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MERIT SY BOARD

5 CFR Par

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AGENCY: M Board.

ACTION: Fi

SUMMARY: Protection address of listed in 5 item numb

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures; Regional Office Address Correction

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The U.S. Merit Systems Protection Board is correcting the address of the Seattle Regional Office as listed in 5 CFR Part 1201, Appendix II, item number 10.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Kelleher, Deputy Executive Director for Regional Operations, (202) 653–7980.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly the Board amends Part 1201 as follows:

PART 1201—[AMENDED]

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

2. Appendix II to Part 1201, item number 10 in the second paragraph is correctly revised to read as follows:

Appendix II to Part 1201—Appropriate Regional Office For Filing Appeals

* * * * *

10. Seattle Regional Office, 915 Second Avenue, Suite 1840, Seattle, Washington 98174–1001 (Alaska, Hawaii, Idaho, Oregon, Washington, Pacific overseas).

* * * * *

Date: November 28, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88–27715 Filed 11–30–88; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15

Nondiscrimination; Revision of Appendix

AGENCY: United States Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture has determined that public interest requires greater elaboration on the extent of its programs covered by Civil Rights Laws and Regulations. Hence, the Department is revising and updating the Appendix for Subpart A which lists Federally assisted programs. In addition, the Department is promulgating under Subpart B, a list of direct assistance and Federally conducted programs and activities of the Department covered under agency program statutes.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Anthony M. Thielen, Compliance, Complaints and Adjudication Division, Office of Advocacy and Enterprise, Equal Opportunity, United States Department of Agriculture, Washington, DC 20250, Room 0101–South, phone (202) 447–5543.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register**, May 6, 1988 (53 FR 16283). Three comments relating to Appendix B were received, one noting that an additional program should be included; a second noting an error in the title of a program; and a third noting a program incorrectly listed as two separate programs. The new program is administered by the Agricultural Stabilization and Conservation Service. It is the Colorado Salinity Control Program, Pub. L. 93–920, 43 U.S.C. 1592, and has been added to Appendix B as number 36. Proposed numbers 36 through 58 have been redesignated as 37 through 59 respectively. The corrected program title is number 53 under Appendix B and has been revised to read "Permits for Use of National Forests and National Grasslands." Numbers 59 and 60 as proposed was one program only, namely, "Meat and Poultry Inspection Operations Program." Hence, proposed number 59 was deleted. The Director, Office of Advocacy and Enterprise, has determined that this regulation is not a major role as defined by Executive Order 12291, since it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets. As a result, it is not necessary to prepare a Regulatory Impact Analysis. Furthermore, the Director has determined that this action will not have a significant economic impact on a substantial number of small entities. Therefore, no Regulatory Flexibility Analysis is required.

List of Subjects in 7 CFR Part 15

Civil rights, Nondiscrimination.

Accordingly, 7 CFR Part 15, Subpart A and Subpart B are amended as follows:

PART 15—[AMENDED]

1. The authority for Part 15 continues to read as follows:

Authority: 78 Stat. 252; 80 Stat. 379; 87 Stat. 394, as amended by 92 Stat. 2955; 42 U.S.C. 2000d–1; 5 U.S.C. 301; 29 U.S.C. 794, unless otherwise noted.

2. Accordingly, the changes and additions have been made as described and the appendices to Subparts A and B are revised to read as follows:

Subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

Appendix to Subpart A—List of USDA-Assisted Programs

Programs administered by the U.S. Department of Agriculture in which Federal financial assistance is rendered, include but are not limited to the following:

Program	Authority
Administered by the Agricultural Cooperative Service	
1. Cooperative Development	Cooperative Marketing Act of 1926, 7 U.S.C. 451 et seq. Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 et seq.
Administered by the Agricultural Marketing Service	
2. Federal-State marketing improvement program	Agricultural Marketing Act of 1946, Section 204b, 7 U.S.C. 1623(b).
Administered by the Agricultural Research Service	
3. Soil and Water Conservation	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
4. Animal Productivity	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862; (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
5. Plant Productivity	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862, (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
6. Commodity Conversion and Delivery	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
7. Human Nutrition	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
8. Integration of Agricultural Systems	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
Administered by the Agricultural Stabilization and Conservation Service	
9. Price support programs operating through producer associations, cooperatives and other recipients in which the recipient is required to furnish specified benefits to producers (e.g. tobacco, peanuts, cotton, rice, honey, dry edible beans, tung oil, naval stores and soybeans price support programs).	Agricultural Adjustment Act of 1938, 7 U.S.C. 1301-1393; Pub. L. 73-430; Commodity Credit Corporation Charter Act, 15 U.S.C. 714 et. seq.; Agricultural Act of 1949, as amended; 7 U.S.C. 1421, et seq.; Pub. L. 81-439, as amended; Agriculture and Food Act of 1961; Pub. L. 97-98; Dairy and Tobacco Adjustment Act of 1983; Pub. L. 98-180; Agricultural Programs Adjustment Act of 1984; Pub. L. 98-258; Food Security Act of 1985; Pub. L. 99-198.
Administered by Cooperative State Research Service	
10. 1890 Research Facilities	Sec. 1433 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, Pub. L. 95-113, as amended; 7 U.S.C. 3195.
11. Payments to 1890 Land-Grant Colleges and Tuskegee Institute.	Sec. 1445 of the National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 85-113, as amended; 7 U.S.C. 3222.
12. Cooperative Forestry Research (McIntire-Stennis Act).	Cooperative Forestry Research Act of October 10, 1962; Pub. L. 87-788; 16 U.S.C. 582a-582q-7.
13. Payments to Agricultural Experiment Stations under Hatch Act.	Hatch Act of 1887, as amended; 7 U.S.C. 361a-361l.
14. Grants for Agricultural Research Competitive Research Grants.	Sec. 2(b) of Pub. L. 89-106; 7 U.S.C. 450i(b), as amended.
15. Grants for Agricultural Research, Special Research Grants.	Sec. 2(c) of Pub. L. 89-106; 7 U.S.C. 450i(c), as amended.
16. Animal Health and Disease Research	National Agricultural Research, Extension and Teaching Policy Act of 1977, Sec. 1433, Pub. L. 95-113, as amended; 7 U.S.C. 3195.
Administered by Extension Service	
17. Home Economics	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Post-secondary Education Reorganization Act, D.C. Code, Sec. 31-1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et. seq. Sec. 14, Title 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended.
18. 4-H Youth Development	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code, Sec. 31-1518; Title VI, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq.; Sections 1425 and 1444, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended; 7 U.S.C. 3221, 3175; Pub. L. 96-374, Sec. 1361(c); 7 U.S.C. 301 note; Pub. L. 97-98, Agriculture and Food Act of 1981, sec. 1401.
19. Agricultural and Natural Resources	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code, Sec. 31-1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq.; Sec. 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended; 7 U.S.C. 3101, et seq.
20. Community Resource Development	Smith-Lever Act, as amended; 7 U.S.C. 341-349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code 31-1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et. seq.; National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95-113, as amended; 7 U.S.C. 3101, et seq.; Renewable Resources Extension Act of 1978; 16 U.S.C. 1671-1676.
Administered by Federal Crop Insurance Corporation	
21. Crop Insurance	Federal Crop Insurance Act, as amended; 7 U.S.C. 1501-1520; Title V of the Agricultural Adjustment Act of 1938; 52 Stat. 31 and Federal Crop Insurance Act of 1980; Pub. L. 96-385 (Sept. 26, 1980); 94 Stat. 1312-1319.

Program	Authority
Administered by Farmers Home Administration	
22. Farm Ownership Loans to install or improve recreational facilities or other nonfarm enterprises.	Section 302 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1923.
23. Farm Operating Loans to install or improve recreational facilities or other nonfarm enterprises.	Sec. 312 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1942.
24. Community Facility Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
25. Rural Rental Housing and related facilities for elderly persons and families of low income.	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
26. Rural Cooperative Housing	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
27. Rural Housing Site Loans	Sec. 524, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490d.
28. Farm and Labor Housing Loans	Sec. 514, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1484.
29. Farm Labor Housing Grants	Sec. 516, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1486.
30. Mutual self-help housing grants. (Technical assistance grants).	Sec. 523, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490c.
31. Technical and supervisory assistance grants	Sec. 525, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490e.
32. Individual Recreation Loans	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
33. Recreation Association Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
34. Private enterprise grants	Sec. 310(B)(c) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932(c).
35. Indian Tribal Land Acquisition Loans	Pub. L. 91-229, approved April 11, 1970; 25 U.S.C. 488.
36. Grazing Association Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
37. Irrigation and Drainage Associations	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
38. Area development assistance planning grant program.	Sec. 306(a)(11) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926(a)(11)
39. Resource conservation and development loans	Sec. 32(e) of Title III, the Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1011(e).
40. Rural Industrial Loan Program	Sec. 310B of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932.
41. Rural renewal and resource conservation development, land conservation and land utilization.	Sec. 31-35, Title III, Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1010-1013a.
42. Soil and water conservation, recreational facilities, uses; pollution abatement facilities loans.	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
43. Watershed protection and flood prevention program.	Sec. 1-12 of the Watershed Protection and Flood Prevention Act, as amended; 16 U.S.C. 1001-1008.
44. Water and Waste Facility Loans and Grants	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
Administered by Food and Nutrition Service	
45. Food Stamp Program	The Food Stamp Act of 1977, as amended; 7 U.S.C. 2011-2029.
46. Nutrition Assistance Program for Puerto Rico. This is the Block Grant signoff of the Food Stamp Program for Puerto Rico.	The Food Stamp Act of 1977, as amended; Sec. 19, 7 U.S.C. 2028.
47. Food Distribution (Food Donation Program). (Direct Distribution Program).	Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165. 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79-396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91-665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5189); sec. 2, Pub. L. 93-326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612 note); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301).
48. Food Distribution Program Commodities on Indian Reservations.	The Food Stamp Act of 1977, as amended, Section 4(b), 7 U.S.C. 2013(b).
49. National School Lunch Program	National School Lunch Act, as amended; 42 U.S.C. 1751-1760.
50. Special Milk Program for Children (School Milk Program).	Child Nutrition Act of 1966, Sec. 3, as amended, 42 U.S.C. 1772.
51. School Breakfast Program	Child Nutrition Act of 1966, Sec. 4, as amended; 42 U.S.C. 1773.
52. Summer Food Service Program for Children	National School Lunch Act, Sec. 13, as amended; 42 U.S.C. 1761.
53. Child Care Food Program	National School Lunch Act, Sec. 17, as amended; 42 U.S.C. 1766.
54. Nutrition Education and Training Program	Child Nutrition Act of 1966, Sec. 19, 42 U.S.C. 1788.
55. Special Supplemental Food Program for Women, Infants and Children.	Child Nutrition Act of 1966, Sec. 17, 42 U.S.C. 1786.
56. Commodity Supplemental Food Program.	Agriculture and Consumer Protection Act of 1973, as amended; 7 U.S.C. 612c note.
57. Temporary Emergency Food Assistance Program.	Temporary Emergency Food Assistance Act of 1983, as amended; 7 U.S.C. 612c note.
58. State Administrative Expenses for Child Nutrition	Child Nutrition Act of 1966, Sec. 7, as amended; 42 U.S.C. 1776.
59. Nutrition Assistance Program for the Commonwealth of the North Mariana Islands. (This is the Block Grant spin-off of the Food Stamp Program for CNMI).	Trust Territory of the Pacific Island, 48 U.S.C. 1681 note.
Administered by Forest Service	
60. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915, as amended, 16 U.S.C. 4971, Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
61. Youth Conservation Corps	Act of August 13, 1970, as amended, 16 U.S.C. 1701-1706. Note: This is a Federally financed and conducted program on National Forest land providing summer employment to teen-age youth doing conservation work while learning about their natural environment and heritage. Recruitment of recipient youth is without regard to economic, social or racial classification. Policy requires that random selection from the qualified applicant pool be made in a public forum.

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Program	Authority
62. Job Corps	29 U.S.C. 1691–1701. Note: This is a Federally financed and conducted program providing education and skills training to young men and women. The U.S. Department of Labor is entirely responsible for recruiting of recipient youth.
63. Permits for disposal of common varieties of mineral material from lands under the Forest Service jurisdiction for use by other individuals at a nominal or no charge.	Secs. 1–4 of the Act of July 31, 1947, as amended, 30 U.S.C. 601–603, 611.
64. Use of Federal land for airports	Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. 2202, 2215. National Forest lands are exempt, Sec. 2215(c).
65. Conveyance of land to States or political subdivisions for widening highways, streets and alleys.	Act of October 13, 1964, 78 Stat. 1089. Forest Road and Trail Act, codified at 16 U.S.C. 532–538.
66. Payment of 25 percent of National Forest receipts to States for schools and roads.	Act of May 23, 1908, as amended, 16 U.S.C. 500.
67. Payment to Minnesota from National Forest receipts of a sum based on a formula.	Sec. 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577 g–l.
68. Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act lands to Counties for school and road purposes.	Sec. 33 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1012.
69. Cooperative action to protect, develop, manage and utilize forest resources on State and private lands.	Cooperative Forestry Assistance Act of 1976, 16 U.S.C. 2101–2111.
70. Advance of funds for cooperative research	Sec. 20 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 581–1.
71. Grants for support of scientific research	Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, 16 U.S.C. 1600 et seq.
72. Research Cooperation	Forest and Rangeland Renewable Resources Research Planning Act of 1974, as amended, 16 U.S.C.
73. Grants to Maine, Vermont and New Hampshire for the purpose of assisting economically disadvantaged citizens over 55 years of age.	Older American Act of 1965, as amended, 42 U.S.C. 3056.
74. Senior Community Service Employment, develop, manage and utilize forest resources on State and private lands.	Older American Act of 1965, as amended, 42 U.S.C. 3056.
75. Cooperative Law Enforcement	16 U.S.C. 551a and 553.
76. Forest Utilization and Marketing	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, 16 U.S.C. 1606, 2101–2111.
77. Fire prevention and suppression	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, Sec. 7, 16 U.S.C. Sec. 2106.
78. Assistance to States for tree planting	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, Secs. 3, 6, 16 U.S.C. 2102, 2105.
79. Technical assistance forest management	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, Sec. 8, 16 U.S.C. 2107.
80. Extramural Research (Cooperative Agreements and Grants).	Range Renewable Resources Act of 1978; Rangeland and Latest Renewable Resources Research Act; 16 U.S.C. 1641–1647.
Administered by Food Safety and Inspection Service	
81. Federal-State Cooperative Agreements and Talmadge-Aiken Agreements.	Federal Meat Inspection Act; 21 U.S.C. 601 et seq. Talmadge-Aiken Act; 7 U.S.C. 450. Poultry Products Inspection Act; 21 U.S.C. 451 et seq.
Administered by Office of International Cooperation and Development	
82. Technical Assistance	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
83. International Training	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
84. Scientific and Technical Exchanges	7 U.S.C. 3291.
85. International Research	7 U.S.C. 3291.
Administered by Soil Conservation Service	
86. Conservation Technical Assistance to Landusers	Sec. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590a–590f, 590g.
87. Plant Materials Conservation	Soil Conservation Act of 1935, Pub. L. 74–46; 49 Stat. 163, 16 U.S.C. 590(a–f).
88. Technical and financial assistance in Watershed Protection and flood prevention.	Watershed Protection and Flood Protection Act, as amended, 16 U.S.C. 1001–1005, 1007–1008; Flood Control Act, as amended and supplemented; 33 U.S.C. 701; 16 U.S.C. 1606(a) and Sec. 403–405 of the Agriculture Credit Act of 1978; 16 U.S.C. 2203–2205. Flood Prevention: Pub. L. 78–534; 58 Stat. 905; 33 U.S.C. 701(b)(1); Pub. L. 81–516.
89. Technical and financial assistance in Watershed Protection and flood prevention.	Emergency Operation (216); 68 Stat. 184; 33 U.S.C. 701(b)(1). Watershed Operation: Pub. L. 83–566; 68 Stat. 666:16 U.S.C. 1001 et. seq.
90. Soil Survey	Sec. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590g.
91. Rural Abandoned Mine Program	Surface Mining Control and Reclamation Act of 1977, Sec. 406; Pub. L. 95–87, 30 U.S.C. 1236, 91 Stat. 460.
92. Resource Conservation and Development	Soil Conservation Act of 1935; Pub. L. 74–46; Bankhead-Jones Farm Tenant Act; Pub. L. 75–210, as amended, Pub. L. 89–796; Pub. L. 87–703; Pub. L. 91–343; Pub. L. 92–419; Pub. L. 97–98; 95 Stat. 1213; 16 U.S.C. 590a–590f, 590g.
93. Great Plains Conservation	Soil Conservation and Domestic Allotment Act, Pub. L. 74–46, as amended by the Great Plains Act of August 7, 1956; Pub. L. 84–1021, Pub. L. 86–793 approved September 14, 1980. Pub. L. 91–118 approved November 1, 1969; Pub. L. 96–263 approved June 6, 1980; 16 U.S.C. 590a–590f, 590g.

Subpart B—Nondiscrimination, Direct USDA Programs and Activities

Appendix to Subpart B—USDA Direct Programs and Activities

Programs conducted by the U.S. Department of Agriculture which include but are not limited to the following:

Program	Authority
Administered by the Agricultural Marketing Service	
1. Agricultural Fair.. Practice Act	7 U.S.C. 2301–2306.
2. Commodity Credit Corporation's Dairy Collection Program.	Omnibus Budget Reconciliation Act of 1982; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); Food Security Improvements Act of 1986.
3. Commodity Purchases	Section 32 (7 U.S.C. 612c); Sec. 6a, 6c and 14 of the National School Lunch Act; Sec. 4(a) of the Agriculture and Consumer Protection Act of 1973; 7 U.S.C. 612(c); Older Americans Act (42 U.S.C. 1751, 1755, 1758 and 1761.
4. Commodity Research and Promotion	Agricultural Marketing Act of 1946 (7 U.S.C. 1621 Act); (7 U.S.C. 2101–2119); Egg Research and Consumer Information Act (7 U.S.C. 2701–2718); Export Apple and Pear Act (7 U.S.C. 581–590); Export Grape and Plum Act (7 U.S.C. 591–599); Federal Seed Act (7 U.S.C. 1551–1611); National Wool Act of 1954, as amended; (7 U.S.C. 1781–1787); Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2417, 2441–2442, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583); Floral Research, Education and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); Wheat and Wheat Foods Research and Nutrition Education Act of 1977 (7 U.S.C. 3401–3417); Cotton Research and Promotion Act of 1966, as amended, (7 U.S.C. 2101–2119); Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627); Agricultural Fair Practices Act (7 U.S.C. 2301–2306); Capper Volstead Act (7 U.S.C. 291–292); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611–2627); Beef Promotion and Research Act of 1985; the Pork Promotion Research and Consumer Information Act of 1985.
5. Federal Seed Act Administration	Federal Seed Act (7 U.S.C. 1551–1575 and 1591–1611); Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).
6. Governmentwide Food Quality Assurance	Federal Property and Administrative Services Act of 1949 (63 Stat. 377).
7. Inspection Grading and Standardization	Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627); Cotton Statistics and Estimates Act (7 U.S.C. 471–476); U.S. Cotton Futures Act (7 U.S.C. 15b); U.S. Cotton Standards Act (7 U.S.C. 51–65); Naval Stores Act (7 U.S.C. 91–99); Tobacco Inspection Act (7 U.S.C. 511–511q); Wool Standards Act (7 U.S.C. 415b–d); Egg Products Inspection Act 1970, Pub. L. 91–597; 21 U.S.C. 1031–1056; Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); Tobacco Statistics of 1929 (7 U.S.C. 501–508); Tobacco Inspection Act of 1983 (7 U.S.C. 511r).
8. Market Assistance and Analysis	Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627); Export Apple and Pear Act of 1933 (7 U.S.C. 581–590); Export Grape and Plum Act of 1960 (7 U.S.C. 591–599); Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517).
9. Marketing Agreements and Orders	Agricultural Marketing Agreement Act of 1937, as amended; 7 U.S.C. 601, 602, 608a–e, 612, 614, 624, 671–674; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513).
10. Marketing Research	Agricultural Marketing Act of 1946; Food and Agriculture Act of 1977.
11. Market News	Cotton Statistics and Estimates Act (7 U.S.C. 471–473, 473b, 475–476; Tobacco Inspection Act of 1935 (7 U.S.C. 511–511a); Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627); Tobacco Statistics Act (7 U.S.C. 501–508); Naval Stores Act (7 U.S.C. 91–99); U.S. Cotton Futures Act (7 U.S.C. 15b); Peanut Statistics (7 U.S.C. 951–957); Turpentine and Rosin Statistics (7 U.S.C. 2248); Agriculture and Food Act of 1981 (7 U.S.C. 2242A).
12. Perishable Agricultural Commodities Act	Perishable Agricultural Commodities Act of 1930, as amended (7 U.S.C. 499a–499s); Produce Agency Act (7 U.S.C. 491–497).
13. Plant Variety Protection	U.S. Plant Variety Protection Act of 1970, 84 Stat. 1542, 7 U.S.C. 2321 et seq.
Administered by Animal and Plant Health Inspection Service	
14. Animal and Animal Products (Veterinary Services).	7 U.S.C. 429, 430, 450, 1622, 1624, 2131–2147, 2149–2155, 3374, 2260, 3801–3812, 15 U.S.C. 1821–1831; 19 U.S.C. 1202, Sch. 1, part 1, item 100.01 and 1306; 21 U.S.C. 102–135; 151–158, 612–614 and 618; 45 U.S.C. 71–74; 46 U.S.C. 3901–3902; 49 U.S.C. 1741; 50 U.S.C. App. 2061 et seq.; Executive Order 11987.
15. Plant and Plant Products. Inspection Programs (Plant Protection and Quarantine).	7 U.S.C. 147a, 147b, 148, 148a–148f, 149, 150–150g, 150aa–150, 151–164–a, 166, 167, 281–286, 450, 1581–1612, 1651–1656, 2260, 2801–2813; 49 U.S.C. 1741; 50 U.S.C. 2061 et. seq.; 2251 et. seq. 87 Stat. 884; Executive Order 11987.
Administered by the Agricultural Stabilization and Conservation Service	
16. Agricultural Conservation Program	The Soil Conservation and Domestic Allotment Act of 1936, Secs. 7 to 15, 16(a), 16(f) and 17, as amended and supplemented (16 U.S.C. 590g–590o, 590p(a), 590(q); secs. 1001–1008 and 1010 of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501–1508 and 1510), Sec. 1501 of the Food and Agriculture Act of 1977; Sec. 259 of the Energy Security Act of 1980 (Pub. L. 96–294).
17. Conservation Reserve Program	Food Security Act of 1985.
18. Cotton Program	Commodity Credit Corporation Charter Act, Pub. L. 80–89; Agricultural Act of 1949, as amended, 7 U.S.C. 1444; Extra Long Staple Cotton Act of 1983, Pub. L. 98–88; Food Security Act of 1985, Pub. L. 99–198.
19. Dairy Indemnity Payment Program	Pub. L. 90–484, as amended; the Agricultural Act of 1970, Title II, Sec. 204, 7 U.S.C. 450j–450l. Pub. L. 91–524; Agriculture and Consumer Protection Act of 1973; Pub. L. 93–86; Food and Agriculture Act of 1977; Pub. L. 95–113; Food and Agriculture Act of 1981, Pub. L. 97–98.
20. Dairy Termination Program	Agricultural Act of 1949, as amended by the Food Security Act of 1985.
21. Emergency Conservation Program	Agricultural Credit Act of 1978, Title IV, Pub. L. 95–334, 16 U.S.C. 2201–2205.
22. Emergency Feed Assistance Program	Agricultural Act of 1949, Sec. 407.
23. Farm Facility Loan Program	Agricultural Act of 1949, as amended; 12 U.S.C. 1134(c), Pub. L. 81–439; Commodity Credit Corporation Charter Act, as amended; 15 U.S.C. 714 (b) and (c); Food and Agriculture Act of 1977, 15 U.S.C. 714(b). Pub. L. 95–113; Pub. L. 96–234; Agriculture and Food Act of 1981, Pub. L. 97–98.
24. Feed Grain Donation Program	Agricultural Act of 1949, Sec. 407.
25. Feed Grain Program	Commodity Credit Corporation Charter Act, Pub. L. 80–89; Agricultural Act of 1949, as amended, 7 U.S.C. 1421, Pub. L. 81–439; Federal Crop Insurance Act of 1980; Pub. L. 96–365, Food Security Act of 1985, Pub. L. 99–198.
26. Forestry Incentives Program	Cooperative Forestry Assistance Act of 1978; Pub. L. 95–313.
27. Grain Reserve Program	Agricultural Act of 1949; 7 U.S.C. 1445; Pub. L. 81–439; Commodity Credit Corporation Charter Act, 15 U.S.C. 714, Pub. L. 80–806; Agriculture and Food Act of 1981, Pub. L. 97–98; Food Security Act of 1985, Pub. L. 99–198.

Program	Authority
28. Herd Preservation Program	Agricultural Act of 1949, Sec. 407.
29. Indian Acute Distress Donation Program	Agricultural Act of 1949, Sec. 407; Executive Order 11336.
30. Programs which do not operate through producers, associations, cooperatives or other recipients.	Agricultural Adjustment Act of 1938; 7 U.S.C. 1301-1393, Pub. L. 73-430; Commodity Credit Corporation Charter Act, 15 U.S.C. 714, et seq.; Agricultural Act of 1949; as amended; 7 U.S.C. 1421, et seq. Pub. L. 81-439; as amended; Agriculture and Food Act of 1961; Pub. L. 97-98; Dairy and Tobacco Adjustment Act of 1983; Pub. L. 98-180; Agricultural Programs Adjustment Act of 1984; Pub. L. 98-258; Food Security Act of 1985; Pub. L. 99-198.
31. Rice Program	Commodity Credit Corporation Charter Act; Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1441, Pub. L. 81-439; Food Security Act of 1985, Pub. L. 99-198.
32. Rural Clean Water Program	Agricultural, Rural Development and Related Agencies Appropriations Act of 1980, Pub. L. 96-108; 93 Stat. 821, 835 and Pub. L. 96-528; 94 Stat. 3095, 3111.
33. Water Bank Program	Water Bank Act; Pub. L. 91-559; Pub. L. 96-182.
34. Wheat Program	Commodity Credit Corporation Charter Act; Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1445; Pub. L. 81-439; Food Security Act of 1985; Pub. L. 99-198.
35. Wool and Mohair Incentive Payment Program	National Wool Act of 1954, as amended; 7 U.S.C. 1781-1787; Pub. L. 83-690; Agriculture and Food Act of 1981; Pub. L. 97-98; Food Security Act of 1985; Pub. L. 99-198.
36. Colorado River Salinity Control Program	Sec. 202(c), Pub. L. 93-920, 88 Stat. 271, as amended, (43 U.S.C. 1592).
Administered by the Economic Research Service	
37. Rural Economics Research Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
38. International Economics Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
39. National Resource Economics Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
40. National Economics Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
Administered by Federal Crop Insurance Corporation	
41. Crop Insurance	Federal Crop Insurance Act, as amended, 7 U.S.C. 1501-1520; Title V of the Agricultural Adjustment Act of 1938; 52 Stat. 31 and Federal Crop Insurance Act of 1980, Pub. L. 96-385 (September 26, 1980), 94 Stat. 1312-1319.
42. Standardization Activities	Sec. 203(c) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1622(c).
43. Inspection Activities	Sec. 7 of the United States Grain Standards Act, as amended, 7 U.S.C. 79.
44. Compliance Activities	Sec. 203(h) of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1622(h).
45. Research and Development	Sec. 203 of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1622.
46. Weighing Activities	Sec. 7A of the United States Grain Standards Act, as amended, 7 U.S.C. 79a.
Administered by Farmers Home Administration	
47. Emergency Loans	Sec. 321-330 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1968.
48. Farm Operating Loans	Sec. 311, Title I of the Rural Development Act, as amended, 7 U.S.C. 1941.
49. Farm Ownership Loans	Sec. 302 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1922.
50. Section 502 Rural Housing Loans	Sec. 502, Title V, Housing Act of 1949, as amended, 42 U.S.C. 1471.
51. Rural Housing Loans and Grants (Section 504 repair loan and grant).	Sec. 504, Title V, Housing Act of 1949, as amended, 42 U.S.C. 1471.
52. Soil and Water Loans	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924.
Administered by the Forest Service	
53. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge to any group.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915, as amended, 16 U.S.C. 497; Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
54. Timber granted free or at nominal cost to any group.	Sec. 1 of the Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
55. Forest seedling production and distribution	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 28 U.S.C. 2102.
56. Control of White Pine Blister Rust	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 16 U.S.C. Sec. 2104 (Insect and disease control, White Pine Blister Rust not specifically mentioned).
57. Protection of Forest Resources from insects, pests and diseases.	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 16 U.S.C. 2104.
58. Job Corps	29 U.S.C. 1691-1701. Note: This is a Federally-financed and conducted program providing education and skills training to young men and women. The U.S. Department of Labor is entirely responsible for recruiting of recipient youth.
59. Youth Conservation Corps	Act of August 13, 1970, as amended, 16 U.S.C. 1701-1706. Note: This is a Federally financed and conducted program on National Forest land providing summer employment to teen-age youth doing conservation work while learning about their natural environment and heritage. Recruitment of recipient youth is without regard to economic, social or racial classification. Policy requires that random selection from the qualified applicant pool be made in a public forum.
Administered by Food Safety and Inspection Service	
60. Meat and Poultry. Inspection Operations Program.	Federal Meat Inspection Act; Pub. L. 90-201; 21 U.S.C. 601, et seq. Poultry Products Inspection Act; Pub. L. 90-492; 21 U.S.C. 601, et seq. Humane Slaughter Act; Pub. L. 85-765; 7 U.S.C. 1901, et seq. Federal Meat Inspection Act; 21 U.S.C. 601, et seq. Poultry Products Inspection Act; 21 U.S.C. 451, et seq.
Administered by Human Nutrition Information Service	
61. Nutrient Data Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
62. Guidance and Education Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
63. Food Consumption Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
64. Diet Appraisal Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.

Program	Authority
Administered by National Agricultural Statistics Service	
65. Crop and Livestock Estimates	7 U.S.C. 292, 411a, 411b, 427, 471, 475, 476, 501, 951, 953, 955, 956, 957. Agricultural Marketing Act of 1946; 7 U.S.C. 1621–1627; 7 U.S.C. 2201, 2202, 2248, 3103, 3291, 3311, 3504; 22 U.S.C. 3101; 44 U.S.C. 3501–3511; 50 U.S.C. 2061, et seq. 50 U.S.C. 2251, et seq.
66. Statistical Research	Agricultural Marketing Act of 1946; 7 U.S.C. 1621.
Administered by the Office of Transportation	
67. Rural Transportation Development	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291; Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, et seq.
68. Foreign Market Development	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1661(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, et seq.
69. Economic Analysis	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(i).
70. Facilities Research and Development	Sec. 201 of the Agricultural Adjustment Act of 1938, 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, et seq.
Administered by Rural Electrification Administration	
71. Rural Electrification Loans and Loan Guarantees	Titles I and II of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 901–916, 931–940 (1982).
72. Rural Telephone, Loans and Loan Guarantees	Titles II and III of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 922–924, 931–940 (1982).
73. Rural Telephone, Bank Loans	Title IV of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 941–950b (1982).
Administered by Soil Conservation Service	
74. Snow Survey and Water Supply Forecasting	Soil Conservation and Domestic Allotment Act, Pub. L. 74–46; 16 U.S.C. 590a–590f, 590g.
75. Inventory and Monitoring	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended; 16 U.S.C. 590a–590f, 590g, Sec. 502 of the Rural Development Act of 1972, 7 U.S.C. 1010a.
76. River Basin Surveys and Investigations	Watershed Protection and Flood Prevention Act; Pub. L. 83–566, as amended, Sec. 6, 16 U.S.C. 1006.

Done this 30th day of August, 1988, in Washington, DC.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 88–27435 Filed 11–30–88; 8:45 am]

BILLING CODE 3410–94–M

Agricultural Marketing Service

7 CFR Part 920

[FV–88–124]

Kiwifruit Grown in California; Final Rule to Relax the Standard Pack Requirement and Define Size Designations for Kiwifruit Packed in Certain Containers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes the standard pack requirement for Size 39 and smaller kiwifruit packed in certain containers, adds a size designation definition in conformity with that change, and adds numerical count size definitions and requirements for bags, volume fill, and bulk containers. Relaxing the standard pack requirement to allow a greater size variance for smaller fruit packed in bags, volume fill and bulk containers will reduce handling costs for these packs, which are generally sold at discounted prices. Adding numerical count size designations used in packing and marketing these containers will promote uniformity in sizing kiwifruit. A number of editorial changes are made to clarify the current kiwifruit handling requirements.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 1,225 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The 1987 California kiwifruit harvest totalled 7.8 million trays and tray equivalents, 21 percent larger than the 1986 harvest. For the past ten years, kiwifruit production has increased in California and is expected to increase again in 1988 to a total of 8.7 million trays. Most of the crop is shipped to fresh markets, with only a small volume of fruit utilized by processors. Exports increased 31 percent over last year and are estimated to have accounted for 55 percent of the 1987 production. Domestic shipments are also increasing, with a gain of about 20 percent for the 1987 crop.

The 1987 harvest container breakdown reveals that about 82

percent of the crop was packed in trays with the remainder distributed between bags (9.2 percent), volume fill containers (8.3 percent), and bulk (0.5 percent). The use of bags, volume fill and bulk containers rose in 1987 to 18.0 percent of shipments compared to 10.7 percent in 1986.

The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 (53 FR 34035, September 2, 1988). The current requirements specify that kiwifruit shall grade at least 85 percent U.S. No. 2 with not more than 8 percent allowed for defects other than shape causing damage, not more than 4 percent allowed for defects other than shape causing serious damage, and not more than 1 percent allowed for fruit affected by internal breakdown or decay. Kiwifruit also must meet a minimum size of 49 and contain at least 6.5 percent soluble solids at the time of inspection. Containers (except for those directly loaded into a vehicle for export) must be marked with a lot stamp number corresponding to the lot inspection.

Pack requirements are also specified in paragraph (a)(4) of § 920.302. Some of these requirements apply to all containers of kiwifruit while others apply only to kiwifruit packed in trays. This rule segregates the current pack requirements by the types of containers to which they apply, and makes a number of editorial changes for clarity.

This rule also revises the pack requirements by increasing the allowable size variance for Size 39 and smaller kiwifruit packed in bags, volume fill and bulk containers from ¼-inch to ⅜-inch in diameter. A definition of Size 30 has also been inserted into the handling regulation. These two changes were unanimously recommended by the Kiwifruit Administrative Committee on July 12, 1988.

Finally, this rule adds numerical count size definitions that are used by the industry in packing and marketing kiwifruit in containers other than trays. The maximum number of fruit per eight-pound sample is specified in the rule.

The current regulation requires all kiwifruit to be "fairly uniform in size", as defined in the U.S. Standards for Grades of Kiwifruit. Such uniformity is in terms of an allowable variance in diameter among the individual pieces of fruit in a given container. Larger size fruit (Size 30 and larger) may not vary by more than ½-inch in diameter; intermediate size fruit (Sizes 31 to 38) may not vary by more than ⅜-inch in diameter; and smaller size fruit (Size 39 and smaller) may not vary by more than ¼-inch in diameter.

Kiwifruit packed in trays will continue to be required to be "fairly uniform in size". In the interest of clarity, however, the definition of this term has been moved from paragraph (a)(4) to paragraph (b) of the handling regulation (§ 920.302).

For kiwifruit packed in containers other than trays, a modification of the "fairly uniform in size" requirement has been made. These other containers include bags, volume fill and bulk containers, which are used primarily for lower quality and smaller sized fruit. Therefore, such packs generally sell at discounted prices. The committee believes that the cost of precise sorting required by the current ¼-inch variance for the smallest sizes of kiwifruit is too high in relation to the returns received. Therefore, the allowable variance for these sizes is increased to ⅜-inch in diameter to reduce packing costs and increase the number of packs available to consumers. This action should facilitate the handling of small kiwifruit, and the additional ⅛-inch in size variation permitted is not expected to adversely affect consumer demand.

Since this requirement differs from the "fairly uniform in size" requirement, that term will not be used to specify the allowable size variance for kiwifruit packed in containers other than trays. Instead, the modified specification is fully set forth in § 920.302.

The pack requirements specify that all kiwifruit must be (1) packed in boxes, flats, lugs, cartons or any other containers, and (2) arranged according to approved and recognized methods. This rule deletes these two requirements from the handling regulation. The first is unnecessary because it only states that kiwifruit may be packed in any type of container and does not place any restrictions on the types of containers that may be used in handling kiwifruit. The second is likewise unnecessary because no methods of arranging kiwifruit have been "approved and recognized." Accordingly, this requirement is deleted.

As previously indicated, the majority of California kiwifruit is packed in trays which have cell compartments to hold individual pieces of fruit. The size of the fruit packed in these containers is denoted by count, i.e., the number of pieces of fruit packed in the tray. There are currently 19 sizes packed in trays, ranging from Size 49 (the smallest size permitted to be shipped) to Size 20. The five most prevalent sizes are 30, 33, 36, 39 and 42 which is 1987–88 accounted for almost 88 percent of the trays packed. These types of containers are required to be marked with a numerical count to designate size, and the number of fruit in the tray must conform to the marked count.

Kiwifruit is also packed in bags, volume fill and bulk containers, which do not have cell compartments. These containers are currently exempt from the requirement that containers be marked with a numerical count to designate size. While not required, the majority of these containers are marked with a size designation, since size is an important factor in marketing kiwifruit.

The numerical size designations used for trays are not directly applicable to bags and other volume fill containers, however. To provide a uniform basis for sizing fruit packed in these containers, the numerical counts used in tray packs have been translated by the committee into equivalent weight counts that can be applied to fruit in other containers. For example, fruit from 30-count trays were assembled into 8-pound samples. The average number of fruit it took to form an 8-pound sample (e.g., 35 pieces of fruit for 30-count trays) then became the criteria to determine the size of the fruit in containers other than trays.

It has been the practice of the committee to annually prepare a Size Designation Chart defining the most commonly packed sizes of kiwifruit in terms of the maximum number of fruit per 8-pound sample. If bags, volume fill or bulk containers are marked to denote size, the Size Designation Chart is used by the Federal-State Inspection Service to verify that the contents of the containers conform to the marked size designation. Since this chart is used in such a way, it is appropriate that it be set forth in § 920.302. Therefore, this rule inserts the Size Designation Chart utilized during the 1986–87 and 1987–88 seasons into the handling regulation. While bags, volume fill, or bulk containers continue to be exempt from the requirement that they be marked with a numerical count, if they are so marked their contents have to conform to these defined size designations. This action should promote consistency in the sizing of kiwifruit packed in all containers.

The only size designation that was defined in the handling regulation for other than tray-packed fruit was Size 49, since it is the minimum size permitted to be shipped. This rule moves the definition of Size 49 from paragraph (a)(2) to paragraph (b) of § 920.302 for consistency.

Since this rule sets an allowable size variance for kiwifruit packed in bags, volume fill and bulk containers of ½-inch in diameter for Size 30 and larger and ⅜-inch in diameter for all other sizes, a definition of Size 30 is also

incorporated in paragraph (b) of the regulation, again in the interest of consistency. Size 30 is defined to mean that an 8-pound sample representative of the size in a container contains not more than 35 pieces of kiwifruit.

Finally, the definition of "diameter" that appeared in paragraph (a)(4) has been moved to paragraph (b) of § 920.302. This change also promotes consistency in the regulation.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on September 29, 1988 (53 FR 38009) allowing interested persons until October 14, 1988 to file written comments. No comments were received.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 533) in that the shipping season for California kiwifruit has already begun, and it is important that the change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers. Furthermore, producers and handlers of kiwifruit in the production area are already aware of the changes, which relax current handling requirements, and no comments were received when notice of this action was given.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.302 is amended by revising paragraphs (a)(2), (a)(4) and (b) to read as follows:

Note: This regulation will appear in the Code of Federal Regulations.

§ 920.302 Grade, size, pack and container regulations.

* * * * *

(a) * * *

(2) *Size Requirements.* Such kiwifruit shall be at least a minimum Size 49.

* * * * *

(4) *Pack Requirements.* (i) All containers of Kiwifruit shall be well filled. Contents shall be tightly packed but not excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents.

(ii) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers or molds in which they are packed. Such fruit shall be fairly uniform in size. When packed in closed containers the size shall be indicated by marking the container with the numerical count, and the contents shall conform to the marked count.

(iii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger and not more than ⅜-inch (9.5 mm) in diameter if smaller than Size 30. When such containers are marked with a numerical count size designation, the numerical count size designation shall be one of those shown in Column 1 of the following table and the number of fruit per 8-pound sample shall not exceed the corresponding number shown in Column 2 of the table:

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
25	30
27/28	31
30	35
33	37
36	43
39	50
42	55
45/46	62
49	64

(iv) Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph.

* * * * *

(b) *Definitions.* (1) The terms "U.S. No. 2", "fairly uniform in size" and "diameter" mean the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

(2) "Size 49" means that an 8-pound sample representative of the size in a package or container contains not more than 64 pieces of kiwifruit.

(3) "Size 30" means that an 8-pound sample representative of the size in a package or container contains not more than 35 pieces of kiwifruit.

* * * * *

Dated: November 25, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–27636 Filed 11–30–88; 8:45 am]

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7 CFR Parts 932 and 944

[Docket No. FV–88–119]

Olives Grown in California and Imported Olives; Establishment of Grade and Size Requirements for Limited Use Styles of California Processed Olives for the 1988–89 Season, and Conforming Changes in the Olive Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule which established grade and size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments and established similar requirements in the olive import regulation to bring that regulation into conformity with the domestic requirements. The grade and size requirements are the same as implemented last season. Olives used in limited use styles are too small to be desirable for use as whole or pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of products where the form of the olive is changed. Their use in such products over the years has helped the California olive industry meet the increasing market needs of the food service industry. The requirements for domestic olives were recommended by the California Olive Committee, which works with the Department in administering the marketing order program for olives grown in California. The establishment of such requirements for imported olives is required pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order

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Administration Branch, F&V Division, AMS, USDA, P.O. Box 96458, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 (7 CFR Part 932), as amended (the order), regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are seven handlers of California olives subject to regulation under the order and approximately 1,400 producers in California. Approximately 25 importers of olives are subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons in the 1972–73 crop year to a high of 146,500 tons in the 1982–83 crop year. Last year's production totalled about 64,000 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The industry expects the 1988–89 crop to be about 85,000 tons.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

This action allows handlers to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers.

The interim rule was issued August 3, 1988, and published in the **Federal Register** on August 30, 1988 (53 FR 33100). That rule invited interested persons to submit written comments through September 29, 1988. One comment was received strongly favoring the grade and size requirements established by the interim final rule.

The interim rule modified § 932.153 of Subpart-Rules and Regulations (7 CFR 932.108–932.161). The modification established grade and size regulations for 1988–89 crop limited use size olives. The modification was issued pursuant to paragraph (a)(3) of § 932.52 of the order. That rule also made necessary conforming changes in the olive import regulation (Olive Regulation 1; 7 CFR 944.401). The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order, the same or comparable requirements must be imposed on the imports.

Paragraph (a)(3) of § 932.52 of the marketing order provides that processed olives smaller than the sizes prescribed for whole and pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

To allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1988–89 crop year (August 1–July 31). The grade requirements are the same as those applied during the 1987–88 crop year, as are the sizes and the size tolerances. Permitting handlers to use small olives in limited use style canned olives will have a positive impact on industry returns. In the absence of this action, the undersized fruit would have to be used for non-canning uses, like oil, for which returns are lower. The requirements hereinafter set forth in § 932.153 are the same as those contained in the interim rule.

Paragraph (b)(12) of § 944.401 of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. Continuation of the limited use authorization for California olives by this final rule requires that similar changes be made in paragraph (b)(12) of § 944.401 to keep the import regulation in conformity with the applicable domestic requirements. These conforming changes will benefit importers because they will be able to import small-sized olives for limited use during the 1988–89 season ending July 31, 1989.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is determined that the provisions as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action leaves in effect requirements currently being applied to California and imported olives under an interim rule; (2) the olive import requirements are mandatory under section 8e of the Act; (3) this action relieves restrictions on handlers and importers; (4) the interim final rule provided a 30 day period for comments, one comment was received strongly favoring this action; and (5) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects

7 CFR Part 932

Marketing agreements and orders, Olives, California.

7 CFR Part 944

Food grades and standards, Fruits, Import regulations.

For the reasons set forth in the preamble, 7 CFR Parts 932 and 944 are amended as follows.

PART 932—OLIVES GROWN IN CALIFORNIA

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citations for 7 CFR Parts 932 and 944 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim rule revising § 932.153, and amending § 944.401(b), which was published at 53 FR 33100 on September 29, 1988, is adopted as a final rule with no changes.

Note: These sections will appear in the Code of Federal Regulations.

Dated: November 25, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–27637 Filed 11–30–88; 8:45 am]

BILLING CODE 3410–01–M

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7 CFR Part 1002

[Docket No. A0–71–A76; DA–88–107]

Milk in the New York-New Jersey Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the maximum allowable rate of payment for expense of administration from four cents to five cents per hundredweight of milk handled under the New York-New Jersey Federal milk order. The higher maximum allowable rate of payment is necessary to offset the increased costs of administering the order that have occurred since the rate was last adjusted in September 1969.

The action is based on a public hearing held in Syracuse, New York, on June 6, 1988, to consider an industry proposal to amend the order. The hearing was requested by three dairy farmer cooperatives.

More than the required percentage of producers in the market approved the issuance of the amended order.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 19, 1988; published May 25, 1988 (53 FR 18844).

Recommended Decision: Issued August 23, 1988; published August 29, 1988 (53 FR 32911).

Final Decision: Issued September 27, 1988; published October 3, 1988 (53 FR 38727).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the New York-New Jersey order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1002.90.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than December 1, 1988. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Programs, was issued August 23, 1988 (53 FR 32911), and the decision of the Assistant Secretary containing the amendment provision of this order was issued September 27, 1988 (53 FR 38727). The change effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective December 1, 1988, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1002

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR Part 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1002.90, is amended by revising the first sentence to read as follows:

§ 1002.90 Payment by handlers.

To share on a pro rata basis the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding five cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), and exact amount to be determined by the market administrator subject to review by the Secretary. * * *

Signed at Washington, DC, on November 25, 1988.

Kenneth A. Gilles,

Acting Secretary.

[FR Doc. 88-27727 11-30-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1007 and 1098

[Docket Nos. AO-184-A52 and AO-366-A29; DA-88-104]

Milk in the Nashville and Georgia Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the pooling provisions of the Nashville, Tennessee, and Georgia milk orders. A pool distributing plant physically located in the Nashville, Tennessee, marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk product distribution. Another change in the Nashville order establishes a plus location adjustment of 8.5 cents per hundredweight for milk received at plants located in 18 Tennessee counties south of Nashville. The Georgia order is amended to accommodate the pooling changes in the Nashville order. The amendments are based on the record of a public hearing held November 3, 1987, at Nashville, Tennessee. More than two-thirds of the producers participating in a referendum have approved the amended Nashville order. Likewise, more than two-thirds of the producers pooled under the Georgia order have approved the amended Georgia order.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued October 16, 1987; published October 21, 1987 (52 FR 39232).

Recommended Decision: Issued July 21, 1988; published July 26, 1988 (53 FR 27993).

Final Decision: Issued September 27, 1988; published October 3, 1988 (53 FR 38730).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Nashville, Tennessee, and Georgia orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the orders effective not later than December 1, 1988. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The provisions of this order are known to handlers. The recommended decision of the Administrator was issued July 21, 1988 (53 FR 27993), and the decision of the Assistant Secretary containing all amendment provisions of this order was issued September 27, 1988 (53 FR 38730). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the orders effective December 1, 1988, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing areas, to sign proposed marketing agreements, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders;

(3) The issuance of the order amending the Nashville, Tennessee, order is approved or favored by at least two-thirds of the producers who

participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(4) The issuance of the order amending the Georgia order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1098 and 1007

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Nashville, Tennessee, and Georgia marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1098 and 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

2. In § 1098.7, paragraph (d)(2) is revised to read as follows:

§ 1098.7 Pool plant.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tennessee, marketing area, except:

(i) That such distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order;

(ii) On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions; and

(iii) A plant located in the marketing area that qualifies pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location even though the plant may have greater route disposition in the other marketing area than in the Nashville marketing area.

3. In § 1098.52, paragraph (a)(4) is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 1098.52 Plant location adjustment for handlers.

(a) * * *

(4) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee, except for the Tennessee counties specified in paragraph (b) of this section or the northern boundary of North Carolina, no adjustment shall be made under this paragraph.

(b) For such milk that is physically received from producers or from a handler described in § 1098.9(c) at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White, the price shall be adjusted by plus 8.5 cents per hundredweight.

* * * * *

§ 1098.60 [Amended]

4. In § 1098.60, paragraph (g) is removed.

5. In § 1098.61, paragraph (a)(2) is revised to read as follows:

§ 1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(2) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1098.75;

* * * * *

6. Section 1098.75 is revised to read as follows:

§ 1098.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1098.73(b), the uniform price and the uniform price for base milk pursuant to § 1098.61 for producer milk received at a plant shall be adjusted at the rates set forth in § 1098.52 (a) and (b) according to the location of the plant; and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1098.52 (a) and (b) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1098.90 [Amended]

7. Amend § 1098.90 by removing the last sentence which reads "For the months of March 1985 through July 1985, base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1098.13."

§ 1098.92 [Amended]

8. Amend § 1098.92 by removing the last sentence which reads "For producer bases to be calculated on or before February 25, 1985, and subject to § 1098.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 153, whichever is more; or by 138 pursuant to the above provisions."

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PART 1007—MILK IN THE GEORGIA MARKETING AREA

9. In § 1007.7, paragraph (e)(3) is revised and a new paragraph (e)(4) is added to read as follows:

§ 1007.7 Pool plant.

* * * * *

(e) * * *

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and, except as provided in paragraph (e)(4) of this section, a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(4) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Georgia marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Georgia order.

Signed at Washington, DC, on November 25, 1988.

Kenneth A. Gilles,

Acting Secretary.

[FR Doc. 88-27728 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1106

[DA-89-001]

Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action, for the months of November 1988 through August 1989, suspends certain shipping standards for supply plants under the Southwest Plains order. The action was requested by Kraft, Inc., Associated Milk Producers, Inc., and Mid-America Dairymen, Inc. The action is necessary to eliminate costly and inefficient movements of milk from supply plants that would have to be made to assure the continued pricing and pooling of milk of producers who have historically supplied the market's fluid milk needs.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 31, 1988; published November 4, 1988 (53 FR 44593).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 4, 1988 (53 FR 44593) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No views in opposition were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of November 1988 through August 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), the words "of February" and the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified".

Statement of Consideration

This action, for November 1988 through August 1989, suspends the shipping standards for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It further provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. Also, a supply plant that was pooled during each of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. This action will remove all shipping standards for supply plants during the months of November 1988 through August 1989 that were pooled under the order during the immediately preceding September through January period.

The suspension was requested by Kraft, Inc., a handler who operates a supply plant that is pooled under the order. The action is supported by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial number of producers who supply the market. These organizations indicate that there are ample supplies of direct-ship milk located near to distributing plants that are available to supply the fluid milk needs of such plants. As a result of production increases, it is unlikely that supplemental shipments of milk from supply plants will be necessary to meet the fluid milk needs of distributing

plants during the months of November 1988 through August 1989. As a result, this suspension action will allow handlers to avoid making costly and inefficient shipments of milk from supply plants that would otherwise have to be made to assure the continued pooling of milk of dairy farmers who have historically supplied the market's fluid milk needs.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will permit milk that has been historically associated with the market to continue to be priced under the order without costly and inefficient shipments of milk from supply plants;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the following provisions in §§ 1106.6 and 1106.7 of the Southwest Plains order are hereby suspended for the months of November 1988 through August 1989.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1106.6 [Suspended in part]

2. In § 1106.6, the words "during the month" are suspended.

§ 1106.7 [Suspended in part]

3. In § 1106.7(b)(1), the words "of February" and the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20-percent requirement in any month of such February–August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified" are suspended.

Signed at Washington, DC, on November 25, 1988.

Kenneth A. Gilles

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88–27635 Filed 11–30–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 88–108]

Importation of Meat and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR Part 94 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are necessary to clarify that authority under these regulations is held by the Administrator, Animal and Plant Health Inspection Service, and not by the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Assistant Director, Regulatory Coordination, PPD, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782; 301–436–5533.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 94 concern the importation into the United States of certain meat and animal products. Prior to the effective date of this document, these regulations stated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service, is responsible for various decisions made pursuant to the regulations. However, this is not correct. Authority and responsibility belongs to the Administrator, Animal and Plant Health Inspection Service.

Therefore, to clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. Among other changes, we are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "Department." These terms are now used in the regulations. However, none of them are defined. The definitions we are adding are the same definitions we use in other Parts of Title 9, Code of Federal Regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Making the nonsubstantive wording changes described in this document will have no effect on importers, quarantine facility operators, or any other persons outside of the Animal and Plant Health Inspection Service.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

Determining the official responsible for decisions made under these animal importation regulations is a matter of internal Agency management. Therefore, neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under 5 U.S.C.

553. Accordingly, this regulation is effective upon publication.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Part 94 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to the provisions of Executive Order 12372, which required intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Lists of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pests, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, we are amending 9 CFR Part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.0 the definition of "Deputy Administrator" is removed and definitions of "Administrator", "Animal and Plant Health Inspection Service", and "Department" are added, in alphabetical order, to read as follows:

§ 94.0 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service, of the United States Department of Agriculture (APHIS.)

Department. The United States Department of Agriculture (USDA, Department).

* * * * *

§ 94.1 [Amended]

3. In § 94.1, paragraph (c)(2), remove the words "the Veterinary Services unit of".

§ 94.5 [Amended]

4. In § 94.5(c), remove the words "The Plant Protection and Quarantine Programs and Veterinary Services, Animal and Plant Health Inspection Service," and add the words "APHIS" in their place.

§ 94.8 [Amended]

5. In § 94.8, introductory paragraph, the word "administrator" is amended to read "Administrator".

§§ 94.3, 94.4, 94.6, 94.7, 94.8, 94.9, 94.11, 94.12, 94.14, 94.16 and 94.17 [Amended]

6. In addition to the amendments set forth above, in 9 CFR Part 94 remove the words "Deputy Administrator, Veterinary Services" and add, in their place, the word "Administrator" in the following places:

(a) Section 94.3;

(b) Section 94.4; including § 94.4(b)(3), footnote 2;

(c) Section 94.6; including § 94.6(d)(2), footnote 1; (g)(2)(i), footnote 3; (g)(2)(ii), footnotes 4 and 5;

(d) Section 94.7;

(e) Section 94.8;

(f) Section 94.9;

(g) Section 94.11;

(h) Section 94.12; including § 94.12(b)(1)(iii)(B), footnote 1;

(i) Section 94.14;

(j) Section 94.16; including § 94.16(b)(2), footnote 1;

(k) Section 94.17.

§§ 94.1, 94.4, 94.8, and 94.17 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 94 remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 94.1(c)(4);

(b) Section 94.4(b)(4);

(c) Section 94.8;

(d) Section 94.17.

§§ 94.4, 94.6, 94.8, 94.9, 94.10, 94.12, 94.16 [Amended]

8. In §§ 94.4, 94.6, 94.8, 94.9, 94.10, 94.12 and 94.16, remove the word "Deputy".

Done at Washington, DC, this 16th day of November 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-27138 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 25745; Amdt. No. 21-64]

Responsibilities of Manufacturers of Parts and Products Produced Under a Production Certificate

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment clarifies the responsibility of a production certificate holder with respect to the manufacture of a replacement or modification part for installation on a type certificated product. The amendment is intended to ensure that such manufacturers are aware of their responsibility to determine that each part produced conforms to its approved design and is in a condition for safe operation.

DATES: Effective date of this amendment is January 3, 1989. Comments must be received on or before January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Melanie R. Miller, Aircraft Manufacturing Division (AIR-200), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8361.

ADDRESSES: Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25745, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this action is in the form of a final rule which involves clarification of an existing rule and was not preceded by notice and public comment procedure, comments are invited on the rule change. Interested persons are invited to comment on any portion of this rule by submitting written data, views, or arguments as they may desire. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulations. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the

regulations. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25745." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

Section 21.303 of the Federal Aviation Regulations (FAR) specifies that no person may manufacture a replacement or modification part for sale for installation on a type certificated product unless it was produced by an owner or operator for use on his own product, or was produced under a Parts Manufacturer Approval (PMA), a type certificate or production certificate, or a Technical Standard Order (TSO). The requirement that these parts be produced under an FAA-approved quality control system helps ensure that installation of replacement or modification parts on type certificated products does not adversely affect the airworthiness of the product. In addition, with respect to parts produced under a PMA, § 21.303(k) specifically requires that the manufacturer determine that each completed part conforms to the design data and is in a condition for safe operation. With respect to parts produced under a production certificate, however, § 21.165(b) provides that the manufacturer must determine that each completed product conforms to the type design and is in a condition for safe operation.

Discussion

The FAA has historically regarded the requirement of a determination of conformity and condition for safe operation as applicable to all parts produced for installation on a type certificated product, including those manufactured under a production certificate, even though the word "parts" does not appear in § 21.165(b). However, it has come to the attention of the FAA that recently there has been some confusion as to the applicability of the requirement to parts produced under a production certificate. Compliance with this requirement by all parts manufacturers is essential to aviation safety and, therefore, the FAA is amending the rule to clearly establish that a manufacturer under a production certificate is also required to ensure conformity and condition for safe operation of each part.

Good Cause Justification for Making This Amendment Effective Without Prior Public Comment

Since this amendment merely clarifies an existing standard and imposes no additional burden on any person, I find that notice and public procedures are unnecessary and would not reasonably be expected to result in the receipt of beneficial information. However, interested persons are invited to submit such comments as they may desire regarding this amendment.

Conclusion

The adoption of this amendment serves to clarify currently existing responsibilities of manufacturers of parts and products under production certificates. The amendment imposes no additional burden on any party. Therefore, the FAA has determined that this amendment is not a major rule under Executive Order 12291 or a significant rule under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant impact, positive or negative, on a substantial number of small entities, and the rule does not warrant preparation of a regulatory evaluation as the overall impact on manufacturers will be minimal.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The amendment set forth would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Part 21 of the Federal Aviation Regulations (14 CFR Part 21) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 *et seq.*, E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 21.165(b) is revised to read as follows:

§ 21.165 Responsibility of holder.

* * * * *

(b) Determine that each part and each completed product submitted for airworthiness certification or approval conforms to the approved design and is in a condition for safe operation.

Issued in Washington, DC, on November 28, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-27676 Filed 11-30-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-28-AD; Amdt. 39-6087]

Airworthiness Directives; Piper Model PA-46-310P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Model PA-46-310P airplanes, which modifies the engine cooling system. Incidents have occurred that indicate excessive operating temperatures have resulted in engine damage. The actions of this AD will prevent catastrophic engine failure due to insufficient cooling air.

DATES: *Effective Date:* January 3, 1989.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD unless already accomplished.

ADDRESSES: Piper Aircraft Corporation Service Bulletin (SB) No. 892, dated August 24, 1988, applicable to this AD-

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may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4366. This information also may be examined in the Rules Docket, Federal Aviation Administration, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the engine cooling system on all Piper Model PA–46–310P airplanes was published in the **Federal Register** on September 29, 1988 (53 FR 38023). The proposal resulted from recent tests conducted by Piper on a Model PA–46–310P airplane which confirmed that both oil and cylinder head normal operating temperatures were exceeded due to insufficient air flow through the engine compartment. This condition, if not corrected, can result in catastrophic failure of the engine due to excessive heat. As a result, Piper issued SB No. 892, dated August 24, 1988, specifying a powerplant cooling improvement kit which adds another louver to each nose gear door, modifies the baffle in front of the number six cylinder and moves the cylinder head temperature thermocouple to the number six cylinder. This kit allows for increased cooling air flow thereby reducing engine temperatures so that the limits are not exceeded within normal operation.

Since the condition described herein is likely to exist or develop in other Piper Model PA–46–310P airplanes of the same design, an AD was proposed which would require compliance with Piper SB No. 892 for these airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. Only one commenter responded and his concern was limited to the FAA determination of the related cost to the public. The NPRM stated that the cost of kit, plus $25 allowance for paint and 6 hours labor allowance will be absorbed by Piper. The commenter stated that this offer is effective for 180 days from August 24, 1988. This comment is correct and this amount will be included in the cost determination. However, it does not result in a change to the overall cost determination. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 403 airplanes at an approximate one-time cost of $338 (for the kit $25 allowance for paint and 6 hours labor allowance to be absorbed by Piper effective for 180 days from August 24, 1988) for each airplane, or a total one-time fleet cost of $136,214. The cost of complying with this AD will not have significant impact on any small entities owning affected airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Piper: Applies to Model PA–46–310P (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent possible catastrophic engine failure accomplish the following:

(a) Modify the engine cooling system in accordance with Piper Service Bulletin 892, dated August 24, 1988.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, ACE–115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, or may examine this document at the FAA, Office of the Assistant Chief Counsel, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 3, 1989.

Issued in Kansas City, Missouri, on November 22, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–27675 Filed 11–30–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25741; Amdt. No. 1388]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on November 25, 1988.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

Effective February 9, 1989

Fairfield, IL—Fairfield Muni, NDB RWY 9, Amdt. 2
Cambridge, MD—Cambridge—Dorchester, NDB RWY 34, Amdt. 7
Gallup, NM—Gallup Municipal, VOR RWY 6, Amdt. 6
Gallup, NM—Gallup Municipal, LOC RWY 6, Amdt. 2
Babelthuap Island, Caroline Is., TT—Babelthuap/Koror, NDB RWY 9, Amdt. 2, CANCELLED
Babelthuap Island, PS—Babelthuap/Koror, NDB RWY 9, Orig.
Babelthuap Island, Caroline Is., TT—Babelthuap/Koror, NDB/DME RWY 9, Orig. CANCELLED
Winchester, VA—Winchester Regional, LOC RWY 32, Amdt. 1
Fort Bridger, WY—Fort Bridger, VOR RWY 22, Amdt. 1

Effective January 12, 1989

Haleyville, Al—Posey Field, VOR/DME RWY 18, Amdt. 3
Muscle Shoals, AL—Muscle Shoals, VOR RWY 29, Amdt. 26
Muscle Shoals, AL—Muscle Shoals, VOR/DME RWY 11, Amdt. 5
Muscle Shoals, AL—Muscle Shoals, ILS RWY 29, Amdt. 3
Merced, CA—Merced Municipal/Macready Field, ILS RWY 30, Amdt. 10
Carrollton, GA—West Georgia Regional, LOC RWY 34, Amdt. 1
Fitzgerald, GA—Fitzgerald Muni, LOC RWY 1, Orig.
Fitzgerald, GA—Fitzgerald Muni, NDB RWY 01, Amdt. 3
Fitzgerald, GA—Fitzgerald Muni, NDB RWY 1, Orig.
Nashville, GA—Berrien Co, RADAR 1, Orig.

Carbondale/Murphysboro, IL—Southern Illinois, VOR—A, Amdt. 4
Carbondale/Murphysboro, IL—Southern Illinois, NDB RWY 18, Amdt. 11
Carbondale/Murphysboro, IL—Southern Illinois, ILS RWY 18, Amdt. 11
Dodge City, KS—Dodge City Muni, LOC RWY 14, Orig.
Louisville, KY—Bowman Field, VOR RWY 1, Amdt. 2
Louisville, KY—Bowman Field, VOR RWY 14, Amdt. 7
Louisville, KY—Bowman Field, VOR RWY 19, Amdt. 2
Louisville, KY—Bowman Field, VOR RWY 24, Amdt. 2
Louisville, KY—Bowman Field, VOR RWY 32, Amdt. 12
Louisville, KY—Bowman Field, NDB RWY 32, Amdt. 11
Pontiac, MI—Oakland-Pontiac, VOR RWY 9R, Amdt. 23
Pontiac, MI—Oakland-Pontiac, VOR RWY 27L, Amdt. 14
Pontiac, MI—Oakland-Pontiac, LOC/DME BC RWY 27L, Amdt. 7
Pontiac, MI—Oakland-Pontiac, ILS RWY 9R, Amdt. 11
Newark, NJ—Newark Intl, VOR/DME RWY 22 L&R, Amdt. 2
Newark, NJ—Newark Intl, NDB RWY 4L, Amdt. 9
Newark, NJ—Newark Intl, NDB RWY 4R, Amdt. 5
Newark, NJ—Newark Intl, NDB RWY 4L, Amdt. 10
Newark, NJ—Newark Intl, NDB RWY 4R, Amdt. 6
Newark, NJ—Newark Intl, NDB RWY 22L, Amdt. 6
Conroe, TX—Montgomery County, RNAV RWY 32, Orig.
Corpus Christi, TX—Corpus Christi Intl, VOR or TACAN RWY 17, Amdt. 25
Corpus Christi, TX—Corpus Christi Intl, LOC RWY 31, Amdt. 3
Corpus Christi, TX—Corpus Christi Intl, ILS RWY 13, Amdt. 24
Corpus Christi, TX—Corpus Christi Intl, ILS RWY 35, Amdt. 9

Effective December 15, 1988

Dodge City, KS—Dodge City Muni, ILS RWY 14, Orig.
Nashville, TN—Nashville International, LDA/DME RWY 2R, Orig.

Effective November 18, 1988

Fullerton, CA—Fullerton Muni, LOC RWY 24, Amdt. 3

Effective November 17, 1988

Redding, CA—Redding Muni, LOC/DME BC RWY 16, Amdt. 6
Dayton, OH—James M. Cox-Dayton Intl, RADAR-1, Amdt. 7

Effective November 14, 1988

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Amdt. 3

[FR Doc. 88-27632 Filed 11-30-88; 8:45 am]
BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 298

[Docket No. 45584; Amendment No. 298-33]

RIN 2137-AA98

Aviation Economic Regulations; Exemptions for Air Taxi Operations

AGENCY: Research and Special Programs Administration, Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends Part 298 by requiring commuter air carriers providing scheduled passenger service to file Schedule F-1 "Report of Financial Data" of RSPA Form 298-C. This schedule is needed to obtain quarterly financial data (Total Operating Revenues, Total Operating Expenses, Net Profit or (Loss) and Passenger Revenues—Scheduled Service). This information will be used primarily by the Department of Transportation to monitor the continuing fitness of commuter air carriers as required by section 401(r) of the Federal Aviation Act of 1958, as amended. The financial information will also benefit the Department's work in other program areas such as in the administration of the Aviation Trust Fund and Loan Guarantee Programs, in econometric modeling and regulatory cost-benefit analyses which support aviation policy and regulatory decisions, and in the Federal Aviation Administration's planning for its allocation of inspection resources.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or Richard G. Minick, Office of Aviation Information Management, Regulations Division, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4383 or (202) 366-4389, respectively.

SUPPLEMENTARY INFORMATION:

Background

In a notice of proposed rulemaking (NPRM) published April 19, 1988 (53 FR 12774) the Department of Transportation (hereafter referred to as either DOT or Department) proposed to require commuter air carriers providing scheduled passenger service (commuters) to file four financial data elements. The data elements proposed for collection were (1) Total Operating Revenues, (2) Total Operating Expenses, (3) Net Profit or (Loss) and (4) Passenger Revenues—Scheduled Service. This information would be reported on the quarterly Schedule F-1 "Report of Financial Data" of Form 298-C *Report of Financial and Operating Statistics for Small Aircraft Operators*. Schedule F-1 is currently being filed by carriers certificated under section 401 of the Federal Aviation Act of 1958, as amended (FAAct), whose operations are limited to the United States and performed with only small aircraft (aircraft with 60 seats or less or 18,000 pounds maximum payload capacity or less). This group of carriers is commonly referred to as small certificated air carriers. The proposal would add the new reporting by amending Part 298 (14 CFR Part 298) of the Department's regulations.

The NPRM stated that the four financial data elements were needed by the Department to monitor continuing fitness, to provide input for econometric models, to assist with the administration of aviation trust fund revenue calculations, to perform regulatory analysis and evaluations, to monitor the aircraft guaranteed loan program, and to aid the Federal Aviation Administration (FAA) in the allocation of its inspection resources.

Comments

Comments were received from two commuters: Metro Airlines, Inc. (Metro) and Wings Airways (Wings); two trade associations: Regional Airline Association (RAA) and the Airline Pilots Association; and one certificated air carrier, Midway Airlines, Inc. (Midway), who filed late. The Airline Pilots Association filed two separate comments—one by the Economics and Financial Office (ALPA—Economics) and one by the Engineering and Safety Department (ALPA—Safety). Two commenters supported the proposed rule with modifications, while the remainder objected to adoption of the proposal. The issues raised by the commenters are discussed below.

SEC Report in Lieu of 298-C, Schedule F-1

Metro stated that it is a public holding company for five wholly owned commuter subsidiaries. These subsidiaries are Metroflight, Inc.; Metro Express, Inc.; Aviation Associates, Inc.; Metro Express II, Inc.; and Chaparral Airlines, Inc. As a public holding company, Metro stated that it is already subject to the more stringent reporting requirements of the Securities and Exchange Commission (SEC). It objected to filing a set of quarterly financial reports in addition to the reports it files with the SEC. Because its fiscal year ends April 30 rather than December 31,

its accounting quarters do not coincide with the calendar quarters as proposed in the NPRM; therefore, it must file eight quarterly reports a year—four with DOT and four with SEC. To alleviate this additional reporting burden, Metro suggested that DOT exempt publicly held carriers or carriers that are subsidiaries of publicly held carriers from the reporting requirements and accept for DOT purposes the same reports that are filed with SEC. Metro felt that the incongruence in quarters would not have a significant impact on the comparability of data and suggested that DOT accept reporting by fiscal quarters by all publicly held corporations.

The Department cannot accept SEC filings in lieu of Schedule F-1 from either a publicly held holding company or a publicly held company for several reasons. First, the results reported to SEC are the consolidated results of the holding company and individual company results are obscured. In the case of Metro, nothing can be derived from the consolidated results concerning the individual commuters. If DOT were doing a fitness review on one of Metro's commuter subsidiaries, we would not know, for example, whether the subsidiary made a profit or loss, or how much passenger service revenue was generated. Second, in many holding companies, the individual subsidiary's business activities are not related. For instance, one subsidiary could be a commuter, one could be a hotel, and one could be a car rental agency. The consolidated report to SEC would be meaningless concerning the commuter. Third, for SEC reporting, revenue and expense data may be reported in broad categories. For example, all passenger revenue may be reported as passenger revenue without disclosing the source—scheduled or charter service. Looking at a publicly held company, we would not know whether its main source of revenue was scheduled or charter operations. Finally, the reporting periods for SEC are not standard. They are the fiscal reporting periods selected by the respondent. Contrary to Metro's contention, erroneous conclusions can be made from data that are not uniformly reported. For instance, suppose several commuters had a fiscal year that ended October 31 and other commuters' fiscal year ended December 31. The last quarter of the October 31 fiscal year does not include two major traffic producing holidays of Thanksgiving and Christmas, while the last quarter of the calendar year does. An analyst using the last quarter's data could very well conclude that the last quarter's traffic had declined.

Data Submitted by Wholly-Owned Commuter Subsidiaries

It was Midway's position that affiliated commuters of certificated air carriers should be excluded from reporting the financial data required by this rule. Midway's wholly-owned subsidiary, Fischer Bros. Aviation d/b/a Midway Commuter (MC), operates as a commuter carrier. Midway contended that because MC's financial data are consolidated with those of Midway and since only allocations are available for MC for some revenue and costs, the data would not be of any use to DOT. In fact, use of the data for financial fitness or other purposes would produce seriously misleading information according to Midway. Midway stated that some revenue and cost allocations made by it are done for internal purposes only, and do not reflect operations of MC as a stand-alone company as they are not arms-length transactions. It further stated that the Department could use the reports filed by it to target carriers for safety inspections. Since Midway did not name the reports, we assume they meant the Form 41 report filed under Part 241 of the Department's regulations (14 CFR Part 241). Further, Midway stated that if affiliated subsidiaries of certificated air carriers are not excluded, then the Department should at least indicate in the final rule its willingness to grant waivers from the reporting requirement.

The Department is not persuaded by Midway's arguments. The Department agrees that a commuter's data when dealing with its parent may not be an arms-length transaction. The nature of the relationship presumes control of the commuter by the certificated carrier, otherwise there would be no affiliation. The parent normally dictates to the subsidiary the policy in such areas as revenue allocations where both are involved, depreciation, tax accounting, and overhead pools. However, if the Department does not feel that the information provided by the commuter is sufficient, it can supplement this information by information requests under Part 204 (14 CFR Part 204) for continuing fitness or under the delegated authority of Part 385 (14 CFR Part 385) for other needs. Finally, the use of Midway's reports to monitor MC is not a viable alternative. The same reason that the holding company's report cannot be used applies here—the information related to the commuter is obscured.

Concerning Midway's waiver comment, there may be instances when a wholly owned subsidiary may want to request a waiver and a waiver may be warranted. The Department would consider such a request on a case-by-case basis. Part 298 has a waiver paragraph which states that reporting requirements of that part can be waived in the public interest if (1) unusual circumstances warrant such a departure, (2) a specifically defined alternate procedure will result in a substantially equivalent or more accurate data, and (3) the alternative approach will maintain or improve reporting between air carriers (14 CFR 298.65)

Fitness Factors

Wings commented that the financial data sought by the rule will not enable DOT to determine a carrier's fitness, since fitness to operate is not determined by a carrier's bottom line or profit and loss. Such items as maintenance and insurance expenses would be much more indicative of a carrier's fitness according to Wings. Wings stated that it uses a significant portion of its revenues to maintain its aircraft above the FAA prescribed minimums, and spends more for liability insurance than the required minimum. Because its net income would be less than a competitor that only meets the minimum requirements, Wings stated it should not be considered less safe than its competitor. Wings cited the large fines and penalties recently imposed on some profitable carriers for safety violations, to demonstrate that net income does not necessarily indicate a carrier's fitness to operate.

The Department agrees that the bottom line is not necessarily indicative of a fit or unfit carrier. Because of this, other aspects of a carrier's operations are considered in a continuing fitness investigation. As explained in the notice of proposed rulemaking, a continuing fitness investigation involves three parts of a carrier's operations—managerial qualifications, compliance with laws and regulations, and financial posture. The profit and loss statement is clearly a part of the financial picture.

Both Wings and RAA stated that fitness from the perspective of safety is a function of the FAA's air carrier inspections and not something that can be ascertained from a carrier's bottom line of its profit and loss statement. RAA further stated that the National Transportation Safety Board conducted extensive hearings in 1980 and found that there is no direct correlation between safety and financial fitness. ALPA-Safety supported the data collection contending that financial stability of a carrier does have a direct

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impact on safety. It alleges that, in a deregulated environment, some carriers allow their maintenance, operations, and pilot training to be influenced by the bottom line which at times may not be in the best interests of safety.

The Department agrees that safety issues are considered primarily in the FAA's inspection program rather than the fitness investigation which this rulemaking supports. The fitness criteria were explored very thoroughly when the Civil Aeronautics Board (CAB) amended its regulations by enacting 14 CFR Part 204 "Data to Support Fitness Determinations." (EDR-385, 44 FR 44106, July 26, 1979/ER-1180 45 FR 42599, June 25, 1980). The Department has a continuing fitness responsibility as defined by section 401(r) of the FAAct. As stated in the NPRM, "In light of the increasingly important role played by commuters in the air transportation system it has become essential for the Department to have the ability to monitor the financial condition of commuter carriers as part of the Department's continuing fitness oversight responsibilities."

Planning and Regulatory Evaluation

Wings and RAA stated that the number of enplaned passengers, which the Department already collects, is the critical item for planning airports, transportation facilities, air traffic control expansion, etc. Both contended that whether a carrier is making money is irrelevant to the planning function. Also, RAA stated that the enplanement data provided by certificated air carriers and commuters are also sufficient for evaluating costs and benefits of new regulations.

While the Department agrees that data on enplaned passengers are an important analytical tool, financial data are also important. As stated in the NPRM, a valid financial base is necessary to project commuter costs and yields for econometric models that are used for planning purposes. These models relate economic activity and cost variables to commuter traffic and airport activity. An example of a cost variable used in a commuter model is "real" yield. This variable represents the real price increase in airline fares, discounting inflation, and is used in the model to forecast revenue passenger-miles. First the current dollar yield is derived by dividing passenger revenue by revenue passenger-miles. Real yield is then derived by dividing the current yield by the Consumer Price Index. The real yield is then combined with one or more demand variables to generate traffic forecasts for assessing future aeronautic needs (48 FR 36601, August 12, 1983). Currently, FAA is using passenger revenue reported by approximately 50 small certificated air carriers to forecast the aeronautic needs of the commuter industry (approximately 125 commuters). The same small certificated air carrier group's data are used to perform regulatory evaluations of new regulations. Clearly, it is in the interest of the public and the commuter industry to have the best information available when planning for future aeronautic needs. Overstating activity levels could cause FAA to overbuild and spend public funds unnecessarily. On the other hand, understating activity could lead to major disruptions in the national air transportation system.

Trust Fund Revenue and Aircraft Loan Guarantee

RAA stated that it finds it ironic that DOT wants to require commuters to provide financial data to estimate trust fund revenues, when the government refuses to spend the money already in the fund. In the same vein, RAA stated that the information is not needed for monitoring the Aircraft Loan Guarantee Program which expired in 1983. According to RAA, there are only six regional air carriers having an outstanding loan balance of over $11 million at May 31, 1988, which hardly justifies the imposition of a reporting burden on the entire industry. Midway stated that the loan program did not apply to MC.

The question of spending trust fund revenue raises policy issues that are irrelevant to, and outside the scope of this proceeding. As far as the loan program, the Department would not require reporting by the entire commuter industry solely to monitor six carrier loans which will all be due by the mid-1990's. The loan program is only one of several programs for which the Department would use the information. Since FAA has to waive any loan conditions that are not met, the Department agrees with RAA that it will ultimately know when a carrier is in difficulty. However, the availability of recurrent financial information will provide an early warning before a carrier actually defaults. The commuter industry is very volatile and a carrier's financial picture can change rapidly.

Balance Sheet Data

ALPA-Economics agreed with the proposed data collection, but felt the Department did not go far enough. It felt that since Part 204 requires balance sheet information for fitness reviews, the rule should also require balance sheet data.

Balance sheet data are not an issue in this rulemaking since they were not proposed. However, the needs of the Department were very carefully reviewed before the NPRM was issued. It should be noted that no program manager expressed a need for recurrent collection of balance sheet data.

Due Dates

The NPRM proposed a due date of 40 days after the end of the reporting period for submitting the data. Metro stated that the interval should be 45 days to conform with SEC requirements.

All schedules in the Form 289-C report are based on a 40-day interval and commuters are already filing two traffic schedules based on this interval. The Department is not persuaded to change the 40-day interval which has been a standard for about 20 years.

Confidentiality

Wings and RAA expressed concerns about confidentiality. Both stated that many commuters are privately held companies and damage could result from disclosing the information to third parties under the Freedom of Information Act (FOIA) or to other Federal agencies. Both expressed concern about the competitive harm that could result from disclosure. They stated that total operating revenues and expenses are critical information to commuters. Disclosure could facilitate intrusions into a carrier's markets which might be unable to support additional service, resulting in the possible failure of one or both carriers and loss of service to the community.

The Department believes these concerns to be unfounded. Identical information has been collected from small certificated air carriers since the beginning of 1985. It too was granted a three year confidential period. In over three years experience in dealing with this collection, the carrier's individual data has not been divulged to the public and not even one FOIA request has been received. Should an FOIA request be received, Departmental policy on "confidential commercial information" provides business submitters of data both notification and an opportunity to object before a disclosure determination is made. The Department will take into account the views of the commuters providing the data should a request for release be received. Finally, the confidential period of three years is long enough to greatly diminish the alleged value of the data.

ALPA-Economics stated that because the commuters play a significant part in the air transportation system, the

information is in the public interest and the Department can no longer justify granting confidential treatment to it. It believes that if the Department is going to monitor the financial condition of each commuter in order to protect the public interest, it is only reasonable to conclude that the prompt release of the information will result in even closer scrutiny and a concomitant increase in the protection accorded the public. Moreover, the need for protection is heightened by the marketing alliances which have developed between the many certificated air carriers and commuters.

As stated in the NPRM, the CAB tried to collect this information on a voluntary basis from commuters in the early 1980's with the firm of Dun and Bradstreet acting as a collection agent. The voluntary approach was not successful. There was a reluctance on the part of commuters, who were privately owned, to submit data that would be publicly disclosed. Because many commuters are still privately owned, the Department feels there would still be this reluctance to submit sensitive information, if the data were immediately available to the public. To allay any fears and to assure ready compliance with this rule, the Department will maintain the financial information confidential for three years as proposed.

Administrative Notices

Executive Orders 12291, 12612, and 12630; Departmental Policy and Procedures; Regulatory Flexibility Act; and Paperwork Reduction Act of 1980, as amended.

The final rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore this rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in domestic or export markets. This regulation will result in a very slight increase in reporting burden for commuter air carriers (see Regulatory Flexibility Act analysis section).

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that it does not pose the risking of a taking of constitutionally protected private property.

This regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, as it does not involve important Departmental policies. Its economic impact is minimal and full regulatory evaluation is not required. The rule only affects the scheduled passenger commuter air carrier industry.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires regulatory flexibility analyses for rules that, if adopted, will have a "significant economic impact on a substantial number of small entities." Under the Act, both an increase or decrease in economic impact must be considered by the agency.

Under DOT's definition, a direct air carrier is considered to be a "small entity" if it provides air transportation only with small aircraft as defined in 14 CFR 399.73 (up to 60 seats and/or up to 18,000 pounds payload capacity). The rule will affect commuter air carriers providing scheduled passenger service. This group fits the definition of small entity within the meaning of the Act and DOT regulation.

This final rule will add four financial data elements that will be filed on a quarterly basis. These elements are (1) Total Operating Revenues, (2) Total Operating Expenses, (3) Net Income or (Loss), and (4) Passenger Revenues—Scheduled Service. It is estimated that this reporting requirement will result in a slight increase in costs for commuters. However, no comments were received concerning costs. The CAB staff conducted a survey of commuters in 1980 to determine, among other things, the marginal costs attributable to filing a balance sheet, income statement and appropriate notes on a quarterly basis. The balance sheet contained 26 elements while the income statement contained 19 elements. Based on this survey, it was estimated that average first year costs, including start-up costs, would be $1900 per carrier. The annual recurring costs after the first year were estimated at $1200 per carrier. Adjusting for inflation, these costs at 1987 would be estimated at $2600 and $1650, respectively.

The four income and expense data elements in this rule represent a great deal less data than the CAB survey considered. The financial data are a type generally maintained by all companies for Federal and state tax purposes, as well as their own management purposes. Except for Metro's and Midway's comments because of their organizational structures, no one commented that the data were not readily available. With respect to passenger revenues, carriers are required to file with the Internal Revenue Service a quarterly excise tax return on the transportation of passengers, but such returns are held confidential (26 CFR 49.6011(a)–1). Consequently, it is estimated that the start-up and recordkeeping costs would be nominal with minimal small recurring costs. Based on a per element cost using 1987 figures, the first year costs for a carrier would be approximately $235 with recurring costs of approximately $155 thereafter. On an industry basis, first year costs would approximate $29,200 with $19,400 in recurring costs.

Based on the above analysis, I certify that this rule will not have a significant impact on the scheduled passenger commuter air carrier industry.

Paperwork Reduction Act of 1980

Carrier reporting burden for this collection of information is estimated to vary from 1 to 5 hours per quarterly response depending on the sophistication of the carrier's accounting system, with an average of 2 hours per quarterly response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the reporting form. Send any comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing the reporting burden, to:

Director, Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, DOT, 400 Seventh Street SW., Washington, DC 20590, and Office of Information and Regulatory Affairs, DOT/RSPA Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 14 CFR Part 298

Air carriers, Registration, Insurance, Reporting.

Final Rule

Accordingly, the Department of Transportation amends 14 CFR Part 298, *Exemptions for Air Taxi Operators* as follows:

PART 298—[AMENDED]

1. The authority for Part 298 continues to read:

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Authority: Secs. 204, 401, 407, 416, 418, 419, Pub. L. 85–726, as amended, 72 STAT. 743, 754, 766, 711; 91 STAT. 1284; 49 U.S.C. 1324, 1371, 1377, 1386, 1388.

2. Section 298.62 *Reporting of financial data* is amended by revising paragraph (a) and republishing paragraph (c) to read as follows:

§ 298.62 Reporting of financial data.

(a) Each commuter air carrier and each small certificated air carrier shall file RSPA Form 298–C, Schedule F–1 "Report of Financial Data." This report shall be filed quarterly as set forth in § 298.60 of this part.

* * * * *

(c) This schedule shall be used to report financial data for the overall or system operations of the carrier. At the option of the carrier, the data may be reported in whole dollars by dropping the cents. Financial data shall be reported in the following categories:

(1) Line 1 "Total Operating Revenues" shall include gross revenues accruing from services ordinarily associated with air transportation and air transportation-related services. This category shall include revenue derived from scheduled service operations, revenue derived from nonscheduled service operations, amounts of compensation paid to the carrier under section 419 of the Federal Aviation Act and other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, cargo pick-up and delivery charges, and fixed-base operations involving the selling or servicing of aircraft, flying instructions, charter flights, etc.

(2) Line 2 "Total Operating Expenses" shall include expenses of a character usually and ordinarily incurred in the performance of air transporation and air transportation services. This category shall include expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services shall not be included in this category.

(3) Line 3 "Net Income or (Loss) shall reflect all operating and nonoperating items of profit and loss recognized during the period except for prior period adjustments.

(4) Line 4 "Passenger Revenues-Scheduled Service" shall include revenue generated from the transportation of passengers between pairs of points which are served on a regularly scheduled basis.

* * * * *

3. A copy of RSPA Form 298–C, Schedule F–1 is attached as Exhibit A.

Note: Exhibit A will not appear in the Code of Federal Regulations.

Issued in Washington, DC, on November 23, 1988.

M. Cynthia Douglass,

Adminstrator, Research and Special Programs Administration, DOT.

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Exhibit A

REPORT OF FINANCIAL DATA	Air Carrier (Corporate name including DBA) _____ Quarter Ended _____ 19__
Financial	
(1) Total Operating Revenues	_____
(2) Total Operating Expenses	_____
(3) Net Income	_____
(4) Passenger Revenues--Scheduled Service	_____

RSPA Form 298-C Schedule F-1

[FR Doc. 88-27468 Filed 11-30-88; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 80878-8178]

Machine Tools and Dimensional Inspection Machines; Clarification

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL) (Supplement No. 1 to 15 CFR 799.1), which specifies those items subject to Department of Commerce export controls. Numerically controlled machine tools and dimensional inspection machines are controlled under Export Control Commodity Number (ECCN) 1091A on the CCL. This document correctly amends paragraph (b) of ECCN 1091A to clarify codification problems arising from publication of "Removal of Validated License Controls on Jig Grinders Exported to Country Groups QWY" (53 FR 7733, Mar. 10, 1988) and "Amendments to the Commodity Control List Based on Coordinating Committee Review" (53 FR 18271, May 23, 1988). The March 1988 regulations redesignated paragraph (b)(ii) as paragraph (b)(iii), added a new paragraph (b)(ii), and revised the newly redesignated paragraph (b)(iii introductory text. The May 1988 regulations incorrectly revised paragraph (b)(ii), which had been redesignated as (b)(iii), and incorrectly added a paragraph (b)(iii), which already existed. The May 1988 regulations should have revised paragraph (b)(iii) and added a new paragraph (b)(iv). This document, rather than correcting the amendatory language and codification of the May 1988 regulations, correctly revises paragraphs (b) (ii) and (iii) and adds paragraph (b)(iv) for the convenience of the reader.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Hall, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8550.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient

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to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)) no initial or final Regulatory Flexibility has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to: Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 768–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery), ECCN 1091A is amended by revising paragraphs (b) (ii) and (iii) and by adding paragraph (b)(iv) to read as follows:

1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". * * *

* * * * *

(b) * * *

(ii) Jig grinders having all of the following characteristics:

(1) Overall positioning accuracy in any axis equal to or greater (coarser) than:

(A) ±0.005 mm (0.0002 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.);

or

(B) ± (0.005 + ((0.002/300) × (L–300)) mm (with L expressed in mm) [or 0.0002 + ([0.000080/12) × (L–12)) in. (with L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.); and

(2) Not more than 2 axes capable of simultaneously coordinated contouring motion.

(iii) Machine tools (other than boring mills, milling machines, and machining centers, described in paragraph (b)(i) having all of the following characteristics:

(1) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm TIR (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, *etc.*);

(2) Meeting the requirements of paragraphs (b) (i)(1)(A), (i)(6) and (i)(7);

(iv) Dimensional inspection machines, having all of the following characteristics:

(1) A linear positioning accuracy equal to or worse than:

(A) ± [3 + L/300) micrometer for L shorter than or equal to 3,300 mm;

(B) ±14 micrometer for L longer than 3,300 mm;

(2) A rotary accuracy of equal to or worse than 5 seconds for every 90 degrees; *and*

(3) Meeting the requirements of (b)(i)(1):

(For high precision turning machinery, see also ECCN 1370A.)

* * * * *

Dated: November 23, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–27470 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–DT–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3235]

Nasser Chahmirzadi, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Nasser Chahmirzadi, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

DATE: Complaint and Order issued August 26, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Jane R. Seymour, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: On Wednesday, June 1, 1988, there was published in the **Federal Register**, 53 FR 19930, a proposed consent agreement with analysis In the Matter of Nasser Chahmirzadi, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–27642 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. C–3236]

James C. Gedney, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, James C. Gedney, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

DATE: Complaint and Order issued August 26, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Jane R. Seymour, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: On Wednesday, June 1, 1988, there was published in the **Federal Register**, 53 FR 19930, a proposed consent agreement with analysis in the Matter of James C. Gedney, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies of service; § 13.660 Threatening withdrawal of patronage.

List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–27641 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. C–3234]

Donald A. Guadagnoli, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Donald A. Guadagnoli, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

DATE: Complaint and Order issued August 26, 1988.[1]

FOR FURTHER INFORMATION CONTACT: L. Barry Costilo, FTC/S–3115, Washington, DC 20580. (202) 326–2743.

SUPPLEMENTARY INFORMATION: On Wednesday, June 1, 1988, there was published in the **Federal Register**, 53 19930, a proposed consent agreement with analysis In the Matter of Donald A. Guadagnoli, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–27640 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3232]

Patrick S. O'Halloran, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington DC 20580.

order prohibits, among other things, Patrick S. O'Halloran, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

DATE: Complaint and Order issued August 26, 1988.[1]

FOR FURTHER INFORMATION CONTACT: L. Barry Costilo, FTC/S–3115, Washington, DC 20580. (202) 326–2748.

SUPPLEMENTARY INFORMATION: On Wednesday, June 1, 1988, there was published in the **Federal Register**, 53 FR 19930, a proposed consent agreement with analysis In the Matter of Patrick S. O'Halloran, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–27639 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

16 CFR Part 13

[Dkt. C–3237]

Douglas G. Wilson, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Douglas G. Wilson, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

DATE: Complaint and Order issued August 26, 1988.[1]

FOR FURTHER INFORMATION CONTACT: L. Barry Costilo, FTC/S–3115, Washington, DC 20580. (202) 326–2748.

SUPPLEMENTARY INFORMATION: On Wednesday, June 1, 1988, there was published in the **Federal Register**, 53 FR 19930, a proposed consent agreement with analysis In the Matter of Douglas G. Wilson, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.433 To fix prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements; Section 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Cutting Off Supplies Or Service: Section 13.610 Cutting off supplies or service; § 13.660 Threatening withdrawal of patronage.

List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–27643 Filed 11–30–88; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW. Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Febantel-Praziquantel Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Mobay Corp., Animal Health Division, providing for the safe and effective use of febantel-praziquantel oral paste for the removal of hookworms (*Uncinaria stenocephala*) and ascarids (*Toxascaris leonina*) in dogs and puppies in addition to other approved uses as a dog and cat anthelmintic.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed supplemental NADA 133–953, which provides for the use of VERCOM Paste (febantel-praziquantel oral paste) in dogs and puppies for the removal of hookworms (*U. stenocephala*) and ascarids (*T. leonina*), in addition to previous approval for treating dogs, puppies, cats, and kittens for certain hookworm, whipworm, ascarid, and tapeworm infections. The supplement is approved and the regulations are amended in 21 CFR 520.903d(c)(2) to reflect the approval. The basis for approval of this NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21

CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(l)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.903d is amended by revising paragraph (c)(2)(i) to read as follows:

§ 520.903d Febantel-praziquantel paste.

* * * * *

(c) * * *

(2) *Indications for use.* (i) Dogs and puppies: For removal of hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), whipworms (*Trichuris vulpis*), ascarids (*Toxocara canis* and *Toxascaris leonina*), and tapeworms (*Dipylidium caninum* and *Taenia pisiformis*).

* * * * *

Dated: November 22, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–27615 Filed 11–30–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for extended treatment times and added claims for use of fenbendazole Type A medicated articles for making Type C medicated swine feeds for use as an anthelmintic.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, filed a supplement to NADA 131–675 which provides for use of Safe-Guard® Type A medicated articles (fenbendazole) for making Type C medicated swine feed. In addition to the previously approved uses the supplement provides for extending treatment time from 3 to 12 days. It also provides for efficacy of all treatment regimens against adult stages of *Metastrongylus pudendotectus* and for use for 3 days for removal and control of larvae (L3,4 stages—liver, lung, intestinal forms) of the large roundworm (*Ascaris suum*), and larvae (L2,3,4 stages—intestinal mucosal forms) of the whipworm (*Trichuris suis*).

The supplement is approved and the regulations are amended in 21 CFR 558.258 by revising paragraph (c)(1). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.258 is amended by revising paragraph (c)(1) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) *Conditions of use.* (1) It is used in swine feed as follows:

(i) A total of 9 milligrams per kilogram of body weight given over a 3- to 12-day period for the removal of the adult stage of the large roundworm (*Ascaris suum*), whipworm (*Trichuris suis*), nodular worm (*Oesophagostomum dentatum, O. quadrispinulatum*), small stomach worm (*Hyostrongylus rubidus*), lungworm (*Metastrongylus apri* and *M. pudendotectus*), and the adult and larval stages of the kidneyworm (*Stephanurus dentatus*).

(ii) A total of 9 milligrams per kilogram of body weight given over a 3-day period for removal and control of larvae (L3,4 stages—liver, lung, intestinal forms) of the large roundworm (*A. suum*), and larvae (L2,3,4 stages—intestinal mucosal forms) of the whipworm (*T. suis*).

(iii) Feed as sole ration.

* * * * *

Dated: November 22, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–27616 Filed 11–30–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8219]

Income Tax; Taxable Years Beginning After December 31, 1953; OMB Control Number Under the Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to the **Federal Register** publication on Monday, August 22, 1988, beginning at 53 FR 31837 of the final regulations. The final regulations relate

to qualified joint and survivor annuities required to be provided under certain retirement plans under section 401(a)(11) prior to its amendment by the Retirement Equity Act of 1984 (REA 1984). The pre-REA 1984 regulations were changed to conform them to *BBS Associates, Inc. v. Commissioner of Internal Revenue.*

FOR FURTHER INFORMATION CONTACT: William D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202–377–9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1988, final regulations relating to qualified joint and survivor annuities required to be provided under certain retirement plans under section 401(a)(11) were published in the **Federal Register** (53 FR 31837).

Need for Correction

As published, the final regulations contain typographical and other errors which may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8219) which was the subject of FR Doc. 88–18886 (53 FR 31837), is corrected as follows:

§ 1.401(a)–11 [Corrected]

1. On page 31842, second column, in § 1.401(a)–11(g)(2)(ii), in the 13th line, "year" should read "years".

2. On page 31842, second column, in § 1.401(a)–11(g)(2)(iii), in the last line, after "REA" add "1984".

§ 1.401(a)–20 [Corrected]

3. On page 31843, second column, in § 1.401(a)–20, in the second line of A–5 (a)(2), after "412" add ", or" and remove "or" in the next printed line.

4. On page 31843, second column, in § 1.401(a)–20, the 21st line of A–5 (a)(3) should read "transactions that subject the".

5. On page 31843, third column, in § 1.401(a)–20, the third and fourth line of Q–7 should read "plan, are benefits payable in the form of a QPSA or QJSA?"

6. On page 31845, first column, in § 1.401(a)–20, in the sixth line of A–11 after "or" add "a".

7. On page 31845, third column, in § 1.401(a)–20, in the fifth line of A–16 after "of" add "a".

8. On page 31846, second column, in § 1.401(a)–20, in the 21st line of A–17(b)(4) "would" was misspelled.

9. On page 31846, second column, in § 1.401(a)–20, in the next to the last line of A–18 "QJSA" was misprinted.

10. On page 31847, second column, in § 1.401(a)–20, the first line of A–24(c) should read "(c) *Renegotiation.* For purposes of".

11. On page 31848, third column, in § 1.401(a)–20, in the seventh line of A–31 (c) after "waive" add "a".

12. On page 31849, first column, in § 1.401(a)–20, in the 12th line of A–33 (a) "participant" should read "participant's".

13. On page 31849, second column, in § 1.401(a)–20, in the eighth line of A–35 (a)(4) "a" should read "an".

§ 1.401(a)–13 [Corrected]

14. On page 31851, second column, in § 1.401(a)–13(g)(4)(iii)(B), in the first line "alternative" should read "alternate".

§ 1.410(a)–8 [Corrected]

15. On page 31851, third column, in § 1.410(a)–8, in the eighth line from the bottom of the column "employeer" should read "employee".

§ 1.410(a)–9 [Corrected]

16. On page 31852, first column, in § 1.410(a)–9(a)(1), line 13 should read "410(a)(5)(E)(i) or 411(a)(6)(E)(i) is the".

17. On page 31852, first column, in § 1.410(a)–9(b), the next to the last line should read "the period of consecutive breaks-in-".

§ 1.411(a)–7 [Corrected]

18. On page 31852, second column, in § 1.411(a)–7(d)(2)(ii)(D)(*2*), in the last two lines of that paragraph "break in service" should read "break-in-service".

19. On page 31852, second column, in § 1.411(a)–7(d)(2)(ii)(E), in the second line "break in service" should read "break-in-service".

20. On page 31852, second column, in § 1.411(a)–7(d)(2)(ii)(E), in the fourth line "break in" should read "break-in-".

§ 1.411(a)–11 [Corrected]

21. On page 31853, third column, in § 1.411(a)–11(e)(1), in the 11th and 13th lines after "employer" add a ",".

§ 1.411(d)–3 [Corrected]

22. On page 31854, first column, under "§ 1.411(d)–3 [Amended]", line four of the amendatory instructions of Par. 10. should read "§1.411(d)–5 for rules that apply to".

§ 1.411(d)–3T [Corrected]

23. On page 31854, first column, under "§ 1.411(d)–3T [Removed]", lines two and three of the amendatory instructions of Par. 11. should read "removed. New § 1.411(d)–5 is added in its place immediately after § 1.411(d)–4".

§ 1.411(d)–4 [Corrected]

24. On page 31854, first column, section heading "§ 1.411(d)–4" should read "§ 1.411(d)–5".

25. On page 31854, second column, in correctly designated § 1.411(d)–5(b)(1), fourth line from the top of the column should read "maintained pursuant to collective".

26. On page 31854, second column, in correctly designated § 1.411(d)–5(b)(2)(i), in the seventeenth line "break in service" should read "break-in-service".

§ 1.417(e)–1 [Corrected]

27. On page 31854, second column, in § 1.417(e)–1(a)(1), in the eighth line "§1.401(a)–11A" should read "§1.401(a)–20".

28. On page 31854, second column, in § 1.417(e)–1(a)(2), in the second line "§ 1.411(a)(11)–1(c)(6)" should read "§ 1.411(a)–11".

29. On page 31854, second column, in § 1.417(e)–1(a)(3), in the second line "§ 1.411(a)(11)–1" should read "§ 1.411(a)–11".

30. On page 31855, first column, in § 1.417(e)–1(c), the sixth line should read "immediately distributable, (see".

31. On page 31855, first column, in § 1.417(e)–1(c), the thirteenth line should read "and consent requirements of section 417".

32. On page 31855, first column, in § 1.417(e)–1(d), the second line, "purpose" should read "purposes".

§ 602.101 [Corrected]

33. On page 31856, first column, under "§ 602.101 [Amended]", lines three and four of the amendatory instructions for Par. 14. should read "the table "§ 1.401(a)–20 . . . 1545–0928" and "§ 1.402(f)–1 . . . 1545–0928"."

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88–27494 Filed 11–30–88; 8:45 am]

BILLING CODE 4830–01–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal announces a cost of living adjustment of 4.25% in the royalty rates to be paid by public broadcasting

entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is an annual adjustment required by 37 CFR 304.10(b) of the Tribunal's rules.

EFFECTIVE DATE: January 2, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653–5175.

SUPPLEMENTARY INFORMATION: On December 29, 1987, the Copyright Royalty Tribunal published in the **Federal Register** the rates and terms for the copyright compulsory license applicable to the use by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. 52 FR 49010. It was determined in that proceeding that the royalty rate to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions would be adjusted each year according to changes in the Consumer Price Index. 37 CFR 304.10.

The change in the cost of living as determined by the Consumer Price Index from the last Index published prior to December 1, 1987 to the last Index published prior to December 1, 1988 was 4.25% (1988's figure was 120.2; 1987's figure was 115.3, based on 1982–1984 equalling 100). Rounding off to the nearest dollar, the Tribunal announces an adjustment in the royalty rate to apply to use of musical compositions in the repertory of ASCAP and BMI of $166, each, $39 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 304

Copyrights, Music, Radio, Television.

PART 304—[AMENDED]

1. The authority citation for Part 304 continues to read as follows:

Authority: 17 U.S.C. 118 and 801 (1976).

§ 304.5 [Amended]

2. 37 CFR 304.5 is amended by revising paragraphs (c) (1) through (4).

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP annually: $166.

(2) For all such compositions in the repertory of BMI annually: $166.

(3) For all such compositions in the repertory of SESAC annually: $39.

(4) For the performances of any other such composition: $1.

* * * * *

Dated: November 28, 1988.

Edward W. Ray,

Acting Chairman.

[FR Doc. 88–27670 Filed 11–30–88; 8:45 am]

BILLING CODE 1410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3484–9]

Approval and Promulgation of Implementation Plans; State of California, Sacramento Ozone Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces EPA's final disapproval of the California State Implementation Plan (SIP) for ozone in the Sacramento Air Quality Maintenance Area (AQMA). This final action is being taken because the SIP for the Sacramento AQMA does not provide for attainment of the ozone national ambient air quality standard (NAAQS) by the statutory deadline of December 31, 1987, or by any other fixed date, as required by section 172(a) of the Clean Air Act ("the Act") (42 U.S.C. 7502(a)). Pursuant to section 110(a)(2)(I) of the Act and EPA's implementing regulations, this disapproval results in the imposition of a moratorium on the construction and modification of major stationary sources of volatile organic compounds (VOC) in the Sacramento AQMA. *See* 40 CFR 52.24 and 42 U.S.C. 7410(a)(2)(I).

EFFECTIVE DATES: EPA's disapproval of the Sacramento ozone SIP is effective

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January 3, 1989. The ban on construction or modification of major sources is effective January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974–7634, (FTS) 454–7634.

SUPPLEMENTARY INFORMATION:

A. Background

A brief background of the Act and the history of the Sacramento SIP is provided here. For a more comprehensive description of the relevant requirements of the Act and EPA's regulatory actions on the Sacramento SIP, see the proposed disapproval of the SIP for Sacramento and four other areas in California (52 FR 26431, July 14, 1987) and the General Preamble accompanying that notice (52 FR 26404).

The Clean Air Act mandates a system of state implementation plans as the chief mechanism for meeting the NAAQS. Section 110(a)(1) directs the state to submit, within nine months from the promulgation of primary NAAQS, a plan for implementing those NAAQSs. Section 110 lays out the requirements that the plan must meet and provides a mechanism for revision of the plan where the Administrator finds that the plan is substantially inadequate to achieve the NAAQS by the relevant deadline.

Recognizing that numerous areas had not been able to attain the NAAQS within the initial timeframe, Congress added Part D to the Act in 1977. Part D allowed certain "nonattainment" areas to extend the time for attainment to December 31, 1982, with the exception that certain areas, in which it was "not possible" to meet that deadline for ozone and carbon monoxide (CO) despite the application of all reasonably available control measures, could apply for a further extension to December 31, 1987.

California requested, and EPA approved, an extension of the statutory attainment date for ozone in the Sacramento AQMA to December 31, 1987. The State then submitted 1982 plan updates for the California ozone SIP for Sacramento and several other areas. In 1983, EPA proposed to disapprove these revisions and impose a construction ban on the ground that the plan did not provide for attainment of the ozone standard by the end of 1987, or reasonable further progress in the interim. 48 FR 5074 (February 3, 1983). On July 30, 1984, EPA took final action to approve the control measures submitted by the State, but held open the question of whether to approve the attainment demonstration in the SIP submittal for Sacramento and for three other areas of California (South Coast, Fresno, and Ventura) similarly lacking approvable SIP attainment demonstrations for ozone or carbon monoxide. 49 FR 30300, 30305 (July 30, 1984).

In July 1987, EPA reproposed to disapprove the ozone SIP for Sacramento, South Coast, Fresno, Ventura and several other areas. 52 FR 26408–26409, 26431–26435 (July 14, 1987). In that notice, EPA stated that it lacked authority to continue to defer action on the plans for those areas that had not yet submitted a plan demonstrating attainment by the deadline, and that it had no choice but to disapprove the plans for those areas and impose a construction ban under section 110(a)(2)(I).

In November 1987, the Ninth Circuit Court of Appeals issued its opinion in *Abramowitz v. United States Environmental Protection Agency*, 832 F.2d 1071 (9th Cir. 1987). The court held that EPA lacked authority to defer action on whether the South Coast ozone and carbon monoxide plan meets all of the Part D requirements of the Act when the Agency approved the individual control measures. The court ordered EPA to "disapprove the relevant SIP provisions." 832 F.2d at 1079. Pursuant to the Ninth Circuit Court's instructions, EPA took final action in January 1988 to disapprove the South Coast SIP. 53 FR 1780 (January 22, 1988). EPA also took final action in September 1988 to disapprove Ventura County's ozone SIP. 53 FR 39087 (September 28, 1988).

B. Discussion

EPA concludes that the attainment demonstration deficiency in the Sacramento ozone SIP is substantially identical to the deficiencies in the South Coast CO and ozone SIP and the Ventura ozone SIP, and EPA is therefore now taking final action to disapprove the Sacramento ozone SIP. The ground for EPA's final disapproval of the Sacramento SIP is that it does not demonstrate attainment of the ozone NAAQS by December 31, 1987, or by any other fixed date (near-term or otherwise) thereafter. Under the terms of the Act and EPA's regulations, such final plan disapproval results in the imposition of a construction ban in the Sacramento AQMA for major new sources and major modifications of existing sources of VOC.[1] Section 110(a)(2)(I); 49 CFR 52.24(a). Under 40 CFR 52.24 (f)(4)(ii) and (f)(5)(i), a major stationary source or major modification that is major for VOC is also major for ozone.

Today's action is also driven by the reasoning of the decision in *Abramowitz*. That decision establishes that EPA has no discretion under the law to postpone the final disapproval when the Agency has effectively determined that the plan does not provide for timely attainment. Thus, EPA is not responding directly to public comments on EPA's July 14, 1987 proposal. EPA may respond to some of the comments in the future, perhaps in connection with EPA's final policy on how areas like Sacramento should correct their SIPs after December 31, 1987.

C. Final Action

EPA is today taking final action to disapprove the 1982 Sacramento AQMA SIP revision for attainment of the primary NAAQS for zone. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this disapproval is effective January 3, 1989. The effective date for the construction ban is January 3, 1989.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. EPA does not have sufficient information to determine the impacts that the construction moratorium announced in today's notice may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Act, the imposition of a construction moratorium is mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the Act, and that determination, in turn, is effectively required by the Ninth Circuit's decision in *Abramowitz*.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1989. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental relations.

Dated: November 28, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart F, is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.237 is amended by adding new paragraph (a)(3) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(3) The ozone attainment demonstration for the Sacramento AQMA. No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in the Sacramento nonattainment area unless the construction permit application is complete on or before January 3, 1989.

* * * * * *

[FR Doc. 27760 Filed 11–30–88; 8:45 am]

BILLING CODE 6560–50–M

[1] The Sacramento Air Quality Maintenance Area includes all of Sacramento and Yolo Counties and portions of Placer and Solano Counties. Within this area, any major new source or major modification for which the construction permit application is incomplete on or after January 3, 1989 will be prohibited from construction. EPA's criteria for determining an application to be complete are explained in 52 FR 26404 and 26409 n.18 (July 14, 1987).

40 CFR Part 52

[FRL-3478-2]

Approval and Promulgation of State Implementation Plans; Revision to Regulation No. 3, Visibility Protection; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is approving revisions to the Colorado Air Quality Control Commission (AQCC) Regulation No. 3 (Sections IV and XIV) of the Colorado State Implementation Plan (SIP) pertaining to New Source Review (NSR) visibility protection in mandatory Class I Federal areas. This action results from a rulemaking on July 12, 1985 (50 FR 28544), in which EPA promulgated Federal regulations for visibility NSR (40 CFR 51.307) in states which failed to comply with the provisions of 40 CFR 51.307.

On May 8, 1986, the Governor of Colorado submitted a revision to AQCC Regulation No. 3 (Section IV) of the SIP to include visibility NSR protection in mandatory Class I Federal areas from sources locating in nonattainment areas. Also included in the submittal is a revision to AQCC Regulation No. 3 (Section XIV) which provides for visibility protection in mandatory Class I Federal areas from sources locating in attainment areas. AQCC Regulation No. 3, Section XIV was originally submitted on April 18, 1983, as part of Colorado's Prevention of Significant Deterioration (PSD) regulations.

EPA's approval of the attainment and nonattainment NSR procedures for visibility protection apply only to those source categories regulated by previously approved NSR and PSD regulations. Colorado's Visibility NSR regulations meet the criteria of 40 CFR 51.307, and these regulations will replace, where appropriate, the Federal Visibility NSR regulations now in effect for Colorado.

EFFECTIVE DATE: December 1, 1988.

ADDRESSES: Copies of the submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

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FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" (hereinafter Class I areas) are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-81.437.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 CFR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981 (see 45 FR 80091, codified at 40 CFR 51.302(a)(1)). That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation, pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate Visibility SIPs (hereinafter Federal Implementation Plans (FIPs)). A negotiated Settlement Agreement between EPA and EDF required EPA to promulgate Visibility FIPs on a specific schedule. It required EPA to propose to incorporate Federal regulations in states where SIPs were deficient with respect to the 1980 Visibility NSR regulations (40 CFR 51.307). However, the Settlement Agreement allowed each State an opportunity to avoid Federal promulgation if it submitted an SIP by May 6, 1985. Colorado was one of the states that did not meet this deadline. Final promulgation of Federal Visibility NSR regulations for all states (including Colorado) having deficient SIPs was published on July 12, 1985 (49 FR 28544), and became effective August 12, 1985.

On April 18, 1983, the Governor of Colorado submitted to EPA Colorado's PSD Regulation (Regulation No. 3) which included Section XIV, providing for visibility protection in Class I areas from sources locating in attainment areas. This revision to the Colorado SIP was adopted by the Colorado Air Quality Control Commission (AQCC) March 10, 1983. EPA approved this PSD revision to the Colorado SIP with some source category exemptions on September 2, 1986 (51 FR 31125). No action was taken with respect to the Colorado regulation for visibility protection in Class I areas at that time. Therefore, the EPA promulgated visibility regulations remained in effect.

On May 8, 1986, the Governor of Colorado submitted to EPA a revision to AQCC Regulation No. 3 which was adopted on March 20, 1986. This revision adds Section IV.D.2.a.(vi) to AQCC Regulation No. 3, providing for NSR visibility protection in Class I areas from sources locating in nonattainment areas. This addition requires an applicant to demonstrate that emissions from a new or modified source locating in a nonatttainment area will not adversely impact visibility in a Class I area. Visibility analyses and/or comments from the Federal Land Manager (FLM) must be considered in the decision to grant or deny the permit. In addition to adding Section IV.D.2.a.(vi) to AQCC Regulation No. 3, the May 8, 1986, submittal again included Section XIV in response to EPA's promulgated Visibility NSR regulations.

On March 31, 1987 (52 FR 10239), EPA proposed to approve both the attainment and nonattainment NSR procedures for visibility protection for source categories regulated by the NSR and PSD regulations which have previously been approved by EPA. However, Colorado's NSR and PSD regulations have been disapproved for certain sources as described in 46 FR 21180 (April 30, 1981) and 51 FR 31125 (September 2, 1986), respectively. The EPA promulgated Visibility NSR regulations will remain in effect for these sources.

Affected Areas

The following areas in Colorado are Class I areas where visibility is an important value:

Black Canyon of the Gunnison Wilderness
Eagles Nest Wilderness
Flat Tops Wilderness
Great Sand Dunes Wilderness
La Garita Wilderness
Maroon Bells-Snowmass Wilderness
Mesa Verde National Park
Mount Zirkel Wilderness
Rawah Wilderness
Rocky Mountain National Park
Weminuche Wilderness
West Elk Wilderness

New Source Review

States are required by 40 CFR 51.307 to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the air quality status of the area in which the source is located. That is, sources locating in attainment areas and nonattainment areas must undergo Visibility NSR (see 40 CFR 51.307 (a) and (b)(2), respectively). These requirements ensure: (1) That the visibility impact review is conducted in a timely and consistent manner; (2) that the reviewing authority considers any timely FLM analysis demonstrating that a proposed source would have an adverse impact on visibility; and (3) the public availability of the permitting authority's conclusion.

There are two parts to Visibility NSR: PSD major stationary sources and major sources in nonattainment areas.

For all major PSD stationary sources:

(1) The State must notify the FLM in writing not more than 30 days after receiving a permit application or advance notification of application from a proposed source that may impact a visibility protection area.

(2) This notification must take place at least 60 days prior to the public hearing on the application and must contain any analysis of the potential impact of the proposed source on visibility.

(3) The State must consider any analysis concerning visibility impairment performed by the FLM and received not more than 30 days after the notification.

(4) If the State does not concur with the FLM's analysis that adverse visibility impairment will result from the proposed source, the State must provide in its notice of public hearing on the application an explanation of its decision or give notice as to where the explanation can be obtained.

(5) The State must have the ability to require a permit applicant to monitor visibility in or around the visibility protection areas.

For major sources in nonattainment areas:

(1) A major source or modification that may impact a visibility protection area must provide a visibility impact analysis.

(2) The State must ensure that the sources' emissions are consistent with the national visibility goal. The State may consider the cost of compliance, the

time for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

(3) The State must follow the same procedures outlined in the PSD items 1 through 5 above in conducting nonattainment area visibility reviews.

Items 1 through 5 for major PSD stationary sources, and items 1 through 3 for major sources in nonattainment areas, are the procedural steps in visibility review as defined in 40 CFR 52.27(d) and 52.28 (c) and (d), respectively. (The provisions of 40 CFR 52.27 and 52.28 were proposed in 49 FR 42670 and finalized in 50 FR 28544.)

The Colorado Visibility SIP has incorporated into the NSR section its existing permit requirements for any source locating in an attainment or nonattainment area. The AQCC Regulation No. 3 specifies the standard requirements for any permit application and permit approval.

Section XIV of AQCC Regulation No. 3 requires any emission permit applicant to demonstrate that emissions from the proposed source will not adversely impact visibility in a Class I area. The demonstration must be reviewed by the FLM, and any determination by the FLM must be considered by the APCD in its decision to grant or deny the permit. The permit will be denied for sources proven to cause a potential impact.

The SIP commits to the notification time frame requirements to the FLM. Section XIV allows the APCD to determine independently if there is an adverse impact to visibility in Class I areas, if the FLM fails to make such determination or such determination is in error. The APCD commits to provide an explanation of its decision, should it disagree with the FLM's assessment on a proposed source's impact on visibility, and to give notice as to where that explanation can be obtained.

FLM Coordination

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values which includes visibility in Class I areas. The visibility regulations allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies. The FLM must maintain these areas consistent with congressional land use goals.

The State of Colorado has accorded the FLM (through the National Park Service (NPS) and the United States Forest Service (USFS)) opportunities to participate and comment on its Visibility SIP and regulations. Comments by the NPS and the USFS were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. Further, the State recognizes the expertise of the FLM in monitoring and new source applicability analyses for visibility and has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

EPA proposed to approve the Colorado Visibility NSR regulations on March 31, 1987 (52 FR 10239). No comments were received.

Summary of Action

EPA is approving the revisions to AQCC Regulation No. 3 of the Colorado SIP as they apply to NSR for visibility protection in Class I areas. These regulations will replace the Federal Visibility NSR regulations now in effect in Colorado, except as they apply to categories of sources for which the Colorado NSR and PSD regulations have been disapproved.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Incorporation by reference, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.
Date: November 14, 1988.

Lee M. Thomas,
Administrator.

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart G—Colorado

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.320 is amended by adding paragraph (c)(40) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(40) A revision to the Colorado SIP was submitted by the Governor on May 8, 1986, for Visibility New Source Review.

(i) Incorporation by Reference.

(A) Revision to the Colorado State Implementation Plan regarding Revision to Regulation No. 3, Section XIV was submitted by the Governor on April 18, 1983, and was adopted on March 10, 1983.

(B) Revision to the Colorado State Implementation Plan regarding Revision to Regulation No. 3, Section IV was submitted by the Governor on May 8, 1986, and was adopted on March 20, 1986.

3. Section 52.344 is amended by revising paragraph (b) to read as follows:

§ 52.344 Visibility protection.

* * * * *

(b) The Visibility NSR regulations are approved for industrial source categories regulated by the NSR and PSD regulations which have previously been approved by EPA. However, Colorado's NSR and PSD regulations have been disapproved for certain sources as listed in 40 CFR 52.343(a)(1). The provisions of 40 CFR 52.26 and 52.28 are hereby incorporated and made a part of the applicable plan for the State of Colorado for these sources.

[FR Doc. 88–26719 Filed 11–30–88; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3484–2]

Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving (1) revised State of Idaho Department of Health and Welfare (IDHW) rules regulating the height of stacks and the use of dispersion techniques and (2) two administrative rule changes, submitted on March 27, 1987, as revisions to the Idaho state implementation plan (SIP). These revisions clarify and correct portions of the existing rules for stack heights and dispersion techniques and were submitted to satisfy the requirements of section 123 (Stack Heights) of the Clean Air Act (hereinafter the Act).

EFFECTIVE DATE: January 3, 1989.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-87-7), Environmental Protection Agency, 1200 Sixth Avenue AT-082, Seattle, Washington 90101.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

State of Idaho Department of Health and Welfare (IDHW), 450 W. State Street, Statehouse, Boise, Idaho 83720.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT-082, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 1987 the State of Idaho Department of Health and Welfare (IDHW) submitted revised rules regulating the use of stack heights and dispersion techniques and two other administrative rule changes as revisions to the Idaho State Implementation Plan (SIP). The revisions to section 16.01.1002.94 "Stack" (definition) and section 16.01.1014 "Stack Heights and Dispersion Techniques," of the Rules and Regulations for Control of Air Pollution in Idaho clarify and correct portions of the existing rules for stack heights and dispersion techniques to comply with revised EPA stack height regulations as promulgated in 40 CFR Part 51. These rules apply to all new sources and modifications in Idaho as required in 40 CFR 51.164, as well as to existing sources as required in 40 CFR 51.118 and apply to all sources that were or are constructed, reconstructed, or modified subsequent to December 31, 1970. EPA has reviewed the revisions to these rules and has determined that the revised rules are consistent with EPA's requirements for stack heights and dispersion techniques regulations as promulgated by EPA on July 8, 1985.

EPA's stack height regulations were challenged in *NRDC* v. *Thomas,* 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

The revisions to section 16.01.1009 "Total Compliance," and section 16.01.1201.03 "Visible Emissions—Exception," clarify the applicability of these sections.

On July 1, 1988 (53 FR 24964), EPA proposed to approve the submitted revisions and provided a 30-day public comment period on this proposed approval. No comments were received.

II. Summary of Action

EPA is today approving of the revised stack heights and dispersion techniques rules as a revision to the Idaho SIP satisfying the requirements of section 123 of the Act, and is approving the administrative rule revisions for "Total Compliance," and "Visible Emissions."

Although EPA is approving IDHW's stack height rules on the grounds that they satisfy 40 CFR Part 51, EPA is also providing notice that this action may be subject to the decision in *NRDC* v. *Thomas,* 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, EPA will notify the State of Idaho that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by IDHW and source owners or operators.

III. Administrative Review

Under 5 U.S.C. § 605(b), I certify this revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Date: November 17, 1988.

Lee M. Thomas,

Administrator.

Note: Incorporation by reference of the State Implementation Plan for the state of Idaho was approved by the Director of the Federal Register on July 1, 1982.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart N—Idaho

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642

2. Section 52.670 is amended by adding paragraph (c)(25) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(25) On March 27, 1987, the State of Idaho Department of Health and Welfare submitted revised rules regulating the use of stack heights and dispersion techniques (section 16.01.1002.94 and section 16.01.1014) as revisions to the Idaho state implementation plan. Additional revisions included clarifications to section 16.01.1009 (Total Compliance), and section 16.01.1201.03 (Visible Emissions-Exception).

(i) Incorporation by Reference

(A) March 27, 1987 letter from the State of Idaho Department of Health and Welfare to EPA, Region 10.

(B) Section 16.01.1002.94 (Stack), section 16.01.1014 (Stack Heights and Dispersion Techniques), section 16.01.1009 (Total Compliance) and section 16.01.1201.03 (Visible Emissions-Exception) adopted by the State of Idaho Department of Health and Welfare on February 11, 1987.

3. Section 52.679 is revised to read as follows:

§ 52.679 Contents of Idaho State implementation plan.

Implementation Plan for the Control of Air Pollution in the State of Idaho

Chapter I—Introduction (submitted 1/15/80)
Chapter II—Administration (submitted 1/15/80)
Chapter III—Emissions Inventory (submitted 1/15/80)
Chapter IV—Air Quality Monitoring (submitted 1/15/80, 2/14/80)
Chapter V—Source Surveillance (submitted 1/15/80)
Chapter VI—Emergency Episode Plan (submitted 1/15/80)
Chapter VII—Approval Procedures for New and Modified Facilities (submitted 4/19/85)

Chapter VIII—Non-Attainment Area Plans
VIII–a—Silver Valley Nonattainment Plan (submitted 1/15/80)
VIII–b—Lewiston Nonattainment Plan (submitted 1/15/80, 12/4/80)
VIII–c—Transportation Control Plan for the carbon monoxide of Ada County (submitted 5/24/84, 1/3/85, and 3/25/85)
VIII–d—Pocatello TSP Nonattainment Plan (submitted 3/7/80, 2/5/81)
VIII–e—Soda Springs Nonattainment Plan (submitted 1/15/80)
Chapter IX—(Reserved)
Chapter X—Plan for Maintenance of National Ambient Air Quality Standards for Lead (submitted 2/3/84)
Appendix A—Legal Authority and Other General Administrative Matters (submitted 1/15/80)
Appendix A.2—Section 39–100, Idaho Code (submitted 1/15/80)
Appendix A.3—Rules and regulations for control of air pollution in Idaho Manual (submitted 1/15/80, 4/19/85)
1–1000 Legal Authority (submitted 1/15/80)
1–1001 Policy (submitted 1/15/80)
1–1002 Definitions (submitted 4/19/85)
1–1002.01 Act
1–1002.02 Actual Emissions
1–1002.03 Adverse Effect on Visibility
1–1002.04 Air Contaminant
1–1002.05 Air Pollution
1–1002.06 Air Quality
1–1002.07 Air Quality Criterion
1–1002.08 Allowable Emissions
1–1002.09 Ambient Air
1–1002.10 Ambient Air Quality Violation
1–1002.11 ASTM
1–1002.12 Attainment Area
1–1002.13 Background Level
1–1002.14 Baseline (Area, Concentration, Date)
1–1002.15 Base Available Control Technology (BACT)
1–1002.16 Board
1–1002.17 Btu
1–1002.18 Collection Efficiency
1–1002.19 Commence Construction or Modification
1–1002.20 Complete
1–1002.21 Construction
1–1002.22 Control Equipment
1–1002.23 Controlled Emission
1–1002.24 Criteria Pollutant
1–1002.25 Department
1–1002.26 Designated Facility
1–1002.27 Director
1–1002.28 Emission
1–1002.29 Emission Standard
1–1002.30 Emission Standard Violation
1–1002.31 Emissions Unit
1–1002.32 Equivalent Air-Dried Kraft Pulp
1–1002.33 Existing Stationary Source or Facility
1–1002.34 Facility
1–1002.35 Federal Class I Area
1–1002.36 Federal Land Manager
1–1002.37 Fuel-Burning Equipment
1–1002.38 Fugitive Dust
1–1002.39 Fugitive Emissions
1–1002.40 Hazardous Air Pollutant
1–1002.41 Hot-Mix Asphalt Plant
1–1002.42 Incinerator
1–1002.43 Indian Governing Body
1–1002.44 Indian Reservation
1–1002.45 Industrial Process
1–1002.46 Innovative Control Technology
1–1002.47 Integral Vista
1–1002.48 Kraft Pulping
1–1002.49 Lowest Achievable Emission Rate (LAER)
1–1002.50 Major Facility
1–1002.51 Major Modification
1–1002.52 Malfunction
1–1002.53 Mandatory Federal Class I Area
1–1002.54 Modification
1–1002.55 Monitoring
1–1002.56 Multiple Chamber Incinerator
1–1002.57 Net Emissions Increase
1–1002.58 New Stationary Source or Facility
1–1002.59 Nonattainment Area
1–1002.60 Noncondensables
1–1002.61 Odor
1–1002.62 Opacity
1–1002.63 Open Burning
1–1002.64 Operating Permit
1–1002.65 Particulate Matter
1–1002.66 Permit to Construct
1–1002.67 Person
1–1002.68 Portable Equipment
1–1002.69 ppm (parts per million)
1–1002.70 Primary Ambient Air Quality Standard
1–1002.71 Process or Process Equipment
1–1002.72 Process Weight
1–1002.73 Process Weight Rate
1–1002.74 Reasonable Further Progress (RFP)
1–1002.75 Salvage Operations
1–1002.76 Secondary Ambient Air Quality Standard
1–1002.77 Secondary Emissions
1–1002.78 Significant
1–1002.79 Significant Contribution
1–1002.80 Smoke
1–1002.81 Source
1–1002.82 Source Operation
1–1002.84 Standard Conditions
1–1002.85 Stationary Source
1–1002.86 Time Intervals
1–1002.87 TRS (total reduced sulfur)
1–1002.88 Unclassifiable Area
1–1002.89 Uncontrolled Emission
1–1002.90 Visibility Impairment
1–1002.91 Wigwam Burner
16.01.1002.94 "Stack" (adopted 2/11/87)
1–1003 (Repealed)
1–1005 Reporting (submitted 1/15/80)
1–1006 Upset Conditions, Breakdown (submitted 1/15/80)
1–1008 Circumvention (submitted 1/15/80)
16.01.1009 "Total Compliance" (adopted 2/11/87)
1–1010 Sampling and Analytical Procedures (submitted 1/15/80)
1–1011 Provisions Governing Specific Activities (submitted 1/15/80)
1–1012 Procedures and Requirements for Permits to Construct and Operating Permits (submitted 4/19/85)
1–1013 Registration Procedures and Requirements for Portable Equipment (submitted 4/19/85)
16.01.1014 "Stack Heights and Dispersion Techniques" (adopted 2/11/87)
1–1015—1–1050 (Reserved)
1–1051—1–1055 Air Pollution Emergency Regulation (submitted 1/15/80)
1–1056—1–1100 (Reserved)
1–1101 Air Quality Standards and Area Classification (submitted 4/19/85)
1–1102—1–1112 (Repealed)
1–1113—1–1150 (Reserved)
1–1151—1–1153 Rules for Control of Open Burning (submitted 1/15/80)
1–1154—1–1200 (Reserved)
1–1201 Visible Emissions (submitted 1/15/80)
16.01.1201.03 "Visible Emissions—Exception" (adopted 2/11/87)
1–1202 (Reserved)
1–1203 General Restrictions on Visible Emissions From Wigwam Burners (submitted 1/15/80)
1–1204—1–1205 (Repealed)
1–1206—1–1250 (Reserved)
1–1251—1–1252 Rules for Control of Fugitive Dust (submitted 1/15/80)
1–1253—1–1300 (Reserved)
1–1301 Fuel Burning Equipment—Particulate Matter (submitted 1/15/80)
1–1302—1–1304 (Repealed)
1–1305—1–1325 (Reserved)
1–1326 (Repealed)
1–1327 Emission Limitations (submitted 1/15/80)
1–1328 Allowable Rate of Emission Based on Process Weight Rate—Table (submitted 1/15/80)
1–1329 Particulate Matter—New Equipment Process Weight Limitations (submitted 1/15/80)
1–1330 Particulate Matter—Existing Equipment Process Weight Limitations (submitted 1/15/80)
1–1331—1–1350 (Reserved)
1–1351—1–1355 Rules for Sulfur Content of Fuels (submitted 1/15/80)
1–1356—1–1400 (Reserved)
1–1401—1–1402 Rules for Control of Fluoride Emissions (submitted 1/15/80)
1–1403—1–1450 (Reserved)
1–1451—1–1452 Rules for Control of Odors (submitted 1/15/80)
1–1453—1–1500 (Reserved)
1–1501—1–1504 Rules for Control of Incinerators (submitted 1/15/80)
1–1505—1–1550 (Reserved)
1–1551—1–1553 Rules for Control of Motor Vehicle Emissions (submitted 1/15/80)
1–1554—1–1600 (Reserved)
1–1601—1–1605 Rules for Control of Hot-Mix Asphalt Plants (submitted 1/15/80)
1–1606—1–1650 (Reserved)
1–1651—1–1662 Rules For Control of Kraft Pulping Mills (submitted 1/15/80)
1–1663—1–1700 (Reserved)
1–1701—1–1704 (Repealed)
1–1705—1–1750 (Reserved)
1–1751—1–1755 Rules for Control of Rendering Plants (submitted 1/15/80)
1–1756—1–1800 (Reserved)
1–1801—1–1804 Rules for Control of Sulfur Oxide Emissions From Sulfuric Acid Plants (submitted 1/15/80)
1–1805—1–1850 (Reserved)
1–1869—1–1899 (Reserved)
1–1900—1–1906 (Repealed)
1–1907—1–1950 (Reserved)
1–1969—1–1999 (Reserved)
Appendix B Emissions Inventory—Ada County Carbon Monoxide Nonattainment Area (submitted 1/15/80)

Appendix G Permits—Silver Valley (submitted 1/15/80)
Appendix H Permits—Lewiston (submitted 12/4/80, 2/5/81)
Appendix J Permits—Pocatello (submitted 3/7/80)
Appendix K Permits—Soda Springs (submitted 1/15/80)
Beker Industries, 1973 Consent Order (40 CFR 52.670(c)(15)) — SO_2 Emission Limitation (submitted 7/28/75)
40 CFR Part 52, Subparts A and N

[FR Doc. 88-27561 Filed 11-30-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42061E; FRL-3484-7]

Oleylamine; Final Test Standards and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final Phase II test rule under section 4(a) of the Toxic Substances Control Act (TSCA) specifying the test standards and reporting requirements to be used by manufacturers and processors of oleylamine (9-octadecenylamine or ODA; CAS No. 112-90-3). This rule requires that certain TSCA health effects test guidelines be utilized as the test standards for the required studies, and that test data be submitted within specified times.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on December 15, 1988. This rule shall become effective on January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is promulgating a final Phase II test rule specifying test standards and reporting requirements for ODA. The test standards and reporting requirements are added to 40 CFR 799.3175.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

EPA issued a final Phase I rule under section 4(a) of TSCA published in the **Federal Register** of August 24, 1987 (52 FR 31962), requiring manufacturers and processors to perform developmental toxicity and two-tiered mutagenicity testing of ODA. The need for third tier mutagenicity testing and oncogenicity testing was to be determined by EPA following public program review of all relevant data.

Under the two-phase test rule development process, manufacturers and processors of ODA would normally have been required to submit proposed study plans, including schedules for each of these required tests, in accordance with 40 CFR 790.50. EPA would review the submitted study plans and schedules and issue them, with any necessary modifications, for public comment in a Phase II test rule proposal. After evaluating and responding to public comment, EPA would adopt the study plans in a Phase II final rule as the required test standards and data submission deadlines in accordance with 40 CFR 790.52.

However, in the case of the ODA test rule, which was initiated under the two-phase process, EPA decided to propose the relevant TSCA test guidelines as the test standards for the rule (52 FR 31970; August 24, 1987). EPA also proposed that the data from the required studies be submitted within certain time periods, these time periods serving as the data submission deadlines required by TSCA section 4(b)(1). The reasons for this change in the test rule development process for ODA were discussed in the proposed Phase II rule.

II. Modifications to the Two-Phase Rulemaking Process

Because EPA proposed certain TSCA guidelines as the test standards and proposed data submission deadlines, persons subject to the Phase I final rule were not required to submit proposed study plans for the required testing or proposed dates for the initiation and completion of this testing. They were, however, required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45.

EPA is now promulgating a final Phase II rule requiring manufacturers (including importers) and processors of ODA who have not been granted exemptions from the rule to conduct testing in accordance with specified test standards and reporting requirements. While EPA has not identified any byproduct manufacturers of ODA, such persons are subject to the requirements of this test rule. These standards and requirements reflect EPA's evaluation of comments received on the proposed rule. Moreover, once this Phase II final rule is promulgated, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each of the required tests.

III. Proposed Phase II Test Rule

A. Proposed Test Standards

EPA proposed that testing of ODA be conducted using the following TSCA test guidelines as test standards:

1. For specific organ/tissue toxicity under 40 CFR 798.4900 *Developmental toxicity study.*

2. For genetic toxicity: Chromosomal effects—a. First tier under 40 CFR 798.5385 *In vivo mammalian bone marrow cytogenetics tests: Chromosomal analysis.*

b. Second tier under 40 CFR 798.5450 *Rodent dominant lethal assay.*

c. Third tier under 40 CFR 798.5460 *Rodent heritable translocation assay.*

3. For genetic toxicity: Gene mutations—a. First tier under 40 CFR 798.5300 *Detection of gene mutations in somatic cells in culture.*

b. Second tier under 40 CFR 798.5275 *Sex-linked recessive lethal test in Drosophila melanogaster.*

c. Third tier under 40 CFR 798.5200 *Mouse visible specific locus test* (see Unit V.A.3. of this preamble).

4. For chronic exposure under 40 CFR 798.3300 *Oncogenicity.*

EPA believes that the TSCA Health Effects Test Guidelines cited in Unit III.A., if properly followed, will produce adequate and reliable data.

B. Proposed Reporting Requirements

EPA proposed that all data developed under this rule be conducted and reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear at 40 CFR Part 792, and that test sponsors submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by section 4(b)(1)(c) of TSCA to specify the time period during which persons subject to a test rule must submit test data. EPA proposed that interim progress reports be provided at 6-month intervals

beginning 6 months after the effective date of the final test rule or notification that testing should be initiated. EPA proposed specific reporting requirements for each of the proposed test standards as follows:

That the developmental toxicity study be conducted and the final results submitted to EPA within 12 months of the effective date of the final test rule.

That the mutagenicity studies be conducted, and the final results submitted to EPA as follows:

1. *In vivo* mammalian bone marrow cytogenetics test and detection of gene mutations in somatic cells in culture within 8 months of the effective date of the final rule.

2. Rodent dominant lethal assay and sex-linked recessive lethal test in *Drosophilia melanogaster* within 17 months of the effective date of the final rule.

3. Rodent heritable translocation assays within 24 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

4. Mouse visible specific locus test within 48 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

That oncogenicity testing be conducted and the final results submitted within 53 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

As required by TSCA section 4(d), EPA plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days of receipt of that data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any person.

IV. Response to Public Comment

EPA received written comments from the Oleylamine Program Panel of the Chemical Manufacturers Association (the Panel) in response to the proposed test standards and reporting requirements for oleylamine on October 8, 1987 (Ref. 1). The Panel was composed of four ODA manufacturers, Akzo Chemie America, Humko Chemicals, Jetco Chemical Company, and Sherex Chemical Company, and one processor, Ethyl Corporation. The Panel also requested a public meeting to give oral comments; the meeting was held on November 16, 1987 (Ref. 2). An additional submission to clarify issues discussed at the EPA public meeting was submitted to EPA by the Panel on January 6, 1988 (Ref. 3). A summary of the Panel's comments and EPA's responses follows.

A. Route of Administration for Developmental Toxicity Study

1. *Comment:* The Panel believes the dietary route should not be used because the Panel found through an animal feed stability study it conducted that only 50 percent of ODA is available in rat chow after 24 hours.

Response: EPA agrees with this comment; thus the route of administration shall now be oral by gavage for the developmental toxicity test, the *in vivo* mammalian bone marrow cytogenetic tests—chromosomal analysis, rodent dominant lethal assay, rodent heritable translocation assay, and the oncogenicity test.

2. *Comment:* The gavage route is inappropriate because the bolus effect is different from a mechanics' slow dermal exposure.

Response: EPA disagrees. Although gavage gives a bolus dose, it is an accepted method to measure the developmental toxicity of chemicals and will measure the intrinsic capacity of ODA to cause developmental toxicity. Dermal exposure is inappropriate because of the highly corrosive nature of ODA as discussed in the final Phase I rule (52 FR 31962; August 24, 1987).

3. *Comment:* An adequate data base is available to interpret developmental toxicity effects via the dermal route.

Response: EPA disagrees because there is a very limited data base on developmental toxicity studies conducted via the dermal route from which background information can be drawn for these studies. Also, those chemicals that have been tested by the dermal route were, for the most part, first tested by the oral route and then tested dermally. Consistent with these tests, EPA would agree to dermal developmental toxicity testing of ODA if an oral developmental toxicity test were done first.

The Panel provided a bibliography of articles to support its contention that there was an adequate data base available to interpret developmental toxicity effects via the dermal route. The Panel's submission included no analysis of this bibliography. In fact, about one-half of the articles were inappropriate to address this question (e.g., frog and chicken embryo studies). The Panel has not provided any analysis or rational argument to support its thesis. Thus, EPA requires that a developmental toxicity study be conducted with ODA via the oral gavage route of exposure.

4. *Comment:* Developmental toxicity effects are different with oral and dermal applications.

Response: A developmental toxicity study is designed to ensure that a chemical being tested is administered at a high enough dose to get to the target system. One then determines if the chemical, on the basis of conditions of exposure with consideration of maternal effects, has the potential to produce an adverse effect. Because of the high corrosive nature of ODA, a dermal study may not allow a sufficient dose to reach the target system. Therefore, EPA is requiring that the route of exposure for the developmental toxicity study be oral by gavage.

5. *Comment:* CMA refuted EPA's assertion that a dermal developmental toxicity study on ODA may result in positive effects due solely to stress from the dermal irritating properties of ODA by citing a study in which three dermal irritating chemicals did not cause developmental toxicity. CMA therefore felt that the dermal route of administration of ODA would be acceptable.

Response: Although there may be compounds that cause dermal irritation in adult animals but no developmental toxicity whatsoever, EPA believes that ODA's strong dermal irritation properties are likely to stress the test animals and that it is prudent to minimize this confounding factor in a developmental toxicity study. Therefore, EPA is requiring that the route of administration of ODA be oral by gavage in the developmental toxicity study.

6. *Comment:* The Panel believes that sufficient ODA will penetrate to the target organ via the dermal route.

Response: EPA disagrees. In the absence of hard data to prove the Panel's point, EPA continues to believe, on the basis of the available data, that because severe irritation will limit the amount of ODA that can be applied to the skin, sufficient ODA will not penetrate the skin to allow for the proper design of the developmental toxicity study, i.e. high dose causing maternal toxicity. In the absence of adequate dermal absorption data (kinetic data), EPA cannot predict what the target organ concentrations of ODA will be.

7. *Comment:* The Panel wants to first conduct the dermal developmental toxicity test with ODA at a level below skin breakdown or obstruction (sic) in rats, and in rabbits whose skin is more permeable than human skin. At this level the maximum tolerated dose (MTD) is expected to approximate maximum use levels in lubricants.

Response: EPA disagrees. Available data indicate that ODA is such a strong

dermal irritant that the animal dose will be below the anticipated human exposure level. This will not provide an adequate margin of exposure between animal and human exposure levels.

B. Oral/Dermal Pharmacokinetics

Comment: EPA stated that it planned to propose an oral/dermal pharmacokinetics study on ODA in its final Phase I rule (52 FR 31962; August 24, 1987). The Panel commented that it felt that such a study would not give reliable comparative results.

Response: EPA is reviewing the need for this study. If EPA determines that such a study is necessary, a separate notice of proposed rulemaking for the comparative oral/dermal pharmacokinetics of ODA will be published in the **Federal Register**.

C. Oncogenicity Testing

Comment: EPA should specify that oncogenicity testing will not be required until an updated economic impact analysis is completed and considered as part of the program review for such testing.

Response: EPA will consider the need for an updated economic impact analysis at the time of the public program review.

D. Reporting Requirements

Comment: The time for testing is inadequate, and moreover should begin on the effective date of the final Phase II rule, rather than the final Phase I rule published on August 24, 1987.

Response: EPA agrees that the time for testing shall be based on the effective date of the final Phase II rule. EPA also beleives that the proposed reporting deadlines finalized in this final Phase II rule provide adequate time for completing the testing and submitting final reports for the developmental toxicity and oncogenicity tests. EPA notes that it has extended the reporting deadlines originally proposed for the mutagenicity tests.

V. Final Phase II Test Rule

A. Test Standards

The first, second, and third tier mutagenicity, developmental toxicity, and oncogenicity test guidelines and chemical-specific modifications proposed for ODA (52 FR 31970; August 24, 1987) shall be the test standards for the testing of ODA under 40 CFR 799.3175 with the following exceptions:

1. *Developmental toxicity study.* EPA is requiring the oral route of administration by gavage for developmental toxicity testing of ODA.

2. *In vivo mammalian bone marrow cytogenetics test, rodent dominant lethal assay, and rodent heritable translocation assays.* The oral route by gavage shall be used to maintain consistency among the tests for ODA test rules and provides an opportunity for public comment. If EPA concludes that third tier mutagenicity testing is still appropriate for ODA, EPA would amend the final test rule for ODA to add this requirement with any appropriate modifications.

3. *Mouse visible specific locus test.* EPA proposed a tiered testing approach to evaluate whether ODA elicits heritable gene mutations. Positive results in certain lower-tier tests would trigger the requirement for conducting a mouse visible specific locus (MVSL) test. EPA believes that the MVSL is necessary, when certain lower-tier tests are positive, to establish definitively whether a substance is capable of eliciting heritable gene mutations. Under the proposed approach, EPA would consider any positive lower-tier test results in a public program review, together with other relevant information, during which interested persons would be able to give their views to EPA. If, after the review, EPA determined that the MVSL was still appropriate, EPA would notify the test sponsors by letter or **Federal Register** notice that they must conduct the test. If EPA determines that the test is no longer necessary, EPA would propose to amend the rule to delete the test requirement.

The final test rule for ODA includes requirements to conduct the lower-tier tests for gene mutations. However, EPA is not promulgating the Phase II requirement for the MVSL for ODA at this time. EPA had based its proposal to require the MVSL, in part, on certain information and assumptions about the cost of conducting the test and the availability of laboratories able to perform the test. The information and assumptions have since proven to be incorrect. Accordingly, EPA is reexamining this information as it applies to the MVSL requirement for this test rule as well as those for other chemical substances. In particular, EPA is reviewing whether any laboratories are available to perform the MVSL for industry in accordance with the TSCA GLP Standards at 40 CFR Part 792, and the cost of such testing. EPA is also reviewing possible alternative tests to the MVSL as well as modifications of the MVSL for which costs may be lower or laboratory availability may be more certain.

Once EPA completes its evalution of this additional information, EPA will publish a notice in the **Federal Register** concerning the MVSL for ODA and other substances subject to TSCA section 4 test rules. This notice would provide up-to-date information on the cost of MVSL testing, availability of laboratories to perform the MVSL, and possible alternative tests to the MVSL or modifications of the MVSL together with their costs and laboratory availability. The notice would also address EPA's intentions about how any changes to the MVSL requirements would apply to the various test rules and would provide an opportunity for public comment. If EPA concludes that the MVSL is still appropriate for ODA, EPA will amend the final test rule for ODA to add the MVSL requirements with any appropriate modifications.

4. *Oncogenicity bioassay.* The oral route of administration by gavage is required.

B. Reporting Requirements

All data developed under this rule shall be reported in accordance with the TSCA GLP Standards (40 CFR Part 792). In addition, test sponsors shall submit individual study plans at least 45 days prior to the initiation of each study in accordance with 40 CFR Part 790.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of EPA's regulatory experience with the health effects tests required for ODA, as well as in response to public comments, EPA is adopting reporting requirements as follows. Results for the required tests shall be reported as specified in the proposed rule for the developmental toxicity and oncogenicity tests. EPA has extended the reporting deadline as originally proposed for the mutagenicity tests. (See Unit III.B. of this preamble). In addition, the rodent heritable translocation assay and oncogenicity test data shall be submitted within the time specified after notification. The following table shows the reporting requirements for ODA:

TABLE—REPORTING REQUIREMENTS FOR ODA

Test	Reporting deadline for final report (months after the effective date of final phase II rule, except as indicated)	Number of interim (6-month) reports required
Developmental toxicity	12	1
Gene mutation cells in culture assay	10	1

TABLE—REPORTING REQUIREMENTS FOR ODA—Continued

Test	Reporting deadline for final report (months after the effective date of final phase II rule, except as indicated)	Number of interim (6-month) reports required
Sex-linked recessive lethal test in *Drosophila melanogaster*	22	3
In vivo cytogenetics test	14	2
Rodent dominant lethal test	26	4
Rodent heritable translocation assay	[1] 25	4
Oncogenicity	[1] 53	8

[1] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter **Federal Register** notice that, following public program review of all of the then existing data for ODA, EPA has determined that the required testing must be performed.

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by TSCA section 4(d).

C. Conditional Exemptions Granted

The test rule development and exemption procedures (40 CFR 790.87) indicate that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they are based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), EPA must terminate the exemption if any test sponsor has not complied with the test rule.

Since the Oleylamine Program Panel of the Chemical Manufacturers Association has indicated to EPA by letter of intent (Ref. 5) its agreement to sponsor all of the tests required for ODA in the final Phase I test rule for ODA (52 FR 31962; August 24, 1987) according to the test standards and reporting requirements established in this final Phase II test rule for ODA, EPA is hereby granting conditional exemptions to all exemption applicants for all of the testing required for ODA in 40 CFR 799.3175.

D. Judicial Review

The promulgation date for the ODA Phase I final rule was established as 1 p.m. eastern daylight time on September 7, 1987 (52 FR 31962; August 24, 1987). To EPA's knowledge, no petitions for judicial review were filed. Any petition for review of this final rule will be limited to a review of the test standards and reporting requirements for ODA established in this final Phase II rule.

E. Other Provisions

Section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I rule for ODA (52 FR 31962; August 24, 1987).

VI. Rulemaking Record

EPA has established a record for this rulemaking [docket number OPTS-42061E]. In addition to the documentation listed in the final Phase I rule, this record includes basic information considered by EPA in developing this final rule, including:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this final rule consisting of:

(a) Phase I final rule on ODA (52 FR 31962; August 24, 1987).

(b) Notice of Proposed Phase II rule on ODA (52 FR 31970; August 24, 1987).

(c) TSCA test guidelines final rule (40 CFR Parts 796, 797, and 798; September 27, 1985) and modifications (52 FR 19056; May 20, 1987).

(2) Support documents consisting of the economic impact analysis of the final test rule for ODA.

(3) Communications consisting of:

(a) Written public comments.

(b) Summaries of phone conversations.

B. References

(1) CMA. Comments in response to proposed test standards for oleylamine submitted to the Environmental Protection Agency, Washington, DC, by the Oleylamine Program Panel of the Chemical Manufacturers Association, Washington, DC (October 8, 1987).

(2) Transcript of proceedings before the Environmental Protection Agency in the matter of test rule development meeting on oleylamine. Heritage Reporting Corporation, Official Reporters, 1220 L Street NW., Washington, DC (November 16, 1987).

(3) Letter to Robert Sanford, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, DC, from Has Shah, Chemical Manufacturers Association, Washington, DC. Clarification of issues discussed at EPA public hearing on oleylamine test rule and proposed test standards on November 16, 1987 (January 6, 1988).

(4) CMA. Chemical Manufacturers Association, 2510 M Street NW., Washington, DC 20037. CHO/HGPRT Mutation Assay in the Presence and Absence of Exogenous Metabolic Activation (1985).

(5) Letter to document control officer, TSCA Public Information Office, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, DC, from Geraldine V. Cox, Chemical Manufacturers Association, Washington, DC. Letter of intent to conduct testing of oleylamine by the Oleylamine Program Panel of the Chemical Manufacturers Association (October 26, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of ODA is discussed in the Phase I test rule (52 FR 31962; August 24, 1987).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments, are included in the public record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of this chemical.

2. Small processors are not expected to perform testing themselves, or

participate in the organization of the testing effort.

3. Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Reporting and recordkeeping requirements.

Dated: November 18, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 799.3175 is amended by adding paragraphs (c)(1) (ii) and (iii); (2) (ii) and (iii); (3) (ii) and (iii); and (4) (ii) and (iii), and (d) to read as follows:

§ 799.3175 Oleylamine.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* (A) The developmental toxicity study shall be conducted with ODA in accordance with § 798.4900 of this chapter except the provisions of paragraphs (e) (1)(i) and (5) of § 798.4900.

(B) For purposes of this section, the following provisions also apply:

(*1*) *Species and strain.* The rat and rabbit shall be the test species. The strain shall not have low fecundity and shall preferably be characterized for its sensitivity to developmental toxins.

(*2*) *Administration of the test substance.* The route of administration shall be oral by gavage. The test substance shall be administered at approximately the same time each day.

(iii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final report submitted to EPA within 12 months of the date specified in paragraph (d)(1) of this section.

(B) An interim progress report shall be provided to EPA 6 months after the date specified in paragraph (d)(1) of this section.

(2) * * *

(ii) *Test standard.* (A)(*1*) The *in vivo* mammalian bone marrow cytogenetics test: Chromosomal analysis shall be conducted with ODA in accordance with § 798.5385 of this chapter except the provisions of paragraphs (d) (3)(i) and (5)(iii) of § 798.5385.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Species and strain.* Mice shall be used.

(*ii*) *Route of administration.* The route of exposure shall be oral by gavage.

(B)(*1*) The rodent dominant lethal assay shall be conducted with ODA in accordance with § 798.5450 of this chapter except the provisions of paragraphs (d) (3)(i) and (5)(iii) of § 798.5450.

(*2*) For purposes of this section, the following provisions also apply:

(*i*) *Species.* Mice shall be used as the test species. Strains with low background dominant lethality, high pregnancy frequency, and high implant numbers are recommended.

(*ii*) *Route of administration.* The route of administration shall be oral by gavage.

(C)(*1*) The rodent heritable translocation assay shall be conducted with ODA is accordance with § 798.5460 of this chapter, except for the provisions of paragraphs (d) (3)(i) and (5)(iii) of § 798.5460.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Species.* Mice shall be used as the test species.

(*ii*) *Route of administration.* The route of administration shall be oral by gavage.

(iii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The *in vivo* mammalian bone marrow cytogenetics test shall be completed within 14 months of the date specified in paragraph (d)(1) of this section.

(*2*) The rodent dominant lethal assay (if required) shall be completed within 26 months of the date specified in paragraph (d)(1) of this section.

(*3*) The rodent heritable translocation assay shall be completed (if required) within 25 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(2)(i)(C) of this section that testing should be initiated.

(B) Interim progress reports shall be provided to EPA at 6-month intervals for each test beginning 6 months after the date specified in paragraph (d)(1) of this section or notification that testing should be initiated under paragraph (c)(2)(i)(C) of this section, until submission of the final report.

(3) * * *

(ii) *Test standard.* (A) (*1*) The detection of gene mutations in somatic cells in culture shall be conducted with ODA in accordance with § 798.5300 of this chapter, except for the provisions of paragraphs (d)(3) (i), (ii) and (4) of § 798.5300.

(*2*) For purposes of this section, the following provisions also apply:

(*i*) *Types of cells used in the assay.* ODA shall be tested in L5178Y mouse lymphoma cells. Cells should be checked for *Mycoplasma* contamination and may be periodically checked for karyotype stability.

(*ii*) *Cell growth and maintenance.* Alternative dosing procedures consisting of suspension cultures or roller-bottle incubation shall be used. Appropriate incubation conditions (CO_2 concentrations, temperature, and humidity) shall be used.

(*iii*) *Metabolic activation.* The metabolic activation system shall be derived from the postmitochondrial fraction (S–9) of livers from rats pretreated with Aroclor 1254. Cells shall be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

(B) (*1*) The sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with ODA in accordance with § 798.5275 of this chapter except for the provisions of paragraph (d)(5)(iii) of § 798.5275.

(*2*) For purposes of this section, the following provisions also apply:

(*i*) *Route of administration.* The route of administration shall be oral.

(*ii*) Reserved.

(iii) *Reporting requirements.* (A) Gene mutation tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The detection of gene mutations in somatic cells in culture shall be completed within 10 months of the date specified in paragraph (d)(1) of this section.

(*2*) The sex-linked recessive lethal test in *Drosophila melanogaster* (if required) shall be completed within 22 months of the date specified in paragraph (d)(1) of this section.

(B) Interim progress reports shall be provided to EPA at 6-month intervals for each test beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(4) * * *

(ii) *Test standard.* (A)(*1*) The oncogenicity bioassay shall be conducted with ODA in accordance with § 798.3300 of this chapter, except for the provisions of paragraphs (b)(1)(i) and (6) of § 798.3300.

(*2*) For purposes of this section, the following provisions also apply:

(*i*) *Species and strain.* ODA shall be tested in both rats and mice. Commonly used laboratory strains shall be employed.

(*ii*) *Administration of the test substance.* The route of administration shall be oral by gavage.

(iii) *Reporting requirements.* (A) The oncogenicity bioassay shall be completed and the final report submitted to EPA within 53 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(4)(i) of this section that testing should be initiated.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the notification under paragraph (c)(4)(i) of this section until submission of the final report.

(d) Effective dates. (1) Section 799.3175 is effective October 7, 1987 except for paragraphs (c)(1) (ii) and (iii); (2) (ii) and (iii); (3) (ii) and (iii); (4) (ii) and (iii), and (d) which are effective on January 17, 1989.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on January 17, 1989.

[FR Doc. 88-27661 Filed 11-30-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-2, Notice No. 9]

Adjustment of Monetary Threshold for Reporting Accidents/Incidents

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule increases the reporting threshold from $5,200 to $5,700 for railroad accidents/incidents involving property damage that occur during the calendar years 1989 and 1990. This action is needed to ensure that the FRA reporting requirements reflect the impact of inflation since the reporting threshold was last computed in 1986.

EFFECTIVE DATE: This rule becomes effective on January 1, 1989.

FOR FURTHER INFORMATION CONTACT: (1) *Principal Program Person:* Gloria D. Swanson, Office of Safety, (RRS-21), FRA, Washington, DC 20590. Telephone (202) 366-0538.

(2) *Principal Attorney:* Billie Stultz, Office of Chief Counsel, (RCC-30), FRA, Washington, DC 20590. Telephone (202) 366-0635.

SUPPLEMENTARY INFORMATION:

Background

Section 225.19(c) of Title 49, Code of Federal Regulations, provides that the dollar figure that constitutes the reporting threshold for railroad accidents/incidents will be adjusted every two years, in accordance with the procedures outlined in Appendix A to Part 225, to reflect cost increases.

New Reporting Threshold

Two years have passed since the accident/incident reporting threshold was last revised. Consequently, FRA has recomputed the threshold, as required by § 225.19(c), based on increased costs for labor and material. FRA has determined that the current reporting threshold of $5,200 should be increased to $5,700, and §§ 225.5 and 225.19 are being amended accordingly. Appendix A has also been amended to reflect the most recent calculations and the procedures used to determine the new threshold.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing regulatory policies and procedures. It does not constitute a major rule under Executive Order 12291 and does not constitute a significant rule under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This rule will not have any significant direct or indirect economic impact on any entity because it does not place any new requirements or burdens on the public. For these reasons, a draft regulatory evaluation has not been prepared.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

No additional public reporting burden is imposed by this rule; therefore, a Paperwork Reduction Act analysis is not necessary.

Notice and Public Procedure

Since the amendment merely adjusts the reporting threshold for accidents/incidents in accordance with procedures specified in long-standing regulation (49 CFR 225.19) and imposes no additional burden on any person, FRA concludes that notice and public procedure are not necessary.

List of Subjects in 49 CFR Part 225

Railroad safety, Railroad accident reporting rules.

For reasons set out in the preamble, Part 225 of Chapter II of Title 49 of the

Code of Federal Regulations is amended as follows:

PART 225—[AMENDED]

The authority citation for Part 225 continues to read as follows (see 53 FR 28594, 28601):

Authority: 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

1. By revising § 225.5(b)(2) and republishing the introductory text of the section and of paragraph (b) to read as follows:

§ 225.5 Definitions.

As used in this part—

* * * * *

(b) "Accident/Incident" means:

* * * * *

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than $5,700 in damages to railroad on-track equipment, signals, track, track structures, and roadbed;

* * * * *

2. By revising the second sentence in § 225.19(b) and by revising the first, third and fifth sentences of § 225.19(c) to read as follows:

(b) *Group I—Rail-Highway Grade Crossing.* * * * In addition, whenever a rail-highway grade crossing accident/incident results in more than $5,700 damages to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F6180.54. * * *

(c) *Group II—Rail Equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment (standing or moving) that result in more than $5,700 in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind. * * * If the property of more than one railroad is involved in an accident/incident, the $5,700 threshold is calculated by including the damages suffered by all of the railroads involved. * * * The $5,700 reporting threshold will be revised periodically and will be adjusted in increments of $100 every 2 years in accordance with the procedures outlined in Appendix A of this part.

* * * * *

3. By revising Appendix A to read as follows:

Appendix A—Procedure for Determining Reporting Threshold

1. Wage figures used for track direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation by Group of Employees," for Group 300 Maintenance of Way Structures Employees. This information appears in the most recent annual edition (Year 1987) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

2. Wage figures used for mechanical direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation by Group of Employees," for Group 400 Maintenance of Way Structures Employees. This information appears in the most recent annual edition (Year 1987) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

3. Fringe benefit surcharges will be added to the average straight time rates for mechanical and track employees based on the Railroad Cost Index data developed for the Interstate Commerce Commission under the provisions of 49 CFR Part 1102. This information was published in summarized form in the September 24, 1984 edition of the **Federal Register** (49 FR 37481).

4. To calculate the index number for mechanical labor, divide the present (1988) mechanical wage rate of $21.82 by the previous (1986) mechanical wage rate of $20.48. The result is a mechanical labor index number of 1.07 for 1988.

5. The track labor index number is calculated by dividing the present (1988) track wage rate of $21.12 by the previous (1986) track wage rate of $19.23. The result is a track labor index number of 1.1 for 1988.

6. Calculation of the labor index number is as follows: [(track labor index number) 1.1. x .20] + [(mechanical labor index number) 1.07 x .80] = labor index number of 1.08.

7. The mechanical material index number is calculated by first totaling the present (1988) cost of the following mechanical materials:

Quantity	Description	1986	1988
8	33" CS wheels	$1,940	$1,682
8	6 by 11" roller bearings.	1,235	1,204
4	Roller bearing axles.	1,946	2,030
4	6 by 11" roller bearing truck sides (750 lbs.).	3,397	3,027
2	6 by 11" truck bolsters (1,060 lbs.).	2,532	2,092
2	E couplers	534	589
4	Brake beams	339	321
1	AB cylinder	95	95
1	AB reservoir	299	342
1	ABD control valve.	1,250	1,252
500 lbs	Steel bar	500	610
1,000 lbs	Steel sheets	1,000	1,220
1,000 lbs	Steel plates	1,000	1,220
8	Brake shoes	58	46
8	Roller bearing adapters.	140	131
24	Outer coil springs.	174	192
800	Board feet hardwood lumber.	376	392
1	Traction motor	36,500	43,000
60 feet	1¼" brake pipe	66	72
1	Hand brake	245	256
	Total mechanical.	53,626	59,773

The mechanical material index number is determined by dividing the present (1988) total cost for these mechanical materials ($59,773) by the previous (1986) total cost for mechanical materials ($53,626). The result is 1.11.

8. The track material index number is calculated by first totaling the present (1988) cost of the following track materials:

Quantity	Description	1986	1988
4,500	Ties, wooden	$99,000	$112,500
250 tons	Rail	140,000	145,000
90 tons	Tie plates	50,400	52,200
27,000	Spikes (5.8 tons).	4,408	4,408
800	Joint bars (25.4 tons).	24,000	27,000
2,000	Track bolts	3,000	3,200
1	Frog	4,300	4,500
1	Switch	4,000	4,900
	Total track material	329,108	353,708

The track material index number is determined by dividing the present (1988) total cost for these track materials ($353,708) by the previous (1986) total cost for track materials ($329,108). The result is 1.07.

9. Calculation of the material index number is as follows: [(track material index number) 1.07 × .20] + [(mechanical material index number) 1.11 × .80] = material index number of 1.10.

10. Calculation of the threshold index number is as follows: [(labor index number) 1.08 × .40] + [(material index number) 1.10 × .60] = threshold index number of 1.09.

11. In order to calculate the new reporting threshold, multiply the existing reporting threshold $5,200 by the threshold index number of 1.09. The result is $5,668. This result, when rounded to the nearest $100.00 is the new accident/incident reporting threshold figure of $5,700.

Issued in Washington, DC on November 23, 1988.

John H. Riley,

Administrator.

[FR Doc. 88–27554 Filed 11–30–88; 8:45 am]

BILLING CODE 4910–06–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Veterans' Benefits and Services Act of 1988 and the Vietnam Era GI Bill

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits and Services Act of 1988 contains a provision which changes the method of measuring laboratory sessions for the purpose of paying educational benefits. The definition of standard class session is also changed. This final rule brings the pertinent Veterans Administration (VA) regulations governing the Vietnam Era GI Bill into agreement with the law.

EFFECTIVE DATE: May 20, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: Amendments are made to 38 CFR 21.4200 and 21.4270. These amendments are required by section 321 of the Veterans' Benefits and Services Act of 1988 (Pub. L. 100–322). That section provides a new definition of a standard class session. The regulations affected by the new provision of law are amended to agree with it.

This law contains numerous provisions which will require changes to VA regulations. These amended regulations are limited to those which are needed to implement the section of law which affects the Vietnam Era GI Bill.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The VA finds that good cause exists for making the amendments to these regulations, like the section of the law they implement, retroactively effective on May 20, 1988. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of benefits to a veteran who is otherwise entitled to them.

The VA also finds that good cause exists for publishing these amended regulations without prior notice and opportunity for public comment. The amended regulations conform directly with the provisions of law which were amended by Pub. L. 100–322. The agency has no discretion in this matter. Consequently, public comment is unnecessary.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 9, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Education and Rehabilitation, is amended as follows:

PART 21—[AMENDED]

1. In § 21.4200, paragraph (g) and its authority citation are revised to read as follows:

§ 21.4200 Definitions.

* * * * *

(g) *Standard class session.* The term means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit.

(1) For enrollments and reenrollments which begin before May 20, 1988, a standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours of laboratory instruction, or 3 hours of workshop training.

(2) For enrollments and reenrollments which begin after May 19, 1988, a standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours of workshop training.

(Authority: 38 U.S.C. 1788(c); Pub. L. 96–466, 100–322)

* * * * *

2. In § 21.4270, footnote 1 to the chart in paragraph (a) is revised to read as follows:

§ 21.4270 Measurement of courses.

(a) * * *

[1] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins before May 20, 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours (or two 50-minute periods) of attendance per week for each quarter or semester hour of cerdit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full time courses; 1½ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours; or ½ hour for less than half-time courses of 6–10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

(Authority: 38 U.S.C. 1788; Pub. L. 100–322)

* * * * *

[FR Doc. 88–27619 Filed 11–30–88; 8:45 am]

BILLING CODE 8320–01–M

VOL 53 ISS 231 DE 1 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 231
Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Meetings on the Business Opportunity Development Reform Act of 1988

AGENCY: Small Business Administration.

ACTION: Notice of public meetings.

SUMMARY: The Business Opportunity Development Reform Act of 1988, Pub. L. 100–656, requires the Small Business Administration (SBA) to hold public meetings on the nature and extent of regulations implementing the Act. This notice advises the public that SBA will hold such meetings on December 9th and 19th, 1988, in San Francisco, California, and Washington, DC, respectively.

DATES: Friday, December 9, 1988; Monday, December 19, 1988.

ADDRESSES:

Federal Building, 450 Golden Gate Avenue, 19th Floor Ceremonial Courtroom, San Francisco, CA 94102, 9:00 a.m. to 4:00 p.m.

Departmental Auditorium, between 12th & 14th Streets, on Constitution Avenue, NW., Washington, DC 20407, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Milton Wilson, Jr., U.S. Small Business Administration, 1441 L Street, NW., Room 602, Washington, DC 20416, telephone—(202) 653–6526.

SUPPLEMENTARY INFORMATION: The Business Opportunity Development Reform Act of 1988, Pub. L. 100–656, requires SBA to hold meetings to ascertain public comment on the nature and extent of regulations needed to implement the Act. SBA will hold two such meetings in compliance with the Act. The first meeting will be on Friday, December 9, 1988, in San Francisco, California (see **ADDRESS** line). The second meeting will be on Monday, December 19, 1988, in Washington, DC (see **ADDRESS** line). Both meetings will be chaired by Joseph O. Montes, Associate Administrator for Minority Small Business and Capital Ownership Development.

The purpose of this Act is to:

1. Affirm that the Capital Ownership Development Program and the section 8(a) authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged to compete on an equal basis in the mainstream of the American economy;

2. Affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

3. Ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

4. Increase the number of small businesses owned and controlled by such individuals from which the United States may purchase equipment, products and services, including construction work; and

5. Ensure integrity, competence and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses.

Interested persons will be given a reasonable time for an oral presentation and may submit written statements of their presentations in advance, if they wish. If a large number of participants desire to make statements, a time limitation on each presentation may be imposed.

In order that appropriate arrangements can be made, those wishing to participate should notify Milton Wilson, Jr. (see **ADDRESS** line) in writing at least three days prior to the hearing. Cameras, food and beverages are prohibited in the San Francisco hearing, and all participants must pass through court security.

Persons not able to attend either meeting should submit their comments to Milton Wilson, Jr., (see **ADDRESS** line) by January 3, 1989.

Dated: November 23, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–27618 Filed 11–30–88; 8:45 am]
BILLING CODE 8025–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Mandatory Review of the Funeral Industry Practices Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Additional public hearing scheduled for Washington, DC.

SUMMARY: On May 31, 1988, the Commission published in the **Federal Register** (53 FR 19864) its Notice of Proposed Rulemaking for its mandatory review of the Funeral Industry Practices trade regulation rule. The Notice announced that hearings on the rule would be held in Washington, DC, commencing on November 7, 1988, in Chicago, Illinois, commencing on December 5, 1988, and in San Francisco, California, commencing on January 9, 1989. The Presiding Officer has now scheduled an additional hearing to commence in Washington, DC, on January 17, 1989.

DATES: The public hearing will commence in Washington, DC, at 9:30 a.m. on January 17, 1989, in Room 332, Federal Trade Commission Building, at 6th Street and Pennsylvania Avenue, NW., Washington, DC. Prepared statements of witnesses and exhibits, if any, must be submitted on or before December 9, 1988.

ADDRESS: Prepared statements and exhibits should be sent to Henry B. Cabell, Presiding Officer, Room 319, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell, Presiding Officer, Room 319, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number: 202–326–3642.

SUPPLEMENTARY INFORMATION: On May 31, 1988, the Commission published its Notice of Proposed Rulemaking in the **Federal Register** (53 FR 19864) for its mandatory review of the Funeral Industry Practices trade regulation rule. The notice included a schedule of dates and places of public hearings to be held in the proceeding.

Representatives of the Commission staff have requested the Presiding Officer to schedule an additional

hearing commencing on January 17, 1989 in Washington, DC, for the purpose of receiving testimony from two expert witnesses who were unable to testify in the three previous hearings. Counsel for National Selected Morticians and counsel for the National Funeral Directors Association supported this request. In addition, counsel for the American Association of Retired Persons has asked that an expert witness be permitted to testify at this additional hearing on its behalf. The Presiding Officer has determined that the testimony of these witnesses, which is concerned with the substantial economic issues in the proceeding, to be of particular importance.

Accordingly, the request of the staff for an additional hearing has been granted and the Presiding Officer has scheduled an additional public hearing to commence at 9:30 a.m. on January 17, 1989 in Room 332, Federal Trade Commission Building. The only witnesses permitted to testify at this hearing will be: Dr. Burt F. Barnow, Dr. Timothy P. Daniel, and Dr. Fred S. McChesney. Their respective prepared statements and accompanying exhibits must be filed with the Presiding Officer on or before December 9, 1988.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

Henry B. Cabell,

Presiding Officer.

[FR Doc. 88-27638 Filed 11-30-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Reopening of Comment Period on Bank Secrecy Act Regulations

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: A notice that Treasury was reopening the comment period on the Proposed Amendments to the Bank Secrecy Act Regarding Reporting and Recordkeeping Requirements by Casinos, published in the **Federal Register** on August 18, 1988 (53 FR 31370) (corrections published August 24, 1988 (53 FR 32323)), to November 14, 1988, was announced in the **Federal Register** on October 28, 1988 (53 FR 43736). In response to requests to extend further the time for public comment, notice is hereby given that Treasury is again reopening the comment period.

DATE: Comments will be accepted through December 14, 1988.

ADDRESS: Address written comments to: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: John M. Zoscak, Jr., Attorney-Adviser, Office of the Assistant General Counsel (Enforcement), Room 2000, 1500 Pennsylvania Ave., NW., Washington, DC 20220, (202) 566-2914.

Date: November 18, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-27669 Filed 11-30-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

38 CFR Part 3

Claims Based on Exposure to Ionizing Radiation and Herbicides Containing Dioxin

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations concerning diseases considered to be "radiogenic." These amendments are necessary to implement recommendations by the Veterans' Advisory Committee on Environmental Hazards. The intended effect of these amendments is to extend the possible entitlement to compensation for veterans with disabilities claimed to have been the result of exposure to ionizing radiation in service. We also propose to clarify the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation or to herbicides containing dioxin during service in the Republic of Vietnam.

DATES: Comments must be received on or before January 3, 1989. Comments will be available for public inspection until January 10, 1989. These changes are proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

SUPPLEMENTARY INFORMATION: The Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. 98-542, required the VA to promulgate regulations for the adjudication of compensation claims in which disabilities or deaths of veterans are alleged to be the result of in-service exposure to ionizing radiation or herbicides containing dioxin. It also required that the regulations be based on sound scientific and medical evidence. To assist the VA in its effort, the law mandated the establishment of the Veterans' Advisory Committee on Environmental Hazards.

The Advisory Committee has recommended that a posterior subcapsular cataracts and non-malignant thyroid nodular disease be considered "radiogenic" and that the gender restriction regarding breast cancer be deleted. They also recommended the manifestation periods for cataracts and thyroid disease and that the time restriction for the manifestation of leukemia be deleted.

We propose to implement these recommendations by appropriately amending 38 CFR 3.311b(2) and (b)(4). It is to be noted that the Advisory Committee stated that in order to warrant a causal relationship between exposure to ionizing radiation and the development of opacities of the lens, the radiation dose would have to be at least 200 rads. The dosage is one of the factors for consideration in claims based on radiation exposure (38 CFR 3.311b(e)(1)). We also propose to add, in parentheses, the term "lymphocytic" for chronic lymphatic leukemia as it is the preferred medical term.

We also propose to amend 38 CFR 3.311b(h) and 38 CFR 3.311a(g) to specify that the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation or to herbicides containing dioxin during service in the Republic of Vietnam, respectively, are those governing direct service connection, service connection by aggravation, or presumptive service connection.

The Radiation-Exposed Veterans Compensation Act of 1988, Pub. L. 100–321, amended Title 38, United States Code, section 312, to establish presumptive service connection for certain radiation-exposed veterans. A separate proposed rule is being prepared to amend 38 CFR 3.309 to implement the above-cited law. We propose to amend 38 CFR 3.311b(a)(1) by adding a reference to § 3.309.

The Administrator hereby certifies that these regulatory proposed amendments will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these proposed amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these proposed amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: October 12, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.311a, paragraph (g) is revised to read as follows:

§ 3.11a Claims based on exposure to herbicides containing dioxin during service in the Republic of Vietnam.

* * * * *

(g) *Service connection under other provisions.* Nothing in the section will be construed to prevent the establishment of service connection for any disease or injury shown to have been incurred or aggravated during active service in accordance with §§ 3.304, 3.306, or 3.307. However, service connection will not be established on the basis of a causal relationship to exposure to herbicides containing dioxin during service in the Republic of Vietnam for any disease not specified in paragraph (c) of this section.

(Authority: 38 U.S.C. 210(c))

* * * * *

2. In § 3.111b, the first sentence of paragraph (a)(1) is revised, paragraphs (b)(2)(i), (b)(2)(iii), (b)(2)(xiv), (b)(2)(xv), (b)(4), and (h) are revised, and paragraphs (b)(2)(xvi) and (xvii) and authority citations for paragraphs (a)(1), (b)(2), and (h) are added to read as follows:

§ 3.311b Claims based on exposure to ionizing radiation.

(a) * * *

(1) *Dose assessment.* In all claims in which it is established that a radiogenic disease, listed in paragraph (b)(2) of this section, first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in §§ 3.307 and 3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. * * *

(Authority: 38 U.S.C. 210(c))

* * * * *

(b) * * *

(2) * * *

(i) All forms of leukemia except chronic lymphatic (lymphocytic) leukemia;

* * * * *

(iii) Breast cancer;

* * * * *

(xiv) Salivary gland cancer;

(xv) Multiple myeloma;

(xvi) Posterior subcapsular cataracts; and

(xvii) Non-malignant thyroid nodular disease.

(Authority: 38 U.S.C. 210(c))

* * * * *

(4) For the purposes of paragraph (b)(1) of this section:

(i) Bone cancer must become manifest within 30 years after exposure;

(ii) Leukemia may become manifest at any time after exposure;

(iii) Posterior subcapsular cataracts must become manifest 6 months or more after exposure; and

(iv) Other diseases specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.

(Authority: 38 U.S.C. 210(c))

* * * * *

(h) *Service connection under other provisions.* Nothing in this section will be construed to prevent the establishment of service connection for any injury or disease shown to have been incurred or aggravated during active service in accordance with §§ 3.304, 3.306, 3.307, or 3.309. However, service connection will not be established on the basis of a causal relationship to exposure to ionizing radiation in service for any disease not specified in paragraph (b)(2) of this section.

(Authority: 38 U.S.C. 210(c); Pub. L. 98–542)

[FR Doc. 88–27620 Filed 11–30–88; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–3478–6; AL–016]

Approval and Promulgation of Implementation Plans, Alabama; New Source Review Regulatory Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Alabama State Implementation Plan (SIP) which were submitted to EPA on November 20, 1985. Alabama has revised its regulation for new source review in nonattainment areas (NSR) to add an exemption for sources which would be considered major solely by virtue of their fugitive emissions. This exemption does not apply to twenty-six source categories which are listed in the regulation. This provision is identical to the requirements of 40 CFR 51.165(a)(4) (formerly 40 CFR 51.18(j)(4)). Also, Alabama is adding to their regulation a section to allow public participation in the State's construction permit review process for nonattainment areas. This addition to the Alabama regulation meets the requirements of 40 CFR 51.165 (formerly 40 CFR 51.18(h)) for those permits, except that 40 CFR 51.161(2)(ii) requires a public comment period of at least thirty days.

DATE: To be considered, comments must reach us by January 3, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Division Alabama Department of Environmental Management, 1751 Federal Drive Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the EPA Region IV Air Programs Branch, at the above address and telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On November 20, 1985, Alabama submitted regulation changes and revisions to the Alabama State Implementation Plan (SIP). This submittal contained certification that the revisions were preceded by adequate notice and a public hearing. EPA proposes to approve these revisions as submitted on the above dates. A discussion of the revisions and the basis for EPA's proposal action now follows.

Two revisions to Chapter 16 of Alabama's Air Pollution Control Commission Rules and Regulations were adopted by the Alabama Department of Environmental Management (ADEM) on November 13, 1985. The first is a change in 16.3.2(1). Specifically, subparagraph 16.3.2(1)(2) has been added to exempt certain nonattainment area sources from review under this new source review regulation. These sources are included in specific industry categories and would not be considered major sources or major modifications unless fugitive emissions were included in the total emissions calculations. The list of source categories and exemption provisions is identical to that in EPA's nonattainment area exemption rule found at 40 CFR 51.165(a)(4), except that "Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input" is omitted. This was an oversight on the part of the State, and will be corrected by the State in the near future. In the meantime no environmental effect is expected from the omission, since the only possible effect is to exclude fugitive emissions in determining if a steam electric plant is a major source, and the nature of steam electric plants causes them to be major even excluding all fugitive emissions.

As indicated above, the addition of subparagraph 16.3.2(1)(2) changes the Alabama NSR rule to match the federal NSR rule in fugitive emissions contained in 40 CFR 51.165. However, it represents a technical relaxation in the SIP as it could result in sources in certain categories becoming newly exempt from NSR requirements in nonattainment areas including those lacking fully approved plans. Nevertheless, EPA believes this change is approvable, for the following reasons. In practical terms the only area likely to be affected is the Jefferson County ozone nonattainment area. Jefferson County is also a designated particulate matter nonattainment area. All construction bans that were in effect for particulate matter (TSP) nonattainment areas were lifted with the promulgation of a new particulate standard (PM_{10}) on July 1, 1987 (52 FR 24634). Portions of Jackson, Colbert and Lauderdale Countries are nonattainment for sulfur dioxide (SO_2), but fugitive emissions are generally not significant in determining NSR applicability for SO_2 sources. Etowah and Mobile Counties are designated ozone nonattainment areas, but EPA has redesignated them to attainment. See 52 FR 17952 (May 13, 1987). As to the Jefferson County ozone nonattainment area, the County adopted an attainment plan for ozone, which was submitted to EPA for review in November, 1986. However, before EPA completed its substantive review, it determined that the plan needed to be adopted by Alabama as well to ensure state enforceability. This must be accomplished before EPA can complete its review and determine whether to propose approval of the plan. Alabama has notified EPA that it expects state approval to occur in the near future.

Thus, it appears that reasonable efforts are being made to adopt and submit a complete plan for the remaining ozone nonattainment areas in Alabama. In addition, the State has indicated that it expects that few, if any, sources will actually be exempted from NSR by virtue of this change. No major ozone sources subject to NSR have located in Alabama since this regulation was adopted four years ago. In addition, Alabama has stated that this change would not constrain the State's ability to obtain any additional emissions reductions needed in its attainment efforts. Thus, EPA does not expect this change to have a significant effect on air quality in Alabama.

This revision originally addressed the Total Suspended Particulate (TSP) ambient air quality standards. However, EPA on July 1, 1987 (52 FR 24634), replaced the TSP ambient air quality standards with a new standard that measures only those particles with an aerodynamic diameter equal to or less than 10 micrometers (PM10). At the State's option, EPA is continuing to process TSP SIP revisions which were in process at the time the new PM10 standard was promulgated. In the policy published on July 1, 1987 (52 FR 24679, Column 2), EPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM10.

Since 16.3.2 already requires review of all National Ambient Air Quality Standards, the State's regulation automatically requires that new and modified sources be reviewed for PM10. Alabama requested that Jefferson County be redesignated to unclassifiable for TSP in a letter dated February 2, 1988. This redesignation will be granted upon approval of Alabama's PM10 SIP. Significant level values will be included in a separate **Federal Register** *Notice* which addresses the PM10 provisions.

Alabama's SIP does not contain a definition of fugitive emissions, as required by 40 CFR 51.165(a)(1)(ix) (formerly 40 CFR 51.18(j)(ix)) whenever the exemption for fugitive emissions is used. This was an oversight, and Alabama is currently in the process of adopting the required definition. Final approval of 16.3.2(l)(2) will be made only after this definition is adopted and submitted to EPA.

The second revision was the addition of a new paragraph, 16.3.2(m), which requires public participation during State evaluation of applications for sources to construct or modify a facility in a nonattainment area. Previously Alabama only required public participation in prevention of significant deterioration (PSD) areas. This regulation includes procedures similar to the procedure which Alabama follows for PSD, and it allows the public to comment on all applications. All comments and response are considered before a final decision is made to accept or reject the permit application and to issue the permit.

However, the regulation differs from the EPA requirements for public notice at 40 CFR 51.161 in that it specifies Alabama will determine the length of each public comment period, rather than require a 30-day notice for each permit. EPA proposes to approve the regulation in spite of this deficiency because the regulation represents a significant improvement over the present regulation, which does not provide for any public notice. The Alabama SIP will still be deficient because of this particular item, and also because public notice is provided for only PSD and NSR

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permits rather than for all permits as required by 40 CFR 51.161(l).

Further details pertaining to these regulation changes are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Proposed Action

After reviewing Alabama's New Source Review SIP revisions, EPA has found they substantially meet the requirements contained in 40 CFR Part 51. EPA is therefore proposing to approve them.

Under 5 U.S.C. 605(b), I certify that this SIP revision does not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 51 and 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: May 12, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

Editorial Note—The document was received at the Office of the Federal Register November 15, 1988.

[FR Doc. 88–26721 Filed 11–30–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3474–3]

Approval and Promulgation of State Implementation Plans; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the revision to the Implementation Plan for the Control of Air Pollution for the State of North Dakota. The revisions were submitted on January 26, 1988, by the Governor of North Dakota. The revisions established new regulations and revised existing regulations and procedures to make them equivalent to the New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), Prevention of Significant Deterioration (PSD), Stack Heights and Visibility. The revisions also updated existing State rules and provided new State rules for oil and gas production facilities. This action only addresses the PSD rule revisions, the updating of existing State rules and the addition of the new rules for oil and gas production facilities. This action does *not* address the new and revised rules for NSPS, NESHAPs, Stack Heights or Visibility. These latter items are being addressed in separate actions.

DATES: Comments must be received on or before January 3, 1989.

ADDRESSES: Written comments on this action should be addressed to: Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293–1764, FTS 564–1764.

SUPPLEMENTARY INFORMATION: On January 26, 1988, the Governor of North Dakota submitted to EPA revisions to the Implementation Plan for the Control of Air Pollution for the State of North Dakota. The revisions established new regulations and revised existing regulations and procedures to make them equivalent to NSPS, NESHAPs, PSD, Stack Heights and Visibility. The revisions also updated various existing State rules and provided new State rules for oil and gas production facilities. This action only addresses the PSD rule revisions, the updating of various existing State rules and the addition of the new rules for oil and gas production facilities. A more detailed discussion of the revisions follows below.

1. Chapter 33–15–01—General Provisions

The definition of "Trade waste" [33–15–01–04(36)] was revised by adding the term "wood-containing preservatives" to the list of what constitutes a "trade waste."

A change was made in the malfunctions regulation [33–15–01–13(2)]. Prior to this change, the malfunction subsection required companies to notify the State immediately concerning any malfunction that was expected to cause a violation of any article or other applicable rules and regulations of the State. This proved to be unworkable in some situations, and, as a matter of practice, the State had been requiring notifications only if the malfunction was expected to last greater than 24 hours or if the discharge of the contaminant posed an immediate danger. The regulations have been amended to require sources to report a malfunction to the State as soon as possible if the malfunction is expected to last longer than 24 hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations of the State. The regulation has also been amended to require immediate notification to the State for any malfunction that would threaten health or welfare, or pose an imminent danger.

A subsection on continuous emission monitoring system (CEM) failures [33–15–01–13(3)] was added. This addition requires that when a CEM fails, an alternative method acceptable to the State for measuring or estimating emissions must be undertaken as soon as possible. In addition, timely repair of the emission monitoring system must be made.

The State added a new section on the confidentiality of records [33–15–01–16] to clarify the State's procedure concerning the submittal of confidential information. This section addresses public inspection, information submitted as trade secrets, accepted trade secret claims, rejected trade secret claims, appeal of nondisclosure claims, retention of confidential information, maintenance of log, transmittals of confidential information, and relationship to issuance of permits.

2. Chapter 33–15–02—Ambient Air Quality Standards

There were numerous changes to this Chapter to bring the wording of the regulation up-to-date and to clarify the Air Quality Guidelines the State follows.

The State rescinded several Ambient Air Quality Standards (AAQS) which were no longer used or necessary. The rescinded AAQS included settled particulate (dustfall), coefficient of haze, reactive sulfur (sulfation), suspended sulfate, sulfuric acid mist, sulfur trioxide or any combination thereof, and hydrocarbons.

The State also amended its hydrogen sulfide (H_2S) AAQS. Prior to the regulation change, there were two AAQS for H_2S. Both standards were based on ½-hour concentrations. This proved to be cumbersome for dispersion modeling purposes, as well as general review of monitoring data. The State changed the H_2S standard to one 1-hour standard that it believes is as stringent as the two ½-hour standards.

The State deleted Table 2–Methods of Air Contaminant Measurement. Methods of measurement have been

incorporated by reference into 33–15–02–05, Methods of Sampling and Analysis.

3. Chapter 33–15–03—Restriction of Emission of Visible Air Contaminants

The State added provisions into 33–15–03–01 that require: (1) Existing sources to comply with the visible air contaminant restrictions for new installations in 33–15–03–02 when technology and feasibility develop; and (2) existing sources that install control technology capable of meeting the restrictions of 33–15–03–02 to meet those restrictions. The State also added provisions to allow parties aggrieved by the above two items the ability to request a hearing before the department, according to Article 33–22 and North Dakota Century Code Chapter 28–32.

In Method of Measurement, 33–15–03–05, the State defined "per hour" for Reference Method 9. The State also added to this subsection a sentence that allows sources to use a continuous opacity monitor to determine compliance with visible emission standards when Reference Method 9 opacity readings are not available.

For clarification, additional minor wording changes were incorporated into this Chapter.

4. Chapter 33–15–04—Open Burning Restrictions

Minor changes were adopted in a 33–15–04–02. One of these changes includes the addition of the requirement that open burning comply with the Rural Fire Mitigation Action Guide included in the North Dakota Rural Fire Contingency Plan.

Language in 33–15–04–02 (7)(c) and (8)(c), which restricted open burning between three hours after sunrise and three hours before sunrise, was omitted. Deleting this language allows open burning during times of the day when dampness and calm conditions prevail, and thus provides for safer burning conditions.

Language was also added [33–15–04–02(8) (c) and (d)] to restrict the burning of liquid hydrocarbons near Class I areas if it will adversely affect the ambient air or visibility of such areas, except in emergencies.

5. Chapter 33–15–05—Emissions of Particulate Matter Restricted

The State added 33–15–05–01(2)(b) and 33–15–05–02(2)(g) to provide a mechanism for parties aggrieved by restrictions applied on them to request a hearing, according to article 33–22 and North Dakota Century Code Chapter 28–32.

The maximum allowable emissions of particulate matter from fuel burning equipment used for indirect heating (33–15–05–02) ws amended to exempt the following from the particulate standard: (1) Sources with a heat input of not more than ten million BTU/hour and (2) sources with multiple boilers with a total aggregate heat input of not more than ten million BTU/hour. Previous to this revision, the rule had exempted sources with a heat input of less than five million BTU/hour or sources with multiple boilers each with heat inputs of five million BTU/hour or less and a total aggregate heat input of less than ten million BTU/hour.

Subdivision (f) was added to 33–15–05–02 and requires existing sources whose heat input is greater than 250 million BTU/hour and who are equipped with state-of-the-art control technology to comply with the particulate emission limitation of the fossil fuel-fired NSPS when directed by the State.

6. Chapter 33–15–07—Control of Organic Compounds Emissions

The State amended this Chapter to correct the overlap that existed between this Chapter and the NSPS Chapter concerning storage tanks. Storage tanks are now incorporated in the NSPS for storage tanks [33–15–12–01(8)].

7. Chapter 33–15–10—Control of Pesticides

The State added to this Chapter paragraph 33–15–10–02(3) to highlight the disposal requirements for surplus pesticides and empty pesticide contain.

8. Chapter 33–15–11—Prevention of Air Pollution Emergency Episodes

The State made minor wording changes in this Chapter to update its regulations.

9. Chapter 33–15–14—Designated Air Contaminant Sources, Permit To Construct, Permit To Operate

This Chapter was amended by adding alcohol plants to the list of designated air contaminant sources [33–15–14–01(1)(x)]. A paragraph was also added that prohibits permits to construct from being transferred without prior approval by the State [33–15–14–02(11)]. The permit to construct and permit to operate fees were compiled into one section [33–15–14–04] and updated. The fees were adopted as follows:

1. The filing fee of $75.00 or $100.00 was increased to $150.00 for all sources.

2. A new classification system was developed based upon the frequency of inspections and the amount of staff time spent on projects. Annual costs were adjusted based upon the amount of staff time involved with the various classifications.

3. An addition was made that allows the State to collect annual fees for sources operating under a permit to construct that have not yet received a permit to operate.

The State also changed the permit exemption limit [33–15–14–05(1) ((b) and (c)] for fuel burning equipment to be consistent with the language in the particulate emission rate exemption discussed in Chapter 33–15–05. Previous to the revision, fuel burning equipment, other than smokehouse generators, which had a heat input of not more than ten million BTUs/hour (and burned gaseous fuels containing not more than 2 and 5-tenths grain H_2S per 100 standard cubic feet; or distillate oil) or one million BTU/hour (and burned residual oil); or 350,000 BTU/hour (and burned solid fuel), were exempt from obtaining a permit to construct or operate. The rule has been revised to exempt fuel burning equipment, other than smokehouse generators, which meet the following criteria:

(1) The aggregate heat input does not exceed ten million BTU/hour.

(2) The total aggregate heat input from all equipment does not exceed ten million BTU/hour.

(3) The emissions from all equipment do not exceed 25 tons per year of any contaminant.

Finally, the State amended this Chapter to correct the overlap that existed between this Chapter and the NSPS Chapter concerning storage tanks. Storage tank exemptions are now incorporated in the NSPS Chapter (33–15–12).

10. Chapter 33–15–15—Prevention of Significant Deterioration

This Chapter was amended by updating the regulations and making them consistent with Federal regulations. The stack height section [33–15–15–01(3)] was revised by deleting all the stack height regulations from 33–15–15 and referencing the new stack height Chapter (33–15–18).

The State updated the air quality models subdivision [33–15–15–01(4)(f)(1)] by deleting the reference to outdated EPA modeling guidelines and inserting general language on modeling requirements. Dana Mount, Director, Division of Environmental Engineering, submitted a letter of interpretation on June 29, 1987, stating that the general language means the applicant must comply with the requirements of EPA 1986 version "Guidelines on Air Quality Models (Revised)", EPA 450/2–78–027R.

To the subdivision on additional impact analyses [33–15–15–01(04)(i)], the State added language to require evaluation of endangered and threatened species of vegetation and wildlife. To the subdivision on sources impacting federal Class I areas—additional impacts [33–15–15–01(4)(j)], the State clarified the notice requirements to the federal land managers. To the subdivision on Public Participation [33–15–15–01(5)], the State clarified the procedures on public hearings.

11. Chapter 33–15–16—Restriction of Odorous Air Contaminants

In this Chapter, the State made wording changes to clarify the rules. The changes allow a State-certified inspector to determine whether an odor is objectionable.

12. Chapter 33–15–20—Control of Emission from Oil and Gas Production Facilities

The State added this Chapter to establish registration and reporting requirements for oil and gas production facilities. The registration and reporting requirements provide a means to determine if sources are subject to PSD (33–15–15). They also provide requirements for the control of production facility emissions.

The State received numerous public comments, as well as comments from EPA, on the draft regulation revisions. In some instances the State amended its regulations in addressing such comments. EPA feels the State has adequately addressed all of the public comments, as well as EPA comments.

EPA made several interpretations regarding this submittal. The State was notified on June 13, 1988 of such interpretations. In a letter dated June 16, 1988, Dana Mount, Director, Division of Environmental Engineering, confirmed EPA's interpretations. The following are EPA's interpretations:

1. Subsequent to the State revising Chapter 33–15–11, Prevention of Air Pollution Emergency Episodes, 40 CFR 51, Appendix L, was amended to address PM–10 (see 52 FR 24672, 7/1/87). The State submitted draft regulations on March 8, 1988. EPA interprets the State's submittal of the draft regulations as a commitment to revise its regulations as required.

2. Subsequent to the State revising 33–15–15, 40 CFR 51.166, Prevention of Significant Deterioration, was amended to address PM–10 (see 52 FR 24672, 7/1/87). As required by Section 110(a)(2) of the Act, the State must adopt and submit to the [EPA] Administrator, within nine months, a plan to implement, enforce and maintain the PM–10 ambient air quality standards. The State has submitted draft regulations to EPA and held a public hearing to address the PM–10 amendments to 40 CFR 51.166. EPA interprets the State's submittal of draft regulations and the holding of a public hearing as a commitment to revise its regulations as required.

3. Subsequent to the State revising 33–15–15, EPA promulgated Supplement A (1987) to the Guidelines on Air Quality Models on January 6, 1988 (see 53 FR 392). Supplement A (1987) adds four additional models to the Guidelines. Although the State has nine months from the effective date (November 6, 1988 in this case) to submit revisions to the rule, EPA is addressing Supplement A in this package. Because North Dakota's air quality modeling regulations [33–15–15–01(4)(f)] are written in such a manner as to not preclude the use of Supplement A (1987), EPA interprets the State's rules to mean that Supplement A (1987) and any future additions to the modeling guidelines promulgated by EPA will be utilized by the State to estimate ambient air concentration required under PSD.

4. Regarding Chapter 33–15–20, Control of Emissions from Oil and Gas Production Facilities, EPA would like to point out that it interprets the State's requirement that demonstrations must be performed in accordance with the "North Dakota Guideline for Air Quality Modeling Analyses" in 33–15–20–03(3) to mean that EPA's Guidelines on Air Quality Models (Revised) will also be followed, as appropriate. EPA makes this interpretation because, even though 33–15–20–03(3) specifically references the State's modeling guidelines, it also says that all sources that emit greater than 250 tpy must comply with the State's PSD chapter. In the State's PSD chapter, EPA modeling guidelines are required.

One further interpretation not addressed in the June 13, 1988, letter is with respect to the malfunction notification regulation, 33–15–01–13(2). EPA interprets this regulation as merely a notification requirement for sources that have a malfunction that can be expected to last longer than 24 hours and cause the emission of air contaminants in violation of statutes and regulations. Additionally, EPA interprets that all sources will report a malfunction, regardless of duration, if it would threaten health or welfare, or pose imminent danger. Whether a source is required to report a malfunction or not does not obviate such a source from meeting its obligation to comply with applicable emission limitations and federal and State statutes and regulations.

In addition to the interpretations addressed in the June 13, 1988, letter to the State, EPA also requested the State to commit to correcting a few discrepancies found in the PSD regulations. When EPA reviewed the draft submittal which addressed PM–10, it found a few discrepancies in the State's PSD regulations that had not been detected earlier. The discrepancies are as follows: (1) In 33–15–15–01(2)(a), the following statement appeared, "the provisions of this Chapter do not apply to those counties or other functionally equivalent areas on a contaminant specific basis that exceed the national ambient air quality standard for sulfur dioxide or particulate matter." This is incorrect because PSD applies to those areas that have been designated attainment or unclassifiable for any National Ambient Air quality Standard (NAAQS) under Section 107 of the Clean Air Act. EPA pointed this out to the State and is requiring the State to amend this paragraph to say that this Chapter applies to areas designated as attainment or unclassifiable for *any* NAAQS. (2) In 33–15–15–01(6)(d), "subsections 5 and 6" should be "subsections 5, 6 and 7". (3) In 33–15–15–02(1), "subdivision d or e" should be "subdivision c or d". Although these discrepancies were noted in a submittal subsequent to the submittal EPA is currently processing, the EPA required the State to commit to correct these deficiencies in order to proceed with this submittal. In a letter dated June 16, 1988, Dana Mount, Director, Division of Environmental Engineering, committed to correct such discrepancies.

EPA proposes to take no action on the revisions to Chapter 33–15–16, Restrictions of Odorous Air Contaminants. This Chapter is not a part of the federally enforceable SIP, since it bears no relationship to attainment or maintenance of any NAAQS. (See 44 FR 63102, November 2, 1979.) Likewise, EPA has no basis for approving or disapproving these revisions to the Chapter.

Proposed Action

EPA hereby proposes to approve the revisions to the Implementation Plan for the Control of Air Pollution for the State of North Dakota as submitted on January 26, 1988, (except for the additions and revisions to the NSPS, NESHAPs, Stack Height and Visibility regulations which are being addressed in separate actions and the odor regulation which is not a part of the federally enforceable SIP) with the

interpretations as discussed and the understanding that the State will correct the discrepancies noted in the PSD regulations.

Under 5 U.S.C. § 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: June 30, 1988.

James J. Scherer,

Regional Administrator.

[FR Doc. 88–27663 Filed 11–30–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 56 and 164

[CGD 86–035]

RIN 2115–AC32

Prohibition of Asbestos-Containing Construction Materials

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the approval specification for noncombustible materials to delete references to asbestos as an acceptable noncombustible material for the construction of merchant vessels, and to update the list of designated testing laboratories for noncombustible materials. It is also proposed to delete references to asbestos gaskets form the regulations on piping systems. The Coast Guard no longer issues approvals for asbestos-containing structural fire protection materials, and does not permit the use of such materials in merchant vessel construction. The action taken under this docket will make the regulations consistent with established Coast Guard practice.

DATE: Comments must be received on or before January 17, 1989.

ADDRESSES: Comments should be mailed to Commandant (G–LRA–2/3600) (CGD 86–035), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G–LRA–2/3600), Room 3600, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC between the hours of 8:00 a.m. and 3:00 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Klaus Wahle, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1444.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Comments should include the names and addresses of persons making them, identifying this rulemaking (CGD 86–035), and the specific section or paragraph of the rules to which each comment applies, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope or postcard is enclosed. The regulations may be changed in light of the comments received. All comments received before the expiration date of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if a written request for a hearing is received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

A regulatory information number (RIN) is assigned to each regulatory action listed on the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Discussion

Coast Guard regulations require the construction of sections of certain types of commercial vessels to be of approved structural fire protection materials. The materials approval specifications are contained in Subchapter Q of Title 46 CFR. Materials which have complied with the applicable provisions of these specifications are issued Certificates of Approval.

Traditionally, many materials approved for fire protection purposes have contained asbestos. As the health hazards of asbestos became known, manufacturers of structural fire protection materials switched from producing asbestos-containing materials to asbestos-free substitutes. Now, no asbestos-containing materials are used.

The approval specification for noncombustible materials, 46 CFR 164.009, needs to be revised to formally remove references to asbestos as an acceptable structural fire protection material. Additionally, this rulemaking proposes to update the list of designated laboratories contained in § 164.009–1. The Coast Guard also proposes to revise 46 CFR 56.25–15, to delete reference to asbestos-metallic gaskets for high temperature or high pressure piping systems.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Klaus Wahle, Project Manager, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of Chief Counsel.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be minimal. The proposed regulations simply delete references to asbestos and asbestos-containing materials as acceptable for use in vessel construction and as gasket material, and update the list of designated testing laboratories for noncombustible materials. Since the use of asbestos is now obsolete, there should be no economic impact on vessel construction or replacement of gaskets. Accordingly, the Coast Guard certifies that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

A draft regulatory evaluation has been prepared and placed in the rulemaking docket. The evaluation may be inspected and copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

The proposed regulations do not contain any information collection or recordkeeping requirements.

Environmental Analysis

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2. of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the docket.

BEST COPY AVAILABLE

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this notice of proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 46, Code of Federal Regulations as follows:

PART 56—[AMENDED]

1. The authority citation for Part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5515; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. In § 56.25–15, paragraphs (b) and (c) are revised to read as follows:

§ 56.25–15 Gaskets (reproduces 108.4).

* * * * *

(b) Only metallic gaskets may be used on flat or raised face flanges if the expected normal operating pressure exceeds 720 pounds per square inch or the operating temperature exceeds 750° F.

(c) The use of metal gaskets is not limited as to pressure provided the gasket materials are suitable for the maximum fluid temperatures.

PART 164—[AMENDED]

3. The authority citation for Part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

4. In § 164.009–1, paragraph (b) is revised to read as follows:

§ 164.009–1 General.

* * * * *

(b) The test and measurements described in this subpart are conducted by a laboratory designated by the Commandant. The following laboratories are so designated:

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062.

Dantest, National Institute for Testing and Verification, Amager Boulevard 115, DK 2300 Copenhagen S., Denmark.

§ 164.009–3 [Removed]

5. Section 164.009–3 is removed.

6. Section 164.009–5 is revised to read as follows:

§ 164.009–5 Noncombustible materials not requiring specific approval.

The following noncombustible materials may be used in merchant vessel construction though not specifically approved under this subpart:

(a) Sheet glass, block glass, clay, ceramics, and uncoated fibers.

(b) All metals, except magnesium and magnesium alloys.

(c) Portland cement, gypsum, and magnesite concretes having aggregates of only sand, gravel, expanded vermiculite, expanded or vesicular slags, diatomaceous silica, perlite, or pumice.

(d) Woven, knitted or needle punched glass fabric containing no additives other than lubricants not exceeding 2.5 percent.

Dated: October 21, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–27695 Filed 11–30–88; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Part 161

[CGD 85–208]

RIN 2115–AC95

Floating Electric Waterlight

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise 46 CFR 161.010 to replace the existing detailed-design requirements with the incorporation by reference of Underwriters Laboratories, Inc. (UL), ANSI/UL 1196, Standard for Floating Waterlights. Also, the Coast Guard proposes to replace the detailed plan approval process with a manufacturer self-certification method. Incorporation by reference of a current industry consensus standard, which is revised at more frequent intervals, will allow for the most current technological innovations to be incorporated into equipment design. Also, the manufacturer self-certification method will improve the plan approval process by reducing time delays and administrative procedures.

DATE: Comments must be received on or before March 1, 1989.

ADDRESSES: Comments may be mailed to the Commandant (G–LRA–2/21) (CGD 85–208), U.S. Coast Guard, Washington, DC 20593–0001. Comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G–LRA–2/21), Room 2110, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Marine Technical and Hazardous Materials Division, Room 1218, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–2206. Normal office hours are from 7:30 a.m. until 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are inivited to participate in this rulemaking procedure by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 85–208), the specific section of the proposal to which each comment applies, and the reason for the comments. No public hearing is anticipated at this time, however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will benefit the rulemaking process. All comments will be reviewed and considered by the Coast Guard before taking further rulemaking action.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Randall N. Crenwelge, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Coast Guard regulations require floating electric waterlights to be attached to ring life buoys, liferafts, lifefloats, and other buoyant apparatus. Floating electric waterlights are required to be constructed and marked in accordance with 46 CFR 161.010, and they must be U.S. Coast Guard Approved.

The Coast Guard, waterlight manufacturers, and Underwriters Laboratories, Inc. (UL), an independent standards development and product certification agency, have worked together to develop an industry standard for floating waterlights. The result is ANSI/UL 1196, Standard for Floating Waterlights. The standard specifies construction and test requirements for floating waterlights, and it is equivalent to the existing U.S. Coast Guard regulations. It also contains the requirement of the 1983 amendments to the Safety of Life at Sea Convention of 1974.

This proposal modifies 46 CFR 161.010 by deleting the specific material, construction, performance, and test requirements. These sections would be replaced by incorporating ANSI/UL 1196 by reference. Also, the manufacturer would be required to test the waterlight using an independent laboratory which complies with Subpart 159.010–3. The manufacturer of a new waterlight would be required to submit to the Commandant (G–MTH–2), U.S. Coast Guard, a pre-approval sample, plans, specifications, a test report, and a self-certification statement indicating compliance with § 161.010. After receiving all the required items, an approval certificate would be issued to the manufacturer, and the plans, test report, and other materials would be retained for future reference. The manufacturer could then label the light with an approval number as required by the ANSI/UL standard. The light could then be mass produced.

Waterlights which have been previously approved and are currently being or will be manufactured with an existing approval number will not be affected by this proposed rulemaking as long as the present certificate is up-to-date. The Coast Guard will continue to accept extensions of approval for existing previously approved waterlights when their certificates expire.

Regulatory Evaluation

The proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Presently, 46 CFR 161.010 requires waterlight manufacturers to submit plans, specifications, test records, and a pre-approval sample to the Coast Guard. The proposed regulations wil not impose any new or additional submission requirements on the manufacturer. This proposal removes the manufacturer's option to perform tests using Coast Guard supervision. This does not differ from present practice. Manufacturers usually do not have the required equipment for testing. The Coast Guard has not been contacted to witness any tests during the last several years. Therefore, any additional expense would be minimal. Since the impact of the proposal is minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed regulations do not impose any new information collection or record-keeping requirements on the public. The only paperwork requirements involve design, plan development, and submittal of plans and test results for record-keeping and oversight purposes, which are similar to requirements already approved by the Office of Management and Budget (OMB).

Environmental Impact

The Coast Guard has considered the environmental impact of the proposed regulations and, in accordance with section 2.B.2.C. of Commandant Instruction M16475.1B, has determined that this rulemaking is categorically excluded from further environmental documentation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Asessment.

List of Subjects in 46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Coast Guard proposes to amend Part 161 of Chapter 1 of Title 46, Code of Federal Regulations, as follows:

PART 161—[AMENDED]

1. The authority citation for Part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

2. Section 161.010–1 is revised to read as follows:

§ 161.010–1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

Underwriters Laboratories, Inc.

333 Pfingsten Road, Northbrook, Illinois 60062, ANSI/UL 1196, Standard for Floating Waterlights, 161.010–3; 161.010–5, Second Edition—March 23, 1987.

3. Section 161.010–3 is revised to read as follows:

§ 161.010–3 Design, Construction, and Test Requirements.

(a) Each floating electric waterlight shall meet the requirements of ANSI/UL 1196.

4. Section 161.010–4 is revised to read as follows:

§ 161.010–4 Inspections and methods of test.

(a) Each inspection and test report required by this subpart shall comply with Section 159.005–11 of this chapter.

(b) The U.S. Coast Guard reserves the right to make any inspection or test it deems necessary to determine the conformance of the materials and equipment to this subpart.

(c) The facilities, materials, and labor for all tests shall be furnished at no cost to the U.S. Coast Guard.

5. Section 161.010–5 is revised to read as follows:

§ 161.010–5 Procedure for approval.

(a) A request for approval of an automatic floating electric waterlight must be submitted to the Commandant (G–MTH–2), U.S. Coast Guad, 2100 Second Street, SW., Washington, DC 20593–0001.

(b) All inspections and tests shall be performed by an independent laboratory which meets the requirements of Subpart 159.010–3.

(c) Each request for approval must contain:

(1) The name and address of the applicant,

(2) One copy of all plans and specifications that meet the

requirements of § 159.005–12 of this chapter,

(3) A pre-approval sample of the waterlight,

(4) An inspection and test report verifying compliance with the construction and test requirements of ANSI/UL 1196, and

(5) A statement by the manufacturer certifying that the waterlight complies with the requirements of this subpart.

§§ 161.010–6 and 161.010–7 [Removed].

6. Sections 161.010–6 and 161.010–7 are removed.

Dated: October 14, 1988.

J.I. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88–27696 Filed 11–30–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR–3, Notice No. 1; Regulation Identifier Number 2130–AA44]

Railroad Accidents/Incidents; Reports Classification, and Investigations; Miscellaneous Proposed Amendments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the rules pertaining to the reporting of railroad accidents and incidents to FRA. When a railroad alleges an employee human factor as the primary cause or contributing cause of an accident, it would be required to notify the employee involved/implicated that the railroad has made such allegations and that the employee has the right to submit a statement to FRA concerning the accident. This action is taken in order to implement section 24 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342), which provides that "if a railroad, in reporting an accident or incident under the Accident Reports Act (45 U.S.C. 38 *et seq.*), assigns human error as a cause of the accident or incident, such report shall include, at the option of each employee whose error is alleged, a statement by such employee explaining any factors the employee alleges contributed to the accident or incident." Interested parties are invited to submit comments for inclusion in the docket of this rulemaking.

DATES: (1) *Written Comments:* Written comment must be received on or before January 27, 1989. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* A public hearing will be held at 10:00 a.m. on January 11, 1989. Any person who desires to make an oral statement at the hearing must notify the Docket Clerk by telephone or mail on or before January 5, 1989, and must submit three copies of the oral statement that he or she intends to make at the hearing by January 6, 1989.

ADDRESSES: (1) *Written Comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Room 8201, Washington, DC 20590. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours at the same address.

(2) *Public Hearing:* The public hearing noted about will be held in room 6200 of the Nassif Building at the same street address. Persons desiring to make oral statements at the hearing should notify the Docket Clerk on or before January 5, 1989, by telephone (202–366–0635; FTS 366–0635) or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Room 8201, Washington, DC 20590. In addition, each person who desires to make an oral statement at the hearing must submit to the Docket Clerk three copies of the oral statement that he or she intends to make at the hearing by January 6, 1989.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Mr. T.S. Ellis, Office of Safety, Federal Railroad Administration, Washington, DC 20590, Telephone 202–366–2760 (FTS 366–2760).

Principal Attorney: Ms. Billie Stultz, Office of the Chief Counsel, Federal Railroad Administration, Washington, DC 20590, Telephone 202–366–0635 (FTS 366–0635).

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1988, the President signed into the Rail Safety Improvement Act of 1988 (RSIA). Section 24 of that Act provides that "(i)f a railroad, in reporting an accident or incident under the Accident Reports Act (45 U.S.C. 38 *et seq.*), assigns human error as a cause of the accident or incident, such report shall include, at the option of each employee whose error is alleged, a statement by such employee explaining any factor the employee alleges contributed to the accident or incident."

The legislative history of this provision indicates that Congress intended for FRA to allow submission of the employee's statement without delaying the submission of the railroad's accident report and for FRA to file the employee's statement with the applicable report from the railroad. (See "Joint Explanatory Statement of the Committee of Conference," in the Conference Report to accompany S. 1539, H.R. Rept. No. 100–637 (100th Cong. 2d Sess.).) That is in fact FRA's practice today and has been its practice for many years. The principal purpose of this provision appears to be threefold: (1) Ensuring that employees are aware of this right, (2) ensuring that employees are notified of the instances where the right may be execised, and (3) institutionalizing the practice in regulations.

The central requirement of the proposed rule is that the railroad provide written notification to any employee whom the railroad alleges to have been responsible, at least in part, for an act, omission, or condition cited by the railroad as a primary or contributing cause of a certain type of employee human factor accident, informing the employee of the relevant allegations and of his or her right to file a statement with FRA. A copy of the proposed standard form for notification of employees is appended to this Notice of Proposed Rulemaking.

Section 209 of the Federal Railroad Safety Act of 1970 (FRSA) provides that "(t)he Secretary shall include in, or make applicable to, any railroad safety * * * regulation issued under this title a civil penalty for violation thereof * * *." The RSIA increases the maximum penalty for violation of a regulation issued under the FRSA from $2,500 to $10,000 and, in certain circumstances, $20,000. See 53 FR 28594–28598 (1988). The final rule will include a revised penalty schedule for Part 225 reflecting the higher maximum penalties now available and adding entries for the new section proposed herein. See the recent revisions to the penalty provision and penalty schedule of Part 225 required by the RSIA. 53 FR 28594, 28601 (1988). Because FRA's penalty schedules are statements of policy, notice and comment are not required to revisions to those schedules. See 5 U.S.C. 553(b)(3)(A). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

Environmental Impact

FRA has evaluated this proposed rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

E.O. 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 but significant under the DOT policies and procedures (44 FR 11034; February 26, 1979).

This rule will not have any significant direct or indirect economic impact for four reasons. First, its requirements apply only in the case of a rail equipment accident/incident that the reporting railroad alleges to have resulted from an employee human factor. FRA statistics, based on the railroads' reports, show that there were 855 such accidents in 1987. Second, compliance with the notification requirements should not be difficult because it is accomplished by filling in a short standard form supplied by the agency. Third, the Railroad Employee Accident Statement provided for in the rule is also to be written on a short standard form, partially completed by the railroad. Fourth, the Statement is submitted at the employee's option; employees who have no interest in filling it out are not required to do so.

The benefit of the rule is that employees are informed of their rights, which is likely to result in FRA's receiving more complete information on employees' views of the causes of accidents. The cost to the railroads for completing, mailing or delivering, and maintaining these records is insignificant. Additionally, we estimate that the cost to the employees is insignificant. For these reasons, a draft regulatory evaluation has not been prepared; however, the agency invites comments on the costs expected to be incurred.

Regulatory Flexibility Act

FRA certifies that this proposed rule will not have a significant impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average fifteen minutes per employee notification and an average of fifteen minutes per employee statement, with an estimated total annual burden (based on an estimated 832 notifications and 416 statements) of 312 hours. All of these estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Ms. Gloria Swanson, Federal Railroad Administration, 400 Seventh Street SW., Room 8314, Washington, DC 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 29 CFR Part 225

Railroad safety, Railroad accident reporting rules.

In consideration of the foregoing, FRA proposes to amend Chapter II, Subtitle B, of Title 49, Code of Federal Regulations as follows:

PART 225—[AMENDED]

The authority citation for Part 225 continues to read as follows (see 53 FR 28594, 28601):

Authority: 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342, 102 Stat. 624; and 49 CFR 1.49 (c) and (m).

1. Add new 49 CFR 225.12 to read as follows:

§ 225.12 Notice to railroad employee involved in rail equipment accident/incident attributed to employee human factor; railroad employee accident statement.

(a) If, in reporting to FRA a "rail equipment accident/incident," as that term is defined in § 225.19(c), a railroad assigns any of the cause codes listed under "Train Operation—Human Factors" in the "FRA Guide for Preparing Accident/Incident Reports," except Cause Code 506, as the primary cause or a contributing cause of the rail equipment accident/incident; has actual knowledge, or through reasonable inquiry should have actual knowledge, that a railroad employee was responsible, at least in part, for the act, omission, or condition cited by that railroad as the primary cause or contributing cause; and has actual knowledge of, or through reasonable inquiry should have actual knowledge of, the identity of that employee; then the railroad must, as to each employee human factor and each such employee—

(1) State in the narrative section of the rail equipment accident/incident report—

(i) The nature of the alleged employee human factor and

(ii) The identity (by name and position) of the employee alleged to have been responsible, at least in part, for the act, omission, or condition cited by that railroad as the human factor (the back of the form or a separate sheet of paper shall be used if additional space is needed); and

(2) Complete Part I, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor," of Form FRA F 6180.78, in accordance with instructions on the form; and

(3) Hand deliver or mail first class (postage prepaid) to that employee within 45 days after the month in which the rail equipment accident/incident occurred—

(i) A copy of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Railroad Employee Accident Statement," with Part I completed as to the applicable employee and accident; and

(ii) Two copies of the railroad's report to FRA on the rail equipment accident/incident involved.

(b) If, in reporting to FRA a "rail equipment accident/incident," as that term is defined in § 225.19(c), a railroad assigns any of the cause codes listed under "Train Operation—Human Factors" in the "FRA Guide for Preparing Accident/Incident Reports," except Cause Code 506, as the primary cause or a contributing cause of the rail equipment accident/incident; but after reasonable inquiry has determined that a railroad employee was not responsible, even in part, for the act, omission, or condition cited by that railroad as the primary cause or contributing cause; or after reasonable inquiry has determined that a railroad employee was responsible, at least in part, but cannot determine the identity

of that employee, then the railroad must, as to each employee human factor and each such employee, state that fact in the narrative section of the rail equipment accident/incident report.

(c) Employee accident statements are voluntary, not mandatory; however, if an employee wishes to submit a statement and assure that it will be filed with the railroad's accident/incident report, the statement must be made on Part II of From FRA F 6180.78 (entitled "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Railroad Employee Accident Statement"), following the instructions printed on the form.

(d) If an employee chooses to submit an employee accident statement to FRA, all of the employee's statements in the Railroad Employee Accident Statement must be true and correct to the best of the employee's knowledge and belief. Under sections 3(a) and 15 of the Rail Safety Improvement Act of 1988, any person who willfully files a false Railroad Employee Accident Statement with FRA is subject to a civil penalty of up to $10,000, and where the willful violation is also grossly negligent or involves a pattern of repeated violations that creates an imminent hazard of death or injury to persons or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Additionally, any person who knowingly and willfully files a false Railroad Employee Accident Statement is subject to a $5,000 fine, or up to two years' imprisonment, or both, under the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(e)).

2. Revise 49 CFR 225.27(a) to read as follows:

§ 225.27 Retention of records.

(a) Each railroad must retain the logs, supplementary records and annual summaries required by § 225.25 for at least 5 years after the end of the calendar year to which they relate and the written notices to employees required by § 225.12 for at least 2 years after the end of the calendar year to which they relate.

* * * * *

Issued in Washington, DC, on November 28, 1988.

John H. Riley,
Administrator.

[**Editorial Note:** The following appendix will not appear in the Code of Federal Regulations.]

Appendix—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Railroad Employee Accident Statement

PART I - NOTICE TO RAILROAD EMPLOYEE INVOLVED IN RAIL EQUIPMENT ACCIDENT/INCIDENT ATTRIBUTED TO EMPLOYEE HUMAN FACTOR (TO BE COMPLETED BY RAILROAD INVOLVED)

Name of Reporting Railroad	Railroad Accident/Incident No. and Location	Date of Accident/ Incident (month, day, year)

Check the Cause Code Applicable to this Employee

Cause Codes Listed on Accident/Incident Report (State what each cause code stands for.)

_____ Primary Cause: _____

Number Meaning

_____ Contributing Cause: _____

Number Meaning

Employee's Name (First, middle, last) Job Title on Date of Accident

Employee's Address or RFD No. (include apt. no., if any) City State Zip

Notice to Employee

This railroad, in submitting its Rail Equipment Accident/Incident Report to the Federal Railroad Administration (FRA) on the accident described above, has identified you as being responsible, at least in part, for an act, omission, or condition cited by the railroad as the primary cause or a contributing cause of the accident. (For the railroad's specific allegations, please see above on this form and the report itself, which is enclosed in duplicate, particularly the narrative section.)

Under FRA safety regulations (49 CFR 225.12), you may submit a statement to FRA explaining any factors that you believe caused or contributed to the accident. You are not required to submit this statement to FRA; however, if you choose to make such a statement, you must do so in the following way:

1. Fill in Part II of this form, "Railroad Employee Accident Statement," according to the instructions on the form;

2. Attach one copy of the railroad's Rail Equipment Accident/Incident Report on this accident; and

3. Mail the entire form (Parts I and II), with one copy of the railroad's report, continuation pages (if any), and any other supporting documents, to: Office of Safety (RRS–22), Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

FRA's time limit for filing such a statement is 35 days from the date that this notice was mailed or hand delivered to you. FRA suggests that you keep one copy of the railroad's report for your records and that you make and keep a copy of your statement and any other supporting material submitted with it.

Signature of Railroad Representative

Title

Date of Mailing or Hand Delivery to Employee

PART II—RAILROAD EMPLOYEE ACCIDENT STATEMENT (TO BE COMPLETED BY EMPLOYEE)

Explain any factors that you believe caused or contributed to the accident described above. Please print or type. (If more room is needed, attach one or more additional pieces of paper.) Also, please attach to this form one copy of the railroad's Rail Equipment Accident/Incident Report on this accident.

Attention—This Statement Must be Signed (Otherwise it will be returned to the employee.)

Any person who willfully files a false Railroad Employee Accident Statement with FRA is subject to a civil penalty of up to $10,000. Sections 3(a) and 15 of the Rail Safety Improvement Act of 1988. Any person who knowingly and willfully files a false Railroad Employee Accident Statement is subject to a $5,000 fine or up to two years' imprisonment, or both. Federal Railroad Safety Act of 1970, 45 U.S.C. 438(e).

I have carefully read this statement and confirm that it is true and correct to the best of my knowledge and belief.

Signature of employee

Date Mailed to FRA

Telephone Numbers:

Home: (——) ——

Work: (——) ——

Form FRA F 6180.78 (9/88)

[FR Doc. 88–27721 Filed 11–30–88; 8:45 am]

BILLING CODE 4910-06-M

Notices

Federal Register
Vol. 53, No. 231
Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules, or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the States of Minnesota (MN) and Mississippi (MS)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Minnesota Department of Agriculture and the Mississippi Department of Agriculture and Commerce as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: January 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Minnesota's and Mississippi's designations terminate on December 31, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the June 30, 1988, **Federal Register** (53 FR 24753). Applications were to be postmarked by August 1, 1988. Mississippi was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency. There were four applications for the Minnesota designation. Minnesota applied for designation renewal for inspection and weighing functions in the entire area currently assigned to that agency. The other three applicants for designation were: David N. Puetz, dba Licensed Inspections for Minnesota, for inspection only designation for any portion of Minnesota; Aberdeen Grain Inspection, Inc., for inspection only designation in two counties in southwest Minnesota; and North Dakota Grain Inspection Service, Inc.; for inspection only designation for approximately a 3 county area due east of Fargo, North Dakota, along the west central border of Minnesota.

The Service announced the applicant names in the September 1, 1988, **Federal Register** (53 FR 33828) and requested comments on the applicants for designation. Comments were to be postmarked by October 18, 1988; no comments were received regarding Mississippi's designation renewal. A total of 18 comments were received regarding the designation of an official agency in the State of Minnesota. Fourteen comments, submitted by grain firms were received in favor of North Dakota Grain Inspection Service Inc. Several of these commenters expressed concern regarding the proximity of their grain firms to, respectively, North Dakota Grain Inspection Service, Inc. and the Minnesota specified service points. Commenters stated that the location of these Agencies impact on the timeliness and costliness of services. Four comments were received in favor of Minnesota which were submitted by grain trade organizations.

The Service has evaluated Minnesota's operation with regard to the designation criteria in the Act and comments received. The Service has not found any deficiencies that would indicate that Minnesota fails to meet the designation criteria to perform official services in the entire geographic area for which the agency applied and that would serve as a basis for not renewing its designation to perform official services in the geographic area currently assigned to Minnesota.

Minnesota's fee schedules previously have been approved by FGIS as reasonable and nondiscriminatory. Additionally, the Service has determined that Minnesota currently provides official services in a timely manner consistent with the Act and the regulations.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Mississippi is able to provide official services in the geographic area for which the Service is renewing their designation. The Service has also determined that Minnesota is better able than any other applicant to provide official services in the geographic area for which the Service is designating it. Effective January 1, 1989, and terminating December 31, 1991, Minnesota and Mississippi will provide official inspection and Class X or Class Y weighing services in their specified geographic area, as previously described in the June 30 **Federal Register**.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Minnesota at (612) 341–7190, Mississippi at (601) 762–6141.

Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 73 *et seq.*)

Date: November 28, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–27829 Filed 11–30–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Ohio Valley (IN) and Quincy (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley), and Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service (Quincy).

DATE: Comments must be postmarked on or before January 17, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. *Telemail* users may respond to [LLEBAKKEN/FGIS/USDA] telemail. *Telex* users may respond as follows:

TO: Lewis Lebakken, TLX: 7607351. ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the October 5, 1988, **Federal Register** (53 FR 39121). Applications were to be postmarked by November 3, 1988. Ohio Valley and Quincy were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*)

Date: November 28, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–27630 Filed 11–30–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Champaign (IL) and Springfield (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Champaign-Danville Grain Inspection Departments, Inc. (Champaign), and Glen Wallace dba Springfield Grain Inspection Department (Springfield).

DATE: Applications must be postmarked on or before January 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Champaign, located at 527 E. Main Street, Danville, IL 61832; and Springfield, located at 1301 North Fifteenth Street, Springfield, IL 62702; were each designated under the Act as an official agency on June 1, 1986, to provide official inspection functions.

Each official agency's designation terminates on May 31, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Champaign, in the States of Illinois and Indiana, pursuant to section 7(f)(2) of the act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Iroquois County line east to the Illinois-Indiana State line; the Illinois-Indiana State line south to U.S. Route 24; U.S. Route 24 east to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; the southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermillion (in Illinois) and Iroquois County lines.

The following locations, all in Illinois, outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, Dewitt County; Moultrie Grain Association, Lovington, Moultrie County; and Monticello Grain Company, Monticello, Piatt County; (all located inside Decatur Grain Inspection, Inc.'s area).

Exceptions to Champaign's assigned geographic area are the following locations inside Champaign's area which have been and will continue to be serviced by the following official agencies:

1. Paris Illinois Grain Inspection: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana; and

2. Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

The geographic area presently assigned to Springfield, in the State of

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Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Schuyler, Cass, and Menard County lines; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason;

Bounded on the East by a straight line from the west side of Beason southwest to Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16;

Bounded on the South by State Route 16 west to Interstate 55; a straight line from the junction of Interstate 55 and State Route 16 northwest to the junction of State Route 111 and the Morgan County line; the southern Morgan and Scott County lines.

Bounded on the West by the western Scott, Morgan, Cass, and Schuyler County lines.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: East Lincoln Farmers Grain Co., Lincoln, Logan County (located inside Bloomington Grain Inspection Department's area); Chestervale Elevator Company, Chestervale, Logan County (located inside Decatur Grain Inspection, Inc.'s area); and Pillsbury Co., Florence, Pike County (located inside Quincy Grain Inspection & Weighing Service's area).

Interested parties, including Champaign and Springfield, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning June 1, 1989, and ending May 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*)

Date: November 28, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–27631 Filed 11–30–88; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Record of Decision; California-Oregon Transmission Project; Final Environmental Impact Statement; Pacific Southwest Region

AGENCY: Forest Service, USDA.

ACTION: Record of decision.

Background

The Secretary of Energy, through Western Area Power Administration (Western), and the Transmission Agency of Northern California (TANC) developed a proposal to construct facilities that would allow mutually beneficial power sales between the Pacific Northwest and California. The proposal, known as the California-Oregon Transmission Project (COTP), would have the purpose of expanding the bidirectional capability of the Pacific Northwest-Pacific Southwest Intertie transmission system and help serve California's need for economical power, would facilitate the Pacific Northwest's desire to sell surplus power, and would meet the need for maintaining and increasing the reliability of the existing transmission system.

The California-Oregon Transmission Project (COTP) proposal is to construct and operate approximately 340 miles of transmission lines, three substations, a series compensation station, communication facilities, and to modify two existing substations. The specific portions of this proposal that involve National Forest System lands include:

Construction of a new 500 KV AC transmission line and associated facilities from the California-Oregon border area to the proposed Olinda Substation near Redding, California, approximately 58 miles of which crosses National Forest System lands.

Modification of existing and construction of a new communication system and associated facilities on National Forest System lands.

The Department of Energy, Western, and the Transmission Agency of Northern California, were designated as lead agencies for the development of the final EIS/EIR for the California-Oregon Transmission Project (DOE/EIS–0128). The USDA Forest Service was a cooperating agency in the development of this joint EIS/EIR.

Decision

Based on the analysis and information contained in the Draft, Supplement to the Draft, and Final Environmental Impact Statement (EIS), it is my decision to select the North D Alternative for the 500 KV powerline and associated improvements on National Forest System lands. It is also my decision to authorize the construction of the project under a Special-Use Permit with appropriate clauses and stipulations, as shown in the attached exhibit, and to issue an easement for the right-of-way covering the operation and maintenance of the transmission line and associated facilities after construction is completed.

The North D Alternative consists of the following route segments discussed in the EIS/EIR which cross National Forest System lands between the Oregon border and Redding, California (a general description of the route follows):

N–10K	N–10I.
N–10M1	N–10M2(A)
N–10M2(A1)	North 2B
N–10Alt5(B)	N–10Alt5(D)
N–10Alt5(C)	N–7Alt1(A)
N–7Alt1(B)	North 3J
N–8A(3)	N–8C
N–8Alt2(A)	

Alternative North D crosses onto National Forest System lands southeast of the town of Newell in Modoc County, near Casuse Mountain. It then travels in a southwesterly direction across portions of the Doublehead and Big Valley Districts of the Modoc National Forest, crossing into Siskiyou County near Border Mountain. The route crosses onto the McCloud District of the Shasta-Trinity National Forest about two miles southwest of Snell Butte. About two miles southeast of Hambone Butte, the route crosses about one-half mile of the Shasta National Forest administered by the Hat Creek District of the Lassen National Forest, where it turns and proceeds in a westerly direction. Approximately three miles west of Bear Mountain Lookout, the route turns south toward Dead Horse Summit, turning to the southwest again about one mile southeast of Curtis Meadows, where it crosses Highway 89. From this point it crosses mostly private lands, crossing into Shasta County about three miles before it reaches Grizzly Peak. From Grizzly Peak it turns to the south, staying to the east side of Little Meadows. The route crosses onto the Shasta Lake District of the Shasta-Trinity National Forest near Stump Creek Butte, and continues south. After crossing private lands in the Flat Woods area, the route crosses about two miles of National Forest land near Hogback Mountain and then proceeds to the south across private lands toward Redding, California.

Routing Alternatives Considered

Four major routes, North A, B, C, and D, were analyzed in the Draft EIS/EIR. Alternative North A travels generally south down the east side of Shasta

Valley, then southeast (staying north and east of Mount Shasta) to about six miles past Ash Creek Butte, where it then turns south toward Grizzly Peak. Alternatives North B and North C both come south through the Butte Valley area. North B passes near the town of Macdoel, while North C stays to the east of Dorris. Both join just to the northeast of Tennant, and continue south to the Ash Creek Butte area, where they then follow the same route as North A. All routes have the same location from Grizzly Peak to the forest boundary. To arrive at the point where the four major routes were analyzed in the EIS, a full range of route segments and alternatives were considered on National Forest System lands. Routing guidelines which took into account engineering, earth sciences, water quality, biological resources, visual resources, socioeconomics, land status, land use, cultural resources, and electrical/magnetic effects were applied in order to develop preliminary routes. After public review, revised preliminary alternative routes were identified, and a second round of route review and revision was initiated.

Additional modifications and adjustments were made during the impact assessment. Multidisciplinary comparisons were done between the different route alternatives in order to identify the preliminary environmentally superior as well as the preliminary project preferred alternatives in the Draft EIS/EIR, issued in November, 1986.

Public and Agency comments on the Draft EIS/EIR resulted in a Supplement to the Draft, issued in June of 1987. The Supplement was issued in order to get public review of proposed new routing options and an alternate Southern Oregon Switching Station site. Seven new route options within Alternative North D north of Redding were analyzed in the Supplement in a similar manner as were the routes in the Draft EIS/EIR.

The Final EIS/EIR incorporated all analyses made the for the Draft EIS/EIR and the Supplement to the Draft, and indentified the environmentally superior and project preferred alternatives for the COTP. The Forest Service participated in and reviewed the route selection process throughout, and my decisions reflect that involvement in the route selection process, as well as the impact assessment and the review of public comment as described below.

Other Alternatives Considered

A full range of alternatives were considered for the entire project, as described in the Phase II Report of Volume 2A of the draft EIS/EIR, supplement to the draft, and Section 1.2.2 of Volume I of the final EIS/EIR. Numerous routes within the basic alternatives were also considered, as described in the EIS/EIR sections listed above. Some other alternatives considered are as follows:

No Action—The no action alternative would have no environmental impacts in the short run. In the long term, participating utilities would undertake other transmission construction projects, and the operation of the western region transmission system would continue to be subject to the effects of outages of the existing AC intertie and operating restrictions on the interconnected system.

Upgrade Existing 500 KV Pacific AC Transmission Intertie—This alternative considered upgrading two existing 500 KV Pacific AC Intertie lines to provide two 2,400 MW AC lines, an increase of 800 MW on each line. This alternative would have fewer environmental impacts, but is rejected based on physical, economic, and outage/reliability problems.

DC Transmission—This alternative would replace the COTP with a second DC transmission line. The environmental impacts of this alternative would be similar to those from the selected alternative. This alternative would require multi-tap DC technology for the multiple points of delivery for the COTP, and would have substantially higher costs.

Parallel Existing Intertie Lines—This alternative considered using the existing right-of-way of the Pacific AC Intertie lines. This alternative does not meet the reliability criteria requiring separation of the new line sufficiently from the two existing lines.

East of Existing Intertie Lines—These options considered placing the COTP to the east of the existing Pacific AC Intertie lines. This would require that the COTP cross the existing lines twice north of Olinda Substation. These options were not considered further due to system reliability concerns and technological difficulties associated with the crossovers.

Underground Construction—Underground construction was considered, but rejected due to economics, reliability, and feasibility. Underground transmission would have a greater environmental impact in terms of soil disturbance. Underground transmission of 500 KV lines for long distances such as this is still an unproven technology.

Nontransmission Alternatives—A variety of nontransmission alternatives were considered, as discussed in section 2.5.2 of the draft EIS. Many combinations of generation and conservation technologies and programs could be developed to provide 1,600 MW of additional capacity to the COTP participants. Generation technologies which could individually or in combination, be compared to the Combined Projects include the following conventional large central station facilities and renewable resource or preferred technology facilities:

Conventional Generation Technologies—Coal-fired; nuclear; combustion turbines; combined cycle (oil or natural gas); large hydroelectric (new dam and reservoir); refurbishment of existing oil and gas-fired capacity; compressed air energy storage; pumped storage hydroelectric.

Renewable and Preferred Technologies—Cogeneration; biomass (wood residue, agricultural waste, municipal solid waste); small hydroelectric; photovoltaic; solar thermal; geothermal; wind turbines; solar space heating and cooling; residential, commercial, and industrial load conservation; load management.

These nontransmission alternatives would not provide for bidirectional capability, and would not facilitate the Pacific Northwest's desire to distribute surplus power.

Reasons for Selection

Impact assessment for the EIS/EIR identified some major resource impacts and concerns for the route segments on National Forest System lands. Major environmental issues pertinent to my decision are the protection of old growth timber, total amount of commercial timber impacted, protection of sensitive wildlife species habitat, minimizing resource impacts in geologically sensitive areas, and that the route best meets public demands for reliable bulk electrical power transmission.

Old growth timber areas provide important habitat for wildlife species dependent on old growth forests, as well as ecological diversity, and of the routing alternatives considered, North D minimizes impacts to old growth timber. Total commercial timber resources impacted by each alternative were analyzed, and Alternative North D would impact less commercial timber than alternatives A, B, and C.

Protection of sensitive wildlife species and their habitats was also an important consideration. In particular, impacts to sensitive species such as Goshawk and spotted owls were analyzed during the impact assessment. The North D alternative route avoids spotted owl network territories designated to maintain viability of the species, and

minimizes impacts to Goshawks. A variety of other important wildlife areas are crossed, but impacts are adequately mitigated through use of seasonal construction activity closures and road management, as outlined in the EIS/EIR.

Alternative A would have major impacts associated with possible line collisions by the bald eagle and other sensitive raptors. Alternative A also passes near a bald eagle nest territory, and would pass through a spotted owl management area near the McCloud River. Alternative B passes within a mile of bald eagle winter roost and a nest near Coleman Lake and the Klamath River. Collision potential is high with this alternative as well, and the same spotted owl management area impacted by alternative A would also be impacted by alternatives B and C. Alternative C also impacts bald eagle roost sites near Bear Valley, and moderate collision potential exists for eagles moving across the line to Butte Valley foraging areas. Alternative D passes on the east side of the Klamath Basin, which also supports high populations of migratory waterfowl and wintering bald eagles, but collision potential here is not significant because use of the corridor area is low and topography shields birds from collisions. Alternative North D passes through the Glass Mountain Known Geothermal Resource Area, as well as the Giant Crater Lava Flow area, but careful placement of towers will mitigate any impacts or concerns regarding lava tube collapse, and the transmission line should not effect or be affected by the known geothermal resource area. Alternatives A, B, and C all would be subject to potential geologic risks associated with Mount Shasta and earthquake faults in the Tennant area.

Alternative North D also minimizes impacts on recreation and visual resources. Alignment and design considerations reduce the visual impact (see mitigations listed below), and crossing of high use scenic roads such as the Powder Hill Road to Medicine Lake is avoided. Alternatives A, B, and C cross through the visually sensitive areas of Shasta Valley and Butte Valley.

Issues Raised by Public Comment

Major issues pertinent to National Forest System lands were raised by the public during the review periods, as described below. Many of the route options presented in the Supplement to the Draft EIS/EIR were developed in response to these issues.

A major concern of many commentors was the overall impact on timberland. The powerline right-of-way represents a permanent loss of productive timerland, and many landowners and communities in the study area are economically dependent on the timber resource. Alternative North D was selected in part because of fewer overall impacts on forest lands. For instance, route segment N–10M2 is located on less productive timerland than N–10 Alt.5. The loss of timber on the National Forests represents less than one-half of one percent reduction in the long-term sustained yield and allowable cut for the affected Forests.

Transmission system reliability and its effects on the location of the routing alternatives was another major issue. The Forest Service has addressed the need for separation from the existing intertie based on concerns for system reliability and good engineering and technological considerations related to minimize the potential for a three line outage. Sufficient separation of the COTP from the existing intertie is an issue where fire has significant potential for causing a simultaneous three line outage. This aspect of the transmission reliability issue is adequately resolved through selection of the N–10M route option (a route option closer to the existing intertie than originally proposd in the Draft EIS/EIR), and with the implementation of a fuels management plan and fire response plan. The fuels management and fire response plans will be developed jointly by TANC and the Forest Service. Separation for other reasons such as natural or man-caused disasters was also considered in assessing the need for separation from the existing intertie.

A second aspect of transmission system reliability relates to the feasibility of crossing the two existing intertie lines with this powerline. Proposals to cross the existing intertie and put the new line to the east were carefully analyzed, but were not considered feasible because of the technical problems with crossovers. Crossing the existing intertie results in reduced reliability by having all three lines in a position where a single event could cause a three line outage at the point of crossover.

Visual impacts of the transmission line were also a major public concern. Routing guidelines emphasized minimizing visual impacts through careful siting. Full application of measures to reduce the visibility of the towers and conductors, as well as selective clearing of the right-of-way, will be done to minimize the visual impacts.

Environmentally Preferred Alternative

The environmentally preferred alternative on National Forest System lands is alternative North D. The No Action and Nontransmission alternatives, while having no or little impact in the short term, would both lead in the long term to proposals for additional power and transmission projects that would have at least the same, or significantly greater impact on National Forest System lands. The North D route, as developed through this EIS/EIR and with the required mitigations, is the preferred route in terms of having lower overall impact on the human environment.

Mitigation

All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted. The full list of mitigation measures adotped are listed in section 1.1.5 of the final EIS. The following is a summary of the key resource areas that are mitigated:

Threatened, Endangered, and Sensitive plant and animal species: Construction of new access roads will be minimized in stream drainages which support special-status aquatic species such as Redband Trout, or in areas that support sensitive plants or threatened, endangered, or sensitive wildlife species; preclude access roads in sensitive areas until after biological surveys are completed and mitigation coordinated with appropriate agencies; avoid siting of transmission line towers, access roads and/or construction work areas in those unique or sensitive plant communities to the maximum extent possible; avoid disturbance to nests and dens; restrict activities during breeding periods that could disturb species sufficiently to cause reproductive failure and other important activity timeframes.

Floodplains and wetlands (Ref. Executive Order 11990): Site structures to span wetland areas and floodplains, place access roads outside wetland areas, and avoid use of heavy equipment in wetlands.

Loss of timberland due to right-of-way clearing: Use directional felling on right-of-way; minimize locating right-of-way on ridgetops where potential windthrow is maximized; emphasize selective clearing removing only tall growing vegetation which could interfere with the conductors; prepare a vegetation management plan which will consider clearing requirements and long-term right-of-way management needs; off-site mitigation such as reforestation or other timber stand improvement treatments on timber sites currently not in production.

Visual resource management: Use non-specular conductors; minimize

vegetation clearing along roads and highways, rivers, trails and residential areas; minimize sitings of towers on ridgelines/hilltops; feather edges of right-of-way clearing; use opaque porcelain insulators; darken tower steel will be used where it can be expected to reduce impacts.

New road construction: Minimize new access road construction; close all roads not needed for long-term maintenance activities.

Archaeological resource protection: Site structures to span sites; plan access roads to avoid these sites and monitor construction to minimize impact; if site cannot be avoided, scientific excavation to recover data or stabilization and protection of sites; consult with Native Americans concerning potential mitigation measures; if cemeteries cannot be avoided, arrange for reburial.

The Forest Service will, through permit administration, monitor compliance to ensure that the terms of the permit are met. A Compliance Monitoring Plan developed by the proponent (TANC) and the lead agency (Western) will track responsibility and accomplishment of mitigation for the entire project. The lead agency will ensure that the applicable mitigation measures are included in construction contracts. Construction inspectors for the lead agency will verify that the mitigation measures are implemented.

Mitigation of impacts of the selected alternative on Floodplains and Wetlands is addressed in the final EIS, Volume I, Section 1.1.5. All potential impacts to wetlands on National Forest System lands are fully mitigable. A Memorandum of Agreement between Western Area Power Administration, the Transmission Agency of Northern California, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation specifies the process for documenting and fully mitigating archaeological and cultural resource impacts for the project.

Impacts to threatened and endangered species on National Forest System lands are fully mitigatable as described in the mitigation section of the final EIS. The Final Biological Opinion by the U.S. Fish and Wildlife Service requires that prior to the season of construction, a survey be conducted for potential bald eagle nest sites near the Pit River crossing on National Forest System lands, and for potential perigrine falcon use of a site at Horse Mountain in the Klamath Basin. Shield wires will be marked at all Pit River crossings with aviation marker balls to increase their visibility to bald eagles and perigrine falcons. All disturbed sites will be repeat seeded as necessary until restored to pre-project conditions.

This decision is subject to appeal in accordance with the provisions of 36 CFR 211.18.

Dated: November 15, 1988.

Paul F. Barker,

Regional Forester.

[FR Doc. 88-27701 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-11-M

Bucks Creek Allotment Management Plan, Plumas National Forest, Plumas County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for the development of a new Allotment Management Plan for the Bucks Creek Allotment on the Oroville Ranger District. The Mill Creek Unit, which is in the Bucks Lake Wilderness, is within this allotment.

A range of alternatives for this plan will be considered. One of these will consider continued use, the no action alternative, as per the existing Allotment Management Plan. Another alternative will consider reducing the total number of cattle using the Mill Creek Unit of the allotment. A third alternative to consider will be to reduce the season of use in the Mill Creek Unit. Another possible alternative to consider will be the elimination of the Mill Creek Unit of the allotment and replacement of the animal unit months in another grazing area outside the wilderness.

Federal, State, and local agencies; range permittee; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

The analysis is expected to take about 9 months. The draft environmental impact statement should be available for public review by September 1989. The final environmental impact statement is scheduled to be completed by June 1990.

Written comments and suggestions concerning the analysis should be sent to Mary J. Coulombe, Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, California 95971, by January 15, 1989.

Questions about the proposed action and environmental impact statement should be directed to Jack Horner, Resource Officer, Oroville Ranger District, Plumas National Forest, phone 916-534-6500.

Date: November 18, 1988.

Mary J. Coulombe,

Forest Supervisor.

[FR Doc. 88-27650 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-11-M

Duncan and Sunflower Timber Sales, Tahoe National Forest, Placer County, CA; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest and regenerate timber in portions of the former Duncan Canyon Inventoried Roadless Area on the Foresthill Ranger District, Tahoe National Forest, Placer County, California.

A range of alternatives for these timber sales will be considered. One of them will be the no action alternative. Various intensities for road construction, timber harvesting and regeneration within the area will be analyzed. The different timber sale alternatives will address different resource values such as visual quality, recreation, wildlife, and timber.

Comments from other Federal, State and local agencies, organizations and individuals who may be interested in, or affected by the decisions are being solicited to identify significant issues. Written comments concerning the project should be directed to Richard A. Johnson, District Ranger, Foresthill District, 22830 Foresthill Rd., Foresthill, California 95631.

Comments should be received by January 15, 1988 to receive timely consideration in the development of the draft EIS.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April 1989. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date of the EPA's notice of availability in the **Federal Register**. It is very important that those interested in the management of the former Duncan Canyon Inventoried Roadless Area participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits

of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Such decisions have also established that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc.* v. *Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this requirement is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the end of the comment period on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is expected to be completed by July 1989. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official, who is the Tahoe National Forest Supervisor, will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under standard agency procedures (36 CFR 211.18).

Date: November 21, 1988.

Geri Bergen Larson,

Forest Supervisor.

[FR Doc. 88-27700 Filed 11-30-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Flood Damage Report.

Form Number: Weather Service Form E-7.

Type of Request: Reinstatement of a previously approved collection.

Burden: 1500 respondents; 4500 reporting hours; average hours per response—3 hours.

Needs and Uses: NOAA requests information on flood damages from local and state officials, or from others affected by the event. NOAA and other agencies use the information to improve flood warnings, flood control projects, and related activities.

Affected Public: All groups and individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-27621 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Application for a Federal Fisheries Permit for Atlantic Swordfish.

Form Number: None.

Type of Request: Request for extension and revision of a currently approved collection.

Burden: 700 respondents; 350 reporting hours; average hours per response—.5 hours

Needs and Uses: U.S. vessels that will fish for, possess, retain, or land Atlantic Swordfish for sale, trade, or barter must obtain a Federal Fisheries Permit to operate in the U.S. Exclusive Economic Zone. The information obtained is used for fishery enforcement and management.

Affected Public: Businesses or other for-profit, Small businesses or organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-27622 Filed 11-30-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration for In-Transit Goods.

Form Number: 7513.

Agency Approval Number: 0607-0001.

Type of Request: Extension.

Burden: 19,500 hours.

Number of Respondents: Unknown (number of firms exporting from one foreign country to another through the United States).

Avg Hours Per Response: 15 minutes.

Needs and Uses: Exporters use this form to report shipments of merchandise from one foreign country to another through the United States. This is the basic source document from which the Bureau of the Census compiles the U.S. statistics on outbound in-transit shipments.

Affected Public: Exporters of merchandise.

Frequency: Monthly (automated reporting). On occasion (all others).

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance

Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–27711 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–07–M

Assistant Secretary for Communications and Information

Advisory Committee on Advanced Television; Partially Closed Meeting

A meeting of the Commerce Advisory Committee on Advanced Television will be held December 15, 1988, 10:00 a.m. to 12:00 noon, in Room 4830, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee advises the Secretary on the impact of advanced television on the competitiveness of U.S. industry, what policies may be pursued to heighten the development of advanced television in the public interest, and other related issues. The meeting is scheduled to consist of a discussion of the impact of advanced television on the competitiveness of U.S. industry and matters related to the development and implementation of advanced television.

The General Session of the meeting will be open to the public and a limited numbers of seats will be available on a first-come first-served basis. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 2, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (c)(9)(B). The discussions are likely to disclose privileged or confidential commercial information and information for which premature disclosure would likely significantly frustrate the implementation of proposed agency actions. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 6628, Department of Commerce.)

FOR FURTHER INFORMATION CONTACT: Richard M. Firestone, Chief Counsel, Office of the Chief Counsel, National Telecommunications and Information Administration, Room H4717, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–377–1816.

Date: November 28, 1988.

Alfred C. Sikes,

Assistant Secretary for Communications and Information.

[FR Doc. 88–27724 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–60–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Sucesion Alberto Bachman From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for comments.

On March 18, 1988, Sucesion Alberto Bachman (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's certification that his proposed installation of a swimmer's protection barrier at Palominos Island would be consistent with Puerto Rico's coastal management program. The PRPB's objection precludes the U.S. Army Corps of Engineers from issuing to the Appellant a permit to perform these activities pending the outcome of Appellant's appeal.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122. The Appellant requests that the Secretary override the PRPB's consistency objection based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed project do not outweigh its contribution to the national interest; (3) the proposed project will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with Puerto Rico's coastal management program.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication date of this notice, and should be sent to Sydney Anne Minnerly, Attorney-Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Hector F. Oliveras, Esquire, Bufete Y Notaria, Calle Vela No. 3–B, Hato Rey, PR 00917 and Jose S. Rodriguez, Puerto Rico Planning Board, Minillas Governmental Center, North Bldg., De Diego Avenue, Stop 22, San Juan, PR 00940–9985. All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of Hector Oliveras, Esquire, the Puerto Rico Planning Board, and the National Oceanic and Atmospheric Administration (NOAA) Office of General Counsel.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: November 23, 1988.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88–27720 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management; Federal Consistency Appeal by Donald A. Benson from an Objection by the Alaska Division of Governmental Coordination

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and dismissal of appeal.

On April 27, 1988, the Secretary of Commerce received a Notice of Appeal and supporting data and information from Mr. Donald A. Benson. Mr. Benson appealed to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the Alaska Division of Government Coordination to Mr. Benson's consistency certification for U.S. Army Corps of Engineers (Corps) Permit No. N–820189, Knik River 6, modification and time extension to extend a previously constructed airplane runway, to dredge a seaplane basin, and to construct additional service areas and access roads. The proposed construction is for a privately owned airport located on the Glenn Highway, six miles south of Palmer, Alaska.

The regulations which implement the CZMA provide that the Secretary may dismiss an appeal for good cause. Good cause is defined to include, but is not limited to, Secretarial receipt of a detailed comment from the Federal agency to which application has been made for a Federal license or permit, or for Federal assistance, stating that the agency has disapproved that application. *See*, 15 CFR 930.128 (1988). In Mr. Benson's case, the Corps has denied the permit request for the proposed expansion project and, simultaneously, denied a request for an extension of time to complete work previously authorized and required mitigation measures to redress problems created by work done under the original authorization.

In view of the detailed and independent denial by the Corps of the underlying permit application, Mr. Benson's appeal has been dismissed for good cause pursuant to 15 CFR 930.128.

FOR FURTHER INFORMATION CONTACT: Hugh C. Schratwieser, Attorny-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: November 23, 1988.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88–27719 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–08–M

Solicitation for Sea Grant Review Panelists

AGENCY: Department of Commerce.

SUBAGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of solicitation for Sea Grant Review Panelists.

SUMMARY: This notice responds to section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 112, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by January 3, 1989.

ADDRESS: Ned A. Ostenso, Director, National Sea Grant College Program, 6010 Executive Blvd., Rm. 812, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert J. Shephard of the National Sea Grant College Program at the address given above; telephone 301/443–8886, (FTS) 443–8886.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a national review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under sections 205 and 206, and section 3 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 204 (a) and (c)(1); and

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of fifteen voting members composed as follows:

Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, or especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (A) the director of a sea grant college, sea grant regional consortium, or sea grant program, (B) an applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 or 206; or (C) a full-time officer or employee of the United States.

The Director of the National Sea Grant Program and one Director of a Sea Grant Program also serve as non-voting members.

At the present time, eleven of the fifteen panel members have been appointed. Original appointments include: Five for a 3-year term, three for a 2-year term, and three for a 1-year term.

Date: November 23, 1988.

Alan R. Thomas,

Deputy Assistant Administrator, OAR.

[FR Doc. 88–27545 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–12–M

National Marine Fisheries Service; Marine Mammals; Application for Permit; Micke Grove Zoo (P416)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Mick Grove Zoo, 11793 N. Micke Grove Road, Lodi, California 95240

2. Type of Permit: Public display

3. Name and Number of Marine Mammals: harbor seal *(Phoca vitulina)* 1

4. Type of Take: To permanently maintain unreleasable male harbor seal. The animal was deemed unreleasable due to motor damage which impairs use of his foreflippers.

5. Location and Duration of Activity: Animal currently held temporarily at Micke Grove.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC., within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fishers Service, 1335 East West Hwy., Silver Spring, MD 20910: and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: November 22, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88–27644 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Groups I and II are being adjusted, variously, for swing, carryover, carryforward, special carryforward and special shift.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 6, 1987). Also see 53 FR 161, published in the **Federal Register** on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 23, 1988, the directive of December 30, 1987 is amended further to adjust the current limits for cotton, wool and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-month limit [1]
Sublevels in Group I:	
611	2,650,254 square yards.
619/620	108,632,891 square yards.
Sublevels in Group II:	
342	68,262 dozen.
345	85,887 dozen.
435	34,128 dozen.
443	338,159 numbers.
448	34,029 dozen.
641	1,034,508 dozen.
642	96,201 dozen.
645/646	3,646,885 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27693 Filed 11–30–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Chemical Stockpile Disposal Program; Intent To Prepare an Environmental Impact Statement To Initiate the Public Scoping Process for the Construction and Operation of a Chemical Munitions Disposal Facility at Anniston Army Depot, AL

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: This announces the Notice of Intent to prepare an EIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Anniston Army Depot, Alabama. The proposed facility will be used to

demilitarize all chemical agents and munitions currently stored at the Anniston Army Depot. Potential environmental impacts will be examined for several locations of the on-site incineration facility and "no action" alternatives. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Anniston Army Depot.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 **Federal Register**, No. 38, pp. 5816–17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. In compliance with the National Environmental Policy Act (NEPA), section 102(2)(c), the Army determined that an EIS will be prepared to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions at Anniston Army Depot. The first phase of this effort will entail the collection and analyses of detailed site-specific information to ensure that the programmatic preferred alternative (on-site incineration) remains valid for Anniston Army Depot. A separate report summarizing this effort will be published prior to preparation of the draft EIS for Anniston Army Depot. The draft EIS should be available in the spring of 1990. Upon completion of the draft EIS, public notice of its availability for review will be announced and interested persons may provide comment on that document.

Notice of Public Meeting

Notice is further given of the Army's intention to initiate the scoping process to aid in determining the significant issues related to the proposed action at Anniston Army Depot. Public, as well as Federal, State and local agency, participation and input are desired. An initial scoping meeting will be held on December 15, 1988, at 6:30 p.m., at the Abrams Building, Anniston Army Depot. Interested individuals, government agencies and private organizations are encouraged to attend and submit information and comments for consideration by the Army.

FOR FURTHER INFORMATION CONTACT: Program Manager for Chemical Demilitarization, ATTN: AMCPEO–CDI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401. Individuals desiring to be placed on a mailing list to receive additional information on the public scoping process and copies of the draft and final EIS should contact the Program Manager at the above address.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA(I&L).

[FR Doc. 88–27628 Filed 11–30–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. F–016]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Rheem Manufacturing Co.

AGENCY: Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case F–016) granting Rheem Manufacturing Company a waiver for its Models (—) GEB and (—) GKA condensing warm air furnaces from the existing DOE furnace test procedures.

FOR FURTHER INFORMATION CONTACT:

Esher R. Kweller, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(1), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Rheem Manufacturing Company has been granted a waiver for its models (—) GEB and (—) GKA condensing warm air furnances, permitting the company to use an alternate test method.

Issued in Washington, DC, November 23, 1988.

John R. Berg,

Acting Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987, Pub. L. 100–12, 92 Stat. 3266, and the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the test procedure regulations by adding § 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary of Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristcs as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Pursuant to § 430.27(1), the Department shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

Rheem Manufacturing Company (Rheem), filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** Rheem's petition and solicited comments, data, and information respecting the petition. 53 FR 25535 (July 7, 1988). One comment was received, from Teledyne Laars, which supported granting the waiver to Rheem.

DOE consulted with the Federal Trade Commission on October 7, 1988 concerning the Rheem Petition.

Assertions and Determinations

Rheem's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and the starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 30 second blower time delay when testing its (—) GEB and (—) GKA condensing gas furnaces. Rheem states that since the 30 second delay is indicative of how the (—) GEB and (—) GKA models actually operate and since such a delay results in an energy savings of approximately 1.8 percent, the waiver should be granted.

Since the blower controls incorporated on the Rheem condensing furnaces are designed to impose a 30 second blower delay in every instance of start up, and since the current test provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30 second blower time delay when testing the Rheem (—) GEB and (—) GKA condensing furnaces. Accordingly, with regard to testing the Rheem (—) GEB and (—) GKA condensing furnaces, today's Decision and Order exempts Rheem from the existing provisions regarding blower controls and allows testing with the 30 second delay.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Rheem Manufacturing Company (F-016), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraph (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Rheem Manufacturing Company shall be permitted to test its (—) GEB and (—) GKA condensing gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with the modification set forth below:

(i) 3.0 Test procedure. Testing and measurements shall be as specified in section 9 of ANSI/ASHARE 103–1982 with the inclusion of the following procedures in lieu of section 9.3.1 of ANSI/ASHARE 103–1982.

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t—), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; (2) the furnaces are designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time would result in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t—), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 in. of water gauge of the manufacturers recommended on-period draft."

(ii) With the exception of the modification set forth in subparagraphs (i) above, Rheem Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to the (—) GEB and (—) GKA models of condensing warm air furnaces manufactured by Rheem Manufacturing Company.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, November 23, 1988.

John R. Berg,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88–27717 Filed 11–30–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87–358–001 and CP87–428–001]

Tennessee Gas Pipeline Co. and CNG Transmission Corp.; Intent to Prepare an Environmental Assessment on the Proposed Norex Project and Request for Comments on Environmental Issues

November 23, 1988.

Description of Proposed Action and Request for Comments

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets. Tennessee Gas Pipeline Company (Tennessee) would construct a total of 35.7 miles of 10-, 12-, and 30-inch-diameter pipeline loop, 17.4 miles of 10-, 12-, and 24-inch-diameter replacement pipeline, and two new meter stations in New York, Massachusetts, and New Hampshire. Also, 16 existing meter stations would be upgraded and 2,075 horsepower of compression would be added at 2 existing compressor stations. CNG Transmission Corporation (CNG) would construct 12.3 miles of 30-inch-diameter pipeline loop and a new measuring station in New York. The facilities would be used to transport up to 24,418,257 Dth of natural gas per year from Tennessee's Canadian and domestic supplies. Tennessee would deliver the gas to CNG near North Sheldon, New York, and CNG would redeliver it to Tennessee near Morrisville, New York. Tennessee would then transport the gas to Northeast markets.

In the Commission's *Order Finding Additional Projects To Be Discrete And Dismissing Applications*, issued on June 29, 1988, concerning pipeline projects in the Northeast, this project was determined to be "discrete" and was referred to as the Norex Project.[1] Since the facilities proposed by Tennessee and CNG are interdependent and, if authorized, would be constructed simultaneously, the staff of the FERC will analyze them in one EA.

The applications filed by CNG and Tennessee on October 6, 1987, and November 2, 1988, respectively, seek a Certificate of Public Convenience and Necessity under section 7(c) of the Natural Gas Act to increase firm

[1] A discrete project is one that can be processed independently and, if authorized, would not adversely affect the pending competitive projects to supply gas to the Northeast.

transportation service to 10 of Tennessee's existing customers. Tennessee, CNG, and the customers (referred to as the Norex Customers) [2] state that the proposed service is needed by November 1, 1989, to avoid curtailing service during the winter heating season or using more costly supplemental fuels. To meet the in-service date, construction of the facilities is proposed to begin May 1, 1989.

By this notice the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to publication of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternative routes), and measures to mitigate impact. Written comments should be submitted by December 23, 1988, in accordance with the procedures identified at the end of this notice.

Proposed Facilities

Figures 1 and 2 show the general location of the facilities. Appendix A contains detailed maps of the proposed pipeline, compressor stations to be upgraded, and new meter stations.[3] The locations of the facilities and the proposed construction and permanent rights-of-way are identified in table 1.

[2] The Berkshire Gas Company, Boston Gas Company, Colonial Gas Company, Concord Natural Gas Corporation, EnergyNorth, Inc., Essex County Gas Company, Fitchburg Gas and Electric Light Company, City of Holyoke, The Southern Connecticut Gas Company, and the Valley Gas Company.

[3] Figures 1 and 2 and appendix A have not been printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, (202) 357-8118.

TABLE 1.—FACILITY LOCATION AND LAND REQUIREMENTS

Company and project	Location (County/State)	Facility	Width of construction ROW [1] (feet)	New ROW (feet) or site (acres)
CNG	Tompkins/NY	12.3 mi., 30-in. pipeline loop [2]	Not Given	Not Given.
Tennessee:				
Section 1	Madison/NY	2.1 mi., 30-in. pipeline loop	75	25.
Section 2	Rensselaer/NY	3.0 mi., 30-in. pipeline loop	75	25
Section 3	Hampden/MA	2.9 mi., 30-in. pipeline loop	75	25.
Section 4	Hampden/MA	5.7 mi., 30-in. pipeline loop	75	25.
Section 5	Worcester/MA	3.0 mi., 30-in. pipeline loop	75	25.
Section 6	Berkshire/MA	6.0 mi., 10-in. pipeline loop	75	25.
Section 7	Hampshire/MA	7.6 mi., 12-in. replacement pipeline [3]	40	10 (shift). [4]
Section 8	Worcester/MA	7.6 mi., 10-in. replacement pipeline	40	10 (shift).
Section 9	Hillsboro/NH	2.1 mi., 12-in. pipeline loop	40	10.
	Merrimack/NH	8.4 mi., 12-in. pipeline loop	40	10.
Section 10	Middlesex/MA	2.3 mi., 24-in. replacement pipeline	40	10 (shift).
Section 11	Essex/MA	2.5 mi., 12-in pipeline loop	40	10.
Tennessee	Columbia/NY	1,240 hp addition, Compressor Station 261		0.
	Worcester/MA	835 hp addition, Compressor Station 264		0.
CNG	Madison/NY	Facilities addition, Morrisville Meter Station		1.
Tennessee	Rockingham/NH	New meter station		1.
	Wyoming/NY	New meter station		1.

[1] ROW—right-of-way.
[2] Pipeline Loop—New pipeline would be installed parallel and adjacent to existing pipeline.
[3] Replacement pipeline—Old pipeline would be removed and larger pipeline would be installed in or near the same trench
[4] Shift—The width of the existing ROW would remain the same but would be relocated 10 feet to either side.

Related Nonjurisdictional Facilities

According to Tennessee, two intrastate pipelines, which are not under FERC jurisdiction, would be constructed if the Norex project is approved. EnergyNorth, Inc., plans to construct 3.5 miles of 8-inch-diameter pipeline in the town of Londonderry, New Hampshire, to serve commercial and industrial customers. The pipeline would originate from Tennessee's Concord Lateral and parallel state and local roads for its entire length, crossing mostly residential land. The route is shown on map 27. It is unknown at this time whether EnergyNorth, Inc., would construct the pipeline within the existing road right-of-way (ROW) or seek new ROW from adjacent property owners. Also, Berkshire Gas Company plans to build 2.5 miles of 8-inch-diameter pipeline near Northampton, Massachusetts, to enable it to receive Norex gas. The pipeline would cross state land for a few tenths of a mile and would then be parallel and within railroad and highway ROW's for the remainder of the route. The area is predominantly residential and commercial. The route is shown on map 30.

Construction Techniques

Constructing the proposed interstate pipeline would involve clearing and grading the construction ROW, excavating a trench of sufficient depth to allow 18 to 36 inches of cover over the line, welding and laying the pipeline, backfilling the trench, and regarding and seeding the ROW. In a number of locations blasting would be required to excavate the trench. Blast rock would be disposed of on-site, if approved by the landowner, or in local landfills. For the projects indicated in table 1 as pipeline replacements, the existing pipeline would be removed and the new line would be installed in or near the same ditch. For the pipeline loops, the new line would be installed parallel to the existing line and the permanent ROW would be widened by 10 to 25 feet. After construction, the construction ROW would revert in full to the landowner. Any new permanent ROW would be restricted from development for the life of the facility. All disturbed areas would be cleaned up, graded to conform to the original contours, and revegetated in accordance with the landowner's specifications or a revegetation plan.

Areas of Special Concern

Tennessee's pipeline would cross about 2 miles of wetland. Also, a number of creeks and rivers would be crossed, including the watersheds for Manchester, New Hampshire

(Tennessee's section 9) and Ithaca, New York (Consolidated's loop). High quality streams would be crossed during low-flow and non-spawning periods. Clean rock tramways or portable bridges would be used to reduce turbidity where equipment crosses streams. Some rivers, including the Housatonic and Nashua Rivers in Massachusetts, may contain sediments contaminated by polychlorinated biphenyls (PCB's), a toxic substance, within the area to be trenched. Directional drilling is proposed for the Housatonic River crossing to avoid disturbing contaminated sediments. A sediment analyses is proposed for the Nashua River to determine the content of PCB's. All stream, river, and wetland crossings would be subject to the Commission's environmental review process, state permit requirements, and the U.S. Army Corps of Engineers sections 404 and 10 permits.

Tennessee's proposed Section 3 pipeline near Agawam, Massachusetts, would cross Leonard Pond, a wetland that the U.S. Environmental Protection Agency has identified as being sensitive to disturbance. Section 6, near Pittsfield, Massachusetts, would cross Brattle Brook Park, a wetland that is habitat for a state-listed rare plant, and the Twin Meadows Wildlife Sanctuary, which is operated by the Massachusetts Audobon Society. Section 10 would cross the Middlesex Canal, which is on the National Register of Historic Places, and a historic homestead known as Butter's Farm, which was built in the late 1600's.

Tennessee's pipeline traverses a number of residential areas in Massachusetts. Tennessee has proposed route alternatives to avoid a subdivision on the east side of Holmes Road in Pittsfield, a subdivision on the east side of County Road North in Easthampton, and a residential area east of Russell Street in Peabody. According to Tennessee, there are no reasonable alternatives to avoid White Fox Estates in Agawam, a residential area between Elm and Williams Streets in Pittsfield, a subdivision between West and Oliver Streets in Easthampton, and a residential area between Lowell and Russell Streets in Peabody. For these areas, Tennessee proposes special construction techniques to minimize the work area and reduce the time of disturbance to any one location. All driveways, lawns, shrubs, fences, and other landscaping would be restored.

Tennessee's facilities are potentially contaminated by PCB's used in the past for lubricating fluids. Tennessee must file a plan for abandonment and disposal of the facilities with the FERC and the U.S. Environmental Protection Agency, and the plan must be approved prior to construction.

Environmental Issues

The EA will address a number of environmental concerns that have been raised in previous projects in the region, and specific concerns identified by the staff and various state and Federal agencies. The following issues have been identified to date:

Land Use

—Eminent domain.
—Impact on homes, future development, and public recreation areas.
—Impact on nature perserves.

Aesthetics

—Affect of appearance of ROW and above-ground facilities on neighborhoods and scenic areas.
—Affect of construction across scenic streams.

Pipeline Safety

—Probability of pipeline rupture.
—Blasting in populated areas.

Cultural Resources

—Effect of the project on properties listed on or eligible for the National Register of Historic Places.

Water Resources

—Effects of construction on potable water supplies.
—Excavation of stream sediments contaminated by toxic substances.

Wildlife

—Impact on fisheries.
—Impact on state and federally listed threatened and endangered species.

Vegetation

—Impact on wetlands.
—Short- and long-term effects on vegetation from clearing, seeding, and right-of-way management.

Soils and Geology

—Erosion control and revegetation.
—Effect on crop production and farmland.
—Proximity to bedrock and the effects of blasting.

Air and Noise

—Impact of additional compression on air quality and noise levels.

PCB's

—Removal and disposal of facilities contaminated by PCB's.

Alternatives

—Pipeline route variations and alternative system designs.

Comment Procedures

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal, state, and local agencies, to interested members of the public, and to those individuals that have sent letters to the Commission.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Comments from Federal, state, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments should be submitted on or before December 23, 1988, reference *Docket Nos. CP87–358–001 and CP87–428–001*, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. James Daniel, Project Manager, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, Environmental Analysis Branch, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426.

Maps showing the location of the proposed pipeline facilities have been provided to parties in this proceeding, to Federal, state, and local governmental agencies, and the public. Additional information on environmental matters concerning the proposal is available

BEST COPY AVAILABLE

from Mr. James Daniel, telephone (202) 357–5364.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27691 Filed 11–30–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–137–000 et al.]

Mid-Louisiana Gas Co. et al.; Natural Gas Certificate Filings

November 23, 1988.

Take notice that the following filings have been made with the Commission:

1. Mid-Louisiana Gas Company

[Docket No. CP89–137–000]

Take notice that on November 7, 1988, as supplemented on November 15, 1988, Mid-Louisiana Gas Company (Mid-La) 5251 DTC Parkway, Suite 550, Englewood, Colorado 80111, filed in Docket No. CP89–137–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Wintershall Pipeline Corporation (WIPC), under its blanket authorization issued in Docket No. CP86–214–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Mid-La would perform the proposed interruptible transportation service for WIPC, an intrastate pipeline, pursuant to a service agreement for transportation of natural gas dated June 1, 1988. The term of the transportation agreement is from the date of execution and shall remain in full force and effect for one year and month-to-month thereafter. Mid-La proposes to transport on a peak day up to 20,000 MMBtu per day; on an average day up to 20,000 MMBtu; and on an annual basis 7,300,000 MMBtu of natural gas for WIPC. It is stated that WIPC would pay Mid-La for all natural gas delivered pursuant to the transportation agreement in accordance with Mid-La's Rate Schedule IT–1. Mid-La states that it would transport natural gas for WIPC from points of receipt located in the Monroe Field, Louisiana to points of interconnections in that same field between its facilities and facilities owned by WIPC. Mid-La avers that the transportation would be behind field gathering systems and would involve potentially up to 20 different metering facilities. It is further averred that the meter runs involve approximately $2,000 each, so that the maximum expenditure would not exceed $40,000. The location of such facilities is Mid-La's field gathering facilities in the Monroe field, Ouachita, Morehouse and Union Parishes, Louisiana. Mid-La states that any expenses incurred from the construction of these interconnects would be paid for from cash on hand.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Mid-La commenced such self-implementing service on September 28, 1988, as reported in Docket No. ST89–406–000.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89–137–000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–263–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for Universal Frozen Foods Corporation (Universal Foods), all as more fully set forth in the request on file Corporation with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Universal Foods, on an interruptible basis, pursuant to a transportation agreement dated September 15, 1988. Northwest explains that service commenced September 24, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–301–000. Northwest further explains that the peak day quantity would be 8,000 MMBtu, the average daily quantity would be 100 MBtu, and that the annual quantity would be 36,500 MMBtu. Northwest explains that it would receive natural gas from various sources in Wyoming, Colorado, Utah, New Mexico, and Washington, and would redeliver the gas to Intermountain Gas Company, a local distribution company, Twin Falls County, Idaho.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89–253–000]

Take notice that on November 21, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–253–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide firm transportation service for General Motors Corporation (General Motors), an end-user, under the blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated October 1, 1988, and under its Rate Schedule PT-Firm, it proposes to transport up to 1,600 dekatherms (dt) per day equivalent of natural gas on a firm basis for General Motors from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to General Motors in Vermillion Parish, Louisiana.

Panhandle advises that service under § 284.223(a) commenced on October 1, 1988, as reported in Docket No. ST89–517. Panhandle further advises that it would transport 1,640 dt on an average day and 598,600 dt annually.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89–262–000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–262–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP86–578–000 on January 19, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated June 10, 1988, as amended October 20, 1988,

under Rate Schedule TI–1, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Chevron from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service may involve interconnections between Northwest and various transporters. Northwest states that it would receive the gas at existing points on its system in Colorado, Wyoming, New Mexico, Utah and Washington, and that it would transport and redeliver the gas to various delivery points located on Northwest's system in Washington, Oregon, Colorado and Wyoming.

Northwest advises that service under § 284.223(a) commenced October 10, 1988, as reported in Docket No. ST89–565 (filed November 7, 1988). Northwest further advises that it would transport 5,500 MMBtu on an average day and 2,000,000 MMBtu annually.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP89–264–000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–264–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Occidental Chemical Company (Occidental), an end-user, under the blanket certificate issued in Docket No. CP86–578–000 on January 19, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated July 14, 1988, under Rate Schedule TI–1, it proposes to transport up to 5,000 MMBtu per day equivalent of natural gas for Occidental, which transportation service may involve interconnections between Northwest and various transporters. Northwest states that it would receive the gas from the existing Green River receipt point in Sweetwater County, Wyoming, the Ignacio receipt point in La Plata County, Colorado, the Opal Plant receipt point in Lincoln County, Wyoming, and the Sumas receipt point in Whatcom County, Washington, and that it would transport and redeliver the gas to the North Tacoma Meter Station delivery point to Washington Natural Gas in Pierce County, Washington.

Northwest advises that service under § 284.223(a) commenced October 17, 1988, as reported in Docket No. ST89–610 (filed November 8, 1988). Northwest further advises that it would transport 40 MMBtu on an average day and 15,000 MMBtu annually.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP89–266–000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–266–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Williams Gas Marketing (Williams), a marketer, under the blanket certificate issued in Docket No. CP86–578–000 on January 19, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated September 26, 1988, as amended September 26, 1988, under Rate Schedule TI–1, it proposes to transport up to 12,000 MMBtu per day equivalent of natural gas for Williams, which transportation service may involve interconnections between Northwest and various transporters. Northwest states that it would receive the gas from existing wells located in Lincoln, Sublette and Sweetwater Counties, Wyoming, to the Moxa Arch delivery points located in Lincoln County, Wyoming, and the Opal Plant delivery point located in Lincoln County, Wyoming.

Northwest advises that service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89–509 (filed November 2, 1988). Northwest further advises that it would transport 8,000 MMBtu on an average day and 3,000,000 MMBtu annually.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP89–195–000]

Take notice that on November 14, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89–195–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a tap and related jurisdictional facilities necessary to deliver gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically proposes (1) to construct and operate a sales tap on its Line 4–1–4 in Grant County, Oklahoma, to deliver gas to ALG for service to Glen Webster, a domestic customer who would use approximately 240 Mcf per year; (2) to construct and operate a sales tap on its Line 633 in Pontotoc County, Oklahoma, to deliver gas to ALG for service to Tommy Palmer, a domestic customer who would use approximately 160 Mcf per year.

AER states that gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

Comment date: Janaury 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27657 Filed 11–30–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89-214-000, et al.]

Texas Gas Transmission Corp. et al.; Natural Gas Certificate Filings

November 25, 1988.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP89-214-000]

Take notice that on November 16, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-214-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of ARMCO, Inc. (ARMCO), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 42,743 MMBtu equivalent of natural gas on a peak day for ARMCO, 20,000 MMBtu equivalent on an average day and 15,601,195 MMBtu equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-163.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-211-000]

Take notice that on November 16, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-211-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc. (Mobil), a shipper of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 30,000 dt equivalent on an average day and 3,650,000 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for Mobil's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Northern Natural Gas Company in Kiowa County, Kansas. It is explained that the service commenced September 22, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-238.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-142-000]

Take notice that on November 7, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-142-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible transportation service provided by Tennessee for Northern Natural Gas Company (Northern) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it was authorized to provide the transportation service for Northern pursuant to certificate authorization granted in Docket Nos. CP84-415-000 and CP84-417-000 and that the underlying transportation agreements expired on November 1, 1988. Tennessee further states that Northern has agreed to the abandonment and that Tennessee will continue transporting the gas for Northern under its blanket certificate authorization issued pursuant to Part 284 of the Commission's Regulations.

Comment date: December 16, 1988, in accordance with Standard Paragraph F at the end of the notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89-210-000]

Take notice that on November 14, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-183-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper of natural gas and agent for IBS, Inc., an end-user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 200 dt equivalent of natural gas on a peak day for Mountain Iron, 100 dt equivalent on an average day and 36,500 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for Mountain Iron's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Central Illinois Light Company in Illinois. It is explained that the service commenced September 26, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-322.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-183-000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-183-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Franklin Boxboard Corporation (Franklin), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 1,323 MMBtu equivalent of natural gas on a peak day for Franklin, 979 MMBtu equivalent on an average day and 482,895 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Franklin's account at various existing receipt points on Texas Gas' system and that Texas Gas would

deliver equivalent volumes in Butler County, Ohio. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–167.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89–193–000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–193–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of CSX NGL Corporation (CSX NGL), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 85,000 MMBtu equivalent of natural gas on a peak day for CSX NGL, 50,000 MMBtu equivalent on an average day and 31,025,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas at various existing receipt points on Texas Gas' system and would deliver equivalent volumes in Louisiana and offshore Louisiana. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–169.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP89–191–000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–191–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Georgia-Pacific Corporation (Georgia-Pacific), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 1,628 MMBtu equivalent of natural gas on a peak day for Georgia-Pacific, 1,628 MMBtu equivalent on an average day and 594,220 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Georgia-Pacific's account at existing receipt points on Texas Gas' system in Texas and Louisiana and would redeliver equivalent volumes of gas in Butler County, Ohio. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–164.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Gas Transmission Corporation

[Docket No. CP89–190–000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–190–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Middletown Paperboard Company (Middletown), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 1,500 MMBtu equivalent of natural gas on a peak day for Middletown, 1,000 MMBtu equivalent on an average day and 547,500 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Middletown's account at various existing receipt points on Texas Gas' system and would redeliver equivalent volumes in Butler County, Ohio. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–165.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP89–189–000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–189–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Olin Corporation (Olin), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 7,500 MMBtu equivalent of natural gas on a peak day for Olin, 5,500 MMBtu equivalent on an average day and 2,737,500 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Olin's account at various existing points on Texas Gas' system in Texas, Louisiana, offshore Louisiana and Arkansas, and that Texas Gas would deliver equivalent volumes in Meade County, Kentucky. It is stated that the transportation service would be effected using facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–168.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP89–231–000]

Take notice that on November 17, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–231–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Gulf Coast Industrial Gas, Inc. (Gulf Coast), under its blanket certificate issued in Docket No. CP86–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 1,000 MMBtu of natural gas per day for Gulf Coast on an interruptible basis pursuant to a transportation agreement dated September 26, 1988, between Texas Gas and Gulf Coast. Texas Gas states that it would receive the gas for Gulf Coast's account in St. Mary Parish, Louisiana and would redeliver the natural gas for the account of Gulf Coast in Acadia Parish, Louisiana. It is indicated that the ultimate consumer of the gas would be Tomke Aluminum.

Texas Gas states that the estimated average daily quantity would be 1,000 MMBtu and that the annual quantities would be 365,000 MMBtu. It is further stated that service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89–420. Texas Gas indicates that the service would have an initial term continuing through the end of the month in which the agreement is dated and continue on a monthly basis thereafter. Texas Gas proposes to charge Gulf Coast a rate pursuant to Texas Gas' currently effective Rate Schedule T. No new facilities are proposed herein.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP89–182–000]

Take notice that on November 14, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, field in Docket No. CP89–182–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Westvaco Corporation (Westvaco), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 10,177 MMBtu equivalent of natural gas on a peak day for Westvaco, 4,500 MMBtu equivalent on an average day and 3,714,605 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Westvaco's account at various existing receipt points on Texas Gas' system in Texas, Louisiana, offshore Louisiana and Arkansas, and that Texas Gas would deliver equivalent volumes to Westvaco in Wickliffe County, Kentucky. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced September 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–162.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89–180–000]

Take notice that on November 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–180–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Cornerstone Production Corporation (Cornerstone), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport on an interruptible basis up to 50,000 dekatherm (dkt) of natural gas per day on behalf of Cornerstone pursuant to a transportation agreement dated October 5, 1988 as amended on October 27, 1988, between Tennessee and Cornerstone. Tennessee would receive gas at various existing points of receipt on its system in Louisiana, offshore Louisiana, Texas, Mississippi, Massachusetts, Pennsylvania, New York, New Jersey, Ohio and West Virginia and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in multiple states.

Tennessee further states that the estimated average daily and annual quantities would be 50,000 dkt and 18,250,000 dkt, respectively. Service under § 284.223(a) commenced on October 5, 1988, as reported in Docket No. ST89–557, it is stated.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Inexco Oil Company

[Docket No. CI73–715–001]

Take notice that on November 8, 1988, Inexco Oil Company (Inexco) of 909 Poydras Street, New Orleans, Louisiana 70160, filed an application pursuant to section 7(c) of the Natural Gas Act and §§ 2.75 and 157.23, *et seq.* of the Commission's regulations requesting that the Commission amend Inexco's certificate in Docket No. CI73–715 issued under the optional procedure in § 2.75 of the Commission's regulations to authorize the continued sale by Inexco of its interest in natural gas from the Furlow B–2 well located in DeSoto Parish, Louisiana, to Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Inexco also requests waiver of § 2.75 of the Commission's regulations to the extent necessary to permit amendment of its certificate as requested.

In support of its application, Inexco states that by amendment dated August 1, 1988, the Furlow B–2 well was added to its January 1, 1949, contract with Southern. Inexco indicates that sales from the Furlow B–2 well were previously covered by the operator OXY USA Inc. under its certificate in Docket No. G–2712 and related FERC Gas Rate Schedule No. 351.

Comment date: December 9, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held

without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary

[FR Doc. 88-27658 Filed 11-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-29-000]

Tennessee Gas Pipeline Co.; Filing

November 25, 1988.

Take notice that on November 21, 1988, Tennessee Gas Pipeline Company (Tennessee) filed alternative tariff sheets to its FERC Gas Tariff in response to the Commission's Order on Rehearing issued October 31, 1988 in Docket No. RP88-228-002. By that Order, the Commission requires Tennessee to develop Demand$_2$ Rates for its firm transportation and sales customers based on customer nominations of annual requirements for service rather than the customers' certificated annual entitlements to service. The Commission did not, however, relieve Tennessee of its obligation to provide service to its customers up to their full certificated annual entitlements.

Tennessee states that in order to establish a balance of obligations between Tennessee and its customers and to provide an incentive for customers to communicate accurate market signals by their D_2 nominations, Tennessee is proposing that the Commission accept one of the three alternatives.

Tennessee states that the tariff sheets listed as Alternative I implement a D_2 nomination procedure for its firm sales and transportation customers and establish an Authorized Overrun Demand Charge. This Demand Charge is applicable to the difference between the customer's certificated service entitlement and his D_2 nomination and compensates Tennessee for standing ready to provide service up to the customers' full certificated entitlement.

Tennessee states the tariff sheets listed as Alternative II implement a D_2 nomination procedure for its firm sales and transportation customers and provide for the suspension of Tennessee's service obligation in excess of a customer's D_2 nomination. Tennessee retains the right to provide service but may file to permanently abandon its certificated sales service to the extent that service permits Tennessee to deliver quantities in excess of a customer's D_2 nomination. Tennessee is also establishing an authorized overrun provision which includes penalties in the event a customer takes quantities in excess of his D_2 nomination without Tennessee's prior approval. To the extent a firm sales customer does take unauthorized overrun quantities, revisions to Tennessee's Purchased Gas Adjustment provide for the direct billing of any increase in gas costs incurred by Tennessee as a result of those authorized takes. Tennessee has also revised Article XXIV (Curtailment) and XXVI (Annual Quantity Limitations) of the General Terms and Conditions consistent with the customers' right to nominate their own service levels. To the extent a customer nominates less than his certificated annual entitlement to service, the customer's end-use quantities will be reduced pro rata across all end-use priorities. Lastly, Tennessee has revised its R Rate Schedule to eliminate the 10 cent rate discount now available to Tennessee's AQL restricted customers to the extent one of those customers nominates a D_2 quantity less than his current annual quantity entitlement.

Tennessee states that the tariff sheets listed as Alternative III are the same as Alternative II excluding the service suspension provisions of Alternative II.

Tennessee has also filed Tenth Revised Sheet No. 20 to correct an inadvertent error in its Daily Demand Rate.

The tariff sheets are proposed to be effective February 1, 1989.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27659 Filed 11-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-31-000]

West Texas Gathering Co.; Tariff Filing

November 25, 1988.

Take notice that on November 21, 1988, West Texas Gathering Company ("West Texas"), 550 WestLake Park

Blvd., Suite 170, Houston, Texas 77079, submitted for filing Original Sheet Nos. 1–41 of its FERC Gas Tariff, Original Volume No. 2. The Tariff filing sets forth rates, terms and conditions for gas transportation service.

West Texas states that its tariff filing is designed to open access to West Texas' services, within the contemplation of Part 284 of the Commission's Regulations, 18 CFR Part 284. West Texas' tariff filing sets out transportation rates which include minimum and maximum rates separately identifying cost components attributable to transportation and gathering costs, includes a cost basis for rates, and expresses rates on an MMBtu basis, all as required by the Commission's Regulations.

West Texas states these tariff sheets provide that they are filed to be made effective on November 21, 1988. West Texas has requested such waiver of the Commission's regulations as may be required in order to permit the proposed effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's regulations. All such motions or protests must be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27660 Filed 11–30–88; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Boulder Canyon Project Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension of consultation and comment period for a proposed power rate adjustment.

SUMMARY: The Western Area Power Administration (Western) announced in the **Federal Register** published June 22, 1988 (53 FR 23446), a proposed adjustment of the rates for power and energy from the Boulder Canyon Project (BCP). In that notice, Western scheduled a public information forum for June 30, 1988, with the consultation and comment period to end August 8, 1988. Western also stated that consideration would be given to an extension of the consultation and comment period if requested by customers or interested parties.

Western received several requests for an extension of 45 days to the originally published consultation and comment period. The basis for the extension was to allow all interested parties an opportunity to review and analyze a new energy forecast, a new method of forecasting future replacement requirements, and new rate calculations.

After reviewing those requests for extension, Western concurred with the requests and rescheduled for September 7, 1988, the public comment forum previously scheduled for July 22, 1988. In addition, the ending date of the consultation and comment period was changed to September 22, 1988. This was noticed in the **Federal Register** at 53 FR 29085, August 2, 1988.

An additional public comment forum was scheduled (53 FR 38779, October 3, 1988) for October 28, 1988, and the end of the consultation and comment period extended to November 14, 1988.

Due to the need for further data input and analysis the October 28, 1988, public comment forum was canceled by written notification to the BCP customers and interested parties and is rescheduled by this **Federal Register** notice. Also, the consultation and comment period is being extended.

DATES: The consultation and comment period which began with the notification of the BCP rate adjustment (53 FR 23446, June 22, 1988) will end December 30, 1988. A public comment forum will be held at 10 a.m. on December 15, 1988.

ADDRESSES: The public comment forum will be held at the Boulder City Area Office, 3 miles south on Buchanan Road, Boulder City, Nevada, on the dates and times cited above. Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255.

Issued at Golden, Colorado, November 23, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88–27718 Filed 11–30–88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140109; FRL–3484–6]

Access to Confidential Business Information by ICF Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF Incorporated (ICF) of Fairfax, VA for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.306(j), EPA has determined that ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully work specified under this contract. EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these materials on a need-to-know basis.

Under contract No. 68–D8–0116, ICF, 9300 Lee Highway, Fairfax, VA, will assist the Office of Toxic Substances' Economics and Technology Division by providing market, economic, and financial information to support activities under sections 4, 5, 6, and 8 of TSCA. All access to TSCA CBI under this contract will take place at EPA Headquarters and ICF's facilities. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

ICF has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA

Confidential Business Information" security manual. EPA has approved the ICF security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. ICF personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-27665 Filed 11-30-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications Privacy Advisory Committee; Meeting

Notice is hereby given that the General Services Administration's (GSA's) Federal Telecommunications Privacy Advisory Committee will meet on December 16, 1988, from 8:30 a.m. to 4:00 p.m., at the General Services Administration Building, 18th and F Streets NW, Washington, DC, Room 5141B. The agenda will include a discussion of the Committee's report.

The meeting will be open to the public.

Questions regarding this meeting should be directed to John J. Landers, (202) 523-4968.

Dated: November 22, 1988.

John J. Landers,

Director, Office of Administration, Information Resources Management Service.

[FR Doc. 88-27710 Filed 11-30-88; 8:45 am]

BILLING CODE 6820-25-M

Advisory Committee on the FTS2000 Procurement; Closed Meeting

Notice is hereby given that a two-day meeting of the General Services Administration's (GSA's) Advisory Committee on the FTS2000 Procurement is scheduled for Sunday, December 4, 1988, from 10:00 a.m. to 4 p.m. and Monday, December 5, 1988, from 8:30 a.m. to 4 p.m. The meetings will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. The agenda will include a review of the evaluation of the best and final offers and the award recommendation.

The meetings will be closed to the public because procurement sensitive matters will be discussed. The exemptions for closing the meetings are cited in 5 U.S.C. 552b (c) (4) and (9) (B) (Government in the Sunshine Act).

Fewer than fifteen days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers, (202) 523-5308.

Dated: November 22, 1988.

John J. Landers,

Director, Office of Administration, Information Resources Management Service.

[FR Doc. 88-27709 Filed 11-30-88; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Funding Priorities for Grants for Graduate Training in Family Medicine

The Health Resources and Services Administration announces the final funding priorities for Grants for Graduate Training in Family Medicine which will be used in addition to other criteria in making grant awards for Fiscal Year 1989.

Section 786(a) authorizes the Secretary to make grants to public or nonprofit private hospitals, accredited schools of medicine or osteopathy, and other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project provides for the project requirements;

2. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

3. The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as completing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed funding priorities for Grants for Graduate Training in Family Medicine were published in the Federal Register of August 15, 1988 (53 FR 30717).

One comment was received during the 30-day comment period in support of attracting and retaining health professionals and increasing primary care services to special populations e.g., HIV/AIDS patients and the elderly. Therefore, the funding priorities as proposed are retained as follows:

1. Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increases of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees.

2. Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designed clinic/center serving an underserved population.

3. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of HIV/AIDS patients.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

5. Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

This program is listed at 13.379 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: November 23, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-27617 Filed 11-30-88; 8:45 am]

BILLING CODE 4160-15-M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS through November 15, 1988. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute:

1. Any allegation in a petition that the petitioner either;

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition."

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions Received

1. Harry Gregson on Behalf of Ashley Gregson, Anchorage, Alaska, Claims Court Docket No. 88-1V.

2. Thomas Mikulich on Behalf of Jennifer Mikulich, West Allis, Wisconsin, Claims Court Docket No. 88-2V.

3. John and Phyllis McNerney on Behalf of Mark McNerney, Des Moines, Iowa, Claims Court Docket No. 88-3V.

4. Lewis and Maude Ray on Behalf of Shelby Ray, Maceo, Kentucky, Claims Court Docket No. 88-4V.

5. Yang Kue on Behalf of Khoua Kue, Providence, Rhode Island, Claims Court Docket No. 88-5V.

6. Ann Heeley on Behalf of Brad Heeley, Sidney, Ohio, Claims Court Docket No. 88-6V.

7. Roland Brandt on Behalf of Carol Brandt, St. Paul, Minnesota, Claims Court Docket No. 88-7V.

8. James and Doris Hart on Behalf of Amanda Hart, Huber Heights, Ohio, Claims Court Docket No. 88-8V.

9. Marian Rick on Behalf of Brett Rick, Delevan, New York, Claims Court Docket No. 88-9V.

10. Richard and Charlotte Freeman on Behalf of Richard Freeman, Jr., St. Paul, Minnesota, Claims Court Docket No. 88-10V.

11. Gene and Shirley Pompey on Behalf of Shayla Pompey, Panama City, Florida, Claims Court Docket No. 88-11V.

12. Maria Marrero on Behalf of Edna Marrero, Brooklyn, New York, Claims Court Docket No. 88-12V.

13. Susan Workman on Behalf of Abby Workman, Chandler, Arizona, Claims Court Docket No. 88-13V.

14. Charlotte Willcox on Behalf of David Willcox, Clarksville, Indiana, Claims Court Docket No. 88-14V.

15. Daniel and Sandra Greene on Behalf of Chad Greene, Tarrant County, Texas (mother), Hamilton County, Tennessee (father), Claims Court Docket No. 88-41V.

16. Tatsu and Lucy Kubo on Behalf of Jessica Kubo, Dallas County, Texas, Claims Court Docket No. 88-42V.

17. Austin and Susan Campbell on Behalf of Austin B. Campbell, Jr., Bell County, Texas, Claims Court Docket No. 88-40V.

18. Barbara G. Zeagler, Sarasota, Florida, Claims Court Docket No. 88-18V.

19. Rose Marie Whitledge on Behalf of Fredrick Allen Whitledge, Henderson, Kentucky, Claims Court Docket No. 88-34V.

20. Tracey and John Prochaska on Behalf of Daniel Thomas Prochaska,

Sacramento, California, Claims Court Docket No. 88–21V.

21. Sharon and William E. Bagnal, Jr. on Behalf of William Craig Bagnal, Moncks Corner, South Carolina, Claims Court Docket No. 88–16V.

22. Jane Rich on Behalf of Ranee Rich, Cheyenne, Wyoming, Claims Court Docket No. 88–19V.

23. Martin C. Philpott on Behalf of Lisa Faye Philpott, Roanoke, Virginia, Claims Court Docket No. 88–20V.

24. Brenda Meland on Behalf of Joshua Schroeder, Northwood, Iowa, Claims Court Docket No. 88–22V.

25. Kenneth and Mary Lou Schneider on Behalf of Glen Philip Schneider, Dallas, Texas, Claims Court Docket No. 88–23V.

26. Charles J. Brown on Behalf of Conway Beverley Carter Brown, Richmond, Virginia, Claims Court Docket No. 88–24V.

27. Linda W. Hanagan on Behalf of Eric L. Hagaman, Woodbury, Minnesota, Claims Court Docket No. 88–25V.

28. Donald J. Matthews Sr. on Behalf of Donald J. Matthews Jr., Holmes, Pennsylvania, Claims Court Docket No. 88–15V.

29. John and Carolyn Moorhead on Behalf of Donald Moorhead, Indiana, Pennsylvania, Claims Court Docket No. 88–27V.

30. Donald W. Newman on Behalf of Donald W. Newman, Jr., Tampa, Florida, Claims Court Docket No. 88–17V.

31. Frances L. Fairl on Behalf of Michael Lee Fairl, Ft. Worth, Texas, Claims Court Docket No. 88–28V

32. Denise L. Scott on Behalf of Christopher James Gallagher, Arlington, Texas, Claims Court Docket No. 88–29V.

33. Paula Dianne Garlington on Behalf of Chris Damon Garlington, Rapides, Louisiana, Claims Court Docket No. 88–31V.

34. Linda Wedzicha on Behalf of Dax Y. Wedzicha, Dade County, Florida, Claims Court Docket No. 88–36V.

35. Nicole C. and Stephen R. Bevis on Behalf of Steven Michael Robert Bevis, Palm Beach, Florida, Claims Court Docket No. 88–45V.

36. Orville Danny and Joyce Evelyn Cope on Behalf of Nickie Brent Cope, Sneedville, Tennessee, Claims Court Docket No. 88–39V.

37. Haley Suzanne and Clyde D. Raines on Behalf of Joseph Daniel Raines, Morristown, Tennessee, Claims Court Docket No. 88–37V.

38. Thomas McKinley on Behalf of Benjamin McKinley, Centerville, Virginia, Claims Court Docket No. 88–35B.

39. Virgil M. and Judy S. Creek on Behalf of Virgil M. Creek II, Newburgh, Indiana, Claims Court Docket No. 88–43V.

40. Velinda Clark on Behalf of She'Kena Clark, Augusta, Georgia, Claims Court Docket No. 88–44V.

41. Antonia L. Johnston on Behalf of Jason Johnston, Washtenaw County, Michigan, Claims Court Docket No. 88–30V.

42. Stephanie Riveaux on Behalf of Lisa Riveaux, Brooklyn, New York, Claims Court Docket No. 88–26V.

43. Dan and Julie Lolley on Behalf of Johnathan Geary Lolley, Riley, Kansas, Claims Court Docket No. 88–33V.

44. Mary Ellen and Harold David Strother on Behalf of Harold David Strother, Jr., Pensacola, Florida, Claims Court Docket No. 88–32V.

45. Larry and Nora Bazan on Behalf of Noeh Bazan, Kleberg County, Texas, Claims Court Docket No. 88–38V.

Dated: November 23, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88–27690 Filed 11–30–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Vacancy; Osage Tribal Education Committee

November 22, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice, announcement of vacancy—Osage Tribal Education Committee.

SUMMARY: A Member At Large vacancy has occurred on the Osage Tribal Education Committee. The purpose of this announcement is to solicit nominations from individuals or from Osage organizations on behalf of nominees for this vacancy.

DATES: Applications and nominations must be made no later than January 3, 1989.

ADDRESSES: Deputy to the Assistant Secretary/Director—Indian Education (Indian Education Programs), Room 3512, 18th & C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Virgil Akins, Bureau of Indian Affairs, Office of Indian Education Programs, Main Interior Building, Mail Stop Room 3522, 18th & C Streets NW., Washington, DC 20240, (202) 343–4871.

SUPPLEMENTARY INFORMATION: Because a Member At Large vacancy has occurred on the Osage Tribal Education Committee, this announcement solicits nominations from individuals or from Osage organizations on behalf of nominees for this vacancy. All vacancies on the committee will be filled as described in 25 CFR 122.5(e)(5). The period of time for receiving applications shall not exceed 30 days with the expiration date to be announced by the assistant Secretary.

The requirements of the Member at Large are:

(a) Must be an adult person of Osage Indian Blood, who is an allottee or a descendant of an allottee; and

(b) May include residents who are living anywhere in the United States.

The nominee or his representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If one is nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Hazel E. Elbert,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–27648 Filed 11–30–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[NV–930–09–4212–24; Nev–066601]

Termination of Segregative Effect of Airport Lease; Nevada

November 23, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Termination of segregative effect, Nevada.

SUMMARY: This notice terminates the segregative effect of airport lease, Nev-066601.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Walker, District Manager, Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289–4865.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2091.3–2(a)(2), the segregative effect, as it pertains to the following described lands, will terminate on January 3, 1989:

Mount Diablo Meridian, Nevada

T. 6 N., R. 66 E.,
Sec. 15, SW¼SE¼;

Sec. 22, W½E½;
Sec. 27, W½NE¼.

The airport lease application was filed on October 25, 1965, at which time the lands became segregated from all forms of appropriation.

The lease has expired and the lessee, Federal Land Bank Association of Utah, no longer has a need for the facility. Improvements have been removed and the airstrip has been appropriately marked to indicate closure.

At 10:00 a.m., on January 3, 1989, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applications received prior to or at 10:00 a.m., on January 3, 1989, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on January 3, 1989, the land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remains open to mineral leasing and material sale laws.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 88-27649 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-HC-M

[ES-030-09-4212-11; ES-00157-003; MNES-31841]

Land Classification for Recreation and Public Purposes, Carlton County, MN

SUMMARY: The following described parcels have been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (43 U.S.C. 869):

Fourth Principal Meridian, Minnesota

1. MNES-31841, Carlton County: T.48N., R.16W., Tracts 37, 38, 39, 40, 41 and 42 totaling 4.22 acres

The purpose of the conveyance is the preservation of the islands in their natural state and management as a part of Jay Cooke State Park.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States. Classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act.

This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this notice, or upon publication of a Notice of Termination.

COMMENTS: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION: Detailed information concerning this application is available for review at the Milwaukee District Office, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203; or by calling Larry Johnson at (414) 291-4413.

Bert Rodgers,

District Manager.

[FR Doc. 88-27707 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-PN-9

[UT-060-09-4100-10]

Environmental Statements; MOAB District, UT

AGENCY: Bureau of Land Management, Moab, Utah, Interior.

ACTION: Change in grazing management plan on allotments involving four Wilderness Study Areas (WSA's).

SUMMARY: Notice of a 30-day comment period on an environmental analysis of impacts of changing grazing management on allotments which include portions of the following WSA's: Westwater Canyon UT-060-118, Wrigley Mesa UT-060-116, Jones Canyon UT-060-117, Black Ridge Canyons West CO-070-113A.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Grand Resource Area, P.O. Box M, Moab, Utah 84532, (801) 259-8193.

Gene Nodine,

District Manager.

[FR Doc. 88-2754 Filed 11-30-88; 8:45 am]

BILLING CODE 4130-DQ-M

[AZ-020-09-4212; AZA-21945 through AZA-21951]

Realty Action; Competitive Sale of Public Lands in Yavapai County; AZ

The Bureau of Land Management will offer seven tracts of land for public sale. These tracts are located near Wickenburg, Arizona. It has been determined that the sale of these tracts is consistent with section 203 of the Federal Land Policy and Management Act of October 21, 1976. These tracts will be sold at no less than the appraised fair market value.

The subject lands are located at:

Gila and Salt River Meridian, Yavapai County, Arizona

Serial No.	Legal description	Acres
AZA-21945	T. 8 N., R. 5 W., sec. 15, NE¼NE¼NW¼.	10.00
AZA-21946	T. 8 N., R. 5 W., sec. 15, SE¼NE¼NW¼.	10.00
AZA-21947	T. 8 N., R. 5 W., sec. 15, W½NE¼NW¼.	20.00
AZA-21948	T. 8 N., R. 5 W., sec. 15, NW¼NW¼.	40.00
AZA-21949	T. 8 N., R. 5 W., sec. 15, N½SW¼NW¼.	20.00
AZA-21950	T. 8 N., R. 5 W., sec. 15, W½SE¼NW¼.	20.00
AZA-21951	T. 8 N., R. 5 W., sec. 15, E½SE¼NW¼.	20.00

The above aggregates 140.00 acres of land in Yavapai County.

Federal law limits the sale of this land to United States citizens, corporations subject to the law of any State or of the United States, States, State instrumentalities or political subdivisions authorized to hold property, and any entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. The purchaser is deemed to be the individual(s) or corporation that will actually take title to the land from the government; the citizenship limitation does not apply to agents who bid on behalf of an associate, client, or employer.

All of the parcels listed will be subject to the following reservations when patented.

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine, and remove such deposits.

The following tracts will be sold subject to the following reservations:

1. Tracts AZA–21945-AZA–21951 will be sold subject to BLM road right-of-way A–18698.

2. Tract AZA–21949 will be subject to BLM road right-of-way A–18699.

Additionally, all parcels will be sold subject to the Wickenburg Inn grazing lease No. AZ–026–2530. The purchaser of the land will honor the terms and conditions of this lease until February 28, 1991. The purchaser will not charge more than the BLM grazing fee schedule for a given year. Modification of these terms and conditions will occur only through mutual agreement between the purchaser and the lessee.

The successful bidder will also be required to purchase the mineral estate at or before the time of final payment.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of non-discretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws, for a period of 270 days or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the **Federal Register**, prior to the expiration of the 270 day period.

Additional information regarding these tracts of land will be contained in the sales brochure made available at least 30 days prior to the sale. This additional information includes: (1) Bidding instructions, (2) date(s) of sale, (3) appraised fair market value of the tracts, (4) any reservations or terms and conditions that apply to the tracts of land, (5) maps showing the location of the tracts of land, (6) requirements of parties wishing to bid, and (7) payment procedures for this successful bidder.

For a period of forty-five (45) days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior. Comments regarding this action or requests for additional information should be sent to the Phoenix District Manager, Bureau of Land Management, 2015 W. Deer Valley Road, Poenix, Arizona 85027.

Henri R. Bisson,

District Manager.

Date: November 22, 1988.

[FR Doc. 88–27703 Filed 11–30–88; 8:45 am]

BILLING CODE 4310–32–M

[CA–010–09–3110–CAPL; Casefile # CA 23587]

Realty Action; Exchange of Public and Private Lands in Kern and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, CA 23587.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.32S., R.32E.
Sec. 22 N1/2N1/2, SE1/4NE1/4, SW1/4NW1/4, W1/2SW1/4.

Containing 320 acres of public land.

In exchange for these lands, the United States will acquire an equal value of lands within the Carrizo Plain Natural Area from The Nature Conservancy, a private, nonprofit organization.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the Carrizo Plain Natural Area. This Natural Area would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna.

The ultimate goal of the Bureau of Land Management is to acquire approximately 155,000 acres within the Natural Area. A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage. The public interest will be well served by completing the exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws, mining laws, and mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

After the exchange is completed, The Nature Conservancy plans to offer the former BLM land for sale to adjacent landowners or other interested parties. The Nature Conservancy's representative can be contacted at (415) 325–9669; 541 Bryson, Palo Alto, CA 94306.

The exchange will be on an equal value basis. Acreage of the private land will be adjusted to approximate equal values. Full equalization of value will be achieved by future exchanges under a pooling agreement with the Nature Conservancy.

Land transferred from the United States will retain the following reservation:

A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Date: November 4, 1988.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 88–26120 Filed 11–30–88; 8:45 am]

BILLING CODE 4310–40–M

[CO–010–08–4212–13; COC–45800]

Realty Action; Exchange of Lands in Jackson and Grand Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1986 (43 U.S.C. 1716, the Bureau of Land Management, Kremmling Resource Area has identified the following described lands in Jackson and Grand Counties as suitable for disposal by exchange.

Selected Land: 6th Principal Meridian

T. 5N., R. 81W.,

Sec. 4:		
	Lot 3	39.34
	Lot 4	39.35
	W½SE¼	80
	SE¼SW¼	40
	N½SW¼	80
	S½NW¼	80
Sec. 5:		
	NE¼SE¼	40
	SE¼NW¼SE¼	10
Sec. 7: Lot 6		45.10

Sec. 9:
- Lot 2 ..... 43.99
- Lot 5 ..... 44.60
- Lot 6 ..... 44.59
- Lot 10 ..... 45.14
- Lot 11 ..... 45.16
- Lot 12 ..... 45.19
- Lot 14 ..... 45.73
- Lot 15 ..... 45.71

T. 5N., R. 81W.,
Sec. 17:
- Lot 1 ..... 46.24
- Lot 2 ..... 46.25
- Lot 6 ..... 46.48

Containing 952.87 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following described lands and interests from Mr. Everett Randleman.

Offered Land and Interest in Land: 6th Principal Meridian

T. 7N., R. 80W.,
- Sec. 27: E½SW¼, SW¼SW¼, SE¼ 280
- Sec. 28: SE¼ 160
- Sec. 34: NW¼NE¼, NW¼ 200

Containing 640 acres of non-federal land, more or less.

One third (⅓) interest in the 3.5 second feet of water allowed to flow in the Burke Ditch under Priority No. 54.

All interest in the 12 second feet of water allowed to flow in the New Burke Ditch under Priority No. 182.

FURTHER INFORMATION AND PUBLIC COMMENT: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue his final determination. In the absence of objections, this realty action will become a final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of other public lands.

The values of lands to be exchanged are approximately equal: full equalization of value will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All mineral resources and related rights shall be reserved to the United States together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. All valid existing rights and reservations of record including the following: Powerline rights-of-way C–8481 and C–8482. Access road right-of-way D–057181.

4. Continued grazing use for a period of two years consistent with grazing permits 1746, 1832, 1737, unless waived.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing and exchanges under section 206 of FLPMA. The segregated effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

Jerry L. Kidd,
Acting District Manager.

[FR Doc. 88–27706 Filed 11–30–88; 8:45 am]
BILLING CODE 4310–JB–M

[NV–930–09–4212–11; N–48112]

Realty Action; Lease of Public Land for Recreation and Public Purposes; Carson City, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action classifying public land.

SUMMARY: The following described 15 acres of public land has been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 15 N., R. 21 E.,
Sec. 6, W½NE¼W½ of Lot 2 of the NW¼, NW¼W½ of Lot 2 of the NW¼.

A 5-year lease with the option to renew will be offered to Carson City for the subject 15 acres of land to be used as a model airplane-radio control flying field.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will be subject to:

1. Those rights for transmission line purposes granted to Sierra Pacific Power Company by Right-of-Way Grant Nev-059133.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public Purposes Act, the mineral leasing laws, and material sales. The segregative effect will terminate as specified in an opening to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: November 22, 1988.

James W. Elliott,
District Manager.

[FR Doc. 88–27702 Filed 11–30–88; 8:45 am]
BILLING CODE 4310–HC–M

[NM–060–4760–90; 73098]

Realty Action; Noncompetitive Sale of Public Lands in Eddy County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—New Mexico 73098.

SUMMARY: The following land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 State 2750, 43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 17 S., R. 30 E., NMPM
Sec. 21: Lots 91, 92, 93, containing 2.6 acres

The land is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from date of this notice, whichever occurs first.

The land is being offered by direct sale to Eddy County for use as a transfer station for refuse collection. Refuse will be regularly transported to a permanent landfill location. The subject lands are not required for any other Federal purpose and meet the disposal criteria of the regulations contained in 43 CFR 2710.03(a) and 43 CFR 2711.3–3(a)(2).

The patent, when issued, will contain certain reservations to the United States and will be subject to three existing rights-of-way. Detailed information concerning these reservations, as well as specific conditions of the sale are available for review at the Carlsbad Resource Area Office, Bureau of Land Management, 101 East Mermod Street, Carlsbad, New Mexico 88220.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at 1717 West Second Street (P.O. Box 1497), Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 88–27705 Filed 11–30–88; 8:45 am]

BILLING CODE 4310–FB–M

[OR–010–09–4212–14:GP9–041]

Realty Action; Direct Sale of Public Land in Lake County, OR

The following lands are suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (and 1719), at no less than the appraised fair market value.

Serial No.	Legal description	Acreage	Value	Minimum deposit (percent)	Bidding procedure
OR 39536	T.27S., R.19E. Willamette Meridian, Oregon Sec. 18: NW¼SE¼, Sec. 20 NE¼NW¼, Sec. 28: E½SW¼, Sec. 29: SE¼SE¼.	200	$12,250	20	Direct

The above described land(s) are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever occurs first.

The sale will be held 60 days after publication of this notice at the Bureau of Land Management, Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. These parcels represent four (4) isolated parcels which are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal Agency. No significant resource values will be affected by this disposal. The sale is in conformance with BLM's planning for the land involved and the public interest will be best served by offering this land for sale.

Bidders Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

Direct Sale Procedures

Direct sale procedures are being used since competitive sale is not appropriate and the public interest would be best served by a direct sale. Benefits to direct sale would be: (1) The elimination of scattered isolated public land inholdings from an existing ranch property; and (2) to allow the ranch to acquire title to the inholdings which it currently uses as an integral part of the ranch operation.

The parcels identified in this notice are to be offered to ZX Land and Cattle Company, using direct sale procedures authorized under 43 CFR 2711.3–3. The land will be sold at fair market value to the designated purchaser without competitive bidding. The designated purchaser will be required to render the minimum percent bid deposit indicated, by the sale date, and the balance of the purchase price within 180 days from the date of sale. If the required desposit is not submitted and the balance of the full purchase price not rendered within 180 days of the sale date, the preference right is cancelled, and the deposit will be forfeited.

Terms and Conditions of the Sale

The terms, conditions and reservations applicable to the sale are as follows:

1. As to the parcels identified in this notice, all minerals will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of October 21, 1976; and

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945; and

3. Patents will be issued subject to all valid existing rights and reservations of record; and

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

Unsold Parcels

If any of the parcels identified by serial number OR 39536 are not sold on the date of the sale, the parcels will then be offered to the public, using competitive sale procedures 43 CFR 2711.3–3, until sold or withdrawn from the market. Sealed bids will be solicited at the BLM, Lakeview District Office, during regular business hours, 7:45 a.m. to 4:30 p.m. All bids received will be opened the first Wednesday of each subsequent month. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

Comments

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Lakeview, Oregon. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: November 23, 1988.

Judy Ellen Nelson,

District Manager.

[FR Doc. 88-27699 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-33-M

[WY-060-09-4212-14, WYW-88722]

Reschedule of Realty Action for Public Lands in Goshen County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Reschedule of sale date for realty action in Goshen County, Wyoming.

SUMMARY: The sale date for land parcel WYW88722, T. 23 N., R. 62 W., Sixth Principal Meridian, Section 29, W½SW¼, Section 32, NW¼, for 240 acres is hereby rescheduled for January 22, 1989. The sale will be held according to the procedures and conditions of the Notice of Realty Action published in the **Federal Register** on Thursday, July 30, 1987 (52 FR 28488-28-489).

FOR FURTHER INFORMATION CONTACT: Bill Mortimer, Area Manager, Platte River Resource Area Office, P.O. Box 2420, 815 Connie Street, Mills, WY 82644, phone (307) 261-5001.

Katheryne Alexander,

Acting District Manager.

Date: November 25, 1988.

[FR Doc. 88-27704 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-22-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

November 22, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 22, 1988.

The supplemental plat creating new lot 31 in section 25, T. 14 S., R. 70 W., Sixth Principal Meridian, Colorado was accepted November 2, 1988.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Marlin G. Livermore,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-27653 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-932-09-4214-10; C-48465]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado; Correction

November 21, 1988.

In 53 FR 12826 dated Tuesday, April 19, 1988, second column, make the following corrections:

1. T. 10 S., R. 103 W., sec. 22, lots 5 thru 8, NE¼NW¼, E½SE¼NE¼, and E½NE¼SW¼, is corrected to read sec. 22, lots 5 thru 8, NE¼NW¼, E½SE¼ NW¼ and E½NE¼SW¼.

2. T. 10 S., R. 104 W., sec. 34, N½N½N E¼, N½N½NE¼NW¼, W½NW¼ and NW¼SW¼, is corrected to read sec. 34, N½N½NE¼, N½NE¼NW¼, W½NW¼, and NW¼SW¼.

Andrew J. Senti,

Acting Chief, Branch of Realty Programs.

[FR Doc. 88-27708 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Paul C. Kao, Northridge, CA, PRT-733207.

The applicant requests a permit to purchase one male and two female captive-hatched nene geese (*Nesochen* (=*Branta*) *sandvicensis*) from Mr. Mike Lubbock, Sylvan Heights Waterfowl, Sylva, North Carolina, for captive breeding purposes.

Applicant: AAZPA Species Survival Plan for Black Rhino, c/o Ed Maruska, Cincinnati Zoo, Cincinnati, OH, PRT-733166.

The applicant requests a permit to import five pairs of wild-caught black rhinoceroses (*Diceros bicornis minor*) from Zimbabwe for captive breeding in accordance with the guidelines set forth by the AAZPA, Game Conservation International, and the Government of Zimbabwe. The rhinos will be placed with the following institutions for breeding: La Coma Ranch, Texas; San Diego Zoo, California; Fort Worth Zoo, Texas; Dallas Zoo, Texas; and Milwaukee Zoo, Wisconsin.

Applicant: LSA Associates, Inc., Point Richmond, CA, PRT-733333.

The applicant requests a permit to live-trap and release Stephens' kangaroo rats (*Dipodomys stephensi*) in Riverside County, California, for determination of this species' presence in proposed project sites.

Applicant: Zoological Society of San Diego, San Diego, CA, PRT-733111.

The applicant requests a permit to import one female harpy eagle (*Harpia harpyja*) from the Instituto Nacional para el Desarrollo de Recursos Naturales Renovables, Bogata, Columbia, for the purpose of enhancement of propagation. This eagle was removed from the wild and has been held in captivity since 1978.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: November 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-27722 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: San Diego Zoological Society, San Diego, CA, PRT-732876.

The applicant requests a permit to import one captive-born male Bactrian deer (*Cervus elaphus bactrianus*) from the Zoologischer Garten Koln, West Germany, for the purpose of enhancement of propagation.

Applicant: Steve Oehlenschlager, Maple Grove, MN 55369, PRT-732816.

The applicant requests a permit to purchase in interstate commerce one pair of captive-born nene geese (*Nesochen* (=*Branta*) *sandvicensis*) from Nugent's Wild Waterfowl, Kimbolton, Ohio, for enhancement of propagation.

Applicant: Zoo Atlanta, Atlanta, GA, PRT-732817.

The applicant requests a permit to import one female captive-born drill (*Papio leucophaeus*) from Wilhelma Zoo, Stuttgart, West Germany, for enhancement of propagation.

Applicant: Duane Patrick, Bradford, TN, PRT–732814.

The applicant requests a permit to purchase in interstate commerce three pair of captive born nene geese (*Nesochen* (=*Branta*) *sandvicensis*) from Charles Nugent, Kimbolton, Ohio, for enhancement of propagation.

Applicant: Burnet Park Zoo, Syracuse, NY, PRT–732960.

The applicant requests a permit to export up to 500 ml. of plasma taken from one captive-held male Asian elephant (*Elephas maximus*) to Cheryl Niemuller-Hare, Science Department, Ontario Veterinary College, Guelph, Ontario, Canada, for the purpose of scientific research.

Applicant: J. Gordon Barrows, Winston, GA, PRT–719755.

The applicant requests a permit to sell in interstate commerce and export in foreign commerce artificially propagated specimens of the following endangered cacti: *Coryphanta minima* (=*Mammillaria nelliae*), *C. ramillosa*, *Echinocereus fendleri* v. *kuenzieri* (=*E. reichenbachii* v. *albertii*, *E. triglochidiatus* v. *arizonicus*, *E. t.* v. *inermis*, *E. viridiflorus* v. *davisii*, *E. lloydii*, and *Pediocactus knowltonii* for enhancement of propagation.

Applicant: San Diego Zoological Society, San Diego, CA, PRT–732995.

The applicant requests a permit to import one captive-born female crested gibbon (*Hylobates concolor*) from the Hong Kong Zoological and Botanical Gardens, Hong Kong, for the purpose of enhancement of propagation.

Applicant: San Diego Zoological Society, San Diego, CA, PRT–732996.

The applicant requests a permit to import one male and two female captive-born Siberian musk deer (*Moschus moschiferus moschiferus*) from the Academy of Sciences, Institute of Evolutionary Animal Morphology and Ecology, Moscow, Russia, for the purpose of enhancement of propagation.

Applicant: Arthur C. Searles, East Patchogue, NY, PRT–732973.

The applicant requests a permit to import two pairs of captive-hatched scarlet-chested (=spendid) parakeets (*Neophema splendida*) and two pairs of captive-hatched turquoise parakeets (*Neophema pulchella*) from John Bennett, Ontario, Canada, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm), Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: November 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–27723 Filed 11–30–88; 8:45 am]

BILLING CODE 4310–AN–M

Minerals Management Service

Development Operations Coordination Document; Pelto Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pelto Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 9698, Blocks 42 and 43, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on November 22, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit: Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–27655 Filed 11–30–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Union Texas Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5387, Block 236, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 22, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of

the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday) A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-27656 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Farmington River Study Committee, Nominating Subcommittee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that a meeting of the Nominating Subcommittee of the Farmington River Study Committee will be held on Saturday, December 3. The meeting will convene at 3:30 p.m. at the Otis Town Hall, Rte 8, following a field trip of the full Committee.

The Committee was established pursuant to Pub. L. 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the Wild and Scenic River Study of two segments of the Farmington River.

The meeting of the subcommittee is open to the public. Members of the public may follow the committee on the field trip which departs from the Otis Town Hall at 9 a.m. For additional information, contact: Public Affairs Office, North Atlantic Regional Office, National Park Service, tel: (617) 565-8888.

Date: November 23, 1988.

John J. Guthrie,

Acting Regional Director.

[FR Doc. 88-27627 Filed 11-30-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 303X)]

Burlington Northern Railroad Co.; Abandonment Exemption in Barnes County, ND

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 7.67-mile line of railroad between milepost 9.64 near Rogers and milepost 17.31 near Dazey, in Barnes County, ND.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 30, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by December 12, 1988. Petitions to stay regarding matters that involve environmental issues and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 20, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Ethel A. Allen, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 5, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (53 FR 48440-48446).

upon environmental or public use conditions.

Decided: November 25, 1988.

By the Commission.

Jane F. Mackall,

Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27738 Filed 11-30-88; 8:45 a.m.]

BILLING CODE 7035-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before January 17, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedules. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the time of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United State. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU 88-7 and -19). Facilitative records relating to communications projects program management and acquisition.

2. Department of the Air Force (N1-AFU-88-35). Nuclear Reactor maintenance and operation records.

3. Department of the Army (N1-AU-88-13). Routine textual and machine-readable records relating to the management of U.S. Army Libraries.

4. Federal Emergency Management Agency, Office of Training (N1-311-88-2). National Emergency Training Center application and stipend agreement forms.

5. Department of Justice, Executive Secretariat, Information Management Staff (N1-60-88-14). Citizen mail of the Executive Secretariate.

6. National Labor Relations Board (N1-25-88-1). Electronic records created by routine automated case tracking and handling, personnel, and procurement systems.

7. National Security Agency (N1-457-89-4). This NSA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and Pub. L. 86-36.

8. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation (N1-431-88-5). Regulatory Effectiveness Reviews (RER) of selected nuclear power plants.

9. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Coordinator for Population Affairs (N1-59-88-36). Reference, administrative, and facilitative records. Records documenting policies and programs are permanent.

10. Tennessee Valley Authority Office of Power, Division of Energy Use and Distributor Relations (N1-142-87-10). Comprehensive records schedule.

11. Tennessee Valley Authority Office of Power, Division of Energy Use and Distributor Relations (N1-142-88-12). Commercial and Industrial Energy Survey records and database.

12. Department of Transportation (N1-398-88-2). Copies of proposed and final rules as published in the **Federal Register** and related documents.

Dated: November 21, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 88-27652 Filed 11-30-88; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 72—Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High Level Radioactive Waste.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses would be required every 20 years for an Independent Spent Fuel Storage Facility (ISFSI) and every 40 years for a Monitored Retrievable Storage (MRS) facility.

5. *Who will be required or asked to report:* Licenses and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

6. *An estimate of the number of responses:* 12.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Approximately 1,191 hours per response for applications and reports, plus approximately 5.175 hours annually per recordkeeper. The total industry burden is 18,267 hours.

8. *An indication of whether section 3504(h), Pub. L. 96–511 applies:* Not applicable.

9. *Abstract:* 10 CFR Part 72 establishes requirements, procedures, and criteria for the issuance of licenses to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage, in an independent spent fuel storage installation, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high level radioactive waste, and other associated radioactive materials, in a monitored retrievable storage facility.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 18th day of November 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–27678 Filed 11–30–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel For Decontamination of Three Mile Island, Unit 2; Renewal

The United States Nuclear Regulatory Commission (NRC) announces the renewal of the Advisory Panel for Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of the charter for this advisory committee is in the public interest in order for NRC to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damage at Three Mile Island Nuclear Power Station Unit 2. The charter which continues the Panel through November 28, 1990, has been filed with the appropriate Congressional Committees and the Library of Congress.

For Further Information Contact: Michael Masnik Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 301–492–1373.

Date: November 28, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–27679 Filed 11–30–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40–8943]

Draft Finding of No Significant Impact Regarding the Issuance of a Source Material License To Ferret Exploration Co. of Nebraska, Inc., Crow Butte Commercial Operation Location In Dawes County, NE

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue a commercial Source and Byproduct Material License. This license would allow in situ leach uranium recovery at the Crow Butte Operation located in Dawes County, Nebraska.

2. Reasons for Draft Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the Crow Butte Research and Development in situ leach operation and the licensee's application dated October 7, 1987. Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Ferret Exploration Company of Nebraska, Inc. is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR Part 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado and at the Commission's Public Document Room at 2120 L Street, Washington, DC.

Dated at Denver, Colorado, this 17th day of November, 1988.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 88–27680 Filed 11–30–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published October 20, 1988 (53 FR 41259). Those meetings which are definitely scheduled have had, or will have, an individual notice in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1988 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492–7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Containment Systems, December 6, 1988, Bethesda, MD. The Subcommittee will review the NRC staff's document on final recommendations for containment performance and improvements (BWR Mark I only).

Thermal Hydraulic Phenomena, December 7, 1988, Bethesda, MD. The Subcommittee will review: (1) The report of the joint NRC/B&W Technical Advisory Group on the need for follow-on research concerning thermal hydraulic phenomena of the B&W once through steam generator (OTSG), and (2) the final report of the NRC–RES Technical Program Group on the Code Scaling, Applicability and Uncertainty (CSAU) Evaluation Methodology.

Reliability Assurance, December 12, 1988, Bethesda, MD. The Subcommittee will continue the discussion of the Equipment Qualification-Risk Scoping Study with special emphasis on peer-review comments.

Mechanical Components, December 12, 1988, Bethesda, MD—CANCELLED.

Advanced Reactor Designs, December 13, 1988, Bethesda, MD. The Subcommittee will review the draft SER for the Sodium Advanced Fast Reactor (SAFR) design.

Regional Programs, January 5–6, 1989, Region IV Office, Arlington, TX. The Subcommittee will review the activities under the purview of the NRC Region IV Office.

Improved Light Water Reactors, January 10, 1989, Bethesda, MD. The Subcommittee will review: (1) the proposed final version of 10 CFR Part 52, Early Site Permits, Standard Design Certification, and Combined Licenses for Nuclear Power Reactors, and (2) the progress of the Requirements Document for the EPRI ALWR.

Auxiliary and Secondary Systems, January 11, 1989, Bethesda, MD. The Subcommittee will discuss Control Air System Design and Operating Experience, and the proposed resolution of Generic Issue 43, "Air Systems Reliability."

Mechanical Components, January 11, 1989, Bethesda, MD. The Subcommittee will discuss Air Operated Valve Testing and Operating Experience (including Solenoid Air Control Valves) and other related matters.

Auxiliary and Secondary Systems, January 27, 1989, Bethesda, MD. The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Mechanical Components, January 27, 1989, Bethesda, MD. The Subcommittee will review Generic Issues 70, "PORV Reliability," and 94, "Low Temperature Over Pressure Protection," and other related matters.

Babcock & Wilcox Reactor Plants, February 1 and 2, 1989, Sacramento, CA. The Subcommittee will discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985, overcooling event. Topics include monitoring extended start-up program, as well as, plant and organization changes as a result of the restart effort.

Safety Research Program, February 8, 1989, Bethesda, MD. The Subcommittee will discuss the ongoing and proposed NRC Safety Research program and budget.

Materials and Metallurgy, February 15–16, 1989, Columbus, OH. The Subcommittee will review the degraded piping program, including NDE and aging of centrifugally cast stainless steel piping material.

Occupational and Environmental Protection Systems, March 1–2, 1989, Bethesda, MD. The Subcommittee will discuss the general status of emergency planning for nuclear power plants.

Advanced Pressurized Water Reactors, Date to be determined (January), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR–DC).

Human Factors, Date to be determined (January), Bethesda, MD. The Subcommittee will review the Human Research Factors program plan.

Instrumentation and Control Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "Break Plus Single Failure in BWR Water Level Instrumentation."

Decay Heat Removal Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

General Electric Reactor Plants (Peach Bottom Restart), Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

Extreme External Phenomena, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review planning documents on external events.

AC, DC Power Systems Reliability, Date to be determined (February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

Materials and Metallurgy, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

Materials and Metallurgy, Date to be determined (April), Palo Alto, CA. The Subcommittee will discuss the status of the following matters: erosion/corrosion of pipes, hydrogen water chemistry, zinc addition to primary coolant loop and its effects on materials, decontamination

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effects on materials and other related matters.

Advanced Pressurized Water Reactors, Date to be determined (April), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Plant Operating Procedures, Date to be determined (early spring), Bethesda, MD. The Subcommittee will review the status of the NRC Program on Technical Specifications update. Also, to review anonymous letter to Weiss, dated September 27, 1988, on Technical Specifications inadequacies.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

ACRS Full Committee Meetings

December 15–17, 1988—Items are tentatively scheduled.

*A. *Meeting with Director, NRC Office of Research (Open)*—Discuss topics of mutual interest, including the status of implementation of recommendations of the National Research Council on Revitalizing Nuclear Safety Research and on Human Factors Research.

*B. *Quantitative Safety Goals (Open)*—Review and comment on proposed NRC Staff plan for implementation of NRC's Safety Goal Policy.

*C. *Containment Systems (Open)*—Review and comment on the final recommendations for containment performance and improvements for BWR Mark I containment.

*D. *Thermal-Hydraulic Phenomena (Open)*—Review NRC Code Scaling Applicability and Uncertainty (CSAU) Evaluation Methodology proposed for use with best-estimate ECCS evaluation models.

*E. *Equipment Qualification-Risk Scoping Study (Open)*—Review and comment on the Equipment Qualification-Risk Scoping Study.

*F. *LaSalle Power Oscillation Event (Open)*—Briefing regarding status of programs to address implications of the core power oscillation event which occurred recently at the LaSalle Nuclear Power Plant.

*G. *Reactor Operator Requalification (Open)*—Briefing regarding lessons learned from revised operator qualification methodology.

*H. *Sodium Advanced Fast Reactor (SAFR) (Open)*—Initial session to discuss the SAFR design.

*I. *NRC Regulatory Philosophy (Open)*—Discuss issues related to the NRC Regulatory Philosophy that need to be examined.

*J. *ACRS Subcommittee Activities (Open)*—Reports regarding status of assigned ACRS subcommittee activities, including thermal-hydraulic phenomena regarding status of joint NRC/B&W OTSG follow-on research program, and international conference on quality and quality assurance.

*K. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and topics proposed for consideration by the full Committee. Discuss ACRS/ACNW interface.

L. *Election of ACRS Officers (Closed)*—Discuss qualifications of members proposed as candidates for ACRS Officers for CY 1989.

*M. *Meeting with Director, OGPA (Open/Closed)*—Report regarding visit to USSR Nuclear installations.

January 12–14, 1989—Agenda to be announced.

February 9–11, 1989—Agenda to be announced.

ACNW Full Committee Meetings

5th Meeting, January 23–24, 1989—Agenda to be announced.

6th Meeting, February 22–23, 1989—Agenda to be announced.

7th Meeting, March 22–23, 1989—Agenda to be announced.

Date: November 25, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–27681 Filed 11–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 030–13105 and 030–17570; License Nos. 37–17637–01 and 37–17637–02; EA 88–248]

E.L. Conwell & Co.; Order To Show Cause Why License Should Not Be Modified

I.

E.L. Conwell & Company (licensee), Bridgeport, Pennsylvania, is the holder of Byproduct Material Licenses Nos. 37–17637–01 and 37–17637–02 issued by the Nuclear Regulatory Commission (the Commission or NRC). The licenses authorize the licensee, in part, to possess and use byproduct nuclear material in sealed sources (for use in nuclear gauges) to measure the properties of materials in accordance with the condition specified in the licenses. The licenses were most recently renewed on October 20, 1983 (License No. 37–17637–01) and February 5, 1987 (License No. 37–17637–02), and are due to expire on October 31, 1988, and January 31, 1992, respectively.

II.

On September 12–13, 1988, an announced radiation safety inspection of licensed activities was performed at the licensee's facility in Bridgeport, Pennsylvania, and at a temporary job location in Conshohocken, Pennsylvania. During the inspection at the field site on September 12, 1988, the NRC found that a Troxler nuclear density gauge, containing millicurie quantities of cesium-137 and americium-241, was being used at the field site, and the gauge, which was not secured, was not under constant surveillance and immediate control of a licensee employee as required. In addition, the NRC found that the source lock on the gauge was not in place (i.e., was not locked in the safe store position) when the gauge was not in use, and that the gauge was not accompanied by adequate shipping papers as required. Furthermore, when the inspector visited the same field site on the following day, he again found that the gauge was not locked in the safe store position when not in use, and again was not accompanied by the appropriate shipping papers as required. These failures constitute violations of NRC requirements.

III.

These violations raise significant regulatory concerns regarding the adequacy of management control of, and the degree of management attention to, NRC licensed activities, given the fact that (1) two of the three violations recurred within the same two day period, and (2) one of these two violations, involving a lack of adequate shipping papers, as well as the violation involving the failure to maintain constant surveillance or immediate control of unsecured gauges, had been identified during several previous NRC inspections. These previous inspections resulted in enforcement conferences being conducted with the licensee on November 19, 1985, and July 22, 1987,

and civil penalties of $500 and $1,000 being proposed for these violations on December 10, 1985, and August 18, 1987, respectively.

IV.

In addition to these violations, the NRC also found that in a letter dated September 9, 1988, from the licensee's General Manager to the NRC Region I, inaccurate information was provided to the NRC. The letter was sent to the NRC in response to a Notice of Violation issued on August 19, 1988, for two violations identified during an inspection in June 1988, including a violation involving the failure to include all of the required information on shipping papers. The letter stated that on September 7, 1988, the licensee had obtained and placed with each device a shipping document from the manufacturer which contained the transport index, chemical and physical form of radioactive material, and the category of label applied to the package. The statement was inaccurate in that an inspection of one of the devices on September 12 and 13, 1988, revealed that the shipping document described in the licensee's letter, dated September 9, 1988, was not with the device. This is a violation of 10 CFR 30.9.

V.

The licensee's continued failure to adhere to NRC requirements (as evidenced by the recurrence of previously identified violations), as well as the submittal of inaccurate information to the NRC, demonstrates that additional actions are needed, in addition to those currently imposed by the license, to increase and improve management attention to licensed activities so as to ensure that these activities are conducted safely and in accordance with NRC requirements. The NRC recognizes that the licensee, in a letter dated September 29, 1988, informed the NRC that subsequent to the enforcement conference, it (1) suspended use of the gauges until the provisions of the license have been reviewed with all certified technicians, and (2) established a disciplinary procedure for failure to comply with its prescribed procedures. Nonetheless, I have determined that the measures proposed by the licensee do not sufficiently address the underlying causes of the violations and that additional requirements are necessary to ensure that your licensed activities are conducted safely and in accordance with the terms of your license. Specifically, I have determined that the license should be modified to require that (1) the duties and responsibilities of the Radiation Safety Officer be more clearly defined, (2) a training program be established for gauge users, (3) a program of field audits of nuclear gauge users be implemented, and (4) a defined disciplinary program be developed and implemented for those nuclear gauge users who fail to comply with license requirements, as steps to preclude recurrence of these violations.

VI.

Accordingly, in view of the foregoing, and pursuant to sections 81, 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered that the licensee shall:

A. Within 30 days of the date of this order, submit to the Regional Administrator, Region I, a description of how the designated Radiation Safety Officer (RSO) will implement his responsibilities to:

1. Ensure that radioactive materials are handled, and licensed activities are conducted, in accordance with the terms of the license and NRC requirements;

2. Provide appropriate training, and periodic retraining, to all individuals handling licensed materials or performing licensed activities, including training concerning appropriate NRC requirements and the conditions of the license;

3. Perform appropriate audits of licensed activities at both the permanent facilities and temporary field sites, at a minimum at intervals not to exceed three months, for each individual who used a nuclear guage during any of those three months, to verify that all personnel are adhering to the conditions of the license; and

4. Advise all employees of the disciplinary policy that will be utilized for individuals who do not adhere to the conditions of the license.

B. Within 30 days of the date of this Order, submit to the Regional Administrator, Region I,

1. A detailed description of the specific training to be provided to all employees, and specific checklist(s) that the RSO will use in performing the quarterly audits;

2. A description of the disciplinary program that the licensee intends to follow to ensure that individuals are held accountable whenever NRC requirements are violated, and verification that the terms of the disciplinary program have been communicated to all licensee employees.

C. Maintain records of all training, retraining, and audits, for at least three years.

The Regional Administrator, Region I, may, in writing, relax, rescind, or terminate any of the above provision upon good cause shown.

VII.

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(d) by consenting to this Order. If the license fails to answer within the specified time or consents to this Order, this Order shall be final without further Order.

VIII.

The licensee, or any other person adversely affected by this Order, may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee, or any other person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue on Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland this 18th day of November 1988.

[FR Doc. 88-27682 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

VOL 53 ISS 231 DEC 1 1988 UMI

[Docket No. 50-302; License No. DPR-72; EA 87-216]

Florida Power Corp., Crystal River Unit 3; Order Imposing Civil Monetary Penalty

I.

Florida Power Corporation, Crystal River, Florida (licensee) is the holder of Operating License No. DPR-72 (license) issued by the Nuclear Regulatory Commission (Commission or NRC) on January 28, 1977. The license authorizes the licensee to operate the Crystal River facility in accordance with the conditions specified therein.

II.

NRC inspections of the licensee's activities under the license were conducted on October 14-16, 1987 and January 5-7, 1988. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was served upon the licensee by letter dated March 17, 1988. The NOV stated the nature of the violations, the provisions of the NRC's requirements that the license had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the NOV by letter dated May 16, 1988. In its response, the licensee admitted certain violations, denied other violations, and stated that the Enforcement Policy had been inapproprately applied in this case and that the facts of the matter support full remission of the civil penalty.

III.

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the violations, except for Violation I.C.4, occurred as stated and, for reasons set forth in the attached Appendix, the penalty proposed for the violations described in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated by 50 percent and imposed.

IV.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295 and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether the licensee committed the violations that are denied and whether the proposed civil penalty mitigated by 50 percent should be imposed.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Operations.

Dated at Rockville, Maryland this 17th day of November 1988.

Appendix—Evaluation and Conclusion

Introduction

On October 14-16, 1987 and January 5-7, 1988, inspections were conducted at the Crystal River facility. Violations identified during these inspections led to the issuance of a Notice of Violation and Proposed Imposition of Civil Penalty on March 17, 1988. Florida Power Corporation, in their response, admitted violations I.A.1 and 2, I.C.3 and 5, II.A and B; denied violations I.B., I.C.1, 2 and 4 and requested mitigation of the civil penalty. Provided below are: (1) a restatement of each violation denied, (2) a summary of the licensee's response regarding each denied violation, (3) NRC's evaluation of the licensee's response, (4) the licensee's request in support of withdrawal of the proposed civil penalty, and (5) NRC's conclusions regarding the violations and the proposed civil penalty.

I. Violation I.B

Restatement of Violation

10 CFR 19.12 requires that all individuals working in or frequenting any portion of a restricted area shall be instructed in the purpose and functions of protective devices employed, shall be instructed of their responsibility to report promptly to the licensee any condition which may lead to or cause a violation of Commission regulations and licenses or unnecessary exposure to radiation or to radioactive material, and shall be instructed in the appropriate response to warnings made in the event of any unusual occurence or malfunction that may involve exposure to radiation or radioactive material. The extent of these instructions shall be commensurate with potential radiation health protection problems in the restricted area.

Contrary to the above, the licensee failed to adequately provide instruction to an Auxiliary Nuclear Operator working in the restricted area of the Reactor Building on October 9, 1987, on the limitations and posible failure modes of a radiation survey instrument that had been provided for his use in controlling his exposure in the restricted area and on the appropriate response to take when the radiation level present exceeded the maximum scale reading on the radiation survey meter.

Summary of Licensee's Response

Florida Power Corporation denies the violation and believes it should be withdrawn. The ANO received training on radiation detection instruments during the Radiation Protection lesson provided in the Assistant Nuclear Auxiliary Operator course and the Auxiliary Nuclear Operator courses for non-licensed operators. This training included information on radiation detection principles, ionization chambers, proportional counters, and Geiger-Mueller (GM) tubes. The radiation detection instrument utilized by the ANO did not respond incorrectly or fail, it indicated an off-scale reading in response to the high radiation field to which it was exposed. Based on the individual's training and extensive work experience history including nuclear navy experience, non-licensed operator training, General Employee Training, and his Crystal River Unit 3 (CR-3) work experience, it is reasonable to assume he knew the correct response to an off-scale radiation detection instrument. It is also clear from the ANO's actions (i.e., pattern of brick removal, dosimetry positioning, warning of others, etc.) that additional training was unnecessary.

The ANO failed to take the proper actions not out of lack of training but due to his decision to perform work that exceeded the authorized scope of approved activities.

Florida Power Corporation subsequently provided specific supplemental retraining to the ANO on the use and limitations of survey instruments. Radiation Safety Procedures have also been enhanced with respect to response to off-scale readings, and General Employee Training has been enhanced to include failure modes of survey instruments. These actions by Florida Power Corporation represent positive actions to improve the training and instruction already provided to radiation workers. The NOV could be read to assume that adoption of these additional measures is an indication that previous practices were insufficient to meet regulatory requirements. Such a view is contrary to the Enforcement Policy in that it could discourage improvements out of fear that the NRC will construe such improvements as an admission of past violations.

NRC Evaluation

The inspection revealed that the ANO was trained in certain subjects related to survey instruments but, was not trained on the limitations and possible failure modes of radiation survey instruments and the correct response to take to off-scale readings. The inspector reviewed the lesson plans with licensee representatives and verified that these subjects were not addressed. The licensees subsequent statement that these topics were added to the training program also incidates they were not there when reviewed by the inspector. The staff cannot agree with the licensee's statement that it is reasonable to assume the individual knew the correct response to an off-scale instrument since the individual was confronted with that very situation and did not respond appropriately. Supporting this position is the fact that the second ANO also failed to respond to an off-scale survey instrument, indicating there most likely was a deficiency in their training in this area. The ANOs stated in interviews with the inspector that they had not received training on the correct response to take when off-scale instrument readings are observed. The NRC decision to cite this violation was based on a review of the facts and was not, as claimed by the licensee, based on construing their corrective actions as an admission of a violation. This violation was first presented in the October 16, 1987 exit interview as documented in the inspection report which occurred prior to the corrective actions described by the licensee. The licensee's corrective actions appear appropriate and in no way were used as a basis for identifying this circumstance as a violation.

NRC Conclusion

For the above reason, the NRC staff concludes that the violation occurred as stated.

II. Violation I.C.

Restatement of Violation

Technical Specification 6.11 requires that procedures for personnel radiation protection shall be prepared consistent with the requirements of 10 CFR Part 20 and shall be approved, maintained, and adhered to for all operations involving personnel radiation exposure.

Technical Specification 6.8.1.b requires that written procedures shall be established, implemented, and maintained covering refueling operations.

Contrary to the above, the licensee's procedures for personnel radiation protection and refueling operations were inadequate as evidenced by the October 8, 1987 reactor cavity access shielding removal event in that they did not specify that:

1. Permanent shielding removed during outage activities is to be reinstalled properly;

2. Health physics is to be notified prior to the removal of permanent shielding;

3. Health physics is to be notified when unexpected radiological conditions are encountered or scope of previously authorized work changed;

4. High radiation areas in the Reactor Building area are to be posted and controlled following a plant shutdown and prior allowing general access; and

5. Personnel assigned to observe for seal leakage in the Reactor Building while filling the fuel transfer canal are to be instructed in the procedure for observing leaks and the precautions to be observed while performing that task, particularly with regard to entries into the reactor cavity.

Summary of Licensee's Response

Florida Power Corporation admits the violation based on examples 3 and 5 but denies the violation with respect to examples 1, 2, and 4.

A. Licensee's Comment On Violation I.C.1

The original function of the lead bricks placed at the reactor cavity access was twofold. First to function as shielding and second as a barrier to prevent inadvertent access to the cavity area. Since FPC admits Violation I.A.1 which states the barrier was inadequate to meet the locked gate criteria, the shielding qualities of the barrier is the issue here. FPC contends that work instructions are adequate to control the removal and reinstallation of shielding.

The lead bricks were installed properly at the end of CR–3's 1985 refueling outage as can be shown by the reduction of radiation levels on radiation surveys taken in the reactor cavity area following the installation of the lead bricks. Shielding installation instructions are routinely included on Radiation Work Permits in the "Remarks and Special Instructions" section. A review of RWP's 85–550 and 85–551 which covered installation and removal of shielding for the 1985 refuel outage provided the following instructions:

(a) HP to direct placement of shielding.

(b) HP to be present at the start of each job.

These RWPs show that it is standard practice at CR–3 for Health Physics to oversee evolutions involving shielding.

FPC concludes that the lead bricks at the reactor cavity access were installed properly after the 1985 refuel outage inasmuch as they provided adequate shielding prior to their unauthorized removal. Therefore, adequate guidance was provided for the control of shielding.

NRC Evaluation

At the time the shield wall was replaced in 1985, the licensee intended the shield wall to function as the physical barrier to access the cavity area. The wall also served a radiation shielding function. The craft group reinstalled the shield wall without any written specifications and the adequacy of their work, either as a barrier or as shielding, was not formally reviewed upon completion. The instructions provided on RWP's 85–550 and 85–551 were also inadequate in that they failed to provide specifications for reinstallation of this shielding (e.g., shims were to be added such that the bricks could not be easily removed) and they did not call for HP to be present at the completion of the shielding installation to ensure that the shield had been properly installed. Thus, the licensee did not have adequate procedures in place to ensure that the shielding was properly reinstalled.

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B. Licensee's Comment On Violation I.C.2

All radiation workers at CR-3 are required to comply with Radiation Safety Procedures (RSPs). General Employee Training also specifies to never remove temporary shielding without Health Physics approval. The procedure RSP-101, "Basic Radiological Safety Information and Instructions for Radiation Workers," revision 8, was in effect at the time of the incident and states in section 3.1.3, "Rules within the RCA," step 3.1.3.7, "notify Health Physics personnel and obtain appropriate approvals prior to breeching any container, containment, system and/or component integrity." Section 2.3.5 defines containment(s)/container(s) as "any device (e.g., bag, box, drum, tent, glove box, etc.) used to control the release of radioactive material or radiation." The lead bricks served as a containment device and a radiological control device in regard to the high radiation area that existed in the cavity area. The ANO proceeded to remove the shielding contrary to radiation protection program instructions and procedural requirements in an effort to discover leakage from the seal plate. If the ANO had followed RSP-101, he would have contacted Health Physics prior to removing the shielding as required.

NRC Evaluation

The inspector determined that the licensee's procedures did contain guidance on notifying health physics before removing temporary shielding but did not address comparable controls for permanent shielding. The licensees position that shielding is considered a "containment device" and is therefore covered by their procedure goes beyond what one would reasonably expect a radiation worker to consider a containment. It should be noted that at the time of the inspection the licensee did not offer the explanation that they considered their shielding as containment. Assuming procedure RSP-101 was intended to address shielding, its guidance was inadequate to convey its intent.

C. Licensee's Comment On Violation I.C.4

In order for the Reactor Building to be accessed, RWPs must be issued. For an RWP to be issued, surveys must be performed in the designated work areas. When high radiation areas are identified during these surveys, they must be posted and controlled. Therefore, following a plant shutdown, surveys must be performed and high radiation areas posted and controlled prior to allowing general access to the Reactor Building. These actions are covered in HPP-106, "Radiation Work Permit Procedure," and HPP-202, "Scheduled Radiological Surveys and Controls." Therefore procedures are adequate to assure the Reactor Building is posted and controlled following a plant shutdown and prior to allowing general access.

NRC Evaluation

This violation is withdrawn.

III. Licensee's Request for Withdrawal of the Civil Penalty

Summary of Licensee's Position

Florida Power Corporation believes that the violations were the result of actions by individuals beyond the authorized scope and are not indicative of programmatic weakness in the radiation protection program. The NOV and the associated civil penalty could be read to imply that the adoption of improvements in response to the events in question is an indication of deficiencies in the program. Such a view is fundamentally unfair and is contrary to the Enforcement Policy in that it may tend to discourage voluntary improvements by licenses. The licensee urges caution is using the term "reactor cavity access" since this event differed significantly from this class of events in the industry's experience since access, per se, was never attempted.

The licensee reviewed the applicability of the mitigation factors in the NRC Enforcement Policy. The licensee promptly identified the problem and voluntarily reported the event to the NRC telephonically and with an LER. Immediate and followup corrective actions were extensive.

The licensee discussed the factors for escalation of the civil penalty stated in the March 17, 1988 letter transmitting the NOV. The licensee acknowledges that there had been an outstanding work order since 1985 to provide a lockable barrier for the cavity access, but priority on completing it was based on the presumed adequacy of the lead bricks as a barrier. Personnel who observed the ANO had reason to believe that he was authorized to remove the lead bricks, there was no reason for them to report any apparent improper radiological activities and none of the personnel had authority to stop the work.

In regard to the events described in the second violation, they were committed by the same individual, who was eventually terminated. The fact that the individual was allowed to remain in the high radiation area was reasonable considering the dose rates in the area.

In regard to the four prior notifications of similar events, the licensee stated that workers were made aware of the hazard and the shield wall barrier was evaluated for adequacy. No action taken by management can prevent individual actions which are outside the bounds of preestablished programs.

NRC Evaluation

The NRC Enforcement Policy states that licensee's are generally held responsible for the acts of their employees. The staff believes that the root cause of this problem was a lack of management controls in this area as evidenced by inadequate training and supervision as detailed in the NOV and not merely employee misconduct. The NRC's characterization of violations and severity levels was based on a review of the facts as determined by the onsite inspections and the licensee's presentation at the Enforcement Conferences. The NRC did not view the corrective actions as admissions of any problem not otherwise fully supported and indicated by the facts at hand. The NRC Enforcement Policy recognizes the importance of licensee initiative in identifying and correcting problems. The staff does not agree that this event was significantly different from other industry events of this type. A common element of each uncontrolled access to the cavity area involved potential or actual entry by personnel while searching for leaks. The ANO did not actually enter the cavity in this case, but could have had he removed additional shielding bricks. It is fundamental that individuals be knowledgeable of the potential hazards in the reactor cavity. The admission of Violation I.C.5 is in itself of significance.

Based upon the licensee's response regarding mitigation and escalation of the civil penalty, the NRC has reconsidered the amount of the civil penalty. The NRC recognizes that the licensee reported these events, even though they were not required to be reported, and has taken extensive corrective action. However, the NRC maintains that the licensee's Radiation Safety Program was deficient regarding the events because of: (1) The prior notice of similar reactor cavity events; (2) the fact that a work order to install a strongback on the existing lead brick barricade with an appropriate locking device was outstanding since 1985, and if completed would have prevented the occurrence of the reactor cavity access event; (3) the fact that there were several opportunities to discover the

reactor cavity access problem in that several members of the licensee's staff passed through the vicinity but did not recognize or report the problem; and (4) the fact that the violations involving unauthorized entries are similar to violations occurring in 1986. The NRC has also reevaluated this case with other similar cases including the two cases the licensee noted in its response (EA 84–13 involving Carolina Power and Light Company and EA 86–38 involving Florida Power and Light Company). These cases are not controlling since different circumstances were involved in each case. Even if similar circumstances were involved, it is not clear that the results in the two cases noted by the licensee are justified under the present Enforcement Policy in view of the significance of the violations. However, after reconsidering your reporting of these events and your extensive corrective actions against your past performance and prior notice of similar events, the NRC is mitigating the civil penalty to $50,000.

IV. NRC Conclusion

The NRC has reviewed Florida Power Corporation's response to the proposed imposition of civil penalty and arguments for withdrawal of the civil penalty. The NRC concludes that the violations, except for Violation I.C.4, occurred as stated in the proposed imposition of civil penalty and that an adequate basis for mitigation of the civil penalty has been provided by the licensee. Consequently, a proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 88–27683 Filed 11–30–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electrical Co.; Withdrawal of a Portion of an Application for Amendment to Facility Operating License No. NPF–1

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Portland General Electric Company (the Licensee) to withdraw its August 16, 1985 application as supplemented December 19, 1986, to amend the Trojan Nuclear Plant Technical Specifications (TS). The proposed amendment would have revised the Technical Specifications to allow relief from Limiting Condition of Operation 3.0.4 for several specifications. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on February 10, 1988 (53 FR 3958). By letter dated April 20, 1988 the licensee stated that a portion of the above application for amendment, TS 3.3.3.5, "Remote Shutdown Instrumentation," was withdrawn. The other items in the application for amendment were approved in Amendment No. 142, dated May 11, 1988.

For further details with respect to this action, see (1) the application for amendment dated August 16, 1985, as supplemented December 19, 1986, and (2) the licensee's letter of April 20, 1988 requesting withdrawal of the application. Both of the above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Portland State University Library, 731 SW Harrison Street, Portland, Oregon 92707.

Dated at Rockville, Maryland, this 16th day of October, 1988.

Roby Bevan,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–27684 Filed 11–30–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–461A]

Clinton Power Station; Proposed License Amendment; Merger of Licensees Soyland Power Cooperative, Inc., and Western Illinois Power Cooperative, Inc.; Request for Comments on Antitrust Issues

By application dated November 2, 1988, Illinois Power Company (IP) requested that Operating License NPF–62 for the Clinton Power Station (CPS) be amended to reflect a change in ownership interest in CPS. The change in ownership interest would result from the proposed merger of Soyland Power Cooperative, Inc. (Soyland) and Western Illinois Power Cooperative, Inc. (WIPCO), the two minority owners of CPS. The surviving entity resulting from the merger will be called Soyland Power Cooperative, Inc. and will own slightly less than 15% of CPS—an ownership share identical to the combined interests of Soyland and WIPCO.

IP, WIPCO and Soyland are currently the only licensees for CPS. The merger of WIPCO and Soyland will not result in the transfer of any interest in the license to an entity not currently a CPS licensee. Soyland will assume full responsibility for all CPS obligations currently being discharged by WIPCO. The proposed license amendment will not change IP's ownership share of CPS, nor will it change IP's commitments related to capital and operating and maintenance costs, and it will not affect IP's role as project manager for CPS.

Pursuant to 10 CFR 50.90 of the Commission's Rules and Regulations and section 105c of the Atomic Energy Act, as amended, the staff is publishing notice of receipt of the proposed amendment and requesting comments on its competitive impact. A copy of the application for amendment has been forwarded to the Attorney General for his review and comment. Moreover, a copy of the application for amendment will be available for public inspection in the local public document room at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727 and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Any person who wishes to express views pursuant to antitrust issues that may be raised by this amendment request, should submit said views within 15 days from the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 22nd day of November, 1988.

For The Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Office of Nuclear Reactor Regulation.

[FR Doc. 88–27692 Filed 11–30–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–346; License No. NPF–3; EA 88–234]

Toledo Edison Co., Davis-Besse Nuclear Power Station; Order Modifying License

I.

The Toledo Edison Company (Licensee) is the holder of Operating License No. NPF–3 issued by the Nuclear Regulatory Commission (NRC/Commission) on April 22, 1977. The license authorizes the Licensee to operate the Davis-Besse Nuclear Power Station (Davis-Besse) in accordance with the conditions specified therein.

II.

A special NRC safety inspection (Inspection Report No. 50–346/88027(DRP)) conducted during the period from May 4 through September 2, 1988, and an NRC investigation (Investigation No. 3–88–008) confirmed an allegation regarding the discriminatory layoff by the former Quality Control (QC)

Manager at Davis-Besse, Louis R. Wade, of a contract QC Inspector who had raised safety concerns to licensee senior management. Specifically, the NRC concluded that the termination of the QC Inspector was a discriminatory act in violation of 10 CFR 50.7 and is described in a Notice of Violation and Proposed Imposition of Civil Penalty being issued this date. The details of the 10 CFR 50.7 violation are as follows.

On July 10, 1986, a Potential Condition Adverse to Quality Report (PCAQR) was written by a QC Inspector concerning deficiencies in the installation of an electrical wire splice. Mr. Wade (who at the time was a QA engineer) was instrumental in having the PCAQR improperly invalidated instead of processing it in accordance with station procedures which require that PCAQRs be processed through the Shift Supervisor, the Plant Technical Support Department and the PCAQR Review Board. (Mr. Wade was promoted shortly thereafter to QC Supervisor and then to QC Manager in 1987.) Because the QC Inspector was still concerned about the issue and refused to dismiss it, Mr. Wade requested that he formally document and clarify his concerns. The QC Inspector reiterated his safety concerns and the improper way his concerns were handled in a memorandum dated October 10, 1986, and provided copies to the Quality Assurance (QA) Director and the Senior Vice-President, Nuclear. As a result of the QC Inspector's memorandum, the QA Director (Mr. Wade's supervisor) investigated the matter and subsequently after several discussions with Mr. Wade, issued a memorandum dated October 29, 1986, to Mr. Wade reprimanding him for his improper handling of the QC Inspector's safety concerns.

During the period between late September and early October 1986, in preparation for an upcoming reduction in contact QC Inspector workforce due to the end-of-outage reduction in workload, Mr. Wade requested that the lead QC inspectors provide him with a list indicating the layoff sequence for contract QC inspectors. This QC Inspector's lead considered the QC Inspector to be one of approximately four or five inspectors who were good performers with multidisciplinary inspection skills who should not be laid off if possible. There is no question that the QC organization thought highly of the QC Inspector who was considered a competent and respected inspector. Despite the recommendation to retain the QC Inspector if possible, Mr. Wade directed that the QC Inspector be laid off. Therefore, on October 31, 1986, the QC Inspector was laid off. In addition, the QC Inspector was one of the first contract QC Inspectors to be laid off and he was the first QC Inspector to be laid off from his particular QC section. Moreover, within 15 days, the vacancy in that section created by his employment termination was filled by another contract QC Inspector.

At the enforcement conference on September 26, 1988, the licensee informed the staff that it had removed Mr. Wade's site access on September 23, 1988, and that it had terminated Mr. Wade's employment effective November 1988.

III.

In addition to the discrimination issue addressed in section II above, additional concerns have been identified relative to the performance of Mr. Wade. A second special NRC safety inspection (Inspection Report No. 50–346/88012 (DRP)) confirmed other allegations of activities conducted by or under the direction of Mr. Wade. A Notice of Violation concerning several violations identified during this inspection was issued on September 22, 1988.

IV.

Based on the results of the NRC inspection and investigation, the staff has concluded that Mr. Wade intentionally removed the QC Inspector from the Davis-Besse facility for raising a safety issue. For almost two years, until disclosure by the NRC, the effect of this act had the potential to "chill" the proper actions of others. The conduct of Mr. Wade removing the QC Inspector who was properly raising safety issues cannot be tolerated. The public health and safety requires an effective quality assurance program in order to provide assurance that licensed activities are properly conducted. Moreover, a basic tenet of the Commission's quality assurance requirements, is that quality control workers must be free to be able to raise safety concerns without fear of retaliation.

The actions of Mr. Wade as described in sections II and III above, demonstrate that he cannot be relied upon to assure that quality assurance programs are properly conducted and that quality control workers will be permitted and encouraged to raise safety issues. Therefore, I have determined that I no longer have reasonable assurance that licensed activities conducted by or under the supervision of Mr. Wade will be conducted in accordance with NRC requirements. Accordingly, I have concluded that it is necessary for the NRC to be informed if Mr. Wade is rehired to permit the NRC to determine, at that time, whether further regulatory action is required.

V.

Accordingly, pursuant to sections 103, 161 b, 8, and o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered that:

License No. NPF–3 is amended adding the following conditions:

The Licensee shall provide the NRC Regional Administrator, RIII, written notice within one week of Mr. Louis R. Wade's reinvolvement in safety-related activities authorized under License No. NPF–3. The notice shall include a statement from the Licensee as to its basis for concluding that, in light of Mr. Wade's conduct which resulted in his removal, he will properly carry out licensed activities.

The Regional Administrator, Region III, may relax or terminate this condition for good cause shown.

VII.

The Licensee, Mr. Wade, or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the Licensee requests a hearing, that person shall set forth with particularly the manner in which the petitioner's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the Licensee, Mr. Wade, or any other person adversely affected by this Order to request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland this 21st day of November 1988.

[FR Doc. 88-27685 Filed 11-30-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer—Kenneth Fogash, (202) 272-2141.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

Proposed Extension of Regulation S-X (17 CFR 210)

SEC File No. 270-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted regulation S-X (17 CFR 210) for approval of an extension of clearance.

Information collected and records prepared pursuant to Regulation S-X focus on the form and contents of, and requirements for, financial statements filed with periodic reports and in connection with the offer or sale of securities.

The potential respondents include all entities that file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Regulation S-X specifies the form and content of financial statements when those financial statements are required to be filed by other rules and forms under the Federal securities laws. Compliance burdens associated with the financial statements are assigned to the rule or form that directly requires the financial statements to be filed, not Regulation S-X. Instead, an estimated burden of one hour traditionally has been assigned to Regulation S-X for incidental reading of the regulation. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms. Direct any comments concerning the accuracy of estimated average burdens hours for compliance to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6004 and to Gary Waxman at the address listed below.

Submit comments to OMB Desk Officer: Gary Waxman (202) 395-7450, Office of Management and Budget, Paperwork Reduction Project 3435-0009, Office of Information and Regulatory Affairs, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

November 22, 1988.

[FR Doc. 88-27666 Filed 11-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16654; 812-7116]

Boston Financial Qualified Housing Tax Credits L.P. III and Arch Street III, Inc.; Application

November 25, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Boston Financial Qualified Housing Tax Credits L.P. III, a Delaware limited partnership, (the "Partnership") and its managing general partner, Arch Street III, Inc., a Massachusetts corporation ("Managing General Parnter").

Relevant 1940 Act Sections: Exemption under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order exempting the Partnership from all provisions of the 1940 Act and the rules thereunder to permit the Partnership to invest in other limited partnerships that in turn will engage in the development, rehabilitation, ownership and operation of low and moderate income housing projects.

Filing Date: The application was filed on September 8, 1988 and amended on November 10, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 101 Arch Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership was formed on August 9, 1988, as a vehicle for equity investment in apartment complexes to be qualified, in the opinion of counsel, for the low income housing tax credit (the "Low Income Housing Credits") under the Internal Revenue Code of 1986, as amended ("Code"). An unlimited amount of the aggregate capital contributions of the limited parnters ("Limited Partners") of the Partnership may be invested in nonsubsidized apartment complexes that will be qualified for the Low Income Housing Credits, although the Partnership expects to invest a majority of its net proceeds in subsidized apartment complexes.

2. The Partnership will operate as a "two-tier" entity, i.e., the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships") which, in turn, will engage in the development, rehabilitation, ownership and operation of apartment complexes in accordance with the purpose and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The Partnership's investment objectives are: (i) To provide current tax benefits in the form of tax credits which Qualified Investors (defined herein) may use to offset their federal income tax liability; (ii) to preserve and protect the Partnership's capital; (iii) to provide limited cash distributions which are not expected to constitute taxable income during Partnership operations; and (iv) to provide cash distributions from sale or refinancing transactions, as defined in the Partnership's partnership

agreement (the "Partnership Agreement").

3. The Partnership will normally acquire at least a 90% interest in the cash distributions, profits, losses and tax credits of the Local Limited Partnerships, with the balance remaining with the local general partners. However, in certain cases, at the discretion of the Managing General Partner, the Partnership may acquire a lesser interest in a Local Limited Partnership. Should Partnership invest in any Local Limited Partnership in which it acquires less than 50% of the limited partnership interest, the Partnership Agreement will provide that the Partnership will have at least a 50% vote to: Amend such partnership agreement of such Local Limited Partnership; dissolve such Local Limited Partnership; remove the local general partner and elect a replacement; and approve or disapprove the sale of substantially all of the assets of such Local Limited Partnership. In addition, in connection with the qualification of the sale of the units of Limited Partnership interests in the Partnership and the compensation arrangements discussed below, the Partnership has entered into an undertaking with certain state securities authorities indicating that the Local Limited Partnership agreements will provide to the limited partners of the Local Limited Partnership substantially all of the rights required by Section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

4. On September 6, 1988, the Partnership filed a registration statement (as amended on November 15, 1988) under the Securities Act of 1933 (the "Securities Act") for the sale of up to 100,000 units of Limited Partnership interest ("Units") at $1,000 per Unit with a minimum subscription of five units ($5,000) per investor.

5. Subscriptions for Units must be approved by the Managing General Partner, and such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement for Units, set forth as Exhibit B to the Prospectus, provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership and set forth in the Prospectus under the heading "Who Should Invest." Such general investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor (a "Qualified Investor") who meets the following requirements: (a) In the case of an investor that is a corporation, other than a corporation subject to Subchapter S of the Code, such corporation (a "C Corporation") has a net worth of not less than $75,000; (b) in the case of a noncorporate investor, such investor reasonably expects to have substantial, unsheltered passive income or, if an individual, such investor reasonably expects to have adjusted gross income of *less* than $250,000 in the next twelve years and reasonably expects to have income tax liability during those years in respect of which the tax credits can be utilized and either (1) he has a net worth (exclusive of home, furnishings and automobiles) of at least $50,000 ($35,000, if such investor is a resident of New Hampshire) and an annual gross income of not less than $30,000 ($35,000, if such investor is a resident of New Hampshire) in the current year and estimates he will maintain these levels for the twelve succeeding years and that (without regard to investment in the Partnership) some part of his income for the current year and the twelve succeeding years will be subject to Federal income tax at the rate of 28% or more, or (2) irrespective of annual taxable income, he has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or (3) is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) or such net worth as set forth in clause (2); or (c) in the case of an investor that is a corporation subject to Subchapter S of the Code each of its shareholders (or if a partnership each of its partners) holding a material interest therein meets the criteria applicable to non-corporate investors. Units will be sold in certain states only to persons who meet additional or alternative standards which will be set forth in the Prospectus, any supplement to the Prospectus or the Subscription Agreement; *provided, however,* that in no event shall the Partnership employ any such suitability standard which is less restrictive than that set forth above. The Partnership Agreement also imposes certain restrictions on transfer and assignment of the Units. The Partnership will not redeem or repurchase Units, does not anticipate formation of a public market for the Units, and thus believes purchases of Units should be considered illiquid investments.

6. The Partnership will be controlled by the Managing General Partner and Arch Street III Limited Partnership, its general partners (the "General Partners"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, the majority in interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), dissolve the Partnership, and remove any General Partner and elect a replacement therefor. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that certain significant actions cannot be taken by the Managing General Partner without the express consent of a majority in interest of the Limited Partners. Such actions include: (a) Sale at any one time of all or substantially all of the assets of the Partnership, except for (1) a sale of any one Local Limited Partnership interest in a twelve month period or (2) sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution; (b) dissolution of the Partnership; and (c) causing the Partnership to merge or be consolidated with any other entity. The admission of a successor or additional General Partner would also require express consent under the Partnership Agreement.

8. Boston Financial Securities, Inc., an affiliate of the General Partners (the "Selling Agent"), will receive customary commissions and an underwriting advisory fee on the sale of the Units together with an expense allowance to defray accountable due diligence activities. The Selling Agent may authorize other members ("Soliciting Dealers") of the National Association of Securities Dealers, Inc. ("NASD") to sell Units. The Selling Agent will pay a concession to each Soliciting Dealer on all sales of Units by such Soliciting Dealer and may reallow all or any portion of its expense allowance to such Soliciting Dealer. Such selling commissions are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD.

9. During the offering and organizational phase, the Managing General Partner and its Affiliates (as defined in the Partnership Agreement) will receive from the Partnership reimbursement of organizational, offering and selling expenses and an allowance for marketing expenses.

10. Acquisition phase fees payable to all persons, including the General Partners or their Affiliates, in

connection with the acquisition of interests in Local Limited Partnerships, will be limited by the guidelines adopted by NASAA. During the operating phase, the Partnership may pay additional fees or compensation to the General Partners or their Affiliates including, without limitation, an asset management fee. Such asset management fee is paid in consideration of the administration of the affairs of the Partnership in connection with each Local Limited Partnership in which the Partnership invests. Such other fees may be paid in consideration of property management services rendered by the General Partners or their Affiliates as the management and leasing agent for some of the Local Limited Partnerships and for consulting services rendered by the General Partners or their Affiliates as consultants to some of the Local Limited Partnerships. All such fees shall be subject to the terms of the Partnership Agreements. As well, the General Partners or their Affiliates may receive amounts from Local Limited Partnerships to the extent permitted by applicable law and regulations. Such amounts shall be paid in the event that the General Partners or their Affiliates are local general partners of the Local Limited Partnerships and all such amounts shall be subject to the terms of the Partnership Agreement. Compensation to the General Partners or their Affiliates during the liquidating stage will be in the form of distributions of the proceeds of the sale or refinancing of Local Limited Partnership projects or interest, or of real personal property of the Partnership. In addition to the foregoing fees and interests, the General Partners or their Affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes.

11. The substantial fees and other forms of compensation that will be paid to the General Partners or their Affiliates will not have been negotiated through arm's length negotations. Terms of all such compensation, however, will be fair and not less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. In addition, compensation in various forms will be paid to the local general partner of each Local Limited Partnership.

12. All proceeds of the public offering of Units will initially be placed in an escrow account with Shawmut Bank, N.A. ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in the "Shawmut Interest Bearing Account," a federally insured money market deposit account. The offering of Units will terminate not later than one year from the date upon which the Partnership's Registration Statement shall have been declared effective. If subscriptions for at least 5,000 Units have not been received by such termination date, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon. The Partnership will not accept any subscriptions for Units until the exemptive order applied for herein is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the 1940 Act. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Limited Partnerships. Any net proceeds not immediately utilized to acquire Local Limited Partnership interests or for other Partnership purposes will be invested and held in highly liquid, non-speculative securities which provide adequately for the preservation of capital. It is the Partnership's intention to apply capital raised in its public offering to the acquisition of Local Limited Partnership interests as soon as possible.

13. The Partnership Agreement provides that, subject to certain limitations including negligence and misconduct, the Partnership shall indemnify the General Partners and certain Affiliates for losses sustained by them or their Affiliates in connection with the business of the Partnership. However, the Partnership has been advised that in the opinion of the SEC indemnification for liabilities under the Securities Act is contrary to public policy as expressed in the Securities Act and is therefore unenforceable.

Applicants' Legal Conclusions

1. The exemption of the Partnership from all provisions of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure provides the only means of bringing private equity capital into such housing; (c) the limited partnership form insulates each Limited Partner from personal liability and limits his financial risk to the amount he has invested in the program, while also allowing the Limited Partner to claim on his individual tax return his proportionate share of the tax credits, income and losses from the investment; (d) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act, such as the requirement of annual approval by investors of a management contract and the requirements concerning election of directors and the termination of the management contract; and (e) real estate limited partnerships such as the Partnership generally cannot comply with the asset coverage limitations imposed by section 18 of the 1940 Act. Also, an exemption from these basic provisions is necessary and appropriate so as not to discourage use of the two-tier limited partnership entity or frustrate the public policy established by the housing laws.

2. Interests in the Partnership will be sold only to (and transfers will be permitted only to) investors who meet specified suitability standards (as described above) which the Partnership believes are consistent with the requirements in Release No. 8456, with the guidelines of those states which prescribe suitability standards, and with the securities laws of all states where the Units will be sold. Such investors will receive extensive reports concerning the Partnership's business and operations. Although the interests of the General Partners and their Affiliates may conflict in various ways with the interests of Limited Partners, Limited Partners are adequately protected through disclosure of all potential conflicts in the Prospectus, including competition by Local Limited Partnerships with Affiliates for properties and the participation by an Affiliate as the Selling Agent for the offering. To address this conflict, the General Partners agree, in section 5.7 of the Partnership Agreement, that each General Partner and each Affiliate thereof, prior to entering into an investment which could be suitable for the Partnership or recommending such investment to others, must present to the Partnership the opportunity to enter into such investment and may not enter into such investment on its own behalf nor recommend it to others unless the Partnership has declined to enter into such investment. Further protection for the interests of Limited Partners is provided by the numerous provisions of the Partnership Agreement designed to prevent over-reaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis the

Limited Partners. The Partnership will also file with the SEC and distribute certain financial documents and reports on its activities.

3. In addition, all compensation to be paid to the General Partners and their Affiliates is specified in the Partnership Agreement and Prospectus and no compensation will be payable to the General Partners or any of their Affiliates not so specified.

4. Release No. 8456 lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (1) "interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable * * *"; and (2) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection.

5. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Limited Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to and in some respects greater than that provided by the 1940 Act. An exemption would therefore be entirely consistent with the protection of investors and the purposes and policies of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-27667 Filed 11-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16655; 811-956, 811-1240]

Royal Business Funds Corp.; Deregistration

November 25, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Royal Business Funds Corporation.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on November 9, 1987, and amended on October 17, and November 21, 1988. A letter was submitted as an exhibit to the application on March 18, 1988, by the Small Business Administration ("SBA") regarding Applicant's liquidation status.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o William J. Foster, IV, Esq., Hertzog, Calamari & Gleason, 100 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a New York corporation formed in 1960 and licensed as a Small Business Investment Company ("SBIC") under the Small Business Investment Act of 1958. Applicant is registered with the SEC under the 1940 Act as a closed-end, non-diversified, management investment company. As a SBIC-licensed company, Applicant borrowed funds, the repayment of which was guaranteed by the SBA. Such funds were loaned to render financial assistance to small business concerns.

2. As of July 1982, Applicant was indebted to the SBA in an amount equal to $23,321,745.91. At the same time its assets consisted largely of real properties acquired by Applicant as a result of liquidating collateral on defaulted loans which had been made to small business concerns.

3. On July 13, 1982, the United States of America brought an action against Applicant for a money judgment and for various other forms of relief. The SBA was appointed receiver of the Applicant and an orderly liquidation of assets was undertaken. Ernst and Whinney, the Applicant's independent accountants, was retained by the SBA to complete Applicant's financial statements for the four-month period beginning March 31, 1984, and ending on the close of business on July 31, 1984. On May 8, 1984, after a formal notice of the proposed settlement was sent to Applicant's stockholders and they were given an opportunity to object, a consent judgment and order in favor of the United States was issued for the full amount of the outstanding indebtedness. The judgment was settled on July 31, 1984, by a transfer of all of the Applicant's assets (except an office lease, equipment and furniture) to the SBA subject to the Applicant's liabilities. Further, the Applicant's SBIC license was surrendered in connection with the proceeding. As a result of the foregoing, Applicant was left with substantially no assets and no liabilities. On April 6, 1987, the SBA receivership of Applicant was terminated.

4. Applicant's present Board of Directors is constituted so as to comply with section 10 of the 1940 Act and will remain as such until Applicant schedules and holds a shareholder meeting and new directors are elected. At present, S. Pierre Bonan (Applicant's Chairman) and his wife own slightly in excess of 50% of Applicant's outstanding common stock.

5. The Board of Directors has concluded that it is in the best interest of the Applicant's shareholders to attempt to revive the Applicant rather than to dissolve it. In applying for deregistration under the 1940 Act, Applicant expects to recapitalize in an effort to engage in a business other than the investmant company business. If successful, an existing net operating loss carry forward may provide tax relief as an offset to operating income. For this reason and the fact that Applicant is a publicly-owned corporation without substantial liabilities, the shareholders have a legitimate economic basis for reviving Applicant.

6. Applicant is not presently a party to any litigation or administrative proceeding, and Applicant does not anticipate that there will be any law suits or claims asserted against it or its directors and officers prior to being deregistered. Neither the Applicant nor any of its officers or directors is the subject of a court ordered injunction or any administrative proceeding.

7. Since July 31, 1984, the date the SBA assumed Applicant's existing liabilities, Applicant's Chairman has advanced funds to the Applicant for necessary services including rent, telephone, secretarial, accounting and legal expenses which he may seek to recover from the Applicant, with Board of Directors' approval, at some future date.

Applicant's Legal Conclusions

The requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because of the following reasons:

1. Applicant is no longer a closed-end, non-diversified, management investment company, licensed by the SBA as a SBIC, requiring registration under the 1940 Act;

2. The provisions of the 1940 Act and the protections normally afforded thereby to the shareholders of Applicant and the public were not intended to be applied to a company whose activities would not otherwise be covered by the 1940 Act;

3. Since the Applicant has substantially no assets, a dissolution could not be expected to result in distribution benefitting the shareholders; and

4. Continued registration under the 1940 Act will only serve to hamper efforts to raise capital and would be burdensome and involve administrative expenses associated with compliance under the 1940 Act that would have no relevance to the operations of Applicant.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Prior to deregistration, Applicant will obtain approval of its stockholders of the change in the nature of its business, as required under section 13(a)(4) of the 1940 Act, and for amendment of Applicant's Certificate of Incorporation for the same.

2. In soliciting proxies for the stockholder vote noted above, the Applicant agrees to disclose in the proxy materials that deregistration under the 1940 Act is subject to majority stockholder approval, that deregistration is subject to approval of the SEC and that interested persons will have an opportunity to request a hearing on such deregistration.

3. A majority of those directors who are not "interested persons" as defined in section 2(a)(19) of the 1940 Act ("disinterested directors") shall also be required to approve the proposed change in the nature of Applicant's business based on a determination that it is in the best interests of the shareholders to approve such change and the Applicant will not participate in the proposed transaction to change Applicant's business on a basis different from or less advantageous than that of any other participant. The disinterested directors shall have its opportunity to consult with independent legal counsel when making such determinations.

4. A majority of the disinterested directors shall be required to approve reimbursement of costs incurred by the Chairman for necessary services based upon a finding that it is both reasonable and fair to the shareholders. Such reimbursement may not include compensation to the Chairman or his wife for services rendered.

5. Applicant does not intend in the future to hold itself out or propose to engage in the business of investing, reinvesting, owning, holding or trading in securities, or to own or propose to acquire investment securities, in such a manner as would otherwise require Applicant to register under the 1940 Act.

6. Applicant acknowledges, understands and agrees that the SEC's issuance of the order requested shall not limit the SEC's right to commence any future investigation, enforcement action or proceeding for violations of the 1940 Act if Applicant should ever come within the definition of an investment company contained in section 3(a) of the 1940 Act.

7. Applicant will file Form N–SAR for the period up until it is deregistered under the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–27668 Filed 11–30–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02–5525]

Brighten Finance & Investment, Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Brighten Finance & Investment, Inc., located at 36 West 44th Street, Room 812, New York, New York 10036, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or Relationship	Percentage of shares owned
Chang WenMing, 185 Kensington Drive, Fort Lee, New Jersey 07024.	Board Chairman and Director.	39
Suez Chen, 229 Emily Drive, Park Ridge, New Jersey 07656.	Vice Chairman and Director.	0
Shiang-Chuan Huang, 33–69 168 Street, Flushing, New York 11358.	Director	11
James Y. A. Wang, 33 Richard Drive, Fort Lee, New Jersey 07024.	President and Director.	11
Chen-Yu Chang, Kensington Drive, Fort Lee, New Jersey 07024.	Director, Treasurer and Vice President.	10
Julius W. Sih, 608 Earlston Road, Kenilworth, Illinois 60043.	Director	6
Irene Wang, 33 Richard Drive, Short Hills, New Jersey 07078.	Secretary	22

The Applicant will conduct its operations in the State of New York. As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to

small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matter involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Busienss Investment Companies)

Dated: November 23, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27712 Filed 11-30-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-5249]

Business Assistance Center-Minority Enterprise Small Business Investment Co., Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Business Assistance Center-Minority Enterprise Small Business Investment Company, Inc. (the Applicant), 6600 NW. 27th Avenue, Miami, Florida 33247, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Position	Percentage of ownership
Garth C. Reeves, 119 NW. 90th Street, El Portal, Florida 33150.	Chairman/Director...	0
Ronald E. Frazier, 1320 NW. 88th Street, Miami, Florida 33147.	Vice Chairman/ Director.	0
Newall J. Daughtrey, 2331 NW. 140th Street, Opa Locka, Florida 33054.	President/CEO/ Manager Director.	0
William O. Cullom, 8445 SW. 151st Street, Miami, Florida 33158.	Secretary/Director...	0
Howard F. Kershaw, 8841 SW. 76th Street, Miami, Florida 33173.	Treasurer/Director...	0
Business Assistance Center, Inc., 6600 NW. 27th Avenue, Miami, Florida 33247.	Shareholder.....	[1] 100

[1] Contributors with a 10 percent or more economic interest in Business Assistance Center, Inc. are as follows: Ryder Systems, Inc., 3600 NW. 82nd Avenue, Miami, Florida 33122—10.18 percent; Knight-Ridder Newspaper, One Herald Plaza, Miami, Florida 33132—10.18 percent

The Applicant will begin operations with a capitalization $1,100,000 and will be a source equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of Florida.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matter involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not late than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Miami, Florida area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 25, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27713 Filed 11-30-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0377]

Wells Fargo Capital Corp.; Issuance of a Small Business Investment Company License

On July 21, 1988, a notice was published in the **Federal Register** (53 FR 27592), Vol. 53, No. 140, stating that an application has been filed by Wells Fargo Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business August 21, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0377 on November 15, 1988, to Wells Fargo Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 25, 1988

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27714 Filed 11-30-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Dynamic Evaluation of Transport Airplane Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular 25.562–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular which provides information and guidance for showing compliance with the standards recently promulgated for occupant protection during emergency landing conditions in transport category airplanes.

DATE: Comments must be received on or before December 21, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, Regulations Branch, ANM–114, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Regulations Branch, ANM–114, at the above address, telephone (206) 431–2126.

SUPPLEMENTARY INFORMATION: .

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.562–1, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Discussion

On May 17, 1988, the FAA published Amendment 25–54 to part 25 of the Federal Aviation Regulations (53 FR 17640). This amendment upgrades the standards for occupant protection during emergency landing conditions in transport category airplanes, by revising the crew and passenger seat restraint requirements and by defining impact injury criteria. These standards require dynamic testing of the seats for strength, deformation, and protection of occupants from impact injury. Proposed Advisory Circular 25.562–1 provides guidance concerning acceptable means of compliance with these new standards, including test procedures for measuring loads and evaluating occupant injuries using an anthropomorphic test dummy. An earlier draft of AC 25.562–1 was published for public comment on July 17, 1986 (51 FR 25990); however, since that time, the AC has undergone a major revision. The FAA therefore invites public comment on this new draft.

Issued in Seattle, Washington, on September 16, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–27634 Filed 11–30–88; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Conference

ACTION: Notice of conference.

SUMMARY: The Federal Aviation Administration will hold a Research, Engineering and Development (R,E&D) Conference for discussion of its R,E&D Plan on December 6 and 7, 1988.

DATE, TIME, AND PLACE: December 5, 1988, registration 12 Noon-8 :00 p.m., registration and conference December 6 and 7, 1988, 8:00 a.m.-5:00 p.m.; Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue NW., Washington, DC 20008.

AGENDA: The conference will employ panel discussions followed by open forums to obtain comments and recommendations from the aviation community on how the FAA should tailor its R,E&D program to fulfill its missions in aviation safety, capacity, efficiency, and security.

Draft copies of the R,E&D Plan will be made available to registered conference attendees on December 5 at the conference location to serve as a basis for discussions. The registration fee is $40.00.

FOR FURTHER INFORMATION CONTACT: Conference coordinators Lois Bossman/Ruth Potter at (617) 494–2307, DTS–930, Transportation Systems Center, Kendall Square, Cambridge, Massachusetts 02142.

T.A. Lorier,

Acting Division Manager, Research Development Management and Control.

[FR Doc. 88–27633 Filed 11–30–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 23, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: ATF F 5200.23.
Type of Review: New Collection.
Title: Pipe Tobacco Floor Stocks Tax Return.
Description: Dealers who owe pipe tobacco floor stocks tax are required to complete this form. The form is used to indicate the amount of floor stocks tax liability for each taxpayer. The form is needed for revennue protection purposes.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: One-time.
Estimated Total Reporting Burden: 3,000 hours.
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–27625 Filed 11–30–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

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and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0025.
Form Number: ATF Form 2 (5320.2).
Type of Review: Extension.
Title: Notice of Firearms Manufactured or Imported.
Description: The National Firearms Act required licensed importers and manufacturers to notify ATF when firearms are imported or manufactured. This action registers the firearms in the National Firearms Registration and Transfer Record and makes their possession of the firearms lawful. Tax otherwise due under 26 U.S.C. 5821 does not apply.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 160.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1512–0188.
Form Number: ATF F 5100.1.
Type of Review: Extension.
Title: Signing Authority for Corporate Officials.
Description: ATF F 5100.1 is substituted instead of a regulatory requirement to submit corporate documents or minutes of a meeting of the Board of Directors to authorize an individual or position of power to sign for the corporation on matters dealing with ATF. The form identifies the corporation, the individual or corporation position getting power to sign, and documents authorizing the power.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88–27626 Filed 11–30–88; 8:45 am]
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Sunshine Act Meetings

Federal Register
Vol. 53, No. 231
Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

November 29, 1988.

PLACE: Stouffer Nashville Hotel, 401 Church Street, Nashville, TN 37219.

DATE AND TIME: Friday, December 9, 1988, 3:30 p.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of November Meeting
III. Announcements
IV. Discussion and Action: *Patterson v. McLean Credit Union: Should Runyon v. McCrary be Reconsidered*
V. Interim Appointment: Mississippi
VI. SAC Reports:
Racial, Ethnic and Religious Vandalism and Bigotry in Affected Communities in Essex County, New Jersey
Stemming Bias-Related Acts in Massachusetts
The 1990 Census: Preparations and Issues (New York)
VII. Staff Director's Report
A. Status of Earmarks
B. Personnel Report
C. Activity Report
VIII. Discussion and Action Regarding Revised Draft, *Medical Discrimination Against Children with Disabilities*
IX. Future Agenda Items
A motion by the regional forums subcommittee to move the forum scheduled for February to April

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,
Solicitor.

[FR Doc. 88–27784 Filed 11–29–88; 3:38 pm]
BILLING CODE 6335–01–M

FEDERAL ELECTION COMMISSION

* * * * *

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 1, 1988, 10:00 a.m.
Federal Register No. 88–27308

THE ABOVE MEETING DATE AND TIME WERE CHANGED TO: Wednesday, November 30, 1988, 10:00 a.m.

This meeting will be closed to the public.

* * * * *

DATE AND TIME: Thursday, December 8, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Draft AO 1988–48: Joyce Hamilton on behalf of the National-American Wholesale Grocers' Association, Inc.
Administrative Matters

* * * * *

DATE AND TIME: Thursday, December 8, 1988, following adjournment of Open Session.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88–27752 Filed 11–29–88; 11:38 am]
BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 53, No. 231
Thursday, December 1, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 28

Federal Acquisition Regulation (FAR); Individual Sureties

Correction

In proposed rule document 88-25274 beginning on page 44564 in the issue of Thursday, November 3, 1988, make the following correction:

28.203 [Corrected]

On page 44565, in the second column, in 28.203(c), in the 10th line, "note" should read "not be".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180792; FRL-3473-2]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

Correction

In notice document 88-25932 beginning on page 45382 in the issue of Wednesday, November 9, 1988, make the following correction:

On page 45382, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the fifth line, "MSD ABVET" should read "MSD AGVET".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44518; FRL-3474-4]

TSCA Chemical Testing; Receipt of Test Data

Correction

In notice document 88-25934 appearing on page 45385 in the issue of Wednesday, November 9, 1988, make the following corrections:

1. In the second column, in the third paragraph under **I. Test Data Submissions**, in the fifth line, "790.1700" should read "799.1700".

2. In the third column, under **II. Public Record**, in the fourth line, "44158" should read "44518".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-6]

Hazardous Substances Priority List, Toxicological Profiles; Second List

Correction

In notice document 88-24295 beginning on page 41280 in the issue of Thursday, October 20, 1988, make the following corrections:

1. On page 41281, in the first column, in the last paragraph, in the fifth line from the bottom, "of" should read "on".

2. On page 41282, in the 2nd column, under "NPL Technical Data Base (NPLt)", in the 14th line, "case" should read "base".

3. On page 41283, in the 3rd column, in the 1st complete paragraph, in the 12th line from the bottom, insert "site" after "their".

4. On page 41284, in the second column, the second table should have been designated as **Priority Group 4**.

5. On page 41285, in the second column, in **Priority Group 4**, the fifth Substance name should read "Hexachloroethane".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 784, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

Correction

In rule document 88-24536 beginning on page 43584 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43586, in the 2nd column, under **II Discussion of Final Rule and Comments**, in the 1st paragraph, in the 12th line, "hs" should read "has".

2. On page 43589, in the third column, in the first complete paragraph, in the third line, "is" should read "in".

3. On page 43593, in the third column, in the second complete paragraph, in the last line, after "process", insert "in".

4. On page 43598, in the 2nd column, in the 4th complete paragraph, in the 13th line, "storage" was misspelled.

5. On page 43600, in the 3rd column, in the 2nd complete paragraph, in the 12th line, "rule" should read "rules".

6. On page 43602, in the first column, in the first complete paragraph, in the seventh line, "believes" was misspelled.

7. On the same page, in the 2nd column, each time the acronym "OSRME" appears, it should read "OSMRE".

8. On page 43603, in the second column, in the third complete paragraph, in the fourth line, "MSHJA" should read "MSHA".

§ 784.16 [Corrected]

9. On page 43605, in the second column, in § 784.16(c)(3), in the second line, "of" should read "or".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

48 CFR Part 852

Acquisition Regulations Relating to Cost Comparisons

Correction

In rule document 88-26695 appearing on page 46872 in the issue of Monday, November 21, 1988, make the following correction:

In the first column, in amendatory instruction 3, in the second line, "852-72" should read "852.207-72".

BILLING CODE 1505-01-D

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Federal Register

Thursday
December 1, 1988

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 882

Neurological Devices; Effective Date of Requirement for Premarket Approval; Implanted Intracerebral/Subcortical Stimulator for Pain Relief; Final Rule

BEST COPY AVAILABLE

VOL 53 ISS 231 DE 1 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 85M-0056]

Neurological Devices; Effective Date of Requirement for Premarket Approval; Implanted Intracerebral/Subcortical Stimulator for Pain Relief

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of an application for premarket approval (PMA) or a notice of completion of a product development protocol (PDP) for the implanted intracerebral/subcortical stimulator for pain relief, a generic type of medical device. After the effective date, commercial distribution of this device must cease, unless a manufacturer or importer has filed with FDA a PMA or a notice of completion of a PDP for its version of the implanted intracerebral/subcortical stimulator for pain relief. The requirement of premarket approval does not compel explantation (surgical removal) of previously implanted devices, whether or not the manufacturer or importer files a PMA or PDP. A decision on whether to recommend explantation of an already-implanted intracerebral/subcortical stimulator for pain relief should be made on an individual basis, depending on whether that course of action is necessary to protect an individual patient's health. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzner, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1979 ((44 FR 51772), FDA published a final rule (21 CFR 882.5840) classifying into class III (premarket approval) the implanted intracerebral/subcortical stimulator for pain relief, a medical device. Section 882.5840 applies to (1) any implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, the date of enactment of the Medical Devices Amendments of 1976 (the amendments) (Pub. L. 94-295), and (2) any device that FDA has found to be substantially equivalent to the implanted intracerebral/subcortical stimulator for pain relief and that has been marketed on or after May 28, 1976. For the sake of convenience, both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date are referred to as "preamendments devices."

In the **Federal Register** of July 25, 1985 (50 FR 30277), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)] of a PMA or a notice of completion of a PDP for the implanted intracerebral/subcortical stimulator for pain relief. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from use of the device (50 FR 30278). The preamble to the proposal also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings. Under section 515(b)(2)(B) of the act, FDA also provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the implanted intracerebral/subcortical stimulator for pain relief was required to be submitted by August 9, 1985. The comment period closed on September 23, 1985.

Although FDA did not receive any petitions requesting a change in the classification of the device, several persons submitted comments relating their clinical experiences with the device. Summaries of these comments and the agency's responses follow:

1. Many comments were concerned that FDA may intend to remove the device from commercial distribution by requiring premarket approval. Some persons who submitted comments provided data on the device's safety and effectiveness to persuade FDA to allow its continued distribution.

The agency has not yet made a decision regarding the safety and effectiveness of the generic type of device, the implanted intracerebral/subcortical stimulator for pain relief. (See 21 CFR 860.3(i) for a definition of the term "generic type of device.") The purpose of requiring premarket approval of the device is to obtain the data necessary for FDA to evaluate its safety and effectiveness. FDA believes that safety and effectiveness data are (or should be) readily available to the manufacturers of the device, because the manufacturers have known since the device was classified into class III in 1979 that the device would eventually be subject to the premarket approval requirements in section 515 of the act (21 U.S.C. 360e) and 21 CFR Part 814. Thus, FDA believes that it has given ample notice. FDA believes that much of the data submitted in the comments on the proposal would be useful to manufacturers during their preparation of PMA's for the device.

2. One comment argued that sufficient data currently exist to determine the safety and effectiveness of the device and that further data collection is unnecessary and unduly burdensome.

Because of the kinds of data submitted by the comments on the proposal, FDA agrees that manufacturers of the implanted intracerebral/subcortical stimulator for pain relief may have sufficient data available now and generation of much additional data may not be necessary. Under the amendments enacted by Congress (section 515 of the act) and FDA's implementing regulations, the agency proposed to require that manufacturers submit data on the safety and effectiveness of the device in the form of a PMA as described in 21 CFR Part 814, or submit to FDA a petition requesting reclassification of the device under section 513(e) of the act (21 U.S.C. 360c(e)) and Subpart C of 21 CFR Part 860. Because no petitions requesting reclassification of the device have been received, FDA now is requiring each manufacturer to submit a PMA or cease commercial distribution of the device.

3. Many comments said that the risks to health identified in the proposed regulation (damage to neural tissue, surgical complications, tolerance to stimulation, skin erosion, cerebrospinal fluid leakage, and tissue toxicity) appear exaggerated, as discussed below:

a. The comments said that in the proposed rule FDA had described neural damage and undesirable neurological effects as a result of implantation and use of this device. Several comments stated that little, if any, evidence has been observed of neural damage, either clinically or in histological data. The comments stated that few post-mortem studies have been performed, but in those done, only minimal morphological changes were seen, and those changes observed were considered to be of no greater extent than damage caused by other routine neurological procedures. In addition, comments argued that

neurological deficits and side effects are rare, and the comments concluded that these risks to health generally resulted from improper placement of electrodes or overstimulation. The comments stated that new designs for electrodes and the development of more precise placement sites, techniques, and stimulation parameters have alleviated most risks of neural damage.

FDA agrees that neural damage and neurological deficits may be infrequent occurrences. In the proposed rule, FDA presented sufficient data to establish that some neural risks to health are associated with the use of this device. The discussion of risks to health presented in the proposed regulation omits any conclusion with regard to these risks. FDA intended to identify the risks that might be eliminated or reduced by requiring premarket approval. FDA also recognizes that improvements may have been made in some of the electrodes used. However, FDA believes that it must perform a detailed analysis of the data on the risks to health from use of the device to provide reasonable assurance of its safety and effectiveness.

b. Several comments believe that FDA's proposed rule exaggerated the risks to health of intraventricular hemorrhage and infection which can result from the implantation procedure. According to studies cited by the comments, infection occurs in a very small percentage of patients; and in these few cases, infection is easily treated with antibiotics or by explanation of the device. The comments stated that the risk of infection is the same or less than from use of similar stereotaxic techniques. The comments also regard the incidence of hemorrhage caused by implantation to be rare, and suggest that the risk is also no more than that involved in similar stereotaxic procedures.

FDA agrees that the incidence of hemorrhage and infection may be infrequent. The proposed rule cites the occurrence of these complications as potentially serious adverse effects associated with the use of this device. The agency believes that regulation of the intracerebral/subcortical stimulator for pain relief through premarket approval is appropriate to assure that these risks are minimized.

c. Some comments asserted that electrode migration is a former problem attributable to poor electrode design and to difficulty in securing the wires to the skull. The comments also asserted that improved electrode design and use of a new burr hole cover and locking component have alleviated the electrode migration problem.

FDA recognizes that new electrode designs and new surgical methods may have reduced the incidence of electrode migration. However, FDA believes that these innovations must be evaluated carefully to determine their impact on the safety and effectiveness of each manufacturer's device.

d. The development of tolerance to electrical stimulation was discussed by several comments. The comments agreed with data cited in the proposed rule which indicated that patients' development of tolerance to electrical stimulation may be the reason that the device becomes ineffective in about 30 percent of patients in whom it is implanted. However, most of the comments disagreed with the data cited in the proposed rule which indicated that a patient who develops tolerance to electrical stimulation frequently also develops tolerance to pain-relieving drugs. The comments also said that, in many cases, the electrical tolerance can be treated through administration of certain drugs.

FDA recognizes that tolerance to stimulation has been reported in 30 percent of the patients treated with the implanted intracerebral/subcortical stimulator for pain relief. These data, along with other data on effectiveness, will be considered by FDA during its review of any PMA's submitted for the device.

e. Several comments discussed the risk to health of cerebrospinal fluid leakage. The comments noted that the studies cited in the proposed rule that pertained to CSF leakage were studies of cerebellar stimulation using the implanted cerebellar stimulator (21 CFR 882.5820). The comments noted that the implant procedure for the cerebellar stimulator involves an open craniotomy as opposed to the burr hole implant procedure used for the intracerebral/subcortical stimulator for pain relief. Therefore, the comments said, the data from these cited studies do not provide an accurate assessment of the risk of cerebrospinal fluid leakage associated with the latter device.

FDA recognizes that the level of risk to health of cerebrospinal fluid leakage associated with use of the intracerebral/subcortical stimulator for pain relief may be lower than the level of risk of cerebrospinal fluid leakage associated with use of the implanted cerebellar stimulator. However, FDA believes that these two devices are sufficiently similar to suggest that a potential risk of cerebrospinal fluid leakage may result from use of the implanted intracerebral/subcortical stimulator for pain relief and that premarket approval is necessary to minimize this risk to health.

FDA advises that the agency has already promulgated a rule requiring any manufacturer of the implanted cerebellar stimulator to submit a PMA for the device or cease commercial distribution (49 FR 26574; June 28, 1984).

f. Several comments said that skin erosion occurs infrequently and that skin erosion was caused by bulky electrode connectors. The comments said that the design of these connectors have been modified to reduce their bulk.

FDA recognizes that manufacturers have made improvements in the design of the electrode connectors which may reduce the risk of skin erosion. However, FDA believes that it should review these data in the form of a PMA to provide reasonable assurance of the safety and effectiveness of this device.

4. Many comments said that in the proposed regulation FDA understated the benefits that can be derived from use of the implanted intracerebral/subcortical stimulator for pain relief. The comments said that use of this device has improved the quality of life for many patients who otherwise are often addicted to drugs, or become suicidal. The comments stated that use of this device for pain relief is a reversible therapy, as opposed to other surgical and ablative techniques. Many comments said that site selection for implantation of the electrodes to treat specific types of pain has become more accurately defined, making patient selection easier and, thus, making use of the device more effective.

FDA recognizes that there are reports of patients who have achieved relief of pain through the use of this device, and also that improvements are being made with respect to the site of electrode implantation and patient selection. However, FDA believes that the degree of benefit offered by this device must be carefully and accurately defined by analysis of all relevant data. Data in the proposed rule indentified some of the benefits found in the scientific literature and also identified some areas where FDA believes that more data need to be studied to assure the safety and effectiveness of these devices.

FDA has reexamined its proposed findings with respect to the degree of risk of illness of injury designed to be eliminated or reduced by requiring the implanted intracerebral/subcortical stimulator for pain relief to meet the statute's approval requirements. The agency concludes that its proposed findings and its conclusion discussed in the preamble to the proposed rule are appropriate. Accordingly, FDA is promulgating a final rule requiring premarket approval of the implanted

intracerebral/subcortical stimulator for pain relief under section 515(b)(3) of the act and is summarizing its findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring that the implanted intracerebral/subcortical stimulator for pain relief have an approved PMA or declared completed PDP, and with respect to the benefits to the public from the use of the device.

I. Findings With Respect to Risks and Benefits

A. Degree of Risk

1. *Damage to neural tissue.* The electrical current used for stimulation and the presence of the electrode may cause injury to brain tissue. Charge densities used to treat patients cannot be determined from published reports of clinical studies. Animal studies indicate that by using low charge densities, electrical injury to brain tissue can be minimized. One study concluded that the upper limit for safe stimulation is 0.05 watt per square inch when biphasic electrical pulses are used. Another study concluded that some neural damage is consistently produced if the charge per phase of the stimulus pulse is 0.45 microculomb or greater. Still another study revealed that neural damage in the cerebral cortex of cats increased proportionally as the charge density per phase increased over the range of 40 to 400 microcoulombs per square centimeter per phase. Several undesirable neurological effects, including coagulated brain tissue, blurring of vision, lesions in the target points, vertigo, focal and motor seizures, and emotional changes have been reported in patients treated with deep brain stimulation.

2. *Surgical complications.* Complications may occur because of the surgical implantation procedures. Because the surgical procedures involve the brain, complications such as punctured blood vessels, intraventricular hemorrhage, and infections are usually serious. One reported death has occurred due to infection.

3. *Electrode migration.* Implanted electrodes can spontaneously move from their original position or they can be dislodged. Electrode movement may cause damage to brain tissue or produce stimulation in an area of the brain which may result is undesirable neurological effects. Electrode migration has been reported in 2 to 17 percent of patients.

4. *Tolerance.* Tolerance to stimulation may develop and has been reported to occur in 30 percent of patients in whom the device is implanted. Patients who have become tolerant to deep brain stimulation may also demonstrate tolerance to some pharmacological opiates. If such tolerance occurs, the patient would not be able to obtain relief of pain with electrical stimulation or with narcotic analgesics.

5. *Skin erosion.* Erosion of the skin can occur in the scalp over the area where the electrodes exit from the cranium or can occur over the site of the receiver. Erosion of the device through the scalp may be the most troublesome source of infection and may necessitate the explanation of the device.

6. *Cerebrospinal fluid leakage.* Cerebrospinal fluid leakage is a risk common to devices implanted in the central nervous system. When this occurs, reoperation is required to correct the condition.

7. *Tissue toxicity.* Although the surface materials used in the implanted receiver, lead wires, or electrodes are generally believed to be biocompatible, it is possible that contaminants may be introduced into the materials used in the device during its manufacture, causing adverse tissue reactions.

Considering the risks and probable benefits associated with the implanted intracerebral/subcortical stimulator for pain relief, FDA concludes that the device should undergo premarket approval to establish conditions for use that will minimize risks and determine whether the risks of using the device are balanced by benefits to patients.

B. Benefits of the Device

The benefits of the implanted intracerebral/subcortical stimulator for pain relief to patients are questionable. Published reports indicate that the device may provide pain relief for selected patients, but may not be suitable for treating certain patients or all types of pain.

The implanted intracerebral/subcortical stimulator for pain relief has been reported to provide relief from peripheral chronic pain syndrome resulting from carcinomas, failed low backs, nerve entrapments, and phantom limb syndromes. Some investigators have reported successful treatment of pain of central origin, e.g., thalmic syndromes, brain stem infarction, and spinal cord injury. Other investigators have concluded that the device is probably not beneficial in treating central pain. Electrical stimulation of both the periaqueductal gray and periventricular gray matter appears to produce opiate-mediated analgesia; stimulation in these areas may produce unpleasant or intolerable side effects. Other researchers have reported pain relief with stimulation within the internal capsule, although there is not any indication that endogenous opiates are produced when this area is stimulated. Additional data are required to explain the variable clinical results obtained to date with the device.

II. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the generic type of device, the implanted intracerebral/subcortical stimulator for pain relief, by revising paragraph (c) in § 882.5840.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before March 1, 1989, for any implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before March 1, 1989. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before August 28, 1989. (If FDA finds that continued availability of an implanted intracerebral/subcortical stimulator for pain relief for which a PMA has been timely filed is necessary for the public health, FDA may, under section 515(d)(1)(B)(i) of the act, extend the 180-day period for taking action on the PMA.) Any implanted intracerebral/subcortical stimulator for pain relief that was not in commercial distribution before May 28, 1976, or that has not on or before March 1, 1989, been found by FDA to be substantially equivalent to an implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of PDP for an implanted intracerebral/subcortical stimulator for pain relief is not filed on or before March 1, 1989, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR Part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c) (1) and (2) will no longer apply to clinical investigations

of the implanted intracerebral/subcortical stimulators for pain relief. Further, FDA concludes that investigational implanted intracerebral/subcortical stimulators for pain relief are significant risk devices as defined in § 812.3(m), and advises that as of the effective date of § 882.5840(c) the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of an implanted intracerebral/subcortical stimulator for pain relief. For any such device, therefore, an IDE submitted to FDA, under § 812.20, is required to be in effect under § 812.30 before an investigation is initiated or continued on or after March 1, 1989. FDA advises all persons who intend to sponsor any clinical investigation involving the implanted intracerebral/subcortical stimulator for pain relief to submit an IDE application to FDA no later than January 30, 1989, to avoid the interruption of ongoing investigations.

As discussed at length in paragraph 1 of the preamble to the final PMA rule (51 FR 26342, 26343; July 22, 1986), FDA will not request recall, or recommend seizure, of an implanted device under circumstances that would necessitate explantation of the device to effect recall or seizure unless such action is necessary to protect the health of the patient. If an implanted device is adulterated under section 501(f)(1)(A) of the act because of the manufacturer's failure to submit a PMA and explantation of the device is not necessary to protect the health of the patient, FDA will require only that commercial distribution of the device cease. FDA also may invoke its authorities under section 518 of the act (21 U.S.C. 360h) to require notification, repair, replacement, or refund when a device in commercial distribution presents an unreasonable risk of substantial harm to the public health.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has examined the economic consequences of this final rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule will not be a major rule as specified in the Order. The agency believes that only three small firms will be affected by this rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of this final rule has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR Part 882 continues to read as follows:

Authority: Sec. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 882.5840 is amended by revising paragraph (c) to read as follows:

§ 882.5840 Implanted intracerebral/subcortical stimulator for pain relief.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 1, 1989, for any implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976, or that has on or before March 1, 1989, been found to be substantially equivalent to an implanted intracerebral/subcortical stimulator for pain relief that was in commercial distribution before May 28, 1976. Any other implanted intracerebral/subcortical stimulator for pain relief shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: October 11, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–27689 Filed 11–30–88; 8:45 am]

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federal register

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December 1, 1988

Part III

Department of the Treasury

Comptroller of the Currency

12 CFR Part 8

Assessment of Fees; National Banks and District of Columbia Banks; Final Rule

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 88-17]

Assessment of Fees; National Banks and District of Columbia Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is revising the semiannual assessment schedule for national banks, District of Columbia banks, and federally licensed branches and agencies of foreign banks. The revised schedule replaces the current schedule for assessments due by January 31, 1989, and beyond. Assessments are increased by 14 percent. This revision is necessary due to a predicted revenue shortfall which results from decreased revenue growth and increased supervisory responsibilities brought on by the increasing complexity of the financial services industry and the deteriorated condition of many national banks. This action will permit the OCC to continue to fulfill its statutory responsibilities. For long-term planning purposes, the OCC has established a task force to study the agency's revenue policy and structure.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roy C. Madsen, Associate Director, Financial Management Division, (202) 447-0956 or Ferne Fisherman Rubin, Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC was created by Federal legislation for the purpose of regulating and supervising the national banking system. Under the National Bank Act, 12 U.S.C. 1 *et seq.*, the OCC has a responsibility to supervise national banks and to ensure that they comply with applicable law. Pursuant to 12 U.S.C. 482, the OCC recovers its expenses by assessing national banks "in proportion to their assets or resources." The statute also requires that the rate of assessment be the same for all banks of the same asset size. The current assessment schedule, found at 12 CFR Part 8, fulfills this statutory requirement.

Proposal

On August 19, 1988, the OCC published a notice of proposed rulemaking (Docket No. 88-13) in the **Federal Register** (53 FR 31705), concerning the assessment schedule. In that notice, the OCC proposed to increase the assessments due by January 31, 1989 and beyond by 14 percent. The OCC estimates this will increase its assessment revenue in 1989 by approximately $28 million. In future years, the amount of increased revenue will vary, based on the growth in banking assets, ths size distribution of banks, and the rate of inflation. A copy of the proposal was sent as Banking Bulletin 88-25 dated August 24, 1988, to the chief executive officer of each national bank. The purpose of the Banking Bulletin was to ensure that each national bank received direct and timely notice of the proposed assessment increase and to explain the reasons in detail.

On September 6, 1988 (53 FR 34307), the OCC published a technical correction to the notice of proposed rulemaking in the **Federal Register**. The correction restored a line to a table showing the proposed assessment schedule. The line was inadvertently deleted due to a printing error. None of the proposed rates were changed by the technical correction.

On September 20, 1988 (53 FR 36556), the OCC extended the comment period to October 3, 1988 to address a request by an association representing approximately 2,000 national banks. The purpose of the extended comment period was to allow additional time for all interested parties to assess the proposal further and to file comments. With this action, we are finalizing the proposal to increase the assessment rates by 14 percent.

Reason for the Action

As a result of stringent cost reduction efforts, the OCC expects expenses to match its revenues in 1988. However, unless the present assessment schedule is revised, a deficit will occur in 1989, and deficits will increase in future years. The increasing resource demands of the OCC's bank supervisory responsibilities have outpaced the OCC's ability to fund those demands. The 14 percent assessment increase is the amount necessary to fund the projected deficit and provide funds for the resource demands of the supervisory environment. This final rule only addresses anticipated shortfalls brought on by increased OCC supervisory responsibilities, changes in the industry and increased costs since 1984, the year of the last assessment increase.

Supervisory Environment Demands Additional Resources

The OCC serves the national interest by maintaining and promoting a system of bank supervision and regulation that promotes safety and soundness by requiring that national banks adhere to sound management principles and comply with the law. The financial services environment demands adequate resources for the OCC to maintain prudent levels of supervision. Examiner-related expenses account for approximately 80 percent of the OCC's increased costs since 1983. The OCC has hired additional examiners, provided needed training for experienced examiners, and enhanced its technological capabilities. This enhanced examiner force is needed to address the OCC's responsibilities, as particularly affected by the following external factors:

(a) The condition of many national banks has deteriorated. In 1987, bank profitability stabilized after falling in each of the preceding six years. Bank failures and the number of problem banks continue at high levels. Currently, 17 percent of the national banking system's assets and 22 percent of national banks are receiving special supervisory attention. Weaknesses in the energy and certain real estate sectors of the economy, as well as continued difficulties with foreign debt exposure, indicate continued difficulties for national banks.

(b) Since 1984, new OCC supervisory responsibilities have been mandated by the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552), the Government Securities Act of 1986 (Pub. L. 99-571, 100 Stat. 3208), the Money Laundering Control Act of 1986 (Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, 100 Stat. 3207), and the Bank Bribery Amendments Act of 1985 (Pub. L. 99-370, 100 Stat. 779).

(c) The deregulation of depository institutions and the entry of banks into new financial activities have created a more complex banking environment requiring new skills on the part of the OCC's staff and increased OCC technological capabilities.

Decreased Asset Growth

The OCC's assessment income is a function of three factors: (1) The level of nominal national bank assets, (2) the distribution of these assets over different size categories of national banks, and (3) the measured rate of inflation that is used to index the

assessment schedule. Primary among these factors is the rate of growth of bank assets. If there is no growth in assets, then assessment income will not increase beyond the small amount attributable to the indexation for inflation.

As a result of economic trends and conditions in the financial services industry, the current and projected growth rates in national bank assets have fallen dramatically. In the early 1980s, national bank assets grew at an annual rate of 7.0 percent or higher. In 1986, the growth rate fell to 6.6 percent and to less than 2.0 percent in 1987, the lowest rate since 1948. The OCC's assessment income in 1988 grew by only 1.8 percent.

Legal Criteria

Under 12 U.S.C. 482, assessments must be in proportion to the assets or resources of the bank. The annual rate must be the same for all banks of the same size; however, banks examined more than twice in a single calendar year must pay for any additional examinations.

The basic characteristics (*i.e.*, use of asset brackets with declining marginal rates) of the OCC assessment schedule were instituted in 1976, continued in 1984, and are used again today. This final rule does not alter those characteristics, which were approved by the United States Court of Appeals for the Eighth Circuit in *First National Bank of Milaca v. Heimann*, 572 F.2d 1244 (8th Cir. 1978) ("*Milaca*"). The court held that the OCC's 1976 revision complied with the requirements of 12 U.S.C. 482.

Various legal criteria imposed by 12 U.S.C. 482 and the *Milaca* decision limit the OCC's options with regard to the range of available assessment procedures. For example, 12 U.S.C. 482 provides for the assessment of an additional fee only if a bank is examined more than twice in a calendar year. The statute therefore prohibits the assessment of an additional fee for the second examination in a year, as one commenter suggested.

Another example of the statutory constraints imposed upon the OCC is that the current statute does not appear to allow the OCC to exempt rural banks, banks that suffer from increased competition, or banks in any other specialized category from the assessment increase, unless the exemption is related to assets or resources. No information that would permit the OCC to exempt banks in special categories has been received or identified. However, this and other suggestions from commenters will be referred to the OCC Comprehensive Revenue Study Task Force for further consideration. That Task Force is described later in this preamble.

Some commenters suggested that assessments be based upon the actual number of hours or resources expended in supervising an institution The current statute does not appear to allow the OCC to implement that suggestion unless it can be directly related to bank assets or resources. Nevertheless, this suggestion, as with other suggestions, will be referred to the OCC Comprehensive Revenue Study Task Force for further consideration.

Comments Received

The OCC received 225 comments in response to the proposal. The commenters were national banks, their directors, officers, and employees, trade organizations and a United States Senator. Most commenters opposed the proposed assessment increase. The commenters' concerns fell into four categories of issues, and, in some instances, the commenters suggested alternative methods to resolve those issues. Commenters asserted: That healthy banks should not subsidize problem banks; that their banks were not examined during the year but their assessments had increased; that the assessment schedule is discriminatory or burdensome to small banks; and that the OCC should reduce its expenses.

Issues Raised

Healthy Banks Should Not Subsidize Problem Banks

Approximately 10 percent of the commenters suggested that the current assessment methodology requires well-run banks to pay some of the costs of special supervisory attention given to problem banks. The commenters strongly urged that troubled banks be assessed higher fees, due to the greater level of OCC resources devoted to supervising these banks.

Well-run banks subsidize problem banks. However, it is not clear that 12 U.S.C. 482 allows the OCC to charge higher assessments to those banks that receive disproportionate attention from the OCC, unless a relationship between those banks and bank assets or resources can be shown. The OCC has received no strong evidence thus far that would clearly establish this relationship. However, this suggestion, as with other commenter suggestions, will be referred to the OCC Comprehensive Revenue Study Task Force for further consideration.

Banks Not Examined But Assessments Increased

Several commenters expressed concern that their banks receive fewer on-site examinations than in the past, but their assessments have increased.

The OCC is aware of this perceived inequity. The OCC's mission is to promote safety and soundness by requiring that national banks adhere to sound management principles and comply with the law. Fulfillment of this mission requires the proper allocation of the OCC's limited supervisory resources. One OCC initiative in this regard has been the increased use of off-site monitoring and concentration of resources on those institutions that present the greatest risk to the system.

The OCC believes it has developed a better approach to bank supervision than the previous practice of examining all banks on a fixed schedule. Under the OCC's present procedures, the frequency and depth of on-site bank supervision is a direct function of the risk that any given institution presents to the safety and soundness of the entire system. Examiners now perform increased off-site monitoring, and both routine and special on-site supervision are scheduled to utilize the OCC's resources more efficiently.

As a result, well-run community banks receive less on-site supervision. However, in a departure from past practice, all banks receive continuous off-site monitoring through an off-site "portfolio approach" to bank supervision. Under this supervisory method, each bank is assigned to at least one national bank examiner who monitors the bank and its environment on a continuous off-site basis. Therefore, the amount of on-site supervision by itself is not an accurate indicator of the amount of supervision the bank receives.

Assessment Schedule Is Discriminatory to Small Banks

Most commenters felt that small banks pay a disproportionate share of OCC assessments relative to their actual cost of supervision.

The OCC employs a system of cost accounting that attributes direct supervision costs to banks based on the hours spent on each bank by OCC staff. Indirect costs are allocated to the banks in the same proportions as the direct costs. The OCC, by using that system, has analyzed the relative cost coverage of national banks by asset size. The analysis indicates that banks in the four asset brackets under $185 million, on average, pay 51 percent of their cost of

supervision. Banks in the six asset brackets over $185 million, on average, pay 164 percent of their cost of supervision.

While there is variation within each category, the averages clearly indicate that small banks, as a group, are not discriminated against; rather, the cost of their supervision is subsidized by larger banks. This subsidy was recognized by the Eighth Circuit in *Milaca.* 572 F.2d at 1248.

The final rule maintains the current distribution of assessment burden, which is favorable to small banks, since the 14 percent increase in marginal rates results in the same proportional increase for all banks.

Some commenters suggested that a progressive fee or flat fee schedule be adopted in lieu of the regressive schedule now in use and approved by the *Milaca* court. Other commenters suggested that assessment fees should more accurately reflect the actual cost of supervising large and merged banks. Both of these suggestions seem to be based upon the commenters' belief that small banks subsidize larger institutions. Relative cost coverage data does not support that belief.

A flat fee schedule and a progressive schedule would increase the large banks' current subsidy of small banks. Alternatively, if the assessment schedule more accurately reflected the supervision costs attributable to large and merged banks, the subsidy would be reduced and the assessments levied upon small banks would rise dramatically.

Finally, some commenters suggested including off-balance-sheet activities in the assessment calculation. The OCC does incur expenses attendant to the supervision of off-balance-sheet activities. However, these activities are usually conducted by large banks, which already subsidize small banks. Effective assessment of off-balance-sheet activities requires further study. This suggestion, as well as various other suggestions, will be referred to the OCC Comprehensive Revenue Study Task Force for further consideration.

OCC Should Reduce Expenses

Most commenters questioned whether the OCC has been sufficiently diligent in controlling or cutting costs. As explained earlier in this preamble, throughout the 1980s the OCC has faced continued, increased resource demands in most areas, including operating expenses, additional staff and training. The OCC has cut costs, but increased resource demands have exceeded the OCC's cost cutting efforts.

In the early 1980s, the OCC adopted a new supervisory strategy that improved its ability to achieve its mission, and that utilized its resources more effectively. This strategy involves off-site monitoring of bank performance on a continuous basis, and focuses supervision on the components of the system that present the greatest risk.

Indicators of the OCC's cost reductions that result from the implementation of the supervisory approach are:

(a) Increased efficiency: Under the prior supervisory scheme, the OCC would have needed a staff of more than 4,000. With the new supervisory approach, the OCC's staff level has been held to 3,250.

(b) Lower travel costs: The off-site procedures have resulted in a reduction in average examiner travel cost. More importantly, reduced examiner travel time substitute productive off-site supervisory hours for unproductive travel time.

Another example of cost control is demonstrated by the way the OCC provides computer capability to its work force. Prior to 1986, computer services were provided through a service bureau. Under the supervisory approach, examiners use automated services to facilitate analysis. Continued use of the service bureau would have been very costly. To contain costs, the OCC developed its own data center in 1986. The OCC will save $5.6 million over the first five years of the center's operation. More importantly, the OCC can meet additional data processing demands without significant increases in costs.

The cost containment efforts have been obscured by the increased demands of the OCC's workload and the complexity of that workload. Without the OCC's efforts to contain costs, an even higher assessment increase would be required. In 1982, the OCC's real (inflation adjusted) cost to supervise $1 billion of bank assets was $105,000. In 1987, that cost was $97,000. This cost decrease was achieved despite the increase in the OCC's workload over the same period. If the cost decrease had not been achieved, an assessment increase of 22 percent or $16 million would be needed as opposed to the 14 percent being implemented.

The increased resource demands preclude limiting the assessment increase to the increase in inflation as suggested by several commenters. The increased resource demands greatly exceed inflation. The OCC has cut its expenses, but cannot cut costs to the point where necessary and prudent operations are affected. That action would be inconsistent with the OCC's mission to promote safety and soundness by requiring that national banks adhere to sound management principles and comply with the law.

OCC Comprehensive Revenue Study

Innovation and change in the financial services industry require that the OCC maintain flexible managerial, technological and supervisory postures. As a result, the current assessment practices may need to be revised. Therefore, the OCC believes that a study of its revenue generation methodolgoy is required. The underlying statutory and regulatory basis of the methodology will be reviewed to determine its adequacy to cover long-term needs and to allocate appropriately the costs of supervision.

Consequently, the OCC has convened a Comprehensive Revenue Study Task Force charged with reviewing its revenue policy and structure. The OCC must ensure that any new revenue policy and structure enable it, over time, to accomplish its mission. A comprehensive review of all current and potential revenue sources will be conducted. The Task Force will make recommendations regarding a revenue-generation methodology that accommodates needed supervisory changes in response to legislative, regulatory and economic trends. These recommendations may require statutory and regulatory changes. The OCC will inform national banks of the developments of that study.

OCC Action

Prompt action is needed to prevent a revenue shortfall in 1989 and beyond. To meet its revenue requirements, the OCC is issuing this final rule to revise the Part 8 assessment schedule to reflect a 14 percent increase commencing with the assessment due on January 31, 1989. In keeping with the present schedule, the revised assessment schedule maintains marginal assessment rates that decline as bank assets increase and asset brackets that are indexed annually to changes in the Gross National Product Implicit Price Deflator.

The assessment increase is necessary to avoid deficits, which may impede the OCC's ability to fulfill its statutory, regulatory and supervisory responsibilities. The assessment increase is the minimum amount necessary to support the OCC's increasing and evolving supervisory responsibilities. The effect of the 14 percent assessment increase on the earnings of national banks will be extremely small. For all national banks, the median return on assets ("ROA")

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currently is .7834 percent. Because of this increase, this median return would fall by 2.4 tenths of a basis point to .7810 percent. The impact on small national banks is also low. For banks in the $15–$85 million category, the median ROA will change from .7476 percent to .7449 percent. The revision is consistent with the requirements of 12 U.S.C. 482, because the new assessment schedule treats banks of similar asset size in the same manner, and is necessary for the OCC to recover its costs.

Executive Order 12291

It is certified that this final rule does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. Consequently, a regulatory impact statement was not prepared.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 8

National banks, Banking, Assessments, Fees.

Authority and Issuance

For the reasons set forth above, Chapter I of Part 8 of Title 12 of the Code of Federal Regulations is amended as follows:

PART 8—[AMENDED]

1. The authority citation for 12 CFR Part 8 is revised to read as follows:

Authority: 12 U.S.C. 481, 482 and 3102, and 26 D.C. Code 102.

2. Section 8.1 is revised to read as follows:

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 481, 482 and 3102 and in 26 D.C. Code 102.

3. The table in § 8.2(a) is revised to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
		This amount—	Plus	Of excess over—
Over—	But not over—			
Column A	Column B	Column C	Column D	Column E
Million	Million			Million
0	X_1	0	.0011400	0
X_1	X_2	Y_1	.0001425	X_1
X_2	X_3	Y_2	.0001140	X_2
X_3	X_4	Y_3	.0000741	X_3
X_4	X_5	Y_4	.0000627	X_4
X_5	X_6	Y_5	.0000513	X_5
X_6	X_7	Y_6	.0000456	X_6
X_7	X_8	Y_7	.0000388	X_7
X_8	X_9	Y_8	.0000365	X_8
X_9		Y_9	.0000239	X_9

* * * * *

Date: November 29, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88–27735 Filed 11–30–88; 8:45 am]

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LIST OF PUBLIC LAWS

Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

Last List November 30, 1988

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

In the **List of Public Laws** printed in the **Federal Register** on November 25, 1988, S. 2840, Public Law 100-696, was incorrectly printed as H.R. 2840.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

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December 27	January 11	January 26	February 10	February 27	March 27
December 28	January 12	January 27	February 13	February 27	March 28
December 29	January 13	January 30	February 13	February 27	March 29
December 30	January 17	January 30	February 13	February 28	March 30

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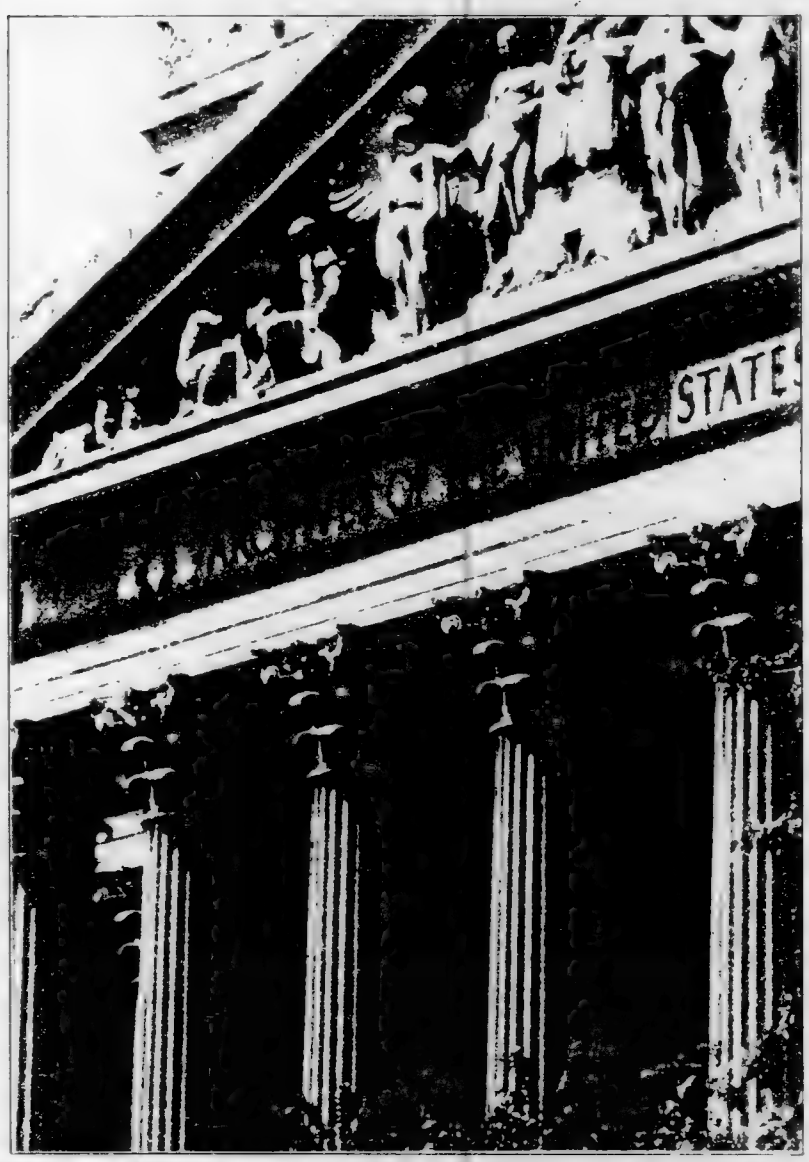

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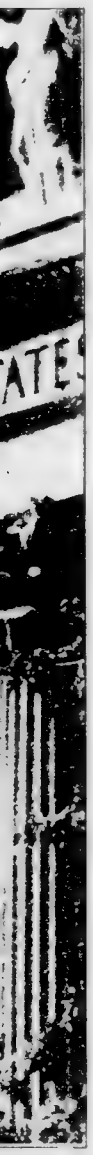

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Rules and Regulations

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Friday, December 2, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 841

Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations concerning modifications of State court orders affecting survivor annuities under the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS). These rules implement sections 8341(h)(4) and 8445(d) of Title 5, United States Code, that, after the retirement or death of the employee, prohibit OPM from honoring modifications of State court orders relating to survivor annuities. These regulations clarify that OPM will not honor a State court order awarding a survivor annuity if issued after the retirement of the employee unless that order actually terminates the marriage or after the employee's death. The regulations also clarify that State courts cannot bypass the statutory prohibition against honoring modifications by reserving jurisdiction in the decree terminating the marriage or by making the award effective retroactively to the date of the judgment terminating the marriage.

EFFECTIVE DATE: January 3, 1989.

ADDRESS: Send court orders affecting CSRS or FERS retirement benefits to Allotment Section, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4682.

SUPPLEMENTARY INFORMATION: On August 2, 1988, we published (at 53 FR 29057) proposed rules concerning modifications of State court orders affecting survivor annuities under the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS). We received two comments on the proposed rules.

Both commenters apparently were confused by the term "former spouse annuity." One commenter used statutory references that apply only to benefits payable during the lifetime of the employee. As we use that term throughout our retirement regulations, it only applies to the *survivor* benefits. Sections 831.1703 and 841.902 define "former spouse annuity" to mean "a recurring benefit * * * that is payable to a former spouse after the employee's, Member's, or retiree's death." These regulations only apply to awards of survivor benefits.

One commenter asserted that the proposed regulations are directly in conflict with the statutory provision. As applied to survivor benefits, the statutory authority for these regulations is clear.

The Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, added section 8341(h) to Title 5, United States Code. This section permits State courts, when terminating a marriage, to award survivor annuities under CSRS to former spouses of employees and retirees covered by that retirement system. Paragraph (h)(4) of this section nullifies modifications of State court orders or court-approved property settlement agreements after the retirement or death of the employee to the extent that the modification involves a CSRS survivor annuity for a former spouse.

Similarly, the FERS Act of 1986, Pub. L. 99–335, applied a similar provision, in section 8445 of Title 5, United States Code, to employees covered by FERS.

Subsection (d) of that section contains the same restriction against modifications involving FERS survivor annuities. These regulations merely implement the statutory requirements.

Both commenters suggested that it could be appropriate for the court to consider the termination of the marriage separate from the property division. As it affects survivor benefits based on the service of a retiree, Federal statute does not permit such a "bifurcated" proceeding. The regulations are intended to give notice of the effect of the statutory prohibition against modification of court orders resulting from bifurcated divorce proceedings (i.e., granting the divorce before division of the marital property). Recently, OPM has received an increasing number of State court orders that terminate marriages of Federal employees and retirees but leave property rights of the parties (including the right to survivor annuities under CSRS or FERS) for later adjudication. These regulations give notice that OPM has no legal authority to honor court orders awarding a survivor annuity if issued after the retirement or death of the employee, unless the award is made in, or prior to, the judgment terminating the marriage, regardless of any reservation of jurisdiction or retroactive effective date of the order granting the survivor annuity.

One commenter also questioned the effect of the rule on cases in which the divorce is granted orally in open court but the written judgment with the property division is signed and recorded at a later date. We considered the written judgment as the order terminating the marriage but the regulations did not make this clear. Accordingly, we have clarified §§ 831.1704(e)(4) and 841.903(d)(4).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 831 and 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

Subpart Q—Court Orders Affecting Retirement Benefits

1. The authority citation for Subpart Q of Part 831 continues to read:

Authority: 5 U.S.C. 8347.

2. In § 831.1704, paragraph (e) is revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(e)(1) For purposes of awarding, increasing, reducing, or eliminating a former spouse annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order terminating the marital relationship between the retiree and the former spouse.

(2) In paragraph (e)(1) of this section, "date of retirement" means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (e)(1) and (e)(4) of this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., order issued *nunc pro tunc*).

(4) In paragraph (e)(1)(ii) of this section, the "first order terminating the marital relationship between the retiree and the former spouse" means the original written order that first ends (or first documents an oral order ending) the marriage, and does not include—

(i) Any order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the order making the amendment, explanation, clarification, or interpretation; or

(ii) Any order issued under reserved jurisdiction or any other orders issued subsequent to the original written order terminating the marriage that divide marital property (even if no division of marital property was made in the order terminating the marriage) regardless of the effective date of the order.

PART 841—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—GENERAL ADMINISTRATION

3. The authority citation for Subpart I of Part 841 continues to read:

Authority: 5 U.S.C. 8347.

Subpart I—Court Orders Affecting Retirement Benefits

4. In 841.903, paragraph (d) is revised to read as follows:

§ 841.903 Qualifying court orders.

* * * * *

(d)(1) For purposes of awarding, increasing, reducing, or eliminating a former spouse annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

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(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (d)(1) and (d)(4) of this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., order issued *nunc pro tunc*).

(4) In paragraph (d)(1)(ii) of this section, the "first order terminating the marital relationship between the retiree and the former spouse" means the original written order that first ends (or first documents an oral order ending) the marriage, and does not include—

(i) Any order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the order making the amendment, explanation, clarification, or interpretation; or

(ii) Any order issued under reserved jurisdiction or any other orders issued subsequent to the original written order terminating the marriage that divide marital property (even if no division of marital property was made in the order terminating the marriage) regardless of the effective date of the order.

[FR Doc. 88-27789 Filed 12-1-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. AMS-FV-88-021PR]

Sweet Peppers; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the voluntary United States Standards for Grades of Sweet Peppers by allowing sweet peppers with pod colors other than green or red to be certified to a U.S. grade. Sweet pepper importers, producers, and growers requested this revision in order to improve marketing information and communication between shippers and receivers of sweet peppers with pod colors other than green or red. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Paul W. Manol, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non major" under the criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of the standards for sweet peppers will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This action revises the U.S. Standards for Grades of Sweet Peppers, last revised on December 15, 1963, and brings the standards into conformity with current marketing practices. A proposal to revise the color sections of the United States Standards for Grades of Sweet Peppers (7 CFR 51.3270 through 51.3272) was published in the **Federal**

Register on June 16, 1988 (53 FR 22498–22499), and invited interested persons to submit written comments.

This proposal was developed at the request of The West Mexico Vegetable Distributors Association, a trade association representing major sweet pepper importers, producers, and growers, because presently there are no provisions for certifying as to grade peppers having pod colors other than green or red. In recent years, peppers showing pod colors such as white, brown, purple, black, orange, and yellow have been developed and introduced into marketing channels. While the grade requirements could be applied, shipments could not be certified to a U.S. grade because the standards required grade-certified peppers to be either green or red. With the adoption of this proposal, color would no longer be a quality requirement except that all peppers in an individual lot shall be of the same varietal color characteristic. Copies of the proposal were distributed to various individuals, growers, handlers, receivers, grocery store chains, Federal and State government officials, and industry associations or organizations for review and comment.

The 60-day comment period ended August 15, 1988, and a total of 24 comments were received concerning the proposal.

The comments were in favor of the proposal. Generally, comments in support stated that with the increased popularity and visibility of peppers having pod colors other than green or red, the changes would allow greater flexibility in grading and a more uniform manner for shipping and marketing peppers.

One comment received from The Royal Netherlands Embassy, Office of the Agricultural Counselor, commenting on behalf of the Netherlands Commodity Board for Fruit and Vegetables, requested that the revised standard include specific provisions concerning the sizing of peppers having pointed or blunt shapes. Their contention was that since the Organization for Economic Cooperation and Development (OECD) and the Economic Commission for Europe (ECE) standards refer to peppers having such shapes, the U.S. standards should also. AMS has determined that these provisions are outside the scope of the proposed rule and therefore should not be incorporated in this final rule. The proposed rule concerned only the color of sweet peppers which could be certified to a U.S. grade. Any proposal to change the grade standards with respect to size or shape would be more appropriately addressed in a separate proposed rulemaking.

One comment was received against the proposal. However, no reason was given for the opposition.

The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, grade, and packaging in order to encourage uniformity and consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of sweet peppers. The provisons of this final rule are the same as those in the proposed rule except for a minor non-substantive change made for clarity.

List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables, and Other products (inspection, certification, and standards).

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended (7 U.S.C. 1622, 1624).

2. In Subpart—*United States Standards for Grades of Sweet Peppers*, § 51.3270, paragraph (b) is revised to read as follows:

§ 51.3270 U.S. Fancy.

* * * * *

(b) *Color.* Any lot of peppers which meets all the requirements of this grade, except those relating to green color, may be designated as "U.S. Fancy" with the characteristic color specified in connection with this grade, provided that at least 90 percent of the peppers show any amount of the specified characteristic color, and provided further, that if the peppers fail to meet the color requirements of either "U.S. Fancy" or "U.S. Fancy (color specified)," they shall be designated as "U.S. Fancy Mixed Color" (See Tolerances, § 51.3274).

3. Section 51.3271, paragraph (b) is revised to read as follows:

§ 51.3271 U.S. No. 1.

* * * * *

(b) *Color.* Any lot of peppers which meets all the requirements of this grade, except those relating to green color, may be designated as "U.S. No. 1" with the characteristic color specified in connection with this grade, provided that at least 90 percent of the peppers show any amount of the specified characteristic color, and provided further, that if the peppers fail to meet the color requirements of either "U.S. No. 1" or "U.S. No. 1 (color specified)," they shall be designated as "U.S. No. 1 Mixed Color" (See Tolerances, § 51.3274).

3. Section 51.3272, paragraph (a) is revised to read as follows:

§ 51.3272 U.S. No. 2.

* * * * *

(a) *Color.* Any lot of peppers which meets all the requirements of this grade, except those relating to green color, may be designated as "U.S. No. 2" with the characteristic color specified in connection with this grade, provided that at least 90 percent of the peppers show any amount of the specified characteristic color, and provided further that if the peppers fail to meet the color requirements of either "U.S. No. 2" or "U.S. No. 2 (color specified)," they shall be designated as "U.S. No. 2 Mixed Color" (See Tolerances, § 51.3274).

Dated: November 28, 1988.

Kenneth C. Clayton,

Deputy Administrator Marketing Programs.

[FR Doc. 88–27758 Filed 12–1–88; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 210, 220, and 226

[Amdt. Nos. 1, 20, and 55]

Revision of Infant Meal Pattern for Child Nutrition Programs; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This regulation corrects a passage in Parts 210, 220, and 226 and corrects the chart in Part 226 in the final rulemaking published on July 6, 1988 (53 FR 25303).

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia N. Daniels, Branch Chief, Nutrition Science and Education Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3554.

SUPPLEMENTARY INFORMATION: The Department is correcting a passage in Parts 210, 220, and 226 in the final rule published at 53 FR 25303 on July 6, 1988 to help clarify the reimbursement policy for meals containing breast milk. The final rule states that meals containing breast milk are reimbursable when served to infants beginning at 4 months of age "when the other required meal component or components are supplied

* * *." The word "required" may be confusing when applied to the 4 through 7 month age group since all meal components, except formula or breast milk, are optional in that age group. The word "required" is being deleted from the passage to avoid misinterpretation of the policy. In the 4 through 7 month age group meals containing breast milk may be claimed for reimbursement when at least one other meal component is also served.

Accordingly, the final rule published at 53 FR 25303, July 6, 1988, amending 7 CFR Parts 210, 220, and 226 is corrected to read as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270, 42 U.S.C. 1751–1760, 1779.

§ 210.10 [Amended]

2. On page 25308, in § 210.10(h), the last full sentence of column one is corrected by removing the word "required" after the word "other".

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779).

§ 220.8 [Amended]

2. On page 25308, in § 220.8(b)(2), the fifth full sentence of column three is corrected by removing the word "required" after the word "other".

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 323, 326 and 361, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1758, 1760, and 1766); secs. 803, 810 and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

§ 226.20 [Amended]

2. On page 25309, in § 226.20(b) the last full sentence of column one is corrected by removing the word "required" after the word "other".

3. On page 25309, the chart in § 226.20(b)(4) is corrected by removing the words "or breast milk" in the "4 through 7 months" column under the entry for the Supplement.

Date: November 25, 1988.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 88–27790 Filed 12–1–88; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 642]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 642 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 338,250 cartons during the period December 4 through December 10, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 642 (§ 910.942) is effective for the period December 4 through December 10, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on November 29, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 533, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.942 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.942 Lemon Regulation 642.

The quantity of lemons grown in California and Arizona which may be

handled during the period December 4, 1988, through December 10, 1988, is established at 338,250 cartons.

Dated: November 30, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-27918 Filed 12-1-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 945

[FV-88-125]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, OR; Final Rule Authorizing Collection of Destination Data

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires handlers to provide the Idaho-Eastern Oregon Potato Committee with the destinations of all fresh market potato shipments. Although production area potatoes are shipped nationwide, some markets receive heavier shipments than others. Collection of this data should help the committee determine which markets are underutilized and so advise handlers. This information will also assist the committee in performing other duties under the marketing order.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Order No. 945 (7 CFR Part 945), regulating the handling of potatoes grown in certain designated counties of Idaho and Malheur County, Oregon. The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of potatoes subject to regulation under the Idaho-Eastern Oregon Potato Marketing Order and approximately 3,100 potato producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Idaho-Eastern Oregon potatoes may be classified as small entities.

This rule requires handlers to provide the Idaho-Eastern Oregon Potato Committee with the destinations of all fresh market potato shipments leaving the production area. The rule is recommended under § 945.80 of the marketing order which authorizes the committee to collect from handlers information necessary to perform its duties. One such committee duty, as set forth in § 945.33, is to investigate and assemble data on potato shipping and marketing conditions. Although potatoes from the production area are distributed nationally and reach nearly all major markets, some markets receive heavier shipments than others. Such differences may be attributed to higher freight costs for more distant markets, competition from other producing areas, or personal preferences of consumers.

At its June 8 meeting the committee unanimously recommended that handlers provide the committee with the zip codes of final destinations of potatoes shipped from the area. The marketing order authorizes the establishment of grade, size, quality, maturity, pack, and container requirements based upon committee recommendations. Prior to making such recommendations, the committee is required to develop and submit a marketing policy which sets forth relevant potato supply and demand conditions, and serves as a basis for regulatory actions. Information compiled on destinations of shipments is useful to the committee in developing its annual marketing policy. The committee will be able to compare movement to various markets over time in recommending regulations. For example, relatively low shipment levels to a specific market may support a modification of regulatory requirements for shipments to that area for market development purposes.

The committee staff will compile a list of destinations and quantities shipped to each from the information provided by handlers. Information gathered by the committee will be disseminated to the trade in aggregate form so that individual handlers' operations will not be divulged. The information thus provided will help the trade to pinpoint markets that seem to be underutilized. The information also will be useful in the planning of individual marketing and promotion programs.

At the present time there is not available from any source a reliable, complete, ongoing record of where production area potatoes are shipped. While the Federal-State Market News Service does publish some potato arrival statistics for certain markets, it does not give a complete picture of potato movement. With a monthly report of potato sales by destination, the committee will be better able to analyze the results of its quality control program.

The committee considered several ways of collecting this information, including requiring handlers to complete and submit reports to the committee on a weekly or monthly basis. However, the mechanism selected to gather the necessary information provides that the Federal or Federal-State inspector copy the zip code from the bill of lading onto the certificate at the time of inspection. The committee staff will then compile the information upon receipt of the inspection certificates, which are already forwarded to the committee by the Inspection Service for billing, statistical reporting, and other purposes. The Inspection Service has agreed to do this, and the additional time required for each certificate should be only a few seconds. Also, many handlers are already providing this information to the Inspection Service. Thus, the burden on the handler imposed by this rule is insignficant.

At times, a load of potatoes may be shipped to other than the destination intended at the time of inspection. In such situations, handlers are required to notify the committee directly of the actual destination of the land. This notification may be provided to the committee office either by telephone or in writing.

This rule imposes some additional reporting requirements on handlers. Specifically, handlers will need to provide the Inspection Service with the intended destination of each shipment. Additionally, handlers are required to contact the committee office directly in

those instances where a shipment is diverted from its intended destination.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB No. 0581–0069.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposal inviting comments on this action was published in the **Federal Register** on September 8, 1988 (53 FR 34764). Interested persons had until September 19, 1988, to file written comments. None were filed.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule was hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** in that: (1) Shipments of potatotes from the production area have begun and this rule should cover as many current-season shipments as possible to be of maximum benefit, (2) this rule imposes no special requirements on handlers that cannot be accomplished by the effective date, and (3) all production area handlers were made aware of the action which was proposed at an open meeting of producers and handlers and were given opportunity to comment.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

For the reasons set forth in the preamble, 7 CFR Part 945 is hereby amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 945.341 is amended by adding a new paragraph (d)(4) to read as follows:

§ 945.341 Handling regulation.

* * * * *

(d) * * *

* * * * *

(4) Handlers shall provide the committee with the destination zip codes of all potatoes handled by permitting the Federal-State Inspection Service to review the bills of lading upon inspection to determine the destination zip codes. The zip codes shall be included on the inspection certificates. Whenever potatoes are diverted to a different destination, the handler shall notify the committee of the new destination zip code orally or in writing as soon as practicable.

* * * * *

Dated: November 28, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–27759 Filed 12–1–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Piperazine Adipate Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Carson Chemicals, Inc. The NADA provides for the use of a piperazine adipate in capsules as a canine and feline wormer. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Carson Chemicals, Inc.'s NADA 118–508, as requested by the sponsor. This final rule removes that portion of the regulations reflecting approval of the NADA.

List of Subjects in 21 CFR 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

§ 520.1801b [Removed]

2. Section 520.1801b *Piperazine adipate capsules* is removed.

Dated: November 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–27756 Filed 12–1–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 86–8, Notice No. 3]

RIN 2125–AB55

Truck Size and Weight; Specialized Equipment Boat Transporters

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: In response to petitions, the FHWA is revising certain provisions established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. This rule establishes: (1) A definition of boat transporters, (2) the same lengths and overhang for boat transporters as that provided the automobile transporters, and (3) a definition and a minimum length limit of 65 feet for a truck-trailer boat transporter.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip W. Blow, Office of Motor Carrier Transportation, (202) 366–4036 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A rule implementing the truck size and weight provisions of the Surface Transportation Assistance Act of 1982 (STAA) Pub. L. 97–424, 96 Stat. 2097, was published in the **Federal Register** on June 5, 1984 (49 FR 23302). This document represented the culmination of major efforts by the FHWA to implement the truck size and weight provisions of the STAA and in part determined that auto transporters constituted specialized equipment and were not subject to the provisions of 23 CFR 658.13 (a) through (c). Section 658.13(d) provided final requirements for automobile transporters relative to overall length and allowable overhang.

Subsequently, the National Marine Manufacturers Association and Celebrity Boats, Inc., of Benton, Illinois, have petitioned that FHWA classify "boat haulers" as specialized equipment within the meaning of section 411(d) of the STAA, 49 U.S.C. 2311(d). In summary, that request sought treatment similar to the rules pertaining to automobile transporters. The petitioners indicate that the needs of the boat transporter industry are analogous to the needs of the automobile industry which was afforded "specialized equipment" status as part of the 1982 STAA.

The petitioners also claim that vehicles used to transport boats operate in a manner similar to the operation of vehicles used for automobile transport. The granting of "specialized equipment" designation for boat transporters and treatment analogous to that afforded to automobile transporters would entail the establishment of Federal minimum length specifications that would preclude States from imposing length maximums that are less than the Federal limit on the National Network established by 23 CFR 658.9; grant boat transporters the ability to carry cargo on the power unit of a truck combination; and grant front and rear allowances for overhang. The advantages of "specialized equipment" designation include a greater cargo-carrying capacity and more economical use of boat transporter equipment.

FHWA initiated an advanced notice of proposed rulemaking (ANPRM) Docket 86–8 issued March 25, 1986 at 51 FR 10234.

In consideration of the fifty-four responses to the ANPRM, Docket 86–8, Notice No. 2, a notice of proposed rulemaking (NPRM) was published January 29, 1988, at 53 FR 2602. Comments were requested on the proposed rule which (1) Set out a definition of a boat transporter, (2) extended to boat transporters the same length limits and overhang afforded automobile transporters and, (3) provided a definition and a minimum length limit of 65 feet for a truck-trailer boat transporter.

Thirty-eight responses were received in reply to the January 29 NPRM (Docket No. 86–8). The respondents are generally categorized as State agencies and the District of Columbia—3; trucking companies—3; Associations—2; manufacturers—28 and Congress—2. Most of the manufacturers also operate equipment transporting their products.

Essentially, all of the commenters endorsed the proposed rule. The Kentucky Transportation Cabinet objected to the specialized equipment being designated by commodity transported rather than unique equipment. Other commenters referred to the logic of the specialized equipment designation because the boat transporters equipment was so configured as to limit any type of back haul. The Maine DOT objected to "stinger-steered vehicles which may operate with a pintle-hook arrangement rather than a fifth-wheel arrangement as in the 75 foot auto transporter regulations." This was a misunderstanding as the stinger-steered combination definition stipulates only a fifth-wheel connection. The District of Columbia in its comments, did condition its "no objection" to "when operated on the national network."

The boat manufacturers and transporters endorsed and urged finalization of the proposed rule, noting the similarity of their loadings and equipment to that of the auto transporters. Six of the boat transporters commented on their safety record using the equipment allowed by the proposed rule. Seven commenters specifically endorsed the inclusion and definition of the truck-trailer combination. Two of these commenters referred to their experiences with the truck-trailer combination, i.e., 6 million accident-free miles since 1979, 15,000 boats delivered annually with 12 truck-trailer combinations, no ball and socket failures, better maneuvering, less load damage.

Subsequent to the NPRM it was noted that the stinger-steered definition applied only to automobile transporters. As a result of this oversight we are modifying the definition to refer to all combinations with the fifth wheel located behind and below the rearmost axle of the power unit. This allows the definition to apply to both automobile and boat transporters.

Congressional action since the start of this rulemaking has reinforced the basis for following through with this rule. Section 133(a)(7) at the Federal-Aid Highway Act of 1987 (Pub. L. 100–17, 101 Stat. 132) enacted April 2, 1987 amends section 411(d) at the STAA of 1982 where "boat transporters" is added as an example of specialized equipment.

Therefore, based upon full consideration of public comments received and a further review by FHWA, 23 CFR 658.5 and 658.13 are amended as described. Two paragraphs are being added to § 658.5 to define boat transporter and to define truck-trailer boat transporter. Section 658.13(d) is being revised to add boat transporters as specialized equipment and to provide length and overhang limits.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291. However, pursuant to E.O. 12498, this rulemaking action has been included in the Regulatory Program for significant rulemaking actions. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5, 1985, final rule by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this proposed rulemaking have already been considered by the impact documentation prepared for the June 5 final rule. Any changes to the NPRM would not appreciably affect the impact documentation initially prepared. The Regulatory Impact Analysis prepared for the June 5 rulemaking (FHWA Docket 83–14) is available for inspection in the headquarters office of FHWA, 400 Seventh Street SW., Washington, DC.

For the same reason and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this section will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

Issued on November 28, 1988.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Part 658, Chapter 1 of Title 23, Code of Federal Regulations, as set forth below.

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATION—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313 and App. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by revising paragraph (n) and adding paragraph (p) and (q) as follows:

§ 658.5 Definitions.

* * * * *

(n) *Stinger-steered combination.* A truck tractor semitrailer wherein the fifth wheel is located on a drop frame located behind and below the rear-most axle of the power unit.

* * * * *

(p) *Boat transporters.* Any vehicle combination designed and used specifically to transport assembled boats and boat hulls. Boats may be partially disassembled to facilitate transporting.

(q) *Truck-trailer boat transporter.* A boat transporter combination consisting of a straight truck towing a trailer using typically a ball and socket connection. The trailer axle(s) is located substantially at the trailer center of gravity (rather than the rear of the trailer) but so as to maintain a downward force on the trailer tongue.

3. Section 658.13 is amended by adding paragraph (d)(2) to read as follows:

§ 658.13 Length.

* * * * *

(d) * * *

(2) *Boat transporters.* (i) Boat transporters are considered to be specialized equipment. As provided for automobile transporters in § 658.5(k), boat transporters may carry boats on the power unit so long as the length and width restrictions of the vehicles and load are not exceeded. No State shall impose an overall length limitation of less than 65 feet on traditional boat transporters (fifth wheel located on tractor frame over rear axle(s), including "low boys," or less than 75 feet on stinger-steered boat transporters. In addition, no State shall impose an overall length limitation of less than 65 feet on truck-trailer boat transporters. Paragraph (c) of this section requires the States to allow operation of vehicles with the dimensions that were legal in the State on December 1, 1982.

(ii) All length provisions regarding boat transporters are exclusive of front and rear overhang. Further, no State shall impose a front overhang limitation of less than three (3) feet nor a rearmost overhang limitation of less than four (4) feet.

* * * * *

[FR Doc. 88-27773 Filed 12-1-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-88-1882; FR-2577]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured House and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" mortgate limits under certain of HUD's insuring authorities under the National Housing Act by increasing "high-cost" mortgage limits for Albany and Rensselaer Counties, New York; Carroll County, Maryland; the City of Fredericksburg and Spotsylvania County, Virginia; Jefferson County, Kentucky; the Albuquerque, New Mexico MSA; Denton and Collin Counties, Texas; and Douglas County, Nevada; and adding "high-cost" mortgage limits for Franklin County, Massachusetts; Hall County, Georgia; Indian River County, Florida; and Allen County, Indiana. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, Room 9160; telephone (202) 755-6880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710-1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On March 3, 1988 (53 FR 6922), the Department published its most recent annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and their applicable limits for each area. (See also April 12, 1988, 53 FR 11997.) Amendments to the annual listing were published March 28, 1988 (53 FR 9869), April 25, 1988 (53 FR 13405), June 1, 1988 (53 FR 19897), August 1 1988 (53 FR 28871), and September 20, 1988 (53 FR 36448).

This Document

Today's document increases high-cost mortgage amounts for Albany and Rensselaer Counties, New York; Carroll County, Maryland; the City of Fredericksburg and Spotsylvania County, Virginia; Jefferson County, Kentucky; the Albuquerque, New Mexico MSA; Denton and Collin Counties, Texas; and Douglas County,

Nevada; and adds "high-cost" mortgage limits for Franklin County, Massachusetts; Hall County, Georgia; Indian River County, Florida; and Allen County, Indiana.

These amendments to the high-cost arees appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D). Combination Manufactured Home and Lot Excluding Alaska, Guam and Hawaii):

To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Franklin County, Massachusetts has a one-family limit of $101,250. The combination home and lot loan limit for Franklin County is $101,250 x .80, or $81,000.

B. Section 2(b)(1)(E): Lot Only (Excluding Alaska, Guam and Hawaii):

To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .20. for example, Franklin County, Massachusetts has a one-family limit of $101,250. The lot-only loan limit for Franklin County is $101,250 x .20, or $20,250.

C. Section 2(b)(2). Alaska, Guam and Hawaii Limits:

The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 X 140%).

2. For combination manufactured homes and lots: 75,600. ($54,000 X 140%).

3. For lots only: $18,900 (13,500 X 140%).

II. Title II—Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
REGION I				
HUD Field Office—Boston Office				
Franklin County, MA	$101,250	$114,000	$138,000	$160,500
REGION II				
HUD Field Office—Albany Office				
Albany County, NY	101,250	114,000	138,000	160,500
Rensselaer County, NY	84,550	95,200	115,700	133,500
REGION III				
HUD Field Office—Richmond Office				
Spotsylvania County/Fredericksburg City, VA	80,750	90,950	110,500	127,500
HUD Field Office—Baltimore Office				
Carroll County, MD	99,650	112,200	136,350	157,350
REGION V				
HUD Field Office—Atlanta Office				
Hall County, GA	75,500	85,050	103,350	119,250
REGION IV				
HUD Field Office—Louisville Office				
Jefferson County, KY	91,650	103,200	125,400	144,700
HUD Field Office—Orlando Office				
Indian River County, FL	69,800	78,600	95,550	110,250
REGION V				
HUD Field Office—Indianapolis Office				
Allen County, IN	76,000	85,600	104,050	120,050
REGION II				
HUD Field Office—Dallas Office				
Collin County, TX	101,250	114,000	138,000	160,500
Denton County, TX	100,700	113,400	137,800	159,000

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
REGION VI				
HUD Field Office—Albuquerque Office				
Albuquerque, NM MSA Bernalillo County	101,250	114,000	138,000	160,500
REGION IX				
HUD Field Office—Reno Office				
Douglas County, NV	82,650	93,050	113,100	130,500

Date: November 28, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-27832 Filed 12-1-88; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 596

[Docket No. R-88-1392; FR-1913]

Enterprise Zone Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This document:

1. Amends the final rule published on August 16, 1988 (53 FR 30944), captioned as above, by revising the text of two sections of that rule; and

2. Announces that the effective date of the August 16, 1988, rule, as revised in this final rule, is December 2, 1988. The purpose of this document is to implement statutory amendments to Title VII (Enterprise Zone Development) of the Housing and Community Development Act of 1987 that were contained in the recently adopted Stewart B. McKinney Homeless Assistance Amendments of 1988. The effect of the revisions is to alter, in accordance with revised statutory directions, the method of determining the rank order of distress among competing nominees for designation as enterprise zones.

DATES: Effective date: December 2, 1988. Deadline date for submission of nominations: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6588. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On August 16, 1988, the Department published its final rule to implement Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). That rule provided instructions to potential applicants seeking designation as Federal enterprise zones. Among other things, the rule provided, in §§ 596.302 and 596.303, a description of the method HUD would employ in making competing nominees for designation as enterprise zones.

HUD's rule did not take effect on publication, but instead was required, under section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)), to await a period of thirty session days of the Congress before it could be announced for effect. The 30-day period on October 6, 1988, but HUD did not announce the effective date of the August 16 rule at that time because there was under consideration in the Congress a statutory amendment that would affect the selection procedure described in HUD's rule. That amendment was adopted as section 1090 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-628, approved November 7, 1988) (1988 Act). The 1988 Act provided clarifying language concerning the method of ranking competing enterprise zone nominees. The clarifying amendment requires changes in HUD's August 16 final rule. Section 1090 also provided for revision of HUD's previously published final rule to effect the statutory change, and for making the revised rule effective immediately.

In a **Federal Register** Notice published on September 22, 1988 (53 FR 36899), the Department advised potential nominees that the deadline date for submitting nominations for enterprise zone designation would be 45 days from the effective date of the final rule. The September 22, 1988, notice indicated HUD's expectation at that time that the rule would be made effective in early October. In light of the delay in announcing the effective date of this final rule caused by the statutory change, the deadline date for submitting nominations will now be January 17, 1989. Any nominating State or local government whose application has already been submitted based on the September 22, 1988, notice is invited to amend the application as necessary in light of the changes contained in this rule.

The following process will be used to rank order, separately, urban and rural enterprise zones.

1. Unique ranks will be assigned to each zone for each of the four criteria on the basis of the degree to which the zone exceeds the threshold for that criterion. A "highest" rank of "1" will be assigned to the zone that exceeds the threshold by the greatest amount.

2. If two or more zones have data with the same value (to the nearest tenth of a percentage point) on a given criterion, each such zone will be assigned the "highest" rank for the group with records of identical value. For example, if three zones are initially assigned ranks 10, 11, and 12, but if the data used to establish the ranks are equal to the same value, then the two "lower" ranks (*i.e.*, 11 and 12) will be revised to share the ranking of 10.

3. Each zone will receive an overall rank based on its urban or rural designation. For urban zones the overall rank will be the *average* of the unemployment rank, the poverty rank, and the *higher* of the rankings received for low income and for population loss. For rural zones, a zone's overall ranking will equal the highest of the four that the zone received.

4. Urban and rural zones will be ranked separately, based on overall rank. If zones are tied in overall rank, they will be further ordered on the basis of the criteria as they appear in the statute. Thus, if zones have the same overall ranking, they will be sequenced, based on, first, unemployment, then poverty, low income, and finally, population loss. (Except for purposes of this "tie breaking" procedure, each of

the statutory criteria will be of equal value.)

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicated that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovations, or the ability of United States-based enterprises in domestic export markets. If Congress passes tax legislation to augment the authority under which this rule is promulgated, the implementing rule for such legislation would constitute a major economic impact and the Department would prepare a Regulatory Impact Analysis at that time.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the Enterprise Zone Program will permit small entities to apply for designation and to benefit from their participation in the program, the impact on these entities is a function of the operation of Title VII of the Housing and Community Development Act of 1987, and is not caused by the rule making, which merely provides the machinery for designations of zones under the statutory criteria.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to additional review under the Order. While the Enterprise Zone program will encourage State and local governmental actions to augment the advantages intended to be provided in federally designated enterprise zones, nothing in the Federal statute, or in this rule, compels State or local governments to alter their laws or procedures in any manner, and no preemption of State law is involved in the administration of the Enterprise Zone program.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus, is not subject to further review under the Order. The rule provides procedures for the designation of enterprise zones, and there are expected to be indirect benefits to families arising out of zone designations, but the impact on family life is not of a nature that would require further review under the Order.

This rule was listed as sequence number 1032 in the Department's semiannual agenda of regulations published on October 24, 1988 (53 FR 41974, 42003–42004), under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15960.

List of Subjects in 24 CFR Part 596

Enterprise zones, Economic development, Housing and urban development, Community development.

Accordingly, the final rule published on August 16, 1988 (53 FR 30944), is amended as follows:

PART 596—ENTERPRISE ZONE DEVELOPMENT

1. The authority citation for Part 596 continues to read as follows:

Authority: Title VII, Housing and Community Development Act of 1987 (42 U.S.C. 11501–11505); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 596.302 is revised to read as follows:

§ 596.302 Selection factors for designation of nominated zones.

Zone designations will be based soley on rank order of distress. Each area will be ranked within each of the criteria set forth in § 596.101(d) on the basis of the amount by which the area exceeds the criteria. For the poverty criterion, the ranking will be based on the overall poverty rate for the smallest number of block groups or enumeration districts which contain the zone. Except as otherwise provided for rural areas in § 596.303, the rank order will then be determined by the highest average ranking with respect to the criteria set forth in §§ 596.101(d)(1) and 596.101(d)(2) and the one criterion, of those set forth in § 596.101(d)(3) or § 596.101(d)(4), that would give an area the higher ranking. In any instance where the data are missing and the applicant did not establish that the area would pass the test, the zone would be unranked on that criterion. If two or more zones have the same overall rank, ties will be broken based on the statutory order of the four ranking criteria, with unemployment considered first, followed by poverty, low income, and population loss.

3. Section 596.303 is revised to read as follows:

§ 596.303 Zone designation in rural areas.

For rural areas as defined in § 596.3, designation will be based on the highest ranking with respect to the single criterion among the four set forth in § 596.101(d), that gives an area the highest ranking. If two or more zones have the same overall rank, ties will be broken based on the statutory order of the four ranking criteria, with unemployment considered first, followed by poverty, low income, and population loss.

Date: November 28, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning Development.

[FR Doc. 88–27831 Filed 12–1–88; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 14a

[T.D. 8235]

Income Tax; Taxable Years Beginning After December 31, 1953, and Temporary Income Tax Regulations Relating to Incentive Stock Options; Stockholder Approval of Incentive Stock Option and Employee Stock Purchase Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations relating to stockholder approval of incentive stock option plans and final regulations relating to stockholder approval of employee stock purchase plans. Questions have arisen concerning the method and degree of stockholder approval necessary with respect to

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incentive stock option plans and employee stock purchase plans. The regulations affect corporations establishing incentive stock option or employee stock purchase plans and provide them with guidance concerning plan qualification requirements under sections 422A and 423 of the Code.

EFFECTIVE DATES: Section 14a.422A–2 is effective on August 13, 1981, and applies to options granted on or after such date and to certain options granted after December 31, 1975. Section 1.423–2(c)(1) is effective on January 1, 1964, and applies to options granted on or after such date.

FOR FURTHER INFORMATION CONTACT: Michael J. Grace of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:CORP:T:R, 202–566–6460 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 423 of the Internal Revenue Code of 1954, relating to employee stock purchase plans, and to the Temporary Income Tax Regulations Relating to Incentive Stock Options (26 CFR Part 14a) under section 422A of the Code. These amendments prescribe the method and degree of stockholder approval necessary to qualify a plan under sections 423 and 422A.

Current Stockholder Approval Requirements

For a stock option plan to qualify either as an employee stock purchase plan under section 423 or as an incentive stock option plan under section 422A, the plan must be approved by the stockholders of the corporation within 12 months before or after the date such plan is adopted. The regulations under section 423 provide that the stockholder approval must comply with all applicable provisions of the corporate charter and bylaws and the law of the State of incorporation. In addition, they provide that an employee stock purchase plan must be approved at a duly held stockholders' meeting and that the stockholders voting in favor of the plan must hold a majority of the outstanding voting stock of the corporation.

The temporary regulations under section 422A do not address the stockholder approval issue generally, but proposed regulation § 1.422A–2(b)(2) would permit stockholder approval in any manner consistent with applicable provisions of the corporate charter, bylaws and applicable State law prescribing the method and degree of approval for the granting of incentive stock options. In the absence of such a prescribed method and degree of stockholder approval, the proposed regulations would require an incentive stock option plan to be approved by a simple majority vote of stockholders, voting either in person or by proxy, at a duly held stockholders' meeting.

Explanation of Provisions

This document amends the regulations under sections 423 and 422A to provide uniform rules relating to stockholder approval. Stockholder approval of either an employee stock purchase plan or an incentive stock option plan must comply with all applicable provisions of the corporate charter, bylaws and applicable State law prescribing the method and degree of stockholder approval required for the issuance of corporate stock or options. If the applicable State law does not prescribe a method and degree of stockholder approval in such cases, then the plan must be approved either (a) by a majority of the votes cast at a duly held stockholders' meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan, or (b) by a method and in a degree that would be adequate under applicable State law in the case of an action requiring stockholder approval. For this purpose, an action requiring stockholder approval is an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting. Thus, if the applicable State law provides that an action must be approved either by majority vote of the stockholders at an annual or special meeting or by the written consent of stockholders, the action is one that requires stockholder approval and approval of the action through the use of either procedure is adequate.

Although the amendment of the regulations under section 423 was not the subject of a notice of proposed rulemaking, the issues considered in connection with this amendment were the subject of a notice of proposed rulemaking under section 422A (LR–279–81, 49 FR 4,504 (February 7, 1984)). For this reason, and because the amendment provides a less burdensome standard for stockholder approval than the current regulations, the Service has concluded that it is not necessary to issue a separate notice of proposed rulemaking with respect to the section 423 amendment.

Inconsistent Rulings

In Revenue Ruling 75–256, 1975–2 C.B. 194, the Service ruled that a stockholder approval requirement identical to the requirement in the current regulations under section 423 was not satisfied when votes were cast by stockholders holding 40 percent of the total outstanding voting stock of the corporation, and the plan was approved by 80 percent of the votes cast, because the plan was not approved by stockholders holding a majority of the outstanding voting stock of the corporation. In Revenue Ruling 80–29, 1980–1 C.B. 94, the Service ruled that a stockholders' meeting is not required when, in accordance with State law, a corporation's qualified stock option plan or employee stock purchase plan is approved by unanimous written consent of the stockholders of the corporation, but that a stockholders' meeting is required if there is less than unanimous written consent by the stockholders.

Under the amended regulations, the stockholder approval requirements of sections 423 and 422A may be satisfied even if (a) the stockholders voting in favor of the plan hold less than a majority of the outstanding voting stock, or (b) the plan is approved by written consent that is less than unanimous. Accordingly, the Service will not follow Revenue Rulings 75–256 and 80–29 in determining whether the stockholder approval requirements of sections 423 and 422A are satisfied, and the portion of Revenue Ruling 80–29 that deals with section 423 will be revoked.

Special Analyses

The Commissioner of Internal Revenue has determined that these rules are not major rules as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations or for final regulations to which 5 U.S.C. 553 (b) does not apply. Accordingly, the temporary and final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Michael J. Grace of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing

these regulations on matters of both substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR Part 14a

Income taxes, Incentive stock options.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, Parts 1 and 14a of Title 26, Chapter 1, Subchapter A of the Code of Federal Regulations are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.423–2 is amended by revising paragraph (c)(1) to read as follows:

§ 1.423–2 Employee stock purchase plan defined.

* * * * *

(c) *Stockholder approval.* (1) An employee stock purchase plan must be approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted. The approval of stockholders must comply with all applicable provisions of the corporate charter, bylaws and applicable State law prescribing the method and degree of stockholder approval required for the issuance of corporate stock or options. If the applicable State law does not prescribe a method and degree of stockholder approval in such cases an employee stock purchase plan must be approved—

(i) By a majority of the votes cast at a duly held stockholder's meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan; or

(ii) By a method and in a degree that would be treated as adequate under applicable State law in the case of an action requiring stockholder approval (i.e., an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting).

* * * * *

PART 14a—[AMENDED]

Par. 3. The authority for Part 14a continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Part 14a is amended by adding § 14a.422A–2 to read as follows:

§ 14a.422A–2 Question and answer relating to the stockholder approval of incentive stock option plans.

The following question and answer relates to the stockholder approval of incentive stock option plans required by section 422A of the Internal Revenue Code as added by section 251 of the Economic Recovery Tax Act of 1981:

Q: In what manner must the stockholders' approval required by section 422A(b)(1) be obtained?

A: The approval of stockholders must comply with all applicable provisions of the corporate charter, bylaws and applicable State law prescribing the method and degree of stockholder approval required for the issuance of corporate stock or options. If the applicable State law does not prescribe a method and degree of stockholder approval in such cases an incentive stock option plan must be approved—

(1) By a majority of the votes cast at a duly held stockholders' meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan; or

(2) By a method and in a degree that would be treated as adequate under applicable State law in the case of an action requiring stockholder approval (i.e., an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting).

There is a need for immediate guidance with respect to the provisions contained in the Treasury decision. For this reason, it is found inpracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: November 2, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–27777 Filed 12–1 88; 8:45 am]

BILLING CODE 4830–01–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM88–1 and R87–1]

Amendment to Domestic Mail Classification Schedule: Postal Rate and Fee Changes, 1987; Order of Rulemaking; Correction

Issued: May 12, 1988.

AGENCY: Postal Rate Commission.

ACTION: Final rule; correction.

SUMMARY: On April 29, 1988 (53 FR 15385–15393), the Postal Rate Commission published a final rule amending the Domestic Mail Classification Schedule (DMCS) as published in the *Code of Federal Regulations*. The Commission is issuing corrections to that rule.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., suite 300, Washington, DC 20268 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On April 29, 1988, the Commission published a Final Rule amending the DMCS as published in the *Code of Federal Regulations*. In FR Doc. 88–9055, make the following changes.

PART 3001—[AMENDED]

Appendix A to Subpart C—[Amended]

1. Page 15388, second line of 400.090, change "follow" to "follows".

2. Page 15388, first line of text in section titled 400.10 Authorizations and licenses, change "400.10 A presort mailing" to "400.100 A presort mailing".

3. Page 15388, second line of text in section titled 400.10 Authorizations and licenses, change "muist" to "must".

4. Page 15392, rate schedule SS–12, first line under title description, change "Onsite" to "On-site".

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 88–27740 Filed 12–1–88; 8:45 am]

BILLING CODE 7715–01–M

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VOL 53 ISS 232 DEC 2 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3485-3]

Approval and Promulgation of State Implementation Plans; Call for Lead SIP Revisions for East Helena, MT

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revisions for East Helena, Montana; information notice

SUMMARY: EPA hereby gives notice that it has notified the Governor of Montana on October 1, 1988, that the Montana State Implementation Plan (SIP) for East Helena (Lewis and Clark County) is substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for lead

DATES: SIP revisions are due within one year of the date that EPA notified the State

ADDRESSES: Written comments should be addressed to: Chief, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1814, (FTS) 564-1814.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the Environmental Protection Agency (EPA) promulgated a National Ambient Air Quality Standard (NAAQS) for lead. The standard was set at a level of 1.5 micrograms of lead per cubic meter of air (ug/m^3), averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (CAA) as amended August 1977, requires that each State submit a State Implementation Plan (SIP) which provides for the implementation, enforcement and maintenance of each NAAQS within the State.

II Finding of Inadequacy

The Montana SIP for Lead was approved in 49 FR 27944 (July 9, 1984). The SIP called for the lead NAAQS to be achieved in the East Helena area within three years from the date of EPA approval of the SIP or by August 8, 1987.

The SIP identified the principle sources of lead to be the following: ASARCO smelter complex including fugitive emissions from the ore concentrate piles, and from the ore and zinc handling operations; process and fugitive emissions from the ASARCO blast furnace operation; and fugitive soil and road dust emissions from the ASARCO smelter complex and the City of East Helena and adjacent areas. The strategies to control the emissions from the above mentioned sources were all implemented on schedule and by December 31, 1986.

Since the approval of the Lead SIP, lead levels in the East Helena area have shown a downward trend. However, the NAAQS for lead (1.5 ug/m^3—quarterly average) continues to be violated. The table below shows the ambient lead levels in ug/m^3, for calendar years (CY) 1986 and 1987, and first quarter CY 1988.

Site	CY86				CY87				CY88
	1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st
Hastie	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Hadfield	2.10	1.14	1.87	3.70	3.45	1.92	1.94	2.76	2.14
Hadfield [2]	2.00	1.27	1.82	3.72	3.25	2.01			
Firehall	3.17	1.77	2.34	5.16	3.44	2.35	3.10	4.11	2.71
Dartman	1.60	1.18	1.50	2.94	2.48	1.28	2.06	2.85	1.95

[1] Shut down
[2] Collocated site

III. Call for SIP Revision

This finding of inadequacy requires Montana, pursuant to the provision of section 110(a)(2)(H) of the CAA, 42 U.S.C. section 7410(a)(2)(H), to carry out its SIP obligations and to adopt and submit to EPA for approval whatever additional control measures are necessary to assure timely attainment and maintenance of the lead NAAQS.

EPA is extending the section 110(c)(1)(C) of the CAA, 42 U.S.C. 7410(c)(1)(C), revision period to one year from the date of the letter notifying the Governor of the Lead SIP inadequacies to adopt and submit the necessary revision. In the absence of a curative SIP revision submitted within the one year period, EPA will be obliged to propose the appropriate CAA sanctions for the area in question. The State is to submit to EPA, within 60 days of the letter to the Governor, a schedule for the development of the SIP revisions to ensure that the SIP will be submitted on time.

IV. Final Action

In EPA's view, this finding of inadequacy does not constitute final actions that are reviewable inasmuch as they are not ripe for review. The determinations will not be sufficiently concrete for judicial resolution until additional action is taken by EPA in reliance on them. Further, Montana will not suffer hardship from delaying review because the findings do not have an immediate, direct and substantial impact. Also, Montana will have a later opportunity to obtain judicial review of the findings.

The 60-day time period for filing a petition for review under section 307(b) of the CAA is tolled until EPA makes the findings ripe by taking additional action in reliance on them, such as imposing sanctions or promulgating revisions, because a time limitation on petitions for judicial review can only run against challenges ripe for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead.

Authority: Secs. 101, 107, 110, 116 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416 and 7610(a)).

Dated: November 17, 1988.

James J. Scherer,

Regional Administrator.

[FR Doc. 88-27762 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3481-3; TN-077]

Approval and Promulgation of Implementation Plans; Tennessee; Approval of SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA approves as a State Implementation Plan (SIP) revision

for the State of Tennessee Rule 1200–3–19–.06, which requires logs for operating hours for sources that are limited by Chapter 1200–3–19 (Emission Standards and Monitoring Requirements for Particulate and Sulfur Dioxide Nonattainment Areas). This revision which was submitted by Tennessee on February 19, 1980, was inadvertently overlooked by Region IV at the time of the submittal.

DATES: This action will be effective on January 31, 1989, unless notice is received by January 3, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House 4th Floor, 701 Broadway, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On February 19, 1980 the State of Tennessee submitted four rules as SIP revisions. Two of the rules, 1200–3–12–.02 (Procedures for Ambient Sampling and Analysis) and 1200–3–2–.01 (General Definitions) were approved earlier, on June 24, 1982 (47 FR 27267). No action was taken on Rule 1200–3–19–.05 (Operating Permits and Emission Limiting Conditions) since the rule dealt with operating permits. Rule 1200–3–19–.06 (Logs for Operating Hours) should have been approved, but was not. This notice corrects that oversight.

Rule 1200–3–19–.06 states that any air contaminant source with operating hours restricted by a rule of Chapter 1200–3–19 (Emission Standards and Monitoring Requirements for Particulate and Sulfur Dioxide Nonattainment Areas) must keep a running log, showing the hours of operation of each source with the startup and shutdown time indicated. The log must be available for the Technical Secretary of the Tennessee Air Pollution Control Board at all times and copies must be maintained for at least two full calendar years.

Final Action

Since Rule 1200–3–19–.06 is consistent with EPA policy and requirements, it is hereby approved. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 1989. This action may not be challenged later in proceedings to enforce requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Date: November 17, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(88) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(88) Rule 1200–3–19–.06, Logs for Operating Hours, submitted on February 19, 1980, by the Tennessee Department of Health and Environment.

(i) *Incorporation by reference.* (A) Rule 1200–3–19–.06, Logs for Operating Hours which became State-effective February 14, 1980.

(B) Letter of February 19, 1980, from the Tennessee Department of Public Health.

(ii) Other material—none.

[FR Doc. 88–27198 Filed 12–1–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3484–3]

Approval and Promulgation of State Implementation Plan; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving the State of Montana's revision to its Prevention of Significant Deterioration (PSD) modeling guidelines and revisions to its Particulate Matter, Fuel Burning Equipment Regulation. The modeling guideline revision incorporates regulations promulgated by the Administrator (52 FR 32176) to specify models used to comply with the Clean Air Act's (CAA) requirements for PSD (sections 165 through 169 of the CAA).

DATES: This action will be effective on January 31, 1989, unless notice is received by January 3, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revisions are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.
Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 293–1814, (FTS) 564–1814.

SUPPLEMENTARY INFORMATION: .

Background

On March 9, 1988, the Governor of Montana submitted a request for modification of the Montana State Implementation Plan (SIP). The

modification consisted of revisions to the following rules:

1. Standard of Performance of New Stationary Sources (16.8.1423);
2. Emission Standards for Hazardous Air Pollutants (16.8.1424);
3. Air Quality Models (16.8.937); and
4. Particulate Matter, Fuel Burning Equipment (16.8.1402).

At this time, EPA is only acting on the Air Quality Models Rule (16.8.937) and the Particulate Matter, Fuel Burning Equipment Rule (16.8.1402). The Standards of Performance of New Stationary Sources and Emission Standards for Hazardous Air Pollutants Rules were addressed in a letter of delegation sent to the Governor on June 17, 1988. Such letter shall be published in the **Federal Register** in the near future.

Air Quality Models (16.8.937)

Section 165(e)(3)(D) of the CAA requires the Administrator to promulgate regulations specifying with reasonable particularity models to be used to comply with the CAA's PSD requirements. To carry out these requirements, the 1978 "Guidelines on Air Quality Models" was incorporated by reference in 40 CFR 51.24 (now renumbered 40 CFR 51.166) and 52.21. On September 9, 1986 (51 FR 32176), EPA promulgated amendments to 40 CFR 51.24 (now 40 CFR 51.166) and 52.21 to substitute by reference the "Guidelines on Air Quality Models (Revised)," EPA 450/2–78–027R, in these regulations. This change became effective October 9, 1986. The CAA, however, allows nine months (until July 9, 1987) for affected states to make the necessary changes in their programs.

A review of Montana's rules (16.8.937) categorized the State as one whose rules specifically precluded the use of the federal modeling guideline as amended. Because of this situation the State revised its modeling guidelines and submitted such revisions to EPA with a letter dated March 9, 1988. This submittal constitutes a revision to the State's PSD rule. The PSD program was originally transferred to the State effective June 6, 1983. (see May 5, 1983, 48 FR 20231.)

Subsequent to the State revising its modeling rules (16.8.937), EPA promulgated Supplement A (1987) on January 6, 1988 (53 FR 392). Supplement A (1987) adds four models to the modeling guidelines. Although the State has nine months from the effective date (or by November 5, 1988 in this case) to submit revisions to the rule, in the matter of efficiency, EPA is addressing Supplement A (1987) in this action.

Because the State's recent rule revision precludes the use of Supplement A (1987), the EPA requested, by letter dated June 2, 1988, that the State submit a committal letter stating that it would: (a) Revise its rules in a timely manner to include Supplement A (1987) and (b) limit PSD modeling to analyses which comply with the revised modeling guidelines and Supplement A (1987) or models otherwise approved for use by EPA. Such letter was submitted to EPA by the State Director of Air Quality Bureau, Jeffrey T. Chaffee, on September 9, 1988.

Particulate Matter, Fuel Burning Equipment (16.8.1402)

In revising the Particulate Matter, Fuel Burning Equipment Rule (16.8.1402), the State added an exemption to the Rule for residential solid fuel combustion devices such as fireplaces and wood and coal stoves (16.8.1402(4)). The State revised this Rule in consideration of the potential literal reading of the Rule could extend its applicability to residential wood burning devices. The State believes that this 16.8.1402 was never intended to be applied to residential wood stoves.

EPA interprets this revision to mean that such solid fuel combustion devices are exempted only from 16.8.1402. Such residential fuel combustion devices, however, may be subject to other rules, if applicable.

Final Action

EPA hereby approves the revisions to the Air Quality Modeling rule (16.8.937) based upon the State's commitment to revise 16.8.937 to incorporate Supplement A (1987) and based further upon the State's commitment to follow the Guidelines on Air Quality Models, including Supplement A, for all PSD permits. EPA approves the revision to the Particulate Matter, Fuel Burning Equipment rule (16.8.1402) with the interpretation as stated.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another notice will begin rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 31, 1989.

EPA finds good cause for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 1989. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Date: November 23, 1988.

Lee M. Thomas,

Administrator.

Part 52, Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7462.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(23) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(23) On March 9, 1988, the Governor submitted a plan revising the State's Air Quality Modeling Rule (16.8.937) and its Particulate Matter, Fuel Burning Equipment Rule (16.8.1402).

(i) *Incorporation by reference.* (A) Modification to the State of Montana Air Quality Rules, that is the Air Quality Modeling rule (16.8.937) and the Particulate Matter, Fuel Burning Equipment rule (16.8.1402) adopted on January 15, 1988.

3. Section 52.1382 is amended by adding paragraph (c) to read as follows:

§ 52.1382 Prevention of significant deterioration of air quality.

* * * * *

(c) The State of Montana has committed to revise its Air Quality Modeling Rule (16.8.937) to incorporate Supplement A (1987). Until such rule is revised, the State will limit Prevention of Significant Deterioration (PSD) modeling to analyses which comply with the revised modeling guideline and Supplement A (1987) or models otherwise approved by EPA. In a letter to Douglas M. Skie, EPA, dated September 9, 1988, Jeffrey T. Chaffee, Director, Air Quality Bureau stated:

> EPA requested Montana to incorporate by reference into the Montana PSD rule "Supplement A to the Guideline on Air Quality Models" (Revised July, 1987). Montana agrees to submit to EPA a revised SIP containing such changes by April 30, 1989. * * * During the interim, the department will continue to follow the "Guidelines on Air Quality Models" including Supplement A for all PSD permits.

[FR Doc. 88-27560 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42088E; FRL-3484-5]

Office of Solid Waste Chemicals; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a test rule under 40 CFR 799.5055 on hazardous waste constituents, published in the **Federal Register** of June 15, 1988 (53 FR 22300). This action is necessary to remove references to phthalic anhydride testing requirements.

EFFECTIVE DATE: Effective on December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is correcting 40 CFR 799.5055 (53 FR 22300) by deleting the hazardous waste constituent phthalic anhydride from the list of chemicals for which testing is required.

In accordance with section 4(a) of the Toxic Substances Control Act (TSCA), a rule was promulgated under 40 CFR 799.5055 (53 FR 22300; June 15, 1988) to require health effects and/or chemical fate testing for 24 chemicals that are hazardous waste constituents. One of these chemicals, phthalic anhydride (CAS No. 85-44-9) was designated for soil adsorption testing.

EPA, in response to a letter received form the Chemical Manufacturers Association (CMA) Phthalate Esters Program Panel finds that phthalic anhydride was erroneously included in the list of 24 chemicals subject to testing under the final test rule for the Office of Solid Waste Chemicals. Comments received from CMA during the comment period for the proposed test rule noted that phthalic anhydride and maleic anhydride, a structurally similar chemical, hydrolyze very rapidly and are both inappropriate candidates for soil sorption and biodegradation testing. These comments were accepted by EPA, and maleic anhydride was removed from the final list of chemicals for which testing was required (53 FR 22300). However, phthalic anhydride was inadvertently left on the final list.

Because EPA already received comment on this issue, EPA finds that further public comment is unnecessary. In addition, EPA finds that making this deletion effective immediately will relieve administrative and testing burdens, and that good cause exists to make the amendment immediately effective.

PART 799—[AMENDED]

§ 799.5055 [Amended]

Accordingly, the table in 40 CFR 799.5055(c) appearing at page 22324, third column, FR Doc. 88-13347, published June 15, 1988, is corrected by removing the entries for "Phthalic anhydride, CAS No. 85-44-9(d)(1)."

Dated: November 23, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-27662 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Care Financing Administration

42 CFR Parts 74, 405, and 441

[HSQ-150-F]

Medicare and Medicaid Programs; Medicare, Medicaid, and Clinical Laboratories Improvement Act (CLIA) Patient Confidentiality Rules

AGENCY: Public Health Service (PHS) and Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule eliminates the requirement that a laboratory maintain the name and other identification of individuals undergoing testing to determine the presence of the Human Immunodeficiency Virus (HIV) antibody or causative agent, if the laboratory is not seeking Medicare or Medicaid payment for these tests. However, it will not excuse a laboratory from maintaining such information if it is required to do so by State law. Those laboratories or entities seeking payment from the Medicare or Medicaid programs for HIV testing must continue to provide the name and other identification of persons tested to assure proper payment of claims. However, State Medicaid programs may choose to approve the use of alternative identifiers in place of the patient's name for HIV testing of Medicaid recipients. Also, laboratories licensed under CLIA will not be required to maintain the names and other identification of individuals being tested to determine the presence of the HIV antibody or causative agent. The intent of this change is to add further protection of confidentiality of HIV test results and to encourage voluntary testing.

EFFECTIVE DATE: These regulations are effective January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Pam Renner, (301) 966-6818.

SUPPLEMENTARY INFORMATION:

I. Background

Acquired Immune Deficiency Syndrome (AIDS) is a major public health issue. In order to promote the laboratory testing of persons who suspect they may have been exposed to HIV, the virus associated with AIDS, current public health practice is to

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protect the privacy of these individuals and to maintain the strictest confidentiality concerning their health records. A number of States have enacted statutes that protect the anonymity of persons tested for the presence of the HIV antibody.

However, most facilities performing HIV testing are approved as hospital or independent laboratories in the Medicare program. The Medicare regulations (42 CFR 405.1316(f)(2) for independent laboratories and 42 CFR 482.27(b) for hospital based facilities) specify that the names and other identification of the individuals whose specimens are being tested must be obtained and maintained by the testing facility, and the regulations at § 405.1316(f) (2) and (3) and § 482.27(b) require laboratories to maintain the name of the licensed physician or other authorized person or clinical laboratory that submitted the specimen and the names of individuals presenting themselves for testing. Also, laboratories that test specimens for Medicaid recipients must meet the Medicare requirements for these facilities (section 1902(a)(9)(C) of the Social Security Act). Laboratories testing specimens under the provisions of the Clinical Laboratories Improvement Act of 1967 (CLIA) must meet similar recordkeeping requirements, as specified at 42 CFR 74.53 (b) and (c).

On March 31, 1988 we published in the **Federal Register** (53 FR 10404) proposed regulations with a 60 day comment period. The changes we proposed were designed to eliminate the personal identification of persons undergoing testing to determine the presence of the HIV antibody or causative agent, if the laboratory is not seeking Medicare or Medicaid payment. The provisions of the proposed regulations, the comments received and our responses, are discussed below.

II. Provisions of the Proposed Regulation

As a result of the growing need to heighten public understanding of AIDS and to encourage voluntary testing for the disease, we proposed—

- To amend the requirement for laboratories to maintain names and identification of individuals undergoing testing to determine the presence of the HIV antibody or the causative agent, provided that Medicare or Medicaid payment for testing is not sought;
- That laboratories or entities seeking payment for HIV testing under the Medicare program would have to continue to provide the name and other identification of persons tested to assure proper payment of claims but as with other testing, would not be required to maintain records linking the results of the test with any patient identifier;
- To allow States the flexibility under their Medicaid programs to approve the use of alternative identifiers in place of the patient's name;
- That CLIA licensed laboratories that do not seek Medicare or Medicaid payments would not be required to maintain the names and other identification of individuals being tested for the presence of the HIV antibody or causative agent;
- To permit individuals who submit their own specimens for testing to maintain their anonymity;
- That all of the confidentiality rules applicable to independent laboratories would apply also to records maintained by hospital-based laboratories and clinical laboratories located in skilled nursing facilities (SNFs), and intermediate care facilities for the mentally retarded (ICF/MRs); and
- That laboratories would not be excused from maintaining records required by State law. Therefore, these regulations would provide flexibility for the State to elect whether or not to require reporting of positive test results.

III. Analysis and Response to Comments

We received 13 timely items of correspondence in response to the proposed rule. Comments were received from laboratory associations, State Medicaid agencies, health care personnel, and health advocate associations. In general, the commenters considered HCFA's efforts to provide anonymity for laboratory testing of high risk individuals a "positive step towards encouraging voluntary testing and protecting the privacy of individuals." Of the 13 comments we received, 3 had concerns that needed to be addressed specifically. A summary of these comments and our responses to them follows:

Comment: Two commenters suggested that the proposed regulation was a step in the right direction but they were concerned about the requirement for maintaining the name and other identification of individuals undergoing HIV testing when Medicare payment is requested by the laboratory. They believed that individuals who do not want their names kept on file may not be able to pay the high out-of-pocket expense, and therefore not seek testing.

Response: While we appreciate the thoughtfulness and sincerity of the commenters, we remain committed to the principles on which we have based the proposal and we have not accepted these comments. The Medicare program requires the name of the beneficiary receiving laboratory testing to assure that the beneficiary is eligible for the service and to assure the proper payment of claims. This kind of information is required for payment of all claims for laboratory tests submitted for Medicare beneficiaries. Even though laboratories must obtain the name of Medicare patients to be assured payment of all Medicare claims, laboratories are allowed to maintain billing records separate from the actual test result records.

Comment: One commenter requested that our proposal be deferred until we clarify or identify the rule that permits Medicare to require laboratories to meet specific requirements for patients who are not seeking Medicare payment or Medicaid reimbursement.

Response: The Medicare statute consistently refers to "all" patients, and not just Medicare beneficiaries, in imposing conditions of participation on entities that want to participate in the Medicare program, and in authorizing the Secretary to impose additional health and safety requirements applicable to such entities.

IV. Provisions of the Final Rule

As explained in section III of this preamble, we did not receive comments that were opposed to the proposed rule; rather, the majority of comments supported the proposed rule. Therefore, we are adopting in final, the rules as proposed on March 31, 1988.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule." A major rule is defined as any document that is likely to: (1) Have an annual effect on the economy of $100 million or more (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises in domestic or export markets.

We have determined that this final rule neither results in an annual economic impact of $100 million or more nor meets any other criteria of the Executive Order 12291. A regulatory impact analysis is not required.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all laboratories to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact

on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hosptial with fewer than 50 beds located outside a metropolitan statistical area.

This rule will allow affected laboratories to conform their operations to accepted public health practices regarding the confidentiality of HIV testing. It will not impose any burdens or costs on affected entities. Therefore, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Other Required Information

Paperwork Reduction Act

Sections 74.53, 405.1316, and 441.16 of this rule reduce information collection requirements for laboratories. These changes are currently approved under OMB Control No. 0938–0527.

List of Subjects

42 CFR Part 74

Laboratories, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 42 of the Code of Federal Regulations is amended as follows:

A. Part 74 is amended as set forth below:

PART 74—CLINICAL LABORATORIES

1. The authority citation for Part 74 continues to read as follows:

Authority: Sec. 215, 58 Stat. 690; 42 U.S.C. 216.

2. In § 74.53, the introductory language is republished and paragraphs (b) and (c) are revised to read as follows:

§ 74.53 Specimen records.

Daily accession records shall contain the following information:

* * * * *

(b) The name and other identification of the person from whom the specimen was taken, if available. However, the name and other identification is not required of an individual whose specimen is tested for—

(1) The presence of the Human Immunodeficiency Virus (HIV) antibody; or

(2) The isolation and identification of the HIV causative agent.

(c) The name of the licensed physician or other person or clinical laboratory who or which submitted the specimen, except the name of the other person is an individual submitting his or her own specimen to be tested for—

(1) The presence of the HIV antibody; or

(2) The isolation and identification of the HIV causative agent.

* * * * *

B. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for Part 405 Subpart M is revised to read as follows:

Authority: Secs. 1102, 1861(s) (3), (12), and (13), 1864, and 1871 of the Social Security Act as amended (42 U.S.C. 1302, 1395x(s) (3), (11), and (12), 1395aa, and 1395hh).

2. In § 405.1316(f), the introductory language is republished and paragraphs (f) (2) and (3) are revised to read as follows:

§ 405.1316 Condition—clinical laboratory; management.

* * * * *

(f) *Standard; specimens—records.* The laboratory maintains a record indicating the daily accession of specimens, each of which is numbered or otherwise appropriately identified. The factor explaining the standard is as follows: Records contain the following information:

* * * * *

(2) The name and other identification of the person from whom the specimen was taken, except for individuals for whom a request for payment is not being made under the Medicare program and whose specimens are being tested for—

(i) The presence of the Human Immunodeficiency Virus (HIV) antibody; or

(ii) The isolation and identification of the HIV causative agent.

(3) The name of the licensed physician or other authorized person or clinical laboratory who or which submitted the specimen, except that when request for Medicare payment is not being made, the name of the other authorized person is not required, if the other authorized person is an individual submitting his or her own specimen to be tested for—

(i) The presence of the HIV antibody; or

(ii) The isolation and identification of the HIV causative agent.

* * * * *

C. Part 441 as amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for Part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.16 is added to Subpart A to read as follows:

§ 441.16 Laboratory services.

(a) The plan must provide for payment of laboratory services as defined in § 440.30 of this subchapter if provided by—

(1) An independent laboratory that meets the requirements for participation in the Medicare program found in § 405.1316 of this chapter;

(2) A hospital-based laboratory that meets the requirements for participation in the Medicare program found in § 482.27 of this chapter;

(3) A rural health clinic, as defined in § 491.9 of this chapter; or

(4) A skilled nursing facility—based clinical laboratory, as defined in § 405.1128(a) of this chapter.

(b) Except as provided under paragraph (c), if a laboratory or other entity is requesting payment under Medicaid for testing for the presence of the human immunodeficiency virus (HIV) antibody or for the isolation and identification of the HIV causative agent as described in § 405.1316(f) (2) and (3) of this chapter, the laboratory records must contain the name and other identification of the person from whom the specimen was taken.

(c) An agency may choose to approve the use of alternative identifiers, in place of the requirement for patient's name, in paragraph (b) of this section for HIV antibody or causative agent testing of Medicaid recipients.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; and No. 13.744, Medicare—Supplementary Medical Insurance)

Dated: October 3, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 1, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-27814 Filed 12-1-88; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Probate Proceedings; Age Requirements

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This office amends its regulations governing hearings in Indian probate proceedings to reflect a statutory amendment concerning the age at which an Indian can execute a will devising trust or restricted property.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Parlen L. McKenna, Chief Administrative Law Judge, Hearings Division, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, Telephone (703) 235-3800.

SUPPLEMENTARY INFORMATION: This Office amends 43 CFR 4.260 to correct an existing regulation based on the enactment of new legislation. Section 4.260 states that an Indian of the age of 21 years or over can execute a will devising trust or restricted property. The statutory age at which an Indian can execute such a will, codified in 25 U.S.C. 373, was lowered to 18 in the Act of November 5, 1987, Pub. L. 100-153, sec. 2, 101 Stat. 886.

Paperwork Reduction Act

This document does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule is categorically excluded from the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 through 4347), process because it is of an administrative, financial, legal, technical, and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required. 40 CFR 1508.4; 516 DM 2.3A.

The Department is publishing this document as a final rule without prior publication of a proposed rule, and effective immediately upon publication. This action is being taken because the Department has determined that the statutory enactment is clear and unambiguous, leaving no room for interpretation. Furthermore, prompt revision of the regulation to effectuate the statutory enactment is in the public interest. Publication of a proposed rule would unnecessarily delay this process and would result in needless additional expense. Therefore the Department concludes for good cause that notice and public comment are unnecessary. The Department also concludes for the above reasons that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

This document was written by Kathryn Lynn, Chief Administrative Judge, Board of Indian Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Date: November 7, 1988.

Earl E. Gjelde,

Under Secretary.

For the reasons set out in the preamble, Title 43, Part 4, Subpart D, of the *Code of Federal Regulations*, is amended as set forth below;

PART 4—[AMENDED]

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

2. Paragraph (a) of 43 CFR 4.260 is amended by changing "21" to "18" to read as follows:

§ 4.260 Making; review as to form; revocation.

(a) An Indian of the age of 18 years or over * * *.

* * * * * *

[FR Doc. 88-27802 Filed 12-1-88; 8:45 am]

BILLING CODE 4310-79-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-506; RM-5850]

Radio Broadcasting Services; Apache Junction, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Apache Junction, Arizona, and modifies the Class A license of Beta Communications, Inc. for Station KVVA-FM, as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 296C2 at Apache Junction are 33-23-49 and 111-27-16. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-506, adopted November 4, 1988, November 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments for Arizona, is amended by revising the entry for Apache Junction by deleting Channel 296A and adding Channel 296C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-27744 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-612; RM-5873]

Radio Broadcasting Services; North Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document allots Channel 266A to North Little Rock, Arkansas, as that community's first local FM service, in response to a petition for rule making filed by Earl N. Hodges, d/b/a Mid-South Frequency Monitoring Service. With this action, the proceeding is terminated.

DATES:

Effective: January 9, 1989. The window period for filing applications on Channel 266A at North Little Rock, Arkansas, will open on January 10, 1989 and close on February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-612, adopted October 28, 1988 and released November 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Arkansas, by adding North Little Rock, Channel 266A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-27743 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-163; RM-6025]

Radio Broadcasting Services; Osage City, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 225C2 for Channel 224A at Osage City, Kansas, and modifies the license of Station KZOC(FM) to specify operation on Channel 225C2. This action is taken in response to a petition filed by Osage Radio, Inc., licensee of Station KZOC(FM). The coordinates for Channel 225C2 are 38-33-42 and 95-52-31. With this action, this proceeding is terminated.

EFFECTIVE DATE: Janaury 9, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-163, adopted October 28, 1988, and released November 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Kansas by removing Channel 224A and adding Channel 225C2 at Osage City.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-27746 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-157; RM-6150 and RM-6437]

Radio Broadcasting Services; Arcadia and Manistee, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 300A to Manistee, Michigan, in response to a counterproposal filed by J. Edward Rossel. The original petition in this proceeding was filed by Kenneth J. Burch, requesting the allotment of FM Channel 300A to Arcadia, Michigan. No supporting comments were received for Channel 300A at Arcadia and in accordance with Commission policy, no further consideration will be given to the allotment of a channel at Arcadia due to a lack of interest. Channel 300A can be allotted to Manistee in compliance with the Commission's spacing requirements at coordinates 44-14-48 and 86-19-12. Canadian concurrence has been obtained for the allotment of 300A at Manistee. With this action, this proceeding is terminated.

DATES: *Effective:* January 9, 1989. The window period for filing applications for Channel 300A at Manistee will open on January 10, 1989, and close on February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-157, adopted October 28, 1988, and released November 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by adding Channel 300A at Manistee.

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Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-27747 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 87-275; DA 88-1723]

Amendment of Part 80 of the Rules to Designate VHF Marine Channel 13 for Bridge-to-Bridge Communication on the Great Lakes

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This Order establishes the effective date of February 1, 1989 for rules adopted in PR Docket 87-275.

This action is necessary to inform the public of the final agreement between Canada and the United States on the use of channel 13 for bridge-to-bridge communications on the Great Lakes.

The effect of this action is to specify an effective date for the implementation of channel 13 in lieu of channel 16 as a bridge-to-bridge channel on the Great Lakes.

EFFECTIVE DATE: February 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Shaffer, Special Services Division, Private Radio Bureau, (202) 632-7197.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 80

Bridge-to-bridge, Canada, Great Lakes, Ship stations, Marine safety.

Order

Adopted: October 27, 1988.
Released: November 14, 1988.
By the Chief, Private Radio Bureau.

1. On March 8, 1988 (published May 13, 1988, 53 FR 17052), Part 80 of the Commission's Rules was amended in PR Docket 87-275 (3 FCC Rcd 1861) to designate VHF marine channel 13 (156.650 MHz), rather than the currently used channel 16 (156.800 MHz), for vessel bridge-to-bridge (navigational) communications on the Great Lakes. The effective date for these rule amendments was deferred until after the conclusion of an agreement with Canada to amend the Technical Regulations annexed to the Agreement between the United States and Canada for Promotion of Safety on the Great Lakes by Means of Radio, as amended (Great Lakes Radio Agreement). On August 10, 1988, an agreement with Canada was reached. Subsequently, a mutually acceptable date to implement the amended Great Lakes Radio Agreement was established as 0001 UTC February 1, 1989.

2. Accordingly, *it is ordered* that under the authority contained in § 0.331 of the Commission's Rules, the effective date for the rule amendments (for §§ 80.308, 80.373, and 80.956) in PR Docket 87-275 is 0001 u.t.c. February 1, 1989.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88-27748 Filed 12-1-88; 8:45 am]

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DEPARTI

Rural Ele

7 CFR Pa

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AGENCY:
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ACTION:

SUMMARY
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Proposed Rules

Federal Register
Vol. 53, No. 232
Friday, December 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1785

Cushion of Credit Account Computations and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Part 1785 *Loan Account Computations, Procedures, and Policies,* by adding five new sections: § 1785.66, *General;* § 1785.67, *Definitions;* § 1785.68, *Establishing a Cushion of Credit Payment Program;* § 1785.69, *Cushion of Credit Payment Account Computations;* § 1785.70 *Application of RETRF Cushion of Credit Payments.* These additions incorporate the provisions of section 313 of the Rural Electrification Act of 1936 as amended by the Omnibus Budget Reconciliation Act of 1987. Section 313 requires all voluntary payments made by borrowers after October 1, 1987, to be placed in a cushion of credit account. This part provides that borrowers shall receive 5 percent per annum on all cushion of credit payments received or credited to their account by REA, after October 1, 1987. Borrowers may not maintain balances or establish balances in a cushion of credit account while any payment, or portion thereof, is in default. Payments received in the month in which an installment is due will be applied to the installment due. However, if the regular installment payment is received at a later date in the month, the first payment received will be applied retroactively to a cushion of credit account and the second will be applied to the installment due. This treatment gives the borrower the greatest economic advantage by allowing interest to accrue for the greatest possible time on cushion of credit accounts.

DATE: Public comments must be received by REA no later than January 3, 1989.

ADDRESS: Submit written comments to Robert D. Ruddy, Director, Fiscal Accounting Division, Rural Electrification Administration, Room 2001, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Ruddy, Director, Fiscal Accounting Division, above address, telephone number (202) 382–8823. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above address.

SUPPLEMENTARY INFORMATION: REA proposes to codify the Rural Electrification regulations related to the REA cushion of credit payments program made by Rural Electrification and Telephone Revolving Fund (RETRF) borrowers. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) result in significant adverse affects on competition, employment, investment or productivity, and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. REA has included that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 42 U.S.C. 4321 *et seq.* (1976) and, therefore, does not require an environmental impact statement or an environmental assessment. This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). These programs are listed in the Catalog of Federal Domestic Assistance as: 10.850—*Rural Electrification Loans and Loan Guarantees* and 10.851—*Rural Telephone Loans and Loan Guarantees.* For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

List of Subjects in 7 CFR Part 1785

Administrative practice and procedure, Electric utilities, Telephone utilities, Loan Programs—energy.

PART 1785—[AMENDED]

In view of the above, REA proposes to amend 7 CFR, Chapter XVII, Part 1785 by designating existing §§ 1785.1 through 1785.17 as Subpart A and adding Subpart B §§ 1785.66 through 1785.70 to read as follows:

Subpart A—Loan Payments and Statements

Sec.
1785.1–1785.16 [Reserved]
1785.17 Basis dates and termination of unadvanced loan fund commitments—electric.

Subpart B—REA Cushion of Credit Account Computations and Procedures

Sec.
1785.66 General.
1785.67 Definitions.
1785.68 Establishing an REA cushion of credit payment account.
1785.69 Cusion of credit payment account computations.
1785.70 Applicaton of RETF cushion of credit payments.

Authority: 7 U.S.C. 901 *et seq.*

Subpart A—Loan Payments and Statements

§§ 1785.1–1785.16 [Reserved]

Subpart B—REA Cushion of Credit Account Computations and Procedures

§ 1785.66 General.

This Subpart B sets forth policies and procedures on the REA cushion of credit payments program. The cushion of credit payments program will be maintained only for insured loans evidenced by obligations of the Fund.

* * * * *

§ 1785.67 Definitions.

"*Accumulated (deferred) interest*" means interest allowed to accumulate up to, and including, the basis date of REA notes covering loans approved before June 5, 1957. The accumulated interest is payable in equal periodic installments over the remaining life of the notes.

"Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)

"Advance payment" means a voluntary unscheduled payment on an REA note, made prior to October 2, 1987, credited to the advance payment account of a borrower.

"Cushion of Credit Payment" means a voluntary unscheduled payment on an REA note made after October 1, 1987, credited to the cushion of credit account of a borrower.

"Current interest" means interest payable periodically as it accrues.

"Fund" means the Rural Electrification and Telephone Revolving Fund established pursuant to the Act.

"Interest credit" means interest earned on balances in advance payment or cushion of credit accounts and added to the advance payment accounts prior to October 2, 1987, and cushion of credit accounts since October 2, 1987.

"REA Notes" means those notes, bonds, or other obligations evidencing indebtedness created by loans made pursuant to Titles I, II, or III of the Act.

"Prepayment" means a voluntary unscheduled payment which the borrower instructs REA to apply directly and immediately to the principal of an REA note.

§ 1785.68 Establishing an REA cushion of credit payment account.

A cushion of credit account shall be automatically established by REA for each borrower who makes an unrestricted payment on an REA note after October 1, 1987, which is in excess of the amount then due. Such account will bear interest at a rate of 5 percent per annum. Therefore, all payments on REA notes which are in excess of required payments and not otherwise designated shall be placed in the borrowers' respective cushion of credit accounts.

§ 1785.69 Cushion of credit payment account computations.

(a) Cushion of credit payments are credited to the borrowers' cushion of credit accounts.

(b) The amount of interest credited to cushion of credit accounts will reduce the interest charged on the borrower's REA notes and is separately shown on REA Form 694, "Statement of Interest and Principal Due."

§ 1785.70 Application of RETRF cushion of credit payments.

If a maturing installment on an REA note is not received by its due date, funds will be withdrawn from the respective borrower's cushion of credit account and applied as of the installment due date beginning with the oldest note as follows: First, to current interest then due on all REA notes; second, to the accumulated interest due, if any, on all REA notes; and third, to the principal then due on all REA notes. In those instances where a borrower has prior to October 2, 1987, maintained an advance payment account with REA, its cushion of credit account will be applied in accordance with the provisions of this section prior to using any balance remaining in its advance payment account to pay interest and principal installments on REA notes.

Dated: October 3, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88-27384 Filed 12-1-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[DS-222]

Waiver by Secretary of State and Attorney General of Passport and/or Visa Requirements for Certain Categories of Nonimmigrants

AGENCY: Bureau of Consular Affairs, State.

ACTION: Proposed rule.

SUMMARY: This proposed rule adds paragraph (m) to 22 CFR 41.2 in order to implement Chapter 15, Annex 1502.1, Part B of the Free Trade Agreement (FTA) with Canada and the provisions of section 307(a) of Pub. L. 100-449, the "United States-Canada Free Trade Agreement Implementation Act of 1988" signed by the President on September 28, 1988. The FTA was signed by both President Reagan and Prime Minister Mulroney on January 2, 1988. The "United States-Canada Free Trade Agreement Implementation Act of 1988" provides the legislative basis for implementing the Free Trade Agreement. These regulations take effect on the date the FTA enters into force. It is anticipated that the FTA will enter into force on January 1, 1989. The Office of the United States Trade Representative will confirm in a **Federal Register** notice the precise date of the FTA's entry into force. Part B of Annex 1502.1 of Chapter 15 of the FTA and section 307(a) of the "United States-Canada Free Trade Agreement Implementation Act" extend to Canadian citizens the opportunity to apply for visas and seek admission to the United States under section 101(a)(15)(E) of the Immigration and Nationality Act (INA). This regulation constitutes an exception to the visa waiver for Canadian citizens.

DATES: Written comments must be received in duplicate on or before December 16, 1988.

ADDRESS: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20520, (202) 663-1204.

SUPPLEMENTARY INFORMATION: Title 22 of the Code of Federal Regulations § 41.2(a) exempts Canadian citizens from seeking visa issuance to enter the United States. Once the FTA is in effect, FTA and the FTA Act will allow Canadian citizens to apply for treaty trader and treaty investor visas under section 101(a)(15)(E) of the INA, a privilege not currently extended to Canadian nationals. Under the terms of the FTA, Canadian nationals must apply for visas from U.S. consular officers abroad in order to gain admission to the United States under section 101(a)(15)(E) of the INA. As Canadian nationals are exempt from the visa requirement pursuant to 22 CFR 41.2(a), the regulations would be amended to impose the visa requirement on Canadians who are seeking admission to the United States as treaty traders or treaty investors under section 101(a)(15)(E) of the INA.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Passport and visas, Students.

In view of the foregoing 22 CFR Part 41 would be amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 313, 100 Stat. 3435, 8 U.S.C. 1182; Sec. 307, 102 Stat. 1876.

2. A new paragraph (m) would be added at the end of § 41.2 to read:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(m) *Treaty Trader and Treaty Investor.* Notwithstanding the provisions of paragraph (a) of this section, a visa is required of a Canadian

national who is classified, or who seeks classification, under INA 101(a)(15)(E).

Date: November 7, 1988.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 88-27796 Filed 12-1-88; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 88-075]

RIN 2115-AD07

Mississippi River; Regulated Navigation Area

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking will amend the recordkeeping requirements for barge fleeting facilities on the lower Mississippi River. The Coast Guard proposes to eliminate the requirement to record the identification of each towboat that moves a barge into, within, or out of a facility. The Coast Guard has concluded that this information is unnecessary to its oversight of fleeting facility operations. This action will reduce the information collection burden imposed on the public.

In addition, this proposed rulemaking will correct the Office of Management and Budget approval number shown for these recordkeeping requirements.

DATES: Comments must be received on or before January 17, 1989.

ADDRESSES: Comments should be submitted to Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 88-075), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying in Room 3600, Marine Safety Council, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Persons desiring to comment on the information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget (OMB), 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Mr. Harry C. Robertson, Office of Navigation Safety and Waterway Services, telephone (202) 267-0405 between 7:30 a.m. and 3:00 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Lieutenant (junior grade) Edward, R. Raynolds, Project Officer, Office of Navigation Safety and Waterway Services, Coast Guard Headquarters; and Christena G. Green, Project Counsel, Office of Chief Counsel, Coast Guard Headquarters.

Background

The regulations for barge fleeting facilities were adopted in 1975 (40 FR 56430) with the establishment of the Regulated Navigation Area between Miles 88 and 127 of the Mississippi River, under the authority of the Ports and Waterways Safety Act of 1972. They were first published in Part 128 of Title 33, CFR. The recordkeeping requirements for barge fleeting facilities were approved by the Office of Management and Budget in 1981 and were reauthorized by OMB in December, 1983 and January, 1987. In 1982 all regulations governing safety zones, security zones, and regulated navigation areas were consolidated in Part 165 of Title 33 (47 FR 29659).

The purpose of the barge fleeting regulations, including the recordkeeping requirements contained in 33 CFR 165.803(i), is to ensure that the operators of barge fleeting facilities follow proper mooring and inspection procedures, in order to prevent barges from breaking away from a fleeting facility and creating a hazard in a very congested area of the Mississippi River. Fleeting facility records provide documentary evidence that inspections are being made and aid in the investigation of any occurrences of runaway barges. However, the Coast Guard had found that recording the name of the tugboat which moves a barge into, within, or out of a facility is no longer necessary to its oversight activities and therefore proposes to eliminate the requirement.

In addition, the note immediately following 33 CFR 165.803(i), containing the OMB approval number for the recordkeeping requirements, will be changed to show the correct number, which is 2115-0092.

Regulatory Evaluation

This regulatory action is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. This action is part of the continuing effort to reduce the paperwork burden on the public in accordance with the Paperwork Reduction Act of 1981. Persons desiring to comment on the information collection requirements should submit their comments to OMB as indicated under "ADDRESSES". The reduction in recordkeeping requirements should result in lower costs in terms of both time and money to the operators of fleeting facilities. Therefore, the Coast Guard certifies that, if adopted, this proposal will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and has been determined to have insufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Coast Guard, Harbors, Marine safety, Navigation, Security measures, Vessels, and Waterways.

For the reasons set forth in the Preamble, the Coast Guard proposes to amend Title 33, Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 is revised to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.803 is amended by removing paragraph (i)(4) and by revising the note at the end of paragraph (i) to read as follows:

§ 165.803 Mississippi River—regulated navigation area.

* * * * *

(i) * * *

Note: The requirements in paragraph (i)(3) of this section for the listing of hazardous cargo refer to cargoes regulated by Subchapters D and O of Chapter I, Title 46, Code of Federal Regulations. The recordkeeping requirement for barge fleeting facilities (Regulated Navigation Area) is approved under Office of Management and Budget Control number 2115-0092.

Dated: October 12, 1988.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-27697 Filed 12-1-88; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89–1; Order No. 810]

Petition of Warshawsky and Co. for Third-Class Cost Data Rulemaking, 1988

AGENCY: Postal Rate Commission.

ACTION: Petition for rulemaking.

SUMMARY: On November 17, 1988, Warshawsky & Company filed a petition requesting the Commission to initiate a rulemaking to amend the Commission's filing and procedural requirements pertaining to the provision of cost and volume data supporting requests for changes in third-class rates. We have labeled this filing Docket No. RM89–1 for reference. In its filing, Warshawsky proposes rule changes which would require the Postal Service to compile volume data by shape and weight. Warshawsky's proposed rule would require that any rate proposal for third-class mail be accompanied by analysis of third-class costs by ounce increments as well as a study, not more than three years old, showing the "effect of shape and weight on costs in third-class mail."

Warshawsky claims that the third-class rate structure is "without substantial cost justification." Furthermore, Warshawsky states that despite continuing Commission requests for improved costing information relative to third class, there "is no evidence that the Service has even begun to develop systems to produce the necessary data" essential to developing a cost-based third-class rate structure.[1] To ensure the availability of this costing information for the next omnibus rate case, Warshawsky proposes to amend the Commission's rules of practice.

DATES: Any person wishing to comment on the desirability of instituting a rulemaking in response to Warshawsky's November 17, 1988, petition may do so by January 3, 1989, reply comments may be filed by December 19, 1988. The Commission will then determine whether to proceed with a formal rulemaking proceeding with regard to Warshawsky's petition.

ADDRESSES: Warshawsky's filing, including the text of its proposed procedural rule, is available for public inspection at the Commission offices, 1333 H Street, NW., Suite 300, Washington, DC. The Secretary of the Commission is preparing a service list for this filing. Any person wishing to be included on it, should advise, in writing, Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268.

FOR FURTHER INFORMATION CONTACT: Charles L. Clapp, (202) 789–6840.

SUPPLEMENTARY INFORMATION: .

Commission Notice and Order Concerning Filing of Petition of Warshawsky for Initiation of Rulemaking to Amend Procedural Requirements Concerning Cost and Volume Data Required to Support Proposals for Changes in Third-Class Postal Rates

Issued November 28, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc, III.

The Commission orders:

(A) Comments to Warshawsky's petition are due 30 days after the publication of this Notice and Order in the **Federal Register**. Reply comments are due 14 days thereafter.

(B) Persons wishing to have their names on the Commission's service list are to notify in writing the Secretary of the Commission.

(C) The Secretary shall publish this Notice and Order in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 88–27739 Filed 12–1–88; 8:45 am]

BILLING CODE 7715–01–M

[1] Petition of Warshawsky and Company to Institute A Rulemaking Proceeding, Memorandum of Points and Authorities, November 17, 1988 at 17.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3485–6]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a submission by the State of Wisconsin as a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This submission would constitute for the General Motors Corporation's (GM) Janesville, Wisconsin, facility a temporary relaxation from Wisconsin's volatile organic compound (VOC) reasonably available control technology (RACT) regulations. This action is taken in response to a January 13, 1987, submission from the State of Wisconsin.

USEPA today is proposing to approve this as a SIP revision because (1) the GM facility is located in an ozone attainment area (the Clean Air Act does not require RACT level VOC control in areas that have always been designated attainment), and (2) approval of this proposed SIP revision will not increase the historical VOC emission level from this source. Under USEPA existing policy, however, no demonstration of attainment and maintenance was required in the SIP for rural ozone attainment areas.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 3, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency,
Region V,
Air and Radiation Branch (5AR–26),
230 South Dearborn Street,
Chicago, Illinois 60604.

Wisconsin Department of Natural Resources,
Bureau of Air Management,
101 South Webster,
Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On January 13, 1987, the Wisconsin Department of Natural Resources (WDNR) submitted a proposed temporary relaxation from its RACT limits until December 2, 1992, for the VOC emissions from GM's topcoat and final repair lines. These operations are located at GM's facility in Janesville, Wisconsin, which has been designated as an attainment/unclassifiable area for ozone, section 107(d) and § 81.350 of the Code of Federal Regulations.

History of the Variance

GM currently operates six coating systems at its B–O–C Group facility in Janesville, Wisconsin, which are subject to Natural Resources (NR) 154.13(4)(g), Wisconsin Administrative Code. Two of these coating systems, topcoating and final repair, currently use coatings which exceed the limits contained in NR 154.13(4)(g). This rule limits the VOC content of topcoats and spray primers to 2.8 pounds per gallon of coating, excluding water, after December 31, 1986, and limits the VOC content of final repair coatings to 4.8 pounds per gallon of coating, excluding water, after December 31, 1986.

In lieu of these limits, the WDNR has issued a variance for the facility, subject to the following conditions:

1. The following limits shall apply through December 1992, or until the J–Car production line is converted to a different automobile type production line, whichever is sooner:

a. 6.2 pounds of VOCs per gallon of coating, excluding water, from a blackout topcoat coating line.

b. 5.2 pounds of VOCs per gallon of coating, excluding water, from any other topcoat coating line.

c. 6.5 pounds of VOCs per gallon of coating, excluding water, from a spot primer coating line.

d. 6.5 pounds of VOCs per gallon of coating, excluding water, from a final repair coating line.

2. The facility shall keep records verifying compliance with the above limitations. These records shall be kept at the facility for a period of 3 years and made available to WDNR officials, upon request.

3. GM shall submit to the WDNR by December 31, 1989, a report detailing the methods to be followed by the facility to achieve compliance with all RACT limitations by December 31, 1992.

These limits would allow GM to continue to use the coatings currently used on these lines.

The variance issued by WDNR extends the compliance date to December 31, 1992. As discussed further below, USEPA's policy provides that where a source in an attainment area is subject to RACT under an accommodative SIP, and that source seeks a compliance date extension, the source must either meet the RACT requirements of USEPA's August 7, 1986, compliance date extension policy or the area will lose the accommodative SIP for the duration of the variance.[1]

[1] An accommodative ozone SIP for areas classified as attainment/unclassifiable requires RACT-level controls on existing sources, in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required on new major sources in attainment/unclassifiable areas under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas.

Compliance Date Extension

In order for an area to retain its accommodative SIP, the State must demonstrate that it is implementing RACT as expeditiously as practicable. The current guidance available for evaluting whether or not a compliance schedule is expeditious is contained in an August 7, 1986, memorandum on compliance date extensions in nonattainment areas. Therefore, although this source is not strictly subject to the requirements of the August 7, 1986, policy, USEPA is using the criteria contained in that policy to determine whether this compliance schedule is expeditious.

However, GM has not demonstrated that its compliance schedule is as expeditious as practicable. WDNR has maintained that an extension is justified because it is economically infeasible for GM to meet the SIP limits. However, GM is only proposing to delay the cost until the J–Car production line is converted to a different type or until December 2, 1992, whichever is sooner.

Therefore the variance will simply allow GM to delay these costs for control, rather than to reduce or eliminate them. Thus, the State has not demonstrated that GM's compliance is expeditious.

This rulemaking relaxes a stationary source RACT emission limitation in an area that has been designated as attainment/unclassified for ozone. Originally, this RACT limitation was imposed by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. This action, when promulgated, will remove the accommodative SIP for Rock County for as long as the relaxation is in place. This means that all new major VOC sources and major modifications in this county must comply with all PSD monitoring requirements. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas—all sources wishing to locate in nonattainment areas must continue to comply with the State's federally approved Part D new source review program. USEPA assumes that the State would prefer to have this revision approved and cancel the accommodative SIP for the duration of the variance. If the State does not wish to have the variance approved on this basis, it should so indicate during the public comment period for this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before January 3, 1989 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbon, Intergovernmental relations, Ozone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: June 18, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register November 29, 1988.

[FR Doc. 88–27763 Filed 12–1–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[SW–FRL–3485–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Boeing Commerical Airplane Company, Auburn, Washington, to exclude certain solid wastes at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a

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waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentation of harzardous constituents released from the petitioned waste, once it is disposed.

DATE: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until January 17, 1989. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by November 19, 1988. The request must contain the information prescribed in 40 CFR 260.2(d).

ADDRESS: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-BAEP-FFFFF".

Requests for a hearing should be addressed to Joe Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS-343), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its fiscal and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitiability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a harardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitiability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used To Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposed to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Boeing's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that these models represent a reasonable worst-case waste disposal scenario for the

petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Boeing is seeking a delisting for waste managed on site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying ground water. Ground-water data collected from Boeing's monitoring wells are compared directly to the levels of regulatory concern for particular hazardous constituents detected in the ground water and will help characterize the potential impact (if any) of the unregulated disposal of Boeing's waste on human health and the environment.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Boeing Commercial Airplane Company, Auburn, Washington

1. Petition for Exclusion

The Boeing Commercial Airplane Company (Boeing), at its Fabrication Division in Auburn, Washington, manufactures metal parts and subassemblies for commercial aircraft. Boeing petitioned the Agency to exclude residually contaminated soils, listed as hazardous pursuant to 40 CFR 261.3(c)(2)(i), remaining after the excavation of a sludge pile and underlying soils containing EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Boeing petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Boeing believes that the previous management of F006 wastes at this site did not leave significant quantities of contaminants in the underlying soils, and if present, these constituents are in an essentially immoble form. Boeing further claims that these soils are not hazardous for any other reason (*i.e.*, there are no additional hazardous constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See Section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Boeing's petition.

2. Background

Boeing originally submitted its petition on November 13, 1985. Additional information was requested from Boeing, and this information was submitted to the Agency on April 8, 1986. In support of its petition, Boeing submitted (1) detailed descriptions, including schematic diagrams, of the manufacturing and treatment processes which contributed to the waste originally present in the sludge pile; (2) total constitutent and EP leachate analyses of the residually contaminated soils for the EP toxic metals and nickel; (3) total constitutent and distilled water extract test results of the soils for total cyanide; (4) total oil and grease analyses of the soils; (5) total constituent analyses for formaldehyde (expected to be present from process descriptions); (6) test data on the hazardous waste characteristics of the soils; (7) a list of raw materials used in the manufacturing and treatment processes which contributed to the sludge from which the contaminated soils were derived; (8) ground-water monitoring data from the facility's monitoring system; and (9) quality control/quality assurance data for the chemical analyses. Although not required to do so, Boeing also voluntarily provided the results of a priority pollutant [1] scan of the petitioned soils to substantiate its claim that no other hazardous constituents, bssides those tested for, were present in the soils.

Boeing's manufacturing process uses some thirty separate subprocesses. These include a variety of processes for cleaning and etching (using solvents, alkaline solutions, and other cleaning agents); anodizing and alodizing; phosphating and pickling; plating with aluminum, cooper, chromium, nickel, and titanium; degreasing and stripping; and painting. The rinse waters and batch dumps from each of the metal cleaning, coating, and inspection steps are influent to Boeing's rinse water treatment plant. Cyanide-bearing wastewaters from the electroplating processes are treated in the wastewater treatment plant with chlorine and lime slurry to destroy cyanide, then are precipitated to remove heavy metal hydroxides (the metal-bearing cyanide sludges are put in barrels and disposed off-site). The effluent from the cyanide destruction step is sent to a surge tank and subsequently to a lagoon where it is combined with dye penetrant wastes containing no cyanide (from the inspection of metal parts) and overflow from a chrome rinse surge tank. In the lagoon, hexavalent chromium in the effluent is reduced to trivalent chromium with sulfur dioxide and sulfuric acid. Lime is then added to raise the pH from 2.5 to 9.0. The treated effluent is then sent to a clarifier, where a polyelectrolyte is added to aid coagulation. The clarifier solids are sent

[1] A set of constituents which include the volatile, semi-volatile acid extractable compounds and base/neutral extractable compounds listed in 40 CFR Part 261, Appendix VIII.

to two storage tanks, which also receive sludges from the seperation of oil/water emulsions (waste coolants). The combined sludges flow by gravity to a centrifuge, where another polyelectrolyte is added, and the resulting sludge paste is collected in a hopper.

During the period from 1976 to 1985, the sludge produced by the rinse water treatment plant was carted daily to the sludge pile containment area. In early 1985, Boeing began closure of this sludge pile in accordance with a closure plan submitted with its revised Part B permit application. Boeing removed approximately 9,000 cubic yards of sludge and underlying soil to a permitted hazardous waste disposal facility. The sludge and soil were excavated down to the ground-water table, which is sometimes visible on the bottom of the containment area. The residually contaminated soils remaining after removal of the sludge are the subject of this petition. Since removal of the sludge pile, all newly generated waste has been disposed off-site as a hazardous waste by Boeing. The facility's existing permit has been conditioned, so that if the delisting petition for the contaminated soils remaining at the waste pile site is denied, the facility will have to close the contaminated soils in the containment area as a hazardous waste landfill. Delisting the residually contaminated soils in the sludge pile containment area is necessary to allow reclamation and future development of the site. If the soil is delisted by EPA, Boeing has stated in its petition that it intends to leave the soil in place on-site and cover it with 10 to 12 feet of clean fill dirt. A preliminary soil evaluation was done in 1985 as part of the closure requirements, but all further data generated by Boeing were collected for the purpose of obtaining a delisting for the residual soils.

The sludge pile containment area is configured in a crescent shape, approximately 180 feet by 80 feet. For sampling, the containment area was divided into eight sections, and sample locations in each were chosen randomly, in accordance with guidance provided by the Agency in its guidance document, *Petitions to Delist Hazardous Wastes—A Guidance Manual*, U.S. EPA Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Soil samples were collected from the empty containment area with the help of a backhoe. Stainless steel split-barrel samplers were driven by the backhoe into the underlying soils (to a depth of about three feet) to collect a core sample of the soil. (Previous analyses had indicated that the water table was usually located approximately three feet beneath the excavated containment area, and that this depth would, therefore, be conservative with respect to the assessment of any deep residual contamination.) In certain case where a backhoe could not drive the sampler to sufficient depth (*e.g.*, because of the presence of extensive cobble layers), the backhoe excavated a section of soil down to a three-foot depth and samples were composited from the material in the backhoe bucket. Six samples were collected in this way. In all, a total of 188 one-quart samples were taken from 61 locations: Five each from seven of the eight quadrants on the containment area floor; six from the other, larger floor quadrant; and five each from the berms and two sections of access road surrounding the containment area.

Road and berm soil data were collected by Boeing because those soils will be used as fill dirt for the former sludge pile containment area; the berm soils represent the soils remaining after removal of the original waste from the sidewalls of the containment area, and the road soils represnt clean imported fill dirt in the road constructed around the site during waste excavation. These soils also serve as a basis for comparison to background contaminant levels in the bottom soils.

The samples were composed into two groups in the laboratory to form 12 samples for analysis. As a quality control procedure, six samples were taken of the wash water used to decontaminate the sampling equipment between samples (those wash waters were containerized in 55-gallon drums for disposal).

3. Agency Analysis

Boeing used test methods from *Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods*, U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846, to evaluate the soil samples. SW–846 Methods 7040 through 7951 were used to quantify the total constituent concentrations (*i.e.*, mg of a particular constituent per every kg of waste) of metals in the soils. Method 9010 was used to quantify the total cyanide content of the soils. In addition to these methods, Method 1310 was used to determine the extraction procedure (EP) leachable concentrations (*i.e.*, mg of a particular constituent per liter of extract) of the EP toxic metals, nickel, and cyanide in the soil. Maximum total constituent and EP leachate analyses for the inorganic constituents in the floor bottom soils are presented in Table 1, and for the road and berm soils in Table 2.

The detection limits in Table 1 (and Table 2 which follows) represent the lowest concentrations quantifiable by Boeing, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices vary and "dirty" waste matrices may cause interference, thus raising the detection limits.)

TABLE 1.—MAXIMUM TOTAL AND EP LEACHATE CONCENTRATIONS BOTTOM SOILS

Constituents	Total constituent *analyses* (*mg/kg*)	EP Leachate *Analyses* (*mg/l*)
Arsenic	2.6	ND
Barium	43	0.1
Cadmium	0.8	ND
Chromium	37.	ND
Lead	2.5	ND
Mercury	0.2	ND
Selenium	1.5	ND
Silver	0.3	ND
Nickel	11	ND
Cyanide	ND	ND
Beryllium	0.4	[1] 0.02
Antimony	ND	< [1] 0.125

ND: Non Detected. Denotes total concentration below the following detection limits: Cyanide—0.5; and antimony—2.5 mg/kg. Denotes leachable concentrations below the following detection limits: Arsenic—0.2; cadmium—0.01; chromium, lead, silver, and nickel—0.1; and mercury, selenium, and cyanide—0.005 mg/l.

[1] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

Table 2.—Maximum Total and EP Leachate Concentrations Road and Berm Soils

Constituents	Total constituent analyses (mg/kg)		EP leachate analyses (mg/1)	
	Road	*Berm*	*Road*	*Berm*
Arsenic	3.8	6.1	ND	ND
Banum	61	48	0.2	0.1
Cadmium	4.1	1.0	0.01	ND
Chromium	560	80	ND	ND
Lead	8.5	6.5	ND	ND
Mercury	0.3	0.3	ND	ND
Selenium	1.5	1.5	ND	ND
Silver	0.3	0.3	ND	ND
Nickel	19	15	ND	ND
Cyanide	0.5	0.5	0.005	ND
Beryllium	0.4	0.5	[1] 0.02	[1] 0.025
Antimony	ND	ND	[1] 0.125	[1] 0.125

ND: Non Detected. Denotes total concentration below the following detection limit: Antimony—2.5 mg/kg. Denotes leachable concentrations below the following detection limits: Arsenic—0.2; cadmium—0.01; Chromium, lead, silver, and nickel—0.1; and mercury, selenium, and cyanide—0.005 mg/l.

[1] See footnote 1 to table 1.

Using SW–846 Method 3540, Boeing determined that its soil had a maximum oil and grease content of 0.19 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may have significant concentrations of constituents of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure). See SW–846 Method 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

Ground-water monitoring data submitted by Boeing for this site do not indicate that contamination of the underlying aquifer by the sludge pile has occurred. Table 3 presents the maximum metal concentration of inorganic constituents at each monitoring well from which Boeing obtained ground-water samples.

TABLE 3.—MAXIMUM GROUND-WATER CONCENTRATIONS SLUDGE PILE AREA (MG/L)

	Well No.				
	SP-1 [1]	SP-2	SP-3	SP-4	SP-5
Arsenic	ND	ND	ND	ND	ND
Barium	ND	ND	ND	ND	ND
Cadmium	ND	ND	ND	ND	ND
Chromium	ND	ND	ND	ND	ND [2]
Lead	ND	ND	ND	ND	ND
Selenium	ND	ND	ND	ND	ND
Silver	ND	ND	ND	ND	ND
Mercury	ND	ND	ND	ND	ND
Cyanide	ND	ND	ND	ND	ND
Nickel	ND [3]	ND	ND	ND	ND

ND: Not Detected. Denotes concentrations below the following detection limits: Arsenic, chromium, selenium, and cyanide—0.005; barium—0.02; cadmium and silver—0.002; lead—0.01; mercury—0.001; and nickel 0.01 mg/l.

[1] Denotes upgradient monitoring well.

[2] Detection limit for chromium at SP–5 was 0.027 mg/l. Detection limits may vary between samples due to matrix effects, small sample size, etc.

[3] Detection limit for nickel at SP–1 was 0.02 mg/l. Detection limits may vary between samples due to matrix effects, small sample size, etc.

Boeing provided the Agency with a complete list of all raw materials used in the process contributing to the production of the sludge previously stored at the containment area. In addition, Boeing voluntarily provided the Agency with results from an evaluation of the soils for the EPA priority pollutants. The soil samples were analyzed with SW–846 Method 8240 to quantify volatile organics in the soil, Method 8080 for pesticides/PCBs, and Method 8270 for base/acid/neutral organics. The maximum concentrations reported for the detected priority pollutants are given in Table 4.

TABLE 4.—MAXIMUM TOTAL ORGANICS CONCENTRATIONS IN SOILS (PPM)

Constituents	Concentrations	Number of samples in which detected
Methylene chloride	0.41	12
Acetone	0.81	12
Di-butyl phthalate	0.074	1
Bis(2-ethylhexyl)-phthalate	3.1	6
Di-n-octyl phthalate	0.19	1

Separate analyses of the soil samples for the presence of formaldehyde showed non-detectable levels at a detection limit of 3 mg/kg.

Based on an evaluation of the site dimensions, Boeing submitted a signed certification stating that approximately 1,000 cubic yards of soil could be considered to be residually contaminated by the former presence of the F006 sludges. Boeing believes that soils at greater depths than they sampled need not be sampled since the bottom of the excavated area already lies at or below the water table, and that inclusion of these deeper soils may tend to dilute the surface soil samples with non-contaminated material. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. After a review of the site dimensions for the facility, the Agency believes that Boeing's figure of 1,000 cubic yards may underestimate the volume of contaminated soil by 300–500 cubic yards. The Agency, therefore, used a value of 1,500 cubic yards as a conservative alternative to Boeing's estimate in the evaluation of the soil.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Boeing's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for the residually contaminated soils and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 *FR* 7882 (February 26, 1985), 50 *FR* 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned wastes. See 50 *FR* 48953 (November 27, 1985), 51 *FR* 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential for organic constituents to leach into the ground water. The Agency requests comments on the use of the VHS and OLM models as applied to the valuation of Boeing's waste.

Specifically, the Agency used the VHS model to evaluate the the mobility of the hazardous inorganic constituents (except arsenic, chromium, lead, mercury, nickel, selenium, and silver—see explanation below) in Boeing's contaminated soils. The Agency's evaluation of the 1,500 total cubic yards of potentially contaminated soils and the maximum reported EP leachate concentrations for the inorganic constituents in the soil samples using the VHS model generated the predicted compliance-point concentrations given in Table 5.

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) RESIDUAL SOIL

Constituents	Compliance-point concentrations	Regulatory levels [1]
Barium	0.02	1.0
Cadmium	0.0009	0.01
Cyanide	0.0005	0.7

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) RESIDUAL SOIL—Continued

Constituents	Compliance-point concentrations	Regulatory levels[1]
Beryllium	[2] < 0.002	0.2
Antimony	[2] < 0.01	0.01

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.
[2] Calculated from worst-case leachate concentrations which were derived from total constituent concentrations (see Tables 1 and 2).

EPA conservatively used, in this evaluation, the maximum EP leachate concentrations for each constituent that were detected in any soil sample (bottom, berm, or road soils). The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, chromium, lead, mercury, nickel, selenium, and silver) from Boeing's soil because they were not detected in the EP extract using the appropriate analytical methods (see Tables 1 and 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

The waste exhibited barium and cadmium levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). Beryllium, antimony, and cyanide also do not exceed their respective regulatory levels. See Verified Reference Doses (RfDs) of the U.S. EPA, Office of Health and Environmental Assessment (OHEA), Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988.

The Agency also evaluated the mobility of the organic constituents which were tested in the residual soils of the sludge pile containment area using the VHS model. The Agency used the organic leachate model (OLM) to predict leachable concentrations of the organic compound data submitted for the residual soils (see Table 4).

The resulting leachable concentrations and the estimated volume of potentially contaminated soils (*i.e.*, 1,500 cubic yards) were then used as inputs in the VHS model in order to assess the potential impacts of these constituents upon the ground water. The calculated compliance-point concentrations for these organic constituents are given in Table 6.

TABLE 6.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS RESIDUAL SOILS (PPM)

Constituents	Compliance-point concentrations	Regulatory levels [1]
Methylene chloride	0.0042	0.0047
Acetone	0.028	4
Di-butyl phthalate	0.00008	4
Bis(2-ethylhexyl) phthalate	0.00029	0.0042
Di-n-octyl phthalate	0.00009	[2] 0.6

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.
[2] Calculated from Health and Environmental Effects-Profile for Phthalic Acid Alkyl, Aryl, and Alkyl/Aryl Esters (Draft), U.S. EPA. July 1986.

Methylene chloride, acetone, di-butyl phthalate, bis(2-ethylhexyl) phthalate, and di-n-octyl phthalate do not exceed their respective regulatory levels. These organic compounds, therefore, are not of regulatory concern.

Evaluation of the raw materials in use at the facility indicates that cyanides and sulfides may be present in the soil. Because the maximum reported concentration of total cyanide in the soils was 0.5 ppm, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Testing for reactive sulfide, however, could not be accomplished. The Agency's existing method in SW–846 for reactive sulfide (see section 7.3.4.1) could not be used, due to the positive interference of sulfides in this waste resulting from the use of sulfuric acid and sulfur dioxide for chromium reduction in Boeing's wastewater treatment system. Sulfuric acid is used in the test method to release the reactive sulfide, so it can be trapped and detected by the appropriate instrumentation; it is thus expected that any reactive sulfide initially present in Boeing's wastewaters prior to the chromium reduction step would have either escaped or oxidized, and so would not be expected to be present at significant concentrations in the soils. In addition, the Agency does not believe that Boeing's soils exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively. Since the soils do not demonstrate the characteristic of reactivity, which considers, among other things, the possibility of release of toxic gases, vapors, or fumes from a waste, the Agency believes that sulfides in the soils, if present, do not exceed 500 ppm, the Agency's interim threshold for total sulfides. See "Interim Agency Thresholds for Toxic Gas Generation," *supra*. The Agency, therefore, does not believe reactive sulfides are of concern in this soil.

The Agency concluded after reviewing Boeing's processes and raw materials list, that no other hazardous constituents of concern are being used by Boeing, and that no other factors of concern appear in the processes which contributed to the originally stored F006 waste.

The Agency reviewed the groundwater monitoring data submitted by Boeing for the containment area. The data, which encompass one year of quarterly data collected in compliance with monitoring requirements in Boeing's RCRA permit, show no exceedances of the health-based regulatory levels for the contaminants monitored by the program, including the EP toxic metals. These data do not present a reason for denying exclusion to the soils.

5. Conclusion

The Agency believes that Boeing has successfully demonstrated that the soils remaining at the former sludge pile containment area are non-hazardous. The Agency believes that the true concentrations of these constituents in the soils were correctly assessed by the detailed sampling plan. The sampling plan incorporated core samples of soil to a depth of approximately three feet. Studies of the site indicated that this depth would be sufficient to evaluate all soil strata above the local water table; these studies are available for inspection in the docket for this proposal. Sampling to a greater depth would be expected to dilute the constituent concentrations of the surface soils with soils from within the water table. The soil samples, therefore, are representative of the existing soils within the sludge pile containment area at the Auburn facility.

The Agency believes that the 12 composited soil samples taken from the site were analyzed for the full spectrum of constituents which were reasonably expected to be present at the site. Boeing demonstrated that the underlying soils remaining after the removal of its hazardous waste pile and all associated surface soils were not contaminated

with sufficient hazardous levels of the F006 wastes previously stored in that pile to be the subject of regulatory concern. Based upon the constituents and factors evaluated, the Agency is proposing that the soils remaining at Boeing's sludge pile containment area are non-hazardous, as they should not present a hazard to either human health or the environment. The Agency, therefore, is proposing to grant a one-time exclusion to Boeing Commercial Airplane Company, located in Auburn, Washington, for the residual soils within its sludge pile containment area described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, Boeing's waste would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will apply only to the wastes covered by the original demonstration. This proposed exclusion has no impact on the lagoon used in Boeing's treatment system; that is, the lagoon is still considered a hazardous waste unit. Because this is a one-time exclusion for the volume of soil evaluated by the Agency, Boeing may modify its manufacturing and treatment processes in the future without altering the regulatory status of the excluded soils, so long as the soils are not combined with hazardous wastes.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administration Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: November 22, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 1 of Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Boeing Commercial Airplane Co.	Auburn, WA	Residually contaminated soils in an inactive sludge pile containment area on [insert date of final rule's publication] previously used to store wastewater treatment sludges generated from electroplating operations (EPA Hazardous F006).
•	•	•

[FR Doc. 88-27765 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[FRL-3485-5]

National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion of a Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to Delete the Wade (ABM) Site from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the

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Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action is being taken by EPA because it has been determined that all Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the Commonwealth of Pennsylvania, has determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the Wade (ABM) Site.

DATE: Comments may be submitted on or before January 3, 1989.

ADDRESS: Comments may be mailed to Richard Watman, Remedial Project Manager, Superfund Branch, (3HW21), Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107. For background information on the site contact Richard Watman at the above address or (215) 597–3155.

The Deletion Docket is available for inspection Monday through Friday at the following locations and times:

—U.S. EPA Region 3, Hazardous Waste Management Division, 841 Chestnut Street, Philadelphia, PA 19107 from 9:00 am to 5:00 pm.

—City Health Dept., Chester City Hall, Chester, PA 19103 from 9:00 am to 4:00 pm.

FOR FURTHER INFORMATION CONTACT: Richard Watman (215) 597–3155.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to human health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Fund (Trust Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

EPA plans to delete the Wade (ABM) Site in Delaware County, Pennsylvania from the NPL.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the Wade Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the **Federal Register** on November 20, 1985 (50 FR 47912) establish the criteria the Agency uses to delete sites from the NPL. Section 300.66(c)(7) of the NCP provides that:

> * * * sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:
>
> (i) EPA in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;
>
> (ii) All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or
>
> (iii) Based on a Remedial Investigation, EPA, in consultation with the State has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary is protective of human health and environment, consistent with section 121(d) of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such action. Section 300.68(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this notice, § 300.66(c)(8) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this site EPA's Regional Office will accept and evaluate public comments before making the final decision to delete.

A deletion occurs when the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**, and the NPL will reflect those deletions in the next final update. Public notices and copies of the responsiveness summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletions

The following site summary provides the Agency's rationale for intending to delete this site from the NPL:

Wade (ABM) Site, Delaware County, PA

The Wade (ABM) Site is a 3 acre parcel located in Chester, Delaware County, Pennsylvania. The site previously housed the Eastern Rubber Recycling Co., a firm engaged in shredding tires, rubber and other post-consumer goods. Contamination of the site occurred when, during 1976 and after, drums of waste were emptied either directly onto the surface or into trenches. An estimated 10,000 drums of waste were either disposed of or stored at this site. In 1982, the Wade Site was placed on the NPL with a Hazard Ranking System Score of 36.63.

A site characterization was completed in 1983 for the Pennsylvania Department of Environmental Resources (PADER) and a Feasibility Study was completed in March 1984 under contract to EPA's Office of Waste Programs Enforcement. As a result of the site characterization approximately 20,000 gallons of drummed wastes were shipped off-site for disposal. Surface and sub-surface sampling found large areas of site soils to be contaminated with volatile organics and base-neutral-acid extractable compounds to depths of up to 5 feet. Ground water in the area is not used for drinking. Sampling indicated that release of contaminants via the ground water to the nearby Delaware River were extremely small and concentrations of chemicals in the river resulting from such discharge were estimated to be negligible. The contaminated soils, debris and wastes were removed from the site under a State-lead, Fund-financed Remedial Action, and were disposed of in a permitted hazardous waste facility. The site was capped and seeded to complete the cleanup process. The remedial actions at the site were completed in July 1987.

The operation and maintenance plan for the site calls for a yearly inspection as well as yearly ground water monitoring to assure that impact on the Delaware River remains negligible. Maintenance to the topsoil cap and security fence will be performed, as necessary, based on this yearly inspection.

BEST COPY AVAILABLE

The Commonwealth of Pennsylvania has concurred on this deletion.

Date: November 17, 1988.

James M. Seif,

Regional Administrator, Region 3.

[FR Doc. 88-27764 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-543; RM-5817]

Radio Broadcasting Services; Arizona City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed on behalf of the Alpha Group, Inc., licensee of Station KXMK(FM), Channel 292A, Arizona City, Arizona, which requested the substitution of Channel 293C2, or alternatively, Channel 293A, for Channel 292A at Arizona City, and modification of its license accordingly, for failure to establish that the alternative channel substitutions would serve the public interest. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-543, adopted November 4, 1988, and released November 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may alo be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-27745 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-132; RM-6016]

Radio Broadcasting Services; Fort Mohave, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Ft. Mohave Broadcasting seeking the allotment of FM Channel 296C2 to Fort Mohave, Arizona, based on petitioner's failure to file comments to establish Fort Mohave's status as a community for allotment purposes. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-132, adopted October 27, 1988, and released November 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-27749 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-525, RM-6475]

Radio Braodcasting Services; Marion, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to substitute FM Channel 236C2 for Channel 236A at Marion, Mississippi, and modify the license of Station WQIC(FM) to specify operation on the new channel. The *Notice* is issued in response to a petition filed by Marion Broadcasting Company, Inc. The coordinates for Channel 236C2 at Marion are 32-20-00 and 88-44-00.

DATES: Comments must be filed on or before January 9, 1989, and reply comments on or before January 24, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leonard S. Joyce, Blair, Joyce & Silva, 1825 "K" Street, NW., Washington, DC 20006, (Counsel for Marion Broadcasting Company, Inc.).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-525, adopted October 27, 1988, and released November 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-27750 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-510; FCC 88-326]

Radio Broadcasting Services; Groundwave Propagation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission adopted this Notice of Proposed Rule Making in order to develop a record with respect to use of new groundwave propagation curves. Use of these curves would result in greater accuracy in the determination of service and interference in the AM broacast band.

DATES: Comments may be filed with the Secretary of the Commission no later than January 3, 1989; and reply comments may be filed no later than January 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Larry W. Olson, Policy and Rules Division, Mass Media Bureau (202) 632-6955.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in MM Docket No. 88-510, FCC 88-326, adopted October 13, 1988, and released November 10, 1988. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. As one step in the process to improve the AM broadcast service, the Commission issued a Notice of Inquiry in MM Docket No. 87-267, 52 FR 31795, August 24, 1987, (Inquiry) which provided a comprehensive review of the Commission's AM broadcast assignment criteria and related matters. Its goal was to identify any needed changes to the Commission's Rules which would permit AM stations to improve their service to the public and enhance their ability to compete in the market place.

2. This Notice of Proposed Rule Making considers changes to the procedures for calculating groundwave field strength. Groundwave field strength calculations are performed in accordance with § 73.183 of the FCC Rules. These procedures make use of the groundwave propagation curves contained in § 73.184 of the FCC Rules.

3. There is a significant range of distances for the present FCC groundwave propagation curves over which precise field strength calculations were not performed during their development. As a consequence, it was necessary to use graphical techniques to achieve smooth curves which result in inaccuracies. Their use in certain instances results in an inaccurate portrayal of service and interference for AM broadcast stations. In February 1986, the Commission released a report, FCC/OET R86-1, which described a new computer program incorporating solutions to the previous mathematical deficiencies. Use of that computer program now permits precise field strength calculations to be performed at all distances. New groundwave curves have been developed through the use of this program.

4. In view of the improved accuracy that would be derived from adoption of improved groundwave propagation curves, we are proposing to amend the Rules to incorporate the new groundwave propagation curves based upon the report, FCC/OET86-1. A complete set of full-scale curves is being placed in the record of this proceeding. In addition, we propose to convert Graph 20 of § 73.184 of the FCC Rules to metric units in order to facilitate its use. Comments are invited on these proposed changes, and, in addition, the Commission will consider alternative proposals which may provide potential improvements related to calculating groundwave field strength in the AM broadcast service.

5. Section 73.183(e) of the FCC Rules prescribes the procedure for calculating groundwave field strength over paths containing more than one conductivity value. Use of the current FCC method may result in imperfect predictions and we explored alternative procedures in the Inquiry. Most commenters suggested the continued use of the method in the FCC Rules finding it acceptable and not foreseeing that a change in methodology would result in a substantial increase in accuracy in the prediction of groundwave field strength contours. After considering the comments, we have concluded that it would not be useful to attempt to improve on the current FCC method at this time. Commenters in this proceeding who have specific proposals of offer or definitive studies on this subject are invited to submit such material for our further consideration.

6. Recognizing the relationship between the groundwave propagation curves which we are considering in this Notice and other assignment criteria that may be considered in future rule making proceedings, we note that there may be practical reasons for considering a delay in implementing new groundwave propagation curves, if adopted, until consideration of other possible changes to interrelated technical assignment criteria is concluded. Rather than implementing various changes to the technical assignment criteria in a "piece meal" fashion, we believe that there is merit in considering implementing simultaneously all the interrelated changes that may ultimately be adopted. We seek comment on the advisability of such an approach.

7. It would not be our intent to require any modifications of existing AM broadcast facilities as a result of the changes proposed in this Notice; nor would we intend to require parties whose applications are pending at the time any proposed rule changes are implemented to amend their application.

8. This is a nonrestricted notice and comment rule making proceeding. *See* §§ 1.1201(b), 1.1202(f), 1.1203 and 1.1206(a) of the Commission's Rules, 47 CFR 1.1201(b), 1.1202(f), 1.1203 and 1.1206(a) for rules governing permissible *ex parte* contacts.

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because none of the approximately 5000 AM broadcast stations in the United States should be affected directly by this proposal. The changes proposed only relate to the standards (curves) used to calculate groundwave field strength and actual interference is not expected to increase as a result of the specific changes proposed in this Notice.

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file

comments on or before January 3, 1989, and reply comments on or before January 18, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

12. Authority for the action taken is contained in sections 4(i), 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 307.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy.

Secretary.

[FR Doc. 88-26466 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 53, No. 232
Friday, December 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Regional Forum

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that the United States Commission on Civil Rights will convene a regional forum at 9:00 a.m. on December 8, 1988, and adjourn at 1:30 p.m. on December 9, 1988, in rooms 108 and 109 of the Nashville Convention Center, 601 Commerce Street, Nashville, Tennessee 37203–3724. The purpose of the forum is to discuss changing perspectives on civil rights.

Persons desiring additional information, or planning a presentation to the Commission, should contact Melvin Jenkins, Acting Staff Director, (202) 523–5571. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Staff Director's office at least three (3) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 30, 1988.

Melvin L. Jenkins,
Acting Staff Director

[FR Doc. 88–27971 Filed 12–1–88; 8:45 am]
BILLING CODE 6335–01–M

Pennsylvania Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission, which was to have been convened at 1:00 p.m. and adjourned at 4:00 p.m. on December 1, 1988, in Room 317 of the U.S. Custom House, 2 Chestnut Street, Philadelphia, Pennsylvania, is postponed until January 12, 1989

The original plans for the December 1, 1988 meeting had appeared on page 45312 of Volume 53, Number 217, of the **Federal Register** on November 9, 1988. The new date for the meeting is January 12, 1989; however, the exact time and location are yet to be determined and will be announced in the near future

Persons desiring additional information on this matter should contact Committee Chairperson Susan M. Wachter (215/898–6355) or John I Binkley, Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117)

Dated at Washington, DC, November 29, 1988

Melvin L. Jenkins,
Acting Staff Director

[FR Doc. 88–27788 Filed 12–1–88; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.
Title: Short Supply Regulations on Petroleum Products.
Form Number: Agency—EAR 371.16 and 377.6; OMB—0694–0024.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 3,750 respondents; 1,875 recordkeeping/reporting hours. Average hours per respondent is ½ hour.
Needs and Uses: The Naval Petroleum Reserves Production Act restricts the export of any petroleum product produced from crude oil derived from the Naval Petroleum Reserves. Before shipment can be made of petroleum products, the exporter must assemble and retain documents to prove compliance with the Act.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 22, 1988

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization

[FR Doc. 88–27755 Filed 12–1–88; 8:45 am]
BILLING CODE 3510–CW–M

Bureau of Export Administration

[Docket Nos. 8105–01, et al.]

Actions Affecting Export Privileges; Robert Behar et al.

Summary

In the Matter of: Robert Behar, individually and doing business as AB Electronics International and Hero Communications of Florida, Inc., Respondents; Docket No. 8501–01, Docket No. 8105–02, Docket No. 8105–03

Pursuant to the October 28, 1988 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed in principle part by me, Robert Behar, individually and doing business as AB Electronics International and Hero Communications of Florida, Inc., all with an address of 2470 W. 8th Avenue, Hialeah, Florida 33012, is, and the Respondents are collectively, assessed a civil penalty in the amount of $20,000; provided, however, that upon payment of the first $10,000 as provided in the Order, the remaining $10,000 shall be suspended for a period of one year and thereafter remitted, waived and/or forgiven provided that Respondents, either individually or collectively, have committed no further violations of the Act, the Regulations, or this final Order during the one year period of suspension.

Discussion

The ALJ's decision in this case is based on a consent agreement between parties. Both Respondents and the Department have taken issue with the ALJ's recommended Decision and Order in the following two respects:

1. The parties object to the fact that the ALJ found that Respondents had committed 20 violations of the Act and Regulations when, in the consent agreement, the Respondents, while admitting the facts alleged in the charging letter which form the basis of the ALJ's finding, specifically refrained from admitting that the facts constituted any violation of the Act or the Regulations; and

2. The parties object to the ALJ's use to the word "remit" in describing the disposition of the suspended $10,000 portion of the $20,000 fine following a one year suspension period in which no violations of the Act, the Regulations or this Order are committed by any of the respondents.

The issue of whether or not admission of facts underlying a charging letter also constitute admission of violation of the Act or Regulation has been the subject of substantial discussion between the ALJ and Departmental counsel for some time. At one point, ALJ Dolan had indicated that he would no longer accept consent agreements which did not expressly admit violation of the Act or the Regulations if the agreement was to be dispositive of a particular case. Such a position is clearly untenable. The plea of *nolo contendere* is well established in our jurisprudential system. It allows a party to accept the imposition of a penalty in a particular proceeding while reserving to the party the right to contest the facts or the imposition of liability in another proceeding. Thus, in the imposition of civil penalties under the Export Administration Act and Regulations, a respondent may admit to certain facts for the purposes of accepting the imposition of a penalty which will bring the matter to a close, while maintaining that the admitted facts do not necessarily constitute violation of the act of the regulations. However, the ALJ, as in the case of a plea of *nolo contendere,* is free to find that the facts thus admitted constitute violations of the Export Administration Act or Regulations. Indeed, the Under Secretary's authority for imposing civil penalties in such cases is based on the finding of a violation.

Export Administration Act cases are not akin to civil litigation between two private citizens. Private litigants are almost always free to reach settlement agreements which may call for the alleged tortfeasor to neither admit nor deny liability but to pay a stipulated sum to avoid the costs of litigations. If suit has been commenced, it is normal in such cases for the docket to be marked "Neither party, no costs, no further action for the same cause." Such is not the case in punitive administrative proceedings. For Export Administration Act cases in which there will be the imposition of a penalty, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary of a violation to support the imposition of the penalty. Thus the ALJ is correct in making a finding with respect to the violation, but incorrect insofar as his decision may indicate that respondents have actually admitted the violations.

The use of the word "remit" is correct. Used in the context in which the ALJ has used it, the word "remit" has the same legal meaning, or approximate meaning, as the word "forgive" or "waive." Any of the words will produce the same result when modified by the operative qualifier "provided Respondents have committed no further violations of the Act, the Regulations or the final Order entered in this proceeding during the one year suspension period."

Order

On October 28, 1988, the ALJ entered his recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The basis of the ALJ's recommended decision and order is an agreement of the parties, which the ALJ approved. Subject to the discussion above, I hereby affirm both that approval and the recommended Decision and Order of the ALJ. This constitutes final agency action in this matter.

Dated: November 28, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

Preliminary Statement

Appearance for Respondents: Frederick W. Finn, Esq., Brown, Finn & Nietert, Chartered, 1920 N Street NW., Suite 510, Washington, DC 20036.

Appearance for Agency: Margo Jackson, Esq., Louis K. Rothberg, Esq., Office of Chief Counsel for Export Enforcement, Room 3329, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce ("Agency") initiated administrative proceedings against Robert Behar, individually and doing business as AB Electronics International and Hero Communications of Florida, Inc. ("Respondents") by issuing a charging letter, dated March 10, 1988. The letter was issued pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2401 through 2420), as amended, (the "Act"), and the Export Administration Regulations (the "Regulations").[1]

Findings and Discussion

The charging letter alleges that on ten separate occasions Respondents violated former §§ 387.4 and 387.6 of the Regulations by exporting U.S.-origin satellite communication equipment from the United States to Saudi Arabia, Argentina, Trinidad, Peru, South Africa, France, Aruba and Singapore, without obtaining the validated export licenses which Respondents knew, or had reason to know, were required by former § 372.1(b) of the Regulations, for a total of twenty violations. Former § 387.6 prohibited the export, diversion, reexport or transshipment of commodities or technical data in violation of, or contrary to, any provision of the Act or any regulation, order, or license issued under the Act. Former § 387.4 prohibited the export of any commodity or technical data which is subject to the Regulations with knowledge or reason to know that a violation of the Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

It is asserted that, on ten separate occasions between May 27, 1983 and July 16, 1985, Respondents exported U.S.-origin satellite communication equipment, controlled under section 5 of the Act for national security reasons, from the United States to the destinations listed previously without obtaining from the Agency the required validated export licenses. Respondents exported this equipment to Saudi Arabia on May 27, 1983, to Argentina on July 20, 1983, to Trinidad on August 3, 1983, to Peru on August 18, 1983, to South Africa on November 3, 1983, to France on June 20, 1984 and again on June 28, 1984, to Aruba on January 18, 1985 and to Singapore on July 16, 1985.

By failing to obtain the validated export license on each of these ten

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (Aug. 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368 through 399, were redesignated as 15 CFR Parts 768 through 799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

occasions, Respondents violated § 387.6 of the Regulations. It is also asserted that Respondents knew, or had reason to know, that licenses were required for each of these shipments by § 372.1(b) of the regulations. Respondents thus violated § 387.4 on each occasion. Respondents admit that these facts are ture. Thus Respondents committed the twenty aforementioned violations.

Conclusion

The Agency and Respondents settled this matter by entering into a consent agreement, as authorized by former § 388.17 of the Regulations, whereby the Respondents agreed to pay to the Agency a civil penalty in the amount of $20,000, of which $10,000 is to be suspended for one year and then remitted, providing Respondents commit no further violations of the Act, the Regulations or the final Agency Order in this proceeding.

The undersigned approves the terms of the consent agreement. Pursuant to the authority delegated to me by Part 388 of the Regulations, *It Is Ordered That*:

Order

I. Respondents are assessed a civil penalty in the amount of $20,000. Respondent is to make three installment payments to the Agency. The first payment of $4,000 is to be paid within thirty days from the date of the final Agency action. The second payment of $3,000 is to be paid within sixty days from the date of that date. The third payment of $3,000 is to be paid within ninety days from that date.

II. The payment of the remainder of the civil penalty, $10,000, is hereby suspended for a period of one year from the date of the final Agency action in this proceeding in accordance with § 388.16 of the Regulations and will be remitted without further action at the end of that period provided Respondents have committed no further violations of the Act, the Regulations or the final Order entered in this proceeding during the one year suspension period.

III. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: October 28, 1988.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(C) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985).

Instruction for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of the Assistant General Counsel for Export Administration, Room H–3845, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *Attn:* Pamela P. Breed, *Esq.*

[FR Doc. 27813 Filed 12–1–88; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[C–427–016]

Industrial Nitrocellulose From France; Preliminary Results of Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on industrial nitrocellulose from France. We preliminarily determine the net subsidy to be 0.12 percent *ad valorem* for the period January 1, 1986 through December 31, 1986, 0.09 percent *ad valorem* for the period January 1, 1987 through December 31, 1987 and 0.06 percent *ad valorem* for the period January 1, 1988 through March 10, 1988, rates we consider *de minimis*. As a result of the review, we intend to revoke the countervailing duty order. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: .

Background

On March 10, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 7776) the preliminary results of administrative review and tentative determination to revoke the countervailing duty order on industrial nitrocellulose from France (48 FR 28521, June 22, 1983). On April 28, 1988, the Department published in the **Federal Register** (53 FR 15267) the final results of its administrative review of the countervailing duty order. In accordance with 19 CFR 355.42, the revocation will be effective as of the date of publication of the notice of tentative determination to revoke. Therefore, in accordance with 19 CFR 355.42(f), we have conducted a review of the period January 1, 1986 through March 10, 1988—the period between the end of the minimum two-year period of no net subsidy and the tentative determination to revoke, since the dispositive date for establishing a two-year period of no net subsidy is the date of publication of the order.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS). All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with our product descriptions. As with the TSUSA, the HTS item number(s) are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the HTS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of French industrial nitrocellulose containing between 10.8 percent and 12.2 percent nitrogen, not explosive grade nitrocellulose which contains over 12.2 per cent nitrogen.

Industrial nitrocellulose is a dry, white, amorphous, synthetic chemical produced by the action of nitric acid on cellulose. Industrial nitrocellulose comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing ink. Such merchandise is currently classifiable as cellulosic plastic materials, other than cellulose acetate, under item 445.2500 of the TSUSA and item 3912.20.00 of the HTS.

The review covers the period January 1, 1986 through March 10, 1988, and nine programs: (1) A grant from DATAR; (2) the assumption of labor costs for civil servants; (3) research and development assistance; (4) financing from the Fonds de Developpement Economique et Social; (5) loans from Credit National; (6) financing from the Caisse des Depots et Consignations; (7) loans from the Ministry of Research and Industry; (8) a grant from the Ministry of Defense; and (9) government equity infusions. Societe Nationale des Poudres et Explosifs ("SNPE") is the only known French producer and exporter of this merchandise to the United States.

(1) DATAR Grant

The Delegation a 1'Amenagement du Territoire et a 1'Action Regionale ("DATAR") coordinates the programs of various government agencies that provide incentives to establish or expand businesses in certain regions of France. SNPE received a grant from DATAR in 1979 to improve the production facilities and general infrastructure of the Bergerac plant, where industrial nitrocellulose is produced. Because grants received from DATAR provide benefits to specific regions, we preliminarily determine that this program constitutes a subsidy.

To calculate the benefit, we applied a declining balance methodology and allocated the grant over 10 years, the average useful life of assets in the nitrocellulose industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the 1979 national average corporate bond rate in France (as reported in Morgan Guaranty Trust Company's *World Financial Markets*) because we have no information on SNPE's weighted cost of capital for that year. On this basis, we preliminarily determine the benefit from this program to be 0.03 percent *ad valorem* for the period January 1, 1986 through December 31, 1986, 0.03 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 0.03 percent *ad valorem* for the period January 1, 1988 through March 10, 1988.

(2) Assmption of Labor Costs for Civil Servants

Some employees of SNPE retain government civil service status ("status employees") as a result of the company's change from a government agency to a government-owned private corporation in 1971. SNPE is responsible for paying the wages and benefits of all its employees. In general, SNPE's contribution for certain nonwage benefits, such as health insurance, pensions, and unemployment insurance, is lower for its status employees than for other employees. Because the French government assumes part of SNPE's contributions for status employees, we preliminarily determine that this program constitutes a subsidy.

To calculate the benefit, we took the average annual difference between SNPE's nonwage benefits for status employees and those for other employees and multiplied that amount by the number of status employees involved in industrial nitrocellulose production. We allocated the result over total sales of industrial nitrocellulose during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.09 percent *ad valorem* for the period January 1, 1986 through December 31, 1986, 0.06 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 0.03 percent *ad valorem* for the period January through March 10, 1988.

(3) Other Programs

We also examined the following programs and preliminarily determine that SNPE did not use them during the period of review:

(a) Research and development assistance;

(b) Financing from the Fonds de Developpement Economique et Social;

(c) Preferential loans from Credit National;

(d) Financing from the Caisse des Depots et Consignations;

(e) Loans from the Ministry of Research and Industry;

(f) Grants from the Ministry of Defense; and,

(g) Government equity infusions.

Preliminary Results of Review and Intent to Revoke

As a result of our review, we preliminarily determine the net subsidy to be 0.12 percent *ad valorem* for the period January 1, 1986 through December 31, 1986, 0.09 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 0.06 percent *ad valorem* for the period January 1, 1988 through March 10, 1988. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department therefore intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before March 9, 1988. If the revocation is made final, the Department intends to instruct the Customs Service to terminate the suspension of liquidation requirement and to refund any cash deposits made on merchandise entered, or withdrawn from warehouse, for consumption on or after March 10, 1988.

SNPE has requested that the Department revoke the countervailing duty order based on the absence of a net subsidy for at least two years, as provided in 19 CFR 355.42(b). In our last review (53 FR 15267, April 28,1988), we determined that SNPE received *de minimis* benefits for at least a two-year period. According to 19 CFR 355.42(f), a revocation will be effective with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of tentative determination to revoke, provided that the firm involved provides information showing no receipt of a net subsidy up to the date of the notice of tentative determination to revoke.

Because we have found *de minimis* benefits for the current review period, which extends through March 10, 1988, the date of publication of the tentative determination to revoke, we intend to revoke the countervailing duty order. If the revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 10, 1988.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication, or the first workday afterwards. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review and its decision on revocation, including the results of its analysis of issues raised in any such written comments or at a hearing.

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This administrative review, intent to revoke, and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act (19 U.S.C.1675 (a)(1) and (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41 and 355.42).

Date: November 25, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-27818 Filed 12-1-88; 8:45 am]

BILLING CODE 3510-05-M

[C-508-802]

Preliminary Affirmative Countervailing Duty Determination; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of the notice. The estimated net subsidy is 15.11 percent *ad valorem.* In addition, we preliminarily determine that critical circumstances do not exist in this case.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Israel that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in an amount equal to the duty deposit rate. If this investigation proceeds normally, we will make a final determination on or before February 13, 1989.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414 or 377-2438.

Preliminary Determination

Based on our investigation, we preliminarily determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of industrial belts. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- Encouragement of Capital Investment Law Grants.
- Exchange Rate Risk Insurance.
- Long-term Industrial Development Loans.
- Encouragesment of Research and Development Law Grants.

We preliminarily determine the estimated net subsidy to be 15.11 percent *ad valorem* for all manufacturers, producers, or exporters in Israel of industrial belts.

Case History

Since the publication of the Notice of Intitation in the **Federal Register** (53 FR 28042, July 26, 1988), the following events have occurred. On August 1, 1988, we issued a questionnaire to the Government of Israel in Washington, DC, concerning petitioner's allegations. On August 26, 1988, petitioner filed a request that the preliminary determination be postponed for 65 days. Pursuant to section 703(c)(1)(A) of the Act, on September 7, 1988, we postponed the preliminary determination to no later than November 28, 1988 (53 FR 34570). On October 6, 1988, we received responses from the Government of Israel (GOI) and Magam United Rubber Industries Ltd. (Magam). On October 21, 1988, we issued deficiency questionnaires to the Government of Israel and Magam.

On October 28, 1988, we received a letter from counsel for Magam stating that a response to the deficiency questionnaires would not be submitted and that the company could no longer participate in the investigation. On November 16, 1988, we received a letter from the GOI stating that it had decided not to actively participate in the investigation and requesting that the GOI questionnaire response be returned. On November 22, 1988, we received a letter from counsel for Magam requesting that the company questionnaire response be returned. The Department has granted the requests of the GOI and Magam, and will return their respective responses.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Analysis of Programs

Because the GOI and Magam have withdrawn their questionnaire responses, this determination is based on the best information available. For

each program upon which we initiated an investigation, we used as the best information available the highest rate ever found for the program in previous Israeli cases. Based upon our analysis of the petition and prior Israeli cases, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters of industrial belts in Israel under the following programs:

A. The Encouragement of Capital Investment Law (ECIL) Grants

The purpose of the ECIL is to attract capital investment to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, interest subsidy payments, accelerated depreciation, and reduced tax rates, the applicant must obtain "approved enterprise" status. (We discuss ECIL interest subsidy payments and tax programs below under "Programs Preliminarily Determined Not to be Used".) Approved enterprise status is obtained after review of information submitted to the Israel Ministry of Industry and Trade, Investment Center Division.

Using our *Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel* (49 FR 36122, September 14, 1984) as the best information available, we preliminarily determine that the provision of investment grants under this program confers a subsidy on exports of industrial belts from Israel and that the estimated net subsidy for all producers and exporters of industrial belts in Israel is 1.18 percent *ad valorem*.

B. Exchange Rate Risk Insurance

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the New Israeli Shekel (NIS) value of an exporter's foreign currency receivables does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay premiums to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated for all participants as a percentage of the value-added sales value of exports. IFTRIC changes this percentage rate periodically; but at any given time, it is the same for all exporters.

In determining whether an export, insurance program provides a countervailable benefit, we examine whether the premiums and other changes are adequate to cover the program's long-term operating costs and losses. In the last Israeli investigation, *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel* (52 FR 25447, July 7, 1987) (*Phosphoric Acid*), we found that this program conferred a countervailable benefit. Using our determination in *Phosphoric Acid* as the best information available, we preliminarily determine that this program confers an export subsidy on exports of industrial belts from Israel.

Using the rate calculated in *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Israel* (52 FR 3316, February 3, 1987) (*Flowers*) as the best information available with respect to the amount of the subsidy, we preliminarily determine that the estimated net subsidy for all producers and exporters of industrial belts in Israel is 8.87 percent *ad valorem*.

C. Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the GOI. In *Phosphoric Acid*, we determined that loans under this program are provided to a diverse number of industries. However, the interest rates charged on these loans vary depending on the development zone location of the borrower. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest.

In the absence of government and company questionnaire responses, we assume, as the best information available, that the producers and exporters of industrial belts in Israel are not located in the Central Zone. Therefore, we preliminarily determine that this program confers a regional subsidy on exports of industrial belts from Israel. Using the rate calculated in *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1651, July 7, 1987) as the best information available, we preliminarily determine that the estimated net subsidy for all producers and exporters of industrial belts in Israel is 5.02 percent *ad valorem*.

D. Encouragement of Research and Development Law (ERDL) Grants

Petitioner alleges that research and development grants equal to 50 percent of approved project costs are available under ERDL where such activity is directed at export expansion. Using as the best information available our determination in *Phosphoric Acid*, we preliminarily determine that this program confers a subsidy on exports of industrial belts from Israel and that the estimated net subsidy for all producers and exporters of industrial belts in Israel is 0.04 percent *ad valorem*.

II. Programs Preliminarily Determined Not to be Used

Using as the best information available the non-use of the following programs in previous investigations, we preliminarily determine that the programs described below were not used by manufacturers, producers, or exporters in Israel of industrial belts:

A. Benefits Under the Encouragement of Capital Investment Law (ECIL)

1. *Accelerated Depreciation Under Section 42.* Section 42 provides that approved enterprises, located in development zones established by the ECIL, are entitled to twice the usual rate of depreciation on machinery and equipment and four times the usual rate of buildings.

2. *Direct Reduction of Corporate Tax Under Section 47.* Under section 47 of the ECIL, a company which has obtained approved enterprise status is eligible for a special corporate tax rate of 30 to 40 percent rather than the usual rate of 61 percent and income from approved investments is subject to a minimum rate of 25 percent. In addition to the regionally-based qualifying criteria, these tax benefits have been conditioned on export performance since 1978.

3. *Interest Subsidy Payments.* The Government of Israel rebates in the form of grants interest paid on loans from commercial banks. The amount of the

grants depends on the development zone in which a company is located.

B. Labor Training Grants from the Ministry of Labor

Petitioner alleges that manufacturers, producers or exporters in Israel of industrial belts benefit from refunds for worker training costs for periods of up to six months and up to 80 percent of trainee wages.

C. Special Export Marketing Financing from the Bank of Israel

Petitioner alleges that loans under this program are provided for specific marketing expenses such as penetrating new markets, special marketing drives and establishing sales offices abroad.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of industrial belts from Israel. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged sudsidy is inconsistent with the Agreement, and (2) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Examination of the import statistics with respect to industrial belts from Israel indicates that the value and volume of imports from Israel are small and declining. Therefore, we preliminarily determine that critical circumstances do not exist.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Israel which are entered, or writhdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each entry of this merchandise equal to 15.11 percent *ad valorem*. This suspension will remain in effect until further notice.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. Written views should be submitted in accordance with 19 CFR 355.33(d) and 355.34, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

November 28, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–27817 Filed 12–1–88; 8:45 am]

BILLING CODE 3510–DS–M

[C–580–802]

Preliminary Affirmative Countervailing Duty Determination; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Korea of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 0.51 percent *ad valorem* for all manufacturers, producers or exporters in Korea of industrial belts, except for Hankook Belt Industry (Hankook). The estimated net subsidy for Hankook is 24.52 percent *ad valorem*. We have calculated a separate estimated net subsidy for Hankook because its rate differs significantly from the country-wide rate. (See "Suspension of Liquidation" section of this notice.) In addition, we preliminarily determine that critical circumstances do exist in this case. If this investigation proceeds normally, we will make a final determination on or before February 13, 1989.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Timothy Nelson or Roy Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3174 and 377–5414.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Korea of industrial belts. For purposes of this investigation, the following programs are preliminarily found to confer subsidies.

- Short-Term Export Financing.
- Export Tax Reserves.
- Duty Drawback on Non-physically Incorporated Items and Allowances

for Excessive Loss and Wastage Rates.

We preliminarily determine the estimated net subsidy to be 0.51 percent *ad valorem* for all manufacturers, producers or exporters in Korea of industrial belts except for Hankook Belt Industry. The estimated net subsidy for Hankook is 24.52 percent *ad valorem*. We have calculated a separate estimated net subsidy for Hankook because its rate differs significantly from the country-wide rate.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (53 FR 28044, July 26, 1988), the following events have occurred. On August 1, 1988, we presented a questionnaire to the Government of Korea in Washington, DC, concerning petitioner's allegations. On August 26, 1988, petitioner filed a request that the preliminary determination be postponed for 65 days. Pursuant to section 703(c)(1)(A) of the Act, on September 7, 1988, we postponed the preliminary determination to no later than November 28, 1988 (53 FR 34570).

On September 14, 1988, we received responses from the Government of Korea (GOK) Dongil Rubber Belt Co., Ltd. (Dongil), and Taelim Moolsan Co., Ltd (Taelim Moolsan), a trading company whose exports to the United States are purchased from Dongil. The response of the GOK listed another producer of industrial belts which exports to the United States, Hankook Belt Industry (Hankook). On October 26, 1988, we sent a letter to the GOK requesting that Hankook also respond to our questionnaire. However, this company did not respond to the Department's countervailing duty questionnaire. On October 21, 1988, we delivered supplemental/deficiency questionnaires to the Government and Dongil. On November 8, 1988, we received responses from the GOK and Dongil to these questionnaires.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a subsidy in the final determination.

When we do not receive a response from a company that the government has indicated is a potential respondent, we generally use in our preliminary determination the best information available. In this investigation, the response of the GOK contains information regarding the non-respondent company, Hankook. Where the government response provides complete information on both usage and the amount of benefits received by Hankook, we have used this information, as the best information available, for purposes of our preliminary determination. All such information provided by the GOK with respect to Hankook is subject to verification at the government. As described below, when the government response did not provide complete information for certain programs used by Hankook, we have also used other sources for the best information available. For these programs, we used, as the best information available, the highest rate found in previous Korean investigations, or the rate found for Dongil in this investigation, whichever was higher.

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987. Based upon our analysis of the petition and the responses to our questionaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers or exporters in Korea of industrial belts under the following programs:

A. Short-Term Export Financing

Petitioner alleges that producers and exporters in Korea of industrial belts receive preferential short-term export financing under the Short-term Export Financing Regulations.

The Short-term Export Financing Regulations provide the guidelines for short-term export financing. Export financing takes the form of loans on bills related to export sales transactions. Eligibility is based upon presentation of export documents or upon past export performance. Export loans based on past performance cannot exceed 90 days, while loans based on specific export documents cannot exceed 180 days and are limited to the terms of the applicable letter of credit. During our review period, the rate of interest charged on short-term export financing remained constant at ten percent, the

ceiling established by the Bank of Korea.

The Bank of Korea also establishes rediscount ratios that set the proportion of a short-term loan which the commercial bank may rediscount through the central bank. During the period of investigation, the rediscount ratio for short-term export financing was lowered from 60 percent to 40 percent for large-sized firms, and from 90 percent ot 60 percent for small- and medium-sized firms. The rediscount ratio on domestic commercial financing remained at 60 percent for small- and medium-sized companies and 30 percent for large-sized companies. Small- and medium-sized firms are defined as companies with fewer than 300 employees. According to the response of the GOK, both Dongil and Hankook are large companies.

Because only exporters are eligible to use the short-term export financing, we preliminarily find these loans to be countervailable to the extent that they are provided on preferential terms. Moreover, we preliminarily determine that the different rediscount ratios applied to financing for the large firms (currently 40 percent for export transactions, 30 percent for domestic transactions) results in the provision of export financing on preferential terms for large firms. This is because in lending to large firms, commercial banks have an incentive to channel more funds to finance those firms' export transactions and fewer funds to finance their domestic transactions.

To determine if these loans are at preferential rates, we used information provided by the GOK to construct a weighted-average interest rate to represent what large firms pay to finance domestic transactions. Becasue commercial banks have an incentive to direct their loans for large firms to financing export transactions rather than domestic transactions, large firms must seek alternative sources for financing domestic sales.

The weighted-average interest rate we have computed is a best estimate measure of the preference created by the different rediscount ratios. It includes the interest rates on commercial bank loans for domestic transactions; the issuance of commercial paper; and financing from investment and finance companies, mutual credit cooperatives, and mutual savings and finance companies. If, at verification, we discover other sources of short-term financing for large companies, we will take these into account in our final determination.

Although the response of the GOK states that the highest interest rate offered by commercial banks for short-term non-export financing is 11.5 percent, a source of information available to the Department indicates that for such financing companies have been charged interest rates above that rate. Information submitted by the GOK also indicates that local commercial banks charge interest rates higher than national commercial banks. Therefore, as our interest rate for commercial bank financing, we have taken the average of the highest rates offered by national and local commercial banks, 12.0 percent.

The weights assigned to each of the sources of short-term domestic credit were based on the *Monthly Bulletin* of the Bank of Korea. From this source, we determined the amount of, and interest rates charged on, short-term financing from each of the financial entities.

Using the data from these sources, we calculated a weighted-average interest rate of 12.70 percent. We compared this rate to the 10 percent interest rate on export loans received by Dongil and Hankook. (According to the response of Taelim Moolsan, it did not receive any export loans during the period of review.) To determine the benefit of the preferential interest rate, we subtracted the interest paid on the export loans at 10 percent from the interest the companies would have paid if the loans had been contracted at the benchmark.

According to the responses of Dongil and the government, it was not possible to segregate the loans received as to product or destination. Therefore, we divided the benefit by both companies' total exports during the review period. We did not receive information regarding Hankook's total exports, but we were able to determine Hankook's exports of the subject merchandise to the United States from information in the GOK response. We are, therefore, using as best information available, the amount of Hankook's total exports of the subject merchandise to the United States to represent its total exports of all goods to all markets. On this basis, we calculated an estimated net subsidy of 0.24 percent *ad valorem* for Dongil and 24.05 percent *ad valorem* for Hankook.

B. Export Tax Reserves

Petitioner alleges that manufacturers, producers, and exporters of the subject merchandise receive tax benefits under Articles 22, 23, and 24 of the Act Concerning the Regulation of Tax Reduction and Exemption. These articles provide for deductions from taxable income by exporting firms for a number of different reserves covering export losses, overseas market development, and price fluctuation losses.

Under Article 22, a corporation may establish a reserve amounting to the lesser of one percent of foreign exchange earnings, or 50 percent of the foreign exchange earnings component of net income. If certain export losses occur, they may be offset from the reserve fund. Following the tax year to which the reserve amount applies there is a one-year grace period. After the grace period, amounts remaining in the reserve that have not been offset by actual losses are returned to the taxable income account in three equal annual installments.

Article 23, which governs overseas market development funds, allows a corporation to establish a reserve fund amounting to one percent of its foreign exchange earnings in the respective tax year. Expenses incurred in developing overseas markets may be offset from the reserve fund. Funds remaining in the reserve after the tax year are treated as under Article 22.

A price fluctuation reserve fund may be established under Article 24. A corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses resulting from the fluctuation of prices for export goods by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve fund are eventually reported as income and subject to corporate tax either when they offset export losses or when the one-year grace period expires.

We determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferment, contingent upon exports, of direct taxes.

To measure the benefit conferred by the deferments for Dongil, we followed the same methodology previously used in *Certain Stainless Steel Cooking Ware from the Republic of Korea: Final Affirmative Countervailing Duty Determination* (51 FR 42687, November 26, 1986) (*Cooking Ware*) and calculated an amount of tax savings by multiplying the amount maintained in the reserves by Dongil's effective tax rate. We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefit, the amount of Dongil's tax savings was multiplied by the average of the highest short-term national and local

commercial bank interest rates (12.0%) which we discussed under the Short-Term Export Financing program.

According to the response of Taelim Moolsan, it did not claim any reserves during the period of investigation. For Hankook, although the GOK provided us with information regarding the amount of reserves claimed by Hankook under this program, we were unable to use this information to derive a benefit because we lacked Hankook's effective tax rate. Therefore, as best information available, we applied to Hankook the same subsidy rate as that found for Dongil. Using this information, we calculated an estimated net subsidy of 0.27 percent *ad valorem* for Dongil and for Hankook.

C. Duty Drawback on Non-physically Incorporated Items and Allowances for Excessive Loss and Wastage Rates

Petitioner alleges that producers of industrial belts in Korea receive countervailable benefits from the Korean duty drawback system. These benefits allegedly stem from the allowance of duty drawback on non-physically incorporated items and from excessive remission of customs duties due to the inclusion of recoverable scrap in the loss and wastage rates set by the Korean government.

According to the response of the GOK, input usage rates are determined every four years for producers of exported products. The survey upon which the GOK based its input usage rates was based on a survey solely of Dongil's production process. Tables of these rates are used by Korean Customs for duty drawback purposes. The response of the GOK states that recoverable scrap is factored into the usage rates and that, therefore, the loss and waste rates built into the input usage tables are not excessive.

In its response, Dongil claims that it has not received any duty drawback on non-physically incorporated items. Furthermore, it claims that it does not have recoverable scrap from its production process. In its response, Taelim Moolsan claims that it does not receive duty drawback.

Since Dongil claims that it has no recoverable scrap and that it has not received any duty drawback on non-physically incorporated items, we preliminarily determine that Dongil receives no subsidy under this program. According to the response of the GOK, all inputs into the manufacture of industrial belts are physically incorporated. Thus, with respect to this issue, we find no subsidy for Hankook. However, with respect to the issue of recoverable scrap, since the GOK's claim that there is no excessive remission of customs duties because recoverable scrap is included in the loss and wastage rates is based on information solely from Dongil, we preliminarily determine that this does not apply to Hankook. Therefore, as best information available, we applied to Hankook the rate found for this program in *Cooking Ware*. Using this information, we calculated an estimated net subsidy of 0.20 percent *ad valorem* for Hankook.

II. Programs Preliminarily Determined Not to be Used

We preliminarily determine that the following programs were not used by manufacturers, producers or exporters in Korea of industrial belts during the review period:

A. Accelerated Depreciation Under Article 25 of the Act Concerning the Regulation of Tax Reduction and Exemption

Petitioner alleges that producers of industrial belts receive accelerated depreciation benefits. Article 25 of the Act Concerning the Regulation of Tax Reduction and Exemption permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation, determined by a formula based on the firm's foreign exchange earnings and total business earnings. According to the questionnaire responses, neither producers nor exporters of industrial belts claimed accelerated depreciation on the tax return filed during the review period.

B. Unlimited Deduction of Overseas Entertainment Expenses

Petitioner alleges that producers and exporters of the subject merchandise receive tax benefits in the form of entertainment expense deductions.

Under Article 18–2 of the Corporation Tax Act and supporting legislation, domestic and overseas entertainment expenses are eligible to be deducted from taxable income. The amount which can be deducted for domestic entertainment expenses is subject to a ceiling according to an established formula. This ceiling is lowered if overseas entertainment expenses are claimed. There is no cap on overseas entertainment expenses. If a company's overseas entertainment expense deductions exceed its domestic ceiling, the amount by which the domestic ceiling is exceeded constitutes a countervailable tax benefit. According to Dongil's response, in the tax return filed in the review period, Dongil's overseas entertainment expenses did not exceed its domestic ceiling. According to the response of the GOK, Hankook did not claim a deduction on the tax return filed during the review period for overseas entertainment expenses.

C. Loans to Promising Small- and Medium-sized Enterprises

Petitioner alleges that manufacturers, producers, and exporters of industrial belts in Korea benefit from a program under which the Bank of Korea directs commercial banks to provide long-term loans to select "promising" small- and medium-sized companies. According to the response of the GOK, the Bank of Korea does not direct commercial banks to provide loans under this program. The response states that commercial banks which provide more than 35 percent of new loans to small- and medium-sized companies obtain from the Bank of Korea a 50 percent rediscount ratio on loans to such enterprises in excess of the 35 percent level. The response further states that none of the companies under investigation qualifies as a small- or medium-sized enterprise because Dongil and Hankook have more than 300 regular employees and Taelim Moolsan is not an industrial company.

D. Exemption from the Acquisition Tax

Petitioner alleges that producers of industrial belts in Korea benefit under the Law for the Promotion of Income Sources in Rural Areas. Under this law companies which establish factories in rural areas may be exempted from paying the two percent acquisition tax on purchases of land, buildings, and capital equipment. According to the response of the GOK, neither producers nor exporters of industrial belts received exemption from the Acquisition Tax during the review period.

E. Tax Incentives for Businesses Moving to a Provincial Area

Petitioner alleges that manufacturers, producers, and exporters of industrial belts in Korea benefit from a program whereby companies moving out of metropolitan areas into rural areas received income and corporate tax deductions based on the cost of the move. According to the response of the GOK, neither producers nor exporters of industrial belts received this tax benefit during the review period.

F. Free Export Zone Program

Petitioner alleges that manufacturers, producers, and exporters of industrial

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belts in Korea benefit from a program whereby companies located in free export zones receive certain tax exemptions. According to the response of the GOK, no producer or exporter of industrial belts is located in a free export zone.

G. Tariff Reductions on Plant and Equipment under Article 28 of the Customs Law

Petitioner alleges that manufacturers, producers, and exporters of industrial belts in Korea benefit under Article 28 of the Customs Law which allow for import duty reductions on certain items for certain industries. According to the response of the GOK, neither producers nor exporters of industrial belts are eligible for this program.

H. Export Credit Financing from the Export-Import Bank of Korea (KXMB)

Petitioner alleges that manufacturers, producers, and exporters of industrial belts in Korea may receive preferential export financing through the KXMB. According to the response of the GOK, this program is not available to producers or exporters of industrial belts.

I. Export Guarantees from the KXMB

Petitioner alleges that manufacturers, producers, and exporters of industrial belts in Korea may receive export guarantees on exports of Korea goods. According to the response of the GOK, this program is not available to producers or exporters of industrial belts.

III. Programs Preliminarily Determined To Have Been Terminated

We preliminarily determine that the following programs have been terminated:

A. Special Depreciation under Article 11 of the Act Concerning the Regulation of Tax Reduction and Exemption

According to the response of the GOK, special depreciation was abolished effective December 26, 1986.

B. Tax Credit for Investment for Key Industries

According to the response of the GOK, this program was abolished effective December 26, 1986.

IV. Program Preliminarily Determined Not To Exist

We preliminarily determine that the following program does not exist:

Loans for Expansion or Construction of Maufacturing Facilities

According to the response of the GOK, this program does not exist.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act with respect to imports of industrial belts from Korea. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement, and (2) there have been massive imports of the subject merchandise over a relatively short period.

Section 355.29(a) of the Commerce Regulations or critical circumstances provides, inter alia, that we will determine "whether the alleged subsidy is an export subsidy inconsistent with the Agreement." We have preliminarily determined that the Export Tax Reserves and the Duty Drawback on Non-physically Incorporated Items and Allowances for Excessive Loss and Wastage Rates programs constitute export subsidies which are inconsistent with the Agreement.

In determining whether imports have been massive over a relatively short period of time, we consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. A review of this information indicates that imports from Korea have been massive over a relatively short period of time.

For the reasons described above, we determine that there is a reasonable basis to believe or suspect that "critical circumstances" exist with respect to imports of industrial belts from Korea.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(e) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of industrial belts from Korea entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of this merchandise, except for entries from Hankook Belt Industry, equal to 0.51 percent *ad valorem*. Entries of this merchandise from Hankook Belt Industry require a cash deposit or bond equal to 24.52 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 120 days after this preliminary affirmative determination, or 45 days after the Department makes its final determination, whichever is later.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business properietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. Written views should be submitted in accordance with 19 CFR 355.33(d) and 355.34, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

November 28, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-27815 Filed 12-1-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-803]

Preliminary Negative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore

AGENCY: Import Administration, International Trade Administration, commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that *de minimis* countervailable benefits are being provided to manufacturers, producers, or exporters in Singapore of industrial belts and components and parts thereof, whether cured or uncured ("industrial belts"), as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 0.001 percent *ad valorem*. Since this rate is *de minimis*, our preliminary countervailing duty determination is negative. If this investigation proceeds normally, we will make a final determination on or before February 13, 1989.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose, or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815, or 377-2438.

Preliminary Determination

Based on our investigation, we preliminarily determine that *de minimis* countervailable benefits are being provided to manufacturers, producers, or exporters in Singapore of industrial belts. For purposes of this investigation, the following program is preliminarily found to confer bounties or grants:

- Short-term loans provided under the Monetary Authority of Singapore.

We preliminarily determine the estimated net bounty or grant to be 0.001 percent *ad valorem*. Although we have determined this program to be countervailable, the respondent received *de minimis* benefits during the review period, the respondent company's fiscal year 1987 (April 1, 1987 through March 31, 1988). Since the countervailable benefits are *de minimis*, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act) are being provided to manufacturers, producers or exporters in Singapore of industrial belts.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (53 FR 28045, July 26, 1988), the following events have occurred. On August 1, 1988, we issued a questionnaire to the Government of Singapore in Washington, DC concerning petitioner's allegations. On October 6, 1988, we received responses from the Government of Singapore (GOS) and Mitsuboshi Belts (Singapore) Pte. Ltd. (MBS). On October 21, 1988 we issued a supplemental/deficiency questionnaire to the GOS and the respondent company. On August 26, 1988, petitioner filed a request that the preliminary determination be postponed for 65 days. Pursuant to section 703(c)(1)(A) of the Act, on September 7, 1988, we postponed the preliminary determination to no later than November 28, 1988 (53 FR 34570). On November 8, 1988, we received responses to our October 21, 1988 supplemental/deficiency questionnaire from the GOS and MBS.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified soley according to the appropriate HTS item numbers. Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioner to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. this investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants (the review period) is April 1, 1987 to March 31, 1988 (MBS's fiscal year). Based upon our analysis of the petition and the responses to our questionnaries, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Singapore of industrial belts under the following program:

Monetary Authority of Singapore (MAS) Rediscount Facility

Under the MAS Rediscounting Scheme, the MAS rediscounts pre-export and export bills of exchange. According to the responses, a qualifying exporter applies for financing from an approved bank, which then discounts the exporter's bills at a MAS-established rediscount rate plus a maximum spread of 1.5 percent. The bank subsequently rediscounts the bills at the MAS rediscount rate. The usual period for financing under this program is three months.

Because this program is available only to exporters, we preliminarily determine that it is countervailable to the extent that it is offered at preferential rates.

To determine whether financing under this program was made at preferential rates, we compared the interest rates charged on these loans to our short-term benchmark. For our benchmark, we are using the three-month rate on commercial bills in Singapore, as published in the *MAS Statistical Bulletin*, for the same period. This is the rate that we applied in the *Preliminary Affirmative Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Singapore* (53 FR 34329, September 6, 1988) (*AFB's*) and in the *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore* (50 FR 9840, May 6, 1985) (*Textiles*), the previous investigations in which this program was used. As in *AFB's* and *Textiles*, we have added 0.5 percent to the benchmark to reflect bank commissions in Singapore. Based on this comparison, the rates on MAS financing through its rediscounting facility are below the benchmark; therefore, we preliminarily determine this program to be countervailable.

Petitioner has alleged that the commercial bill rate is not the appropriate benchmark for determining whether loans through the MAS Rediscounting Facility are preferential because they account for a small portion of short-term loans in Singapore. We will continue to examine this issue for the final determination.

To calculate the benefit arising from this program, we followed our short-term loan methodology, which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

According to MAS's response, the company used both pre-shipment and export loans during the period of investigation. Export loans (those based on specific shipments) were segregated according to exports of the subject merchandise to the United States. According to MAS's response, pre-shipment loans cannot be segregated by either product or destination. Therefore, we calculated the rate for pre-shipment loans by dividing the benefit by all exports sales to all markets. We calculated the rate for export loans by dividing the benefit over exports of the subject merchandise to the United States. We added the resulting rates and on this basis calculated an estimated net bounty or grant under this program of 0.001 percent *ad valorem*.

II. Programs Preliminarily Determined Not to be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Singapore of industrial belts during the review period:

A. Economic Expansion Incentives Act of 1985 (EEIA)

The EEIA offers tax incentives under the following provisions:

- Part II: Pioneer Industries.
- Part IV: Expansion of Established Enterprises.
- Part VI: Production for Export.
- Part VII: International Trade Incentives.
- Part VIII: Foreign Loans for Productive Equipment.
- Part IX: Royalties, Fees and Development Contributions.
- Part X: Research and Development Incentives.
- Part XI: Warehousing and Servicing Incentives.

According to the response, the respondent company did not claim benefits under any of these provisions on the tax return filed during the review period.

B. Double Deduction of Export Promotion Expenses under the Income Tax Act (ITA)

Sections 14B and 14C of the ITA provide a double deduction for (a) approved overseas and domestic market trade fair expenses, (b) overseas trade office maintenance, (c) approved publications and advertising, and (d) foreign market development and trade missions. According to the response, the respondent company did not claim benefits under this program on the tax return filed during the review period.

C. Research and Development (R&D) Incentives

Section 14E of the ITA offers a double deduction for R&D expenses incurred by qualifying firms. According to the response, the respondent company did not claim benefits under this program on the tax return filed during the review period.

D. Section 19B of the ITA

This section of the ITA confers a writing down allowance of expenditures relating to know-how and patent rights for a company's R&D expenditures. According to the response, the respondent company did not claim benefits under this program on the tax return filed during the review period.

E. Research and Development Assistance Scheme (RDAS)

Government funding is available for R&D projects under the RDAS, administered by the Singapore Science Council. The purpose of the program is to encourage R&D. Both public institutions and private companies are eligible to apply. According to the response, the respondent company has not participated in this program.

F. Singapore Economic Development Board (EDB)

The EBD administers four programs available for approved company activities. The Capital Assistance Scheme provides long-term, fixed-rate loans and loan guarantees to companies investing in new production activities. The Production Development Assistance Scheme supplies matching grants for technical improvements in products or processes to companies with at least 30 percent Singaporean ownership. The Initiatives in New Technology Program provides grants to cover employee training and manpower development costs in fields of new technology. The additional R&D Incentives from EDB Program provide companies which conduct research and development with additional years of pioneer status beyond those normally allowed, investment allowances of up to 50 percent of capital investment in R&D (not including building costs), double deductions for R&D expenditures (not

including building and equipment), capitalization and writing off of lump sum payments for manufacturing licenses over a five-year period. According to the responses, the respondent company has not participated in these programs.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of industrial belts from Singapore. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Subsidy Agreement, and (2) there have been massive imports of the subject merchandise over a relatively short period.

Because we have preliminarily determined that the benefit provided to manufacturers, producers, or exporters of industrial belts in Singapore is *de minimis*, the preliminary determination is negative. Therefore, the issue as to whether critical circumstances exist is moot. If our final determination is affirmative we will reexamine the critical circumstances allegation at that time.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

ITC Notification

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. However, Singapore is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of this investigation (*i.e.*, those classified under items 358.0610, 358.0690, 358.1400, 657.2520, 773.3510, and 773.3520 of the *Tariff Schedules of the United States Annotated*) are nondutiable. Therefore, in accordance with section 303(a)(2), the U.S. International Trade Commission (ITC) is required to determine whether imports of these nondutiable products from Singapore materially injure, or threaten material injury to, a U.S. industry.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the Department makes its final determination.

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. Written views should be submitted in accordance with 19 CFR 355.33(d) and 355.34, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

November 28, 1988.

[FR Doc. 88-27816 Filed 12-1-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species; Application for Permit; Connecticut Department of Environmental Protection (P430)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant: Connecticut Department of Environmental Protection, Fisheries Bureau, Marine Fisheries Office, P.O. Box 248, Waterford, Connecticut 06385.

2. Type of Permit: Scientific Research.

3. Name of Animals: Shortnose sturgeon (*Acipenser brevirostrum*).

4. Type of Take and Number: Up to 2,000 sturgeon will be captured using gill nets for a tag release study. An unspecified number of tagged sturgeon may be recaptured at least once to estimate population size. Al sturgeon captured will be measured, weighed, sexed if possible, and tagged with carlin dangler tags. In addition to the carlin tags a maximum of 25 sturgeon per year will also be sonic tagged.

5. Location of Activity: Connecticut River, South of the Holyoke Dam, and the Thames and Housatonic Rivers.

6. *Period of Activity:* 3 years.

Written data or views or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930.

Date: November 22, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-27725 Filed 12-1-88; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) Send comments on applications to: Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331.

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366.

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00981, 809/753–4926.

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815.

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352.

Clarence Pautzske, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage AK 99501, 907/274–4563.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301–427–2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications of fishing in 1989 have been received from the Governments shown below.

Dated: November 30, 1988.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code/Fishery	Regional fishery management councils
ABS/Atlantic Billfish and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA/Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA/Gulf of Alaska Groundfish.	Do.
NWA/Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA/Snail (Bering Sea)...	North Pacific.
WOC/Pacific Coast Groundfish (Washington, Oregon and California).	Pacific.
PBS/Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahimahi.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

	Fishing operations
Activity code:	
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) supporting U.S. vessels (joint venture).
(**)	Cargo transport vessels with fish finding equipment on board receive an activity code 2 to enable them to perform both scouting as well as support activities.
Pending	Number to be assigned at a later date.

The respective amounts requested by each government for joint ventures are listed below. These are followed by the list of vessels for which permit applications have been received for the fisheries and activities noted. Joint venture Mackerel requests in the Northwest Atlantic Fishery made by the Government of the Netherlands, the Government of the German Democratic Republic, the Government of the Union of Soviet Socialist Republics, Her Majesty's Government of the United Kingdom, and the Government of the Polish People's Republic were published at 53 FR 48006, November 29, 1988. Vessels published at 53 FR 48006 for the ABS and the NWA fisheries are republished for the convenience of the reviewers.

Japan (JA)

The Government of Japan submitted 1989 applications to receive from U.S. fishermen a total of 595,688 metric tons (mt) of joint venture groundfish species in the Bering Sea and Aleutian Islands (BSA) fishery. The groundfish requested are:

Pollock
Arrowtooth flounder
Pacific cod
Sablefish
Other groundfish
Yellowfin sole
Rock sole
Pacific Ocean Perch
Atka mackerel
Greenland Turbot
Other flatfish
Other rockfish
Squid

Poland (PL)

The Government of the Polish People's Republic submitted applications to receive from U.S. fishermen a total of 30,000 mt of joint venture groundfish species in the BSA and the GOA fisheries and 43,000 mt of Pacific whiting in the Pacific Coast Groundfish fisheries.

Korea (KS)

The Government of the Republic of Korea submitted applications to receive from U.S. fishermen a total of 602,396 mt of joint venture groundfish species in the BSA fishery, 15,400 mt in the GOA fishery and 29,000 mt of Pacific whiting. The BSA and GOA joint venture groundfish requested are:

Pollock
Other flatfish
Pacific cod
Atka mackerel
Yellowfin sole
Other groundfish

China (CH)

The Government of the People's Republic of China submitted applications to receive from U.S. fishermen a total of 76,000 mt of joint venture groundfish species in the BSA fishery, a total of 2,000 mt of Pollock in the GOA fishery and a total of 20,000 mt of Pacific whiting. The BSA groundfish requested are:

Pollock
Atka mackerel

Yellowfin sole
Other flounder
Pacific cod
Other groundfish

Spain (SP)

The Government of Spain submitted applications to receive from U.S. fishermen a total of 20,000 mt of joint venture groundfish species in the BSA and GOA fisheries.

Soviet Union (UR)

The Government of the Soviet Socialist Republics submitted applications to receive from U.S. fishermen a total of 172,000 mt of joint venture groundfish species in the BSA fisheries.

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VESSEL (VESSEL TYPE)	APPLICATION /PERMIT #	FISHERY-ACTIVITY (*=JOINT VENTURE)
GENG HAI (LARGE STERN TRAWLER)	CH-89-0001	WOC-1* GOA-1* BSA-1*
HAI FA (CARGO/TRANSPORT VESSEL)	CH-89-0009	WOC-3 GOA-3 BSA-3
HAI FENG 301 (CARGO/TRANSPORT VESSEL)	CH-89-0008	WOC-3 GOA-3 BSA-3
KAI CHUANG (LARGE STERN TRAWLER)	CH-89-0003	WOC-1* GOA-1* BSA-1*
KAI TUO (LARGE STERN TRAWLER)	CH-89-0010	WOC-1* GOA-1* BSA-1*
YAN YUAN 1 (LARGE STERN TRAWLER)	CH-89-0002	WOC-1* GOA-1* BSA-1*
YAN YUAN NO. 2 (FACTORY SHIP)	CH-89-0006	WOC-1* GOA-1* BSA-1*
YUN HAI (FACTORY SHIP)	CH-89-0007	WOC-1* GOA-1* BSA-1*
ICE FLOWER (CARGO/TRANSPORT VESSEL)	DA-89-0003	NWA-3
ICE PEARL (CARGO/TRANSPORT VESSEL)	DA-89-0009	NWA-3
ICEBERG (CARGO/TRANSPORT VESSEL)	DA-89-0001	NWA-3
ICEPORT (CARGO/TRANSPORT VESSEL)	DA-89-0004	NWA-3
BODO UHSE (LARGE STERN TRAWLER)	GC-89-0040	NWA-1*
EDUARD CLAUDIUS (LARGE STERN TRAWLER)	GC-89-0059	NWA-1*
EHM WELK (LARGE STERN TRAWLER)	GC-89-0041	NWA-1*
LICHTENHAGEN (CARGO/TRANSPORT VESSEL)	GC-89-0055	NWA-3
LUDWIG RENN (LARGE STERN TRAWLER)	GC-89-0054	NWA-1*
REUTERSHAGEN (CARGO/TRANSPORT VESSEL)	GC-89-0056	NWA-3

AKASHI MARU NO. 11.....JA-89-1530...GOA-1* BSA-1*
(PAIR TRAWLER)

AKASHI MARU NO. 12.....JA-89-1531...GOA-1* BSA-1*
(PAIR TRAWLER)

AKASHI MARU NO. 66.....JA-89-0168...GOA-1* BSA-1*
(PAIR TRAWLER)

AKASHI MARU NO. 67.....JA-89-0169...GOA-1* BSA-1*
(PAIR TRAWLER)

AKASHIA MARU.....JA-89-1156...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

AKEBONO MARU NO. 18.....JA-89-0315...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

AKEBONO MARU NO. 22.....JA-89-0317...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

AKEBONO MARU NO. 3.....JA-89-0105...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

AKEBONO MARU NO. 31.....JA-89-0306...WOC-1* GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

AKEBONO MARU NO. 72.....JA-89-0338...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

AKEBONO MARU NO. 77.....JA-89-0157...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

AKISHIO MARU.....JA-89-0096...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ALBATROSS.....JA-89-0081...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ANYO MARU NO. 1.....JA-89-1552...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

ANYO MARU NO. 11.....JA-89-0541...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

ANYO MARU NO. 15.....JA-89-0104...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

ANYO MARU NO. 18.....JA-89-1175...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

ANYO MARU NO. 21.....JA-89-0621...GOA-1* BSA-1*
(LONGLINE FISHING VESSEL)

ANYO MARU NO. 22.....JA-89-0622...GOA-1* BSA-1*
(LONGLINE FISHING VESSEL)

AOYAGI MARU.....JA-89-0026...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ATAGO MARU.....JA-89-0195...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BAINBRIDGE REEFER.....JA-89-1159...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BANSHU MARU NO. 6.....JA-89-0373...NWA-1*
(LARGE STERN TRAWLER)

BANSHU MARU NO. 7.....JA-89-0374...NWA-1*
(LARGE STERN TRAWLER)

BANYO MARU.....JA-89-0099...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

BIYO MARU.....JA-89-0598...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BLUE ARROW.....JA-89-0916...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CHIKUBU MARU.....JA-89-0336...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

CHIKUZEN MARU.....JA-89-0199...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

CHITOSE MARU.....JA-89-0180...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CHIYO MARU.....JA-89-0197...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

CHOYO MARU NO. 81.....JA-89-0615...GOA-1* BSA-1*
(LONGLINE FISHING VESSEL)

CHOYOH MARU.....JA-89-0574...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAIAN MARU NO. 188.....JA-89-0553...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

DAIKAN MARU.....JA-89-0033...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAIKICHI MARU NO.1.....JA-89-1198...WOC-1* GOA-1* BSA-1*
(SMALL STERN TRAWLER)

DAIKICHI MARU NO.5.....JA-89-0187...WOC-1* GOA-1* BSA-1*
(SMALL STERN TRAWLER)

DAIKICHI MARU NO.51.....JA-89-0484...WOC-1* GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

DAIKOH MARU.....JA-89-0021...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAISHIN MARU NO. 28.....JA-89-0569...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

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DAISHO MARU.....JA-89-0035...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DOUGLAS.....JA-89-2028...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

EBISU FONTAINE.....JA-89-0589...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

EBISU MARU NO. 88.....JA-89-0118...GOA-1* BSA-1*
(LONGLINE FISHING VESSEL)

EIKYU MARU NO. 12.....JA-89-0124...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

EIKYU MARU NO. 75.....JA-89-1541...BSA-1
(SMALL STERN TRAWLER)

EIYO MARU (B).....JA-89-0109...SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

ENA MARU.....JA-89-0577...NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

ENYOH MARU.....JA-89-0086...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ETSUYOH MARU.....JA-89-0089...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FALCON.....JA-89-0918...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUJISHIO MARU.....JA-89-0594...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUKUCHO MARU NO. 11.....JA-89-1537...BSA-1
(SMALL STERN TRAWLER)

FUKUHO MARU NO. 78.....JA-89-1548...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

FUKUSHIN MARU NO. 8.....JA-89-0555...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

FUKUSHIO MARU.....JA-89-1539...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUKUYOSHI MARU NO. 26.....JA-89-0644...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

FUKUYOSHI MARU NO. 38.....JA-89-0304...WOC-1* GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

FUKUYOSHI MARU NO. 58.....JA-89-1536...WOC-1* GOA-1* BSA-1*
(SMALL STERN TRAWLER)

FUKUYOSHI MARU NO. 8.....JA-89-0624...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

FUYO MARU.....JA-89-0925...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAKKO BOOMERANG.....JA-89-0881...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAKKO FONTAINE.....JA-89-0587...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAKUREI MARU.....JA-89-0013...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

HAKUYO MARU.....JA-89-0570...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAMANASU MARU.....JA-89-0883...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAMAYOSHI MARU NO.63.....JA-89-1187...BSA-1
(MEDIUM STERN TRAWLER)

HANAZONO MARU.....JA-89-0147...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HATSUE MARU NO. 68.....JA-89-0562...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

HEKIFU.....JA-89-0196...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HIYO MARU.....JA-89-2025...SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

HIYOSHI MARU.....JA-89-0075...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOKKAI MARU.....JA-89-0012...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

HOKKAI MARU (B).....JA-89-0922...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOKUSHIN MARU.....JA-89-0014...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

HOKUSHIN MARU.....JA-89-0138...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOKUTO MARU.....JA-89-0015...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

HOKUYU MARU NO. 68.....JA-89-1177...BSA-1
(MEDIUM STERN TRAWLER)

HONAI MARU.....JA-89-0648...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOYO MARU.....JA-89-0190...WOC-2* GOA-2* BSA-2*
(FACTORY SHIP)

HOZAN MARU.....JA-89-0194...NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

ISHIKARI MARU.....JA-89-0595...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

IZUMO REEFER.....JA-89-0053...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

JAMES.....JA-89-0584...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAIUN MARU NO. 65.....JA-89-2010...BSA-1
(MEDIUM STERN TRAWLER)

KAIYO MARU NO. 15.....JA-89-1176...BSA-1
(MEDIUM STERN TRAWLER)

KAIYO MARU.....JA-89-0088...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAIYO MARU NO. 115.....JA-89-1153...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

KAKUYO MARU NO. 1.....JA-89-0210...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAKUYO MARU NO. 11.....JA-89-2008...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAKUYO MARU NO. 12.....JA-89-2009...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAKUYO MARU NO. 17.....JA-89-1575...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAKUYO MARU NO. 18.....JA-89-1574...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAKUYO MARU NO. 2.....JA-89-0211...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAKUYO MARU NO. 7.....JA-89-0214...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAKUYO MARU NO. 8.....JA-89-0215...WOC-1* GOA-1* BSA-1*
(PAIR TRAWLER)

KAMUI MARU.....JA-89-0223...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASHIMA REEFER.....JA-89-0054...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASHIWAGI MARU.....JA-89-0019...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASUGA REEFER.....JA-89-0055...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KATAH.....JA-89-0148...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KEIFU MARU.....JA-89-0572...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KEIYO MARU.....JA-89-0102...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KINYO MARU.....JA-89-0103...SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

KISARAGI MARU.....JA-89-0929...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KIYO MARU NO. 55.....JA-89-0602...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

KOEI MARU NO. 10.....JA-89-0149...GOA-1 BSA-1
(LONGLINER/GILLNET)

KOEI MARU NO. 20.....JA-89-1576...BSA-1
(SMALL STERN TRAWLER)

KOEI MARU NO. 56.....JA-89-0618...GOA-1* BSA-1*
(LONGLINE FISHING VESSEL)

KOEI MARU NO.51.....JA-89-1173...BSA-1*
(MEDIUM STERN TRAWLER)

KOHFU MARU.....JA-89-0641...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOHOKU MARU NO.7.....JA-89-1191...BSA-1*
(SMALL STERN TRAWLER)

KOHSHO MARU.....JA-89-0579...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOMEI MARU.....JA-89-0139...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOSHIN MARU NO. 1.....JA-PENDING...WOC-1* GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

KOSHIN MARU NO. 21.....JA-89-0525...WOC-1* GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

KOSHIN MARU NO. 3.....JA-89-0192...WOC-1* GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

KOTOKU MARU.....JA-89-1035...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOYO MARU.....JA-89-0383...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOYO MARU NO. 2.....JA-89-0297...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

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KOYO MARU NO. 3.....JA-89-0343...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

KOYO MARU NO. 8.....JA-PENDING...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

KUNISAKI.....JA-89-0899...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KUROSHIMA MARU.....JA-89-1582...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KYOKUSHIN MARU.....JA-89-1161...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MABAH.....JA-89-0108...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MANRYO MARU NO. 52.....JA-89-1189...BSA-1
(SMALL STERN TRAWLER)

MARINE ACE.....JA-89-0002...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MATSUEI MARU NO. 88.....JA-89-0609...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

MINESHIMA MARU.....JA-89-0080...WOC-2* GOA-2* BSA-2*
(FACTORY SHIP)

MITO MARU NO. 82.....JA-89-0611...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

MIYAJIMA MARU.....JA-89-1540...WOC-1* GOA-1* BSA-1*
(FACTORY SHIP)

MIYOSHIMA MARU.....JA-89-0025...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NICHIYO MARU.....JA-89-1167...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NIITAKA MARU.....JA-89-0289...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

NIPPONHAM MARU NO. 1.....JA-89-1082...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NISSEI MARU.....JA-89-0914...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NISSHIN MARU NO.51.....JA-89-1188...BSA-1
(MEDIUM STERN TRAWLER)

NOJIMA MARU.....JA-89-1096...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

OHTORI MARU.....JA-89-0342...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

OHYO MARU.....JA-89-0158...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OKUSHIRI.....JA-89-0580...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO TRANSPORT VESSEL)

ORIENTAL CRANE.....JA-89-0184...SNA-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

ORION.....JA-89-0591...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORION.....JA-89-0642...NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

OTOWA MARU.....JA-89-1538...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PALOMA.....JA-89-0098...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PEGASAS.....JA-89-0152...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PHOENIX.....JA-89-0917...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

POHAH.....JA-89-0206...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER BEAVER.....JA-89-1145...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER FRESH.....JA-89-2029...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

RIKUZEN MARU.....JA-89-0340...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

RISHIRI.....JA-89-0027...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ROKKO.....JA-89-0181...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ROKUNOSHIMA MARU NO. 18.....JA-89-1553...ABS-1
(LONGLINE FISHING VESSEL)

RYOAN MARU NO.21.....JA-89-1172...BSA-1
(MEDIUM STERN TRAWLER)

RYOYO MARU.....JA-89-1024...SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

RYUHO MARU NO. 38.....JA-89-0557...GOA-1* BSA-1*
(LONGLINE FISHING VESSEL)

RYUHO MARU NO. 51.....JA-89-1572...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

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RYUJIN MARU NO.21.....JA-89-0634...BSA-1
(SMALL STERN TRAWLER)

RYUO MARU NO. 28.....JA-89-1373...ABS-1
(LONGLINE FISHING VESSEL)

RYUSHO MARU NO. 15.....JA-89-0619...GOA-1 BSA-1
(LONGLINER/GILLNET)

RYUSHO MARU NO. 18.....JA-89-0620...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

RYUYO MARU.....JA-89-0280...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

SACHISHIO MARU.....JA-89-0097...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SAGAMI MARU.....JA-89-0146...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

SAKAE MARU.....JA-89-0647...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SANUKI MARU.....JA-89-0915...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SANWA FONTAINE.....JA-89-0590...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEAGULL.....JA-89-0034...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEISHIN MARU.....JA-89-0645...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEITOKU MARU NO. 107.....JA-89-0450...BSA-1*
(MEDIUM STERN TRAWLER)

SEIYOH MARU.....JA-89-0583...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEKI REX.....JA-89-1148...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHIDAKA MARU.....JA-89-0179...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHIN SAKURA.....JA-89-0153...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINASAHI MARU.....JA-89-0578...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINBUNGO MARU.....JA-89-0047...NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

SHINEI MARU NO. 18.....JA-89-1555...ABS-1
(LONGLINE FISHING VESSEL)

SHINEI MARU NO. 63.....JA-89-1196...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

SHINEI MARU NO. 81.....JA-89-1554...ABS-1
(LONGLINE FISHING VESSEL)

SHINKO MARU NO. 11.....JA-89-0119...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

SHINMEI MARU.....JA-89-0207...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINNICHI MARU NO. 38.....JA-89-0563...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

SHINNICHI MARU NO. 68.....JA-89-0308...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

SHINSHO MARU.....JA-89-0640...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINTAKARA MARU.....JA-89-0046...NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

SHINTOKU MARU NO. 25.....JA-89-0613...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

SHINWA MARU.....JA-89-0137...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINYO MARU.....JA-89-0074...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOEI MARU NO. 5.....JA-89-0639...BSA-1
(SMALL STERN TRAWLER)

SHOJU MARU.....JA-89-0134...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOKEN MARU.....JA-89-0930...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOUTOKU MARU.....JA-89-0028...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOYO MARU (A).....JA-89-1394...BSA-1
(MEDIUM STERN TRAWLER)

SHOYO MARU (B).....JA-89-1563...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHUNYO MARU.....JA-89-0136...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHUNYOO MARU NO. 118.....JA-89-0564...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

SINGAPORE FONTAINE.....JA-89-0586...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

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SKYLARK.....JA-89-0023...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SOUTHERN CROSS.....JA-89-0156...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SOYO MARU.....JA-89-0240...GOA-2* BSA-2*
(FACTORY SHIP)

SOYOKAZE MARU.....JA-89-1040...WOC-3 SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

STARLING.....JA-89-0024...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUIYO MARU.....JA-89-0575...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUMI MARU NO. 8.....JA-89-1546...ABS-1
(LONGLINE FISHING VESSEL)

SUMIYOSHI MARU NO. 53.....JA-89-0608...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

SUNBIRD.....JA-89-0576...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUOH.....JA-89-0893...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SURUGA MARU.....JA-89-2014...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUZURAN MARU.....JA-89-1152...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SWALLOW.....JA-89-0032...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 101.....JA-89-1144...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

TAISEI MARU NO. 15.....JA-89-0205...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

TAISEI MARU NO. 3.....JA-89-0085...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

TAISEI MARU NO. 35.....JA-89-0636...BSA-1
(MEDIUM STERN TRAWLER)

TAISEI MARU NO. 52.....JA-89-1055...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

TAISEI MARU NO. 87.....JA-89-1053...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

TAISEI MARU NO. 98.....JA-89-1054...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL) **

TAISETSU MARU.....JA-89-0193...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAIYO.....JA-89-1032...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAIYO MARU NO. 83.....JA-89-0380...NWA-1*
(MEDIUM STERN TRAWLER)

TAKACHIHO MARU.....JA-89-0291...NWA-1 GOA-1* BSA-1*
(LARGE STERN TRAWLER)

TAKATOYO MARU NO. 18.....JA-89-1331...ABS-1
(LONGLINE FISHING VESSEL)

TAKATSUKI MARU.....JA-89-2022...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAKUYO MARU.....JA-89-0029...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TEISHO MARU NO. 68.....JA-89-1547...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

TENKAI MARU.....JA-89-0894...SNA-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

TENSHUN MARU.....JA-89-0182...SNA-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

TENYO MARU.....JA-89-0352...WOC-1 GOA-1* BSA-1*
(LARGE STERN TRAWLER)

TENYO MARU NO. 2.....JA-89-0332...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

TENYO MARU NO. 3.....JA-89-0333...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

TENYO MARU NO. 5.....JA-89-0334...WOC-1 GOA-1* BSA-1*
(LARGE STERN TRAWLER)

TENYU MARU NO. 37.....JA-89-0616...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

TENYU MARU NO.57.....JA-89-0637...BSA-1
(SMALL STERN TRAWLER)

TOKACHI MARU (B).....JA-89-0359...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKIWA MARU.....JA-89-0631...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKUKO MARU.....JA-89-0593...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKURYU MARU.....JA-89-0592...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

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TOKYO REEFER.....JA-89-1135...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOMI MARU NO. 21.....JA-89-1476...ABS-1
(LONGLINE FISHING VESSEL)

TOMI MARU NO. 51.....JA-89-1197...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

TOMI MARU NO. 55.....JA-89-1171...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 58.....JA-89-0643...GOA-2* BSA-1*
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 81.....JA-89-1192...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

TOMI MARU NO. 82.....JA-89-1193...GOA-1* BSA-1*
(SMALL STERN TRAWLER)

TOMI MARU NO. 83.....JA-89-1170...GOA-2* BSA-1*
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 86.....JA-89-0222...GOA-2* BSA-1*
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 87.....JA-89-0198...GOA-2* BSA-1*
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 88.....JA-89-0612...GOA-1* BSA-1*
(LONGLINE FISHING VESSEL)

TORA MARU NO. 58.....JA-89-1190...BSA-1
(SMALL STERN TRAWLER)

TOSHIN MARU.....JA-89-0056...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TSUDA MARU.....JA-89-0337...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

TSUNE MARU NO. 31.....JA-89-0601...GOA-1 BSA-1
(LONGLINE FISHING VESSEL)

TSURUSAKI.....JA-89-0630...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

WORLD FONTAINE.....JA-89-0588...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAGISHIRI.....JA-89-0581...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAKUSHI MARU NO. 51.....JA-89-0638...BSA-1
(MEDIUM STERN TRAWLER)

YAMATO MARU.....JA-89-0339...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

YASAKA REEFER.....JA-89-0052...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAYOI MARU.....JA-89-0018...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOHTEI MARU.....JA-89-0076...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOKO MARU.....JA-89-0087...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZAO MARU.....JA-89-0361...NWA-1
(LARGE STERN TRAWLER)

ZUIFU.....JA-89-0646...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZUIHOO MARU NO. 28.....JA-89-0565...GOA-1* BSA-1*
(MEDIUM STERN TRAWLER)

ZUIYO MARU.....JA-89-0335...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ZUIYO MARU NO. 3.....JA-89-0331...GOA-1* BSA-1*
(LARGE STERN TRAWLER)

CHEOG YANG HO.....KS-89-0003...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

CORAL STAR.....KS-89-0135...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CRYSTAL DAHLIA.....KS-89-0034...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

DAE JIN NO. 21.....KS-89-0136...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

DAE SUNG HO.....KS-89-0051...WOC-1* GOA-2* BSA-2*
(LARGE STERN TRAWLER)

DAEJIN NO. 52.....KS-89-0037...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

DONG BANG HO.....KS-PENDING...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

DONGSAN-HO.....KS-89-0039...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

GAE CHEOG HO.....KS-89-0112...GOA-2* BSA-2*
(FACTORY SHIP)

GAE CHEOG HO NO. 2.....KS-89-0090...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GAE YANG HO.....KS-89-0001...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

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HAN JIN HO.....KS-89-0045...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

HAN KIL HO.....KS-89-0044...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

HANIL HO.....KS-89-0107...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

JOON SUNG HO.....KS-89-0137...WOC-1* GOA-2* BSA-2*
(LARGE STERN TRAWLER)

KYUNG YANG HO.....KS-89-0085...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

NAM BUG HO.....KS-89-0033...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

NAM JOO HO.....KS-89-0146...GOA-3 BSA-3
(TANKER FUEL/WATER)

NO. 1 HAN SUNG.....KS-89-0106...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

NO. 101 HYUN IL.....KS-89-0151...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 103 NAM CHANG.....KS-89-0141...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 29 TAE BAEK.....KS-89-0091...WOC-2* GOA-2* BSA-2*
(FACTORY SHIP)

NO. 3 CHIL BO SAN HO.....KS-89-0074...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 5 CHIL BO SAN HO.....KS-89-0075...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 501 DONG SOO.....KS-89-0119...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 6 CHIL BO SAN HO.....KS-89-0076...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 602 TAE WOONG.....KS-89-0105...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

NO. 7 SANG WON.....KS-89-0041...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

NO. 70 OYANG HO.....KS-89-0048...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

NO. 71 DONG BANG.....KS-89-0121...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

NO. 77 DONG BANG.....KS-89-0118...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 9 JEONG WOO.....KS-89-0139...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 99 TAE BAEK.....KS-89-0079...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OCEAN EXPRESS.....KS-89-0142...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ODAEYANG NO. 106.....KS-89-0099...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORYONG NO. 501.....KS-89-0123...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

ORYONG NO. 503.....KS-89-0095...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

OYANG HO.....KS-89-0006...WOC-2* GOA-2* BSA-2*
(LARGE STERN TRAWLER)

PUNG YANG HO.....KS-89-0004...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

REEFER NO. 1.....KS-89-0147...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 2.....KS-89-0148...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 3.....KS-89-0149...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 5.....KS-89-0098...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 6.....KS-89-0150...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SALVIA.....KS-89-0103...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

SHIN AN HO.....KS-89-0047...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

SHIN YANG HO.....KS-89-0122...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

SUNFLOWER NO. 7.....KS-89-0002...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

TAE BAEK HO.....KS-89-0042...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

TAE WOONG HO.....KS-89-0143...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

TAE YANG NO. 12.....KS-89-0081...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

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YUYANG HO.....KS-89-0104...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

ALIDA.....NL-89-0006...NWA-1*
(LARGE STERN TRAWLER)

ANNIE HILLINA.....NL-89-0027...NWA-1*
(MEDIUM STERN TRAWLER)

ARIADNE.....NL-89-0009...NWA-1*
(MEDIUM STERN TRAWLER)

ASTRID.....NL-89-0028...NWA-1*
(LARGE STERN TRAWLER)

CORNELIS VROLIJK FZN.....NL-89-0014...NWA-1*
(MEDIUM STERN TRAWLER)

DIRK DIRK.....NL-89-0026...NWA-1*
(LARGE STERN TRAWLER)

FRANZISKA.....NL-PENDING...NWA-1*
(LARGE STERN TRAWLER)

FRIESLAND.....NL-89-0031...NWA-1*
(MEDIUM STERN TRAWLER)

GEERTRUID MARGRETA.....NL-89-0032...NWA-1*
(LARGE STERN TRAWLER)

HENDRIKA JOHANNA.....NL-89-0025...NWA-1*
(MEDIUM STERN TRAWLER)

HOLLAND.....NL-89-0023...NWA-1*
(LARGE STERN TRAWLER)

PRINS BERNHARD.....NL-89-0007...NWA-1*
(LARGE STERN TRAWLER)*

TETMAN HETTE.....NL-PENDING...NWA-1*
(LARGE STERN TRAWLER)

ZEELAND.....NL-89-0022...NWA-1*
(LARGE STERN TRAWLER)

ADMIRAL ARCISZEWSKI.....PL-89-0081...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ALTAIR.....PL-89-0115...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

AMAREL.....PL-89-0046...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ANTARES.....PL-89-0037...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ANTONI GARNUSZEWSKI.....PL-89-0106...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

AQUARIUS.....PL-89-0103...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

AQUILA.....PL-89-0097...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ARCTURUS.....PL-89-0038...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

AWIOR.....PL-89-0060...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

BOGAR.....PL-89-0085...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

BURAN.....PL-89-0033...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CASSIOPEIA.....PL-89-0099...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

DALMOR 2.....PL-89-0114...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

DELFIN.....PL-89-0065...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

DENEBOLA.....PL-89-0075...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

DZIECI POLSKIE.....PL-89-0091...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GARNELA.....PL-89-0008...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

GDYNSKI KOSYNIER.....PL-89-0090...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GEMINI.....PL-89-0048...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

GOPLO.....PL-89-0057...WOC-3 BSA-3
(MEDIUM STERN TRAWLER)

GRINWAL.....PL-89-0007...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

HAJDUK.....PL-89-0066...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

HALNIAK.....PL-89-0029...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HUMBAK.....PL-89-0019...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

INDUS.....PL-89-0094...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

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KALMAR.....PL-89-0039...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

KANTAR.....PL-89-0118...WOC-1* NWA-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

KASZUBY 2.....PL-89-0027...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOCIEWIE.....PL-89-0116...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOLIAS.....PL-89-0050...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

KULBIN.....PL-89-0117...NWA-1*
(LARGE STERN TRAWLER)

KUNATKA.....PL-89-0021...NWA-1*
(LARGE STERN TRAWLER)

LASKARA.....PL-89-0024...NWA-1*
(LARGE STERN TRAWLER)

LEWANTER.....PL-89-0030...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

M/V KURPIE.....PL-89-0120...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MANTA.....PL-89-0052...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

MARLIN.....PL-89-0034...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

MAZURY.....PL-89-0098...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MORS.....PL-89-0063...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

MUSTEL.....PL-89-0012...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ORCYN.....PL-89-0077...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ORLEN.....PL-89-0078...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

OTOL.....PL-89-0011...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

PARMA.....PL-89-0084...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

PERSEUS.....PL-89-0004...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

BEST COPY AVAILABLE

PIENINY 2.....PL-89-0110...WOC-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

PLOCK.....PL-89-0109...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

POLLUX.....PL-89-0006...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

POWISLE.....PL-89-0119...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PROF. BOGUCKI.....PL-89-0107...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

REGULUS.....PL-89-0095...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

REKIN.....PL-89-0080...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

SAGITTA.....PL-89-0040...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

SIRIUS.....PL-89-0062...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

SOLANO.....PL-89-0112...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TATRY.....PL-89-0108...WOC-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

TAZAR.....PL-89-0054...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

TERRAL.....PL-89-0086...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TORNADO.....PL-89-0113...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TUNEK.....PL-89-0045...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

VEGA.....PL-89-0055...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

WALEN.....PL-89-0009...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

WINETA.....PL-89-0061...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

WLOCZNIK.....PL-89-0020...WOC-1* GOA-1* BSA-1*
(LARGE STERN TRAWLER)

ZONDA.....PL-89-0102...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

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ZULAWY.....PL-89-0041...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZYRARDOW.....PL-89-0089...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

AROSA DIEZ.....SP-PENDING...GOA-2* BSA-2*
(LARGE STERN TRAWLER)

AROSA DOCE.....SP-PENDING...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

AROSA NUEVE.....SP-PENDING...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

AROSA SEXTO.....SP-PENDING...GOA-2* BSA-2*
(MEDIUM STERN TRAWLER)

GENESIS.....UK-PENDING...NWA-1*
(LARGE STERN TRAWLER)

WESTELLA.....UK-PENDING...NWA-1*
(MEDIUM STERN TRAWLER)

DANKO.....UR-89-0001...BSA-2*
(LARGE STERN TRAWLER)

EFIM GORBENKO.....UR-89-0823...NWA-1*
(LARGE STERN TRAWLER)

FYODOR KRAINOV.....UR-89-0206...BSA-2*
(LARGE STERN TRAWLER)

GALAKTON TAIDZE.....UR-89-0826...NWA-1*
(LARGE STERN TRAWLER)

GALDOR.....UR-89-0821...NWA-1*
(LARGE STERN TRAWLER)

GALIFAN BATARSHIN.....UR-89-0190...BSA-2*
(LARGE STERN TRAWLER)

GENERAL PUSHKIN.....UR-89-0822...NWA-1*
(LARGE STERN TRAWLER)

KARGAT.....UR-89-0198...BSA-2*
(LARGE STERN TRAWLER)

KATANGLI.....UR-89-0018...BSA-2*
(LARGE STERN TRAWLER)

KAZATIN.....UR-PENDING...BSA-2*
(LARGE STERN TRAWLER)

KONTAIKA.....UR-89-0076...BSA-2*
(LARGE STERN TRAWLER)

MALAYA ZEMLIA.....UR-89-0824...NWA-1*
(LARGE STERN TRAWLER)

MYS CHASOVOY.....UR-89-0176...BSA-2*
(LARGE STERN TRAWLER)

MYS EGOROVA.....UR-89-0097...BSA-2*
(LARGE STERN TRAWLER)

MYS ELAGINA.....UR-89-0165...BSA-2*
(LARGE STERN TRAWLER)

MYS MALTSEVA.....UR-89-0192...BSA-2*
(LARGE STERN TRAWLER)

MYS OREKHOVA.....UR-89-0017...BSA-2*
(LARGE STERN TRAWLER)

MYS SHELIKHOVA.....UR-89-0703...BSA-2*
(LARGE STERN TRAWLER)

MYS TAIMYR.....UR-89-0166...BSA-2*
(LARGE STERN TRAWLER)

MYS VODOPADNY.....UR-89-0546...BSA-2*
(LARGE STERN TRAWLER)

NOVATOR.....UR-89-0825...NWA-1*
(LARGE STERN TRAWLER)

PAUDZHA.....UR-89-0704...BSA-2*
(LARGE STERN TRAWLER)

POYMA.....UR-89-0201...BSA-2*
(LARGE STERN TRAWLER)

PROLETARSKAJA REVOLYUTSIJA.....UR-89-0829...NWA-1*
(LARGE STERN TRAWLER)

REVOLIUTSIONER.....UR-89-0187...BSA-2*
(LARGE STERN TRAWLER)

SOIUZ-5.....UR-89-0235...BSA-2*
(LARGE STERN TRAWLER)

SOVGAVANSKY KOMSOMOLETS.....UR-89-0560...BSA-2*
(LARGE STERN TRAWLER)

SULAK.....UR-89-0238...BSA-2*
(FACTORY SHIP)

TIGIL.....UR-89-0162...BSA-2*
(LARGE STERN TRAWLER)

TURKUL.....UR-89-0172...BSA-2*
(LARGE STERN TRAWLER)

VASILIY REVIAKIN.....UR-89-0828...NWA-1*
(LARGE STERN TRAWLER)

YUBILEY OKTIABRIA.....UR-89-0064...BSA-2*
(LARGE STERN TRAWLER)

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[FR Doc. 88-27869 Filed 12-1-88; 8:45 am]
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SUMMARY:
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COMMISSION ON MERCHANT MARINE AND DEFENSE

Notice of Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, December 12, 1988, Beginning 9:00 a.m.; Tuesday, December 13, 1988, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268.

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–27734 Filed 12–1–88; 8:45 am]

BILLING CODE 3820–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products From Jamaica

November 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of a Special Access Program.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and Jamaica is available from Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 53 FR 22202, published on June 14, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile agreements.

Committee For The Implementation of Textile Agreements

November 29, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States of consumption or withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following designated levels:

Category	12 Mo. restraint level
331/631	350,000 dozen pairs.
336/636	98,000 dozen.
338/339/638/639	736,700 dozen.
340/640	344,500 dozen of which not more than 291,500 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling Categories 340-Y/640-Y— (only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.46, 6205.20.20.50, 6205.20.20.60, 6205.30.20.10, 6205.30.20.20, 6205.30.20.50 and 6205.30.20.60).
341/641	432,586 dozen.
342/642	175,000 dozen.
345/845	106,742 dozen.
347/348/647/648	795,175 dozen.
349/649	500,000 dozen.
352/652	300,000 dozen.
445/446	47,945 dozen.
447	10,000 dozen.
632	100,000 dozen pairs.

Imports charged to these category limits for the periods beginning on January 1, 1988 and July 1, 1988 and extending through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

The conversion factors for Categories 338/339/638/639 and 352/652 are 12.0 and 13.5, respectively.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the categories listed below. These products shall be assembled in Jamaica from fabric formed and cut in the United States and exported to

the United States from Jamaica during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989.

Category	Guaranteed access level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
336/339/638/639	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648	2,000,000 dozen.
349/649	2,200,000 dozen.
352/652	1,550,000 dozen.
447	30,000 dozen.
632	3,000,000 dozen pairs.

Any shipment for entry tariff number 9802.00.80.10 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment which is declared as tariff number 9802.00.80.10 but found not to qualify for the Special Access Program shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27785 Filed 12-1-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment and Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

November 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and increasing limits.

EFFECTIVE DATE: December 6, 1988.

Authority: E. O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and the Republic of Korea agreed to establish a specific limit for Category 200 for the period January 1, 1988 through December 31, 1988. The current Group I limit is being increased to include tents in Category 669-T which were reclassified from sporting goods to textiles.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987.) Also see 53 FR 161, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

November 29, 1988

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 6, 1988, the directive of December 30, 1987 is being amended to establish a limit for Category 200 and to increase the current limit for Group I, as provided by the current bilateral agreement between the Governments of the United States and the Republic of Korea. Category 200 shall remain subject to the Group I limit.

Category	12-month restraint limit [1]
GROUP I	
200, 201, 218-220, 222-229, 300-326, 360-363, 369-O [2], 400, 410, 414, 464-469, 600-607, 611-622, 624-629, 665-669 and 670-O [3], as a group.	452,692,605 square yards equivalent.
SUBLEVEL IN GROUP I	
200	754,201 pounds.

[1] The limit for Group I has not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369-O, all TSUSA numbers except 706.3210, 706.3650 and 706.4111.

[3] In Category 670-O, all TSUSA numbers except 706.3415, 706.4130 and 706.4135.

Import charges already made to Category 200 in Group I are to be retained and applied to the sublevel established in this directive for Category 200.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27786 Filed 12-1-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Trinidad and Tobago

November 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and GAL's for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 Announcement of a Special Access Program.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United

States and Trinidad and Tobago is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are desinged to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1988

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 23, 1986 between the Governments of the United States and Trinidad and Tobago; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Trinidad and Tobago and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following designated levels:

Category	12-month restraint level
336/636	65,000 dozen.
338/339	105,000 dozen.
340/640	50,000 dozen of which not more than 25,000 dozen shall be in shirts made from yarn dyed fabric of two or more colors in the warp and/or filling (Categories 340pt./640pt.—only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.46, 6205.20.20.50 and 6205.20.20.60 in Category 340pt.; and 6205.30.20.10, 6205.30.20.20, 6205.30.20.50 and 6205.30.20.60 in Category 640pt.
347/348/647/648	100,000 dozen.
352/652	100,000 dozen.

—Continued

Imports charged to the category limits for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The conversion factors for Categories 340/640 and 352/652 are 20.1 and 11.3, respectively.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), you are directed to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported to the United States from Trinidad and Tobago during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989.

Category	Guaranteed access level
336/636	300,000 dozen.
338/339	225,000 dozen.
340/640	100,000 dozen.
347/348/647/648	300,000 dozen.
352/652	300,000 dozen.

Any shipment for entry under tariff number 9802.00.8010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the provisions of the certification requirements established in the directive of July 28, 1987 shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as tariff number 9802.00.8010 but found not to qualify for the Special Access Program shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27787 Filed 12–1–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Additions to Procurement List 1989; Correction

The effective date of the additions to the Procurement List appearing on page 47850 of FR Doc. 88–27314 in the issue of Monday, November 28, 1988, should read December 28, 1988, instead of December 26, 1988.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–27799 Filed 12–1–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 a commodity to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 2, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1989, November 15, 1988 (53 FR 46018).

Stand, Canteen Cup
8465–01–250–3632

(All DLA Depots except Mechanicsburg, Pennsylvania)

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-27797 Filed 12-1-88; 8:45 am]

BILLING CODE 6820-33-M

Proposed Additions to Procurement List 1989; Extension of Comment Period

The period for submitting comments on the proposed additions to the Procurement List appearing on page 47850 of FR Doc. 88-27315 in the issue of Monday, November 28, 1988, is extended until December 28, 1988.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-27798 Filed 12-1-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Base Realignment and Closure Commission

ACTION: Notice of closed meetings.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold closed meetings on December 13, 14 and 15, 1988. They will meet for the purpose of individual base deliberations. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (9)(B) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d).

FOR FURTHER INFORMATION CONTACT: Russel Milness, (202) 653-0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW., Suite 310, Washington, DC 20006.

November 23, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-27767 Filed 21-1-88; 8:45 am]

BILLING CODE 3810-01-M

Meetings, Defense Intelligence Agency Advisory Board

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that closed meetings of a panel of the DIA Advisory Board have been scheduled as follows:

DATE: December 21, 1988, and January 23, 1989 (9:00 a.m. to 5:00 p.m. each day).

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on tactical intelligence information handling systems.

November 28, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-27768 Filed 12-1-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Advanced Naval Warfare Concepts; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Advanced Naval Warfare Concepts will meet in closed session on January 19-20, March 14-15, and April 24-25, 1989 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine advanced naval warfare concepts and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

November 23, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-27769 Filed 12-1-88; 8:45 am]

BILLING CODE 3810-01-M

U.S. Court of Military Appeals Code Committee; Public meeting

ACTION: Notice of public hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 9:00 a.m. on December 13, 1988, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001. The agenda for this meeting will include consideration of the proposed changes to the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001; telephone (202) 272-1448.

November 28, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-27770 Filed 12-1-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Amendment of Record System Notice; Correction

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice of an amendment of a record system.

SUMMARY: The Defense Logistics Agency is amending a system of records subject to the Privacy Act of 1974. The specific changes to the amended system are set forth below followed by the amendment notice published in its entirety as changed.

DATES: The proposed action will be effective without further notice, January 3, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Any comments may be sent to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, DLA-XAM, Defnese Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, Telephone: 202-274-6234, Autovon: 284-6234.

SUPPLEMENTARY INFORMATION: This existing record system was published at 53 FR 32091, August 23, 1988. The Defense Logistics Agency systems of records as prescribed by the Privacy Act of 1974 (6 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22897) May 29, 1985 (DoD Compilation).
FR Doc. 85-30123 (50 FR 61898) December 20, 1985.
FR Doc. 86-17259 (51 FR 27443) July 31, 1986.
FR Doc. 86-19035 (51 FR 30104) August 22, 1986.
FR Doc. 87-21654 (52 FR 35304) September 18, 1987.
FR Doc. 87-22481 (52 FR 37495) October 7, 1987.
FR Doc. 88-03220 (53 FR 04442) February 16, 1988.
FR Doc. 88-06658 (53 FR 09965) March 28, 1988.
FR Doc. 88-12863 (53 FR 21511) June 8, 1988.
FR Doc. 88-15473 (53 FR 26105) July 11, 1988.
FR Doc. 88-19066 (53 FR 32091) August 23, 1988.
FR Doc. 88-22957 (53 FR 39129) October 5, 1988.
FR Doc. 88-25700 (53 FR 44937) November 7 1988.

This notice is not within the purview of subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

November 28, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S160.50 DLA-1

System Name:

Criminal Incidents/Investigations File. (53 FR 32091 August 23, 1988)

Changes:

The system number should read "S160.50 DLA-1".

Categories of Individuals Covered by the System is revised and Categories of Records in the System is added to read as follows:

Categories of Individuals Covered by the System:

Civilian and military personnel of DLA, contractor employees, and other persons who committed or are suspected of having committed a felony or misdemeanor on DLA controlled activities or facilities; or outside of those areas in cases where DLA is or may be a party of interest.

Categories of Records in the System:

Reports of investigation, messages, statements of witnesses, subjects and victims, photographs, laboratory reports, data collection reports, and other related papers.

Retention and Disposal:

Delete: (on line 12) "(DCIL)".
Add: (on line 12) "(DCII)".

Record Source Categories:

Delete: (on line 2) "Security Officer".
Add: (on line 2) "Security Officers".
As corrected, the system of records reads as follows:

S160.50 DLA-I

SYSTEM NAME:

Criminal Incidents/Investigations File.

SYSTEM LOCATION:

Primary System—case files on all incidents of known or suspected criminal activity or other serious incidents: Office of Command Security and Office of General Counsel, Headquarters Defense Logistics Agency (HQ DLA) and field extension offices. Decentralized segments—above described files and files of minor nature: DLA Primary Level Field Activities (PLFAs) and six Secondary Level Field Activities (SLFAs).

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel of DLA, contractor employees, and other persons who committed or are suspected of having committed a felony or misdemeanor on DLA controlled activities or facilities, or outside of those areas in cases where DLA is or may be a party of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, messages, statements of witnesses, subjects and victims, photographs, laboratory reports, data collection reports, and other related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security of 1950 (Pub. L. 831, 81st Congress). DoD Directive 5102.22 Defense Logistics Agency, DoD Instruction 5240.4, Reporting of Counterintelligence and Criminal Violations, DoD Directive 5105.42, Defense Investigative Service, and DoD Instruction 5505.2, Criminal Investigations of Fraud Offenses.

PURPOSE(S):

Information is maintained for the purpose of monitoring the progress of investigations, identification of crime conducive conditions, crime and loss prevention, and preparation of statistical data required by higher authority. Information is used by: DLA Security and General Counsel personnel—to monitor progress of cases, develop non-personal statistical data on crime and crime investigative support for the future. DLA General Counsel review of all available remedies. DLA supervisors and managers—to determine appropriate action against DLA employees in cases of their involvement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be referred to local, state, or Federal law enforcement agencies when the information indicates a violation of local, state or federal law. See also blanket routine uses set forth at the beginning of this agency's listing of records system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in combination of paper and automated files.

RETRIEVABILITY:

Hardcopy records filed chronologically by DLA case number and cross indexed to a card index file. Indexed by name of the individual or firm involved. Automated records are retrievable by name of the individual or firm, DLA case number, PLFA number of activity code.

SAFEGUARDS:

Records, as well as computer terminals, are maintained in areas accessible only to DLA Security and Office of General Counsel personnel. In addition, access to a retrieval from computerized files is limited to authorized users and is password protected.

RETENTION AND DISPOSAL:

Paper records from external law enforcement and investigative organizations are destroyed 5 years after the receipt of a final report in each case, or when no longer needed, whichever is later. Criminal investigative reports generated by DLA investigators/detectives are retained for 25 years, either in hard copy or microfiche, as recommended by the DIS Defense Central Investigation Index

(DCII). Automated records are retained for 10 years in the on-line mode and then transfered to magnetic tape with retention of 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Command Security, DLA: Heads of PLFAs and SLFAs.

NOTIFICATION PROCEDURE:

Written or personal requests for information may be directed to the SYSMANAGER.

RECORD ACCESS PROCEDURE:

Official mailing addresses of the SYSMANAGERS are in the Department of Defense Directory in the appendix to the DLA systems notice. Written requests for information should contain the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that could be verified with the file.

CONTESTING RECORD PROCEDURES:

DLA's rules for contesting contents as well as appealing initial determinations by individual concerned may be obtained from the SYSMANAGERS.

RECORD SOURCE CATEGORIES:

Reports of investigations by DLA investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under Title 5 U.S.C. 552a(k)(2) as applicable. Agency rules pertaining to this exemption are set forth both in Appendix C of 32 CFR Part 1286 and DLA Regulation 6400.21. For additional information, contact the System Manager.

[FR Doc. 88-27771 Filed 12-1-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Tesoro Petroleum Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Tesoro Petroleum Corporation (Tesoro). The agreement proposes to resolve matters relating to Tesoro's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. If this Consent Order is approved, Tesoro shall pay a total of $48,500,000, plus interest on any unpaid balance over a period of six years. Within thirty days of the effective date of the Consent Order, Tesoro will pay an initial payment of $25,000,000. Thereafter, beginning one year after the initial payment, Tesoro will make six equal annual payments of $5,177,650.95 each, including interest at the rate of 8.61% per annum on the unpaid balance.

DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from Tesoro's alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. Following this comment period, ERA will conduct a public hearing on January 4, 1989, to provide interested persons an additional opportunity to present comments. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4167.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues
II. Determination of Reasonable Settlement Amount
III. Terms and Conditions of the Consent Order

I. Resolution of Regulatory Issues

Tesoro is a petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the Federal Petroleum Price and Allocation Regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Tesoro engaged in, among other things, the production, importation, refining, and sale of crude oil; and the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products.

ERA conducted an audit of Tesoro's compliance for the period beginning in 1973 to the date when Federal price and allocation controls were ended by the President (January 27, 1981, Executive Order 12287). During this audit, ERA identified certain areas in the pricing, refining, and sales of crude oil and pricing and sales of refined petroleum products in which it believed that Tesoro had failed to comply with the requirements of the Federal price and allocation regulations.

A. The crude oil overcharge allegations resolved by this settlement involve proceedings pending before the DOE's Office of Hearings and Appeals and an appeal pending at the Federal Energy Regulatory Commission. The proceedings are discussed below.

1. Entitlements

In March 1988, ERA issued to Tesoro a Proposed Remedial Order (PRO), as amended May 25, 1988, alleging violations of 10 CFR 211.66(b) and (h) and 205.202 as a result of Tesoro's significant understatement on its entitlements reports of its receipts of controlled tier crude oil at its refinery located in Kenai, Alaska, during the period January 1978 through December 1980. Specifically, ERA alleged that during this period Tesoro failed to correctly report the volumes of controlled tier certification associated with substantial volumes of its crude oil receipts at the Kenai, Alaska refinery. Instead, Tesoro reported such volumes as uncontrolled crude oil. ERA alleges that Tesoro's actions circumvented and contravened, or resulted in the circumvention and contravention of, the requirements of the Entitlements Program. As a remedy for these alleged violations, the Proposed Remedial Order seeks to recover approximately $37.5 million, which is the amount of Tesoro's reduced post-entitlement crude costs. Tesoro subsequently submitted documentation to demonstrate that corrections to the crude oil purchases and sales identified in the PRO reduce DOE's principal claim to approximately $36.2 million. With interest, Tesoro's maximum legal liability in this case would be approximately $101 million.

2. Processing Agreement Disputes

In three enforcement cases, ERA alleges Tesoro was liable for the improper use of processing agreements

with small and exempt refiners to avoid entitlements obligations. A PRO issued in December 1986 names Tesoro and another firm as jointly liable for alleged violations in the amount of approximately $2 million, plus interest of $4.4 million. A PRO issued in November 1986, names Tesoro and another firm as jointly liable for $1.4 million in violations, plus interest amounting to approximately $3 million. The third processing agreement is the subject of a Remedial Order issued in September 1986, and now pending appeal at FERC, which finds Tesoro liable for violations in the amount of $2.9 million plus interest in the amount of $6 million. Pursuant to the terms of the proposed Consent Order, 50% of DOE's claim will remain against the parties other than Tesoro in the two cases where joint liability is alleged. Therefore, the total maximum refund liability being settled in the three processing cases is approximately $14.3 million, including interest.

3. Crude Production

In September 1983, ERA issued to Tesoro a PRO alleging violations of 10 CFR Part 212, Subpart D, in its first sales of domestically produced crude oil in the amount of approximately $1.5 million, plus interest. Subsequent responses by Tesoro have reduced the amount of the overcharge dispute to less than $700,000. With interest, the current total in dispute is approximately $2 million. The allegations involved Tesoro's use of an incorrect posted price; improper aggregation of two properties as a single property and improper certifications as to exempt stripper wells based on erroneous average daily production calculations.

4. Crude Oil Resales

In a PRO issued to Tesoro in September 1988, ERA alleged that Tesoro resold crude oil in excess of its maximum lawful selling price in certain months between 1973 and 1976, in violation of 10 CFR, Subpart F. ERA estimated Tesoro's potential overcharge liability in these sales to approximately $5.2 million plus interest in the amount of $10 million. Tesoro's position is that factual errors in DOE's data base would reduce Tesoro's maximum overcharge liability to approximately $700,000. ERA has not yet made a determination as to the correctness of Tesoro's submissions, but has reason to believe that potential liability would be reduced to some extent.

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit and the nature of the alleged regulatory violations. With regard to the entitlements of PRO issued in March 1988, ERA took into consideration the evidence Tesoro provided that $10.8 million of Tesoro's reduced post-entitlements cost were, by specific contractual provisions, directly passed through to a large utility, San Diego Gas & Electric (SDG&E). Under the contract, the price of SDG&E's residual fuel oil was directly affected by Tesoro's post-entitlements crude costs. Thus, nearly 30% of the alleged liability in this case was directly passed through by Tesoro to the utility.

B. *Refinery Product Pricing.* In April 1988, ERA issued a PRO to Tesoro regarding certain cost issues relating to its refined product sales during the period May 1973 and August 1973 through December 1980. The PRO alleges that in determining its maximum legal selling prices, Tesoro overstated its available increased costs by approximately $85 million.

ERA estimated the maximum amount of refined product overcharges for which Tesoro might be liable as a result of the cost issues with Tesoro by comparing Tesoro's available costs with costs actually recovered by Tesoro in sales of its products during the period of price controls. This comparison yielded the information necessary to estimate Tesoro's maximum potential overcharge liability for refined products.

Under the relevant regulations, a refiner was permitted to "bank" any increased costs in a given month that it was permitted to recover in its product prices but did not. Costs could be "banked" and used, subject to certain limitations, in later months in pricing products.

In the PRO, ERA indicated that success on all of the cost disputes would result in estimated overcharges of $4 to $6 million. Tesoro subsequently submitted documentation to demonstrate that the maximum resulting overcharges in the case would amount to $1.3 million. With interest on that amount, Tesoro's maximum potential liability would be approximately $4 million.

II. Determination of Reasonable Settlement Amount

The settlement calls for Tesoro to pay $48.5 million, plus interest, to discharge in full the potential liability for its obligations under the price and allocation regulations. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement Special Refund Procedures for disposition of these funds pursuant to 10 CFR Part 205, Subpart V. ERA has preliminarily agreed to the settlement amount after considering the factual aspects related to the various issues, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a substantial settlement of numerous issues which would take years of continued litigation to resolve.

In determining a reasonable settlement amount for the $137 million of refund claims being settled in this case, as discussed above, ERA reviewed submissions of certain factual data by Tesoro which reduced the entitlements PRO allegation to $36.2 million from $37.5 million, and in the crude production PRO, to less than $700,000 from $1.5 million. Also, the crude oil resale alleged violations may require reduction upon further review and development. Moreover, ERA took into consideration the contractual evidence that a substantial portion of the violations alleged in one case was actually passed through to a utility.

The inherent risks in litigation make success on all of the issues problematic, and the necessity for the government to prevail on all of the issues in order to maximize overcharge and interest recovery was an important consideration in ERA's preliminary determination that Tesoro's agreement to pay $48.5 million in settlement is in the public interest.[1]

In evaluating the total settlement amount for Tesoro's regulatory violations, in addition to the analysis of litigation risks, ERA took into account such factors as the number and complexity of the legal and factual issues and the time and expense required for the government to fully litigate every issue in order to obtain and recovery. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $48.5 million plus interest, is an appropriate settlement and in the public interest.[2]

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[1] Although ERA and Tesoro did not come to any specific agreement as to the portions of the $48.5 million settlement amount attributable to crude oil and refined product violations, in ERA's view, approximately $2 million is attributable to the refined product issues and the remainder to the crude oil issues.

[2] ERA has also concluded that it is appropriate for Tesoro to satisfy its total obligation by means of seven payments over a period of six years. Over 50% of the total settlement amount will be paid within thirty days of the effective date of the Consent Order. Further, Tesoro will pay interest on the unpaid principal balances. (See note 3, *infra*.).

III. Terms and Conditions of the Consent Order

If the settlement is not made final by the one hundered fiftieth day following execution, Tesoro may withdraw from the proposed agreement. If the Consent Order is made final, Tesoro will pay DOE $48.5 million plus interest. Within thirty days of the effective date of the Consent Order, Tesoro will make its first payment to the DOE in the amount of $25,000,000. Thereafter, Tesoro will make six annual payments to DOE, each for $5,177,850.95, inclusive of interest,[3] beginning 12 months from the date the initial payment of twenty-five million dollars is due and payable.

ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations. In these proceedings, OHA would develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement monies. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Tesoro provide customer identification and purchase volume information to OHA upon request.

Tesoro and DOE mutually release each other from claims and actions arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Tesoro, or of Tesoro or the DOE to take action against any other party.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Tesoro Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, and to appear at a public hearing, beginning at 10:00 a.m. on January 4, 1989, at the Department of Energy Auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. All comments received by the thirtieth day following publication of this Notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received and the comments at the hearing, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on November 23, 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order With Tesoro Petroleum Corporation

I. Introduction

101. This Consent Order is entered into between Tesoro Petroleum Corporation ("Tesoro") and the United States Department of Energy ("DOE"). Except as othewise provided herein, this Consent Order settles and finally resovles all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Tesoro, as hereinafter defined, relating to Tesoro's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Tesoro, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The Federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Tesoro" shall include: (1) Tesoro Petroleum Corporation and all of its subsidiaries and affiliates, (2) all of Tesoro's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise and, except for purposes of Article IV, *infra*, (3) Tesoro's directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Tesoro was a "refiner," "producer," and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Tesoro engaged in, among other things, the production, importation, sale, and refining of crude

[3] Tesoro's total payments on the $23.5 million balance will exceed $31 million. Interest at the stated rate is included in each of the installments.

oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products.

302. DOE conducted an audit to determine Tesoro's compliance with the federal petroleum price and allocation regulations. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Tesoro's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Tesoro, including the issuance of Notices of Probable Violation, Proposed Remedial Orders, and Remedial Orders. Tesoro maintained, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Tesoro have disagreed in several respects concerning the proper application of the federal petroleum price and allocation regulations to Tesoro's activities with respect to the matters covered by this Consent Order, and each has asserted its belief that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent settlement negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Tesoro has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Tesoro for such matters under 10 CFR 205.199I or otherwise, Tesoro shall pay a total principal amount of forty-eight million five hundred thousand dollars ($48,500,000), plus interest, to the DOE in the manner specified in paragraphs 402 and 403.

402. Within thirty (30) days of the effective date of this Consent Order, Tesoro shall make an initial payment to the DOE of twenty-five million dollars ($25,000,000).

403. Beginning one year after the date the initial payment prescribed by paragraph 402 becomes due and payable, Tesoro shall make six equal annual installments to the DOE of five million one hundred seventy-seven thousand eight hundred fifty dollars and ninety-five cents ($5,177,850.95), constituting an additional principal sum of twenty-three million five hundred thousand dollars ($23,500,000) plus interest calculated at the rate of 8.61 percent per annum.

404. The payments pursuant to paragraphs 402 and 403 shall be made by wire transfer in accordance with instructions furnished to Tesoro by the DOE in a timely manner. Late payments will bear interest at the rate of 17.22 percent per annum from the day following the due date through the date of payment, with interest deemed earned each day as of 2:00 p.m. Eastern Time.

405. Payments made by Tesoro pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Tesoro regarding Tesoro's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Tesoro by this Consent Order. This Consent Order, however, does not resolve, extinguish, or otherwise affect DOE's claims against any other party, except that the DOE agrees to reduce by fifty percent all claims that it has asserted against other parties before the Office of Hearings and Appeals (OHA) in OHA Case Nos. KRO–0630, and KRO–0540 now pending.

502. (a) Except as otherwise provided herein, compliance by Tesoro with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Tesoro, the DOE hereby releases Tesoro completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Tesoro before or after the date of this Consent Order for alleged violations of the Federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil judicial matter against Tesoro or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Tesoro or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Tesoro has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Tesoro in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) This Consent Order settles and finally resolves all aspects of Tesoro's potential liability to the DOE under the federal petroleum price and allocation regulations, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, if Tesoro was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the Federal petroleum price and allocation regulations during such period relative to such property. Otherwise, the DOE reserves the right to initiate and prosecute enforcement actions against any person other than Tesoro for noncompliance with the Federal petroleum price and allocation regulations, including suits against operators for overcharges for crude oil when Tesoro is a working interest or royalty interest owner in such crude oil production. In that connection, Tesoro and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Tesoro's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, Tesoro and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any

other person for violations on properties of which (but only for the times during which) Tesoro is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Tesoro and the operator or any other working interest or royalty interest owner.

(c) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Tesoro in any private action, including an action for contribution by or against Tesoro.

(d) Tesoro releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Tesoro has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the Federal petroleum price and allocation regulations. This release, however, does not preclude Tesoro from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Tesoro from asserting a defense, counter-claim or offset to any action, claim or proceeding brought by any other person.

503. (a) Within thirty (30) days after the Effective Date of this Consent Order, Tesoro and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending or subsequently filed before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

(b) Within fifteen (15) days after the execution of the Consent Order by both parties, DOE agrees to join with Tesoro in written notification to DOE's Office of Hearings and Appeals, the Federal Energy Regulatory Commission and any appropriate court of the fact of such execution, which notice shall request that said administrative or judicial tribunal stay all further action in the proceedings covered by this Consent Order until such time as DOE provides notice to said tribunals that the Consent Order has become effective or has been withdrawn purusant to Article IX of this Consent Order.

504. Execution of this Consent Order constitutes neither an admission by Tesoro nor a finding by the DOE of any violation by Tesoro of any statute or regualtion. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Tesoro pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Tesoro, but only if Tesoro has knowingly concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any knowing misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Tesoro shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order and records related to Tesoro's crude oil purchases, sales, exchanges or transfers during the period January 1, 1978 through January 27, 1981. To assist DOE in the distribution of the monies paid pursuant to this Consent Order, Tesoro shall also retain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of such monies. If requested, Tesoro shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 402 of this Consent Order, Tesoro is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Tesoro will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Tesoro's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Tesoro pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Tesoro and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Tesoro with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Tesoro's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Copnsent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If

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requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Tesoro may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Tesoro and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Tesoro (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Tesoro agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Tesoro hereby waives its right to administrative or judicial review of this Order, but Tesoro reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent order shall become effective as a final order of the DOE upon notice to this effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the Federal Register that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments and to appear at a public hearing conducted by ERA. The DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Tesoro, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Tesoro, Tesoro may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Tesoro, hereby agree to and accept on behalf of Tesoro the foregoing Consent Order.

Dennis F. Juren,

President and Chief Executive Office, Tesoro Petroleum Corporation.

Dated: October 31, 1988.

I, the undersigned, a duly authorized representative of Tesoro, hereby agree to and accept on behalf of Tesoro the foregoing Consent Order.

Milton C. Lorenz,

Chief Counsel Economic Regulatory Administration.

Dated: October 21, 1988.

[FR Doc. 88-27839 Filed 12-1-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-66-NG]

CanadianOxy Marketing Inc.; Application to Extend Blanket Authorization to Import Natural Gas from Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 25, 1988, of an application filed by CanadianOxy Marketing Inc. (CanadianOxy) requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 161 (Order No. 161), issued December 29, 1986 (ERA Dkt. No. 86-58-NG), be amended to extend its term for two years commencing on the date of first delivery under the extended import authorization. CanadianOxy's current authorization expires February 21, 1989. CanadianOxy's existing blanket import authorization allows it to import up to a maximum of 100 Bcf of Canadian natural gas. Under the extension requested, CanadianOxy would import volumes not to exceed in the aggregate 100 Bcf of Canadian natural gas over a two-year period.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 3, 1989.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9578.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

CanadianOxy, a Delaware corporation with its principal place of business in Calgary, Alberta, requests authority to continue to import Canadian gas from its Canadian parent, Canadian Occidental Petroleum Ltd., and a variety of other suppliers located in Canada, for sale on short-term or spot basis to a wide range of markets in the United States, including pipelines, local distribution companies, and industrial and commercial end-users. The specific terms of each import and sale would continue to be negotiated on an individual basis, and no transaction would be for a period longer than two years. CanadianOxy intends to use existing pipeline facilities to transport its gas supplies. CanadianOxy states also that it would continue to comply with the ERA's quarterly reporting requirements. Quarterly reports filed with the ERA indicate that CanadianOxy's first delivery began on February 22, 1987 and has imported 543 MMcf of natural gas under its current import authorization as of September 31, 1988.

In support of its application, CanadianOxy asserts that the proposed extension of its existing blanket import authorization is not inconsistent with the public interest since the extension requested would assure gas consumers expanded access to competitively-priced Canadian gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import

arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Further, ERA may determine to start the two-year extension of CanadianOxy's authorization upon the end of its existing authorization rather than upon the date of first delivery under the extension as requested by CanadianOxy.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., January 3, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the offical record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CanadianOxy's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 25, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–27837 Filed 12–1–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No.88–67–NG]

Kerr-McGee Chemical Corp.; Application to Extend Authorization to Import Natural Gas from Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 28,1988, of an application filed by Kerr-McGee Chemical Corporation (Kerr-McGee Chemical) requesting that the authorization previously granted in DOE/ERA Opinion and Order No. 155 (Order 155), issued November 15,1986 (ERA Dkt. No. 86–51–NG), be amended to extend its term for two years commencing on the date of first delivery under the extended import authorization.

Annual reports filed with the Energy Information Administration (EIA) indicate that Kerr-McGee Chemical imported 1.2 Bcf of Canadian gas as of December 31, 1987.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0.204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 3, 1989.

FOR FURTHER INFORMATION:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F–077, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Kerr-McGee Chemical is a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma. Kerr-McGee Chemical's previous import authorization that expired October 31, 1988, allowed it to import up to a maximum of 18,000 Mcf per day of Canadian natural gas. Under the extension requested, Kerr-McGee Chemical seeks authority to continue to import the same maximum daily quantities or a maximum of 14 Bcf over

the two-year extension under the terms and conditions approved in Order 155. The extension would cover Canadian natural gas imported on a short-term basis by Kerr-McGee Chemical for use in the operation of equipment and space heating at its inorganic chemical manufacturing plants located near Trona and Argus, California. Kerr-McGee Chemical purchases the gas at Kingsgate, British Columbia, in accordance with an underlying sales contract with KM Gas, which, like the applicant, is a wholly-owned subsidiary of Kerr-McGee Corporation, also a Delaware corporation. Kerr-McGee Chemical incurs no take-or-pay or minimum purchase obligations under the contract. The contract provides for periodic price adjustment based on provisions that give both Kerr-McGee Chemical and KM Gas the right to nonimate a new price and absent agreement on a new price, the right to terminate the supply contract.

According to its application, Kerr-McGee Chemical would continue to use Pacific Gas Transmission Company's (PGT) existing pipeline facilities to transport the gas from the international border at Kingsgate to norther California where it would then be delivered to Kerr-McGee Chemical's plants by Pacific Gas and Electric Company's (PG&E) existing transmission facilities.

In support of its application, Kerr-McGee Chemical asserts that the proposed extension of the short-term import authorization approved in Order 155 is not inconsistent with the public interest since the extension requested would ensure continued access to a reliable source of competitively priced natural gas that has helped Kerr-McGee Chemical to maintain consistent and efficient operations. The applicant also states that PGT's transportation of this imported supply would benefit other U.S. consumers by lowering per unit transportation costs.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

The ERA will condition any authorization issued in this proceeding on the filing of quarterly reports to facilitate ERA monitoring of its natural gas import and export program. Further, the ERA may decide if it grants the application, to authorize the two-year extension requested by Kerr-McGee Chemical's effective October 31, 1988, rather than upon the date of first delivery.

Kerr-McGee Chemical requests that extension of the short-term import authority approved in Order No. 155 be granted on an expedited basis. An ERA decision on Kerr-McGee Chemical's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Polcy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Adminstration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., January 3, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Kerr-McGee Chemical's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 25, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 27838 Filed 12-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-3912-002, et al.]

Tenneco Oil Co., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

November 29, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3912-002, D, Nov. 9, 1988	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	Williams Natural Gas Company, Guyman-Hugoton Field, Texas County, Oklahoma.	(1)
G-4579-058, F C, Nov. 8, 1988.	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102	Colorado Interstate Gas Company, Hayward E-1 well, Morton County, Kansas.	(2)
CI60-116-000, D, Nov. 9, 1988.	Tenneco Oil Company	ANR Pipeline Company, May East Field, Harper County, Oklahoma.	(3)
CI64-946-001, D, Nov. 9, 1988.	....do	ANR Pipeline Company, Quinlan NW Field, Dewey County, Oklahoma.	(4)
CI89-40-000, (CI61-521), B, Oct. 31, 1988.	....do	Colorado Interstate Gas Company, Laverne Field, Harper County, Oklahoma.	(5)
CI89-45-000, (CI72-587) B, Nov. 2, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Transwestern Pipeline Company, Rock Tank Field, Eddy County, New Mexico.	(6)
CI89-47-000, (CI64-858), B, Nov. 2, 1988.	Tenneco Oil Company	El Paso Natural Gas Company, Monahans North Field, Ward and Winkler Counties, Texas.	(7)
CI89-48-000, (CI63-1415), B, Nov. 2, 1988.	....do	Northern Natural Gas Company, Bechtold Field, Lipscomb County, Texas.	(8)
CI89-55-000, (CI61-291), B, Nov. 8, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Transwestern Pipeline Company, NE Elmwood and SE Griggs Fields, Beaver County, Oklahoma.	(9)
CI89-56-000, (CI61-77), D, Nov. 8, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Valero Interstate Transmission Company, Prado Field, Jim Hogg County, Texas.	(10)
CI89-57-000, (CI79-382), D, Nov. 8, 1988.	Tenneco Oil Company	Panhandle Eastern Pipe Line Company, Lorena Field, Beaver County, Oklahoma.	(11)
CI89-58-000, (CI62-1216), F, Nov. 9, 1988.	OXY USA Inc	Texas Eastern Transmission Corporation, May Field, Kleberg County, Texas.	(12)
CI89-59-000, (G-12802), D, Nov. 9, 1988.	Tenneco Oil Company	Northern Natural Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(13)
CI89-60-000, (CI79-544), D, Nov. 9, 1988.	....do	Northern Natural Gas Company, Lovedale NW Field, Woods County, Oklahoma.	(14)
CI89-61-000, (CI64-1036), B, Nov. 10, 1988.	....do	Arkla Energy Resources, a division of Arkla, Inc., Bethany Field, Panola County, Texas.	(15)
CI89-62-000, (G-6669), B, Nov. 14, 1988.	....do	El Paso Natural Gas Company, Justis Field, Lea County, New Mexico.	(16)
CI89-64-000, (CI79-374), D, Nov. 14, 1988.	....do	Northern Natural Gas Company, Gage SE. Field, Ellis County, Oklahoma.	(17)
CI89-66-000, (CI65-704), F, Nov. 15, 1988.	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77201-4684.	ANR Pipeline Company, Kings Bayou Field, Cameron Parish, Louisiana.	(18)
CI89-67-000, E, Nov. 15, 1988.	Amoco Production Company, P.O. Box 800, Denver, CO 80201.	K N Energy, Inc., Hugoton Field, Finney County, Kansas.	(19)
CI89-68-000, E, Nov. 15, 1988.	Amoco Production Company	Colorado Interstate Gas Company, Hugoton Field, Finney County, Kansas.	(19)
CI89-69-000, E, Nov. 15, 1988.	....do	K N Energy, Inc., Hugoton Field, Finney County, Kansas.	(19)
CI89-70-000, B, Oct. 27, 1988.	Messman-Rinehart Oil Company, 500 Bitting Building, Wichita, KS 67202.	KNE Energy, Inc., Bright #3 Well, Edwards County, Kansas.	(20)

[1] By respective assignments effective June 1, 1986, and December 1, 1987, Applicant assigned its interests in certain acreage to Frank Collins and Maple Properties Corporation.

[2] Effective July 1, 1987, Applicant acquired certain interests from Cox Family Trust No. 8. Applicant proposes to add this interest to its FERC Gas Rate Schedule No. 126 and related certificate.

[3] Applicant states that effective July 27, 1981, the Easterwood #1-28 was plugged and abandoned. By assignments effective December 1, 1987, and December 1, 1986, Applicant assigned its interests in certain acreage to Maple Properties Corporation, Foran Oil Company and PNG Operating Company. By assignment dated August 19, 1981, Applicant assigned its interests in certain acreage to Old Dominion Oil Corporation.

[4] Applicant states that effective December 22, 1987, the M. H. Wheelock #1 & 2 wells were plugged and abandoned. By assignment effective December 1, 1987, Applicant assigned its interest in certain acreage to Maple Properties Corporation.

[5] Applicant states that the lease expired by its own terms and the last well was plugged and abandoned.

[6] Applicant states that the only well drilled on the land subject to this rate schedule ceased producing in August 1978, there is no longer any production subject to this rate schedule and the leases involved have expired.

[7] Applicant states that the last remaining well on the lease, the Sealy Smith #1, was plugged and abandoned on October 26, 1984, and the lease was surrendered to the landowner on December 6, 1984.

[8] Applicant states that the last remaining well was plugged and abandoned in April 1969 and the acreage has been released.
[9] Applicant states that the only lease dedicated to the contract expired after the last producing well, the Fleming Gas Unit #1, was plugged on January 1, 1981
[10] Effective May 1, 1988, Applicant assigned certain acreage to H.K.E., Inc.
[11] Applicant states that the well was plugged and abandoned on November 30, 1976.
[12] By assignment dated April 4, 1988, and effective November 1, 1987, Applicant acquired certain interests from Tenneco Oil Company.
[13] By assignments effective December 1, 1986, Applicant assigned its interests in certain acreage to Foran Oil Company, Mesa Operating Limited Partnership, Oklahoma Exploration Company, Andrea Singer Pollack, Trustee of the Andrea Singer Pollack Revocable Trust, Martha Diss Sundby, Trustee of the Singer Trusts Josaline Control Account and Atlantic Richfield Company.
[14] Applicant states that the Sealey "D" well was plugged and abandoned. By respective assignments effective December 1, 1987, and December 1, 1986, Applicant assigned certain acreage to Maple Properties Corporation and Spess Oil Company.
[15] Applicant states that production ceased in 1971 and the wells were plugged and abandoned.
[16] Applicant states that all the wells have been plugged and abandoned and the leases have been surrendered.
[17] By assignment executed November 26, 1986, Applicant assigned its interest in certain acreage to Bell and Kinley Company, effective December 1, 1986.
[18] Effective June 1, 1987, Applicant acquired certain interests from Texaco Producing Inc.
[19] Effective November 1, 1986, Applicant acquired certain interests from Northern Pump Company, *et al.*
[20] Applicant states that the well was plugged and abandoned on November 1, 1984.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88–27823 Filed 12–1–88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP83–58, RP86–63, RP86–114, RP88–17, RP88–96, RP88–210 and RP88–229]

Southern Natural Gas Co.; Filing of Stipulation and Agreement and Establishment of Comment Dates

November 28, 1988.

Take notice that on November 25, 1988, Southern Natural Gas Company (Southern) tendered for filing in the above-capitioned proceedings a base Stipulation and Agreement which, if approved by the Commission, would resolve or provide for the resolution of all of the issues in the above-referenced proceedings.

Southern has requested and notice is hereby given that initial comments on the base Stipulation are due within twenty days of the date of this notice and reply comments fifteen days thereafter.

Lois D. Cashell,
Secretary.

Appendix A—Proposed Tariff Sheets

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[FR Doc. 88–27781 Filed 12–1–88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87–7–043]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

November 29, 1988.

Take notice that on November 14, 1988, Transcontinental Gas Pipeline Corporation (Transco) filed a report of refunds. Transco states that on October 21, October 27, and November 4, 1988, Transco refunded amounts to its sales, storage and transportation customers. Transco alleges that such refunds resulted from the Commission's approval, by order issued July 22, 1988, of its cost of service settlement in Docket No. RP87–7–030. Transco states that the refund period covered April 1, 1987 through September 30, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88–27824 Filed 12–1–88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP89–258–000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

November 25, 1988.

Take notice that on November 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–258–000, a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Fina Oil and Chemical Company (Fina), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on a firm basis, up to 41,200 MMBtu per day for Fina from thirty three (33) points of receipt, thirty (30) in Goliad, Smith and Rusk Counties, Texas and three (3) in Terrebonne and Vermilion Parishes, Louisiana to one (1) delivery point in Pike County, Mississippi. United States that construction of facilities would not be required to provide the proposed service.

United further states that the estimated daily and annual quantities would be 41,200 MMBtu and 15,038,000 MMBtu respectively, and that service under § 284.223(a) commenced October 24, 1988, as reported in Docket No. ST89–297.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27782 Filed 12–1–88; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Colorado Office of Energy Conservation Mutual Assistance Program Notice of Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western)/Colorado Office of Energy Conservation Mutual Assistance Program (Program) notice of proposed Cooperative Agreement.

SUMMARY: Western announces that, pursuant to 10 CFR 600.7(b), eligibility for a cooperative agreement to develop and implement cofunded conservation and renewable energy (C&RE) activities for the State of Colorado (State) has been restricted to the Colorado Office of Energy Conservation (OEC) as the State energy office in support of electrical utilities and other Western customers. OEC has the resources, technical capability, and statewide credibility to manage and promote this cooperative program. Moreover, OEC is dedicated to promoting energy efficiency and renewable energy development in Colorado and is the only energy office in the service territory with the requisite staff and expertise. The program calls for assistance to customers in the ongoing effort to improve the efficiency of their electrical power utilities as well as assist Western in meeting the C&RE firm power contract provisions.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Plate, Conservation Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490–7227.

SUPPLEMENTARY INFORMATION: Western's C&RE Program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. This program is conducted as part of Western's operation and maintenance program. It is funded as provided in relevant appropriations acts, as a function of "Conservation and Renewable Resources." See Energy and Water Development Appropriations Act, FY 1989 (Act of July 19, 1988; Pub. L. 100–371). To meet these ends, Western offers a number of C&RE Program activities to its customers, including educational workshops and seminars, equipment loan programs, and cost sharing of C&RE projects. Joint program sponsorship with State energy offices is one of the methods that Western uses to effectively deliver its C&RE support activities to customers within its 15-State marketing area.

Solicitaion Number: DE–RP65–89WJ07753.

Scope of Project: The Western/OEC C&RE Mutual Assistance Program is designed to allow joint sponsorship of C&RE activities within the State of Colorado by Western and OEC. The Program will provide cost-shared funding for the development and implementation of C&RE activities in three general categories: (1) Technology development and transfer, (2) public information, and (3) economic analysis of C&RE projects. Activities funded under this Program may include, but are not limited to: educational workshops and seminars on energy efficiency and renewable energy; State, regional, and national C&RE conferences; energy efficiency tests and monitoring; C&RE publication development; energy efficiency demonstration and evaluation projects; economic analysis of C&RE projects; and community energy management activities.

Issued at Golden, Colorado, November 17, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88–27840 Filed 12–1–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3485–9]

Environmental Impact Statements and Regulations, Availability of EPA Comments Prepared November 14 through 18, 1988

Availability of EPA comments prepared November 14, 1988 through November 18, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Final EISs

ERP No. F–AFS–K61092–CA,

Mt. Shasta Ski Area Development, Special Use Permit, Shasta-Trinity National Forests, Mt. Shasta Ranger District, Siskiyou County, CA.

Summary: EPA expressed environmental concerns on the feasibility and environmental consequences of building a tertiary wastewater treatment plant. EPA requested that no permits related to the proposed ski area be issued until the wastewater treatment question is adequately resolved with the California Regional Water Quality Control Board.

ERP No. F–BPA–L09801–00

New Energy-Efficient Homes Programs, Accessing Indoor Air Quality Options, Implementation and Construction, OR, WA, ID and MT.

Summary: The radon model was not redone as EPA requested in its comments on the draft EIS and there is insufficient information in the final EIS for EPA to agree or disagree with the mitigation measures selected for minimizing health effects. There are also effective radon resistant construction techniques DRR available that were not included in the mitigation measures.

ERP No. F–NAS–E12002–00,

Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Heliosphere Exploration Program, Modifications and Implementation.

Summary: EPA has no objection to the proposed project.

Regulations

ERP No. R-NRC-A22116-00,

10 CFR Part 20; Disposal of Waste Oil by Incineration (53 FR 32914).

Summary: EPA requested clarification of two issues: The responsibility of NRC's licensees complying with the approval requirements of the Clean Air Act and the potential need for licensees obtaining state or federal hazardous waste permits.

Dated: November 29, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-27843 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3485-8]

Environmental Impact Statements; Availability of Environmental Impact Statements Filed November 21, 1988 Through 25, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

EIS No. 880390, Draft, FHW, FL, US 19/FL-55 Upgrading, FL-694/Gandy Boulevard to FL-595/Alternate US 19, Funding, Pinellas and Pasco Counties, FL, Due: January 17, 1989, Contact: Jennings R. Skinner (904) 681-7223.

EIS No. 880391, Draft, MMS, AK, 1989 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Leasing Offering, AK, Due: January 17, 1989, Contact: George Valiulis (703) 648-7868.

EIS No. 880392, Final, FHW, NC, NC-90 Replacement, NC-90 at Taylorsville to I-40 at Statesville, Funding, and Possible 404 Permit, Tredell and, Alexander Counties, NC, Due: January 3, 1989, Contact: Kenneth L. Bellamy (919) 790-2859.

EIS No. 880393, Draft, FHW, MD, US 29 Improvements, Sligo Creek Parkway to the Patuxent River Bridge, Funding and 404 Permit, Montgomery County, MD, Due: January 31, 1989, Contact Herman Rodrigo (301) 962-4132.

Amended Notices

EIS No. 880378, Final, IBR, TX, San Jacinto River Basin Water Supply Project, Municipal and Industrial Water Use, Implementation, Montgomery, Harris, Grimes, Walker, San Jacinto, Fort Bend, Liberty and Waller Counties, TX, Due: December 19, 1988, Contact: Nicolas Palacios (512) 482-5641.

Published FR 11-18-88—Incorrect due date.

EIS No. 880384, Final, UAF, NC, Seymour Johnson AFB, F-4 to F-15E Aircraft Conversion Program, Site Selection and Implementation, Wayne Co., NC; Alternative Sites are Cannon AFB, NW; Holloman AFB, NM; Mountain Home AFB, ID and Nellis AFB, NV, Due: December 27, 1988, Contact: Alton Chavis (804) 764-7844.

Published FR 11-25-88—Incorrect due date.

EIS No. 880385, Final, COE, AL, Bayou La Batre Navigation Channel Improvements, Implementation, Mobile County, AL, Due: December 27, 1988, Contact: Susan Invester Rees (205) 690-2724. Published FR 11-25-88—Incorrect due date.

November 29, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-27844 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3485-4]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity to Comment regarding ConAgra Turkey Co., Carthage, MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding ConAgra Turkey Company, Carthage, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment. Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On November 15, 1988, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913)236-2811, the following Complaint: In the Matter of the ConAgra Turkey Company, 411 N. Main, Carthage, Missouri; EPA Docket No. VII 89-W-0002.

The Complaint proposes a penalty of $125,000, for effluents discharged from ConAgra Turkey Company's processing plant to the City of Carthage Water and Electric Plant wastewater treatment facilities in excess of pretreatment effluent limitations contained in Industrial Discharge Permit No. 8701 issued to ConAgra Turkey Company by the City.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the ConAgra Turkey Company is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding the thirty days from the date of this Notice.

Date: November 9, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-27761 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 88-522]

Applications for Consolidated Hearings; V.O.B. Inc. et al.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

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I.

Applicant, city and State	File No.	MM Docket No.
A. V.O.B. Incorporated; Ankeny, IA.	BPH-871102MH	88-522
B. Iowa Radio Limited Partnership; Ankeny, IA.	BPH-871103MB	
C. Richard and Stephanie Hermann d/b/a DICK Broadcasting, Inc.; Ankeny, IA.	BPH-871104MD	
D. William B. Roth; Ankeny, IA.	BPH-871104MG	

Issue Heading and Applicants

1. Comparative, A-D
2. Ultimate, A-D

II.

Applicant, city and State	File No.	MM Docket No.
A. Josephine M. Rodriguez d/b/a Cielo Communications; Omaha, NE.	BPH-870917MC	88-521
B. Baer Broadcasting Corp.; Omaha, NE.	BPH-870918MG	
C. Richard Palmquist; Omaha, NE.	BPH-870918MM	
D. Diane N. Landen; Omaha, NE.	BPH-870918MP	
E. Omaha Metro Broadcasting Inc.; Omaha, NE.	BPH-870918NA	
F. Omaha FM Broadcast, Limited Partnership; Omaha, NE.	BPH-870918NI	
G. Freedom Broadcasting Network, Inc.; Omaha, NE.	BPH-870918NP	

Issue Heading and Applicants

1. Air Hazard, C, F, G
2. Comparative, All
3. Ultimate, All

III.

Applicant, city and State	File No.	MM Docket No.
A. Bryan Davidson; Mt. Vernon, IL.	BPH-870917MG	88-523
B. CR Broadcasting, Inc.; Mt. Vernon, IL.	BPH-870918ME	
C. Saga Communications; Mt. Vernon, IL.	BPH-870918MS	
D. Daniel S. Stratemeyer; Mt. Vernon, IL.	BPH-870918MZ	

Issue Heading and Applicants

1. City Coverage, B
2. Air Hazard, D
3. Comparative, All applicants
4. Ultimate, All applicants

IV.

Applicant, city and State	File No.	MM Docket No.
A. Willie A. Jefferson d/b/a Opportunity Broadcasting of Shreveport; Shreveport, LA.	BPH-870814MK	88-524
B. Shreveport Radio Limited Partnership; Shreveport, LA.	BPH-870819MX	
C. NTW, Inc.; Shreveport, LA.	BPH-870820ME	
D. Port City Communications L.P.; Shreveport, LA.	BPH-870820MH	
E. Marcom; Shreveport, LA.	BPH-870820MI	
F. KYMHILKYLAA Broadcasting Co., Inc.; Shreveport, LA.	BPH-870820MO	
G. A.T. Moore d/b/a Nor-Max Broadcasting Co.; Shreveport, LA.	BPH-870820MP	
H. Innovative Women's Media Association; Shreveport, LA.	BPH-870820MQ	
I. Caddo Broadcasting Limited Partnership; Shreveport, LA.	BPH-870820MR	
J. Richard H. Wilcox d/b/a KNWL, Limited, A Partnership in Commendam; Shreveport, LA.	BPH-870820MT	

Issue Heading and Applicants

1. Air Hazard, B, C, D, E, G
2. Comparative, A through J
3. Ultimate, A through J

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issue listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-27751 Filed 12-1-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-817-DR]

Declaration; Major Disaster And Related Determinations; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-817-DR), dated November 23, 1988, and related determinations.

DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated November 23, 1988, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from tornadoes and severe storms beginning on November 15, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by "The Disaster Relief and Emergency Assistance Amendments of 1988." I, therefore declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You are also authorized to provide Public Assistance in the affected areas, if required and necessary, and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance be supplemented, any Federal funds provided under PL 93-288, as amended, for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance,

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shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency management Agency under Executive Order 12148, I hereby appoint Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Hot Spring, Johnson, Lonoke, Pulaski, and Van Buren Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-27772 Filed 12-1-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Rare Properties Inc., et al

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200182

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration, Rare Properties, Inc. (Rare).

Synopsis: The agreement provides Rare with a five-year lease of land and a building at the Dundalk Marine Terminal to be used for new vehicle processing and storage.

Agreement No.: 224-200181

Title: Tampa Port Authority Lease Agreement.

Parties: Tampa Port Authority (Authority), Maersk Container Service Company, Inc. d/b/a, Bridge Terminal Transport (Lessee).

Synopsis: The agreement provides that Lessee will lease from the Authority certain lots and parcels of land in Hillsborough County, Florida, consisting of approximately 7 acres of bare land on a month-to-month basis. The term of the lease commences December 1, 1988 and may be cancelled by either party on 30 days advance written notice to the other party.

Agreement No.: 224-200117-001

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: The Port Authority of New York and New Jersey.

Synopsis: The agreement provides for ACL's lease of Paceco Container Crane No. 282 at the Port Elizabeth Marine Terminal facility covered by the basic agreement. The agreement also allows for improvement and modifications to the subject crane.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 29, 1988.

[FR Doc. 88-27778 Filed 12-1-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Tacoma Terminals, Inc. et al

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-004129-001.

Title: Port of Tacoma Terminal Agreement.

Parties: Port of Tacoma, Tacoma Terminals Inc. (TTI).

Filing Party: Susan Flood, Traffic Manager, Port of Tacoma, P.O. Box 1837, Tacoma, WA 98401.

Synopsis: The agreement evidences TTI's exercise of a basic agreement option to lease additional area at the Port of Tacoma. The agreement also suspends the payment of user fees for certain preferential berthing areas pending construction of a pier extension.

By Order of the Federal Maritime Commission.

Joseph C. Polking

Secretary.

Dated: November 29, 1988.

[FR Doc. 88-27779 Filed 12-1-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Wilhelmsen Limited, et al

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011142-001

Title: NOSAC Agreement.

Parties: K/S NOSAC A/S & Co., Wilh. Wilhelmsen Limited A/S, K/S Benargus A/S & Co.

Synopsis: The proposed modification designates Den norske Amerikalinje A/S as general manager of the Norwegian Specialized Autocarriers (NOSAC). The parties have requested a shortened review period.

Agreement No.: 203-011170-001

Title: Ro-Ro Chartering Agreement.

Parties: Barber Blue Sea (Wilhelmsen Lines A/S), NOSAC.

Synopsis: The proposed amendment would reflect the termination of the joint service status of Barber Blue Sea due to the withdrawal of two of the three current parties to the joint service. Barber Blue Sea will remain a party to the Agreement as a service of Wilhelmsen Lines A/S. The parties have requested a shortened review period.

Agreement No.: 203–011170–002

Title: Ro-Ro Chartering Agreement.

Parties: Barber Blue Sea, NOSAC.

Synopsis: The proposed amendment would permit the parties to discuss and agree upon rates in the Agreement trade. Adherence to any agreement reached would be voluntary. It would also permit any party to give notice of withdrawal beginning on January 1, 1990, instead of January 1, 1991. It would include authority to agree on deadfreight liability and would designate Den norske Amerikalinje A/S as manager of NOSAC in place of Oivind Lorentzen A/S. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 29, 1988.

[FR Doc. 88–27780 Filed 12–1–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Canaan National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank of to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 19, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Canaan National Bancorp, Inc.*, Canaan, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Canaan National Bank, Canaan, Connecticut.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to merge with New Palestine Bancorp, New Palestine, Indiana, and thereby indirectly acquire New Palestine Bank, New Palestine, Indiana.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Banc Securities, Inc.*, Morgantown, West Virginia; to acquire 100 percent of the voting shares of First Bank, National Association, Uniontown, Pennsylvania, a *de novo* bank.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens National Bancshares, Inc.*, Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Springfield, Springfield, Missouri, a *de novo* bank. Comments on this application must be received by December 23, 1988.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Conway BanCorp, Inc.*, Conway Springs, Kansas; to become a bank holding company by acquiring 72 percent of the voting shares of The State Bank of Conway Springs, Conway Springs, Kansas.

Board of Governors of the Federal Reserve System, November 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27729 Filed 12–1–88; 8:45 am]

BILLING CODE 6210–01–M

Citizens Capital Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens Capital Corporation*, Morton, Mississippi; to engage *de novo* in insurance activities, specifically acting as principal, agent, or broker, including credit insurance related to extensions of credit by Applicant and any of its subsidiaries and affiliates pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted throughout Scott and Ranking Counties in Mississippi.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation, Inc.*, St. Louis, Missouri; to engage *de novo* through its subsidiary, Mercantile Financial, Inc., St. Louis, Missouri, in making, acquiring, and servicing loans or other extensions of credit for Company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Missouri, Kansas, and Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Affiliated Bankshares of Colorado, Inc.*, Denver, Colorado; to engage *de novo* through a subsidiary to be known as Affiliated Bankshares Insurance Agency in the sale of credit related life, accident and health insurance sold in connection with credit extensions by credit granting subsidiaries of the bank holding company pursant to § 225.25(b)(8)(i) of the Board's Regulation Y. In addition, Applicant has applied to engage in general insurance agency activities from the following communities, each with a population of less than 5,000 persons: Ault, Colorado; Center, Colorado; Fruita, Colorado; and within a 10 mile radius of each; Salida, Colorado, and within a 4 mile radius; and Manitou Springs, Colorado, within the city limits.

Board of Governors of the Federal Reserve System, November 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27730 Filed 12-1-88; 8:45 am]

BILLING CODE 6210-01-M

First Fidelity Bancorp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreases or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 16, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Fidelity Bancorporation*, Newark, New Jersey, and Philadelphia, Pennsylvania; to acquire First Fidelity Community Development Corporation, Newark, New Jersey, and thereby engage in certain community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. Applicant proposes to expand its geographical service area to a nationwide basis.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bancorp, Inc.*, Huron, South Dakota; to acquire Custer County Insurance Agency, Custer, South Dakota, through its subsidiary, First Western Agency, Inc., and thereby engage in general insurance agency activities in various communities with populations not exceeding 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the communities of Custer, Hot Springs, Edgemont, and Buffalo Gap, South Dakota.

2. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Adam D. Kohl Insurance, Inc., Hastings, Nebraska, through its subsidiary, Norwest Insurance, Inc., and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Hastings, Nebraska, and other nearby communities.

Board of Governors of the Federal Reserve System, November 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27731 Filed 12-1-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Gulledge, Robert L, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 16, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Robert I. Gulledge* and Linda W. Gulledge, both of Robertsdale, Alabama; to retain 1.42 percent and acquire an additional 11.38 percent of the voting shares of Citizens' Capital Corporation, Robertsdale, Alabama, and thereby indirectly acquire Citizens' Bank, Inc., Robertsdale, Alabama.

2. *Robert Eason Leake*, and Wirt A. Yerger, Jr., both of Jackson, Mississippi; to acquire an additional 14.1 percent of the voting shares of Citizens Capital Corporation, Morton, Mississippi, and thereby indirectly acquire Citizens Bank & Trust Company, Morton, Mississippi, and State Bank & Trust Company, Collins, Mississippi.

3. *Robert Eason Leake*, and Wirt A. Yerger, Jr., both of Jackson, Mississippi; to acquire an additional 18.5 percent of the voting shares of Magnolia State Capital Corporation, Magee, Mississippi, and thereby indirectly acquire Bank of Simpson County, Magee, Mississippi.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charles C. Smith,* Omaha, Nebraska, to acquire 20 percent; Jack G. Lengemann, Omaha, Nebraska, to acquire 5.0 percent; Anne M. Anderson, as Custodian for Gordon Anderson, under the Uniform Gift to Minor Act, Thedford, Nebraska, to acquire 16.67 percent; Anne M. Anderson, Thedford, Nebraska, to acquire 16.67 perecent; Lawrence F. Chandler Trust, Lawrence F. Chandler, Jr., Trustee, Bellevue, Nebraska, to acquire 8.33 percent; and Reeva Chandler Trust, Lawrence F. Chandler and Lawrence F. Chandler, Jr., Trustees, Bellevue, Nebraska, to acquire 16.67 percent of the voting shares of North Fork Corporation, Paonia, Colorado, and thereby indirectly acquire First National Bank of Paonia, Paonia, Colorado.

Board of Governors of the Federal Reserve System, November 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27732 Filed 12-1-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on November 4, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. A Case-Control Study of Cancer and Drinking Water Contaminants—0925-0283—Contaminates in drinking water as a cause of cancer are a major public health issue. This continuation of a population-based case-control study will evaluate the role that such factors may play in the etiology of bladder cancer. Respondents: Individuals or households; Number of Respondents: 1,943; Number of Responses per Respondent: 1.58; Average Burden Per Response: .31; Estimated Annual Burden: 934 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Independent Rule Health Clinic Cost Reporting Form—0938-0107—The HCFA-222 is used by independent rural health clinics participating in the Medicare program to effect cost settlement for providing services to Medicare beneficiaries. Respondents: Businesses or other for-profit; Number of Respondents: 438; Frequency of Response: 1; Average Burden per response: 10; Estimated Annual Burden: 4,380 hours.

2. Health Insurance Common Claims Form "Medicare and Medicaid"—This form will become a standardized form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. In addition, it will reduce costs and administrative burdens associated with claims since only one coding system would be used and maintained. Respondents: State or local governments, Businesses or other for-profit, Small businesses or organizations; Estimated Annual Burden: Not Applicable—since this will become a Standard Form and GSA will be responsible for printing and distribution.

3. Physicians Practice Costs and Incomes Survey—0938-0284—This survey will collect data from 6,000 physicians in the United States in order to update the Medicare Economic Index, to refine the Geographic Practice Cost Index, to study out of pocket expenses of beneficiaries, and to study issues related to volume and intensity. Respondents: Individuals or households, Small businesses or organizations; Number of Respondents: 6,000: Frequency of Response: 1; Average Burden per response: ½ hour; Estimated Annual Burden: 3,000 hours.

4. Medicare Therapeutic Shoes for Diabetic Foot Disease Demonstration Prescription Form—NEW—This form is proposed for use by demonstration providers which will verify that the Medicare beneficiary meets the demonstration eligibility criteria. The form will be used by the demonstration contractor to check Medicare eligibility randomize applicants, and provide baseline information for the evaluation. Respondents: Small Businesses or organizations; Number of Respondents: 27,488; Frequency of Response: 1; Average Burden per response: 5 minutes; Estimated Annual Burden: 2,291 hours.

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, one of the following numbers:

PHS: (202) 245-2100
HCFA: (301) 966-2088
SSA: (301) 965-4149
OS: (202) 472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: November 21, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-27300 Filed 12-1-88; 8:45 am]

BILLING CODE 4150-05-M

Food and Drug Administration

Carson Chemicals, Inc.; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Carson Chemicals, Inc. The NADA provides for the use of piperazine adipate in capsules as a canine and feline wormer. The firm requested the withdrawal of approval. Elsewhere in this issue of the **Federal Register**, FDA is removing that portion of the regulations reflecting approval of the NADA.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Carson Chemicals, Inc., P.O. Box 466, New Castle, IN 47362-0466, is the sponsor of NADA 118-508 which provides for the 1-day use of piperazine adipate in capsules as a canine and feline wormer. The NADA was originally approved July 1, 1980 (45 FR 44264).

By letter of February 18, 1988, the sponsor requested voluntary withdrawal

of approval on the ground that the new animal drug is no longer being marketed.

Therefore under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 118–508 and all supplements thereto are hereby withdrawn effective December 12, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing that portion of the regulations reflecting approval of the NADA.

Dated: November 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–27757 Filed 12–1–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85D–0480]

Revised Draft Guideline For The Design of Clinical Trials For Evaluation of the Safety and Efficacy of Allergenic Products For Therapeutic Uses; Availability of Revised Draft Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guideline to assist manufacturers in designing clinical studies to assess the safety and efficacy of allergenic products for therapeutic use. FDA is making the revised draft guideline available for public comment to assist the agency in developing a final guideline. The guideline, when issued in final form, may be relied on by allergenic manufacturers and sponsors in designing clinical studies. The draft guideline was prepared by FDA's Center for Biologics Evaluation and Research.

DATE: Written comments by April 3, 1989.

ADDRESSES: Written comments regarding the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for a copy of the revised draft guideline to the Biologics Information Staff (HFB–205), Building 29, Room B–16, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–9508.

FOR FURTHER INFORMATION CONTACT: Joann M. Minor, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a revised draft guideline to assist allergenic biological product manufacturers and investigational sponsors in designing clinical studies to assess the safety and efficacy of allergenic products for therapeutic use. The revised draft guideline does not address the design of clinical studies for allergenic products for diagnostic uses.

In the **Federal Register** of October 22, 1985 (50 FR 42777), FDA announced the availability of the draft guideline and invited public comment. FDA has revised the draft guideline after review of comments and discussion at a public meeting of the Allergenic Products Advisory Committee of June 26, 1986. The revised guideline replaces the guideline announced on October 22, 1985, and dated September 1985.

FDA is making this draft guideline available for public comment before making it the formal position of the agency. If, following the receipt of comments, the agency concludes that the draft guideline, as revised, reflects acceptable criteria for use in designing clinical studies to assess the safety and efficacy of allergenic products for therapeutic uses, the guideline will be made final, and FDA will announce its availability under 21 CFR 10.90(b).

Section 10.90(b) provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline can be assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent an expenditure of money and effort for work that the agency may later determine to be unacceptable. Therefore, interested persons are encouraged to use this opportunity to submit comments on the revised draft guideline if they have suggestions for its revision.

Interested persons may, on or before April 3, 1989 submit written comments on the draft guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether amendments to, or revision of, the draft guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Biologics Information Staff (address above).

Dated: November 21, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–27807 Filed 12–1–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket Nos. 88E–0342 and 88E–0346]

Determination of Regulatory Review Period for Purposes of Patent Extension; Acesulfame Potassium

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for acesulfame potassium and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of two patents which claim acesulfame potassium.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For food and color additives: (1) The testing phase begins on the date a major health or environmental effects test is begun and ends on the date a petition relying on the test and requesting the issuance of a regulation for use of the additive under sections 409 (21 U.S.C. 348) or 706 (21 U.S.C. 376) of the Federal Food, Drug, and Cosmetic Act (the act) is initially submitted to FDA. An "environmental effects" test may be any test which: (a) Is reasonably related to the evaluation of the product's health effects, environmental effects, or both; (b) produces data necessary for marketing approval; and (c) is conducted over a period of not less than a 6-month duration, excluding time required to analyze or evaluate test results. (2) The approval phase begins on the date a petition requesting the issuance of a regulation for use of the additive under sections 409 or 706 of the act is initially submitted to FDA and ends upon whichever of the following occurs last: (a) The regulation for the additive becomes final; or (b) objections filed against the regulation that result in a stay of effectiveness are resolved and commercial marketing is permitted; or (c) proceedings resulting from objections to the regulation, after commercial marketing has been permitted and later stayed pending resolution of the proceedings, are finally resolved and commercial marketing is permitted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a color or food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently issued a regulation listing acesulfame potassium (the potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one-2,2-dioxide) as a food additive. Acesulfame potassium is used as a nonnutritive sweetener.

Subsequent to this listing, the Patent and Trademark Office received patent term restoration applications for acesulfame potassium (U.S. Patent Nos. 3,926,981 and 4,158,068) from Hoechst, and requested FDA's assistance in determining the product's eligibility for patent term extension. In a letter dated October 18, 1988, FDA advised the Patent and Trademark Office that the product had undergone a regulatory review period and that the food additive's active ingredient, the potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one-2,2-dioxide, represented the first commercial marketing or use. The **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined the applicable regulatory review period for acesulfame potassium is 5,311 days. Of this time, 3,139 days occurred during the testing phase of the regulatory review period, while 2,172 days occurred during the approval phase. These periods were derived from the following dates:

1. *The date a major health or environmental effects test was begun: January 14, 1974.* FDA has verified the applicant's claim that a major health or environmental effects test was begun on January 14, 1974.

2. *The date a petition requesting the issuance of a regulation for use of the food additive under section 409 of the act was initially submitted: August 18, 1982.* FDA has verified the applicant's claim that a petition requesting the issuance of a regulation for the use of the food additive under section 409 of the act was submitted on August 18, 1982.

3. *The date the regulation for the food additive became effective: July 28, 1988.*

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 31, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 30, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 60.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) identified with the docket numbers found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88-27806 Filed 12-1-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 78P-0173 et al.]

Approved Variances for Laser Light Shows; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 13 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "**SUPPLEMENTARY INFORMATION.**"

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 13 organizations listed in the table below a variance from the requirements of 21 CFR 1040.11(c) of the performance standards for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer which is its particular variety of laser light show, laser light

show projector, or both. Each laser product involves levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical designs and by warnings in the user manuals and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Acting Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/termination date
78P-0173 (renewal)	Laser Images, Inc., 6911 Hayvenhurst Ave., Van Nuys, CA 91406.	Laserium (krypton) and Concert System (CS) Series of Class III and IV laser projectors manufactured by Laser Images, Inc., and for laser light shows assembled and produced by Laser Images, Inc. incorporating these projectors or the Foursight Visual Systems, Inc. Model 4 projectors. The Laserium (krypton) projectors are Class IIIb products incorporating a Class IV krypton laser system. The Concert System series projectors may contain Class IV argon, krypton, or mixed-gas ion.	Oct. 7, 1988/Aug. 22, 1990.
79P-0462 (amendment)	Laser Systems Development Corp., P.O. Box 639, 6960 Lake St., Green Mountain Falls, CO 80819.	Laser Systems Development Corp. Class IIIb or Class IV laser projection systems, Model R-2 and the C-3 and C-4 Model Series, and laser light shows assembled and produced by Laser Systems Development Corp. incorporating these projection systems. These projectors may contain HeNe, Ar, Kr, or Ar/Kr lasers.	Oct. 12, 1988/Aug. 20, 1990.
81P-0194 (reinstatement).	That's Entertainment, Inc., d/b/a CITI, 15 Lansdowne St., Boston, MA 02215.	CITI laser light show produced by That's Entertainment, Inc., d/b/a CITI by means of the incorporated Class IV Science Faction SFC-2000-SFX-LR projector and Lexel 95-4 argon laser.	Sept. 16, 1988/July 8, 1990.
81P-0278 (extension)	Raytel, 137 Second St., Troy, NY 12180.	Raytel laser light shows incorporating projectors manufactured by Raytel which may use HeNe, Ar/Kr, HeCd, Nd:YAG, copper vapor, or mercury vapor lasers with a maximum peak power of 20 watts.	Sept. 15, 1988/July 12, 1990.
81P-0389 (renewal)	Laser Affiliates/Cherry Optical Co., c/o Nancy Gorglione, 2047 Blucher Valley Rd., Sebastopol, CA 95472.	Nancy Gorglione dba Laser Affiliates/Cherry Optical Co. laser light shows incorporating Class II, III, or IV helium neon, argon, helium cadmium, and/or krypton laser projectors.	Sept. 20, 1988/Dec. 8, 1990.
84V-0160 (renewal)	Advanced Dimensional Displays, Inc., Apt. 102, 16742 Stagg Street, Van Nuys, CA 91406.	Advanced Dimensional Displays, Inc., laser light shows and the large format holographic displays and display devices incorporated into these laser light shows.	Sept. 16, 1988/June 8, 1990.
86V-0194 (renewal)	Lasertainment, 428 B West County Road D, New Brighton, MN 55112.	Lasertainment laser light show using the Laser Fantasy Class IIIb or IV Rainbow Model Series Ar/HeNe laser projections systems.	Oct. 14, 1988/Oct. 16, 1990.
86V-0271 (renewal)	Laser Design, P.O. Box 40006, Long Beach, CA 90804.	Laser Design laser light show incorporating the Laser Media LMS Series laser projector with Class IV argon, krypton, or helium-neon laser systems.	Sept. 14, 1988/July 3, 1990.
86V-0283 (renewal)	Entertainment Technology Industries, 8932 Coral Circle, Huntington Beach, CA 92646.	ETI Arena Master (aka Beam Master or Chorus Master) Series Class IV laser projectors with argon and helium-neon laser systems and the laser light shows assembled and produced by ETI incorporating these projectors or the Laserdream Productions Model 0002 projector.	Sept. 6, 1988/Sept. 19, 1990.
86V-0379 (renewal)	Laservisions Productions, Inc., 25 Midland Ave., Budd Lake, NJ 07828.	Laservisions Productions, Inc., laser light show incorporating the Coherent Innovations' Rainbow Class IV helium-neon/argon laser projection system.	Sept. 16, 1988/Nov. 24, 1990.
87V-0048 (renewal)	Roctronics Lighting, 100-FDA Roctronics Park, Pembroke, MA 02359.	Roctronics Lasergraph laser projectors and the laser light shows incorporating these projectors assembled and produced by Roctronics Lighting. The projection systems will incorporate up to Class IV argon, krypton, argon/krypton, or helium-neon ion lasers.	Sept. 15, 1988/Feb. 20, 1991.
88V-0259 (amendment)	Twilight Theatrical Lighting, 538 Clifton Ave., Clifton, NJ 07011.	Twilight Theatrical Lighting laser light show incorporating the Laser Media LMS or Holo-Spectra HST-1 projectors.	Oct. 12, 1988/Aug. 5, 1990.
88V-0313	Lazer Light and Sound, 210 Lantana Street, Panama City Beach, FL 32407.	Lazer Light and Sound laser light shows incorporating Class IV Roctronics Lasergraph laser projectors.	Sept. 30, 1988/Sept. 30, 1990.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: November 23, 1988.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-27805 Filed 12-1-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0352]

Abbott Laboratories; Premarket Approval of Abbott ER-ICA Monoclonal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Abbott Park, IL, for premarket approval, under the Medical Device Amendments of 1976, of the Abbott ER-ICA Monoclonal. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1988, of the approval of the application.

DATE: Petitions for administrative review by January 3, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On April 4, 1988, Abbott Laboratories, Abbott Park, IL 60064, submitted to CDRH an application for premarket approval of the Abbott ER-ICA Monoclonal. The device is an immunocytochemical assay for the detection of the human estrogen receptor as an aid in the management of breast cancer. Its intended use is as an aid in predicting patient response to hormonal therapy, and in the prognosis and management of breast cancer patients. This assay should be interpreted by a specialist in breast cancer morphology and/or pathology. Assay results should be used in conjunction with other clinical and laboratory data to assist the clinician in making individualized patient management decisions.

On August 16, 1988, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ-440), address above.

Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 306e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and informationi showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 3, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 16, 1988.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-27804 Filed 12-1-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-889; FR-2570]

Consolidated Delegations of Authority for Policy Development and Research

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of consolidated delegations of authority.

SUMMARY: This notice consolidates all delegations of authority to the Assistant Secretary for Policy Development and Research and General Deputy Assistant Secretary for Policy Development and Research. No substantive change in current delegations is intended, but obsolete material has been eliminated and changes have been made to standardize language and format.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: David D. White, Senior Attorney, Office of the Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, Room 10244, Washington, DC 20410, phone (202) 755-7205. This is not a toll free number.

The Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research each are delegated in the power and authority of the Secretary of Housing and Urban Development with respect to all Policy Development and Research programs and functions, including but not limited to those set forth below, with authority to delegate to employees of the Department, unless otherwise specified. Each of them may issue rules or regulations in order to carry out Policy Development and Research programs but they may not redelegate the authority to issue rules and regulations.

1. Research, management and evaluation of programs of research, studies, testing, and demonstration relating to the mission and programs of the Department as deemed necessary and appropriate by the Secretary. Title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1).

2. Technological aspects of experimental housing, including determination of the technological acceptability of proposals, evaluation and dissemination of results.

Section 233 of the National Housing Act (12 U.S.C. 1715x).

3. Technical studies concerning problems in the development of standards for property financed with mortgages or loans insured under the National Housing Act (12 U.S.C. 1702 *et seq.*), and research to enable the Assistant Secretary for Housing to determine the acceptability of materials or products as suitable for use in structures approved for mortgages or loans insured under section 521 of that Act. (12 U.S.C. 1735e).

4. Lead-based paint poisoning and prevention. Lead-Based Paint Poisoning and Prevention Demonstration and Research Program (42 U.S.C. 4821).

5. Conduct of housing and urban development studies. Section 3(b) of the Housing and Urban Development Act (42 U.S.C. 3532(b)).

6. Urban mass transportation. Sections 6 (a) and (u) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1605(a) and 1607(c)).

7. Issuance of rules and regulations. Section 7(d) of the Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Preparation of the President's annual message to Congress on National Housing Production. Title XVI of the Housing and Urban Development Act of 1968 (42 U.S.C. 1441).

9. Collection and reporting of data on manufactured homes for the nation, each Census region, each State on an annual basis, and selected Standard Metropolitan Statistical Areas having sufficient activity on an annual basis. Section 308(e) of the Housing and Community Development Act of 1980 (12 U.S.C. 1703).

10. Promulgation of implementation of energy conservation performance standards for new buildings. Title III of the Energy Conservation and Production Act of 1976 (42 U.S.C. 6831 through 6840).

11. Preparation of the President's National Urban Policy Report. Section 703(a) of the Housing and Urban Development Act of 1970, as amended.

12. Supplemental assistance for facilities to assist the homeless, including the authority to issue or waive rules, regulations or guidelines under the Program but not the authority to redelegate the power to issue or waive rules, regulations or guidelines. Title IV, Subtitle D of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

13. Study of mortgage credit in rural areas. Section 312 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

14. Home Equity Conversion Mortgage Insurance Demonstration. Section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

15. Study of interest rates and discount points. Section 419(c) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

16. Development of a Comprehensive Grant Formula and Completion of Modernization Needs Study. Section 119 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

17. Lead-based paint demonstration. Section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

18. Preparation of a report on a study of alternative delivery systems in the States for the elderly at risk of institutionalization. Section 163(c) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

19. Annual report on the characteristics of families in assisted housing. Section 166 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

20. Study of voluntary standards for modular housing, to be conducted by NIBS and funded up to $50,000 from the research and technology appropriation. Section 572 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, Approved February 5, 1988).

Authority Excepted

Authority excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research:

1. To sue or be sued.

Delegations Revoked

1. 36 FR 8012 (March 27, 1973) [Docket No. D–73–223]
2. 36 FR 5007–5008 (March 16, 1971) [FR Doc. 71–3645]
3. 48 FR 36341 (August 10, 1983) [Docket No. D–83–702]
4. 52 FR 38898 (October 19, 1987) [Docket No. D–87–866; FR 2389], as amended by 52 FR 44492 (November 19, 1987) [Docket No. D–87–1746; FR 2389]

Any redelegations issued, or action taken, under any delegation revoked herein shall remain in effect until expressly modified or revoked.

Authority: Sec. 7(d), Department of HUD Act 42 U.S. 3535(d)).

Dated: November 28, 1988.

Samuel R. Pierce, Jr.,

Secretary U.S. Department of Housing and Urban Development.

[FR Doc. 88–27833 Filed 12–1–88; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–88–1884; FR–2579]

Section 8 Certificate and Housing Voucher Programs; Administrative Fees

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice sets out the administrative fees for the Certificate and Housing Voucher Programs, in accordance with HUD's fiscal year 1989 appropriations Act.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: With respect to the Housing Voucher Program, Gerald Benoit, Director, Housing Voucher Division, Room 6122, telephone (202) 755–6477 and with respect to the Certificate Program, Madeline Hastings, Director, Existing Housing Division, Room 6126, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–6887. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Certificate Program and Housing Voucher Program Administrative Fees

The administrative fees for the Certificate Program and the Housing Voucher Program are:

Description	Ongoing fee (percent)	Maximum preliminary fee	Hard-to-house fee
FY1989 Incremental Housing Vouchers and Certificates	8.2	$275	$45
Pre-FY1989 Housing Vouchers	6.5	215	45
Pre-FY1989 Certificates	7.65	250	45

The administrative fees for the Certificate Program and the Housing Voucher Program are subject to the requirements of section 8(q) of the United States Housing Act of 1937, as added by section 144 of the Housing and Community Development Act of 1987. Sections 8(q) (1) and (2) set the ongoing administrative fee at 8.2% of the two-bedroom Fair Market Rent and the maximum preliminary fee at $275 for both the Certificate Program and the Housing Voucher Program. Section 8(q)(2)(B)(3), however, provides that these fees may be established or increased "only to such extent or in such amounts as are provided in appropriations Acts." The fourth proviso in title I of the HUD-Independent Agencies Fiscal Year 1989 Appropriations Act, Pub. L. 100–404, approved August 19, 1988, states:

> That those portions of the fees for the costs incurred in administering incremental units assisted in the certificate and housing voucher programs under sections 8(b) and

8(o), respectively, shall be established or increased in accordance with the authorization for such fees in section 8(q) of the Act * * *

The administrative fees listed in the above table for "Pre-FY 1989 Housing Vouchers" and for "Pre-FY 1989 Certificates" are the administrative fees that were in effect in fiscal year 1988. They remain in effect for pre-FY 1989 housing vouchers and for pre-FY 1989 certificates, respectively, because the above-quoted appropriations Act proviso applies only to "incremental units," namely, the additional certificates and housing vouchers that can be funded from the amounts appropriated in HUD's FY 1989 appropriations Act.

The Department will provide, in the near future, administrative guidance to PHAs on the procedures for calculating the fee for pre-FY 1989 and FY 1989 units.

Findings

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321 through 4347) is unnecessary since the Certificate Progam and the Housing Voucher Program are part of the Section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this notice does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this notice merely specifies the amount of the administrative fees for the Certificate and Housing Voucher Programs, as they have been established in HUD's FY 1989 appropriations Act.

For the same reason, HUD has determined that this notice is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*.

Authority: Secs. 8(b) and 8(o) of the United States Housing Act of 1937 (42 U.S.C. 143f (b) and (o)); sec. 1(f) of Pub. L. 100-120, December 22, 1987; title I of Pub. L. 100-404, April 19, 1988.

Date: November 28, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-27834 Filed 12-1-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Revised Draft Policy for Cabin Management on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service revised draft policy concerning cabin management on National Wildlife Refuges in Alaska is now available for review. Comments and suggestions are solicited.

DATE: Comments must be received on or before February 9, 1989, to be considered in the development of the final policy.

ADDRESS: Comments should be directed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199, Attention: William Knauer.

FOR FURTHER INFORMATION CONTACT: William Knauer at the above address or telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: The original cabin policy for the U.S. Fish and Wildlife Service (Service) was developed in 1981 and revised in 1984. This policy was the basis for regulations printed in the Code of Federal Regulations Title 50. In September 1987, the Service, believing revisions of the existing cabin policy and regulations were needed, published a Draft Cabin Management Policy for cabins on National Wildlife Refuges in Alaska. Comments and suggestions on the draft policy were solicited during a 60-day public review period.

Because of the number and nature of comments received during the public review of the draft policy, the Service made such extension revisions that a revised draft of the cabin management policy is being published to give the public another opportunity to comment before the policy is made final.

The revised draft has been completely reorganized, more clearly describes the objectives of the policy, and sets forth the guidelines needed to comply with the Alaska National Interest Lands Conservation Act of 1980 and the National Wildlife Refuge system Administration Act of 1966.

The purpose of the draft policy and guidelines is to provide uniform guidance to both the public and refuge managers on human use and occupancy of cabins located on National Wildlife Refuges in Alaska. The draft policy further serves to define under what conditions use and occupancy of a cabin may be compatible with purposes for which the refuge was established.

Compatibility with refuge purposes is implicit in all cabin management decisions.

Copies of the revised draft policy are available from any national wildlife refuge in Alaska, from the Regional Office (address above), or by calling Ms. Gina Mullen in the Alaska Regional Office at (907) 786-3390.

Once the policy is finalized the Service will develop draft regulations for the public's consideration and subsequent incorporation into the Code of Federal Regulations.

Dated: November 18 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-27737 Filed 12-1-88; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[ES-970-09-4120-14-2410; WVES 39061]

Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Emergency Coal Lease Application WVES 39061

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value, maximum economic recovery and the environmental assessment of certain coal resources it proposes to offer for competitive lease sale. The land included in Emergency Coal Lease Application WVES 39061 are located in Mingo County, West Virginia and are described as follows:

Kermit Poe Tract

Part of Tract 201 (Metes and Bounds)
Containing 20 acres, more or less

The range of quality of the coal of the tract is as follows:

1. 200,000 tons of recoverable coal.
2. 12,400 BTU's per pound.
3. 9.2% Ash.
4. 9.0% Moisture.
5. 0.67% Sulphur.

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tract.

In addition, notice is also given that a public hearing will be held on January 5, 1989 on the environmental assessment, the proposed sale, the fair market value,

and the maximum economic recovery of the proposed lease tracts.

DATE: Comments must be received on or before January 3, 1989.

ADDRESS: The public hearing will be held on January 5, 1989 at 5:00 p.m. in the Gilbert High School Auditorium, Gilbert, West Virginia 25621.

FOR FURTHER INFORMATION CONTACT: For more complete data on this tract, please contact Pearl Flaver Tillman at (703) 461–1468, at the Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

SUPPLEMENTARY INFORMATION: In accordance with the Federal coal management regulations 43 CFR Parts 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shal solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management, Eastern States Office, at the above address, in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Eastern States Office, at the above address, during regular business hours (7:30 a.m. to 4:00 p.m.) Monday through Friday, except Federal holidays. Comments should be sent to the Bureau of Land Management, Eastern States Office, at the above address, and should address, but not necessarily be limited to, the following information:

1. The method of mining to be employed in order to obtain maximum economic recovery of the coal;
2. The impact that mining the coal in the proposed leasehold may have on the area, including, but not limited to, impacts of the environment; and
3. Methods of determining the fair market value of the coal to be offered.

The coal characteristics given above may or may not change as a result of comments received from the public and changes in market conditions that occur between now and the time at which final economic evaluations are completed.

G. Curtis Jones, Jr.,
State Director.

[FR Doc. 88–27836 Filed 12–1–88; 8:45 am]
BILLING CODE 4310–GJ–M

[UT–080–09–4830–12]

Advisory Council Nomination Period and Opening; Vernal District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council Nomination Period and Opening.

SUMMARY: The Vernal District of the Bureau of Land Management located in Vernal, Utah is seeking nominations to fill a vacancy in it's Advisory Council.

A District Advisory Council is a ten-person body of folks who are nominated by their peers and who are qualified by experience, knowledge, training, or interest to offer informed advice to the District Manager concerning land management matters. They are nominated to serve in one of eight categories, including "Elected Official", the category in which Vernal District will have an opening. A person nominated to fill a vacancy in "Elected Official" category must, by regulation, be " * * * an official of general purpose government serving the people of the District."

Nomination letters must be received by December 31, 1988, and should be sent to the: Vernal District Office—BLM, 170 South 500 East, Vernal, Utah 84078.

Letters of nomination for an elected official should include the following information:

1. Full name of nominee (no nicknames, please).
2. Nominees mailing address.
3. Nominees home and work phone numbers.
4. Current public office held.
5. Nominees occupation.
6. Nominator's name and phone number.

Questions may be directed to R. Ray Tate, Advisory Council Coordinator, (801) 789–1362.

Date: November 28, 1988.

David E. Little,
District Manager.

[FR Doc. 88–27795 Filed 12–1–88; 8:45 am]
BILLING CODE 4310–DQ–M

INTERSTATE COMMERCE COMMISSION

[No. 40193]

Kerrville Tours, Inc.; Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Kerrville Tours, Inc., a passenger motor contract carrier, seeks exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10762. The Commission has issued a decision proposing to grant an exemption for existing and future contracts. The petition for exemption from the tariff filing requirements may be inspected at the Public Docket Room (Room 1227) of the Commission in Washington, DC. Any interested party may file a comment in this proceeding.

DATE: Comments are due on or before December 19, 1988; the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments will be considered, and, within 20 days of the close of the comment period, the Commission will issue a final decision.

ADDRESSES: Send an original and 10 copies of comments referring to No. 40193 to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Jasneth C. Metz, (202) 275–7974.
or
Richard Felder, (202) 275–7691.
(TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: November 22, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 88–27812 Filed 12–1–88; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31337]

Norfolk and Western Railway Co.; Acquisition and Operation Exemption; The Toledo Terminal Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, the acquisition by Norfolk and Western Railway Company of 7.73 miles of rail line in Toledo, Lucas County, OH, from The Toledo Terminal Railroad Company, a subsidiary of CSX Transportation, Inc., subject to standard labor protective conditions.

DATES: The exemption will be effective on January 2, 1989. Petitions for stay must be filed by December 19, 1988, and petitions for reconsideration must be filed by December 27, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31337 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

Angelica D. Lloyd, Norfolk Southern Corporation, 8 North Jefferson Street, Roanoke, VA 24042–0041.

Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: November 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27800 Filed 12–1–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31347]

Southern Railway Co. and Transylvania Railroad Co.; Merger Exemption

Southern Railway Company (Southern) and Transylvania Railroad Company (TR) have filed a notice of exemption for the merger of TR into Southern with Southern as the surviving corporation. The merger was expected to be consummated on November 15, 1988.

Southern, a wholly owned subsidiary of Norfolk Southern Corporation, is a class I rail common carrier. TR, a class II railroad, is a wholly owned subsidiary of Southern.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William A. Noell, Jr., Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

Decided: November 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27801 Filed 12–1–88; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., in Washington, DC on January 4, 1989, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1988 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Date: November 25, 1988.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 88–27726 Filed 12–1–88; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging a Final Judgment by Consent Pursuant to the Clean Air Act; Robert W. Skinner

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 17, 1988 a proposed Consent Decree in *United States* v. *Robert W. Skinner*, Civil Action No. 87–494–B, was lodged with the United States District Court for the Southern District of Iowa.

The complaint filed by the United States alleged that Robert W. Skinner failed to follow certain work practices for handling asbestos during renovation and demolition operations as required by the National Emission Standard for Hazardous Air Pollutants ("NESHAP"), 40 CFR 61.147(c) and 61.152 (a) and (c), promulgated pursuant to the Clean Air Act, 42 U.S.C. 7412 (c) and (e). The complaint sought civil penalties of up to $25,000 per day of violation. Pursuant to the Consent Decree, Mr. Skinner has agreed to pay a civil penalty of $500.00 and not to engage in any future asbestos renovation or demolition operations.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Robert W. Skinner*, Civil Action No. 87–494–B, DOJ Ref. No. 90–5–2–1–1001.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, East First and Walnut Streets, Des Moines, Iowa 50009. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6314, Tenth and Pennsylvania Avenue NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044.

Roger J. Marzulla,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 88-27809 Filed 12-1-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Competitive Impact Statement and Proposed Consent Judement; United States v. TRW Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Ohio in *United States v. TRW Inc.*, Civil Action No. C-88-4253.

The Complaint in this case alleges that the effect of the proposed acquisition of Chilton by TRW will be substantially to lessen competition in the market for consumer credit reports in violation of section 7 of the Clayton Act, 15 U.S.C. 18, in all or portions of the states of Arizona, Colorado, Connecticut, Hawaii, Massachusetts, Michigan, New Hampshire, New Mexico, New York, Rhode Island, and Texas.

The proposed Final Judgment orders and directs TRW to: (a) Terminate affiliation agreements with specified credit bureaus affiliated with TRW or Chilton; and (b) consummate contracts to sell a copy of TRW's or Chilton's consumer credit files in specified areas within four months of the entry of the proposed Final Judgment. If TRW is unable to transfer a copy of its consumer credit files to a person with whom it currently has a contract for sale of a copy of consumer credit files, TRW shall transfer a copy of the consumer credit files for that area to some other person acceptable to the Department of Justice. Under the Final Judgment, TRW must report to the Department the fact and manner of compliance with the Final Judgment.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Barry Grossman, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, 555 4th Street, NW., Room 8104, Washington, DC 20001, (202) 272-4247.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-27811 Filed 12-1-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Development of a High-Temperature Resistant Diesel Particulate Trap; Southwest Research Institute

Notice is hereby given that, on November 2, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of parties to its group research project regarding "Development of a High-Temperature Resistant Diesel Particulate Trap." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that Volvo Truck Corporation (effective September 14, 1988); General Motors Corporation, Chevrolet-Pontiac-Canada Group (CPC Romulus Engineering Center) (effective September 19, 1988); and The Riken-Duriron Joint Venture (effective September 23, 1988) have become parties to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On August 31, 1988, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 27, 1988, 53 FR 37654.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-27810 Filed 12-1-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs.

Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Bureau of Labor Statistics

1989 PILOT SURVEYS

Form number	Affected public	Respondents	Frequency	Per response
OSHA 101	Businesses or other for profit, farms, small businesses, non-profit institutions	490	One quarter	14.5 minutes.
OSHA 101-M	(Same)	735	Quarterly	55 minutes.
OSHA 200-A	(Same)	735	Quarterly	19 minutes.
OSHA 200-B	(Same)	735	Quarterly	14 minutes.
Employer supplement	(Same)	100	One quarter	30 minutes.

4,474 total hours.

The pilot surveys will obtain and evaluate the operational, quality, and cost characteristics of three methods for recording, reporting, and coding occupational injury and illness individual case information as well as summary data.

Employment and Training Administration, State Plan and Subgrantee Plan for EDWAA, No forms, Biennially, State or local governments.

74 respondents; 740 total hours; 10 hours per response; no forms The State Plan, required by section 311(a) and the Plan required by section 311(b) of JTPA as amended by Subtitle D of Title VI of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) will provide the Department of Labor with a general description of each State's plan for the operation of the EDWAA program and its utilization of JTPA funds for this purpose.

Revision

Department of Labor, Bureau of Labor Statistics, Office of Administration

BLS/OSHS FEDERAL/STATE STATISTICAL GRANT (APPLICATION PACKAGE) 1220-0067

Form number	Affected public	Respondents	Frequency	Average time Per response
424C	State government	44	Annual	6 hours.
424D	State government	44	Annual	1 hour.

308 total hours.

The BLS Occupational Safety and Health Statistics Program makes grants to the States to assist them developing and administering programs dealing with occupational safety and health statistics and to arrange through these grants for research to further the objectives of the Occupational Safety and Health Act.

National Longitudinal Survey of Work Experience of Youth, 1220-0109, Annually, Individuals or Households.

10,500 responses; 7,560 total hours; 43 minutes per response; 1 form. The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by young men and women in this age group.

Employment Standards Administration

Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

1215-0160; LS-200; ESA-100; LS-271; LS-274; LS-201; LS 513; LS-267; LS-203; LS-204; LS-262.

Form number	Affected public	Respondents	Frequency	Average time per response
LS-200; 702.285	Individuals or households	25,000	On occasion	10 minutes.
702.162	Businesses or other for profit; small businesses or orgainizations	10	On occasion	30 minutes.
702.174	Businesses or other for profit; small businesses or orgainizations	5	On occasion	45 minutes.
702.175	Businesses or other for profit; small businesses or orgainizations	2	On occasion	30 minutes.
702.242	Individuals or households; businesses or other for profit; small businesses or organizations.	7,600	On occasion	120 minutes.
702.321	Businesses or other for profit; small businesses or organizations	500	On occasion	300 minutes.
ESA 100	Businesses or other for profit; small businesses or organizations	42,000	On occasion	1 minute.
LS-271	Businesses or other for profit; small businesses or organizations	50	On occasion	120 minutes.
LS-274	Businesses or other for profit; small businesses or organizations	375	On occasion	60 minutes.
LS-201	Individuals or households	80,000	On occasion	15 minutes.
LS-513	Businesses or other for profit; small businesses or organizations	850	Annually	30 minutes.
LS-267	Individuals or households	1,400	On occasion	2 minutes.
LS-203	Individuals or households	13,760	On occasion	15 minutes.
LS-204	Businesses or other for profit; small businesses or organizations	120,400	On occasion	30 minutes.
LS-262	Individuals or households	275	On occasion	15 minutes.

Work Experience and Career Exploration Programs, 1215–0121; 29 CFR 570.35a, Biennially, State or local governments.

7 respondents, 1,318 total hours; 171 hours per response; 1 form; State educational agencies are required to file applications for approval of Work Experience and Career Exploration Programs which are exceptions to the Fair Labor Standards Act Child Labor Regulations. State educational agencies are also required to maintain certain records with respect to approval programs.

Extension

Employment Standards Administration

Establishment Information, 1215–0008; WH–45 and WH–45 (Sp.), On occasion, Businesses or other for-profit; Non-profit agencies, Small businesses or organizations.

4,500 responses; 750 total hours; 10 minutes per response; 2 forms; Form WH–45 is used in determining coverage of various establishments that are being considered for investigation under the Fair Labor Standards Act.

Signed at Washington, DC, this 29th day of November, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88–27829 Filed 12–1–88; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[Training and Employment Guidance Letter No. 4–88]

Job Training Partnership Act; Reallotment and Reallocation of Funds Under Title III of the Job Training Partnership Act, as Amended

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Training and Employment Guidance Letter No. 4–88; request for comments.

SUMMARY: The Employment and Training Administration is issuing Training and Employment Guidance Letter (TEGL) No. 4–88 to provide information to States on its policy and procedures for reallotment and reallocation of funds under Title III of the Job Training Partnership Act, as revised by the Economic Dislocation and Worker Adjustment Assistance Act (Title VI, Subtitle D, of the Omnibus Trade and Competitiveness Act of 1988). A revised TEGL may be published in the **Federal Register** following a review of comments.

DATES: *Effective Date*: Training and Employment Guidance Letter No. 4–88 became effective on November 25, 1988.

Comments: Written comments are invited from interested parties. Comments must be received by January 3, 1989.

ADDRESS: Comments shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N–4703, 200 Constitution Avenue, NW., Washington, DC. 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo. Telephone: (202) 535–0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act, establishing employment and training programs for dislocated workers, was revised recently by the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act (Title VI, Subtitle D, of the Omnibus Trade and Competitiveness Act of 1988). Among other things, EDWAA provides for the reallotment of unexpended funds from underutilizing States to States that are effectively using available funds. It is necessary to establish and promulgate policies and procedures to inform States of the means by which reallotment will be effected. This information has been issued in a Training and Employment Guidance Letter (TEGL). Information on plans and procedures are set forth in the attached TEGL No. 4–88, for which written comments are being invited. After review of the comments, revised instructions may be issued in a TEGL, which would be published in the **Federal Register**. It is likely that no further revision of this TEGL may be effected, however.

Signed at Washington, DC this 23rd day of November, 1988.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Department of Labor, Employment and Administration; Training and Employment Guidance Letter No. 4–88

November 25, 1988.

From: Robert T. Jones, Assistant Secretary of Labor

Subject: Reallotment and reallocation of funds under Title III of the Job Training Partnership Act (JTPA), as amended.

Expiration Date: Continuing.

1. *Purpose.* To provide information to the JTPA and worker adjustment delivery system on plans and procedures for reallotment of funds by the Secretary under the Economic Dislocation and Worker Adjustment Assistance (EDWAA) program, and to discuss briefly substate reallocation procedures.

2. *References.* Sections 302 and 303 of the Job Training Partnership Act, as amended.

3. *Background.* In January of 1989, as in previous years, the allotments for the upcoming program year will be published.

The allotment formula for Program Year (PY) 1989 will be the same as the formula used for PY 1988 and earlier. This formula distributes funds among the States based on three equally weighted factors, including the relative numbers of unemployed individuals, the relative numbers of unemployed individuals over 4.5 percent of the labor force, and the relative numbers of individuals who have been unemployed for 15 weeks or more.

Pursuant to section 302(b)(2) of EDWAA, the formula eventually will be expanded to four equally weighted factors. The relative numbers of dislocated workers will be the fourth factor along with the existing three factors, but it will be some time before the Bureau of Labor Statistics is able to collect satisfactory data. When BLS and the Department of Agriculture develop a report giving the number of displaced farmers and ranchers, that information will be included with the dislocated workers' data to become a combined fourth factor in the allotment formula.

Beginning in PY 1989 the Secretary must initiate reallotment of formula-allotted funds, as provided for in section 303 of EDWAA. The reallotment process will be based on expenditure reports that will be due 30 days after the end of the program year (i.e. due by July 31, 1989). Reallotments will be finalized and implemented on or about September 1, 1989, two months into the program year.

All 50 States plus Puerto Rico and the District of Columbia will be involved in the reallotment process at the end of PY 1988:

a. States that have no unexpended formula-allotted funds from PY 1987, and have expended 70 percent or more of PY 1988 formula funds, will be eligible to receive reallotted funds.

b. States that have any unexpended formula-allotted funds from PY 1987, or have not expended 70 percent of PY 1988 formula funds, will have their new obligational authority for PY 1989 reduced.

4. *Special Report.* For the PY 1988/89 reallotment process only, a special report will be required to identify the total amount of unexpended formula-allotted funds in each State. Only

formula-allotted funds are subject to this reallotment process. At present, expenditure reports do not distinguish the specific year of allotment against which expenditures are recorded in State accounting records.

5. *Notice of Obligation.* PY 1989 allotments will be obligated through a Notice of Obligation on July 1, 1989. After the expenditure reports have been received and the reallotments have been calculated, each State will receive a second Notice of Obligation that will adjust the total funds available for the State for the program year, according to the amount of reallotted funds the State gains or loses.

6. *Process.* There will be a multi-step process for computing the amount of funds that will be reallotted to "eligible States" (i.e., those States that expended an amount equal to 70 percent of the formula allotment for PY 1988 *and* had no unexpended PY 1987 formula-allotted funds). An example of how this process will work is attached.

a. The total amount of funds to be reallotted will be equal to the total excess unexpended funds, defined as all unexpended formula funds in a State at the end of PY 1988 that were in excess of 30 percent of that year's formula allotment plus all unexpended formula-allotted funds from PY 1987.

Pursuant to section 161(b) of JTPA, funds may be expended during the program year in which they were allotted and the 2 succeeding program years. Therefore, formula funds from PY 1986 and earlier that remain unexpended at the end of PY 1988 are no longer available for expenditure and are subject to deobligation, but they will not be included in the reallotment process.

b. The available funds from Step "a" will be divided among all eligible States by applying the regular Title III formula to those eligible States. The most recent 12 months for which satisfactory data are available will be used for this calculation.

c. Eligible States that experienced an average unemployment rate greater than the national average according to the most recent 12 months for which satisfactory data are available will receive an amount equal to their share of Step "b".

d. The share of the available funds under Step "b" for eligible States with unemployment rates less than or equal to the national average will be added together and that new (smaller) amount will be divided among all eligible States, also using the regular Title III allotment formula.

Therefore, eligible States with unemployment rates higher than the national average will receive a total reallotment amount based on Steps "c" and "d," while eligible States with unemployment rates equal to or less than the national average will receive a reallotment amount based only on Step "d."

On or about September 1, a second Notice of Obligation will be issued to each State in an amount equal to the State's share of the reallotted funds, or in the case of those States with excess carryforward, a Negative Adjustment to PY 1989 New Obligational Authority.

7. *Within State Procedures.* EDWAA requires Governors to:

a. Prescribe uniform procedures for the expenditure of funds by substate grantees in order to avoid the requirement that funds be made available for reallotment; and

b. Prescribe equitable procedures for making funds available from the State and substate grantees in the event that the State is required to make funds available for reallotment (section 303(d)).

Federal requirements do not define allowable carryforward at the within State level. State policies may include within State reallocation procedures even when the State maintains a high overall level of expenditure if an individual State or substate grantee is experiencing significant underexpenditure of funds.

States that gain funds through the reallotment process will be required to distribute those funds in the same manner as the rest of the formula allotment (i.e., 60 percent to substate areas).

8. *New Allotment Levels.* The reallotted funds will increase the allotment level of formula funds for States that receive the additional funds. Therefore unexpended reallotted funds at the end of the year will be subject to the 20 percent limitation of allowable carryforward of formula-allotted funds into PY 1990. States that lose funds through the reallotment process, however, will calculate allowable carryforward into PY 1990 by using the initial formula allotment level the State received before reallotment.

9. *Action.* States should make this information available to appropriate staff.

10. *Contact.* Inquires regarding the reallotment process should be directed to Robert N. Colombo on (202) 535–C577 or Jack Rapport on (202) 535–8765.

11. *Allotment.* Program Year 1989 Reallotment Process.

PROGRAM YEAR 1989 REALLOTMENT PROCESS EXAMPLE

State	PY 1988 allotment	Allowable PY 1988 carry-out (30%)	Unexpended as of June 30, 1989			12 month average unemploy-ment (percent)
			PY 1986 allotment	PY 1987 allotment	PY 1988 allotment	
A	$100	$30	$0	$4	$10	6.0
B	200	60	0	0	60	6.1
C	300	90	2	5	104	5.4
D	200	60	0	0	62	7.2
E	100	30	5	10	45	3.5
F	300	90	0	0	10	6.0
National	1,200	360	7	19	291	6.0

Given the PY 1988 experience in the example above, and assuming straight line funding for the two year period in this scenario, as well as no change in the unemployment factors used in the allotment formula, the following reallotment steps will be taken:

State	Total carryforward (Note 1)	Excess carryforward (Note 1)	Reallotment step "c" (Note 2)	Reallotment step "d" (Note 2)	PY 1989 allotment	PY 1989 obligation (Note 3)	Total availability (Note 4)
A	$14	$4			$100	$96	$110
B	60	0	$20	$12	200	232	292
C	109	19			300	281	390
D	62	2			200	198	260
E	55	25			100	75	130
F	10	0		18	300	318	328
National	310	50	20	30	1,200	1,200	1,510

Note 1—Excess Carryforward is the amount of PY 1988 unexpended funds over 30 percent plus all PY 1987 unexpended funds. In this example, States C, D, and E have excess PY 1988 carryforward, and States A, C, and E have carryforward from PY 1987. Expenditure authority for PY 1986 funds will have expired, and those funds will not be subject to reallotment.

Note 2—Steps "c" and "d" refer to the multi-step process described in the TEGL on Reallotment. Step "c" allots funds to eligible States with unemployment above the National average, and Step "d" is the allotment of the balance of the reallotted funds to all States eligible to receive reallotted funds. In this example, only States B and F are eligible, and only B is a high unemployment State.

Note 3—The PY 1989 Obligational Authority will be adjusted on or about September 1 to reflect the amount of reallotted funds added to a State's Obligational Authority or the remainder after the Obligational Authority has been reduced by the amount of excess carryforward.

Note 4—Total Availability includes both the PY 1989 Obligational and the total unexpended funds from PY 1987 and PY 1988 carried forward into PY 1989.

[FR Doc. 88-27826 Filed 12-1-88; 8:45 am]

BILLING CODE 4510-30-M

[Training and Employment Guidance Letter No. 3-88]

Job Training Partnership Act: Transition to Economic Dislocation and Worker Adjustment Assistance Act Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Training and Employment Guidance Letter No. 3–88; request for comments.

SUMMARY: The Employment and Training Administration is issuing Training and Employment Guidance Letter (TEGL) No. 3–88 to issue instructions to States for the transition to dislocated worker programs under Title III of the Job Training Partnership Act, as revised by the Economic Dislocation and Worker Adjustment Assistance Act (Title VI, Subtitle D, of the Omnibus Trade and Competitiveness Act of 1988). A revised TEGL may be published in the **Federal Register** following a review of comments.

DATES: *Effective Date:* Training and Employment Guidance Letter No. 3–88 became effective on November 25, 1988.

Comments: Written comments are invited from interested parties. Comments must be received by January 3, 1989.

ADDRESS: Comments shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N–4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Telephone: (202) 535–0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act, establishing employment and training programs for dislocated workers, was revised recently by the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act (Title VI, Subtitle D, of the Omnibus Trade and Competitiveness Act of 1988). It is necessary to issue instructions to the States regarding transition between the dislocated worker programs under Title III before EDWAA and the dislocated worker programs under Title III as revised by EDWAA. These instructions have been issued in the attached Training and Employment Guidance Letter (TEGL) No. 3–88. Instructions are set forth in the attached TEGL, for which written comments are being invited. After review of the comments, revised instructions may be issued in a TEGL, which would be published in the **Federal Register**. It is likely that no further revision of this TEGL may be effected, however.

Signed at Washington, DC, this 23rd day of November 1988.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Department of Labor, Employment and Training Administration; Training and Employment Guidance Letter No. 3–88

Date: November 25, 1988.

From: Roberts T. Jones, Assistant Secretary of Labor.

Subject: Transition policy for implementation of the New Worker Adjustment Assistance Program Under Amendments to Title III of the Job Training Partnership Act (JTPA).

Expiration Date: Continuing.

1. *Purpose.* To provide States with guidance regarding the transition from programs operating under existing provisions of Title III of JTPA, to programs operated under provisions of Title III as amended by the Economic Dislocation and Worker Adjustment Assistance (EDWWA) Act.

2. *References.* Subtitle D of Title VI of Pub. L. 100–418; interim final regulations published in the **Federal Register** on October 24, 1988, pps. 41572 *et seq.*

3. *Background.* Title VI, Subtitle D of the recently enacted Omnibus Trade and Competitiveness Act of 1988 essentially replaces the old Title III of JTPA with an entirely new dislocated worker program—EDWAA. Program Year (PY) 1988 will serve as the transition period for planning and implementation of the new program so that EDWAA can be fully operational beginning in PY 1989.

4. *Statutory and Regulatory Citations.* The "transition provisions" included in the Omnibus Trade and Competitiveness Act of 1988 at section 6305 state:

(a) General Rule.—Except as otherwise provided in this section, the amendments made by sections 6302 and 6304 shall be effective for program years beginning on or after July 1, 1989.

(b) Program Year 1988–1989.—The Secretary of Labor and Governors shall, during the program year beginning July 1, 1988, continue to administer title III of the Job Training Partnership Act in the same manner as such title was administered during prior program years, except to the extent necessary to provide for an orderly transition to and implementation of the amendments made by this subtitle. The Secretary and Governors may, for such purposes, use funds appropriated for fiscal year 1989 or any preceding fiscal year to carry out appropriate transition and

implementation activities. Such activities may include—

(1) Activities to prevent disruption in the delivery of services to program participants; and

(2) Planning for and implementation of such amendments. (Section 6305.)

Section 631.1(b) of the interim final regulations published in the **Federal Register** on October 24, 1988 states:

These regulations apply to JTPA programs funded by Fiscal Year 1989 and later appropriations for use in programs in Program Year 1989 and later. For JTPA Title III programs operated with funds appropriated for fiscal years before Fiscal Year 1989, the regulations which had been published in 20 CFR Part 631 (1988 ed.) continue to apply.

In addition, § 631.70(a) of the interim final regulations states:

In order to provide for the transition from Title III activities as administered thorugh PY 1988, the Governor may use a limited amount of funds allotted for PY 1988 to assist in implementing new provisions through June 30, 1989, under the following conditions:

(1) Funds are expended to cover only the one-time costs associated with the transition such as: Reconstitution of the SJTCC; establishment of substate areas and substate grantees; establishment of the State dislocated worker unit; establishment of management systems; development of the State plan; and development of substate plans;

(2) Funds so expended will not be taken into account when computing compliance with the cost limitations at 20 CFR 631.13, 53 FR 4277 (February 12, 1988) or the matching requirements at 20 CFR 731.14, 53 FR 4277 (February 12, 1988); and

(3) Allowable costs are limited to salaries and benefits of staff for the time spent on implementing new systems and linkage arrangements and other direct costs associated with the transition;

(4) No funds included paragraph (a)(2) of this section may be used for the purchase of equipment or computer hardware. (Section 6305(b).)

5. *Discussion of Limitation on Use of Funds Appropriated for Fiscal Years Before Fiscal Year (FY) 1989.*

As currently written, § 631.1 of the interim final regulations requires that funds appropriated prior to FY 1989 be used to fund current Title III program activities during the entire period of availability of those funds, except for transition costs incurred in PY 1988 in accordance with § 631.70.

The effect of this provision would be that in most States existing Title III programs and new EDWAA programs would be running simultaneously until all pre-PY 1989 formula-allotted funds were no longer available. Under the reallotment process, the amount of "new" formula-allotted funds available in a State for PY 1989 will be reduced by the amount of excess unexpended funds remaining available at the end of PY 1988. For some States, then, a significant proportion of the activity during PY 1989 would continue under the existing provisions, since those States would have limited PY 1989 formula-allotted funds for the new EDWAA program.

Based on comments received to date and further analysis of the potential adverse effect of this provision, the Employment and Training Administration intends ot revise the final regulations to ensure full implementation of the EDWAA program on July 1, 1989.

6. *Transition Policy.* The interim final regulations at § 631.1 are likely to be revised to reflect the following policy:

a. *Use of Funds.* The regulations published in the February 12, 1988 **Federal Register** apply to activity during PY 1988 (other than transition activities per § 631.70), and to any activities thereafter that are funded with carryforward funds into PY 1989 that are not subject to reallotment (up to 30 percent of the PY 1988 allotment).

All funds subject to reallotment (an amount equal to funds in excess of 30 percent of the PY 1988 allotment, plus the unexpended balance of the PY 1987 allotment) will be considered to be "new funds" and are subject to the provisions of the EDWAA Act and regulations in PY 1989.

b. *Transition Activities in PY 1988.* Planning for implementation of the EDWAA provisions will be primarily an administrative cost. Although the transition provisions in EDWAA provide for the use of funds for transition activities, the February 12 regulations at 20 CFR 629.39, and at 20 CFR 631.13 and 631.14, regarding cost limitations and matching requirements, could limit the availability of funds for this purpose.

In order to avoid potential problems regarding compliance with cost limitations and matching requirements, the transition provisions included in the interim final regulations at § 631.70(a) provide flexibility, as outlined above in section 4 of this Training and Employment Guidance Letter.

(1) A limited amount of funds may be used for one-time costs for transition to EDWAA. Allowable transition costs are costs directly related to activities such as the following:

(A) Establishment or modification of management systems to meet the requirements of section 311(b)(3)(C), as amended;

(B) Development of State policies and procedures; and

(C) Development of required linkages with other agencies.

(2) To be considered allowable transition costs, and thus excluded from the cost limitations and matching requirements, such costs must be accounted for separately.

(3) Allowable transition costs are limited to salaries and benefits of staff for time spent on transition activities and other direct costs of transition.

(4) Purchases of equipment and computer hardware are not allowable transition costs.

These provisions will allow and encourage the transition effort, while providing flexibility for States to meet current obligations.

c. *Existing Subagreements.* Each State will have at least a full-share allotment (as determined by the funding formula, and which will be announced in January 1989) for implementation of the new EDWAA activities in PY 1989. Because of the potential impact of reallotment on unexpended funds from prior and previous years, States should begin now to look at the status of these funds since:

(1) An amount equal to unexpended PY 1988 formula funds in excess of 30 percent of the allotment, plus all unexpended PY 1987 formula funds, must be used according to the new EDWAA provisions; and

(2) Only carryforward not subject to reallotment will be available to meet obligations under subagreements based on existing Title III provisions.

d. *Phase-out of Existing Title III in PY 1989.* Program activity under Title III will continue through June 30, 1989 according to the existing regulations published in the **Federal Register** on February 12, with the exception of transition activities discussed above. After June 30, 1989, phase-out of existing programs will be subject to the following provisions:

(1) Only carryforward not subject to reallotment (i.e., unexpended funds up to 30 percent of the PY 1988 formula allotment) will be available for existing programs and activities.

(A) Programs and activities funded with such carryforward will continue to be subject to the provisions in the February 12 regulations.

(B) Phase-out may continue until all such carryforward funds have been expended or until such funds are no longer available for expenditure (i.e., 3 years from the date funds were obligated to the State as permitted under section 161(b) of JTPA).

(C) Expenditures and participant activity under the existing programs should be separately identified on current reporting forms under existing requirements.

(2) All eligible participants in Title III programs on June 30, 1989 will be considered eligible for transfer to programs operated under the new provisions at any time beginning on July 1, 1989. Participants transferred are not to be counted in either the numerator or the denominator when computing the entered employment rate for the existing programs.

7. *Closure.* A process for closure of the current Title III program is being developed by the Department. Further information on this subject will be provided to the States by June 30, 1989.

8. *Action.* States should ensure that transition activities under Title III of JTPA are consistent with this policy guidance. In addition, it is suggested that States take the following specific actions during the remainder of PY 1988:

a. Estimate total accrued expenditures through the end of PY 1988 and the amount of prior and previous year funds that will be carried forward into PY 1989; and

b. If estimated carryforward is in excess of allowable carryforward, examine existing subagreements and activities to determine (1) if activities and expenditures can be accelerated during the remainder of PY 1988, or (2) if subagreements can be modified, terminated or funds otherwise recovered to reduce existing Title III obligations in PY 1989 to a level at or below the amount of allowable carryforward.

9. *Inquiries.* Questions regarding transition may be addressed to Robert N. Colombo on 202–535–0577 or Lance Grubb on 202–535–0719.

[FR Doc. 88–27827 Filed 12–1–88; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further informaton and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:	
FL88–17 (Jan. 8, 1988)	p. 144.
Maryland:	
MD88–1 (Jan. 8, 1988)	p. 416.
MD88–2 (Jan. 8, 1988)	pp. 422–423.
MD88–11 (Jan. 8, 1988)	pp. 4444–445.
MD88–15 (Jan. 8, 1988)	p. 454.
New Jersey:	
NJ88–3 (Jan. 8, 1988)	p. 637.
NJ88–4 (Jan. 8, 1988)	p. 659.
New York:	
NY88–2 (Jan. 8, 1988)	p. 689.
NY88–3 (Jan. 8, 1988)	pp. 702, 704.
NY88–4 (Jan. 8, 1988)	pp. 710–711.
NY88–12 (Jan. 8, 1988)	p. 792.
NY88–13 (Jan. 8, 1988)	pp. 802–803, 805.
NY88–17 (Jan. 8, 1988)	pp. 820–822, pp. 825–826.
NY88–18 (Jan. 8, 1988)	pp. 830–831.
Pennsylvania:	
PA88–12 (Jan. 8, 1988)	pp. 938–939.
PA88–14 (Jan. 8, 1988)	p. 945.
PA88–21 (Jan. 8, 1988)	p. 986.
PA88–24 (Jan. 8, 1988)	pp. 1006–1007.
Virginia:	
VA88–5 (Jan. 8, 1988)	p. 1128.
VA88–14 (Jan. 8, 1988)	p. 1150
VA88–15 (Jan. 8, 1988)	p. 1154.
VA88–17 (Jan. 8, 1988)	p. 1160b.
VA88–18 (Jan. 8, 1988)	p. 1160f.

Volume II

Illinois:	
IL88–1 (Jan. 8, 1988)	pp. 68–71.
IL88–3 (Jan. 8, 1988)	p. 114.
IL88–8 (Jan. 8, 1988)	p. 143.
IL88–13 (Jan. 8, 1988)	p. 174.
IL88–14 (Jan. 8, 1988)	pp. 184–185.
IL88–16 (Jan. 8, 1988)	pp. 204, 206.

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Indiana:
IN88–1 (Jan. 8, 1988) ..... p. 237.
IN88–5 (Jan. 8, 1988) ..... p. 292.
Missouri:
MO88–1 (Jan. 8, 1988)..... p. 583.

Wisconsin:
WI88–2 (Jan. 8, 1988) ..... p. 1088.
WI88–3 (Jan. 8, 1988) ..... p. 1092.
WI88–4 (Jan. 8, 1988) ..... pp. 1096–1097.
WI88–6 (Jan. 8, 1988) ..... pp. 1104–1105.
WI88–7 (Jan. 8, 1988) ..... p. 1108.
WI88–8 (Jan. 8, 1988) ..... p. 1113.
WI88–9 (Jan. 8, 1988) ..... pp. 1130–1131.
WI88–10 (Jan. 8, 1988) ..... p. 1135.
WI88–11 (Jan. 8, 1988) ..... pp. 1146–1148.
WI88–13 (Jan. 8, 1988) ..... pp. 1154–1156.
WI88–14 (Jan. 8, 1988) ..... p. 1158.
WI88–15 (Jan. 8, 1988) ..... pp. 1162–1163.
WI88–16 (Jan. 8, 1988) ..... p. 1166.

Volume III

California:
CA88–4 (Jan. 8, 1988)..... p. 71.
Colorado:
CO88–4 (Jan. 8, 1988)..... pp. 121–122.
Idaho:
ID88–1 (Jan. 8, 1988)..... p. 152.
North Dakota:
ND88–2 (Jan. 8, 1988)..... pp. 228–229.
Oregon:
OR88–1 (Jan. 8, 1988)..... pp. 302–304, pp. 306–307, pp. 311–312.
Washington:
WA88–1 (Jan. 8, 1988) ..... pp. 360–363, pp. 365, 368–370, pp. 374–375.

General Wage Determination Publication.

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 25th day of November 1988.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88–27564 Filed 12–1–88; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–88–214–C]

Snyder Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Snyder Coal Company, R.D. No. 2, Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Rothermel Slope (I.D. No. 36–07588) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1989. Copies of the petition are available for inspection at that address.

Date: November 23, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–27830 Filed 12–1–88; 8:45 am]

BILLING CODE 4510–43–M

Office of Workers' Compensation Programs

Report of Computer Matching Project Involving Certain Beneficiaries Under the Federal Employees' Compensation Act and Certain Subscribers in the Federal Employee Program of the Blue Cross and Blue Shield Association

SUMMARY: The Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), announces that the Federal Employee Program (FEP) of the Blue Cross and Blue Shield Association (BCBSA) will participate as a Source agency in a series of computer matches conducted by the OWCP of the names, Social Security Numbers (SSN's), dates of birth, etc. of certain beneficiaries who are both beneficiaries under the Federal Employees' Compensation Act (FECA) and subscribers in the FEP, in order to identify those beneficiaries receiving FECA medical benefits for medical bills the BCBSA has paid. Most such concurrent payments to the same beneficiary would entitle BCBSA to payment or reimbursement from OWCP.

a. Authority

The Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101, *et seq.*

b. Description of the Match

Among its responsibilities in the administration of the FECA, the OWCP must ensure that benefit payments are proper and that fraud and abuse are prevented. Computer matching is an efficient and unobtrusive method of determining whether beneficiaries are receiving medical benefits from both BCBSA and OWCP, for work-related injury.

The matching effort will compare the OWCP automated data records, including the name and Social Security Number (SSN), of recipients of benefits under the FECA with the BCBSA automated data records of FEP subscribers who have bills (i.e., claims), in order to determine whether the same

person is receiving benefits from both programs for the same bills.

The purpose of the matches is to detect, identify and follow-up on dual medical bill payments. BCBSA will provide a computer tape containing the selected beneficiaries' name, SSN, date of birth, sex code, and modified FEP I.D. number to OWCP. OWCP will match this data against similar automated records it maintains.

Following this, BCBSA will follow-up on the matches in order to determine whether BCBSA has paid bills which are attributable to the work-related injury upon which the FECA claim with the OWCP is based; to initiate action to assure the proper party is paying the bills; and, to assure no double payments have taken place.

c. Description of the Federal Records to be Matched

The OWCP system of records to be matched has been published as DOL/ESA–13, 47 FR 30382–30383, July 13, 1982, as amended in 48 FR 27, pages 5826, February 8, 1983, and as amended in 50 FR 5144–5145, February 6, 1985. The disclosure of information from the system of records for this matching program is authorized by routine use "b."

d. Period of the Match

The anticipated starting date of the first match pursuant to the Notice is on or about January 1, 1989, and recurring every six months thereafter.

e. Security

The personal privacy of individuals identified on the tapes will be protected by strict compliance with the Privacy Act (Pub. L. 93–579) and OMB Circular A–108. Information from the match will be used only for official purposes, and will not be released to the public. All automated source and match data will be password protected while resident on BCBSA's computers and only those with a need to know will be given access to the data sets or passwords; all tape and paper listings of the source and match information will be stored in a locked file, cabinet or room when not in use.

f. Disposition of the Records

The source data will be returned by OWCP to the BCBSA, whose property it remains. BCBSA may make a copy of the data provided on the OWCP tape(s) for creation of its own on-line database. The sole purpose of this database is to allow BCBSA to bill OWCP on approved cases for treatment related to the approved claim. After BCBSA has screened the data on all matched cases, and billed OWCP for reimbursement in the appropriate cases, all the data copied from the OWCP will be erased, or otherwise destroyed. BCBSA will not maintain any data provided by OWCP on any media after the above specified processing has been completed, except it may keep hard copies of such data to the extent that it is required, in order to justify its billing actions, by the terms of its contract with the Office of Personnel Management.

Signed at Washington, DC this 15th day of November 1988.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 88–27825 Filed 12–1–88; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Public Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Local Programs Section) to the National Council on the Arts which is being held on December 8, 1988, from 8:30 a.m.–5:30 p.m. and December 9, 1988, from 8:30 a.m.–4:00 p.m. in Room MO9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 has been changed.

As you were previously notified, a portion of the meeting is to be open to the public on December 9, 1988, from 2:00–4:00 p.m. for a policy discussion.

Also as previously reported, a session of this meeting on December 9, 1988 from 8:30 a.m.–2:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In addition, a session on December 8, 1988, from 8:30 a.m.–5:30 p.m. will also be for the same purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1865, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–27803 Filed 12–1–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47, issued to Gulf States Utilities Company (the licensee), for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment would delete the License Condition 2.C.(4), Attachment 2, Item 1 requirement to install an additional brace on the control rod drive hydraulic control units as used in the qualification testing in accordance with the licensee's application for amendment dated November 9, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 2, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petiton for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the

Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 9, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Local Public Document Room, Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 22nd day of November 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27794 Filed 12-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company, (the licensee), which revised the Technical Specifications for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to allow single recirculation loop operation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on May 13, 1988 (53 FR 17131). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see: (1) The application for amendment dated April 6, 1988, as supplemented October 20, 1988; (2) Amendment No. 31 Facility Operating License No. NPF-47; and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555; at Government Documents Department, Louisiana State

University, Baton Rouge, Louisiana 70803. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-II, IV, V and Special Projects.

Dated at Rockville, Maryland this 22nd day November, 1988.

For the Nuclear Regulatory Commission.

Walter A. Paulson, Project Manager,

Project Directorate-IV, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–27791 Filed 12–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Mississippi Power and Light Co., System Energy Resources, Inc., and South Mississippi Electric Power Association; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power and Light Company, System Energy Resource, Inc., and South Mississippi Electric Power Associates, (the licensees), for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Caliborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change the Technical Specifications (TS) by separating the 24-hour surveillance test of emergency diesel generators from the surveillance test simulating a loss of offsite power in conjunction with an ECCS actuation signal.

The proposed action is in accordance with the licensees' application for amendment dated July 26, 1988.

The Need for the Proposed Action

The proposed change is needed to permit flexibility in scheduling surveillance tests during refueling outages. Present TS required that the loss of offsite power test be initiated within five minutes of completing the 24-hour test. The proposed TS would allow separate tests provided a warmup period to achieve operating temperatures preceded the loss of offsite power tests.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed change to TS and has concluded that the proposed TS would provide a level of safety at least equivalent to the present TS. Therefore, the proposed amendment does not significantly increase the probability or consequences of any accident. The Commission also concludes that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that maybe released offsite and that there should be no significant increase in individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves requirements with respect to installation or use of a facility component located with the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concludes that there are no significant environmental effects that woud result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of "Grand Gulf Nuclear Station, Units 1 and 2," dated September 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 26, 1988, which is available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 28th day of November 1988.

For the Nuclear Regulatory Commission.

Elinor G., Adensam,

Director, Project Directorate II–1, Division of Reactor Projects I/II.

[FR Doc. 88–27792 Filed 12–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Mississippi Power and Light Co., System Energy Resources, Inc., and South Mississippi Electric Power Association; Environment Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power and Light Company, System Energy Resources, Inc. (SERI), and South Mississippi Electric Power Associates, for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change the Operating License (OL) by changing the schedule for implementing the recommendations of Regulatory Guide 1.97 for monitoring neutron flux in the reactor following an accident.

The proposed action is in accordance with SERI's application for amendment dated July 1, 1988.

The Need for the Proposed Action

The proposed change to the OL is required in order to allow adequate time to effectively plan, design and install a neutron flux monitoring system according to the recommendations of Regulatory Guide 1.97.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed delay in the installation of a post-accident qualified neutron flux monitoring system and has concluded that the delay would not significantly affect plant safety. During the initial phase of an accident, the existing neutron flux monitoring system would provide direct information on reactor power. Long-term post-accident information regarding reactor power can be deducted from other post-accident qualified instrumentation, such as control rod position indication, reactor pressure, suppression pool temperature, and safety relief valve actuation. Therefore, the proposed amendment does not significantly increase the probability or consequences of any accident. The Commission also concludes that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite and that there should be no significant increase in individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves requirements with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

The action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Units 1 and 2, dated September 1981.

Agencies and Persons Consulted

The NRC staff reviewed SERI's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statment for the proposed license amendment.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 1, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 28th day of November, 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II.

[FR Doc. 88-27793 Filed 12-1-88; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

PPR Commission Public Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, December 8, 1988, from 9:00 a.m. to 5:00 p.m. and on Friday, December 9, 1988, from 8:30 a.m. to 3:00 p.m. The meeting will be held in the Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW (between L and M Streets), in the New Hampshire Rooms I and II. The agenda for the meeting will include discussion of: An update on the Commission's evaluation of the Hsiao study, practice costs, coding of visits and surgical global services, practice guidelines, financial issues related to expenditure targets, utilization and quality review, issues related to the Medicare data system, trends in Part B expenditures, and ethics in physician referral.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 88-27783 Filed 12-1-88; 8:45 am]

BILLING CODE 6820-SE-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice of Meeting

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 13 and 14, 1988 at the Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in the Diplomat Room, Lobby Floor, at 9:00 a.m., December 13, 1988. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. in the Consulate Room also on the Lobby Floor, on December 13, 1988.

The Full Commission will meet at 8:30 a.m., December 14, 1988 in the Diplomat/Consulate Rooms.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 88-27924 Filed 12-1-88; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16657; (811-3058)]

Equitable Money Market Account, Inc.; Application

November 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Equitable Money Market Account, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant requests an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on October 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a

hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 23, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On May 7, 1980, Applicant registered under the 1940 Act as an open-end, diversified management investment company. Applicant filed a registration statement pursuant to the Securities Act of 1933 (the "1933 Act") on May 7, 1980, which registered an indefinite number of shares of its $.001 par value common stock. The registration statement became effective on October 16, 1980, and the initial public offering commenced shortly thereafter.

2. Applicant was organized as a Maryland corporation. On August 28, 1987, Applicant filed Articles of Dissolution with the Maryland State of Assessments and Taxation terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

3. On November 17, 1986, Applicant's Board of Directors approved an Agreement and Plan of Reorganization and Liquidation ("Plan") providing for (i) the sale of substantially all the assets of the Applicant's General Purpose portfolio to Alliance Capital Reserves Inc. (File No. 811–2835) in exchange for shares of beneficial interest of Alliance Capital Reserves to be distributed to shareholders of the General Purpose portfolio on the basis of their relative net asset values per share, (ii) the sale of substantially all the assets of Applicant's Government Securities portfolio to Alliance Government Reserves Inc. (File No. 811–2889) in exchange for shares of beneficial interest of Alliance Government Reserves to be distributed to shareholders of the Government Securities portfolio on the basis of their relative net asset value per share, and (iii) the subsequent dissolution of Applicant. Separate registration statements on Form N–14 were filed on December 22, 1986, registering the shares of beneficial interest of Alliance Capital Reserves and Alliance Government Reserves to be distributed pursuant to the Plan (File Nos. 33–10824 and 33–10828) ("Registration Statements"). The Registration Statements became effective on January 23, 1987. The Plan and the terms of the reorganization are set forth in those Registration Statements, which are incorporated by reference into the application.

4. On January 21, 1987, the respective Board of Trustees of Alliance Capital Reserves and Alliance Government Reserves approved the reorganization. Applicant's Board of Directors determined at their meeting that the reorganization was in Applicant's best interests and that the interests of its shareholders would not be diluted as a result of the reorganization. Accordingly, Applicant's Board recommended that the Plan be submitted to its shareholders for their approval.

5. On January 29, 1987, Applicant mailed a Prospectus/Proxy Statement forming a part of said Registration Statements to its shareholders of record. On February 27, 1987, a majority of the shareholders of the General Purpose and Government Securities Portfolios approved the Plan and subsequent dissolution of the Applicant.

6. On March 3, 1987, Applicant's reorganization and subsequent dissolution was consumated. The total number of shares of Alliance Capital Reserves distributed was 170,706,774, with an aggregate net asset value on such date of $170,706,774. The total number of shares of Alliance Government Reserves distributed was 5,648,931, with an aggregate net asset value on such date of $5,648,931.

7. Expenses of approximately $76,976 were incurred in connection with the reorganization, and consisted primarily of legal, printing and accounting costs. Alliance Capital Management Corporation, the Applicant's investment adviser, assumed these expenses.

8. Applicant does not have any shareholders and does not have any assets or liabilities which remain outstanding. Applicant is not a party to any litigation or administrative proceeding, and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–27821 Filed 12–01–88; 8:45 a.m.]

BILLING CODE 8010-01-M

[Rel. No. IC–16658; (811–3685)]

Equitable Tax-Free Account, Inc.; Application

November 28, 1988

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Equitable Tax-Free Account, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant requests an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 23, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On March 10, 1983, Applicant registered under the 1940 Act as an open-end, diversified management investment company. Applicant filed a registration statement pursuant to the Securities Act of 1933 (the "1933 Act") on March 10, 1983, which registered an indefinite number of shares of its $.001 par value common stock. The registration statement became effective on June 15, 1983, and the initial public offering commenced shortly thereafter.

2. Applicant was organized as a Maryland corporation. On August 28, 1987, Applicant filed Articles of Dissolution with the Maryland State Department of Assessments and Taxation terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

3. On November 17, 1986, Applicant's Board of Directors approved an Agreement and Plan of Reorganization and Liquidation ("Plan") providing for (i) the sale of substantially all of Applicant's assets to the General portfolio of Alliance Tax-Exempt Reserve Inc. (File No. 811–3586) in exchange for shares of beneficial interest of Alliance's General portfolio to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) Applicant's subsequent dissolution. A registration statement on Form N–14 was filed on December 22, 1986, registering the shares of beneficial interest of Alliance's General portfolio, which were distributed to the shareholders pursuant to the Plan (File No. 33–10825) ("Registration Statement"). The Registration Statement became effective on January 23, 1987. The Plan and the terms of the reorganization are set forth in the Registration Statement, which is incorporated by reference into the application.

4. On January 21, 1987, Alliance's Board of Trustees approved the reorganization. Applicant's Board of Directors determined at their meeting that the reorganization was in Applicant's best interests and that the interests of its shareholders would not be diluted as a result of the reorganization. Accordingly, Applicant's Board recommended that the Plan be submitted to Applicant's shareholders for their approval. On January 29, 1987, a Prospectus/Proxy Statement forming a part of the Registration Statement was mailed to Applicant's shareholders of record. On February 27, 1987, a majority of the Applicant's shareholders approved the Plan. Pursuant to the Plan, on March 3, 1987, Applicant transferred all its assets to Alliance's General Portfolio in exchange for shares of beneficial interest of the Alliance's General Portfolio. All of the shares of Alliance's General Portfolio received by Applicant were thereafter distributed to Applicant's shareholders in liquidation. The number of shares received by Applicant's shareholders was based on the relative net assets values per share of Applicant and Alliance's General Portfolio at the effective time of the reorganization, in accordance with the exchange ratio set forth in section 2(a) of the Plan. The total number of shares distributed was 14,208,536 with an aggregate net asset value on such date of $14,208,536.

5. Expenses of approximately $76,976 were incurred in connection with the reorganization, and consisted primarily of legal, printing and accounting costs. Alliance Capital Managment Corporation, the Applicant's investment adviser, assumed these expenses.

6. Applicant does not have any shareholders and does not have any assets or liabilities which remain outstanding. Applicant is not a party to any litigation or administrative proceeding, and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–27822 Filed 12–1–88; 8:45 a.m.]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 1086]

Berne Convention and "Berne Implementation Act of 1988"

The Department of State wishes to announce that the United States of America deposited its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works on November 16, 1988 with the Director General of the World Intellectual Property Organization in accordance with Article 29 of the Convention.

As stated in the instrument of accession, the Convention shall enter into force for the United States of America on March 1, 1989. We also wish to note that, in accordance with the "Berne Implementation Act of 1988" which was signed by the President on October 31, 1988.

> • • • this Act and the amendments made by this Act will take effect on the date on which the Berne Convention (as defined in Section 101 of title 17, United States Code) enters into force with respect to the United States.

Date: November 22, 1988.

William B. Milam,

Deputy Assistant Secretary for International Finance and Development.

[FR Doc. 88–27741 Filed 12–1–88; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance; Consolidated Rail Corp.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with a requirement of its railroad safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Consolidated Rail Corporation

Waiver Petition Docket Number SA–88–6

The Consolidated Rail Corporation (Conrail) requests a waiver of compliance with certain provisions of the safety appliance regulations (49 CFR Part 231). Conrail seeks a waiver of compliance with § 231.29, which incorporates by reference § 231.30(e)(2)(ii). The latter stipulates that, "On locomotives built before April 1, 1977, each vertical handhold must • • • Begin not less than five (5) inches nor more than thirty-two (32) inches above the safety tread surface • • •." Conrail is requesting a temporary waiver of compliance of 180 days' duration for its U23B class of locomotives numbered from 2700 to 2788, which have vertical handholds that begin at a point which is thirty-five (35) inches above the safety tread surface.

Conrail states that the subject locomotives were manufactured by the

General Electric Company in the time period of 1971 to 1974, with vertical handholds measuring thirty-five (35) inches above the switching step safety tread. The carrier is basing its petition on the fact that it knows of no reported injuries related to this deficiency over the 17 years that the locomotives have been in service. Conrail plans to fabricate new vertical handholds of increased length, to be applied at the various maintenance terminal locations within the 180-day time period.

Based on Conrail's presentation, FRA has tentatively approved Conrail's petition and granted an interim waiver of 180 days, permitting the carrier to begin the retrofitting of vertical handholds on the subject locomotives, while its petition is being announced for public comment, considered by FRA, and finally resolved.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number SA–88–6) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before January 18, 1989 will be considered by FRA before final judgment is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on November 18, 1988.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–27774 Filed 12–1–88; 8:45 am]

BILLING CODE 4910–06–M

Petitions for Exemption or Waiver; Long Island Rail Road Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that two railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with certain requirements of the regulations entitled Hours of Service of Railroad Employees (49 CFR Part 228).

Long Island Rail Road Company (LIRR)

[FRA Waiver Petition Docket No. HS–88–22]

The LIRR seeks a permanent waiver of compliance with 49 CFR 228.17(a)(5), which requires that "Each carrier shall keep, for each dispatching district, a record of train movements made under the direction and control of a dispatcher who uses telegraph, telephone, radio, or any other electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders pertaining to train movements. The following information shall be included in the record:

* * * Identification of enginemen and conductors and their times on duty * * *"

The LIRR states that it seeks this waiver of the records requirement of the Hours of Service of Railroad Employees because it currently operates over 800 passenger, equipment and freight trains daily, utilizing approximately 295 train and engine crews. The LIRR also states that it operates a 24-hour, 7-day-a-week centralized crew dispatchers' office which can provide the information required by 49 CFR 228.17(a)(5) in a matter of minutes, through a dedicated intercom system from the Chief Train Dispatcher to the crew dispatchers' office. The LIRR feels that due to the high volume of train traffic and their ability to track train and engine crews, that the burden of recordkeeping and reporting is excessive for the carrier's operation. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

New Jersey Transit Rail Operations (NJTR)

[FRA Waiver Petition Docket No. HS–88–24]

New Jersey Transit Rail Operations seeks a permanent waiver of compliance with 49 CFR 228.17(a)(4), which requires that "Each carrier shall keep, for each dispatching district, a record of train movements made under the direction and control of a dispatcher who uses telegraph, telephone, radio, or any other electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders pertaining to train movements. The following information shall be included in the record:

* * * Weather conditions at 6-hour intervals * * *"

NJTR states that it seeks this waiver of the records requirement of the Hours of Service of Railroad Employees because it currently has realized a substantial reduction of operators across the system as a result of rationalization projects. A total of 49 operator positions were abolished resulting in a loss of personnel, at initial and final terminals and other locations, who previously furnished the weather conditions in compliance with the regulation.

NJTR, realizing the importance of weather extremes as they relate to rail operations, contracts with a weather forecasting service from December 1 to May 1 of each year. Arrangements have been made with the forecasting service to divide the State of New Jersey into seven climatological zones, including southern New York State. The weather service furnishes reports twice daily, via telecopier, to the Chief Train Dispatcher's Officer. The daily reports are supplemented by warnings as necessary. NJTR further states that reporting by/ meteorolgists is vastly superior to reporting by operators; for example, an operator can read the temperature on the thermometer and observe overcast skies, but he is normally unaware that the zone is experiencing heavy snow fall, sleet or other extremes 10 miles from his location.

In addition, NJTR states that during other periods of the year, weather extremes are rare. Any impending storm is tracked by the Train Dispatcher's Officer utilizing the local weather bureau forecast for the area involved. During the period December 1 to May 1 of each year, the weather reports will be made part of the computerized train sheets and retained in compliance with FRA regulations. The petitioner indicates that granting the waiver is in the public interest and will not adversely affect safety.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number HS–88–22 or Waiver Petition Docket Number HS–88–23) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before January 18, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.—5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on November 18, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-27775 Filed 12-1-88; 8:45 am]

BILLING CODE 4910-06-M

Petitions for Exemption or Waiver; Sierra Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that one railroad has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Sierra Railroad Company (SERA)

[FRA Waiver Petition Docket No. HS-8-23]

The SERA seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The SERA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The SERA provides service on over 49 miles of track from a connection with the Southern Pacific Transportation Company and The Atchison, Topeka and Santa Fe Railway Company at Oakdale, California, to Standard, California. Operations are based at Sonora, California.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS-87-20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before January 18, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.—5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on November 18, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-27776 Filed 12-1-88; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0059.
Form Number: ATF F 5120.29 (698 Supplemental).
Type of Review: Extension.
Title: Bonded Wineries-Formula and Process for Wine, Letterhead Applications and Notices Relating to Operations.
Description: ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
Respondents: Businesses or other for-profit, and Small businesses or organizations.
Estimated Number of Respondents: 832.
Estimated Burden Hours Per Response: 1 hour and 50 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,520 hours.

OMB Number: 1512-0116.
Form Number: ATF F 2145 (5200.11).
Type of Review: Extension.
Title: Notice of Release/Return of Tobacco Products, Cigarette Papers and Tubes.
Description: ATF F 2145 (5200.11) documents the removal or return of tobacco products, without payment of tax from U.S. Customs custody or return by a U.S. Government agency to bonded tobacco products factories and manufacturers of cigarette papers and tubes. The form identifies the establishment that is responsible for the tax on tobacco articles, products released from Customs custody, products returned and the authorizing Government official.
Respondents: Businesses and other for-profit, Federal agencies or employees, and Small businesses or organizations.
Estimated Number of Respondents: 153.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 306 hours.

OMB Number: 1512.0392.
Form Number: ATF REC 5190/1.
Type of Review: Extension.
Title: Record of Things of Value Furnished to Retailers Under the Federal Alcohol Administration Act.
Description: These records (bills of sale, invoices) are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers. These records are commercial invoices showing the furnishing of goods to retailers.

Respondents: Individuals or housholds, Businesses or other for-profit and Small businesses or organizations.

Estimated Number of Recordkeepers: 12,665.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–27753 Filed 12–1–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0198

Form Number: ATF REC 5110/03—ATF F 5110.28.

Type of Review: Extension.

Title: Distilled Spirits Plant (DSP) Processing Records and Report.

Description: The information collection is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 133.

Estimated Burden Hours Per Response/Recordkeeper: 7 hours.

Frequency of Response: Monthly.

Estimated Total Recordkeeping/ Reporting Burden: 3,857 hours.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–27754 Filed 12–1–88; 8:45 am]

BILLING CODE 4810–25–M

Office of Foreign Assets Control

Issuance by Government of Japan of Certificates Verifying Non-Cuban Origin of Nickel-Bearing Materials Manufactured by Certain Japanese Steel Corporations

AGENCY: Department of the Treasury.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Brown, Senior Enforcement Policy Analyst, Office of Foreign Assets Control, Treasury Department, 1331 G Street, NW., Washington, DC 20220, tel.: 202/376–0431.

Certificates of origin are now available for importation into the United States from Japan of nickel-bearing materials produced by the Shunan Works of Nisshin Steel Corporation. These certificates are issued pursuant to an arrangement between the Government of Japan and the Government of the United States. The certificates, which are issued by the Japanese Ministry of International Trade and Industry, attest that the materials with respect to which they are issued do not contain nickel of Cuban origin. Each certificate will bear the following statement:

"The Ministry of International Trade and Industry (MITI) hereby certifies that the nickel-bearing products described herein do not contain nickel of Cuban origin and that this certificate has been issued in accordance with procedures administered by MITI to which prior consent was given by the Government of the United States on June 27, 1983." Each certificate shall bear as a footnote the statement: "Issued in connection with the United States Cuban Assets Control Regulations."

Nickel-bearing material produced by the Shunan Works of the Nisshin Steel Corporation may be imported under the general license in § 515.536(c) of the Cuban Assets Control Regulations (31 CFR Part 515) in accordance with the provisions of that section and of § 515.808 of the Regulations. Such merchandise will be permitted entry through United States Customs if a certificate of origin as described above and issued by MITI is presented to the U.S. Customs authorities at the point of entry. Nickel bearing material produced by other Japanese steel producers is not required to be accompanied by a certificate as a condition for entry into the United States.

(Sec. 5, 40 Stat. 415, as amended, 50 U.S.C. App. 5; Sec. 620(a), 75 Stat. 445, 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR Comp. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748)

Dated: November 3, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 3, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88–27742 Filed 11–29–88; 2:09 pm]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 232
Friday, December 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 2, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27944 Filed 11–30–88; 4:09 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 9, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27945 Filed 11–30–88; 4:09 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, December 9, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27943 Filed 11–30–88; 4:09 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 13, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Program Objectives, Second Quarter, FY 1989.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27946 Filed 11–30–88; 4:09 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, December 13, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27947 Filed 11–30–88; 4:08 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 15, 1988.

PLACE: 2033 K Street NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Applications for designation as contract markets for:

—Morgan Stanley Capital International Europe, Australia, and Far East (EAFE) Stock Index/Chicago Mercantile Exchange.
—International Market Index/Coffee, Sugar and Cocoa Exchange.
—Regulation of Hybrid and Related Instruments/proposed rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27948 Filed 11–30–88; 4:08 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 16, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27949 Filed 11–30–88; 4:08 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, December 16, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Sales Practice Review, Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27950 Filed 11–30–88; 4:08 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 23, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27951 Filed 11–30–88; 4:08 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 30, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27952 Filed 11–30–88; 4:08 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION: .

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, page 47899, November 28, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: November 29, 1988.

CHANGES: The meeting was cancelled.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

November 30, 1988.

[FR Doc. 88–27886 Filed 11–30–88; 3:23 pm]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 29, 1988.

TIME AND DATE: 10:00 a.m., Thursday, December 1, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Secretary of Labor, on behalf of Joseph Gabossi v. Western Fuels-Utah, Inc.*, Docket No. WEST 86–24–D. (Issues include consideration of a petition for discretionary review.)

3. *Local Union 2333, Dist. 29, UMWA v. Ranger Fuel Corporation*, Docket No. WEVA 86–439–C. (Issues include consideration of a petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that these items be included on the agenda and that no earlier announcement of the additions were possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–27922 Filed 11–30–88; 3:28 p.m.]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, December 7, 1988.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Document of Cooperation between NCUA and NASCUS (National Association of State Credit Union Supervisors).

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Wednesday, December 7, 1988.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Appeal of Regional Director's Denial of Charter Application. Closed pursuant to exemption (8).
3. PC Program. Closed pursuant to exemptions (2), (8), and (9)(B).
4. Special Assistance under section 208 of the FCU Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88–27902 Filed 11–30–88; 2:36 pm]

BILLING CODE 7535–01–M

LEGAL SERVICES CORPORATION, BOARD OF DIRECTORS MEETING

TIME AND DATE: The Board of Directors meeting will be held on December 10, 1988. The open meeting will commence at 10:00 a.m., or immediately following the previous meeting, and continue until 2:30 p.m. The Executive Session will be held from 12:00 p.m. until 1:00 p.m.

PLACE: The Loews L'Enfant Plaza Hotel, Monet II Room (2nd floor), 480 L'Enfant Plaza, SW., Washington, DC 20024.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b (c)(2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)).

MATTERS TO BE CONSIDERED:

Executive Session (Closed)

1. Personnel and Personal Matters.
2. Litigation and Investigation Matters.

Board of Directors Meeting (Open)

1. Approval of Agenda.
2. Approval of Minutes—November 19, 1988.
3. Report from the President.
4. Election of Chairman and Vice Chairman.
5. Report from the Audit and Appropriations Committee.
6. Consideration of Proposed Revisions to Part 1626, Restrictions on Aliens.
7. Discussion of Task Force on Client Training.

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION:

Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: December 1, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–27978 Filed 12–1–88; 9:00 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION, AUDIT AND APPROPRIATIONS COMMITTEE MEETING

TIME AND DATE: The meeting will be held on Saturday, December 10, 1988, commencing at 8:30 a.m. and continuing until 10:00 a.m.

PLACE: The Loews L'Enfant Plaza Hotel, Monet II Room (2nd floor), 480 L'Enfant Plaza, SW., Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—November 19, 1988
3. Consideration of Fiscal Year 1990 LSC Budget

Discussion and Public Comments follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: December 1, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–27979 Filed 12–1–88; 9:16 am]

BILLING CODE 7050–01–M

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federal register

Friday
December 2, 1988

Part II

Office of Personnel Management

5 CFR Part 737

Post Employment Conflict of Interest, Final Regulation

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 737

Post Employment Conflict of Interest

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing a final regulation under the Ethics in Government Act of 1978 which (1) designates certain positions subject to the post employment conflict of interest regulations applicable to "Senior Employees," and (2) designates certain statutory and non-statutory agencies/bureaus for the purpose of limiting the application of the post employment rules which prohibit, for one year after leaving Government service, a former high-level "senior employee" from representing anyone in an attempt to influence his or her former agency on a matter pending before, or of substantial interest to, such agency.

EFFECTIVE DATE: December 2, 1988.

ADDRESS: Office of Government Ethics, P.O. Box 14108, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Karen Bovard or Robert Flynn at (202) 632-7642.

SUPPLEMENTARY INFORMATION: Subsection 207(d)(1)(C) of Title 18 U.S.C., contained in Title V of the Ethics in Government Act of 1978, as amended, ("the Act"), (Pub. L. 95-521), gives the Director of the Office of Government Ethics ("OGE") authority to designate (1) certain employee positions for purposes of the restrictions of 18 U.S.C. subsections 207(b)(ii) and 207(c), and (2) agencies and bureaus, within a parent department or agency, having separate and distinct subject matter jurisdiction; i.e., "separate non-statutory agencies/bureaus." Regulations implementing this authority were published on February 1, 1980 (45 FR 7402). Those regulations designated as "Senior Employees" all employees in a position in any pay system for which the basic rate of pay is equal to or greater than that for GS-17 of the General Schedule, as prescribed by 5 U.S.C. 5332, or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1978, subject to specific exemptions to be made by OGE. The regulations also set forth those separate statutory (18 U.S.C. 207(e)) agencies and bureaus and those separate non-statutory agencies/bureaus (18 U.S.C. 207(d)(1)(C)) as determined by the Director, OGE, to be qualified for designation at the time of publication.

Regarding "Senior Employee" designations, upon review of agency recommendations, made pursuant to the requirement set forth in 5 CFR 737.25(b)(1), the Director, OGE, determined that only those non-exempted positions, i.e., those subject to the prohibitions of 18 U.S.C. 207(b)(ii) and (c), would be published in the **Federal Register.** A partial list of such "designated" positions was contained in the February 1, 1980, **Federal Register** publication (45 FR 7402). That list was followed by another partial list which was published on February 8, 1980 (45 FR 8544). Annual amendments to the list were published on November 14, 1980 (45 FR 75500); March 5, 1982 (47 FR 9694); February 25, 1983 (48 FR 8188); March 15, 1984 (49 FR 9808); July 31, 1985 (50 FR 31096); July 16, 1986 (51 FR 25645); and November 12, 1987 (52 FR 43442). The combined lists represented all 18 U.S.C. 207(d)(1)(C) positions which were not exempted by the Director, OGE. This regulation consolidates and amends the previously published lists and is based upon a review of agency annual submissions made pursuant to 5 CFR 737.25(b)(1). All positions designated pursuant to 5 U.S.C. 207(d)(1)(C) not previously designated are marked by an asterisk. In accordance with 5 CFR 737.25(d), designation of such positions shall not become effective until the last day of the fifth full calendar month after this publication.

Section 737.25 of the final regulations sets forth the standards and procedures to be applied in determining which positions shall be designated. OGE also issued a memorandum to heads of departments, independent agencies, commissions and Government corporations/designated agency ethics officials dated April 26, 1979, giving additional information and guidance on this subject. Section 737.11 sets forth the standards and procedures to be applied in determining which separate statutory and non-statutory agencies and bureaus shall be designated.

The Director, OGE, in consultation with each department and agency concerned, has determined that the positions set forth below qualify for designation as "Senior Employee" positions. 5 CFR 737.33 is hereby amended accordingly. The Director has further determined, in consultation with each department or agency concerned, the separate statutory and non-statutory agencies/bureaus set forth below qualify for such designation.

The "Senior Employee" positions listed constitute all such positions designated under the provisions of subsection 207(d)(1)(C) of title 18 U.S.C. for the departments and agencies listed. In accordance with 5 CFR 737.25(d), subsequent designation of positions within the department or agencies listed shall not be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director, OGE, of intention to so designate. Such fair notice shall not apply to subsequent designations made under the rule concerning position shifting set forth in 5 CFR 737.25(i).

In several cases, a position in one agency has been designated while a position of similar title in another has not. OGE has, in the exercise of its discretion, accorded some deference to the decision of a department or agency to designate a position where that decision was in favor of designation above minimum OGE standards. As OGE conducted the review necessary for these designations, it became apparent that, because of the subject matter of a department's or agency's business, the gravity of the "revolving door" problems varied significantly from agency to agency. Moreover, positions which were ostensibly similarly titled and described nevertheless had different roles from agency to agency. Also, OGE believes it desirable that the balance between post employment restrictions and impact on recruiting and retention be adjudged on an agency level, as long as minimum standards are met.

Positions automatically designated by 18 U.S.C. 207(d)(1) (A) and (B) are not included in this publication.

This is a final not a proposed regulation. The Director of the Office of Government Ethics, acting pursuant to 5 U.S.C. 553(b)(3)(A), has found good cause for waiving the general notice of proposed rulemaking and the 30 day delay in effectiveness. This regulation is interpretive in nature, exempt from 5 U.S.C. 553.

E.O. 12291, Federal Regulation

OGE has determined that this is not a major rule as defined under section 1(B) of E.O. 12291.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because it only effects Federal employees.

List of Subjects in 5 CFR Part 737

Conflicts of interest, Government employees.

U.S. Office of Personnel Management.

Frank Q. Nebeker,

Director, Office of Government Ethics.

Accordingly, the Office of Personnel Management is amending 5 CFR Part 737 as follows:

PART 737—[AMENDED]

1. The authority citation for Part 737 continues to read as follows:

Authority: Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979), 5 U.S.C. Appendix; Pub. L. 96–150 (November 11, 1983); 18 U.S.C. 207.

2. Section 737.31 is revised to read as follows:

§ 737.31 Separate statutory agencies: Designations.

In accordance with the provisions of 18 U.S.C. 207(e) and § 737.13, each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it separate statutory agencies or bureaus as set forth below:

Parent Agency: EXECUTIVE OFFICE OF THE PRESIDENT
Separate Statutory Components:
- Office of Management and Budget
- Council of Economic Advisers
- National Security Council
- United States Trade Representative
- Council on Environmental Quality
- Office of Science and Technology Policy
- Office of Administration
- White House Office and the Office of Policy Development
- Office of the Vice President

Parent Agency: DEPARTMENT OF THE TREASURY
Separate Statutory Components:
- Bureau of Alcohol, Tobacco and Firearms
- Bureau of Engraving and Printing
- Bureau of the Mint
- Comptroller of the Currency
- Internal Revenue Service
- Bureau of the Public Debt
- Financial Management Service
- United States Customs Service
- United States Secret Service

Parent Agency: FEDERAL EMERGENCY MANAGEMENT AGENCY
Separate Statutory Component: United States Fire Administration
Parent Agency: OFFICE OF PERSONNEL MANAGEMENT
Separate Statutory Component: Office of Government Ethics
Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES
Separate Statutory Components:
- Food and Drug Administration
- Public Health Service
- Social Security Administration

Parent Agency: DEPARTMENT OF TRANSPORTATION
Separate Statutory Components:
- Federal Aviation Administration
- Federal Highway Administration
- Federal Railroad Administration
- Maritime Administration
- National Highway Traffic Safety Administration
- Saint Lawrence Seaway Development Corporation
- United States Coast Guard
- Urban Mass Transportation Administration

Parent Agency: DEPARTMENT OF LABOR
Separate Statutory Components:
- Bureau of Labor Statistics
- Mine Safety and Health Administration
- Occupational Safety and Health Administration

Parent Agency: DEPARTMENT OF JUSTICE
Separate Statutory Components:
- Bureau of Prisons (including Federal Prison Industries, Inc.)
- Community Relations Service
- Drug Enforcement Administration
- Federal Bureau of Investigation
- Foreign Claims Settlement Commission
- National Institute of Justice and Bureau of Justice Statistics [1]
- Immigration and Naturalization Service
- Independent Counsel
- United States Parole Commission

Parent Agency: DEPARTMENT OF DEFENSE
Separate Statutory Components:
- Department of the Army
- Department of the Navy
- Department of the Air Force
- Defense Mapping Agency

Parent Agency: DEPARTMENT OF ENERGY
Separate Statutory Component:
- Federal Energy Regulatory Commission

Parent Agency: DEPARTMENT OF COMMERCE
Separate Statutory Components:
- Economic Development Administration
- Patent and Trademark Office
- National Oceanic and Atmospheric Administration
- Bureau of the Census

Parent Agency: NATIONAL CREDIT UNION ADMINISTRATION
Separate Statutory Components:
- Central Liquidity Facility

Parent Agency: MERIT SYSTEMS PROTECTION BOARD
Separate Statutory Component:
- Office of the Special Counsel

3. Section 737.32 is revised to read as follows:

§ 737.32 Separate components of agencies or bureaus: Designations.

In accordance with the provisions of 18 U.S.C. 207(d)(1)(C) and § 737.14, each of the component agencies or bureaus as set forth below is determined, for purposes of 18 U.S.C. 207(c) and this Part 737, to be separate from the remaining agencies and bureaus of its parent agency (except such agencies and bureaus as specified):

Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES
Separate Component:
- Health Care Financing Administration

[1] These two components shall not, for purposes of 18 U.S.C. 207(c), be considered separate from one another but only from other separate components of the Department of Justice.

Parent Agency: DEPARTMENT OF LABOR
Separate Components:
- Employment and Training Administration
- Employment Standards Administration

Parent Agency: DEPARTMENT OF DEFENSE
Separate Components:
- Defense Communications Agency
- Defense Intelligence Agency
- Defense Nuclear Agency
- National Security Agency
- Defense Logistics Agency

Parent Agency: DEPARTMENT OF STATE
Separate Statutory Components:
- Foreign Service Grievance Board
- International Joint Commission, United States and Canada (American Section)

Parent Agency: DEPARTMENT OF JUSTICE
Separate Statutory Components:
- Office of United States Attorney (for each judicial district (95))—however, each such Office is not designated as separate from the Office of the U.S. Marshal for the same judicial district.
- Office of the United States Marshal (for each judicial district (95))—however, each such Office is not designated as separate from the Office of the U.S. Attorney for the same judicial district.
- Antitrust Division
- Civil Rights Division
- Land and Natural Resources Division
- Tax Division
- Criminal Division
- Civil Division

Parent Agency: DEPARTMENT OF COMMERCE
Separate Components:
- International Trade Administration
- Minority Business Development Administration
- National Telecommunication and Information Administration

4. Section 737.33 is revised to read as follows:

§ 737.33 "Senior Employee" designations.

In accordance with § 737.25(b)(1), the following employee positions have been designated as "Senior Employee" positions for purposes of subsections 207(b)(ii) and (c) of Title 18, U.S.C., as amended.[2]

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF ADMINISTRATION)

Positions:

AD Director, Automated Systems Division.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (COUNCIL OF ECONOMIC ADVISERS)

Positions: No Section 207(d)(1)(C) Designations.

[2] All positions designated pursuant to section 207(d)(1)(C) not previously designated are marked by an asterisk (*). Those positions marked by a double asterisk (**) are former executive level positions which were converted to SES positions. Positions automatically designated by section 207(d)(1)(A) and (B) are not shown.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (COUNCIL ON ENVIRONMENTAL QUALITY)

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF MANAGEMENT AND BUDGET)

Positions:

SES Executive Associate Director
SES Executive Assistant to the Director
SES General Counsel
SES Deputy General Counsel
SES Assistant Director for Public Affairs
SES Assistant Director for Communications and Public Liaison
SES Assistant Director for Legislative Affairs
SES Associate Director for Economic Policy
SES Deputy Associate Director for Economic Policy
SES Assistant Director for Legislative Reference
SES Deputy Assistant Director for Legislative Reference
SES Assistant Director for Administration
SES Assistant Director for Budget Review
SES Deputy Assistant Director for Budget Review
SES Administrator, Office of Information and Regulatory Affairs
SES Deputy Administrator, Office of Information and Regulatory Management
SES Associate Director for Management
SES Deputy Associate Director for Management Improvement
SES Deputy Associate Director for Financial Management
SES Deputy Associate Director for Planning and Communications Management
SES Associate Director for National Security and International Affairs
SES Deputy Associate Director for Special Studies, National Security and International Affairs
SES Deputy Associate Director for National Security
SES Deputy Associate Director for International Affairs
SES Associate Director for Human Resources, Veterans, and Labor
SES Deputy Associate Director for Special Studies, Human Resources, Veterans and Labor
SES Deputy Associate Director for Health and Income Maintenance
SES Deputy Associate Director for Labor, Veterans and Education
SES Associate Director for Natural Resources, Energy and Science
SES Deputy Associate Director for Special Studies, Natural Resources, Energy and Science
SES Deputy Associate Director for Natural Resources
SES Deputy Associate Director for Energy and Science
SES Deputy Chief, Energy and Science Division
SES Associate Director for Economics and Government
SES Deputy Associate Director for Special Studies, Economics and Government
SES Deputy Associate Director for Transportation, Commerce and Justice
SES Deputy Associate Director for Housing, Treasury and Personnel

Office of Federal Procurement Policy

SES Deputy Administrator for Procurement
SES* Associate Director for Privatization

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (NATIONAL SECURITY COUNCIL)

Positions:

GS–18 Special Assistant to the President (5)
GS–17 Senior Staff Members (3)

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF SCIENCE AND TECHNOLOGY POLICY)

Positions:

SES Executive Director
SES Assistant Director for Defense Technology and Systems
SES Assistant Director for Energy, Natural Resources, and International Affairs
SES Assistant Director for General Science
SES Assistant Director for Institutional Relations
SES Assistant Director for Life Sciences
SES Assistant Director for Space Science and Technology

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE)

Positions:

SES General Counsel
SES Chief Textile Negotiator
SES Assistant U.S. Trade Representative—Congressional Affairs
SES Assistant U.S. Trade Representative—Public, Private, Intergovernmental Affairs
SES Special Negotiator for U.S.-Canada
SES Senior Deputy General Counsel
SES Deputy General Counsel
SES Assistant U.S. Trade Representative—Trade Policy Coordination
SES Assistant U.S. Trade Representative—Industry and Services
SES Assistant U.S. Trade Representative—Agriculture
SES Assistant U.S. Trade Representative—Europe and the Mediterranean
SES Assistant U.S. Trade Representative—Japan and China
SES Assistant U.S. Trade Representative—Trade Policy and Analysis
SES Assistant U.S. Trade Representative—Asia and the Pacific
SES Assistant U.S. Trade Representative—GATT Affairs
SES Assistant U.S. Trade Representative—Multilateral Negotiations
SES Assistant U.S. Trade Representative—Latin America, Caribbean and Africa
SES Counsellor to USTR
SES Deputy Assistant U.S. Trade Representative—Industry and Services
SES Deputy Assistant U.S. Trade Representative—GATT Affairs
SES Director—Computer Operations
SES Assistant U.S. Trade Representative—Administration

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES)

Positions:

AD Chief of Staff

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (THE WHITE HOUSE OFFICE)

Positions: No section 207(d)(1)(C) designations.

AGENCY: DEPARTMENT OF AGRICULTURE

Positions:

Office of the Secretary

SES Deputy Assistant Secretary for Administration
SES Deputy Assistant Secretary for Food and Consumer Services
SES Deputy Assistant Secretary for Natural Resources and Environment (2)
SES Deputy Under Secretary for Small Community and Rural Development
SES Deputy Under Secretary for International Affairs and Commodity Programs
SES Deputy Assistant Secretary for Marketing and Inspection Services (2)
SES Deputy Assistant Secretary for Economics
SES Deputy Assistant Secretary, Science and Education
SES Deputy Assistant Secretary for Governmental and Public Affairs

Office of the Inspector General

SES Deputy Inspector General
SES Assistant Inspector General for Audit
SES Assistant Inspector General for Investigations
SES Deputy Assistant Inspector General for Audit (2)
SES Deputy Assistant Inspector General for Investigations (2)

Office of the General Counsel

SES Deputy General Counsel

Office of Administrative Law Judges

No section 207(d)(1)(C) designations.

Office of Personnel

SES Director
SES Deputy Director

Office of Advocacy and Enterprise

SES Director
SES Associate Director, Equal Opportunity
SES Associate Director, SBDU

Office of Finance and Management

SES Director
SES Deputy Director
SES Assistant Director, Program Development
SES Director, National Finance Center (NFC)

SES* Director, Information Resources Management Division
SES* Director, Financial Services Division
SES* Director, Application Systems Division
SES* Director, Thrift Savings Plan Development Division

Office of Information Resources Management

SES Director
SES* Associate Director for Policy
SES* Associate Director for Operations

Office of Operations

SES Director

Office of Budget and Program analysis

SES Director

World Food and Agricultural Outlook

SES Chairperson
SES Deputy Chairperson

Economics Research Service

SES Administrator
SES Associate Administrator

National Agricultural Statistics Service

SES Administrator
SES Deputy Administrator for Programs
SES Deputy Administrator for Operations

Economics Management Staff

SES Director

Economic Analysis Staff

SES Director

Agricultural Cooperatives Service

SES Administrator

Rural Electrification Administration

SES Deputy Administrator—Program Operations
SES Deputy Administrator—Policy and Program Support
SES Assistant Administrator, Electric
SES Assistant Administrator, Telephone

Farmers Home Administration

SES Associate Administrator
SES Deputy Administrator for Management
SES Deputy Administrator Program Operations

Agricultural Research Service

SES Deputy Administrator, National Program Staff
SES Associate Deputy Administrator, National Program Staff
SES Deputy Director, Administrative Management
SES Associate Deputy Director, Administrative Management
SES Administrator, Agricultural Research Service
SES Associate Administrator, Agricultural Research Service

Extension Service

SES Administrator
SES Associate Administrator

Cooperative State Research Service

SES Administrator
SES Associate Administrator
SES* Associate Administrator, Grants and Program Systems

Soil Conservation Service

SES Chief
SES Associate Chief
SES Deputy Chief for Administration
SES Deputy Chief for Technology
SES Deputy Chief for Programs
SES* Assistant to the Chief, Strategic Planning and Budget Analysis

Forest Service

SES Chief
SES Associate Chief
SES Deputy Chief for Administration
SES Deputy Chief for Research
SES Associate Deputy Chief for Research (2)
SES Deputy Chief, National Forest System
SES Associate Deputy Chiefs, National Forest System (2)
SES Deputy Chief, State and Private Forestry
SES Associate Deputy Chief, State and Private Forestry
SES Deputy Chief for Programs and Legislation
SES Associate Deputy Chief for Programs and Legislation

Agricultural Stabilization and Conservation Service

SES Administrator
SES Associate Administrator
SES Deputy Administrator, State and County Operations
SES Deputy Administrator, Management
SES Deputy Administrator for Program Planning and Development
SES Deputy Administrator, Commodity Operations

Federal Crop Insurance Corporation

SES Manager
SES Deputy Manager
SES Assistant Manager for Actuarial and Underwriting Services

Foreign Agricultural Service

SES Administrator
SES Associate Administrator
SES Associate Administrator and General Sales Manager

Office of International Cooperation and Development

SES Administrator
SES Associate Administrator
SES Assistant Administrator for International Research and Development

Food Safety and Inspection Service

SES Administrator
SES Associate Administrator
SES Deputy Administrator, Meat and Poultry Inspection Operations
SES Deputy Administrator, Technical Services
SES Deputy Administrator, Administrative Management
SES Deputy Administrator, Science
SES Deputy Administrator, International Programs

Food and Nutrition Service

SES Administrator
SES Associate Administrator

Agricultural Marketing Service

SES Administrator
SES Deputy Administrator, Marketing Programs
SES Deputy Administrator, Commodity Services
SES Director, Compliance Staff

Packers and Stockyards

SES Administrator
SES Deputy Administrator

Animal and Plant Health Inspection Service

SES Administrator
SES Associate Administrator
SES Deputy Administrator, Veterinary Services
SES Deputy Administrator, Plant Protection and Quarantine
SES Deputy Administrator for Management and Budget
SES Deputy Administrator, Animal Damage Control

Federal Grain Inspection Service

SES Deputy Administrator

Office of Transportation

SES Director

AGENCY: DEPARTMENT OF COMMERCE

Positions:

Office of the Secretary

SES Executive Assistant to the Secretary
SES Special Assistant to the Secretary
SES* Counselor to the Secretary

Office of the Associate Deputy Secretary

SES Associate Deputy Secretary

Office of Congressional and Intergovernmental Affairs

SES Deputy Assistant Secretary for Congressional Affairs
SES Deputy Assistant Secretary for Intergovernmental Affairs

Office of Business Liaison

SES Director, Office of Business Liaison

Office of Public Affairs

SES Director

Office of General Counsel

SES Deputy General Counsel

Office of Under Secretary for Travel and Tourism

SES Deputy Under Secretary
SES Assistant Secretary for Tourism Marketing

Office of Inspector General

SES Deputy Inspector General

Minority Business Development Agency

SES Director
SES Deputy Director

Office of Assistant Secretary for Administration

SES Deputy Assistant Secretary for Administration

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SES Director for Planning, Budget, and Evaluation
SES Director, Office of Budget
SES Director for Procurement and Administrative Services
SES Deputy Director for Procurement and Administrative Services
SES* Deputy Director for Procurement

Office of the Under Secretary for Economic Affairs

SES* Deputy Under Secretary
SES* Associate Under Secretary
SES Chief Economist
SES Director, Office of Productivity, Technology and Innovation
SES Deputy Assistant Secretary for Productivity, Technology and Innovation
SES Director, Office of Strategic Resources

Bureau of Economic Analysis

SES Director
SES Deputy Director

National Technical Information Service

SES Director
SES Deputy Director

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SES Deputy Assistant Secretary

Office of Planning and Policy Coordinating

SES Director, Office of Policy Coordination and Management

Office of Chief Counsel

SES Chief Counsel

Office of Spectrum Management

SES Associate Administrator
SES Deputy Associate Administrator

Office of Policy Analysis and Development

SES Associate Administrator

Institute for Telecommunications Sciences

SES Associate Administrator

Office of International Affairs

SES Associate Administrator
SES* Deputy Associate Administrator

BUREAU OF THE CENSUS

SES Deputy Director

Demographic Programs

SES Associate Director

Management Services

SES Associate Director

Statistical Standards and Methodology

SES Associate Director

Field Operations

SES Associate Director

Decennial Census

SES* Associate Director

Economic Programs

SES Associate Director

ECONOMIC DEVELOPMENT ADMINISTRATION

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Loan Programs
SES Deputy Assistant Secretary for Grant Programs
SES Deputy Director for Grant Programs
SES Deputy Assistant Secretary for Management Support

Office of Chief Counsel

SES Chief Counsel
SES Deputy Chief Counsel

INTERNATIONAL TRADE ADMINISTRATION

SES Deputy Under Secretary
SES* Deputy Assistant Secretary for Planning
SES Deputy Assistant Secretary for U.S. and Foreign Commercial Services
SES Deputy Assistant Secretary for Foreign Operations
SES Deputy Assistant Secretary for Domestic Operations

Office of the Assistant Secretary for International Economic Policy

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Europe
SES Deputy Assistant Secretary for Western Hemisphere
SES Deputy Assistant Secretary for East Asia and Pacific
SES Deputy Assistant Secretary for Africa, Near East, South Asia

Office of the Assistant Secretary for Trade Administration

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Import Administration
SES Deputy to the Deputy for Import Administration
SES Dep. Asst. Secretary for Export Admin.
SES Deputy Assistant Secretary for Export Enforcement

Office of the Assistant Secretary for Trade Development

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Services
SES Deputy Assistant Secretary for Basic Industries
SES Deputy Assistant Secretary to Capital Goods and International Construction
SES Deputy Assistant Secretary for Aerospace
SES Deputy Assistant Secretary for Trade Information and Analysis
SES Deputy Assistant Secretary for Trade Adjustment Assistance
SES Director, Office of World Fairs and International Expositions
SES Deputy Assistant Secretary for Science and Electronics
SES Deputy Assistant Secretary for Automotive Affairs and Consumer Goods
SES Deputy Assistant Secretary for Textiles and Apparel

BUREAU OF EXPORT ADMINISTRATION

Office of the Under Secretary for Export Administration

SES* Director, Office of Technology and Policy Analysis

NATIONAL BUREAU OF STANDARDS

SES Deputy Director

Office of Associate Director for Programs, Budget and Finance

SES Associate Director for Programs, Budget and Finance
SES Director, Planning Office

National Measurement Laboratory

SES Director
SES Deputy Director for Resources and Operations
SES Deputy Director for Programs

Institute for Materials Science and Engineering

SES Director
SES Associate Director for Resources and Operations

Office of Associate Director for Industry and Standards

SES* Associate Director

National Engineering Laboratory

SES Director
SES Deputy Director

Institute for Computer Sciences and Technology

SES Director
SES* Deputy Director

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Office of the General Counsel

SES General Counsel

National Marine Fisheries Service

SES Assistant Administrator for National Marine Fisheries Services
SES Deputy Assistant Administrator
SES Deputy Assistant Administrator for Fisheries Resource Management
SES Deputy Assistant Administrator for Science and Technology

Office of Oceanic and Atmospheric Research

SES Assistant Administrator for Oceanic and Atmospheric Research
SES Deputy Assistant Administrator

National Weather Service

SES Assistant Administrator for Weather Services
SES Deputy Assistant Administrator

National Ocean Services

SES Assistant Administrator for Ocean Services and Coastal Zone Management
SES Deputy Assistant Administrator for Ocean Services

National Environmental Satellite Data and Information Service

SES Assistant Administrator
08 Deputy Assistant Administrator for Satellites

NOAA CORPS

SES Director

PATENT AND TRADEMARK OFFICE

GS–18 Deputy Assistant Secretary and Deputy Commissioner

Office of Assistant Commissioner for Patents

GS–18 Assistant Commissioner

SES Deputy Assistant Commissioner

Office of Assistant Commissioner for Trademarks

GS–17 Assistant Commissioner
SES Deputy Assistant Commissioner

Office of Assistant Commissioner for External Affairs

SES Assistant Commissioner

Office of the Assistant Commissioner for Finance and Planning

SES Assistant Commissioner

Office of the Assistant Commissioner for Administration

SES Assistant Commissioner
SES Deputy Assistant Commissioner

Office of the Solicitor

SES Solicitor
SES Deputy Solicitor

AGENCY: DEPARTMENT OF DEFENSE

Positions:

Immediate office of the Secretary of Defense

SES Assistant to the Secretary of Defense (Intelligence Oversight)
SES Assistant to the Secretary of Defense and Deputy Secretary of Defense
0–7 Senior Military Assistant to the Deputy Secretary of Defense

Office of the Director, Operational Test and Evaluation

SES Deputy Director for Policy, External Affairs, and Special Programs
SES Deputy Director for Plans and Programs
SES Director, Strategic Defense System Operational Test Organization
SES Deputy Director for Resources and Administration
0–7 Principal Military Advisor

Office of the Under Secretary of Defense (Policy)

SES Deputy Under Secretary of Defense for Trade Security Policy
SES Deputy Under Secretary of Defense (Planning and Resources)/Special Advisor for NATO Armaments
SES Principal Director, Trade Security Policy

Net Assessment

SES Director of Net Assessment

Office of the Deputy Under Secretary of Defense (Policy)

SES Director, Special Advisory Staff
SES Director, Humanitarian Assistance
SES Deputy Under Secretary of Defense for Policy
SES Assistant Deputy Under Secretary of Defense (Policy)
SES Assistant Deputy Under Secretary of Defense (Counterintelligence and Security)
SES Director for Security Plans and Programs
SES Director, Counterintelligence and Investigative Programs
SES Director, International Security Programs
SES Director, Defense Security Institute

Office of the Assistant Secretary of Defense (International Security Policy)

SES Principal Director, European and NATO Policy
SES Special Assistant to the Deputy Assistant Secretary of Defense (European and NATO Policy)
SES Director, Strategic Arms Control Policy
SES Director, European Policy
SES Director, Regional Policy
SES Deputy Assistant Secretary of Defense (Nuclear Forces and Arms Control Policy)
SES Deputy Assistant Secretary of Defense (Negotiations Policy)
SES Director, Strategic Forces Policy
SES Director, Verification Policy
SES Principal Director, Negotiations Policy
SES Director, Multilateral Negotiations
SES Director, Theater Nuclear Forces Policy
SES Principal Director, Nuclear Forces Arms Control Policy
SES Director, Strategic Defense and Space Arms Control Policy
SES Deputy Assistant Secretary of Defense (European and NATO Policy)
SES Principal Deputy Assistant Secretary of Defense (International Security Policy)
0–8 Advisor for NATO Affairs/Director, NATO Policy

Office of the Assistant Secretary of Defense (International Security Affairs)

SES Director, Foreign Military Rights Affairs
SES Director, Africa Region
SES Deputy Assistant Secretary of Defense (Inter-American Affairs)
SES Director for Plans
SES Director, Policy Planning
SES Director, Near East and South Asia Region
SES Deputy Assistant Secretary of Defense (East Asia and Pacific Affairs)
SES Principal Deputy Assistant Secretary of Defense (International Security Affairs)
SES Deputy Assistant Secretary of Defense for African Affairs
SES Deputy Assistant Secretary of Defense for Policy Analysis
SES Principal Director, Policy Analysis
SES Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs)
0–7 Director, Inter-American Region
0–7 Director, East Asia Pacific Region

Defense Security Assistance Agency

SES Director, Security Assistance Operations
SES Deputy Comptroller, Defense Security Assistance Agency
SES Deputy Director, Policy and Plans
SES Comptroller, Defense Security Assistance Agency
SES Director, Security Assistance Accounting Center
SES Deputy Director, Defense Security Assistance Agency

Office of the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)

SES Deputy Assistant Secretary of Defense (Resources)
0–7 Deputy Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)

Office of the Under Secretary of Defense (Acquisition)

SES Director, Small and Disadvantaged Business Utilization
SES Deputy Director, Program Assessment
SES Deputy Assistant Secretary of Defense (Acquisition Systems Management)
SES Director, Program Integration
SES Deputy Director, Program and Budget Integration
0–7 Director, Special Programs
0–7 Senior Military Assistant to the Assistant Secretary of Defense (Acquisitions)

Office of the Director Defense Research and Engineering

SES Assistant Deputy Under Secretary of Defense (Defensive Systems)
SES Assistant Deputy Under Secretary of Defense (Strategic Aeronautical and Theater Nuclear Systems)
SES Assistant Deputy Under Secretary of Defense (Naval Warfare and Mobility)
SES Director, Engineering Technology
SES Deputy Under Secretary of Defense (Research and Advanced Technology)
SES Assistant Deputy Under Secretary of Defense (Offensive and Space Systems)
SES Deputy Under Secretary of Defense (International Programs and Technology)
SES Deputy Under Secretary of Defense (Strategic and Theater Nuclear Forces)
SES Deputy Under Secretary of Defense (Tactical Warfare Programs)
SES Deputy Assistant to the Secretary of Defense (Chemical Matters)
SES Assistant Deputy Under Secretary of Defense (Air Warfare)
SES Assistant Deputy Under Secretary of Defense (Start and Arms Control Office)
SES Director, Office of Munitions
SES Director, Environmental and Life Sciences
SES Assistant Deputy Under Secretary of Defense (Land Warfare)
SES Deputy Director, Defense Technology Security Administration
SES Director, Office of Conventional Initiatives
SES Assistant Deputy Under Secretary of Defense (Force Analysis Concepts and Plans)
SES Assistant Deputy Director for Live Fire Test
SES Director, Research and Laboratory Management
SES Assistant Deputy Under Secretary of Defense (Research and Advanced Technology)
SES Assistant Deputy Under Secretary of Defense (Technology Cooperation and Planning)
SES Assistant Deputy Under Secretary of Defense (NATO/European Affairs)
SES Assistant Deputy Under Secretary of Defense (Asia/Southern Hemisphere Affairs)
SES Assistant Deputy Under Secretary of Defense (International Programs and Technology)

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SES Director, Computer and Electronics Technology
SES Director, Electronic Systems Technology
SES Deputy Director of Defense Research and Engineering (Test and Evaluation)
SES Assistant Deputy Director for Weapon Systems Assessment
0-7 Assistant Deputy Under Secretary of Defense (Tactical Warfare Programs)
0-7 Assistant Deputy Under Secretary (Strategic and Theater Nuclear Forces)
0-7 D/ATSD (Atomic Energy) (MA) and Executive Secretary (MILC)

Office of the Assistant Secretary of Defense (Production and Logistics)

SES Deputy Assistant Secretary of Defense (Procurement)
SES Deputy Assistant Secretary of Defense (Installations)
SES Director, Cost, Pricing and Finance
SES Director, Standardization and Acquisition Support
SES Director for Maintenance Policy
SES Director, Industrial Resources
SES Director, Automated Systems Research and Information
SES Deputy Assistant Secretary of Defense (Production Support)
SES Principal Director (Installations)
SES Director, Facility Requirements and Resources
SES Director, Installations Management
SES Deputy Assistant Secretary of Defense (Logistics)
SES Director, Weapon Support
SES Director, Logistics Planning and Analysis
SES Director, Installations Planning
SES Director, International Logistics
SES Director, Contract Policy and Administration
SES Deputy Director, Weapon Support
SES Director, Spares Program Management
SES Director, Transportation Policy
SES Director, Supply Management Policy
SES Deputy Director, Supply Management Policy
SES Director, Energy Policy
SES Director, Computer Aided Logistics Support Office
SES Deputy Assistant Secretary of Defense (Environment)
SES Director, Industrial Productivity and Quality
SES Deputy Director, Manufacturing and Quality
SES Deputy Assistant Secretary of Defense (Systems)
SES Director, Defense Systems Procurement Strategies
SES Special Assistant to the Assistant Secretary of Defense (Production and Logistics)
SES Executive Director, Defense Secretary's Commission on Base Realignment and Closure
SES Asst. to the Asst. Secretary of Defense (P&L) (For Stockpile Policy and Programs)
0-8 Principal Deputy to Assistant Secretary of Defense (Production and Logistics)

Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence)

SES Director, National Intelligence Systems
SES Director, Information Systems
SES Director, Theater and Tactical C3
SES Director, Strategic and Theater Nuclear Forces C3
SES Assistant Director, Electronic Combat Systems
SES Deputy Assistant Secretary of Defense (Intelligence)
SES Deputy Assistant Secretary of Defense (Plans and Resources)
SES Director, Resource Management
SES Assistant Director for Electronic Combat (Command, Control, Communications Countermeasures)
SES Director, Mission Assessment and Evaluation
SES Director, Special Operations
SES Director, Electronic Combat and Special Systems
SES Staff Assistant for Strategic C3
SES Director, Tactical Intelligence Systems
SES Deputy Director, Tactical Intelligence System
SES Deputy Director, National Intelligence Systems
SES Principal Deputy Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
SES Director, Intelligence Resources and Training
SES Deputy Director, Theater and Tactical Command, Control and Communications

Defense Advanced Research Projects Agency

SES Director, Directed Energy Office
SES Director, Program Management Office
SES Director, Tactical Technology Office
SES Director, Strategic Technology Office
SES Director, Defense Sciences Office
SES Director, Technology Assessment and Long Range Planning Office
SES Director, Aero-Space Technology Office
SES Director, Naval Technology Office
SES Director, Prototype Projects Office
SES Director, Contracts Management Office
SES Deputy Director for Systems and Technology
SES Deputy Director for Research
SES Director, Information Sciences and Technology Office
SES Director, Defense Advanced Research Projects Agency Liaison Office—Europe
SES Director, Nuclear Monitoring Research Office
SES Assistant Director for Armor/Anti-Armor
SES Director, Defense Advanced Research Projects Agency

Office of the Assistant Secretary of Defense (Reserve Affairs)

SES Deputy Assistant Secretary of Defense (Guard/Reserve Material and Facilities)
SES Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
SES Deputy Assistant Secretary of Defense (Guard/Reserve Program and Budget)
0-7 Deputy Assistant Secretary of Defense (Guard/Reserve Readiness and Training)
0-8 Military Advisor/Executive Officer RFPB (Negotiations)

Strategic Defense Initiative

SES Deputy Director, Strategic Defense Initiative Organization
SES Director, Innovative Science and Technology Office
SES Director, Directed Energy Office
SES General Counsel
SES Director, Strategic Defense Initiative Programs
SES Deputy for Technology
SES Associate Deputy for Technology
SES Associate Deputy for Programs and Systems
SES Deputy Comptroller
SES Special Advisor for International and Governmental Affairs
SES Deputy Program Manager, SDS Phase I
0-8 Deputy for Programs and Systems

Office of the Assistant Secretary of Defense (Force Management and Personnel)

SES Director for Safety and Occupational Health Policy
SES Director, Intergovernmental Affairs
SES Director, Civilian Requirements and Analysis
SES Director, Accession Policy
SES Deputy Director for Compensation and Overseas Employment Policy
SES Deputy Assistant Secretary of Defense (Resources Management and Support)
SES Principal Deputy Assistant Secretary of Defense (Force Management and Personnel)
SES Deputy Assistant Secretary of Defense (Family Support, Education and Safety)
SES Director for Workforce Relations, Training and Staffing Policy
SES Deputy Assistant Director for Defense (Civilian Personnel Policy)
SES Director, Personnel Management
SES Deputy Director for Civilian Employment Stability Nonappropriated Funds and Special Projects
SES Director for Civilian Equal Opportunity Program
SES Director, Mobilization Planning and Requirements
SES Director, Educational Liaison

Department of Defense Dependents Schools

SES Director, Department of Defense Dependents Schools
SES Director, Pacific Region, Department of Defense Dependents Schools
SES Director, Germany Region

Office of Economic Adjustment

SES Director, Office of Economic Adjustment

Defense Mobilization Systems Planning Activity

SES Assistant Director for Resource Management
SES Deputy Assistant Director for Resource Management
SES Deputy Assistant Director for Mobilization Systems
SES Deputy Director, Defense Mobilization Systems Planning Activity
SES Deputy Assistant Director for Engineering
SES Special Assistant to the Deputy Director, Defense Mobilization Systems Planning Activity
SES Associate Director for Engineering
SES Assistant Director for Program Analysis and Implementation

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SES Chief, Facilities Plans Division

Office of the Assistant Secretary of Defense (Legislative Affairs)

SES Deputy Assistant Secretary for Defense (Senate Affairs)
SES Deputy Assistant Secretary of Defense (House Affairs)

Office of the Assistant Secretary of Defense (Comptroller)

SES Director for Program and Financial Control
SES Director for Research and Development
SES Director for Military Personnel
SES Policy Analyst and Historian
SES Director for Procurement
SES Special Assistant for Appropriations Liaison
SES Deputy Director for Procurement
SES Deputy Assistant Secretary of Defense (Admin)/Director, Washington Headquarters Services
SES Director for Construction
SES Director for Organizational and Management Planning
SES Director for Operations
SES Deputy Assistant Secretary of Defense (Management Systems)
SES Deputy Assistant Secretary of Defense (Program/Budget)
SES Principal Assistant to the Deputy Assistant Secretary of Defense (Management Systems)
SES Director for Accounting Policy
SES Deputy Director for Plans and Systems
SES Director for Financial Services Policy
SES Director for Plans and Systems
SES Principal Deputy Assistant Secretary of Defense (Comptroller)
SES Deputy Comptroller (Program/Budget)
SES Director for Acquisition Cost Management
SES Principal Assistant to the Deputy Assistant Secretary of Defense (Cost and Audit)
SES Director for Management Improvement
SES Director, Policy and Systems Division
SES Director, Finance and Operations Division
SES Deputy Assistant Secretary of Defense (Contract Audit and Cost Control)
SES Director for Contract Audit Management
SES Deputy Assistant Secretary of Defense (Information Resources Management)
SES Director, Information Resources Management Policy and Plans
SES Principal Assistant to the Deputy Assistant Secretary of Defense (Information Resources Management)/Director, Architecture and Programs
SES Director, Resources and Management Control
SES Special Assistant to the Principal Deputy Assistant Secretary of Defense (Comptroller)

Office of the Assistant Secretary of Defense (Health Affairs)

SES Deputy Assistant Secretary of Defense for Professional Affairs and Quality Assurance
SES Principal Deputy Assistant Secretary of Defense (Health Affairs)
SES Director, Defense Medical Systems Support Center
SES Deputy Assistant Secretary of Defense for Medical Resources Administration
SES Principal Director for Professional Affairs and Quality Assurance
SES Deputy Director, Defense Medical Systems Support Center
SES Deputy Assistant Secretary of Defense (Health Program Management)
SES Principal Director for Medical Resources Administration
0–8 Deputy Assistant Secretary of Defense (Medical Readiness)

Office of the Director of Program Analysis and Evaluation

SES Director, Land Forces Division
SES Director, Naval Forces Division
SES Deputy Director (Strategic Programs)
SES Director, Strategic Offensive Forces Division
SES Director, Strategic Defensive and Theater Nuclear Forces Division
SES Deputy Director (Resource Analysis)
SES Deputy Director (General Purpose Programs)
SES Director, Tactical Air Division
SES Director, Program Analysis and Evaluation
SES Deputy Director (Theater Assessments and Planning)
SES Principal Deputy Director, Program Analysis and Evaluation
SES Director, Economic Analysis and Resource Planning Division
SES Director, Force Structure and Support Cost Analysis Division
SES Director, Research and Development/Procurement Cost Analysis Division
SES Director, Europe and Pacific Forces Division
SES Director, Projection Forces Division

Office of the Assistant Secretary of Defense (Public Affairs)

SES Principal Deputy Assistant Secretary of Defense (Public Affairs)
SES Director, Freedom of Information and Security Review
SES Director, American Forces Information Service
SES Deputy Assistant Secretary of Defense (Public Affairs)

Office of the General Counsel

SES Assistant General Counsel (Personnel and Health Policy)
SES Deputy General Counsel
SES Assistant General Counsel (Fiscal and Inspector General)
SES Assistant General Counsel (Logistics)
SES Assistant General Counsel (Legal Counsel)
SES Assistant General Counsel (International and Intelligence)

U.S. Mission to The North Atlantic Treaty Organization

SES Defense Advisor, U.S. Mission to North Atlantic Treaty Organization
SES Director, Communications and Electronics Division
SES Director, Infrastructure and Logistics Division
SES Director, Defense Plans Division
SES Special Deputy to the Defense Advisor for Policy Analysis
SES Administrative Advisor
SES Deputy Defense Advisor

Washington Headquarters Services

SES Director of Personnel and Security
SES Director, Information Operations and Reports
SES Director of Budget and Finance
SES Director for Space Management Services
SES Senior Director, Asian Affairs Directorate
SES Deputy Executive Secretary for External Affairs
SES Deputy Executive Secretary for Legislative Affairs
SES Director of NSC Security Operations

International Military Activities Staff

SES Director of Logistics (NAMSA)

Organization of The Joint Chiefs of Staff

SES Assistant Deputy Director for Plans, Concepts and Analysis
SES Joint ADP/Communications Integration Manager/Scientific and Technical Advisor

Department of Defense Inspector General

SES Deputy Inspector General
SES Assistant Inspector General for Investigations
SES Director for Contract and External Audit Oversight and Evaluation
SES Deputy Assistant Inspector General for GAO Reports Analysis
SES Director, Major Acquisition Programs
SES Director, Contract Audit Programs
SES Assistant Inspector General for Criminal Investigations Policy and Oversight
SES Assistant Inspector General for Audit Policy and Oversight
SES Deputy Assistant Inspector General (Analysis and Followup)
SES Deputy Assistant Inspector General for Auditing
SES Director, Financial Manpower and Security Assistance Programs
SES Deputy Assistant Inspector General for Investigations
SES Assistant Inspector General for Special Programs
SES Deputy Assistant Inspector General for Inspections
SES Director, Acquisition Support Programs
SES Director, Intelligence, Communications and Related Programs
SES Director, Logistics and Support Programs
SES Assistant Inspector General for Auditing
SES Assistant Inspector General for Analysis and Followup
SES Assistant Inspector General for Administration and Information Management
0–7 Assistant Inspector General for Inspections

National Security Agency/Central Security Service

0–7 Deputy Director, National Security Agency/Central Security Service

U.S. Court of Military Appeals

SES Clerk of the Court

AGENCY: DEPARTMENT OF THE AIR FORCE

Positions:

Civilian

Secretariat

Secretary of the Air Force

SES* Deputy for Contracting
SES Assistant to the Secretary for Space Policy

Under Secretary of the Air Force

SES Deputy Under Secretary of the Air Force (Space Systems)
SES* Assistant to the Under Secretary for Program Development
SES* Senior Advisor to the Under Secretary on Defense Review Board Matters

Assistant Secretary of the Air Force For Acquisition

SES Deputy Assistant Secretary (Acquisition Management and Policy)
SES Deputy Assistant Secretary (Command, Control, Communications and Computer Systems Management)
SES Associate Director, Contracting and Manufacturing Policy
SES* The Air Force Competition Advocate General

Assistant Secretary of the Air Force for Manpower and Reserve Affairs

SES Principal Deputy Assistant Secretary of the Air Force (Manpower and Reserve Affairs)
SES Deputy Assistant Secretary (Manpower Resources and Military Personnel)
SES Deputy Assistant Secretary (Reserve Affairs)

Assistant Secretary of the Air Force for Readiness Support

SES* Principal Deputy Assistant Secretary of the Air Force (Readiness Support)
SES* Deputy Assistant Secretary (Force Support)
SES* Deputy Assistant Secretary (Environment, Safety and Occupational Health)
SES Deputy Assistant Secretary (Installations)
SES Deputy Assistant Secretary (Logistics)

Comptroller of the Air Force

SES Deputy Comptroller of the Air Force
SES Deputy Comptroller (Financial Policy and Banking)
SES Assistant Deputy Comptroller, Budget
SES Director, Budget Management
GS–18 Management Systems Deputy
SES Deputy Assistant Comptroller, Air Force Accounting and Finance Center

Office of the Auditor General

SES The Auditor General
SES Director, Acquisition and Logistics Systems, Air Force Audit Agency (Wright-Patterson AFB, OH)

Office and Small and Disadvantaged Business Utilization

SES Director, Office of Small and Disadvantaged Business Utilization

Administrative Assistant to the Secretary of the Air Force

SES Administrative Assistant to the Secretary of the Air Force

General Counsel

SES The General Counsel
SES Deputy General Counsel
SES Assistant General Counsel, Procurement

Air Staff

Assistant Chief of Staff, Systems For Command, Control, Communications and Computers

SES Assistant to the Assistant Chief of Staff, Systems for Command, Control, Communications and Computers

Deputy Chief of Staff, Logistics and Engineering

SES Associate Director, Engineering and Services
SES Associate Director, Logistics Plans and Programs
SES Chief, Combat Support Programs Division
SES Chief, Modification and Operations and Maintenance Programs Division
SES Deputy to the Commander, Air Force Commissary Service

Major Commands

Air Force Logistics Command

SES Chairperson, Air Force Logistics Command Procurement Committee
SES* Assistant Deputy Chief of Staff, Distribution
SES Assistant Deputy Chief of Staff, Logistics Management Systems
SES Assistant Deputy Chief of Staff, Materiel Management
SES Assistant Deputy Chief of Staff, Maintenance
SES Assistant Deputy Chief of Staff, Plans and Programs
SES Assistant Deputy Chief of Staff, Contracting and Manufacturing
SES Assistant Deputy for Aeronautical Programs, Air Force Acquisition Logisitics Center
SES* Assistant to the Director, Air Force Electronic Combat Office (AFLC/AFSC)
SES Deputy Director, Contracting and Manufacturing, Ogden Air Logistics Center
SES Deputy Director, Materiel Management, Ogden Air Logistics Center
SES Deputy Director, Contracting and Manufacturing, Oklahoma City Air Logistics Center
SES Deputy Director, Materiel Management, Oklahoma City Air Logistics Center
SES Deputy Director, Contracting and Manufacturing, Sacramento Air Logistics Center
SES Deputy Director, Material Management, Sacramento Air Logistics Center
SES Deputy Director, Contracting and Manufacturing, San Antonio Air Logistics Center
SES Deputy Director, Materiel Management, San Antonio Air Logistics Center
SES Deputy Director, Contracting and Manufacturing, Warner Robins Air Logistics Center
SES Deputy Director, Materiel Management, Warner Robins Air Logistics Center

Air Force Systems Command (AFSC)

Headquarters AFSC

SES Principal Assistant Deputy Chief of Staff, Contracting and Manufacturing
SES Technical Director, Manufacturing and Industrial Preparedness
SES Command Competition Advocate
SES Chief Engineer
SES Assistant to Staff Judge Advocate

Air Force Office of Scientific Research

SES Director, Aerospace Sciences
SES Director, Chemical and Atmospheric Sciences
SES Director, Electronics and Materiel Sciences
SES Director, Life Sciences
SES Director, Mathematical and Information Systems

Aeronautical Systems Division

SES Assistant Deputy for Contracting and Manufacturing
SES Assistant Deputy for Programs (Deputy for Propulsion)
SES Assistant Deputy (Deputy for Tactical Systems)
SES Assistant Deputy for Reconnaissance, Strike and Electronic Warfare

Air Force Wright Aeronautical Laboratories

Air Force Aero-Propulsion Laboratory

SES* Director, Air Force Aero-Propulsion Laboratory

Air Force Materials Laboratory

SES Research and Development Executive (Director, AFML)
SES Director, Manufacturing Technology Division

Electronic Systems Division

SES* Deputy Commander for Development Plans and Support Systems
SES Assistant Deputy for Contracting and Manufacturing
SES Assistant Deputy for Strategic Systems
SES Assistant Deputy Commander for Tactical Systems, Joint Tactical Information Distribution System (JTIDS), and Airborne Warning and Control System (AWACS)
SES* Technical Director, Deputy Commander for Tactical Systems, JTIDS and AWACS

Space Division

SES Assistant Deputy for Acquisition Management and Competition

Air Force Contract Management Division

SES Assistant for Contract Administration Services

Joint and Executive Agencies

National Aerospace Plane Joint Program Office

SES* Director, National Aerospace Plane Joint Program Office

United States Transportation Command

SES* Deputy Director, Command, Control, Communications and Computer Systems

Military

Secretariat

Assistant Secretary of the Air Force For Acquisition

0-7/0-8 Principal Deputy Assistant Secretary of the Air Force for Acquisition
0-7/0-8 Director, Contracting and Manufacturing Policy
0-7/0-8* Director, Planning and Integration
0-7/0-8 Director, Space and Strategic Defense Initiative Programs; and Special Assistant for Strategic Defense Initiative
0-7/0-8 Director, Tactical Programs

Comptroller of the Air Force

0-7/0-8 Deputy Comptroller, Budget
0-7/0-8 Director, Budget Operations
0-7/0-8 Commander, Air Force Accounting and Finance Center; Assistant Comptroller for Accounting and Finance; and Assistant Director, Security Assistance Accounting, Defense Security Assistance Agency

The Auditor General of the Air Force

0-7/0-8 Commander, Air Force Audit Agency; and Deputy Auditor General

The Inspector General of the Air Force

0-7/0-8 Deputy Inspector General of the Air Force
0-7/0-8 Commander, Air Force Office of Special Investigations; and Assistant Inspector General for Special Investigations

Office of Space Systems

0-7/0-8 Director, Office of Space Systems

Office of Special Projects

0-7/0-8 Director of Special Projects; and Assistant Vice Commander, Space Division (AFSC)

AIR STAFF

Office of Air Force Reserve

0-7/0-8 Chief of Air Force Reserve; and Commander, Air Force Reserve

National Guard Bureau

0-7/0-8 Director, Air National Guard

Assistant Chief of Staff, Systems for Command, Control, Communications and Computers

0-7/0-8 Assistant Chief of Staff, Systems for Command, Control, Communications and Computers
0-7/0-8 Deputy Assistant Chief of Staff, Systems for Command, Control, Communications and Computers

Assistant Chief of Staff, Studies and Analyses

0-7/0-8 Assistant Chief of Staff, Studies and Analyses

Office of the Judge Advocate General

0-7/0-8 The Judge Advocate General; and Commander, Air Force Legal Services Center
0-7/0-8 Deputy Judge Advocate General

Deputy Chief of Staff, Logistics and Engineering

0-7/0-8 Director, Logistics Plans and Programs
0-7/0-8 Director, Engineering and Services
0-7/0-8 Director, Transportation
0-7/0-8 Special Assistant to the Principal Deputy Assistant Secretary of the Air Force for Acquisition, and the Deputy Chief of Staff, Logistics and Engineering, for Reliability and Maintainability
0-7/0-8 Commander, Air Force Commissary Service

Deputy Chief of Staff, Plans and Operations

0-7/0-8 Director, Plans

Deputy Chief of Staff, Programs and Resources

0-7/0-8 Assistant Deputy Chief of Staff, Programs and Resources
0-7/0-8 Director, Programs and Evaluation
0-7/0-8 Director, International Programs

MAJOR COMMANDS

Air Force Communications Command

0-7/0-8 Commander, Air Force Communications Command

Air Force Logistics Command

0-7/0-8 Chief of Staff
0-7/0-8 Deputy Chief of Staff, Contracting and Manufacturing
0-7/0-8 Deputy Chief of Staff, Materiel Management
0-7/0-8 Deputy Chief of Staff, Maintenance
0-7/0-8 Deputy Chief of Staff, Plans and Programs
0-7/0-8 Staff Judge Advocate
0-7/0-8 Commander, Air Force Acquisition Logistics Center
0-7/0-8 Commander, Air Force Logistics Command, International Logistics Center; and Assistant for International Logistics
0-7/0-8 Commander, Air Force Logistics Command, Logistics Management Systems Center; and Deputy Chief of Staff, Communications-Computer Systems
0-7/0-8 Commander, Air Force Logistics Command, Logistics Operations Center
0-7/0-8 Commander, Ogden Air Logistics Center
0-7/0-8 Commander, Oklahoma City Air Logistics Center
0-7/0-8 Commander, Sacramento Air Logistics Center
0-7/0-8 Commander, San Antonio Air Logistics Center
0-7/0-8 Commander, Warner Robins Air Logistics Center

AIR FORCE SYSTEMS COMMAND

Headquarters AFSC

0-7/0-8* Chief of Staff
0-7/0-8 Deputy Chief of Staff, Contracting
0-7/0-8* Deputy Chief of Staff, Technology and Requirements Planning
0-7/0-8* Deputy Chief of Staff, Test and Resources
0-7/0-8 Deputy Chief of Staff, Systems
0-7/0-8 Deputy Chief of Staff, Product Assurance and Acquisition Logistics
0-7/0-8 Staff Judge Advocate

Aeronautical Systems Division

0-7/0-8 Vice Commander, Aeronautical Systems Division
0-7/0-8 Program Director, B-2 Systems Program Office
0-7/0-8* Program Director, C-17 Systems Program Office
0-7/0-8 Program Director, F-16 Systems Program Office
0-7/0-8* Program Director, Advanced Tactical Fighter

Armament Division

0-7/0-8 Commander, Armament Division
0-7/0-8* Vice Commander, Armament Division; and Deputy Commander, Research, Development and Acquisition
0-7/0-8 Deputy for Advanced Medium Range Air-to-Air Missile

Electronic Systems Division

0-7/0-8 Vice Commander, Electronic Systems Division
0-7/0-8 Deputy Commander for Tactical Systems, Airborne Warning and Control Systems, and Joint Tactical Information Distribution Systems

Space Division

0-7/0-8 Vice Commander, Space Division
0-7/0-8* Deputy Commander for Communications, Operations Support and Control Systems

Air Force Contract Management Division

0-7/0-8 Commander, Air Force Contract Management Division

Air Force Flight Test Center

0-7/0-8 Commander, Air Force Flight Test Center

Ballistic Missile Office

0-7/0-8 Commander, Ballistic Missile Office; and Program Director, Small ICBM Office

JOINT AND EXECUTIVE AGENCIES

Army and Air Force Exchange Service

0-7/0-8* Commander, Army and Air Force Exchange Service
0-7/0-8 Vice Commander, Army and Air Force Exchange Service

Military Traffic Management Command

0-7/0-8 Vice Commander, Military Traffic Management Command

AGENCY: DEPARTMENT OF THE ARMY

Positions:

Office, Secretary of the Army

SES Administrative Assistant to the Secretary of the Army
SES Deputy Administrative Assistant

Office of the General Counsel

SES General Counsel
SES Principal Deputy General Counsel

Office of the Under Secretary

SES Deputy Under Secretary of the Army
SES Deputy Under Secretary of the Army (Operations Res)

SES Assistant Deputy Under Secretary of the Army (Air and Missile Defense)

Office, Assistant Secretary of the Army (Installations and Logistics)

SES Principal Deputy Assistant Secretary of the Army (Installations and Logistics)
SES Deputy Assistant Secretary of the Army (Installations and Housing)
SES Deputy Assistant Secretary of the Army (Logistics)
SES Deputy for Environment Safety and Occupational Health
SES Deputy for Programs and Commercial Activities and Director Commercial Activities Agency

Office, Assistant Secretary of the Army (Financial Management)

SES Principal Deputy Assistant Secretary of the Army (Financial Management)
SES Deputy for Cost Analysis
SES Deputy for Financial Systems
SES Deputy for Management Evaluation and Improvement
SES Deputy for Information Resource Management
SES Deputy for Planning, Programming, Budgeting and Execution Systems

Office, Assistant Secretary of the Army (Manpower and Reserve Affairs)

SES Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs) and Deputy Assistant Secretary of the Army (Reserve Affairs)
SES* Deputy Assistant Secretry of the Army (Military Personnel, EO)
SES* Deputy Assistant Secretary of the Army (Civilian Personnel, NAF, Personnel Security)
SES* Deputy Assistant Secretary of the Army (Readiness, Force Management and Training)

Office, Small and Disadvantaged Business Utilization

SES Director, Small and Disadvantaged Business Utilization

Office, Assistant Secretary of the Army (Civil Works)

SES Principal Deputy Assistant Secretary of the Army (Civil Works)
SES Deputy for Program Planning, Review and Evaluation (Civil Works)
SES Deputy for Management and Budget (Civil Works)
SES Deputy for Policy, Planning and Legislative Affairs (Civil Works)

Office, Assistant Secretary of the Army (Research, Development and Acquisition)

SES Principal Deputy Assistant Secretary of the Army (Research, Development and Acquisition) and Deputy Assistant Secretary of the Army (Research and Development)
SES Deputy Assistant Secretary of the Army (Acquisition)
SES Deputy for Technology and Requirements
SES Deputy for Materiel Acquisition Management
SES Deputy for Procurement Policy
SES Deputy Assistant Secretary of the Army (Systems Management)
SES Deputy for Program Evaluation
SES Deputy for Programs

U.S. Army Operational Test and Evaluation Agency (OCSA)

SES Technical Director

U.S. Army Concepts Analysis Agency

SES Director

Deputy Chief of Staff for Logistics

SES Special Assistant to the Deputy Chief of Staff for Logistics/Chief Aviation Logistics

OFFICE, DIRECTOR OF ARMY STAFF (OCSA)

Program Analysis and Evaluation Directorate (OCSA)

SES Deputy Director, Program Analysis Evaluation

Management Directorate

SES Director, Study Program Management Office

Comptroller of the Army

SES Assistant Comptroller for Economic Policy

Army Audit Agency (OSA)

SES The Auditor General (OCSA)
SES Deputy Auditor General (OSA)
SES Director, Personnel and Force Management Audits (OSA)
SES Director, Audit Policy, Plans, and Resources (OSA)
SES Director, Logistical and Financial Audits (OSA)
SES Director, Acquisition and Systems Audits (OSA)
SES Regional Auditor General (European Region)

Office of the Judge Advocate General

SES Special Assistant for Comm, Trans and Utilities
SES* Chief, Patent Law

Office of U.S. Army Materiel Command (AMC) Headquarters

SES Assistant Deputy for Resource Management
SES Command Counsel
SES Principal Assistant Deputy for Research, Development and Acquisition
SES Assistant Deputy for Science and Technology
SES Assistant Deputy for International Programs/Deputy Chief of Staff for International Programs
SES Deputy Chief of Staff for Production
SES Assistant Deputy for Materiel Readiness
SES Deputy Chief of Staff for Procurement
SES Deputy Director Product Assurance and Test
SES Deputy Executive Director, TMDE

U.S. Army Information Systems Command (USAISC)

SES Director, U.S. Army Information Systems Selection and Acquisition Activity (USAISSAA)

CORPS OF ENGINEERS

SES Director of Real Estate, Headquarters, Corps of Engineers
SES Chief Counsel, Headquarters, Corps of Engineers
SES Deputy Director of Engineering and Construction, Directorate of Engineering and Construction, Headquarters, Corps of Engineers
SES Deputy Director, Resource Management, Directorate of Resource Management, Headquarters, Corps of Engineers

THE ARMY STAFF

0–8 Director, Management
0–8 Director, Program Analysis and Evaluation
0–8 Assistant Deputy Chief of Staff for Logistics (Security Assistance)
0–8 Director for Transportation, Energy and Troop Support
0–8 Director for Supply and Maintenance
0–8 Director for Contracting
0–7 Director for Plans and Operations
0–7 Competition Advocate
SES Chief, Contracting Policy and Procedures Division
0–8 Assistant Deputy Chief of Staff for Personnel
0–8 Assistant Deputy Chief of Staff for Operations and Plans
0–8 Director, Strategic Plans and Policy
0–8 Director of Army Budget
0–8 Chief, Army Reserve
0–7 Deputy Chief, Army Reserve
0–8 Director, Army National Guard
0–7 Deputy Directors, C4 (2)
0–7 Deputy Assistant Chief of Staff for Intelligence
0–8 Chief of Chaplains
0–8 The Judge Advocate General
0–8 The Assistant Judge Advocate General
0–8 The Deputy Surgeon General
0–7/0–8 Assistant Surgeon General (Research and Development)
0–8 Deputy Chief of Engineers and Chairman, Board of Engineers for Rivers and Harbors

ARMY STAFF FIELD OPERATING AGENCIES

Office, Chief of Staff

0–7 Deputy Commanding General, Strategic Defense Command, Huntsville, Alabama
0–8 Commanding General, U.S. Army Operational Test and Evaluation Agency, Falls Church, Virginia

Office, Deputy Chief of Staff for Personnel

0–8 Commanding General, U.S. Total Army Personnel Agency, Alexandria, Virginia
0–8 Commanding General, U.S.A. Recruiting Command, Fort Sheridan, Illinois
0–8 Commanding General, U.S.A. Community and Family Support Center, Alexandria, Virginia
0–7 Deputy Commanding General, East U.S.A. Recruiting Command, Fort Sheridan, Illinois
0–7 Deputy Commanding General, West U.S.A. Recruiting Command, Fort Sheridan, Illinois

0–7 Deputy Commanding General, U.S.A. Community and Family Support Center, Alexandria, Virginia

Office, Deputy Chief of Staff for Logistics

0–7 Commanding General, U.S. Army Troop Support Agency, Fort Lee, Virginia

Office, the Deputy Chief of Staff for Personnel

0–7 Commanding General, U.S. Army Reserve Components Personnel and Administration Center, St. Louis, Missouri

Office, the Judge Advocate General

0–7 Commanding General, Chief Judge, U.S. Army Legal Services Agency/United States Court of Military Review, Falls Church, Virginia

Office of the Surgeon General

0–7/0–8 Commanding General, U.S. Army Medical Research and Development Command, Fort Detrick, Maryland

U.S. Army Research Institute for Infectious Diseases (USAMRIID)

SES Special Advisor for Biotechnology

Miscellaneous Army Staff FOA's

0–8* Director, Armored Family of Vehicles Task Force, Fort Eustis, Virginia
0–7* Joint Program Manager/Director, Joint Tactical Fusion Project Management Office, McLean, Virginia

ARMY COMMANDS

U.S. Army Training and Doctrine Command, Fort Monroe, Virginia

0–8 Chief of Staff
0–8 Deputy Chief of Staff, Combat Developments
0–8 Commanding General, TRADOC Combined Arms Test Activity, Fort Hood, Texas

U.S. Army Materiel Command, Alexandria, Virginia

0–8 Deputy Commander, Resources Management
0–7/0–8 Director, Development, Engineering and Acquisition
0–7 Director, Supply, Maintenance and Transportation
0–7/0–8 Director, Security Assistance/CDR, U.S.A. Security Assistance Center
0–7* Program Executive Officer, Ammunition
0–7* Program Executive Officer, Combat Aviation, Aviation Systems Command, St. Louis, Missouri
0–7* Program Manager, LHX, Aviation Systems Command, St. Louis, Missouri
0–7* Deputy Commanding General, Aviation Systems Command, St. Louis, Missouri
0–8 Commanding General, U.S. Army Tank-Automotive Command, Warren, Michigan
0–7 Deputy Commanding General for Research and Development, U.S. Army Tank-Automotive Command, Warren, Michigan
0–8 Commanding General, U.S. Army Aviation Systems Command, St. Louis, Missouri
0–8 Commanding General, U.S. Army Troop Support Command—St. Louis, Missouri
0–7 Deputy Commanding General, U.S. Army Troop Support Command, St. Louis, Missouri
0–8 Commanding General, U.S. Army Armament Munitions and Chemical Command—Rock Island, Illinois
0–7 Deputy Commanding General for Procurement and Readiness, U.S. Army Armament Munitions and Chemical Command—Rock Island, Illinois
0–7 Commanding General, U.S. Army Armament Research and Development Center—Picatinny Arsenal, New Jersey
0–7 Commanding General, U.S.A. Chemical Research and Development Center—Picatinny Arsenal, New Jersey
0–8 Commander, U.S. Army Missile Command—Redstone Arsenal, Alabama
0–7 Deputy Commanding General for Procurement and Readiness, U.S. Army Missile Command—Redstone Arsenal, Alabama
0–8* Commanding General, Laboratory Command, Adelphi, Maryland, U.S. Army Materiel Command, Major CONUS Command
0–7* Program Executive Officer, Forward Area Air Defense, Missile Command, Redstone Arsenal, Alabama, U.S. Army Materiel Command, Major CONUS Command
0–7* Program Executive Officer, Fire Support, Missile Command, Redstone Arsenal, Alabama, U.S. Army Materiel Command, Major CONUS Command
0–7* Program Executive Officer, Close Combat Missiles, Missile Command, Redstone Arsenal, Alabama, U.S. Army Materiel Command, Major CONUS Command
0–7* Program Executive Officer, High/Medium Air Defense, Missile Command, Redstone Arsenal, Alabama, U.S. Army Materiel Command, Major CONUS Command
0–7* Project Manager, Saudi Arabian National Guard Modernization, Riyadh, Saudi Arabia, U.S. Army Materiel Command, Overseas Command
0–7* Program Executive Officer, Combat Support, Tank-Automotive Command, Warren, Michigan, U.S. Army Materiel Command, Major CONUS Command
0–7* Program Executive Officer, Close Combat Vehicle, Tank-Automotive Command, Warren, Michigan, U.S. Army Materiel Command, Major CONUS Command
0–8* Commanding General, Test and Evaluation Command, Aberdeen Proving Ground, Maryland, U.S. Army Materiel Command, Major CONUS Command
0–8* Commanding General, White Sands Missile Range/Deputy Commanding General, Test and Evaluation Command, White Sands, New Mexico, U.S. Army Materiel Command, Major CONUS Command
0–8* Commanding General, Military Traffic Management Command, Falls Church, Virginia, Major CONUS Command
0–8* Commanding General, Communications-Electronics Command, Fort Monmouth, New Jersey, U.S. Army Materiel Command, Major CONUS Command
0–7* Program Executive Officer, Army Command and Control Systems, Communications-Electronics Command, Fort Monmouth, New Jersey, U.S. Army Materiel Command, Major CONUS Command
0–7* Program Executive Officer, Communications Systems, Communications-Electronics Command, Fort Monmouth, New Jersey, U.S. Army Materiel Command, Major CONUS Command
0–8* Commanding General, Depot Systems Command, Chambersburg, Pennsylvania, U.S. Army Materiel Command, Major CONUS Command
0–7* Commanding General, U.S. Army Materiel Command-Europe, Army Materiel Command, Overseas Command
0–7* Program Manager, Chemical Demilitarization, Armament, Munitions, and Chemical Command, Aberdeen Proving Ground, Maryland, U.S. Army Materiel Command, Major CONUS Command

U.S. Army Health Services Command, Fort Sam Houston, Texas

0–8* Commanding General

U.S. Army Intelligence and Security Command, Arlington Hall Station, Virginia

0–7* Program Executive Officer, Intelligence-Electronic Warfare

U.S. Army Military Traffic Management Command, Falls Church, Virginia

0–8* Commanding General

AGENCY: DEPARTMENT OF THE NAVY

Positions:

Office of the Under Secretary of the Navy

SES Deputy Under Secretary of the Navy (Policy)
SES* Deputy Under Secretary of the Navy (Special Review and Analysis)
SES* Director, Naval Industrial Management Programs
SES* Deputy Assistant Secretary of the Navy (Technology, Transfer and Security Assistance)
SES Executive Director, President's Foreign Intelligence Advisory Board
SES* Auditor General of the Navy
SES* Special Assistant to the Under Secretary of the Navy

Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs)

SES Deputy Assistant Secretary of the Navy (Reserve Affairs)
SES Deputy Assistant Secretary of the Navy (Force Support and Families)
SES Director, Civilian Personnel Policy/Equal Employment Opportunity
SES Director, Office of Civilian Personnel Management
SES* Deputy Assistant Secretary of the Navy (Manpower)

Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics)

SES Director of Small and Disadvantaged Business Utilization

SES Director, Installations and Facilities
SES* Director, Shipbuilding
SES* Director, Aviation and Ordnance Programs
SES* Director, Resources and Policy Evaluation
SES* Director, Contracts and Business Management
SES* Director, Reliability, Maintenance, and Quality Assurance
SES* Specification Control Advocate General
SES* Assistant Director, Contract Pricing
SES* Assistant for Acquisition (Special Programs)
SES* Assistant Deputy Under Secretary of the Navy for Safety and Survivability

Office of the Assistant Secretary of the Navy (Research, Engineering and Systems)

SES DASN (Command, Control, Communications, Intelligence and Space)
SES Director, Acquisition Management, International Programs and Cong. Support
SES Special Assistant for Software Application
SES Principal Deputy Assistant Secretary of the Navy (Research, Engineering and Systems)
SES Deputy Assistant Secretary of the Navy (Surface Warfare)
SES Director, Air Warfare

Office of the General Counsel

SES General Counsel
SES Deputy General Counsel (Logistics)
SES Principal Deputy General Counsel

U.S. Marine Corps

SES Fiscal Director of the Marine Corps
SES Special Assistant to the Deputy Chief of Staff for Installations and Logistics
SES Director, Contracts Division
0-7/0-8* Commanding General of Marine Corps, Research, Development and Acquisition

Office of Naval Research

SES Director, Acquisition

Chief of Naval Education and Training

SES Principal Advisor for Education and Training/Deputy CNET for Ed. Development and R&D

Military Sealift Command

SES Vice Commander
0-7/0-8 Deputy Commander

Navy Regional Data Automation Center

SES Technical Director

Strategic Systems Programs

SES Director, Plans and Program Division

Naval Air Systems Command HQ

SES Executive Director for Procurement Management
SES Deputy Commander, Naval Air Systems Command

Joint Cruise Missile Program Office

SES Technical Director, Joint Cruise Missiles Program

Naval Facilities Engineering Command HQ

SES Assistant Commander for Contracts

Naval Sea Systems Command HQ

SES Deputy Chief Engineer for Logistics (CEL)
SES Assistant Deputy Commander for Contracts
SES Deputy Commander
SES* Deputy Commander for Acquisition Planning and Appraisal

Space and Naval Warfare Systems Command

SES* Deputy Commander
SES Executive Director, Contracts
SES Director, Office of Naval Laboratories
SES* Assistant Commander, Research and Development

CNO

0-7/0-8* Director, Combat Logistics Auxiliaries, Amphibious and Mine Warfare Division (OP-37)
0-8 Assistant Deputy Chief of Naval Operations (Logistics) (OP-04B)
0-7/0-8 Director, Logistics Plans Division (OP-40)
0-7/0-8 Director, Material Division (OP-41) (sc)
0-7/0-8 Director, Ships Maintenance and Modernization (OP-43)
0-7/0-8 Director, Shore Activities Planning and Programming Division (OP-44) (CEC)

NAVAIRSYSCOM

0-8 Vice Commander (NAIR-09)
0-7/0-8 Deputy Commander for Plans and Programs (NAIR-01)
0-7 Assistant Commander for Contracts (NAIR-02)
0-8 Assistant Commander for Logistics and Fleet Support (NAIR-04)
0-8 Director, Weapons Plans and Programming/Assistant Commander for Systems and Engineering (NAIR-05)
0-7-Assistant Commander for Test and Evaluation (NAIR-06)
0-7 Commander, Naval Aviation Logistics Center

NAVCOMPT

0-7/0-8 Deputy Comptroller of the Navy (NCD)
0-7/0-8 Director of Budget and Reports/ Fiscal Management Reports (NCB)
0-7/0-8 Assistant Comptroller, Financial Management Systems/Commander, Navy Accounting and Finance Center (NCF)
0-7/0-8* Director of Information Resources Management (IRM)

Space and Warfare Systems Command

0-8 Commander (00)
0-8 Vice Commander (09)
0-8* Director, Space and Sensors Systems Directorate (PD-40)
0-7/0-8 Director, Warfare Systems, Engineering and Architecture (003)
0-7/0-8* Assistant Commander, Space and Technology (004)

Designated Project Managers

0-8 Director, Strategic Systems Programs (NSP-00)
0-7 Director, Technical Division, Strategic Systems Programs, SSP (NSP-20)
0-7/0-8 Director, Joint Cruise Missile Project (JPM-3)
0-7/0-8 Program Manager, ASW Systems Project Office
0-7 Project Manager, Saudi Naval Expansion Program (PM-5)
0-7 Project Manager, Theater Nuclear Warfare Project Office (PM-23)

Naval Sea Systems Command

0-7/0-8 Deputy Commander/Comptroller (01)
0-8 Vice Commander (09)
0-7/0-8 Deputy Commander for Weapons and Combat Systems (06)
0-7/0-8 Project Manager, AEGIS Shipbuilding Project (PMS-400)
0-7/0-8 Deputy Commander for Industrial and Facility Management (07)
0-7/0-8 Deputy Commander for Submarines (92)
0-7/0-8 Deputy Commander for Ship Design and Engineering (05)
0-7 Deputy Commander for Surface Combatants (91)
0-7 Deputy Commander for Contracts
0-7 Assistant Deputy Commander for ASW and Undersea Warfare Systems (06U)
0-7 Assistant Deputy Commander for AAW and Surface Warfare Systems (06A)

Supply Systems Command

0-8 Commander and Chief of Supply Corps (NSUP-00)
0-7/0-8 Assistant Commander, Inventory and Systems Integrity (NSUP-00X)
0-7/0-8 Vice Commander (NSUP-09)
0-7 Deputy Commander, Financial Management/Comptroller (NSUP-01)
0-7 Deputy Commander, Fleet Support, Corporate Planning, Logistics and Support (NSUP-03)

Supply Corps Billets

0-8 Competition Advocate General of the Navy
0-7/0-8 Commander, Navy Resale and Services Support Office/Deputy Commander, NAVSUPPSYSCOM Navy Resale and Services Support Programs
0-7/0-8 C.O., Navy Aviation Supply Office, Philadelphia
0-7/0-8 C.O., Navy Ships Parts Control Center, Mechanicsburg, PA
0-7 Commander, Defense Fuel Support Center, Alexandria, VA

CEC Billets

0-8 Commander/Chief of Civil Engineers (NFAC-00)
0-7/0-8 Vice Commander (NFAC-09)
0-7 Deputy Commander for Planning, ADDU to OP-04E
0-7/0-8 C.O., Shore Activity, Atlanta Division; ADDU: ACOS, FACENG to CINCLANTFLT, Area Civil Engineer
0-7/0-8 C.O., Shore Activity, Pacific Division ADDU: FLT Civil Engineer CINCPACFLT
0-7 C.O., Shore Activity, Northern Division, Philadelphia
0-7 C.O., Shore Activity, Western Division, San Bruno, CA

East Coast

0-7 Commander, Naval Telecommunications Command
0-7/0-8 Commander, Naval Oceanography Command

0–7/0–8 Vice Commander, Military Sealift Command
0–7 Supervisor for Shipbuilding, Conversion and Repair, Newport News Shipbuilding and Drydock Co., Newport News, VA
0–7 Supervisor, Shipbuilding, Conversion and Repair
0–7 Deputy Auditor General, Naval Auditor Services Command
0–7 Commander, Naval Space Command

MEDCOM

0–8 Commander
0–7 Deputy Commander, Readiness and Logistics

AGENCY: DEFENSE COMMUNICATIONS AGENCY

Positions:

0–7 Director, Defense Communications System Organization (DCSO)
0–7 Commander, White House Communications Agency
SES Deputy Director, WWMCCS ADP Technical Support, JDSSC
SES Comptroller, DCA
SES Director, Planning and Systems Integration Center (PSIC)
0–8 Vice Director, Defense Communications Agency
SES Deputy Manager, National Communications System, DCA
SES General Counsel, DCA
SES Deputy Director, Military Satellite Communications Systems, PSI
SES Deputy Director, DCSO
SES Deputy Director, Switched Network Engineering Division, DCEC
SES Director, Joint Data Systems Support Center (JDSSC)
SES Director, Special Programs Organization
SES Chief Regulatory Counsel—Telecommunications
SES Deputy Director, Command and Control Systems Organization
SES Assistant Director for Program Development and Coordination, PSIC
SES Program Manager, Defense Switched Network
SES Director, Defense Communications Engineering Center
SES Deputy Director, NMCS ADP Directorate
SES Associate Director for NMC/WWMCCS Engineering Integration
SES Special Assistant to the Director, Special Programs Organization
SES Deputy Director for DCS Integration
SES Deputy Director, Special Programs Organization
SES Special Assistant to the Director, PSIC for Satellite Communications Systems
SES Special Assistant to the Director, C4S Systems for Integrated Digital Architectures
SES Special Assistant to the Director, PSIC for NATO and International C3
SES Deputy WWMCCS System Engineer, Europe-EUCOM, PSIC
SES Assistant Manager (Plans and Programs), NCS
SES Associate Director for Technical and Management Support
SES Chief, Interoperability and Standards Office, DCEC
SES* Associate Director for Engineering and Technology
SES* Deputy Director for Personnel and Administration
SES* Assistant Director, JTC3A
SES* Deputy Director, JTC3A
0–7* Director, JTC3A

AGENCY: DEFENSE CONTRACT AUDIT AGENCY

Positions:

SES Director
SES Deputy Director
SES General Counsel
SES Assistant Director, Operations and Professional Development
SES Assistant Director, Policy and Plans
SES Assistant Director, Resources
SES Director, Field Detachment
SES Regional Director, Atlanta
SES Regional Director, Boston
SES Regional Director, Chicago
SES Regional Director, Los Angeles
SES Regional Director, Philadelphia
SES Regional Director, San Francisco

AGENCY: DEFENSE INTELLIGENCE AGENCY

Positions:

Civilian Positions

DISES Executive Director
DISES Deputy Director for Resources and Systems
DISES Assistant Deputy Director for DODIIS Planning and Management
DISES Assistant Deputy Director for Plans and Policy
DISES GDIP Staff Director
DISES Staff Director, Intelligence Communication Architecture Project Office
DISES Assistant Deputy Director for Information Systems

Military Positions

0–8 Deputy Director, Defense Intelligence Agency
0–7 Deputy Director for Operations, Plans, and Training
0–8 Deputy Director for Foreign Intelligence

AGENCY: DEFENSE INVESTIGATIVE SERVICE

Positions:

SES Director
SES Deputy Director (Industrial Security)
SES Deputy Director (Investigations)

AGENCY: DEFENSE LOGISTICS AGENCY

Positions:

Headquarters

0–8 Deputy Director
0–8 Deputy Director (Acquisition Management)
0–7 Executive Director, Supply Operations
0–7/0–8 Executive Director, Quality Assurance
SES Comptroller, DLA
SES General Counsel, DLA
SES Executive Director, Technical and Logistics Services
SES Executive Director, Contracting
SES Deputy Exec. Director, Supply Operations
SES Executive Director, Contract Management
SES Deputy General Counsel, DLA
SES Chief, Logistics Programs Division, Directorate of Supply Operations
SES Chief, Contracts Division, Directorate of Contracting
SES Assistant Director, Office of Telecommunications and Information Systems
SES Deputy Exec. Director, Quality Assurance
SES Staff Director, Small and Disadvantaged Business Utilization
SES Chief, Accounting and Finance Division, Office of Comptroller
SES Deputy Comptroller, Office of Comptroller
SES Chief, AIS Development and Control Division, Office of Telecommunications and Information Systems
SES Staff Director, Office for Contracting Integrity
SES* Chief, Plans, Policies and Systems Division, Directorate of Contract Management
SES* Program Manager, DLA Logistics Systems Modernization

Field Activities

0–8 Commander, Defense Construction Supply Center
0–7 Commander, Defense Electronics Supply Center
0–8 Commander, Defense Fuel Supply Center
0–7 Commander, Defense General Supply Center
0–7 Commander, Defense Industrial Supply Center
0–8 Commander, Defense Personnel Support Center
0–7 Commander, Defense Contract Administration Services Region, Los Angeles
0–7 Commander, Defense Contract Administration Services Region, New York
0–7 Commander, Defense Reutilization and Marketing Service
SES* Executive Director, Acquisition Management Planning and Support, Defense Personnel Support Center

AGENCY: DEFENSE MAPPING AGENCY

Positions:

SES Deputy Director, Management and Technology
SES Deputy Director for Programs, Production and Operations
SES Deputy Director for Research and Engineering
SES Comptroller
0–8 Director, Defense Mapping Agency
0–7 Deputy Director, Defense Mapping Agency
0–7 Deputy Director for Plans and Requirements
SES Director of Personnel
SES Assistant Deputy Director for Programming

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SES Assistant Deputy Director for Production and Distribution
SES Chief, Advanced Technology Division
SES Director, Defense Mapping Agency Systems Center
SES Deputy Director for Systems Development Systems Center
SES Technical Director, Defense Mapping Agency Reston Center
SES Director, Defense Mapping Agency Office of Telecommunications Services
SES General Counsel
SES Director of Acquisition
SES Technical Director, Defense Mapping Agency Aerospace Center
SES Technical Director, Defense Mapping Agency Hydrographic/Topographic Center
SES Deputy Director, Programs, Production/Operations, Defense Mapping Agency Hydrographic Topographic Center
SES Assistant Deputy Director for Plans and Requirements
SES Deputy Director for Programs Production and Operations, Defense Mapping Agency Aerospace Center
SES* Chief, Scientific Data Department, Defense Mapping Agency Aerospace Center
SES* Chief, Scientific Data Department, Defense Mapping Agency Hydrographic/Topographic Center
SES* Technical Director/Deputy Director, Defense Mapping Agency Combat Support Center
SES* Deputy Director for Programs, Production and Operations, Defense Mapping Agency Reston Center
SES* Deputy Director for Program Integration and Operations, Defense Mapping Agency Systems Center

AGENCY: DEFENSE NUCLEAR AGENCY

Positions:

SES Deputy Director
SES* Director for Plans, Programs and Requirements
SES Director for Test
SES Director for Radiation Sciences
SES Director for Shock Physics
SES Director for Acquisition Management
SES Comptroller
SES Scientific Director, AFRRI
0-6 Director for Operations
SES* Deputy Director for Operations
0-7 Commander, Field Command

AGENCY: NATIONAL SECURITY

Positions:

Military Positions

SCES* Deputy Director
SCES* Inspector General
SCES* General Counsel

AGENCY: DEPARTMENT OF EDUCATION

Positions:

Office of the Secretary

SES Counselor/Chief of Staff to the Secretary

Deputy Under Secretary for Management

SES Comptroller
SES* Director, Office of Financial Management Service
SES* Director, Grants and Contracts Service
SES Administrator for Management Services
SES* Director, Management Improvement Service
SES* Director, Personnel Management Service
SES* Director, Administrative Resource Management Service
SES Director, Information Technology Services
SES* Deputy Director, Information Technology Service

Deputy Under Secretary for Planning, Budget and Evaluation

SES Director of Budget Services
SES* Deputy Director of Budget Service
SES* Director, Division of Budget Systems
SES* Director, Division of Elementary, Secondary and Vocational Education Analysis
SES* Director, Division of Postsecondary Education Analysis
SES* Director, Division of Special Education, Rehabilitative Service and Research Analysis
SES Director of Planning and Evaluation Services
SES* Deputy Director Planning and Evaluation Service
SES Director of Public Affairs

Deputy Under Secretary for Intergovernmental and Interagency Affairs

SES Chairperson, Education Appeal Board
SES* Director, Intergovernmental Affairs

Assistant Secretary for Legislation

SES Deputy Assistant Secretary for Legislation

General Counsel

SES* Senior Counsel to the General Counsel
SES Deputy General Counsel for Departmental Services
SES* Assistant General Counsel for Business and Administrative Law
SES* Assistant General Counsel for Educational Equity
SES Deputy General Counsel for Regulations and Legislation
SES* Assistant General Counsel for Regulations
SES Deputy General Counsel for Program Service
SES* Assistant General Counsel for Elementary Secondary, Adult and Vocational Education

Inspector General

SES Assistant Inspector General for Investigation
SES Assistant Inspector General for Policy, Planning and Management
SES Assistant Inspector General for Audit
SES* Deputy Assistant Inspector General for Audit Operations
SES* Deputy Assistant Inspector General for Technical Audit Services

Office for Civil Rights

SES Deputy Assistant Secretary for Civil Rights (Operations)
SES Deputy Assistant Secretary for Civil Rights (Policy)
SES* Director, Policy and Enforcement Service

Office of Bilingual Education and Minority Language Affairs

SES Director Office of Bilingual Education and Minority Languages Affairs

Office of Special Education and Rehabilitative Services

SES Deputy Assistant Secretary
SES* Executive Administrator
SES Director, Office of Special Education Programs
SES* Deputy Commissioner, Rehabilitation Services Administration

Office of Postsecondary Education

SES Deputy Assistant Secretary for Student Financial Assistance
SES* Director, Student Financial Assistance Programs
SES Deputy Assistant Secretary for Higher Education Programs
SES* Director, Debt Collection and Management Assistance Service

Office of Vocational and Adult Education

SES Deputy Assistant Secretary for Vocational and Adult Education
SES* Director, Division of Adult Education

Office of Elementary and Secondary Education

SES Deputy Assistant Secretary for Programs and Administration
SES Deputy Assistant Secretary for Regulations, Innovation and Development
SES* Director, Office of State and Local Education Programs
SES* Director, Office of Indian Education Programs
SES* Director, Office of Compensatory Education Programs

Office of Education Research and Improvement

SES Deputy Assistant Secretary for Educational Research and Improvement
SES Commissioner, National Center for Education Statistics
SES* Director, Programs for the Improvement of Practice

National Commission on Libraries and Information Science

SES Executive Director

AGENCY: DEPARTMENT OF ENERGY

Positions:

Office of the Secretary

SES Special Assistant to the Secretary
SES Executive Assistant to the Deputy Secretary
SES Special Assistant to the Secretary for Programs and Policies
SES Special Assistant to the Secretary for Outreach Programs
SES Manager, Albuquerque Operations Office

SES Deputy Manager, Albuquerque Operations Office
SES Manager, Chicago Operations Office
SES Deputy Manager, Chicago Operations Office
SES Manager, Idaho Operations Office
SES Deputy Manager, Idaho Operations Office
SES Manager, Nevada Operations Office
SES Deputy Manager, Nevada Operations Office
SES Manager, Oak Ridge Operations Office
SES Deputy Manager, Oak Ridge Operations Office
SES Manager, Richland Operations Office
SES Deputy Manager, Richland Operations Office
SES Executive Assistant to the Under Secretary
SES Executive Assistant to the Secretary
SES Special Executive Assistant to the Under Secretary (Field Operations)
SES Special Assistant to the Under Secretary (Nuclear Energy and Emergency Preparedness)
SES Departmental Liaison to the National Critical Materials Council
SES Special Assistant to the Under Secretary (Defense Programs)
SES Special Assistant to the Secretary for Nuclear Reactor Safety
SES Manager, Savannah River Operations Office
SES Manager, San Francisco Operations Office
SES Deputy Manager, San Francisco Operations Office
SES Deputy Manager, Savannah River Operations Office

Office of the Inspector General

SES Associate Inspector General
SES Assistant Associate Inspector General for Audits
SES Assistant Associate Inspector General for Inspections
SES Assistant Associate Inspector General for Investigations

Office of the General Counsel

SES Deputy General Counsel
SES Deputy General Counsel for Legislation and Regulations
SES Deputy General Counsel for Litigation
SES Deputy General Counsel for Programs
SES Deputy General Counsel for Legal Services

Economic Regulatory Administration

SES Deputy Administrator for Enforcement
SES Special Counsel
SES Deputy Special Counsel, Office of Special Counsel
SES Solicitor
SES Director, Office of Enforcement Programs
SES Director, Office of Fuels Programs
SES Deputy Director, Office of Fuels Programs

Energy Information Administration

SES Deputy Administrator, Energy Information Administration
SES Director, Office of Oil and Gas
SES Director, Office of Energy Markets and End Use
SES Director, Office of Statistical Standards
SES Director, Office of Coal, Nuclear, Electric and Alternative Fuels

Assistant Secretary for Conservation and Renewable Energy

SES Principal Deputy Assistant Secretary for Conservation and Renewable Energy
SES Administrator, Alaska Power Administration
SES Administrator, Bonneville Power Administration
SES Assistant Administrator for Engineering and Construction, Bonneville Power Administration
SES Assistant Administrator for Power Management, Bonneville Power Administration
SES Deputy Administrator, Bonneville Power Administration
SES Assistant Administrator for Conservation, Bonneville Power Administration
SES Administrator, Southeastern Power Administration
AD–340 Administrator, Southwestern Power Administration
SES Deputy Administrator, Southwestern Power Administration
SES Administrator, Western Area Power Administration
SES Deputy Administrator, Western Area Power Administration
SES Deputy Assistant Secretary for Conservation
SES Deputy Assistant Secretary for Renewable Energy

Assistant Secretary for Environment, Safety and Health

SES Principal Deputy Assistant Secretary
SES Director, Office of Environmental Guidance and Compliance, Deputy Assistant Secretary for Environment
SES Deputy Assistant Secretary for Safety, Health and Quality Assurance
SES Deputy Assistant Secretary for Environment

Assistant Secretary for Defense Programs

SES Executive Assistant
SES Principal Deputy Assistant Secretary for Defense Programs
SES Deputy Assistant Secretary for Security Affairs
SES Deputy Director, Office of Military Applications, Deputy Assistant Secretary for Military Applications
SES Deputy Director, Office of Inertial Fusion
SES Director, Office of Inertial Fusion
SES Director, Office of International Security Affairs
SES Deputy Director, Office of International Security Affairs
SES Director, Office of Classification
SES Director, Politico-Military Security Affairs, Division, Office of International Security Affairs
SES Deputy Director, Office of Classification
SES Deputy Director, Office of Safeguards and Securities
SES Director, Office of Safeguards and Securities
SES Director, Office of Nuclear Materials Production, Deputy Assistant Secretary for Nuclear Materials Production
SES Deputy Director, Office of Nuclear Materials Production, Deputy Assistant Secretary for Nuclear Materials Production
SES Deputy Assistant Secretary for Nuclear Materials
SES Director, Office of Defense Waste and By-products Management, Deputy Assistant Secretary for Nuclear Materials
SES Deputy Director, Office of Defense Waste and Transportation Management, Deputy Assistant Secretary for Nuclear Materials
SES Deputy Assistant Secretary for Intelligence
0–8 Deputy Assistant Secretary for Military Applications/Director of Military Applications

Assistant Secretary for International Affairs and Energy Emergencies

SES Principal Deputy Assistant Secretary for International Affairs
SES Deputy Assistant Secretary for Energy Emergencies
SES Deputy Assistant Secretary for International Affairs

Office of Energy Research

SES Deputy Director, Office of Energy Research
SES Associate Director, Office of Health and Environmental Research
SES Deputy Associate Director, Office of Health and Environmental Research
SES Associate Director, Office of Fusion Energy
SES Deputy Associate Director, Office of Fusion Energy
SES Director, Office of Field Operations Management
SES Director, Office of Program Analysis
SES Associate Director, Office of Basic Energy Sciences
SES Deputy Associate Director for Basic Energy Sciences, Office of Basic Energy Sciences
SES Associate Director of High Energy and Nuclear Physics

Assistant Secretary for Fossil Energy

SES Principal Deputy Assistant Secretary for Fossil Energy
SES Deputy Assistant Secretary for Strategic Petroleum Reserve
SES Deputy Assistant, Secretary for Management, Planning and Technical Coordination
SES Deputy Assistant Secretary for Coal Utilization, Advanced Conversions and Gasification
SES Deputy Assistant Secretary for Oil, Shale and Coal Liquids
SES Deputy Assistant Secretary for Clean Coal, Combustion and Conversion Systems
SES Deputy Assistant Secretary for Advanced Fuels Technology and Extraction and Environmental Control
SES Deputy Assistant Secretary for Coal Technology

Assistant Secretary for Nuclear Energy

SES Associate Deputy Assistant Secretary for Reactor Deployment
SES Principal Deputy Assistant Secretary for Nuclear Energy

SES Deputy Director for Naval Reactors, Deputy Assistant Secretary for Naval Reactors
SES Deputy Assistant Secretary for Reactor Systems, Development and Technology
SES Deputy Assistant Secretary for Uranium Enrichment
0-8 Deputy Assistant Secretary for Naval Reactors
SES Deputy Assistant Secretary for Breeder Reactor Programs

Assistant Secretary, Management and Administration

SES Deputy Assistant Secretary for Management and Administration
SES Director, Office of Equal Opportunity
SES Deputy Director, Office of Equal Opportunity
SES Deputy Director, Office of Administrative Services
SES Director of Administration
SES Deputy Director of Administration
SES Director, Office of Personnel
SES Director, Office of Organization and Management Systems
SES Deputy Director, Office of Organization and Management Systems
SES Deputy Director of Project and Facilities Management
SES Director, Office of Project and Facilities Management
SES Director, Office of Administrative Services
SES Director, Office of ADP Management
SES Deputy Director, Office of ADP Management
SES Director, Office of Organization and Management Systems, Directorate of Administration
SES Director, Office of Computer Services and Telecommunications Management
SES Deputy Director, Office of Computer Services and Telecommunications Management
SES Director, Office of Industrial Relations
SES Director, Office of Small and Disadvantaged Business Utilization
SES Director, Office of Policy
SES Assistant Controller, Budget Policy and Compliance
SES Assistant Controller, Financial Systems and Accounting
SES Director, Office of Procurement Support
SES Director, Office of Procurement Review
SES Director, Office of Procurement Operations
SES Deputy Director, Office of Procurement Operations
SES Controller
SES Deputy-Controller
SES Director, Office of Budget
SES Deputy Director, Office of Budget
SES Director, Procurement and Contract Management
SES Deputy Director, Procurement and Contract Management

Assistant Secretary, Congressional, Intergovernmental and Public Affairs

SES Deputy Assistant Secretary for House Liaison
SES Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs
SES Deputy Assistant Secretary for Senate Liaison

Office of Hearings and Appeals

SES Director, Office of Hearings and Appeals

Board of Contract Appeals

GM-18 Chairman, Board of Contract Appeals

Office of Civilian Radioactive Waste Management

SES Associate Director for Geologic Repositories, Office of Geologic Repositories
SES Associate Director for Storage and Transportation Systems, Office of Storage and Transportation Systems

Office of Policy, Planning and Analysis

SES Director, Office of Planning and Analysis

AGENCY: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Positions:

OFFICE OF THE SECRETARY

Immediate Office of the Secretary

SES Chief of Staff
SES Executive Assistant to the Secretary
SES Executive Secretary
SES Deputy Executive Secretary to the Department (3)
SES Executive Administrative Assistant
SES Senior Advisor to the Secretary
SES Senior Special Assistant to the Secretary
SES Special Assistant to the Secretary (4)
SES* Senior Executive Assistant to the Chief of Staff
SES* Senior Advisor to the Chief of Staff
SES* Executive Director, Presidential Commission on the HIV Epidemic

Immediate Office of the Under Secretary

SES Counselor to the Under Secretary
SES Deputy Under Secretary
SES Director for Intergovernmental Affairs
SES Regional Director—Region I
SES Regional Director—Region II
SES Regional Director—Region III
SES Regional Director—Region IV
SES Regional Director—Region V
SES Regional Director—Region VI
SES Regional Director—Region VII
SES Regional Director—Region VIII
SES Regional Director—Region IX
SES Regional Director—Region X
SES Chairman, Departmental Grant Appeals Board

Office of Planning and Evaluation

SES Assistant Secretary for Planning and Evaluation
SES Deputy Assistant Secretary for Income Security Policy
SES Deputy Assistant Secretary for Health Policy
SES Deputy Assistant Secretary for Program Systems
SES Deputy Assistant Secretary for Social Services Policy

Office of Inspector General

SES Assistant Inspector General for Audit
SES Senior Assistant Inspector General for Auditing and Systems
SES Assistant Inspector General for Investigations
SES Deputy Assistant Inspector General Criminal Investigations Division, Office of Investigations
SES Assistant Inspector General for Analysis and Inspections
SES Deputy Assistant Inspector General for Health Care Financing Audits
SES Deputy Assistant Inspector General for Grants, Internal Systems, and EDP Audits
SES Deputy Assistant Inspector General for Analysis and Inspections
SES Deputy Assistant Inspector General for Social Security Audits
SES Deputy Assistant Inspector General for Audit, Management, Operations and Evaluation
SES Deputy Assistant Inspector General, Civil Fraud Division, Office of Investigations
SES Deputy Assistant Inspector General, Headquarters Operations Division, Office of Investigations

Office of Management and Budget

SES Assistant Secretary for Management and Budget
SES Principal Deputy Assistant Secretary for Management and Budget
SES Deputy Assistant Secretary, Budget
SES Deputy Assistant Secretary, Finance
SES* Deputy to Deputy Assistant Secretary, Finance
SES Deputy Assistant Secretary for Information Resources Management
SES Deputy Assistant Secretary, Procurement, Assistance and Logistics
SES Director, Division of Health Benefits and Income Security Budget Analysis, Office of Budget, Office of Management and Budget
SES Director, Division of Public Health and Social Services Budget Analysis, Office of Budget, Office of Management and Budget
SES Director, Office of Procurement and Assistance Financial Management, Office of Procurement, Assistance and Logistics, Office of Management and Budget
SES Deputy Assistant Secretary for Administrative and Management Services
SES* Director, Office of Procurement and Logistics, Policy, Office of Procurement, Assistance and Logistics, Office of Management and Budget
SES* Director, Office of Financial Policy, Office of Finance, Office of Management and Budget

Legislation

SES Deputy Assistant Secretary for Legislation
SES Deputy Assistant Secretary for Legislation (Health)
SES Deputy Assistant Secretary for Legislation (Human Services)
SES Director of Program Coordination
SES Deputy Assistant Secretary for Legislation (Special Projects)
SES Deputy Assistant Secretary for Legislation (Congressional Liaison)

Office for Civil Rights

SES Special Assistant to the Secretary for Civil Rights, Director, Office for Civil Rights

SES Deputy Director, Office for Civil Rights
SES Associate Deputy Director for Program Operations, Office for Civil Rights
SES Associate Deputy Director for Management, Planning and Evaluation, Office for Civil Rights

Office for Personnel Administration

SES Assistant Secretary for Personnel Administration
SES Deputy Assistant Secretary, Personnel Administration

Office of Public Affairs

SES Deputy Assistant Secretary for Public Affairs
SES Deputy Assistant Secretary for News
SES* Director, News Division

Office of the General Counsel

SES Principal Deputy General Counsel
SES Deputy General Counsel
SES Deputy General Counsel, Legal Counsel
SES Associate General Counsel, Legislation Division
SES Associate General Counsel, Public Health Division
SES Associate General Counsel, Social Security
SES Associate General Counsel, Food and Drug Administration
SES Associate General Counsel, Health Care Financing
SES Associate General Counsel, Civil Rights Division
SES Associate General Counsel, Business and Administrative Law Division
SES Associate General Counsel, Inspector General Division
SES Associate General Counsel, Family Support and Human Development Division
SES* Chief Counsels, Regions I–X

Office of Consumer Affairs

SES Deputy Director, Office of Consumer Affairs
SES Director, Office of Consumer Affairs

Office of Human Development Services

SES Deputy Commissioner, Administration on Aging
SES Deputy Assistant Secretary, Human Development Services
GS–18 Commissioner, Administration for Children, Youth and Families
SES Deputy Commissioner, Administration for Children, Youth and Families
SES Commissioner, Administration for Native Americans
SES Commissioner, Administration on Developmental Disabilities
SES Director, Office of Management Services
SES Director, Office of Policy, Planning and Legislation
SES Associate Commissioner, Office of State and Tribal Programs
SES Associate Commissioner, Administration for Children, Youth and Families
SES Associate Commissioner, Office of Program Operations, Administration on Aging
SES* Director, Office of Regional Operations

Health Care Financing Administration

SES Deputy Administrator, Health Care Financing Administration
SES Executive Associate Administrator
SES Director, Bureau of Program Operations
SES* Deputy Director, Bureau of Program Operations
SES Director, Office of Prepaid Health Care
SES* Deputy Director, Office of Prepaid Health Care
SES Director, Health Standards and Quality Bureau
SES* Deputy Director, Health Standards and Quality Bureau
SES Director, Office of Management and Budget
SES* Deputy Director, Office of Management and Budget
SES Director, Office of Research and Demonstrations
SES Associate Adminstrator for Management and Support Services
SES Associate Administrator for Program Development
SES Associate Administrator for Operations
SES Deputy Associate Administrator for Operations (Field)
SES Associate Administrator for Communications
SES Director, Office of Executive Operations
SES* Deputy Director, Office of Executive Operations
SES Regional Administrator, Region I
SES Regional Administrator, Region II
SES Regional Administrator, Region III
SES Regional Administrator, Region IV
SES Regional Administrator, Region V
SES Regional Administrator, Region VI
SES Regional Administrator, Region VII
SES Regional Administrator, Region VIII
SES Regional Administrator, Region IX
SES Regional Administrator, Region X
SES Director, Bureau of Eligibility Reimbursement and Coverage
SES* Deputy Director, Bureau of Eligibility Reimbursement and Coverage
SES Director, Bureau of Quality Control
SES* Deputy Director, Bureau of Quality Control
SES Director, Office of Legislation and Policy
SES Director, Bureau of Data Management and Strategy
SES* Deputy Director, Bureau of Data Management and Strategy
SES Chief Actuary, Office of the Actuary

PUBLIC HEALTH SERVICE

Office of the Assistant Secretary for Health

SES Deputy Assistant Secretary, Health Operations
SES Deputy Assistant Secretary, Planning and Evaluation
SES Deputy Assistant Secretary, Population Affairs
SES/0–7/0–8 Regional Health Administrators—Regions I–X
SES Executive Director, President's Council on Physical Fitness and Sports
SES Director, National Center for Health Services Research and Health Care Technology Assessments
0–8 Deputy Surgeon General, Public Health Service
SES Director, Office of International Health
0–7 Deputy Director, Office of International Health
0–8 Senior Advisor for Environmental Affairs
0–7 Deputy Assistant Secretary for Health for Disease Prevention and Health Promotion
SES Deputy Assistant Secretary for Health (Communications)
SES* AIDS Coordinator
SES* Vaccine Coordinator, National Vaccine Program Office
SES* Director, News Division

Center for Disease Control

0–8 Director, Centers for Disease Control
SES Deputy Director, Centers for Disease Control
SES Assistant Director for International Health
SES Director, Office of Program Support, Centers for Disease Control
0–7 Program Manager, Expanded Program on Immunization, World Health Organization, International Health Program Office
SES Director, Clinical Chemistry Division, Center for Environmental Health
SES Director, Center for Infectious Diseases
SES Assistant Director for Management, Center for Disease Control
SES Assistant Director for Laboratory Science, Center for Infectious Diseases
SES Director, Center for Health Promotion and Education
0–8 Director, National Institute for Occupational Safety and Health
SES Associate Administrator, Agency for Toxic Substances and Disease Registry
SES Deputy Director, Center for Preventive Services
SES Director, Division of Viral Diseases
0–7 Assistant Director, Washington Office
SES Deputy Director, National Institute for Occupational Safety and Health

Health Resources and Services Administration

0–8 Administrator, Health Resources and Services Administration
SES Deputy Administrator
0–8 Director, Bureau of Health Care Delivery and Assistance
SES Deputy Director, Bureau of Health Care Delivery and Assistance
0–8 Director, Bureau of Health Professions
SES Deputy Director, Bureau of Health Professions
0–8 Director, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration
SES Deputy Director, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration

Indian Health Service

SES Director Indian Health Service
SES Deputy Director, Indian Health Service
SES* Director, Alaska Area Indian Health Service
SES* Director, Bemdiji Area Indian Health Service
SES* Director, California Area Indian Health Service

SES* Director, Navajo Area Indian Health Service
SES* Director, Phoenix Area Indian Health Service

Alcohol, Drug Abuse, and Mental Health Administration

SES Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration
SES Director, National Institute on Alcohol Abuse and Alcoholism
SES Deputy Director, National Institute on Alcohol Abuse and Alcoholism
SES Director, National Institute of Mental Health
SES Deputy Director, National Institute of Mental Health
SES Director, National Institute on Drug Abuse
SES Deputy Director, National Institute on Drug Abuse

National Institutes of Health

0–8 Director, National Institutes of Health
SES Deputy Director, National Institutes of Health
SES Deputy Director for Intramural Research
SES Deputy Director for Extramural Research and Training
SES Associate Director for Program Planning and Evaluation
SES Associate Director for Administration
SES Associate Director for Communications
SES Associate Director for Research Services
SES Associate Director for for Clinical Care, National Institutes of Health and Director of Clinical Center
SES Associate Director for Intramural Affairs
SES Associate Director for Extramural Affairs
SES Director, Fogarty International Center
SES Director, Division of Computer Research and Technology
SES Director, Division of Research Grants
SES Deputy Director, Division of Research Grants
0–8 Director, National Cancer Institute
SES Deputy Director, National Cancer Institute
SES* Director, National Center for Nursing Research
SES Director, Division of Research Resources
SES Deputy Director, Division of Research Resources
SES Director, Division of Research Services
SES Director, National Eye Institute
SES Deputy Director, National Eye Institute
SES Director, National Heart, Lung, and Blood Institute
0–7 Deputy Director, National Heart, Lung, and Blood Institute
0–8 Director, National Institute of Allergy and Infectious Diseases
SES Deputy Director, National Institute of Allergy and Infectious Diseases
SES Director, National Institute of Arthritis and Musculosketal and Skin Diseases
0–7 Director, National Institute on Aging
SES Deputy Director, National Institute on Aging
SES Director, National Institute of Child Health and Human Development
SES Deputy Director, National Institute of Child Health and Human Development
SES Director, National Institute of Dental Research
0–7* Deputy Director, National Institute of Dental Research
0–8 Director, National Institute of Environmental Health Sciences
SES Deputy Director, National Institute of Environmental Health Sciences
SES Director, National Institute of General Medical Sciences
SES* Director, National Institute of Diabetes and Digestive and Kidney Diseases
0–7* Deputy Director, National Institute of Diabetes and Digestive and Kidney Diseases
0–8 Director, National Institute of Neurological and Communicative Disorders and Stroke
SES Deputy Director, National Institute of Neurological and Communicative Disorders and Stroke
SES Director, National Library of Medicine
SES Deputy Director, National Library of Medicine

Food and Drug Administration

0–8 Commissioner of Food and Drugs
SES Deputy Commissioner of Food and Drugs
SES Associate Commissioner for Consumer Affairs
SES Associate Commissioner for Health Affairs
SES Associate Commissioner for Planning and Evaluation
SES Associate Commissioner for Science
SES Director, Parklawn Computer Center
SES Director, Orphan Products Development
SES Associate Commissioner for Public Affairs
SES Special Assistant to the Commissioner for Program Policy
SES Associate Commissioner for Legislative Affairs
SES Associate Commissioner for Management and Operations
SES* Director, Office of the Executive Assistant

Center for Food Safety and Applied Nutrition

SES Director, Center for Food Safety and Applied Nutrition
SES Deputy Director, Center for Food Safety and Applied Nutrition
SES Associate Director, Office of Toxicological Sciences
SES Director, Division of Toxicology
SES Associate Director for Laboratory Investigations
SES Director, Division of Chemistry and Physics
SES Director, Division of Microbiology
SES Director, Office of Compliance
SES Director, Office of Physical Sciences
SES Deputy Director, Office of Physical Sciences
SES Director, Division of Food Technology
SES Director of Mathematics
SES Director, Division of Food and Color Additives
SES Director, Division of Chemical Technology
SES Director, Office of Nutrition and Food Sciences
SES Director, Division of Regulatory Guidance
SES Director, Office of Management
SES Deputy Director, Office of Nutrition and Food Sciences
SES Director, Division of Nutrition

Center for Drug Evaluation and Research

0–8* Director, Center for Drug Evaluation and Research
SES* Deputy Director, Center for Drug Evaluation and Research
SES Director, Office of Compliance
SES Deputy Director for Program Management
SES Director, Division of Oncology and Radiopharmaceutical Drugs Products
SES Director, Division of Scientific Investigations Staff
SES Director, Division of Anti-Infective Drug Products
SES Director, Division of Metabolism and Endocrine Drug Products
SES Director, Division of Surgical-Dental Drug Products
SES Director, Division of OTC Drug Evaluation
SES Director, Office of Drug Standards
SES Deputy Director, Office of Drug Standards
SES Director, Division of Neuropharmacological Drugs Products
SES Director, Division of Biological Products Compliance
SES Director, Office of Epidemiology and Biostatistics
SES Deputy Director, Division of Epidemiology and Biostatistics
SES Director, Division of Biometrics
SES Director, Division of Epidemiology and Surveillance
SES Director, Office of Drug Research and Review
SES Director, Division of Generic Drugs
SES Director, Division of Biopharmaceutics
SES* Director, Division of Gastrointestinal and Coagulation Drug Products

Center for Biologics Evaluation and Research

0–7 Director, Office of Biologics Research and Review
SES* Director, Center for Biologics Evaluation and Research
SES Deputy Director for Program Management
SES Deputy Director for Medical Activities
SES Director, Office of Management
SES Director, Division of Biochemistry and Biophysics
SES Director, Division of Drug Biology
SES Director, Division of Product Quality Control
SES Director, Division of Blood and Blood Products
SES Director, Division of Bacterial Products

Center for Veterinary Medicine

SES Director, Center for Veterinary Medicine
SES Deputy Director, Center for Veterinary Medicine
SES Director, Division of Therapeutic Drugs for Non-Food Animals

SES Director, Office of New Animal Drug Evaluation
SES Associate Director for Surveillance and Compliance
SES Director, Office of Science
SES Director, Division of Veterinary Medical Research
SES Director, Division of Animal Feed
SES Associate Director for Scientific Information and Education
SES Director, Division of Biometrics and Production Drugs
SES Director, Division of Therapeutic Drugs for Food Animals
SES Director, Division of Drug Manufacturing and Controls

Center for Devices and Radiological Health

SES Director, Office of Device Evaluation
SES Associate Director, Office of Regulations
SES Director, Office of Compliance
SES Deputy Director, Office of Compliance
0–8 Director, Center for Devices and Radiological Health
SES Director, Office of Science and Technology
SES Deputy Director, Center for Devices and Radiological Health
SES Deputy Director, Office of Science and Technology
SES Deputy Director, Office of Device Evaluation

National Center for Toxicological Research

SES Director, National Center for Toxicological Research
SES Director, Division of Biometry
SES Associate Director for Research
SES Deputy Director, National Center for Toxicological Research

Office of Regulatory Affairs

SES Associate Commissioner for Regulatory Affairs
SES Deputy Associate Commissioner for Regulatory Affairs (Enforcement)
SES Deputy Associate Commissioner for Regulatory Affairs (Regional Operations)
SES Deputy Director, Office of Regional Operations
SES Deputy Director, Office of Enforcement
SES Director, Office of Regulatory Resource Management
SES Director, Contaminants Policy Staff
SES Regional Food and Drug Director, Region II (Northeast Region)
SES Regional Food and Drug Director, Region III (Mid-Atlantic Region)
SES Regional Food and Drug Director, Region IV (Southeast Region)
SES Regional Food and Drug Director, Region V (Midwest Region)
SES Regional Food and Drug Director, Region VI (Southwest Region)
SES Regional Food and Drug Director, Region IX (Pacific Region)
0–7 Regional Medical Officer, Region X

Social Security Administration

SES* Senior Executive Officer
SES* Chief Financial Officer
SES Associate Commissioner, Program and Integrity Reviews
SES Deputy Associate Commissioner, Program and Integrity Reviews
SES* Associate Commissioner, Financial Policy and Operations
SES* Deputy Associate Commissioner, Financial Policy and Operations
SES* Director, Information Technology Systems Review Staff
SES* Deputy Commissioner for Management
SES* Assistant Deputy Commissioner for Management
SES* Associate Commissioner for Human Resources, Training and Management Analysis
SES* Associate Commissioner for Information Management, Acquisition and Logistics
SES* Deputy Commissioner for Policy and External Affairs
SES Associate Commissioner, Policy
SES Associate Commissioner, Governmental Affairs
SES Deputy Associate Commissioner, Governmental Affairs
SES* Deputy Commissioner, Programs
SES* Assistant Deputy Commissioner, Programs
SES Associate Commissioner, Hearings and Appeals
SES* Deputy Associate Commissioner, Hearings and Appeals
SES Associate Commissioner, Disability
SES Deputy Associate Commissioner, Disability
SES Associate Commissioner, Supplemental Security Income
SES Deputy Associate Commissioner, Supplemental Security Income
SES Associate Commissioner, Retirement and Survivors Insurance
SES Deputy Associate Commissioner, Retirement and Survivors Insurance
SES Chief Actuary
SES Deputy Commissioner, Operations
SES* Senior Advisor to the Deputy Commissioner, Operations
SES* Director, Field Liaison and Support Staff
SES Associate Commissioner, Central Operations
SES Regional Commissioner, Boston—Region I
SES Regional Commissioner, New York—Region II
SES Regional Commissioner, Philadelphia—Region III
SES Regional Commissioner, Atlanta—Region IV
SES Regional Commissioner, Chicago—Region V
SES Regional Commissioner, Dallas—Region VI
SES Regional Commissioner, Kansas City—Region VII
SES Regional Commissioner, Denver—Region VIII
SES Regional Commissioner, San Francisco—Region IX
SES Regional Commissioner, Seattle—Region X
SES Deputy Commissioner, Systems
SES* Assistant Deputy Commissioner for Systems
SES* Director, Office of System Support and Planning
SES Associate Commissioner, System Operations
SES Deputy Associate Commissioner, System Operations
SES Associate Commissioner, System Integration
SES Deputy Associate Commissioner, System Integration
SES Associate Commissioner, System Requirements
SES Deputy Associate Commissioner, System Requirements

Family Support Administration

SES Administrator, Family Support Administration
SES Deputy Administrator, Family Support Administration
SES Associate Administrator for Financial Management
SES Associate Administrator for Management and Information Systems
SES Director, Office of Family Assistance
SES Director, Office of Refugee Resettlement
SES Deputy Director, Office of Child Support Enforcement
SES Associate Deputy Director, Office of Child Support Enforcement
SES Director, Office of Community Services
SES Director, Office of State and Project Assistance, Office of Community Services

AGENCY: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Positions:

Office of the Secretary

SES Deputy Under Secretary for Intergovernmental Relations
SES Executive Assistant to the Secretary
SES Exec. Assistant to the Under Secretary
SES Deputy Under Sec. for Field Coordination
SES Assistant to the Secretary for International Affairs
SES Assistant to the Secretary for Labor Relations

Office of the Assistant Secretary for Public Affairs

SES General Deputy Assistant Secretary for Public Affairs
SES Deputy Assistant Secretary for Public Affairs
SES Special Assistant to the Secretary for Public Affairs (Director of Public Affairs)

Office of the Assistant Secretary For Housing

SES Deputy Assistant Secretary for Multifamily Housing Programs
SES Deputy Assistant Secretary for Single-Family Housing
SES Deputy Assistant Secretary for Policy and Financial Management, and Administration
SES General Deputy Assistant Secretary for Housing/Deputy Federal Housing Commissioner

Office of the Assistant Secretary for Public and Indian Housing

SES General Deputy Assistant Secretary for Public and Indian Housing

Office of the Assistant Secretary for Community Planning and Development

SES Deputy Assistant Secretary for Program Policy Development and Evaluation
SES Director, Office of Urban Development Action Grants
SES General Deputy Assistant Secretary for Community Planning and Development
SES Deputy Assistant Secretary for Program Management
SES Deputy Assistant Secretary for Field Operations and Environment/Energy

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

SES Deputy Assistant Secretary for Operations and Management
SES General Deputy Assistant Secretary for Fair Housing and Equal Opportunity
SES Deputy Assistant Secretary for Enforcement and Compliance

Office of the Assistant Secretary for Policy Development and Research

SES Deputy Assistant Secretary for Policy Development
SES Deputy Assistant Secretary for Economic Affairs
SES* Deputy Assistant Secretary for Research
SES General Deputy Assistant Secretary for Policy Development and Research
SES Associate Deputy Assistant Secretary for Economic Affairs

Office of the General Counsel

SES Deputy General Counsel
SES Deputy General Counsel (Operations)

Office of the Assistant Secretary for Administration

SES Deputy Assistant Secretary for Administration

Office of the Assistant Secretary for Legislation and Congressional Relations

SES Deputy Assistant Secretary for Legislation
SES Deputy Assistant Secretary for Congressional Relations

Office of the Inspector General

SES Deputy Inspector General
SES Assistant Inspector General for Investigations
SES Assistant Inspector General for Audit
SES Assistant Inspector General for Fraud Control and Management Operations

Government National Mortgage Association

SES Vice President (Mortgage Finance)
SES Vice President (Mortgage Backed Securities)
SES Executive Vice President

FIELD OFFICES

Region I

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator

Region II

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator
SES Area Manager, Newark Area Office

Region III

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator
SES Manager, Pittsburgh Office

Region IV

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator
SES Manager, Jacksonville Office

Region V

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator
SES Manager, Detroit Office
SES Manager, Columbus Office
SES Manager, Minneapolis/St. Paul Office
SES Manager, Indianapolis Office

Region VI

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator
SES Manager, New Orleans Office
SES Manager, Oklahoma City Office

Region VII

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator

Region VIII

SES Regional Administrator—Regional Housing Commissioner

Region IX

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator
SES Manager, Los Angeles Office

Region X

SES Regional Administrator—Regional Housing Commissioner
SES Deputy Regional Administrator

AGENCY: DEPARTMENT OF THE INTERIOR

Positions:

Office of the Secretary

SES Executive Assistant to the Secretary
SES Special Assistant for Programs
SES Assistant to the Secretary and Director, External Affairs
SES Deputy Under Secretary
SES Assistant to the Secretary and Director of Public Affairs
SES Assistant to the Secretary and Director, Office of Congressional Affairs
SES Deputy Director, Congressional and Legislative Affairs
SES Deputy Director, House
SES* Deputy Director, House
SES Legislative Counsel
SES Director, Office of Small and Disadvantaged Business Util
SES* Director, Office of Hist Black Colleges and Univ Pro and Job Corp
SES Special Assistant (Field Representative—Sacramento)
SES Director, Office of Equal Opportunity
SES* Assistant Director, Federal Financial Assistance Programs
AD Commissioner, Delaware River Basin
AD Commissioner, Susquehanna River Basin Commission
AD Federal Co-Chairman, Alaska Land Use Council

Office of Inspector General

SES Deputy Inspector General
SES Assistant Inspector General (Audit)
SES Assistant Inspector General (Investigations)

Office of Hearings and Appeals

SES Director
GS–18 Chairman, Board of Contract Appeals
GS–17 Vice Chairman, Board of Contract Appeals

Office of the Solicitor

SES Deputy Solicitor
SES Associate Solicitor (Conservation and Wildlife)
SES Associate Solicitor (Energy and Resources)
SES Associate Solicitor (Surface Mining)
SES Associate Solicitor (General Law)
SES Associate Solicitor (Indian Affairs)
SES* Deputy Associate Solicitor (Surface Mining)
SES Associate Solicitor (Audit and Investigations)
SES Deputy Associate Solicitor (General Law)
SES Regional Solicitor (Sacramento)
SES Regional Solicitor (Portland)
SES Regional Solicitor (Anchorage)
SES Regional Solicitor (Denver)
SES Regional Solicitor (Boston)
SES* Regional Solicitor (Tulsa)
SES Regional Solicitor (Atlanta)
SES* Regional Solicitor (Salt Lake City)

Office of Territorial and International Affairs

SES* Special Assistant
GS–18 High Commissioner of the Trust Territories
SES* Principal Deputy Assistant Secretary

Office of the Assistant Secretary for Fish and Wildlife and Parks

SES Deputy Assistant Secretary
SES Staff Assistant

National Park Service

SES Director
SES Assistant Director, Legislative and Congressional Affairs
SES Deputy Director
SES Associate Director, National Resources
SES Associate Director, Park Operations
SES Associate Director, Planning and Development
SES Associate Director, Cultural Resources
SES* Associate Director, Budget and Administration
SES Senior Scientist
SES Director, National Capital Region
SES Regional Director (Seattle)
SES Regional Director (Atlanta)
SES Regional Director (Philadelphia)
SES Regional Director (Omaha)
SES Regional Director (Alaska)
SES Regional Director (Boston)

SES Regional Director (Santa Fe)
SES Regional Director (San Francisco)
SES Regional Director (Denver)

U.S. Fish and Wildlife Service

SES Deputy Director, Line
SES Assistant Director, External Affairs
SES Assistant Director, Fish and Wildlife Enhancement
SES Regional Director, Region 8
SES Assistant Director, Fisheries
SES Assistant Director, Policy, Budget and Administration
SES Assistant Director, Refuges and Wildlife
SES* Deputy Regional Director, Region 8
SES* Special Assistant to the Director
SES* Special Assistant to the Director
SES Regional Director, Portland
SES Regional Director, Twin Cities
SES Regional Director, Atlanta
SES Regional Director, Boston
SES Regional Director, Anchorage
SES Regional Director, Denver
SES Regional Director, Albuquerque
SES* Research Director, Patuxent
SES* Special Assistant to the Director
SES* Special Assistant to the Director for Contaminants

Office of the Assistant Secretary for Water and Science

SES Deputy Assistant Secretary
SES Principal Deputy Assistant Secretary
SES Staff Assistant to the Assistant Secretary
SES Irrigation Drainage Coordinator

Bureau of Reclamation

SES Assistant Commissioner, Administration
SES* Deputy Commissioner
SES Assistant Commissioner, Engineering and Research
SES* Director, Administrative Service
SES* Assistant Commissioner, Resources
SES Regional Director, Lower Colorado (Boulder City)
SES Regional Director, Mid-Pacific (Sacramento)
SES Regional Director, Pacific Northwest (Boise)
SES Regional Director, Missouri Basin Region (Billings)
SES Regional Director, Upper Colorado (Salt Lake City)
SES Regional Director, Southwest (Amarillo)

Bureau of Mines

SES Deputy Director
SES* Special Assistant to the Director
SES Chief Staff Officer
SES* Associate Director, Research
SES* Associate Director, Information and Analysis
SES* Associate Director, Finance and Management

U.S. Geological Survey

SES Associate Director
SES Assistant Director, Research
SES Assistant Director, Engineering Geology
SES Assistant Director for Administration
SES Assistant Director for Information Systems
SES Assistant Director for Programs
SES Assistant Director, Intergovernmental Affairs

Office of the Assistant Secretary for Land and Minerals Management

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary
SES Deputy Assistant Secretary
SES Special Assistant to the Assistant Secretary
SES* Staff Assistant

Minerals Management Service

SES Director
SES Deputy Director
SES Associate Director for Offshore Minerals
SES Associate Director for Administration
SES Associate Director for Program Review
SES Associate Director for Royalty Management
SES Regional Director, Gulf of Mexico OCS Region
SES Regional Director, Pacific OCS Region
SES Regional Director, Atlantic OCS Region
SES Regional Director, Alaska OCS Region

Bureau of Land Management

SES Assistant to the Director and Director, Office of External Affairs
SES Assistant Director, Support Services
SES Deputy Director
SES Assistant Director, Energy and Mineral Resources
SES Assistant Director, Lands and Renewable Resources
SES Chief, Planning and Environmental Coordination
SES Assistant Director, Management Services
SES Assistant Director, Solid Leasable Minerals
SES Associate Director, Fluid Leasable Minerals
SES* ALMRS–GIS Program Manager
SES State Director, Eastern States
SES State Director, Utah
SES State Director, Wyoming
SES State Director, Montana
SES State Director, Colorado
SES State Director, California
SES State Director, Alaska
SES State Director, Oregon
SES State Director, Arizona
SES State Director, New Mexico
SES State Director, Idaho
SES State Director, Nevada
SES Director, Denver Service Center
SES Director, Boise Interagency Fire Center

Office of Surface Mining

SES Director, External Affairs
SES Deputy Director, Operations and Technical Service
SES Deputy Director, Administration and Finance
SES Assistant Director for Program Operations
SES Assistant Director for Budget and Administration
SES Assistant Director for Finance and Accounting
SES Assistant Director, Western Field Operations
SES Assistant Director, Eastern Field Operations
SES Administrator, Technical Service Center (West)

Office of the Assistant Secretary Policy, Budget and Administration

SES* Deputy Assistant Secretary
SES* Director, Office of Policy Analysis
SES* Director of Security and Drug Enforcement
SES Director, Management Services
SES* Staff Assistant, Policy Analysis
SES Director, Office of Construction
SES Principal Deputy Assistant Secretary
SES Director of Acquisition, Construction and Property Management
SES Director of Budget and Finance
SES* Deputy Agency Ethics and Audit Coordination Official
SES Deputy Director, Office of Construction
SES Director, Office of Acquisition and Property Management
SES Deputy Director, Acquisition and Property Management
SES Director, Office of Information Resources Management
SES* Deputy Director, Office of Information Resources Management
SES* Director, Office of Management Improvement
SES Director, Office of Environmental Project Review
SES Director, Office of Administrative Services
SES Director, Office of Budget
SES Chief, Division of Budget Operations (A)
SES Chief, Division of Budget Operations (B)
SES Chief, Division of Budget Administration
SES* Special Assistant to the DAS and Director of Policy Analysis
SES* Deputy Director, Policy Analysis
SES Assistant Director for Special Analysis
SES Assistant Director for Economics
SES Director, Office of Personnel
SES Deputy Director, Office of Personnel
SES Director, Office of Financial Management
SES Deputy Director, Office of Financial Management
SES Director, Office of Aircraft Services

Bureau of Indian Affairs

SES Area Operations Officer (Northern)
SES Deputy to the Assistant Secretary (Operations)
SES Deputy to the Assistant Secretary (Tribal Services)
SES Deputy to the Assistant Secretary (Trust and Economic Development)
SES Deputy to the Assistant Secretary, Indian Education Program
SES Director, Office of Data Systems
SES* Director of Administration
SES* Assistant Director of Administration (Financial Management)
SES* Area Director, Muskogee
SES Area Director, Anadarko
SES Area Director, Navajo
SES Area Director, Albuquerque
SES Area Director, Portland
SES Area Director, Juneau
SES Area Director, Minneapolis
SES Area Director, Eastern Area
SES Area Director, Phoenix

SES Area Director, Phoenix
SES Area Director, Aberdeen
SES Area Director, Billings
SES Area Director, Sacramento
SES Deputy Area Director (Albuquerque)

Navajo-Hopi Indian Relocation Commission

SES Commissioners (3)
SES Executive Director

AGENCY: DEPARTMENT OF JUSTICE

Positions:

Office of the Attorney General

SES Executive Assistant to the Attorney General
SES Assistant to the Attorney General for Administration and Management
SES Assistant to the Attorney General for Criminal Matters
SES Assistant to the Attorney General for Civil Matters

Office of the Deputy Attorney General

SES All Associate Deputy Attorneys General

Office of the Associate Attorney General

SES All Deputy Associate Attorneys General
SES* Executive Assistant to the Associate Attorney General for Management Issues

Office of the Solicitor General

SES All Deputy Solicitors General (5)

Legal Divisions: Antitrust, Civil, Civil Rights, Criminal, Land and Natural Resources, and Tax

SES All Deputy Assistant Attorneys General in Legal Divisions (21)
SES Director of Operations, Antitrust Division
SES Deputy Director of Operations, Antitrust Division
SES Chief, Organized Crime and Racketeering Section, Criminal Division

Office of Legal Counsel

SES All Deputy Assistant Attorneys General (3)

Office of Legislative Affairs

No section 207(d)(1)(C) Designations

Office of Liaison Services

SES* Director
SES* Deputy Director

Justice Management Division

SES Assistant Attorney General for Administration
SES All Deputy Assistant Attorneys General (4)

Office of Public Affairs

SES Director

Office of the Pardon Attorney

No section 207(d)(1)(C) Designations

United States Parole Commission

GS–18 All Commissioners (9)

United States Marshals Service

SES Director
SES Assistant Director for Financial Management
SES Assistant Director for Inspections
SES Deputy Director
SES Associate Director for Operations
SES Associate Director for Administration

United States Attorneys

SES All United States Attorneys (93)

Drug Enforcement Administration

GS–18 All Assistant Administrators (3)
GS–17* Chief Counsel
GS–17 All Deputy Assistant Administrators (6)
GS–17* Special Agent in Charge, Office of Training

Federal Bureau of Investigation

GS–18 Executive Assistant Directors (3)
GS–18 All Assistant Directors (11)
GS–18* Assistant Director in Charge, New York Office
GS–17 All Inspectors/Deputy Assistant Directors (21)
GS–17* Inspector in Charge, Office of Liaison and International Affairs
GS–18 or GS–17 All Special Agents in Charge of Field Offices above GS–16 (26)
GS–17* Deputy Assistant Director in Charge, New York Office
GS–17 Special Assistant to the Director

Immigration and Naturalization Service

SES Deputy Commissioner
SES All Associate Commissioners (4)
SES All Regional Commissioners (4)
SES General Counsel
SES Executive Associate Commissioner

Bureau of Prisons

SES Deputy Director
SES All Assistant Directors (2)
SES Deputy Assistant Director, Correctional Programs Division
SES Deputy Assistant Director, Administration Division
SES All Regional Directors (5)
SES Associate Commissioner for Prison Industries
SES Wardens (14)
SES Deputy Associate Commissioner for Prison Industries (3)
SES General Counsel
SES Director, National Institute of Corrections

Community Relations Service

SES Deputy Director

Office of Justice Programs

SES Deputy Assistant Attorney General
SES Comptroller
SES General Counsel
SES Director, Office for Victims of Crime

National Institute of Justice

SES Assistant Director, Office of Development Testing and Dissemination
SES Assistant Director, Office of Research Programs

Office of Juvenile Justice and Delinquency Prevention

SES Deputy Administrator

Bureau of Justice Statistics

SES Deputy Director

Office of Legal Policy

SES Deputy Assistant Attorneys General (3)

Office of Intelligence Policy Review

SES Counsel for Intelligence Policy
SES Deputy Counsel for Intelligence Policy
SES Deputy Counsel for Intelligence Operations

Executive Office for Immigration Review

SES Director
SES Assistant to the Director
SES* Chief Administrative Hearing Officer
SES Chief Immigration Judge
SES Chairman, Board of Immigration Appeals

Interpol-United States National Central Bureau

SES Chief

AGENCY: DEPARTMENT OF LABOR

Positions:

Office of the Inspector General (OIG)

SES Deputy Inspector General
SES Assistant Inspector General for Investigations
SES Assistant Inspector General for Audit
SES Deputy Assistant Inspector General for Audit
SES Assistant Inspector General for Resource Management and Legislative Assessment

Women's Bureau

GS–17 Director
SES Deputy Director

Office of the Assistant Secretary for Legislative Affairs

No section 207(d)(1)(C) Designations

Office of the Assistant Secretary, Administration and Management

SES Deputy Assistant Secretary
SES Director, Office of Procurement and Grants Management
SES Comptroller for the Department
SES Deputy Comptroller

Office of Administrative Law Judges (ALJ)

No section 207(d)(1)(C) Designations

Office of the Assistant Secretary for Labor-Management Relations (LMSA)

SES Deputy Assistant Secretary for Management and Services
SES Deputy Assistant Secretary for Program Operations
SES Administrator for Pension and Welfare Benefit Programs (PWBP)
SES Deputy Administrator for Pension and Welfare Benefit Programs (PWBP)
SES Director, Office of Labor-Management Standards Enforcement (LMSE)

Office of the Assistant Secretary for Occupational Safety and Health Administration (OSHA)

SES Deputy Assistant Secretary for Occupational Safety and Health Administration
SES Director, Policy Analysis, Integration and Evaluation

SES Director, Federal Compliance and State Programs
SES Director, Safety Standards Programs
SES Director, Health Standards Programs
SES Director, Technical Support, TECFAP

Office of the Assistant Secretary for Mine Safety and Health Administration (MSHA)

SES Deputy Assistant Secretary for Mine Safety and Health Administration
SES Administrator for Metal and Nonmetal Mine Safety and Health
SES Deputy Administrator for Metal and Nonmetal Mine Safety and Health
SES Administrator for Coal Mine Safety and Health
SES Deputy Administrator for Coal
SES Director of Technical Support
SES Director of Educational Policy and Development
SES Chief, Standards, Regulations and Variances

Office of the Deputy Under Secretary for Employment Standards Administration (ESA)

SES Deputy Under Secretary for Employment Standards
SES Associate Deputy Under Secretary for Employment Standards
SES Director, Office of Federal Contract Compliance Programs (OFCCP)
SES Deputy Director, OFCCP
SES Deputy Administrator, Wage and Hour Division (WH)
SES Director, Office of Workers' Compensation Programs (OWCP)
SES Deputy Director, OWCP for Operations

Bureau of Labor Statistics (BLS)

SES Deputy Commissioner for Administration and Internal Operations

Office of the Solicitor of Labor

SES Deputy Solicitor
SES Deputy Solicitor for Regional Operations

Office of the Assistant Secretary, Employment and Training Administration (ETA)

SES Associate Assistance Secretary, ETA
SES Administrator, Office of Strategic Planning and Policy Development (OSPPD)
SES Deputy Administrator, Office of Strategic Planning and Policy Development (OSPPD)
SES Director, Office of Research and Evaluation, OSPPD
SES Administrator, Office of Employment Security (OES)
SES Administrator, Office of Comprehensive Employment and Training (OCET)
SES Deputy Administrator, Office of Comprehensive Employment and Training (OCET)
SES Administrator, Office of Financial Control and Management Systems (OFCMS)

Office of the Deputy Under Secretary, International Labor Affairs (ILAB)

SES Deputy Under Secretary for International Affairs
SES Associate Deputy Under Secretary for International Labor Affairs

Office of the Assistant Secretary for Policy (ASP)

SES Deputy Assistant Secretary for Policy, Evaluation and Research
SES Deputy Assistant Secretary for Economic Policy and Research

National Commission for Employment Policy (NCEP)

GS–18 Director

President's Committee on Employment of the Handicapped (PCEH)

SES Executive Director
SES Deputy Executive Director

Office of the Assistant Secretary for Veteran's Employment

SES Deputy Assistant Secretary

AGENCY: DEPARTMENT OF STATE

Positions:

FEMC Executive Assistant to Secretary, S
FEMC SA to Sec & Coord Int'l Lab Aff, S/IL
ESOO Chief of Protocol, S/CPR
FEMC SA to Sec & Exec Sec of Dept., S/S
ESOO Executive Assistant, S/ARN
FEMC Deputy Director, Policy Planning Staff, S/P (2)
ESOO Director, Policy Planning Staff, S/P
FEMC Executive Assistant to Deputy Secretary, D
FEMC Senior Advisor to the Under Secretary, P
ESOO Coord, Int'l Comm & Info Pol, CIP
FEMC Deputy Coordinator, CIP
FEMC Senior Rep. for Strategic Technology Policy, T/ST
FEMC Executive Assistant, M
FEMC Special Coordinator, M
ESOO Deputy Assistant Secretary, S/EEOCR
ESOO Ombudsman for the Dept., S/CSO
FEMC Director of Management Operations, M/MO
FEMC Deputy Director of Management Operations, M/MO (2)
FEOC Deputy Director for Planning, M/MO
ESOO Director, Office of Foreign Missions, M/OFM
FEMC Program Director, M/OFM
FEMC Deputy Inspector General, OIG (2)
ESOO State Representative, PM/SREP
FEMC Negotiator for Nuclear Testing Talks, PM
ESOO Deputy Representative—START Negotiations, PM/SREP
FEOC Deputy Representative—INF Negotiations, PM/SREP
FEMC United States Representative, PM/CDE
FEMC Deputy Assistant Secretary, PM/RASA
ESOO Deputy Assistant Secretary, PM/TTC
FEMC Deputy Assistant Secretary, PM/PDAS
ESOO Deputy Assistant Secretary, PM/DAC
ESOO Deputy Assistant Secretary, HA
FEOC Deputy Assistant Secretary, HA
ESOO Deputy Assistant Secretary, INM
FEMC Deputy Assistant Secretary, INM
ESOO Principal Deputy Assistant Secretary, OES
ESOO Deputy Assistant Secretary, OES/O
ESOO Deputy Assistant Secretary, OES/S
ESOO Deputy Assistant Secretary, OES/E
ESOO Deputy Assistant Secretary, OES/N
ESOO Director of Refugee Programs, RP
FEMC Deputy Assistant Secretary, RP/MGT
FEMC Deputy Assistant Secretary, RP/IA
ESOO Deputy Assistant Secretary, RP/RA
ESOO Deputy Legal Adviser, L (4)
FEMC Deputy Assistant Secretary, EB
FEMC Deputy Assistant Secretary, EB/TDC
FEMC Deputy Assistant Secretary, EB/IFD
ESOO Deputy Assistant Secretary, EB/TRA
FEMC Deputy Assistant Secretary, EB/ERP
ESOO Deputy Assistant Secretary, EB/ITC
FEMC Deputy Assistant Secretary, INR
ESOO Deputy Assistant Secretary, INR/RA
FEMC Deputy Assistant Secretary, INR/C
FEMC Deputy Assistant Secretary, INR/FAR
ESOO Deputy Assistant Secretary, INR/ID
ESOO Deputy Assistant Secretary, H (3)
FEMC Deputy Assistant Secretary, H
ESOO Comptroller, M/COMP
ESOO Deputy Assistant Secretary, PA
FEMC Deputy Assistant Secretary, PA
ESOO Deputy Assistant Secretary, ARA (2)
FEMC Deputy Assistant Secretary, ARA (3)
FEMC Deputy United States Representative, ARA/USOAS
ESOO Deputy Assistant Secretary, EUR
FEMC Deputy Assistant Secretary, EUR (4)
FEMC Deputy Assistant Secretary, EAP (4)
ESOO United States Representative, EAP/PIA
ESOO Deputy Assistant Secretary, NEA
FEMC Deputy Assistant Secretary, NEA (5)
ESOO Deputy Assistant Secretary, AF
FEMC Deputy Assistant Secretary, AF
FEMC Deputy Assistant Secretary, AF (2)
ADOO United States Representative, USUN (5)
ADOO Deputy U.S. Representative, USUN
FEMC Deputy United States Representative, USUN
ESOO Deputy Assistant Secretary Private Sector Initiates
FEMC Deputy Assistant Secretary, IO (3)
ESOO Deputy Assistant Secretary, IO
FEMC Deputy Assistant Secretary, DS/DSS
FEMC Deputy Assistant Secretary, A/CDC
FEMC Deputy Assistant Secretary, A/FBO
FEMC Deputy Assistant Secretary, DGP/PER (3)
ESOO Deputy Assistant Secretary, DGP/PER
FEMC Deputy Assistant Secretary, A/ISO
FEMC Deputy Assistant Secretary, A/OPR
ESOO Deputy Assistant Secretary for Policy and Counter Terrorism, DS/P
FEMC Director Foreign Service Inst, M/FSI
FEMC Deputy Assistant Secretary, A/OC
FEMC Deputy Assistant Secretary, CA
FEMC Deputy Assistant Secretary, CA/PPT
FEMC Deputy Assistant Secretary, CA/VO
ESOO Deputy Assistant Secretary, CA/OCS
FEMC Deputy Chief of Mission, Buen Aires
FEMC Deputy Chief of Mission, Brasilia
FEMC Principal Officer, Rio De Jan
FEMC Principal Officer, Sao Paulo
FEMC Deputy Chief of Mission, Bogota
FEMC Principal Officer, Havana
FEMC Charge d'Affaires, St. Georges
FEMC Deputy Chief of Mission, Kingston

FEMC Deputy Chief of Mission, Mexico D.F.
FEMC Deputy Chief of Mission, Panama
FEMC Deputy Chief of Mission, Lima
FEMC Deputy Chief of Mission, Caracas
FEMC Deputy Chief of Mission, Vienna
FEMC United States Representative, UNVIE Vienna
FEMC Deputy United States Representative, UNVIE Vienna
FEMC United States Representative, MBFR Vienna
FEMC Deputy United States Representative, MBFR Vienna
ESOO Director of Interagency Affairs, A/OC/IAA
FEMC Deputy Chief of Mission, Brussels
FEMC Deputy Chief of Mission, Brussels-EC
FEMC United States Representative, Brussels NATO
FEMC Deputy Chief of Mission, Brussels NATO
FEMC Deputy Chief of Mission, Athens
FEMC United States Representative, Montreal
FEMC Deputy Chief of Mission, Ottawa
FEMC Principal Officer, Montreal
FEMC Principal Officer, Toronto
FEMC Deputy Chief of Mission, London
FEMC Deputy Chief of Mission, Paris
FEMC Deputy Chief of Mission, OECD Paris
FEMC United States Representative, OECD Paris
FEMC Deputy Chief of Mission, Bonn
FEMC Assistant Chief of Mission, Berlin
FEMC Principal Officer, Frankfurt
FEMC Principal Officer, Munich
FEMC Deputy Chief of Mission, Rome
FEMC Principal Officer, Milan
FEMC Principal Officer, Naples
FEMC United States Representative, USM FAO Rome
FEMC Deputy United States Representative, USM FAO Rome
FEMC Charge d'Affaires, Warsaw
FEMC Deputy Chief of Mission, Madrid
FEMC Deputy Chief of Mission, Stockholm
FEMC United States Representative, US MIS GEN
FEMC Deputy United States Representative, US MIS GEN
FEMC United States Negotiator, Geneva (3)
FEMC Deputy Chief of Mission, Ankara
FEMC Principal Officer, Istanbul
FEMC Deputy Chief of Mission, Moscow
FEMC Principal Officer, Hong Kong
FEMC Deputy Principal Officer, Hong Kong
FEMC Deputy Chief of Mission, Beijing
FEMC Principal Officer, Guangzhou
FEMC Deputy Chief of Mission, Jakarta
FEMC Deputy Chief of Mission, Canberra
FEMC Principal Officer, Melbourne
FEMC Principal Officer, Sydney
FEMC Deputy Chief of Mission, Tokyo
FEMC Deputy Chief of Mission, Seoul
FEMC Deputy Chief of Mission, Vientiane
FEMC Deputy Chief of Mission, Manila
FEMC Director, Asian Develop Bank, ASIAN DEV BK
FEMC Deputy Chief of Mission, Bangkok
FEMC Deputy Chief of Mission, Cairo
FEMC Deputy Chief of Mission, New Delhi
FEMC Principal Officer, Bombay
FEMC Principal Officer, Baghdad
FEMC Deputy Chief of Mission, Tel Aviv
FEMC Principal Officer, Jerusalem
FEMC Deputy Chief of Mission, Beirut
FEMC Deputy Chief of Mission, Islamabad
FEMC Principal Officer, Karachi
FEMC Deputy Chief of Mission, Riyadh
FEMC Deputy Chief of Mission, Kinshasa
FEMC Charge d'Affaires, Add. Ababa
FEMC Deputy Chief of Mission, Nairobi
FEMC Deputy Chief of Mission, Lagos
ADOO Commissioner, IJC
SROO Commissioner International Joint Comm, IJC
SROO Commissioner International Joint Comm, IJC

AGENCY: DEPARTMENT OF TRANSPORTATION

Positions:

Office of the Secretary of Transportation

SES Deputy General Counsel
SES Deputy Assistant Secretary for Policy and International Affairs
SES Deputy Assistant Secretary for Policy and Program Development
SES* Deputy Assistant Secretary for Safety
SES Deputy Assistant Secretary for Budget and Programs
SES Deputy Assistant Secretary for Governmental Affairs (2)
SES* Deputy Assistant Secretary for Governmental Affairs (Intergovernmental and Consumer)
SES Deputy Assistant Secretary for Public Affairs
SES Assistant Secretary for Administration
SES Deputy Assistant Secretary for Administration (2)
SES* Chief of Staff
SES Director, Office of Commercial Space Transportation
SES Director, Office of Civil Rights
SES Director, Office of Aviation Analysis

Office of the Inspector General

SES Assistant Inspector General for Auditing, Office of the Secretary
SES Deputy Assistant Inspector General for Auditing
SES Director, Office of Surface Transportation and Secretarial Programs, Assistant Inspector General for Auditing
SES Director, Office Aviation, Marine and Research Programs, Assistant Inspector General for Auditing
SES Director, Office of ADP Audits and Technical Support, Assistant Inspector General for Auditing
SES Assistant Inspector General for Investigations
SES Assistant Inspector General for Policy, Planning and Resources

United States Coast Guard

0-7/0-8 Chief Counsel
SES Deputy Chief Counsel
0-7/0-8 Chief of Staff
0-7/0-8 Chief, Office of Boating, Public and Consumer Affairs
0-7/0-8 Comptroller
0-7/0-8 Chief, Office of Engineering and Development
0-7/0-8 Chief, Office of Marine Safety, Security and Environmental Protection
0-7/0-8 Chief, Office of Navigation
0-7/0-8 Chief, Office of Command, Control and Communication
0-7/0-8 Chief, Office of Operations
0-7/0-8* Commanders, Maintenance and Logistics Commands (2)
0-7/0-8 District Commanders (10)

Federal Aviation Administration

SES* Chief of Staff, Office of the Administrator
SES Associate Administrator for Administration
SES Deputy Associate Administrator for Administration
SES Associate Administrator for Airports
SES Deputy Associate Administrator for Airports
SES Associate Administrator for Development and Logistics
SES* Deputy Associate Administrator for NAS Programs, Office of the Associate Administrator for Development and Logistics
SES* Deputy Associate Administrator for Engineering, Office of the Associate Administrator for Development and Logistics
SES Associate Administrator for Aviation Standards
SES Deputy Associate Administrator for Aviation Standards
SES Associate Administrator for Air Traffic
SES Deputy Associate Administrator for Air Traffic
SES Associate Administrator for Policy and International Aviation
SES Deputy Associate Administrator for Policy and International Aviation
SES Associate Administrator for Human Resource Management
SES Deputy Associate Administrator for Human Resource Management
SES Chief Counsel
SES Deputy Chief Counsel
SES Assistant Administrator for Science and Advanced Technology
SES Director, Office of Aviation Safety
SES Deputy Director Office of Aviation Safety
SES Federal Air Surgeon
SES Deputy Federal Air Surgeon
SES Director, Eastern Region (New York)
SES Deputy Director, Eastern Region
SES Director, New England Region (Boston)
SES Deputy Director, New England Region
SES Director, Southern Region (Atlanta)
SES Deputy Director, Southern Region
SES Director, Southwest Region (Fort Worth)
SES Deputy Director, Southwest Region
SES Director, Central Region (Kansas City)
SES Deputy Director, Central Region
SES Director, Great Lakes Region (Chicago)
SES Deputy Director, Great Lakes Region
SES Director, Western-Pacific Region (Los Angeles)
SES Deputy Director, Western-Pacific Region
SES Director, Northwest Mountain Region (Seattle)
SES Deputy Director, Northwest Mountain Region
SES Director, Alaska Region (Anchorage)
SES Deputy Director, Alaska Region
SES Director, Europe, Africa, and Middle East Office (Brussels)

Federal Highway Administration

SES Deputy Administrator
SES Executive Director
SES Associate Administrator for Policy

SES Associate Administrator for Research, Development and Technology
SES Associate Administrator for Right-Of-Way and Environment
SES Associate Administrator for Engineering and Program Development
SES Associate Administrator for Safety and Operations
SES Associate Administrator for Motor Carriers
SES Associate Administrator for Administration
SES Chief Counsel
SES Deputy Chief Counsel
SES Regional Federal Highway Administrators (9)

Federal Railroad Administration

SES Deputy Administrator
SES Associate Administrator for Administration
SES Executive Director
SES Chief Counsel
SES Associate Administrator for Passenger and Freight Services
SES Deputy Associate Administrator for Passenger and Freight Services
SES Associate Administrator for Policy
SES Deputy Associate Administrator for Policy
SES Associate Administrator for Safety
SES Deputy Associate Administrator for Safety
SES* Director, Office of Safety Enforcement

National Highway Traffic Safety Administration

SES Deputy Administrator
SES Chief Counsel
SES Associate Administrator for Rulemaking
SES Managing Director
SES Associate Administrator for Plans and Policy
SES Associate Administrator for Traffic Safety Programs
SES Associate Administrator for Research and Development
SES Deputy Associate Administrator for Research and Development
SES Associate Administrator for Enforcement
SES Associate Administrator for Administration

Urban Mass Transportation Administration

SES Deputy Administrator
SES Executive Director
SES Associate Administrator for Administration
SES Chief Counsel
SES Associate Administrator for Technical Assistance
SES Associate Administrator for Budget and Policy
SES Associate Administrator for Grants Management

Saint Lawrence Seaway Development Corporation

SES Chief Counsel
SES Associate Administrator for Management and Productivity

Research and Special Programs Administration

SES Administrator
SES Deputy Administrator for Research and Technology and Chief Scientist
SES Chief Counsel
SES Director, Office of Hazardous Materials Transportation
SES Director, Office of Pipeline Safety
SES Director, Transportation Systems Center
SES Deputy Director, Transportation Systems Center

Maritime Administration

SES Deputy Administrator
SES Deputy Administrator for Inland Waterways and Great Lakes
SES Special Assistant to Maritime Administrator
SES Director, Office of External Affairs
SES Chief Counsel
SES Deputy Chief Counsel
SES Associate Administrator for Administration
SES Associate Administrator for Policy and International Affairs
SES Associate Administrator for Maritime Aids
SES Deputy Associate Administrator for Maritime Aids
SES Associate Administrator for Shipbuilding and Ship Operations
SES Director, Office of Ship Construction, Office of the Associate Administrator for Shipbuilding and Ship Operations
SES Deputy Director, Office of Ship Construction, Office of the Associate Administrator for Shipbuilding and Ship Operations
SES Director, Office of Ship Operations, Office of the Associate Administrator for Shipbuilding and Ship Operations
SES Senior Technical Advisor, Office of the Associate Administrator for Marketing
SES Associate Administrator for Marketing
SES Superintendent, Merchant Marine Academy

AGENCY: DEPARTMENT OF THE TREASURY

Positions:

Departmental Offices

SES* Counselor to the Secretary and Executive Secretary

Office of the Inspector General

SES Inspector General
SES Deputy Inspector General
SES* Asst. Inspector Gen. for Audit (DOTOCC)
SES* Assistant Inspector General for Audit (Fiscal Services/ADP)
SES* Assistant Inspector General for Investigations

Office of the Assistant Secretary for Domestic Finance

SES Deputy Asst. Sec., Federal Finance
SES Deputy Assistant Secretary, Financial Institutions Policy

Office of the Assistant Secretary for International Affairs

SES Senior Deputy Assistant Secretary for International Economic Policy
SES Deputy Assistant Secretary for International Monetary Affairs
SES Deputy Assistant Secretary for Developing Nations Finance
SES Deputy Assistant Secretary for Trade and Investment Policy
SES Deputy Assistant Secretary for Arabian Peninsula Affairs

Office of the Assistant Secretary for Tax Policy

SES Deputy Assistant Secretary, Tax Policy
SES Deputy Assistant Secretary, Tax Analysis

Office of the Fiscal Assistant Secretary

SES Assistant Secretary
SES Deputy Fiscal Assistant Secretary

Office of the Assistant Secretary for Management

SES Deputy Assistant Secretary for Administration
SES Deputy Assistant Secretary for Departmental Finance and Management
SES Deputy Assistant Secretary for Information Systems

Office of the Assistant Secretary for Economic Policy

SES Deputy Assistant Secretary (Economic Forecasting)
SES* Deputy Assistant Secretary (Policy Coordination)

Office of the Assistant Secretary for Enforcement

SES Deputy Assistant Secretary (Law Enforcement)
SES Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement)

Office of the Assistant Secretary for Legislative Affairs

SES* Deputy Assistant Secretary for Legislative Affairs (Legislation)
SES* Deputy Assistant Secretary for Legislative Affairs (Policy and Development)

Treasurer of the United States

GS–18 Treasurer and National Savings Bond Director, Office of the Secretary
SES Deputy Treasurer

Comptroller of the Currency

SES Senior Deputy Comptroller for Legislative and Public Affairs
SES Senior Deputy Comptroller for Bank Supervision Operations
SES Senior Deputy Comptroller for Corporate and Economic Programs
SES Senior Deputy Comptroller for Administration
SES Senior Deputy Comptroller for Bank Supervision Policy
SES Senior Advisor to the Comptroller

Customs Service

SES Commissioner
SES Deputy Commissioner
SES Assistant Commissioner, International Affairs
SES Assistant Commissioner, Enforcement
SES Deputy Assistant Commissioner, Enforcement
SES Assistant Commissioner, Commercial Operations

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SES Deputy Assistant Commissioner, Inspection and Control
SES Assistant Commissioner, Inspection and Control
SES Comptroller
SES Assistant Commissioner, Internal Affairs

Financial Management Service

SES Commissioner
SES Deputy Commissioner

Internal Revenue Service

SES* Senior Deputy Commissioner
SES* Deputy Commissioner (Operations)
SES* Deputy Commissioner (Planning and Resources)
SES Assistant Commissioner (Inspection)
SES Regional Commissioner (C)
SES Regional Commissioner (MA)
SES Regional Commissioner (MW)
SES Regional Commissioner (NA)
SES Regional Commissioner (SE)
SES Regional Commissioner (SW)
SES Regional Commissioner (W)

Legal Division

SES Deputy General Counsel, Office of the General Counsel
SES Tax Legislative Counsel, Office of the Assistant Secretary (Tax Policy)
SES International Tax Counsel, Office of the Assistant Secretary (Tax Policy)
SES Chief Counsel, U.S. Customs Service
SES Deputy Chief Counsel, U.S. Customs Service
SES Chief Counsel, U.S. Secret Service
SES Chief Counsel, Bureau of the Public Debt
SES Chief Counsel, Office of Foreign Assets Control
SES* Chief Counsel, Financial Management Service
SES Chief Counsel, Comptroller of the Currency
SES Chief Counsel, Bureau of Alcohol, Tobacco and Firearms
SES Deputy Chief Counsel, Bureau of Alcohol, Tobacco and Firearms
SES Deputy Chief Counsel, Internal Revenue Service

U.S. Mint

GS–18 Director
SES Deputy Director of the Mint
SES Associate Director for Policy and Management
SES Associate Director for Marketing
SES Associate Director for Operations

U.S. Savings Bonds Division

No section 207(d)(1)(C) Designations

U.S. Secret Service

SES Director
SES Deputy Director

Bureau of Alcohol, Tobacco and Firearms

SES Director
SES Deputy Director/Associate Director (Compliance Operations)
SES Deputy Director/Associate Director (Law Enforcement)
SES Assistant Director, Internal Affairs

Bureau of Public Debt

SES Commissioner of Public Debt

Federal Law Enforcement Training Center

SES Director
SES Deputy Director

Bureau of Engraving and Printing

SES Director
SES Deputy Director
SES Assistant Director (Administration)
SES Assistant Director (Operations)
SES Assistant Director (Research and Engineering)

AGENCY: ACTION

Positions:

SES Executive Officer
SES Assistant Director for Older Americans Volunteer Program (OAVP)
SES Assistant Director for Administration
SES Deputy Assistant Director for Administration
SES General Counsel
SES Deputy Associate Director for Voluntarism Initiatives
SES Assistant Director for Financial Management
SES Assistant Director for VISTA/Service Learning Programs
SES Inspector General
SES Executive Assistant
SES Deputy General Counsel
SES Special Assistant to the Director
SES Associate Director for Management and Budget
SES Special Assistant to the Associate Director

AGENCY: ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Positions:

SES Legal Counsel
SES Executive Director
SES Research Director

AGENCY: ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: ADVISORY COUNCIL ON HISTORIC PRESERVATION

Positions:

SES Executive Director
SES General Counsel

AGENCY: AFRICAN DEVELOPMENT FOUNDATION

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: AMERICAN BATTLE MONUMENTS COMMISSION

Positions:

0–8 Secretary

AGENCY: APPALACHIAN REGIONAL COMMISSION

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: BOARD FOR INTERNATIONAL BROADCASTING

Positions:

SES Executive Director

AGENCY: CENTRAL INTELLIGENCE AGENCY

Positions:

AD Executive Director
AD All Deputy Directors and Associate Deputy Directors of Directorates
AD All Heads of Independent Offices

AGENCY: COMMISSION ON CIVIL RIGHTS

Positions:

SES Solicitor
SES Assistant Staff Director for Regional Programs
SES Assistant Staff Director for Administration
SES Assistant Staff Director for Planning and Coordination
SES Assistant Staff Director for Programs and Policy
SES Assistant Staff Director for Civil Rights Evaluation
SES Assistant Staff Director for Congressional and Public Affairs
SES Deputy Staff Director
SES General Counsel
SES* Assistant Staff Director for Research
SES* Executive Assistant to the Staff Director

AGENCY: COMMISSION OF FINE ARTS

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: COMMODITY FUTURES TRADING COMMISSION

Positions:

SES Executive Director
SES Deputy Executive Director (1)
SES Director, Division of Enforcement
SES Deputy Director, Division of Enforcement (3)
SES Chief Economist, Division of Economic Analysis
SES Deputy Chief Economist, Division of Economic Analysis (1)
SES Director, Division of Trading and Markets
SES Deputy Director, Division of Trading and Markets (1)
SES Deputy General Counsel, Office of General Counsel (3)
SES Associate Director for Market Analysis, Division of Economic Analysis
SES General Counsel
SES Associate General Counsel for Opinions and Review, Office of General Counsel
SES Associate Director for Surveillance, Division of Economic Analysis
SES Chief Counsel, Division of Trading and Markets
SES Director, Office of Information Resources Management

AGENCY: CONSUMER PRODUCT SAFETY COMMISSION

Positions:

SES General Counsel
SES Executive Director
SES Deputy Executive Director
SES Associate Executive Director for Administration
SES Associate Executive Director for Compliance and Administrative Litigation
SES* Associate Executive Director for Economic Analysis
SES Associate Executive Director for Engineering Sciences
SES Associate Executive Director for Epidemiology
SES Associate Executive Director for Field Operations
SES Associate Executive Director for Health Sciences
SES Director, Office of Program Management and Budget
SES* Executive Assistant to the Chairman

AGENCY: COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: DISTRICT OF COLUMBIA GOVERNMENT

Positions:

AD Superintendent of Schools
AD President, University of the District of Columbia
AD General Manager, Convention Center
AD* Executive Director, DC General Hospital
AD* Medical Director, DC General Hospital
AD* General Manager, DC Armory Board
AD* Commanding General, DC National Guard
AD* Deputy Superintendent of Schools

AGENCY: ENVIRONMENTAL PROTECTION AGENCY

Positions:

SES Regional Administrator, Region I
SES Regional Administrator, Region II
SES Regional Administrator, Region III
SES Regional Administrator, Region IV
SES Regional Administrator, Region V
SES Regional Administrator, Region VI
SES Regional Administrator, Region VII
SES Regional Administrator, Region VIII
SES Regional Administrator, Region IX
SES Regional Administrator, Region X
SES Director, Office of Radiation Programs, OAR
SES Director, Office of Municipal Pollution Control, OW
SES Director, Office of Water Regulations and Standards, OW
SES Director, Office of Solid Waste, SWER
SES Director, Office of Drinking Water, OW
SES Director, Office of Pesticide Programs
SES Director, Office of Compliance Monitoring, OPTS
SES Director, Office of Acid Deposition, Environmental Monitoring and Quality Assurance, ORD
SES Director, Office of Environmental Processes and Effects Research, ORD
SES Director, Office of Environmental Engineering and Technology, ORD
SES Director, Office of Toxic Substances, OPTS
SES Deputy General Counsel, OGC
SES Director, Office of Federal Activities, OEA
SES Director, Office of Mobile Sources, OAR
SES Director, Office of Emergency and Remedial Response, SWER
SES Deputy Inspector General, OIG
SES Assistant Inspector General for Investigations, OIG
SES Deputy Assistant Administrator for Administration and Resources Management, OARM
SES Deputy Assistant Administrator for Policy, Planning and Evaluation, OPPE
SES Director, Office of Policy Analysis, OPPE
SES Director, Office of Standards and Regulations, OPPE
SES Deputy Assistant Administrator for External Affairs, OEA
SES Director, Office of Congressional Liaison, OEA
SES Director, Office of Legislative Analysis, OEA
SES Assistant Inspector General for Audits, OIG
SES Deputy Assistant Administrator for Water, OW
SES Director, Office of Marine and Estuarine Protection, OW
SES Director, Office of Ground Water Protection, OW
SES Director, Office of Water Enforcement and Permits, OW
SES Deputy Assistant Administrator for Solid Waste and Energency Response, SWER
SES Director, Office of Waste Programs Enforcement, SWER
SES Deputy Assistant Administrator for Air and Radiation, OAR
SES Director, Office of Air Quality Planning and Standards, OAR
SES Deputy Assistant Administrator for Pesticides and Toxic Substances, OPTS
SES Deputy Assistant Administrator for Research and Development, ORD
SES Director, Office of Health Research, ORD
SES Deputy Regional Administrator, Region I
SES Deputy Regional Administrator, Region II
SES Deputy Regional Administrator, Region III
SES Deputy Regional Administrator, Region IV
SES Deputy Regional Administrator, Region V
SES Deputy Regional Administrator, Region VI
SES Deputy Regional Administrator, Region VII
SES Deputy Regional Administrator, Region VIII
SES Deputy Regional Administrator, Region IX
SES Deputy Regional Administrator, Region X
SES Director, Office of Health and Environmental Assessment, ORD
SES Director, Office of Exploratory Research, ORD
SES Director, Office of Wetlands Protection, OW
SES Director, Office of Underground Storage Tanks, SWER
SES Deputy General Counsel (Litigation, Legislation, and Regional Operations), OGC
SES* Assistant Inspector General for Management and Technical Assessment (OIG)
SES* Deputy Assistant Administrator for Enforcement and Compliance Monitoring (Civil) (OPECM)
SES* Deputy Assistant Administrator for Enforcement and Compliance Monitoring (Criminal) (OECM)
SES* Director, National Enforcement Investigation Center (OECM)
SES* Director, Office of Administration (OARM)
SES* Comptroller (OARM)
SES* Director, Office of Human Resources Management (OARM)
SES* Director, Office of Information Resources Management (OARM)
SES* Director, Office of Regulatory Support and Scientific Analysis (ORD)

AGENCY: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Positions:

SES Deputy General Counsel
SES Associate General Counsel for Trial Services
SES Legal Counsel
SES* Deputy Legal Counsel
SES Director, Office of Program Operations

AGENCY: EXPORT-IMPORT BANK OF THE UNITED STATES

Positions:

GS-18 General Counsel
GS-17 Senior Vice President, Exporter Credits, Guarantees and Insurance
GS-17 Senior Vice President, Direct Credits and Financial Guarantees

AGENCY: FARM CREDIT ADMINISTRATION

Positions:

SES General Counsel
SES* Associate General Counsel for Litigation and Enforcement
SES Director of Internal Audit
SES Chief Examiner, Office of Examination
SES Regional Director, Northeast Region, Office of Examination
SES Regional Director, Southeast Region, Office of Examination
SES Regional Director, Western Region, Office of Examination
SES Regional Director, Central Region, Office of Examination
SES Director, Special Examination Division, Office of Examination
SES Director, Congressional and Public Affairs
SES* Director, Office of Administration
SES Chief, Records and Projects Division, OA

SES Director, Office of Analysis and Supervision
SES Deputy Director, Office of Analysis and Supervision
SES Assistant Director, Office of Analysis and Supervision

AGENCY: FEDERAL COMMUNICATIONS COMMISSION

Positions:

SES Managing Director
SES General Counsel
SES Chief Engineer
SES Chief, Mass Media Bureau
SES Chief, Common Carrier Bureau
SES Chief, Private Radio Bureau
SES Chief, Field Operations Bureau
SES Chief, Office of Plans and Policy
SES* Chief of Staff, Office of the Chairman
SES Deputy Managing Director
SES Deputy Chief, Mass Media Bureau (Operations)
SES Deputy Chief, Mass Media Bureau (Policy)
SES Deputy Chief, Common Carrier Bureau (Policy)
SES Deputy Chief, Common Carrier Bureau (Operations)
SES Deputy Chief, Private Radio Bureau
SES Deputy Chief, Field Operations Bureau
SES Deputy Chief, Office of Plans and Policy
SES* Deputy Chief Engineer
SES* Deputy General Counsel

AGENCY: FEDERAL DEPOSIT INSURANCE CORPORATION

Positions:

AD–18 Deputy to the Chairman
AD–18 Deputy to the Director (Appointive)
AD–18 General Counsel
AD–18 Director, Division of Bank Supervision
AD–18 Division of Liquidation
AD–17 Director, Office of Research and Strategic Planning
AD–18 Director, Division of Accounting and Corporate Services
AD–17 Associate Director, Division of Bank Supervision, Administration and Corporate Applications
AD–17 Deputy General Counsel, Open Bank Regulation, Litigation and Legislation Branch, Legal Division
AD–17 Deputy General Counsel, Closed Bank Investigation and Litigation Branch, Legal Division
AD–17 Associate Director, Division of Bank Supervision, Supervision, Enforcement and Surveillance
AD–17 Associate Director, Division of Bank Supervision, Planning and Program Development
AD–17 Regional Director, Atlanta Region, Division of Bank Supervision
AD–17 Regional Director, Boston Region, Division of Bank Supervision
AD–17 Regional Director, Chicago Region, Division of Bank Supervision
AD–17 Regional Director, Dallas Region, Division of Bank Supervision
AD–17 Regional Director, Kansas City Region, Division of Bank Supervision
AD–17 Regional Director, Memphis Region, Division of Bank Supervision
AD–17 Regional Director, New York Region, Division of Bank Supervision
AD–17 Regional Director, San Francisco Region, Division of Bank Supervision
AD–17 Associate Director, Division of Accounting and Corporate Services (Financial Services)
AD–17 Associate Director, Division of Accounting and Corporate Services (Management Information Services)
AD–17 Associate Director, Division of Liquidation (Operations)
AD–17 Associate Director, Division of Liquidation (Credit)
AD–17 Associate Director, Division of Liquidation (Administration)
AD–17 Associate Director, Division of Accounting and Corporate Services (Corporate Services)
AD–17 Regional Director (Liquidation), Atlanta Region
AD–17 Regional Director (Liquidation), Dallas Region
AD–17 Regional Director (Liquidation), New York Region
AD–17 Regional Director (Liquidation), San Francisco Region
AD–17 Regional Director (Liquidation), Chicago Region
AD–17 Deputy General Counsel, Regional and Corporate Affairs Branch, Legal Division
AD–17 Regional Director (Liquidation), Kansas City Region
AD–17* Associate Director, Division of Bank Supervision, Failing Banks and Assistance Transactions

AGENCY: FEDERAL ELECTION COMMISSION

Positions:

AD–17 Deputy General Counsel

AGENCY: FEDERAL EMERGENCY MANAGEMENT AGENCY

Positions:

SES Regional Director, FEMA, Region I, Boston, Massachusetts
SES Regional Director, FEMA, Region II, New York, New York
SES Regional Director, FEMA, Region III, Philadelphia, Pennsylvania
SES Regional Director, FEMA, Region IV, Atlanta, Georgia
SES Regional Director, FEMA, Region V, Chicago, Illinois
SES Regional Director, FEMA, Region VI, Denton, Texas
SES Regional Director, FEMA, Region VII, Kansas City, Missouri
SES Regional Director, FEMA, Region VIII, Denver, Colorado
SES Regional Director, FEMA, Region IX, San Francisco, California
SES Regional Director, FEMA, Region X, Bothell, Washington

Office of Chief of Staff

SES General Counsel
SES Inspector General
SES Director of Personnel
SES Comptroller
SES Chief of Staff
SES* Assistant Chief of Staff for Administration
SES* Director of Security

Federal Insurance Administration

SES Deputy Administrator
SES* Assistant Administrator, Office of Insurance Policy Analysis and Technical Services
SES* Assistant Administrator, Office of Loss Reduction

Office of Training

SES Superintendent of National Fire Academy
SES Superintendent, Emergency Management Institute
SES* Director of Training
SES* Deputy Director of Training

National Preparedness Directorate

SES Deputy Associate Director
SES* Assistant Associate Director, Office of Systems Engineering
SES* Senior Policy Advisor
SES* Assistant Associate Director, Office of Operations
SES* Assistant Associate Director, Office of Mobilization Preparedness
SES* Assistant Associate Director, Office of Operations Analysis and Control
SES* Assistant Associate Director, Office of Information Resources Management
SES* Assistant Associate Director, Office of Facilities Management
SES* Deputy Associate Assistant Associate Director, Office of Facilities Management (Chief, FOD)

State and Local Programs and Support Directorate

SES* Deputy Associate Director
SES* Assistant Associate Director, Natural and Technological Hazards
SES* Assistant Associate Director, Civil Defense
SES* Assistant Associate Director, Disaster Assistant Programs

External Affairs Directorate

SES* Deputy Associate Director

AGENCY: FEDERAL ENERGY REGULATORY COMMISSION

Positions:

SES Executive Director
SES* Director, Office of Economic Policy
SES General Counsel
SES Deputy General Counsel
SES Chief Accountant
SES Deputy Chief Accountant
SES Director, Office of Electric Power Regulation
SES Deputy Director, Office of Electric Power Regulation
SES Director, Office of Hydropower Licensing
SES Deputy Director, Office of Hydropower Licensing
SES Director, Office of Pipeline and Producer Regulation (OPPR)
SES Deputy Director, Office of Pipeline and Producer Regulation (OPPR)
SES Secretary to the Commission
SES Chief, Administrative Law Judge

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AGENCY: FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Positions:

GS–18 Executive Secretary

AGENCY: FEDERAL HOME LOAN BANK BOARD

Positions:

SES General Counsel
SES Executive Director, Federal Savings and Loan Insurance Corporation
SES Executive Director
SES* Executive Director for Policy
SES* Executive Director for Public Affairs
SES* Executive Director for Administration and Human Resources

AGENCY: FEDERAL HOME LOAN MORTGAGE CORPORATION

Positions:

AD President—Chief Executive Officer
AD Executive Vice President—Chief Financial Officer
AD Executive Vice President—Internal and External Affairs
AD Executive Vice President—Marketing and Sales
AD Executive Vice President—Operations
AD Senior Vice President, Legal Corporate Secretary
AD Senior Vice President—Information Services
AD* Senior Vice President—Risk Management
AD Vice President—Controller
AD Vice President—Corporate Finance
AD Vice President—Financial Research
AD Vice President—Regional Operations
AD Vice President and Treasurer
AD Regional Vice President—North Central
AD Regional Vice President—Northeast
AD Regional Vice President—Southeast
AD Regional Vice President—Southwest
AD Regional Vice President—Western
AD General Manager—Security Sales and Trading Group

AGENCY: FEDERAL LABOR RELATIONS AUTHORITY

Positions:

GS–18 Chairman, Federal Service Impasses Panel
GS–18 Members of the Federal Service Impasses Panel (6)
GS–18 Chairman, Foreign Service Impasse Disputes Panel
GS–18 Members, Foreign Service Impasse Disputes Panel (4)
GS–17 Chief Administrative Law Judge
SES Executive Director
SES Solicitor
SES Associate General Counsel
SES Chief Counsel to Chairman
SES Chief Counsel to Member (2)
SES* Director, Information Resources and Research Services
SES Assistant General Counsel for Field Management
SES Assistant General Counsel for Field Management Legal Policy
SES Assistant General Counsel, Appeals
SES Regional Director, Boston
SES Regional Director, New York
SES Regional Director, Washington
SES Regional Director, Atlanta
SES Regional Director, Chicago
SES Regional Director, Dallas
SES Regional Director, Denver
SES Regional Director, Los Angeles
SES Regional Director, San Francisco
SES Executive Director, Federal Service Impasses Panel

AGENCY: FEDERAL MARITIME COMMISSION

Positions:

SES General Counsel
SES Director, Bureau of Domestic Regulations
SES Director, Bureau of Trade Monitoring
SES Deputy General Counsel
SES Director, Bureau of Hearing Counsel
SES Secretary
SES Director, Bureau of Economic Analysis
SES Director, Bureau of Investigations
SES Counsel to the Chairman
SES Managing Director
SES Director, Bureau of Administration
SES* Deputy Managing Director

AGENCY: FEDERAL MEDIATION AND CONCILIATION SERVICE

Positions:

SES Deputy Director
SES Executive Director
SES Regional Directors (2)

AGENCY: FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Positions:

SES Executive Director
SES General Counsel

AGENCY: FEDERAL RESERVE SYSTEM

Positions:

FRO–I Staff Director, Office of Staff Director for Federal Reserve Bank Activities
FRO–III Director, Division of Hardware and Software Systems
FRO–I Executive Director, Office of Executive Director for Information Resources Management
FRO–II Inspector General, Office of the Inspector General
FRO–I General Counsel, Legal Division
FRO–II Assistant to the Board (for Public Affairs) Office of Board Members
FRO–II Deputy Director, Division of Research and Statistics
FRO–I Director, Division of Federal Reserve Bank Operations
FRO–II Director, Division of Support Services
FRO–I Staff Director, Office of Staff Director for Management
FRO–II Director, Division of Consumer and Community Affairs
FRO–III Director, Division of Applications and Statistical Service
FRO–I Director, Division of Monetary Affairs
FRO–II Deputy Director, Division of Monetary Affairs
FRO–II Controller, Office of the Controller
FRO–II Deputy General Counsel, Legal Division
FRO–I Director, Division of Research and Statistics
FRO–II Director, Division of Human Resources Management
FRO–I Staff Director, Division of Banking Supervision and Regulations
FRO–I Staff Director, Division of International Finance
FRO–II Secretary, Office of the Secretary
FRO–II Assistant to the Board (for Congressional Liaison) Office of Board Members

AGENCY: FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Positions:

SES* General Counsel
SES* Assistant General Counsel (2)
SES* Assistant Director for Investments
GS–18* Chairman
GS–18* Member (4)

AGENCY: FEDERAL TRADE COMMISSION

Positions:

SES General Counsel
SES Deputy General Counsel
SES Director, Bureau of Competition
SES Deputy Directors, Bureau of Competition
SES Director, Bureau of Consumer Protection
SES Deputy Directors, Bureau of Consumer Protection
SES Director, Bureau of Economics
SES Deputy Directors, Bureau of Economics
SES Executive Director
SES Executive Assistant to the Chairman
SES* Director, Office of Policy Development

AGENCY: GENERAL ACCOUNTING OFFICE

Positions:

SES Deputy Director, for Planning and Reporting (RCED)
SES Assistant Comptroller General for Resources, Community and Economic Development (RCED) Programs
SES Deputy Director for Operations (RCED)
SES Director, Accounting and Financial Management Division (AFMD)
SES Deputy Director for Operations (AFMD)
SES Deputy Director for Planning and Reporting (AFMD)
SES Assistant Comptroller General for General Government Programs (GGD)
SES Deputy Director for Planning and Reporting (GGD)
SES Deputy Director for Operations (GGD)
SES Assistant Comptroller General for Human Resources Programs
SES Deputy Director for Planning and Reporting, HRD
SES Deputy Director for Operations, HRD
SES Deputy General Counsel
SES Director, Office of Internal Evaluation
SES Director, European Office
SES Director, Far East Office
SES Director, Office of Policy

SES Director of Personnel
SES Director, General Services and Controller
SES Deputy Director, General Services and Controller
SES Director, Office of Organization and Human Development
SES Director, Program Evaluation and Methodology Division
SES Deputy Director, Program Evaluation and Methodology Division
SES Director, Civil Rights Office
SES General Counsel
SES Assistant Comptroller General
SES Assistant Comptroller General for Planning and Reporting
SES Assistant Comptroller General for Operations
SES Chief Economist
SES Deputy Chief Economist
SES Assistant Comptroller General for National Security and International Affairs (NSIAD) Programs
SES Deputy Director for Planning and Reporting (NSIAD)
SES Deputy Director for Operations (NSIAD)
SES Director, Information Management and Technology Division (IMTEC)
SES Deputy Director for Operations (IMTEC)
SES Deputy Director for Planning and Reporting (IMTEC)
SES Regional Manager, Los Angeles
SES Regional Manager, Dallas
SES Regional Manager, Philadelphia
SES Regional Manager, Atlanta
SES Regional Manager, Boston
SES Regional Manager, San Francisco
SES Regional Manager, Washington
SES Regional Manager, Denver
SES Regional Manager, New York
SES Regional Manager, Detroit
SES Regional Manager, Cincinnati
SES Regional Manager, Kansas City
SES Regional Manager, Seattle
SES Regional Manager, Chicago
SES Regional Manager, Norfolk
SES Special Assistant to the Comptroller General
SES Director, Office of Publishing and Communications (OPC)
SES Director, Office of Information Resources Management (OIRM)
SES* Deputy Assistant Comptroller General for Operations
SES* Deputy Assistant Comptroller General for Human Resources
SES* Director, Office of Public Affairs

AGENCY: GENERAL SERVICES ADMINISTRATION

Positions:

Office of the Administrator

SES Deputy Administrator
SES Executive Assistant to the Deputy Administrator
SES* Special Counsel for Ethics Civil Rights
SES Director, Office of Small and Disadvantaged Business Utilization
SES Executive Director, Regulatory Information Service Center
SES* Assistant to the Administrator for Child Care and Development Programs

Office of Policy Analysis

SES Associate Administrator for Policy Analysis

Office of Congressional and Industry Relations

SES* Associate Administrator for Congressional and Industry Relations
SES* Deputy Associate Administrator for Congressional and Industry Relations

Office of Public Affairs

SES Associate Administrator for Public Affairs

Office of Administration

SES Associate Administrator for Administration
SES Special Assistant to the Associate Administrator for Administration
SES Director of Personnel
SES Deputy Director of Personnel
SES* Director, Office of Administrative Programs and Support
SES Director, Office of Administrative Services
SES* Director, Office of Management Programs

Office of Operations

SES Associate Administrator for Operations

Office of Information Security Oversight

SES Director of Information Security Oversight

Office of the Inspector General

SES Deputy Inspector General
SES Assistant Inspector General for Policy, Plans, and Management Systems
SES Assistant Inspector General for Auditing
SES Deputy Assistant Inspector General for Auditing
SES Assistant Inspector General for Investigations
SES Counsel to the Inspector General

Office of Acquisition Policy

SES Associate Administrator for Acquisition Policy
SES Deputy Associate Administrator for Acquisition Policy
SES Director of Acquisition Management and Contract Clearance

Office of General Counsel

SES General Counsel
SES Deputy General Counsel
SES* Assistant to the Deputy General Counsel
SES Associate General Counsel for General Law
SES Deputy Associate General Counsel for General Law
SES Associate General Counsel for Personal Property
SES Associate General Counsel for Real Property

Office of the Comptroller

SES Comptroller
SES Deputy Comptroller for Finance
SES* Deputy Comptroller for Financial Management Systems
SES Deputy Comptroller for Budget

Federal Property Resources Service

SES Commissioner, Federal Property Resources Service
SES Deputy Commissioner
SES Assistant Commissioner for Real Estate Policy and Sales
SES Assistant Commissioner for National Defense Stockpile
SES* Deputy Assistant Commissioner for National Defense Stockpile

Public Buildings Service

SES Commissioner, Public Buildings Service
SES Deputy Commissioner
SES* Special Assistant to the Commissioner
SES* Controller, Public Buildings Service
SES Director for Real Property Information Systems
SES Assistant Commissioner for Government-Wide Real Property Policy and Oversight
SES Assistant Commissioner for Real Property Management and Safety
SES Deputy Assistant Commissioner for Real Property Management and Safety
SES Director, Facility Management Division
SES Director, Law Enforcement Division
SES Assistant Commissioner for Real Property Development
SES Deputy Assistant Commissioner for Real Property Development
SES Assistant Commissioner for Procurement
SES Assistant Commissioner for Facility Planning

Information Resources Management Service

SES Commissioner, Information Resources Management Service
SES Deputy Commissioner for Telecommunications
SES Deputy Commissioner for Federal Information Resources Management
SES Deputy Commissioner for Central Information Services
SES Assistant Commissioner for Information Resources Management Policy
SES Assistant Commissioner for Information Resources Procurement
SES Assistant Commissioner for Regional Information Services
SES Assistant Commissioner for Network Services
SES* Assistant Commissioner for Technical Assistance
SES* Controller, Information Resources Management Service
SES Director, Office of Regional Telecommunications Services
SES* Director, Office of Innovative Office Systems
SES Special Assistant to the Commissioner, Information Resources Management Service

Federal Supply Service

SES Commissioner, Federal Supply Service
SES Deputy Commissioner, Federal Supply Service
SES* Controller, Federal Supply Service
SES Assistant Commissioner for Policy and Agency Liaison
SES Assistant Commissioner for Commodity Management

SES Assistant Commissioner for Customer Support Management
SES Assistant Commissioner for Quality and Contract Administration
SES* Assistant Commissioner for Transportation Audits
SES* Assistant Commissioner for National Distribution

Regional Offices

SES* Senior Advisor, Region 1 (Boston)
SES Regional Administrator, Region 2 (New York)
SES* Senior Advisor, Region 2 (New York)
SES Deputy Regional Administrator, Region 2 (New York)
SES Assistant Regional Administrator, Public Buildings Service, Region 2 (New York)
SES Assistant Regional Administrator, Federal Supply Service, Region 2 (New York)
SES Regional Administrator, Region 3 (Philadelphia)
SES Deputy Regional Administrator, Region 3 (Philadelphia)
SES Assistant Regional Administrator, Information Resource Management Service, N.E. Zone, Region 3 (Philadelphia)
SES Assistant Regional Administrator, Public Buildings Service, Region 3 (Philadelphia)
SES Regional Administrator, Region 4 (Atlanta)
SES Deputy Regional Administrator, Region 4 (Atlanta)
SES Assistant Regional Administrator, Public Buildings Service, Region 4 (Atlanta)
SES Assistant Regional Administrator, Information Resources Management Service, Region 4 (Atlanta)
SES Assistant Regional Administrator, Federal Supply Service, Region 4 (Atlanta)
SES Regional Administrator, Region 5 (Chicago)
SES Deputy Regional Administrator, Region 5 (Chicago)
SES Assistant Regional Administrator, Public Buildings Service, Region 5 (Chicago)
SES Regional Administrator, Region 6 (Kansas City)
SES Deputy Regional Administrator, Region 6 (Kansas City)
SES Assistant Regional Administrator for Administration, Region 6 (Kansas City)
SES Assistant Regional Administrator, Public Buildings Service, Region 6 (Kansas City)
SES Regional Administrator, Region 7 (Fort Worth)
SES Deputy Regional Administrator, Region 7 (Fort Worth)
SES Assistant Regional Administrator, Public Buildings Service, Region 7 (Fort Worth)
SES Assistant Regional Administrator, Federal Supply Service, Region 7 (Fort Worth)
SES Assistant Regional Administrator, Information Resources Management Service, Region 7 (Fort Worth)
SES Regional Administrator, Region 8 (Denver)
SES Senior Advisor, Region 8 (Denver)
SES Regional Administrator, Region 9 (San Francisco)
SES Deputy Regional Administrator, Region 9 (San Francisco)
SES Assistant Regional Administrator, Public Buildings Service, Region 9 (San Francisco)
SES Assistant Regional Administrator, Federal Supply Service, Region 9 (San Francisco)
SES Assistant Regional Administrator, Information Resources Management Service, Region 9 (San Francisco)
SES Regional Administrator, Region 10 (Auburn)
SES Senior Advisor, Region 10 (Auburn)
SES Regional Administrator, National Capital Region (Washington, DC)
SES Deputy Regional Administrator, National Capital Region (Washington, DC)
SES Assistant Regional Administrator for Real Estate and Development, National Capital Region (Washington, DC)
SES Assistant Regional Administrator for Operations, National Capital Region (Washington, DC)
SES Assistant Regional Administrator, Information Resources Management Service, National Capital Region (Washington, DC)
SES Director of Federal Domestic Assistance Catalog Staff, Information Resources Management Service, National Capital Region (Washington, DC)

GSA Board of Contract Appeals

GS–18 Chairman and Chief Administrative Judge of Board of Contract Appeals
GS–17 Vice Chairman, Board of Contract Appeals

AGENCY: HARRY S TRUMAN SCHOLARSHIP FOUNDATION

Positions: No section 207 (d)(1)(C) designations.

AGENCY: INSTITUTE OF MUSEUM SERVICES

Positions: No section 207 (d)(1)(C) designations.

AGENCY: INTER-AMERICAN FOUNDATION

Positions: No section 207 (d)(1)(C) designations.

AGENCY: INTERNATIONAL JOINT COMMISSION

Positions: No section 207 (d)(1)(C) designations.

AGENCY: INTERNATIONAL TRADE COMMISSION

Positions:

SES Director, Office of Operations
SES General Counsel
SES Director, Office of Industries
SES Director, Office of Investigations
SES Director, Office of Economics
SES Director, Office of Administration
SES Director, Office of Tariff Affairs and Trade Agreements

AGENCY: INTERSTATE COMMERCE COMMISSION

Positions:

SES Managing Director
SES General Counsel
SES Director, Bureau of Traffic
SES Director, Bureau of Accounts
SES Director, Office of Proceedings
SES Director, Office of Transportation Analysis (OTA)
SES Deputy General Counsel
SES Deputy General Counsel, Research and Legislation
SES Director, Office Compliance and Consumer Assistance (OCCA)
SES Associate Director, Office of Compliance and Consumer Assistance (OCCA)
SES Chief of Staff
SES Director, Office of Government and Public Affairs
SES Deputy Director, Bureau of Accounts

AGENCY: JAPAN-UNITED STATES FRIENDSHIP COMMISSION

Positions:

SES Executive Director

AGENCY: MARINE MAMMAL COMMISSION

Positions:

GS–18 Executive Director

AGENCY: MERIT SYSTEMS PROTECTION BOARD

Positions:

SES* Counsel to the Chairman for Legal Policy
SES Executive Director
SES* Assistant to the Executive Director for Management
SES* Director, Office of Policy and Evaluation
SES Deputy Executive Director for Regional Operations
SES General Counsel
SES Deputy General Counsel
SES* Director, Office of Administration
SES Legislative Counsel
SES Director, Office of Appeals Counsel
SES Deputy Director, Office of Appeals Counsel
SES* Associate Director for Appeals Policy
SES* Research Advisor, Office of Policy and Evaluation
SES Regional Director, Atlanta
SES Regional Director, Chicago
SES Regional Director, Dallas
SES Regional Director, Philadelphia
SES Regional Director, San Francisco
SES Regional Director, Washington, DC

AGENCY: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Positions:

Office of the Administrator

SES Associate Deputy Administrator (Institution)
SES* Associate Deputy Administrator (Policy)

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Office of the Comptroller

SES Deputy Comptroller, NASA
SES Comptroller, NASA

Office of Legislative Affairs

SES Assistant Administrator for Legislative Affairs
SES Deputy Assistant Administrator for Legislative Affairs

Office of the Chief Engineer

SES Chief Engineer, NASA
SES Deputy Chief Engineer, NASA

Office of Space Science and Applications

SES Associate Administrator for Space Science and Applications
SES Deputy Associate Administrator for Space Science and Applications

Office of General Counsel

SES General Counsel
SES Deputy General Counsel, NASA

Office of Procurement

SES Assistant Administrator for Procurement
SES Deputy Assistant Administrator for Procurement

Office of Safety, Reliability and Quality Assurance

SES Associate Administrator for Safety, Reliability and Quality Assurance

Office of Commercial Programs

SES Assistant Administrator for Commercial Programs
SES Deputy Assistant Administrator for Commercial Programs

Office of External Relations

SES Associate Administrator for External Relations
SES Deputy Associate Administrator for External Relations

Office of Space Flight

SES Associate Administrator for Space Flight
SES Deputy Associate Administrator for Space Flight

Office of Management

SES Associate Administrator for Management
SES Deputy Associate Administrator for Management

Office of Aeronautics and Space Technology

SES Associate Administrator for Aeronautics and Space Technology
SES Deputy Associate Administrator for Aeronautics and Space Technology

Office of Policy

SES Associate Administrator for Policy

Office of Chief Scientist

SES Chief Scientist
SES Deputy Chief Scientist

Office of Space Tracking and Data Systems

SES Associate Administrator for Space Tracking and Data Systems
SES Deputy Associate Administrator for Space Tracking and Data Systems

Office of Space Station

SES Associate Administrator for Space Station
SES Deputy Associate Administrator for Space Station

Office of Equal Opportunity Programs

SES Assistant Administrator for Equal Opportunity Programs
SES Deputy Assistant Administrator for Equal Opportunity Programs

Inspector General

SES Deputy Inspector General
SES* Assistant Inspector General for Investigations
SES* Assistant Inspector General for Auditing

Ames Research Center

SES Director, NASA Ames Research Center
SES Deputy Director, NASA Ames Research Center

Goddard Space Flight Center

SES Director, NASA Goddard Space Flight Center
SES Deputy Director, NASA Goddard Space Flight Center

Johnson Space Center

SES Director, NASA Johnson Space Center
SES Deputy Director, NASA Johnson Space Center

Kennedy Space Center

SES Director, NASA Kennedy Space Center
SES Deputy Director, NASA Kennedy Space Center

Langley Research Center

SES Director, NASA Langley Research Center
SES Deputy Director, NASA Langley Research Center

Lewis Research Center

SES Director, NASA Lewis Research Center
SES Deputy Director, NASA Lewis Research Center

Marshall Space Flight Center

SES Director, NASA Marshall Space Flight Center
SES Deputy Director, NASA Marshall Space Flight Center

National Space Technology Laboratories

SES Manager, National Space Technology Laboratories
SES Deputy Manager, National Space Technology Laboratories

AGENCY: NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Positions:

SES* Deputy Archivist of the United States
SES* General Counsel
SES* Assistant Archivist, Office of Management and Administration
SES* Assistant Archivist, Office of Federal Records Centers
SES* Assistant Archivist, Office of the National Archives
SES* Assistant Archivist, Office of Public Programs
SES* Director, Office of the Federal Register
SES* Assistant Archivist, Office of Presidential Libraries
SES* Director, Harry S. Truman Library
SES* Director, Dwight D. Eisenhower Library
SES* Director, Lyndon B. Johnson Library
SES* Assistant Archivist, Office of Records Administration

AGENCY: NATIONAL CAPITAL PLANNING COMMISSION

Positions:

SES Executive Director
SES Associate Executive Director for Regional Affairs
SES Associate Executive Director for District of Columbia Affairs
SES Assistant Executive Director for Operations

AGENCY: NATIONAL COMMISSION ON EMPLOYMENT POLICY

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: NATIONAL CREDIT UNION ADMINISTRATION

Positions:

SES General Counsel
SES Director, Office of Examination and Insurance
SES Regional Directors (6)
SES Deputy General Counsel
SES Chief Economist
SES President, CLF
SES Executive Director
SES* Deputy Director, Office of Examination and Insurance

AGENCY: NATIONAL ENDOWMENT FOR THE ARTS

Positions:

SES Director of Policy, Planning, Research and Budget
SES Deputy Chairman for Management
SES Deputy Chairman for Programs
SES Associate Deputy Chairman for Programs and Director of Program Coordination

AGENCY: NATIONAL ENDOWMENT FOR THE HUMANITIES

Positions:

SES* Deputy Chairman (Programs and Administration)
SES Deputy Chairman (Policy)
SES General Counsel
SES Assistant Chairman for Administration
SES Assistant Chairman for Programs
SES Director, Division of Research Programs
SES Director, Division of General Programs
SES Director, Office of Planning and Budget

AGENCY: NATIONAL LABOR RELATIONS BOARD

Positions:

SES Solicitor
SES Executive Secretary

SES Deputy General Counsel
SES Associate General Counsel, Division of Enforcement Litigation

AGENCY: NATIONAL MEDIATION BOARD

Position:

SES Executive Director

AGENCY: NATIONAL SCIENCE FOUNDATION

Positions:

SES Senior Science Advisor
SES Executive Officer, National Science Board
SES Director, Office of Audit and Oversight
SES Director, Office of Legislative and Public Affairs
SES Controller, National Science Foundation
SES General Counsel
SES Director, Office of Information Systems
SES* Director, Office of Science and Technology Centers Development
SES Assistant Director for Computer and Information Science and Engineering
SES Assistant Director for Science and Engineering Education
SES Assistant Director for Scientific, Technological and International Affairs
SES Assistant Director for Administration
SES Deputy Assistant Director for Engineering
SES* Assistant Director for Biological, Behavioral and Social Sciences
SES* Assistant Director for Engineering
SES* Assistant Director for Geosciences
SES* Assistant Director for Mathematical and Physical Sciences

AGENCY: NATIONAL TRANSPORTATION SAFETY BOARD

Positions:

SES Managing Director
SES Deputy Managing Director
SES General Counsel
SES Director, Bureau of Accident Investigation
SES Director, Bureau of Technology
SES Director, Bureau of Administration
SES Director, Bureau of Safety Programs
SES Director, Bureau of Field Operations

AGENCY: NUCLEAR REGULATORY COMMISSION

Positions:

Office of the Commission

SES Executive Assistant to the Chairman

Advisory Committee on Reactor Safeguards

SES Executive Director, ACRS
SES Assistant Executive Director for Project Review, ACRS
SES Assistant Executive Director for Technical Activities, ACRS

Office of the Secretary

SES Secretary of the Commission
SES Assistant Secretary of the Commission

Office of the Inspector and Auditor

SES Director, Office of Inspector and Auditor
SES Deputy Director, Office of Inspector and Auditor

Office of Investigations

SES Director, Office of Investigations
SES Deputy Director, Office of Investigations

Atomic Safety and Licensing Board Panel

SES Chief Administrative Judge
SES Deputy Chief Administrative Judge (Executive)
GG–17 Deputy Chief Administrative Judge (Technical)

Atomic Safety and Licensing Appeal Panel

SES Chairman, ASLAP
GG–17 Administrative Judge (Legal) ASLAP (2)
GG–17 Administrative Judge (Technical) (1)

Office of the General Counsel

SES General Counsel
SES Solicitor, Office of the General Counsel
SES Deputy General Counsel for Licensing and Regulation
SES Assistant General Counsel for Adjudications and Opinions
SES Deputy Assistant General Counsel for Adjudications and Opinions/Legislative Counsel
SES Assistant General Counsel for Rulemaking and Fuel Cycle
SES Deputy General Counsel for Hearings and Enforcement
SES Assistant General Counsel for Administration
SES Assistant General Counsel for Enforcement
SES Assistant General Counsel for Hearings
SES First Deputy Assistant General Counsel
SES Deputy Assistant General Counsel, Reactor Licensing Branch
SES Deputy Assistant General Counsel, Materials, Antitrust, and Special Proceedings Branch
GG–17 Special Assistant for International Affairs

Office of Governmental and Public Affairs

SES Director, Office of Public Affairs, General Counsel for Legislative and Governmental Affairs
SES Director, Congressional Affairs
SES Director, Office of State Programs
SES Deputy Director, State, Local and Indian Tribe Programs
SES Director, Internationl Programs
SES A/D for International Cooperation
SES A/D for Export/Import and International Safeguards
SES Director, Public Affairs
SES Deputy Director, Public Affairs

Executive Director for Operations

SES Executive Director for Operations
SES Deputy Executive Director for Operations
SES Assistant for Operations
SES Deputy Executive Director for Regional Operations and Generic Requirements
SES Director, Regional Operations and Generic Requirements Staff

Office of Enforcement

SES Director

Office of Special Projects

SES Director
SES Deputy Director
SES Director, TVA Projects Staff
SES Deputy Director, TVA Projects Staff
SES A/D for Projects, TVA Projects Staff
SES A/D, TVA Technical Staff
SES Director, Comanche Peak Project Division
SES Deputy Director, Comanche Peak Project Division
SES A/D for Comanche Peak Inspection Programs

Office of Administration and Resources Management

SES Director
SES Executive Assistant to the Director
SES Deputy Director for Administration
SES Director, Division of Contracts and Property Management
SES Deputy Director for Information Resources Management
SES Deputy Director for Financial Management/Controller
SES Assistant Controller

Office of Personnel

SES Director, Office of Personnel
SES Deputy Director, Office of Personnel

Office of Nuclear Reactor Regulation

SES Director, Office of Nuclear Reactor Regulation
SES Deputy Director, Office of Nuclear Reactor Regulation
STS Special Assistant for Policy Development
SES Director, Program Management, Policy Development, and Analysis Staff
SES Director, Program Management, Policy Development, and Analysis Staff
SES Chief, Planning, Program and Management Support Branch
SES Chief, Policy Development and Technical Support Branch
SES Chief, Inspection, Licensing, and Research Integration Branch
SES Associate Director for Projects
SES Director, Division of Reactor Projects—I/II
SES Assistant Director for Region I Reactors
SES Project Director, Directorate I–1
SES Project Director, Directorate I–2
SES Project Director, Directorate I–3
SES Project Director, Directorate I–4
SES Assistant Director for Region II Reactors
SES Project Director, Directorate II–1
SES Project Director, Directorate II–2
SES Project Director, Directorate II–3
SES Director, Division of Reactor Projects—III/IV/V and Special Projects
SES Assistant Director for Region III and V Reactors
SES Project Director, Directorate III–1
SES Project Director, Directorate III–2
SES Project Director, Directorate III–3
SES Project Director, Directorate V
SES Assistant Director for Region IV Reactors and Special Projects
SES Project Director, Directorate IV
SES Project Director, TMI–2 Cleanup Directorate
SES Director, Standardization and Non-Power Reactor Project Directorate

SES Associate Director for Inspection and Technical Assessment
SES Director, Division of Engineering and System Technology
SES Special Assistant, Division of Engineering and System Technology
SES Assistant Director for Engineering
SES Chief, Materials Engineering Branch
SES Chief, Mechanical Engineering Branch
SES Chief, Structural and Geosciences Branch
SES Chief, Chemical Engineering Branch
SES Assistant Director for Systems
SES Chief, Instrumentation and Control Systems Branch
SES Chief, Electrical Systems Branch
SES Chief, Plant Systems Branch
SES Chief, Reactor Systems Branch
SES Director, Division of Operational Events Assessment
SES Chief, Events Assessment Branch
SES Chief, Generic Communications Branch
SES Chief, Technical Specifications Branch
SES Director, Division of Reactor Inspection and Safeguards
SES Deputy Director, Division of Reactor Inspection and Safeguards
STS Senior Program Coordinator
SES Chief, Vendor Inspection Branch
SES Chief, Safeguards Branch
SES Chief, Special Inspections Branch
SES Director, Division of Radiation Protection and Emergency Preparedness
SES Chief, Emergency Preparedness Branch
SES Chief, Risk Applications Branch
SES Chief, Radiation Protection Branch
SES Director, Division of Licensee Performance and Quality Evaluation
SES Deputy Director, Division of Licensee Performance and Quality Evaluation
SES Chief, Performance Evaluation Branch
SES Chief, Quality Assurance Branch
SES Chief, Human Factors Assessment Branch
SES Chief, Operator Licensing Branch

Office of Nuclear Regulatory Research

SES Director, Nuclear Regulatory Research
SES Deputy Director for Research, Nuclear Regulatory Research
SES Deputy Director for Generic Issues, Nuclear Regulatory Research
SES Director, Program Management, Policy Development and Analysis Staff
SES Senior Resident Adviser
SES Director, Division of Engineering
SES Deputy Director, Division of Engineering
SES Chief, Materials Engineering Branch
SES Chief Engineering Issues Branch
SES Chief, Electrical and Mechanical Engineering Branch
SES Chief, Structural and Seismic Engineering Branch
SES Chief, Waste Management Branch
SES Director, Division of Regulatory Applications
SES Deputy Director, Division of Regulatory Applications
SES Chief, Regulation Development Branch
SES Chief, Radiation Protection and Health Effects Branch
SES Chief, Advanced Reactors and Generic Issues Branch
SES Director, Division of Reactor Accident Analysis
SES Deputy Director, Division of Reactor Accident Analysis
SES Assistant for Consequence Analysis Policy
SES Chief, Accident Evaluation Branch
SES Chief, Severe Accident Issues Branch
SES Chief, Probabilistic Risk Analysis Branch
SES Director, Division of Reactor and Plant Systems
SES Deputy Director, Division of Reactor and Plant Systems
SES Assistant for Operational Safety and Reliability
SES Assistant for Accident Management
SES Chief, Reactor and Plant Systems Branch
SES Chief, Reactor and Plant Safety Issues Branch
SES Chief, Reliability and Human Factors Branch

Office of Nuclear Material Safety and Safeguards

SES Director, NMSS
SES Deputy Director, NMSS
SES Director, Program Management, Policy Development and Analysis Staff
SES Director, Special Issues Group
SES Assistant Director, Special Issues Group
SES Director, Division of Safeguards and Transportation
SES Deputy Director, Division of Safeguards and Transportation
SES Chief, Operations Branch
SES Chief, Licensing Branch
SES Chief, Transportation Branch
SES Director, Division of Industrial and Medical Nuclear Safety
SES Deputy Director, Division of Industrial and Medical Nuclear Safety
SES Chief, Operations Branch
SES Chief, Medical, Academic, and Commercial Use Safety Branch
SES Chief, Fuel Cycle Safety Branch
SES Director, Division of High-Level Waste Management
SES Deputy Director, Division of High-Level Waste Management
SES Chief, Systems Engineering and Evaluation Branch
SES Chief, Operations Branch
SES Chief, Technical Review Branch
SES Director, Division of LLW Management and Decommissioning
SES Deputy Director, Division of LLW Management and Decommissioning
SES Chief, Operations Branch
SES Chief, Technical Branch
SES Chief, Regulatory Branch

Regional Offices

SES Regional Administrator, Region I
SES Deputy Regional Administrator, Region I
SES Director, Division of Reactor Projects, Region I
SES Deputy Director, Division of Reactor Projects, Region I
SES Director, Division of Reactor Safety, Region I
SES Deputy Director, Division of Reactor Safety, Region I
SES Director, Division of Radiation Safety and Safeguards, Region I
SES Regional Administrator, Region II
SES Deputy Regional Administrator, Region II
SES Director, TVA Projects, Region II
SES Director, Division of Radiation Safety and Safeguards, Region II
SES Director, Division of Reactor Safety, Region II
SES Deputy Director, Division of Reactor Safety, Region II
SES Director, Division of Reactor Projects, Region II
SES Deputy Director, Division of Reactor Projects, Region II
SES Regional Administrator, Region III
SES Deputy Regional Administrator, Region III
SES Director, Division of Reactor Projects, Region III
SES Deputy Director, Division of Reactor Projects, Region III
SES Director, Division of Radiation Safety and Safeguards, Region III
SES Director, Division of Reactor Safety, Region III
SES Deputy Director, Division of Reactor Safety, Region III
SES Regional Administrator, Region IV
SES Director, Division of Radiation Safety and Safeguards, Region IV
SES Deputy Director, Division of Radiation Safety and Safeguards, Region IV
SES Director, Uranium Recovery Field Office, Region IV
SES Deputy Regional Administrator, Region IV
SES Director, Division of Reactor Projects, Region IV
SES Deputy Director, Division of Reactor Projects, Region IV
SES Director, Division of Reactor Safety, Region IV
SES Regional Administrator, Region V
SES Deputy Regional Administrator, Region V
SES Director, Division of Reactor Safety and Projects, Region V
SES Deputy Director, Division of Reactor Safety and Projects, Region V
SES Director, Division of Radiation Safety and Safeguards, Region V

Office for Analysis and Evaluation of Operational Data

SES Director, Office for Analysis and Evaluation of Operational Data
SES Deputy Director, Office for Analysis and Evaluation of Operational Data
SES Director, Division of Operational Assessment
SES Chief, Diagnostic Evaluation and Incident Investigation Branch
SES Chief, Incident Response Branch
SES Director, NRC Technical Training Center
SES Director, Division of Safety Programs
SES Assistant for Technical Studies
SES Chief, Trends and Patterns Analysis Branch
SES Chief, Reactor Operations Analysis Branch

Office of Small and Disadvantaged Business Utilization and Civil Rights

SES Director, Office of Small and Disadvantaged Business Utilization and Civil Rights

AGENCY: OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Positions

SES Executive Director
SES General Counsel

AGENCY: OFFICE OF PERSONNEL MANAGEMENT

Positions.

SES Counselor to the Director, Office of the Director
SES Chief of Staff, Office of the Director
SES* Senior Administrator for Intergovernmental Affairs, Office of the Director
SES Director, Federal Executive Institute
SES Regional Director, Atlanta Region
SES Regional Director, Chicago Region
SES Regional Director, Dallas Region
SES Regional Director, Philadelphia Region
SES Regional Director, San Francisco Region
SES Director, Office of Congressional Relations
SES Director, Office of Executive Administration
SES* Director, Office of Executive Personnel
SES General Counsel, Office of the General Counsel
SES Deputy General Counsel, Office of the General Counsel
SES Associate General Counsel Office of the General Counsel
SES* Principal Assistant General Counsel, Office of the General Counsel
SES Deputy Director, Office of Government Ethics
SES Chief Counsel, Office of Government Ethics
SES Inspector General, Office of the Inspector General
SES Director, Office of International Affairs
SES Director, Office of Public Affairs
SES Chairman, Federal Prevailing Rate Advisory Committee
SES Associate Director for Administration, Administration Group
SES Deputy Associate Director for Administration, Administration Group
SES Assistant Director for Personnel and EEO Administration Group
SES Assistant Director for Finance and Administrative Services, Administration Group
SES Assistant Director for Information Management, Administration Group
SES Executive for ADP Operations, Administration Group
SES Assistant Director for Budget and Management, Administration Group
SES Associate Director for Career Entry, Career Entry Group
SES Deputy Associate Director for Career Entry, Career Entry Group
SES Assistant Director for Staffing Policy and Operations, Career Entry Group
SES Assistant Director for Examination Development, Career Entry Group
SES Director, Staffing Service Center, Career Entry Group
SES Assistant Director for Recruiting and Special Personnel Programs, Career Entry Group
SES Assistant Director for Administrative Law Judges, Career Entry Group
SES Associate Director for Personnel Systems and Oversight, Personnel Systems and Oversight Group
SES Deputy Associate Director for Personnel Systems and Oversight, Personnel Systems and Oversight Group
SES Assistant Director for Pay and Performance, Personnel Systems and Oversight Group
SES Assistant Director for Employee and Labor Relations, Personnel Systems and Oversight Group
SES Assistant Director for Agency Compliance and Evaluation, Personnel Systems and Oversight Group
SES Assistant Director for Classification, Personnel Systems and Oversight Group
SES Assistant Director for Systems Innovation and Simplification, Personnel Systems and Oversight Group
SES Associate Director for Retirement and Insurance, Retirement and Insurance Group
SES Deputy Associate Director for Retirement and Insurance, Retirement and Insurance Group
SES Director, Office of Actuaries, Retirement and Insurance Group
SES Assistant Director for Insurance Programs, Retirement and Insurance Group
SES Assistant Director for Retirement Programs, Retirement and Insurance Group
SES Assistant Director for Financial Control and Management, Retirement and Insurance Group
SES Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group
SES Temporary Assignment Pool Program Officer serving as Director FERS Implementation Task Force, Retirement and Insurance Group
SES Associate Director for Training and Investigations, Training and Investigations Group
SES Deputy Director for Training and Investigations, Training and Investigations Group
SES Assistant Director for Federal Investigations, Training and Investigations Group
SES Assistant Director for Training and Development, Training and Investigations Group
SES Director, Washington Area Service Center
SES Deputy Director, Washington Area Service Center
SES Assistant Director for Washington Examining Services, Washington Area Service Center
SES Assistant Director for Washington Training and Development Services, Washington Area Service Center

President's Commission on Executive Exchange

GS–17 Executive Director

AGENCY: OFFICE OF SPECIAL COUNSEL (MSPB)

Positions:

SES Deputy Special Counsel
SES Associate Special Counsel for Investigation
SES Associate Special Counsel for Prosecution
SES Associate Special Counsel for Planning and Oversight
SES Director of Operations Management

AGENCY: OVERSEAS PRIVATE INVESTMENT CORPORATION

Positions:

AD* Departmental Vice President (6)
AD* Deputy General Counsel

AGENCY: PANAMA CANAL COMMISSION

Positions:

DA Deputy Administrator

AGENCY: PEACE CORPS

Positions:

FE–2 General Counsel, Peace Corps
FE–2 Associate Director, International Operations, Peace Corps
FE–2 Chief of Staff, Peace Corps
FE–2 Associate Director, Volunteer Recruitment and Selection, Peace Corps
FE–2 Associate Director, Management, Peace Corps

AGENCY: PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Positions:

AD Executive Director of the Corporation
AD Assistant Director—Legal
AD Assistant Director—Development
AD All Members of the Board of Directors (23)

AGENCY: PENSION BENEFIT GUARANTY CORPORATION

Positions:

GS–17 Principal Deputy Executive Director
GS–17 General Counsel
GS–17 Director, Insurance Operations Department
GS–17* Deputy Executive Director for Management and Operations

AGENCY: POSTAL RATE COMMISSION

Positions:

AD–18 General Counsel of the Commission
AD–18 Director of the Office of Technical Analysis and Planning
AD–18 Director of Office of Consumer Advocate

AGENCY: RAILROAD RETIREMENT BOARD

Positions:

SES Executive Director
SES Director of Legal and Administrative Services/General Counsel
SES Director of Program Analysis
SES Director of Field Service

SES Director of Retirement Claims
SES Director of Unemployment and Sickness Insurance
SES Chief Actuary
SES Director of Data Processing
SES Chief Financial Officer
SES Assistant Inspector General for Auditing
SES* Chief Executive Officer
SES* Assistant Inspector General for Investigations
SES* Deputy General Counsel

AGENCY: SECURITIES AND EXCHANGE COMMISSION

Positions:

SES General Counsel
SES Director, Division of Corporation Finance
SES* Deputy Director, Division of Corporation Finance
SES Director, Division of Enforcement
SES Director, Division of Investment Management
SES* Deputy Director, Division of Investment Management
SES Director, Division of Market Regulation
SES Chief Accountant of the Commission
SES Deputy Chief Accountant
SES Executive Director
SES Regional Administrator, New York
SES Regional Administrator, Chicago
SES Regional Administrator, Los Angeles

SELECTIVE SERVICE SYSTEM

Positions:

SES Deputy Director of the Agency
SES Associate Director, Information Management

AGENCY: SMALL BUSINESS ADMINISTRATION

Positions:

SES Deputy Administrator
SES Regional Administrator, Region I
SES Regional Administrator, Region II
SES Regional Administrator, Region III
SES Regional Administrator, Region IV
SES Regional Administrator, Region V
SES Regional Administrator, Region VI
SES Regional Administrator, Region VII
SES Regional Administrator, Region VIII
SES Regional Administrator, Region IX
SES Regional Administrator, Region X
SES General Counsel
SES Associate Administrator for Business Development
SES Associate Administrator for Finance and Investment
SES Associate Administrator for Minority Small Business and Capital Ownership Development
SES Associate Administrator for Procurement Assistance
SES Associate Deputy Administrator for Management and Administration
SES Associate Deputy Administrator for Special Programs
SES Assistant Administrator for Administration
SES* Deputy Inspector General and Counsel to the Inspector General
SES Assistant Inspector General for Audits
SES Assistant Inspector General for Investigations
SES Director, Equal Employment Opportunity and Compliance
SES Director of Personnel
SES Director of Program Analysis and Review
SES Comptroller

AGENCY: TENNESSEE VALLEY AUTHORITY

Positions:

M–13 General Manager
M–12 Inspector General
M–12 Manager, Office of Natural Resources and Economic Development
M–12 Manager, Office of Nuclear Power
M–12 Manager, Office of Power
M–12 General Counsel
M–12 Manager, Office of Agricultural and Chemical Development
M–12 Assistant General Manager (Finance)
M–12 Manager, Office of Employee Relations
M–12 Manager, Office of Corporate Services
M–12 Manager, Office of Policy, Planning and Budget
M–12 Manager, Office of Governmental and Public Affairs

AGENCY: UNITED STATES ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Positions: No Section 207(d)(1)(C) Designations.

AGENCY: UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

Positions:

SES Counselor
O–7/O–8 Senior Military Adviser, D
SFS U.S. Representative to CD
SES Administrative Director
SES General Counsel
SFS Director, Office of Public Affairs
SES Deputy Assistant Director, SP
SES Deputy Assistant Director, NWC
SES* Director, Office of Congressional Affairs

AGENCY: UNITED STATES INFORMATION AGENCY

Positions:

SES* Director, Private Sector Committees
SFS* Executive Assistant to the Director
SFS* Executive Assistant to the Deputy Director
SES* Senior Advisor to the Director
SES* Assistant Director (Congressional Liaison)
SES* Senior Advisor for Public Affairs
SES* Director, Office of Public Liaison
SFS* Counselor
SES General Counsel
SES Deputy General Counsel
SES* Coordinator, President's U.S.-Soviet Exchange Initiatives

Office of Inspector General

SES* Assistant Inspector General for Inspections
SES* Assistant Inspector General for Audits

The Bureau of Educational and Cultural Affairs

SFS* Deputy Associate Director
SFS Director, Office of Cultural Centers and Resources
SFS* Deputy Office Director (Cultural Centers)
SES Director, Office of Academic Programs
SFS* Deputy Director, Office of Academic Programs
SES Director, Office of International Visitors
SFS* Deputy Director, Office of International Visitors
SES Director, Office of Private Sector Programs
SFS* Deputy Director, Office of Private Sector Programs
SES* Executive Officer

The Voice of America

SFS* Deputy Director
SES* Director, Office of Programs
SES* Deputy Director, Office of Programs
SES Director, Office of Administration
SES Director for News and English Broadcasts
SFS Director for Regional Language Broadcasts
SES Director of Engineering and Technical Operations
SES Director, Office of Personnel
SES Director, Radio Marti
SES Director of Broadcast Operations
SES* Director of Policy
SES* Director, VOA Europe

The Bureau of Management

SFS Deputy Associate Director
SES Director, Office of Administration and Technology
SES Director, Office of Comptroller
SES Director, Office of Personnel
SFS Director, Office of Equal Employment Opportunity and Civil Rights
SES Director, Office of Contracts
SES Director, Office of Security

The Bureau of Programs

SES Director of Exhibits Service
SFS Director of Press and Publication Services
SES Deputy Associate Director
SES Executive Officer
SES Director, Office of Program Coordination and Development
SFS Director, Foreign Press Centers
SES Director, Office of Research

Television and Film Service

SES Director of Television and Film Service
SES Deputy Director
SES International Marketing Manager
SES Facilities Manager
SES News and Current Events Manager

Area Offices

SFS Director of African Affairs
SFS Deputy Director, African Affairs
SFS Director of European Affairs
SFS Deputy Director of European Affairs (2)
SFS Director of East Asian and Pacific Affairs
SFS Deputy Director of East Asian and Pacific Affairs
SFS Director of American Republics Affairs
SFS Deputy Director of American Republics Affairs
SFS Director of North African, Near Eastern and South Asian Affairs

SFS Deputy Director of North African and Near Eastern and South Asian Affairs
SFS Public Affairs Officer of Class A Posts (26)

AGENCY: U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Positions:

AGENCY FOR INTERNATIONAL DEVELOPMENT

Office of the Administrator
SES Counselor to the Agency

Office of the General Counsel (GC)
SES General Counsel
SES Deputy General Counsel

Office of Legislative Affairs (LEG)
SES Director

Bureau of External Affairs (XA)
SES Deputy Assistant Administrator (PML)

Office of U.S. Foreign Disaster Assistance (OFDA)
SES Coordinator, Foreign Disaster Relief

Bureau of Management

Office of the Assistant to the Administrator for Management (AA/M)
SES Assistant to the Administrator for Management
SES Deputy Assistant to the Administrator for Management

Office of Personnel Management (M/PM)
SFS–MC Director

Office of Financial Management (M/FM)
SES Controller

Directorate for Program and Management Services (M/SER)

Office of the Associate Assistant to the Administrator
SES Associate Assistant to the Administrator for Management (M/AAA/SER)

Office of Information Resources Management (M/SER/IRM)
SES Director

Office of Management Operations (M/SER/MO)
SES Director

Office of Procurement (M/SER/OP)
SFS–MC Director

Executive Office of Management Support (M/SER/MS)

Office of the Director
SFS–C Director

Office of Equal Opportunity Programs (EOP)
SES Director

Bureau for Food for Peace and Voluntary Assistance (FVA)

Office of the Assistant Administrator (AA/FVA)
SFS–MC Deputy Assistant Administrator

Office of Program, Policy and Management (PPM)
SFS-C Director, Program Policy and Evaluation

Office of Private and Voluntary Cooperation (PVC)
SES Director, Private and Voluntary Cooperation

Office of Food for Peace (FFP)
SFS Coordinator, Food for Peace

Office of the Inspector General (IG)
SES Inspector General
SES Deputy Inspector General

Office of Investigations (IG/II)
SES Assistant Inspector General for Investigations

Office of Security (IG/SEC)
SES Assistant Inspector General for Security

Bureau for Private Enterprise (PRE)

Office of the Assistant Administrator (AA/PRE)
SFS—MC Senior Deputy Assistant Administrator

Office of Investment (I)
SFS–C Director

Office of Housing and Urban Programs (H)
SES Director

Bureau for Program and Policy Coordination (PPC)

Office of the Assistant Administrator (AA/PPC)
SFS–MC Deputy Assistant Administrator
SFS–MC Deputy Assistant Administrator

Office of Planning and Budgeting (PPC/PB)
SFS–MC Associate Assistant Administrator

Office of Economic Affairs (PPC/EA)
SFS–MC Associate Assistant Administrator

Center for Development Information and Evaluation (PPC/CDIE)
SFS–C Associate Assistant Administrator

Office of Donor Coordination (PPC/DC)
SES Director

Bureau for Science and Technology (S&T)

Office of the Senior Assistant Administrator
SES Deputy Assistant Administrator for Research
SFS–MC Deputy Assistant Administrator for Technical Cooperation

Office of Program (ST/PO)
SFS–MC Director

Agency Directorate for Food and Agriculture (ST/FA)
SES Agency Director for Food and Agriculture

Office of Agriculture (ST/AGR)
SES Director

Office of Nutrition (ST/N)
SES Director

Agency Directorate for Energy and Natural Resources (ST/EN)
SES Agency Director for Energy and Natural Resources

Office of Forestry, Environment and Natural Resources (ST/FNR)
SES Director

Office of Energy (ST/EY)
SES Director

Agency Directorate for Human Resources (ST/HR)
SES Agency Director for Human Resources

Office of Rural and Institutional Development (ST/RD)
SFS–C Director

Office of Education (ST/ED)
SES Director

Agency Directorate for Health (ST/H)
SES Agency Director for Health

Agency Directorate for Population (ST/POP)
SES Agency Director for Population

Bureau for Africa (AFR)

Office of the Administrator (AA/AFR)
SFS–MC Deputy Assistant Administrator
SFS–MC Deputy Assistant Administrator for East and Southern Africa

Office of Development Planning (AFR/DP)
SFS–MC Director

Office of Technical Resources (AFR/RT)
SFS–MC Director

Office of Project Development (AFR/PD)
SFS–C Director

Office of Eastern Africa Affairs (AFR/EA)
SFS–C Director

Office of Central and Coastal and West African Affairs (AFR/CCWA)
SFS–C Director

Office of Sahel and West Africa Affairs (AFR/SWA)
SFS–C Director

Office of Southern Africa Affairs (AFR/SA)
SFS–C Director

Bureau for Asia and Near East (ANE)

Office of the Assistant Administrator (AA/ANE)
SFS–MC Deputy Assistant Administrator (2)

Office of Development Planning (ANE/DP)
SFS–MC Director

Office of Project Development (ANE/PD)
SFS–MC Director

Office of South Asian Affairs (ANE/SA)
SFS–C Director

Office of Egypt and European Affairs (ANE/NE/EE)

SFS-C Director

Office of East Asian Affairs (ANE/EA)

SFS–C Director

Bureau for Latin American and Caribbean (AA/LAC)

Office of the Assistant Administrator (AA/LAC)

SFS–CM Deputy Assistant Administrator

Office of Development Programs (LAC/DP)

SFS–MC Director

Office of Development Resources (LAC/DR)

SFS–MC Director

Office of South American and Mexican Affairs (LAC/SAM)

SFS–C Director

Office of Caribbean Affairs (LAC/CAR)

SFS–C Director

Office of Central American and Panamanian Affairs (LAC/CAP)

SFS–C Director

Missions

Africa

SFS–MC Director, Botswana
SFS–C AID Representative, Burundi
SFS–MC Director, Cameroon
SFS–C AID Representative, Cape Verde
SFS–C AID Representative, Chad
SFS–C AID Representative, Djibouti
SFS–C AID Representative, Ethiopia
SFS–MC AID Representative, Gambia
SFS–MC AID Representative, Ghana
SFS–C AID Representative, Guinea
SFS–C AID Representative, Guinea Bissau
SFS–MC Director, Kenya
SFS–C Deputy Mission Director, Liberia
SFS–MC Director, Lesotho
SFS–C AID Representative, Madagascar
SFS–C Director, Malawi
SFS–MC Director, Mali
SFS–MC Director, Mauritania
SFS–C AID Representative, Mozambique
SFS–MC Director, Niger
SFS–C AID Representative, Rwanda
SFS–MC Director, Senegal
SFS–MC Director, Somolia
SFS–MC Director, Republic of South Africa
SFS–MC Director, Sudan
SFS–MC Director, Swaziland
SFS–C AID Representative, Tanzania
SFS–C AID Representative, Togo
SFS–MC Director, Uganda
SFS–MC Director, Burkina Faso
SFS–MC Director, Zambia
SFS–MC Director, Zimbabwe
SFS–MC Deputy Mission Director, Zaire
SFS–MC Director, Regional Economic Development Services Office, West Africa
SFS–MC Director, Regional Economic Development Services Office, East Africa

Asia Near East

SFS–C AID Representative, Afghanistan
SFS–C Deputy Mission Director, Bangladesh
SFS–C AID Representative, Burma

Egypt

SFS–MC Deputy Mission Director
SFS–C Associate Mission Director, Office of Legal Advisor
SFS–C Associate Mission Director, Office of Financial Management
SFS–MC Associate Mission Director Program, Policy, Planning
SFS–MC Associate Mission Director for Industry and Support
SFS–MC Associate Mission Director for Development Resources
SFS–MC Associate Mission Director for Agriculture
SFS–MC Associate Mission Director for Human Resources and Development Cooperation (HRDC)
SFS–MC Deputy Mission Director, India
SFS–MC Deputy Mission Director, Indonesia
SFS–C AID Representative, Lebanon
SFS–MC Director, Morocco
SFS–MC Director, Nepal
SFS–C AID Representative, Oman
SFS–MC Deputy Mission Director, Pakistan
SFS–MC Deputy Mission Director, Philippines
SFS–C AID Representative, Portugal
SFS–MC Director, Sri-Lanka
SFS–MC Director, Thailand
SFS–MC Director, Tunisia
SFS–MC Director, Yemen
SFS–MC Director, South Pacific

Latin America and the Caribbean

SFS–MC Director, Bolivia
SFS–C AID Representative, Brazil
SFS–C AID Representative, Colombia
SFS–MC Director, Regional Development Office, Caribbean
SFS–MC Director, Costa Rica
SFS–C Deputy Mission Director, Dominican Republic
SFS–MC Director, Ecuador
SFS–MC Director, El Salvador
SFS–MC Director, Guatemala
SFS–MC Director, Regional Office for Central American Programs (ROCAP)
SFS–MC Director, Haiti
SFS–MC Director, Honduras
SFS–MC Director, Jamaica
SFS–C AID Representative, Mexico
SFS–C Deputy Mission Director, Peru
SFS–C AID Representative, Uruguay

Trade and Development Program (TDP)

SFS–MC Director

AGENCY: U.S. POSTAL SERVICE

Positions:

AD–17 Associate Judicial Officer
AD* Field Division General Manager/ Postmaster (Division 1)
AD* Office Director, Headquarters, Rates
AD* Office Director, Headquarters, Budget and Cost
AD* Office Director, Headquarters, Classification and Rates Administration
AD* Office Director, Headquarters, Accounting
AD* Office Director, Headquarters, Delivery and Customer Services Operations
AD* Office Director, Headquarters, Industrial Engineering
AD* Office Director, Headquarters, Transportation and International Services
AD* Office Director, Headquarters, Maintenance Management
AD* Office Director, Headquarters, Engineering Services
AD* Office Director, Headquarters, Operational Requirements
AD* Office Director, Headquarters, Mail Processing Operations
AD* Office Director, Headquarters, Real Estate
AD* Office Director, Headquarters, Facilities Planning and Management
AD* Office Director, Headquarters, Procurement
AD* Office Director, Headquarters, Design and Construction
AD* Office Director, Headquarters, Stamps and Philatelic Marketing
AD* Office Director, Headquarters, Product Marketing
AD* Office Director, Headquarters, Market Research Management
AD* Office Director, Headquarters, Field Marketing
AD* Office Director, Headquarters, Operation Research and Systems Requirements
AD* Office Director, Headquarters, Data Processing
AD* Office Director, Headquarters, Communications and Technology
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AD* Office Director, Headquarters, Collective Bargaining
AD* Office Director, Headquarters, Training and Development
AD* Office Director, Headquarters, Safety and Health
AD* Office Director, Headquarters, Selection and Evaluation
AD* Office Director, Headquarters, Organizational Requirements
AD* Associate General Counsel
AD* Regional Director, Marketing and Communications
AD* Regional Director, Human Resources
AD* Regional Director, Finance
AD* Regional Director, Operations Support
AD* Director, Facilities Service Center
AD* Executive Director, Engineering Support Center
AD* Executive Director, Office of Equal Employment Opportunity
AD* Executive Director, Office of Employee Involvement/Quality of Work Life
AD* Assistant Chief Inspector
AD* Regional Chief Postal Inspector
AD* Project Director, Automation Integration

AGENCY: UNITED STATES RAILWAY ASSOCIATION

Positions:

AD President
AD Executive Vice President
AD Vice President (1)

AGENCY: UNITED STATES SOLDIERS' AND AIRMEN'S HOME

Positions: No Section 207(d)(1)(C) Designations

AGENCY: VETERANS ADMINISTRATION

Positions:

Office of the Administrator

SES Associate Deputy Administrator for Congressional Affairs
SES Associate Deputy Administrator for Logistics
SES Associate Deputy Administrator for Management
SES Deputy Associate Deputy Administrator for Management
SES Associate Deputy Administrator for Public Affairs

Office of Inspector General

SES Deputy Inspector General
SES Assistant Inspector General for Audit
SES Assistant Inspector General for Investigations
SES Assistant Inspector General for Policy Planning and Resources
SES Deputy Assistant Inspector General for Headquarter Audits
SES Deputy Assistant Inspector General for Regional Audits
SES Deputy Assistant Inspector General for Policy, Planning and Resources
SES Deputy Assistant Inspector General for Investigations

Office of the General Counsel

SES General Counsel
SES Deputy General Counsel

Office of Program Analysis and Evaluation

SES Director

Office of Budget and Finance

SES Director

Office of Facilities

SES Director
SES Deputy Director

Department of Memorial Affairs

SES Chief Memorial Affairs Director
SES Deputy Chief Memorial Affairs Director

Department of Veterans' Benefits

SES Chief Benefits Director
SES Deputy Chief Benefits Director for Program Management
SES Deputy Chief Benefits Director for Field Operations
SES Deputy Chief Benefits Director for ADP Systems Management

Department of Medicine and Surgery

SES Deputy Associate Deputy Chief Medical Director

Office of Personnel and Labor Relations

SES Director
SES Deputy Director

Office of Information Systems and Telecommunications

SES Director

Office of Procurement and Supply

SES Director
SES Deputy Director

Office of Information Management and Statistics

SES Director

Office of Equal Opportunity

SES Director

Office of Systems Planning, Policy and Acquisition Control

SES Director

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Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Proposed Rule and Notice

VOL 53 ISS 232 DE 2 1988 UMI

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products; Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for 3 Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA) and the National Appliance Energy Conservation Act (NAECA), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. NAECA requires DOE to consider amending the energy conservation standards for refrigerators, refrigerator-freezers, and freezers; to establish standards for small gas furnaces; and to consider establishing energy conservation standards for television sets.

The Department is not proposing a specific level within the range considered, rather, DOE is soliciting comments and information from the public to be considered in promulgating the final rule. The final rule will specify a specific level for refrigerators, refrigerator-freezers and freezers; the level selected could include no change to the standard level prescribed by NAECA.

For small gas furnaces, the Department is proposing to determine that standards would result in a significant conservation of energy and be economically justified.

Finally, for television sets, the Department is proposing to determine that an energy conservation standard would result in a significant conservation of energy but would not be economically justified.

DATES: Written comments on the proposed rule must be received by the Department by January 31, 1989.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on January 12, 1989. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., January 10, 1989.

The hearing will begin at 9:30 a.m., on January 12, 1989, and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, DC.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing and request for speaker lists are to be submitted to U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Energy Conservation Program for Consumer Products, Docket No. CAS-RM-87-102, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

Copies of the transcript of the public hearing and written public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section V, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:
Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.
U.S. Department of Energy, CE-43.1, Docket No. CAS-RM-87-102, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, by the National Appliance Energy Conservation Act (NAECA), Pub. L. 100-12, and by the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100-357,[1] created

[1] Part B of Title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of EPCA, as amended by NECPA only, is referred to in this notice as NECPA.

the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. Section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: Testing, labeling, and mandatory energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE procedure. Section 323(c)(2).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there are FTC rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, and central air conditioners. 44 FR 66475, November 19, 1979, and 52 FR 46888, December 10, 1987.

For each of 12 of the covered products, the Act prescribes an initial Federal energy conservation standard. Section 325 (b) through (h). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within three to ten years, also depending on the product. Section 325 (b) through (h). After the specified three- to ten-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. Section 325(l)(1). The Department's first review of standards is for refrigerators, refrigerator-freezers and freezers. The Act requires DOE to publish a final rule for these products by July 1, 1989. Section 325(b)(3)(A)(i).

The Act also directs DOE to prescribe an energy conservation standard, no later than January 1, 1989, for small gas furnaces, i.e., gas furnaces having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992. Section 325(f)(1)(B).

With regard to another covered product, television sets, the Act allows the Department to prescribe an applicable standard; however, such standard may not become effective before January 1, 1992. Section 325(i)(3).

These products (refrigerators, refrigerator-freezers, and freezers; small gas furnaces; and television sets) are the subject of this rulemaking.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(1)(2)(A).

Section 325(1)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant. In addition, the Act specifies criteria for petitions to DOE in regard to amendments to standards. Section 325(k). Under the Act, any person may petition the Department to conduct a rulemaking to amend a Federal energy conservation standard for any covered product. Section 325(k)(1). The Department must grant such a petition if it determines that an amended standard will result in significant conservation of energy, is technologically feasible and is cost effective. Section 325(k)(2).

Sections 325(k)(3) (A) and (B) stipulate that in no case may an amended standard apply to products manufactured within three years or five years, depending on the product, after publication of the final rule establishing a standard.

Prior to proposing a new or amended standard, DOE is required to publish an advance notice of proposed rulemaking which specifies the type (or class) of covered product to which the rule may apply and which provides a 60-day period during which interested persons may submit written comments. Section 325(m)(1) (A) and (B).

Section 325(q) provides that manufacturers having annual gross revenues not exceeding $8 million may apply to DOE for an exemption from all or part of the requirements of an energy conservation standard. This exemption may not extend beyond two years from the effective date of any standards requirement. This authority will not be exercised by DOE unless, after written consultation with the Attorney General, the Secretary finds that failure to allow the exemption would likely result in a lessening of competition.

Section 326 of the Act requires manufacturers to submit information or reports to assure that each covered

product to which a standard applies meets the required energy efficiency level. The Act also specifies that in determining information requirements, DOE consider existing sources of information, including nationally recognized trade association certification programs. Section 326(d).

Enforcement-related provisions of the Act provide for: (1) DOE to prescribe rules requiring manufacturers to allow the Department to observe testing and inspect results of testing conducted by the manufacturer (section 326 (b)(5)); (2) manufacturers to supply to DOE a reasonable number of products for testing purposes (section 326(b)(3)); (3) manufacturers to submit information or reports necessary to ensure compliance (section 326(d)); and (4) injunctive relief against any prohibited act, including distribution of noncomplying products (section 334).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act. Section 327 (a) through (c). Exceptions to this general rule include: (1) State standards prescribed or enacted before January 3, 1987, and applicable to appliances produced before January 3, 1988, may remain in effect until the applicable standard begins (section 327(b)(1); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327(b)(2) and (e)) and certain building code requirements for new construction, if certain criteria are met, are exempt from Federal preemption (section 327(b)(3) and (f)(1) through f(4)); (3) State regulations banning constant burning pilot lights in pool heaters; and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (section 327(b)(6) and 327(c)).

Another exception to Federal preemption concerns standards for refrigerators, refrigerator-freezers and freezers. The Act specifies that if DOE does not publish a final rule before January 1, 1990, relating to the revision of Federal standards for this product category, the State of California's December 14, 1984, standards (effective January 1, 1992) for these products, would become effective in California beginning January 1, 1993, and may not be preempted by any Federal standard prescribed on or after January 1, 1990. Section 325(b)(3)(A)(ii)(I) and section 327(c).

In addition, if DOE does not publish a final rule before January 1, 1992, relating to the revision of standards for refrigerators, refrigerator-freezers and freezers, any State regulation which applies to such products manufactured on or after January 1, 1995, is exempt from Federal premption until the effective date of a Federal standard. Section 325(b)(A)(ii)(II).

A State whose energy conservation standard is preempted may petition the Department for a rule that it not be preempted on the basis that the State regulation is needed to meet unusual and compelling State or local energy interests. Section 327(d). However, DOE cannot issue the requested rule if it is established that such State regulation will significantly burden marketing, manufacturing, distribution, sale or servicing of the covered products, or is likely to result in the unavailability in the State of any covered product with performance characteristics that are substantially the same as those generally available in the State at the time of DOE's determination. Section 327(d)(4).

The Act further provides that, except under certain energy emergency conditions, any State regulation for which exemption is granted shall apply to products manufactured three years after DOE publishes such a rule in the **Federal Register**, or five years after publication, if DOE finds that additional time is necessary for retooling and redesign. Section 327(d)(5).

b. Background

NECPA required DOE to establish mandatory energy efficiency standards for each of 13 covered products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

NECPA provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

NECPA specified the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products were given priority. These nine products were: Refrigerators and refrigerator-freezers; freezers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; kitchen ranges and ovens; central air conditioners; and furnaces.

The Department published an advance notice of proposed rulemaking for the nine priority products on January 2, 1979. 44 FR 20. On December 13, 1979, DOE published an advance notice of proposed rulemaking for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. 44 FR 72276. An advance notice for central air conditioners (heat pumps) was published on January 23, 1980. 45 FR 5602.

After receiving comments on the January 2 advance notice, on June 30, 1980, DOE published its first proposed rulemaking for the nine products. 45 FR 43976. (Hereafter referred to as the June 1980 proposal.) This NOPR set forth DOE's proposal concerning energy efficiency standards for the covered products. It also proposed comprehensive requirements for certification and enforcement of the standards, procedures for processing petitions by States that sought exemption for regulations subject to the general preemption requirements of NECPA, and small business exemptions.

On April 2, 1982, DOE issued a further notice of proposed rulemaking with respect to the nine priority products. 47 FR 14424. (Hereafter referred to as the April 1982 proposal). With respect to eight of the products, DOE proposed to make a determination that a standard would not result in significant conservation of energy and would not be economically justified.[3] The April 1982 proposal also proposed rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards, as well as by manufacturers to obtain preemption of State or local standards.

On Decmber 22, 1982, DOE published a final rule in which the Department determined that efficiency standards

[2] The consumer products covered by NECPA included: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

[3] The April 1982 proposal did not propose any rule with respect to the product type "home heating equipment, not including furnaces," or with respect to that class of the product water heaters made up of heat pump water heaters, or with respect to those classes of the product central air conditioners that are heat pumps.

were not warranted for clothes dryers and kitchen ranges and ovens. 47 FR 57198. (Hereafter referred to as the December 1982 final rule.) At that time, DOE also adopted final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption, and by which manufacturers might obtain preemption of a State or local standard not otherwise preempted.

On August 30, 1983, DOE published a final rule with respect to the remaining six covered products: Refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376. (Hereafter referred to as the August 1983 final rule). For each of the six products covered by the August 1983 final rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in significant conservation of energy, but not be economically justified.

On April 1, 1985, DOE published a proposed rule with respect to four covered products: Dishwashers, television sets, clothes washers and humidifiers and dehumidifiers. 50 FR 12966. (Hereafter referred to as the April 1985 proposal). For each of the four products covered by the April 1985 proposal, DOE proposed that an energy efficiency standard would not be economically justified and would not result in a significant conservation of energy.

During 1983, DOE's December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department. On July 16, 1985, the U.S. Court of Appeals set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985).

Consequently, on March 5, 1986, DOE published notices in the **Federal Register** removing the December 1982 and August 1983 final rules and withdrawing the April 1985 proposal. 51 FR 7549 and 51 FR 7582.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended EPCA in part by: Redefining "covered products" (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine if an amended standard is required.

More recently, the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) established Federal energy conservation standards for a new covered product, fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if an amended standard is required.

As stated above, the Act requires DOE to publish a final rule for small gas furnaces by January 1, 1989; for refrigerators, refrigerator-freezers, and freezers by July 1, 1989; and to consider establishing a standard for television sets. DOE is combining these rulemaking items into one action. The purposes of this rulemaking is three-fold: (1) To review the energy conservation standards for refrigerators, refrigerator-freezers, and freezers (hereafter referred to as refrigerators) that have been established by the Act; (2) to propose energy efficiency standards between 71 percent and 78 percent AFUE (annual fuel utilization efficiency) [4] for small gas furnaces, i.e., those having an input rate less than 45,000 Btu per hour; and (3) to consider the establishment of an energy conservation standard for television sets.

As directed by the Act, DOE published an advance notice of proposed rulemaking, with a 60-day comment period that ended February 5, 1988, as the Department considers prescribing applicable new or amended standards for these three products. 52 FR 46367, December 7, 1987. (Hereafter referred to as the advance notice). The advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to DOE's approach. The comments in response to the advance notice are addressed in sections II and III of this notice. In addition, on January 28, 1988, a public hearing was held on the advance notice.

[4] The Annual Fuel Utilization Efficiency (AFUE) is the ratio annual fuel output energy to annual fuel input energy, expressed as a percent.

II. General Discussion

As stated above, NAECA requires DOE to determine if the legislated standards for refrigerators should be amended, to establish a standard for small gas furnaces, and to consider establishing a standard for television sets.

The Act prohibits DOE from promulgating a standard for a product if (1) there is no test procedure for the product, (2) a standard is not technologically feasible, (3) DOE determines that a standard would not be economically justified, or (4) if a standard would not result in a significant conservation of energy. To measure possible energy savings and economic justification, DOE analyzed several possible standard levels for each product type (refrigerators and television sets) or class of product (small gas furnaces). Furthermore, the Act stipulates that any adjustment of a standard may only be toward stringent levels. With respect to each appliance, DOE analyzed various specific design options, including prototypes. A prototype can be either an individual component, e.g., high efficiency compressor, or a complete assembly with the design option installed, e.g., a condensing furnace. While a prototype design may be technologically feasible as an individual component or as part of a bread-board [5] assembly, it does not necessarily follow that techniques have been developed for mass production of the prototype design.

a. Test Procedures

For each product discussed in today's proposed rulemaking there is an applicable DOE test procedure to evaluate its energy efficiency. These test procedures also cover the various classes of products identified in today's notice. However, DOE has issued four test procedure waivers for refrigerator-freezers, all concerning variable defrost controls.[6] The engineering analysis for refrigerator-freezers for today's proposal is based upon the test procedures included in DOE's Decision and Orders concerning variable defrost controls. Research in support of the development of test procedures for refrigerator-freezers equipped with variable defrost controls has been completed. DOE issued a proposed rule concerning

[5] A bread-board unit is an experimental arrangement of the design made to test its feasibility.

[6] RF–001 Whirlpool Corp., 50 FR 34186, August 23, 1985; RF–002 White Consolidated Inc., 51 FR 15679, April 25, 1986; RF–003 and RF–004 Whirlpool Corp., 51 FR 36591, October 14, 1986.

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variable defrost controls on September 26, 1988. (53 FR 37416).

b. Technological Feasibility

1. General

For those products and classes of products discussed in today's notice, DOE believes that the efficiency levels analyzed, while not necessarily in production, are technologically possible. The technological feasibility of the design options is addressed in the product specific discussion. DOE's criteria for evaluating design options for technological feasibility are that the design options are already in use by the respective industry or that research has progressed to the likely development of a prototype.

Several comments addressed the subject of technological feasibility. The California Energy Commission (CEC) recommended that DOE put no limits on design options for technological feasibility, that DOE include prototypes, foreign market designs and designs with long paybacks. (CEC, No. 35, at 4.) [7] The Association of Home Appliance Manufacturers (AHAM) identified the need for DOE to establish maximum technologically feasible levels separately from any economic inputs. (AHAM, No. 22, at 4.) The Natural Resources Defense Council (NRDC) recommended that DOE increase standard levels to the maximum technologically feasible designs, such as evacuated panel insulation for refrigerators. (NRDC, No. 19, at 9.)

2. Maximum Technologically Feasible Levels

The Act requires that in considering any new or amended standards, the Department must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325(l)(2)(A).) Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible design option was identified. This is the most efficient model of a class for which at least a prototype exists. A complete discussion of each maximum technologically feasible level and design options included in each is found in the Engineering Analysis. *See* Technical Support Document, Chapter 3, specifically sections 3.2.3 through 3.2.5, 3.3, and 3.4.1 through 3.4.3. These are presented in Table 2–1, below.

TABLE 2–1.—MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Products and product classes	Unit energy consumption
Refrigerators and Refrigerator-Freezers:	
Manual Defrost (16.6 cu. ft.)	380 kWh/yr.
Partial Automatic Defrost (18.1 cu. ft.).	435 kWh/yr.
Automatic Defrost Top Mount (20.8 cu. ft.).	515 kWh/yr.
Automatic Defrost Side-by-Side (24.1 cu. ft.).	599 kWh/yr.
Automatic Defrost Side-by-Side with Through-the-Door Service Features (31.9 cu. ft.).	776 kWh/yr.
Automatic Defrost Top Mount with Through-the-Door Service Features (20.8 cu. ft.).	525 kWh/yr.
Automatic Defrost Bottom Mount (20.4 cu. ft.).	535 kWh/yr.
Freezers:	
Chest, Manual Defrost (22.5 cu. ft.).	315 kWh/yr.
Upright, Manual Defrost (26.1 cu. ft.).	343 kWh/yr.
Upright, Automatic Defrost (29.9 cu. ft.).	505 kWh/yr.
Small Gas Furnaces:	
Non-Weatherized (Indoor)	[1] 97% AFUE.
Weatherized (Outdoor)	[1] 97% AFUE.
Television Sets:	
Monochrome (13")	46 kWh/yr.
Color (19"–20")	171 kWh/yr.

[1] 78 percent AFUE is the maximum standard level that is allowed by the Act for small gas furnaces.

The Department believes that these are the maximum technologically feasible energy conservation levels from an engineering standpoint; some or all of these levels will be evaluated in accordance with the economic justification factors specified in the Act to determine if the levels are economically justified. Specifically excluded from further analysis are the maximum technologically feasible levels for small gas furnaces, since these levels are beyond the range in which the Department must establish standards.

The New York State Energy Office (NYSEO) called for DOE to explain why it does not adopt any design option that conserves more energy than the maximum technologically feasible design. The NYSEO also stated that for those design options selected, DOE must ensure that development and commercial availability correspond to the dates standards become effective. (NYSEO, No. 32, at 4–6). Admiral Home Appliances (Admiral) stated that "innovation cannot be legislated," therefore, maximum technologically feasible design options are those that are fully developed and commercially available today. Admiral also stressed NAECA's requirement that DOE delete design options that would lessen utility to the consumer and affect performance, life, and reliability of the covered appliance. (Admiral, No. 31, at 3).

DOE proposes that the maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypes, to the baseline units without affecting the product's utility. DOE believes that there are no products available with the same utility and capacity that are more efficient than the maximum technological level. DOE believes that design options, including prototypes and foreign designs, must be capable of implementation by the effective date of a standard.

Each maximum technologically feasible level was evaluated to determine if it would be commercially viable, that is, economically justified, at the time of the effective date of the standard. Design options that have unacceptable impacts on consumers or manufacturers or result in the changing of the utility of the product were rejected.

DOE provided lists of design options for engineering analysis in the advance notice. DOE received a number of comments on these design options, which resulted in more detailed design options for DOE review. DOE has considered these suggestions and has addressed them in the product specific discussions in this notice.

The analysis process is described fully in the Technical Support Document. Computer models and manufacturers' data were used to predict improvements in product efficiencies and the costs associated with these improvements.

The Engineering Analysis addresses two statutory requirements. The first requirement is the Department's evaluation of the maximum improvements in energy efficiency that are technologically feasible. The second requirement relates to the lessening of utility to the consumer of any of the covered products due to the imposition of standards. The Engineering Analysis also provides information on efficiencies and manufacturing costs to other sections of the overall analysis. The product specific sections of this notice include the method of analysis for each of the products.

c. Energy Savings

1. Determination of Savings

The Department forecast energy consumption through the use of the Lawrence Berkeley Laboratory

[7] Comments on the advance notice have been assigned docket numbers and have been numbered consecutively. Statements that were presented at the January 28, 1988, public hearing are identified as Testimony.

Residential Energy Model (LBL-REM). The LBL-REM forecasts energy consumption over the period of analysis for candidate standards and the base case.[8] The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the standards case and the base case.

The LBL-REM, which is an improvement of the Oak Ridge National Laboratory Residential Energy End Use Model (ORNL Model) that was used by DOE in previous standards rulemakings is fully explained in the Technical Support Document. Appendix B to that document addresses the LBL-REM in detail. The LBL-REM contains algorithms to project average efficiencies, usage behavior, and market shares for each product. The model's assumptions and methods are described in the Technical Support Document. The market share algorithm used for the refrigerator analysis is the same as the one used in previous analyses. Since such products have no significant competition from technologies that use fuels other than electricity, the principal market share decisions are: purchase this product or not; and select among the available classes. The fraction of potential purchasers who actually purchase the product is determined each year by applying market share elasticities to the percent change in equipment price, operating expense (which includes changes in electricity price and in unit energy consumption), and income. The market share elasticities are constant over the projection period. The market share obtained by each class in any future year is assumed to be a constant fraction of total refrigerator sales. (*See* Technical Support Document, Table B.3). For refrigerators, the market shares range from a low of 0.7 percent for a top-mount refrgerator-freezer with through-the-door ice, to a high of 72.9 percent for a top-mount refrigerator-freezer without through-the-door ice service. If this assumption were changed, the results of the LBL–REM would be affected, e.g., for refrigerators, if the market share of less expensive and less energy consumptive products were to increase, the energy savings would be increased and the net present value would also likely be increased. If this scenario were to occur, consumers would sacrifice utility by purchasing refrigerators with fewer amenities. DOE requests comments on this issue.

On the other hand, a new market share algorithm for small gas furnaces had to be developed, since such products had not previously been analyzed separately. Market shares for small gas furnaces are determined using modifications to the algorithms developed for all heating and cooling end uses. *See* Technical Support Document section 4.2.3. Elasticities for heating equipment in new mobile homes, new large multifamily housing (five or more units), and all types of existing housing are calculated using methods and models developed by Lin, Hirst, and Cohn, *Fuel Choices in the Household sector*, Oak Ridge, TN: Oak Ridge National Laboratory, ORNL/CON–3, 1976. Those authors reported a cross-sectional analysis of residential fuel choices (equipment ownership market shares) for five major end uses, including space heating, air conditioning, water heating, food freezing, and cooking, using 1970 data from states.

For new single-family and new small (two to four units) multifamily housing, effective market share elasticities are derived from an econometric model originally developed by Electric Power Research Institute (EPRI), *Household Appliance Choice: Revision of REEPS Behavioral Models*, Palo Alto, CA: Electric Power Research Institute, EPRT EA–3409, Research Project 1918–1, 1984, and modified at Lawrence Berkeley Laboratory (LBL).

The model was established from a national data base disaggregated to the household level, using exogenous variables of equipment prices, operating expenses (which are proportional to fuel prices), household income, and other variables. The most significant difference between the EPRI model and the LBL model is the LBL model's characterization of a household discount rate for the choice of heating and cooling equipment as varying with maximum winter heat load and a measure of the oppressiveness of summer climate. Essentially, the data strongly support the hypothesis that households that are likely to use a particular piece of equipment frequently (because of a cold winter climate or a hot, humid summer climate) are likely to pay greater attention to future operating expenses. Such households are estimated as having lower discount rates, i.e., accepting longer payback periods for additional equipment expenses for heating or cooling appliances than those living in relatively mild conditions. Conversely, those households in milder climates give relatively greater weight to equipment price than to operating expense. *See* Technical Support Document, Appendix B, section B.5.

The LBL–REM is used to project residential energy use over the relevant time periods for: (1) Television sets with and without standards; (2) small furnaces at 71, 74, and 78 percent AFUE; and (3) refrigerators at different standard levels, including the NAECA-imposed 1990 standards, and several candidate amendment levels. By comparing the energy consumption projection at alternative standard levels or no standard (for television sets), at standards of 71 percent and 78 percent AFUE (for small furnaces), and at alternative standard levels or NAECA 1990 standards (for refrigerators), the Department estimated the amount of energy projected to be saved during the period 1992–2015.[9] The energy saved is expressed in Quads, i.e., quadrillion Btu. With respect to electricity, the savings are quads of source or primary energy, which is the energy necessary to generate and transmit electricity. The Act defines "energy use" as the quantity of energy directly consumed by a consumer product at point of use. This is generally called "site" energy, as opposed to "source" energy. There are great differences between these types of energy. In 1986, the amount of electrical energy consumed at the site was less than one-third of the amount of source energy that was required to generate and transmit the site electrical energy.[10] Therefore, it is important to identify whether the electricity involved is site or source energy.

The LBL–REM projections are dependent on many assumptions. Among the most important are responsiveness of household appliance purchases to changes in energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. As is the case with any complicated computer model simulation,

[8] For refrigerators the base case represents the NAECA 1990 standards; for small gas furnaces and television sets, the base case represents no-standards.

[9] LBL–REM was programmed to analyze a single standard level or alternative levels, over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this rulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2015.

[10] Energy Information Administration, *Electric Power Annual 1986*, Tables 7 and 41, DOE/EIA–0348(86), 1987.

the validity of the outputs is critically dependent on the inputs.

Several of the assumptions that were described in the advance notice were questioned in comments on the advance notice. These included the following:

Rebound Effect. NYSEO critiqued the existence of a "rebound effect" with more efficient refrigerators or television sets (NYSEO, No. 32, at 14–15). The Department believes that households respond to changes in operating expenses in three different ways. In the short run, they change the way they operate existing equipment, e.g., lower winter thermostat setting. In the long run, they also change equipment by switching from one fuel to another, and by improving the efficiency of their equipment, e.g., purchasing a more efficient water heater, or both. Thus, the elasticity of demand can be thought of as being separated into three elements—a usage elasticity, a technical efficiency elasticity, and an equipment/fuel choice (market share) elasticity. Household changes in equipment use in response to changes in fuel price and household income determine the usage elasticities. These elasticities are based on engineering possibilities and judgment in the original formulation of the ORNL model.[11] *See* Technical Support Document, Appendix B. DOE requests comments on the methodology and elasticities used and the appropriate values for the various elasticities, including usage elasticity (rebound effect).

In the analysis, the Department assumed that a more efficient refrigerator or television set would not be used more intensively because it is more energy efficient. Therefore, in estimating energy savings from different standard levels for refrigerators and television sets, the Department did not use a rebound effect. The Department does not have any data that consumers will use refrigerators and television sets any differently with changes in either energy prices or efficiency. However, the Department did include a "rebound effect" of 30 percent for small gas furnaces. *See* Technical Support Document, sections B.1 and B.6. The Department requests comments on the "rebound effect" for each product subject to today's proposal and for all space heating and cooling products, including the furnace categories not covered by this notice.

Discount Rate. NRDC and the CEC contended that the Department's use of five, seven and 10 percent discount rates was artificially high and would result in many capital-intensive candidate standard levels being excluded from consideration (NRDC, No. 19, at 21; and CEC, No. 35, at 7).

Since a dollar in the future is worth less than a dollar today, that future dollar must be discounted to determine its value today. If the discount rate chosen is too high, the present value of future dollars will be understated. Thus, higher discount rates tend to preclude more capital-intensive candidate standard levels. Nevertheless, the Department does not believe that the seven percent rate that was used in the analysis is artificially high. From the business perspective, a reasonable discount rate would be one that represented the private opportunity cost of capital used to meet any appliance conservation standard. A gauge of the private opportunity cost of capital is the most profitable alternative use of that capital. One measure of that cost could be the prime rate, that is, the interest rate that is offered by lending institutions to their most credit-worthy customers. In early October 1988, the prime rate was 10.0 percent. If such a business secured a loan at one of those rates of interest, and repaid it in the 1990–1995 time period, the real rate of interest would be 5.0 percent. This results because the expected annual rate of price increases in that time period is approximately five percent. Most businesses, however, are not eligible for loans at the prime rate of interest, so the estimated real rate of interest for these firms would probably be somewhat higher.

Similarly, from the consumer perspective, one approach to selecting an appropriate discount rate is to look at the interest payable on a consumer loan and depreciate that interest by the inflation rate. If a consumer secures a loan at 12 percent interest, and repays it in the 1990–1995 time period, the real rate of interest will be seven percent. Thus, DOE believes that from both the business and consumer perspectives, a seven percent discount rate is reasonable.

On the other hand, it may not be reasonable to require consumers to make an investment where there are inherent risks. For example, if consumers perceive a risk because of the uncertainty of energy prices and reliability and longevity of the equipment, they would require a greater return on their investment, i.e., a higher discount rate. It has been argued that the discount rate should be as high as 15 percent. Dubin and McFadden, "An Econometric Analysis of Residential Electric Appliance Holdings and Consumption," *Econometrica*, March 1984, pp. 345–361. DOE requests comments on the approach taken to select an appropriate discount rate, alternative approaches, and the consumer and business risks to be considered.

Several of the inputs, e.g., energy and equipment prices, were tested in sensitivity analyses to determine the effects of varying certain assumptions on the results of the analysis. By such sensitivity analyses, it is possible to determine those inputs where changes, including possible errors, are meaningful to the model's output, and those inputs for which changes are not meaningful. *See* the Technical Support Document, sections 4.3 and 5.4.

The savings attributable to the different standard levels are identified for each product in section III of this notice.

Modeling. Several comments offered suggestions on the LBL–REM modeling efforts. NYSEO and CEC critiqued the use of old data in LBL–REM in developing the baseline units for analysis. They contended that use of such old data could underestimate the impact that increased efficiency standards could have on saving energy. (NYSEO, No. 32, at 12; and, CEC, No. 35, at 3).

While some old data was used for the analysis of refrigerators, small gas furnaces, and television sets, these data points were merely the point of departure of the analysis. All of the data bases were updated to reflect current levels of efficiency in the marketplace, and, in the case of refrigerators, the baseline units were those with levels of efficiency that will be in the marketplace after the NAECA-imposed standards are in effect, i.e., after January 1, 1990. These data were then used to calculate annual energy consumption for the LBL–REM and life-cycle cost (LCC) analyses, based on the DOE test procedures. For example, in the LCC analysis, DOE used the test procedure annual average hours of use to calculate the annual cost of operation. This calculation does not account for variability in consumer usage patterns, nor does it reflect any changes in typical consumer usage behavior since the test procedures were developed. While the use of out-of-date usage values may affect the results of the LBL–REM and LCC analysis, DOE is not certain to what extent the results would be affected since, for example, the energy savings and net present value calculation of the LBL–REM would use

[11] Eric Hirst and Janet Carney 1978 "The Oak Ridge Engineering-Economic Model of Residential Energy Use." Oak Ridge National Laboratory, ORNL/CON–24.

the dated usage values in both the base case and standards case.

Several comments expressed confusion as to the difference between "baseline unit" and "base case." In the engineering analysis, the baseline unit for each product class under consideration is identified. These are units that are representative of units that are expected to be offered for sale in the beginning year of the analysis.[12]

Baseline refers only to the engineering analysis and is the first point identified in each cost-efficiency curve. It is the product to which design options are added to create more efficient units. On the other hand "base case" refers to the economic analysis forecast without standards for small gas furnaces and television sets, and for refrigerators, only those standards mandated by the Act.

2. *Significance of Savings*

Under section 325(1)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. While the term "significant" has never been defined precisely in the Act, the Department believes that a standard level option need not meet a threshold level of energy savings to be considered a "significant" saver of energy. The U.S. Court of Appeals, *NRDC* v. *Herrington, supra,* concluded that Congressional intent in using the word "significant" was to mean "non-trivial." *Id.* at 30. Thus, DOE believes that each candidate standard considered results in significant energy savings.

Two comments discussed the issue of significant energy savings. NRDC Noted that the use of engineering estimates to screen those design options that yield measurable energy savings is desirable and encouraged the Department not to establish (as it had in the past) a threshold of significance for energy savings. The Department has not established a significance threshold for energy savings. In addition, AHAM contended that, with regard to revision of refrigerator standards, if DOE found that incremental savings by the 1990 standards are "minor," the Department can "legally conclude that no revision is justified." (AHAM, No. 22, p. 7). DOE proposes that each candidate refrigerator standard saves a significant amount of energy.

[12] The baseline units for small gas furnaces and television sets are those with estimated average shipment-weighted energy factors (SWEF's) in 1987, while the baseline refrigerator units are ones with an estimated average SWEF in 1990.

d. Rebuttable Presumption

NAECA established new criteria for determining whether a standard level is economically justified. Section 325(1)(2)(B)(iii) states:

> If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

DOE believes that this provision means that if the added price of an appliance, caused by a conservation standard, would repay itself to the consumer in value of energy savings in less than three years, then it can be presumed that such standard is economically justified.[13] This presumption of economic justification can be rebutted by the seven factors of economic justification.

e. Economic Justification

As noted earlier, section 325(1)(2)(B)(i) of the Act, provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. *Economic Impact on Manufacturers and Consumers*

The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, and to determine the effects of standards on different-sized firms, the Department used a computer model that simulated hypothetical firms in the three industries under consideration. This model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), is fully explained in the Technical Support Document. The LBL–MIM was formerly named the Lawrence Berkeley Laboratory Typical Year Model (LBL–TYM), which is the name that appeared in DOE's advance notice of this proposed rulemaking. LBL–MIM provides a broader array of outputs than the specified in the advance notice. The outputs are shipments, price, revenue, net income, and return on equity (ROE). An "Output Table" lists values for these in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. A "Sensitivity Chart" shows how ROE would be effected by a change in any one of the model's nine control variables.

For consumers, a measure of economic impact is the life-cycle cost of a product, because it accounts for the increased first price, any increased maintenance expenses, and the reduced fuel expenses resulting from the product's greater efficiency. Under section 325 of the Act, life-cycle cost analysis is a separate factor to be considered in determining economic justification

2. *Life-Cycle Costs*

One measure of the effect of proposed standards on consumers is the change in life-cycle costs resulting from standards. This is quantified by the difference in life-cycle cost (LCC) between the base and standards case for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating expense, including maintenance expenditures, discounted over the lifetime of the appliance.

The LCC is calculated at the estimated average efficiency for each class in the year standards are imposed using consumer discount rates of five, seven, and 10 percent. The purchase price is based on the factory costs in the Engineering Analysis, and includes a factory markup plus a distributor and retailer markup. As noted in the advance notice, energy price forecasts are inputs that are taken from the 1986 *Annual Energy Outlook* of the Energy Information Administration. Appliance usage forecasts are taken from the results of the LBL–REM. The Department seeks comments on the input to the LCC analysis including the discount rate and energy price forecasts.

The differences in life-cycle costs between the base case and various levels of standards for refrigerators and small gas furnaces are presented in Tables 6.1 through 6.3 of the Technical Support Document. These LCC's are calculated at a seven percent discount

[13] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be "average" consumer as defined by the DOE test procedures. Consumers that use the products less than the test procedure assumes will experience a longer payback while those that use more than the test procedure assumes will have a shorter payback.

rate; a higher rate, e.g. 10 percent, gives a smaller difference, while a lower rate, e.g. five percent, produces a greater difference. As discussed above, it has been argued that discount rates as high as 15 percent should be used. The Department did not use 15 percent in the LCC analysis; however, as can be seen in the various LCC curves, the use of a higher discount rate would result in a flatter curve with the minimum life-cycle cost dropping, i.e., approaching the baseline unit. If a higher discount rate were used, e.g., 15 percent, and energy prices were lower than average, the minimum life-cycle cost point could be less efficient than the baseline unit.

When the LCC numbers are plotted graphically (on the Y axis) against unit energy consumption (on the X axis), the data generally produce a curve that is concave from above in shape. This means that at first the LCC curve will decline as efficiency improvements are made, will reach a minimum (which may or may not be discrete), and then rise. All this indicates is that the first efficiency improvements will produce energy savings, the value of which will more than pay for the design change. As efficiency improvements are made, it becomes increasingly costly to save more energy, and, eventually, the value of the energy savings will not cover the expenditures for the design improvements. *See* Technical Support Document, section 3.5.

The minimum of the LCC curve was of particular interest in the analysis. The minimum of the curve represents that level of efficiency improvements that maximizes the difference between the value of energy saved and the additional consumer expenditures for the relevant efficiency improvements. Therefore, design options that corresponded to the minimum point were of special consideration in establishing standard levels. Efficiency levels exceeding the LCC minima were generally rejected as standards as not being economically justified. At efficiency levels beyond the LCC minima, the incremental first cost of the product exceeds the value of the energy savings such that the average consumer does not realize a benefit from the investment.

The Department conducted a net present value (NPV) analysis to assess the differential economic impacts on consumers that would occur from the adoption of standards (for small gas furnaces and television sets) and amended standards (for refrigerators) compared to a base case with no-standards (for gas furnaces and television sets) and NAECA 1990 standards (for refrigerators). *See* Technical Support Document, Chapter 5. The LBL-REM calculates the total expenditure for each product (discounted total value of energy consumption from 1992 through the last year of use for those products purchased through the year 2015, plus the total discounted expenses for equipment purchased from 1992 through 2015) with and without standards (for televisions and small furnaces), and with more stringent standards and with NAECA 1990 standards (for refrigerators). The NPV analysis is similar to the LCC analysis, in that the greatest NPV should occur at the standard level that corresponds to the LCC minimum for the product.[14] The NPV for each product at the different standard levels is identified in section III of this notice. The NPV calculation, like the LCC analysis, is based on national average efficiency and usage values. This analysis does not take into account variations in energy prices and local usage rates. If for any product the covariances are zero, the results of the analysis will not be affected. If, however, the covariances are not zero, the results of the analysis will be affected. DOE does not have the data to determine if or to what extent the NPV calculation is affected by using average usage rates and energy prices. DOE requests comments on this issue.

3. Energy Savings

While the significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard to consider the total projected savings that are expected to result directly from new or revised standards. DOE used the LBL–REM results, discussed earlier, in its consideration of total projected savings. The savings for the three products are provided in section III of this notice.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the three products under consideration in this rulemaking. That is, to the extent that comments or DOE's own research indicated that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for that product. In this way the Department attempted to minimize the impact of this factor as a result of the standards that were analyzed. However, other factors, in conjunction with standards, could affect the utility or performance of products subject to standards. For example, the EPA limitations on CFC production could cause refrigerator manufacturers to adopt alternatives to the regulated CFC's which would affect the refrigerator's utility or performance. In this way, DOE is not able to assure that utility and performance could not be affected by standards.

Also, as discussed in section III of this notice, DOE was not able to establish separate classes for television features that provided a utility and which affected energy efficiency. DOE requests comments on the impacts that both legislated and revised standards could have on product utility and performance.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and, on the other hand, it directs the Attorney General to gauge the impact of that effect, should it occur.

In order to assist the Attorney General in making such a determination, the Department studied the affected appliance industries to determine their existing concentrations, levels of competitiveness, and financial performances. This information will be sent to the Attorney General. *See* Technical Support Document, Chapter 7.

To afford the Attorney General the information that he may need to carry out his responsibility, we have forwarded copies of this notice and the Technical Support Document for his review.

6. Need of the Nation to Conserve Energy

One measure of the need of the Nation to conserve energy is the country's reliance on energy in the form of oil, especially imported oil. This was documented last year in a DOE report (*Energy Security: A Report to The President of The United States,* Washington, DC.: U.S. Department of Energy, March 1987.) In that report, U.S. energy security was essentially considered to be a function of free oil markets. The three products being considered here (namely, refrigerators, small gas furnaces, and television sets)

[14] The net present value (NPV) of a standard, per appliance, is calculated for all affected appliances that are purchased in the projection period, while the life-cycle cost (LCC) is calculated only for the lifetime of an appliance that is purchased in the first year of the relevant standard. Therefore, NPV and LCC estimates, per appliance, may not correlate exactly.

are all fueled by energy forms other than oil, specifically electricity for refrigerators and television sets, and natural gas for the small furnaces. While some oil is used to generate the electricity on which refrigerators and television sets operate, that is a very small part of our national energy picture. Specifically, only 5.5 percent of net electricity was generated by petroleum in 1986. Therefore, conservation of energy by these products will have little bearing on our national energy security.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that he deems to be relevant. The only such factor that has been identified is the EPA regulation to restrict the production of certain chlorofluorocarbons (CFCs).

III. Product-Specific Discussion

a. Refrigerators/Refrigerator-Freezers/Freezers

1. Classes

In the advance notice, the Department discussed its methodology for reviewing the energy conservation standards established by the Act for refrigerators to determine if the standards should be amended. NAECA currently prescribes maximum annual energy consumption level for refrigerators based on the adjusted volume of the model. The equations are different for each of the seven classes of refrigerators and refrigerator-freezers, and three classes of freezers. These standards are to become effective January 1, 1990.

The following are the classes that are being reviewed for amended standards:

Refrigerators and Refrigerator-Freezers with manual defrost.
Refrigerators and Refrigerator-Freezers—partial automatic defrost.
Refrigerators and Refrigerator-Freezers—automatic defrost with:
  Top-mounted freezer without through-the-door ice service.
  Side-mounted freezer without through-the-door ice service.
  Bottom-mounted freezer without through-the-door ice service.
  Top-mounted freezer without through-the-door ice service.
  Side-mounted freezer without through-the-door ice service.
Upright Freezers with:
  Manual defrost.
  Automatic defrost.
Chest Freezers and all other freezers.

2. Design Options

The following is a list of a design options that were examined:

(i) *Refrigerators and refrigerator-freezers.*
(A) Foam insulation substitution in doors.
(B) Increased door insulation thickness.
(C) High-efficiency compressor substitution.
(D) Anti-sweat heater switch.
(E) Increased cabinet insulation thickness.
(F) Increased evaporator surface area.
(G) Adaptive defrost control.
(H) Fan and fan motor improvement.
(I) Improved foam insulation.
(J) Evacuated insulation panels.
(ii) *Freezers.*
(A) Foam insulation substitution in cabinet.
(B) Foam insulation substitution in door.
(C) Increased cabinet insulation thickness.
(D) Increased door insulation thickness.
(E) High-efficiency compressor substitution.
(F) Double door gasket.
(G) Adaptive defrost control.
(H) Fan and fan motor improvement.
(I) Improved foam insulation.
(J) Evacuated insulation panels.

3. Comments on the Advance Notice of Proposed Rulemaking

During the comment period on the advance notice, the Environmental Protection Agency (EPA) published a proposed rulemaking on December 14, 1987, concerning CFC production restrictions. 52 FR 47486. Recent findings regarding depletion of the earth's ozone layer have pointed to certain CFC's as the probable cause of that depletion. As part of an international agreement to halt that deterioration, the EPA proposed production restrictions on the most harmful of those CFC's. These rules were finalized on August 12, 1988. 53 FR 30566. Persons commenting on the advance notice with regard to refrigerators voiced concern about EPA's proceeding, since many of the design options that were under consideration by DOE involved CFC's. The following is a summary of comments concerning refrigerators.

The manufacturers and the trade association expressed concern for the ozone layer and recommended that DOE policy set the reduction of CFC's as a priority over energy conservation; to do otherwise would create potential conflict between two government agency rulemakings. (White Consolidated Inc. (WCI), No. 17, at 2; Whirlpool, No. 10, at 1; Admiral, No. 31, at 2; and AHAM, No. 22, at 16). Each recommended that DOE reject all design options that would require increased use of CFC's. (Whirlpool, No. 10, at 7; WCI, No. 17, at 1; Admiral, No. 31, at 2; and AHAM, No. 22, at 18). Whirlpool stated further that substitutes for CFC 11 and 12 would not be available for approximately five to seven years. (Whirlpool, No. 10, at 2.)

NRDC stated that DOE should establish more stringent standards in an effort to replace CFC technology with new forms of technology such as vacuum panel insulation or improved refrigeration cycles and that this would reduce industry need for CFC 11 or 12. (NRDC, No. 19, at 9.) The Solar Energy Association of Oregon (SEAO) supported this opinion. (SEAO, No. 30, at 1.) NRDC believes that DOE has the authority under section 325(b) of the Act to respond to industry demands for leadtime by establishing a two-tier level or extension to provide maximum technologically feasible standards. (NRDC, No. 19, at 12.)

NAECA established the review cycles to provide industry with sufficient time to respond to regulated standard levels set by DOE. Intermediate standard levels could require manufacturers to retool more than once in a five-year period. Therefore, the Department does not consider the imposition of intermediate standard levels between reviews to be practicable.

The EPA testified that, if promulgated, its proposed rule would not eliminate CFC 11 or 12 from production, but would impose reductions in CFC production over 11 years (EPA, Testimony). EPA stated that its proposed rule would allow for market-based CFC distribution and use, providing for a flexible regulation suitable to the needs of business and consumers. (EPA, Testimony).

SEAO recommended that DOE analyze and follow one of two courses of action concerning CFC issues. First, DOE could follow EPA's proposed rule and apply limited availability to the cost analysis. Alternatively, DOE could anticipate the further or more rapid reduction of CFC's production due to developments in research on the ozone layer. (SEAO, No. 30, at 2.)

In commenting on the advance notice, E. I. DuPont de Nemours and Company (DuPont) described its work on alternatives to CFC 11 and CFC 12. While the company has some promising alternatives, it does not expect to have them available in commercial quantities until late 1992, at the earliest; and, even then, the alternatives (HFC–134, HCFC–123 and HCFC–141b) will be less energy efficient as well as much more expensive. (DuPont, No. 48, at 1–2.)

At the public hearing on the advance notice, the NRDC urged that the Department not establish standards that would require use of more of the harmful CFC's, and also advocated that such CFC's be banned. (NRDC, Testimony.)

In mid-March 1988, the National Aeronautics and Space Administration (NASA) announced the results of a 19-year international study that concluded that the depletion of the earth's ozone

layer was more extensive than had previously been indicated. Specifically, the study found that stratospheric ozone has decreased by as much as three percent over densely populated areas of North America and Europe since 1969, as well as wintertime drops of more than six percent in Alaska and the Scandinavian countries, and that this ozone depletion had been caused by certain CFC and other chemicals.

In late March 1988, DuPont urged a total phaseout of the destructive CFC and indicated its intent to cease production of those CFC's at some unspecified date. In announcing the decision, the company cited the significant ozone depletion that was documented in the NASA report.

In September 1988, EPA reported that nothing short of a halt in the use of CFC's can save the stratospheric ozone layer from further dangerous depletion. EPA projects a more extensive and faster-moving threat than previously realized. DOE's analysis does not consider the possibility that CFC's could be banned altogether. Furthermore, the possibility of a ban in CFC use is an example of the reason why DOE needs to exercise care in prescribing standards. For example, DOE is prohibited by NAECA from reducing the stringency of standards.

Because of limitations imposed on CFC's, whether by reduction in production levels or by production bans, refrigerator manufacturers may be required to utilize alternatives to the restricted CFC's to achieve energy efficiency requirements. DOE cannot be certain, however, that the new product would have the same utility or performance or be able to achieve the same level of energy efficiency. If standards are set at a level that, as a result of these or other factors, cannot be attained, the standards could have an adverse effect on manufacturers and consumers, since DOE is prohibited by NAECA from reducing the stringency of standards.

The Department believes that under present EPA regulations, there will be substitutes for CFC–11 and CFC–12, but with a cost and energy efficiency penalty. In addition, questions exist regarding the ability of appliance manufacturers to accommodate new refrigerants in their production processes. For example, if the new refrigerants are not as energy efficient as the CFC's being replaced, it would mean that more of them would be needed to achieve the same level of savings; and, this could result in a need to alter the refrigerator design in order to accommodate the substitute materials. Under these circumstances, any change in the need for CFC's could result in altering the expected results of the analysis by, for example, adversely affecting the estimates of manufacturing costs, consumer prices, and so on.

The Department is examining all design options, including those using CFC's. CFC's, while being reduced in quantity, are not banned from production. Supplementary information provided through DOE research shows that the residential refrigerator industry consumption of CFC–11 and CFC–12 currently represents approximately two percent of all consumption of the regulated CFC's.[15]

The engineering baseline unit for refrigerators was identified in the advance notice as the same unit used in the April 1982 proposal. The CEC and AHAM expressed concern that the data were too old for current use and that DOE should use a representative model. (CEC, No. 35, at 3; and AHAM, No. 22, at 27.)

DOE agrees, and has used as the baseline for each class, a refrigerator with a SWEF near that which is expected to prevail after the 1990 NAECA standards are in effect.

AHAM stated that data provided to LBL on 1987 refrigerator models had no single set of design options used by manufacturers to accomplish energy goals, making it difficult to identify a baseline unit. (AHAM, No. 22, at 27.) Furthermore, AHAM suggested removing from consideration, in this rulemaking, those design options that would be used to accomplish the 1990 standards. (AHAM, No. 22, at 28.) The Department did not include such design options in this analysis.

NRDC submitted data on the LaBrecque Cycle, as a possible means to shift from CFC–12 to CFC–22. (NRDC, No. 19, at 19.) While DOE agrees that this technology is a theoretical possibility, the Department has no knowledge of any prototype or laboratory assembly that demonstrates its potential. Furthermore, DOE does not have data to conclude that this technology could be adopted as a prototype by the time of the amended standard's 1993 effective date. Therefore, DOE did not include this technology in the engineering analysis.

NYSEO recommended that DOE investigate different configurations, changes in unit dimensions, number and location of doors, rotary compressors as well as conducting research into Japanese methods of refrigerator manufacturing. (NYSEO, No. 32, at 7.) DOE believes that the number and location of doors and dimensions of a refrigerator may have utility implications to the consumer, but it is uncertain whether there is any impact on energy efficiency. Many refrigerators are used as replacements and must therefore fit into the space used by previous models, which can make dimensions very restrictive. The concept of using rotary compressors as one of the design options is a good one. However, DOE believes that considering design options by compressor efficiencies, e.g., 5.0 or 5.3 energy efficiency ratio, rather than by design e.g., rotary compressor, allows manufacturers to select the appropriate compressor design.

The CEC was concerned that some design options will be incorporated to reach the 1990 standard levels, and should not be used again to evaluate 1993 levels. Also, the CEC requested that DOE identify the method of combining design options. (CEC, No. 35, at 6.)

The Department combined design options by beginning with those designs that were most cost-effective for consumers, and then adding progressively less cost-effective ones.

DOE has determined that certain design options will be part of the 1990 standard level design, and are in some current models, therefore, they are being treated as part of the base case for 1990. These options are: Foam insulation substitution in freezer section doors: and antisweat heater switch.

One design option, evacuated insulation panels, was mentioned throughout the comments as an energy saver that could also eliminate the need for CFC–11 in refrigerators. NRDC commented that evacuated panels have been researched in many forms, all showing high potential for saving energy. (NRDC, No. 19, at 17). AHAM provided information from its investigation of Japanese use of evacuated panels in refrigerators. AHAM stated that the models were discontinued, and speculated that it was due to concerns about a combination of cost, reliability and incompatibility with the manufacturing process. (AHAM, No. 22, at 31).

DOE has funded research at the Solar Energy Research Institute (SERI) and Oak Ridge National Laboratory (ORNL) to develop U.S. technology in evacuated panels. Completion of this research is expected to take approximately five years; however, independent research or

[15] "The Use of Chlorofluorocarbons in Refrigeration, Insulation and Mobile Air Conditioning in the United States," Terry G. Statt, DOE, paper prepared for EPA Conference on Substitutes and Alternatives to CFC's and Halons, Washington, DC, January 13–15, 1988.

a major breakthrough may bring this technology into place prior to 1993. Nevertheless, DOE believes that to specify standards that would require evacuated panel insulation in 1993 would be beyond the ability of the manufacturers to carry out commercially acceptable redesign and retooling successfully. Therefore, DOE is retaining evacuated insulation panels as a design option but proposes that it is not technologically feasible for implementation of 1993 standard levels. DOE believes that the scheduled reductions in CFC production will inspire industry to research non-CFC technology such as evacuated panels and provide prototypes and limited production models for the next review process of refrigerators.

Whirlpool requested that DOE evaluate the possible development of two new classes for refrigerators. The first is an all-refrigerator with automatic defrost and the second is for built-in refrigerators. Whirlpool recommended that the standard level for an all-refrigerator with automatic defrost be equivalent to a refrigerator-freezer, top mount, with automatic defrost and that the standard level for a built-in be approximately 10 to 15 percent above the non built-in class. (Whirlpool, No. 10, at S–6). AHAM supported the adoption of the all-refrigerator with automatic defrost class. (AHAM, No. 22 at 26).

DOE proposes to include the all-refrigerator with the class of top-mount, automatic defrost refrigerator-freezer. However, DOE does not have any information to conclude that built-ins, which provide utility to the consumer, affect energy consumption. Thus, DOE is not proposing a separate class for built-in refrigerators. DOE invites comments and data concerning the adoption of these classes.

4. Efficiency Levels Analyzed

DOE examined a range of standard levels, including the 1990 NAECA standards. As discussed above, the impacts of any revised standards were compared to the 1990 NAECA standards; therefore, the impacts of the base case are generally not presented because they are calculated to be zero.

Table 3–1 presents the efficiency levels, other than the base case, selected for analysis for 1993. Alternate levels were selected to generate a range of impacts for analysis. Initially, the levels were selected for the class of top-mount, automatic defrost refrigerator-freezer without through-the-door ice service. Level 5 corresponds to the highest efficiency level considered in the engineering analysis. It was felt that manufacturers eventually can produce appliances at this efficiency. Level 4 generally corresponds to the minimum life-cycle cost point. Levels 1 through 3 correspond to efficiencies lower than that of level 4. Each level was analyzed discretely in the engineering analysis. Standard levels for each of the other classes of refrigerators was based on the combination of design options for the top mount, automatic defrost refrigerator-freezer without through-the-door ice service.

TABLE 3–1.—ALTERNATIVE EFFICIENCY LEVELS FOR 1993 FOR REFRIGERATORS AND REFRIGERATOR-FREEZERS AND FREEZERS
[ENERGY CONSUMPTION KWH/YR.]

Product class	Level analyzed				
	1	2	3	4	5
Refrigerators and Refrigerator-Freezers with manual defrost	14.4 AV + 287	12.3 AV + 272	11.9 AV + 258	10.6 AV + 245	8.0 AV + 245
Refrigerator-Freezers—partial automatic defrost	16.7 AV + 333	15.2 AV + 317	14.1 AV + 305	12.5 AV + 290	8.9 AV + 273
Refrigerator-Freezers—automatic defrost with:					
Top-mounted freezer without through-the-door ice service [1]	19.3 AV + 384	17.8 AV + 372	16.8 AV + 363	14.4 AV + 334	10.0 AV + 306
Side-mounted freezer without through-the-door ice service	14.8 AV + 572	13.5 AV + 547	13.1 AV + 540	10.9 AV + 497	6.9 AV + 426
Bottom-mounted freezer without through-the-door ice service	21.1 AV + 410	19.1 AV + 499	17.9 AV + 386	15.2 AV + 353	10.5 AV + 321
Top-mounted freezer with through-the-door ice service	20.5 AV + 409	18.9 AV + 395	17.6 AV + 380	14.8 AV + 343	10.2 AV + 313
Side-mounted freezer with through-the-door ice service	17.2 AV + 662	15.7 AV + 635	15.2 AV + 625	12.8 AV + 582	8.1 AV + 517
Upright Freezers with: Manual defrost	14.7 AV + 213	13.2 AV + 191	12.3 AV + 181	10.4 AV + 177	7.0 AV + 157
Automatic defrost	20.7 AV + 300	19.2 AV + 277	18.0 AV + 264	14.8 AV + 252	9.7 AV + 216
Chest Freezers and all other freezers	12.8 AV + 186	12.0 AV + 173	11.2 AV + 163	8.4 AV + 159	7.0 AV + 157

[1] Including all refrigerators with automatic defrost.

Payback Period. Table 3–2 presents the payback period for the efficiency levels analyzed for the most prevalent class of product (20.8 cubic foot adjusted volume, automatic defrost refrigerator-freezer). Standard level 1 involves efficiencies achievable with foam door insulation and a 5.0 compressor, level 2 involves additional efficiencies achievable with K=0.11 foam insulation, level 3 substitutes a 5.3 compressor, level 4 substitutes K=0.10 foam insulation and adds more efficient fans as well as 2 inches of door insulation, and level 5 adds adaptive defrost and evacuated panel which the additional expense of purchasing a product at this efficiency level will be less than three times the value of the energy savings that the consumer will receive during the first year. The payback period for refrigerators that meet standard level 1 efficiency ranges from a low of 0.6 years for a side-by-side refrigerator-freezer with through-the-door services to a high of 2.0 years for a manual defrost chest freezer; the payback period for refrigerators that meet standard level 2 efficiency ranges from a low of 0.9 years efficiencies. For most classes, standard level 3 corresponds to the most stringent energy conservation standard level at for a side-by-side refrigerator-freezer without through-the-door services to a high of 1.9 years for a manual defrost chest freezer; the payback period for refrigerators that meet standard level 3 efficiency ranges from a low of 1.3 years for an upright, automatic defrost freezer to a high of 2.9 years for a manual defrost, chest freezer; and, the payback period for units that meet level 4 efficiency ranges from 2.7 years for an automatic defrost refrigerator-freezer with side freezer and through-the-door services to 4.1 years for a chest freezer. *See* Technical Support Document Table 3.31 through Table 3.40.

TABLE 3-2.—PAYBACK PERIODS (YEARS) TOP MOUNT AUTO DEFROST REFRIGERATOR-FREEZER, WITHOUT THROUGH-THE-DOOR FEATURES

[Adjusted Volume = 20.6 Cu. Ft.]

Standard level	Payback period
1	0.9
2	1.1
3	1.7
4	3.3
5	5.4

Significance of Energy Savings. By the year 2015, the weighted average energy consumption of new refrigerators sold in absence of revised standards is not projected to change compared to 1990 when the legislated standards become effective. This is because residential electricity rates are projected to decline from 1984 to 1995, then increase, reaching 1983 levels by 2015 (in real terms). Without upward pressure on operating expenses, the LBL–REM projects that there will be no major energy consumption improvements. When revised energy conservation standards are imposed, the LBL–REM projects that over the period 1992–2015, the following savings would be attributable to the increased standards:

Level 1—3.8 Quads
Level 2—5.1 Quads
Level 3—5.9 Quads
Level 4—8.1 Quads
Level 5—11.6 Quads

(*See* Technical Support Document, Table 5.8.)

On the basis of the above, DOE believes that the increased standard levels considered for refrigerators would result in a significant conservation of energy. However, DOE believes that the LBL–REM base case projections of no improvement in the efficiency of refrigerators compared to 1990 is unlikely. Over the last two decades the average efficiency of refrigerators has increased over 50 percent. During this time, the nation experienced both declining and increasing real energy prices. DOE believes there is no reason to conclude that the average efficiency of refrigerators will not continue to increase. Changes in SWEF can be brought about by a number of factors including heightened consumer awareness.[16] DOE requests comments on this issue, particularly the LBL–REM's forecast of refrigerator efficiency.

Economic Justification—A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 3 efficiency ranges from $12.60 for a 22.5 cubic foot (adjusted volume (AV)) chest freezer to $15.90 for a 31.9 cubic foot AV automatic defrost refrigerator-freezer with side freezer and through-the-door services. The cost for the most prevalent class of product (automatic-defrost refrigerator-freezer with top-mounted freezer) would increase $13.20. For level 4 efficiency, the per unit increased cost to manufacturers to meet that efficiency ranges from $22.40 for a 26 cubic foot chest freezer to $36.80 for a 31.9 cubic foot automatic defrost refrigerator-freezer with side freezer and through-the-door services. The cost for the most prevalent class of product (automatic-defrost refrigerator-freezer with top-mounted freezer) would increase $33.20. The per unit increased cost to manufacturers to meet the level 1 efficiency ranges from $4.60 to $6.90, while level 2 cost increases range from $7.70 to $10.30. For level 5, the cost increases from $47.30 to $79.60. *See* Technical Support Document, Tables 3.14 through 3.23.

The LBL–MIM, in the base case, projects manufacturers long-run return on equity (ROE) to be 9.54 percent for refrigerators and refrigerator-freezers and 8.25 for freezers. At level 3, the LBL–MIM predicts that a prototypical refrigerator and refrigerator-freezer manufacturer would have a gain in its ROE to 10.59 percent, a gain of 11.0 percent. At level 4, the manufacturer's ROE is expected to increase to 10.56 percent, a 10.7 percent gain. The corresponding gains for freezer manufacturers are 15.5 percent at level 3, and 6.9 percent at level 4. At levels 1 and 2, the refrigerator and refrigerator-freezer manufacturers' ROE are expected to improve respectively, to 10.08 percent (an improvement of 15.6 percent) and to 10.32 percent (an improvement of 8.2 percent). For freezer manufacturers, the ROE is expected to improve to 8.99 (an improvement of 12.8 percent) for levels 1 and 2, respectively. *See* Technical Support Document, Tables 7.9 and 7.10.

These industries have displayed periods of increasing consolidations that have been especially pronounced during periods of low earnings. By increasing profitability, as DOE projects, standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case. The increase in profitability is directly related to the LBL–REM projection of shipments. Shipments under standards are projected to increase slightly. *See* Technical Support Document, Table 5.34. If shipments were to decrease, however, the LBL–MIM's projection of ROE would likely decrease, resulting in reduced profitability and possibly increase industry concentration.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical refrigerator, refrigerator-freezer and freezer designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce refrigerators that minimally comply with the 1990 NAECA standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL–MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publically available, e.g., Securities and Exchange Commission 10K reports and company annual reports. Finally, DOE assumed that manufacturers would have sufficient quantities of the regulated CFC's. Because of the significant impact these assumptions could have on the results of the analysis, DOE requests comments on these issues, particularly from small manufacturers.

The sensitivity analysis, however, indicates the refrigerator, refrigerator-freezer and freezer industry is sensitive to price and operating expense elasticities. For example, the high price and low operating cost scenario indicates that the effects of standards would be to decrease return-on-equity for refrigerator, refrigerator-freezer and freezer manufacturers by nearly 1.5 percent and nearly 2.0 percent for freezers. *See* Technical Support Document, Tables 7.17 and 7.18. While these scenarios are theoretically possible, the Department expects that the original analysis will be the likely outcome.

For consumers, standard level 3 would cause price increases that would range from a low of $22.62 for an automatic defrost, upright freezer, to a high of $39.36 for an automatic defrost, side-by-side refrigerator-freezer. The corresponding range of price increases at standard level 4 would be a low of $48.13 for a manual defrost, chest

[16] On June 13, 1988, FTC published proposed rules to amend the appliance labeling program. (53 FR 22106). In particular, FTC requested comments on amendments to refrigerator labeling. Changes to the refrigerator label could increase consumer awareness of energy consumption.

freezer and a high of $96.70 for an automatic defrost, side-by-side refrigerator-freezer. *See* Technical Support Document, Tables 3.31–3.40.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that for each possible standard level the increase in purchase price would be offset by savings in operating expenses. Standard level 4 generally corresponds to the minimum for each of the life-cycle cost curves. *See* Technical Support Document, Figures 3.13–3.22. This indicates that the standard level would not cause any economic burden on the average consumer. DOE examined the effect of different discount rates, 5, 7 and 10 percent, on the LCC curves and generally found little impact; however, the Department did not consider higher discount rates. Similarly, DOE did not consider different energy prices, including regional prices, or different usage rates in the LCC analysis.

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level. If those consumers who face higher energy costs and/or expect to use their refrigerators more intensively, are on average, more likely to buy higher efficiency refrigerators, then a modeling approach that assumes that national average energy prices and usage rates apply to all consumers will yield results that overstate the net benefits that could be expected. The Department requests comments on the effects of energy prices and expected usage rates on consumer's choice of efficiency level as well as the potential biases that may be introduced by using national average energy prices and usage rates.

The net present value (NPV) analysis indicates that if a standard were adopted at level 3, there would be a net present value of $12.2 billion from energy savings over the period 1992–2015. At level 1, the corresponding NPV would be $8.5 billion, at level 2, $11.0 billion and at level 4, the corresponding NPV would be $13.9 billion. *See* Technical Support Document, Table 5.14. If, as discussed above, the NPV were calculated based on a 15 percent discount rate, the NPV at level 3 would be $2.5 billion; significantly less than calculated at seven percent.

C. *Energy Savings.* As discussed above, DOE proposes that standards, at each candidate standard level, would result in a significant saving of energy. The Department conducted several sensitivity cases, one of which was to assume that after 1990, the market would produce refrigerators of an efficiency that increases more than the standards would otherwise require.

The base case projects that there will be no increases in the SWEF of refrigerators after 1990, i.e., that the private sector will not continue to improve the efficiency of these appliances beyond the mandated levels. The sensitivity case assumes that after the 1990 standards are in place, the base case efficiency growth, instead of being flat or zero, will occur at some positive rate. The Department believes that the maximum improvement in market-induced refrigerator energy efficiency after 1990 would be that amount that would be characterized by the historical improvement in such efficiency. It would not be reasonable to assume that energy efficiency would improve at a greater than historical rate.

Therefore, the Department believes that the range of market-induced efficiencies that would occur after 1990 in the absence of additional Federal standards would be from a low or no improvement to a high of an historical average growth rate.

It is important to note that the energy savings results for refrigerator standards may overstate the results that would otherwise obtain. For example, as indicated above, the maximum savings attributable to standards on refrigerators would be 11.6 Quads of electricity. This level would require the use of evacuated panels in place of foam insulation. If, however, base case efficiency growth were to occur at its historical average rate, the LBL–REM projects that savings from standards would be reduced by as much as 4.09 Quads, i.e., 11.6 Quads minus 7.51 Quads over the 1992–2015 period. See Table 3.3. Similarly, the energy savings could be affected if a regional analysis, including regional energy prices and varying usage rates, were used. DOE did not perform this analysis because the Department does not have data to indicate that regional values would have an effect on energy savings due to standards.

TABLE 3–3.—SENSITIVITY ANALYSIS: CUMULATIVE ENERGY CONSUMPTION OF REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS IN THE PERIOD 1992–2015 (QUADRILLION BTU, PRIMARY)

[High efficiency sensitivity case]

Base case	Standard			Difference		
	Level 3	Level 4	Level 5	Level 3	Level 4	Level 5
41.64	39.41	37.52	34.13	2.23	4.12	7.51

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of refrigerators. However, there is no assurance that future utility or performance of refrigerators would not be lessened as a result of disincentives caused by standards to investments in energy-using new features or as a result of redesign brought about by EPA's regulations affecting CFC production.

E. *Impact of Lessening Competition.* Since standards generally would result in greater industry profitability, and since historically in this industry mergers have resulted during periods of low profitability, one result of standards could be to reduce the rate of industry consolidation, therby leading to more competition than is likely under the less profitable base case. DOE concludes from the results of the LBL–MIM that standards could lead to a reduction in the rate of consolidation; therefore, standards would not lessen competition. However, this conclusion is based on DOE's forecast of increased ROE. DOE requests comments on the impact of standards, both legislated and possibly amended, on competition.

F. *Need to Save Energy.* Refrigerators use electricity as their energy source. Nearly seven percent of the nation's total electricity (which required source energy of 27.6 Quads in 1987) powers refrigerators, and nearly 13 percent of that seven percent would be saved by standards for this product at level 3, while almost 18 percent of that seven

percent would be saved at level 4. Levels 1 and 2 would save 8 and 11 percent respectively. The sensitivity analysis on the LBL–REM indicates that even if market improvements and consumer awareness of appliance efficiency continues, the projected savings at level 3 would be nearly 5.5 percent of that seven percent, while the savings at level 4 would be nearly ten percent of that seven percent.

G. *Other Factors.* In the Design Option discussion above, it was explained that many design options considered by DOE require the use of additional amounts of CFC, either CFC–11 or CFC–12. Both of these refrigerants are subject to an EPA rulemaking that would place restrictions on the manufacture of certain CFCs.

As noted above, the use of CFC's in the manufacture of refrigerators currently accounts for approximately two percent of the restricted CFC's. The 50 percent reduction in CFC manufacture prescribed by EPA, will likely result in the use of CFC's in refrigerators to exceed five percent of U.S. consumption. This increase in the percentage of CFC consumption accounted for refrigerators would be a result of the CFC production restriction along with increased CFC use to meet the legislated 1990 standards, and increased sale of these products. Presently, DOE is unaware of any currently available alternatives to CFC–11 or CFC–12 that have been demonstrated as acceptable replacements to the affected CFC's. However, likely alternatives have been identified, but have not been subjected to complete evaluation, including toxicology tests. Based upon the comments on the advance notice, DOE assumed that suitable alternatives will be developed; however, the schedule by which these alternatives will become available in sufficient quantities is unknown at this time. DOE believes that most of the increase in CFC usage will be made in order to meet the 1990 NAECA standards. Of the design options considered to meet standard levels 1 through 3, only the addition of foam doors for refrigerators and refrigerator-freezers (level 1) would require significant amounts of the affected CFC's. However, in order to meet the 1990 NAECA standards, manufacturers could consider the adoption of design options not included in DOE's baseline unit, including thicker walls. If manufacturers were to adopt this approach, substantially more CFC's would be required than the Department assumes. Furthermore, under this scenario, the supply of CFC's may not meet the demand at any standard level including the 1990 NAECA level. The impacts of the EPA rulemaking on CFCs are not specifically reflected in the LBL–MIM. DOE solicits comments on this issue, especially concerning the baseline unit and manufacturers' ability to meet the 1990 NAECA standards. DOE is particularly interested in receiving comments from small manufacturers of refrigerators.

Conclusion. After careful consideration of the analysis, the Department is proposing a revision of the refrigerator standards from a range of standards that includes continuing the 1990 NAECA standards to standard level 3. The Department proposes that each candidate standard level for refrigerators saves a significant amount of energy, and is economically justified. However, because of the analytical and policy questions discussed above, the Department is not proposing specific standard levels within the above range. Rather, DOE is presenting the results of the analysis and is soliciting additional comment and information to be considered in promulgating the final rule. The final rule will specify a specific level for refrigerators; the level selected could include no change to the 1990 NAECA standards.

As discussed above, DOE's analysis indicates that there would be substantial energy savings at each candidate standard level of efficiency. During the period 1992–2015, these savings would be nearly six Quads of primary electricity per year compared to the base case for level 3, five Quads for level 2 and nearly four Quads for level 1.

Although these standards would cause some increase in the initial price to the consumer, each standard is calculated to reduce substantially the typical consumer's life-cycle costs. In addition, of the standard levels analyzed, level 3 was the most stringent level that satisfied the rebuttable presumption test, i.e., that had a value of energy savings that repaid the initial purchase price increase to the average consumer in less than three years.

The technologies that may be necessary to meet each standard, level 1–3, will likely be available by 1993. These include compressors of near 5.3 EER. For manufacturers, level 3 standards are expected to produce long-run increases in their net income and return on equity of 18.2 percent and 11.0 percent, respectively. Levels 1 and 2 will result in similar increases.

Each standard level may involve the use of additional amounts of ozone-depleting CFC's; however, DOE believes this additional amount will come at the expense of other products that presently use the needed CFC's. If, however, EPA were to halt the production of CFC's, manufacturers would have to find alternatives to both CFC–11 and CFC–12. It has not been conclusively demonstrated to what extent, if any, alternatives would penalize the energy efficiency performance of refrigerators. Furthermore, if the standards were to be revised and it were to be shown that the CFC alternatives did have an efficiency penalty, DOE would not be able to adjust the standard downward.

In the base case (1990 NAECA standards), DOE believes the analysis likely underestimates the impacts of the 1990 NAECA standards. As discussed above, the Department believes that the LBL–REM overestimates energy consumption by forecasting no increases in refrigerator SWEF. Also, the characterization of the prototypical manufacturer in the LBL-MIM does not account for the possible impacts of the EPA's regulations concerning CFC manufacture, since the Department assumed that sufficient quantities will exist after the regulations go into effect.

In addition, not amending the 1990 NAECA standards would allow manufacturers time to adjust to the standards; would not increase refrigerator CFC use; and would allow time for research on alternative, lower CFC-using technologies.

For standard level 3, the Department proposes that there will be a significant conservation of energy and that the standards are projected to have little economic impact on manufacturers. Standards at this level would likely be met with existing technology and would reduce consumer life cycle costs. However, standards at this level would require the use of more CFC's and would increase prices to consumers. Furthermore, as discussed above, the LBL-REM forecast of energy savings is likely to be overestimated. The standards analysis may also underestimate the impact on manufacturers, since many are already involved in retooling to meet the 1990 NAECA standards and the EPA's CFC restrictions.

For standard level 2, the Department proposes that there will be a significant conservation of energy and that the standards will cause little increase in price to consumers. In addition, the analysis projects little economic impact on manufacturers and a substantial reduction in consumer life cycle costs. However, standards at this level will require the use of more CFC's. Also, the analysis may underestimate the economic impacts on manufacturers as

discussed above and it likely overestimates energy savings.

For level 1, the Department proposes that there will be a significant conservation of energy and that the standards would likely have little economic impact on manufacturers and consumers. In addition, the standards would substantially decrease consumer life cycle costs compared to the 1990 unit. However, significant improvements in efficiency are technologically feasible. Also, standards at this level would result in some increase in CFC use in refrigerators, and the impacts on manufacturers and energy savings estimates may be incorrect as described above.

The results of the analysis, including those for levels 1, 2, and 3 discussed above, could change if a different discount rate were used, energy prices drop, or if the use of national average energy prices and appliance usage rates introduces a bias. Furthermore, if amendments to the appliance labeling program are finalized by FTC, it could improve the effectiveness of the program, thereby reducing any benefits of standards. 53 FR 22106, June 13, 1988. DOE believes that programs such as the labeling program are preferable to standards since they result in the least amount of intervention in the marketplace and do not preclude products that may be the optimum for certain consumers.

More stringent standard levels were examined and rejected for the following reasons: First, the level 5 standard, the maximum technologically feasible option, involved the use of evacuated panels. While evacuated panels have existed for some time, and were previously even used in some Japanese refrigerators, the technology has not yet proven to be a reliable and durable one, and one suitable for mass production. Furthermore, even though one domestic manufacturer has patented an evacuated panel technology, there are no reasonable assurances that a reliable and durable evacuated panel design will be available when this standard is to be effective. Therefore, the Department has rejected this standard level. Moreover, in most cases this point is beyond the minimum life-cycle cost point which would prevent some consumers from being able to purchase the most cost-effective units for them.

Level 4 standards would involve a substantial increase in the initial consumer price of refrigerators; in fact, the improvements necessary to reach that level of efficiency are estimated to be so costly that the rebuttable presumption consideration is not satisfied for the most prevalent class. In addition, results of the engineering analysis and the life-cycle cost analysis indicate that while there is a substantial increase in the price of refrigerators between level 3 and 4, the corresponding decrease in operating costs results in a negligible life-cycle cost difference between these levels. Furthermore, this standard level assumes the use of more ozone-depleting CFC than the level 3 standard.

b. Small Gas Furnaces

1. Classes

Two classes of small gas furnaces,[17] weatherized (outdoor) and non-weatherized (indoor), were specified in the advance notice.

These classes are distinguished by their ability, or inability, to be installed outdoors, a performance-related feature that affects utility and efficiency. The weatherized (outdoor) furnace provides the owner with the utility of saving indoor space. The weatherized furnace typically is less energy efficient than a comparable nonweatherized (or, indoor) furnace because the "jacket" energy losses of a weatherized furnace will usually exceed the infiltration energy losses of an indoor furnace. The test procedures for furnaces recognize these differences and prescribe different efficiency calculation methods for these two types of furnaces.

2. Design Options

The Engineering Analysis identifies individual or combinations of design options with a potential for improving energy efficiency. Design options that are on the market, or that will be on the market by the time standards are effective, were considered. The following is a list of design options that were examined:

(A) Increased heat exchanger surface area.

(B) Intermittent ignition device (IID).

(C) Power burner or power vent.

(D) Increased insulation.

(E) Additional improvement of steady-state efficiency.

(F) Two-stage and modulating burners.

3. Comments on the Advance Notice of Proposed Rulemaking

Comments from the Edison Electric Institute (EEI) suggested that in evaluating the small furnace standard (between 71 and 78 percent AFUE), the Department consider the base case not to be the no regulation case, but rather the 78 percent case. In addition, EEI suggested that the Department examine 71 percent AFUE, 78 percent AFUE (as the base case), and two levels higher than 78 percent. (EEI, No. 20, at 3–4).

The Department rejects the idea of a base case at 78 percent AFUE since that would preclude the ability to show any energy savings at 71 percent AFUE and, therefore, it would *a priori* exclude the 71 percent AFUE case from consideration. As to EEI's other suggestion, DOE believes it would serve no purpose in this proceeding to examine two standards cases of efficiencies greater than 78 percent AFUE since the Act precludes DOE from setting a standard greater than 78 percent AFUE.

The American Gas Association (AGA) and Alabama Gas Association (AlG) maintained that the use of life-cycle cost (LCC) analysis is inappropriate in the small gas furnace market since much of the decision-making on new purchases is made by builders and contractors whose purchase decisions are influenced principally by initial price considerations. (AGA, No. 24, at 1; and, A1G, No. 8, at 3 and 6). Conversely, CEC suggested that the Department develop LCC curves for each product. (CEC, No. 35, at 6).

Indeed, while much of the small furnace market demand comes from builders and contractors, consumer life-cycle cost analysis is still appropriate since section 325(1)(2)(B)(i)(II) of the Act requires DOE, in determining whether a new or amended standard is economically justified, to "determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard."

The AGA stated that the LBL–REM model disregards regional variations in housing unit growth rates (AGA, No. 24, at 15). The AGA is incorrect, since the inputs to LBL–REM include forecasts of regional housing starts. Specifically, LBL–REM's updated housing submodel includes several features:

(1) The model uses population projections, which are more stable than

[17] The Act requires the Department to establish minimum energy conservation standards for gas furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour. The Department interprets this provision to be applicable only to gas, forced-air furnaces.

projections of housing completions because of the comparatively larger influence of economics, e.g., the stage of the business cycle, interest rates, and so on, on housing completions. In the long run, the number of housing units available is expected to agree with the need for housing units, which is determined by the size and composition of the population.

(2) The updated method utilizes population projections for states by house type. This feature, combined with climate data, permits estimation of the fraction of households with heat loads that could be met by small gas furnaces.

(3) Projections of the numbers of people in each age group in future years are used to project changes in the distribution of house types.

Lastly, with regard to the utility impact analysis, Lone Star Gas Company (LSG) and EEI suggested that the utility analysis examine the impact on gas, as well as electric, utilities. (LSG, No. 11, at 6; EEI, No. 20, at 6).

No direct analysis of gas utilities was performed, but impacts on residential gas sales were estimated. The Department believes that this is adequate to assess the gas utility impacts from standards on small gas furnaces that are intended for residential use, since the bulk of these impacts should be on future gas utility residential sales. Nevertheless, the Department welcomes detailed information and data from persons or organizations who believe that DOE has underestimated the likely impacts on gas utilities.

Also, two utilities suggested that results obtained for a region may differ greatly from results obtained for each separate utility system within a region. (Allegheny Power System (APS), No. 13, at 2; and, LSG, No. 11, at 6).

For the small gas furnace analysis, it was the Department's intention to capture as much of the regional variations as possible. LBL–REM used regional disaggregation in modeling space conditioning choice in new homes. While resource limitations prevented any further disaggregation of the marektplace, DOE is interested in receiving information and data on any specific regional problems that were overlooked.

Several gas distribution companies and gas suppliers, and the Southern Gas Association (SGA) and AGA endorsed the 71 percent AFUE furnace standard over the 78 percent AFUE. They cited various reasons for their preference for the lower efficiency, the predominant one being the impact on gas utilities of reduced load that would result from a 78 percent standard.[18] Comments in favor of the 78 percent AFUE were received from the Gas Appliance Manufacturers Association and the Edison Electric Institute. (GAMA, No. 23, at 1); (EEI, No. 20, at 2). Three comments encouraging a thorough analysis of all factors before a decision is made were submitted by the Natural Resources Defense Council, the New York State Energy Office, and the American Council for an Energy-Efficient Economy (ACEEE). (NRDC, No. 19, at 6–8; NYSEO, No. 32, at 7–8; ACEEE, Testimony).

Several comments favored DOE's approach of considering two standards cases, 71 percent and 78 percent, since efficiencies between 71 and 78 percent are not well-defined in terms of inherent design options. (PING, No. 3, at 3; Peo.G., No. 6, at 1; FNGA, No. 14, at 1; ENTEX, No. 15, at 2; AGA, No. 24, at 7; and SGA, No. 26, at 2).

Comments requesting consideration of a range of efficiencies between 71 and 78 percent were received from Southern Company Services Inc. (SCS). (SCS, No. 7, at 1).

While the Department still believes that 71 percent and 78 percent AFUE are the meaningful candidate levels, an analysis at 74 percent AFUE was also conducted.

The Edison Electric Institute suggested that the 78 percent AFUE level should be the base case or "default level" unless DOE justifies reducing it to 71 percent. (EEI, No. 20, at 3). The New York State Energy Office stated that DOE is required to investigate maximum technical feasibility efficiency levels for small furnaces and that while pulse combustion and heat exchangers are not on the list of design options to be examined, they should be. (NYSEO, No. 32, at 7–8).

The "max-tech" level of efficiency for small furnaces is 96 percent AFUE; therefore, it cannot be a candidate standard level for this rulemaking, because it falls outside of the range for consideration set by section 325(f)(1)(B)(ii) of the Act.

Only one comment addressed test procedure issues. York International (York) pointed out that "the measure of efficiency for furnaces under the FTC appliance labeling requirements is the annual fuel utilization efficiency (AFUE) and not the Energy Factor." (York, No. 1, at 1). The Act is explicit under the definition of "efficiency descriptor" stating "for furnaces and direct heating equipment, (it is) annual fuel utilization efficiency." Section 321 (a)(22)(A). The confusion in this matter has reference to section III of DOE's advance notice, in which outputs of the engineering analysis are listed as Energy Efficiency (expressed as the DOE energy factor) with a footnote stating "the energy factor is a measure of energy efficiency derived from the DOE test procedure for that product." The problem is that the DOE test procedure for furnaces includes an additional efficiency descriptor called Energy Factor which includes the electric energy in the calculation. This potential misinterpretation, that energy efficiency refers to the "Energy Factor," is being clarified by stating that energy efficiency refers to AFUE.

Maintenance Expense. Several gas companies referenced the need to consider higher maintenance expense for the 78 percent AFUE furnace standard. (A1G, No. 8, at 6; LSG, No. 11, at 4&8; FNGA, No. 14, at 4; VANG, No. 16, at 7; ALG, No. 26, at 2; and NG Co., No. 37, at 2). Since this efficiency level would require the use of a fan motor and its associated controls for induced draft, the maintenance expense was included in the Engineering Analysis.

Higher First Costs/Installation Costs. Several of the gas companies and associations cited increased installation expenses due to special venting requirements as being necessary to consider in the engineering and economic analyses for the 78 percent AFUE standard for induced draft type furnaces. (OKNG, No. 2, at 2; ETNG, No. 9, at 4 and 5; LSG; No. 11, at 8; ANR, No. 12, at 2; FNGA, No. 14, at 2; VANG, No. 16, at 5; AGA, No. 24, at 12; SGA, No. 25, at 4; UCG, No. 27, at 3; SCE&G, No. 28, at 3; and NG Co., No. 37, at 2). Generally, these comments addressed problems that would arise when a furnace and a water heater are installed with a common vent system.

Name	Assigned abbreviation	Comment No.
Oklahoma Natural Gas Co	OKNG	2
Piedmont Natural Gas Co., Inc	PING	3.
Public Service Co. of N.C. Inc	Pub.S.	5.
Peoples Gas System Inc	Peo.G.	6.
Southern Companies Services Inc.	SCS	7.
Alabama Gas Corp	AlG	8.
East Tennessee Natural Gas Co.	ETNG	9.
Lone Star Gas Co	LSG	11.
ANR Pipeline Co	ANR	12 and 34.
Florida Natural Gas Association Energy Committee.	FNGA	14.
Entex	ENTEX	15.
Virginia Natural Gas Inc	VANG	16.
Gas Appliance Manufacturers Association.	GAMA	23.
The American Gas Association	AGA	24.
Southern Gas Association	SGA	25.
Arkansas Louisiana Gas Co	ALG	26
United Cities Gas Co	UCG	27.
South Carolina Electric & Gas Co.	SCE and G	28.
Sierra Power Co	SP Co.	33.
Northern Illinois Gas	NIGas	36.
Nashville Gas Co	NG Co.	37.

[18] The gas utility companies and associations responding included:

These additional expenditures were cited as needed since a separate vent may be required to vent an induced draft type furnace. Also, the existing vent used for the water heater would then be oversized and possibly require a revised water heater vent or insulation of the vent to prevent condensation. Particular problems were cited for multifamily structures and accessibility to the existing venting for retrofit. GAMA disagreed, stating that venting of induced draft gas furnaces in multifamily housing would cost less, not more, than the atmospheric type of vent systems. (GAMA, No. 23, at 4). GAMA also encouraged DOE to examine further this comparative cost issue. This issue had not been addressed explicitly by LBL and additional analysis is planned before DOE will issue a final rule.

Regional Analysis. Several gas companies and their associations submitted comments suggesting that a regional analysis be included that accounts for the reduced heat load and energy savings that would prevail for the higher efficiency, i.e., 78 percent AFUE, in milder climates. (PING, No. 3, at 2; Peo.G., No. 6, at 2; A1G, No. 8, at 3&7; FNGA, No. 14, at 4; AGA, No. 24, at 14; SGA, No. 26, at 2; and SCE&G, No. 28, at 2).

A national estimate was made using LBL–REM. DOE recognizes that there are regional differences in climate. LBL–REM includes a heat load calculation for new houses in each state that is used for projecting market shares of small gas furnaces. The average unit energy consumption of small gas furnaces reflects the average climate where small gas furnaces are located, not a national population-based climate.

In addition, DOE performed a sensitivity analysis on the LCC analysis using regional energy prices and usage rates. *See Technical Support Document,* section 6.2. Because of the impact that usage and prices can have on the results, DOE requests comments on this issue.

Vent Installation—Ability to Use Common Venting. Many of the gas companies and their associations contended that a major issue to be considered in the 78 percent AFUE furnace (an induced draft type system) are code requirements which would prohibit the installation of this type furnace in a common vent with an atmospheric type burner system. This would be particularly important in the replacement market. (PING, No. 3, at 3; OKNG, No. 2, at 2; Peo.G, No. 6, at 2; A1G, No. 8, at 4; FNGA, No. 14, at 3; VANG, No. 16, at 7; SGA, No. 25, at 3; ALG, No. 26, at 2; NIGAS, No. 36, at 2).

The National Fuel Gas Code (ANSI Standard Z223.1), which is the major installation code for gas-fueled furnaces, addresses mechanical draft systems as follows: "Vent connection serving equipment vented by natural draft shall not be connected into any portion of mechanical draft systems operating under positive pressure." This would prohibit an installation of a gas water heater and a gas furnace in a common chimney venting arrangement. The operative words in the code are "systems operating under positive pressure."

GAMA stated that "over 90 percent of the non-condensing induced draft furnaces and boilers certified by the American Gas Association can be safely common vented with conventional atmospheric type gas appliances." (GAMA, No. 23, at 3). GAMA cited a September 1985 "White Paper" prepared by the American Gas Association Laboratories, entitled "Common Vent Study of Power and Non Power Vented Appliances," to substantiate its statement and which GAMA believes directly contradicts the testimony of AGA and SGA. GAMA also submitted a list of engineering reports published by the AGA Laboratories in the July 1987 issue of the AGA Laboratories Directory of Certified Appliances. GAMA stated that the purpose of these reports is to identify specific induced draft non-condensing furnaces that can be common vented with conventional combustion system equipment. GAMA further stated that AGA's White Paper concluded that before allowing common venting of fan or blown assisted combustion system appliances with draft hood equipped appliances, code authorities are requiring engineering data to show satisfactory performance.

Based on this information, DOE believes that draft induced appliances can be used safely in a common vent system with atmospheric type (draft hood equipped) water heaters. However, there remains a question of the degree of acceptability by local code officials of draft-induced furnaces using a common vent with an atmospheric type water heater. DOE will examine these issues before issuing a final rule for the small furnace standard. DOE invites comments on these issues, especially with respect to the acceptance within each State or local jurisdiction regarding the special testing requirements and AGA engineering reports that are being used.

Several Comments also suggested that a variety of housing types and climates be investigated. SCE&G cited the need for specialized cases to examine payback and economic analysis for mild climates, such as those with less than 2500 degree days (SCE&G, No. 28, at 2).

Utility Impact Analysis—Fuel Switching Impact. Several gas utility companies commented that the utility analysis should include costs of all utilities, not only electric utilities. (OKNG, No. 2, at 3; Peo.G, No. 6, at 2; SCS, No. 7, at 1; A1G, No. 8, at 3 and 7; ETNG, No. 9, at 6; ANR, No. 12, at 3; FNGA, No. 14, at 3 and 4; ENTEX, No. 15, at 2; VANG, No. 16, at 6; ALG, No. 18, at 2; AGA, No. 24, at 4–7 and 12; SGA, No. 25, at 3; UCG, No. 27, at 4; SCE&G, No. 28, at 3; NIGAS, No. 36, at 2; and NGCo., No. 37, at 2).

These companies believe that probable shifts of gas utility load to electricity generation should be included in the analysis when considering the higher 78 percent AFUE levels for small gas furnaces. For example, gas utilities could suffer a decreased market share resulting in an increased cost of gas per unit sold. (LSG, No. 11, at 6). Several of these companies also pointed out that when load is lost to electric resistance heat—particularly baseboard radiant heat—that future conversion to gas would be cost prohibitive. Gas utilities also contended that a switch to electric resistance heat with its attendant higher cost of operation will hurt the elderly and lower income customers. AGA stated that the proposed methodology should not consider load loss to heat pumps in assessing the potential load loss from gas utilities when evaluating the shift of gas heating to electric resistance heat, as required by the Act. (AGA, No. 24, at 4).

In considering candidate standard levels, the Department will calculate the potential load loss of gas utilities to electric resistance heat, and to other heating choices, e.g., heat pumps.

The South Carolina Electric Company (SCE&G), which supplies both gas and electricity to its customers, favors the lower 71 percent AFUE standard for small furnaces. SCE&G stated that fuel switching will produce a greater demand for electricity on the company's electric system, but this will not cause a corresponding increase in KWh sales because of the utility's climate area. (SCE&G, No. 28, at 3).

Alabama Gas Corp. (A1G, No. 8, at 4) stated what many other gas utility companies also implied—that when a gas furnace is not selected, a gas water heater often will not be selected. Specific comments that cited statistics or estimates included the following: "Seventy-eight percent AFUE would lose 20–25 percent of the market to electric resistance"—(OKNG, No. 2, at

3); "forty percent of new homes in Florida install electric resistance heat," (FNGA, No. 14, at 3); "although less than 10 percent of dwelling units priced above $120,000 use electric resistance heat, roughly one-third of the units priced less than $60,000 use electric resistance heat. AGA projections of load loss to gas utilities between the years 1993 and 2000 could be as high as 600 BCF if the 78 percent AFUE level is prescribed." (NG Co., No. 37, at 3).

Conversely, EEI stated that DOE's analysis should consider only those households that are both candidates to purchase gas furnaces and candidates to purchase gas supply, since the decision of a builder to choose electric space conditioning may be based on the availability, cost or convenience of electricity and gas. EEI also commented that DOE should modify the utility analysis to include the benefits that will occur from improved gas energy efficiency causing an extension of future gas reserves. (EEI, No. 20, at 5). While improvement in energy efficiency in small gas furnaces would seem to extend future gas reserves, the Department believes that the private individuals' values for those reserves, as expressed in the marketplace, captures fully the benefits to society of any extension of the reserves' lifetimes. Therefore, no additional benefits to society will be calculated for this potential effect.

Sierra Pacific Power (SPC) stated that the analysis should also include gas utilities which would be impacted by: Reduction in fossil fuel usage; input to environmental assessment; change in investment; change in revenue requirements; change in facilities, and change in residential load factors. (SPC, No. 33, at 1).

NRDC contended that the furnace standard analysis should consider the likelihood of the Department's implementation of ASHRAE Special Project 53, which would require greater thermal integrity in homes that are heated by electric resistance heat than for those that are heated by gas. The contention was that since this would raise the first-cost of electric resistance heating relative to gas heating, it would "reduce or eliminate fuel switching to electric resistance resulting from furnace standards by reducing the differential costs—both first cost and operating cost—of gas and electric resistance houses." (NRDC, No. 19, at 8–9).

The Department accepts this point; however, DOE has no authority to implement a mandatory program, incorporating provisions of ASHRAE Special Project 53, that would apply to non-Federal construction.

NRDC also suggested that consideration of the small gas furnace standard be done in the context of manufacturers having retooled to meet a 78 percent AFUE standard for gas furnaces greater than 45,000 Btu. Therefore, to produce a 71 percent AFUE unit would require setting up a separate production line which, because of the relatively small numbers of small furnaces produced, could result in higher unit cost than would a 78 percent standard for small furnaces. (NRDC, No. 19, at 6).

The Department's analysis evaluated the impacts of standards on small gas furnaces in the context of a 78 percent standard in effect on all furnaces greater than 45,00 Btu/hour input.

The NRDC contended, in advocating a 78 percent AFUE small gas furnace standard, that those consumers who are already willing and institutionally able to trade off higher first costs in return for lower operating costs will buy a small gas furnace, even at 71 percent efficiency. NRDC maintained,

> It would seem anomalous if a family that was willing to accept, say, a five-year payback on going from resistance heat to gas would not be willing to accept a similar or shorter payback with respect to increasing the efficiency of the gas furnace. We believe the model should reflect this syllogism. (NRDC, No. 19, at 7).

This comment contains implicit assumptions that are not necessarily valid. The payback on the higher efficiency furnace would be similar or shorter only if it had a less than proportional price increase to reach the higher efficiency. If the price increase for the higher efficiency unit were proportionately more expensive than the value of additional energy saved, then the payback period would, in fact, be longer.

The American Council for an Energy-Efficient Economy testified that claims about shifts in markets should be avoided unless supported by empirical evidence. (ACEEE, Testimony).

Future Market. Several gas utilities and associations commented that the future market for gas furnaces of less than 45,000 Btu/h input is considerably greater than may be projected by the LBL–REM. (A1G, No. 8, at 3–5; VANG, No. 16, at 6; AGA, No. 24, at 9, 11, and 15; SGA, No. 25, at 3; and ANR, No. 34, at 2).

The major reasons given to support this assertion were: Thermal integrity of buildings is improving due to either retrofit or to recent changes in model building codes; historical oversizing of gas furnaces has now been recognized and oversizing practices are being moderated (in some cases as a result of building codes); and, there are increased numbers of multifamily housing units with their smaller sizes and lower heating requirements. AGA provided data from its Space Heating Efficiency Improvement Program (SHEIP) showing that furnaces are typically 2½ times oversized, and all new and existing multifamily units could be served by less than 45,000 Btu/h furnaces. (AGA, No. 24, at 10).

AGA also commented that the assumption in the proposed methodology that the market for a small gas furnace is the single family house which is undefined by size, heat loss, geographic region, or socioeconomic group is questionable for existing construction, and is an incorrect assumption for new housing built from 1992 and beyond. (AGA, No. 24, at 9).

"AGA statistics indicate that average gas consumption for house heating customers declined 27.4 percent from 1973 baseline consumption levels, while the number of house heating customers increased 17 percent." AGA also comments that master meter prohibitions and rehabilitation of existing buildings are greatly expanding the market for the small gas furnace. (AGA, No. 24, at 10).

Impact of Builder and Developer Decisions. Several of the gas utility companies and their associations stated that DOE's methodology should evaluate builder decision-making regarding type of heating fuel selected. (PING, No. 3, at 3; OKNG, No. 5, at 2; A1G, No. 8, at 4 and 6; FNGA, No. 14, at 2; ENTEX, No. 15, at 2; VANG, No. 2, at 4 and 5; AGA, No. 24, at 11 and 12; SGA, No. 25, at 6; UCG, No. 27, at 3; and ANR, Nos. 12 and 34, at 3). ANR cited an opinion survey that concluded that builders are the decision-makers in selecting a heating system for single family residences. The objective of these comments was to show that builders' decisions were based on first cost, and that builders will switch to electric resistance because of the increased cost for the 78 percent AFUE furnace. (ANR, No. 34, at 3). NRDC contends that no further switch to electric is likely as a result of the small gas furnace standard going from 71 to 78 percent AFUE, since first cost is already significant for gas at 71 percent versus electric. EEI stated that if a builder decides not to purchase gas it may be for reasons other than whether the furnace is 71 percent or 78 percent AFUE, namely, reasons such as individual metering requirements, interruptible rate requirements, etc. (EEI, No. 20, at 5). Florida Natural Gas has stated that 40 percent of new homes in Florida are presently installed with

electric resistance heat. (FNGA, No. 14, at 3).

Comments on future market share have an overlapping consequence to this analysis if the future market share for small gas furnaces is as great as some have predicted. As a result of more thermally efficient homes, and, with less oversizing of furnaces, the principal market share that otherwise would have been 78 percent AFUE (the NAECA standard for furnaces greater than 45,000 Btu/h) would become 71 percent AFUE if the smaller furnace is predominant. One basis of setting standards for furnaces was predicated on the fact that builders determine the type of equipment to be installed and do so on first cost. If the 71 percent AFUE furnace is available, and attains a large share of the future market for small gas furnaces, the less efficient furnace may be used in structures where a greater than 45,000 Btu/h furnace (of 78 percent AFUE) would otherwise have been used.

In other words, the purpose of an energy efficiency standard as specified by the Act for the typical gas furnace at 78 percent AFUE would be circumvented by the availability to the builder market of a 71 percent AFUE furnace at lower cost. The more thermally efficient home, coupled with less oversizing, could lead to more small gas furnaces. The builder model that would otherwise have been a somewhat larger than 45,000 Btu/h, 78 percent AFUE furnace could become the less expensive 45,000 Btu/h, 71 percent furnace, in a structure that, because of improved construction (with lower heat loss), could then use the smaller furnace.

4. Efficiency Levels Analyzed

Table 3.4 presents the efficiency levels selected for analysis for 1992. Alternate levels were selected to generate a range of impacts for analysis. The initial level selected, level 3, corresponds to the highest efficiency level provided for in the Act. Standards above 78 percent AFUE were excluded from consideration because the Act specifies that such a standard may not be greater than 78 percent AFUE. Levels 1 and 2 correspond to efficiencies lower than level 3, with level 1 being the lowest level provided for in the Act. Levels 1 and 2 were analyzed discretely in the Engineering Analysis. Level 3, 78 percent AFUE, was based on engineering level 3, having an intermittent ignition device and induced draft. In addition, the engineering analysis considered design options that would result in furnace efficiencies as great as 92 percent AFUE. These more efficient designs, as mentioned above, were not considered for potential standards, but rather were used as input to the LBL–REM in order that the energy forecasting analysis would have a complete set of data upon which to make projections.

TABLE 3–4. STANDARD LEVELS ANALYZED FOR SMALL GAS FURNACES

Standard level	AFUE (percent)
1	71
2	74
3	78

Payback Period. Table 3.5 presents the payback period for the efficiency levels analyzed. For both classes, level 1 is the only energy conservation standard level in which the additional cost of purchasing a product at this efficiency level will be less than three times the value of the energy savings the consumer will receive during the first year. The payback period for units that meet level 1 efficiency ranges from 2.3 years for a warm air indoor gas furnace to 2.5 years for a warm air outdoor gas furnace. *See* Technical Support Document Tables 3.41 and 3.42.

TABLE 3–5. PAYBACK PERIODS OF DESIGN OPTIONS YEARS FOR GAS FURNACES (LESS THAN 45,000 BTU/HR.)

Standard level	Payback periods	
	Warm air indoor	Warm air outdoor
1	2.3	2.5
2	14.4	15.6
3	5.1	6.4

Significance of Energy Savings. By the year 2015, the weighted average energy efficiency of new small gas furnaces sold in the absence of standards is projected to be 80.3 percent AFUE. Standards, at standard levels 1 and 3, are expected to increase the average shipment weighted efficiency of small gas furnaces to between 81.6 and 84.3 percent AFUE, respectively. *See* Technical Support Document, Table 5.16. However, the aggregate annual energy consumption of small gas furnaces is projected to increase slightly. This increase in gas consumption for small gas furnaces comes at the expense of larger gas furnaces, heat pumps, and central electrical furnaces. *See* Technical Support Document, Table 5.18. While standards increase the efficiency and cost of small gas furnaces, the market for small furnaces is projected to increase at the same time. When energy conservation standards are imposed, the LBL–REM projects that over the period 1992–2015, the following increase in energy consumption of small gas furnaces would occur:

Level 1—0.01 Quads
Level 2—0.03 Quads
Level 3—0.05 Quads

Economic Justification—A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 3 efficiency ranges from $64 for an indoor gas furnace to $88 for an outdoor gas furnace. *See* Technical Support Document, Tables 3.24 and 3.25.

At that level of efficiency, the price to the consumer increases $215.10 for indoor gas furnaces and $257.60 for outdoor gas furnaces at level 3. *See* Technical Support Document, Tables 3.41 and 3.42.

The LBL–REM results indicate that standards at level 3 will result in nearly a five percent improvement in average shipment weighted efficiency when compared to standard level 1. This would result in a negligible drop in life cycle costs. *See* Technical Support Document, Table 5.16 and Figures 3.11 and 3.12.

In the LBL–MIM results for small gas furnaces, it was found that standards would cause manufacturers to lose even more money on these furnaces than they are projected to lose in the base or no-standards case. In the base case, manufacturers' returns on equity (ROE) are expected to be −2.02 percent for small furnaces, compared to a base case ROE of a −2.13 percent under standard level 3.

Small gas furnaces tend to have very low profit margins and thus they contribute little or nothing to a gas furnace manufacturer's profitability. DOE believes this is because of marketing considerations, in that manufacturers find it important for marketing purposes to carry a complete line of furnace capacities. Thus, manufacturers tend to carry small gas furnaces in their product lines, although many of these firms carry only one or two models.

LBL–MIM projects that a standard of either 71, 74, or 78 percent AFUE for small gas furnaces would result in slightly fewer shipments, higher product prices, and lower net income and ROE than would occur in the absence of standards.

The LBL–MIM predicts at level 3 that a prototypical furnace manufacturer would experience a .001 percent decrease in ROE. *See* Technical Support Document, Table 7.23. The sensitivity analysis, however, indicates the gas

furnace industry results are sensitive to consumer price elasticities and unit variable cost increases. For example, the sensitivity analysis indicates that the effects of standards could be to decrease return-on-equity for small gas furnace manufacturers by nearly 1.2 percent or to raise it by nearly the same amount. However, there is only a one percent chance of either of these sensitivity results occurring. *See* Technical Support Document, Table 7.25.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that at each possible standard level the increase in purchase price would be offset by savings in operating expenses. *See* Technical Support Document, Tables 3.41 and 3.42. Also, of the three candidate standard levels, level 3 had the lowest consumer life-cycle cost. This indicates that the standard level would not cause any economic burden on the average consumer because of the decreasing life cycle costs.

The NPV analysis indicates that if a standard were adopted at level 3, there would be a net present value of a negative $17 million to consumers. This negative value is due principally to the increase in furnace shipments and a corresponding increase in total gas consumption in the standards cases. *See* Technical Support Document, Table 5.37.

C. *Energy Savings.* As indicated above, standards will result in an increase of gas consumption for small gas furnaces. If, however, the marketplace continues to demand changes in efficiency at the same rate as historically, the LBL–REM projects that there would be no savings from standards over the 1992–2015 period. This result occurs because in the base case, the efficiency, or SWEF of all new small gas furnaces is projected to exceed the 78 percent AFUE standard by the time it would come into effect. *See* Technical Support Document, Table 5.30, Reference 10.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility for performance of small gas furnaces.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Small gas furnaces use natural gas as their energy source. Nearly seven percent of the nation's natural gas consumption is used to operate small gas furnaces, and nearly five percent of that seven percent would be saved by standards for this product at level 3. However, the sensitivity analysis on the LBL–REM indicates that if consumer awareness of and concern with appliance efficiency continues the projected savings would be the same as with level 3 standards.

Conclusion. The Department is proposing a 78 percent AFUE standard on small gas furnaces. A 78 percent AFUE standard for small gas furnaces would result in a significant conservation of energy, and although the payback is greater than three years, the standard level was found to be economically justified.

In addition to producing the maximum unit energy savings of the candidate standards, this standard is beneficial to consumers and manufacturers alike.

For consumers, the 78 percent AFUE standard produces the lowest consumer life-cycle cost of the candidate levels. In addition, the initial purchase price increase may be lower than that which has been estimated. This result is possible because the 78 percent AFUE standard on small gas furnaces is the same level of efficiency that the Act imposes on larger gas furnaces, which presently comprise more than 95 percent of furnance sales. Therefore, to the extent that manufacturers can produce these small units on the same production lines, with the same design options that will be used for the larger furnaces, there may be economics of scale in the production of these units.

Small gas furnace manufacturers have strongly supported the 78 percent AFUE standard on their products. The analysis indicates that such a standard should have relatively little economic impact on them. The uniformity of a 78 percent AFUE standard on small furnaces and on larger units may make the production process simpler for the manufacturers. This occurs because as mentioned above, a uniform standard for all gas furnaces could result in fewer production lines.

In comments on the advance notice, several gas utilities contended that a 78 percent AFUE standard on small gas furnaces would cause them to lose market share to electric utilities. This analysis, however, indicates that such a loss of market share is not a likely result from a 78 percent AFUE standard. The LBL–REM projects that market share for small gas furnaces is likely to increase as a result of the level 3 standard.

One small drawback to the 78 percent AFUE standard on small gas furnaces is that it would eliminate units that may be, in some circumstances, the most cost-effective for some consumers. This is a result that could possibly occur in some Southern-tier States, where the most cost-effective small gas furnace could be one that is less efficient and whose first cost is less than the minimum LCC unit. This less efficient unit could cost the consumer less to operate, on a LCC basis, if the usage rate is extremely low. With low usage it is possible that any increase in purchase price may not be matched by reductions in annual operating costs. Nevertheless, while this is a possible outcome for some purchasers in some areas, the Department believes that such effects, should they occur at all, would be limited.

c. Television Sets

1. Classes

In accordance with the Act, the Department is considering the establishment of an energy conservation standard for television sets, to become effective no earlier than January 1, 1992. The advance notice proposed two classes of television sets, color and monochrome (black and white) to be evaluated for separate levels of efficiency. DOE identified eight design options and requested data on power demand characteristics.

The two classes are distinguished by the ability of one to reproduce images in color, a performance-related feature that affects utility and efficiency.

Color television sets usually consume more energy than comparable monochrome television sets, because of the use of multiple electron guns. For this reason, energy efficiency levels achieved by monochrome television sets are not achievable in color television sets. Since color television sets and monochrome television sets offer distinct differences in utility to the consumer, DOE is specifying separate classes for color and monochrome television sets.

Certain features on television sets, such as remote control and stereo components, provide utility to the consumer and may affect energy consumption. Although such characteristics typically would require the establishment of separate classes for television sets with such features, the Department was unable to analyze these features separately and, hence, is not establishing separate classes for them.

2. Design Options

The following is a list of design options that were examined for both color and black and white television sets:

(A) Remote control.
(B) Electronic tuning.
(C) Automatic color control.
(D) Vertical interval reference.
(E) Brightness sensor.

(F) Voltage regulating power source.
(G) Display device.
(H) One-gun tube.

3. Comments on the Advance Notice of Proposed Rulemaking

Three comments addressed specifically the issue of standards for television sets; these were offered by one manufacturer, one manufacturers' association, and one conservation group. Thompson Consumer Electronics, Inc. (Thompson), manufacturer-marketing company for Radio Corporation of America (RCA) and General Electric (GE) brand television sets, opposed the establishment of energy standards for television sets. Thompson claimed that the technological advancement of solid state electronics in replacing tubes had extensively increased the energy efficiency of television sets. (Thompson, No. 4, at 2). The company stated further that its research revealed an incremental improvement of only 5–48 kilowatt hours (Kwh) per year based on the standard operating time of 2200 hours per year. (Thompson, No. 4, at 3). These claims were supported by the Consumer Electronics Group of the Electronic Industries Association (EIA), an industry trade association representing television manufacturers. (EIA, No. 21, at 2).

Additional comments contended that manufacturers prefer to decrease energy use because of the adverse effects on reliability and performance that can be caused by the excess heat generated by inefficient electronics. (Thompson, No. 4, at 3; and EIA, No. 21, at 3).

NRDC supported the establishment of standards for television sets and maintained that a significant conservation potential exists for this product. (NRDC, No. 19, at 3). NRDC suggested that the list of design options be left open to allow for new and cost-effective energy efficient technologies. One of those recommended was based on the observed variation in power requirement between a 40-inch color set of 190 watts and a four inch monochrome portable of 3.6 watts. It was suggested that even allowing for color versus black and white difference, the 10-fold decrease in size inferred some technology of portability which could be employed in larger sets. (NRDC, No. 19, at 4). DOE has reviewed this comment and does not find a basis for the improvement potential suggested by NRDC. Therefore, the Department rejects NRDC's inference of improvement potential.

NRDC expressed the expectation that the Department would issue a standard for television sets as long as at least one of the design options analyzed has a favorable life cycle cost and meets the other impact criteria under which DOE is operating. (NRDC, No. 19, at 5).

EIA submitted that television sets no longer use significant amounts of energy and are "covered products" because of historical data obtained when tubes were used primarily in the circuits. (EIA, No. 21, at 2). EIA also commented that television sets are not similar to any other covered product. In addition, EIA claimed that standards could retard development of new television set designs. Specifically, EIA stated that standards would cause manufacturers to reallocate funds presently being used to support research on high-definition television (HDTV), research that is being coordinated by the Federal Communications Commission. (EIA, No. 21, at 3).

EIA and Thompson discussed the eight proposed design options.

1. *Remote control* is seen as a consumer utility using five watts or less. Statistics were provided showing that 68 percent of color sets sold in 1987 included remote control (EIA, No. 21, at 4). It was also noted that not all remote controls have the same features, thereby affecting power requirements (Thompson, No. 4, at 6). Furthermore, EIA indicated that while manufacturers are moving toward use of more energy consumptive remote control devices, such devices will result in a more efficient television set in the playing mode. EIA did not provide a specific example of how this condition could occur. (EIA, No. 21, at 4).

2. *Electronic tuning* is considered to have negligible power requirements. (EIA, No. 4, at 6).

3. *Automatic color control* is described as a feature which does not use energy and is a component of the picture stabilization system. (Thompson, No. 4, at 6; and EIA, No. 21, at 5).

4. *Vertical Internal Reference* (VIR) is no longer in production according to these comments. (Thompson, No. 4, at 6; and EIA, No. 21, at 5).

5. *Brightness sensor* is seen as an energy saver by EIA, while Thompson points out that this device performs the same function available to the consumer using the picture controls. Both comments agree that this device uses no power. (EIA, No. 21, at 5; and Thompson, No. 4, at 6).

6. *Voltage regulating power source* contributes measurably to the energy consumption of television sets depending on the type of power supply. (Thompson, No. 4, at 7). It was noted by EIA that transformers have become obsolete with the advent of solid-state voltage regulators. The ability to increase the efficiency of the solid-state components shows little potential (EIA, No. 21, at 5).

7. *The cathode ray* tube is seen by Thompson and EIA as the only efficient and reliable display device known for use in direct view sets. (Thompson, No. 4 at 7; and EIA, No. 21, at 5). The concept of Liquid Crystal Display (LCD) is functional in small sets but very restrictive and unreliable in larger sets (EIA, No. 21, at 5).

8. *One-gun tube* color television sets have been demonstrated as a prototype; however, its enormous cost and poor quality picture have placed serious limitations on its commercial feasibility, according to EIA. (EIA, No. 21, at 6).

4. Efficiency Levels Analyzed

Table 3.6 presents the efficiency levels selected for analysis for 1992. Alternate levels were selected to generate a range of impacts for analysis. The initial level selected, level 3, corresponds to the highest efficiency level, i.e., the "max-tech" level, identified in the engineering analysis. It was felt that manufacturers could produce products at this efficiency, and that these products would not have any reliability problems. Level 2 corresponds to the minimum life-cycle cost point. Level 1 corresponds to efficiency lower than that of level 2. These levels were analyzed discretely in the Engineering Analysis.

TABLE 3–6.—Standard Levels Analyzed for Television Sets (KWH/YR.)

Standard level	Standard	
	Monochrome	Color
1	NA	Standby power no greater than 2 W/h
2	47	7.3 S + 38
3	45	6.9 S + 42

S is screen size (diagonal) in inches.

Note that standard level 1 is not a performance standard. DOE's measures of energy consumption by television sets are receiver energy efficiency factor and annual energy consumption, both annual energy use measures. Standby power deals with energy consumption of the unit for that period when the unit is not in operation. Section 321(a)(6)(A) of the Act prescribes that a performance standard "prescribes a minimum level of energy efficiency or a maximum quantity of energy use." DOE's analysis assumed that for level 1, the baseline unit was unchanged except for the standby power.

However, a limitation on standby power does not necessarily have an effect on the energy efficiency or energy

consumption as defined by DOE at § 430.22. While standby power may be limited, changes to the design of the television set can result in more energy being consumed when the unit is on, thereby resulting in more total energy being used.

Payback Period. Table 3–7 presents the payback period for the efficiency levels analyzed. For the color class, level 1 is the only energy conservation standard level in which the additional price of purchasing a product at this efficency level will be less than three times the value of the energy savings the consumer will receive during the first year. No standard level for monochrome televisions pays back in less than 3 years. The payback period for units that meet level 1 efficiency is approximately three years for the color class.

TABLE 3–7.—PAYBACK PERIODS (IN YEARS) FOR TWO CLASSES OF TELEVISION SETS

Standard level	Payback periods	
	19" to 20" color	13" to 14" monochrome
1	2.9	NA
2	3.4	4.7
3	3.7	11.8

By the year 2015 the weighted average energy consumption of new television sets sold in absence of standards is projected to decline nearly 20 percent, compared to new sets sold in 1987.

Significance of Energy Savings. With energy conservation standards imposed, the LBL–REM projects that over the period 1992–2015, the following savings would be attributable to standards:

Level 1—.66 Quads
Level 2—.69 Quads
Level 3—.73 Quads

See Technical Support Document, Table 5.26. On the basis of the above, DOE believes that the standards considered for television sets would result in a significant conservation of energy.

Economic Justification—A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency ranges from $0.33 for a 13-inch monochrome set to $2.15 for a 19–20 inch color set. *See* Technical Support Document, Tables 3.29 and 3.30.

The purchase price to the consumer increases $4.30 for the 19/20-inch color television set. *See* Technical Support Document, Table 3.43.

LBL–MIM projects that television standards would result in ROE essentially unchanged, compared to the base case of no-standards. *See* Technical Support Document, Table 7.27.

The sensitivity analysis also indicates that the television set industry's ROE is relatively insensitive to standards. DOE believes this results from the proportion of manufacturing costs due to standards that can be passed on to consumers in the form of a higher price and a low consumer demand elasticity with respect to price and operating cost.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that for each possible standard level, except level 3, the increase in purchase price would be offset by savings in operating expenses. However, the LCC analysis indicates that for color television sets, the savings over the products' lifetimes would be slight and that for each standard level the savings are less than $5.00. *See* Technical Support Document, Figure 3.23. For 13 inch to 14 inch black and white televisions, the LCC savings over the expected lifetimes of the products are even slighter, as each candidate standard level would save less than $1.00. *See* Technical Support Document, Figure 3.24. This indicates that the standard level would not cause any economic burden on the average consumer.

The NPV analysis indicates that if a standard were adopted at level 1, 2, or 3, there would be a net present value of $1 billion from energy savings over the period 1992–2015. *See* Technical Support Document, Table 5.29.

C. *Energy Savings.* As indicated above, the maximum savings attributable to standards would be .73 Quads of electricity. This level would require the reduction of standby power and reduction of screen power, including a more efficient screen display.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE is required to establish classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of the regulated appliance. However, for television sets, the Department was not able to establish classes to assure the utility of the product. Almost every feature present on a television set that provides utility to the consumer, also affects the product's energy consumption. For example, remote control and stereo sound both provide utility to the consumer and affect energy consumption. Therefore, separate classes would have to be established for each feature, as well as for those products that have both features and those without either feature, a total of four classes, in order not to lessen the product's utility. However, because of the existence of a number of different features that provide utility but for which DOE has limited data on their energy consumption, the Department was not able to set separate classes for each. In addition, because the electronics industry is changing so rapidly, DOE believes that it is likely that future utility or performance would be lessened as a result of disincentives caused by standards to investments in energy-using new features.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Television sets use electricity as their energy source. Nearly one percent of the nation's electricity powers television sets, nearly 10 percent of that one percent would be saved by standards for this product at level 3. However, the sensitivity analysis on the LBL–REM indicates that if consumer awareness of, and concern with, appliance efficiency continues, the projected savings would be less than three percent of that one percent.

G. *Other Factors.* Television sets are presently not covered by the Federal Trade Commission (FTC) labeling program. Testing and certification could be an unusual burden on manufacturers of this product since testing and certification could result in delays in the rapid introduction of new technologies that characterize this industry. For example, a standard for television sets, involving the diversion of research and development monies to complying with the standard, could have an impact on the development of high resolution televisions, which is an effort that is presently being supported by the Federal Communications Commission (FCC).

Conclusion. After reviewing the effects that energy conservation standards on television sets would have, the Department is proposing a "no-standard" standard. The Department proposes that while energy conservation standards for television sets would save a significant amount of energy, they are not economically justified.

DOE believes standards for television sets would have insignificant impacts on consumer life-cycle costs, and could harm manufacturers, especially in their ability to introduce new products, i.e., by diverting research and development funds to complying with energy conservation standards. Any increase in cost to manufacturers due to efficiency testing and certification reporting will reduce the already small LCC savings. Furthermore, the Department is

concerned that standards could adversely impact the efforts to develop high resolution televisions, adversely affecting the future utility of the products.

For these costs, at standard level 3, the energy savings that the Nation would experience is approximately three-fourths of a Quad over 24 years, i.e., 1992–2015, which would result in minimal LCC savings, i.e., less than $5.00. The individual consumer would save only about one percent of his expected life-cycle costs.

Because of the relatively small impacts on energy consumption for television set consumer life-cycle costs, DOE believes that the manufacturer impacts described above are the most noteworthy.

Furthermore, because of limited available data on television sets, the standards analysis was unable to account for the wide variety of television features. Because of that, the Department believes that the establishment of energy conservation standards on television sets would restrict the utility and performance of new products.

Finally, as noted earlier, level 1 standard (standby power no greater than 2 watts per hour) was rejected from consideration because it does not meet either of the Department's two measures of television set energy consumption, namely, receiver energy efficiency factor and annual energy consumption. Standby power could be viewed as either a design standard or efficiency standard for a component. DOE views section 321(a)(6) of the Act as prohibiting standby power requirements for television sets.

Weighing the anticipated benefits against the potential costs, the Department is proposing that energy conservation standards for television sets, at each standard level considered, are not economically justified.

IV. Environmental, Regulatory Impact, Takings Assessment, Federalism and Regulatory Flexibility Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR Part 1500 *et seq.*), and the Department's own NEPA regulations (10 CFR Part 1021);
- Executive Order 12291 (46 FR 13193, February 19, 1981) which pertains to agency review of the impact of Federal regulations; and
- Executive Order 12630 (53 FR 8859, March 18, 1988) which pertains to agency consideration of Federal actions that interfere with constitutionally protected property rights.
- Executive Order 12612 (52 FR 41685, October 30, 1987) which pertains to agency consideration of Federal actions that would have a substantial direct effect on States, on the relationship between the National Government and the States, and on the distribution of power and responsibilities among the various levels of government.
- The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register**.

a. Environmental Review

DOE prepared an Environmental Assessment (EA) on the proposed standards pursuant to the National Environmental Policy Act of 1969, as amended, Pub. L. 91–190, 40 U.S.C. 4221 *et seq.*, and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500 through 1808). The EA addresses the possible incremental environmental effects attributable to the application of the proposed standards to the design of three types of covered products: refrigerators, refrigerator-freezers, and freezers; small gas furnaces; and television sets.

A Finding of No Significant Impact (FONSI) is published in today's **Federal Register**. The FONSI concludes that the proposed standards would result in no significant environmental impacts and that an environmental impact statement is not required.

The EA is part of the Technical Support Document and is available at the DOE Freedom of Information Reading Room at the address provided at the beginning of this notice.

b. Regulatory Impact Review

Executive Order 12291 (46 FR 13193, February 19, 1981) directs that, in proposing a major rule,[19] an agency perform a regulatory analysis. Such an analysis presents major alternatives to the regulation that could substantially achieve the same regulatory goal at lower cost, as well as a description of the costs and benefits (including potential net benefits) of the proposed rule.

DOE has determined that this proposed rule is a "major rule." Accordingly, a Draft Regulatory Impact Review has been prepared.

The Regulatory Analysis is summarized below. This summary focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft "Regulatory Impact Analysis," which will be available for public comment as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

It should be noted at the outset that none of the alternatives for refrigerators and small gas furnaces that were examined saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

Alternatives for Achieving Consumer Product Energy Conservation

Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action.
- Informational Action:
  - —Product labeling.
  - —Consumer education.
- Prescriptive Standards.
- Financial Incentives:
  - —Tax credits.
  - —Rebates.
- Voluntary Energy Efficiency Targets.
- The Proposed Approach (Performance Standards).

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable

[19] "Major rule" means any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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costs, and has been compared to the effectiveness of the proposed regulation.

If no new regulatory action were taken, then no new standards would be implemented for refrigerators, small gas furnaces, or television sets. This is essentially the "base case" for each appliance. In this case, between the years 1992 and 2015 there would be expected energy use of 46.94 Quads of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and DOE's public education and information program. Both of these alternatives are mandated by the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by five percent for refrigerators and by two percent for purchasers of small gas furnaces. This resulted in no energy savings, with expected consumption equal to that of the base case.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., prescriptive standards. For refrigerators, this involved assuming a 1.5 inch foam door and 5.0 EER compressor, and, for small gas furnaces, a power burner. This resulted in energy consumption, between 1992 and 2015, of 43.14 Quads, and savings of 3.8 Quads. The net present value, in 1987 dollars, was $8.52 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased cost of higher energy efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed almost no change from the base case, i.e., this alternative would save less than .01 Quad with a net present value of $20 million. Consumer rebates however, would save .04 Quad with a net present value of $210 million.

The consumer rebate program and the tax credit program would return to the participating consumer exactly the same amount of money. However, it is expected that there will be more participants in the rebate program. Therefore, the rebate program would result in substantially more energy savings than the tax credit program would.

The most important difference to the consumer between rebate and tax credit programs is that a rebate can be obtained quickly, whereas a tax credit is delayed until income taxes are filed or a tax refund is provided by the Internal Revenue Service. This means that middle and low income purchasers, who generally have little ready cash to purchase more expensive products, are not so likely to take advantage of the program as are upper income purchasers. To simulate this impact, DOE has assumed that only 60 percent of consumers would purchase more energy efficient products as a result of the tax credit program.

Another financial incentive that was considered was tax credits to manufacturers for the production of energy-efficient refrigerators and small gas furnaces. In this scenario, an investment tax credit (ITC) of 20 percent was assumed. The tax credits to manufacturers had almost no effect, since the energy consumption estimates are 46.93 Quads with savings equal to .01 Quad, and a net present value equal to zero.

The impact of this scenario is so small because the ITC was applicable only to the tooling and machinery costs of the firms, i.e., the firms' fixed costs, and most of the design improvements that would likely be adopted to manufacture more efficient refrigerator and small gas furnaces would involve purchased parts. Expenses for purchased parts would not be eligible for an ITC.

Two scenarios of voluntary energy efficiency targets were examined; in the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in five years, and, in the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, the five year delay would result in energy consumption by these appliances of 43.01 Quads, energy savings of 3.93 Quads, and a net present value of $8.41 billion; the 10 year delay would result in 44.75 Quads of energy being consumed, 2.19 Quads being saved, and a net present value of $5.47 billion.

These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by the refrigerator and small gas furnace manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this notice. Such performance standards would result in energy consumption of refrigerators, small gas furnaces, and television sets to total an estimated 41.01 Quads of primary energy over the 1992–2015 time period. Savings would be 5.93 Quads, and the net present value would be an expected $12.23 billion.

As noted at the beginning of this section, none of the alternatives that were considered for refrigerators and small gas furnaces would save as much energy as the proposed rule.

c. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards program that could conceivably be viewed as having "takings implications." These are testing and certification requirements, the impacts of standard levels, and possible DOE testing of products for validation.

With regard to the first part, namely, testing and certification, the Department believes that such a requirement, implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts does not constitute a "taking" of private property.

Similarly, the Department's possible validation testing does not constitute a "taking," within the limitations described above.

Lastly, the impact of standards could be viewed by some as a "taking." Nevertheless, the Department believes that the fact that while an energy conservation standard may limit some manufacturers in the range of appliance efficiencies that they can produce, such narrowing of the energy efficiency range does not constitute a "taking" in the sense described above.

In short, in none of the three parts of the appliance standards program does the Department believe that the provisions of E.O.12630 pertain.

d. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

DOE has identified a substantial direct effect that today's regulation, when finalized, would have on State governments. It would initially preempt inconsistent State regulations. However, DOE has concluded that the initially preemptive effect is not sufficient to warrant preparation of a federalism assessment for two reasons. First, DOE does not have discretion under the Act to avoid promulgating a preemptive regulation because of a policy preference for State regulation as a general matter. Second, the Act provides for subsequent State petitions for exemption which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

e. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of proposed regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In this rulemaking, three different products and, hence, industries, are being addressed. Regulatory flexibility for the television set industry, however, does not need to be considered since this notice is proposing no energy conservation standards on those manufacturers. Regulatory flexibility issues will be addressed for the two industries for which standards are being proposed.

First, the energy conservation standard of 78 percent AFUE on those small gas furnace manufacturers, who could be considered small businesses, will be discussed. There is no indication that the impact of standards will be directly related to firm size. Although different size firms have different cost structures, industry sources indicate that, overall, neither large nor small firms have a cost advantage and that neither large nor small firms tend to have a higher proportion of fixed cost. A corollary to this observation is that profits are also not correlated to firm size. Some large firms are quite profitable, others earn normal profits, while others are marginally profitable, and the same is true for smaller firms.

The Engineering Analysis indicates that the measures necessary to meet the standards levels under consideration involve using additional purchased parts. While larger firms may have some slight cost advantage from buying in larger quantities, the fact that the design options predominantly involve purchased parts tends to be an equalizing factor among different-sized firms.

Therefore, the fact that this energy conservation standard on small gas furnaces is not likely to "have a significant economic impact on a substantial number of small entities" suggests that the provisions of section 605(b) of the Regulatory Flexibility Act pertain. These provisions state that neither an initial nor a final regulatory flexibility analysis need be performed for a proposed or final rule "if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Secondly, the proposed energy conservation standards on refrigerator manufacturers needs to be addressed. It is not at all clear that the standard levels being proposed will "have a significant economic impact on a substantial number of small firms." The LBL–MIM indicates through its predictions of an increase in typical ROE that standards are likely to slow down the consolidation process temporarily. This would lead to a temporary slowing down of the continuing decrease in this industry's competitiveness. However this prediction would be tempered by the observation that if standards were technologically difficult to meet they could hurt some smaller firms the most, since smaller firms tend to have less sophisticated research and development capabilities. This should not be a serious consideration for regulatory flexibility since the proposed standard levels on refrigerators will not be technologically difficult to meet.

Of the eight small refrigerator firms reviewed for this analysis, three make custom refrigerators, three make compact units (largely for mobile homes and recreational vehicles), and two make 3-in-1 units with range tops and sinks.

The analysis of combined-unit manufacturers is straightforward. Three-in-one units are not covered by the present standards, so these manufacturers will not be affected.

The custom refrigerator manufacturers seem to be fairly well protected for two reasons; they are not exposed to either direct foreign competition or direct competition from major domestic firms, and because they produce custom units they have a greater ability to make design changes compared to a large manufacturer. These two facts indicate that standards will probably not hurt the custom manufacturer's control of its market; however, its market may shrink due to price increases. This cannot be estimated without engineering data and an estimate of the elasticity of demand in this market. One thing must be remembered when analyzing this problem: standards will increase the price of standard refrigerators and this will offset (partly or more than completely) the impact of the price increase of custom refrigerators.

The three small manufacturers of compact refrigerators are probably at the greatest risk, both without standards and from standards. They face stiff foreign competition from large foreign manufacturers. Some anecdotal evidence indicates that part of their current competitive strategy is to use cheaper, less efficient compressors than their foreign competition. Depending on the level of standards, this option could be foreclosed, forcing them to buy compressors at a higher price than that paid by their larger competitors who either buy in volume or in some cases manufacture their own. Still, it would seem that these small manufacturers must have some advantages from the niche they occupy or they would have already succumbed to their competition. These advantages would need to be accounted for before a firm conclusion could be drawn.

Now consider the truly small firms—those that cater to very specialized niche markets. There are only about a dozen of these and they tend to be very small compared with the major firms. Because of this, they have little time to cooperate with data collection efforts and consequently relatively little is know about them. Specifically, engineering cost data is not separately available for small firms nor are demand elasticities available. Small firms are generally not members of AHAM. Consequently, most were not included in information provided by AHAM concerning the Department's analysis and, of the ones that were, only one was included. Because of this no

financial data specific to small firms are available.

The foregoing discussion suggests that only three of the eight small manufacturers on whom the effects of standards were evaluated, would possibly suffer from the proposed standards on refrigerators. The Department believes that in this industry, too, the provisions of section 605(b) are applicable, since there is no certainty that the proposed rule will "have a significant economic impact on a substantial number of small entities."

V. Public Comment Procedures

a. Participation in Rulemaking

DOE encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers' associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 60 days following publication of this notice for persons to comment on this proposal.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Three Products Rulemaking (Docket No. CAS–RM–87–102)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 10 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedure for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Three Products Rulemaking (Docket No. CAS–RM–87–102)," and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered or phoned in to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the time they will be speaking.

Each person selected to be heard is requested to submit 10 copies of the statement at the beginning of the hearing. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who have made oral presentations, as well as employees of the United States Government who have made written or oral presentations, relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

d. Issues Requested for Comment

As discussed above in today's notice, DOE has identified a number of issues where comments are requested. These issues include, but are not limited to the following:

- The refrigerator baseline units and the base case;
- Refrigerator market share elasticities;
- Rebound effect for refrigerators, television sets, small gas furnaces and all other space heating and cooling products;
- Refrigerator usage elasticities;
- Appropriate discount rates, including those for consumer analyses (LCC and LBL–REM) and the use of a social discount rate (LBL–REM);
- Energy price forecasts;
- The characterization of prototypical firms for the manufacturer impact analysis (LBL–MIM);
- Impacts of the EPA restriction on CFC manufacture; and
- Refrigerator efficiency forecasts.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, November 22, 1988.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, National Appliance Energy Conservation Act of 1987, and National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291–6309).

2. Subpart C of Part 430 is revised to read as follows:

Subpart C—Energy Conservation Standards

Sec
430.31 Purpose and scope.
430.32 Energy Conservation Standards.

Subpart C—Energy Conservation Standards

§ 430.31 Purpose and scope.

This subpart contains any energy conservation standards for classes of covered products that are required to be administered by the Department of Energy pursuant to the energy conservation program for consumer products other than automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*).

§ 430.32 Energy conservation standards.

The energy conservation standards for the covered product classes are:

(a) Refrigerators/refrigerator-freezers/freezers.

Product class	Energy standards equations January 1, 1993 [2]
1. Refrigerators and refrigerator-freezers with manual defrost	(16.3AV + 316) to (11.9AV + 258).
2. Refrigerator-freezers-partial automatic defrost	(21.8AV + 429) to (14.1AV + 305).
3. Refrigerator-freezers-automatic defrost with top-mounted freezer without ice [1]	(23.5AV + 471) to (16.8AV + 363).
4. Refrigerator-freezers-automatic defrost with side-mounted freezer without ice	(27.7AV + 488) to (13.1AV + 540).
5. Refrigerator-freezers-automatic defrost with bottom-mounted without ice	(27.7AV + 488) to (17.9AV + 386).
6. Refrigerator-freezers-automatic defrost with top-mounted freezer with through the door ice service	(26.4AV + 535) to (17.6AV + 380).
7. Refrigerator-freezers-automatic defrost with side-mounted freezer with through the door ice	(30.9AV + 547) to (15.2AV + 625).
8. Upright freezers with manual defrost	(10.9AV + 422) to (12.3AV + 181).
9. Upright freezers with automatic defrost	(16.0AV + 623) to (18.0AV + 264).
10. Chest freezers and all other freezers	(14.6AV + 223) to (11.2AV + 163).

[1] Including all refrigerators with automatic defrost.
[2] The Energy Standards Equations selected will be from these ranges.
AV = Total adjusted volume, expressed in Ft [3].

(b)–(d) [Reserved]

(e) Furnaces.

Product class	Annual fuel utilization efficiency (percent)	Effective date
1.–2. [Reserved]		
3. Small furnaces (input rate less than 45,000 Btu/hours:		
(A) Weatherized (outdoor)	78	January 1, 1992.
(B) Non-weatherized (indoor)	78	January 1, 1992.

(f)–(k) [Reserved]

(l) Television Sets.

No standard.

[FR Doc. 88–27595 Filed 12–1–88; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Finding of No Significant Impact

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact (FONSI) on proposed rulemaking for energy conservation standards for 3 types of consumer products.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA) and the National Appliance Energy Conservation Act (NAECA), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. As a general matter, these Federal standards preempt State and local standards and any other State and local requirements with respect to energy efficiency or energy use of these products. Among other things, NAECA requires DOE to consider amending the energy conservation standards for refrigerators, refrigerator-freezers, and freezers; to establish standards for small gas furnaces; and to consider establishing energy conservation standards for television sets.

In accordance with NAECA, the Department has reviewed possible standards for refrigerators, refrigerator-freezers and freezers, small gas furnaces and television sets as discussed in today's notice of proposed rulemaking.

For refrigerators, refrigerator-freezers and freezers, the Department is proposing a range of standards that includes not increasing the stringency of the standard level. DOE is soliciting comments and information from the public to be considered in promulgating the final rule. As discussed in the proposed rule, the final rule will specify a specific level for refrigerators, refrigerator-freezers and freezers.

For small gas furnaces, the Department is proposing to determine that standards would result in a significant conservation of energy and be economically justified. Therefore, the Department is today proposing to amend 10 CFR Part 430 to add standards for this product.

Finally, for television sets, the Department is proposing to determine that an energy conservation standard would result in a significant conservation of energy but would not be economically justified. Therefore, the Department is proposing to amend Part 430 to include a determination of no standard for television sets.

Based on an Environmental Assessment (EA), DOE has determined that none of the proposed standards, including the "no standard" for television sets, are a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA). Therefore an Environmental Impact Statement will not be prepared. The EA is part of the Technical Support Document for the proposed standards and is available on request at the following address.

Public Availability

Hearings and Dockets Branch, Office of Conservation and Renewable Energy, U.S. Department of Energy, Docket Number CE–RM–87–102, 1000 Independence Avenue SW., Room 6B–025, Washington, DC 20585: (202) 586–9320.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Donald E. Henninger, U.S. Department of Energy, Office of NEPA Project Assistance, Forrestal Building, Mail Station EH–25, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600.

Martha S. Crosland, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–11, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6947.

SUPPLEMENTARY INFORMATION: DOE prepared an Environmental Assessment (EA) on the proposed standards pursuant to the National Environmental Policy Act of 1969, as amended, Pub. L. 91–190, 40 U.S.C. 4221 *et seq.*, and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500 through 1808). The EA addresses the possible incremental environmental effects attributable to the application of the proposed standards to the design of refrigerators, refrigerator-freezers, and freezers; and small gas furnaces. The EA also looked at the impact of energy conservation standards for television sets. As discussed in the General Findings, the "no standard" standard for televisions will not change the status quo and therefore will not result in any environmental impact. The effect of the proposed standards range from no change to a slight improvement in the outdoor environment as discussed in the General Findings below.

Approach Used in the Analysis

This assessment evaluates the environmental impacts resulting from the proposed setting of new or amended energy-efficiency standards for refrigerators, refrigerator-freezers, freezers, and small gas furnaces and the proposed setting of no standards for television sets in accordance with the NAECA. A complete description of the Engineering and Economic Analysis of the proposed standards may be found in the Technical Support Document (TSD).

The two main environmental concerns addressed are emissions from fossil fuel fired electricity generation and the chlorofluorocarbons used in the production of rigid insulation foam.

Four of the fourteen scenarios for product design changes described in the Engineering Analysis of the TSD were chosen for study based on their relative importance as design measures. Values for energy savings that result from product design changes are also taken from the TSD.

An in-depth analysis of particulate emissions is not included in this assessment because particulate emissions are relatively small compared to sulfur and nitrogen oxide emissions. Current electricity generating methods are far cleaner than those of the past. In 1984, power plants contributed only 7 percent of U.S. total particulate emissions as compared to contributions of 83 percent and 34 percent to total SO_2 and NO_2 emissions, respectively (EPA, 1986).

General Findings

1. Refrigerators, Refrigerator-Freezers and Freezers

The proposed standards for refrigerators, refrigerator-freezers, and freezers range from retaining the federally mandated standards contained in NAECA, up to three more stringent standards. The greatest impacts of the proposed standards, other than the minimum NAECA standards, are the result of generating less electricity. Power plants' main environmental effects on air and water result from emissions of sulfur oxides (SO_x), nitrogen oxides (NO_x), and carbon dioxide (CO_2). All SO_x and NO_x emissions are expressed in the equivalent weights of SO_2 and NO_2, respectively. Carbon dioxide emissions are commonly expressed as tons of carbon. Additionally, there would be some shifting of CFC use. General findings are summarized below:

A. Sulfur Dioxide

The greatest decrease in air pollution will occur for sulfur dioxide. The possible reductions range from no change up to 151,000 tons or 0.9 percent of the U.S. SO_2 emissions expected to be emitted by power plants by the year 2010 for the most stringent standard proposed.[1]

B. Nitrogen Dioxide

The possible reductions in NO_2 range from no change up to 100,000 tons or 1.0 percent of the total NO_2 emissions expected to be emitted by power plants by the year 2010 for the most stringent standard proposed.[2]

C. Carbon Dioxide

The possible reductions in CO_2 range from no change up to the equivalent of 9,180,000 tons or 0.2 percent of the worldwide CO_2 emissions for the year 2010 for the most stringent standard proposed.[3]

D. Chlorofluorocarbons

An additional effect of some design change scenarios is an increased consumption of CFC's. CFC–11 is contained in the rigid foam insulation used in the appliances and CFC–12 is the heat exchange fluid used in refrigerators and freezers. The possible increased use ranges from no change to one percent of the 1985 total United States CFC–11 and CFC–12 consumption for the most stringent standards proposed. However, since CFC production has been limited, any extra consumption would have to come from other uses and would not result in a net increase in CFC production.

None of the environmental impacts from the savings of SO_2, NO_2, or CO_2 from the range of proposed standards are considered to be significant.

2. Small Gas Furnaces

The greatest impact of the proposed standard for small gas furnaces is a decrease in electricity consumption as some households shift from electric heating to small gas furnaces and decreases in gas and oil burned in homes. General findings are summarized below:

A. Sulfur Dioxide

The reduction in SO_2 would be 6800 tons or 4.2 percent of the emissions estimated to come from residential fuel combustion during 2010.

B. Nitrogen Dioxide

The reduction in NO_2 would be 5100 tons or 1.3 percent of the emissions estimated to come from residential fuel combustion during 2010.

C. Carbon Dioxide

The reduction in CO_2 would be equivalent to 569,000 tons of carbon or .01 percent of the worldwide CO_2 emissions for the year 2010.

None of the environmental impacts from the savings of SO_2, NO_2, or CO_2 from the proposed standard are considered to be significant.

3. Television Sets

The proposed "no standard" standard for television sets results in no impact on the environment since it will not change the status quo. DOE is unaware of any State or local energy conservation standards concerning television sets that would be preempted by the "no standard" standard. The only state standard for television sets of which DOE is aware is the New York State standard that bans the "instant-on" feature of tube type televisions. However, since tube type television sets are no longer manufactured, such standards currently have no effect.

Determination

Based upon the EA, DOE has determined that the proposed interim standards do not constitute a major federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an Environmental Impact Statement is not required.

Issued in Washington, DC, November 7, 1988.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–27596 Filed 12–1–88; 8:45 am]

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[1] The upper levels are interpolated from data in Table 5.8 of the Technical Support Document for energy savings and Tables 1, 2, 5, and 6 of the Environmental Assessment for pollutant reductions. The interpolation is made between standard level 1 (engineering level 3) and standard level 4 (engineering level 8).

[2] Ibid.

[3] Ibid.

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Part IV

Environmental Protection Agency

Proposed Guidelines for Exposure-Related Measurements and Request for Comments; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3484-8]

Proposed Guidelines for Exposure-Related Measurements

AGENCY: Environmental Protection Agency.

ACTION: Proposed guidelines for exposure-related measurements and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing risk assessment guidelines for exposure-related measurements, and invites public comment.

The Proposed Guidelines for Exposure-Related Measurements are intended to assist those who must recommend, conduct, or evaluate an exposure assessment. These proposed guidelines were developed as part of an interoffice guideline development program under the auspices of EPA's Risk Assessment Forum. The current proposal incorporates comments from external and internal peer reviewers. EPA's Science Advisory Board (SAB) will review these proposed guidelines at a meeting to be held on December 2, 1988. For further details regarding the SAB review, contact Jan Kurtz at (202) 382–2552.

DATES: Comments must be postmarked by March 2, 1989.

ADDRESS: Comments may be mailed or delivered to: Michael A. Callahan, Director, Exposure Assessment Group, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Inspection and copies: References, support documents, and other relevant materials will be available for inspection and copying at the Public Information Reference Unit (202–382–5926), EPA Headquarters Library, 401 M Street SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: John Segna or Michael Callahan, telephone: 202–475–8909.

SUPPLEMENTARY INFORMATION: In its 1983 book "Risk Assessment in the Federal Government: Managing the Process", the National Academy of Sciences recommended that Federal regulatory agencies establish "inference guidelines" (1) to promote consistency and technical quality in risk assessment, and (2) to ensure that the risk assessment process is maintained as a scientific effort separate from risk management. A task force within EPA accepted that recommendation and requested that Agency scientists begin to develop such guidelines.

In 1984, EPA scientists began work on risk assessment guidelines for carcinogenicity, mutagenicity, suspect developmental toxicants, chemical mixtures, and exposure assessment. Following extensive scientific and public review, these five guidelines were issued on September 24, 1986 (51 FR 33992–34054).

The guidelines proposed today continue the guidelines development process initiated in 1984. Like the guidelines issued in 1986, the new proposal sets forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments and to inform Agency decision-makers and the public about these procedures. In particular, the guidelines emphasize that risk assessments will be conducted on a case-by-case basis, giving full consideration to all relevant scientific information. This case-by-case approach means that Agency experts study scientific information on each chemical under review and use the most scientifically appropriate interpretation to assess risk. The guidelines also stress that this information will be fully presented in Agency risk assessment documents, and that Agency scientists will identify the strengths and weaknesses of each assessment by describing uncertainties, assumptions, and limitations, as well as the scientific basis and rationale for each assessment.

The guidelines are formulated in part to bridge gaps in risk assessment methodology and data. By identifying these gaps and the importance of the missing information to the risk assessment process, EPA wishes to encourage research and analysis that will lead to new risk assessment methods and data.

Work on the Proposed Guidelines for Exposure-Related Measurements began in 1986. The draft guidelines were developed by Agency work groups composed of scientists from throughout the Agency, and the drafts were peer-reviewed by experienced professionals from environmental groups, industry, EPA, and other governmental agencies. During the public comment period, reviewers are requested to comment specifically on the guidance for interpreting contaminated blanks vs. field data (section 2.5.4), the interpretation of data at or near the limit of detection (section 3.3.2), approaches to assessing uncertainty (section 3.4) and, the Glossary of Terms. Public comment is also invited on the following questions: Should these guidelines be combined with the 1986 guidelines? Is the current state-of-the-art in making measurements of population activities for the purpose of exposure assessment advanced to the point where the Agency can construct guidelines in this area? Given that these guidelines are not necessarily a protocol or detailed literature review, is the level of detail of these guidelines useful and appropriate, especially in the area of statistics?

After SAB and public comment, Agency staff will prepare summaries of the comments and analyses of major issues presented by the commentors. The comments will be considered by EPA's Risk Assessment Forum and Risk Assessment Council in the development of final guidelines.

Date: November 22, 1988.

John A. Moore,

Chairman, Risk Assessment Council.

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1. Introduction

1.1. Purpose of the Guidelines

In 1984, EPA organized a new program to ensure scientific quality and technical consistency in the Agency's risk assessments. Included in the program's goals was the development of Agencywide guidelines for risk assessment. The first group of five guidelines was issued in 1986 and included The Guidelines for Estimating Exposures (U.S. EPA, 1986a). The Proposed Guidelines for Exposure-Related Measurements is a companion and supplement to the Guidelines for Estimating Exposures.

The Guidelines for Estimating Exposures were developed to help avoid inadvertent mistakes of omission. They present the risk assessor with a set of questions to be considered in carrying out an exposure assessment and provide a procedural framework for estimating the degree of human contact with a chemical of concern. The Guidelines for Estimating Exposures set forth internal Agency procedures that facilitate consistency by developing common approaches to exposure assessments and by promoting the quality and accuracy of science underlying EPA exposure assessments.

As stated in the Guidelines for Estimating Exposures, "Ideally, exposure measurements are based on measured data. EPA recognizes that gaps in data will be common, but the Guidelines will nevertheless serve to assist in organizing the data that are available, including new data developed as part of the exposure assessment. In the absence of sufficient reliable data and the time to obtain appropriate measurements, exposure assessments may be based on validated mathematical models. Whenever possible, exposure assessments based on modeling should be complemented by reliable measurements." Comments received on the Guidelines for Estimating Exposures, including comments from EPA's Science Advisory Board (SAB), suggested a supplement dealing in more detail with how to make and use measurements in exposure assessment. In accord with these suggestions, the Agency prepared the Proposed Guidelines for Exposure-Related Measurements.

This document focuses primarily on chemical measurements in various physical and biological media. The guidelines are intended to help exposure assessors make informed choices regarding collection and interpretation of these types of data. Other types of exposure-related measurements (e.g., activity profiles) are not considered in detail here.

The Proposed Guidelines for Exposure-Related Measurements (hereinafter Guidelines) are not intended to serve as a step-by-step instructional guide, but to convey general principles. They represent a collection of information already refined by consensus approval. As the Agency performs more exposure assessments and incorporates various novel approaches, these Guidelines will be revised.

1.1.1. Intended Audience

These Guidelines are intended to assist those who must recommend, conduct, or evaluate an exposure assessment. Exposure assessment is a multidisciplinary process that should reflect the combined input of analytical and environmental chemists, biologists, engineers, statisticians, and others as appropriate. To ensure a credible exposure assessment, the assessor must be familiar with the site or program-specific needs and the factors that affect how well these needs will be fulfilled.

Important aspects to be considered when generating new data (i.e., making measurements) include sampling plans, field activities, and analytical methodologies. Exposure assessors will enhance their expert judgment with sample designs that provide objective measurements. The purpose of sampling an environmental medium, or of sampling exposures directly for an individual, or of sampling tissues or body fluids, is to make an inference about the nature of quality of the whole medium, population, or absorbed dose. Statistics, while a useful tool, cannot alone provide the rationale for the link between the sample and the whole. It is the exposure assessor, as builder of the assessment, who must provide the explanation and justification for this link, usually through carefully laid out logic as to why the sample is accurate and representative. Statistics, and the help of a statistician, however, are often essential parts of establishing the link between the sample and the population of inference.

When evaluating data (i.e., using exposure-related measurements) exposure assessors should carefully examine the relationship between the population on which the measurements were made and the population about which inferences are desired. Another matter to be considered and understood is the possible difference between statistical significance and practical significance. The former term relates to whether observed differences could be the result of the variability of the data used in a decision process. The latter relates to whether the difference, if real, would be of practical importance. For a given set of circumstances, measures of statistical significance should not vary from one assessor to another because they are calculated using established procedures, while statements on practical significance are very likely to vary from assessor to assessor since they are matters of opinion.

1.1.2. Organization of the Guidelines

These Guidelines consist of three parts. The introduction describes some general aspects of exposure assessment and some major sources of measurement data used in exposure assessment. The second chapter discusses the making (i.e., generation) of measurements for exposure assessments including the role of the exposure assessor, sampling plans, uncertainty analysis, quality assurance, quality control, and method selection. The third chapter describes the use of measurements in exposure assessments including evaluation of uncertainty in the use of measurements, the role of limit-of-detection values, and the use of surrogate data.

1.1.3. Role of Technical Support Documents

It is impracticable to create guidelines that give specific step-by-step instructions for every situation. The assessor should consult technical support documents, such as those referred to in these Guidelines, for more specific information.

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1.2. Exposure Assessment

The National Research Council (NRC) in 1983 described risk assessment as containing some or all of the following four steps: *Hazard identification* (the determination of whether a particular chemical is or is not causally linked to particular health effects), *dose-response assessment* (the determination of the relation between the magnitude of exposure and the probability of occurrence of the health effects in question), *exposure assessment* (the determination of the extent of human exposure before or after application of regulatory controls), and *risk characterization* (the description of the nature and often the magnitude of human risk, including attendant uncertainty).

Once a dose-response relationship is established, and often this is done in a controlled situation such as a laboratory, one can make statements such as, "if the dose is 'x,' then the response should be 'y.' " A major problem confronting risk assessors when trying to apply the dose-response relationship to an actual "real-world" problem is the question of what dose to as representative of the actual situation. The primary purpose of an exposure assessment is usually to estimate the real-world dose value to use in a dose-response relationship.

The EPA Guidelines for Estimating Exposure (U.S. EPA, 1986a) define exposure as the contact with a chemical or physical agent. The magnitude of this contact is determined by measuring or estimating the amount of an agent available at the exchange boundaries (i.e., lungs, gastrointestinal tract, skin) during some specified time. Once the agent is absorbed through these boundaries, the amount crossing the boundary becomes the absorbed dose. Exposure assessment is the qualitative or quantitative determination/estimation of the magnitude, frequency, duration, and route of exposure. Exposure are sometimes referred to in the literature in terms of "administered dose" or "applied dose," which describe contact with the organism, but not absorption. These terms tend to be confusing and should not be used to describe exposure if avoidable. Exposures assessments often present not only the exposures, but also the absorbed doses, which can be calculated from exposure if the absorption fraction is known (see the Glossary of Terms).

Over the last decade, exposure assessors have generally approached the evaluation of real-world exposures in three ways: by trying to measure the exposure directly while it is taking place ("the direct measurement approach"), by trying to reconstruct an absorbed dose from evidence within an organism after the exposure and absorption have taken place ("the reconstructive approach"), or by trying to make estimates of the distribution of the chemical and the organism separately, then linking them ("the predictive approach"). All of these approaches involve measurements of some kind, and the measurements used in these approaches to determine or estimate exposure are generally termed "exposure-related measurements." This term applies to measurements taken for use in an exposure assessment, whether or not they measure actual exposures directly, or directly provide information upon which exposure will ultimately be estimated.

1.3. Sources of Measurement Data

This section describes some of the methods currently used to provide reliable measurements for exposure assessment needs. The methodologies discussed below focus on direct measurement of exposure, measurement of biological markers, and measurements for characterization of media for predictive assessments. These Guidelines will not discuss the collection of data on population activity patterns, although it is recognized that these data play an important role in exposure assessment.

The reader should keep in mind that the measurements discussed in sections 1.3.1 through 1.3.3 share s similarity in that for most of them, a substance or medium is being analyzed for chemical content. However, the *use* of the resulting measurement data is fundamentally different for the three different approaches to exposure assessment, and therefore considerations in *making* these measurements vary also.

1.3.1. Direct Measurement of Exposure

Direct measurement of exposure measures the contact of a chemical with an organism (human or nonhuman) while it occurs, by measuring the chemical concentrations at human physical exchange boundaries (skin, lungs, etc.) as a function of time (e.g., throughout a day) to obtain an exposure profile. A number of individual profiles can be statistically aggregated to make statements about the exposure profiles for human or nonhuman populations, provided the individuals sampled have a known relationship to the entire population.

As the name implies, the direct measurement method relies essentially on measured data. The best-known example of the direct measurement of exposure is the radiation dosimeter, a small badge-like device worn in areas where exposure to radiation is possible. The dosimeter effectively measures exposures to radiation while it is taking place, then indicates when a preset level has been exceeded. Another example of direct measurement of pollutant exposure is provided by the Total Exposure Assessment Methodology (TEAM) studies (U.S. EPA, 1987a) conducted by EPA. In the TEAM studies, a small pump with a collector and absorbent is attached to a person's clothing and measures the exposures to airborne solvents or other pollutants while the exposure takes place. The absorbent cartridges are then analyzed for a variety of chemicals. A third direct measurement example is given by the carbon monoxide (CO) studies done by EPA in the 1980s, where a small CO measuring device was carried by a number of people over several days (U.S. EPA, 1984a). The device had a recording capability which allowed the assessor to analyze the exposure to CO over that time period. In all three of these examples, the key to direct measurement techniques is that the measurements must be taken at the interface between the person and the environment and measure the exposure while it is taking place.

1.3.2. Biological Monitoring for Reconstructive Exposure Assessment

Another method, yielding useful measurement data for reconstructive exposure assessments, involves biological monitoring. Biological tissue or fluid measurements that reveal the presence of a chemical may indicate directly that an exposure has occurred, provided the chemical is not a metabolite of other chemicals. There has been much interest in relating biological sample levels to exposure, particularly for occupational exposure where chemical concentrations are high enough to permit easier detection.

Four types of measurements using biological monitoring can be used to evaluate the amount of a chemical in the body:

1. Measurement of the concentration of the chemical itself in various biological tissues or fluids (blood, urine, breath, hair, adipose tissue, etc.) (body burden).
2. Measurement of the concentration of one or more of the biotransformation products (metabolites) of the chemical.
3. Measurement of a biological effect that occurs as a result of human exposure to the chemical (e.g., alkylated hemoglobin) (types of biomarkers).
4. Measurement of the amount of a chemical bound to target molecules (e.g.,

DNA adducts or chromosome aberrations) (types of biomarkers).

The results of biomonitoring can be used to estimate the amount of chemical uptake during a specific interval if the relationship between uptake and the markers selected is known (i.e., pharmacokinetics are known) and if background levels before the exposure interval are known.

Reconstructive exposure assessment relies heavily on measured data. However, the data on body burden or biomarker values cannot be used directly for exposure assessment unless a relationship can be established between these levels and absorbed dose, and interfering reactions (e.g., from metabolism of nonrelated chemicals) can be accounted for or ruled out. Biological monitoring for exposure assessment usually involves sampling tissues or fluids for the purpose of making inferences about absorbed dose.

1.3.3. Measurements for Predictive Exposure Assessment

In predictive exposure assessment, the assessor attempts to match, or link, individuals or collections of individuals with the concentrations of chemicals or agents they are contacting. Usually, the assessor addresses the characterization of the individuals or population separately from the characterization of the chemical or agent. Population characterization involves identifying those individuals who are exposed and the activities (habits) that bring them into contact with the chemical or agent. This may involve demographics, survey statistics, behavior observation, activity diaries, or other means of obtaining this information. Although population characterization may involve measurements, these measurements are fundamentally different from the chemical/media characterization discussed in these Guidelines, and therefore will not be specifically discussed further here.

Measurements employed in characterizing the chemical or agent in predictive exposure assessments are quite varied, but they all share a common purpose: to use sampling to make inferences about the distribution of chemical/agent concentrations in the media being sampled. Measurements are often used as inputs to models. Once the concentration distribution has been estimated or measured, this information can be combined with the population characterization to estimate exposure.

The following are a few examples of the types of measurements used in predictive exposure assessment to characterize the concentrations of chemicals or agents in various media. *Fixed location monitoring* has been used by the Agency and other groups to provide a record of pollutant concentration at one spot over some length of time. Nationwide air and water monitoring programs have been established to provide continuous monitoring of pollutant concentration so that "baseline" values in these environmental media can be documented. *Measurements in environmental media* can also be done in focused studies which look for specific chemicals or agents in specific places and time. *Indoor air measurements* simply refer to the geographic zone monitored. There are valid reasons for differentiating indoor measurements from outdoor ones, since when performing an exposure assessment, the considerable time spent indoors for most persons needs to be linked with the concentrations they are exposed to indoors. The home, office, automobile, or other defined areas are often called *microenvironments*, and are used in predictive exposure assessment to better link chemical concentrations with individuals or populations. *Breathing zone measurements*, usually associated with industrial hygiene studies of worker exposure, refer to measurements taken by a fixed location device situated at approximately head height at or near where the worker spends a substantial amount of time. Note that this differs from direct measurement, since the monitor is fixed rather than moving with the worker. *Food and drinking water measurments* are often made to characterize these potential exposure pathways. General characterization of these media, such as market basket studies, shelf studies (where foodstuffs are taken from store shelves and analyzed), or drinking water quality surveys are linked in a predictive exposure assessment with the characterization of the individuals or population assessed. (Again, this differs from direct measurement of exposure, where measurements of food and drinking water are taken as split samples simultaneously as an individual is ingesting them.) *Source characterization measurements* usually refer to sampling to determine the rate of release of chemicals or agents into the environment from a point of emission such as an incinerator, landfill, industrial or municipal facility, or other source. Often these measurements are used to estimate emission factors, or a relationship between releases and operating parameters of a facility (x mg of chemical released per ton of waste burned, etc.). The release rates are often combined in a predictive exposure assessment with environmental transport and transformation (environmental fate) data or models, resulting in an estimate of the distribution of the release in the environment over time. This distribution must then be linked to individuals or populations before exposures can be estimated. *Consumer or industrial product analysis* is sometimes done to characterize the concentrations of chemicals or agents in products with which individuals came in contact. In predictive exposure asssessment, this information can be linked with population activities to estimate exposures, provided information is known about how much the individual actually comes in contact with the product. (For example, when holding a product, an individual does not usually contact the entire product, nor do the chemical additives immediately become available on the surface being contacted, etc.)

31.4. Quality Assurance and Quality Control Requirements

While the preceding discussion has described a number of types of measurements, all of them must provide sufficient proof of reliability. This proof is embodied in the form of quality assurance and Quality Control. The Agencywide quality assurance policy stipulates that every monitoring and measurement project undertaken by the Agency must have a written, approved Quality Assurance Project Plan (QAPjP) and Data Quality Objectives (DQOs).

EPA's Office of Research and Development (U.S. EPA, 1983) has published "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", which describes the sixteen elements required in every QAPjP and establishes criteria for plan preparation, review, and approval. Every QAPjP should contain procedures that can be used to document and report precision, accuracy, and completeness of environmental measurements.

Individual EPA program offices have prepared more specific guidance based on this general guidance package.

1.5 Other Requirements

An exposure assessor must also be aware of other requirements that are important in specific types of assessments. For example, one must consider that in the process of obtaining direct measurements of exposure in all Federally-funded exposure studies that mandatory submission of a complete survey design to the Office of

Management and Budget (OMB) may be necessary. The guidelines for all such submissions are outlined in the Federal Paperwork Reduction Act (U.S. OMB, 1988).

2. Guidelines for Making Measurements for Exposure Assessments

2.1 Responsibilities of the Exposure Assessor

As noted in section 1.2, the exposure assessor's task is to obtain or estimate dose information representative of actual exposure situations for use in the dose-response relationships which are generally established under controlled conditions, usually in a laboratory. Since dose involves both the organism and the chemical, obtaining representative dose information involves establishing a link between the organism and the chemical. Again, exposure assessors commonly attempt to make this link in any of several ways: by direct measurement, by predictive relationships involving individual study of the distribution of the organisms and chemical in time and space, or by reconstructing the dose after it has occurred. In most cases, the exposure assessor works from individual organism exposures and aggregates these to make statements, inferences, or conclusions about the exposure profiles of collections of individuals (subpopulations, populations, etc.).

In order to make these inferences and conclusions, the assessor often uses measurements along with the concept of sampling. A sample is a small portion of a whole (e.g., specimens of water from the entire drinking water distribution system, 10 cubic meter portions of air within a home, several individuals in a town of 25,000) intended to represent the nature or quality of the whole. The most important responsibility of the exposure assessor is to understand and explain the relationship between the measurement data (samples) and the conclusions drawn about exposure to the subpopulation or population being assessed (the whole).

Good planning, sound statistics, and adequate quality control will go a long way toward building that link between sample and whole. The ultimate utility of new measurements taken for exposure assessment is strongly influenced by sampling strategy (sampling locations, sampling frequency, sampling duration), quality assurance (e.g., sample preparation, handling, and preservation), and knowledge about systematic and random sampling errors (American Chemical Society, 1983). It is incumbent on the exposure assessor to be well informed and to participate in such decisions relating to the making of measurements so that the sampling process is relevant to the questions being asked of the assessor. In addition, the exposure assessor should be involved (along with an analytical chemist and statistician) in selecting the appropriate analytical methods. Likewise, the exposure assessor needs to be involved in quality assurance, control, and assessment. The following discussion is intended to assist the exposure assessor in the highly complex process of making measurements for exposure assessments. The subject areas described below are often interrelated and, even though the process of planning and executing exposure-related measurements is described in a sequential manner, the exposure assessor must recognize the interative nature of the entire process.

2.2 Defining Objectives

A critical choice which must be made early in the process of conducting exposure-related measurements is the decision regarding exactly what is to be measured, what data quality is required, and what resources are available to carry out the study. In order to accomplish this, the exposure assessor must first explicitly define the overall objectives including the type of assessment (i.e., direct, predictive, or reconstructive) that the study is intended to support, the approach to be followed, and the nature of the decisions that will be made based on the data. Studies can range form being scoping in nature, intended to develop a hypothesis for further testing, to detailed investigations for the purpose of deciding on remedial actions or to support regulatory decision-making. In every case proper planning prior to data collection is essential to ensure that the results of the study are consistent with the anticipated uses of the data.

To facilitate this planning, the exposure assessor should keep some basic questions in mind:

Why is the study being conducted? What questions (hypotheses) does the study intend to address and to what uses will the results be put?

Where does the study area begin and where does it end? Is the intent of the study to make inferences on a national, regional, or local scale?

Who is to be monitored? Will the study involve human and/or nonhuman populations? How are they to be identified, characterized, and stratified?

What substances and what media will be measured? What is known about the environmental fate as well as the fate of the substance within the receptor organism? What are the important exposure pathways? What is known about expected concentration levels, analytical methods, and detection limits?

What will the samples be collected? How frequently will the sampling be conducted? Is the intent to characterize exposure as a function of specified variables?

By addressing each of these questions, the exposure assessor will develop a clear and concise definition of study objectives that will form the basis for further planning. The following list of overall objectives illustrates the range of data requirements in terms of variety, quantity, and quality that will result from this process. Generally, the requirements and, therefore, the effort and associated costs increase as one proceeds down the list.

Example Study Objectives

Determining whether exposure occurs to support the need for toxicity testing.

Establish mean or peak exposures.

Establish the fraction of a given area or the percent of time that exposures exceed a particular level for purposes of demonstrating compliance or the need for remedial action.

Establish trends in exposures and the efficacy of risk management decisions.

Determine exposures as a function of location, population characteristics, activity patterns, or other factors.

2.3. Developing a Sampling Strategy

Having decided on the overall objectives of the measurements effort, the exposure assessor should then be prepared to advance to the next level in planning the study which involves making decisions regarding the types of measurements to be undertaken. Data from health or ecological effects studies can be used in deciding such issues as which route of exposure or which medium is most important to sample and the level of detection that is required. Frequency considerations might depend on whether the effects studies have examined average concentrates of the chemical of interest or the effect of peak exposures. Much more frequent sampling must be undertaken to determine peak exposures versus average exposure. Besides the number of sampling locations and samples to be collected, the frequency of sampling is the most significant cost multiplier in a sampling program.

As discussed in section 1.2, there are three approaches useful in exposure assessment. Each of these three approaches (namely, direct measurement methods, predictive methods, and reconstructive methods) has particular strengths and weaknesses and each has different data requirements. When direct measurement of exposure is not possible, indirect methods (i.e., predictive or

reconstructive) are used, the most common being predictive methods. In general, predictive methods link sources, environmental pathways, monitoring data, and population (individual) activity patterns through use of models and exposure scenarios to estimate exposures. The reconstructive approach is almost always combined with one of the other methods to form a better assessment. In fact, many exposure assessments are a combination of two or all three approaches; the TEAM study is a good example of an assessment that combines direct measurement with the microenvironmental predictive approach and breath measurements for the reconstructive approach (U.S. EPA, 1987a).

2.3.1. Direct Exposure Measurements

Directly measuring human exposure to environmental pollution is a rapidly emerging science. In such studies measurements are made of the actual pollutant concentrations contacting a person's body by essentially using split samples of the air breathed, the food eaten, and the water consumed, and by using patch or other techniques to estimate dermal exposure. Availability of appropriate measurement methodology is, therefore, an essential element in planning a direct exposure monitoring study. Existing methodology developed for occupational exposure or environmental monitoring may not be adequate to meet the special demands of direct measurement of exposure. This is especially true with air or respiratory measurements where the monitoring device must be sufficiently small and lightweight to be worn or carried by the person or animal. Although much has been accomplished in certain areas, such as the development of small personal monitors for carbon monoxide (CO) and volatile organic chemicals (VOCs) and the development of sensitive methods for sampling exhaled air, new technology must be developed to accurately determine the exposure to many, if not most, of the airborne pollutants of concern at nonoccupational levels. A highly useful bibliography covering models, field data, and emerging research methodologies which should be consulted in planning direct exposure studies is "Total Human Exposure and Indoor Air Quality" (U.S. EPA, 1988a).

2.3.2. Reconstructive Exposure Measurements

Measurements in support of reconstructive exposure assessments can be characterized as being one of four types: (1) Measurement of the chemical or (2) its metabolites in biological media, (3) determination of a biological effect related to the internal dose, e.g., determination of alkylated hemoglobin, and (4) measurement of the amount of chemical bound to the target molecules e.g., (DNA adducts) or other molecular changes (e.g., chromosome aberrations). Collectively, these measurements are known as biomonitoring of exposure. The principal advantage of biomonitoring is it confirms entry of an environmental pollutant into an organism and, thereby, removes a major assumption in most current exposure assessments (i.e., that the material enters the body) and thus considerably strengthens risk assessments. Theoretically, biomonitoring can integrate total intake to the body from multiple sources and, if the substance is stable, it can integrate exposure over time. For many chemicals of interest, application of biomonitoring to exposure and risk assessments is limited by the availability of appropriate analytical techniques, cost of the assay, and sufficient understanding of the relationship between external exposure, body burden, internal dose, and adverse effects.

In general, most reconstructive environmental studies have focused on monitoring chemicals that are moderately to highly persistent in human tissues. This is based on the reasoning that there is greater potential for exposure and, therefore, adverse effects to result from exposure to more persistent chemicals. Occupational exposure studies have, on the other hand, focused more on transient exposure levels, and the TEAM studies have used breath measurements to help evaluate exposures to VOCs.

The kinds of specimens to be collected in a reconstructive study will vary depending on the following factors: accessibility, prevention of contamination, and existence of analytical procedures. Accessibility is determined first by whether materials will be collected from living persons or cadavers. From living persons typical sampling involves blood, urine, hair, fingernails, and feces. For cadavers (or surgical patients), one can sample adipose tissues, liver, kidney, and other organs. For example, many studies include liver because it is both an accumulating organ and a site of pollutant detoxification and hence a site where many pollutants are likely to be found. It is also present in large enough quantities to obtain individual samples and it tends to be more homogeneous in its distribution of trace substances. Adipose tissue is the ideal depository for lipophilic compounds where many chemicals, including chlorinated pesticides and biphenyls, are concentrated to levels that can be three orders of magnitude more than in the blood. Adipose tissue is available in large quantities from cadavers and is quite homogeneous in its trace contaminant distribution. Blood and urine are often chosen as indicators of recent as well as long-term exposure. They can be sampled repeatedly from the same individual, over a period of years. Samples can be readily obtained, are inexpensive, and information about lifestyle and occupation of the donor can provide clues to exposure routes and sources of the toxicants.

2.3.3. Predictive Exposure Measurements

As mentioned previously, direct exposure measurements may not be feasible in a given situation due to cost, time constraints, unavailability of direct measurement methods for the chemicals of interest, or when the assessment of past or future exposures is desired. Presently, predictive methods, which attempt to link sources, environmental processes, ambient concentrations, target organisms, and activity patterns through models and exposure scenarios, are the most widely used for the Agency's risk assessments.

Although the environmental media are primarily responsible for the wide dispersion of anthropogenic chemicals that reach the environment and sometimes serve as major reservoirs of pollutant residues, the mere presence of a substance within an environmental medium does not indicate the extent to which exposure might occur. It is worth emphasizing here that ambient concentrations of a pollutant are not exposures to a pollutant. Ambient pollutant levels can give distorted estimates of exposure levels for many pollutants by failing to account for other sources of exposure. Moreover, ambient pollutant concentrations fail to account for time-activity patterns that affect exposure in segments of the population (i.e., there is no exposure if the organism is not present). Ambient measurements only indicate the amount of a chemical potentially reaching the exposed individual, and these data must be combined with other information through the use of environmental fate models and exposure scenarios to come up with realistic exposure assessments.

The exposure assessor should use caution in applying long-term monitoring data to specific exposure assessments, since the strategy that was used in siting the particular stations in the network may not correspond to the strategy needed to answer the questions at hand.

For example, although NASQAN (National Stream Quality Accounting Network) stations are located all across the nation, their siting is not based on a probability sample of stream locations designed to reflect water quality (U.S. Government Accounting Office, 1986). Likewise, aerometric monitoring sites are usually established to measure compliance with air quality standards rather than produce a statistically representative data base from which valid inferences of population exposure can be drawn. When ambient monitoring data are needed for an exposure assessment, the optimum approach is to site the sampling stations to address the specific objectives of the exposure assessment. However, this may be impracticable due to time or resource limitations, and existing monitoring locations may be used but only after the assessor has examined the purpose and design of the existing network and its appropriateness for providing the requisite data.

Air Measurements: Air pollutants exist, usually at trace levels, in the atmosphere in one or more physical states. These pollutants may be present as gases or vapors, as surface or bulk constituents of aerosol particles and droplets, or as constituents of cloud liquid water. The low concentrations (typically, in the ppt to ppb range) of most substances poses particular problems for separation and detection. In planning ambient air monitoring studies, the exposure assessor must recognize that for some air pollutants (especially primary pollutants, e.g., CO, as well as a variety of volatile organics) actual human exposures are not well represented by outdoor measurements but are better represented by a series of microenvironmental measurements (see section 3.2.3), including indooor measurements.

Vapor pressure and polarity are the two most important properties governing the succees of sampling organic compounds from air. These properties govern whether the chemical will be found in the gaseous, condensed, or adsorbed phase and will affect the ability to separate, identify, and quantify its concentration. For compounds having medium-to-high vapor pressures, components of interest are usually concentrated from large volumes of air with a solid sorbent material. Collection of whole air samples in stainless steel canisters, which have been specially electropolished to prevent decomposition of the collected compounds, has become an attractive alternative to sorbent sampling. Low vapor pressure compounds are normally associated with particles, and filtration of large volumes of air is the usual means of sampling. Recently, the status of a number of important techniques for sampling air have been reviewed (American Chemical Society, 1988); the exposure assessor should consult this review and the references contained therein for a detailed discussion of their advantages and disadvantages.

Surface and Ground Water Measurements: Water is a major vehicle whereby chemical pollutants are transported and transformed to other substances. Concentrations within a given water body may fluctuate widely as a function of rate and turbulence of flow. Natural water bodies can be very difficult to sample because of large diurnal, seasonal, and local variations. In the case of ground water, one of the toughest questions to answer is "How to obtain a sample that is representative of the aquifer" because of the heterogeneity and complexity of the matrix. Several references describing sampling techniques have been reviewed recently (American Chemical Society, 1988), and these should be consulted by the exposure assessor in planning such studies.

Soil and Sediment Measurements: Soils often exhibit extreme variability even within a small area. Variations of properties such as pH and organic carbon content within soil types can significantly alter the environmental behavior of chemicals so that their persistence, mobility, extractability, and bioavailability are altered. The interpretation of soil analysis is further complicated by the fact that concentrations of a particular substance in soils may bear little immediate relationship to its exposure potential. Guidance on performing soil monitoring studies has been developed (U.S. EPA, 1984b) and should be consulted in planning such studies. Sediments have been repeatedly shown to accumulate toxic chemicals, and many chemicals reach higher concentrations in sediments than in the overlying water column. As in the case of soils, however, there are many questions regarding the bioavailability of sediment-bound chemicals and their significance to the biosphere. The sampling techniques most frequently used fall into two broad categories: bottom grab (dredge) sampling and core sampling. Guidance for designing, implementing, and overseeing a sediment sampling program is available (U.S. EPA, 1985i).

Other Measurements: In addition to environmental concentration measurements, predictive exposure assessments use data on the physical/chemical properties of the substance, its production, use, and disposal patterns, release rates to specific media, environmental fate, exposed populations (size, location, activity patterns), concentrations in drinking water and food, bioavailability, and pharmacokinetics (see Table 3–1). It is beyond the scope of this document to provide a discussion of the considerations and approaches to measuring each of the factors that may go into a predictive exposure assessment. In reality, most predictive exposure assessments use a mix of measured, surrogate, and estimated data. Several methodology documents have been prepared (U.S. EPA, 1985a–h, U.S. EPA, 1986b) which, although not a series of "how-to" books, they do provide a catalogue of information sources and describe the use of the data in predictive exposure assessments. These documents provide a useful starting point in planning a study.

2.4 Setting Data Quality Objectives

All data are subject to some error, and errors can be introduced at various stages of data collection. Some types of error can be expressed quantitatively, but others can only be described qualitatively. The magnitude of the error assigned to a data set is related to data quality. As the magnitude of the error increases, the quality of the data decreases. Depending on the particular decisions that will be made with the data and the way the data will be used to support those decisions, specified levels of error may be tolerable. Data Quality Objectives (DQOs) are statements of the level of uncertainty that an exposure assessor is willing to accept in results derived from environmental data.

The setting of realistic data quality requirements is essential for proper planning because data of insufficient quality will have little value for problem solving, and data of excess quality may provide few, if any, additional advantages. DQOs should be established based on cost-effective consideration of the needs of the exposure assessment and the capability of the measurement process. Knowledge of the expected variability of the samples is required to estimate the number of samples to be taken and the number of measurements to be made on each sample.

Although the term connotes quality, DQOs also are intended to clarify the objectives of the study. They force the exposure assessor to crystallize

beforehand, in his or her mind, how the data will be used once it is collected.

The process of establishing the data criteria begins with the exposure assessor proposing limits (based on best judgment) on the level of uncertainty that will be acceptable for each conclusion to be drawn from new data, taking into consideration the resources available for the study. These limits include the uncertainty resulting from both the analytical and sampling components of the plan. Thus, the DQO process consists of an analytical component and a sampling component. The analytical component results in the selection of a cost-effective chemical analysis method that, when integrated with the selected sampling plan (see section 2.5), will satisfy the given objective. Frequently, the detection limit of a "standard" analytical method exceeds the concern level for the substance (this is particularly true for many suspected carcinogens) and, therefore, more costly procedures will be required. The sampling component involves specifying a sampling plan (including numbers, types, locations, and levels of sampling quality control) that takes into account the expected sample variability (may have to be determined by a pilot study), and, when combined with the analytical component, will provide data consistent with the DQOs.

The DQOs should include the following:

1. A description of the data to be obtained and the media from which samples will be collected.
2. A statement of the desired performance for each data-dependent element that specifies in as much detail as possible the acceptable probabilities associated with false positive and false negative situations of varying degrees of magnitude. This statement should indicate the level of uncertainty that can be tolerated if the result is to be included in a decision-making process.
3. A clear statement of the objectives of the study.
4. The scope of study objectives including the smallest part of the data set from which a separate result will be calculated, and the largest unit (area, time period, or group of objects) that the data are expected to represent.
5. A discussion of how the results will be tested, including the following: Statistics that will be used to summarize the data; any standards, reference values, or action levels to which the statistics will be compared; and a statement of the rationale for and specifics of the mathematical and/or statistical procedures that will be used to derive the result.
6. Initial estimates of the time and dollar resources expected to be expended for the data collection effort.

The quality of a data set is represented in terms of precision, accuracy, representativeness, completeness, and comparability. Only precision and accuracy can be expressed in purely quantitative terms. The other statistics are best expressed using a mixture of qualitative and quantitative terms. Brief descriptions of these terms are given below:

Precision—Precision is a measure of the reproducibility of the analyses under a given set of conditions. Specifically, it is a quantitative measure of the variability of a group of measurements compared to their average value. Sampling precision is determined by analyzing multiple samples chosen at random from the same population, i.e., collected at the same point in time and space so as to be considered identical. Analytical precision is determined by the analysis of separate aliquots of a homogenized sample or separate aliquots of a spiked matrix and its replicates. Precision is usually stated in terms of sample standard deviation, but other estimates such as the coefficient of variation (sample relative standard deviation), the range (maximum value minus minimum value), and the relative range are common. Analytical precision is much easier to control and quantify than sampling precision.

Accuracy—Accuracy is a measure of the correctness of the data that takes into account the variability and bias that may exist in a measurement system. Unlike precision, accuracy is difficult to measure for the entire data collection activity. Sources of error include the sampling process, field contamination, preservation, handling, sample matrix, and analysis. Accuracy can only be estimated by evaluating all sources of variability and bias, to that extent possible. Accuracy is usually determined by analysis of a well-characterized sample or reference material, or is stated in terms of the mean recovery determined by analysis of a matrix spike and its replicates.

Representativeness—Representativeness expresses the degree to which sample data accurately and precisely represent a characteristic of a population, parameter variations at a sample point, or an environmental condition. Representativeness is a qualitative parameter that is very important in the proper design of the sampling plan, since it is related to the relevance of the data to exposure (see section 3.2). Representativeness is best addressed by describing sampling techniques and the rationale used to select the sampling locations. Samples can be biased (based on existing data, surveys, observations, etc.) or unbiased (completely random or stratified-random approaches). Later, in using the data for exposure assessment, this information will help build the logical link between the samples and the characterization of the whole media (see section 3.1).

Completeness—Completeness is a measure of the amount of valid data obtained from a measurement system compared to the amount that was expected to be obtained under normal conditions. Completeness is usually expressed as a percentage. Site access, sampling problems, analytical problems, and the data validation process can all contribute to missing data. Missing data may reduce the precision of estimates, introduce bias, and lower the level of confidence in the conclusions. A completeness goal must be included in the process to make sure that enough data of sufficient quality are obtained from the measurement system to fulfill the objectives of the study.

Comparability—Comparability describes the confidence with which one data set can be compared to another. Comparability refers to such issues as using standard field and analytical techniques and reporting data in the same units. For this data collection step, the assessor must consider whether two or more data sets are comparable. For example, if more than one field team is collecting samples or more than one laboratory is analyzing the samples, equivalent methods must be used to ensure that everyone is measuring the same thing in the same way. In this manner conclusions may be drawn from the totality of existing data.

2.5. Sampling Plan

The quality of the analytical data used in an exposure assessment depends on the choice of the sample and the adequacy of the sampling and analytical programs. As discussed earlier, the exposure assessor must first have a clear understanding of the overall goals of the study and have decided on the nature of the sampling and the data quality objectives. Once this has been achieved one can then proceed to the development of the sampling plan.

A *sampling plan* is a set of rules or procedures that specify how a sample is to be selected and handled. An inadequate plan will often lead to biased, meaningless, or unreliable results; good planning, on the other hand, maximizes the efficient use of limited resources and is more likely to produce valid results.

2.5.1. Sampling Design

Sampling for the purposes of exposure assessment is a complex process. The

heterogeneous nature of the environment poses particular problems in obtaining a representative sample. The sampling design specifies the number and type of samples needed to achieve the data quality objectives. Factors to be considered in developing the sampling design include the study objectives, sources of variability (e.g., environmental heterogeneity in time and space, analytical variability) and their relative magnitudes, relative costs, and practical limitations of time, cost, and personnel.

Decisions are made regarding replication in time and space, compositing (combining several samples into one prior to analysis), and multiple determinations on a single sample. A statistical (or environmental process) model, which may be simple or complex depending on the circumstances, is used to allocate sampling effort in the most efficient manner. For example, consideration of sources of variability together with cost may suggest multiple analyses of individual samples in one case and single analyses of a large number of samples in another case.

Prior knowledge of environmental factors may suggest designs that take into account expected physical or spatial relationships. Stratified random sampling is one approach that involves subdivision of the sampling universe into strata (e.g., according to geographical region, soil type, etc.). Appropriate choice of strata leads to more efficient use of sampling resources compared with simple random sampling when prior knowledge is available. Kriging, developed initially for geostatistical applications, is a statistical interpolation method that uses models of the spatial correlation between measurements. It is particularly suited for developing contour map representations of, for example, chemical concentrations in soil. As with stratified random sampling, an appropriate choice of model allows more efficient use of sampling resources compared with simple random sampling. Model selection, however, involves professional judgment and therefore may be subject to criticism. The sampling approach should be thoroughly reviewed to identify its strengths and weaknesses prior to implementation. An example of both approaches being used in tandem is provided in "Data Quality Objectives for Remedial Response Activities" (U.S. EPA, 1987b), in which stratified random sampling is used in the initial phase of a site remediation investigation, followed by the use of geostatistical techniques to effectively target subsequent sample collection.

The difference between survey and experimental approaches should be recognized. The survey approach seeks to estimate exposure of a population based on the measured exposure of a statistically representative sample from the population. In some situations the study objectives may be better served by an experimental approach which seeks to describe the relationship between two or more factors, e.g., the relationship between house construction and a particular indoor air pollutant. In the experimental approach, experimental units are selected to cover a range of situations (e.g., different housing types) and do not reflect the frequency of those units in the population of ultimate interest. An understanding of the relationship between factors gained from an experiment can be combined with other data (e.g., distribution of housing types) to estimate exposure. An advantage of the experimental approach is that it may provide more insight into underlying mechanisms that may be important in targeting regulatory action. A properly conducted survey has the additional benefit, however, of providing representative estimates of population characteristics with known uncertainty. To justify the experimental approach one has to argue, as in all experimental work, that the relationships revealed by the experiment apply beyond the situation of the particular experiment.

A single study may use a combination of survey and experimental approaches and involve a variety of sampling techniques. Relevant EPA reference documents include "Survey Management Handbook", Vols. I and II (U.S. EPA, 1984c). A detailed description of methods for enumerating and characterizing populations exposed to chemical substances is contained in "Methods for Assessing Exposure to Chemical Substances", Vol. 4 (U.S. EPA, 1985d). Statistical input is essential during this planning stage to make the most efficient use of available resources and to ensure that the number and type of samples collected are likely to achieve the data quality objectives.

2.5.2. Sampling Location and Frequency

Factors to be considered in selecting possible sampling sites include population density, historical environmental sampling results, patterns of environmental contamination and variability (such as prevailing wind direction or stream flow), access to the sample site, types of samples, frequency and duration of sample collection desired, and health and safety of field personnel.

There are many sources of information on methods for selecting sampling locations. Schweitzer and Black (1985) and Schweitzer and Santolucito (1984) give statistical methods for selecting sampling locations, particularly for sampling ground water, soil, and hazardous wastes. A practical guide for ground-water sampling is also available (U.S. EPA, 1985h) as well as a handbook for stream sampling (U.S. EPA, 1986c).

The term *sampling frequency* indicates the time interval between the collection of successive samples. The type of sample to be taken and the physical and chemical properties of the chemical of concern will usually dictate the sampling frequency. For example, determining the concentration of a volatile chemical in surface water would require a higher sampling frequency than necessary for ground water because the chemical concentration of the surface water would be changing more rapidly.

The optimum number, spacing, and sampling frequency can best be estimated after a preliminary survey. Factors to be considered in determining the number of samples to be obtained include technical objectives, resources available, the schedule of the program, types of analyses, and the constituents to be evaluated. Examples for air, surface water, and ground water of the application of statistical techniques for determining the optimum number of samples required to give data with specific limits of confidence include Shaw et al. (1984), Sanders and Adrian (1978), and Nelson and Ward (1981). The best assurance of obtaining a good sampling plan is to rely on a professional statistician.

2.5.3. Sampling Duration

The duration of sampling depends on the analytical method chosen, the limits of detection, the physical/chemical properties of the analyte, chemical concentration, and knowledge of transport/transformation mechanisms. For example, sampling duration may be extended to ensure adequate collection of a low concentration chemical and may be curtailed to prevent the breakthrough of a relatively high concentration of volatile chemical. Also, duration of sampling is directly related to selection of statistical analyses, such as trend versus cross-sectional analyses.

2.5.4. Sample Preparation

A major analytical concern is to ensure that the samples are not biased by the introduction of field or laboratory contamination. If the validity of the

sample is in question, all the analytical results will be questionable. Field and laboratory spiked samples and blank samples should be analyzed concurrently to validate results.

While conducting the sampling plan, careful attention should be given to collecting, preparing, preserving, and analyzing samples according to the established protocols.

The method for interpreting and using the results from blank samples should be specified in the sampling plan. The following EPA documents provide examples.

For *volatiles and semivolatiles* the action in the case of unsuitable blank results depends on the circumstances and the origin of the blank. No positive sample results should be reported unless the concentration of the compound in the sample exceeds 10 times the amount in any blank for the following contaminants: methylene chloride, acetone, toluene, 2-butanone, and common phthalate esters. The amount for other volatiles and semivolatiles should exceed 5 times the amount in the blank (U.S. EPA, 1988b). If a compound is found in a blank but not found in a sample, no action is taken.

For *pesticides/PCBs* no positive sample results should be reported unless the concentration of the compound in the sample exceeds 5 times the amount in the blank (U.S. EPA, 1988b). If a pesticide/PCB is found in a blank but not found in a sample(s), no action is taken.

For *inorganics*, no positive sample results should be reported if the sample results are greater than the instrument detection limit (IDL) and less than 5 times the amount in any blank (U.S. EPA, 1988c). Any blank with a negative result whose absolute value is greater than the IDL must be carefully evaluated to determine its effect on the sample data.

2.6 Evaluating Uncertainty

In evaluating and reporting uncertainty associated with measurements, sampling errors, laboratory analysis errors, and data manipulation errors are three categories of errors that should be evaluated. These are discussed in the next sections.

2.6.1. Sampling Errors

There are two kinds of sampling errors: systematic errors (often referred to as biases) that result from the sampling process, and random errors that result from the variability of both the population and the sampling process.

A biased sample can result from faulty assumptions. For example, one may assume that only the liquid phase of an aquatic system is important and may therefore ignore colloidal matter, suspended material, and sediment. A biased conception of an environmental situation could thus result. Unfounded discrimination with respect to speciation (chemical and biological) is another example of sample bias. Experimental failure to realize a proper discriminatory feature of an assumption could be another source of bias. For example, sampling a "respirable" fraction of particles in an atmosphere depends both on an appropriate definition of what is respirable and the use of a sampling device that has the required size discrimination. The presence or absence of such biases must never be assumed without experimental evidence. A sampling operation can be biased by faulty calibration of critical components such as flow meters, thermometers, pressure sensors, sieves, or any device that influences the sample or is used to quantitatively modify a measured result.

Biases of a different kind can result from contamination, losses, interactions with containers, deteriorations, and displacement of phase or chemical equilibria. Sources of bias must be considered in every sampling operation. A good procedure is to develop a "bias budget" wherein individual items are evaluated for significance, quantitatively when appropriate. Tolerances should be established to hold them within acceptable bounds, and adequate calibrations should be made of all critical components.

2.6.2. Laboratory Analysis Errors

Generally, laboratory errors are smaller than sampling errors. Preparation of accurate calibration standards helps minimize measurement bias as much as possible, since calibration is a major source of systematic error in analysis. This requires standards that suitably match the samples of interest in both matrix and level of analyte of concern. Other sources include chemical operations such as sample dissolution, concentration, extraction, and reactions. Blanks arising from the chemical operations, storage and handling of samples, sampling and transfer lines, and laboratory environment (including its personnel) must be controlled and evaluated.

Another type of error in laboratory analysis is the uncertainty of intercomparison of standards and samples. The measurement system must be in a state of statistical control, i.e., it must be stable and capable of producing a limiting mean value; the individual observations must be randomly distributed around the mean, and they must have a stable variance. Furthermore, each individual observation must be independent of others in a data set.

A system is statistical control will be stabilized but not necessarily optimized. Accordingly, its standard deviation will need to be evaluated and monitored on a continuing basis.

2.6.3. Data Manipulation Errors

Uncertainties that arise from errors in data manipulation are due to the operation of the measurement process and can be evaluated experimentally. Blunders, however, cannot be evaluated, so sufficient care must be exercised to prevent them to the extent possible.

Data manipulation errors can be of several kinds. These include errors of calculation, errors of transposition, errors of transmission, use of wrong units, use of improper conversion factors, spatial or temporal averaging information loss, and misassociation errors that confuse samples and numerical results. A measurement program should have built-in mechanisms to detect these errors. These can include, where appropriate:

1. Proofreading and hand checking calculations.
2. Ion balance.
3. Mass balance.
4. Comparison of results found for similar samples.
5. Graphical plots.
6. Tests for outliers.

A data set should not be released until it has been screened for possible blunders. The quality assurance program should include a prescribed procedure for data release, and any request to bypass it (premature release of data) should be resisted.

2.6.4. Reporting Data Near the Detection Limit

Oftentimes, extrapolation methodologies applied to toxicological studies result in acceptable risk levels which necessitate measuring environmental concentrations at or near the limit of detection (LOD). The limit of detection is defined as the lowest concentration level that can be determined to be statistically different from a blank (American Chemical Society, 1983). Data measured at or near the detection limit have considerably more uncertainty associated with them than when measurable amounts are present. To understand what a reasonably certain measure or a reliable detection is, the exposure assessor must understand the method of measurement as well as the statistical approach that

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was used to calculate the limit of detection. Different statistical approaches will produce different limits of detection. It is beyond the scope of this document to discuss the various methods for calculating limit of detection values. Instead, the assessor should consult a statistician and become familiar with the advantages and disadvantages of each method (e.g., Long and Winefordner, 1983).

As a general rule, the exposure assessor should report all data that contribute to an understanding of the true situation including the extent to which data have been adjusted for recovery or other factors. If the exposure assessor reports individual values, the American Chemical Society's Committee on Environmental Improvement (1983) recommends that:

1. If the measured value is less than the limit of detection, report "not detected" together with the value for the LOD.

2. If the measured value is larger than the LOD but smaller than the limit of quantification (LOQ), report "detected but not quantifiable" together with the value for the LOQ. The LOQ is the level above which quantitative results can be obtained with a specified degree of confidence.

3. If the measured value is greater than the LOQ, report the value and its uncertainty.

The American Chemical Society recommendation sets the LOD at 3 standard deviation units above the mean value of the blank responses and the LOQ at 10 standard deviations above the blank responses.

2.7. Quality Assurance, Control, and Assessment

Quality assurance is a system of activities designed to provide the producer or user of a product or service with the assurance that the product meets defined standards of quality with a stated level of confidence. The quality assurance process involves quality control and quality assessment.

Quality control is the overall system of activities whose purpose in to control the quality of a product or service so that it meets the needs of users. The aim is to provide quality that is satisfactory, dependable, and economical. A quality control program should include developing and strictly adhering to priciples of good laboratory practice, consistently using standard operational procedures, and following carefully designed protocols for specific measurement programs. Qualified personnel, reliable and well-maintained equipment, appropriate calibrations and standards, and close supervision of all operations are essential components of a sound quality control program. A quality control program should foster a measurement system that operates in a state of statistical control, which means that errors have been reduced to acceptable levels and have been characterized statistically.

Quality assessment is the overall system of activities whose purpose is to provide assurance that the overall quality control job is being done effectively. It involves a continuing evaluation of the products produced and the performance of the production system. Quality assessment describes those techniques used to assess the quality of the measurement process and the resulting data. The establishment of a system of control charts is considered the best way to monitor the performance of a measurement system. Control charts are plots of multiple data points from the same or similar samples (or processes) versus time. The relative variability of repetitive data can thus be visualized. These charts can also be used with reference materials, spiked samples, and surrogates as a means of assessing the accuracy of measurements.

Quality assurance begins with the establishment of data quality objectives and extends throughout the entire measurement process. Each laboratory should have a quality assurance program and, for each study, a quality assurance project plan (QAPjP). This plan should be complete and detailed and its language clear and unambiguous to preclude confusion and misunderstanding (U.S. EPA, 1983). The contents of the plan should include the following:

1. Statement of the data quality objectives for the monitoring effort.
2. Full description of the chemical to be analyzed.
3. Review of the analytical method selected, following the procedures discussed in section 2.8.
4. Description of the steps taken to verify and validate the method.
5. Verification and validation results.
6. Description and source of reference standards.
7. Field study design with rationale.
8. Quality assurance and quality control used throughout the study.
9. List of equipment and materials to be used in the field.
10. Description of the system used to ensure sample preservation and handling, traceability of instrumentation, samples, and data.

Examples of the last quality assurance and quality control procedure listed above include the following:

Sample Preservation and Handling—When immediate analysis of the collected sample is not possible, precautions should be taken so that the sample integrity is not altered. The assessor should store the sample in a manner that guarantees that the parameters to be measured are not altered. The container material should not interfere with the analysis of the specific parameters, and the holding times specified for the analytical procedure should not be violated unless it can be demonstrated that significant changes have not occurred.

Traceability of Instrumentation—All collection and measurement instrumentation should have a unique identification number. Maintenance, calibration, and use logs should be maintained.

Traceability of Samples—All samples should have a unique identification number that is traceable to information on the field site, monitoring location, and collection devices. An efficient way to trace samples is to employ a bar code labeling system. Under this system, samples are labeled with adhesive bar code labels to identify the samples and trace them through the sampling and analytical procedures.

Traceability of Data—Data should be documented and filed to allow complete reconstruction from initial field records to data archiving.

Audits should also be a feature of all quality assurance programs. A systems audit should be made at appropriate intervals to ensure that all aspects of the quality assurance program are operative. Performance audits in which a laboratory is evaluated based on the results of analyses of blind standard samples also provide valuable quality assessment information.

2.8. Selection and Validation of Analytical Methods

Selecting the most suitable method of analysis involves developing a chemical profile of the chemical of interest. This profile should identify the physical and chemical properties of the chemical, such as vapor pressure, water solubility, octanol-water partition coefficient, boiling and melting points, molecular weight, and other properties that help characterize the chemical.

There are several major steps in the method selection and validation process:

Step 1. Determination of Method Requirements

The method requirements are normally established by the assessor who needs environmental measurement data. The

requirements identify the substances of interest (analytes), define the matrices to be examined, and specify (quantitatively) the performance of the method and the reliability, confidence, and quality of the measurements needed.

Step 2. Method Selection and Testing

Existing methods should be reviewed to identify candidate methods that may be adequate to meet the needs of the assessor. The method detection limit (MDL), which is the lowest amount detectable with a stated level of confidence, is of particular importance for selection of an analytical method and must be considered in light of the needs of the risk assessment.

Step 3. Single Laboratory Testing

The candidate method, if new, is subjected to laboratory and field testing, as necessary, to characterize its performance adequately with respect to the requirements established in Step 1.

Step 4. Comparability Testing

An evaluation similar to that described for Step 3 is conducted by other laboratories participating in the study to verify the method write-up and to confirm the results and conclusions of the method characterization conducted in the Single Laboratory Testing.

Step 5. Final Method Description

The method description is revised to incorporate changes or clarifications determined to be necessary based on the testing in Steps 3 and 4.

2.9 Background Level

At some sites, background chemical contamination is significant and should be accounted for. Background is defined as chemical contamination due to a source other than the site under investigation. Background can be either natural or from man-made sources. The exposure assessor should try to define local background conditions of concern by observing nearby locations clearly unaffected by the site under investigation.

When differences between a background (control site) and a target site are to be determined experimentally, the sampling of the control site must be done with the same detail and care as for that of the target. Otherwise, the uncertainty of any difference can be limited by the data for the control.

3. Guidelines for Using Measurements in Exposure Assessments

3.1. Use of Measurement Data in Making Inferences for Exposure Assessments

As discussed in the previous two chapters, the primary purpose for making measurements and using data related to exposure assessments is to make inferences from the measurements (samples) to the whole. In predictive exposure assessments, the whole is usually a medium of interest such as outdoor air, drinking water, a consumer product, etc. Once characterization of the medium has been made (and this may include changes over time), a matched link to individuals or populations being assessed must be made, usually via use of exposure scenarios. In direct measurement of exposure, sampling of one individual's exposure must be related to the exporsures of a collection of individuals (the whole). This relationship may also include inferences about different times and locations from those in the sample (e.g., different cities, winter vs. summer, present vs. past). In reconstructive exposure assessment, the whole is usually the total absorbed dose over some period of the past, which is reconstructed from samples of various tissues, fluids, or other biomarkers; individual absorbed doses might then be used to make inferences about collections of individuals.

In all these cases, the exposure assessor must have a clear picture of the relationship between the sample and the whole. It is obvious that the sampling being done for exposure assessments does not always try to characterize the same thing as "the whole." For example, samples of an environmental medium such as surface water, which are useful in characterizing the medium itself, are not necessarily immediately useful for characterizing exposures from surface water. But the characterization of the medium (over space and time) can be used, along with the location and activities of individuals or populations, to estimate exposures. Because the samples taken for exposure assessment differ in what they are trying to characterize, a sample taken as a direct measure of exposure, for example, is qualitatively different from a sample of an environmental medium, and these are qualitatively different from a tissue or body fluid sample.

The concept that different measurements, all taken under the general category of "exposure-related measurements," cannot all be used in the same way is critical to using these data in an exposure assessment. It is the exposure assessor's primary responsibility to understand, explain, and justify the relationship between the sample data and the inferences or conclusions being drawn from the data in the assessment. In doing so, the assessor must evaluate data relevance, adequacy, and uncertainty. These topics are covered in sections 3.2, 3.3, and 3.4, respectively.

Inferences are generalizations that actually go beyond the information contained in the set of data. Inferences involve at least some subjectivity, since it is impossible to eliminate all elements of subjectivity no matter how objectively data are collected. The credibility of an inference is often related to the method used to make it and the amount of supporting data it is based on. A guess, for instance, is one type of inference, although an assessor or decision-maker is likely to place less confidence in this method as a predictor of real-world events or conditions than many other methods. Anecdotal information, that is, stories of the form "once I knew a situation where * * *", are somewhat better than guesses as predictors, but the assessor has only a limited knowledge of where in the distribution of real-world situations this anecdote is being drawn from. Professional judgment is usually a better predictor that either guesses or anecdotes, since it presupposes that a (sometimes substantial) data base of experience (i.e., a collection of anecdotes) is being used, even if this is not a formal data base.

Statistical inferences also are generalizations that actually go beyond the data set. Statistical inferences may take any of several forms (see any statistics textbook for examples), but unlike the types of inferences mentioned above, a statistical inference will usually state not only the inference, but a measure of how good the inference is. For that reason, statistical inferences (including inferences involving judgment; see section 3.3.3) are often preferable to guesses, anecdotes, or professional judgment alone in understanding, explaining, and justifying the inferences made in linking the samples with the characterization of the whole, provided the data are shown to be relevant and adequate.

3.2. Relevance of Measurement Data for the Intended Exposure Assessment

Since all of the approaches to exposure assessment involve exposure measurements to some degree [1], it is important that the proper "match" be made between the measurement data and the type of exposure assessment. As discussed in the previous chapter, the exposure assessment approach will often dictate the type of measurements needed if new data are being generated. More often, however, the exposure assessor has at least some data that

[1] Of course, it is always possible to do a predictive assessment based solely on models and assumptions, without a subsequent reality check, but even these assessments use models and model inputs which may ultimately be based on measurement in some form.

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were collected from previous studies, either for exposure assessment purposes or (more often) for other purposes. In determining relevance of data for the intended exposure assessment (adequacy of the data is covered in section 3.3), the assessor must consider not only the type of data and what it might logically characterize, but also how this characterization relates to risk.

There are many types of measurement data that an assessor can collect or evaluate for an exposure study. The measurements themselves are samples, and the assessor must have a clear idea of what kinds of inferences may be made for each type of measurements and what assumptions need to be made to make those inferences. Table 3–1 gives some examples of different types of measurements, what these samples are usually used to characterize, and what additional information must be known before the data, inferences, and characterizations can be used in an assessment.

As Table 3–1 illustrates, different types of measurements may be relevant to characterizing a variety of exposure-related media and parameters. (Nevertheless, just because certain measurements may be used to characterize these media or parameters is not a guarantee that in a particular assessment the medium or parameter can be adequately characterized with the data at hand (see section 3.3).) In addition to determining relevance to characterizing media or parameters, the assessor must also determine the relevance of these media or parameters to the exposure assessment.

TABLE 3–1.—EXAMPLES OF TYPES OF MEASUREMENTS TO CHARACTERIZE EXPOSURE-RELATED MEDIA AND PARAMETERS

Type of measurement (sample)	Usually attempts to characterize (whole)	Examples	Typical information needed to characterize exposure
A. *Predictive Assessments:*			
1. Fixed Location Monitoring	Environmental medium; samples used to establish long-term indications of media quality and trends over time.	NASQAN,[1] water quality networks, air quality networks.	Population location and activities relative to monitoring locations; fate of pollutants over distance between monitoring and point of exposure; time variation of pollutant concentration at point of exposure.
2. Short-term Media Monitoring (including indoor air).	Environmental or ambient medium; samples used to establish a "snapshot" of quality of medium over relatively short time.	Special studies of environmental media, indoor air.	Population location and activities (this is critical since it must be closely matched to variations in concentrations due to short period of study); fate of pollutants between measurement point and point of exposure; time variation of pollutant concentration at point of exposure.
3. Source Monitoring of Facilities.	Release rates to the environment from sources (facilities) (often given in terms of relationship between release amounts and various operating parameters of facility).	Stack sampling, effluent sampling, leachate sampling from landfills, incinerator ash sampling, fugitive emissions sampling, pollution control device sampling.	Fate of pollutants from point of entry into the environment to point of exposure; population location and activities; time variation of release.
4. Food Samples	Concentrations of contaminants in food supply.	FDA Total Diet Study Program,[2] market basket studies, shelf studies.	Dietary habits of various age/sex/cultural groups. Relationship between food items sampled and particular (geographic, ethic, demographic) groups studied; relationships between concentrations in uncooked vs. prepared food.
5. Drinking Water Samples	Drinking water supply	Ground Water Supply Survey,[3] Community Water Supply Survey,[4] tap water.	Fate and distribution of pollutant from point of sample to point of consumption. Population served by specific facilities and consumption rates. For exposure due to other uses, e.g., cooking and showering, need to know activity patterns and volatilization rates.
6. Consumer Products	Concentration levels of various products.	Shelf surveys, e.g., solvent concentration in household cleaners [5].	Establish use patterns and/or market share of particular product, individual exposure at various usage levels, extent of passive exposure.
7. Breathing Zone Measurements (Industrial Studies).	Exposure to chemicals in an industrial setting.	Industrial hygiene studies, occupational surveys.	Fate of pollutants between monitoring and point of exposures, location, activities, time spent relative to monitoring locations. Protective measures/avoidance.
8. Microenvironmental Studies.	Ambient medium in a defined area, e.g., kitchen, automobile interior, office setting, parking lot.	Special studies of indoor air, radon measurements, office building studies.	Activities of study populations relative to monitoring locations and time exposed.
9. Surface soil sample	Soil available for contact	Soil samples at contaminated sites.	Fate of pollution on/in soil; activities of potentially exposed populations.
10. Soil Core	Soil including pollution available for ground water contamination; can be an indication of quality and trends over time.	Soil sampling at hazardous waste sites.	Fate of substance in soil, speciation and bioavailability, and contact and ingestion rates as a function of activity patterns and age.
11. Fish Tissue	Extent of insult to ecological population, and/or extent of contamination of edible fish tissue.	National Shellfish Survey,[6] special studies on local fish populations.	For ecological assessments: Relationship of samples to fish population (then see reconstructive assessment below). For humans: relationship of samples to food supply for individuals or population of interest, consumption habits, preparation habits.
B. *Direct Assessments:*			
1. Air Pump/Particulates and Vapors ("split sample" air).	Exposure of an individual or population via the air medium.	TEAM study,[7] carbon monoxide study [8].	Direct measure of individual exposure during time sampled; to characterize exposure to population, relationship between individuals and population must be established as well as relationships between times sampled and other times for the same individuals, and relations between sampled individuals and other populations. In order to make these links, activities of the sampled individuals compared to populations characterized are needed in some.

TABLE 3-1.—EXAMPLES OF TYPES OF MEASUREMENTS TO CHARACTERIZE EXPOSURE-RELATED MEDIA AND PARAMETERS—Continued

Type of measurement (sample)	Usually attempts to characterize (whole)	Examples	Typical information needed to characterize exposure
2. Split Sample Food/Split Sample Drinking Water.	Exposures of an individual or population via ingestion.	TEAM study [7]	Same as above.
3. Skin Patch Samples	Dermal exposure of an individual or population.	Pesticide Applicator Survey [8]	Same as above, skin penetration.
C. *Reconstructive Assessments:*			
1. Breath	Total absorbed dose for individuals or population (usually indicative of relatively recent exposures).	Measurement of VOCs, alcohol (usually limited to volatile compounds).	(1) Relationship between individuals and population; exposure history (i.e., steady-state or not) pharmacokinetics (chemical half-life), possible storage reservoirs within the body. (2) Relationship between breath content and body burden.
2. Blood	Total absorbed dose for individuals or population (usually indicative of relatively recent exposures).	Lead studies, pesticides, heavy metals (usually best for soluble compounds, although blood lipid analysis may reveal lipophilic compounds).	(1) Same as above. (2) Relationship between blood content and body burden.
3. Adipose	Total absorbed dose for individuals or population (usually indicative of long-term averages).	NHATS,[10] dioxin studies, PCBs (usually limited to lipophilic compounds).	(1) Same as above. (2) Relationship between adipose content and body burden.
4. Nails, Hair	Total absorbed dose for individuals or population (usually indicative of past exposure in weeks to months range; can sometimes be used to evaluate exposure patterns).	Heavy metals studies (usually limited to metals).	(1) Same as above. (2) Relationship between nails, hair content, and body burden.
5. Urine	Total absorbed dose for individuals or population (usually indicative of elimination rates), may vary in time since exposure depending on chemical.	PERC study,[11] TCE study [12]	(1) Same as above. (2) Relationship between urine content and body burden.

[1] U.S. EPA (1985b).
[2] U.S. EPA (1986b).
[3] U.S. EPA (1985b).
[4] U.S. EPA (1985e).
[5] U.S. EPA (1985d).
[6] U.S. EPA (1986b).
[7] U.S. EPA (1987a).
[8] U.S. EPA (1987a).
[9] U.S. EPA (1987d).
[10] U.S. EPA (1986e).
[11] U.S. EPA (1986d).
[12] U.S. EPA (1987e).

For example, if a chemical shows adverse effects through inhalation, but ingestion and dermal studies show no adverse effects, measurement data to characterize ingestion and dermal routes of exposure may be irrelevant.[2] Likewise, for a substance that shows adverse effects for some forms (vapor, solid, particular valence state, etc.) but not others, the assessor must evaluate and explain why the data used match with the chemical species of concern.

In addition to the general discussion of relevance above, the following sections deal with more specific issues of relevance.

3.2.1. Direct Measurement of Exposure

Direct exposure assessments always rely on measurements. Assessments using the direct measurement approach can be assessing individual exposures, exposures to groups of individuals or segements of a population (i.e., a subpopulation) of which the sampled individuals are a part. Each of these objectives of the overall exposure assessment presents different issues of relevance to using the data.

Data collected for the direct measurement approach are typically personal samples of an individual or small population sample. The data are usually chemical-specific, although samples of radiation, particulates, fibers, or other non-chemical-specific agents have been measured. The data are usually time-specific, and can be expressed in terms of a time-weighted average (TWA) (i.e., 1-hour TWA, 8-hour TWA, etc.) or a continuous curve (e.g., by using the recording carbon monoxide monitor). The data are usually location-specific, the location being wherever the individual with the personal monitor was during the period of measurement. It should be noted here that unless detailed records are kept of where the individual goes and for how long, this information may not be available to the assessor. The data are also usually a function of the specific activities of the individual during the period of measurement; this information is rarely available to the assessor in more than very broad categories, if at all.

To make the case that the direct measurement data are relevant to the exposure assessment being done, the exposure assessor must show that these factors for the data match the objective of the assessment. If there is an unknown or partial match between the data factors and the assessment objectives, the assessor must make, state, and justify assumptions that will establish a logical link. For example, if 8-hour TWA data are available, and the objectives of the assessment are to evaluate average exposure over 10 years, the 8-hour TWA data might be used if it is known (from other data, observation, etc.) that the concentrations/exposures do not vary significantly from day to day, and that

[2] A caution here; unless pharmacokinetics are reasonably well known and mechanisms of action identified, it is often very difficult to dismiss exposure routes as totally irrelevant, even if some studies show no apparent adverse effect.

the day selected for measurement is representative or typical (based on statistical considerations, etc.).

For those individuals for whom direct measurements of exposure have been made, these data may be used directly in individual exposure assessments provided the data are of adequate quality (see section 3.3), are measures of the appropriate chemical or agent, and are actually measuring exposure while it takes place. This is an unusual case in that it is one of the few times where measurement data may be used directly as exposure data. Individual direct measurement exposure assessments are usually done for the purposes of protecting the individuals, often in an occupational environment. When exposures are being compared to an action level, concern level, standard, or other benchmark, and the data are being taken to answer a yes/no question about whether exposure is above the benchmark, direct measurements properly collected are the most relevant data.

Direct measurement data are also used to characterize the exposures of a population, or a segment of a population, by making inferences from the individuals sampled to the population or population subgroup. The logical link between the individuals sampled and the entire population is considerably strengthened by statistics. If the individuals sampled were selected randomly, probabilistically, or in a manner that can be described with statistics, this link can perhaps be described quantitatively, and the exposure assessor is advised to consult a statistician to help in establishing the relevance of the data taken for individuals to the exposures of a population. It must be kept in mind that the population being characterized by the data is not necessarily the population desired for the objectives of the assessment, since the assessment may involve different times (summer, winter, etc.), different locations (all service station attendants vs. data taken for attendants in Cleveland, etc.), or different activity patterns (persons who eat fish vs. persons who do not eat fish, etc.). All of these differences between the data measured and the population for which the assessment requires characterization must be identified and logical links must be drawn between individual measurement data and population exposures before the data can be fully relevant.

3.2.2. Reconstructive Exposure Assessment

Measurement data for reconstructive exposure assessments are usually from individuals (although composite tissue samples from several individuals are sometimes used), are usually chemical-specific, and may also be location-specific, time-specific, and activity-specific. Some reconstructive exposure assessment samples will reflect exposures over the relatively recent past (e.g., exposures can be reflected in breath, blood, urine, and fecal samples after minutes-to-days), while others will be indications of exposures over a longer period of time (e.g., adipose tissue, bone, and hair samples are usually reflective of exposures that took place weeks-to-years previously). The key to linking measurements of body burden or other biomarkers to exposure assessment is pharmacokinetics (i.e., the time-dependent distribution, metabolism, transport, storage, and elimination of the agent within the organism). In addition, before these measurements can be used to reconstruct absorbed dose or exposure, information must be known on the properties of the chemical, individual characteristics (size, body fat content, etc.), and whether the exposure has been long-term, acute, intermittent, a past episode, etc.

Pharmacokinetics can also be used to establish the relevance of particular samples to the exposure assessment being considered. Because pharmacokinetics maps out where a substance is likely to go within an organism, it will indicate the relevance of various tissues or fluids as an indication of exposure. For example, for a lipid-soluble substance with a long half-life within the body (such as 2,3,7,8-TCDD), pharmacokinetic considerations would show that adipose tissue or blood fat samples may be very relevant while breath samples are irrelevant, since inside the body the chemical avoids the blood/breath elimination route and instead is stored in fat tissue.

As with the direct measurement data discussed in the preceding section, reconstructive exposure assessment usually use data from an individual, and so the inferences made from the samples will be to characterize the absorbed dose (or exposure if absorption data are available) for an individual. All of the considerations discussed previously about making inferences from individuals to populations also apply here.

3.2.3. Predictive Exposure Assessment

Use of measurement data in predictive exposure assessments can vary widely, from a speculative assessment where no measurements are used directly, to an assessment where extensive measurement data are used both to characterize the chemical and to characterize the activities of the individuals or populations assessed. Exposure assessments that use no measurement data directly have legitimate purposes in a regulatory agency, for example, where the chemical has not been manufactured yet so no measurements can be made, or in preliminary evaluations of exposure where great precision is not required.[3] However, most predictive exposure assessments use at least some measurement data.

Like the other approaches to exposure assessment, the predictive approach requires the assessor to make a logical link between the measurement data and the exposure. Because of the many different types of measurements used in predictive exposure assessment, making these links (say, from source measurements to exposures) can be complex. Using measurement data to quantify exposure is usually done using any of several forms or derivatives of a general exposure equation.

Exposure, or the contract of an agent with the exchange boundaries of an organism (i.e., skin, lungs, digestive tract, etc.), can be mathematically defined as the amount of the agent available for absorption at the exchange boundaries. Over a period of interest, T, this can be described as:

$$E = \int_{t=0}^{T} I\,dt \qquad (3\text{-}1)$$

where E is the exposure, I is the intensity of contract, and t is time. The units of E are "amount," usually a mass of a chemical, but amount can also be in terms of fibers of asbestos, radiological amounts, etc. if the dose-response relationship for which the exposure and dose information being calculated are also in these terms. For the sake of simplicity, the discussion that follows will use units of mass for E. Note that I varies over time and may even be zero for part of the period of interest from t=0 to t=T. The units of I are mass/time.

The intensity of contact, I, is a function of C, the concentration of the pollutant in the medium contacting the organism, and CR is the contact rate or extent of contact:

$$I = (C)\,(CR) \qquad (3\text{-}2)$$

[3] For example, many times a decision is needed as to which chemical to study first, or even whether to continue to study a chemical. Often these decisions involve few resource consequences and great precision is not necessary. This is not to say, however, that important decisions with large resource implications should be made based on assessments using no measurements if measurement data may make a difference in the decision.

The units of C and CR may vary, but must be compatible with each other and must lead to units of mass/time exposed for I. For example, if C is in units of M/M (e.g., mg/kg food ingested), CR is in units of M/T (e.g., kg food ingested/day). If C is in units of M/V (e.g., mg/L water ingested), CR is in units of V/T (e.g., L water ingested/day). Conversion factors may be necessary in assessing I. For example, if C is in units of V/V (e.g., ppm in air), a conversion factor to M/V (say, mg/m³ of air) would be necessary if CR is in the typical units of V/T (m³/day). For dermal exposures, if C is in units of, say, M/V of bulk material (e.g., mg/L), a conversion factor of the form (M/A)/(M/V) (say, mg available per cm² skin exposed/mg per L bulk material) yielding C in units of M/A (e.g., mg/cm²) with CR typically in A/T units (e.g., cm² skin exposed/hour).

The discrete form of equation 3–1 is:

$$E=\sum_{i=1}^{N} I_i t_i = I_1 t_1 + I_2 t_2 + \ldots + I_n t_n \qquad (3\text{–}3)$$

where t_i now becomes the duration of exposure of event i, and I_i is the intensity of contact for exposure event i. For multiple exposure events over period of interest T (using equations 3–2 and 3–3):

$$E=\sum_{i=1}^{N} I_i t_i = \sum_{i=1}^{N} (C_i)(CR_i)t_i \qquad (3\text{–}4)$$

where

$$T=\sum_{1=1}^{N} t_i \qquad (3\text{–}5)$$

for all events, and

$$ED=\sum_{i=1}^{N} t_i \qquad (3\text{–}6)$$

for events where I is not zero. ED is the duration of exposure over all events where exposure occurs, that is, where the intensity of contact, I, is not zero.

The *exposure rate* can be defined as the exposure per unit of time. Certain average exposure rates can be useful in exposure assessment. Using equations 3–4 and 3–5, if $\bar{I}_e$ is a weighted average intensity of contact over the period of interest (including those segments of time when intensity is zero):

$ER_e = \bar{I}_e = E/T \qquad (3\text{–}7)$

where ER_e is the calendar-time exposure rate. If equation 3–6 is used instead of 3–5, a similar exposure rate is derived for those times when exposure is actually occurring:

$ER_e = \bar{I}_e = E/ED \qquad (3\text{–}8)$

Note that in equations 3–4, E is the same whether or not there are zero intensity terms on the right side of the equation, but 3–7 represents a calendar-time (or clock time) exposure rate and 3–8 represents and exposure-time exposure rate. The difference is whether the exposure rate, which is an average, is averaged over a period of time where sometimes exposure is zero, or is averaged over only those periods of time when exposure is occurring. By substitution,

$ER_e = I\ ED/T \qquad (3\text{–}9)$

For cases where the contact rate, CR, is reasonably constant, and using the weighted average concentration for C, substituting equations 3–2 into 3–9 yields:

$ER_e = (C)\ (CR)\ (ED)/T \qquad (3\text{–}10)$

where ER_e is the calendar-time exposure rate for period of interest T, and ED is the time during which exposure actually occurs at average concentration C and contact rate CR. This exposure rate can be normalized to unit body weight (BW) to yield a normalized calendar-time exposure rate. A commonly-encountered special case of this is the lifetime average daily exposure (LADE), where the period of interest is the lifetime (LT):

$LADE = (C)\ (CR)\ (ED)/(LT)\ (BW \qquad (3\text{–}11)$

where, using representative units for water ingestion as an example:

LADE = lifetime average daily exposure [mg/kg/day]
C = average concentration [mg/L water ingested]
CR = contact rate [L water ingested/day]
ED = duration of time when exposure actually occurs days]
LT = lifetime [70 years converted to days]
BW = body weight (kg) (Note that this is average body weight over a lifetime and not merely the adult body weight.)

The resulting LADE is a normalized lifetime exposure rate. Another useful relationship encountered frequently is the dose equation, given in simplified form:

$D = (E)\ (AF) \qquad (3\text{–}12)$

where D is dose (units are mass), E is exposure, and AF is an absorption fraction:

AF = amount absorbed/amount available for absorption (3–13)

These equations, when used with equation 3–11, give rise to another commonly encountered term, the lifetime average daily dose (LADD):

$LADD = (C)\ (CR)\ (ED)\ (AF)/(BW)\ (LT) \qquad (3\text{–}14)$

Note that the concentration (C), the contact rate (CR), the exposure duration (ED), absorption fraction (AF), lifetime (LT), and body weight (BW) are all parameters that are specific to the individual, although the absorption fraction, body weight, and lifetime might usually be described with generic measurements, that is, averages for a population, since they are reasonably constant for an individual. Note also that both CR and ED are dependent on the activities of the individual, and the relevant data for these parameters are activity pattern data. A major task for the exposure assessor is to determine which measurement data are relevant to

determine C, the concentration of the agent that contacts the individual. In actual exposure situations, C is likely to vary over time, sometimes by a great deal.

There are several ways that exposure assessors use measurements such as those listed in Table 3–1 to determine C and to calculate exposures using the predictive approach. Three of these ways, each having a somewhat different approach to dealing with the variation in C (and other parameters), are the *scenario method*, the *microenvironment method*, and the *Monte Carlo method*. For all of these methods, the measurement data are first used to make inferences about environmental or ambient media, and how concentrations of the chemical or agent vary over time in those media. The logical links are formed and justified between the measurement (sample) data and the characterization of the media as given in the examples in Table 3–1. Once these characterizations are made, they are used to make inferences about exposure. These three methods are not mutually exclusive, and often are used in combination in exposure assessments.

The scenario method can be used either with a single scenario, usually starting with an average concentration to calculate an LADE or LADD as in equations 3–11 and 3–14, or with multiple scenarios. In the *single scenario method*, a set of assumptions is made about how exposure takes place for an individual, and values for the various parameters in the generic exposure equation are derived from the assumptions. For example, let us assume we are doing an exposure assessment concerned with chloroform in drinking water. Since it is known that chloroform may be formed as part of the chlorination process in a drinking water treatment plant, the drinking water treatment plant can be viewed as the source, and measurements can be made of the chloroform concentrations in the finished drinking water leaving the plant. Knowledge or data concerning the fate of chloroform in the distribution system will help build the logical link between the measurements at the treatment plant and later exposure; fate information may allow linking the concentrations at the plant with those at the tap.[4] An average concentration in tap water can be estimated from the data and fate considerations, say in this case, 20 mg chloroform/L tap water. Activity pattern data are used, or assumptions made, concerning the activities of the exposed individual, to determine what the parameters for contact rate and exposure duration will be for the scenario. For this scenario, assume the contact rate is two liters of tap water ingested daily, and that the individual lives at this location for 40 years (the exposure duration). Using a lifetime of 70 years (converted to days), and a body weight of 70 kg, the LADE calculation (using equation 3–11) is straightforward.

For the concentration parameter in the exposure equation, the single scenario method usually assumes it to be a single value. (The mean value and highest value reported are two common single-value treatments depending on whether the scenario is supposed to represent a "typical" or "worst case," respectively.[5] Recall that in the derivation of LADE in equation 3–11, it is an average intensity of contact for the exposure period. Substituting the highest value reported for the concentration term for a worst-case estimate in the LADE equation is essentially saying that the person will be exposed to that value on average for the duration of exposure (ED in equation 3–11). Variation in the concentration parameter C, as well as the other parameters, are often treated with ranges or a sensitivity analysis. Use of the single scenario method, where variation in the parameters is not used, can only be justified if individual exposures are being evaluated; applying a single scenario estimate to a population without considering variation is tantamount to saying all members of the population behave exactly the same way and are exposed to exactly the same concentrations of the chemical or agent. In cases where the variation is not known, single values may be used if explained in the uncertainty section of the assessment. where an analysis of the impacts of possible variation should be done.

A few words need to be said here about the use of "worst-case" scenarios. As discussed in Chapter 1, the exposure assessor is trying to estimate a real-world dose to use in the dose-response relationship for a risk assessment. By maximizing the parameters in a scenario for exposure, the assessor is looking at the top end of the distribution of exposures in a population (if indeed the worst case actually exists in the population). A legitimate use of worst-case scenarios is to determine if the exposure or risk is low enough even at this extreme so as to dismiss concern for this scenario. It is not legitimate to use a worst-case scenario to prove that there in fact exists a concern in a real population. In constructing a worst-case scenario, the assessor has usually added assumptions or used particular data points that bring into question whether the scenario actually represents the real world. If the exposure or risk value estimated by a worst-case scenario is high enough to cause concern, the assessor must reevaluate the parameters used and perform reality checks before deciding a problem really exists. It is critical that the results of a worst-case individual scenario are not immediately applied to an entire population, since in almost all cases this will result in a substantial overestimate of a potential problem.

In the *multiple scenario method*, several individual scenarios are constructed, with particular attention given to highlighting the variability of the parameters used for the scenarios. The most common use of multiple scenarios will be where a typical case and a worst case (or reasonable worst case) are constructed, using the same procedures described above. In its theoretical extreme, one could construct a different scenario for each individual, using the particular values of the parameters which apply to that individual, and derive an estimate of population exposures by aggregating the individual scenarios.[6] With populations

[4] Alternately, of course, one could take measurements at the tap and consider that as the source for the purpose of the assessment. Where this approach may cut down uncertainty for the individual exposure, it makes generalization to a population from the individual estimates somewhat more difficult since the relationship among the individuals as far as differences in concentration at the tap is unknown.

[5] A worst-case scenario is one that estimates the highest exposure. One form of worst-case scenario is the so-called "maximally exposed individual" (MEI), which represents the single individual with the highest exposure. Naturally, the worst case can be arrived at in a number of ways besides maximizing concentration; the exposure can often be much more sensitive to the activities of the individual (ingestion rates, for example). In most exposure assessments, adjusting all the parameters to their limiting values would maximize exposure results in a scenario that may not have realistic chance of happening in the real world. For example, in the drinking water scenario, maximizing all parameters in an LADD calculation would mean the individual with the smallest body weight and shortest lifetime consumed the most water per day at the highest concentration for the longest duration; this combination is unlikely to actually occur since at least some of the parameters (e.g., body weight and consumption rate) may be covariant. For this reason, the concept of "reasonable worst-case" scenarios is often used, where the exposures are high but the combination of parameters thought to be one which probably occurs in the actual population.

[6] This has in fact been done by the Office of Toxic Substances for the 4920 respondents in the OTS chlorinated solvents study, as reported in the Task #43 report to contract 68–02–4254, dated 8/31/87, titled, "Consumer Exposure Estimates for Solvents."

of more than a small number of individuals, this may become unwieldy, but often groups of individuals will be treated as behaving similarly enough to be covered by a single scenario, thereby dividing the population into subpopulations. This procedure is often done when estimating occupational exposures for a single chemical across a number of job types. Each job type is covered by a different scenario which uses the particular parameters pertinent to that job.

The *microenvironment method* treats the variability in the concentration contacted, C, as a series of constants. If the contact rate is assumed to be fairly constant during periods of exposure, equation 3–4 can be reduced to:

$$E=(CR)\sum_{i=1}^{N} C_i, \qquad (3\text{–}15)$$

where each microenvironment i has associated with it a characteristic concentration C_i, and the subject spends a duration t_i in that microenvironment. In this method, the individual's surroundings are divided into compartments where the chemical or agent concentration remains constant, or at least has a known and describable variability. Measurement data for concentrations of chemicals or agents are usually described as constants (usually means of the measured data) for each microenvironment. Exposure estimates are derived by using an exposure equation such as the one described above, evaluating each microenvironment, and summing over all the microenvironments for an individual. Unlike the scenario methods described in equation 3–11, however, which essentially evaluate average individual exposure and which can then be aggregated to populations, the microenvironment method can more easily directly incorporate data on population activity patterns into the estimate by assigning statistical weights to the various microenvironments.

The *Monte Carlo method* immediately uses the fact that the parameters in the generic exposure equation are not single values, but distributions of values, to derive a distribution of exposures in the population. Using computer-assisted iterative techniques, the Monte Carlo simulation will solve exposure equations multiple times (hundreds, thousands) using all the actual values observed from measurements or characterization of the media, and all the data about activity patterns. The technique involves using random combinations of the actual data enough times to generate a distribution of estimated exposures while recreating the distribution of the data on the equation parameters. Although this may superficially resemble the theoretical extreme of the multiple scenario method discussed previously, it is fundamentally different, since the multiple scenario method purposefully combines the values from the distribution and the Monte Carlo method does this randomly. Whereas the multiple scenario technique may be impracticable if the population is large, the Monte Carlo method is not limited by a large population. Because of the way the estimate is derived, however, the Monte Carlo method has several issues that the exposure assessor must keep in mind before using it. First, the Monte Carlo technique works on the assumption that the parameters are independent; if they are not independent, but assumed so, excessive error may result. There are methods, however, to account for covariance if known. Second, and a more resource-related concern for most exposure assessors, is that the variation or distribution of the input parameters must be known. For the assessor using measurement data to derive distributions of concentrations or activities, this may have important ramifications to the sampling plan, and it is best to consult a statistician about the possibility of using the data for Monte Carlo simulations before the date are collected.

3.2.4. Measurements and Modeling

In exposure assessments, exposure models based on mathematical equations are used extensively to calculate things such as environmental fate/transport in surface water, indoor air levels of chemicals volatilizing from consumer products, etc. These exposure models and exposure-related measurements should be mutually supportive. When an analytical method for a particular chemical and medium is well established, and models are just being developed, all collected measurement data can be used to validate the models. Conversely, when such an analytical method is being developed and the appropriate mathematical models are well accepted, the models can be part of the process of verifying the data from the analytical method. Whenever the relative certainty of models and the relevant measurements of adequate quality are in question, the assessor should favor the measurements.

EPA's Office of Research and Development is in the process of establishing criteria for the selection of exposure assessment-related models that are most useful for a particular scenario. Part of this process involves the use of measurement data to answer selection criteria questions (e.g., fate and transport, degradation rates). Model selection criteria documents already exist for ground water (U.S. EPA, 1988d) and surface water (U.S. EPA, 1987c) and are being developed for other media.

Monitoring data and environmental fate modeling are complementary tools used to help estimate exposure. A combination of monitoring data and estimates obtained from environmental modeling reduces uncertainty in estimating chemical concentrations at exposure points. While monitoring data have the advantage of being actual measurements at the pollution site, they may have potential limitations, particularly in assessing long-term trends. However, measurement data, which are autocorrelated, can be used to predict trends in future exposures (Roach, 1977). Over-reliance on monitoring data can cause underemphasis of chemicals that have not yet been released from a source or are slow moving.

Another question related to monitoring data, which modeling helps resolve, is whether they are representative only of their sampling locations, or are relevant also to an overall exposure assessment. Because chemical concentrations are spatially variable, the assessor may need to use modeling for proper spatial representativeness in the exposure assessment. Monitoring usually represents a spatial distribution that is by necessity limited. The use of models in conjunction with monitoring can project chemical concentrations over space and time, thereby strengthening the logical link between measurement data and exposures.

3.2.5. Use of Surrogate Data in Pesticide Exposure Assessment

The use of surrogate data plays a major role in EPA assessments of human non-dietary exposure to chemicals, especially in the Office of Pesticide Programs. According to the Agency's "Pesticide Assessment Guidelines, Subdivision U, Applicator Exposure Monitoring" (U.S. EPA, 1987d): "Surrogate exposure data are defined as exposure monitoring data collected for other pesticide chemicals using comparable methods and under similar conditions as for the pesticide under assessment." The mechanics of the use of surrogate data have been discussed in public fora and in the published

scientific literature in recent years. The assumption in the use of surrogate data is that in many pesticide application scenarios, the physical parameters of application (such as human activity which leads to exposure), not the properties of the pesticide, are most important in determining the level of exposure. Note that when using a passive dosimetry monitoring method, what is measured is the amount of chemical impinging on the skin surface, or available for inhalation, that is, exposure, not the actual dose received. Factors such as dermal penetration, are, of course, expected to be highly chemical-dependent.

The development of a surrogate data base, and valid predictive correlations where possible, is a procedure that the Agency will continue to pursue. The Agency believes that it is more reliable to estimate exposure based on an extensive, scientifically sound and appropriate "surrogate" data base rather than on the results of an individual pesticide application study with a limited number of replicates, even if that single study is judged valid by the Agency. As the Agency receives additional valid exposure data from any source, the data will be added to the existing data base, thus expanding the data base and improving its reliability for estimating exposure for other pesticides.

3.2.6. Combining Measurement Data Sets from Various Studies

Combining data from more than one source into a single data set must be done cautiously. The circumstances under which each set of data was collected (target population, sampling design, location, time, etc.) and the quality of the data (precision, accuracy, representativeness, completeness, etc.) must be evaluated. Combining summary statistics of the data sets (e.g., means) into a single data set may be more appropriate than combining the original data values. Statistical methods are available for combining results from individual statistical tests. For example, in applicable cases, several studies with marginally statistically significant results may justify an overall conclusion of a statistically significant effect.

The best way to report data is to provide sufficient background information for the measurement data set, including clear documentation of the source of the data (including references). This allows for determining the underlying probability distribution of the measurement variable. A probability distribution can be ascertained from the following types of information about the data set: the arithmetic or geometric mean, the number of measurements in the data set, the extreme values, the mode or modes, the median value, the variance or standard deviation, and a histogram showing the general shape of the distribution.

Arithmetic means are good descriptors of the central tendency of a data set provided the data set is normally distributed. Geometric means are better descriptors of central tendency for lognormal distributions. The median is a good measure of the location of the center of a data set because it is unaffected by extreme values. Unfortunately, it does not make use of all the information contained in the data set, but rather uses only the relative sizes of the measurements. The median is also less amenable than a mean to mathematical treatment, and is more difficult to use in more elaborate statistical techniques.

3.3. *Adequacy of Measurement Data for the Intended Exposure Assessment*

Measurement data, whether generated for the particular exposure assessment or taken from another measurement study, must be evaluated for their adequacy in use as samples representative of media, individual exposures, body burden, or whatever is being characterized. The same considerations discussed in section 2.4 concerning data quality (precision, accuracy, representativeness, completeness, and comparability) are appropriate when evaluating any data being considered for use in an assessment.

Even in the case of serious flaws, data should not be discarded entirely unless better data are available. If flawed data are retained, the nature and seriousness of the flaws should be clearly stated. If flawed data are rejected for use in exposure assessments in favor of better data, the flaws should be clearly stated and the basis for judgment of the retained data should be documented.

3.3.1. Quality Assurance and Quality Control for Previously-Generated Data

In many instances, previous studies may have developed data that could be useful for the current sampling plan requirements of the exposure assessor. Any data developed through previous studies should be validated with respect to quality and extrapolation to current use. The criteria for method selection and validation should also be followed in the analysis of existing data. Some other considerations when evaluating data include the following:

Analytical Methods—Were the analytical methods used in collecting or analyzing the data from the previous study consistent with present practices? The methods need not be identical, and a lower detection limit with a newer method does not necessarily mean that the older data are inadequate. However, research might have identified problems with older methods that would invalidate them for current use.

Detection Limits—It should be determined whether the detection limits of the analytical method were sensitive to current Agency standards and criteria for evaluating data.

Laboratory—Was the laboratory performing the analysis considered competent? Are matrix spike recoveries acceptable for the intended use? Were any laboratory blanks contaminated?

Sample Collection Considerations—Was the sampling plan followed? Where and how were the samples collected? Were a sufficient number of samples collected? Methods for sample collection are as important as methods for sample analysis.

Sample Handling Considerations—Were traceability procedures followed if the samples were analyzed off-site? Were the samples preserved properly? How were the samples shipped? How long were the samples held before being analyzed?

3.3.2. The Role of Limit of Detection (LOD) Values in Measurements Used to Estimate Exposure

The ability to detect and accurately measure a quantity tends to decrease at low concentrations due to various factors such as sampling constraints, limitations of the measuring instrument, contamination from sources other than the source being considered, etc. The limitations of the measuring system must be understood when interpreting data for exposure assessment.

The limit of detection (LOD) is the smallest concentration or amount of a substance that can be reliably detected by a given measurement process. The limit of quantitation (LOQ) is the smallest concentration or amount of a substance for which quantitative results may be obtained with a specified degree of confidence. The precise interpretation of these definitions depends on the analytical method (e.g., particle counting methods differ from methods such as GC–MS with essentially continuous results) and the substance being analyzed. The definitions tend to vary also between applications and laboratories ("reliably detected" may be defined as detected with a probability of 95%, 99%, 99.9%, etc.).

The exposure assessor should ensure that the LOD and LOQ have been clearly defined and estimated for the

measurement process under consideration and are appropriate for the needs of the exposure assessment. The laboratory should not only state numerical values, but definitions of the LOD and LOQ.

Exposure assessors may often be faced with data consisting largely of "below LOD" or "at LOD" values. Since the exposure assessment is only as good as the data supporting it, it is essential to interpret these types of data properly so as to avoid misrepresenting the data set or the exposure assessment itself. Rules of thumb that the exposure assessor may encounter in the way data sets are reported include:

Data less than the LOD reported as "non-detected"—When measurements less than the LOD are reported as non-detected, the data are referred to as censored. The level of censoring is based on the confidence with which the analytical signal can be discerned from the noise. Statistical methods are available for treating these data sets and many are summarized and include working examples (Cox and Oakes, 1984; Miller, 1981; Kalbfleisch and Prentice, 1980; Porter et al., 1988).

All Non-detects reported as LODs—In this worst-case approach, all non-detects are assigned the value of the LOD, which may be considered the largest concentration of analyte that could be present but not yet detected. This approach biases the mean in a positive direction. The seriousness of such a bias will depend on the relative number of detects and non-detects in the data set and the relative size of the detection limit compared to the mean of the data with values above the LOD.

All non-detects reported as zero—This approach results in biasing the mean in a negative direction. Again, the seriousness of the bias depends on the relative number of detects and non-detects and the mean of the data with values above zero.

All non-detects as LOD/2—This approach assumes that on the average all values between the LOD and zero could be present; therefore, an average value would result if many samples in this range were measured. Similar to the above approaches, the seriousness of the bias depends on the relative number of detects and non-detects and the mean of the data above LOD/2.

Another option includes all measured values reported, without regard to the considerations for LODs and LOQs. Negative values (e.g., a blank larger than the value measured for a sample) must be reported when they occur. Indeed, if a population value is truly zero, an equal number of negative and positive measured values is expected because of the measurement variability. Using this approach, the mean and standard deviation of the data set are the important parameters, and the results for individual samples should not be considered apart from the data set.

3.4. *Evaluation and Description of Uncertainty in the Use of Measurements*

The estimation of a quantitative value of a parameter using measurement data is an inexact process. Every measurement results in a somewhat different value for the parameter. Thus, the resulting data and any decisions based on them have a degree of *measurement uncertainty*. When using field or laboratory measurement in the decision-making process, the exposure assessor must always evaluate the data for their uncertainty and assess them for the error associated with the risk estimate. The assessment will also contain *descriptive uncertainty*, which refers to the uncertainty in the logic of how the measured data and the exposures are linked. Descriptive uncertainty as well as measurement uncertainty must be clearly indicated in the assessment. An error in descriptive logic about how the measurements and the exposures are linked may mean the difference between estimating exposures that do or do not actually occur in the real world, with resulting health, ecological, or economic consequences. For that reason, it is essential that the non-numeric assumptions about how the measurements and exposures are linked are clearly laid out in the uncertainty analysis.

Most predictive or reconstructive exposure assessments, and often direct measurement assessments, also rely somewhat on expert judgment. Section 3.4.3 discusses formal means for representing uncertainty due to expert opinion.

3.4.1. Assignment of Limits of Uncertainty to Data

Any assignment of uncertainty to data must consider both random and systematic sources of error and, for the measurement process, the sampling operation and the relation of the samples to the population of concern. The assignment of measurement uncertainty must be made on the basis of a statistical analysis of the data. However, even the best statistical treatment may often involve some subjective decisions. Accordingly, all details of the analysis of the data must be documented, and clear statements must be made as to what the assigned uncertainties represent.

3.4.2. Statistical Analysis of Data

The services of a professional statistician are essential in the exposure assessment process when data are being analyzed statistically.

The evaluation of both the mean and the dispersion of a data set depends on the knowledge or assumption of the type of distribution of the population. Types range from a uniform distribution in which all individuals have the same frequency of occurrence (e.g., flipping a coin) to those in which the frequencies of occurrence vary and may be symmetrically or asymmetrically distributed. The normal distribution is the type most frequently encountered and is familiar to most scientists. The results of measurement processes are often normally distributed. Individual samples from environmental media often exhibit a log-normal distribution. Log-normal data can be transformed to normal data by first converting to logarithms and then treating the logarithms as if they were the actual data. It would be useful to graph the available data to ensure that the results are normally distributed. There are computerized statistics packages on the commercial market that facilitate the determination of data distribution. Also, a limited number of samples may preclude statistical analysis of the data.

Depending on the distribution of data, statistics such as dispersion, range, standard deviation, and confidence intervals can be developed, as well as measures of bias and uncertainty. Again, the exposure assessor is advised to consult a statistician or good statistics text for further information and guidance in this area.

3.4.3. Decision Analytic Approach for Expert Opinion

The decision analytic approach explicitly characterizes and represents major uncertainties using probability as the language to convey the degree of uncertainty. When the available data are too indirect, conflicting, or incomplete to draw relationships of concern, the National Academy of Sciences, in its 1977 review of EPA's decision-making procedures, endorsed the use of (judgmental) probabilities as a means for scientific experts to communicate more precisely their knowledge concerning scientific uncertainties to decision-makers (National Academy of Sciences, 1977). An important issue in implementing a decision analytic assessment is the selection of the exposure experts to provide probabilistic exposure relationships. There is extensive

literature covering techniques used for eliciting probability judgments from experts and the various types of bias that can occur when experts make such judgments (Von Holstein and Matheson, 1979; Spetzler and Von Holstein, 1975; Kahneman et al., 1982; Wallsten and Budescu, 1983).

Bayesian inference is worthy of note for combining expert opinion and experimental or survey data. This approach to representing uncertainty is to begin with a prior probabilistic distribution to represent the uncertainty, based on expert opinion, anecdotal information interpreted by an expert, or other sources. The prior distribution is then updated using experimental data and standard Bayesian statistics to obtain an updated or "posterior" distribution, which is taken to be the final form of the distribution (see Hayes et al., 1987, or any statistics text covering Bayesian inference).

Glossary of Terms

Absorbed Dose—The amount of a substance penetrating across the exchange boundaries of an organism, via either physical or biological processes, after contact (exposure).

Accuracy—The measure of the correctness of data, as given by the difference between the measured value and the true or standard value.

Administered Dose—The amount of a substance given to a human or test animal in determining dose-response relationships, especially through ingestion or inhalation. (See applied dose.) Even though this term is frequently encountered in the literature, administered dose is actually a measure of exposure, because even though the substance is "inside" the organism once ingested or inhaled, administered dose does not account for absorption. (See absorbed dose.)

Agent—A chemical, radiological, mineralogical, or biological entity that may cause deleterious effects in an organism after the organism is exposed to it.

Ambient—Surrounding conditions. "Indoor ambient" and "outdoor ambient" are sometimes used to differentiate between indoor and outdoor surroundings.

Ambient Measurement—A measurement (usually the concentration of a chemical or pollutant) taken in an ambient medium, normally with the intent of relating the measured value to the exposure of an organism which contacts that medium.

Ambient Medium—One of the basic categories of material surrounding or contacting an organism, e.g., outdoor air, indoor air, water, or soil, through which chemicals or pollutants can move and reach the organism. (See biological medium, environmental medium.)

Applied Dose—The amount of a substance given to a human or test animal in determining dose-response relationships, especially through dermal contact. (See administered dose.) Even though this term is encountered in the literature, applied dose is actually a measure of exposure, since it does not take absorption into account.

Arithmetic Mean—The sum of all the measurements in a data set divided by the number of measurements in the data set.

Breathing Zone—A zone of air in the vicinity of an organism from which respired air is drawn. Breathing zone measurements are frequently made in occupational health studies by placing monitors at fixed locations of approximately head height near where a worker spends a substantial amount of the workday.

Bias—A systematic error inherent in a method or caused by some feature of the measurement system.

Biological Measurement—For the purposes of reconstructive exposure assessment, a measurement taken in biological medium, usually of the concentration of a chemical/metabolite or the status of a biomarker, normally with the intent of relating the measured value to the absorbed dose of a chemical at some time in the past. (Biological measurements are also taken for purposes of monitoring health status and predicting effects of exposure.) (See ambient measurement.)

Biological Medium—One of the major categories of material within an organism, e.g., blood, adipose tissue, or breath, through which chemicals can move, be stored, or be biologically, physically, or chemically transformed. (See ambient medium, environmental medium.)

Comparability—The ability to describe likenesses and differences in the quality and relevance of two or more data sets.

Data Quality Objectives (DQO)—Statements of the level of uncertainty an assessor is willing to accept in results derived from environmental data.

Direct Measurement of Exposure—An approach to quantifying exposure by taking measurements of exposure at or near the exchange boundaries of an organism while the exposure is taking place.

Dose—The amount of a substance available for interaction with metabolic processes of an organism following exposure and absorption into the organism. The amount of a substance crossing the exchange boundaries of skin, lungs, or digestive tract is termed *absorbed dose*, while the amount available for interaction by any particular organ or cell is termed the *delivered dose* for that organ or cell. Theoretically, the sum of the delivered doses plus the metabolic transformations should equal absorbed dose. (The terms *adminstered dose* and *applied dose* refer to amounts of a substance made available for absorption, and therefore are measures of exposure rather than dose. As such, these terms, sometimes found in the literature, are somewhat confusing and should be avoided if possible by exposure assessors. The term *exposure dose*, a common radiological term, refers to exposure but carries the assumption that the absorption fraction is one, making exposure equal to absorbed dose. Again, this term is somewhat confusing and should be avoided if possible.)

Dose Rate—Dose per unit time, for example in mg/day. Dose rates are often normalized to body weight, yielding units such as mg/kg/day.

Dose-Response Assessment—The determination of the relationship between the magnitude of exposure and the probability of occurrence of the health effects in question.

Dose-Response Curve—A representation, normally in a graphical presentation, of the relationship between dose and probability of occurrence of a health effect or effects. Often these curves are actually based on "administered dose" (i.e., exposure) rather than absorbed dose or delivered dose. (See discussion under "dose.")

Dosimeter—Instrument to measure dose; many so-called dosimeters actually measure exposure rather than dose.

Dosimetry—Process of measuring dose.

Ecological Exposure—Exposure of a nonhuman receptor or organism to a chemical, radiological, or biological agent.

Effluent—(Waste) material being discharged into the environment, either treated or untreated. Effluent generally is used to describe water discharges to the environment, although it can refer to stack emissions or other material flowing into the environment.

Environmental Fate—The destiny of a chemical or biological pollutant after release into the environment. Environmental fate involves temporal and spatial considerations of transport, transfer, storage, and transformation.

Environmental Fate Model—In the context of exposure assessment, any mathematical abstraction of a physical

system used to predict the concentration of specific chemicals as a function of space and time subject to transport, intermedia transfer, storage, and degradation in the environment.

Environmental Medium—One of the major categories of material found in the outdoor natural physical environment that surrounds or contacts organisms, e.g., surface water, ground water, soil, or air, and through which chemicals or pollutants can move and reach the organisms. (See ambient medium, biological medium.)

Exposure—Contact of an organism with a chemical, physical, or biological agent. Exposure is quantified as the amount of the agent available at the exchange boundaries of the organism (e.g., skin, lungs, digestive tract) and available for absorption.

Exposure Assessment—The determination or estimation (qualitative or quantitative) of the magnitude, frequency, duration, and route of exposure.

Exposure Pathway—The course a chemical or pollutant takes from the source to the organism exposed.

Exposure Rate—Exposure per unit time (compare exposure, dose, dose rate), yielding units of amount (mass, fibers, etc.)/time, for example, mg/day. Exposure rates are often normalized to body weight, yielding units such as mg/kg/day.

Exposure Route—The way a chemical or pollutant enters an organism after contact, e.g., by ingestion, inhalation, or dermal absorption.

Exposure Scenario—A set of assumptions about how exposure takes place (including assumptions/conditions concerning sources, exposure pathways, concentrations of pollutants, individual or population habits and characteristics), which aid the exposure assessor in evaluating, estimating, or quantifying exposures.

Fixed-Location Monitoring—Sampling of an environmental or ambient medium for pollutant concentration at one location continuously or repeatedly over some length of time.

Geometric Mean—The nth root of the product of n values.

Guidelines—Principles and procedures to set basic requirements for general limits of acceptability for assessments.

Hazard Identification—The determination of whether a particular substance or chemical is or is not causally linked to particular health effects.

Limit of Detection (LOD)—The smallest concentration or amount of a substance that can be differentiated from background by a given measurement process (e.g., analytical instrument/sample matrix combination). (See limit of quantitation.)

Limit of Quantitation (LOQ) (also, "limit of quantification")—The lower limit of concentration or amount of substance for which quantitative results may be obtained with a specified degree of confidence (i.e., the amount that must be present before a particular method is considered to provide reliable and reproducible quantitative results). (See limit of detection.)

Maximally Exposed Individual (MEI)—The single individual with the highest exposure in a given population.

Median Value—The value in a measurement data set such that half the measured values are greater and half are less.

Microenvironment Method—A method used in predictive exposure assessments to estimate exposures by sequentially assessing exposure for a series of areas (microenvironments) that can be approximated by constant or well-characterized concentrations of a chemical or other agent.

Microenvironments—Well-defined areas such as the home, office, automobile, kitchen, store, etc. that can be treated as homogeneous (or well characterized) in the concentrations of a chemical or other agent.

Mode—The value in the data set that occurs most frequently. Monte Carlo Method—A method used in predictive exposure assessments that uses the Monte Carlo technique, a repeated random sampling from the distribution of values for each of the parameters in a generic exposure equation, to derive an estimate of the distribution of exposures in the population.

Non-Parametric—Statistical methods that do not assume a particular statistical distribution for the statistical population(s) of interest ("distribution-free methods").

Personal Measurement—A measurement collected from an individual's immediate environment using direct methods such as personal air pumps.

Pharmacokinetics—The study of the time course of absorption, distribution, metabolism, and excretion of a foreign substance (e.g., a drug or pollutant) in an organism's body.

Precision—A measure of the reproducibility of a measured value under a given set of conditions.

Predictive Exposure Assessment—An approach to quantifying exposure by measurement or estimation of both the amount of a substance contacted, and the frequency/duration of contact, and subsequently linking these together to estimate exposure. Predictive exposure assessments commonly use the scenario method, the microenvironment method, or the Monte Carlo method (or combinations of these) to make the link between amount (intensity of contact) and duration of contact.

Probability Samples—Samples selected from a statistical population such that each sample has a known probability of being selected.

Quality Assessment—The overall system of activities that provide an objective measure of the quality of data produced.

Quality Assurance—The system of activities whose purpose is to provide to the user of the exposure assessment the assurance that the data used as a basis for the assessment meet defined standards of quality.

Quality Control—The overall system of activities whose purpose is to control the quality of the measurement data so that they meet the needs of the user.

Random Samples—Samples selected from a statistical population such that each sample has an equal probability of being selected.

Range—The difference between the largest and smallest values in a measurement data set.

Reconstructive Exposure Assessment—An approach to quantifying exposure by reconstructing absorbed dose (and exposure) after exposure has occurred, from evidence within an organism such as chemical levels in tissues or fluids, or from evidence of other biomarkers of exposure.

Representativeness—The degree to which a sample is, or samples are, characteristic of the whole medium, exposure, or dose for which the samples are being used to make inferences.

Risk—The probability of deleterious health or environmental effects.

Risk Characterization—The description of the nature and often the magnitude of human or non-human risk, including attendant uncertainty.

Sample—A small part of something designed to show the nature or quality of the whole. Exposure-related measurements are usually samples of environmental or ambient media, exposures of a small subset of a population for a short time, or biological samples, all for the purpose of inferring the nature and quality of parameters important to evaluating exposure.

Sampling Frequency—The time interval between the collection of successive samples.

Sampling Plan—A set of rules or procedures specifying how a sample is to be selected and handled.

Scenario Method—A method used in predictive exposure assessment to account for variability in exposure parameters by setting up one or more alternative sets of assumptions (scenarios), evaluating each for the resulting exposures, and then using the resulting exposure estimate(s) as being illustrative of the exposures in the actual populations being evaluated. In the case of a single scenario, a sensitivity analysis is usually performed on the parameters to evaluate the variability.

Source Characterization Measurements—Measurements made to characterize the rate of release of agents into the environment from a source of emission such as an incinerator, landfill, industrial or municipal facility, consumer product, etc.

Standard Operating Procedure (SOP)—A procedure adopted for repetitive use when performing a specific measurement or sampling operation.

Statistical Control—The process by which the variability of measurements or of data outputs of a system is controlled to the extent necessary to produce stable and reproducible results.

Statistical Significance—An inference that the probability is low that the observed difference in quantities being measured could be due to variability in the data rather than an actual difference in the quantities themselves. The inference that an observed difference is statistically significant is typically based on a test to reject one hypothesis and accept another.

Surrogate Data—Substitute data or measurements on one substance used to estimate corresponding values of another substance.

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Part V

Department of Education

34 CFR Part 203

Chapter 1 Program for Neglected or Delinquent Children; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 203

Chapter 1 Program for Neglected or Delinquent Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes regulations to implement the portion of Chapter 1 that provides financial assistance to State agencies responsible for the education of neglected or delinquent children in institutions. Under Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, the U.S. Department of Education (Department) provides financial assistance to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, and children in adult correctional institutions.

DATES: Comments must be received on or before January 31, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mrs. Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Ogura, Chief, Program Policy Branch, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132. Telephone: (202) 732–4701.

SUPPLEMENTARY INFORMATION:

Background

Title I of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297) amended the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized programs. One of these programs is Chapter 1 of Title I of the ESEA, which reauthorizes programs previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Part D of Chapter 1 of the ESEA, as amended, which would be implemented by these proposed regulations, provides financial assistance to State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, and children in adult correctional institutions.

In reauthorizing the Chapter 1 Program for Neglected or Delinquent Children, Congress enacted several changes designed to improve services for the children participating in the program. First, section 1241 clarifies that if a State agency is responsible for providing free public education for neglected or delinquent children in institutions or adult correctional institutions, the agency is eligible for a grant under this part. This includes a State educational agency (SEA) that has the responsibility and does not provide the services directly, but provides the services under contract with a local educational agency (LEA) or by arrangement with another State agency. The Conference Report (H.R. Rept. 567, 100th Cong., 2d Sess. 339 (1988)) further indicates that if a State appropriates funds specifically for the SEA to provide education for neglected or delinquent children in institutions, the SEA shall be considered to meet the definition of an eligible State agency under this part even if the SEA does not directly provide the educational services.

Second, the reauthorization, in section 1242(a) of the Act, clarifies that neglected or delinquent children attending community day programs for neglected or delinquent children are included in the categories of children eligible for services. In addition, section 1292 of the Act provides that handicapped children eligible to be counted and served under this part are also eligible to be counted and served under the Chapter 1 program for handicapped children, if they qualify for services under section 1225 of the Act.

Third, section 1243 of the Act seeks to improve the transition of neglected or delinquent children from educational programs operated by institutions to regular classrooms operated by LEAs. The Act permits a State to reserve 10 percent or less of the amount it receives under this part to support projects that facilitate the transition of children from State-operated or State-supported institutions to LEAs.

Fourth, section 1242(b) of the Act contains a special interpretation of how the supplement-not-supplant requirement applies to the Chapter 1 Program for Neglected or Delinquent Children. Although the services provided under this part must be supplementary to services provided with State funds, compliance with the requirement is to be determined on the basis of the total hours of instruction children receive from State sources without regard to the specific subject areas. For example, even if an institution's regular program of instruction does not include a reading class, funds received under this part may be used to provide a remedial reading class if the total instructional time for the selected children is increased by the amount of time of the remedial reading class.

Finally, section 1242(a) requires that records for students transferring between institutions and LEAs include any available individualized education plans for the students.

Regulatory Issues

The Secretary particularly invites comments on the following issues:

1. Reservation of Funds for Transition Services

The statute provides that a State may reserve up to and including 10 percent of the amount it receives under section 1241 of Chapter 1 for transition services. Under § 203.40(b), the Secretary has interpreted this provision to mean that the State agency educating the children in the institutions, which will not always be the SEA, has the discretion to reserve the funds. Since the State agency provides education for institutionalized children returning to LEAs, the Secretary believes that the State agency is in a better position to determine the transition needs of students and to identify the resources available to facilitate students' transitions to LEA programs. The Secretary specifically seeks comments on whether an SEA or State agency should have the authority to reserve the funds.

2. Definitions of Institutions

Section 1244 of Chapter 1 defines the terms "institution for delinquent children" and "institution for neglected children." The definitions in the Act exclude the requirement in the current regulations that children in the institution have an average stay in the institution of at least 30 days. The Secretary believes that institutions that serve children for less than 30 days, such as reception and diagnostic centers, do not have sufficient time to provide services of sufficient size, scope, and quality to meet the needs of the

children sought to be addressed by this program. Therefore, § 203.6(c) adds to the statutory definition the requirement that children in an eligible institution have an average stay in the institution of at least 30 days.

3. Maintenance of Effort

Section 1242(a) of the Act requires that a State agency maintain fiscal effort on the same basis as is required of an LEA under section 1018(a) of the Act. In determining an LEA's compliance with the requirement, an SEA considers current expenditures, as defined in section 1471 of the Act, in the calculation of combined fiscal effort per student and aggregate expenditures. The statutory definition of current expenditures includes expenditures for administration, instruction, attendance, health services, pupil transportation services, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities. These expenditures represent an LEA's fiscal effort in providing a free public education for its students.

A State agency operating institutions for neglected or delinquent children is primarily responsible for caring for the children in the institutions. Therefore, many of the expenditures incurred by institutions for neglected or delinquent children include expenses that are primarily associated with the cost of caring for the children rather than the cost of providing them a free public education. Section 203.41(a)(3) limits the expenditures to be included in determining whether a State agency has properly maintained effort to expenditures for instructional staff salaries and instructional materials and supplies. The Secretary particularly seeks comments on limiting the expenditure categories and whether additional costs should be included in the determination to reflect educational expenditures more accurately without causing additional and unwarranted burden on a State agency.

4. State Regulations

Section 1451(b) of the Act requires that State rules and regulations, relating to the administration and operation of Chapter 1 programs, be reviewed by a committee of practitioners prior to publication. The statute provides that a majority of the members of the committee be representatives of LEAs. Section 1242 of the Act requires that programs under this part be administered and carried out in a manner consistent with section 1451(b). In order to be consistent with section 1451(b), the Secretary proposes to require that a committee of practitioners be established. However, because funds under this program go to State agencies rather than LEAs, the Secretary proposes that the majority of the committee represent those State agencies rather than LEAs as provided in section 1451(b). Section 203.50(e)(3)(ii) of the proposed regulations reflects this position.

Applicability of Education Department General Administrative Regulations (EDGAR)

As indicated in § 203.5(a), the Secretary proposes to make the relevant parts of EDGAR applicable to programs under this part. In making this proposal, the Secretary is responding to a need for additional guidance. During the six years that EDGAR has not been applicable under Chapter 1 of the ECIA, SEAs and State agencies have asked the Department numerous questions that are answered by the provisions in EDGAR. Moreover, without the benefit of the guidance in EDGAR, a number of States have incurred audit exceptions concerning fiscal control and fund accountability. The Secretary believes that making the relevant parts of EDGAR applicable to programs under this part will address the need for better guidance and accountability. Moreover, the Secretary does not believe this action will create additional burden for SEAs and State agencies because EDGAR is applicable to other State-administered Federal education programs and has recently been reviewed with respect to federalism issues and burden reduction, and unduly burdensome requirements have been revised or removed.

Specifically, the Secretary proposes to apply Part 76 (*State-Administered Programs*), with certain exceptions; Part 77 (*Definitions that Apply to Department Regulations*); and Part 78 (Education Appeal Board). In addition, regulations implementing the new enforcement provisions in Part E of the General Education Provisions Act would apply when those regulations are promulgated. Further, the Secretary proposes in § 203.5(a)(4) to apply Part 80 (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for funds received by the SEA and its LEAs under this part. If a State does not have its own written requirements implemented by July 1, 1989, but wishes to develop them, the requirements in Part 80 would apply until such time as written requirements are formally adopted. If a State chooses to apply its own written requirements, those requirements must be available for Federal inspection. In a case where departmental officials determine that a State's requirements are not sufficient, the enforcement provisions in Part E of GEPA would apply, including the due process provisions in that part. During the transition period provided for in section 1491(c) of the Act (July 1, 1988 through June 30, 1989), a State may continue to comply with the requirements under Chapter 1 of the ECIA. The Secretary specifically invites comments on § 203.5(a)(4).

Program Improvement

Under proposed § 203.46(a)(2), each State agency would be required to use the results from evaluating its project to make necessary improvements. Any necessary changes in the project would of course be subject to approval by the SEA.

State Complaint Procedures

Section 203.52 of the proposed regulations has been added to require States to develop and implement procedures for resolving complaints at the State and local levels. The Secretary has added this section in response to language in the conference report accompanying the Hawkins-Stafford Act recommending that the Secretary "issue amended regulations making 34 CFR 76.780 through 76.783 applicable to Chapter 1." H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1988). The Secretary has proposed, in a previously published notice of proposed rulemaking, to remove the complaint procedures from Part 76 and to retain those procedures only in regulations for the specific programs to which they apply. Rather than repeating the complaint provisions currently in Part 76, however, the Secretary has attempted in § 203.52 to implement the conferees' intent that States develop and implement procedures to resolve complaints while affording States maximum flexibility in tailoring those procedures to fit State and local needs.

Annual Performance Report

Under § 203.46(c), the SEA will be required annually to submit to the Secretary the data required under section 1019(b)(3) of the Act, along with additional items the Department believes are necessary in describing the impact of the program. The additional items that would be included are: (1) The number of children, by grade, receiving services in neglected, delinquent, adult correctional,

community day programs for neglected or delinquent children, and transitional projects; (2) characteristics of participants, including age, gender, and ethnicity; (3) the number of participants—in neglected, delinquent, or adult correctional institutions, or community day programs—each by type of instructional or support service received; (4) the number of participants with handicapping conditions; and (5) other information as may be requested by the Secretary.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606—The Family

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the program provides educational and support services for children removed from families because of delinquency or neglect and supports activities that facilitate children's return to family and local school programs.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 203.21, 203.30, 203.44, 203.46, and 203.52 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h).)

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2043, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 203

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.013—Chapter 1 Program for Neglected or Delinquent Children.)

Dated: November 29, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 203 to read as follows:

PART 203—CHAPTER 1 PROGRAM FOR NEGLECTED OR DELINQUENT CHILDREN

Subpart A—General

Sec.

203.1 What is the Chapter 1 Program for Neglected or Delinquent Children?
203.2 Who is eligible for a grant?
203.3 Who is eligible for a subgrant?
203.4 What kind of activities may be assisted?
203.5 What regulations apply?
203.6 What definitions apply?
203.7–203.9 [Reserved]

Subpart B—How Does a State Apply for a Grant?

203.10 What assurances must a State submit to receive a grant?
203.11–203.19 [Reserved]

Subpart C—How Does the Secretary Determine the Amount of a Grant?

203.20 How does the Secretary determine the amount of a grant to an SEA?
203.21 How does the Secretary determine the amount of a State agency grant?
203.22 What funds are available for an SEA to carry out its responsibilities?
203.23–203.29 [Reserved]

Subpart D—How Does a State Agency Apply For and Receive a Subgrant?

203.30 How does a State agency apply for a subgrant?
203.31 What are the State agency needs assessment requirements?
203.32 Under what conditions does an SEA approve a State agency's application?
203.33–203.39 [Reserved]

Subpart E—What Post-Award Conditions Must Be Met by a State Agency?

203.40 What costs are allowable?
203.41 What is the maintenance of effort requirement?
203.42 Under what circumstances may an SEA waive the maintenance of effort requirement?
203.43 What is the supplement-not-supplant requirement that applies to the program?
203.44 What is included in the records of transferred students?
203.45 How may personnel be assigned supervisory duties?
203.46 What are the requirements for evaluating and reporting project results?
203.47–203.49 [Reserved]

Subpart F—What Are Other State Responsibilities for the Program?

203.50 Does a State have authority to issue State regulations for the program?
203.51 How can State personnel paid with Chapter 1 funds be assigned to State programs?
203.52 What complaint procedures must an SEA adopt?
203.53–203.59 [Reserved]

Authority: 20 U.S.C. 1232(b)(2), (5), 2721(a), 2724(b), 2728 (a), (b), (d), 2729(b), 2801–2804, 2811–2812, 2824 (a), (b), 2831(a), 2835 (a), (d), 2838 (a), (b), (c), 2851, 2853, 2891, unless otherwise noted.

Subpart A—General

§ 203.1 What is the Chapter 1 Program for Neglected or Delinquent Children?

Under the Chapter 1 Program for Neglected or Delinquent Children, the Secretary provides Federal financial assistance for projects designed to meet the special educational needs of neglected or delinquent children—

(a) In institutions for neglected children;

(b) In institutions for delinquent children;

(c) Attending community day programs for neglected or delinquent children; and

(d) In adult correctional institutions.

(Authority: 20 U.S.C. 2802(a))

§ 203.2 Who is eligible for a grant?

The Secretary provides funds under this part to State educational agencies (SEAs) for State agencies directly responsible for providing free public

education for children referred to in § 203.1.

(Authority: 20 U.S.C. 2801(a))

§ 203.3 Who is eligible for a subgrant?

(a) A State agency that is responsible for providing free public education for children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, or children in adult correctional institutions is eligible to receive a subgrant under this part.

(b) The SEA shall annually notify each eligible State agency of the amount of funds the State agency is eligible to receive under the Chapter 1 Neglected or Delinquent Program.

(Authority: 20 U.S.C. 2801 (a), (b))

§ 203.4 What kind of activities may be assisted?

Under the Chapter 1 Neglected or Delinquent Program, the Secretary makes payment to SEAs to assist State agencies in conducting—

(a) Programs and projects that are designed to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, and children in adult correctional institutions; and

(b) Projects that facilitate the transition of children from State institutions for neglected or delinquent children into programs operated by local educational agencies (LEAs).

(Authority: 20 U.S.C. 2802(a), 2803(a))

§ 203.5 What regulations apply?

The following regulations apply to the Chapter 1 Neglected or Delinquent Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (*State-Administered Programs*) as follows:

(i) Subpart A (*General*).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Subpart E (*How a Subgrant is Made to an Applicant*).

(ivi) Subpart F (*What Conditions Must Be Met by the State and Its Subgrantees?*), except for §§ 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(v) Subpart G (*What Are the Administrative Responsibilities of the State and Its Subgrantees?*), except for § 76.722 (Other responsibilities of the State).

(vi) Subpart H (*What Procedures Does the Secretary Use to Get Compliance?*).

(2) 34 CFR Part 77 (*Definitions that Apply to Department Regulations*).

(3) 34 CFR Part 78 (*Education Appeal Board*).

(4) 34 CFR Part 80 (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Result in the efficient and effective administration of programs under this part;

(iii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iv) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(b) The regulations in this Part 203.

(Authority: 20 U.S.C. 2831(a))

§ 203.6 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 1471 of the Act:

Average daily attendance.
Average per pupil expenditure.
Construction.
Current expenditures.
Equipment.
Free public education.
Local educational agency.
Parent.
Secretary.
State.
State educational agency.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

GEPA.
Grant.
Nonprofit.
Private.
Project.
Supplies.

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

"Adult correctional institution" means a facility in which persons are confined as a result of a conviction of a criminal offense, including persons under 21 years of age.

"Children" means—

(a) Persons up to age 21 who are entitled to a free public education not above grade 12; and

(b) Preschool children.

"Community day program" means, as determined by the SEA, a regular program of instruction provided by a State agency at a community day school operated specifically for neglected or delinquent children.

"ECIA" means the Education Consolidation and Improvement Act of 1981.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

"Institution" means either an institution for neglected children or an institution for delinquent children, or an adult correctional institution.

"Institution for delinquent children"means, as determined by the SEA, a public or private residential facility that is operated for the care of children who—

(a) Have been determined to be delinquent or in need of supervision; and

(b) Have had an average length of stay in the institution of at least 30 days.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated for the care of children who—

(a) Have been committed to the institution or voluntarily placed in the institution under applicable State law because of abandonment, neglect, or death of the parents or guardians; and

(b) Have had an average length of stay in the institution of at least 30 days.

"Regular program of instruction" means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

"State agency" means an agency of State government directly responsible for the free public education of children in institutions for neglected or delinquent children or in adult correctional institutions, or in community day programs for neglected or delinquent children. Although the term generally refers to an agency other than an SEA, the term includes an SEA

that receives a specific State appropriation for the education of neglected or delinquent children but transfers the funds to another agency that has responsibility for providing the educational services. The educational services may be provided in schools operated by the SEA or the State agency or schools under contract or other arrangement with the SEA or the State agency.

(Authority: 20 U.S.C. 2831(a), 2891; H.R. Rept. 567, 100th Cong., 2d Sess. 339 (1988) (Conf. Rept.))

§§ 203.7-203.9 [Reserved]

Subpart B—How Does a State Apply for a Grant?

§ 203.10 What assurances must a State submit to receive a grant?

(a) A State that wishes to receive fund under this part for State agency projects designed to meet the special educational needs of neglected or delinquent children shall submit to the Secretary, through its SEA, assurances that the SEA will—

(1) Meet the requirements in section 435(b) (2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures;

(2) Carry out the evaluation requirements in § 203.46; and

(3) Ensure that its State agencies comply with all applicable statutory and regulatory requirements.

(b) The assurances submitted under paragraph (a) of this section remain in effect for the duration of the SEA's participation in programs under this part.

(Authority: 20 U.S.C. 1232d(b) (2), (5), 2729 (b), (a), (d), 2838(c))

§§ 203.11-203.19 [Reserved]

Subpart C—How Does the Secretary Determine the Amount of a Grant?

§ 203.20 How does the Secretary determine the amount of a grant to an SEA?

(a) This Secetary annually determines the amount of funds under this part that State agencies in a State are eligible to receive in accordance with sections 1241(b) and 1291 of the Act.

(b) The Secretary annually notifies the SEA of the amount each State agency is eligible to receive under this part.

(Authority: 20 U.S.C. 2801(b), 2811)

§ 203.21 How does the Secretary determine the amount of a State agency grant?

(a) *Amounts of grants.* The Secretary determines the amount of a State agency grant according to section 1241 of the Act and the following data:

(1) Average daily attendance data, determined according to the provisions of paragraph (c) of this section, in the schools operated or supported by the State agencies in the State, including community day schools for neglected or delinquent children.

(2) The applicable average per pupil expenditure data.

(3) The amount appropriated for programs for neglected and delinquent children for the relevant fiscal year.

(b) *Determination of average daily attendance.* (1) Average daily attendance is computed for each institution or community day program serving neglected or delinquent children by—

(i) Calculating from daily attendance records the total number of days of attendance of children in the regular educational program, as defined in § 203.6(c), during the most recently completed school year; and

(ii) Dividing that total by 180.

(2) For the purpose of computing average daily attendance—

(i) A child is counted as being in a full day of attendance for each day the child attends the regular educational program for three or more hours; and

(ii) A child is counted as being in one-half day of attendance for each day the child attends the regular educational program for at least one hour, but less than three hours.

(3) To be counted in average daily attendance, a child must be—

(i) One for whom a State agency is providing a free public education; and

(ii) Enrolled for at least 10 hours a week in a regular educational program for which daily attendance records are kept.

(4) Neglected or delinquent children under this part, who are eligible for programs for handicapped children under 34 CFR Part 302, may be counted for grant determinations under both programs and may be served under both programs.

(Authority: 20 U.S.C. 2801(b))

§ 203.22 What funds are available for an SEA to carry out its responsibilities?

(a) Except for programs under Part C of Chapter 1, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(b) The SEA may use not more than 15 percent of the funds referred to in paragraph (a) of this section for indirect costs.

(Authority: 20 U.S.C. 2824 (a), (b))

§§ 203.23-203.29 [Reserved]

Subpart D—How Does a State Agency Apply for and Receive a Subgrant?

§ 203.30 How does a State agency apply for a subgrant?

(a) A State agency shall submit an application to the SEA for a period of not more than three fiscal years.

(b) The application submitted by the State agency must include the following:

(1) A description of the procedures to be used conduct an annual assessment of educational needs that meets the requirements of § 203.31.

(2) A description of the project to be conducted, including a budget for the initial project year.

(3) Data showing that the State agency has maintained fiscal effort as required by § 203.41.

(4) Other information the SEA may request.

(c) A State agency shall annually update an application that has been approved for more than one year by submitting the following information to the SEA:

(1) Data showing that the State agency has maintained fiscal effort as required by § 203.41.

(2) A budget for the expenditure of funds received under this part.

(d) If there are substantial changes in the numbers or the needs of children to be served or the services to be provided, the State agency shall submit a description of the changes to the SEA.

(Authority: 20 U.S.C. 2721(a), 2724(b), 2728 (a), (b), (d), 2802 (a), (c))

§ 203.31 What are the State agency needs assessment requirements?

A State agency may receive funds under this part only if it conducts an annual assessment of all children in eligible institutions to—

(a) Identify the special educational needs of children in the institutions and children attending community day programs for neglected or delinquent children;

(b) Identify the general instructional areas on which the program will focus;

(c) Select for participation those children with the greatest need for special assistance; and

(d) Determine the special needs of participating children with sufficient specificity to ensure concentration on those needs.

(Authority: 20 U.S.C. 2724(b))

§ 203.32 Under what conditions does an SEA approve a State agency's application?

(a) An SEA shall approve a State agency's application for funds under this

part if that application meets the requirements under §§ 203.30 and 203.31.

(b) An SEA may approve an application for a grant to a State agency for one year or for a period of up to three years if a State agency operates programs for children who participate for more than one year.

(c) SEA approval of an application under paragraph (a) of this section does not relieve the State aency of its responsibility to comply with all applicable requirements.

(Authority: 20 U.S.C. 2802 (a), (c))

§§ 203.33-203.39 [Reserved]

Subpart E—What Post-Award Conditions Must Be Met by a State Agency?

§ 203.40 What costs are allowable?

(a) A State agency shall use funds under this part only for programs and projects (including the acquisition of equipment and, if necessary, the construction of school facilities) that are designed to—

(1) Meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, or children in adult correctional institutions; and

(2) Support educational services supplemental to the basic education of neglected or delinquent children that must be provided by the State.

(b)(1) A State agency may reserve 10 percent or less of the funds it receives for any fiscal year under section 1241 of the Act for projects designed to facilitate the transition of children from State institutions or community day programs for neglected or delinquent children into locally operated elementary and secondary education programs.

(2) The services provided from the funds reserved under paragraph (b)(1) of this section may include, but are not limited to, the following:

(i) Supplemental instruction to improve achievement in basic and more advanced skills.

(ii) Counseling—educational, family, and personal.

(iii) The services of persons with special responsibilities to act on behalf of individual children (ombudspersons).

(iv) Tutoring.

(v) Re-entry orientation programs.

(3) Projects funded under paragraph (b)(1) of this section may be conducted directly by the State agency, or by contracts or other arrangements with one or more of the following:

(i) One or more LEAs.

(ii) Other public agencies.

(iii) Private, nonprofit organizations.

(4) The special educational services funded under paragraph (b) of this section shall be provided to neglected or delinquent children in schools other than those operated for children in State institutions or community day programs for neglected or delinquent children.

(Authority: 20 U.S.C. 2802(a), 2803)

§ 203.41 What is the maintenance of effort requirement?

(a)(1) *Basic standard.* Except as provided in paragraph (b) of this section, an SEA shall pay a State agency its allocation of funds under this part if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State funds with respect to the provision of free public education by the State agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the twelve-month period ending on June 20, 1988 and the "second preceding fiscal year" is the period ending on June 20, 1987.

(3) *Expenditures.*—(i) *To be considered.* In determining a State agency's compliance with the maintenance of effort requirement, the SEA shall consider the State agency's expenditures from State funds for free public education. These include expenditures for instructional staff salaries, supplies, and materials.

(ii) *Not to be considered.* The SEA may not consider the following expenditures in determining a State agency's compliance with the maintenance of effort requirement:

(A) Any expenditures related primarily to the care of children in institutions rather than for free public education.

(B) Any expenditures for community services, capital outlay, or debt service.

(C) Any expenditures from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapters 1 and 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If a State agency fails to maintain effort and a waiver under § 203.42 is not granted, the SEA shall reduce the State agency's allocation of funds under this part in the exact proportion by which the State agency fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State agency) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State agency failed to maintain effort, the SEA shall consider the State agency's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State agency) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a State agency fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State agency maintained effort during the next fiscal year (1991), the SEA may consider the State agency's expenditures for the second preceding fiscal year (1988) (the year that caused the State agency's failure to maintain effort) to be no less than 90 percent of the State agency's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a), 2802(a))

§ 203.42 Under what circumstances may an SEA waive the maintenance of effort requirement?

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in § 203.41 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include but are not limited to the following:

(i) A natural diaster.

(ii) A precipitous and unforeseen decline in the financial resources of the State agency.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of funds under this part the State agency is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall

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consider the State agency's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State agency) for the third preceding fiscal year.

Example: In fiscal year 1990, a State agency secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the State agency maintained effort during the next fiscal year (1991), the SEA may consider the State agency's expenditures for the second preceding fiscal year (1988) (the year for which the State agency needed a waiver) to be no less than 90 percent of the State agency's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a), 2802(a))

§ 203.43 What is the supplement-not-supplant requirement that applies to the program?

(a) Except as provided in paragraph (b) of this section, a State agency may use funds available under this part only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of funds under this part, be made available for the education of pupils participating in projects funded under this part, and in no case may funds available under this part be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, a State agency is not required to provide services under this part through use of a particular instructional method or in a particular instructional setting.

(c) A State agency may exclude, for the purpose of determining compliance with the supplement-not-supplant requirement in paragraph (a) of this section, State and local funds spent to carry out special programs that the Secretary has determined, in advance and in writing, meet the requirements of section 1018(d)(1)(B) of the Act.

(d) For the purposes of determining compliance with paragraph (a) of this section, a program under this part will be considered supplementary to the regular education program on the basis of the number of hours students receive instruction from State sources regardless of the subject areas of instruction.

Example: The regular program of instruction in an institution provides classes with State funds in English, mathematics, and vocational education. Each student receives three hours of instruction each day. The Chapter 1 program provides a remedial reading class for children selected to receive Chapter 1 services. Although reading is not part of the regular program of instruction, the Chapter 1, remedial reading class is supplemental to the regular program because the Chapter 1 services provides additional instructional time for participating children.

(Authority: 20 U.S.C. 2728 (b), (d), 2802 (a), (c))

§ 203.44 What is included in the records of transferred students?

A State agency shall include any individualized education plans in the records of students who transfer to another State or local educational agency.

(Authority: 20 U.S.C. 2802(c))

§ 203.45 How may personnel be assigned supervisory duties?

(a) A State agency may assign personnel paid entirely with funds available under this part to limited supervisory duties that may provide some benefit to children not participating in the Chapter 1 project if—

(1) Similarly situated personnel at the same site, who are not paid with funds available under this part, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non-Chapter 1 personnel at the same site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The limited supervisory duties in paragraph (a) of this section need not be limited to classroom instruction and may include but are not limited to the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authority: 20 U.S.C. 2853; H.R. Rept. 95, 100th Cong., 1st Sess. 34–35 (1987))

§ 203.46 What are the requirements for evaluating and reporting project results?

(a) *State agency evaluations.* (1) A State agency that receives funds under this part shall annually conduct an evaluation to determine the impact of the project on the ability of the participants to—

(i) Maintain and improve their educational achievement;

(ii) Maintain school credit in compliance with State requirements; and

(iii) Make the transition to regular or special education programs operated by LEAs.

(2) If an evaluation shows that a project is not making substantial progress in meeting the goals in paragraph (a)(1) of this section, the State agency shall make changes in the project, with the approval of the SEA, that will enable the project to meet those goals.

(b) *SEA evaluation.* (1) An SEA shall conduct an evaluation of programs under this part that is based on State agency data collected under paragraph (a) of this section at least once every two years.

(2) The SEA shall inform its State agencies, in advance, of the specific data that will be needed and how the data may be collected.

(3) The SEA shall—

(i) By a date established by the Secretary, submit the results of that evaluation to the Secretary; and

(ii) Make public the results of that evaluation.

(c) *Performance report.* (1) An SEA shall—

(i) Collect data specified in the Act and by the Secretary in the SEA's performance report; and

(ii) Submit those data to the Secretary.

(2) A State agency receiving funds under this part shall provide to the SEA any data needed by the SEA to complete its performance report.

(d) *Average daily attendance.* On a date specified by the Secretary each year, the SEA shall submit to the Secretary the average daily attendance data required under § 203.21(a).

(Authority: 20 U.S.C. 2729(b), 2802(d), 2835 (a), (d))

§§ 203.47–203.49 [Reserved]

Subpart F—What Are Other State Responsibilities for the Program?

§ 203.50 Does a State have authority to issue State regulations for the program?

(a)(1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(1) The Chapter 1 statute.

(2) The regulations in this part.

(3) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit a State agency's decisions regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, as long as this staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits an SEA's authority to review and approve State agencies' applications or to ensure that State agencies use Chapter 1 funds in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 programs, including those based on State interpretation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraph (e)(2) of this section, if a State issues rules or regulations relating to the administration and operation of Chapter 1 programs funded under this part, a State committee of practitioners shall review before publication—

(A) Any proposed rule or regulation if one is required under State law; or

(B) Any final rule or regulation if a proposed rule or regulation is not required by State law.

(ii) The State is encouraged to convene the committee of practitioners for the purpose of the review required under paragraph (e)(1)(i) of this section.

(2) In an emergency situation in which a rule or regulation must be issued within a limited time, the State—

(i) May issue a regulation without the prior consultation required in paragraph (e)(1) of this section; and

(ii) Shall immediately convene a committee of practitioners to review the emergency regulation prior to issuance in final form.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers; and

(C) Parents.

(ii) The majority of the committee must be representatives of State agencies.

(4) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2851; H.R. Rept. 95, 100th Cong., 1st Sess. 34 (1987))

§ 203.51 How can State personnel paid with Chapter 1 funds be assigned to State programs?

(a) As provided in paragraph (b) of this section, an SEA may use funds received under § 203.22(a) to pay the salary costs for any employee assigned to programs funded under this part and special State programs that meet the requirements of section 1018(d)(1) of the Act.

(b) Salary costs are allowable charges to funds received under § 203.22(a) if the following conditions are met:

(1) An employee's assignments are related to the SEA's administrative, training, and technical assistance responsibilities under the programs.

(2) The SEA maintains contemporaneous time distribution records reflecting the actual amount of time the employee spends on the programs.

(3) The time distribution records are signed by the employee's supervisor.

(4) Actual costs are charged to the programs on the basis of the employee's time distribution records.

(Authority: 20 U.S.C. 2728(d), 2853; H.R. Rept. 95, 100th Cong., 1st Sess. 34 (1987))

§ 203.52 What complaint procedures must an SEA adopt?

(a) *Definition of a complaint.* For the purpose of this section, a complaint is a signed, written statement that includes—

(1) An allegation that a requirement applicable to a program under this part has been violated; and

(2) Information that supports the allegation.

(b) *Who may complain.* Any parent, teacher, or other concerned individual or organization may file a complaint.

(c) *Where to file.* (1) Unless a complaint meets the standards for a direct complaint to the SEA under paragraph (d)(2)(iii) of this section, a complaint must be filed initially with the appropriate State agency.

(2) A complainant who is dissatisfied with the initial decision of the State agency may file an appeal with the SEA.

(d) *Procedures for complaint resolution.* (1) An SEA shall develop and implement written procedures to govern—

(i) Investigation and resolution of complaints by a State agency;

(ii) Review by the SEA of appeals of complaints resolved by a State agency; and

(iii) Investigation and resolution of direct complaints filed with the SEA.

(2) The procedures required under paragraph (d)(1) of this section must include—

(i) Specific time limits for investigation and resolution of complaints by a State agency;

(ii) Specific time limits for resolution of direct complaints and appeals by the SEA; and

(iii) Standards for—

(A) Accepting direct complaints under paragraph (d)(1)(iii) of this section; or

(B) Referring a direct complaint to the appropriate State agency for resolution.

(Authority: 20 U.S.C. 2831(a); H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1988) (Conf. Rept.))

§§ 203.53–203.59 [Reserved]

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Part VI

Department of Education

34 CFR Part 81

General Education Provisions Act—Enforcement; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 81

General Education Provisions Act; Enforcement

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education (Secretary) proposes to add a new Part 81 to Title 34 of the Code of Federal Regulations. Part 81 would implement amendments to Part E of the General Education Provisions Act (GEPA) made by Pub. L. 100–297, enacted April 28, 1988. The proposed regulations in this document contain general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ) authorized by the GEPA amendments and specific rules for OALJ hearings for the recovery of funds.

DATES: Comments must be received on or before January 31, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Barry W. Stevens, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW., Room 4087 FOB–6, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Barry W. Stevens, (202) 732–2730.

SUPPLEMENTARY INFORMATION: On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. Section 3501 of that statute amends and restates Part E of the General Education Provisions Act (GEPA), which relates to the enforcement of legal requirements under most grant programs administered by the Secretary of Education. The proposed regulations in this document contain standards and procedures relating to the newly-authorized Office of Administrative Law Judges (OALJ) and hearings for the recovery of funds conducted by the OALJ. These proposed regulations thus implement the core provisions of the amended statute. The Secretary intends to develop additional regulations to implement the remaining provisions of Part E, and those regulations will be published in proposed form at a later date. A discussion of specific provisions of the proposed regulations in this document follows.

Subpart A—General Provisions

Subpart A contains provisions relating to the establishment of the OALJ. Section 81.1 sets out the purpose of Part 81. Section 81.2 lists the definitions of terms used in that part, including "applicable program" (*i.e.*, a program to which Part E of GEPA applies) and "disallowance decision" (*i.e.*, an appealable decision of a Departmental official to require a recipient to return funds). Section 81.3 sets out the statutory jurisdiction of the OALJ and provides that the Secretary publishes a notice in the **Federal Register** if he designates an additional proceeding or class of proceedings to be heard by that Office. Section 81.4 states who the members of the OALJ are, provides for the appointment of one of the members as the chief judge, and describes how members are assigned to cases.

Subpart B—General Rules of Procedure

Subpart B contains general procedural rules for any proceeding conducted by the OALJ. For a particular kind of Part E proceeding, the general rules in Subpart B are supplemented by speicific rules for that kind of proceeding. One set of specific rules is Subpart D—Hearings for Recovery of Funds, which is a part of this document. Specific rules for other Part E proceedings will be published in a separate document.

Section 81.10 sets out the authority and responsibility of an Administrative Law Judge (ALJ) in conducting a hearing on the record. This section includes provisions on the disqualification of an ALJ from a case. The Secretary intends that the disqualification provisions be interpreted in the light of 28 U.S.C. 455, relating to the disqualification of a Federal judge.

Section 81.11 describes a hearing on the record under Part 81. This section contemplates that the hearing will generally be conducted on the basis of briefs and other written submissions, and it establishes standards for the receipt of oral testimony and the hearing of oral argument. This section also authorizes an ALJ to hold conferences of the parties in person or by conference telephone call.

Section 81.12 contains provisions for the participation in cases before an ALJ of persons or organizations other than the parties. Under these provisions, a third party files an application to participate with the ALJ. The ALJ reviews the application and determines whether and to what extent participation is warranted. This section contemplates that third-party participation will generally be limited to the submission of briefs but permits certain other forms of participation in the ALJ's discretion.

Section 81.13 permits a party or other participant to be represented by counsel. Section 81.14 requires generally that proceedings at which the parties must appear in person be held in the Washington, DC, area. Section 81.15 prohibits a party or other participant from communicating with an ALJ *ex parte* on any fact at issue in a case or any matter relevant to the merits.

Section 81.16 provides that a party's request for an order or a ruling from an ALJ be made by motion and sets out the standards and procedures for motion practice. Section 81.17 governs the filing of briefs and other written submissions. It requires service of the filed materials on the other party and sets standards for the identification of filing dates.

Section 81.18 provides that the Federal Rules of Evidence do not apply to proceedings under Part 81 but that an ALJ accepts only evidence that is relevant, material, not unduly repetitious, and not inadmissible because it relates to settlement and mediation discussions. This seciton also authorizes an ALJ to take official notice of certain facts. Section 81.19 acknowledges the applicability of legal privileges under common law as interpreted by the Federal courts. Section 81.20 requires that any evidentiary hearing or oral argument be recorded and transcribed and that the transcript be made available to the parties upon request at no charge. This section also describes what the record consists of for purposes of further proceedings.

Section 81.21 pertains to settlement negotiations. It requires an ALJ to stay the proceedingts for settlement negotiations or the approval of a settlement agreement if the parties so request. This section also requires the ALJ to dismiss the case if the parties enter into a settlement agreement and request dismissal. Finally, this section bars disclosing the contents of settlement negotiations to the ALJ and admitting evidence of conduct or statements made during settlement negotiations in any proceeding under Part 81.

Subpart C—Other Rules

Subpart C contains special new rules that apply to OALJ proceedings under the amendments to Part E of GEPA.

Section 81.30 governs the discovery process. It provides, as a general policy, that the parties to a proceeding are encouraged to exchange relevant documents and information voluntarily. This policy is intended to reduce the high cost in time and money that formal discovery may entail and to promote the resolution of disputes through mediation and settlement. In addition, this discovery, provisions pertaining to the

issuance and enforcement of subpoenas, and a limit on the period for discovery. This section also includes an express prohibition against an ALJ's compelling discovery of legally privileged information. See H.R. Rep. No. 95, 100th Cong., 1st Sess., 93 (1987).

Section 81.31 describes the voluntary mediation that is available in cases pending before the OALJ. This section includes provisions concerning the qualifications of a mediator, a limit on the period for mediation, and criteria for extending that period. To promote a free and open discussion during mediation and to preserve the mediator's impartiality, this section bars the introduction of evidence from the mediation discussions in proceedings under Part 81 and prohibits the mediator from disclosing in these proceedings certain information acquired as a part of his or her mediation duties. The Secretary specifically requests comments on how a successful mediation process for OALJ cases may be ensured.

Section 81.32 recites the statutory requirement that the Equal Access to Justice Act, 5 U.S.C. 504, applies to OALJ proceedings. This section also includes a reference to the Department's regulations implementing that statute.

Subpart D—Hearings for Recovery of Funds

Subpart D contains specific rules that apply to hearings for the recovery of funds under applicable programs. The regulations in Subparts A through C apply to these hearings as well.

Section 81.40 sets out the basis for requiring a recipient to return funds to the Department and recites the statutory provision that a decision to do so may be based on evidence in any form. Section 81.41 summarizes the considerations that determine the amount of funds required to be returned: proportionality of the remedy to the violation and the exclusion of any amount attributable to mitigating circumstances or barred by the applicable statute of limitations.

Section 81.42 addresses the first of these considerations—proportionality. This section recites the statutory provision that the amount required to be returned be proportional to the extent of harm caused by a violation of law to an identifiable Federal interest associated with the program in question. The regulations then set out an illustrative list of identifiable Federal interests and a second list of hypothetical examples of how the standards for proportionality apply. The purpose of the examples is to promote predictable, consistent, and equitable results in the enforcement of grant conditions and thereby reduce the litigation associated with the enforcement process.

Section 81.43 addresses the second consideration in setting the measure of recovery—mitigating circumstances. Under the amended statute, a State or local educational agency is not required to return misspent funds if the misexpenditures was caused by certain mitigating circumstances. This section sets out each of the three types of qualifying mitigating circumstances and states what the recipient must prove to be relieved of the obligation to return funds.

Section 81.44 describes the Department's notice of a disallowance decision. The notice must include a prima facie case for the recovery of funds and inform the recipient of its statutory rights to obtain review of the decision by the OALJ and to request mediation. In addition, this section requires that the notice describe the time available to apply for review and the procedure for filing an application for review.

Sections 81.45 and 81.46 describe the means by which the Department may reduce the amount of a claim: redetermining the claim on the basis of a proper application of the law to the facts, compromising the claim under government-wide standards, or compromising the claim under standards in the amended Part E of GEPA. Section 81.46 recites the statutory standards and procedures for compromising a claim under the GEPA provisions, which permit the Secretary to compromise up to $200,000 in the amount of a claim.

Section 81.47 states the statutory requirement that a recipient file an application for review with the OALJ within 30 days of receipt of the notice of a disallowance decision. This section also sets out the required contents of such an application. If an application is timely filed, the ALJ who considers it may permit the recipient to supplement or amend the application with respect to issues that were timely raised.

Section 81.48 describes the process by which an application for review is considered. First, the ALJ assign to the case reviews the Department's notice of a disallowance decision for compliance with the requirements in 81.44. If the notice meets these requirements, the ALJ proceeds to consider the application for review; if not, the notice is returned to the Departmental official who issued it for possible modification and reissuance. If the application for review, with any supplements or amendments, meets the requirements of 81.47, the ALJ accepts jurisdiction of the case and schedules a hearing on the record; if not, the disallowance decision becomes the final decision of the Department.

Section 81.49 implements the statutory requirements for timely adjudication by requiring that all evidence in a case be submitted within 90 days of the OALJ's receipt of the application for review, subject to extension for good cause. Section 81.50 implements the statutory provisions relating to the burden of proof. This section provides that the recipient presents its case first and has the burden of proving that it is not required to return funds for one or more of the reasons recognized by law.

Section 81.51 requires that the ALJ make an initial decision based on the record (described in 81.20), sets out the elements of such a decision, and describes the procedures for notifying the Secretary and the parties to the case.

Sections 81.52 and 81.53 described the procedure for review of an ALJ's initial decision by the Secretary. Section 81.52 describes how review of an initial decision may be obtained. Because of the limited time available under the statute for the Secretary's review, this section is framed to permit both parties to seek review simultaneously even if one party seeks no modification of the initial decision. As provided by the statute, a party has 30 days from receipt of the initial decision to file its petition for review. This section requires that the petition be filed by hand-delivered or overnight mail delivery and that a copy be simultaneously served on the other party by these means. This section also sets out the required contents of a petition and establishes a 15-day period for a party to file a responsive statement of its views on the issues raised in the other side's petition.

Section 81.53 states which decisions are and are not subject to review and what materials the Secretary considers during the review process. This section recites the statutory substantial evidence rule respecting an ALJ's findings of fact and prohibits the introduction of new evidence after the initial decision except in extraordinary circumstances. If these circumstances are found, the Secretary remands the case to the ALJ. This section also provides that the Secretary, for good cause, may remand a case to the ALJ for further briefing or for clarification and revision of the initial decision. Finally, this section describes the contents of any decision to modify or set aside an ALJ's initial decision and the procedure for notifying the parties.

Section 81.54 describes when an ALJ's initial decision or the Secretary's decision on review becomes the final decision of the Department. Section

81.55 describes how the Department collects a claim and sets out the standards for when collecting action may be undertaken. This section also recites the statutory prohibition against the Department's collecting interest for the period between the date of the disallowance decision and the date of the final decision of the Department.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive order 12291. They are not classified as major regulations because they do not meet the criteria for major regulations established in that Order.

Regulatory Flexibility Act Clarification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. While some small local educational agencies and small nonprofit organizations would be affected by these regulations, the Secretary does not expect the total number of these entities to be significant in comparison to the total number of entities that would be subject to these regulations.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3034 FOB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Education Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 Part 81

Enforcement, General Education Provisions Act.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: October 20, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to add a new Part 81 to Title 34 of the Code of Federal Regulations to read as follows:

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

Subpart A—General Provisions

Sec.
81.1 Purpose.
81.2 Definitions.
81.3 Jurisdiction.
81.4 OALJ membership and assignment to cases.

Subpart B—General Rules of Procedure

81.10 Authority and responsibility of an ALJ.
81.11 Hearing on the record.
81.12 Third-party participation.
81.13 Representation.
81.14 Location of proceedings.
81.15 Ex parte communications.
81.16 Motions.
81.17 Filing requirements.
81.18 Evidence.
81.19 Privileges.
81.20 The record.
81.21 Settlement negotiations.

Subpart C—Other Rules

81.30 Discovery.
81.31 Mediation.
81.32 Costs and fees of parties.

Subpart D—Hearings for Recovery of Funds

81.40 Basis for recovery of funds.
81.41 Measure of recovery.
81.42 Proportionality.
81.43 Mitigating circumstances.
81.44 Notice of a disallowance decision.
81.45 Reduction of claims.
81.46 Compromise of claims under GEPA.
81.47 Application for review of a disallowance decision.
81.48 Consideration of an application for review.
81.49 Submission of evidence.
81.50 Burden of proof.
81.51 Initial decision.
81.52 Petition for review of an initial decision.
81.53 Review by the Secretary.
81.54 Final decision of the Department.
81.55 Collection of claims.

Authority: 20 U.S.C. 1221e–3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

Subpart A—General Provisions

§ 81.1 Purpose.

The regulations in this part govern the enforcement of legal requirements under applicable programs administered by the Department of Education and implement Part E of the General Education Provisions Act (GEPA).

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.2 Definitions.

The following definitions apply to the terms used in this part:

"Administrative Law Judge" (ALJ) means a judge appointed by the Secretary in accordance with section 451 (b) and (c) of GEPA.

"Applicable program" means any program for which the Secretary of Education has administrative responsibility, except a program authorized by—

(a) The Higher Education Act of 1965, as amended;

(b) The Act of September 30, 1950 (Pub. L. 874, 81st Congress), as amended; or

(c) The Act of September 23, 1950 (Pub. L. 815, 81st Congress), as amended.

"Department" means the United States Department of Education.

"Disallowance decision" means the decision of an authorized Departmental official that a recipient must return funds because it made an expenditure of funds that was not allowable or otherwise failed to discharge its obligation to account properly for funds.

"Party" means either of the following:

(a) A recipient that appeals a decision.

(b) An authorized Departmental official who issues a decision that is appealed.

"Recipient" means the recipient of a grant or cooperative agreement under an applicable program.

"Secretary" means the United States Secretary of Education.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234 (b), (c), and (f)(1); 1234a(a)(1); 1234i; 3474(a))

§ 81.3 Jurisdiction.

(a) The Office of Administrative Law Judges (OALJ) established under section 451(a) of GEPA has jurisdiction to conduct the following proceedings concerning an applicable program:

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Cease and desist hearings.

(b) The OALJ also has jurisdiction to conduct other proceedings designated by the Secretary. If a proceeding or class of proceedings is so designated, the Department publishes a notice of the designation in the **Federal Register**.

(Authority: 5 U.S.C. 554, 20 U.S.C. 1234(a))

§ 81.4 OALJ membership and assignment to cases.

(a) The Secretary appoints Administrative Law Judges as members of the OALJ.

(b) The Secretary appoints one of the members of the OALJ to be the chief judge. The chief judge is responsible for

the efficient and effective administration of the OALJ.

(c) The chief judge assigns an ALJ to each case or class of cases within the jurisdiction of the OALJ.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234 (b) and (c), 3474(a))

Subpart B—General Rules of Procedure

§ 81.10 Authority and responsibility of an ALJ.

(a) An ALJ assigned to a case conducts a hearing on the record. The ALJ regulates the course of the proceedings and the conduct of the parties to ensure a fair, expeditious, and economical resolution of the case in accordance with applicable law.

(b) An ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(c) An ALJ is disqualified in any case in which the ALJ has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the ALJ to be assigned to the case.

(d)(1) An ALJ may disqualify himself or herself at any time on the basis of the standards in paragraph (c) of this section.

(2) A party may file a motion to disqualify an ALJ under the standards in paragraph (c) of this section. A motion to disqualify must be accompanied by an affidavit that meets the requirements of 5 U.S.C. 556(b). Upon the filing of such a motion and affidavit, the ALJ decides the disqualification matter before proceeding further with the case.

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e–3(a)(1); 1234 (d), (f)(1), and (g)(1); 3474(a))

§ 81.11 Hearing on the record.

(a) A hearing on the record is a process for the orderly presentation of evidence and arguments by the parties.

(b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that oral testimony is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed for a proper disposition of the case.

(c) An ALJ may hold conferences of the parties in person or by conference telephone call.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.12 Third-party participation.

(a) A person or organization, other than a party, that wishes to participate in a case shall file an application to participate with the ALJ assigned to the case. The application must—

(1) Identify the case in which participation is sought;

(2) State how the applicant's interest relates to the case;

(3) State how the applicant's participation would aid in the disposition of the case; and

(4) State how the applicant seeks to participate.

(b) The ALJ may permit and applicant to participate if the ALJ determines that the applicant's participation—

(1) Will aid in the disposition of the case;

(2) Will not unduly delay the proceedings; and

(3) Will not prejudice the adjudication of the parties' rights.

(c) If the ALJ permits an applicant to participate, the ALJ permits the applicant to file briefs.

(d)(1) In addition to the participation described in paragraph (c) of this section, the ALJ may permit the applicant to participate in any or all of the following ways:

(i) Submit documentary evidence.

(ii) Provide oral testimony.

(iii) Make oral argument.

(2) The ALJ may place appropriate limits on an applicant's participation to ensure the efficient conduct of the proceedings.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.13 Representation.

A party to, or other participant in, a case may be represented by counsel.

(Authority: 20 U.S.C. 1221e–3(a)(1), 3474(a))

§ 81.14 Location of proceedings.

Any conference, hearing, argument, or other proceeding at which the parties are requir d to appear in person is held in the Washington, DC, metropolitan area unless the ALJ determines that that location is not feasible.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.15 Ex parte communications.

A party to, or other participant in, a case may not communicate with an ALJ on any fact in issue in the case or on any matter relevant to the merits of the case unless the parties are given notice and an opportunity to participate.

(Authority: 20 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.16 Motions.

(a) To obtain an order or a ruling from an ALJ, a party shall make a motion to the ALJ.

(b) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(c) If a party files a motion, the party shall simultaneously serve a copy of the motion on the other party by hand-delivery or by mail.

(d) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(e) The date of service of a motion is determined by the standards for determining a filing date in § 81.17(c).

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.17 Filing requirements.

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery or by mail.

(b) If a party files a brief or other document with an ALJ or the OALJ, the party shall simultaneously serve a copy of the filed material on the other party by hand-delivery or by mail.

(c)(1) The filing date for a written submission to an ALJ or the OALJ is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.18 Evidence.

(a) The Federal Rules of Evidence do not apply to proceedings under this part. However, the ALJ accepts only evidence that is—

(1) Relevant;

(2) Material;

(3) Not unduly repetitious; and

(4) Not inadmissible under § 81.21 or § 81.31.

(b) The ALJ may take official notice of facts that are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.19 Privileges.

The privilege of a person or governmental organization not to produce documents or provide information in a proceeding under this part is governed by the principles of common law as interpreted by the courts of the United States.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1232(f)(1), 3474(a))

§ 81.20 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and the transcript made available to the parties upon request at no charge.

(b) The record of a hearing on the record consists of—

(1) All papers filed in the proceeding;

(2) Documentary evidence admitted by the ALJ;

(3) The transcript of any evidentiary hearing or oral argument; and

(4) Rulings, orders, and subpoenas issued by the ALJ.

(Authority: 5 U.S.C. 556(e), 557(c); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.21 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or the approval of a settlement agreement, the ALJ grants the stay.

(b) Evidence of conduct or statements made during settlement negotiations is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during settlement negotiations.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 5 U.S.C. 554(c)(1); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

Subpart C—Other Rules

§ 81.30 Discovery.

(a) The parties to a case are encouraged to exchange relevant documents and information voluntarily.

(b) In a proceeding before the OALJ, the ALJ, at a party's request, may order compulsory discovery described in paragraph (c) of this section if the ALJ determines that—

(1) The order is necessary to secure a fair, expeditious, and economical resolution of the case;

(2) The discovery requested is likely to elicit relevant information with respect to an issue in the case;

(3) The discovery request was not made primarily for the purposes of delay or harassment; and

(4) The order would serve the ends of justice.

(c) If compulsory discovery is prmissible under paragraph (b) of this section, the ALJ may order a party to do one or more of the following:

(1) Produce relevant documents.

(2) Answer written interrogatories that inquire into relevant matters.

(3) Have depositions taken.

(d) The ALJ may issue a subpoena to enforce an order described in this section and may apply to the appropriate court of the United States to enforce the subpoena.

(e) The ALJ may not compel the discovery of information that is legally privileged.

(f)(1) The ALJ limits the period for discovery to not more than 90 days but may grant an extension for good cause.

(2) At a party's request, the ALJ may set a specific schedule for discovery.

(Authority: 20 U.S.C. 1234 (f)(1) and (g))

§ 81.31 Mediation.

(a) Voluntary mediation is available for proceedings that are pending before the OALJ.

(b) A mediator must be independent of, and agreed to by, the parties to the case.

(c) A party may request mediation by filing a motion with the ALJ assigned to the case. The ALJ arranges for a mediator if the parties to the case agree to mediation.

(d) A party may terminate mediation at any time. Mediation is limited to 120 days unless the mediator informs the ALJ that—

(1) The parties are likely to resolve some or all of the dispute; and

(2) An extension of time will facilitate an agreement.

(e) The ALJ stays the proceedings during mediation.

(f)(1) Evidence of conduct or statements made during mediation is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during mediation.

(2) A mediator may not disclose, in any proceeding under this part, information acquired as a part of his or her official mediation duties that relates to any fact in issue in the case or any matter relevant to the merits of the case.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1) and (h), 3474(a))

§ 81.32 Costs and fees of parties.

The Equal Access to Justice Act, 5 U.S.C. 504, applies by its terms to proceedings before the OALJ. Regulations under that statute are in 34 CFR Part 21.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f), 3474(a))

Subpart D—Hearings for Recovery of Funds

§ 81.40 Basis for recovery of funds.

(a) Subject to the provisions of § 81.41, an authorized Departmental official requires a recipient to return funds to the Department if—

(1) The recipient made an unallowable expenditure of funds under a grant or cooperative agreement; or

(2) The recipient otherwise failed to discharge its obligation to account properly for funds under a grant or cooperative agreement.

(b) An authorized Departmental official may base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.

(Authority: 20 U.S.C. 1234a(a) (1) and (2))

§ 81.41 Measure of recovery.

A recipient that made an unallowable expenditure or otherwise failed to discharge its obligation to account properly for funds shall return an amount that—

(a) Meets the standards for proportionality in § 81.42;

(b) Excludes any amount attributable to mitigating circumstances under the standards in § 81.43; and

(c) Excludes any amount expended in a manner not authorized by law more than five years before the recipient received the notice of a disallowance decision under § 81.44.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(k), 1234b (a) and (b), 3474(a))

§ 81.42 Proportionality.

(a)(1) A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which it received the grant or cooperative agreement.

(2) An identifiable Federal interest under paragraph (a)(1) of this section includes, but is not limited to, the following:

(i) Serving only eligible beneficiaries.

(ii) Providing only authorized services or benefits.

(iii) Complying with expenditure requirements and conditions, such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements.

(iv) Preserving the integrity of planning, application, recordkeeping, and reporting requirements.

(v) Maintaining accountability for the use of funds.

(b) The following examples illustrate how the standards for proportionality apply. The examples present hypothetical cases and do not represent interpretations of any actual program statute or regulation.

(1) *Ineligible beneficiaries.* A State uses 15 percent of its grant to meet the special educational needs of children who were migratory, but who have not migrated for more than five years as a Federal program statute requires for eligibility to participate in the program. Result: Recovery of 15 percent of the grant—all program funds spent for the benefit of those chidren. Although the services were authorized, the children were not eligible to receive them.

(2) *Ineligible beneficiaries.* A Federal program designed to meet the special educational needs of gifted and talented children requires that at least 80 percent of the children served in any project must be identified as gifted or talented. A local educational agency (LEA) conducts a project in which 76 students are identified as gifted or talented and 24 are not. The project was designed and implemented to meet the special educational needs of gifted and talented students. Result: The LEA must return five percent of the project costs. The LEA provided authorized services, for a project in which the 76 target students had to constitute at least 80 percent of the total. Thus, the maximum number of non-target students permitted was 19. Project costs relating to the remaining five students must be returned.

(3) *Ineligible beneficiaries.* Same as the example in paragraph (b)(2) of this section, except that only 15 percent of the children were identified as gifted or talented. On the basis of the low percentage of these children and other evidence, the authorized Departmental official finds that the project as a whole did not address their special educational needs and was outside the purpose of the statute. Result: The LEA must return its entire award. The difference between the required percentage of gifted and talented children and the percentage actually enrolled is so substantial that, if consistent with other evidence, the official may reasonably conclude the entire grant was misused.

(4) *Ineligible beneficiaries.* Same as the example in paragraph (b)(2) of this section, except that 60 percent of the children were identified as gifted or talented, and it is not clear whether the project was designed or implemented to meet the special educational needs of these children. Result: If it is determined that the project was designed and implemented to serve their special educational needs, the LEA must return 25 percent of the project costs. A project that included 60 target children would meet the requirement that 80 percent of the children served be gifted and talented if it included no more than 15 other children. Thus, while the LEA provided authorized services, only 75 percent of the beneficiaries were authorized to participate in the project (60 target children and 15 others). If the authorized Departmental official, after examining all the relevant facts, determines that the project was not designed and implemented to serve the special educational needs of gifted or talented students, the LEA must return its entire award because it did not provide services authorized by the statute.

(5) *Unauthorized activities.* An LEA uses ten percent of its grant under a Federal program intended to meet the special educational needs of educationally deprived children to pay for recreational trips to an amusement park and a circus. All the children are eligible to receive program services. Result: Recovery of ten percent of the grant—all program funds spent for the trips. Although the children were eligible to receive program services, the trips were unrelated to a special educational need and, therefore, not authorized by law.

(6) *Set-aside requirement.* A State uses 22 percent of its grant for one fiscal year under a Federal adult education program to provide programs of equivalency to a certificate of graduation from a secondary school. The adult education program statute restricts those programs to no more than 20 percent of the State's grant. Result: Two percent of the State's grant must be returned. Although all 22 percent of the funds supported adult education, the State had no authority to spend more than 20 percent on secondary school equivalency programs.

(7) *Set-aside requirement.* A State uses eight percent of its basic State grant under a Federal vocational education program to pay for the excess cost of vocational educational services and activities for handicapped individuals. The program statute requires a State to use ten percent of its basic State grant for this purpose. Result: The State must return two percent of its basic State grant, regardless of how it was used. Because the State was required to spend that two percent on services and activities for handicapped individuals and did not do so, it diverted those funds from their intended purposes, and the Federal interest was harmed to that extent.

(8) *Excess cost requirement.* An LEA uses funds reserved for the disadvantaged under a Federal vocational education program to pay for the cost of the same vocational education services it provides to non-disadvantaged individuals. The program statute requires that funds reserved for the disadvantaged must be used to pay only for the supplemental or additional costs of vocational education services that are not provided to other individuals and that are required for disadvantaged individuals to participate in vocational education. Result: All the funds spent on the disadvantaged must be returned. Although the funds were spent to serve the disadvantaged, the funds were available to pay for only the supplemental or additional costs of providing services to the disadvantaged.

(9) *Maintenance-of-effort requirement.* An LEA participates in a Federal program in fiscal year 1988 that requires it to maintain its expenditures from non-Federal sources of program purposes to receive its full allotment. The program statute requires that non-Federal funds expended in the first preceding fiscal year must be at least 90 percent of non-Federal funds expended in the second preceding fiscal year and provides for a reduction in grant amount proportional to the shortfall in expenditures. No waiver of the requirement is authorized. In fiscal year 1986 the LEA spent $100,000 from non-Federal sources for program purposes; in fiscal year 1987, only $87,000. Result: The LEA must return 1/30 of its fiscal year 1988 grant—the amount of its grant that equals the proportion of its shortfall ($3,000) to the required level of expenditures ($90,000). If, instead, maintenance of expenditures were a clear condition of the LEA's eligibility to receive funds and there were no provisions for a proportional reduction in the grant award, the LEA would be required to return its entire grant.

(10) *Supplanting prohibition.* An LEA uses funds under a Federal drug education program to provide drug abuse prevention information to students in the eight grade. The LEA is required to provide that information under State law. Funds under the Federal program statute are subject to a supplement-not-supplant requirement. Result: All the funds used to provide the required information to the eighth-grade

students must be returned. The Federal funds did not increase the total amount of spending for program purposes because the information would have been provided with non-Federal funds if the Federal funds were not available.

(11) *Matching requirement.* A State receives an allotment of $90,000 for fiscal year 1988 under a Federal adult education program. It expends its full allotment and $8,000 from its own resources for adult education. Under the Federal statute, the Federal share of expenditures for the State's program is 90 percent. Result: The State must return the unmatched Federal funds, or $18,000. Expenditure of a $90,000 Federal allotment required $10,000 in matching State expenditures, $2,000 more than the State's actual expenditures. At a ratio of one State dollar for every nine Federal dollars, $18,000 in Federal funds was unmatched.

(12) *Application requirements.* An LEA submits an application to its State educational agency (SEA) for a subgrant of Federal program funds to carry out school-level basic skills development programs. After it receives the Federal funds, it decides instead to use 20 percent of the funds to carry out a program for gifted and talented elementary school students, but does not amend its application to the SEA. Result: 20 percent of the LEA's subgrant must be returned. The LEA had no authority under the Federal statute to use the funds except as provided by its approved local application. The statutorily required planning process was circumvented and accountability for the proper use of Federal funds was not maintained.

(13) *Application requirements.* Under a State-administered program, an LEA is required to submit an application to its SEA, which must approve that application before it may make a subgrant to the LEA. The LEA never submits an application, but the SEA awards a subgrant anyway. The LEA uses the subgrant to carry out activities that would have been authorized if included in an approved local application. Result: The SEA must return the amount of the subgrant. The statutorily required planning process was circumvented, specific application requirements were avoided, and accountability was not maintained.

(14) *Harmless violation.* Under a Federal program, a grantee is required to establish a 15-member advisory council of affected teachers, school administrators, parents, and students to assist in program design, monitoring, and evaluation. Although the law requires at least three student members of the council, a grantee's council contains only two. The project is carried out, and no damage to the project attributable to the lack of a third student member can be identified. Result: No financial recovery is required, although the grantee must take other appropriate steps to come into compliance with the law. The grantee's violation has not measurably harmed a Federal interest associated with the program.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234b(a), 3474(a))

§ 81.43 Mitigating circumstances.

(a) A recipient that is a State or local educational agency and made an unallowable expenditure or otherwise failed to account properly for funds is not required to return any amount that is attributable to the mitigating circumstances described in paragraph (b), (c), or (d) of this section.

(b) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the Department. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The guidance was provided in response to a specific written request from the recipient that is clearly identified as a request for authoritative guidance;

(2) The guidance was provided by a Departmental official authorized to provide the guidance, identified by notice in the **Federal Register**;

(3) The recipient actually relied on the guidance as the basis for the conduct that constituted the violation; and

(4) The recipient's reliance on the guidance was reasonable.

(c) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the Department's failure to provide timely guidance. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient in good faith submitted a written request for guidance, clearly identified as a request for authoritative guidance, with respect to the legality of a proposed expenditure or practice;

(2) The request was submitted by certified mail, return receipt requested, to a Departmental official authorized to provide the requested guidance, as provided by notice in the **Federal Register**;

(3) The request—

(i) Accurately described the proposed expenditure or practice; and

(ii) Included the facts necessary for the Department's determination of its legality;

(4) The request contained the certification of the chief legal officer of the appropriate State educational agency that the officer—

(i) Examined the proposed expenditure or practice; and

(ii) Believed it was permissible under State and Federal law applicable at the time of the certification;

(5) The recipient reasonably believed the proposed expenditure or practice was permissible under State and Federal law applicable at the time it submitted the request to the Department;

(6) No Departmental official authorized to provide the requested guidance responded to the request within 90 days of its receipt by the Department; and

(7) The recipient made the proposed expenditure or engaged in the proposed practice after the expiration of the 90-day period.

(d) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the recipient's compliance with a judicial decree from a court of competent jurisdiction. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient was legally bound by the decree;

(2) The recipient actually relied on the decree when it engaged in the conduct that constituted the violation; and

(3) The recipient's reliance on the decree was reasonable.

(e) If a Department official authorized to provide the requested guidance responds to a request described in paragraph (c) of this section more than 90 days after its receipt, the recipient that made the request shall comply with the guidance at the earliest practicable time.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234b(b), 3474(a))

§ 81.44 Notice of a disallowance decision.

(a) If an authorized Departmental official decides that a recipient must return funds under § 81.40, the official gives the recipient written notice of a disallowance decision. The official sends the notice by certified mail, return receipt requested, or other means that ensure proof of receipt.

(b)(1) The notice must include a prima facie case for the recovery of funds.

(2) For the purpose of this section, a prima facie case is a statement of the law and the facts that, unless rebutted,

is sufficient to sustain the conclusion drawn in the notice. The facts may be set out in the notice or in a document that is referenced by the notice and available to the recipient.

(3) A statement that the recipient failed to maintain records required by law or failed to allow an authorized representative of the Secretary access to those records constitutes a prima facie case for the recovery of the funds affected.

(c) The notice must inform the recipient that it may—

(1) Obtain a review of the disallowance decision by the OALJ; and

(2) Request mediation under § 81.31.

(d) The notice must describe—

(1) The time available to apply for a review of the disallowance decision; and

(2) The procedure for filing an application for review.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(a), 3474(a))

§ 81.45 Reduction of claims.

The Secretary or an authorized Departmental official as appropriate may, after the issuance of a disallowance decision, reduce the amount of a claim established under this subpart by—

(a) Redetermining the claim on the basis of the proper application of the law, including the standards for the measure of recovery under § 81.41, to the facts;

(b) Compromising the claim under the Federal Claims Collection Standards in 4 CFR Part 103; or

(c) Compromising the claim under § 81.46, if applicable.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a); 31 U.S.C. 3711)

§ 81.46 Compromise of claims under GEPA.

(a) The Secretary or an authorized Departmental official as appropriate may compromise a claim established under this subpart without following the procedures in 4 CFR Part 103 if—

(1)(i) The amount of the claim does not exceed $200,000; or

(ii) The difference between the amount of the claim and the amount agreed to be returned does not exceed $200,000; and

(2) The Secretary or the official determines that—

(i) The collection of the amount by which the claim is reduced under the compromise would not be practical or in the public interest; and

(ii) The practice that resulted in the disallowance decision has been corrected and will not recur

(b) Not less than 45 days before compromising a claim under this section, the Department publishes a notice in the **Federal Register** stating—

(1) The intention to compromise the claim; and

(2) That interested persons may comment on the proposed compromise.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a))

§ 81.47 Application for review of a disallowance decision.

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the OALJ.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision.

(c) An application for review must contain—

(1) A copy of the disallowance decision of which review is sought;

(2) A short and plain statement of the disputed issues of law and fact, the recipient's position with respect to these issues, and the disallowed funds the recipient contends need not be returned; and

(3) A statement of the facts and the reasons that support the recipient's position.

(d) The ALJ who considers a timely application for review may permit the recipient to supplement or amend the application with respect to issues that were timely raised. Any requirement to return funds that is not timely appealed becomes the final decision of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(b)(1), 3474(a))

§ 81.48 Consideration of an application for review.

(a) The ALJ assigned to the case under § 81.4 considers an application for review of a disallowance decision.

(b) The ALJ decides whether the notice of a disallowance decision meets the requirements of § 81.44, as provided by section 451(e) of GEPA.

(1) If the notice does not meet those requirements, the ALJ—

(i) Returns the notice, as expeditiously as possible, to the authorized Departmental official who made the disallowance decision,

(ii) Gives the official the reasons why the notice does not meet the requirements of § 81.44; and

(iii) Informs the recipient of the ALJ's decision by certified mail, return receipt requested

(2) An authorized Departmental official may modify and reissue a notice that an ALJ returns

(c) If the notice of a disallowance decision meets the requirements of § 81.44, the ALJ decides whether the application for review meets the requirements of § 81.47.

(1) If the application, including any supplements or amendments under § 81.47(d), does not meet those requirements, the disallowance decision becomes the final decision of the Department.

(2) If the application meets those requirements, the ALJ—

(i) Informs the recipient and the authorized Departmental official that the OALJ has accepted jurisdiction of the case; and

(ii) Schedules a hearing on the record.

(3) The ALJ informs the recipient of the disposition of its application for review by certified mail, return receipt requested. If the ALJ decides that the application does not meet the requirements of § 81.47, the ALJ informs the recipient of the reasons for the decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(e) and (f)(1), 1234b(b), 3474(a))

§ 81.49 Submission of evidence.

(a) The ALJ schedules the submission of the evidence, whether oral or documentary, to occur within 90 days of the OALJ's receipt of an application for review under § 81.47.

(b) The ALJ may waive the 90-day requirement for good cause.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(c), 3474(a))

§ 81.50 Burden of proof.

If the OALJ accepts jurisdiction of a case under § 81.48, the recipient shall present its case first and shall have the burden of proving that the recipient is not required to return the amount of funds that the disallowance decision requires to be returned because—

(a) An expenditure identified in the disallowance decision as unallowable was allowable, and the recipient fully discharged its obligation to account properly for the funds;

(b) The amount required to be returned does not meet the standards for proportionality in § 81.42;

(c) The amount required to be returned includes an amount attributable to mitigating circumstances under the standards in § 81.43; or

(d) The amount required to be returned includes an amount expended in a manner not authorized by law more than five years before the recipient received the notice of the disallowance decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234a(b)(3) and (f)(1), 1234b(b)(1), 3474(a))

§ 81.51 Initial decision.

(a) The ALJ makes an initial decision based on the record.

(b) The initial decision includes the ALJ's findings of fact, conclusions of law, and reasoning on all material issues.

(c) On the day the ALJ makes the initial decision, the ALJ—

(1) Sends the initial decision to the Secretary; and

(2) Sends the initial decision to each of the parties by hand-delivery or by certified mail, return receipt requested.

(d) For the purpose of this section, "initial decision" includes an ALJ's modified decision after the Secretary's remand of a case.

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

§ 81.52 Petition for review of an initial decision.

(a) If a party wishes to obtain the Secretary's review of the initial decision of an ALJ, the party files a petition for review with the OALJ, which sends the petition to the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision. The party shall file its petition by hand-delivery or by overnight mail delivery.

(c) If a party files a petition for review, the party shall simultaneously serve a copy of the petition on the other party by hand-delivery or by overnight mail delivery.

(d) A petition for review must contain—

(1) The identity of the initial decision of which review is sought; and

(2) A statement of the reasons asserted by the party for affirming the initial decision, modifying it, or setting it aside in whole or in part.

(e)(1) A party may respond to a petition for review by filing a statement of its views on the issues raised in the petition with the OALJ not later than 15 days after the date it receives the petition. The OALJ sends the statement to the Secretary.

(2) A party shall simultaneously serve a copy of its statement of views on the other party by hand-delivery or by overnight mail delivery.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(e), 3474(a))

§ 81.53 Review by the Secretary.

(a) The Secretary reviews the initial decision of an ALJ on the petition of a party under § 81.52. An interlocutory decision of an ALJ is not subject to review.

(b) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any submissions of the parties or other participants in the case filed during the review process.

(c)(1) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(2) The Secretary, for good cause, may remand the case to the ALJ to take further evidence. The ALJ may make new or modified findings of fact and may modify the initial decision. The new or modified findings, if supported by substantial evidence, are conclusive.

(3) A party may not introduce new evidence after an initial decision unless the Secretary determines that extraordinary circumstances made the introduction of the evidence during the proceeding before the ALJ impossible. If the Secretary permits the introduction of new evidence, the Secretary remands the case to the ALJ.

(d) The Secretary, for good cause, may remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(e)(1) If the Secretary modifies or sets aside an initial decision, in whole or in part, the Secretary's decision includes a statement of the reasons that support it.

(2) The Secretary gives a decision to modify, remand, or set aside to the OALJ, which sends the decision to each of the parties by hand-delivery or by mail. If the decision is mailed, the OALJ sends it certified mail, return receipt requested.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(d), 3474(a))

§ 81.54 Final decision of the Department.

(a) The ALJ's initial decision becomes the final decision of the Department 60 days after the recipient receives the ALJ's decision unless the Secretary modifies, sets aside, or remands the decision during the 60-day period.

(b) If the Secretary modifies or sets aside the ALJ's initial decision, the Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(g), 3474(a))

§ 81.55 Collection of claims.

(a) An authorized Departmental official collects a claim established under this subpart by using the standards and procedures in 34 CFR Part 30.

(b) A claim established under this subpart may be collected—

(1) 30 days after a recipient receives notice of a disallowance decision if the recipient fails to file an acceptable application for review under § 81.47; or

(2) On the date of the final decision of the Department under § 81.54 if the recipient obtains review of a disallowance decision.

(c) The Department takes no collection action pending judicial review of a final decision of the Department under section 458 of GEPA.

(d) If a recipient obtains review of a disallowance decision under § 81.48, the Department does not collect interest on the claim for the period between the date of the disallowance decision and the date of the final decision of the Department under § 81.54.

(Authority: 20 U.S.C. 1234(f)(1); 1234a(f) (1) and (2), (i), and (l))

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Part VII

Department of the Interior

Bureau of Land Management

43 CFR Parts 3830, 3850, and 3860

Location of Mining Claims; Assessment Work; Mineral Patent Applications; Amendment Establishing Service Charges and Making Clarifications; Final Rulemaking

VOL 53 ISS 232 DE 2 1988 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3830, 3850, and 3860

[AA-680-09-4310; Circular No. 2614]

Location of Mining Claims; Assessment Work; Mineral Patent Applications; Amendment Establishing Service Charges and Making Clarifications

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Parts 3830, 3850, and 3860 to establish or increase service charges connected with the filing and recording of documents required by the General Mining Law of 1872 and the Federal Land Policy and Management Act of 1976. The final rulemaking enables the Bureau of Land Management to recover some of the costs of administering its mining law administration program. It also makes other regulatory changes intended to improve the administration of the mining claim program, to increase equity to program users, and to clarify terminology.

EFFECTIVE DATE: January 3, 1989.

ADDRESS: Any suggestions or inquiries should be sent to: Director (680), Mail Stop 3538, Bureau of Land Management, 1800 C St., NW., Washington, DC. 20240.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, (202) 343–8537 or William Condit, (202) 343–8537.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending certain sections of the regulations at 43 CFR Subparts 3830, 3850, and 3860 was published in the **Federal Register** on June 23, 1988 (53 FR 23720). After the proposal was published, post cards notifying mining claimants that it was available for comment were sent to approximately 60,000 entities in the United States. This outreach effort generated 557 comments, from 420 individuals, 100 businesses in the mining industry, 33 environmental and mining associations, and 4 units of local government. The individuals, businesses, associations, and local governments represent all regions of the United States, but the majority originated from States west of the Mississippi River.

The comments addressed all aspects of the proposed rulemaking. All comments received were given careful consideration and are addressed in the preamble, either as general comments on the rulemaking as a whole or as specific comments connected with particular proposed changes. In general, the correspondents agreed that regulatory and procedural changes to the program for processing and administering mining claims and patents were needed to clarify terminology or increase program efficiency. They generally disagreed, however, with the methods by which the Bureau proposed to increase efficiency, particularly the Bureau of Land Management's (Bureau) proposals to establish or increase service charges (user fees) for the filing of various mining-claim-related documents. Descriptions of the comments and discussions of their disposition are grouped into either the general comments or specific comments sections below.

General Comments

Three comments challenged the Bureau's authority to record mining claims on public lands. Two of them believed that the Bureau should return its recordation function to the counties where the claims are located. This comment cannot be adopted because its adoption is not legally possible. The Bureau is required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) to record mining claims. That statute requires the owners of unpatented lode or placer mining claims located before October 21, 1976, to file within 3 years after October 21, 1976, the following: (1) A copy of the official record of the notice of location, including a description of the location of the mining claim sufficient to locate the claim on the ground, and (2) a notice of intention to hold the mining claim or an affidavit of assessment work performed on the claim. The statute also requires that the claimholder file a notice of intention to hold the mining claim or an affidavit of assessment work each year after the initial filing and before December 31. Owners of mill sites and tunnel sites must comply with (1), above, under the statute. Under regulations promulgated January 27, 1977, such owners are required to comply with (2). The statute further requires all claims and sites located after the date of enactment to be recorded within 90 days of location and, in order to hold the mining claim or site, that a notice of intention to hold the mining claim or an affidavit of assessment work be filed every calendar year after the year of location.

The statute further states that failure to file either the notice of intent or the assessment work affidavit would constitute an abandonment of the mining claim by the owner, but that the claim would not be considered abandoned if the notice of intent or assessment was defective or late under other Federal laws requiring filing or recording of mining claims, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill site.

The constitutionality of section 314 was challenged in court. On October 24, 1983, the District Court for the District of Nevada declared section 314 of the Federal Land Policy and Management Act (FLPMA) unconstitutional. The United States appealed directly to the United States Supreme Court. Because of this action, on January 31, 1984, all decisions on mining case recordation cases that were considered abandoned and void were suspended at the request of the Director of the Department of the Interior's Office of Hearings and Appeals, pending a Supreme Court decision on the constitutional question.

On April 1, 1985, the Supreme Court upheld the constitutionality of Section 314 of FLPMA in its entirety. (See *United States v. Locke*, 471 U.S. 84, 1985.) In its *de novo* review of BLM's procedures, it also found the Bureau's administrative system for mining claim recordation processing to be reasonable and adequate. Since that date, the Bureau has been implementing the mining claim recordation system with the objective of maintaining accurate mining claim records.

Several comments on the proposed rulemaking disputed 2 statements made in the preamble: (1) That the regulatory proposals were not a major Federal action significantly affecting the quality of the human environment and (2) that the proposed regulatory changes would not have an adverse effect on a substantial number of small entities. These comments argued that the economic effects of the proposed service charge increases would cause significant adverse effects both on the socio-economic environment and on small businesses in the mining industry. Because the proposal to establish a service charge for the annual filing of either an affidavit of assessment work or a notice of intent to hold was the focus of most comments, the discussion below centers on that service charge.

According to Bureau of Land Management records, approximately 85 percent of Federal mining claimants hold 20 or fewer mining claims. According to one comment, California has the lowest claimholder rate, an average of 2.7 claims per claimholder By contrast, only 1.3 percent of all mining claimants hold more than 200 claims and 0.1 percent hold more than 1,500 claims each. Although there are

exceptions, claimholders holding 1,500 or more claims tend to be medium to large-sized companies, including miners of uranium, precious metals, and base metals.

The proposed rulemaking provided for a $5 per claim per year filing fee on affidavits of annual assessment work and notices of intent to hold. Mining claimants are required by law to do not less than $100 worth of assessment work on or for the benefit of each lode or placer claim each year. Expenditures for mill sites and tunnel sites are necessary as well to maintain their validity. The filing fee would increase the Federally imposed component of the cost of maintaining each claim by not more than 5 percent per year. This increase would amount to $15 for the average California claimant and not more than $100 for the 85 percent of all claimants who hold 20 or fewer claims. Because many claimants seeking to make discoveries on their claims are doing more than the minimum $100 annual labor, their cost increase would be less than 5 percent.

The fee schedule could be considered by some individuals to favor small entities because the new service charges on a small claimholder, one holding 20 claims or less, would be at most $100 per year.

The service charge increases could also benefit small claimholders by reducing the number of what many comments referred to as "paper hangers," individuals who locate large numbers of mining claims for speculative purposes only. According to some comments, these "paper hangers" hold up to 2,000 claims each. The Bureau expects that an elastic response will occur. That is, some claimants holding large numbers of claims are expected to relinquish or drop their more marginal claims rather than pay the new annual filing fee. These lands would then be available for exploration by other individuals.

The response to service charge increases will be inelastic where market demands support the location of claims for a particular mineral commodity, and those claims will not likely be relinquished to avoid the filing fee. In support of this expectation, we note that Nevada counties have recently raised their recording fees for affidavits of assessment work, also charged on a per-claim basis. Numbers of claims filed there have increased significantly, not decreased, despite the increase in recording fees, because of factors such as the increased price of gold and the State's geological favorability for precious metal deposits.

The foregoing discussion is not a substitute for the description and analysis of comments addressing the service charge schedule proposals. That discussion is located at 43 CFR 3833.1–3, below. The data presented above are support for the conclusion that the fee increases would not adversely affect a substantial number of small businesses or create unacceptable socio-economic effects because the burden of the increases would fall equally on all claimholders and is only a small increase in costs of exploration and mining.

Specific Comments

43 CFR 3833.0–5

The proposed rulemaking created the definitions of "relocation" at § 3833.0–5(q) and "amended location" at § 3833.0–5(p) to reduce confusion among mining claimants on which of the terms should be used when recording their mining claims with the Bureau. Approximately 85 percent of those commenting on this section concluded that the proposed definitions further confused mining claimants rather than reducing their confusion. Only 15 percent of those commenting on this section supported the definitions as proposed.

Those opposing the definitions pointed out that they conflicted with established case law, at both the Federal and State levels, and that they posed problems for prospectors in the field. They stated that the definition of "amended notice of location" eliminated the possibility of adding lands to an existing claim. Historically, the comments noted, mining claimants have been allowed to amend their claims to take in additional unappropriated ground. In addition, one comment noted a logical inconsistency within the definition of "amended notice of location". The definition stated that an amended notice could be used to make changes in the position of claim boundary monuments, but could not be used to add lands to a claim. However, changes in boundary position add or remove lands from the claim. As a result of these comments, the final rulemaking revises the definition of "amended notice of location" to allow for the inclusion of additional unappropriated lands.

Opponents of the definition of "relocation" interpreted it to mean that a claimant must waive all rights to a prior claim if he files a new claim. They stated that frequently no definitive distinction could be made between an amendment and a relocation on the ground and that, if the claimant chose incorrectly, he or she could lose all rights to the claim. This would be in conflict with case law in certain States.

The final rulemaking removes the phrase "which is adverse to any former location on the same lands" from the definition of relocation. The purpose of the definition is administrative, that is, the definition is intended to assist Bureau employees in determining whether to assign a new serial number to a relocated claim or to retain the serial number on an amended claim while noting the amendment. It is not the intention of the Bureau to decide whether or not claimants have correctly identified their claims as amended or relocated for the purpose of maintaining title under the mining law. The Bureau's intention is to decide in which set of case files the document belongs.

A few correspondents encouraged the Bureau to accept hybrid claims as legitimate filings. Hybrid claims are combination documents which both amend and relocate a claim at the same time. The comments stated that the filing of such a document gives better protection to claimants if the validity of their claims is challenged in court. The suggestion is not adopted. Acceptance of hybrid claims would involve the setting up of two separate, parallel case files for each claim. Maintaining parallel case files is contrary to Department policy, which was established by several Interior Board of Land Appeal cases (*R. Gail tibbets et al.*, 43 IBLA 210 (1979), as modified by *Hugh B. Fate, Jr. et al.*, 86 IBLA 215 (1985) and *Russell Hoffman (On Reconsideration)*, 87 IBLA 146 (1985)). The principal difficulty in administering parallel files for a claim is that of determining which of the case files constitutes the official record of the claim, if the claim is litigated. Therefore, a hybrid claim, if submitted, will be treated as if it is an amended notice of location and will be adjudicated in connection with the existing mining claim case file of record.

At the suggestion of one comment, the section now contains a definition of "authorized officer." The comment noted that the term was used in many sections of the regulations but was not defined in this subpart.

43 CFR 3833.1–3

The Bureau proposed to establish or increase the established service charges for the following actions: (1) The filing of initial recordations of mining claims and sites and (2) the annual filings of affidavits of assessment work and notices of intent to hold mining claims, amendments to location, and transfers of interest. The service charge for the

filing of an initial claim or site would be increased from $5 to $10 per claim. New service charges of $5 would be imposed on each of the annual filings.

This section generated the largest number of comments on the proposed rulemaking. Approximately 90 percent of those commenting stated positions or made suggestions on this proposal. Some comments both stated positions and made suggestions so that the percentages and categories described below may overlap. The comments can be sorted into six categories: (1) Approximately 70 percent of the comments either categorically opposed the fees without stating a reason or stated that they would be a burden and a hardship on the small miner; (2) approximately 15 percent thought that the fees to be imposed should be based on a per-document, rather than a per-claim charge; (3) 4 percent suggested that fees for the annual filing of assessment work should be based on a sliding scale, usually $5 each for the first 10 claims or sites and then 50 cents or $1 each for the rest on the same document; (4) 1 percent suggested discounts for various groups, including small miners and senior citizens; (5) 7 percent were satisfied with the proposal as written; and (6) 2 percent suggested that the proposed fees were too low and recommended fees of up to $100 to record annual filings, plans, and notices, these increased fees to be used to offset the costs of reclamation of public lands which had been mined.

The category one correspondents based their arguments on the filing fees actually being a tax that would force the small miner out of business, and compared the fees to those charged by County Recorders. County Recorder fees were noted to be significantly lower.

Statute and case law make a distinction between taxes and service charges. A tax is a charge imposed by legislatures or other authorities on citizens to pay for public services or to meet the demands of managing a government. The citizens upon whom the taxes are imposed may or may not directly benefit from the services. Service charges are charges imposed on the users of specific programs, and these users will directly benefit from the services provided. Service charges serve a cost-recovery function in that the government or other organization uses the money to defray the cost of providing the service. Taxes are authorized by Federal and State constitutions or related revenue statutes. User fees, at the Federal level, are allowed by Title V of the Independent Offices Appropriation Act (31 U.S.C. 9701). Policies implementing that law require that a charge to recover the costs of program administration be imposed for services that provide special benefits or privileges to identifiable non-Federal recipients above and beyond those accruing to the public at large. The fee may be assessed either as a cost pursuant to an established schedule or as a share of the cost to the performing bureau or office as determined by a formal accounting system.

A detailed analysis of the processing costs of the Bureau for mining claim recordation documents indicated that in Fiscal Year 1987 each claim for which an affidavit of assessment work (or notice of intent to hold) was filed required an expenditure of $7.42. The initial recordation of a claim cost the Bureau $10.13. Because there is a benefit to the public, as well as to the mining claimants themselves, from the maintenance of these records, a portion of the recordation program costs should not be recovered from filing fees. Based on an analysis of public versus mining claimant benefits, $5.00 per claim for annual filings and $10.00 per claim for initial recordation was determined to be the appropriate cost recovery fees that approach but do not exceed actual costs.

The law and its implementing policies allow for exemptions from user fees, but the Bureau has been unable to justify exempting the mining claim recordation program from service charges. In fact, the General Accounting Office and the Department of the Interior's Office of the Inspector General have criticized the Bureau in at least 9 reports and letters in the last 5 years for having no, or very low, service charges for most of its programs. At least 2 reports and 1 letter have focused on the mining recordation program.

The Bureau's processing costs are higher than those of the County Recorder. The County Recorder receives a location certificate or affidavit of assessment work and places the entire page, undifferentiated, into a book. In contrast, the Bureau, as the official recordkeeper of the United States for public lands, receives a location certificate, adjudicates it for land status and legal requirements, and then enters it into the Bureau's data processing system. A separate file must be maintained for each claim. Annual filings of assessments of work and notices of intent to hold mining claims are adjudicated for ownership changes and numbers of claims or sites filed. Separate copies are made for each mining claim or site listed, and each automated record must also be updated. The County Recorder is simply filing a record; the Bureau is processing and recording many changes to a public land record. The additional requirements on the Bureau as a Federal land records agency mean that its processing costs are clearly not comparable to those of the County Recorder.

The category 2 group of comments argued that the County Recorder operates on a per page basis and that the Bureau ought to operate on the same basis. The Bureau of Land Management queried County Recorder Offices in the western States before presenting this proposal for public comment. In at least six States—Colorado, Idaho, Montana, Nevada, South Dakota, and Utah—the fee for recording affidavits of assessment work is charged on a per-claim basis, as opposed to a per-document basis. For example, Utah counties charge $5 for an affidavit of assessment work plus 50 cents for each claim after the first. Although the Bureau could operate on a per-page basis, this procedure would not always recover the costs of processing the document. Some annual filings, for example, contain up to 100 claims or sites per document, and the Bureau is required to adjudicate each claim or site as a separate action and separately enter each into the appropriate case file. The same situation applies to transfers of interest. Charging on a per-page basis would be equivalent, in effect, to giving volume discounts to filers who have multiple claims even though each claim required separate processing. These entities would be charged the same amount as an individual filing one claim. Because the Bureau must recover its processing costs equitably, each filer must be charged on a per-claim, rather than a per-document, basis.

The category 3 comments suggested that service charges on annual filings be imposed on a sliding scale. Sliding scale fees increase the time of administration of individual claims and encourage the filing of fewer documents. The combination of increased administration time and reduced filings would result in revenues that do not recover administrative costs or that would shift the majority of the burden of paying for administering the program to the small miner with only a few claims. To ensure that small businesses do not shoulder an inappropriate share of the burden, fees must be on a per-claim basis. Alternatively, the fees could increase with the number of claims held per claimant so that large entities holding many claims would pay a higher per-

claim share. This idea was rejected as being inequitable.

The category 4 comments suggested discounts for various select groups who use the program, such as small miners or senior citizens. These discounts would significantly increase administrative costs because the special groups would have to be identified initially and then reviewed annually as the filings are made. The reduced revenues could result in failure to recover administrative costs. The proposal would also present numerous practical problems because of the difficulties of defining the special groups. For instance, the term "small miner" could include those individuals or businesses with a "few" claims or those with small, active operations. The term "active" could also present difficulties because the term could include only currently active operations, those active during a certain period within the last 3 to 5 years or some other arbitrary standard.

The category 5 comments supported the proposals as written. Some in the group expressed support for the idea that the increased revenues should remain in the States where they are generated to improve administration of the mining program. This proposal can be implemented to some extent because language in the Fiscal Year 1989 Interior Appropriations Act authorizes the Bureau to place the fees collected by this rulemaking into a special no-year reimbursable account and not into the General Fund. The funds in a no-year account are not returned to the Treasury at the end of the fiscal year. The money is carried over in the account into subsequent fiscal years to be spent as needed. The legislation further requires that all fees collected by this fee schedule and returned to the Bureau in Fiscal Year 1989 and later years be spent only in the Mining Law Administration Program to improve the Bureau's record system and to expand and improve its overall activities in the mining law administration program. Because of the close linkage to the cost generating activities in each State, the funds generated in any State will likely to be returned to that State. It is not feasible to mandate annual accounting or budget requirements in the regulations, however.

One of the correspondents supporting the service charges based her support upon the canceled check serving as evidence that the service charges had been paid and that the Bureau had received the documents sent. The Bureau would take this suggestion one step further and strongly encourage claimholders to send in their annual filings by certified mail with a return receipt requested, further protecting them against loss of their claims because of alleged losses of the annual filing documents by the Bureau after their receipt from the U.S. Mail. A return receipt card may serve as evidence that the documents were received on time, overturning the presumption of regularity in the processing of Bureau records. One comment estimated that 10 percent of the notices sent were lost in the mail.

The Bureau also strongly encourages claimholders to use the serial numbers of the claims for which filings are made each year on the filings themselves. This practice will reduce the number of incorrect credits given for payments made for the mining claims and will prevent a claim from being lost due to confusion over similar claim names or owner surnames.

The category 6 comments supported greatly increased filing fees to permit the Bureau to reclaim lands disturbed by previous mining actions and to operate a thorough enforcement/bonding program. The fees suggested were up to 1,000 percent above those proposed.

The law does not permit an agency to recover more than its actual costs. Fees collected in excess of expenditures are legally considered a tax. The Bureau has no power to tax individuals or groups without express Congressional legislative authority. Because the Bureau does not have taxing authority, this proposal cannot be adopted.

One additional proposal in this section drew comments. This proposal was the provision that, after June 1, 1989, any filings not accompanied by the appropriate filing fee would be considered fatally defective and would be returned to the sender without further action. The result would be that the claim was considered abandoned. Some comments suggested that a grace period be given to "cure" the defect of the lack of a filing fee or of the right amount of a fee. The comments stated that no fee or an incorrect fee should be correctable without the disastrous consequence of losing a claim with no right of appeal. Based on these comments, the final rulemaking continues a 30-day grace period for curing the defect of no fee or an insufficient fee until January 1, 1991. After that date, by which time claimants should be accustomed to the requirement, filings accompanied by insufficient or no fees will be refused by the Bureau. This proposal has been renumbered as 43 CFR 3833.1–4 to avoid confusion between the fees mentioned in 43 CFR 3833.1–3 and the date when non-payment of fees becomes a non-curable defect.

43 CFR 3833.2

The proposed rulemaking amended 43 CFR 3833.2–1 to reflect the fact that new mining claims, mill sites, and tunnel sites could not be located in units of the National Park System. One comment supported the proposal. Several others stated that the proposal was not necessary because it duplicated provisions of the regulations relating to the National Park Service at 36 CFR Part 9. In addition, a few argued that units of the National Park System should be open to mineral location and development.

The final rulemaking retains the language of the proposed rulemaking. The Mining in the Parks Act of September 28, 1976 (90 Stat. 1342), prohibits mineral location and development in units of the National Park System. Therefore, the suggestion that units of the National Park System be open to mineral location and development cannot be adopted. The intent of the regulations is to reinforce the statutory prohibition against mineral location in National Parks. The regulatory provisions of the National Park Service relevant to the mining laws are referenced in these regulations to assist prospectors and miners who might not have access to or knowledge of regulations relating to the National Park Service.

Two comments noted an ambiguity in language at 43 CFR 3833.2–2(b) with respect to the phrase "between January 1, 1978, and October 22, 1979." The correspondents could not determine whether or not the beginning and ending dates were included. The final rulemaking changes the language to clarify that the beginning and ending dates are included in the provision.

Two comments responded to the proposed language in 43 CFR 3833.2–2(b) requiring that notices of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year after 1979. The comments suggested December 31 as an alternative date. The final rulemaking retains the December 30 date for filing because that date is set by the Federal Land Policy and Management Act of 1976.

One of the comments pointed out that notices of intention to hold mill sites and tunnel sites are not filed with County Recorders. Notices of intention to hold mining claims are the only notices filed with County Recorders. The final rulemaking changes the language of § 3833.2–2(c) to reflect this fact.

43 CFR 3833.4

A few comments addressed the proposal in this section to make the failure to file information required by a decision of the authorized officer a cause for voiding, and considering abandoned, a mining claim, mill site, or tunnel site. The correspondents suggested that the information failure should be considered a curable defect and that the decision should be appealable. The language of the final rulemaking makes the suggested change and allows individuals to appeal the voiding of claims and sites for failure to file information requested in a decision. If the Bureau is upheld on appeal, the claim would be conclusively deemed abandoned and void.

43 CFR 3833.5

The proposed rulemaking eliminated the so-called "diligent search" requirement, whereby the Bureau made a thorough search to find the whereabouts of a mining claimant before administratively taking adverse action on the claimholder's claim. The final rulemaking eliminates the diligent search requirement for administrative decisions of the authorized officer but adds language to clarify that the diligent search requirement continues for mineral contest actions. This language is added in response to 3 comments, which addressed the possible elimination of the requirement for a "diligent search" for mineral contests.

43 CFR 3852.2

Numerous comments addressed this section, which would impose a service charge of $50 on petitions for the deferment of annual assessment work. Eight comments opposed the service charge as being a hardship on small miners and suggested that Congress appropriate the money to administer the mining program through appropriations. Six comments supported the proposal.

The actions involved in processing a petition for deferment of annual assessment work are as follows: A land law examiner receives the petition, evaluates it by examining the facts and law in the matter, and then issues a decision granting or denying the petition. The Bureau's estimate of the actual time spent by a land law examiner in processing a petition for deferment costs approximately $25 per petition. The proposed $50 fee is reduced to $25 by this final rulemaking to reflect the approximate costs of processing this type of document. As was discussed under 43 CFR 3833.1–3 above, the Bureau is obligated by statute and policy to recover the costs of administering its programs. This final rulemaking therefore adopts a service charge of $25 for each petition for deferment of assessment work.

43 CFR 3862.1–2

The proposed rulemaking increased the filing fee for a patent application from $25 to $250 per application and from no fee to $50 for each additional claim or site in the application. There were 24 comments on the section, with six supporting the increase and 18 opposed. Those opposing the increase stated that it was a hardship on small miners, that it was too high, or that it should only be collected if the patent was granted.

The proposed fee increase is another cost recovery measure. The fee increase is not unreasonable, considering the costs of providing the benefits obtained in the patent process, required by law to be recovered. Under the General Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*), the mineral industry could obtain a mineral patent to the lands under the mining claim or site, a deferment of assessment work, and a forum to challenge rival locators over rights of discovery or the mineral character of the lands.

The Bureau, in order to fulfill the responsibility of the Secretary of the Interior to grant or deny these claimed or asserted rights, maintains a staff of Land Law Examiners, sometimes called adjudicators, in each State Office, and mineral examiners in each district or area office.

The land law examiners process patent applications by assuring that all required title work complies with Departmental standards, that the proper affidavits of compliance are submitted, that the mineral survey is in order, and that the application has been advertised in the legal section of local newspapers. If all the preceding requirements are met, the Bureau issues the first half of the mineral entry final certificate.

After the mineral entry final certificate is issued, the mineral examiner visits the mining claim or site covered by the application. The examiner maps the geology, samples the mineral deposits, and verifies the mineral survey and improvements upon the mining claim or site. The information collected by the mineral examiner is then evaluated to determine if the mining claim contains an economically extractable mineral commodity. If so, the examiner recommends that the patent issue. If not, the examiner recommends that a mineral contest action be initiated against the mining claims in the administrative law court of the Department of the Interior. A hearing is held before an Administrative Law Judge to determine whether the claims are valid or null and void.

The Bureau incurs processing costs whether or not the patent is granted. Therefore, the final rulemaking does not adopt the suggestion that the fee be imposed only if the patent is granted. The service charge on patent applications is, by this rulemaking, set at $250 per application and the first claim contained in the application and $50 for each additional claim or site thereafter in the application.

The principal authors of this rulemaking are Roger Haskins and William Condit of the Division of Mining and Salable Minerals, assisted by the staff of the Division of Solid Mineral Leasing and the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See the discussion under General Comments for the rationale for this determination.

The information collection requirements contained in 43 CFR Part 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0114.

List of Subjects in 43 CFR Parts 3830, 3850, and 3860

Mineral royalties, Mines, Public lands—Mineral resources, Reporting and Recordkeeping requirements.

Under the authority of the General Mining Law of May 10, 1872 (30 U.S.C. 22), section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), the Independent Offices Appropriations Act (31 U.S.C. 9701), and sections 304, 310, and 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734, 1740, and 1744), the regulations at Subpart 3830, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.

October 14, 1988.

PART 3830—[AMENDED]

1. The authority citation for Part 3830 is added to read:

Authority: 30 U.S.C. 22, sections 2319 and 2478 of the Revised Statutes, as amended (43

U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907, and 43 U.S.C. 1734, 1740, 1744, and 1782.

§ 3833.0–3 [Amended]

2. Section 3833.0–3(d) is amended by removing the citation "(31 U.S.C. 483a)" and replacing it with the citation "(31 U.S.C. 9701)".

§ 3833.0–5 [Amended]

3. Section 3833.0–5 is amended by:

A. Revising paragraph (j) to read:

(j) "Affidavit of assessment work" means the instrument required under state law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim or, if state law does not require the filing of such an instrument, an affidavit evidencing the performance of such assessment work; and

B. Adding new paragraphs (p), (q), (r), and (s) to read:

(p) "Amended location" means a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground. An amendment may:

(1) Correct or clarify defects or omissions in the original notice or certificate of location; or

(2) Change the legal description, mining claim name, position of discovery or boundary monuments, or similar items.

An amended location notice relates back to the original location notice date. No amendment is possible if the original location is void.

(q) "Relocation" means the establishment of a new mining claim, mill site, or tunnel site. A relocation may not be established by the use of an "amended location notice", but requires a new original location notice or certificate as prescribed by state law.

(r) "Annual filing" means either an affidavit of assessment work or a notice of intention to hold the mining claim, mill site, or tunnel site.

(s) "Authorized officer" means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

4. Section 3833.1–1 is amended by:

A. Revising the title to read:

§ 3833.1–1 Recordation of mining claims, mill sites and tunnel sites located on or before October 20, 1976.

B. By adding the figure "(a)" at the beginning of the existing paragraph in that section; and

C. Adding a new paragraph (b) to read:

(b) No unit of the National Park System remained open to mining claim location after September 28, 1976. All mining claims, mill sites, and tunnel sites located in a unit of the National Park System on that date were required to be recorded with the National Park Service on or before September 28, 1977, or they were, by operation of law, deemed conclusively to be abandoned and void.

5. Section 3833.1–3 is revised to read:

§ 3833.1–3 Service charges.

(a) All service charges shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior—Bureau of Land Management.

(b) Each mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a nonrefundable service charge of $10.00.

(c) Annual filings submitted pursuant to § 3833.2 of this title shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(d) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(e) Transfers of interest filed pursuant to § 3833.3 of this title shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site affected.

§ 3833.1–4 Effective date of service charges.

(a) *Prior to January 1, 1991.* Filings that are not accompanied by the service charges set forth in § 3833.1–3 of this title shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of such deficiency notice by the authorized officer. Failure to submit the proper service charge shall cause the filing to be rejected and returned to the claimant/owner.

(b) *Beginning January 1, 1991.* Filings that are not accompanied by the proper service charges set forth in § 3833.1–3 of this title shall not be accepted and will be returned to the claimant/owner without further action.

6. Revise § 3833.2 to read:

§ 3833.2 Annual filings.

7. Section 3833.2–1 is revised to read:

§ 3833.2–1 National Park System lands.

(a) For all mining claims, mill sites, and tunnel sites located within a unit of the National Park System that was recorded on or before September 28, 1977, an annual filing shall be submitted to the proper BLM office on or before December 30 of each succeeding calendar year thereafter.

(b) Even though the National Park Service, except under certain limited circumstances described in 36 CFR Part 9, Subpart A, does not permit surface disturbing actions to occur in units of the National Park System, a notice of intent to hold should be filed for mining claims and sites located within these units. If the owner has received National Park Service approval for surface disturbing actions under 36 CFR Part 9, Subpart A, either a notice of intent or an affidavit of assessment work, as appropriate, should be filed.

(c) The provisions of this section shall apply to all mining claims, mill sites, and tunnel sites included in a unit of the National Park System because of an enlargement of the said unit after September 28, 1976.

(d) Evidence of annual assessment work for mining claims, mill sites, and tunnel sites located in a unit of the National Park System shall be in the form prescribed by § 3833.2–4 of this Title. A notice of intention to hold such a claim or site shall be in the form prescribed in § 3833.2–5 of this title.

(e) The authorized officer shall forward copies of annual filings on mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

§§ 3833.2–2, 3833.2–3, 3833.2–4 [Redesignated as §§ 3833.2–4, 3833.2–5, 3833.2–6]

8. Redesignate §§ 3833.2–2, 3833.2–3, 3833.2–4 as §§ 3833.2–4, 3833.2–5, and 3833.2–6, respectively.

9. New §§ 3833.2–2 and 3833.2–3 are added to read:

§ 3833.2–2 Other Federal lands.

Unpatented mining claims, mill sites, and tunnel sites located on Federal lands which are not within a unit of the National Park System are subject to the following annual filing requirements:

(a) If a mining claim, mill site, or tunnel site located on or before October 20, 1976, was recorded in the proper BLM office prior to January 1, 1978, a notice of intention to hold or evidence of annual assessment work shall be filed in the proper BLM office on or before December 30, of the calendar year following the calendar year of its recordation, and of each calendar year thereafter.

(b) All owners of mining claims, mill sites, or tunnel sites located on or before October 20, 1976, and recorded in the

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proper BLM office on or after January 1, 1978, and on or before October 22, 1979, shall have filed a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before October 22, 1979, and on or before December 30 of each calendar year after 1979.

(c) Owners of mining claims, mill sites, and tunnel sites located on or after October 21, 1976, shall file a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before December 30 of the calendar year following the calendar year of the location of the mining claims, mill site, or tunnel site.

(d) Evidence of annual assessment work shall be in the form prescribed in § 3833.2–4 of this title. A notice of intention to hold shall be in the form prescribed in § 3833.2–5 of this title.

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act and the General Mining Law of May 10, 1872.

(a) The Federal Land Policy and Management Act requires that a notice of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year following the calendar year in which the mining claim, mill site, or tunnel site was located. To comply with the requirements of the Act for mining claims, mill sites, or tunnel sites located between September 1 and December 31 of a given calendar year, the claimant shall submit an annual filing on or before December 30, of the following calendar year for each location to prevent the mining claim, mill site, or tunnel site from being declared abandoned and void by operation of law.

(b) Evidence of assessment work filed under this subpart between January 1 and the following December 30 of the same calendar year shall be deemed to have been filed during that calendar year, regardless of what assessment year that work fulfilled under State law.

(c) Notice of intention to hold a mining claim, mill site, or tunnel site may be filed at the election of the owner, regardless of whether the assessment work has been suspended, deferred, or not yet accrued. However, the owner shall have filed with the Bureau of Land Management the same documents which have been or will be recorded with the local recordation office. There is no requirement to file a notice of intent to hold for a mill site or a tunnel site with the local recordation office. A notice of intention to hold a mining claim, mill site, or tunnel site shall be effective only to satisfy the filing requirement for the calendar year in which the notice is filed. The filing of a notice of intention to hold with the Bureau of Land Management shall not relieve the owner of complying with Federal and State laws pertaining to the performance of assessment work.

§ 3833.4 [Amended]

11. Section 3833.4(b) is amended by removing the phrase "§§ 3833.1–2(b), 3833.2–1(c), 3833.2–2(a) and (b), or 3833.2–3(b) and (c)" and replacing it with the phrase "§§ 3833.2–4 (a) and (b), and 3833.2–5 (a) and (b)", and by removing the second and third sentence of the paragraph and adding a new sentence to read "Failure to file the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed conclusively to be abandoned and it shall be void."

§ 3833.5 [Amended]

12. Section 3833.5 is amended by:

A. Amending paragraph (d) by removing everything after the first sentence of the paragraph and replacing it with "As provided in Subpart 1810 of this title, all owners of record with the Bureau of Land Management shall be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners shall be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The provisions of this subpart shall not be applicable to procedures for public notice required under Part 3860 of this title with respect to mineral patent applications and to the procedures given in 43 CFR 4.450–5 concerning service in mineral contest actions."; and

B. By adding a new paragraph (h) to read:

* * * * *

(h) Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of this Subpart shall have a right of appeal pursuant to Part 4 of this title.

PART 3850—ASSESSMENT WORK

1. An authority citation is added to read:

Authority: 30 U.S.C. 22 et seq.

Subpart 3852—Deferment of Assessment Work

§ 3852.2 [Amended]

2. The last sentence of § 3852.2(a) is revised to read:

(a) * * * Each petition shall be accompanied by a $25 nonrefundable service charge.

* * * * *

PART 3860—MINERAL PATENT APPLICATIONS

1. An authority citation is added to read:

Authority: 30 U.S.C. 22 et seq.

Subpart 3862—Lode Mining Claim Patent Applications

2. Section 3862.1–2 is revised to read:

§ 3862.1–2 Service charge.

Each Mineral Patent Application shall be accompanied by a nonrefundable service charge of $250 per application and the initial mining claim or site plus $50 for each additional mining claim or site contained within the application.

[FR Doc. 88–27686 Filed 11–30–88; 8:45 am]
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Friday
December 2, 1988

Part VIII

Department of Labor

Employment and Training Administration

20 CFR Part 639
Worker Adjustment and Retraining Notification; Interim Interpretative Rule

DEPARTMENT OF LABOR

20 CFR Part 639

Worker Adjustment and Retraining Notification

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim interpretative rule; request for comments.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing an interim interpretative rule interpreting the provisions of the Worker Adjustment and Retraining Notification Act (WARN). WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit, and to the appropriate local government.

DATES: *Effective date*: The interim interpretative rule is effective on December 2, 1988. However, as discussed below in the **SUPPLEMENTARY INFORMATION**. affected employers may be required to provide advance notice as early as December 6, 1988.

Expiration date: As noted in § 639.11 of the interim interpretative rule, the interim interpretative rule will, by its own terms, expire on April 1, 1989.

Comments: This interim interpretative rule also is being used to solicit comments on a subsequent final rule which the Department intends to issue before the expiration of this interim interpretative rule. Comments must be received by January 31, 1989. See also the Notice of Proposed Rulemaking on this subject, which will be published separately in the December 5, 1988, issue of this **Federal Register**.

ADDRESS: Comments shall be mailed to the Assistant Secretary of Labor, Employment and Training Administration, Department of Labor, Room N–4459, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Administrator, Office of Job Training Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo; Telephone: (202) 535–0577.

SUPPLEMENTARY INFORMATION:

Introduction

The Worker Adjustment and Retraining Notification Act (WARN, the statute, or the Act), Pub. L. 100–379, 102 Stat. 890, was enacted on August 4, 1988. 29 U.S.C. 2101 *et seq*. Section 11 of the Act provides that WARN goes into effect on February 4, 1989. WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit (see 29 U.S.C. 1661(b)(2)), and to the appropriate local government. 29 U.S.C. 2902 and 2903. Section 8(a) of the Act requires that the Secretary of Labor "prescribe such regulations as may be necessary to carry out this Act. Such regulations shall, at a minimum, include interpretative regulations describing the method by which employers may provide for appropriate service of notice as required by this Act." 29 U.S.C. 2107(a). Under section 11 of the Act, the authority to issue regulations for WARN became effective on August 4, 1988.

The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department), since the enactment of WARN, has published in the **Federal Register** for comment various notices and discussion papers on WARN. 53 FR 43731 (October 28, 1988); 53 FR 39403 (October 6, 1988) 53 FR 38026 (September 29, 1988); 53 FR 36056 (September 16, 1988); and 53 FR 34844 (September 8, 1988). In developing this interim interpretative rule, ETA has considered the comments received in response to those notices and discussion papers.

Prior Actions

The Department of Labor (DOL) is conducting the WARN implementation process in an open and public manner. On September 16, 1988, the Department published a notice in the **Federal Register** inviting comments from interested parties regarding: "(1) [T]he extent to which the Department should issue interpretative regulations; and (2) [T]o the extent that regulations are needed, the specific views of commenters on how particular sections of the law should be implemented through regulations."

A total of 63 letters was received, of which 43 were sufficiently timely for full consideration. The comments break out by source as follows: Employer associations 18, companies 17, law firms 8, unions 7, employee associations 1, Members of Congress 4, State officials 7, and private citizens 1.

The Department's analysis of these comments revealed the following points:

(1) Both companies and unions strongly encouraged DOL to publish interpretative regulations that explain how WARN will be implemented and clarify WARN provisions they find ambiguous.

(2) The commenters also requested that DOL address or define a number of specific items including:

(a) The earliest date notice would be required to be given;

(b) Who is affected by an employment loss (e.g., part-time workers and incumbents with seniority who displace other workers);

(c) The exemption of temporary workers and temporary facilities;

(d) The terms "single site of employment," "facility" and "operating unit," which are important terms used in determining coverage of plant closings and mass layoffs;

(e) The allowable bases for reduced advance notice under the Act for companies encountering unforeseeable business circumstances.

A question has arisen regarding the meaning of the February 4, 1989, effective date of WARN. Section 3(a) of WARN states "an employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice * * *."

Some commenters have interpreted this language to require that employers must provide full 60-day notice in advance of planned plant closings or mass layoffs occurring on or after the effective date, i.e., any actions planned to occur on or after February 4, 1989 would be subject to the full 60-day notice requirement, requiring notice as early as December 6, 1988.

Another interpretation that has been offered is that the effective date provision requires notice to be given only for actions which will occur 60 days after February 4, 1989, i.e., notice would be required only for actions occurring on or after April 5, 1989.

Still a third possible interpretation is that an employer must give such advance notice as is possible for all covered employment actions that occur on or after February 4, 1989, e.g., for a layoff occurring on March 6, 1989, the employer would be required to provide 30 days' notice.

DOL has received comments supporting each of these interpretations. DOL agrees with commenters that a strong case can be made to support the second and third interpretations, but DOL also has determined that there are substantial arguments to support the first interpretation. DOL has been informed in a comment submitted by four of the Congressional sponsors of WARN that they intended WARN to require 60 days' notice for all plant closings that occur on or after the effective date.

DOL views the effective date provision to mean that covered

employment actions which occur on or after February 4, 1989 are subject to the notice requirements of WARN. That may mean that notice is required to be given as early as December 6, 1988. DOL believes that it would not be responsible to advise employers not to give notice during a period (December 6, 1988–April 4, 1989) when notice may later be determined to have been required. Employers are, therefore, best advised to proceed conservatively and to provide notice in view of this possible liability.

DOL is therefore issuing these regulations as an interim interpretative rule so that potentially affected employers will know in advance of December 6, 1988, how to comply with the law.

DOL agrees with commenters who have pointed out that the publication of this regulation only a few days before the notice requirement may become effective may not provide sufficient advance notice to enable some employers to fully comply with all the regulatory provisions. DOL has alerted employers to the possibility that notice may be required to be given as of December 6, 1988 in both the September 16 and October 28 **Federal Register** Notices. Nonetheless, DOL recognizes that the details of these regulations have not been generally known. DOL therefore believes that in the early days of WARN implementation substantial compliance with regulatory requirements should be sufficient to comply with WARN.

It should be noted that the requirements of WARN do not apply to employment actions that are completed prior to February 4, 1989.

Issues Under the Act

On October 28, 1988, the Department published the WARN Discussion Paper in the **Federal Register** and solicited comments. This paper reviewed sections 2, 3, 4 and 11 of the statute, discussing questions raised in comments on the September 16, 1988 Notice and issues addressed in the legislative history.

DOL has received comments in response to the October 28 Notice from employer associations, employers, labor unions, law firms and a State governmental agency. A letter of comment was submitted by four members of Congress who were legislative sponsors. DOL has reviewed and considered the comments in drafting its regulations. Because of the short timeframes for developing these regulations, DOL will continue to consider these comments and others that may be received in response to the October 28 Notice, as well as those received in response to this document, in the preparation of the final WARN regulations.

Following is a section-by-section analysis of the regulations and the comments.

(1) Organization of Regulations

The Department has written and presented the WARN regulations so they will be understandable, and offer guidance to readers in the business and labor communities. Issues are discussed in their logical sequence, in an effort to easily convey the intent of the Act and employers' responsibilities.

(2) Scope and Purpose

The scope of these regulations is basic: Section 2 of the Act provides necessary definitions and exclusions; section 3 describes the content and service of notice, sets forth the legal bases for providing reduced notice or extending a 6-month layoff period, and reviews employment losses over a 90-day period to determine whether some employers are covered by WARN requirements; and section 4 outlines two possible exemptions to coverage of plant closings and mass layoffs.

The Department decided not to regulate in any way regarding enforcement and civil penalties (i.e., section 5 of the statute) since the courts alone have the authority to enforce WARN, and are therefore best situated to interpret these important provisions of WARN.

The regulations note that WARN does not supersede or supplant collective bargaining agreements which provide additional rights. DOL is interested in receiving comments on: (1) Whether and to what extent the final regulations might provide that collective bargaining agreements which provide for the terms different from terms incorporated into the WARN regulations may be used to legitimate alternative methods of compliance with WARN; and (2) whether such a provision should apply only to collective bargaining agreements that are entered into after the effective date of WARN or whether agreements that predate WARN also should be included. Obviously, the length of the notice period cannot be reduced by agreement, but DOL is interested in receiving comments on other definitions or requirements which might properly be varied in collective bargaining agreements: for example, the definitions of single site of employment, facility or operating unit or the content of notice.

(3) Definitions

The definition of employer presented in the Act makes it clear that all business enterprises of the stated size are covered. Because of the use of the term "business enterprise", DOL concludes that regular Federal, State, and local government public services are outside the purview of WARN. Commenters have sought clarification regarding the treatment of private nonprofit entities; quasi-public corporations, authorities, institutions of higher learning, hospitals, and public utilities. The Congressional commenters stated that the intent of WARN was to include private nonprofit organizations and "public and quasi-public entities operating in a 'commercial' context." To the extent such entities engage in "business" (i.e., take part in a commercial or industrial enterprise; supply a service or good on a mercantile basis; or provide independent management of public assets, raising revenue and making desired investments), such entities appear to meet the definition of "business enterprise" in the absence of specific legislative history on this point.

Generally, DOL has developed its definition of the term "employer" in accordance with the comments; it has included nonprofit organizations. In the final rule, DOL is considering including some public agencies within the definition. DOL does not, however, intend to define covered public enterprises in terms of the traditional/non-traditional governmental functions distinction that was rejected by the Supreme court as unworkable in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1984). Instead, DOL is considering defining which public entities are covered in terms of an organizational test, i.e., whether the entity is managed by a separately organized governing board with independent authority to manage its personnel and assets. DOL believes this test will cover the entities intended to be covered and will have the virtue of relative ease of application. DOL specifically invites comments on whether such entities should be covered and whether this test is an appropriate basis for defining coverage.

DOL agrees with commenters that, as a general rule, separately incorporated or organized entities should be treated as separate employers. It must be recognized, however, that there are cases where related entities are not effectively separate and must be treated as one entity for WARN purposes. DOL has adopted standard tests recognized by the courts in the context of a variety of laws for determining whether a subsidiary or an independent contractor

is sufficiently independent from its parent to be treated separately.

In the application of the tests, the courts look to the totality of the circumstances and each determination is highly fact-specific. Given the complex nature of the determination, § 639.3(a), which defines "employer", sets out a brief description of a few of the more important factors used in determining subsidiary or independent contractor status.

The regulations set down definitions for "plant closing", "mass layoff" and "representative" as presented in WARN.

Commenters asked the Department to clarify the meaning of "affected employees" in the Act. Since the statute includes in the term those employees who can reasonably be expected to experience an employment loss, it is clear the impact on the employee roster of bumping, seniority, and persons with multiple job skills requires consideration.

A number of commenters discussed the difficulty of determining 60 days in advance which employees will be bumped in some of the complex bumping procedures that exist in various industries. Most of these commenters referred to collectively bargained bumping procedures in which case notice goes to unions(s), not to individual workers (Section 3(a)(1) of WARN). One commenter took the opposite view and suggested that employers are well aware of who will be affected by bumping systems and should be required to notify all potentially affected employees. DOL believes that, in those cases of non-bargained, employer-developed seniority or bumping systems to which notice to individual workers applies, there are real complexities which militate against imposing an absolute requirement that notice be given to all potentially affected employees regardless of the complexity of the bumping system. DOL is persuaded that there are factors, including the possible non-exercise of bumping rights by an intermediate bumpee and the difficulty of predicting a bumping path where employees have several options among positions or lines of progression into which they can bump, which make it difficult to predict who will finally be affected as a result of a plant closing or mass layoff. Additionally, DOL believes that in some cases adoption of an absolute notice rule would contravene the intent of WARN to provide notice to those workers who will be affected by dislocation events and might lead to unnecessarily broad mass termination or blanket notices which Congress clearly intended should not be utilized. DOL has, therefore, adopted a reasonable foreseeability test in defining affected employees.

The purpose of WARN to provide notice to workers so alternative employment or necessary training can be obtained on a timely basis applies equally to white-collar and managerial employees as well as to employees in the skilled trades and other blue-collar occupations. Therefore, the Department includes managerial and supervisory workers as "affected employees". The definition also addresses questions raised regarding consultants and contract employees, excluding them since they are not legally employees of the businesses to which they are assigned.

The definition of "employment loss" and exclusions from employment loss in the regulations closely follow the language of the statute. Commenters questioned whether an employment loss occurs when there is job loss but no loss of income. Some commenters gave examples of programs under which an employee retains full pay, benefits and other rights although separated from a particular job and suggested that the definition of employment loss should take account of such programs. DOL agrees and has developed the definition of employment loss to take account of these employer initiatives. On the other hand, DOL does not agree that total or partial income replacement programs where an employee does not retain full employment status, such as supplemental unemployment benefits and severance pay, should affect the definition of employment loss, and has developed the definition accordingly.

On a related matter, commenters have asked that DOL discuss in its regulations arrangements where employers have reassigned workers after providing the notice required by WARN, prior to the date of employment loss. Reassignment could be to training, paid leave status, on job-seeking activities. DOL agrees that such reassignments may be possible where not prohibited by contract, but does not which to endorse practices which could undermine the objectives of WARN that both workers and their communities be provided notice in advance of a plant closing. Accordingly, DOL is specifically requesting comments on this issue for consideration prior to issuing a final rule.

"Unit of local government" is defined in the regulations as in the Act. Commenters asked what taxes should be considered in determining which unit of local government should receive notice. The logical solution is for a firm to aggregate all taxes paid to a single unit of local government.

The definition of "part-time employee" in the regulations follows the statutory language. Some commenters were unsure whether regular full-time employees with employment during less than 6 of the last 12 months would be considered part-time or full-time employees. The statute specifically states that such employees are part-time and makes no specific exemption for employees newly hired for full-time, permanent employment.

Other commenters were unsure as to the status of employees who are traditionally understood to be "seasonal" and short-term, yet are hired on a recurring basis. According to the Act, if these employees work for less than 6 of the past 12 months, they are part-time employees. Such employees would, in most cases, also fall under the "temporary facility/limited employment" exemption in section 4(a). Further, "seasonal" employees who work longer than 6 months may also fall under the "limited employment" exemption.

In response to commenters' requests for guidelines in determining the period used in calculating whether a worker has worked "an average of fewer than 20 hours per week," DOL has established that the shorter of the time the worker has been employed or the most recent 90 days should be used.

Several commenters requested clarification of the term "single site of employment." The regulations provide a definition which is drawn from the April 1988 Conference Report on H.R. 3.

As a general rule, a geographic connection or proximity is required to define "single site of employment." Even where several distinct operations are performed at a geographically connected site, that plant will be counted as a single site of employment. The facilities or units that house the separate functions may also be "facilities or operating units" within the plant which are also used to measure the occurrence of a covered employment loss.

DOL also recognizes that in some limited cases geographically separate sites may still be considered a single site of employment because of an inextricable operational connection. DOL intends this exception to be a narrow one to cover those cases where separate buildings are used for the same purpose and share the same staff and equipment, or other unusual organizational situations exist.

DOL has adopted common sense definitions of the terms "facility" and "operating unit" within a single site of

employment. These terms are important for determining whether a plant closing has occurred. DOL has defined these terms in a manner which attempts to define physically and operationally distinct entities for purposes of determining whether a plant closing, the shutdown of a distinct entity, has occurred. Generally, commenters do not appear to disagree with the definitions adopted. After receiving and reviewing specific comments regarding the "plant closing" definition, DOL notes, that the closing of a facility or operating unit at which fewer than 50 workers are employed does not, under the statute, become a plant closing if additional employees in an unrelated unit are also laid off. An example would be a plant of 300 workers, where an operating unit of 35 workers is closed. As a result of that closing, 15 other workers in other parts of the plant lose their jobs. Advance notice is not required under these circumstances. DOL solicits comment on this example, and related issues.

The definition of operating unit can be applied through the following example. A 24-hour store eliminating its night shift would not carry out a closing of an operating unit, but the elimination of all warehouse and stock workers on all three shifts would constitute the closing of an operating unit if 50 or more workers were affected.

DOL also has provided definitions of the terms "State dislocated worker unit" and "State."

(4) Who Must Give Notice

In response to DOL's discussion paper, several commenters pointed out that WARN creates an absolute division of responsibility for giving notice between a buyer and seller of a business; the seller is liable to give notice up to and including the date (time) of sale and the buyer is responsible thereafter. DOL agrees and has developed its regulations to reflect that view. Thus, at all times one of the parties to the transaction is responsible for giving notice. The Department's regulations offer guidance to employers anticipating a sale or purchase transaction to avoid confusion regarding service of notice and liability under WARN, by suggesting that each party's responsibility with respect to these items be covered in the contract of sale.

A number of commenters objected to DOL's use of the word "tenure" in the discussion paper when reviewing the meaning of the last sentence of section 2(b)(1) which provides that employees of the seller as of the effective date of the sale become employees of the buyer immediately thereafter. The commenters stated that this provision should be interpreted solely to relate to the responsibility to provide notice. DOL generally agrees and has not used the term "tenure" in the regulations. DOL agrees that Congress did not intend to affect other questions relating to employment status that are unrelated to the notice requirements of WARN. DOL notes, however, that for WARN purposes this provision does prevent a full-time employee of the seller from being classified as a part-time employee of the buyer because the employee has not worked for the buyer for 6 months.

(5) When Must Notice Be Given

To aid employers in complying with the Act and issuing notice when it is due, DOL suggests that the employers look ahead and behind, not only 30 days, but 90 days (section 3(d)) in determining whether planned employment actions will trigger notice requirements. By doing this, an employer can look at its planned employment actions, in the broader framework of the Act, and reduce potential liability for failure to give notice when thresholds have been met. DOL reminds employers that, in the case of the section 3(d) 90-day aggregate, notice is not required if the employer can demonstrate that the reductions were the result of "separate and distinct actions and causes and are not an attempt to evade" the Act.

In response to inquiries from commenters, DOL has pointed out a practical and reasonable method for measuring the number of employees in a business enterprise for the purpose of determining whether an employer is covered by WARN, i.e., has sufficient numbers of workers or hours so that WARN applies, and, if so, whether a particular employment action is a plant closing or mass layoff. The obvious point in time at which an enterprise's employment level should be measured is the date the first notice is required to be given. Because this point of measurement is closest to the time of the employment action, a "snapshot" on this date is usually most reflective of the firm's employment status, and thus of its coverage under WARN. There are, however, instances in which this method of employment measurement is not most indicative of a firm's true employment level and thus not appropriate for determining WARN coverage. The use of the number of employees on a more representative alternative date, or the use of an average employment level calculated over a recent period of time, may be appropriate where employment levels have surged up or down for temporary, and thus unrepresentative, reasons. An example would be the detailing of a large group of employees to a particular employment site for a short period of time.

For the purpose of exclusion from the definition of employment loss under section 2(b)(2), DOL has defined the term "transfer." Consistent with direction on transfers found in the June 2, 1987, Senate Committee Report, the new job being offered must be substantially equivalent in terms of pay and working conditions. By applying this definition, the term transfer, as used in the statute, will indeed refer to a transfer, and not a demotion. Some commenters suggested that the definition of reasonable commuting distance or comparable employment be made sufficiently flexible to accommodate the different provisions of collective bargaining agreements. DOL agrees and points out that under section 6 of the Act and under § 639.1(f) of the regulations provision is made for assuring that WARN does not supersede collective bargaining agreements which provide different but not inferior rights in areas such as these.

Section 639.5(c) of the regulations clarifies that work may fall under the temporary employment exemption in section 4(1) of the Act, if the workers understood the temporary nature of the employment at the time of hire. Since such an understanding could arise in a variety of ways, the regulations specify reference to employment contracts or local or industry employment practices, but leave the burden of proof to employers. A distinction is made between temporary work and long-term or continuous employment in construction and agriculture.

A number of commenters argued that the regulations should provide a blanket exemption to certain industries where the majority of workers may be hired for particular projects or seasonal, recurring work. DOL does not agree that a blanket exemption for any industry is appropriate since DOL cannot find that *all* the employees of any industry are necessarily hired only for particular projects. DOL believes, however, that the regulations define temporary facility and particular project in a manner which will not subject industries in which employees are generally hired for a particular project to any unforeseen liability as long as there are clear understandings about the nature of their employment.

Section 639.5(d) of the regulations addresses the strikes and lockouts exemption in section 4(2) of the Act. In the discussion paper DOL suggested that the exemption effectively does not apply to strikes since it is difficult to understand how a strike by employees

constitutes a plant closing or mass layoff, an action solely within the power of the employer. A number of commenters disagreed with this suggestion, although none clarified how a strike can constitute a plant closing or mass layoff. DOL agrees that a strike can cause a plant closing or mass layoff and has, therefore, included strikes within the regulatory provision.

The legislative history reveals the clear intent of Congress to restrict the exemption to actions which occur in the normal course of collective bargaining. The regulations reflect this intent and emphasize that the exemption does not apply where there is an attempt to evade the Act. Commenters also questioned whether employment loss suffered by non-striking employees as a direct or indirect result of a strike entitles them to notice, especially when their loss of employment cannot be predicted 60 days in advance. This situation is specifically addressed in the legislative history. The intent to provide advance notice whenever workers are involuntarily unemployed due to a plant closing or mass layoff may extend to these workers. DOL is considering, in the final regulations, therefore, requiring notice to non-striking employees at the employment site that is directly affected by the strike or lockout, but clarifying that reduced notice under the unforeseeable business circumstances provision may apply to plant closings or mass layoffs that indirectly result from strikes or lockouts.

DOL recognizes that the entire area of strikes and lockouts as they relate to the provisions of WARN is a complex one involving a variety of issues that arise under the National Labor Relations Act. While DOL does not intend to promulgate regulations which intrude into these matters, DOL does recognize that additional clarity may be possible in the final regulations and, therefore, invites additional comments on these issues.

(6) Who Must Receive Notice

Notice must be given to affected employees' representatives, directly to unrepresented affected employees, to the State dislocated worker unit, and to the chief elected official of the unit of local government. Section 639.6 of the regulations clarifies who is to receive notice in each case. It may be advisable to provide notice to the level of the union organization which is closest to the workers and which has the ability to act to notify individual workers. Thus, while the regulations specify that the notice is to be served upon the chief elected officer of the exclusive representative or bargaining agent, it is recommended that a copy also be given to the local union official.

Affected employees entitled to notice include part-time as well as full-time employees, since the law does not specify otherwise. In addition, where bumping rights apply, employees who may reasonably be expected to experience an employment loss due to application of bumping rights are entitled to notice as well as incumbents of positions to be directly affected. This is borne out by the legislative history. It is clear, however, that such factors as voluntary separations, early retirement and transfers which occur after notice is given will change which employees actually experience employment loss. In recognition of such non-predictable factors, the regulations state that notice is to be given to the extent that the affected workers can be identified.

States are required, under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), to have operating dislocated worker units as of July 1, 1989. To meet the requirement for notice to these units prior to their creation or designation by State governors and to permit States to set in motion existing worker adjustment assistance programs, the regulations specify that notice served upon the State governor constitutes service upon the State dislocated worker unit.

Questions were raised about the identity of the chief elected official of a unit of local government, given the variety of local government structures. In particular, clarification was sought in the situation where local government is run by an elected board. The regulations clarify this situation by providing that the chairperson of the elected board is to receive notice. The regulations also provide that all local taxes should be aggregated for purposes of determining which unit of local government to notify when a plant is located within two or more such units.

(7) Content of Notice

A number of commenters argued that the discussion paper imposed too many requirements on employers and went beyond the requirements of the Act. While the Act does not enumerate specific elements which should be included in the advance written notice of an order for a plant closing or a mass layoff, the purpose of providing notice to the parties mentioned above is to allow each of them to take appropriate action to facilitate training, employment or other adjustments for affected employees. The content of notice to each party, specified in § 639.7 of the regulations, is designed to provide information necessary for each of them to take responsible action.

Commenters pointed out that specific requirements for identifying the date on which a layoff or termination is to occur could interfere with their collectively bargained procedures for notice to employees or their unions. DOL agrees that it is not the intent of WARN to interfere with such processes and has attempted to draft the notice content requirements to provide for some flexibility where notice is provided well in advance of WARN's 60-day notice period. DOL also agrees with one commenter that in plant closing situations where such long-term notice is given that otherwise complies with these regulations but where notice of a definite termination date is not possible, the giving of a second notice specifying a termination date 60 days in advance of that date constitutes full compliance with WARN.

It is clear from comments that there are circumstances in which a closing or layoff will be triggered if a specific event occurs, but it is not known at the time 60-day notice would be required whether that specific event will take place. It would be consistent with the intent of the Act to provide notice in such a situation. However, since the eventual outcome is not definite, the regulations stipulate that the notice must clearly identify its conditional nature and the circumstances on which it is based.

(8) *How is Notice to be Served*

Commenters asked whether the parties listed in the Act must have the written notice in hand 60 days before the separation occurs or whether the employer could mail the notice, insert the notice in affected workers' pay envelopes, etc., 60 days prior to the employment action. According to the legislative history, the first option is the correct interpretation. Any method of transmittal that is designed to ensure this end, i.e., to have the notice in hand 60 days in advance, would satisfy the intent of the Act. Additionally, the floor debates indicated that a ticketed notice fails to meet the requirements of WARN.

(9) *When May Notice Be Given Less Than 60 Days in Advance*

The three conditions allowing for a reduction of the 60-day period mentioned in the regulations are set forth in the statute. While commenters pointed to several floor comments which indicated a less restrictive approach to applying reduced notice provisions, the totality of the legislative history indicates the narrow nature of these

bases as well as the requirement that the employer must satisfactorily prove the necessity of a reduced notice period, if challenged. To ensure that the employees or their representative(s), the State dislocated worker unit, and the chief elected official of the unit of local government receive the information needed to help the workers find a new job or receive appropirate training, a brief statement of the basis for reducing the notification period should accompany the other elements required in the notice under the regulations. As expressed in the statute, the employer must give as much notice as is practicable.

The language of the "faltering company", "unforeseeable business circumstances", and "natural disaster" bases outlined in the regulations to a great extent reiterates relevant portions of the April 1988 Conference Report's text.

Commenters asked for clarification of when business circumstances are not reasonably foreseeable. In an effort to provide guidance and address their concerns, the regulations state that the employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of a particular market. The employer is not, however, required to predict general economic conditions that may impact the demand for his goods or services.

Commenters also suggested that DOL list examples of reasonably unforeseeable business circumstances in the regulations. While DOL agrees with the commenters that such factors as strikes or lockouts elsewhere, loss of contracts, unexpected major market downturns, fires and closures ordered by government agencies all may constitute unforeseeable business circumstances, at this time DOL does not see the utility of including such a list in the regulations. DOL is willing to consider including in the final regulations examples which illustrate principles applicable to employers generally. DOL therefore invites additional comments on examples that should be included in regulations and the circumstances in which they might apply.

In the case of the "natural disaster" exception, the floor debates demonstrate Congressional intent that an employment action that was a direct result would fall under this exception, while one that was caused as an indirect result of a natural disaster would not be covered. The Department, however, understands that "indirect" plant closings or mass layoffs may not be known 60 days in advance and, thus, the "unforeseeable business circumstance" provision may prove applicable.

(10) *When May Notice Be Extended*

Section 639.10 covers the length of time after the date specified in the notice for which the notice is valid. To ensure that the parties who are due notice have the most current and helpful data available and, thus, can make appropriate plans, additional notice is due if the original date is not met. If the postponement is for less than 60 days, the notice need only contain a reference to the earlier notice, the date to which the planned action is postponed, and the reasons for the postponement. This type of notice will provide the parties with needed information and be less burdensome to the employer. If the postponement extends for 60 days or more, the additional notice should be treated as new notice and meet the specified requirements.

Several commenters disagreed with this interpretation, arguing that there is no specific statutory requirement to support it, that a 180-day period is more in keeping with the rolling 90-day aggregation period for determining employment loss under section 3(d) and that if any "secondary" notice is required posting general notice on a bulletin board should be sufficient. DOL believes that the approach it has adopted is most consistent with Congressional intent in two important respects. First, it furthers the Congressional purpose that notice to workers provide the workers and governmental authorities with specific information in order to react to a dislocation event and to obtain new employment or training to minimize the effects of that event. If workers are not informed of changes in planned termination dates their planning will be disrupted and either they will run the risk of losing other opportunities or the employer will lose employees who it may need to carry on its operations. Second, DOL's approach is in accord with Congress' express intent to prohibit rolling notice.

In the legislative history, the floor debats stipulate that rolling notice is *not* acceptable, and, accordingly, routine periodic notice of a possible plant closing or mass layoff is not permitted under the regulations.

Publication of Interim Interpretative Rule; Request for Comments; Expiration Date of Interim Interpretative Rule

This document is published as an interim interpretative rule with a 60-day comment period. WARN was enacted on August 4, 1988. 102 Stat. 890. With an effective date of February 4, 1989, and the potential requirement that employers provide advance notice as early as December 6, 1988, it is essential that the interpretations contained in this interim interpretative rule be issued as soon as possible.

Due to the short statutory timeframe and the need to provide employers, workers, and governments with sufficient advance notice of the interim interpretative rule, the Department of Labor has found, pursuant to 5 U.S.C. 553(a)(B), that immediate publication of an interim interpretative rule is in the public interest in that the employer community and workers need timely guidance on the requirements of WARN. Further, this is an interpretative rule, for which the Administrative Procedure Act does not require a notice of proposed rulemaking or a delay in the effective date. 5 U.S.C. 553(b)(A) and (d)(2).

The Department also is requesting comments on the interim interpretative rule for 60 days after its publication, and plans to respond to those comments and publish a final rule at a later date. The extended comment period is provided so that the many parties interested in the final rule will have a full opportunity to comment before final regulations are published. The formal Notice of Proposed Rulemaking is being published separately in the December 5, 1988, issue of the **Federal Register**.

As noted in § 639.11 of the interim interpretative rule, it expires on April 1, 1989. By that time, DOL expects to have published an effective a final rule.

Regulatory Impact

The interim interpretative rule interprets the provisions of the Worker Adjustment and Retraining Notification Act. It imposes no burdens on employers or others; implementation flows from the Act itself. As it would not have the financial or other impact to make it a major rule, preparation of a regulatory impact analysis is unnecessary. See Executive Order 12291, 5 U.S.C. 601 *note*.

Insofar as is possible, however, DOL intends to perform an analysis of the impact of the Act, this interim interpretative rule, and the final rule, to aid the General Accounting Office in its function of reporting to Congress on the Act.

The interim interpretative rule was not preceded by a general notice of proposed rulemaking. Therefore, it is not a "rule" as that term is defined in the Regulatory Flexibility Act. 5 U.S.C. 601(2).

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Paperwork Reduction Act

The interim interpretative rule is not a rule to which the Paperwork Reduction Act applies. Further, this rule imposes no requirement that a company maintain any record in any format, or that any record be on file for subsequent government review.

Information collection requirements in the final rule will be submitted to the Office of Management and Budget for review pursuant to the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 639

Employment, Labor, Labor management relations, Labor unions, Penalties.

Interim Interpretative Rule

Accordingly, Chapter V of Title 20, Code of Federal Regulations, is amended by adding a new Part 639, to read as follows:

PART 639—WORKER ADJUSTMENT AND RETRAINING NOTIFICATION

Sec.

639.1 Purpose and scope.
639.2 What does WARN require?
639.3 Definitions.
639.4 Who must give notice?
639.5 When must notice be given?
639.6 Who must receive notice?
639.7 What must the notice contain?
639.8 How is the notice served?
639.9 When may notice be given less than 60 days in advance?
639.10 When may notice be extended?
639.11 Expiration date.

Authority: 29 U.S.C. 2107(a).

§ 639.1 Purpose and scope.

(a) *Purpose of WARN.* The Worker Adjustment and Retraining Notification Act (WARN or the Act) provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. WARN also provides for notice to State dislocated worker units so that dislocated worker assistance can be promptly provided.

(b) *Scope of these regulations.* These regulations establish basic definitions and rules for giving notice, implementing the provisions of WARN. The Department's objective is to establish clear principles and broad guidelines which can be applied in specific circumstances. However, the Department recognizes that Federal rulemaking cannot address the multitude of industry and company-specific situations in which advance notice will be given.

(c) *Notice encouraged where not required.* Section 7 of the Act states:

> It is the sense of Congress that an employer who is not required to comply with the notice requirements of section 3 should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

(d) *WARN enforcement.* Enforcement of WARN will be through the courts, as provided in section 5 of the statute. Employees, their representatives and units of local government may initiate civil actions against employers believed to be in violation of section 3 of the Act. The Department of Labor has no legal standing in any enforcement action and, resultantly, will not be in a position to issue advisory opinions affecting specific cases. These regulations are interpretive, and are not binding upon the courts. The Department will provide assistance in understanding these regulations and may revise them from time to time as may be necessary.

(e) *Notice in ambiguous situations.* It is civically desirable, it would appear to be good business practice for an employer to provide advance notice to its workers or unions, local government and the State when terminating a significant number of employees. In practical terms, there are some questions and ambiguities of interpretation inherent in the application of WARN to business practices in the market economy that cannot be addressed in these regulations. It is therefore prudent for employers to weigh the desirability of advance notice against the possibility of expensive and time-consuming litigation to resolve disputes where notice has not been given.

(f) *Coordination with job placement and retraining programs.* The Department, through these regulations and through the Trade Adjustment Assistance Program (TAA) and Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) regulations, encourages maximum coordination of the actions and activities of these programs to assure that the negative impact of dislocation on workers is lessened to the extent possible. By providing for notice to the State dislocated worker unit, WARN notice begins the process of assisting workers who will be dislocated.

(g) *WARN not to supersede other laws and contracts.* The provisions of WARN do not supersede any State laws or collective bargaining agreements that provide for additional notice or rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period.

§ 639.2 What does WARN require?

WARN requires employers who are planning a plant closing or a mass layoff to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice. Not all plant closings and layoffs are subject to the Act, and certain employment thresholds must be reached before the Act applies. The Act sets out specific exemptions, and provides for a reduced period of notification in particular circumstances. Damages and civil penalties can be assessed against employers who violate the Act.

§ 639.3 Definitions.

(a) *Employer.* (1) The term "employer" means any business enterprise that employs (i) 100 or more employees, excluding part-time employees; or (ii) 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of hours of overtime. Workers on temporary layoff who have a reasonable expectation of recall should be counted as employees. The term "employer" includes non-profit organizations of the requisite size. Regular Federal, State, and local government public services are not covered.

(2) Independent contractors and subsidiaries which are wholly or partially owned by a parent company will be treated as separate employers or as a part of the parent or contracting company depending upon the degree of their independence from the parent. Some of the factors to be considered in making this determination are (i) common ownership, (ii) common directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies emanating from a common source, and (v) the dependency of operations.

(3) An employer may have one or more sites of employment under common ownership or control. An example would be a major auto maker which has dozens of automobile plants throughout the country. Each plant would be considered a site of employment, but there is only one "employer", the auto maker.

(b) *Plant closing.* The term "plant closing" means the permanent or temporary shutdown of a "single site of employment", or one or more "facilities or operating units" within a single site of employment, if the shutdown results in an "employment loss" during *any 30-day period* at the single site of employment for *50 or more* employees, excluding any part-time employees. An employment action that results in the effective cessation of production or the work performed by a unit, even if a few employees remain, is a shutdown. A "temporary shutdown" triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding 6 months, or reductions in hours of work as specified under the definition of "employment loss."

(c) *Mass layoff.* The term "mass layoff" means a reduction in force which first, is not the result of a plant closing, and second, results in an employment loss at the single site of employment during *any 30-day period* for:

(1) *At least 33 percent* of the employees, excluding part-time employees, and

(2) *At least 50 employees,* excluding part-time employees.

Where 500 or more employees are affected, the 33% requirement does not apply, and notice is required if the other criteria are met. Plant closings, which can be triggered by the termination of a smaller number of workers than a mass layoff, involve the shutdown of one or more district units within a single site. A mass layoff involves employment loss, regardless or whether one of more units are shut down at the site.

(d) *Representative.* The term "representative" means an exclusive representative of employees within the meaning of Section 9(a) or 8(f) of the National Labor Relations Act or Section 2 of the Railway Labor Act.

(e) *Affected employees.* The term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer. This includes employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. The term "affected employees" includes managerial and supervisory employees, but does not include business partners. Consultant or contract employees who have a separate employment relationship with another employer and are paid by that other employer, or who are self-employed, are not "affected employees" of the business to which they are assigned. In addition, for purposes of determining whether coverage thresholds are met, only incumbent workers in jobs being eliminated are counted.

(f) *Employment loss.* (1) The term "employment loss" means (i) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (ii) a layoff exceeding 6 months, or (iii) a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period.

(2) Where a termination or a layoff (see paragraphs (f)(1) (i) and (ii) of this section) is involved, an employment loss occurs upon the loss of full employment status. "Full employment status" means full pay, benefits, and other employment entitlements. Payment of normal termination or separation benefits otherwise due, such as severance pay and supplemental unemployment benefits, does not serve to continue full employment status.

(3) Employees who are transferred to employer-sponsored programs in which they retain full pay, benefits and other employment entitlements do not suffer an employment loss.

(4) An employee is not considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employer's business and, prior to the closing or layoff—

(i) The employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or

(ii) The employer offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(g) *Unit of local government.* The term "unit of local government" means any general purpose political subdivision of a State, which has the power to levy taxes and spend funds as well as general corporate and police powers. When a covered employment site is located in more than one unit of local government, the employer must give notice to the unit to which it determines it paid the highest taxes for the year preceding the year for which the determination is made. All local taxes paid should be aggregated for this purpose.

(h) *Part-time employee.* The term "part-time" employee means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, including workers who work full-time. This term includes workers who would traditionally be understood as short-term, "seasonal" employees. The period to be used for calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed or the most recent 90 days.

(i) *Single site of employment.* (1) A single site of employment can refer to either a single location or a group of contiguous locations. Groups of structures which form a campus or industrial park, or separate facilities across the street from one another, may be considered a single site of employment.

(2) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable geographic proximity, used for the same purpose, and share the same staff and equipment. An example is an employer who manages a number of warehouses in an area but who regularly shifts or rotates the same employees from one building to another.

(3) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site. For example, assembly plants which are located on opposite sides of a town and which are managed by a single employer may be considered separate sites if they employ different workers.

(4) The term "single site of employment" may also apply to unusual organizational situations where the above criteria do not reasonably apply.

(j) *Facility or operating unit.* The term "facility" refers to a building or buildings, and the term "operating unit" refers to a product, task or specific work function within or across facilities at the single site. For workers whose primary duties require travel from point to point (e.g., railroad workers, bus drivers, salespersons), the facility or operating unit to which they are assigned as their home base will define the unit in which they are covered for WARN purposes.

(k) *State dislocated worker unit.* The term "State dislocated worker unit" means a unit to be designated or created in each State by the Governor under Title III of the Job Training Partnership Act, as amended by the Economic Dislocation and Worker Adjustment Assistance Act.

(l) *State.* For the purpose of WARN, the term "State" includes the 50 States,

the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

§ 639.4 Who must give notice?

Section 3(a) of WARN states that "an employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order * * *." Therefore, an employer who is anticipating carrying out a plant closing or mass layoff is required to give notice to affected employees or their representative(s), the State dislocated worker unit and the chief elected official of a unit of local government. (See definitions in § 639.3 of this part.)

(a) It is the responsibility of the employer to decide the most appropriate person within the employer's organization to prepare and deliver the notice to affected employees or their representative(s), the State dislocated worker unit and the chief elected official of a unit of local government. In most instances, this may be the local site plant manager, the local personnel director or a labor relations officer.

(b) Consistent with Section 3(c) of WARN, an employer who has previously carried out a short-term layoff (less than 6 months) which is being extended beyond 6 months is required to give notice when it becomes reasonably foreseeable that the extension is required. Section 3(c) requires that the layoff, at its outset, was announced to be for less than 6 months.

(c) In the case of the sale of part or all of a business, Section 2(b)(1) of WARN defines who the "employer" is. The full responsibility to notify any workers whose employment will be terminated as a result of a sale remains with the seller up to and including the effective date (time) of the sale and is then assumed by the buyer. According to the language of the Act, employees are always entitled to notice, i.e., at all times the employer is responsible for providing notice. For purposes of coverage under WARN, an employee of the seller becomes an employee of the buyer at the time of the sale.

(1) If the seller is made aware of any definite plans on the part of the buyer to carry out a plant closing or mass layoff within 60 days of purchase, the seller may give notice to affected employees as an agent of the buyer, if so empowered. If the seller does not give notice, the buyer is responsible to give notice.

(2) If the buyer has been silent about any plans to reduce the workforce, the buyer is responsible for giving notice to affected employees after the time of sale.

(3) It may be prudent for the buyer and seller to determine the impacts of the sale on workers, and to arrange between them for advance notice to be given to affected employees or their representative(s), if a mass layoff or plant closing is planned. In addition, it may be advisable, considering potential liabilities, for the contract of sale to contain an explicit discussion of these arrangements.

§ 639.5 When must notice be given?

(a) *General rule.* With certain exceptions discussed in paragraphs (b), (c) and (d) of this section and in § 639.9 of this part, notice must be given at least 60 days prior to any planned plant closing or mass layoff, as defined in these regulations. When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day period triggers the 60-day notice requirement. The first and each subsequent group of terminees are entitled to a full 60 days' notice. In order for an employer to decide whether issuing notice is required, the employer should:

(1) Look ahead 30 days and behind 30 days to determine whether employment actions both taken and planned will, in the aggregate for any 30-day period, reach the minimum numbers for a plant closing or a mass layoff and thus trigger the notice requirement; and

(2) Consistent with section 3(d) of WARN, look ahead 90 days and behind 90 days to determine whether employment actions both taken and planned which separately may not be of sufficient size to trigger WARN coverage will, in the aggregate for any 90-day period, reach the minimum numbers for a plant closing or a mass layoff and thus trigger the notice requirement. An employer is not, however, required under section 3(d) to give notice if the employer demonstrates that the separate employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the requirements of WARN.

(3) The point in time at which the number of employees is to be measured for the purpose of determining coverage is the date the first notice is required to be given. If this "snapshot" of the number of employees employed on that date is clearly unrepresentative of the ordinary or average employment level, then a more representative number can be used to determine coverage. Examples of unrepresentative employment levels include cases when the level is near the peak or trough of an employment cycle or when large upward or downward shifts in the number of employees occur around the time notice is to be given. A more representative number may be an average number of employees over a recent period of time or the number of employees on an alternative date which is more representative of normal employment levels.

(b) *Transfers.* (1) Notice is not required in certain cases involving transfers, as described under the definition of "employment loss" at § 639.3(f) of this part.

(2) The term "transfer" means that the new job is substantially equivalent in terms of pay and working conditions. The term "reasonable commuting distance" has the same meaning given to it by the Internal Revenue Service in 26 CFR 1.119–1(d)(4), i.e., consideration should be given to the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

(3) In cases where the transfer is beyond reasonable commuting distance, the employer may become liable for failure to give notice if an offer to transfer is not accepted within 30 days of the offer or of the closing or layoff (whichever is later). Depending upon when the offer of transfer was made by the employer, the normal 60-day notice period may have expired and the plant closing or mass layoff may have occurred. An employer is, therefore, well advised to provide 60-day advance notice as part of the transfer offer.

(c) *Temporary employment.* (1) No notice is required if the closing is of a temporary facility, or if the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

(2) The employees must clearly understand at the time of hire that their employment is temporary. When such understandings exist will be determined by reference to employment contracts or employment practices of an industry or a locality, but the burden of proof will lie with the employer should questions arise regarding the temporary employment understandings.

(3) Employers in agriculture and construction frequently hire workers for harvesting, processing, or for work on a particular building. Such work may be seasonal but recurring. Such work falls under this exemption if the workers understood at the time they were hired that their work was temporary. In

uncertain situations, it may be prudent for employers to clarify temporary work understandings in writing when workers are hired. The same employers may also have permanent employees who work on a variety of jobs and tasks continuously through most of the calendar year. Such employees are not included under this exemption. Giving written notice will not convert permanent employment into temporary work, making jobs exempt from WARN.

Certain long-term jobs may be related to a specific contract or order. Whether such jobs are temporary depends on the duration of the job, whether the employee was specifically hired to work only on the job and whether the employer expects that the contract or order is part of a long-term relationship. For example, an aircraft manufacturer hires workers to produce a standard airplane for the U.S. fleet with the expectation that its contract will continue to be renewed during the foreseeable future. The employees of this manufacturer would not be considered temporary.

(d) *Strikes or lockouts.* The statute provides an exemption for strikes and lockouts which occur in the normal course of collective bargaining, and which are not intended to evade the requirements of the Act. A lockout not related to collective bargaining which is intended as a subterfuge to evade the Act does not qualify for this exemption. An employer need not give notice when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act.

§ 639.6 Who must receive notice?

Section 3(a) of WARN provides for notice to each representative of the affected employees as of the time notice is required to be given or, if there is no such representative at that time, to each affected employee. Notice also must be served on the State dislocated worker unit and the chief elected official of the unit of local government within which such closing or layoff is to occur. Section 2(b)(1) of the Act states that "any person who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale." This provision preserves the notice rights of the employees of a business that has been sold.

(a) *Representative(s) of affected employees.* Written notice is to be served upon the chief elected officer of the exclusive representative or bargaining agent of affected employees at the time of the notice. If this person is not the same as the officer of each local union representing affected employees, it is recommended that a copy also be given to the local union official(s).

(b) *Affected Employees.* Notice is to be given not only to incumbents in positions that are to be eliminated, but also to employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified. While part-time employees are not counted in determining whether plant closing or mass layoff thresholds are reached, such workers are due notice.

(c) *State dislocated worker unit.* The Act provides that notice is to be served upon the State dislocated worker unit. Since the States are restructuring to implement training under EDWAA, service of notice upon the State Governor constitutes service upon the State dislocated worker unit until such time as the Governor makes public State procedures for serving notice to this unit.

(d) *Chief elected official of the unit of local government.* The identity of the chief elected official will vary according to the local government structure. In the case of elected boards, the notice is to be served upon the board's chairperson.

§ 639.7 What must the notice contain?

(a) *Notice must be specific.* All notices must be specific. If notice is given conditioned upon the occurrence of an event, i.e., the termination of a contract when negotiations for its renewal are in progress, the notice must clearly identify the fact that the notice is conditional and the circumstances upon which the notice is based.

(b) Notice to each representative of affected employees is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff, and whether it is expected to be permanent or temporary;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected, the number of employees in each job classification, and the names of the workers currently holding those jobs;

(5) A statement as to the existence of any applicable bumping rights;

(6) Identification of other representatives, if any, of other affected employees at the same site; and

(7) The name, address, and telephone number of a company official to contact for further information.

In addition, it is recommended that the notice include information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(c) Notice to each affected employee who does not have a representative is to be written in language understandable to the employee and is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff, and whether it is expected to be permanent or temporary;

(3) The expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated;

(4) A statement as to the existence of applicable bumping rights, if any.

In addition, it is recommended that the notice include information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if know.

(d) Notice to the State dislocated worker unit is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff;

(3) The expected date of the first separation, and the anticipated schedule for making separations;

(4) The job titles of positions to be affected, and the number of affected employees in each job classification;

(5) A statement as to the existence of any applicable bumping rights;

(6) The name of each union representing affected employees, and the name and address of the chief elected officer of each union; and

(7) The name, address, and telephone number of a company official to contact for further information.

In addition, it is recommended that the notice include a statement of whether the planned action is expected to be permanent or temporary, and, if temporary, its expected duration.

(e) Notice to the chief elected official of the unit of local government is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff is to occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected, and the number of affected employees in each job classification;

(5) A statement as to the existence of any applicable bumping rights;

(6) The name of each union representing affected employees, and the name and address of the chief elected officer of each union; and

(7) The name, and address, and telephone number of a company official to contact for further information.

In addition, it is recommended that the notice include a statement of whether the planned action is expected to be permanent or temporary, and, if temporary, its expected duration.

§ 639.8 How is notice served?

Any reasonable method of delivery to the parties listed under § 639.6 of this part which is designed to ensure receipt of notice at least 60 days before separation is acceptable (e.g., first class mail, personal delivery with optional signed receipt). In the case of notification directly to affected employees, insertion of notice into pay envelopes is another viable option. A ticketed notice, i.e., preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of WARN.

§ 639.9 When may notice be given less than 60 days in advance?

Section 3(b) of WARN sets forth three conditions under which the notification period may be reduced to less than 60 days. These three exceptions are to be narrowly construed and the employer bears the burden of proof that conditions for the exceptions have been met. If one of the exceptions is applicable, the employer must give as much notice as is practicable, and must, at the time notice actually is given, provide a brief statement of the reason for reducing the notice period, in addition to the other elements set out in § 639.7 at the time notice is actually given.

(a) The exception under Section 3(b)(1) of WARN termed "faltering company" applies to plant closings but not to mass layoffs. To qualify for reduced notice under this exception:

(1) An employer must have been actively seeking capital or business at the time that 60-day notice would have been required. That is, the employer must have been seeking financing or refinancing through the arrangement of loans, the issuance of stocks, bonds, or other methods of internally generated financing; or the employer must have been seeking additional money, credit, or business through any other commercially reasonable method. The employer must be able to identify specific actions taken to obtain capital or business.

(2) There must have been a realistic opportunity to obtain the financing or business sought.

(3) The financing or business sought would have been sufficient, if obtained, to have enabled the employer to avoid or postpone the shutdown. The employer must be able to objectively demonstrate that the amount of capital or the volume of new business sought would have enabled the employer to keep the facility, operating unit, or site open for a reasonable period of time.

(4) The employer must have reasonably and in good faith believed that giving the required notice would have precluded the employer from obtaining the needed capital or business. The employer must be able to objectively demonstrate that it reasonably thought that a potential customer or source of financing would have been unwilling to provide the new business or capital if notice were given, that is, if the employees, customers or the public were aware that the facility, operating unit, or site might have to close. This condition may be satisfied if the employer can show that the financing or business source would not choose to do business with a troubled company or with a company whose workforce would be looking for other jobs.

The actions of an employer relying on the "faltering company" exception will be viewed in a company-wide context. Thus, a company with access to capital markets or with cash reserves may not avail itself of this exception by looking solely at the financial condition of the facility, operating unit, or site to be closed.

(b)(1) The "unforeseeable business circumstances" exception under Section 3(b)(2)(A) of WARN applies to plant closings and mass layoffs caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.

(2) The primary objective indicator of a business circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden and unexpected action or condition outside the employer's control. A principal client's sudden and unexpected termination of a major contract with the employer, a strike at a major supplier of the employer, and an unanticipated and dramatic major economic downturn might each be considered a business circumstance that is not reasonably foreseeable. The test for determining when business circumstances are not reasonably foreseeable focuses on an employer's business judgment. The employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market. The employer is not required, however, to accurately predict general economic conditions that also may affect demand for its products or services.

(c) The "natural disaster" exception in § 3(b)(2)(B) of WARN applies to plant closings and mass layoffs due to any form of a natural disaster. Floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature are natural disasters under this provision. To qualify for this exemption, an employer must be able to demonstrate that its plant closing or mass layoff is a direct result of a natural disaster. While a disaster may preclude full or any advance notice, notice still must be given, whether in advance or after the fact of an employment loss caused by a natural disaster. Where a plant closing or mass layoff occurs as an indirect result of a natural disaster, this exception does not apply but the "unforeseeable business circumstance" exception described in paragraph (b) of this section may be applicable.

§ 639.10 When may notice be extended?

Additional notice is required when the dates of a planned plant closing or mass layoff are extended beyond the date announced in the original notice.

(a) If the postponement is for less than 60 days from the originally scheduled date, the additional notice should be given as soon as possible to the parties identified in § 639.6 and should include reference to the earlier notice, the date to which the planned action is postponed, and the reasons for the postponement.

(b) If the postponement is for 60 days or more from the originally scheduled date, the additional notice should be treated as new notice subject to the provisions of §§ 639.5, 639.6, and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not a plant closing or mass layoffs is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

§ 639.11 Expiration date.

Unless amended to extend its effectiveness, this part shall not be effective on or after April 1, 1989.

Signed at Washington, DC, this 30th day of November 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-27958 Filed 12-1-88; 9:01 am]

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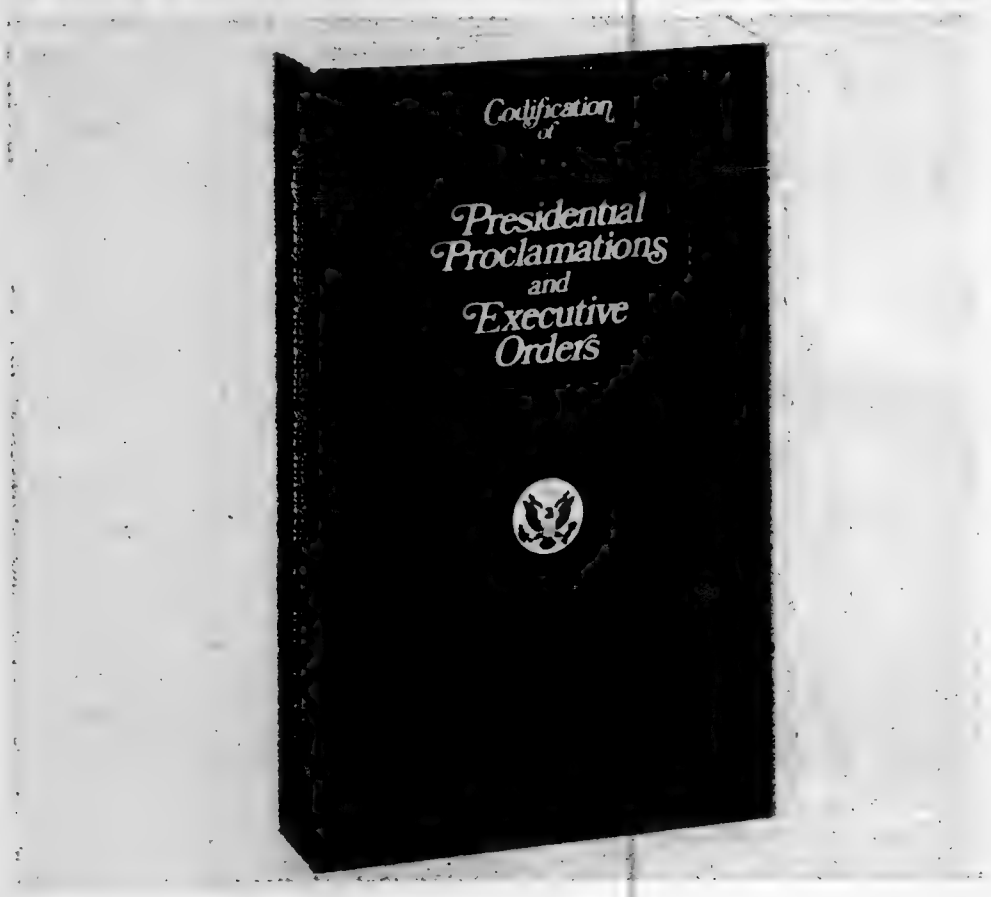

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Rules and Regulations

Federal Register
Vol. 53, No. 233
Monday, December 5, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 841

Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations concerning modifications of State court orders affecting survivor annuities under the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS). These rules implement sections 8341(h)(4) and 8445(d) of title 5, United States Code, that, after the retirement or death of the employee, prohibit OPM from honoring modifications of State court orders relating to survivor annuities. These regulations clarify that OPM will not honor a State court order awarding a survivor annuity if issued after the retirement of the employee unless that order actually terminates the marriage or after the employee's death. The regulations also clarify that State courts cannot bypass the statutory prohibition against honoring modifications by reserving jurisdiction in the decree terminating the marriage or by making the award effective retroactively to the date of the judgment terminating the marriage.

EFFECTIVE DATE: January 4, 1989.

ADDRESS: Send court orders affecting CSRS or FERS retirement benefits to Allotment Section, Office of Personnel Management; P.O. Box 17; Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4682.

SUPPLEMENTARY INFORMATION: On August 2, 1988, we published (at 53 FR 29057) proposed rules concerning modifications of State court orders affecting survivor annuities under the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS). We received two comments on the proposed rules.

Both commenters apparently were confused by the term "former spouse annuity." One commenter used statutory references that apply only to benefits payable during the lifetime of the employee. As we use that term throughout our retirement regulations, it only applies to the *survivor* benefits. Sections 831.1703 and 841.902 define "former spouse annuity" to mean "a recurring benefit * * * that is payable to a former spouse after the employee's, Member's, or retiree's death." These regulations only apply to awards of survivor benefits.

One commenter asserted that the proposed regulations are directly in conflict with the statutory provision. As applied to survivor benefits, the statutory authority for these regulations is clear.

The Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, added section 8341(h) to title 5, United States Code. This section permits State courts, when terminating a marriage, to award survivor annuities under CSRS to former spouses of employees and retirees covered by that retirement system. Paragraph (h)(4) of this section nullifies modifications of State court orders or court-approved property settlement agreements after the retirement or death of the employee to the extent that the modification involves a CSRS survivor annuity for a former spouse.

Similarly, the FERS Act of 1986, Pub. L. 99–335, applied a similar provision, in section 8445 of title 5, United States Code, to employees covered by FERS. Subsection (d) of that section contains the same restriction against modifications involving FERS survivor annuities. These regulations merely implement the statutory requirements.

Both commenters suggested that it could be appropriate for the court to consider the termination of the marriage separate from the property division. As it affects survivor benefits based on the service of a retiree, Federal statute does not permit such a "bifurcated" proceeding. The regulations are intended to give notice of the effect of the statutory prohibition against modification of court orders resulting from bifurcated divorce proceedings (i.e., granting the divorce before division of the marital property). Recently, OPM has received an increasing number of State court orders that terminate marriages of Federal employees and retirees but leave property rights of the parties (including the right to survivor annuities under CSRS or FERS) for later adjudication. These regulations give notice that OPM has no legal authority to honor court orders awarding a survivor annuity if issued after the retirement or death of the employee, unless the award is made in, or prior to, the judgment terminating the marriage, regardless of any reservation of jurisdiction or retroactive effective date of the order granting the survivor annuity.

One commenter also questioned the effect of the rule on cases in which the divorce is granted orally in open court but the written judgment with the property division is signed and recorded at a later date. We considered the written judgment as the order terminating the marriage but the regulations did not make this clear. Accordingly, we have clarified §§ 831.1704(e)(4) and 841.903(d)(4).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 831 and 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

Subpart Q—Court Orders Affecting Retirement Benefits

1. The authority citation for Subpart Q of Part 831 continues to read:

Authority: 5 U.S.C. 8347.

2. In § 831.1704, paragraph (e) is revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(e)(1) For purposes of awarding, increasing, reducing, or eliminating a former spouse annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order terminating the marital relationship between the retiree and the former spouse.

(2) In paragraph (e)(1) of this section, "date of retirement" means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (e)(1) and (e)(4) of this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., order issued *nunc pro tunc*).

(4) In paragraph (e)(1)(ii) of this section, the "first order terminating the marital relationship between the retiree and the former spouse" means the original written order that first ends (or first documents an oral order ending) the marriage, and does not include—

(i) Any order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the order making the amendment, explanation, clarification, or interpretation; or

(ii) Any order issued under reserved jurisdiction or any other orders issued subsequent to the original written order terminating the marriage that divide marital property (even if no division of marital property was made in the order terminating the marriage) regardless of the effective date of the order.

PART 841—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart I—Court Orders Affecting Retirement Benefits

3. The authority citation for Subpart I of Part 841 continues to read:

Authority: 5 U.S.C. 8461.

4. In § 841.903, paragraph (d) is revised to read as follows:

§ 841.903 Qualifying court orders.

* * * * *

(d)(1) For purposes of awarding, increasing, reducing, or eliminating a former spouse annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order terminating the marital relationship between the retiree and the former spouse.

(2) In paragraph (d)(1) of this section, "date of retirement" means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (d)(1) and (d)(4) of this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., order issued *nunc pro tunc*).

(4) In paragraph (d)(1)(ii) of this section, the "first order terminating the marital relationship between the retiree and the former spouse" means the original written order that first ends (or first documents an oral order ending) the marriage, and does not include—

(i) Any order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the order making the amendment, explanation, clarification, or interpretation; or

(ii) An order issued under reserved jurisdiction or any other orders issued subsequent to the original written order terminating the marriage that divide marital property (even if no division of marital property was made in the order terminating the marriage) regardless of the effective date of the order.

[FR Doc. 88-27573 Filed 12-2-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

Restriction on Importation of Meat From Australia and New Zealand

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule adjusts the quantitative restrictions on meat imports from Australia and New Zealand. This adjustment increases the permissible level of meat imports from Australia and New Zealand to reflect changes in the estimated meat imports from other supplying countries. Such an increase was provided for in voluntary restraint agreements with Australia and New Zealand.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Norman R. Kallemeyn, (202) 447-8031, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, USDA, Room 6616 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Executive Order 11539, as amended, the Office of the United States Trade Representative has negotiated agreements with the Governments of Australia and New Zealand whereby those countries have voluntarily agreed to limit the quantity of certain meats exported to the United States during calendar year 1988. Those agreements provided that, if it is subsequently estimated by the United States that the amount of meat imported from other supplying countries is expected to be less than the projected total used in negotiating the maximum level of imports contained in those agreements, then the United States will promptly increase the total level of permissible imports from Australia and New Zealand by the estimated amount of the shortfall from other supplying countries.

Such a shortfall is now expected to occur. Accordingly, this final rule increases the permissible level of imports from Australia and New Zealand to reflect the allocation of that shortfall to Australia and New Zealand. This final rule also deletes the references to TSUS item 107.61 (Harmonized Tariff Schedule of the United States subheadings 0201.20.20, 0201.30.20, 0202.20.20, and 0202.30.20) from § 16.5 to conform with the

voluntary restraint agreements with Australia and New Zealand.

The concurrence of the Secretary of State and the United States Trade Representative has been obtained for the issuance of these regulations.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, this regulation falls within the foreign affairs exception of Executive Order 12291 and the provisions of 5 U.S.C. 553 with respect to proposed rulemaking. Further, the provisions of the Regulatory Flexibility Act do not apply to this rule since the proposed rulemaking provisions of 5 U.S.C. 553 do not apply.

List of Subjects in 7 CFR Part 16

Meat and meat products, Imports.

Accordingly, Subpart A of Part 16 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 16—LIMITATIONS ON IMPORTS OF MEAT

1. The authority citation for Part 16 continues to read as follows:

Authority: Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854), and E.O. 11539 (35 FR 10733), as amended by E.O. 12188 (45 FR 989).

2. Section 16.5 is revised as follows:

§ 16.5 Quantitative restrictions.

(a) *Imports for Australia.* During calendar year 1988, no more than 811.57 million pounds of meat exported from Australia in the form in which it would fall within the definition of meat in TSUS items 106.10, 106.22, 106.25, 107.55, or 107.62 (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, and 0204.50.00) may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from Australia to the United States.

(b) *Imports from New Zealand.* During calendar year 1988, no more than 451.43 million pounds of meat exported from New Zealand in the form in which it would fall within the definition of meat in TSUS items 106.10, 106.22, 106.25, 107.55, or 107.62 (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, and 0204.50.00) may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from New Zealand to the United States.

Issued at Washington, DC, this 30th day of November 1988.

Peter Myers,

Secretary of Agriculture.

[FR Doc. 88-27954 Filed 11-30-88; 4:37 pm]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-15]

Revision to Control Zone; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Augusta, GA, Control Zone by eliminating the Daniel Field Airport from the present description. Surface weather observations which govern IFR/VFR operations in the Control Zone are taken at the Bush Field Airport. Due to environmental differences between Bush Field and Daniel Field, weather conditions can vary greatly at the two airports; i.e., Bush Field, located adjacent to the Savannah River, often reports IFR weather conditions when conditions at Daniel Field are VFR. The Airport Manager and local users have requested the Daniel Field Airport be excluded from the Control Zone.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On September 13, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Augusta, GA, Control Zone (53 FR 35323). The proposed revision would eliminate the Daniel Field Airport from the Augusta, GA, Control Zone. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Augusta, GA, Control Zone by excluding the Daniel Field Airport from the present description.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Augusta, GA [Amended]

By eliminating the existing description and substituting the following: "Within a 5-mile radius of Bush Field Airport (Lat. 33°22'11"N., Long. 81°57'53"W). This zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in East Point, Georgia, on November 16, 1988.

William D. Wood,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-27873 Filed 12-2-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 65

[DOD Directive 1304.19]

Accession of Chaplains for the Military Services

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This rule is revised to update the terminology, criteria, and DD Form 2088 to coincide with the intended purpose of 32 CFR Part 65. The rule clarifies the criterion and procedures for religious groups that seek DOD recognition as an ecclesiastical endorsing agent for the purpose of nominating clergy for service as chaplains in the Armed Forces.

EFFECTIVE DATE: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Chaplain, Colonel, John L. Mann, USAF, Office of the Assistant Secretary of Defense (Force Management and Personnel), Armed Forces Chaplains Board, Room 4C759, Pentagon, Washington, DC 20301-4000, telephone (202) 697-9015.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 65

Armed Forces, Chaplains.

Accordingly, 32 CFR Part 65 is revised as follows:

PART 65—ACCESSION OF CHAPLAINS FOR THE MILITARY SERVICES

Sec.
65.1 Purpose.
65.2 Applicability.
65.3 Policy.
65.4 Responsibilities.
65.5 Procedures.

Authority: 10 U.S.C. 532, 591, and EO 9397, 3 CFR, 1943-1948 Comp., p. 283.

§ 65.1 Purpose.

This part: (a) Revises 32 CFR Part 65 to update policy, procedures, and responsibilities.

(b) Establishes the educational and ecclesiastical requirements for appointment of military chaplains.

(c) Establishes criteria and procedures under which faith groups may become ecclesiastical endorsing agents.

§ 65.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), and the Joint Staff (hereafter referred to collectively as "DOD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 65.3 Policy.

It is DOD policy that professionally qualified chaplains shall be appointed to provide for the free exercise of religion for all members of the Military Services, their dependents, and other authorized persons. Persons appointed to the chaplaincy shall be able to perform a ministry for their own specific faith groups, and provide for ministries appropriate to the rights and needs of persons of other faith groups. Persons appointed to the chaplaincy shall be capable of providing professional staff support to the Military Department concerned.

§ 65.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) may issue additions implementing guidance consistent with DOD 5025.1-M, as appropriate.

(b) The *Secretaries of the Military Departments* shall follow the policy and procedures in this Part to ensure that persons appointed to the chaplaincy shall meet the minimum professional and educational qualifications prescribed herein and any additional requirements established by law and regulation for appointment as an officer and a chaplain.

§ 65.5 Procedures.

(a) *Ecclesiastical Certification of Clergy*

(1) To be considered for appointment and to serve as a chaplain, clergy shall be certified by a DOD-recognized ecclesiastical endorsing agent. The ecclesiastical certification shall attest that the applicant:

(i) Is a fully qualified member of the clergy of a religious faith group represented by the certifying Agency.

(ii) Is qualified to provide directly or indirectly for the free exercise of religion by all members of the Military Services, their dependents, and other authorized persons.

(2) The required ecclesiastical certification shall be made on DD Form 2088, "Ecclesiastical Endorsing Agent Certification." If the applicant has completed a number of years of active professional experience after the completion of educational requirements for the chaplaincy, the certifying agent shall so state on DD Form 2088.

(3) Chaplains who fail to maintain their ecclesiastical certification shall be processed in accordance with DOD Directive 1332.31.[1]

(b) *Criteria for Ecclesiastical Endorsing Agencies.* (1) Religious faith groups that seek to become ecclesiastical endorsing agents for the purpose of certifying the professional qualifications of clergy for appointment as chaplains in the Military Services shall obtain DOD recognition through the action of the Armed Forces Chaplains Board (AFCB). To be considered for DOD recognition, each religious faith group shall:

(i) Be organized exclusively or substantially to provide religious services to a lay constituency.

(ii) Be able to exercise ecclesiastical authority to grant or withdraw ecclesiastical certification.

(iii) Be able to provide continuing validation of ecclesiastical certification.

(iv) Be able to certify clergy who are qualified to provide directly or indirectly for the free exercise of religion by all members of the Military Services, their dependents, and other authorized persons.

(v) Abide by the applicable DOD regulations and policies.

(2) Through the action of the AFCB, the Department of Defense may revoke its recognition of an ecclesiastical endorsing agent that fails to continue to meet the criteria of paragraphs (b)(1) (i) through (v) of this section. The AFCB, before revoking the recognition of an ecclesiastical endorsing agent, shall provide written notice to the Agency concerned stating the reasons for the proposed revocation and providing a reasonable opportunity for the Agency to reply in writing to the AFCB.

(3) Religious faith groups recognized by the Department of Defense as ecclesiastical endorsing agents may authorize third parties to act on their behalf for accomplishing the administrative procedures in accession of chaplains for the Military Services, and of maintaining liaison with chaplains of the recognized faith group. Each such authorization shall be made in writing by an official authorized by the faith group to grant such

[1] Copies may be obtained if needed, from the U.S. Naval Publication and Forms Center, 5801 Tabor Avenue, Attn: Code 301, Philadelphia, PA 19120.

authorization, and a copy of the authorization shall be filed with the AFCB.

(c) *Educational Requirements.* (1) To be considered for appointment as a chaplain in the Military Services, an applicant shall:

(i) Possess a baccalaureate degree of not less than 120 semester hours from a college that is listed in the "Education Directory, Colleges and Universities" [2] or from a school whose credits are accepted by a college listed in the Directory Education.

(ii) Have completed 3 resident years of graduate professional study in theology or related subjects (normally validated by the possession of a Master of Divinity degree, an equivalent degree, or 90 semester hours) that lead to ecclesiastical certification as a member of the clergy fully qualified to perform the ministering functions of a chaplain.

(2) The applicant shall complete the graduate professional study referred to in § 65.5(c)(1)(ii), at a graduate school listed in the Education Directory, Colleges and Universities; an accredited school listed in the "Directory, ATS Bulletin, Part 4"; [3] or from a school whose credits are accepted by a school listed in the Directory or listed as accredited in the "Directory, ATS Bulletin, part 4."

(d) *Other Requirements.* Applicants for the chaplaincy also shall meet the requirements established by the Military Departments for appointment as an officer and a chaplain.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 30, 1988.

[FR Doc. 88-27880 Filed 12-2-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

32 CFR Part 537

Claims on Behalf of the United States

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a change of the regulatory provision controlling the processing and settlement of administrative claims filed in behalf of the Army. The change is necessary because of the publication of change 1 to AR 27-20 (July 10, 1987) (Claims). This change will inform third parties of the procedures controlling the processing and settlement of these administrative claims by the Army.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755-5360 (301) 677-7622.

SUPPLEMENTARY INFORMATION: The change to Part 537 reflects the enhanced role of the United States Army Claims Service to manage affirmative claims for the U.S. Army.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 537

Claims, Foreign Claims, Tort Claims

Jack F. Lane,

Colonel, JA, Commanding United States Army Claims Service, Office of Judge Advocate General.

Part 537 is revised to read as follows:

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Sec.

537.1 Claims for damage to or loss or destruction of Department of Army (DA) property.
537.2 Recovery of property unlawfully detained by civilians.
537.6 Maritime casualties; claims in favor of the United States.
537.7 Maritime claims.

Claims for The Reasonable Value of Medical Care Furnished by The Army

537.21 General.
537.22 Basic considerations.
537.23 Predemand procedures.
537.24 Post demand procedures.

Authority: Section 3012, 70A Stat. 157; 10 U.S.C. 3012, unless otherwise noted.

§ 537.1 Claims for damage to or loss or destruction of Department of Army (DA) Property.

(a) *Purpose.* This section prescribes, within the limitations indicated in AR 27-20 and in paragraph (b) of this section, the procedures for the investigation, determination, assertion, and collection, including compromise and termination of collection action, of claims in favor of the United States for damage to or loss or destruction of Department of the Army (DA) property.

(b) *Applicability and scope.* (1) Other regulations establish systems of property accountability and responsibility; prescribe procedures for the investigation of loss, damage, or destruction by causes other than fair wear and tear in the service; and provide for the administrative collection of charges against military and civilian personnel of the United States, contractors and common carriers, and other individuals and legal entities from whom collection may be made without litigation. When the investigation so prescribed results in preliminary indication of pecuniary liability, and no other method of collection is provided, the matter is referred for action under this section. This relationship exists with regard to—

(i) Property under the control of the DA. (AR 735-5.)

(ii) Property of the Defense Logistics Agency in the custody of the DA.

(iii) Property of nonappropriated funds of the DA (except Army and Air Force Exchange Service property unless a special agreement exists). See AR 215-1 and AR 215-2.

(iv) Federal property made available to the Army National Guard (ARNG). (AR 735-5.)

(2) This section does not apply to—

(i) Claims arising from marine casualties.

(ii) Claims for damage to property funded by civil functions appropriations.

(iii) Claims for damage to property of the DA and Air Force Exchange Service.

(iv) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(v) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(vi) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army, or the Department of Defense (DOD), for loss, damage, or destruction of personal

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[2] Current edition published by U.S. Department of Education, National Center for Education Statistics, Washington, DC 20202.

[3] Current edition published by the Association of Theological Schools, Vandalia, Ohio 45377.

property while in transit or storage at Government expense.

(3) The commander of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to establish procedures for the processing of claims in favor of the United States for loss, damage, or destruction of property which may, to the extent deemed necessary, modify the procedures prescribed herein. Two copies of all implementing directives will be furnished Commander, U.S. Army Claims Service (USARCS). Procedures will be prescribed—

(i) To carry out the provisions of DOD Directive No. 5515.8, assigning single service claims responsibility.

(ii) To carry out provisions of treaties and other international agreements which limit or provide special methods for the recovery of claims in favor of the United States.

(c) *Definitions.* For the purpose of this section only, the following terms have the meaning indicated:

(1) *Claim.* The Government's right to compensation for damage caused to Army property.

(2) *Prospective defendant.* An individual, partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, except an instrumentality of the United States, against whom the United States has a claim.

(3) *Damage.* A comprehensive term, including not only damage to, but also loss or destruction of Army property.

(4) *DA property.* Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefor, real or personal property of a foreign government, which is in the possession or under the control of the DA, one of its instrumentalities, or the ARNG, including that property of an activity for which the Army has been designated the administrative agency, and that property located in an area in which the Army has been assigned single service claims responsibility by appropriate DOD directive.

(5) *Major overseas command.* U.S. Army Europe; U.S. Army Forces Southern Command; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous States specially designated by The Judge Advocate General (TJAG) under the provisions of AR 27–20.

(6) *Area Claims Office.* The principal office for the investigation, assertion, adjudication and settlement of claims, staffed with qualified legal personnel under the supervision of a Staff Judge Advocate (SJA) or Command Judge Advocate or Corps of Engineers district or Command Legal Counsel under provisions of AR 27–20.

(7) *Recovery judge advocate (RJA).* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses and property damage.

(d) *Limitation of time.* The Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) established a 3-year statute of limitations, effective July 19, 1966, upon actions in favor of the United States for money damages founded upon a tort. In computing periods of time excluded under 28 U.S.C. 2416, the RJA concerned shall be deemed the official charged with responsibility and will ensure that action may be brought in the name of the United States within the limitation period.

(e) *Foreign prospective defendants.* Except as indicated below, claims within the scope of this section against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant. Claims against an international organization, a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such international organization or foreign government, will not be asserted without prior approval of TJAG. Investigation and report thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS, unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(f) *Standards of liability.* (1) The Government's right to compensation for damage caused to Army property will be determined in accordance with the law of the place in which the damage occurred, unless other law may properly be applied under conflict of law rules.

(2) To the extent that the prospective defendant's liability is covered by insurance, liability will be determined without regard to standards of pecuniary liability set forth in other regulations. If no insurance is available, claims will be asserted under this section against military and civilian employees of the United States and of host foreign governments only where necessary to complete the collection of charges imposed upon such persons under the standards established by other regulations.

(g) *Concurrent claims under other regulations.* (1) Claims for damage to DA property and claims for medical care cognizable under §§ 537.21 through 537.24 arising from the same incident will be processed under the sections applicable to each.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim or suit against the United States, the claim in favor of the Government will be asserted and otherwise processed only by an RJA who has apparent authority to take final action on the claim against the Government.

(h) *Claims for less than $250.* Such claims need not be asserted or otherwise processed under this section unless the facts and circumstances surrounding the incident indicate that collection will be economically feasible (for example, a good case of liability covered by insurance) or desirable in the best interests of the United States.

(i) *Repayment in kind.* The RJA who asserts a claim under this section may accept, in lieu of full payment of the claim, the restoration of the property to its condition prior to the incident causing the damage, or the replacement thereof. Acceptability of these methods of repayment is conditioned upon the certification of the appropriate staff officer responsible for maintenance, such as is described for motor vehicles in AR 735–5, before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

(j) *Delegation of authority.* Subject to the provisions of paragraph (k) of this section, the authority conferred by AR 27–20, to compromise claims and to terminate collection action, with respect to claims that do not exceed $20,000, exclusive of interest, penalties and administrative fees, is further delegated as follows:

(1) An Area Claims Office, as defined in paragraph (c)(6) of this section, is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than $10,000.

(ii) Terminate collection action, provided the uncollected amount of claim does not exceed $10,000.

(2) The SJA, or if so designated, the chief of the Command Claims Service of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to:

(i) Compromise claims, not over $20,000 without monetary limitations.

(ii) Terminate collection action, provided the uncollected amount of the claim does not exceed $20,000.

(k) *Compromise and termination of collection action.* (1) The authority delegated in paragraph (j) of this section to compromise claims will be exercised in accordance with the standards set forth in 4 CFR, Part 104.

(2) The authority delegated in paragraph (j) of this section to terminate collection action will be exercised in accordance with the standards set forth in 4 CFR, Part 104.

(3) A debtor's liability to the United States arising from a particular incident shall be considered as a single claim in determining whether the claim is not more than $20,000, exclusive of interest, penalties and administrative fees for the purpose of compromise, or termination of collection action.

(4) Only the Department of Justice may approve claims involving:

(i) Compromise or waiver of a claim asserted for more than $20,000 exclusive of interest, penalties and administrative fees.

(ii) Settlement actions previously referred to the Department.

(iii) Settlement where a third party files suit against the United States or the individual federal tortfeasor arising out of the same incident.

(l) *Releases.* The RJA who receives payment of the claim in full, or who receives full satisfaction of an approved compromise settlement, is authorized to execute a release. A standard form furnished by the prospective defendant or his insurer may be executed, provided no indemnity agreement is included.

(m) *Receipts.* The RJA may execute and deliver to a prospective defendant a receipt for payment in full, installment payment or an offered compromise payment, subject to approval of the SJA. DA Form 2135–R (Receipt for Payment for Damage to or Loss of Government Property) be used.

§ 537.2 Recovery of property unlawfully detained by civilians.

Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the procedures contained in AR 735–11, Para. 3–15, Unit Supply UPDATE 10, should be followed.

§ 537.6 Maritime casualties; claims in favor of the United States.

See 32 CFR 536.60, which covers claims on behalf of the United States as well as claims against the United States.

§ 537.7 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee, under the direction of the Secretary of Defense, is authorized by Army Maritime Claims Settlement Act of 1956 (70A Stat. 270), as amended (10 U.S.C. 4801–4804, 4806).

(b) *Related Statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought; the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790), the Extension of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code (U.S.C.), sections 7365, 7621–7623, and by the Department of the Air Force under 10 U.S.C. 9801 through 9804, 9806.

(c) *Scope.* (1) Section 4803 of title 10, U.S.C., provides for the settlement or compromise of claims of a kind that are within the admiralty jurisdiction of a district court of the United States and of claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the Department has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed $500,000.

(2) Section 4804 of title 10, U.S.C., for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA for any vessel. The amounts of claims for salvage services are based upon per diem rates for the use of salvage vessels and other equipment; and materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis, in accordance with commercial practice, in an appropriate case.

(d) *Amounts exceeding $500,000.* Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding $500,000 payable to the United States. However, all such claims othewise within the scope of this section will be investigated and reported to the Commander, USARCS.

(e) *Civil works activities.* Rights of the United States to fines, penalties, forfeitures, or other special remedies in connection with the protection of navigable waters, the control and improvement of rivers and harbors, flood control, and other functions of the Corps of Engineers involving civil works activities, are not dealt with in this section. However, claims for money damages which are civil in nature, arising out of civil works activities of the Corps of Engineers and otherwise under this section, for which an adequate remedy is not available to the Chief of Engineers, may be processed under this section.

(f) *Delegation of authority.* Where the amount to be received by the United States is not more than $10,000, claims under this section, except claims for salvage services, paragraph (c)(2) of this section, may be settled or compromised by the Commander, USARCS, or designee, subject to such limitations as may be imposed by the Commander, USARCS and by engineer area claims offices, subject to such limitations as may be imposed by the Chief of Engineers.

(g) *Demands.* Demand for the payment of claims in favor of the United States under this section may be made by the Commander, USARCS, or designee.

Claims for the Reasonable Value of Medical Care Furnished by the Army

Authority: Sections 537.21 through 537.24 issued under 76 Stat. 593, 594, 42 U.S.C. 2651–2653.

§ 537.21 General.

(a) *Authority.* The regulations in §§ 537.21 through 537.24 are in implementation of the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651–3), Executive Order Number 11060 (27 FR 10925), and Attorney General's Order Number 289–62, as amended (28 CFR Part 43), providing for the recovery of the reasonable value of medical care furnished or to be furnished by the United States to a person on account of injury or disease incurred after December 31, 1962, under circumstances creating a tort liability upon some third person.

(b) *Applicability and scope.* (1) Sections 537.21 through 537.24 apply to all claims for the reasonable value of medical services furnished by or at the expense of the Army which result from incidents occurring on or after March 1, 1969. Cases which arise from incidents occurring prior to that date:

(i) And which are the responsibility of an SJA or JA who is designated an RJA will be processed under §§ 537.21 through 537.24;

(ii) And which are the responsibility of an SJA or JA not so designated will be processed under the predecessor

regulation until either completed or transferred.

(2) The procedures prescribed herein are to be employed within the DA for the investigation, determination, assertion, and collection, including compromise and waiver, in whole or in part, of claims in favor of the United States for the reasonable value of medical services furnished by or at the expense of DA. TJAG provides general supervision and control of the investigation and assertion of claims arising under the Federal Medical Care Recovery Act.

(3) In Continental U.S., Army SJA's and RJA's will be assigned responsibility under §§ 537.21 through 537.24 on a geographical area basis.

(4) The commander of any major overseas command specified in paragraph (c)(5) of this section is authorized to modify the procedures prescribed herein to accommodate any special circumstances which may exist in the command.

(5) Claims for medical care furnished by the DA on a reimbursable basis (see table 1, AR 40–3) ordinarily will be forwarded for processing directly to the Federal department or agency responsible for reimbursement.

(c) *Definitions.* For the purpose of §§ 537.21 through 537.24 only, the following terms have the meaning indicated.

(1) *Claim.* The Government's right to recover from a prospective defendant the reasonable value of medical care furnished to each injured party.

(2) *Medical care.* Includes hospitalization, out-patient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

(3) *Injured party.* The person who received an injury or contracted a disease which resulted in the medical care. Such person may be an active duty or retired member, a dependent, or any other person who is eligible for medical care at DA expense. See section III, AR 40–3, and §§ 577.60 through 577.71 of this chapter.

(4) *Prospective defendant.* A person other than the injured party. An individual partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, against whom the United States has a claim.

(5) *Major overseas command.* U.S. Army Forces Southern Command; the U.S. Army, Europe; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous states specially designated by TJAG under the provisions of AR 27–20.

(6) *Recovery judge advocate.* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses.

§ 537.22 Basic considerations.

(a) *The right of recovery*—(1) *Applicable law.* The right of the United States to recover the reasonable value of medical care furnished or to be furnished an injured party is based on the Federal Medical Care Recovery Act. It accrues simultaneously with the accrual of the injured party's right to recover damages from the prospective defendant but is independent of any claim which the injured person may have against the prospective defendant. Recovery is allowed only if the injury or diseases resulted from circumstances creating a tort liability under the law of the place where the injury occurred.

(2) *Time limitation.* The Act of July 18, 1966 (28 U.S.C. 2415 et seq.) establishes a 3-year statute of limitation upon actions in favor of the United States for money damages founded upon a tort. The RJA will take appropriate steps within the limitation period to assure that necessary legal action is not barred by the statute.

(3) *Amount.* The Government's right of recovery is limited to amounts expended or to be expended by the United States for medical care from other than Federal sources, and to amounts determined by the rates established by the Office of Management and Budget for medical care from Federal sources, less any amounts reimbursed by the injured party.

(b) *Certain prospective defendants*—(1) *U.S. Government agencies.* No claim will be asserted against any department, agency, or instrumentality of the United States.

(2) *U.S. personnel.* Claims against a member of the uniformed services; or an employee of the United States, its agencies or instrumentalities; or a dependent of a service member or an employee will not be asserted unless the prospective defendant has the benefit of liability insurance coverage or was guilty of gross negligence or willful misconduct. If simple negligence occurring in the scope of a member's or employee's employment is the basis of the claim, no claim will be asserted if such claim is excluded from the coverage of the liability insurance policy involved. No claim, in the absence of specific statutory authorization, will be made directly against a member or employee, or his or her dependents for injuries sustained to himself or herself through acts of simple negligence, gross negligence, or willful misconduct.

(3) *Government contractors.* Claims, the cost or expense of which may be reimbursable by the United States under the terms of a contract, will not be asserted against a contractor without the prior approval of USARCS. Such claims will be investigated and the report thereof, which will include citation to the specific contract clauses involved and recommendations regarding assertion will be forwarded through command channels to Commander, USARCS.

(4) *Foreign persons.* Claims within the scope of §§ 537.21 through 537.24 against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant, unless such action is precluded by treaty or international agreement. Claims against an international organization, or foreign government, will be investigated and reports thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS.

(5) *National Guard Members.* Claims arising from the tortious conduct of NG members will be investigated and if assertion appears appropriate, a recommendation shall be made to Commander, USARCS.

(c) *Concurrent claims under other regulations*—(1) Section 537.1. Claims for medical care and claims for damage to DA property arising from the same incident will be processed by the RJA in accordance with § 537.1(g). If an RJA lacks settlement authority sufficient to settle a concurrent claim under § 537.1, he may request additional authority under that section from the appropriate major overseas command SJA or area claims authority, who may delegate such additional authority in an amount not exceeding his own settlement authority. Where time is of the essence, telephonic delegations of authority are encouraged, provided they are confirmed in a writing which will be made a part of the case file.

(2) *Counterclaims.* Claims for medical care and claims against the United States which arise from the same incident will be processed by the RJA in accordance with § 537.1(g)(2). If an RJA lacks authority sufficient to settle the claim against the Government, he will coordinate his action with that claims echelon which has the necessary authority to settle the particular claim against the United States.

(d) *Claims for less than $250.* Such claims need not be asserted or

otherwise processed, unless the facts and circumstances surrounding the incident indicate that collection will be economically feasible (for example, a good case of liability covered by insurance) or desirable in the best interests of the United States.

§ 537.23 Predemand Procedures.

(a) *Relations with the injured party*—(1) *Advice.* The injured party, or, in appropriate cases, his guardian, next-of-kin, personal representative, or the executor or administrator of his estate, will be advised of the following:

(i) That under the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651–3, the United States may be entitled to recover the reasonable value of medical care furnished or to be furnished him in the future from the person or persons who injured him, or who were otherwise responsible for his injury or disease; and

(ii) That if he is otherwise entitled to legal assistance under AR 27–3, he should seek guidance from a legal assistance officer regarding any claim he may have for personal injury; and

(iii) That he is required to cooperate in the prosecution of all actions of the United States against the person or persons who injured him; and

(iv) That he is required to furnish a complete statement regarding the facts and circumstances surrounding the incident which resulted in the injury or disease; and

(v) That he is required to furnish information concerning any legal action brought or to be brought by or against the prospective defendant, or to furnish the name and address of the attorney representing him; and

(vi) That he should not execute a release or settle any claim which he may have as a result of his injury without first notifying the RJA.

(2) *Statement.* A written statement will be obtained from the injured party, or his representative, in which he acknowledges receipt of the advice in paragraph (a)(1) of this section, and provides the information required by paragraphs (a)(1) (iv) and (v) of this section. If the injured party or representative fails or refuses to furnish necessary information or cooperation, the originator of the notification of potential claims may be requested to withhold records as to medical history, diagnoses, findings, and treatment, from the injured party or anyone acting on his behalf pending compliance with the requirements in paragraph (a)(1) of this section. Mere refusal by the injured party or his representative to include the Government's claim in his claim is not sufficient basis, by itself, for this action.

(b) *Determination and assertion*—(1) *Liability.* The RJA will review all the evidence including any claims officer's report of investigation and, after assuring completeness of the file, will make a written determination as to the liability of the prospective defendant and note his reasons for such determination.

(2) *Value.* If the RJA determines that the prospective defendant is liable, he will also ascertain the reasonable value of medical care furnished or to be furnished to the injured party, in accordance with § 537.22(a)(3) and rates established by the Office of Management and Budget. When a military member has been retained in a military hospital for administrative reasons, or where the patient was absent from the hospital or was in a purely convalescent status, the amount of the claim will be recomputed to apply the outpatient rate, if under circumstances warranting only outpatient treatment in a civilian hospital or eliminate such periods altogether if the injured party received no treatment during those periods. In making these determinations the RJA will coordinate with the registrar or other responsible official of the hospital or medical unit in his area of responsibility.

(3) *Amount.* In the event of doubt concerning the extent of medical care furnished or to be furnished an injured party, the RJA will assert the claim in an indefinite amount. Demand will be made in a definite amount at the earliest possible date, based on an estimate of a reasonable value of medical care to be furnished, if appropriate. The RJA will assure that the file contains complete statements of the value of medical care furnished, including all charges by civilian physicians, medical technicians and civilian hospitals.

§ 537.24 Post demand procedures.

(a) *Coordination with the injured party's claim.* (1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished or to be furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the claim on behalf of the government as an item of special damages with the injured party's claim or suit except where prohibited by law. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees may be neither paid by the Government (5 U.S.C. 3106) nor computed on the basis of the Government's portion of the recovery. The agreement must also require the Government's permission to settle its claim.

(3) If the injured party, denies or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(b) *Independent collection action.* Unless suit between the injured party and the prospective defendant is pending, all available administrative collection procedures will be followed prior to reference of the claim to the Department of Justice under paragraph (e) of this section. Direct contact with the prospective defendant's insurer, if known, is desirable. If the prospective defendant is an uninsured motorist, timely and appropriate action will be taken to collect the claim, or to request suspension of driving and registration privileges under the applicable uninsured motorist fund statute, or to seek compensation from the victim's insurer, or otherwise under financial responsibility laws.

(c) *Delegation of authority.* Subject to the provisions of paragraphs (d) and (e) of this section, authority to compromise or waive, in whole or in part, claims of the United States not in excess of $40,000 exclusive of interest penalties and administrative fees is delegated as follows:

(1) The Area Claims Office as defined in paragraph (c)(6) of section 537.1 is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than $15,000 in any claim not asserted for more than $25,000; and

(ii) Waive claims for the convenience of the Government (but not on account of undue hardship upon the injured party) provided the uncollected amount of the claim does not exceed $15,000 in any claim not asserted for more than $25,000; and

(iii) Redelegation in an amount not to exceed $5,000 compromise authority to any claim processing office with approval authority is permitted.

(d) *Compromise and waiver of claims*—(1) *General.* A debtor's liability to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is not more than $40,000, for the purpose of compromise or waiver. Claims not resolved within the delegation of authority stated in this section or referral to the Department of

Justice, will be forwarded to Commander, USARCS. A claim file forwarded to higher authority will contain a memorandum of opinion supported by necessary exhibits.

(2) *Compromise.* (i) The authority delegated in paragraph (c) of this section to compromise claims will be exercised in accordance with standards set forth in 4 CFR Part 103. When available funds are insufficient to satisfy both the claim of the United States and that of the injured party, the claim of the United States will be compromised to the extent required to achieve an equitable apportionment of the available funds.

(ii) If appropriate, a request by the injured party or his attorney for waiver on the ground of undue hardship may be treated initially as a suggestion for compromise with the tortfeasor, and the compromised amount of the claim of the United States will be determined. In such cases, RJA's may make offers of compromise within their delegated authority. RJA's may also make counteroffers within their delegated authority to offers of compromise beyond their delegated authority. If settlement within the limits of delegated authority is not achieved, the claim will be referred to higher authority.

(iii) When time is a factor, RJA or major overseas command staff JA's may make telephonic delegation within their compromise authority on a case by case basis. When such verbal delegations are made, they will be confirmed in writing and the writing included in the case file.

(3) *Waiver.* (i) The authority delegated in paragraph (c) of this section to waive claims for the convenience of the Government will be exercised in accordance with standards set forth in 4 CFR 103.

(ii) If the injured party or his attorney requests waiver of the full or any compromised amount of the claim on the ground of undue hardship, and the request may not be appropriately treated under paragraph (d)(2)(ii) of this section, the file will be forwarded to appropriate major overseas command claims authority or Commander, USARCS. For the purpose of evaluation of the request for waiver, the file will include detailed information concerning the reasonable value of the injured party's claim for permanent injury, pain and suffering, decreasing earning power, and other items of special damages, pension rights, and other Government benefits accruing to the injured party; and the present and prospective assets, income, and obligations of the injured party, and those dependent on him.

(iii) In the event an affirmative determination is made by TJAG that, as a result of the collection of the Government's claim the injured party has suffered an undue hardship, the RJA will be authorized to direct issuance of the amount waived to the injured party.

(4) A file forwarded to higher authority for waiver of compromise consideration will contain a memorandum by the RJA giving his assessment of the case and his recommendation with regard to the approval or denial of the requested compromise or waiver.

(e) *Only the Department of Justice may approve claims involving*—(1) compromise or waiver of a claim asserted for more than $40,000 exclusive of interest, penalties or administrative fees,

(2) Settlement actions previously referred to the Department,

(3) Settlement where a third party files suit against the United States on the injured party arising out of the same incident.

[FR Doc. 88-27868 Filed 12-2-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-88-32]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Treasure Island, the Coast Guard is modifying regulations governing the Treasure Island Causeway drawbridge by requiring advance notice for opening be given certain periods. This change is being made because of a lack of requests to open the bridge at night. This action will relieve the bridge owner of the financial burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerald Fleming at (305) 536-4103.

SUPPLEMENTARY INFORMATION: The original Notice of Proposed Rulemaking was published in the **Federal Register** on September 23, 1988. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated September 28, 1988. Interested persons were given until November 7, 1988 to submit comments. No comments were received to either notice

Drafting Information

The drafters of these regulations are Lieutenant Commander Gerald Fleming, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

No comments were received. The final rule is unchanged from the proposed rule published on September 28, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 177 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.287(g) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(g) The draw of the Treasure Island Causeway bridge, mile 119.0, shall open on signal, except that from 3 p.m. to 6 p.m. Monday through Friday, and from 11 a.m. to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, quarter hour, half hour, and three-quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given.

* * * * *

Dated: November 21, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88-27929 Filed 12-2-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD1-88-098]

Temporary Drawbridge Operation Regulations; Saugus River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Massachusetts Bay Transportation Authority (MBTA), the Coast Guard is issuing temporary regulations permitting the MBTA Saugus railroad bridge over the Saugus River, at mile 2.1, between Lynn and Revere, Massachusetts, to remain closed for 96 days from 25 November 1988 through 28 February 1989. This temporary regulation is needed to accomplish necessary rehabilitation and emergency repairs to the bridge. This action will relieve the bridge owner of the burden to open the draw during the repairs and would only permit marine traffic which can pass under the closed bridge to have access to facilities above the bridge.

EFFECTIVE DATE: This regulation becomes effective on 25 November 1988.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7021.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after the **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since the bridge has experienced some structural failures, immediate action is needed to repair the bridge and the MBTA has a contractor on site to commence repairs.

Drafting Information

The drafters of this notice are LT J.W. McDonald, project officer and CDR R.A. Brunell, project attorney.

Discussion of Temporary Regulations

Current regulations provide that the draw of the bridge shall open on signal at all times. The temporary regulations would allow the bridge to remain in the closed position from 25 November 1988 through 28 February 1989. Bridge opening logs for the closed period indicate that the waterway is used primarily by pleasure craft, lobster and gill net fishermen and oil barges.

The deteriorated condition of the bascule pier, trunnion and counterweight tower supports and foundations, along with the need to replace all mechanical and electrical equipment has necessitated that the bridge remain in the closed position and supported on temporary support piers to perform the necessary repairs. The bridge is presently inoperative in the closed position.

The MBTA Saugus drawbridge provides a vertical clearance of 7 feet at mean high water and 17 feet at mean low water in the closed position. This is not adequate for the transit of any commercial vessels using the oil facility nor can it accommodate a large number of the lobster and gill net fisherman without severe limitations. Additionally ice breaking activities upstream of the bridge will not be able to be performed.

The temporary regulation will affect the operation of approximately 85 lobster and gill net boats which operate from docks upstream of the bridge in November, approximately 40 boats in December and approximately 24 boats in January and February. Marinas and boat yards, upstream of the bridge, which overhaul vessels during the winter, will also be affected if the vessels cannot pass under the bridge in the closed position. The MBTA has agreed to compensate the lobster and gill net fishermen, boat yards and other marine interests to minimize economic losses during this closure. The MBTA has also agreed to make arrangements to get any vessel trapped upstream and unable to transit the bridge at low water hauled and refloated at a dock downstream of the bridge.

The General Electric Company fuel delivery barge will not be able to pass under the closed bridge during this period. Modification of the facility and trucking arrangements have been completed by General Electric Company with financial assistance of the Massachusetts Bay Transportation Authority.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact, because of compensation by the bridge owner, has been found to be so minimal that a full regulatory evaluation is unnecessary. This determination is based on the fact that work will be done outside the prime boating season; that the bridge is in need of major repairs and both commercial fishing and recreational boaters have frequently been delayed or unable to transit the existing bascule bridge due to unscheduled bridge malfunctions, and the MBTA is now taking reasonable and prudent measures to minimize the impact and the temporary hardships imposed by these regulations.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this final temporary regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.618 is added to read as follows:

§ 117.618 Saugus River.

The draw of the Saugus MBTA Bridge mile 2.1 need not be opened for the passage of vessels from 25 November 1988 through 28 February 1989 inclusive, to effect emergency repairs to the movable span.

Dated: November 23, 1988.

R.O. Buttrick,

Captain, U.S. Coast Guard, Acting, Commander First Coast Guard District.

[FR Doc. 88-27930 Filed 12-2-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5-88-073]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Fairfield, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard grants a temporary deviation from the regulations for the drawbridge across the Atlantic Intracoastal Waterway at mile 113.8, at Fairfield, North Carolina. The purpose of this deviation from the regulations is to allow the project contractor for the U.S. Army Corps of Engineers, the owner of the bridge, to repair the bridge. The repairs are expected to be completed by December 23, 1988.

DATES: This temporary deviation from the regulations becomes effective on December 5, 1988, and terminates on December 23, 1988, or earlier if bridge repairs are completed ahead of schedule.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Deviation From Drawbridge Regulations

In consideration of the foregoing, during the period December 5, 1988 through December 23, 1988, or earlier if bridge repairs are completed ahead of schedule, the regulations in § 117.821(b)(1) of Title 33, Code of Federal Regulations, do not apply to the bridge across the Atlantic Intracoastal Waterway, mile 113.8, at Fairfield, North Carolina, from 8:00 a.m. to 4:00 p.m., Monday through Friday. During this period the bridge shall open on signal for vessels on the hour only on even numbered hours (e.g., 8:00 a.m., 10:00 a.m., etc). Between the hours of 7:00 a.m. and 8:00 a.m. and 4:00 p.m. and 7:00 p.m. the bridge shall open on signal for pleasure vessels only on the hour and the half hour. The bridge shall open on signal for all vessels from 4:00 p.m. to 8:00 a.m.

Authority: 33 U.S.C. 499; 49 CFR 1–46; 33 CFR 1.05–1(g); 33 CFR 117.35(d).

Dated November 22, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88–27931 Filed 12–2–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Honolulu Regulation 88–06]

Security Zone Regulations; Mamala Bay, Oahu, HI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in Mamala Bay off Ewa Beach, Oahu, Hawaii within the limits of the following coordinates: 21–17.3′ N., 158–01.8′ W.; to 21–17.3′ N., 158–01.0′ W.; to 21–16.8′ N., 158–01.8′ W.; to 21–16.8″ N., 158–01.0′ W.

This zone is needed to safeguard the U.S. Naval Vessel, EX YW–101 and attending vessels, equipment and personnel against injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during sinking operations involving the EX YW–101. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on December 16, 1988 at 1200 h.s.t. It terminates December 19, 1988 at 1200 h.s.t. unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade E.F. Costa, Port Operations Department, (808) 541–2068, Marine Safety Office, Honolulu, Hawaii.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury or damage to persons and equipment incident to the sinking of the U.S. Naval Vessel EX YW–101, approximately 2 miles off the coast of Ewa Beach, Oahu, Hawaii.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade E.F. Costa, Project Officer for the Captain of the Port, and Lieutenant Commander B. N. Durham, Project Attorney, Fourteenth Coast Guard District Legal Office.

Discussion of the Regulation

The event requiring this regulation is the sinking of U.S. Naval Vessel EX YW–101 which will be done using a controlled detonation of Naval ordnance some time between 1200 h.s.t., December 16 and 1200 h.s.t., December 19, 1988. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1406 is added as follows:

§ 165.T1406 Security Zone: Mamala Bay, Oahu, Hawaii

(a) *Location:* The area within the following coordinates is a security zone: 21–17.3′ N., 158–01.8′ W.; to 21–17.3′ N., 158–01.0′ W.; to 21–16.8′ N., 158–01.8′ W.; to 21–16.8″ N., 158–01.0′ W.

(b) *Effective date:* This regulation becomes effective on December 16, 1988 at 1200 h.s.t. It terminates on December 19, 1988 at 1200 h.s.t. unless sooner terminated by the Captain of the Port.

(c) *Regulations:*

(1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other requirements.

Dated: November 22, 1988.

G.G. Piche,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.

[FR Doc. 88–27933 Filed 12–2–88; 8:45 am]

BILLING CODE 491–014–M

33 CFR Part 165

[COTP Philadelphia, PA Reg. 88-05]

Safety Zone Regulations; Marcus Hook Range Ship Channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage, (Anchorage 6)

AGENCY: Coast Guard DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Delaware River that includes the Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6). The safety zone is needed to protect vessels from safety hazards associated with dredging operations in Marcus Hook Range ship channel and to minimize temporary port congestion while the dredging operations are ongoing.

The Marcus Hook Range ship channel in the vicinity of the dredging operation is closed to vessel traffic. Marcus Hook Anchorage (Anchorage 7) is closed to anchoring to permit vessel traffic to transit the anchorage in lieu of using the Marcus Hook Range ship channel. Vessels over 700 feet in length are subject to anchorage restrictions in Deepwater Point and Mantua Creek Anchorages (Anchorages 6 and 9).

EFFECTIVE DATES: This regulation is effective from 8:00 a.m., November 24, 1988. This regulation terminates at 8:00 a.m., January 21, 1989, unless sooner terminated by the Captain of the Port, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: LTGJ Gary T. Croot, at the Captain of the Port, Philadelphia, (215) 271-4894.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was not officially informed of the date dredging operations would commence until early November 1988. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic caused by the presence of the dredge in the ship channel.

Drafting Information

The drafters of this regulation are LTJG Gary T. Croot, project officer for the Captain of the Port, Philadelphia, and LCDR Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of the Regulation

The hazards requiring this regulation result from maintenance dredging of the Marcus Hook Range ship channel. The Marcus Hook Range ship channel must be closed and traffic diverted through Marcus Hook Anchorage (Anchorage 7) to reduce the hazards associated with dredging of the channel. Anchorage restrictions in Mantua Creek Anchorage and Deepwater Point Anchorage are being imposed to accommodate those vessels that will be prevented from anchoring in Marcus Hook Anchorage. This regulation takes effect at 8:00 a.m., November 23, 1988 or upon completion of the preliminary pipelaying operation, whichever occurs later. The pipelaying operation originally was to have been completed by November 16, 1988, but it has been delayed twice due to weather.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T05076 is added to read as follows:

§ 165.T05076 Safety Zone: Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), Deepwater Point Anchorage (Anchorage 6), Delaware River.

(a) *Location.* The following areas are a safety zone: The Marcus Hook Range ship channel, as delineated on National Ocean Survey Chart 12312, within 150 yards of dredging operations, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6), located in the Delaware River, as described in § 110.157 of this Title.

(b) *Regulations.* (1) No vessel may enter or remain in the Marcus Hook Range ship channel within 150 yards of dredging operations. Vessels transiting the area shall pass through the Marcus Hook Anchorage (Anchorage 7).

(2) A vessel may not anchor in Marcus Hook Anchorage (Anchorage 7).

(3) In addition to the general regulations contained in § 110.157(b) of this title, before anchoring in the Mantua Creek or Deepwater Point Anchorages (Anchorages 9 and 6):

(i) Vessels over 700 feet in length shall obtain permission from the Captain of the Port to anchor in Deepwater Point or Mantua Creek Anchorages (Anchorage 6 or 9).

(ii) Vessels between 700 and 750 feet long shall have one tug alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(iii) Vessels greater than 750 feet long shall have two tugs alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(4) Each tug alongside a vessel meeting the restrictions in either paragraph (b)(3) (ii) or (iii) of this section must have a minimum rating of 1000 shaft horsepower.

(5) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Philadelphia, Pennsylvania, or his designated representative.

(c) *Effective Date.* This regulation is effective from 8:00 a.m., November 24, 1988. This regulation terminates on 8:00 a.m., January 21, 1989, unless sooner terminated by the Captain of the Port, Philadelphia, Pennsylvania.

Dated: November 22, 1988.

E. K. Roe,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 88-27932 Filed 12-2-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Cleveland Reg. 88-11]

Safety Zone Regulations; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is re-establishing ten safety zones in the Old River and the Cuyahoga River and their adjoining shore areas. They are identical to the zones previously-established on July 22, 1988 as published in the **Federal Register** on August 5, 1988 (53 FR 29458). The zones are needed to protect life and property associated with moored, standing or anchored vessels from a safety hazard arising from the transit of vessels over 1,600 gross tons. Entry into these zones is generally prohibited unless authorized by the Coast Guard

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Captain of the Port, Cleveland, OH. However, vessels may transit, but not moor, stand or anchor in, these zones as necessary to comply with the Inland Navigation Rules or otherwise facilitate safe navigation. And, cargo vessels conducting loading/unloading operations may temporarily moor in the zones until operations are complete.

EFFECTIVE DATES: This regulation becomes effective on December 1, 1988. It terminates on January 31, 1989 unless sooner terminated by the Captain of the Port, Cleveland.

FOR FURTHER INFORMATION CONTACT: CDR Patrick A. Turlo, Captain of the Port, (216) 522–4406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the vessels involved or further injury to the people involved.

Drafting Information

The drafters of this regulation are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstance requiring this regulation results from large vessels (lakers) transiting the Cuyahoga River an average of four times a day through areas used increasingly by a large number of small, mainly recreational vessels. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987, one such collision resulted in severe damage to two recreational boats, one of which had persons on board.

Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Ontario Stone, Shooters, Nautica Stage, Columbus Road bridge, Alpha Precast Products (United Ready Mix), Upriver Marina and Shippers C&D. Preventing mooring, standing or anchoring of vessels in these areas will decrease danger to lives and property.

Seven safety zones were established on September 3, 1987. Those zones were located at specific bends in the Cuyahoga River at which a history of mishaps had developed, and were successful in preventing further mishaps at those designated areas. During the period in which the emergency rules were in effect, the Captain of the Port continued to study the river traffic situation, and determined that three other areas presented a severe hazard to life and property should small craft be allowed to moor there. These areas were incorporated into a proposed regulation which would make all ten areas permanent safety zones, which was published in the **Federal Register** on December 3, 1987 (52 FR 45973).

The comments concerning these proposed regulations resulted in the Captain of the Port holding a public hearing on March 7, 1988 at which several witnesses expressed the desire to form a working group which would study the river situation, and present a mutually agreeable solution to the Captain of the Port within ninety days. The Captain of the Port agreed to this. The ninety day deadline having expired, the working group requested an additional extension of the comment period. The Captain of the Port also agreed to this, and extended the comment period to December 1, 1988.

These emergency regulations are being effected in order to continue to safeguard life and property pending a final decision on permanent rules.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these temporary rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T903 is added to read as follows:

§ 165.T903 Safety Zones: Cuyahoga River and Old River, Cleveland, OH.

(a) *Location.* The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) locations, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29′53.5″ N., 81 degrees 42′33.5″ W., which is the knuckle on the north side of Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver and fifty (50) feet upriver from 41 degrees 29′48.4″ N., 81 degrees 42′44″ W., which is the knuckle adjacent to the Ontario Stone warehouse on the south side of Old River.

(3) From 41 degrees 29′51.1″ N., 81 degrees 42′32.0″ W., which is the corner of Nicky's Pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29′55.1″ N., 81 degrees 42′27.6″ W., which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29′48.9″ N., 81 degrees 42′10.7″ W., which is the knuckle toward the downriver corner of the Nautica stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29′45.5″ N., 81 degrees 42′9.7″ W., which is the knuckle toward the upriver corner of the Nautica stage.

(6) The fender on the west bank of the river at 41 degrees 29′45.2″ N., 81 degrees 42′10″ W., which is the knuckle at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29′18.8″ N., 81 degrees 42′02.3″ W.) to the chain link fence at the upriver end of Commodore's Club Marina.

(8) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29′24.5″ N., 81 degrees 41′57.2″ W., which is the knuckle at the Upriver Marina fuel pump.

(9) Seventy-five (75) feet downriver and seventy-five (75) feet upriver from 41 degrees 29′33.7″ N., 81 degrees 41′57.5″ W., which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Fifteen (15) feet downriver to fifteen (15) feet upriver from 41 degrees 29′41″ N., 81 degrees 41′38.6″ W., which is the end of the chain link fence between Jim's Steak House and Shipper's C&D.

(b) *Effective Date.* This regulation becomes effective on December 1, 1988. It terminates on January 31, 1989, unless

sooner terminated by the Captain of the Port.

(c) *Regulations*—(1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(3) *Exception.* Vessels may *transit,* but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation. Cargo vessels of 1,600 gross tons (GT) or greater conducting loading/unloading operations may temporarily moor in the zones until operations are complete.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland. Waivers received under the previous emergency rule will remain in effect until January 31, 1989. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1,600 GT or greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1,600 GT or greater.

Dated: November 22, 1988.

Patrick A. Turlo,

Captain of the Port, Cleveland, OH.

[FR Doc. 88-27934 Filed 12-2-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88-161; FCC 88-339]

Certain Filing Procedures for Mobile Services Division Applications and To Eliminate Form 430; Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission has determined that all Mobile Services Division (MSD) applications, amendments, correspondence, exhibits and attachments should be submitted on microfiche. Filings of five pages or less will be exempt from this requirement. Non-cellular and non-initial cellular applications will be submitted on microfiche along with an original paper application with their filing. The use of microfiche provides a system of storage and retrieval of filings that will enable the public to use the reference room with greater assurance and confidence. This procedure will enable us to serve the public in a more efficient, secure, and expeditious manner and result in more efficient use of Commission space. The Commission has determined also that the annual filing requirement of FCC Form 430 for Part 22 licensees should be eliminated, since the staff seldom uses the information requested in the form and most of the information is duplicated in section 401 of FCC Form 401. Applicants must continue to file a FCC Form 430 in response to line 18 of FCC Form 490. This is less burdensome than requiring all Part 22 licensees to file FCC Form 430 annually.

EFFECTIVE DATE: A Public Notice will be issued when the new rules have been approved by the Office of Management and Budget.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Donnell, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted October 26, 1988, and released November 16, 1988. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Estimated Average Burden Hours Per Response: 20 minutes

The public reporting burden for providing the microfiche is estimated to average 20 minutes per response. This burden estimate considers the time for processing the original microfiche and additional copies and the time needed to label and insert it into jackets. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Summary of Report and Order

1. This order requires that all non-cellular applications and non-initial cellular applications, amendments, correspondence, and forms including attachments and exhibits thereto be submitted on microfiche. Non-cellular applicants and non-initial cellular applicants will be required to submit the original as well as three microfiche copies. Filings of five pages or less are exempt from the requirement to file on microfiche. This should substantially reduce the burden in submitting filings on microfiche. This procedure will enable the Commission to serve the public in a more efficient, secure, and expeditious manner and result in more efficient use of Commission space.

The order also eliminates the requirement that Part 22 licensees file FCC Form 430 annually, since the staff seldom uses the information requested in the form and since the information is essentially duplicated in Schedule A of FCC Form 401. Because the information on FCC Form 430 is used in processing FCC Form 490, applicants must continue to file FCC Form 430 in response to line 18 of FCC Form 490. This will be less burdensome than requiring all Part 22 licensees to file FCC Form 430 annually.

2. Final Regulatory Flexibility Analysis. There has been an increasing number of applications filed and stored in the MSD generating a need for a change in procedure that would give the Commission the greatest administrative flexibility in meeting the needs of the public. It was imperative that a system be devised that would provide a system of storage and retrieval of filings that would enable the public to use the reference room with greater assurance and confidence. Our objective is to provide service to the public with greater speed and efficiency.

The order takes into consideration the various issues raised by the public concerning the proposed rules. As a result of these comments, whenever possible, we have modified our proposal. For example, based on suggestions in the comments, we modified our proposal and have exempted filings of five pages or less from the microfiche requirement. This should substantially reduce the burden on small entities to submit filings on microfiche.

3. Paperwork Reduction. This proposal has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new and modified requirements and burdens upon the public which are subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

4. Authority for this Rulemaking is contained in sections 1, 4(i) and (j), 301,

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303 and 309 of the Communications Act of 1934, as amended, and section 503 of the Administrative Procedure Act;

5. Wherefore, for the foregoing reasons, Part 22 of the Commission's Rules are hereby amended as specified in the Rules Section appended to this summary. The amendments adopted in this Order for Part 22 licensees will become effective after approval from OMB.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Title 47, Part 22 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 1, 4(i) and 303(r) of the Communications Act of 1934, 47 U.S.C. 151, 154(i) and 303(r), and sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 22.2 is amended by adding a definition in alphabetical order as follows:

§ 22.2 Definitions.

* * * * *

Non-initial cellular applications. Cellular applications not filed in a Commission announced filing window.

* * * * *

3. Section 22.6 is amended by revising paragraph (d) to read as follows:

§ 22.6 Filing of applications, fees, and numbers of copies.

* * * * *

(d) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms shall be submitted on microfiche with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743. (*See* § 22.913 for specific filing requirements for applications for initial cellular, and § 22.923 for specific filing requirements for applications for rural cellular radio communications system authorizations.) Filings of five pages or less are exempt from the requirement to submit on microfiche. Non-cellular and non-initial cellular applicants and those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original".

(1) *Microfiche Copies.* Each microfiche copy should be a copy of the signed original. Each microfiche copy shall be a 148mm X 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a 5" X 7.5" envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) Non-Cellular and Non-Initial Cellular Applications. All non-cellular and non-initial cellular applications must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(1) The name of the applicant;

(2) The city and state of the application and

(3) If the application refers to an existing station, the call sign of the station.

* * * * *

4. Section 22.11 is amended by revising paragraph (a) as follows:

§ 22.11 Miscellaneous forms shared by all domestic public radio services.

(a) *Licensee qualifications.* FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by Mobile Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under Part 22.

* * * * *

[FR Doc. 88-27109 Filed 12-2-88; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 552

[Acquisition Circular AC-88-3]

Administration of Small and Small Disadvantaged Business Subcontracting Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is temporarily amended to revise Subpart 519.7 in order to provide uniform procedures for administration of the small and small disadvantaged business subcontracting program to ensure compliance with the requirements of Pub. L. 95-507 and to add section 552.219-72 to provide the text of a notice to offerors of subcontracting plan requirements.

DATES: *Effective Date:* December 2, 1988.

Expiration Date: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield, Office of GSA Acquisition Policy and Regulations (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION:

Background: This rule was not published in the **Federal Register** for public comment because it provides internal operating procedures for GSA contracting activities and implements certain requirements of the Federal Acquisition Regulations (FAR) which have previously undergone the public comment process. The implementation of the FAR requirements in this rule will not result in an additional significant cost or administrative impact on contractors or offerors.

Impact: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The rule simply amends the GSAR to provide internal operating procedures for GSA contracting activities and implements certain requirements of the FAR. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 519 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 519 and 552 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular (AC-88-3)

To: All GSA contracting activities.

Subject: Administration of small and small disadvantaged business subcontracting program.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), to provide uniform procedures for administration of the small and small disadvantaged business subcontracting program to ensure compliance with the requirements of Public Law 95-507.

2. *Background.* With certain exceptions, section 211 of Public Law

95–507 established a subcontracting plan requirement for all Federal contracts over $500,000 ($1 million for construction). Responding to a recommendation from the Committee on Government Operations, the Office of Small and Disadvantaged Business Utilization has requested that the GSA's procedures for implementing small disadvantaged business involvement in the subcontracting program be strengthened. The changes being made are intended to reinforce both the subcontracting plan review process and the administration of those subcontracting plans to ensure full compliance with the statutory requirements of Public Law 95–507.

3. *Effective date.* December 2, 1988.

4. *Expiration date.* This circular expires December 1, 1989, unless canceled earlier.

5. *Reference to regulation.* Subpart 19.7 of the Federal Acquisition Regulation and Subpart 519.7 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.*

a. Section 519.701 is added to read as follows:

519.701 Definitions.

"Individual contract plan" means a subcontracting plan that applies to a specific contract and that has goals which are based upon the company's planned subcontracting and purchasing of supplies and services in support of the performance of a specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract. Individual contract plans may incorporate a master subcontracting plan.

"Commercial products plan" means an annual subcontracting plan effective during the offeror's fiscal year for all of the offeror's commercial products, and which has goals based on the offeror's production of both commercial and noncommerical products. This type of plan may apply to the production of the offeror's entire company, or it may be limited to a division or plant.

"Master subcontracting plan" means a subcontracting plan which contains all of the required elements except goals, and which may be incorporated into an individual plan provided (a) the master plan has been approved, (b) the offeror provides a copy of the approved master plan and evidence of its approval to the contracting officer and (c) goals and any deviations from the master plan are approved by the contracting officer. Master subcontracting plans are useful for offerors who anticipate receiving many Government contracts requiring individual subcontracting plans.

b. Section 519.702 is added to read as follows:

519.702 Ststutory requirements.

(a) The statute treats contracts and modifications separately, not cumulatively. Accordingly, if a subcontracting plan is not required at the time of award because the value of the contract is below the threshold, a subcontracting plan will not be required if a subsequent modification increases the value of the contract to an amount which exceeds the threshold, unless the value of the modification itself exceeds $500,000, or $1 million for construction contracts.

(b) It is not necessary to obtain another subcontracting plan for a modification exceeding $500,000 ($1 million for construction contracts) if the contract already includes a subcontracting plan. Modifications may be incorporated into an existing plan and the original plan goals revised to include the new effort.

c. Section 519.704 is added to read as follows:

519.704 Subcontracting plan requirements.

(a) *Subcontracting goals.* (1) Pursuant to section 211 of Public Law 95–507, positive subcontracting goals for small and small disadvantaged business concerns are required to establish a gauge for measuring results, and to provide an incentive for continuing efforts to increase the dollar value of contracts placed with small and small disadvantaged business concerns.

(2) Although there may be no known small or small disadvantaged business concerns that furnish the products or services required by a prospective contractor at the time a subcontracting plan is developed, a zero goal is not acceptable because contractors are expected to make continuing efforts during the contract period to locate and identify newly emerging small and small disadvantaged business concerns as potential suppliers. In addition, there may be subcontracting opportunities in the area of indirect costs.

(3) Goals in individual plans for multiyear contracts or contracts with options to extend the period of performance may be established for a period less than the full term of the contract (including options) when it is impractical to establish goals for the full term if the plan includes a schedule for establishing goals for the balance of the term of the contract.

(b) *Types of plans.* For commercial products and public utility service contracts either a commercial products plan or an individual contract plan must be submitted. Individual contract plans must be submitted for other contracts.

(c) *Duration of plans.* (1) *Individual plans.* The plan must cover the entire period of contract performance, including option periods (but see paragraph (a)(3), above, for goals).

(2) *Commercial products plans.* A commercial products plan is approved by the first Federal agency awarding a contract for commercial products during the contractor's fiscal year, and is applicable to every additional Federal contract for commercial products awarded to that contractor during the contractor's same fiscal year. If the approved plan is limited to a division or plant, it only applies to additional contracts for commercial products of that particular division or plant. The cutoff date for applying a previously approved commercial products plan to additional Federal contracts is the end of the company's fiscal year in which the plan was approved. If the contract extends beyond the contractor's fiscal year, the GSA contracting officer responsible for monitoring the existing plan, under 519.706–70(c), must request a new plan 30 days prior to the end of the contractor's fiscal year.

d. Section 519.705–2 is added to read as follows:

519.705–2 Determining the need for a subcontracting plan.

Before making a determination, under FAR 19.705–2, that no subcontracting opportunities exist on a prospective contract which meets the dollar threshold, the contracting officer must contact the Director, Office of Small and Disadvantaged Business Utilization (AU), and consider any comments or recommendations offered.

e. Section 519.705–4 is revised to read as follows:

519.705–4 Reviewing the subcontracting plan.

(a) The GSA Form 3584, Checklist for Review of Subcontracting Plan, must be used by the procuring contracting officer (PCO) and small business technical advisor (SBTA) when reviewing subcontracting plans. Its use by SBA procurement center representatives is optional.

(b) In the goals section of the plan, small disadvantaged business goals are to be included in small business goals and stated separately. If it is not clear from the plan that the offeror has done this, the contracting officer shall request clarification and have the offeror correct the goals, if necessary.

(c) The contracting officer shall question low subcontracting goals submitted by an offeror required to submit a subcontracting plan and shall require the offeror to document in its plan the steps it has taken to identify subcontracting opportunities for small and small disadvantaged business concerns.

(d)(1) Before determining the responsibility of an offeror on a contract requiring a subcontracting plan, the contracting officer shall review the offeror's compliance with previous subcontracting plans, if any, approved by the contracting activity, including the contractor's performance in submitting subcontracting reports in a timely manner. The findings must be documented on the GSA Form 3584, Checklist for Review of Subcontracting Plan, before forwarding it to the SBTA and the SBA/PCR for review.

(2) In addition to paragraph (d)(1) above, PBS contracting officers must check the quarterly list of PBS contracts with plans provided by AU and contact all other contracting activities holding contracts with the same contractor concerning compliance with the previous year's plan.

(3) When an offeror has consistently failed to submit SF 294 and SF 295 reports in a timely manner or has failed to make a good faith effort to meet its subcontracting goals on previous contracts with plans, the contracting officer shall include on the GSA Form 3584 the basis for finding the offeror responsible including the steps the offeror proposes to take that were not included in previous subcontracting plans to ensure compliance with the subcontracting program requirements on the proposed contract.

f. Section 519.705–5 is amended by redesignating paragraphs (a) and (b) as (c) and (d), respectively, and to substitute the verb "must" for "should" in the second sentence of the redesignated paragraphs (c) and (d), and adding new paragraphs (a) and (b) to read as follows:

519.705–5 Awards involving subcontracting plans.

(a) In the event there is an unresolved disagreement with the SBTA and/or SBA/PCR on a proposed subcontracting plan, the contracting officer, prior to making an award, must contact the Director (AU) and consider any comments or recommendations offered.

(b) When a contractor has a commercial products plan previously approved by another GSA contracting activity or another Federal agency for the company's fiscal year, the GSA contracting officer shall request a copy of the plan and the agency approval document and include them in the contract file. The plan must also be included in and made a part of the resultant contract.

g. Section 519.705–6 is revised to read as follows:

519.705–6 Postaward responsibilities of the contracting officer.

(a) In addition to the requirements of FAR 19.705–6, contracting officers shall notify the SBTA of each contract award or contract modification exceeding $500,000 ($1 million for construction) that contains a subcontracting plan within 5 work days of award. The notice of award must contain the following information:

(1) Contractor's name, address, phone number.

(2) Subcontracting plan administrator's name, address, phone number.

(3) Contract number.

(4) Place of performance.

(5) Dollar amount of contract award.

(6) Period of contract performance.

(7) Description of contract items.

(8) Contracting officer's name, address, phone number.

(9) Administrative contracting office address, phone number.

(10) Type of plan (individual or commercial products).

(b) The subcontracting plan checklist (GSA Form 3584) must be submitted as the notice of award, except in the case of a contract incorporating a previously approved commercial products plan. In this case, notice of award as described in paragraph (a) above, will be necessary as there will be no subcontracting plan checklist. The SBTAs shall forward a copy of notices and checklists to AU on a weekly basis and retain a file copy.

(c) AU will notify Congress of subcontracting goals established for each contract.

h. Section 519.706–70 is revised to read as follows:

519.706–70 Monitoring contractor compliance with subcontracting plans.

(a) Contract administration may be performed by the procuring contracting officer who awarded the contract or it may be delegated to an administrative contracting officer (ACO). When contract administration is delegated, the subcontracting plan must be included in the contract file transmitted to the contract administration office.

(b) The contracting officer administering contracts with subcontracting plans shall monitor receipt of SF 294 reports for individual contract plans and SF 295 reports for company-wide plans and review the reports for progress in meeting subcontracting plan goals by comparing the reports with the plan. If percentage goals are not met, the contractor must be required to explain the shortfall in the "Remarks" block on the subcontracting reports and may be required to submit evidence of their outreach efforts to locate and provide subcontracting opportunities to small business and small disadvantaged business concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by meeting plan goals. The contracting officer responsible for monitoring receipt of the reports shall also obtain delinquent SF 295 reports from contractors for both individual and company-wide plans upon request from AU.

(c) In the case of commercial products plans approved by GSA, the first contracting officer who enters into a contract with a company during the company's fiscal year approves the plan and monitors receipt of reports and compliance with the plan. This responsibility is generally assigned to the ACO if contract administration is delegated. Subsequent GSA contracts awarded during the company's same fiscal year and incorporating the previously approved plan will not require submission of subcontracting reports.

(d) In the case of commercial products plans approved by another agency, the first GSA contracting officer entering into a contract with the company during the company's same fiscal year in which the plan was approved requires the contractor to submit the SF 295 report and monitors receipt of the report. No other monitoring of this plan is required by GSA.

(e) Contractor compliance with plans must be documented in the contract file in accordance with FAR 19.706 and must be considered by the contracting officer when determining contractor responsibility for future awards. In case of noncompliance, the contracting officer shall notify AU through the SBTA.

(f)(1) Contractors who fail to submit SF 294 and SF 295 reports within 10 days of the due date must be reminded in writing that the report is past due.

(2) Contractors who do not respond to the first notice must be issued a second written notice by certified mail which must contain the following information:

(i) A statement that the named report has not been received.

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(ii) A statement that failure to submit the report is a material breach of the contract (see FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan).

(iii) A statement that if the report is not received within 10 days from the date of the notice, the contracting officer will consider withholding payments as deemed appropriate under the circumstances until the report is received and may terminate the contract for default.

(iv) The contractor is also to be reminded that failure to submit the report may affect its ability to receive future awards from GSA (see FAR 9.104–3(c)) and that willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government for a period of time (see FAR 9.406–2(b)).

(v) The notice must also contain the address of the contracting officer or administrative contracting officer to whom the report must be sent and instructions that a copy of the report must be sent to AU, if it is a SF 295 report, and to the appropriate SBTA, if it is a SF 294 report.

(3) Copies of delinquency notices concerning SF 295 or SF 294 reports must be sent to AU or the appropriate SBTA, respectively.

(4) If the contracting officer administering the contract has reason to believe that the contractor is otherwise not complying in good faith with the subcontracting plan, in addition to the requirements at FAR 19.706(b), the contracting officer must contact the Director (AU) and consider any comments or recommendations offered.

i. Section 519.706 is added to read as follows:

519.706 Solicitation provisions and contract clauses.

For contracting activities using GSA Form 1602, Notice Concerning Solicitation, or a similar form as a cover page of the solicitation, the contracting officer shall insert the provision at 552.219–72 on that cover page when the contract amount is expected to be over $500,000 ($1 million for construction) and the acquisition (a) is not set aside for small business, (b) is not for personal services, or (c) will not result in a contract that will be performed outside of any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

j. Section 519.770–1 is revised to read as follows:

519.770–1 Report forms.

(a) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report is required for reporting subcontracting activity under contracts with individual contract plans. A separate report must be made on this form for each contract with an individual contract plan. This report is not required for commercial products plans.

(1) Contractors shall submit the SF 294 report to the contracting office administering the contract and a copy to the SBTA.

(2) Reports are due semiannually (within 25 days after March 31st and September 30th) and at contract completion.

(b) *Standard Form 295, Summary Subcontracting Report.* This form is required for reporting subcontracting activity under both individual contract plans and commercial products plans.

(1) *Individual contract plans.* (i) Contractors shall submit the SF 295 reports to AU.

(ii) The reports are quarterly, and are due 25 days after the end of each Government quarter (December 31st, March 31st, June 30th, and September 30th).

(iii) The reports are cumulative from quarter to quarter and aggregate subcontracting activity under all GSA contracts held by the contractor, except those covered by commercial products plans.

(2) *Commercial products plans.* (i) Contractors shall submit the SF 295 reports to the contracting office administering the contract and a copy to AU.

Note: This instruction applies only for the first GSA contract covered by a commercial products plan awarded during the contractor's fiscal year. Contractors are not required to submit SF 295 reports for subsequent contracts awarded during their current fiscal year and covered by the same commercial products plan.

(ii) Reports are due annually, on or before October 25th of each year. The reports should cover the contractor's subcontracting activity under company-wide plans for commercial products in effect during the reporting period, which is October 1st to September 30th (Government fiscal year).

k. Section 519.770–3 is revised to read as follows:

519.770–3 Reporting on contractual actions under Section 211 of Public Law 95–507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts awarded in excess of $500,000 ($1 million for construction) requiring subcontracting plans or a written determination that so subcontracting opportunities exist, must be prepared by contracting offices and submitted to the SBTA by the 10th calendar day after the end of the quarter. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required. The SBTA will forward the reports to AU by the 20th calendar day following the end of the quarter.

(b) *Report format.* The following format is prescribed for the quarterly report.

Reporting office _____
Quarter beginning _____
Ending _____

Report on Contracting Actions Under Section 211 of Pub. L. 95–507

(contracts estimated or actual value over $500,000)

[$1 million for construction]

Note: Do not include Contracts with Small Business Concerns.

1. Total number of contracts awarded over $500,000 ($1 million for construction)
No. _____
$ value _____

2. Contracts awarded over $500,000 ($1 million for construction) which contain subcontracting plans
No. _____
$ value _____

3. Contracts awarded over $500,000 ($1 million for construction) without subcontracting plans. (Attach written justification for each contract awarded without a plan, see FAR 19.705–2).
No. _____
$ value _____

(End of format)

l. Section 552.219–72 is added to read as follows:

552.219–72 Notice to offerors of subcontracting plan requirements.

As prescribed in 519.708 insert the following provision:

Notice to Offerors of Subcontracting Plan Requirements (November 1988)

Offerors, prior to being awarded any contract exceeding $500,000 ($1 million for construction), shall be required to submit an acceptable subcontracting plan (see FAR 52.219–9) or demonstrate that no subcontracting opportunities exist. This provision does not apply to small business concerns.

(End of Provision)

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

November 28, 1988.

[FR Doc. 88–27733 Filed 12–2–88; 8:45 am]
BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 53, No. 233
Monday, December 5, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number 1126-88]

Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add paragraph (e)(2) to 8 CFR 214.2, defining the term "trade" as it relates to treaty traders. The purpose of this rule is to define a term which has never been defined in this Service's regulations and which has new meaning in the international business community.

DATE: Written comments must be received on or before January 4, 1989.

ADDRESS: Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536, Telephone (202) 633-3946.

SUPPLEMENTARY INFORMATION: The treaty trader provision appeared first in the Immigration Act of 1924 and was revised by the Act of July 6, 1932, and by the Immigration and Nationality Act of 1952. On none of these occasions was the term "trade" defined. Traditionally, the United States Immigration and Naturalization Service has held that the term includes only the exchange of goods and some quasi-services.

The quasi-services referred to above are found in the Department of State's note 4.1 to 22 CFR 41.51. These "include international banking, insurance, transportation, tourism, communications, and newsgathering activities." All these activities, with the exception of tourism, were noted as being acceptable activities under the treaty trader provision in *The Report of the Committee on the Judiciary* prior to enactment of the 1952 Act. Including the aforementioned quasi-services as acceptable activities under the treaty trader provision and the evolution of the concept of trade itself make it necessary at this time to clearly define the term "trade." The evolution of the term is most recently and most clearly seen in the Trade and Tariff Act of 1984 wherein the term "international trade" is described as including trade in goods and services.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Chapter I of Title 8 Code of Federal Regulations would be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187.

2. In § 214.2, paragraph (e) is redesignated (e)(1), and (e)(i) heading and (e)(2) are added to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) *Traders and Investors*—(1) *General.* ***

(2) *Definition of the term "trade."* The term "trade," as used in this section, means the exchange, purchase, or sales of goods and/or services. Goods are tangible commodities or merchandise having intrinsic value, excluding money, securities, and negotiable instruments. Services are economic activities whose outputs are other than tangible goods. Such activities include, but are not limited to, banking, insurance, transportation, communications, and data processing, advertising, accounting, design and engineering, management consulting, and tourism.

* * * * *

Dated: November 29, 1988.

Richard E. Norton,

Associate Commissioner Examinations, Immigration and Naturalization Service.

[FR Doc. 88-27885 Filed 12-2-88; 8:45 am]
BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; EFT-2]

Electronic Fund Transfers; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The proposed revision addresses questions that have arisen about the disclosure requirements of the regulation.

DATES: Comments must be received on or before February 3, 1989.

ADDRESSES: Comments should refer to Docket No. EFT-2 and be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Kathleen S. Brueger, Staff Attorneys, Division of Consumer Affairs, at (202) 452-3667 or (202) 452-2412. For the hearing-impaired *only*,

Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205).

The Board has published an official staff commentary (Supp. II to 12 CFR Part 205) to interpret the regulation. The commentary is designed to provide guidance to financial institutions and others in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. This notice contains the proposed seventh update, which the Board expects to adopt in final form in March 1989.

(2) *Proposed revisions.* Following is a brief description of the proposed revisions to the commentary:

Section 205.7—Initial Disclosure of Terms and Conditions

Question 7–1

Question 7–1 addresses the situation where a financial institution provides EFT disclosures when a consumer opens an account. The question is revised to clarify that the regulation does not impose a time limit by which a consumer must sign up for an EFT service with a third party in order for the disclosures originally provided by the account holding institution to satisfy the regulation's requirements.

Question 7–2

Question 7–2 is revised to clarify that, in cases where a financial institution does not receive notice that a consumer has signed up for direct deposit of Social Security payments (because there has been no prenotification and no Form 1199A has been completed by the consumer and the financial institution), the financial institution must provide the necessary disclosures as soon as possible after the first electronic fund transfer has been made. In cases where the financial institution does receive prior notice of the consumer's enrollment in the direct deposit program, the financial institution must provide disclosures before the first EFT occurs. The institution has the option, of course, of providing disclosures to customers when an account is opened, as described in Question 7–1.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

Certain conventions have been used to highlight the revisions. New language is shown inside bold-faced arrows while language to be removed is set off with brackets.

(3) *Text of proposed revisions.* Pursuant to authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C. 1693b, the Board proposes to amend the official staff commentary to Regulation E (12 CFR Part 205, Supp. II) as follows:

1. The authority citation for Part 205 continues to read:

Authority: Pub. L. 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. The official staff commentary on Regulation E, Supp. II to 12 CFR Part 205, is amended by revising Q and A 7–1 and 7–2 for § 205.7 to read as follows:

Supplement II—Official Staff Interpretations

* * * * *

Section 205.7—Initial disclosure of terms and conditions.

Q 7–1: *Timing of disclosures—early disclosure.* An institution is required to give initial disclosures either (1) when the consumer contracts for an EFT service or (2) before the first electronic fund transfer to or from the consumer's account. If an institution provides initial disclosures when a consumer opens a checking account and the consumer does not sign up for an EFT service until [11 months later,] ►a later time,◄ has the institution satisfied the disclosure requirements?

A: Yes, if the EFT contract is between the consumer and a third party for preauthorized electronic transfers to be initiated by the third party to or from the consumer's account. In this case, the financial institution need not repeat disclosures previously given unless the terms and conditions required to be disclosed are different from those that were given.

If, on the other hand, the EFT contract is directly between the consumer and the financial institution—for the issuance of an access device, or for a telephone bill-payment plan, for example,—the institution should provide the disclosures at the time of contracting. Disclosures given before the time of contracting will satisfy the regulation only if they occurred in close proximity thereto. (§ 205.7(a)).

Q 7–2: *Timing of disclosures—Social Security direct deposits.* In the case of Social Security direct deposits, [the financial institution receives no prenotification. How] ►how◄ can the ►financial◄ institution comply with the disclosure requirements ►, absent prenotification, in cases where a Form 1199A is no longer used by the Social Security Administration◄?

A: Before direct deposit of Social Security payments ►takes place, usually◄ [can occur, both] the consumer and the institution ►both◄ must complete a Form 1199 [. The] ►A, and the◄ institution can make disclosures at that time. ►However, if a Form 1199A is not used and there is no prenotification, the institution should provide the required disclosures as soon as possible after the first direct deposit is received (unless the institution has previously given the disclosures; see question 7–1).◄ (§ 205.7(a))

* * * * *

Board of Governors of the Federal Reserve System, November 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–27857 Filed 12–2–88; 8:45 am]

BILLING CODE 6210–01–M

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12 CFR Part 225

[Regulation Y; Docket No. R–0652]

Bank Holding Companies and Change in Bank Control; Rescission of Existing Regulation Regarding Investments in Voting Shares of Nonbanking Companies by State Banks Owned by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Soliciation of public comment.

SUMMARY: In light of a number of recent developments, the Federal Reserve Board is soliciting public comment regarding a proposal to rescind its existing regulation permitting bank holding companies to acquire, through their subsidiary state banks, shares of companies engaged in activities that the bank is permitted to conduct under state law, so-called operations subsidiaries. If the existing rule is rescinded, bank holding companies would be required by the Bank Holding Company Act to obtain approval under section 4(c)(8) of the Act prior to establishing or acquiring, through their state banks, operations subsidiaries, unless the transaction is otherwise authorized under the Act.

The Board is also requesting comment regarding a proposal to grandfather all or most existing subsidiaries of holding company banks acquired in reliance on, and in conformance with, this regulation. In addition, the Board requests comment on a proposal to establish an expedited notice procedure for future proposals by bank holding companies, through their state banks, to establish or acquire operations subsidiaries under section 4(c)(8) of the Bank Holding Company Act.

DATE: Comments must be received by January 30, 1989.

ADDRESS: All comments, which should refer to Docket No. R–0652, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B–2222, 20th and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452–3583), Scott G. Alvarez, Senior Counsel (202/452–3583), Legal Division; or Sidney M. Sussan, Assistant Director (202/452–2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Board has had under review for some time the legal and policy issues associated with the application of the nonbanking provisions of section 4 of the Bank Holding Company Act ("BHC Act") to subsidiaries of holding company banks. In light of a number of developments, including the enactment of the insurance amendments to section 4(c)(8) of the Act, the expansion of the powers authorized for subsidiaries of state banks under a number of state statutes, petitions and requests for rulemaking by a number of parties regarding the coverage of these subsidiaries under the Act, and the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in *AMBAC*,[1] the Board has decided that it is now appropriate to resolve these issues.

Accordingly, after reexamining the governing provisions of the Act, the Board has decided to ask for public comment on a proposal that would rescined its existing regulation that permits state banks owned by bank holding companies to acquire, without approval under the Bank Holding Company Act, so-called operations subsidiaries—companies that are wholly-owned by the state bank and that engage only in activities that the bank may conduct directly under state law.[2] The result of this proposed amendment would be to require bank holding companies to obtain approval under the closely related to banking standards of section 4(c)(8) of the Act for their subsidiary state banks to acquire or retain control of such operations subsidiaries or their voting shares, unless control of the subsidiary is permitted without an application under one of the other limited exemptions in the Act (*e.g.*, for servicing activities (12 U.S.C. 1843(c)(1)). The proposal would provide grandfather rights for certain existing operations subsidiaries and establish expedited notice procedures for future acquisitions of operations subsidiaries by holding company state banks.

The Board's state bank operations subsidiary rule, which was adopted in 1971, provides that state banks owned by bank holding companies may, without Board approval under the Act, acquire or retain all of the voting shares of companies that engage solely in activities that the bank may conduct directly under applicable state law, at locations at which the bank may conduct the activity and subject to other limitations that would be applicable if the bank were conducting the activity.[3] The Board has a similar rule for operations subsidiaries of national banks authorized in accordance with regulations of the Comptroller of the Currency.[4]

In adopting these rules in 1971, the Board noted that it did so based upon notions of competitive equity between independent banks and holding company banks and in the absence of evidence that acquisitions by holding company banks were resulting in evasions of the Act. 36 FR 9292 (1971).[5] At that time, the powers of operations subsidiaries of banks were limited and approval for operations subsidiaries was required by the banking authorities. Thus, there was no significant conflict between the scope of activities permitted for bank holding companies and their direct and indirect nonbank subsidiaries under the closely related to banking and proper incident standards of section 4(c)(8) of the Act and the Board's rules. The Board, however, recognized that over time these rules could become the focus for evasion of section 4(c)(8) of the Act and cautioned that it would review the merits of its decisions not to apply the Act to these subsidiaries from time to time based upon its experience in administering the Act. *Id.*

In 1982, Congress amended section 4(c)(8) of the BHC Act to provide that, with certain exceptions, insurance activities are not closely related to banking, thereby eliminating the Board's discretion to permit bank holding companies to engage in these activities.[6] This amendment raised the question of the continued appropriateness of the Board's operations subsidiaries rules because, for the first time, these rules potentially permit nonbank subsidiaries of holding companies to engage in activities that the Board had no discretion to permit for bank holding companies and their direct and indirect nonbank subsidiaries. In addition, in connection with its 1983 update and revision of Regulation Y, the Board received substantial comment that these rules were not consistent with the terms and intent of the BHC Act because they permitted holding companies to acquire, through subsidiary banks, companies engaged in activities not permissible under the Act. The Board has also become concerned that the risk nonbanking activities in subsidiaries of banks outside the framework and safeguards Congress established in the BHC Act for the conduct of nonbanking activities within a bank holding company organization.

For these reasons, the Board deferred final action on the operations subsidiary rules in its 1983 Regulation Y rulemaking pending completion of certain related proceedings involving the insurance and real estate investment and development powers of bank holding companies and consideration by Congress of the appropriateness of expanded powers for banking organizations and the structural arrangements and prudential limitations that should govern the exercise of these powers.[7] The recent decision by the Court of Appeals in AMBAC that a holding company national bank may not acquire an operations subsidiary without compliance with section 4(c)(8)

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[1] *American Insurance Association* v. *Clarke*, 854 F. 2d 1405 (D.C. Cir. 1988) ("*AMBAC*"), *rehearing granted*, October 24, 1988.

[2] 12 CFR 225.22(d)(2)(ii). As discussed below, the Board does not propose to rescind or alter its current rule permitting state banks owned by bank holding companies to aquire shares of the kinds and amounts explicitly eligible by federal statute for investment by a national bank. 12 CFR 225.22(d)(2)(i).

[3] 12 CFR 225.22(d)(2)(ii).

[4] 12 CFR 225.22(d)(1). As discussed below, the Board is not proposing any action regarding this regulations pending the decision of the Court in *AMBAC*.

[5] At year-end 1971, bank holding companies controlled 2,420 banks, or approximately 18 percent of the total banks in the United States. These banks held approximately 57 percent of the total assets in commercial banks in the country. By year-end 1987, bank holding companies controlled 9,316 banks with 92 percent of assets in commercial banks.

[6] Garn-St Germain Depositiory Institutions Act of 1982, Pub. L. 97–320, Title VI, 96 Stat. 1469, 1536–1538 (1982).

[7] 49 FR 794, 797, 811 (1984); 52 FR 543, 545 (1987).

of the BHC Act has focused the Board's attention on the need to resolve the issues raised by these rules.

A. Acquisition of Voting Shares and Subsidiaries by Holding Company State Banks Under the Nonbanking Porvisions of the Bank Holding Company Act

In light of the above developments, the Board has reexamined the legal basis for the state bank operations subsidiary rule, including, particularly, the scope of coverage of the nonbanking provisions of section 4(a) of the act as they apply to subsidiaries of holding company banks, and the existence of any provisions in the Act that would permit acquisitions of operations subsidiaries without section 4(c)(8) approval. Based upon that reexamination and in light of judicial decisions regarding the Board's discretionary authority under the Act, the Board is concerned that the current state bank opeations subsidiary rule may not be consistent with the terms of the Act. Accordingly, the Board is proposing to rescind this rule and is requesting public comment on the proposal.

Since enactment of the Act in 1956, the Board has consistently held that the nonbanking provisions of section 4(a) of the Act apply to the acquisition and retention of the voting shares of nonbank companies by holding company banks because such shares are deemed indirectly held by the parent holding company under the Act. *See e.g.* 12 CFR 225.101 and 102. As discussed in Part III, the literal language of the Act leaves no room for doubt as to the correctness of this position.[8] The overall structure of the Act, reflecting the line drawn by Congress in the Act between banking and nonbanking companies, and its legislative history and itnent support this position.

Accordingly, the Board believes that when a bank controlled by a bank holding company seeks to acquire or retain control of a nonbank company or its voting shares, that transaction is subject to the nonbanking provisions of section 4(a) of the BHC Act and, to be permissible, must fall within one of the exemptions to these prohibitions.

There is no express exemption in the Act that permits a state bank owned by a bank holding company, without compliance with section 4(c)(8), to acquire or retain control of a company engaged in any activity that may be authorized for the bank under state law or of the voting shares of such a company; and the Board cited no such exemption when the rule was adopted in 1971. Moreover, in light of judicial decisions since the operations subsidiary rules were adopted in 1971 concerning the scope of the Board's authority under the Act,[9] the Board does nto believe that it is authorized under the Act, as a matter of regualtory discretion or forbearance, to provide a regulatory exemption permitting such acquisitions without compliance with the closely related to banking and public interest standards and procedural requirements of section 4(c)(8).

For the foregoing reasons, the Board is asking for comment on a proposal to rescind the state bank operations subsidiary rule (12 CFR 225.22(d)(2)(ii)), thereby requiring that the acquisition and retention of operations subsidiaries and their voting shares meet the closely related to banking and proper incident standards of section 4(c)(8) of the Act (unless the transaction fits under any of the other limited exemptions in the Board's Regulation Y).

B. Consistency of Proposal With Dual Banking System Principles

The Board wishes to emphasize that the principles of the dual banking system as reflected in the terms and legislative intent of the BHC Act would be unaffected by application of the Act to operations subsidiaries of holding company state banks. In the 1956 Act, Congress recognized these principles by limiting the coverage of the nonbanking provisions of the Act to bank holding companies and their direct and indirect nonbank subsidiaries. The appropriate range of activities for state and national banks, which are authorized, respectively, by the states and the Comptroller, was deliberately left unaffected by the prudential limitations established under section 4(c)(8) of the BHC Act. The Board has adhered to this view of the line drawn by Congress in section 4 of the Act between banks and nonbanking companies since its enactment in 1956, and has recently reaffirmed that position. See *Merchants National Corporation*, 73 Federal Reserve Bulletin 876, 878–80 (1987).[10]

Because the nonbanking provisions of the Act apply only to holding companies and their nonbank subsidiaries, the direct activities of state and national banks and the actions of regulatory and state legislative bodies as they apply to the direct activities of banks are entirely unaffected by section 4 of the BHC Act. Thus, a decision that section 4 of the BHC Act applies to nonbank subsidiaries of holding company state banks does not limit the authority of states to determine the appropriate range of activities for banks, whether or not owned by holding companies, and does not upset the principles of the dual banking system.

C. Impact of the Decision on Operations Subsidiaries of State Banks

Similarly, the Board does not believe that a decision to rescind the state bank operations subsidiary rule would unduly disrupt existing relationships or result in substantial new regulatory burdens. For example, the Board's proposal to eliminate the state bank operations subsidiary rule does not mean that it would be unlawful for state banks in a holding company system to establish operations subsidiaries or that their activities must be terminated or moved into the bank.

In this regard, the Board notes that most of the activities permitted for state banks are also permissible for bank holding companies under the BHC Act and that many bank holding companies already have approval to engage in the activities on the Regulation Y list directly and through their subsidiaries, including operations subsidiaries. Moreover, as discussed in Part II, the Board would emphasize that the proposal to rescind its state bank operations subsidiary rule gives appropriate consideration to grandfathering acquisitions by banks in reliance on the Board's current regulation.

In those cases where BHC Act approval has not been secured, the Board is proposing rules that would permit approval under an expedited notice procedure. The procedure would give full consideration to the authorizing actions of state bank regulatory authorities and would allow holding companies banks to proceed to acquire operations subsidiaries engaged in activities listed in Regulation Y unless notified within a short period of time

[8] Under section 4(a) of the Act, a bank holding company many not acquire or retain direct or indirect control of the voting shares of any company other than a bank and may not control any subsidiary other than banks and other subsidiaries authorized under the Act. 12 U.S.C. 1843(a). Under the Act's definitions, a subsidiary of a holding company bank is deemed to be an indirect subsidiary of the holding company and its shares are deemed to be indirectly held by the holding company. 12 U.S.C. 1841(g)(1).

[9] *See, e.g., Board of governors of the Federal Reserve System* v. *Dimension financial Corp.*, 474 U.S. 361, 368 (1986) (if the language of the BHC Act "is clear and unambiguous, 'that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress' ", quoting *Chevron U.S.A., Inc.*, v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–843 (1984).

[10] *vacated on other grounds sub nom. Independent Ins. Agents of America* v. *Board of Governors*, 838 F.2d 627 (2d Cir. 1988).

that the activity of the subsidiary was inconsistent with the safety and soundness and other prudential provisions of section 4(c)(8) of the Act.

D. Implications for Bank Regulation

Application of the BHC Act to holding company state bank operations subsidiaries would further a fundamental policy objective of bank regulation in the powers area. The Board has taken the position that it is necessary to expand the activities in which banking organizations may engage, particularly in the securities area, in order to assure their competitive vitality in a rapidly changing financial environment. To accomplish this objective the Board has considered it essential that these activities take place in a subsidiary of a holding company rather than in a holding company bank or in a subsidiary of a bank.

The purpose of this organizational structure is to separate more effectively than through other available techniques these new functions from the benefits of the federal safety net, which consists of access to Federal Reserve credit and federal deposit insurance. This separation is required for two reasons: (1) To assure that the risks of these activities are not passed on to the federal safety net, and (2) to assure that competition is not distorted by the support for depository institutions that is an aspect of the federal safety net.

Application of the Act to holding company state bank subsidiaries would help to accomplish these goals by assuring that activities that pose a risk to the federal safety net will be conducted in entities that are much more effectively insulated from their bank affiliates. The Board is sensitive to the concern that these goals might be achieved only as a result of additional regulatory burdens and at the cost of limiting the scope of initiative at the state level. The Board believes, however, that effective and flexible administration of the BHC Act, such as through the options discussed in Part II, will allow these goals to be accomplished without imposing substantial new regulatory burdens, or unduly limiting the initiative of state authorities to adapt banking powers to market realities.

E. Applicability of Section 4(c)(5) of the Act to Permit Acquisition of Shares by Holding Company State Banks.

The Board notes that section 4(c)(5) of the Act also does not by its terms authorize the acquisition of operations subsidiaries by holding company state banks. Under section 4(c)(5), a holding company may acquire, without an application or compliance with the prudential safeguards of section 4(c)(8) of the Act, "shares which are the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes", 12 U.S.C. 1843(c)(5). It is clear that section 4(c)(5) does not authorize bank holding companies or their subsidiaries to make either direct or indirect investments that may be permissible for state banks under state law. As noted above, there is no other provision in the BHC Act that would have this effect for state bank acquisitions.

The Board has interpreted section 4(c)(5) as permitting holding company state banks to acquire shares of companies only of the kinds and in the amounts listed or cross-referenced in section 5136 of the Revised Statutes as eligible for investment for national banks.[11] The Board continues to believe that this section of its rules is fully consistent with the terms of the Act, and thus is proposing to readopt this rule.

This existing rule is also consistent with the Board's rules implementing section 4(c)(5) as they apply to the acquisition of shares by bank holding companies directly and by their direct nonbank subsidiaries. 12 CFR 225.22(c)(4). In 1971, at the time it adopted the state bank operations subsidiary rule, the Board also adopted rules implementing section 4(c)((5) that provide that a bank holding company and its nonbank subsidiaries may acquire voting shares under section 4(c)(5), but *only* if the shares were of the limited range explicitly eligible by federal statute for investment by a national bank.[12] At that time, the Board recognized that if section 4(c)(5) is deemed to go beyond the limited range of shares authorized by statute for national banks to invest in, the carefully established Congressional framework in section 4(c)(8) for authorization of the activities of holding companies and their nonbank subsidiaries would be upset.[13]

In this regard, the Board notes that, unless section 4(c)(5) is read as reflected in § 225.22(c)(4) of Regulation Y, direct acquisitions by holding companies of finance, mortgage banking, leasing, data processing, and similar companies engaged in activities permissible for national banks would be permissible without regard to the capital adequacy, conflict of interest, safety and soundness and other public benefits criteria of section 4(c)(8). Moreover, these acquisitions, in many cases involving substantial portions of the capital resources of the holding company, would be subject to no regulatory review.

The Board notes that the Court of Appeals in *AMBAC* has granted a petition by the Comptroller for rehearing of the BHC Act issues in that case which involve the acquisition of shares by a holding company national bank in reliance on section 4(c)(5) and the Board's national bank operations subsidiary rule (12 CFR 225.22(d)(1)). Accordingly, the Board is taking no action to complete its rulemaking proceeding with respect to § 225.22(d)(1) at this time. Depending on the outcome of the *AMBAC* case and this rulemaking proceeding, the Board will consider appropriate action regarding this section of its rules.

F. Applicability of Section 7 of the Act to the Acquisition By Holding Company State Banks of Operations Subsidiaries and Their Shares.

The Board has also considered whether, as some argue, section 7 of the Act authorizes the Board's state bank operations subsidiary rule. Section 7 provides that "the enactment by the Congress of the (BHC) Act shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof." 12 U.S.C. 1846.

That section does not, and was not intended to, limit the applicability of the nonbanking provisions of section 4, or provide an exemption for state bank operations subsidiaries. As the Supreme Court has noted, section 7 is intended only "to define the extent of the (Act's) pre-emptive effect on state law." *Lewis v. BT Investment Managers, Inc.* 447 U.S. 27, 49 (1980). The Senate Report on

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[11] 12 CFR 225.22(d)(2)(i). The voting shares which are listed as eligible for investment under section 5136 include those of bankers' banks and bankers' bank holding companies up to 10 percent of capital and surplus, agricultural credit companies up to 20 percent of capital and surplus, and safe-deposit companies up to 15 percent of capital and surplus. Section 5136 also cross-references investments in stock specifically authorized under other statutes, which also are limited in amount. *E.g.*, shares of Edge Act and Agreement Corporations up to 10% of capital and surplus, (12 U.S.C. 601, 618), small business investment companies up to 5% of capital and surplus, (15 U.S.C. 681), and bank service corporations up to 10% of capital and surplus (12 U.S.C. 1862).

[12] 12 CFR 225.22(c)(4).

[13] The Board stated that unless section 4(c)(5) were so interpreted "Congress' purpose in amending section 4(c)(8) might be substantially nullified." 36 FR 1430, 1431; *see id.* at 9292 (1971). In its 1984 rulemaking regarding section 4(c)(5), the Board reaffirmed this view, a view that has been accepted by the banking industry, insofar as the bank holding companies themselves are concerned, without dissent. 48 FR 23,529 (1983).

the original 1956 Act is explicit that section 7 was intended to make it clear that, while the states retained concurrent jurisdiction over banks and bank holding companies, "a State could not enact legislation inconsistent with the bill and therefore nullify its effect." [14]

The fact that, under this interpretation of section 7 of the Act, the Board and the state banking authorities would share concurrent jurisdiction over nonbank subsidiaries of holding company state banks is not new in the federal banking laws. For example, the Board and the states share supervisory authority over state member banks, including the scope of their activities,[15] as do the FDIC and the states with respect to nonmember banks.[16] Moreover, the BHC Act grants the Board full examination, reporting, and subpoena authority over national and state banks owned by bank holding companies, even though the Comptroller and the states have similar authority over national and state banks, respectively. 12 U.S.C. 1844(c). The Supreme Court has recognized that the regulatory framework of the BHC Act overlaps with statutes administered by other banking authorities, and has left no doubt that, in such situations, the requirements of the BHC Act prevail. *Board of Govenrors* v. *First Lincolnwood Corp.*, 439 U.S. 234, 240–41, 250–51 (1978).

II. Proposed Rules Governing the Acquisition and Retention of Operations Subsidiaries by Holding Company State Banks under the Bank Holding Company Act.

A. Generally

Rescission of the state bank operations subsidiary rule would require bank holding companies to obtain approval under section 4(c)(8) of the Act in order for their subsidiary state banks to acquire operations subsidiaries or for these subsidiaries to commence nonbanking activities (unless the acquisition falls under one of the other exemptions in the Act, *e.g.*, servicing activities). In order to minimize the impact and regulatory burdens on these future acquisitions or proposals, the Board is requesting comment on an expedited 30-day notice procedure under which bank holding companies could seek the necessary approval under section 4(c)(8).

The Board also recognizes that a number of bank holding companies have acquired operations subsidiaries, through their subsidiary state banks, without approval under section 4(c)(8), in reliance on the Board's existing state bank operations subsidiary regulation. Rescission of this rule would require these bank holding companies to obtain approval under section 4(c)(8) of the Act to retain these operations subsidiaries unless the retention is otherwise authorized under the Act.

The Board notes that a great number of bank holding companies already have the necessary approval under section 4(c)(8) to acquire or retain operations subsidiaries engaged in a broad range of activities. For these companies, no further approval under the Act would be required if the operations subsidiary rule were rescinded. Under existing rules, a bank holding company that has secured approval under section 4(c)(8) to engage in a nonbanking activity, either directly or through a subsidiary, may open a new office or create a new subsidiary to conduct the activity, generally without further approval under the Act. 12 CFR 225.23(b)(1). For example, a bank holding company that has secured approval under section 4(c)(8) to engage in lending activities without geographic limit could conduct this activity on a *de novo* basis through any of its subsidiaries, including through an operations subsidiary of one of its state banks, without further approval under the Act.

Where the bank holding company has not previously obtained approval under section 4(c)(8) of the Act for a particular activity conducted by an operations subsidiary, the Board is proposing for comment a rule that would permit bank holding companies, without an application under section 4(c)(8) of the Act, to retain all or most existing operations subsidiaries acquired in reliance on the Board's current rule.

B. Future Acquisitions of Operations Subsidiaries

1. *Listed Activities.* The Board proposes to establish an expedited 30-day notice procedure for banking holding companies seeking approval under section 4(c)(8) of the Act to acquire, through a subsidiary state bank, an operations subsidiary engaged in activities the Board has previously found by regulation to be closely related to banking or for such a subsidiary to commence, or acquire assets or shares of a company engaged in, these activities. Under the proposed procedure, holding company state banks may establish operations subsidiaries, insofar as the BHC Act is concerned, after the holding company provides the appropriate Reserve Bank with 30 days prior written notice of the proposal. This expedited notice procedure would apply to operations subsidiaries that are wholly owned by the state bank, as under the existing rule, and that engage in activities that are both permissible under state law for the bank directly and that the Board has determined, by regulation, to be closely related to banking under section 4(c)(8). The Board asks for comment on whether the notice procedures should also be available for activities that have been found closely related to banking by order in an individual case.[17]

The notice required under this procedure would be limitd to a brief description of the proposal and the activity that would be conducted by the operations subsidiary, a reference to the relevant provisions of Regulation Y or Board order that found the activity to be closely related to banking, and a copy of any notice or application submitted by the state bank to its primary regulator for approval to establish or acquire the operations subsidiary under state law or for the subsidiary to commence a new activity.

The appropriate Reserve Bank would act on all notices submitted under this procedure within 30 days of their submission in accordance with the existing expedited notice procedures in § 225.23(a)(1) of Regulation Y. the proposed notice procedure would be available not only for *de novo* proposals, but also could be used for proposals to acquire the shares or assets of going concerns. As an alternative, the Board asks for comment on whether the notice procedure should be limited to proposals to engage *de novo* in listed activities, and a fuller application required for acquisitions of going concerns, as is the case under existing rules for bank holding companies. 12 CFR § 225.23(a)(2).

The Reserve Bank would have the discretion to require an application or fuller information regarding a proposal described in the notice, but would generally do so only where the bank holding company does not meet the Board's capital adequacy guidelines, or where the condition of the bank holding company organization or the nature of the proposed new activity warrants a more extensive analysis.

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[14] S. Rep. No. 1095, pt. 2, 84th Cong., 2d Sess. 5 (1986); 102 Cong. Rec. 6751, 6758 (1956) (remarks of Senator Robertson).

[15] *See e.g.* 12 U.S.C. 322, 12 CFR 208.7(a)(1).

[16] *See* 12 U.S.C. 1816.

[17] If the Board adopts this procedure, it proposes to amend its existing rules to allow bank holding companies to file notices for such acquisitions also. 12 CFR 225.23(a)(1).

The Board asks for comment on whether there are certain activities on the Regulation Y list of closely related to banking activities that should not be permitted for a subsidiary of a holding company bank, but only allowed through a direct subsidiary of the bank holding company.

2. *Unlisted Activities.* In the case of proposals by operations subsidiaries involving activities that have not been added to the list of permissible activities in § 225.25(b) of Regulation Y, the Board proposes to require an application under the procedures currently established in the Board's regulations for such proposals. *See* 12 CFR 225.23(a)(3).

In considering these applications, the Board will give full consideration to the finding by the state that the activity is permissible for state banks in that state. In this regard, in determining whether an activity is closely related to banking, the Board and the courts have looked primarily to whether banks in fact conduct the activity.[18]

C. Retention of Existing Operations Subsidiaries

To deal with the impact of the proposed rescission of § 225.22(d)(2) on existing operations subsidiaries, the Board is requesting public comment on a proposal that would permit bank holding companies, without further approval under the BHC Act, to retain operations subsidiaries held by their subsidiary state banks in compliance with that regulation on November 21, 1988, the date of the proposal to rescind § 225.22(d)(2). Entitlement to this provision would be available only if the operations subsidiary was in compliance with that rule on November 21, 1988, that is, the subsidiary must be wholly-owned by the parent bank (except for directors' qualifying shares) and the subsidiary must be engaged only in activities that the parent bank could conduct directly under relevant state law at locations at which the bank could conduct the activities.

The Board notes that the courts have ruled in a number of cases that changes in regulations that adversely affect parties should ordinarily be applied only prospectively.[19] The courts have been particularly concerned about retroactive application of new regulations in circumstances in which affected parties have reasonably relied on the existing regulation in conducting their affairs and would suffer detriment under the new rule.[20]

The Board believes it important to consider that the great majority of operations subsidiaries acquired in reliance on § 225.22(d)(2)(ii) engage in lending, leasing, trust and other activities that are closely related to banking and permissible for bank holding companies under section 4(c)(8). In addition, many of these operations subsidiaries were formed *de novo*, rather than through acquisition of going concerns, and their retention and continued operation would be likely to promote competition, increase customer convenience, and enhance operating efficiencies. Retention of these subsidiaries also would not involve additional expenditures of funds or increased debt. Consequently, the financial impact of the retention proposal should in most cases be negligible. For these reasons, the Board believes retention of these subsidiaries would, as a general matter, satisfy the requirements under section 4(c)(8) that the activity be closely related to banking and that the public benefits of the proposal outweigh its adverse effects.

The Board notes that under the grandfather proposal, bank holding companies, in some cases, could retain indirectly operations subsidiaries that engage in activities that the Board has not determined to be closely related to banking, such as certain insurance or real estate development activities.[21] The Board requests comment on whether under the principles articulated by the courts regarding the retroactive application of agency rules, as discussed in the cases noted above, the Board is authorized to apply any rescission of its operations subsidiary rule only prospectively, thereby permitting bank holding companies to retain these subsidiaries as well as subsidiaries conducting activities that have been determined to be closely related to banking. The Board also seeks comment on whether, if it is so authorized, it should permit these subsidiaries to be retained or should prohibit their retention without an application and compliance with the standards of section 4(c)(8) of the Act.

The Board further asks for comment on whether, from the point of view of the prudential standards in section 4(c)(8), the Board should permit activities that involve high risk, such as real estate development if it were authorized under section 4(c)(8) of the Act for bank holding companies, to be conducted only through a direct subsidiary of the bank holding company subject to appropriate prudential limitations and not through subsidiaries of holding company banks.

The Board further asks for comment on whether the proposed grandfather rule should contain a provision permitting the Board to determine, in an individual case, after notice and opportunity for the affected bank holding company to comment, that a particular activity that has not previously been determined by the Board to be closely related to banking, is not permissible under the standards set forth in section 4(c)(8) of the Act and must, therefore, be terminated by the company.

Finally, the Board asks for comment as to whether to limit the grandfather proposal for operations subsidiaries established under § 225.22(d)(2) prior to November 21, 1988, to only those subsidiaries engaged in activities previously found by the Board, by regulation or order, to be closely related to banking under section 4(c)(8). Because these subsidiaries would meet the Act's closely-related to banking standard and because, as discussed above, the retention of the subsidiary would be likely to result in public benefits that outweigh potential adverse effects, the Board believes that this option would satisfy the terms of section 4(c)(8) and that individual applications to retain these subsidiaries would not be required. In support of this proposal, the Board notes that under section 4(c)(8) the Board may act by order or by regulation in authorizing nonbanking proposals. As discussed above, the Board is asking for comment on whether it should require that certain of these activities that may involve high risk should be conducted only through direct subsidiaries of the bank holding company.

As discussed in Part I, as a result of the Garn-St Germain Act insurance amendments, the Board has no discretion under section 4(c)(8) to permit bank holding companies or their nonbank subsidiaries to engage in the United States in insurance activities, except as specifically authorized in those amendments.[22] One of these

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[18] *National Courier Assn.* v. *Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975)

[19] *See, e.g., Georgetown University Hospital* v. *Bowen*, 821 F.2d 750 (D.C. Cir. 1987), *cert. granted*, 108 S. Ct. 1073 (1988); *Sam* v. *United States*, 682 F.2d 925 (Ct. Cl. 1982), *cert. denied*, 459 U.S. 1146 (1983).

[20] *See Anderson, Clayton & Co.* v. *United States*, 562 F.2d 972 (5th Cir. 1977), *cert. denied*, 436 U.S. 944 (1978).

[21] The Board currently has a proposed rule under consideration to authorize real estate investment and development activities for bank holding companies under section 4(c)(8) within certain prudential limits. 52 FR 543 (January 7, 1987); 50 FR 4519 (January 31, 1985).

[22] For example, the amendments permit bank holding companies to sell credit-related life, accident, health and unemployment insurance.

provisions permits a holding company subsidiary to continue any insurance agency activity it conducted on May 1, 1982. The U.S. Court of Appeals for the District of Columbia Circuit recently affirmed a Board decision recognizing that an operations subsidiary of a holding company state bank selling insurance on May 1, 1982, in reliance on the Board's state bank operations subsidiary rule, qualifies for this grandfather exception and may continue to sell insurance under section 4(c)(8).[23] Accordingly, the Board believes that, if the state bank operations subsidiary rule is rescinded, state banks could continue to hold operations subsidiaries engaged in general or other insurance agency activities that they conducted on May 1, 1982, in accordance with the Board's state bank operations subsidiary rule and without further application under the BHC Act.

In the event the grandfather rule is limited, as discussed above, the Board asks for comment on a proposal to permit bank holding companies to retain operations subsidiaries that do not qualify under the grandfather rule for two years in order to permit the bank holding company time to seek a determination from the Board that the particular activity satisfies the standards of section 4(c)(8).[24] The Reserve Banks would be authorized to extend this two-year period for three additional one-year periods in appropriate cases.

III. Legal Framework Relating to the Proposed Rescission of the State Bank Operations Subsidiary Rule.

A. The Literal Terms of the BHC Act Cover the Acquisition and Retention by Holding Company Banks of Control of Companies (other than Banks) and Their Voting Shares

The BHC Act establishes a comprehensive framework governing the acquisitions and activities of bank holding companies. Section 4 of the Act contains two prohibitions that together limit the nonbanking acquisitions and activities of bank holding companies to those expressly permitted under various specific provisions in the statute. Under these prohibitions, a holding company may not acquire or retain, directly or through a subsidiary, voting shares or subsidiaries unless the shares or subsidiary are authorized under one of the Act's exemptions.

Section 4 of the Act provides that, except as set forth in the Act, bank holding companies may not (1) acquire or retain direct or *indirect* control of voting shares of "any company which is not a bank," or (2) engage in activities other than banking or managing and controlling banks and other subsidiaries authorized under the Act and those activities permitted under the closely related to banking standards of section 4(c)(8) of the Act.[25] Section 4 then sets out certain exceptions from these general prohibitions, the principal one being for companies engaged in activities the Board, after notice and opportunity for hearing, has determined to be so closely related to banking as to be a proper incident thereto.[26]

By their terms, the prohibitions of section 4 apply not only to voting shares and nonbank companies controlled directly by a bank holding company but also to shares and nonbank companies controlled by the bank holding company *indirectly* through any of its subsidiaries.[27] Section 2(g)(1) of the Act is explicit that "shares owned or controlled *by any subsidiary* of a bank holding company shall be deemed to be *indirectly* owned or controlled by such bank holding company." 12 U.S.C. 1841(g)(1)(emphasis added). The attribution provisions in this section apply to voting shares held by "any subsidiary" of a holding company and do not distinguish between shares held by a subsidiary bank of a bank holding company or by a nonbank subsidiary of a bank holding company.[28]

Thus, under the unambiguous language of the statute, the voting shares of a company held by a holding company bank are indirectly owned or controlled by the parent holding company and, in order for the shares or subsidiary to be retained, they must fit within one of the exceptions to the general prohibitions in section 4(a).

This reading of the statutory language is confirmed by its legislative history. Congress added the attribution provisions in section 2(g)(1) to the Act in 1966 [29] "to confirm current interpretations of the Board (that) provide that a bank holding company shall be deemed to control indirectly any shares owned or controlled by any of its subsidiaries * * *." S. Rep. No. 1179, 89th Cong., 2d Sess. 8 (1966). One of the interpretations codified in section 2(g)(1) expressly stated that the prohibition against retention of shares of a company applies to indirect control of shares of a nonbanking company held by a banking subsidiary of a bank holding company. 12 CFR 225.101(a)–(c); *see also* § 225.102. The statutory provisions concerning the scope of section 4(a) have not been subsequently amended.

B. Other Provisions of the Act Demonstrate that the BHC Act Applies to Shares of Nonbank Companies Held by Holding Company Banks

Two other sections of the BHC Act demonstrate that section 4 applies to the voting shares of nonbank companies owned by a holding company bank. The original sections 4(c)(2) and 4(c)(4) of the Act provided exemptions from the

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[23] *National Association of Casualty and Surety Agents* v. *Board of Governors*, 856 F.2d 282 (D.C. Cir. 1988), *petition for rehearing pending*.

[24] In the event the Board does not extend grandfather rights to real estate development activities, operations subsidiaries engaged in such activities would be permitted to complete any projects commenced by the subsidiary prior to November 21, 1988, but could not invest in any additional projects without approval under section 4(c)(8) of the Act.

[25] Section 4(a) of the Act provides:

Except as otherwise provided in this Act, no bank holding company shall—

(1) * * * acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) * * * retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company, or engage in any activities other than (A) those of banking, or of managing or controlling banks and other subsidiaries authorized under this Act * * *, and (B) those permitted under paragraph (8) of subsection (c) (that is, those found by the Board to be closely related to banking) * * * 12 U.S.C. 1843(a)(1) and (2).

The activity provision in section 4(a)(2) of the Act limits the direct activities of a bank holding company. The authorization to engage in banking pertains to those banks that were themselves bank holding companies. *Merchants National Corp.*, 73 Fed. Res. Bull. 876, 879, n.11 (1987).

[26] 12 U.S.C. 1843(c)(8). The other exceptions to the general nonbanking provisions of the Act are set out in paragraphs (1) through (14) of section 4(c) of the Act and include exemptions for holding shares of servicing subsidiaries, of companies acquired in satisfaction of debts previously contracted or in a fiduciary capacity, shares of the kinds and amounts eligible for investment by a national bank under section 5136 of the Revised Statutes, shares of an investment company, shares amounting to less than 5 percent of a company's outstanding shares, shares of certain foreign companies, and shares of an export trading company. 12 U.S.C. 1843(c)(1) through (14). There are certain other grandfather exceptions found in section 4(a)(2) of the Act. 12 U.S.C. 1843(a)(2).

[27] A holding company's subidiaries include direct as well as indirect subsidiaries. 12 U.S.C. 1841(d)(1). Thus, under the provisions of section 4(a)(2), a bank holding company could not manage or control an operations subsidiary unless control of that subsidiary was authorized under the Act.

[28] A bank owned or controlled by a holding company is clearly its subsidiary. 12 U.S.C. 1841(d). A "subsidiary" of a bank holding company is defined to include "any company" 25 percent or more of the voting shares of which is directly or indirectly owned or controlled by that holding company. *Id.* That the term "subsidiary" as used in the BHC Act encompasses banks is evident in provisions throughout the Act. *E.g.*, 12 U.S.C. 1842(a)(2), 1844(c). Section 4(a)(2) itself confirms this when it limits holding companies to controlling "banks and other subsidiaries authorized under this Act." 12 U.S.C. 1843(a)(2).

[29] Pub. L. No. 89–485, 6, 80 Stat. 236, 237 (1966).

nonbanking restrictions of section 4 for voting shares acquired by "any banking subsidiary * * * in satisfaction of a debt previously contracted in good faith" ("DPC") [30] and for shares acquired "by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity * * *." [31] It is obvious that there would be no need for these exemptions to section 4 for holding company banks unless the prohibition in section 4 applies to shares held by a holding company bank. The fact that Congress added these exemptions to the Act to exempt the fiduciary and DPC acquisitions of holding company banks is explainable only by the conclusion that Congress recognized and intended the Act to apply to the acquisition of nonbank shares by a holding company bank.

The legislative history confirms this view. As originally drafted, the exemptions extended only to shares acquired by a bank *that was itself* a bank holding company or any of its banking subsidiaries.[32] In the version that was enacted, these provisions, however, were deliberately revised to include an exemption for shares acquired by "any banking subsidiary of a bank holding company." [33] Thus, the legislative history shows that in 1956, Congress specifically focused on the question of whether the nonbanking provisions of the Act applied to acquisitions by holding company banks, found that they did, and provided a specific exemption for DPC and fiduciary acquisitions.

The Board also notes that a 1987 amendment to the BHC Act further confirms Congressional recognition that shares of companies held by subsidiary banks are subject to section 4. A new section 3(f)(1) creates a "specical rule" which exempts subsidiaries of certain holding company savings banks from section 4.[34] This authorization would be unnecessary if section 4 of the Act is inapplicable to subsidiaries of banks controlled by holding companies.

C. The Board Has Consistently held that Section 4 Applies To Voting Shares and Subsidiaries Controlled by Holding Company Banks

The Board has, since the enactment of the BHC Act in 1956, consistently held the view that the nonbanking prohibitions of section 4 apply to shares of a nonbank company held by a holding company bank. As explained above, Board interpretations expressing this view, issued in 1956 and 1957 contemporaneously with passage of the Act, were subsequently codified in section 2(g)(1) of the Act. 12 CFR 225.101 and 102. Moreover, the Comptroller of the Currency in congressional testimony in 1970, has stated that "there is no legal doubt" regarding this construction of the Act:

> The opening language of section 4(a) of the present Act * * * states that no bank holding company shall "acquire direct or *indirect* ownership etc." of a nonbank company. There is no legal doubt that any acquisition by the national bank subsidiary would be an "indirect" acquisition by the [one bank holding company).[35]

In 1971, the Board reaffirmed its view that section 4 applies to nonbank subsidiaries of holding company banks in connection with its promulgation of § 225.22(d) of Regulation Y (then § 225.4(e)), providing a regulatory exemption from the nonbanking prohibitions of the Act but only for wholly owned operations subsidiaries doing business at locations at which the state bank could conduct the activity and subject to limitations applicable to the bank.[36] Since 1956, acquisitions of companies engaged in activities not permissible for the bank or of less than 100 percent of the shares of a company engaged in bank-eligible activities has not been permitted under the Board's rules without compliance with section 4 of the Act.

The Board recently reaffirmed its view that the nonbanking provisions of the BHC Act apply to acquisitions by holding company banks of voting interests in nonbank companies and required divestiture by a holding company bank of such an interest that did not comply with the Board's regulations.[37]

D. Views of Commenters on Act's Coverage to Acquisitions of Shares by Holding Company Banks

In response to the Board's request for comments regarding the real estate development activities of bank holding companies, a number of commenters have argued that the Board has no authority to regulate the activities of nonbank subsidiaries of holding company banks. The commenters argue that the BHC Act does not by its terms permit the Board to regulate the direct activities of holding company banks and that the legislative history of the Act indicates that Congress did not intend the BHC Act to confer such authority on the Board. Based on the argument that the BHC Act does not extend to the activities of banks owned by holding companies, the commenters argue that a nonbank subsidiary of a bank is also exempt from the Act because it is merely an incorporated department or division of the bank operating under color of the bank's charter and authority. These commenters suggest that Congress could not have intended to create the anomalous result of excluding holding company banks from the Board's authority under the BHC Act while granting the Board authority over the nonbank operating subsidiaries of those same banks.

The Board notes, however, that this view appears to advocate an interpretation of the Act that is inconsistent with the express terms of the BHC Act, which as noted apply to the direct or indirect nonbanking subsidiaries of a bank holding company without distinction between nonbank companies owned by the holding company and those owned by a bank subsidiary of the holding company.[38]

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[30] *See* Bank Holding Company Act of 1956, Pub. L. No. 84–511, section 4(c)(2), 70 Stat. 133, 136 (1956). This section was amended in 1977 to provide an exception for shares acquired "by a bank holding company or any of its subsidiaries," in order to extend this exemption to nonbank subsidiaries of a holding company. 12 U.S.C. 1843(c)(2) (1982); H.R. Rep. No. 95–774, 95th Cong., 1st Sess. 11 (1977).

[31] *See* Bank Holding Company Act of 1956, Pub. L. No. 511, section 4(c)(4), 70 Stat. 133, 136 (1956). This section was amended in 1971, but continues to provide an exception for "shares held or acquired by a bank in good faith in a fiduciary capacity * * *." 12 U.S.C. 1843(c)(4) (1982).

[32] H.R. 6227, 84th Cong., 1st Sess. (1955); S. 2577, 84th Cong. 1st Sess. (1955).

[33] S. Rep. No. 1095, pt. 2, 84th Cong., 2d Sess. 3–4 (1956). *See also* 102 Cong. Rec. 6048 (1956) (Remarks of Sen. Robertson to the same effect).

[34] 12 U.S.C. 1842(f), as added by Pub. L. No. 100–86, Title I, section 101(d), 101 Stat. 552, 561; S. Rep. No. 100–19, 100th Cong., 1st Sess. 35 (1987); H.R. Rep. No. 261, 100th Cong., 1st Sess. 130 (1987).

[35] *One-Bank Holding Company Legislation of 1970: Hearings Before the Senate Comm. on Banking and Currency*, 91st Cong., 2d Sess. 198 (1970) (Statement of William B. Camp) ("Senate Hearings").

[36] In its notice of rulemaking, the Board stated its view that the proposed limitation "would not affect the scope of activities permitted to a banking subsidiary of a bank holding company, but could affect acquisitions of a nonbanking company by such a bank since any acquisition by a subsidiary bank would represent an indirect acquisition by the parent holding company." 36 FR 1431 (1971).

[37] *Security Pacific Corp./Arizona Bancwest*, 72 Federal Reserve Bulletin 800 (1986). *See also The South Dakota Loophole: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs*, 99th Cong., 1st Sess. 7 (1985) (statement of J. Charles Partee, Member, Board of governors, Federal Reserve System). ("The Board has long held that the provisions of the Act apply to acquisitions by holding company banks of voting shares of a nonbanking company.")

[38] In support of their view that section 4(a) does not apply to subsidiaries or nonvoting shares held by holding company banks, some commenters rely on *Cameron Financial Corp.* v. *Board of Governors*, 497 F.2d 841, 848 (4th Cir. 1974). That decision, however, held only that since section 4(a) does not apply to banks, activities conducted directly by banks do not qualify under the grandfather proviso

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Since nonbank subsidiaries of holding company banks are by definition not banks, they are not excluded from section 4 of the Act.

Moreover, the commenters' view that a nonbank subsidiary of a bank is merely part of its bank parent appears to conflict with the facts generally associated with the formation of many such subsidiaries. They are separately incorporated entities, in many cases with different names, offices, and employees, and are formed largely in order to permit the parent to separate and insulate itself from the activities of the subsidiary in order to limit its liability for the activities conducted by the subsidiary.

In this regard, the Board notes that the other federal banking agencies have often expressed the view that subsidiaries of banks provide an effective mechanism to separate and insulate nonbanking activities from the bank and the support of the federal safety net. For example, the Comptroller of the Currency has recently stated that the functions of subsidiaries of national banks—at least those conducting certain new types of activities—should be insulated from the parent bank in order to protect the insured deposits of the parent from risks arising from its ownership of the subsidiary.[39] The FDIC has specifically recognized that a subsidiary of a bank is a separate entity, which should not be confused with the bank itself.[40]

1. *Divestiture Provisions of Section 5(e) of BHC Act.* Commenters also point to section 5(e) of the BHC Act, which allows the Board to order a bank holding company to terminate ownership or control of any nonbank subsidiary "other than a nonbank subsidiary of a bank" where the nonbank constitutes a serious risk to the safety and soundness of a holding company bank. 12 U.S.C. 1844(e). This provision was added to the Act in 1978 and is pointed to as evidence of Congressional intent that the Act does not apply to nonbank subsidiaries of holding company banks.

This exemption, however, merely recognizes that primary responsibility for the ongoing supervision of the bank and its safety and soundness rests with the bank's primary supervisor, which has adequate enforcement authority to protect the bank against safety and soundness risks from nonbank subsidiaries. This section does not in any way attempt to regulate the kinds of nonbanking activities that the nonbank subsidiary may conduct or by its terms exempt the activities of such a nonbank subsidiary from the Act. Indeed, the Board notes that the fact that Congress excluded nonbank subsidiaries of holding company banks from only this provision of the Act suggests that such subsidiaries are to be included as subsidiaries of the bank holding company for all other provisions of the Act where they are not so excluded, including the nonbanking provisions of section 4. Moreover, if nonbank subsidiaries of holding company banks are not subject to the Act, the exclusion in section 5(e) is unnecessary.

2. *Board Authority Over Nonbank Subsidiaries of Holding Company Banks Under the Financial Institutions Supervisory Act of 1966.* Similarly, some commenters have argued that the cease-and-desist authority of the Board under the Financial Institutions Supervisory Act of 1966 ("FISA") (12 U.S.C. 1818(b)(3)) does not extend to nonbank subsidiaries of holding company banks and that this demonstrates that the BHC Act also does not apply to such subsidiaries. This argument, however, appears based on a misreading of the statute. In fact, the terms of the cease-and-desist statute (12 U.S.C. 1818(b)(3)) confirm that section 4(a) of the BHC Act applies to subsidiaries of holding company banks as indirect subsidiaries of the bank holding company. FISA grants the Board cease and desist authority over "any bank holding company and [to] any subsidiary (other than a bank) of a holding company, as those terms are defined in the Act." As noted, a subsidiary of a holding company bank is, as a matter of law, a subsidiary of the holding company and is, thus, contrary to the commenters' claims, subject to the Board's cease-and-desist authority.

The second sentence of section 1818(b)(3), in recognition of the Board's exclusive jurisdiction over holding companies, establishes the rule that the other federal banking agencies may not issue a cease and desist order against bank holding companies or their subsidiaries "(other than a bank or a subsidiary of that bank)".[41] The parenthetical language is necessary to prevent the primary federal supervisor from losing cease and desist authority over banks and their subsidiaries that are also subsidiaries of a bank holding company. The parenthetical does not, however, mean, as some claim, that the Board has no cease and desist authority over nonbank subsidiaries of holding company banks.[42]

Thus, the cease and desist provisions recognize a distinction between holding company banks and nonbank subsidiaries of such banks and grant the Board concurrent authority over the nonbank subsidiaries of holding company banks. The concurrent cease and desist authority over nonbank subsidiaries of holding company banks is necessary to enable the Board to enforce the BHC Act as it applies to these subsidiaries while allowing the appropriate banking authority to enforce provisions of law for which it has responsibility. This grant of authority to the Board under FISA would be unnecessary if Congress had intended, as the commenters suggest, that nonbank subsidiaries of holding company banks were to be considered as part of the parent bank and outside the Board's jurisdiction for purposes of the BHC Act.

3. *Legislative History of 1970 Amendments to BHC Act.* Some commenters point to the following testimony of Chairman Burns regarding the 1970 Amendments to the BHC Act as support for the claim that Congress did not intend the BHC Act to cover subsidiaries of holding company banks:

> We now have three Federal agencies regulating banks. The agencies that now regulate banks would continue to regulate banks.
>
> Let us say that you gave the power of regulation to the Federal Reserve Board. The Board would then be simply regulating the

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in section 4(a)(2). In that context, the reference to the term subsidiary in the grandfather proviso means a subsidiary that is not a bank and that would, therefore, not be subject to the nonbank provisions of section 4(a) in the first place. This case does not address the question raised by the commenters in this proceeding whether section 4 applies to activities conducted by a subsidiary of the bank and not by the bank itself.

Some commenters have also referred to the fact that section 4 is entitled "Interests in Nonbanking Organizations." That argument supports only the position that section 4 applies to nonbank companies wherever located within a bank holding company organization.

[39] *Reform of the Nation's Banking and Financial Systems, Hearings Before the House Committee on Banking, Finance, and Urban Affairs*, 100th Cong., 1st Sess. 283, 287 (1987) (Statement of Comptroller Clarke). *See also* Statement of FDIC Chairman Seidman, *Id.*, at 128, 128.

[40] *See also*, 50 FR 23964 (1985); Mandate for Change: Restructuring the Banking Industry, A Staff Study, FDIC (August 18, 1987).

[41] 12 U.S.C. 1818(b)(3) states: "Nothing in this subsection * * * shall authorize any Federal banking agency, *other than the Board of Governors of the Federal Reserve System*, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (*other than a bank or subsidiary of that bank*)."

[42] If the commenters' view were correct that the Board's cease and desist authority does not extend to subsidiaries of the holding company banks, the exclusion in the first sentence of 12 U.S.C. 1818(b)(3) would read as does the exclusion in the second sentence, that is, the Board's cease and desist authority under the first sentence would be limited to "any bank holding company, and to any subsidiary (other than a bank or subsidiary of that bank)"

bank holding companies, not the banks themselves. The banks would continue to function under their present supervisory authorities.

(W)e would not be examining the banks which we are not presently examining.

All that we would do, if this came to us at the Federal Reserve Board, would be to determine whether a given acquisition is or is not in accordance with the principles of the legislation and regulations that we might have drawn; or whether a divestiture is or is not proper in the circumstances or whether it is or is not being carried out.

But, we would not be examining the banks which we are not presently examining. We would not supervise banks we are not presently supervising. Therefore, the distribution of regulatory authority functions, as far as the banks are concerned, would remain entirely unchanged.[43]

The testimony of Chairman Burns, however, reflects the Board's long-standing position that the Board would not exercise its authority to examine holding company banks and will defer to the primary supervisor with respect to safety and soundness matters.[44] The testimony carefully points out that the 1970 Amendments would make no change in the distribution of regulatory authority "as far as banks are concerned." The testimony, however, says nothing about nonbank subsidiaries of holding company banks and in no way indicates that section 4(a) does not apply to the acquisition of shares or subsidiaries by holding company banks. As discussed above, the Board's long-held position predating Chairman Burns' testimony had been that the Act does apply to the acquisition of shares of nonbank companies by holding company banks. Moreover, three weeks after enactment of the 1970 Amendments, the Board reiterated this view in proposing rules to implement that legislation. 30 FR 1430, 1431, and 9292 (1971).

The Board has also considered the reference by some commenters to the House Banking Committee report associated with the 1970 Amendments stating that the nonbanking restrictions of section 4 apply only to bank holding companies and their nonbank subsidiaries and "not to the bank subsidiaries" whose activities are governed by other Federal and State law. H. Rep. No. 387, 91st Cong., 1st Sess. 15 (1969). This comment, however, is directed at the permissible activities of the subsidiary *bank* itself, and therefore does not address the applicability of section 4 to the *nonbank* subsidiaries of a holding company bank.

4. *Consistency of Board Interpretation with Intent of BHC Act.* In establishing the BHC Act framework, Congress was required to draw the line between banking and nonbanking activities in the Act in some manner. As the terms of the Act demonstrate, Congress rationally did so on the basis of whether the company conducting the activity is a bank or a nonbank. Thus, where the company is chartered and operated as a bank under the definition in the BHC Act, it is outside the scope of the nonbanking provisions of the Act. But where the company is not a bank, it is, consistent with the line drawn by Congress in section 4, subject to the nonbanking provisions of the Act—wherever located within a bank holding company system—and in order for these activities to be permissible, they must fit within one of the Act's authorizing provisions.

IV. Regulatory Flexibility Act Analysis

This rulemaking has been initiated to permit public comment on whether the Board is required to rescind its existing state bank operations subsidiary rule in light of the terms of section 4 of the BHC Act. If the Board is required to rescind its rule, the Board has proposed several procedures that are designed to mitigate the effect of this action on bank holding companies, including the economic impact on bank holding companies that may be small business entities within the meaning of the Reguatory Flexibility Act (5 U.S.C 601 *et seq*). In particular, the Board has proposed several alternatives for permitting bank holding companies, including small bank holding companies, to retain all or most existing operations subsidiaries held through state bank subsidiaries. The Board has also proposed an expedited notice procedure for future acquisitions of operations subsidiaries that has been designed to minimize any procedural burden on bank holding companies, including small bank holding companies.

The Board notes that a great number of bank holding companies already have received Board approval to engage in the activities conducted by operations subsidiaries of holding company state banks, and may, therefore, retain and establish such operations subsidiaries engaged in these activities without further approval. As a result, this proposal may have little or no effect on many bank holding companies, including in particular small bank holding companies, that engage in activities already approved by the Board under the Act.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board proposes to amend 12 CFR Part 225 as follows:

PART 225—[AMENDED]

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

§ 225.2 [Amended]

2. The Board proposes to amend § 225.2 by redesignating existing paragraphs (g) through (l) as paragraphs (h) through (m), and adding a new paragraph (g) to read as follows:

* * * * * *

(g) "Operations subsidiary" means a company (other than a bank) (1) all (but, except for directors' qualifying shares, not less than all) of the shares of which are owned by a state bank, and (2) that engages solely in activities that the state bank may itself conduct directly under relevant law, subject to the same limitations on those activities, including geographic limitations, as are applicable to its parent bank.

* * * * *

3. The Board proposes to amend § 225.22 by revising paragraph (d)(2) to read as follows:

§ 225.22 Exempt nonbanking activities and acquisitions.

* * * * * *

(d) * * *

(2) *State Bank*—(i) *Securities Eligible For Investment.* Insofar as the Bank Holding Company Act is concerned and without the Board's prior approval under this subpart, a state-chartered bank owned by a bank holding company may acquire or retain, on the basis of section 4(c)(5) of the BHC Act, securities of the kinds and amounts explicitly eligible for investment by a national bank under section 5136 of the Revised Statutes.

(ii) *Grandfathered operations subsidiaries.* Without the Board's prior approval under this subpart, a bank holding company may retain indirect ownership and control of an operations subsidiary and its voting shares that it owned and controlled through a subsidiary state bank on November 21, 1988, so long as the operations subsidiary:

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[43] *Senate Hearings* at 157–158.

[44] The Board is given extensive authority under the BHC Act over holding company banks, including direct authority to examine any holding company subsidiary, including subsidiary banks, and to require reports and to issue subpoenas against such institutions. 12 U.S.C. 1844

(A) Was acquired and held in compliance with the Board's regulations governing operations subsidiaries of state banks in effect on November 21, 1988; and,

(B) Does not thereafter commence new activities or acquire shares or assets of another company except as otherwise authorized under this subpart.

* * * * *

§ 225.23 [Amended]

4. The Board proposes to amend § 225.23 by adding a new paragraph (a)(4) to read as follows:

(a) * * *

(4) *Acquiring an operations subsidiary*—(i) *Listed activities.* A notice is required under paragraph (a)(1) of this section for a bank holding company indirectly to acquire and control voting shares of an operations subsidiary engaged in activities listed in § 225.25, and for such an operations subsidiary to commence, or acquire the assets of a company engaged in, any such activity. The notice under this paragraph shall be processed pursuant to paragraph (a)(1) of this section as a notice to engage *de novo* in an activity listed in § 225.25.

(ü) *Unlisted activities.* An application is required under paragraph (a)(3) of this section for a bank holding company indirectly to acquire and control voting shares of an operations subsidiary engaged in an activity that is not listed in § 225.25, and for such an operations subsidiary to commence, or acquire the assets of a company engaged in, any such activity.

* * * * *

5. The Board proposes to amend the reference to "12 CFR 262.2" in the introductory text to paragraph (a) of § 225.23 to read "12 CFR 262.3".

By order of the Board of Governors of the Federal Reserve System, November 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-27847 Filed 12-2-88; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material. The proposed comments address, for example, disclosure questions raised by the emergence of reverse mortgage products, questions concerning the amendments to Regulation Z affecting disclosures for adjustable-rate mortgages, and questions concerning when a third party fee may be a finance charge in a credit transaction.

DATES: Comments must be received on or before February 3, 1989.

ADDRESSES: Comments should refer to Docket No. TIL-1 and be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412: Sharon Bowman, Michael Bylsma, Leonard Chanin, Adrienne Hurt, Thomas Noto, or Linda Vespereny.

For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, an official staff commentary (TIL-1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. There have been seven general updates and one limited update so far. This notice contains the proposed eighth general update. It is expected that it will be adopted in final form in March 1989 with optional compliance until the uniform effective date of October 1 for mandatory compliance.

(2) *Proposed revisions.* The following is a brief description of the proposed revisions to the commentary:

Subpart A—General

Section 226.4—Finance Charge

4(a) Definition

Comment 4(a)-3 would be revised to clarify that charges imposed on the consumer by someone other than the creditor are finance charges if the creditor requires the services of the third party. For example, if a consumer cannot obtain the same credit terms from the creditor without using a loan broker, any fee imposed by the broker is a finance charge.

4(b) Examples of Finance Charges

Paragraphs 4(b) (7) and (8)

Comment 4(b) (7) and (8)-2 would be revised to clarify that insurance "written in connection with a credit transaction" includes insurance sold to a consumer at any time during an open-end credit plan. Thus, premiums for property insurance or credit life insurance sold to a consumer in an open-end credit plan would be finance charges unless excluded under § 226.4(d).

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1). Comment 17(a)(1)-5 would be revised to provide that creditors with variable-rate transaction subject to § 226.18(f)(2) may also provide the information set forth in § 226.18(f)(1) as information directly related to the required disclosures.

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1). Comment 17(c)(1)-8 would be revised to clarify the basis of disclosures for variable-rate transactions with no initial discounted or premium rate. The comment explains that creditors should base their disclosures only on the initial rate and not on any potential rate increases.

Comments 17(c)(1)-14 and 17(c)(1)-15 would be renumbered as 17(c)(1)-15 and 17(c)(1)-16, respectively. New comment 17(c)(1)-14 would be added to clarify how lenders should provide disclosures for reverse mortgages. These mortgages, also known as reverse annuity or home equity conversion mortgages, typically

involve the disbursement of monthly or other periodic advances to the consumer for a fixed period or until the occurrence of an event such as the sale of the house by the consumer. Repayment of the loan may be required at the end of the disbursement period or at a later time; both accrued interest and principal are often payable in one payment.

Some reverse "term" mortgages have a fixed term for the disbursement of funds to the consumer, but provide that the consumer does not have to repay the loan until a later time, such as when the consumer sells the house. The proposed comment provides that the creditor should assume repayment is required on the date that disbursements to the consumer are scheduled to end even if repayment is due upon the occurrence of a future event that might follow the final disbursement.

The new comment would also provide guidance on how creditors should make disclosures when both the period for advances and the date for repayment are determined solely by a future event, such as when the consumer moves out of the house. In such cases, the creditor would be required to base all of the disclosures on the assumption that both the advances will end and repayment will be required at the time of the event most likely to occur first. For example, if disbursements cease and repayment is required either upon the sale of the house or the death of the consumer, all disclosures would be based on the event the creditor estimates is most likely to occur first. Alternatively, if the creditor is unable to estimate which event is most likely to occur first, it may base the disclosures on the consumer's life expectancy (such as by using actuarial tables).

The proposed comment also addresses the disclosure of shared-appreciation features associated with reverse mortgages. The commentary provides that the appreciation feature should be disclosed in accordance with either § 226.18(f)(1) or § 226.19(b), as appropriate.

Section 226.18—Content of Disclosures

18(f) Variable Rate

Paragraph 18(f)(2). Comment 18(f)(2)–1 would be revised by adding a cross-reference to the commentary to § 226.17(a)(1) regarding the disclosure of additional variable-rate information as directly related information.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

Comment 19(b)–1 would be revised to clarify the disclosure of construction loans that may be permanently financed. Under the current rules in § 226.17(c)(6), a creditor may disclose the construction and permanent financing arrangements, under § 226.18, as a single transaction or as separate transactions. Under the proposed revision to comment 19(b)–1, a creditor would be permitted to apply a similar analysis in determining the applicability of § 226.19(b). Under the proposed revision, the creditor could treat the construction phase as a separate transaction and, if the term is one year or less, disclosures under § 226.19(b) would not be required for the construction phase. Furthermore, the revised comment would make clear that a creditor could treat the construction and permanent phases as distinct transactions for purposes of determining coverage under § 226.19(b), yet still provide a single § 226.18 disclosure in accordance with the rules in § 226.17(c)(6).

Comment 19(b)–1 also would be amended to address the disclosure requirements for non-creditor holders who permit new consumers to assume variable-rate transactions secured by the consumer's principal dwelling with a term longer than one year. The comment explains that such holders, like creditors in assumptions, should provide disclosures under §§ 226.18(f)(2)(i) and 226.20(c), but need not provide disclosures under §§ 226.18(f)(2)(ii) or 226.19(b).

Paragraph 19(b)(2). Comment 19(b)(2)–1 would be revised to clarify the timing requirements for disclosures provided in response to a subsequent expression of interest by the consumer. The comment would also make clear that if the consumer and creditor agree on a program different than that set forth in the disclosures that were already provided, disclosures for the new program must be provided.

Paragraph 19(b)(2)(iii). Comment 19(b)(2)(iii)–1 would be revised to clarify that, in loans that call for a final balloon payment of the outstanding balance, the creditor must disclose that fact, but need not reflect the balloon payment in the historical example or in the disclosure of the initial and maximum rates and payments.

Paragraph 19(b)(2)(v). Comment 19(b)(2)(v)–1 would be revised to clarify that consumer buydowns and third-party buydowns that are reflected in the legal obligation should be disclosed in accordance with the rules for discounted variable-rate transactions. The revised comment would also make clear that no additional disclosures relating to the buydown need be provided on the program disclosure.

Paragraph 19(b)(2)(viii). Comment 19(b)(2)(viii)–1 would be amended to clarify that, in transactions that end before the last year in the historical example, the example must illustrate all significant loan program terms such as rate limitations that would have affected the interest rate for the remaining years shown in the example.

Paragraph 19(b)(2)(ix). Comment 19(b)(2)(ix)–1 would be revised to clarify that, in transactions where the latest payment shown in the historical example is not for the latest year of index values shown, a creditor may base the disclosure of how to calculate the consumer's actual payments on the initial or maximum payment disclosed under § 226.19(b)(2)(x).

Section 226.20—Subsequent Disclosure Requirements

20(b) Assumptions

Comment 20(b)–6 would be amended to add a cross reference to § 226.19(b) concerning the disclosure requirements for non-creditor holders of variable-rate transactions secured by the consumer's principal dwelling with a term longer than one year.

20(c) Variable-Rate Adjustments

Paragraph 20(c)(4). Comment 20(c)(4)–1 would be revised to clarify that the provisions of this paragraph apply to balloon payment transactions. The comment explains that the creditor should disclose any change in a balloon payment that results from an interest rate adjustment.

Paragraph 20(c)(5). Comment 20(c)(5)–1 would be amended to clarify that the provisions of this paragraph apply only when negative amortization occurs in a transaction, and not merely because a payment is a non-amortizing or partially amortizing payment.

Section 226.23—Right of Rescission

23(b) Notice of Right to Rescind

Comment 23(b)–3 would be revised to clarify the requirements for the disclosure of security interests on rescission notices. Recently, there has been some dispute over the specificity required in such a disclosure. The revised comment would make clear that where security interests taken in connection with prior transactions remain of record and a new security

interest is taken, the rescission notice need not detail each interest that the creditor may hold in the property. Rather, a simple disclosure of the fact that the transaction is secured by the consumer's principal dwelling is sufficient.

Section 226.24—Advertising

24(b) Advertisement of Rate of Finance Charge

Although not reprinted in this notice, comment 24(b)–5 would be revised to change the references to comment 18(f)–8 to be 17(c)(1)–10. No substantive change is intended.

Subpart D—Miscellaneous

Section 226.25—Record Retention

25(a) General Rule

Comment 25(a)–3 would be added to address the record retention requirements for variable-rate transactions that are subject to the disclosure requirements of § 226.19(b). The comment explains that maintaining written procedures for compliance with the disclosure provisions as well as retaining a sample disclosure form for each loan program will be adequate evidence of compliance.

Section 226.30—Limitation on Rates

Comment 30–8 would be revised to clarify that this paragraph applies to the manner of stating the maximum interest rate in the credit contract only. This paragraph does not govern how interest rate ceilings should be stated in Truth in Lending disclosures. The disclosures are governed by provisions found elsewhere in the regulation and commentary.

Comment 30–13, concerning footnote 50, would be revised to clarify the requirements of the regulation after October 1, 1988. For purposes of § 226.30, the rate must be stated in the credit contract as prescribed in comment 30–8. The disclosure requirements for limitations of rate increases are described elsewhere in the regulation and commentary.

Appendix D—Multiple-Advance Construction Loans

Although not reprinted in this notice, the first sentence of comment app. D–2 would be revised to delete the word "most" and to change the reference to § 226.18(f)(4) to be § 226.18(f)(1)(iv). No substantive change is intended by either revision.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in Lending.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

Text of proposed revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended) and section 1204 of the Comprehensive Equality Banking Act, Pub. L. 100–86, 101 Stat. 552, the Board proposes to amend the official staff commentary to Regulation Z (12 CFR Part 226 Supp. I) as follows:

PART 6—[AMENDED]

1. The authority citation for Part 226 continues to read:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*); sec. 1204(c), Competitive Equality Banking Act, Pub. L. 100–86, 101 Stat. 552.

2. The proposed revisions amend the commentary (TIL–1, 12 CFR Part 226 Supp. I) by adding a sentence and a bullet paragraph at the end of comment 4(a)–3; revising the heading and adding a sentence at the end of comment 4(b)(7) and (8)–2; adding a bullet paragraph at the end of comment 17(a)(1)–5; adding two sentences and parenthetical material after the second sentence in comment 17(c)(1)–8; redesignating comments 17(c)(1)–14 and –15 to be comments 17(c)(1)–15 and –16, respectively; adding comment 17(c)(1)–14; adding parenthetical material at the end of comment 18(f)(2)–1; adding three sentences at the end of comment 19(b)–1; revising the fourth sentence of comment 19(b)(2)–1; adding a sentence after the second sentence in comment 19(b)(2)(iii)–1; adding a new sentence before the parenthetical material at the end of comment 19(b)(2)(v)–1; revising the third sentence in the parenthetical material after the first sentence in comment 19(b)(2)(viii)–1; adding a sentence after the second sentence in comment 19(b)(2)(ix)–1; adding parenthetical material at the end of comment 20(b)–6; adding a sentence after the second sentence in comment 20(c)(4)–1; revising comment 20(c)(5)–1; adding two sentences after the second sentence in comment 23(b)–3; changing the references to "comment 18(f)–8" in the first sentence and in the first bullet paragraph of comment 24(b)–5 to "comment 17(c)(1)–10"; adding comment 25(a)–3; revising the first sentence of comment 30–8; revising the last sentence in comment 30–13; removing the word "most" and changing the reference to "§ 226.18(f)(4)" in comment app. D–2 to "§ 226.18(f)(1)(iv)" to read as follows:

Subpart A—General

* * * * *

Section 2264—Finance Charge

4(a) Definition.

* * * * *

3. *Charges by third parties.* * * * ►In contrast, charges imposed on the consumer by someone other than the creditor are finance charges if the creditor requires the services of the third party. For example:

• Any fee charged by a loan broker if the consumer cannot obtain the same credit terms from the creditor without using a broker.◄

* * * * *

4(b) Examples of Finance Charges

* * * * *

Paragraph 4(b) (7) and (8)

* * * * *

2. *Insurance written [after consummation.] ►in connection with a transaction.◄* * * * *►In open-end credit plans, insurance "written in connection with a credit transaction" includes insurance sold at any time during the existence of the plan.◄*

* * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

5. *Directly related.* * * * ►• The disclosures set forth under § 226.18(f)(1) for variable-rate transactions subject to § 226.18(f)(2).◄

17(c) Basis of Disclosures and Use of Estimates Paragraph 17(c)(1)

* * * * *

8. *Basis of disclosures in variable-rate transactions.* * * *

►Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. (See, however, the commentary to § 226.17 concerning disclosures for discounted and premium variable-rate transactions.)◄ * * *

►14. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's selling or moving out of the home. Repayment of the loan (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, at the time the consumer moves out of the home. In disclosing these transactions, creditors must apply the following rules, as applicable:

• If the reverse mortgage has a specified period for advances, but repayment is due

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only upon the occurrence of a future event such as the sale of the house by the consumer (which could occur after the last disbursement), the creditor must assume repayment will occur on the date disbursements to the consumer will end. This assumption should be used even if repayment might not occur when the disbursements end. In such cases, the creditor may include a statement such as "The disclosures assume that repayment will be required at the time our payments to you end. As provided in your agreement, your repayment may be required at a different time."

• If the reverse mortgage has neither a specified period for advances nor a specified repayment date and these terms will be determined solely by reference to future events, the creditor must base the disclosures on the event estimated to be most likely to occur first. For example, if the plan provides that repayment will occur either upon the sale of the home or the death of the consumer, the creditor must base the disclosures on the creditor's estimate of the date the home will be sole, if the sale of the house is determined to be more likely to occur before the death of the consumer. If the creditor is unable to estimate which event is most likely to occur first, the disclosures may be based on the consumer's life expectancy (such as by using actuarial tables).

• In making the disclosures, creditors must assume that all disbursements and accrued interest must be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor will nonetheless assume that the full amount to be disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the debt, although the amount you may be required to pay is limited by your agreement."

• Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. Such loans are considered variable-rate mortgages, as described in comment 17(c)(1)–11, and the appreciation feature must be disclosed in accordance with § 226.18(f)(1). If the reverse mortgage has a variable interest rate, is written for a term greater than one year, and is secured by the consumer's principal dwelling, the shared appreciation feature must be described under § 226.19(b)(2)(vii).◄

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(f) Variable Rate

* * * * *

Paragraph 18(f)(2)

1. *Disclosure required.* * * * ►(See the commentary to § 226.17(a)(1) regarding the disclosure of certain directly related information in addition to the variable-rate disclosures required under § 226.18(f)(2).)◄

* * * * *

Section 226.19—Certain Residential Mortgage Transactions

* * * * *

19(b) Certain Variable-Rate Transactions

1. *Coverage.* * * * ►In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a signle transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as a signle transaction or as a combined transaction in accordance with § 226.17(c)(6). Finally, in cases where a subsequent holder permits a new consumer to assume a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, the holder, like a creditor, need not provide new disclosures under § 226.18(f)(2)(ii) or 226.19(b), but must provide the disclosures required under §§ 226.18(f)(2)(i) and 226.20(c).◄

* * * * *

Paragraph 19(b)(2)

1. *Disclosure for each variable-rate program.* * * *

If the consumer subsequently expresses an interest in other available variable-rate programs subject to § 226.19(b)(2), the creditor must provide disclosures for such additional programs ►as soon as reasonably possible after the subsequent expression of interest. In addition, if the creditor and consumer agree upon program terms for which the consumer has not received disclosures, the appropriate program disclosures must be provided as soon as reasonably possible after the agreement◄. * * *

* * * * *

Paragraph 19(b)(2)(iii)

1. *Determination of interest rate and payment.* * * * ►In transactions that call for a final balloon payment of the outstanding balance, the creditor must disclose this fact. For example, the disclosure might read, "At the end of the loan term, a single payment of the entire outstanding balance will be required." The creditor, however, need not reflect the balloon payment in the historical example or in the disclosure of the initial and maximum rates and payments.◄ * * *

* * * * *

Paragraph 19(b)(2)(v)

1. *Discounted and premium interest rate.* * * *

►In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted variable-rate transaction, but need not disclose additional information regarding the buydown in its program disclosures.◄ * * *

* * * * *

Paragraph 19(b)(2)(viii)

1. *Index movement.* * * * For the remaining ten years, 1982–1991, the creditor need only show the remaining index values, margin and interest rate [.] ►and must continue to reflect all significant loan program terms such as rate limitations affecting them.◄ * * *

* * * * *

Paragraph 19(b)(2)(ix)

1. *Calculation of payments.* * * * ►However, in transactions in which the latest payment shown in the historical example is not for the latest year of index values shown (such as in a five-year loan), a creditor may base the disclosure required under this paragraph on the initial or maximum payment disclosed under § 226.19(b)(x).◄ * * *

* * * * *

Section 226.20—Subsequent Disclosure Requirements

* * * * *

20(b) Assumptions

* * * * *

6. *Disclosures.* * * * ►(See the commentary to § 226.19(b) for the disclosure requirements for non-creditor holders of variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year.)◄

* * * * *

20(c) Variable-Rate Adjustments

* * * * *

Paragraph 20(c)(4)

1. *Contractual effects of the adjustment.* * * * ►In balloon payment transactions, if an effect of the adjustment will be to change the balloon payment, the amount of the adjusted ballon payment must be disclosed.◄ * * *

Paragraph 20(c)(5)

1. *Fully-amortizing payment.* [A disclosure is required if the payment disclosed in § 226.20(c)(4) is not sufficient to pay off the loan balance (including capitalized interest) in the remaining term of the loan at the adjusted interest rate. In such cases, the] ►This paragraph requires a disclosure only when negative amortization occurs as a result of the adjustment. A disclosure is not required simply because a loan calls for non-amortizing or partially amortizing payments. For example, in a five-year balloon loan with payments based on a longer amortization schedule, the creditor would not have to disclose the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is required, however, if the payment disclosed under § 226.20(c)(4) is not sufficient to prevent negative amortization in the loan. The◄ adjustment notice must state the payment required to [fully amortize the loan over the remainder of the term.] ►prevent negative amortization◄. (This paragraph does not apply if the new payment disclosed in § 226.20(c)(4) is [fully amortizing] ►sufficient to prevent negative amortization in the loan◄ but the final payment will be a different amount due to rounding.)

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(b) Notice of Right to Rescind

* * * * *

3. Content. * * * ►In disclosing the retention or acquisition of a security interest, a creditor need not separately disclose multiple security interests that it may hold in the property. The creditor need only disclose that the transaction is secured by the consumer's principal dwelling, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction.◄ * * *

* * * * *

Subpart D—Miscellaneous

Section 226.25—Record Retention

25(a) General Rule

* * * * *

►3. *Certain variable-rate transactions.* In variable-rate transactions that are subject to the disclosure requirements of § 226.19(b), written procedures for compliance with those requirements as well as a sample disclosure form for each loan program represent adequate evidence of compliance.◄

* * * * *

Section 226.30—Limitation on Rates

* * * * *

8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated ►in the credit contract◄ either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation. * * *

* * * * *

13. *Transition rules.* * * * On or after that date, creditors must have the maximum rate set forth in their credit contracts and, where applicable, as part of their truth in lending disclosures [.] ►in the manner prescribed in the applicable sections of the regulation.◄

* * * * *

Board of Governors of the Federal Reserve System, November 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-27858 Filed 12-2-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-147-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, which would require repetitive inspections of the lower windshield center bracket for cracks, and repair, if necessary. This proposal is prompted by reports of cracks found during major structural inspection on three airplanes. This condition, if not corrected, could lead to decompression of the airplane during flight.

DATE: Comments must be received no later than January 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-147-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 89168. The aplicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications recieved on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-147-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Fokker Model F-28 series airplanes.

The manufacturer has reported three separate cases where fatigue cracks were found during major structural inspections of the frame 1600 center bracket. Examination of the brackets has revealed that the cracks started from the two center bolt holes, traveling in a forward and aft direction. This condition, if not corrected, could lead to decompression of the airplane during flight.

Fokker has issued Service Bulletin F28/53-A92, Revision 1, dated July 15, 1988, which describes procedures for inspection of the frame 1600 center bracket located behind the lower windshield girders, and repair, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 88-45, dated June 17, 1988.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provision of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the lower windshield frame 1600 center bracket for cracks, and repair, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 48 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,840.

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The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 through 11241, 11991 and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent decompression of the aircraft during flight, accomplish the following:

A. For airplanes in pre-Service Bulletin F28/21-16 configuration, within 30 days after the effective date of this AD, or upon the accumulation of 75,000 landings, whichever occurs later, inspect the frame 1600 center bracket for cracks, and repair, if necessary, in accordance with Fokker Service Bulletin F28/53-A92, Revision 1, dated July 15, 1986. Repeat this inspection at intervals not to exceed 4,500 landings.

B. For airplanes in Post-Service Bulletin F28/21-16 configuration, within 30 days after the effective date of this AD, or upon the accumulation of 50,000 landings, whichever occurs later, inspect the frame 1600 center bracket for cracks, and repair, if necessary, in accordance with Fokker Service Bulletin F28/53-A92, Revision 1, dated July 15, 1986. Repeat this inspection at intervals not to exceed 3,000 landings.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 21, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-27874 Filed 12-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-44]

Proposed Establishment of Transition Area; Coushatta, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Coushatta, LA. The development of a new standard instrument approach procedure (SIAP) to the Red River Airport, utilizing the soon to be commissioned Coushatta Nondirectional Radio Beacon, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new NDB SIAP to the Red River Airport. Coincident with this action is the changing of the status of the Red River Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before January 10, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-44, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-44." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel

concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Person interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Coushatta, LA. The development of a new SIAP to the Red River Airport, utilizing the soon to be commissioned Coushatta NDB, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airpace for aircraft executing the new NDB SIAP. Coincident with this action is the changing of the status of the Red River Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAY, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Coushatta, LA [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Red River Airport (latitude 31°59'26" N., longitude 93°18'26" W.), and within 3.5 miles each side of the 002° bearing of the Coushatta NDB (latitude 32°04'17" N., longitude 93°18'17" W.), extending from the 6.5-mile radius area to 16.5 miles north of the Red River Airport.

Issued in Fort Worth, TX, on November 21, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–27876 Filed 12–2–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASW–42]

Proposed Establishment of Transition Area; Robstown, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Robstown, TX. The development of a new VOR/DME–A standard instrument approach procedure (SIAP) to the Nueces County Airport, utilizing the Corpus Christi Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME–A SIAP to the Nueces County Airport. Coincident with this action is the changing of the status of the airport from visual flight rules (VFR) to instrument flight rules (IFR) .

DATES: Comments must be received on or before January 10, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88–ASW–42, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASW–42." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of the NPRM. Persons interested in being placed on a

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mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Robstown, TX. The development of a new VOR/DME–A SIAP to the Nueces County Airport, utilizing the Corpus Christi VORTAC, has necessitated the proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME–A SIAP to the Nueces County Airport. The new transition area will exclude that portion which overlies the Corpus Christi, TX, Control Zone and Transition Area. Coincident with this action is the changing of the status of the Nueces County Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAY, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Robstown, TX [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nueces County Airport (latitude 27°46'41" N. longitude 97°41'24" W.), excluding that portion which overlies the Corpus Christi, TX, Control Zone and Transition Area.

Issued in Fort Worth, TX, on November 21, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–27875 Filed 12–2–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 776

[Docket No. 81137–8237]

Definition of Supercomputer

AGENCY: Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend § 776.10 of the Export Administration Regulations (EAR) by adding a new paragraph (c) that contains a definition of the term "supercomputer". Inclusion of the supercomputer definition in the EAR is mandated by Section 5(a)(6) of the Export Administration Act of 1979, as amended by the Omnibus Trade and Competitiveness Act of 1988.

The Commerce Department will consider comments on this definition and on the supercomputer licensing process.

DATE: Comments must be received by January 19, 1989.

ADDRESS: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Room 1622, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Background

Section 5(a)(6) of the Export Administration Act of 1979 (the Act), as amended by the Omnibus Trade and Competitiveness Act of 1988, requires that the Export Administration Regulations (EAR) be amended to provide a definition of the term "supercomputer" for export control purposes.

This rule proposes to implement section 5(a)(6) of the Act by revising § 776.10 of the EAR to include the definition. When the final rule is published, this definition will cross-reference sections of the EAR concerning supercomputers.

The term "supercomputer" refers to advanced architecture, very high speed, computer systems that can solve highly complex problems in strategically relevant time frames. Because of their high-speed problem solving capabilities, supercomputers have unique applications in a variety of critical military areas. The United States and certain of its Western allies have a commanding edge in supercomputer technology over the Soviet Union and its allies. This technological edge translates into a specific strategic military advantage. If this technological edge were eroded by diversion of a supercomputer system to the Soviet Bloc, our national security could be seriously jeopardized. Accordingly, the Bureau of Export Administration licenses the export of a supercomputer only when it is satisfied that special security safeguards—covering security during shipment, physical security of the system, and computational access security—are in place and will be adhered to.

Congress has recognized the strategic importance of this technology, and has exempted supercomputers from certain reexport control liberalizations otherwise mandated by the Omnibus Trade and Competitiveness Act of 1988.

The supercomputer definition proposed in this rule contains specific technical guidelines for measuring a computer's performance. It also includes a threshold performance level above which a computer would be considered a "supercomputer" for export control purposes. This definition, of course, will be subject to periodic review as this technology advances.

In addition to establishing a performance threshold for "supercomputers", Commerce is exploring the possibility of streamlining the licensing process for supercomputers, while maintaining the level of control that this advanced

technology warrants. One possible approach would be to focus on the ultimate destination of the supercomputer and differentiate among imports by specific groups of countries. For example, security safeguards could vary according to whether or not the ultimate destination is a COCOM/5(k) country.

The Commerce Department will consider public comments that address the supercomputer definition, the threshold level of performance, and the supercomputer licensing process, including comments concerning the linkage between security safeguards and the importing country. Publication of a final rule will follow after consultations with appropriate U.S. allies.

Rulemaking Requirements and Invitation to Comment

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule is being issued in proposed form, this rule complies with section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages Interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 19, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

5. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 776

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 776 of the Export Administration Regulations is proposed to be amended as follows:

1. The authority citation for 15 CFR Part 776 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 776—[AMENDED]

2. Section 776.10 is amended by redesignating paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

§ 776.10 Electronic computers and related equipment

* * * * *

(c) *Supercomputers.* Any computer that has a theoretical peak performance capability greater than or equal to 160 MFLOPS (million floating-point operations per second) will be considered a supercomputer. This performance capability will apply equally to all vector, array, and parallel processors, as well as other architectures, as appropriate. The computer manufacturer will provide the information necessary to identify the variables in the standard formula for determining performance capability. The standard formula that must be used in calculating the theoretical peak performance capability of a single processor is as follows:

$$\frac{\text{Number of operations}}{\text{1 cycle}} \times \frac{\text{1 cycle}}{\text{cycle time}} = \text{Number of MFLOPS}$$

Note.—There are three basic assumptions in standardizing the measurement:

(1) The theoretical peak performance will be measured on a 50/50 ratio of multiply/add calculations.

(2) The results will be measured on 64-bit word lengths, regardless of the word length of the processor.

(3) For machines with more than one processor, the MFLOPS number for a single processor is multiplied by the number of processors.

* * * * *

Dated: November 29, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-27845 Filed 12-2-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Explosives; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding its proposed rule for explosives at metal and nonmetal mines.

DATE: Written comments on the proposed rule must be received on or before February 10, 1989.

ADDRESS: All comments should be sent to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On November 10, 1988, MSHA published a proposed rule (53 FR 45487) revising the explosives standards for the metal and nonmetal mining industry. The comment period was scheduled to end on January 9, 1989.

In response to requests from the public, MSHA is extending the time for commenting on this proposed rule to February 10, 1989. All interested members of the mining community are encouraged to submit comments prior to that date.

Dated: November 29, 1988.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-27884 Filed 12-2-88; 8:45 am]

BILLING CODE 4510-43-M

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: MSHA is proposing to revise two sections of the Safety Standards for Methane in Metal and Nonmetal Mines to conform the standards to recently issued approval requirements for brattice cloth and ventilation tubing. The methane standards currently require that those materials have a flame spread rating of 25 or less if used in underground metal and nonmetal mines with a history of, or a potential for methane liberation. The reference to flame spread rating would be replaced with a requirement that brattice cloth and ventilation tubing be approved by MSHA in accordance with 30 CFR Part 7.

DATE: Written comments must be received on or before February 3, 1989.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

Background and Effect of Rule

The final rule of Safety Standards for Methane in Metal and Nonmetal Mines was published as a new Subpart T of Part 57 on July 1, 1987 (52 FR 24924). Editorial corrections and clarifying amendments were published on July 24, 1987 (52 FR 27903), October 27, 1987 (52 FR 41394) and March 24, 1988 (53 FR 9615). Sections 57.22215 and 57.22222 of the methane standards specify the use of brattice cloth and ventilation tubing with a flame spread rating of 25 or less as determined by American Society of Testing Materials (ASTM) test method E-162. Under § 57.22215, rigid ventilation tubing is required to be constructed of noncombustible material. The July 1, 1987 preamble noted that MSHA was engaged in development of an improved test method to evaluate the flame resistance of brattice cloth and ventilation tubing. The new test method has now been issued as part of new approval regulations in 30 CFR Part 7, (53 FR 23486, June 22, 1988). MSHA stated in the July 1, 1987 preamble that upon promulgation of Part 7, §§ 57.22215 and 57.22222 would be revised to require the use of approved brattice cloth and ventilation tubing. This rule would make those revisions, effective August 22, 1989. As of this date, brattice cloth and ventilation tubing newly installed in a mine would be required to be approved by MSHA in accordance with 30 CFR Part 7. This proposed delay in the effective date coincides with the phase-in of new approval requirements under Part 7 and will provide sufficient time for mine operators to obtain approved ventilation materials. To the extent that ventilation materials approved under Part 7 become available sooner, they may be installed and will be considered in compliance with current §§ 57.22215 and 57.22222. Operators may also continue to install currently acceptable ventilation materials until the effective date of this rule. The approval status of those products previously tested and accepted by the Approval and Certification Center and issued an MSHA BC or VT acceptance number will remain unaffected allowing those products to be manufactured and used as MSHA approved.

Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule would revise two previously issued standards to update technical performance requirements for brattice cloth and ventilation tubing. The cost impact of the new requirements on mine operators will be negligible. The cost impact of the test requirements of the ventilation materials has been analyzed in the context of the Part 7 rulemaking. Accordingly, the Agency has determined that this rule would not result in a major cost increase or have an incremental effect of $100 million or more on the economy. Therefore, a regulatory impact analysis is not required. The Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The proposal does not contain any information collection requirements subject to the Paperwork Reduction act of 1980.

List of Subjects in 30 CFR Part 57

Mine safety and health, Metal and nonmetal mining, Safety standards for methane.

Date: November 29, 1988.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Accordingly, Subpart T, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 57—[AMENDED]

1. The authority citation for Subpart T continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.22215(b)(1) is revised to read as follows:

§ 57.22215 Separation of intake and return air (I–A, II–A, III, and V–A mines.

* * * * *

(b) * * *

(1) Ventilation tubing approved by MSHA in accordance with 30 CFR Part 7 of previously issued a BC or VT acceptance number by the MSHA Approval and Certification Center may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall not exceed 250 feet in length.

* * * * *

3. Section 57.22222 is revised to read as follows:

§ 57.22222 Ventilation materials (I–A, I–B, I–C, II–A, III, V–A, and V–B mines).

Brattice cloth and ventilation tubing shall be approved by MSHA in accordance with 30 CFR Part 7, or shall bear a BC or VT acceptance number issued by the MSHA Approved and Certification Center

[FR Doc. 88–27883 Filed 12–2–88; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 86–079]

RIN 2115–AC96

Anchorage Regulations; Regulated Navigation Areas and Limited Access Areas

AGENCY: Coast Guard, DOT.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to expand the editorial revision of Part 110 by publishing Special Anchorage Areas and Anchorage Grounds as two separate parts, and by redescribing the existing anchorages using a standardized description format. These additional changes are editorial and are intended to clarify the anchorage regulations.

DATE: Comments must be received on or before February 3, 1989.

ADDRESS: Comments should be submitted to Commandant (G–LRA–2/21) (CGD 86–079), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying in Room 2110, between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Short Range Aids to Navigation Division, Office of Navigation Safety and Waterway Services, (202) 267–0415, between 7:30 a.m. and 3:00 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Request for Comments

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 86–079, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Margie G. Hegy, Project Manager, and Christena G. Green, Project Counsel, Office of Chief Counsel.

Discussion of Proposed Regulations

Responsibility for the administration and enforcement of anchorage regulations was transferred from the U.S. Army Corps of Engineers (COE) to the U..S Coast Guard in 1967. Many of these regulations have remained basically unchanged since that time. In 1979, the authority to designate special anchorage areas and anchorage grounds and to issue regulations pertaining to anchorage grounds was delegated to Coast Guard district commanders. State and local governments have also promulgated ordinances which apply in some of these designated anchorages.

On March 11, 1988, (53 FR 7949) the Coast Guard proposed to amend the anchorage regulations by placing a general statement at the beginning of Part 110 advising mariners that state and/or local ordinances may apply; by removing other notes and textual references to state and/or local ordinances; by removing non-regulatory, obsolete or duplicative language; by relocating, to Part 165, sections which regulate navigation outside the boundaries of established anchorages; and by renumbering the sections in Part 110 to eliminate non-standard section designations and facilitate future amendments. After reviewing the comments received as a result of the NPRM, the Coast Guard proposes to expand the editorial revision of Part 110.

Two commenters expressed concern that the proposed removal of notes and references to state and local ordinances from the anchorage regulations would, in effect, transfer control of the anchorages from the Coast Guard to local authorities. These comments are based on a misunderstanding of the Coast Guard's authority with regard to anchorages.

The Coast Guard does not regulate vessel activities within special anchorage areas as it does in anchorage grounds. The only effect of designating a special anchorage area under the authority of 33 U.S.C. 2071 is that vessels under 20 meters in length (65 feet) anchored in these areas do not have to exhibit the lights and shapes or sound signals required by Rules 30 and 35 of the Inland Rules. Other vessel activity within these special anchorage areas may be regulated by local authorities as long as the local regulations do not conflict with Federal regulations which may be promulgated under other statutory authority.

Anchorage grounds are established under 33 U.S.C. 471. This statute also authorizes the Coast Guard to adopt suitable rules and regulations in relation to these anchorages.

To clarify the distinction between special anchorage areas and anchorage grounds, which are established under

different statutory authorities and serve different purposes, the Coast Guard proposes to separate the contents of existing Part 110 into two parts: Subpart A, Special Anchorage Areas, will remain in Part 110 and Subpart B, Anchorage Grounds will become Part 111. The distinction between special anchorage areas and anchorage grounds can best be drawn by separating them into two parts, each with its own distinct statutory authority.

Comments from Coast Guard field offices pointed out the need to amend anchorage descriptions currently in the CFR because buoy numbers or landmarks referred to as part of anchorage descriptions have changed or no longer exist. Currently, a variety of reference points, including buoys, piers, property boundaries, streets, yacht clubs, etc. are used in Part 110 to describe the boundaries of special anchorage areas and anchorage grounds. The Coast Guard proposes to standardize the format for anchorage descriptions by using latitudes and longitudes, expressed in degrees, minutes, and seconds, to the nearest tenth. This format would eliminate the need for future rulemaking merely to correct anchorage descriptions when a landmark no longer exists, or when buoys are renumbered but the anchorage boundaries have not changed. Figure 1 is an example of a present anchorage description and how it would appear in the proposed standardized format. Although the description format is different, the existing anchorage boundaries and location are not changed. The anchorage remains as presently charted.

Regulatory Evaluation

These regulatory changes are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this amendment has been found to be so minimal that further evaluation is unnecessary. The Coast Guard certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities.

Federalism

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: September 21, 1988.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard; Chief, Office of Navigation Safety and Waterway Services.

Figure 1

Present

§ 110.95 Newport Bay Harbor, Calif.

(d) Area A–4, South of a line bearing 268° from Newport Bay Channel Light 11, this line being the south line of the main fairway; north of a line parallel to and 200 feet from the pier-head line off 11th and 8th Streets; and west of a line bearing 203° from Newport Bay Channel Light 12, passing through the pierhead line at the east end of Lido Isle.

Standardized

§ 110.95 Newport Bay Harbor, CA

(d) *Area A–4. South of Lido Island.* The waters bounded by a line connecting the following points:

Latitude	Longitude
33°36'28.1" N.	117°54'31.2" W
33°36'23.9" N.	117°54'33.6" W
33°36'26.5" N.	117°54'47.4" W
33°26'27.9" N.	117°54'47.0" W

and thence to the point of beginning.

[FR Doc. 88–27935 Filed 12–2–88; 8:45 am]
BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

Electronic Records Management

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Because of technological changes, NARA is proposing to revise its regulations concerning Federal agencies' electronic records. This revision mandates procedures to manage electronic records, to provide for the selection and maintenance of electronic storage devices, and to follow the legal requirements for the disposition of such records. As a result, regulations will more effectively deal with the issues associated with data base management systems and office automation technologies. Identical regulations will be issued simultaneously by the General Services Administration and published at FIRMR 201–45.2.

DATE: Comments must be received by January 4, 1989.

ADDRESS: Comments should be sent to Director, Policy and Program Analysis Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: NARA's current electronic records management regulations were in large part developed when processing numeric data on mainframe computers in a batch mode with compiler programs was state-of-the-art data processing. Since those regulations were developed, technology has advanced, especially in the areas of data base management systems and online access. Magnetic computer tape storage is now supplemented by a variety of direct access storage devices. Centralized data processing has been transformed by the spread of official automation technologies, such as word processing, spreadsheets, electronic calendaring, electronic messaging, and data base management systems.

Because of these changes in technology, in 1985 NARA issued a bulletin that provided extensive advice and information about the management of records created, stored, or transmitted using microprocessors. This bulletin was reissued in February 1987 as NARA Bulletin No. 87–5. This proposed rule further updates NARA guidance on electronic records management by issuing new or revised regulations in those areas where clear procedures have been developed. Namely, the regulation requires agencies to establish an administrative structure to deal with electronic records, to implement procedures for the selection and maintenance of electronic storage devices, and to follow the legal requirements for the disposition of such records.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1234

Archives and records.

For the reasons set forth in the preamble, NARA proposes to revise Part 1234 of Chapter XII of Title 36 of the Code of Federal Regulations as follows:

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Sec.

Subpart A—General

1234.1 Scope of part.

Subpart B—Program Requirements

1234.10 Agency responsibilities.

Subpart C—Standards for the Creation, Preservation, and Disposition of Electronic Records

1234.20 Creation and use of data bases and numeric data files.
1234.22 Creation and use of text information in an office automation system.
1234.24 Judicial use of electronic records.
1234.26 Security of electronic records.
1234.28 Selection and maintenance of electronic records storage media.
1234.30 Retention of electronic records.
1234.32 Destruction of electronic records.

Authority: 44 U.S.C. 2904, 3101, 3102, and 3105.

Subpart A—General

§ 1234.1 Scope of part.

This part establishes the basic requirements related to the creation, maintenance, use, and disposition of electronic records, which include all data files and data bases as well as text information in an office automation system. Unless otherwise noted, these requirements apply to all electronic records, systems, whether on microprocessors, mini- or main-frame computers, regardless of storage media, in network or stand-alone configurations. Guidance on electronic records management and related issues may be obtained from the National Archives and Records Administration, Agency Services Division (NIA), Washington, DC 20408 and the General Services Administration, Office of Innovative Office Systems (KO), Washington, DC 20405.

Subpart B—Program Requirements

§ 1234.10 Agency responsibilities.

The head of each Federal agency shall establish a program for the management of electronic records that incorporates the following elements:

(a) Assigning to an office of the agency the responsibility to develop and implement an agencywide program for the management of all records created, received, maintained, used, or stored on electronic media; and notifying the National Archives and Records Administration, Office of Records Administration (NI), Washington, DC 20408 and the General Services Administration, Regulations Branch (KMPR), Washington, DC 20405, of the assignment.

(b) Integrating the management of electronic records with other records and information resources management programs of the agency by requiring close coordination between the office designated in § 1234.10(a) and the office assigned overall records management responsibility in accordance with § 1220.40 of this chapter, if the two are different.

(c) Issuing a directive establishing program objectives, responsibilities, and authorities and disseminating the directive throughout the agency as appropriate.

(d) Establishing procedures for the participation of records management officials in the approval review process for new electronic records systems or enhancements to existing systems.

(e) Ensuring that adequate training is provided for users of electronic records systems in the operation, care, and handling of all systems equipment and media.

(f) Developing and maintaining a complete and accurate inventory of all electronic records systems. The inventory should include: Name and control number of records system and any implementing directives; purpose(s) and uses of the system; programs and program offices supported by the system; system manager; information content of the system including major outputs; software environment; date of first input; location of documentation needed to read and understand the information in the system; identification of restricted information; authorized disposition of the electronic records as determined by General Records Schedule (GRS) 20, Electronic Records, GRS 23, Records Common to Most Offices Within Agencies, or a NARA-approved records schedule; the disposition authority citation; and the location of any storage media containing permanent or unscheduled records.

(g) Specifying the location, manner, and media in which records will be maintained to meet operational and archival requirements.

(h) Developing and securing NARA approval of records disposition schedules, and ensuring implementation of their provisions.

(i) Issuing internal agency procedures for system documentation of software and electronic records including application programs, functional and operational flowcharts, and output format plans for all applications; record layouts and codebooks and basic machine run instructions (run books) for batch processing applications; and data dictionaries and software user guides for data base management systems.

(j) Specifying the method of implementing controls over national security-classified, sensitive, proprietary, and Privacy Act records stored and used electronically.

(k) Establishing procedures to ensure that contractors deliver to the agency those data files, data bases, and related documentation that are necessary to provide adequate and proper documentation of agency functions, policies and activities, and to protect legal and financial rights of the Government and of persons directly affected by the agency's activities (see Part 1222 of this chapter).

(l) Ensuring compliance with applicable governmentwide policies, procedures, and standards such as those issued by the Office of Management and Budget, the General Services Administration, the National Archives and Records Administration, and the National Institute of Standards and Technology.

(m) Reviewing electronic records systems periodically for conformance to established agency procedures, standards, and policies as part of the periodic reviews required by 44 U.S.C. 3506. The review should determine if the data files and data bases have been properly identified and described, and whether the schedule descriptions and retention periods reflect the current informational content and use. If not, or if substantive changes have been made in the structure, design, codes, purposes, or uses of the system, submit an SF 115, Request for Records Disposition Authority, to NARA.

Subpart C—Standards for the Creation, Preservation, and Disposition of Electronic Records

§ 1234.20 Creation and use of data bases and numeric data files.

Agencies shall maintain adequate and up-to-date technical and informational documentation for data files and data bases. Minimum documentation required is a narrative description of the system; physical characteristics; recording mode information, including the coding structure (code books); recording system information; and a record layout that describes each field including its name, size, starting or relative position, and a description of the form of the data (such as alphabetic, zoned decimal, packed decimal, or numeric), or a data dictionary or the equivalent information associated with a data base management system including a description of the relations between data elements in relational data bases.

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§ 1234.22 Creation and use of text information in an office automation system.

(a) In office automation systems which maintain the official file copy of documents on electronic media, the software shall meet the following minimum requirements:

(1) Provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system;

(2) Provide an appropriate level of security to ensure integrity of the documents;

(3) Provide a standard interchange format when necessary to permit the exchange of documents on electronic media between computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another; and

(4) Accommodate, when necessary, the requirements for transporting permanent records to NARA (see § 1228.188 of this chapter).

(b) Before a document is created electronically on office automation systems which will maintain the official file copy on electronic media, each document shall be identified sufficiently to enable authorized personnel to retrieve, protect and dispose of documents in the system. Appropriate identifying information for each document maintained on the electronic media may include: office of origin, file code, key words for retrieval, addressee (if any), signator, author, date, authorized disposition (coded or otherwise), and security classification (if applicable). Agencies shall ensure that records maintained in such systems can be correlated with related records on paper, microform, or other media.

§ 1234.24 Judicial use of electronic records.

Electronic records may be admitted in evidence to Federal courts for use in court proceedings (Federal Rules of Evidence 803(6)) if trustworthiness is established by thoroughly documenting the recordkeeping system's operation and the controls imposed upon it. Agencies should implement the following procedures to enhance the legal admissability of electronic records.

(a) Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) Substantiate that security procedures prevent unauthorized modification of a record and ensure system protection against such problems as power interruptions.

(c) If a vital record is kept in electronic form, document the vital records procedures, including a description of the informational content of the various generations, i.e., the original and vital record copies.

(d) Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage medium, and the NARA-approved disposition of all records.

(e) Coordinate all of the above with legal counsel and senior IRM and records management staff.

§ 1234.26 Security of electronic records.

Agencies shall implement and maintain an effective records security program which incorporates the following:

(a) Ensures that only authorized personnel have access to electronic records.

(b) Provides for adequate backup and recovery of records to protect against information loss.

(c) Ensures that appropriate agency personnel are trained to safeguard sensitive or classified electronic records.

(d) Prevents the unauthorized alteration or erasure of electronic records.

(e) Ensures that electronic records security is included in computer systems security plan prepared pursuant to the Computer Security Act of 1987 (40 U.S.C. 759 note).

§ 1234.28 Selection and maintenance of electronic records storage media.

(a) Agencies shall select appropriate media and systems for storing agency records throughout their life cycle, which meet the following requirements:

(1) Permit easy retrieval in a timely fashion;

(2) Retain the records in a usable format until their authorized disposition date; and

(3) When appropriate, meet requirements for transferring permanent records to NARA (see § 1228.188 of this chapter).

(b) The following factors shall be considered before selecting a storage medium or converting from one medium to another:

(1) The authorized life of the records, as determined during the scheduling process;

(2) The maintenance necessary to retain the records;

(3) The cost of storing and retrieving the records;

(4) The records density;

(5) The access time to retrieve stored records;

(6) The portability of the medium (that is, selecting a medium that will run on equipment offered by multiple manufacturers); and

(7) Whether the medium meets the current applicable Federal Information Processing Standards.

(c) Agencies shall prohibit the use of floppy disks for the exclusive long-term storage of permanent or unscheduled electronic records.

(d) Agencies shall ensure that all authorized users can identify and retrieve the information stored on diskettes, removable disks, or tapes by establishing or adopting procedures for external labeling.

(e) Agencies shall ensure that information is not lost because of changing technology or deterioration by converting storage media to provide compatability with the agency's current hardware and software. Before conversion to a different medium, agencies must determine that the authorized disposition of the electronic records can be implemented after conversion.

(f) Agencies shall back up electronic records on a regular basis to safeguard against the loss of information due to equipment malfunctions or human error. Duplicate copies of permanent or unscheduled records shall be maintained at a separate location.

(g) Maintenance of magnetic computer tape.

(1) Agencies shall test magnetic computer tapes no more than 6 months perior to using them to store electronic records that are unscheduled or scheduled for permanent retention. This test should verify that the tape is free of permanent errors and in compliance with National Institute of Standards and Technology or industry standards.

(2) Agencies shall maintain the storage and test areas for permanent and unscheduled computer magnetic tapes at the following temperatures and relative humidities:

Constant temperature—62 to 68° F.
Constant relative humidity—35% to 45%

(3) Agencies shall rewind under controlled tension all tapes containing unscheduled and permanent records every 3½ years.

(4) Agencies shall annually read a 3-percent statistical sample of all permanent and unscheduled reels of magnetic computer tape to identify any loss of data and to discover and correct the causes of data loss. Tapes with 10 or more errors shall be replaced and, when possible, lost data shall be restored. All other tapes which might have been affected by the same cause (i.e. poor

quality tape, hugh usage, poor environment, improper handling) shall be read and corrected as appropriate.

(5) Agencies shall copy permanent or unscheduled data on magnetic tapes before the tapes are 10 years old onto tested and verified new tapes.

(6) External labels (or the equivalent automated tape management system) for magnetic tapes used to store permanent or unscheduled electronic records shall include the following information: Name of the organizational unit responsible for the data; system and file title(s); dates of creation; dates of coverage; the recording density; type of internal labels; volume serial number, if, applicable; number of tracks; character code/software dependency; information about block size; and reel sequence number, if the file is part of a multi-reel set. For numeric data files, the external label should include record format and logical record length, if applicable; data set name(s) and sequence, if applicable; and number of records for each data set.

(7) Agencies shall prohibit smoking and eating in magnetic computer tape storage libraries and test or evaluation areas that contain permanent or unscheduled records.

(h) Maintenance of direct access storage devices.

(1) Agencies shall issue written procedures for the care and handling of direct access storage devices which draw upon the recommendations of the manufacturers.

(2) External labels for diskettes or removable disks used when processing or temporarily storing permanent or unscheduled records shall include the following information: name of the organizational unit responsible for the records, descriptive title of the contents, dates of creation, and identification of the software and hardware used.

§ 1234.30 Retention of electronic records.

Agencies shall establish policies and procedures to ensure that electronic records and their documentation are retained as long as needed by the Government. These retention procedures shall include provisions for:

(a) Scheduling the disposition of all electronic records, as well as related documentation and indexes, by applying GRS 20 or GRS 23 as appropriate or submitting an SF 115, Request for Records Disposition Authority, to NARAZ (see Part 1228 of this chapter). Electronic records systems, including those operated for the Government by a contractor, shall be scheduled as soon as possible but no later than one year after their implementation.

(b) Transferring a copy of the electronic records and any related documentation and indexes to the National Archives at the time specified in the records disposition schedule in accordance with instructions found in § 1228.188 of this chapter. Transfer may take place at an earlier date if convenient for both the agency and the National Archives and Records Administration.

(c) Establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records throughout their authorized life cycle (see § 1234.28).

§ 1234.32 Destruction of electronic records.

Electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States. At a minimum each agency shall ensure that:

(a) Electronic records scheduled for destruction are disposed of in a manner that ensures protection of any sensitive, proprietary, or national security information.

(b) Magnetic recording media previously used for electronic records containing sensitive, proprietary, or national security information are not reused if the previously recorded information can be compromised by reuse in any way.

Dated: November 8, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-27651 Filed 12-2-88; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[AD-FRL-3486-2; Docket No. A-88-04]

Fourth Conference on Air Quality Modeling; Extension of Public Comment Period on New Air Quality Modeling Techniques

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA published information on new ambient air quality dispersion modeling techniques and other modeling related matters on August 23, 1988 (53 FR 32081-32084), and held a public conference on October 12 and 13, 1988, under section 320 of the Clean Air Act. The purpose of the conference was to advise the public of these new modeling techniques and to solicit public comment to guide EPA in its consideration of further revisions to the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987). The new modeling techniques and other items are fully discussed in the August 23, 1988, **Federal Register** notice mentioned above and will not be discussed in today's notice. The deadline for written public comments was set for December 15, 1988. Documents related to the modeling items are contained in Central Docket No. A-88-04. Information pertaining to the docket can be found in the Address Section of this notice.

In response to requests from various interested persons for additional time to examine and review documents contained in the docket and to assure that the public has ample opportunity to fully comment, EPA is today extending the time period in which to submit comments to February 13, 1989.

DATE: The new deadline for submitting written public comments is February 13, 1989.

ADDRESSES: Written comments should continue to be submitted (duplicate copies are preferred) to: Central Docket Section (LE-131), Attention: Docket A-88-04, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Docket No. A-88-04 is located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC. The docket may be inspected at the above address between 8:00 a.m. and 12:00 p.m. and 1:00 p.m. and 3:30 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart (919) 541-5562 or Sharon Reinders (919) 541-5684.

Date: November 28, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-27895 Filed 12-2-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3483-4]

Approval and Promulgation of Air Quality Implementation Plans; Disapproval of an Exemption to Louisiana Air Quality Regulation 22.8 for the Sid Richardson Carbon and Gasoline Co. Carbon Black Plant in Addis, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to disapprove a revision to the Louisiana State Implementation Plan (SIP) which would exempt the Sid Richardson Carbon and Gasoline Company (Sid Richardson), Addis, West Baton Rouge Parish, Louisiana, plant from further controls on acetylene as is now required by the Louisiana Air Quality Regulation (LAQR) 22.8.

EPA proposes to disapprove this SIP revision for the following reasons: (1) The revision involves a major volatile organic compound (VOC) source located in an urban ozone nonattainment area that must meet the standard of Reasonably Available Control Technology (RACT); (2) the revision request does not contain adequate support that the emission limitations now in the Louisiana SIP for this source are *not* RACT; (3) the Agency's review of the company's RACT analysis report shows that alternative controls are economically and technically feasible; and (4) EPA considers acetylene to be a reactive compound that has not been excluded from SIP demonstrations and thus, must be controlled.

EFFECTIVE DATE: Comments must be received on or before January 4, 1989.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs at the address below: U.S. Environmental Protection Agency, Region VI, Air Programs Branch, 1445 Ross Avenue, 6T–AN, Dallas, Texas 75202–2733.

Copies of the documents relevant to this proposed action may be examined at the location above or at the following location during normal business hours: Louisiana Department of Environmental Quality, Air Quality Division, Land and Resources Building, 625 N. 4th. Street, Baton Rouge, Louisiana 70804.

FOR FURTHER INFORMATION CONTACT: Barbara Durso at (214) 655–7214, or FTS 255–7214.

SUPPLEMENTARY INFORMATION: On April 4, 1979, at 44 FR 20372, EPA published its policy for approving 1979 SIP revisions for nonattainment areas under Part D of the Clean Air Act. One of the provisions required the States to adopt regulations that represent RACT for stationary sources covered by an EPA Control Technology Guidance (CTG) document and for any other major source as needed to assure reasonable further progress (RFP) and attainment. On February 14, 1980, at 45 FR 9903, EPA approved the Louisiana Ozone Attainment Plan and incorporated it into the SIP. As part of the attainment plan, Louisiana adopted regulation 22.8, the waste gas stream regulation. This rule requires sources to combust waste gas streams containing nonhalogenated compounds at 1300° Fahrenheit for 0.3 seconds or greater in a direct-flame afterburner or an equally effective device and applies across the State to all sources regardless of size. A company can seek an exemption if it can demonstrate that it emits less than 100 tons per year (tpy), and that it either cannot support the combustion without it using auxiliary fuel or it cannot practically or safely accomplish the combustion without causing economic hardship. EPA must approve any such exemption before the SIP can be amended federally.

The Baton Rouge nonattainment area was to have achieved the National Ambient Air Quality Standard for ozone by December 31, 1982. Both East and West Baton Rouge parishes continued to exceed the standard after the deadline, and on February 14, 1984, EPA requested a revision to the ozone SIP for those parishes.

Although other air quality control regions (AQCRs) in Louisiana were also not in attainment by that date, EPA excluded rural areas from the SIP calls, because the Agency believed that attainment in urban areas would assure reasonable further progress (RFP) and attainment in those rural areas.

EPA's post '82 SIP policy requires RACT for stationary sources in urbanized areas for which EPA has issued a CTG document, and it requires control of additional sources where necessary to achieve RFP in the area of the SIP call. To satisfactorily demonstrate RFP, a SIP must include among other things RACT for all major source categories besides those that were covered by a CTG document. (See 44 FR 20377.) Because Sid Richardson is a major non-CTG source located in the metropolitan Baton Rouge AQCR, the company must implement RACT. EPA holds that LAQR 22.8(a) is RACT for Sid Richardson and that control of acetylene emissions is required.

The State of Louisiana argues, on the contrary, that the proposed SIP revision is acceptable for several reasons. First, available data show that acetylene has low photochemical reactivity and toxicity. Second, the ozone modeling that includes the demonstration of attainment in the Baton Rouge area did not consider controlling acetylene emissions from the Sid Richardson Addis plant. Third, incineration of the tail gas would require auxiliary fuel, extensive capital cost and significantly increased operating costs.

In addition to the arguments put forth by the State in its official submittal to EPA, Sid Richardson prepared a RACT analysis, which was sent to the Louisiana Department of Environmental Quality (LDEQ) in a letter dated December 12, 1986. The State passed along a copy of this report to EPA for informal consideration. Later, in a letter dated March 12, 1987, Sid Richardson sent LDEQ two other documents to supplement its RACT analysis. Finally, the State submitted an updated SIP revision on May 29, 1987, that clarified some language and also incorporated the company's December RACT analysis and the March amendments. Meanwhile, Sid Richardson identified some of the information contained in its RACT analysis as "confidential" in a letter to EPA on May 29, 1987. EPA has reviewed this information and the company's support for its claims of confidentiality and agrees that this information cannot be released for public inspection. This information includes, among other things, pre-tax profit margin, product manufacturing costs, and fuel costs for a defunct flare at the facility. The information in the public docket includes the following: the Sid Richardson RACT analysis, the Agency's initial review of that document, the Agency's revised review of that document, and the EPA technical evaluation and any other relevant document or information that has not been declared confidential. EPA Review

A. Reactivity of Acetylene

In response to the State's claim that data show acetylene to have low reactivity, EPA counters that because the existing, published data show the reactivity of acetylene to range from 0.6 to 3 times that of ethane (EPA's standard for atmospheric photochemical reactivity), the best statement on the matter is that the data are inconclusive. Recent studies show acetylene to be 2.73 times more reactive than ethane, which contradicts previously published evidence that acetylene is only 0.6 times more reactive than ethane. Since 1977, EPA's policy has been that all VOCs are to be included in SIP control strategies except those which have been listed specifically as exempt in the **Federal Register**. So far, four compounds were listed as exempt on July 8, 1977, at 42 FR 35314; another was listed as exempt on June 4, 1979, at 44 FR 32042; and six freon compounds were listed on July 22, 1980, at 45 FR 48941. EPA exempted these eleven chemicals from consideration, because scientists have determined that the compounds have "negligible" photochemical reactivity.

Acetylene is not an exempt agent, nor has it been proposed for exemption.

B. Sid Richardson's Present Control

The Sid Richardson Addis plant vents about sixty percent of its tail gases through the primary filter stacks. The emissions from these stacks contain an average of 0.21 percent acetylene, or slightly more than 1500 tpy. The actual composition of these emissions varies with the grade of carbon black being produced.

The tail gases not emitted from the primary filter stacks, approximately forty percent, are routed to the pellet dryers as low BTU fuel. The emissions from the dryer stacks do not contain acetylene.

C. Louisiana's Modeling Support

The State contends that its air quality modeling supports the position that acetylene emissions from Sid Richardson will have no adverse effect upon attainment of the ozone standard in the Baton Rouge area. The modeling submitted by the State in support of its post '82 SIP demonstrates that a twenty-one percent VOC reduction is necessary in the Baton Rouge area to attain the standard by December 31, 1987.

In a letter dated January 30, 1987, the State discussed supplemental ozone modeling performed by LDEQ using the OZIPM–2 model for each day that could have any impact on the ozone SIP. LDEQ determined that the parcel of air passed over the plant on three days and adjusted the value for the VOC emissions put into the calculations to reflect the plant's acetylene emissions in accordance with the carbon bond III photochemical mechanism used in the model. The results showed that none of the VOC requirement changed and the level of reduction remained at twenty-one percent. EPA is not surprised by the State's finding, because the model used is an EKMA model that is not sufficiently sensitive to small changes in emissions and would not produce significant changes in ambient ozone levels or the resulting control target. Therefore, EPA rejects the State's analysis of the ozone modeling results.

D. RACT Analysis

As mentioned above, EPA has reviewed Sid Richardson's RACT analysis submitted to LDEQ and disagrees with the conclusion that any of the three methods of control presented in the document will cause economic hardship. Sid Richardson evaluated three alternatives for control of acetylene emissions: flaring, thermal combustion, and cogeneration. The company concludes that none of the alternatives is economically feasible. However, EPA's analysis shows that the installation of any of these three options will not cause an adverse economic impact. Indeed, installation of a cogeneration unit with the use of the tail gas emissions as fuel in steam boilers—which according to EPA's evaluation is the most capital intensive option—will generate savings.

1. Economic Review

EPA prepared its economic analysis with financial estimates that would be directly comparable to information prepared for NSPS and CTG analyses over the past ten to fifteen years for various industries. Therefore, EPA used constant 1986 dollars and a 5% discount rate without tax consideration rather than annual inflation adjusted dollars and a 10.3% discount rate with tax consideration. Sid Richardson based its economic review upon standard accounting tax, depreciation, and debt retirement. The company believes that its method is superior for a site specific RACT analysis, because it uses factors that it asserts are what businesses actually consider when determining whether or not to spend capital dollars on a long-term project.

EPA, on the other hand, maintains that tax effects and inflation are two factors which produce the greatest distortions among industries when preparing cost analyses. EPA's approach to regulate these distortions is to ignore tax effects and to use constant dollars to adjust for inflation. The result of ignoring tax effects is to actually overstate the cost of the project. Finally, EPA's decision to use constant 1986 dollars and a discount rate of five percent produces essentially the same results as Sid Richardson's use of five percent inflation and a ten and one-half percent discount rate (i.e., 5.5% real discount rate for Sid Richardson's calculations versus 5% discount rate for EPA's figures).

Another major disagreement between the two economic analyses concerns the estimation of the useful life of the hardware for the cogeneration unit. EPA considers twenty years as a reasonable estimate for calculating depreciation; whereas, Sid Richardson contends the unit will have a much shorter life of five to ten years. The company argues that EPA agreed to the ten-year expected life for the flares and for the combustor and that similar consideration should be given to the cogeneration facility. However, EPA stands by its decision to use the depreciation values published by the Internal Revenue Service in its publication 534, "Depreciation," for Electric Utility Combustion Turbine Production Plant and considers the equipment lifespan given in this publication to be generally acceptable. EPA believes that the company would have to provide more documentation to support an accelerated schedule for depreciation.

In general EPA finds little support for economic infeasibility or adverse economic impact. EPA concludes that the cost per ton of VOC control is reasonable and is lower than for many other regulated sources. Furthermore, EPA finds that each of the options for control of acetylene seems economically viable, and, in fact, the cogeneration control option would result in a net savings.

2. Technical Review

a. Flares

In its RACT analysis, Sid Richardson claims that installation of flare stacks could not comply with the combustion parameters of 1300 °F for 0.3 seconds as specified in LAQR 22.8. EPA does not fully agree with this statement, because while flares may not comply with such parameters, the efficiency of flares is measured by other criteria, e.g., BTU content of gas, gas velocity and residence time. Generally, flares have an efficiency of about 98% or greater combustion of hydrocarbons.

Given this estimation of efficiency, installation of flares for control of acetylene emissions will burn more waste gas than the 41% now combusted at the Addis plant. Sid Richardson believes that the installation of flares will "pose a significant hazard to plant personnel and process equipment." However, certain factors regarding the design and the location of the flare need to be taken into account when determining the potential hazard. Sid Richardson does not address issues like these in its RACT analysis.

b. Combustors

Sid Richardson's second alternative in the RACT analysis for control of acetylene emissions is the installation of a thermal combustor. Basically, a combustor is a furnace especially designed to burn waste gases. For combustion to take place, additional fuel of approximately 10% enrichment with natural gas and air must be exposed to a temperature high enough to oxidize the VOCs. With this alternative, as with the previously discussed installation of flares, the combustion products are released to the atmosphere. This alternative is energy consumptive, yet, at the same time, it generates heat that may be of some use to another process.

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Sid Richardson alleges that the plant has no use for the heat generated by the combustor, and it also asserts that extreme care must be taken to control the tail gas flow from the combustor. Excess suction on the system, for example, could collapse the primary filters or pull in atmospheric air that could then cause an explosion anywhere in the collection and combustion system. While EPA agrees that there are safety concerns associated with a combustor, the Agency believes that this means is technically feasible with proper engineering safeguards to serve as a control on acetylene emissions.

c. Cogeneration

Sid Richardson's third alternative is cogeneration. This alternative does not consume as much energy as a combustor and can produce electricity. Also, this alternative does not pose a hazard to plant personnel or process equipment. The installation of a cogeneration unit for the purpose of controlling acetylene emissions is economically and technically feasible.

The company claims that alternative is impractical, because the electricity is of no use to the local consumer power company. EPA notes that Sid Richardson does not state if the energy is of use within its own plant. EPA believes that the energy produced could be useful to the local power company given a rate increase.

E. Major Sources in Nonattainment Areas

The Sid Richardson Addis plant emits 1,514 tons per year acetylene and thus qualifies as a major source. The plant is located in West Baton Rouge Parish, an urban ozone nonattainment area under a SIP call for failure to meet the 1982 ozone attainment deadline. EPA's policy requires RACT for all sources covered by a CTG document and for all other major sources in any ozone nonattainment area that failed to meet the December 31, 1982, deadline. Because of Sid Richardson's size and location, the company must control its acetylene emissions to the RACT standard. At this time, the only applicable RACT control in the existing SIP covering vent gas emissions is LAQR 22.8; therefore, an exemption from control limits for emission of acetyelene cannot be approved. Of course, LDEQ may propose to EPA an alternative method of control equivalent to RACT.

Proposed Action

EPA proposes to disapprove the exemption of further control of acetylene emissions for the Sid Richardson Carbon and Gasoline Company, Addis, Louisiana, for the following reasons:

(1) The source is located in an urban area currently designated as nonattainment for ozone and must be covered by a SIP that requires RACT for all major sources;

(2) The revision request does not adequately support its argument that the emission limitations already in the Louisiana SIP for this source are not RACT;

(3) The State has not demonstrated to EPA that Regulation 22.8 of the LAQR for control of VOC from tail gas emissions cannot be technically or economically met; and

(4) Even though acetylene may have a low reactivity compared to certain other VOCs, EPA still considers it to be a reactive chemical and has not specifically exempted it from SIP demonstrations. Therefore, acetylene emissions must be controlled.

Pursuant to the provision of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities, because it affects only one source and imposes no new requirements on the source.

Under Executive Order 12291, this action is not "MAJOR." EPA submitted this proposed rulemaking action to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: January 28, 1988.

[**Editorial Note:** This document was received at the Office of the **Federal Register** on November 23, 1988.]

Robert E. Layton, Jr.,

Regional Administrator (6A).

[FR Doc. 88–27456 Filed 12–2–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL 3486–1]

Approval and Promulgation of State Implementation Plans; Utah; Stack Height Analyses and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: EPA is today proposing to approve the Kennecott stack height demonstration analyses as submitted in the Utah Stack Height State Implementation Plan (SIP) on May 2, 1986, with subsequent submittals on October 6, 1986, December 3, 1986, November 13, 1987, and May 17, 1988. The effect of this action is to propose approval of the stack height credits of the Kennecott Minerals Company smelter in Magna, Utah, with respect to EPA's revised stack height regulations.

The revised stack height regulations, promulgated on July 8, 1985, 50 FR 27892, required review of stack height credits in each State's implementation plan for consistency with the regulations. Today's action addresses only the Kennecott stack height analyses which were submitted as part of the Utah Stack Height SIP. EPA is addressing all the other parts of the Utah Stack Height SIP in a separate rulemaking (proposed approval, February 3, 1988, 53 FR 3052).

Approval of the Kennecott stack height credits would satisfy the condition stated in EPA's prior approval of the Kennecott portion of the Utah SO_2 SIP (February 20, 1985, 50 FR 7056) and thereby fully approve the Utah SO_2 SIP.

DATES: Comments must be received on or before January 4, 1989.

ADDRESS: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405.

Copies of the State's submittals are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 293–1762, FTS 564–1762.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height

regulations, while upholding other portions. As a result, EPA promulgated revisions to the stack height regulations on July 8, 1985 (50 FR 27892) [1]. The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height credit.

Pursuant to section 406(d)(2) of the CAA, each state was required to (1) review and revise, as necessary, its SIP to include provisions that limit stack height credit and other dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits greater than GEP, or any other dispersion techniques. For any limitations so affected, each state was to prepare revised limitations consistent with the revised stack height regulation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, each state was to prepare an inventory of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission level provision in the regulations. These sources were then subjected to detailed review for conformance with the revised federal regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Subsequent to the July 8, 1985, promulgation, the stack height regulations were again challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations, for the most part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

However, none of these provisions is at issue here.

B. Regulatory Requirement for Stacks Greater Than GEP

GEP has been established by the regulations to be the greater of: (1) 65 meters, (2) the height derived through application of one of two formulas which base GEP on the dimensions of nearby buildings, or (3) the height demonstrated through a field study or fluid modeling demonstration to be necessary to avoid excessive concentrations of any air pollutant due to downwash, eddies, or wakes caused by the source itself or nearby buildings or terrain obstacles (40 CFR 51.100(ii). where EPA or a State finds that a source emission limit is affected by dispersion from a stack in excess of GEP, the State must then model to establish an emission limit which will provide for attainment of the national ambient air quality standards (NASAQS) when stack height credit is restricted to GEP.

The term "excessive concentration" is defined in the regulations to be a 40 percent increase in concentrations of any air pollutant due to downwash which also results in an exceedance of an applicable NAAQS or prevention of significant deterioration (PSD) increment. In order to demonstrate that stack height in excess of the GEP formulas is needed, a source owner must shop through the use of fluid modeling that, when meeting emission rates equivalent to the new source performance standard applicable to the source category, excessive concentrations would result from the use of a shorter stack height. However, a source may demonstrate that the NSPS emission limit is infeasible, establishing an alternative emission limit that represents the most stringent degree of emissions control feasible for the particular source. In making this demonstration, source owners may generally rely on EPA's Guidelines for the Determination of Best Available Retrofit Technology for Coal-Fired Power Plants and Other Existing Stationary Facilities, EPA 450/3–80–009b, November 1980 (BART Guideline) [2].

C. The Utah Stack Height SIP

The Utah Stack Height SIP was submitted with a letter dated May 2, 1986, by Governor Norman H. Bangerter. The submittal included regulations to address (1) GEP stack height credit and dispersion techniques, (2) a new Section 17 of the SIP that lists all existing stacks in Utah greater than 65 meters, and (3) a technical support document for section 17G of the SIP. The Kennecott Magna stack analyses were part of this submittal. Subsequent submittals to support the Kennecott analyses were received in letters dated October 6, 1986, December 3, 1986, November 13, 1987, and May 17, 1988.

The Kennecott smelter stack height credit is a significant comonent of the Utah SO_2 emission limits conditionally approved on February 20, 1985. Briefly, a condition in that approval required the State to determine whether the 1215 ft. stack would be GEP once the revised stack height regulations were promulgated. If not, the emission limit would then be revised as necessary.

II. Stack Height Evaluation

A. Applicability of the NSPS Regulation

The federal NSPS regulation for primary copper smelters applies to any such facility that commences construction or modification after October 16, 1974 [3] (42 FR 37937, July 25, 1977 and 40 CFR 60.160). Modification generally means any physical or operational change which results in an increase in the emission rate to the atmosphere. NSPS requires, among other things, control of the strong gas streams with a double contact acid plant (i.e., a stack gas of 650 ppm or less SO_2, based on a 6–hour average [3, 4] (EPA 450/3–83–018a)).

The Kennecott Magna smelter expansion/modification began in the early 1970s, with a commitment to the 1215 ft. stack in 1973 [5] and completion of the project in 1977 [6, 7]. The modification of the acid plant system resulted in an increase from 60% sulfur capture to 86%; approximately a 65% reduction of sulfur emission [5, 6]. Based on the above information, EPA concluded that the 1970s Kennecott expansion/modification did not subject the smelter to NSPS requirements.[8]

B. Stack Height Analyses

The Kennecott stack height analyses were undertaken to comply with the July 8, 1985 stack height regulation as well as the condition specified in the approval of the Utah SO_2 SIP. The reader should refer to the February 20, 1985, final approval (50 FR 7056) and March 23, 1984, proposed approval (49 FR 10946) **Federal Register**,[9, 10] actions for additional information on the Utah SO_2 SIP.

Kennecott originally had two 400 ft. stacks (grandfathered stack heights) from which SO_2 emissions from the smelter were vented. The 1970s modification/expansion included the replacement of the 400 ft. stacks with a single 1215 ft. stack. The formula height (H+1.5L), considering the nearby buildings, is 212.5 ft. Therefore, to

demonstrate that the 1215 ft. stack is GEP, Kennecott was required to perform a fluid modeling or a field study.

There are two basic parts of the Kennecott analyses: the GEP demonstration and BART analysis. The GEP demonstration consists of three subparts: The fluid modeling protocol, the fluid modeling results, and an evaluation of the fluid modeling results with respect to the stack height regulations.

The BART analysis is peformed if the source contends that the NSPS emission limits are infeasible. Relevant factors for this analysis include: High cost-effectiveness ratio, excessive local community impact, and excessive plant impact, and technology infeasibility.

These issues, and the responses to these issues, are discussed below.

1. GEP Determination

a. *Fluid Modeling Protocol.* As stated above (under Regulatory History), the purpose of the fluid modeling study,[11] for determining GEP stack height, is to demonstrate the stack height needed to avoid excessive concentrations caused by the effects from nearby structures or terrain obstacles. The construction of a fluid model requires that the flow in the test facility (e.g., wind tunnel) be appropriately fixed and, along with the surface roughness, terrain, and/or buildings, scaled to accurately reproduce atmospheric phenomena. Wind tunnel modeling is ideally suited for this type of determination, since the model structure or terrain feature being studied can be easily removed to assess its effect. More importantly, a properly designed wind tunnel study can account for the aerodynamically-induced influences affecting the dispersion of the stack effluent. The stack and plume from the source are also similarly scaled.

Upon promulgation of the July 8, 1985 rules, Kennecott initiated efforts to conduct a fluid modeling study. A meeting between Kennecott and the State of Utah was held on September 17, 1985, to discuss the fluid modeling study protocol. EPA attended this meeting and identified requirements regarding stack parameters, number of concentration profiles and sampling positions. The need for modeling fugitive emissions for the purpose of providing estimates of background concentrations was also identified by EPA. Kennecott then made revisions to the protocol to address these issues. EPA evaluated the final GEP analyses and determined that the study followed the proposed protocol.[12]

b. *Fluid Modeling Results.* A two-part test must be met in justifying the excessive concentration definition. That is, the fluid model must show that the downwash effect of nearby terrain on the 1215 ft. stack height results in a 40% increase in the ground maximum level concentrations compared to the maximum concentration without the nearby terrain. The fluid model must also show that the increase of these concentrations will cause an exceedance of the NAAQS or applicable PSD increment.

The Kennecott fluid model results are documented in the Good Engineering Practice Stack Height Demonstration report dated February 1, 1986. The report discusses the excessive concentration caused by the nearby terrain, the Oquirrh Mountains, which rise 4,720 feet above the base of the stack. In documenting an exceedance of the SO_2 NAAQS, the actual emissions during 1982 were used, in conjunction with a calculated wind persistence frequency for the conditions used in the wind tunnel. (1982 constituted a year in which essentially full operation occurred and measured stack emission rates are available.)

Two critical issues which were raised concerning the adequacy of the fluid model were: The emission rates used, and the terrain amplification factor (TAF). Kennecott had stated that the NSPS presumptive rate was infeasible, and proceeded to use the emission rate approved in the SO_2 SIP of February 20, 1985 (50 FR 7056). the acceptability of this approach was questioned by EPA during the early discussion of the fluid modeling protocol. Discussion of the BART review is provided below.

TAF is a relatively recent documented concept, useful for expressing how the enhanced atmospheric turbulence caused by a terrain obstacle affects emissions released at various heights above the ground near the obstacle. Within the terrain wake region, the value of the TAF will generally be greater than one indicating that the concentration will be higher with the presence of the terrain feature than the concentration in flat terrain. For a few simple types of terrain obstacle, TAF values based on wind tunnel studies have been published.

The issue relating to TAF was raised during EPA's review of the Kennecott report of February 1, 1986. For this study, it appears that the TAF values decrease at certain levels below stack top. There is a possibility, therefore, that the values less that the threshold 1.4 ratio may occur at a height less than those tested in the wind tunnel.

In a response dated November 13, 1987, Kennecott provided discussion on the TAF findings by stating its approach to the fluid modeling study. That is, fluid modeling beginning at the GEP formula height was not done, rather, it followed EPA guidance in starting at actual stack height.

As stated earlier, formula height based on a nearby building is 212.5 ft.; the grandfathered stack height is 400 ft. Since the study was to demonstrate whether the existing stack height met the 40% increase in ground level criterion, Kennecott, therefore, with the State of Utah and EPA participation, decided to initiate the fluid modeling for a stack equivalent to the existing 1215 ft. (370.4m) stack, and subsequently examine stack heights above (431m and 492m) and below (248m) the existing stack until the 40% excess concentration was defined. The TAF values for the Utah stack apparently exhibit an envelope downwind from the terrain obstacle not entirely anticipated in EPA's 1985 guidance. The TAFs documented by Kennecott define a portion of the lower part of the envelope for the specific location of the stack.

From the modeling results, the existing stack height of 370.4m has been shown to meet the 40% criterion due to terrain effects; and, an exceedance of the NAAQS at Multi-point Rollback (MPR) emission rates.[13] This stack height evaluation satisfies the excessive concentration criteria in EPA's regulations if MPR reflects the proper emission rates. (Discussion of the MPR emission rates for Kennecott can be found in 49 FR 10948, March 12, 1983, proposed rulemaking.) After review, EPA concluded that Kennecott's analyses are acceptable since Kennecott performed a fluid modeling study consistent with existing guidance and the study was approved by EPA.

2. BART Analyses

a. BART Concept. Determining BART for stack height submittals necessarily must be a case-by-case demonstration. The basic conclusion which must be reached to justify an emission limit different than the NSPS is that the presumptive NSPS limitation cannot feasibly be met by the individual facility.[14]

Most of the relevant factors for a feasibility determination will fall into one or more of four categories as discussed in detail below.

High Cost Effectiveness Ratios. In order to assess cost effectiveness of compliance options, a submittal should document the incremental number of tons of emission reduction expected for each level of compliance stringency, and the incremental cost to achieve that level. This incremental cost should be put into context by comparing it to

incremental compliance costs incurred by new sources.

In assessing compliance costs which involve control devices, the new control equipment's useful life should be consistent with that used by EPA in assessing the NSPS. An exception to this is in evaluating a facility which can document that it has a limited remaining useful life. In this case, the amortization period for the equipment should be the same as that of the facility.

The basis used to estimate costs should be clearly delineated and documented. For some sources, the costs should be consistent with the appropriate NSPS background information document, adjusted for plant-specific circumstances, or should be based on plant-specific engineering analysis. For sources proposing process changes, the costs should be net of any other benefits (e.g., additional saleable product, reduced maintenance costs, etc.). Because the annualization of capital costs can be somewhat sensitive to the discount rate chosen, EPA would recommend that calculations be made using real discount rates of 5, 7, and 10%. Since the real discount rate is in constant-year dollars, there is no need to incorporate any inflation estimates.

Excessive Employment/Community Impacts. This portion of an impact assessment will necessarily be less quantitative than other sections. In essence, it should look at the impacts of the changes necessary for compliance in the context of people external to the firm. For instance, jobs lost due to the closing of the facility, impacts on major customers of price increases to the extent they will be passed on to these customers, or other significant impacts, should be documented.

Excessive Plant Impacts. For a source in a competitive market, any unrecovered costs incurred will adversely impact the profitability of a facility. Reduced profitability is not a sufficient basis by itself to judge adverse plant impacts. It is important to place these impacts on profitability in context, such as demonstration of the impact on the viability of the facility. While closure is not the only impact contemplated, the impact needs to be tangible and significant. If the plant will suffer other impacts short of closure, the impact projected for the facility, the basis for this conclusion, and the impact on the firm should be documented. If closure is expected, the evaluation should demonstrate that, as a result of the emission limit, revenues will not be sufficient to recover compliance costs and plant variable charges.

Technological Infeasibility. In some measure, technological infeasibility is tied to cost effectiveness since, in most cases, it is technologically feasible to comply at some cost, however large. However, there may be a few circumstances for some NSPS categories where NSPS compliance cannot be achieved regardless of cost. Where technological factors relating to the facility adversely impact the feasibility of operation, these factors should be clearly delineated in the analysis.

b. Kennecott BART Review. Responses to the above factors were presented in the November 13, 1987 and May 17, 1988 Kennecott submittals. Responses were provided regarding the community and plant impact, however, the key to this review is the determination on the adequacy of the cost-effectiveness ratio and the technical infeasibility issues. The cost-effectiveness ratio and the technical infeasibility issues, however, cannot be discussed separately from the emission limits used in the GEP analyses.

Emission limits for Kennecott's Magna smelter are set in consideration of the much higher degree of variability in SO_2 emissions in the smelting process than occurs in combustion sources of SO_2 such as coal-fired boilers. The technique used for deriving these emission limits is MPR. Very simply described, this technique establishes a series of emission rates which are each permitted to occur no more than a certain specified number of hours out of each year. These emission rates reflect a number of operating conditions at the smelter, including start-up and shutdown emissions, upset and malfunction conditions, and emissions from stable operating conditions.

The purpose for establishing a BART emission rate in the 1985 stack height regulations was to prevent source owners from using unreasonably high emission rates to justify credit for excessive stack heights. The regulations require that sources faced with excessive concentrations due to downwash should be required to attempt to reduce those concentrations by reducing those emissions to the degree feasible before seeking credit above the GEP formula. The benchmark for this requirement is the NSPS, or an alternative level of control established through the application of BART if NSPS is found to be infeasible.

Application of the level of control required by NSPS would reduce the emissions of SO_2 at the Magna smelter during the stable process phase, but would not affect emission rates under start-up, shutdown, malfunction, and upset conditions (as defined in 40 CFR 60.2). This is because the NSPS emission rate is for normal operations and includes express exclusion for such process conditions (see 40 CFR 60.2). Thus, when a downwash analysis is performed, the highest permissible emission rates established through NSPS or MPR (which includes the upset conditions) would not be affected by any additional controls impacting the stable process stage and would continue to produce the same determination of GEP.

From the assessment Kennecott has performed, considering only long-term averages, the cost portions are consistent with the tons of SO_2 reduction expected from similar NSPS applications. However, as noted above, in the case of the Kennecott BART analysis, the controlling emissions for the determination of GEP appear to be those under upset, malfunction, start-up, and shutdown conditions. Hence, while there would be no difference in emission rates under these other conditions as a result of meeting NSPS, there would be a substantial additional cost.

In summary, the emissions at the Magna smelter from start-ups, shutdowns, upsets, and malfunctions are included in the MPR emission limits and must be considered in the NAAQS attainment and GEP analyses. Application of NSPS technology will not affect these emission rates and will, therefore, result in no change in demonstrated GEP. Thus, it may be possible to reduce annual emissions by requiring additional controls on the Magna smelter, but such reductions will have no relevance to the limiting case for determination of GEP. EPA, therefore, concludes that the existing emission limits are the appropriate emissions to apply in Kennecott's GEP analysis.[15]

III. Clarification of the Issues

As stated above, EPA has reviewed the Utah Stack Height SIP and subsequent submittals from Kennecott. With these submittals, EPA concludes that the existing stack height of 1215 ft. is GEP, and that the NSPS does not apply to the GEP determination.

However, assumptions that were part of this decision should be clarified. In the analyses, and in the determination to use the actual SIP emission limits, the capacity and efficiency of the acid plants and the cost associated with these plants to maintain, upgrade, and/or replace, were critically evaluated. In the Kennecott evaluation:

1. 1982 emission data were used; 1982 constituted a year in which essentially full smelter capacity occurred following the modification/expansion.

2. The MPR limit was justified as part of the GEP demonstration.

3. The analyses considered the upgrading and replacing of four single contact acid plants. (The acid plants, #5, 6, 7, and 8, capacities and efficiencies were the key elements to the MPR emission limit.) However, from the May 17, 1988 submittal:

a. #5 acid plant was retired in 1982 "because it leaked so much gas at low elevation that is did more environmental harm than good. No maintenance has been done on it since 1982. Replacement is the only option."

b. #6 is presently shut down but could be restarted "for increased smelting capacity."

c. #7 and #8 are presently operating. In addition, #7 and #8 are operating under an approved permit [16] issued by the State of Utah, dated June 23, 1987. Although the permit was not part of the actual State or Kennecott submittal, it is a part of the public information document and is subject to EPA's NSR oversight. The permit restricts the smelter operation to two vessels (two reactors, two converters, or one of each) at any one time, prohibits bypassing of the acid plants except for start-up, shutdown and upset conditions, and contains recordkeeping requirements. The permit is, for the most part, consistent with EPA's approval of the State's NSR program and the Utah Air Conservation Regulation (UACR) 4.3.2. UACR 4.3.2. was part of EPA's approval of the Utah SO_2 SIP which requires specific compliance measures of the smelter, specifically for SO_2 emission control. Such provision cannot be made less stringent without a SIP revision.

4. EPA is not requiring Kennecott to upgrade to the NSPS levels. However, should modification to acid plants #5, #6, #7 or #8 occur outside the normal operation defined in the existing permits, the SO_2 SIP, and that described in these analyses, Kennecott would be subject to review under UACR 3.1.8., and any other applicable State and Federal regulations. EPA is citing UACR 3.1.8. to clarify that replacement of #5 or upgrading of #6 acid plants, would require compliance with any now existing State and Federal requirements. Further, replacement of #5 or upgrading or replacement of #6, #7, or #8 should be evaluated for applicability of the NSPS reconstruction provision (40 CFR 60.15).

EPA expects that the State will follow its past practice in reviewing any changes to the Kennecott facility. Under the existing NSR program, any change that constituted a modification would require application of additional controls consistent with the BACT requirement in that program, and in no event shall the required controls be less stringent than NSPS (49 CFR Subpart P).

An additional area that EPA expects should be addressed in any future permit revision is the definition of what situations constitute start-up, shutdown, and upset conditions. Definitions of these terms appear at 40 CFR 60.2; and EPA recommends that these definitions be evaluated for inclusion in any such permit.

EPA Action

EPA today proposes to approve the Kennecott GEP analyses justifying the 1215 ft. stack and affirms the previously approved MPR emission limit. The fluid modeling study and BART analysis satisfy the requirements of the revised stack height regulations.

With the proposed approval of the GEP height, today's action would also remove the condition in the prior approval of the Utah SO_2 SIP.

Under 5 U.S.C. Section 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Date: November 26, 1988.

James J. Scherer,

Regional Administrator.

References specifically noted in the text:

1. 50 FR 27892, July 8, 1985, Stack Height Rule.

2. Guideline for Determining Best Available Retrofit Technology for Coal-fire Power Plants and Other Existing Stationary Facilities, EPA–450 3–80–009b, November 1980.

3a. 49 FR 8572, March 7, 1984, Standards of Performance for New Stationary Sources; Primary Copper Smelters; Review of Standards.

3b. 40 CFR 60.160, Subpart P, Standard of Performance for Primary Copper Smelters.

4. Review of New Source Performance Standards for Primary Copper Smelters, Chapters 1 through 9, EPA 450/3–88–018a, March 1984.

5. "Utah Copper and the $280 Million Investment," Engineering and Mining Journal, Vol. 180, No. 4, May 1979.

6. "A Smelting Milestone," Kennecott Copper Corporation, June 1978.

7. Utah Copper, Kennecott Copper Corporation, 1988.

8. EPA supporting documents that NSPS does not apply to 1970s smelter modification:

a. EPA internal memorandum from Marius Gedgaudas to James Lehr, October 19, 1973, RE: Review of Kennecott Copper Corporation's Compliance Schedules.

b. Letter and enclosure, B.B. Smith, Utah Copper Division General Manager to John Green, Regional Administrator, September 6, 1973, RE: Compliance Schedule for Kennecott.

9. 49 FR 10946, March 23, 1984, Proposed Approval of Utah SO_2 SIP.

10. Final conditional approval of Utah SO_2 SIP, 50 FR 7056, February 20, 1985.

11. Guideline for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height, EPA 450/4–81–003, July 1981.

12. Fluid modeling protocol memoranda:

a. EPA internal memorandum from Alan H. Huber to Francis A. Schiermeier, October 8, 1975, RE: Trip Report, Salt Lake City, Utah and Fort Collins, Colorado, September 17–19, 1985.

b. EPA internal memorandum from Alan H. Huber to Norm Huey, November 8, 1985, RE: GEP Stack Height Demonstration at the Kennecott Utah Smelter.

c. EPA internal memorandum from Alan H. Huber to Lee Hanley, August 13, 1987, RE: Kennecott GEP Study.

13. EPA internal memorandum from Joseph A. Tikvart to Robert Bauman, September 26, 1988, RE: Fluid Modeling to Determine GEP Stack Height for the Kennecott, Utah Smelter.

14. EPA internal memorandum from John Calcagni to Air Branch Chiefs, Region I to X; July 7, 1987, RE: Preparation of BART Analyses for Stack Height Analyses.

15. EPA internal memorandum from John Calcagni to Lee Hanley, September 7, 1988, RE: Kennecott-Magna Best Available Retrofit Technology Analysis.

16. Approval Order For Smelter Operating Plan Salt Lake County, F. Burnell Cordner to Gregory Boyce (Kennecott Minerals Corporation), June 23, 1987.

Additional references which are part of this review:

17. Letter from Robert R. DeSpain to Brent Bradford, September 3, 1986, RE: Requesting the BART analyses.

18. Letter from Irwin Dickstein to Gregory Boyce, November 19, 1986, RE: Documentation as to why BART Report should be treated confidential.

19. EPA internal memorandum from Paul Stolpman to Irwin Dickstein, July 27, 1987, RE: Kennecott Stack Height Demonstration.

20. Letter from Irwin L. Dickstein to Gregory H. Boyce, September 14, 1987, RE: Requesting information from the State and/or Kennecott in support of data presented in the GEP demonstration report and BART analysis.

21. Letter, Douglas M. Skie to Gregory Boyce, March 3, 1988, RE: Documenting the discussion which occurred in a meeting between EPA, the State of Utah, and Kennecott on the issues raised in EPA's September 14, 1987 letter and Kennecott's response dated November 12, 1987.

State and Kennecott Submittals:

22. Wind Tunnel Model Performance and Design Test Specifications for GEP Stack Height Demonstration at the Kennecott Utah Smelter, October 2, 1985.

23. Utah Stack Height SIP, submitted by Governor Norman H. Bangerter, May 2, 1986.

24. Kennecott Good Engineering Practice Stack Height Demonstration, February 1, 1986.

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25. Letter from Brent C. Bradford to Robert DeSpain, dated September 10, 1986.
26. NSPS Economic Evaluation, from G.H. Boyce to John Welles, October 3, 1986. Confidentiality requested.
27. Public hearing comments, Robert Dalley to Lee Hanley, December 9, 1986.
28. Response to EPA's September 14, 1987, letter, G.H. Boyce to Irwin L. Dickstein, November 13, 1987. Confidentiality requested.
29. Response to EPA's March 3, 1988, letter, P.W. McCallum to Douglas Skie, May 17, 1988.

[FR Doc. 88-27891 Filed 12-2-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 435

[FRL-3486-3]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on notice of data availability.

SUMMARY: On October 21, 1988, EPA published in the **Federal Register** a notice of data availability pertaining to effluent limitations guidelines and new source performance standards for the offshore subcategory of the oil and gas extraction point source category (53 FR 41356). The comment period on that notice of data availability was announced to end on December 5, 1988. EPA is today extending the comment period to end on January 19, 1989.

DATE: Comments on the October 21, 1988, notice of data availability must be submitted by January 19, 1989.

ADDRESSES: Comments should be sent to Mr. Dennis Ruddy, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The supporting information and data described in the October 21, 1988, notice of data availability are available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (rear of EPA Library), 401 M Street SW., Washington, DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Mr. Dennis Ruddy at the above address, or call (202) 382-7131. Economic information may be obtained from Ms. Ann Watkins, Economic Analysis Branch (WH-586), at the above address or call (202) 382-5387. Environmental assessment information may be obtained from Ms. Alexandra Tarnay, Monitoring and Data Support Division (WH-553), at the above address or call (202) 382-7036.

SUPPLEMENTARY INFORMATION: On October 21, 1988, EPA published a notice of data availability in the **Federal Register** (53 FR 41356) presenting and analyzing new information for the purpose of establishing best available technology (BAT) effluent limitations guidelines and new source performance standards (NSPS) for the drilling fluids and drill cuttings waste streams generated by offshore oil and gas extraction facilities.

The October 21, 1988, notice established a 45-day period in which the general public was invited to submit comments on all aspects of the information presented and discussed in that notice. The comment period was to end on December 5, 1988.

On November 3, 1988, the American Petroleum Institute (API), on behalf of itself and its interested member companies, submitted a request to EPA to extend the comment period on the October 21, 1988, notice of data availability by 45 days. On November 7, 1988, the Alaska Oil and Gas Association (AOGA) also submitted a request to EPA to extend the comment period on the notice of data availability by 45 days.

In light of the volume of new information presented and discussed in the notice of data availability and the complex issues involved in the formulation of final regulations for the drilling, waste streams, EPA has decided to grant the requests for extension of the comment period in full. Therefore, comments on the October 21, 1988, notice of data availability must be submitted by Janaury 19, 1989.

Dated: November 23, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator.

[FR Doc. 88-27890 Filed 12-2-88; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-45

Electronic Records Management

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed final regulation establishes Governmentwide policies and procedures for the management of electronic records. Specifically, agency responsibilities for the creation, maintenance, use, and disposition of electronic records are prescribed. The intent is to increase economy and efficiency in the management of electronic records. Identical regulations will be issued simultaneously by the National Archives and Records Administration and published in the Code of Federal Regulations (CFR) at 36 CFR Chapter XII, Part 1234.

DATE: Comments are due on or before January 4, 1989.

ADDRESS: Comments should be sent to General Services Administation, Information Resources Management Service (KMPR), Project 86.83A, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr. or Carolyn A. Thomas, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566-0194 or FTS, 566-0194. The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to Governmentwide management regulation that will have little or no net cost effect on society. The proposed rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 201-45

Archives and records, Government records management, Information resources activities.

Dated: February 23, 1988

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 88-27863 Filed 12-2-88; 8:45 am]
BILLING CODE 6820-BR-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 53, No. 233
Monday, December 5, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Ethics in Government; Meeting

ACTION: Special Committee on Ethics in Government; notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Special Committee on Ethics in Government of the Administrative Conference of the United States. The committee has scheduled the meeting to discuss a draft report on the Ethics in Government Act's financial reporting requirements by Professor Thomas Morgan and a draft report on conflict-of-interest rules for federal advisory committee members by Richard K. Berg. Requests for copies of these draft reports may be made to the Office of the Chairman at the address and telephone number given below.

DATE: Monday, December 19, 1988 at 9:30 a.m.

Location: Library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7065.

Dated: November 29, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-27919 Filed 12-2-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Extention of Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Pub. L. 100-518 recently amended the United States Grain Standards Act (Act) to direct the Secretary of Agriculture to establish an advisory committee to provide advice to the Administrator of the Federal Grain Inspection Service (FGIS) with respect to the implementation of the Act. The Advisory Committee consists of 15 members, appointed by the Secretary, representing the interests of all segments of the grain producing, processing, storing, merchandising, consuming, and exporting industries, including grain inspection and weighing agencies and scientists with expertise in research related to the policies established in section 2 of the Act. Members of the committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

In anticipation of Congress establishing the Advisory Committee, a notice was published in the **Federal Register** on July 13, 1988, inviting nominations for persons to serve on the Advisory Committee. The period for nominations closed on August 15, 1988.

Because more than three months have lapsed since the date for accepting nominations closed, FGIS is extending by 15 days the period to receive *additional* nominations for persons to serve on the Advisory Committee. Nominations received previously will be considered along with any additional nominations received. Persons interested in serving on the Advisory Committee should contact, in writing, W. Kirk Miller, Administrator, FGIS, Room 1094, P.O. Box 96454, Washington, DC 20090-6454, not later than December 20, 1988, and furnish the following information: Name, home address, social security number, business address, employer, occupation and title, statement of reason for nomination, and major source of income. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status.

The final selection of committee members and alternates will be made by the Secretary. It is the Secretary's policy that membership on USDA boards and committees reflect, to the extent practicable, the diversity of individuals served by the programs.

Dated: November 30, 1988.

Robert Melland;

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-27989 Filed 12-2-88; 8:45 am]

BILLING CODE 3410-EN-M

Federal Grain Inspection Service

Grain Standards; Dockage and Foreign Material in Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Request for public comment.

SUMMARY: Using data from May, 1987 through October, 1988 the Federal Grain Inspection Service (FGIS or Service) will study the effects on wheat grades that would have occurred if dockage and foreign material and been combined into one factor. The study will evaluate the combined portions as a grading factor versus a deductible by weight. Public comments are being requested to determine the level of interest in combining dockage and foreign material into a single factor.

DATE: Comment must be submitted on or before February 3, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628-S, P.O. Box 96454, Washington, DC 20090-6454. Alternatively, telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Lewis Lebakken, Jr, TLX: 7607351, ANS:FGIS UC; and telecopy users may send response to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at room 0628 South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: Pursuant to section 5 of the United States Grain Standards Act Amendments of 1988 (Pub. L. No. 100–518), the Service is required to study the effects of combining wheat dockage and foreign material into one grade factor and to submit a report on the results of the study to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate, not later than June 1, 1989. The study will use data recorded from individual, graded wheat samples from May, 1987 through October, 1988. The Economic Research Service of USDA will use the statistically generated FGIS data to prepare an economic impact study.

The study to be conducted during FY 89, will include both export and inland locations. All classes and grades of wheat for which there are individual sample data will be studied. The Service's computer system will generate theoretical combinations of dockage and foreign material as both a grading factor and a deductible by weight.

Public comments are requested and any data, views or arguments are welcome.

(Section 5, Pub. L. No. 100–518)

Dated: November 29, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–27877 Filed 12–2–88; 8:45 am]

BILLING CODE 3410-EN-M

ARMS CONTROL AND DISARMAMENT AGENCY

Visiting Scholars Program

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1989–90 school year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control and disarmament shall be established by the Director [of the U.S. Arms Control and Disarmament Agency] in order to obtain the services of scholars from the faculties of recognized institutions of higher learning."

The law states that "The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer. * * * Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency." In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969 and died on October 15, 1984, scholars are known as William C. Foster Fellows.

ACDA initially implemented this program by competitively selecting six visiting scholars for the 1984–85 school year to perform specific activities at ACDA for which their services had been identified as being needed. This process was repeated for the 1985–86, 1986–87, 1987–88 and 1988–89 school years and it is intended that the process will be used again this year with one-year assignments beginning at a mutually agreeable time during the period from July 1989 lasting until mid September 1990 for the positions in ACDA's four bureaus described in the Appendix to this announcement. Note that the emphasis is on the expertise and service which the visiting scholars can provide rather than on general interest in arms control and the pursuit of the scholars' own research.

It is planned that the visiting scholars will be assigned by detail and compensated in accordance with the Intergovernmental Personnel Act. In addition to pay based on their regular salary rates, the visiting scholars will receive travel to and from the Washington, DC area for their one-year assignment and either per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens or nationals of the United States and on the faculty of a recognized institution of higher learning. Prior to appointment they will be subject to full-field background security and loyalty investigation for a top secret security clearance including access to Restricted Data, as required by Section 45 of the Arms Control and Disarmament Act. Visiting scholars also will be subject to applicable Federal conflict of interest laws and standards of conduct.

Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap which does not interfere with performance of duties, and all qualified persons are encouraged to apply.

Applications should be in the form of a letter indicating the position(s) in which the applicant is interested and the perspective and expertise which the applicant offers. The letter should be accompanied by a curriculum vitae, and any other materials such as letters of reference and samples of published articles which the applicant believes should be considered in the selection process. (If published materials are submitted, it is requested that they be provided in twelve copies, if possible.)

Applications, and any requests for additional information, should be sent to: Visiting Scholars Program, Attention: Personnel Office, Room 5722, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. The application deadline for assignments for the 1989–90 school year is January 31, 1989, subject to extension at ACDA's option. Announcement of selection, subject to security clearance procedures, is expected early spring 1989.

Dated: November 7, 1988.

William J. Montgomery,

Administrative Director.

Appendix

A. Visiting Scholar Assignments to the Bureau of Multilateral Affairs of ACDA

1. Description of the Bureau of Multilateral Affairs

The Bureau of Multilateral Affairs (MA) has primary responsibility within ACDA for arms control issues dealt with in multilateral forums. MA provides both technical backstopping and diplomatic support to the US Delegations to the Conference on Disarmament in Geneva, where negotiations on a chemical weapons ban takes place, to the various negotiating forums dealing with conventional arms control in Europe, and to the United Nations.

2. Nature of Assignment

The European Security Negotiations (ESN) Division of the Bureau of Multilateral Affairs has responsibility for supporting two negotiations concerning conventional forces in Europe. The Conventional Stability Talks will take place in Vienna, Austria, among the 23 members of NATO and the Warsaw Treaty Organization, and will address conventional force reductions and associated stability and verification measures. The Conference on Disarmament in Europe will resume in Vienna, Austria, among the 35 states participating in the Conference on Security and Cooperation in Europe (CSCE). These negotiations will consider further Confidence- and Security-

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Building Measures (CSBMs), building on the Stockholm Document of 1986.

Conventional arms control in Europe will be gaining increased attention in coming years, as a result of the progress made in US-Soviet bilateral negotiations on nuclear reductions, represented in particular by the INF Treaty. At the same time, NATO will be in the process of determining its post-INF nuclear and conventional force requirements for the next decade. While these two conventional forces negotiations are independent forums, their substance is clearly related. The interactions of the two negotiations and NATO force planning requirements will require careful analysis in the ESN Division.

3. Candidate Qualifications

Specific useful background for a candidate would include knowledge of European political and military issues and familiarity with NATO defense doctrine. Previous experience and research on arms control and national security issues would be valuable.

B. Visiting Scholar Assignments to the Bureau of Verification and Intelligence of ACDA

1. Description of the Bureau of Verification and Intelligence

The Bureau of Verification and Intelligence (VI) has responsibility for ACDA's work in verification, compliance, intelligence, operations analysis, and computer support. VI provides the support in these subject areas for the strategic and theater nuclear arms control negotiations; the Standing Consultative Commission; the Anti-Ballistic Missile, SALT I and SALT II Treaties, the Limited Test Ban Treaty and Threshold Test Ban Treaty, INF, START, CST, Defense In Space, Nuclear Testing and the agreements on chemical and biological weapons.

2. Nature of the Assignment

VI develops verification requirements for arms control agreements being negotiated; reviews compliance with existing arms control agreements; conducts operations analysis of relevant arms control issues and Soviet views thereof; and evaluates the potential of various collection technologies for monitoring compliance with provisions of arms control agreements. A Visiting Scholar would be expected to participate in one or more of these activities by performing studies, drafting policy papers, and/or performing analyses both for use within ACDA and for coordination with other agencies. In some cases, the Visiting Scholar would represent ACDA on interagency working groups and would be called upon to exercise a relatively high degree of individual judgment.

Subject areas where a Visiting Scholar might contribute include: verification of a treaty on chemical weapons, vertification of limits on space-based weapons and weapons which can attack space-based military assets, compliance with existing—and verification of proposed—treaty limitations on ballistic missiles and nuclear testing, or analysis of Soviet views on stability and their impact on verification.

3. Candidate Qualifications

Because of the complex technical and analytical content in these areas, VI seeks a physical scientist, operations analyst, or expert in Soviet strategy and doctrine with a broad background. Specific useful background for a candidate would include: knowledge of basic physics, chemistry, aerospace systems, operations research, or Soviet strategic studies. The Visiting Scholar should have facility in analytical writing and general communication and a proven ability to innovate. Specific background in the areas of VI responsibility would be a value, but is not a requirement.

C. Visiting Scholar Assignments to the Bureau of Strategic Programs of ACDA

1. Description of the Bureau of Strategic Programs

The Bureau of Strategic Programs (SP) has responsibility for support of the Director of ACDA on arms control matters concerning limitations on U.S. and Soviet strategic and theater nuclear offensive forces and defensive and space forces. This includes providing technical and policy guidance to the Director in these areas and participating in the policy deliberation of Interagency Groups responsible for these areas. SP also has responsibility for ACDA's participation in the Nuclear and Space Talks (NST) in Geneva, other bilateral U.S.-USSR nuclear arms control negotiations, and other defense related matters including ACDA participation in US decisions regarding research on ballistic missile defenses. NST includes strategic and theater nuclear arms control and defense and space issues. Other bilateral discussions include meetings of the Standing Consultative Commission (SCC) and preparation for the periodic Anti-Ballistic Missile (ABM) Treaty reviews as well as meetings of the Special Verification Commission (SVC) on INF implementation and compliance. SP also has interagency responsibility for backstopping of the NST negotiations, the SVC, the SCC, and ABM Treaty reviews. SP has three divisions: Strategic Affairs, Theater Affairs, and Defense and Space.

2. Nature of the Assignment

A visiting scholar assigned to SP would assist in policy formation in one or more of the areas cited above. Because of the high technical content in these areas, SP seeks a physical scientist with a broad theoretical or applied background.

The visiting scholar's responsibilities would include drafting position papers, background studies, and policy analyses, both for use within ACDA and for coordination with other agencies such as the Central Intelligence Agency, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of State, and Interagency Groups. In some cases, the individual would represent ACDA on interagency working groups. The visiting scholar would be called upon to exercise a relatively high degree of individual judgment in developing policy recommendations. There may be an opportunity to volunteer to serve on the staff of U.S. delegations to arms control negotiations. The most likely area of concentration for the visiting scholar would be strategic arms reduction policy, but this could vary according to the scholar's background and the needs of ACDA/SP.

3. Candidate Qualifications

Specific useful background for a candidate would include: knowledge of basic physics, facility in concise writing, general communication skills, and proven ability to innovate. Background in areas of SP responsibility would be of value but is not a requirement.

D. Visiting Scholar Assignment to the Bureau of Nuclear and Weapons Control of ACDA

1. Description of the Bureau of Nuclear and Weapons Control

The Bureau of Nuclear and Weapons Control (NWC) has responsibility for proliferation issues, including nuclear, missile, and conventional armaments. Functions include the review of nuclear exports, support of the international safeguards system, and the promotion of the Nuclear Non-Proliferation Treaty and the Treaty of Tlatelolco. NWC also assesses the arms control implications of proposed arms transfers and technology transfers, prepares Arms Control Impact Statements on U.S. programs and prepares arms control policy assessments and proposals. In addition, NWC is responsible for ACDA's economic analysis work and

coordinates publication of *World Military Expenditures and Arms Transfers.*

2. Nature of the Assignment

A visiting scholar assigned to NWC would work on selected topics within that Bureau's responsibility, with emphasis on issues raised by the interrelationships among U.S. policies on nuclear non-proliferation, the transfer of conventional arms, and the export of missile technology. The visiting scholar's responsibilities would include the preparation of analyses of these issues and recommendations on their implications for arms control.

The position would involve close coordination with officials in the Departments of State and Defense and other concerned agencies. In carrying out assigned duties, the individual would need to exercise initiative and function effectively with minimum direct guidance and supervision.

3. Candidate Qualifications

Desirable attributes for a candidate would include an understanding of the role of arms control in national security planning, familiarity with weapons characteristics and capabilities, knowledge of political-military conditions in developing regions, a highly-developed analytical ability, and facility in written and oral communications. Because of the complex political-military issues involved, the individual should have a strong background in national security studies or international relations.

[FR Doc. 88-27920 Filed 12-2-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than November 30, 1989.

	Periods to be reviewed
Antidumping Duty Proceedings and Firms	
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A-122-057).	9/01/87 to 8/31/88.
Fortress Allatt	
Italy: Pressure Sensitive Ptastic Tape (A-475-059).	10/01/87 to 9/30/88.
Manuli	
N.A.R.	
Boston	
Japan: Tapered Roller Bearings and Parts thereof, Finished and Unfinished (A-588-604).	3/23/87 to 9/30/88.
Koyo Seiko	
PRC: Barium Chloride (A-570-007)	10/01/87 to 9/30/88.
Sinochem	
PRC: Greige Polyester/Cotton Printcloth (A-570-101).	9/01/87 to 8/31/88.
Sinochem	
PRC: Shop Towels of Cotton (A-570-003).	10/01/87 to 9/30/88.
CNART	
Chinatex	
Cussmere	
Fabnc Enterprise	
China Resources	
Transatlantic Sales	
United Kingdom: Certain Forged Steel Crankshafts (A-412-602).	5/13/87 to 8/31/88.
United Engineering & Forging	
Countervailing Duty Proceedings	
Brazil: Certain Agricultural Tillage Tools (C-351-406).	1/1/87 to 12/31/87.
India: Certain Iron Metal Castings (C-533-063).	1/1/87 to 12/31/87.
Israel: Fresh Cut Roses (C-508-064)	10/1/87 to 9/30/87.
Mexico: Lime (C-201-402)	1/1/87 to 12/31/87.
Mexico: Portland Hydraulic Cement and Cement Clinker (C-201-013).	1/1/87 to 12/31/87.
New Zealand: Lamb Meat (C-614-503).	4/1/87 to 3/31/88.
New Zealand: Steel Wire (C-614-601).	7/1/87 to 6/30/88.
Sweden: Certain Carbon Steel Products (C-401-401).	1/1/87 to 12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Date: November 22, 1988.

[FR Doc. 88-27960 Filed 12-2-88; 8:45 am]

BILLING CODE 3510-05-M

National Institute of Standards and Technology

[Docket No. 81005-8205]

Intention To Adopt a Test Method and Establish a Validation Service for the Federal Information Processing Standard (FIPS 120) for Graphical Kernel System (GKS)

AGENCY: National Institute of Standards and Technology (NIST), (formerly the National Bureau of Standards (NBS)), Commerce.

ACTION: Request for comments. Notice of intention to adopt a test method and conduct a one-year trial validation service for the Federal Information Processing Standard (FIPS) 120, Graphical Kernel System (GKS).

SUMMARY: The NIST intends to adopt the GKS-FORTRAN Validation Test Suite as the test method to be used for validating GKS implementations for conformance to GKS FIPS 120, Graphical Kernel System (GKS). This validation system will be used to assess the degree to which GKS implementations conform to FIPS 120. Beta testing with this software has been completed, and Version 2.1 is the current version of the software.

The NIST will use the trial validation service period to verify the accuracy and completeness of the GKS validation procedures. To assess the suitability of the test method for testing conformance

to the FIPS, NIST solicits the views of industry, the public, and State and local governments.

DATE: The test service will start immediately and will continue for a one-year trial period through September 1989.

ADDRESS: Written comments concerning the GKS Test Service should be sent to: National Institute of Standards and Technology; ATTN: GKS Test Service, Technology Building, Room B154, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Mark Skall, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3265.

SUPPLEMENTARY INFORMATION:

Background

The Federal Information Processing Standard Publication (FIPS PUB) 120, Graphical Kernel System, was approved on April 18, 1986, and became effective November 3, 1986. In accordance with FIPS PUB 120, two-dimensional graphics toolbox packages acquired for Federal use after this date should implement the standard. The purpose of the graphics software standard is to promote portability of graphics applications for use on a variety of graphics workstations.

Federal agencies may require conformance to FIPS PUB 120 whether toolbox packages are developed internally, acquired as part of an ADP system procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Testing may be required in order for agencies to determine if the GKS implementations conform to the FIPS PUB. The GKS-FORTRAN Validation Test Suite and the test results provided from the NIST trial validation service are sources for Federal agencies to use in making this determination.

Updates to the Test Method

The Test Suite will be periodically updated and used as the basis for validating FIPS PUB 120 implementations. The update process will be used to correct errors identified in the GKS-FORTRAN Validation Test Suite and to introduce new or modified programs as appropriate. Modification to the Test Suite is also intended to ensure that implementations are being built according to the technical specifications of the standard. Should an interpretation of the FIPS be made that would affect the test suite, these changes would also be reflected during the update process.

Obtaining Validation Services

The NIST provides validation services on a cost-reimbursable basis. These services are available to both the producers and users of GKS implemetations. Upon receipt of a request for validation, NIST will supply the client with a GKS Information Pack which will include a description of the test service and procedures, an Order Form, a Software License Agreement, and a Scheduling Request. To obtain the GKS-FORTRAN Validation Test Suite and documentation the client must return a completed Order Form and Software License Agreement, along with proper payment to the NIST.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

Ernest Ambler,

Director.

Dated: November 30, 1988.

[FR Doc. 88–27909 Filed 12–2–88; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting on December 14, 1988, at 10 a.m., at the Howard Johnson's Hotel, 65 Newbury Street, Danvers, MA, to discuss reports of the Large Pelagics, Groundfish, Coastal Anadromous, Enforcement and Scallop Committees. There will be presentations and discussion on the recent U.S./U.S.S.R. meeting concerning the "donut hole", fisheries habitat, amendments to the Magnuson Fishery Conservation and Management Act, and New England Council work priorities. The public meeting will recess at approximately 5 p.m., reconvene December 15 at 9 a.m., and will adjourn when agenda items are completed.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Date: November 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–27970 Filed 12–2–88; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[CESPK-PD-R]

Intent to Prepare a Draft Environmental Impact Statement (EIS); Third Phase, Sacramento River Bank Protection Project, California

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare an EIS.

SUMMARY: The action being taken is to prepare a plan for a Third Phase of additional bank protection and setback levee construction to protect the levees throughout the Sacramento River Flood Control Project. The Third Phase Plan would be presented to Congress for approval. The reason for the action is to protect the structural integrity of the flood control system. The project will remove riparian vegetation, and have fish and wildlife impacts which will be mitigated. Construction is anticipated to begin in 1994.

FOR FURTHER INFORMATION CONTACT: Questions regarding the EIS should be addressed to Mr. Mike Welsh, Planning Division, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814–4794, telephone (916) 551–1861.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Sacramento River Bank Protection Project was authorized by the 1960 Flood Control Act. The project comprises a modification of the existing Sacramento River Flood Control Project to include a long-range program of bank erosion control works and levee setbacks to protect the integrity of the Sacramento River Flood Control Project levee system. The present project area extends along the Sacramento River and its tributaries from Collinsville at river mile (RM) O to Chico Landing at RM 194; and includes project levees along the Feather, Bear, and Yuba Rivers; the Sutter and Yolo Bypasses; and additional sloughs and creeks included in the Sacramento River Flood Control Project.

The Sacramento River Bank Protection Project is being constructed in separate phases. Construction of the Congressionally authorized First Phase work of approximately 430,000 LF of bank protection was completed in 1974. In 1974, Congress authorized a Second Phase bank protection program of 405,000 LF. Construction has been completed on approximately 300,000 LF, and 105,000 LF of bank protection work remains to be constructed under the Second Phase authorization.

The objectives of the present studies are: (1) To determine if additional work is needed to protect the integrity of the project levee system, and (2) if additional work is required, to develop a plan(s) that will provide adequate protection consistent with the Sacramento River Bank Protection Project authorization. If an implementable plan(s) is developed, a Third Phase report and accompanying environmental impact statement will be submitted for Congressional authorization. The Reclamation Board of the State of California is the non-Federal cost sharing sponsor for the Third Phase studies. In addition, the Reclamation Board will be preparing a draft Environmental Impact Report (EIR) for potential Third Phase work, pursuant to the California Environmental Quality Act. It is expected the two documents will be jointly published as a draft EIS/EIR.

Alternatives

The alternatives discussed in the Third Phase Report and the EIS/EIR will include a without-project condition, non-structural alternatives, and structural alternatives including bank protection and setback levee plans.

2. Scoping of the Third Phase Report and EIS/EIR

Close coordination will be maintained with Federal, State, and local agencies, interested organizations, and concerned individuals. A series of public meetings and workshops will be held. Notices concerning the time and location of the meetings and subsequent workshops will be mailed separately. Information will be provided on the following: potential for levees failures, consequences of levee failures, impacts due to flooding in urban and rural areas, and engineering studies regarding bank protection and levee setbacks; potential impacts to fishery resources, endangered species, wildlife resources, riparian vegetation, and cultural resources; and methods of improving mitigation success.

Scoping Comments, Meetings, and Workshops

Comments should be provided by letter or at the scoping meetings and workshops. The topics described above will be discussed in the scoping meetings and workshops along with other topics that arise during the planning process. Comments received will be considered during the development of project alternatives. Comments will also be used to identify and evaluate significant resources in the project area, and to identify possible impacts and mitigation alternatives. Impacts to significant resources will be analyzed in detail in the EIS/EIR. A public participation program for this project is being developed by a consultant and will be implemented by the Corps and the Reclamation Board.

3. Estimated Schedule

The initial public meetings are presently set for Yuba City, California; Sacramento, California; and Rio Vista, California. These meetings are scheduled for December 6, 7, and 8, 1988. The workshops are tentatively scheduled for February 1989 and August 1989. Additional public meetings will be held during the public review period for the draft documents. As the schedule becomes finalized, dates, times, and locations will be made available. The Third Phase Report and the draft EIS/EIR are anticipated to be ready for public review and comment in April 1990.

Date: November 10, 1988.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-27921 Filed 12-2-88; 8:45 am]

BILLING CODE 3710-GH-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.202]

Notice Inviting Applications for Fiscal Year 1989 Under the Grants To Institutions To Encourage Minority Participation in Graduate Education Program; Correction

In the notice document beginning on page 46576 in the issue of Thursday, November 17, 1988, on page 46580, the following information should be included:

Form Approved: June 30, 1988
OMB No: 1840-0603
Expiration Date: December 31, 1988.

Date: November 29, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education

[FR Doc. 88-27959 Filed 12-2-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Cooperative Agreement to the State of Illinois, Department of Energy and Natural Resources

AGENCY: Department of Energy.

ACTION: Announcement of Noncompetitive Financial Assistance (Cooperative Agreement) Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2), it intends to make a noncompetitive financial assistance (cooperative agreement) award to the State of Illinois, Department of Energy and Natural Resources for "Support of High-Sulfur Coal Research."

Scope: The proposed research effort offered by the State of Illinois focuses on the development and utilization of high-sulfur coal, the predominant generic coal type found in the Illinois Basin, as well as in numerous other important bituminous coal-producing regions in the United States. The State of Illinois is currently spending in excess of $3 million for research and development in the area of high-sulfur coal research. In conjunction with other sponsors, a total of 42 projects are being conducted, and of this total, approximately 11 are classified as coal cleaning and related studies. Research in coal preparation includes the areas of physical; microbial, and chemical coal cleaning, along with ancillary operations. These areas parallel and are of specific interest to the U.S. Department of Energy, Pittsburgh Energy Technology Center's Coal Preparation Program.

Authority for this noncompetitive award is 10 CFR 600.7(b)(2)(i)(B). The research activities presently being conducted by the State of Illinois, using its own resources, with the additional DOE financial support being provided by this award will enhance the public benefits to be derived by this research and development program.

The term of the Cooperative Agreement is for twelve (12) months at an estimated value of approximately $2,250,000.00, with the DOE sharing $1,500,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh

Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Keith R. Miles. Telephone: AC 412/892–5984.

Dated: November 21, 1988.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division (Acting).

[FR Doc. 88–27974 Filed 12–2–88; 8:45 am]

BILLING CODE 6450–01–M

San Francisco Operations Office; Research Announcement Solicitation for Laser Fusion Research Proposals; Rescission of Proposal Submission Date

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE advises that the closing date of December 15, 1988, for submission of proposals, has been rescinded for the Research Announcement contained in the Federal Register Vol. 53 No. 57 dated Thursday, March 24, 1988. This notice concerned the solicitation of proposals for Laser Fusion Research. The DOE will, in the near future be issuing a revised request for proposals including a new submission date. Field responsibility for the conduct of basic research experiments in high-energy density studies at the National Laser User's Facility (NLUF), located at the University of Rochester Laboratory for Laser Energetics, has been transferred to DOE's San Francisco Operations Office from the Nevada Operations Office. Dennis Neely is the new Program Manager (Telephone 415–273–4188).

Dorothy Lacey,

Branch Chief, Contracts Management Division.

[FR Doc. 88–27973 Filed 12–2–88; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Cooperative Agreements; Southern Co. Services, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a cooperative agreement.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b)(2)(i) (B) and (D), gives notice of its plans to award a 12-month Cooperative Agreement to Southern Company Services, Inc., P.O. Box 2625, Birmingham, AL 35202 in an amount estimated to be $783,702.

The pending award is based on an unsolicited application for a research project entitled, "Integrated Gasification Combined Cycle (IGCC) Systems Analysis." The purpose of the project is to conduct a site specific evaluation of various power generation options for an integrated gasification combined cycle (IGCC) system and to determine the system electricity cost, load response, fuel flexibility, and environmental benefits. This study assesses the integration of air-blown coal gasification/hot gas cleanup systems with advanced gas turbine power plants which will improve the understanding of cost/benefit tradeoffs inherent in advanced systems. The involvement of a host utility to conduct a site specific evaluation of advanced systems will ensure the credibility of the results with the power generation community. The results of this assessment will allow the energy production and research communities to directly compare natural gas-fired and coal gas-fired systems. In furtherance of the DOE mission to commercialize DOE supported technologies, performance of this activity would greatly enhance the public benefit olf this work by making results of the study publicly available to a wider distribution base. The technical transfer of these results will provide a significant step toward the adoption of DOE sponsored technologies by addressing several of the current gaps in systems development data.

Southern Company Services and its major subcontractors possess proprietary and confidential process, technical, economic and site specific data necessary for successful completion of the site specific system assessment. In order to facilitate the adoption of DOE sponsored technologies, the results of the project must be directly comparable to results obtained under EPRI Project Number RP2773–5 entitled, "IGCC Site Specific Plant Study at Georgia Power Company's Plant Wansley." This common basis will allow the power generation community to compare DOE sponsored advanced IGCC systems with previously commercialized power generation systems. Due to the proprietary and site specific information required to satisfactorily conduct the assessment, and the need for comparability to the previously conducted EPRI study, the project team is considered uniquely qualified to perform the assessment.

FOR FURTHER INFORMATION CONTACT: Brenda L. Summers (M/S I07), Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880. Telephone: (304) 291–4340. Procurement Request No. 21–89MC26019.000.

Date: November 28, 1988.

Louie L. Calaway,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88–27975 Filed 12–2–88; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Cooperative Agreement; University of Washington

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Operations Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a noncompetitive financial assistance cooperative agreement to the University of Washington, acting on behalf of the Tri-Cities University Center in Richmond, Washington.

Scope: The cooperative agreement will help support an educational program of course work leading to MS & PhD degrees in the physical and biological sciences, in engineering, and in business.

The DOE has determined that the award on a noncompetitive basis is appropriate for the following reasons: The activity to be supported is a continuation of an existing cost sharing arrangement which DOE has previously supported through a contractual arrangement.

It is currently being conducted at the Tri-Cities University Center primarily by the two state research universities which offer advanced degrees, with the University of Washington acting as legal and fiscal agent. Through the University of Washington, the State of Washington provides the facilities for the program and about 66 percent of the cost currently estimated at about $2,300,000 per year. DOE wishes to insure that the program continues in order to continue to attract and retain qualified employees at the Hanford site.

The present arrangement is the only one through which advanced degrees in the sciences and engineering are available in this area. No other awardee is presently available, and any other arrangement would seriously distrupt the educational programs of students pursuing advanced degrees. It has therefore been determined that it is appropriate to provide assistance to this activity on a noncompetitive basis.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy, Richland Operations Office, Procurement Division, P.O. Box 550, Richland, WA 99352 Telephone: (509) 376–2039.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 88–27976 Filed 12–2–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF89–41–000]

Exxon Chemical Co. and Exxon Co., U.S.A.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 30, 1988

On November 7, 1988, Exxon Chemical Company and Exxon Company, U.S.A.; (Applicants), of P.O. Box 100, Baytown, Texas 77522–0100 and P.O. Box 3950, Baytown, Texas 77522–3950 respectively, submitted for filing an application for certification of a facility as qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Baytown, Texas. The facility will comprise of twelve combustion turbine generating units, twelve heat recovery steam generators (HRSGs) equipped with supplementary firing and four steam turbine generators. Steam produced by the facility will be used in refining and processing crude oil and other petrochemicals. The primary energy source is natural gas. Refinery and by-product gas will be used for supplemental firing of HRSGs. The net electric power production capacity of the facility will be 315 MW. Seven of the twelve combustion turbines and associated HRSG's, and four steam turbine generators were in operation prior to March 13, 1980.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27910 Filed 12–2–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER89–33–000, et al.]

Florida Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 25, 1988.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket No. ER89–33–000]

Take notice that on October 24, 1988, Florida Power Corporation (Florida) filed a letter agreement between itself and Seminole Electric Cooperative, Inc. (Seminole) extending the term of a letter of commitment providing for negotiated interchange service under an interchange agreement between Florida Power and Seminole. The letter of commitment provided for service from Florida Power during the period June 1, 1988 through August 31, 1988 when Seminole needed the service because of an emergency outage at Seminole's Unit No. 1. The outage has continued beyond August 31, 1988 and Florida Power and Seminole have agreed to continue the letter of commitment in effect until the unit has been returned to service; i.e., it has been operated at a net output level of 400 MW or higher for a period of 16 consecutive hours.

Comment date: December 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. The Kansas Power and Light Co.

[Docket No. ES89–7–000]

Take notice that on November 9, 1988, The Kansas Power and Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $190,000,000 (with the maximum amount not to exceed 15% of the aggregate of the amount of outstanding securities as defined in the Company's Restated Articles of Incorporation filed as Exhibit A of the Application) in the aggregate principal amount of short-term unsecured Promissory Notes in the form of bank loans and commercial paper, on or before December 31, 1990, with a final maturity date of no later than December 31, 1991.

Comment date: December 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Ocean State Power

[Docket No. EC89–4–000]

Take notice that on November 21, 1988, Ocean State Power (Ocean State) filed an Application with the Federal Energy Regulatory Commission (Commission), in Docket No. EC89–4–000, for Authorization to Transfer Utility Assets pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b and the Commission's regulations promulgated thereunder at 18 CFR Part 33. Ocean State seeks action on its Application by December 13, 1988 to permit financial closing of the Ocean State Project to occur on schedule.

Ocean State proposes to construct, own and operate an approximately 250 mw combined cycle electric generating facility in Burrillville, Rhode Island (the Project). The Project will be interconnected with an existing 345 KV substation adjacent to the site. Ocean State intends to construct the necessary interconnection facilities as a party of the construction of the combined cycle facility and seeks authorization to transfer those interconnection facilities to Blackstone Valley Electric Company (BVE) on the commercial date of the Project. Thereafter, BVE will maintain and operate the transmission facilities for the exclusive use of Ocean State.

Comment date: December 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Blackstone Valley Electric

[Docket No. EC89–69–000]

Take notice that on November 17, 1988, Blackstone Valley Electric Company (BVE) tendered for filing an interconnection agreement between itself and Ocean State Power (OSP). This Agreement provides for the construction, ownership and payment for facilities to be built in order to interconnect OSP's generating station to BVE's transmission facilities. The Agreement provides that once OSP's generating unit commences commercial operation OSP shall pay 100% of the yearly cost of service for the Interconnection Facilities.

While the Agreement will not become effective as a rate schedule until the commercial operation date OSP needs prompt acceptance of this filing in order to proceed with its financing. At OSP's request and for reasons which OSP will explain in a separate pleading BVE requests waiver of the 120 maximum

notice requirement and requests that the Commission accept this filing no later than December 13, 1988, to become effective on the commercial operation date of OSP's unit. BVE will inform the Commission when the unit enters service.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corp.

[Docket No. ER88–55–000]

Take notice that on November 4, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Con Ed) dated June 8, 1988, providing for certain transmission services to Con Ed. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This new agreement is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara Mohawk delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed. Paragraph 2.3 of Rate Schedule No. 90, as amended on August 28, 1980, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission in Niagara Mohawk's most recent retail electric rate proceeding. Niagara Mohawk requests an effective date of September 1, 1987.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Co.

[Docket No. ER89–67–000]

Take notice that on November 17, 1988, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on October 25, 1988, by the respective parties: Edison-IID, *Economy Energy Agreement* Between Southern California Edison Company and Imperial Irrigation District.

The filed agreement establishes the terms and conditions under which Economy energy may be purchased or sold by either Party.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corp.

[Docket No. ER89–68–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on November 17, 1988, tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Central Vermont Public Service (Central Vermont). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to Central Vermont. Service under this agreement will commence on November 1, 1988 and shall terminate on April 30, 1989 unless extended in writing by mutual agreement.

NYSEG states that a copy of this filing has been served upon Central Vermont Public Service and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that November 1, 1988 be allowed as the effective date of the filing.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Public Service Co. of New Hampshire

[Docket No. ER89–70–000]

Take notice that Public Service Company of New Hampshire (PSNH), on November 21, 1988, tendered for filing proposed changes in its Wholesale for Resale Contracts with New Hampshire Electric Cooperative, Inc. (NHEC) for Total Requirements Service (FERC No. 50) and Partial Requirements Service (FERC No. 71). If accepted, the proposed agreement would provide credits to be applied to bills rendered to NHEC if certain of the NHEC's retail customers voluntarily curtail energy intensive loads during periods when PSNH is highly likely to experience a winter system peak.

The proposed changes would reduce PSNH's need for purchasing capacity outside of its system at a cost in excess of the credits paid to NHEC.

PSNH requests waiver of the Commission's notice requirements to permit the agreement to take effect on December 1, 1988.

Copies of the filing were served upon NHEC and the New Hampshire Public Utilities Commission.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Light & Power Co.

[Docket No. ER89–72–000]

Take notice that Montana Light & Power Company (Montana), formerly, a subsidiary of Champion International Corporation, on November 21, 1988, tendered for filing, in accordance with Section 35 of the Commission's Regulations, a Notice of Cancellation of FERC Electric Rate Schedule No. 2.

Montana states that this tariff is being terminated because of the dissolution of Montana, effective February 1, 1988. The FERC Rate Schedule Designation is as follows:

FERC Rate Schedule No.	Party
FERC Electric Rate Schedule No. 2 (Supersedes Rate Schedule FPC No. 1).	Pacific Power & Light Company.

Montana requests waiver of the Commission's notice requirements to permit the Tariff to terminate on February 1, 1988.

Copies of the filing were served upon all parties hereto, and the Montana Public Service Commission.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Co.

[Docket No. ER88–605–001]

Take notice that on November 14, 1988, Wisconsin Power and Light Company (WP&L) tendered for filing, on behalf of itself and Wisconsin Electric Power Company (WEP), with the Federal Energy Regulatory Commission an amended Transmittal Letter intended to revise language used in the Transmittal Letter of the original filing made in this docket (September 15, 1988), and to detail and clarify the intended pricing arrangements associated with the use of Service Schedule G—Short Term Shared Risk Power.

WP&L requests waiver of the Notice requirements in order to permit an effective date of July 18, 1988. WP&L states that copies of this filing have been provided to WEP and also that a copy of the filing has been mailed to each of the Parties identified on the original Service List.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. The Washington Water Power Co.

[Docket No. ER89–2–000]

Take notice that on November 7, 1988, The Washington Water Power Company (Washington) submitted an amendment to the filing of a service schedule applicable to what Washington refers to as an Energy Exchange Agreement between Washington and the Public Utility District No. 1 of Snohomish County (Snohomish). Washington states that this amendment is pursuant to a request for additional information regarding the service energy which is payment for providing the availability of exchange energy.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Co.

[Docket No. ER88–566–000]

Take notice that on November 14, 1988, the Northeast Utilities Service Company (NUSCO) as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (NU Companies) tendered for filing an amend to proposed rate schedules with respect to Transmission Service Agreements (Agreements), with Boston Edison Company (BECO) and Public Service Company of New Hampshire (PSNH) dated May 1, 1988.

NUSCO states that the amendment was filed in response to a deficiency letter from the Commission. NUSCO states that it proposes to revise the Agreements in response to the Commission's letter.

NUSCO states that a copy of this material has been mailed to NECO and PSNH.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Power & Light Co. an assumed business name of PacifiCorp.

[Docket No. ER89–71–000]

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on November 21, 1988, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Montana and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Montana (Bonneville's Docket No. 5–A4–8801). The Revised Appendix 1 calculates the ASC for the state of Montana applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective March 16, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Montana Public Service Commission and Bonneville's Direct Service Industrial Customers.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27911 Filed 12–2–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER88–540–001, et al.]

Louisiana Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Louisiana Power & Light Corp.

[Docket No. ER88–540–001]

Take notice that on October 27, 1988, Louisiana Power & Light Company (LP&L) tendered for filing its compliance report in compliance with the Commission's order dated September 30, 1988. In compliance with this order LP&L filed revised service schedules for replacement energy service designated in the attachment of that order.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Montana Electric Company

[Docket Nos. ER88–584–000 and ER88–585–000]

Take notice that on November 10, 1988, Montaup Electric Company supplemented its filings in these dockets by furnishing certain information requested by the Commission Staff concerning the sale of Somerset No. 6 unit power and energy. The information supplied consists of an explanation of Montaup's decision to sell that unit power and energy at an energy price below average energy costs as calculated by Staff.

Montaup's explanation consists of two points. First, that by entering into the unit sale it obtained the right to convert that sale on November 1, 1990 to additional contract demand service to continue through the year 2000. Montaup expected at the time of the negotiations in July 1987 (and continues to expect that the revenues from the additional contract demand service will more than offset any incremental costs of providing it. Montaup had to agree to the unit sales in order to obtain the right to convert. Secondly, at the time of the negotiations the revenues from the unit sale were expected to more than offset the costs which Montaup expected to incur as a result of making the sale.

Montaup furnished statistical information in support of its explanation on both points.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. East Carrolltown Co-Gen Inc.

[Docket No. QF89–48–000]

On November 16, 1988, EAST CARROLLTOWN CO-GEN INC. (Applicant), of 353 Pittsburgh Road, Butler, Pennsylvania 16001, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the proposed new Rt. 219 near the town of Carrolltown, Pennsylvania. The facility will consist of three steam boilers, three extraction/condensing turbine generators, and a 138 kV transmission line. Thermal energy recovered from the facility will be used for industrial and commercial processes in a mini steel mill, a hospital, offices, a greenhouse, and other light industry. Primary energy source will be natural gas. The net electric power production capacity of the facility will be 120 MW. Startup of the new facility is expected to begin in September 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27912 Filed 12-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST88-5508-000, et al.]

Southern Natural Gas Co., et al.; Self-Implementing Transactions

December 1, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company purusant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before December 21, 1988.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filling is in compliance with the Commission's Regulations.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-5508	Southern Natural Gas Co	Rangeline Corp	09-01-88	G-S		
ST88-5509	Southern Natural Gas Co	Alabama Gas Corp	09-01-88	B		
ST88-5510	Southern Natural Gas Co	Entrade Corp	09-01-88	G-S		
ST88-5511	Southern Natural Gas Co	Rangeline Corp	09-01-88	G-S		
ST88-5512	Southern Natural Gas Co	Sonat Marketing Co	09-01-88	G-S		
ST88-5513	Southern Natural Gas Co	South Carolina Pipeline Corp	09-01-88	B		
ST88-5514	Southern Natural Gas Co	Rangeline Corp	09-01-88	G-S		
ST88-5515	Southern Natural Gas Co	Sng Intratstate Pipeline, Inc	09-01-88	G-S		
ST88-5516	Southern Natural Gas Co	Rangeline Corp	09-01-88	G-S		
ST88-5517	Southern Natural Gas Co	Pennzoil Gas Marketing Co	09-01-88	G-S		
ST88-5518	Southern Natural Gas Co	Sonat Marketing Co	09-01-88	G-S		
ST88-5519	Williams Natural Gas Co	PSI, Inc	09-01-88	G-S		
ST88-5520	Williams Natural Gas Co	Gastrak Corp	09-01-88	G-S		
ST88-5521	Williams Natural Gas Co	Farmland Industries, Inc	09-01-88	G-S		
ST88-5522	Louisiana Resources Co	Louisiana Gas Marketing Co	09-01-88	C	01-29-89	26.43
ST88-5523	Williams Natural Gas Co	Enron Gas Marketing Co	09-01-88	G-S		
ST88-5524	Williams Natural Gas Co	OXY U.S.A., Inc	09-01-88	G-S		
ST88-5525	Williams Natural Gas Co	Atlas Powder Co	09-01-88	G-S		
ST88-5526	Transcontinental Gas Pipe Line Corp	Public Service Gas and Electric Co	09-01-88	B		
ST88-5527	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	09-01-88	B		
ST88-5528	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	09-01-88	B		
ST88-5529	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	09-02-88	B		
ST88-5530	Tennessee Gas Pipeline Co	New Orleans Public Service, Inc	09-02-88	B		
ST88-5531	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co	09-02-88	G		
ST88-5532	Columbia Gulf Transmission Co	Bishop Pipeline Corp	09-02-88	B		
ST88-5533	ONG Transmission Co	Natural Gas Pipeline Co. of America	09-02-88	C	01-30-89	24.32
ST88-5534	ONG Transmission Co	Northern Natural Gas Co	09-02-88	C	01-30-89	24.32
ST88-5535	Tennessee Gas Pipeline Co	Louisiana Land & Exploration Co	09-02-88	G-S		
ST88-5536	Natural Gas Pipeline Co. of America	Iowa Public Service Co	09-02-88	B		
ST88-5537	Natural Gas Pipeline Co. of America	Louisiana Gas System, Inc	09-02-88	B		

Docket No. [1]
ST88-5538
ST88-5539
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ST88-5617

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-5538	Natural Gas Pipeline Co. of America	Spindletop Gas Distribution System	09-02-88	B		
ST88-5539	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	09-02-88	B		
ST88-5540	Natural Gas Pipeline Co. of America	Memphis Gas Light	09-02-88	B		
ST88-5541	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	09-02-88	B		
ST88-5542	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	09-02-88	B		
ST88-5543	Natural Gas Pipeline Co. of America	Acadian Gas Pipeline System	09-02-88	B		
ST88-5544	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	09-02-88	B		
ST88-5545	Natural Gas Pipeline Co. of America	Endevco Pipeline Co	09-02-88	B		
ST88-5546	Natural Gas Pipeline Co. of America	Illinois Power Co	09-02-88	B		
ST88-5547	Natural Gas Pipeline Co. of America	Winnie Pipeline Co	09-02-88	B		
ST88-5548	Natural Gas Pipeline Co. of America	Alabama-Tennessee Natural Gas Co	09-02-88	B		
ST88-5549	El Paso Natural Gas Co	Cabot Gas Supply Corp	09-02-88	B		
ST88-5550	Northern Natural Gas Co	NGC Intrastate Pipeline Co	09-02-88	B		
ST88-5551	Northern Natural Gas Co	OXY U.S.A., Inc	09-02-88	G-S		
ST88-5552	Northern Natural Gas Co	Wisconsin Gas Co	09-02-88	B		
ST88-5553	Northern Natural Gas Co	VLDC Co	09-02-88	B		
ST88-5554	Northern Natural Gas Co	Excalibur Energy Corp	09-02-88	G-S		
ST88-5555	Northern Natural Gas Co	Fina Oil and Chemical Co	09-02-88	G-S		
ST88-5556	Cabot Pipeline Corp	Cabot Gas Supply Corp	09-02-88	C	01-30-89	32.00
ST88-5557	Northern Natural Gas Co	NGC Intrastate Pipeline Co	09-06-88	B		
ST88-5558	Northern Natural Gas Co	Panda Resources, Inc	09-06-88	G-S		
ST88-5559	Williams Natural Gas Co	Williams Gas Marketing Co	09-06-88	G-S		
ST88-5560	Williams Natural Gas Co	Vesta Energy Co	09-06-88	G-S		
ST88-5561	United Gas Pipe Line Co	Commonwealth Gas Pipeline Corp., et al	09-06-88	B		
ST88-5562	United Gas Pipe Line Co	Midcon Marketing Corp	09-06-88	G-S		
ST88-5563	United Gas Pipe Line Co	Wisconsin Natural Gas Co., et al	09-06-88	B		
ST88-5564	United Gas Pipe Line Co	Bridgeline Gas Distribution Co., et al	09-06-88	B		
ST88-5565	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	09-06-88	G		
ST88-5566	Tennessee Gas Pipeline Co	Intercon Gas, Inc	09-06-88	G-S		
ST88-5567	Natural Gas Pipeline Co. of America	Llano, Inc	09-06-88	B		
ST88-5568	Natural Gas Pipeline Co. of America	Winnie Pipeline Co	09-06-88	B		
ST88-5569	Natural Gas Pipeline Co. of America	Dow Intrastate Gas Co	09-06-88	B		
ST88-5570	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	09-06-88	B		
ST88-5571	Natural Gas Pipeline Co. of America	Louisiana Natural Gas Pipeline, Inc	09-06-88	B		
ST88-5572	Gulf Energy Pipeline Co	Natural Gas Pipeline Co. of America	09-06-88	C		
ST88-5573	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	09-06-88	B		
ST88-5574	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	09-06-88	B		
ST88-5575	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	09-06-88	B		
ST88-5576	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	09-06-88	B		
ST88-5577	Transcontinental Gas Pipe Line Corp	Virginia Natural Gas, Inc	09-06-88	B		
ST88-5578	Transcontinental Gas Pipe Line Corp	City of Richmond	09-06-88	B		
ST88-5579	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	09-06-88	B		
ST88-5580	Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co	09-06-88	G-HT		
ST88-5581	ANR Pipeline Co	City of Moulton	09-07-88	B		
ST88-5582	ANR Pipeline Co	Wisconsin Gas Co	09-07-88	B		
ST88-5583	ANR Pipeline Co	City of Bloomfield	09-07-88	B		
ST88-5584	ANR Pipeline Co	Wisconsin Natural Co	09-07-88	B		
ST88-5585	ANR Pipeline Co	City of Wetmore	09-07-88	B		
ST88-5586	ANR Pipeline Co	Wisconsin Gas Co	09-07-88	B		
ST88-5587	ANR Pipeline Co	City of Bethany	09-07-88	B		
ST88-5588	ANR Pipeline Co	City of Morning Sun	09-07-88	B		
ST88-5589	ANR Pipeline Co	City of Winfield	09-07-88	B		
ST88-5590	Texas Eastern Transmission Corp	Mobil Vanderbilt-Beaumont Pipeline Co	09-07-88	B		
ST88-5591	Texas Eastern Transmission Corp	Mountaineer Gas Co	09-07-88	B		
ST88-5592	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	09-07-88	G		
ST88-5593	Williams Natural Gas Co	Kansas Power and Light Co	09-07-88	G-S		
ST88-5594	Williams Natural Gas Co	Reliance Gas Marketing Co	09-07-88	G-S		
ST88-5595	Williams Natural Gas Co	Farmland Industries, Inc	09-07-88	G-S		
ST88-5596	Williams Natural Gas Co	Trinity Pipeline, Inc	09-07-88	G-S		
ST88-5597	Columbia Gulf Transmission Co	Alabama-Tennessee Natural Gas Co	09-07-88	B		
ST88-5598	United Gas Pipe Line Co	NGC Intrastate Pipeline Co	09-07-88	B		
ST88-5599	Gulf South Pipeline Co		09-07-88	G-HS	02-04-89	40.00/32.06
ST88-5600	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	09-07-88	B		
ST88-5601	Natural Gas Pipeline Co. of America	Mitchell Energy Corp	09-07-88	G-S		
ST88-5602	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	09-07-88	B		
ST88-5603	Natural Gas Pipeline Co. of America	Louisiana Gas System, Inc	09-07-88	B		
ST88-5604	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	09-07-88	B		
ST88-5605	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	09-07-88	C		
ST88-5606	Sabine Pipe Line Co	Coastal States Gas Transmission Co	09-07-88	B		
ST88-5607	Sabine Pipe Line Co	Neches Gas Distribution Co	09-07-88	B		
ST88-5608	Sabine Pipe Line Co	Sandy Hook Pipeline Inc	09-07-88	B		
ST88-5609	Sabine Pipe Line Co	Acadian Gas Pipeline Co., et al	09-07-88	B		
ST88-5610	Sabine Pipe Line Co	Peoples Natural Gas Co	09-07-88	B		
ST88-5611	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	09-08-88			
ST88-5612	Natural Gas Pipeline Co. of America	Southern California Gas Co	09-08-88	B		
ST88-5613	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	09-08-88	B		
ST88-5614	Questar Pipeline Co	Northwest Natural Gas Co	09-08-88	B		
ST88-5615	Questar Pipeline Co	Mountain Fuel Supply Co	09-08-88	B		
ST88-5616	Texas Gas Transmission Corp	Louisville Gas & Electric Co	09-08-88	B		
ST88-5617	Texas Gas Transmission Corp	Baltimore Gas & Electric Co., et al	09-08-88	B		

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ST88-5618	Texas Gas Transmission Corp	Indiana Gas Co., Inc	09-08-88	B		
ST88-5619	Texas Gas Transmission Corp	Arkansas Louisiana Gas Co	09-08-88	B		
ST88-5620	Texas Gas Transmission Corp	Northern Indiana Public Service Co	09-08-88	B		
ST88-5621	Texas Gas Transmission Corp	Baltimore Gas & Electric Co., et al	09-08-88	B		
ST88-5622	Williams Natural Gas Co	Union Gas System, Inc	09-08-88	G-S		
ST88-5623	Texas Eastern Transmission Corp	Mantachie Natural Gas Dist	09-08-88	B		
ST88-5624	Texas Eastern Transmission Corp	Mobil Vanderbilt-Beaumont Pipeline Co	09-08-88	B		
ST88-5625	Texas Eastern Transmission Corp	Mississipi Fuel Co	09-08-88	B		
ST88-5626	ANR Pipeline Co	Arkla Energy Marketing	09-08-88	G-S		
ST88-5627	ANR Pipeline Co	Wisconsin Gas Co	09-08-88	B		
ST88-5628	ANR Pipeline Co	Wisconsin Gas Co	09-09-88	B		
ST88-5629	Transwestern Pipeline Co	Coastal States Gas Transmission Co	09-09-88	B		
ST88-5630	Dow Pipeline Co	Tennessee Gas Pipeline Co	09-09-88	C	02-06-89	07.31
ST88-5631	Delhi Gas Pipeline Co	Northern Natural Gas Co	09-09-88	C	02-06-89	35.00
ST88-5632	Red River Pipeline	El Paso Natural Gas Co	09-09-88	C	02-06-89	36.00
ST88-5633	Transcontinental Gas Pipe Line Corp	Clinton Newberry Nat. Gas Authority	09-12-88	B		
ST88-5634	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	09-12-88	B		
ST88-5635	Transcontinental Gas Pipe Line Corp	Southern Gas Co	09-12-88	B		
ST88-5636	Transcontinental Gas Pipe Line Corp	East Ohio Gas Co	09-12-88	B		
ST88-5637	Gas Co. of NM (Div. Public Serv. Co. NM)	Pacific Gas and Electric Co	09-12-88	D		
ST88-5638	Northwest Pipeline Corp	Inland Empire Paper Co	09-09-88	G-S		
ST88-5639	Tennessee Gas Pipeline Co	Tejas Power Corp	09-09-88	G-S		
ST88-5640	Western Gas Supply Co	El Paso Natural Gas Co	09-12-88	C		
ST88-5641	Panhandle Eastern Pipe Line Co	Quantum Chemical Corp	09-12-88	G-S		
ST88-5642	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	09-12-88	B		
ST88-5643	Panhandle Eastern Pipe Line Co	Entrade Corp	09-12-88	G-S		
ST88-5644	Trunkline Gas Co	Eastex Gas Transmission Co	09-12-88	B		
ST88-5645	Trunkline Gas Co	Eastex Gas Transmission Co	09-12-88	B		
ST88-5646	Williams Natural Gas Co	OXY NGL, Inc	09-12-88	G-S		
ST88-5647	Williams Natural Gas Co	Rangeline Corp	09-12-88	G-S		
ST88-5648	Tennessee Gas Pipeline Co	South Carolina Pipeline Corp	09-12-88	B		
ST88-5649	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	09-12-88	B		
ST88-5650	Transcontinental Gas Pipe Line Corp	United Texas Transmission Co	09-12-88	B		
ST88-5651	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Co	09-12-88	B		
ST88-5652	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	09-12-88	B		
ST88-5653	Transcontinental Gas Pipe Line Corp	Houston Pipe Line Co	09-12-88	B		
ST88-5654	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	09-12-88	B		
ST88-5655	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	09-12-88	B		
ST88-5656	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	09-12-88	B		
ST88-5657	Natural Gas Pipeline Co. of America	Channel Industries Gas Co	09-12-88	B		
ST88-5658	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	09-12-88	B		
ST88-5659	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	09-12-88	B		
ST88-5660	Natural Gas Pipeline Co. of America	Dow Intrastate Pipeline Co	09-12-88	B		
ST88-5661	Natural Gas Pipeline Co. of America	Acacia Gas Corp	09-12-88	G-S		
ST88-5662	Natural Gas Pipeline Co. of America	Mississippi Valley Gas Co	09-12-88	B		
ST88-5663	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	09-12-88	B		
ST88-5664	United Gas Pipe Line Co	Humble Gas System, Inc	09-13-88	B		
ST88-5665	Sea Robin Pipeline Co	Iesco Pipeline, Inc	09-13-88	B		
ST88-5666	Sea Robin Pipeline Co	Bridgeline Gas Distribution Co., et al	09-13-88	B		
ST88-5667	Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	09-13-88	G-S		
ST88-5668	Panhandle Eastern Pipe Line Co	Miami Pipeline Co	09-13-88	B		
ST88-5669	Panhandle Eastern Pipe Line Co	Indiana Gas Co., Inc	09-13-88	B		
ST88-5670	Panhandle Eastern Pipe Line Co	Union Electric Co	09-13-88	B		
ST88-5671	Panhandle Eastern Pipe Line Co	Citizens Gas Supply Corp	09-13-88	G-S		
ST88-5672	Panhandle Eastern Pipe Line Co	Northern Indiana Fuel & Light Co	09-13-88	B		
ST88-5673	Panhandle Eastern Pipe Line Co	Associated Intrastate Pipeline Co	09-13-88	B		
ST88-5674	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	09-13-88	B		
ST88-5675	Panhandle Eastern Pipe Line Co	KPL Gas Service Co	09-13-88	B		
ST88-5676	Trunkline Gas Co	James River—Norwalk	09-13-88	G-S		
ST88-5677	Tennessee Gas Pipeline Co	Natural Gas Clear. Intra. Pipeline Co	09-13-88	B		
ST88-5678	Tennessee Gas Pipeline Co	Diamond Shamrock Nat. Gas Marketing Co.	09-13-88	G-S		
ST88-5679	Tennessee Gas Pipeline Co	North Penn Gas Co	09-13-88	B		
ST88-5680	El Paso Natural Gas Co	Southern California Gas Co	09-14-88	B		
ST88-5681	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	09-14-88	B		
ST88-5682	Transcontinental Gas Pipe Line Corp	Commission of Public Works, Greenwood.	09-14-88	B		
ST88-5683	Northwest Pipeline Corp	Grand Valley Gas Co	09-14-88	G-S		
ST88-5684	Northwest Pipeline Corp	Mobil Natural Gas, Inc	09-14-88	G-S		
ST88-5685	Northwest Pipeline Corp	Grand Valley Gas Co	09-14-88	G-S		
ST88-5686	Northwest Pipeline Corp	Kimbark Oil & Gas Co	09-14-88	G-S		
ST88-5687	Northwest Pipeline Corp	Ladd Petroleum Corp	09-14-88	G-S		
ST88-5688	United Gas Pipe Line Co	Louisiana Gas System, Inc., et al	09-14-88	B		
ST88-5689	United Gas Pipe Line Co	Enron Gas Marketing	09-14-88	G-S		
ST88-5690	Natural Gas Pipeline Co. of America	Golden Gas Energies, Inc	09-14-88	G-S		
ST88-5691	ANR Pipeline Co	TPC Pipeline Co	09-13-88	B		
ST88-5692	ANR Pipeline Co	Acadian Gas Pipeline System	09-13-88	B		
ST88-5693	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	09-15-88	B		
ST88-5694	Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	09-15-88	B		
ST88-5695	Transcontinental Gas Pipe Line Corp	Union Gas Co	09-15-88	B		

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ST88-5696	Transcontinental Gas Pipe Line Corp	Union Gas Co	09-15-88	B		
ST88-5697	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	09-15-88	B		
ST88-5698	Transcontinental Gas Pipe Line Corp	Mississippi Valley Gas Co., et al	09-15-88	B		
ST88-5699	United Gas Pipe Line Co	Pennzoil Gas Marketing Corp	09-15-88	G-S		
ST88-5700	United Gas Pipe Line Co	Phillips Natural Gas Co	09-15-88	B		
ST88-5701	United Gas Pipe Line Co	Polaris Corp	09-15-88	G-S		
ST88-5702	Tennessee Gas Pipeline Co	North Penn Gas Co	09-14-88	B		
ST88-5703	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co.	09-15-88	B		
ST88-5704	Natural Gas Pipeline Co. of America	Central Illinois Light Co	09-15-88	B		
ST88-5705	Natural Gas Pipeline Co. of America	Illinois Power Co., et al	09-15-88	B		
ST88-5706	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	09-15-88	B		
ST88-5707	Northwest Pipeline Corp	Mobil Natural Gas, Inc	09-15-88	G-S		
ST88-5708	Northwest Pipeline Corp	Salmon Resources, Ltd	09-15-88	G-S		
ST88-5709	Northwest Pipeline Corp	Mock Resources, Inc	09-15-88	G-S		
ST88-5710	Tennessee Gas Pipeline Co	Polaris Pipeline Corp	09-15-88	G-S		
ST88-5711	Southern Natural Gas Co	Atlanta Gas Light Co	09-16-88	B		
ST88-5712	Southern Natural Gas Co	Atlanta Gas Light Co	09-16-88	B		
ST88-5713	Southern Natural Gas Co	Woodward Pipeline, Inc	09-16-88	B		
ST88-5714	Southern Natural Gas Co	Rangeline Corp	09-16-88	G-S		
ST88-5715	Southern Natural Gas Co	Woodward Pipeline, Inc	09-16-88	B		
ST88-5716	Southern Natural Gas Co	Atlanta Gas Light Co	09-16-88	B		
ST88-5717	Southern Natural Gas Co	Rangeline Corp	09-16-88	G-S		
ST88-5718	Southern Natural Gas Co	City of Cartersville	09-16-88	B		
ST88-5719	Southern Natural Gas Co	Shell Offshore Inc	09-16-88	G-S		
ST88-5720	Williams Natural Gas Co	Llano, Inc	09-16-88	B		
ST88-5721	Williams Natural Gas Co	Kansas Power and Light Co	09-16-88	B		
ST88-5722	Texas Eastern Transmission Corp	Corpus Christi Industrial Pipeline Co	09-16-88	B		
ST88-5723	Texas Eastern Transmission Corp	TPC Pipeline Co	09-16-88	B		
ST88-5724	Texas Eastern Transmission Corp	Providence Gas Co	09-16-88	B		
ST88-5725	Texas Eastern Transmission Corp	Long Island Lighting Co	09-16-88	B		
ST88-5726	Texas Eastern Transmission Corp	Michigan Consolidated Gas Co	09-16-88	B		
ST88-5727	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	09-16-88	B		
ST88-5728	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	09-16-88	B		
ST88-5729	Trunkline Gas Co	City of Hickman	09-16-88	B		
ST88-5730	Valero Interstate Transmission Co	Valero Transmission, L.P	09-16-88	B		
ST88-5731	Valero Transmission, L.P	Northern Natural Gas Co	09-16-88	C		
ST88-5732	Valero Transmission, L.P	Transwestern Pipeline Co	09-16-88	C		
ST88-5733	Valero Transmission, L.P	Northern Natural Gas Co	09-16-88	C		
ST88-5734	Valero Transmission, L.P	Transwestern Pipeline Co	09-16-88	C		
ST88-5735	Valero Transmission, L.P	Valero Interstate Transmission Co	09-16-88	C		
ST88-5736	Natural Gas Pipeline Co. of America	Northern Illinois Gas & Electric Co	09-16-88	B		
ST88-5737	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	09-16-88	B		
ST88-5738	United Gas Pipe Line Co	Pontchartrain Natural Gas System	09-16-88	B		
ST88-5739	United Gas Pipe Line Co	Victoria Gas Crop	09-16-88	B		
ST88-5740	United Gas Pipe Line Co	Seagull Louisiana Intrastate Pipeline Co	09-16-88	B		
ST88-5741	United Gas Pipe Line Co	Cornerstone Natural Gas Co	09-16-88	B		
ST88-5742	United Gas Pipe Line Co	Access Energy Pipeline Corp	09-16-88	B		
ST88-5743	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	09-16-88	G-S		
ST88-5744	United Gas Pipe Line Co	Bishop Pipeline Corp	09-16-88	B		
ST88-5745	United Gas Pipe Line Co	Entex, Inc	09-16-88	B		
ST88-5746	United Gas Pipe Line Co	Entex, Inc	09-16-88	B		
ST88-5747	United Gas Pipe Line Co	Entex, Inc	09-16-88	B		
ST88-5748	El Paso Natural Gas Co	Southern Union Gas Co	09-16-88	B		
ST88-5749	El Paso Natural Gas Co	EMW Gas Association	09-16-88	B		
ST88-5750	El Paso Natural Gas Co	Southern Union Gas Co	09-16-88	B		
ST88-5751	ONG Transmission Co	Caprock Pipeline Co	09-16-88	C	02-13-89	24.32
ST88-5752	ONG Transmission Co	Natural Gas Pipeline Co. of America	09-16-88	C	02-13-89	24.32
ST88-5753	ONG Transmission Co	Williams Natural Gas Co	09-16-88	C	02-13-89	24.32
ST88-5754	Gas Co. of NM (Div. Public Serv. Co NM)	El Paso Natural Gas Co	09-19-88	G-HT		
ST88-5755	Transcontinental Gas Pipe Line Corp	Chevron U.S.A	09-16-88	G-S		
ST88-5756	Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	09-16-88	G		
ST88-5757	Transcontinental Gas Pipe Line Corp	Tejas Power Corp	09-16-88	G-S		
ST88-5758	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	09-16-88	B		
ST88-5759	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	09-16-88	B		
ST88-5760	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	09-16-88	B		
ST88-5761	Gulf South Pipeline Co	Public Service Electric and Gas Co	09-20-88	G-HS		
ST88-5762	Gulf South Pipeline Co	Energy Gathering, Inc	09-20-88	G-HS		
ST88-5763	Gulf South Pipeline Co	Orange and Rockland Utilities, Inc	09-20-88	G-HS		
ST88-5764	Gulf South Pipeline Co	Texas Eastern Transmission Corp	09-20-88	G-HS		
ST88-5765	Gulf South Pipeline Co	Texas Industrial Energy Co	09-20-88	G-HS		
ST88-5766	Gulf South Pipeline Co	Brooklyn Union Gas Co	09-20-88	G-HS		
ST88-5767	Gulf South Pipeline Co	Florida Gas Transmission Co	09-20-88	G-HS		
ST88-5768	Gulf South Pipeline Co	Philadelphia Gas Works, Inc	09-20-88	G-HS		
ST88-5769	Gulf South Pipeline Co	Philadelphia Electric Co	09-20-88	G-HS		
ST88-5770	Gulf South Pipeline Co	Clarke-Mobile Counties Gas District	09-20-88	G-HS		
ST88-5771	William Natural Gas Co	Kansas Power and Light Co	09-19-88	G-S		
ST88-5772	Northwest Pipeline Corp	Access Energy Pipeline Corp	09-20-88	B		
ST88-5773	Northwest Pipeline Corp	Meridian Oil Production, Inc., et al	09-20-88	G-S		
ST88-5774	El Paso Natural Gas Co	GGSI Gas Co	09-20-88	B		
ST88-5775	United Gas Pipe Line Co	Eastex Gas Transmission Co	09-20-88	B		

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ST88-5776	United Gas Pipe Line Co	Pacific Gas & Electric Co., et al	09-20-88	B		
ST88-5777	United Gas Pipe Line Co	Atlanta Gas Light Co	09-20-88	B		
ST88-5778	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al	09-19-88	B/G		
ST88-5779	Tennessee Gas Pipeline Co	Connecticut Light & Power Co	09-19-88	B		
ST88-5780	Tennessee Gas Pipeline Co	Lovera Pipeline Co	09-19-88	B		
ST88-5781	Tennessee Gas Pipeline Co	Delta Pipeline Co	09-20-88	G-S		
ST88-5782	CNG Transmission Corp	Owens-Illinois, Inc	09-20-88	G-S		
ST88-5783	CNG Transmission Corp	River Gas Co	09-20-88	B		
ST88-5784	CNG Transmission Corp	Owens-Illinois, Inc	09-20-88	G-S		
ST88-5785	CNG Transmission Corp	Hadson Retail	09-20-88	G-S		
ST88-5786	CNG Transmission Corp	Resource Group, Inc	09-20-88	G-S		
ST88-5787	CNG Transmission Corp	Clinton Gas Marketing	09-20-88	G-S		
ST88-5788	CNG Transmission Corp	CNG Trading Co	09-20-88	G-S		
ST88-5789	CNG Transmission Corp	Brandywine Industral Gas, Inc	09-20-88	G-S		
ST88-5790	CNG Transmission Corp	Finch Pruyn	09-20-88	G-S		
ST88-5791	CNG Transmission Corp	Bishop Pipeline Corp	09-20-88	G-S		
ST88-5792	CNG Transmission Corp	Kogas Inc	09-20-88	G-S		
ST88-5793	Colorado Interstate Gas Co	Associate Intrastated Pipeline Co	09-19-88	B		
ST88-5794	Colorado Interstate Gas Co	Coastal States Gas Transmission Co	09-19-88	B		
ST88-5795	Colorado Interstate Gas Co	Northern Illinois Gas Co	09-19-88	B		
ST88-5796	Colorado Interstate Gas Co	Williams Gas Co	09-20-88	B		
ST88-5797	Colorado Interstate Gas Co	Llano, Inc	09-20-88	B		
ST88-5798	Colorado Interstate Gas Co	Vesgas Co	09-20-88	B		
ST88-5799	United Texas Transmission Co	United Gas Pipe Line Co	09-21-88	C		
ST88-5800	United Texas Transmission Co	Natural Gas Pipeline Co. of America	09-21-88	C		
ST88-5801	United Texas Transmission Co	United Gas Pipe Line Co	09-21-88	C		
ST88-5802	United Texas Transmission Co	Natural Gas Pipeline Co. of America	09-21-88	C		
ST88-5803	United Gas Pipe Line Co	Louisiana State Gas Corp	09-21-88	G-S		
ST88-5804	Acacia Natural Gas Corp	Natural Gas Pipeline Co. of America	09-08-88	C	02-05-89	17.09
ST88-5805	Williams Natural Gas Co	Gulf Energy Marketing Co	09-21-88	G-S		
ST88-5806	Tennessee Gas Pipeline Co	CNG Transmission Corp	09-21-88	G		
ST88-5807	Natural Gas Pipeline Co. of America	Ladd Gas Marketing	09-22-88	G-S		
ST88-5808	South Georgia Natural Gas Co	Woodward Pipeline, Inc	09-22-88	B		
ST88-5809	Lone Star Gas Co	Natural Gas Pipeline Co. of America	09-23-88	C		
ST88-5810	ANR Pipeline Co	Elizabethtown Gas Co	09-23-88	B		
ST88-5811	ANR Pipeline Co	Elizabethtown Gas Co	09-23-88	B		
ST88-5812	Questar Pipeline Co	Public Service Co. of Colorado	09-26-88	B		
ST88-5813	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	09-26-88	B		
ST88-5814	Tennessee Gas Pipeline Co	Wellhead Ventures Corp	09-26-88	B		
ST88-5815	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	09-26-88	B		
ST88-5816	Tennessee Gas Pipeline Co	Delhi Gas Pipeline Corp	09-26-88	B		
ST88-5817	Texas Gas Transmission Corp	Baltimore Gas & Electric Co., et al	09-26-88	B		
ST88-5818	Texas Gas Transmission Corp	East Ohio Gas Co., et al	09-26-88	B		
ST88-5819	Texas Gas Transmission Corp	Cincinnati Gas and Electric Co	09-26-88	B		
ST88-5820	Texas Gas Transmission Corp	Western Kentucky Gas Co	09-26-88	B		
ST88-5821	Texas Gas Transmission Corp	Lafayette Gas Intrastate Co	09-26-88	B		
ST88-5822	Texas Gas Transmission Corp	TPC Pipeline Co	09-26-88	B		
ST88-5823	Texas Gas Transmission Corp	Buckeye Cellulose Corp	09-26-88	B		
ST88-5824	Texas Gas Transmission Corp	Ohio Casualty Insurance Group	09-26-88	B		
ST88-5825	Texas Gas Transmission Corp	AEC Gas Co	09-26-88	B		
ST88-5826	Columbia Gulf Transmission Co	Connecticut Natural Gas Co	09-26-88	B		
ST88-5827	Northern Border Pipeline Co	Northern Natural Gas Co	09-26-88	G		
ST88-5828	Sea Robin Pipeline Co	Columbia Gas of PA, Inc., et al	09-26-88	B		
ST88-5829	United Gas Pipeline Co	Texaco Gas Marketing, Inc	09-26-88	G-S		
ST88-5830	United Gas Pipeline Co	Texaco Gas Marketing, Inc	09-26-88	G-S		
ST88-5831	United Gas Pipeline Co	Texaco Gas Marketing, Inc	09-26-88	G-S		
ST88-5832	United Gas Pipeline Co	West Ohio Gas Co., et al	09-26-88	B		
ST88-5833	Tennessee Gas Pipeline Co	Texaco Gas Marketing, Inc	09-28-88	G-S		
ST88-5834	Channel Industries Gas Co	Tennessee Gas Pipeline Co	09-28-88	C		
ST88-5835	Tennessee Gas Pipeline Co	[redacted] Florida Gas Transmission Co	09-28-88	G		
ST88-5836	Tennessee Gas Pipeline Co	Tejas Power Corp	09-27-88	G-S		
ST88-5837	Trunkline Gas Co	Mobil Oil Exp. & Producing SE, Inc	09-28-88	G-S		
ST88-5838	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	09-28-88	B		
ST88-5839	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	09-28-88	B		
ST88-5840	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	09-28-88	B		
ST88-5841	Transcontinental Gas Pipe Line Corp	Spindletop Gas Distribution System	09-28-88	B		
ST88-5842	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	09-28-88	B		
ST88-5843	Transcontinental Gas Pipe Line Corp	Sun Refining & Marketing Co	09-28-88	G-S		
ST88-5844	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	09-28-88	B		
ST88-5845	Transcontinental Gas Pipe Line Corp	Sabine Gas Transmission Co	09-28-88	B		
ST88-5846	Tennessee Gas Pipeline Co	NY State Electric & Gas Corp., et al	09-28-88	B		
ST88-5847	Colorado Interstate Gas Co	Northern Gas of Wyoming	09-28-88	B		
ST88-5848	United Gas Pipe Line Co	Louisiana State Gas Corp	09-28-88	B		
ST88-5849	Northern Natural Gas Co	Peoples Natural Gas Co	09-27-88	B		
ST88-5850	Panhandle Eastern Pipe Line Co	National Steel Corp	09-28-88	G-S		
ST88-5851	Transok, Inc	Tennessee Gas Pipeline Co	09-27-88	C	02—24—89	32.50
ST88-5852	Arkla Energy Resources	Williams Gas Co	09-27-88	B		
ST88-5853	Caprock Pipeline Co	Cabot Gas Supply Corp	09-29-88	B		
ST88-5854	Natural Gas Pipeline Co. of America	Entex, Inc	09-29-88	B		

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Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-5855	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas Electric Co	09-29-88	B		
ST88-5856	Williams Natural Gas Co	KPL Gas Service Co	09-29-88	B		
ST88-5857	Northwest Pipeline Corp	Northwest Natural Gas Co	09-29-88	B		
ST88-5858	Northwest Pipeline Corp	Southwest Gas Corp	09-29-88	B		
ST88-5859	Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	09-29-88	G-S		
ST88-5860	Northern Natural Gas Co	Manilla Municipal Gas Dept	09-29-88	B		
ST88-5861	Northern Natural Gas Co	Energy Marketing Exchange, Inc	09-29-88	G-S		
ST88-5862	Northern Natural Gas Co	Reliance Pipeline Co	09-29-88	B		
ST88-5863	Northern Natural Gas Co	Indiana Public Service Co	09-29-88	B		
ST88-5864	Northern Natural Gas Co	Tejas Power Corp	09-29-88	G-S		
ST88-5865	Northern Natural Gas Co	Apache Marketing, Inc	09-29-88	G-S		
ST88-5866	Tennessee Gas Pipeline Co	Philadelphia Electric Co	09-29-88	B		
ST88-5867	El Paso Natural Gas Co	Phillips Natural Gas Co	09-29-88	B		
ST88-5868	El Paso Natural Gas Co	Southern California Gas Co	09-29-88	B		
ST88-5869	El Paso Natural Gas Co	Pacific Gas and Electric Co	09-29-88	B		
ST88-5870	Northern Natural Gas Co	Energy Dynamics, Inc	09-30-88	G-S		
ST88-5871	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	09-30-88	G-S		
ST88-5872	Colorado Interstate Gas Co	Access Energy Pipeline Corp	09-29-88	B		
ST88-5873	Colorado Interstate Gas Co	MGTC, Inc	09-29-88	B		
ST88-5874	Colorado Interstate Gas Co	Energy Pipeline Co	09-29-88	B		
ST88-5875	El Paso Natural Gas Co	Southwest Gas Corp	09-29-88	B		
ST88-5876	Arkansas Oklahoma Gas Corp		09-30-88	G-HT	02-27-89	49.21
ST88-5877	Panhandle Eastern Pipe Line Co	Loutex Energy, Inc	09-30-88	G-S		
ST88-5878	Natural Gas Pipeline Co. of America	Apache Marketing, Inc	09-30-88	G-S		
ST88-5879	ONG Transmission Co	Phillips Gas Pipeline Co	09-30-88	C	02-27-89	24.32
ST88-5880	Tennessee Gas Pipeline Co	Boston Gas Co	09-30-88	C		
ST88-5881	Tennessee Gas Pipeline Co	Consolidation Edison Co. of NY, Inc	09-30-88	B		
ST88-5882	Tennessee Gas Pipeline Co	Coastal States Gas Transmission Co	09-30-88	B		
ST88-5883	Williams Natural Gas Co	Transtate Gas Service Co	09-30-88	G-S		
ST88-5884	Williams Natural Gas Co	Central Soya Company, Inc	09-30-88	G-S		
ST88-5885	Williams Natural Gas Co	Reliance Pipeline Co	09-30-88	B		
ST88-5886	Williams Natural Gas Co	Ramona Public Works Authority	09-30-88	B		
ST88-5887	Williams Natural Gas Co	Slaby Gas Co	09-30-88	B		
ST88-5888	Williams Natural Gas Co	KPL Gas Service Co	09-30-88	B		
ST88-5889	Williams Natural Gas Co	Gulf Energy Marketing Co	09-30-88	G-S		
ST88-5890	Williams Natural Gas Co	Slaby Gas Co	09-30-88	B		
ST88-5891	Colorado Interstate Gas Co	Union Gas Limited	09-30-88	B		
ST88-5892	BP Gas Transmission Co	Texas Eastern Pipeline Corp., et al	09-30-88	C	02-27-89	21.50
ST88-5893	Transok, Inc	Arkla Energy Resources	09-30-88	C	02-27-89	32.50
ST88-5894	Texas Eastern Transmission Corp	Washington Gas Light Co	09-30-88	B		
ST88-5895	Texas Eastern Transmission Corp	Hope Gas, Inc	09-30-88	B		
ST88-5896	Texas Eastern Transmission Corp	Philadelphia Electric Co	09-30-88	B		
ST88-5897	Texas Eastern Transmission Corp	Long Island Lighting Co	09-30-88	B		
ST88-5898	Texas Eastern Transmission Corp	City of Pulaski, TN Natural Gas Dept	09-30-88	B		
ST88-5899	Texas Eastern Transmission Corp	Natural Gas Clear. Intra Pipeline Co	09-30-88	B		
ST88-5900	Texas Eastern Transmission Corp	Eastex Gas Transmission Co	09-30-88	B		

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 43,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its Transportation Rate pursuant to Section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-27914 Filed 12-2-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP87-92-004, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

November 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP87-92-004]

Take notice that on November 10, 1988, Texas Eastern Transmission Corporation (Texas Eastern), One Houston Center, Houston, Texas 77010-2070, filed in Docket No. CP87-92-004 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate pipeline facilities necessary to restore capacity on Texas Eastern's system to render existing certificated service under its Rate Schedule SS, all as more fully set forth in the application on file with the Commission and open for public inspection.

Texas Eastern states that by orders issued April 29, 1966, and October 30, 1967, in Docket No. CP66-43, the Commission authorized the construction and operation of certain facilities including the Staten Island LNG facility to render a firm storage service to certain customers pursuant to Rate Schedule SS, that the total certificated Maximum Daily Quantity was 151,354 Mcf per day delivery capacity and was used in conjunction with Texas Eastern's Accident storage field to meet peak-day requirements under Rate Schedule SS, and that on February 10, 1973, the facility was severely damaged by fire while the LNG tank liner was undergoing repair.

Texas Eastern states that on November 24, 1986, it filed its Capacity Restoration Program (CRP) application in Docket No. CP87-92-000, as amended CP87-92-002, for authority to replace the 102,130 dt per day of peak day delivery capacity lost due to the destruction of the Staten Island LNG storage facility, as well as to replace certain mainline transmission facilities, and to add mainline transmission capacity necessary to provide certain incremental services.

Texas Eastern further states that on September 7, 1988, the settlement judge certified to the Commission as an additional discrete project the portion of CRP not included in the APEC

settlement, that the settlement judge found specifically with regard to the 102,130 dt per day of LNG capacity reinstatement, that no pending open season proposal to provide new service could be mutually exclusive, and that the settlement judge reasoned that the LNG capacity reinstatement concerned service that is already certificated under Docket No. CP66–43.

Texas Eastern states that by its order of October 26, 1988, the Commission found the LNG reinstatement portion of the CRP project to be eligible for processing as a discrete project and directed Texas Eastern to file an application to implement that portion of the CRP project, and that the instant application is filed in response to that directive. Specifically, Texas Eastern requests authorization to construct and operate the following facilities: scraper traps and mainline piping inside yard limits at Compressor Stations 21–A, 21, 22 and 22–A; install up to 11,000 horsepower to compression at Compressor Station 21–A; install up to 11,000 horsepower of compression at Compressor Station 26; place in idle service 169.91 miles of 24-inch pipeline between Stations 21–A and 24–A. Additionally, Texas Eastern proposes to charge, commencing the later of November 1, 1990 or the date upon which the proposed facilities are placed in service, its Rate Schedule SS customers the SS reinstatement Demand Rate.

Texas Eastern states that the estimated capital cost of the proposed facilities is $44,113,500 financing. Texas Eastern further states that the cost of service associated with the Rate Schedule SS capacity reinstatement facilities proposed herein will be borne by all Buyers receiving the Rate Schedule SS service, and requests that the SS reinstatement Demand Rate of $6.0723 be accepted as the initial rate to be charged, together with the effective Rate Schedule SS rates, commencing the later of November 1, 1990, or the date upon which the proposed facilities are placed in service.

Texas Eastern alleges that approval of its proposal herein will remedy a long-standing capacity deficiency on its system which was created by the abandonment of the Staten Island LNG facility, that restoration of the 102,130 dth per day capacity is absolutely essential to maintain Texas Eastern's system design integrity to meet the certificated obligations to its SS customers, and for the foregoing reasons, Texas Eastern submits that its proposal is required by the present and future public convenience and necessity.

Comment date: December 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89–219–000]

Take notice that on November 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–219–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for Conterra Natural Gas, Inc. (Conterra), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Conterra, on an interruptible basis, pursuant to a transportation agreement dated February 10, 1988, as amended April 13, 1988, and September 6, 1988. Northwest explains that service commenced September 26, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–318–000 on October 24, 1988. Northwest further explains that the peak day quantity would be 20,100 MMBtu, the average daily quantity would be 150 MMBtu, and that the annual quantity would be 55,000 MMBtu. Northwest explains that it would receive natural gas for Conterra's account at the existing Sumas receipt point in Whatcom County, Washington, and transport the gas to an existing interconnection with El Paso Natural Gas Company at Ignacio in La Plato County, Colorado, and to an existing interconnection with a Colorado Interstate Gas Company in Sweetwater County, Wyoming, for delivery for the account of Conterra to any appropriate local distribution company or affiliate of Conterra.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williston Basin Interstate Pipeline Company

[Docket No. CP89–206–000]

Take notice that on November 16, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89–206–000 a request pursuant to §§ 157.212 and 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to abandon service and add delivery points under its blanket authorization issued in Docket Nos. CP82–487–000, *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

It is stated that Williston Basin would abandon its certificate authority to serve Byron Natural Gas Utility, Inc., which has been purchased by Wyoming Gas Company, and would add the two delivery points previously used for service to Byron Natural Gas Utility, Inc. to its service agreement under Rate Schedule G–1 with Wyoming Gas Company.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP89–144–000]

Take notice that on November 8, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP89–144–000 an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the rebuilding and upgrading of five centrifugal compressor units located at the Danville and Owingsville, Kentucky, compressor stations and at the Gillis, Louisiana, compressor station, all as more fully set forth in the application which is on file with the Commission and open to public inspections.

Texas Eastern proposes to rebuild five early-model gas turbine compressor engines that are badly worn and nearing obsolescence rather than purchasing new more expensive units.[1] The compressor engines that Texas Eastern plans to rebuild are General Electric Model MS3002 turbines two of which are located in its Danvile Compressor Station in Lincoln County, Kentucky, and two units in the Owingsville Compressor Station in Bath County, Kentucky, and one unit in the Gillis Compressor Station in Beauregard Parish, Louisiana. In addition, Texas Eastern also requests Commission authorization to capitalize the costs of the proposed rebuilding program estimated to be $14,690,000.

[1] Texas Eastern was authorized by Commission order issued July 23, 1984, in Docket No. CP84–380–000, to upgrade by rebuilding ten compressor engines in a program similar to the subject application.

From past experience with the previously rebuilt units, Texas Eastern states that it expects the rebuilding program will increase horsepower output, thermal efficiencies and a greater use of these upgraded units while reducing fuel usage, maintenance costs and compressor outages. It is stated the compressor engine ratings, as a result of the rebuilding, will be increased an average of 400 horsepower per unit. Texas Eastern states that it does not intend to use the additional horsepower to increase pipeline capacity on its system.

Texas Eastern estimated this project will cost $14,690,000, and proposes to finance that cost internally with funds on hand.

Comment Date: December 19, 1988, in accordance with Standard Paragraph F at the end of the notice.

5. Northwest Pipeline Corporation

[Docket No. CP89–249–000]

Take notice that on November 18, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–249–000, a prior notice request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Ash Grove Cement West, Inc. (Ash Grove), an end user of natural gas, under the blanket certificate issued Northwest in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated September 2, 1988, as amended September 6, 1988, under Rate Schedule TI–1, it proposes to transport up to 23,000 MMBtu of natural gas per day for Ash Grove from various existing receipt points on Northwest's system in Utah, Colorado, Wyoming, New Mexico and Washington and redeliver the gas to the Portland West and Scappoose delivery meter in Multnomah County, Oregon, the Durkee delivery meter to Cascade Natural Gas Corporation in Baker County, Oregon, the Idaho Portland Cement delivery meter to Intermountain Gas Company in Bannock County, Idaho, the North Seattle delivery meter in Snohomish County, Washington and the South Seattle delivery meter in King County, Washington to Washington Natural Gas Company.

Northwest states that no construction of facilities would be required to provide the transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 23,000 MMBtu, 330MMBtu and 120,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced September 30, 1988, as reported in Docket No. ST89–303–000.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipe Line Company

[Docket No. CP89–268–000]

Take notice that on November 22, 1988, Tennessee Gas Pipe Line Company (Tennessee) Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP89–268–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for its affiliate Tenngasco Corporation (Tenngasco), a marketer, as agent for Chevron, U.S.A., Inc. under its blanket authorization issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Tenngasco, pursuant to an interruptible transportation service agreement dated October 4, 1988. The term of the transportation agreement is from the date of the contract and shall continue for a primary term of two years, and shall continue month to month thereafter unless cancelled by thirty days prior notice by either party. Tennessee proposes to transport on a peak day up to 1,000,000 dekatherms (dt) per day, the maximum daily quantity pursuant to the transportation agreement; on an average day up to 1,000,000 dt; and on an annual basis 365,000,000 dt of natural gas for Tenngasco. Tennessee proposes to transport natural gas for Tenngasco from multiple receipt points along the Tennessee system for redelivery to Chevron's processing plant located in LaFourche Parish, Louisiana.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on October 6, 1988, as reported in Docket No. ST89–556–000.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP89–265–000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–265–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Unocal Canada Limited (Unocal), under its blanket authorization issued in Docket No. CP89–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Unocal, a producer of natural gas, pursuant to a transportation agreement dated June 10, 1988, under its Rate Schedule TI–1. It is stated that the natural gas to be transported under the transportation agreement would be received on behalf of Unocal by its affiliate, Union Oil Company of California (Union Oil), an end user. The transportation agreement became effective on June 10, 1988 and shall remain in full force and effect until February 8, 1990. Northwest proposes to transport on a peak day up to 25,000 MMBtu; on an average day up to 3,000 MMBtu; and on an annual basis 1,100,000 MMBtu for Unocal. Northwest proposes to receive the subject gas from the existing Sumas receipt point in Whatcom County, Washington and transport such volumes to the Union Oil Parachute Plant Delivery Point located in Garfield County, Colorado. Northwest avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on November 6, 1988, as reported in Docket No. ST89–611–000.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP88–213–001]

Take notice that on August 29, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston,

Texas 77251, filed in Docket No. CP88–213–001 an amendment as supplemented on November 15, 1988, to its pending application filed in Docket No. CP88–213–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act; for authorization to modify sales and storage services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Panhandle states that this amendment reflects the following changes to its original proposal.

(1) Panhandle states that it is deleting the proposed mechanism for recovery of take-or-pay, buy-out and buy-down costs.

(2) It is also stated that Panhandle is deleting its proposed Gas Supply Inventory Charge.

(3) It is further stated that Panhandle is withdrawing its proposed Rate Schedule ST for firm storage service to its sales customers and, therefore, is not proposing any change to the terms for existing firm storage services provided under Rate Schedules TS–2, TS–3, TS–4, TS–5 and TS–6.

(4) Panhandle further states that it is withdrawing its request, effective November 1, 1988, to abandon firm sales service to all customers pursuant to its Rate Schedule LS and G and the effectuation of the proposed new form of firm sales service pursuant to Rate Schedules S–1, S–2 and S–3. It is stated that Panhandle proposes that following authorization, the abandonment of existing Rate Schedule LS and G service and effectuation of the new firm sales service become effective as to each customer only upon expiration of that customer's currently effective sales contract.

(5) Panhandle also states that it is requesting to terminate its currently effective Rate Schedule S.

(6) Panhandle states that to the extent any existing sales customer seeks to convert any portion of its firm service to firm transportation to be effective at the expiration of its existing sales Service Agreement, Panhandle seeks authority to provide such firm transportation in accordance with Rate Schedule PT–Firm. Panhandle further states that such conversion shall be deemed to be in lieu of conversion rights specified by § 284.10 of the Commission's Regulations.

(7) Finally, Panhandle states that it is proposing modifications of the terms of the pro-forma tariff sheets as follows: (a) Deletion of the specific limitation on hourly quantity of firm sales deliveries, in section 2 of the pro-forma S Rate Schedules; (b) determination of deliveries in dekatherms based on the heating value of deliveries during the second preceding month, for purposes of applying the overrun provisions of section 7 of the pro-forma S Rate Schedules; and (c) revision of the proposed procedures for updating of the curtailment, end-use requirements to delete the originally proposed use of a three-year, rolling base period.

For services performed under Panhandle's new Rate Schedule S and I, it proposes to charge the rates set forth in Exhibit P of Panhandle's November 15, 1988, supplement to the proceeding herein.

Comment date: December 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89–251–000]

Take notice that on November 18, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–251–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Hadson Gas Systems, Inc. (Hadson) under WNG's blanket certificate issued in Docket No. CP89–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 79,380 MMBtu of natural gas per day for Hadson from various receipt points in Kansas, Missouri, Oklahoma and Wyoming to various delivery points on WNG's pipeline system located in Kansas, Missouri and Texas. The receipt and delivery points are listed in Exhibits A through B–1 of the September 14, 1988 transportation agreement which provides for this service, and on file with the Commission and open to public inspection. WNG states that it anticipates transporting 79,380 MMBtu on an average day and 28,973,700 MMBtu on an annual basis.

WNG states that the transportation of natural gas for Hadson commenced on October 4, 1988, as reported in Docket No. ST89–527–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86–631–000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

WNG further states that it has no knowledge of any agency relationship under which a local distribution company or an affiliate of Hadson will receive natural gas on behalf of Hadson.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89–247–000]

Take notice that on November 18, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–247–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Amgas, Inc. (Amgas), a marketer of natural gas pursuant to Panhandle's blanket certificate issued in Docket No. DP86–585–000 and Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Panhandle requests authority to transport up to 200 dt equivalent of natural gas per day on an interruptible basis on behalf of Amgas pursuant to a transportation agreement dated September 19, 1988, between Panhandle and Amgas. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Wyoming, and Colorado and to redeliver the gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company in Tazewell County, Illinois.

Panhandle indicates it would provide the service for a primary term of one month from the date of initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least 30 days prior notice to the other. Panhandle states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 200 dt equivalent of natural gas, 100 dt equivalent of natural gas, and 36,500 dt equivalent of natural gas, respectively. Panhandle states it commenced a 120-day transportation service for Amgas on October 12, 1988, as reported in Docket No. ST89–608–000.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipleline Company of America

[Docket No. CP89–199–000]

Take notice that on November 15, 1988, Natural Gas Pipleline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–199–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for Natural Gas Clearinghouse, Inc. (NGC) under its blanket certificate issued in Docket No. CP86–582–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that pursuant to an Interruptible Transportation Service Agreement dated September 7, 1988, Natural is obligated to accept for transportation, on an interruptible basis, no more than 150,000 MMBtu per day of natural gas for NGC. Natural further states that NGC may request and Natural may agree to accept additional quantities as overrun gas. Natural states that NGC has advised Natural that the volumes anticipated to be transported on an average day would be 10,000 MMBtu. Natural further states that based on that average day figure, the annual volume to be transported would be 3,650,000 MMBtu. Natural indicates that the receipt point would be located in Oklahoma and the delivery point would be located in Texas.

Natural indicates that it commenced the transportation of natural gas for NGC on October 1, 1988, at Docket No. ST89–755, for a one hundred and twenty (120) day period pursuant to § 284.223(a)(1) of the Commission's Regulations (18 CFR 284.223(a)(1).

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–237–000]

Take notice that on November 17, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–237–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Houston Gas Exchange Corporation (Shipper), under the blanket certificate issued in Docket No. CP88–328–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it proposes to transport for Shipper 340,000 dt on a peak day, 200,000 dt on an average day and 73,000,000 dt on an annual basis. Transco also states that it will receive gas at Brazos Block 437/436, offshore Texas and deliver the gas at an existing interconnect between Transco and Channel Industries, Inc. at Markham, Matagorda, Texas.

Transco further states that it commenced this service October 1, 1988, as reported in Docket No. ST89–355.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89–192–000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–192–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of E. I. Du Pont De Nemours and Company, an end user of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the interruptible gas transportation service agreement #T1–21–1662/Ref. #2889, dated June 1, 1988, proposes to transport a maximum daily quantity of 3,090 MMBtu and an annual quantity of 1,127,850 MMBtu, using existing facilities to provide transportation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 19, 1988, as reported in Docket No. ST89–382 pursuant to § 284.223(a) of the Regulations.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP89–185–000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–185–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Enron Gas Marketing, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1–21–1818/Ref. #3380, dated August 22, 1988, proposes to transport a maximum daily quantity of 51,500 MMBtu and an annual quantity of 18,797,500 MMBtu, using existing facilities to provide transportation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 19, 1988, as reported in Docket No. ST89–378 pursuant to Section 284.223(a) of the Regulations.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corporation

[Docket No. CP89–217–000]

Take notice that on November 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–217–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for Evanite Fiber Corporation (Evanite), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Evanite, on an interruptible basis, pursuant to a transportation agreement dated July 14, 1988. Northwest explains that service commenced October 8, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–587–000. Northwest further explains that the peak day quantity would be 3,000 MMBtu, the average daily quantity would be 2,900 MMBtu, and that the annual quantity would be 1,100,000 MMBtu. Northwest explains that it would receive natural gas from various sources in Wyoming, Colorado, Utah, New Mexico, and Washington, and would redeliver the gas to

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Northwest Natural Gas Company, a local distribution company, for the account of Evanite in the states of Washington and Oregon.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Northwest Pipeline Corporation

[Docket No. CP89–220–000]

Take notice that on November 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–220–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for Norpac Foods, Inc. (Norpac), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Norpac, on an interruptible basis, pursuant to a transportation agreement dated February 10, 1988, as amended July 15, 1988. Northwest states that service commenced September 30, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–339–000. Northwest further explains that the peak day quantity would be 2,500 MMBtu, the average daily quantity would be 160 MMBtu, and that the annual quantity would be 60,000 MMBtu. Northwest explains that it would receive natural gas for Norpac's account from various sources in Wyoming, Colorado, Utah and Washington, and would redeliver the gas to Northwest Natural Gas Company (Northwest), a local distribution company, for the account of Norpac at existing delivery points in Washington and Oregon.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Northwest Pipeline Corporation

[Docket No. CP89–218–000]

Take notice that on November 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–218–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for G. Heileman (Heileman), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Heileman, on an interruptible basis, pursuant to a transportation agreement dated July 15, 1988. Northwest explains that service commenced September 30, 1988, under § 284.223(a) of the Commission's Regulation, as reported in Docket No. ST89–317–000 on October 24, 1988. Northwest further explains that the peak day quantity would be 2,800 MMBtu, the average daily quantity would be 100 MMBtu, and that the annual quantity would be 40,000 MMBtu. Northwest explains that it would receive natural gas from various sources and interconnects in Wyoming, Colorado, Utah, Washington, and Oregon and would redeliver the gas for the account of Heileman to Washington Natural Gas Company (Washington Natural) in the state of Washington.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Northwest Pipeline Corporation)

[Docket No. CP89–216–000]

Take notice that on November 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–216–000 a request pursuant to § 157.205 and 284.223 of the Commission's regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to Section 7 of the Natural Gas Act for Eastex Canadian Hunter (Eastex), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Eastex, on an interruptible basis, pursuant to a transportation agreement dated June 10, 1988. Northwest explains that service commenced September 22, 1988, under § 284.223(a) of the Commission's Regulations, as reported on October 24, 1988, in Docket No. ST89–304–000. Northwest further explains that the peak day quantity would be 500,000 MMBtu, the average daily quantity would be 2,500 MMBtu, and that the annual quantity would be 900,000 MMBtu. Northwest explains that it would receive natural gas from various sources in Wyoming, Colorado, Utah, Washington, and New Mexico and would redeliver the gas for Eastex's account to Washington Water Power Company a local distribution company in the state of Washington.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. PennEast Gas Service Company CNC Transmission Corporation Texas Eastern Transmission Corporation

[Docket No. CP88–182–001]

Take notice that on November 10, 1988, PennEast Gas Services Company (PennEast), a general partnership, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, WV 26301, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, TX 77252, jointly known as applicants (Applicants), filed a Compliance Amendment to their Joint application for certificates of public convenience and necessity and related authorizations filed on January 15, 1988, pursuant to section 7(c) of the Natural Gas Act, and the rules and regulations of the Commission. The compliance amendment supplements and modifies Applicants' original application solely to reflect a modification of the design of certain of the proposed facilities for which Commission authorization to construct and operate is requested. The Compliance Amendment is currently on file with the Federal Energy Regulatory Commission (Commission) and is available for public inspection.

Applicants state that in the January 15, 1988, application PennEast specifically sought construction and operation authorization for facilities, which would consist of incremental pipeline, compression and metering facilities, which would be operated in conjunction with existing facilities owned and operated by CNC and Texas Eastern to render the proposed transportation services from the proposed receipt points to the proposed New York and New Jersey shippers' delivery points. By the original application, PennEast proposed to construct and operate the following facilities:

In conjunction with CNG:

—83 miles of 24-inch pipeline from the northern terminus of CNG's Line No. TL–460 at Biddlecum road to Point Vivian, New York, near the international border, to be known as Line No. PE–468;

—5,800 horsepower of compression to be located at CNG Transmission's existing Greenlick Compressor Station;

—13,500 horsepower of compression at a site on CNG Transmission's existing Line No. PL–1 near Doylesburg, Pennsylvania;

—6,000 horsepower of compression to be located at CNG Transmission's existing Sabinsville Compressor Station;
—measuring and regulations facilities to be located at the existing interconnection between the facilities of CNG Transmissions and Texas Eastern at Leidy Storage Pool;

In conjunction with Texas Eastern:

—20.25 miles of 36-inch pipeline looping on Texas Eastern's Leidy pipeline between PennEast's proposed Centre Hall compressor station and Texas Eastern's Perulack Station;
—8.50 miles of 36-inch pipeline loop and the discharge side of Texas Eastern's compressor station 23;
—3.93 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's Line No. 2 between station No. 25 and station No. 26;
—5.25 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's 24-inch Hanover Lateral;
—38.70 miles 30-inch pipeline from Texas Eastern's compressor station No. 27–A to Long Island, N.Y.;
—additional 4,800 horsepower gas turbine/compressor unit and upgrade the 3,500 horsepower unit to 4,800 horsepower, at PennEast's proposed Centre Hall compressor station;
—one 11,000 horsepower gas turbine/compressor unit at Texas Eastern's compressor station 24–A;
—two 11,000 horsepower gas turbine/compressor units at Texas Eastern's compressor station 24–A;
—two 11,000 horsepower gas turbine/compressor units at Texas Eastern's compressor station 25;
—measuring and regulating facilities at Texas Eastern's measuring and regulating stations Nos. 087, 1075, 953. Perulack and Chambersburg compressor station and PennEast's proposed Long Island measuring and regulation station.

Applicants state that the original application was filed in response to the Commission's notice of July 24, 1987, soliciting applications for authority to provide new natural gas service to the Northeast United States.

Applicant states that on August 15, 1988, the Associated PennEast Customer (APEC) Group filed an offer of settlement that provided for the severance from the open-season proceedings of various projects, the portions of projects in order to provide service to the APEC members by the winter 1989–90.

Applicants state that as a result of the filing by Texas Eastern of the Fence-to-Fence Capacity Restoration Project facilities, and the separate LNG reinforcement facilities, modifications are necessary to facilities proposed for other PennEast projects which were designed in conjunction with Texas Eastern's system, and were in a subsequent design sequence. Applicants further state that this compliance Amendment is submitted solely in response to the October 26, 1988, order.[2]

PennEast requests authorization to construct and operate the following facilities in conjunction with Texas Eastern's system:

—24.66 miles of 36-inch pipeline looping on Texas Eastern's Leidy pipeline from M.P. 24.66 to Texas Eastern's Perulack Station;
—3.25 miles of 36-inch pipeline loop on the discharge side of Texas Eastern's compressor station 23;
—5.18 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's Line No. 2 between station No. 25 and station No. 26 (M.P. 1430.72 to M.P. 1434.90);
—1.75 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's 24-inch Hanover Lateral;
—38.70 miles of 30-inch pipeline from Texas Eastern's compressor station No. 27–A to Long Island, N.Y.;
—one 11,000 horsepower gas turbine/compressor unit at Texas Eastern's compressor station 24–A;
—two 11,000 horsepower gas turbine/compressor units at Texas Eastern's compressor station 25;
—measuring and regulation facilities at Texas Eastern's measuring and regulating stations Nos. 087, 953, and PennEast's proposed Long Island measuring and regulation station.

The estimated capitol cost of the proposed Facilities is $314,602,500. In all other respects, the original application including the facilities in conjunction with CNG Transmission system and the proposed service remains unchanged.

Comment date: December 19, 1988, in accordance with Standard Paragraph F at the end of his notice.

20. PennEast Gas Services Company

[Docket No. CP88–181–001]

Take notice that on November 10, 1988, PennEast Gas Services Company (PennEast), a general partnership, filed a Compliance Amendment to its application for a certificate of Public Convenience and Necessity filed on January 15, 1988, pursuant to section 7(c) of the Natural Gas Act, and the Rules and Regulations of the Commission, and in compliance with the Commission's Order Finding Additional Discrete Projects issued October 26, 1988.[3]

PennEast states that on January 15, 1988, it filed an application for authorization to render a firm natural gas sales service pursuant to Rate Schedule CDS in interstate commerce to designated local distribution companies; to render firm transportation services in interstate commerce; to construct and operate facilities necessary therefore; and for a blanket certificate pursuant to 18 CFR 284.221 authorizing open-access, non-discriminatory transportation of natural gas.

PennEast states that it in the January 15, 1988 application proposed to construct and operate the following facilities in conjunction with the pipeline system of Texas Eastern:

—2.56 miles of 42-inch pipeline looping on Texas Eastern's existing pipeline in Pennsylvania.
—24.5 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's 20-inch Line No. 2 at the discharge of Texas Eastern's Compressor Station No. 25 in Pennsylvania.
—1.0 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's 24-inch Hanover Lateral Line No. 20–B in New Jersey.
—11,000 HP gas turbine/compressor unit at Station 21–A.
—11,000 HP gas turbine/compressor unit at Station 23.
—Expand capacity of Texas Eastern's Measuring and Regulating Stations No. 087 and No. 949.

PennEast states that on August 15, 1988, the Associated PennEast Customer ("APEC") Group filed an offer of settlement that provided for the severance from the open-season proceedings of various projects or portions of projects in order to provide service to the APEC members by the winter of 1989–90. PennEast further states that by its order of October 26, 1988, the Commission found the LNG reinstatement portion of the CRP project to be eligible for processing as a discrete project and directed Texas Eastern to file an application to implement that portion of the CRP project.

PennEast states that as a result of the filing by Texas Eastern of the Fence-to-Fence Capacity Restoration Project facilities, and the separate LNG reinstatement facilities, modifications are necessary to facilities proposed for other PennEast projects which were designed in conjunction with Texas Eastern's system, and were in a

[2] *Northeast and U.S. Pipeline Projects*, 45 FERC ¶ 61,098.

[3] *Northeast U.S. Pipeline Project*, 45 FERC ¶ 61,006

subsequent design sequence, and that its Compliance Amendments are submitted solely in response to that necessity and the October 26, 1988, order.

PennEast requests authorization to construct and operate the following facilities:

—7.50 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's 20-inch Line No. 2 at the discharge of Texas Eastern's Compressor Station No. 25 in Pennsylvania (M.P. 1397.97 to M.P. 1405.47).
—11,000 HP gas turbine/compressor unit at Station 21–A.
—Modify Texas Eastern's Measuring and Regulating Stations Nos. 949 and 1209.
—Aerodynamic assembly changeouts at Station No. 23.

The estimated capital cost of the proposed facilities is $28,286,500.

Applicant states that in all other respects, the proposed services of the original application remain unchanged.

Comment date: December 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

21. Williston Basin Interstate Pipeline Company

[Docket No. CP89–156–000]

Take notice that on November 10, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89–156–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to modify and enhance certain metering facilities at 18 metering stations of wells in Williston Basin's Baker Storage Field, all as more full set forth in the application which is on file with the Commission and open to public inspection.

At 16 of the stations, Williston Basin proposes to install new above-ground meter runs of the same size as the existing facilities but compatible with the 400 lb. psig design of other field facilities. These stations are identified as Station Nos. 3, 7, 8, 18, 28, 43, 47, 120, 126, 140, 394, 395, 396, 397, 398, and 399 (see appendix for complete list and legal description of all 18 meter stations).

Williston Basin further proposes to install a 4-inch meter run in addition to the existing 6-inch meter run at Station No. 12. It is stated that this would allow for more efficient operation of this group meter station.

Williston Basin also proposes to measure the storage withdrawals from well No. 81 through a group meter at Meter Station No. 108. It is stated that this would allow Williston Basin to operate this well on a most cost-efficient basis due to the low volume of gas injected into this well. It is indicated that group metering these two storage wells would require the installation of 50 feet of 3-inch pipeline and miscellaneous gauges and valves.

Williston Basin states that the proposed facilities would be installed on existing pipeline right-of-way. It is estimated that the total construction cost would be $180,000, which cost would be financed through internally generated funds and/or short-term bank loans.

Comment date: December 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

Appendix

Storage Meter Stations

1. Well #3 Group Meter Station—Unit 3, located in the SW ¼ of Section 27, T1ON, R58E, in Fallon County, Montana.
2. Well #7 Group Meter Station—Unit 3, located in the NE ¼ of Section 28, T1ON, R58E, in Fallon County, Montana.
3. Well #8 Group Meter Station—Unit 3, located in the NE ¼ of Section 3, T9N, R58E, in Fallon County, Montana.
4. Well #12 Group Meter Station—Unit 4, located in the NE ¼ of Section 14, T9N, R58E, in Fallon County, Montana.
5. Well #18 Meter Station—Unit 3, located in the NE ¼ of Section 34, T1ON, R58E, in Fallon County, Montana.
6. Well #47 Group Meter Station—Unit 3, located in the SE ¼ of Section 34, T1ON, R58E, in Fallon County, Montana.
7. Well #394 Meter Station—Unit 3, located in the SE ¼ of Section 21, T1ON, R58E, in Fallon County, Montana.
8. Well #28 Group Meter Station—Unit 4, located in the SE ¼ of Section 25, T9N, R58E, in Fallon County, Montana.
9. Well #43 Group Meter Station—Unit 4, located in the NW ¼ of Section 24, T9N, R58E, in Fallon County, Montana.
10. Well #120 Meter Station—Unit 4, located in the NW ¼ of Section 11, T9N, R58E, in Fallon County, Montana.
11. Well #140 Group Meter Station—Unit 4, located in the NW ¼ of Section 24, T9N, R58E, in Fallon County, Montana.
12. Well #395 Meter Station—Unit 4, located in the SW ¼ of Section 11, T9N, R58E, in Fallon County, Montana.
13. Well #396 Meter Station—Unit 4, located in the SE ¼ of Section 14, T9N, R58E, in Fallon County, Montana.
14. Well #397 Meter Station—Unit 4, located in the NE ¼ of Section 23, T9N, R58E, in Fallon County, Montana.
15. Well #398 Meter Station—Unit 4, located in the SW ¼ of Section 24, T9N, R58E, in Fallon County, Montana.
16. Well #399 Meter Station—Unit 4, located in the SE ¼ of Section 36, T9N, R58E, in Fallon County, Montana.
17. Well #126 Group Meter Station—Unit 5, located in the ¼ of Section 4, T8N, R59E, in Fallon County, Montana.
18. Well #81 Meter Station—Unit 5, located in the NW ¼ of Section 10, T8N, in Fallon County, Montana.

22. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–241–000]

Take notice that on November 18, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–241–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point and appurtenant facilities as a jurisdictional sales facility, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to operate an existing delivery point to Northern States Power Company of Wisconsin (NSP–Wisc.) to accommodate jurisdictional natural gas deliveries to the State Fish Hatchery near Bayfield, Wisconsin, to be served by NSP–Wisc. It is stated that the volume of gas delivered to the State Fish Hatchery would be served from the existing firm entitlement of NSP–Wisc.

Northern states that the facility was constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978. It is estimated that a maximum of 145 Mcf of gas per day would be delivered at this point.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Northwest Pipeline Corporation

[Docket No. CP89–222–000]

Take notice that on November 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–222–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for Cascade Steel Rolling Mills, Inc. (Cascade), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Cascade, on an

interruptible basis, pursuant to a transportation agreement dated July 15, 1988, as amended August 17, 1988. Northwest states that service commenced October 6, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–588–000. Northwest further explains that the peak day quantity would be 2,900 MMBtu, the average daily quantity would be 33 MMBtu, and that the annual quantity would be 12,000 MMBtu. Northwest explains that it would receive natural gas from various sources and in Wyoming, Colorado, Utah, and Washington, and would redeliver the gas to Northwest Gas Company and/or CP National Corporation, local distribution companies, for the account of Cascade in the States of Washington and Oregon.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Northwest Pipeline Corporation

[Docket No. CP89–221–000]

Take notice that on November 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–221–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for Pennwalt Corporation (Pennwalt), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Pennwalt, on an interruptible basis, pursuant to a transportation agreement dated June 10, 1988. Northwest explains that service commenced September 22 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–316–000. Northwest further explains that the peak day quantity would be 3,700 MMBtu, the average daily quantity would be 550 MMBtu, and that the annual quantity would be 200,000 MMBtu. Northwest explains that it would receive natural gas from various sources and in Wyoming, Colorado, Utah, New Mexico and Washington, and would redeliver the gas to Northwest Gas Company (Northwest), a local distribution company, for the account of Pennwalt in Multnomah and Clackmas Counties, Oregon.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Northwest Pipeline Corporation

[Docket No. CP89–261–000]

Take notice that on November 21, 1988, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP89–261–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Smurfit Newsprint Corporation (Smurfit), as end user, under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that the volumes of natural gas to be transported for Smurfit would be approximately 12,000 MMBtu on a peak day, approximately 4,000 MMBtu on an average day and approximately 1,500,000 MMBtu on an annual basis. Northwest further states that it would transport the natural gas through its transmission system from various receipt points on its system in Colorado, Wyoming, New Mexico, Utah and Washington to the Portland West and Scappoose Meter Station and the Portland Northeast Meter Station located in Multnomah County, Oregon and the Portland Southeast Meter Station located in Clackmas County, Oregon. Northwest indicates that the delivery point meter stations connect to Northwest Natural Gas Company.

Northwest states that it commenced the transportation of the natural gas for Smurfit on October 11, 1988, at Docket No. ST89–564–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations (18 CFR 284.223(a)(1)).

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Trunkline Gas Company

Docket No. CP89–259–000

Take notice that on November 21, 1988 Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–259–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to transport natural gas for American Central Gas Marketing Company (American Central), a shipper of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 100,000 Dt. per day on behalf of American Central pursuant to a Transportation Agreement dated September 2, 1988, between Trunkline and American Central (Transportation Agreement). The Transportation agreement provides for trunkline to receive gas from various existing points of receipt on its system. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Northern Indiana Public Service Company (Northern Indiana) in Marshall, Pulaski, Elkhart, and Jasper Counties, Indiana.

Trunkline further states that the estimated daily and estimated annual quantities would be 20,000 Dt. and 7,300,000 Dt., respectively. Service under § 284.223(a) commenced on October 12, 1988, as reported in Docket No. ST89–0560.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. United Gas Pipe Line Company

[Docket No. CP89–235–000]

Take notice that on November 17, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–235–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transporation service on behalf of The Resource Group, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement T1–21–1894/Ref. #3656, dated October 5, 1988, proposes to transport a maximum daily quantity of 10,300 MMBtu and an annual quantity of 3,759,500 MMBtu, using existing facilities to provide transporation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 7, 1988, as reported in Docket No. ST89–580 pursuant to § 284.223(a) of the Regulations.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Williams Natural Gas Company

Docket No. CP89–244–000

Take notice that on November 18, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–244–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for Cabot Energy Marketing Corporation (Cabot) under WNG's blanket certificate issued in Docket No. CP86–6341–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 150,000 MMBtu of natural gas per day for Cabot from various receipt points of Kansas, Oklahoma, Texas and Wyoming to various delivery points on WNG's pipeline system located in Kansas, Missouri and Oklahoma. WNG anticipates transporting 50,000 MMBtu on an average day and 54,750,000 MMBtu on an annual basis. WNG states that the transportation of natural gas for Cabot commenced on October 1, 1988, as reported in Docket No. ST89–613–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. United Gas Pipe Line Company

[Docket No. CP89–271–000]

Take notice that on November 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 filed in Docket No. CP89–271–000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act of authorization to abandon in place certain pipeline facilities and to add a delivery point to Mississippi Valley Gas Company (MVG) under the blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that MVG is an existing distributor customer of United. United proposes to abandon in place by sale to MVG approximately three miles of 8-inch diameter pipeline and related facilities in Hinds County, Mississippi. It is stated that the facilities to be abandoned are known as the Woodrow Wilson Pipeline. United explains that in order to continue to serve MVG at this location, it proposes to construct and operate a 6-inch dual meter station at the proposed point of division between United-owned facilities and those to be owned by MVG. It is indicated that the proposed change in delivery points will not affect United's delivery capacity to MVG and is not prohibited by United's tariff.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. Natural Gas Pipeline Company of America

[Docket No. CP89–254–000]

Take notice that on November 21, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–254–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Panhandle Trading Company (Panhandle), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day from receipt points located in Louisiana, Offshore Louisiana and Offshore Texas to delivery points located in Louisiana, Illinois, Texas, Arkansas, Iowa, Missouri and Kansas. Natural anticipates transporting, on an average day 15,000 MMBtu and an annual volume of 5,475,000 MMBtu.

Natural states that the transportation of natural gas for Panhandle commenced October 1, 1988, as reported in Docket No. ST89–812–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Tennessee Gas Pipeline Company

[Docket No. CP89–280–000]

Take notice that on November 23, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–280–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for LL&E Gas Marketing, Inc. (LL&E), a marketer, under the blanket certificate issued in Docket No. CP87–115–000 on June 18, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 25, 1988, it proposes to transport up to 10,000 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for LL&E from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". Such transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at existing points on its system located offshore Louisiana, and that it would transport and redeliver the gas in the State of Louisiana and that the ultimate delivery point is the State of Wisconsin.

Tennessee advises that service under § 284.223(a) commenced October 26, 1988, as reported in Docket No. ST89–764 (filed November 17, 1988). Tennessee further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. United Gas Pipe Line Company

[Docket No. CP89–273–000]

Take notice that on November 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–273–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Consolidated Fuel Corporation (Consolidated Fuel). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–599. United explains that the peak day quantity would be 77,250 MMBtu, the average daily quantity would be 77,250 MMBtu, and that the annual quantity would be 28,196,250 MMBtu. United explains that it would receive natural gas for Consolidated Fuel's

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account at existing points of receipt in the state of Louisiana, and would redeliver for Consolidated Fuel's account at the existing interconnection between United and Southern Natural Gas Company in Ouachita Parish, Louisiana.

Comment date: January 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27913 Filed 12-2-88; 8:45 am]

BILLING CODE 6717-01-m

[Project No. 9731-001]

Summit Hydropower; Surrender of Preliminary Permit

November 30, 1988.

Take notice that Summit Hydropower, permittee for the Willimantic No. 3 Project No. 9731, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9731 was issued on May 8, 1986, and would have expired on April 30, 1989. The project would have been located on the Willimantic River, in Windham County, Connecticut.

The permittee filed the request on November 16, 1988, and the preliminary permit for Project No. 9731 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27915 Filed 12-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC89-4-001, Docket No. TC89-4-002]

Arkla Energy Resources; Tariff Filing

November 30, 1988.

Take notice that on November 16 and 17, 1988,[1] Arkla Energy Resources, a Division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Dockets No. TC89-4-001 and TC89-4-002, pursuant to § 281.204(b)(2) of the Commission's Regulations the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective December 1, 1988: First Substitute Tenth Revised Sheet No. 3E. Cancel, Tenth Revised Sheet No. 3F.

The filings reflect changes in the Applicants Index of Entitlements.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before December 9, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27916 Filed 12-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-115-006]

Texas Gas Transmission

November 30, 1988.

Take notice that on November 23, 1988, Texas Gas Transmission Corporation (Texas Gas) filed revised tariff sheets to its FERC Gas Tariff, to be effective November 1, 1988.

Texas Gas states that in compliance with the Commission's order of May 31, 1988, this filing reflects the following changes:

(a) The base demand and commodity costs of purchased gas were determined from the PGA filing made on September 30, 1988, to be effective November 1, 1988, and are reflected on Third Revised Sheet No. 107 and Substitute Second Revised Sheet No. 108.

(b) The revised tariff sheets and supporting workpapers reflect currently effective contract demand volume levels in the design of the D-1 rates to the extent that certificate authority for the revised contract demand levels is not received before November 1, 1988.

Texas Gas requests any necessary waivers and moves the Commission to accept the revised tariff sheets to be effective November 1, 1988, subject to refund and to the final determination of the Commission in the instant proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825

[1] The submission of TC89-4-002 on November 17, 1988, was made to correct clerical errors in the original filing of November 16th.

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commissions Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27917 Filed 12-2-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3486-8]

Ambient Air Monitoring Reference and Equivalent Methods; Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is:

EQL-1288-070, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission Spectrometry (Silver Valley Laboratories)."

The applicant's request for an equivalent method determination for the above method was received on October 17, 1988.

This method has been tested by the applicant, Silver Valley Laboratories, Inc., in accordance with the test procedures prescribed in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept in file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with nitric acid facilitated by heat. The lead content of the sample is analyzed by a Thermo-Jarrell Ash inductively coupled argon plasma optical emission spectrometer using the 220.35 nm lead emission line and instrument conditions optimized by the user laboratory. A sample of the extract solution is nebulized to form an aerosol which is excited with high temperature argon gas produced by passing of argon through a powerful radio frequency field. Radiation emitted from the plasma enters a spectrometer where it is separated into selected wavelengths and sensed by separate photomultipler tubes for each element of interest. The luminous energy thus measured is converted to an output signal which can be related to the concentration of each element of interest in the sample. Technical questions concerning the method should be directed to Silver Valley Laboratories, Inc., P.O. Box 929, Kellogg, Idaho 83837.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of section 2.8 of Appendix C to 40 CFR Part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR Part 53.

Additional information concerning this action may be obtained by writing to Director, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

For Further Information Contact: Frank McElroy at (919) 541-2622.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88-27889 Filed 12-2-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00096; FRL-34867]

Biotechnology Science Advisory Committee; Subcommittee on the Proposed Biotechnology Rule Under TSCA; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee; Subcommittee on Proposed Biotechnology Rule under TSCA. The meeting will be open to the public. The Subcommittee will review a set of scientific issues being considered by the Agency in connection with a proposed rule under the Toxic Substances Control Act (TSCA) for testing and use of microorganisms subject to TSCA.

DATE: The meeting will be held on Wednesday, December 21, 1988, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: November 29, 1988.

Victor J. Kimm,

Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 88-27953 Filed 12-2-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59264A; FRL-34864]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-1. The test marketing conditions are described below.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–608, 401 M St. SW., Washington, DC 20460, (202) 382–2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–89–1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–89–1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–89–1

Date of Receipt: October 11, 1988.
Notice of Receipt: October 21, 1988 (53 FR 41410).
Applicant: AM International, Inc.
Chemical: Polymer of a fat and heterocyclic substituted olefin.
Use: Open non-dispersive use.
Production Volume: (Confidential).
Number of Customers: 6 customers.
Test Marketing Period: 15 months, commencing on first day of manufacture.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 23, 1988.

Wendy Cleland-Hamnett,

Deputy Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 88–27896 Filed 12–2–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51596B; FRL–3486–5]

Toxic and Hazardous Substances; Certain Chemical Premanufacture Notice; Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the authority of section 5(c) of the Toxic Substances Control Act (TSCA), EPA is revoking, effective November 16, 1988, the remaining portion of a 90-day extension of the review period for PMN P86–92.

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Room E–613, 401 M Street SW., Washington, DC 20460, (202) 382–3374.

SUPPLEMENTARY INFORMATION: The original review periods for P88–134 and P88–138 were scheduled to expire on January 20, 1988. EPA published a section 5(c) extension notice for the PMN in the **Federal Register** of January 26, 1988 (53 FR 2888), to provide the Agency with sufficient time to issue an Order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substance in, or importing it into, the United States, pending the submission and evaluation of test data addressing the potential risk of injury to the environment.

After the section 5(c) extension was published, the Company voluntarily suspended the notice review period and submitted additional toxicity testing. In light of this new information, EPA finds that the PMN substance does not present an unreasonable risk of injury to the environment.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: November 16, 1988.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 88–27893 Filed 12–2–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51700B; FRL–3486–6]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices; Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the authority of section 5(c) of the Toxic Substances Control Act (TSCA), EPA is revoking, effective November 16, 1988, the remaining portion of a 90-day extension of the review periods for PMN P88–134 and P88–138.

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Room E–613, 401 M Street, SW., Washington, DC 20460, (202) 382–3374.

SUPPLEMENTARY INFORMATION: The original review period for P88–92 was scheduled to expire on August 31, 1987. EPA published a section 5(c) extension notice for the PMN in the **Federal Register** of September 16, 1987 (52 FR 34497), to provide the Agency with sufficient time to issue an Order under section 5(e). The order would have prohibited the Company from manufacturing the PMN substance in, or importing it into, the United States, pending the subcommission and evaluation of test data addressing the potential risk of injury to the environment.

After the section 5(c) extension was published, the Company voluntarily suspended the notice review period and submitted additional toxicity testing. In light of this new information, EPA finds that the PMN substance does not present an unreasonable risk of injury to the environment.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: November 16, 1988.

John W. Melone,

Director, Chemical Control Division Office of Toxic Substances.

[FR Doc. 88-27894 Filed 12-2-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200184.
Title: North Carolina State Ports Authority Terminal Agreement.
Parties: North Carolina State Ports Authority, Boke Trading, Inc. (Boke).
Synopsis: The agreement establishes a one-year contract with an option for two additional terms of one year for Boke's marine terminal operations at Wilmington, North Carolina.

Agreement No.: 224-200183.
Title: Trans Pacific Container Service Corporation Terminal Agreement.
Parties: Trans Pacific Container Service Corporation (TRAPAC), Marine Terminals Corporations (MTC).
Synopsis: The agreement provides for MTC to furnish terminal and stevedoring services to TRAPAC at TRAPAC's facility located at Terminal 30 in Seattle, Washington.

Agreement No.: 224-011042-001.
Title: Galveston Wharves Terminal Agreement.
Parties: Board of Trustees of the Galveston Wharves, Southern Stevedoring Company, Inc. (Southern).
Synopsis: The agreement provides for a reduction in the total annual cargo through-put tonnage and a reduced usage fee in connection with Southern relinquishing a portion of the Upland Terminal.

Agreement No.: 224-200077-001.
Title: Virginia International Terminals Agreement.
Parties: Virginia International Terminals, Inc., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Yamashita-Shinnihon Steamship Co., Ltd.
Synopsis: The agreement substitutes Nippon Liner System, Ltd. for Yamashita-Shinnihon Steamship Co., Ltd. as a party to the basic agreement.

By Order of the Federal Maritime Commission.

Dated: November 30, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-27901 Filed 12-1-88; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 220573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreeement No.: 217-010738-002.
Title: Barber Blue Sea/Open Bulk Carriers Chartering Agreement.
Parties: Barber Blue Sea (Wilhelmsen Lines A/S), Opean Bulk Carriers Limited.
Synopsis: The proposed modification would reflect the termination of the joint service status of Barber Blue Sea due to the withdrawal of two of the three current parties to the joint service. The resulting owner of Barber Blue Sea will be Wilhelmsen Lines A/S. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 30, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-27928 Filed 12-2-88; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passenger or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Seabourn Cruise Line A/S, c/o Eliot J. Halperin, Esquire, Graham and James, 1750 17th Street, NW., Washington, DC 20036.

Vessel: *Seabourn Pride.*

Date: November 30, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-27927 Filed 12-2-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; C. B. Bancshares, Inc.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *C. B. Bancshares, Inc. Employee Stock Ownership Plan and Trust,* Honolulu, Hawaii; to acquire 24.9 percent of the voting shares of C. B. Bancshares, Honolulu, Hawaii, and thereby indirectly acquire City Bank, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, November 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27852 Filed 12-2-88; 8:45 am]

BILLING CODE 6210-01-M

First Interstate BancSystem of Montana, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Interstate BancSystem of Montana, Inc.*, Billings, Montana; to acquire First Interstate Trust Company of Billings/Missoula, Billings, Montana, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Montana.

Board of Governors of the Federal Reserve System, November 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27853 Filed 12-2-88; 8:45 am]

BILLING CODE 6210-01-M

First National Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 22, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First National Bancorp*, Gainesville, Georgia; to acquire 100 percent of the voting shares of The People Bank of Forsyth County, Cumming, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Missouri Valley Financial Services, Inc.*, Missouri, Valley, Iowa; to acquire 100 percent of the voting shares of First Bank N.A., Council Bluffs, Iowa.

Board of Governors of the Federal Reserve System, November 29, 1988.

James McAfee

Associate Secretary of the Board.

[FR Doc. 88-27854 Filed 12-2-88; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to engage *de novo* in making equity and debt investments in

corporations or projects primarily designed to promote community welfare, such as economic rehabilitation and development of low income areas by providing housing, services or jobs for residents pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Detroit, Michigan.

Board of Governors of the Federal Reserve System, November 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27855 Filed 12–2–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Jay Nelson; Correction

This notice corrects a previous Federal Register notice (FR Doc. 88–25732) published at page 45160 of the issue for Tuesday, November 8, 1988.

Under the Federal Reserve Bank of Minneapolis, the entry for Jay Nelson, Austin, Minnesota, is amended to read as follows:

1. *Jay Nelson,* Austin, Minnesota; Jodell Van Duyn, Dubuque, Iowa; and Thomas Nelson, San Jose, California; acting in concert to acquire an additional 17.9 percent of the voting shares of Mower Agency, Inc., Austin, Minnesota, and thereby indirectly acquire Sterling State Bank, Austin, Minnesota.

Comments on this application must be received by December 19, 1988.

Board of Governors of the Federal Reserve System, November 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27856 Filed 12–2–88; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 111488 AND 112588

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Royal Dutch Petroleum Company, Tenneco, Inc., HOCOL, S.A	89–0100	11/15/88
Harvard Industries, Inc., E. Cayley Hill, Dominion Automotive Industries, Inc	89–0157	11/15/88
Holiday Pacific Partners Limited Partnership, Holiday Corporation, Holiday Pacific Holding Company	89–0172	11/15/88
Nortek, Inc., Donald M. Aubrey Residual Trust, Aubrey Manufacturing, Inc. and Air Care Industries, Inc	89–0202	11/15/88
Kenneth D. Peterson, Jr., c/o Columbia Aluminum Corp., RTZ Corporation PLC, Indal, Inc	89–0203	11/15/88
Alan Bond, Dale A. Rorabaugh, DAR	89–0205	11/15/88
Warner Communications, Inc., Advent V Limited Partnership, TA Milwaukee Cable Company, Inc	89–0216	11/15/88
Warburg, Pincus Capital Company, L.P., Lorimar Telepictures Corporation, LTB (WPGH–TV) Corp	89–0238	11/15/88
Maytag Corporation, Chicago Pacific Corporation, Chicago Pacific Corporation	89–0245	11/15/88
Cambrex Corporation, Pfizer Inc., iron oxides business of Pfizer	89–0246	11/15/88
Alan Bond, Donald J. Trump, St. Moritz Hotel Associates	89–0251	11/15/88
Maytag Corporation, Chicago Pacific Corporation, Chicago Pacific Corporation	89–0255	11/15/88
Chemical Banking Corporation, Eagle-Picher Industries, Inc., A.D. Weiss Lithograph Company, Inc	89–0258	11/15/88
British & Commonwealth Holdings PLC, Stephen M. Deixler, Princeton Computer Group, Inc	89–0266	11/15/88
British & Commonwealth Holdings PLC, Stephen P. Roma, Princeton Computer Group, Inc	89–0267	11/15/88
American Hoist and Derrick Company, CoastAmerica Corporation, CoastAmerica Corporation	89–0289	11/15/88
Royal Insurance Holdings plc, Maccabees Mutual Life Insurance Company, Maccabees Mutual Life Insurance Company	89–0290	11/15/88
Clarendon Group Limited, Joel Rocha Garza, Laurel Capital Corporation	89–0295	11/15/88
Forsch Corporation, APL Corporation, Riviera Cabinets, Inc., and Tennessee Cabinet Company	89–0296	11/15/88
Watsco, Inc., Nortek, Inc., Gemaire Distributors, Inc	89–0302	11/15/88
Kenchiku Shiryo Kenkyusha Ltd., NW/Maui Hotel Corp., NW/Maui Hotel Corp	89–0317	11/15/88
Warner Communications Inc., Wisconsin Cable Investors Limited Partnership, Wisconsin Cable Investors Limited Partnership	89–0320	11/15/88
UNUM Corporation, The Continental Corporation, Commercial Life Insurance Company	89–0325	11/15/88
Unitech plc, William S. Shields & Kathryn L. Shields, Wells Electronics, Inc	89–0140	11/16/88
Pic "N" Save Corporation, Joseph J. Zilber, Job Lot Trading Co., Inc	89–0149	11/16/88
Mobil Corporation, British Petroleum Company, p.l.c., Sohio Oil Company	89–0152	11/16/88
British Petroleum Company, p.l.c., Mobil Corporation, Mobil Oil Corporation	89–0153	11/16/88
British Petroleum Company, p.l.c., Mobil Corporation, Mobil Oil Corporation	89–0154	11/16/88
British Petroleum Company, p.l.c., Olympic Pipe Line Company, Olympic Pipe Line Company	89–0155	11/16/88
Pacific Enterprises, Brown's Sporting Goods, Inc., Brown's Sporting Goods, Inc	89–0194	11/16/88
Willcox & Gibbs, Inc., Clark Consolidated Industries, Inc., Clark Consolidated Industries, Inc	89–0228	11/16/88
Comdata Holdings Corporation, American Facsimile Systems, Inc., American Facsimile Systems, Inc	89–0232	11/16/88
Gestion Marcel Pouliot Inc., Boise Cascade Corporation, Oxford Paper Company	89–0260	11/16/88
Groupe B.G.L.M. Inc., Boise Cascade Corporation, Oxford Paper Company	89–0261	11/16/88
Maximum Corporation, Protective Life Corporation, Central Security Life Insurance Company	89–0305	11/16/88
Aramco Services Company, Texaco Inc., Texaco Refinery and Marketing, Inc	89–1964	11/17/88
Texaco, Texaco, Texaco Refinery and Marketing, Inc	89–1967	11/17/88
Aramco Services Company, Texaco Inc., Texaco Refinery and Marketing, Inc	89–1982	11/17/88
Aramco Services Company, Aramco Services Company, Saudi Refining, Inc	89–1983	11/17/88
Texaco Inc., Aramco Services Company, Saudi Refining, Inc	89–1984	11/17/88
Jack D. Rutherford, Chrysler Corporation, Amplex VanWert Corporation	89–0195	11/17/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 111488 AND 112588—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
David T. Shelby, Chrysler Corporation, Amplex VanWert Corporation	89-0196	11/17/88
Combustion Engineering, Inc., SD-Scicon plc, Systems Control, Inc. (Energy Systems Group)	89-0150	11/18/88
Britannia Arrow Holdings PLC, Invesco Capital Management, Inc., Invesco Capital Management, Inc	89-0175	11/18/88
Kohl's Holding, Inc., Robert Campeau, MainStreet Retail Stores, Inc	89-0235	11/18/88
Warburg, Pincus Capital Company, L.P., Channel 20 Enterprises Limited Partnership, Channel 20 Enterprises Limited Partnership	89-0239	11/18/88
Warburg, Pincus Capital Company, L.P., Odyssey Partners, 39 Broadcasting Ltd	89-0240	11/18/88
Wasserstein, Perella Partners, L.P., Wickes Companies, Inc., Wickes Companies, Inc	89-0274	11/18/88
The Fulcrum III Limited Partnership, Robert Half International, Inc., Robert Half International, Inc	89-0279	11/18/88
Louis S. Caiola, Whittaker Corporation, Whittaker Corporation	89-0286	11/18/88
Yoshida Kogyo K.K., Amax Inc., Alumax of Maryland, Inc., and Alumax of Washington, Inc	89-0291	11/18/88
Toyo Sash Co., Ltd., Amax Inc., Alumax of Maryland, Inc., and Alumax of Washington, Inc	89-0299	11/18/88
Mitsui & Co., Ltd., Amax Inc., Alumax of Maryland, Inc., and Alumax of Washington, Inc	89-0300	11/18/88
Stephen Adams, American Bakeries Company, American Bakeries Company	89-0319	11/18/88
James A. Daley and Kathleen Y. Daley (Spouses), John Hancock Mutual Life Insurance Company, Copley Plaza Hotel	89-0324	11/18/88
The President and Fellows of Harvard College, John Hancock Mutual Life Insurance Company, Copley Plaza Hotel	89-0329	11/18/88
RFS Equity Partners II, L.P., Duff Research Inc Employees Stock Ownership Plan/Trust, Duff Research Inc	89-0335	11/18/88
Oglethorpe Power Corporation, The Southern Company, Georgia Power Company	89-0336	11/18/88
Douglas Wolf, Edward W. Wedbush, BWAC Sub Two, Inc	89-0343	11/18/88
Morris Bailey, Grand Metropolitan PLC, Historic Houston Corporation and Intercontinental	89-0370	11/18/88
Martin Wright, Lawrence H. Koffler, Royal Technologies USA, Inc	89-0158	11/18/88
Martin Wright, Trust of Martin Wright, Royal Technologies USA, Inc	89-0159	11/21/88
HMK Enterprises, Inc., Business Interiors, Inc., Business Interiors, Inc	89-0282	11/21/88
Richard A. Bernstein, The Harris Companies, Inc., The Harris Companies, Inc	89-0287	11/21/88
The Penn Central Corporation, Republic American Corporation, Republic American Corporation	89-0298	11/21/88
USF&G Corporation, George H. Heilborn, Information Processing Systems, Inc	89-0352	11/21/88
Warner Communications Inc., Ivy Hill Corporation, Ivy Hill Corporation	89-0253	11/22/88
Maxwell Foundation, The Dun & Bradstreet Corporation, Official Airline Guides, Inc	89-0311	11/22/88
Maxwell Communication Corporation plc, The Dun & Bradstreet Corporation, Official Airline Guides, Inc	89-0312	11/22/88
Value Equity Associates I, L.P., Devon Group, Inc., Devon Group, Inc	89-0316	11/22/88
Edward W. Wedbush, Transamerica Corporation, a Delaware Corporation, BWAC Sub Two, Inc	89-0334	11/22/88
Blue Cross of Massachusetts, Inc., Blue Shield of Massachusetts, Inc., Blue Shield of Massachusetts, Inc	89-0356	11/22/88
Airgas, Inc., Don W. Axworthy, Welders Supply Co, Welders Supply Northwest	89-0250	11/23/88
Ann G. Getty, Bestform Foundations, Inc., Bestform Foundations, Inc	89-0259	11/23/88
Airgas, Inc., Donald D. MacRea, Welders Supply Co, Welders Supply Northwest	89-0265	11/23/88
Williams Holdings PLC, Hanson PLC, Walter Kidde Aerospace Inc. et al	89-0138	11/25/88
American Manufacturing Corporation, Gordon B. Hattersley, UTI Corporation	89-0214	11/25/88
UtiliCorp United Inc., Michigan Energy Resources Company, Michigan Energy Resources Company	89-0223	11/25/88
Donald G. Jones, John S. Ingersoll, Sr., Ingersoll Industries, Inc	89-0231	11/25/88
Times Mirror Company, William W. McDonald, Chillicothe Cablevision, Inc	89-0247	11/25/88
Times Mirror Company, Allan J. McDonald, Chillicothe Cablevision, Inc	89-0248	11/25/88
Tele-Communications, Inc., Cable Educational Network, Inc., Cable Educational Network, Inc	89-0249	11/25/88
Yale University, Robert Campeau, Douglaston Plaza, Inc	89-0269	11/25/88
Carl C. Icahn, USX Corporation, USX Corporation	89-0294	11/25/88
William R. Berkley, NAFCO Financial Group, Inc., NAFCO Financial Group, Inc	89-0331	11/25/88
George N. Gillett, Jr., Sara Lee Corporation, Peck Foods Corporation	89-0332	11/25/88
Swiss Reinsurance Company, C.I.S. Technologies, Inc., C.I.S. Technologies, Inc	89-0341	11/25/88
Henry Lassiter, c/o Lassiter Properties, Inc., Generale Occidentale, Diamond International Corporation	89-0358	11/25/88
Burlington Northern Inc., Texaco Inc., Meridian Oil Production Inc	89-0371	11/25/88
Sundor Group Inc., The Pillsbury Company, The Pillsbury Company (Azteca Mexican Food Division)	89-0382	11/25/88
Petroleos de Venezuela, S.A., Union Pacific Corporation, Champlin Refining Company (Joint Venture Partnership)	89-0387	11/25/88
Commonwealth of PA State Employe's Retirement System, George Zamias, Columbia Mall Limited Partnership	89-0392	11/25/88
Heitman Real Estate Fund III, George Zamias, Columbia Mall Limited Partnership	89-0393	11/25/88
Mustang Energy Corp., ONEOK Inc., Oneok Exploration Company and Oneok Resources Company	89-0399	11/25/88
Saratoga Partners II, L.P., ONEOK Inc., Oneok Exploration Company and Oneok Resources Company	89-0400	11/25/88
New York Venture Fund, Inc., The O-W Fund, Inc., The O-W Fund, Inc	89-0401	11/25/88
Daimler-Benz AG, Siliconix Incorporated, Siliconix Incorporated	89-0406	11/25/88
Shoji Kanazawa, James W. Rappaport, Charles River Hawaii Limited Partnership	89-0416	11/25/88
Commonwealth Equity Trust, California Real Estate Investment Trust, California Real Estate Investment Trust	89-0420	11/25/88
Cencom Cable Associates, Inc., William W. McDonald, Lenoir TV Cable, Inc	89-0422	11/25/88
Cencom Cable Associates, Inc., Allan J. McDonald, Lenoir TV Cable, Inc	89-0423	11/25/88
Olympia & York Developments Limited, Allied-Lyons PLC, HPC, Inc	89-0426	11/25/88
American Express Company, National Business Systems, Inc., FundsNet, Inc	89-0428	11/25/88
PepsiCo, Inc., George E. Middleton, Middleton Enterprises, Inc	89-0430	11/25/88
Societe Nationale Elf Aquitaine, Ranks Hovis McDougall PLC, Theresa Friedman and Sons, Inc	89-0435	11/25/88
Kenchiku Shiryo Kenkyusha Limited, Richard J. Bradley, Bradley Holdings, Ltd	89-0436	11/25/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88–27899 Filed 12–2–88; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the General Counsel; Statement of Organization, Functions, and Delegation of Authority

Part A, Chapter AG (Office of the General Counsel) of the Statement of Organization, Functions, and Delegation of Authority for the Department of Health and Human Services (38 FR 17033, June 28, 1973, as amended most recently at 51 FR 35286, 10/2/86), is amended to delete from section AG.22 A.1.a. the reference to patents and from section Ag.35 the designation of the Associate General Counsel, Business and Administrative Law Division, as the Department Patent Officer and to designate in his/her place the Associate General Counsel, Public Health Division. No change in the responsibilities for the Department Patent Officer has been made. The changes are as follows:

Delete sections AG 22A.1.a and Ag.35 and replace with the following:

Section AG.22.A.1.a. Legal services on business management activities and administrative operations throughout the Department, including procurement, contracting, copyrights, personnel, budget, appropriations, employment, compensation, travel and claims by and against the Department.

Section AG.35 *Department Patent Officer.* The Associate General Counsel, Public Health Division, is designated Department Patent Officer and is responsible for:

Date: November 23, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88–27871 Filed 12–2–88; 8:45 am]

BILLING CODE 4150–01–M

Food and Drug Administration

[Docket No. 85D–0574]

Revised Drug Stability Guideline; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised "Drug Stability Guideline—December 1, 1987," prepared by the Center for Veterinary Medicine (CVM). The guideline is intended for use as an aid in meeting the stability requirements for the manufacture of veterinary finished dosage forms (pharmaceutical and medicated feed products) as submitted in new animal drug applications (NADA's) and manufactured in conformance to the corresponding current good manufacturing practice (CGMP) regulations (21 CFR Parts 211, 225, and 226).

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for copies of the revised "Drug Stability Guideline—December 1, 1987," to the Division of Chemistry (HFV–142), Center for Veterinary Medicine, Food and Drug Administration, Rm. 8–92, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the revised "Drug Stability Guideline—December 1, 1987," prepared by CVM. A notice of availability of a draft of this revision was announced in the **Federal Register** of February 19, 1986 (51 FR 6037) (Docket No. 85D–0574).

The guideline is intended as an aid in designing and conducting stability studies to meet the requirements of 21 CFR 514.1(b)(5)(x) and the appropriate CGMP regulations for veterinary products (21 CFR 211.166 and 226.58). Section 514.1 specifies the proper format and the information required for NADA approval under section 512(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)). The guideline applies to finished dosage form drugs for veterinary purposes and to drugs used in medicated feed products.

The revised guideline includes the following changes:

1. Editorial changes throughout the document.

2. An updated section on containers.

3. An updated section on analytical methods. The update provides a method format sequence for the reporting of analytical methods and a list of references related to stability applications.

4. A new section on the use of injectable multidose containers under "Sterile Preparations."

5. A completely revised medicated premix and finished feed section. This section reflects the revised medicated feed nomenclature (Type A articles, Types B and C feeds (21 CFR 558.3)). In addition, it provides more detail to assist the user in conducting studies of these preparations. Information on interference, homogeneity, and segregation studies is given.

6. A section (from the preceding guidance) on medicated liquid feed supplements. This section was the subject of a notice of availability published in the **Federal Register** of February 19, 1986 (51 FR 6038) (Docket No. 84D–0284), because it was initially issued as a separate guideline.

7. A section (from the preceding guidance) on products containing one or more DNA-derived active ingredients. This section advises the user that the stability of such products will be handled as that of normal drug or feed products. Specific requirements will be determined on a case-by-case basis.

The notice of availability of the draft revised drug stability guideline provided for a 30-day comment period. In response to that notice, an industry association filed two submissions, and two drug sponsors filed one submission each. Those submissions and CVM's responses are on file with the Dockets Management Branch (Docket No. 85D–0574).

Interested persons may, at any time, submit additional written comments on the revised guideline to the Dockets Management Branch. Such comments will be considered in determining if further revisions are required. Respondents should submit two copies (except that individuals may submit single copies) identified with Docket No. 85D–0574. Comments and all related materials may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–27849 Filed 12–2–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N-0405]

Drug Export; Abbott Test Pack® HIV-1/HIV-2

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories, North Chicago, IL, has filed an application requesting approval for the export of the biological product Abbott Test Pack® HIV-1/HIV-2 to West Germany.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(2)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, North Chicago, IL 60064, has filed an application requesting approval for the export of the biological product Abbott Test Pack® HIV-1/HIV-2, to West Germany. The Abbott Test Pack® HIV-1/HIV-2 is used as an in vitro rapid enzyme immunoassay for the detection of antibodies to two human immunodeficiency viruses (HIV-1 and HIV-2) in human sera, plasma, and whole blood. The application was received and filed in the Center for Biologics Evaluation and Research on November 14, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 15, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: November 21, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88-27850 Filed 12-2-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88D-0338]

Medical Devices; Draft Guidance for Premarket Notification Submissions for Magnetic Resonance Diagnostic Devices; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Draft Guidance for Content and Review of a Magnetic Resonance Diagnostic Device 510(k) Application," prepared by FDA's Center for Devices and Radiological Health (CDRH). The purpose of the draft document is to provide guidance for the preparation and review of premarket notifications for magnetic resonance diagnostic devices. The premarket notifications would be submitted to FDA under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act). CDRH's reviewers determine whether or not a device the subject of a 510(k) submission is substantially equivalent to marketed devices of the same generic type.

DATE: Written comments may be submitted at any time. However, comments submitted by February 3, 1989 will be used by FDA to determine whether any changes in the draft guidance are warranted during CDRH's preparation of a final guidance document. Comments should reference the docket number found in the heading of this notice and be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

ADDRESS: Written requests for copies of the draft guidance document to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800-638-2041, calls from within MD 301-443-6587.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: FDA regulates medical devices under the act (21 U.S.C. 301 *et seq.*) as amended by the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments). Section 510(k) of the act (21 U.S.C. 360(k)) requires that each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use shall, at least 90 days before making such introduction or delivery, notify FDA as prescribed in the regulations. Subpart E of 21 CFR Part 807 governs premarket notification submissions to FDA under section 510(k) of the act. FDA is making available to the public its "Draft Guidance for Content and Review of a Magnetic Resonance Diagnostic Device 510(k) Application" to provide guidance for the preparation and review of a premarket notification for a magnetic resonance diagnostic device.

The "Draft Guidance for Content and Review of a Magnetic Resonance Diagnostic Device 510(k) Application" is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under 21 CFR 10.85.

Dated: November 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-27851 Filed 12-2-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control

Pusuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, January 26-27, 1989, Building 1, Wilson Hall, 3rd Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on January 26 from 8:30 a.m. to recess and on January 27 from 8:30 a.m. to adjournment to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892-3100 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Acting Executive Secretary, Elise Mackie, National Cancer Institute, Executive Plaza-North, Room 318, National Institutes of Health, Bethesda, Maryland 20892 (301-496-8526), upon request.

Dated: November 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-27937 Filed 12-2-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 23-24, 1989, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. on January 23 to adjournment on January 24. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Eugene R. Passamani, M.D., Director, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 416, Federal Building, Bethesda, Maryland 20892, (301) 496-2553, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-27938 Filed 12-2-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences Advisory Council on Hazardous Substances Research and Training; Ad Hoc Subcommittee Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of an ad hoc subcommittee on research oversight of the Advisory Council on Hazardous Substances Research and Training at the National Institutes of Health, Building 31, C Wing, Conference Room 8, Bethesda, Maryland on December 19 and 20, 1988. The meeting is open to the public and will begin at 8:30 a.m. on December 19 and end at 1:00 p.m. on December 20, 1988.

The goal of the ad hoc subcommittee is to assist the Advisory Council and the National Institute of Environmental Health Sciences (NIEHS) in the implementation of a program of university-based basic research and assist in the coordination of various research programs authorized by the Comprehensive Environmental Response, Compensation Liability Act, as amended. The program consists of grants for basic biomedical research with related engineering, geology and hydrogeology and ecology studies. Funds for the NIEHS program are appropriated from the Superfund Hazardous Substances Trust Fund.

In July 1987, the Advisory Council endorsed a plan for the implementation of the NIEHS Superfund Basic Research and Training Grants Program (52 FR 34721, September 14, 1987). As required by the Superfund Amendments and Reauthorization Act and by National Institutes of Health policy, each research study, including the NIEHS program, was peer reviewed and approved by a panel of scientists prior to being funded. In this meeting, the ad hoc subcommittee will examine research studies funded with fiscal years 1987, 1988, and 1989 appropriations to assure that they are consistent with the Research Plan and responsive to Superfund Program needs for additional scientific data for the effective and permanent management of hazardous substances. The ad hoc subcommittee will also comment on the appropriateness and balance of the NIEHS Superfund basic research grants and will identify any research gaps.

The Environmental Protection Agency (EPA) and the Agency for Toxic Substances and Disease Registry (ATSDR) will be invited to present overviews of their Superfund hazardous substances research efforts at the meeting. The ad hoc subcommittee will comment upon and make recommendations on the coordination of the applied and basic research supported or conducted by these Federal agencies.

The ad hoc subcommittee will provide a report of their findings to the NIEHS Advisory Council.

Attendance is limited only by space available. For further information regarding the meeting, please contact Mr. Daniel C. VanderMeer, Executive Secretary, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3484 or FTS 629-3484. The official government representative for this meeting will be Dr. Anne P. Sassaman.

Dated: November 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

FR Doc. 88-27939 Filed 12-2-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 4-Hexylresorcinol

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 4-hexylresorcinol, an anthelmintic and antiseptic. It is used for the treatment of whipworm, hookworm, Ascaris, Oxyuris,and dwarf tapeworm infestations. 4-Hexylresorcinol is an active component in antimicrobial soaps, health care personnel handwashes, preoperative skin preparations, skin antiseptic and wound cleaners, mouthwashes, and cold and cough preparations.

Two-year toxicology and carcinogenesis studies were conducted by administering 4-hexylresorcinol at dose levels of 0, 62.5 or 125 mg/kg in corn oil by gavage to groups of 50 F344/N rats and 50 B6C3F$_1$ mice of each sex 5 days per week for 104 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity* of 4-hexylresorcinol for male or female F344/N rats given doses of 62.5 or 125 mg/kg. There was equivocal evidence of carcinogenic activity of 4-hexylresorcinol for male B6C3F$_1$ mice, as shown by marginally increased incidences of pheochromocytomas (and hyperplasia) of the adrenal medulla and of harderian gland neoplasms. There was no evidence of carcinogenic activity for female B6C3F$_1$ mice given doses of 62.5 or 125 mg/kg 4-hexylresorcinol. Decreased incidences of three tumor types were considered related to 4-hexylresorcinol administrations: Mononuclear cell leukemia in male and female rats, hepatocellular neoplasms in male mice, and circulatory system tumors in male and female mice.

The study scientist for this bioassay is Dr. R. S. Chhabra. Questions or comments about the contents of this Technical Report should be directed to Dr. Chhabra at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3386; FTS: 629–3386.

Copies of *Toxicology and Carcinogenesis Studies of 4-Hexylresorcinol in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR 330) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991; FTS: 629–3991.

Dated: November 29, 1988.

David P. Rall,

Director.

[FR Doc. 88–27859 Filed 12–2–88; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2-Mercaptobenzothiazole

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 2-mercapto-benzothiazole, a rubber accelerant and preservative.

Two-year toxicology and carcinogenesis studies of technical grade 2-mercaptobenzothiazole were conducted by administering the chemical in corn oil by gavage to 50 animals of each species and sex 5 days per week for 103 weeks. Doses selected for the 2-year studies were 0, 375 and 750 mg/kg for male rats and for mice of each sex and 0, 188 or 375 mg/kg for female rats.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity [1] of 2-mercaptobenzothiazole for male F344/N rats, indicated by increased incidences of mononuclear cell leukemia, pancreatic acinar cell adenomas, adrenal gland pheochromocytomas, and preputial gland adenomas or carcinomas (combined). There was some evidence of carcinogenic activity for female F344/N rats, indicated by increased incidences of adrenal gland pheochromocytomas and pituitary gland adenomas. There was no evidence of carcinogenic activity of 2-mercapto-benzothiazole for male B6C3F$_1$ mice dosed with 375 or 750 mg/kg. There was equivocal evidence of carcinogenic activity for female B6C3F$_1$ mice, indicated by increased incidences of hepatocellular adenomas or carcinomas (combined).

The study scientist for this bioassay is Dr. Michael P. Dieter. Questions or comments about the contents of this Technical Report should be directed to Dr. Dieter at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3368; FTS: 629–3368.

Copies of *Toxicology and Carcinogenesis Studies of 2-Mercapto-benzothiazole in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (Tr 332) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991; FTS: 629–3991.

Dated: November 29, 1988.

David P. Rall,

Director.

[FR Doc. 88–27860 Filed 12–2–88; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Nitrofurazone

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of nitrofurazone, a synthetic furan derivative active against a broad spectrum of bacteria. This chemical is used in veterinary and human medicine.

Two-year toxicology and carcinogenesis studies were conducted by feeding diets containing 0, 310, or 620 ppm nitrofurazone to rats and 0, 150, or 310 ppm for mice (50 animals per dose group).

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity [1] of nitrofurazone for male F344/N rats as shown by the occurrences of sebaceous gland adenomas and trichoepithelioma of the skin, mesotheliomas of the tunica vaginalis, and preputial gland tumors. There was clear evidence of carcinogenic activity of nitrofurazone for female F344/N rats as shown by markedly increased incidences of fibradenomas of the mammary gland.

*The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each animal study: Two categories of positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effects ("no evidence"), and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

There was no evidence of carcinogenic activity for male B6C3F$_1$ mice fed diets containing nitrofurazone at concentrations of 150 or 310 ppm. There was clear evidence of carcinogenic activity of nitrofurazone for female B6C3F$_1$ mice as shown by increased incidences of benign mixed tumors and granulosa cell tumors of the ovary.

Administration of nitrofurazone was associated with decreased incidences of mononuclear cell leukemia in male and female rats, testicular interstitial cell tumors in male rats, and pituitary gland neoplasms in femal mice. Convulsive seizures in mice of each sex, ovarian atrophy in female mice, testicular degeneration in rats, and degeneration of articular cartilage in rats were all associated with the administration of nitrofurazone.

The study scientist for these studies is Dr. Frank Kari. Questions or comments about the contents of this Technical Report should be directed to Dr. Kari at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-2926; FTS: 629-2926.

Copies of *Toxicology and Carcinogenesis Studies of Nitrofurazone in F344/N Rats and B6C3F$_1$* Mice (Feed Studies) (TR 337) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991; FTS: 629-3991.

Dated: November 29, 1988.

David P. Rall,

Director.

[FR Doc. 88-27861 Filed 12-2-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-940-90-4520-13; (ES-039020, Group 98)]

Amendment on Filing of Plat of Survey of an Island; Michigan

November 29, 1988.

In the notice of filing, dated August 4, 1988 (53 FR 30351, August 11, 1988), the date in paragraph 8 should be amended to read September 19, 1988.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-27923 Filed 12-2-88; 8:45 am]

BILLING CODE 4310-GJ-M

[NM-010-GP9-0103]

Availability and Public Hearings for the Molycorp Guadalupe Mountain Tailings Disposal Facility Draft Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: The Bureau of Land Management, Albuquerque District, announces the availability of the Molycorp Guadalupe Mountain Tailings Disposal Facility DEIS for public review and comment. This document analyzes whether the proposed tailings facility will result in any unnecessary or undue degradation of the public lands near Questa, New Mexico, in BLM's the Taos Resource Area.

DATE: Written comments on the Draft EIS will be accepted if they are submitted or post-marked no later than February 9, 1989.

ADDRESS: Comments should be sent to Robert Dale, District Manager, Bureau of Land Management, Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Kent Hamilton, Bureau of Land Management, Albuquerque, District Office, 435 Montana NE, Albuquerque, New Mexico 87107, telephone commercial (505) 761-4546, FTS 474-4546.

SUPPLEMENTARY INFORMATION: Molycorp Inc., has applied for a 1230 acre millsite located on Guadalupe Mountain near Questa, New Mexico, pursuant to 30 U.S.C. 42 (1976). In the case of an action authorized under the mining laws, the only required determination is whether the proposal will result in any unnecessary or undue degradation of the public lands; there is no provision for a discussion of alternatives. Consequently, alternatives are not analyzed.

The Draft EIS was prepared by ENSR Consulting and Engineering a third party contractor for the Bureau of Land Management.

A copy of the Draft EIS will be sent to all individuals. Government agencies, and groups who have expressed an interest in the project. In addition, review copies may be examined at: Bureau of Land Management, Taos Resource Area Office, Plaza Montevideo, Cruz Alto Road, Taos, New Mexico 87571-1045 and Bureau of Land Management, New Mexico State Office, South Federal Place, Joseph M. Montoya Federal Building, Santa Fe, New Mexico 87504-1449.

Public Hearings: There will be public meetings/hearings on the DEIS at the following locations:

Date and Time and Meeting Location

January 20, 1989, 7:00 p.m.—St. Anthony Parish Hall, Questa, New Mexico

January 21, 1989, 10:00 a.m.—Ramada Inn Conference Room, Taos, New Mexico

(Oral testimony will be limited to 10 minutes per person.)

Larry L. Woodard,

State Director.

[FR Doc. 88-27864 Filed 12-2-88; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Renewal

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Outer Continental Shelf (OCS) Advisory Board Charter.

The purpose of the OCS Advisory Board is to provide advice to the Secretary of the Interior and other officers of the Department of the Interior in the performance of discretionary functions of the OCS Lands Act, as amended (43 U.S.C. 1331 et. seq.), including all aspects of leasing, exploration, development, and protection of the resources of the OCS.

Further information regarding the Committee may be obtained from the Associate Director for Offshore Minerals Management, Department of the Interior, 18th and C Streets, NW., Room 4230, Washington, DC 20240.

The certification of renewal is published below.

Certification

I hereby certifiy that the renewal of the Outer Continental Shelf Advisory Board Charter is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 et. seq.

Date: November 23, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88-27862 Filed 12-2-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Revision of Park Boundary; Johnstown Flood National Memorial, PA

AGENCY: National Park Service, Johnstown Flood National Memorial, Pa.

ACTION: Notice of revision of park boundary.

SUMMARY: Pursuant to section 307(a) of the act of November 10, 1978 (92 Stat. 3467), the Park boundary was designated by publication of a Notice in the **Federal Register**, Vol. 45, No. 189, Friday, September 26, 1980 to include the lands depicted on boundary map numbered 427/80,002 dated August 1979.

Public Law 95–42 (91 Stat. 211) dated June 10, 1977 provides that the Secretary may make minor boundary changes to an area whenever he determines that to do so will contribute to, and is necessary for, the proper preservation, protection, interpretation, or management of such an area.

Therefore, pursuant to Pub. L. 95–42, notice is given that the boundary of the Johnstown Flood National Memorial has been revised to exclude a 2.55 acre tract on the periphery of the park which is not necessary for management purposes or to protect the historic scene and which is outside the designated historic zone, and to include a 2300 foot section of railroad right-of-way, comprising approximately 3.20 acres, which presently divides the part into two sections. Inclusion of this right-of-way within the boundary would allow for future acquisition if it were abandoned, and would provide a contiguous land area of the original dam and lakebed. The boundary shall be as depicted on boundary map numbered 427/80,002A dated June 1986 prepared by the Land Resources Division of the Mid-Atlantic Region of the National Park Service.

The map is on file and available for inspection in the administrative office of the Johnstown Flood National Memorial, P. O. Box 247, Cresson, Pennsylvania, 16630; in the office of the Mid-Atlantic Region, Land Resources Division, Custom House, Room 502, Second and Chestnut Streets, Philadelphia, Pennsylvania, 19106; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC, 20240.

Dated: June 30, 1988.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

Note.—This document was received by the Office of the Federal Register November 30, 1988.

BILLING CODE 4310-70-M

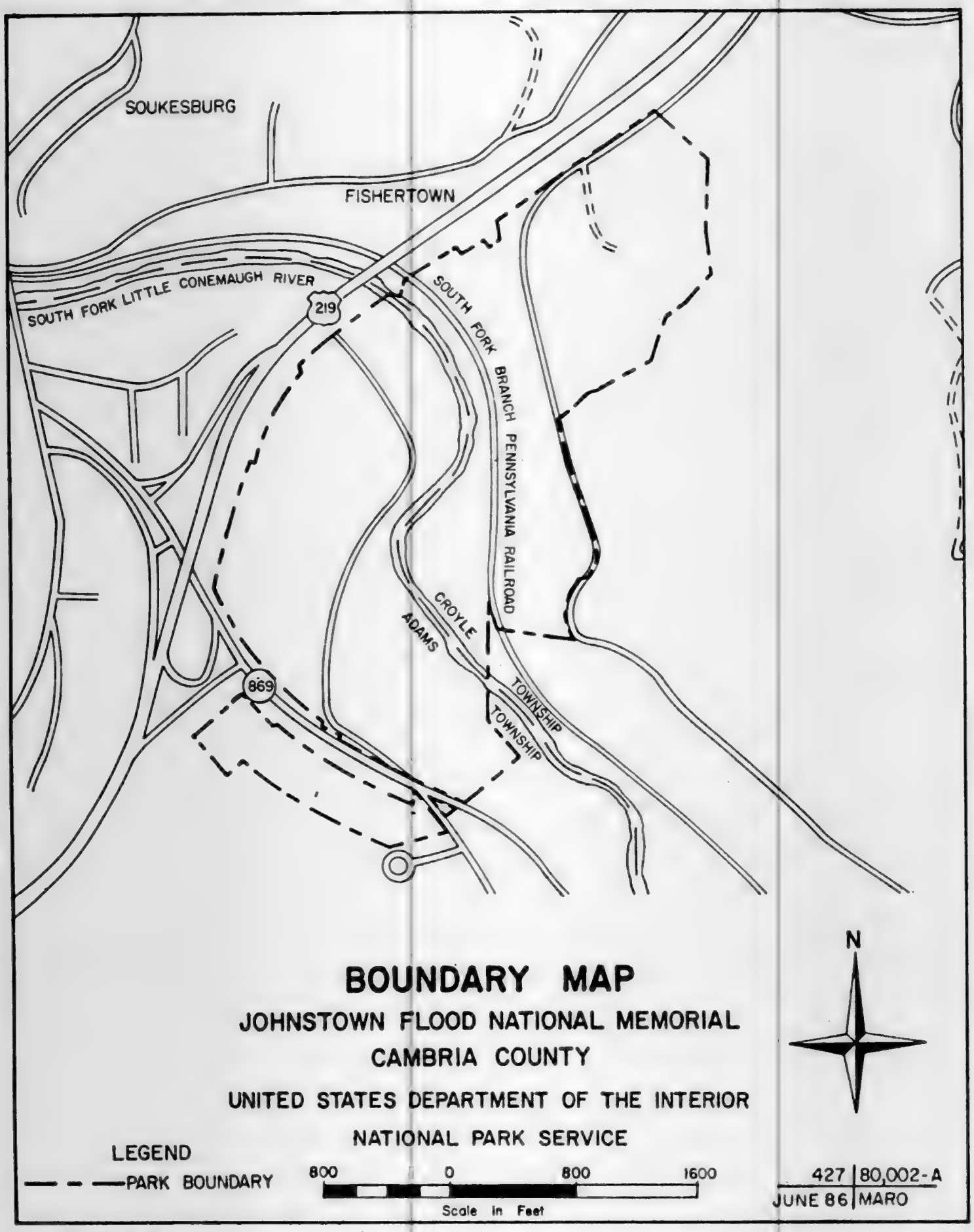

[FR Doc. 88-27865 Filed 12-2-88; 8:45 am]

BILLING CODE 4310-70-M

Martin Luther King, Jr., National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: December 14, 1988.

ADDRESS: The Martin Luther King, Jr., Center for Nonviolent Social Change, Inc., Freedom Hall Complex, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with and advise the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site Advisory Commission. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. William W. Allison
Mr. Arthur J. Clement
Mr. John Cox
Mrs. Christine King Farris
Mrs. Valena Henderson
Mr. C. Randy Humphrey
Dr. Elizabeth A. Lyon
Mr. Daniel H. Nall
Rev. Joseph L. Roberts
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include: (1) The status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: November 25, 1988.

Thomas W. Piehl,

Acting Regional Director, Southeast Region.

[FR Doc. 88-27866 Filed 12-2-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-425 (Preliminary)]

Light Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof With or Without Attached Axles From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-425 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States if materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of light duty integrated hydrostatic transmissions and subassemblies thereof, with or without attached axles,[1] provided for in items 660.85, 660.97, 666.00, and 666.10 of the Tariff Schedules of the United States (*TSUS*), and classifiable in subheadings 8412.29.80, 8412.90.90, 8413.60.00, 8413.81.00, 8432.90.00, 8433.90.10, 8433.90.50, 8434.90.00, and 8436.99.00 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by January 6, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202-252-1178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on November 22, 1988, by Eaton Corporation, Eden Prairie, Minnesota.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11) not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3, as amended, 53 FR 33034, 33041 (August 29, 1988), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

[1] The subject articles, which have a maximum input horsepower of twenty or fewer, comprise the following: Parts and subassemblies of non-electric engines and motors not specially provided for (TSUS item 660.85 and HTS subheadings 8412.29.80 and 8412.90.90); pumps for liquids, liquid elevators, and parts thereof, the foregoing not specially provided for (TSUS item 660.97 and HTS subheadings 8413.60.00 and 8413.81.00); other parts, not specially provided for, of machinery for soil preparation and cultivation (TSUS item 666.00 and HTS subheadings 8432.90.00, 8433.90.50, 8434.90.00, and 8436.99.00); and parts of lawn mowers (TSUS item 666.10 and HTS subheading 8433.90.10).

BEST COPY AVAILABLE

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled as conference in connection with this investigation for 9:30 a.m. on December 14, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Janine Wedel (202–252–1178) not later than December 12, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before December 16, 1988, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7 as amended, 53 FR 33041).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than December 19, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 29, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–27900 Filed 12–2–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and principal mailing address: Borden, Inc., 180 East Broad Street, Columbus, OH 43215.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

Name	State of incorporation
Acme Resin Corp	Delaware.
Amber Snack, Inc	Delaware.
B-F Processing Corp	Delaware.
C&D Distributing Co., Inc	South Carolina.
Cheese-Tek Corp	Delaware.
Clover Club Foods Co	Utah.
Coco Lopez USA Inc	Maryland.
Columbus Coated Fabrics Corp	Ohio.
Fabric Leather Corp	New York.
Geiser's Potato Chip, Inc	Wisconsin.
Guy's Foods, Inc	Missouri.
Imperial Flavors, Inc	Florida.
Industrias La Famosa, Inc	New Jersey.
Jays Foods, Inc	Illinois.
Laura Scudder's, Inc	Delaware.
MCP Foods, Inc	Delaware.
Marshland Energy, Inc	New Jersey.
Meadow Gold Dairies, Inc	Delaware.
Orleans Food Co	Delaware.
Perkins Industries, Inc	Delaware.
Serv-Ga., Inc	Georgia.
Seyfert Foods, Inc	Indiana.
Snacks Distributors, Inc	New Jersey.
Superior Case Company, Inc	Oklahoma.
Superior Dairies, Inc	Texas.
Valley Bell Dairy Co	West Virginia.
Wholesome Dairy, Inc	Texas.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27897 Filed 12–2–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–52 (Sub–No. 56)]

The Atchison, Topeka and Santa Fe Railway Co.; Authorization To Abandon Railroad Line In Kay County, OK; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka and Sante Fe Railway Company to abandon its 8.1-mile line of railroad, known as the Tonkawa Industrial Spur, extending between milepost X35.35 near Blackwell and milepost X43.45 near Tonkawa, in Kay County, OK. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27898 Filed 12–2–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB-290 (Sub-No. 28X)]

Southern Railway Co.; Abandonment Exemption for Railroad Line in Gaffney, SC

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.73-mile line of railroad between milepost SE-9.82 and milepost SE-10.55, at Gaffney, SC.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of railroad service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 5, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(2)(2)[1] must be filed by December 16, 1988. Requests for stays regarding environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 27, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commerical Place, Norfolk, VA 23510-2101.

If the notice of exeemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an enviornmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an enviornmental assessment (EA). SEE will issue the EA by December 11, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-28065 Filed 12-2-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-service Rail Lines*, 4 I.C.C.2d 400 (1988).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87-80]

John G. Bennett, M.D.; Revocation of Registration

On September 24, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John G. Bennett, M.D., Respondent, of Miami, Florida, proposing to revoke his DEA Certificate of Registration BB0420810, and to deny any pending applications for renewal of his registration. The statutory bases for the issuance of the Order to Show Cause were that: (1) Respondent was convicted of felony offenses relating to controlled substances, and (2) his continued registration would be contrary to the public interest based upon previous controlled substance violations and his history of using and abusing controlled substances for other than legitimate medical purposes.

Respondent, pro se, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held on March 4, 1988, in Miami, Florida. Respondent was represented by counsel at the hearing.

During the administrative hearing, the Government presented testimony from one witness, a DEA Diversion Investigator, and introduced eight exhibits. Respondent testified on his own behalf and presented additional testimony from Roger Goetz, M.D., the Director of the Florida Impaired Physicians Program, and John C. Eustace, M.D., an addictionologist. Respondent also introduced one exhibit. Subsequent to the hearing, Dr. Goetz submitted a letter to the Administrative Law Judge withdrawing his support for Respondent's continued registration with the Drug Enforcement Administration based upon Respondent's failure to progress satisfactorily in the Physicians Recovery Network Program. With the consent of counsel for both parties, this letter was placed in the record and was given full consideration. Respondent's counsel made no responsive filing with respect to the letter, although he was given an opportunity to respond.

On August 18, 1988, Government counsel filed a motion to supplement the hearing record to include a copy of an order of the Florida Department of Professional Regulation, State Board of Medicine, ordering the immediate suspension of Respondent's medical license in that state, effective July 5, 1988. Government counsel further requested that Respondent's current lack of state authorization to handle controlled substances be considered as an additional ground supporting the revocation of his DEA registration. Respondent's counsel filed no response and the Administrative Law Judge granted the Government's requests.

On September 29, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending the revocation of Respondent's registration and the denial of any pending applications for renewal. No exceptions were filed and, on October 28, 1988, the Administrative Law Judge forwarded the record to the Administrator.

After a careful review of the entire record in this proceeding, the Administrator adopts the findings of fact, conclusions of law and recommended ruling of the Administrative Law Judge.

The Administrator finds that Respondent's DEA Certificate of Registration BB0420810, authorizing him to handle controlled substances in the State of Georgia, expired on July 31,

1987. There are no pending applications for renewal of that registration on file with DEA. Although he requested that DEA transfer his registration to Florida in 1987, Respondent has not been issued a DEA registration in Florida, pending the outcome of this proceeding.

In September 1984, Respondent was arrested by the Dade County (Florida) Metropolitan Police for possession of marijuana. In that case, a police officer observed Respondent smoking a marijuana cigarette in a taxi at Miami International Airport. When he realized he was being watched by the officer, Respondent swallowed the marijuana cigarette he was smoking. The police then searched Respondent and discovered another marijuana cigarette. Respondent pleaded *nolo contendere* to the misdemeanor offense of unlawful possession of marijuana and the court withheld adjudication on the charge.

In August 1985, Respondent was arrested in Fulton County, Georgia, and was charged with possession of marijuana. In that case, a police officer observed Respondent speeding in an automobile and driving recklessly. Respondent resisted the officer's attempt to stop him, and a chase ensued. When Respondent finally was stopped, the officer observed that he was unsteady on his feet. Respondent was placed under arrest and charged with driving under the influence and fleeing from an officer. Following the arrest, the officer noticed a marijuana cigarette on the passenger's side of Respondent's automobile and a half-smoked marijuana cigarette in the ashtray. Based upon these findings, Respondent was also charged with unlawful possession of marijuana. Respondent failed to appear in court on those charges and a bench warrant was issued for his arrest.

The Administrator finds that Respondent has never possessed a valid Schedule I DEA Certificate of Registration authorizing him to handle or possess marijuana for any valid medical or scientific reason.

In March 1986, Respondent entered an alcohol and drug treatment program in Rhode Island, where he was then licensed to practice medicine. He was discharged from the program in April 1986. He began drinking again less than two months after completing the program. Based upon his history of abusing alcohol and controlled substances, Respondent's Rhode Island medical license was revoked in 1986.

On November 7, 1986, in the Superior Court for Tift County, Georgia, Respondent was convicted, after entering a plea of guilty, on one count of attempting to obtain possession of a Schedule II controlled substance, to wit: oxycodone, by fraud, deception and subterfuge, and one count of unlawful possession of diazepam, a Schedule IV controlled substance. Both violations are felony offenses relating to controlled substances. Respondent was fined, placed on probation for a period of five years, and was ordered to "undergo complete psychological and/or drug counseling as designated by the medical boards of Georgia and/or Florida."

The felony convictions resulted from an investigation of Respondent's unlawful prescribing practices. On November 4, 1986, Respondent issued a prescription for Percodan in the name of "James Gordon Bennett" for "back pain." He attempted to fill the prescription at a pharmacy in Tift County. Respondent gave conflicting sworn statements regarding his issuance of the prescription. In his first statement, Respondent claimed that he decided to use his brother's name on the prescription because he knew he was not permitted to prescribe controlled substances in his own name. In his second statement, Respondent insisted that the Percodan was actually for his brother. In addition, Respondent informed the investigating officers that he had written prescriptions for himself in the past, including a prescription for Valium filled the day prior to his arrest.

The Administrator finds that Respondent has a long history of abusing controlled substances and alcohol. He has abused alcohol since graduating from high school approximately twenty years ago. In addition, Respondent was fired from three hospitals in Georgia between 1984 and 1986, as a result of his drinking problem.

The Administrator further finds that for three months in 1987, Respondent was employed as an emergency room physician at Mariner's Hospital in Islamorada, Florida. During that time, Respondent handled and prescribed controlled substances such as Tylenol #3 and Lomotil, although he did not possess a valid DEA Certificate of Registration authorizing him to handle controlled substances in the State of Florida.

On August 31, 1987, at the insistence of Roger Goetz, M.D., Respondent admitted himself to the South Miami Hospital for treatment for chemical dependence. On September 28, 1987, he was transferred to a live-in center in Brandon, Mississippi, and was later transferred to another treatment center in Hattiesburg, Mississippi, where he remained until his release in 1988.

At the DEA administrative hearing, Drs. Goetz and Eustace testified that they both felt that Respondent could be entrusted with a DEA registration. Neither physician had treated nor examined Respondent prior to the hearing. Both based their opinions on records of Respondent's treatment by other individuals and brief interviews with Respondent.

Sometime prior to June 24, 1988, Respondent violated the terms of his agreement with the Florida Physician's Recovery Network. As a result, Dr. Goetz withdrew his support from Respondent and recommended to the Administrative Law Judge that Respondent no longer be permitted to handle controlled substances.

Following the March 1988 hearing, Respondent began abusing controlled substances again. He agreed to withdraw from the practice of emergency medicine for ninety days, beginning on April 18, 1988. Respondent then failed to withdraw from practice an, on May 21, 1988, he prescribed 50 dosage units of Valium tablets to a person he knew, or should have know, was addicted to that drug. As a result, the Florida Department of Professional Regulation ordered the immediate suspension of his license to practice medicine in that State, effective July 5, 1988.

The Administrator finds that there are sufficient grounds to support the revocation of Respondent's DEA registration and to deny any pending applications for renewal of that registration. First, since Respondent is not currently authorized to handle controlled substances in the State of Florida, he cannot be granted permission by DEA to handle controlled substances in that State. The Drug Enforcement Administration can only register or maintain the registrations of practitioners who are properly authorized to handle controlled substances in the States in which they maintain or request registration. See *Fazal Ahmad, M.D.*, Docket No. 86–36, 51 FR 41030 (1986).

Also, there is no dispute that Respondent was convicted of felony offenses relating to controlled substances in November 1986. Such convictions alone, can support the revocation of a DEA registration. See 21 U.S.C. 824(a)(2). See also *Raymond A. Carlson, M.D.*, Docket No. 86–50, 53 FR 7425.

The Administrator also finds that Respondent's continued registration would be contrary to the public interest. In determining whether a registration would be inconsistent with the public interest, the Administrator must consider the following factors enumerated in 21 U.S.C. 823(f):

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(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's [or registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's [or registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

In this case, all factors listed above are applicable in considering whether Respondent's registration is inconsistent with the public interest. First, the State licensing board, the Florida Department of Professional Regulation, State Board of Medicine, has suspended Respondent's medical license for violations relating to controlled substances. With respect to the second through fifth factors, the administrative record in this proceeding is replete with examples of Respondent's violations relating to controlled substances. Respondent was convicted of two felony offenses and one misdemeanor offense relating to controlled substances; he is the subject of an open arrest warrant for failing to appear on additional misdemeanor offenses; Respondent has a history of abusing controlled substances, even after undergoing extensive treatment on two occasions; he issued fraudulent controlled substance prescriptions for his own use; and he handled controlled substances and issued prescriptions at a time when he was not authorized to do so. Such behavior is evidence that Respondent's continued registration would be contrary to the public interest.

The Administrator notes that little positive evidence remains to support Respondent's registration. The testimony of Drs. Coetz and Eustace supporting his registration is countered by Respondent's subsequent violations relating to controlled substances. In addition, the testimony of these two physicians was not based upon personal evaluations of Respondent, thus was accorded little weight in this proceeding. Also, Dr. Goetz's testimony was later nullified by the letter he submitted to the Administrative Law Judge. The Administrator further finds that Respondent's own testimony was largely self-serving and discounted by evidence of his continued abuse of controlled substances and violation of controlled substance laws and regulations.

In viewing all of the evidence, including the testimony presented by Respondent, the Administrator concludes that Respondent has not been rehabilitated and cannot be entrusted with a DEA Certificate of Registration. To allow him to be registered would be inconsistent with the public interest.

Thus, based on Respondent's lack of State authorization to handle controlled substances, his felony convictions relating to controlled substances, and a finding that his continued registration would be inconsistent with the public interest, the Administrator concludes that Respondent's registration must be revoked and any pending applications for renewal must be denied. Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration, orders that DEA Certificate of Registration BB0420810, previously issued to John G. Bennett, M.D., be, and it hereby is, revoked. He further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

This order is effective December 5, 1988.

November 29, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-27908 Filed 12-2-88; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482]

Kansas Gas and Electric Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42 issued to the Kansas Gas and Electric Company, Kansas City Power and Light Co., and Kansas Electric Power Cooperative, Inc. (the licensees), for operation of the Wolf Creek Generating Station located at the licensee's site in Coffey County, Kansas.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would provide a more optimum pressure balance between the emergency ventilation systems of the Control Building and the Auxiliary Building. The proposed amendment would modify Technical Specifications (TS) relating to emergency ventilation system flow rates, deletes unnecessary and redundant surveillance requirements and clarifies the Bases accordingly. The proposed amendment would revise TS 3/4.7.6, Control Room Ventilation System, 3/4.7.7, Emergency Exhaust System (Plant Systems), 3/4.9.13, Emergency Exhaust Systems (Refueling Operation), TS Bases B 3/4.7.7, Emergency Exhaust System (Plant Systems) and B 3/4.9.13, Emergency Exhaust System (Refueling Operation).

The proposed action is in accordance with the licensee's application for amendment dated February 26, 1988, and as supplemented by letter dated October 31, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide a more optimum pressure balance between the emergency ventilation systems of the Control Building and the Auxiliary Building. Modifications to the ventilation system flow rates establishes a more desirable positive pressure envelope in the Control Building.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would: (1) Ensure Control Room Habitability under accident conditions, including chlorine accident, loss-of-coolant accident (LOCA), and Fuel Building irradiated fuel accident. The changes proposed increase the ability of the systems to ensure Control Room habitability during a LOCA or a Fuel Building fuel handling accident by providing a more reliable positive pressure envelope in the Control Building, thus ensuring that only air passing through high-efficiency particulate air (HEPA) and charcoal filters is discharged into the Control Room. The increased air flow will not increase chlorine concentrations in the Control Room during a chlorine accident above acceptable level specified in Regulatory Guide 1.78. (2) Ensure that radioactive materials leaking from emergency core cooling system (ECCS) pumps in the Auxiliary Building during a LOCA are not discharged into the atmosphere without being processed through HEPA and charcoal filters. The changes do not reduce the required negative pressure of greater than ¼-inch Water Gage (W.G.) for the Auxiliary Building during a LOCA. (3) Ensure that radioactive materials released from an irradiated fuel assembly damage during a fuel handling accident in the Fuel

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Building will be filtered through HEPA and charcoal filters prior to discharge to the atmosphere. The change in flow rates does not reduce the ability of the Emergency Exhaust System to maintain a negative pressure of greater than ¼-inch W.G. in the Fuel Building.

The Commission's review has concluded that with regard to potential radiological impacts to the general public, the accident releases will be adequately controlled as before during the postulated accident conditions in the Auxiliary Building and Fueling Building since the negative pressure level limits and the iodine removal efficiency of the filters are not affected by the change in the emergency exhaust system flow rates. In addition, the control room habitability system operation with the revised ventilation and exhaust air flow rates still meet the requirements specified in General Design Criteria 19 and Standard Review Plan 6.4 for the protection of control room personnel under accident conditions. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 26, 1988 (53 FR 32804). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Wolf Creek Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for amendment dated February 26, 1988, as supplemented October 31, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the William Allen White Library, Emporia State University, Emporia, Kansas, and at the Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland, this 29th day of November, 1988.

For The Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate IV, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27904 Filed 12-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(1) to the Nebraska Public Power District (the licensee) for the Cooper Nuclear Station located in Nemaha County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The licensee would be partially exempted from the requirement of 10 CFR 50.54(w)(1) from December 5, 1988 through June 4, 1990. 10 CFR 50.54(w)(1) requires that licensees have property damage insurance in the amount of at least $1.06 billion to provide financial security for stabilizing and decontaminating their licensed reactors in the event of an accident.

The Need for the Proposed Action

The licensee is a political subdivision of the State of Nebraska and, as such, is prohibited by state law from becoming a subscriber to the stock or any portion of interest of any corporation or association. The licensee is therefore prohibited from becoming a member of Nuclear Electric Insurance Limited (NEIL). As a result, the licensee is unable to obtain the entire $1.06 billion of property insurance as required by the rule. The licensee is seeking a declaratory judgement from United States District Court which will enable it to become a NEIL member. Until such time, the maximum amount of property insurance available to the licensee is the $750 million available from the American Nuclear Insurers (ANI) and the Mutual Atomic Energy Reinsurance Pool (MAERP). The requested exemption will grant the licensee additional time to obtain the necessary ruling.

Environmental Impacts of the Proposed Action

The proposed action affects only insurance requirements and will have no effect on nuclear safety or on plant effluents. Therefore, the Commission has determined that there is no environmental impact associated with the proposed action.

Alternative Use of Resources

This action involves no use of resources.

Agencies/Persons Consulted

The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's application dated November 4, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, 20555, and at the Local Public Document Room in the Auburn Public Library, 1118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 30th day of November, 1988.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate IV, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27905 Filed 12-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(1) to the Omaha Public Power District (the licensee) for the Fort Calhoun Nuclear Station located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The licensee would be partially exempted from the requirement of 10 CFR 50.54(w)(1) from December 5, 1988 through June 4, 1990. 10 CFR 50.54(w)(1) requires that licensees have property damage insurance in the amount of at least $1.06 billion to provide financial security for stabilizing and decontaminating their licensed reactors in the event of an accident.

The Need for the Proposed Action

The licensee is a political subdivision of the State of Nebraska and, as such, is prohibited by state law from becoming a subscriber to the stock or any portion of interest of any corporation or association. The licensee is therefore prohibited from becoming a member of Nuclear Electric Insurance Limited (NEIL). As a result, the licensee is unable to obtain the entire $1.06 billion of property insurance as required by the rule. The licensee is seeking a declaratory judgment from United States District Court which will enable it to become a NEIL member. Unitil such time, the maximum amount of property insurance available to the licensee is the $750 million available from the American Nuclear Insurers (ANI) and the Mutual Atomic Energy Reinsurance Pool (MAERP). The requested exemption will grant the licensee additional time to obtain the necessary ruling.

Environmental Impacts of the Proposed Action

The proposed action affects only insurance requirements and will have no effect on nuclear safety or on plant effluents. Therefore, the Commission has determined that there is no environmental impact associated with the proposed action.

Alternative Use of Resources

This action involves no use of resources.

Agencies/Persons Consulted

The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's application dated November 4, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room in the W. Dale Clark Library, 215 S. 15th Street, Omaha, Nebraska 68102.

Dated Rockville, Maryland, this 30th day of November, 1988.

Paul W. O'Connor,

Acting Director Project Directorate IV, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27906 Filed 12-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co., et al; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 115 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment revised the steam generator tube plugging criteria to allow tubes with defects in the rolled region of the tube sheet to remain in service provided that the first inch of rolled tube contains no imperfections, and made permanent the interim approval granted by Amendment No. 101, issued May 6, 1988.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 16, 1988 (53 FR 17282). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement need not be prepared because operation of the facility in accordance with this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 10, 1988, as supplemented March 22 and 29, 1988, (2) Amendment No. 115 to License No. DPR-13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of tiems (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 28th day of November, 1988.

For The Nuclear Regulatory Commission.

Charles M. Trammell,

Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27907 Filed 12-2-88; 8:45 am]

BILLING CODE 7590-01-M

VOL 53 ISS 233 DE 5 1988 UMI

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26325; File No. SR-AMEX-88-27)

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Relating to Timely Responses to Requests for Information, and Amex Policy Regarding Cooperation With Domestic and Foreign Self-Regulatory Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt a new rule concerning the obligation of persons subject to the Amex's jurisdiction to respond in a timely manner to request for information, and the Amex's policy with respect to cooperation with domestic and foreign self-regulatory organizations.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed new rule is to require responses to Exchange requests for information within a reasonable, yet specific, period of time. Although the Exchange Constitution and Rules currently authorize the Exchange to require persons and firms subject to its jurisdiction to provide information and testimony, and also establish a disciplinary mechanism for failure to cooperate with an Exchange investigation, there is no specific requirement that requests for information or testimony be answered within a reasonable period of time. In the past, the Exchange's ability to investigate possible insider trading situations and other matters occasionally has been hampered by slow responses to requests for information on the part of member firms and other persons.

The Exchange therefore proposes to adopt new Rule 31 to enhance the timeliness of its investigations by ensuring that all Exchange requests for information, including requests for surveillance information, are answered promptly. The new rule requires that persons and firms subject to Amex's jurisdiction comply with requests for information within the time specified by the representative or committee of the Exchange making the request.

Additionally, commentary to the proposed new rule sets out Exchange policy concerning cooperation with domestic and foreign self-regulatory organizations ("SROs").

The development of a surveillance system that is appropriate to the realities of today's international and domestic securities markets requires close cooperation between the Exchange and other SRO's and associations. For this reason, the Exchange routinely shares surveillance and investigative information with domestic SROs pursuant to the agreement between the members of the Intermarket Surveillance Group, and has entered into bilateral information-sharing agreements for regulatory purposes with foreign exchanges and associations. The proposed commentary would set forth this policy of cooperation by specifically noting the Exchange's authority to enter into agreements with domestic and foreign SROs for the exchange of information and other regulatory purposes.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 29, 1988.

[FR Doc. 88-27961 Filed 12-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26315; File No. SR-Amex-88-17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Arbitration Procedures

I. Introduction

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on June 24, 1988 proposed amendments to its rules governing Exchange arbitration procedures. The proposal would amend Exchange Rules 602, 618 and 619 pertaining to the monetary limit governing arbitrations involving public customers, the amount of the filing fee to be retained by the Exchange if an arbitration is withdrawn or settled prior to commencement of the first hearing session, and the monetary limit on simplified arbitrations involving public customers.[3]

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26194; October 18, 1988) and by publication in the **Federal Register** (53 FR 43060; October 25, 1988). The Commission received no comments on the proposed amendments.

The Securities Industry Conference on Arbitration ("SICA") has recently approved amendments to procedures set forth in the Uniform Code of Arbitration pertaining to the number of arbitrators required in matters concerning amounts in controversy of more than $500,000, the retention by a self-regulatory organization of a portion of the filing fee where an arbitration is withdrawn or settled before it has reached the hearing stage, and the types of disputes eligible for resolution through simplified procedures. The rule changes proposed by the Amex are intended to conform applicable Exchange rules to the modifications approved by SICA. Accordingly, the proposal would raise the limit on the size of claims eligible for simplified arbitration procedures from $5,000 to $10,000, establish a filing fee of $200 where the case and controversy is between $5,000 and $10,000, provide for arbitration panels of no less than three nor more than five arbitrators where the matter in controversy exceeds $10,000 and increase the administrative fees retained for cases withdrawn or settled prior to their first hearing session.

In arbitrations involving public customers, Amex Rule 602 currently provides for a panel of at least three but no more than five arbitrators where the matter in controversy does not exceed $500,000. Under the proposal, Amex Rule 602 would provide for a panel of at least three but no more than five arbitrators where the matter in controversy exceeds $10,000, or where the matter in controversy does not involve or disclose a money claim. The amendment to Amex Rule 619 would increase the limit on the size of the claims involving public customers eligible for resolution pursuant to the Exchange's simplified arbitration procedures from $5,000 to $10,000, and would adopt change from a filing fee of $200 for cases where the amount in controversy is more than $5,000 but does not exceed $10,000.[4] Finally, Amex Rule 618, as amended, would increase from $25 to $100 the portion of the administrative filing fee to be retained by the Exchange if a matter submitted for arbitration is withdrawn or settled prior to the commencement of the first hearing session.

The Commission believes that the proposed rule changes are consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and, more specifically, section 6(b)(5) of the Act, in that they are designed to promote just and equitable principles of trade and protect investors and the public interest. In accordance with the guidelines provided by SICA's recent revisions to the Uniform Code of Arbitration, the Commission finds that the proposed amendments will streamline the Exchange's procedural rules governing arbitration, provide for more efficient arbitration proceedings involving smaller claims, and help defray the expenses associated with the Exchange's administration of the arbitration forum.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: November 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27962 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-26314; File No. BSE-88-2]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Filing of Proposed Plan for Enforcing and Reporting Minor Disciplinary Rule Violations

Pursuant to section 19(d)(1), 15 U.S.C. 78s(d)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19d–1(c)(2) thereunder, 17 CFR 240.19d–1(c)(2), notice is hereby given that on October 20, 1988, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change to establish a minor rule violation enforcement and reporting plan.[1] For covered minor disciplinary rule violations, the proposed plan would relieve the Exchange from the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions. The BSE filed with the Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Change

Pursuant to section 19(d)(1) of the Exchange Act and Commission Rule 19d–1(c)(2) thereunder, the Proposed Rule Change would authorize the Exchange, in lieu of commencing a disciplinary proceeding under Chapter XXX of the Exchange Rules, to impose a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On September 27, 1988, the Commission received a letter from the Amex amending the language of Amex Rules 602 and 619 under the proposal, in order to conform more closely with the recently approved amendments to the Uniform Code of Arbitration, as adopted by the Securities Industry Conference on Arbitration. *See* letter from Scott Noah, Associate General Counsel, Amex to Howard Kramer, Assistant Director, SEC, Division of Market Regulation, dated September 26, 1988.

[4] Arbitrations conducted pursuant to the Exchange's simplified procedures require the appointment of just one arbitrator, and may be decided solely on the papers unless the claimant or the arbitrator requests a hearing.

[5] *See* 17 CFR 200.30–3(a)(44).

[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SRO") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

fine, not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member organization for any violation of an Exchange Rule which the Exchange determines to be minor in nature. Under the Proposed Rule Change, the Exchange will serve a written statement, signed by a Floor Official or Officer of the Exchange, on the person against whom a fine is to be imposed, setting forth: (i) The Exchange Rule(s) alleged to have been violated; (ii) the act or omission constituting the violation; (iii) the fine imposed; and (iv) the date by which the determination becomes final and the fine must be paid, or the date by which the determination must be contested, such date to be not less than 10 days after the date of service of the written statement. If the person against whom the fine is imposed pursuant to the Proposed Rule Change chooses not to contest that matter and pays the fine, he waives both his right to a disciplinary proceeding under Chapter XXX of the Exchange Rules and his right of appeal to the Market Performance Committee or the Board of Governors.

Alternatively, under the Proposed Rule Change, any person may choose to contest the fine by filing not later than the date by which the determination must be contested, a written request with the Market Surveillance and Compliance Department to appear before the Market Performance Committee in order to state the appeal. Following submission of the written request, the matter shall become a formal disciplinary proceeding subject to Chapter XXX of the Exchange Rules. In any such appeal proceeding, if the Market Performance Committee determines that the person charged is guilty of the rule violation(s) charged, the Committee shall: (i) Be free to impose any one or more of the disciplinary sanctions provided in the Proposed Rule, and (ii) determine whether the Exchange Rule violation is minor in nature. The Compliance Department, the person charged, or any member of the Board of Governors of the Exchange may require a review by the Board of any determination by the Market Performance Committee. In addition, paragraph (e) of the Proposed Rule provides that imposition of a fine pursuant to the Rule is not mandatory. Moreover, the Exchange has the option, whenever it determines that any violation is not minor in nature, to commence formal disciplinary proceedings under Chapter XXX of the Exchange Rules.

The Proposed Rule Change would also establish an abbreviated reporting plan and designates certain specified Exchange Rule violations that, if uncontested, would not be subject to the current reporting provisions of Commission Rule 19d–1(c)(1) under the Act requiring that a SRO promptly file notice with the Commission of any "final" disciplinary action directed at any person or organization.[2] Pursuant to paragraph (c)(2) of Commission Rule 19d–1, the BSE thus requests that it be relieved of the current reporting requirement otherwise imposed on Commission Rule 19d–1(c)(1) "final" disciplinary actions, provided the Exchange gives notice of the violations to the Commission on a quarterly basis. Subject to the provisions of Commission Rule 19b–4, the BSE will periodically prepare and announce to its members and member organizations a revised listing of Exchange Rules the violation of which the BSE may impose finds pursuant to the terms of the Proposed Rule Change, as well as the fines that may be imposed for such a violation(s).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements governing the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. Set forth in sections (A), (B) and (C) below, the SRO has prepared summaries of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Currently, when the Exchange discovers a minor rule infraction, a verbal or written caution is issued calling attention to the violation and the need to comply with rules. The Exchange likewise issues a warning against future violations. The purpose of the Proposed Rule Change is to permit the imposition of fines for these minor rule infractions, which will improve the Exchange's ability to efficiently meet its statutory enforcement responsibilities by establishing a program for the imposition of fines for minor violations of Exchange Rules, and by designating certain specified Rule violations as minor Rule violations.

(2) The Proposed Rule Change is consistent with sections 6(b)(1), 6(b)(6), 19(d)(1) and 19(g)(1)(A) of the Act. Section 6(b)(1) of the Act requires Commission-registered national securities exchanges to have the capacity to enforce compliance by its members and associated persons with the provisions of the Act, the Rules thereunder and the rules of the exchange. Section 6(b)(6) of the Act provides that appropriate disciplinary procedures be established to exact such compliance. Section 19(d)(1) of the Act requires SROs to notify the Commission of any "final" disciplinary sanction imposed on any member thereof or participants therein, and Commission Rule 19d–1 thereunder authorizes SROs to adopt minor disciplinary rule violation enforcement and reporting plans. Finally, section 19(g)(1)(A) of the Act requires each SRO to enforce compliance by its members and associated persons with its rules, as well as Commission rules and regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Exchange believes that the Proposed Rule Change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

The Exchange has neither solicited nor received any comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

[2] The actual list of substantive Exchange rules that would be subject to the proposed minor disciplinary rule violation enforcement and reporting plan are available for inspection in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements addressing the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 28, 1988.

Jonathan G. Katz,

Secretary.

[FR. Doc. 88-27963 Filed 12-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26316; File No. SR-MSE-87-11]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Deletion of Rule 6.01, Article III of the Midwest Stock Exchange Guide, in Its Entirety

I. Introduction

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[2] the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on September 3, 1987 a proposed amendment to the Exchange Rule governing the affiliations of bank and bank holding companies with Exchange members.[3] The proposal would delete in its entirety Rule 6.01, Article III of the MSE Stock Exchange Guide, which generally prohibits a bank or bank holding company from acting as a principal stockholder or parent firm of an Exchange member corporation.

Notice of the proposed amendment to the rule governing the affiliations of Exchange members with banks and bank holding companies was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26195; October 18, 1988) and by publication in the **Federal Register** (53 FR 43061; October 25, 1988). The Commission received no comments addressing the proposed rule change.

II. Description of the Proposal

Article III of the Midwest Stock Exchange Guide generally governs corporate responsibilities of Exchange members. Rule 6 under Article III of the Exchange Rules governs officer, director and principal shareholder disclosures, reporting obligations and management responsibilities. Paragraph .01 under Exchange Rule 6.01, Article III states:

> At least until pending legal and legislative questions affecting such relationships are clarified, the Exchange will not approve a bank or bank holding company as a principal stockholder or parent firm of a member corporation.[4]

A "bank" is generally defined under the Bank Holding Company Act of 1956 as an institution that is insured by the Federal Deposit Insurance Corporation, or accepts deposits and makes commercial loans.[5] A "bank holding company" is defined under the Bank Holding Company Act of 1956 as any company that satisfies one of the bank "control" tests set forth in the statute (*e.g.*, a company that has the power to vote 25 percent of a bank's class of voting equity securities).[6] The Exchange is proposing to delete the text of Exchange Rule 6.01 in its entirety; however, despite the proposed deletion of Exchange Rule 6.01, Exchange Rule 1.02 would continue to preclude banks and bank holding companies from direct Exchange membership.

At the time of its original filing with the Commission, the Exchange stated that approximately ten of its then current members had as their principal shareholders banks or bank holding companies, thereby bringing the MSE members within Rule 6.01's coverage. In an October 1988 letter filed with the Commission's Division of Market Regulation, the Exchange cited three Exchange member corporations as examples of such firms covered by Exchange Rule 6.01: Rose and Company, ("Rose") owned by Chase Manhattan Corporation ("Chase"); First Options of Chicago ("first Options"), owned by Continental Illinois"); and Charles Schwab and Co. ("Schwab"), owned at that time by BankAmerica Corporation ("BankAmerica").[7] Schwab, Rose and First Options are all members of the Exchange.

The Exchange has noted that since the adoption of Exchange Rule 6.01, certain clarifications regarding bank ownership of broker-dealers have been made, and there presently exist a significant number of broker-dealers that are at least in part owned by banks or bank holding companies. The Exchange therefore contends that legal and regulatory developments subsequent to the adoption of Exchange Rule 6.01, coupled with the continued prohibition on direct bank or bank holding company exchange membership, support the deletion of Exchange Rule 6.01.

III. Discussion and Conclusion

The Board of Governors of the Federal Reserve System ("Board"), the primary federal bank regulator of Chase and BankAmerica,[8] and the Office of the Comptroller of the Currency ("OCC"), the primary federal bank regulator of Continental Illinois, have both issued orders that address the affiliations of the three MSE member firms cited above. Pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 ("BHCA"),[9] the Board approved the application of BankAmerica, a bank holding company, to acquire Schwab, a retail discount brokerage firm registered as a broker-dealer with the Commission.[10] The Board also approved the section 4(c)(8) BHCA application of Chase, a bank holding company, to acquire Rose, a retail discount brokerage firm registered as a broker-

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On October 21, 1988 the Commission received a letter from the MSE that clarifies the rationale underlying the proposal. *See* letter from Patrick Conroy, Associate Counsel, MSE to George Scargle, Staff Attorney, SEC, Division of Market Regulation, dated October 17, 1988.

[4] Unless the context otherwise requires, under Exchange Rules, the term "principal stockholder" is defined as any person or entity beneficially owning, directly or indirectly, equity securities representing 5% of the voting power in elections of directors, or 5% of the net worth, or a 5% participation in the net profits, of a corporation, while the term "parent firm" is defined as a corporation or partnership which beneficially owns, directly or indirectly, equity securities representing 20% or more of the voting power in the election of directors of a member corporation, or such lesser percentage of such voting power as constitutes in the circumstances effective control of the member corporation. *See* Midwest Stock Exchange Guide, Article III, Rule 2.

[5] *See* 12 U.S.C. 1841(c).

[6] *See* 12 U.S.C. 1841(a). *See also*, 12 CFR 225 *et seq.* (additional definitions of control).

[7] This latter MSE member firm is no longer affiliated with Bank of America.

[8] *See, e.g.*, section 3(a)(34) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(34) ("appropriate regulatory agency"). *See also*, 12 U.S.C. 282, 321, 466, 1813(q), 1814, 1815 (primary regulatory jurisdiction of federal bank regulators).

[9] *See* 12 U.S.C. 1843(c)(8).

[10] *BankAmerica/Charles Schwab Corp.*, 69 Fed. Res. Bull. 105 (1983), upheld in *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 716 F.2d 92 (2d Cir. 1983), *aff'd*, 468 U.S. 207 (1984).

dealer with the Commission.[11] Finally, pursuant to section 24 (Seventh) of the National Bank Act,[12] the OCC approved the establishment by Continental Illinois, a national bank, of a wholly-owned operating subsidiary through the acquisition of First Options, a broker dealer registered with the Commission.[13] Thus, to the extent that the primary federal bank regulators of BankAmerica, Chase and Continental Illinois have approved their affiliations with Commission-registered broker-dealers, their orders (as well as consequent litigation) support the exchange's contention that subsequent to the adoption of Exchange Rule 6.01, bank regulatory standards have become sufficiently clarified to support repeal of the Rule's principal shareholder and parent firm prohibitions.

Section 6(c)(1) of the Securities Exchange Act of 1934 requires national securities exchanges registered under the Act to deny membership to any person, other than a natural person, which is not registered as a broker-dealer with the Commission.[14] This statutory requirement prevents banks or bank holding companies from directly operating Exchange memberships, without registration with the Commission as broker-dealers. In the past banks have not been willing to register as broker-dealers and comply with the broker-dealer regulatory requirements. Similarly, MSE Rule 1.02, Article I, prohibits the Exchange from approving bank or bank holding companies applications for direct MSE membership. Because the combination of these two prohibitions effectively prevent banks or bank holding companies from directly operating an MSE membership without establishing a separate subsidiary subject to commission regulation, the repeal of Rule 6.01 is consistent with the regulatory structure governing broker-dealer registration and exchange membership under the Act.

The Commission believes that the proposed rule change is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and, more specifically, section 6(b)(5) of the Act. For the limited purpose of repealing the prohibition on bank and bank holding companies from acting as the principal stockholder or parent corporation of Exchange member firms, the Commission believes that repeal of MSE Rule 6.01 is appropriate. Additionally, the Commission finds that the proposed amendment will preserve the Commission's regulatory jurisdiction as it applies to broker-dealers and members of registered national securities exchanges. Finally, the proposed repeal of MSE rule 6.01 has no impact on the effect of MSE Rule 1.02 and its continued prohibition on banks and bank holding companies from directly owning or operating Exchange memberships.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Dated: November 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27964 Filed 12-2-88; 8:45 am]

BILLING CODE 8010-01-M

[11] *Chase Manhattan Corp./Rose & Co.*, 69 Fed. Res. Bull. 725 (1983).

[12] 12 U.S.C. 24 (Seventh).

[13] Office of the Comptroller of the Currency, Interpretive Letter No. 380 (December 29, 1986), Fed. Banking L. Rep. (CCH) ¶ 85,804 [1986-87 Transfer Binder].

[14] 15 U.S.C. 78f(c)(1).

[15] *See* 17 CFR 200.30-3(a)(44).

[Release No. 34-26317; File No. SR-NASD-88-40]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Filing of Advertisements and Sales Literature Concerning Registered Investment Companies

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on September 28, 1988 (and an Amendment thereto, dated November 17, 1988, providing the results of membership vote)[1], pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Article III, section 35(c)(1) of the NASD Rules of Fair Practice to delete certain existing text and add new provisions regarding the filing of advertisements and sales literature concerning registered investment companies.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26140, September 28, 1988) and by publication in the **Federal Register** (53 FR 40303, October 14, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-88-40, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated, 17 CFR 200.30-3(a)(12).

Dated: November 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27888 Filed 12-2-88; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Letter from Anne H. Wright to Katherine England, dated November 17, 1988, providing results of the membership vote, a copy of which is on file in the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, 20549.

[Rel. No. IC-16661; 811-4955]

Progress Common Stock Fund, Inc.; Application

November 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Progress Common Stock Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8F was filed on January 6, 1988 and amended on August 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of services by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 260 First Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272–3035 or Stephanie M. Monaco, Branch Chief at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Florida corporation and registered under the 1940 Act on December 19, 1986 as an open-end, diversified, management investment company. On March 30, 1987, Applicant filed a registration statement on Form N–1A with respect to an indefinite number of shares of its common stock, $.01 par value. The registration statement never became effective and was withdrawn by Applicant on August 20, 1987. Applicant has never made a public offering of its securities.

2. Applicant filed Articles of Dissolution on September 11, 1987 with the Department of State of Florida to terminate its legal existence.

3. Prior to adoption of a plan of liquidation and dissolution for Applicant, all of Applicant's shareholders, other than Progress Financial Services Incorporated ("PFS""), had elected to redeem their shares. Their shares were redeemed in cash on July 31, 1987, at the net asset value per share of $13.43 for a total of $707,170. Redeeming shareholders also received tax indemnification payments totaling $55,108 pursuant to an indemnification undertaking by PFS to compensate shareholders for the federal income tax consequences of their recognition, at the time of redemption, of unrealized capital gains existing in Applicant's portfolio. On July 31, 1987, a Plan of Liquidation and Dissolution (the "Plan") was adopted by the Board of Directors of Applicant, and the Plan was approved by the sole remaining shareholder, PFS, on August 10, 1987. As of August 19, 1987, all of Applicant's remaining assets, which consisted of $151 in cash and $11,453,761 in securities, were distributed in kind to the sole remaining shareholder, PFS.

4. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust.

5. Applicant states that it does not currently have any shareholders, it does not have any assets, debts or liabilities, it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business other than that necessary for the winding up of its affairs.

6. It is Applicant's understanding that, pursuant to Rule 30b1–1 under the 1940 Act, Applicant was relieved of its N–SAR reporting obligations for the period from March 30, 1987, the date on which its Registration Statement on Form N–1A was filed, through the date, August 20, 1987, on which this Registration Statement was withdrawn.

7. Applicant made sales of shares of its common stock in a private placement pursuant to Regulation D under the Securities Act of 1933 on the dates and in the amounts indicated in Schedule A of Applicant's application on Form N–8F.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27965 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16862; 811–4956]

Progress Fixed Income Fund, Inc.; Application

November 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Progress Fixed Income Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N–8F was filed on January 6, 1988 and amended on August 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 260 First Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272–3035 of Stephanie M. Monaco, Branch Chief at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Application is a Florida corporation and registered under the 1940 Act on December 19, 1986 as a open-end, diversified, management investment company. On March 30, 1987, Applicant filed a registration statement on Form N–1A with respect to an indefinite number of shares of its common stock, $.01 per value. The registration statement never became effective and was withdrawn by Applicant on August 20, 1987. Applicant has never made a public offering of its securities.

2. Applicant filed Articles of Dissolution on September 11, 1987 with the Department of State of Florida to terminate its legal existence.

3. Prior to adoption of a plan of liquidation and dissolution for Applicant, all of Applicant's shareholders, other than Progress Financial Services Incorporated ("PFS"), had elected to redeem their shares. Their shares were redeemed in cash on July 31, 1987, at the net assist value per share of $10.58 for a total of $22,887. On July 28, 1987, a Plan of Liquidation and Dissolution (the "Plan") was adopted by the Board of Directors of Applicant, and the Plan was approved by the sole remaining shareholder, PFS, on August 3, 1987. As of August 19, 1987, all of Applicant's remaining assets, which consisted of $1,059,213 in cash were distributed in kind to the sole remaining shareholder, PFS.

4. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust.

5. Applicant states that it does not currently have any shareholders, it does not have any assets, debts or liabilities,

it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business other than that necessary for the winding up of its affairs.

6. It is Applicant's understanding that, pursuant to Rule 30bl–1 under the 1940 Act, Applicant was relieved of its N-SAR reporting obligations for the period from March 30, 1987, the date on which its Registration Statement on Form N–1A was filed, through the date, August 20, 1987, on which this Registration Statement was withdrawn.

7. Applicant made sales of shares of its common stock in a private placement pursuant to Regulation D under the Securities Act of 1933 on the dates and in the amounts indicated in Schedule A of Applicant's application on Form N–8F.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27966 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—16660; 811–4957]

Progress Tax-Exempt Fund, Inc.; Notice of Application

November 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Progress Tax-Exempt Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N–8F was filed on January 6, 1988 and amended on August 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 260 First Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272–3035 or Stephanie M. Monaco, Branch Chief at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Florida corporation and registered under the 1940 Act on December 19, 1986 as an open-end, diversified, management investment company. On March 30, 1987, Applicant filed a registration statement on Form N–1A with respect to an indefinite number of shares of its common stock, $.01 par value. The registration statement never became effective and was withdrawn by Applicant on August 20, 1987. Applicant has never made a public offering of its securities.

2. Applicant filed Articles of Dissolution on September 11, 1987 with the Department of State of Florida to terminate its legal existence.

3. Prior to adoption of a plan of liquidation and dissolution for Applicant, all of Applicant's shareholders, other than Progress Financial Services Incorporated ("PFS"), had elected to redeem their shares. Their shares were redeemed in cash on July 31, 1987, at the net asset value per share of $10.42 for a total of $87,778. On July 28, 1987, a Plan of Liquidation and Dissolution (the "Plan") was adopted by the Board of Directors of the Fund, and the Plan was approved by the sole remaining shareholder, PFS, on August 3, 1987. By August 19, 1987, all of Applicant's remaining assets, which consisted of $1,042,087 in cash were distributed in kind to the sole remaining shareholder, PFS.

4. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust.

5. Applicant states that it does not currently have any shareholders, it does not have any assets, debts or liabilities, it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business other than that necessary for the winding up of its affairs.

6. It is Applicant's understanding that, pursuant to Rule 30b1–1 under the 1940 Act, Applicant was relieved of its N–SAR reporting obligations for the period from March 30, 1987, the date on which its Registration Statement on Form N–1A was filed, through the date, August 20, 1987, on which this Registration Statement was withdrawn.

7. Applicant made sales of shares of its common stock in a private placement pursuant to Regulation D under the Securities Act of 1933 on the dates and in the amounts indicated in Schedule A of Applicant's application on Form N–8F.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27967 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16659; 812–7125]

South Australian Finance (USA) Ltd., et al.; Notice of Application

November 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION. Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: South Australian Finance (USA) Ltd. (the "Issuer"), the South Australian Government Financing Authority ("SAFA"), and the Treasurer of the State of South Australia of the Commonwealth of Australia (the "Treasurer").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order exempting them from all provisions of the 1940 Act in connection with the issuance and sale of certain of the Issuer's debt securities in the United States.

Filing Date: The application was filed on September 8, 1988, and an amendment to the application was filed on November 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 21, 1988. Request a hearing in writing, giving the nature of your

interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Howard S. Yaruss, Esq., Baker & McKenzie, 805 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Issuer, incorporated under the laws of the State of Delaware, was established to act as agent for SAFA and the semi-government authorities of the State of South Australia of the Commonwealth of Australia ("South Australia") for the purpose of raising funds in the United States and elsewhere. All of the issued and outstanding shares of the Issuer's capital stock are owned by SAFA.

2. SAFA is a statutory authority of South Australia. A statutory authority is any corporate body established by an act of the Parliament of South Australia. SAFA was established under the laws of South Australia on January 13, 1983, pursuant to the Government Financing Authority Act, 1982 (the "Financing Authority Act"), to act as the central authority for the finances of South Australia.

3. SAFA is responsible for providing almost all the capital funds (including working capital) needed by South Australia's semi-government authorities. SAFA manages the majority of South Australia's public debt, its cash and liquid assets and its foreign currency positions. As of June 30, 1987, the total borrowing of SAFA from public sources, including assumption of obligations originally issued by the Commonwealth of Australia on behalf of South Australia and by semi-government authorities prior to SAFA's establishment, equalled A$6,515 million. (as of September 6, 1988, A$1 was approximately equal to US $0.80.) as of June 30, 1987, SAFA had total assets of A$8,684 million.

4. Pursuant to the Financing Authority Act, the SAFA "Board" may consist of no less than three nor more than six members which are appointed by the Governor of South Australia. The Under Treasurer of South Australia is the ex officio chairman. SAFA's Financial Accounts are audited by the Auditor-General of South Australia, as required by the Financing Authority Act, and an international firm of chartered accountants. SAFA's Annual Report, which includes its audited Financial Accounts, is presented to the Parliament of South Australia.

5. South Australia's semi-government authorities are defined by section 4 of the Financing Authority Act. The purpose of such entities is to engage in activities for the benefit of South Australia and its citizens. Such activities include acting as "corporate" Treasurer for the South Australia public sector, including managing South Australia's financial risks through active debt and financial asset management, and developing and financing public works projects.

6. The Applicants propose that the Issuer issue and sell, on behalf of SAFA and the semi-government authorities, prime quality, short-term negotiable promissory notes of the type generally referred to as commercial paper (the "Commercial Paper Notes"). The Commercial Paper Notes will be denominated in United States dollars and will be sold in minimum denominations of $100,000.

7. The Commercial Paper Notes will not be offered for sale to the general public. They will be sold in private placements exempt from the registration requirements of the Securities Act of 1933, as amended ("1933 Act"). Sales will be made through recognized and reputable dealers in commercial paper, as selected by the Issuer and SAFA (the "Commercial Paper Dealers"), to institution investors and to other entities or investors which ordinarily purchase commercial paper notes in large denominations.

8. The net proceeds of any offering of Commercial Paper Notes will be transferred directly by the Issuer to the principals, *i.e.*, SAFA and the semi-government authorities. Although the Issuer will issue and sell the Commercial Paper Notes only as agent for SAFA and semi-government authorities, the Issuer will be fully liable thereunder. The Treasurer of South Australia will, however, unconditionally guarantee the payment of principal and interest on the Commercial Paper Notes issued by the Issuer (the "Guarantees"). Such Guarantees may be given directly by the Treasurer. In the event the Treasurer does not directly give such Guarantees, SAFA will unconditionally guarantee the payment of principal and interest on the Commercial Paper Notes; such guarantees will automatically cause the Treasurer of South Australia to be a guarantor of the payment of principal and interest on the Commercial Paper Notes since liabilities incurred or assumed by SAFA in carrying out the purposes of the Financing Authority Act are automatically guaranteed by the Treasurer of South Australia by virtue of section 15(1) of the Financing Authority Act. Any liability of the Treasurer under the Guarantees shall be satisfied out of the General Revenue of South Australia which is appropriate by section 15(2) of the Financing Authority Act.

9. The Issuer may, from time to time in the future, issue and sell debt securities other than Commercial Paper Notes on behalf of SAFA or semi-government authorities of South Australia.

Applicants' Conditions

If the requested order is granted, Applicants agree to comply with the following undertakings:

1. No Commercial Paper Notes will be issued prior to receiving an opinion of the United States counsel to the effect that the proposed offering is exempt from the registration requirements of the 1933 Act.

2. No debt securities other than Commercial Paper Notes will be offered or sold in the United States unless they are (a) registered under the 1933 Act or (b) in the opinion of United States Counsel for the Applicants, an exemption from registration under the 1933 Act is available with respect to such offer and sale or (c) the staff of the SEC states that they would not recommend that the SEC take any action under the 1933 Act if such securities were not registered.

3. The Commercial Paper Notes and any other debt securities offered for sale by the Issuer in the future will have received one of the two highest investment grade ratings, or one of the equivalent ratings in any future rating system, from one nationally recognized rating organization. Prior to the issuance of the Commercial Paper Notes or any other debt security, the Issuer's United States counsel shall confirm in writing to the Issuer that the requisite investment rating has been obtained. The Issuer's United States counsel shall maintain a copy of such confirmation.

4. In connection with any issue and sale of the Commercial Paper Notes (as

well as in connection with any future offerings by the Issuer guaranteed by the Treasurer of South Australia), the Issuer, SAFA and the Treasurer of South Australia will maintain an agent in the United States upon which process may be served in any action arising out of or based on the Commercial Paper Note, the Guarantees, or any other debt securities. Such action may be instituted in any state or Federal Court in the Borough of Manhattan, the City of New York, New York, by any holder of a Commercial Paper Notes, and the Issuer, SAFA and the Treasurer of South Australia will consent to the jurisdiction of any such court in respect to any such action. The obligation to maintain an agent to accept service of process and the consent to jurisdiction shall remain in effect until all amounts due and to become due in respect of any Commercial Paper Notes have been paid. SAFA and the Treasurer of South Australia further agree to waive, to the extent permitted by law, any immunity they might have from such actions.

5. The Applicants undertake to take reasonable steps to ensure that the Commercial Paper Dealers provide any person to whom Commercial Paper Notes are offered in the United States disclosure documents which are at least as comprehensive in their description of the Applicants as those which may be used by United States issuers in United States offerings of such securities. Similalry, the Issuer undertakes to provide to any person to whom it offers debt securities in the United States (and undertakes to take reasonable steps to ensure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made prior to the sale of debt securities to such offeree) disclosure documents which are at least as comprehensive in their description of the Issuer and SAFA as those which would be used by other United States issuers in United States offerings of such securities and which contain the latest available audited financial statements of the Issuer and SAFA.

6. The Issuer will not at any time nor under any circumstances offer any debt securities, including Commercial Paper Notes, which are not guaranteed, directly or indirectly by virtue of SAFA's guarantee, by the Treasurer of South Australia.

7. The Issuer will neither issue nor sell any equity securities to any entity other than SAFA and/or an affiliate of SAFA.

Applicants' Legal Analysis

1. Approval of the application is both necessary and appropriate in the public interest because South Australia, SAFA and the semi-government authorities would effectively be precluded from raising funds in the United States capital markets if the Applicants were required to comply with the provisions of the 1940 Act. The procedes of the issuance of the Commercial Paper Notes will be used to benefit the South Australia public.

2. The requested exemption is consistent with the protection of investors. Because of the complete and unconditional guarantees of the Treasurer of South Australia, the Commercial Paper Notes are expected to have the highest investment grade ratings. Investors in the Commercial Paper Notes would be able to rely upon the credit strength of the Treasurer of South Australia rather than on that of the Issuer.

3. The Applicants believe that they are not persons which were intended to be subject to the 1940 Act. SAFA and each of the semi-government authorities differs fundamentally from the types of investment companies at which the 1940 Act is generally directed and for which its substantive provisions are necessary or suitable. They are political subdivisions of a foreign sovereign, South Australia, established solely to pursue activities for the benefit of South Australia and its citizens.

4. Rule 3a–5 provides an exemption for subsidiaries organized to finance the operations of domestic or foreign companies. The Applicants could not issue Commercial Paper Notes in reliance upon the exemption provided in Rule 3a–5 because Rule 3a–5 is not available to finance subsidiaries of a political subdivision. Additionally, Rules 3a–5's requirement that at least 85% of the funds raised be "invested in or loaned to" the finance subsidiary's parent will not be met. Otherwise, the Applicants comply in all material respects with the requirements specified for an exemption under Rule 3a–5. Furthermore, the structure of the Applicants, the intended use of proceeds of the Commercial Paper Notes and the protection afforded by the Guarantees are consistent with the policy underlying Rule 3a–5.

For the Commission, by the Division of Investment Management, under delegated authority.

Joanathan G. Katz,

Secretary.

[FR Doc. 88–27968 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applicants for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 25, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 45951.

Date Filed: November 21, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1988.

Description: Application of Nashville Eagle, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate and overseas scheduled air transportation of persons, property and mail.

Docket No.: 45962

Date Filed: November 25, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 23, 1988.

Description: Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Rule 147 authorizing TWA to carry local passengers, property and mail on its London-Frankfurt flights on a year-round basis, commencing May 15, 1989.

Docket No.: 45966.

Date Filed: November 15, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 23, 1988.

Description: Application of Bahamasair Holdings Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations requests amendment of its foreign air carrier permit to authorize Bahamasair to engage in the foreign air transportation of passengers, mail, and property between any point or points in the Commonwealth of The Bahamas and the new coterminal point of Washington,

D.C., to be served through Washington Dulles International Airport.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-27936 Filed 12-2-88; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Enactment of Imported Vehicle Safety Compliance Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of enactment of law imposing new requirements regarding importation of motor vehicles that do not comply with all applicable Federal motor vehicle safety standards.

SUMMARY: When it becomes effective, the recently enacted Imported Vehicle Safety Compliance Act of 1988 will require that motor vehicles not manufactured to meet Federal motor vehicle safety standards be imported into the United States through an importer that has registered with the Department of Transportation and that will modify the vehicles to comply with the standards, or imported pursuant to an existing contract with a registered importer to undertake conformance modifications. This procedure is similar to the one adopted by the Environmental Protection Agency last year with respect to Federal emissions standards. The new NHTSA procedure contrasts with its present one allowing importation by any person, upon the furnishing of a bond for the production of a compliance statement within 120 days after entry. The new law provides a number of exemptions from the general requirement for importation by importers. For example, the new procedures retain the current exemptions for foreign military and diplomatic personnel. The new law also gives the Secretary authority to exempt vehicles imported solely for research, training, competitive racing events or similar purposes. Similar exemptions are permitted under the existing import procedures. Other changes are also discussed.

DATES: As provided in section 2(e)(1) of the Imported Vehicle Safety Compliance Act, the amendments made by the Act to the National Traffic and Motor Vehicle Safety Act are effective January 31, 1990, if regulations impementing the Imported Vehicle Safety Act have been proposed not later than April 30, 1989. If implementing regulations have not been proposed by that date, the amendments are effective October 31, 1989. Implementing regulations must be finally adopted by October 31, 1989.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel (NCC-10), NHTSA, Room 5219, 400 7th Street, SW., Washington, DC 20590, Telephone: (202) 366-5263.

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed into law Pub. L. 100-562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). The 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety stanards (section 108(b), 15 U.S.C. 1397(b)). Section 2(e)(2) of the 1988 Act requires NHTSA, as soon as possible after enactment, to "take reasonable steps designed to encourage notification to the extent feasible" regarding its provisions "to individuals who may be affected by such amendments." The purpose of this notice is to apprise the public at large of the 1988 Act and the changes that it makes in motor vehicle importation procedures that have been in effect, relatively unchanged, since January 1, 1968.

The current importation regulations, which are set forth in 19 CFR 12.80, were jointly issued by the Departments of Transportation and Treasury pursuant to the authority of sections 108(b)(3) and (b)(4) of the Vehicle Safety Act. Administered by NHTSA and the Customs Service, these regulations, with minor amendments, have governed the importation of motor vehicle and motor vehicle equipment subject to the Federal motor vehicle safety standards since the effective date of the first standards in January 1968. Those regulations will continue to govern the importation of nonconforming vehicles and equipment until the effective date of the amendments made by the 1988 Act.

One effect of the amendments made by the 1988 Act is to delete the authority for the existing joint regulations and to vest in NHTSA authority to regulate the importation of motor vehicles subject to the Vehicle Safety Act. The category of importer primarily affected by the amendments is the importer of a motor vehicle that does not conform, at the time of importation, to the Federal motor vehicle safety standards that applied at the time of its original manufacture. Under the current regulation, 19 CFR 12.80(b)(1)(iii), a nonconforming vehicle may be imported if the importer provides a bond for the production of a statement within 120 days of entry that the vehicle has been brought into compliance with the Federal motor vehicle safety standards, and if the importer declares that the vehicle will not be sold, or offered for sale, until the bond has been released.

The 1988 Act imposes restrictions upon both motor vehicles and importers. The principal restriction upon a motor vehicle is that it cannot be imported at all unless NHTSA determines that it is suitable for modification to meet the Federal safety standards. Determinations will be made on NHTSA's own initiative, or upon petition of any registered importer (see discussion below) or any motor vehicle manufactuer, and will be subject to public comment.

A nonconforming vehicle may be imported under either of the following two scenarios. The first scenario will involve the making of two determinations: That the nonconforming vehicle is substantially similar to a motor vehicle of the same model year originally manufactured for importation into and sold in the U.S., and that the vehicle is capable of being readily modified to conform.

The second scenario will arise if the agency does not make a substantial similarity determination regarding a vehicle. In that case, it will still be permissible to import the vehicle if the agency determines that it has safety features that comply with the U.S. standards, or are capable of being modified to comply with those standards, "based on destructive crash data or such other evidence" as NHTSA determines is adequate.

Under either scenario, a positive determination regarding a vehicle will permit *any* registered importer to modify vehicles of the same model and model year.

If the agency makes a negative determination regarding a model's substantial similarity or ability to be modified, the agency will be temporarily prohibited from taking up the issue again. If the decision was made in response to a petition, the 1988 Act prohibits the agency from considering a petition regarding the same model of vehicle until at least 3 months after that decision. If the negative determination was made in a proceeding begun at the agency's own initiative, the agency will not be able to make another determination regarding the same model of motor vehicle until at least 3 months after the negative one.

The primary restriction placed on persons importing nonconforming vehicles is that they will have to be, subject to certain exceptions, registered importers, or those who have conformance contracts with registered

importers. The purpose of this requirement is to increase the likelihood that the nonconforming vehicles will be properly modified and actually brought into compliance with the safety standards.

In order to become and remain registered, a registered importer will have to keep records, allow inspection of its records and facilities, and demonstrate that it will be able technically and financially to carry out notification and remedy responsibilities in the event a noncompliance or safety related defect is determined to exist in any of the vehicles that it imports. To cover the expenses of the registration program and certain other activities, each registered importer will have to pay annual fees. Registration may be revoked or suspended for failure to comply with any requirement or regulation, and is automatically suspended for failure to pay a required fee in a timely manner, or for knowingly filing a false or misleading certification.

Importers will continue to provide a bond for each vehicle imported to ensure that the vehicle is brought into conformity with the safety standards. When a registered importer has finished its modifications of an imported vehicle, it will have to attach a label to the vehicle stating that it complies with the safety standards, and certify to NHTSA that the vehicle conforms to the safety standards. The registered importer will be able to release the vehicle from its custody for licensing or registration 30 days after its submission of the certification to NHTSA. NHTSA, however, may demand an inspection of the vehicle within the 30-day period. In that event, the vehicle may be released only upon the agency's written finding, on completing the inspection, that the vehicle complies. This finding may be made within the 30-day period, but need not be made within that period. If the agency gives a written notice of compliance, the vehicle may be released immediately. The 30-day release provisions also do not apply if, within that period NHTSA has reason to believe a certification is false or contains a material misrepresentation.

The 1988 Act provides a variety of exemptions from the requirements that nonconforming imported vehicles be determined by the agency to be suitable for modification and imported and modified by Registered Importers. The requirements do not apply to:

—Vehicles needing further manufacturing in order to perform their intended functions.
—Any individual who wishes to import a vehicle for his or her own personal use if the person provides a bond to assure proper modification of the vehicle, provides a copy of any agreement with a registered importer committing the importer to modify the vehicle to bring it into conformity with the safety standards and certifies that the vehicle is of the same model and model year as a vehicle which the agency has previously determined to be suitable for modification.
—Any individual, including U.S. military personnel, whose assigned place of employment was outside the United States on October 31, 1988, who wishes to import a vehicle, purchased or ordered before that date, for his or her own personal use, who imports the vehicle not later than October 31, 1992, and who meets the requirements of the current importation procedures.
—Any individual who works for a foreign government on assignment in this country or for the Secretariat of a public international organization and is within the class of person for whom free entry of vehicles has been authorized by the Secretary of State and any individual who is a member of the armed forces of a foreign country and is on assignment in this country.
—Any vehicle that is 25 years or more old.
—Any vehicle imported solely for research, investigations, studies, demonstrations or training, or competitive racing events. (Under existing importation regulations, this exemption covers vehicles imported for show, test, experiment, competition, repair or alteration).

NHTSA emphasizes that this notice is for informational purposes only. Accordingly, no comments are requested on this notice. To implement the 1988 Act, the agency will issue appropriate notices of proposed rulemaking by April 30, 1989. At that time, the agency will invite all interested persons to participate by submitting written comments.

Issued on November 29, 1988.

George Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-27870 Filed 12-2-88; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Thursday, December 15, 1988, from 9:00 a.m. to 5:00 p.m. in room 10234 of the Department of Transportation's headquarters building at 400 Seventh Street, SW. in Washington, DC. This will be the eighth meeting of the Committee. The meeting will address issues associated with component research study, international competition in the world launch market, insurance requirements for commercial launch activities, security and restrictions at USAF bases, radio frequency allocation, commercial spaceports, launch scheduling report, space debris and government launch service and launch-related procurements.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Linda H. Strine at (202) 366-5770.

Carol S. Lane,

Director, Office of Commercial Space Transportation.

Dated: December 1, 1988.

[FR Doc. 88-28076 Filed 12-2-88; 9:24 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Supplement to Department Circular—Public Debt Series—No. 31-88]

Treasury Notes, Series AH-1990

Washington, November 23, 1988.

The Secretary announced on November 22, 1988, that the interest rate on the notes designated Series AH-1990, described in Department Circular—Public Debt Series—No. 31-88 dated November 17, 1988, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-27925 Filed 12-2-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 32-88]

Treasury Notes, Series H-1994

Washington, November 24, 1988.

The Secretary announced on November 23, 1988, that the interest rate on the notes designated Series H-1994, described in Department Circular—Public Debt Series—No. 32-88 dated November 17, 1988, will be 8⅞ percent.

Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-27926 Filed 12-2-88; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 29, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0028.

Form Number: IRS Forms 940 and 940PR.

Type of Review: Resubmission.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (940); Planilla Para la Declaracion Anual del Patrono—La Contribucion Federal Para el Desempleo (FUTA) (940PR).

Description: Internal Revenue Code Section 3301 imposes a tax on employers based on the first $7,000 of taxable annual wages paid each employee. IRS uses the information, reported on Forms 940 and 940PR (Puerto Rico employers only) to ensure that employers have reported and figured the correct FUTA wages and FUTA tax.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 4,899,394.

Estimated Burden Hours Per Response:

Recordkeeping: 14 hours, 7 minutes
Learning about the law or the form: 18 minutes
Preparing the form: 32 minutes
Copying, assembling, and sending the form to IRS: 0 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 73,245,940 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitutional Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-27940 Filed 12-2-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 29, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8810.

Type of Review: New collection.

Title: Corporate Passive Activity Loss and Credit Limitations.

Description: Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held C corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Response:

Recordkeeping: 41 hours, 22 minutes
Learning about the law or the form: 4 hours, 40 minutes
Preparing and sending the form to IRS: 5 hours, 33 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 5,158,000 hours.

OMB Number: 1545-1030.

Form Number: None.

Type of Review: Reinstatement.

Title: 1989 Opinion Survey of Taxpayers Contacting Taxpayer Service.

Description: The data collected will be used to determine if the Internal Revenue Service meets the taxpayers' needs in providing assistance on tax related matters, to plan for short and long range assistance programs, and to assess the impact of taxpayers who have requested assistance on voluntary compliance. The sample will be selected from taxpayers who have requested assistance from IRS.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 8,400.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,100 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-27941 Filed 12-2-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 29, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0478.

Form Number: ATF REC 5130/3 and ATF REC 5130/4.

Type of Review: Extension.

Title: Marks on Equipment and Structures (ATF REC 5130/3) and Marks

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and Labels on Containers of Beer (ATF REC 5130/4).

Description: Marks, signs and calibrations are necessary on equipment and structures at breweries for the identification of major equipment, for accurate determination of tank contents, and for segregation of taxpaid and non-taxpaid beer. Marks and labels on containers of beer are necessary to properly inform the consumer of the container contents and to identify the brewer, place of production, and address.

Respondents: Businesses or other for-profit, and small businesses or organizations.

Estimated Number of Recordkeepers: 147.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–27942 Filed 12–2–88; 8:45 am]

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FEDERAL
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Sunshine Act Meetings

Federal Register
Vol. 53, No. 233
Monday, December 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for December 6, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 6, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approvals;
2. Farm Credit System Building Association 1989 Budget;
3. Policy on Transfer of Capital Under Section 433 Reassignments;
4. Final Regulations Regarding Farm Credit System Mergers and Consolidations, 12 CFR Parts 611, 612, 618, and 620;

Closed Session [1]

5. Examination and Enforcement Matters; and
6. Jackson FLB/FLBA, in Receivership.

Dated: November 30, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-28002 Filed 12-1-88; 11:53 am]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:07 p.m. on Tuesday, November 29, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the following matters:

Application of New Baton Rouge Bank & Trust Company, Baton Rouge, Louisiana, a proposed new bank in organization, for consent to merge, under its charter and with the title "Baton Rouge Bank & Trust Company," with Baton Rouge Bank & Trust Company, Baton Rouge, Louisiana, and for consent to establish the five branches of Baton Rouge Bank & Trust Company as branches of the resultant bank.

Application of Peninsula Bank, Princess Anne, Maryland, an insured State nonmember bank, for consent to merge, under its charter and title, with Eastern Shore National Bank, Pocomoke City, Maryland, and for consent to establish the five offices of Eastern Shore National Bank as branches of the resultant bank.

The possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interst did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 30, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-27972 Filed 11-30-88; 5:07 pm]

BILLING CODE 6714-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, December 7, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-423 (P) (Generic Cephalexin in Capsules from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

November 29, 1988.

[FR Doc. 88-28009 Filed 12-1-88; 11:53 am]

BILLING CODE 7020-02-M

NATIONAL LABOR RELATIONS BOARD

Notice of Hearing

TIME AND DATE: 9:30 a.m., Wednesday, November 23, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal pesonnel rules and practices and (c)(6) (personal information where disclosure would consitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Personal matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, December 1, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-28042 Filed 12-1-88; 3:50 pm]

BILLING CODE 7445-01-M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: Immediately following a 2:00 p.m. case-adjudicatory meeting, Thursday, December 1, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly

[1] Sessions closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (2), (4), (8) and (9).

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unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personal matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, December 1, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88–28043 Filed 12–1–88; 3:50 pm]

BILLING CODE 7445–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 47613, November 23, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: December 6, 1988.

CHANGE: Addition of the following item to the open meeting agenda:

7. Capital Investment:
   Palos Verdes (CA) Main Post Office

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–28033 Filed 12–1–88; 3:29 pm]

BILLING CODE 7710–12–M

INSTITUTE OF PEACE

Change in Meeting Schedule

"FEDERAL REGISTER" CITATION OF PREVIOUSLY ANNOUNCED MEETING: 53 FR 48366.

PREVIOUSLY ANNOUNCED MEETING: December 2, 1988.

CHANGE IN MEETING: Cancelled.

CONTACT: Gregory McCarthy, United States Institute of Peace, 1550 M. Street NW, Suite 700, Washington, DC 20005, (202) 457–1700.

Samuel W. Lewis,

President.

November 30, 1988.

[FR Doc. 88–28020 Filed 12–1–88; 2:34 pm]

BILLING CODE 3155–01–M

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Monday
December 5, 1988

Part II

Department of Transportation

Coast Guard

33 CFR Part 151

Noxious Liquid Substances List; Notice of Proposed Rulemaking

46 CFR Part 30 et al.

Bulk Hazardous Materials; Notice of Proposed Rulemaking

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VOL 53 ISS 233 DE 5 1988 UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 88-100a]

RIN 2115-AC35

Noxious Liquid Substances Lists

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its Noxious Liquid Substances (NLSs) regulations to include substances recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's Chemical Codes and by making minor editorial changes and corrections. This action would update the current lists of oil-like and non-oil-like NLSs allowed for carriage.

DATE: Comments must be received on or before January 19, 1989.

ADDRESSES: Comments may be mailed to Commandant (G-LRA-2) (CGD 88-100a), U.S. Coast Guard, Washington, DC 20593-0001. Comments received may be inspected or copied at the Regulatory Administrative Branch, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267-1577.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each letter should include the name and address of the person submitting the comments, reference and docket number (CGD 88-100a) and the specific section of the proposal to which each comment applies, and give the reasons for each comment. If acknowledgment of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposal may be changed in view of the comments received. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Discussion of Amendments

The Coast Guard is proposing to revise its lists of Category D Noxious Liquid Substances (NLSs) and Categories C and D Oil-like NLSs by including in these lists new entries proposed to be added to Table 30.25-1 of 46 CFR Part 30 and Table 2 of 46 CFR Part 153 by a separate rulemaking appearing elsewhere in this edition of the **Federal Register** (Coast Guard Docket CGD 88-100).

(a) *Section 151.47.* A number of new chemical cargoes would be added to the list in § 151.47. These include the following Category D Noxious Liquid Substances (NLSs), known as Pollution Category (Pol. Cat.) D cargoes, in Title 46:

(1) Cargoes recently authorized in Coast Guard regulations for Subchapter D, 46 CFR Part 30, and Table 2 of 46 CFR Part 153.

(2) Cargoes currently included in Chapter 18 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (the "IBC" Code) and Chapter VII of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (the "BCH" Code) but not yet in Coast Guard regulations.

(3) Cargoes currently included in the report of the IMO Evaluation of Hazards Working Group (BCH), BCH 18/16, July 19, 1988.

Several current commodity names would be modified or corrected to conform with the International Maritime Organization (IMO) name or to correct typographical errors.

Five entries would be deleted. "Calcium chloride solution", "Ethylene glycol butyl ether", "Latex", and "Triisopropanolamine" are NLS Category "III". "Coconut oil, fatty acid methyl ester" is NLS Category C.

New entries to § 151.47 are indicated with an asterisk and changes to existing entries are in bold face.

2. *Section 151.49.* "Decene", an NLS Category B, and "Dodecyl benzene", an NLS Category "III", would be deleted from paragraph (a). One entry, "n-Parafins (C_{10} to C_{20})" (sic), in paragraph (b) would be deleted. This entry has been reevaluated by IMO for its pollution hazard and been reassigned to Appendix III of Annex II to the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL 73/78) as a liquid substance that has been determined to be other than an A, B, C, or D NLS.

Several current commodity names in § 151.49 (a) and (b) would be modified or corrected to conform with the IMO name or to correct typographical errors.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. This rulemaking is administrative in nature and merely would update chemical lists by adding substances recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making non-substantive corrections.

Regulatory Flexibility Act

Because the impact of this final rule is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no information collection or record keeping requirements.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, the proposed regulations are categorically excluded from further environmental documentation. This rulemaking is an administrative update of lists of chemicals already approved or soon to be approved under Coast Guard regulations or international law. A Categorical Exclusion Determination Statement has been prepared and is included in the Regulatory docket.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 33 CFR Part 151 is proposed to be amended as follows:

PART 151—OIL AND NOXIOUS LIQUID SUBSTANCE REGULATIONS

1. The authority citation for Part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b); E.O.11735; 49 CFR 1.46.

2. In § 151.47, by revising the list to read as follows:

§ 151.47 Category D NLSs other than oil-like Category D NLSs that may be carried under this part.

* * * * *

*Acetophenone
*Acrylonitrile-Styrene copolymer dispersion in Polyether polyol
*Ammonium nitrate solution (45% or less)
*Ammonium nitrate, Urea solution (2% or less NH_3)
*Ammonium phosphate, Urea solution
Ammonium sulfate solution **(20% OR LESS)**
Amyl alcohol **(ISO-,** n-, sec-, primary)
*Brake fluid base mixtures
*Butene oligomer
BUTYL ACETATE (SEC-)
Butylene glycol
ISO-BUTYL FORMATE
*n-Butyl formate
BUTYROLACTONE (GAMMA)
Calcium alkyl salicylate
*Calcium hydroxide slurry
Caprolactam **SOLUTIONS**
*Choline chloride solutions
*Decahydronaphthalene
*Decane
*Decyl benzene (n-)
Diacetone alcohol
*Dialkyl(C10 - C14) benzenes
*Dialkyl(C7 - C13) phthalates
Diethylene glycol butyl ether acetate
*Diethylene glycol dibutyl ether
Diethylene glycol ethyl ether acetate
Diethylene glycol methyl ether acetate
*Diethylene glycol phenyl ether
*Diethylene glycol phthalate
Di-(**2**-ethylhexyl)adipate
Di-(**2**-ethylhexyl)phthalate
*1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution
Diisobutyl ketone
Diisodecyl phthalate
*Diisononyl adipate
*Diisononyl phthalate
*Diisopropyl naphthalene
*2,2-Dimethylpropane-1,3-diol
Dinonyl phthalate
*Dipropylene glycol dibenzoate
Dipropylene glycol methyl ether
*Ditridecyl phthalate
Diundecyl phthalate
2-Ethoxyethanol
*Ethoxy triglycol *(crude)*
*Ethyl acetate
Ethyl acetoacetate
*Ethyl butanol
*Ethyl cyclohexane
Ethylenediamine tetraacetic acid, tetrasodium salt solution
Ethylene glycol
Ethylene glycol acetate
Ethylene glycol butyl ether acetate
*Ethylene glycol dibutyl ether
*Ethylene glycol ethyl ether
*Ethylene glycol isopropyl ether
*Ethylene glycol methyl butyl ether
Ethylene glycol methyl ether
Ethylene glycol methyl ether acetate
Ethylene glycol phenyl ether
*Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture
2-Ethylhexanoic acid
*Ethyl propionate
*Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution
*Fish solubles
Formamide
*Glyoxal solution (40% or less)
*Heptanoic acid
*Hexamethylenediamine adipate
*Hexamethylenetetramine solutions
*Hexanoic acid
1-Hexanol
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution
Isophorone
Lactic acid
3-Methoxybutyl acetate
*Methyl acetoacetate
*Methyl butenol
*Methyl butyl ketone
*Methyl butynol
Methyl isobutyl ketone
Methyl tert-butyl ether
*Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution
*Nonane
*Nonanoic acid (all isomers)
*Nonanoic, Tridecanoic acid mixture
*Nonyl methacrylate
*Noxious Liquid Substance, (17) n.o.s.
*Octadecenoamide solution
*Octane
*Octanoic acid
*Octyl acetate
*Oil, edible:
Babassu
Beechnut
Castor
Cocoa butter
Coconut
Cod liver
Corn
Cottonseed
Fish
Groundnut
Hazelnut
Nutmeg butter
Olive
Palm
Palm nut
Peanut
Poppy
Raisin seed
Rapeseed
Rice bran
Safflower
Salad
Sesame
Soya bean
Sunflower
Tucum
Vegetable
Walnut
*Oil, misc:
Animal, n.o.s.
Coconut oil, fatty acid methyl ester
Coconut oil, esterified
Lanolin
Linseed
Neatsfoot
Oiticica
Palm oil, fatty acid methyl ester
Palm oil, methyl ester
Perilla
Pilchard
Sperm
Tung
Whale
Oleic acid
*Palm stearin
*Pentaethylenehexamine
*Pentane (iso-)
*Pentanoic acid
*Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures
*Polyethylene glycol monoalkyl ether
*Polypropylene glycols
*Potassium oleate
PROPYL ACETATE (N-)
*iso-Propylcyclohexane
*Propylene glycol monoalkyl ether
*Propylene glycol ethyl ether
*Propylene glycol methyl ether
*Sodium acetate solution
*Sodium benzoate solution
*Sodium carbonate solutions
*Sodium silicate solution
*Tallow
*Tallow fatty acid
*Tetrasodium salt of Ethylenediaminetetraacetic acid solution
*Triethylene glycol ethyl ether
*Triethylene glycol methyl ether
*Triethyl phosphate
*Trimethylol propane polyethoxylate
*Tripropylene glycol methyl ether
*Trisodium salt of N-(Hydroxyethyl)-ethylenediamine triacetic acid solution
*Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution
*Urea, Ammonium nitrate solution (2% or less NH_3)
Urea, Ammonium phosphate solution
*Waxes:
Candelilla
Carnauba

Notes

* denotes newly added products.
Entries in **BOLDFACE** are changes.

§ 151.49 [Amended]

3. In § 151.49, paragraph (a), by removing the word "P-Cymene" and adding, in its place, the word "p-Cymene", by removing the words "Decene" and "Dodecyl benzene", by removing the words "Diethyl Benzene" and adding, in their place, the words "Diethyl benzene", by removing the words "Pentene, all isomers" and adding, in their place, the words "Pentene (all isomers)", by removing the word "Phenylxylylethane" and adding, in its place, the words "1-Phenyl-1-xylyl ethane", and by removing the words

"Tetrahydro naphthalene" and adding, in their place, the word "Tetrahydronaphthalene" and, in paragraph (b), by removing the words "Alkylbenzene (C_9 to C_{17} straight or branched chain)" and adding, in their place, the words "Alkyl(C_9–C_{17}) benzenes", by removing the word "Dodecane" and adding, in its place, the word "n-Dodecane", and by removing "n-Parafins (C_{10} to C_{20})".

Dated: November 4, 1988.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-27694 Filed 1-2-88; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Parts 30, 150, 151, and 153

[CGD 88-100]

RIN 2115-AC35

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations on carriage of bulk hazardous materials by adding cargoes recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's Chemical Codes and by making minor technical and editorial changes and corrections. This action would update the bulk hazardous materials tables and better inform persons shipping bulk hazardous material of that material's compatibility and special handling requirements.

DATE: Comments must be received on or before January 19, 1989.

ADDRESS: Comments may be mailed to Commandant (G-LRA-2) (CGD 88-100), U.S. Coast Guard, Washington DC 20593-0001. Comments received may be inspected or copied at the Regulatory Administrative Branch, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267-1577.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each letter should include the name and address of the person submitting the comments, reference the docket number (CGD 88-100) and the specific section of the proposal to which each comment applies, and give the reasons for each comment. If acknowledgement of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposal may be changed in view of the comments received. No public hearing is planned but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing proposed amendments to its noxious liquid substances lists in 33 CFR 151.47 and 151.49 (Coast Guard docket CGD 88-100a). When appropriate, changes made in the present rulemaking are also proposed for §§ 151.47 and 151.49.

Purpose and Objectives

This rulemaking is administrative in nature and is intended to update various Coast Guard hazardous materials tables in 46 CFR Parts 30, 150, 151, and 153 to include new chemicals and requirements authorized or soon to be authorized by Coast Guard regulations or international law. In general, the objectives of this rulemaking are as follows:

(a) Table 30.25-1 in Part 30, Table 151.05 in Part 151, and Tables 1 and 2 in Part 153 would be amended by adding:

(1) Cargoes recently authority for carriage by Coast Guard regulations;

(2) Cargoes included in International Maritime Organization (IMO) Chemical Codes ("International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (IBC Code), Chapter 18, and "Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (BCH Code), Chapter VII, but not yet included in Coast Guard regulations; and

(3) Newly upgraded or downgraded pollution categories and special carriage requirements for certain chemicals appearing in the July 19, 1988 report of the IMO Evaluation of Hazards Working Group (BCH 18/16). The BCH 18/16 changes are expected to be approved and made effective by the IMO Maritime Environment Protection Committee during March 1989. The effective date of final regulations under the present rulemaking will be set for a date after the BCH 18/16 changes become effective.

Under BCH 18/16, the following chemicals will be upgraded relative to the current international requirements in "Proposed and Provisional Entries in the IBC and BCH Codes" (MSC)/Circ.481; July 28, 1987):

Alcohol ($C_{12}-C_{16}$) poly (3–11) ethoxylates
Alcohol (C_6-C_{17}) poly (3–6) ethoxylates
Alcohol (C_6-C_{17}) poly (7–12) ethoxylates
Ammonium thiosuflate solution (60% or less)
Butyl benzenes (all isomers)
Coconut oil fatty acid
Diglycidyl ether of Bisphenol F
Dimethyl adipate
Diphenyl
Diphenyl/Diphenyl ether mixtures
Ethyl phenol
Lactonitrile solution (80% or less)
Lauric acid
Octyl nitrates (all isomers)
Palm nut oil fatty acid
Sodium thiocyanate solutions (56% or less)

Under BCH 18/16, the following chemicals will be downgraded relative to current requirements:

Aluminum suflate solution
Aviation alkylates (C_8 paraffins and iso-paraffins BPT 95–120°C)
Cyclopentane
Methyl cyclohexane
Methyl ethyl ketone
Octyl decyl adipate
n-Paraffins ($C_{10}-C_{20}$)
n-Propyl alcohol
Tridecane
Triisopropanolamine

(b) The Compatibility of Cargoes tables in Part 150 would be amended to include chemicals added under this rulemaking to the hazardous materials tables in Parts 30, 151, and 153.

(c) New names for certain chemicals would be added as part of the Coast Guard's program to adopt IMO terminology and align usage throughout Coast Guard regulations (eg. "diphenyl oxide" would be changed to "diphenyl ether" wherever it appears throughout Parts 30, 150, and 153).

(d) Various changes and corrections would be made to align provisions

within Parts 30, 151, and 153 and to consolidate material.

Discussion of Specific Amendments

In addition to the changes discussed in the "Purpose and Objectives" section of this preamble, the following specific amendments are proposed:

(a) *Table 30.25–1.* A number of new chemical cargoes (indicated by an asterisk) would be added to Table 30.25–1. Several current cargo names (printed in boldface) would be changed to conform with the IMO terminology or to correct typographical errors. The "Alcohols (mixed)" entry would be deleted because this cargo is no longer produced or shipped by the manufacturer. The "Coal tar" entry listed under "Oils" would be listed separately. "Dodecane", "Dodecanol", "Dodecene", and "Dodecylbenzene" entries, which were inadvertently omitted in the March 12, 1987 version of Table 30.25–1 (52 FR 7774), would be added. "Aromatic (10% or less Benzene)" under the "Naphtha" heading would be revised to read "Aromatic (less than 10% Benzene)." Aromatic naphthas containing 10% or more benzene would use the "Benzene hydrocarbon mixtures" entry in Table 151.05 or Table 1 of Part 153. The "Petrolatum" entry, previously considered by the Coast Guard to be an "oil" under Annex I of the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL 73/78), has been evaluated by the IMO and assigned to Appendix III of Annex II to MARPOL 73/78. This assignment to Appendix III would be reflected in Table 30.25–1.

(b) *Part 150, Tables I and II and Appendix I.* New cargoes added by this rulemaking to Table 30.25–1, Table 151.05, and Tables 1 and 2 of Part 153, along with their CHRIS Codes, would be added to Part 150. The CHRIS Code of several entries would be adjusted to reflect a new or changed CHRIS Code, several current cargo names modified or corrected, and obsolete entries deleted. "Ferric chloride solution", originally assigned to Group 43 (Miscellaneous Water Solutions), would be reassigned to Group 1 (Non-oxidizing Mineral Acids). This proposal results from discussions with the manufacturer during which it was concluded the Group 1 was the more appropriate Compatibility Group, considering the possible hazardous reaction with caustic materials.

New entries and changes to Table I and Appendix I are in boldface type; changes to Table II are indicated by bullets (●).

(c) *Table 151.01–10(b).* Table 151.01–10(b) (Cargoes Regulated by Subchapter O) would be removed and references in Part 151 to this table replaced with references to Table 151.05. This change would eliminate the administrative problems of ensuring that both tables are identical. This change would not affect the requirements applying to these cargoes.

(d) *Table 151.05.* New entries to Table 151.05 are indicated by an asterisk and changes to previous entries are in boldface. The special requirements for several cargoes recently authorized for carriage by the Coast Guard would be revised to bring the requirements for tank barges in Part 151 in line with the safety requirements for tankships in Part 153. In addition, several current cargo names would be modified or corrected and the table correctly alphabetized.

Several new entries in the "Special requirements" column would be added, two entries modified, and two obsolete entries deleted, as follows:

(1) A new § 151.50–73, "Chemical protective clothing", would be added to consolidate the numerous protective clothing sections listed throughout Part 151 for specific cargoes appearing in Table 151.05. In each case, the "Special requirements" column of the table would be changed to reference § 151.50–73.

Several cargoes which do not reference a protective clothing section would reference § 151.50–73 in the "Special requirements" column. This change would be made to align the clothing requirements in Part 151 with those in Part 153.

(2) Several cargoes which do not reference § 151.50–81, "Special operating requirements for heat sensitive cargoes", would reference that section in the "Special requirements" column of Table 151.05. This change would align Part 151 with Part 153.

(3) A new § 151.50–70, entitled "Cargoes requiring inhibition or stabilization", would be added to allow the word "inhibited" to be deleted from the "Cargo identification/Name" column of Table 151.05 and replaced by a reference to § 151.50–70 in the "Special requirements" column. This change would not affect the actual requirement, only the way it would be referenced in the table.

Several entries not referencing "inhibited" or "stabilized" would be subject to § 151.50–70 to align Part 151 with Part 153.

(4) New §§ 151.58–1, "Prohibited materials", and 151.58–1, "Required materials", would be added for reference in the "Special requirements" column of Table 151.05. These two "materials of construction" sections would be added to reflect the simpler designation method currently used by the tankship regulations in Part 153. This would allow simpler comparisons and translations of requirements between Parts 151 and 153. All presently listed cargoes would retain their same materials of construction requirements. The new materials of construction requirements would not affect the presently listed cargoes. However, an equivalency requirement would be listed following each of the current materials of construction requirements in § 151.55–1, thus allowing comparisons between old and new sections. New entries to Table 151.05 would reference only the new requirements, where assigned.

(5) In the special requirements section for vinyl chloride (§ 151.50–34), references to obsolete "29 CFR 1910.93q(g)" would be corrected to read "29 CFR 1910.1017".

Corrections of references to incorrect or obsolete requirements of Subchapter J—Electrical Engineering would be made to the Table 151.05, § 151.05–1(p), and § 151.50–42(e).

In the "Special requirements" column, the designation "151" would be deleted because all references are to Part 151. Section 151.05–1(o) would be revised by adding a statement explaining this deletion.

Seven cargoes would be deleted from Table 151.05. Three are no longer produced by the original manufacturers ("Chemical wastes (Mixture of chlorinated hydrocarbons and caustic materials"); "Industrial wastes, containing dimethyldisulfide, methyl mercaptan, and methomyl"; and "Polyvinylbenzyltrimethyl ammonium chloride solution"). Triisopropanolamine would be moved to Table 30.25–1 by this rulemaking. The remaining three entries ("Hydrofluoric acid", "Hydrogen chloride", and "Hydrogen fluoride") are not authorized cargoes and, therefore, do not belong in Table 151.05.

The "Cargo transfer/Piping class" column for the "Ethylene diamine" entry would be corrected to read "II" instead of "I". This would correct an error in the table and would be a reduction in requirements.

The word "inhibited" would be deleted from the "Ethylidene norbornene" entry because inhibition is required for product quality control, not for the safe transportation of this cargo.

The "Environmental control/Cargo handling space" column for the "Vinylacetate" entry would be corrected to read "Vent F" instead of "Vent", as now shown.

The items listed under "Footnotes" at the end of Table 151.05 would be deleted. Footnote number 1 is listed as "reserved". Footnote number 2 pertains to Ethylene oxide and was applied in the "Temperature control install." column until all reference to Footnote 2 were removed from that column in 1982. Footnote number 3 applied to "Hydrofluoric acid", "Hydrogen chloride", and "Hydrogen fluoride"—three entries already discussed as proposed for deletion by this rulemaking. Footnote number 4 would be replaced by a "Special requirement" entry referencing new § 151.25–1(e), concerning dry gas or vapor containment in cargo tanks.

The list of Pollution Category D NLS cargoes in § 151.12–5 would be revised by the addition of a number of new entries and the deletion of two incorrect entries.

(e) *Part 153, Table 1.* A number of new cargoes which are included in the IMO Chemical Codes but not in the Coast Guard regulations would be added. New entries to Table 1 are indicated with an asterisk and changes to previous entries are in boldface.

(f) *Part 153, Table 2.* A number of new cargoes would be added to Table 2, the "unregulated" cargo list. These include cargoes recently authorized by the Coast Guard, cargoes currently included in the IMO Chemical Codes but not included in Coast Guard regulations, and cargoes to be included in the IMO Chemical Codes.

New entries to Table 2 are indicated with an asterisk and changes to existing entries are in bold face.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. This rulemaking is administrative in nature and would merely update chemical tables by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making other non-substantive editorial changes and corrections.

Regulatory Flexibility Act

Because the impact of this proposal is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains no information collection or recordkeeping requirements.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of the proposed regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the proposed regulations are categorically excluded from further environmental documentation. This rulemaking is an administrative update of tables listing chemicals already approved or soon to be approved under Coast Guard regulation or international law. A Categorical Exclusion Determination Statement has been prepared and is included in the regulatory docket.

List of Subjects

46 CFR Part 30

Administrative practice and procedures, Barges, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels.

46 CFR Part 150

Hazardous materials transportation, Marine safety.

46 CFR Part 151

Barges, Flammable materials, Hazardous materials transportation, Marine safety, Tank vessels.

46 CFR Part 153

Barges, Hazardous materials transportation, Marine safety, Tank vessels.

For the reasons set out in the preamble, 46 CFR Parts 30, 150, 151, and 153 are proposed to be amended as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for Part 30 is revised to read as follows:

Authority: 46 U.S.C. 3507, 3703; 49 U.S.C. 1804; 49 CFR 1.46.

§ 30.10–35 [Amended]

2. In § 30.10–35, by removing "20591" and adding, in its place, "20593–0001".

3. In § 30.25–1, by revising Table 30.25–1 to read as follows:

§ 30.25–1 Cargoes carried in vessels certified under the rules of this subchapter.

* * * * * *

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

Cargoes	Pollution Category
Acetone	III
Acetophenone	D
Acetyl tributyl citrate	#
*Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	(D)
*Alcohols (C13 and above)	III
*Alcoholic beverages, n.o.s.	III
*Alcohol(C6 - C17)(secondary) poly(3-6)ethoxylates	A
*Alcohol(C8 - C17)(secondary) poly(7-12)ethoxylates	B
*Alcohol(C12 - C15) poly(1-3)ethoxylates	A
*Alcohol(C12 - C15) poly(3-11)ethoxylates	A
Alkenylsuccinic acid	#
Alkenylsuccinic anhydride	#
*Alkyl(C9 - C17) benzenes	D
Alkyl benzene sulfonic acid (4% or less)	#
Alkyl phthalates (n-) *see individual phthalates*	#
Alkyl succinate formaldehyde hydroxyamino condensate (3.2% or less)	#
*Aminoethyldiethanolamine, Aminoethylethanolamine solution	III
Amyl acetate (iso-, n-)	C
*Amyl alcohol (iso-, n-, sec-, primary)	D
*Amyl alcohol (tert-)	III
Amylene *see* Pentene (all isomers)	C
Amyl methyl ketone *see* Methyl amyl ketone	C
Amyl tallate	#
Asphalt	I
Asphalt blending stocks:	
Roofers flux	I
Straight run residue	I
Behenyl alcohol	III
*Benzene tricarboxylic acid trioctyl ester	III
Benzyl alcohol	C
Bicyclic terpenel polyamine amide salt	#
*Brake fluid base mixtures (*containing Poly(2-8)alkylene(C2 - C3) glycols, Polyalkylene(C2 - C10) glycol monoalkyl(C2 - C3) ethers, and their borate esters*)	D
Butane	LFG
Butene see Butylene	
*Butene oligomer	D
Butyl acetate (iso-, n-)	C
Butyl acetate (sec-)	D
Butyl alcohol (iso-, n-, sec-, tert-)	III
Butyl benzyl phthalate	A
Butylene	LFG
*Butylene glycol	D
1,3-Butylene glycol *see* **Butylene glycol**	D
Butylene polyglycol *see* **Butylene glycol**	@D
*Iso-Butyl formate	D
*n-Butyl formate	@D
Butyl heptyl ketone	C

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Butyl methyl ketone *see* **Methyl butyl ketone**	D
Butyl stearate	III
Butyl toluene	@A
Butyrolactone (gamma)	D
Calcium alkylphenate	#
Calcium alkyl salicylate	D
Calcium amino nonyl phenolate	#
Calcium carboxylate	#
Caprolactam solutions	D
Carbon black base	#
Cetyl alcohol (*Hexadecanol*), *see* **Alcohols (C13 and above)**	@III
Cetyl-Stearyl alcohol	III
Cleaning spirit (unleaded)	#
*Coal tar	A
Cumene	B
Cycloaliphatic resins	#
Cyclohexane	C
Cyclohexanol	C
*1,3-Cyclopentadiene dimer (molten)	B
Cyclopentadiene polymers *see* **1,3-Cyclopentadiene dimer (molten)**	@B
Cymene (para-)	C
*Decahydronaphthalene	D
Decaldehyde (iso-)	C
Decaldehyde (n-)	B
Decane	D
Decene	B
Decyl alcohol (iso-, n-)	B
Decyl benzene (n-)	D
Detergent alkylate	#
Diacetone alcohol	D
*Dialkyl(C10 - C14) benzenes	[D]
*Dialkyl(C7 - C13) phthalates	D
Dibutyl carbinol	#
Dibutyl phthalate (ortho-)	A
Dicyclopentadiene *see* **1,3-Cyclopentadiene dimer (molten)**	B
Diethyl benzene	C
Diethylene glycol	III
Diethylene glycol butyl ether	III
Diethylene glycol butyl ether acetate	D
*Diethylene glycol dibutyl ether	D
Diethylene glycol diethyl ether	III
Diethylene glycol ethyl ether	III
Diethylene glycol ethyl ether acetate	D
Diethylene glycol methyl ether	C
Diethylene glycol methyl ether acetate	D
Diethylene glycol phenyl ether	[D]
*Diethylene glycol phthalate	[D]
*Di-(2-ethylhexyl)adipate	D
Di-(2-ethylhexyl)phthalate	D
Diethyl phthalate	C
Diglycidyl ether of Bisphenol A	B
Diheptyl phthalate	III
Dihexyl phthalate	III
Diisobutylcarbinol	@C
Diisobutylene	B
Diisobutyl ketone	D
Diisobutyl phthalate	B
Diisodecyl phthalate	D
*Diisononyl adipate	D
Diisononyl phthalate	D
Diisooctyl phthalate	III
Diisopropyl benzene	A
Diisopropyl naphthalene	D
*Dimethyl adipate	B
Dimethyl benzene *see* **Xylenes**	C
*Dimethyl glutarate	C
Dimethyl phthalate	C
Dimethyl polysiloxane	[III]
2,2-Dimethylpropane-1,3-diol	D
*Dimethyl succinate	C
Dinonyl phthalate	D

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Di(octylphenyl)amine	#
Dioctyl phthalate	III
Dipentene	C
Diphenyl	A
Diphenyl, Diphenyl **ether**	A
Diphenyl ether	A
*Diphenyl ether, Biphenyl phenyl ether mixtures	A
Dipropylene glycol	III
Dipropylene glycol dibenzoate	[D]
Dipropylene glycol methyl ether	D
Distillates:	
Flashed feed stocks	I
Straight run	I
*Ditridecyl phthalate	D
Diundecyl phthalate	D
*Dodecane (all isomers)	III
*Dodecanol	B
*Dodecene	B
*Dodecylbenzene	III
Dodecylphenol	A
*Drilling mud (low toxicity) (*if flammable or combustible*)	[III]
Epoxylated linear alcohols, C11-C15	#
Ethane	LFG
2-Ethoxyethanol	D
2-Ethoxyethyl acetate	C
Ethoxylated alcohols, C11-C15 *see the Alcohol polyethoxylates*	A/B
Ethoxy triglycol (*crude*)	D
Ethyl acetate	D
*Ethyl acetoacetate	D
Ethyl alcohol	III
Ethyl amyl ketone	C
Ethyl benzene	C
Ethyl butanol	@D
*Ethyl butyrate	C
Ethyl cyclohexane	D
Ethylene	LFG
Ethylene carbonate	III
Ethylene glycol	D
*Ethylene glycol acetate	D
Ethylene glycol butyl ether	III
Ethylene glycol butyl ether acetate	D
*Ethylene glycol tert-butyl ether	III
Ethylene glycol diacetate	C
*Ethylene glycol dibutyl ether	[D]
Ethylene glycol ethyl ether, *see* **2-Ethoxyethanol**	D
Ethylene glycol ethyl ether acetate, *see* **2-Ethoxyethyl acetate**	C
Ethylene glycol isopropyl ether	D
Ethylene glycol methyl butyl ether	D
Ethylene glycol methyl ether	D
Ethylene glycol methyl ether acetate	D
Ethylene glycol phenyl ether	D
*Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	D
Ethylene-Propylene copolymer (*in liquid mixtures*)	[III]
*Ethyl-3-ethoxypropionate	[B]
Ethylhexaldehyde *see* Octyl aldehydes	@B
2-Ethylhexanoic acid	D
2-Ethylhexanol *see* **Octanol (all isomers)**	@C
Ethylhexoic acid *see* **2-Ethylhexanoic acid**	D
Ethyl hexyl phthalate	C
Ethyl hexyl tallate	#
*Ethyl propionate	D
Ethyl toluene	B
*Fatty acid (saturated, C13 and above)	III
Fatty acid amides	#
Formamide	D

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Furfuryl alcohol	C
Gas oil, cracked	I
Gasoline blending stocks:	
Alkylates	I
Reformates	I
Gasolines:	
Automotive (*containing not over 4.23 grams lead per gallon*)	I
Aviation (*containing not over 4.86 grams lead per gallon*)	I
Casinghead (*natural*)	I
Polymer	I
Straight run	I
Glycerine	III
Glycerol *see* **Glycerine**	III
*Glycerol polyalkoxylate	III
Glyceryl triacetate	III
Glycidyl ester of tertiary carboxylic acid *see* **Glycidyl ester of tridecyl acetic acid**	@B
*Glycidyl ester of tridecyl acetic acid	B
Glycidyl ester of versatic acid *see* **Glycidyl ester of tridecyl acetic acid**	@B
Glycol diacetate *see* **Ethylene glycol diacetate**	C
Glycols, Resins, & Solvents mixture	#
Glycol triacetate, *see* **Glyceryl triacetate**	III
Glyoxal **solution** (40% **or less**)	D
Grease	#
Heptadecane	@III
*Heptane (iso-)	C
Heptane **(n-)**	C
Heptanoic acid	D
Heptanol	C
Heptene	C
Herbicide (C15 -H22 -NO2 -Cl) *see* **Metolachlor**	@B
Hexaethylene glycol	@III
Hexamethylene glycol	III
*Hexamethylenetetramine solutions	D
*Hexane **(all isomers)**	C
*Hexanoic acid	D
1-Hexanol	D
Hexene **(all isomers)**	C
Hexyl acetate	B
Hexylene glycol	III
Hog grease, *see* **Lard**	@III
*2-Hydroxy-4-(methylthio)butanoic acid	[C]
*Hydroxy terminated polybutadiene *see* **Polybutadiene, hydroxyl terminated**	
Isophorone	D
Jet fuels:	
JP-1 (*kerosene*)	I
JP-3	I
JP-4	I
JP-5 (*kerosene, heavy*)	I
*JP-8	@I
Kerosene	I
Lactic acid	D
Lard	III
Latex, liquid synthetic *including:*	III
*Styrene-butadiene rubber latex	III
*Carboxylated styrene-butadiene copolymer	III
Magnesium nonyl phenol sulfide	#
Magnesium sulfonate	#
Maleic anhydride copolymer	#
2-Mercaptobenzothiazol (*in liquid mixtures*)	#
Methane	LFG

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
*3-Methoxy-1-butanol	III
*3-Methoxybutyl acetate	D
*1-Methoxy-2-propyl acetate	#
Methoxy triglycol *see* **Triethylene glycol methyl ether**	@D
Methyl acetate	III
Methyl acetoacetate	D
Methyl alcohol	III
Methyl amyl acetate	C
Methyl amyl alcohol	C
Methyl amyl ketone	C
Methyl butanol *see the* **Amyl alcohols**	**D**
*Methyl butenol	D
*Methyl butyl ketone	D
*Methyl butynol	D
*Methyl butyrate	C
Methyl ethyl ketone	**III**
Methyl formal (*dimethyl formal*)	#
Methyl heptyl ketone	B
Methyl isobutyl carbinol *see* **Methyl amyl alcohol**	**C**
Methyl isobutyl ketone	D
*3-Methyl-3-methoxybutanol	III
*3-Methyl-3-methoxybutyl acetate	III
Methyl naphthalene	A
Methyl pentene	C
N-Methyl pyrrolidone	**B**
Methyl tert-butyl ether	D
*Metolachlor	@B
Mineral spirits	I
*Myrcene	[B]
Naphtha:	
*Aromatic (*having less than 10% Benzene*)	@I
Cracking fraction	@I
Heavy	@I
Paraffinic	@I
Petroleum	I
Solvent *see* **Coal tar naphtha solvent**	**B**
Stoddard Solvent	@I
Varnish makers' and painters' (75%)	@I
*Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	D
Naphthenic acid	A
Nonane **(all isomers)**	**C**
Nonanoic acid **(all isomers)**	D
Nonanoic, Tridecanoic acid mixture	@D
Nonene	B
Nonyl alcohol **(all isomers)**	[C]
*Nonyl methacrylate	[D]
Nonyl phenol	A
*Nonyl phenol **poly(4-12)**ethoxylates	B
Nonyl phenol sulfide (90% or less)	#
*Noxious liquid, n.o.s. (17) ("trade name," contains "principal components"), Category D (*if flammable or combustible*)	D
*Non-noxious liquid, n.o.s. (18) ("trade name," contains "principal components"), Appendix III (*if flammable or combustible*)	III
Octadecene, *see the Olefin or alpha-Olefin entries*	@III
Octadecenoamide solution (*Oleamide*)	[D]
Octane **(all isomers)**	**C**
*Octanoic acid	D
*Octanol (all isomers)	C
Octene	B
Octyl acetate	D
Octyl alcohol (iso-, n-) *see* **Octanol (all isomers)**	C

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
*Octyl aldehydes	B
*Octyl decyl adipate	III
Octyl epoxytallate	#
Octyl phthalate *see* **Di-(2-ethylhexyl)phthalate**	@D
Oil, edible:	
Babassu	D
Beechnut	D
Castor	D
Cocoa butter	D
Coconut	D
Cod liver	D
Corn	D
Cottonseed	D
Fish	D
Grapeseed	#
Groundnut	D
Hazelnut	D
Lard	@III
Maize *see* **Corn oil**	**D**
Mustard seed	#
Nutmeg butter	D
Olive	D
Palm	D
*Palm nut	D
Peanut	D
Poppy	D
Raisin seed	D
Rapeseed	D
Rice bran	D
Safflower	D
Salad	D
Sesame	D
Soya bean	D
*Sunflower	D
Sunflower seed	#
Tucum	D
Vegetable, **n.o.s.**	**D**
Walnut	D
Oil, fuel:	
No. 1 (*kerosene*)	I
No. 1-D	I
No. 2	I
No. 2-D	I
No. 4	I
No. 5	I
No. 6	I
Oil, misc:	
Absorption	@I
Aliphatic	@I
Animal, **n.o.s.**	D
Aromatic	I
Aviation P2300	@I
Clarified	I
Coal	#
*Coconut oil, esterified	D
*Coconut oil, fatty acid	C
Coconut oil, fatty acid methyl ester	**D**
*Coconut oil, methyl ester	#
*Cottonseed, fatty acid *see* **Cottonseed oil, fatty acid**	C
Croton	#
Crude	I
Diesel	I
Gas, low pour	@I
Gas, low sulfur	@I
Heartcut distillate	I
Lanolin	D
Linseed	D
Lubricating	I
Mineral	I
Mineral seal	@I
Motor	I
Neatsfoot	D
Oiticica	D

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
*Palm oil, fatty acid	[III]
*Palm oil, fatty acid methyl ester	D
Palm oil, methyl ester	**D**
Penetrating	I
Perilla	D
Pilchard	D
Pine	B
Range	@I
Residual	I
Resin	#
Resinous petroleum	@I
Road	I
Rosin	A
Seal	I
Soapstock	#
*Soya bean (epoxidized)	#
Sperm	D
Spindle	I
Spray	#
Tall	B
Tall, fatty acid	C
Tanner's	#
Transformer	I
Tung	D
Turbine	I
Whale	D
White (mineral)	@I
Wood	#
*alpha-Olefins (C13 - C18)	III
*Olefins (C13 and above, all isomers)	III
Oleic acid	D
Oleyl alcohol (*Octadecenol*), *see* **Alcohols (C13 and above)**	@III
Organic amine 70 *see* **Aminoethylethanolamine, Aminoethyl- ethanolamine solution**	III
*Palm stearin	D
*n-Paraffins (C10 - C20)	III
Pentadecanol, *see* **Alcohols (C13 and above)**	@III
Pentaethylene glycol, *see* **Polyethylene glycols**	III
*Pentaethylenehexamine	D
Pentane **(all isomers)**	C
*Pentanoic acid	D
Pentene **(all isomers)**	C
Petrolatum	III
*1-Phenyl-1-xylyl ethane	C
Phosphosulfurized bicyclic terpene	#
Phthalate plasticizers *see individual phthalates*	#
Pinene	B
Polyalkenyl succinic anhydride amine	#
*Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	D
*Polyalkylene oxide polyol	[C]
Polyamine, amide mixture	#
*Polybutadiene, hydroxyl terminated	[III]
Polybutene	III
*Polydimethylsiloxane	#
Polyethylene glycols	III
*Polyethylene glycol dimethyl ether	III
*Polyglycerol	[III]
Polyisobutylene	[III]
Polymerized esters	#
*Poly(20)oxyethylene sorbitan monooleate	[B]
Polypropylene	[III]
Polypropylene glycols	D
Polypropylene glycol methyl ether	III
*Polysiloxane	III
Polystyrene dialkyl maleate	#
*Potassium oleate	[D]
Propane	LFG
*n-Propoxypropanol	#
Propyl acetate (iso-)	III

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Propyl acetate (n-)	D
Propyl alcohol (iso-)	III
Propyl alcohol (n-)	III
Propyl benzene (iso-) *see* Cumene	B
Propyl benzene (n-)	C
*Iso-Propylcyclohexane	D
Propylene	LFG
Propylene-butylene **copolymer**	III
*Propylene dimer	C
Propylene glycol	III
*Propylene glycol monoalkyl ether	D
Propylene glycol ethyl ether	D
Propylene glycol methyl ether	D
Propylene polymer (*in liquid mixtures*)	#
Propylene tetramer	**B**
Propylene trimer	B
Pseudocumene *see* **Trimethylbenzenes**	B
Rum, *see* **Alcoholic beverages, n.o.s.**	@III
Sodium acetate, Glycol, Water solutions	#
*Sodium acetate solution	[D]
*Sodium benzoate solution	[D]
Sodium sulfonate	#
Stearic acid	@III
Stearyl alcohol (*Octadecanol*)	III
Sulfolane	III
Tallow	D
Tallow alcohol, *see* **Alcohols (C13 and above)**	@III
Tallow fatty acid	D
Tallow nitrile	#
Tetradecanol	III
Tetradecene, *see the Olefin or alpha-Olefin entries*	III
Tetradecyl benzene	C
Tetraethylene glycol	III
Tetrahydronaphthalene	C
Tetrapropyl benzene *see* **Alkyl(C9-C17) benzenes**	@D
Toluene	C
Triarylphosphate	A
Tributyl phosphate	B
*Tricresyl phosphate (less than 1% ortho isomer)	A
Tridecane	III

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Tridecanoic acid	III
Tridecanol, *see* **Alcohols (C13 and above)**	III
Tridecene	III
Tridecyl benzene, *see* **Alkyl(C9-C17) benzenes**	D
Triethyl benzene	A
Triethylene glycol	III
*Triethylene glycol butyl ether	III
Triethylene glycol butyl ether mixture	#
Triethylene glycol di-(2-ethylbutyrate)	C
Triethylene glycol ether mixture	#
*Triethylene glycol ethyl ether	D
Triethylene glycol methyl ether	D
Triethyl phosphate	D
Triisooctyl trimellitate	#
*Triisopropanolamine	III
Trimethylbenzenes **(all isomers)**	B
*Trimethylol propane polyethoxylate	D
2,2,4-Trimethylpentanediol-1,3-diisobutyrate	#
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	#
Tripropylene *see* **Propylene trimer**	@B
Tripropylene glycol	D
Tripropylene glycol methyl ether	D
Trixylenyl phosphate	A
Turpentine	B
Turpentine substitute (White spirit) *see* **White spirit (low (15-20%) aromatic)**	@B
Undecanol	B
Undecene	B
Undecylbenzene	C
Vinyl acetate-fumarate copolymer	#
Waxes:	[D]
Candelilla	@D
Carnauba	@D
Paraffin	III
Petroleum	#
White spirit *see* **White spirit (low (15-20%) aromatic)**	@B
*White spirit **(low (15-20%) aromatic)**	B
Wine	III
Wool grease	#
Xylenes (*ortho-, meta-, para-*)	C

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Zinc dialkyldithiophosphate	#

* denotes newly added products.
Entries in **boldface** are changes.

Explanation of Symbols: As used in this table the following stands for:

A, B, C, D – NLS Category of Annex II of MARPOL 73/78.

I – Considered an "oil" under Annex I of MARPOL 73/78.

III – Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG – Liquefied flammable gas.

– No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[ ] – A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

@ – The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO, based upon a GESAMP Hazard Profile or by analogy to a closely related product having one assigned.

Words in italics are not part of the the cargo name but may be used in addition to the cargo name.

When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether *see* Ethyl ether). However, the referenced entry is preferred.

PART 150—COMPATIBILITY OF CARGOES

4. The authority citation for Part 150 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46, except § 150.160 which is issued under 46 U.S.C. 3306; 49 CFR 1.46.

5. In Part 150, by revising Table I, Table II, and Appendix I to read as follows:

TABLE I - ALPHABETICAL LIST OF CARGOES

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Acetaldehyde	19	AAD	
Acetic acid	[2] 4	AAC	
Acetic anhydride	11	ACA	
Acetone	[2] 18	ACT	
Acetone cyanohydrin	[1,2] 0	ACY	
Acetonitrile	37	ATN	
Acetophenone	18	ACP	
Acetyl tributyl citrate	34		
Acrolein	[2] 19	ARL	
Acrylamide solution	10	AAM	
Acrylic acid	[2] 4	ACR	
Acrylonitrile	[2] 15	ACN	
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	**20**	**ALE**	
Adiponitrile	37	ADN	
Alcohols (C13 and above)	**20**		**TDN/TTN/PDC**
Alcoholic beverages	**20**		
Alcohol polyethoxylates	**20**		**APK/APL**
Alcohol polyethoxylates, secondary	**20**		**AEA/AEB**

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Alkyl acrylate-Vinyl pyridine copolymer in Toluene	32	AAP	
Alkyl(C9 - C17) benzenes	**32**	**AKB**	**DBZ/UDB/ DDB/TRB/ TDB**
Alkyl benzene sulfonic acid	[1,2] 0	ABS	
Alkyl benzene sulfonic acid, sodium salt solutions	**33**	**ABT**	
Alkyl phthalates	34		
Allyl alcohol	[2] 15	ALA	
Allyl chloride	15	ALC	
Aluminium chloride, Hydrochloric acid solution	**0**	**AHS**	
Aluminum sulfate solution	[2] 43	ASX	ALM
2-(2-Aminoethoxy)ethanol	8	AEX	
Aminoethyldiethanolamine, Aminoethylethanolamine solution	**8**		
Aminoethylethanolamine	8	AEE	
N-Aminoethylpiperazine	7	AEP	
2-Amino-2-hydroxymethyl-1,3-propanediol solution	43	AHL	
2-Amino-2-methyl-1-propanol	8	APR	
Ammonia, anhydrous	5	AMA	
Ammonium bisulfite solution	[2] 43	ABX	ASU
Ammonium hydrogen phosphate solution	**0**		
Ammonium hydroxide (28% or less Ammonia)	5	AMH	
Ammonium nitrate solution	[1] 0	ANR	AMN
Ammonium nitrate, Urea solution (containing Ammonia)	5	UAS	
Ammonium nitrate, Urea solution (not containing Ammonia)	43	ANU	
Ammonium polyphosphate solution	43		
Ammonium sulfate solution	43	**AME**	AMS
Ammonium sulfide solution	5	ASS	ASF
Ammonium thiocyanate, Ammonium thiosulfate solution	**0**	**ACS**	
Ammonium thiosulfate solution	43	ATV	
Amyl acetate	34		IAT/AML/AAS/ AYA/AEC
Amyl alcohol	20		IAA/AAN
Amylene	30	**AMZ**	**PTX/PTE**
Amyl methyl ketone	18	AMK	
Amyl tallate	34		
Aniline	9	ANL	
Anthracene oil (Coal tar fraction)	33	AHO	
Asphalt	33	ASP	
Asphalt blending stocks, roofers flux	33	ARF	
Asphalt blending stocks, straight run residue	33	ASR	
Aviation alkylates	**33**	**AVA**	**GAV**
Behenyl alcohol	20		
Benzene	32	BNZ	
Benzene hydrocarbon mixtures (having 10% Benzene or more)	32	BHB	
Benzenesulfonyl chloride	[1,2] 0	BSC	
Benzene, Toluene, Xylene mixtures	32	BTX	
Benzene tricarboxylic acid trioctyl ester	**34**		
Benzyl acetate	**34**	**BZE**	
Benzyl alcohol	21	BAL	
Benzyl chloride	36	BCL	
Brake fluid base mixtures	**20**	**BFX**	
Butadiene	30	BDI	
Butadiene, Butylene mixtures (cont. Acetylenes)	30	BBM	
Butane	31	BMX	IBT/BUT
Butene	30	BTN	IBL
Butene oligomer	**30**	**BOL**	
Butyl acetate	34		IBA/BCN/BTA/ BYA
Butyl acrylate	14	BAR	BAI/BTC
Butyl alcohol	[3] 20		IAL/BAN/BAS/ BAT
Butylamine	7	BTY	IAM/BAM/BTL/ BUA
Butyl benzene	32	BBE	
Butyl benzyl phthalate	34	BPH	
n-Butyl butyrate	**34**	**BUB**	
Butylene	30		BTN/IBL
Butylene glycol	[3] 20	**BUG**	
Butylene oxide	16	BTO	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Butyl ether	41	BTE	
Butyl formate	34	BFN	BFI
iso-Butyl isobutyrate	34	BIB	
Butyl heptyl ketone	18	**BHK**	
Butyl methacrylate	14	BMH	BMI/BMM/BMN
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture	14	DER	
Butyl phenol, Formaldehyde resin in Xylene	**32**		
Butyl toluene	**32**	**BUE**	
Butyraldehyde	19	BAE	BAD/BTR/BFA
Butyric acid	4	BRA	IBR
gamma-Butyrolactone	[1,2] 0	BLA	
Calcium bromide solution	43		
Calcium bromide, Zinc bromide solution *see* Drilling brine (containing Zinc salts)	43		**DZB**
Calcium chloride solution	43	**CCS**	CLC
Calcium hypochlorite solutions	5		**CHZ/CHU**
Calcium naphthenate in Mineral oil	34	CNM	
Calcium nitrate, Magnesium nitrate, Potassium chloride solution	**34**		
Calcium sulfonate, Calcium carbonate, Hydrocarbon solvent mixture	33		
Camphor oil	18	CPO	
Caprolactam solution	22	CLS	
Carbolic oil	21	CBO	
Carbon black base	33		
Carbon disulfide	38	CBB	
Carbon tetrachloride	36	CBT	
Cashew nut shell oil (untreated)	4	OCN	
Caustic potash solution	[2] 5	CPS	
Caustic soda solution	[2] 5	CSS	
Cetyl-Eicosyl methacrylate	14	CEM	
Chlorinated paraffins (C10 - C13)	**35**	**CLH**	
Chlorinated paraffins (C14 - C17)	**35**		
Chlorine	[1] 0	CLX	
Chloroacetic acid solution	4	CHM	CHL/MCA
Chlorobenzene	36	CRB	
Chlorodifluoromethane	36	MCF	
Chloroform	36	CRF	
Chlorohydrins	17	CHD	
4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution	9	CDM	
Chloronitrobenzene *see* o-Nitrochlorobenzene			CNO/CNP
Chloropropionic acid	4	CPM	CLA/CLP
Chlorosulfonic acid	[1] 0	CSA	
Chlorotoluene	36	CHI	CTM/CTO/CRN
Choline chloride solutions	20		
Coal tar	33	**COR**	**OCT**
Coal tar pitch	33	CTP	
Coconut oil, fatty acid	**34**	**CFA**	
Corn syrup	43	CSY	
Cottonseed oil, fatty acid	**34**	**CFY**	
Creosote	[2] 21	CCT	CCW/CWD
Cresols	21	CRS	CRL/CRO/CSO
Cresylate spent caustic	5	CSC	
Cresylic acid	21	CRY	
Cresylic acid, sodium salt solution	**5**		**CSC**
Crotonaldehyde	[2] 19	CTA	
Cumene	32	CUM	
Cycloaliphatic resins	31		
1,5,9-Cyclododecatriene	**30**	**CYT**	
Cycloheptane	**31**	**CYE**	
Cyclohexane	31	CHX	
Cyclohexane oxidation product acid water	4		
Cyclohexanol	20	CHN	
Cyclohexanone	18	CCH	
Cyclohexanone, Cyclohexanol mixtures	[2] 18	CYX	
Cyclohexyl acetate	**34**	**CYC**	
Cyclohexylamine	7	CHA	
1,3-Cyclopentadiene dimer	**30**	**DPT**	
Cyclopentadiene polymers	30		**DPT**
Cyclopentadiene, Styrene, Benzene mixtures	30	CSB	
Cyclopentane	**31**	**CYP**	
Cyclopentene	**30**	**CPE**	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Cymene	32	CMP	
Decahydronaphthalene	**33**	**DHN**	
Decaldehyde	19		IDA/DAL
Decane	31	DDC	**PFN**
Decanoic acid	**4**	**DCO**	
Decene	30	DCE	
Decyl acrylate	14	DAT	IAI/DAR
Decyl alcohol	[2] 20	DAX	ISA/DAN
Decyl benzene	32	DBZ	**AKB**
Dextrose solution	43	DTS	
Diacetone alcohol	[2] 20	DAA	
Dialkyl(C10 - C14) benzenes	**32**	**DAB**	
Dialkyl(C7 - C13) phthalates	**34**	**DAH**	**DHP/DIE/DOP/ DIF/DTP**
Diammonium salt of Zinc EDTA solution	43	DSZ	
Dibutylamine	7	DBA	
Dibutyl phthalate	34	DPA	
Dichlorobenzene	36	**DBX**	DBM/DBO/DBP
Dichlorodifluoromethane	36	DCF	
1,1-Dichloroethane	36	DCH	
2,2'-Dichloroethyl ether	41	DEE	
2,2'-Dichloroisopropyl ether	36	DCI	
Dichloromethane	36	DCM	
2,4-Dichlorophenol	21	DCP	
2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution	43	DDE	
2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution	[1,2] 0	DAD	DDA/DSX
2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution	[2] 43	DTI	
Dichloropropane	36	DPX	DPB/DPP/ DPC/DPL
1,3-Dichloropropene	15	DPS	DPF/DPU
Dichloropropene, Dichloropropane mixtures	15	DMX	
2,2-Dichloropropionic acid	4	DCN	
Dicyclopentadiene	30	DPT	
Didecyl dimethyl ammonium chloride, Ethanol mixture solution	**43**	**DDX**	
Diethanolamine	8	DEA	
Diethanolamine salt of 2,4-Dichlorophenoxy acetic acid solution	43	DDE	
Diethylamine	7	DEN	
Diethylaminoethanol	8		DAE
2,6-Diethylaniline	**9**	**DMN**	
Diethylbenzene	32	DEB	
Diethylene glycol	40	DEG	
Diethylene glycol dibutyl ether	**40**	**DIG**	
Diethylene glycol ethyl ether acetate	**34**	**DGA**	
Diethylene glycol methyl ether	40	DGM	
Diethylene glycol methyl ether acetate	**34**	**DGR**	
Diethylene glycol butyl ether	40	DME	
Diethylene glycol butyl ether acetate	34	DEM	
Diethylene glycol ethyl ether	40	DGE	
Diethylene glycol phenyl ether	40	**DGP**	
Diethylene glycol phthalate	**34**	**DGL**	
Diethylenetriamine	[2] 7	DET	
Diethylethanolamine	8	DAE	
Di-(2-ethylhexyl)adipate	**34**	**DEH**	
Di-(2-ethylhexyl)phosphoric acid	1	DEP	
Di-(2-ethylhexyl)phthalate	34		DIO/DOP/**DAH**
Diethyl phthalate	34	DPH	
Diethyl sulfate	34	DSU	
Diglycidyl ether of Bisphenol A	41	BDE	BPA
Diglycidyl ether of Bisphenol F	**41**	**DGF**	
Diheptyl phthalate	34	DHP	
Di-n-hexyl adipate	34	**DHA**	
Diisobutylamine	7	DBU	
Diisobutyl carbinol	20	DBC	
Diisobutylene	30	DBL	
Diisobutyl ketone	18	DIK	
Diisobutyl phthalate	34	DIT	
Diisodecyl phthalate	34	DID	
Diisononyl adipate	34	**DNY**	
Diisononyl phthalate	34	DIN	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Diisooctyl phthalate	34	DIO	
Diisopropanolamine	8	DIP	
Diisopropylamine	7	DIA	
Diisopropyl benzene	32	DIX	
Diisopropyl naphthalene	32	DII	
N,N-**Dimethylacetamide**	10	DAC	
N,N-Dimethylacetamide solution	**10**	**DLS**	
Dimethyl adipate	**34**	**DLA**	
Dimethylamine	7	DMA	DMC/DMG/DMY
Dimethylamine solution	7		DMC/DMG/DMY
Dimethylamine salt of 4-Chloro-2-methylphenoxyacetic acid solution	9	CDM	
Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution	[1,2] 0	**DAD**	DDA/DSX
2,6-Dimethylaniline	**9**	**DMM**	
Dimethylcyclicsiloxane hydrolyzate	34		
N,N-Dimethylcyclohexylamine	7	DXN	
Dimethylethanolamine	8	DMB	
Dimethylformamide	10	DMF	
Dimethyl furan	41		
Dimethyl glutarate	34	**DGT**	
Dimethyl hydrogen phosphite	[2] 34	DPI	
Dimethyl naphthalene sulfonic acid, sodium salt solution	[2] **34**	**DNS**	
2,2-Dimethyloctanoic acid	4	DMO	
Dimethyl phthalate	34	DTL	
Dimethyl polysiloxane	34	DMP	
2,2-Dimethylpropane-1,3-diol	20	**DDI**	
Dimethyl succinate	34	**DSE**	
Dinonyl phthalate	34	**DIF**	**DAH**
Dinitrotoluene	42	DNM	DTT/DNL/DNU
Dioctyl phthalate	34	DOP	**DAH**
1,4-Dioxane	41	DOX	
Dipentene	30	DPN	
Diphenyl	32	DIL	
Diphenyl, Diphenyl **ether**	33	DDO	DTH
Diphenyl ether	41	DPE	
Diphenylmethane diisocyanate	12	DPM	
Diphenylol propane-Epichlorohydrin resins	[1] 0	DPR	
Diphenyl **ether**, Diphenyl phenyl ether mixture	41	DOB	
Di-n-Propylamine	7	DNA	
Dipropylene glycol	40	DPG	
Dipropylene glycol dibenzoate	34	**DGY**	
Dipropylene glycol methyl ether	**40**	**DPY**	
Distillates, flashed feed stocks	33	DFF	
Distillates, straight run	33	DSR	
Ditridecyl phthalate	**34**	**DTP**	**DAH**
Diundecyl phthalate	34	DUP	
Dodecane	31		**DOC/PFN**
Dodecanol	20	DDN	LAL
Dodecene	30	DOZ	DDC/DOD
2-Dodecenylsuccinic acid, dipotassium salt solution	**34**		
Dodecylamine, Tetradecylamine mixture	[2] 7	DTA	
Dodecyl alcohol	20	DDN	LAL
Dodecylbenzene	32	DDB	**AKB**
Dodecylbenzenesulfonic acid	[2] **0**	**DSA**	
Dodecyl diphenyl **ether** disulfonate solution	43	DOS	
Dodecyl methacrylate	14	DDM	
Dodecyl-Pentadecyl methacrylate	14	DDP	
Dodecyl phenol	21	DOL	
Drilling brine (containing Calcium or Sodium salts)	**43**		
Drilling brine (containing Zinc salts)	**43**	**DBZ**	
Drilling mud (low toxicity) (if flammable or combustible)	**33**		
Drilling mud (low toxicity) (if non-flammable or non-combustible)	**43**		
Epichlorohydrin	17	EPC	
Epoxy resin	18		
Ethane	31	ETH	
Ethanolamine	8	MEA	
2-Ethoxyethanol	**20**	**EEO**	
2-Ethoxyethyl acetate	34	EEA	

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TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Ethoxylated alcohols, C11-C15	20		EOD/ENP/ EOP/EOT/ ETD
Ethoxy triglycol	40	ETG	
Ethyl acetate	34	ETA	
Ethyl acetoacetate	34	EAA	
Ethyl acrylate	14	EAC	
Ethyl alcohol	[2] 20	EAL	
Ethylamine	[2] 7	EAM	
Ethylamine solution	7	EAN	
Ethyl amyl ketone	**18**	**EAK**	
Ethyl benzene	32	ETB	
Ethyl butanol	20	EBT	
N-Ethyl-n-butylamine	7	EBA	
Ethyl butyrate	34	EBR	
Ethyl chloride	36	ECL	
Ethyl chlorothioformate	**[2] 0**	**ECT**	
N-Ethyl cyclohexylamine	7	ECC	
Ethylene	30	ETL	
Ethylene chlorohydrin	20	ECH	
Ethylene cyanohydrin	20	ETC	
Ethylenediamine	[2] 7	EDA	EMX
Ethylene diamine tetracetic acid, tetrasodium salt solution	**43**	**EDS**	
Ethylene dibromide	36	EDB	
Ethylene dichloride	[2] 36	EDC	
Ethylene glycol	[2] 20	EGL	
Ethylene glycol acetate	**34**	**EGO**	
Ethylene glycol tert-butyl ether	**40**		
Ethylene glycol diacetate	34	EGY	
Ethylene glycol dibutyl ether	**40**	**EGB**	
Ethylene glycol ethyl ether acetate	34	EGA	
Ethylene glycol methyl ether acetate	**34**	**EGT**	
Ethylene glycol butyl ether	40	EGM	
Ethylene glycol butyl ether acetate	34	EMA	
Ethylene glycol ethyl ether	40	EGE	
Ethylene glycol isopropyl ether	40	**EGI**	
Ethylene glycol methyl ether	40	EME	
Ethylene glycol phenyl ether	40	**EPE**	
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	**40**	**EDX**	
Ethylene glycol propyl ether	**40**	**EGP**	
Ethylene oxide	[1] 0	EOX	
Ethylene oxide, Propylene oxide mixture	16	EPM	
Ethylene-Vinyl acetate copolymer emulsion	43		
Ethyl ether	41	EET	
Ethyl-3-ethoxypropionate	34	**EEP**	
Ethylhexaldehyde	19	EHA	
2-Ethylhexanol	20	EHX	
2-Ethylhexanoic acid	4	**EHO**	
2-Ethylhexyl acrylate	14	EAI	
2-Ethyl hexylamine	7	EHM	
Ethyl hexyl phthalate	34	EHE	
Ethyl hexyl tallate	34	EHT	
Ethylidene norbornene	[2] 30	ENB	
Ethyl methacrylate	14	ETM	
2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline	9	EEM	
o-Ethyl phenol	21	EPL	
Ethyl propionate	34	EPR	
2-Ethyl-3-propylacrolein	[2] 19	EPA	
Ethyl toluene	32	ETE	
Fatty acids (saturated, C13 and above)	**4**		
Fatty acid amides	33		
Fatty alcohols	20	FAT	
Ferric chloride solution	**1**	**FCS**	
Ferric hydroxyethylethylenediamine triacetic acid, trisodium salt solution	**[2] 43**	**FHX**	
Ferric nitrate, Nitric acid solution	**3**	**FNN**	
Fish solubles (*water based fish meal extracts*)	**43**	**FSO**	
Formaldehyde, Methanol mixtures	[2] 19	MTM	
Formaldehyde solution	[2] 19	FMS	
Formamide	10	FAM	

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TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Formic acid	[2] 4	FMA	
Fructose solution	**43**		
Fumaric adduct of Rosin, water dispersion	43	FAR	
Furfural	19	FFA	
Furfuryl alcohol	[2] 20	FAL	
Gas oil, cracked	33	GOC	
Gasoline blending stock, alkylates	33	GAK	
Gasoline blending stock, reformates	33	GRF	
Gasolines:			
Automotive (*not over 4.23 grams lead per gal.*)	33	GAT	
Aviation (*not over 4.86 grams lead per gal*)	33	GAV	**AVA**
Casinghead (*natural*)	33	GCS	
Polymer	33	GPL	
Straight run	33	GSR	
Glutaraldehyde solution	19	GTA	
Glycerine	[2] 20	GCR	
Glycerol polyalkoxylate	**34**		
Glyceryl triacetate	34		
Glycidyl ester of tridecylacetic acid	**34**	**GLT**	
Glycidyl ester of Versatic acid	34		**GLT**
Glycol diacetate	34		
Glycols, Resins, and Solvents mixture	33		
Glyoxal solutions	19	GOS	
Heptane	31	HPT	
n-Heptanoic acid	**4**	HEP	
Heptanol	20	HTX	HTN
1-Heptene	30	HPX	HTE
Heptyl acetate	34	HPE	
Herbicide (C15-H22-NO2-Cl)	33	**MCO**	
Hexamethylenediamine solution	7	HMC	HMD
Hexamethylenetetramine	7	HMT	
Hexamethylenetetramine solutions	**7**	**HTS**	
Hexamethylenimine	7	HMI	
Hexane	[3] 31	**HX5**	HXA/IHA
Hexanoic acid	**4**	**HXO**	
Hexanol	20	HXN	
Hexene	30	**HXE**	**HEX**
Hexyl acetate	34	HAE	
Hexylene glycol	20	HXG	
Hydrochloric acid	1	HCL	
Hydrochloric acid, spent	1	HCS	
Hydrofluoric acid	1	HFA	
Hydrofluorosilicic acid	1	HFS	
Hydrogen peroxide solutions	[1] 0		HPN/HPS/HPO
2-Hydroxyethyl acrylate	[1,2] 0	HAI	
N-(Hydroxyethyl)ethylene diamine triacetic acid, trisodium salt solution	**43**	**HET**	
2-Hydroxy-4-(methylthio)butanoic acid	**4**	**HBA**	
Isophorone	[2] 18	IPH	
Isophorone diamine	7	IPI	
Isophorone diisocyanate	12	IPD	
Isoprene	30	IPR	
Isopropylbenzene	32	CUM	
Jet fuels:			
JP-1	33	JPO	
JP-3	33	JPT	
JP-4	33	JPF	
JP-5	33	JPV	
JP-8	**33**	**JPE**	
Kaolin clay slurry	43		
Kerosene	33	KRS	
Ketone residue	18		
Kraft black liquor	5		
Kraft pulping liquors (Black, Green, or White)	**5**	**KPL**	
Lactonitrile solution	37	LNI	
Latex, liquid synthetic	43	LLS	
Lauric acid	**4**	**LRA**	
Lignin liquor	43		
Magnesium chloride solution	[1,2] 0		
Magnesium nonyl phenol sulfide	33		

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Magnesium sulfonate	34	MSE	
Maleic anhydride	11	MLA	
Maleic anhydride copolymer	33		
Mercaptobenzothiazol, sodium salt solution	5	SMB	
Mesityl oxide	[2] 18	MSO	
Metam sodium solution	**7**	**MSS**	**SMD**
Methacrylic acid	4	MAD	
Methacrylonitrile	15	MET	
Methane	31	MTH	
3-Methoxy-1-butanol	**20**		
3-Methoxybutyl acetate	**34**	**MOA**	
1-Methoxy-2-propyl acetate	**34**	**MPO**	
Methoxy triglycol	40	MTG	
Methyl acetate	34	MTT	
Methyl acetoacetate	34	**MAE**	
Methyl acetylene, Propadiene mixture	30	MAP	
Methyl acrylate	14	MAM	
Methyl alcohol	[2] 20	MAL	
Methylamine	7	MTA	
Methylamine solutions	7	MSZ	
Methyl amyl acetate	34	MAC	
Methyl amyl alcohol	20	MAA	
Methyl amyl ketone	18	MAK	
Methyl bromide	36	MTB	
Methyl butenol	**20**	**MBL**	
Methyl butyl ketone	18	MBK	
Methyl tert-butyl ether	[2] 41	MBF	
Methylbutynol	**20**	**MBY**	
3-Methyl butyraldehyde	19		
Methyl butyrate	34	MBU	
Methyl chloride	36	MTC	
Methylcyclohexane	**31**	**MCY**	
Methylcyclopentadiene dimer	**30**	**MCK**	
Methyl diethanolamine	8	MDE	
4,4'-Methylene dianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures	9	MDB	
2-Methyl-6-ethyl aniline	9	MEN	
Methyl ethyl ketone	[2] 18	MEK	
2-Methyl-5-ethyl pyridine	9	MEP	
Methyl formal	41	MTF	
Methyl formate	34	MFM	
Methyl heptyl ketone	18	MHK	
2-Methyl-2-hydroxy-3-butyne	20	MHB	
Methyl isoamyl ketone	18		MAK
Methyl isobutyl carbinol	20	MIC	
Methyl isobutyl ketone	[2] 18	MIK	
Methyl methacrylate	14	MMM	
3-Methyl-3-methoxybutanol	**20**		
3-Methyl-3-methoxybutyl acetate	**34**		
Methyl naphthalene	32	MNA	
Methylolureas	19	MUS	
2-Methyl pentane	**31**		**IHA**
2-Methyl-1-pentene	30	MPN	
4-Methyl-1-pentene	**30**	**MTN**	
Methylpyridine	9		MPE/MPF/MPR
N-Methyl-2-pyrrolidone	9	MPY	
Methyl salicylate	34	MES	
alpha-Methyl styrene	30	MSR	
Metolachlor	**34**	**MCO**	
Mineral spirits	33	MNS	
Molasses	20		
Molasses residue	**D**		
Monochlorodifluoromethane	36	MCF	
Morpholine	[2] 7	MPL	
Motor fuel antiknock compounds containing lead alkyls	[1] 0	MFA	
Myrcene	**30**	**MRE**	
Naphtha:			
Coal tar **solvent**	33	NCT	
Cracking fraction	[2] 33		
Petroleum	33	PTN	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Solvent	33	NSV	
Stoddard solvent	33	NSS	
Varnish Makers' and Painters'	33	NVM	
Naphthalene	32	NTM	
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	**0**	**NFS**	
Naphthalene sulfonic acid, sodium salt solution (40% or less)	**34**	**NSA**	
Naphthenic acid	4	NTI	
Naphthenic acid, sodium salt solution	**43**	**NTS**	
Neodecanoic acid	4	NEA	
Nitrating acid	[1] 0	NIA	
Nitric acid (70% or less)	3	NCD	
Nitric acid (greater than 70%)	[1] 0		NAC
Nitrobenzene	42	NTB	
o-Nitrochlorobenzene	42	CNO	CNP
Nitroethane	42	NTE	
o-Nitrophenol	[1,2] 0	NTP	NIP/NPH
Nitropropane	42	NPM	NPN/NPP
Nitropropane, Nitroethane mixture	42	NNM	
Nitrotoluene	42	NIT	NIE/NTT/NTR
Nonane	31	NAN	
Nonanoic acid	**4**		**NNA/NAI**
Nonene	30	NON	NNE
Nonyl alcohol	[2] 20	**NNS**	**NNN**
Nonyl methacrylate	**14**	**NMA**	
Nonyl phenol	21	NNP	
Nonyl phenol (ethoxylated)	40		**NPE**
Nonyl phenol poly(4-12)ethoxylates	**40**	**NPE**	
Nonyl phenol sulfide solution	33		NPS
Noxious Liquid Substance, n.o.s. (NLS's)	**0**		
1-Octadecene	30		
Octadecenoamide	10	**ODD**	
Octane	31	OAN	IOO
Octanoic acid	**4**	**OAA**	
Octene	30	OTX	OTE
Octyl alcohol (Octanol)	[2] 20	OCX	IOA/OTA
Octyl aldehyde	19	**OAL**	IOC
Octyl decyl adipate	**34**	**ODA**	
Octyl epoxytallate	34	OET	
Octyl nitrate	[2] 34	ONE	
Octyl phenol	21		
Oil, edible:			
Babassu	34	**OBB**	
Castor	34	OCA	
Coconut	[2] 34	OCC	
Corn	34	**OCO**	
Cotton seed	34	OCS	
Fish	[2] 34	OFS	
Lard	34	OLD	
Olive	34	OOL	
Palm	[2] 34	OPM	
Palm nut	**34**	**OPO**	
Peanut	34	OPN	
Rapeseed	34	**ORP**	
Rice bran	34	**ORB**	
Safflower	34	OSF	
Soya bean	34	OSB	
Sunflower	**34**	**OSN**	
Sunflower seed	34		
Tucum	34	OTC	
Vegetable	34	OVG	
Oil, fuel:			
No. 1	33	OON	
No. 1-D	33	OOD	
No. 2	33	OTW	
No. 2-D	33	OTD	
No. 4	33	OFR	
No. 5	33	OFV	
No. 6	33	OSX	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Oil, misc:			
Absorption	33	OAS	
Aliphatic	33		
Aromatic	33		
Clarified	33	OCF	
Coal	33		
Coconut, methyl ester	34		
Coconut, fatty acid methyl ester	**34**	**OCM**	
Cotton seed, fatty acid	34	CFY	
Crude	33	OIL	
Diesel	33	ODS	
Heartcut distillate	33		
Linseed	33	OLS	
Lubricating	33	OLB	
Mineral	33	OMN	
Mineral seal	33	OMS	
Motor	33	OMT	
Neatsfoot	33	ONF	
Oiticica	34	OOI	
Palm, fatty acid	**4**		
Palm, fatty acid methyl ester	**34**	**OFM**	
Palm, methyl ester	**34**	**OPE**	
Penetrating	33	OPT	
Pine	33	OPI	
Range	33	ORG	
Residual	33		
Resin	33	ORS	
Resinous petroleum	33		
Road	33	ORD	
Rosin	33	ORN	
Seal	34		
Soapstock	34		
Soybean (epoxidized)	40		EVO
Sperm	33	OSP	
Spindle	33	OSD	
Spray	33	OSY	
Tall	34	OTL	
Tall, fatty acid	[2] 34	TOF	
Tanner's	33	OTN	
Transformer	33	OTF	
Tung	34	**OTG**	
Turbine	33	OTB	
White (mineral)	33		
Oleic acid	4	OLA	
Olefin mixtures	**30**		**OFX/OFY**
alpha-Olefins (C13 and above)	**30**	**OAM**	
Oleum	[1,3] 0	OLM	
Oxyalkylated alkyl phenol formaldehyde	33		
Palm nut oil, fatty acid	**4**	**PNO**	
Palm nut oil, fatty acid methyl ester	**34**	**PNF**	
Palm stearin	**34**	**PMS**	
n-Paraffins (C10 - C20)	**31**	**PFN**	**DCC/DOC/TRD**
Paraldehyde	19	PDH	
Pentachloroethane	36	PCE	
Pentadecanol	20	PDC	
1,3-Pentadiene	30	PDE	PDN
Pentaethylenehexamine, Tetraethylenepentamine mixture	7	PEP	
Pentane	31	PTY	IPT/PTA
Pentene	30	PTX	PTE
Pentene, Miscellaneous hydrocarbon mixture	[3] 30		
3-Pentenenitrile	37	PNT	
Pentyl aldehyde	19		
Perchloroethylene	36	PER	
Petrolatum	33	PTL	
Phenol	21	PHN	
1-Phenyl-1-xylyl ethane	32	PXE	
Phosphoric acid	1	PAC	
Phosphorus	[4] 0		PPW/PPR/PPB
Phthalic anhydride	11	PAN	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Pinene	30	PIN	
Pine oil	33	OPI	
Polyalkenyl succinic anhydride amine	33		
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	**40**	**PPX**	
Polyalkyl(C18 - C22) acrylate in Xylene	**14**	**PIX**	
Polyalkylene oxide polyol	**20**	**PAO**	
Polybutadiene, hydroxyl terminated	20		
Polybutene	30	PLB	
Polydimethylsiloxane	34		
Polyethylene glycol dimethyl ether	**40**		
Polyethylene glycol monoalkyl ether	**40**	**PEE**	
Polyethylene glycols	40		
Polyethylene polyamines	[2]7	PEB	
Polyferric sulfate solution	**34**	**PSS**	
Polyglycerol	**20**		**GCR**
Polymethylene polyphenyl isocyanate	12	PPI	
Polymethylsiloxane	34		
Poly(20)oxyethylene sorbitan monooleate	**34**	**PSM**	
Polypropylene	30	PLP	
Polypropylene glycol	40	PGC	
Polypropylene glycol methyl ether	40	PGM	
Polysiloxane	**34**		
Potassium hydroxide solution	[2]5	CPS	
Potassium oleate	**34**	**POE**	
Propane	31	PRP	
Propanolamine	8		MPA/PLA/PRA
Propionaldehyde	19	PAD	
Propionic acid	4	PNA	
Propionic anhydride	11	PAH	
Propionitrile	37	PCN	
n-Propoxypropanol	**40**	**PXP**	
Propyl acetate	34		IAC/PAT
Propyl alcohol	[2]20		IPA/PAL
Propylamine	7		IPO/IPP/PRA
Propylbenzene	**32**	**PBZ**	
Iso-Propylcyclohexane	**31**	**IPX**	
Propylene	30	PPL	
Propylene butylene polymer	30	PBP	
Propylene dimer	30	PDR	
Propylene glycol	[2]20	PPG	
Propylene glycol monoalkyl ether	**40**	**PGE**	**PME/PGY**
Propylene glycol ethyl ether	**40**	**PGY**	**PGE**
Propylene glycol methyl ether	**40**	**PME**	**PGE**
Propylene oxide	16	POX	
Propylene tetramer	30	PTT	
Propylene trimer	30	PTR	
Propyl ether	41		IPE
Pseudocumene	32		TME
Pyridine	9	PRD	
Pyridine bases	9	PRB	
Rosin soap (disproportionated) solution	43	RSP	
Rum	20		
Salicylaldehyde	19	SAL	
Sewage sludge	43		
Sodium acetate solution	**34**	**SAN**	
Sodium alkyl sulfonate solution	43	SSU	
Sodium aluminate solution	**5**	**SAU**	
Sodium benzoate solution	**34**	**SBN**	
Sodium borohydride, Sodium hydroxide solution	5	SBX	SBH/SBI
Sodium carbonate solutions	5	**SCE**	
Sodium chlorate solution	[1,2]0	SDD	SDC
Sodium cyanide solution	5	SCS	SCN
Sodium dichromate solution	[1,2]0	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution	[2]34	**DNS**	
Sodium hydrogen sulfide, Sodium carbonate solution	[2]0	**SSS**	
Sodium hydrogen sulfite solution	43	SHX	
Sodium hydrosulfide solution	[2]5	SHR	
Sodium hydrosulfide, Ammonium sulfide solution	[2]5	SSA	
Sodium hydroxide solution	[2]5	CSS	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Sodium hypochlorite solution	5	SHP	SHC
Sodium 2-mercaptobenzothiazol solution	5	SMB	
Sodium naphthalene sulfonate solution	34	SNS	
Sodium nitrite solution	**5**	**SNI**	
Sodium polyacrylate solution	[2]43		
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution	43	STA	**FHX**
Sodium silicate solution	[2]43	SSC	
Sodium sulfide, Hydrosulfide solution	[1,2]0		SSH/SSI/SSJ
Sodium thiocyanate solution	[1,2]0	STS	SCY
Sorbitol solutions	20		SBT
Stearic acid	4	SRA	
Styrene	30	STY	
Sulfolane	39	SFL	
Sulfur	[1]0	SXX	
Sulfuric acid	[2]2	SFA	
Sulfuric acid, spent	2	SAC	
Tall oil	34	OTL	
Tall oil soap (disproportionated) solution	43	TOS	
Tallow	[2]34	TLO	
Tallow fatty acid	[2]34	**TFD**	
Tallow fatty alcohol	20	TFA	
Tallow nitrile	37		
1,1,2,2-Tetrachloroethane	36	TEC	
Tetradecanol	20	TTN	
Tetradecene	30	TTD	
Tetradecylbenzene	32	TDB	**AKB**
Tetraethylene glycol	40	TTG	
Tetraethylenepentamine	7	TTP	
Tetrahydrofuran	41	THF	
Tetrahydronaphthalene	32	THN	
1,2,3,5-Tetramethylbenzene	**32**	**TTB**	
Tetrasodium salt of EDTA solution	43	**EDS**	
Titanium tetrachloride	2	TTT	
Toluene	32	TOL	
Toluenediamine	8	TDA	
Toluene diisocyanate	12	TDI	
o-Toluidine	8	TLI	
Triarylphosphate	34		
Tributyl phosphate	34	TBP	
1,2,4-Trichlorobenzene	36	TCB	
1,1,1-Trichloroethane	[2]36	TCE	
1,1,2-Trichloroethane	36	TCM	
Trichloroethylene	[2]36	TCL	
1,2,3-Trichloropropane	36	TCN	
1,1,2-Trichloro-1,2,2-trifluoroethane	36	TTF	
Tricresyl phosphate	34		TCO/TCP
Tridecane	34	**TRD**	**PFN**
Tridecanol	20	TDN	
Tridecene	30	TDC	
Tridecylbenzene	32	**TRB**	**AKB**
Triethanolamine	[2]8	TEA	
Triethylamine	7	TEN	
Triethyl benzene	32	TEB	
Triethylene glycol	40	TEG	
Triethylene glycol butyl ether	**40**		
Triethylene glycol butyl ether mixture	40		
Triethylene glycol di-(2-ethylbutyrate)	**34**	**TGD**	
Triethylene glycol ether mixture	40		
Triethylene glycol ethyl ether	**40**	**TGE**	
Triethylenetetramine	[2]7	TET	
Triethyl phosphate	34	**TPS**	
Triethyl phosphite	[2]34	TPI	
Triisobutylene	30	TIB	
Triisooctyl trimellitate	34		
Triisopropanolamine	8	TIP	
Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution	43	**DTI**	
Trimethylacetic acid	4	TAA	
Trimethyl benzene	32	TME	TMB/TMD
Trimethylhexamethylene diamine (2,2,4- and 2,4,4-)	7	THA	

TABLE I - ALPHABETICAL LIST OF CARGOES—Continued

[Entries in **boldface** are new additions or changes]

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-)	12	THI	
Trimethylol propane polyethoxylate	**20**	**TRP**	
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate	34		
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate	34	TMP	
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	34		
Trimethyl phosphite	[2] 34	TPP	
Tripropylene	30		
Tripropylene glycol	40	TGC	
Tripropylene glycol methyl ether	40	**TGM**	
Trisodium nitrilotriacetate	34		
Trixylenyl phosphate	34	TRP	
Turpentine	30	TPT	
Undecanoic acid	**4**	**UDA**	
Undecanol	20	UND	
Undecene	30	UDC	
Undecyl alcohol	20	UND	
Undecylbenzene	32	UDB	**AKB**
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution	**0**	**UPX**	
Urea, Ammonium nitrate solution (containing Ammonia)	6	UAS	
Urea, Ammonium nitrate solution (not containing Ammonia)	43	ANU	
Urea, Ammonium phosphate solution	**43**	**UAP**	
Valeraldehyde	19		IVA/VAL/VAK
Vanillin black liquor	5	VBL	
Vegetable protein solution	**43**		
Vinyl acetate	13	VAM	
Vinyl acetate-Fumarate copolymer	34		
Vinyl chloride	35	VCM	
Vinyl ethyl ether	13	VEE	
Vinylidene chloride	35	VCI	
Vinyl neodecanate	13	VND	
Vinyl toluene	13	VNT	
Waxes:			
Carnauba	34	WCA	
Paraffin	31	WPF	
White spirit (low (15-20%) aromatic)	33	WSL	WSP
Xylene	32	XLX	XLM/XLO/XLP
Xylenols	21	XYL	
Zinc bromide, Calcium bromide solution *see* Drilling brine (containing Zinc salts)	43	**DZB**	

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593-0001. Telephone (202) 267-1577.

[2] See Appendix I - Exceptions to the Chart.

Table II - Grouping of Cargoes

([•] New addition to 46 CFR Part 150)

0. Unassigned Cargoes

Acetone cyanohydrin [1,2]
Alkyl benzene sulfonic acid [1,2]
•Aluminium chloride, Hydrochloric acid solution [1]
•Ammonium hydrogen phosphate solution [1]
Ammonium nitrate solution [1]
•Ammonium thiocyanate, Ammonium thiosulfate solution [1]
Benzenesulfonyl chloride [1,2]
gamma-Butyrolactone [1,2]
Chlorine [1]
Chlorosulfonic acid [1]
2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution [1,2]
Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution [1,2]
Diphenylol propane-Epichlorohydrin resins [1]
•Dodecylbenzenesulfonic acid [1,2]
•Ethyl chlorothioformate [1,2]
Ethylene oxide [1]
2-Hydroxyethyl acrylate [1,2]
Magnesium chloride solution [1,2]
•Molasses residue [1]
Motor fuel antiknock compounds containing Lead alkyls [1]
•Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution [1]
Nitrating acid [1]
Nitric acid (greater than 70%) [1]
o-Nitrophenol [1,2]
•Noxious Liquid Substance, n.o.s. (NLS's) [1]
Oleum [1,2]
Phosphorus [1]
Sodium chlorate solution [1,2]
Sodium dichromate solution [1,2]
•Sodium hydrogen sulfide, Sodium carbonate solution [1,2]
Sodium sulfide, Hydrosulfide solution [1,2]
Sodium thiocyanate solution [1,2]
Sulfur [1]
•Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution

1. Non-Oxidizing Mineral Acids

Di-(2-ethylhexyl)phosphoric acid
•Ferric chloride solution
Hydrochloric acid
Hydrochloric acid, spent
Hydrofluoric acid
Hydrofluorosilicic acid
Phosphoric acid

2. Sulfuric Acids

Sulfuric acid [2]
Sulfuric acid, spent
Titanium tetrachloride

3. Nitric Acid

•Ferric nitrate, Nitric acid solution
Nitric acid (70% or less)

4. Organic Acids

Acetic acid [2]
Acrylic acid [1]
Butyric acid
Cashew nut shell oil (untreated)
Chloroacetic acid solution
Chloropropionic acid

Cyclohexane oxidation product acid water
•Decanoic acid
2,2-Dichloropropionic acid
2,2-Dimethyloctanoic acid
2-Ethylhexanoic acid
•Fatty acids (saturated, C13 and above)
Formic acid [3]
n-Heptanoic acid
•Hexanoic acid
•2-Hydroxy-4-(methylthio)butanoic acid
•Lauric acid
Methacrylic acid
Naphthenic acid
Neodecanoic acid
Nonanoic acid
•Nonanoic acid
•Octanoic acid
Oils:
Oil, misc:
•Palm, fatty acid
Oleic acid
•Palm nut oil, fatty acid
Propionic acid
Stearic acid
Trimethylacetic acid
•Undecanoic acid

5. Caustics

Ammonium sulfide solution
Calcium hypochlorite solution
•Calcium hypochlorite solutions
Caustic potash solution [3]
Caustic soda solution [3]
Cresylate spent caustic
•Cresylic acid, sodium salt solution
Kraft black liquor
•Kraft pulping liquors
Mercaptobenzothiazol, sodium salt solution
Potassium hydroxide solution [3]
•Sodium aluminate solution
Sodium borohydride, Sodium hydroxide solution
Sodium carbonate solutions
Sodium cyanide solution
Sodium hydrosulfide solution [3]
Sodium hydrosulfide, Ammonium sulfide solution [3]
Sodium hydroxide solution [3]
Sodium hypochlorite solution
Sodium 2-mercaptobenzothiazol solution
•Sodium nitrite solution
Vanillin black liquor

6. Ammonia

Ammonia, anhydrous
Ammonium hydroxide (28% or less Ammonia)
Ammonium nitrate, Urea solution (containing Ammonia)
Urea, Ammonium nitrate solution (containing Ammonia)

7. Aliphatic Amines

N-Aminoethylpiperazine
Butylamine
Cyclohexylamine
Dibutylamine
Diethylamine [3]
Diethylenetriamine
Diisobutylamine
Diisopropylamine
Dimethylamine
Dimethylamine solution
N,N-Dimethylcyclohexylamine
Di-n-propylamine
Dodecylamine, Tetradecylamine mixture [3]
Ethylamine [3]
Ethylamine solution
N-Ethyl-n-butylamine
N-Ethyl cyclohexylamine
Ethylenediamine [3]
2-Ethyl hexylamine
Hexamethylenediamine solution
Hexamethylenetetramine
•Hexamethylenetetramine solutions
Hexamethylenimine
Isophorone diamine
•Metam sodium solution
Methylamine
Methylamine solutions
Morpholine [3]
Pentaethylenehexamine, Tetraethylenepentamine mixture
Polyethylene polyamines [3]
Propylamine
Tetraethylenepentamine
Triethylamine
Triethylenetetramine [3]
Trimethylhexamethylene diamine (2,2,4- and 2,4,4-)

8. Alkanolamines

2-(2-Aminoethoxy)ethanol
•Aminoethyldiethanolamine, Aminoethylethanolamine solution
Aminoethylethanolamine
2-Amino-2-methyl-1-propanol
Diethanolamine
Diethylaminoethanol
Diethylethanolamine
Diisopropanolamine
Dimethylethanolamine
Ethanolamine
Propanolamine
Triethanolamine [3]
Triisopropanolamine

9. Aromatic Amines

Aniline
4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution
•2,6-Diethylaniline
Dimethylamine salt of 4-Chloro-2-methylphenoxyacetic acid solution
•2,6-Dimethylaniline
2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline
4,4'-Methylene dianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures
2-Methyl-6-ethyl aniline
2-Methyl-5-ethyl pyridine
Methyl pyridine
•3-Methylpyridine
N-Methyl pyrrolidone
Pyridine
Pyridine bases
Toluenediamine
p-Toluidine

10. Amides

Acrylamide solution
N,N-Dimethylacetamide
•N,N-Dimethylacetamide solution
Dimethylformamide
Formamide
Octadecenoamide

11. Organic Anhydrides

Acetic anhydride
Maleic anhydride
Phthalic anhydride
Propionic anhydride

12. Isocyanates

Diphenylmethane diisocyanate
Isophorone diisocyanate
Polymethylene polyphenyl isocyanate
Toluene diisocyanate
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-)

13. Vinyl Acetate

Vinyl acetate
Vinyl ethyl ether
Vinyl neodecanate
Vinyl toluene

14. Acrylates

Butyl acrylate
Butyl methacrylate
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture
Cetyl-Eicosyl methacrylate
Decyl acrylate
Dodecyl methacrylate
Dodecyl-Pentadecyl methacrylate
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
Methyl acrylate
Methyl methacrylate
•Nonyl methacrylate
•Polyalkyl(C18 - C22) acrylate in Xylene

15. Substituted Allyls

Acrylonitrile [3]
Allyl alcohol [3]
Allyl chloride
1,3-Dichloropropene
Dichloropropene, Dichloropropane mixtures
Methacrylonitrile

16. Alkylene Oxides

Butylene oxide
Ethylene oxide, Propylene oxide mixtures
Propylene oxide

17. Epichlorohydrin

Chlorohydrins
Epichlorohydrin

18. Ketones

Acetone [3]
Acetophenone
Amyl methyl ketone
Butyl heptyl ketone
Camphor oil
Cyclohexanone
Cyclohexanone, Cyclohexanol mixtures [2]
Diisobutyl ketone
•Ethyl amyl ketone
Epoxy resin
Ketone residue
Isophorone [3]
Mesityl oxide [3]
Methyl amyl ketone
Methyl butyl ketone
•Methyl butyl ketone
Methyl diethanolamine
Methyl ethyl ketone [3]
Methyl heptyl ketone
Methyl isoamyl ketone
Methyl isobutyl ketone [3]

19. Aldehydes

Acetaldehyde
Acrolein [3]
Butyraldehyde

Crotonaldehyde [2]
Decaldehyde
Ethylhexaldehyde
2-Ethyl-3-propylacrolein [2]
Formaldehyde, Methanol mixtures [2]
Formaldehyde solution [2]
Furfural
Glutaraldehyde solution
Glyoxal solutions
3-Methyl butyraldehyde
Methylolureas
Octyl aldehyde
Paraldehyde
Pentyl aldehyde
Propionaldehyde
Salicylaldehyde
Valeraldehyde

20. Alcohols, Glycols

•Acrylonitrile-Styrene copolymer dispersion in Polyether polyol
•Alcoholic beverages
•Alcohol polyethoxylates
•Alcohol polyethoxylates, secondary
•Alcohols (C13 and above)
Amyl alcohol
Behenyl alcohol
•Brake fluid base mixtures
Butyl alcohol [2]
Butylene glycol [2]
Choline chloride solutions
Cyclohexanol
Decyl alcohol [2]
Diacetone alcohol [2]
Diisobutyl carbinol
2,2-Dimethylpropane-1,3-diol
Dodecanol
Dodecyl alcohol
Ethoxylated alcohols, C11-C15
•2-Ethoxyethanol
Ethyl alcohol [2]
Ethyl butanol
Ethylene chlorohydrin
Ethylene cyanohydrin
Ethylene glycol [2]
2-Ethylhexanol
Fatty alcohols
Furfuryl alcohol [2]
Glycerine [2]
Heptanol
Hexanol
Hexylene glycol
•3-Methoxy-1-butanol
Methyl alcohol [2]
Methyl amyl alcohol
•Methyl butenol
•Methylbutynol
2-Methyl-2-hydroxy-3-butyne
Methyl isobutyl carbinol
•3-Methyl-3-methoxybutanol
Molasses
Nonyl alcohol [2]
Octyl alcohol [2]
Pentadecanol
•Polyalkylene oxide polyol
Polybutadiene, hydroxyl terminated
•Polyglycerol
Propyl alcohol [2]
Propylene glycol [2]
Rum
Sorbitol solutions
Tallow fatty alcohol
Tetradecanol
Tridecanol
•Trimethylol propane polyethoxylate
Undecanol
Undecyl alcohol

21. Phenols, Cresols

Benzyl alcohol
Carbolic oil
Creosote [2]
Cresols
Cresylic acid
2,4-Dichlorophenol
Dodecyl phenol
o-Ethylphenol
Nonyl phenol
Octyl phenol
Phenol
Xylenols

22. Caprolactam Solutions

Caprolactam solution

23-29. Unassigned

30. Olefins

Amylene
Butadiene
Butadiene, Butylene mixtures (cont. Acetylenes)
Butene
•Butene oligomer
Butylene
•1,5,9-Cyclododecatriene
•1,3-Cyclopentadiene dimer
Cyclopentadiene polymers
Cyclopentadiene, Styrene, Benzene mixture
•Cyclopentene
Decene
Dicyclopentadiene
Diisobutylene
Dipentene
Dodecene
Ethylene
Ethylidene norbornene [2]
1-Heptene
Hexene
Isoprene
Methyl acetylene, Propadiene mixture
•Methylcyclopentadiene dimer
2-Methyl-1-pentene
•4-Methyl-1-pentene
alpha-Methyl styrene
•Myrcene
Nonene
1-Octadecene
Octene
•Olefin mixtures
•alpha-Olefins (C13 and above)
1,3-Pentadiene
Pentene
Pentene, Miscellaneous hydrocarbon mixture [3]
Pinene
Polybutene
Polypropylene
Propylene
Propylene butylene copolymer
Propylene dimer
Propylene tetramer
Propylene trimer
Styrene
Tetradecene
Tridecene
Triisobutylene
Tripropylene
Turpentine
Undecene

31. Paraffins

Butane
Cycloaliphatic resins
•Cycloheptane
Cyclohexane
•Cyclopentane
Decane
Dodecane
Ethane
Heptane
Hexane [3]
Methane
•Methylcyclohexane
•2-Methyl pentane
Nonane
Octane
•n-Paraffins (C10 - C20)
Pentane
Propane
•iso-Propylcyclohexane
Waxes:
Paraffin

32. Aromatic Hydrocarbons

Alkyl acrylate-Vinyl pyridine copolymer in Toluene
•Alkyl(C9 - C17) benzenes
Benzene
Benzene hydrocarbon mixtures (having 10% Benzene or more)
Benzene, Toluene, Xylene mixtures
Butyl benzene
•Butyl phenol, Formaldehyde resin in Xylene
•Butyl toluene
Cumene
Cymene
Decyl benzene
•Dialkyl(C10 - C14) benzenes
Diethylbenzene
Diisopropyl benzene
Diisopropyl naphthalene
Diphenyl
Dodecylbenzene
Ethyl benzene
Ethyl toluene
Isopropylbenzene
Methyl naphthalene
Naphthalene
1-Phenyl-1-xylyl ethane
•Propylbenzene
Pseudocumene
Tetradecylbenzene
Tetrahydronaphthalene
•1,2,3,5-Tetramethylbenzene
Toluene
Tridecylbenzene
Triethyl benzene
Trimethyl benzene
Undecylbenzene
Xylene

33. Miscellaneous Hydrocarbon Mixtures

•Alkyl benzene sulfonic acid, sodium salt solutions
Asphalt blending stocks, roofers flux
Asphalt blending stocks, straight run residue
•Aviation alkylates
Calcuim sulfonate, Calcium carbonate, Hydrocarbon solvent mixture
Carbon black base
Coal tar
Coal tar pitch
•Decahydronaphthalene
Diphenyl, Diphenyl ether
Distillates, flashed feed stocks
Distillates, straight run

•Drilling mud (low toxicity) *(if flammable or combustible)*
Fatty acid amides
Gas oil, cracked
Gasoline blending stock, alkylates
Gasoline blending stock, reformates
Gasolines:
Automotive *(not over 4.23 grams lead per gal.)*
Aviation *(not over 4.86 grams lead per gal.)*
Casinghead *(natural)*
Polymer
Straight run
Glycols, Resins, and Solvents mixture
Herbicide (C15-H22-NO2-Cl)
Jet Fuels:
JP-1
JP-3
JP-4
JP-5
•JP-8
Kerosene
Magnesium nonyl phenol sulfide
Maleic anhydride copolymer
Mineral spirits
Naphtha:
Coal tar solvent
Cracking fraction [3]
Petroleum
Solvent
Stoddard solvent
Varnish Makers' and Painters'
Nonyl phenolsulfide solution
Oil, fuel:
No. 1
No. 1-D
No. 2
No. 2-D
No. 4
No. 5
No. 6
Oil, misc:
Absorption
Aliphatic
Aromatic
Clarified
Coal
Crude
Diesel
Heartcut distillate
Linseed
Lubricating
Mineral
Mineral seal
Motor
Neatsfoot
Penetrating
Pine
Range
Resin
Resinous petroleum
Rosin
Sperm
Spindle
Spray
Tanner's
Turbine
White (mineral)
Residual
Road
Transformer
Oxyalkylated alkyl phenol formaldehyde
Petrolatum
Pine oil
Polyalkenyl succinic anhydride amine
White spirit (low (15-20%) aromatic)

34. Esters

Acetyl tributyl citrate
Alkyl phthalates
Amyl acetate
Amyl tallate
•Benzene tricarboxylic acid trioctyl ester
•Benzyl acetate
Butyl acetate
Butyl benzyl phthalate
•n-Butyl butyrate
Butyl formate
iso-Butyl isobutyrate
Calcium naphthenate in Mineral oil
•Calcium nitrate, Magnesium nitrate, Potassium chloride solution
•Coconut oil, fatty acid
•Cottonseed oil, fatty acid
•Cyclohexyl acetate
•Dialkyl(C7 - C13) phthalates
Dibutyl phthalate
•Diethylene glycol ethyl ether acetate
•Diethylene glycol methyl ether acetate
Diethylene glycol butyl ether acetate
•Diethylene glycol phthalate
•Di-(2-ethylhexyl)adipate
Di-(2-ethylhexyl)phthalate
Diethyl phthalate
Diethyl sulfate
Diheptyl phthalate
Di-n-hexyl adipate
Diisobutyl phthalate
Diisodecyl phthalate
Diisononyl adipate
Diisononyl phthalate
Diisooctyl phthalate
Dimethyl adipate
Dimethylcyclicsiloxane hydrolyzate
Dimethyl glutarate
Dimethyl hydrogen phosphite [3]
•Dimethyl naphthalene sulfonic acid, sodium salt solution [3]
Dimethyl phthalate
Dimethyl polysiloxane
Dimethyl succinate
Dinonyl phthalate
Dioctyl phthalate
Dipropylene glycol dibenzoate
•Ditridecyl phthalate
•2-Dodecenylsuccinic acid, dipotassium salt solution
Diundecyl phthalate
2-Ethoxyethyl acetate
Ethyl acetate
Ethyl acetoacetate
Ethyl butyrate
•Ethylene glycol acetate
Ethylene glycol diacetate
•Ethylene glycol methyl ether acetate
Ethylene glycol butyl ether acetate
Ethylene glycol ethyl ether acetate
Ethyl-3-ethoxypropionate
Ethyl hexyl phthalate
Ethyl hexyl tallate
Ethyl propionate
•Ethyl propionate
•Glycerol polyalkoxylate
Glyceryl triacetate
•Gylcidyl ester of tridecylacetic acid
Glycidyl ester of Versatic acid
Glycol diacetate
Heptyl acetate
Hexyl acetate
Magnesium sulfonate
•3-Methoxybutyl acetate
•1-Methoxy-2-propyl acetate
Methyl acetate
Methyl acetoacetate
Methyl amyl acetate
Methyl butyrate
Methyl formate
•3-Methyl-3-methoxybutyl acetate
Methyl salicylate
•Metolachlor
•Naphthalene sulfonic acid, sodium salt solution (40% or less)
•Octyl decyl adipate
Octyl epoxytallate
Octyl nitrate [3]
Oil, edible:
Babassu
Castor
Coconut [3]
Corn
Cotton seed
Fish [3]
Lard
Olive
Palm [3]
•Palm nut
Peanut
Rapeseed
Rice bran
Safflower
Soya bean
•Sunflower
Sunflower seed
Tucum
Vegetable
Oil, misc:
Coconut, methyl ester
•Coconut oil, fatty acid methyl ester
Cotton seed, fatty acid
Cotton seed, fatty acid
•Palm oil, fatty acid methyl ester
•Palm oil, methyl ester
Soapstock
Tall
Tall, fatty acid [3]
Tung
•Palm nut oil, fatty acid methyl ester
•Palm stearin
Polydimethylsiloxane
•Polyferric sulfate solution
Polymethylsiloxane
•Poly(20)oxyethylene sorbitan monooleate
•Polysiloxane
•Potassium oleate
Propyl acetate
•Sodium acetate solution
•Sodium benzoate solution
Sodium dimethyl naphthalene sulfonate solution [3]
Sodium naphthalene sulfonate solution
Tall oil
Tallow [3]
Tallow fatty acid [3]
Triarylphosphate
Tributyl phosphate
Tricresyl phosphate
Tridecane
•Triethylene glycol di-(2-ethylbutyrate)
Triethyl phosphate
Triethyl phosphite [3]
Triisooctyl trimellitate [3]
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate
2,2,4-Trimethyl-3-pentanol-1-isobutyrate

Trimethyl phosphite [2]
Trisodium nitrilotriacetate
Trixylenyl phosphate
Vinyl acetate-Fumarate copolymer
Waxes:
Carnauba

35. Vinyl Halides

Vinyl chloride
Vinylidene chloride

36. Halogenated Hydrocarbons

Benzyl chloride
Carbon tetrachloride
•Chlorinated paraffins (C10 - C13)
•Chlorinated paraffins (C14 - C17)
Chlorobenzene
Chlorodifluoromethane
Chloroform
Chlorotoluene
Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
2,2'-Dichloroisopropyl ether
Dichloromethane
Dichloropropane
Ethyl chloride
Ethylene dibromide
Ethylene dichloride [2]
Methyl bromide
Methly chloride
Monochlorodifluoromethane
Pentachloroethane
Perchloroethylene
1,1,2,2-Tetrachloroethane
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane [2]
1,1,2-Trichloroethane
Trichloroethylene [2]
1,2,3-Trichloropropane
1,1,2-Trichloro-1,2,2-trifluoroethane

37. Nitriles

Acetonitrile
Adiponitrile
Lactonitrile solution
3-Pentenenitrile
Propionitrile
Tallow nitrile

38. Carbon Disulfide

Carbon disulfide

39. Sulfolane

Sulfolane

40. Glycol Ethers

Diethylene glycol
•Diethylene glycol dibutyl ether
Diethylene glycol butly ether
Diethylene glycol ethyl ether
Diethylene glycol methly ether
Diethylene glycol phenyl ether
Dipropylene glycol
•Dipropylene glycol methyl ether
Ethoxy triglycol
•Ethylene glycol tert-butyl ether
•Ethylene glycol dibutyl ether
Ethylene glycol butyl ether
Ethylene glycol ethyl ether
Ethylene glycol isopropyl ether
Ethylene glycol methly ether
Ethylene glycol phenyl ether
•Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture
•Ethylene glycol propyl ether
Methoxy triglycol
Nonyl phenol (ethoxylated)
•Nonyl phenol poly(4-12)ethoxylates
Oil, misc:
Soybean (epoxidized)
•Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures
Polyethylene glycols
•Polyethylene glycol dimethyl ether
•Polyethylene glycol monoalkyl ether
Polypropylene glycol methyl ether
Polypropylene glycols
•n-Propoxypropanol
•Propylene glycol monoalkyl ether
•Propylene glycol ethyl ether
•Propylene glycol methyl ether
Tetraethylene glycol
Triethylene glycol
•Triethylene glycol butyl ether
Triethylene glycol butyl ether mixture
Triethylene glycol ether mixture
•Triethylene glycol ethyl ether
Tripropylene glycol
Tripropylene glycol methyl ether

41. Ethers

Butyl ether
2,2'-Dichlorodiethyl ether
Digylcidyl ether of Bisphenol A
•Diglycidyl ether of Bisphenol F
Dimethyl furan
1,4-Dioxane
Diphenyl ether
Diphenyl ether, Diphenyl phenyl ether mixture
Ethyl ether
Methyl-tert-butyl ether [2]
Methyl formal
Propyl ether
Tetrahydrofuran

42. Nitrocompounds

Dinitrotoluene
Nitrobenzene
o-Nitrochlorobenzene
Nitroethane
Nitropropane
Nitropropane, Nitroethane mixture
Nitrotoluene

43. Miscellaneous Water Solutions

Aluminum sulfate solution [2]
2-Amino-2-hydroxymethyl-1,3-propanediol solution
Ammonium bisulfite solution [2]
Ammonium nitrate, Urea solution (not containing Ammonia)
Ammonium polyphosphate solution
Ammonium sulfate solution
Ammonium thiosulfate solution
Calcium bromide solution
Calcium chloride solution
Corn syrup
Dextrose solution
Diammonium salt of Zinc EDTA solution
2,4-Dichlorophenoxy acetic acid, Diethanolamine salt solution
2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution [2]
•Didecyl dimethyl ammonium chloride, Ethanol mixture solution
Diethanolamine salt of 2,4-Dichlorophenoxy acetic acid solution
Dodecyl diphenyl ether disulfonate solution
•Drilling brine (containing Calcium or Sodium salts)
•Drilling brine (containing Zinc salts)
•Drilling mud (low toxicity) *(if non-flammable or non-combustible)*
•Ethylene diamine tetracetic acid, tetrasodium salt solution
Ethylene-Vinyl acetate copolymer emulsion
•Ferric hydroxyethylethylenediamine triacetic acid, trisodium salt solution [2]
•Fish solubles *(water based fish meal extracts)*
•Fructose solution
Fumaric adduct of Rosin, water dispersion
•N-(Hydroxyethyl)ethylene diamine triacetic acid, trisodium salt solution
Kaolin clay slurry
Latex, liquid synthetic
Lignin liquor
•Naphthenic acid, sodium salt solution
Rosin soap (disproportionated) solution
Sewage sludge
Sodium alkyl sulfonate solution
Sodium hydrogen sulfite solution
Sodium polyacrylate solution [2]
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution
Sodium silicate solution [2]
Tall oil soap (disproportionated) solution
Tetrasodium salt of EDTA solution
Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution
Urea, Ammonium nitrate solution (not containing Ammonia)
•Urea, Ammonium phosphate solution
•Vegetable protein solution (hydrolysed)

Footnotes to Table II

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593-0001. Telephone (202) 267-1577.

[2] See Appendix I - Exceptions to the Chart.

Appendix I - Exceptions to the Chart

Entries in **boldface** are newly authorized exceptions to 46 CFR Part 150

(a). The binary combinations listed below have been tested as prescribed in Appendix III and found not to be dangerously reactive. These combinations are exceptions to the Compatibility Chart (Figure 1) and may be stowed in adjacent tanks.

Member of reactive group	Compatible with
Acetone (18)	Diethylenetriamine (7)
Acetone cyanohydrin (0).	Acetic acid (4)
Acrylonitrile (15)	Triethanolamine (8)
1,3-Butylene glycol (20).	Morpholine (7)
1,4-Butylene glycol (20).	Ethylamine (7) Triethanolamine (8)
Caustic potash, 50% or less (5).	Ethyl alcohol (20)
	Ethylene glycol (20)

Member of reactive group	Compatible with
	Isopropyl alcohol (20)
	Methyl alcohol (20)
	iso-Octyl alcohol (20)
Caustic soda, 50% or less (5).	Butyl alcohol (20)
	tert-Butyl alcohol, Methanol mixtures
	Decyl alcohol (20)
	Diacetone alcohol (20)
	Diethylene glycol (40)
	Ethyl alcohol (20)
	Ethyl alcohol (40%, whiskey) (20)
	Ethylene glycol (20)
	Ethylene glycol, Diethylene glycol mixture (20)
	Ethyl hexanol (Octyl alcohol) (20)
	Methyl alcohol (20)
	Nonyl alcohol (20)
	Propyl alcohol (20)
	Propylene glycol (20)
	Sodium chlorate (0)
	iso-Tridecanol (20)
Dodecyl and Tetradecylamine mixture (7).	Tall oil, fatty acid (34)
Ethylenediamine (7)	Butyl alcohol (20)
	tert-Butyl alcohol (20)
	Butylene glycol (20)
	Creosote (21)
	Diethylene glycol (40)
	Ethyl alcohol (20)
	Ethylene glycol (20)
	Ethyl hexanol (20)
	Glycerine (20)
	Isononyl alcohol (20)
	Isophorone (18)
	Methyl butyl ketone (18)
	Methyl iso-butyl ketone (18)
	Methyl ethyl ketone (18)
	Propyl alcohol (20)
	Propylene glycol (20)
Oleum (0).....	Hexane (31)
	Dichloromethane (Methylene chloride) (36)
	Perchloroethylene (36)
1,2-Propylene glycol (20).	Diethylenetriamine (7)
	Polyethylene polyamines (7)
	Triethylenetetramine (7)
Sulfuric acid (2).....	Coconut oil (34)
	Coconut oil acid (34)
	Palm oil (34)
	Tallow (34)
Sulfuric acid, 98% or less (2).	Choice white grease tallow (34)

(b). The binary combinations listed below have been determined to be dangerously reactive, based on either data obtained in the literature or on laboratory testing which has been carried out in accordance with procedures prescribed in Appendix III. These combinations are exceptions to the Compatibility Chart (Figure 1) and may not be stowed in adjacent tanks.

Acetone cyanohydrin (0) is not compatible with Groups 1-12, 16, 17 and 22.

Acrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Acrylic acid (4) is not compatible with Group 9, Aromatic Amines.

Alkyl benzene sulfonic acid (0) is not compatible with Groups 1-3, 5-9, 15, 16, 18, 19, 30, 34, 37, and strong oxidizers.

Allyl alcohol (15) is not compatible with Group 12, Isocyanates.

Aluminum sulfate solution (43) is not compatible with Groups 5-11.

Ammonium bisulfite solution (43) is not compatible with Groups 1, 3, 4, and 5.

Benzenesulfonyl chloride (0) is not compatible with Groups 5-7, and 43.

gamma-Butyrolactone (0) is not compatible with Groups 1-9.

Crotonaldehyde (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Cyclohexanone, Cyclohexanol mixture (18) is not compatible with Group 12, Isocyanates.

2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution (43) is not compatible with Group 3, Nitric Acid.

Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution (0) is not compatible with Groups 1-5, 11, 12, and 16.

Dimethyl hydrogen phosphite (34) is not compatible with Groups 1 and 4.

Dimethyl naphthalene sulfonic acid, sodium salt solution (34) is not compatible with Group 12, Formaldehyde, and strong oxidizing agents.

Dodecylbenzenesulfonic acid (0) is not compatible with oxidizing agents and Groups 1, 2, 3, 5, 6, 7, 8, 9, 15, 16, 18, 19, 30, 34, and 37.

Ethyl chlorothioformate (0) is not compatible with Groups 5, 6, 7, 8, and 9.

Ethylenediamine (7) is not compatible with Ethylene dichloride (36).

Ethylene dichloride (36) is not compatible with Ethylenediamine (7).

Ethylidene norbornene (30) is not compatible with Groups 1-3 and 5-8.

2-Ethyl-3-propylacrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Fish oil (34) is not compatible with Sulfuric acid (2).

Formaldehyde (over 50%) in Methyl alcohol (over 30%) (19) is not compatible with Group 12, Isocyanates.

Formic acid (4) is not compatible with Furfural alcohol (20).

Furfuryl alcohol (20) is not compatible with Group 1, Non-Oxidizing Mineral Acids and Formic acid (4).

2-Hydroxyethyl acrylate is not compatible with Groups 2, 3, 5-8 and 12.

Isophorone (18) is not compatible with Group 8, Alkanolamines.

Magnesium chloride solution (0) is not compatible with Groups 2, 3, 5, 6 and 12.

Mesityl oxide (18) is not compatible with Group 8, Alkanolamines.

Methyl tert-butyl ether (41) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Naphtha, cracking fraction (33) is not compatible with strong acids, caustics or oxidizing agents.

o-Nitrophenol (0) is not compatible with Groups 2, 3, and 5-10.

Octyl nitrates (all isomers) (34) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Oleum (0) is not compatible with Sulfuric acid (2) and 1,1,1-Trichloroethane (36).

Pentene, Miscellaneous hydrocarbon mixtures (30) are not compatible with strong acids or oxidizing agents.

Sodium chlorate solution (50% or less) (0) is not compatible with Groups 1-3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dichromate solution (70% or less) (0) is not compatible with Groups 1-3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dimethyl naphthalene sulfonate solution (34) is not compatible with Group 12, Formaldehyde and strong oxidizing agents.

Sodium hydrogen sulfide, Sodium carbonate solution (0) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium hydrosulfide (5) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium hydrosulfide, Ammonium sulfide solution (5) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium polyacrylate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution (43) **is not compatible with Group 3, Nitric acid.**

Sodium silicate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium sulfide, hydrosulfide solution (0) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium thiocyanate (56% or less) (0) is not compatible with Groups 1-4.

Sulfuric acid (2) is not compatible with Fish oil (34), or Oleum (0).

Tallow fatty acid (34) is not compatible with Group 5, Caustics.

1,1,1-Trichloroethane (36) is not compatible with Oleum (0).

Trichloroethylene (36) is not compatible with Group 5, Caustics.

Triethyl phosphite (34) is not compatible with Groups 1, and 4.

Trimethyl phosphite (34) is not compatible with Groups 1 and 4.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

6. The authority citation for Part 151 is revised to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3703; 49 CFR 1.46.

7. In Part 151, by removing the words "gage", "gages", and "gaging" wherever they may appear and adding, in their place, the words "gauge", "gauges", or "gauging", respectively.

§ 151.01–10 [Amended]

8. In § 151.01–10, by removing Table 151.01–10(b) following paragraph (b) and by removing from paragraphs (b), (c), (c–1), (d), and (e) the words "Table 151.01–10(b)" and adding, in their place, the words "Table 151.05".

§§ 151.01–15, 151.01–20, 151.04–1, and 151.04–5 [Amended]

9. In §§ 151.01–15 (a) and (b), 151.01–20 (a) and (b), 151.04–1(c), and 151.04–5(h), by removing the words "Table 151.01–10(b)" and adding, in their place, the words "Table 151.05".

10. In § 151.05–1, by revising paragraphs (a), (o), and (p) to read as follows:

§ 151.05–1 Explanation of column headings in Table 151.05.

(a) *Cargo identification/name.* This column identifies cargoes by name. Words in italics are not part of the cargo name but may be used in addition to the cargo name. When one entry references another entry by use of the word "see" and both names are in roman type, either name may be used as the cargo name (e.g., "Diethyl ether *see* Ethyl ether"). However, the referenced entry is preferred.

* * * * *

(o) *Special requirements.* This column refers to requirements in Subparts 151.50, 151.55, 151.56, and 151.58 of this part which apply to specific cargoes. The section numbers listed omit the preceding part designation, "151".

* * * * *

(p) *Electrical hazard class—group.* This column refers to the hazardous material class and group ratings.

* * * * *

11. By revising Table 151.05 to read as follows:

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Acetaldehyde	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	Inerted	Vent F	Yes	.55-1(h)	I-C	NA	G
Acetic acid	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(g)	I-D	NA	G
Acetic anhydride	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(g)	I-D	NA	G
Acetone cyanohydrin	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-70(b)** **.50-73** **.50-81**	NA	NA	G
Acetonitrile	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
*Acrylic acid	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.50-70(a) .50-73 **.50-81** .58-1(a)	I-D	NA	G
Acrylonitrile	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(e) **.50-70(a)**	I-D	NA	G
Adiponitrile	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	No	NA	NA	G
Allyl alcohol	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73**	I-C	NA	G
Allyl chloride	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-D	NA	G
*Aluminum sulfate solution	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.58-1(e)	NA	NA	G
Aminoethylethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	NA	NA	G
Ammonia, anhydrous	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR 250 p.s.i.	Restr.	II	P-2	NR	Vent F	No	.50-30 .50-32	I-D	NA	8
Ammonia, anhydrous	Atmos.	Low	II	1NA 2ii	Ind. Gravity	PV	Restr.	II-L	G-2	NR	Vent F	No	.50-30 .50-32	I-D	.40-1(b)(1)	8
*Ammonium bisulfite solution (70% or less).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .56-1(a), (b), (c)	NA	NA	G
Ammonium hydroxide (28% or less NH_3).	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	I-D	NA	G
Aniline	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	**.50-73**	NA	NA	G
*Anthracene oil (Coal tar fraction).	Atmos	Amb Elev	II	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
*Argon, liquefied	Press	Low	III	1NA 2i	Ind. Pressure	SR	Restr	II-L	P-1	NR	Vent F	No	.40-1(a) .50-30 .50-36.	NA	.40-1(a)	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Benzene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.50-60	I-D	NA	G
Benzene hydrocarbon mixtures (containing Acetylenes) (*having 10% Benzene or more*).	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.56-1(b), (d), (f), (g)**	I-D	NA	G
Benzene hydrocarbon mixtures (*having 10% Benzene or more*).	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Benzene, Toluene, Xylene mixtures (*having 10% Benzene or more*).	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Butadiene	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	**.50-70(a)**	I-B	NA	8
Butadiene, **Butylene** mixtures (*containing Acetylenes*).	Press	Amb	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	NR	Vent F	Yes	**.50-30** **.50-70(a)** **.56-1(b), (d), (f), (g)**	I-B	NA	8
iso-Butyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
n-Butyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Butylamine **(all isomers)**	Atmos.	Amb.	II	1ii 2ii	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Butyl methacrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
iso-Butyraldehyde	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
n-Butyraldehyde	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
Butyraldehydes (crude)	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	No	I-C	NA	G
Camphor oil (*light*)	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Carbolic oil	Atmos.	Amb	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73**	NA	NA	G
Carbon dioxide, liquid	Press.	Low	III	1 NA 2i	Ind. Pressure	SR	Restr.	I-L	P-1	NR	Vent F	No	.50-30	NA	.40-1(b)(1)	G
Carbon disulfide	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Restr.	II	G-1	Inert	Vent F	Yes	.50-40 .50-41	I-A	NA	G
Carbon tetrachloride	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Open	II	G-1	NR	Vent N	No	No	NA	NA	G
Caustic potash solution	Atmos.	Amb. Elev.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	**.50-73** .55-1(j)	NA	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Caustic soda solution	Atmos.	Amb. Elev.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .55-1(j)	NA	NA	G
Chlorine	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR 300 p.s.i.	Indirect	I	P-2	NR	Vent F	No	.50-30 .50-31	NA	NA	2
Chlorobenzene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Chloroform	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent F	No	No	NA	NA	G
Chlorohydrins	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-D	NA	G
Chlorosulfonic acid	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 **.50-73**	I-B	NA	G
*Coal tar naphtha solvent	Atmos	Amb	III	1i 2i	Integral Gravity	PV	Restr	II	G-1	NR	**Vent F**	Yes	No	**I-D**	NA	G
*Coal tar pitch (molten)	Atmos	Elev	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Creosote	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Cresols **(all isomers)**	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
**Cresols with 5% or less Phenol see* Cresols (all isomers).																
**Cresols with more than 5% Phenol see* Phenol.																
Cresylate spent caustic	Atmos.	Amb.	III	1ii 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .55-1(b)	NA	NA	G
Crotonaldehyde	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
*Cyclohexanone	Atmos	Amb	III	1i 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(a), (b)	I-D	NA	G
*Cyclohexylamine	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(a), (b), (c), **(g)**	I-D	NA	G
Iso-Decyl acrylate	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)** .55-1(c)	NA	NA	G
*Dichlorobenzene (all isomers).	Atmos	Amb	III	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(a), (b)	I-D	NA	G
*1,1-Dichloroethane	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Dichlorodifluoromethane	Press.	Amb.	III	1NA 2i	Ind. Pressure	SR	Restr.	II	P-1	NR	NR	No	No	NA	NA	8

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
2,2'-Dichloroethyl ether	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(f)	I-D	NA	G
Dichloromethane	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
*2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution.	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.56-1(a), (b), (c), (g)	NA	NA	G
*2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	Atmos	Amb/ Elev	III	1i 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	.56-1(a), (b), (c), (g)	NA	NA	G
*2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.56-1(a), (b), (c), (g)	NA	NA	G
1,1-, 1,2-, or 1,3-Dichloropropane.	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
1,3-Dichloropropene	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
*Dichloropropene, Dichloropropane mixtures.	Atmos	Amb	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
*2,2-Dichloropropionic acid	Atmos	Amb	II	1ii 2i	Integral Gravity	PV	Restr	II	G-1	Dry	Vent F	Yes	.50-73 .56-1(e)	NA	NA	G
Diethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Diethylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Diethylenetriamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
*Diethyl ether *see* Ethyl ether.				—												
Diisobutylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Diisopropanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Diisopropylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
*N,N-Dimethylacetamide	Atmos	Amb	III	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(b)	I-D	NA	G
Dimethylamine	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.55-1(c)	I-C	NA	8
*Dimethylethanolamine	Atmos	Amb	III	1i 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(b), (c)	I-C	NA	G
Dimethylformamide	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-D	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
1,4-Dioxane	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	Inerted	Vent F	Yes	No	I-C	NA	G
*Diphenylmethane diisocyanate.	Atmos	Elev	II	1ii 2i	Integral Gravity	PV	Closed	I	G-1	Inert Dry	Vent F	Yes	.50-5 .56-1(a), (b)	NA	Yes	G
Di-n-propylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Epichlorohydrin	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-C	NA	G
Ethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Ethyl acrylate	Atmos.	Amb.	II	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Ethylamine **solution** (72% or less).	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(b)	I-D	NA	G
N-Ethylbutylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(b)	I-C	NA	G
Ethyl chloride	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	No	I-D	NA	8
N-Ethylcyclohexylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(b)	I-C	NA	G
*Ethylene chlorohydrin	Atmos	Amb	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73.	I-D	NA	G
Ethylene cyanohydrin	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Ethylenediamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Ethylene dibromide	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	No	No	NA	NA	G
Ethylene dichloride	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
*Ethylene glycol propyl ether.	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Ethylene oxide	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	Inert	Vent F	Yes	.50-10 .50-12	I-B	.40-1(c)	4
Ethyl ether	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Closed	II	G-1	Inert	Vent F	Yes	.50-40 .50-42	I-C	NA	G
2-Ethyl hexyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-70(a) .50-81(a), (b)	NA	NA	G
Ethylidene norbornene	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-5 .50-74	I-C	NA	G
*Ethyl methacrylate	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.50-70(a)	I-D	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
2-Ethyl-3-propyl acrolein	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-C	NA	G
Ferric chloride solutions	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 **.50-75**	I-B	NA	
Formaldehyde solution (37% to 50%).	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.55-1(h)	I-C	NA	G
Formic acid	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(j)	I-D	NA	G
Furfural	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
*Glutaraldehyde solution (50% or less).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	No	NA	NA	G
Hexamethylenediamine solution.	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
*Hexamethyleneimine	Atmos	Amb	II	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(b), (c)	I-C	NA	G
Hydrochloric acid	Atmos.	Amb.	III	1NA 2ii	Ind. Gravity	Open	Open	II	G-1	NR	Vent F	No	.50-20 .50-22 **.50-73**	I-B	NA	4
Hydrochloric acid, spent (15% or less).	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent F	No	.50-75(a) .50-76 **.50-73**	I-B	NA	4
Hydrofluorosilicic acid (25% or less).	Atmos.	Amb.	II	1ii 2ii	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	No	.50-20 **.50-22** **.50-77**	I-B	NA	4
2-Hydroxyethyl acrylate	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-70(a)** **.50-73** **.50-81(a), (b)**	NA	NA	G
*Isopentaldehyde (mixed isomers) see Valeraldehyde (iso-, n-).																
Isoprene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
*Kraft pulping liquors (free alkali content 3% or more) (*including: Black, Green, or White liquor*).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	**.50-73** .56-1(a), (c), (g)	NA	NA	G
*Mesityl oxide	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Methylacetylene, Propadiene mixture.	Press.	Amb	III	1 NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.50-79	I-C	NA	G
Methyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G

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TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
*Methylamine (anhydrous)	Press	Amb	I	1NA 2i	Ind. Pressure	SR	Closed	II	P-2	NR	Vent F	Yes	.50-30 .56-1(a), (b), (c)	I-D	NA	8
*Methylamine solution (42% or less).	Atmos	Amb	II	1NA 2i	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.56 1(a), (b), (c), (g)	I-D	NA	G
Methyl bromide	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Closed	I	P-2	NR	Vent F	Yes	.50-5	I-D	NA	2
Methyl chloride	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.55-1(c)	I-D	NA	8
*Methylcyclopentadiene dimer.	Atmos	Amb	III	1i 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	No	I-B	NA	G
*Methyldiethanolamine	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(b), (c)	I-C	NA	G
2-Methyl-5-ethyl pyridine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(e)	NA	NA	G
Methyl methacrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
2-Methylpyridine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G 1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
alpha-Methyl styrene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Monochlorodifluoromethane	Press.	Amb.	III	1NA 2i	Ind. Pressure	SR	Restr.	I	P-1	NR	NR	No	No	NA	NA	8
Morpholine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	I-C	NA	G
Motor fuel anti-knock compounds (containing lead alkyls).	Atmos.	Amb.	I	1ii 2ii	Ind. Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-6	I-D	NA	.50-6
Nitric acid (70% or less)	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-20 .50-73 .50-80	I-B	NA	4
Nitrobenzene	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	I-D	NA	G
*Nitrogen, liquefied	Press	Low	III	1NA 2i	Ind. Pressure	SR	Restr	II-L	P-1	NR	Vent F	No	.40-1(a) .50-30 .50-36	NA	.40-1(a)	G
1- or 2-Nitropropane	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-81	I-C	NA	G
*Octyl nitrates (all isomers)	Atmos	Amb	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-81 .50-86	NA	NA	G
Oleum	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 .50-73	I-B	NA	4

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
*Pentachloroethane	Atmos	Amb	III	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	No	NA	NA	G
1,3-Pentadiene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81**	I-D	NA	G
Perchloroethylene	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
Phenol	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73**	NA	NA	2
Phosphoric acid	Atmos.	Amb.	III	1ii 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-23	I-B	NA	4
Phosphorus, elemental	Atmos.	Elev.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	Water Pad	Vent F	Yes	.50-50	NA	NA	4-8
Phthalic anhydride **(molten)**	Atmos.	Elev.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	NA	NA	G
Polyethylene polyamines	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(e)	NA	NA	G
Polymethylene polyphenyl isocyanate.	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	**Dry**	Vent F	Yes	.55-1(e)	NA	NA	G
*Potassium hydroxide solution *see* Caustic potash solution.																
Iso-Propanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
*Propanolamine (iso-, n-)	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(b), (c)	I-D	NA	G
Propionic acid	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(g)	I-D	NA	G
Iso-Propylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Propylene oxide	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	Inerted	Vent F	Yes	.50-10 .50-13	I-B	NA	4
*iso-Propyl ether	Atmos	Amb	III	**1ii** 2ii	Integral Gravity	PV	Restr	II	G-1	**Inert**	**Vent F**	Yes	**.50-70(a)**	I-D	NA	G
Pyridine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-D	NA	G
*Sodium aluminate solution	Atmos	Amb/ Elev	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .56-1(a), (b), (c)	NA	NA	G
Sodium chlorate solution (50% or less).	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	No	NA	NA	G
*Sodium dichromate solution (70% or less).	Atmos	Amb	II	1ii 2ii	Integral Gravity	Open	Closed	II	G-1	NR	Vent N	No	.50-5(d) .50-73 .56-1(b), (c)	NA	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
*Sodium hydroxide solution *see* Caustic soda solution.																
*Sodium hypochlorite solution (15% or less).	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.50-73 .56-1(a), (b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S 15ppm or less).	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .55-1(b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S greater than 15ppm but less than 200ppm).	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-73 .55-1(b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S greater than 200ppm).	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	No	.50-73 .55-1(b)	NA	NA	G
*Sodium thiocyanate solution (56% or less).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.58-1(a)**	NA	NA	G
Styrene *monomer*	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Sulfur **(molten)**	Atmos.	Elev.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	Vent N	Vent N	Yes	.50-55	I-C	40-1(f)(1)	G
Sulfur dioxide	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Closed		P-2	NR	Vent F	No	.50-30 .50-35 .55-1(j)	NA	NA	2
Sulfuric acid	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 **.50-73**	I-B	NA	4
Sulfuric acid, spent	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 **.50-73**	I-B	NA	4
*1,1,2,2-Tetrachloroethane	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	No	NA	NA	G
Tetraethylenepentamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
*Tetrahydrofuran	Atmos	Amb	III	1i 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.50-70(b)	I-C	NA	G
Toluene diisocyanate	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	**Dry N_2**	Vent F	Yes	.50-5 .55-1(e)	NA	NA	G
*1,1,2-Trichloroethane	Atmos	Amb	III	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	.50-73 .56-1(a)	I-D	NA	G
Trichloroethylene	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	I-D	NA	G
1,2,3-Trichloropropane	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-73** **.56-1(a)**	NA	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Triethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	NA	NA	G
Triethylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-C	NA	G
Triethylenetetramine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	NA	NA	G
*Urea, Ammonium nitrate **solution (containing more than 2% NH_3)**.	Atmos	Amb	III	1i 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	**.56-1(b)**	I-D	NA	G
*Valeraldehyde (iso-, n-)	Atmos	Amb	III	1i 2ii	Integral Gravity	PV	Restr	II	G-1	Inert	Vent F	Yes	No	I-C	NA	G
*Vanillan black liquor (free alkali content 3% or more).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	**.50-73** .56-1(a), (c), (g)	NA	NA	G
Vinyl acetate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	**Vent F**	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Vinyl chloride	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Closed	II	P-2	NR	Vent F	Yes	.50-30 .50-34	I-D	NA	8
Vinyl chloride	Atmos.	Low	II	1NA 2ii	Ind. Gravity	PV	Closed	II-L	G-2	NR	Vent F	Yes	.50-30 .50-34	I-D	.40-1(b)(1)	8

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation Tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Vinylidene chloride	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Closed	II	P-2	Padded	Vent F	Yes	.55-1(f) **.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
*Vinyl toluene	Atmos	Amb	III	1i 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.50-70(a) **.50-81** .56-1(a), (b), (c), (g) .50-81	I-D	NA	G
For requirements see these sections:			151.10	151.13-5	151.15-1	151.15-5	151.15-10	151.20-1	151.20-5	151.25-1	151.25-2	151.30		111.105 (Subchapter J)	151.40	151.04-5

* denotes newly added products.
Entries in **boldface** are changes.

Terms and symbols:

Segregation—Tank—
Line 1—Segregation of cargo from surrounding waters:
i = Skin of vessel (single skin) only required. Cargo tank wall can be vessel's hull.
ii = Double skin required. Cargo tank wall cannot be vessel's hull.
Line 2—Segregation of cargo space from machinery spaces and other spaces which have or could have a source of ignition:
i = Single bulkhead only required. Tank wall can be sole separating medium.
ii = Double bulkhead required. Cofferdam, empty tank, pumproom, tank with Grade E Liquid (if compatible with cargo) is satisfactory.
Internal tank inspection—
G—Indicates cargo is subject to general provisions of § 151.04-5(b).
Specific numbers in this column are changes from the general provisions.

Abbreviations used:
Tank type: Ind = Independent.
Vent:
PV = Pressure vacuum valve.
SR = Safety relief.
Gauging device: Restr. = Restricted.
General usage:
NR = No requirement.
NA = Not applicable.

§ 151.12-5 [Amended]

12. In § 151.12-5, by removing from the list "n-Butyl acrylate" and "2-Ethylhexyl acrylate" and by adding in alphabetical order "Acetic acid", "Ammonium bisulfite solution", "Coal tar pitch", "2,2-Dichloropropionic acid", "N,N-Dimethylacetamide", "Dichloromethane", "Polyethylene polyamine", and "Pyridine".

13. In § 151.25-1, by adding a new paragraph (e) to read as follows:

§ 151.25-1 Cargo tank.

* * * * *

(e) *Dry.* All vapor space within the cargo tank is filled and maintained with a gas or vapor containing no more than 100 ppm water.

Subpart 151.50—[Amended]

14. By revising the heading to Subpart 151.50 to read as follows:

Subpart 151.50—Special Requirements

15. In § 151.50-5, by adding introductory text and by removing and reserving paragraph (a) as follows:

§ 151.50-5 Cargoes having toxic properties.

When Table 151.05 refers to this section, the following apply:

(a) [Reserved]

* * * * *

16. In § 151.50-20, by revising paragraph (k) to read as follows:

§ 151.50-20 Inorganic acids.

* * * * *

(k) The special requirements for hydrochloric acid in § 151.50-22, for hydroflurosilicic acid in § 151.50-77, for phosphoric acid in § 151.50-23, and for sulfuric acid in § 151.50-21 also apply to the carriage of those acids.

§ 151.50-22 [Amended]

17. In § 151.50-22(d), by removing the words "Commandant (MHM)" and adding, in their place, the words "Commandant (G-MTH)".

§ 151.50-24 [Removed]

18. By removing § 151.50-24, Hydrofluoric acid.

19. In § 151.50-30, by removing from paragraph (e) "§ 515.45-6(b)" and adding, in its place, "§ 151.45-6(b)", by removing from the table in paragraph (e) the line entry for "Hydrogen chloride", and by revising paragraph (g), to read as follows:

§ 151.50-30 Compressed gases.

* * * * *

(g) The special requirements for ammonia (anhydrous) in § 151.50-32, for argon in § 151.50-36, for chlorine in § 151.50-31, for nitrogen in § 151.50-36, and for vinyl chloride in § 151.50-34 also apply to the carriage of those gases.

§ 151.50-32 [Amended]

20. By revising the section heading for § 151.50-32 to read "Ammonia, anhydrous".

§ 151.50-33 [Removed]

21. By removing § 151.50-33, Anhydrous hydrogen chloride.

§ 151.50-34 [Amended]

22. In § 151.50-34(g)(3) and (k), by removing "29 CFR 1910.93q(g)" and adding, in its place, "29 CFR 1910.1017".

23. By adding a new § 151.50-36 to read as follows:

§ 151.50-36 Argon or nitrogen.

(a) A cargo tank that contains argon or nitrogen and that has a maximum allowable working pressure of 172 kPa (25 psig) or greater must have one of the following arrangements:

(1) A refrigeration system that keeps the tank pressure below the safety relief valve operating pressure when ambient temperatures are 46° C (115° F) air and 32° C (90° F) water.

(2) A relief valve or pressure control valve that maintains the tank pressure below the setting of the tank's required safety relief valve in ambient temperatures of 46° C (115° F) air and 32° C (90° F) water.

(b) A cargo tank with a maximum allowable working pressure of less than 172 kPa (25 psig) is approved by the Commandant (G-MTH) on a case by case basis.

(c) Section 151.50-30 also applies to the carriage of argon or nitrogen.

§§ 151.50-40 and 151.50-41 [Amended]

24. In §§ 151.50-40 and 151.50-41, by removing the words "carbon bisulfide" and adding, in their place, the words "carbon disulfide (*carbon bisulfide*)".

§ 151.50-42 [Amended]

25. In § 151.50-42(e), by removing "Class 1" and adding, in its place, "Class I" and by removing "§ 111.70-10(c)(4)" and adding, in its place, "Part 111, Subpart 111.105".

§ 151.50-55 [Amended]

26. By revising the section heading for § 151.50-55 to read "Sulfur (molten)".

§ 151.50-65 [Removed]

27. By removing § 151.50-65, Hydrogen fluoride.

28. By adding a new § 151.50-70 to read as follows:

§ 151.50-70 Cargoes requiring inhibition or stabilization.

When Table 151.05 refers to this section, that cargo must be—

(a) Inhibited; or

(b) Stabilized.

§§ 151.50-71 and 151-72 [Removed]

29. By removing § 151.50-71, Benzene-hydrocarbon mixtures (containing acetylenes), and § 151.50-72, Butadiene, butene mixture (inhibited).

30. By revising § 151.50-73 to read as follows:

§ 151.50-73 Chemical protective clothing.

When Table 151.05 refers to this section, the following apply:

(a) The person in charge of cargo handling operations shall ensure that the following chemical protective clothing constructed of materials resistant to permeation by the cargo being handled is worn by all personnel engaged in an operation listed in paragraph (b) of this section:

(1) Splash protective eyewear.

(2) Long-sleeved gloves.

(3) Boots or shoe covers.

(4) Coveralls or lab aprons.

Note to paragraph (a).—"Guidelines for the Selection of Chemical Protective Clothing", Third Edition, 1987, available from the American Conference of Governmental Industrial Hygienists, 6500 Glenway Ave., Cincinnati, OH 45211-4438, provides information on the proper clothing for the cargo being handled.

(b) The section applies during the following operations:

(1) Sampling cargo.

(2) Transferring cargo.

(3) Making or breaking cargo hose connections.

(4) Gauging a cargo tank.

(5) Opening cargo tanks.

(c) Coveralls or lab aprons may be replaced by splash suits or aprons constructed of light weight materials if, in the judgment of the person in charge of cargo handling operations:

(1) Contact with the cargo is likely to occur only infrequently and accidentally; and

(2) The splash suit or apron is disposed of immediately after contamination.

(d) Splash protective eyewear must be tight-fitting chemical-splash goggles, face shields, or similar items intended specifically for eye protection from chemical splashing or spraying.

(e) The person in charge of cargo handling operations shall ensure that each person in the vicinity of an operation listed in paragraph (b) of this section or in the vicinity of tanks, piping, or pumps being used to transfer the

cargo wears splash protective eyewear under paragraph (d) of this section.

§ 151.50–74 [Amended]

31. By revising the section heading of § 151.50–74 to read "Ethylidene norbornene."

§ 151.50–75 [Amended]

32. In § 151.50–75, by removing paragraph (b).

§ 151.50–78 [Removed]

33. By removing § 151.50–78, Industrial wastes (containing dimethyldisulfide, methyl mercaptan, and methomyl).

§ 151.50–80 [Amended]

34. In § 151.50–80(a), by adding at the end of the paragraph the words "See § 151.15–3(f)(2)."

35. In § 151.50–81, by revising the section heading and adding introductory text to read as follows:

§ 151.50–81 Special operating requirements for heat sensitive cargoes.

When Table 151.05 refers to this section, the following apply to the cargo:

* * * * *

§§ 151.50–82 and 151.50–83 [Removed]

36. By removing §§ 151.50–82, Polyvinylbenzyltrimethyl ammonium chloride solution, and 151.50–83, Sodium sulfide, hydrosulfide solutions.

§ 151.50–85 [Removed]

37. By removing § 151.50–85, 1,2,3-Trichloropropane.

38. By adding a new § 151.50–86 to read as follows:

§ 151.50–86 Octyl nitrates.

(a) The carriage temperature of octyl nitrates must be maintained below 100° C (212° F) in order to prevent the occurrence of a self-sustaining exothermic decomposition reaction.

(b) Octyl nitrates may not be carried in a deck tank unless the tank has a combination of insulation and a water deluge system sufficient to maintain the tank's cargo temperature below 100° C (212° F) and the cargo temperature rise at or below 1.5° C (2.7° F)/hour, for a fire of 650° C (1200° F).

39. In § 151.55–1, by adding words at the end of paragraphs (b), (c), (d), (e), (f), (g), and (j) to read as follows:

§ 151.55–1 General.

* * * * *

(b) * * *. (Equivalent to § 151.56–1 (a), (b), and (c).)

(c) * * *. (Equivalent to § 151.56–1 (b), (c), and (g).)

(d) * * *. (Equivalent to § 151.56–1 (a), (c), and (d).)

(e) * * *. (Equivalent to § 151.56–1 (b).)

(f) * * *. (Equivalent to § 151.56–1 (a) and (b).)

(g) * * *. (Equivalent to § 151.56–1 (a).)

* * * * *

(j) * * *. (Equivalent to § 151.56–1 (a) and (c).)

40. By adding a new Subpart 151.56 and § 151.56–1 to read as follows:

Subpart 151.56—Prohibited Materials of Construction

§ 151.56–1 Prohibited materials.

When one of the following paragraphs of this section is referenced in Table 151.05, the materials listed in that paragraph may not be used in components that contact the cargo or its vapor:

(a) Aluminium or aluminum alloys.

(b) Copper or copper alloys.

(c) Zinc, galvanized steel, or alloys having more than 10 percent zinc by weight.

(d) Magnesium.

(e) Lead.

(f) Silver or silver alloys.

(g) Mercury.

41. By adding a new Subpart 151.58 and § 151.58–1 to read as follows:

Subpart 151.58—Required Materials of Construction.

§ 151.58–1 Required materials.

When one of the following paragraphs of this section is referenced in Table 151.05, only those materials listed in that paragraph may be used in components that contact the cargo or its vapor.

(a) Aluminium, stainless steel, or steel covered with a protective lining or coating. (See § 151.15–3(f)(2).)

(b) [Reserved]

(c) [Reserved]

(d) Solid austenitic stainless steel.

(e) Stainless steel or steel covered with a suitable protective lining or coating. (See § 151.15–3(f)(2).)

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

42. The authority citation for Part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

43. In § 153.238, by adding new paragraphs (d) and (e) to read as follows:

§ 153.238 Required materials.

* * * * * *

(d) Solid austenitic stainless steel.

(e) Stainless steel or steel covered with a suitable protective lining or coating. (See § 153.266.)

44. In § 153.558, by adding a note at the end of the section to read as follows:

§ 153.558 Special requirements for phosphoric acid.

* * * * *

Note to § 153.558.—"Phosphoric acid", as defined in § 153.2, includes phosphoric acid, superphosphoric acid, and aqueous solutions of phosphoric acid.

45. By adding a new § 153.560 to read as follows:

§ 153.560 Special requirements for octyl nitrates.

(a) The carriage temperature of octyl nitrates must be maintained below 100° C (212° F) in order to prevent the occurrence of a self-sustaining exothermic decomposition reaction.

(b) Octyl nitrates may not be carried in a deck tank unless the tank has a combination of insulation and a water deluge system sufficient to maintain the tank's cargo temperature below 100° C (212° F) and the cargo temperature rise at or below 1.5° C (2.7° F)/hour, for a fire of 650° C (1200° F).

§ 153.907 [Amended]

46. In § 153.907(b)(2), by removing "§ 153.5(b)" and adding, in its place, "§ 153.900(d)".

47. By revising § 153.933 to read as follows:

§ 153.933 Chemical protective clothing.

When Table 1 refers to this section, the following apply:

(a) The master shall ensure that the following chemical protective clothing constructed of materials resistant to permeation by the cargo being handled is worn by all personnel engaged in an operation listed in paragraph (b) of this section:

(1) Splash protective eyewear.

(2) Long-sleeved gloves.

(3) Boots or shoe covers.

(4) Coveralls or lab aprons.

Note to paragraph (a).—"Guidelines for The Selection of Chemical Protective Clothing", Third Edition, 1987, available from the American Conference of Governmental Industrial Hygienists, 6500 Glenway Ave., Cincinnati, OH 45211–4438, provides information on the proper clothing for the cargo being handled.

(b) This section applies during the following operations:

(1) Sampling cargo.

(2) Transferring cargo.

(3) Making or breaking cargo hose connections.

(4) Gauging a cargo tank.

(5) Opening cargo tanks.

(c) Coveralls or lab aprons may be replaced by splash suits or aprons constructed of light weight materials if, in the judgment of the master:

(1) Contact with the cargo being handled is likely to occur only infrequently and accidentally; and

(2) The splash suit or apron is disposed of immediately after contamination.

(d) Splash protective eyewear must be tight-fitting chemical-splash goggles, face shields, or similar items intended specifically for eye protection from chemical splashing or spraying.

(e) The master shall ensure that each person in the vicinity of an operation listed in paragraph (b) of this section or in the vicinity of tanks, piping, or pumps being used to transfer the cargo wears splash protective eyewear under paragraph (d) of this section.

§ 153.1025 [Amended]

48. In § 153.1025(c), by removing "426–1217" and adding, in its place, "267–1217".

49. By revising § 153.1035 to read as follows:

§ 153.1035 Acetone cyanohydrin or lactonitrile solutions.

No person may operate a tankship carrying a cargo of acetone cyanohydrin or lactonitrile solutions, unless that cargo is stabilized with an inorganic acid.

50. By revising Table 1 and Table 2 to Part 153 to read as follows:

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Acetic acid	D	III	4m	PV	Restr	A	.238(a), .527, .554	I-D
Acetic anhydride	D	II	4m	PV	Restr	A	.238(a), .526, .527, .554	I-D
Acetone cyanohydrin	A	II	B/3	PV	Closed	A	.238(a), .316, .336, .408, .525, .526, .527, .912(a)(2), .933, .1002, .1004, .1020, .1035.	I-D
Acetonitrile	III	II	B/3	PV	Restr	A	.525, .526, .1020	I-D
Acrylamide solution (50% or less)	D	II	NR	Open	Closed	NSR	.409, .525(a), (c), (d), (e), .912(a)(1), .1002(a), .1004, .1020.	NA
Acrylic acid	D	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	I-D
Acrylonitrile	B	II	B/3	PV	Closed	A	.236(a), (c), (d), .316, .408, .525, .526, .527, .912(a)(1), .1004, .1020.	I-D
Adiponitrile	D	III	4m	PV	Restr	A	.526	I-D
*Alcohol(C6 - C17)(secondary) poly(3-6)ethoxylates.	A	III	NR	Open	Open	A	**.409**	NA
*Alcohol(C6 - C17)(secondary) poly(7-12)-ethoxylates.	B	II	NR	Open	Open	A	.409, .440, .908(a), (b)	NA
*Alcohol(C12 - C15) poly(1-3)ethoxylates	A	II	NR	Open	Open	A	.409	NA
*Alcohol(C12 - C15) poly(3-11)ethoxylates	A	II	NR	Open	Open	A	**.409**	NA
Alkyl acrylate-Vinyl pyridine copolymer in Toluene.	C	III	4m	PV	Restr	A	.409	NA
Alkylbenzenesulfonic acid (*greater than 4%*)	C	III	NR	Open	Open	B	.440, .908(a)	NA
*Alkylbenzenesulfonic acid, sodium salt solution.	C	III	NR	Open	Open	NSR	.440, .903, .908(a), (b)	NA
Allyl alcohol	B	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .933, .1020	I-C
Allyl chloride	B	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-D
*Aluminum chloride (30% or less), Hydrochloric acid (20% or less) solution.	D	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052	I-B
2-(2-Aminoethoxy) ethanol	D	III	NR	Open	Open	**A, D**	.236(b), (c), .409	NA
Aminoethylethanolamine	D	III	NR	Open	Open	A	.236(a), (b), (c), (g)	NA
N-Aminoethylpiperazine	D	III	4m	PV	Restr	**A**	.236(b), (c), .409, .526	I-C
2-Amino-2-methyl-1-propanol (90% or less)	D	III	NR	Open	Open	A	**.236(a), (b), (c), (g)**	I-D [15]
Ammonium hydroxide (28% or less NH_3)	C	III	4m	PV	Restr	**A, B, C**	.236(b), (c), (f), .526, .527	I-D
Ammonium nitrate solution (greater than 45% and less than 93%).	D	II	NR	Open	Open	NSR	**.238(d), .252,** .336, .409, .554(a), (b)	NA
Ammonium sulfide solution (45% or less)	B	II	B/3	PV	Closed	**A**	.236(a), (b), (c), (g), **.316,** .372, .408, .525, .526, **.527,** .933, .1002, .1020.	I-D
*Ammonium thiocyanate (25% or less), Ammonium thiosulfate (20% or less) solution.	C	III	NR	Open	Open	NSR	None	NA
Ammonium thiosulfate solution (60% or less)	C	III	NR	Open	Open	NSR	**.440, .908(b)**	NA
(commercial, iso-, n-, sec-) Amyl acetate	C	III	4m	PV	Restr	A	.409	I-D
Aniline	C	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	I-D
*Anthracene oil (Coal tar fraction)	[A]	II	NR	Open	Open	A	.409	I-D [15]
*Aviation alkylates (*C8 paraffins and isoparaffins, b. pt. 95-120 C*).	C	III	4m	PV	Restr	B	**.409**	I-C
Benzene hydrocarbon mixtures (*having 10% Benzene or more*).	C	III	B/3	PV	Restr	**A, B**	.316, .440, .526, .908(b), .1060	I-D
Benzenesulfonyl chloride	D	III	4m	PV	Restr	**A, D**	.236(a), (b), (c), (g), .409, .526	I-D
*Benzene, Toluene, Xylene mixtures (*having 10% Benzene or more*).	@C	III	B/3	PV	Restr	B	.316, .440, .526, .908(b), .1060	I-D
*Benzyl acetate	C	III	NR	Open	Open	A	None	I-D [15]
Benzyl alcohol	C	III	NR	Open	Open	A	None	I-D

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Benzyl chloride	B	II	B/3	PV	Closed	**A, B**	.316, .408, .525, .526, .527, .912(a)(2), .1004, .1020	I-D
(iso-, n-) Butyl acetate	C	III	4m	PV	Restr	A	.409	I-D
(iso-, n-) Butyl acrylate	D	II	4m	PV	Restr	A	.526, .912(a)(1), .1002(a), (b), .1004	I-D
Butylamine (all isomers)	C	II	B/3	PV	Restr	A	.236(b), (c), .316, .408, .525, .526, .527, .1020	I-D
*Butyl benzenes (all isomers)	A	II	4m	PV	Restr	A	.409	I-D [15]
Butyl benzyl phthalate	A	II	NR	Open	Open	A	**.409**	I-D
*n-Butyl butyrate	C	III	4m	PV	Restr	A	.409	I-D [15]
1,2-Butylene oxide	C	III	4m	PV	Restr	A, C	.372, .408, .440, .500, .526, .530(a), (c), (e)-(g), (m)-(o), .1010, .1011.	I-B [15]
n-Butyl ether	C	III	B/3	PV	Restr	**A**	.500, .525, .526, .1020	I-C
*Butyl heptyl ketone	[C]	III	NR	Open	Open	A	None	NA
*iso-Butyl isobutyrate	[B]	III	4m	PV	Restr	A	.409	I-D [15]
Butyl methacrylate	D	III	4m	PV	Restr	A, D	.526, .912(a)(1), .1002(a), (b), .1004	I-D
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture.	D	III	4m	PV	Restr	**A, D**	.912(a)(1), .1002(a), (b), .1004	I-D
*Butyl toluene	@A	II	NR	Open	Open	A	.409	I-D
(n-, crude) Butyraldehyde	B	III	4m	PV	Open	A	.526	I-C
iso-Butyraldehyde	C	III	4m	PV	Open	A	.526	I-C
Butyric acid	**D**	III	4m	PV	Restr	A	.238(a), .554	I-D
*Calcium bromide, Zinc bromide solution *see* Drilling brine (containing Zinc salts).								
Calcium hypochlorite solution (15% or less)	C	III	4m	PV	Restr	NSR	**.238(d)**	NA
Calcium hypochlorite solution (more than 15%).	B	III	4m	PV	Restr	NSR	**.238(d)**	NA
Calcium naphthenate in Mineral oil mixture	A	III	NR	PV	Open	A	**None**	NA
Camphor oil	B	II	4m	PV	Open	**A, B**	.409	I-D
Carbolic oil	A	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020	NA
Carbon disulfide	B	II	B/3	PV	Closed	C	.236(c), .252, 408, .500, .515, .520, .525, .526, .527, .1020, .1040.	I-A
Carbon tetrachloride	B	III	B/3	PV	Closed	NSR	.316, .409, .525, .526, .527, .1020	NA
Cashew nut shell oil (untreated)	D	III	4m	PV	Restr	**A, B**	.526, .933	NA
Caustic potash solution	C	III	NR	Open	Open	NSR	.236(a), (c), (g), .440, .908(b), .933	NA
Caustic soda solution	D	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Cetyl-Eicosyl methacrylate	III	III	NR	Open	Open	**A, D**	.912(a)(1), .1002(a), (b), .1004	NA
Chloroacetic acid (80% or less)	C	II	B/3	PV	Closed	NSR	**.238(e)**, .408, .440, .554, .908(b)	I-D
*Chlorinated paraffins (C10 - C13)	A	I	NR	Open	Open	A	.408	NA
Chlorobenzene	B	II	4m	PV	Restr	B	.409, .526	I-D
Chloroform	B	III	B/3	PV	Restr	NSR	.525, .526, .527, .1020	NA
(crude) Chlorohydrins	D	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-D
4-Chloro-2-methylphenoxyacetic acid, dimethylamine salt **solution**.	[C]	III	NR	Open	Open	NSR	**.236(a), (b), (c), (g)**	NA
o-Chloronitrobenzene *see* o-Nitrochlorobenzene								
2- or 3-Chloropropionic acid	C	III	NR	Open	Open	A	.238(a), .440, .554, .908(b)	NA
Chlorosulfonic acid	C	I	B/3	PV	Closed	NSR	.408, .525, .526, .527, .554, .555, .602, .933, .1000, .1020, .1045.	I-B [11]
o-Chlorotoluene	A	III	4m	PV	Restr	B, C	.526	I-D
m-Chlorotoluene	B	III	4m	PV	Restr	B, C	.526	I-D
p-Chlorotoluene	B	II	4m	PV	Restr	**A, B**	.409, .440, .526, .908(b)	I-D
Chlorotoluenes (mixed isomers)	A	II	4m	PV	Restr	**A, B**	**.409, .526**	I-D

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Coal tar	A	II	4m	PV	Restr	B, D	.409	I-D[15]
Coal tar naphtha solvent	B	III	4m	PV	Restr	A, D	.526	I-D
Coal tar pitch (molten)	D	III	4m	PV	Restr	B, D	**.252, .409**	I-D[15]
*Coconut oil, fatty acid	C	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
*Cottonseed oil, fatty acid	[C]	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Creosote (wood)	A	II	NR	Open	Open	**A, D**	.409	NA
Creosote (coal tar)	C	III	NR	Open	Open	B, D	.409	I-D
Cresols **(all isomers)**	A	II	NR	Open	Open	B	.409, .440, .908(b)	I-D
**Cresols with 5% or less Phenol see* Cresols (all isomers)								
**Cresols with more than 5% Phenol see* Phenol								
Cresylate spent caustic (*mixtures of Cresols and Caustic soda solutions*).	A	II	NR	Open	Open	NSR	.236(a), (c), .933	NA
*Cresylic acid, sodium salt solution *see* Cresylate spent caustic.								
Crotonaldehyde	B	II	B/3	PV	Restr	A	.316, .525, .526, .527, .1020	I-C
Cumene	B	III	4m	PV	Restr	A	.409	I-D
*1,5,9-Cyclododecatriene	[B]	III	4m	PV	Restr	A	.236(b), (c), .409, .526, .912(a)(1), .1002(a), (b), .1004.	I-D[15]
*Cycloheptane	C	III	4m	PV	Restr	A	**.409**	I-D[15]
Cyclohexane	C	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
Cyclohexanol	C	III	NR	Open	Open	A	.440, .908(a), (b)	I-D
Cyclohexanone	D	III	4m	PV	Restr	A	.236(a), (b), .526	I-D
*Cyclohexanone, Cyclohexanol mixture	[C]	III	4m	PV	Restr	A	.238(d), .526	I-D
*Cyclohexyl acetate	B	III	4m	PV	Restr	A	.409	I-D[15]
Cyclohexylamine	C	III	4m	PV	Restr	**A, C**	.236(a), (b), (c), (g), .526	I-D
p-Cymene	C	III	4m	PV	Restr	A	.409	I-D
*1,3-Cyclopentadiene dimer (molten)	B	II	4m	PV	Restr	A	.409, .440, .488, .908(a), (b)	I-C[15]
*Cyclopentane	C	III	4m	PV	Restr	A	.409	I-D[15]
*Cyclopentene	B	III	4m	PV	Restr	A	.409	I-D[15]
*iso-Decaldehyde	C	III	NR	Open	Open	A	None	I-C
*n-Decaldehyde	B	III	NR	Open	Open	A	None	I-C
*Decanoic acid	C	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
Decene	B	III	4m	PV	Restr	A	.409	I-D
(iso-, n-) Decyl acrylate	A	II	NR	Open	Open	A, C, D	.236(a), (b), (c), .409, .912(a)(1), .1002(a), (b), .1004	I-D[15]
Decyl alcohol (all isomers)	B	III	NR	Open	Open	A	.440, .908(b)	I-D
Diammonium salt of Zinc ethylenediamine tetraacetic acid solution [13].	#	III	NR	Open	Open	NSR	**.238(e)**	I-B
Dibutylamine	C	III	4m	PV	Restr	**A, C, D**	.236(b), (c), .526	I-C
Dibutyl phthalate	A	II	NR	Open	Open	A	.409	I-D
*Dichlorobenzenes **(all isomers)** [17]	B	II	4m	PV	Restr	B, D	.236(a), (b), .409, **.440, .488** [17], .526, **.908(a), (b)** [17]	**I-D**
1,1-Dichloroethane	B	III	4m	PV	Restr	B	.526, .527	I-D
2,2'-Dichloroethyl ether	B	II	4m	PV	Restr	A	.236(a), (b), .526	I-C[15]
2,2'-Dichloroisopropyl ether	C	II	B/3	PV	Restr	**A, C, D**	.236(a), (b), .316, .408(a), .440, .525, .526, .1020	I-D
Dichloromethane	D	III	4m	PV	Restr	NSR	.526	I-D[15]
2,4-Dichlorophenol [14]	A	II	4m	PV	Restr	**A**	.236(a), (b), (c), (g), .409, .440, .500, .501, .526, .908(b), .933.	I-D[15]
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution.	A	III	NR	Open	Open	NSR	**.236(a), (b), (c), (g)**	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
1,1-, 1,2-, or 1,3-Dichloropropane	B	II	B/3	PV	Restr	B	.525, .526, .1020	I-D
1,3-Dichloropropene	B	II	B/3	PV	Closed	**A, B**	.316, .336, .408, .525, .526, .527, .1020	I-D
Dichloropropene, Dichloropropane mixtures	B	II	B/3	PV	Closed	**A, B, D**	.316, .336, .408, .526, .527	I-D
2,2-Dichloropropionic acid	D	III	4m	PV	Restr	**A**	**.238(e)**, .266, .500, .501, .554	NA
Diethanolamine	III	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylamine	C	III	B/3	PV	Restr	A	.236(a), (b), (c), (g), .525, .526, .527, .1020	I-C
Diethylaminoethanol *see* Diethylethanolamine								
*2,6-Diethylaniline	[C]	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	NA
Diethylbenzene	C	III	4m	PV	Restr	A	.409	I-D
Diethylene gylcol methyl ether	C	III	NR	Open	Open	A	None	I-C
Diethylenetriamine	D	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylethanolamine	C	III	4m	PV	Restr	**A, C**	.236(a), (b), (c), (g), .526	I-C
Diethyl ether *see* Ethyl ether								
Di-(2-ethylhexyl) phosphoric acid	C	III	NR	Open	Open	**A, D**	.236(b), (c)	I-D
Diethyl phthalate	C	III	NR	Open	Open	A	None	I-D
Diethyl sulfate	B	II	4m	PV	Closed	**A**	.236(a), (c), (d), .526	I-D [15]
Diglycidyl ether of Bisphenol A	B	III	NR	Open	Open	A	.440, **.908(a)**	NA
*Diglycidyl ether of Bisphenol F	B	III	NR	Open	Open	A	.409, .440, .908(a)	NA
*Di-n-hexyl adipate	B	III	NR	Open	Open	A	.409	NA
Diisobutylamine	C	II	4m	PV	Restr	**A, C, D**	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
*Diisobutylcarbinol	@C	III	NR	Open	Open	A	None	I-D [15]
Diisobutylene	B	III	4m	PV	Restr	A	.409	I-D
Diisobutyl phthalate	B	III	NR	Open	Open	A	.440, .908(a)	I-D
Diisopropanolamine	C	III	NR	Open	Open	A	.236(b), (c), .440, .908(a), (b)	I-D [15]
Diisopropylamine	C	II	B/3	PV	Closed	A	.236(b), (c), .408, .525, .526, .527, .1020	I-C
Diisopropyl benzene (all isomers)	A	II	NR	Open	Open	A	.409	I-D
N,N-Dimethylacetamide	D	III	B/3	PV	Restr	B	.236(b), .316, .525, .526, .527, .1020	I-D [15]
*N,N-Dimethylacetamide solution (40% or less).	D	III	B/3	PV	Restr	B	.236(b), .316, .526	I-D [15]
*Dimethyl adipate	B	III	NR	Open	Open	A	**.409,** .440, .908(b)	NA
Dimethylamine solution (45% or less)	C	III	B/3	PV	Restr	**A, C, D**	.236(a), (b), (c), (g), .525, .526, .527, .1020	I-C
Dimethylamine solution (over 45% but not over 55%).	C	II	B/3	PV	Closed	A, C, D	.236 (a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-C
Dimethylamine solution (over 55% but not over 65%).	C	II	B/3	PV	Closed	A, C, D	.236 (a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .1020.	I-C
*2,6-Dimethylaniline	[C]	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	I-D [15]
N,N-Dimethylcyclohexylamine	C	II	B/3	PV	Restr	A, C	.236(a), (b), (c), (g), **.316,** .409, .525, .526, .527, .1020.	NA
Dimethylethanolamine	D	III	4m	PV	Restr	A, D	.236(b), (c), .526	I-C
Dimethylformamide	D	III	4m	PV	Restr	A, D	.236(b), .526	I-D
*Dimethyl glutarate	C	III	NR	Open	Open	A	None	NA
Dimethyl hydrogen phosphite	#	III	4m	PV	Restr	A, D	.526	NA
*Dimethyl naphthalene sulfonic acid, sodium salt solution.	[A]	III	NR	Open	Open	NSR	None	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*Dimethyloctanoic acid	C	III	NR	Open	Open	A	.440, .903, .908(b)	I-D [15]
Dimethyl phthalate	C	III	NR	Open	Open	A	None	I-D
*Dimethyl succinate	C	III	NR	Open	Open	A	.440, .908(b)	NA
Dinitrotoluene (molten)	B	II	B/3	PV	Closed	A	.316, .408, .440, .525, .526, .527, .908(a), (b), .1020	I-C
1,4-Dioxane	D	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-C
Dipentene	C	III	4m	PV	Restr	A	.409	I-D
Diphenyl	A	I	NR	Open	Open	B	.408	I-D [15]
Diphenyl/Diphenyl ether mixtures	A	I	NR	Open	Open	B	.408	I-D [15]
Diphenyl ether	A	III	NR	Open	Open	A	None	I-D
Diphenylmethane diisocyanate [12]	B	II	B/3	PV	Closed	A, B, C [12], D	.236(a), (b), .316, .440, .500, .501, .525, .526, .602, .908(a), .1000, .1020.	NA
*Diphenylol propane-epichlorohydrin resins	B	III	NR	Open	Open	B	.440, .908(a)	NA
Diphenyl ether, Biphenyl phenyl ether mixtures.	A	III	NR	Open	Open	B	None	NA
Di-n-propylamine	C	III	4m	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020	I-C
Dodecanol	B	III	NR	Open	Open	A	.440, .908(a), (b)	I-D
Dodecene (all isomers)	B	III	NR	Open	Open	A	None	I-D
Dodecyl alcohol *see* Dodecanol								
*Dodecylamine, Tetradecylamine mixture	[C]	III	4m	PV	Restr	A, D	.236(b), (c), .440, .526, .903, .908(a), (b)	NA
Dodecylbenzene	C	III	NR	Open	Open	A	None	I-D
Dodecyl diphenyl ether disulfonate solution	B	III	NR	Open	Open	NSR	.440, .908(a)	NA
Dodecyl methacrylate	III	III	NR	Open	Open	A	.236(b), (c), .912(a)(1), .1004	I-D
Dodecyl-Pentadecyl methacrylate mixture	III	III	NR	Open	Open	A, D	.912(a)(1), .1002(a), (b), .1004	NA
Dodecyl phenol	A	I	NR	Open	Open	A	.408	I-D
*Drilling brine (containing Zinc salts)	A	II	NR	Open	Open	NSR	.409	NA
Epichlorohydrin	C	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-C
Ethanolamine	D	III	NR	Open	Open	A	.236(b), (c), .526	I-D [15]
2-Ethoxyethyl acetate	C	III	4m	PV	Restr	A	.409	I-C
Ethyl acrylate	B	II	4m	PV	Restr	A	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
Ethylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .252, .372, .525, .526, .527, .1020	I-D
Ethylamine solution (72% or less)	C	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525(a), (c), (d), (e), .526, .527, .1020.	I-D
*Ethyl amyl ketone	C	III	4m	PV	Restr	A	.409	I-D
Ethyl benzene	C	III	4m	PV	Restr	A	.409	I-D
N-Ethylbutylamine	C	III	4m	PV	Restr	A	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
Ethyl butyrate	C	III	4m	PV	Restr	A	.409	I-D
N-Ethylcyclohexylamine	D	III	4m	PV	Restr	A	.236(a), (b), (c), (g), .409, .526	I-C
Ethylene chlorohydrin	C	II	B/3	PV	Closed	A, D	.316, .408, .525, .526, .527, .933, .1020	I-D
Ethylene cyanohydrin	D	III	NR	Open	Open	A	None	NA
Ethylenediamine	C	II	4m	PV	Restr	A	.236(b), (c), .440, .526, .908(b)	I-D
Ethylene dibromide	B	II	B/3	PV	Closed	NSR	.408, .440, .525, .526, .527, .908(b), .1020	NA
Ethylene dichloride	B	II	4m	PV	Restr	A, B	.236(b), .408, .526	I-D
Ethylene glycol diacetate	C	III	NR	Open	Open	A	None	I-D [15]
Ethylene glycol ethyl ether acetate *see* 2-Ethoxyethyl acetate								
Ethylene oxide (30% or less), Propylene oxide mixture.	D	II	B/3	PV	Closed	A, C	.252, .372, .408, .440, .500, .525, .526, .530, .1010, .1011, 1020.	I-B
Ethyl ether	III	II	4m	PV	Closed	A	.236(g), .252, .372, .408, .440, .500, .515, .526, .527	I-C
*Ethyl-3-ethoxypropionate	[C]	III	4m	PV	Restr	A	.409	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*2-Ethylhexanol	@C	III	NR	Open	Open	A	None	I-D
2-Ethylhexyl acrylate	D	III	NR	Open	Open	A	.912(a)(1), .1002(a), (b), .1004	I-D
2-Ethylhexylamine	B	II	B/3	PV	Restr	A	.236(b), (c), .525, .526, .1020	I-D [15]
*Ethyl hexyl phthalate	C	III	NR	Open	Open	A	None	NA
Ethylidene norbornene	B	III	B/3	PV	Restr	**A, D**	.236(b), .409, .526	NA
Ethyl methacrylate	D	III	4m	PV	Restr	**A, D**	.526, .912(a)(1), .1002(a), (b), .1004	I-D
Ethylphenol	A	III	NR	Open	Open	B	**.409**	I-D [15]
2-Ethyl-3-propyl acrolein	B	III	4m	PV	Restr	A	.440, .526, .908(b)	I-C
Ethyl toluene	B	III	4m	PV	Restr	A	.409	I-D
Fatty alcohols (C12 - C22)	B	III	NR	Open	Open	A	.440, .908(a), **(b)**	NA
*Ferric chloride solution	C	III	NR	Open	Open	NSR	.409, .440, .554, .555, .908(b), .1045	I-B
*Ferric nitrate, Nitric acid solution	C	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045	I-B
Formaldehyde (50% or more), Methanol mixtures.	#	III	4m	PV	Closed	A	.526, .527	I-B
Formaldehyde solution (37% to 50%)	C	III	4m	PV	Restr	A	.526, .527	I-B
Formic acid	D	III	4m	PV	Restr	A	.238(b), (c), .526, .527, .554	I-D
Fumaric adduct of rosin, water dispersion	B	III	NR	Open	Open	NSR	.440, .908(a)	NA
Furfural	C	III	4m	PV	Restr	A	.526	I-C
Furfuryl alcohol	C	III	NR	Open	Open	A	None	I-C
Glutaraldehyde solution (50% or less)	D	III	NR	Open	Open	NSR	None	NA
Glycidyl ester of tridecyl acetic acid	B	III	NR	Open	Open	A	None	NA
*Heptane (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
Heptanol (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
Heptene (mixed isomers)	C	III	4m	PV	Restr	A	.409	I-D
Heptyl acetate	B	III	NR	Open	Open	A	None	NA
Hexamethylenediamine solution	C	III	4m	PV	Restr	A	.236(b), (c), .409, .440, .526, .908(b)	I-D
Hexamethyleneimine	C	II	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .526	I-C
*Hexane (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
Hexene (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
Hexyl acetate	B	III	**4m**	PV	Restr	A	.409	I-D
Hydrochloric acid	D	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052	I-B [11]
Hydrogen peroxide solutions (over 8% but not over 60%).	C	III	B/3	PV	Closed	NSR	.238 (a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA
Hydrogen peroxide solutions (over 60% but not over 70%).	C	II	B/3	PV	Closed	NSR	.238 (a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA
2-Hydroxyethyl acrylate	B	II	B/3	PV	Closed	A	.408, .525, .526, .912(a)(1), .933, .1002 (a), (b), .1004, .1020.	NA
*2-Hydroxy-4-(methylthio)butanoic acid	[C]	III	NR	Open	Open	A	.440, .908(a), (b)	NA
Isophorone diamine	D	III	4m	PV	Restr	A	.236(b), (c), .526	NA
Isophorone diisocyanate [12]	B	III	B/3	PV	Closed	[12] **A, B, D**	.236(a), (b), .316, .500, .501 .526, .602, .1000, .1020.	NA
Isoprene	C	III	4m	PV	Restr	B	.372, .440, .912(a)(1), .1002(a), (b), .1004	I-D
Isopropyl benzene *see* Cumene								
Lactonitrile solution (80% or less)	B	II	B/3	PV	Closed	A, C, D	**.238(d), .252**, .316, .336, .408, **.440**, .525, .526, .527, **.908(a), .912(a)(2)**, .1002, **.1004**, .1020, .1035.	I-D [15]
*Lauric acid	B	III	NR	Open	Open	A	.440, .488, .908(a), (b)	NA
Maleic anhydride [10]	D	III	4m	PV	Restr	A, C [10]	None	I-D [15]

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Mercaptobenzothiazol, sodium salt solution *see* Sodium-2-mercaptobenzothiazol solution								
Mesityl oxide	D	III	4m	PV	Restr	A	.236(b), (c), .409, .526	I-D
*Metam sodium solution	A	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA
Methacrylic acid	D	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	NA
Methacrylonitrile	B	II	B/3	PV	Closed	A	**.236(b)**, .316, .408, .525, .526, .527, .912(a)(1), .1002(a), .1004, .1020.	I-D
Methyl acrylate	C	II	4m	PV	Restr	B	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
Methylamine solution (42% or less)	C	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-D
Methylamyl acetate	C	III	4m	PV	Restr	A	.409	I-D
Methylamyl alcohol	C	III	4m	PV	Restr	A	.409	I-D
Methylamyl ketone	C	III	4m	PV	Restr	A	.409	I-D [15]
Methyl butyrate	C	III	4m	PV	Restr	A	.409	I-D [15]
*Methylcyclohexane	C	III	4m	PV	Restr	A	.409	I-B [15]
*Methylcyclopentadiene dimer	B	III	4m	PV	Restr	B	.409	I-C [15]
*Methyldiethanolamine	[C]	III	NR	Open	Open	A	.236(b), (c), .440, .903, .908(a)	
Methylene chloride see Dichloromethane								
2-Methyl-6-ethyl aniline	C	III	NR	Open	Open	**A, D**	None	NA
2-Methyl-5-ethyl pyridine	B	III	NR	Open	Open	**A, D**	.236(b)	I-D
Methyl formate	D	II	B/3	PV	Restr	A	.372, .408, .440, .525, .526, .527, .1020	I-D
Methyl heptyl ketone	B	III	4m	PV	Restr	A	.409	I-D [15]
2-Methyl-2-hydroxy-3-butyne	III	III	4m	PV	Restr	**A, B, D**	.236(b), (d), (f), (g), .409, .526	I-D
Methyl methacrylate	D	II	4m	PV	Restr	A	.526, .912(a)(1), .1002(a), (b), .1004	I-D
*Methyl naphthalene	A	III	NR	Open	Open	A	.903, .908(a), (b)	I-D [15]
2-Methyl-1-pentene	C	III	4m	PV	Restr	A	.409	I-D
*4-Methyl-1-pentene	[C]	III	4m	PV	Restr	A	.409	I-D [15]
2-Methylpyridine	B	II	B/3	PV	Closed	A	.236(b), .408, .525(a), (c), (d), (e), .1020	I-D
*3-Methylpyridine	[B]	II	4m	PV	Closed	A	.236(b), .408, .525(a), (c), (d), (e), .1020	I-D [15]
4-Methylpyridine	B	II	B/3	PV	Closed	A	.236(b), .408, .440, .525(a), (c), (d), (e), .526, .908(b), .1020.	I-D
N-Methyl-2-pyrrolidone	B	III	NR	Open	Open	A	None	I-D
Methyl salicylate	B	III	NR	Open	Open	D	None	I-D
alpha-Methyl styrene	A	III	4m	PV	Restr	D	.409, .526, **.903**, .912(a)(1), .1002(a), (b), .1004	I-D
*Metolachlor	@B	III	NR	Open	Open	A	None	NA
Morpholine	D	III	4m	PV	Restr	A	.236(b), (c)	I-C
Motor fuel anti-knock compounds (containing lead alkyls).	A	II	B/3	PV	Closed	**A, C**	.252, .316, .336, .408, .525, .526, .527, .933, .1020, .1025.	I-D
*Myrcene	[B]	III	4m	PV	Restr	A	.409	NA
Naphthalene (molten)	A	II	4m	PV	Restr	A, D	.409, .440, .908(b)	I-D [15]
*Naphthalene sulfonic acid, sodium salt solution (40% or less).	[A]	III	NR	Open	Open	NSR	None	NA
*Naphthenic acid	A	II	NR	Open	Open	A	.409	NA
*Naphthenic acid, sodium salt solution	[A]	II	NR	Open	Open	NSR	.409	NA
Neodecanoic acid	C	III	NR	Open	Open	A	None	NA
Nitrating acid (*mixture of Sulfuric and Nitric acids*).	C	II	B/3	PV	Closed	NSR	.316, .408, .526, .527, .554, .555, .556, .559, **.602**, .933, .1000, .1045.	I-B [11]
Nitric acid (70% or less)	C	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045	I-B [11]

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Nitrobenzene	B	II	B/3	PV	Closed	**A, D**	.316, .336, .408, .440, .525, .526, .908(b), .933, .1020.	I-D
o-Nitrochlorobenzene	B	II	B/3	PV	Closed	**A, B, D**	.316, .336, .408, .440, .525, .526, .908(a), (b), .1020	NA
o-Nitrophenol (molten)	B	II	B/3	PV	Closed	**A, D**	.440, .525, .526, .908(a), (b), .1020	NA
1- or 2-Nitropropane [10]	D	III	4m	PV	Restr	**A** [10]	.526	I-C
Nitropropane (60%), Nitroethane (40%) mixture [10].	D	III	4m	PV	Restr	**A** [10]	.236(b), .526	I-C
(o-, p-) Nitrotoluene	C	II	B/3	PV	Closed	**B**	.316, .408, .440, .525, .526, .908(b), .1020	I-D [15]
*Nonane (all isomers)	C	III	4m	PV	Restr	B, C	.409	I-D
Nonene	B	III	4m	PV	Restr	**A**	.409	I-D
Nonyl alcohol **(all isomers)**	C	III	NR	Open	Open	**A**	None	I-D
Nonyl phenol	A	II	NR	Open	Open	**A**	**.409**	I-D
*Nonyl phenol poly(4-12)ethoxylates	B	III	NR	Open	Open	**A**	.409, .440, .488 [17], .908(a), (b)	I-D [15]
*Noxious liquid, N.F., (1) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	I	NR	Open	Open	**A**	.408	NA
*Noxious liquid, F., (2) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	I	4m	PV	Restr	**A**	.408	NA
*Noxious liquid, N.F., (3) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	II	NR	Open	Open	**A**	.409	NA
*Noxious liquid, F., (4) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	II	4m	PV	Restr	**A**	.409	NA
*Noxious liquid, N.F., (5) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	II	NR	Open	Open	**A**	.409; (.440, .903, .908) [17]	NA
*Noxious liquid, N.F., (6) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	II	NR	Open	Open	**A**	.409, .486; (.440, .903, .908) [17]	NA
*Noxious liquid, F., (7) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	II	4m	PV	Restr	**A**	.409; (.440, .903, .908) [17]	NA
*Noxious liquid, F., (8) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	II	4m	PV	Restr	**A**	.409, .486; (.440, .903, .908) [17]	NA
*Noxious liquid, N.F., (9) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	III	NR	Open	Open	**A**	None	NA
*Noxious liquid, F., (10) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	III	4m	PV	Restr	**A**	.409	NA
*Noxious liquid, N.F., (11) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	III	NR	Open	Open	**A**	(.440, .903, .908) [17]	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*Noxious liquid, N.F., (12) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	III	NR	Open	Open	A	.488; (.440, .903, .908) [17]	NA
*Noxious liquid, F., (13) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	III	4m	PV	Restr	A	.409; (.440, .903, .908) [17]	NA
*Noxious liquid, F., (14) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	III	4m	PV	Restr	A	.409, .488; (.440, .903, .908) [17]	NA
*Noxious liquid, N.F., (15) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	III	NR	Open	Open	A	(.440, .903, .908) [17]	NA
*Noxious liquid, F., (16) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	III	4m	PV	Restr	A	(.440, .903, .908) [17]	NA
*Octane (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
Octanol (all isomers)	C	III	NR	Open	Open	A	None	I-D
Octene (all isomers)	B	III	4m	PV	Restr	A	.409	I-D
Octyl aldehydes	B	III	4m	PV	Restr	A	.409, **.440, .908(b)**	I-C [15]
*Octyl nitrates (all isomers)	A	II	NR	Open	Open	B	.409, .560, .1002	NA
*Olefin mixtures (C5 - C7)	C	III	4m	PV	Restr	A	.409	I-D
*Olefin mixtures (C5 - C15)	B	III	4m	PV	Restr	A	.409	I-D
**Olefins, straight chain mixtures see* Olefin mixtures (C5 - C7) *or* (C5 - C15).								
Oleum	C	II	B/3	PV	Closed	NSR	.316, .408, .440, .526, .527, .554, .555, .556, .602, .908(a), .933, .1000, .1045, .1052	I-B [11]
*Palm nut oil, fatty acid	C	III	NR	Open	Open	B	.903, .908(a), (b)	NA
*Palm nut oil, fatty acid methyl ester	[C]	III	NR	Open	Open	A	.903, .908(a)	NA
Paraldehyde	C	III	4m	PV	Restr	A	.440, .908(b)	I-C
Pentachloroethane	B	II	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
1,3-Pentadiene	C	III	4m	PV	Restr	**A, B**	.526, .912(a)(1), .1002, .1004	I-D
Pentane (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
Pentene (all isomers)	C	III	4m	PV	Restr	A	**.409**	I-D
Perchloroethylene	B	III	4m	PV	Restr	NSR	.526	NA
Phenol (*or solutions with 5% or more Phenol*).	B	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020	I-D [15]
1-Phenyl-l-xylyl ethane	C	III	NR	Open	Open	**A, B**	None	NA
Phosphoric acid	D	III	NR	Open	Open	NSR	.554, .555, .558, .1045, .1052	I-B [11]
Phthalic anhydride (molten)	C	III	4m	PV	Restr	**A, D**	.440, .908(b)	I-D [15]
Pinene	B	III	4m	PV	Restr	A	.409	I-D
*Pine oil	[B]	III	NR	Open	Open	A	.908(a)	I-D [15]
*Polyalkylene oxide polyol	[C]	III	NR	Open	Open	A	.440, .903, .908(a)	NA
*Polyalkyl(C18 - C22) acrylate in Xylene	[C]	III	4m	PV	Restr	A	.409, .903, .908(a)	NA
Polyethylene polyamines	C	III	NR	Open	Open	A	.236(b), (c), .400, .440, .908(b)	NA
*Polyferric sulfate solution	C	III	NR	Open	Open	NSR	.238(d)	NA
Polymethylene polyphenyl isocyanate [12]	D	II	B/3	PV	Closed	[12] **A**	.236 **(a)**, (b), .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
*Poly(20)oxyethylene sorbitan monooleate	[B]	III	NR	Open	Open	A	.440, .908(a)	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Potassium hydroxide solution *see* Caustic potash solution								
iso-Propanolamine	C	III	NR	Open	Open	A	.236 (b), (c), .440, .526, .908(a)	NA
n-Propanolamine	C	III	NR	Open	Open	**A, D**	.236 (b), (c), .440, .526, .908(b)	NA
Propionaldehyde	D	III	4m	PV	Restr	A	.316, .526, .527	I-C
Propionic acid	D	III	4m	PV	Restr	A	.238(a), .527, .554	I-D
Propionic anhydride	C	III	4m	PV	Restr	A	.238(a), .526	I-D
Propionitrile	C	II	B/3	PV	Closed	A, D	**.252,** .316, .336, .408, .525, .526, .527, .1020	I-D
iso-Propylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .408, .440, .525, .526, .527, .1020	I-D
n-Propylamine	C	II	B/3	PV	Closed	**A, D**	.236(b), (c), .408, .500, .525, .526, .527, .1020	I-D
*n-Propylbenzene	C	III	4m	PV	Restr	A	.409	I-D [15]
*iso-Propylcyclohexane	C	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I-D [15]
Propylene dimer	C	III	4m	PV	Restr	A	.409	NA
Propylene oxide	D	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .526, .530, .1010, .1011	I-B
*Propylene tetramer	B	III	4m	PV	Restr	A	.409	I-D [15]
Propylene trimer	B	III	4m	PV	Restr	A	.409	I-D
iso-Propyl ether	D	III	4m	PV	Restr	A	.409, .500, .515, .912(a)(1)	I-D
Pyridine	D	III	4m	PV	Restr	A	.236(b)	I-D
*Rosin *see* Rosin oil								
Rosin oil	B	III	NR	Open	Open	A	**None**	I-D
Rosin soap (disproportionated) solution	B	III	NR	Open	Open	A	None	NA
Sodium borohydride (15% or less), Sodium hydroxide solution.	C	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(a), .933	NA
Sodium chlorate solution (50% or less)	III	III	NR	Open	Open	NSR	.409, .933, .1065	NA
Sodium dichromate solution (70% or less)	B	II	B/3	Open	Closed	NSR	.236(b), (c), .408, .525, .933, .1020	NA
*Sodium dimethyl naphthalene sulfonate solution *see* Dimethyl naphthalene sulfonic acid, sodium salt solution.								
*Sodium hydrogen sulfide (6% or less), Sodium carbonate (3% or less) solution.	[C]	III	NR	Open	Open	NSR	None	NA
Sodium hydrogen sulfite solution (35% or less).	D	III	NR	Open	Open	NSR	None	NA
Sodium hydrosulfide solution (45% or less)	B	III	4m	PV	Restr	NSR	.526, .440, .908(b), .933	NA
Sodium hydrosulfide/Ammonium sulfide solution.	B	II	B/3	PV	Closed	**A**	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .933, .1002, .1020.	NA
Sodium hydroxide solution *see* Caustic soda solution								
Sodium hypochlorite solution (15% or less)	C	III	4m	PV	Restr	NSR	.236(a), (b)	NA
Sodium-2-mercaptobenzothiazol solution	B	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(b), .933	NA
*Sodium N-methyldithiocarbamate solution *see* Metam sodium solution.								
*Sodium naphthalene sulfonate solution (40% or less) *see* Naphthalene sulfonic acid, sodium salt solution (40% or less).								
*Sodium naphthenate solution *see* Naphthenic acid, sodium salt solution.								
*Sodium nitrite solution	B	II	NR	Open	Open	NSR	.408, .525(a), (c), (d), (e), .1020	NA
Sodium thiocyanate **solution** (56% or less)	B	III	NR	Open	Open	NSR	.238(a), **.409**	NA
Styrene *monomer*	B	III	4m	PV	Open	B	.236(b), .912(a)(1), .1002(a), (b), .1004	I-D
Sulfur (molten)	III	III	NR	Open	Open	NSR	.252, .440, .526, .545	I-C

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Sulfuric acid	C	III	NR	Open	Open	NSR	.440, .554, .555, .556, .602, .908 (a), (b), .933, .1000, .1045, .1046, .1052.	I-B [11]
Tall oil (*crude and distilled*)	B	III	NR	Open	Open	A	**None**	NA
Tall oil, fatty acid (*resin acids less than 20%*).	C	III	NR	Open	Open	A	None	NA
Tall oil soap (disproportionated) solution	B	III	NR	Open	Open	A	.440, .908(a)	NA
1,1,2,2-Tetrachloroethane	B	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	I-D [15]
*Tetradecylbenzene	[C]	III	NR	Open	Open	A	.908(b)	I-C [15]
Tetraethylenepentamine [13]	D	III	NR	Open	Open	A	.236(b), (c), (g)	I-C
Tetrahydrofuran	D	III	4m	PV	Restr	A	.526, .912(a)(2), .1004	I-D
Tetrahydronaphthalene	C	III	NR	Open	Open	A	None	I-D [15]
*1,2,3,5-Tetramethylbenzene	C	III	NR	Open	Open	A	None	I-D
Toluene	C	III	4m	PV	Restr	A	.409	
Toluenediamine	C	II	B/3	PV	Closed	A, D	.236(a), (b), (c), (g), .316, .408, .440, .525, .526, .527, .908(b), .933, .1020.	
Toluene diisocyanate [12]	C	II	4m	PV	Closed	A, C [12], D	.236(b), .316, .408, .440, .500, .501, .525, .526, .527, .602, .908(b), .1000, .1020.	I-D [15]
o-Toluidine	C	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	I-D [15]
Tributyl phosphate	B	III	NR	Open	Open	A	None	I-D
1,2,4-Trichlorobenzene	B	II	4m	PV	Restr	A, B	.409, .440, .526, .908(b)	I-D
1,1,1-Trichloroethane	B	III	NR	Open	Open	A	None	I-D
1,1,2-Trichloroethane	B	III	B/3	PV	Restr	NSR	.526	I-D
Trichloroethylene	B	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	I-D
1,2,3-Trichloropropane	B	II	B/3	PV	Closed	A, B, D	.316, .408, .525, .526, .1020	I-D
1,1,2-Trichloro-1,2,2-trifluoroethane	C	III	NR	Open	Open	NSR	None	NA
Tricresyl phosphate (less than 1% of ortho isomer).	A	II	NR	Open	Open	A	**.409**	I-D [15]
Tricresyl phosphate (1% or more of the ortho isomer).	A	I	4m	PV	Closed	A, B	**.408, .525(a), (c), (d), (e), .1020**	I-D [15]
Tridecyl benzene *see* **Alkyl(C9 - C17) benzenes**.								
Triethanolamine	D	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I-C [15]
Triethylamine	C	II	B/3	PV	Restr	A, C	.236(b), (c), .525, .526, .527, .1020	I-C
Triethylbenzene	A	II	NR	Open	Open	A	.409	I-D
*Triethylene glycol di-(2-ethylbutyrate)	[C]	III	NR	Open	Open	A	None	I-C [15]
Triethylenetetramine	D	III	NR	Open	Open	A	.236(a), (b), (c)	I-C [15]
Triethyl phosphite	#	III	B/3	PV	Restr	A, B	.526	NA
Trimethylacetic acid	D	III	4m	PV	Restr	A, C	.238(a), .266, .554	I-D
Trimethyl benzenes (all isomers)	B	III	4m	PV	Restr	A	.409	I-D
Trimethylhexamethylene diamine (2,2,4- and 2,4,4-isomers).	D	III	NR	Open	Open	A, C	.236 (a), (b), (c), (g), .409	NA
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers) [12].	B	II	B/3	PV	Closed	A, C [12]	.316, .500, .501, .525, .526, .602, .1000, .1020	NA
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate	C	III	NR	Open	Open	A	None	I-D
Trimethyl phosphite	#	III	4m	PV	Restr	A, D	.409, .526, **.602,** .1000	I-D
* *Tritolyl phosphate see* Tricresyl phosphate								
Trixylenyl phosphate	A	I	NR	Open	Open	A	**.408**	NA
*Trixylyl phosphate *see* Trixylenyl phosphate								
Turpentine	B	III	4m	PV	Restr	A	.409	I-D
*Undecanoic acid	C	III	NR	Open	Open	A	.903, .908(a), (b)	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
1-Undecene	B	III	NR	Open	Open	A	None	I-D
Undecyl alcohol	B	III	NR	Open	Open	A	.440, .908(b)	I-D
*Undecylbenzene	[C]	III	NR	Open	Open	A	None	I-D [15]
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	C	III	4m	PV	Restr	A	.236(b), .526	I-D
iso-Valeraldehyde	C	III	4m	PV	Restr	A	.500, .526	I-C
n-Valeraldehyde	D	III	4m	PV	Restr	A	.500, .526	I-C
Vinyl acetate	C	III	4m	PV	Open	A	.912(a)(1), .1002 (a), (b), .1004	I-C
Vinyl ethyl ether	C	II	4m	PV	Closed	A	.236(b),(d),(f),(g), **.252**, .372, .408, .440, .500, .515, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	
Vinylidene chloride	B	II	4m	PV	Restr	B	.236 (a), (b), .372, .440, .550, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	I-D
Vinyl neodecanate	C	III	NR	Open	Open	A, B	.912(a)(1), .1002 (a), (b), .1004	NA
Vinyl toluene	A	III	4m	PV	Restr	A, B	.236 (a), (b), (c), (g), .409, .912(a)(1), .1002(a), (b), .1004.	I-D
White spirit (low (15-20%) aromatic)	B	II	4m	PV	Restr	A	.409	NA
Xylenes [16] (*ortho-, meta-, para-*)	C	III	4m	PV	Restr	A	.409, .440, .908(b) [16]	I-D
Xylenol	B	III	NR	Open	Open	A, B	.440, .908(a), (b)	NA

* denotes newly added products.
Entries in **boldface** are changes.

COLUMN HEADING FOOTNOTES:

[1] The cargo name must be as it appears in this column **(see §§ 153.900, 153.907).** Words in italics are not part of the cargo name but may be used in addition to the cargo name. When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether *see* Ethyl ether). However, the referenced entry is preferred.

[2] This column lists the IMO Annex II Pollution Category.
A, B, C, D – NLS Category of Annex II of MARPOL 73/78.
III – Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.
– No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).
[] – A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.
@ – The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO, based upon a GESAMP Hazard Profile or by analogy to a closely related product having one assigned.

[3] This column lists the type of containment system the cargo must have (see §§ 153.230 through 153.232).

[4] This column lists the height of any vent riser required (see §§ 153.350 and 153.351).

[5] This column lists any vent control valve required (see § 153.355).

[6] This column lists the type of gauging system required (see §§ 153.400 through 153.406).

[7] This column lists the type of fire protection system required. Where more than one system is li sted, any listed system may be used. A dry chemical system may not be substituted for either type of foam system unless the dry chemical system is listed as an alternative or the substitution is approved by Commandant (G-MTH) (§ 153.460). The types are as follows:
A is a foam system for water soluble cargoes (polar solvent foam).
B is a foam system for water insoluble cargoes (non-polar solvent foam).
C is a water spray system.
D is a dry chemical system.
NSR means there is no special requirement applying to fire protection systems.

[8] This column lists sections that apply to the cargo in addition to the general requirements of this part. The 153 Part number is omitted.

[9] This column lists the electrical hazard class and group used for the cargo when determining requirements for electrical equipment under Subchapter J (Electricial engineering) of this chapter.

Abbreviations used:
NR – No requirement.
NA – Not applicable.
FOOTNOTES OF SPECIFIC CARGOES:

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[10] Dry chemical extinguishers should not be used on fires involving this cargo since some dry chemicals may react with the cargo and cause an explosion.
[11] The I-B electrical hazard for acids does not apply to weather deck locations. See 46 CFR Part 111.
[12] Water is effective in extinguishing open air fires but will generate hazardous quantities of gas if put on the cargo in enclosed spaces.
[13] Aluminum is a questionable material of construction with this cargo since pitting and corrosion have been reported. The IMO Chemical Code prohibits aluminum as a material of construction for this cargo.
[14] Some tank pitting has been reported when this cargo is contaminated with water, including moisture in the air. The IMO Chemical Code requires that the vapor space over this cargo be kept dry.
[15] Electrical Hazard Class and Group based upon that which appears in "Classification of Gases, Liquids and Volatile Solids Relative to Explosion-Proof Electrical Equipment", Publication NMAB 353-5, National Academy Press, 1982, but not appearing in NFPA 497M, "Manual for Classification of Gases, Liquids and Dusts for Electrical Equipment in Hazardous Classified Locations." See also Subchapter J (Electrical Engineering) of this chapter.
[16] Special requirement .908(b) only applies to the para isomer, and mixtures containing the para isomer having a melting point of 0 deg C (32 deg F) or more.
[17] Special applicability:

§§ 153.440 and .908(a) apply to the chemical, and mixtures containing the chemical, with a viscosity of 25 mPa.s at 20 deg C (68 deg F).
§§ 153.440 and .908(b) apply to the chemical, and mixtures containing the chemical, with a melting point of 0 deg C (32 deg F) and above.
§§ 153.440 and .908(c) apply to the chemical, and mixtures containing the chemical, with a melting point of 15 deg C (59 deg F) and above.
§§ 153.448 applies to the chemical, and mixtures containing the chemical, with a melting point of 15 deg C (59 deg F) and above.

ABBREVIATIONS FOR NOXIOUS LIQUID CARGOES:

N.F. -- non-flammable.
F. -- flammable.
n.o.s. -- not otherwise specified.
ST -- Ship type.
Cat -- Pollution category.

TABLE 2—CARGOES NOT REGULATED UNDER SUBCHAPTERS D OR O OF THIS CHAPTER WHEN CARRIED IN BULK ON NON-OCEANGOING BARGES

Cargoes	Pollution Category
*2-Amino-2-hydroxymethyl-1,3-propanediol solution	III
*Ammonium hydrogen phosphate solution	[III]
Ammonium nitrate solution (45% or less)	D
Ammonium nitrate, Urea solution (2% or less NH_3)	D
Ammonium phosphate solution	#
Ammonium phosphate, Urea solution	D
Ammonium polyphosphate **solution**	@D
Ammonium sulfate solution (20% or less)	D
Apple juice	III
Calcium bromide solution	III
*Calcium carbonate slurry	III
Calcium chloride solution	III
*Calcium hydroxide slurry	D
*Calcium nitrate, Magnesium nitrate, Potassium chloride solution	■
Chlorinated paraffins (C14-C17) (with 52% Chlorine)	■
2-Chloro-4-ethylamino-6-isopropylamino-5-triazine solution	#
Choline chloride solution	D
*Clay slurry	III
*Coal slurry	III
*Dextrose solution	III
Diethylenetriamine pentaacetic acid, pentasodium salt solution	III
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution	D
*2-Dodecenylsuccinic acid, dipotassium salt solution	[III]
*Drilling brine (containing Calcium or Sodium salts)	III
*Drilling brine (containing Zinc salts)	A
*Drilling mud (low toxicity) (*if non-flammable and non-combustible*)	[III]
Ethylenediaminetetraacetic acid, tetrasodium salt solution	D
Ethylene-Vinyl acetate copolymer (*emulsion*)	III
*Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution	D
*Fish solubles (*water based fish meal extracts*)	[D]
*Fructose solution	#
Glucose solution	III
Glycine, sodium salt solution	III
Hexamethylenediamine adipate	D
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution	D
Kaolin clay solution	III
*Kaolin slurry	■

TABLE 2—CARGOES NOT REGULATED UNDER SUBCHAPTERS D OR O OF THIS CHAPTER WHEN CARRIED IN BULK ON NON-OCEANGOING BARGES—Continued

Cargoes	Pollution Category
*Kraft pulping liquor (free alkali content, 1% or less) *including: Black, Green, or White liquor*	#
Lignin liquor (free alkali content, 1% or less) *including:*	#
Calcium lignosulfonate solution	
Sodium lignosulfonate solution	
Lignin sulfonic acid, **sodium salt** solution	III
Magnesium chloride solution	III
Magnesium hydroxide slurry	III
Milk	III
Molasses	III
*Molasses residue (*from fermentation*)	[III]
*Noxious liquid, n.o.s. (17) ("trade name," contains "principal components"), Category D (*if non-flammable or non-combustible*)	D
*Non-noxious liquid, n.o.s. (18) ("trade name," contains "principal components"), Appendix III (*if non-flammable or non-combustible*)	III
Pentasodium salt of Diethylenetriamine pentaacetic acid solution, *see* **Diethylenetriamine pentaacetic acid, pentasodium salt solution**	III
Polyaluminum chloride solution	III
Sewage sludge (*treated so as to pose no additional decompositional and fire hazard;* **stable, non-corrosive, non-toxic, non-flammable**)	#
*Silica slurry	[III]
Sludge **(treated so as to pose no additional decompositional and fire hazard;** *stable, non-corrosive, non-toxic, non-flammable*)	#
Sodium aluminosilicate slurry	III
Sodium carbonate solution	D
Sodium naphthenate solution (free alkali content, 3% or less) *see* Naphthenic acid, sodium salt solution	A
Sodium polyacrylate solution	[III]
Sodium silicate solution	D
*Sodium sulfate solution	[III]
Sorbitol solution	III
Tetrasodium salt of Ethylenediaminetetraacetic acid solution, *see* **Ethylenediaminetetraacetic acid, tetrasodium salt solution**	D
1,1,1-Trichloroethane	B

TABLE 2—CARGOES NOT REGULATED UNDER SUBCHAPTERS D OR O OF THIS CHAPTER WHEN CARRIED IN BULK ON NON-OCEANGOING BARGES—Continued

Cargoes	Pollution Category
1,1,2-Trichloro-1,2,2-trifluoroethane	C
Trisodium salt of N-(Hydroxyethyl)-ethylenediaminetriacetic acid solution, *see* **N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution**	D
*Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution	D
Urea, Ammonium nitrate solution (2% or less NH_3), see **Ammonium nitrate, Urea solution (2% or less NH_3)**	D
Urea, Ammonium phosphate solution, see **Ammonium phosphate, Urea solution**	D
*Urea formaldehyde resin solution	III
Urea solution	III
*Vegetable protein solution (*hydrolysed*)	III
*Vanillan black liquor (free alkali content, 1% or less)	#
Water	III
Zinc bromide, Calcium bromide solution *see* Drilling brine (containing Zinc salts)	A

* denotes newly added products.
Entries in **boldface** are changes.

Explanation of Symbols: As used in this table, the following stand for:

A, B, C, D – NLS Category of Annex II of MARPOL 73/78.

I – Considered an "oil" under Annex I of MARPOL 73/78.

III – Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG – Liquefied flammable gas.

– No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[] – A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

Dated: November 4, 1988.

[FR Doc. 88-27698 Filed 12-2-88; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 141 and 143

Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules; Reopening for Public Comment

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 141, and 143

[Docket No. 25627]

Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening for public comment.

SUMMARY: This notice announces the reopening of the above docket to provide for continued receipt of comments, recommendations, and ideas from the public on the Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules. Comments received in the docket after it closed on September 9, 1988, and before this reopening will be included in the docket. The docket is being reopened to facilitate the orderly flow of collecting comments, recommendations, and ideas from the public throughout this regulatory review.

DATE: Docket No. 25627 will remain open until the FAA gives notice in the **Federal Register** that the docket is closed.

ADDRESS: Comments may be sent in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC–204), Docket No. 25627, 800 Independence Ave. SW., Washington, DC 20591; or delivered in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments received may be examined in the Rules Docket on all weekdays, except Federal holidays, between the hours of 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Edna H. French, Manager, AFS–850 Project Development Branch or John Lynch, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA requests the participation of all interested persons, and the identification of data, literature, statistics, research papers, or other documents, available in the public sector, that may be relevant to the issues involved in pilot, flight instructor, pilot school, and ground instructor requirements and training.

Interested persons are invited to express views and to make recommendations for regulatory changes. Participants also should address any economic consequences (e.g., implementation costs, potential savings) of the views or changes that they recommend. The FAA encourages those persons submitting comments to include any source of supporting data that may be applicable to the views or recommendations.

Comments should identify Docket No. 25627, and be submitted in duplicate to the address noted previously in the "Address" section of this document. All comments submitted will be available for examination in the Rules Docket in Room 916 of the FAA Building, both before and after the closing date.

Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with their comments a self-addressed, stamped postcard of which the following statement is made: "Comments to Docket Number 25627." The postcard will be dated, time stamped, and returned to the commenter by the FAA.

Availability of the Notice

Any person may obtain copies of this notice and the other notices that have been issued on this regulatory review project, by submitting a request to the FAA, Office of Public Affairs, ATTN: APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267–3484. Communications must identify Docket No. 25627. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

A Notice of Public Hearing was published in the **Federal Register** on June 27, 1988 (53 FR 24178) requesting participation from the public on this regulatory review. In that Notice of Public Hearing document, the FAA announced the hearing schedule and several topics of discussion for public comment. The topics for discussion were identified on the basis of regulatory amendments previously adopted by the FAA, petitions for exemption, letters, petitions for rulemaking, National Transportation Safety Board (NTSB) safety recommendations, and FAA evaluations of training and certification rules. The topics included the following: Several NTSB safety recommendations; reporting completion of biennial flight reviews to the FAA; adding or deleting certain certificates and/or ratings; changes to the aircraft type rating certification procedures; changes to the pilot and instructor certification eligibility requirements; changes to the pilot and instructor privileges and limitations; changes to the FAA certification of military and foreign pilots; changes to the flight and ground instructor endorsements and recordkeeping practices; various changes to the certification and operational rules of Part 141; and various changes in clarifying certain terms and definitions in Parts 61, 141, and 143. In addition, the FAA announced the availability of a management action plan for conducting a job task analysis in conjunction with this regulatory review. The public hearings were held on July 26 and 27, 1988 at the FAA Building in Washington, DC, and on August 3 and 4, 1988 at the FAA Building in Oshkosh, Wisconsin.

The FAA issued a second notice on this regulatory review on August 5, 1988 (53 FR 29582). This notice extended the period for receipt of written comments to Docket No. 25627 until September 9, 1988, for the topics of discussion items and solicited comments on the methodology of the management action plan announced in the Notice of Public Hearing (53 FR 24178; June 27, 1988).

Currently, the FAA is developing a Notice of Proposed Rulemaking (NPRM). The first NPRM will address NTSB safety recommendations and FAA immediate action items discussed at the public hearings. The FAA will consider comments on these issues made at the public hearings or received by September 9, 1988, in the docket. Comments received after that date will be considered to the extent practicable.

The FAA intends to publish additional NPRM's addressing other issues raised in the regulatory review. Many of these issues will involve extensive research and additional public hearings. The management action plan, contained in Docket No. 25627, describes a valid and reliable methodology to collect information from subject matter experts (i.e., experienced and current pilots, instructors, and examiners from the aviation community). The information collected from these experts will be used to identify the required knowledge, skills, and abilities needed by pilots and instructors for flying in each category and class of aircraft in the various operating environments of today's National Airspace System.

In addition, the FAA intends to conduct a futuristic review of the training and certification needs for air

carrier pilots from the year 2000 and beyond.

The FAA continues to receive numerous inquiries, suggestions, ideas, and comments from the public concerning recommended changes to Parts 61, 141, and 143. As a result, the FAA is reopening Docket No. 25627, in order to provide an organized means of receiving comments from the public throughout this regulatory review. Docket No. 25627 will remain open until the FAA gives notice that the docket is closed. All comments addressed to Docket No. 25627, including those received after September 9, 1988, and before issuance of this notice, are included in the docket. The FAA will use the data, ideas, information, and recommendations in Docket No. 25627 as a resource in developing specific regulatory proposals.

D.C. Beaudette,

Acting Director, Flight Standards Service.

Issued in Washington, DC on November 29, 1988.

[FR Doc. 88-27872 Filed 12-2-88; 8:45 am]

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Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 639

Worker Adjustment and Retraining Notification; Proposed Rule

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 639

Worker Adjustment and Retraining Notification

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing a proposed rule interpreting the provisions of the Worker Adjustment and Retraining Notification Act (WARN). WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit, and to the appropriate local government.

DATES: This proposed rule is being used to solicit comments on a subsequent final rule which the Department intends to issue before the expiration of the April 1, 1989, expiration of the interim interpretative rule published separately.

Comments on this proposed rule must be received by February 3, 1989.

ADDRESSES: *Proposed rule*: Comments on the proposed rule shall be mailed to the Assistant Secretary of Labor, Employment and Training Administration, Department of Labor, Room N–4459, 200 Constitution Avenue NW., Washington, DC 20210; Attention: Administrator, Office of Job Training Programs.

Information collection requirements: Comments on the information collection requirements should be sent to the Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503, Attention: Desk Officer for Employment and Training Administration.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo; Telephone: (202) 535–0577.

SUPPLEMENTARY INFORMATION:

Introduction

The Worker Adjustment and Retraining Notification Act (WARN, the statute, or the Act), Pub. L. 100–379, 102 Stat. 890, was enacted on August 4, 1988. 29 U.S.C. 2101 et seq. Section 11 of the Act provides that WARN goes into effect on February 4, 1989. WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit (see 29 U.S.C. 1661(b)(2)), and to the appropriate local government. 29 U.S.C. 2902 and 2903. Section 8(a) of the Act requires that the Secretary of Labor "prescribe such regulations as may be necessary to carry out this Act. Such regulations shall, at a minimum, include interpretative regulations describing the method by which employers may provide for appropriate service of notice as required by this Act." 29 U.S.C. 2107(a). Under section 11 of the Act, the authority to issue regulations for WARN became effective on August 4, 1988.

The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department), since the enactment of WARN, has published in the **Federal Register** for comment various notices and discussion papers on WARN. 53 FR 43731 (October 28, 1988); 53 FR 39403 (October 6, 1988); 53 FR 38026 (September 29, 1988); 53 FR 36056 (September 16, 1988); and 53 FR 34844 (September 8, 1988). In developing this proposed rule, ETA has considered the comments received in response to those notices and discussion papers.

Prior Actions

The Department of Labor (DOL) is conducting the WARN implementation process in an open and public manner. On September 16, 1988, the Department published a notice in the **Federal Register** inviting comments from interested parties regarding: "(1) [T]he extent to which the Department should issue interpretive regulations; and (2) [T]o to extent that regulations are needed, the specific views of commenters on how particular sections of the law should be implemented through regulations."

A total of 63 letters was received, of which 43 were sufficiently timely for full consideration. The comments break out by source as follows: employer associations 18, companies 17, law firms 8, unions 7, employee associations 1, Members of Congress 4, State officials 7, and private citizens 1.

The Department's analysis of these comments revealed the following points:

(1) Both companies and unions strongly encouraged DOL to publish interpretive regulations that explain how WARN will be implemented and clarify WARN provisions they find ambiguous.

(2) The commenters also requested that DOL address or define a number of specific items including:

(a) The earliest date notice would be required to be given;

(b) Who is affected by an employment loss (e.g., part-time workers and incumbents with seniority who displace other workers);

(c) The exemption of temporary workers and temporary facilities;

(d) The terms "single site of employment," "facility" and "operating unit," which are important terms used in determining coverage of plant closings and mass layoffs;

(e) The allowable bases for reduced advance notice under the Act for companies encountering unforeseeable businesses circumstances.

A question has arisen regarding the meaning of the February 4, 1989, effective date of WARN. Section 3(a) of WARN states "an employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice * * *."

Some commenters have interpreted this language to require that employers must provide full 60-day notice in advance of planned plant closings or mass layoffs occurring on or after the effective date, i.e., any actions planned to occur on or after February 4, 1989 would be subject to the full 60-day notice requirement, requiring notice as early as December 6, 1988.

Another interpretation that has been offered is that the effective date provision requires notice to be given only for actions which will occur 60 days after Fedruary 4, 1989, i.e., notice would be required only for actions occurring on or after April 5, 1989.

Still a third possible interpretation is that an employer must give such advance notice as is possible for all covered employment actions that occur on or after February 4, 1989, e.g., for a layoff occurring on March 6, 1989, the employer would be required to provide 30 days' notice.

DOL has received comments supporting each of these interpretations. DOL agrees with commenters that a strong case can be made to support the second and third interpretations, but DOL also has determined that there are substantial arguments to support the first interpretation. DOL has been informed in a comment submitted by four of the Congressional sponsors of WARN that they intended WARN to require 60 days' notice for all plant closings that occur on or after the effective date.

DOL views the effective date provision to mean that covered employment actions which occur on or after February 4, 1989 are subject to the notice requirements of WARN. That may mean that notice is required to be given as early as December 6, 1988. DOL

believes that it would not be responsible to advise employers not to give notice during a period (December 6, 1988—April 4, 1989) when notice may later be determined to have been required. Employers are, therefore, best advised to proceed conservatively and to provide notice in view of this possible liability.

DOL is therefore issuing separately in the **Federal Register** an interim interpretative rule so that potentially affected employers will know in advance of December 6, 1988, how to comply with the law.

DOL agrees with commenters who have pointed out that the publication of this regulation only a few days before the notice requirement may become effective may not provide sufficient advance notice to enable some employers to fully comply with all the regulatory provisions. DOL has alerted employers to the possibility that notice may be required to be given as of December 6, 1988 in both the September 16 and October 28 **Federal Register** Notices. Nonetheless, DOL recognizes that the details of these regulations have not been generally known. DOL therefore believes that in the early days of WARN implementation substantial compliance with regulatory requirements should be sufficient to comply with WARN.

It should be noted that the requirements of WARN do not apply to employment actions that are completed prior to February 4, 1989.

Issues Under the Act

On October 28, 1988, the Department published the WARN Discussion Paper in the **Federal Register** and solicited comments. This paper reviewed sections 2, 3, 4 and 11 of the statute, discussing questions raised in comments on the September 16, 1988 Notice and issues addressed in the legislative history.

DOL has received comments in response to the October 28 Notice from employer associations, employers, labor unions, law firms and a State governmental agency. A letter of comment was submitted by four members of Congress who were legislative sponsors. DOL has reviewed and considered the comments in drafting its regulations. Because of the short time frames for developing these regulations, DOL will continue to consider these comments and others that may be received in response to the October 28 Notice, as well as those received in response to this document, in the preparation of the final WARN regulations.

Following is a section-by-section analysis of the regulations and the comments.

(1) Organization of Regulations

The Department has written and presented the WARN regulations so they will be understandable, and offer guidance to readers in the business and labor communities. Issues are discussed in their logical sequence, in an effort to easily convey the intent of the Act and employers' responsibilities.

(2) Scope and Purpose

The scope of these regulations is basic: Section 2 of the Act provides necessary definitions and exclusions; Section 3 describes the content and service of notice, sets forth the legal bases for providing reduced notice or extending a 6-month layoff period, and reviews employment losses over a 90-day period to determine whether some employers are covered by WARN requirements; and Section 4 outlines two possible exemptions to coverage of plant closings and mass layoffs.

The Department decided not to regulate in any way regarding enforcement and civil penalties (i.e., section 5 of the statute) since the courts alone have the authority to enforce WARN, and are therefore best situated to interpret these important provisions of WARN.

The regulations note that WARN does not supersede or supplant collective bargaining agreements which provide additional rights. DOL is interested in receiving comments on: (1) whether and to what extent the final regulations might provide that collective bargaining agreements which provide for the terms different from terms incorporated into the WARN regulations may be used to legitimate alternative methods of compliance with WARN; and (2) whether such a provision should apply only to collective bargaining agreements that are entered into after the effective date of WARN or whether agreements that predate WARN also should be included. Obviously, the length of the notice period cannot be reduced by agreement, but DOL is interested in receiving comments on other definitions or requirements which might properly be varied in collective bargaining agreements: for example, the definitions of single site of employment, facility or operating unit or the content of notice.

(3) Definitions

The definition of employer presented in the Act makes it clear that all business enterprises of the stated size are covered. Because of the use of the term "business enterprise", DOL concludes that regular Federal, State, and local government public services are outside the purview of WARN. Commenters have sought clarification regarding the treatment of private nonprofit entities; quasi-public corporations, authorities, institutions of higher learning, hospitals, and public utilities. The Congressional commenters stated that the intent of WARN was to include private nonprofit organizations and "public and quasi-public entities operating in a 'commercial' context." To the extent such entities engage in "business" (i.e., take part in a commercial or industrial enterprise; supply a service or good on a mercantile basis; or provide independent management of public assets, raising revenue and making desired investments), such entities appear to meet the definition of "business enterprise" in the absence of specific legislative history on this point.

Generally, DOL has developed its definition of the term "employer" in accordance with the comments; it has included nonprofit organizations. In the final rule, DOL is considering including some public agencies within the definition. DOL does not, however, intend to define covered public enterprises in terms of the traditional/non-traditional governmental functions distinction that was rejected by the Supreme Court as unworkable in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1984). Instead, DOL is considering defining which public entities are covered in terms of an organizational test, i.e., whether the entity is managed by a separately organized governing board with independent authority to manage its personnel and assets. DOL believes this test will cover the entities intended to be covered and will have the virtue of relative ease of application. DOL specifically invites comments on whether such entities should be covered and whether this test is an appropriate basis for defining coverage.

DOL agrees with commenters that, as a general rule, separately incorporated or organized entities should be treated as separate employers. It must be recognized, however, that there are cases where related entities are not effectively separate and must be treated as one entity for WARN purposes. DOL has adopted standard tests recognized by the courts in the context of a variety of laws for determining whether a subsidiary or an independent contractor is sufficiently independent from its parent to be treated separately.

In the application of the tests, the courts look to the totality of the

circumstances and each determination is highly fact-specific. Given the complex nature of the determination, § 639.3(a), which defines "employer", sets out a brief description of a few of the more important factors used in determining subsidiary or independent contractor status.

The regulations set down definitions for "plant closing", "mass layoff" and "representative" as presented in WARN.

Commenters asked the Department to clarify the meaning of "affected employees" in the Act. Since the statute includes in the term those employees who can reasonably be expected to experience an employment loss, it is clear the impact on the employee roster of bumping, seniority, and persons with multiple job skills requires consideration.

A number of commenters discussed the difficulty of determining 60 days in advance which employees will be bumped in some of the complex bumping procedures that exist in various industries. Most of these commenters referred to collectively bargained bumping procedures in which case notice goes to union(s), not to individual workers (section 3(a)(1) of WARN). One commenter took the opposite view and suggested that employers are well aware of who will be affected by bumping systems and should be required to notify all potentially affected employees. DOL believes that, in those cases of non-bargained, employer-developed seniority or bumping systems to which notice to individual workers applies, there are real complexities which militate against imposing an absolute requirement that notice be given to all potentially affected employees regardless of the complexity of the bumping system. DOL is persuaded that there are factors, including the possible non-exercise of bumping rights by an intermediate bumpee and the difficulty of predicting a bumping path where employees have several options among positions or lines of progression into which they can bump, which make it difficult to predict who will finally be affected as a result of a plant closing or mass layoff. Additionally, DOL believes that in some cases adoption of an absolute notice rule would contravene the intent of WARN to provide notice to those workers who will be affected by dislocation events and might lead to unnecessarily broad mass termination or blanket notices which Congress clearly intended should not be utilized. DOL has, therefore, adopted a reasonable foreseeability test in defining affected employees.

The purpose of WARN to provide notice to workers so alternative employment or necessary training can be obtained on a timely basis applies equally to white-collar and managerial employees as well as to employees in the skilled trades and other blue-collar occupations. Therefore, the Department includes managerial and supervisory workers as "affected employees". The definition also addresses questions raised regarding consultants and contract employees, excluding them since they are not legally employees of the businesses to which they are assigned.

The definition of "employment loss" and exclusions from employment loss in the regulations closely follow the language of the statute. Commenters questioned whether an employment loss occurs when there is job loss but no loss of income. Some commenters gave examples of programs under which an employee retains full pay, benefits and other rights although separated from a particular job and suggested that the definition of employment loss should take account of such programs. DOL agrees and has developed the definition of employment loss to take account of these employer initiatives. On the other hand, DOL does not agree that total or partial income replacement programs where an employee does not retain full employment status, such as supplemental unemployment benefits and severance pay, should affect the definition of employment loss, and has developed the definition accordingly.

On a related matter, commenters have asked that DOL discuss in its regulations arrangements where employers have reassigned workers after providing the notice required by WARN, prior to the date of employment loss. Reassignment could be to training, paid leave status, on job-seeking activities. DOL agrees that such reassignments may be possible where not prohibited by contract, but does not wish to endorse practices which could undermine the objectives of WARN that both workers and their communities be provided notice in advance of a plant closing. Accordingly, DOL is specifically requesting comments on this issue for consideration prior to issuing a final rule.

"Unit of local government" is defined in the regulations as in the Act. Commenters asked what taxes should be considered in determining which unit of local government should receive notice. The logical solution is for a firm to aggregate all taxes paid to a single unit of local government.

The definition of "part-time employee" in the regulations follows the statutory language. Some commenters were unsure whether regular full-time employees with employment during less than 6 of the last 12 months would be considered part-time or full-time employees. The statute specifically states that such employees are part-time and makes no specific exemption for employees newly hired for full-time, permanent employment.

Other commenters were unsure as to the status of employees who are traditionally understood to be "seasonal" and short-term, yet are hired on a recurring basis. According to the Act, if these employees work for less than 6 of the past 12 months, they are part-time employees. Such employees would, in most cases, also fall under the "temporary facility/limited employment" exemption in section 4(a). Further, "seasonal" employees who work longer than 6 months may also fall under the "limited employment" exemption.

In response to commenters' requests for guidelines in determining the period used in calculating whether a worker has worked "an average of fewer than 20 hours per week," DOL has established that the shorter of the time the worker has been employed or the most recent 90 days should be used.

Several commenters requested clarification of the term "single site of employment." The regulations provide a definition which is drawn from the April 1988 Conference Report on H.R. 3.

As a general rule, a geographic connection or proximity is required to define "single site of employment." Even where several distinct operations are performed at a geographically connected site, that plant will be counted as a single site of employment. The facilities or units that house the separate functions may also be "facilities or operating units" within the plant which are also used to measure the occurrence of a covered employment loss.

DOL also recognizes that in some limited cases geographically separate sites may still be considered a single site of employment because of an inextricable operational connection. DOL intends this exception to be a narrow one to cover those cases where separate buildings are used for the same purpose and share the same staff and equipment, or other unusual organizational situations exist.

DOL has adopted common sense definitions of the terms "facility" and "operating unit" within a single site of employment. These terms are important for determining whether a plant closing

has occurred. DOL has defined these terms in a manner which attempts to define physically and operationally distinct entities for purposes of determining whether a plant closing, the shutdown of a distinct entity, has occurred. Generally, commenters do not appear to disagree with the definitions adopted. After receiving and reviewing specific comments regarding the "plant closing" definition, DOL notes, that the closing of a facility or operating unit at which fewer than 50 workers are employed does not, under the statute, become a plant closing if additional employees in an unrelated unit are also laid off. An example would be a plant of 300 workers, where an operating unit of 35 workers is closed. As a result of that closing, 15 other workers in other parts of the plant lose their jobs. Advance notice is not required under these circumstances. DOL solicits comment on this example, and related issues.

The definition of operating unit can be applied through the following example. A 24-hour store eliminating its night shift would not carry out a closing of an operating unit, but the elimination of all warehouse and stock workers on all three shifts would constitute the closing of an operating unit if 50 or more workers were affected.

DOL also has provided definitions of the terms "State dislocated worker unit" and "State."

(4) Who Must Give Notice

In response to DOL's discussion paper, several commenters pointed out that WARN creates an absolute division of responsibility for giving notice between a buyer and seller of a business; the seller is liable to give notice up to and including the date (time) of sale and the buyer is responsible thereafter. DOL agrees and has developed its regulations to reflect that view. Thus, at all times one of the parties to the transaction is responsible for giving notice. The Department's regulations offer guidance to employers anticipating a sale or purchase transaction to avoid confusion regarding service of notice and liability under WARN, by suggesting that each party's responsibility with respect to these items be covered in the contract of sale.

A number of commenters objected to DOL's use of the word "tenure" in the discussion paper when reviewing the meaning of the last sentence of section 2(b)(1) which provides that employees of the seller as of the effective date of the sale become employees of the buyer immediately thereafter. The commenters stated that this provision should be interpreted solely to relate to the responsibility to provide notice. DOL generally agrees and has not used the term "tenure" in the regulations. DOL agrees that Congress did not intend to affect other questions relating to employment status that are unrelated to the notice requirements of WARN. DOL notes, however, that for WARN purposes this provision does prevent a full-time employee of the seller from being classified as a part-time employee of the buyer because the employee has not worked for the buyer for 6 months.

(5) When Must Notice Be Given

To aid employers in complying with the Act and issuing notice when it is due, DOL suggests that the employers look ahead and behind, not only 30 days, but 90 days (section 3(d)) in determining whether planned employment actions will trigger notice requirements. By doing this, an employer can look at its planned employment actions, in the broader framework of the Act, and reduce potential liability for failure to give notice when thresholds have been met. DOL reminds employers that, in the case of the section 3(d) 90-day aggregate, notice is not required if the employer can demonstrate that the reductions were the result of "separate and distinct actions and causes and are not an attempt to evade" the Act.

In response to inquiries from commenters, DOL has pointed out a practical and reasonable method for measuring the number of employees in a business enterprise for the purpose of determining whether an employer is covered by WARN, i.e., has sufficient numbers of workers or hours so that WARN applies, and, if so, whether a particular employment action is a plant closing or mass layoff. The obvious point in time at which an enterprise's employment level should be measured is the date the first notice is required to be given. Because this point of measurement is closest to the time of the employement action, a "snapshot" on this date is usually most reflective of the firm's employment status, and thus of its coverage under WARN. There are, however, instances in which this method of employment measurement is not most indicative of a firm's true employment level and thus not appropriate for determining WARN coverage. The use of the number of employees on a more representative alternative date, or the use of an average employment level calculated over a recent period of time, may be appropriate where employment levels have surged up or down for temporary, and thus unrepresentative, reasons. An example would be the detailing of a large group of employees to a particular employment site for a short period of time.

For the purpose of exclusion from the definition of employment loss under section 2(b)(2), DOL has defined the term "transfer." Consistent with direction on transfers found in the June 2, 1987, Senate Committee Report, the new job being offered must be substantially equivalent in terms of pay and working conditions. By applying this definition, the term transfer, as used in the statute, will indeed refer to a transfer, and not a demotion. Some commenters suggested that the definition of reasonable commuting distance or comparable employment be made sufficiently flexible to accommodate the different provisions of collective bargaining agreements. DOL agrees and points out that under section 6 of the Act and under § 639.1(f) of the regulations provision is made for assuring that WARN does not supersede collective bargaining agreements which provide different but not inferior rights in areas such as these.

Section 639.5(c) of the regulations clarifies that work may fall under the temporary employment exemption in section 4(1) of the Act, if the workers understood the temporary nature of the employment at the time of hire. Since such an understanding could arise in a variety of ways, the regulations specify reference to employment contracts or local or industry employment practices, but leave the burden of proof to employers. A distinction is made between temporary work and long-term or continuous employment in construction and agriculture.

A number of commenters argued that the regulations should provide a blanket exemption to certain industries where the majority of workers may be hired for particular projects or seasonal, recurring work. DOL does not agree that a blanket exemption for any industry is appropriate since DOL cannot find that *all* the employees of any industry are necessarily hired only for particular projects. DOL believes, however, that the regulations define temporary facility and particular project in a manner which will not subject industries in which employees are generally hired for a particular project to any unforeseen liability as long as there are clear understandings about the nature of their employment.

Section 639.5(d) of the regulations addresses the strikes and lockouts exemption in section 4(2) of the Act. In the discussion paper DOL suggested that the exemption effectively does not apply to strikes since it is difficult to understand how a strike by employees constitutes a plant closing or mass layoff, an action solely within the power

of the employer. A number of commenters disagreed with this suggestion, although none clarified how a strike can constitute a plant closing or mass layoff. DOL agrees that a strike can cause a plant closing or mass layoff and has, therefore, included strikes within the regulatory provision.

The legislative history reveals the clear intent of Congress to restrict the exemption to actions which occur in the normal course of collective bargaining. The regulations reflect this intent and emphasize that the exemption does not apply where there is an attempt to evade the Act. Commenters also questioned whether employment loss suffered by non-striking employees as a direct or indirect result of a strike entitles them to notice, especially when their loss of employment cannot be predicted 60 days in advance. This situation is specifically addressed in the legislative history. The intent to provide advance notice whenever workers are involuntarily unemployed due to a plant closing or mass layoff may extend to these workers. DOL is considering, in the final regulations, therefore, requiring notice to non-striking employees at the employment site that is directly affected by the strike or lockout, but clarifying that reduced notice under the unforeseeable business circumstances provision may apply to plant closings or mass layoffs that indirectly result from strikes or lockouts.

DOL recognizes that the entire area of strikes and lockouts as they relate to the provisions of WARN is a complex one involving a variety of issues that arise under the National Labor Relations Act. While DOL does not intend to promulgate regulations which intrude into these matters, DOL does recognize that additional clarity may be possible in the final regulations and, therefore, invites additional comments on these issues.

(6) Who Must Receive Notice

Notice must be given to affected employees' representatives, directly to unrepresented affected employees, to the State dislocated worker unit, and to the chief elected official of the unit of local government. Section 639.6 of the regulations clarifies who is to receive notice in each case. It may be advisable to provide notice to the level of the union organization which is closest to the workers and which has the ability to act to notify individual workers. Thus, while the regulations specify that the notice is to be served upon the chief elected officer of the exclusive representative or bargaining agent, it is recommended that a copy also be given to the local union official.

Affected employees entitled to notice include part-time as well as full-time employees, since the law does not specify otherwise. In addition, where bumping rights apply, employees who may reasonably be expected to experience an employment loss due to application of bumping rights are entitled to notice as well as incumbents of positions to be directly affected. This is borne out by the legislative history. It is clear, however, that such factors as voluntary separations, early retirement and transfers which occur after notice is given will change which employees actually experience employment loss. In recognition of such non-predictable factors, the regulations state that notice is to be given to the extent that the affected workers can be identified.

States are required, under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), to have operating dislocated worker units as of July 1, 1989. To meet the requirement for notice to these units prior to their creation or designation by State governors and to permit States to set in motion existing worker adjustment assistance programs, the regulations specify that notice served upon the State govenor constitutes service upon the State dislocated worker unit.

Questions were raised about the identity of the chief elected official of a unit of local government, given the variety of local government structures. In particular, clarification was sought in the situation where local government is run by an elected board. The regulations clarify this situation by providing that the chairperson of the elected board is to receive notice. The regulations also provide that all local taxes should be aggregated for purposes of determining which unit of local government to notify when a plant is located within two or more such units.

(7) Content of Notice

A number of commenters argued that the discussion paper imposed too many requirements on employers and went beyond the requirements of the Act. While the Act does not enumerate specific elements which should be included in the advance written notice of an order for a plant closing or a mass layoff, the purpose of providing notice to the parties mentioned above is to allow each of them to take appropriate action to facilitate training, employment or other adjustments for affected employees. The content of notice to each party, specified in § 639.7 of the regulations, is designed to provide information necessary for each of them to take responsible action.

Commenters pointed out that specific requirements for identifying the date on which a layoff or termination is to occur could interfere with their collectively bargained procedures for notice to employees or their unions. DOL agrees that it is not the intent of WARN to interfere with such processes and has attempted to draft the notice content requirements to provide for some flexibility where notice is provided well in advance of WARN's 60-day notice period. DOL also agrees with one commenter that in plant closing situations where such long-term notice is given that otherwise complies with these regulations but where notice of a definite termination date is not possible, the giving of a second notice specifying a termination date 60 days in advance of that date constitutes full compliance with WARN.

It is clear from comments that there are circumstances in which a closing or layoff will be triggered if a specific event occurs, but it is not known at the time 60-day notice would be required whether that specific event will take place. It would be consistent with the intent of the Act to provide notice in such a situation. However, since the eventual outcome is not definite, the regulations stipulate that the notice must clearly identify its conditional nature and the circumstances on which it is based.

(8) How Is Notice To Be Served

Commenters asked whether the parties listed in the Act must have written notice in hand 60 days before the separation occurs or whether the employer could mail the notice, insert the notice in affected workers' pay envelopes, etc., 60 days prior to the employment action. According to the legislative history, the first option is the correction interpretation. Any method of transmittal that is designed to ensure this end, i.e., to have the notice in hand 60 days in advance, would satisfy the intent of the Act. Additionally, the floor debates indicated that a ticketed notice fails to meet the requirements of WARN.

(9) When May Notice Be Given Less Than 60 Days In Advance

The three conditions allowing for a reduction of the 60-day period mentioned in the regulations are set forth in the statute. While commenters pointed to several floor comments which indicated a less restrictive approach to applying reduced notice provisions, the totality of the legislative history indicates the narrow nature of these bases as well as the requirement that the employer must satisfactorily prove

the necessity of a reduced notice period, if challenged. To ensure that the employees or their representative(s), the State dislocated worker unit, and the chief elected official of the unit of local government receive the information needed to help the workers find a new job or receive appropriate training, a brief statement of the basis for reducing the notification period should accompany the other elements required in the notice under the regulations. As expressed in the statute, the employer must give as much notice as is practicable.

The language of the "faltering company," "unforeseeable business circumstances," and "natural disaster" bases outlined in the regulations to a great extent reiterates relevant portions of the April 1988 Conference Report's text.

Commenters asked for clarification of when business circumstances are not reasonably foreseeable. In an effort to provide guidance and address their concerns, the regulations state that the employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of a particular market. The employer is not, however, required to predict general economic conditions that may impact the demand for his goods or services.

Commenters also suggested that DOL list examples of reasonably unforeseeable business circumstances in the regulations. While DOL agrees with the commenters that such factors as strikes or lockouts elsewhere, loss of contracts, unexpected major market downturns, fires and closures ordered by government agencies all may constitute unforeseeable business circumstances, at this time DOL does not see the utility of including such a list in the regulations. DOL is willing to consider including in the final regulations examples which illustrate principles applicable to employers generally. DOL therefore invites additional comments on examples that should be included in regulations and the circumstances in which they might apply.

In the case of the "natural disaster" exception, the floor debates demonstrate congressional intent that an employment action that was a direct result would fall under this exception, while one that was caused as an indirect result of a natural disaster would not be covered. The Department, however, understands that "indirect" plant closings or mass layoffs may not be known 60 days in advance and, thus, the "unforeseeable business circumstance" provision may prove applicable.

(10) When May Notice Be Extended

Section 639.10 covers the length of time after the date specified in the notice for which the notice is valid. To ensure that the parties who are due notice have the most current and helpful data available and, thus, can make appropriate plans, additional notice is due if the original date is not met. If the postponement is for less than 60 days, the notice need only contain a reference to the earlier notice, the date to which the planned action is postponed, and the reasons for the postponement. This type of notice will provide the parties with needed information and be less burdensome to the employer. If the postponement extends for 60 days or more, the additional notice should be treated as new notice and meet the specified requirements.

Several commenters disagreed with this interpretation, arguing that there is no specific statutory requirement to support it, that a 180-day period is more in keeping with the rolling 90-day aggregation period for determining employment loss under section 3(d) and that if any "secondary" notice is required posting general notice on a bulletin board should be sufficient. DOL believes that the approach it has adopted is most consistent with congressional intent in two important respects. First, it furthers the congressional purpose that notice to workers provide the workers and governmental authorities with specific information in order to react to a dislocation event and to obtain new employment or training to minimize the effects of that event. If workers are not informed of changes in planned termination dates their planning will be disrupted and either they will run the risk of losing other opportunities or the employer will lose employees who it may need to carry on its operations. Secondly, DOL's approach is in accord with Congress' express intent to prohibit rolling notice.

In the legislative history, the floor debates stipulate that rolling notice is *not* acceptable, and, accordingly, routine periodic notice of a possible plant closing or mass layoff is not permitted under the regulations.

Interim Interpretative Rule

The Department also is requesting comments on the interim interpretative rule (published separately in the **Federal Register**) for 60 days after its publication, and plans to respond to those comments and publish a final rule at a later date. The extended comment period is provided so that the many parties interested in the final rule will have a full opportunity to comment before final regulations are published.

As noted in the separately published interim interpretative rule, it expires on April 1, 1989. By that time, DOL expects to have published and effective a final rule.

Regulatory Impact

Insofar as is possible, DOL intends to perform an analysis of the impact of the Act and the final rule, to aid the General Accounting Office in its function of reporting to Congress on the Act.

Paperwork Reduction Act

Information collection requirements in this proposed rule will be submitted to the Office of Management and Budget for review pursuant to the Paperwork Reduction Act.

Comments on the information collection requirements should be sent to the Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503, Attention: Desk Officer for Employment and Training Administration.

List of Subjects in 20 CFR Part 639

Employment, Labor, Labor management relations, Labor unions, Penalties.

Proposed Rule

Accordingly, it is proposed that Part 639 of Chapter V of Title 20, Code of Federal Regulations, be revised to read as follows:

PART 639—WORKER ADJUSTMENT AND RETRAINING NOTIFICATION

Sec.

639.1 Purpose and scope.
639.2 What does WARN require?
639.3 Definitions.
639.4 Who must give notice?
639.5 When must notice be given?
639.6 Who must receive notice?
639.7 What must the notice contain?
639.8 How is the notice served?
639.9 When may notice be given less than 60 days in advance?
639.10 When may notice be extended?

Authority: 29 U.S.C. 2107(a).

§ 639.1 Purpose and scope.

(a) *Purpose of WARN.* The Worker Adjustment and Retraining Notification Act (WARN or the Act) provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the

prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. WARN also provides for notice to State dislocated worker units so that dislocated worker assistance can be promptly provided.

(b) *Scope of these regulations.* These regulations establish basic definitions and rules for giving notice, implementing the provisions of WARN. The Department's objective is to establish clear principles and broad guidelines which can be applied in specific circumstances. However, the Department recognizes that Federal rulemaking cannot address the multitude of industry and company-specific situations in which advance notice will be given.

(c) *Notice encouraged where not required.* Section 7 of the Act states: "It is the sense of Congress that an employer who is not required to comply with the notice requirements of section 3 should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce."

(d) *WARN enforcement.* Enforcement of WARN will be through the courts, as provided in section 5 of the statute. Employees, their representatives and units of local government may initiate civil actions against employers believed to be in violation of section 3 of the Act. The Department of Labor has no legal standing in any enforcement action and, resultantly, will not be in a position to issue advisory opinions affecting specific cases. These regulations are interpretive, and are not binding upon the courts. The Department will provide assistance in understanding these regulations and may revise them from time to time as may be necessary.

(e) *Notice in ambiguous situations.* It is civically desirable, it would appear to be good business practice for an employer to provide advance notice to its workers or unions, local government and the State when terminating a significant number of employees. In practical terms, there are some questions and ambiguities of interpretation inherent in the application of WARN to business practices in the market economy that cannot be addressed in these regulations. It is therefore prudent for employers to weigh the desirability of advance notice against the possibility of expensive and time-consuming litigation to resolve disputes where notice has not been given.

(f) *Coordination with job placement and retraining programs.* The Department, through these regulations and through the Trade Adjustment Assistance Program (TAA) and Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) regulations, encourages maximum coordination of the actions and activities of these programs to assure that the negative impact of dislocation on workers is lessened to the extent possible. By providing for notice to the State dislocated worker unit, WARN notice begins the process of assisting workers who will be dislocated.

(g) *WARN not to supersede other laws and contracts.* The provisions of WARN do not supersede any State laws or collective bargaining agreements that provide for additional notice or rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period.

§ 639.2 What does WARN require?

WARN requires employers who are planning a plant closing or a mass layoff to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice. Not all plant closings and layoffs are subject to the Act, and certain employment thresholds must be reached before the Act applies. The Act sets out specific exemptions, and provides for a reduced period of notification in particular circumstances. Damages and civil penalties can be assessed against employers who violate the Act.

§ 639.3 Definitions.

(a) *Employer.* (1) The term "employer" means any business enterprise that employs (i) 100 or more employees, excluding part-time employees; or (ii) 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of hours of overtime. Workers on temporary layoff who have a reasonable expectation of recall should be counted as employees. The term "employer" includes non-profit organizations of the requisite size. Regular Federal, State, and local government public services are not covered.

(2) Independent contractors and subsidiaries which are wholly or partially owned by a parent company will be treated as separate employers or as a part of the parent or contracting company depending upon the degree of their independence from the parent. Some of the factors to be considered in making this determination are (i) common ownership, (ii) common directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies emanating from a common source, and (v) the dependency of operations.

(3) An employer may have one or more sites of employment under common ownership or control. An example would be a major auto maker which has dozens of automobile plants throughout the country. Each plant would be considered a site of employment, but there is only one "employer", the auto maker.

(b) *Plant closing.* The term "plant closing" means the permanent or temporary shutdown of a "single site of employment", or one or more "facilities or operating units" within a single site of employment, if the shutdown results in an "employment loss" during *any 30-day period* at the single site of employment for *50 or more* employees, excluding any part-time employees. An employment action that results in the effective cessation of production or the work performed by a unit, even if a few employees remain, is a shutdown. A "temporary shutdown" triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding 6 months, or reductions in hours of work as specified under the definition of "employment loss."

(c) *Mass layoff.* The term "mass layoff" means a reduction in force which first, is not the result of a plant closing, and second, results in an employment loss at the single site of employment during *any 30-day period* for:

(1) *At least 33 percent* of the employees, excluding part-time employees, and

(2) *At least 50 employees,* excluding part-time employees.

Where 500 or more employees are affected, the 33% requirement does not apply, and notice is required if the other criteria are met. Plant closings, which can be triggered by the termination of a smaller number of workers than a mass layoff, involve the shutdown of one or more distinct units within a single site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

(d) *Representative.* The term "representative" means an exclusive representative of employees within the meaning of section 9(a) or 8(f) of the National Labor Relations Act or section 2 of the Railway Labor Act.

(e) *Affected employees.* The term "affected employees" means employees who may reasonably be expected to

experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer. This includes employee who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. The term "affected employees" includes managerial and supervisory employees, but does not include business partners. Consultant or contract employees who have a separate employment relationship with another employer and are paid by that other employer, or who are self-employed are not "affected employees" of the business to which they are assigned. In addition, for purposes of determining whether coverage thresholds are met, only incumbent workers in jobs being eliminated are counted.

(f) *Employment loss.* (1) The term "employment loss" means (i) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (ii) a layoff exceeding 6 months, or (iii) a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period.

(2) Where a termination or a layoff (see paragraphs (f)(1) (i) and (ii) of this section) is involved, an employment loss occurs upon the loss of full employment status. "Full employment status" means full pay, benefits, and other employment entitlements. Payment of normal termination or separation benefits otherwise due, such as severance pay and supplemental unemployment benefits, does not serve to continue full employment status.

(3) Employees who are transferred to employer-sponsored programs in which they retain full pay, benefits and other employment entitlements do not suffer an employment loss.

(4) An employee is not considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employer's business and, prior to the closing or layoff—

(i) The employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or

(ii) The employer offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(g) *Unit of local government.* The term "unit of local government" means any general purpose political subdivisions of a State, which has the power to levy taxes and spend funds as well as general corporate and police powers. When a covered employment site is located in more than one unit of local government, the employer must give notice to the unit to which it determines it paid the highest taxes for the year preceding the year for which the determination is made. All local taxes paid should be aggregated for this purpose.

(h) *Part-time employee.* The term "part-time" employee means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, including workers who work full-time. This term includes workers who would traditionally be understood as short-term, "seasonal" employees. The period to be used for calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed or the most recent 90 days.

(i) *Single site of employment.* (1) A single site of employment can refer to either a single location or a group of contiguous locations. Groups of structures which form a campus or industrial park, or separate facilities across the street from one another, may be considered a single site of employment.

(2) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable geographic proximity, used for the same purpose, and share the same staff and equipment. An example is an employer who manages a number of warehouses in an area but who regularly shifts or rotates the same employees from one building to another.

(3) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site. For example, assembly plants which are located on opposite sides of a town and which are managed by a single employer may be considered separate sites if they employ different workers.

(4) The term "single site of employment" may also apply to unusual organizational situations where the above criteria do not reasonably apply.

(j) *Facility or operating unit.* The term "facility" refers to a building or buildings, and the term "operating unit" refers to a product, task or specific work function within or across facilities at the single site. For workers whose primary duties require travel from point to point (e.g., railroad workers, bus drivers, salespersons), the facility or operating unit to which they are assigned as their home base will define the unit in which they are covered for WARN purposes.

(k) *State dislocated worker unit.* The term "State dislocated worker unit" means a unit to be designated or created in each State by the Governor under Title III of the Job Training Partnership Act, as amended by the Economic Dislocation and Worker Adjustment Assistance Act.

(l) *State.* For the purpose of WARN, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

§ 639.4 Who must give notice?

Section 3(a) of WARN states that "an employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order * * *." Therefore, an employer who is anticipating carrying out a plant closing or mass layoff is required to give notice to affected employees or their representative(s), the State dislocated worker unit and the chief elected official of a unit of local government. (See definitions in § 639.3 of this part.)

(a) It is the responsibility of the employer to decide the most appropriate person within the employer's organization to prepare and deliver the notice to affected employees or their representative(s), the State dislocated worker unit and the chief elected official of a unit of local government. In most instances, this may be the local site plant manager, the local personnel director or a labor relations officer.

(b) Consistent with section 3(c) of WARN, an employer who has previously carried out a short-term layoff (less than 6 months) which is being extended beyond 6 months is required to give notice when it becomes reasonably foreseeable that the extension is required. Section 3(c) requires that the layoff, at its outset, was announced to be for less than 6 months.

(c) In the case of the sale of part or all of a business, section 2(b)(1) of WARN defines who the "employer" is. The full responsibility to notify any workers whose employment will be terminated as a result of a sale remains with the seller up to and including the effective date (time) of the sale and is then assumed by the buyer. According to the language of the Act, employees are always entitled to notice, i.e., at all times the employer is responsible for providing notice. For purposes of

coverage under WARN, an employee of the seller becomes an employee of the buyer at the time of the sale.

(1) If the seller is made aware of any definite plans on the part of the buyer to carry out a plant closing or mass layoff within 60 days of purchase, the seller may give notice to affected employees as an agent of the buyer, if so empowered. If the seller does not give notice, the buyer is responsible to give notice.

(2) If the buyer has been silent about any plans to reduce the workforce, the buyer is responsible for giving notice to affected employees after the time of sale.

(3) It may be prudent for the buyer and seller to determine the impacts of the sale on workers, and to arrange between them for advance notice to be given to affected employees or their representative(s), if a mass layoff or plant closing is planned. In addition, it may be advisable, considering potential liabilities, for the contract of sale to contain an explicit discussion of these arrangements.

§ 639.5 When must notice be given?

(a) *General rule.* With certain exceptions discussed in paragraphs (b), (c) and (d) of this section and in § 639.9 of this part, notice must be given at least 60 days prior to any planned plant closing or mass layoff, as defined in these regulations. When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day period triggers the 60-day notice requirement. The first and each subsequent group of terminees are entitled to a full 60 days' notice. In order for an employer to decide whether issuing notice is required, the employer should:

(1) Look ahead 30 days and behind 30 days to determine whether employment actions both taken and planned will, in the aggregate for any 30-day period, reach the minimum numbers for a plant closing or a mass layoff and thus trigger the notice requirement; and

(2) Consistent with section 3(d) of WARN, look ahead 90 days and behind 90 days to determine whether employment actions both taken and planned which separately may not be of sufficient size to trigger WARN coverage will, in the aggregate for any 90-day period, reach the minimum numbers for a plant closing or a mass layoff and thus trigger the notice requirement. An employer is not, however, required under section 3(d) to give notice if the employer demonstrates that the separate employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the requirements of WARN.

(3) The point in time at which the number of employees is to be measured for the purpose of determining coverage is the date the first notice is required to be given. If this "snapshot" of the number of employees employed on that date is clearly unrepresentative of the ordinary or average employment level, then a more representative number can be used to determine coverage. Examples of unrepresentative employment levels include cases when the level is near the peak or trough of an employment cycle or when large upward or downward shifts in the number of employees occur around the time notice is to be given. A more representative number may be an average number of employees over a recent period of time or the number of employees on an alternative date which is more representative of normal employment levels.

(b) *Transfers.* (1) Notice is not required in certain cases involving transfers, as described under the definition of "employment loss" at § 639.3(f) of this part.

(2) The term "transfer" means that the new job is substantially equivalent in terms of pay and working conditions. The term "reasonable commuting distance" has the same meaning given to it by the Internal Revenue Service in 26 CFR 1.1119–1(d)(4), i.e., consideration should be given to the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

(3) In cases where the transfer is beyond reasonable commuting distance, the employer may become liable for failure to give notice if an offer to transfer is not accerpted within 30 days of the offer or of the closing or layoff (whichever is later). Depending upon when the offer of transfer was made by the employer, the normal 60-day notice period may have expired and the plant closing or mass layoff may have occurred. An employer is, therefore, well advised to provide 60-day advance notice as part of the transfer offer.

(c) *Temporary employment.* (1) No notice is required if the closing is of a temporary facility, or if the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

(2) The employees must clearly understand at the time of hire that their employment is temporary. When such understandings exist will be determined by reference to employment contracts or employment practices of an industry or a locality, but the burden of proof will lie with the employer should questions arise regarding the temporary employment understandings.

(3) Employers in agriculture and construction frequently hire workers for harvesting, processing, or for work on a particular building. Such work may be seasonal but recurring. Such work falls under this exemption if the workers understood at the time they were hired that their work was temporary. In uncertain situations, it may be prudent for employers to clarify temporary work understandings in writing when workers are hired. The same employers may also have permanent employees who work on a variety of jobs and tasks continuously through most of the calendar year. Such employees are not included under this exemption. Giving written notice will not convert permanent employment into tempoary work, making jobs exempt from WARN.

(4) Certain long-term jobs may be related to a specific contract or order. Whether such jobs are tempoary depends on the duration of the job, whether the employee was specifically hired to work only on the job and whether the employer expects that the contract or order is part of a long-term relationship. For example, an aircraft manufacturer hires workers to produce a standard airplane for the U.S. fleet with the expectation that its contract will continue to be renewed during the foreseeable future. The employees of this manufacturer would not be considered temporary.

(d) *Strikes or lockouts.* The statute provides an exemption for strikes and lockouts which occur in the normal course of collective bargaining, and which are not intended to evade the requirements of the Act. A lockout not related to collective bargaining which is intended as subterfuge to evade the Act does not qualify for this exemption. An employer need not give notice when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act.

§ 639.6 Who must receive notice?

Section 3(a) of WARN provides for notice to each representative of the affected employees as of the time notice is required to be given or, if there is no such representative at that time, to each affected employee. Notice also must be served on the State dislocated worker unit and the chief elected official of the unit of local government within which such closing or layoff is to occur. Section 2(b)(1) of the Act states that "any person

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who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale." This provision preserves the notice rights of the employees of a business that has been sold.

(a) *Representative(s) of affected employees.* Written notice is to be served upon the chief elected officer of the exclusive representative or bargaining agent of affected employees at the time of the notice. If this person is not the same as the officer of each local union representing affected employees, it is recommended that a copy also be given to the local union official(s).

(b) *Affected Employees.* Notice is to be given not only to incumbents in positions that are to be eliminated, but also to employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified. While part-time employees are not counted in determining whether plant closing or mass layoff thresholds are reached, such workers are due notice.

(c) *State dislocated worker unit.* The Act provides that notice is to be served upon the State disclocated worker unit. Since the States are restructuring to implement training under EDWAA, service of notice upon the State Governor constitutes service upon the State dislocated worker unit until such time as the Governor makes public State procedures for serving notice to this unit.

(d) *Chief elected official of the unit of local government.* The identity of the chief elect official will vary according to the local government structure. In the case of elected boards, the notice is to be served upon the board's chairperson.

§ 639.7 What must the notice contain?

(a) *Notice must be specific.* All notice must be specific. If notice is given conditioned upon the occurrence of an event, i.e., the termination of a contract when negotiations for its renewal are in progress, the notice must clearly identify the fact that the notice is conditional and the circumstances upon which the notice is based.

(b) Notice to each representative of affected employees is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff, and whether it is expected to be permanent or temporary;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected, the number of employees in each job classification, and the names of the workers currently holding those jobs;

(5) A statement as to the existence of any applicable bumping rights;

(6) Identification of other representatives, if any, of other affected employees at the same site; and

(7) The name, address, and telephone number of a company official to contact for further information.

In addition, it is recommended that the notice include information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(c) Notice to each affected employee who does not have a representative is to be written in language understandable to the employee and is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff, and whether it is expected to be permanent or temporary;

(3) The expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated;

(4) A statement as to the existence of applicable bumping rights, if any.

In addition, it is recommended that the notice include information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(d) Notice to the State dislocated worker unit is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff;

(3) The expected date of the first separation, and the anticipated schedule for making separations;

(4) The job titles of positions to be affected, and the number of affected employees in each job classification;

(5) A statement as to the existence of any applicable bumping rights;

(6) The name of each union representing affected employees, and the name and address of the chief elected officer of each union; and

(7) The name, address, and telephone number of a company official to contact for further information.

In addition, it is recommended that the notice include a statement of whether the planned action is expected to be permanent or temporary, and, if temporary, its expected duration.

(e) Notice to the chief elected official of the unit of local government, is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff is to occur;

(2) The nature of the planned action, i.e., whether it is a plant closing or a mass layoff;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected, and the number of effected employees in each job classification;

(5) A statement as to the existence of any applicable bumping rights;

(6) The name of each union representing affected employees, and the name and address of the chief elected officer of each union; and

(7) The name, address, and telephone number of a company official to contact for further information.

In addition, it is recommended that the notice include a statement of whether the planned action is expected to be permanent or temporary, and, if temporary, its expected duration.

§ 639.8 How is notice served?

Any reasonable method of delivery to the parties listed under § 639.6 of this part which is designed to ensure receipt of notice at least 60 days before separation is acceptable (e.g., first class mail, personal delivery with optional signed receipt). In the case of notification directly to affected employees, insertion of notice into pay envelopes is another viable option. A ticketed notice, i.e. preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of WARN.

§ 639.9 When may notice be given less than 60 days in advance?

Section 3(b) of WARN sets forth three conditions under which the notification period may be reduced to less than 60 days. These three exceptions are to be narrowly construed and the employer bears the burden of proof that conditions for the exceptions have been met. If one of the exceptions is applicable, the employer must give as much notice as is practicable, and must, at the time notice actually is given, provide a brief statement of the reason for reducing the notice period, in addition to the other elements set out in

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§ 639.7 at the time notice is actually given.

(a) The exception under section 3(b)(1) of WARN termed "faltering company" applies to plant closings but not to mass layoffs. To qualify for reduced notice under this exception:

(1) An employer must have been actively seeking capital or business at the time that 60-day notice would have been required. That is, the employer must have been seeking financing or refinancing through the arrangement of loans, the issuance of stocks, bonds, or other methods of internally generated financing; or the employer must have been seeking additional money, credit, or business through any other commercially reasonable method. The employer must be able to identify specific actions taken to obtain capital or business.

(2) There must have been a realistic opportunity to obtain the financing or business sought.

(3) The financing or business sought would have been sufficient, if obtained, to have enabled the employer to avoid or postpone the shutdown. The employer must be able to objectively demonstrate that the amount of capital or the volume of new business sought would have enabled the employer to keep the facility, operating unit, or site open for a reasonable period of time.

(4) The employer must have reasonably and in good faith believed that giving the required notice would have precluded the employer from obtaining the needed capital or business. The employer must be able to objectively demonstrate that it reasonably thought that a potential customer or source of financing would have been unwilling to provide the new business or capital if notice were given, that is, if the employees, customers or the public were aware that the facility, operating unit, or site might have to close. This condition may be satisfied if the employer can show that the financing or business source would not choose to do business with a troubled company or with a company whose workforce would be looking for other jobs.

The actions of an employer relying on the "faltering company" exception will be viewed in a company-wide context. Thus, a company with access to capital markets or with cash reserves may not avail itself of this exception by looking solely at the financial condition of the facility, operating unit, or site to be closed.

(b)(1) The "unforeseeable business circumstances" exception under section 3(b)(2)(A) of WARN applies to plant closings and mass layoffs caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.

(2) The primary objective indicator of a business circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden and unexpected action or condition outside the employer's control. A principal client's sudden and unexpected termination of a major contract with the employer, a strike at a major supplier of the employer, and an unanticipated and dramatic major economic downturn might each be considered a business circumstance that is not reasonably foreseeable. The test for determining when business circumstances are not reasonably foreseeable focuses on an employer's business judgment. The employer must exercise such commerically reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market. The employer is not required, however, to accurately predict general economic conditions that also may affect demand for its products or services.

(c) The "natural disaster" exception in section 3(b)(2)(B) of WARN applies to plant closings and mass layoffs due to any form of a natural disaster. Floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature are natural disasters under this provision. To qualify for this exception, an employer must be able to demonstrate that its plant closing or mass layoff is a direct result of a natural disaster. While a disaster may preclude full or any advance notice, notice still must be given, whether in advance or after the fact of an employment loss caused by a natural disaster. Where a plant closing or mass layoff occurs as an indirect result of a natural disaster, this exception does not apply but the "unforeseeable business circumstance" exception described in paragraph (b) of this section may be applicable.

§ 639.10 When may notice be extended?

Additional notice is required when the dates of a planned plant closing or mass layoff are extended beyond the date announced in the original notice.

(a) If the postponement is for less than 60 days from the originally scheduled date, the additional notice should be given as soon as possible to the parties identified in § 639.6 and should include reference to the earlier notice, the date to which the planned action is postponed, and the reasons for the postponement.

(b) If the postponement is for 60 days or more from the originally scheduled date, the additional notice should be treated as a new notice subject to the provisions of §§ 639.5, 639.6, and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not a plant closing or mass layoffs is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

Signed at Washington, DC this 30th day of November 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-27957 Filed 12-2-88; 8:45am]

BILLING CODE 4510-30-M

Monday
December 5, 1988

Part V

Department of Education

National Diffusion Network Program; Notice Inviting Applications for New State Facilitator Awards for the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and Palau for Fiscal Year 1989

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DEPARTMENT OF EDUCATION

[CFDA No. 84.073C]

National Diffusion Network Program; Notice Inviting Applications for New State Facilitator Awards for the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and Palau for Fiscal Year 1989

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: Provides grants for the dissemination of exemplary education programs within the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

Note: A competition for new State Facilitator awards was held in February 1988, and grants were made in all fifty States, the District of Columbia, and Puerto Rico. Therefore, this competition is limited to geographic entities that did not receive an award during the last competition.

Deadline for Transmittal of Applications: February 3, 1989.

Deadline for Intergovernmental Review: April 4, 1989.

Available Funds: $300,000.

Estimated Range of Awards: $50,000 to $75,000 per year.

Estimated Average Size of Awards: $60,000.

Estimated Number of Awards: Five; one award each in the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); and (b) The regulations for this program in 34 CFR Parts 785 and 788. (Final regulations for this program were published in the **Federal Register** on August 14, 1987 (52 FR 30612).

Selection Criteria

(a) The Secretary uses the following ten selection criteria to evaluate applications for new grants under this competition.

(b) The maximum score for all of these criteria is 100 points.

(c) The maximum score for each criterion is indicated in parentheses.

Selection criterion—plan of operation. (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See 34 CFR 788.10 for a description of the activities that a State Facilitator must propose);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(e) If the applicant is an LEA or SEA, the quality of the applicant's plans to provide an opportunity for participation of private schools in accordance with 34 CFR 788.40.

Selection criterion—quality of key personnel. (20 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraph (a)(1) and (2) will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to in paragraph (a)(1) and (2), the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

Selection criterion—budget and cost effectiveness. (5 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project; and

(b) Costs are reasonable in relation to the objectives of the project.

Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate to the project; and

(b) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

Selection criterion—monitoring plan. (15 points)

The Secretary reviews each application to determine the extent to which the applicant clearly details plans to monitor and assist sites that adopt the programs, and provide follow-up services after training.

Selection criterion—consultation during application. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in developing its application, has consulted with the SEA, LEAs, Institutions of Higher Education, private schools and other educational service providers in the State to be served.

Selection criterion—consultation and participation during project. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in carrying out the project activities, provides for consultation with, and participation of the SEA, LEAs, Institutions of Higher Education, private schools and other education providers in the State.

Selection criterion—innovative dissemination strategies. (10 points)

The Secretary reviews each application to determine the extent to which the applicant proposes innovative dissemination strategies.

Selection criterion—provision of information about other programs. (10 points)

The Secretary reviews each application to determine the extent to which the applicant has the capacity to provide information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts (such as federally and privately funded programs that identify outstanding educators, students, and

schools) to educational personnel throughout the State.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.073C, U.S. Department of Education, MS 6403, 400 Maryland Avenue SW., Washington, DC 20202–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84073C), Washington, DC 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.073C), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) a private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (**Note:** ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

An applicant may submit information on a photostatic copy of the application and budget form, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Ms. Lois N. Weinberg, U.S. Department of Education, 555 New Jersey Avenue NW., Room 510, Washington, DC 20208–5645. Telephone: (202) 357–6147.

Program Authority:
20 U.S.C. 2962.

Dated: November 30, 1988.

Patricia M. Hines,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 7 3
TITLE: National Diffusion Network Program State Facilitator

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5 Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4000-01-C

SF 424B (4-88) Back

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program activities in paragraph (2) below and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package, including in the *Plan of Operation* a clear description of how each of the following activities will be carried out:

(a) Inform public and private education service providers about the availability of all exemplary education programs in the National Diffusion Network;

(b) Assist education service providers to select exemplary education programs to meet their needs;

(c) Negotiate adoption agreements with Developer Demonstrators and Dissemination Process grantees and education service providers;

(d) Arrange for Developer Demonstrator and Dissemination Process grantees to provide training and follow-up services when requested by education service providers;

(e) Arrange for the selection and training of Local Facilitators;

(f) Assist in the identification and preparation of Certified Trainers and Demonstration Sites;

(g) Maintain records during the grant period concerning the exemplary education programs adopted in the State, including demographic data and program retention rates;

(h) Monitor and evaluate the activities of the State Facilitator project;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(j) Cooperate with Developer Demonstrator grantees, Dissemination Process grantees and the Private School Facilitator grantee to carry out these activities; and

(k) Disseminate information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts, (such as federally and privately funded programs that identify outstanding educators, students, and schools); and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Director of Information Management and Compliance Division, Washington, DC 20202–5645; and to the Office of Management and Budget, Washington, DC 20503.

This information collection is not subject to the Office of Management and Budget Review under the Paperwork Reduction Act because it involves nine or fewer respondents.

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Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

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Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

ED Form GCS-008, 6/88

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Monday
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Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Programs for the Conduct of Surface Mining Operations Within Each State; Tennessee; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Programs for the Conduct of Surface Mining Operations Within Each State; Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final Rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is amending its regulations governing the Federal surface mining regulatory program in Tennessee. The amendment is in response to a petition for rulemaking. The effect of this action is to codify criteria for determining whether a proposed revision to an existing coal mining permit is significant. A significant revision to a permit involves public notice and hearing requirements.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. J. Hammond Eve, Division of Tennessee Permitting, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Knoxville, TN 37902; Telephone (615) 673–4349 or Ms. Nancy Prolman, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343–1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments and Discussion of Adopted Rule
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA) sets forth the general statutory requirements governing surface coal mining operations and the surface impacts of underground coal mining. The Office of Surface Mining Reclamation and Enforcement (OSMRE) has implemented by regulations, the general requirements of SMCRA, and the requirements specific to the States with approved regulatory programs. In the case of Tennessee, there is no approved State regulatory programs. OSMRE directly regulates the surface coal mining operations in Tennessee through regulations contained in 30 CFR Part 942. This part was promulgated on October 1, 1984 (49 FR 38892); subsequent revisions can be found in Part 942.

OSMRE, through the Division of Tennessee Permitting, had been developing guidelines for use in Tennessee under section 511(a)(2) of SMCRA and 30 CFR 774.13. These sections require the regulatory authority to establish guidelines for determining when a proposed revision to a permit is significant and therefore subject to the public notice and hearing requirements. In direct response to the draft guidelines developed by the Division of Tennessee Permitting, Ms. Carol S. Nickle and Mr. Mark Squillace, representing four organizations (Environmental Policy Institute, Legal Environmental Assistance Foundation, Illinois South Project and Save Our Cumberland Mountains), filed a petition for rulemaking on February 19, 1986. Pursuant to section 201(g) of SMCRA, any person may petition the Director, OSMRE, "to initiate a proceeding for the issuance, amendment, or repeal of a rule." The principal concerns of the petitioners were that the Division of Tennessee Permitting failed to incorporate all of the petitioner's comments on earlier draft guidelines and that the guidelines were rules and could only be implemented by following the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

OSMRE published a notice on March 5, 1987, granting the petition for the Federal program for Tennessee and accepting the petitioners' proposed criteria in principle (52 FR 6827). In granting the petition for the Federal program in Tennessee, OSMRE decided to provide criteria for review of permit revision applications in that State by rule.

As the regulatory authority in Tennessee, OSMRE is promulgating regulations for use in that State. OSMRE would not develop regulations or guidelines for States with approved regulatory programs, because under 30 CFR 774.13(b)(2), the regulatory authorities in primacy States develop such guidelines to reflect their own unique circumstances and interests.

OSMRE has gained considerable experience with significant revisions in the review of revision applications received during the conduct of the Federal Program for Tennessee. This experience together with the comment letters received pursuant to the June 13, 1986 **Federal Register** notice soliciting comments on the petition, and the concerns expressed in the petition itself, aided in identifying those revisions that would constitute significant revisions.

The proposed rule was published in the July 13, 1988 **Federal Register** (53 FR 26566), with a public comment period ending September 12, 1988. A public hearing was scheduled for September 6, 1988, in Knoxville, but was not held since there were no requests to testify at the hearing.

II. Response to Comments and Discussion of Adopted Rule

Under the provisions of 30 CFR 774.13, OSMRE, as the regulatory authority for surface coal mining and reclamation activities in Tennessee, is adopting criteria to determine when a proposed permit revision is significant. These criteria for significant revisions to permits, and the public notice and hearing requirements to which they are subject, are detailed in amendments to 30 CFR 942.774. The rule language adopted contains two minor changes from the proposal in 30 CFR 942.744 (c)(3) and (c)(7).

Under the final rule, OSMRE will review each administratively complete application for a permit revision to determine if any of the proposed revisions included in the application match the criteria adopted herein for significant revisions. Should any one of the proposed revisions be found to be significant, the permit application information requirements and procedures of Subchapter G, including public notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1) and (3), and 778.21, would be followed for the evaluation of the proposed revisions in that application.

Only one commenter responded to OSMRE's request for comments on the proposed rule. That commenter raised two areas of concern. The first was a concern that the rule contained vague phrases, such as "likely to cause adverse impacts beyond those previously considered" and "have the potential for causing additional impacts." The commenter suggested that the determinations specified in the proposed rule be made by a central staff person, rather than individual permit reviewers or coordinators, to ensure fair and uniform administration of the rules. OSMRE believes that some flexibility in language is necessary to allow for contingencies or applications of the rule that are not possible to foresee. Depending on the subsection under which a permit revision will be evaluated to determine whether it is a significant revision, different staff reviewers will be involved. The staff reviewers' determinations will be reviewed by supervisory and management personnel, as appropriate,

to assure consistency in application of the rules.

The second concern questioned what was meant by "legitimate water supply" in proposed § 942.774(c)(3). The commenter suggested "that 'legitimate water supply' be interpreted or defined to be a primary, principal, or regular source of water upon which people or livestock depend for a significant portion of their water needs." Section 942.774(c)(3) refers to 30 CFR 816.41(h) which implements section 717(b) of SMCRA. Section 717(b) of SMCRA requires that a person who conducts surface coal mining activities "shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation." To remove confusion caused by the use of the term legitimate water supply in the proposed rule, the word "legitimate" has been deleted from § 942.774(c)(3), so that the rule now refers to a water supply to which the requirements of § 816.41(h) apply.

Discussion of Adopted Rule

Amendments to 30 CFR 942.774 are adopted as proposed with minor changes as discussed below. Section 942.774 codifies criteria for determinations of significant revisions at 30 CFR 942.774 paragraph (c). Previous paragraph (c) is redesignated as paragraph (d). Previous paragraph (b) contained material on both revisions in general and significant revisions. The material on significant revisions is removed from paragraph (b) and added to paragraph (c) which consolidates requirements for significant revisions.

The rule at 30 CFR 942.774(b) contains general requirements for permit revisions. It provides that any revision to the approved mining or reclamation plan will be subject to review and approval by OSMRE through the Division of Tennessee Permitting.

The rule at 30 CFR 942.774(c) states that a significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1) and (3), and 778.21, prior to approval and implementation. Where the rule refers to impacts beyond or different from those previously considered, it is referring to impacts that were not considered in the original permit or any subsequent significant revisions, such that the public has not had the opportunity to review and comment thereon.

Any proposed revision will be considered significant if it meets any of the specific requirements contained in §§ 942.774 (c)(1) through (c)(8) summarized below.

The rule at 30 CFR 942.774(c)(1) provides that a proposed revision resulting in adverse impacts beyond those previously considered, that would affect cultural resources listed on or eligible to be listed on the National Register of Historic Places, will constitute a significant revision.

The rule at 30 CFR 942.774(c)(2) provides that a proposed revision to an approved blasting plan which will be likely to cause adverse impacts beyond those previously considered, to persons or property outside of the permit area, will constitute a significant revision. A proposal for a change in the blasting plan that expedites the reasonable course of mining and which is proposed only for that purpose, may in and of itself be considered a non-significant revision if there is no potential for injury to persons or damage to property outside the permit area.

The rule at 30 CFR 942.774(c)(3) provides that a proposed revision that will result in adverse impacts beyond those previously considered, affecting a water supply to which the requirements of 30 CFR 816.41(h) apply, will constitute a significant revision. This rule differs slightly from the proposal in that the word "legitimate" which modified "water supply" in the proposed rule is deleted to reflect the language in § 816.41(h). A proposed revision that is not reasonably expected to affect a water supply for domestic, agricultural, industrial or other legitimate use may be considered non-significant.

The rule at 30 CFR 942.774(c)(4) provides that a proposed revision which will require a new or updated probable hydrologic consequences determination or cumulative hydrologic impact analysis as required under 30 CFR 780.21(f)(4) or 780.21(g)(2) will be considered a significant revision.

The rule at 30 CFR 942.774(c)(5) provides that a proposed revision that requires a change in procedures for identification, disturbance, or handling of toxic- or acid-forming materials different from those previously considered, where the changes have the potential for causing additional impacts not previously considered (such as long-term environmental, public health, or safety effects beyond the permit boundary), will be considered a significant revision. A proposed revision to incorporate an equivalent or better demonstrated and proven methodology for the identification, disturbance, or handling of toxic- or acid-forming materials from those previously considered may be considered non-significant.

The rule at 30 CFR 942.774(c)(6) provides that a proposed revision which will result in adverse impacts on fish, wildlife, and related environmental values beyond those previously considered, will be considered a significant revision.

The rule at 30 CFR 942.774(c)(7) provides that a proposed revision which includes the addition of a coal processing facility or any permanent support facility, where the addition of the facility will cause impacts not previously considered, will be considered a significant revision, except that the addition of a temporary coal processing facility used exclusively for crushing and screening need not be considered a signifcant revision. This rule differs slightly from the proposal in that "shall not" has been changed to "need not" in the phrase "need not be considered a significant revision." Although the addition of such facilities will not ordinarily be considered a significant revision, OSMRE has determined that it needs some flexibility in making a case-by-case determination of significance. The addition of coal processing facilities, such as a wash plant, which have the potential effect of concentrating toxic materials from the coal in the form of coarse refuse which must be disposed of by proper means will be considered a significant revision. The addition of a temporary crusher, screener, or similar non-permanent facility which does not conentrate coal wastes and that expedites the reasonable course of mining may be considered a non-significant revision. The use of such facilities within the permit area for a mine would not ordinarily result in any substantial additional environmental consequences and thus may be considered non-significant.

The rule at 30 CFR 942.774(c)(8) provides that a proposed revision will be considered significant if it involves a change in the postmining land use to a residential, industrial/commercial, recreation or developed water resources land use, as defined in 30 CFR 701.5; except that a change to a developed water resource not meeting the size criteria of the Mine Safety and Health Administration standards at 30 CFR 77.216(a) need not be considered a significant revision.

Consideration of a proposed revision to an existing permit is not to be confused with incidental boundary revisions. Under 30 CFR 774.13(d), the only extensions allowed in the size of a permit area without requiring a new permit are incidental boundary revisions. Any other extensions to the area covered by a permit are not considered revisions, and must be made by application for a new permit.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule affects a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

Section 702(d) of the Surface Mining Control and Reclamation Act provides that promulgation of Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no environmental assessment is required for this rulemaking.

Author

The principal authors of this rule are Mr. J. Hammond Eve, Division of Tennessee Permitting, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Knoxville, TN 37902; Telephone (615) 673–4349, and Ms. Nancy Prolman, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1864.

List of Subjects in 30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Part 942 is amended to read as follows:

Dated: November 21, 1988.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

PART 942—TENNESSEE

1. The authority citation for Part 942 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 942.774 is amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

§ 942.774 Revision; renewal; and transfer, assignment or sale of permit rights.

* * * * *

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office.

(c) A significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of § 773.13, 773.19(b)(1) and (3), and 778.21, prior to approval and implementation. The Office will consider any proposed revision to be significant if it:

(1) Will result in adverse impacts beyond those previously considered, affecting cultural resources listed on, or eligible to be listed on, the National Register of Historic Places;

(2) Involves changes to the blasting plan that will be likely to cause adverse impacts beyond those previously considered, to persons or property outside of the permit area;

(3) Will result in adverse impacts beyond those previously considered, affecting a water supply to which the requirements of 30 CFR 816.41(h) apply;

(4) Will cause a new or updated probable hydrologic consequences determination or cumulative hydrologic impact analysis to be required under 30 CFR 780.21(f)(4) or 780.21(g)(2) as a result of an increase in impacts;

(5) Requires a change in the identification, disturbance, or handling of toxic- or acid-forming materials different from those previously considered, where the changes have the potential for causing additional impacts not previously considered;

(6) Will result in adverse impacts on fish, wildlife and related environmental values beyond those previously considered;

(7) Includes the proposed addition of a coal processing facility, or any permanent support facility, where the addition of the facility will cause impacts not previously considered, except that the addition of a temporary coal processing facility used exclusively for crushing and screening need not be considered a significant revision; or

(8) Involves a change in the postmining land use to a residential, industrial/commercial, recreation or developed water resources land use, as defined in 30 CFR 701.5; except that a change to a developed water resource not meeting the size criteria of § 77.216(a) of this title need not be considered a significant revision.

* * * * *

[FR Doc. 88–27881 Filed 12–2–88; 8:45 am]
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Monday
December 5, 1988

Part VII

Office of Management and Budget

Policy Guidance on the Buy American Act of 1988; Public Hearing

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OFFICE OF MANAGEMENT AND BUDGET

Policy Guidance on the Buy American Act of 1988; Public Hearing

AGENCY: Office of Federal Procurement Policy.

ACTION: Public Hearing on Policy Guidance on the Buy American Act of 1988.

SUMMARY: The Office of Federal Procurement Policy (OFPP) is requesting comments and suggestions on proposed policy guidance on how to determine whether a contractor or subcontractor offering to provide a service, other than a construction service, to a Federal agency is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country for purposes of implementing the Buy American Act of 1988 (Sections 7001–7005 of Pub. L. 100–418). Any comments on the policy guidance, including issues or options that should be addressed, should be directed in writing to Donna Fossum, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW. (N.E.O.B.), Room 9025, Washington, DC., 20503. Please note that OFPP is not soliciting or accepting comments on the "rule of origin" for products at this hearing. This matter will be the subject of other hearings yet to be called by the Administrator for Federal Procurement.

PUBLIC HEARING: A public hearing will be held in Room 2010, New Executive Office Building, 725 17th Street, NW., Washington, DC, at 10:00 a.m., December 15, 1988. Persons and organizations wishing to present views, ideas, and suggestions on the proposed policy guidance are encouraged to attend the hearing. Written statements of those wishing to speak at this public hearing must be received by the Office of Federal Procurement Policy by the close of business on December 13, 1988. Oral statements presented at the public hearing will be limited to 10 minutes each. Persons and organizations with similar views are encouraged to select a common spokesman for the presentation of their views. Persons wishing to attend and/or present statements at the public hearing must contact Ms. Brenda Harper, telephone number (202) 395–3300, prior to 3:30 p.m., December 14, 1988, to arrange for admittance to the New Executive Office Building.

BACKGROUND: The Buy American Act (the Act) was enacted in 1933 to ensure that Federal agencies gave domestic products priority in purchasing decisions. Over the years the determination of what constitutes a domestic unmanufactured product has been based simply on the geographic origin of the product. Determining what constitutes a domestic manufactured product has been more difficult, however, and has ultimately come to be based on where the final manufacturing occurred and where the cost of mining, producing, or manufacturing the components of such a product was incurred. Depending on the method of acquisition and the agency involved, domestic products are given 6, 12, or 50 percent price evaluation preferences over foreign products in the award of Federal procurement contracts. Such price evaluation preferences are waived under certain conditions for signatory countries of the GATT Agreement on Government Procurement (the Agreement) and they do not apply to procurements conducted in accordance with Defense Department Memoranda of Understanding.

In 1988, the Act was amended by several sections of Title VII of Pub. L. 100–418 to include provisions prohibiting Federal agencies from purchasing products and services from individuals or organizations of (1) countries that signed but have not abided by the Agreement; (2) countries that signed and have abided by the Agreement, but which discriminate against U.S. products and services not covered by the Agreement in their government procurements; and (3) countries that have not signed the Agreement and which discriminate against U.S. products and services in their government procurements. To fall into these latter two categories, the country's services and products must be acquired in significant amounts by the U.S. Government and it must maintain, in its government procurements, a significant and presistent pattern or practice of discrimination against U.S. products which results in identifiable harm to U.S. businesses. Identification of countries within the above categories is to be made annually on April 30 by the President beginning in 1990, pursuant to guidelines to be issued by the U.S. Trade Representative. Enactment of these provisions marks the first time that the Act proscribes as well as prescribes Federal agency behavior and pertains to services as well as products.

In bringing services in the above described circumstances within the purview of the Act, the 1988 amendments also provided a rule for determining what constitutes foreign construction services. They did not, however, define "construction services." The determination of what constitutes a foreign service, other than a construction service, was delegated to the Administrator for Federal Procurement Policy for the development of policy guidance by February 19, 1989 (i.e., 180 days after enactment of Pub L. 100–418). In developing this policy guidance, the Administrator is expected to limit such guidance to "services" as opposed to "products" and is required to receive the comments of public parties at one or more public hearings.

The Administrator is therefore calling the public hearing described in this notice. In addition, to focus the discussion at this hearing the following policy guidance, as mandated by the provisions of Pub. L. 100–418, is proposed. Please note that the policy guidance proposed herein may change following consideration of the comments received in response to this announcement and at the public hearing.

Proposed Policy Guidance

1. *Question*—Do the amendments made to the Buy American Act of 1933 (the Act) by Section 7002 of Pub. L. 100–418 require Federal agencies to give preferences to domestic services in procurements?

Answer—No, the amendments made to the Act by Section 7002 of Pub. L. 100–418 do not extend the preferential purchase requirements of the Act to services. Instead, the amendments prohibit Federal agencies from procuring services as well as products from individuals or organizations of (1) countries that signed but have not abided by the Gatt Agreement on Government Procurement (the Agreement); (2) countries that signed and have abided by the Agreement, but which discriminate against U.S. products and services not covered by the Agreement in their government procurements; and (3) countries that have not signed the Agreement and which discriminate against U.S. products and services in their government procurements; and that have been so identified by the President pursuant to specific criteria. To fall into categories 2 and 3 above, the country's services and products must be acquired in significant amounts by the U.S. Government and it must maintain, in its government procurements, a significant and presistent pattern or practice of discrimination against U.S. products which results in identifiable harm to U.S. businesses. Identification of countries within all three categories above is to be made annually on April 30 by the President beginning in 1990, pursuant to guidelines to be issued by the U.S. Trade Representative. In summary, the Act as amended prohibits

Federal agencies under certain conditions from procuring either services or products from individuals or organizations of countries that the President has identified as discriminating against U.S. products and services in making their government procurements.

2. *Question*—Are there exceptions to the prohibitions on the procurement of services set forth in Section 7002 of Pub. L. 100–418?

Answer—Yes, the prohibitions do not apply to: (1) services procured and used outside the United States and its territories; and (2) services of least developed countries. Also, the President or the head of a Federal agency may exempt procurements from these prohibitions upon a determination that such action is necessary in the public interest, or to ensure adequate competition.

3. *Question*—When do the prohibitions on procurement by Federal agencies of services from individuals or organizations of specified countries go into effect?

Answer—The prohibitions on the procurement of services by Federal agencies from individuals or organizations of specified countries can start only after the President submits the first report mandated by Section 7003 of Pub. L. 100–418 to Congress on April 30, 1990. This annually produced report will list the countries that discriminate against U.S. products and services in making their government procurements. Further, depending on which of the three categories of countries a particular nation falls into (see Question 1), the provisions of Section 7003 specify that no action can be taken before the passage of 60 days following the issuance of the President's report. Consequently, the earliest date that the prohibitions on the procurement of services from individuals or organizations of specified countries could go into effect is June 29, 1990.

4. *Question*—Do the prohibitions on the procurement of services from individuals or organizations of specified countries apply to grants? Do the prohibitions apply to contracts awarded by grantees using grant funds?

Answer—No, the prohibitions pertain only to services provided by contractors and subcontractors under procurement contracts. They do not pertain to services provided by grantees, contractors, or subcontractors using grant funds.

5. *Question*—What constitute "construction services" for purposes of implementing the Act as amended by Section 7002 of Pub. L. 100–418?

Answer—"Construction services" means construction, alteration, or repair as defined in Subpart 22.4 of the Federal Acquisition Regulation (FAR), 48 CFR 1, 22.41. "Construction services" do not include services provided incidental to the supply of a product, provided that the value of the incidental services does not exceed the value of the product being delivered.

6. *Question*—What constitute "foreign" construction services under the provisions of the Act as amended by Section 7002 of Pub. L. 100–418?

Answer—"Foreign" construction services are those services described in the answer to Question 5 above that are provided by an individual acting as a contractor or subcontractor who is a citizen or national of a country listed in the President's report, or an organization acting as a contractor or subcontractor where—

(A) 50 percent or more of the voting stock is owned by one or more citizens or nationals of a country listed in the President's report;

(B) The title to 50 percent or more of the stock is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of a country listed in the President's report;

(C) 50 percent or more of the voting stock is vested in or exercisable on behalf of one or more citizens or nationals of a country listed in the President's report;

(D) In the case of a corporation——

(i) The number of its directors necessary to constitute a quorum are citizens or nationals of a country listed in the President's report; or

(ii) The corporation is organized under the laws of a country or any subdivision, territory, or possession thereof listed in the President's report; or

(E) In the case of an individual or organization who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

7. *Question*—What constitute "services other than construction services" for purposes of implementing the Act as amended by Section 7002 of Pub. L. 100–418?

Answer—"Services other than construction services" include all services other than those described in the answer to Question 5 above where work is performed by manual, clerical, technical, or professional labor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. This includes, but is not limited to, the following:

1. Research and development (R & D) as defined in the Federal Procurement Data System Product and Service Codes, Section I, Part A;
2. Special studies and analyses—Not R & D;
3. Architect and Engineering Services;
4. Automatic data processing and telecommunication services;
5. Purchase of structures and facilities;
6. Natural resources and conservation services;
7. Environmental system protection;
8. Social services;
9. Quality control, testing, and inspection services;
10. Maintenance, repair, and rebuilding of equipment;
11. Modification of equipment;
12. Technical representative services;
13. Operation of government-owned facilities;
14. Installation of equipment;
15. Salvage service;
16. Medical service;
17. Professional, administrative, and management services;
18. Utilities and housekeeping services;
19. Photographic, mapping, printing, and publication services;
20. Education and training services;
21. Transportation, travel, and relocation services;
22. Lease or rental of equipment; and
23. Lease or rental of facilities.

"Services other than construction services" also include:

24. Services covered by the Service Contract Act as determined by the U.S. Department of Labor (see 29 CFR 4.130);
25. Advisory and assistance services as defined in OMB Circular A–120; and
26. Federal information processing services and federal information processing support services as defined in the notice of proposed rulemaking that would amend Part 201–2 of the Federal Information Resources Management Regulation (see 53 FR 32085, August 23, 1988).

"Services other than construction services" do not include services provided incidental to the supply of a product, provided that the value of the incidental services does not exceed the value of the product being delivered.

8. *Question*—What consitutes "foreign" services other than construction services for purposes of implementing the Act as amended by Section 7002 of Pub. L. 100–418?

Answer—"Foreign" services other than construction services are those services described in the answer to Question 7 above that are provided by an individual acting as a contractor or subcontractor who is a citizen or

national of a country listed in the President's report, or an organization acting as a contractor or subcontractor where—

(A) 50 percent or more of the voting stock is owned by one or more citizens or nationals of a country listed in the President's report;

(B) The title to 50 percent or more of the stock is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of a country listed in the President's report;

(C) 50 percent or more of the voting stock is vested in or exercisable on behalf of one or more citizens or nationals of a country listed in the President's report;

(D) In the case of a corporation—

(i) The number of its directors necessary to constitute a quorum are citizens or nationals of a country listed in the President's report; or

(ii) The corporation is organized under the laws of a country or any subdivision, territory, or possession thereof listed in the President's report; or

(E) In the case of an individual or organization who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

9. *Question*—Are Federal agencies prohibited from procuring services from all foreign countries?

Answer—No, Federal agencies are only prohibited from procuring services and products from individuals or organizations of "foreign" countries that have been specifically found by the President to discriminate against U.S. services or products and are so listed in the President's annual report (See answer to Question 1).

10. *Question*—How long are the provisions of Title VII of Pub. L. 100–418 in effect?

Answer—The provisions of Title VII of Pub. L. 100–418 are in effect until April 30, 1996.

DATES: Comments and suggestions in response to this **Federal Register** notice must be received in OFPP by close of business, December 22, 1988. Two copies of any statements to be presented at the public meeting must be received by the close of business December 13, 1988.

ADDRESS: Comments and statements should be submitted to Donna Fossum, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., (NEOB), Room 9025, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Donna Fossum, Deputy Associate Administrator, (202) 395–3300.

Allan V. Burman,

Deputy Administrator and Acting Administrator.

[FR Doc. 88–28078 Filed 12–2–88; 8:45 am]

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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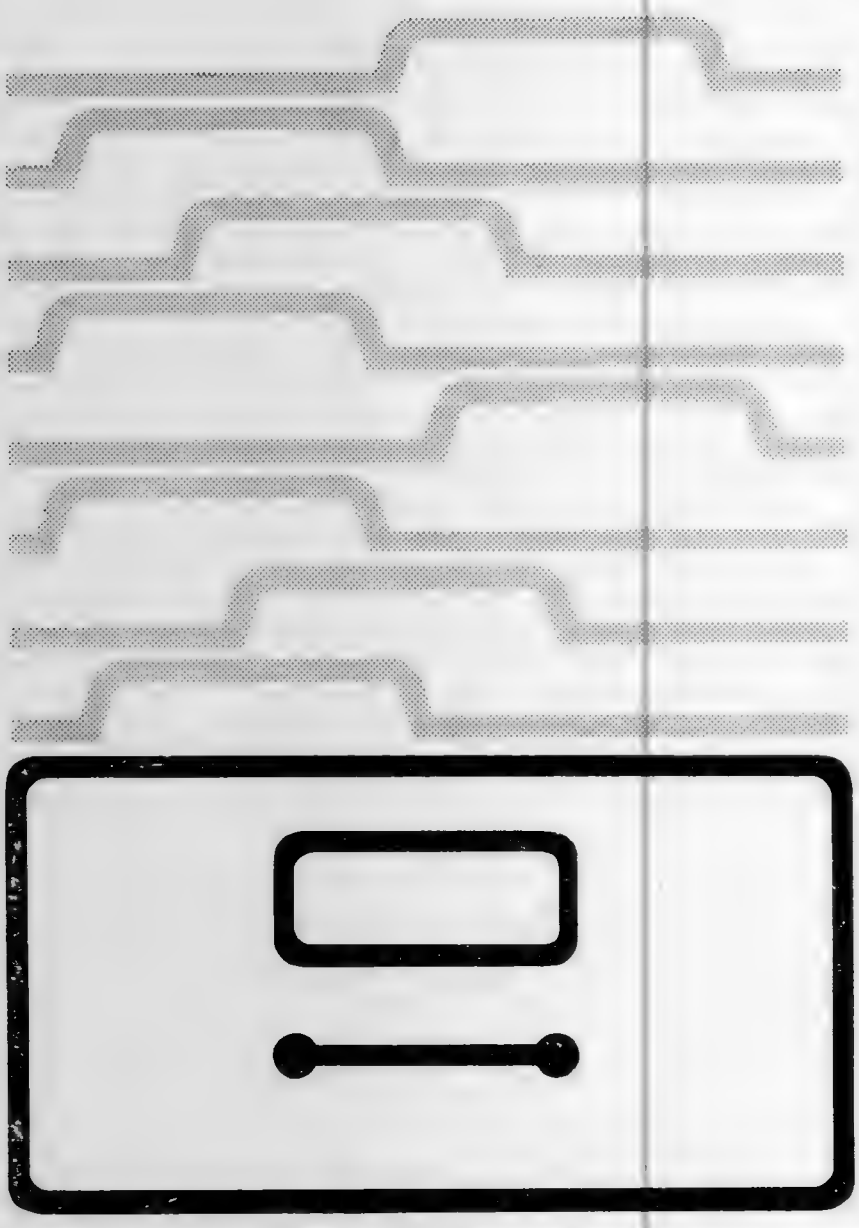

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The President

Presidential Determination No. 89–7 of November 18, 1988

Determination Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Secretary of State

Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2375(e), I hereby certify that Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device.

You or your delegatee are authorized and directed to publish this determination and certification in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, November 18, 1988.

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Vol. 53, No. 234
Tuesday, December 6, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[FV-88-114]

Irish Potatoes Grown in Modoc and Siskiyou Counties, CA, and all Counties in Oregon, Except Malheur County; Amendment To Relax Requirements for High Quality Red-Skinned Varieties of Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (with minor changes) which eliminated the minimum size requirement for high quality red-skinned potatoes (also known as round red potatoes), and relieved such potatoes from special purpose shipment requirements. Before the interim final rule became effective on August 19, 1988, high quality red-skinned potatoes at least 1½ inches in diameter could be shipped under a special purpose provision. Handlers of such potatoes were required to obtain a Certificate of Privilege from the committee, meet a 50-pound minimum pack requirement, and report the shipment, grade, and usage of such potatoes to the committee. Eliminating the minimum size and other requirements was designed to meet consumer demand for smaller, high quality round red potatoes, meet the industry's need for a smaller container, and relieve handlers from safeguard requirements that are no longer necessary.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 947 (7 CFR Part 947), as amended, regulating the handling of potatoes grown in Modoc and Siskiyou Counties, California, and in all counties in Oregon, except Malheur County. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Oregon-California potatoes subject to regulation under the marketing order, and approximately 470 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

Red-skinned potatoes represent less than one percent of the total potato crop in the production area. This estimate is based on red-skinned potato acreage and the national average potato yield. Red-skinned potatoes are utilized mainly in the fresh market.

While in the past consumer demand has been stronger for larger sized potatoes, there currently exists a market for small red-skinned potatoes. Potatoes produced in other areas are competing for this market. These potatoes are being merchandised as a gourmet or specialty item.

An interim final rule was issued on August 16, 1988, and was published in the **Federal Register** on August 19, 1988 (53 FR 31651). That rule amended the handling regulation for Irish potatoes grown in Modoc and Siskiyou Counties, California, and all counties in Oregon, except Malheur County set forth in § 947.340 (53 FR 2996, February 3, 1988). That rule also provided that interested persons could file written comments through September 19, 1988. One comment was received from William N. Wise, Manager of the Oregon-California Potato Committee.

Prior to the effective date of the interim final rule, red-skinned potatoes were required to be at least U.S. No. 2 grade and, if shipped within the continental United States, have a minimum diameter of 2 inches or weigh at least 4 ounces. Red-skinned potatoes for export and those shipped domestically under special purpose provisions had to have a minimum diameter of 1½ inches. For red-skinned potatoes to be shipped under the special purpose provision, they had to grade at least U.S. No. 1, except for size, and be packed in containers of at least 50 pounds. The interim final rule eliminated the minimum size requirement and deleted the special purpose shipment requirements for U.S. No. 1 round red potatoes. These changes were recommended by the Oregon-California Potato Committee on a nine to one vote.

The elimination of the size requirement afforded producers and handlers the opportunity to meet current market demand for small, high quality red-skinned potatoes. This change benefitted consumers by providing them with a product they desire, and producers and handlers by increasing sales. This relaxation has not adversely affected the market for larger potatoes.

To research markets for expansion possibilities, the committee initiated a special purpose shipment provision during the 1986-87 season. This provision allowed the shipment of high quality red-skinned potatoes that measured at least 1½ inches in diameter and that were packed in quantities of 50 pounds or more. Also, handlers of such potatoes were required to obtain a

Certificate of Privilege from the committee prior to each season and report the shipment, grading and usage of the potatoes to the committee. The certification and reporting requirements aided the committee in discerning the market for such potatoes.

The interim final rule deleted the special purpose requirements for red-skinned potatoes to allow shippers to meet the industry's need for a smaller container (e.g. one-pound bag). Furthermore, the certification and reporting requirements had served their purpose and were no longer necessary.

While small red-skinned potatoes are currently in high demand, this apparently does not extend to other varieties of potatoes. For this reason, the committee recommended retaining the special purpose shipment requirements for non-red-skinned potatoes. These requirements could be eliminated at some point in the future if experience indicates that there is a viable market for these small potatoes.

The interim final rule also made an editorial change that changed the term "special purpose certificate" to "Certificate of Privilege" in paragraph (b)(3) of § 947.340. The revised term is used elsewhere in the regulation, and this change was made in the interest of consistency.

During the comment period provided by the interim final rule, one comment was submitted by William N. Wise, the manager of the Oregon-California Potato Committee, on behalf of the committee. It recommended that the handling regulation be clarified by naming the form that is used to report certain special purpose shipments. This recommendation is being adopted, and the name of the form, Special Purpose Shipment Report, is being added to subparagraphs (b)(3), (h)(1) and (h)(2) of § 947.340.

Mr. Wise also recommended that the handling regulation be revised to require handlers of potatoes for processing to obtain a Certificate of Privilege from the committee and report each shipment of such potatoes to the committee. Sufficient information to enable a full assessment of the impact of such a change in the regulation has not been provided. Further, opportunity has not been provided for interested persons including those who would be affected by these new reporting requirements to participate in the rulemaking process. This proposed rule change is therefore not being adopted at this time, but may be addressed in a future rulemaking action.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Because the import requirements for red-skinned potatoes are based on the marketing orders covering Washington potatoes (M.O. 946) and Colorado Area No. 2 potatoes (M.O. 948), the changes made in the handling requirements for Oregon-California potatoes will have no effect on the potato import regulation.

The information collection requirements contained in the handling regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0112. The previously approved information collection burden has been reduced by the elimination of the reporting requirements applicable to shipments of small, high quality red-skinned potatoes.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR Part 947 which was published at 53 FR 31650–31651 on August 19, 1988, is adopted with modification as a final rule to read as follows:

PART 947—POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 947.340 is amended by revising paragraphs (b), (h)(1) and (h)(2) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 947.340 Handling regulation.

* * * * *

(b) *Size requirements.* (1) Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1½ inches in diameter.

(2) Red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1.

(3) All non-red-skinned varieties of potatoes that measure less than 1½ inches in diameter may be shipped if such potatoes otherwise grade at least U.S. No. 1 and are packed in quantities of 50 pounds or more per container: *Provided,* That any person who desires to handle such potatoes shall each season prior to shipment apply for and obtain a Certificate of Privilege from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee on Special Purpose Shipment Report forms.

* * * * *

(h) * * *

(1) Each handler making shipments of certified seed outside the district where grown pursuant to paragraph (g) of this section shall obtain from the committee a Certificate of Privilege, and shall furnish a report of shipments to the committee on Special Purpose Shipment Report forms.

(2) Each handler making shipments of potatoes pursuant to paragraphs (g)(2), (4)(i), and (5) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments on Special Purpose Shipment Report forms at such intervals as the committee may prescribe in its administrative rules.

* * * * *

Dated: December 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28069 Filed 12–5–88; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0653]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions): (1) To increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(C)), from $40.5 million to $41.5 million of net transaction accounts (known as the low reserve tranche adjustment); (2) to increase the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent, as required by section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)), from $3.2 million to $3.4 million of reservable liabilities (known as the reservable liabilities exemption adjustment); and (3) to increase the deposit cutoff level which is used in conjunction with the reservable liabilities exemption amount to determine the frequency of deposit reporting from $40.0 million to $42.1 million.

EFFECTIVE DATE: December 6, 1988. For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective starting with the reserve computation period beginning on Tuesday, December 27, 1988, and with the corresponding reserve maintenance periods beginning Thursday, December 29, 1988, for net transaction accounts, and on Thursday, January 26, 1989, for other reservable liabilities. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective with the computation period beginning on Tuesday, December 20, 1988, and with the reserve maintenance period beginning Thursday, January 19, 1989. For all depository institutions, the increase in the deposit cutoff level will be used to screen institutions in the second quarter of 1989 to determine reporting frequency beginning September 1989.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), Legal Division, or Patrick Mahoney, Economist (202/452-3827), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act requires each depository institution to maintain with the Federal Reserve System reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for each depository institution's total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million. Section 19(b)(2) further provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts for all depository institutions determined as of June 30 of each year.

Currently, the amount of the low reserve tranche on transaction accounts is $40.5 million. The growth in the total net transaction accounts of all depository institutions from June 30, 1987, to June 30, 1988, was 3.0 percent (from $586.6 billion to $604.1 billion). In accordance with section 19(b)(2), the Board is amending Regulation D to increase the amount of the low reserve tranche for transaction accounts for 1986 by $1.0 million to $41.5 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (*i.e.*, transaction accounts within the low reserve requirement tranche) may be so designated.

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. The change in the amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions determined as of June 30 each year. The growth in total reservable liabilities of all depository institutions from June 30, 1987, to June 30, 1988, was 6.5 percent (from $1,184.6 billion to $1,261.7 billion). In accordance with section 19(b)(11), the Board is amending Regulation D to increase the amount of the reserve requirement exemption from 1989 by $0.2 million to $3.4 million.

As a result, the effect of these amendments is to raise the low reserve tranche to $41.5 million and to apply a zero percent reserve requirement on the first $3.4 million of transaction accounts and a three percent reserve requirement on the remainder of the low reserve tranche. Any amount of this zero percent reserve requirement tranche remaining after applying it to transaction accounts will then be applied to nonpersonal time deposits with maturities of less than 1½ years or to Eurocurrency liabilities, both of which are subject to a reserve requirement ratio of three percent.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective starting with the reserve computation period beginning on Tuesday, December 27, 1988, and with the corresponding reserve maintenance periods beginning Thursday, December 29, 1988, for net transaction accounts, and on Thursday, January 26, 1989, for other reservable liabilities. For institutions that report quarterly, the tranche adjustment and the exemption will be effective with the computation period beginning on Tuesday, December 20, 1988, and with the reserve maintenance period beginning Thursday, January 19, 1989. In addition, all entities currently submitting Form FR 2900 will continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board in 1981 established a deposit reporting cutoff level of $25 million to determine deposit reporting frequency. Institutions

are screened during the second quarter of each year to determine reporting frequency beginning the following September. In March of 1985, the Board decided to index this reporting cutoff level equal to 80 percent of the annual rate of increase of total deposits.[2] In July of 1988, in conjunction with approval of the extension of the deposit reporting system, the Board increased the cutoff to $40 million, effective in September 1988, from the $30 million cutoff that would have become effective in September 1988.

From June 30, 1987, to June 30, 1988, total deposits grew 6.5 percent, from $3,296.9 billion to $3,511.4 billion. This results in an increase of $2.1 million in the deposit cutoff level which determines frequency of reporting from the current $40.0 million to $42.1 million. Based on the indexation of the reserve requirement exemption, the cutoff level for total deposits above which reports of deposits must be filed rises $0.2 million to $3.4 million. Institutions with total deposits below $3.4 million are excused from reporting if their deposits can be estimated from other sources. The $42.1 million cutoff level for weekly versus quarterly FR 2900 reporting and for quarterly FR 2910q versus annual FR 2910a reporting, and the $3.4 million level threshold for reporting will be used in the second quarter 1989 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1989.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, and all other institutions with reservable liabilities in excess of the exemption level amount prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and with total deposits at least equal to the deposit cutoff level are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). Depository institutions with reservable liabilities in excess of the exemption level amount but with total deposits less than the deposit cutoff level may file the FR 2900 quarterly effective each September. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) on the same frequency as they file the FR 2900. The deposit cutoff is also used to determine whether an institution with reservable liabilities at or below the exemption level amount (known as an "exempt institution") must file one of two reduced deposits reports—the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) or the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Exempt institutions (that is, institutions with total deposits less than the exemption amount) are not required to file a deposits report if their deposits can be estimated from other sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

[2] In November of 1985, the Board amended the definition of "total deposits" as used in determining the cutoff level to include not only gross transaction deposits, savings accounts, and time deposits but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board believes that notice and public participation is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties and reporting requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for 12 CFR Part 204 continues to read as follows:

Authority: Secs. 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and sec. 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.9, paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts: [1]	
$0 to $41.5 million	3 percent of amount.
Over $41.5 million	$1,245,000 plus 12% of amount over $41.5 million.
Nonpersonal time deposits: By original maturity (or notice period):	
Less than 1½ years	3 percent.
1½ years or more	0 percent.
Eurocurrency liabilities	3 percent.

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or Agreement Corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section, nonpersonal time deposits, or Eurocurrency liabilities or any combination thereof not in excess of $3.4 million determined in accordance with § 204.3(a)(3) of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–27846 Filed 12–5–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 88-78]

Tariff Classification of Wire Rope With Becket Attachments

AGENCY: Customs Service, Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice of a change in the tariff classification of wire rope with becket attachments or becket loops. This merchandise has previously been classified under the provision for wire ropes, cable or cordage fitted with hooks, swivels, clamps, clips, thimbles, sockets or other fittings in item 642.20, Tariff Schedules of the United States (TSUS). Merchandise classifiable under that item is dutiable at the column 1 rate of 5.7 percent ad valorem, but is not subject to any import restrictions under voluntary restraint arrangements (VRA's). The heavy-duty type of rope generally involved in this matter will now be classified under the provision for steel rope not fitted with fittings in item 642.16, TSUS, which requires a column 1 rate of duty of 4 percent ad valorem. If of stainless steel, the rope will now be dutiable at the rate of 4.4 percent ad valorem under item 642.14, TSUS. Merchandise classifiable under either item 642.14 or item 642.16 may not be imported without visas as required under VRA's. The applicable VRA's are agreements between the United States and such entities as the European Economic Community, Japan and the Republic of Korea under which exports of certain steel products to the United States are voluntarily limited. Customs published a previous notice of proposed change in this matter requesting comments on the proposed reclassification and an appropriate effective date for any change.

EFFECTIVE DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after 30 days from the date of publication of this decision in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: James A. Seal, General Classification Branch, Office of Regulations and Rulings (202) 566-8181.

SUPPLEMENTARY INFORMATION:

Background

Customs received on behalf of an organization representing domestic steel wire rope producers a request that the Customs position concerning the tariff classification of wire rope with becket attachments or becket loops be reconsidered. It was claimed that this classification was not consistent with later Customs classification positions affecting steel cordage products, and that an analysis of import statistics suggested that the Customs classification in question was being abused as a mean for avoiding limitations under applicable voluntary restraint arrangements (VRA's). The applicable VRA's are agreements between the United States and certain steel producing countries, such as the Republic of South Korea, Japan and the European Economic Community, to voluntarily limit exports to the United States of certain basic steel products identified by Tariff Schedules of the United States (TSUS) item numbers. In order to show compliance with the applicable restrictions, imports of the steel products are not entitled to admission into the United States unless accompanied by the necessary visa. Accordingly, Customs published a notice in the **Federal Register** on October 1, 1987 (52 FR 36789), that the classification in question was under review. The notice also requested public comment regarding the substantive considerations involving classification as well as comments concerning an appropriate effective date for any change in position.

The merchandise affected by this document mainly consists of heavy-duty steel wire rope typically used as hoist, drag or similar lines in earthmoving or mining equipment or in other heavy-duty applications. Rope of this type generally must be attached to the equipment with which it is used by mechanical connections, rather than by preattached fittings (which are not a practical means for transferring full loads to and from the rope when placed in service). However, the rope is supplied with becket attachments or becket loops which provide a means for handling the rope. For example, a more flexible rope of smaller diameter and load capacity may be attached to the larger rope using beckets to guide it for the purpose of threading the larger rope through pulleys or otherwise positioning it before full load connections are made.

In a letter dated November 1, 1974 (036046), Customs Headquarters ruled that wire rope with a pad eye welded to one end with a becket loop attached for use in a power shovel was classifiable under the provision for wire ropes, cables or cordage fitted with hooks, swivels, clamps, clips, thimbles, sockets or other fittings in item 642.20, TSUS. In apparent reliance on this precedent, New York Customs Region ruling letters dated March 23, 1986 (808452), and May 28, 1986 (818700), held wire rope with becket loops to be similarly classifiable. None of these rulings, however, examined the scope of the involved provision.

In the decision claimed to be inconsistent with that position, protest review decision dated April 23, 1984 (072959), Headquarters reviewed the tariff status of 7-wire prestressed concrete strand in continuous lengths of approximately 4,000 feet on reels. A cylinder with tapered center hole (chuck) was attached to each end of the strand. The chuck's stated purpose was to prevent fraying of the ends and to facilitate unreeling and handing of the strand during further processing. Customs rejected the protestant's claim that the merchandise was properly classifiable under item 642.20 as wire rope fitted with fittings. In confirming that the provision for steel strand not fitted with fittings in item 642.11, TSUS, represented the proper classification, Customs found that the chucks did not make the strand suitable for the use intended, and that they did not dedicate the strand to any particular use. Customs stated that the "fittings" within the meaning of the involved provisions were functional attachments for articles which have an identifiable use. Headquarters amplified that position in a letter dated August 16, 1984 (072959), by stating that in the context of the involved provisions a "fitting" must make the strand fit or suitable for, or adapt it to the purpose intended, and that attachments which do not make the strand ready for final use do not "fit" the strand in a tariff sense.

While merchandise classifiable under the provision for steel ropes fitted with fittings in item 642.20 is not subject to any VRA restrictions, the merchandise is subject to a column 1 rate of duty of 5.7 percent ad valorem. While changing the classification of merchandise to the provision for steel ropes not fitted with fittings in item 642.16 TSUS, will make it subject to visa requirements under applicable VRA's, the change also results in a reduction in the rate of duty to 4 percent ad valorem. For stainless steel wire cordage without fittings classifiable under item 642.14, TSUS, the rate of duty would be reduced to 4.4 percent ad valorem.

In response to the Customs **Federal Register** notice requesting comments on the change, a further submission was received on behalf of the same domestic producers initially requesting this review. In addition to further advocating the change, the comments also stated

that the change should be made without further delay. Submissions were received from seven other commenters, all of which were opposed to the change, and which included comments on behalf of importers and from foreign industry representatives.

Analysis of Comments

The main objection to the change was that the classification of the type of wire rope at issue with beckets as rope with fittings constituted a premise on which the applicable VRA's were negotiated, and that the change in classification will change the intended scope of VRA's and represent a unilateral violation of negotiated quotas. Customs recognizes that the change may impact the quantitative levels under the respective VRA's. However, Customs is equally cognizant of its obligations to properly classify and assess duty on merchandise in accordance with its condition as imported.

A second objection was that various Customs rulings have classified beckets as fittings, that they are so classified internationally, and that judicial precedent requires that beckets be classified as fittings. Customs has legal authority to modify or revoke rulings found to be in error, and, in fact, has a responsibility to do so. Moreover, *Oxford International Corp.* v. *United States*, 88 Cust. Ct. 12, C.D. 4326 (1972), cited by a commenter in connection with this objection, held that plastic covered lengths of wire cable fitted at either end with barrel and ferrule connectors, and used to transmit force in bicycle caliper brake systems, were fittings for item 642.20 purposes because they served a connective and fastening purpose. We do not agree that this is authority for the similar classification of wire rope with beckets that do not assist the rope in performing its ultimate function.

It was further commented that beckets are "fittings" both by common meaning and commercial usage, and that they are functional attachments which adapt or "fit" a rope for use as a drag line or hoist line on a particular piece of mining equipment, and that the temporary use of beckets does not negate their functional characteristics. However, the claim that beckets are within the common meaning of the term "fittings" is not supported by any lexicographic references. Moreover, they do not "fit" wire rope for tariff purposes because they do not adapt the rope to the purpose for which it is intended. Their only purpose is to pull a wire rope into place on a particular piece of equipment or in a particular application. With respect to mining equipment, such as an excavator, the rope is fastened for full load transfer to the drum and bucket respectively, by a series of clamps and wedge sockets, to function as a hoist line, boom pendant, etc. Becket end preparations or attachments are facilitating in nature, and do not enable the rope to transmit motion or perform some other specific function.

Another commenter stated beckets are custom-made attachments which dedicate heavy-duty ropes cut to lengths of over 500 feet for a specific end use, and that the ropes could not be used without them. It was further noted that ropes with beckets are ready to be installed upon importation and require no post-importation processing. However, we do not agree that beckets dedicate wire rope to its specific end use. The fact that ropes may be custom-made and require no post-importation processing is not dispositive.

A further claim was that beckets are *ejusdem generis* with the named exemplars, "hooks, swivels, clamps, clips, thimbles, sockets," preceding the general term "other fittings" in the superior heading to item 642.20. However, under the doctrine of *ejusdem generis*, we believe that beckets would be excluded from the general term "other fittings." The enumerated exemplars are end terminations, each with its own individual characteristic which will fit the needs of a given installation better than the others. Unlike beckets, these end terminations fit rope or cable for a particular ultimate purpose, which is their common feature not shared by beckets.

With respect to the comment that a change in classification and consequent application of import restrictions should be made effectively immediately, the Customs Service in the past has delayed the effective date of changes in positions which result in the imposition of a restriction which was not applicable under the previous position. The delays allow time for affected importers to readjust their business arrangements and avoid reliance on the previous position to their detriment. However, changes which result in reductions in rates of duty are generally made effective as to all entries which are open as of the date of the change and for which there has not been a final liquidation. In the instant matter, where the change has both an advantageous and disadvantageous result, these requirements are in conflict. Since both duty rate and VRA consequences are linked to the tariff classification of the merchandise, the single effective data chosen for any change must be one of which best takes into account both the benefit and detriment of the change.

Decision

After careful analysis of the comments submitted and further review of this matter, the previously proposed change in classification is adopted, and steel wire rope otherwise classifiable under the provisions of item 642.14 or item 642.16, TSUS, covering ropes without fittings, will not be excluded from those provisions and classified under the provision for steel wire rope with fittings in item 642.20, TSUS, on the basis of the presence of beckets or becket loops. This change in classification and resulting reduction in rates of duty is effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after 30 days from the date of publication of this decision in the Customs Bulletin. Customs previous decisions of November 1, 1974 (036046), March 23, 1986 (808452) and May 28, 1986 (818700) are revoked and will no longer be followed.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved:
Salvatore R. Martoche,
Assistant Secretary of the Treasury.

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Interim Rules Governing the Posting and Possible Forfeiture of Temporary Relief Bonds by Complainants in Investigations of Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Interim rules and request for comments.

SUMMARY: The Commission has revised certain rules in 19 CFR Part 210 (53 FR 33043, Aug. 29, 1988) on an interim basis to implement the following: (1) A new statutory provision authorizing the Commission to require complainants who are seeking a temporary exclusion order under subsection (e) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(e)) to post a bond as a prerequisite

to the issuance of such relief; and (2) Congressional authorization in the legislative history of the statutory bonding provision for the Commission to order forfeiture of the bond to the U.S. Treasury if, after issuing a temporary exclusion order conditioned on a bond, the Commission determines that the respondents have not violated section 337.

DATES: The effective date of the interim rules is November 21, 1988. Comments on the interim rules will be considered by the Commission in promulgating final rules if received no later than February 6, 1989.

ADDRESS: A signed original and fourteen (14) copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, Office of the Secretary, 500 E. Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION:

The Omnibus Trade and Competitiveness Act of 1988 and Its Legislative History

The temporary relief provisions of section 337 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1337 (e) and (f)) were amended in several important respects by the recently enacted Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"), Pub. L. No. 100–418, 102 Stat. 1107 (1988).[1] Among other things, complainants can be required to post a bond as a prerequisite to the issuance of a temporary exclusion order. *See* 19 U.S.C. 1337(e)(2), created by section 1342(a)(3)(B) of the Omnibus Trade Act. The purposes of requiring a bond are to deter frivolous requests for temporary relief and to deter use of temporary relief for harassment of respondents and other improper purposes. *See* 134 Cong. Rec. H1863 and H2044 (April 20, 1988); H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988); 133 Cong. Rec. S10364–S10365 (July 21, 1987 (Statement of Sen. Lautenberg). The Commission's authority to require a bond also is intended by Congress to be a means of overcoming Commission hesitation to grant temporary exclusion orders. *See* 133 Cong. Rec. S10365; 134 Cong. Rec. H2044; H.R. Rep. No. 576 at 635.

The legislative history of the statutory bonding provision indicates that if the Commission issues a temporary exclusion order conditioned on a bond and subsequently determines that the respondents have not violated section 337, the bond may be forfeited to the U.S. Treasury in accordance with rules prescribed by the Commission. *See* H.R. Rep. No. 576 at 635; 133 Cong. Rec. S10365; H.R. Rep. No. 40, 100th Cong., 1st Sess. 158–159 (1987). The forfeiture authorization is intended to provide a further disincentive to abuse of requests for temporary exclusion orders by complianants. *See* H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044.

The effective date of the statutory bonding provision is November 21, 1988. *See* section 1342(d)(1)(B) of the Omnibus Trade Act; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044. The interim rules set forth in this notice governing the posting and possible forfeiture of bonds by complainants apply only with respect to motions for temporary exclusion orders filed on or after November 21, 1988.

The Procedure for Adopting Interim Rules

The Legislative History of the statutory bonding provision admonished the Commission to issue implementing interim rules as expeditiously as possible. *See* H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044. Ordinarily, Commission rules to implement new legislation are promulgated in accordance with the rulemaking provision of the Administrative Procedure Act ("the APA"), which encompasses the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules 30 days prior to their effective date. *See* 5 U.S.C. 553(b) through (d). Because of the amount of time needed to develop interim bonding and forfeiture rules and the Congressional admonition to issue such rules as expeditiously as possible, the customary procedure could not be used. A notice soliciting public comments on proposed interim bonding and forfeiture rules was published in the **Federal Register** of November 3, 1988, 53 FR 44463. However, the time allotted for interested persons to file such comments was shorter than usual because of the limited time remaining before the effective date of the statutory bonding provision. *See* 53 FR 44463 and 44464 at footnote 2.[2] Time constraints imposed by the statutory effective date of the bonding provision also made it impossible for the Commission to publish the final interim rules set forth in this notice 30 days prior to their effective date.[3]

The interim bonding and forfeiture regulations that the Commission has adopted are intended to respond only to the exigencies created by the statutory bonding provision and the legislative history authorizing the Commission to order forfeiture of bonds. Final rules governing the posting and possible forfeiture of temporary relief bonds by complainants will be promulgated in accordance with the complete APA notice, public comment, and advance publication procedure.

Determinations Pursuant to Executive Order 12291 of February 17, 1981, and the Regulatory Flexibility Act

The Commission has determined, for the following reasons, that the interim rules contained in this notice are not subject to the provisions of Executive Order 12291 of February 17, 1981 (46 FR 13193, Feb. 19, 1981) governing federal regulation: Some of the interim rules pertain to administrative actions governed by the provisions of sections 556 or 557 of the APA (5 U.S.C. 556 and 557) (*e.g.*, evidentiary hearing and the issuance of an initial determination by a Commission administrative law judge and discretionary review by the Commission) and thus are not "regulations" or "rules" within the meaning of section 1(a) of Executive Order 12291. The interim rules also do not qualify as "major rules" under section 1(b) of Executive Order 12291 because they do not result in the following:

(1) An annual effect on the economy of $100 million or more;

[1] *See* FR 33043 (Aug. 29, 1988) for a summary of all the Omnibus Trade Act's amendments to section 337 and the text of interim Commission rules implementing the amendments that became effective on August 23, 1988.

[2] The public comments the Commission received concerning the proposed interim bonding and forfeiture rules are discussed elsewhere in this notice.

[3] Under section 553 of the APA, an agency may dispense with the publication of a notice of "final" interim rules 30 days prior to their effective date if (1) the rules are interpretive rules or statements of policy, or (2) the agency finds that "good cause" exists for not meeting the advance publication requirement, and (3) that finding is published along with the rule. *See* 5 U.S.C. 553(d)(3). In this instance, the Commission has determined that the amount of time needed to develop interim bonding rules, the short period allotted for pomulgating such rules, and the Congressional admonition to do so as expeditiously as possible constitute "good cause" for not complying with the 30-day advance publication requirement.

(2) A major increase in costs (apart from the litigation costs of obtaining a temporary exclusion order in an investigation under section 337 of the Tariff Act of 1930) or prices for consumers, individual industries, Federal, state, or local government agencies, geographic regions, or individual industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

In accordance with the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the interim rules set forth in this notice are not likely to have a significant economic impact on a substantial number of small business entities. The Commission feels justified in making this certification, for the following reasons:

(1) The interim bonding and forfeiture rules set forth in this notice apply only to companies that are seeking a temporary exclusion order under section 337 of the Tariff Act of 1930. Historically, motions for temporary exclusion orders have been filed by only a very small percentage of the total number of section 337 complainants.[4] Although the Commission does not maintain statistics on the size of companies that appear before it as section 337 complainants, it safely can be said that not all complainants that seek temporary exclusion orders are small businesses as defined in 5 U.S.C. 601 and 15 U.S.C. 632.

(2) The Commission notes also that the interim rules which it has adopted are flexible enough not to unduly inhibit the ability of complainants that are small businesses to comply with the prescribed bonding and foreiture procedure or to compete in the marketplace (consequences that the RFA is designed to prevent). For example, with respect to bonding, the interim rules provide that even though there is a policy favoring the imposition of a bond in every case, the Commission may, in an appropriate case, waive the bond or require only a nominal bond after considering factors such as hardship to the complainant.

The interim rule governing the bond-related documentation that must be filed with motions for temporary relief also has a certain amount of flexibility designed to accommodate small businesses. The rule requires the complainant to submit certain audited financial statements or "the equivalent thereof." The rule was drafted in this fashion in recognition of the fact that some complainants may be very small businesses and may not have audited statements prepared. The Commission thus determined to accept reasonably equivalent substitutes to accommodate such complainants.

Summary of Public Comments on the Proposed Interim Rules, Overview of the Bonding and Forfeiture Processes, and Explanation of the Specific Interim Revisions to 19 CFR Part 210 (53 FR 33043 Aug. 29, 1988)

Apparently because of the short time allotted for filing, the Commission did not receive a large number of comments on the proposed interim bonding and forfeiture rules. The ITC Trial Lawyers Association ("ITCLA") filed a letter stating that it had not been able to prepare comments on the proposed rules within the time provided, but would file comments on the "final" interim rules for consideration by the Commission in drafting final rules. *See* letter to Kenneth R. Mason from Sandra A. Sellers of the ITCLA (dated Nov. 9, 1988). The only comments the Commission received were from the International Electronics Manufacturers and Consumers of America, Inc. ("IEMCA"), an association whose members include potential section 337 respondents and some potential complainants. *See* Letter to Kenneth R. Mason from the law firm of Powell, Goldstein, Frazer & Murphy (dated Nov. 9, 1988) and the accompanying comments of the IEMCA. The IEMCA's comments and the Commission's responses thereto are integrated into the discussion which follows.

1. Determining Whether the Complainant Should Be Required To Post a Bond and, if so, the Amount of the Bond

The procedures governing the disposition of motions for temporary relief are found primarily in interim rules 210.24(e), 210.41, 210.53, 210.58, and 210.59. *See* 53 FR 33043, 33060–33063, 33068, 33070, and 33072 (Aug. 29, 1988). The new interim rules governing the posting of bonds by complainants as a prerequisite to the issuance of a temporary exclusion order have been incorporated into those rules. Where appropriate, the interim bonding rules are based on or contain citations to Treasury Department and U.S. Customs Service regulations and statutes. For the most part, the preamble and interim rules set forth below are the same as the preamble and proposed interim rules published on November 3, 1988 (53 FR 44463).

Commission decisions on whether to require a complainant to post a bond and, if so, the amount of the bond, will be made by the initial determination/discretionary Commision review procedure that is currently used to determine whether to grant or deny motions for temporary relief. The factors administrative law judge and the Commission will consider in determining whether to require a bond include those specified in the legislative history of the bonding provision, as well as consideration of the public interest, which is to be paramount in the administration of section 337. *See* 133 Cong. Rec. S10365; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044; S. Rep. No. 1298, 93 Cong., 2d Sess. 193 (1974). Complainants who seek a temporary exclusion order will be required to address the issues of bonding and the amount of the bond in the motion for temporary relief and to provide coroborating documentation with the motion. Each respondent's response to the motion must respond to bonding arguments in the motion for temporary relief to the extent possible.[5] In light of the stringent statutory deadlines for determining whether to grant temporary relief and the intent of Congress that the Commission issue temporary relief orders more quickly than it issued them under the previous enactment of section 337 (*see* H.R. Rep No. 40 at 159; S. Rep. No. 71, 100th Cong., 1st Sess. 131 (1987), the Commission believes that having as much relevant bonding data as possible before the administrative law judge at the outset of the temporary relief proceeding will foster the development of a more complete record (since the respondents and the Commission investigative attorney can conduct discovery and challenge the complainant's bonding data and assertions). It also will facilitate resolution of the question of bonding within the period allotted by law for determining whether to grant motions for temporary exclusion orders, as well as the expeditious issuance of a temporary exclusion order if the motion is granted and a bond is required.

The interim rules enunciate a policy favoring the requirement of a bond in every case in which the complainant will receive a temporary exclusion order. In a case where the complainant seeks to be excused from posting a bond, the complainant will have the

[4] For example, of the 17 investigations instituted in 2 involved a motion for a temporary exclusion order. Of the 23 investigations instituted in 1986, none involved a motion for a temporary exclusion order.

[5] *See infra* n.12.

burden of persuading the Commission that exemption from the bond requirement is warranted. The Commission believes that such a policy is consistent with the stated purpose of the bonding provision, which is to deter complainants from filing frivolous motions for temporary relief or using temporary relief as a means of harassing the respondent. *See* H.R. Rep. No. 576 at 635–636; 133 Cong. Rec. S10364–S10365; 134 Cong. Rec. H2044. The Commission also believes that a Commission policy favoring the imposition of a bond is consistent with the Congressional intent that the bond serve as a means of overcoming Commission hesitation to grant temporary relief (*e.g.*, in cases where the motion for temporary relief does not appear to be frivolous but the strength of the complainant's case is not overwhelming). 133 Cong. Rec. S10365; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044.

The Commission believes that any perceived unfairness to complainants stemming from a Commission policy favoring the posting of bonds by complainants to secure temporary exclusion orders is mitigated somewhat by the fact that the Commission has considerable discretion in determining the amount of the bond and thus would be free to require only a nominal bond in appropriate cases. (The Commission notes also that the IEMCA, whose membership includes potential complainants as well as potential respondents expressed no objection to the aforesaid Commission policy favoring the imposition of a bond.)

As stated previously, the legislative history of the statutory bonding provision indicates that the purposes of requiring a bond are to deter frivolous requests for temporary exclusion orders and to deter the use of such relief by complainants to harass respondents or for other improper purposes. *See* H.R. Rep. No. 576 at 635–636; 134 Cong. Rec. H2044; 133 Cong. Rec. S10364–S10365. The Commission's goal in computing the amount of the bond is therefore is select an amount that is sufficient to deter the complainant in question from misusing the temporary exclusion order process and/or the temporary exclusion order if such relief is granted.[6]

In light of (1) the stringent new statutory deadlines for granting temporary relief (90 days in an ordinary investigation and up to 150 days in a "more complicated" investigation),[7] (2) the wide range of issues parties conceivably could raise in their arguments concerning the posting of a temporary relief bond by the complainant, and (3) the Commission's lack of prior experience with complainants' temporary relief bonds, the Commission found it appropriate to adopt an interim rule containing a specific formula for calculating the amount of the bond. A prescribed formula will not only make the computation relatively easy, it also will ensure, to a certain extent, that the bonding provision is applied in a reasonably consistent fashion and that a complainant considering seeking temporary relief will have some idea of the amount at issue (at least in certain types of cases).

For those reasons, the interim rules provide that in cases where a domestic industry exists and domestic sales have commenced and have not been de minimis, the Commission generally will require a bond in an amount ranging from 10 to 100 percent of sales revenues and licensing royalties from the domestic product at issue, as reported in the complainant's annual financial statements for the most recently completed fiscal year. The advantages of this formula are the following:

(1) In most cases, the Commission will not have to rely on allocations. Financial statement sales revenue figures generally are audited numbers and hence specific product revenues should be readily available.

(2) Since a sales revenue figure generally is an audited number, it has some validity. Hence, the only verification documents that the complainant must file along with the motion for temporary relief are (a) the audited financial statements (or the equivalent thereof) for the most recently completed fiscal year, (b) the back-up income statements, work sheets, or other documents showing product revenues tied to the aggregate revenue listed on the financial statements, and (c) a certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

(3) A bond computation formula keyed to a percentage of sales revenues and licensing royalties is appropriate because a bond amount can be tailored to provide a meaningful deterrent to complainant's abuse of temporary relief by taking into account the extent of the complainant's involvement with articles of the type under investigation and the complainant's relative financial strength.[8]

If the facts and circumstances so warrant, the presiding administrative law judge can recommend in the initial determination on temporary relief and bonding by the complainant (if a temporary exclusion order is requested) that the Commission order waiver of the rule requiring application of the range prescribed in the formula, and that it require instead a bond in an amount equal to less than 10 percent or more than 100 percent of the relevant product sales revenues and licensing royalties.[9]

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[6] In the preamble to the proposed interim rules, the Commission's objective in computing the amount of the bond was described as selecting a bond amount "that is sufficient to deter the complainant in question from abusing the use of a temporary exclusion order if such relief is granted." 53 FR 44465. The IEMCA commented that such a statement mischaracterized the abuses that are most likely to occur, *i.e.*, a complainant's misuse of the temporary relief *process* rather than misuse of a temporary relief *order* and that a complainant's conduct prior to the issuance of the order must be taken into account in computing the amount of the bond.

The Commission notes, in response, that the disputed language corresponded to the language of the Conference Committee Report accompanying the statutory bonding provision, which states that "the purpose of the bonding provision is to prevent the use of *TEOs* [temporary exclusion orders] as a form of harassment of respondents or for other frivolous or unjustified purposes." H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988) (emphasis added). The Commission also notes, however, that other statements in the legislative history provide support for the proposition that the real problem which Congress sought to address is potential misuse of the temporary exclusion order process and not just misuse of the order itself. A Senate colloquy incorporated by reference into the Conference Committee Report indicates, for example, that Congress gave the Commission authorization to require a bond as "a tool to weed out unjustified *requests* for temporary exclusion orders." 133 CONG. REC. S10365 (Statement of Sen. Lautenberg) (July 21, 1988) (emphasis added); H.R. Rep. No. 576 at 635; 134 CONG. REC. H1863 and H2044 (April 20, 1988). The aforesaid colloquy also indicates that the Commission may consider "all legal and equitable considerations" in determining whether to require a bond, *id.*, and such considerations clearly would include evidence or facts supporting the inference that a complainant has initiated a temporary relief proceeding to harass the respondents or for some other improper purpose. *See* H.R. Rep. No. 576 at 635; 134 CONG. REC. H2044. To be consistent with all relevant statements in the legislative history, the discussion in the preamble of this notice and the text of interim rule 210.24(e)(1)(iii) were drafted with a view toward deterring potential abuse by complainants of the temporary exclusion order process and/or the temporary exclusion order itself.

[7] 19 U.S.C. 1337(e)(2) as amended by section 1342(a)(3)(B) of the Omnibus Trade Act.

[8] Hardship to the complainant is one of the factors which the Commission is expected to consider in determining whether to require a bond (*see* 133 CONG. REC. S10365; H.R. Rep. No. 576 at 635; 134 CONG. REC. H2044), and thus may also be considered by the Commission in determining the amount of the bond, if a bond is required.

[9] Commission rule 201.4(b) provides that Commission rules may be amended, waived, suspended, or revoked by the mission when, in the judgment of the Commission, there is good and sufficient cause therefor and the rule is not a matter of procedure required by law. *See* 19 CFR 201.4(b).

The Commission expects, however, that exceptions to the range set forth in the rule would be rare. Moreover, even though an occasional exception may arise, the Commission believes that it still is desirable to have a range for the possible amount of the bond set forth in the interim rules in order to lessen the possibility that a complainant with limited litigation resources would, in good faith, pursue a temporary exclusion order and then decide after the Commission determines to grant such relief that it cannot afford to post the required bond.

The Commission recognizes that in certain types of cases, the percentage-of-product-sales-revenue-and-licensing-royalties formula may not be suitable. Such cases may include (but would not be limited to) those in which the complaint alleges prevention of the establishment of an industry, or cases in which the complainant's domestic operations are newly established and commercial sales of the domestic product have not yet commenced or have been de minimis, or cases in which the complainant is a large multinational conglomerate with substantial litigation resources and the domestic product at issue accounts for only a small portion of the complainant's total revenues from sales and licensing royalties. In such cases, the administrative law judge's initial determination on temporary relief can recommend and the Commission can agree to waive application of the rule requiring computation of the bond by the percentage-of-product-sales-revenues-and-licensing-royalties formula. The administrative law judge and the Commission can then use whatever criteria are appropriate to determine the bond in that case. The interim rules thus provide that in cases where the prescribed formula would not be appropriate—*e.g.* including but not limited to cases where the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deems relevant. If a case is a type for which the prescribed formula is or may not be suitable, the interim rule requires the motion for temporary relief to explain why the prescribed formula would not be appropriate, to state the theory the complainant believes would be appropriate for computing the amount of the bond (if the Commission determines to require a bond), and to provide supporting financial and economic data along with a certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data. Finally, the interim rules state that all complainants who are seeking a temporary exclusion order (including complainants who have provided audited financial statements and back-up data), must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and certification under oath by the complainant's chief financial officer that the information submitted is accurate.

The bond computation formula and procedure discussed above were outlined in the preamble and proposed interim rules published November 3, 1988. *See* 53 FR 44465, 44466, and 44472. The IEMCA's comments criticized the proposed formula and the implementing rules on the following grounds: (1) They provide too little guidance and give too much discretion to the administrative law judge—which results in uncertainty for the parties; and (2) the formula relies on criteria that are not related to the concept of deterring misuse of the temporary relief process, since the formula is based on a complainant's *past* sales rather then future sales while the temporary exclusion order is in effect. The IEMCA suggested that, in keeping with the deterrent purpose of the bond, the amount of the bond should be commensurate with the actual or constructive commercial benefit the complainant would derive from the temporary exclusion order (an amount which, if forfeited to the U.S. Treasury, would return the complainant to the status quo prior to issuance of the temporary exclusion order). Specifically, the IEMCA recommended that the interim rules be drafted to provide that the amount of the bond would be based on the following: (1) The amount of the commercial benefit derived by the complainant as a result of the temporary exclusion order (based on the allegations of injury that are the basis for the motion for temporary relief), (2) the estimated amount of the benefit to the complainant based on economic projections of expected sales, or (3) the amount of harm to the respondent as a result of the temporary exclusion order, as a proxy for the complainant's benefit.

The Commission is aware that a percentage-of-post-sales-revenues-and-licensing-royalties bond computation formula has certain shortcomings, and that the approach advocated by the IEMCA is logical (since it focuses on commercial benefits to the complainant during the pendency of the temporary exclusion order). The Commission is concerned, however, that in most instances, the formulae advocated by the IEMCA would be too speculative and too difficult to apply within the very limited time available for discovery, an evidentiary hearing, the issuance of an initial determination by the presiding administrative law judge, and the Commission's determination on whether to grant a temporary exclusion order. The Commission has therefore determined that the IEMCA's proposed alternative formulae should not be incorporated into the interim rules as the standard for computing the amount of the bond.

However, the presiding administrative law judge and the Commission would not be precluded from applying one of the IEMCA's proposed formula in an appropriate case, where the complainant or other parties can demonstrate that the percentage-of-product-sales-revenues-and-licensing-royalties formula is inappropriate, that the rule requiring its application should be waived, and that another formula should be applied instead. What constitutes "an appropriate case" will depend on the facts (as well as on the reliability of financial or economic data that are available to support the request for waiver of the prescribed formula in favor of an alternative approach).

Although it is possible that the bond computation methodology in the initial bonding cases may be ad hoc to a certain extent, that result cannot be entirely avoided, for the following reasons:

(1) No single formula will be appropriate for all types of cases (as the IEMCA's comments and proposed alternative formulae tacitly acknowledge).

(2) The Commission has no previous experience in computing the amount of temporary relief bonds, and bonds posted to secure temporary exclusion orders under section 337 are not directly analogous to injunction bonds posted in civil actions pursuant to Rule 65(c) of the Federal Rules of Civil Procedure (which generally are computed on the basis of the amount of harm to the respondent and may be forfeited to the respondent if it turns out that the injunction should not have been issued).

(3) Congress did not provide any specific guidelines for computing the amount of the bond.

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One purpose of having flexible interim rules in effect during the initial bonding cases is to develop experience which can be used in the formulation of final bonding (and forfeiture) rules. Significant computation problems that arise in the initial cases under the interim bonding rules can be remedied by further revision of the rules published in this notice on an interim basis (if necessary) or through the promulgation of final rules.

The statutory provision authorizing the Commission to require that the complainant post a bond to secure a temporary exclusion order and other provisions of federal law (cited in the proposed rules) provide that: (1) The surety need not be a guarantee corporation and the Government cannot require that the person posting the bond use a particular guarantee corporation; and (2) in lieu of the surety bond of a guarantee corporation, the person may post the surety bond of an individual or other types of Government obligations [10], *viz.*, a certified check, a postal money order, cash, United States bonds, or Treasury notes. *See* 31 U.S.C. 9301, 9303, and 9304(b). *See* also 31 CFR Part 225. For those reasons, the proposed rules provide for the posting of individual or corporate surety bonds, as well as other types of government obligations, such as a certified check, a bank draft, a postal money order, cash, United States bonds, or Treasury notes, in lieu of a surety bond in accordance with the applicable Treasury statutes and regulations.

Federal law also requires that the Commission formally approve any bond posted to secure a temporary relief order. The interim rules designate the Commission Secretary as the Commission's bond approval officer. The bond approval process will entail verification of the information provided in and with the bond (with assistance from the Commission's Office of Investigations, where necessary) in accordance with governing Treasury regulations or circular. The interim rules authorize the Secretary to disapprove and reject a bond submitted by a complainant for the following reasons: (1) Noncompliance with the Commission order, notice, determination, or opinion requiring the complainant to post a bond; (2) noncompliance with governing Commission or Treasury regulations (or a restriction imposed by a Treasury regulation or circular); (3) evidence of fraud or misrepresentation on the face of the bond or any supporting documentation (*e.g.*, powers of attorney) or in the instrument governing the posting and disposition of the certified check, the bank draft, postal money order, cash, United States bond, or Treasury note submitted in lieu of a surety bond; or (4) any other reason deemed appropriate by the Secretary. If the complainant believes that the Secretary's rejection of the bond was erroneous as matter of law, the complainant may appeal to the Commission by filing a petition in the form of a letter to the Chairman of the Commission within 10 days after service of the Secretary's rejection letter.

The Commission notes that the bond approval process will be expedited if the complainant chooses to use surety corporation that is licensed to do business in the United States and is on the list of approved corporate sureties mantained by the Clerk of the U.S. District Court for the District of Columbia. From the Commission's standpoint, the administrative advantage of using such a company is that the Commission can seek advice and assistance from the clerk of that court in connection with the verification needed to approve a bond posted by such a company. The advantage to the complainant is that this may expedite the bond approval process and the issuance of the temporary relief order which the bond is intended to secure.

The bond approval process can be expected to take longer if the complainant chooses to use the bond of an individual surety, or a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note in lieu of a surety corporation's bond to secure a temporary exclusion order. This is due to the verification that must be performed before the bond or Government obligation tendered in lieu of a surety corporation's bond can be accepted by the Commission.

For example, when the bond of an individual surety is tendered, the verification entails investigation to ensure the solvency and financial responsibility of the individual. For that reason, the individual must file an affidavit of the type shown in Appendix A to interim rule 210.58 (which corresponds to Customs Form 3579 (19 CFR 113.35). If the bond or Government obligation is in the form of a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note, the bond approval officer must conduct the verification specified in 31 CFR 225.6. That verification entails ascertaining ownership of the Government obligation in question, as well as the sufficiency of the accompanying power of attorney and bond agreement or the equivalent thereof. In cases where a registered bond or note is posted, the bond approval officer must verify the regularity of the assignments and that the deposit is made in conformity with the provisions of 31 CFR Part 225.

Since federal law prohibits the Commission from requiring complainants to use a surety corporation or a particular surety corporation, the interim rules do not *require* that complainants post bonds of corporate sureties registered with the U.S. District Court for the District of Columbia or that the complainant post the bond of a surety corporation rather than the bond of an individual surety or another type of Government obligation in lieu of a surety bond (such as a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note).

The manner in which the Commission has incorporated the procedures discussed above into existing Commission rules is summarized below.

Interim Rule 210.1

Interim rule 210.1 (53 FR 33043 and 33056, Aug. 29, 1988) describes the applicability of the rules in and lists the statutory provisions that authorize the enactment of such rules. As indicated above, the Commission's authority to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order is found in subsection (e)(2) of section 337 of the Tariff Act (created by section 1342(a)(3)(B) of the Omnibus Trade Act). The authority to issue interim bonding rules to implement that provisions is found in section 1342(d)(1)(B) of the Omnibus Trade Act. The Commission's authority to require forfeiture of the bond to the U.S. Treasury is found in the legislative history of the aforesaid bonding provision. *See* H.R. Rep. No. 576 at 636; 133 CONG. REC. S10365; 134 CONG. REC. H2044.

The interim revisions to interim rule 210.1 therefore consist of the following: (1) The addition of the words "expressly or implicitly" before the word "authorized" in the sentence beginning "These rules are authorized by * * *"; and (2) the insertion of citations to the relevant statutory provisions and legislative history at the end of that sentence.[11]

[10] A "Government obligation" is a public debt obligation of the United States Government and an obligation whose principal and interest is unconditionally guaranteed by the Government. 31 U.S.C. 9301.

[11] Section 2 of the Omnibus Trade Act is cited in the revised version of interim rule 210.1 (in addition

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Interim Rule 210.24(e)

Interim rule 210.24(e) published on August 29, 1988 (53 FR 33043 and 33060) sets out the procedure for filing, processing, and the ultimate disposition of motions for temporary relief. Paragraph (1) of rule 210.24(e) (53 FR 33043 and 33060, Aug. 29, 1988) sets forth the mandatory content of motions for temporary relief. The new interim revision consists of requiring the motion to address the following issues when the complainant is seeking a temporary exclusion order: (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of such an order; and (2) the appropriate amount of the bond, if the Commission determines (despite any arguments to the contrary) that a bond will be required. Paragraph (1) of interim rule 210.24(e) also has been revised to include the following: (1) A recitation of the factors the Commission will consider in determining whether to require a bond; (2) the Commission's policy favoring the posting of temporary relief bonds in every case in which the complainant seeks and the Commission determines to issue a temporary exclusion order; (3) the formula for computing the amount of the bond in cases where the domestic industry is established and sales of the domestic product in question have not been de minimis; and (4) the documentation that must be provided to support the bonding arguments in the motion for temporary relief.

Paragraph (7) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) governs the amendment of motions for temporary relief. Prior to the adoption of the new interim bonding and forfeiture rules, paragraph (7) stated, in pertinent part, that if the complainant amends the motion for temporary relief in a manner that expands the scope of the motion, the 35-day period allotted under paragraph (8) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. Paragraph (7) has been revised by the addition of a provision stating that if the complainant amends the motion for temporary relief in a manner that changes the complainant's original assertions on whether a bond is to be required or the appropriate amount of the bond, the 35-day period allotted for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. The Commission found this change to be appropriate because the issue of bonding is likely to be vigorously contested and each respondent's response to the motion for temporary relief must address the complainant's arguments on bonding to the extent possible. (*See* the revision of paragraph (9) of interim rule 210.24(e)). The Commission notes further that this revision of paragraph (7) of interim rule 210.24(e) is consistent with the Commission's intent that the respondents have at least 30 days in which to review the motion in its entirety, to consult an attorney, and to decide prior to the tolling of the period for filing a response to the motion what course of action and arguments would be appropriate if an investigation is instituted.

Paragraph (9) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) sets forth the required content of responses to motions for temporary relief. Paragraph (9) has been revised by addition of the following: (1) A statement that if the motion requests that the Commission issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's arguments concerning whether a bond should be required and the appropriate amount of the bond; [12] and (2) a statement that each response to the motion for temporary relief may also contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

Prior to the adoption of the interim bonding and forfeiture rules, paragraph (10) of interim rule 210.24(e) (53 FR 33043 and 33061, August 29, 1988) provided that following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief must be forwarded to an administrative law judge for an initial determination on whether there is reason to believe there is a violation of section 337 of the Tariff Act and whether temporary relief is appropriate. Since the Commission has determined that the question of bonding will be determined by using the initial determination/discretionary Commission review procedure, the revision of paragraph (10) of interim rule 210.24(e) consists of new language to provide that the initial determination on temporary relief must also address whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and, if so, the amount of the bond.

Paragraph (11) of interim rule 210.24(e) (53 FR 33043 and 33061, Aug. 29, 1988) pertains to designating an investigation "more complicated" for purposes of adjudicating a motion for temporary relief. That paragraph previously provided, in pertinent part, that after a motion for temporary relief is referred to the administrative law judge for an initial determination, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" in order to obtain additional time to adjudicate the motion for temporary relief.

The issues of bonding by the complainant and computing the amount of the bond are likely to be contested in most investigations. Moreover, Commission resolution of those issues may pose procedural and substantive difficulties, at least until the administrative law judges and the Commission gain experience with bonding. For those reasons and because the issue of bonding must be addressed in the initial determination on temporary relief, the interim revision of paragraph (11) of interim rule 210.24(e) consists of clarification that the "more complicated designation" may be applied because of the complexity of the bonding issues and/or the complexity of issues relating to whether there is reason to believe the respondents have violated section 337 (as discussed in interim rule 210.59(a)(1)).

Paragraph (12) of the interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29 1988) discusses the administrative law judge's discretion to control the time, place, nature, and extent of discovery relating to the motion for temporary relief and the administrative law judge's authority to compel discovery on certain issues. The interim revisions to

to the relevant legislative history) for the following reasons: Although the bill that became the Omnibus Trade Act is H.R. 4848, 100th Cong., 2d Sess. (1988), the reports comprising the relevant legislative history expressly pertain to H.R. 3, 100th Cong., 2d Sess. (1988), a trade bill which the President vetoed. The provisions of H.R. 4848 that amend section 337 of the Tariff Act are identical to provisions of H.R. 3. For that reason, section 2 of the Omnibus Trade Act provides that the legislative history of H.R. 3 also serves as the legislative history of the relevant provisions of H.R. 4848.

[12] The Commission recognizes that a respondent's ability to respond to the complainant's arguments on the issue of whether the complainant should be required to post a bond and the appropriate amount of the bond may be limited by the fact that much of the data upon which the complainant may rely to support its position is likely to be confidential business information, which would not be served on the respondents along with the motion and the complaint.

paragraph (12) include new language expressly authorizing the administrative law judge to compel discovery on matters relating to (1) whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and (2) if so, the amount of the bond. The interim revisions to paragraph (12) also include changing the previous reference in that paragraph from "bonding" to "bonding by respondents." This change will avoid confusion since complainants may now be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (13) of interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29, 1988) relates to evidentiary hearings on motions for temporary relief. Paragraph (13) discusses the administrative law judge's authority to rule on such motions with or without a hearing, his or her discretion to control the form and scope of the hearing, and the matters that are to be addressed at the hearing. The interim revisions to paragraph (13) include a statement that the following issues must be discussed at the hearing (if a hearing is conducted): (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and (2) if so, the amount of the bond. The interim amendments to paragraph (13) of interim rule 210.24(e) also include changing the previous reference in that paregraph from "bonding" to "bonding by respondents" where appropriate. Paragraph (14) of interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29, 1988) discusses the administrative law judge's discretion to permit the parties to file proposed findings of fact, conclusions of law, and briefs concerning the grant or denial of temporary relief. The interim revision of paragraph (14) consists of clarification that the administrative law judge has the same discretion with respect to the filing of written submissions on whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and the amount of the bond.

Paragraph (15) of interim rule 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses interlocutory appeals and review by the Commission of the administrative law judge's actions and findings relating to motions for temporary relief. No interim revision has been made in the directive set forth in this rule. But for purposes of internal consistency in the references to the initial determination concerning temporary relief, paragraph (15) of interim rule 210.24(e) has been revised by changing the previous reference in that paragraph from "an initial determination granting or denying a motion for temporary relief" to "an initial determination granting or denying a motion for temporary relief and, if applicable, a ruling on the issue of bonding by the complainant as prerequisite to the issuance of a temporary exclusion order."

The Commission has made the same type of clarification in paragraph (16) of interim rule 210.24(e) (53 FR 33043 and 33062, August 29, 1988), which pertains to certification of the record to the Commission.

Paragraph (17) of interim rule 210.24(e) (53 FR 33043 and 33062, Aug. 29, 1988) discusses the content of the initial determination on temporary relief and Commission action thereon. The interim revision to paragraph (17)(i) of this rule (53 FR 33043 and 33062, August 29, 1988) consists of the same type of clarification the Commission made in paragraphs (15) and (16) of rule 210.24(e). The revisions to paragraph (13) also include changing the previous reference to "bonding" to "bonding by respondents" where appropriate. This change will avoid confusion since, complainants may now be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (17)(ii) of interim rule 210.24(e) (53 FR 33043 and 33062, August 29, 1988) has not been revised. Although the issue of bonding by the complaintant will be included in the initial determination in cases involving a request for a temporary exclusion order, the scope of review by the Commission continues to be limited to alleged errors of law and matters of policy (including policy considerations related to the public interest and bonding). Neither the ruling on bonding by the complainant nor any other aspect of the initial determination will be reviewed by the Commission solely for alleged errors of fact.

The preamble and proposed interim rule 210.24(e)(17) published on November 3, 1988, indicated that the scope of review would be limited to errors of law and matters of policy articulated by the Commission and that questions of fact would not be reviewed. The IEMCA objected to the proposed rule, arguing that the Commission could not lawfully delegate its factfinding responsibility to an administrative law judge and that limiting Commission review in that manner would effectively preclude any review of bonding and public interest matters (which, in the IEMCA's view, are largely factual matters and the responsibility of the Commission).

The Commission noted that section 557(b) of the APA provides, in pertinent part, that on appeal from or review of an initial decision by an administrative law judge, an agency has all powers that it would have in making the initial decision "except as it may limit the issues on notice or by rule." 5 U.S.C. 557(b). The Commission noted also that while the judicial decisions cited by the IEMCA in its comments supported the IEMCA's assertion that there is a widespread assumption that a system of restricted review can be brought about only through legislation, the cited decisions are inapposite to the circumstances at issue here because each of the cited decisions is an affirmation of an agency's ability to review factual findings, rather than a decision affirmatively precluding the delegation of factfinding responsibility. In each case, the agency in question had a duty to review factual findings because it had not limited the scope of its review by notice or by rule. In none of the cited decisions was the issue whether an agency may restrict the scope of its review.

The Commission noted that there is no definitive legislative history of the APA upon which the Commission could rely to determine whether the proposed rule was unlawful, as the IEMCA had suggested and that interpreters of the statute disagree on its meaning. *See, e.g.*, K. Davis, Administrative Law Treatise, § 17.14 at 324 (2d ed. 1980) at 323, 324 citing Administrative Conference Statement on ABA Proposals to Amend the Administrative Procedure Act, 24 Ad. L. Rev. 419, 442 (1973); *Universal Camera Corp.* v. *Labor Bd.*, 340 U.S. 494 n.27 (1950).

The short time provided by law for determining whether to grant or deny motions for temporary relief necessitates abbreviation of the customary administrative adjudicative process. For that reason, and the fact that section 557(b) expressly permits an agency to limit the scope of its review of an initial determination by rule, the Commission determined not to change the proposed interim rule making Commission review unavailable for purely factual matters addressed in an initial determination on temporary relief and bonding. However, to clarify that bonding and the public interest involve policy matters for which Commission review should and will be available (particularly as the Commission gains experience with bonding issues in the initial cases and in light of the fact that the public interest is paramount in the

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administration of section 337), the preamble in this notice and interim rule 210.24(e) were drafted to indicate that review of an initial determination on temporary relief and bonding may be granted for errors of law and/or policy matters, including policy considerations relating to bonding and public interest.

Paragraphs (17) (iii) and (v) of interim rule 210.24(e) (53 FR 33043 and 33063, Aug. 29, 1988) discuss, among other things, the page limits for comments and responses thereto which the parties may file concerning the presence or absence of alleged errors of fact or law in the initial determination on temporary relief. The interim revisions to paragraphs (17) (iii) and (v) include the same type of clarification the Commission has made in paragraphs (15) and (16) of interim rule 210.24(e). Additionally, since the initial determination must address the question of bonding by the complainant when the complainant is seeking a temporary exclusion order and that issue is likely to be vigorously contested (at least in the first few investigations), the revisions to paragraphs (17) (iii) and (v) of interim rule 210.24(e) include 5-page increases in the current page limits imposed for the parties' comments on the initial determination and the responses thereto.

Paragraph (17)(vi) of interim rule 210.24(e) (53 FR 33043 and 33063, Aug. 29, 1988) provide that if the Commission determines to modify or vacate the initial determination, a notice and (if appropriate) a Commission opinion will be issued, and if the Commission does not modify or vacate the initial determination, it will automatically become the determination of the Commission and a notice of that fact will not be issued. The operation of the statutory bonding provision necessitates modification of this rule to indicate that if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter) a notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

Paragraph (18) of interim rule 210.24(e) (53 FR 33043 and 33063, Aug. 29, 1988) sets forth the Commission's procedure for determining (1) the appropriate form of temporary relief, (2) whether the statutory public interest factors preclude such relief, and (3) the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of the investigation and any temporary relief order issued in response to the motion. The interim amendments to paragraph (18) of interim rule 210.24(e) consist of changing all previous references to "bonding" to "bonding by respondents" where appropriate.

Interim Rule 210.41

Interim rule 210.41 (53 FR 33043 and 33068, Aug. 29, 1988) sets forth general provisions governing hearings in section 337 investigations. Paragraph (a)(2) of that rule previously stated that "[e]xcept as provided under § 120.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act." For internal consistency with other interim rules governing the initial adjudication of motions for temporary relief by the administrative law judge, the interim revision to paragraph (a)(2) of interim rule 210.41 consists of clarification that the hearing may also address the issue of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is being requested) and, if so, the amount of the bond.

Interim Rule 210.53

Interim rule 210.53 (53 FR 33043 and 33068, Aug. 29, 1988) discusses the issuance and disposition of initial determinations for all matters that are to be adjudicated by the initial determination/discretionary review procedure, including motions for temporary relief. Paragraph (b) of that rule previously stated that "[t]he disposition of an initial determination concerning temporary relief is governed by the provisions of § 210.24(e)(17)." For internal consistency with the revisions to interim rule 210.24(e) relating to bonding by the complainant, the Commission has revised paragraph (b) of interim rule 210.53 to state that "[t]he disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(e)(17)."

Interim Rule 210.56

Interim rule 210.56 (53 FR 33043 and 33071, Aug. 29, 1988) discusses the process of reviewing initial determinations, including the filing of briefs, requests for oral argument, the scope of the review, what action the Commission can take upon completion of the review, and the time limits for concluding a review of an initial determination concerning temporary relief. For consistency with other interim rules pertaining to the grant or denial of temporary relief and to avoid confusion, the Commission has changed the language in paragraph (d) of interim rule 210.56 which previously referred to "an initial determination concerning temporary relief" to "an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents."

Interim Rule 210.58

Interim rule 210.58 (53 FR 33043 and 33068, Aug. 29, 1988) governs the Commission's adjudication of the issues of remedy, the public interest, and bonding by respondents in section 337 investigations. Since the Commission is now authorized to require complainants to post a bond as a prerequisite to the issuance of a temporary exclusion order, the bonding issues encompassed in that determination are cited in paragraph (b) of that rule. The definition of the "bond" to be posted by the complainant, the criteria the Commission will use in determining the amount of bond, the standard bond provisions that will be required in every case, the restrictions and requirements relating to individual and corporate sureties, are also discussed in the revised version of paragraph (b).

Interim Rule 210.59

Paragraph (b) of interim rule 210.59 (53 FR 33043 and 33072, Aug. 29, 1988) discusses designating an investigation "more complicated" for purposes of determining whether to grant a motion for temporary relief. The Commission has revised paragraph (b) of this rule by clarifying that the "more complicated" designation can be applied for purposes of determining whether to grant a motion for temporary relief and/or determining (1) whether to require the complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order, and (2) if so, the amount of the bond.

2. Determining Whether the Complainant Should be Required to Forfeit the Bond in Whole or in Part

The legislative history of the statutory provision authorizing the Commission to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order also

authorizes the Commission to require forfeiture of the bond when the Commission determines, after issuing a temporary exclusion order conditioned on a bond, that the respondents have not violated section 337. *See* H.R. Rep. No. 576 at 635; 134 CONG. REC. H2044; 133 CONG. REC. S10365; H.R. Rep. No. 40 at 158–159. Congress intends that the forfeiture provision operate in the same way that respondents' section 337 import bonds "revert" to the U.S. Treasury when the Commission determines that imported articles permitted to enter the United States under a bond violated section 337.[13]

Interim rule 210.58(c) provides that if an investigation is terminated on the basis of a settlement agreement or a consent order with no concurrent determination as to the violation of section 337, the parties will not address and the Commission will not determine the issue of whether the bond posted by the complainant to secure a temporary exclusion order should be forfeited. The proposed rules published on November 3, 1988, did not include such a provision. The IEMCA's comments noted that the proposed rules should discuss how the matter of bond forfeiture would be resolved in the event that an investigation involving a temporary exclusion order is terminated on the basis of a settlement agreement or a consent order with no concurrent finding as to the violation of section 337.

The Commission agreed that this issue should be addressed in the "final" interim rules. The legislative history authorizing the Commission to order forfeiture of the bond only provides for forfeiture after the Commission has determined that there is no violation of section 337. *See* H.R. Rep. No. 576 at 635–636; 134 Cong. Rec. H2044; 133 Cong. Rec. S10365. For that reason, interim rule 210.58(b) provides that if the investigation is terminated on the basis of a settlement agreement or a consent order and without a final determination as to the violation of section 337, forfeiture of the temporary relief bond will not be addressed by the parties and will not be determined by the Commission.[14]

The other interim forfeiture rules which the Commission has adopted are, for the most part, the same as the proposed rules published on November 3, 1988 (*see* 53 FR 44466, 44470–44471, and 44476–44477). Paragraph (c) of interim rule 210.58 provides that if the Commission issues a temporary exclusion order secured by a bond and subsequently determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief and contemplated by the temporary exclusion order,[15] the Commission will determine whether to order forfeiture of the bond in whole or in part to the U.S. Treasury. Unlike the interim rule governing the posting of temporary relief bonds by complainants, there is no Commission policy favoring forfeiture of the bond. Nor is there a prescribed policy disfavoring forfeiture. The decision concerning forfeiture will be made on a case-by-case basis.

In its comments on the proposed rules, the IEMCA argued that the interim rules should contain a rebuttable presumption that the bond will be forfeited in all cases where the Commission determines that section 337 has not been violated and that such an approach would be consistent with the deterrent purpose of the forfeiture authority and the liquidated damages assessment procedure of the U.S. Customs Service (which is to serve as an analog for the Commission's bonds forfeiture procedure). The IEMCA added that the absence of such a Commission policy would vitiate the deterrent value of the forfeiture authorization.

The Commission believes that adopting a rebuttable presumption of forfeiture would have few practical consequences or benefits to the complainant or to the respondents, for the following reasons:

Although there is no rebuttable presumption of forfeiture in the interim rules, the complainant is still required to present arguments on the issue of forfeiture within a short time after the Commission has determined that section 337 has not been violated, and the forfeiture determination and actual forfeiture (if ordered) will not be postponed pending the outcome of any judicial review of the determination on violation. (*See* the discussion below.)

Moreover, the absence of a presumption favoring forfeiture does not necessarily mean that the Commission will be less likely to order forfeiture than it would be if a rebuttable presumption were incorporated into the rules. There is, after all, no Commission policy disfavoring forfeiture. The Commission will simply consider all parties' arguments, with no predisposition one way or the other, in determining whether forfeiture is warranted.

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[13] The Customs Service regulations provide that after the date on which the Commission's final determination and remedial order concerning the violation of section 337 become final (*i.e.*, after Presidential review), imported articles that were allowed to enter the United States under a bond must either be exported or destroyed under Customs supervision within 30 days after the date on which Customs district directors notify the importer or consignee that the exclusion order has become final. 19 CFR 12.39(b)(2). If the exporter or consignee fails to take the required action within 30 days, the district director who allowed the articles to enter must assess liquidated damages in the full amount of the bond.

If that happens, a written notice of the claim for liquidated damages and a demand for payment are served on the principal and the surety. The principal and the surety also are advised of their right to petition for relief from the payment of such damages under section 623(c) of the Tariff Act (19 U.S.C. 1623(c)) or any other applicable statute authorizing the cancellation of any bond or any bond charge that may have been made against such bond. The surety and the principal then have 30 days to take the following action: (1) Petition for relief from the payment of liquidated damages; (2) pay the damages; or (3) make arrangements to pay the damages. If the parties who are liable for liquidated damages fail to take the aforesaid action, the district director must refer the claim to the U.S. Attorney (unless otherwise ordered by the Commissioner of Customs or the importer files one or more supplemental petitions for relief). (*See generally* 19 CFR Part 172 for the procedure governing assessment of liquidated damages under the bond and the cancellation of a claim for such damage.)

[14] The IEMCA's comments also expressed concern about cases in which a complainant that obtains a temporary exclusion order (and the competitive benefits resulting from such an order) subsequently declines to proceed with the investigation. Even if there is evidence that the complainant has misused the temporary relief proceeding (the type of conduct the forfeiture authority is designed to punish), the Commission believes that it would be constrained from ordering forfeiture of the bond in the absence of a Commission determination that section 337 has not been violated. In such a case, however, the Commission would have to determine (after considering all relevant legal, equitable, and public interest considerations and the stage to which the investigation has progressed) whether to proceed with the investigation (despite the complainant's wish to discontinue the proceeding) and to issue a final determination on violation based on the evidence of record, the arguments of the parties, and possibly on substantive findings against the complainant based on sanctions imposed pursuant to interim rule 210.36 (or any governing rule in effect at the time).

As an alternative to determining whether to proceed with the investigation despite the complainant's wish to terminate the proceeding, if there is evidence that the complainant has abused the section 337 process, the Commission could determine what other action (if any), would be permissible and appropriate under the authority conferred by subsection (h) of section 337 to order sanctions for abuse of process to the extent authorized by the Federal Rules of Civil Procedure and the Commission rules in effect at the time.

[15] *E.Q.*, because the importation or sale of certain merchandise covered by the order does not violate section 337 owing to the invalidity, unenforceability, or noninfringement of the intellectual property right(s) in question, or the absence of other types of unfair acts and unfair methods of competition alleged in the complaint or motion for temporary relief, or because a domestic industry for the subject domestic merchandise does not exist and is not in the process of being established as required by paragraphs (a) (2) and (3) of section 337 of the Tariff Act.

The legislative history conferring the bond forfeiture authorization does not make forfeiture mandatory; it provides that the Commission *may* order forfeiture of the bond if it determines that the respondents have not violated section 337. *See* H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044; H.R. Rep. No. 40 at 158–159. The Commission believes that there may be cases in which the purpose of the forfeiture authority would not be served by ordering forfeiture even though the complainant did not prevail on the question of the violation of section 337.

An example would be a case in which the investigation was brought by the complainant in good faith and the Commission's final determination was negative owing to a recent judicial decision which superseded the Commission's previous ruling on a particular issue (and hence invalidated the ruling favorable to the complainant on that issue during the temporary relief phase of the investigation). In a case of that type, the Commission conceivably could conclude (depending on other relevant facts and the arguments of the parties) that the policy of deterring misuse of section 337 temporary relief proceedings had been adequately served by requiring the complainant to undergo the expense and burden of posting a bond, and that ordering forfeiture would not be in the public interest, since forfeiture under such circumstances could deter holders of intellectual property rights with valid section 337 complaints from seeking temporary relief in the future.

For all the foregoing reasons, the Commission determined that at least for purposes of the interim forfeiture rules, it would not adopt a policy favoring or disfavoring forfeiture, but would make forfeiture determinations based on the facts in each case as they relate to the Congressional purpose of the forfeiture authorization.

The procedure for determining whether to order forfeiture of the bond under the interim rules is as follows:

When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief, the complainant must file, within 30 days after the effective date of the aforesaid Commission determination,[16] a written submission discussing whether the Commission should or should not order forfeiture of the bond in whole or in part. The other parties will subsequently be permitted to file responses to the complainant's submission.

The factors the Commission will consider (and which the parties' submission must address) in determining whether forfeiture should be ordered include the following: (1) The extent to which the Commission determined that the respondents have not violated section 337; (2) whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as whole; (3) whether forfeiture would be consistent with the legislative intent of the forfeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainant); (4) whether forfeiture (in whole or in part) would be in the public interest; and (5) any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

Factors (3), (4), and (5) are derived from the legislative history of the bonding and forfeiture authority and the legislative history of other provisions of section 337. Factor (2) was borrowed from the criteria the Commission uses to implement the Equal Access to Justice Act. *See* 5 U.S.C. 504; 19 CFR Part 212. Under that statute and the Commission regulations, eligible individuals and entities who are parties to certain administrative proceedings (including section 337 investigations) may receive an award of attorneys fees and other costs from the Government if the party prevails over the agency in the proceeding, the agency's position in the proceeding was not substantially justified, and there are no special circumstances that would make such an award unjust.

In its comments on the proposed rules, the IEMCA expressed disapproval of the fact that the Commission proposed to employ criteria related to the Equal Access to Justice Act to determine whether to order forfeiture of a complainant's temporary relief bond under section 337. The IEMCA argued that the purposes and objectives of the Equal Access to Justice Act and the Commission's bond forfeiture authority are in no way analogous.

The Commission is fully cognizant of the differences between the two and assures interested parties that forfeiture determinations will be made in a manner that is consistent with the purpose and intent articulated in the section 337 legislative history authorizing the Commission to order forfeiture.

The analytical factor the interim forfeiture rules is borrowing from the Equal Access to Justice Act regulations—*i.e.*, "whether the complainant's assertions with respect to the violation alleged as a basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as a whole"—will help the Commission determine whether the complainant's motion for temporary relief was frivolous and constituted a misuse of the temporary relief process. As such, that factor is fully consistent with the Congressional purpose for authorizing forfeiture of bonds.

The IEMCA also argued that the Commission's adoption of an interim rule providing for Commission assessment of "all other legal, equitable, and public interest considerations relating to forfeiture" would be inappropriate because, in the IEMCA's view, the legislative history authorizing forfeiture of a temporary relief bond by the complainant does not authorize such an open-ended analysis.

As stated above, Congress did not mandate that the bond be forfeited in every case where the final determination is negative, and the Commission believes that there may be instances in which forfeiture would be inconsistent with the Congressional intent of the bond forfeiture authority. Since the Commission has no previous experience in adjudicating bond forfeitures, it cannot fully anticipate all relevant issues that are likely to arise. The Commission, therefore, believes it advisable not to adopt narrowly-drawn interim forfeiture rules that expressly or impliedly would prevent consideration of unanticipated but relevant issues raised in favor of or against forfeiture.

The interim forfeiture rule provides that the decision on whether to order forfeiture of the bond will be made by using the procedures set forth in interim rules 210.53(j) and 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for reviewing, modifying, and reversing an initial determination than the procedures and criteria set forth in paragraphs (17) and (18) of proposed interim rule 210.24(e), which govern the disposition of motions for temporary relief and the posting of bonds by

[16] Interested persons are reminded that a wholly negative final determination on the violation of section 337 and the negative portions of a mixed determination concerning the violation of section 337 are not subject to Presidential review and thus are final on the effective date specified in the Commission rules or when issued (*see* interim rules 210.53(h), 210.56(c), and 210.57(d), 53 FR 33043, 33070, and 33071, Aug. 29, 1988).

complainants. The Commission believes that the procedures set forth in interim rules 210.53(c) and 210.54 through 210.56(c) are appropriate for determining whether to order forfeiture of a complainant's temporary relief bond, since forfeiture decisions are not subject to statutory deadlines.

Although there are no statutory deadlines applicable to forfeiture of bonds, the interim forfeiture rule provides that motions to stay forfeiture proceedings or the effective date of a forfeiture order pending the outcome of judicial review of the violation determination will not be granted, for the following reasons. The legislative history of the forfeiture authority indicates that "[b]onds posted by [complainants], if forfeited, would revert to the Treasury in the same way as bonds now posted by respondents" (133 Cong. Rec. S10365; H.R. Rep. No. 576 at 635; 134 Cong. Rec. H2044). The Customs Service regulations governing the assessment of liquidated damages under a bond posted pursuant to 19 CFR 12.39(b) do not provide for stay on the assessment of liquidated damages under 19 CFR Part 172 pending the outcome of judicial review of the subject Commission determination concerning the violation of section 337. Moreover, preliminary information we have received from the Treasury Department indicates that if the negative violation determination supporting the forfeiture order is reversed on judicial review, the complainant would not have to file suit against the United States in order to recover the money forfeitured pursuant to the Commission order.[17]

In accordance with interim rules 210.53 (a) and (h) (which have been revised in the manner discussed below), an initial determination on forfeiture of the bond will become the determination of the Commission within 45 days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

Interim rule 210.53 (governing initial determinations) and interim rule 210.56(b) (governing Commission action, the public interest, and bonding by respondents) have been modified to incorporate the foregoing procedures governing the possible forfeiture of bonds.

Interim rule 210.53 (53 FR 33053 and 33070, Aug. 29, 1988) has been revised by creating a new paragraph (j) to provide for the issuance of an initial determination on whether the Commission should order a complainant to forfeit a bond in whole or in part when the Commission determines, after issuing a temporary exclusion order conditioned on the bond, that the respondents have not violated section 337 to the extent alleged in the motion for temporary relief. The revisions to this rule also include a statement that the provisions of interim rules 210.54 through 210.56(c) will govern the disposition of an initial determination issued pursuant to paragraph (j) of interim rule 210.53 and that if the Commission does not order a review, the initial determination on forfeiture will become the determination of the Commission within 45 days after service of the initial determination. Corresponding and appropriate revisions have been made in interim rule 210.54 concerning the filing of petitions for review and responses thereto to indicate that such petitions may be filed within 10 days after service of the initial determination on forfeiture and that responses to the petitions may be filed within 5 days after service of the petition.

All other aspects of the forfeiture procedures discussed above have been incorporated into interim rule 210.58 (53 FR 33053 and 33072, Aug. 29, 1988).

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Investigations.

Chapter II, Subchapter C, of Part 210 of Title 19 of the Code of Federal Regulations is amended as follows:

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for Part 210 is revised to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337, and sections 2 and 1342(d)(1)(B) of Pub. L. No. 100–418, 102 Stat. 1107 (1988), 133 Cong. Rec. S10364–S10365 (statement of Sen. Lautenberg) (July 21, 1987), H.R. Rep. No. 576, 100th Cong., 2d. Sess. 635–636 (1988); 134 Cong. Rec. H1863 and H2044 (Apr. 20, 1988).

2. Section 210.1 is revised to read as follows:

§ 210.1 Applicability of part.

The rules in this part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). These rules are expressly or impliedly authorized by sections 333, 335, and 337 of the Tariff Act of 1930 (19 U.S.C. 1333, 1335, and 1337), sections 2 and 1342(d)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988), and its legislative history , 133 Cong. Rec. S10364–S10365 (Statement of Sen. Lautenberg) (July 21, 1987), H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988), 134 CONG. REC. H1863 and H2044 (April 20, 1988).

3. The introductory text of paragraph (e) and paragraphs (e) (1), (7), and (9) through (18) of § 210.24 are revised to read as follows:

§ 210.24 Motions.

* * * * *

(e) *Motions for temporary relief.* Requests for temporary relief pursuant to subsection (e) or (f) of section 337 of the Tariff Act shall be made through a motion to be filed and adjudicated in accordance with the following provisions.

(1) *Motion accompanying complaint.* (i) A complaint requesting temporary relief pursuant to § 210.20(a)(10) shall be accompanied by a motion that sets forth complainant's request for temporary relief. The motion must contain a detailed statement of specific facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest.

(ii) If the motion requests that the Commission issue a temporary exclusion order under subsection (e) of section 337, the motion must also contain a detailed statement of facts bearing on:

(A) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and

(B) The appropriate amount of the bond, if the Commission determines that a bond will be required.

[17] Our preliminary information is that money forefeited to the U.S. Treasury pursuant to the bond forfeiture authorization in the Omnibus Trade Act will be deposited into a miscellaneous receipts account. If the Commission determines that a refund is needed (following issuance of a judicial determination reversing or vacating the Commission determination of no violation providing the basis for the forfeiture proceedings), the Commission can arrange through its Office of Finance to have a check in the appropriate amount issued to the complainant (after executing certain formalities with Treasury's Financial Management Service). The Commission notes that the Customs Service's liquidated damages assessment regulations provide for the filing of a petition setting forth an appeal of the final Custom's decision requiring the assessment and payment of liquidated damages (*i.e.*, the adverse ruling on the party's original petition for relief from liquidated damages) within 60 days after an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based. *See* 19 CFR 172.33(c).

(iii) The factors the Commission will consider in determining whether to require a bond include the following:

(A) The strength of the complainant's case;

(B) Whether posting a bond would impose an undue hardship on the complainant;

(C) Whether the respondent has responded to the motion for temporary relief (in the time and manner specified by paragraph (e)(9) of this section or by order of the Commission or the presiding administrative law judge);

(D) Whether the respondent will be harmed by issuance of the temporary exclusion order sought by the complainant; and

(E) Any other legal, equitable, or public interest consideration that is relevant to whether complainant should be required to post a bond as a condition precedent to obtaining temporary relief (including the question of whether the complainant is using the temporary relief proceedings, or is likely to use a temporary exclusion order, to harass the respondents or for some other improper purpose).

No single factor will be determinative. The Commission's policy is to favor the posting of a bond in every case. Therefore, a complainant who believes that a bond should not be required has the burden of persuading the Commission that a bond should not be required.

(iv) The following documents and information shall be filed along with all motions for temporary relief:

(A) A memorandum of points and authorities in support of the motion;

(B) Affidavits executed by persons with knowledge of the facts specified in the motion; and

(C) All documentary information and other evidence in complainant's possession that complainant intends to submit in support of the motion.

(v) If the motion requests issuance of a temporary exclusion order, the complainant must also provide information and documents that will assist the presiding administrative law judge and the Commission in computing the amount of the bond if a bond is to be required. (A complainant also may file, if it chooses, a draft of the bond it expects to submit if a bond is to be required.) In cases where a domestic industry exists and domestic sales of the product in question have commenced and have not been de minimis, the amount of the bond is likely to be an amount ranging from 10 to 100 percent of the sales revenues and licensing royalties (if any) from the domestic product at issue, as reported in the complainant's audited annual financial statements for the most recent fiscal year. In such cases, the complainant must provide the following documents:

(A) The audited financial statements (or the equivalent thereof, if audited statements do not exist) for the most recently completed fiscal year;

(B) The back-up income statements, work sheets, or other documents showing revenues for the domestic product at issue in the investigation, which are tied to the aggregate revenue listed on the financial statements; and

(C) A certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

In cases where the aforesaid formula would not be appropriate—including but not limited to cases where the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant's financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deem relevant. In such cases, the motion for temporary relief should state why the prescribed formula is not appropriate (with supporting documentation where appropriate). The motion should also state the theory the complainant believes is appropriate for computing the amount of the bond (if the Commission determines to require a bond) and should provide supporting financial and economic data with certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data provided. All complainants who are seeking a temporary exclusion order (including complainants who have provided the audited financial statements and back up data listed above in paragraph (e)(v)(B) of this section) must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and the certification under oath by the complainant's chief financial officer that the information submitted is accurate.

(vi) If the complaint, the motion for temporary relief, and the supporting documentation contain confidential business information as defined in § 201.6(a), of this chapter, the complainant must follow the procedure outlined in §§ 210.6(a), 201.6 (a) and (c), of this chapter and paragraph (e)(5) of this section.

* * * * *

(7) *Amendment of the motion.* A motion for temporary relief may be amended at any time prior to the institution of an investigation. However, all material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC, of the foreign governments that they represent, in accordance with paragraph (e)(4) of this section. If the amendment expands the scope of the motion or changes the complainant's assertions on the issue of whether a bond is to be required as a prerequisite to the issuance of a temporary exclusion order or the appropriate amount of the bond, the 35-day period allotted under paragraph (e)(8) of this section for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. Motions for temporary relief may not be amended after an investigation is instituted.

* * * * *

(9) *Responses to the motion and the complaint.* Any party may file a response to a motion for temporary relief. Responses shall be filed within ten (10) days after service of the motion by the Commission upon institution of an investigation, unless otherwise ordered by the administrative law judge. The response must comply with the requirements of § 201.8 of this chapter and § 210.5, and shall contain the following information:

(i) A statement that sets forth with particularity any objection to the motion for temporary relief;

(ii) A statement that sets forth with specificity facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm, if any, to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that issuance of the requested temporary relief would have on the public interest.

(iii) A memorandum of points and authorities in opposition to the motion:

(iv) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. If the motion requests that the Commission

issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be calculated. Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Response to the complaint and notice of investigation must comply with § 201.8 of this chapter and §§ 210.5 and 210.21.

(10) *Referral to an administrative law judge.* Following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief shall be forwarded to an administrative law judge for an initial determination on whether there is reason to belief there is a violation of section 337 of the Tariff Act, whether temporary relief is appropriate, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and, if so, the amount of the bond.

(11) *Designating an investigation "more complicated" for the purpose of adjudicating a motion for temporary relief.* At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to paragraph (e)(8) of this section, the Commission may designate the investigation "more complicated" pursuant to § 210.59(b) for the purpose of obtaining additional time to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under paragraphs (e)(10) and (17) of this section, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" for the purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the **Federal Register**. The "more complicated" designation may be applied by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of issues relating to whether there is reason to believe that the respondents have violated section 337 and whether temporary relief is appropriate. The "more complicated" designation also may be applied by the Commission or the presiding administrative law judge because of complications in determining whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and, if so, the amount of the bond.

(12) *Discovery and compulsory process.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitation set forth in paragraph (e)(17)(i) of this section relating to issuance of an initial determination concerning the motion for temporary relief. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(i) The effect, if any, that issuance of the temporary relief requested in the motion would have on the public interest;

(ii) The form of temporary relief the Commission should issue if it determines to grant temporary relief;

(iii) Whether the public interest factors enumerated in the statute preclude that form of relief;

(iv) The amount of the bond under which the respondent(s)' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission;

(v) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and, if so,

(vi) The amount of bond.

As part of the standard analysis for determining whether to grant a motion for temporary relief (see paragraphs (e)(1)(i) and (9) of this section), the administrative law judge should make findings on the issue specified in paragraphs (e)(12) (v) and (vi) of this section. The administrative law judge may, but is not required to, make findings on issues specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to paragraph (e)(18) of this section.

(13) *Evidentiary hearing.* A motion for temporary relief and the matter of bonding by the complainant may be ruled upon without a hearing by the administrative law judge when a motion for summary determination under § 210.50(a) is granted in favor of respondents or other parties opposing the motion for temporary relief, or if the administrative law judge determines that the motion should be dismissed for some other reason (*e.g.*, failure to comply with some portion of paragraph (e)(1) of this section). (Such rulings by the administrative law judge shall be in the form of an initial determination issued under paragraph (e)(17)(i) of this section.) If a hearing is conducted, the precise form and scope of the hearing are left to the discretion of the administrative law judge. At the hearing or as directed by the administrative law judge, the parties shall address the following issues:

(i) Whether there is reason to believe that there is a violation of section 337 of the Tariff Act;

(ii) Whether temporary relief is appropriate;

(iii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iv) The amount of the bond.

The administrative law judge may, but is not required to take evidence at the hearing concerning remedy, the public interest, and bonding by respondents as specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (*see* paragraphs (e) (1) and (9) of this section), the administrative law judge should take evidence on the question of what effect the form of temporary relief requested in the motion for temporary relief would have on the public interest, and the question of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if applicable) and, if so, the amount of the bond.

(14) *Proposed findings and conclusions and briefs.* The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, and/or briefs (pursuant to § 210.52) concerning:

(i) The grant or denial of temporary relief;

(ii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iii) The amount of the bond.

(15) *Interlocutory appeals and review by the Commission.* There will be no interlocutory appeals to the Commission (pursuant to § 210.71) of the administrative law judge's ruling on any matter delegated to him or her for decision under a provision of paragraph (e) of this section. After the administrative law judge has certified the following materials to the Commission (pursuant to paragraphs (e)(16) and (17) of this section) an initial determination granting or denying a motin for temporary relief, a ruling on the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order, and the administrative record upon which the initial determination is based, the Commission's review of the administrative law judge's actions and rulings relating to the motion for temporary relief and the question of bonding by the complainant will be limited to the issues specified in paragraph (e)(17)(ii) of this section.

(16) *Certification of the record.* At the close of the reception of evidence in any hearing held pursuant to paragraph (e)(13) of this section or as soon as possible thereafter, the administrative law judge shall certify the record to the Commission prior to issuance of an initial determination concerning temporary relief and, if applicable, bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. However, if such advance certification is not feasible, the record shall be certified to the Commission when the administrative law judge issues the aforesaid initial determination, in accordance with paragraph (e)(17)(i) of this section.

(17) *Initial determination concerning temporary relief and Commission action thereon.* (i) On the 70th day after publication of the notice of investigation in an ordinary investigation, or on the 120th day after such publication in a "more complicated" investigation, the administrative law judge will issue an initial determination concerning whether there is reason to believe that respondents have violated section 337 of the Tariff Act and, if applicable, the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. The initial determination may, but is not required to, address appropriate relief, the public interest, and bonding by the respondents as specified in paragraphs (e)(12), (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (*see* paragraphs (e) (1) and (9) of this section), the initial determination shall address the questions of:

(A) What effect the form of relief requested in the motion would have on the public interest (except when the initial determination is granting a summary determination denying the motion for temporary relief (pursuant to paragraph (e)(13) of this section);

(B) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(C) The amount of the bond.

(ii) The initial determination will become the Commission's determination twenty (20) calendar days after issuance thereof in an ordinary case, and thirty (30) calendar days after issuance in a "more complicated" investigation, unless the Commission modifies or vacates the initial determination within that period. Such modification or vacation may be ordered on the basis of errors of law or for policy matters (including policy considerations related to bonding and the public interest). No review will be ordered solely on the basis of alleged errors of fact. In computing the aforesaid 20-day and 30-day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 201.16(d) of this chapter cannot be provided.

(iii) In order to assist the Commission to determine whether modification or revocation of the initial determination is warranted, all parties may file written comments concerning the presence (or absence) of errors of law in the initial determination and/or matters of policy (including policy considerations related to bonding and the public interest) that justify such action (or show that would not be justified). Such comments will be limited to thirty-five (35) pages and must be filed no later than seven (7) calendar days after service of the initial determination in an ordinary case and ten (10) calendar days after service of the initial determination in a "more complicated" investigation. In computing the aforesaid 7-day and 10-day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 201.16(d) of this chapter cannot be provided.

(iv) Nonconfidential copies of the initial determination also will be served on other agencies, and they will be given ten (10) calendar days in which to file comments on the initial determination.

(v) Each party may file a response to other parties' comments within ten (10) calendar days after issuance of the initial determination in an ordinary case, and within fourteen (14) calendar days after issuance of an initial determination in a "more complicated" investigation. The reply comments will be limited to twenty (20) pages. If the last day of the 10-day or 14-day period is a Saturday, Sunday, or federal holiday as defined in § 201.12(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the constraints imposed by the statutory deadlines, additional time ordinarily allotted under § 201.16(d) of this chapter will not be provided. The parties are expected to facilitate the filing of timely and useful responses to each other's initial comments by serving the initial comments by the fastest means available.

(vi) If the Commission determines to modify or vacate the initial determination within twenty (20) calendar days after issuance thereof in an ordinary case, or thirty (30) calendar days after issuance in a "more complicated" case, a notice and (if appropriate) a Commission opinion will be issued. If the Commission does not modify or vacate the administrative law judge's initial determination within the time provided, the initial determination will automatically become the determination of the Commission and a notice of that fact will not be issued. However, if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter) a notice setting forth conditions for the bond if any (in addition to those outlined in the

initial determination) and the deadline for filing the bond with the Commission.

(18) *Remedy, the public interest, and bonding by respondents.* The procedure for arriving at the Commission's determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission, is as follows:

(i) While the motion for temporary relief is before the administrative law judge, he or she may compel discovery on matters relating to remedy, the public interest, and bonding by respondents (as provided in paragraph (e)(12) of this section). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in paragraph (e)(17)(i) of this section. However, such findings may be superseded by Commission findings on that issue as provided in paragraph (e)(18)(iii) of this section.

(ii) On the 60th day after institution in an ordinary case or on the 105th day after institution in a "more complicated" investigation, all parties may file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public interest factors, and bonding by respondents may be provided along with the parties' submissions.

(iii) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under subsection (b) of section 337 of the Tariff Act, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission. In the event that Commission's findings on the public interest pursuant to paragraph (e)(18)(iii) of this section are inconsistent with findings made by the administrative law judge in the initial determination pursuant to paragraph (e)(17)(i) of this section, the Commission's findings are controlling.

4. In § 210.41, the introductory text of paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission:

* * * * *

(2) Except as provided under § 210.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is being requested) and, if so, the amount of the bond.

* * * * *

5. In § 210.53, paragraph (b) is revised and paragraph (j) is added to read as follows:

§ 210.53 Initial determination.

* * * * *

(b) *On issues concerning temporary relief.* The disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(c)(17).

* * * * *

(j) *Concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part.* The disposition of an initial determination pursuant to § 210.58(c) concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part shall be governed by the provisions of §§ 210.54 through 210.56(c). The initial determination shall beccme the determination of the Commission forty-five (45) days after the date on which it is served on the parties by the Secretary unless the Commission orders a review pursuant to § 210.54(b) or § 210.55 or extends the deadline for determining whether to order a review.

6. Paragraph (a)(1) sentence two and paragraph (b)(1) sentence one of § 210.54 are revised to read as follows:

§ 210.54 Petition for review.

(a) * * *

(1) * * * A petition for review of an initial determination filed pursuant to § 210.53(a) or (j) shall be filed within ten (10) days after the service of the initial determination. * * *

* * * * *

(b) * * *

(1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53(a) or (j) within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order. * * *

* * * * *

7. Paragraph (d) of § 210.56 is revised to read as follows:

§ 210.56 Review by Commission.

* * * * *

(d) *Initial determinations concerning temporary relief and bonding by the complainant and the respondents.* Commission action on an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents is governed by the provisions of § 210.24(e)(17) and (18).

8. In § 210.58, paragraph (b) is revised and a new paragraph (c) and Appendix A are added to read as follows:

§ 210.58 Commission action, public interest factor, and bonding.

* * * * *

(b)(1) With respect to addressing the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination concerning the grant or denial of a motion for temporary relief, see § 210.24(e)(12), (13), and (17). Unless otherwise ordered by the Commission or permitted by this paragraph, and except as provided in § 210.24(e)(12) and (13), the administrative law judge shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of paragraphs (a)(1), (2), (3) and (4) of this section.

(2) Regarding settlements by agreement or consent order under § 210.51 (b) and (c), the parties may file statements regarding the impact of the proposed settlement on the public interest, and the administrative law judge may in his or her discretion hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(3) Regarding the issuance of an initial determination concerning the granting of a motion for a temporary exclusion order and whether the complainant should be required to post a bond as a prerequisite to the issuance of such an

order, *see* § 210.24(e)(1), (9), (10), (12), (13), and (17). If the Commission determines under § 210.24(e)(17)(ii) that the complainant must post a bond as a prerequisite to the issuance of a temporary exclusion order, the "bond" which the complainant submits may consist of one or more of the following:

(i) The surety bond of a surety or guarantee corporation that is licensed to do business with the United States in accordance with 31 U.S.C. 9304–9306 and 31 CFR Parts 223 and 224;

(ii) The surety bond of an individual, a trust, an estate, or a partnership, pursuant to 31 U.S.C. 9301 and 9303(c), whose solvency and financial responsibility will be investigated and verified by the Commission; or

(iii) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR Part 225, which are owned by the complainant and tendered in lieu of a surety bond, pursuant to 31 U.S.C. 9303(c) and 31 CFR Part 225.

The same restrictions and requirements relating to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR Part 113, shall apply with respect to bonds posted by complainants pursuant to an order, notice, determination or opinion of the Commission issued pursuant to this paragraph or § 210.24(e)(17). If the survey is an individual, the individual must file an affidavit of the type shown in Appendix A to § 210.58. Unless otherwise ordered by the Commission, while the bond of the individual surety is in effect, an updated affidavit must be filed every four months (computed from the date on which the bond was approved by the Secretary or the Commission).

(4) The "bond" and accompanying documentation must be submitted to the Commission within the time specified in the Commission notice, order, determination, or opinion requiring the posting of a bond, or within such other time as the Commission may order. If the bond is not submitted within the specified period (and an extension of time has not been granted), a temporary exclusion order will not be issued.

(5) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forfeiture of the bond pursuant to paragraph (C) of this section:

(i) The investigation caption and docket number;

(ii) The names, addresses, and seals (if appropriate) of the principal, the surety, the obligee, as well as the "attorney in fact" and the registered process agent (if applicable) (*see* Customs Service regulations 19 CFR Part 113 and Treasury Department regulations in 31 CFR Parts 223, 224, and 225);

(iii) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond); and

(iv) A section at the bottom of the bond or other instrument for the date and authorized signature of the Commission Secretary to reflect Commission approval of the bond.

(6) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, or cash in accordance with 31 U.S.C. 9303, 31 CFR Parts 202, 206, 225 and 240, and other governing Treasury regulations and circular(s). If required by the governing Treasury regulations and circular, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation tendered in lieu of a surety bond may have to be collateralized. *See, e.g.*, 31 CFR 202.6 and the appropriate Treasury Circular.

(7) In accordance with 31 U.S.C. 9304(b), all bonds posted by complainants must be approved by the Commission before the temporary exclusion order which the bond will secure will be issued. *See* 31 U.S.C. 9303(a) and 9304(b) and 31 CFR 225.1 and 225.20. The Commission's "bond approval officer" within the meaning of 31 CFR 225.1 and 255.20 shall be the Commission Secretary. The bond approval process will entail investigation by the Secretary or the Commission's Office of Investigations to determine the veracity of all factual information set forth in the bond and the accompanying documentation (*e.g.*, powers of attorney), as well as any additional verification required by 31 CFR Parts 223, 224, and 225, or the Commission rules. The Secretary may reject a bond on one or more of the following grounds:

(i) Failure to comply with the instructions in the Commission determination, order, or notice directing the complainant to post a bond;

(ii) Failure of the surety or the bond to provide information or supporting documentation required by the Commission rules, 31 U.S.C. 9304 and 31 CFR Parts 223 and 224, or governing Treasury circulars or because of a limitation prescribed in a governing statute, regulation, or circular;

(iii) Failure of an individual surety to execute and file with the bond, an affidavit of the type shown in Appendix A to § 210.58, which corresponds to Customs Form 3579 (19 CFR 113.35) and sets forth information about the surety's assets, liabilities, net worth, real estate and other property of which the individual surety is the sole owner, other bonds on which the individual surety is a surety (and which must be updated at 4-month intervals while the bond is in effect, measured from the date on which the bond is approved by the Secretary on behalf of the Commission or by the Commission);

(iv) Any question about the solvency or financial responsibility of the surety, or any question of fraud, misrepresentation, or prejury which comes to light as a result of the verification inquiry during the bond approval process; and

(v) Any other reason deemed appropriate by the Secretary.

If the complainant believes that the Secretary's rejection of the bond was erroneous as a matter of law, the complainant may appeal the Secretary's rejection of the bond by filing a petition with the Commission in the form of a letter to the Chairman, within ten (10) days after service of the rejection letter.

(8) After the bond is approved and the temporary exclusion order it secures is issued, if any question concerning the continued solvency of the individual or the legality or enforceability of the bond or undertaking develops, the Commission may take the following action, sua sponte or on motion;

(i) Revoke the Commission approval of the bond and require complainant to post a new bond; or

(ii) Revoke or vacate the temporary exclusion order for public interest reasons or changed conditions of law or

fact (criteria that are the basis for modification or rescission of final Commission action pursuant to § 211.57(a)(1) of this Chapter); and/or

(iii) Notify the Treasury Department if the problem involves a corporate surety licensed to do business with the United States under 31 U.S.C. 9303–9306 and 31 CFR Parts 223 and 224; and/or

(iv) Refer the matter to the U.S. Department of Justice if there is a suggestion of fraud, perjury, or related conduct.

(c) Forfeiture of complainant's bonds.

(1) When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order have not violated section 337 to the extent alleged in the motion for temporary relief and provided for in the temporary exclusion order, the complainant must file within thirty (30) days after the effective date of the aforesaid Commission determination, a written submission discussing whether the Commission should or should not order forfeiture of the bond. The factors the Commission will consider (and which the complainant's submission must address) in determining whether forfeiture of the bond should be ordered in whole or in part include the following:

(i) The extent to which the Commission has determined that section 337 has not been violated;

(ii) Whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as a whole;

(iii) Whether forfeiture would be consistent with the legislative intent of the forfeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainants);

(iv) Whether forfeiture would be in the public interest; and

(v) Any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

(2) The other parties to the investigation may file responses to the complainant's submission that address the aforesaid issues within fifteen (15) days after service of the complainant's submission.

(3) If the investigation is terminated on the basis of a settlement agreement or a consent order with no concurrent determination concerning the violation of section 337, the parties will not address, and the Commission will not determine the issue of whether the bond should be forfeited.

(4) The Commission's determination on whether to order forfeiture of the bond will be made by using the initial determination/discretionary Commission review procedure set forth in § 210.53(j) and §§ 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for reviewing, modifying and reversing an initial determination than the procedures and criteria set forth in § 210.24(e) (17) and (18) which govern the disposition of motions for temporary relief and the posting of bonds by complainants. In accordance with § 210.53 (a) and (h), the initial determination on forfeiture of the bond will become the determination of the Commission within forty-five (45) days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

(5) Motions to stay forfeiture proceedings or the effective date of a forfeiture order pending the outcome of judicial review of the violation determination will not be granted. If the negative violation determination supporting the forfeiture order is reversed on judicial review, within sixty (60) days after the judgment or judicial order becomes final, the complainant may file a petition with the Commission for a refund of the amount of the bond forfeited to the Treasury (if any). The other parties to the investigation may file responses to the forfeiture refund petition within ten (10) days after service of the petition. If the Commission determines in response to the complainant's petition or sua sponte that the bond amount forfeited to the Treasury should be refunded in whole or in part, the Commission shall issue an order directing that the appropriate sum be refunded as expeditiously as possible in accordance with the governing Treasury procedures and regulations.

BILLING CODE 7020-02-M

Appendix A to § 210.58
Affidavit by Individual Surety

UNITED STATES INTERNATIONAL TRADE COMMISSION

AFFIDAVIT BY INDIVIDUAL SURETY

19 C F R 210.58

STATE OF)
) SS:
COUNTY)

I, the undersigned, being duly sworn, depose and say that I am a citizen of the United States, and of full age and legally competent; that I am not a partner in any business of the principal on the bond or bonds on which I appear as surety; that the information herein below furnished is true and complete to the best of my knowledge. This affidavit is made to induce the United States International Trade Commission to accept me as surety on the bond(s) filed or to be filed with the United States International Trade Commission pursuant to 19 C F R 210.58. I agree to notify the Commission of any transfer or change in any of the assets herein enumerated.

1. NAME (First, Middle, Last)	2. HOME ADDRESS
3. TYPE & DURATION OF OCCUPATION	4. NAME OF EMPLOYER (If Self-Employed, So State)
5. BUSINESS ADDRESS	5. TELEPHONE NO. HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF MY ASSETS, LIABILITIES, AND NET WORTH AND DOES NOT INCLUDE ANY FINANCIAL INTEREST I HAVE IN THE ASSETS OF THE PRINCIPAL ON THE BOND(S) ON WHICH I APPEAR AS SURETY.

a. Fair value of solely owned real estate*	$_____
b. All mortgages or other encumbrances on the real estate included in Line a	_____
c. Real estate equity (subtract Line b from Line a)	_____
d. Fair value of all solely owned property other than real estate	_____
e. Total of the amounts on Lines c and d	_____
f. All other liabilities owing or incurred not included in Line b	_____
g. Net worth (subtract Line f from Line e)	_____

*Do not include property exempt from execution and sale for any reason. Surety's interest in community property may be included if not so exempt.

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8. LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER, THE VALUE OF WHICH IS INCLUDED IN LINE (a), ITEM 7 ABOVE 1/

Amount of assessed value of above real state for taxation purposes:

9. DESCRIPTION OF PROPERTY INCLUDED IN Line (d), ITEM 7 ABOVE (List the value of each category of property separately) 2/

10. ALL OTHER BONDS ON WHICH I AM SURETY (State character and amount of each bond; if none, so state) 3/

11. SIGNATURE	12. BOND AND COMMISSION INVESTIGATION TO WHICH THIS AFFIDAVIT RELATES

SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

DATE OATH ADMINISTERED MONTH DAY YEAR	CITY	STATE (Or Other Jurisdiction)

NAME & TITLE OF OFFICIAL ADMINISTERING OATH	SIGNATURE	MY COMMISSION EXPIRES

INSTRUCTIONS

1. Here describe the property by giving the number of the lot and square or block, and addition or subdivision, if in a city, and, if in the country after showing state, county, and township, locate the property by metes and bounds, or by part of section, township, and range, so that it may be identified.

2. Here describe the property by name so that it can be identified - for example "Fifteen shares of the stock of the National Metropolitan Bank, New York City," or "Am. T. & T. s. f.5's 60".

3. Here state what other bonds the affiant has already signed as surety, giving the name and address of the principal, the date, and the amount and character of the bond.

BILLING CODE 7020-02-C

9. Paragraph (b) of § 210.59 is revised to read as follows:

§ 210.59 Period for concluding Commission investigation.

* * * * *

(b) An investigation may be designated "more complicated" by the Commission or the presiding administrative law judge pursuant to § 210.24(e)(11) for the purpose of extending the statutory deadline for determining whether to grant or deny a motion for temporary relief, as well as the issues of bonding by the complainant if a temporary exclusion order is to be issued and the amount of the bond. The Commission's or the administrative law judge's reasons for designating the investigation "more complicated" for that purpose shall be published in the **Federal Register.** In computing the statutory deadline for determining whether to grant or deny a motion for temporary relief in an investigation designated "more complicated" pursuant to this paragraph (and § 210.24(e)(11), there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

* * * * *

By order of the Commission.

Issued: November 29, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-28003 Filed 12-5-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 201

[Docket No. 86C-0192]

FD&C Yellow No. 6 Label Declaration

AGENCY: Food and Drug Administration.

ACTION: Final rule; suspension.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, pending further agency action, it will not enforce the provisions of the FD&C Yellow No. 6 regulations (21 CFR 74.706(d)(2), 74.1706(c)(2), and 201.20(c)) that require that beginning January 1, 1989, the labels of all foods and drugs that contain this color additive declare its presence.

DATE: Sections 74.706(d)(2), 74.1706(c)(2), and 201.20(c) are suspended as of December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 19, 1986 (51 FR 41765), FDA published a final rule that permanently listed FD&C Yellow No. 6 for use in food, drugs, and cosmetics. That final rule also established a label declaration requirement for all food and drug products (21 CFR 74.706(d)(2), 74.1706(c)(2), and 201.20(c)) containing the color additive because of reported allergic reactions to FD&C Yellow No. 6. In that final rule, the agency stated that the compliance date for declaring FD&C Yellow No. 6 on product labels would be November 19, 1987.

FDA received several objections to the labeling requirement for FD&C Yellow No. 6. Those objections addressed, among other things, the evidence used by the agency to establish the ruling, the fact that FDA did not propose labeling before making it a requirement in a final rule, and the effective date for the labeling requirement.

FDA evaluated the objections and presented its responses in the **Federal Register** of June 8, 1987 (52 FR 21505). The agency reiterated its reasoning for establishing the labeling requirements for FD&C Yellow No. 6. In response to some of the objections, the agency made revisions in the labeling language for drug products and extended the effective date for compliance with the label declaration requirement to January 1, 1989.

On October 5, 1987, the Certified Color Manufacturers Association, Inc. (CCMA), filed in the U.S. Court of Appeals for the District of Columbia Circuit a petition challenging only that portion of the final rule dated June 8, 1987, that required by making final the rule of November 19, 1986, that all food labeling declare the presence of FD&C Yellow No. 6. The issues raised by CCMA were: (1) Whether FDA provided sufficient notice under the agency's regulations, the Administrative Procedure Act, the Federal Food, Drug, and Cosmetic Act and the Due Process Clause of the U.S. Constitution for that portion of the above-mentioned final rule, and (2) whether that portion of the final rule is supported by sufficient evidence. On February, 29, 1988, FDA and CCMA filed a stipulation for the voluntary dismissal of the petition for judicial review. The stipulation was based on the fact that FDA had agreed to issue in the **Federal Register** a notice withdrawing, as a final rule, the labeling requirement set forth at 52 FR 21505 and simultaneously to publish, as a proposed rule, a label declaration requirement for products containing FD&C Yellow No. 6. This agreement did not affect the permanent listing of the color additive as confirmed in the June 8, 1987, **Federal Register** document.

FDA is preparing the notice withdrawing this requirement and the proposed rule. Until further agency action, however, FDA will not enforce the provisions (21 CFR 74.706(d)(2), 74.1706(c)(2), and 201.20(c)) that require the label declaration of FD&C Yellow No. 6. Any food or drug product on the market on or after January 1, 1989, the effective date for labeling compliance, that contains the color additive but that does not have the specific declaration will not be considered out of compliance with the FD&C Yellow No. 6 regulations.

Dated: November 28, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-27848 Filed 12-5-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-88-1401; FR-2472]

Rental Rehabilitation Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements sections 150(a), (c), (d), (e) and 311 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Section 150 makes a number of changes in the Rental Rehabilitation Grant Program authorized by section 17(a)(1)(A) of the United States Housing Act of 1937 and codified at 24 CFR Part 511.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice

of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become final until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, Office of Urban Rehabilitation, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Purpose

HUD's regulations at 24 CFR Part 511 authorize the Secretary of Housing and Urban Development to make rental rehabilitation grants to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. This rule makes final a previously published interim rule to implement statutory revisions permitting a grantee to use uncommitted funds from prior years as well as FY 1988 funds to carry out its rental rehabilitation programs. The changes include permitting grantees to use a portion of their funds for administrative expenses, and increasing the per-unit assistance limits.

Two other 1987 Act amendments, one making eligible for rental rehabilitation assistance real property that will be privately owned upon completion of rehabilitation, and the other making eligible property owned by certain non-profit organizations, are not implemented by this rule.

The Department published an interim rule on July 6, 1988 (53 FR 25462) seeking public comment. HUD received one comment in support of the rule.

Finding and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The revisions in the Rental Rehabilitation Program regulations are not environmentally significant because the changes are administrative and will not result in significant impact on the physical environment. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not contribute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements several statutory provisions that improve the Rental Rehabilitation Program. These changes will have neither a significant economic impact on, nor an effect on a substantial number of, small entities.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the rule will not have a significant impact on the family. The final rule implements several statutory provisions that improve the Rental Rehabilitation Program and will have little, if any, impact on family formation, maintenance and general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have substantial direct effects on States or their political subdivisions, or on the relationship or distribution of power among the various levels of government. The rule, which permits a grantee to use uncommitted funds from prior years as well as FY 1988 funds to carry out its rental rehabilitation programs will not have a significant impact on the States.

The Catalog of Federal Domestic Assistance Program number is 14.230.

The rule was listed as Sequence No. 1026 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42003) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 511

Rental rehabilitation grants, Administrative practice and procedure, Grants programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, the Interim Rule published in the **Federal Register** on July 6, 1988 (53 FR 25462), as corrected on July 26, 1988 (53 FR 28115), is adopted as final without changes.

Date: November 28, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88–27980 Filed 12–5–88; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 885

[Docket No. N–88–1891; FR–2587]

Section 202 Loans for Housing for the Elderly or Handicapped; Fiscal Year 1989 Loan Interest Rate

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of Section 202 Loan Interest Rate—Fiscal Year 1989.

SUMMARY: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) The annual interest rate announced by HUD under § 885.410(g)(1); or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment under § 885.410(g)(2). This document establishes 9.25 percent as the annual interest rate for Fiscal Year 1989. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, 451 Seventh Street, SW., Room 6116, Washington, DC 20401–8000, telephone (202) 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) The annual interest rate announced by HUD under § 885.410(g)(1); or (2) the optional interest rate elected by the Borrower

and computed by HUD at the time of the Borrower's request for conditional or firm commitment under § 885.410(g)(2). The citations in this document are to the interim rule published June 1, 1988 (53 FR 19899) and the final rule published November 9, 1988 (53 FR 45265).

This document announces HUD's determination of the annual interest rate. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

The annual interest rate under § 885.410(g)(1) may not exceed:

(1) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceeding the fiscal year in which the loan is made (adjusted to the nearest one-eight of one percent) plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (0.25 percent) per annum for both the construction and permanent loan periods); and

(2) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses. (§ 885.410(g)(1)(ii)). The current statutory ceiling is 9.25 percent per annum.

The average yield on the described interest-bearing obligations of the United States during the last three months of Fiscal Year 1988 was 9.125 percent. This rate plus the 0.25 percent allowance for administrative costs and probable losses yields an interest rate of 9.375 percent, a rate in excess of the 9.25 percent statutory ceiling. Accordingly, this Notice establishes the annual interest rate for section 202 loans made during Fiscal Year 1989 at the statutory ceiling of 9.25 percent per annum.

Under 24 CFR 50.20(l), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR Part 50.

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 28, 1988.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 88-28000 Filed 12-5-88; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) by adding a new Table I–89 to Appendix D. Table I–89 is to be used by any terminating pension plan with a valuation date falling in 1989 to determine expected retirement ages for plan participants in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act (Part II of Subtitle D of Title IX of the Omnibus Budget Reconciliation Act of 1987) change significantly the rules for terminating single-employer plans, the rules for valuing benefits in such plans are much the same. Under ERISA section 4041(c), plans wishing to terminate in a distress termination generally must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in Part 2619. Plans terminating in a standard termination may also use the formulas in Part 2619 to value benefit liabilities for purposes of the notice to the PBGC required by ERISA section 4041(b)(2)(A), although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Under § 2619.46, early retirement benefits are valued according to the annuity starting date, if a retirement date has been selected, or according to the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of Part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of Part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in Appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–88), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probablility of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–88 in Appendix D establish retirement rate categories for the calendar years 1979 through 1988. The table for each year applies only to plans with valuation dates in that year. This rule amends Appendix D to add Table I–89 in order to provide an updated correlation, appropriate for calendar year 1989, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–89 will be used to value benefits in plans with valuation dates that occur during calendar year 1989.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest.

Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1989, the plan administrator needs the updated table being promulgated in this rule. Accordingly,

the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1989. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix D to Part 2619 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

2. Appendix D to Part 2619 is amended by adding Table I–89 as follows:

Appendix D—Tables Used to Determine Expected Retirement Age

* * * * *

TABLE I–89.—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 1988, and before January 1, 1990]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low [1] if monthly benefit at NRA is less than—	Medium [2] if monthly benefit at NRA is—		High [3] if monthly benefit at NRA is greater than—
		From—	To—	
1990	316	316	1,330	1,330
1991	327	327	1,378	1,378
1992	338	338	1,422	1,422
1993	347	347	1,461	1,461
1994	355	355	1,493	1,493
1995	363	363	1,526	1,526
1996	371	371	1,559	1,559
1997	379	379	1,594	1,594
1998	387	387	1,629	1,629
1999 or later	395	395	1,665	1,665

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC, this 1st day of December 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–28019 Filed 12–5–88; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, 80, 100, 200, 222, 241, 251, 253, 254, 255, 256, 257, 258, 263, 298, 300, 302, 307, 309, 315, 324, 326, 338, 361, 366, 367, 369, 370, 385, 386, 387, 388, 389, 390, 396, 538, 600, 607, 624, 626, 628, 637, 639, 643, 644, 649, 650, 653, 656, 657, 668, 674, 675, 676, 682, 690, 745, 755, 762, 769, 776, 777, 778, 779, 787, and 790

OMB Control Numbers

AGENCY: Department of Education.

ACTION: Final regulations; technical amendments.

SUMMARY: The Secretary amends Title 34 of the Code of Federal Regulations (CFR) to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to ensure that valid OMB control numbers are displayed for these sections of Department regulations.

EFFECTIVE DATE: These regulations are effective December 6, 1988.

FOR FURTHER INFORMATION CONTACT: A. Neal Shedd, Director, Division of Regulations Management, 400 Maryland Avenue SW., (Room 2131, FOB–6), Washington, DC 20202. Telephone: (202) 732–2887.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980, Pub. L. 96–511, establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Under the Act, the Director of OMB has oversight authority for information collection activities. The Act authorizes the Director of OMB to promulgate necessary rules, regulations, or procedures (44 U.S.C. 3516).

OMB regulations published at 5 CFR 1320.4(a) and 1320.7(f)(2) require publication of these control numbers in the **Federal Register** for inclusion in the CFR.

In accordance with the applicable OMB regulations, the Secretary publishes OMB control numbers in this document for certain sections of regulations promulgated prior to OMB's publication of regulations implementing the Paperwork Reduction Act of 1980.

The Department has determined that some sections of final regulations listed as subject to OMB approval do not require review under the Paperwork Reduction Act of 1980. These sections became effective at the same time as the other regulations with which they were published. These sections include 34 CFR 628.32, Endowment Challenge Grant Program, published on July 12, 1984 (49 FR 28520); 34 CFR 690.72, Pell Grant Program, published on March 15, 1985 (50 FR 10710); and 34 CFR 706.21 and 706.22, Regional Educational Laboratories and Research and Development Centers Program: General Provisions, published on July 23, 1984 at (49 FR 29746).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking on these regulations is unnecessary and contrary to the public

interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Grant programs—education, Grants administration.

34 CFR Part 75

Grant programs—education, Grants administration.

34 CFR Part 76

Grant programs—education, Grants administration, Intergovernmental relations, State-administered programs.

34 CFR Part 80

Accounting, Administrative practice and procedure, Grants administration, Insurance, Reporting and recordkeeping requirements.

34 CFR Part 100

Administrative practice and procedure, Civil rights.

34 CFR Part 200

Education of disadvantaged, Education of handicapped, Elementary and secondary education, Juvenile delinquency, Migrant labor.

34 CFR Part 222

Education of handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education.

34 CFR Part 241

Education, Educational study programs, Elementary and secondary education, Grant programs—education, Law.

34 CFR Parts 251, 253, 254, 255, and 256

Elementary and secondary, Grant programs—Indians, Indians—education.

34 CFR Part 257

Grants programs—Indians, Indians—education, Teachers.

34 CFR Part 258

Adult education, grant programs—Indians, Indians—education.

34 CFR Part 263

Business and industry, Colleges and universities, Indians—education, Scholarships and fellowships, Teachers.

34 CFR Part 298

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, State-administered programs.

34 CFR Part 300

Education of handicapped, Grant programs—education.

34 CFR Part 302

Education of handicapped, Elementary and secondary education, Grants programs—education.

34 CFR Part 307

Education of handicapped, Government contracts, Grant programs—education.

34 CFR Part 309

Education of handicapped, Grant programs—education.

34 CFR Part 315

Education of handicapped, Education—research, Grant programs—education, Teachers.

34 CFR Part 324

Education of handicapped, Grant programs—education, Scholarships and fellowships, Teachers.

34 CFR Part 326

Education of handicapped, Transitional services.

34 CFR Part 338

Adult education, Colleges and universities, Education of handicapped, Vocational education.

34 CFR Part 361

Administrative practice and procedure, Grant programs—education, Vocational rehabilitiation.

34 CFR Parts 366, 367, 369, 385, 386, 387, 388, 389, 390, and 396

Grant programs—education, Vocational rehabilitation.

34 CFR Part 370

Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 538

Bilingual education, Elementary and secondary education, Grant programs—education, Refugees.

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 607

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Parts 624 and 626

Colleges and universities, Grant programs—education.

34 CFR Part 628

Colleges and universities, Grant programs—education.

34 CFR Part 637

Colleges and universities, Education of disadvantaged, Grant programs—education, Science and technology.

34 CFR Part 639

Colleges and universities, Grant programs—education, Law.

34 CFR Part 643

Education of disadvantaged, Education of handicapped, Grant programs—education, Student aid.

34 CFR Part 644

Education of disadvantaged, Grant programs—education, Student aid.

34 CFR Part 649

Colleges and universities, Grant programs—education, Mineral resources, Scholarships and fellowships.

34 CFR Part 650

Colleges and universities, Scholarships and fellowships.

34 CFR Part 653

Grant programs—education, State-administered programs, Student aid.

34 CFR Part 656

Colleges and universities, Cultural exchange programs, Grant programs—education, Scholarships and fellowships.

34 CFR Part 657

Colleges and universities, Foreign languages, Scholarships and fellowships.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Loan programs—education, Grant programs—education, Student aid.

34 CFR Part 674

Loan programs—education, Student aid.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Student aid.

34 CFR Part 676

Grant programs—education, Student aid.

34 CFR Part 682

Administrative practice and procedure, Loan programs—education, Vocational education.

34 CFR Part 690

Administrative practice and procedure, Education of disadvantaged, Grant programs—education, Student aid.

34 CFR Part 745

Grant programs—education, Sex discrimination.

34 CFR Part 755

Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 762

Educational research, Fellowships.

34 CFR Part 769

Colleges and universities, Elementary and secondary education, Grant programs—education.

34 CFR Part 776

Colleges and universities, Grant programs—education, Libraries, Student aid.

34 CFR Part 777

Educational research, Grant Programs—education, Libraries.

34 CFR Part 778

Colleges and universities, Grant programs—education, Libraries, Research.

34 CFR Part 779

Libraries.

34 CFR Part 787

Dissemination and educational research.

34 CFR Part 790

Colleges and universities, Grant programs—education, Teachers.

(44 U.S.C. 3501–3520; 5 CFR Part 1320)

Dated: November 30, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance does not apply)

The Secretary amends Parts 74, 75, 76, 80, 100, 200, 222, 241, 251, 253, 254, 255, 256, 257, 258, 263, 298, 300, 302, 307, 309, 315, 324, 326, 338, 361, 366, 367, 369, 370, 385, 386, 387, 388, 389, 390, 396, 538, 600, 607, 624, 626, 628, 637, 639, 643, 644, 649, 650, 653, 656, 657, 668, 674, 675, 676, 682, 690, 745, 755, 769, 776, 777, 778, 779, 787, and 790 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for Part 74 continues to read as follows:

Authority: 20 U.S.C. 3474; OMB Circular A-110, unless otherwise noted.

§§ 75.61, 74.73, 74.74, 74.75, 74.76, 74.82, and 74.140 [Amended]

2. Sections 74.61, 74.73, 74.74, 74.75, 74.76, 74.82, and 74.140 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0513)" following each section.

PART 75—DIRECT GRANT PROGRAMS

3. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

§§ 75.107, 75.108, 75.118, 75.119, 75.210, 75.261, 75.720, 75.730, and 75.732 [Amended]

4. Sections 75.107, 75.108, 75.118, 75.119, 75.210, 75.261, 75.720, 75.730, and 75.732 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0513)" following each section.

PART 76—STATE-ADMINISTERED PROGRAMS

5. The authority citation for Part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

§§ 76.131, 76.301, 76.302, 76.720, 76.730, 76.771, 76.780, and 76.781 [Amended]

6. Sections 76.131, 76.301, 76.302, 76.720, 76.730, 76.771, 76.780, and 76.781 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0513)" following each section.

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

7. The authority citation for Part 80 continues to read as follows:

Authority: 20 U.S.C. 3474; OMB Circular A-102, unless otherwise noted.

§§ 80.10, 80.20, 80.24, 80.30, 80.32, 80.36, 80.40, 80.41, 80.42 and 80.50 [Amended]

8. Sections 80.10, 80.20, 80.24, 80.30, 80.32, 80.36, 80.40, 80.41, 80.42 and 80.50 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0517)" following each section.

PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

9. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

§ 100.6 [Amended]

10. Section 100.6 is amended by adding "(Approved by the Office of Management and Budget under control number 1870–0500)" following the section.

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

11. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 552–559, 591–596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801–3808, 3871–3876, unless otherwise noted.

§ 200.13 [Amended]

12. Section 200.13 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0504)" following the section.

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

13. The authority citation for Part 222 continues to read as follows:

Authority: 20 U.S.C. 236–244, unless otherwise noted.

§§ 222.22, 222.23, 222.25 and 222.40 [Amended]

14. Sections 222.22, 222.23, 222.25 and 222.40 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0036)" following each section.

PART 241—LAW-RELATED EDUCATION PROGRAM

15. The authority citation for Part 241 is revised to read as follows:

Authority: 20 U.S.C. 3851, unless otherwise noted.

§§ 241.30 and 241.31 [Amended]

16. Sections 241.30 and 241.31 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0507)" following each section.

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES

17. The authority citation for Part 251 continues to read as follows:

Authority: 20 U.S.C. 2601–2606, unless otherwise noted.

§ 251.41 [Amended]

18. Section 251.41 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 253—INDIAN CONTROLLED SCHOOLS—ENRICHMENT PROJECTS

19. The authority citation for Part 253 continues to read as follows:

Authority: Title IV, Part A, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241bb(b)), unless otherwise noted.

§ 253.31 [Amended]

20. Section 253.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 254—EDUCATIONAL SERVICES FOR INDIAN CHILDREN

21. The authority citation for Part 254 continues to read as follows:

Authority: Title IV, Part B, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 339, as amended (20 U.S.C. 3385(a), (c)), unless otherwise noted.

§ 254.32 [Amended]

22. Section 254.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 255—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN CHILDREN

23. The authority citation for Part 255 continues to read as follows:

Authority: Title IV, Part B, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 339, as amended (20 U.S.C. 3385(a), (b)), unless otherwise noted.

§§ 255.32, 255.33 and 255.34 [Amended]

24. Sections 225.32, 255.33, and 255.34 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following each section.

PART 256—EDUCATIONAL PERSONNEL DEVELOPMENT

23. The authority citation for Part 255 continues to read as follows:

Authority: Title IV, Part B, Pub. L. 92–318, 86 Stat. 339, as amended (20 U.S.C. 3385); and the Indian Education Act, Section 422, as amended (20 U.S.C. 3385a), unless otherwise noted.

§ 256.32 [Amended]

26. Section 256.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 257—EDUCATIONAL SERVICES FOR INDIAN ADULTS

27. The authority citation for Part 257 continues to read as follows:

Authority: Title IV, Part C, Pub. L. 92–318 (The Indian Education Act), 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

§ 257.31 [Amended]

28. Section 257.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

PART 258—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

29. The authority citation for Part 258 continues to read as follows:

Authority: Title IV, Part C, Pub. L. 92–318 (the Indian Education Act), 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

§§ 258.32, 258.33 and 258.34 [Amended]

30. Sections 258.32, 258.33, and 258.34 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following each section.

PART 263—INDIAN FELLOWSHIP PROGRAM

31. The authority citation for Part 263 continues to read as follows:

Authority: Sec. 423, Indian Education Act, as amended (20 U.S.C. 3385b), unless otherwise noted.

§§ 263.12 and 263.23 [Amended]

32. Sections 263.12 and 263.23 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0020)" following each section.

PART 298—CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

33. The authority citation for Part 298 continues to read as follows:

Authority: Secs. 561–596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3811–3876, unless otherwise noted.

§ 298.4 [Amended]

34. Section 298.4 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0053)" following the section.

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

35. The authority citation for Part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§§ 300.121 through 300.134, 300.136 through 300.141, 300.144, 300.146, 300.148 through 300.151, 300.380 through 300.385, 300.387 and 300.754 [Amended]

36. Sections 300.121, 300.122, 300.123, 300.124, 300.125, 300.126, 300.127, 300.128, 300.129, 300.130, 300.131, 300.132, 300.133, 300.134, 300.136, 300.137, 300.138, 300.139, 300.140, 300.141, 300.144, 300.146, 300.148, 300.149, 300.150, 300.151, 300.380, 300.381, 300.382, 300.383, 300.384, 300.385, 300.387, and 300.754 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0030)" following each section.

§ 300.507 [Amended]

37. Section 300.507 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0509)" following the section.

PART 302—STATE OPERATED PROGRAMS FOR HANDICAPPED CHILDREN

38. The authority citation for Part 302 is revised to read as follows:

Authority: 20 U.S.C. 241c–1, unless otherwise noted.

§§ 302.21 and 302.30 [Amended]

39. Sections 302.21 and 302.30 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0510)" following each section.

§ 302.25 [Amended]

40. Section 302.25 is amended by adding "(Approved by the Office of Management and Budget under control

number 1820–0513)" following the section.

PART 307—SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

41. The authority citation for Part 307 continues to read as follows:

Authority: Sec. 622 of the Education of the Handicapped Act (20 U.S.C. 1422), unless otherwise noted.

§§ 307.31 and 307.40 [Amended]

42. Sections 307. 31 and 307.40 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0028)" following each section.

PART 309—HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

43. The authority citation for Part 309 continues to read as follows:

Authority: 20 U.S.C. 1423, unless otherwise noted.

§ 309.21 [Amended]

44. Section 309.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0028)" following the section.

PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

45. The authority citation for Part 315 continues to read as follows:

Authority: 20 U.S.C. 1424.

§§ 315.32 and 315.33 [Amended]

46. Sections 315.32 and 315.33 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0028)" following each section.

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

47. The authority citation for Part 324 is revised to read as follows:

Authority: 20 U.S.C. 1414–1444, unless otherwise noted.

§§ 324.31 and 324.32 [Amended]

48. Sections 324.31 and 324.32 are amended by adding "(Approved by Office of Management and Budget under control number 1820–0028)" following each section.

PART 326—SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH PROGRAM

49. The authority citation for Part 326 continues to read as follows:

Authority: 20 U.S.C. 1425, unless otherwise noted.

§§ 326.32 and 326.33 [Amended]

50. Sections 326.32 and 326.33 are amended by adding "(Approved by Office of Management and Budget under control number 1820–0028)" following each section.

PART 338—POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

51. The authority citation for Part 338 continues to read as follows:

Authority: 20 U.S.C. 1424a, unless otherwise noted.

§ 338.31 [Amended]

52. Section 338.31 is amended by adding "Approved by the Office of Management and Budget under control number 1820–0028)" following the section.

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

53. The authority citation for Part 361 continues to read as follows:

Authority: 20 U.S.C. 711(c), unless otherwise noted.

§§ 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48 [Amended]

54. Sections 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48 are amended by adding "(Approved by the Office of Management and Budget under control number (1820–0500)" following each section.

PART 366—CENTERS FOR INDEPENDENT LIVING

55. The authority citation for Part 366 continues to read as follows:

Authority: 29 U.S.C. 711(c), and 796(e), unless otherwise noted.

§§ 366.20 and 366.31 [Amended]

56. Sections 366.20 and 366.31 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following each section.

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

57. The authority citation for Part 367 continues to read as follows:

Authority: 29 U.S.C. 796f, unless otherwise noted.

§§ 367.20 and 367.21 [Amended]

58. Sections 367.20 and 367.21 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following each section.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

59. The authority citation for Part 369 continues to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 777(a)(3), 777(b), 777f, and 795g, unless otherwise noted.

§ 369.31 [Amended]

60. Section 369.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 370—CLIENT ASSISTANCE PROGRAM

61. The authority citation for Part 370 is revised to read as follows:

Authority: 29 U.S.C. 732, unless otherwise noted.

§ 370.44 [Amended]

62. Section 370.44 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0528)" following the section.

PART 385—REHABILITATION TRAINING

63. The authority citation for Part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 744, and 776, unless otherwise noted.

64. Section 385.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

65. The authority citation for Part 386 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 386.30 [Amended]

66. Section 386.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

67. The authority citation for Part 387 continues to read as follows:

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Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 387.30 [Amended]

68. Section 387.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 388—STATE VOCATIONAL REHABILIATATION UNIT IN-SERVICE TRAINING

69. The authority citation for Part 388 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 388.30 [Amended]

70. Section 388.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

71. The authority citation for Part 389 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 389.30 [Amended]

72. Section 389.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1820–0018)" following the section.

PART 390—REHABILITATION SHORT-TERM TRAINING

73. The authority citation for Part 390 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 390.30 [Amended]

74. Section 390.30 is amended by adding the authority citation "(Authority: 29 U.S.C. 711(c) and 774)" following the section and adding "(Approved by the Office of Management and Budget under control number 1820–0018)".

PART 396—TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS

75. The authority citation for Part 396 continues to read as follows:

Authority: Sec. 304(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602, 92 Stat. 2970 (29 U.S.C. 774(d)), unless otherwise noted.

§§ 396.20 and 396.30 [Amended]

76. Sections 396.20 and 396.30 are amended by adding "(Approved by the Office of Mangement and Budget under control number 1820–0018)" following each section.

PART 538—TRANSITION PROGRAM FOR REFUGEE CHILDREN

77. The authority citation for Part 538 continues to read as follows:

Authority: Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96–212, 8 U.S.C. 1522(d), unless otherwise noted.

§ 538.20 [Amended]

78. Section 538.20 is amended by adding "(Approved by the Office of Management and Budget under control number 1885–0503)" following the section.

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

79. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1085 (a), (b), and (e), 1088 (b) and (c), 1094(c)(3), and 1141 (a), unless otherwise noted.

§§ 600.8, 600.10, 600.20, 600.30 and 600.31 [Amended]

80. Sections 600.8, 600.10, 600.20, 600.30, and 600.31 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0098)" following each section.

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

81. The authority citation for Part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059, 1066–1069f, unless otherwise noted.

§ 607.8 [Amended]

82. Section 607.8 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0114)" following the section.

PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS

83. The authority citation for Part 624 continues to read as follows:

Authority: 20 U.S.C. 1051–1069c, unless otherwise noted.

§ 624.21 [Amended]

84. Section 624.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0593)" following the section.

PART 626—SPECIAL NEEDS PROGRAM

85. The authority citation for Part 626 continues to read as follows:

Authority: Secs. 321–324 and 341–347 of Title III of the Higher Education Act of 1965 (20 U.S.C. 1060–1063 and 1066–1069c), unless otherwise noted.

§ 626.21 [Amended]

86. Section 626.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0593)" following the section.

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

87. The authority citation for Part 628 continues to read as follows:

Authority: 20 U.S.C. 1065a, unless otherwise noted.

§§ 628.41 and 628.47 [Amended]

88. Sections 628.41 and 628.47 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0564)" following each section.

PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM

89. The authority citation for Part 637 continues to read as follows:

Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6, unless otherwise noted.

§ 637.32 [Amended]

90. Section 637.32 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0109)" following the section.

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

91. The authority citation for Part 639 continues to read as follows:

Authority: 20 U.S.C. 1134s–1134t, unless otherwise noted.

§ 639.31 [Amended]

92. Section 639.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0041)" following the section.

PART 643—TALENT SEARCH PROGRAM

93. The authority citation for Part 643 continues to read as follows:

Authority: 20 U.S.C. 1070d–1, unless otherwise noted.

§§ 643.31 and 643.32 [Amended]

94. Sections 643.31 and 643.32 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0549)" following each section.

PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

95. The authority citation for Part 644 continues to read as follows:

Authority: 20 U.S.C. 1070d–1c.

§ 644.31 [Amended]

96. Section 644.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0065)" following the section.

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIPS PROGRAM

97. The authority citation for Part 649 continues to read as follows:

Authority: 20 U.S.C. 1134d to 1134f, unless otherwise noted.

§ 649.12 [Amended]

98. Section 649.12 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0508)" following the section.

§ 649.13 [Amended]

99. Section 649.13 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0509)" following the section.

PART 650—NATIONAL GRADUATE FELLOWS PROGRAM

100. The authority citation for Part 650 continues to read as follows:

Authority: 20 U.S.C. 1134h–1134k, unless otherwise noted.

§ 650.44 [Amended]

101. Section 650.44 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0562)" following the section.

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

102. The authority citation for Part 653 continues to read as follows:

Authority: 20 U.S.C. 1111–1111h, unless otherwise noted.

§ 653.21 [Amended]

103. Section 653.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0595)" following the section.

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

104. The authority citation for Part 656 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

§§ 656.21 and 656.22 [Amended]

105. Sections 656.21 and 656.22 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0068)" following each section.

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

106. The authority citation for Part 657 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

§§ 657.3 and 657.21 [Amended]

107. Sections 657.3 and 657.21 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0068)" following each section.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

108. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094 and 1141, unless otherwise noted.

§§ 668.8, 668.13, 668.14, 668.15, 668.17, 668.22, 668.23, 668.32, 668.33, 668.34, 668.35, and 668.96 [Amended]

109. Sections 668.8, 668.13, 668.14, 668.15, 668.17, 668.22, 668.23, 668.32, 668.33, 668.34, 668.35, and 668.96 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0537)" following for each section.

PART 674—PERKINS LOAN PROGRAM

110. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

§§ 674.8, 674.10, 674.16, 674.19, 674.20, 674.31, 674.34, 674.35, 674.37, 674.38, 674.52, and 674.58 [Amended]

111. Sections 674.8, 674.10, 674.16, 674.19, 674.20, 674.31, 674.34, 674.35, 674.37, 674.38, 674.52, and 674.58 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0535)" following each section.

§§ 674.42, 674.43, 674.45, 674.48, 674.49, and 674.50 [Amended]

112. Sections 674.42, 674.43, 674.45, 674.48, 674.49, and 674.50 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0581)" following each section.

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

113. The authority citation for Part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

§§ 675.10, 675.16, 675.19, 675.20, 675.27, 675.34, and 675.35 [Amended]

114. Sections 675.10, 675.16, 675.19, 675.20, 675.27, 675.34, and 675.35 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0535)" following each section.

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

115. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–107b–3, unless otherwise noted.

§§ 676.16 and 676.19 [Amended]

116. Sections 676.16 and 676.19 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0535)" following each section.

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

117. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.301 [Amended]

118. Section 682.301 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0110)" following the section.

PART 690—PELL GRANT PROGRAM

119. The authority citation for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

§ 690.81 [Amended]

120. Section 690.81 is amended by adding "(Approved by the Office of

Management and Budget under control number 1840–0536)" following the section.

PART 745—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM

121. The authority citation for Part 745 continues to read as follows:

Authority: 20 U.S.C. 3341–3348, unless otherwise noted.

§§ 745.8 and 745.30 through 745.35 [Amended]

122. Sections 745.8, 745.30, 745.31, 745.32, 745.33, 745.34, and 745.35 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0062)" following each section.

PART 755—SECRETARY'S DISCRETIONARY PROGRAM FOR MATHEMATICS, SCIENCE, COMPUTER LEARNING, AND CRITICAL FOREIGN LANGUAGES

123. The authority citation for Part 755 continues to read as follows:

Authority: 20 U.S.C. 3972, unless otherwise noted.

§§ 755.32 and 755.33 [Amended]

124. Sections 755.32 and 755.33 are amended by adding "(Approved by the Office of Management and Budget under control number 1880–0510)" following each section.

PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

125. The authority citation for Part 762 continues to read as follows:

Authority: 20 U.S.C. 1221e, unless otherwise noted.

§ 762.21 [Amended]

126. Section 762.21 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0620)" following the section.

PART 769—THE LIBRARY SERVICES AND CONSTRUCTION ACT LIBRARY LITERACY PROGRAM

127. The authority citation for Part 769 continues to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

§ 769.31 [Amended]

128. Section 769.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0587)" following the section.

PART 776—LIBRARY CAREER TRAINING PROGRAM

129. The authority citation for Part 776 continues to read as follows:

Authority: 20 U.S.C. 1021, 1031, 1032, unless otherwise noted.

§§ 776.10, 776.21, 776.22 and 776.23 [Amended]

130. Sections 776.10, 776.21, 776.22 and 776.23 are amended by adding "(Approved by the Office of Management and Budget under control number 1850–0022)" following each section.

PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

131. The authority citation for Part 777 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

§ 777.31 [Amended]

132. Section 777.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0600)" following the section.

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES

133. The authority citation for Part 778 continues to read as follows:

Authority: 20 U.S.C. 1021, 1041, 1042, unless otherwise noted.

§§ 778.2, 778.21 and 778.22 [Amended]

134. Sections 778.2, 778.21, and 778.22 are amended by adding "(Approved by the Office of Management and Budget under control number 1850–0054)" following each section.

PART 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATIVE GRANTS PROGRAM

135. The authority citation for Part 779 continues to read as follows:

Authority: 20 U.S.C. 1021 and 1047, unless otherwise noted.

§ 779.30 [Amended]

136. Section 779.30 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0622)" following the section.

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROJECTS

137. The authority citation for Part 787 continues to read as follows:

Authority: 20 U.S.C. 3851, unless otherwise noted.

§ 787.10 [Amended]

138. Section 787.10 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0086)" following the section.

PART 790—TERRITORIAL TEACHER TRAINING ASSISTANCE

139. The authority citation for Part 790 continues to read as follows:

Authority: Title XV, Part C, sec. 1525, Education Amendments of 1978 (Pub. L. 95–561), 92 Stat. 2379, unless otherwise noted.

§ 790.20 [Amended]

140. Section 790.20 is amended by adding "(Approved by the Office of Management and Budget under control number 1850–0619)" following the section.

[FR Doc. 88–27955 Filed 12–5–88; 8:45 am]
BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796 and 798

[OPTS–42079C; FRL–3487–5]

Technical Amendments to Certain Chemical Fate and Health Effects Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing technical amendments to certain chemical fate and health effects test guidelines used in the testing of chemical substances under section 4 of the Toxic Substances Control Act. These amendments are necessary to incorporate changes resulting from comments by interested parties on the regulations and to correct specific editorial errors.

EFFECTIVE DATE: Effective on December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404. TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 20, 1985 (50 FR 39252), EPA issued as final regulations test guidelines that were previously available through the National Technical Information Service (NTIS). These guidelines are used in the testing of chemicals designated for priority testing by the Interagency

Testing Committee under section 4 of the Toxic Substances Control Act. These regulations under 40 CFR Parts 796 through 798, were amended in the **Federal Register** of May 20, 1987 (52 FR 19056).

These technical amendments incorporate changes resulting from comments from interested parties to § 798.2250 *Dermal toxicity;* § 798.2450 *Inhalation toxicity;* and § 798.2650 *Oral toxicity.* Since the comments were considered minor and nonsubstantive in nature, the Agency finds no need for detailed discussion of those comments in the preamble. Specific editorial amendments are also made in:

1. Sections 796.3140(b)(2)(i) (A) and (C).
2. Sections 798.2250 (a), (e)(7), (9)(vi), (10) (i) (A) and (B), (ii) (A) and (B), (11)(ii) and (12) (iv) and (vi).
3. Sections 798.2450 (a), (b)(7), (d)(11)(i), (12)(ii), (13) (v) and (vi) and (e)(13).
4. Sections 798.2650(b) (1) and 4), (e)(8)(vii), (9)(i) (A) and (B), (10)(ii) and (f)(3).

List of Subjects in 40 CFR Parts 796 and 798

Chemical fate, Health effects, Chemicals, Environmental protection, Hazardous substances, Laboratories.

Dated: November 28, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR, Chapter I, Subchapter R is amended as follows:

PART 796—[AMENDED]

1. In Part 796:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 796.3140 is amended by revising paragraphs (b)(2)(i) (A) and (C) to read as follows:

§ 796.3140 Anaerobic biodegradability of organic chemicals.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) Prereduced medium is prepared by adding 8 mL of stock solution S–1, 8 mL of S–2, and 40 mL of S–3 to approximately 3,500 mL of deionized water in a 4–L Florence or Erlenmeyer flask. This medium is heated to a boil, while being stirred with a magnetic stir bar and sparged with oxygen (O_2)-free nitrogen. The O_2-free nitrogen is obtained by passing nitrogen gas through a quartz cylinder filled with copper filings heated to 400 °C. Alternatively, commercial nitrogen free of oxygen may be used.

* * * * *

(C) When the medium has cooled to 35 °C, the flask is removed from the ice bath and the following components are added: 4 mL of solution S–4; 20 mL of solution S–5; 10.56 g sodium bicarbonate; and 400 mL of sludge inoculum. The final volume should be approximately 4 L.

* * * * *

PART 798—[AMENDED]

2. In Part 798:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 798.2250 is amended by revising paragraphs (a); the introductory text of (e)(7) and (9)(vi); 10(i) (A) and (B) and (ii) (A) and (B); 11(ii); and (12) (iv) and (vi) to read as follows:

§ 798.2250 Dermal toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic dermal toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic dermal study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the dermal route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

* * * * *

(e) * * *

(7) Preparation of animal skin.

* * * * *

(9) * * *

(vi) At the end of the study period, all survivors in the nonsatellite treatment groups shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(10) * * *

(i) * * *

(A) Certain hematology determinations shall be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Clinical biochemistry test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

(ii) * * *

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to exposure to the test substance and at the termination of the study.

(B) Urinalysis is not recommended on a routine basis, but only when there is an indication based on expected or observed toxicity.

(11) * * *

(ii) The liver, kidneys, adrenals, brain, and gonads shall be weighed wet, as soon as possible after dissection, to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

* * * * *

(12) * * *

(iv) The tissues listed in parenthesis in paragraph (e)(11)(iii) of this section, if indicated by signs of toxicity or expected target organ involvement.

* * * * *

(vi) When a satellite group is used, histopathology shall be performed on tissues and organs identified as showing effects in the treated groups.

* * * * *

c. Section 798.2450 is amended by revising paragraphs (a); (b)(7); the introductory text of (d) (11)(i), (12)(ii), (13) (v) and (vi); and the introductory text of (e)(3) to read as follows:

§ 798.2450 Inhalation toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a gas, volatile substance, or aerosol/particulate, determination of subchronic inhalation toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic inhalation study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposures by the inhalation route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure. Hazards of inhaled substances are influenced by the inherent toxicity and by physical factors such as volatility and particle size.

(b) * * *

(7) Cumulative toxicity is the adverse effects of repeated doses occuring as a result of prolonged action on, or increased concentration of the administered test substance or its metabolites in susceptible tissues.

* * * * *

(d) * * *

(11) * * *

(i) The following examinations shall be made on all animals of each sex in each group:

(A) Certain hematology determinations shall be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Clinical biochemistry test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase, (now known as serum alanine aminotransferase), serum glutamic-oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

* * * * *

(12) * * *

(ii) At least the liver, kidneys, adrenals, brain, and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

* * * * *

(13) * * *

(v) Lungs of animals (rodents) in the low and intermediate dose groups shall also be subjected to histopathological examination, primarily for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(vi) When a satellite group is used, histopathology shall be performed on tissues and organs identified as showing effects in the treated groups.

* * * * *

(e) * * *

(3) *Test report.* In addition to the reporting requirements as specified under EPA Good Laboratory Practice Standards, 40 CFR Part 792, Subpart J, the following specific information shall be reported:

* * * * *

d. Section 798.2650 is amended by revising paragraphs (b) (1) and (4); (e)(8)(vii), (9)(i) (A) and (B) and (10)(ii); and the introductory text of (f)(3) to read as follows:

§ 798.2650 Oral toxicity.

* * * * *

(b) * * *

(1) Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral route for a part (approximately 10 percent) of a life span.

* * * * *

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of, the administered test substance or its metabolites in susceptible tissue.

* * * * *

(e) * * *

(8) * * *

(vii) At the end of the 90-day period all survivors in the nonsatellite treatment groups shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

* * * * *

(9) * * *

(i) * * *

(A) Certain hematology determinations shall be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least two times during the test period on all groups of animals including concurrent controls: After 30 days of test and just prior to terminal sacrifice at the end of the test period. Clinical biochemistry test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested

determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

* * * * *

(10) * * *

(ii) At least the liver, kidneys, adrenals, and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

* * * * *

(f) * * *

(3) *Test report.* In addition to the reporting requirements as specified under EPA Good Laboratory Practice Standards, 40 CFR Part 792, Subpart J, the following specific information shall be reported:

* * * * *

[FR Doc. 88-28034 Filed 12-5-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6690

[AK-932-09-4214-10; AA-5671]

Partial Revocation of Public Land Order No. 960 for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 7.30 acres of public land withdrawn for the Federal Aviation Administration for inclusion into Air Navigation Site No. 4. The land is no longer needed for the purpose for which it was withdrawn. This action makes the land available for selection by the State of Alaska, if such land is otherwise available. If not selected by the State, the land will be subject to the terms and conditions of PLO No. 5186, and will remain closed to location for metalliferous minerals until a further opening order is published.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 960 is hereby revoked insofar as it affects the following described land:

Copper River Meridian

T. 31 S., R. 59 E., partially surveyed,
Sec. 2, lots 7, 8, 9, and 17.

The area described contains approximately 7.30 acreas.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2371, 2437-2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of PLO No. 5186, and any other withdrawal of record, and shall remain closed to location for metalliferous mining until a further opening order is published.

J. Steven Griles,

Assistant Secretary of the Interior.

November 28, 1988.

[FR Doc. 88-27993 Filed 12-5-88; 8:45 am]
BILLING CODE 4310-JA-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 840

Rules Pertaining to Notification of Railroad Accidents

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: By this rule change, the Board is amending § 840.3 to reduce the period of time during which notification of certain railroad accidents is mandatory to 2 hours after the occurrence of an accident that results in a fatality or serious injury to two or more crewmembers or passengers, the emergency evacuation of a passenger train, or the release of hazardous materials, as further described herein; and to 4 hours for any accident that requires an evaluation of property damage.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Zielinski, Chief, Railroad Accident Division, 800 Independence Avenue, SW., Washington, DC 20594 ((202) 382-6840).

SUPPLEMENTARY INFORMATION: Section 840.3 requires notification to the National Transportation Safety Board of certain railroad, and, included therein, rail rapid transit accidents, at the earliest practical time. The Safety Board's rules that pertain to notification of railroad accidents, specifically Rule 840.3, provide a convenient mechanism for complying with the notification requirement in the form of a toll-free telephone number, and, prior to this amendment, those Rules imposed a six-hour time limit during which reporting was mandatory. Notwithstanding the toll-free telephone number and the six-hour time limit, the Safety Board determined that there were still numerous instances where reporting of accidents was not sufficiently expeditious as to afford Board personnel access to the accident site before the initiation of post-accident cleanup efforts. In order to remedy the situation, and after notice and public procedure (53 FR 11520; published April 7, 1988), the Board is amending its railroad accident notification rules to require notification within two hours of any railroad accident that involves a fatality, injury that requires admission to a hospital of two or more crewmembers or passengers, the release of hazardous materials, or an emergency evacuation. In cases that do not involve any of these eventualities but that

require a preliminary monetary estimate of damages, a four-hour limit is being placed on the notification time.

Additionally, although virtually all railroad trains and facilities are at present equipped for radio communication, the Board recognizes that in certain extraordinary circumstances, communication from the site of an accident immediately after its occurrence may be problematical. This could be the case in accidents occurring in remote areas where radio transmission is ineffective. In such instances the reporting time limits prescribed in § 840.3(a) can be computed from the time railroad personnel, other than those at the accident site at the time of its occurrence, have received notice of the accident. This provision is contained in paragraph (d) of the revised regulation.

The Safety Board received five comments in response to its notice of proposed rulemaking which was published April 7, 1988 (53 FR 11520). The Board has given the views expressed in those responses its careful consideration but finds that our expressed goal of affording Board personnel access to the accident site as early as possible, and, wherever feasible, before initiation of clean-up efforts, is paramount, and that the deleterious effects of earlier reporting may in fact never materialize.

The major obstacle to the requirements for earlier reporting concerns the difficulty of arriving at a preliminary monetary estimate of damage. One commentator expressed concern that accidents that do not meet the Board's estimated damage criteria would be reported because of hasty damage evaluation. The Board considered that possibility when it proposed a 4-hour limit for any accident requiring a damage estimate. Moreover, the Board does not believe that the reporting of any accidents that do not meet those criteria will impose an undue administrative burden on either the reporting railroad or on the Safety Board's staff.

In respect to the comment that initiation of clean-up efforts should take precedence over all other activities, the Board believes that the accident cure and prevention objectives that are its investigatory goal are equally essential. It is patent that a number of tasks, such as the proper control of hazardous materials, must be undertaken at once; however, notification to the Board at the earliest practicable time after the occurrence is equally in the best interests of public safety and accident prevention, and it is imperative that the Board be notified as soon as possible if hazardous materials are involved.

As do other agencies of Government, the Department of Transportation's Research and Special Programs Administration requires immediate reporting of most hazardous materials spills by any carrier that transports them (49 CFR 171.15); accordingly, notification to the Board through the National Response Center's telephone service is not an additional burden. All other matters dealt with in the comments, especially alternative proposals, have been give consideration by the Board.

Under the criteria of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Safety Board has determined that these amendments will not have a significant economic impact on a substantial number of small entities because the new rules require only a somewhat more expeditious reporting, and they do not create any increase in the number of accidents for which notification must be made, the costs of complying with the rule are not substantial, and the Safety Board has so certified.

List of Subjects in 49 CFR Part 840

Administrative practice and procedure, Investigations, Hazardous materials transportation, Railroad Safety, Reporting and recordkeeping requirements.

PART 840—[AMENDED]

1. Accordingly, the authority citation for 49 CFR Part 840 continues to read as follows:

Authority: Sec. 304(a)(1)(c), Independent Safety Board Act of 1974, as amended (49 U.S.C. 1903).

2. Section 840.3 of Part 840, Chapter VIII, Title 49, Code of Federal Regulations, is revised to read as follows:

§ 840.3 Notification of railroad accidents.

The operator of a railroad shall notify the Board by telephoning the National Response Center at telephone 800–424–0201 at the earliest practicable time after the occurrence of any one of the following railroad accidents:

(a) No later than 2 hours after an accident which results in:

(1) A passenger or employee fatality or serious injury to two or more crewmembers or passengers requiring admission to a hospital;

(2) The evacuation of a passenger train;

(3) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(4) A fatality at a grade crossing.

(b) No later than 4 hours after an accident which does not involve any of the circumstances enumerated in paragraph (a) of this section but which results in:

(1) Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost, to railroad and nonrailroad property; or

(2) Damage of $25,000 or more to a passenger train and railroad and nonrailroad property.

(c) Accidents involving joint operations must be reported by the railroad that controls the track and directs the movement of trains where the accident has occurred.

(d) Where an accident for which notification is required by paragraph (a) or (b) of this section occurs in a remote area, the time limits set forth in that paragraph shall commence from the time the first railroad employee who was not at the accident site at the time of its occurrence has received notice thereof.

Signed at Washington, DC on November 29, 1988.

James L. Kolstad,

Acting Chairman.

[FR Doc. 88–27878 Filed 12–5–88; 8:45 am]

BILLING CODE 7533–01–M

Proposed Rules

Federal Register
Vol. 53, No. 234
Tuesday, December 6, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule regarding South Texas melons would authorize expenses and establish an assessment rate under Marketing Order 979 for the 1988–89 fiscal period. Authorization of this budget would allow the South Texas Melon Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by December 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Order No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Texas melons under this marketing order, and approximately 70 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable melons handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of melons. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of melons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee;s expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Melon Committee met on November 1, 1988, and unanimously recommended a 1988–89 budget of $308,438. This total exceeds last year's budget of $251,811 by $56,627, reflecting an increase in production research project expenses from $50,723 to $104,398. Administrative expenses are up $3,517 from last year to $84,040, and promotion expenses have been reduced $565 to $120,000.

The committee also unanimously recommended an assessment rate of 4 cents per carton, down one cent from the 1987–88 rate. The recommended assessment rate, when applied to anticipated shipments of 7.7 million cartons, would yield $308,000 in assessment revenue. This amount, when added to $438 from the reserve, would be adequate to cover budgeted expenses. The current reserve minus $438 would result in a yearend reserve of $382,353. This total is within the limit of two fiscal periods' expenses allowed by the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons (Texas).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 970.211 is added to read as follows:

§ 979.211 Expenses and assessment rate.

Expenses of $308,438 by the South Texas Melon Committee are authorized and an assessment rate of $0.04 per carton of melons is established for the fiscal period ending September 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: December 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28070 Filed 12–5–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1124 and 1125

[Docket Nos. AO–368–A16 and AO–226–A32; DA–88–108]

Milk in the Oregon-Washington and Puget Sound-Inland Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision merges the Oregon-Washington and Puget Sound-Inland Federal orders, based on industry proposals considered at a public hearing held November 17–18, 1987. In addition to the presently regulated marketing areas, the merged "Pacific Northwest" marketing area would include five additional Washington counties, the unregulated portion of another Washington county, and three central Oregon counties. The Class I differentials at Portland, Oregon, and Spokane, Washington, are reduced from $1.95 to $1.90; and the Class I differentia at Seattle, Washington, is increased from $1.85 to $1.90.

The provisions of the merged order are patterned largely after those of the present Puget Sound order, with some modifications to accommodate specific marketing conditions of the Oregon-Washington order area. Provisions of the merged order that represent significant changes in regulation for handlers and producers currently pooled under the Oregon-Washington order include a single butterfat differential for adjusting order prices for variations in butterfat content, payment to producers on the basis of a uniform price for all production rather than a base-excess plan, and determination of handler obligations to the marketwide pool on an equalization basis (the difference between the use value of producer receipts and the value of those receipts at the uniform price).

The merger is needed to reflect changes in market structure in that the two separately regulated areas have become, in effect, one common market. Cooperative associations will be polled to determine whether producers favor the issuance of the merged order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued October 26, 1987; published October 29, 1987 (52 FR 41566).

Recommended Decision: Issued September 7, 1988; published September 19, 1988 (53 FR 36291).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Portland, Oregon on November 17–18, 1987. Notice of such hearing was issued on October 26, 1987 and published October 29, 1987 (52 FR 41566).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, AMS, on September 7, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "6. Classification of milk.", one paragraph is added at the end.

2. Under the heading "7. Class prices, location adjustments and butterfat differential.", two paragraphs are added after paragraph 9.

3. Under the heading "8. Handler obligations to the pool.", one paragraph is added after paragraph 4.

4. Under the heading "9. Payments to producers.", one paragraph is added at the end.

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the Oregon-Washington and Puget Sound-Inland orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory;

4. Milk to be priced and pooled;

5. Handler reports;

6. Classification of milk;

7. Class prices, location adjustments and butterfat differential;

8. Handler obligations to the pool;

9. Payments to producers;

10. Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.* The handling of milk in the proposed and expanded marketing area is in the current of interstate commerce and directly burdens, obstructs and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "Pacific Northwest marketing

area", includes 72 contiguous counties, of which 37 are in the State of Washington, 29 in Oregon and six in Idaho. The principal cities in the marketing area are Eugene and Portland, Oregon; and Seattle and Spokane, Washington. The specific territory included in the marketing area is set forth in the marketing area discussion.

Handlers located in the Oregon-Washington area have route sales in Oregon and Washington, while handlers regulated under the Puget Sound-Inland order distribute milk in the States of Alaska, Idaho, Montana, Oregon and Washington. Handlers located in the States of California, Idaho, Montana, Oregon and Washington distribute milk within the proposed marketing area.

Similarly, milk procurement for the proposed merged area crosses state boundaries. Handlers regulated by the Puget Sound-Inland order procure milk from producers located in Idaho, Oregon and Washington. The milk needed to supply Oregon-Washington distributing plants is procured from California, Idaho, Oregon and Washington.

There are numerous manufacturing plants located within the proposed marketing area that manufacture dairy products. These products are sold in California, Oregon, Washington and other states in competition with manufactured products produced in many other states.

2. *Need for merger of the orders.* Marketing conditions in the two separately regulated marketing areas under consideration justify the issuance of a single order regulating the handling of milk in these areas. This single order would be the most appropriate means of effectuating the declared policy of the Act.

Federal regulation of milk marketing in northwestern Washington State was initiated May 1, 1951, when the Puget Sound order became effective. The marketing area was later amended in December 1952 and July 1966 to include Island and San Juan Counties and most of the remaining portions of Grays Harbor, King, Lewis, Skagit, Snohomish and Whatcom Counties. Milk marketing in northeastern Washington State and northern Idaho came under Federal regulation March 1, 1956, when the Inland Empire order became effective. The Inland Empire marketing area was later amended in October 1957 and in March 1962 to add the Idaho Counties in Benewah, Boundary, Latah and Shoshone and the remaining unregulated portions of Bonner and Kootenai Counties; and Whitman County, Washington. The Puget Sound and Inland Empire marketing areas were merged to become the Puget Sound-Inland order effective January 1, 1984. The Washington Counties of Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln and Okanogan, and the remaining unregulated portions of Pend Oreille and Stevens Counties, were included in the merged Puget Sound-Inland order in addition to the already regulated areas.

Milk marketing in western Oregon and southwestern Washington became federally regulated under the Oregon-Washington order on January 1, 1970. The marketing area of the Oregon-Washington order has not changed since it became effective.

The merger of the Oregon-Washington and Puget Sound-Inland orders was proposed by six cooperative associations representing dairy farmer members whose milk is pooled under the two orders. The merger proponents represent a substantial majority of the producers whose milk would be pooled under the merged order.

The principal proponent witness, a representative of Northwest Dairymen's Association (NDA) stated that the merged order is needed because the proposed marketing area is becoming one competitive market. He stated that NDA, which represents about 60 percent of the producers delivering milk to the two Federal order marketing areas, has producer members located in almost every county in the proposed marketing area and supplies bulk milk to handlers operating plants with distribution in all parts of the proposed marketing area. The witness testified that the existence of two Federal orders in an area that has become one competitive marketing area has required NDA to alter the movement of member milk to plants in order to prevent inequities between the prices paid to NDA members supplying different markets. He also stated that operating within the constraints of two separate orders sometimes causes difficulty and inefficiency in supplying the demands of each order market as those demands vary over time.

The NDA witness concluded that a merger would increase the efficiency of administering marketing order regulations in the Pacific Northwest, and would reduce the complexity of reports which must be filed by regulated handlers. No opposition to a merger of the two orders was expressed at the hearing.

The record indicates that the Oregon-Washington and Puget Sound-Inland marketing areas have become interrelated to such an extent that a merger is the most appropriate means of regulating milk marketing in the area involved. When the two orders were promulgated, they regulated the handling of milk in areas that were clearly distinguishable as separate markets for particular handlers and producer groups. Changes in marketing practice and market structure since that time, however, have caused these separately regulated areas to become substantially interrelated in both distribution and supply arrangements.

In September 1987, a majority of the pooled handlers regulated under the Puget Sound-Inland milk order distributed fluid milk products within the Oregon-Washington marketing area. At the same time, 20 percent of Oregon-Washington pooled handlers distributed milk within the Puget Sound-Inland order. The fact that one-third of the handlers regulated under the two orders distribute milk in competition with handlers regulated under the other order is an indication of the degree of interrelationship that has developed between the two markets. A merger of the two marketing areas under one order will assure that fully regulated handers competing with each other are subject to the same regulatory provisions and aligned prices.

NDA markets the milk of producers located throughout the proposed merged marketing area, and Darigold, Inc., NDA's marketing agent, distributes fluid milk products throughout the proposed area from its five bottling plants that are currently pooled under the two orders. Many of NDA's member producers are located in production areas from which the milk produced on neighboring farms is delivered to pool plant regulated under the two different Federal orders. The differing provisions of the two orders prevent the cooperative from easily being able to shift the milk of a producer from a plant pooled under one order to a plant regulated by the other order, even when such a shift would be the most efficient means of moving milk to where it is needed. The Oregon-Washington order's base-excess plan is one such provision that prevents an easy interchange of producer milk between the two orders. The milk of baseholding producers cannot be pooled under the Puget Sound-Inland order without those producers losing the benefit of their earned bases. At the same time, producers previously pooled under the Puget Sound-Inland order have not earned Oregon-Washington production bases and thus would receive less for their milk if it were pooled under the Oregon-Washington order. Because of this feature of regulation by the two separate orders, it is not practicable for a handler such as NDA to haul the milk of some

neighboring producers in the same loads.

An occasional need to deliver the milk of producers customarily pooled under one order to a plant location normally priced under the other order is another situation in which the existence of the two interconnected orders causes marketing problems for handlers. Problems arise because of the differing location adjustments under the two orders. Milk produced in the Yakima Valley and customarily pooled under the Oregon-Washington order that is surplus to the market's fluid needs is usually hauled to Chehalis, Washington, where there is no location adjustment under the Oregon-Washington order. If the Chehalis facility is already operating at capacity, however, the milk must be moved to manufacturing plants at Issaquah or Lynden, Washington, where the Oregon-Washington location adjustments are minus 25.5 and 40.5 cents, respectively. If the same milk from Yakima Valley were pooled under the Puget Sound-Inland order at Issaquah or Lynden, however, it would be subject to location adjustments of zero or minus six cents.

The differences in Class I and producer prices under the two orders at the same location is also a factor that causes marketing difficulties for Darigold, and for any other handler attempting to market milk under both orders in an efficient manner. Specifically, larger amounts of the milk surplus to the fluid needs of each order area are delivered to a Darigold manufacturing plant in Chehalis, Washington. Chehalis is located in the production area of both Federal order markets, and is approximately equidistant from Portland, Oregon, and Seattle, Washington. The Puget Sound-Inland location adjustment at Chehalis is a minus six cents, while there is no price adjustment at Chehalis under the Oregon-Washington order. Because of the 10-cent difference between the two orders' Class I prices, the Class I price difference at Chehalis is actually 16 cents.

However, because the milk received at Chehalis is used for manufactured products rather than for Class I use, the difference in producer pay prices between the two orders at the same location is the primary cause of inequity at Chehalis. The price difference between the two orders extends to producer payments because the orders' minimum uniform prices are subject to the same location adjustments as are the Class I prices.

Although the difference in Class I prices as Chehalis is 16 cents, the difference in order prices due to producers for milk delivered to Chehalis under the Puget Sound-Inland and Oregon-Washington orders is normally less, but nevertheless significant. During 1986 and the months of 1987 preceding the hearing, the Oregon-Washington uniform price to producers exceeded the Puget Sound-Inland uniform price by an average of 6.7 cents, with the difference ranging from two to 13 cents. When the six-cent location adjustment under the Puget Sound-Inland order is taken into account, prices paid to similarly located producers for milk delivered to Chehalis under the two orders differed by an average of 12.7 cents per hundredweight, and by as much as 19 cents. The location adjustment differences at the same location under the two orders, therefore, result in a significant difference in returns to producers whose milk is delivered to the same location.

For the reasons described above, a merger of the Oregon-Washington and Puget Sound orders will represent the most effective means of achieving efficient and orderly handling and marketing of milk in the Pacific Northwest. The merger will permit the minimizing of hauling expenses by allowing surplus milk supplies to be better matched to the nearest plant location without consideration of the regulatory effects of the two orders. Similarly located handlers and producers will be subject to more equitable pooling provisions under a single order than under the two separate orders. Accordingly, the merger should be adopted.

3. *Merged and expanded marketing area.* The marketing area of the proposed merged order should include all of the territory in the presently designated marketing areas of the Oregon-Washington and Puget Sound-Inland orders. Certain additional territory adjacent to the two present marketing areas also should be part of the merged marketing area. The additional territory to be included are the entire Washington counties of Asotin, Columbia, Garfield, Kitsap and Mason, and the portion of Pierce County that is currently unregulated; and the Oregon counties of Crook, Lake and Wheeler. All territory within the boundaries of the designated marketing area which is occupied by government (municipal, State or Federal) reservations, installations, institutions or other establishments, likewise should be part of the marketing area. Where such an establishment is partly within and partly without such territory, the entire establishment should be included in the marketing area.

The merged and expanded marketing area consists of 37 Washington State counties (omitting only Clallam and Jefferson), 29 western and central Oregon counties, and the same six northern Idaho counties that are included in the present Puget Sound-Inland marketing are. The total population of the merged and expanded marketing area, according to the 1980 census, was approximately 6,738,000 people, or about 224,000 more people than the two separate order areas contain. The territory proposed to be added to the merged order, therefore, increases the population of the merged marketing area by less than four percent over that of the separate marketing areas. Data obtained from 1986 population estimates of the proposed merged area give approximately the same results.

The territory to be added to the merged marketing area was proposed for inclusion by Darigold. Proponent witness states that no additional handlers would become regulated as a result of adding the proposed areas to the merged marketing area. He also testified that all of the route distribution in the areas to be added is by handlers regulated under one or both of the two orders proposed to be merged. The witness stated that incorporating the proposed additional area into the merged order would eliminate much of the recordkeeping currently required of handlers to report out-of-area sales, and would improve the efficiency of order administration by reducing the complexity of handlers' exports.

On the basis of the evidence received and in view of the fact that there was no opposition to the addition of the proposed territory to the marketing area or contradiction of proponent's characterization of the counties proposed to be added as supplied with fluid milk products entirely by handlers currently regulated under the two existing orders, the marketing area of the merged orders should be defined as proposed.

4. *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "distributing plant," "supply plant," "pool plant" and

"nonpool plant". Definitions of persons include "handler," "producer-handler," "cooperative reserve supply unit," "producer" and "cooperative association." Definitions relating to milk and milk products include "producer milk," "other source milk," "fluid milk product," "fluid cream product" and "filled milk." Some of these definitions were of particular issue at the hearing or are substantially different than those presently contained in either the Oregon-Washington or Puget Sound-Inland orders. Such definitions are discussed below.

Plant. The definition of a "plant" included in the proposed merged order should be adopted as proposed. However, due to some contradictory testimony in the hearing record, some clarification is needed. Milk may be considered a receipt for accounting and pricing purposes only at a "plant", and may not be considered a receipt for either purpose at a reload point at which bulk milk is transferred from one tank truck to another.

Pool plant. It is necessary to establish minimum performance requirements to distinguish between plants that serve the fluid milk needs of the regulated market and those that do not serve the market to a degree that warrants their sharing in the Class I utilization of the market by being included in the marketwide pool. The pooling standards for distributing plants and supply plants that are included in the attached order are the most appropriate means of determining which plants should be eligible to share in the marketwide pool under the marketing conditions present in the merged marketing area.

The pool plant definition of the merged order should be based on those contained in the two present orders. Because the pool status of handlers that customarily have been pooled under the two separate orders should not be altered by the provisions of the merged order, the pooling standards adopted for the merged order should reflect the more liberal of the pooling standards contained in the separate orders.

The proposed pool distributing plant definition, based on the definition in the Puget Sound-Inland order, should be adopted with some modification. The proposed pool supply plant definition, based on the definition in the Oregon-Washington order, also should be incorporated in the merged order in a modified form. The proposed definition of a cooperative supply plant should not be adopted. A provision allowing the Director of the Dairy Division to revise temporarily the pooling standards for distributing and supply plants should be included in the merged order.

The Darigold witness testified that the percentage of receipts disposed of as route dispositions within the marketing area required for pool status under the present Puget Sound-Inland Federal order would be an appropriate standard for determining pool qualifications under the proposed merged order. He stated that the Oregon-Washington order's separate requirement that a minimum of 30 percent of a handler's total receipts be distributed on routes is probably not necessary for the merged order, as most of the out-of-area sales by handlers currently regulated under the two separate orders are within the marketing area of the other order. Therefore, he concluded, handlers regulated under the merged order should have a relatively small volume of route dispositions outside the marketing area, and should be subject only to a requirement that 10 percent of their receipts be distributed on routes within the marketing area. The witness also advocated adoption of a provision of the present Oregon-Washington order that allows a handler operating more than one distributing plant to have those plants considered on a combined basis for the purpose of meeting pooling qualifications.

The Darigold witness supported adoption of the same supply plant pooling requirements currently in effect under the Oregon-Washington order. He urged that the pool supply plant definition continue as part of the merged order so that organizations currently operating nonpool plants that receive substantial quantities of Grade A milk by diversion from handlers or cooperative associations may qualify as pool supply plants if they so desire. The percentage of receipts proposed to be required of pool supply plants as shipments to pool distributing plants is the same as that contained in the present Oregon-Washington order. During the months of September through November, a pool supply plant would have to ship to pool distributing plants or distribute on routes in the marketing area at least 40 percent of the producer milk physically received at the plant or diverted directly from producers' farms to another plant. The applicable percentage for other months would be 30 percent. Direct shipments of producer milk could be counted for qualification only to the extent they do not exceed transfers of bulk milk from the supply plant.

The witness explained that at present, there is only one pool supply plant regulated under the Oregon-Washington order, and none under the Puget Sound-Inland order. The witness pointed out that at times in the past more than one supply plant has been regulated under the Oregon-Washington order, and that the possibility that there may be other supply plants in the future would justify inclusion of a provision that would allow two or more supply plant operators to have their plants' pool qualifications determined on a combined basis. Such a provision, he explained, is included in the present Oregon-Washington order.

In addition to the definition for a pool distributing plant and a pool supply plant, the Darigold representative supported adoption of a provision defining a "cooperative supply plant" as a pool plant. The witness explained that cooperative associations generally provide services to the market which are not provided by proprietary plants, such as operating a plant that separates milk and provides skim milk to pool distributing plants as required. He stated that because of seasonal variations in demand for bulk skim milk, a cooperative association operating such a plant may find it difficult to meet the necessary volume of milk shipments required to meet pooling qualifications. For this reason, the witness advocated defining as a pool plant a cooperative association plant that ships at least 30 percent of its receipts of producer milk to pool distributing plants by any combination of direct shipments (from farm to plant) and transfers from the supply plant to distributing plants.

The Darigold witness also supported adoption of a provision not currently contained in either order that would allow the Director of the Dairy Division to make temporary adjustments in the performance standards for the pooling qualification of distributing plants, supply plants, and cooperative supply plants. The witness stated that such a provision would give the order flexibility in dealing with sudden or marked increases or decreases in supply, demand, or both, without necessitating emergency hearings to amend the pooling standards.

A spokesman for Tillamook County Creamery Association (TCCA) testified that modifications to the proposed "cooperative supply plant" definition would be necessary if the provision is to meet TCCA's needs and current operations. He proposed limiting the months during which such a supply plant would be required to meet the proposed order's 30-percent shipping requirement to the months of September through February, and adding a provision that would allow a "cooperative supply plant" that met the order's shipping requirements for those months to be pooled for the months of

March through August without having to meet required shipping percentages. The witness stated that such modifications are necessary to assure the continued pooling of TCCA members' milk without requiring uneconomic and inefficient handling solely for the purpose of maintaining the producers' association with the pool. He observed that TCCA would have failed to qualify for pooling under the proposed standards in three summer months of each of the past two years, and barely would have met the standards in three additional months during that period. According to the witness, a lower percentage of shipping requirement is also necessary to accommodate the pooling of the rapidly increasing volume of milk produced by TCCA members. The witness testified that TCCA currently is pooled under the existing pool supply plant definition of the Oregon-Washington order, and suggested that the proposed "cooperative pool supply plant" definition would better accommodate TCCA's operations if it were modified to more closely resemble the order's present pool supply plant definition.

A witness representing Olympia Cheese Company, a proprietary cheese plant, testified that the small cooperative associations that supply milk to Olympia Cheese are facing increased difficulties in meeting the order's requirements for pooling their members' milk. The witness stated that if the Olympia Cheese operation, which is currently a nonpool plant, were able to qualify as a pool supply plant by separating milk and supplying skim milk to distributing plants, the cooperative associations supplying milk to the cheese plant would be assured of the pool status of their members' milk, and Olympia Cheese would be assured of a continued supply of milk. For Olympia Cheese to achieve pool supply plant status, the witness suggested, the proposed pool supply plant definition should be modified to require only 30 percent of a supply plant's receipts year-round to be shipped to pool distributing plants. He stated that such a modification would eliminate what he characterized as the proposed definition's discrimination against proprietary supply plants and in favor of cooperative-owned supply plants.

The proposed pool distributing plant definition should be adopted with only minor modification. Although the proposed percentage of receipts used in route disposition, in total and within the marketing area, (10 percent) is quite low for the purpose of defining a plant primarily engaged in the processing and distributing of fluid milk, the proposed percentage apparently is necessary to ensure the continued pool status of a plant that historically has been pooled under the Puget Sound-Inland order. An exhibit in the hearing record indicates that during at least one month of the 17 months preceding the hearing, the distributing plant in question exceeded the 10-percent requirement by only one percentage point. According to the exhibit, all of the other distributing plants pooled under the two orders during the four months covered in the exhibit disposed of at least 40 percent of their receipts as fluid milk products on routes. Although the proposed standard of route dispositions as a percentage of receipts may not be high enough to avoid pooling plants that are not primarily distributing plants, that level has existed in the Puget Sound-Inland order for some time and there was no testimony that would support increasing it.

Because the total percentage of receipts required to be disposed of on routes to assure pool status is to be set at such a minimal level, there is no reason to incorporate in the merged order the provision of the present Oregon-Washington order that allows a handler operating two or more distributing plants to have their operations considered on a combined basis for the purpose of meeting pooling standards. The Oregon-Washington order requires a pool distributing plant to distribute at least 30 percent of its receipts as route dispositions. Under such a requirement, it is possible that a handler who would find it more economical to concentrate milk by-product processing in one of its distributing plants could still justify having such a plant pooled on the basis of the combined receipts and route dispositions from two or more distributing plants. It would be difficult, however, to consider any plant that distributes less than 10 percent of its receipts on routes as qualifying as a distributing plant regardless of the extent of fluid milk dispositions from any of its operator's other plants.

The two proposed pool supply plant definitions should be combined into one. According to the hearing record, the only plant that either of the two proposed definitions would apply to at the present time is the TCCA plant. Adoption of the "cooperative supply plant" definition would result in the TCCA plant being pooled under that definition only when it failed to meet the shipping standards of the regular "pool supply plant" definition. Such changes in regulation are needlessly confusing. The TCCA witness testified that certain modifications of the proposed "cooperative supply plant" definition would assure the continued pooling of the TCCA supply plant. Application of the suggested modifications and certain features of the proposed "cooperative supply plant" definition to the regular "pool supply plant" definition would eliminate the need for a second "supply plant" definition. It would also allow the order to avoid establishing differing pool standards for cooperative and proprietary pool plants.

The pool supply plant definition should establish a year-round shipping standard of 30 percent, rather than a higher standard for certain fall months. This standard would allow TCCA to maintain the pool status of its members' milk and would accommodate the increasing volume of producer milk handled by the association. In addition, a cooperative's member producer milk which is delivered directly to pool distributing plants should be included as qualifying shipments without any limit on the quantity which may be so included. Such shipments represent as great a commitment by a cooperative to supplying the market's fluid milk needs as do transfers from a supply plant. One of the principal distinctions between the proposed "supply plant" and "cooperative supply plant" definitions is that the "supply plant" definition limits the amount of direct-shipped milk that may be included in a supply plant's qualifying shipments to the amount of milk transferred from the supply plant to pool distributing plants. Maintaining such a limit serves no real purpose under either definition, and therefore should not constitute a reason to define a special category of pool supply plants.

The inclusion of a supply plant's route dispositions of fluid milk products within the marketing area as a qualifying shipment should be continued under the merged order, as should the provision enabling a supply plant that qualified for pooling during the months of September through February to continue to be pooled in each of the following months of March through August. These are provisions that have been included in the Oregon-Washington order and apparently are necessary to maintain the pool status of the TCCA supply plant and TCCA's member producers.

The proposed provision that would allow the Director of the Dairy Division to revise pool plant performance standards temporarily if such revision is found to be appropriate should be adopted. Such a provision will give the merged order needed flexibility to deal with fluctuations in supply and demand.

Without such a provision, the only possible adjustments to rapidly changing marketing conditions are suspensions, which leave an order with no pooling standards at all, or amendatory proceedings, which do not allow timely action. Allowing the Director the discretion to temporarily adjust pooling standards, with appropriate input from the industry, is a means by which timely reaction to changed marketing conditions may be achieved.

Under the paragraph in the "pool plant" definition that describes plants that are not to be considered pool plant is a description of a "portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition." In his testimony, the principal Darigold witness advocated that such a portion of a plant be allowed to be connected by pipeline to the Grade A or pooled portion of the plant for the purpose of easily moving surplus milk and cream from the pool plant to the nonpool plant. Such an arrangement may make it difficult to assure that milk is moving through the pipeline only in the amounts and direction reported by the handler. If milk is to be allowed to move by pipeline from a pool plant to a nonpool plant located on the same premises, each individual arrangement must meet with the market administrator's approval by complying with specific guidelines developed by the market administrator. Only under fairly close scrutiny can it be assured that a pipeline arrangement from a pool plant to a nonpool plant is operated in conformity with the order.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and/or making payments for milk under the merged order. The handler definition proposed by proponents should be adopted. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to the milk of producers that it causes to be picked up at the farms and delivered to a pool plant unless the cooperative and the pool plant operator agree that the pool plant operator will be the handler on such milk, or diverted for the cooperative's account to a nonpool plant;

(3) The operator of an other order plant from which milk is disposed of in the marketing area;

(4) A producer-handler;

(5) The operator of a partially regulated distributing plant;

(6) The operator of an unregulated supply plant; and

(7) The operator of an exempt plant.

All such persons are now defined as handlers under the Puget Sound-Inland order, and most are so defined under the present Oregon-Washington order. Each person that may incur an obligation (reporting and/or financial) under the order should be designated a handler. This will assure that all information necessary to determine their regulatory status under the order can be readily determined by the market administrator.

Proponent witness testified that the proposed definition is essentially the same as those contained in the separate orders and is intended to serve the same purpose. Specifically, the definition is identical to the one contained in the present Puget Sound-Inland order. Adoption of the handler definition described above should help to assure orderly marketing in the merged marketing area.

A proposal to adopt a "cooperative reseve supply unit" should be adopted, but not as part of the handler definition. The "cooperative reserve supply unit" is discussed below.

Producer-handler. The merged order should continue the exemption now contained in each of the two individual orders of a "producer-handler" from the pooling and pricing provisions of the order. Under the merged order, the definition of a producer-handler should be the same as that now contained in the Puget Sound-Inland order.

Proponent witness stated that retaining the provision of the present Puget Sound-Inland order that requires a producer-handler to distribute a daily average of at least 300 pounds of fluid milk products on routes will eliminate from producer-handler status 5 of the operations that currently have producer-handler status under the Oregon-Washington order.

The witness for proponents observed that the percentages of Class I disposition by producer-handlers in the Puget Sound-Inland and Oregon-Washington marketing areas are, respectively, the highest and third highest of any Federal orders in the United States. He cited such activity as evidence that the producer-handler provisions in these orders are not unduly restrictive. The witness stated that any relaxation of the present and proposed provisions would provide producer-handlers an additional unfair advantage in their competition with regulated handlers for the sale of fluid milk products on routes in the marketing area.

In addition to testimony about the provisions proposed for the actual producer-handler definition, proponent witness testified that the proposed order should include a provision of the present Oregon-Washington order that directs that fluid milk producers received or acquired for disposition by a pooled handler from a producer-handler be allocated to the extent possible first to Class III, then to Class II, and finally to Class I use. The witness stated that the provision had been incorporated into the Oregon-Washington order at its promulgation in response to a situation in which a handler wished to receive unlimited quantities of packaged products from a producer-handler at a location outside the handler's plant without accounting to the pool for such receipts.

A primary basis for exempting a producer-handler from the pricing and pooling provisions of the order is that such a person customarily has a relatively small operation and is operating in a self-sufficient manner. The milk that is processed, packaged and distributed by a producer-handler is obtained from the producer-handler's own production. Any fluctuation in a producer-handler's daily and seasonal milk needs is met through his own farm production, and any excess milk supplier are disposed of at his own expense. Under this arrangement, a producer-handler seldom can be a major competitive factor in the market for regulated handlers, nor can such a person have a preferred market for his milk relative to producers who supply the regulated handlers and share in the proceeds of the marketwide pool.

If a producer-handler processes milk from his own farm but also relies on pool plants for substantial supplies, either in bulk or packaged form, his operations are not significantly different than the operations conducted by a pool handler. Since his operation is not fully regulated, the pool does not receive the benefits of the producer-handler's Class I sales. At the same time, the other producers in the market are bearing the cost of balancing his operation by carrying such operator's necessary reserve milk supplies. Such an operator should not have producer-handler status under the merged order, but should be accorded pool status similar to that of any other handler receiving milk directly from dairy farms.

There was no opposition to adoption of the producer-handler definition as proposed. In view of the fact that producer-handlers supply a significant share of the fluid milk dispositions in the marketing area, and yet are not subject to the same pricing and pooling provisions of the order as are regulated handlers, it is appropriate to require producer-handlers to rely almost totally on their own milk production to balance their fluid sales and to find outlets for their surplus production outside the fluid market. Only in this way can there be any reasonable assurance that their exemption would not have an adverse impact on the market.

Therefore, as adopted herein, a producer-handler would be allowed, within the limitations on supplemental purchases, to purchase fluid milk products in bulk or packaged form. This change would not undermine the concept of self-sufficiency, but rather would provide a producer-handler with the flexibility to purchase supplemental fluid milk products in the form that fits his needs. It is appropriate to include handlers who produce and distribute less than 300 pounds of milk per day in the order's "exempt plant" definition. Such handlers represent far too small a share of the total market for fluid milk production to justify the same degree of administrative attention necessary to assure that larger producer-handlers operate within the parameters of the producer-handler definition adopted herein.

The provision of the Oregon-Washington order directing that products acquired from a producer-handler for sale by a regulated handler be reported as receipts and allocated first to Class III, then to Class II, and finally to the handler's Class I use, should be included in the merged order. Adoption of this provision also requires that any such receipts allocated to Class I will be subject to a compensatory payment to the producer-settlement fund at a rate determined by the difference between the Class I and Class III prices.

Without such a provision, a producer-handler would be able to find a fluid outlet for any of its milk production that might exceed demand for its fluid milk products sold through customary channels. In addition, regulated handlers associated with retail outlets would have access to unregulated and potenially lower-cost supplies of fluid milk products, giving them a competitive advantage over other pooled handlers who must pay the order's Class I price for fluid milk products disposed of on routes.

Cooperative reserve supply unit. A proposal to include in the merged order a "cooperative reserve supply unit" should be adopted. Such a provision will assure the continued pooling of the milk of coooperative association members having an historical relationship with the market. In order to qualify as a reserve supply unit, a cooperative association must have been a handler of producer milk under the merged order or one of its two predecessor orders for at least the immediately preceding twelve months. In addition, a cooperative reserve supply unit must supply milk to pool distributing plants located within 125 miles of the majority of its producers as directed by the market administrator when the market administrator has determined that such shipments are necessary to assure consumers an adequate supply of fluid milk products.

The "cooperative reserve supply unit" provision was proposed on behalf of two cooperative associations whose members' milk is pooled under the Oregon-Washington and Puget Sound-Inland orders. A witness representing one of the cooperatives, Northwest Independent Milk Producers Association (NWI), testified that the production of NWI members represents approximately 1 percent of the milk pooled under the two Northwest orders. He stated that NWI historically has marketed 25–30 percent of its members' production to a pool distributing plant, with the balance diverted to a nonpool cheese plant, and asserted the cooperative's willingness to continue to supply the fluid market. However, the witness testified, NWI's sole pool distributing plant customer signed a full-supply agreement with Darigold in October 1986 for necessary shipments of milk to supplement the plant's nonmember milk supply. He stated that he contracted and met with out the pool plant operators in the marketing area in an unsuccessful attempt to arrange for alternative pool outlets for the cooperative's milk. The witness described NWI's position as a participant in the marketwide pool as vulnerable, although the cooperative's pool plant customer has continued to receive enough of NWI's production to assure the pool status of the cooperative's members. He urged adoption of the "cooperative reserve supply unit" provision as a means of correcting the potential inequity of being excluded from the marketwide pool. The witness stated that failure to qualify the cooperative's member producers' milk for pooling would result in their receiving 65 to 70 cents per hundredweight less for their milk than pooled producers receive.

The NWI witness recommended that the "call area" from which the market administrator could require milk to be shipped by cooperative reserve supply units from members' farms to pool distributing plants be defined as 100 miles. He stated that this would represent a reasonable distance over which milk supplies needed for fluid use might be required to be shipped. The witness observed that adequate supplies of milk for fluid use are produced within 100 miles of both Portland and Seattle, and that expanding a "call area" much beyond 100 miles would result in inefficient and prohibitively expensive hauling.

The witness representing Darigold and NDA testified that those organizations would have no objection to a "cooperative reserve supply unit" provision as long as certain safeguards are included so that producers not actually associated with the market would not be eligible to participate in the marketwide pool. The Darigold representative proposed that a "cooperative reserve supply unit" be required to have qualified for pool status for the 24 consecutive months immediately preceding its reserve supply unit status, and that the headquarters and all of the producer members of the association should be located within the marketing area. The witness based the need for such modifications on the possibility that producer groups having no real historical supply relationship with the market might otherwise attempt to be pooled under the provision.

The provision defining a "cooperative reserve supply unit" should be included in the merged order to assure the continued pooling of the milk of producers historically associated with the market. The provision will protect the member producers of marketing cooperatives who have been associated with the market over a significant period of time and have demonstrated their willingness and ability to supply milk to the fluid market from losing their association with the pool as a result of forces beyond their control. The order's requirement that such an association supply milk to pool distributing plants as specified by the market administrator in order to retain pool status will assure that the milk supplies of a "cooperative reserve supply unit" would be made available for fluid use whenever needed by the market. The specific order language proposed by proponent should be modified to better reflect the role that a cooperative reserve supply unit would play in the merged order. It is not necessary to define such an entity as a "handler" since the only means it has of marketing its members' milk is by moving it to either pool plants or

nonpool plants. Both of those possible movements, when directed by a cooperative, are already included in the handler definition. Therefore, a "cooperative reserve supply unit" has been defined in a separate section, and an exemption from the constraints of diversion limits has been included in the "producer milk" definition.

In addition, the concept of a "call area" to determine the area containing the producers whose milk is required to be shipped and the pool distributing plants to which the milk is to be shipped is not appropriate in the context of this provision. The area encompassing the locations of producers' farms is likely to be more difficult to delineate than the supply plants from which milk supplies are "called" under similar provisions in other orders. The market administrator has the information necessary to determine whether the members of any "cooperative reserve supply units" are within a reasonable distance of pool distributing plants in need of milk supplies and, if so, how much milk should be shipped. The testimony dealing with the distance over which such shipments should be required indicated that some producers in Whatcom County, Washington, are more than 100 miles from Seattle, the nearest likely market for their milk. Therefore, a reserve supply unit should not be "called" upon for milk needed at locations more than 125 miles from the majority of its producers. It would not be reasonable to compel such a unit to move milk several hundred miles if there is an adequate supply nearer to the area experiencing a shortage. It also would not be reasonable to require shipments from a cooperative reserve supply unit at a percentage level of its supply that exceeds the percentage of milk supplied to pool distributing plants by other pooled handlers.

Another change needed in the proposed definition is in the penalty for failure of a unit to comply with any announced shipping requirements. The penalty proposed by proponent, that loss of reserve supply unit status would preclude the unit from qualifying for such status for a period of one year, leaves unclear the status of the cooperative for the next year and the steps that must be taken for such a unit to regain "cooperative reserve supply unit" status. Instead of the proposed language, the merged order should require a cooperative that loses reserve supply unit status to meet the order's pooling requirements for 12 consecutive months before again becoming eligible for "cooperative reserve supply unit" status.

Darigold's proposed modification to the provision, that a cooperative reserve supply unit be required to meet the order's pooling standards for its producers' milk for 24 consecutive months, is not necessary and should not be adopted. A handler whose producers have been pooled for 12 consecutive months has demonstrated a considerable association with the fluid milk market. Extending the period to 24 months would serve no useful purpose beyond delaying for a year a handler's ability to pool milk under the "cooperative reserve supply unit" provision. Darigold's argument that a handler can obtain a 12-month milk supply contract to meet the order's delivery requirements is not sufficient to require a 24-month association with the market. The order cannot erect unreasonable barriers to the entry of producers or producer groups that are not currently included in the marketwide pool.

Another proposed modification, that the headquarters and all of the members of a reserve supply unit be located within the marketing area, is not a reasonable restriction. The market statistics clearly show that milk production for the two orders is not normally limited to the marketing areas of the orders. Production from counties on the Olympic Peninsula and from other counties near the boundaries of the present marketing areas is currently pooled under both of the present orders. There is no basis on which to limit the membership of cooperatives operating reserve supply units to the marketing area when other cooperatives are not so limited. However, because a reserve supply unit will be required to ship milk only to pool distributing plants located within 125 miles of the majority of its producers, only those units having a majority of their member producers located within 125 miles of a pool distributing plant should qualify for reserve supply unit status.

Changes in other order provisions that will accommodate the pooling of milk handled by a "cooperative reserve supply unit" should be made where necessary.

Producer milk. For the most part, the producer milk definition should be very similar to the one proposed by proponents, which is the same as the current Puget Sound-Inland definition, and similar to the present Oregon-Washington definition. However, some changes in the producer milk definition of the merged order will be necessary to accommodate the continued pooling of the milk currently pooled under the two orders, and to conform with other features of the merged order. As in the case of pool provisions for handlers, the pool status of producers that customarily have been pooled under the two separate orders should not be altered by the provisions of the merged order. Therefore, the pooling standards adopted for producers and producer milk under the merged order should reflect the more liberal of the pooling standards contained in the separate orders.

Adoption of the "cooperative reserve supply unit" provision will necessitate omission of references to "diversion from" particular kinds of plants. By definition, milk pooled by a reserve supply unit will have no attachment to any particular pool plant, and therefore cannot be considered as being "diverted from" a pool plant. Milk delivered directly to manufacturing plants can be considered to be "diverted from" the fluid market rather than from a pool distributing plant or a pool supply plant. This change in the terminology relating to diverted milk will result in non-substantive changes in the wording of some of the paragraphs of the "producer milk" definition. Additionally, it will require that the proposed distinction between the percentages of allowable diversions from pool distributing plants and pool supply plants be omitted.

The language requiring different levels of allowable diversions from pool distributing and pool supply plants is contained in the present Puget Sound-Inland order. The only supply plant expected to be pooled under the merged order is operated by Tillamook County Creamery Association. The plant is currently a supply plant under the Oregon-Washington order, which applies the same diversion limits to all producer milk, regardless of the type of pool plant from which it is diverted.

The limits on diversions of producer milk proposed for the merged order are taken from the Puget Sound-Inland order, and are slightly more liberal than those in the present Oregon-Washington order. Allowances for the movement of producer milk direct from producers' farms to nonpool plants enable handlers to move milk more economically and efficiently than if all producer milk were required to be received first at pool plants. The proposed 80-percent limit on diversions of producer milk during the months of September through April, with no limit during May through August, will permit handlers the same degree of flexibility and efficiency in handling milk that they now enjoy under the Puget Sound-Inland order.

Also as proposed by proponents, the merged order should contain no

restrictions on the amount of an individual producer's milk that may be diverted to nonpool plants (commonly referred to as "touch-base" requirements). Proponent witness testified that a large portion of the milk pooled under the Puget Sound-Inland order is produced in Whatcom County, Washington, located 110–120 miles from Seattle and from most of the order's pool plants. According to the witness, most of the Whatcom County milk is delivered directly to a nearby manufacturing plant. The Darigold witness stated that milk produced in such locations, much closer to manufacturing outlets than to any pool plants, should not be required to be delivered to a pool plant simply to demonstrate an association with the market.

The present Puget Sound-Inland order has no requirement that any particular percentage or amount of each producer's milk be received at pool plants, and there is no basis in the record of this proceeding on which more demanding delivery requirements could be adopted. Therefore, in accordance with the approach of adopting the more liberal pooling requirements of the two present orders, the merged order should contain no "touch-base" requirement.

5. *Handler reports.* Reports required to be submitted by handlers should be the same as those currently required under the Puget Sound-Inland order, and similar to those proposed by proponents. Exempt plants and unregulated supply plants should not be required to report in the same detail as pooled handlers are required to do. Instead, any requirements of such handlers to file reports would be at the discretion of the market administrator.

The adopted requirements for handler reports, payroll reports and other reports are identical to those currently contained in the Puget Sound-Inland order and very similar to those of the present Oregon-Washington order. Proponenet failed to establish sufficient reason for requiring exempt and unregulated supply plants to be subject to the same reporting requirements as regulated handlers. There was no testimony that any current difficulties exist in evaluating the status of such plants. Therefore, such handlers should be required to file no more reports, nor in any greater detail, than prescribed by the market administrator.

6. *Classification of milk.* The merged order should use essentially the same uniform classification plan that is commonly provided in most other Federal milk orders. However, the plan should be modified in several respects to conform to local market conditions. Basically, the plan adopted herein provides, as is the case under the individual orders, for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another and the classification of shrinkage. The plan also sets forth a procedure for allocating a handler's receipts of milk and milk products from various sources to his utilization in each class in order to determine the classification of producer milk.

Under the classification plan here adopted, Class I milk would include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milkshakes and ice milk mixes containing less than 20 percent total solids and mixtures of cream and milk or skim milk containing less than 15 percent butterfat. Skim milk and butterfat disposesd of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, would be classified as Class III.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted as Class III classification.

Class III milk should include products which are make from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Additionally, Class III milk should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 15 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products and bulk cream products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, milk or milk products sterilized and packaged in hermetically sealed metal or glass containers, and certain other products as specified in the order.

The classification plan adopted herein was proposed by the merger proponent and embraces the basic features of the uniform classification plan contained in many other Federal orders. This plan was developed from exhaustive hearings held on the broad issue of classification in 1971 for 39 markets. A full discussion and appropriate order language on the uniform classification plan is contained in a final decision issued February 19, 1974 (34 FR 8202, 8452, 8712, 9012). This decision was duly noted on the record of this proceeding. Proponent testified that this classification system, with certain minor revisions, would be fully appropriate for the merged order and would comport with the need for greater uniformity among those essential provisions of marketing orders that should be uniform.

The minor revisions to the uniform classification plan applicable to most orders, which were proposed by the merger proponent and adopted herein,

concern the classification of certain fluid cream products and ending inventories of packaged fluid milk products. Under the adopted classification plan, any mixtures of cream and milk or skim milk containing less than 15 percent butterfat would continue to be Class I. Such products are Class II under the 39-market uniform classification plan. Although inventories of fluid milk products in packaged form on hand at the end of the month are included in Class III in most other Federal orders, they should be classified in Class I under the merged order. Such inventories in bulk form, however, should be classified in Class III. This procedure for handling fluid milk product inventories is identical with that provided under both the present Puget Sound-Inland and Oregon-Washington orders.

Such revisions to the 39-market uniform classification plan that are herein adopted make allowance for the provisions under which Northwest handlers are accustomed to operating. On the basis of the hearing record, there is no reason to change the classification of cream and milk mixtures containing less than 15 percent butterfat (half-and-half) from Class I to Class II. Proponent witness supported retaining such products in Class I on the basis that they are customarily used in coffee as a beverage and as an alternative to whole milk for many purposes. The witness explained that the limit on the butterfat content of fluid milk products should be reduced from 18 percent to 15 percent in order to eliminate any possibility of sour cream being classified as a fluid milk product instead of a fluid cream product.

A brief filed on behalf of Carnation Company, a proprietary handler operating three pool distributing plants in the proposed merged marketing area, proposed lowering the limit on butterfat content of fluid milk products from the current level of 18 percent to 9 percent. The handler supported such a change by stating that half-and-half and related by-products are classified in Class II by Federal orders in surrounding states, and that such products are moving greater distances than before from processing plants through grocery chain warehouse deliveries. The Carnation brief also advocated Class II classification for "biscuit mix", a skim milk formula with added stabilizer, salt and biscuit flour. The handler observed that such a product has been classified as Class II in the Ohio Valley Federal order.

Although the uniform classification plan does classify a milk and cream mixture containing 9 percent or more butterfat in Class II, there is no evidence that the proposed merged order should do so. The only Federal order in a state adjoining the proposed marketing area is the Southwest Idaho-Eastern Oregon order. The nearest distributing plant in that market is in Boise, Idaho, located nearly 400 miles from distributing plants in Spokane, Washington, and over 400 miles from distributing plants in Eugene or Portland, Oregon. Although milk products such as half-and-half may be moving greater distances than before, there is no testimony or data in the hearing record that would support a conclusion that handlers in the proposed merged marketing area are competing for sales of half-and-half with handlers from other areas who are subject to a lower price. Similarly, there is nothing in the hearing record that would support a Class II classification for "biscuit mix".

At the hearing, proponents' principal witness testified that certain diversion provisions in each of the two orders should not be included in the merged order. The merged order proposed by proponents would omit the Oregon-Washington order provision allowing pooled handlers to divert milk from producers' farms to other pool plants at Class III use if so requested by both handlers. The witness suggested that the Puget Sound-Inland order provision allowing producer milk to be diverted to a commercial food processor located in Pacific County, Washington, and classified as Class II not be included in the merged order because the commercial food processor affected by the provision has moved its operation to Seattle and no longer receives diverted producer milk.

The ability of handlers to divert milk from producers' farms to other pool plants and to commercial food processing plants should be retained in the merged order, with diversions between pool plants accommodated in all three classes of use. Direct shipments of producer milk are the most efficient and economical means of moving milk from farms to the plants in which it ultimately will be used. Such efficiencies should not be prohibited by order provisions. Although the food processing plant that previously received such shipments apparently has ceased to do so, such a means of disposing efficiently of producer milk surplus to the fluid needs of the market should continue to be available to other milk handlers and commercial food processors. The order should continue to assure that the records of a commercial food processing plant receiving Class II milk by transfers or diversions from regulated handlers will be available to the market administrator for audit and verification purposes.

Two changes in the order language included with the recommended decision have been made in the order language accompanying this decision to reflect accommodation of producer milk diversions to pool, as well as to nonpool, plants.

7. *Class prices, location adjustments and butterfat differential.* The Class I price for the merged Pacific Northwest market should be the basic formula price for the second preceding month plus a Class I differential of $1.90. This price should apply to plants located within zones established to approximate distances of 90 miles from Spokane and Seattle, Washington; and Eugene and Portland, Oregon. For the purpose of applying location adjustments, the marketing area should be divided into four pricing zones. Zone 1, which would be the base zone and would have no price adjustment, should include northern Idaho and most of eastern Washington; western Washington, except for the counties of Clallam, Jefferson, San Juan and Whatcom; and western Oregon north of, and including, Douglas County. Zone 2, with a location adjustment of minus 6 cents, should consist of Whatcom County, Washington. Zone 3 would have a location adjustment of minus 8 cents, and would include three southern Oregon counties. Zone 4 would have a minus 15-cent location adjustment, and would include the Idaho counties of Lewis and Nez Perce, twelve central and northeastern Oregon counties, fourteen central and southeastern Washington counties, and three northwestern Washington counties. The Class II and Class III prices to be effective under the merged order should be adopted as proposed.

The location adjustment for each zone, the resulting Class I differential (shown parenthetically), and the territory that should be included in each zone are as follows:

Zone 1—No Adjustment ($1.90)

Idaho Counties

Benewah	Boundary	Latah
Bonner	Kootenai	Shoshone

Oregon Counties

Benton	Hood River	Multnomah
Clackamas	Lane	Polk
Clatsop	Lincoln	Tillamook
Columbia	Linn	Washington
Douglas	Marion	Yamhill

Washington Counties

Clark	Island	Lincoln
Cowlitz	King	Mason
Ferry	Kitsap	Pacific
Grays Harbor	Lewis	Pend Oreille

Pierce	Skamania	Thurston
Skagit	Spokane	Wahkiakum
Snohomish	Stevens	Whitman

Zone 2—Minus 6 cents ($1.84)

Whatcom County, Washington

Zone 3—Minus 8 cents ($1.82)

Oregon Counties

Coos	Jackson	Josephine

Zone 4—Minus 15 cents ($1.75)

Idaho Counties

Lewis	Nez Perce

Oregon Counties

Crook	Klamath	Umatilla
Deschutes	Lake	Wallowa
Gilliam	Morrow	Wasco
Jefferson	Sherman	Wheeler

Washington Counties

Adams	Douglas	Klickitat
Asotin	Franklin	Okanogan
Benton	Garfield	San Juan
Chelan	Grant	Walla Walla
Clallam	Jefferson	Yakima
Columbia	Kittitas	

At plant locations outside the zones specified above, the Class I price and the uniform price to producers should be reduced by 1.5 cents for each 10 miles that the plant is from the nearer of the county courthouse in Spokane, Washinton; the Multnomah County Courthouse in Portland, Oregon; or the city hall in Eugene, Oregon.

The single butterfat differential currently in use under the Puget Sound-Inland order should be adopted for the merged order, rather than the provisions of the Oregon-Washington order under which the price of milk used by handlers in Class I is adjusted by a different butterfat differential than the price of milk used in Classes II and III.

Class I price. The Class I price differentials effective at the primary population centers of the merged marketing area should be changed to $1.90. Currently, the Class I price differential at Portland, Oregon, and Spokane, Washington, is $1.95, while the corresponding differential at Seattle, Washington, is $1.85.

The Darigold witness testified that adequate supplies of milk are produced within short distances of each of the Pacific Northwest cities in which population and distributing plants are concentrated. He also observed that packaged Class I milk products move freely between the population centers without being impeded by the price differences. The witness stated that the proposed reduction in the Class I price level at Portland and Spokane would more than offset the effect of the proposed increase at Seattle on prices to producers.

A producer from the Spokane area opposed the proposed 5-cent reduction of the Class I differential at Spokane. Instead, he suggested, the differential should be increased to $2.00. The witness expressed his concern that the proposed 5-cent increase in the Class I differential at Seattle would cause dairy farmers to move their operations to the Seattle area for the benefits of a higher Class I price and lower hauling costs. He also stated that the proposed change would cost him 5 cents per hundredweight.

Adoption of the $1.90 Class I differential for all of the marketing area's population centers will bring the prices for fluid milk at those locations into line without significantly changing total returns to producers. In view of the volume of milk supplies produced in the vicinity of all the market's population centers, there is no reason to maintain a higher price level at some of the metropolitan areas than at others. The hearing record provides no support for the Spokane-area producer's concerns about a reduction in his returns for milk or a migration of dairy farmers from eastern Washington State to the Seattle area. The effect of the decrease in the Class I differential at Spokane and Portland will be largely offset by the increase in the Class I differential at Seattle. As a result, little change in the uniform price paid to producers should be attributable to the changes in Class I differentials. As a result of the merger of the two orders, however, the uniform price paid to producers currently pooled under the Puget Sound-Inland order should increase by several cents. Such an increase would result from the relatively higher percentage of milk used in Class I in the Oregon-Washington market.

As for the possibility of eastern Washington producers moving to the Seattle area because of the increase in the Class I price there, in combination with lower hauling rates, such a shift in production area is unlikely. For one thing, producers in both parts of the marketing area will be receiving the same uniform price, regardless of the class in which their milk is used. For another, the Washington area that appears to be experiencing marked increases in milk production is Yakima County. Milk received at plants located in central Washington is subject to significant location adjustments under both of the two separate orders, reducing prices to producers by 15 or 20 cents below the uniform price. Milk produced in Yakima County that is surplus to the fluid milk needs of central Washington handlers must be hauled over 150 miles to the nearest plants in Spokane, Portland or the Seattle area, at substantial hauling costs to producers. In spite of these advantages in price and hauling cost, Yakima County appears to be one of the fastest-growing areas of milk production in the merged marketing area. It is apparent that there are factors beyond the local Class I differential and effective hauling rates that influence milk production trends in any given area.

Proponents originally proposed that the Commodity Credit Corporation allowance for manufacturing butter and powder (currently $1.22) be used in the computation of the Class III price under the merged order instead of the 48-cent manufacturing allowance provided for in the two separate orders. At the hearing, proponents withdrew that proposed change, and stated that they wished to use the formula currently used in the two separate orders. Modification of the proposal was not discussed in the recommended decision, nor was the change incorporated into the order language accompanying the decision. Two of the merger proponents and Northwest Independent Milk Producers Association filed exceptions to adoption of the Class III price computation as originally proposed, noting correctly that failure to adopt the language as modified at the hearing must be the result of an error.

The Class III price computation in the merged order should reflect the modification proposed at the hearing by proponents. If adopted as originally proposed, the Class III price under the merged order could fall as much as 74 cents below the current Class III price level, depending on the margin by which the Minnesota-Wisconsin, or basic formula, price exceeds the butter-powder snubber price computed with the use of the designated manufacturing allowance. Such a price reduction would significantly reduce the blend prices to be paid to producers, and would give Pacific Northwest manufacturing plant operators a significant advantage in competing for sales of butter, cheese and nonfat dry milk with manufacturing operations elsewhere in the United States. Therefore, the Class III price computation procedure under the merged order should be changed from that contained in the recommended decision to the procedure followed in the two individual orders.

Location adjustments. A system of establishing location adjustments by the zone in which a plant is located is appropriate for the merged order, since location pricing under the separate orders is determined largely by zones. The amounts of most of the proposed adjustments are also appropriate, and should be adopted. The Darigold

witness testified that location adjustments should be reduced at all locations in the marketing area that are subject to adjustments to the Class I and uniform prices. He supported proponents' proposal that location adjustments be reduced from 10 cents to 8 cents in southern Oregon; from 18 and 20 cents to 15 cents in central Oregon; and from 20 cents under the Oregon-Washington order to 15 cents in central Washington. The 15-cent adjustment of this latter area, however, would mean a 5-cent greater adjustment than now exsits under the Puget Sound-Inland order. The witness also supported the elimination of location adjustments at locations between Seattle and Portland, and the reduction of the present 6-cent adjustment at locations in Whatcom County, Washington, to 3 cents.

The Darigold witness based his support of a reduction in the adjustments to be made in Class I and uniform prices on two principal arguments. First, he stated, location adjustments to producer prices under the Oregon-Washington order have been applied only to the amount of each producer's base production, and not to producers' total production. With the elimination of the base-excess plan, he said, location adjustments will be applied to the unform price for all of each producer's milk, and will have a greater impact on producer returns. According to the witness, another reason for reducing the amounts of location adjustments is to "modernize" the merged order. He cited recent Federal order decisions in which location adjustments were reduced, eliminated or not adopted as evidence of such a trend.

Opposition to the proposal to reduce the location adjustment at Darigold's Lynden, Washington, manufacturing plant in Whatcom County from 6 to 3 cents was expressed in two briefs received by the Department. Both Northwest Independent Milk Producers Association and Carnation Company protested that the current 6-cent location adjustment rate is too low when compared to the cost of handling milk from Whatcom County to Seattle. The handlers stated that Darigold's ability to charge its producers a very low hauling rate because of their proximity to Darigold's manufacturing plant makes it very difficult for other handlers to procure milk supplies in that area for the Seattle fluid milk market. The handlers argued that the location adjustment for Whatcom County should, if changed at all, be increased to more closely reflect the actual cost of hauling milk from Whatcom County to Seattle.

The location adjustments in most parts of the marketing area should be changed as proposed. Most of the locations affected by such price adjustments obtain milk supplies from producers currently pooled under the Oregon-Washington order. The location adjustments deducted from the prices paid for these producers' milk are calculated on the basis of the producers' base production. According to the Darigold witness, base production under the Oregon-Washington base-excess plan generally represents about 80 percent of producers' total production. Under the proposed merged order, each producer's entire production will be subject to the full price adjustment at the location of the plant at which it is received. Accordingly, a slight (approximately 20 percent) reduction in the location adjustment rates at those locations will result in a minimal impact on producer returns when considered with the elimination of the base-excess plan.

The proposed changes in location adjustments at locations in the Oregon-Washington marketing area should have little or no effect on the handlers at those locations. Most of the southern and central Oregon and central Washington handlers have, according to the Darigold witness, more than adequate supplies of milk available nearby and no nearby competition for producer milk supplies from manufacturing plants. The handlers in these areas are located at great enough distance from each other and from handlers in the zero location adjustment zone that changes of 2 to 5 cents in location adjustment rates should not affect their competitive relationships with other distributing plants.

The location adjustments effective at locations between Portland and Seattle under the two separate orders should be eliminated. Areas within 90 miles of Eugene, Portland, Seattle and Spokane should be free of location adjustments. The record indicates that ample milk supplies for the market's population centers are available within 90 miles of those centers. The distance between Portland and Seattle is less than 180 miles, so any plant located between the two cities must be less than 90 miles from either Portland or Seattle.

Location adjustments for the northern Olympic Peninsula and San Juan County, Washington, should be reduced by 1 cent, from 16 cents to 15 cents, as proposed. It appears that there are no pool plants in this area to which location adjustments could be applied. Therefore, the 1-cent change is unlikely to make any real difference.

Proponents' arguments for reducing the present 6-cent location adjustment at locations in Whatcom County, Washington, are less persuasive. The location adjustment should not be reduced. One reason given for such a reduction was that the nearby manufacturing plant in Lynden provides an outlet for milk surplus to the market's fluid needs, while location adjustments are still needed at locations in southern and central Oregon and central Washington precisely because no nearby manufacturing plants exist to provide an outlet for surplus milk produced in those areas. In fact, the situation thus described by the Darigold witness should result in a greater location adjustment for Whatcom County than, for instance, Jackson County, Oregon. The receipt of milk at a manufacturing plant located in an area of heavy milk production at some distance from the market's center is the classic situation to which location adjustments were designed to apply. Prices paid for such milk are adjusted downward for location to compensate for the fact that the milk has not had to be hauled to distant bottling plants but instead has been shipped a relatively short distance at a significantly lower hauling cost.

Another reason advanced by the Darigold witness for a reduction in the location adjustment rate at Whatcom County was the need to "modernize" the order. According to the witness, reduction and elimination of location adjustments in Federal orders generally has become a trend that should be followed in the merged order. The witness cited 3 relatively recent decisions relating to the Southwestern Idaho-Eastern Oregon, Eastern Ohio-Western Pennsylvania and Greater Kansas City orders in which location adjustments had been, respectively, not adopted, eliminated and reduced.

None of the reasons given in the cited decisions for the actions taken are relevant to marketing conditions in the Pacific Northwest. The Southwestern Idaho-Eastern Oregon decision found that no location adjustments were necessary for that marketing area because all of the distributing plants that were expected to be regulated by the order were located in counties in which enough milk was produced to satisfy the local distributing plant's demand for fluid milk. Also, the distributing plants were found to be distributed throughout the marketing area, not concentrated in one or two large population centers.

In the Eastern Ohio-Western Pennsylvania decision, location

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adjustments at locations in the marketing area were eliminated because most of the distributing plants had moved out of the population centers nearer to the production areas, leaving the leading population centers as no longer significant fluid milk processing centers. The decision reiterated the traditional rationale for location adjustments, but determined that the conditions for which location adjustments were designed no longer existed in the Eastern Ohio-Western Pennsylvania marketing area.

The Greater Kansas City decision referred to by proponent expanded the order's location adjustment-free area to assure that prices at a pool supply plant located south of Kansas City and closer to a higher-priced order would not be subject to a negative adjustment. The decision was part of a 6-market proceeding held to consider location adjustment changes for the purpose of assuring inter-market price alignment after Class I prices were legislatively amended in many Federal orders. In the six orders affected by the decision, location adjustments were increased in 3, reduced in 1, and unchanged in 2.

The decisions cited by the Darigold witness address marketing conditions that differ markedly from those in the proposed merged marketing area. However, the witness failed to cite decisions affecting the New England and New York-New Jersey orders in which location adjustments were increased to reflect increases in hauling costs. These markets, with manufacturing plants located in the heavy production areas distant from most distributing plant locations, are more comparable to the situation of Whatcom County. Such increases, that update location adjustments to correspond to the significant increases in hauling costs that have been experienced since most location adjustment provisions were written, are actually the only means of "modernizing" location adjustments. It is very possible that it would be appropriate to "modernize," or increase, the location adjustment at Whatcom County, as urged by Northwest Independent Milk Producers Association and Carnation Company. However, there is inadequate data and testimony in the record of this proceeding to determine an appropriate change in the level of location adjustment for Whatcom County. Therefore, there should be no change in the present 6-cent adjustment.

Butterfat differential. The merged order should provide for a single butterfat differential for adjusting order prices to the butterfat content of the milk being priced. The differential should be the Chicago 92-score butter price for the month multiplied by a factor of 0.115, rounded to the nearest 0.1 cent. Such differential should be announced on the fifth day after the end of the month to which it applies.

This differential is now used under the present Puget Sound-Inland order. However, the Oregon-Washington order provides for three separate butterfat differentials. The Class I butterfat differential for handlers is determined by multiplying the Chicago butter price for the preceding month by 0.12, while the handler Class II and III differentials are determined by multiplying the butter price for the current month by 0.115. The butterfat differential applicable in adjusting the uniform price to producers is the average of the Class I, Class II and Class III butterfat differentials weighted by the proportion of buttefat in producer milk in each class.

Presently, the Class I, Class II, and Class III differentials for the Oregon-Washington order are announced on the fifth day of the month. The Class I differential applies to the month in which announced, while the Class II and Class III differentials apply to the preceding month. The producer butterfat differential is announced on the 14th day of each month and applies to milk received during the preceding month.

The merger proponents proposed that all class prices and uniform prices under the merged order be subject to an adjustment by a butterfat differential based on the Chicago butter price and the factor of 0.115. No opposition to the use of this single factor was presented at the hearing.

As proposed and as herein adopted, using a single factor of 0.115 for computing class butterfat differentials will change the relationship of Class I skim milk and butterfat values of those handlers that are presently regulated by the Oregon-Washington order. The impact of this change will increase such handlers' cost of skim milk since less value will be assigned to the butterfat component of Class I milk. However, the absolute effect on a handler's cost for Class I milk is dependent on the average test of his Class I products.

Nevertheless, adopting a lower Class I butterfat differential for the Oregon-Washington portion of the proposed merged marketing area gives recognition to the reduced demand and the related lower market value of butterfat in fluid milk products in Class I. This lower value for Class I butterfat will be reflected in returns to producers which, in turn, should provide less incentive to produce high-test milk that consumers do not want.

8. *Handler obligations to the pool.* The value of producer milk to handlers should continue to be determined on the basis of its use in the three classes of utilization, and the prices associated with each class. As proposed by proponents, each handler's obligation to the producer-settlement fund should be determined by "equalization", as is currently the case under the Puget Sound-Inland order. In an "equalization" pool, a handler pays to the producer-settlement fund the amount by which the handler's use value of producer milk exceeds the value of the producer milk at the uniform price. If the value of the producer milk at the uniform price exceeds the handler's use value, the handler receives the difference from the producer-settlement fund in order to pay the producers the uniform price. In this way, each handler pays the total use value of producer milk received and each handler is left with a sum great enough to pay all of the handler's producers for their milk at the uniform price.

Under the Oregon-Washington order, handlers are required to pay the full class use value of their producer milk to the producer-settlement fund. The market administrator then pays nonmember producers, handlers, cooperative associations and the Oregon State Division of Milk Stabilization for the milk supplied by them or by the producers for whose milk they are responsible for paying. With the cessation of payments to the State of Oregon (see below), it is no longer necessary to require handlers to pay the full use value of their milk to the producer-settlement fund. Operation of the Pacific Northwest pool as an "equalization" pool will reduce the amount of money paid into and out of the producer-settlement fund, and should improve handlers' cash flow.

Late payment charge. The merged order should include a late payment charge to be applied to handlers' payments to the producer-settlement fund, as a result of audit adjustments, and for administrative and marketing service assessments that are received after the date such payments are due under the order. The charge should be 1 percent of the amount due, and should be applied on the first day after the due date. The late payment charge should also be applied to any unpaid balance (including any previously unpaid overdue charges) on the due date for such obligation in each following month.

Proponent proposed the late payment charge on the basis that such a

provision had been found necessary in the Oregon-Washington order to assure timely payment of handlers' obligations to the producer-settlement fund and for administrative and marketing service assessments. The Darigold witness testified that the late payment charge provision, as proposed, should be modified to remove a requirement that late payment charges be assessed under the order on late payments for milk purchased from cooperative association plants by other handlers. He explained that agreements between cooperatives and their customers may enable cooperatives to impose such a charge outside the order.

Some of the wording in paragraph (b) of the section on late payment charges in the recommended decision order language appears to correspond to that part of the originally proposed section that proponents testified should not be adopted. The requirement that "All charges on overdue accounts shall be paid to the fund or to the person to whom the account was due . . ." appears to be related to the original proposal that would have instructed the market administrator to apply such charges not only to accounts overdue to the market administrator, but accounts overdue to cooperative associations and nonmember producers as well. The order language therefore is changed to reflect the omission of such an application of late payment charges.

Two briefs opposing adoption of a late payment charge were received. Carnation Company, a proprietary handler operating distributing plants under both of the two orders, objected to the imposition of a late payment charge in months when billings from cooperatives or the market administrator arrive after the date payments are due. The Carnation brief stated that the company does accept billing information by telephone so that payments can be made on time, but considers a late payment charge unreasonable unless the billings arrive on time. Carnation also stated that the 1 percent charge for a payment one day late is unreasonable. Olympia Cheese Company, a nonpool cheese plant operator, also objected to adoption of a late payment charge for the merged order. The brief filed by the handler stated that cooperatives and other handlers are able to charge late payment fees on overdue accounts outside the Federal order. Olympia Cheese's brief also stated that the proposed provision would disrupt the operation of the order, goes beyond the intent of the Act, and violates usury laws.

The late payment charge, modified as suggested by the Darigold witness, is necessary to assure that payments to the funds maintained by the market administrator will be made promptly. Prompt payment is essential in order for the market administrator to make payments to handlers on the dates specified in the order so that those handlers, in turn, may pay producers according to the timetable required by the order. Failure on the part of a handler to meet the order's due dates unnecessarily delays payments to producers and gives the late-paying handler a financial advantage over handlers who comply with the order's payment dates. Allowing a period after the due date when no late payment charge would be imposed would only encourage handlers to put off payment until the day before the charge is effective. A charge for late payments will enable the order to operate smoothly, and will assure that producers will receive payment for their milk, some of which was used by handlers over a month earlier, in a timely manner. Elimination of the proposed provision subjecting handlers' late payments to cooperative associations for milk received from cooperatives' plants will enable the market administrator to avoid unnecessary involvement in business dealings between regulated handlers.

A charge of one percent of the amount overdue should not be considered excessive. A lesser rate would constitute little deterrent to late payments. Furthermore, since handler obligations under the merged order will reflect only their equalization value (the difference between the class use value of the milk and its value at the uniform price), the amount of late payment charge imposed should not be unduly burdensome. The late payment charge is not considered interest, and is not subject to usury laws. The late payment charge assures that timely payment of a handlers' obligations to the pool will represent the most economic use of the handler's financial resources.

9. *Payments to producers.* Marketwide pooling of producer returns should be provided under the merged order as the basis of distributing among producers the proceeds from the sale of their milk. This type of pooling is now being used in each of the individual markets to be merged and was the only alternative proposed or supported for use under the merged order.

A single marketwide uniform price, adjusted for butterfat content and for location of the plant to which the milk is delivered, should be the basis of distributing total pool proceeds from producer milk in making payments to individual producers. Under this payment arrangement, each producer would share equally in the higher-valued Class I milk of the market as well as in the lower-valued Class II and Class III uses of milk. A single uniform price to producers is now applicable under the Puget Sound-Inland order.

The present Oregon-Washington order provides for a 12-month operating base plan, which is another method of distributing the total proceeds from handlers to producers. This plan provides for producers to earn daily bases that represent the producer's daily average production during the market's four lowest months of production for the previous year. For deliveries within a producer's base, the producer receives a "base" price that includes a share of the value of the market's Class I sales. For marketings in excess of his base, the producer receives an "excess" price which is comparable to the lower manufacturing, or Class III, price. In addition to the "base-excess" plan, the Oregon-Washington order includes authorization for the market administrator to pay pool proceeds to the Oregon State Milk Audit and Stabilization Division at the base and excess values for producers and cooperative associations participating in the "Oregon Base Plan."

Proponents proposed that both the Oregon-Washington Federal order base plan and provisions facilitating operation of the Oregon State Base Plan be omitted from the proposed order. The Darigold witness testified that participation by Oregon-Washington producers in the Oregon Base Plan had declined from nearly 100 percent at the time the Oregon-Washington order was promulgated to approximately 18 percent at the time of the hearing in this proceeding. He stated further that the State of Oregon was expected to discontinue operation of its base plan at the end of 1987. There was no opposition, at the hearing or in briefs, to the omission of both the Federal order base plan and the Oregon base plan from the merged order. Because no support was expressed for retention of the Federal order base plan or provisions facilitating operation of the Oregon State Base Plan in the merged order, the provisions associated with those plans should not be included.

Adoption of the equalization method of pooling the value of producers' milk will necessitate adoption of the proposed procedure for paying producers. The Oregon-Washington order currently requires the market

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administrator to pay the full amounts due to producers directly to nonmember producers, cooperative associations, the Oregon State Department of Agriculture or, upon request, to the handler of nonmember producer milk. Such a payment scheme would not be possible with an equalization system under which only the differences between the values of milk at class prices and at the uniform price are paid to and from the producer-settlement fund. The market administrator would not have the necessary funds to pay for all of the milk production of individual producers. Therefore, the producer payment provisions of the present Puget Sound-Inland order should be adopted.

In testimony, the Darigold witness proposed two corrections to the proposed order language relating to payments to producers. He requested that the date by which handlers are required to pay cooperative associations for milk received from cooperatives' plants be changed from the 17th to the 15th day after the end of the month in which the milk is moved. The change should be adopted. Under the merged order, the cooperative association, as the handler of the milk, must account to the pool for such milk on the 16th day after the end of the month. The cooperative should have access to the money needed to pay for the milk before such payment is due to the producer-settlement fund.

The other proposed modification to the proposed order was to change a reference in the provision dealing with the application of location adjustments to payments for milk delivered by a cooperative association from producers' farms directly to the plant of another handler. The requested change would cause the provision to be applied instead to transfers from a cooperative association's plant to another handler's plant. Application of location adjustments to such milk movements are already covered in the order. A change of the provision referred to would result in no location adjustment being applied to a cooperative's milk received directly at another handler's plant. The proposed modification should not be adopted.

One change from the payment provisions of the present Puget Sound-Inland order, and from the recommended decision, should be made for the reason of consistency. Payments by handlers to cooperative associations are to be made 2 days prior to the dates specified for payments to producers. In § 1124.73(d)(2), final payment by handlers receiving milk for which a cooperative association is the handler under § 1124.9(c) should be made on or before the 17th day after the end of the month, rather than the 18th as specified in the recommended decision. Such payment to cooperative associations on the 17th day would correspond to final payment to producers on the 19th day after the end of the month.

10. *Administrative provisions—administrative assessment.* The maximum rate of payments by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Such payments are required if the market administrator is to perform the necessary function of administering the merged order. The 4-cent per hundredweight rate is the same as under the two separate orders, and was proposed at the hearing without objection. Continuation of the 4-cent rate should enable the market administrator to administer the merged order effectively. If experience indicates that the merged order can be administered at a lesser rate, the order provides that the Secretary may adjust the rate downward without the necessity of a hearing.

Deduction for marketing services. The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat testing and market information should be 5 cents per hundredweight. The marketing service deduction is necessary to reimburse the market administrator for providing such services to producers to whom the services are not provided by a cooperative association.

Currently, the maximum rates under the separate orders are 6 cents under the Oregon-Washington order, and 5 cents under the Puget Sound-Inland order. A 5-cent rate, which was proposed at the hearing without objection, should enable the market administrator to provide adequate testing and information services to nonmember producers. The marketing service deduction rate, like the administrative assessment, may be adjusted downward if the maximum rate is higher than necessary.

Merger of the administrative expense, marketing service and producer-settlement funds. To accomplish the merger of the two orders effectively and equitably, the reserves in the administrative expense funds that have accumulated under the individual orders should be combined. Similar procedures should be followed with respect to the marketing service and producer-settlement fund reserves of the individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new funds established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid from the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the two orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is equally equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the merged Pacific Northwest market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the two orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged Pacific Northwest market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations [resulting from audit adjustments and otherwise] accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the

extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington and Puget Sound-Inland orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the Pacific Northwest order which amends and merges the present Oregon-Washington and Puget Sound-Inland orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Pacific Northwest marketing area, and the minimum prices specified in the tentative marketing agreement and the Pacific Northwest order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the Pacific Northwest order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the merged Pacific Northwest order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his prorata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to milk specified in § 1124.85 of the tentative marketing agreement and the Pacific Northwest order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

September 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, amending and merging the orders regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing areas is approved or favored by producers, as defined under the terms of the attached order who during such representative period were engaged in the production of milk for sale within the marketing area defined in such attached order.

List of Subjects in 7 CFR Parts 1124 and 1125

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on November 29, 1988.

Robert Melland,

Acting Deputy Secretary for Marketing and Inspection Services.

Order Amending and Merging the Orders Regulating the Handling of Milk in the Oregon-Washington and Puget Sound-Inland Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Pacific Northwest order, which amends and merges the Oregon-Washington and Puget Sound-Inland orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Pacific Northwest marketing area; and the minimum prices specified in the Pacific Northwest order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The Pacific Northwest order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Pacific Northwest order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1124.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing areas (Parts 1124 and 1125, respectively) shall be amended and merged into one order. Part 1125 is superseded thereby, and such vacated part designation shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "Pacific Northwest marketing area" (Part 1124), shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended and merged as follows:

The provisions of the proposed marketing agreement and order amending and merging the Oregon-Washington and Puget Sound-Inland orders contained in the recommended decision issued by the Administrator, AMS, on September 7, 1988, and published in the **Federal Register** on September 19, 1988, (53 FR 36291), shall be and are the terms and provisions of this order, and are set forth in full herein, subject to the following modifications:

1. In § 1124.9, paragraph (b) is revised.
2. In § 1124.13, paragraph (c)(1) is revised.
3. In § 1124.50, paragraph (c)(3) is revised.
4. In § 1124.73, paragraph (d)(2) is revised.
5. In § 1124.78, paragraph (b) is revised.

Accordingly, 7 CFR Part 1125 is proposed to be removed and Part 1124 is proposed to be revised as follows:

PART 1125—[REMOVED]

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1124.1 General provisions.

Definitions

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1124.4 Plant.
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1124.6 Supply plant.
1124.7 Pool plant.
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Handler Reports

1124.30 Reports of receipts and utilization.
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Classification of Milk

1124.40 Classes of utilization.
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1124.44 Classification of producer milk.
1124.45 Market administrator's reports and announcements concerning classification.

Class Prices

1124.50 Class prices.
1124.51 Basic formula price.
1124.51a Basic Class II formula price.
1124.52 Plant location adjustments for handlers.
1124.53 Announcement of class prices.
1124.54 Equivalent price.

Uniform Price

1124.60 Handler's value of milk for computing uniform price.
1124.61 Computation of uniform price.
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Payments for Milk

1124.70 Producer-settlement fund.
1124.71 Payments to the producer-settlement fund.
1124.72 Payments from the producer-settlement fund.
1124.73 Payments to producers and to cooperative associations.
1124.74 Butterfat differential.
1124.75 Plant location adjustments for producers and on nonpool milk.
1124.76 Payments by a handler operating a partially regulated distributing plant.
1124.77 Adjustment of accounts.
1124.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1124.85 Assessment for order administration.
1124.86 Deduction for marketing services.

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby referenced and made a part of this order.

Definitions

§ 1124.2 Pacific Northwest marketing area.

"Pacific Northwest Marketing Area" (hereinafter called the "Marketing Area") means all territory geographically within the places listed below including all territory fully or partly therein occupied by government (municipal, state or federal) reservations, facilities, installations, or institutions:

Idaho Counties:

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Washington Counties:

Adams, Asotin, Benton, Chelan, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman and Yakima.

Oregon Countries:

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point as provided by this section, by a vendor, from a plant store or through a vending machine). The term "route disposition" does not include: (a) A delivery to a plant. However, packaged fluid milk products that are transferred to a pool distributing plant from another pool distributing plant, and classified as Class I under § 1124.42(a), shall be considered route disposition from the transferor-plant for the sole purpose of qualifying it as a pool distributing plant under § 1124.7(a), and the transferor-plant shall be assigned in-area dispositions but not in excess of the in-area dispositions of the transferee plant;

(b) A delivery in bulk to a commerical food processing establishment pursuant to § 1124.40(b)(3); or

(c) A delivery to a military or other ocean transport vessel leaving the marketing area, of fluid milk products which originated at a plant located outside the marketing area and were not received or processed at any pool plant.

§ 1124.4 Plant.

"Plant" means the buildings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a "plant" under this definition.

§ 1124.5 Distributing plant.

"Distributing plant" means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1124.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

§ 1124.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which there is route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of receipts of Grade A milk at such plant (exclusive of transfers of packaged fluid milk products from plants qualifying as pool plants pursuant to this paragraph, filled milk, and milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted thereform pursuant to § 1124.13;

(b) A supply plant from which during any month not less than 30 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk producets (except filled milk) processed and packaged at such plant; *Provided*, That:

(1) With respect to a supply plant operated by a cooperative association, the producer milk of its members which it caused to be delivered directly from their farms to pool distributing plants, shall for the purpose of this paragraph, be considered as a receipt at the cooperative's supply plant and a shipment from the supply plant to pool distributing plants;

(2) A plant which qualified as a pool plant pursuant to this paragraph in each month of September through February shall be a pool plant in each of the following months of March through August unless a written application is filed with the Market Administrator prior to the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(3) For the purpose of this paragraph, the operations of two or more supply plants may be combined and considered as the operation of one plant if so requested in writing to the Market Administrator by the handler(s) operating such plants prior to the first day of the month for which such consideration is requested.

(c) The Director of the Dairy Division may reduce or increase up to 10 percentage points from the levels set forth therein the pool plant performance standards in paragraph (a) or (b) of this section, if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or a the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal Order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal Order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month it shall continue to be subject to all the provisions of this part until the fourth consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal order;

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order;

(5) A distributing plant from which total route disposition (except filled milk) in the marketing area during the month averages 300 pounds or less per day; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition.

§ 1124.8 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which during the month an average of more than 300 pounds daily of fluid milk products is disposed of as route disposition in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

(e) "Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1124.3(a).

§ 1124.9 Handler.

"Handler" means:

(a) The operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association to another plant or pursuant to § 1124.40(b)(3);

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a plant defined in § 1124.8 (a) through (e).

§ 1124.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. Any State institution shall be a producer-handler exempt from the provisions of this section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in its capacity as a handler) complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in its capacity as a dairy farmer).

(2) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of its milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Designation of any person as a producer-handler following a cancellation of its prior designation shall be preceded by performance in accordance with paragraphs (a) (1), (2), and (3) of this section for a period of 1 month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of the producer-handler's milk production resources and facilities; and

(2) As milk handling, processing and distributing resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distribution any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraphs (c)(1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a)(1),(2), and (3) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellations occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which do not exceed in the aggregate a daily average during the month of 100 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of person designate as producer-handlers, of those whose designations have been canceled and the effective dates of producers-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1124.11 Cooperative reserve supply unit.

"Cooperative reserve supply unit" means any cooperative association or its agent that is a handler pursuant to § 1124.9(b) or (c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order(s) during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a pool distributing plant. A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section;

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use at pool distributing plants are needed for plants defined in § 1124.7(a). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1124.9(b) and (c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any persons who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1124.9(c); or

(3) Diverted in accordance with § 1124.13;

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1124.44(a)(9)(iii) and the corresponding step of § 1124(b);

(3) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such order;

(4) Any person who during the month has disposed of as route disposition or to consumers at the farm an average of more than 110 pounds daily of fluid milk or fluid cream products; and

(5) Any person (known as a dairy farmer for other markets) whose milk was received at a nonpool plant or a commercial food processing establishment during the month as other than producer milk under this or any other Federal milk order.

§ 1124.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received or diverted by a handler defined in § 1124.9(a) under one of the following conditions:

(1) Received at such handler's pool plant directly from the farm of such producer;

(2) Received at such handler's plant from a handler defined in § 1124.9(c) for all purposes other than those specified in paragraph (b)(2)(i) of this section; and

(3) Diverted for the account of the operator of the pool plant, subject to the conditions set forth in paragraph (c) of this section.

(b) Received or diverted by a cooperative defined in § 1124.9 (b) or (c) under one of the following conditions:

(1) Milk diverted for the account of the cooperative association. Except for milk moved by a cooperative reserve supply unit defined in § 1124.11, such diversions shall be subject to the conditions set forth in paragrpah (c) of this section;

(2) Milk for which the cooperative association is a handler pursuant to § 1124.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1124.30(c) and 1124.31(a) and making payments to producers pursuant to § 1124.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) The following conditions shall apply to diverted producer milk:

(1) A cooperative association or its agent may divert for its account the milk of any producer. The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the total quantity of producer milk which the association or its agent causes to be delivered to pool distributing plants or diverted. No percentage limit shall apply during the months of May through August. The percentage limits on diversions specified in this paragraph shall not apply to a cooperative reserve supply unit defined in § 1124.11;

(2) A handler other than a cooperative association that operates a pool plant may divert milk for its account to other plants or pursuant to § 1124.40(b)(3). The total quantity of milk so diverted may not exceed 80 percent during the months of September through April of the milk received at such handler's pool plant or diverted by such handler from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) of this section and for which the operator of such plant is the handler during the month. No percentage limit shall apply during the months of May through August;

(3) Milk diverted in excess of the limits specified shall not be considered producer milk, except for milk diverted by a cooperative reserve supply unit.

The diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler during the month;

(4) Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of producer milk which the associations cause to be delivered to pool plants or diverted during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(5) Diverted milk shall be priced at the location of the plant or commercial food processing establishment to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently divided among plants, the proportion of the load received at each plant shall be prorated among the individual producers involved on the basis of their respective percentage of the total load.

§ 1124.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1124.40(b)(1) from any source other than producers, handlers described in § 1124.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1124.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1124.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1124.40(b)(1)) for which the handler fails to establish a disposition.

§ 1124.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, mixtures of cream and milk or skim milk containing less than 15 percent butterfat (including those which are sterilized or aseptically packaged), filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use and milk or milk products (including filled milk) that are sterilized and packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1124.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 15 percent or more butterfat, with or without the addition of other ingredients.

§ 1124.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1124.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1124.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1124.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A

work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

On or before the 9th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the preceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c);

(iii) Fluid milk products and bulk fluid cream products received from other pool plants showing filled milk separately;

(iv) Other source milk showing filled milk separately; and

(v) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1124.40(b)(1).

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities in route disposition inside and outside the marketing area.

(b) Each producer-handler shall report:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk of own-farm production;

(ii) Receipts of fluid milk products and fluid cream products from pool plants, showing separately receipts in packaged form and in bulk; and

(iii) Other source milk, showing separately any receipts from another dairy farmer.

(2) As specified in paragraph (a)(2) of this section.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either § 1124.9 (b) or (c):

(1) The quantities of skim milk and butterfat received from producers;

(2) The utilization of skim milk and butterfat for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk and butterfat delivered to each pool plant pursuant to § 1124.9(c).

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraphs (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

(f) Each handler who operates an exempt plant or an unregulated supply plant shall report as specified in paragraphs (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk.

§ 1123.31 Payroll reports.

On or before the 22nd day of each month handlers shall report to the market administrator as follows:

(a) Each handler with respect to each of its pool plants and each cooperative association which is a handler pursuant to § 1124.9 (b) or (c) shall submit its producer payroll for deliveries (other than own-farm production) in the preceding month which shall show:

(1) The total pounds of milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments; and

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.76(a) to be considered in the computation of its obligation pursuant to § 1124.76 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk and the butterfat content thereof received from each dairy farmer;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1124.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under §§ 1124.30 and 1124.31 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by the handler.

Classification of Milk

§ 1124.40 Classes of utilization.

Except as provided in § 1124.42 all skim milk and butterfat required to be reported by a handler pursuant to § 1124.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more non-milk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In all bulk fluid milk products and bulk fluid cream products disposed of or diverted to any commercial food processing establishment, subject to the conditions of § 1124.42(e), at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products

other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cotton cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section.

(iv) Plastic cream, frozen cream and anhydrous milkfat.

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers; and

(vii) Any milk or milk products sterilized and packaged in hermetically sealed metal or glass containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1124.15; and

(6) In shrinkage assigned pursuant to § 1125.41(a) to the receipts specified in § 1124.41(a)(2) and in shrinkage specified in § 1124.41 (b) and (c).

§ 1124.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1124.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3) and milk received from a handler described in § 1124.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1124.9(c) and in milk diverted to such plant by the operator of another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3), except that if the operator of the plant or establishment to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section.

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1124.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of a plant or a commerical food processing establishment pursuant to § 1124.40(b)(3) to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1124.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers and diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving handler's plant after the computation pursuant to § 1124.44(a)(13) and the corresponding step of § 1124.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1124.44(a)(8) or the corresponding step of § 1124.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1123.44(a) (12) or (13) or the corresponding steps of § 1124.44(b), the skim milk or butterfat so transferred or diverted up to the total of the skim

milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class II milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1124.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk is transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to the transferee's receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not another order plant or a producer-handler plant shall be classified:

(12) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1124.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and

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bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers and diversions to a commercial food processing establishment.* Skim milk and butterfat transferred or diverted to a commercial food processing establishment shall be classified:

(1) Subject to the provisions of § 1124.13(c) and, except as provided in paragraph (e)(2) of this section, as Class II milk; or

(2) Transfers of diversions shall be classified as Class I milk unless the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification.

§ 1124.43 General classification rules.

In determining the classification of producer milk pursuant to § 1124.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1124.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1124.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1124.40, 1124.41, and 1124.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1124.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1124.40 through 1124.45, butterfat in skim milk, either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.080 percent unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1124.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1124.9(a) for each of the handler's pool plants separately and of each handler described in § 1124.9(b) and (c) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1124.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1124.40(b) but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1124.40(b)(1) that was not subtracted pursuant to paragraphs (a)(5), (6), and (7) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal Order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1124.12(b)(5);

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (8)(v) of this section for which the handler requests a classification other than Class I, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (8)(v), and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to

paragraph (a)(9)(ii)(A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiple by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentages that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant are of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(3)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series, beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1124.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(4), (6), and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity pro rated, to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (6)(v), (9)(i), and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unreglated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(13) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1124.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph

(a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1124.42(a); and

(15) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

§ 1124.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1124.44(a)(13) and the corresponding step of § 1124.44(b), estimate ane publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such recepts are allocated pursuant to § 1124.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1124.50 Class prices.

Subject to the provisions of § 1124.52, the class prices for the month, per hundredweight of milk, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraphs (c) (1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51 and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month but not to exceed the price computed as follows:

(1) Multiply the Chicago butter price pursuant to § 1124.51 by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under paragraph (c) (1) and (2) of this section subtract 48 cents and round to the nearest cent.

§ 1124.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) if Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1124.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1124.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight or milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1124.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include:

(i) The Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah and Shoshone;

(ii) The Oregon counties of Benton, Clackamas, Clatsop, Columbia, Douglas, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill;

(iii) The Washington counties of Clark, Cowlitz, Ferry, Grays Harbor, Island, King, Kitsap, Lewis, Lincoln, Mason, Pacific, Pend Oreille, Pierce, Skagit, Snohomish, Skamania, Spokane, Stevens, Thurston, Wahkiakum, and Whitman.

(2) Zone 2 shall include: the Washington county of Whatcom.

(3) Zone 3 shall include: the Oregon counties of Coos, Jackson, and Josephine;

(4) Zone 4 shall include:

(i) The Idaho counties of Lewis and Nez Perce;

(ii) The Oregon counties of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Morrow, Sherman, Umatila, Wallowa, Wasco and Wheeler;

(iii) The Washington counties of Adams, Asotin, Benton, Chelan, Callam, Columbia, Douglas, Franklin, Garfield, Grant, Jefferson, Kittitas, Klickitat, Okanogan, San Juan, Walla Walla and Yakima.

(b) For milk received at a plant from producers and which is classified as Class I milk, the price specified in § 1124.50(a) shall be adjusted by the amount stated in paragraphs (b) (1) and (2) of this section for the location of such plant:

(1) For a plant located within one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 2	Minus 6 cents.
Zone 3	Minus 8 cents.
Zone 4	Minus 15 cents.

(2) For a plant located outside of one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be minus 1.5 cents per hundredweight for each 10 miles or fraction thereof by shortest hard-surfaced highway distance that the plant is located from the nearer of the county courthouse in Spokane, Washington, the Multnomah County Courthouse in Portland, Oregon, or the city hall in Eugene, Oregon;

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the price when adjusted for location shall not be less than the Class III price.

(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to § 1124.44 (a)(13) and (b) the pounds of packaged fluid milk products from other pool plants;

(2) Subtract the pounds of bulk fluid milk products received at the transferee-plant form the following sources:

(i) Producers;

(ii) Handlers described in § 1124.9(c); and

(iii) Pool plants at which the same or a higher Class I price applies.

(3) Assign any pounds remaining to transferor-plants in sequence beginning with the plant at which the least adjustment would apply; and

(4) Multiply the pounds so computed for each transferor-plant by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1124.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the pricing constituent that is required.

Uniform Price

§ 1124.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants and of each handler described in § 1124.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1124.44(c), by the applicable class prices (adjusted pursuant to § 1124.52) and add together the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) by the class prices applicable at the location of the pool plant, as adjusted by the butterfat differential specified in § 1124.74. In case overage occurs in a nonpool plant located on the same premises as a pool plant, such overage shall be prorated between the quantity transferred from the pool plant and other source milk in such nonpool plant. In such case, add an amount equal to the value of overage prorated to the quantity transferred to the nonpool plant at the class price applicable at the pool plant.

(c) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv) and (vii) and the corresponding step of § 1124.44(b) excluding receipts of bulk fluid cream products from another order plant;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (v) and (vi) and the corresponding step of § 1124.44(b);

(e) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price adjusted pursuant to § 1124.52, or the Class II price as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b);

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(12) and the corresponding step of § 1124.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by a handler fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order; and

(g) Add or subtract as the case may be, the amount necessary to correct errors as disclosed by the verification of reports of such handler of the handler's receipts and utilization of skim milk and butterfat in previous months for which payment has not been made.

§ 1124.61 Computation of uniform price.

For each month the market administrator shall compute the "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add the aggregate of all minus location adjustments computed pursuant to § 1124.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the produce-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1124.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 14th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1124.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which shall be deposited all payments made by handlers pursuant to §§ 1124.71 and 1124.76 and out of which shall be made all payments to handlers pursuant to § 1124.72. However, the market administrator shall offset the payment due to a handler from such fund against payments due from such handler.

§ 1124.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month during which the skim milk and butterfat were received each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the total amount specified in paragraph (a)(2) of this section:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1124.60; and

(ii) For a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d) but without adjustment for butterfat;

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable uniform price pursuant to § 1124.73(a)(2) but without adjustments for butterfat;

(ii) The amount to be paid to cooperative associations pursuant to § 1124.73(d) but without adjustment for butterfat; and

(iii) The value at the uniform price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1124.60(f); and

(b) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1124.7(d) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated

according to such disposition in each area.

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(a)(2) exceeds the amount computed pursuant to § 1124.71(a)(1), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71(a), 1124.77, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payments to each producer for milk received from such producer during the month:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, at not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(2) On or before the 19th day after the end of each month for milk received from such producers during such month:

(i) At not less than the uniform price for the quantity of milk received, adjusted by the butterfat differential pursuant to § 1124.74 and by any location adjustments applicable under § 1124.75;

(ii) Minus payments made pursuant to paragraph (a)(1) of this section. However, if by such date such handler has not received full payment for such month pursuant to § 1124.72, the handler shall not be deemed to be in violation of this paragraph if the handler reduced uniformly for all producers the payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the Market Administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

(b) The payments required in paragraph (a) of this section shall be made, upon request, to a cooperative association qualified under § 1124.18, or its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of the producer's milk, and any payment made pursuant to this paragraph shall be made on or before 2 days prior to the dates specified in paragraph (a) of this section.

(c) Each handler shall pay to each cooperative association or its duly authorized agent which operates a pool plant for skim milk and butterfat received from such plant:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for skim milk and butterfat received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class pursuant to § 1124.42(a) by the class price adjusted by the butterfat differential and taking into account any location adjustments as provided by § 1124.52 applicable at the pool plant of the cooperative association or its agent, minus payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler who received milk for which a cooperative association is the handler pursuant to § 1124.9(c) shall pay such cooperative association for such milk received:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for such milk received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for the milk received at not less than the uniform price for all milk adjusted pursuant to §§ 1124.74 and 1124.75(b), minus payments made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler, on or before the 19th days of each month shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show for the preceding month:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer and the average butterfat test thereof and the pounds per shipment if such information is not furnished to the producer each day of delivery;

(3) The minimum rate at which payment to the producer is required under the provisions of this section;

(4) The rate per hundredweight and amount of any premiums or payments above the minimum price provided by the order;

(5) The amount or rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler upon request shall furnish to the cooperative association, with respect to each producer for whom such payment is made, any or all of the above information specified in paragraph (f) of this section.

§ 1124.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month. § 1124.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment to producers pursuant to § 1124.73(a) subject to the application of § 1124.13(c)(5) appropriate adjustments shall be made per hundredweight of milk received from producers at respective plant locations at the same rate as specified for Class I milk set forth in § 1124.52.

(b) In making payments to a cooperative association pursuant to § 1124.73(d) appropriate adjustments shall be made at the rates specified for Class I milk in § 1124.52 for the location

of the plant at which the milk was received from the cooperative association.

(c) For purposes of computations pursuant to §§ 1124.71(a) and 1124.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1124.30(d) and 1124.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, the handler shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1124.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1124.60(f) and a credit in the amount specified in § 124.71(a)(2)(iii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with reports filed pursuant to §§ 1124.30(d) and 1124.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1124.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1124.74, and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Any payments to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the maketing area;

(2) Deduct the respective amount of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant (but not to be less than the Class III price) less the value of such skim milk at the Class III price.

§ 1124.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.

§ 1124.78 Charges on Overdue Accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1124.71, 1124.76, 1124.77, 1124.85 or § 1124.86 shall be increased 1 percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the fund to which the account was due immediately after the charge has been collected.

Administrative Assessment and Marketing Service Deduction

§ 1124.85 Assessment for order administration.

A pro rata share of the expense of administration of the order shall be paid to the market administrator by each handler on or before the 16th day after the end of the month 4 cents per

hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1124.44(a)(8) and (12) and the corresponding steps of § 1124.44(b), except such other source milk on which no handler obligation applies pursuant to § 1124.60(f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1124.76(b)(2)(ii).

§ 1124.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1124.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association.

(2) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this paragraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 16th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers, and in providing for market information to producers. Such services are to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer;

(1) Who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deductions therefore to, a cooperative association;

(2) Whose milk is received at a plant not operated by such association; and

(3) For whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to § 1124.73 (a)(2) the amount per hundredweight on milk authorized by such producer and shall pay, on or before the 16th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

Marketing Agreement Regulating the Handling of Milk in the Pacific Northwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1124.1 to 1124.86, all inclusive, of the order regulating the handling of milk in the Pacific Northwest marketing area (7 CFR Part 1124) which is annexed hereto; and

II. The following provisions:

§ 1124.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of September 1988, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1124.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

_____

(Signature)

(Seal)

By _____

(Name) (Title)

_____

(Address)

Attest _____

Date _____

FR Doc. 88-27819 Filed 12-5-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-101]

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of animals and animal products to allow birds that originate in the United States, and the offspring of these birds, to be imported under specified conditions from an approved breeding facility without quarantine in the United States. Under the current regulations, with certain exceptions, birds imported from any part of the world must be quarantined in the United States as a condition of entry into the United States. We believe that the provisions included in this proposal could be used in lieu of the current quarantine provisions without increasing the risk of introducing communicable diseases of poultry into the United States.

DATES: We will consider only comments postmarked or received on or before February 6, 1989.

ADDRESS: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket No. 86-101. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141-South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wade H. Ritchie, Staff Microbiologist, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8590.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) include provisions concerning the importation of birds into the United States. Section 92.11(e) of the regulations requires, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, or research birds imported from any part of the world be entered at certain ports and be quarantined at one of our

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quarantine facilities or at a privately operated quarantine facility approved by the Administrator for the Animal and Plant Health Inspection Service (APHIS). The quarantine requirements were established to help ensure that birds imported into the United States are free from exotic Newcastle disease, forms of avian influenza lethal to poultry, and other communicable diseases of poultry.

Persons associated with the commercial bird industry have requested that we establish regulations to allow birds to be imported into the United States without quarantine in the United States, if the birds are imported from a country free of viscerotropic velogenic Newcastle disease (which poses the greatest threat to the poultry industry of all communicable diseases of poultry), from a closed breeding facility containing only birds that originated in the United States and the offspring of those birds. We are not proposing to establish those regulations.

Birds Shipped to the Closed Breeding Facility

This proposal includes provisions to ensure that birds brought *into* the closed breeding facility are free of communicable diseases of poultry upon arrival in the facility. The facility must conain only birds that have never previously been in a country other than the United States, or the offspring of those birds if they were hatched in the facility. The facility must contain no birds that were at any time removed from the facility. In order to ensure that the birds are free of communicable diseases of poultry at the time of shipment, we are proposing to require that a certificate issued by an accredited veterinarian and endorsed by a veterinarian employed by APHIS accompany each shipment of birds from the United States to the closed breeding facility. In addition to information identifying the birds, the certificate would have to contain information indicating that all birds in the shipment were inspected by an accredited veterinarian, and that no evidence of any communicable diseases of poultry was found among the birds. The certificate would also have to indicate that the birds were not subjected to any bacterial or viral agent known to cause a communicable disease of poultry during the 90 days immediately before their exportation from the United States; that the birds were placed in previously unused containers at the premises from which they were exported from the United States; and that the birds have not been vaccinated, unless the vaccine has been approved by the Administrator. We would include criteria for the approval of vaccines and a footnote (footnote 7) indicating where to write to request a list of approved vaccines. Additionally, we would acquire that the certificate indicate that during the 90 days immediately before exportation of the birds from the United States, Newcastle disease did not occur anywhere on the premises from which the birds are to be exported from the United States or on adjoining premises, and that none of the above premises are located in an area that has been under quarantine for poultry diseases at any time during the 90 days immediately before exportation of the birds from the United States. The 90-day provisions would ensure that any disease that the birds might have been exposed to before that time would manifest itself before shipment of the birds from the United States.

In order to ensure that the birds do not become infected with communicable diseases of poultry during shipment, we would require that the birds be shipped by air, without stopping, from the United States to the country in which the closed breeding facility is located. Upon arrival of the birds in the country in question, a salaried veterinarian of that country's national veterinary services would have to accompany the birds to the facility. Identification of the birds would have to be maintained during shipment by means of a serially numbered legband, coded to the facility, that would have to be applied before shipment of the birds from the United States. The Legbands would have to be shipped by the operator of the closed breeding facility, and would have to be individually identifiable closed legbands.

Conditions for Approval of Closed Breeding Facility

To qualify for approval by the Administrator of APHIS (referred to below as the Administrator), a closed breeding facility and its maintenance and operation would have to meet the requirements we are proposing in this document. However, the Administrator would approve a closed breeding facility only when he or she determines that sufficient veterinarians employed by APHIS are available to provide the services required by the facility. The operator of the facility would have to bear its costs and all costs associated with its maintenance and operation.

We would require that a closed breeding facility be located in a country that is designated in 9 CFR 94.6(a)(2) as being considered free of viscerotropic velogenic Newcastle disease, and be operated under conditions adequate to prevent introduction into the facility of communicable diseases of poultry. As noted above, viscerotropic velogenic Newcastle disease poses the greatest threat to the poultry industry of all communicable diseases of poultry. A requirement that the country be free of this disease would be consistent with current APHIS regulations that allow poultry eggs to be imported into the United States without quarantine only if they are imported from a country considered free of the disease.

The closed breeding facility would have to be maintained under the supervision of a veterinarian employed by APHIS and a salaried veterinarian of the national veterinary services of the country in which it is located. In this proposal, we specify required inspections by that salaried veterinarian.

We are proposing construction and procedural requirements regarding the closed breeding facility, to prevent the introduction into the facility of communicable diseases of poultry. The closed breeding facility would have to be at least one-half mile from any premises containing any of the following: poultry, a poultry processing plant, a poultry egg-laying farm, an aviary, a pigeon loft, a pet shop, a game bird breeding facility, a hatchery, or a poultry breeding farm. We have determined that the disease agent for viscerotropic velogenic Newcastle disease can travel in aerosol fashion, but is unlikely to do so for more than one-half mile. Specific requirements regarding doors and fences would be imposed to help prevent accidental entry of other birds and carnivores, and the entry of unauthorized individuals. The bird holding area would have to include windows that provide a full view of its interior, to allow supervisors to monitor activities in the area.

Effective sanitation and hygiene would be important in keeping the closed breeding facility free of disease. We would require procedures, including cleaning and disinfection, to keep the facility free from vermin, and from contamination that might otherwise occur from waste material and improper drainage.

To avoid human transmission of diseases harmful to birds or poultry, all individuals entering the bird holding area would (1) be permitted to have no contact with poultry or birds outside the bird holding area for at least 3 days before entering the bird holding area (a period of time sufficient to ensure that any disease organisms on the individuals will die before contact with the birds); (2) have to shower when entering and leaving the bird holding

area; and (3) have to dress in work clothing and footwear that has not been worn since it was last washed and that is available at the facility, when entering the bird holding area, and change out of that clothing and footwear upon leaving the bird holding area. To facilitate the showering and changing, there would have to be (1) a shower at the entrance into the bird holding area and a clothes storage and change area at each end of the shower; (2) restrooms at each end of the shower area; and (3) a receptacle in the clothes storage and change area nearest the bird holding area for clothes worn in the bird holding area. The operator of the closed breeding facility would have to collect used work clothing at the end of each workday and keep it in a bag until the clothing is washed. Footwear that has been worn in the bird holding area would either have to be left in the clothes change area or cleaned and disinfected.

A guard employed by the country in which the closed breeding facility is located would have to be posted at the facility at all times to prevent birds in the bird holding area from having contact with either individuals not authorized entry into the facility or other birds and animals. We would require that the guard be employed by the country where the closed breeding facility is located to ensure that he or she has maximum authority to prevent unauthorized entry into the facility. We believe that if the guard were employed directly by the closed breeding facility, conflicts might arise between his or her security responsibilities and his or her obligations to the employing facility. The guard would have to keep a daily log to record the entry and exit of all individuals entering the bird holding area. Access to the closed breeding facility would be restricted to individuals working at the facility, certain other authorized individuals, veterinarians employed by APHIS, and salaried veterinarians of the national veterinary services of the country in question.

We would also require that the closed breeding facility have a necropsy room containing a necropsy table, a hood with a viewing window over the table, refrigerated storage space for carcasses retained for laboratory examination, a sink with running water, and the following equipment: scissors, forceps, tweezers, BHI media, sterile tubes, and rubber gloves. Additionally, we would require that the closed breeding facility have office space for recordkeeping.

The operator of the closed breeding facility would have to supply APHIS with certain written information regarding day-to-day operations at the facility. This information would include the telephone number of the facility's operator or an individual who can act for the operator, and a current list of employees of the facility who are designated to handle and care for birds in the facility. We would need the list of employees to determine whether security procedures required elsewhere in the proposed regulations are being effectively carried out. We would also require a signed statement from each of the designated personnel at the facility that they will have no contact with poultry and birds for 3 days before entering the bird holding area.

Birds Imported From the Closed Breeding Facility

Before the birds are shipped from the closed breeding facility to the United States, we would require certain procedures to ensure that none of the birds are carrying communicable diseases of poultry when shipped.

In order to monitor the source of any possible disease spread among birds intended for importation into the United States, each bird hatched in the closed breeding facility would have to be banded with a serially numbered legband coded to the closed breeding facility. The legbanding would have to be done within 30 days after hatching, because after that time it is anatomically difficult or impossible to band the birds with closed legbands. The legbands would have to be supplied by the operator of the closed breeding facility and would have to be individually identifiable closed legbands.

For at least 30 days immediately before their shipment to the United States, birds imported from an approved closed breeding facility would have to be kept in a bird holding area, separate from other birds in the facility. This would allow sufficient time for any disease in the birds to clinically manifest itself before the birds are shipped to the United States.

At least 21 days before the birds are shipped to the United States, cloacal samples from all of the birds in the shipment, or from 150 birds in the shipment, whichever is fewer, would have to be submitted to the National Veterinary Services Laboratories in Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in question. For the birds to be allowed importation into the United States, the samples would have to test negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out of the National Veterinary Services Laboratories. We are including a footnote (footnote 3) in this poposed rule indicating where to write for copies of the virus isolation procedures used. Submission of the samples at least 21 days before shipment of the birds to the United States is necessary to allow sufficient time for laboratory isolation of the samples. The samples would have to be collected within 28 days before the birds are shipped to the United States. By collecting samples no earlier than 28 days before shipment, any disease that a bird might contract before the 30-day separation period would be detectable by the time the samples are taken. Testing a maximum of 150 birds in any lot has been shown statistically to be effective in determining whether a disease of concern has occurred in the lot.

At least 21 days before the birds are shipped to the United States, necropsy samples from lung, trachea, terminal gut, and spleen, either from all birds that were kept in a bird holding area and that died, or from 30 of these birds, whichever is fewer, must be submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located. In lots of more than 30 birds, samples from 30 of the birds have statistically been proven effective in detecting disease organisms in that lot.

The samples would have to be taken from birds that were kept in a bird holding area and that died between 30 and 21 days before the birds in the bird holding area are shipped to the United States. The 30-day outside limit represents the first day of the birds intended for shipment were isolated from other birds; the 21-day minimum represents the minimum time necessary to complete testing before shipment of the birds to the United States. Before the birds may be shipped to the United States, the samples must test negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out at the National Veterinary Services laboratories.

The operator of the closed breeding facility would have to collect daily any birds that die while in the bird holding area, and refrigerate them until specimens are collected. The refrigeration temperature could be no warmer than 35 °F if the birds are autopsied daily, and no warmer than 0°F if the birds are autoposied more than

1 day after being placed under refrigeration. The operator of the closed breeding facility would not be permitted to dispose of any carcass or parts of a carcass unless permitted to do so by a salaried veterinarian of the national veterinary services of the country in question, and would have to account for all birds in the closed breeding facility.

We are also proposing provisions for treating psittacine birds, and non-psittacine birds that are kept in the bird holding area with the psittacine birds and shipped with them to the United States, with feed containing chlortetracycline (CTC), for at least 30 days immediately before shipment of the birds to the United States. We believe this treatment is necessary as a preventive measure against chlamydiosis (psittacosis, ornithosis), a communicable disease of birds and poultry and also a disease that can be transmitted to humans. Although chlamydiosis can be spread to birds other than psittacine birds, psittacines are the primary carriers of the disease, and it appears that a 30-day treatment with CTC is sufficient to rid a bird of chlamydiosis.

After hatching, any bird that is imported into the United States from the approved closed breeding facility must be banded with a serially numbered legband coded to the facility. The legband must be an individually identifiable closed legband. The birds must be moved from the bird holding area to an aircraft for shipment to the United States in the presence of a salaried veterinarian of the national veterinary services of the country in which the facility is located. The aircraft, which may contain no other birds or poultry, must move, without stopping, from the country in which the facility is located to the United States port of entry. From the time the birds leave the bird holding area, until their importation into the United States, they may have no contact with any other birds or poultry.

We are also proposing to require that all birds in the shipment that die enroute from the approved closed breeding facility to the United States be made availale to a veterinarian employed by APHIS at the port of entry. Additionally, for the birds to be exempt from the quarantine requirements in current 9 CFR 92.11(e), there would have to be no evidence that any bird in the shipment has any communicable disease of poultry, based on port of entry inspection.

Request for Approval of a Closed Breeding Facility

We are including in this proposal instructions for requesting approval for a closed breeding facility. We are also including in this proposal requirements for a pre-approval inspection of the facility by APHIS, and requirements for an Advance Payment Agreement to cover the cost of the pre-approval inspection.

If the closed breeding facility is approved, the facility's operator would have to execute with APHIS another Advance Payment Agreement to cover the costs to the United States Department of Agriculture relating to the shipment of birds from the facility into the United States, and relating to ongoing inspections of the facility by a veterinarian employed by APHIS.

We are proposing that the Administrator will deny or withdraw approval of any closed breeding facility if: (1) Any provisions of the proposed regulations is not met; (2) the operator of the facility or a person responsibly connected with the business (as explained in the proposed regulations) has been convicted of a crime regarding the importation of an animal or bird into any jurisdiction; (3) the operator or a responsibly connected person has been convicted of any crime involving fraud, bribery, or extortion (all of which demonstrate a lack of integrity); or (4) no birds have been shipped from the facility to the United States for one year. We would also allow an operator to request voluntary withdrawal of approval.

We would establish due process procedures regarding a denial or withdrawal of approval, which would include adoption of rules of practice for a proceeding and an opportunity for a hearing when there is dispute of material fact regarding the denial or withdrawal.

To help the Administrator determine if grounds exist for denial or withdrawal of approval, and to facilitate action by APHIS in the event of a violation of the regulations, we would require from the operator of the facility his or her name and those of all persons responsibly connected with the business of the closed breeding facility, and the addresses of the operator and of certain specified responsibly connected persons.

We would also provide that denial or withdrawal of approval will not be based solely on the conviction of a responsibly connected person if the operator of the facility agrees to and complies with a consent agreement with the Administrator that the responsibly connected person will never again be associated with the closed breeding facility.

Miscellaneous

We are proposing to remove the definition of the word "Operator" in §92.1, because it does not aid in the understanding of the word. Further, we are proposing to add the definition of the terms "Animal and Plant Health Inspection Service" and "Bird holding area" to the definitions in § 92.1 to clarify the meaning of those terms as used in this proposal.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information supplied by the Department, we have determined that this action would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Based on industry projections, we believe that if this proposed rule is published as a final rule, approximately 200,000 parakeets will be imported annually from closed breeding facilities outside the United States. We expect that no brids other than parakeets would be imported under this rule. If there were any year in which the sale of the entire 200,000 imported birds would directly compete with the sale of birds that are produced by breeders in the United States, the dollar amount competed for would total a maximum of $1.4 million annually, based on a payment or breeders of $5.00 to $7.00 per parakeet. Based upon a Department survey, there are at least 12,000 parakeet breeders in the United States, virtually all of whom are small entities. The projected number of birds to be imported from the closed breeding facility would at most account for an average of approximately $117 annually per breeder that would otherwise be paid to breeders in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0040.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.1 would be amended by removing the definition of "Operator", and adding the definitions of "Animal and Plant Health Inspection Service" and "Bird holding area" to read as follows:

§ 92.1 Definitions.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Bird holding area. An area in a building located at an approved closed breeding facility, in which birds intended for importation to the United States are kept for a minimum of 30 days immediately before their shipment to the United States.

* * * * *

3. In § 92.11, footnotes 3, 4, and 5 and the references to them would be redesignated as 4, 5, and 6, respectively.

4. In paragraph (e) of § 92.11 the text following the heading would be designated as paragraph (e)(1) and a new paragraph (e)(2) would be added to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(e) * * *

(2) Birds imported from an approved closed breeding facility will be exempt from paragraph (e)(1) of this section if all of the following conditions have been met:

(i) Within 30 days after hatching, the birds are banded with a legband in compliance with paragraph (h)(5) of this section.

(ii) The birds had been kept together in a bird holding area separate from other birds in the approved closed breeding facility for at least 30 days immediately before shipment to the United States.

(iii) The birds had been shipped by air, without stopping, from the country in which the approved closed breeding facility is located to a United States port of entry listed in § 92.8(b) of this part.

(iv) The birds had been moved from the bird holding area to the aircraft for shipment to the United States in the presence of a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located.

(v) The birds had been moved only on an aircraft containing no other birds or poultry.

(vi) The birds had no contact with poultry or other birds from the time they left the bird holding area until they are imported into the United States.

(vii) At least 21 days before the birds were shipped to the United States, cloacal samples either from all of the birds in the shipment, or from 150 birds in the shipment, whichever is fewer, had been submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located. The samples must have been collected within 28 days before shipment and must have tested negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out at the National Veterinary Services Laboratories, Ames, Iowa.[3]

(viii) At least 21 days before the birds were shipped to the United States, necropsy samples from lung, trachea, terminal gut, and spleen either from all birds that were kept in a bird holding area and that died, or from 30 birds that were kept in a bird holding area and that died, whichever is fewer, had been submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the approved closed breeding facility is located. The samples must be from birds that were kept in a bird holding area and that died between 30 and 21 days before shipment to the United States. The samples must have tested negative for viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry, using standard virus isolation procedures carried out at the National Veterinary Services Laboratories, Ames, Iowa.[3]

(ix) For at least 30 days immediately before shipment to the United States, all psittacine birds in the shipment, and all non-psittacine birds in the shipment that had been kept in a bird holding area with the psittacine birds at the approved closed breeding facility, had a balanced, medicated feed ration treatment of bird seed coated with not less than .5 mg chlorotetracycline (CTC) per gram of seed (for birds 9 inches in length or less measured from the forehead to the end of the tail) or a balanced, medicated feed ration treatment containing not less than 1 percent chlorotetracycline (CTC) with not more than 0.7 percent calcium (for birds more than 9 inches in length measured from the forehead to the end of the tail).

(x) All birds in the shipment that die enroute from the approved closed breeding facility to the United States are made available to a veterinarian employed by the Animal and Plant Health Inspection Service at the United States port of entry.

(xi) Based on port of entry inspection and all other information available to the inspector, there is no evidence to indicate that any bird in the shipment has any communicable disease of poultry.

* * * * *

5. In § 92.11, a new paragraph (h) would be added immediately following the concluding text in paragraph (g) to read as follows:

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[3] Standard procedures for virus isolation for viscerotropic velogenic Newcastle disease and for forms of avian influenza lethal to poultry, as published in "Methods for Examining Poultry Biologics and for Identifying and Quantifying Avian Pathogens," National Academy of Sciences, can be obtained by writing to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

§ 92.11 Quarantine requirements.

* * * * *

(h) *Standards for an approved closed breeding facility for birds.* To qualify as an approved closed breeding facility for birds and to retain that approval, the closed breeding facility and its maintenance and operation must meet the requirements of this section. However, the Administrator will approve a closed breeding facility only when he or she determines that sufficient veterinarians employed by the Animal and Plant Health Inspection Service are available to provide the services required by the closed breeding facility. The operator of the closed breeding facility must bear the cost of the closed breeding facility and all costs associated with its maintenance and operation.

(1) *Disease status of country of facility.* The closed breeding facility must be located in a country that is designated in § 94.6(a)(2) of this chapter as being considered free of viscerotropic velogenic Newcastle disease.

(2) *Inspection of the facility.* The salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located must inspect the closed breeding facility at least once each calendar week to determine whether the closed breeding facility is operating in compliance with this section.

(3) *Physical plant requirements.* The closed breeding facility must meet the following criteria:

(i) *Location.* The closed breeding facility must be located at least one-half mile from any premises that contains any of the following: Poultry, a poultry processing plant, a poultry egg-laying farm, an aviary, a pigeon loft, a pet shop, a game bird breeding facility, a hatchery, or a poultry breeding farm.

(ii) *Construction and related provisions.* (A) The buildings housing birds in the closed breeding facility must be constructed so as to prevent accidental entry of birds.

(B) The bird holding area must:

(*1*) Be constructed so that all access into the bird holding area must be from within the building in which the bird holding area is located, and each entryway into the bird holding area must be equipped with self-closing double doors, unless emergency exits to the outside are required by local fire ordinances; in which case, the emergency exits may exist in the bird holding area if they are constructed so as to allow their opening from the inside of the bird holding area only;

(*2*) Have a vermin-proof feed storage area; and

(*3*) Have windows sufficient to provide a full view of the bird holding area.

(C) The closed breeding facility must:

(*1*) Have office space for recordkeeping;

(*2*) Have a necropsy room containing a necropsy table, a hood with a viewing window over the table, refrigerated storage space for carcasses retained for laboratory examination, a sink with running water, and the following equipment: scissors, forceps, tweezers, swabs, BHI media, sterile tubes, and rubber gloves.

(*3*) Have a supply of water adequate to meet the drinking needs of the birds and to allow for the cleaning specified in paragraph (h)(4)(i) of this section.

(*4*) Have a room for washing closed breeding facility equipment;

(*5*) Have a shower at the entrance into the bird holding area and have a clothes storage and change area at each end of the shower;

(*6*) Have a receptacle in the clothes storage and change area nearest the bird holding area for clothes worn in the bird holding area;

(*7*) Have restrooms at each end of the shower area;

(*8*) Have a storage area for hoses, brooms, shovels, soaps, cages, and waterers;

(*9*) Have a power sprayer to apply disinfectant and insecticide; and

(*10*) Be enclosed by a chain link security fence that is at least 6 feet high and that is made of a minimum of 11½ gauge wire, so as to prevent the entry of carnivores and unauthorized individuals.

(4) *Operational procedures.* (i) The closed breeding facility must be cleaned as follows, using hot water (148 °F minimum) and detergent:

(A) Floors, food and water receptacles, and drop pans from cages must be cleaned of excreta and food waste every other day; and

(B) Cages must be cleaned of excreta and food waste when they are emptied of birds.

(ii) After all birds are removed from a bird holding area, and before any other birds are put into the bird holding area, the following areas and items must be disinfected with either a quarternary ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency: Floors, cages, food and water receptacles, and drop pans from cages.

(iii) A salaried veterinarian of the country in which the closed breeding facility is located must judge the areas and items specified in paragraph (h)(4)(B)(ii) of this section to be clean of all excreta and food waste before the disinfection is carried out, and must be present when the disinfection required by paragraph (h)(4)(ii) of this section is carried out.

(iv) Surface drainage into the bird holding area must be controlled to prevent any disease agent from entering the bird holding area.

(v) A guard employed by the country in which the closed breeding facility is located must be posted at the closed breeding facility at all times to prevent birds in the bird holding area from having contact with individuals not authorized entry into the closed breeding facility and with other birds and animals. The guard must maintain a daily log to record the entry and exit of all individuals entering the bird holding area.

(vi) The operator of the closed breeding facility must allow the unannounced entry into the closed breeding facility of veterinarians employed by the Animal and Plant Health Inspection Service, salaried veterinarians of the national veterinary services of the country in which the closed breeding facility is located, and other individuals authorized by the Administrator, to inspect both birds in the closed breeding facility and the operations at the closed breeding facility, and to determine whether this part is being complied with. Otherwise, access to the closed breeding facility must be restricted only to individuals working at the closed breeding facility, or to individuals specifically granted access by a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located.

(vii) All individuals granted access to a bird holding area must:

(A) Upon entering a bird holding area, wear work clothing and footwear that has not been worn since it was last washed and that is available at the closed breeding facility;

(B) Change out of that work clothing and footwear upon leaving a bird holding area;

(C) Shower when entering and when leaving the bird holding area; and

(D) Have no contact with poultry or birds for at least 3 days before entering the bird holding area.

(viii) At the end of each workday, the operator of the closed breeding facility must collect work clothing worn into the bird holding area and keep it in a bag until the clothing is washed. Used footwear must be either left in the clothes change area or cleaned with hot water (148 °F minimum) and detergent and disinfected with either a quaternary

ammonia-based disinfectant or a phenolic-based disinfectant, applied in accordance with the label approved by the Environmental Protection Agency.

(ix) The operator of the closed breeding facility must submit the following to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782:

(A) The telphone number or numbers at which the operator of the closed breeding facility can be reached on a daily basis on the number of numbers for an agent who can act and make decisions on the operator's behalf;

(B) A current list of the legal names and residential addresses of personnel employed at the closed breeding facility and designated by the operator of the closed breeding facility to handle and care for birds in the closed breeding facility. Before additional designated individuals may handle and care for birds in the closed breeding facility, the legal names and residential addresses of these additional designated individuals must be submitted to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(C) A signed statement from each of the designated personnel employed at the closed breeding facility, that states for 3 days before entering the bird holding area, the designated personnel will refrain from having contact with poultry and birds.

(5) *Procedures concerning birds.* (i) The closed breeding facility must contain only birds that have never previously been in a country other than the United States, and the offspring of those birds if they were hatched in the closed breeding facility, and must not contain any birds that have been removed from the closed breeding facility.

(ii) Birds shipped to the closed breeding facility from the United States must be shipped by air, without stopping, from the United States to the country in which the closed breeding facility is located. When the birds arrive in the country in which the closed breeding facility is located, a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located must accompany the shipment of birds to the closed breeding facility. Before shipment from the United States, the birds must be handled with serially numbered legbands that have been coded to the closed breeding facility. The legbands must be individually identifiable closed legbands. A certificate issued by an accredited veterinarian and endorsed by a veterinarian employed by the Animal and Plant Health Inspection Service in the United States must accompany each shipment of birds from the United States to the closed breeding facility. The certificate must indicate the following:

(A) Species, breed, and number of birds;

(B) Legband numbers;

(C) That all birds covered by the certificate have been inspected by the accredited veterinarian;

(D) That no evidence of any communicable disease of poultry was found among the birds;

(E) That during the 90 days immediately before their exportation from the United States, the birds were not subjected to any bacterial or viral agent known to cause a communicable disease of poultry;

(F) That the birds were placed in previously unused containers at the premises from which the birds were exported from the United States;

(G) That Newcastle disease did not occur anywhere on the premises from which the birds are to be exported from the United States or on adjoining premises during the 90 days immediately before the exportation of the birds from the United States, and that these premises are not located in any area that has been under quarantine for poultry diseases at any time during the 90 days immediately before exportation of the birds from the United States; and

(H) That the birds have not been vaccinated, except with a vaccine approved by the Administrator.[7] The Administrator will approve a vaccine if:

(1) The vaccine is licensed by the Animal and Plant Health Inspection Service in accordance with § 102.5 of this chapter; and

(2) The vaccine is not one that is used to prevent Newcastle disease, avian influenza, or any other hemagglutinating virus of poultry.

(iii) The operator of the closed breeding facility, in the presence of a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located, must individually band each bird hatched in the closed breeding facility, within 30 days after hatching, with a serially numbered legband that has been coded to the closed breeding facility. The legbands must be individually identifiable closed legbands.

[7] A list of approved vaccines can be obtained by writing to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(iv) The operator of the closed breeding facility must collect daily all birds that die while kept in the bird holding area and hold them under refrigeration within the bird holding area until specimens are collected for laboratory examination. The refrigeration temperature must be no warmer than 35 °F if the birds are autopsied daily, and no warmer than 0 °F if the birds are autopsied more than 1 day after being placed under refrigeration. The operator of the closed breeding facility must account for all birds in the closed breeding facility, and must not dispose of any carcass or parts of a carcass unless permission to do so is given by a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located.

(6) *Records.* (i) The operator of the closed breeding facility must maintain a current log concerning all birds in the closed breeding facility, recording the number of birds that die, the number of birds that enter the closed breeding facility (including a separate count of those arriving dead), and the number of birds that leave the closed breeding facility. The log must be made available upon request to veterinarians employed by the Animal and Plant Health Inspection Service and must be kept by the operator of the closed breeding facility until reviewed by a veteranarian employed by the Animal and Plant Health Inspection Service.

(ii) The operator of the closed breeding facility must submit the following to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782: the operator's legal name; the operator's residential address; the operator's business address; the legal names of all persons responsibly connected with the business of the closed breeding facility, as that term is defined in paragraph (h)(10)(iv) of this section; the residential addresses and business addresses of all directors, officers, partners, and owners of 10 percent or more of the voting stock of the closed breeding facility; and the address of the closed breeding facility. The operator must submit to the same address any change in any of this information within 14 days of the change.

(7) *Advance Payment Agreement for services required by operator of an approved closed breeding facility for birds intended for importation.* (i) When a closed breeding facility for birds intended for importation is approved by the Administrator, the operator of the

approved closed breeding facility and the Animal and Plant Health Inspection Service must execute an Advance Payment Agreement, as set forth in paragraph (h)(7)(ii) of this section.

(ii) *Advance Payment Agreement.*

Advance Payment Agreement between _____ (name of operator), referred to below as the Operator, and the United States Department of Agriculture, Animal and Plant Health Inspection Service, referred to below as the Service, with respect to _____ (approved closed breeding facility and address of facility). The Operator and the Service agree to the following:

(A) The Operator agrees to deposit with the Service upon execution of this agreement $10,000 to defray the following costs, when incurred by the Service in providing services required for two shipments of birds to the United States and one inspection of the approved closed breeding facility by a veterinarian employed by the Animal and Plant Health Inspection Service: costs for travel, salary, subsistence, local transportation, telephone, and postage incurred in inspection of the approved closed breeding facility; administrative costs to carry out the activities of the Advance Payment Agreement; and the cost of all tests required by this part that concern birds in the approved closed breeding facility. As funds from the $10,000 are obligated, the Service will issue monthly bills for costs incurred, based on official accounting records, to restore the deposit to its original level. The Opertor agrees to pay these bills within 14 days after receiving them.

(B) The Service agrees:

(*1*) To furnish the services of personnel needed to conduct inspections, perform laboratory procedures, and complete examination of birds intended for importation to insure that they are free of viscerotropic velogenic Newcastle disease and forms of avian influenza lethal to poultry.

(*2*) To provide the Operator on a quarterly basis, or within 30 days following receipt of a written request from the Operator, with an accounting of funds expended in providing services under this agreement. Any unobligated balance upon termination or expiration of this agreement will be returned to the Operator.

(*3*) To inform the Operator when a diagnosis of viscerotropic velogenic Newcastle disease or any form of avian influenze lethal to poultry has been made in an approved closed breeding facility.

(C) It is mutually understood and agreed that this agreement will become effective upon date of final signature and will continue indefinitely. This agreement may be amended by agreement of the parties in writing. It may be terminated by either party upon 30 days written notice to the other party.

(D) No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise therefrom.

Date _____

_____

Operator

Date _____

_____

Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture

(8) *Submission of Plans and Request for Approval.* Persons requesting approval for a closed breeding facility must submit the request for approval and architectural and floor plans for the closed breeding facility to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(9) *Advance Payment Agreement for inspection for approval of a closed breeding facility for birds intended for importation.* (i) Before the Administrator determines whether a closed breeding facility is eligible for approval, a veterinarian employed by the Animal and Plant Health Inspection Service must make a personal inspection of the closed breeding facility, to determine whether it complies with the standards in paragraph (h)(3) of this section. As a condition of the veterinarian employed by the Animal and Plant Health Inspection Service conducting an inspection of the closed breeding facility, the operator of the closed breeding facility and the Animal and Plant Health Inspection Service must execute an Advance Payment Agreement, as set forth in paragraph (h)(9)(ii) of this section.

(ii) *Advance Payment Agreement.*

Advance Payment Agreement between ___ (name of operator), referred to below as the Operator, and the United States Department of Agriculture, Animal and Plant Health Inspection Service, referred to below as the Service, with respect to ___ (closed breeding facility and address of facility). The Operator and the Service agree to the following:

(A) The Operator agrees to deposit with the Service upon execution of this agreement $4,000 to defray the costs for the following, when incurred by the Service in carrying out inspection of the closed breeding facility to determine if it is eligible for approval: costs for travel, salary, subsistence, local transportation, administrative expenses, telephone, and postage. If the costs incurred are more than $4,000, a bill for the extra costs incurred, based on official Service accounting records, will be issued to the Operator. The Operator agrees to pay these bills within 14 days after receiving them.

(B) The Service agrees:

(*1*) To furnish the services of a veterinarian employed by the Animal and Plant Health Inspection Service necessary to conduct an inspection of the closed breeding facility to determine if it is eligible for approval.

(*2*) To provide the Operator, within 30 days following receipt of a written request from the Operator, with an accounting of funds expended in providing services under paragraph (h)(9)(ii)(B)(*1*) of this section. Any unobligated balance upon termination or expiration of this agreement will be returned to the Operator.

(C) It is mutually understood and agreed that this agreement will become effective upon date of final signature and will continue until inspection of the closed breeding facility has been completed and any amounts owed by or to the Operator have been paid. This agreement may be amended by agreement of the parties in writing.

(D) No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise therefrom.

Date _____

_____

Operator

Date _____

_____

Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture

(10) *Denial and Withdrawal of Approval.* (i) The Administrator will withdraw the approval of any approved closed breeding facility when the operator of the approved closed breeding facility requests in writing the withdrawal of approval.

(ii) The Administrator will deny or withdraw approval of any closed breeding facility, for any of the reasons set forth in paragraph (h)(10)(iii) of this section. Before withdrawing or denying approval, the Administrator will inform the operator of the closed breeding facility of the reasons for the proposed action and provide the operator of the closed breeding facility with an opportunity to respond. The Administrator will give the operator of the closed breeding facility an opportunity for a hearing regarding any dispute of material fact, in accordance with rules of practice that will be adopted for the proceeding. However,

the suspension of approval will become effective pending final determination in the proceeding, when the Administrator determines that the suspension is necessary to protect the health of poultry in the United States. The suspension will be effective upon oral or written notification, whichever is earlier, to the operator of the closed breeding facility. In the event of oral notification, written confirmation will be given to the operator of the closed breeding facility within 10 days of the oral notification. This suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(iii) The Administrator will deny or withdraw approval of a closed breeding facility if:

(A) Any provision of this section is not met;

(B) The operator of the closed breeding facility or a person responsibly connected with the business of the closed breeding facility has been convicted of any crime under any statute or regulation regarding the importation into any jurisdiction of any animal or bird;

(C) The operator of the closed breeding facility or a person responsibly connected with the business of the closed breeding facility has been convicted of any crime involving fraud, bribery, or extortion; or

(D) No birds have been shipped from the closed breeding facility to the United States for one year.

(iv) For the purposes of this section, a person will be considered responsibly connected with the business of the closed breeding facility if that person has an ownership, morigage, or lease interest in the closed breeding facility's physical plant, or if the person is a partner, officer, director, holder or owner of 10 percent or more of its voting stock, or is an employee of the operator of the closed breeding facility.

(v) The denial or withdrawal referred to in this paragraph will not be based solely on the conviction of a person responsibly connected with a closed breeding facility if the operator of the closed breeding facility enters into a consent agreement with the Administrator in which it is agreed that the responsibly connected person identified in the notification will never again be associated with the closed breeding facility, and the operator of the closed breeding facility complies with the consent agreement. Violation of the consent agreement by the operator of the closed breeding facility will constitute independent grounds for denial or withdrawal of approval of a closed breeding facility.

* * * * *

Done in Washington, DC, this 1st day of December, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-28067 Filed 12-5-87; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Parts 113, 114, and 116

[Notice 1988-14]

Debts Owed by Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on a proposed new Part 116 of its regulations governing the extension of credit and settlement of debts owned by candidates and political committees. These regulations implement sections 433, 434, 439a, 441a, 441b and 451 of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA"), 2 U.S.C. 431 *et seq.* Comment is also sought on proposed revisions to section 113.1 concerning the determination that a candidate's committee has excess campaign funds. Please note that public comment is requested on several related issues for which no specific regulatory language is proposed at this time. The draft rules that follow do not represent a final decision by the Commission on the amendment of 11 CFR 113.1 or the addition of 11 CFR Part 116 to its regulations. A public hearing has been scheduled to obtain further comment on the issues and proposed amendments discussed in this notice. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before January 27, 1989. The Commission will hold a hearing on February 15, 1989 at 10:00 a.m. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is considering deleting the current debt settlement regulations at 11 CFR 114.10 and replacing them with a new Part 116 to address in a comprehensive manner a broad range of topics concerning debts owed by candidates and political committees. The proposed new regulations, together with revisions to the current debt settlement procedures (*see* Federal Election Commission Directive No. 3, Agenda Document #82-110, effective July 22, 1982), would establish a new system whereby indebted political committees would be required to submit comprehensive debt settlement plans for Commission review prior to termination. Such debt settlement plans would cover all debts owed and would provide for the disposition of the committees' remaining funds and assets. In contrast, committees that are not terminating would not be permitted to settle their just debts. However, their creditors would be allowed to completely forgive those debts if the committee is essentially defunct and clearly unable to pay its creditors. Please note that the proposed rules would cover several specific types of debts not mentioned in the current regulations, such as debts owed to unincorporated commercial vendors, committee employees, and other individuals. However, the proposed rules which follow would not apply to bank loans to candidates or political committees since this form of debt is governed by other regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12), and is currently the subject of a separate rulemaking. *See* Notice of Proposed Rulemaking, 51 FR 28154 (Aug. 5, 1986); and Announcement of hearing, 52 FR 2416 (Jan. 22, 1987). The Commission does not generally consider bank loans in the debt settlement process and does not intend to change its approach. Another area addressed by these proposals involves situations where a candidate has multiple campaign committees for different elections and/or different offices, and certain of these committees have surplus funds or the ability to raise funds while other committees are significantly in debt.

This proposed new approach has been developed with several interrelated objectives in mind. One objective is to ensure that debt settlements, and the initial transactions creating the debts, do not result in excessive or prohibited contributions to the debtor committees. This concern prompted the Commission to adopt the current debt settlement regulations in 1977. Since that time, the

Commission's experiences in reviewing debt settlements have illustrated the need to encourage candidates and political committees to pay their debts. Previous debt settlements have also demonstrated the need to reduce the actual or perceived unfairness to certain creditors that may occur when a committee liquidates its assets to pay its debts in a piecemeal manner.

A. Proposed Part 116—Debts Owed by Candidates and Political Committees

The Commission has prepared this proposed new part to address, in a systematic way, several interrelated concerns regarding the creation and disposition of election-related debts and obligations under the FECA. Proposed Part 116 would explain when extensions of credit and debt settlements are treated as contributions from the creditors, how committees should report outstanding debts, including disputed debts, when to file a debt settlement plan and what information to include, and how the Commission reviews debt settlements.

1. Debts Owed by Ongoing and Terminating Committees

The current debt settlement regulations are not expressly limited to political committees that are in the process of winding down their activities and preparing to terminate, although the vast majority of those seeking debt settlement are in that posture. Thus, questions have arisen as to whether it is appropriate to permit ongoing committees, including party committees, separate segregated funds and nonconnected committees, to settle their debts for less than the full amount owed, particularly since some of these committees may have the ability and intention to continue to solicit funds and to engage in political activities. Consequently, the Commission seeks comments on proposed § 116.2, which would expressly limit debt settlements to terminating committees. However, this section would also create a very limited exception to allow creditors of ongoing committees to write off bad debts in the limited situation where it is demonstrated that the ongoing committee has been essentially dormant for some time and will not be able to pay its debts in the foreseeable future. This is not intended to serve as a routine method for ongoing committees to dispose of the debts.

Under proposed § 116.2, the Commission would review debt settlement plans to determine whether the committee has complied with new Part 116 and to ascertain whether the proposed plan would result in an apparent violation of the FECA or the Commission's regulations. This provision is based on current § 114.10, which provides for a similar review of debt settlements for potential violations. The Commission has not "approved" or "disapproved" debt settlement statements in the past. Nonetheless, comments are sought as to whether specific approval or disapproval should be granted to future debt settlement plans and what consequences should flow from such approval or disapproval, particularly in situations where creditors may disagree with certain aspects of the settlement plans.

2. Transfers Involving Indebted Committees

Proposed § 116.2 would also address situations where candidates seek to transfer an indebted campaign committee's remaining funds to another campaign committee authorized by that candidate. Such transfers would not be permitted under the proposals being published today because they would be unfair to the creditors of the transferor committee and they would be contrary to the objective of encouraging political committees to pay their just debts.

Comments are also sought on other situations involving transfers and indebted committees. For example, the Commission is considering whether to expressly permit, but not require, the forwarding of debts from previous to current campaign committees of the same candidate in accordance with AOs 1980–43 and 1977–52. Under such an approach, the previous campaign committee would be permitted to terminate after the transfer is made. The current campaign committee would be required to report separately the previous debts, as well as whatever contributions it receives to pay those debts. Such contributions would have to be aggregated with whatever contributions were previously received from the same donors for that prior election.

In some cases, a subsequent campaign committee may not wish to assume the obligation of paying debts incurred by previous campaign committees if they are not legally required to do so. Nevertheless, the Commission is interested in exploring ways to encourage campaign committees to pay or settle previous campaign debts before the candidate begins making expenditures for the next election, or before the campaign committee makes new purchases from the same vendors. A related question is whether the Commission should allow a candidate's committee to terminate and dispose of its surplus, if the candidate has another principal compaign committee that is in debt. Conversely, should the indebted committee be permitted to settle those debts if it could lawfully receive a tranfer of funds from the other committee to pay those debts in full?

3. Extensions of Credit and Settlements of Debts by Commercial Vendors

New § 116.3 would cover extensions of credit by incorporated and unincorporated vendors of goods and services to candidates and political committees. It would clarify that both incorporated and unincorporated vendors may extend credit to a candidate or committee provided that the credit is extended in the ordinary course of business on terms substantially similar to those offered to non-political purchasers where the degree of risk and the amount of the obligation are comparable. Please note that an extension of credit outside the commercial vendor's normal course of its own business would continue to be impermissible unless it involves a use of facilities or means of transportation such as that specifically permitted by 11 CFR 114.9.

This new provision would also list the factors the Commission would consider in determining whether credit was extended in the ordinary course of business. These suggested factors are intended to provide guidance so that commercial vendors and political committees may avoid situations that would result in the making or acceptance of excessive or prohibited contributions. One of the proposed factors would be whether the extension of credit conformed to the usual and normal practice in the vendor's trade or industry. However, this factor may not be pertinent in cases where the vendor could show that its own business practices are different, or where there may not be an established industry-wide practice. Thus, the proposed factors would not necessarily be accorded equal weight. The Commisison requests comments on these proposed criteria and suggestions as to other criteria that should be considered.

Section 116.4 would address the forgiveness or settlement of campaign debts by corporate and noncorporate commercial vendors and would explain that such actions will result in the making of a contribution to the debtor committee unless they are commercially reasonable.

The proposed regulation would also follow current § 114.10(c) by explaining when a settlement is commercially reasonable. The draft rules would include examples of commercially

reasonable efforts that could be undertaken by the debtor candidates and committees to pay the outstanding amounts, as well as examples of commercially reasonable remedies that the vendor could pursue in appropriate cases. However, the creditor and the debtor would not be required to undertake particular activities that are not likely to result in the payment of the debt and the vendor would not be required to go beyond its usual efforts to collect debts of similar amount from non-political entities. The Commission requests comments on this approach and suggestions concerning other examples of commercially reasonable efforts undertaken by the candidate, the committee or the vendor.

Finally, proposed § 116.4(d) would state explicitly that the proposed regulations are not intended to force a commercial vendor to forgive or settle a political debt is the vendor does not wish to do so. This would be consistent with the current Commission practice of examining debt settlement statements for indications that the creditors are in agreement with the terms of the settlement. *See* FEC Directive No. 3, Agenda Document #82–110 (effective July 22, 1982).

4. Advances by Committee Staff and Other Individuals

Issues have arisen during the course of several compliance matters and in advisory opinion requests concerning payments by individuals, including campaign staff, using personal funds including personal credit cards to purchase various goods or services for political committees. *See* MUR 1349; and AO 1984–37. For example, such individuals have used, or sought to use, personal funds to purchase goods and services such as airfare, rental cars, meals, lodging, postage, office supplies, messenger services and a variety of other election-related items with the expectation of later reimbursement by the committee. The Commission is concerned that individuals with sizable resources may have the ability to circumvent the contribution limitations by paying committee expenses and not being reimbursed for a substantial period of time.

If the payments are for transportation expenses incurred by individuals while traveling on behalf of candidates or political party committees, they would not be treated as contributions under 11 CFR 100.7(b)(8) if they do not exceed $1000 per candidate per election or $2000 per year for the political committees of a political party. Moreover, personal funds used by volunteers for usual and normal subsistence expenses incidental to volunteer activity are not contributions under current § 100.70(b)(8). However, if the payments do not fall within these exemptions, the problem is that the individuals involved have not provided goods or services to the committee as commercial vendors. Therefore, they cannot rely on § 100.7(a)(4), which permits extensions of credit for an amount of time within normal business or trade practice. Nevertheless, these individuals may need to pay for unanticipated expenses before obtaining the funds from the committee.

Consequently, the Commission is now seeking comments on draft § 116.5, which would allow individuals such as volunteers and paid employees of the campaign to use personal funds, including credit cards, to pay for certain types of expenses on behalf of candidates and political committees without being considered to have made a contribution, privided they are repaid within the time periods indicated below.

Under this approach, payments from personal funds for the purchase of campaign-related goods or services would not be treated as contributions if they fall within one of the categories of payments excluded from the definition of contribution under 11 CFR 100.7(b)(8). In addition, this proposal would state that nonexempted payments would be considered contributions unless two conditions are met. The payments must be for the individual's personal transportation expenses incurred while traveling on behalf of a candidate or party committee or for the individual's usual and normal subsistence expenses incurred while traveling on behalf of a candidate or party committee. Secondly, reimbursement must be obtained within sixty days for credit car transactions or thirty days in other cases. These proposals would be consistent with the changes suggested by the Commission to 11 CFR 100.7(b)(8), regarding unreimbursed subsistence expenses, and would also be consistent with the treatment of credit card transactions in the public financing regulations. *See* Notice of Proposed Rulemaking, 53 FR 35827 (September 15, 1988); and 11 CFR 9035.2(a)(2).

The proposal being published today is intended to provide flexibility in situations where certain individuals may find it necessary to pay personnal travel and subsistence expenses. The Commission recognizes that the campaign committee may not want to provide credit cards to its field workers. Under this approach, however, a contribution would result if the individual pays for the transportation or subsistence expenses of others, or for other campaign expenses such as the costs of meeting rooms or telephone services, or if reimbursement is not forthcoming within the proposed time limits. These time limits are intended to prevent individuals associated with the campaign from financing the campaign for long periods during which the candidate's funding may be quite limited. Comments are sought on this approach and on the appropriateness of the thirty and sixty day limits proposed. Although the draft rule does not set a maximum limit on the amount of reimbursable transportation and subsistence costs an individual may accrue, the Commission requests comments on whether to establish an upper limit. Finally, comment is sought on whether this new provision should apply to all individuals who make these types of advances for candidates and committees, or whether it should be limited to volunteers and paid campaign staff. The Commission recognizes that questions may also arise as to whether particular individuals are employees of or consultants to a committee.

Draft § 116.5 would also state that such unreimbursed payments must be treated as debts, in which case they must be reported as such until payment or settlement occurs. In addition, the Commission's proposals would clarify that the individual creditors are not required to settle or forgive such debts if they do not wish to do so.

The Commission notes that individuals may also lend funds directly to committees. Under the current regulations, such loans are contributions until repaid. 11 CFR 100.7(a)(1)(i)(B). The Commission is considering whether it may be advisable to state in proposed Part 116 that a loan must be treated as an outstanding debt to the extent that it has not been repaid and, therefore, it would have to be included in a debt settlement plan. Language could also be included to clarify that such loans are contributions to the extent forgiven by the lenders.

5. Salary Payments Owed to Employees

Questions have arisen regarding the treatment of unpaid salaries owed to committee staff as debts for debt settlement purposes. The current debt settlement regulations do not address this subject. In some situations, the political committee and the campaign worker may have agreed that a salary would be paid only as funds are available. In other cases, the committee may seek to treat the individuals as volunteers retroactively. Under section 431(8) of the Act and 11 CFR 100.7(b)(3),

the value of services provided by a volunteer is not a contribution.

The Commission is considering adding proposed § 116.6 to the regulations to provide political committees with guidance in this area. The proposed new language would permit the committee to treat the unpaid amount as a debt owed to the employee or as volunteer services under 11 CFR 100.7(b)(3), provided the employee agrees in writing to being considered a volunteer. This decision could be made at any time. If the amount is treated as a debt, it would have to be reported as such under current § 104.11 and included in any debt settlement plan filed under proposed § 116.7. Although proposed § 116.6 would not treat unpaid salary obligations as contributions, comments are requested as to whether there are situations where it would be advisable to do so.

6. Debt Settlement Plans Filed by Terminating Committees and Commission Review

Proposed § 116.7 would contain guidelines concerning the submission and review of comprehensive debt settlement plans by terminating committees. Under § 116.7(a), a debt settlement plan would have to be filed by an indebted terminating committee after it has reached settlements with all remaining creditors but before it has paid whatever amounts were agreed to in those settlements. In comparison, the current rules allow committees to file debt settlement requests as they reach agreements with various creditors. The current approach has raised questions as to how a committee intends to handle debts owed to other creditors, particularly when the committee has insufficient funds to pay these amounts and limited fundraising prospects. Consequently, the proposed rules would require the submission of a single settlement plan indicating how the political committee intends to handle all of its debts and dispose of its remaining assets and cash on hand, and how it plans to obtain whatever additional amounts may be needed to pay its creditors under the plan. Thus, the Commission would postpone review of a committee's debt settlements until the committee has reached agreements with every creditor and is ready to terminate. Comments are sought on whether it would be advisable to require the filing of a debt settlement statement within a set period of time after all settlements have been reached, and if so, what the appropriate deadline should be. Under this proposal creditors would no longer have the option of filing debt settlement statements. *Compare* current 11 CFR 114.10. Comments are requested as to whether this may present difficulties for creditors wishing to write off bad debts before the debtor committee is ready to terminate.

Paragraph (b) of proposed §116.7 would clarify that debts owed to the United States could not be settled except as permitted pursuant to applicable federal law, and that Title 26 repayments and civil penalties under Title 2 must be paid in full.

Under draft §116.7(c), a debt settlement plan filed by an indebted candidate or committee would have to include a signed affidavit from each creditor evidencing agreement to the terms of the settlement of the debt owed to that creditor. The creditors would also be able to submit written statements supporting or opposing settlements offered to other creditors.

Generally, since the Commission does not have the authority to waive reporting requirements, if any creditor refuses to accept the settlement, the political committee would not be able to file a debt settlement plan, would not be able to terminate, and would therefore be required to continue reporting its debate pursuant to § 104.11. The Commission realizes, however, that a political committee acting in good faith may encounter a creditor who absolutely refuses to settle when offered the same terms and conditions as other creditors, thereby preventing review of the entire debt settlement plan. Comment is sought as to whether committees faced with this situation should be allowed to submit their debt settlement plans for review, including a statement outlining their good faith efforts. The Commission is considering whether in such situations it may be appropriate for the Commission to suspend the reporting requirements pursuant to 11 CFR 102.4 after having determined that the committee did make a good faith attempt to reach a settlement.

The proposals being published today would also clarify the factors the Commission may consider in reviewing debt settlement plans. Most of these factors have been drawn from FEC Directive No. 3 regarding debt settlement procedures. Listing these factors in the new rules would enable political committees and their creditors to better understand how the Commission evaluates proposed debt settlements.

In the past, the Commission has not attempted to influence the indebted committee's decisions as to which creditors to include in a settlement agreement or as to the amount or percentage of debt to be forgiven. The proposed rules would require committees to include all debts in their settlement plans, but would give committees broad discretion in deciding how much to pay to each creditor. However, the Commission would be able to consider whether debts owed to the candidate received more favorable treatment than other campaign obligations. Since the proposed rules would not prevent committees from treating different creditors unequally, suggestions are requested as to whether and how to encourage committees to pay approximately the same percentage of each outstanding debt on similar terms. Comments are also requested as to whether an indebted committee should be expected to justify different settlement amounts and percentages for different creditors.

The Commission is also considering whether to establish mandatory or suggested priorities for the settlement of debts owed to different categories of creditors, or whether to require committees to adhere to the priorities set out in the Federal Bankruptcy Code. *See* 11 U.S.C. 507. These possibilities raise the question of whether the Commission should approve or disapprove debt settlements on the basis of such priorities. The Commission notes that implementation of priorities could create conflicts with decisions made by federal bankruptcy courts in cases brought by indebted political committees or their creditors. Nevertheless, the FECA grants the Commission authority to establish procedures to determine the insolvency of political committees, to liquidate the assets of insolvent committees for the reduction of outstanding debts, and to terminate insolvent committees after liquidation. 2 U.S.C. 433(d).

Thus, the Commission is seeking comments as to what its role should be in this area and whether insolvent committees should be permitted to seek discharges in bankruptcy prior to submission of debt settlement plans for Commission review. Although in the past the Commission has reviewed debt settlements where committees have sought liquidation under Chapter 7, the reorganization of a political committee under Chapter 11 may present different considerations. For example, such a reorganization may allow the committee to continue its political activities while restructuring its debts, thereby obtaining an advantage over other committees that are committed to paying their bills on time or in full. The Commission is also concerned that reorganizations may present opportunities for the committee

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to accept prohibited or excessive contributions. Finally, Chapter 11 reorganizations may not be entirely consistent with the Commission's proposals to limit debt settlements to terminating committees.

The debt settlement proposals set out in § 116.7 contemplate that once the Commission has finished reviewing a debt settlement plan, the committee will liquidate its remaining assets and pay its creditors so that it may terminate as soon as possible. The Commission is considering whether committees should be required to terminate within a specified period of time, such as thirty or sixty days. Comments are also sought as to whether terminating committees should be permitted to make contributions or expenditures during this period just prior to termination. The concern is that this type of activity would drain resources already committed to paying past creditors.

7. Creditors' Forgiveness of Debts Owed by Ongoing Committees and Commission Review

Proposed section 116.8 would set out conditions under which creditors would be able to forgive debts owed by committees not intending to terminate. For the reasons stated above, the Commission does not favor allowing ongoing committees to settle debts with creditors if those committees have the ability and intention to continue fundraising for election-related purposes. Consequently, this proposed rule would only allow creditors to forgive an ongoing committee's debts if either the creditor is unable to locate the indebted committee or the committee meets certain conditions showing that it is essentially defunct and clearly unable to pay its bills. This proposed section also contemplates Commission review of the creditor's actions and the proposed forgiveness to determine whether the requirements of new Part 116 have been satisfied and whether the forgiveness would result in an apparent violation of the Act or the regulations. Comments are sought on this approach.

8. Disputed Debts

Another issue that sometimes arises involves disputed debts owed by either ongoing or terminating committees. In some cases, there may be no agreement as to the amount or even the existence of the debt. For this reason, the committee may not want to report the debt to avoid acknowledging it. In other situations there may be a bona fide dispute regarding the value of the goods or services received, or the vendor's compliance with the terms of the contract or the vendor's authority to undertake certain actions. Although the Commission's reporting regulations appear to require disclosure of all debts and obligations, the rules do not explain how to report disputed debts. Committees may be reluctant to list such debts on their reports because they wish to avoid jeopardizing their legal position with regard to the dispute. However, the failure to disclose such information is not consistent with the FECA's goal of achieving full disclosure of campaign finances.

To address these concerns, the Commission is considering promulgating new § 116.9, which would apply to disputed debts involving both terminating and ongoing committees. It would create a distinction for reporting purposes between situations in which the committee has received some goods or services, whether or not to the committee's satisfaction, and those situations in which nothing of value has been provided. This proposal would require committees to report a disputed debt only when they have actually received something of value pursuant to the agreement between the parties, thereby ensuring disclosure whenever there is the potential for a contribution to result. However, proposed § 116.9 would allow committees to indicate on their reports that they dispute the existence or the amount of the debt and that by noting the dispute they have not admitted to owing the amount claimed. This would permit the committee to disclose the possible obligation while preserving their rights in the dispute, and would be consistent with 11 CFR 9035.1(a)(2). Thus, reporting would be postponed only when nothing has been provided and only the creditor believes a debt exists.

With regard to terminating committees that have been unable to resolve disputed debts, the proposed rules would require such committees to state in the debt settlement plan what amount, if any, they propose paying creditors to resolve the disputes. These committees would not be expected to include statements from the creditors agreeing to the settlements. The Commission would review these proposals as part of the debt settlement plans. Comments are requested on this approach.

9. Issues Concerning Debts Owned by Publicly-Funded Presidential Campaign Committees

The current debt settlement regulations at 11 CFR 114.10 do not differentiate between debts owed by presidential campaign committees accepting public funding under 26 U.S.C. Chapters 95 and 96, and debts owed by other political committees. Consequently, the Commission has handled debt settlement requests submitted by presidential committees in accordance with the procedures set out in FEC Directive No. 3. Current § 9035.1(a)(2) contemplates that such debts may be settled and that a settlement does not affect the candidate's spending limits unless the lower amount represents a reasonable settlement of a dispute as to what was owed. Although proposed Part 116 would continue this approach, the question arises as to whether publicly funded committees should be permitted to settle debts, and if so, whether higher standards should be used to evaluate their settlement plans. Another issue concerns the timing of debt settlements filed by presidential committees. If the Commission continues to permit such debt settlements, should the Presidential committees submit their proposed settlement plans for Commission review as soon as feasible, or should they be able to wait until the Commission's audit process has been completed?

Questions were also raised in AO 1988–5 as to whether a publicly funded committee may use its funds to make loans or contributions to the candidate's previous publicly funded committee which is still in debt. The Commission concluded that such a payment would not constitute a qualified campaign expense pursuant to 11 CFR 9034.4 and would not be includible in the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5 upon the candidate's withdrawal from the race. However, the subsequent presidential campaign committee was permitted to treat part of its cash balance as excess campaign funds available to retire the previous committee's debts once the Commission's audit and review were completed and the committee has satisfied whatever repayment obligations or possible penalties it may owe. Accordingly, comments are requested as to whether the Commission's debt settlement rules, or the public financing rules should be revised to reflect this decision.

B. Proposed Amendments to Other Regulations

The Commission is considering several possible conforming amendments to §§ 104.11 and 113.1(e) that may be necessary to bring these sections into conformity with proposed new Part 116. Accordingly, the Commission seeks comments on several possible revisions discussed below. The Commission also notes that the cross

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references in §§ 100.7(a)(4) and 104.3(d) to the current debt settlement provisions in § 114.10 will need to be revised.

1. Definition of Excess Campaign Funds

Section 113.1(e) of the regulations implements the statutory provisions regarding permissible uses of excess campaign funds. 2 U.S.C. 439a. The Commission is proposing to amend the definition of "excess campaign funds" so that a candidate's campaign committee could not declare excess campaign funds until after the campaign has ended and the committee has determined that it is not in a net debt situation. This proposal is intended to ensure that campaign funds will be used to pay for goods and services provided to the campaign. The Commission is concerned that under the current rules and advisory opinions, it is possible to declare excess campaign funds at any time, and to use those excess amounts to form a new campaign committee, or for a variety of political or non-political purposes, at the expense of the *bona fide* creditors of the previous committee. Accordingly, comments are sought on this proposed amendment.

2. Continuous Reporting of Debts and Obligations

Section 104.11 implements section 434(b)(8) of the Act by requiring that all debts and obligations owed by or to a political committee be continuously reported until extinguished, and by requiring the disclosure of settlements for less than the reported value or amount of the debt. Under § 104.11(b), debts of $500 or less must be reported either at the time of payment or no later than sixty days after they are incurred, which ever is earlier. However, obligations exceeding $500 must be reported as of the time of the transaction. Comments are requested as to whether § 104.11(b) should be revised to more clearly explain that debts exceeding $500 must be reported when they are incurred, and must be disclosed on subsequent reports as outstanding, and that payments must also be reported.

The Commission is also reevaluating the scope of § 104.11(b). Currently, for amounts not exceeding $500, the committee must disclose any "debt, obligation or other promise to make an expenditure." However, for amounts over $500, disclosure is required for "any loan, debt or obligation." The Commissioin's policy has been to treat these categories as the same. Accordingly, the Commission is considering clarifying this policy by making the language of the two provisions consistent with each other. Comments are requested as to whether both of these provisions should be revised to cover all "debts and obligations, including loans and written contracts, promises or agreements to make expenditures," which would be consistent with the definition of expenditure at 2 U.S.C. 431(9).

Several other questions concerning the reporting of debts and obligations could be addressed. For example, the reporting rules do not indicate when to report an employee's salary if the work is performed in one reporting period and the payment is made in another. Another situation that could be addressed concerns committees that may not know the exact amount of the obligation incurred during the reporting period until the vendor submits a bill in a later reporting period. This is particularly common with regard to telephone services and contingent fee arrangements. To ensure adequate disclosure, the Commission is considering whether it needs to be made clearer that the estimated cost should be reported as a debt on Schedule D with a notation that this amount is an estimate. When the committee receives the bill, it could either amend the previous report or note the change on a subsequent Schedule D. In some situations, the activity will also represent an in-kind contribution to a specific candidate. Thus, the estimated amount would also have to be included as a memo entry on Schedule B and adjustments would be made once the bill is received and paid. The detailed summary page would also reflect these figures and the changes. Comments are requested on whether this approach needs to be clarified.

Finally, § 104.11 could be amended to clarify when the obligation to continuously report ends. In most situations, the disclosure requirement ends once the bill is paid in full or the Commission has completed review of the debt settlement. However, a question arises as to whether a committee should also be permitted to report a debt as extinguished if the creditor has gone out of business. If this is allowed, the Commission recognizes that it may be necessary to require committees to demonstrate that the creditor no longer exists or that they have been diligent in trying to locate the creditor. Another issue concerns debts that are no longer legally enforceable against the committee under the applicable statute of limitations. The Commission is considering whether, in some cases, such debts should be treated as extinguished, thereby enabling the committees to terminate their reporting obligations. However, some committees may wish to make efforts to pay part or all of the amount owed, even after they are no longer legally obligated to do so. Comments are therefore requested as to whether committees should have the option to report debts as extinguished once they are no longer legally enforceable under the appropriate statute of limitations. The Commission notes that his approach would not be appropriate in situations where the credit was extended beyond a commercially reasonable length of time or where the creditor failed to take commercially reasonable steps to obtain payment.

The Commission welcomes comments on proposed new Par 116, the conforming amendments, and the issues raised in this Notice.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the Act's requirements in these areas.

List of Subjects

11 CFR Part 113

Campaign funds, Elections, Political candidates.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICE-HOLDER ACTIVITIES (2 U.S.C. 439a)

1. The authority citation for Part 113 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

2. Section 113.1 would be amended by revising paragraph (e) to read as follows:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(e) *Excess campaign funds.* "Excess campaign funds" means amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. The candidate shall not determine that any amounts constitute excess campaign funds until after the campaign has ended and the candidate has determined that his or her authorized committee has no net debts outstanding under 11 CFR 110.1(b)(3).

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for Part 114 would be revised to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432(c), 437d(a)(8), 438(a)(8) and 441b.

§ 114.10 [Removed and Reserved]

4. Section 114.10 would be removed and reserved.

5. Part 116 would be added to read as follows:

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

Sec.

116.1 Definitions.
116.2 Debts owed by terminating and ongoing committees; transfers from indebted political committees.
116.3 Extensions of credit by commercial vendors.
116.4 Forgiveness or settlement of debts owed to commercial vendors.
116.5 Advances by committee staff and other individuals.
116.6 Salary payments owed to employees.
116.7 Debt settlement plans filed by terminating committees; Commission review.
116.8 Creditor forgiveness of debts owed by ongoing committees; Commission review.
116.9 Disputed debts.

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(c)(8), 441a, 441b and 451.

§ 116.1 Definitions.

(a) *Terminating committee.* For purposes of this part, "terminating committee" means any political committee that is in the process of winding down its political activities in preparation for filing a termination report, and that would be able to terminate under 11 CFR 102.3 except that it has outstanding debts and obligations.

(b) *Ongoing committee.* For purpose of this part, "ongoing committee" means any political committee that has not terminated and does not qualify as a terminating committee.

(c) *Commercial vendor.* For purposes of this part, "commercial vendor" means any person providing goods or services to a candidate or committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services for profit.

(d) *Disputed debt.* For purposes of this part, "disputed debt" means an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owned by the political committee.

§ 116.2 Debts owed by terminating and ongoing committees; transfers from indebted political committees.

(a) *Terminating committees.* A terminating committee may settle outstanding debts provided that the terminating committee files a debt settlement plan and the requirements of 11 CFR 116.7 are satisfied. The Commission will review the debt settlement plan to determine whether or not the terminating committee appears to have complied with the requirements set forth in this part, and whether or not the proposed debt settlement plan would result in an apparent violation of the Act or the Commission's regulations.

(b) *Ongoing committees.* An ongoing committee may not settle any outstanding debt for less than the entire amount owed. However, a creditor may forgive a debt owed by an ongoing committee provided the requirements of 11 CFR 116.8 are satisfied.

(c) *Transfers from indebted political committees.* No transfers of funds may be made from a candidate's authorized committee to another authorized committee of the same candidate if the transferor committee has net debts outstanding under 11 CFR 110.1(b)(3).

§ 116.3 Extensions of credit by commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(b) *Incorporated vendor.* A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(c) *Ordinary course of business.* In determining whether credit was extended in the ordinary course of business, the Commission will consider—

(1) Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

(2) Whether the commercial vendor received prompt payment in full when it previously extended credit to the candidate or political committee; and

(3) Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

(d) *Extension of credit by regulated industries.* The Commission may rely on the regulations prescribed by the Federal Communications Commission, the Interstate Commerce Commission, and the Department of Transportation on behalf of the Civil Aeronautics Board, issued pursuant to 2 U.S.C. 451 and any other regulations prescribed by other Federal agencies to determine whether extensions of credit by the entities regulated by those Federal agencies were made in the ordinary course of business.

§ 116.4 Forgiveness or settlement of debts owed to commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt. The amount forgiven will not be considered a contribution by the commercial vendor to the candidate or political committee if—

(1) The amount forgiven is excluded from the definition of contribution in 11 CFR 100.7(b); or

(2) The commercial vendor has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(b) *Corporation.* A corporation may not forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt unless—

(1) The amount forgiven is excluded from the definition of contribution in 11 CFR 100.7(b); or

(2) The corporation has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(c) *Commercially reasonable.* A debt settlement will be considered commercially reasonable if—

(1) The initial extension of credit was made in accordance with 11 CFR 116.3 or regulations issued pursuant to 2 U.S.C. 451;

(2) The candidate or political committee has undertaken all commercially reasonable efforts to satisfy the outstanding debt. Such efforts may include, but are not limited to, the following—

(i) Engaging in fundraising efforts;

(ii) Reducing overhead and administrative costs; and

(iii) Liquidating assets; and

(3) The commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances. Such remedies may include, but are not limited to, the following—

(i) Oral and written requests for payment;

(ii) Withholding delivery of additional goods or services until overdue debts are satisfied;

(iii) Imposition of additional charges or penalties for late payment;

(iv) Referral of overdue debts to a commercial debt collection service; and

(v) Litigation.

(d) *Settlement or forgiveness of the debt.* A commercial vendor and a political committee may agree to the total forgiveness of the debt pursuant to 11 CFR 116.8 or a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require a commercial vendor to forgive or settle the debt for less than the entire amount owed.

§ 116.5 Advances by committee staff and other individuals.

(a) *Treatment as contributions.* The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is excluded from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted under 11 CFR 100.7(b)(8), it shall be considered a contribution by the individual unless—

(1) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and

(2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(b) *Treatment as debts.* A political committee shall treat a payment described in paragraph (a) of this section as an outstanding debt until reimbursed.

(c) *Settlement or forgiveness of the debt.* The individual and the political committee may agree to the total forgiveness of the debt pursuant to 11 CFR 116.8 or a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require the individual to forgive or settle the debt for less than the entire amount owed.

(d) *Reporting.* The political committee shall report the payment as a debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(d) or until the individual agrees to forgive the entire amount owed pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

§ 116.6 Salary payments owed to employees.

(a) *Treatment as debts or volunteer services.* If a political committee does not pay an employee for services rendered to the political committee in accordance with an employment contract or a formal or informal agreement to do so, the unpaid amount may be treated either as a debt owed by the political committee to the employee or as volunteer services under 11 CFR 100.7(b)(3), provided that the employee signs a written statement agreeing to be considered a volunteer. The unpaid amount shall not be treated as a contribution under 11 CFR 100.7.

(b) *Settlement or forgiveness of the debt.* If the unpaid amount is treated as a debt, the employee and the political committee may agree to a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require the employee to settle the debt for less than the entire amount owed.

(c) *Reporting.* If the unpaid amount is treated as a debt, the political committee shall report the debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(d) or until the employee agrees to be considered a volunteer, or until the political committee pays the debt, whichever occurs first.

§ 116.7 Debt settlement plans filed by terminating committees; Commission review.

(a) *Procedures for filing debt settlement plans.* A terminating committee that has any outstanding debts or obligations shall file a debt settlement plan with the Commission prior to filing its termination report under 11 CFR 102.3. The terminating committee shall continue to report all outstanding debts and obligations in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to paragraph (d) of this section. The terminating committee shall file the debt settlement plan after all of its creditors have agreed to the settlement or forgiveness of the particular debt(s) owed to each of them. The terminating committee shall not make any payments to the creditors pursuant to the settlement agreements until completion of Commission review.

(b) *Debts covered by the debt settlement plan.* The debt settlement plan shall provide for the disposition of the terminating committee's total assets and cash on hand and shall provide for the payment, settlement or forgiveness of each of the terminating committee's outstanding debts and obligations, including all amounts owed to the United States, commercial vendors, committee employees, volunteers, and other individuals, but not including any debts forgiven in accordance with 11 CFR 116.8. No debt or obligation owed to the United States shall be forgiven or settled for less than the entire amount owed except as permitted by other applicable law. Repayment obligations pursuant to 11 CFR 9007.2, 9008.10,

9008.11, 9038.2 or 9038.3 of funds received from the Presidential Election Campaign Fund or the Presidential Primary Matching Payment Account, and obligations to pay civil penalties pursuant to 2 U.S.C. 437g shall not be forgiven or settled for less than the entire amount owed.

(c) *Information required.* (1) The debt settlement plan shall provide the following information on each debt covered by the plan—

(i) The terms of the initial extension of credit and a comparison to the terms of the creditor's other extensions of credit involving nonpolitical debtors of similar risk and size of obligation;

(ii) A description of the efforts made by the candidate or the terminating committee to satisfy the debt;

(iii) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(iv) The terms of the debt settlement and a comparison to the terms of the creditor's other debt settlements involving nonpolitical debtors in similar circumstances, if any.

(2) Each debt settlement plant filed under this section shall include a signed affidavit from each creditor covered indicating agreement to the terms of the settlement of the debt owned to that creditor. The terminating committee shall notify each creditor as to the settlement terms offered to all other creditors, and shall permit each creditor to include in the debt settlement plan a written statement supporting or opposing the terms of the settlements offered to any other creditor(s).

(3) The debt settlement plan shall include a statement as to whether the terminating committee has sufficient cash on hand to pay the total amount indicated in the debt settlement plan, and if not, a statement as to what steps the terminating committee will take to obtain the funds needed to make the payments.

(4) If the terminating committee expects to have residual funds after disposing of its outstanding debts and obligations, the debt settlement plan shall include a statement as to the purpose for which such residual funds will be used.

(5) The debt settlement plan shall state whether the terminating committee expects to make or receive additional contributions or expenditures prior to termination, and when it expects to file a termination report under 11 CFR 102.3.

(6) Upon the Commission's request, the candidate, the terminating committee or the creditor shall provide such additional information as the Commission may require to review the debt settlement plan.

(d) *Commission review of debt settlement plans.* In reviewing the debt settlement plan, the Commission will consider—

(1) The information provided by the terminating committee and the creditors under this section;

(2) The amount of each debt that remains unpaid and the length of time each debt has been overdue;

(3) The amount and percentage of each debt that would be forgiven under the plan;

(4) The total amount of debts and obligations owed by the terminating committee to all creditors, compared to the total amount of cash on hand and other amounts available to pay those debts and obligations;

(5) The year to date expenditures and receipts of the terminating committee;

(6) Whether the total percentage that was or will be repaid on any loans made by the candidate to the terminating committee is comparable to the total percentage that was or will be paid to other creditors; and

(7) Whether the candidate has any other authorized committees as defined in 11 CFR 100.5(f)(1) that have funds available to transfer to the terminating committee to pay its outstanding debts and obligations.

§ 116.8 Creditor forgiveness of debts owed by ongoing committees; Commission review.

(a) *General requirements.* A creditor may forgive the total amount of a debt owed by an ongoing committee if the creditor and the ongoing committee have satisfied the requirements of 11 CFR 116.3 or 116.5, as appropriate, regarding the extension of credit, and—

(1) The creditor has exercised reasonable diligence in attempting to locate the ongoing committee and has been unable to do so; or

(2) The ongoing committee—

(i) Does not have sufficient cash on hand to pay the creditor;

(ii) Has receipts of less than $500 during the previous twenty-four months; and

(iii) Owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay this particular debt.

(b) *Procedures for forgiving debts.* A creditor that intends to forgive a debt owed by an ongoing committee shall notify the Commission by letter of its intent. The letter shall demonstrate that the requirements set forth in paragraph (a) of this section are satisfied. The letter shall provide the following information—

(1) The terms of the initial extension of credit and a comparison to the terms of the creditor's other extensions of credit involving nonpolitical debtors of similar risk and size of obligation;

(2) A description of the efforts made by the candidate or the ongoing committee to satisfy the debt;

(3) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(4) An indication that the creditor has totally forgiven other debts involving nonpolitical debtors in similar circumstances, if any.

(c) *Commission review.* Upon the Commission's request, the ongoing committee or the creditor shall provide such additional information as the Commission may require to review the creditor's request. The Commission will review each request to forgive a debt to determine whether the candidate, the ongoing committee, and the creditor have complied with the requirements of 11 CFR 116.2 through 116.6, and whether or not the forgiveness of the debt would result in an apparent violation of the Act or the Commission's regulations.

§ 116.9 Disputed debts.

(a) *Reporting disputed debts.* A political committee shall report a disputed debt in accordance with 11 CFR 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Until the dispute is revolved, the political committee shall disclose on the appropriate reports the fair market value of what was provided, any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. The political committee may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor. (*See also* 11 CFR 9035.1(a)(2) regarding the effect of disputed debts on a candidate's expenditure limitations under 11 CFR Part 9035.)

(b) *Disputed debts owed by terminating committees.* If a terminating committee and creditor have been unable to resolve a disputed debt, the terminating committee shall include the disputed debt in the debt settlement plan filed under 11 CFR 116.7. The debt settlement plan shall state what amount, if any, the terminating committee will pay to the creditor to satisfy the debt.

The debt settlement plan need not include a signed affidavit from the creditor pursuant to 11 CFR 116.7(c)(2).

Dated: November 30, 1988.

Danny L. McDonald,

Vice chairman, Federal Election Commission.

[FR Doc. 88-27903 Filed 12-5-88; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 774, and 786

[Docket No. 81139-8239]

General License G-COCOM; Shipments to Cooperating Countries

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: To implement section 5(b)(2) of the Export Administration Act ("EAA") as amended by the Omnibus Trade and Competitiveness Act of 1988, the Bureau of Export Administration is proposing to create a new general license designated GCOCOM. General License G-COCOM is designed for exports to COCOM countries and countries designated as qualifying for full benefits under section 5(k) of the EAA. General License G-COCOM would authorize exports of those commodities described in Supplement No. 2 to Part 771, and those commodities eligible for General License G-COM or GFW. Supplement No. 2 to Part 771 lists commodities that could have been exported to the People's Republic of China with only notification to other COCOM governments as of the date of enactment of the Trade Act.

Some commodities are ineligible for General License G-COCOM because they are controlled for other than national security reasons or because their export requires more than mere notification to COCOM.

This procedure would not authorize exports or reexports to entities that the exporter or reexporter knows or has reason to know are controlled-in-fact by countries in Country Groups Q, W, Y or Z. BXA is seeking a means of assisting exporters and reexporters in identifying such entities. Among the options that will be considered is a full or partial list of entities known to BXA. Comments on this aspect of the proposal are encouraged.

DATE: Comments should be received by January 23, 1989.

ADDRESS: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning or section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis was prepared.

2. The rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). As a result of this rule, a reduction of paperwork burden on the public is anticipated. Affected OMB controlled collection actions include 0694-0005, 0694-0007, and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C 603(a) and 604(a)) no Initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule does not impose new controls, it is not subject to section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 23, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects in 15 CFR Parts 771, 774, and 786

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 771, 774, and 786 of the Export Administration Regulations (15 CFR Parts 768–799) are proposed to be amended as follows:

1. The authority citations for Parts 771, and 786 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 774 is revised to read as follows:

Authority: Pub. L. 96–72, Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 771—[AMENDED]

3. A new § 771.24 is added to read as follows:

§ 771.24 General License G–COCOM: Certain shipments to cooperating countries.

(a) *Scope.* A general license designated G–COCOM is established, authorizing exports to COCOM participating countries and Switzerland, for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments, as well as commodities within the China "Green Zone", as of August 23, 1988.

(b) *Eligible countries.* The countries that are eligible to receive exports under this general license are Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom. Exports may be made under G–COCOM only when intended for consumption within the importing country or when intended for reexport among and consumption within eligible countries.

(c) *Eligible exports.* The commodities eligible for export under this general license are those also eligible for General License G–COM or GFW, and those described in Supplement No. 2 to Part 771. End-use and quantity restrictions in Supplement No. 2 to Part 771, and the notes identifying those commodities that may be shipped under General License G–COM or GFW (see §§ 771.8 and 771.23), may be disregared in determining whether G–COCOM may be used. Shipments of eligible commodities are subject to the prohibitions contained in § 771.2(c).

(d) *Restrictions.* (1) No shipments of commodities that exceed the limits of General License G–COM (§ 771.8) may be made under this general license when the exporter knows or has reason to know the recipient is:

(i) An entity controlled in fact by a government in Country Group, Q, W, Y or Z;

(ii) A national of a country in Country Groups Q, W, Y or Z; or

(iii) An entity controlled in fact by nationals of a country in Country Groups Q, W, Y or Z.

(2) For purposes of this section, "controlled in fact" means the authority or ability of a government or national to establish, directly or indirectly, the general policies or to control, directly or indirectly, the day-to-day operations of the entity.

(3) An entity will be presumed to be controlled in fact by a government or national, subject to rebuttal by competent evidence, when such government or national:

(i) Owns or controls more than 50% of the outstanding voting stock of the corporation;

(ii) Has the authority and the ability to name or control the votes of a majority of the members of the board of directors of the corporation;

(iii) Has control or other powers to name the management of the corporation; or

(iv) Has powers similar to those listed in paragraph (d)(3) (i), (ii), or (iii) of this section with regard to unincorporated entities.

(4) An agency, department, diplomatic mission, or consular mission of a government will be presumed to be controlled in fact by such government.

4. A new Supplement No. 2 to Part 771 is added to read as follows:

Supplement No. 2 to Part 771—Commodities Eligible for General License G–COCOM

Export Control Commodity Number and Commodity Description

This Supplement provides a list of commodities eligible for General License G–COCOM. Use of this general license is subject to the conditions of § 774.24.

1312—Presses having no controlled thermal environment within the closed cavity and that are used for the manufacture of industrial refractory and ceramic products.

1353—Equipment specially designed for the manufacture of silicon-based optical fiber or cable, provided that it is designed to produce non-militarized silicon-based optical fiber or cable that is optimized to operate at a wavelength of 1,350 nm or less and provided that the equipment has been commercially available before May 1, 1985.

1354—Equipment for the manufacture of printed circuit boards, as follows:

(a) Equipment specially designed for the removal of resists or printed circuit board materials by dry (e.g., plasma) methods;

(b) "Stored program controlled" multi-spindle drills and routers with the following characteristics:

(1) Absolute positioning accuracy of + or − 5 micrometers or worse; and

(2) X and Y positioning speeds of 0.21 meter/second or slower for drilling of for routing.

1355—Equipment, as follows, for use in silicon semi-conductor manufacturing:

(a) Equipment for the production of polycrystalline silicon;

(b) Crystal pullers, except those that:

(1) Are rechargeable without replacing the crucible; or

(2) Operate at pressures above 1 atmosphere;

(c) Diffusion furnaces, except those that use computer feedback control operated from an "associated" computer;

Note: "Associated" with equipment or system means:

(a) Can feasibly be either:

(i) Removed from the equipment or systems; or

(ii) Used for other purposes; and

(b) Is not essential to the operation of such equipment or systems.

(d) Vacuum indication-heated zone refining equipment;

(e) Epitaxial reactors, except those that are:

(1) For molecular beam epitaxy; or

(2) Specially designed for organo-metallic deposition or liquid-phase epitaxy;

(f) Magnetically enhanced multiple-wafer sputtering equipment;

(g) Ion implantation, ion-enhanced or photo-enhanced diffusion equipment, except having:

(1) Patterning capability;

(2) An accelerating voltage for more than 200 keV; or

(3) A current greater than 0.5 mA;

(h) "Batch" planar, "batch" reactive ion, barrel or barrel-plannar dry etching equipment, except equipment incorporating end-point detection.

Note: "Batch" refers to equipment capable of etching two or more wafers simultaneously;

(i) Low pressure chemical vapor deposition equipment, except equipment capable of metal deposition;

(j) Reserved;

(k) Single-sided lapping and polishing equipment for wafer surfacing finishing;

(l) Hard surface (e.g., chromium, silicon, iron oxide) coated substrates (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions greater then 12.5 cm x 12.5 cm;

(m) Mask fabrication equipment using photo-optical methods that was either commercially available before January 1, 1980, or has a performance no better than such equipment;

(n) Manually operated mask inspection equipment;

(o) Photo-optical contract and proximity mask align and exposure equipment defined in paragraph (b)(2)(vi), and projection aligners that can produce pattern sizes no finer than 3 micrometers;

(p) Contact image transfer equipment;

(q) Wafer and chip inspection equipment that was either commercially available before January 1, 1981, or has a performance no better than such equipment;

(r) Equipment for concurrent etching and doping profile analysis employing capacitance-voltage or current-voltage analysis techniques;

(s) "Stored program controlled" wire or die bonders;

(t) "Stored program controlled" wafer probing equipment that does not include associated test equipment or drive circuitry other than those identified in paragraphs (u) or (v) of ECCN 1355A;

(u) Test equipment for:

(1) Television circuit testing;

(2) Operational amplifier testing;

(3) Voltage regulator testing;

(4) Analog-to-digital and digital-to-analog converter testing; or

(5) Discrete semi-conductor testing at frequencies of 18 GHz or less;

(v) "Stored program controlled" equipment for functional testing (truth table) at a pattern rate of 10 MHz or less for micro-circuits or microcircuit assemblies.

1359—Tooling and fixtures for the manufacture of fiber-optic connectors and couplers controlled for export by ECCN 1526(f), provided that the tooling and fixtures are not specially designed to manufacture fiber-optic connectors and couplers for use with:

(a) Non-silicon-based fiber or cable; or

(b) Fiber-optic bulkhead or hull penetrators in ships or vessels.

1510—The following equipment:

(a) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, providing that:

(1) They are not capable of processing responses from more than 8 beacons in the calculation of a single point;

(2) They have neither devices nor "software" for correcting automatically velocity-of-propagation errors for point calculation;

(3) They have no coherent signal processing means; and

(4) Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters;

(b) Side-scan sub-bottom profile systems, no portion of which is specially designed for operation at depths greater than 1,000 meters.

1519—The following equipment or components and accessories controlled for exports by paragraphs (a) or (b) of this ECCN:

(a) General communication transmission equipment, provided that:

(1) The equipment is to be used in non-strategic applications;

1510—The following equipment:

(a) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, providing that:

(1) They are not capable of processing responses from more than 8 beacons in the calculation of a single point;

(2) They have neither devices nor "software" for correcting automatically velocity-of-propagation errors for point calculation;

(3) They have no coherent signal processing means; and

(4) Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters;

(b) Side-scan sub-bottom profile systems, no portion of which is specially designed for operation at depths greater than 1,000 meters.

1519—The following equipment or components and accessories controlled for exports by paragraphs (a) or (b) of this ECCN:

(a) General communication transmission equipment, provided that:

(1) The equipment is to be used in non-strategic applications;

(2) It is for other than underwater use;

(3) It is to be permanently installed in circuit (radio, coaxial cable, or multimode optical fiber) operated by the civilian authorities of the importing country; and

(4) It is to be used for general commercial traffic with a total digital bit rate at the highest level multiplex point of 45 Mbits per second or less for optical fiber or 140 Mbits per second or less for radio or coaxial cable, as follows:

(i) With a total number of voice channels per each physical bearer of 672 or less for optical fiber of 1,920 or less for radio or coaxial cable; or

(ii) With one monochrome or color television channel with a maximum nominal bandwidth of 6 MHz and associated sound channels in the case of optical fiber or four of those television channels and associated sound channels in the case of radio or coaxial cable;

(b) Intra-city communication transmission equipment, provided that it is:

(1) Designed for operation at a total digital data signalling rate at the highest level multiplex point of 140 Mbits per second or less;

(2) Installed under the supervision of the seller in a permanent circuit (radio, coaxial cable, multimode optical fiber with, or single mode optical fiber without repeaters/regenerators) between communication switching equipment; and

(3) Intended for general commercial traffic in an intra-city civil communication system;

(c) The minimum set of spare parts;

(d) Test or measurement equipment necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the provision of this entry, provided:

(1) It cannot operate at a data rate exceeding 140 Mbits per second; and

(2) It will be supplied in the minimum quantity required for the transmission equipment eligible for export under this entry.

1519—The following equipment:

Modems and multiplexers controlled for export by subparagraphs (a)(2)(A) and (a)(2)(B) of this ECCN designed for operation at data signalling rates of 19,200 bps or less.

1520—The following radio relay communication equipment:

(a) Analog microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 20 GHz with a capacity of up to 1,920 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,9200 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(c) Ground communication radio equipment for use with temporarily-fixed services operated by the civilian authorities and designed to be used at frequencies not exceeding 20 GHz;

(d) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by (a) or (b) above;

(e) Power amplifiers not exceeding 10 W and 6/4–GHz–transmitters/receivers for communication satellites.

1522—The following equipment:

(a) Tunable pulsed flowing-dye lasers having all of the following characteristics, and specially designed components therefor:

(1) An output wavelength shorter than 0.8 micrometer;

(2) A pulse duration not exceeding 100 ns; and

(3) A peak output power not exceeding 15 MW; (b) CO_2, CO or CO/CO_2 lasers having an output wavelength in the range from 9 to 11 micrometers and a pulsed output not exceeding 2 joules per pulse and a maximum rated average single-or multi-mode output power not exceeding 5 KW or a continuous wave maximum rated single-or multi-mode output power not exceeding 10 KW;

(c) Equipment specially designed for medical applications incorporating ND:YAG lasers covered by paragraph (a)(vi) of ECCN 1522A;

(d) Laser systems for trimming resisters of thick/thin film electronic circuits;

(e) Equipment incorporating CO_2 lasers with average or continuous wave output power not exceeding 5 kW, not exceeding the parameters of ECCN 1091A, and specifically designed for welding, cutting, bonding or drilling metals for civil applications.

1529—The following equipment:

(a) Quartz or rubidium frequency standards not specifically designed for military use;

(b) Swept frequency network analyzers or sweep generators for use at frequencies not exceeding 40 GHz and that cannot be controlled remotely;

(c) Swept frequency network analyzers for the automatic measurement of complex equivalent circuit parameters over a range of frequencies where the maximum frequency does not exceed 20 GHz;

(d) Instruments in which the functions can be controlled by the injection of digitally

coded electrical signals from an external source where the maximum frequency does not exceed 20 GHz;

(e) Instruments incorporating computing facilities with "user-accessible programability" and an alterable program and data memory of a total of less than 32 Kbytes;

(f) Digital test instruments with "users-accessible programability" controlled for export by sub-paragraph (b)(5) of this ECCN 1529A, required for the use (installation, operation or maintenance) of microcircuits or computers that are exported to the People's Republic of China under Advisory Notes to ECCNs 1564A or 1565A;

(g) Microprocessor and microcomputer development instruments for 8 bit microcircuits, i.e., microcircuits having an operand (data) word length of less than or equal to 8 bit(s) and an arithmetic logic unit (ALU) of less than or equal to 16 bit;

(h) Digital counters with any of the following characteristics:

(1) Not capable of counting successive input signals with less than 1.8 ns time difference without prescaling (digital division) of the input signal;

(2) Employing prescaling of the input signal in which the prescaler is not capable of resolving successive input signals with less than 0.5 ns time difference; or

(3) Not capable of measuring burst frequencies exceeding 250 MHz for a burst duration of less than 2 ms;

(i) Time interval measuring equipment employing digital techniques, not capable of measuring time intervals of less than 1 ns or a single shot basis;

(j) Instruments controlled by sub-paragraph (f) of this entry, not capable of more than 1,000 independent measurements per second;

(k) Transient recorders, not capable of sampling single input signals at successive intervals of less than 20 ns.

(l) PROM programers controlled by subparagraph (b)(6) of this ECCN.

1531—The following and specifically designed components and accessories therefor:

(a) "Frequency synthesizers" controlled only by paragraph (a) and not incorporating cesium beam standards;

(b) Instruments "frequency synthesizers" and synthesized signal generators controlled only by paragraphs (b)(1) an (b)(3) and having a maximum output frequency of 18 GHz, provided the "frequency switching time" is 2.0 ms or more;

(c) Instrument "frequency synthesizers" and synthesized signal generators not controlled by paragraph (b)(4) and having a maximum output frequency of 2.6 GHz, provided the "frequency switching time" is 0.3 ms or more;

(d) Conventional synthesizer based, digitally controlled, civil land or marine mobile radio receivers and transmitters, provided:

(1) They operate at frequencies not exceeding 960 MHz;

(2) The power output and frequency resolution parameters specified in paragraph (e)(3)(ii) remain in force;

(3) The equipment has "frequency switching time" of 5 ms or more;

(4) The equipment does not employ either frequency agility or other spread spectrum techniques; and

(5) The synthesizers are embedded in the radio receivers or transmitters;

(e) Radio receivers controlled by paragraph (d)(1) that have 1000 selective channels or fewer.

1533—The following equipment:

(a) Non-programmable signal analyzers including those with a tracking signal generator, provided the display bandwidth is 4.4 GHz or less;

(b) Programmable signal analyzers, including those with a scanning preselector or a tracking signal generator, having both of the following characteristics:

(1) Operating at frequencies of 4.4 GHz or less; and

(2) The overall dynamic range of the display not exceeding 100 dB;

(c) Signal analyzers employing time compression of the input signal of Fast Fourier Transform techniques not capable of;

(1) Analyzing signals with a frequency higher than 100 KHz if the instrument uses time compression, or

(2) Calculating 512 complex lines in less than 50 ms.

1537—Microwave equipment controlled for export by sub-paragraphs (a), (b) or (c) of ECCN 1537A, when designed for use at frequencies not exceeding 40 GHz and when specially designed for use with conventional commercial instruments described in ECCNs 1529A, 1531A, or 1533A, provided that the equipment does not in any way extend the frequency range of the basic instrument.

1548—Semi-conductor photodiodes for previously approved and installed Western civil communications equipment with a response time constant of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,350 nm nor shorter than 300 nm.

Note: The photodiodes will be supplied on a replacement basis with no enhancement of the system.

1555—Electron tubes, as follows:

(a) Image intensifer and image conversion tubes that incorporate fiber optic face-plates or microchannel-plates, except image tubes specially designed for cameras controlled for export by ECCN 1585A;

(b) Television and video camera tubes that incorporate:

(1) Fiber optic face-plates; or

(2) Microchannel-plate electron multipliers not controlled by ECCN 1556A.

Note: Eligibility Note does not apply to electron tubes incorporating a gallium arsenide (or similar semi-conductor) photocathode.

1564—"Assemblies" for printed circuit boards and integrated circuits not specially designed to military standards for radiation hardening or temperature as follows:

(a) "Substrates" for printed circuits, except those exceeding the limits of subparagraph (a)(1)(E) or (a)(2) of this ECCN;

(b) Silicon-based devices exceeding the limits of:

(1) Subparagraphs (d)(2)(D)(a), (b) or (c), except those with more than 28 terminals;

(2) Subparagraphs (d)(2)(D)(g), or (h)

(3) Subparagraphs (d)(2)(D)(k), (1), (m)(4) and (5), (n), (r), (s), or (u); or

(4) Subparagraphs (d)(2)(D)(f), or (g)

(c) Silicon-based 8 bit or less "microcomputer microcircuits" exceeding the limit of subparagraphs (d)(2)(D)(e)(1) to (7);

(d) Silicon-based "microprocessor microcircuits" with an operand length of 16 bits or less and an arithmetic logic unit (ALU) not wider than 32 bit and exceeding the limits of subparagraphs (d)(2)(D)(i)(1) to (6), except:

(1) Those with a total processing data rate exceeding 28 million bits per second;

(2) Bit-slice "microprocessors microcircuits";

(e) Silcon-based memory devices, as follows:

(1) MOS DRAMs with no more than 256 Kbits;

(2) MOS SRAMs with no more than 64 Kbits;

(3) Mask PROMS with no more than 512 Kbits;

(4) UV–EPROMs (except keyed access EPROMs) with no more than 256 Kbits;

(5) EAROMs with no more than 64 Kbits; or

(6) EEROMs with no more than 64 Kbits;

[Note: 1 Kbit=1,024 bits.]

(f) Operational amplifiers exceeding the limits of subparagraph (d)(2)(D)(k)(4) that do not have slew rates exceeding 100 volts per microsecond;

(g) Analog-to-digital and digital-to analog converters exceeding the limits of subparagraphs (d)(2)(D)(m)(1) to (3), except:

(1) Analog-to-digital converters with less than a 500 ns conversion time to a maximum resolution of 12 bits;

(2) Digital-to-analog converters with less than 500 ns settling time for voltage output and a maximum resolution of 12 bits;

(3) Digital-to-analog converters with less than 25 ns settling time for current output and a maximum resolution of 12 bits;

(h) Silicon-based 8 bits or less user-programmable single chips "microcomputer microcircuits" controlled for export by subparagraph (d) of this ECCN;

(i) "Optical integrated circuits":

(1) Controlled for export by subparagraph (d) of this ECCN;

(2) With no more than 2,048 elements; and

(3) Not exceeding the limits of paragraphs (a) and (b) of ECCN 1548A; and

(j) Not-reprogrammable silicon-based integrated circuits specially designed or programed by the manufacturer for business or office use.

1565—"Digital computers" or "related equipment" therefor controlled for export by paragraph (h) of this ECCN 1565A, provided that:

(a) The "digital computers" or "related equipment" therefor;

(1) Are exported as complete systems or enhancements to previously exported systems up to the limits of paragraph (b) of this entry;

(2) Do not fall within the scope of both paragraphs (h)(1)(ii) (A) and (B);

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit with a "total processing data rate" of 550 million bit/s;

(2) Array transform processors:

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(i) "Equivalent multiply rate"—800,000 operations per second;

(ii) Fast Fourier Transform of 1,024 complex points—40 ms;

(c) The "digital computers" or "related equipment" therefor do not have the following characteristics:

(1) Those identified in paragraphs (h)(1)(i)(D) to (H) or (M); or

(2) Those identified in paragraph (h)(1)(i)(b) having an "equivalent multiply rate" of more than 2 million operations per second;

1565—"Digital computer" or "related equipment" therefor in accordance with Advisory Note 5, on the understanding that:

(a) Paragraph (b)(1) of Advisory Note 5 does not apply;

(b) The "total processing data rate" under paragraph (c) of Advisory Note 5 does not exceed 155 million bit/s.

1565—Peripheral equipment and input/output interface or control units therefor as follows:

(a) Cathode ray tube graphic displays that do not exceed:

(1) 1,024 resolvable elements along one axis and 1,280 resolvable elements along the perpendicular axis; or

(2) 256 shades of gray or color (8 bit per pixel);

(b) Plotting equipment and digitalizing equipment that has an accuracy of 0.002% or worse, and an active area of 254 cm x 254 cm or smaller;

(c) Non-impact type printers and laser printers having a resolution not exceeding 120 dots per cm (300 dots per inch);

(d) Optical character recognition (OCR) equipment;

(e) Light gun devices or other manual graphic input devices.

(f) Disk drives having either an unformatted capacity that does not exceed 5.04 giga bytes or a maximum bit transfer rate that does not exceed 3 mega bytes/sec.

1565—Personal computers and small business computer systems controlled by paragraph (h) that do not exceed any of the following parameters:

(Note: This does not apply to graphic workstation exceeding the limits of paragraphs (a)(7) of Advisory Note 9)

(a) "Total processing data rate"—136 million bit/s;

(b) "Virtual storage" capability—512 MBytes

(Note: Supermini "digital computers" with a "virtual storage" capacity exceeding the level in this paragraph (b) will not be eligible for consideration under this Note. It is recognized, however, that other "digital computers" (e.g., micro-computers and super microcomputers) may have a "virtual storage" capacity exceeding this limit and in such cases they may be considered under this Note.)

(c) The other technical parameters of the system—the limits contained in paragraph (b) of Advisory Note 9 without taking into account paragraph (b)(2)(v) of Advisory Note 9.

1585—Spare parts in accordance with Advisory Note 7 (a) and (b) to this ECCN 1565A.

1587—"Stored-program-controlled telephone circuit switching" equipment or systems controlled by sub-paragraph (b) of this entry, provided that:

(a) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" that fulfill the definition of "private automatic branch exchanges" ("PABXs");

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications; and

(c) The equipment or systems do not contain "digital computers" or "related equipment" controlled for export by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(i) (a) to (k) or (m); or

(3) ECCN 1565A(h)(1)(ii);

(d) The "PABXs" do not have the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "truck circuits" or switches;

(Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Automatic tandem "trunk circuit" switching, including adaptive routing, or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) Reserved;

(5) Reserved;

(6) Digital synchronization circuitry for networking two or more exchanges except that permitting slave exchanges to be synchronized by master exchanges;

(7) Reserved;

(8) Centralized maintenance by means of transmission or reception of instructions for the purpose of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or

(v) Managing the network;

(e) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; and

(2) Do not exceed a "total data signalling rate" of 19,200 bit per second;

(f) Reserved;

(g) Reserved;

(h) Reserved;

(i) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

1587—"Stored-program-controlled circuit switching" equipment or systems controlled for export by sub-paragraph (b) of this ECCN 1587A, provided that:

(a) The equipment or systems are designed for fixed civil use of "stored-program-controlled telegraph circuit switching" for data;

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telegraph circuit switching" applications;

(c) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (a) to (k) or (m); or

(3) ECCN 1565A(h)(1)(ii);

(d) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(e) The maximum internal bit rate per channel does not exceed 19,200 bit per second;

(f) Reserved;

(g) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

1587—"Stored-program-controlled circuit switching" equipment or systems, controlled for export by sub-paragraph (b) of this entry, provided that:

(a) The equipment or systems are designed for fixed civil use as "stored-program-controlled telephone circuit switching" exchanges that fulfill the definitions of either "terminal exchange" or transit exchange";

(b) Reserved;

(c) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications;

(d) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A(f)(1) to (4), (g) or (h)(1)(ii)(a) and (b):

(e) Reserved;

(f) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or witches;

Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Adaptive routing or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) Reserved;

(5) Reserved;

(6) Digital synchronization circuitry for networking two or more exchanges except that permitting slave exchanges to be synchronized by master exchanges; or

(7) Centralized maintenance by means of transmission or reception of instructions for the purposes of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or

(v) Managing the network;

(g) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; and

(2) Do not exceed a "total data signalling rate" of 19,200 bit per second;

(h) Reserved;

(i) Reserved;

(j) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

1572—Recording and reproducing equipment, as follows:

(a) Graphic instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 KHz, and not containing a cathode ray tube with a fiber optic face plate;

(b) Analog magnetic tape recorders with all of the following characteristics:

(1) Bandwidth of up to:

(i) 4 MHz per track and having up to 28 tracks; or

(ii) 2 MHz per track and having up to 42 tracks;

(2) Tape speed of 610 cm (240 inches) per second or less;

(3) Not designed for underwater use;'

(4) Not ruggedized for military use; and

(5) Recording density not exceeding 6,532 magnetic flux sine waves per cm;

(c) Instrumentation digital recorders having all of the following characteristics:

(1) "Packing density" of 13,125 bits per cm or less;

(2) Maximum of 28 tracks;

(3) Tape speed of 305 cm (120 inches) per second or less;

(4) Not designed for underwater use; and

(5) Not ruggedized for military use;

(d) Magnetic tape appropriate for use with magnetic tape recorders free from control or exportable under this entry, provided that the tape length, "packing density" and "recording density" do not exceed the performance limits of the magnetic tape recorders;

(e) Disks appropriate for use with disk drives free from control or exportable under this entry, provided that the "packing density" and inner and outer diameters do not exceed the preformance limits of the disk drives;

(f) Video magnetic tape recorders specially designed for television recording.

1588—Analog-to-digital or digital-to analog converters, as follows:

(a) Analog-to-digital converters with more than a 200 ns conversion time to a maximum resolution of 12 bit;

(b) Digital-to-analog converters with more than 200 ns settling time for voltage output and a maximum resolution of 12 bit;

(c) Digital-to-analog converters with more than 25 ns settling time for current output and a maximum resolution of 12 bit.

1584—Cathode-ray oscilloscope not having any of the following characteristics:

(a) An amplifier bandwidth exceeding 350 MHZ;

(b) A horizontal sweep speed faster than 1 ns per cm and an accuracy (linearity) better than 2%;

(c) Using sampling techniques for the analysis of recurring phenomena that increase the effective bandwidth of an oscilloscope or time-domain reflectometer to a frequency greater than 5 GHz;

(d) Digital oscilloscopes with sequential sampling of the input signal at intervals of less than 20 ns;

(e) Ruggedized to meet military specifications; or

(f) Rated for operation over a temperature range of below −25 degrees C to above +55 degrees C.

1585—The following:

(a) Non-ruggedized cinema recording cameras, controlled for export by paragraph (a) of this ECCN, for normal civil purposes;

(b) Mechanical framing cameras controlled for export by paragraph (b) of this entry that are designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than $2x10^6$ frames per second;

(c) Electronic streak and/or framing cameras having all of the following characteristics:

(1) Not ruggedized;

(2) Capable in the framing mode of speeds of no more than 10^6 frames per second;

(3) Capable in the streak mode of writing speeds no more than 10mm per second;

(4) Designed for civil use;

(5) The performance of the camera is not field-upgradable such as through the substitution of electronic plug-ins;

(6) Exported for non-nuclear use; and

(7) Not using a electron tube having a gallium arsenide (GaAs) photocathode.

1587A—The following:

(a) Temperature-compensated crystal oscillators (TCXOs) copntrolled for export only by sub-paragraph (c)(1) of this ECCN 1587A;

(b) Quartz crystals for use as oscillator elements specially designed for temperature-controlled crystal ovens or for TCXOs covered by sub-paragraph (c) and having an average aging rate of + or − $1x10^{-11}$ per day or better (less) except stress compensated (SC) cut crystals.

3605A—Nickel powder obtained by the carbonyl process for non-nuclear civil applications.

1757A—Monocrystalline silicon, as follows:

(a) N-type, crystal orientation 1–1–1 with a resistivity not exceeding 100 ohm/cm;

(b) P-type, crystal orientation 1–1–1 with a resistivity not exceeding 5 ohm/cm;

(c) Polycrystalline silicon;

(d) Compounds used in the synthesis of polycrystalline silicon.

1767A—Optical fiber preforms specially designed for the manufacture of silicon-based optical fibers, provided that they are designed to produced non-militarized silicon-based optical fibers that are optimized to operate at a wavelength of 1,350 nm or less.

PART 774—[AMENDED]

§ 774.2 [Amended]

4. Section 774.2(a)(1) is amended by adding the phrase "G–COCOM" immediately after the phrase "G–COM" and before the phrase "GFW".

PART 786—[AMENDED]

5. Section 786.6 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 786.6 Destination control statements.

* * * * *

(ii) General License GLV, GTF–US, GTE, GLR, G–COM, G–COCOM or C–CEU; or

* * * * *

Dated: November 30, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–27977 Filed 12–5–88; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Proposed Customs Regulations Amendment Relating to Charges for Returned Checks

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document sets forth a proposed amendment to the Customs Regulations which will authorize a $100 charge for any check returned unpaid which was presented for payment of duties on noncommercial importations for which formal entry is not required or other Customs transactions not backed by a Customs bond. Currently there is no charge to cover the considerable extra expenditures in time and resources which the Customs Service incurs in connection with returned checks and attempted collection.

DATE: Comments must be received on or before February 6, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John V. Accetturo, Chief, Billings & Collections, National Finance Center, U.S. Customs Service (317–298–1307).

SUPPLEMENTARY INFORMATION:

Background

Each year the Customs National Finance Center (NFC) receives over 4,000 returned checks drawn by importers, brokers, and persons returning from travel abroad. Establishing accountability for the associated debit vouchers and collecting the returned checks is an administrative process requiring significant time and effort that must be devoted to processing and handling by both the NFC and field officials. Although the NFC is primarily involved in establishing and monitoring control over the accountability and collection of the returned checks, there are substantial operational costs incurred at the NFC and at the district/port level where Customs officers must establish liquidated damages, research entry documentation and provide copies of files to the NFC for colletion action. These special actions, which are necessary only because of returned checks, disrupt and impede the Customs commercial operations mission. Accordingly, Customs proposes to impose a $100 charge for each returned check presented for payment of duties or other charges on noncommercial importations for which a formal entry is not required or other transactions not backed by a Customs bond. This charge reflects the actual cost to Customs of processing the returned check.

Comments

Before adopting this proposal, consideration will be given to any written comments (perferably in triplicate) that are submitted timely to the Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory impact analysis or other requirements of 5 U.S.C 603 and 604.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Taxes, Wages.

Proposed Amendment

It is proposed to amend Part 24, Customs Regulations (19 CFR Part 24) as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24, Customs Regulations (19 CFR Part 24) and the specific authority for § 24.1, therein (19 CFR 24.1) would continue to read as follows:

Authority: 19 U.S.C. 66, 1202, 1624, 31 U.S.C. 9701; Pub. L. 99–272, Pub. L. 99–509, Pub. L. 99–662. Section 24.1 also issued under 19 U.S.C. 197, 198, 1648.

2. It is proposed to amend § 24.1 by adding a new paragraph (e) to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

* * * * *

(e) Any person who pays by checks any duties, taxes, fees or other charges or obligation due the Customs Service which is not guaranteed by a Customs bond shall be assessed a charge of $100 for each check which is returned upaid by a financial institution for any reason. This charge shall be in addition to any unpaid duties, taxes and other charges.

William von Raab,
Commissioner of Customs.

Approved: October 21, 1988.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 88–27982 Filed 12–5–88; 8:45 am]
BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–934–86]

Branch Tax; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the branch tax. This regulation will provide immediate guidance to taxpayers concerning the imposition of tax on profits of a U.S. branch of a foreign corporation that are removed from the branch and on interest that is paid, or deemed paid, by the branch.

DATES: The public hearing will be held on Tuesday, January 17, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, January 3, 1989.

ADDRESS: The public hearing will be held in the I.R.S. auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, Attn: CC:CORP:T:R, Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935 (not a toll free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 884, as added to the Code by section 1241 of the Tax Reform Act of 1986. The proposed regulations appeared in the Federal Register for Friday, September 2, 1988 at page 34120 (53 FR 34120).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to

the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, January 3, 1988 an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-28032 Filed 12-5-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3487-2]

Approval and Promulgation of Implementation Plans; Sacramento, San Diego, South Coast, and San Francisco Bay Area Air Pollution Control Regulations; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On September 20, 1988 (53 FR 36473), EPA invited comment on the proposed disapproval of three rules, and the proposed approval of one rule, for the control of volatile organic compound emissions from can and coil coating operations in California. Sacramento County Air Pollution Control District Rule 452 (submitted on February 10, 1986), San Diego County Air Pollution Control District Rule 67.4 (submitted on November 12, 1985), and South Coast Air Quality Management District Rule 1125 (submitted on June 4, 1986) are proposed for disapproval. Bay Area Air Quality Management District Regulation 8, Rule 11 (submitted on April 12, 1985) is proposed for approval. At the request of a commentor during the comment period, EPA is extending the public comment period for a period of 60 days from the prior November 4, 1988 closing date.

DATE: Comments may be submitted to EPA at the address below, until January 3, 1989.

ADDRESSES. Comments on the proposal published at 53 FR 36473 on September 20, 1988 should be sent to: Morris Goldberg (A-2-3), Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Morris Goldberg at (415) 974-8213.

Date: November 2, 1988.

John Wise,

Acting Regional Administrator.

[FR Doc. 88-28035 Filed 12-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3483-6]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision is a request for a site-specific reasonably available control technology (RACT) determination for volatile organic compounds (VOC) emissions from two miscellaneous metal parts and products spray coating lines at General Electric Company, Medical Systems (GE). This facility is located in Milwaukee, Wisconsin.

USEPA is proposing to disapprove this SIP revision, because the State has not documented that GE cannot meet a lower limit through the use of low solvent coatings.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 5, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On August 22, 1986, the Wisconsin Department of Natural Resources (WDNR) submitted a proposed revision to its ozone SIP, consisting of a site-specific RACT [1] determination for two miscellaneous metal parts and products spray coatings lines. These operations are located at the GE facility in Milwaukee, Wisconsin, an area which has been designated as nonattainment for ozone, pursuant to Section 107 of the Clean Air Act (Act) and 40 CFR Part 61, 81.350.

On November 24, 1986, USEPA notified WDNR that the August 22, 1986, submittal was deficient for reasons stated in USEPA's technical support document (TSD), dated October 27, 1986. WDNR submitted supplemental information on January 29, 1987, which was intended to correct the cited deficiencies.

Wisconsin's SIP

Under the existing federally approved SIP for Wisconsin, each miscellaneous metal parts and products spray coating line is subject to the control requirements contained in Wisconsin Administrative Code, Section National Resource (NR) 154.13(4)(m). This rule limits air-dried coating to 3.5 pounds of VOC per gallon, excluding water, by December 31, 1985. USEPA approved these rules as meeting the RACT requirements of the Act on January 11, 1980 (45 FR 2319), and June 21, 1982 (47 FR 26622).

Analysis

In order for 7.31 pounds of VOC per gallon of coating limit proposed by GE

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility

to be considered RACT, the source must demonstrate that it is technically or economically infeasible to meet a lower emission limit using coatings with a lower VOC content or using add-on control equipment.

WDNR's January 29, 1987, submittal contains documentation of GE's efforts to reduce the VOC emissions from this process. This documentation shows that GE has considered the following alternatives:

1. Eliminate the coating step by integrating the lead shielding into the casing design. This study which was initiated in August 1986, is expected to extend into the fourth quarter of 1988.

2. Contract with an outside vendor to coat the lead shielding. The vendor contacted by GE, which coats for GE's competitors, indicated that it would be unable to coat GE's parts due to chemical storage issues.

3. Use of coating recommended by the vendor mentioned above. The VOC content of this coating exceeds the SIP limit. In fact, this coating has a higher VOC content than the one currently used by GE.

4. Use of a vacuum impregnation process utilizing solventless coatings. This process was determined to be infeasible for GE's application due to the density of the lead being coated.

5. Investigation of other coating materials. GE has provided evidence of having contacted, in late 1986, several suppliers of coating materials.

However, GE has not demonstrated that the suppliers are unable to provide coatings with a lower VOC content that meet all of GE's criteria. GE has provided limited information about coatings that it intends to evaluate. Wisconsin must also demonstrate that a 7.31 pound emission limit is RACT. Further discussion of the type of demonstration required can be found in Appendix A to the notice of proposed rulemaking for Easco Aluminum published on November 9, 1988 at 53 FR 45285.

Proposal

USEPA is proposing to disapprove this SIP revision because the State has not adequately documented that GE cannot meet a lower limit through the use of low solvent coatings.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before January 5, 1989 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because the effect of this disapproval is to leave in effect existing emission limitation. Therefore, there is no change or any impact on any source or community. Additionally, it applies to only one major corporation, GE.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbon, Intergovernmental relations, Ozone.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: June 26, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register December 1, 1988.

[FR Doc. 88–28037 Filed 12–5–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 88–26]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in its rules governing the filing of agreements. These amendments are intended to state more clearly the class of agreements that are subject to the mandatory provisions requirements of section 5 of the Shipping Act of 1984. The amendments would codify current Commission policy which is not to require mandatory provisions in the case of strictly voluntary arrangements.

DATE: Comments due on or before February 6, 1989.

ADDRESS: Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Trade Monitoring, 1100 L Street NW., Washington, DC 20573, (202) 523–5787.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Section 5(b) of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1704(b), imposes eight requirements or mandatory provisions upon ocean common carrier conference agreements. These requirements include independent action, open membership, neutral body policing at the request of a member, and the establishment of procedures for considering shippers' requests and complaints.[1] The mandatory provisions place "substantial limitations on * * * conference activity," H.R. Rep. 600, 98th Cong. 2d Sess. 33 (1984), and the question of what constitutes a "conference" has a significant regulatory impact.

Section 3(7) of the Act, 46 U.S.C. app. 1702(7), defines a "conference" as:

> an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not inlcude a joint service, consortium, pooling, sailing or transshipment agreement.

The Commission's rules at 46 CFR 572.104(f) currently define "Conference agreement" as:

> an agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common

[1] Section 5(b) in its entirety requires each conference agreement to:

(1) state its purpose;

(2) provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw from conference membership upon reasonable notice without penalty;

(4) at the request of any members, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 10(c) (1) or (3) of the Act;

(6) provide for a consultation process designed to promote—

(A) commercial resolution of disputes, and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering shippers' requests and complaints; and

(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not inlcude consortium, joint service, pooling, sailing or transshipment agreements.

In interpreting and applying these definitions, the Commission's policy under the 1984 Act has been to require mandatory provisions only in the case of binding agreements and not in the case of strictly volumtary arrangements. This policy is based on the premise that mandatory provisions were intended to apply only to binding rate agreements, *i.e.*, conferences. The legislative history of the 1984 Act supports this view. The Report of the House Committee on Merchant Marine and Fisheries explains that steamship conferences are generally understood to be "* * * associations of steamship companies *that have authority to bind their members to agreed-upon rates and conditions of service.*" H.R. Rep. No. 98–53 (Part I), 98th Cong., 1st Sess. 8 (1983). (Emphasis supplied). The Report also states that the statutory definition of "conference" "* * * codifies the general understanding of the term." *Id.* at 28. The authority to bind its members would therefore appear to be an essential element of a conference.

In light of this legislative history and the Commission's policy under the 1984 Act, it appears that the current definition of "Conference agreement" in the Commission's rules may not be sufficiently precise in that it does not limit its scope to those ocean common carrier agreements which have the authority to enforce adherence, through contractual remedies, to decisions reached under the agreement. In the case of agreements authorizing discussion and agreement upon rates, for example, the current definition may not adequately distinguish between agreements which contractually bind members to agreed-upon rates and those which do not.

Moreover, it appears that no regulatory purpose would be served by requiring that the mandatory provisions be included in voluntary, non-binding rate discussion agreements. For example, in such voluntary agreements, requiring that the agreement provide for a right of independent action would be superfluous since the agreement by its nature only provides for voluntary rate adherence and members may always act independently and change the rate *at any time.*

Based on the legislative history and a reading of the purposes of the mandatory provisions section of the 1984 Act, the Commission's policy not to require mandatory provisions in voluntary non-binding agreements appears well-founded. The Proposed Rule would clearly state and codify this policy by making appropriate changes in the current definition of "Conference agreement."

The Proposed Rule would also make the following revisions in the definition of "Conference agreement." First, because of the amended definition's focus on ocean common carrier "Conference agreements," and because marine terminal conference agreements—unlike ocean common carrier conference agreements—are not required by section 5(b) of the 1984 Act to include mandatory provisions, the current definition's reference to marine terminal operators would be deleted. The definition of the term "Marine terminal conference agreement" established under § 572.307(b) by Docket No. 85–10, *Marine Terminal Agreements,* would be moved to § 572.104, with an appropriate cross-reference in § 572.307(b). Second, the references to "*uniform*" rates, charges and conditions of service, and "*all*" members, would be eliminated because, in the context of contractually-enforceable adherence, they could unduly narrow the definition and make its application less clear. Third, reference to the "conduct of collective administrative affairs" would be eliminated as being an inappropriate criterion for defining a "Conference agreement" given the purposes of the Act. Finally, reference to alternative methods of tariff publication would be removed because it was merely illustrative and, in any event, is no longer necessary given the proposed revised definition.

Both joint service and consortium agreements are excluded from the statutory definition of the term "conference" and therefore are not subject to the obligation to incorporate mandatory provisions under section 5(b). Although the statute identifies these two classes of excluded agreements, it does not define them.

The Commission's rules at § 572.104(n) currently define "Joint service/consortium agreement" as:

> an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to define and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur *and there is no competition between members for traffic in the agreement trade;* but they otherwise maintain their separate identities. (Emphasis supplied).

This definition was intended to incorporate the essential elements of what had been commonly understood to constitute a joint service or consortium at the time of the passage of the 1984 Act. *See* former 46 CFR 522.2(a)(4) and *In Re: Agreement No. 9973–3—Johnson ScanStar Service Voting Provision,* 21 F.M.C. 216, 226 (1978). However, the requirement under § 572.104(n) that there be "no competition between members for traffic in the agreement trade" may be unnecessarily restrictive in defining the term for the purposes of the 1984 Act. Moreover, this requirement may reduce the flexibility contemplated by the 1984 Act for parties to fashion joint ventures. Accordingly, the Proposed Rule would amend the definition of the term "joint service/consortium agreement" under § 572.104(n) to remove the current requirement that there be "no competition between members for traffic in the agreement trade."

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, bcause it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organization units or small governmental jurisdictions.

The Federal Maritime Commission has determined that this action does not constitute a major Federal action

significantly affecting the quality of the human environment; therefore no environmental impact statement was prepared.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Proposed Rule because the proposed amendments to Part 572 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 572

Antitrust, Maritime carriers, Administrative practice and procedure, Rates and fares.

Therefore, in order to clarify the Commission's policy concerning mandatory provisions required under section 5(b) of the Shipping Act of 1984, the Commission hereby proposes to amend Part 572 of Title 46 of the Code of Federal Regulations as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 continues to read as follows:

Authority. 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. Section 572.104 is amended by revising paragraphs (f) and (n) to read as follows.

§ 572.104 Definitions.

* * * * *

(f) *Conference agreement* means an agreement which authorizes two or more ocean common carriers, each operating as a single entity in the trade covered by the agreement, to (1) discuss and agree upon common rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo; and (2) enforce adherence to any action or activity agreed upon, by means of liquidated damages, penalties, fines, suspension, expulsion or other contractual remedies. The term does not include joint service, consortium, pooling, sailing or transshipment agreements.

* * * * *

(n) *Joint service/consortium agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur, but the members otherwise maintain their separate identities.

* * * * *

§ 572.104 [Amended]

3. Section 572.104 is amended by redesignating paragraphs (o) through (ff) as (p) through (gg).

§§ 572.307 and 572.104 [Amended]

4. Section 572.307(b) is redesignated as § 572.104(o).

5. A new paragraph (b) is added to § 572.307 to read as follows:

§ 572.307 Marine terminal agreements-exemption.

* * * * *

(b) *Marine terminal conference agreement* is defined in § 572.104(o) of this part.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28045 Filed 12–5–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF DEFENSE

48 CFR 252

Department of Defense Federal Acquisition Regulation Supplement; Protests, Disputes and Appeals

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Defense is considering a change to the DFARS clause 252.233–7000 to clarify the importance of identifying incurred costs in contractor's proposals for claims, equitable adjustment, relief under Pub. L. 85–804 and other similar requests.

DATE: Comments should be submitted to the DAR Council at the address shown below by January 5, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P) / DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 87–128 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

A review by the Department of Defense's Inspector General of requests for equitable adjustment submitted against changes to construction contracts, found that contractor's requests were in excess of actual costs incurred. Many of the requests were made after contract performance was substantially completed and actual costs were known. The contractor's cost representations, however, were generally based on estimates because the costs related to the changes were not segregated from the costs of the unchanged portion of the contract. The proposed rule would permit contracting officers to include a clause in construction contracts requiring that contractors separately account for changed work if the estimated cost of the change, or a series of related changes, exceeds $100,000.

B. Regulatory Flexibility Act

The proposed rule does not appear to have a significant impact on a substantial number of small entities because the clause will be included in contruction contracts only when deemed appropriate by the contracting officer and will become operative only if the contractor submits a request due to a change and that change, or series of related changes, equals or exceeds $100,000. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because contractors are required to maintain separate accounts for changed and unchanged work when the amount of the change, or series of related changes, exceeds $100,000.

List of Subjects in 48 CFR Part 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 252 be amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202 DoD Directive 5000.35, and DoD FAR Supplemnent 201.301.

2. Section 252.233–7000 is amended by changing the date of the clause to read "(DEC 1988)" in lieu of "(FEB 1980)"; by revising the certificate in paragraph (a) of the clause; by removing paragraph (b) of the clause; by redesignating the existing paragraphs (c) and (d) of the clause to paragraphs (b) and (c) respectively; by adding in the redesignated paragraph (c) between the number "813" and the word "has" a comma and the statute "Pub. L. 95–485"; to read as follows:

252.233–7000 Certification of requests for adjustment or relief exceeding $100,000.

* * * * *

(a) * * *

I certify that this claim is made in good faith and that to the best of my knowledge and belief, the supporting data are accurate and complete, that all incurred allowable costs have been identified in this claim, that all relevant facts, including cost or pricing data, have been fully disclosed to the government, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the government is liable.

(Signature)

(Officials's Name)

(Title)

(Date)

* * * * *

[FR Doc. 88–28031 Filed 12–5–88; 8:45 am]

BILLING CODE 3810–01–M

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Notices

Federal Register
Vol. 53, No. 234
Tuesday, December 6, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-192]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

Place, Dates, and Times of Meeting: The meeting will be held at the United States Department of Agriculture, Conference Room 5066, South Building, 14th and Independence Avenue SW., Washington, DC, on December 13, 1988, from 1 to 4 p.m. The meeting will reconvene the following day, December 14, from 9 a.m. to 4 p.m. in the EPIC Room, 741-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5140.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (Committee) makes recommendation to the Department concerning the poultry industry and the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

Tentative topics to be discussed at the meeting include:

1. Current *Salmonella enteritidis* research.
2. An update on *Salmonella enteritidis*.
3. National Poultry Improvement Plan activities at the National Veterinary Services Laboratories.
4. The U.S. Sanitation Monitored Program and *Salmonella enteritidis* surveillance activity.
5. Reports on Avian Influenza and Exotic Newcastle Disease surveillance.
6. Avian import/export activity.
7. International poultry disease concerns.
8. The Model State Poultry Disease Prevention Program and its implementation.

The meeting will be open to the public. Those interested in expressing their views concerning the above topics or other aspects of the National Poultry Improvement Plan should send their written comments to Dr. Irvin L. Peterson at the address listed under FOR FURTHER INFORMATION CONTACT. The Committee will also accept written comments at the time of the meeting. Please refer to Docket Number 88-192 when submitting your comments.

Written comments received by Dr. Peterson may be inspected in Room 848 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Due to administrative error, less than 15 days notice is being given.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 2nd day of December 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-28107 Filed 12-2-88; 12:06 pm]

BILLING CODE 3410-34-M

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail (PCNST) Advisory Council will meet on January 5, 1989 in Millbrae, California. The meeting will begin at 8:30 a.m. at the El Rancho Inn, 1100 El Camino Real.

The Council provides recommendations for the Secretary of Agriculture on policy, programs, and procedures affecting the PCNST. The Council will discuss the development of a volunteer support organization for the PCNST. The meeting will be open to the public.

Persons who wish additional information about the meeting or dedication should contact Dick Benjamin, Assistant Regional Forester, RW&CR, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, CA 94111, Phone (415) 556-6986.

Dated: November 28, 1988.

Richard O. Benjamin,

Assistant Regional Forester for Recreation, Wilderness and Cultural Resources.

[FR Doc. 88-27995 Filed 12-5-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 81140-8240]

Enforcement Policy for Takings of Marine Mammals Incidental to Commercial Fishing

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Statement of Policy Regarding Enforcement for Takings of Marine Mammals Incidental to Commercial Fishing.

SUMMARY: On November 23, 1988 the President signed into law Pub. L. 100-711 which reauthorizes and amends the Marine Mammal Protection Act (MMPA). Among other things, this legislation requires the Secretary of Commerce to establish, within 240 days, a five-year exemption from the prohibitions on the taking of marine mammals in domestic commercial fisheries and foreign fisheries with fishing permits issued under the Magnuson Fishery Conservation and Management Act (MFCMA). This legislation does not, however, explicitly provide for an interim grace period from prohibitions on takings of marine mammals between the date of enactment and the date the exemption system becomes effective. To address the absence of an explicit interim grace period, NOAA announces a general enforcement policy that it will not seek penalties under the MMPA before the

exemption system becomes effective for certain takings of marine mammals incidental to lawful commercial fishing operations against persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Eileen Cooney, Assistant General Counsel for Enforcement and Litigation, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: Section 2 of Pub. L. 100–711 requires the Secretary of Commerce to establish, within 240 days, a five-year exemption from the prohibitions on the taking of marine mammals in domestic commercial fisheries and foreign fisheries with fishing permits issued under the MFCMA. Incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 104(h)(2) of the MMPA is expressly excluded from the exemption. Without this exemption, large segments of the commercial fishing industry would be forced to stop fishing or to fish under the risk of prosecution for incidental takings of marine mammals due to the inability of NOAA to issue incidental take permits under an opinion issued by the U.S. Court of Appeals for the D.C. Circuit. Persons engaged in commercial yellowfin tuna fishing subject to section 104(h)(2) are still eligible to be covered by a valid general incidental take permit

The House and Senate Committee Reports accompanying the legislation indicate that Congress intended to grant those persons eligible for the exemption, a grace period from penalties for incidental takings of marine mammals in the 240 days after the effective date of the law, which the new exemption system is being developed. Sen. Rep. No. 100–592, 100th Cong., 2d Sess. (1988) 17; H.R. Rep. 100–970, 100th Cong., 2d Sess. (1988) 22. Despite the clear intent of Congress, the MMPA as amended by Pub. L. 100–711 does not explicitly provide for an interim grace period.

To prosecute fishermen during the interim 240-day period, however, would obviously contradict the purpose of the amendments and the intent of Congress. Therefore, in an attempt to comply with the spirit and intent of the amendments, NOAA adopts, in the exercise of its discretion, the enforcement policy set forth below.

Dated: December 1, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Statement of Policy Regarding Enforcement for Takings of Marine Mammals Incidental to Commercial Fishing

In the exercise of its discretion as the agency with the delegated authority to enforce the MMPA, NOAA adopts the following enforcement policy toward persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA who take marine mammals incidental to lawful commercial fishing operations between the period after enactment of Pub. L. 100–711 and the date the exemption system required by that law becomes effective:

1. NOAA will not seek penalties under the MMPA for the unintentional takings of marine mammals incidental to lawful commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA.

2. NOAA will not seek penalties under the MMPA for intentional takings during lawful commercial fishing operations that do not seriously injure or kill marine mammals by persons using vessels of the United States or vessels which have valid fishing permits issued in accordance with section 204(b) of the MFCMA if the taking is necessry to protect gear or catch from damage or depredation, or to protect a person from injury or death.

3. NOAA will not seek penalties under the MMPA for intentional takings during commercial fishing operations that seriously injure or kill marine mammals by persons using vessels of the United States or vessels which have valid permits issued in accordance with section 204(b) of the MFCMA if the taking is necessary to protect a persons from serious injury or death after all other practicable non-injurious steps have been taken.

4. This enforcement policy is designed so as not to allow takings of marine mammals to exceed the level and type of takings that have been authorized previously in general permits issued under the MMPA before it was amended by Pub. L. 100–711. In this respect, the policy is based on the assumption that it will not result in a significant adverse effect on the species or population of marine mammals that may be taken. If NOAA determines that the continuation of certain incidental takings will have a significant adverse effect on an affected species or population, NOAA may revise or amend this policy for any fisherman, group of fishermen or fishery, with prior notice to the affected parties. Notice of any such change will be published in the **Federal Register**.

5. This enforcement policy does not apply to persons engaged in commercial yellowfin tuna fishing subject to section 104(h)(2) of the MMPA because there is still a valid general incidental take permit available to those persons.

[FR Doc. 88–28004 Filed 12–1–88; 12:07 pm]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Brazil

December 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 607 is being increased for swing and carryforward.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 53 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published

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on November 7, 1988). Also see 53 FR 46644, published on November 18, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1988, and extends through March 31, 1989.

Effective on December 1, 1988, the directive of November 15, 1988, is amended to increase to 7,280,000 pounds [1] the current limit for Category 607, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28023 Filed 12-5-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Japan

December 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6583. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for Category 611 is being increased by application of swing.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the correction: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49470, published in the **Federal Register** on December 31, 1987.

The letter to the Commissioenr of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 8, 1988, the directive of December 28, 1987 is hereby amended to increase to 18,244,063 square yards [1] the previously established limit for man-made fiber textile products in Category 611, as provided under the terms of the current bilateral agreement between the Governments of the United States and Japan.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs excpetion to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28024 Filed 12-5-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

December 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory limit for Category 369-D, the United States Government has decided to control imports in Category 369-D for the prorated period which began on June 30, 1988 and extends through December 31, 1988.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16,

[1] The limit has not been adjusted to account for any imports exported after March 31, 1988.

[1] The limit has not been adjusted to account for any imports exported after December e1, 1987.

1987). Also see 53 FR 27545, published on July 21, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 8, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369–D [1], produced or manufactured in Thailand and exported during the prorated period which began on June 30, 1988 and extends through December 31, 1988, in excess of 111,292 pounds.[2]

Textile products in Category 369–D which have been exported to the United States prior to June 30, 1988 shall not be subject to the limit established in this directive.

Textile products in Category 369–D which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 96.090 pounds to the limit established in this directive. These charges are for goods imported during the period June 30, 1988 thorugh September 30, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28025 Filed 12–5–88; 8:45 am]

BILLING CODE 3510–DR–M

[1] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] The limit has not been adjusted to account for any imports exported after May 31, 1988.

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 14, 1988 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subject of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Indian Rock Water Company—Newtown Artesian Water Company D–80–78 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 12.96 million gallons (mg)/30 days of water from Well No. 21 during periods of normal precipitation. Commission approval of September 14, 1983 was limited to five years. Well No. 21 has not been used since it was approved in 1983. It is planned that the well will be used in the near future. The project is located in Newtown Township, Bucks County, in the Ground Water Protected Area of Southeastern Pennsylvania.

2. *Blue Mountain Consolidated Water Company D–81–50 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's distribution system from the Knauss Road Well. Commission approval on January 25, 1984 was limited to five years and will expire unless renewed. The project is located in Buskkill Township, Northhampton County, Pennsylvania.

3. *Town of Delaware D–82–47 CP.* A sewage treatment project to serve the Callicoon area of the Town of Delaware, also known as Sewer District No. 2, in Sullivan County, New York. The treatment plant will be designed to remove 90 percent BOD and suspended solids from a sewage flow of 0.12 million gallons per day (mgd). Treated effluent will discharge to Callicoon Creek. The project is located within the Upper Delaware National Scenic and Recreational River Area.

4. *Summit Hill Water Authority D–84–3 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 13.8 mg/30 days of water to the applicant's distribution system from Well No. 4. Commission approval on March 28, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 13.8 mg/30 days. The project is located in Summit Hill Borough, Carbon County, Pennsylvania.

5. *Collegeville-Trappe Joint Water System D–88–3 CP.* An application for the renewal of a ground water withdrawal project to supply up to 3.46 mg/30 days of water to the applicant's existing public water supply system from new Well No. 11. The project is located approximately 700 feet northeast of the intersection of Clamer Avenue and Route 422, in Collegeville Borough, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Horsham Township D–88–17 CP.* An application to construct a sewage treatment plant off Keith Valley Road in Horsham Township, Montgomery County, Pennsylvania. The proposed tertiary treatment plant is designed to process a total average flow of 0.5 mgd from customers in Horsham Township only. Treatment plant effluent will be discharged to Park Creek in the Neshaminy Creek Basin.

7. *Town of Phillipsburg D–88–24 CP.* An application to upgrade a 3.5 mgd sewage treatment plant to provide high quality secondary treatment. The plant is located off Main Street in the Town of Phillipsburg, Warren County, New Jersy. The project involved demolition and modification of some treatment facilities, plus construction of a sequencing batch reactor system. The plant will continue to serve the Town of Phillipsburg and portions of Pohatcong Township, Alpha Borough, and Lopatcong Township. Treatment plant effluent will continue to be discharged to Lopatcong Creek near its confluence with the Delaware River, but a new outfall will be constructed.

8. *Roamingwood Sewer and Water Association, Inc. D–88–45 CP (Revised).* An application to revise the docket approved August 3, 1988, because the applicant mistakenly requested an allocation that is too low to meet projected water demand during the five-year approval period. The applicant requests that decision condition "d." be revised to limit the withdrawal from proposed Well Nos. 4 and 5 to 9.69 mg/30 days, and to limit the withdrawal from all wells to 26.69 mg/30 days. The

project is located in Lake Township, Wayne County, Pennsylvania.

9. *Blue Ridge Real Estate Company D–88–61.* An application to increase seasonal surface water withdrawal from Tobyhanna Creek to serve the Jack Frost Ski Area snowmaking process. The applicant requests approval to withdrawal up to 50 million gallons a month (mgm) during cold weather months as needed for the sole purpose of making snow. The existing snowmaking facilities, described in DRBC Docket No. D–79–71, use up to 30 mgm. The applicant's ski resort is located in Kidder Township, Carbon County, Pennsylvania.

10. *Hansen Properties D–88–62.* An application for a ground water/surface water withdrawal project to supply water for golf course irrigation at the Blue Bell Golf Course and Country Club associated with the Normandy Farms Housing Development in Whitpain Township, Montgomery County, Pennsylvania. The applicant has requested approval to withdraw up to 475,000 gpd for irrigation Streamflow will be used when available: ground water will be used when surface water cannot meet the demand. The surface source will be an intermittent tributary to Stoney Creek in the Schuylkill Watershed. Well Nos. 2 and 3 (combined) will be pumped at rates up to 14.256 mg/30 days into surface storage ponds as needed to supplment storm water runoff. The project is located about 3000 feet southwest of the intersection of Route 202 and Morris Road, Franklinville, in the Southeastern Pennsylvania Ground Water Protected Area.

11. *Hansen Nurseries D–88–66.* An application for approval of a ground water withdrawal project to supply up to 10.02 mg/30 days of water to the applicant's nursery from new Well No. 1. The project is located in Douglas Township, Montgomery County, Pennsylvania. The site is 1800 feet west southwest of the intersection of Green Road and Hoffmansville Road near an unnamed tributary to Schlegel Creek. in the Perkiomen Watershed and is located in the Southeastern Pennsylvania Ground Water Protected Area.

12. *City of Dover D–88–71 CP.* An application for approval of a ground water withdrawal project to supply up to 22.9 mg/30 days of water to the applicant's distribution system from existing Well Nos. 13 and 14 not previously included in the Comprehensive Plan, and to retain the existing withdrawal limit from all wells of 300 mg/30 days. The project is located in the City of Dover, Kent County, Delaware.

13. *Texaco Refining and Marketing, Inc. D–88–73.* An application to replace the withdrawal of water from Well No. P–5A in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. P–5B be limited to 17.28 mg/30 days, and that the total withdrawal from all wells remain limited to 180 mg/30 days. The project is located in New Castle County, Delaware.

Susan M. Weisman,

Secretary.

November 29, 1988.

[FR Doc. 88–27998 Filed 12–5–88; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88–55–NG]

Access Energy Corp.; Application To Extend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 12, 1988, of an application filed by Access Energy Corporation (Access) requesting that the blanket authorization, previously granted in DOE/ERA Opinion and Order No. 107 (Order No. 107), issued January 29, 1986, be extended for two years beginning January 1, 1989, the expiration of its current authorization, through the period ending December 31, 1990. Authorization is requested to import over this two-year term up to 296 Bcf of natural gas.

Quarterly reports filed with the ERA indicate that Access has imported approximately .7 Bcf of gas under Order No. 107 as of September 30, 1988.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 5, 1989.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Order No. 107 was originally issued to Yankee International Company (Yankee) on January 29, 1986; subsequent to the February 8, 1988, purchase by Access of Yankee's business assets, the ERA, on February 24, 1988, approved the transfer of this authority to Access. The existing blanket authorization allows Access to import from Canada a daily maximum of 400 MMcf of domestic natural gas, up to a total of 296 Bcf over a two-year term that ends December 31, 1988.

Access, a Delaware corporation, with its principal office in Dublin, Ohio, intends to continue importing competitively-priced Canadian natural gas produced by reliable Canadian suppliers for sale on a short-term or spot market basis to purchasers in the U.S., including commercial and industrial end-users and local distribution companies. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. According to Access, the transactions will continue to utilize existing pipeline facilities and will not require the construction of new facilities. Access proposes to continue to submit quarterly reports to the ERA giving the specific details of each transaction.

This import application will be reviewed pursuant to section 3 of the Natural Gas Act and DOE's gas import policy guidelines under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive since the transactions are premised upon imported gas being price-competitive with alternate fuels and domestic gas in various U.S. spot-markets. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the ERA approves this request to amend a blanket import, it may designate a total amount of authorized volumes for the term without any daily limit, in order to

provide the applicant with maximum flexibility of operation. In addition, the ERA may permit the import of the gas at any existing point of entry and through any existing transmission system.

Access requests that an authorization be granted on an expedited basis. An ERA decision on Access' request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusions in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., January 5, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Access' application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC November 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–28071 Filed 12–5–88; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–R–79–19]

Annual Reports From States and Non-Regulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of availability of Form ERA–166.

SUMMARY: Sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) require State regulatory authorities and certain non-regulated utilities to submit to the Department of Energy (DOE) annual reports on their progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. Under the present DOE regulations (10 CFR Part 463), as amended, each of the reporting entities must file an annual report by February 28, 1989, covering the calendar year 1988 reporting period. All reports are to be made on Form ERA–166.

DATE: Reports are due by February 28, 1989.

ADDRESS: All completed Forms ERA–166 should be addressed to: Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Form ERA–166, Room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Room 3F–070, Washington, DC 20585, Telephone (202) 586–9506.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1979 (44 FR 47264, August 13, 1979), DOE issued a rule (10 CFR Part 463) setting forth the manner in which State regulatory authorities and certain non-regulated gas and electric utilities are required to report on their consideration of the ratemaking and other regulatory standards established by sections 111(d), 113(b), and 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA).

On August 4, 1982 (47 FR 33679), DOE amended Part 463 by revising § 463.3 (a) and (c). The revised rule requires the reporting entities to file their annual reports on February 28 of each year. Each annual report must cover the immediately preceding calendar year. For example, the report due by February 28, 1989, shall cover the period January 1, 1988–December 31, 1988.

II. The Report Form

The Form ERA–166 is identical to the form published on December 10, 1987 (52 FR 46823), except for date changes. It was approved by the Office of Management and Budget (OMB Control Number 1903–0060), and is being sent to each electric and gas utility listed in

appendices A and B of the ERA Federal Register notice [Docket No. ERA–R–79–43B] which is published annually at the end of each calendar year. Copies of this form also are available upon request from this office at the address given in this announcement.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 9591 (42 U.S.C. 7101 *et seq.*)

Issued in Washington, DC on November 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–28072 Filed 12–5–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden, and (13) a brief abstract describing the proposed collection and the respondents.

DATE: January 5, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–1, 3, 4, 5, 6, 7A, 7A(Supp), and 20
3. 1905–0167
4. Coal Program Package
5. Revision
6. Quarterly, Annually, (Standby Forms, EIA–1, 4, and 20 in the case of a Coal Supply Disruption, and Standby Form, EIA–7A(Supp), As Needed)
7. Mandatory
8. Businesses or other for profit
9. 11,998 respondents annually
10. 15,740 responses annually
11. The estimated average hours per response for each of the Coal Program Package surveys are: EIA–1, 1 hour; EIA–3, .5 hours; EIA–4, 1 hour; EIA–5, 1 hour; EIA–6, 2.5 hours; EIA–7A, 1.21 hours; EIA–7A(Supp), 1 hour; and EIA–20, 1 hour.
12. 23,400 total burden hours
13. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, November 30, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–28073 Filed 12–5–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 9840–000 Virginia]

Appomattox River Water Authority; Availability of Environmental Assessment

November 30, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for the major license for the proposed Appomattox River Project located on the Appomattox River in Chesterfield and Dinwiddie Counties, near Petersburg, VA and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28010 Filed 12–5–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6549–001 California]

Conway Ranch Partnership; Availability of Environmental Assessment

November 25, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Conway Ranch Hydroelectric Project and has prepared an

Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28011 Filed 12-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6167-004 California]

Ronald E. Rulofson; Availability of Environmental Assessment

November 25, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Eltapom Creek Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28012 Filed 12-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-260-000 et al.]

Texas Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Company

[Docket No. CP89-260-000]

November 29, 1988.

Take notice that on November 21, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-260-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for American Central Gas Marketing Company (American Central), a shipper of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

It is stated that Trunkline would transport up to 25,000 dt per day on behalf of American Central pursuant to a Transportation Agreement dated October 6, 1988, between Trunkline and American Central (Transportation Agreement). It is asserted that the transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline would then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Natural Gas Pipe Line Company of America in Cameron Parish, Louisiana.

Trunkline further states that the estimated average daily and estimated annual quantities would be 20,000 dt and 7,300,000 dt., respectively. Further, Trunkline states that service under § 284.223(a) commenced on October 11, 1988, as reported in Docket No. ST89-0563.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89-287-000]

November 29, 1988.

Take notice that on November 23, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP89-287-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Pennzoil Gas Marketing Company (Pennzoil). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-391. United Explains that the peak day quantity would be 82,400 MMBtu, the average daily quantity would be 82,400 MMBtu, and that the annual quantity would be 30,076,000 MMBtu. United explains that it would receive natural gas for Pennzoil's account at an existing interconnection between United and Sea Robin Pipeline Company in Vermilion Parish, Louisana. United states that it would redeliver the gas for Pennzoil's account at an existing interconnection between United and Tennessee Gas Pipeline Company in Ouachita Parish, Louisiana, and an existing interconnection between United and Columbia Gulf Transmission in Rapides Parish, Louisiana.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-286-000]

November 29, 1988.

Take notice that on November 23, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-286-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Texaco Gas Marketing (Texaco). United explains that service commenced October 14, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-690. United explains that the peak day quantity would be 103,000 MMBtu, and that the average daily quantity would be 103,000 MMBtu, and that the annual quantity would be 37,595,000 MMBtu. United explains that it would receive natural gas for Texaco's account at existing points of receipt in Louisiana, Texas, Offshore Louisiana, and Mississippi. United states that it would redeliver the gas for Texaco's account at existing interconnections located in Florida, Mississippi, and Alabama.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-284-000]

November 29, 1988.

Take notice that on November 23, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-284-000

a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Texaco Gas Marketing (Texaco). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–692. United explains that the peak day quantity would be 206,000 MMBtu, the average daily quantity would be 206,000 MMBtu, and that the annual quantity would be 75,190,000 MMBtu. United explains that it would receive natural gas for Texaco's account at existing points of receipt in Louisiana, Alabama, Offshore Louisiana, and Mississippi. United states that it would redeliver the gas for Texaco's account at existing interconnections located in Florida, Mississippi, and Alabama.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–75–000]

November 29, 1988.

Take notice that on October 21, 1988, as supplemented on November 21, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–75–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to increase the currently authorized firm entitlement of six of its utility customers, and to realign the currently authorized firm entitlement sold to one of such six utility customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the utilities for which the requested authorizations are sought are Austin Utilities (Austin), City of Duluth (Duluth), Michigan Gas Company (Michigan Gas), Minnegasco, Inc. (Minnegasco), Natural Gas, Inc., and Northern States Power Company (NSP). It is stated that the total increase in firm entitlement sought by Northern is 21,796 Mcf per day (Mcfd); 18,246 Mcfd is to be served under Rate Schedule SS–1 and 3,550 Mcfd under Rate Schedule CD–1, of its FERC Gas Tariff, Third Revised Volume No. 1. Northern states that the proposed changes are to be effective for the 1989–1990 winter heating season.

Northern states that each of the six utilities has requested Northern to realign and/or increase their firm entitlement in the manner and amount set forth in the following schedules. Schedule I reflects the proposed increase for five of the six utilities.

SCHEDULE I—(VOLUMES IN MCFD)

Utility/community	Existing authority SS–1	Proposed SS–1
Austin	1,276	1,600
Duluth	8,450	11,450
Minnegasco	154,665	156,707
Natural Gas, Inc.	602	1,202
NSP	47,501	57,501

SCHEDULE I—(VOLUMES IN MCFD)—Continued

Utility/community	Existing authority SS–1	Proposed SS–1
Total	212,494	228,460

Northern states that its requested increase of 2,042 Mcfd in the total firm entitlement of Minnegasco under Rate Schedule SS–1 will be utilized to serve the community of Minneapolis; previously, in Docket No. CP88–781–000, Minnegasco's entitlement for Rate Schedule SS–1 volumes to serve the community of Minneapolis was decreased by 2,042 Mcfd, which was then transferred under the SS–1 Rate Schedule to other communities served by Minnegasco.

Additionally, Northern states that its requested increase of 10,000 Mcfd in the total firm entitlement of NSP will be utilized to serve the community of St. Paul; previously, in Docket No. CP88–780–000, NSP's entitlement for Rate Schedule SS–1 volumes to serve the community of St. Paul was decreased by 10,000 Mcfd which was transferred under Rate Schedule SS–1 to other communities served by NSP.

It is also stated that by operation of the Commission's prior notice procedures, the authorizations in Docket No. CP88–780–000 and CP88–781–000 were granted on November 7, 1988, after no protests were filed.

Since Michigan Gas is currently realigning the volumes it serves to fifteen communities, Northern states that its proposed increase is set forth separately in Schedule II.

SCHEDULE II—(VOLUMES IN MCFD)

Michigan gas/community	Existing authority		Proposed authority	
	CD–1	SS–1	CD–1	SS–1
Baraga	996	74	500	284
Chassell	165	81	210	119
Hancock-Ripley	922	1,832	1,968	1,118
Houghton	1,744	210	2,245	991
Ishpeming	2,384	3,090	3,965	2,252
L'Anse	904	260	862	490
L'Anse-Celolex Corp.	1,300	0	3,000	0
Marquette	6,285	4,136	8,415	4,780
Marquette-K.I. Sawyer AFB	2,507	0	1,404	797
Nagaunee	1,971	699	2,082	1,183
Ontonagon-Green	1,153	0	1,063	527
Palmer	106	99	154	88
Silver City	47	0	21	12
White Pine Village	373	20	247	140
White Pine Copper Co.	2,986	0	1,200	0
Total	23,786	10,501	27,336	12,781

To summarize, Northern states that it requests authorization to realign the firm entitlement of Michigan Gas under Rate Schedules CD–1 and SS–1, and further, to increase the firm entitlement for six utilities by a total of 21,796 Mcf/d in the individual amounts and under the specific Rate Schedules as set forth in the following table:

PROPOSED VOLUME INCREASE (MCFD)

Utility	CD–1	SS–1	Increase
Austin	0	324	
Duluth	0	3,000	3,000
Michigan Gas	3,550	2,280	5,830
Minnegasco	0	2,042	2,042
Natural Gas, Inc.	0	600	
NSP	0	10,000	10,000
Total	3,550	18,246	21,796

Northern states that such realignment and/or increase in firm entitlement will more effectively serve the natural gas needs of Northern's utility customers and of their individual customers, and is clearly in the public convenience and necessity. It is further stated that Northern's Form 16, Report of Gas Supply and Requirements, filed with the Commission on September 30, 1988, refelcts that Northern has gas supply in excess of its current market requirements to enable it to serve the increased loads proposed herein.

According to Northern, no additional facilities are required to be constructed to accommodate the realigned and increased deliveries of natural gas to the utility customers as proposed herein.

Finally, Northern states that it will utilize its currently effective CD–1 and SS–1 Rate Schedules for the increased level of service proposed, and that at the appropriate time, Northern will file with the Commission the necessary revised Tariff Sheets reflecting the proposed volume increases.

Comment date: December 20, 1988, in accordance with Standard Paragraph F at the end of his notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–257–000]

November 29, 1988.

Take notice that on November 21, 1988, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–257–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Transco Energy Marketing Company (Shipper) under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 10,000 dt equivalent of natural gas; on an average day will be 10,000 dt equivalent of natural gas; and on an annual basis will be 3,650,000 dt equivalent of natural gas. It is stated that Transco will receive the gas at points of receipt in Pennsylvania, New Jersey, Alabama, Georgia, Texas, Louisiana, offshore Louisiana and offshore Texas and will deliver the gas at an existing point of interconnection between Transco and Sun Oil Company in Point Coupee Parish, Louisiana (Fordoche). It is stated that Transco will construct no new facilities to provide this transportation service, utilizing instead of existing facilities as reflected in Exhibit A of the transportation agreement. It is stated that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper. Transco states that service for Shipper commenced October 20, 1988, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89–0671. Transco states further that it has verified that transportation hereunder will be pursuant to Subpart F, Part 157 of the Regulations, and Subpart G, Part 284 of the Regulations.

Comment date: January 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Eastern Transmission Corporation

[Docket No. CP87–312–004]

November 30, 1988.

Take notice that on November 10, 1988, Texas Eastern Transmission Corporation (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87–312–004 an application pursuant to section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity authorizing Applicant to render in interstate commerce firm transportation service pursuant to Rate Schedule FTS–5, Phase II and III, and authorizing the construction and operation by Applicant of certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that this application is being filed in compliance with the Commission's October 26, 1988 Order in Docket No. CP87–451–013, et al. (45 FERC ¶61,098), which required Applicant to file within 15 days an application in Docket No. CP87–312–004 to provide services related to Phases II and III of CNG Transmission Corporation's (CNG) proposed storage service.

Applicant states that Phases II and III of CNG's storage service were found to be a discrete project by the Commission's September 16, 1988 order in Docket No. CP87–451–009, et al. (44 FERC ¶61,340), which severed from the Open Season proceeding and provides for processing as discrete projects several pipelines' proposed services and facilities relating to implementation of a *Stipulation and Agreement* (APEC Settlement) filed on August 15, 1988 by the Associated PennEast Customer Group (APEC) in Docket No. CP87–451–000, *et al.* In the September 16, 1988 Order, the Commission directed the sponsors of the APEC Settlement to submit, within 15 days, revised applications modified to reflect changes in facilities and services resulting from the severance of the projects.

Applicant proposes to render firm transportation service pursuant to Rate Schedule FTS–5, Phases II and III, up to the following maximum daily transportation quantities (MDTQ):

Buyer	Phase II increase (dt/day equivalent)	Aggregate MDTQ (dt/day equivalent)
Phase II—Commencing 11/15/90:		
Bristol & Warren Gas Co	0	813
Central Hudson Gas & Electric Co	2,000	6,000
Colonial Gas Company	0	2,067
Elizabethtown Gas Company	10,000	10,000
Intercontinental Energy Corp. & Public Service Electric & Gas Co	0	24,508
Long Island Lighting Company	15,000	30,000
Town of Middleborough, MA	52	207
New Jersey Natural Gas Company	10,000	15,000
Penn Fuel Gas, Inc.	1,000	3,000
The Pequot Gas Company	0	125
Public Service Electric & Gas Company	0	45,084
South County Gas Company	0	248
Valley Gas Company	0	1,000
Total Increase—Phase II	38,052	
Total FTS–5—Phase I & II		138,052

Buver	Phase III increase (dt/day equivalent)	Aggregate MDTQ (dt/day equivalent)
Phase III—Commencing 11/15/91:		
Bristol & Warren Gas Co	0	813
Central Hudson Gas & Electric Co	0	6,000
Colonial Gas Company	0	2,067
Consolidated Edison Co. of NY, Inc	20,000	20,000
Elizabethtown Gas Company	0	10,000
Intercontinental Energy Corp. & Public Service Electric & Gas Co	0	24,508
Long Island Lighting Company	20,000	50,000
Town of Middleborough, MA	52	259
New Jersey Natural Gas Company	20,000	35,000
Penn Fuel Gas, Inc	1,000	4,000
The Pequot Gas Company	0	125
Public Service Electric & Gas Company	0	45,084
South County Gas Company	0	248
Valley Gas Company	0	1,000
Total Increase—Phase III	61,052	
Total Increase—Phase II–III	99,104	
Total FTS–5—Phase I, II & III		199,104

It is indicated that the application implements Applicant's participation in Phase II and III of the restructuring and unbundling of storage services previously proposed to be rendered under the PennEast Gas Service Company (PennEast) Rate Schedule PSS.

Applicant states that, upon the later of November 15, 1990 (Phase II) and November 15, 1991 (Phase III) or the completion of all necessary facilities for each phase, transportation service under Rate Schedule FTS–5 (Phases II and III) would consist of the transportation of gas for the account of Buyer received by Applicant from Buyer for delivery to CNG and the transportation of gas for the account of Buyer received by Applicant from CNG for delivery to or for the account of Buyer. It is indicated that Applicant would receive gas for transportation under Rate Schedule FTS–5 (Phases II and III) from CNG, or deliver gas to CNG for storage for the account of Buyer, at the interconnection of CNG's proposed North Summit storage field pipeline and Applicant's existing system. It is further indicated that Applicant would deliver gas received from CNG to points of delivery with Buyer, or in the case of the Algonquin Gas Transmission Company (Algonquin) customers' volumes, to Algonquin at measuring station 087 near Lambertville, Pennsylvania. Applicant states that it would receive the gas from the Buyers for storage injection at their existing delivery points with Applicant by displacement of quantities otherwise delivered and would redeliver such quantities to CNG at the CNG North Summit facility.

Applicant states that the cost of service associated with the proposed incremental facilities required to render the FTS–5 service (Phase II and III) would be borne by all Buyers receiving the FTS–5 service. It is submitted that, for all gas transported, commencing November 15, 1990 and November 15, 1991, Applicant would charge a demand rate of $7.8326 and $6.8072 per dt respectively, and an authorized daily overrun rate of $0.2575 and $0.2238 per dt respectively.

Applicant indicates that, pursuant to section 11 of Rate Schedule FTS–5, during the interim period beginning on the date of commencement of deliveries under FTS–5 and prior to the in-service date of facilities for firm service, the Buyers may tender gas for transportation for the sole purpose of delivering gas to CNG for injection into storage for the Buyers' account and Buyer would pay the interim rate of $0.1230 per dt for the interim periods 1990 and 1991.

Applicant states that executed precedent agreements between Applicant and each Buyer originally filed in Docket No. CP87–312–000 for PSS service would be modified for FTS–5 service Phases II and III and would be filed as a supplement to this application.

Applicant requests authorization to construct and operate the following facilities:

1990 (Phase II)

Install scraper traps and mainline piping inside yard limits at Compressor Stations 23, 24, 24A and 25.

Replace 8.75 miles of existing 20-inch pipeline No. 2 with 36-inch pipeline between Compressor Stations 25 and 26.

1991 (Phase III)

Replace 4.75 miles of existing 20-inch pipeline No. 2 with 36-inch pipeline between Compressor Stations 25 and 26 (M.P. 1397.97 to M.P. 1402.72).

Applicant states that the facilities proposed would provide capacity to implement the FTS–5 (Phases II and III) transportation to deliver an additional 38,052 dt equivalent per day commencing November 15, 1990 (Phase II) and a total 99,104 dt equivalent per day commencing November 15, 1991 (Phases II and III). Applicant estimates that the capital cost of the proposed facilities would be $24,455,000 for 1990 and $13,521,000 for 1991. Applicant states that the facilities would be financed from funds on hand, funds generated from operations, or short-term borrowing, and would later be financed as part of Applicant's long-term financing.

Comment date: December 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–292–000]

November 30, 1988.

Take notice that on November 25, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–292–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Texaco Gas Marketing Inc. (Texaco), a marketer, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 25, 1988, under its Rate Schedule IT, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas on an interruptible basis for Texaco from points of receipt offshore and in multiple states listed in Appendix "A" of the agreement to numerous redelivery points in multiple states, also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 37,500 MMBtu and 18,250,000 MMBtu, respectively. Northern advises that service has commenced under the provisions of § 284.223(a) as reported in Docket No. ST89–832.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-294–000]

November 30, 1988.

Take notice that on November 25, 1988, Northern Natural Gas Company,

Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–294–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Canterra Natural Gas, Inc. (Canterra), a producer, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 22, 1988, under its Rate Schedule IT–1, it proposes to transport up to 20,000 MMBtu per day equivalent of natural gas on an interruptible basis for Canterra from points of receipt listed in Appendix "A" of the agreement to redelivery points also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 15,500 MMBtu and 7,300,000 MMBtu, respectively. Northern advises that service has commenced under the provisions of § 284.223(a) as reported in Docket No. ST89–830.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–283–000]

November 30, 1988.

Take notice that on November 23, 1988, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–283–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Carnation Company (Shipper) under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 1,600 dt equivalent of natural gas; on an average day will be 1,600 dt equivalent of natural gas; and on an annual basis will be 584,000 dt equivalent of natural gas. It is stated that Transco will receive the gas at an existing point of interconnection between Transco and United Gas Pipe Line Company at Holmesville, Pike County, Mississippi, and will deliver the gas at an existing point of interconnection between Transco and City of Danville in Pittsylvania County, Virginia. It is stated that Transco will construct no new facilities to provide this transportation service, utilizing instead existing facilities as reflected in Exhibit A of the service agreement. It is stated that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of the Shipper. Transco states that service for Shipper commenced October 8, 1988, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89–0593.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89–187–000]

November 30, 1988.

Take notice that on November 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–187–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Citizens Gas Supply Corporation (Citizens), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport on an interruptible basis up to 200,000 dekatherm (dkt) of natural gas per day on behalf of Citizens pursuant to a transportation agreement dated October 14, 1988, between Tennessee and Citizens. Tennessee would receive gas at various existing points of receipt on its system in Texas, offshore Texas, Louisiana, offshore Louisiana, Alabama, Kentucky and Pennsylvania and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in Massachusetts, Alabama, Mississippi, Pennsylvania, New York, New Jersey, West Virginia, Tennessee and Louisiana.

Tennessee further states that the estimated average daily and annual quantities would be 200,000 dkt and 73,000,000 dkt, respectively. Service under § 284.223(a) commenced on October 29, 1988, as reported in Docket No. ST89–577, it is stated.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89–188–000]

November 30, 1988.

Take notice that on November 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–188–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Houston Gas Exchange Corporation (Houston), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport on an interruptible basis up to 80,000 dekatherm (dkt) of natural gas per day on behalf of Houston pursuant to a transportation agreement dated October 13, 1988, between Tennessee and Houston. Tennessee would receive gas at various existing points of receipt on its system in South Pass Block 5, offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in New York, Connecticut, Ohio, Pennsylvania, West Virginia, Alabama, and Louisiana.

Tennessee further states that the estimated average daily and annual quantities would be 80,000 dkt and 29,200,000 dkt, respectively. Service under §284.223(a) commenced on October 13, 1988, as reported in Docket No ST89–597, it is stated.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Tennessee Gas Pipeline Company

[Docket No. CP89–207–000]

November 30, 1988.

Take notice that on November 16, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–207–000 a request pursuant to §157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 1578.205) and the Natural Gas

BEST COPY AVAILABLE

Policy Act (18 CFR 284.223) for authorization to transport gas for North Atlantic Utilities, Inc. (North Atlantic), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport on an interruptible basis up to 15,000 dekatherm (dkt) of natural gas per day on behalf of North Atlantic pursuant to a transportation agreement dated September 29, 1988, between Tennessee and North Atlantic. Tennessee would receive gas at various existing points of receipt on its system in Louisiana, New York, Texas and offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing points of interconnection with CNG Transmission Corporation in West Virginia, New York, Ohio and Pennsylvania.

Tennessee further states that the estimated average daily and annual quantities would be 15,000 dkt and 5,475,000 dkt, respectively. Service under § 284.223(a) commenced on November 1, 1988, as reported in Docket No ST89–595, it is stated.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28013 Filed 12–5–88; 8:45am]

BILLING CODE 6717–01–M

[Docket No. CS68–41–000, et al.]

Cass Resources, Inc., et al.; Applications for Small Producer Certificates [1]

December 1, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS68–41–000	[1] [2] 11–1–88	Cass Resources, Inc., and Frank W. Cass d/b/a Cass Oil Company (Frank W. Cass d/b/a Cass Oil Company), 300 Crescent Court, Suite 1800, Dallas, TX 75201.
CS71–414	[3] 11–17–88	Caspen Oil, Inc. (Summit Energy, Inc.), 300 Crescent Court, Suite 1100, Dallas, TX 75201.
CS77–432	[4] 10–31–88	Petrus Oil Company, L.P. (Petrus Oil Company), 12377 Merit Drive, Suite 1600, Dallas, TX 75251.
CS87–70–001	[5] 10–13–88	American Exploration Company, Ninian Oil Company, Ninian Oil Finance Corp., KEC Acquisition Corp., TES Acquisition Corp., TOC Acquisition Corp. and South States Oil & Gas Company (American Exploration Company), 2100 RepublicBank Center, 700 Louisiana, Houston, TX 77002–2725.
CS88–89–000	[6] 10–28–88	Beartooth Oil & Gas Company, P.O. Box 2564, Billings, MT 59103.
CS89–2–000	[7] 11–21–88	Rife Oil Properties, Inc., 3207 West 4th Street, Forth Worth, TX 76107.
CS89–4–000	11–1–88	Vaughan McElvain Energy Company, c/o Vorys, Sater, Seymour & Pease, P.O. Box 1008, Columbus, OH 43216–1008.
CS89–5–000	11–7–88	Bannon Energy Program 88A, L.P., Bannon Energy Program 88B, L.P., and Bannon Energy Incorporated, 3934 F.M. 1960 West, Suite 240, Houston, TX 77068.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS89-6-000	11-8-88	James M. Collins, 130 South Main Street, Noble, OK 73068.
CS89-7-000	11-21-88	V.C. McClintock, 1125 Ash Street, Broomfield, CO 80020

Footnotes

[1] Application received October 21, 1988. Filing date is date of receipt of filing fee

[2] By letters dated October 17, 1988, as supplemented by letter dated October 21, 1988. Applicant requests that the small producer certificate issued in Docket No. CS68-41 under the name of Frank W. Cass d/b/a Cass Oil Company be amended to include Cass Resources, Inc.

[3] Letter dated November 14, 1988, advising that by Certificate of Amendment of Restated Articles of Incorporation of Summit Energy, Inc., executed on August 29, 1988, Summit Energy, Inc., changed its name to Caspen Oil, Inc.

[4] By letter dated September 19, 1988. Applicant requests that the small producer certificate in Docket No. CS77-432 be redesignated from Petrus Oil Company to Petrus Oil Company, L.P. Applicant states the company underwent an organizational change in January 1987.

[5] By letter dated October 6, 1988, American Exploration Company (AEC) requests that its affiliates, Ninian Oil Company, Ninian Oil Finance Corp., KEC Acquisition Corp., TES Acquisition Corp., TOC Acquisition Corp. and South States Oil & Gas Company, be covered as certificate co-holders under its small producer certificate in Docket No. CS87-70-000. AEC states that it acquired Britoil Ventures, Inc. (CS84-60-000) effective January 1, 1987. Effective June 11, 1987, Britoil changed its name to Ninian Oil Company. KEC Acquisition Corp. succeeded to the interests of Kirby Exploration Company of Texas (CS76-926) effective October 1, 1987. South States Oil & Gas Company (CS71-356) was acquired by AEC effective November 14, 1983.

[6] Application received August 1, 1988. Filing date is date of receipt of filing fee. Additional material received September 6, 1988.

[7] Application received October 17, 1988. Filing date is date of receipt of filing fee.

[FR Doc. 88-28014 Filed 12-5-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3487-3]

Zenith Chemical Co. Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Zenith Chemical Company Site, Dalton, Georgia, with Trust Company Bank, the Trust of Norman Reints, P-I-E Nationwide, Inc., and ACF Industries. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or consideration which indicate the proposed settlements are inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Carolyn McCall, Investigations Support Clerk, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, GA 30365. 404-347-5059.

Written comments may be submitted to the person above by thirty (30) days from the date of publication.

Date: November 28, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-28039 Filed 12-5-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44520; FRL-3487-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on trichlorobenzene (CAS No. 87-61-6), tetrabromobisphenol A (TBBPA, CAS No. 79-94-7), vinylidene fluoride (CAS No. 75-38-7) and 1,2-dichloropropane (CAS No. 78-87-5), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for trichlorobenzene was submitted by the Standard Chlorine Chemical Company pursuant to a test rule at 40 CFR 799.1053. It was received by EPA on November 14, 1988. The study report describes chronic toxicity of 1,2,3-trichlorobenzene to mysid shrimp (*Mysidopsis bahia*). Environmental effects testing is required by this test rule.

Trichlorobenzenes are used in organic intermediates, solvents, dye carriers, transformer and dielectric fluids.

Test data for TBBPA was submitted by the Brominated Flame Retardant Industry Panel, pursuant to a test rule at 40 CFR 799.4000. It was received by EPA on November 21, 1988. The submission consists of two studies: (1) Toxicity of TBBPA to the freshwater green alga *Selenastrum capricornutum*; and (2) acute toxicity of TBBPA to fathead minnow (*Pimephales promelas*) under flow-through conditions. Environmental effects testing is required by this test rule.

TBBPA is used primarily as a reactive flame retardant, and to a lesser extent, as an additive flame retardant.

Test data for vinylidene fluoride was submitted by the Pennwalt Corporation, pursuant to the fluoroalkenes test rule at 40 CFR 799.1700. It was received by EPA on November 21, 1988. The submission describes vinylidene fluoride: Assessment of clastogenic action on bone marrow erythrocytes in the micronucleus test. Health effects testing is required by this test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for 1,2-dichloropropane was submitted by the Dow Chemical Company, pursuant to a test rule at 40 CFR 799.1550. It was received by EPA on November 21, 1988. The submission consists of five final reports: (1) Daphnid: chronic toxicity; (2) mysid shrimp: acute toxicity; (3) algae: acute toxicity to diatoms; (4) algae: acute toxicity to *Selenastrum capricornutum*; and (5) neurotoxicity. Health and environmental effects testing are required by this test rule.

1,2-Dichloropropane is used as a captive intermediate in production of perchloroethylene; as a solvent in ion exchange resin manufacture, toluene diisocyanate production, photographic film manufacture, paper coating, and petroleum catalyst regeneration; and in a mixture that is marketed as a soil fumigant.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is

unable to provide any determination as to the submissions' completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44–520). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 30, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88–28038 Filed 12–5–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Revision of a currently approved collection.
Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).
Form Number: FFIEC 031, 032, 033, 034.
OMB Number: 3064–0052.
Expiration Date of Current OMB Clearance: August 31, 1990.
Frequency of Response: Quarterly.
Respondents: Insured state nonmember commercial and savings banks.
Number of Respondents: 8301.
Number of Responses Per Respondent: 4.
Total Annual Responses: 33,204.
Average Number of Hours Per Response: 20.35.
Total Annual Burden Hours: 675,714.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before January 5, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review a change in the classes of banks that file the quarterly Consolidated Reports of Condition and Income (Call Reports), form FFIEC 031, 032, 033, and 034. To date, only insured state nonmember commercial banks have filed these FFIEC forms. The FDIC plans to have insured state-chartered savings banks begin to file FFIEC Call Report forms (including a supplemental schedule applicable only to savings banks for the purpose of capturing interest rate sensitivity data) while at the same time eliminating the separate FDIC savings bank Reports of Income and Condition (OMB No. 3064–0054), effective as of the March 31, 1989 report date.

Dated: November 18, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–27999 Filed 12–5–88; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Richard J. Baker

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 21, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Richard J. Baker,* Rantoul, Illinois; to acquire 88.84 percent of the voting shares of First Rantoul Corporation, Rantoul, Illinois, and thereby indirectly acquire Eagle Bank of Champaign County, N.A., Rantoul, Illinois.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27984 Filed 12–5–88; 8:45 am]

BILLING CODE 6210–01–M

Barnett Banks, Inc.; Proposed Acquisition of Savings and Loan Association

Barnett Banks, Inc. ("Barnett"), Jacksonville, Florida, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(1) of Regulation Y (12 CFR 225.21(a)) to acquire 100 percent of the voting shares of First Federal Savings and Loan Association of Columbus ("First Federal"), Columbus, Georgia, which are to be issued after the conversion of First Federal from a mutual thrift institution to a stock federal savings bank. Further, Barnett has applied to acquire First Federal's wholly-owned subsidiary, First Columbus Service Corporation, which is primarily engaged in the sale of real estate owned by First Federal. In that regard, Barnett has committed to limit the activities of the acquired thrift to those permissible for a bank holding company.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp,* 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation,* 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interest or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Tuesday, December 20, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28163 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

B/W Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *B/W Bancshares, Inc.*, Lexington, Kentucky; to acquire Mountain Credit Corporation, Lexington, Kentucky, and engage *de novo* in the consumer finance business pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Govenors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27985 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Lakeland Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 14, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Lakeland Bancorp, Inc.*, Newfoundland, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Lakeland State Bank, Newfoundland, New Jersey.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Interlachen Development, Inc.*, Milford, Iowa; to acquire 100 percent of the voting shares of Milford Bancorporation, Milford, Iowa, and thereby indirectly acquire Dickinson County Savings Bank, Milford, Iowa.

2. *Interlachen Development, Inc.*, Milford, Iowa; to acquire 100 percent of the voting shares of San Bancorp, Sanborn, Iowa, and thereby indirectly acquire Sanborn Savings Bank, Sanborn, Iowa.

3. *Markesan Bancshares, Inc.*, Markesan, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Markesan State Bank, Markesan, Wisconsin.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27986 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Meridian Bancorp, Inc.; Proposed Acquisition of Savings and Loan Association

Meridian Bancorp, Inc. ("Meridian"), Reading, Pennsylvania, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(1) of Regulation Y (12 CFR 225.21(a)) to acquire all of the non-voting preferred shares of Horizon Financial, F.A. ("Horizon"), Southampton, Pennsylvania, which are to be issued after the voluntary conversion of Financial from a mutual thrift institution to a stock thrift institution. Meridian also has applied for the Board's approval to acquire all of Horizon's common stock in the event certain events occur. Further, Meridian has applied to acquire six direct and seven indirect subsidiaries of Horizon, which engage in real estate development, private mortgage insurance, title abstract, general insurance activities, unerwriting of credit life and disability insurance to mortgage and consumer loan customers of Horizon, selling tax-deferred annuities, and hold real estate as the result of debts previously contracted. (Meridian has committed that Horizon will: (a) Cease all new

impermissible real estate and insurance activities, (b) liquidate existing real estate development activities, (b) liquidate existing real estate development activities within two years from the date of acquisition, and (c) divest itself of all impermissible insurance activities over the same two-year period. Finally, Meridian seeks approval to purchase all of the preferred stock of a finance subsidiary of Horizon which is to be formed to hold certain assets and to sell its preferred stock to Meridian.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulleting 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest of unsound banking paractices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue, NW., Washington, DC 20551, not later than 5:00 p.m. on Monday, December 19, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Philadelphia.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27988 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

MNC Financial, Inc.; Proposed Acquisition of Savings and Loan Association

MNC Financial, Inc. Baltimore, Maryland ("MNC"), has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 USC 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire 100 percent of the voting shares of Virginia Federal Savings and Loan Association, Richmond, Virginia ("Virginia Federal"), which are to be issued after the conversion of Virginia Federal from a mutual thrift institution to a stock federal savings bank. Further, MNC has applied to acquire Virginia Federal's seven wholly-owned service corporation subsidiaries.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Tuesday, December 20, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28162 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Sandwich Banco, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 29, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Sandwich Banco, Inc.*, Sandwich, Illinois; to acquire Northern Illinois

Finance Company, Plano, Illinois, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y, and in the sale of insurance relating directly to the extensions of credit pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *IntraOklahoma Bancshares, Inc.*, Ponca City, Oklahoma; to acquire Strategic Data Services, Ltd. (SDSL), a limited partnership, and Strategic Data Services, Inc. (SDSI), a general partner of SDSL, and thereby engage in providing data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y, through a joint-venture arrangement with The First National Bank and Trust Company of Ponca City, Oklahoma.

Board of Governors of the Federal Reserve System, November 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27987 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

Wells Fargo & Co.; Proposed Acquisition of Savings and Loan Association

Wells Fargo & Company ("Wells Fargo"), San Francisco, California, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(1) of Regulation Y (12 CFR 225.21(a)) to acquire 100 percent of the voting shares of Perpetual Savings Association ("Perpetual"), Santa Ana, California, which are to be issued after the conversion of Perpetual from a mutual thrift institution to a stock federal savings bank.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2222, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Tuesday, December 20, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28111 Filed 12-5-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Commission on Nursing; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of October 1988:

Name: Secretary's Commission on Nursing.

Date: Monday, December 12, 1988.

Time: 11:00 a.m.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

The agenda for the December 12 meeting will consist of discussion about steps that can be taken to encourage private and public sector organizations to implement the Commission's recommendations and proposed strategies. In addition, the Secretary of the Department of Health and Human Services will be presented with the Commission's report and given an overview of its contents.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission one week before the schedule meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 600E, 200 Independence Avenue SW., Washington, DC, 20201, telephone 202/245-0409.

Lillian K. Gibbons,

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88-28153 Filed 12-5-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87D-0315]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Prescription Compounding; Withdrawal of Approval of Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of five abbreviated antibiotic drug applications (AADA's) for neomycin sulfate for prescription compounding. AADA 61-579, held by Pharma-Tek, Inc., is not affected by this notice because a hearing requested by the firm is currently under consideration. This withdrawal action is being taken because these products are being used for indications for which they lack evidence of safety and effectiveness, and for which there is clinical evidence of significant risk to the patient.

EFFECTIVE DATE: January 5, 1989.

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FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 15, 1988 (53 FR 12662), the Director of the Center for Drug Evaluation and Research offered an opportunity for a hearing on a proposal to withdraw approval of antibiotic applications and abbreviated antibiotic applications for nonsterile neomycin sulfate for prescription compounding not labeled in accordance with applicable amended antibiotic regulations (21 CFR 444.942a). In the same issue (53 FR 12644), FDA amended the regulations governing these products and offered a labeling guideline because the drug was being used for indications for which it lacked evidence of safety and effectiveness, and for which there was clinical evidence of significant risk to the patient. The final rule became effective on June 14, 1988.

The amendments to 21 CFR 444.942a changed the product name from "neomycin sulfate for prescription compounding" to "neomycin sulfate for compounding oral products" and required product labeling to provide information concerning appropriate uses and to warn about the risks associated with inappropriate use.

Manufacturers and suppliers were notified that they would have to supplement their applications within 60 days of the effective date of the final rule to provide for the new product name and package insert labeling. Alternatively, a manufacturer or supplier could request a hearing. No supplements were submitted for any of the applications. One supplier, Pharma-Tek, Inc., requested a hearing.

The sponsors of the five products listed below failed to file a request for a hearing and did not supplement their applications. Accordingly, FDA is withdrawing approval of the following AADA's:

1. AADA 61–043; held by The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001.
2. AADA 61–805; held by Pfizer, Inc., 235 East 42nd St., New York, NY 10017.
3. AADA 61–169; held by S.B. Penick and Co., 540 New York Ave., Lyndhurst, NJ 07071.
4. AADA 61–698; held by Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08034.
5. AADA 62–385; held by Paddock Laboratories, Inc., 3101 Louisiana Ave. North, Minneapolis, MN 55421.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e))) and under authority delegated to him (21 CFR 5.82), finds that clinical or other experience, tests, or other scientific data show that the drug products listed above are unsafe for use under the conditions of use upon basis for which their applications were approved. Therefore, pursuant to the foregoing finding, approval of the AADA's listed above is hereby withdrawn effective January 5, 1989. Shipment in interstate commerce of the products listed above will then be unlawful.

This notice does not apply to AADA 61–579, held by Pharma-Tek, Inc., P.O. Box AB, Huntington, NY 11743. The product covered by AADA 61–579 is the subject to a pending hearing request and will be the subject of a future **Federal Register** announcement.

Dated: November 28, 1988.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 88–28027 Filed 12–5–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 79N–0151]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Injection; Withdrawal of Approval of Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four abbreviated antibiotic drug applications (AADA's) for neomycin sulfate in sterile vials for injection. This withdrawal action is being taken because the risks involved in the parenteral use of neomycin sulfate are judged to outweigh any benefits that may be derived from its continued availability.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 15, 1988 (53 FR 12664), the Director of the Center for Drug Evaluation and Research offered an opportunity for a hearing on a proposal to withdraw approval of antibiotic applications and abbreviated antibiotic applications for neomycin sulfate in sterile vials for parenteral use. FDA also amended the antibiotic regulations for sterile neomycin sulfate (21 CFR 444.42a) by deleting all provisions for the injectable dosage form so that neomycin sulfate packaged in sterile vials for dispensing could not be certified or released (see 53 FR 12658; April 15, 1988). These actions were deemed necessary because of the toxicity associated with the unapproved use of this drug in the irrigation of wounds. In addition, the Director concluded that the use of this dosage form for the single remaining approved indication, the treatment of urinary tract infection, is no longer acceptable because of the availability of newer, safer antibiotics that are as effective as, or more effective than, parenteral neomycin sulfate and that do not present comparable risks.

In response to the April 15, 1988, **Federal Register** notice, no holders of approved applications requested a hearing. Accordingly, FDA is withdrawing approval of the following applications:

1. AADA 60–366, Neomycin Sulfate for Injection, U.S.P., held by E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540.

2. AADA 60–477, Mycifradin Injectable, held by The Upjohn Co., Kalamazoo, MI 49001.

3. AADA 61–084, Neomycin Sulfate for Injection, held by Pfizer Inc., 235 East 42nd St., New York, NY 10017.

4. AADA 61–198, Neomycin Sulfate for Injection, U.S.P., held by Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08034.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e))) and under authority delegated to him (21 CFR 5.82), finds that clinical or other experience, tests, or other scientific data show that the drug products listed above are unsafe for use under the conditions of use upon the basis for which their applications were approved. Therefore, pursuant to the foregoing finding, approval of the AADA's listed above is hereby withdrawn effective January 5, 1989. Shipment in the interstate commerce of the products listed above will then be unlawful.

Dated: November 28, 1988.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 88-28028 Filed 12-5-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT-22-N]

Medicare Program; Employers and Duplicative Medicare Benefits

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the national average actuarial value of additional Medicare Part A benefits available in 1989 as a result of the Medicare Catastrophic Coverage Act of 1988. Employers are required to examine the extent to which health benefits they provide to employees and retired former employees entitled to Medicare (including coverage for employees' and retired former employees' dependents entitled to Medicare) duplicate the new Part A and Part B benefits. If the duplicative benefits have a national average actuarial value of at least 50 percent of the value of the new Medicare benefits, the employer must offer a refund, additional benefits, or some combination thereof.

In computing the actuarial values of the duplicative benefits, employers have the option of using national average actuarial values we establish or calculating the actuarial value based on guidelines we establish. This notice contains both the national actuarial values we have determined and the guidelines for employers to use.

EFFECTIVE DATES: The provisions of this notice concerning Part A are effective January 1, 1989. The provisions of this notice concerning Part B are effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Kenneth Leong, (301) 966-7908, concerning the actuarial values and guidelines.

Herbert Pollock, (301) 966-4474, concerning all else.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) was enacted on July 1, 1988. This act, which provides for benefits not previously available under Medicare, protects beneficiaries against costs associated with a catastrophic illness. The Act provides for expanded Part A benefits effective January 1, 1989 and expanded Part B benefits effective January 1, 1990.

Many beneficiaries have private health insurance coverage that supplements Medicare, usually through health benefits plans of current or past employers. Some of these health benefits plans offer protection against the costs of a catastrophic illness by limiting beneficiary out-of-pocket expenses or offering additional benefits, such as a longer period of hospitalization than Medicare covered; some plans may do both. In addition, some plans pay deductibles, coinsurances, the Part A premium where applicable, the Part B premium, or some combination of these benefits.

With the availability of expanded Medicare coverage beginning in 1989, beneficiaries that now are receiving additional benefits through their employers' health benefits plans would find that the coverages are duplicative and they reap little, if any, benefit from the Medicare catastrophic coverage changes. Therefore, Congress included section 421 in Pub. L. 100-360, which ensures that if an employer provided to employees or retired former employees,[1] as of July 1, 1988 (the date of enactment of Pub. L. 100-360) benefits that will be available to Medicare beneficiaries as a result of Pub. L. 100-360, the employer must offer additional benefits, a refund, or a combination thereof, if the duplicative benefits have an actuarial value of at least 50 percent of the national average actuarial value of the benefits added or increased by Pub. L. 100-360. Congress enacted technical amendments to section 421 in section 608(a) of The Family Support Act of 1988 (Pub. L. 100-485 October 13, 1988).

More specifically, under section 421 the employer must (1) provide additional benefits to the employee or retired former employee that are at least equal in actuarial value to the duplicative benefits, (2) refund to the employee or retired former employee an amount of money equal in actuarial value to the duplicative benefits, or (3) provide a combination of additional benefits and refunds that total at least the actuarial value of the duplicative benefits. In computing the actuarial value of the duplicative Part A, benefits (beginning January 1989) and duplicative Part B benefits (beginning January 1990), employers have the option of using national average actuarial values published by the Secretary or calculating the actuarial value based on guidelines published by the Secretary.

[1] Note.—To avoid repetition, the term "employee", when used in this notice, also includes retired former employees.

II. Provisions of This Notice

This notice provides the actuarial values for the benefits added by Pub. L. 100-360; specifies the employers to whom the notice applies; defines "additional benefits;" gives the applicable effective dates; defines duplicative benefits; contains the guidelines for employers to use to compute the actuarial value of duplicative benefits; and lists some of the benefits added by Pub. L. 100-360.

A. National Average Actuarial Value of the Medicare Benefits Added or Increased by Pub. L. 100-360

The national average actuarial value of the Medicare Part A benefits added or increased by Pub. L. 100-360 was $61 as of July 1, 1988. This is the cost of providing the increased Part A benefits for each beneficiary enrolled. Fifty percent of this amount is $30.50 per year. For 1989, the national average actuarial value is $65. The national average actuarial value of the Part B benefits added or increased by Pub. L. 100-360 will be published prior to January 1, 1990.

B. Responsibility of Employers

Employers are responsible for determining if, as of July 1, 1988, they offered to their employees or retired former employees who are covered by Medicare any duplicative Part A benefits (as defined in D. below) and, if so, the actuarial value of any such benefits on July 1, 1988. If the actuarial value of their duplicative Part A benefits was, as of July 1, 1988, 50 percent of the 1989 national average actuarial value of the Medicare benefits added or increased under Pub. L. 100-360 (discounted to the value as of July 1, 1988), the employer is required to offer additional benefits or refunds, or a combination of additional benefits and refunds, equal in actuarial value to the value of the duplicative benefits determined as if they were provided in 1989.

If an employer provides only additional benefits, the benefits must be equal in value at least to the 1989 national average actuarial value of the duplicative Part A benefits that were provided by the employer to employees as of July 1, 1988. Employers may provide a wide range of additional benefits as long as they are equal in value to at least the actuarial value of the duplicative benefits. The additional benefits may consist of health care benefits that do not duplicate the new Medicare benefits and may include payment of the Part B premium, provided the employer was not already

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paying Part B premium as of July 1, 1988. If an employer was already paying the Part B premium as of July 1, 1988, that payment does not constitute an additional benefit, even if the payments continue into 1990.

If, before July 1, 1988, an employer had agreed to an increase in benefits or services that were not covered under Medicare and that will become effective July 1, 1988 or later, we do not consider the benefits to be "additional" benefits. Hence, the employer is required to provide additional benefits, refunds, or both, above and beyond any previously agreed-to benefit enhancements.

We interpret the term "actuarial value" as referring to the value of the benefits to the employee rather than their cost to the employer. A contrary interpretation could result in the additional benefits not directly benefiting the employee which would be contradictory to the intent of the statute. Thus, we do not consider administrative or other overhead costs that an employer may incur in establishing the additional benefits or refunds appropriate for consideration by employers in determining the actuarial value of the new benefits or the amount of any refunds.

If an employer decides to make only a refund of money, the refund must be available to the Medicare beneficiary no later than the end of the calendar year in which the duplicative benefits were provided. The amount refunded to each individual should be determined by dividing the actuarial value of the duplicative benefits by the total number of employees and retired former employees enrolled in the plan. Thus, each employee and retired employee will receive an equal refund.

If an employer opts to provide a cash refund, and the employees or retirees contribute, through premiums, to the cost of the health plan, the employer may make all or part of the refund in the form of an offset against current employee premiums or a planned premium rate increase for 1989 or 1990, provided that the employer had notified the employees of the planned premium increase before July 1, 1988. An employer may not increase the cost of plan benefits to employees or retired former employees or reduce the amount of plan benefits to offset the cost of additional benefits and/or refunds required by the maintenance of effort requirement in section 421 of Pub. L. 100–360.

If an employer chooses to provide a package of additional benefits or a combination of additional benefits and refunds, the employer is required to take into account the timing of the change in its calculation of additional benefits and refunds. We believe it was the intent of Congress for employees to have at least a full year's benefit under the "maintenance of effort" requirement in section 421 of Pub. L. 100–360. For example, if an employer establishes its additional benefit package for duplicative Part A benefits on July 1, 1989, the employees under such a plan would be deprived of additional benefits for the first six months of 1989. Using this example, the employer would be required to either provide appropriate refunds to its employees that would cover the period of time during which additional benefits were not provided; i.e., from January 1 to June 30, 1989, or ensure that the additional benefits beginning July 1 equal in value one year's duplicative benefits.

C. Employers Covered by this Notice

For purpose of this provision, "employer" means, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax, such a religious, charitable and educational institutions, the governments of the individual States, the Territories, Puerto Rico, the Virgin Islands, Guam, and the District of Columbia, and the agencies, instrumentalities and political subdivision of these governments.

Any employer that provides, as of July 1, 1988, health benefits to a Medicare covered employee or retired former employee that are duplicative Part A benefits or duplicative Part B benefits is subject to this provision with the following exceptions:

1. The Federal Government as an employer;

2. Employers contributing to a multi-employer plan that is maintained under one or more collective bargaining agreements.

D. Duplicative Benefits

1. Part A

Duplicative Part A benefits are benefits provided by an employer as of July 1, 1988 to a Medicare-covered employee (including health coverage for the Medicare-covered dependents of employees and retired former employees) that supplemented the benefits under Part A of Medicare before January 1, 1989, but that, as of January 1, 1989, are covered under Part A of Medicare as amended by Pub. L. 100–360. The following are examples of duplicative Part A benefits:

- Payment of the Medicare inpatient hospital deductible for any but the first spell of illness in a calendar year.
- Payment of a coinsurance amount for the 61st through 150th days of hospitalization.
- Payment for hospitization in excess of 150 days during a spell of illness.
- Payment for more than 100 days of SNF services but for not more than 150 days. In determining the value of this duplicative benefit, the value of any co-payments paid by the employer for the first eight days should be offset against the value of copayments from the 21st day through the 100th day in a benefit period and the value of the payment for any days covered from days 101 through 150.

2. Part B

Duplicative Part B benefits are benefits (excluding benefits with respect to covered outpatient drugs as defined in section 1861(t) (2), (3) and (4), as added by section 202(a) of the Medicare Catastrophic Coverage Act) provided by an employer as of July 1, 1988 to a Medicare-covered employee (including health coverage for the Medicare-covered dependents of employees and retired former employees) that supplemented the benefits under Part B of Medicare before January 1, 1990, but that, as of January 1, 1990, are covered under Part B of Medicare as amended by Pub. L. 100–360. The following are examples of duplicative Part B benefits:

- Payment for mammograms as part of routine breast cancer examinations.
- Payment for home intravenous drug therapy and associated items and service.
- Payment of copayments for covered items and services after an employee has made out-of-pocket part B payments of at least $1,370 in 1990.

3. Applicability When Medicare is Secondary Payer

Employers are not required to provide additional benefits or refunds in the case of any individual for whom Medicare is secondary payer under section 1862(b) (2), (3) and (4) of the Social Security Act. These provisions of the statute require that employer plans be primary payers and that Medicare be secondary payer for employed individuals and spouses age 65 and over if the employer has 20 or more employees, for disabled individuals under age 65 who are enrolled in large group health plans (i.e., plans that cover at least 100 individuals under age 65), and during the first year of an individual's entitlement to Medicare on the basis of end-stage renal disease. When Medicare is secondary, the private insurer pays its benefits before Medicare If the primary insurer does

not pay all of the charges, Medicare may pay secondary benefits to supplement the primary payment.

The purpose of the Medicare secondary payment provisions is to conserve Medicare funds by shifting responsibility for the health care expenses of certain individuals to private insurance plans. If an employer that is required under section 1862(b) to be primary payer were required to provide additional benefits or refunds instead of duplicative benefits, Medicare would become primary payer for the benefits added by Pub. L. 100–360.

This result would contradict the cost saving objectives of section 1862(b) (2), (3), and (4). Section 421 of Pub. L. 100–360 does not change section 1862(b) of the Act or otherwise override it. See H.R. Rep. 998, 100th Cong., 2nd Sess. 197 (1988).

E. Benefits Added or Increased by Pub. L. 100–360

Some of the benefits added by or increased by Pub. L. 100–360 are as follows:

1. Part A

• Unlimited free hospitalization after payment of a single annual deductible of $560 (see 53 FR 38357). After the deductible is met, Medicare will pay 100 percent of all covered hospital services, regardless of the costs, length of stay, or number of times a beneficiary is admitted to the hospital in any one year. This benefit also eliminates all previous copayment requirements. (The previous benefit was 90 days of hospitalization per spell of illness, with 60 "lifetime reserve days," a required copayment for the lifetime reserve days and days 61 through 90, and a deductible for each spell of illness.)

• One hundred fifty days of skilled nursing facility (SNF) care per year (instead of 100 days per benefit period subject to a coinsurance for each of the first 20 days) and without requiring the beneficiary to be hospitalized three days' immediately before entering the SNF. (Under Pub. L. 100–360, when a beneficiary is admitted to an SNF, he or she will be responsible for copayments for the first eight days of care each year. Medicare will pay all other allowable expenses for up to 150 days of care even if the beneficiary is discharged and readmitted to an SNF more than once during a year.)

• Hospice care beyond the previous limit of 210 days when a beneficiary is recertified as terminally ill.

• Decrease in the number of units of blood to be replaced or paid for; The beneficiary will be responsbile for the first three units of whole blood or packed cells furnished each calendar year instead of each benefit period. The Part A deductible will also be reduced to the extent that the Part B blood deductible has been met.

• Recalculation of the Part A monthly premium (for those beneficiaries who buy into Part A of Medicare) as required by section 103 of Pub. L. 100–360. It will equal the estimated actuarial value of the Part A benefit and for 1989 will be $156 a month. (It has been $234 a month in 1988.)

• Effective January 1, 1990, home health care for up to six days a week on an intermittent basis for as long as it is prescribed by a doctor. Beneficiaries requiring home health care seven days a week will be entitled to 38 days of care. The 38-day limit can be extended for a period of time if a doctor certifies that the care is medically necessary.

2. Part B

• Limitation of a beneficiary's out-of-pocket expenses for services and supplies to $1,370 in 1990. (Under the old law there was no limit to a beneficiary's out-of-pocket expenses.) Once that amount is reached, Medicare will pay 100 percent of all allowable charges for the remainder of the year. To reach the out-of-pocket limit, a beneficiary will be required to pay the first $75 (deductible) for covered benefits and 20 percent (copayment) of all additional covered costs up to $1,370. If a physician or supplier who does not accept assignment charges more than Medicare's approved charge, the amount above the approved charge must be paid by the beneficiary and is not counted toward the $1,370 limit in 1990.

• A mammogram benefit that provides Medicare coverage for a breast cancer examination every other year for women aged 65 and older, and at various intervals for younger female beneficiaries.

• A respite care benefit that pays for the temporary services of a home health aide to provide relief for a spouse, relative or friend caring for a Medicare beneficiary who cannot be left alone. Medicare will pay for up to 80 hours per year of home health aide and personal care services.

• Coverage for home intravenous drugs and associated items and services (including supplies, equipment, and nursing and pharmacy services).

• Effective January 1, 1990, home health care for up to six days a week on an intermittent basis for as long as it is prescribed by a doctor. Beneficiaries requiring home health care seven days a week will be entitled to 38 days of care. The 38-day limit can be extended for a period of time if a doctor certifies that the care is medically necessary. This benefit is a Part B benefit only if the beneficiary is not enrolled in Part A.

• The Part B deductible will be reduced to the extent that the Part A blood deductible has been met.

D. Determining the Actuarial Value of Duplicative Benefits

Under section 421 of Pub. L. 100–360, the employer has two options for computing the amount of additional benefits or refunds to account for duplicative Part A or Part B benefits: (1) It may determine that their value is equal to the national average actuarial value of the duplicative Part A or Part B benefits, respectively, as determined by the Secretary, or (2) it may determine their actuarial value based on the guidelines below.

Regardless of the method the employer uses, the employer must determine the value of the duplicative Part A or Part B benefits net of any premiums paid by the employees or retired former employees. This means that the employer first determines the value of the duplicative benefits on a per capita basis for the year in question (1989 for duplicative Part A benefits and 1990 for duplicative Part B benefits). The employer then subtracts from the per capita value of the duplicative benefits any premiums the employee pays toward the duplicative benefits. When the employer and employee both contribute toward the cost of the total employer health benefits package, the employee is considered to be contributing the same proportion of the premium attributable to the duplicative portion of the benefit package as the employee contributes toward the overall health benefits package. For example, if the per capita cost of an employer's entire health benefit plan is $200 per year, of which the employee contributes $50 (25 percent), and the cost of the duplicative portion of the benefit plan is $60, the employee is considered to be contributing $15 toward the cost of the duplicative benefits (25 percent of $60).

If an employer provides duplicative benefits under more than one plan, it must determine the value of duplicative benefits for *each* benefit plan it offers individually and provide additional benefits, refunds, or both, to its employees accordingly.

For example, if an employer determines that one of its benefit plans, as of July 1, 1988, provides duplicative benefits that have an actuarial value equal to only 40 percent of the actuarial value of the benefits added or increased by Pub. L. 100–360, it need not provide additional benefits, refunds, or both, to

its employees enrolled in that particular plan. However, if another of the employer's plans provides duplicative benefits that have an actuarial value equal to 50 percent or more of the actuarial value of the benefits added or increased by Pub. L. 100–360, the employer will be required to provide the employees enrolled in that plan with additional benefits, refunds, or both, that total at least the actuarial value of the duplicative benefits provided by that plan. The employer may not sum the values and determine an average.

If a collective bargaining agreement provides that certain company-paid health benefits are vested upon retirement of the employee, the employer is not required to provide additional benefits beyond the time periods stated above, i.e. until the later of 12/31/89 or the date of the expiration of the agreement for duplicative Part A benefits and until the later of 12/31/90 or the date of the expiration of the agreement for duplicative Part B benefits.

C. Applicability to HMOs/CMPs

Section 1876(g) of the Act provides that the Medicare program may contract with health maintenance organizations and competitive medical plans (HMOs) on a risk basis. Payments made to HMOs on behalf of Medicare beneficiaries enrolled in HMOs are fixed and not adjusted based on the enrollees' actual use of services. An HMO contracting on a risk basis is required to submit to the Health Care Financing Administration (HCFA) for approval, before each contract period, its adjusted community rate (ACR). The ACR is the HMO's cost of furnishing Medicare covered services to Medicare enrollees. If the ACR is less than the average payment that HCFA Pays to the HMO, then the HMO is required, under section 1876(g)(2) of the Act, to: (1) Provide additional benefits not covered under Medicare; (2) reduce premiums or other charges; (3) return the difference to HCFA, or a combination of the above three actions. Therefore, a Medicare beneficiary enrolled in a risk contracting HMO may be receiving benefits beyond the scope of Medicare, which are funded from HCFA's payment to the HMO.

An employer may contract with an HMO that has a risk contract with HCFA to provide health benefits under the employer's group health plan. An employer that has a contract with a risk HMO has the same responsibility under the maintenance of effort requirements as any other employer to determine if, as of July 1, 1988, the benefits the employer was providing through the HMO to its employees or retired former employees, constitute duplicative benefits. Duplicative benefits could result in a windfall to the HMO. If the actuarial value of any duplicative benefits being provided by a risk HMO with which the employer has a contract is at least 50 percent of the national average actuarial value of the new or improved benefits provided under Pub. L. 100–360, the employer is expected to negotiate with the HMO for the provision of additional benefits and/or refunds equal in actuarial value to the value of the duplicative benefits. These additional benefits under maintenance of effort must be in addition to the additional benefits that the HMO already provides based on the difference between its average payment rate and its ACR.

H. Guidelines

To determine whether the provisions of section 421 of Pub. L. 100–360 apply to an employer plan, the employer must first determine the cost of the duplicative Part A benefits in 1988. This cost should then be compared to the national average actuarial value of the duplicative Part A benefits valued as of July 1, 1988. The national average actuarial value of duplicative Part A benefits as of July 1, 1988 is $61. If the employer plan cost for 1988 is at least $30.50, then the employer plan is subject to the provisions of section 421.

In calculating the cost to the employer plan, the employer must add together the cost of all of the duplicative benefits in its plan. The sum of the employer's cost is then compared to the national average actuarial value of duplicative Part A benefit as of July 1, 1988; i.e., $61. If the employer does not know the cost of the duplicative benefits in 1988, but knows the costs in some prior year, the employer may use the factors in Table 1 to arrive at the costs in 1988.

The factors in Table 1 and Table 2 are based on the increases in Medicare reimbursement per person enrolled in Part A of Medicare. The factors for skilled nursing care might seem unusual at first glance because the factor for adjusting costs from 1986 to 1988 is larger than the factor for adjusting from 1985 to 1988. This is due to the fact that these factors reflect the increase in Medicare reimbursement per person, not total cost per person. Due to a large increase in the skilled nursing care coinsurance rate in 1986, the actual Medicare reimbursement per person was less in 1986 than in 1985. All of the factors in Table 1 and Table 2 are provided as guidelines. An employer does not have to use these tables. If an employer can determine the costs of its plan by other means which conform to generally accepted actuarial practices, the employer can do so.

The following example will illustrate how to use Table 1 to determine whether, as of July 1, 1988, an employer meets the requirements of section 421: The employer knows the costs for duplicative Part A benefits in the plan for calendar year 1986 are:

Duplicative inpatient hospital benefits cost $40 per person;

Duplicative skilled nursing care benefits cost $5 per person; and

There are no other duplicative benefits. Using Table 1, the employer may now determine the 1988 value of these costs as follows:

1. The factor from Table 1 to adjust inpatient hospital costs from 1986 to 1988 is 1.052. The employer would then calculate $40×1.052 to ge $42.08, the 1988 value of the duplicative inpatient hospital benefits.

2. The adjustment factor from Table 1 to adjust skilled nursing care costs from 1986 to 1988 is 1.114. The employer would then calculate $5×1.114 to get $5.57, the 1988 value of the duplicative skilled nursing care costs.

3. The employer then sums the costs of the individual parts. In this example it would be $42.08+$5.57=$47.65.

4. The total of $47.65 is now divided by the national average duplicative Part A benefits valued in 1988 ($61) to get 79% ($47.65/$61).

5. Since this percentage is greater than 50%, the employer is subject to the provisions of section 421.

6. In lieu of steps 4 and 5 the employer could compare the dollar value of the duplicative benefits $47.65 with $30.50.

If an employer is subject to the provisions of section 421, then the employer must determine the value of the Part A duplicative benefits for 1989. The employer then has the option of using this 1989 value or the national average actuarial value of duplicative Part A benefits for 1989 ($65) in determining the amount of refund, or additional benefits, or combination of refund and additional benefits. The employer may use Table 2 to adjust the employer plan costs to 1989. Using the same example as above, the following will illustrate how the 1989 value of the Part A duplicative benefits may be determined:

1. The adjustment factor from Table 2 to adjust the inpatient hospital duplicative benefits from 1986 to 1989 is 1.117. The employer would then calculate $40×1.117=$44.68 to get the 1989 value of the duplicative inpatient hospital costs.

2. The adjustment factor from Table 2 to adjust the skilled nursing care

duplicative benefits from 1986 to 1989 is 1.188. The employer would then calculate $5 \times 1.88 = \$5.94$ to get the 1989 value of the duplicative skilled nursing care costs.

3. The employer then sums the individual parts to get $50.62 ($44.68 + $5.94).

4. The employer then has the option of using the computed value ($50.62) or the 1989 national average actuarial value ($65) of the duplicative Part A benefit.

TABLE 1.—TO DETERMINE THE VALUE OF DUPLICATIVE BENEFITS IN 1988

[Factors to adjust given year to 1988]

Type of benefit	1984	1985	1986	1987	1988
Inpatient hospital	1.125	1.076	1.052	1.034	1.000
Skilled nursing	1.095	1.069	1.114	1.073	1.000

TABLE 2.—TO DETERMINE THE VALUE OF DUPLICATIVE BENEFITS IN 1989

[Factors to adjust given year to 1989]

Type of benefit	1984	1985	1986	1987	1988
Inpatient hospital	1.194	1.142	1.117	1.098	1.062
Skilled nursing	1.168	1.140	1.188	1.145	1.067

III. Tax Questions

Questions relating to taxability of refunds paid and benefits received under section 421 of Pub. L. 100–360 fall within the purview of the Internal Revenue Service. Any inquiries on this subject should be addressed to that agency. The address is: Internal Revenue Service, P.O. Box 7704, Benjamin Franklin Station, Washington, DC 20044. Inquirers should refer to section 59(B) in their letters.

IV. Effective for Period for Provision of Additional Benefits, Refunds or Both

Employers are required to provide to their employees and retired former employees additional benefits, refunds, or both, at least equal to the actuarial value of: (1) Duplicative Part A benefits (determined as if they were provided in 1989) by January 1, 1989 but no later than December 31, 1989, and (2) duplicative Part B benefits (determined as if they were provided in 1990) by January 1, 1990 but no later than December 31, 1990. However, where there is a collective bargaining agreement in effect as of July 1, 1988, the employer requirement to provide additional benefits, refunds, or both, stays in effect until the later of December 31, 1989 for Part A benefits and December 31, 1990 for Part B benefits, or the date of the expiration of the agreement, determined without regard to any extension of the agreement agreed to after July 1, 1988.

V. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, certain employers are considered small entities.

This notice does not contain rules. Rather it announces certain actuarial values and guidelines under section 421 on Pub. L. 100–360, which specifies that if, as of July 1, 1988, an employer provided employees or retired former employees benefits that were added or increased by Pub. L. 100–360, the employer must offer additional benefits, a refund, or a combination thereof, if the duplicative benefits have an actuarial value of at least 50 percent of the benefits added by Pub. L. 100–360. We are nevertheless evaluating the effects of the statute under the criteria of E.O. 12291 and the RFA.

As of July 1, 1988, those beneficiaries who are receiving duplicative benefits from an employer health benefit plan that have an actuarial value of at least 50 percent of the benefits added by Pub. L. 100–360 will benefit from this notice. Specifically, they will be eligible to receive additional benefits or refunds or a combination thereof. Those receiving duplicative benefits valued at less than 50 percent of the actuarial value of benefits added by the provisions of Pub. L. 100–360 will not be eligible for any refunds or additional benefits or combination thereof.

The provisions of section 421 of Pub. L. 100–360 may nominally increase the administrative burden on those employers who are required by that section to determine their obligations to provide additional benefits or refunds equal to the value of duplicative Part A benefits they provided as of July 1, 1988. However, we do not estimate that these administrative costs will result in a significant economic impact on a substantial number of small entities. Therefore, we have determined that this notice is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required. Also, the Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

Although this document does not contain rules, we have evaluated the effect of section 421 of Pub. L. 100–360 under the criteria of section 1102(b) of the Act. We are not preparing a rural impact statement since we have determined, and the Secretary certifies that section 421 will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

(**Authority:** 42 U.S.C. 1395b note (Section 421 of Pub. L. 100–360))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: November 21, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 23, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–27766 Filed 12–2–88; 8:45 am]

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Health Resources and Services Administration

Announcement and Proposed Criteria for Rural Health Medical Education Demonstration Projects

AGENCY: Health Resources and Services Administration, HHS.

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ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) in coordination with the Health Care Financing Administration announces its intent to implement section 4038 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) (the Act), authorizing Rural Health Medical Education Demonstration Projects.

This is a demonstration to assist physicians to develop clinical experience in rural areas using reimbursement for graduate medical education under the Social Security Act. For the purposes of these projects, payments made for the indirect costs of graduate medical education, pursuant to section 1886(d)(5)(B) of the Social Security Act, for any part of a year that a resident works at a small rural hospital, shall be treated as if the resident was working at the sponsoring hospital on September 1 of that year, and shall not be treated as if the resident was working in the small rural hospital.

Medicare's share of the direct graduate medical education costs of the sponsoring hospital will be increased for the duration of the project to meet any reasonable additional direct costs incurred for the education and training of resident physicians at the rural site. The sponsoring hospital will be required to separately accumulate the costs of the demonstration project. Medicare will reimburse the sponsoring hospital for Medicare's share of the additional costs the hospital incurs in connection with the project under the reasonable cost authority in section 1861(v) of the act. Reimbursement for these costs will be in addition to the hospital's payment under section 1886(h).

It should be noted that direct costs may only be claimed once and will not be reimbursed under both section 1886(h) and 1861(v).

In this demonstration an emphasis is being placed on cost effectiveness of the projects. Sponsors of proposed projects must describe areas of additional costs associated with the project which they feel would be reimbursed under section 1861(v). These costs are to be estimated for each of the three years of the demonstration project. The cost and the cost effectiveness of a proposed project will be considered during the review of applications.

Additional costs may include arrangements for supervision of the residents at the rural site, housing of the residents, and travel by residents and supervisors from the sponsoring hospital. Any reimbursement requests for additional costs will require review by the Medicare intermediaries to determine the accuracy and reasonableness of the claim. Teaching hospitals wishing to apply should note that Medicare will only reimburse the sponsoring hospitals for Medicare's share of cost. The sponsoring hospital will have to seek reimbursement from other payers for costs of the demonstration related to non-Medicare patients. Sponsoring teaching hospitals should note that residents participating in the project may be counted as "on-site" or "off-site" personnel for purposes of determining direct medical education cost, however, each resident may only be counted once.

Rural hospitals should note that there will be no reimbursement directly to them. All reimbursement associated with the demonstration projects will be made to the sponsoring hospital.

This Notice invites interested persons to comment on the proposed criteria for the projects which are intended to assist resident physicians in developing field experience in rural cases. The Notice also requests that hospitals interested in entering into an agreement with the Department should notify the Health Resources and Services Administration.

DATES: (1) Written comments from interested persons must be received by January 5, 1989 in order to be considered.

(2) To receive consideration, to enter into an agreement with the Department to conduct a demonstration project, an expression of interest should be received by January 5, 1989. Materials regarding entry into an agreement will only be sent to those programs and hospitals making a request.

ADDRESSES: Written comments and requests for information on entering into an agreement and other questions should be directed to: Chief, Special Projects and Data Analysis Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–04, 5600 Fishers Lane, Rockville, Maryland 20857. For more information call the Chief, Special Projects and Data Analysis Branch on (301) 443–3626.

SUPPLEMENTARY INFORMATION: On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 was signed into law. Section 4038, authorizing, Rural Health Medical Education Demonstration Projects, requires the Secretary of Health and Human Services to enter into agreements with four teaching hospitals, which currently receive payments for direct and indirect graduate medical education costs as defined under Medicare, as sponsors of the demonstration projects. Eligible hospitals may be public or private entities, non-profit or for profit. These projects will be for a three year period and are intended to assist resident physicians in developing field experience in rural areas. These agreements will be entered into only after proposals for participation are received and a review is conducted by the Department. The review of proposals under this demonstration are not subject to requirements of the Executive Order 12372.

Under these agreements, each of the sponsoring hospitals will make arrangements with a small rural hospital to provide for resident rotations for a period of one to three months for physicians who have completed at least one year of residency training in family practice, osteopathic general practice, primary care internal medicine, or primary care pediatrics. The number of physicians and the duration of the rotation is to be a part of the arrangements between the sponsoring hospital and the rural hospital.

The Act requires that the rural hospitals must meet the following geogrpahic criteria:

(1) Two must be in rural counties of more than 2,700 square miles, one of which is east of, and one west of, the Mississippi River; and

(2) Two must be in rural counties with a severe shortage of physicians (as determined by the Secretary), one of which is east of, and one west of, the Mississippi River.

Proposed Project Criteria

The Department is proposing to establish the following criteria for the Rural Health Education Demonstration projects.

(1) Only residents from family medicine, osteopathic general practice, primary care internal medicine, or primary care pediatric residency programs would be eligible for participation in the demonstration projects. The Department views these primary care specialties as most relevant to the needs of rural, underserved areas, and accordingly proposes to limit eligible residency programs to those listed above. All residents participating in the project must have completed at least one year of resident training.

(2) For the purpose of this

demonstration, a small rural hospital is defined as a general hospital of 100 or fewer inpatient beds available for the lodging of patients, excluding newborn beds (except those in intensive care units), skilled nursing beds and beds in any distinct part of the hospital not subject to the Medicare prospective payment system, e.g., psychiatric beds and post operative beds. The hospital must be located in a county that is not included in either a Metropolitan Statistical Area or a New England County Metropolitan Area as determined by the Office of Management and Budget. The Department considers hospitals of 100 beds or fewer as offering training opportunity significantly different from experience offered at most hospitals which sponsor graduate medical education.

(3) For the purpose of the projects, "rural counties with severe shortages of physicians" would be defined as any rural county wholly designated by the Secretary as a Health Manpower Shortage Area (HMSA) under section 332 of the Public Health Services Act (42 U.S.C. 254e). The Department views HMSA designation as the most relevant indicator of physician shortage at the county level.

Interested persons are invited to comment on the proposed criteria for the demonstration projects. Normally, the comment period would be 60 days. However, due to the need to implement the projects as quickly as possible, the comment period has been reduced to 30 days. All comments received by January 5, 1989 will be considered before final project criteria are established.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: November 30, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-28026 Filed 12-5-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1899]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collecton requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Interim Rule implementing the rehabilitation component of the Section 8 Certificate Project-Based Assistance Program. With one addition, the information collection requirements in the rule are the same as those set out in the draft HUD field notice that was printed with the Notice of Submission of Proposed Information Collection to OMB, published at 53 FR 45162 (November 8, 1988). The interim rule adds a requirement that the PHS must obtain HUD Field Office approval of contract rents, if the PHA proposes to provide project-based assistance for fifty or more units. In addition, the reporting burden has been revised.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This program Interim Rule establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHS for its Section 8 Certificate Program. The Interim Rule implements a 1987 law which directs the Department to permit a PHA to attach to structures up to 15 percent of the Section 8 Assistance by the PHA under the Certificate Program.

Respondents: State or Local Governments, Businesses or Other Non-Profit and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
PHAs	200		1		9.73		1,947.05
(Projects)	(200)		(1)		(.4085)		81.70
Total Burden							2,038.75
Owners Total Burden	200		1		40.6		8,110.00
Total							10,138.75

Total Estimated Burden Hours: 10,138.75

Status: New Collection.

Contact: Louise Hunt, HUD, (202) 755-6887; John Allison, OMB, (202) 395-6880.

Dated: November 30, 1988.

[FR Doc. 88-28001 Filed 12-5-88; 8:45 am]

BILLING CODE 4210-01-M

Government National Mortgage Association

[Docket No. N-88-1864; FR-2548]

GNMA Mortgage-Backed Securities Program; Revision of Mortgage and Security Interest Rate Requirements

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice of intent to remove requirement for a specific "spread" between mortgage and security interest rates in the mortgage-backed securities program.

SUMMARY: Currently, the Government National Mortgage Association (GNMA) requires that the interest rate on mortgage-backed securities be a predetermined amount lower than the interest rate or rates on the underlying mortgages. GNMA proposes to remove these administrative restrictions on interest rates. As a consequence, there would be a significant change in the terms of contracts entered into between GNMA and issuers in connection with future mortgage-backed security issuances. Because of the nature of this policy change and its impact upon program participants, GNMA is publishing its intentions in the **Federal Register** and inviting comment from the public and from program participants on the contemplated change.

DATES: *Comment Due Date:* February 6, 1989.

ADDRESSES: Interested persons are invited to submit comments on the Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John E. Vihstadt, Executive Assistant to the President, Government National Mortgage Association, Room 6100, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5926. (This is not toll-free number).

SUPPLEMENTARY INFORMATION: Lenders servicing GNMA mortgage-backed securities (MBS) earn a certain servicing fee according to the type of pools serviced. For GNMA I single family pools, including pools of GPM and GEM mortgages, that amount is .5 percent below the interest rate on the mortgages in the pool (Handbook GNMA 5500.1 at 10-2). For GNMA I manufactured home loan pools, the amount ranges from 3.5 percent to 2.25 percent, depending upon the type of loan. (Handbook GNMA 5500.1 at 15-5(b)). For Project loan and Construction loan pools, the amount is .25 percent or .45 percent, depending upon whether FHA insurance benefits are payable in cash or debentures (Handbook GNMA 5500.1 at 16-7 and 17-4).

Similar "spread" requirements are contained in the GNMA II instructions—see Handbook GNMA 5500.2 at 5-3(b) and 5-6(c)(2).

From this required spread, the issuer may pay the required GNMA guarantee fee (Handbook GNMA 5500.1 at 5-2(b), 15-5(c), 16-6 and 17-6; Handbook 5500.2 at 4-4(c)), with the remainder to be used as compensation for the issuer's servicing activities.

These servicing fees have remained constant since the inception of the MBS program in 1970. While little or no historical information exists as to how the amounts of the servicing fees were determined, it appears that the principal consideration was to encourage lenders to participate in the program by ensuring that they could profitably service GNMA MBS pools.

By all accounts, the servicing spreads have done their job. As of July 1988, there were approximately 1,200 GNMA-approved lenders headquartered in 49 States and in Puerto Rico. Since 1970, over $490 billion in GNMA MBS have been issued, with over $330 billion outstanding as of August 1988. The $490 billion represents over 200,000 separate MBS pools. The GNMA MBS is the most widely held and traded mortgage-backed security in the world.

The Administration and GNMA now believe that the program is mature enough that the servicing fee may be safely deregulated, with the market setting the rate, whether higher or lower. A deregulated fee is a more natural indicator of the true value of mortgage servicing in a free market economy, and would encourage lenders to become more efficient and responsive to industry and borrower demands. Lenders would have the freedom to set fees that more closely reflect their costs of servicing mortgages in the various government insured and guaranteed loan programs participating in the GNMA-MBS program. At the same time, GNMA is not unmindful of the potential ramifications of deregulation, including its potential impact on the market for GNMA MBS, its effect on the GNMA investor base, and on lenders and borrowers of FHA-insured and VA-guaranteed home mortgages.

Because of the significant consequences that any deregulation of the servicing fee could have, GNMA seeks comments on the following possible courses GNMA could take. Subject to compelling public comment to the contrary, GNMA contemplates that all options would involve the deregulation of servicing fees for all programs and that a minimum six months notice would be provided to lenders. Commenters should also base their comments on the assumption that the guarantee fee that GNMA charges issuers will remain the same for the foreseeable future and subject to legislative requirements set forth in Pub. L. 100-14, "An Act to amend the National Housing Act to limit the fees that may be charged by the Government National Mortgage Association for the guarantee of mortgage-backed securities." Approved March 24, 1987.

Option 1. This option would be a complete deregulation of all servicing fees, beginning with all new pools issued after a date certain. GNMA seeks comments as to whether a floor, below which the fee could not drop, should be set, and at what level. (For example, GNMA could require that the servicing fee for the single family program, now 44 basis points, be allowed to float freely but in no event lower than, say, 36 points or 32 points.)

Option 2. GNMA requests comments on deregulating with set increments or gradations, rather than free-floating the fee. (For example, GNMA issuers could issue single family pools with servicing

fees of 48, 44 or 40 points, or according to some other set menu of points.)

Option 3. A companion proposal to this proposal to deregulate the GNMA servicing fee would establish new net worth requirements for GNMA issuers. (*See* the proposed rule entitled "Eligible Issuers Under Mortgage-Backed Securities Program," published October 17, 1988, 53 FR 40458). The new net worth requirements are designed, in part, to ensure that issuers will have higher capital resources in order to guard against potential increased risk to GNMA caused by any reduction in servicing value of affected pools. While the changes to GNMA net worth requirements are intended to be made effective, following consideration of public comment on the proposed rule, regardless of the outcome of this proposal to deregulate servicing fees, GNMA requests comments concerning whether the ability to issue pools with new servicing fee levels should be limited to a special class of issuers meeting still higher net worth requirements (or meeting other qualifications), or whether all issuers in good standing should be allowed to issue pools with deregulated spreads.

GNMA also seeks views on the following concerns raised in connection with deregulation:

1. *Impact on the GNMA program.* GNMA has defaulted some issuers at various times for failure to comply with certain statutory, regulatory and administrative requirements. When a default occurs, and there is little prospect of a cure, GNMA assumes the issuer/servicer's servicing responsibilities, enters into a subservicing agreement with an approved GNMA issuer, and attempts, as soon as possible, to sell and transfer the portfolio to another issuer in order to avoid administrative and budget burdens associated with subcontracting. GNMA seeks comments on whether, and at what level, a servicing fee for a particular pool might operate to discourage purchase by an issuer in good standing, thereby increasing GNMA's own administrative and fiscal costs.

2. *Competitive Effects.* GNMA believes that many companies will be able to service for less than current servicing fee levels and still make a profit. While lenders have certain special responsibilities and costs as servicers of FHA and VA loans, they also realize certain savings in dealing in government, as opposed to conventional loans. GNMA seeks comments on the possible competitive effects of deregulation on the issuer universe.

3. *Market Impact on GNMA Securities.* Deregulation may result in odd coupon securities, *i.e.*, securities bearing coupon rates in other than half-point increments. While any new security takes time to be fully accepted by investors, GNMA seeks comments concerning the market appeal of securities with odd-coupon rates, and their likely overall effect on the acknowledged high liquidity of GNMA MBS in general. Could impact on liquidity be minimized by allowing only quarter-point coupon increments?

4. *Impact on Consumers.* Numerous factors contribute to a lender's decision to offer FHA and VA loans and a borrower's decision to take one. What impact would a deregulated servicing fee have on availability and cost of a government loan?

Procedural Requirements

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order.

Currently, GNMA requires that the interest rate on mortgage-backed securities be a predetermined amount lower than the interest rate(s) on the underlying mortgages. In this Notice, GNMA announces its intention to remove these administrative restrictions. Any removal will result in a change in the terms upon which GNMA contracts with issuers of mortgage-backed securities. It will not, however, effect a fundamental change in the established relationship between lender-issuers and GNMA.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The function of this Notice is limited to inviting public comment on the intention of GNMA to revise certain administrative restrictions that currently govern contractural relations it has with issuers of mortgage-backed securities.

Dated: November 28, 1988.

Mark Buchman,

President, Government National Mortgage Association.

[FR Doc. 88-27981 Filed 12-5-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-09-4410-08]

Environmental Statements; Washakie Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM) announces the availability of the Record of Decision for the Washakie Resource Management Plan/Environmental Impact Statement (RMP/EIS) and the Approved RMP for the Washakie Resource Area. The Record of Decision and the Approved Washakie RMP were signed by the BLM Wyoming State Director. They were distributed on October 20, 1988.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the Wyoming State Director of the Bureau of Land Management has issued the Approved Washakie Resource Management Plan and a record of decision on the environmental impact statement for that plan.

FOR FURTHER INFORMATION CONTACT: Roger D. Inman, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347-9871.

SUPPLEMENTARY INFORMATION: The Approved RMP for the Washakie Resource Area provides guidance to resource managers for the comprehensive management and use of the BLM administered public lands and resources in the Washakie Resource Area.

The Approved RMP describes the future management direction for 1,234,000 acres of public land surface and 1,603,000 acres of Federal mineral estate administered by the BLM in the Washakie Resource Area, Worland District. The Resource Area includes portions of Big Horn, Washakie, and Hot Springs counties in the Big Horn Basin of north central Wyoming. The Record of Decision formalizes and records the decision to select the Approved Resource Management Plan. The livestock grazing portion of the RMP includes the Range Program Summary, which informs the public of the BLM's rangeland resource management objectives for the grazing allotments in the Washakie Resource Area, and of the actions intended to achieve those objectives.

Four special management area designations have been made in the approved plan:

—Approximately 11,200 acres are designated as the Spanish Point Karst Area of Critical Environmental Concern (ACEC).
—Approximately 241,000 acres on portions of the west slope of the Bighorn Mountains are designated as a Special Recreation Management Area (SRMA).
—Approximately 59,000 acres along the Bighorn River from the Wedding of the Waters downstream to Shell Creek are designated as an SRMA.
—The remainder of the resource area (about 934,000 acres) is designated as an Extensive Recreation Management Area (ERMA).

Copies of the document may be obtained from Roger Inman, at the address listed above.

Date: November 23, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88-27994 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-22-M

[ID-030-09-4211-14, 4333-12, 4351-11]

Motor Vehicle Use Restrictions; Idaho

AGENCY: Bureau of Land Management.

ACTION: Cancellation of restricted vehicle use closure order.

In accordance with a July 12, 1988 order issued by IBLA (IBLA-88-383), this office issued a closure order affecting the Egin-Hamer road in Idaho. The order extended the closure of the Egin-Hamer road from November 1 through April 30 and was published in the **Federal Register** on September 29, 1988, Vol. 53, No. 189, pp. 38092 and 38093.

On November 8, 1988, the Secretary of the Interior issued an order which overruled the IBLA order of July 12, 1988. Therefore, the order of closure issued by this office which affected the Egin-Hamer road is hereby cancelled. The Egin-Hamer road will be closed to motor vehicles between December 1 and March 31 of each year as set forth in a notice published in the **Federal Register** on November 27, 1987, Vol. 52, No. 228, pp. 45385 and 45386.

EFFECTIVE DATE: This cancellation is effective immediately.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 529-1020.

Dated: November 28, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88-27992 Filed 12-5-88; 8:45 am]

BILLING CODE 4130-GG-M

[OR-933-09-4332-09; GP9-025]

Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" for the following Wilderness Study Areas (WSAs). These WSAs have been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Orejana Canyon WSA (OR-1-78), Harney County, Oregon (USGS Bulletin 1738-B);
2. Abert Rim WSA (OR-1-101), Lake County, Oregon (USGS Bulletin 1738-C);
3. Fish Creek Rim WSA (OR-1-117), Lake County, Oregon (USGS Open File Report 88-442);
4. Guano Creek WSA (OR-1-132), Lake County, Oregon (USGS Open-File Report 88-0297);
5. Sheepshead Mountains WSA (OR-2-72C), Wildcat Canyon WSA (OR-2-72D), and Table Mountain WSA (OR-2-72I), Malheur and Harney Counties, Oregon (USGS Bulletin 1739-A);
6. Rincon WSA (OR-2-82), Harney County, Oregon (USGS Bulletin 1740-E);
7. Disaster Peak WSA (OR-3-153/NV-020-859), Harney and Malheur Counties, Oregon, and Humboldt County, Nevada (USGS Bulletin 1742-A);
8. Upper West Little Owyhee WSA (OR-3-173), Malheur County, Oregon (USGS Bulletin 1719-H);
9. Lower John Day WSA (OR-5-6), and Thirtymile WSA (OR-5-1) Sherman and Gilliam Counties, Oregon (USGS Bulletin 1743-A);
10. South Fork WSA (OR-5-33), and Sand Hollow WSA (OR-5-34) Crook County, Oregon (USGS Bulletin 1744-A);
11. Sheep Mountain WSA (OR-6-3), Baker County, Oregon (USGS Bulletin 1741-B); and
12. Zwagg Island WSA (OR-12-14), Curry County, Oregon (USGS Open File Report 88-257).

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to USGS/USBM. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness designation are made.

Copies of the mineral survey reports are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236-7476.

DATE: The public review of the mineral survey reports named in this notice shall conclude on February 17, 1989.

ADDRESS: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Durga N. Rimal, Division of Mineral Resources at (503) 231-6951 or David Harmon, Division of Lands and Reneweable Resources at (503) 231-6823, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas. There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. These 12 reports are part of approximately 45 combined mineral survey reports that will be prepared by USGS/USBM. The next batch of mineral survey reports will be available for public review during the spring of 1989.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are

considered by Congress prior to making its final wilderness suitability decisions. BLM will review the public comments and will forward to USGS/USBM any significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc. should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and *marked confidential* will be treated as proprietary data and will not be released to the public without consent.

Charles W. Luscher,

State Director.

Dated: November 23, 1988.

[FR Doc. 88–28050 Filed 12–5–88; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Reclamation

[INT–DES–88–56]

Kellogg Unit Reformulation Study, Delta Division, Central Valley Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Notice of availability of planning report/draft environmental statement (PR/DES).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Reclamation (Reclamation) has prepared a planning report/draft environmental statement (PR/DES) on a proposed project to improve water quality and water system reliability for the Contra Costa Water District, California. The report presents an evaluation and comparison of six alternatives for relocating the Contra Costa Canal intake from its present location at Rock Slough on the Sacramento-San Joaquin Delta.

DATES: A 90-day public review period commences with the publication of this notice. Written comments on the report may be submitted to the Regional Director at the address below within the 90-day review period.

ADDRESSES: Single copies of the PR/DES may be requested from Reclamation's Regional Office at the address below. Copies of the PR/DES and its seven appendices are available for inspection at the following locations:

Director, Public Affairs Office, Department of the Interior, Bureau of Reclamation, Room 7644, Washington, DC 20240; Telephone: (202) 343–4662.
Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, CO 80225; Telephone: (303) 236–6963.
Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP–720, Sacramento, CA 95825–1898; Telephone: (916) 978–4957.
Contra Costa Water District Headquarters, 1331 Concord Avenue, Concord, CA 94524

Libraries

Contra Costa County Libraries: Antioch, Brentwood, Concord, Dublin, Lafayette, Martinez, Moraga, Oakley, Orinda, Pacheco, Pittsburg, Pleasant Hill, San Ramon Valley (Danville), Walnut Creek, and Ygnacio Valley, CA
California State Library, Sacramento, CA
California State University Libraries, Hayward and Sacramento, CA
Contra Costa Center Library, Pleasant Hill, CA
Diablo Valley College Library, Pleasant Hill, CA
Los Medanos College Library, Pittsburg, CA
University of California, Water Resources Center, Berkeley Archives Collection, Berkeley, CA
University of California, Water Resources Center, Main Library, Government Documents Section, Davis, CA
University of California, Water Resources Archives, Los Angeles Archives Collection, Los Angeles, CA

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Johnson (Team Leader, Mid-Pacific Region), (916) 978–4957; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver Federal Center), (303) 236–9336.

SUPPLEMENTARY INFORMATION: Under the recommended plan, the existing intake of the canal would be relocated to Clifton Court Forebay. The proposed 19-mile-long Highlane Canal located in eastern Contra Costa County, would connect the existing Contra Costa Canal to Clifton Court Forebay. Implementation of the proposed project would improve the quality of water Contra Costa Water District receives and would provide an added degree of water system reliability. Full resolution of the district's water quality and water system reliability problems, however, would also require construction of an offstream storage reservoir. The recommended plan includes a mitigation package to offset any negative effects on the environment.

Date: November 25, 1988.

B.E. Martin,

Acting Deputy Commissioner.

[FR Doc. 88–28007 Filed 12–5–88; 8:45 am]

BILLING CODE 4310–09–M

Competitive Sale of Federal Land

ACTION: Notice of realty action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than $43,000.00, the appraised value.

DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Ed Taylor, Realty Specialist, Bureau of Reclamation, Mountain House and Kelso Roads (10 miles west of Tracy), Tracy, California 95378, telephone (209) 836–6238.

SUPPLEMENTARY INFORMATION: A tract of land in the east half of section 5 and the northeast quarter of Section 8, all in Township Four (4) South, Range Six (6) East, Mount Diablo Meridian, San Joaquin County, State of California, containing an area of 25.35 acres, more or less.

Said above tract shall be subject to easements or rights-of-way existing or of record in favor of the public or to third parties.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Bureau of Reclamation, Mountain House

and Kelso Roads, Tracy, California on February 8, 1989, at which time the sealed bids will be opened. Sealed bids will be accepted at the Tracy Office until close of business on February 7, 1989. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. In order to promote full and free competition, the bid form required for this sale contains a statement that the purchase price has been determined independently by the bidder; this statement must accompany each sealed bid.

The sale of the land is consistent with the Bureau of Reclamation land use planning and it was determined that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Tracy office.

The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties, and shall also make the land subject to conditions and covenants pursuant to E.O. 11988.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Date: November 9, 1988.

Neil W. Schild,

Assistant Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 88-27879 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-09-M

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate for water resources planning.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1989 is 8⅞ percent.

DATE: This discount rate is to be used for the period October 1, 1988 through and including September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Sam Kennedy, Bureau of Reclamation, Department of the Interior, Denver, CO 80225. Telephone (303) 236-8388.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8⅞ percent for fiscal year 1989.

This rate has been computed in accordance with section 80(a) Pub. L. 93-251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity; and (2) provide that the rate shall not be raised or lowered more than one-quarter of one percent for any year.

The Treasury Department calculated the specific average yield to be 9.2 percent. Since the rate must be a multiple of one-eighth of 1 percent nearest that average, and in fiscal year 1988 was 8⅝ percent, the rate for fiscal year 1989 is 8⅞ percent.

The rate is 8⅞ percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, and otherwise converting benefits and costs to a common time basis.

C. Dale Duvall,

Commissioner.

November 25, 1988.

[FR Doc. 88-28008 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Concession Contract Negotiations; Fletcher's Boat House, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Fletcher's Boat House, Inc., authorizing it to continue to provide rowboat, canoe and bike rental, and snack bar facilities and services for the public at C&O Canal National Historical Park, Maryland, for a period of five (5) years from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: February 6, 1989.

ADDRESS: Interested parties should contact the Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Ronald N. Wrye,

Acting Regional Director, National Capital Region.

Date: September 22, 1988.

[FR Doc. 88-28015 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, December 13, 1988, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street NW., Washington, DC.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's

Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr., Chairman, Director, National Park Service, Washington, DC.
George M. White, Architect of the Capitol, Washington, DC.
Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.
Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.
Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC.
John Alderson, Administrator, General Services Administration, Washington, DC.
Honorable Frank Carlucci, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. Kahlil Gibran Memorial, authorized by Pub. L. 98–537, October 19, 1984.

—Review of Preliminary Design Plan.

II. Korean War Memorial, authorized by Pub. L. 99–572, October 28, 1986.

—Review of Criteria for the Design Competition:

a. Memorial Design Requirements and Limitations.

b. Presentation Requirements.

Date: November 30, 1988.

John G. Parsons,

Acting Regional Director, National Capital Region.

[FR Doc. 88–28016 Filed 12–5–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 25, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 21, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Colonia Solana Residential Historic District, Roughly bounded by Broadway Blvd., S. Randolph Way, Camino Campestre, and S. Country Club, Tucson, 88002963

CONNECTICUT

Hartford County

Southington Center Historic District, Roughly N. Main St. N. from Vermont Ave., and Berlin St. from Main St. to Academy Ln., Southington, 88002961

Litchfield County

Downtown Torrington Historic District, Roughly bounded by Church and Alvord Sts., Center Cemetery, Willow St., E. Main St., Litchfield St., and Propsect St., Torrington, 88002978

Tolland County

Talcottville Historic District, 13–44 Elm Hill Rd. and 11—132 Main St., Vernon, 88002959

FLORIDA

Dade County

Algonquin Apartments (Downtown Miami MRA), 1819–1825 Biscayne Blvd., Miami, 88002985
Brickell Mausoleum (Downtown Miami MRA), 501 Brickell Ave., Miami, 88002977
Central Baptist Church (Downtown Miami MRA), 500 N.E. 1st Ave., Miami, 88002988
Chaille Block (Downtown Miami MRA), 401–447 N. Miami Ave., Miami, 88002964
City National Bank Building (Downtown Miami MRA), 121 S.E. 1st St., Miami, 88002975
City of Miami Cemetery (Downtown Miami MRA), 1800 N.E. 2nd Ave., Miami 88002960
Dade County Courthouse (Downtown Miami MRA), 73 W. Flagler St., Miami, 88002983
Dorsey, D. A., House (Downtown Miami MRA), 250 N.W. 9th St., Miami, 88002966
*DuPont, Alfred I., Building (Downtown Miami MRA),*169 E. Flagler St., Miami 88002984
Ebenezer Methodist Church (Downtown Miami MRA), 1042 N.W. 3rd Ave., Miami 88002972
Fire Station No. 2 (Downtown Miami MRA), 1401 N. Miami Ave., Miami, 88002971
First Presbyterian Church (Downtown Miami MRA), 609 Brickell Ave., Miami, 88002979
Greater Bethel AME Church (Downtown Miami MRA), 245 N.W. 8th St., Miami, 88002987
Hahn Building (Downtown Miami MRA), 140 N.E. 1st Ave., Miami, 88002989
Huntington Building (Downtown Miami MRA), 168 S.E. 1st St., Miami, 88002976
Ingraham Building (Downtown Miami MRA), 25 S.E. 2nd Ave., Miami, 88002958
J & S Building (Downtown Miami MRA), 221–233 N.W. 9th St., Miami, 88002967
Kentucky Home (Downtown Miami MRA), 1221 and 1227 N.E. 1st Ave., Miami, 88002969
Lyric Theater (Downtown Miami MRA), 819 N.W. 2nd Ave., Miami, 88002965
Martina Apartments (Downtown Miami MRA), 1023 S. Miami Ave., Miami, 88002981
Meyer-Kiser Building (Downtown Miami MRA), 139 N.E. 1st Building, Miami, 88002991
Miramar Public School (Downtown Miami MRA), 109 N.E. 19th St., Miami, 88002974
Old US Post Office and Courthouse (Downtown Miami MRA), 100–118 N.E. 1st Ave., Miami, 88002962
Palm Cottage (Downtown Miami MRA), 60 S.E. 4th St., Miami, 88002957
Priscilla Apartments (Downtown Miami MRA), 318–320 N.E. 19th St. and 1845 Biscayne Blvd., Miami, 88002986
S & S Sandwich Shop (Downtown Miami MRA), 1757 N.E. 2nd St., Miami, 88002994
Security Building (Downtown Miami MRA), 117 N.E. 1st Ave., Miami, 88002990
Shoreland Arcade (Downtown Miami MRA), 120 N.E. 1st St., Miami, 88002992
Southside School (Downtown Miami MRA), 45 S.W. 13th St., Miami, 88002980
St. John's Baptist Church (Downtown Miami MRA), 1328 N.W. 3rd Ave., Miami, 88002970
Walgreen Drug Store (Downtown Miami MRA), 200 E. Flagler St., Miami, 88002982

INDIANA

Fountain County

Milford, Marshall M., House, 414 E. Main St., Attica, 88003037

Hamilton County

Craycraft, Daniel, House, 1095 E. Conner St., Noblesville, 88003040

Huntington County

Kline, John and Minerva, Farm, 2715 East 400 North, Huntington vicinity, 88003038

Lake County

Lake County Sheriff's House and Jail, 232 S. Main St., Crown Point, 88003039

Marion County

Attucks, Crispus, High School, 1140 N. Martin Luther King, Jr. St., Indianapolis, 88003043

Montgomery County

Yount's Woolen Mill and Boarding House, 3729 Old SR 32 West, Crawfordsville, 88003041

Posey County

Posey County Courthouse Square, 300 Main St., Mounty Vernon, 88003042

KANSAS

Reno County

Plevna General Store, 3rd and Main, Plevna, 88002968

MAINE

Aroostook County

Fort Fairfield Public Library (Maine Public Libraries MPS), Main St., Fort Fairfield, 88003021

Cumberland County

Davis, Dalton Holmes, Memorial Library (Maine Public Libraries MPS), Main St., Bridgton, 88003020

BEST COPY AVAILABLE

Deertrees Theatre, Deertrees Rd., Harrison vicinity, 88003002

Franklin County

Goodspeed Memorial Library (Maine Public Libraries MPS), 104 Main St., Wilton, 88003019

Knox County

Vinalhaven Public Library (Maine Public Libraries MPS), Carver St., Vinalhaven, 88003014

Oxford County

Mann, Arthur L., Memorial Library (Maine Public Libraries MPS), Main St., West Paris, 88003016
Paris Public Library (Maine Public Libraries MPS), 3 Main St., South Paris, 88003015
Rumford Public Library (Maine Public Libraries MPS), Rumford Ave., Rumford, 88003023

Piscataquis County

Milo Public Library (Maine Public Libraries MPS), 4 Pleasant St., Milo, 88003017

Sagadahoc County

Riggs, Benjamin, House, Robinhood Rd., Georgetown vicinity, 88003008
Riggs—Zorach House, Off Robinhood Rd., Georgetown vicinity, 88003007

Somerset County

Madison Public Library (Maine Public Libraries MPS), Old Point Ave., Madison, 88003022

Waldo County

Islesboro Free Library (Maine Public Libraries MPS), Main Rd., Islesboro, 88003018

York County

Conway Junction Railroad Turntable Site, Fife Ln. and Rt. 236, South Berwick vicinity, 88003001

MICHIGAN

Washtenaw County

Ypsilanti Historic District (Boundary Increase), Roughly Michigan, Summit, W. Cross, W. Forest, and Ballard; S. Adams and Woodward; Forest, Grove, Cross, and River, Ypsilanti, 88003055

MINNESOTA

Becker County

Sargent, Homer E., House, 1036 Lake Ave., Detroit Lakes, 88003005

Clay County

Park Elementary School, 121 6th Ave. South, Moorhead, 88003013

Crow Wing County

Northern Pacific Railroad Shops Historic District, Roughly bounded by the Burlington Northern Railroad tracks, Laurel and 13th Sts., Brainerd, 88003024

Mahnomen County

Mahnomen City Hall, 104 W. Madison Ave., Mahnomen, 88003011

Wadena County

Commercial Hotel, Jefferson St. South, Wadena 88003010
Northern Pacific Passenger Depot, Off 1st St. Southwest, Wadena, 88003012

NORTH CAROLINA

Mecklenburg County

Elizabeth Historic District, Roughly bounded by Central Ave., Seaboard Coast Line Railroad, E. 5th St. Kenmore Ave., Park Dr., and E. Independence, Charlotte, 88003003

Rowan County

Lyerly Building for Boys, Crescent Rd./Rt. 3, Gold Hill Township, 88003006

Wake County

Oakwood Historic District (Boundary Increase), Roughly bounded by E. Franklin St., Wautauga St., Boundary St., and N. Bloodworth St., Raleigh, 88003044

PENNSYLVANIA

Berks County

Hunter's Mill Complex, Forgedale Rd., Herreford Twnshp., 88003045

Bucks County

Mechanicsville Village Historic District, Jct. Mechanicsville Rd. and Rt. 413, Mechanicsville, 88003049

Dauphin County

Smith, Henry, Farm, 950 Swatara Creek Rd., Middletown, 88003050

Delaware County

Collen Brook Farm, Off Mansion and Marvine Rds., Upper Darby Twnshp., 88003048

Lancaster County

Andrews Bridge Historic District, Jct. of Rt. 896 and Sproul and Creeks Rds., Colerain Twnshp., 88003046

Montgomery County

Strawbridge and Clotheir Store, Old York Rd. N of Rydal Rd., Jenkintown, 88003047

SOUTH DAKOTA

Codington County

Adams, E. C., House (North End Neighborhood MPS), 604 N. Maple, Watertown, 88003032
Cartford, Benjamin H., House (North End Neighborhood MPS), 803 N. Maple, Watertown, 88003025
Davis, Amy A., House (North End Neighborhood MPS), 20 Fourth Ave., NW, Watertown, 88003030
DeGraff, Curt E., House (North End Neighborhood MPS), 603 N. Park, Watertown, 88003033
Evangelical United Brethren Church (North End Neighborhood MPS), 409 N. Maple, Watertown, 88003026
Ferris, James W., House (North End Neighborhood MPS), 619 N. Park, Watertown, 88003034
Freebury, Dr. H. M., House (North End Neighborhood MPS), 501 N. Park, Watertown, 88003035
Gulruth, A. C., House (North End Neighborhood MPS), 218 Second Ave. NE, Watertown, 88003031
Johnson, A Einar, House (North End Neighborhood MPS), 803 First St. NW, Watertown, 88003029
Majerus, E. M., House (North End Neighborhood MPS), 802 First St. NW, Watertown, 88003036
Mauseth, Peter, House (North End Neighborhood MPS), 703 N. Maple, Watertown, 88003028
William, Walter, House (North End Neighborhood MPS), 702 Second St. NE, Watertown, 88003027

UTAH

Emery County

Green River Presbyterian Church, 134 W. Third Ave., Green River, 88002998

Millard County

Scipio Town Hall, UT 63, Scipio, 88002999

Sevier County

Sudden Shelter (42SU6), Address Restricted, Salina vicinity, 88003009

Summit County

Echo Church and School, Temple Ln., Echo, 88003000

WASHINGTON

Kitsap County

Hospital Reservation Historic District (Puget Sound Naval Shipyard Shore Facilities TR), Roughly bounded by Mahan Ave., Hoogewerf Rd., Decatur Ave., and Dewey St., Bremerton, 88003052
Marine Reservation Historic District (Puget Sound Naval Shipyard Shore Facilities TR), Bounded by Cole St., Dewey St., Decatur Ave., and Doyen St., Bremerton, 88003051
Officers' Row Historic District (Puget Sound Naval Shipyard Shore Facilities TR), Roughly bounded by Mahan Ave., Decatur Ave., and Coghlan Rd., Bremerton, 88003054
Puget Sound Radio Station Historic District (Puget Sound Naval Shipyard Shore Facilities TR), Roughly bounded by Mahan Ave., Coghlan Rd., and Cottman Rd., Bremerton, 88003053

The following property is also being considered for listing in the National Register:

TEXAS

Angelina County

Texas Highway Department Complex, Angelina County MRA, 110 Forest Park, Lufkin 88002769

[FR Doc. 88-28017 Filed 12-5-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-405 (Final)]

Sewn Cloth Headwear From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-405 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of sewn cloth headwear, provided for in items 702.06, 702.08, 702.12, 702.14, 702.20, 702.32, 703.05, 703.10, and 703.16 and various items in part 6F of schedule 3 of the Tariff Schedules of the United States,[1] that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination on or before March 17, 1989 and the Commission will make its final injury determination by May 1, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673(a) and 1673(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of sewn cloth headwear form the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigation was requested in a petition filed on May 26, 1988 by counsel for the Headwear Institute of America, New York, NY. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 27409, July 20, 1988).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d)) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on March 14, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 29, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 21, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 22, 1989 at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 24, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rules requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 4, 1989. In addition, any person who has

[1] Such headwear is also provided for in subheadings 6114.20.00, 6114.30.30, 6114.90.00, 6204.22.30, 6204.23.00, 6204.29.20, 6204.29.40, 6209.20.50, 6209.30.30, 6209.90.30, 6209.90.40, 6211.32.00, 6211.33.00, 6211.39.00, 6211.42.00, 6211.43.00, 6211.49.00, and 6505.90 (except 6505.90.30 and 6505.90.40), of the Harmonized Tariff Schedule of the United States (USITC Pub. 2030, as supplemented).

not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 4, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than April 10, 1989. Such additional comments must be limited to comments on business proprietary information recieved in or after the posthearing briefs.

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 29, 1988.

[FR Doc. 88-28005 Filed 12-5-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 277X)]

CSX Transportation, Inc.; Abandonment Exemption; St. Clair County, MI

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 9.82-mile line of railroad between milepost 73.46 at Avoca, MI, and milepost 83.28 at Port Huron, MI, in St. Clair County, MI.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 5, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by December 16, 1988. Requests for stays [2] regarding environmental issues and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 27, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 11, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-28006 Filed 12-5-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988).

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Arrangement; Manteca News and Manteca Bulletin

Notice is hereby given that the Attorney General, by Order of November 28, 1988, has extended the period for public comment on the application for a Joint Operating Arrangement between the Manteca *News* and the Manteca *Bulletin* filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.* The period for public comment has been extended until January 19, 1989. The period in which persons may reply in writing to the report of the Antitrust Division and to other comments is extended until February 18, 1989. Comments should be filed by mailing or delivering five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Date: November 29, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88-27996 Filed 12-5-88; 8:45 am]

BILLING CODE 4410-01-M

Pollution Control; Consent Judgment; Atlantic Richfield Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on November 22, 1988, a proposed Consent Decree in *United States* v. *Atlantic Richfield Company, Inc.,* Civil Action Number was lodged with the United States District Court for the Western District of New York. The Complaint filed by the United States alleged violations of the Comprehensive Environmental Response,

Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.* Defendant Atlantic Richfield Company, Inc. is the successor in interest to Sinclair Refining Company, which owned and operated an oil refinery facility in Wellsville, Alleghany County, New York. The former refinery and an adjacent landfill, operated for the disposal of hazadous wastes generated by the refinery, are two portions of the Sinclair Refinery Superfund Site, registered on the National Priorities List, 40 CFR Part 300, Appendix B.

The Consent Decree provides that the defendant shall design and perform the clean-up of the landfill portion of the Site. This clean-up includes partial channelization of the Genesee River.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atlantic Richfield Company, Inc.*, D.J. No. 90–11–3–298.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 502 U.S. Courthouse, Court and Franklin Streets, Buffalo, New York 14202, at the Region II office of the Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Atlantic Richfield Company, Inc.*, D.J. No. 90–11–3–298, and include a check for $8.00 (10 cents per page reproduction charge) payable to the United States Treasury.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–27997 Filed 12–5–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–21,166]

Charles E. Mayfield Co., Princeton, LA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), an investigation was initiated on October 3, 1988 in response to a worker petition dated September 20, 1988 and filed on behalf of workers and former workers at Charles E. Mayfield Company, Princeton, Louisiana. The workers produce crude oil and natural gas.

The retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

No layoffs occured at the Charles E. Mayfield Company since September 20, 1987, one year prior to the date of the petition and the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 25th day of November, 1988.

Marvin M. Fooks,

Director, Officer of Trade Adjustment Assistance.

[FR Doc. 88–28060 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,210]

North American Oil and Gas, Inc., Austin, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a worker petition which was filed on behalf of workers at North American Oil and Gas, Incorporated, Austin, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from North American Oil and Gas, Incorporated, Austin, Texas more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed 25th day of November, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28061 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,236]

Sun Exploration and Production Co., Dallas, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), an investigation was initiated on October 3, 1988 in response to a worker petition which was filed on behalf of workers at Sun Exploration and Production Company, Dallas, Texas. The workers are engaged in activities related to the exploration and production of crude oil and natural gas.

All Sun Exploration and Production Company workers at all company locations were certified as eligible to apply for trade adjustment assistance benefits on June 26, 1987. The impact date was April 21, 1986, one year prior to the date of the petition, which was April 21, 1987. The certification remains in effect until June 26, 1989.

Since an active certification covering the petitioning group of workers remains in effect (TA–W–19,643), further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28062 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; Native American Programs; Proposed Total Allocations and Allocation Formulas for Program Year 1989 Regular Program and Calendar Year 1989 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the proposed Native American allocations, distribution formulas and rationale, and individual grantee planning estimates for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for regular programs funded under Title IV–A of the Job Training Partnership Act, and for Calendar Year 1989 for Summer Youth Employment and Training Programs (SYETP) funded under Title II–B of the JTPA.

DATE: Written comments on this proposal are invited and must be received on or before January 1, 1989.

ADDRESS: Send written comments to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. William McVeigh. Phone: 202–535–0507.

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration of the Department of Labor publishes below for review and comment the proposed allocations and distribution formulas for areas to be served by Native American grantees to be funded under JTPA section 401, and JTPA Title II, Part B. The amounts to be distributed are $58,996,000 for the JTPA section 401 programs for Program Year (PY) 1989 (July 1, 1989–June 30, 1990); and $13,058,321 for the JTPA Title II, Part B, Summer Youth Employment and Training Program (SYETP) for the Summer of Calendar Year 1989. The planning estimates reflect the existing grantees and their currently assigned areas, and are subject to change for such reasons as Administrative Law Judge decisions, the possibility that a grantee will want to have its designation withdrawn, legislative changes, et al.

The formula for allocating JTPA Section 401 funds provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons, and youths among the Native American population is indicative of the need for training and employment funds.

Statistics on youths, unemployed persons, and poverty-level persons among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC this 18th day of November 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Poarch Band of Creek Indians, Route 3, Box 243A, Atmore, Alabama 36502. Grant Number: 99–7–0648–55–104–02	384,452	307,562	76,890	0	0	0
Aleutian/Pribilof Islands Assoc. Inc., 1689 C Street, Anchorage, Alaska 99501. Grant Number: 99–7–0117–55–071–02	45,853	36,682	9,171	34,985	27,988	6,997
Assoc. of Village Council Presidents, P.O. Box 848, Bethel, Alaska 99559. Grant Number: 99–7–2713–55–135–02	545,040	436,032	109,008	262,905	210,324	52,581
Bristol Bay Native Association, P.O. Box 189, Dillingham, Alaska 99576. Grant Number: 99–7–0116–55–070–02	135,110	108,088	27,022	79,829	63,863	15,966
Central Council of Tlingit and Haida Indian Tribe, 320 W. Willoughby, Suite 300, Juneau, Alaska 99801. Grant Number: 99–7–0114–55–068–02	210,978	168,782	42,196	169,518	135,614	33,904
Cook Inlet Tribal Council, 670 West Fireweed Lane, Anchorage, Alaska 99503. Grant Number: 99–7–3402–55–188–02	350,125	280,100	70,025	202,227	116,782	40,445
Kawerak Incorporated, P.O. Box 948, Nome, Alaska 99762. Grant Number: 99–7–0123–55–073–02	212,885	170,308	42,577	92,913	74,330	18,583
Kenaitze Indian Tribe, P.O. Box 988, Kenai, Alaska 99611. Grant Number: 99–7–0089–55–067–02	29,043	23,234	5,809	17,634	14,107	3,527
Kodiak Area Native Association, 402 Center Avenue, Kodiak, Alaska 99615. Grant Number: 99–7–0115–55–069–02	61,556	49,245	12,311	33,752	27,002	6,750
Maniilaq Manpower, P.O. Box 725, Kotzebue, Alaska 99752. Grant Number: 99–7–0124–55–074–02	167,053	133,642	33,411	89,500	71,600	17,900
Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926. Grant Number: 99–7–0064–55–053–02	15,157	12,126	3,031	18,393	14,714	3,679
North Pacific Rim, 300 C Street, Anchorage, Alaska 99503. Grant Number: 99–7–0118–55–072–02	55,595	44,476	11,119	26,357	21,086	5,271
Tanana Chiefs Conference, Inc., 201 First Avenue—Doyon Bldg., Fairbanks, Alaska 99701. Grant Number: 99–7–3109–55–150–02	371,420	297,136	74,284	217,492	173,994	43,498
Affiliation of Arizona Ind. Cntrs. Inc., 333 West Indian School Road, Suite 210, Phoenix, Arizona 85013. Grant Number: 99–7–0268–55–089–02	245,680	196,544	49,136	0	0	0
American Indian Assoc. of Tucson, P.O. Box 7246, Tucson, Arizona 85725. Grant Number: 99–7–0492–55–096–02	320,585	256,468	64,117	0	0	0
Colorado River Indian Tribes, Route 1, Box 23–B, Parker, Arizona 85344. Grant Number: 99–7–0498–55–097–02	78,516	62,813	15,703	31,477	25,182	6,295
Gila River Indian Community, Box 97, Sacaton, Arizona 85247. Grant Number: 99–7–0054–55–049–02	469,469	375,575	93,894	135,577	108,462	27,115

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Hopi Tribal Council, Box 123, Kykotsmovi, Arizona 86039. Grant Number: 99-7-0057-55-050-02	367,883	294,306	73,577	107,893	86,314	21,579
Indian Dev. Dist. of Arizona, Inc., 1777 W. Camelback Road, Suite D-102, Phoenix, Arizona 85015. Grant Number: 99-7-0053-55-048-02	107,287	85,830	21,457	43,991	35,193	8,798
Native Americans for Community Action, 2717 North Steves Boulevard, Suite 11, Flagstaff, Arizona 86004. Grant Number: 99-7-1777-55-119-02	109,356	87,485	21,871	0	0	0
Navajo Tribe of Indians, P.O. Box 1899, Window Rock, Arizona 85515. Grant Number: 99-7-0059-55-052-02	6,520,025	5,216,020	1,304,005	2,379,135	1,903,308	475,827
Pasqua Yaqui Tribe, 7474 S. Camino De Oeste, Tucson, Arizona 85746. Grant Number: 99-7-3289-55-160-02	36,862	29,490	7,372	9,386	7,509	1,877
Phoenix Indian Center, Inc., 1337 North 1st Street, Phoenix, Arizona 85004. Grant Number: 99-7-0195-55-084-02	674,521	539,617	134,904	0	0	0
Salt River Pima-Maricopa Ind. Commun., Route 1, Box 216, Scottsdale, Arizona 85256. Grant Number: 99-7-0476-55-094-02	91,782	73,426	18,356	47,120	37,696	9,424
San Carlos Apache Tribe, P.O. Box '0', San Carlos, Arizona 85550. Grant Number: 99-7-0173-55-081-02	299,431	239,545	59,886	118,606	94,885	23,721
Tohomo O'Odham Nation, P.O. Box 837, Sells, Arizona 85634. Grant Number: 99-7-0181-55-083-02	409,211	327,369	81,842	128,277	102,622	25,655
White Mountain Apache Tribe, P.O. Box 700, White River, Arizona 85941. Grant Number: 99-7-0174-55-186-02	318,024	254,419	63,605	133,017	106,414	26,603
Am. Indian Center of Arkansas, Inc., 2 Van Circle, Suite 7, Little Rock, Arkansas 72207. Grant Number: 99-7-1778-55-120-02	445,452	356,362	89,090	0	0	[illegible]
California Indian Manpower Csrt., 4153 Northgate Boulevard, Sacramento, California 95834. Grant Number: 99-7-2058-55-181-02	2,639,997	2,111,998	527,999	154,728	123,782	30,946
Candalaria American Indian Council, 2635 Wagon Wheel Road, Oxnard, California 93030. Grant Number: 99-7-0086-55-066-02	440,863	352,690	88,173	0	0	[illegible]
Csrt. of United Indian Nations, 1404 Franklin Street, Suite 202, Oakland, California 94612. Grant Number: 99-7-2310-55-133-02	614,563	491,650	122,913	0	[illegible]	[illegible]
Fresno American Indian Council, 283 North Fresno Street, Fresno, California 93701. Grant Number: 99-7-0079-55-193-02	268,783	215,026	53,757	[illegible]	[illegible]	[illegible]
Hoopa Valley Business Council, P.O. Box 815, Hoopa, California 95546. Grant Number: 99-7-1142-55-114-02	49,524	39,619	9,905	22,849	18,279	4,570
Indian Center of San Jose, Inc., 935 The Alameda, San Jose, California 95126. Grant Number: 99-7-0499-55-098-02	226,295	181,036	45,259	[illegible]	0	0
Indian Human Resources Center, 4040 30th Street, Suite A, San Diego, California, 92104. Grant Number: 99-7-2441-55-134-02	431,594	345,275	86,319	[illegible]	[illegible]	[illegible]
Northern Calif. Ind. Dev. Council, Inc., 241 F Street, Eureka, California 95501. Grant Number: 99-7-0686-55-015-02	310,876	248,701	62,175	15,549	12,439	3,110
Orange County Indian Center, Inc., 12755 Brookhurst Street, Garden Grove, California 92642-2550. Grant Number: 99-7-0170-55-172-02	1,905,900	1,524,720	381,180	0	0	0
Tule River Tribe, Dept. of Health, Safety & Welfare, P.O. Box 589, Porterville, California 93258. Grant Number: 99-7-3219-55-153-02	127,869	102,295	25,574	4,266	3,413	853
Ya-Ka-Ama Indian Educ. and Dev., Inc., 6215 Eastside Road, Healdsburg, California 95448. Grant Number: 99-7-0082-55-065-02	126,584	101,267	25,317	0	0	0
Denver Indian Center, Inc., 4407 Morrison Road, Denver, Colorado 80219. Grant Number: 99-7-0076-55-062-02	590,353	472,282	118,071	0	0	0
Southern Ute Indian Tribe, P.O. Box 800, Ignacio, Colorado 81137. Grant Number: 99-7-2714-55-136-02	54,615	43,692	10,923	15,454	12,363	3,091
Ute Mountain Ute Tribe, P.O. Box 30, Towaoc, Colorado 81334. Grant Number: 99-7-1143-55-115-02	65,850	52,680	13,170	18,677	14,942	3,735
American Indians for Development, Inc., P.O. Box 117, Meriden, Connecticut 06450. Grant Number: 99-7-0361-55-091-02	183,860	147,088	36,772	0	0	0
Nuic d/b/a Delaware Indian Council, 2258 S. Broadway, Denver, Colorado 80210. Grant Number: 99-7-3403-55-187-02	37,974	30,379	7,595	0	0	[illegible]
Fla. Governors Council on Ind. Affairs, 521 E. College Avenue, Tallahassee, Florida 32301. Grant Number: 99-7-0692-55-107-02	832,713	666,170	166,543	0	0	[illegible]
Miccosukee Corporation, P.O. Box 440021, Tamiami Station, Miami, Florida 33144. Grant Number: 99-7-0052-55-047-02	116,961	93,569	23,392	40,199	32,159	8,040
Seminole Tribe of Florida, JTPA Department, 6073 Stirling Road, Hollywood, Florida 33024. Grant Number: 99-7-0004-55-009-02	65,872	52,698	13,174	7,869	6,295	1,574
Nuic d/b/a Georgia Association of Native Ameri, 2258 S. Broadway, Denver, Colorado 80210. Grant Number: 99-7-3406-55-190-02	333,689	266,951	66,738	0	0	0
Alu Like, Inc., 1024 Mapunapuna Street, Honolulu, Hawaii 96819-4417. Grant Number: 99-7-1179-55-116-02	2,426,082	1,940,866	485,216	2,086,934	1,669,547	417,387
American Indian Services Corporation, 1405 North King Street, Suite 302, Honolulu, Hawaii 96817. Grant Number: 99-7-3404-55-189-02	85,540	68,432	17,108	0	0	0
Kootenai Tribe of Indians, P.O. Box 1269, Bunnersferry, Idaho 83805. Grant Number: 99-7-3334-55-161-02	31,596	25,277	6,319	1,327	1,062	265
Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 83540-0305. Grant Number: 99-7-0065-55-054-02	79,036	63,229	15,807	12,420	9,936	2,484
Shoshone-Bannock Tribes, Fort Hall Indian Reservations, P.O. Box 306, Fort Hall, Idaho 83203. Grant Number: 99-7-1780-55-121-02	234,683	187,746	46,937	40,294	32,235	8,059
American Indian Business Association, 4735 North Broadway, Suite 700, Chicago, Illinois 60640. Grant Number: 99-7-0809-55-109-02	1,063,617	850,894	212,723	[illegible]	[illegible]	[illegible]
Mid America All Indian Center, Inc., 660 N. Seneca, Wichita, Kansas 67203. Grant Number: 99-7-0168-55-078-02	158,591	126,873	31,718	0	[illegible]	0

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
United Tribes of Kansas and S.E. Neb., P.O. Box 29, Horton, Kansas 66439. Grant Number: 99–7–0178–55–082–02	484,971	387,977	96,994	9,860	7,888	1,972
Inter-Tribal Council of Louisiana, Inc., 5425 Galeria Drive—Suite A, Baton Rouge, Louisiana 70816. Grant Number: 99–7–0026–55–026–02	439,485	351,588	87,897	5,499	4,399	1,100
Central Maine Indian Association, Inc., P.O. Box 2280, Bangor, Maine 04401. Grant Number: 99–7–2719–55–182–02	89,498	71,598	17,900	0	0	0
Tribal Governors, Inc., 93 Main Street, Orono, Maine 04473. Grant Number: 99–7–0001–55–167–02	102,956	82,365	20,591	27,589	22,071	5,518
Baltimore American Indian Center, 113 So. Broadway, Baltimore, Maryland 21231. Grant Number: 99–7–3405–55–192–02	309,446	247,557	61,889	0	0	0
Boston Indian Council, Inc., 105 S. Huntington Avenue, Jamaica Plain, Massachusetts 02130. Grant Number: 99–7–0494–55–174–02	232,970	186,376	46,594	0	0	0
Mashpee-Wampahoag Indian Tribal Council, P.O. Box 1048, Mashpee, Massachusetts 02649. Grant Number: 99–7–0408–55–093–02	81,252	65,002	16,250	0	0	0
Grand Rapids Inter-Tribal Council, 45 Lexington Ave. N.W., Grand Rapids, Michigan 49504. Grant Number: 99–7–0694–55–108–02	116,280	93,024	23,256	0	0	0
Grand Traverse Band of Ottawa and Chippewa Indians, Route 1, Box 135, Suttons Bay, Michigan 49682. Grant Number: 99–7–2721–55–137–02	53,872	43,098	10,774	2,465	1,972	493
Inter-Tribal Council of Michigan, Inc., 405 East Easterday Avenue, Sault Ste. Marie, Michigan 49783. Grant Number: 99–7–0172–55–080–02	64,535	51,628	12,907	30,623	24,498	6,125
Michigan Indian Employment and Training Service, 2405 East Mount Hope, Lansing, Michigan 48910. Grant Number: 99–7–1144–55–179–02	777,630	622,104	155,526	0	0	0
North American Indian Assoc. of Detroit, 22720 Plymouth Road, Detroit, Michigan 48239. Grant Number: 99–7–0695–55–176–02	391,793	313,434	78,359	0	0	0
Potawatomi Indian Nation, 53237 Townhall Road, Dowagiac, Michigan 49047. Grant Number: 99–7–3339–55–164–02	148,827	119,062	29,765	0	0	0
Sault Ste. Marie Tribe of Chippewa Indians, 2151 Shunk Road, Sault Ste. Marie, Michigan 49783. Grant Number: 99–7–0507–55–100–02	228,887	183,110	45,777	42,948	34,358	8,590
Southeastern Michigan Indians, Inc., P.O. Box 861, Warrren, Michigan 48090. Grant Number: 99–7–3220–55–154–02	63,073	50,458	12,615	0	0	0
American Indian Fellowship Assn., 8 East Fourth Street, Duluth, Minnesota 55802. Grant Number: 99–7–0254–55–087–02	132,945	106,356	26,589	2,086	1,669	417
American Indian Opportunities Ctr., 2495–18th Avenue South, Minneapolis, Minnesota 55404. Grant Number: 99–7–3221–55–155–02	511,075	408,860	102,215	0	0	0
Bois Forte R.B.C., P.O. Box 698, Wett Lake, Minnesota 55772. Grant Number: 99–7–0010–55–0140–02	37,964	30,371	7,593	9,007	7,206	1,801
Fond Du Lac R.B.C., 105 University Road, Cloquet, Minnesota 55720. Grant Number: 99–7–0009–55–013–02	38,799	31,039	7,760	6,447	5,158	1,289
Leech Lake R.B.C., Route 3, Box 100, Cass Lake, Minnesota 56633. Grant Number: 99–7–0012–55–017–02	175,402	140,322	35,080	49,206	39,365	9,841
Mille Lacs Band of Chippewa Indians, Star Route-Box 194, Onamia, Minnesota 56359. Grant Number: 99–7–0008–55–012–02	32,020	25,616	6,406	8,912	7,130	1,782
Minneapolis American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404. Grant Number: 99–7–0204–55–085–02	299,245	239,396	59,849	12,420	9,936	2,484
Red Lake Tribal Council, P.O. Box 310, Red Lake, Minnesota 56671. Grant Number: 99–7–0017–55–020–02	140,449	112,359	28,090	63,427	50,742	12,685
White Earth R.B.C., Box 418, White Earth, Minnesota 56591. Grant Number: 99–7–0011–55–016–02	157,219	125,775	31,444	50,628	40,502	10,126
Mississippi Band of Choctaw Indians, Route 7, Box 21, Philadelphia, Mississippi 30350. Grant Number: 99–7–0005–55–010–02	304,495	243,596	60,899	52,240	41,792	10,448
Region VII American Indian Council, Inc., 310 Armour Road, Suite 205, Kansas City, Missouri 64116. Grant Number: 99–7–0967–55–177–02	564,167	451,334	112,833	0	0	0
Assiniboine and Sioux Tribes; Fort Peck Indian Reservation, P.O. Box 1027, Poplar, Montana 59255. Grant Number: 99–7–0033–55–031–02	210,085	168,068	42,017	77,174	61,739	15,435
Blackfeet Tribal Business Council, P.O. Box 1090, Browning, Montana 59417. Grant Number: 99–7–0006–55–011–02	243,696	194,957	48,739	92,723	74,178	18,545
Chippewa Cree Tribe, Rocky Boys Reserv., Rocky Boy Route—P.O. Box 580, Box Elder, Montana 59521. Grant Number: 99–7–0035–55–033–02	98,065	78,452	19,613	29,865	23,892	5,973
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855. Grant Number: 99–7–0031–55–030–02	246,561	197,249	49,312	72,813	58,250	14,563
Crow Indian Tribe, P.O. Box 159, Crow Agency, Montana 59022. Grant Number: 99–7–0030–55–029–02	207,081	165,665	41,416	81,441	65,153	16,288
Fort Belknap Indian Community, P.O. Box 249, Harlem, Montana 59526. Grant Number: 99–7–0032–55–168–02	79,058	63,246	15,812	36,596	29,277	7,319
Montana United Indian Association, P.O. Box 6043, Helena, Montana 59601. Grant Number: 99–7–0074–55–060–02	425,177	340,142	85,035	0	0	0
Northern Cheyenee Tribe, P.O. Box 368, Lake Deer, Montana 59043. Grant Number: 99–7–0034–55–032–02	164,096	131,277	32,819	54,610	43,688	10,992
Indian Center, Inc., 1100 Military Road, Lincoln, Nebraska 68502. Grant Number: 99–7–2722–55–183–02	169,227	135,382	33,845	0	0	0
Nebraska Indian Inter-Tribal Dev. Corp., Route 1—Box 66–A, Winnebago, Nebraska 68071. Grant Number: 99–7–0087–55–171–02	306,929	245,543	61,386	55,084	44,067	11,017
Inter-Tribal Council of Nevada, P.O. Box 7440, Reno, Nevada 89510. Grant Number: 99–7–0058–55–051–02	329,426	263,541	65,885	69,400	55,520	13,880
National American Indian Center, Inc., 2300 West Bonanza Road, Las Vegas, Nevada 89106. Grant Number: 99–7–0687–55–105–02	92,191	73,753	18,438	0	0	0

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV–A AND PY 1988 II–B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Shoshone Paiute Tribes, P.O. Box 219, Owyhee, Nevada 89832. Grant Number: 99-7-2723-55-138-02	162,332	129,866	32,466	19,341	15,473	3,868
Powhattan Renape Nation, Rankokus Reservation—P.O. Box 225, Rankokus, New Jersey 08073. Grant Number: 99-7-3222-55-156-02	291,671	233,337	58,334	0	0	0
Alamo Navajo School Board, P.O. Box 907, Magdalena, New Mexico 87825. Grant Number: 99-7-2724-55-139-02	76,239	60,991	15,248	17,919	14,335	3,584
All Indian Pueblo Council, Inc., 1015 Indian School Rd., NW., P.O. Box 6507, Albuquerque, New Mexico 87197. Grant Number: 99-7-3341-55-165-02	146,960	117,568	29,392	79,829	63,863	15,966
Eight Indian Pueblo Council, P.O. Box 969, San Juan Pueblo, New Mexico 87566. Grant Number: 99-7-3223-55-157-02	57,440	45,952	11,488	24,366	19,493	4,873
Five Sandoval Indian Pueblos, Inc., P.O. Box 580, Bernalillo, New Mexico 87004. Grant Number: 99-7-3336-55-162-02	118,193	94,554	23,639	68,642	54,914	13,728
Jicarilla Apache Tribe, P.O. Box 507, Dulce, New Mexico 87528. Grant Number: 99-7-2725-55-140-02	53,175	42,540	10,635	31,382	25,106	6,276
Mescalero Apache Tribe, P.O. Box 176, Mescalero, New Mexico 88340. Grant Number: 99-7-3100-55-149-02	74,254	59,403	14,851	30,528	24,422	6,106
National Indian Youth Council, 318 Elm Street Se, Albuqueque, New Mexico 87102. Grant Number: 99-7-0077-55-063-02	705,631	564,505	141,126	0	0	0
Pueblo of Acoma, P.O. Box 469, Pueblo of Acoma, New Mexico 87034. Grant Number: 99-7-2199-55-128-02	99,677	79,742	19,935	41,621	33,297	8,324
Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico 87026. Grant Number: 99-7-1583-55-117-02	74,812	59,850	14,962	58,308	46,646	11,662
Pueblo of Taos, P.O. Box 1846, Taos, New Mexico 87571. Grant Number: 99-7-2200-55-129-02	32,085	25,668	6,417	12,704	10,163	2,541
Pueblo of Zuni, Zuni Tribal Council, P.O. Box 339, Zuni, New Mexico 87327. Grant Number: 99-7-0021-55-023-02	286,114	228,891	57,223	128,845	103,076	25,769
Ramah Navajo School Board, Inc., Drawer G, Pine Hill, New Mexico 87321. Grant Number: 99-7-0146-55-075-02	91,358	73,086	18,272	23,513	18,810	4,703
Santa Clara Indian Pueblo, P.O. Box 580, Espanola, New Mexico 87532. Grant Number: 99-7-3224-55-158-02	19,128	15,302	3,826	5,689	4,551	1,138
Santo Domingo Tribe, General Delivery, Santo Domingo, New Mexico 87052. Grant Number: 99-7-1781-55-122-02	124,548	99,638	24,910	41,621	33,297	8,324
American Indian Community House, Inc., 842 Broadway, 8th Floor, New York City, New York 10003. Grant Number: 99-7-0348-55-090-02	763,833	611,066	152,767	3,129	2,503	626
Native American Cultural Center, Inc., 2115 East Main Street, Rochester, New York 14609. Grant Number: 99-7-3407-55-191-02	88,149	70,519	17,630	0	0	0
Native American Community Services of Erie and Vicinity 1047 Grant Street (Rear)—P.O. Box 86, Buffalo, New York, 14207-0086. Grant Number: 99-7-0689-55-106-02	227,487	181,990	45,497	10,239	8,191	2,048
The North Am. Ind. Club of Syracuse and Vicinity, P.O. Box 851, Syracuse, New York 13201. Grant Number: 99-7-2201-55-130-02	192,350	153,880	38,470	7,300	5,840	1,460
St. Regis Mohawk Tribe, Community Building, Hogansburg, New York 13655. Grant Number: 99-7-0522-55-103-02	162,268	129,814	32,454	27,779	22,223	5,556
Seneca Nation of Indians, P.O. Box 231, Salamanca, New York 14779. Grant Number: 99-7-0169-55-079-02	301,742	241,394	60,348	54,705	43,764	10,941
Cumberland County Assoc. For Ind. People 102 Indian Drive, Fayetteville, North Carolina 28301. Grant Number: 99-7-1782-55-123-02	123,498	98,798	24,700	0	0	0
Eastern Band of Cherokee Indians, P.O. Box 481, Cherokee, North Carolina 28719. Grant Number: 99-7-0003-55-008-02	232,763	186,210	46,553	87,224	69,779	17,445
Guilford Native American Assoc., P.O. Box 5623, 400 Prescott Street, Greensboro, North Carolina 27403. Grant Number: 99-7-2727-55-142-02	93,871	75,097	18,774	0	0	0
Lumbee Reg. Dev. Assoc., P.O. Box 68, Pembroke, North Carolina 28372. Grant Number: 99-7-0067-55-02	1,268,699	1,014,959	253,740	0	0	0
Metrolina Native American Assn., 6407 Idlewild Road—Suite 103, Charolotte, North Carolina 28212. Grant Number: 99-7-2726-141-02	95,941	76,753	19,188	0	0	0
North Carolina Comm. of Ind. Affairs, P.O. Box 27228, Raliegh, North Carolina 27611-7228. Grant Number: 99-7-0070-55-p057-02	378,182	302,546	75,636	0	0	0
Devils Lake Sioux Tribe, P.O. Box 300, Fort Totten, North Dakota 58335. Grant Number: 99-7-0037-55-034-02	116,885	93,508	23,377	38,777	31,022	7,755
Standing Rock Sioux, Box D, Fort Yates, North Dakota 58538. Grant Number: 99-7-0046-55-041-02	244,610	195,688	48,922	94,240	75,392	18,848
Three Affiliated Tribes, Box 597, New Town, North Dakota 58763. Grant Number: 99-7-0062-55-170-02	165,319	132,255	33,064	56,032	44,826	11,206
Turtle Mountain Band of Chippewa Ind., P.O. Box 900, Belcourt, North Dakota 58316. Grant Number: 99-7-0075-55-061-02	332,405	265,924	66,481	109,504	87,603	21,901
United Tribes—Ed. Tech. Cntr., 3315 University Drive, Bismarck, North Dakota 58501. Grant Number: 99-7-0206-55-173-02	167,685	134,148	33,537	0	0	0
North American Indian Cultural Center, 1062 Triplette Boulevard, Akron, Ohio 44306. Grant Number: 99-7-3349-55-166-02	709,287	567,430	141,857	0	0	0
Caddo Tribe of Oklahoma, P.O. Box 487, Binger, Oklahoma 73009. Grant Number: 99-7-1783-55-124-02	27,314	21,851	5,463	12,420	9,936	2,484
Central Tribes of the Shawnee Area, Inc., 624 North Broadway, Shawnee, Oklahoma 74801. Grant Number: 99-7-0038-55-035-02	79,131	63,305	15,826	49,490	39,592	9,898
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465. Grant Number: 99-7-0027-55-027-02	1,382,457	1,105,966	276,491	743,018	594,414	148,604
Cheyenne-Arapaho Tribes, P.O. Box 67, Concho, Oklahoma 73022. Grant Number: 99-7-0048-55-043-02	185,654	148,523	37,131	93,008	74,406	18,602

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma 74820. Grant Number: 99-7-0042-55-038-02	370,645	296,516	74,129	190,092	152,074	38,018
Choctaw Nation of Oklahoma, Drawer 1210, Durant, Oklahoma 74702. Grant Number: 99-7-0041-55-037-02	754,840	603,872	150,968	333,917	267,134	66,783
Citizens Band Potawatomi Ind. of Okla., Rt. 5, Box 151, Shawnee, Oklahoma 74801. Grant Number: 99-7-2202-55-131-02	187,064	149,651	37,413	156,056	124,845	31,211
Comanche Tribe of Oklahoma, P.O. Box 908, Lawton, Oklahoma 73502. Grant Number: 99-7-3150-55-151-02	153,948	123,158	30,790	120,218	96,174	24,044
Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447. Grant Number: 99-7-0025-55-025-02	562,493	449,994	112,499	359,136	287,309	71,827
Four Tribes Consortium of Oklahoma, P.O. Box 1193, Anadarko, Oklahoma 73005. Grant Number: 99-7-2728-55-143-02	70,563	56,450	14,113	37,260	29,808	7,452
Inter-Tribal Council of N.E. Oklahoma, P.O. Box 1308, Miami, Oklahoma 74355. Grant Number: 99-7-1135-55-110-02	49,313	38,450	9,863	36,217	28,974	7,243
Kaw Tribe of Oklahoma, Drawer 50, Kaw City, Oklahoma 74641. Grant Number: 99-7-2729-55-144-02	2,700	2,160	540	1,422	1,138	284
Kiowa Tribe of Oklahoma, P.O. Box 361, Carnegie, Oklahoma 73015. Grant Number: 99-7-0047-55-042-02	199,885	159,908	39,977	85,992	68,794	17,198
Oklahoma Tribal Assistance Program, Inc., P.O. Box 2841, Tulsa, Oklahoma 74101. Grant Number: 99-7-0072-55-058-02	326,329	261,063	65,266	197,297	157,838	39,459
Osage Tribal Council, P.O. Box 147—Osage Agency Campus, Pawhuska, Oklahoma 74056. Grant Number: 99-7-0022-55-024-02	99,629	79,703	19,926	77,080	61,664	15,416
Otoe-Missouria Indian Tribe of Okla., P.O. Box 68, Red Rock, Oklahoma 74074. Grant Number: 99-7-2730-55-145-02	35,360	28,288	7,072	21,048	16,838	4,210
Pawnee Tribe of Oklahoma, P.O. Box 470, Pawnee, Oklahoma 74058. Grant Number: 99-7-1785-55-126-02	22,492	17,994	4,498	16,402	13,122	3,280
Ponca Tribe of Indians, White Eagle—Box 2, Ponca City, Oklahoma 74601. Grant Number: 99-7-0029-55-028-02	53,033	42,426	10,607	48,447	38,758	9,689
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, Oklahoma 74884. Grant Number: 99-7-0051-55-046-02	141,976	113,581	28,395	67,504	54,003	13,501
Tonkawa Tribe of Oklahoma, P.O. Box 70, Tonkawa, Oklahoma 74653. Grant Number: 99-7-1136-55-111-02	39,187	31,350	7,837	46,077	36,862	9,215
United Urban Indian Council, 1501 Classen Blvd., Suite 100, Oklahoma City, Oklahoma 73106-5435. Grant Number: 99-7-2731-55-146-02	293,995	235,196	58,799	221,569	177,255	44,314
Confed. Tribes of Siletz Indians, P.O. Box 549, Siletz, Oregon 97380. Grant Number: 99-7-3153-55-152-02	585,902	468,722	117,180	13,937	11,150	2,787
Confed. Tribes of the Umatilla Ind. Res., P.O. Box 638, Pendleton, Oregon 97801. Grant Number: 99-7-3065-55-148-02	43,466	34,773	8,693	16,497	13,198	3,299
Confederate Tribes of Warm Springs, P.O. Box C—Tenino road, Warm Springs, Oregon 97761. Grant Number: 99-7-0256-55-088-02	91,728	73,382	18,346	42,854	34,283	8,571
Organization of Forgotten Americans, P.O. Box 1257, 4509 South 6th Street, Rm. 206, Klamath Falls, Oregon 97601-0276. Grant Number: 99-7-2732-55-147-02	426,622	341,298	85,324	4,172	3,338	834
Council of Three Rivers, 200 Charles Street, Pittsburgh, Pennsylvania 15238. Grant Number: 99-7-0642-55-175-02	433,153	346,522	86,631	0	0	0
United Am. Indians of the Del. Valley, 225 Chestnut Street, Philadelphia, Pennsylvania 19106. Grant Number: 99-7-0477-55-095-02	193,645	154,916	38,729	0	0	0
Rhode Island Indian Council, 444 Friendship St., Providence, Rhode Island 02907. Grant Number: 99-7-0510-55-101-02	141,406	113,125	28,281	0	0	0
Palmetto Indian Affairs Commission, Employment and Training Division, 13 Pickson Street—Suite 200, Columbia, South Carolina 29201. Grant Number: 99-7-0403-55-092-02	258,661	206,929	51,732	11,567	9,254	2,313
Cheyenne River Sioux Tribe, P.O. Box 768, Eagle Butte, South Dakota 57625. Grant Number: 99-7-0039-55-036-02	221,306	177,045	44,261	83,337	66,670	16,667
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548. Grant Number: 99-7-0073-55-059-02	56,084	44,867	11,217	14,601	11,681	2,920
Oglala Sioux Tribe, P.O. Box G, Pine Ridge, South Dakota 57770. Grant Number: 99-7-0043-55-039-02	698,422	558,738	139,684	228,964	183,171	45,793
Rosebud Sioux Tribe, Box 430, Rosebud, South Dakota 57570. Grant Number: 99-7-0044-55-040-02	413,698	330,958	82,740	116,425	93,140	23,285
Sissetion-Wampeton Sioux Tribe, P.O. Box 509, Agency Village, South Dakota 57262. Grant Number: 99-7-0045-55-169-02	161,127	128,902	32,225	49,301	39,441	9,860
United Sioux Tribes Dev. Corp., P.O. Box 1193, Pierre, South Dakota 57501. Grant Number: 99-7-0165-55-077-02	684,412	547,530	136,882	64,280	51,424	12,856
Uset Incorporated, 1101 Kermit Drive, Suite 800, Nashville Tenassee 37217. Grant Number: 99-7-2737-55-184-02	614,237	491,390	122,847	0	0	0
Alabama-Coushatta Indian Tribal Council, Route 3—Box 645, Livingston, Texas 77315. Grant Number: 99-7-1784-55-125-02	641,216	512,973	128,243	5,404	4,323	1,081
Dallas Inter-Tribal Center, 209 East Jefferson Blvd., Dallas, Texas 75203-2690. Grant Number: 99-7-0078-55-064-02	263,150	210,520	52,630	0	0	0
Tigua Indian Tribe, P.O. Box 17579—Ysleta Station, El Paso, Texas 79917. Grant Number: 99-7-2099-55-127-02	437,991	350,393	87,598	11,851	9,481	2,370
NIBC d/b/a United Tribes Service Center, Inc., 1164 South Foulger Street, Salt Lake City, Utah 84111. Grant Number: 99-7-3337-55-163-02	402,059	321,647	80,412	0	0	0
Ute Indian Tribe, P.O. Box 190, Fort Duchesne, Utah 84026. Grant Number: 99-7-0049-55-044-02	72,258	57,806	14,452	35,743	28,594	7,149
Abenaki Self-Help Assn./N.H. Ind. Counc., Box 276, Swanton, Vermont 05488. Grant Number: 99-7-3064-55-185-02	107,069	85,655	21,414	0	0	0

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 TITLE IV-A AND PY 1988 II-B (SUMMER 1989) PLANNING ESTIMATES FOR NATIVE AMERICAN GRANTEES, OCT. 19, 1988—Continued

	PY 1989 IV-A			PY 1988 II-B		
	Total	Program	Cost pool	Total	Program	Cost pool
Mattaponi Pamunkey Monacan Consortium, Route 2-P.O. Box 280, West Point, Virginia 23181. Grant Number: 99-7-3227-55-159-02	232,367	185,894	46,473	1,612	1,290	322
American Indian Community Center, East 801 Second Ave., Spokane, Washington 99202. Grant Number: 99-7-1138-55-112-02	690,872	552,698	138,174	119,744	95,795	23,949
Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155. Grant Number: 99-7-1726-55-118-02	195,988	156,790	39,198	50,723	40,578	10,145
Lummi Indian Business Council, 2616 Kwina Road, Bellingham, Washington 98225. Grant Number: 99-7-2204-55-338-02	43,001	34,401	8,600	20,099	16,079	4,020
N.W. Inter-Tribal Council, P.O. Box 115, Nean Bay, Washington 98357. Grant Number: 99-7-0069-55-056-02	44,620	35,696	8,924	33,183	26,546	6,637
Puyallup Tribe, 2002 East 28th St., Tacoma, Washington 98404. Grant Number: 99-7-1137-55-178-02	158,231	126,585	31,646	20,194	16,155	4,039
Seattle Indian Center, 611 12th Avenue South-Suite 100, Seattle, Washington 98144. Grant Number: 99-7-0511-55-102-02	414,513	331,610	82,903	0	0	0
Western Wash. Ind. Empl. and Trng. Prog., 4505 Pacific Highway East, Suite C-5, Tacoma, Washington 98424. Grant Number: 99-7-1933-55-180-02	833,851	667,081	166,770	132,448	105,958	26,490
Lac Courte Oreilles Tribal Governing Board, Route 2, Box 2700, Hawyard, Wisconsin 54843. Grant Number: 99-7-0018-55-021-02	93,936	75,149	18,787	25,883	20,706	5,177
Lac du Flambeau, P.O. Box 67, Lac Du Flambeau, Wisconsin 54538. Grant Number: 99-7-1139-55-113-02	45,227	36,182	9,045	19,910	15,928	3,982
Memominee Indian Tribe, P.O. Box 397, Keshena, Wisconsin 54135-0397. Grant Number: 99-7-0013-55-018-02	71,747	57,398	14,349	48,542	38,834	9,708
Milwaukee Area Am. Ind. Manpower Counc., 3121 W. Wisconsin Ave., Milwaukee, Wisconsin 53208. Grant Number: 99-7-0227-55-086-02	222,408	177,926	44,482	0	0	0
Oneida Tribe of Indians of Wis., Inc., P.O. Box 365, Oneida, Wisconsin 54115. Grant Number: 99-7-0015-55-019-02	197,165	157,732	39,433	32,140	25,712	6,428
Stockbridge-Munsee Community, Route 1, Bowler, Wisconsin 54416. Grant Number: 99-7-0500-55-099-02	59,926	47,941	11,985	9,576	7,661	1,915
Wisconsin Indian Consortium, P.O. Box 181, Odanah, Wisconsin 54861. Grant Number: 99-7-2207-55-132-02	88,094	70,475	17,619	27,021	21,617	5,404
Wisconsin-Winnebago Business Committee, P.O. Box 311, Tomah, Wisconsin 54660. Grant Number: 99-7-0019-55-022-02	191,268	153,014	38,254	15,359	12,287	3,072
Shoshone/Arapahoe Tribes, P.O. Box 920, Fort Washakie, Wyoming 82514. Grant Number: 99-7-0050-55-045-02	215,497	172,398	43,099	72,434	57,947	14,487
National total	58,996,000	47,196,803	11,799,197	13,058,321	10,446,659	2,611,662

[FR Doc. 88-27826 Filed 12-5-88; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-17-M]

B&J Crushing; Petition for Modification of Application of Mandatory Safety Standard

B&J Crushing, 229 County Road 11, No. 21, Gunnison, Colorado 81230 has filed a petition to modify the application of 30 CFR 57.4533 (mine opening vicinity) to its Lucky Strike Mine and Mill (I.D. No. 05-03845) located in Gunnison County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that buildings within 100 feet of intake mine openings be constructed of fire-resistant materials or equipped with an automatic fire suppression system.

2. As an alternate method, petitioner proposes that the mill building be located 53 feet away from the main mine shaft.

3. In support of this request, petitioner states that—

(a) The main mine shaft has a concrete collar running down to the bedrock, which is a distance of 38 feet, and has a steel building located over it;

(b) There are no flammable materials located anywhere near the main mine shaft;

(c) There is natural ventilation out of the main mine shaft resulting from the second escapeway being 30 feet lower in elevation than the main mine shaft. This is assisted by a 10-horsepower electric fan in the second escapeway building;

(d) The underground mine is equipped with direct telephone connections, stench warning systems and signals set up with electric flashing lights;

(e) All underground areas have compressed air provided from the engine house, which is over 100 feet from the main mine shaft;

(f) The mill building was constructed with fiberglass insulation which does not burn easily. The insulation would not emit fumes should a fire occur. The building has a 60 gauge steel exterior and is fully equipped with three high-pressure water fire hoses and seven fire extinguishers located throughout the building; and

(g) Whenever persons are working underground there is a hoist operator stationed at the hoist controls and additional miners are working in the mill building.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28053 Filed 12-5-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-210-C]

Cyprus Emerald Resources Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Emerald Resources Corporation, Route 218 South, Box 871, Waynesburg, Pennsylvania 15370 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Emerald No. 1 Mine (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. The longwall mining equipment in use at the mine is powered by 950-volt, a.c. electricity. The circuit breakers and cables used in this medium-voltage system are at the practical limits of safe and efficient operation.

3. This equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors and leads to excessive strain on equipment and high current loads in the electric circuitry. In order to maintain compliance with overcurrent protection in low- or medium-voltage systems, it is necessary to split the loads and increase the number of cables. This increases the amount of cable handling and electrical connections that must be made and would expose miners to unnecessary hazards.

4. As an alternate method, petitioner proposes to use 2400-volt a.c. cables and equipment to power permissible longwall mining equipment within 150 feet of pillar workings, such as the longwall gob, or inby the last open crosscut with specific conditions as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 30, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28054 Filed 12-5-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-218-C]

R & F Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R & F Coal Company, 538 N. Main Street, Cadiz, Ohio 43907 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandonment) to its Hart No. 2 and No. 3 Mine (I.D. No. 33-02688), (Impoundment No. 1211-OHO8-02688-01) located in Guernsey County, Ohio and its Furbay-Beem Mine (I.D. No. 33-03929) Impoundment No. 1211-OH8-3929-01) located in Tuscarawas County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that prior to abandonment of any water, sediment, or slurry impoundment and impounding structure, the person owning, operating, or controlling such an impounding structure submit to and obtain approval of the District Manager a plan for abandonment based on current, prudent engineering practices which shall contain provisions to preclude the probability of future impoundment of water, sediment or slurry, provide for major slope stability, and include a schedule for the plan's implementation.

2. The sediment ponds are not on property owned by R & F Coal Company, and the property has been completely reclaimed in the watershed areas in which the ponds are located. Petitioner proposes to permanently leave the ponds, in lieu of conducting the weekly inspections, as requested by the landowners. In support of this request, petitioner states that—

(a) The landowners have agreed to take care of the impoundments, take over full responsibility regarding the necessary equipment and to be aware of contractors availability to do any necessary work;

(b) It will not reduce the safety of the miners due to the fact that the work has been completed in these areas and there are no miners working near the watershed areas; and

(c) The dams are stable and will remain stable. The stillways were designed to pass a 100 year storm with adequate free board. These are low hazard areas with very little potential danger to anyone or anything.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Dated: November 30, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28055 Filed 12-5-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-221-C]

Rhen Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rhen Coal Company, R.D. No. 3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Skidmore Slope (I.D. No. 36-08031) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are

nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. The mine is damp and dust concentrations are low.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 30, 1988.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 28056 Filed 12-5-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-16-M]

Southwestern Portland Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Southwestern Portland Cement Company, P.O. Box 1547, Odessa, Texas 79760 has filed a petition to modify the application of 30 CFR 56.14107 (moving machine parts) to its Odessa Plant (I.D. No. 41-00060) located in Ector County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that moving machine parts be guarded to protect persons from gears, sprockets, shafts, and similar moving parts that can cause injury.

2. As an alternate method, petitioner proposes to weld expanded metal grating to the interal structural steel of the building, in a vertical position, to enclose the gears, sprockets and drives. This unit is seven feet in height, measuring from the floor, and is supported at the bottom and top with angle iron. Angle iron is also used as support at approximate four-foot vertical intervals. A section of this vertical guard is used as the door to get into the equipment, it is secured with a hasp and is padlocked. The key is kept by the quarry manager.

3. In support of this request, petitioner states that—

(a) There are no regular employees that work in this area. The crusher operator's station is located in the first floor overlooking the truck dumping area;

(b) There are no regular cleanup or maintenance employees at the quarry crusher building; and

(c) All grease fittings or oil tubes have been extended from the equipment to the outer edge of the guard.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Date: November 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28057 Filed 12-5-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-223-C]

Summit Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Summit Coal Company, R.D. No. 1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Summit Slope (I.D. No. 36-07981) located in Schuykill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet a minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inpection at that address.

Date: November 29, 1988.

Patricia W. Silvey,

Director, Office of Standard, Regulations and Variances.

[FR Doc. 88-28058 Filed 12-5-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-15-M]

Sunshine Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, P.O. Box 1080, Kellogg, Idaho 83837 has filed a petition of modify the application of 30 CFR 57.16017 (hoisting heavy equipment or material) to its Sunshine Mine (I.D. No. 10-00089) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that where the stretching or contraction of a hoist rope could create a hazard, chairs or other suitable blocking are required to be used to support conveyances at shaft landings before heavy equipment or material is loaded or unloaded.

2. Petitioner states that application of the standard would result in a diminution of safety to the personnel traveling in the shaft because:

(a) The conveyance, moving at a normal man-hoisting speed, could strike a chair or similar arresting device while passing a shaft station; and

(b) The use of chairs or similar devices requires great skill and concentration on the part of hoistmen.

3. As an alternate method, petitioner proposes to utilize forklifts, tuggers, or overhead crawl hoists in a manner that removes personnel from exposure to sudden movement of heavy loads.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 30, 1988.

[FR Doc. 88-28059 Filed 12-5-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

MET Electrical Testing Co., Inc.; Variance Application

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the application of the MET Electrical Testing Company, Inc., for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The late date for interested parties to submit comments is February 6, 1989.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, at the above address, Telephone: (202) 523-7193.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that the MET Electrical Testing Company, Inc., has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35763), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the place of employment that will be affected by the application is as follows: MET Electrical Testing Company, Inc., Laboratory Division, 916 West Patapsco Avenue, Baltimore, Maryland 21230.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The MET Electrical Testing Company, Inc., further states that it has inhouse the complete equipment, facilities, capabilities and personnel to perform accurate tests and produce creditable findings, objectively and without bias, as well as the facilities and personnel which are necessary to inspect production runs, conduct field (follow-up) inspections, implement control procedures and assure initial and continued compliance with the referenced standard on the listed equipment. In addition, MET states that it has effective procedures for handling complaints and disputes of all interested parties under a fair and reasonable system.

The applicant states that it is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested. Further, it asserts that no single client, with the exception of the U.S. Government, produces revenues greater than 3% of its total revenue.

Background

MET Electrical Testing Company, Inc. (MET) was incorporated in Baltimore, Maryland in October, 1959, as Eastern Electrical Testing Laboratories, according to the applicant. The name was changed one year later to Maryland Electrical Testing Company to eliminate confusion between the acronym "EETL" and similar acronyms of other laboratories. In 1973, the applicant states that the Company's expansion into Pittsburgh, Pennsylvania necessitated an additional name change to the present one of MET Electrical Testing Company, which removed the restrictive "Maryland" from the Company's name. However, according to the applicant, MET has been corporately the same organization since its inception in 1959. Since that time, MET has expanded further by purchasing the Burlington Testing Company of Burlington, New Jersey.

MET also has, according to the applicant, sought and gained recognition in each particular area of service where

recognition and accreditation of independent laboratories was available, including the National Voluntary Laboratory Accreditation Program (NVLAP) for telecommunications and computing equipment, and the American Association of Laboratory Accreditation (A2LA). It has also received additional accreditations from numerous jurisdictions including states, cities, municipalities, and federal government agencies including the U.S. Coast Guard, the U.S. Navy, the U.S. Army and the Nuclear Regulatory Commission.

The applicant also states that it is active on many national standards committees.

The Laboratory Division, which is located at the Baltimore, Maryland address of the applicant, consists of 21 employees, as follows: 1—Laboratory Director, 3—Project Engineers, 2—Engineers, 2—Junior Engineers, 4—Senior Technicians, 4—Test Technicians, 2—Group Administrators, 1—Sales Engineer, 1—Clerical, 1—Machinist.

MET has submitted copies of the job responsibilities and qualifications for each of the technical positions listed above.

The applicant has submitted the following list of equipment where accreditation is requested for the MET Laboratory Division. It has also stated that all of the standards listed for Laboratory Listing and Labeling may be used in commerical or industrial products that are within the OSHA jurisdiction. All of the test standards that the applicant has indicated it will use are appropriate test standards within the meaning of 29 CFR 1910.7(c).

The listing is by MET product category.

(1) Audio/Video Equipment

ANSI/UL #1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL #1410—Television Receivers and High-Voltage Video Products

(2) Energy Monitoring Equipment

ANSI C12.1—Code for Electricity Meters
IEEE/ANSI C57.13—Terminology and Test Code for Instrument Transformers

(3) Food Preparation Equipment

ANSI/UL #197—Commercial Electric Cooking Appliances
ANSI/UL #471—Commercial Refrigerators and Freezers
ANSI/UL #982—Motor-Operated Household Food Preparing Machines

(4) Heating, Ventilation

ANSI C33.76—Industrial Control Equipment
ANSI B191.1—Heat Pumps
ANSI/UL #465—Central Cooling Air Conditioners
ANSI/UL #484—Room Air Conditioners
ANSI/UL #499—Electric Heating Appliances
ANSI/UL #559—Heat Pumps
ANSI/UL #883—Fan-Coil Units and Room Fan-Heater Units
ANSI/UL #1025—Electric Air Heaters
ANSI/UL #1042—Electric Baseboard Heating Equipment

(5) Industrial Control Equipment

ANSI/UL #508—Electric Industrial Control Equipment

(6) Lighting Fixtures

ANSI/UL #153—Portable Electric Lamps
ANSI/UL #676—Underwater Lighting Fixtures
ANSI/UL #1670—Fluorescent Lighting Fixtures
ANSI/UL #1571—Incandescent Lighting Fixtures

(7) Medical and Dental Equipment

ANSI C33.100—Medical and Dental Equipment
ANSI/UL #187—X-Ray Equipment
ANSI/UL #544—Electric Medical and Dental Equipment
ANSI/UL #1069—Hospital Signaling and Nurse-Call System

(8) Motor Operated Equipment

ANSI C33.36—Motor Operated Appliances
ANSI C33.76—Industrial Control Equipment
ANSI/UL #507—Electric Fans
ANSI/UL #705—Power Ventilators

(9) Office/Business Equipment

ANSI/UL #114—Electric Office Appliances and Business Equipment
ANSI/UL #478—Information-Processing and Business Equipment
ANSI/UL #1459—Telephone Equipment

(10) Residential Appliances

ANSI/UL #73—Electric Motor-Operated Appliances
ANSI/UL #507—Electric Fans

Components Standards

ANSI/UL #73—Electric Motor-Operated Equipment
ANSI/UL #94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL #507—Electric Fans
ANSI/UL #746C—Polymeric Materials—Use in Electrical Equipment Evaluation
ANSI/UL #796—Electrical Printed-Wiring Boards

Note.—Component Standards. Several component standards may be used in an evaluation of a particular product. This will depend upon the listing status of the components. If a component is currently listed by Underwriters' Laboratories, Inc. (UL) or, in the future, other OSHA accredited NRTL's, then it will be accepted by MET. The components will, however, be evaluated for use in the particular application.

Note.—Specific Product Standards. Many American National Standard Institute (ANSI) standards have been adopted for the evaluation of specific products. MET may use such standards as necessary in conjunction with various component standards in order to evaluate the particular products.

Preliminary Finding

Based upon all of the foregoing, and on the results of an on-site review of the applicant's testing facilities and administrative and technical practices, the Assistant Secretary has made a preliminary finding that MET electrical Testing Company, Inc., can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements of a Nationally Recognized Testing Laboratory, listed in 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than February 6, 1989, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210. Copies of the MET application, the written staff recommendation and accompanying laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–1–88), are available for inspection and duplication at the Docket Office, Room N2634, Occupation Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC, this 29th day of November 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–28064 Filed 12–5–88; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological, Behavioral, and Social Sciences; Renewal

The Advisory Committee for Biological, Behavioral, and Social Sciences is being renewed for an additional two years.

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the renewal of this Committee is necessary and in the

public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

December 1, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-28018 Filed 12-5-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-440, 50-441]

Cleveland Electric Illuminating Co., et al., Perry Nuclear Power Plant, Units 1 and 2; Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC), has issued a final director's decision concerning a petition dated September 22, 1987, filed by Ms. Connie Kline, Ms. Theresa Burling, Mr. Russ Bimber, and Mr. Ron O'Connell, on behalf of Concerned Citizens of Lake County, Concerned Citizens of Geauga County, and Concerned Citizens of Ashtabula County (petitioners). Supplements to the petition were submitted on October 8, 1987, and April 8 and July 25, 1988. Among other things, the petitioners requested that the NRC issue an order to the Cleveland Electric Illuminating Company, et al., to correct alleged deficiencies in a public information handbook on emergency planning for the Perry Nuclear Power Plant. The petitioners alleged that this handbook contained false and misleading information concerning nuclear power and nuclear accidents at power plants that was likely to persuade those reading it to minimize or disregard the need for emergency planning.

The Director has now determined that most of the petitioners' requests in their July 25, 1988 supplemental petition should be denied for the reasons explained in the "Final Director's Decision Under 10 CFR 2.206" (DD-88-19), which is available for inspection in the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the local Public Document Room for the Perry Nuclear Power Plant at the Perry Public Library, 2753 Main Street, Perry, Ohio 44081.

A copy of the decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Rockville, Maryland, this 29th day of November 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28021 Filed 12-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co., Point Beach Nuclear Plant, Units Nos. 1 and 2; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Facility Operating License Nos. DPR-24 and DRP-27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site in Manitowoc County, Wisconsin.

The proposed amendment would revise the provisions in the Point Beach Nuclear Plant, Unit Nos. 1 and 2, Technical Specifications (TS's) relating to the design and operation of the Point Beach fuel cycle with upgraded core features and at higher core power peaking factors (F_Q and F_H) than are currently permitted by the plant TS.

Specifically, the proposed amendment would incorporate higher core power peaking factors. The higher peaking factors will allow the use of a low-low leakage loading pattern (L4P) fuel management strategy, which will result in decreased neutron fluence to the reactor vessel. This fluence reduction will help address reactor vessel irradiation damage issues such as pressurized thermal shock, low upper shelf material toughness and pressure-temperature restrictions on heatup and cooldown. The higher core power peaking factors will allow additional fluence reduction measures, such as the use of peripheral power suppression assemblies, to be pursued.

In addition to the increase in core power peaking factors, the proposed changes and reanalysis supporting them would permit the use of an upgraded fuel product features package. The upgraded fuel product features include: Removable top nozzles, integral fuel burnable absorbers, axial blankets, extended burnup geometry, and inclusion of a debris filter bottom nozzle. Finally, the reanalysis for this proposed amendment supports the removal of the fuel assembly thimble plugging devices and the elimination of the third line segment of the K(z) curve.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 5, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its propsoed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 26, 1988 as supplemented October 28, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 30th day of November 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28022 Filed 12–5–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26327; File No. SR–NSCC–88–9]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Securities Clearing Corporation Relating to Securities Clearing Group

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is filed as Exhibit "A".[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to set forth in a Statement of Policy to be added to NSCC's rules, the basis for NSCC's ability to enter into an information sharing agreement with other SEC registered clearing agencies. The agreement is the formalization of the efforts of the Securities Clearing Group, which is comprised at the present time of seven clearing agency self-regulatory organizations. The goal of the group is to identify and create procedures to minimize risks posed by participants in more than one clearing agency self-regulatory organization. The key method for achieving this goal, will be the sharing of appropriate financial, operational and clearing data on common participants among members of the SCG for regulatory purposes.

(b) NSCC derives the authority to join the SCG and sign the agreement from both its own rules and the Securities Exchange Act of 1934 ("the Act"). NSCC is currently authorized, to share clearing data with other SEC regulated self-regulatory organizations pursuant to NSCC's Rule 49. In addition, Rule 15 allows NSCC to examine members' financial and operational conditions, and to receive information from other self-regulatory organizations relevant to such examinations. The standards for confidentiality of the information are those maintained by the members' regulatory organization. Further, section 17A(b)(3) of the Act itself requires, among other things, that rules of clearing agency self-regulatory organizations must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to protect investors and the public interest. Section 19(g)(1) of the Act requires clearing agencies to enforce compliance by their members with their rules.

Therefore, the Statement of Policy reiterates NSCC's existing rules and the sections of the Securities Exchange Act which allow NSCC to share information as contemplated by both the agreement and the SCG. In addition, the Statement

[1] For a copy of the text of the proposed rule change, *see* Securities Exchange Act Release No. 26300 (November 21, 1988), 53 FR 48353 (November 30, 1988).

of Policy will provide a framework for possible future information sharing projects as contemplated by the Act. This information will (1) help the members of the Securities Clearing Group to recognize conditions of a participant which could indicate failure and (2) contribute to NSCC's safeguarding of securities and funds in its custody or control.

The actions of NSCC and/or the SCG are not intended as, nor shall they be deemed to be, a limitation on the rights of NSCC or other registered clearing agencies to continue to share data on dual or sole members with other self-regulatory organizations for regulatory purposes. For the foregoing reasons, the Statement of Policy is consistent with the requirements of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received.

III. Data of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–88–09 and should be submitted by December 27, 1988. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 30, 1988.

[FR Doc. 88–28047 Filed 12–5–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16666; 812–7120]

Growth Industry Shares, Inc., et al.; Application

November 30, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Growth Industry Shares, Inc. ("GIS"), William Blair Ready Reserves, Inc. ("WBRR") and any future fund for which William Blair & Company serves as distributor or investment adviser.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 32(a)(1).

Summary of Application: Applicants seek an order to permit them to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of directors meeting held within thirty days before or ninety days after the beginning of each Applicant's respective fiscal year.

Filing Date: The application was filed on September 16, 1988, and amended on November 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o William Blair & Company, 135 South LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or H. R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Applicant is a diversified, open-end management company registered under the Act and incorporated under the laws of the State of Maryland.

2. GIS has typically held annual meetings of its shareholders during each fiscal year. Generally, the board of directors has selected independent public accountants at a meeting held subsequent to the fiscal year end and prior to the annual meeting of shareholders, and the selection was ratified by the shareholders. WBRR has not held a shareholders meeting since the public offering of its shares commenced in June of 1988. WBRR anticipates holding its first meeting of shareholders in 1989. Because the corporate law of Maryland does not require annual shareholders meetings, Applicants do not intend to hold shareholders meetings unless stockholder action is needed. Accordingly, under the provisions of section 32(a)(1), Applicants would be required to select their independent public accountants within thirty days before or after the beginning of each Applicant's respective fiscal year.

3. The selection of the independent public accountants for each Applicant is predicated on the recommendations of its audit committee ("Committee"). The Committees are composed of disinterested directors serving on the board of directors of each Applicant.

The Committees meet formally once a year with the independent public accountants to discuss the audit plan, significant audit procedures to be implemented, and projected costs. Upon completion of each Applicant's audit, the Committees review the results. Based on the meeting and the results of the prior year's audits, the Committees formulate recommendations for consideration by the respective boards of directors with respect to the selection of the independent public accountants.

4. Applicants presently employ the same independent public accountant and expect to continue such practice in the future. Absent the payment of extraordinary fees it is unlikely that the audits would be completed in time for the directors to review the accountant's performance and fees for the previous year prior to the selection of auditors for the next year. In addition, the more limited time period prescribed by the section 32(a)(1) in situations where there is no annual meeting would make it more difficult for the directors to coordinate their schedules to enable them to attend meetings.

5. Permitting the request for expansion of the aforementioned time period to ninety days after the beginning of each Applicant's fiscal year would allow for review procedures that would provide the Committees with a more realistic time frame for a detailed review of the services and results furnished by the independent public accountants and enable the directors to give sufficient consideration to all of the information submitted by the Committees prior to making their selection. Accordingly, Applicants believe that expanding the thirty day period under section 32(a)(1) will permit a more efficient and thorough consideration of the independent public accountants.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28048 Filed 12-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24764; 70-7383 and 31-838; Administrative Proceeding File No. 3-7097]

Noverco Inc. et al.; Order for Hearing on Proposed Acquisition of Securities of Exempt Holding Company and on Application for Exemption

December 1, 1988.

Noverco Inc. ("Noverco"), 1170 Peel Street, Suite 410, Montreal, Quebec H3B 4P2, Canada, has filed an application pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act") to acquire certain securities and an application for exemption pursuant to section 3(a)(5) of the Act. The two matters have been consolidated. A notice of the filing of the two applications was issued by the Commission on April 7, 1988 (HCAR No. 24619). No requests for a hearing were filed, but comments have been received from the Vermont Public Service Board, the Vermont Department of Public Service, Senator Patrick Leahy of Vermont, and Northeast Utilities, a registered holding company.

2425 Quebec Inc. ("Quebec Inc."), a Quebec corporation, and SOQUIP, a Quebec joint stock company created by statute whose sole shareholder is the Quebec Government, respectively own 19.88% and 15.36% of the common stock of Noverco. Caisse de depot et placement du Quebec ("Caisse"), a Quebec corporation created by statute and an agent of the Quebec government, owns 2.38% of the common stock of Noverco and exercises the voting rights attached to an additional 13.21% of such stock. These three companies are claiming exemption from the Act as holding companies in accordance with Rule 10(a)(4) under the Act, which rule exempts them since they have a subsidiary company (Noverco) which is a holding company that has a pending application for an order of exemption under section 3(a)(5). They have joined the Noverco's application under sections 9(a)(2) and 10 of the Act.

Noverco is a Canadian public-utility holding company and is temporarily exempt from the Act by virtue of having filed an application for exemption pursuant to section 3(a)(5) on June 24, 1987. It is a publicly held corporation with 51,933,615 shares of capital stock outstanding at September 30, 1987. Noverco has not issued or sold its capital stock or any other of its securities in the United States, nor is its stock publicly traded in the United States. Its principal subsidiary, wholly owned, is Gaz Metropolitan, Inc. ("GMI"), a Quebec corporation that distributes natural gas in Quebec, including Montreal. In fiscal year 1987, GMI accounted for about 95% of Noverco's consolidated revenues of approximately $743 (U.S.) million. Noverco's consolidated assets at year-end were about $1 (U.S.) billion, and net property, plant, and equipment totaled about $697 (U.S.) million. Noverco has certain nonutility subsidiary companies doing business in Canada.

Noverco proposes to acquire the outstanding common stock of Northern New England Gas Corporation ("NNEG"), a Vermont corporation which owns the outstanding common stock of Vermont Gas System Inc. ("VGS") a gas utility company and a Vermont corporation. VGS provides gas distribution service to communities in the northwest part of Vermont, including the greater Burlington area. It currently owns and operates 55 miles of transmission mains, extending from the Canadian border at Phillipsburg, Quebec/Highgate Springs, Vermont, to Burlington, and 266 miles of distribution lines. It holds an exclusive franchise to provide natural gas throughout the entire state of Vermont. Its exclusive supplier is TransCanada Pipelines, Ltd., which also is the major supplier of GMI. For the fiscal year 1987, VGS' utility revenues were about $24.3 million, its total assets at year-end were about $24.6 million, and its net utility plant was about $17.2 million.

VGS has outstanding 100 shares of common stock, $1 par value, all owned by NNEG, which was organized in 1983 to acquire the VGS common stock. The VGS acquisition was financed by loans of $12 million to NNEG and by the sale by NNEG of 5,000 shares of its common stock, $1 par value, to Energy Future Limited Partnership ("EFLP"), a Vermont limited partnership, for $750,000. Both NNEG and EFLP are exempt intrastate holding companies under section 3(a)(1) of the Act in accordance with Rule 2 under the Act. The limited partnership interests in EFLP constitute 99% of the partnership interests of EFLP. On December 30, 1986, the limited partnership interests were acquired by Noverco from its owners for $10,395,000. It is proposed that upon the contemplated dissolution of EFLP and upon payment of $105,000 to the general partner of EFLP for his interest, Noverco will acquire and own directly the common stock of NNEG.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a public hearing be held with respect to the proposed acquisition and the application for exemption and that interested persons be afforded an opportunity to be heard at such hearing with respect to such matters. Accordingly,

It is ordered, pursuant to section 19 of the Act, that a hearing be held on the applications under the applicable provisions of the Act and the Rules of the Commission at a time and place to be fixed by further order, as provided by Rule 6 of the Commission's Rule of Practice (17 CFR 201.6), and that an Administrative Law Judge, to be designated by further order, preside at

said hearing. Any person, other than Noverco, Quebec Inc., SOQUIP, and Caisse, desiring to be heard or otherwise wishing to participate in that proceeding is directed to file with the Secretary of the Commission, on or before December 27, 1988, an application, as provided by Rule 9 of the Commission's Rule of Practice (17 CFR 201.9), setting forth the nature and extent of such person's interest in the proceeding and any issues deemed to be raised by this Notice and Order or by the applications. A copy of that request shall be served personally upon Noverco, Quebec, SOQUIP, and Caisse at the address noted above, and proof of such service (by affidavit or, in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing and any adjournments thereof, as well as of other actions of the Commission involving the subject matter of this proceeding.

The Division of Investment Management has advised the Commission that it has examined the applications and the comment letters received by the Commission and that, upon the basis thereof, the following questions are presented for consideration, without prejudice to the Commission's specifying additional questions upon further examination:

(1) Whether the proposed acquisition by Noverco of the common stock of NNEG meets the standards of section 10 of the Act, particularly subsection (c)(2).

(2) Whether Noverco should be granted an exemption from the Act in accordance with section 3(a)(5), particularly in light of the size of VGS' gas utility business.

(3) What terms or conditions, if any, the Commission should impose if the proposed acqusition and/or exemption requests are approved.

(4) Generally, whether the proposed acqusition and exemption are in all respects compatible with the provisions and standards of the applicable sections of the Act and of the rules promulgated thereunder.

It is further ordered that attention should be given to the foregoing questions at the hearing.

It is further ordered that the Division of Investment Management shall be party to the proceeding.

It is further ordered that the Secretary of the Commission shall give notice of the hearing by mailing copies of this Notice and Order by certified mail to Noverco, Quebec Inc., SOQUIP, and Caisse at the address noted above, to the Vermont Public Service Board and the Vermont Department of Public Service both located at 120 State Street, State Office Building, Montpelier, Vermont 05602, Senator Patrick Leahy, United States Senate, Washington, DC 20549, and Northeast Utilities, P.O. Box 270, Hartford, Connecticut 06141–0270; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the "SEC Docket"; and that an announcement of the hearing shall be included in the "SEC News Digest."

By the Commission.

Dated: December 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28049 Filed 12–5–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council; Public Meeting; Puerto Rico

The Small Business Administration Region II Advisory Council located in the geographical area of Hato Rey, Puerto Rico, will hold a public meeting at 9:00 a.m., Tuesday, December 6, 1988, at Room 691, Federal Building, Carlos Chardón Avenue, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the Small Business Administration or others attending.

For further information, write or call Carlos E. Chardón, District Director, Small Business Administration, Federal Building, Room 691, Carlos Chardón Avenue, Hato Rey, Puerto Rico 00918—(809) 766–5002.

Jean M. Nowak,

Director, Office of Advisory Councils

November 25, 1988.

[FR Doc. 88–27989 Filed 12–5–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 06/06–0296]

Live Oak Capital Partners, Ltd.; Application for License to Operate as a Small Business Investment Company

An application for a License to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*). has been filed by Live Oak Capital Partners, Ltd., 4900 First City Center, 1700 Pacific Avenue, Dallas, Texas 75201, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988). The company is being organized as a limited partnership.

The general partners and the sole limited partner of Live Oak Capital Partners, Ltd. are as follows:

Name and address, and title	Percent of ownership
Live Oak Capital Advisors, Inc., 4900 First City Center, 1700 Pacific Avenue, Dallas, Texas 75201; Corporate General Partner (CGP)	0.90
Joseph F. Langston, Jr., Route 3, Box 185, Kaufman, Texas 75142; Individual General Partner	0 10
John Hancock Mutual Life Insurance Company, 200 Clarendon Street, Boston, Massachusetts 02117; Sole Limited Partner	99.00

The officers, directors and sole stockholders of the CGP are:

Name and address, and position	Ownership (percent)
Joseph F. Langston, Jr.; President and Director	100
F. Lee Robinson, 745 Gilpin Street, Denver, Colorado 80218; Director	0
Robert L. Simmons, 3517 Hilltop Lane, Plano, Texas 75023; Secretary and Director	0

The Applicant will begin operations with a capitalization of $1,050,000. The source of initial capital of the Applicant will be $1,039,500 from John Hancock and $10,500 from the corporate and individual general partners. The applicant will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to invest in general manufacturing, technology and service industries. The Applicant intends to operate in Texas, but may expand its activities to Oklahoma, Louisiana and other areas in the mid-continent region of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Act and the Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 29, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27991 Filed 12-5-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 45959]

United States-Mexico All-Cargo Service Proceeding; Prehearing Conference

The prehearing conference in this proceeding will be held on Thursday, January 5, 1989 at 10:00 a.m. in Room 5332, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

On or before December 28, 1988, the parties shall submit one copy to each other and four copies to the Judge of (1) any proposals for changes in the evidence request contained in Appendix C to Order 88-11-37; (2) proposed procedural dates; (3) proposed stipulations; and (4) a statement of position.

Dated at Washington, DC, November 30, 1988.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 88-28051 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 45959]

United States-Mexico All-Cargo Service Proceeding; Assignment of Proceeding

November 30, 1988.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, Washington 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88-28052 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Customs Service

Overstatement of Charges on Entry Documentation

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of Customs investigations of overstatement of charges on entry documentation.

SUMMARY: Entry documentation covering merchandise imported into the U.S. is required by law to set forth all charges upon merchandise. The actual amounts paid to freight and insurance companies, less any discounts, bonuses or rebates paid by the freight and insurance companies to the seller, must be reflected on the documents. It has come to the attention of Customs that many invoices set forth overstated freight and insurance charges as the invoices do not reflect the discounts, commissions, bonuses or rebates received by the shippers or manufacturers from the freight and insurance companies. This document notifies the public that Customs is currently investigating such practices.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Fischer, Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-6188).

SUPPLEMENTARY INFORMATION:

Background

All invoices for imported merchandise are required by 19 U.S.C. 1481(a)(8), and § 141.86(a)(8), Customs Regulations (19 CFR 141.86(a)(8)), to set forth all the charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, coverings, and cost of packing. Pursuant to 19 U.S.C. 1481(a)(9), and § 141.86(a)(9), Customs Regulations (19 CFR 141.86(a)(9)), invoices must also set forth all rebates allowed upon exportation of the merchandise.

The importer of record is required by 19 U.S.C. 1484(a)(1)(B) to file such documentation as is necessary to enable the appropriate Customs officer to assess the proper duties on merchandise, collect accurate statistics with respect to merchandise, and determine whether other applicable requirements of law are met. Such documents required by Customs include the entry summary, Customs Form 7501. Pursuant to § 141.61(e)(1), Customs Regulations (19 CFR 141.61(e)(1)), the applicable information required by the General Statistical Headnotes, Tariff Schedules of the U.S. (TSUS), shall be shown on the entry summary. General Statistical Headnote 1(a)(xiv) provides that when persons making customs entry of articles imported into the customs territory of the U.S. complete the entry summary, they shall include the aggregate cost, in U.S. dollars, of freight, insurance and all other charges, costs and expenses incurred in buying the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry.

It has come to the attention of Customs that some importers are overstating freight and insurance charges on entry documentation by not reflecting accurately discounts, commissions, bonuses or rebates received by the shippers or manufacturers from freight and insurance companies. This has resulted in undervaluation of imported merchandise as the value of the merchandise is determined pursuant to 19 U.S.C. 1401a as the total payment made by the buyer, exclusive of any costs, charges or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise. Customs has further learned that some shippers and manufacturers are receiving the excess monies and/or discounts in CIF and FOB prepaid transactions.

Pursuant to 19 U.S.C. 1485(a), every consignee making an entry is required to declare on the entry that the prices set forth in the invoice are true to the best of his knowledge and belief; that all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and that he will produce at once to the appropriate Customs officer any invoice, paper, letter, document or information received showing that any such prices or statements are not true or correct. Accordingly, overstating freight and insurance charges is a violation of 19 U.S.C. 1485(a). Violation of 19 U.S.C. 1485(a) could result in a penalty under 19 U.S.C. 1592.

The purpose of this notice is to notify the importing public that Customs is currently investigating the practice of overstating freight and insurance charges on import documents. Manufacturers, exporters, and importers who have engaged in the aforementioned practices are encouraged to make duty tenders and provide all pertinent information to U.S. Customs. These actions may be considered an extraordinary mitigating factors with respect to any possible civil

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penalty action that might be commenced against the importer.

William von Raab,

Commissioner of Customs.

Approved: November 10, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88-27983 Filed 12-5-88; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Youth Exchange Program

The Bureau of Educational and Cultural Affairs, Youth Exchange Staff of the U.S. Information Agency announces its intention to fund a series of educational and cultural projects during 1989 and seeks written expressions of interest and capability on the part of private sector organizations that wish to be considered for grants to conduct these projects. This is not a request for proposals. Interested, potentially qualified organizations will be sent letters inviting them to submit detailed proposals and guidelines for these submissions once the Agency has developed specific solicitations. In each instance at the time of solicitation a limited number of organizations will be competing with each other in bidding on a project design. The list of competing organizations will include, but not necessarily be limited to, those that respond to this invitation and will be developed based on professional staff assessment of relevant qualifications.

Unless otherwise indicated below, the typical project is a short-term (4–6 week) group activity for participants identified by USIS posts overseas to be conducted during the summer months of 1989. The components of the programs will vary, depending on the theme, age of participants, length of stay, and other specifications. These projects are also primarily designed for international youth, not Americans, unless otherwise indicated.

Programs are authorized under Pub. L. 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose "purpose is to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life.

Respondents are hereby notified that budgetary constraints may prevent some of these projects from being funded in the final analysis.

Eligibility

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the nature of the project on which they are bidding. Organizations in existence less than four years will only be eligible for grants under $60,000. Experience programming international visitors is desirable.

Western Europe

Germany

A. Congressional interns—a program for 8 West German youth aged 20–25 to provide them with a two-month experience in national and regional legislative affairs in the U.S., including internships in congressional offices and exposure to various regions of the U.S.

B. Journalists—a 6-week program for 6 young West German journalists to experience living in the U.S. and serving as interns in media organizations.

France

A. A project in France on the theme of the Bicentennial of the French Revolution for a group of American high school youth. A reciprocal project for a group of French youth on the theme of liberty and equality will also be conducted. The French Government will share in the cost of the projects.

B. A project to send a delegation of policically active American youth aged 18–25 to Paris in the summer of 1989 for a youth conference entitled "Paris '89" organized by youth wings of international political movements.

Spain

A project for a group of university student leaders from Spain on the theme of the 500th anniversary of Columbus' first voyage to the New World. The project will focus on the creation of "the American" culture and the contributions of various ethnic groups to its development.

Portugal

A project for university student leaders on the theme of leadership development.

United Kingdom

A. A project for student union university leaders to learn about the structure of the U.S. Government, higher education, democracy in a pluralistic society, and the foreign policy process, with special emphasis on international security affairs.

B. As two-way exchange project for top U.S. and U.K. students of one or more leading university drama departments.

A regional European project on the theme of "Challenge of Federalism" for leaders of youth wings of political parties.

Africa (Sub-Saharan)

A. American Studies—A 2-way 4–6 week project for African students of American studies in universities that have links with American universities.

B. Constitutional Law—A 4-week project for students of law in anglophone countries focusing on the U.S. Constitution and the practice of law in the U.S.

C. Arts—A 4-week project for young performing and visual artists from francophone African countries to explore the arts in America. Program will be conducted in French.

D. Sciences—A 4-week project for gifted students in science and math (upper high school level), preferably to attend a summer enrichment activity focusing on science and math.

American Republics (Latin America/the Caribbean)

Mexico

A. Arts and Crafts—A 4-week project for young folk artists and craftsmen to learn about the U.S. crafts heritage and to demonstrate their skills.

B. Political Process—a 4-week project for university students and politically active youth leaders on U.S. political processes, with special reference to the transition from one administration to another; also U.S.-Mexican relations.

C. U.S.-Mexican Relations—A 3-week project to send a group of U.S. university students interested in U.S.-Mexican relations to Mexico to meet with Mexican university students. The USIA grant will be primarly for international travel and partial per diem, with modest additional funding for the organization's administrative expenses.

Uruguay

The Agency will sponsor a 6-week program for American students in community colleges to attend classes in Spanish, history and culture at the Binational Center (BNC) in Montevideo during summer 1989. The Agency grant will be primarily for international travel only for 20–25 students, with modest additional funding for the organization's administrative expenses. Hosting will be provided by the BNC.

Regional Projects

A. Young Diplomats—A 4-week project for students from Latin

American diplomatic academies with a focus on the U.S. foreign policy process.

B. Community Development/Youth Leaders—A project to expose young community leaders to grass-roots development activities in the U.S. the Program should accommodate non-English speakers.

C. Arts—A project for young talented visual artists focusing on the arts and art education in the U.S. The program will be designed for Spanish speakers.

East Asia/Pacific

Korea

A project to bring ten Korean graduate students in political science to the United States for a period of six weeks with a focus on bilateral political, security and economic issues. Part of the program should be at a college or university. Other foci will be on such institutions as the mass media, community action groups, consumer organizations, and organized labor.

The Philippines

A five-week project to bring six to eight young political leaders to the United States to study the development of political institutions in the United States, the diversity of American culture and issues in the bilateral relationship. They will also examine the particular role of the mass media in formulating popular opinion.

Thailand

A 3-week project for ten to twelve leaders of Thai University student unions with a focus on the American political process and issues facing American young people, especially those on university campuses. The students would observe how Americans actively participate in the political process, the workings of federalism, the role of lobbyists and the meaning of the separation of powers at the federal level.

Regional Projects

A. A project to bring twelve to sixteen young leaders from the fields of business and economics to the United States to become familiar with American perspectives on international trade issues. They will examine U.S. economic history with a particular focus on the varied patterns of development which existed in different regions of the country.

B. A project to bring six to eight young leaders from the Pacific Island nations to the United States for four to five weeks to study the American political process, with a particular focus on the development of regional governmental institutions. They would participate in leadership seminars and have homestays with American families.

Near East and South Asia

Egypt

A project to bring eight Egyptian students and young professionals from the fields of museum management and archeology to the United States for five weeks. The program would expose the young Egyptians to the latest information on museum management as well as preservation and restoration techniques and technology in the field of archeology.

India

A project to bring five Indian high school students, who are outstanding in the fields of science and mathematics, to the United States for six weeks.

Israel

A two-way exchange project for ten young journalists from each country. They will be introduced to the practice of journalism, including issues of ethics and censorship, through visits to media and governmental institutions. The program will include cultural visits and homestays.

Morocco

A project to bring ten graduate students and junior faculty in the field of American Studies to the United States for five weeks. The project would concentrate on the development of American literature, and expose the students to the diversity of American civilization and American institutions of higher education. American graduate students and junior faculty in North African Studies would travel to Morocco to complete this exchange.

Pakistan

A project to bring two Pakistani high school students, who are outstanding in the fields of science and mathematics, to the United States for about six weeks for summer enrichment activities.

Regional Project

A project for ten university students from various countries in the Near East and South Asia with a focus on the issue of ethnicity in American society. The participants will attend seminars on American cultural and religious diversity and visit sites of particular interest in this regard.

Multiregional Projects

These are projects for participants nominated by USIS posts worldwide.

A. Writers and animators of popular culture through graphic story-telling—A 4-week project for 15 professionals who create popular culture—comic books, comic strips and animated films.

B. International political affairs—American organizations with resources to put together diverse, well-balanced delegations of American youth interested in politics and international issues to participate in international youth activities and to program incoming delegations of leaders of similar youth, are invited to identify themselves.

Interested organizations are requested to respond in writing by December 30, 1988, so that they may be included in limited solicitations for project designs now being prepared.

A separate announcement is being published inviting proposals for exhanges of young people between the U.S. and the USSR and Eastern Europe. For further information on that program and on the projects listed above, please write to the Young Exchange Staff, U.S. Information Agency, Rm. 357, 301 4th St. SW., Washington, DC 20547, or call 202–485–7299.

Robert D. Persiko,

E/YX—Deputy Director.

[FR Doc. 88–28006 Filed 12–5–88; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

Jennings Randolph Program for International Peace; Fellowship Availability

The United States Institute of Peace announces the 1988–89 cycle of its annual international competition for fellowships from the Jennings Randolph Progam for International Peace. These followships enable professionals and scholars to undertake research and education projects that will increase knowledge and spread awareness on the part of the public and policymakers regarding the nature of violent international conflicts and the full range of ways to deal with them peacefully. Fellowships are awarded in three categories: Distinguished Fellow, Peace Fellow, and Peace Scholar.

Applications must be postmarked by February 1, 1989 in order to be considered in the current review cycle. For further information or application materials, please call or write: Jennings Randolph Program for International Peace, United States Institute of Peace, 1550 M Street NW., Suite 700, Washington, DC 20005–1708, (202) 457–1706.

Contact: Michael Lund, Director, Jennings Randolph Progam for International Peace.

Date: November 22, 1988.

Samuel W. Lewis,

President.

[FR Doc. 88–28029 Filed 12–5–88; 8:45 am]

BILLING CODE 3155–01–M

VOL 53 ISS 234 DE 6 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 234
Tuesday, December 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, December 12, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28152 Filed 12-2-88; 3:49 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 5, 12, 19, and 26, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 5

Friday, December 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Meeting with Public Officials Having Responsibility for Emergency Planning for Pilgrim Nuclear Power Plant (Public Meeting)

Week of December 12—Tentative

Thursday, December 15

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 19—Tentative

Monday, December 19

10:00 a.m.
Briefing on Status of NUREG-1150 (Public Meeting)

Tuesday, December 20

10:00 a.m.
Briefing on Current Status of Possible Use of Substandard Components in Nuclear Power Plants (Public Meeting)
2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)

Wednesday, December 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Week of December 26—Tentative

Friday, December 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) was held on December 1.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

December 1, 1988.

[FR Doc. 88-28124 Filed 12-2-88; 3:42 pm]

BILLING CODE 7590-01-M

POSTAL SERVICE

Board of Governors

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 47613, November 23, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: December 6, 1988.

CHANGE: Amend agenda by rescheduling Item 7b "Capital Investment—Multiline Optical Character Reader and Bar Code Sorter Automation" from December 6 Open Session to December 5 Closed Session.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-28116 Filed 12-2-88; 1:56 pm

BILLING CODE 7710-12-M

POSTAL SERVICE

Board of Governors

Vote To Close Meeting

By telephone on December 2, 1988, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for December 5, 1988, at the Hyatt Regency Westshore, 6200 Courtney Campbell Causeway, Tampa, Florida. The meeting will involve consideration of a capital investment for Multiline Optical Character Reader and Bar Code Sorter Automation.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title

5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–28117 Filed 12–2–88; 1:56 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 5, 1988.

A closed meeting will be held on Tuesday, December 6, 1988, at 2:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 6, 1988, at 2:00 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Settlement of administrative proceedings of an enforcement nature.

Formal orders of investigation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daughtery at (202) 272–2200.

Jonathan G. Katz,

Secretary.

December 1, 1988.

[FR Doc. 88–28108 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M

VOL 53 ISS 234 DE 6 1988 UMI

federal register

Tuesday
December 6, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1989 and Deadlines for Submission of Program Descriptions; Notice

VOL 53 ISS 234 DEC 6 1988 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88; 1885; FR 2575]

Notice of Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1989 and Deadlines for Submission of Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice announces the allocation of Rental Rehabilitation Program grant funds for cities with populations of 50,000 or more, urban counties, consortia of units of general local government, and States for Fiscal Year 1989. It also sets the dates by which Program Descriptions must be submitted to HUD for these potential grantees to be considered for actual grants based on these allocations.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, Telephone (202) 755–5970. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Formula Allocations

The Rental Rehabilitation Program is authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o), hereafter referred to as section 17. The Program's regulations are published at 24 CFR Part 511. Section 511.30 contains the formula for allocating Rental Rehabilitation Program funds. Cities having a population of 50,000 or more, urban counties, consortia of units of general local government having a combined population of 50,000 or more, and States are eligible to received formula allocations. Since the amount of funding available for allocation in Fiscal Year 1989 is $148.5 million, a reduction from the $198.5 million that was allocated for the program in Fiscal Year 1988, a number of localities that participated as formula grantees in Fiscal Year 1988 have a formula amount less than $50,000 in Fiscal Year 1989. Pursuant to § 511.31(b), published in the June 3, 1986 issue of the **Federal Register** (51 FR 20220), such localities may choose to accept their less-than-$50,000 formula amount as a direct grant or participate in their State's Program.

Appendix A to this Notice contains the formula allocations for cities and urban counties that receive an allocation of $50,000 or more. Appendix B to this Notice contains the minimum formula allocations for States. Appendix C to this Notice contains optional grant amounts for localities that participated in the Rental Rehabilitation Program last year as formula grantees that may elect to participate as formula grantees in Fiscal Year 1989, or may elect to participate in their State's Program.

The eligibility of cities with populations of 50,000 or more and urban counties for formula allocations is determined by whether they were so classified for purposes of the Community Development Block Grant Entitlement Program (24 CFR Part 570) for Federal Fiscal Year 1988. For city and urban county allocations, grant amounts have been rounded to the nearest thousand. The formula factors for allocating the Fiscal Year 1989 funds are the same as those used in prior Fiscal Years. Section 511.32 was suspended effective May 19, 1987 (52 FR 11466, April 9, 1987) and remains suspended. Thus, performance adjustments to potential grantees' formula allocations will not be made this year.

As noted above, the allocations indicated for States in Appendix B are the minimum amounts that they would receive. Amounts for those localities listed in Appendix C that do not elect to receive their formula allocations will be added to the published allocations for the appropriate States. If a locality elects to participate in a State Program (whether State-administered or HUD-administered), there is no assurance that it will receive funding, since funding in such programs is under procedures set by the State grantee (or HUD if the State's program is HUD-administered).

Deadline for Submitting Program Descriptions

Section 511.20(a) of the Program regulations states that cities, urban counties and consortia eligible to receive a grant based on a formula allocation must submit a Program Description to the appropriate HUD Field Office within 45 days of written notification of their Rental Rehabilitation fund allocation, and that States have 75 days from the date of written notification of their allocations to submit their Program Descriptions. Because HUD is publishing allocations this year, HUD regards the date of this Notice to be the date of written notification to all grantees of their fund allocations for the program. However, since those entities listed in Appendix C that would receive less than $50,000 have the option this year of applying directly to HUD or participating in a State Program, under § 511.31(b) they must notify the appropriate HUD Field Office of their decision within 30 days of publication of this Notice. This is necessary to allow HUD sufficient time to advise the affected States of any additional moneys that they will be allocated. However, if entities listed in Appendix C decide to participate as formula grantees, they still must submit a Program Description to the appropriate HUD Field Office within 45 days of the date of publication of this Notice. States that elect to participate in the Rental Rehabilitation Program must submit a Program Description to the appropriate HUD Field Office within 75 days of the date of publication of this Notice, and HUD will endeavor to notify States as soon as possible of any additional allocation amounts resulting from the elections of entities listed in Appendix C not to participate as direct grantees in Fiscal Year 1989. In addition, under § 511.50 HUD will administer the allocation of any State that does not notify the responsible HUD Field Office of its election to administer the Rental Rehabilitation Program within 30 days of the date of publication of this Notice.

Thus, all cities and urban counties receiving a formula allocation must deliver their Program Descriptions to the appropriate HUD Field Office or have them postmarked no later than January 20, 1989 to be considered for a grant. If a formula-eligible unit of general local government that would receive less than a $50,000 formula allocation chooses not to participate as a formula grantee, it must notify HUD in writing of its decision as soon as possible, but no later than January 5, 1989 to facilitate HUD's notification to the affected State of the additional allocation. If a State elects to administer the Rental Rehabilitation Program in Fiscal Year 1989, it must notify HUD in writing of its intent to participate in the program by January 5, 1989 and must deliver its Program Description or have it postmarked by February 20, 1989 to be considered for a grant.

If a State chooses not to participate in the Rental Rehabilitation Program, eligible units of general local government located in the State that wish to participate in the HUD-Administered State Program must submit a Program Description to the responsible HUD Field Office within 45 days of the date stated in a written notification from HUD to such potential grantees of fund availability under the program for the fiscal year. These

notifications will be directly issued by HUD Field Offices when it is known which States, if any, are not participating in Fiscal Year 1989.

Localities and States that will be submitting Program Descriptions should refer to the regulatory changes to the program that were published as an interim rule (amending 24 CFR Part 511) in the **Federal Register** on July 26, 1988, at 53 FR 25462.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

The Catalog of Federal Domestic Assistance program number is 14.230, Rental Housing Rehabilitation.

The collection of information requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control No. 2506–0080 (expires April 30, 1990).

Authority: Section 17, United States Housing Act of 1937, 42 U.S.C. 1437o section 7(d). Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 28, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210-29-M

RENTAL REHABILITATION PROGRAM
FORMULA ALLOCATIONS
FOR
CITIES, URBAN COUNTIES AND CONSORTIA

FY 1989

Appendix A

STATE / LOCALITY	$ IN THOUSANDS
ALABAMA	
BIRMINGHAM	365
HUNTSVILLE	86
MOBILE	167
MONTGOMERY	154
TUSCALOOSA	94
JEFFERSON COUNTY	130
ALASKA	
ANCHORAGE	97
ARIZONA	
GLENDALE	53
MESA	81
PHOENIX	535
TEMPE	77
TUCSON	309
MARICOPA COUNTY	80
PIMA COUNTY	64
ARKANSAS	
FORT SMITH	59
LITTLE ROCK	138
PINE BLUFF	56
CALIFORNIA	
ALAMEDA	64
ALHAMBRA	70
ANAHEIM	171
BAKERSFIELD	86
BELLFLOWER	53
BERKELEY	211
BURBANK	78
CHULA VISTA	80
COMPTON	76
CONCORD	53
COSTA MESA	80
DOWNEY	55
EL CAJON	76
EL MONTE	92
ESCONDIDO CITY	57
EVERETT	62
FRESNO	235
FULLERTON	76
GARDEN GROVE	74
GLENDALE	169
HAWTHORNE	59
HAYWARD	64
HUNTINGTON BEACH	104
HUNTINGTON PARK	85
INGLEWOOD	125
LONG BEACH	501
LOS ANGELES	4257
MODESTO	75
MOUNTAIN VIEW	59
NATIONAL CITY	55
NEWPORT BEACH	54
OAKLAND	540
OCEANSIDE	66
ONTARIO	54
ORANGE	54
OXNARD	84
PASADENA	150
PERRIS	77
REDONDO BEACH	57
RICHMOND	66
RIVERSIDE	128
SACRAMENTO	290
SALINAS	69
SAN BERNADINO	113
SAN DIEGO	881
SAN FRANCISCO	1256
SAN JOSE	372
SAN MATEO	61
SANTA ANA	178
SANTA BARBARA	107
SANTA CLARA	62
SANTA MONICA	146
SANTA ROSA	68
SOUTH GATE	64
STOCKTON	166
SUNNYVALE	65
TORRANCE	79
VALLEJO	52
VENTURA	63
ALAMEDA COUNTY	103
CONTRA COSTA COUNTY	159
FRESNO COUNTY	156
KERN COUNTY	174
LOS ANGELES COUNTY	1416
MARIN COUNTY	150
ORANGE COUNTY	291
RIVERSIDE COUNTY	232
SACRAMENTO COUNTY	296
SAN BERNARDINO COUNTY	228
SAN DIEGO COUNTY	242
SAN JOAQUIN COUNTY	112
SAN MATEO COUNTY	168
SANTA CLARA COUNTY	152
SONOMA COUNTY	136
VENTURA COUNTY	99
COLORADO	
AURORA	70
BOULDER	93
COLORADO SPRINGS	163
DENVER	617
FORT COLLINS	71
GREELEY	59
PUEBLO	86
ADAMS COUNTY	75
CONNECTICUT	
BRIDGEPORT	253
HARTFORD	301
NEW BRITAIN	87
NEW HAVEN	264
NORWALK	57
STAMFORD	81
WATERBURY	136
DELAWARE	
WILMINGTON	102
NEW CASTLE COUNTY	139
DISTRICT OF COLUMBIA	
WASHINGTON	915
FLORIDA	
CLEARWATER	63
DAYTONA BEACH	84
FT LAUDERDALE	156
GAINESVILLE	108
HIALEAH	135
HOLLYWOOD	81
JACKSONVILLE	429
MIAMI	686
MIAMI BEACH	327
ORLANDO	137
PENSACOLA	57
ST PETERSBURG	224
TALLAHASSEE	130
TAMPA	266
WEST PALM BEACH	82
BREVARD COUNTY	67
BROWARD COUNTY	249
DADE COUNTY	623
ESCAMBIA COUNTY	88
HILLSBOROUGH COUNTY	173
ORANGE COUNTY	188
PALM BEACH COUNTY	197
PASCO COUNTY	60
PINELLAS COUNTY	134
POLK COUNTY	115
SEMINOLE COUNTY	76
VOLUSIA COUNTY	96
GEORGIA	
ALBANY	94
ATLANTA	641
COLUMBUS	163
MACON	147
SAVANNAH	180
COBB COUNTY	94
DE KALB COUNTY	220
FULTON COUNTY	127
HAWAII	
HONOLULU	558
IDAHO	
BOISE	71
ILLINOIS	
AURORA	51
CHAMPAIGN	76
CHICAGO	5292
CICERO	65
DECATUR	77
EVANSTON	74
JOLIET	60
PEORIA	109
ROCKFORD	106
SPRINGFIELD	90
COOK COUNTY	196
DU PAGE COUNTY	138
LAKE COUNTY	76
MADISON COUNTY	137
ST CLAIR COUNTY	107
INDIANA	
BLOOMINGTON	78
EVANSVILLE	121
FORT WAYNE	132
GARY	142
HAMMOND	68
INDIANAPOLIS	858
MUNCIE	87
SOUTH BEND	80
TERRE HAUTE	58
LAKE COUNTY	56
IOWA	
CEDAR RAPIDS	66
DAVENPORT	88
DES MOINES	65
IOWA CITY	69
SIOUX CITY	66
WATERLOO	68
KANSAS	
KANSAS CITY	126
LAWRENCE	77
TOPEKA	88
WICHITA	209
JOHNSON COUNTY	54
KENTUCKY	
LEXINGTON-FAYETTE	201
LOUISVILLE	391
JEFFERSON COUNTY	116
LOUISIANA	
ALEXANDRIA	60
BATON ROUGE	251
LAFAYETTE	65
LAKE CHARLES	53
MONROE	69
NEW ORLEANS	1039
SHREVEPORT	173
JEFFERSON PARISH	201
MAINE	
PORTLAND	123
MARYLAND	
BALTIMORE	1280
ANNE ARUNDEL COUNTY	93
BALTIMORE COUNTY	261
MONTGOMERY COUNTY	225
PRINCE GEORGES COUNTY	333
MASSACHUSETTS	
BOSTON	1184
BROCKTON	115
BROOKLINE	76
CAMBRIDGE	179
FALL RIVER	150
LAWRENCE	121
LOWELL	127
LYNN	125
MALDEN	61

STATE LOCALITY	$ IN THOUSANDS
MASSACHUSETTS	
NEW BEDFORD	164
QUINCY	78
SOMERVILLE	132
SPRINGFIELD	223
WALTHAM	57
WORCESTER	216
MICHIGAN	
ANN ARBOR	132
BATTLE CREEK	59
DETROIT	1820
FLINT	153
GRAND RAPIDS	183
KALAMAZOO	115
LANSING	129
PONTIAC	77
SAGINAW	91
GENESEE COUNTY	87
MACOMB COUNTY	61
OAKLAND COUNTY	139
WAYNE COUNTY	165
MINNESOTA	
DULUTH	107
MINNEAPOLIS	526
ST PAUL	255
DAKOTA COUNTY	63
HENNEPIN COUNTY	140
RAMSEY COUNTY	55
MISSISSIPPI	
JACKSON	174
MISSOURI	
COLUMBIA	74
KANSAS CITY	453
ST JOSEPH	70
ST LOUIS	788
SPRINGFIELD	124
ST LOUIS COUNTY	274
MONTANA	
BILLINGS	63
NEBRASKA	
LINCOLN	136
OMAHA	272
NEVADA	
LAS VEGAS	143
RENO	109
CLARK COUNTY	165
NEW HAMPSHIRE	
MANCHESTER	120
NASHUA	57
NEW JERSEY	
BAYONNE	77
CAMDEN	144
EAST ORANGE	138
ELIZABETH	160
IRVINGTON	101
JERSEY CITY	453
NEWARK	807
PASSAIC	128
PATERSON	283
TRENTON	148
UNION CITY	130
BERGEN COUNTY	404
BURLINGTON COUNTY	118
CAMDEN COUNTY	104
ESSEX COUNTY	194
GLOUCESTER COUNTY	88
HUDSON COUNTY	347
MIDDLESEX COUNTY	103
MONMOUTH COUNTY	170
MORRIS COUNTY	75
OCEAN COUNTY	91
SOMERSET COUNTY	88
UNION COUNTY	164
NEW MEXICO	
ALBUQUERQUE	253
NEW YORK	
ALBANY	194
BABYLON TOWN	72
BINGHAMTON	97
BUFFALO	745
ISLIP TOWN	97
MOUNT VERNON	118
NEW ROCHELLE	76
NEW YORK	15541
NIAGARA FALLS	91
ROCHESTER	401
SCHENECTADY	108
SYRACUSE	304
TROY	94
UTICA	127
YONKERS	239

STATE LOCALITY	$ IN THOUSANDS
NEW YORK	
DUTCHESS COUNTY	73
ERIE COUNTY	96
MONROE COUNTY	101
NASSAU COUNTY	420
ONONDAGA COUNTY	69
ORANGE COUNTY	92
ROCKLAND COUNTY	105
SUFFOLK COUNTY	181
WESTCHESTER COUNTY	242
NORTH CAROLINA	
ASHEVILLE	83
CHARLOTTE	260
DURHAM	141
FAYETTEVILLE	67
GREENSBORO	130
HIGH POINT	63
RALEIGH	136
WILMINGTON	68
WINSTON SALEM	142
NORTH DAKOTA	
FARGO	60
OHIO	
AKRON	240
CANTON	98
CINCINNATI	718
CLEVELAND	1014
COLUMBUS	682
DAYTON	285
HAMILTON CITY	67
LAKEWOOD	59
LORAIN	51
MANSFIELD	54
SPRINGFIELD	98
TOLEDO	387
YOUNGSTOWN	136
CUYAHOGA COUNTY	168
FRANKLIN COUNTY	93
HAMILTON COUNTY	156
LAKE COUNTY	87
MONTGOMERY COUNTY	110
STARK COUNTY	72
SUMMIT COUNTY	85
OKLAHOMA	
LAWTON	62
NORMAN	62
OKLAHOMA CITY	321
TULSA	268
OREGON	
EUGENE	135
PORTLAND	838
SALEM	84
CLACKAMAS COUNTY	85
MULTNOMAH COUNTY	100
WASHINGTON COUNTY	122
PENNSYLVANIA	
ALLENTOWN	114
ALTOONA	54
BETHLEHEM	55
ERIE	139
HARRISBURG	82
LANCASTER	81
PHILADELPHIA	2332
PITTSBURGH	689
READING	122
SCRANTON	106
UPPER DARBY	52
ALLEGHENY COUNTY	485
BEAVER COUNTY	103
BERKS COUNTY	72
BUCKS COUNTY	122
CHESTER COUNTY	133
DELAWARE COUNTY	158
LANCASTER COUNTY	118
LUZERNE COUNTY	125
MONTGOMERY COUNTY	173
WASHINGTON COUNTY	130
WESTMORELAND COUNTY	127
YORK COUNTY	88
RHODE ISLAND	
PAWTUCKET	100
PROVIDENCE	343
SOUTH CAROLINA	
CHARLESTON	114
COLUMBIA	111
GREENVILLE	75
NORTH CHARLESTON	59
GREENVILLE COUNTY	111
SOUTH DAKOTA	
SIOUX FALLS	63
TENNESSEE	
CHATTANOOGA	180
KNOXVILLE	212
MEMPHIS	646
NASHVILLE-DAVIDSON	368

STATE LOCALITY	$ IN THOUSANDS
TEXAS	
ABILENE	61
AMARILLO	84
ARLINGTON	94
AUSTIN	419
BEAUMONT	95
BROWNSVILLE	80
CORPUS CHRISTI	172
DALLAS	848
DENTON	56
EL PASO	370
FORT WORTH	289
GALVESTON	73
HOUSTON	1370
IRVING	59
KILLEEN	50
LAREDO	87
LUBBOCK	138
MC ALLEN	90
ODESSA	55
PASADENA	60
SAN ANGELO	53
SAN ANTONIO	640
TYLER	59
WACO	114
WICHITA FALLS	66
BEXAR COUNTY	54
HARRIS COUNTY	154
HIDALGO COUNTY	103
TARRANT COUNTY	87
UTAH	
OGDEN	63
PROVO	78
SALT LAKE CITY	221
SALT LAKE COUNTY	95
VERMONT	
VIRGINIA	
ALEXANDRIA	98
CHESAPEAKE	56
HAMPTON	77
LYNCHBURG	56
NEWPORT NEWS	125
NORFOLK	323
PORTSMOUTH	103
RICHMOND	311
ROANOKE	106
VIRGINIA BEACH	122
ARLINGTON COUNTY	143
FAIRFAX COUNTY	197
WASHINGTON	
EVERETT	90
SEATTLE	633
SPOKANE	224
TACOMA	182
CLARK COUNTY	104
KING COUNTY	244
PIERCE COUNTY	161
SNOHOMISH COUNTY	97
SPOKANE COUNTY	70
WEST VIRGINIA	
CHARLESTON	82
HUNTINGTON	81
WISCONSIN	
EAU CLAIRE	55
GREEN BAY	72
MADISON	225
MILWAUKEE	781
RACINE	64
MILWAUKEE COUNTY	73
WYOMING	
PUERTO RICO	
AGUADILLA	55
ARECIBO	61
BAYAMON MUNICIPIO	101
CAGUAS MUNICIPIO	80
CAROLINA MUNICIPIO	96
MAYAGUEZ MUNICIPIO	125
PONCE MUNICIPIO	167
SAN JUAN MUNICIPIO	688

Appendix B

RENTAL REHABILITATION PROGRAM ALLOCATIONS BY STATE
FISCAL YEAR 1989

	CITY/COUNTY AMOUNT*	MINIMUM STATE AMOUNT*	CITY/COUNTY/STATE TOTAL AMOUNT*
Alabama	$ 1,035	$ 888	$ 1,923
Alaska	97	60	157
Arizona	1,199	292	1,491
Arkansas	253	743	996
California	17,180	2,382	19,562
Colorado	1,282	450	1,732
Connecticut	1,265	758	2,023
Delaware	241	40	281
District of Columbia	915	0	915
Florida	5,172	1,090	6,262
Georgia	1,711	1,308	3,019
Hawaii	558	80	638
Idaho	71	288	359
Illinois	7,135	1,533	8,668
Indiana	1,429	1,008	2,437
Iowa	596	610	1,206
Kansas	554	530	1,084
Kentucky	751	802	1,553
Louisiana	1,911	739	2,650
Maine	123	498	621
Maryland	2,192	361	2,553
Massachusetts	3,144	1,778	4,922
Michigan	3,211	1,613	4,824
Minnesota	1,226	561	1,787
Mississippi	174	832	1,006
Missouri	1,783	798	2,581
Montana	111	267	378
Nebraska	408	260	668
Nevada	417	112	529
New Hampshire	177	285	462
New Jersey	4,540	997	5,537
New Mexico	334	301	635
New York	19,815	1,816	21,631
North Carolina	1,070	1,256	2,326
North Dakota	60	166	226
Ohio	4,617	1,858	6,475
Oklahoma	713	761	1,474
Oregon	1,064	573	1,637
Pennsylvania	5,660	1,855	7,515
Rhode Island	525	366	891
South Carolina	470	834	1,304
South Dakota	63	206	269
Tennessee	1,492	774	2,266
Texas	6,032	2,063	8,095
Utah	457	202	659
Vermont	0	227	227
Virginia	1,717	812	2,529
Washington	1,775	737	2,512
West Virginia	143	489	632
Wisconsin	1,339	889	2,228
Wyoming	0	172	172
Puerto Rico	1,388	585	1,973
	$109,595	$38,905	$148,500

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RENTAL REHABILITATION OPTIONAL GRANTEES FY1989

Appendix C

STATE	LOCALITY	$ IN THOUSANDS
ALABAMA	DOTHAN	39
		39
CALIFORNIA	DALY	46
	LYNWOOD	45
	MONTEBELLO	43
	MONTEREY PARK	38
	NORWALK	41
	PALO ALTO	41
	REDWOOD CITY	49
	WHITTIER	49
		352
COLORADO	LAKEWOOD	48
		48
CONNECTICUT	DANBURY	43
	WEST HAVEN	43
		86
FLORIDA	LAKELAND	46
	POMPANO BEACH	47
	SARASOTA	48
		141
GEORGIA	GWINNETT COUNTY	48
		48
ILLINOIS	ELGIN	40
	OAK PARK	46
	WAUKEGAN	46
	WILL COUNTY	49
		181
INDIANA	ANDERSON	49
		49
IOWA	COUNCIL BLUFFS	39
	DUBUQUE	47
		86
KENTUCKY	OWENSBORO	43
		43
MASSACHUSETTS	CHICOPEE	44
	FRAMINGHAM	46
	MEDFORD	46
		136
MINNESOTA	ROCHESTER	38
	ANOKA COUNTY	42
		80
MONTANA	GREAT FALLS	48
		48
NEW JERSEY	CLIFTON	47
		47
NEW MEXICO	LAS CRUCES	40
	SANTA FE	41
		81
NEW YORK	AMHERST TOWN	39
	HUNTINGTON TOWN	44
	UNION TOWN	49
		132
OHIO	WARREN	47
		47
RHODE ISLAND	CRANSTON	43
	WARWICK	39
		82
TENNESSEE	CLARKSVILLE	38
	JACKSON	48
		86
TEXAS	BAYTOWN CITY	39
	BRYAN	43
	GARLAND	45
	PORT ARTHUR	47
		174
WISCONSIN	KENOSHA	46
	OSHKOSH	43
		89
PUERTO RICO	GUAYNABO MUNICIPIO	48
		48

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December 6, 1988

Part III

Department of Education

34 CFR Part 208

Mathematics-Science Education Program; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 208

Mathematics-Science Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues this NPRM for the program of State grants for strengthening the economic competitiveness and national security of the United States by improving the skills of teachers and the quality of instruction in mathematics and science in the Nation's public and private elementary and secondary schools. This NPRM would implement the changes in the Mathematics and Science Education Program as a result of its reauthorization under the Dwight D. Eisenhower Mathematics and Science Education Act of 1988.

DATE: Comments must be received on or before February 6, 1989.

ADDRESS: All comments concerning these proposed regulations should be addressed to M. Patricia Goins, Director, Division of Educational Support, U.S. Department of Education, Mail Stop 6264, 400 Maryland Avenue SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dr. Allen Schmieder, Math/Science Section, 400 Maryland Avenue SW., (Room 2040, FOB #6), Washington, DC 20202, (202) 732–4336.

SUPPLEMENTARY INFORMATION: Title II, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) (the Act), recently enacted in the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), reauthorizes the mathematics and science education program. The new Act (the Dwight D. Eisenhower Mathematics and Science Education Act) revises several of the provisions of the predecessor statute (Title II of the Education for Economic Security Act). However, the purpose of the program is still to improve the skills of teachers and the quality of instruction in mathematics and science.

The following proposed regulations would implement the changes required by Pub. L. 100–297.

Computer and Foreign Language Instruction. Like the statute, the proposed regulations would delete foreign language programs from the allowable activities (Congress created a separate program to support foreign language instruction in Title II, Part B, of ESEA). Services related to computer learning would be allowed only in the context of mathematics and science programs at the elementary and secondary school levels (§ 208.23).

Allotment of funds to States. The proposed regulations would maintain the separate programs for the State educational agency (SEA) and the State agency for higher education (SAHE) that the Secretary would fund on the basis of a single, joint State application. However, the Act increases from 70 percent to 75 percent the proportion of each State's grant allotted to the SEA for elementary and secondary education programs and decreases the proportion allotted to the SAHE for higher education programs from 30 percent to 25 percent (§ 208.11).

Elementary and Secondary Education Programs. The funds reserved for use at the State level would be reduced from 30 percent to ten percent of the elementary and secondary funds. Of the total funds allocated to each SEA, up to five percent (5%) may be used for technical assistance and administrative costs (§ 208.25). Not less than five percent (5%) of the funds reserved to each SEA are to be used to support demonstration and exemplary programs (§ 208.24). At the local educational agency (LEA) level, the new statute adds the following allowable activities not previously specified in the statute: (1) Preservice training (in addition to inservice training and retraining); (2) the recruitment or retraining of minority teachers to become mathematics and science teachers; (3) the purchase of computers or other telecommunications equipment after all other training needs in that LEA have been met, for schools where at least 50 percent of the students are from low-income families; (4) the integration of higher order analytical and problem-solving skills into the mathematics and science curriculum; and (5) grant projects for individual teachers.

Higher Education Programs. While the five percent of funds reserved for the use of the SAHE remains the same, the 20 percent set-aside for cooperative programs has been eliminated (although cooperative programs are still authorized). Ninety-five (95) percent of available funds must be awarded on a competitive basis to institutions of higher education (IHEs) (§ 208.31).

Other Regulatory Changes. The public is invited to comment on any aspect of the proposed regulations; however, the Secretary specifically invites the public to address four regulatory proposals that would interpret statutory language.

First, § 208.22(c) of the proposed regulations implements section 2009(c) of the Act by authorizing an SEA to renew payments to an LEA if the LEA is making adequate progress toward meeting the goals of the program. Under these proposed provisions, if the SEA determines that the LEA is not making adequate progress, the SEA may either approve program revisions proposed by the LEA or, after affording the LEA notice and opportunity for hearing, disapprove the LEA's application. The Secretary has chosen to allow SEAs to approve program revisions, rather than mandate the SEA's termination of the LEA's funding when a program is unsuccessful, if the LEA's proposed revisions are consistent with the Act and regulations and if revisions are likely to enable the LEA to meet the goals of the Act and regulations. This policy of allowing revisions is consistent with the program improvement policies of the Secretary, which have also been implemented in other Department programs.

Second, under the higher education program, the statute specifically permits secondary school teachers who specialize in other disciplines to be retrained to become mathematics and science teachers. It does not expressly provide for teachers who specialize in one area of science or mathematics to be retrained as teachers in another area of these disciplines. In view of the intent of Congress to address the improvement of instruction in mathematics and science, and because the greatest need for retraining is intradisciplinary, the Secretary proposes to define allowable retraining activities under § 208.33(a)(2) to include those secondary school teachers who need intradisciplinary retraining.

In addition, an IHE may receive a grant only if it enters into an agreement with an LEA, or a consortium of LEAs, as required by section 2007(b)(3) of the act. In the past, agreements of this kind often have taken the form of a simple letter of support from the LEA. This practice has often resulted in programs offered by IHEs that are ill-suited to the needs of the LEAs for which they were intended. In § 208.33(c)(2) of the proposed regulations, the Secretary would rectify this problem by specifying that these agreements between IHEs and LEAs provide evidence of cooperative planning.

Finally, proposed regulations governing when the Secretary implements a bypass for a grantee's failure to provide for the participation of

children or teachers from private nonprofit schools (§ 208.52) were published in the **Federal Register** on August 18, 1988 (53 FR 31580) as 34 CFR 76.670 through 76.677. These proposed common procedures do not differ substantively from procedures now in effect.

Other Considerations. Section 2004(a)(2) of the act changes the allocation formula from one that allocates funds to States based solely on each State's relative share of children aged 5 to 17, to one that allocates 50 percent of the funds based on the age 5 to 17 population and 50 percent according to the State's share of allocations under Part A of Chapter 1 of Title I of the ESEA or Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) whichever was effective for the previous fiscal year. In making allocations for FY 1989, the Secretary has determined that Chapter 1 of ECIA was effective for the previous year.

The phrase "allocations under Chapter 1 of the Education Consolidation and Improvement Act of 1981," as usesd in section 2004(a)(2)(B) of the act, means each State's total allocation of Chapter 1 funds both for programs operated by LEAs and the separate programs operated by SEAs for migratory, handicapped, and neglected and delinquent children. The phrase "allocations * * * under part A of Chapter 1 of Title I of this Act," as used in that same section, means each State's allocation of Chapter 1 funds only for programs operated by LEAs. Therefore, although the two statutory formulas in section 2004(a)(2)(B) are inconsistent, the Secretary will determine the size of each State's FY 1989 award on the basis of its share of total allocations for all four programs operated under Chapter 1 of ECIA. However, as the Act provides, the Secretary will determine the size of each State's subsequent year awards under a somewhat different formula, on the basis of its share of allocations for programs operated only by LEAs under Part A of Chapter 1 of Title I of ESEA.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because they would impose minimal requirements to ensure the proper expenditure of programs funds and would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Sections 208.11, 208.22, and 208.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes develped by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and action for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2040, FOB #6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except on Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 208

Colleges and universities, Consortium, Economically disadvantaged, Education, Elementary and secondary education, Gifted and talented, Grants administration, Grant programs—education, Inservice education, Low-income families, Mathematics, Museums, Nonprofit educational organization, Other appropriate educational personnel, Preservice education, Private schools, Recruitment and retention, Reporting and recordkeeping requirements, Retraining, Science and technology, State administered programs, Students, Teachers, Training program, Underserved and underrepresented, Vocational education.

Dated: November 30, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.164, The Dwight D. Eisenhower Mathematics and Science Education Act.)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 208 to read as follows:

PART 208—MATHEMATICS-SCIENCE EDUCATION PROGRAM

Subpart A—General

Sec.

208.1 Purpose.
208.2 Applicable Regulations.
208.3 Definitions that apply to programs under this part.
208.4 through 208.10 [Reserved]

Subpart B—Application Procedures

208.11 State Application.
208.12 through 208.20 [Reserved]

Subpart C—Elementary and Secondary Education Programs and Activities

208.21 In-Site Apportionment.
208.22 LEA Application.
208.23 Use of funds by LEAs.
208.24 Use of funds by SEAs for demonstration and exemplary programs.
208.25 Use of funds by SEAs for technical assistance and administrative costs.
208.26 through 208.30 [Reserved]

Subpart D—Higher Education Programs and Activities

208.31 Apportionment of funds.
208.32 IHE application.
208.33 Use of funds by IHEs.
208.34 through 208.40 [Reserved]

Subpart E—Fiscal Requirements

208.41 Supplement not supplant.
208.42 through 208.50 [Reserved]

Subpart F—Participation of Private Schools

208.51 Participation of children and teachers in private schools.
208.52 Bypass.
208.53 through 208.60 [Reserved]

Authority: 20 U.S.C. 2981–2993.

Subpart A—General

§ 208.1 Purpose.

The Secretary provides financial assistance under this part of States to strengthen the economic competitiveness and national security of the United States by improving the skills of teachers and the quality of instruction in mathematics and science in the Nation's public and private elementary and secondary schools.

(Authority: 20 U.S.C. 2982)

§ 208.2 Applicable regulations.

The following regulations apply to programs for which the Secretary provides financial assistance under this part:

(a) The regulations in this part.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(Authority: 20 U.S.C. 2981–2991, 2993)

§ 208.3 Definitions that apply to programs under this part.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Elementary school
Fiscal year
Local educational agency (LEA)
Nonprofit
Private
Public
Secretary
State educational agency (SEA)

(b) *Additional definitions.* The following additional terms used in this part are defined as follows:

"Act" means Title II, Part A of the Elementary and Secondary Education Act of 1965 (The Dwight D. Eisenhower Mathematics and Science Education Act).

"EESA" means the Education for Economic Security Act, 20 U.S.C. 3901 *et seq.*

"Institution of higher education (IHE)" has the meaning given that term in section 1201(a) of the Higher Education Act of 1965, 20 U.S.C. 1141(a).

"Magnet school programs for gifted and talented students" means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. Magnet schools are schools or education centers that offer a special curriculum, and include but are not limited to, schools or education centers capable of attracting substantial numbers of students of different racial backgrounds.

"Nonprofit organizations" include, but are not limited to, museums, libraries, educational television stations, professional science, mathematics, and engineering societies and associations, associations for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics, and other organizations that meet the definition of "nonprofit" in 34 CFR 77.1.

"Secondary school" means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico. "State" also includes the "insular areas" of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and, as appropriate, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (or the Trust Territory of the Pacific Islands [Palau], if the Compact of Free Association for Palau has not been ratified when funds are allocated).

"State agency for higher education (SAHE)" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purposes of this part by the Governor or by State law.

(Authority: 20 U.S.C. 2981–2991, 2993)

§§ 208.4 through 208.10 [Reserved]

Subpart B—Application Procedures

§ 208.11 State application.

(a) Of the amount allotted to each State under Section 2004 of the Act, the Secretary awards, on the basis of approved State applications, 75 percent to the State's SEA for elementary and secondary education programs (in accordance with §§ 208.23, 208.24, and 208.25) and 25 percent to the State's SAHE for higher education programs (in accordance with § 208.33). The SEA shall apportion these funds in accordance with § 208.21; the SAHE shall apportion these funds in accordance with § 208.31.

(b) A State that desires to receive funds under this part shall have on file with the Secretary an application that covers a period of three fiscal years. Each State application must—

(1) Designate the SEA as the agency responsible for the administration and supervision of the elementary and secondary education programs described in Subpart C and the SAHE as the agency responsible for the administration and supervision of the higher education programs described in Subpart D;

(2) Provide assurances that—

(i) Payments will be distributed by the State in accordance with the provisions of §§ 208.21 and 208.31;

(ii) Provision will be made for the equitable participation of nonprofit private school children and teachers, in accordance with § 208.51, in elementary and secondary education programs described in Subpart F.

(iii) Provision will be made for fiscal control and accounting procedures to ensure proper accounting and expenditure of funds made available under this part;

(iv) Funds made available under this part will be used to supplement and not supplant non-Federal funds in accordance with § 208.41;

(v) During the three-year period of the plan, the State will evaluate its standards for teacher preparation, licensing, certification, and endorsement for elementary and secondary mathematics and science;

(vi) The State will take into account the needs for greater access to and participation in mathematics and science by students and teachers from historically underrepresented groups, including females, minorities, individuals with limited English proficiency, the economically disadvantaged, and the handicapped;

(vii) The needs of teachers and students in areas of high concentrations of low-income students and sparsely populated areas will be considered in the distribution of funds reserved for State use; and

(viii) The programs conducted with State funds will be assessed annually (including collecting statistics on the number of students and teachers involved in these programs) and that the data from these assessments, as well as a summary of the local assessments required under § 208.22(b)(1), will be submitted to the Secretary;

(3) Provide descriptions of—

(i) How, if appropriate, funds paid under this part will be coordinated with State and local funds and other Federal resources, particularly resources available from the National Science Foundation or the Department of Energy, or both;

(ii) Procedures for—

(A) Submitting applications for the programs described in Subparts C and D; and

(B) Approval of applications by the appropriate State agency, including procedures to ensure in accordance with 34 CFR 76.401 that the State agency will not disapprove an application without notice and opportunity for a hearing. Disapproval of an application does not include a determination by an SAHE as to the relative merit of a competing application submitted under § 208.32;

(iii) How programs under this part will meet the teacher training and curriculum needs projected under paragraph (b)(4) of this section;

(iv) Specific activities that will be undertaken that involve IHEs;

(v) Specific activities that will be supported with funds reserved for State use, and how those activities relate to the State's needs in mathematics and science; and

(vi) Specific activities the State will support to improve access of historically underrepresented groups in mathematics and science education; and

(4) Contain the following information:

(i) A projection of the supply and demand for teachers within the State in all the mathematics and science subject areas at the elementary and secondary levels, including a consideration of the impact of changing State graduation requirements and other State reforms on the supply of those teachers.

(ii) An assessment of the current elementary and secondary curriculum needs within the State in mathematics and science.

(c) The Secretary approves any State application that meets the requirements of this section.

(Authority: 20 U.S.C. 2988)

§§ 208.12 through 208.20 [Reserved]

Subpart C—Elementary and Secondary Education Programs and Activities

§ 208.21 In-State apportionment.

(a) Each SEA shall distribute to LEAs within the State, for use under § 208.23, not less than 90 percent of the funds allotted to it under § 208.11(a), as follows:

(1)(i) Fifty (50) percent of the funds must be distributed to LEAs according to the relative enrollments in public and private nonprofit schools within the school districts of the LEAs. Relative enrollments may be calculated, at the option of the SEA, on the basis of the total number of children enrolled in public schools and—

(A) Private nonprofit schools, or

(B) Private nonprofit schools desiring that their children and teachers participate in programs or projects assisted under the Act.

(ii) Nothing in paragraph (a)(1)(i) of this section diminishes the responsibility of an LEA to contact, on an annual basis, appropriate officials of private nonprofit schools within its school district to determine whether those officials desire that their children and teachers participate in programs or projects funded under the Act.

(2) Fifty (50) percent of the funds must be distributed to LEAs in the same proportion as funds under Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, are distributed.

(b) Each SEA shall use not less than five percent of the total funds allotted to to it under § 208.11(a) for demonstration and exemplary program activities described in § 208.24.

(c) Each SEA shall use not more than five percent of the funds allotted to it under § 208.11(a) for technical assistance and administrative costs, as described in § 208.25.

(Authority: 20 U.S.C. 2986)

§ 208.22 LEA application.

(a) An LEA that desires to receive an allocation of funds under Subpart C shall submit to the SEA an application that covers a period of three fiscal years and meets the requirements of this section.

(b) An LEA may apply for funds, singly or in conjunction with other LEAs, IHEs, or an intermediate educational unit to conduct programs under § 208.23. Each LEA application must include—

(1) A summary assessment of—

(i) The needs of its current teachers in mathematics and science and whether a shortage of qualified teachers in these subjects exists or will exist within five years of the date of the application;

(ii) The current levels of mathematics and science student achievement in the LEA; and

(iii) The curricular needs of the LEA in mathematics and science;

(2) Information the SEA may require describing the LEA's proposed activities and expenditures of funds for those activities under § 208.23. This information must include a description of—

(i) How the LEA plans to use funds received under this part to meet the needs described in paragraph (b)(1)(i) of this section;

(ii) If applicable, how funds it receives under this part will be coordinated with State, local, and other Federal resources, especially with respect to any programs available from the National Science Foundation, the Department of Energy, or both; and

(iii) If applicable, how the assisted programs will use other resources of the community and involve public agencies, private industry, IHEs, public and private nonprofit organizations, and other appropriate institutions; and

(3) Assurances that—

(i) Programs will take into account the need for greater access to and participation in mathematics and science programs by students from historically underrepresented groups, including females, minorities, individuals with limited English proficiency, the economically disadvantaged, and the handicapped; and

(ii) Programs assisted will be assessed, that progress made will be reported in terms of numbers of teachers and students affected, and that the results will be submitted to the SEA in the time and manner that the SEA requires.

(c)(1) The SEA shall renew payments to the LEA under this program if it determines on the basis of its review of the LEA's application and any other information it may have, that the LEA is making adequate progress toward the goals of this part.

(2) If the SEA determines that the LEA has not made adequate progress toward meeting the goals of this part, the SEA may—

(i) Approve revisions to the programs funded under this part that are proposed by the LEA, if those revisions will enable the LEA to meet the goals of this part; or

(ii) After affording the LEA notice and opportunity for a hearing, disapprove the LEA's application.

(Authority: 20 U.S.C. 2989)

§ 208.23 Use of funds by LEAs.

(a) An LEA shall use the funds it receives under § 208.21(a) for—

(1) The expansion and improvement of preservice and inservice training and retraining for teachers and other appropriate school personnel in the fields of mathematics and science, including vocational education teachers who use mathematics and science in teaching vocational education courses;

(2) Recruitment or retraining of minority teachers to become mathematics and science teachers;

(3) Training in and instructional use of computers, video, and other telecommunications technologies as part of a mathematics and science program (which may include the purchase of computers or other telecommunications equipment in schools with an enrollment of 50 percent or more of students from low-income families after all other training needs have been met);

(4) Integrating higher-order analytical and problem-solving skills into the mathematics and science curriculum; or

(5) Providing funds for grants projects for individual teachers within the LEA to undertake projects to improve either their teaching ability or the instructional materials they used in their mathematics and science classrooms.

(b) An LEA may carry out the training and instruction under this section—

(1) Through agreements with public agencies, private industry, IHEs, and nonprofit organizations; and

(2) In conjunction with one or more LEAs within the State, with the SEA, or with both LEAs and the SEA.

(c) An LEA may use not more than five percent of the funds it receives under § 208.21 for local administration of these programs.

(Authority: 20 U.S.C. 2986)

§ 208.24 Use of funds by SEAs for demonstration and exemplary programs.

(a) An SEA shall use the funds described under § 208.21(b) to support one or more of the following:

(1) Demonstration and exemplary programs in the fields of mathematics and science for—

(i) Teacher training and retraining and inservice upgrading of teacher skills;

(ii) Instructional equipment and materials and necessary technical assistance; and

(iii) Special projects for historically underrepresented and underserved populations and for gifted and talented students.

(2) The dissemination of information relating to demonstration and exemplary programs to all LEAs within the State.

(b) In funding demonstration and exemplary programs under paragraph (a)(1) of this section, the SEA shall give special consideration to special projects in mathematics and science for—

(1) Students from historically underrepresented and underserved populations, including females, minorities, handicapped individuals, individuals with limited English proficiency, and migrant students; and

(2) Gifted and talented students. A program for gifted and talented students may include assistance to a magnet school program for those students.

(Authority: 20 U.S.C. 2986)

§ 208.25 Use of funds by SEAs for technical assistance and administrative costs.

An SEA may use the funds described under § 208.21(c)—

(a) To provide technical assistance to LEAs and, if appropriate, IHEs and nonprofit organizations that are conducting programs under § 208.23; and

(b) For the costs incurred by the SEA in administering and assessing programs assisted under this part.

(Authority: 20 U.S.C. 2986)

§ 208.26 through 208.30 [Reserved]

Subpart D—Higher Education Programs and Activities

§ 208.31 Apportionment of funds.

(a) *Funds for IHEs.* (1) An SAHE shall distribute not less than ninety-five (95) percent of the funds it receives under § 208.11(a) to IHEs in accordance with the application procedures governing IHEs in § 208.32.

(2) The SAHE shall make every effort to ensure equitable participation of public and private IHEs.

(3) The SAHE may use funds described in this section for cooperative programs among IHEs, LEAs, SEAs, private industry, and nonprofit organizations, for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics.

(b) *Funds retained by SAHEs.* An SAHE may reserve not more than five percent of the funds it receives under § 208.11 for the costs incurred by the SAHE for the State assessment of curriculum needs required by § 208.11(b)(4)(ii) and for administration and evaluation of programs assisted under this part.

(Authority: 20 U.S.C. 2987)

§ 208.32 IHE Application.

An IHE wishing to receive a grant for programs funded under the Act may apply to the SAHE on a competitive basis either as an individual subgrantee or on behalf of a proposed cooperative program (see § 208.31(a)(2)). The application must contain information that the SAHE may require, and must demonstrate the IHE's involvement with one or more LEAs, as required by § 208.33(d).

(Authority: 20 U.S.C. 2987)

§ 208.33 Use of funds by IHEs.

(a) Subject to the requirement in paragraph (c) of this section, an IHE shall use funds awarded under § 208.31(a) for one or more of the following activities:

(1) Establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level;

(2) Retraining. (i) Teachers who specialize in disciplines other than the teaching of mathematics and science, to specialize in the teaching of mathematics and science; or

(ii) Mathematics and science secondary school teachers to expand their areas of specialization within those disciplines, (e.g., retraining biology teachers in physics or geometry teachers in calculus) or to expand their specializations across disciplines (e.g., retraining biology teachers in algebra); and

(3) Inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics and science.

(b) Support for inservice training and retraining includes the provision of stipends for participation in institutes authorized under Title I of the EESA or any other program of the National Science Foundation.

(c) Each IHE receiving funds under this part shall ensure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics and science, and careers for—

(1) Students from historically underrepresented and underserved groups, including females, minorities, individuals with limited English proficiency, the handicapped, and migrants; and

(2) Gifted and talented students.

(d)(1) To receive funds for programs under paragraphs (a) (2) and (3) of this section, an IHE shall enter into an agreement with an LEA, or a consortium

of LEAs, to provide inservice training and retraining for elementary and secondary school teachers in public and private schools in the LEA or LEAs.

(2) In the agreement, the IHE shall provide evidence that proposed projects and activities are the result of cooperative planning with LEAs affected, and that such projects and activities reflect the training, retraining, and inservice training needs of teachers as determined jointly by the LEA or LEAs and the IHE.

(Authority: 20 U.S.C. 2987)

§§ 208.34 through 208.40 [Reserved]

Subpart E—Fiscal Requirements

§ 208.41 Supplement not supplant.

A grantee or subgrantee that receives funds under this part—

(a) May use those funds only to supplement and, to the extent practicable, to increase the level of funds from non-Federal sources that, in the absence of funds made available under this part, would be made available for the purposes described in Subparts C and D; and

(b) May not use funds made available under this part to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 2988)

§§ 208.42 through 208.50 [Reserved]

Subpart F—Participation of Private Schools

§ 208.51 Participation of children and teachers in private schools.

(a) *Participation of private nonprofit school students.* To the extent consistent with the number of children in the State or an LEA who are enrolled in private nonprofit elementary and secondary schools, an SEA or LEA after consultation with appropriate private nonprofit school representative shall provide services and arrangements for the benefit of these children to ensure their equitable participation in the purposes and benefits of this part.

(b) *Participation of private nonprofit school teachers.* (1) To the extent consistent with the number of children in the State or an LEA who are enrolled in private nonprofit elementary and secondary schools, an SEA, LEA, SAHE, or IHE shall, after consultation with appropriate private nonprofit school representatives, make sufficient provision for teacher training, retraining, and inservice training for the benefit of private nonprofit school teachers as will ensure their equitable participation in the purposes and benefits of this part.

(2) To receive funds for programs under §§ 208.33(a) (2) and (3), an IHE shall meet the requirements in § 208.33(d) for serving teachers in public and private nonprofit elementary and secondary schools.

(c) *Applicable requirements.* In fulfilling the equitable participation requirements in paragraphs (a) and (b) of this section an SEA, LEA, or IHE shall comply with the provisions in 34 CFR 76.661 through 76.662 regarding equipment and supplies and construction.

(Authority: 20 U.S.C. 2990)

§ 208.52 Bypass.

The Secretary implements a bypass if—

(a) An SEA, LEA, or IHE is prohibited by law from providing for the participation of children or teachers from private nonprofit schools as required by § 208.51; or

(b) The Secretary determines that an SEA or LEA has substantially failed or is unwilling to provide for the participation of children or teachers from private nonprofit schools on an equitable basis.

(Authority: 20 U.S.C. 2990)

§§ 208.53 through 208.60 [Reserved]

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Title 3—

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Federal Register
Vol. 53, No. 235
Wednesday, December 7, 1988

Presidential Documents

Title 3—

The President

Proclamation 5918 of December 5, 1988

National Drunk and Drugged Driving Awareness Week, 1988

By the President of the United States of America

A Proclamation

The holiday season is a most fitting time to reemphasize that driving while under the influence of alcohol or drugs is dangerous and irresponsible behavior that no one should engage in, tolerate, or permit.

Again this year, citizens across our Nation are volunteering their time and talents to take part in a week of observance to focus public attention on eliminating drunk and drugged driving. Public officials at all levels have issued proclamations, sponsored legislation, and appointed task forces; law enforcement agencies have increased enforcement efforts; public and private organizations have held safety campaigns; and citizens have sponsored programs to provide rides home from holiday parties. Actions like these bring us closer to the day when drunk and drugged drivers will no longer threaten our lives and our families.

We can take heart from the results of the comprehensive year-round activities to stop drunk driving. In 1987, the proportion of motor vehicle fatalities in which at least one driver or pedestrian was legally intoxicated was 40 percent. That figure is down from 46.3 percent in 1982. Another significant achievement was among intoxicated teenage drivers, whose involvement in fatal crashes declined to 18.7 percent in 1987, down from 21 percent in 1986 and 28.4 percent in 1982.

These notable gains give us hope and even more reason to redouble our efforts to stop drunk and drugged driving. This is no time for complacency.

We must also realize that combining drugs and alcohol adds to the risk. Studies of drivers involved in accidents reveal that many use drugs—and that certain drugs, either alone or in combination with alcohol, contribute to crashes. We must all be aware of the safety risks of driving after taking drugs, including prescription and over-the-counter drugs that carry a warning label against driving.

We can all help improve safety on our roads and highways by refusing to tolerate drunk and drugged driving; by always wearing safety belts, even for short drives; and by insisting upon prompt and effective action against alcohol- and drug-impaired drivers.

To encourage citizen involvement in prevention efforts and to increase awareness of the threat to our lives and safety, the Congress, by Senate Joint Resolution 332, has designated the week of December 11 through December 17, 1988, as "National Drunk and Drugged Driving Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 11 through December 17, 1988, as National Drunk and Drugged Driving Awareness Week. I ask all Americans to show concern and not to drink or take drugs and drive or to permit others to do so. I also call upon public officials at all levels and interested citizens and groups to observe this week with appropriate ceremonies and activities in reaffirmation of our refusal to tolerate drunk and drugged driving.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-28303
Filed 12-6-88; 10:35 am]
Billing code 3195-01-M

VOL 53 ISS 235 DE 7 1988 UMI

Presidential Documents

Proclamation 5919 of December 5, 1988

Wright Brothers Day, 1988

By the President of the United States of America

A Proclamation

Eighty-five years ago, above the sound of North Carolina's pounding surf, above the chattering of the sea gulls and terns, came the sound of progress; for over the sandy dunes of Kitty Hawk flew the first self-propelled, winged aero-vehicle. Hardly an imposing sight, it barely rose above the shore; and, in size, it bore little resemblance to the jumbo jets that would follow. In power, velocity, and payload, it was also but a hint of what was to come. But that aircraft, aloft for only a few moments, held promise far beyond its modest dimensions and capabilities. Eventually that promise became reality, yielding change that helped shrink the globe and bring the peoples of the world closer together. Rarely has mankind beheld an event foreshadowing such remarkable improvement for the benefit of us all. Today, we commemorate an idea that grew in the hearts and minds of the Wright Brothers, Orville and Wilbur, until it culminated in the famous flight that blazed a path into the future for America and the world.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the seventeenth day of December of each year as "Wright Brothers Day" and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 17, 1988, as Wright Brothers Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities, both to recall the achievements of the Wright Brothers and to stimulate aviation in this country and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-28304
Filed 12-6-88; 10:36 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5920 of December 5, 1988

Year of the Young Reader, 1989

By the President of the United States of America

A Proclamation

Reading is one of the most important activities any child can engage in, and potentially one of the most enjoyable too. For all of us, and especially for youngsters, reading is a key to past, present, and future—a path into virtually limitless treasures of knowledge and inspiration. Reading encourages wonder about the world, broadens awareness of others, and offers clues about the meaning of life. It helps transmit our cultural legacy and fosters inner resources of spirit, intellect, and imagination. Children and young adults need and deserve the gift, joy, and promise of reading, and a year of special national observance in recognition of this truth is most appropriate.

Nurturing a love of reading in children is crucial for their personal growth and well-being and for the continued health and vigor of our communities and country. Now as always, America needs a literate and knowledgeable citizenry fully conversant with and determined to defend our heritage of liberty and learning.

We can all help young readers discover the blessings and the enjoyment that reading offers. Parents can read aloud to their children. Families and schools can make reading materials a familiar part of youngsters' surroundings and can suggest regular visits to libraries. Educators and concerned citizens can redouble their efforts to ensure that students remain in school and that literacy programs for people of all ages are available in their areas. Each of us can give young people the good example of reading ourselves. We can explain the freedom we Americans enjoy to read and write and study as we like. If we do all of these things, we will go a long way toward awakening among every young reader the understanding that reading is a thrilling, lifetime journey into new worlds of adventure, history, heritage, and far frontiers. That will be an inestimable service to our Nation.

The Congress, by Public Law 100–662, has designated 1989 as "Year of the Young Reader" and authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1989 as Year of the Young Reader. I call upon parents and educators, librarians and publishers, interested private organizations and businesses, government officials, and all Americans to observe this year with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88–28305
Filed 12–6–88; 10:37 am]
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DEPARTM

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7 CFR Pa

[Docket No

**Oranges,
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AGENCY: A
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SUMMARY:
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Specialist,
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Rules and Regulations

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-89-011]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Grapefruit Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily relaxes the minimum size requirement for shipments of domestic and imported pink seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). The size composition, maturity level, and current and prospective supply and demand conditions for the 1988–89 season Florida grapefruit crop warrants this action.

DATES: Effective for the period December 5, 1988, through August 20, 1989. Comments which are received by January 6, 1989, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers and importers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (7 CFR 905.306). This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I.

This rule amends paragraph (a) of § 905.306 to temporarily relax the minimum size requirements for domestic shipments of pink seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter), effective December 5, 1988. The relaxation is to remain in effect through August 20, 1989, by which time shipment of the 1988–89 season Florida grapefruit crop will be finished.

The Citrus Administrative Committee (committee), which administers the program locally, recommended relaxation of the size requirements for Florida grapefruit at its November 8, 1988, meeting. The committee recommended the relaxed size requirements for Florida grapefruit based on an analysis of the current and prospective marketing conditions for the 1988–89 season crop, as well as a projection of the size composition and maturity level of the crop which will remain for shipment on and after December 5, 1988. The committee's recommendation to relax the minimum size requirements for grapefruit follows the practice of prior years of lowering such requirements when the fruit reaches an acceptable level of quality, maturity, and flavor. By the date this action takes effect, the size released (56's) should have reached a level of quality, maturity, and flavor satisfactory to consumers necessary to maximize shipments. Growing conditions have not been especially good this season due to a lack of moisture, which has inhibited size development of the fruit. Furthermore, the committee expects the grapefruit market to be the strongest and the weekly flow to market the heaviest of the season when this action becomes effective due to the strong holiday demand, thereby minimizing the price depressing effect of releasing the smaller sized fruit on the market at that time. Shipment of the 1988–89 season

Florida grapefruit crop currently is in progress.

The relaxation of the minimum size requirements for pink seedless grapefruit is only for the remainder of the 1988–89 shipping season. The tighter minimum size requirements as specified § 905.306 will resume for pink seedless grapefruit effective August 21, 1989. The resumption of tighter size requirements for 1989–90 season shipments is based upon the maturity, size, quality, and flavor characteristics of pink seedless grapefruit early in the shipping season.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act [7 U.S.C. 608e–1] provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action relaxes the minimum size requirements for dometically produced pink seedless grapefruit the relaxed requirements would also be applicable to imported pink seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Section 944.106 is effective under Section 8e of the Act. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed 4/5-bushel cartons exempt from the import requirements.

The relaxation of the minimum size requirements applicable to domestic and import shipments of pink seedless grapefruit is intended to maximize domestic shipments to meet buyer needs. Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers would be beneficial because it will enable shippers to provide grapefruit consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and imported grapefruit over the past several years, has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes the minimum size requirements currently in effect for Florida and imported grapefruit; (2) Florida grapefruit handlers are aware of this action which was recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1988–89 season Florida grapefruit crop has begun; (4) the relaxation of the size requirements for imported grapefruit is mandatory under Section 8e of the Act; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, grapefruit, oranges, tangelos, tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 are amended by revising the following entries in Table I of paragraph (a) applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 48.

(a) * * *

Table I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum (Diameter inches) (4)
*	*	*	*
GRAPEFRUIT:			
Seedless, pink.	12/05/88–8/20/89.	Improved No. 2 (External) U.S. No. 1 (Internal).	3–5/16
	On and after 8/21/89.	Improved No. 2 (External) U.S. No. 1 (Internal).	3–9/16
*	*	*	*

* * * * *

Dated: December 1, 1988.

Charles R. Brauer,

Director, Fruit and Vegetable Division.

[FR Doc. 88–28103 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[FV–88–105FR]

Raisins Produced From Grapes Grown in California; Changes to the Supplementary Rules and Regulations; Deletion of the Weight Adjustment (Moisture) System and Revision of the Schedule of Payments for California Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting as a final rule, the provisions of an interim final rule which changed the supplementary rules and regulations and the schedule of payments of the California raisin marketing order (order). The action deletes the weight adjustment (moisture) system for Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins, makes conforming changes to reflect such deletion and makes a conforming change under the schedule of payments. These changes were recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the marketing order. These changes are designed to improve the operation of the marketing order. In addition, this final rule corrects inadvertent errors in the iterim final rule.

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such acions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins subject to regulation under the raisin marketing order, and approximately 5,000 raisin producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

This final rule changes the supplementary rules and regulations and the schedule of payments of the raisin marketing order. These changes were recommended by the Committee. They delete the weight adjustment (moisture) system for Natural (sun-dried) Seedless, monukka, and Other Seedless raisins, make conforming changes to other order provisions to reflect the deletion of this system, and make an additional conforming change in Subpart—Schedule of Payments. The rule also corrects inadvertent errors in the interim final rule published August 22, 1988, (53 FR 31830).

The first change deletes the weight adjustment (moisture) system for natural (sun-dried) Seedless, Monukka, and Other Seedless raisins. This system was established on September 4, 1985, (50 FR 35769). The weight adjustment (moisture) system encouraged Natural (sun-dried) Seedless, Monukka, and Other Seedless raisin producers to deliver lower moisture raisins (i.e., in the 10.0 to 14.0 percent moisture range) to handlers for processing. The industry has found that higher maturity raisins of these varietal types with a moisture level in excess of 14.0 percent tend to sugar if held in storage for extended periods. Sugaring is an undesirable condition in raisins because the raisins feel gritty, rather than soft and pliable, when eaten.

Under this system, producers delivering raisins in the lower percentage range (i.e., 13.9 percent and lower) received a weight credit to their lots of raisins. In turn, producers that delivered raisins in the higher percentage range (i.e., 14.1 to 16.0 percent) received a weight reduction on such lots. There was no dockage or adjustment on raisins containing 14.0 percent moisture. Raisins above the 16.0 percent moisture level were considered off-grade and were returned to the producer or reconditioned by the handler to bring the lot up to acceptable quality standards.

Producers received payments on their deliveries of raisins based on the creditable fruit weight of each lot. Therefore, producers that received a weight credit for delivering drier raisins received a larger payment per lot than those producers who delivered raisins in a higher percent moisture range.

As mentioned above, the industry has found that higher maturity raisins with more than 14.0 percent moisture tend to sugar if held in storage for a lengthy period and the weight adjustment (moisture) system was installed to correct this program. However, since the advent of the program in 1985, the average moisture level of such lots of Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins delivered to handlers has dropped 1.2 percent from 11.71 to 10.52 percent. In addition, an average of only 5.01 percent of the lots of such raisins delivered since the onset of this program have been in the 14.0 to 16.0 percent moisture range. Producers are now delivering drier raisins.

The Committee has therefore recommended that the weight adjustment (moisture) system be discontinued and deleted from the rules and regulations. Since drier raisins are now being delivered, the weight adjustment (moisture) portion of the regulations is not considered as necessary as it was in 1985. The current program has also been found to be cumbersome and difficult to administer. This action also makes necessary conforming changes to other provisions in the regulations to reflect the deletion of the weight adjustment (moisture) system (§§ 989.210, 989.212 and 989.213).

The second change revises § 989.401(a)(1) to reflect the use of "creditable weight" as the basis of payment for receiving, storing, fumigating and handling costs paid to handlers rather than the "natural condition weight" at the time of acquisition as previously stated in the regulations. This is a conforming change which should have been implemented when the weight dockage and adjustment (moisture) systems were originally established on September 4, 1985, (50 FR 35769).

The interim final rule establishing these changes was issued on August 17, 1988, and was published in the **Federal Register** on August 22, 1988, (53 FR 31830). Comments were solicited from interested persons through September 21, 1988. No comments were received. Thus, the changes made by that interim final rule are adopted by this final action, with the exception of correcting errors in §§ 989.212 and 989.213 which were inadvertently made in that interim final rule and which are corrected in this final rule.

Of the errors mentioned above, one appears in the second sentence of paragraph (a) of § 989.212, which is

found in the first column of page 31832 of the August 22, 1988, issue of the **Federal Register.** In that sentence, the phrase "more than 12 percent" was inadvertently used. This action corrects that phrase to read "from 12.1 percent through 17.0 percent."

The second error that is corrected by this final rule also appears in paragraph (a) of § 989.213, which is found in the first column on page 31832 of the August 22, 1988, issue of the **Federal Register.** In the second sentence of paragraph (a), references to paragraph (c) and (d) were inadvertently omitted. This action corrects that reference to read "paragraphs (b), (c), and (d)."

Other errors contained in the August 22 interim final rule were corrected by a final rule published in the **Federal Register** on September 8, 1988, (53 FR 34714). The August 22 interim final rule inadvertently used the phrase "40.0 through 49.9 percent" in the first sentence of paragraph (a) in § 989.213 (53 FR 31832). The September 8 rule corrected that phrase to read "35.0 through 49.9 percent" (53 FR 34715). The August 22 interim final rule also corrected section 989.212 by reinserting the term "dipped seedless" in the first sentence (53 FR 31832).

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee and other available information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the crop year for raisins began August 1, 1988, and this rule should continue in effect for this crop year and for subsequent years.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, and Raisins.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 989 is taken:

Note.—These sections will appear in the Code of Federal Regulations.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Supplementary Regulations

2. Section 989.210 is revised to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) *General.* A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, Sultana, Zante Currant and Muscat (including other raisins with seeds) raisins under the weight dockage provisions described in §§ 989.212 and 989.213. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable factor(s) from the appropriate dockage table(s) included in those sections.

(b) *Free and reserve tonnage percentages.* Whenever free and reserve percentages are designated for raisins of the varietal types specified in paragraph (a) of this section for a crop year, such percentages shall be applicable to the creditable weight of any lot of such raisins acquired by a handler pursuant to a weight dockage system.

(c) *Reserve tonnage.* A handler may hold as reserve tonnage raisins, any lot, or portion thereof, of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system: *Provided,* That only the creditable weight of such lot, or portion thereof, may be applied by the Committee against the handler's reserve tonnage obligation.

(d) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the free tonnage portion of the creditable weight of such lot.

(e) *Payments for services on reserve tonnage.* Payment to a handler for services performed by such handler with respect to reserve tonnage raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be made on the basis of the creditable weight of such lot and at the applicable rate specified for such services in § 989.401 of *Subpart—Schedule of Payments.*

(f) *Identification.* Any lot of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage system shall be so identified by the inspection service affixing to one container on each pallet, or to each bin, in such lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed to the container or bin until the raisins are processed or disposed of as natural condition raisins. The control card shall only be removed by, or under the supervision of an inspector of, the inspection service, or authorized Committee personnel.

(g) *Application of dockage factors.* A lot of raisins acquired which may be subject to both a substandard and maturity dockage factor shall have only the highest of the two dockage factors applied to determine the creditable weight.

§ 989.211 [Removed]

3. Section 989.211 is removed.

4. Section 989.212(a) is revised to read as follows:

§ 989.212 Substandard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins containing from 5.1 through 10.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 percent through 17.0 percent, by weight, of substandard raisins under a dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

* * * * *

5. Section 989.213(a) is revised to read as follows:

§ 989.213 Maturity dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins containing from 35.0 percent through 49.9 percent,

by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraphs (b), (c), and (d) of this section.

* * * * *

6. Section 989.401(a) is revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition. (1) Receiving, storing, fumigating, and handling.* Each handler shall, beginning August 1, 1983, be compensated at the rate of $38.75 per ton (creditable weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Raisin Adminsitrative Committee during all or any part of the same crop year, and released after February 13, 1984.

* * * * *

Dated: December 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

FR Doc. 88-28068 Filed 12-6-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 059CE, Special Condition No. 23-ACE-43]

Special Conditions; Modified Cessna Model 414A Airplanes With TCM TSIOL-550 Engines Installed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for modified Cessna Model 414A airplanes with TCM TSIOL-550 engines installed. The novel and unusual design features requiring special conditions include the installation of the TCM TSIOL-550 engines, which incorporates coolant systems for which the applicable regulations do not contain adequate or appropriate temperature indicator requirements. The special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Missouri 64106, telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1988, RAM Aircraft Corporation, Post Office Box 5219, Waco, Texas 76708, made application to the FAA for supplemental type certificate (STC) approval on the type design changes necessary to install the Teledyne Continental Motors (TCM) TSIOL-550 engines in the Cessna Model 414A airplane. The TCM TSIOL-550 engines are liquid-cooled replacements for the currently installed air-cooled engines.

Early airworthiness standards contained requirements for both liquid-cooled and air-cooled engine installations. These requirements continued through a number of rule changes; however, the requirement for a coolant temperature indicator for the flight crew was deleted from the rules, without explanation, by Civil Air Regulations Amendment 3-5, effective October 1, 1959. Consequently, the type certification basis for these airplanes does not contain a requirement for a liquid-coolant temperature indicator.

Since CAR 3/Part 23 as applicable to these airplanes do not contain adequate instrument requirements for liquid-cooled engines, it is incumbent upon the FAA to identify liquid-cooled engine installations as novel and unusual design features to the extent necessary to adopt special conditions to require the necessary instrumentation.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis in accordance with § 21.101(b)(2), if the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification, as provided by § 21.101(b)(2).

Type Certification Basis

The proposed type certification basis for the RAM modified Cessna Model 414A is as follows: Part 3 of the Civil Air Regulations (CAR), dated May 15, 1956, as amended by 3-1 through 3-5 and 3-8, excluding the following portions: Subpart B and §§ 3.356, 3.357, 3.358, 3.359, 3.411, 3.429, 3.433, 3.434, 3.435, 3.436, 3.437, 3.445, 3.581, 3.582, 3.583, 3.584, 3.585, 3.587, 3.628, 3.666, 3.672, 3.673, 3.674, 3.675, 3.700(c), 3.728, 3.767(a), and 3.767(b). Include the following portions of Part 23 of the FAR, dated February 1, 1965, as amended by 23-1 through 23-14: Subpart B and §§ 23.729, 23.901, 23.909, 23.951, 23.954, 23.955, 23.959, 23.973, 23.1041, 23.1043, 23.1047, 23.1143, 23.1305, 23.1387(e); 23.1435 and 23.1557(c), as amended by 23-1 through 23-21; § 23.1385(c), as amended by 23-1 through 23-23, § 23.1327. Add § 23.1559(b) for Model 414A only. Findings of equivalent level of safety were made for CAR 3.637, 3.757, and 3.778(a). Part 36, as applicable, and these special conditions are applicable when liquid-cooled engines are installed.

Discussion of Comments

The FAA received no comments on the special condition in response to Notice No. 23-ACE-43, published in the **Federal Register** on August 1, 1988. The closing date for comments was August 31, 1988. However, the FAA did receive one comment addressing an error in the preamble to the notice.

The commenter objected to the statement in the "Discussion" section that states: "When CAR 3 was recodified into Part 23, the requirement for a coolant temperature indicator for each liquid-cooled engine was inadvertently omitted." The commenter states he participated in the recodification and it was not "inadvertently" omitted. The commenter submitted the applicable portions of the May 1962 issue of CAR 3 that was used as the basis for Part 23. The applicable page from CAR 3, of May 1956, was also enclosed. Since the older document contains the requirement and the later one does not, the requirement was deleted somewhere between. The commenter suspects the requirement was deleted by Amendment 3-5, 24 FR 7065, dated September 1, 1959.

The FAA checked further into this issue and finds that the commenter is correct in that Civil Air Regulations amendment 3-5, effective October 1, 1959, deleted the requirement without

explanation other than the change is "clarifying or editorial in nature." The FAA apologizes for the error in the notice.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

In view of the design features discussed above, the following special conditions are adopted for the propulsion system of the Cessna Model 414A airplanes, with TCM TSIOL–550 engines installed, under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Conditions

Accordingly, the Federal Aviation Administration issues the following special conditions as part of the type certification basis for the RAM modified Cessna Model 414A airplanes with TCM TSIOL–550 engines installed:

1. In addition to the requirements of § 23.1305, a coolant temperature indicator is required for each liquid-cooled engine.

Issued in Kansas City, Missouri on November 15, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28099 Filed 12–6–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 536

Claims Against the United States

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a change of the regulatory provisions controlling the processing and settlement of administrative claims filed against the Army. The change is necessary because of the publication of change 1 to AR 27–20 (July 10, 1987) (Claims). This change will inform third parties of the procedures currently controlling the processing and settlement of these administrative claims by the Army.

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755–5360, (301) 677–7622.

SUPPLEMENTARY INFORMATION: This change updates the applicable law on damages. It changes the appellate rules to the Military Claims Act (MCA). The revision provides rules on nonappropriated claims to be handled by commercial insurance instead of under a claims statute. It designates responsibility for the Article 139 Program. The change provides uniform reduction procedures for claimant's failure, absent good cause, to provide timely notice to household goods carrier for loss or damage.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 536

Claims, Foreign claims, Tort claims.

Jack F. Lane, Jr.,

Colonel, JA, Commanding, United States Army Claims Service, Office of The Judge Advocate General, Department of Defense.

Accordingly, 32 CFR Part 536 is revised to read as follows:

PART 536—CLAIMS AGAINST THE UNITED STATES

General Provisions

Sec.
536.1 Purpose and scope.
536.2 Information and assistance.
536.3 Definitions and explanations.
536.4 Treaties and international agreements.
536.5 Claims.
536.6 Determination of liability.
536.7 Incident to service exclusionary rule.
536.8 Use of appraisers and independent medical examinations.
536.9 Effect on award of other payments to claimant.
536.10 Settlement agreement.
536.11 Appeals and notification to claimant as to denial of claims.
536.12 Effect of payment.
536.13 Advance payments.

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

536.20 Statutory authority.
536.21 Definitions.
536.22 Scope.
536.23 Claims payable.
536.24 Claims not payable.
536.25 Claims also cognizable under other statutes.
536.26 Presentation of claims.
536.27 Procedures.
536.28 Law applicable.
536.29 Compensation for property damage, personal injury, or death.
536.30 Structured settlements.
536.31 Claims over $100,000.
536.32 Settlement procedures.
536.33 Attorney fees.
536.34 Payment of costs, settlements, and judgments related to certain medical and legal malpractice claims.
536.40 Claims under Article 139, Uniform Code of Military Justice.
536.50 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.
536.60 Maritime claims.

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

536.70 Statutory authority.
536.71 Definitions.
536.72 Scope.
536.73 Claims payable.
536.74 Claims not payable.
536.75 Notification of incident.
536.76 Claims in which there is a State source of recovery.

Sec.

536.77 Claims against the ARNG tortfeasor individually.
536.78 When claim must be presented.
536.79 Where claim must be presented.
536.80 Procedures.
536.81 Settlement agreement.

Claims Incident to Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

536.90 Statutory authority.
536.91 Scope.
536.92 Claims payable.
536.93 Claims not payable.
536.94 When claim must be presented.
536.95 Procedures.
536.96 Settlement agreement.
536.97 Reconsideration.

Authority: 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715, unless otherwise noted.

General Provisions

§ 536.1 Purpose and scope.

(a) *Purpose.* Part 536 prescribes policies and procedures to be followed in the filing, investigation, processing and administrative settlement of Department of Army (DA) generated noncontractual claims. Sections 536.1 through 536.13 contain general instructions and guidance for the investigation and processing of claims and apply to all claims unless other laws or regulations specify other procedures. They are intended to ensure that incidents that may result in claims are promptly and efficiently investigated under supervision adequate to ensure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled. The Secretary of the Army has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated to the Commander, U.S. Army Claims Service (USARCS) to carry out these responsibilities. USARCS is the agency through which the Secretary of the Army and TJAG discharge their responsibilities for claims administration. The proper mailing address of USARCS is Commander, U.S. Army Claims Service, Office of The Judge Advocate General, Fort George G. Meade, Maryland 20755–5360.

(b) *Scope*—(1) *Applicability.* (i) Sections 536.20 through 536.35 apply in the settlement of claims under the Military Claims Act (MCA) (10 U.S.C. 2733) for personal injury, death or property damage that was either caused by members or employees of the DA acting within the scope of their employment or otherwise incident to noncombat activities of the DA.

(ii) Section 536.40 sets forth the procedures to be followed and the standards to be applied in the processing of claims cognizable under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 399) for property willfully damaged or wrongfully taken or withheld by members of the DA.

(iii) Section 536.50 governs the administrative settlement of claims under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671–2680) for personal injury, death or property damage caused by the negligent act or omissions of members or employees of the DA while acting within the scope of their employment.

(iv) Section 536.60 provides the procedures to be followed in the settlement of claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–4804, 4806) for damage caused by a vessel of or in the service of the Army.

(v) Sections 536.70 through 536.81 provide instructions for settlement of claims under the National Guard Claims Act (NGCA) (32 U.S.C. 715) for personal injury, death or property damage that was either caused by a member or employee of the Army National Guard (ARNG) while in training or duty under Federal law, and acting within the scope of their employment; or otherwise incident to noncombat activities of the ARNG not in active Federal service.

(vi) Sections 536.90 through 536.97 provide instructions for settlement of claims under 10 U.S.C. 2737 for personal injury, death or property damage (not cognizable under any other law) incident to the use of Government property by members or employees of the DA.

(2) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by §§ 536.1 through 536.13. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(3) *Nonapplicability.* Sections 536.1 through 536.13 do not apply to:

(i) Contractual claims which are under the provisions of Pub. L. 85–804, 28 August 1958 (72 Stat. 972) and AR 37–103, or other regulations including acquisition regulations.

(ii) Maritime claims (§ 536.60).

§ 536.2 Information and assistance.

(a) Government personnel may not represent any claimant or receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. 203, 205). They are prohibited from disclosing information which may be the basis of a claim, or any evidence or record in any claims matter, except as prescribed in §§ 518.1 through 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim against the United States will be instructed concerning the procedure to follow. He will be furnished claim forms, and, when necessary, will be assisted in completing the forms and assembling evidence. He will not be assisted in determining what amount to claim. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and locations of claims officers, and engineer repair teams. When the government of a foreign country in which the U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

§ 536.3 Definitions and explanations.

The following terms as used in §§ 536.1 through 536.13 and the matters referred to in § 536.1(b) will have the meaning here indicated:

(a) *Affirmative Claims.* The government's statutory right to recover money, property, or repayment in kind incurred as a result of property loss, damage, or destruction by any individual, partnership, association or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) incurred under circumstances creating tort liability upon some third person.

(b) *Civilian Employees.* Civilian employee means a person whose

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activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used: this includes, but is not limited to, full-time Federal civilian officers and employees. The term should be distinguished from the term "independent contractor" for whose actions the Government generally is not liable. The determination of who is a civilian employee is a Federal question determined under Federal law and not under local law.

(c) *Claim.* A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant or a property designated representative.

(d) *Claim file.* The claim, report of the claims officer or other report of investigation, supporting documentation, and pertinent correspondence.

(e) *Claim approval authority.* Except for claims under 10 U.S.C. 939, 31 U.S.C. 3721, and treaties or international agreements such as the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), and subject to any limitations found in specific provisions of these regulations, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. A person with approval authority may not disapprove a claim in its entirety nor make a final offer, subject to any limitations found in specific provisions of this regulation.

(f) *Claim settlement authority.* The authority to approve a claim, to deny a claim in its entirety, or to make a final offer subject to any limitations found in specific provisions of this regulation.

(g) *Claims attorney.* DA or DOD civilian attorney assigned to a judge advocate or legal office, who has been designated by the Commander, USARCS.

(h) *Claims judge advocate.* An officer of the Judge Advocate General's Corps designated by a command or staff judge advocate (SJA) to be in immediate charge of claims activities of the command.

(i) *Claims Officer.* A commissioned officer, warrant officer, or qualified civilian employee detailed by the commander of an installation or unit who is trained or experienced in the investigation of claims.

(j) *Claimant.* An individual, partnership, association, corporation, country, state, territory, or other political subdivision of such country; does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants but individual Indians can be claimants.

(k) *Combat activities.* Activities resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict.

(l) *Diaster.* A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

(m) *Federal agency.* A federal agency includes the executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

(n) *Final offer.* An offer of payment by a settlement authority in full and final settlement of a claim which, if not accepted, constitutes a final action for purposes of filing suit under § 536.50 or filing an appeal under §§ 536.20 through 536.35 and 536.70 through 536.81, provided such offer is made in writing and meets the other requirements of a final action as set forth in this regulation.

(o) *Government vehicle.* A vehicle owned or on loan to any agency of the Government of the United States or privately owned, and operated by members or civilian employees of the DA in the scope of their office or employment with the Government of the United States including vehicles being operated on joint operations of the U.S. Armed Forces.

(p) *Medical claims judge advocate.* A judge advocate (JA) assigned to an Army Medical Center, under an agreement between TJAG and The Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

(q) *Medical claims investigator.* A senior legal specialist or qualified civilian assigned to assist a medical claims JA on a full-time basis. A medical claims investigator is authorized to administer oaths under the provision of Article 136(b)(6), UCMJ, 10 U.S.C. 936(b)(6) when performing investigative duties.

(r) *Medical malpractice claim.* A claim arising out of substandard or inadequate care of an Army patient.

(s) *Military personnel.* Military personnel means members of the DA on active duty for training, or inactive duty training as defined in AR 310–25 and 10 U.S.C. 101(22), 101(23), and 101(30). This includes members of the District of Columbia ARNG while performing active duty or training under 32 U.S.C. 316, 502, 503, 504 or 505.

(t) *Noncombat activities.* A noncombat activity arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances, are excluded.

(u) *Personal property.* Property consisting solely of corporeal personal property, that is, tangible things. Personal property does not consist of the loss or forfeiture of a security deposit or a contingent financial benefit.

§ 536.4 Treaties and international agreements.

(a) The governments of some foreign countries have by treaty or agreement waived or assumed, or may hereafter waive or assume, certain claims against the United States. In such instances claims will not be settled under laws or regulations of the United States.

(b) The prohibition stated in paragraph (a) of this section is not applicable to claims within the purview of Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty or similar type agreements which normally will be investigated and settled as therein provided.

§ 536.5 Claims.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in his name by a duly authorized agent or legal representative. As used in this regulation an owner includes the following:

(i) For real property. The mortgagor, or the mortgagee, if he or she can maintain a cause of action in the local courts involving a tort to that specific property. When notice of divided interests in real property is received, the claim should, if feasible, be treated as a single claim or a release from all interests must be obtained.

(ii) For personal property. A bailee, leasee, mortgagee, and conditional vendor, or others having title for

purposes of security only, are not proper claimants unless specifically authorized by the statute and implementing regulations in question. If more than one party has a real interest in the property, all must join in the claim or a release from all interests must be obtained.

(2) A claim for personal injury may be presented by the injured person or duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. The amount allowed will, to the extent practicable, be apportioned among the beneficiaries in accordance with the law applicable to the incident.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has in fact incurred the expenses for which the claim is made. However, for claims cognizable under the provisions of the FTCA, see § 536.50, and for claims cognizable under the provisions of the Nonscope of Employment Claims Act, see §§ 536.90 through 536.97.

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing the title or capacity. Written evidence of the authority of such person to act is mandatory except when controlling law does not require such evidence.

(6) A claim normally will include all damages that accrue by reason of the incident. Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, each of the foregoing or any combination of them ordinarily represent only an integral part or parts of a single claim or cause of action. Under §§ 536.20 through 536.35 and the Foreign Claims Act (FCA) (10 U.S.C. 2734), a single claimant is entitled to be compensated only one time for all damages or injuries arising out of an incident.

(b) *Subrogation.* A claim may be presented by a subrogee in his own name if authorized by the law of the place where the incident giving rise to the claim occurred, provided subrogation is not barred by the regulation applicable to the type of claim involved. (1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute separate claims, and it is permissible for the aggregate of such claims to exceed the monetary jurisdiction of the approving or settlement authority.

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully subrogated is a matter to be determined by local law. Some jurisdictions permit the property owner to file for property damage even though the owner has been compensated for the repairs by an insurer. In such instances a release should be obtained from both parties in interest or be released by both of them. The approved payment in a joint claim will be by joint check which will be sent to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his undisputed interest.

(3) Where a claimant has made an election and accepted workmen's compensation benefits, both statutory and case law of the jurisdiction should be scrutinized to determine to what extent the claim of the injured party against third parties has been extinguished by acceptance of compensation benefits. While it is infrequent that the claim is fully extinguished, it is true in some jurisdictions, and the only proper party claimant is the workmen's compensation carrier. Even where the injured party's claim has not been fully extinguished, most jurisdictions provide that the compensation insurance carrier has a lien on any recovery from the third party, and no settlement should be reached without approval by the carrier where required by local law. Additionally, claims from the workmen's compensation carrier as subrogee or otherwise will not be considered payable where the United States has paid the premiums, directly or indirectly, for the workmen's compensation insurance. Applicable contract provisions holding the United States harmless should be utilized.

(4) Whether medical payments paid by an insurer to its insured can be subrogated depends on local law. Some jurisdictions prohibit these claims to be submitted by the insurer notwithstanding a contractual provision providing for subrogation. Therefore, local law should be researched prior to deciding the issue, and claims forwarded to higher headquarters for adjudication should contain the results of said research. Such claims, where prohibited by state law, will also be barred by the Antiassignment Act.

(5) Care will be exercised to require insurance disclosure consistent with the type of incident generating the claim. Every claimant will, as a part of his claim, make a written disclosure concerning insurance coverage as to:

(i) The name and address of every insurer;

(ii) The kind and amount of insurance;

(iii) Policy number;

(iv) Whether a claim has been or will be presented to an insurer, and, if so, the amount of such claims; and

(v) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(6) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and should support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or of the amount of damages. Approving and settlement authorities will make independent determinations upon the evidence of record and the law.

(7) Subrogated claims are not cognizable under §§ 536.90 through 536.97 and the FCA (10 U.S.C. 2734).

(c) *Transfer and assignments.* (1) Except as they occur by operation of law or after a voucher for the payment has been issued, unless within the exceptions set forth by statute (see 31 U.S.C 3727 and AR 37–107), the following are null and void—

(i) Every purported transfer or assignment of a claim against the United States, or of any part of or interest in a claim, whether absolute or conditional.

(ii) Every power of attorney or other purported authority to receive payment of all or part of any such claim.

(2) The purposes of the Antiassignment Act are to eliminate multiple payment of claims, to cause the United States to deal only with original parties, and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims which arise under a statute are not barred by the Antiassignment Act. For example, subrogated worker's compensation claims are cognizable when presented by the insurer.

(4) Subrogated claims which arise pursuant to contractual provisions may be paid to the subrogee if the subrogated

claim is recognized by state statute or decision. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by State law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law. If there may be a valid subrogated claim forthcoming, payment should be withheld for this portion of the claim. If it is determined that claimant is the only proper party, full settlement is authorized.

(d) *Action by claimant*—(1) *Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable. A claim is filed only when the elements indicated in § 536.3(c) have been supplied in writing by a person authorized to present a claim, unless the claim is cognizable under a regulation that specifies otherwise. A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(4) *Amendment of claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially. If the additional party had a separate cause of action, his claim may not be treated as an amendment but only as a separate claim and is thus barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries, a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by an insured for the deductible portion of the property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim.

(5) *Date of receipt stops the running of the statute.* In computing this time to determine whether the period of limitations has expired, exclude the first day and include the last day, except when it falls on a nonworkday such as Saturday, Sunday, or a legal holiday, in which case it is to be extended to the next workday.

(f) *Statute of limitations*—(1) *General.* Each statute available to the Department of the Army for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless the statute expressly provides for waiver. Specific information concerning the period for filing under each statute is contained in the appropriate implementing sections of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the claimant or his decedent. Exceptions to this general rule may exist where the claimant does not know the cause of injury or death; that is, the claim accrues when the injured party, or someone acting on his or her behalf, knows both the existence and the cause of his or her injury. However, this exception does not apply when, at a later time, he or she discovers that the acts inflicting the injury may constitute medical malpractice. (See *United States v. Kubrick,* 444 U.S. 111, 100 S. Ct. 352 (1979).) The discovery rule is not limited to medical malpractice claims; it has been applied to diverse situations involving violent death, chemical and atomic testing, and erosion and hazardous work environment. In claims for indemnity or contribution against the United States, the accrual date is the time of the payment for which indemnity is sought or on which contribution is based.

(3) *Effect of infancy, incompetency or the filing of suit.* The statute of limitations for administrative claims is not tolled by infancy or incompetency. Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by the filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties.

(2) *Signatures.* (i) The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, for example, "Mary A. Doe," rather than "Mrs. John Doe."

(ii) Where the claimant is represented, the supporting evidence required by subparagraph a(5) of this section will be required only if the claim is signed by the agent or legal representative. However, in all cases in which a claimant is represented, the name and address of the representative will be included in the file together with copies of all correspondence and records of conversations and other contacts maintained and included in the file. Frequently, these records are determinative as to whether the statute of limitations has been tolled.

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the legal office of the nearest Army post, camp, or station, or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attache of the U.S. Armed Forces. Claims cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan (Japan SOFA) or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

(g) *By the command concerned*—(1) *General.* If the claim is of a type and amount within the jurisdiction of the claims office of the command concerned and the claim is meritorious in the amount claimed, it will be approved and paid. If a claim in an amount in excess of the monetary jurisdiction of the claims office, is meritorious in a lesser amount within its jurisdiction, the claim may be approved for payment provided the amount offered is accepted by the claimant in settlement of the claim. If the claim is not of a type within the jurisdiction of the claims office, or if the claimant will not accept an amount within its jurisdiction, the claim with supporting papers and a recommendation for appropriate action will be forwarded to the next higher

claims authority. If the claim is determined to be not meritorious, it will be disapproved provided the claims office has settlement authority for claims of the type and amount involved. Prior to the disapproval of a claim under a particular statute, a careful review should be made to ensure that the claim is not properly payable under a different statute or on another basis.

(2) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each of the following types of claims will be forwarded immediately to the Commander, USARCS: (i) One that appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations;

(ii) One in which the demand exceeds $15,000; or

(iii) One which is a claim under the FTCA (§ 536.50) where the total of all claims, arising from a single incident, actual or potential, exceeds $25,000. USARCS is responsible for the monitoring and settlement of such claims and will be kept informed on the status of the investigation and processing thereof. Direct liaison and correspondence between the USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required. The field claims office will provide USARCS duplicates of all documentation as it is added to the field file. This will include all correspondence, memoranda, medical reports, reports, evaluations, and any other material relevant to the investigation and processing of the claim.

(3) *Claims involving privately owned vehicles.* In areas where the FTCA (§ 536.50) is applicable, any claim except those under 31 U.S.C. 3721, arising out of an accident involving a privately owned vehicle driven by a member of the DA, or by ARNG personnel as defined in § 536.71, based on an allegation that the privately owned vehicle travel was within the scope of employment, should be forwarded without adjudication directly to the Commander, USARCS. Additional information is provided in §§ 536.20 through 536.35, 536.90 through 536.97.

(4) *Claims within the exclusive jurisdiction of USARCS.* Authority to settle the following claims has been delegated to the Commander, USARCS, only: (i) Claims under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty and other treaties or international agreements;

(ii) Claims under § 536.60 (Maritime claims not arising out of civil works activities);

(iii) Industrial security claims, DOD Directive 5220.6, 12 August 1985; and

(iv) Claims of the U.S. Postal Service. Files of these claims will be forwarded directly to the Commander, USARCS, with the report of investigation and supporting papers, including a seven-paragraph memorandum.

(5) *Maritime claims.* (i) A Copy of a claim arising out of damage, loss, injury, or death which originates on navigable waters and is not considered cognizable under the Army Maritime Claims Settlement Act (10 U.S.C. 4802–4804) will be forwarded immediately to the Commander, USARCS. A determination will be made as to whether the claim must be processed under the Suits in Admiralty Act or the Public Vessels Act or may be considered administratively.

(ii) In a maritime claim cannot be settled administratively, the claimant will be advised that he must file a suit.

(iii) If it is determined that both administrative and judicial remedies are available, the claim may be processed administratively and the claimant advised of the need to file a suit within 2 years of the date of occurrence if he chooses his judicial remedy.

(iv) If the claim is for damage to property, or injury to person, consummated on land, a claimant who makes an oral inquiry or demand will be advised that no suit can be filed until a period of six months has expired after a claim in writing is submitted.

(v) If it is determined by the Commander, USARCS, that a claim, apparently maritime in nature, is not within the maritime jurisdiction, the claimant will be so advised, and the claim will be returned for processing under the appropriate section of this regulation.

(h) *By district or division engineer.* The district or division engineer area claims office will take the action of an initial claims authority. Files of unpaid claims should be forwarded directly to USARCS. An information copy will be sent to the next higher engineer authority unless such requirement is waived.

(i) *By higher settlement authority.* A higher claims settlement authority may take action with respect to a claim in the same manner as the initial claims office. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded to the Commander, USARCS, with recommendations.

§ 536.6 Determination of liability.

(a) In the adjudication of tort claims, the liability of the United States generally is determined in accordance with the law of the State or country where the act or omission occurred, except that any conflict between local law and the applicable United States statute will be resolved in favor of the latter. However, in claims by inhabitants of the United States arising in foreign countries, liability is determined in accordance with general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, except as it applies to absolute liability. Where liability is not clear or other issues exist, settlements should truly reflect the uncertainties in the adjudication of such issues. Compromise settlements are encouraged provided agreement can be reached that reflects the reduced value of the damages as measured against the full value or range of value if such uncertainties or issues did not exist and were it possible for the claimant to successfully litigate the claim.

(b) Quantum exclusion. The costs of filing a claim and similar costs, for example, court costs, bail, interest, inconvenience expenses, or costs of long distance telephone calls or transportation in connection with the preparation of a claim, are not proper quantum elements and will not be allowed.

§ 536.7 Incident to service exclusionary rule.

(a) *General.* A claim for personal injury or death of a member of the Armed Forces of the United States or a civilian employee of the United States that accrued incident to his service is not payable under this regulation. A claim for property damage that accrued incident to the service of a member of the Armed Forces may be payable under 31 U.S.C. 3721 or §§ 536.20 through 536.35 depending on the facts.

(b) *Property damage claims.* A claim for damage to or loss of personal property of a claimant who is within one of the categories of proper party claimants under 31 U.S.C. 3721, which is otherwise cognizable under 31 U.S.C. 3721, must first be considered thereunder. If a claim is not clearly compensable under 31 U.S.C. 3721, and it arises incident to a noncombat activity of the DA or was caused by a negligent or wrongful act or omission of military personnel or civilian employees of the Department of Defense (DOD), it may be cognizable under either §§ 536.20 through 536.35 or § 536.50. The

claim, if meritorious in fact, will probably be payable under one authorization or another regardless of whether the claim accrued incident to the service of the claimant.

(c) *Personal injury and death claims.* (1) Only after the death or personal injury (which is the subject of the claim) has been determined to have not been incurred incident to the member's service should §§ 536.20 through 536.35 and § 536.50 be studied to determine which, if either, provides a proper basis for settlement of the claim. In any event, the rule in *U.S.* v. *Brooks*, 176 F.2d 482 (4th Cir. 1949) requiring setoff of amounts obtained through military or veterans' compensation systems against amounts otherwise recoverable will be followed. Other Government benefits, funded by general treasury revenues and not by the claimant's contributions, may also be used as a setoff against the settlement. (See, *Overton* v. *United States*, 619 F.2d 1299 (8th Cir. 1980)).

(2) As the incident to service issue is determinative as to whether this type of claim may be processed administratively at all, the applicable law and facts should be carefully considered before deciding that injury or death was not incident to service. Such claims also are often difficult to settle on the issue of quantum and thus more likely to end in litigation. Moreover, the United States may well elect to defend the lawsuit on the basis of the incident to service exclusion, and this defense could be prejudiced by a contrary administrative determination that a service member's personal injuries or death were not incident to service. Doubtful cases will be fowarded to the Commander, USARCS without action along with sufficient factual information to permit a determination of the incident to service question.

§ 536.8 Use of appraisers and independent medical examinations.

(a) *Appraisers.* Appraisers should be used in all claims where an appraisal is reasonably necessary and useful in effectuating the administrative settlement of the claims. The decision to use an appraiser is at the discretion of DA.

(b) *Independent medical examinations.* In claims involving serious personal injuries, for example, normally those cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician, or other medical specialist, depending upon the nature and extent of the injuries. The decision to conduct an independent medical examination is at the discretion of DA.

§ 536.9 Effect on award of other payments to claimant.

The total award to which the claimant (and subrogee) may be entitled normally will be computed as follows: (a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment, compensation, or benefit the claimant has received from the following sources:

(1) The U.S. or ARNG employee/member who caused the damage.

(2) The U.S. or ARNG employee's/member's insurer.

(3) Any person or agency in a surety relationship with the U.S. employee; or

(4) Any joint tortfeasor or insurer, to include Government contractors under contracts or in jurisdictions where it is permissible to obtain contribution or indemnity from the contractor in settlement of claims by contractor employees and third parties.

(5) Any advance payment made pursuant to § 536.13.

(6) Any benefit or compensation based directly or indirectly on an employer-employee relationship with the United States or Government contractor and received at the expense of the United States including but not limited to medical or hospital services, burial expenses, death gratuities, disability payment, or pensions.

(7) The State (Commonwealth and so forth) whose employee or ARNG member caused or generated an incident that was a proximate cause of the resulting damages.

(8) Value of Federal medical care.

(9) Benefits paid by the Veterans Administration (VA) that are intended to compensate the same elements of damage. When the claimant is receiving money benefits from the VA under 38 U.S.C. 351 for a non-service connected disability or death based on the injury that is the subject of the claim, acceptance of a settlement or an award under the FTCA (§ 536.50) will discontinue the VA monetary benefits until the amount that would have otherwise been received in VA monetary benefits is equal to the total amount of the agreement or award including attorney fees. While monetary benefits received under 38 U.S.C. 351 must be discontinued as above, medical benefits, that is, VA medical care may continue provided the settlement or award expressly provides for such continuance and the appropriate VA official is informed of such continuance.

(10) When the claimant is receiving money benefits under 38 U.S.C. 410(b) for non-service connected death, arising from the injury that is the subject of the claim, acceptance of a settlement or award under the FTCA (§ 536.50) or under any other tort procedure will discontinue the VA benefits until the amount that would have otherwise been received in VA benefits is equal to the amount of the total settlement or award including attorney fees. The discontinuation of monetary benefits under 38 U.S.C. 410(b) has no effect on the receipt of other VA benefits. The claimant should be informed of the foregoing prior to the conclusion of any settlement and thus afforded an opportunity to make appropriate adjustment in the amount being negotiated.

(11) Value of other Federal benefits to which the claimant did not contribute, or at least to the extent they are funded from general revenue appropriation.

(12) Collateral sources where permitted by State law (for example, State or Federal workers' compensation, social security, private health, accident, and disability benefits paid as a result of injuries caused by a health care provider).

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage, as to which subrogated interests are allowable, the award based on total damages will be apportioned as their separate interests are indicated (see § 536.5(b)).

(e) After deduction of permissible collateral and non-collateral sources, also deduct that portion of the loss or damage believed to have been caused by the negligence of the claimant, third parties whose negligence can be imputed to the claimant, or joint tortfeasors who are liable for their share of the negligence (for example, where some form of the Uniform Contribution Among Joint Tortfeasors Act has been passed).

(f) Claims with more than one potential source of recovery.

(1) The Government seeks to avoid multiple recovery, that is, claimants seeking recovery from more than one potential source, and to minimize the award it must make. The claims investigation should therefore identify other parties potentially liable to the claimant and/or their insurance carriers; indicate the status of any claims made or include a statement that none has been made so that it can be assured there is only one recovery and the Government does not pay a disproportionate share. Where no claim

has been made by the claimant against others potentially liable, if applicable State law grants the Government the right to indemnity or contribution, and it is felt the Government may be entitled to either under the facts developed by the claims investigation, the claims officer or attorney should formally notify the other parties of their potential liability, the Government's willingness to share information, and its expectation of shared responsibility for any settlement. Furthermore, the claimant may be receiving or entitled to receive benefits from collateral and non-collateral sources, which can be deducted from the total loss or damage. Accordingly, a careful review must be made of applicable State laws regarding joint and several liability, indemnity, contribution, comparative negligence, and the collateral source doctrine.

(2) If a demand by a claimant or an inquiry by a potential claimant is directed solely to the Army, in a situation where it appears that the responsible Army employee may have applicable insurance coverage, inquiry should be made of the employee as to whether he has liability insurance. (i) If so, determine if the insurer has made or will make any payment to claimant. Under applicable State law, the United States may be an additional named insured entitled to coverage under the employee's liability policy. (See 16 ALR3d 1411; *United States* v. *State Farm Mutual Ins. Co.*, 245 F. Supp. 58 (D. Ore. 1965.) Therefore, where there may be applicable insurance coverage, there should be a review of the policy language together with the rules and regulations of the State insurance regulatory body to determine whether the United States comes within the definition of "insured," and whether the exclusion of the United States from policy coverage conforms with state law and policy.

(ii) If the employee refuses to cooperate in providing this information, he or she should be advised to comply with the notice requirements of the insurance policy and to request the insurance carrier contact the claims officer or attorney. In addition, other sources of information, such as vehicle registration records, will be checked to ascertain the employee's insurer. The case should be followed to ascertain whether the employee's insurer has made or will make any payment to the claimant before deciding whether to settle the claim against the Government. Normally, the award, if any, to the claimant will be reduced by the amount of the payment of the employee's insurance carrier.

(3) If the employee is the sole target of the claim and Army claims authorities arrange to have the claim made against the Government, the member or employee should be required to notify his or her insurance carrier according to the policy and inform DA claims authorities as to the details of the insurance coverage, including the name of the insurance carrier. Except when the "Driver's Act" is applicable, the insurance carrier is expected to participate in the negotiation of the claims settlement and to pay its fair share of any award to the claimant.

(4) Where the responsible Army employee is "on loan" to another employer other than the United States, for example, civilian institution for ROTC instructor, or performing duties for a foreign government, inquiry should be made to determine whether there is applicable statutory or insurance coverage concerning the acts of the responsible employee and contribution or indemnification sought as appropriate. In the case of foreign governments, applicable treaties or agreements are considered controlling.

(5) A great many claims cognizable under the FTCA (§ 536.50) are now settled on a compromise basis. A major consideration in many such settlements is the identification of other sources of recovery. This is true in a variety of factual situations where there is a potential joint tortfeasor; for example, multi-vehicle accidents with multiple drivers and guest passengers, State or local government involvement, contractors performing non-routine tasks for the Government, medical treatment rendered to a claimant by non-Government employees, or incidents caused by a member or employee of the military department of a State or Commonwealth with whom the DA does not have a cost-sharing agreement. The law of the jurisdiction regarding joint and several liability, indemnity and contribution may permit shared financial responsibility, but even in jurisdictions which do not permit contribution, a compromise settlement can often be reached with the other tortfeasor's insurance company paying a portion of the total amount of the claim against the Government. For these reasons, every effort should be made to identify the insurance of all potential tortfeasors involved and the status of any claims made, and to demand contribution or indemnity where there is a substantial reason to believe that liability for the loss or damage should be shared.

(6) Whenever a claim is filed against the Government under a statute which does not permit the payment of a subrogated interest, it is important to ensure that full information is obtained from the claimant regarding insurance coverage, if any, since it is the clear legislative intent of such statutes that insurance coverage be fully utilized before using appropriated funds to pay the claims.

§ 536.10 Settlement agreement

(a) *General.* Except under 31 U.S.C. 3721, if a claim is determined to be meritorious in an amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. Acceptance by a claimant of an award constitutes a full and final settlement and release of any and all claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

(b) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

§ 536.11 Appeals and notification to claimant as to denial of claims.

(a) *General.* The nature and extent of the written notification to the claimant as to the denial of his claim should be based on whether the claimant has a judicial remedy following denial or whether he has an administrative recourse to appeal. Where there is a judicial remedy, the written notification should be general, as the various defenses to be employed by the United States in any subsequent litigation is a matter finally for determination by the Attorney General or the appropriate U.S. Attorney. On the other hand, in cases in which an administrative appeal is provided, the basis for denial should be more explicit and certain; only in this way can the claimant be required to completely particularize his grounds for appeal.

(b) *Final Actions under the Federal Tort Claims Act (28 U.S.C. 2671–2680), § 536.50.* If the settlement authority has information available which could possibly be a persuasive factor in the decision of the claimant as to whether to resort to litigation, such information may be orally transmitted to the

claimant and, in appropriate cases, released under normal procedures in accordance with AR 340–17. However, the written notification of the denial should be general in nature; for example, denial on the weaker ground of contributory negligence should be avoided, and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed in writing of his right to bring an action in the appropriate United States District Court not later than 6 months after the date of mailing of the notification.

(c) *Denials under the MCA (10 U.S.C. 2733) §§ 536.20 through 536.35 and the NGCA (32 U.S.C. 715) §§ 536.70 through 536.81.* Claims disapproved under these statutes are subject to appeal and the claimant will be so informed. Also, the notice of disapproval will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for the disapproval. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him is asserted as a basis for denying his appeal.

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim presented or the statute under which it may be considered, claims denied on jurisdictional grounds which are valid, certain, and not easily overcome and in which for this reason no detailed investigation as to the merits of the claim is conducted, should contain in the denial letter a general statement to the effect that the denial on such grounds is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on the merits of the claim, liability may be expressly denied.

(e) *Where claim may be considered under more than one statute.* In cases in which it is doubtful as to whether the MCA (§§ 536.20 through 536.35) or the NGCA (§§ 536.70 through 536.81) or the FTCA (§ 536.50) is the appropriate statute under which to consider the claim, the claimant will be advised of the alternatives, for example, the right to sue or the right to appeal. Similarly, a claimant may be advised of his alternative remedies when the claimant is a military member and the issue of "incident to service" is not clear.

§ 536.12 Effect of payment.

Acceptance of an award by the claimant, except for an advance payment, constitutes for the United States, and for the military member or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

§ 536.13 Advance payments.

(a) *Purpose.* This section implements the Act of September 8, 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–521 (82 Stat. 874) and Pub. L. 98–564 (98 Stat. 2918). No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments on meritorious claims as specified in this section.

(b) *Conditions for advance payment.* An advance payment not in excess of $10,000 is authorized in the limited category of claims resulting in immediate hardship arising from incidents that are payable under the provisions of §§ 536.20 through 536.35, 536.70 through 536.81, or the FCA (10 U.S.C. 2734). An advance payment is authorized only under the following circumstances:

(1) The claim must be determined to be cognizable and meritorious under the provisions of either §§ 536.20 through 536.35, and 536.70 through 536.81, or the FCA (10 U.S.C. 2734).

(2) There exists an immediate need of the person who suffered the injury, damage, or loss, or of the family of a person who was killed, for food, clothing, shelter, medical or burial expenses, or other necessities, and other resources for such expenses are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, as is the spouse or next of kin of a claimant who is incapacitated.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained.

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

§ 536.20 Statutory authority.

The statutory authority for §§ 536.20 through 536.35 is contained in the Act of August 10, 1956 (70A Stat. 153, 10 U.S.C. 2733) commonly referred to as the Military Claims Act (MCA), as amended by Pub. L. 90–522, September 26, 1968 (82 Stat. 875), Pub. L. 90–525, September 26, 1968 (82 Stat. 877), Pub. L. 91–312, July 8, 1970 (84 Stat. 412) and Pub. L. 93–336, July 8, 1974 (88 Stat. 291); and the Act of September 9, 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–521, September 26, 1968 (82 Stat. 874) and Pub. L. 98–564, October 30, 1984 (98 Stat. 2918).

§ 536.21 Definitions.

The definitions of terms set forth in § 536.3 are applicable to §§ 536.20 through 536.35.

§ 536.22 Scope.

Sections 536.20 through 536.35 are applicable in all places and prescribe the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by military personnel or civilian employees of the DA acting within the scope of their employment, or otherwise incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian officer or employee whose injury or death is incident to service.

§ 536.23 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under §§ 536.20 through 536.35 when—

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the Army acting within the scope of their employment, or

(2) Incident to the noncombat activities of the Army.

(b) *Property.* The loss or damage to property which may be the subject of claims under §§ 536.20 through 536.35 includes—

(1) Real property used and occupied under a lease, express or implied, or otherwise (for example, in connection with training, field exercises, or maneuvers). An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. Some losses may be payable using Operations and Maintenance, Army funds. Clothing damage or loss claims arising out of the operation of an Army Quartermaster laundry are considered to be incident to service and are payable only if claimant is not a proper claimant under 31 U.S.C. 3721.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by a criminal act.

(c) *Effect of FTCA.* A claim arising in the United States may be settled under §§ 536.20 through 536.35 only if the

FTCA (28 U.S.C. 2671–2680), § 536.50, has been judicially determined not to be applicable to claims of this nature, or if the claim arose incident to noncombat activities.

(d) *Advance payments.* Advance payments under 10 U.S.C. 2736, as amended, in partial payment of meritorious claims to alleviate immediate hardship are authorized.

§ 536.24 Claims not payable.

A claim is not payable under §§ 536.20 through 536.35 which—

(a) Results wholly from the negligent or wrongful act of the claimant or agent.

(b) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(c) Is purely contractual in nature.

(d) Arises from private as distinguished from Government transactions.

(e) Is based solely on compassionate grounds.

(f) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by § 536.23(b)(1). Real estate claims founded upon contract are generally processed under AR 405–15.

(h) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, together with the recommendations of the responsible claims office.

(i) If presented by a national, or a corporation controlled by a national, or a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country unless the settlement authority having jurisdiction over the claim determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable.

(j) Is for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian employee thereof which is incident to his or her service (10 U.S.C. 2733(b)(3)).

(k) The types of claims not payable under the FTCA (see § 536.50(j)) are also not payable under §§ 536.20 through 536.35 with the following exceptions:

(1) The foreign country exclusion in 28 U.S.C. 2680(k) does not apply to claims under §§ 536.20 through 536.35.

(2) The *Feres* bar in § 536.50(j)(1) does not apply to claims under §§ 536.20 through 536.35, but see the exclusion in paragraph (j) of this section.

§ 536.25 Claims also cognizable under other statutes.

(a) *General.* Claims based upon a single act or incident cognizable under §§ 536.20 through 536.35, which are also cognizable under the FTCA (28 U.S.C. 2671–2680) § 536.50, the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806) § 536.60, the FCA (10 U.S.C. 2734), or Title 31, U.S.C. section 3721 (Personnel Claims), will be considered first under the latter statutes. If not payable under any of those latter statutes, the claim will be considered under §§ 536.20 through 536.35.

(b) *Claims in litigation.* Disposition under §§ 536.20 through 536.35 of any claim of the type covered by this section that goes into litigation in any State or Federal court under any State or Federal statute or ordinance will be suspended pending disposition of such litigation and the claim file will be forwarded to the Commander, USARCS. The Commander, USARCS, in coordination with the U.S. Department of Justice, may determine that final disposition under §§ 536.20 through 536.35 during pendency of the litigation is in the best interests of the United States. This section will also apply to any litigation brought against any agent of the United States in his or her individual capacity which is based upon the same acts or incidents upon which a claim under §§ 536.20 through 536.35 is based.

§ 536.26 Presentation of claims.

(a) *When claim must be presented.* A claim may be settled under this §§ 536.20 through 536.35 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be as established by concurrent resolution of Congress or by determination of the President.

(b) *Where claim must be presented.* A claim must be presented to an agency or instrumentality of the DA. However, the statute of limitations is tolled if a claim is filed with another agency of the Government and is forwarded to the DA within 6 months, or if the claimant makes inquiry of the DA concerning his or her claim within 6 months after it was filed with another agency of the Government. If a claim is received by an official of the DA who is not a claims approval or settlement authority under §§ 536.20 through 536.35, the claim will be transmitted without delay to the nearest claims office or JA office for delivery to such an authority.

§ 536.27 Procedures.

So far as not inconsistent with §§ 536.20 through 536.35, the procedures set forth in §§ 536.1 through 536.13 will be followed. Subrogated claims will be processed as prescribed in § 536.5(b).

§ 536.28 Law applicable.

(a) As to claims arising in the United States, its territories, commonwealths, and possessions, the law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory negligence on claimant's right to recover damages.

(b) In claims arising in a foreign country, liability of the United States will be assessed by reference to general principles of tort law common to the majority of United States jurisdictions. Absolute liability and similar theories are not a basis for liability under this section. Damages will be determined under § 536.29. The law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant will be applied in determining the relative merits of the claim. In the unusual situation where foreign law governing contributory or comparative negligence does not exist, the MCA (10 U.S.C. 2733) requires application of traditional rules of contributory negligence. Foreign rules and regulations governing the operation of motor vehicles ("rules of the road") will be applied to the extent these rules

are not specifically superseded or preempted by United States military traffic regulations.

§ 536.29 Compensation for property damage, personal injury, or death.

(a) *Measure of damages for property claims*—(1) *General.* The measure of damages in property claims arising in the United States or its possessions will be determined in accordance with the law of the place where the incident occurred. The measure of damages in property claims arising overseas will be determined in accordance with general principles of United States tort law.

(2) *Proof of damage.* The information specified in 28 CFR 14.4(c) will be submitted by a claimant to substantiate a claim.

(3) *Appraisals.* The assistance of appraisers should be used in all claims where, in the opinion of the claims officer, an appraisal is reasonably necessary and useful in reaching an administrative settlement of claims.

(b) *Measure of damages in injury or death claims arising in the United States or its possessions.* Where an injury or an injury resulting in death arises within the United States or its possessions, the measure of damages will be determined in accordance with the law of the State or posesssion wherein the injury arises. The information specified in 28 CFR 14.4 (a) and (b) will be submitted to substantiate a claim.

(c) *Measure of damages for overseas personal injury claims.*

(1) Damages will be determined in accordance with general principles of United States tort law.

(2) The information specified in 28 CFR 14.4(b) will be submitted to substantiate a claim.

(3) A claimant who suffers serious personal injury, resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist. (See § 536.8(b).)

(d) *Wrongful death claims arising in foreign countries*—(1) *General.* Where claims for wrongful death under §§ 536.20 through 536.35 arise overseas, eligible claimants and their damages will be determined in accordance with established principles of general maritime law. (See generally *Moragne* v. *United States Lines, Inc.*, 398 U.S. 375 (1970).) However, the following elements of damages are not recoverable:

(i) Punitive damages, including damages punitive in nature under 28 U.S.C. § 2674.

(ii) Interest on any claim settlement.

(2) The information specified in 28 CFR 14.4(a) will be submitted by a claimant to substantiate a claim.

§ 536.30 Structured settlements.

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

(3) Where the injured party's life expectancy cannot be reasonably determined.

§ 536.31 Claims over $100,000.

Claims cognizable under 10 U.S.C. 2733 and §§ 536.20 through 536.35, which are meritorious in amounts in excess of $100,000, will be forwarded to the Commander, USARCS who will negotiate a settlement subject to approval by the Secretary of the Army or designee or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Tender of a final offer by the Commander, USARCS constitutes an action subject to appeal. Upon appeal, the Commander, USARCS will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army or designee for final action. The Secretary or designee will either disapprove the claim or approve it in whole or in part.

§ 536.32 Settlement procedures.

(a) *Procedures.* Approval and settlement authorities will follow the procedures set forth in §§ 536.1 through 536.13 in paying, denying or making final offers on claims. A copy of the notification will be forwarded to Commander, USARCS. The settlement authority will notify the claimant by certified mail (return receipt registered) of a denial or final action and the reason therefore. The letter of notificaiton will inform the claimant of the following:

(1) He or she may appeal, and that no form is prescribed for the appeal.

(2) The title of the authority who will act on the appeal and that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) The claimant must fully set forth the grounds for appeal, or state that he or she appeals on the basis of the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after receipt of notice of action on the claim. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. The 60 day appeal period starts on the day following claimant's receipt of the letter from the settlement authority informing the claimant of the action taken and of the appellate rights. For good cause shown, the Commander, USARCS or designee, or the chief of a command claims service (if the appellant authority), may extend the time for appeal, but normally such extension will not exceed 90 days.

(5) Where a claim for the same injury has been filed under the FTCA and the denial or final offer applies equally to such claim, the letter of notification must advise the claimant that any suit brought as to any portion of the claim under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, the claimant must be advised that if suit is brought, action on any appeal will be held in abeyance pending final determination of such suit.

(b) *Action on appeal.* (1) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this section. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure all allegations or evidence presented by the claimant, agent or attorney are documented in the file; and that all pertinent evidence is included in the file. If the claimant states that he or she appeals but does not submit supporting materials within the 60 day appeal period or an approved extension thereof, the appeal will be treated as being on the record as it existed at the time of denial or final offer. Unless action under paragraph (b)(2) of this section is taken. The claim with complete investigative file including any additional investigation required and a seven-paragraph memorandum of opinion will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(2) If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates that the appeal should be granted, in whole or in part, the settlement authority who last acted on the claim or his or her successor will attempt to settle the claim. If settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (b)(1) of this section.

(3) As to an appeal that requires action by TJAG, The Assistant Judge Advocate General (TAJAG), or the Secretary of the Army or designee, the Commander, USARCS may take the action in paragraph (b)(2) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(4) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claims file to be used in considering the appeal should be granted unless access is not permitted by law or regulation.

§ 536.33 Attorney fees.

In the settlement of any claim under §§ 536.20 through 536.35, attorney fees shall not exceed 20 percent of any award; provided, that when a claim involves payment of an award is excess of $1,000,000, attorney fees on that part of the award exceeding $1,000,000 may be determined by the Secretary. Where a structured settlement is involved, attorney fees will not exceed 20 percent of the cost of the award to the United States.

§ 536.34 Payment of costs, settlements and judgments related to certain medical and legal malpractice claims.

(a) Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, or paramedical, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists) of DA should be forwarded to Commander, USARCS, for action and will be paid, provided: (1) The alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment; and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information, and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

(b) Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for injury of loss of property caused by any attorney, paralegal, or other member of a legal staff within the DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in connection with providing legal services while acting within the scope of the person's duties or employment, and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

§ 536.40 Claims under Article 139, uniform code of military justice.

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken, by members of the armed forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims for damage, loss or destruction of property owned by or in the lawful possession of an individual, whether civilian or military, a business, a charity, or a State or local government, where the property was wrongfully taken or willfully damaged by military members of DA. Claims cognizable under other claims statutes may be processed under this section.

(c) *Effect of disciplinary action.* Administrative action under Article 139 and this section is entirely separate and distinct from disciplinary action taken under other articles of the UCMJ or other administrative actions. Because action under Article 139 and this section requires independent findings on issues other than guilt or innocence, the mere fact that a soldier was convicted or acquitted of charges is not dispositive of a claim under Article 139.

(d) *Claims cognizable.* Claims cognizable under Article 139, UCMJ are limited to—

(1) *Claims for property willfully damaged.* Willful damage is damage which is inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly through simple or gross negligence. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others may be considered willful damage.

(2) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, not involving the breach of a fiduciary or contractual relationship, with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking.

(e) *Claims not cognizable.* Claims not cognizable under this section and Article 139 include—

(1) Claims resulting from negligent acts.

(2) Claims for personal injury or death.

(3) Claims resulting from acts or omissions of military personnel acting within the scope of their employment.

(4) Claims resulting from the conduct of reserve component personnel who are not subject to the UCMJ at the time of the offense.

(5) Subrogated claims, including claims by insurers.

(f) *Limitations on assessments*—(1) *Time Limitations.* To be considered, a claim must be submitted within 90 days of the incident out of which the claim arose, unless the special court-martial convening authority (SPCMCA) acting on the claim determines that good cause has been shown for the delay.

(2) *Limitations on amount.* No soldier's pay may be assessed more than $5,000 on a single claim without the approval of the Commander, USARCS, or designee. If the commander acting on the claim determines that an assessment against a soldier in excess of $5,000 is meritorious, he or she will assess the pay of that soldier in the amount of $5,000 and forward the claim to the Commander, USARCS, with his or her recommendation as to the additional amount which should be assessed.

(3) *Direct damages.* Assessments are limited to direct damages for the loss of or damage to property. Indirect, remote, or consequential damages may not be considered under this section.

(g) *Procedure.* Area claims offices and claims processing offices with approval authority are responsible for publicizing the Article 139 program and maintaining a log for Article 139 claims presented in their areas (see Personnel Claims

Adjudication Appendix G, Claims Manual). Area claims offices and claims processing offices with approval authority are required to monitor action taken on Article 139 claims and ensure that time requirements are met. If assessment action on a particular claim will be unduly delayed, the office may consider the claim under 31 U.S.C. 3721 and chapter 11 of this regulation if it is otherwise cognizable under the authority. The office will counsel the claimant to repay any overpayment if the Article 139 claim is later successful (see para 11–2e of the manual).

(1) *Form of a claim and presentment.* A claim must be presented by the claimant or his or her authorized agent orally or in writing. The claim must be reduced to writing, signed, and for a definite sum in U.S. dollars within 10 days after oral presentment. (See para 2–10d(1)(a) of the manual.)

(2) *Action upon receipt of a claim.* Any officer receiving a claim will forward it within 2 working days to the SPCMCA over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of more than one such convening authority who are under the same general court-martial convening authority, the claim will be forwarded to that general court-martial convening authority, who will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same general court-martial convening authority, the claim will be forwarded to the SPCMCA whose headquarters is closest to the situs of the incident, who will investigate and act on the claim as to all soldiers involved. If a claim is made against a member of one of the other military Services, the claim will be forwarded to the commander of the nearest major Army command (MACOM) of that Service.

(3) *Action by the SPCMCA.* Within 4 working days of receipt of a claim, the SPCMCA will appoint an investigating officer to investigate the claim, using the procedures of this section supplemented by the procedures of AR 15–6. The claims officer of a command, if he or she is a commissioned officer, may be appointed as the investigating officer.

(4) *Action by the investigating officer.* The investigating officer will provide notification to the soldier against whom the claim is made.

(i) If the soldier indicates a desire to make voluntary restitution, the investigating officer may, with the convening authority's concurrence, delay proceedings until the end of the next pay period to accomplish this. If the soldier makes payment to the claimant's full satisfaction, the claim will be dismissed.

(ii) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139 and this chapter and the amount to be assessed each offender. This amount will be reduced by any restitution accepted by the claimant from an offender in partial satisfaction. Within 10 working days or such time as the SPCMCA may provide, the investigating officer will make findings and recommendations and submit these to the SPCMCA. The investigating officer will also provide a copy of his or her findings and recommendations to any soldier against whom an assessment is recommended.

(iii) If the soldier is absent without leave so that he or she cannot be provided with notification, the Article 139 claim may be processed in the soldier's absence. If an assessment is approved, a copy of the claim and SPCMCA approval will be forwarded by transmittal letter to the servicing finance and accounting office (FAO) for offset input against the soldier's pay account. In the event the soldier is dropped from the rolls, the servicing FAO will forward the assessment documents to Commander, U.S. Army Finance and Accounting Center, ATTN: Department 40, Indianapolis, Indiana 46249.

(5) *Legal review.* After completion of the investigating officer's report, the SPCMCA will refer the claim to the area claims office or claims processing office servicing his or her command to review for legal sufficiency and advice. That office will furnish within 5 working days or such time as the SPCMCA will provide a written opinion as to—

(i) Whether the claim is cognizable under the provisions of Article 139 and this chapter.

(ii) Whether the findings and recommendations are supported by evidence.

(iii) Whether there has been substantial compliance with the procedural requirements of Article 139, this chapter, and AR 15–6.

(6) *Final action.* After considering the advice of the claims office, the SPCMCA will disapprove the claim or approve the claim in an amount equal to or less than the amount recommended by the investigating officer. The SPCMCA will notify the claimant, and any soldier subject to his or her jurisdiction, of the determination and the right to request reconsideration. The SPCMCA will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration unless he or she determines that this delay will result in substantial injustice. The SPCMCA will direct the servicing finance officer for the soldier or soldiers against whom assessments are approved to withhold such amount from the soldier or soldiers up to $5000. For any soldier not subject to the SPCMCA's jurisdiction, the SPCMCA will forward the claim to that commander who does exercise special court-martial jurisdiction over the soldier for collection action.

(7) *Assessment.* Subject to any limitations provided in appropriate regulations, the servicing finance officer will withhold the amount directed by the SPCMCA and pay it to the claimant. The SPCMCA's assessment is not subject to appeal and is conclusive on any finance officer. If the servicing finance officer finds that the required amount cannot be withheld because he or she does not have custody of the soldier's pay record or because the soldier is in a no pay due status, the servicing finance officer will promptly notify the SPCMCA of this in writing.

(8) *Post settlement action.* After action on the claim is completed, the claims office servicing the command which took final action will forward one copy of the claim together with a cover sheet and all attachments, to include information that money has or has not been withheld and paid to the claimant by the servicing finance officer, through any command claims service, to the Commander, USARCS.

(9) *Remission of indebtedness.* 10 U.S.C. 4837(d), which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139.

(h) *Reconsideration*—(1) *General.* Although Article 139 does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the SPCMCA or a successor in command to reconsider the action. A request for reconsideration will be submitted in writing and will clearly state the factual or legal basis for the relief requested. The SPCMCA may direct that the matter be reinvestigated.

(2) *Reconsideration by the original SPCMCA.* The original SPCMCA may reconsider the action so long as he occupies that position, regardless of whether a soldier whose pay was assessed has been transferred. If the original SPCMCA determines that the action was incorrect, he or she may modify it subject to paragraph (h)(4) of

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this section. If a request for reconsideration is submitted more than 15 days after notification was provided, however, the SPCMCA should only modify the action on the basis of fraud, substantial new evidence, errors in calculation, or mistake of law.

(3) *Reconsideration by a successor in command.* Subject to subparagraph (h)(4) of this section, a successor in command may only modify an action on the basis of fraud, substantial new evidence, errors in calculation or mistake of law apparent on the face of the record.

(4) *Legal review and action.* Prior to modifying the original action, the SPCMCA will have the claims office render a legal opinion and fully explain his or her basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the SPCMCA should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

(5) *Disposition of files.* After completing action on reconsideration, the SPCMCA will forward a copy of the reconsideration action to the Commander, USARCS, and retain one or more additional copies with the claim file.

§ 536.50 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.

(a) *Authority.* The statutory authority for this chapter is the FTCA (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by the Act of July 18, 1966 (Pub. L. 89–506; 80 Stat. 306), the Act of March 16, 1974 (Pub. L. 93–253; 88 Stat. 50), and the Act of December 29, 1981 (Pub. L. 97–124), and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11).

(b) *Scope.* This section prescribes the substantive basis and special procedural requirements for the administrative settlement of claims against the United States under the FTCA and the implementing Attorney General's Regulations based on death, personal injury, or damage to or loss of property which accrue on or after January 18, 1967. If a conflict exists between the provisions of this section and the provisions of the Attorney General's Regulations, the latter govern.

(c) *Claims payable.* Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this section when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the DA or the DoD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited consent to liability without which the United States is immune. Similarly, there is no Federal cause of action created by the Constitution which would permit a damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the FTCA.

(d) "Employee of the Government" (28 U.S.C. 2671) includes the following categories of tortfeasors for which the DA is responsible: (1) Military personnel (members of the Army), including but not limited to:

(i) Members on full-time active duty in a pay status, including—

(A) Members assigned to units performing active service.

(B) Members serving as ROTC instructors. (Does not include Junior ROTC instructors unless on active duty.)

(C) Members serving as National Guard instructors or advisors.

(D) Members on duty or in training with other Federal agencies, for example, Nuclear Regulatory Commission, National Aeronautics and Space Administration, Departments of Defense, State, Navy, or Air Force.

(E) Members assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry. This does not include members on excess leave.

(F) Members on full-time duty at nonappropriated fund activities.

(G) Members of the ARNG of the United States on active duty.

(ii) Members of reserve units during periods of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

(iii) Members of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 for claims arising on or after December 29, 1981.

(2) Civilian officials and employees of both the DOD and the DA (there is no practical significance to the distinction between the terms "official" and "employee") including but not limited to—

(i) Civil Service and other full-time employees of both DOD and DA paid from appropriate funds.

(ii) Contract surgeons (10 U.S.C. 1091, 4022; paragraph 4–2, AR 40–1) and consultants (10 U.S.C. 1091; paragraph 4–3, AR 40–1; CPR A–9; FPM Chapter 304) where "control" is exercised over physician's day to day practice.

(iii) Employees of nonappropriated funds if the particular fund is an instrumentality of the United States and thus a Federal agency. In determining whether or not a particular fund is a "Federal agency," consider whether the fund is an integral part of the DA charged with an essential DA operational function and the degree of control and supervision exercised by DA personnel. Members or users, as distinguished from employees of nonappropriated funds, are not considered Government employees. The same is true of family child care providers. However, claims arising out of the use of certain nonappropriated fund property or the acts or omissions of family child care providers, may be payable from such funds under chapter 12, AR 27–20, as a matter of policy, even when the user is not within the scope of employment and the claim is not otherwise cognizable under any other claims authorization.

(iv) Prisoners of war and interned enemy aliens.

(v) Civilian employees of the District of Columbia National Guard, including those paid under "service contracts" from District of Columbia funds.

(vi) Civilians serving as ROTC instructors paid from Federal funds.

(vii) National Guard technicians employed under 32 U.S.C. 709(a) for claims accruing on or after January 1, 1969 (Pub. L. 90–486, August 13, 1968; 82 Stat. 755).

(3) Persons acting in an official capacity for the DOD or the DA whether temporarily or permanently in the service of the United States with or without compensation including but not limited to—

(i) "Dollar a year" personnel.

(ii) Members of advisory committees, commissions, boards or the like.

(iii) Volunteer workers in an official capacity acting in furtherance of the business of the United States. The general rule with respect to volunteers is set forth in 31 U.S.C. 665(b), which provides that, "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property." (5 U.S.C. 3111(c) specifically provides that student volunteers employed thereunder shall be considered Federal employees for purposes of claims under the FTCA. The same classification is applied by 10 U.S.C. 1588 to museum and family support program volunteers.) The DA is permitted to accept and use certain

volunteer services in Army family support programs as authorized by Pub. L. 98–94, September 24, 1983.

(iv) Loaned servants. Employees who are permitted to serve another employer may be considered "loaned servants," provided the borrowing employer has the power to discharge the employee, to control and direct the employee, and to decide how he will perform his tasks. Whoever has retained those powers is liable for the employee's torts under the principle of respondeat superior. Where those elements of direction and control have been found, the United States has been liable, for example, for the torts of Government employees loaned for medical training and emergency assistance, and county and state employees discharging Federal programs.

(e) "Scope of employment" means acting in "line of [military] duty" (28 U.S.C. 2671) and is determined in accordance with principles of respondent superior under the law of the jurisdiction in which the act or omission occurred. Determination as to whether a person is within a category listed in paragraph (d)(3) of this section will usually be made together with the scope determination. Local law should always be researched, but the novel aspects of the military relationship should be kept in mind in making a scope determination.

(f) "Line of duty" determinations under AR 600–8–1 are not determinative of scope of employment. "Joint venture" situations are likely to be frequent where the Federal employee is performing federally assigned duties but is under actual direction and control of a non-Federal entity, for example, a Federal employee in training at a non-Federal entity or ROTC instructors at civilian institutions. This could also occur where the employee is working for another Federal agency. Furthermore, dual purpose situations are commonplace where benefits to the Government and the member or employee may or may not be concurrent, for example, use of privately owned vehicles at or away from assigned duty station, or permanent change of station with delay en route. (See §§ 536.90 through 536.97 for the handling of certain claims arising out of nonscope activities of members of the Army.)

(g) *Law applicable.* The whole law of the place where the act or omission occurred, including choice of law rules, will be applied in the determination of liability and quantum. Where there is a conflict between the local law and an express provision of the FTCA, the latter governs.

(h) *Subrogation.* Claims involving subrogation will be processed as prescribed in § 536.5(b), except where inconsistent with the provisions of this section or the Attorney General's regulations.

(i) *Indemnity or contribution*—(1) *Sought by the United States.* If the claim arises under circumstances in which the Government is entitled to contribution or indemnity under a contract of insurance or the applicable law governing joint tortfeasors, the third party will be notified of the claim, and will be requested to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, the claim will be compromised or settled only after consultation with the Department of Justice as provided in 28 CFR 14.6.

(2) *Claims for indemnity or contribution.* Claims for indemnity or contribution from the United States will be compromised or settled under this section, if liability exists under the applicable law, provided the incident giving rise to such claim is otherwise cognizable under this section. As to such claims where the exclusivity of the FECA may be applicable, see 5 U.S.C. 8101–8150.

(3) *ARNG vehicular claims.* When a vehicle used by the ARNG, or a privately owned vehicle operated by a member or employee of the ARNG, is involved in an incident under circumstances which make this section applicable to the disposition of administrative claims against the United States and results in personal injury, death, or property damage, and a remedy against the State or its insurer is indicated, the responsible area claims authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer. Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and United States authorities do not issue conflicting instructions for processing claims and that whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in subparagraph (i)(4) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(4) *Claims arising out of training activities of ARNG personnel.* Contribution may be sought from the state involved where it has waived sovereign immunity or has private insurance which would cover the incident giving rise to the particular claim. Where the state involved rejects the request for contribution, the file will be forwarded to the Commander, USARCS. The Commander, USARCS, is authorized to enter into an agreement with a State, territory, or commonwealth to share settlement costs of claims generated by the ARNG personnel or activities of that political entity.

(j) *Claims not payable.* The exclusions contained in 28 U.S.C. 2680 are applicable to claims herein. Other types of claims are excluded by statute or court decisions, including, but not liimited to, the following: (1) Claims for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service, or for damage to a member's property incurred incident to service. *Feres v. United States,* 340 U.S. 135 (1950). Currently the most significant justification for the incident to service doctrine is the availability of alternative compensation systems, and the fear of disrupting the military command relationship. Other supportive factors often cited by the courts are the service member's duty status, location, and receipt of military benefits at the time of the incident.

(i) The exception applies to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve Components of the Armed Forces. (See 10 U.S.C. 261.) The exception also applies to service members on the Temporary Disability Retired List, and on convalescent leave, to service academy cadets, to members of visiting forces in the United States under the SOFA between the parties to the North Atlantic Treaty Organization or similar international agreements, and to service members on the extended enlistment program.

(ii) The incident to service doctrine has been extended to derivative claims where the directly injured party is a service member. Third party indemnity claims are barred.

(2) Claims for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees Compensation Act (5 U.S.C. 8101–8150). This Act provides

that benefits paid under the Act are exclusive and instead of all other liability of the United States, including that under a Federal tort liability statute (5 U.S.C. 8116(c)). It extends to derivative claims, to subsequent malpractice for treatment of a covered injury, to injuries for which there is no scheduled compensation, and to employee harassment claims for which other remedies are available (42 U.S.C. 2000e). The exception does not bar third party indemnity claims. When there is doubt as to whether or not this exception applies, the claim should be forwarded through claims channels to the Commander, USARCS, for an opinion.

(3) Claims for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901–950). An employee of a nonappropriated fund instrumentality is covered by that Act (5 U.S.C. 8171). This is the exclusive remedy for covered employees, similar to the exclusivity of the FECA.

(4) Claims for the personal injury or death of any employee for whom benefits are provided under any workmen's compensation law, if the premiums of the workmen's compensation insurance are retrospectively rated and charged as an allowable, allocable expense to a cost-type contract. If, in the opinion of an approval or settlement authority, the claim should be considered payable, for example, the injuries did not result from a normal risk of employment or adequate compensation is not payable under workmen's compensation laws, the file will be forwarded with recommendations through claims channels to the Commander, USARCS, who may authorize payment of an appropriate award.

(5) Claims for damage from or by flood or flood waters at any place. 33 U.S.C. 702c. This exception is broadly construed and includes multi-purpose projects and all phases of construction and operation.

(6) Claims based solely upon a theory of absolute liability or liability without fault. Either a "negligent" or "wrongful" act is required by the FTCA, and some type of malfeasance or nonfeasance is required. *Dalehite v. United States*, 346 U.S. 15 (1953); *Laird v. Nelms*, 406 U.S. 797 (1972). Thus, liability does not arise by virtue either of United States ownership of an inherently dangerous commodity or of engaging in extra-hazardous activity.

(k) *Procedures*—(1) *General.* Unless inconsistent with the provisions of this section, the procedures for the investigation and processing of claims set forth in §§ 536.1 through 536.13 will be followed.

(2) *Claims arising out of tortious conduct by ARNG personnel as defined in subparagraph (d)(1)(iii) of this section—(i) Notification.* The procedures prescribed in § 536.75, will be followed in ARNG claims arising under the FTCA.

(ii) Claims against the U.S. Government received by agencies of the State. These claims will be expeditiously forwarded through the State adjutant general to the appropriate U.S. Army area claims office in whose geographic area the incident occurred.

(3) *Statute of Limitations.* (i) To be settled under this section, a claim against the United States must be presented in writing to the appropriate Federal agency within 2 years of its accrual.

(ii) For statute of limitations purposes, a claim will be deemed to have been presented when the appropriate Federal agency as defined in § 536.3(m) receives from a claimant, his or her duly authorized agent, or legal representative an executed SF 95 or written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death. For Federal tort claims arising out of activities of the ARNG, receipt of a written claim by any fulltime officer or employee of the ARNG will be considered proper receipt.

(iii) A claim received by an official of the DOD will be transmitted without delay to the nearest Army claims processing office or area claims office. Inquiries concerning applicability of the statute of limitations to claims filed with the wrong Federal agency will be referred to USARCS for resolution.

(4) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each claim which appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations (28 CFR 14.6), or one in which the demand exceeds $15,000 or the total amount of all claims, actual or potential, from a single incident exceeds $25,000, will be forwarded immediately to the Commander, USARCS. Subsequent documents should be forwarded or added in accordance with § 536.5(h)(2). USARCS is responsible for the monitoring and settlement of such claims and will be kept informed of the status of the investigation and processing thereof. Direct liaison and correspondence between USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required.

(5) *Non-Army claims.* Claims based on acts or omissions of employees of the United States, other than military and civilian personnel of the DA, civilian personnel of the DOD, and employees, of nonappropriated fund activities of the DA, will be transmitted forthwith to the nearest official of the employing agency, and claimant will be advised of the referral.

(6) *Acknowledgment of claim.* (i) The claimant and his or her attorney will be kept informed by personal contact, telephonic contact, or mail of the receipt of his or her claim and the status of the claim. Formal acknowledgment of the claim in writing is required only where the claim is likely to result in litigation or is presented in an amount exceeding $15,000. In this event, the letter of acknowledgment will state the date of receipt of the claim by the first agency of the Army receiving the claim.

(ii) If it is reasonably clear to the office acknowledging receipt that a claim filed under the FTCA is not cognizable thereunder; for example, it is a maritime claim under § 536.60, or it falls under §§ 536.20 through 536.35 or 536.70 through 536.81, the acknowledgment will contain a statement advising the claimant of the statute under which his or her claim will be processed. If it is not clear which statute applies, a statement to that effect will be made, and the claimant will be promptly advised on his or her remedy when a decision is made. However, all potential maritime claims will be handled in accordance with § 536.5(h)(5).

(iii) When a claim has been amended as set forth in § 536.5(f)(4), the amendment will be acknowledged in all cases. Additionally, the claimant will be informed that the amendment constitutes a new claim insofar as concerns the 6 months in which the DA is granted the authority to make a final disposition under 28 U.S.C. 2675(a) and the claimant's option thereunder will not accrue until 6 months after the filing of the amendment.

(iv) When a claim is improperly presented, is incomplete or otherwise does not meet the requirements set forth in § 536.5(d), the claimant or his or her representative will be promptly informed in writing of the deficiencies and advised that a proper claim must be filed within the 2 year statute of limitations.

(7) *Investigation.* Claims cognizable under this section will be investigated and processed on a priority basis in order that settlement if indicated may be

accomplished within the 6 months prescribed by statute.

(8) *Advice to claimant.* (i) A full explanation of claims procedures and of the rights of the claimant will be made to the extent necessitated by the amount and nature of the claim.

(ii) In a case where litigation is likely, or where this course of action is preferred by the claimant, and it appears to be a proper case for administrative settlement, the claimant will be advised as to the advantages of administrative settlement. If the claim is within the jurisdiction of a higher settlement authority, the claim will be discussed with such authority prior to the furnishing of such advice. The claimant should be familiarized with all aspects of administrative settlement procedures including the administrative channels through which his claim must be processed for approval. He or she may be advised that administrative processing can result in more expeditious processing, whereas litigation may take considerable time, particularly in jurisdictions with crowded dockets.

(iii) If appropriate, he or she may be informed that a tentative settlement can be reached for any amount above $25,000, subject to approval by the Attorney General. He or she should be advised that administrative filing of the claim protects him under the statute of limitations for purpose of litigation; suit can be filed within 6 months after the date of mailing of notice of final denial by the DA, thus potentially allowing negotiations to continue indefinitely. An attorney representing a claimant should be advised of the limitations on fees for purposes of administrative settlement (20 percent) and litigation (25 percent). The attorney may also be advised that there is no jury trial under the FTCA.

(9) *Notification to claimant of action on claim.* (i) The filing of an administrative claim and its denial are prerequisite to filing suit. Any suit must be filed not later than 6 months after notification by certified or registered mail of the denial of the administrative claim. Failure of a settlement authority to take final action on a properly filed claim within 6 months may be treated by the claimant as a final denial for the purposes of filing suit. If the claimant has provided insufficient documentation to permit evaluation of the claim, written notice should be given to this effect. Since administrative settlements are a voluntary process, the preferred method of negotiating is to attempt to exchange information on an open basis.

(ii) Upon final denial of a claim, or upon rejection by the claimant of a partial allowance, and further efforts to reach a settlement are not considered feasible (§ 536.5(h)(1)), the settlement authority will inform the claimant of the action on his claim by certified or registered mail. Notification will be made as set forth in § 536.11(b).

(iii) If a claim has been presented to the DA and, also, to other Federal agencies, without any notification to the DA of this fact, final action taken by the DA prior to that of any other agency is conclusive on a claim presented to other agencies, unless another agency decides to take further action to settle the claim. Such agency may treat the matter as a reconsideration under 28 CFR 14.9(b), unless suit has been filed. The foregoing applies likewise to DA claims in which another Federal Agency has already taken final action.

(iv) If, after final denial by another agency, a claim is filed with the DA, the new submission will not toll the 6 months limitation for filing suit, unless the DA treats the second submission as a request for reconsideration under paragraph (l) of this section.

(l) *Reconsideration.* (1) While there is no appeal from the action of an approving or settlement authority under the FTCA and this section, an approving of settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. Even in the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even where a settlement agreement has been executed) when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(2) A successor approving or settlement authority may also reconsider the original action on a claim but only on the basis of fraud, substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(3) A request for reconsideration must be submitted prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b). Upon timely filing, the appropriate authority shall have 6 months from the date of filing in which to make a final disposition of the request, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request.

(4) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be referred through claims channels to the Commander, USARCS, and the claimant informed of such referral.

§ 536.60 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee is authorized by the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806, as amended).

(b) *Related statutes.* The Army Maritime Claims Settlement Act is supplemented by the following statutes under which suits in admiralty may be brought: The Suits in Admiralty Act of 1920 (41 Stat. 46 U.S.C. 525, 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790); the Act of 1948 Extending the Admiralty and Maritime Jurisdiction (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7365, 7621–23 and by the Department of the Air Force under 10 U.S.C. 9801–9804, and 9806.

(c) *Scope.* 10 U.S.C. 4802 provides for the settlement or compromise of claims for—(1) Damage caused by a vessel of, or in the service of, the DA or by other property under the jurisdiction of the DA;

(2) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or to other property under the jurisdiction of the DA; or

(3) Damage caused by a maritime tort committed by any agent or employee of the DA or by property under the jurisdiction of the DA.

(d) *Claims exceeding $500,000.* Claims against the United States settled or compromised in a net amount exceeding $500,000 are not payable hereunder, but will be investigated and processed under this section, and, if approved by the Secretary of the Army, will be certified by him to Congress.

(e) *Claims not payable.* A claim is not allowable under this section which:

(1) Is for damage to, or loss or destruction of, property, or for personal injury or death, resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in armed combat, or in immediate preparation for impending armed combat.

(2) Is for personal injury or death of a member of the Armed Forces of the United States or a civilian employee incurred incident to his service.

(3) Is for personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101–8150).

(4) Is for personal injury or death of an employee, including non-appropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(5) Has been made the subject of a suit by or against the United States, except as provided in subparagraph (h)(2) of this section.

(6) Arises in a foreign country and was considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(f) *Claims under other laws and regulations.* (1) Claims of military personnel and civilian employees of the DOD and the Army, including military and civilian officers and crews of Army vessels, for damage to or loss of personal property occurring incident to their service will be processed under the provisions of the Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 3721).

(2) Claims which are within the scope of this section and also within the scope of the FCA (10 U.S.C. 2734) may be processed under that statute when specific authority to do so has been obtained from the Commander, USARCS. The request for such authority should be accompanied by a copy of the report of the incident by the Marine Casualty Investigation Officer, or other claims investigator.

(g) *Subrogation.* (1) An assurer will be recognized as a claimant under this section to the extent that it has become subrogated by payment to, or on behalf of, its assured, pursuant to a contract of insurance in force at the time of the incident from which the claim arose. An assurer and its assured may file a claim either jointly or separately. Joint claims must be asserted in the names of, and must be signed by, or on behalf of, all parties; payment then will be made jointly. If separate claims are filed, payment to each party will be limited to the extent of such party's undisputed interest.

(2) For the purpose of determining authority to settle or compromise a claim, the payable interests of an assurer (or assurers) and the assured represent merely separable interests, which interests in the aggregate must not exceed the amount authorized for administrative settlement or compromise.

(3) The policies set forth in paragraphs (g) (1) and (2) of this section with respect to subrogation arising from insurance contracts are applicable to all other types of subrogation.

(h) *Limitation of settlement.* (1) The period for effecting an administrative settlement under the Army Maritime Claims Settlement Act is subject to the same limitation as that for beginning an action under the Suits in Admiralty Act; that is, a 2-year period from the date of the origin of the cause of action. The claimant must have agreed to accept the settlement, and it must be approved for payment by the Secretary of the Army or his designee prior to the end of such period; otherwise, thereafter the cause of action ceases to exist, except under the circumstances set forth in subparagraph (h)(2) of this section. The presentation of a claim, or its consideration by the DA, neither waives nor extends the 2-year limitation period.

(2) In the event that an action has been filed in a U.S. district court before the end of the 2-year statutory period, an administrative settlement may be negotiated by the Commander, USARCS, with the claimant, even though the 2-year period has elapsed since the cause of action accrued, provided the claimant obtains the written consent of the appropriate office of the Department of Justice charged with the defense of the complaint. Payment may be made upon dismissal of the complaint.

(3) When a claim under this section, notice of damage, invitation to a damage survey, or other written notice of an intention to hold the United States liable is received, the receiving installation, office, or person immediately will forward such document to the Commander, USARCS. USARCS will promptly advice the claimant or potential claimant in writing of the comprehensive application of the time limit.

(4) When a claim under this section for less than $10,000 is presented to a Corps of Engineers office and thus may be appropriate for action by the Corps of Engineers pursuant to the delegation of authority set forth in subparagraph (i)(2) of this section, the receiving Corps of Engineers office will promptly advise the claimant in writing of the comprehensive application of the time limit (unless such has already been done by USARCS).

(i) *Delegation of authority.* (1) Where the amount to be paid is not more than $10,000, claims under this section may be settled or compromised by the Commander, USARCS, or this designee.

(2) When a claim under this section arises from a civil works activity of the Corps of Engineers, engineer area claims offices are delegated authority to approve and pay in full, or in part, subject to the execution of an appropriate settlement agreement, claims presented for $10,000 or less, and compromise and pay claims regardless of the amount claimed, provided an award of $10,000 or less is accepted by the claimant in full satisfaction and final settlement of the claim, subject to such limitations as may be imposed by the Chief of Engineers. Meritorious claims arising from civil works activities of the Corps of Engineers will be paid from Corps of Engineers funds.

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

§ 536.70 Statutory authority.

The statutory authority for this chapter is contained in the Act of September 13, 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the National Guard Claims Act (NGCA), as amended by Pub. L. 90–486, August 13, 1968 (82 Stat. 756), Pub. L. 90–525, September 26, 1968 (82 Stat. 877), Pub. L. 91–312, July 8, 1970 (84 Stat. 412), and Pub. L. 93–336, July 8, 1974 (88 Stat. 291); and the Act of September 8, 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Pub. L. 90–521, September 26, 1968 (82 Stat. 874), Pub. L. 97–124 December 29, 1981 (95 Stat. 1666), and Pub. L. 98–564, October 30, 1984 (98 Stat. 2918).

§ 536.71 Definitions.

For purposes of §§ 536.70 to 536.81 the following terminology applies:

(a) *ARNG personnel.* A member of the ARNG engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709.

(b) *Claimant.* An individual, partnership, association, corporation, country, State, Commonwealth, territory or a political subdivision thereof, or the District of Columbia, presenting a claim

and meeting the conditions set forth in § 536.5. The term does not include the U.S. Government, any of its instrumentalities, except as prescribed by statute, or a State, commonwealth, territory or the District of Columbia which maintains the unit to which the ARNG personnel causing the injury or damage are assigned. This exclusion does not ordinarily apply to a unit of local government which does not control the ARNG organization involved. As a general rule, a claim by a unit of local government other than a State, commonwealth or territory will be entertained unless the item claimed to be damaged or lost was procured or maintained by State, commonwealth or territorial funds.

§ 536.72 Scope.

(a) Sections 536.70 through 536.81 apply in all places and set forth the procedures to be followed in the settlement and payment of claims for death, personal injury, or damage to or loss or destruction of property caused by members or employees of the ARNG, or arising out of the noncombat activities of the ARNG when engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard, or a civilian officer or employee whose injury or death is incident to service.

(b) A claimant dissatisfied with an administrative settlement under §§ 536.70 through 536.81 as the result of activities of the ARNG of a State, Commonwealth, or territory is not entitled to judicial relief in an action against the United States. Whether he or she has a legal cause of action or may file an administrative claim against such a political entity depends upon controlling local law.

(c) Claims arising out of activities of the ARNG when performing duties at the call of the governor of a State maintaining the unit are not cognizable under §§ 536.70 through 536.81 or any other law, regulation or appropriation available to the Army for the payment of claims. Such claims should be returned or referred to the authorities of the State for whatever action they choose to take, and claimants should be informed of the return or referral. Care should be taken to determine the status of the unit and members at the time the claims incident occurred, particularly in civil emergencies as units called by the governor are sometimes "federalized" during the call-up. If the unit was "federalized" at the time the claim incident occurred, the claim will be cognizable under §§ 536.20 through 536.35, 536.50, or 536.90 through 536.97 or other sections pertaining to the Active Army.

§ 536.73 Claims payable.

(a) *Tort claims.* All claims for personal injuries, death, or damage to or loss of real or personal property, arising out of incidents occurring on or after December 29, 1981, based on negligent or wrongful acts or omissions of ARNG personnel acting within the scope of employment, within the United States while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709 will be processed under the FTCA, § 536.50. Such claims arising before December 29, 1981 will, except as modified herein, be processed and settled in accordance with the provisions of §§ 536.20 through 536.35.

(b) *Noncombat activities.* A claim incident to the noncombat activities of the ARNG while engaged in duty or training under 32 U.S.C. 316, 502, 503, 504, 505, or 709 may be settled under §§ 536.70 through 536.81. "Noncombat activities" are defined in § 536.3.

(c) *Subrogated claims.* Subrogated claims will be processed as prescribed in § 536.5(b).

(d) *Advance payments.* Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in § 536.13.

§ 536.74 Claims not payable.

The type of claims listed in § 536.24 as not payable are also not payable under §§ 536.70 through 536.81.

§ 536.75 Notification of incident.

Except where claims are regularly paid from State sources, for example, insurance, court of claims, legislative committee, etc., the appropriate adjutant general will ensure that each incident which may give rise to a claim cognizable under §§ 536.70 through 536.81 is reported immediately by the most expeditious means to the area claims office in whose geographic area the incident occurs or to a claims processing office designated by the area claims office. The report will contain the following information:

(a) Date of incident.

(b) Place of incident.

(c) Nature of incident.

(d) Names and organizations of ARNG personnel involved.

(e) Names of potential claimant(s).

(f) A brief description of any damage, loss, or destruction of private property, and any injuries or death of potential claimants.

§ 536.76 Claims in which there is a state source of recovery.

Where there is a remedy against the State, as a result of either waiver of sovereign immunity or where there is liability insurance coverage, the following procedures apply:

(a) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by the Commander, USARCS. Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims, and whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United

States, forward file with seven-paragraph memorandum to the Commander, USARCS, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Commander, USARCS, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If the Commander, USDARCS determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

§ 536.77 Claims against the ARNG tortfeasor individually.

The procedures set forth in § 536.9(f) are applicable. With respect to claims arising before December 29, 1981, an ARNG driver acting pursuant to the authorities cited in § 536.73(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)) and the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final actions will be withheld pending resolution of the demand against the ARNG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

§ 536.78 When claim must be present.

A claim may be settled under §§ 536.70 through 536.81 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

§ 536.79 Where claim must be present.

A claim must be presented to the appropriate Federal agency. Receipt of a written claim by any full time officer or employee of the National Guard will be considered receipt. However, the statute of limitations is tolled if a claim is filed with a State agency, the claim purports to be under the NGCA and it is forwarded to the Army within 6 months, or the claimant makes inquiry of the Army concerning to claim within 6 months. If a claim is received by a DA official who is not a claims approval or settlement authority, the claim will be transmitted without delay to the nearest approval or settlement authority.

§ 536.80 Procedures.

(a) The form of a claim under §§ 536.70 through 536.81 will be as described in § 536.5 (d) and (e).

(b) So far as they are not inconsistent with §§ 536.70 through 536.81, the guidance set forth in §§ 536.10 through 536.12 will be followed in processing a claim under §§536.70 through 536.81.

(c) The following provisions are applicable to claims under §§ 536.70 through 536.81 and are hereby incorporated by reference:

(1) Section 536.28 (applicable law);

(2) Section 536.29 (determination of quantum);

(3) Section 536.31 (claims over $100,000);

(4) Section 536.32 (settlement procedures);

(5) Section 536.33 (attorney fees).

§ 536.81 Settlement agreement.

Procedures concerning settlement agreements will be in accordance with § 536.10 except that the agreement will be modified to include a State and its National Guard in most cases. A copy of the agreement will be furnished to State authorities and the individual tortfeasor.

Claims Incident to Use of Government Vehicles and Other Property of The United States Not Cognizable Under Other Law

§ 536.90 Statutory authority.

The statutory authority for §§536.90 through 536.97 is contained in the act of October 9, 1962 (76 Stat. 767, 10 U.S.C. 2737). This statute is commonly called the "Nonscope Claims Act." For the purposes of §§ 536.90 through 536.97, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

§ 536.91 Scope.

(a) Sections 536.90 through 536.97 prescribe the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than $1,000, of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or civilian employees of the DA or by civilian employees of the DoD incident to the use of a United States vehicle at any place or incident to the use of other United States property on a Government installation.

(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under §§ 536.20 through 536.35, 536.50, or 536.70 through 536.81 as applicable. Only when all parties, to include an insurer, agree that there is no "in scope" issue will §§ 536.90 through 536.97 be used.

§ 536.92 Claims payable.

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.90 through 536.97 when—

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault, of military personnel of the DA or the ARNG, or civilian employees of the DA or the ARNG—

(i) Incident to the use of a vehicle of the United States at any place,

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be settled under any other claims statute and claims regulation available to the DA for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a settlement agreement in an amount not in excess of $1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 526.93 Claims not payable.

A claim is not allowable under §§ 536.90 through 536.97 that—

(a) Results wholly or partly from the negligent or wrongful act of the claimant, his or her agent or employee. The doctrine of comparative negligence is not applicable.

(b) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than provided in § 536.92(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering, are not payable.

(d) Is for loss of use of property or for the cost of a substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

§ 536.94. When claim must be presented.

A claim may be settled under §§ 536.90 through 536.97 only if it is presented in writing within 2 years after it accrues.

§ 536.95 Procedures.

So far as not inconsistent with §§ 536.90 through 536.97, the procedures for the investigation and processing of claims contained in §§ 536.1 through 536.13 will be followed.

§ 536.96 Settlement agreement.

A claim may not be paid under §§ 536.90 through 536.97 unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement (§ 536.10) is required before payment.

§ 536.97 Reconsideration.

(a) An approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim which was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of §§ 536.90 through 536.97 to a claim upon request of the claimant or someone acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

[FR Doc. 88–27867 Filed 12–6–88; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS PASADENA

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS PASADENA (SSN–752) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PASADENA (SSN–752) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS PASADENA (SSN–752) is a member of the SSN 688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS PASADENA (SSN–752).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and

701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
USS PASADENA	SSN-752	255°	112.5°	206	4.2	6.1	3.5	1.7 below

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, § 2(a)(i), Annex I
USS PASADENA	SSN-752	3.5

Date: November 23, 1988.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 88-28093 Filed 12-6-88; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS WASP

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS WASP (LHD-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval amphibious assault ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS WASP (LHD-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex 1, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light, in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; and Annex 1, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special function as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Two of § 706.2 is amended by adding the following ship:

Vessel	Number	Masthead lights, distance to stbd of keel in meters, Rule 21(a)	Forward anchor light, distance below flight dk in meters; sec 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters, Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters, sec 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; sec. 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; sec. 3(b), Annex I
USS WASP	LHD-1	9.0					3.1	65.2	

3. Table Five of § 706.2 is amended by adding the following ship:

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Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i).	Aft masthead light, less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	AFT masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship, Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS WASP	LHD-1						X	X	65

Date: November 23, 1988.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 88-28094 Filed 12-6-88; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 809d

Procedures for Reporting on Defense Related Employment

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 809d, Procedures for Reporting on Defense Related Employment. The source document has been revised and incorporated into Air Force Regulation 30-30, Standards of Conduct. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AADAQD, Pentagon, Washington, DC 20330-1000, telephone (202-694-3431).

SUPPLEMENTARY INFORMATION: Accordingly, 32 CFR, Chapter VII, is amended by removing Part 809d.

PART 809d—[REMOVED]

Authority: 10 U.S.C. 8013.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-28080 Filed 12-6-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning

AGENCY: Public Health Service, HHS.

ACTION: Notice of court action.

SUMMARY: This document provides notification of court action relating to rules promulgated by the Department of Health and Human Services on February 2, 1988 (53 FR 2922) under Title X of the Public Health Service Act and guidance as to how further clarification of the effect of such court action as it relates to particular grantees and applicants for grants may be obtained.

FOR FURTHER INFORMATION CONTACT: Dennis G. Smith, Director, Office of Family Planning, (202) 245-0153.

SUPPLEMENTARY INFORMATION: On February 2, 1988, the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants under section 1001 of the Public Health Service Act, 42 U.S.C. 300a, with the prohibition on the use of Title X funds in programs where abortion is a method of family planning which is set forth at section 1008 of the Act, 42 U.S.C. 300a-6. 53 FR 2922. The rules promulgated on February 2, 1988 are codified at 42 CFR 59.7-59.10, and various technical and conforming changes were made to other sections of the pre-existing regulations.

Four suits were filed in three jurisdictions by various organizations and individuals seeking to have the February 2nd rules declared invalid and their operation enjoined. In two of the suits, permanent injunctions were entered enjoining the Department from enforcing the rules against the parties to those suits. See *Commonwealth of Massachusetts, et al.* v. *Bowen*, No. 88-0253-S (D. Mass., March 3, 1988) and *Planned Parenthood Federation of America, et al.* v. *Bowen*, No. 88-Z-158 (D. Colo., June 15, 1988). In the remaining two suits, the government prevailed and the complaints were dismissed. See *The State of New York, et al.* v. *Bowen*, No. 88 Civ. 0701 (S.D.N.Y., June 30, 1988) and *Dr. Irving Rust, et al.* v. *Bowen*, No. 88 Civ. 0702 (S.D.N.Y., June 30, 1988). All of the district court orders are currently on appeal.

As a result of this court action, the rules promulgated on February 2, 1988 are currently effective with respect to certain organizations and not with respect to others. Because the appellate process has not concluded and because the applicants for grants and grantees under the program can change, the extent of the rules' coverage is likely to change over time. Organizations with questions as to whether the February 2nd rules are in effect with regard to them are encouraged to consult their attorneys and the Director of the Office of Family Planning at the number provided above.

Dated: October 28, 1988.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 88-28135 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-17-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 86-111; FCC 88-355]

Common Carrier Services; Allocation of Costs Between Regulated and Nonregulated Activities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has affirmed its *Order on Reconsideration* in CC Docket 86-111 insofar as that Order requires carriers to use a three-year forecasting period for the allocation of network plant between regulated and nonregulated activities. The Commission also denied a request that revenues from nonregulated activities be recorded in various operating revenue accounts

within 47 CFR Part 32, and affirmed that these revenues must be placed in a single revenue account. However, the Commission determined that the account established for this purpose in the *Order on Reconsideration* did not properly identify these revenues. Accordingly, the Commission changed the account number and title.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert W. Spangler, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Order on Further Reconsideration* in CC Docket No. 86-111, FCC 88-355, adopted November 1, 1988 and released November 18, 1988. The full text of the FCC's decision is available for inspection and copying in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text of this document may be purchased from the Commission's copy contractor, International Transcription Service's Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order on Further Reconsideration

In the *Joint Cost Order*, the Commission adopted rules and policies applicable to the telephone companies' allocation of costs between their regulated and nonregulated activities. The Commission largely affirmed the *Joint Cost Order* in the *Order on Reconsideration*. However, the Commission on reconsideration modified the time period that carriers are to use for forecasting joint use of network plant, and established procedures by which carriers account for tariffed services used for nonregulated activities.

The Bell Atlantic Telephone Companies petitioned for reconsideration of the changes in the procedure by which carriers account for tariffed services used for nonregulated activities. The *Joint Cost Order* stated that tariffed services provided to a nonregulated activity must be charged to the nonregulated activity at the carrier's tariffed rates. The *Order on Reconsideration* specified the precise accounting procedure for this requirement, which included debiting the tariffed rate to Account 7991, Other nonregulated revenue. This account is classified as a nonoperating account. Bell Atlantic asked that nonregulated revenues instead be accounted for within unique subaccounts in various operating revenue accounts. In the *Order on Further Reconsideration* the Commission rejected that accounting treatment. Such revenues often do not fit readily within the regulated revenue accounts. Moreover, the Commission has no regulatory need for service-specific revenue data for nonregulated activities, and Bell Atlantic's proposal would complicate efforts to assess the level of nonregulated revenues in reports filed by the carriers. The Commission agreed with Bell Atlantic and certain commenters, however, that the nonregulated revenues should not be recorded as nonoperating revenues. Rather, those revenues should be recorded in a separate account classified as operating revenue along with the group of accounts used for regulated telecommunications revenues. Accordingly, the Commission replaced Account 7991 with Account 5280, Nonregulated operating revenue. Carriers must record in that account all nonregulated revenues derived from activities which share assets or resources with regulated activities.

The New York Department of Public Service also sought reconsideration of the *Order on Reconsideration*. In the *Joint Cost Order*, the Commission required carriers to allocate certain types of investment on the basis of relative regulated and nonregulated usage of the investment at the highest forecast relative nonregulated usage over the life of the investment. The *Order on Reconsideration* affirmed use of a forward-looking investment allocator for this investment. However, the Commission amended the rules on reconsideration to require use of a three-year forecast period, because forecasting for the life of the investment would create variations in forecast periods such that monitoring of cost allocations would be complicated. NYDPS sought reinstatement of the three-year forecast period. The Commission rejected a return to use of the three-year forecast period because NYDPS presented no evidence that such forecasts would be meaningful or useful. In response to NYDPS' request, the Commission clarified the restrictions on a carrier's ability to reallocate investment from nonregulated to regulated use.

Ordering Clauses

It is hereby ordered, that pursuant to sections 4(i), 4(j), 201-205, 215, 218, 219, 220, and 405 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201-205, 215, 218, 219, 220, and 405, the Petition of New York State Department of Public Service for Clarification and Reconsideration, filed in this proceeding on November 13, 1987, and the Bell Atlantic Petition for Reconsideration, filed in this proceeding on November 23, 1987, are denied in part and granted in part as specified herein.

It is further ordered, that pursuant to sections 4(i), 4(j), 201-205, 215, 218, 219, and 220 of the Communications Act of 1934, 47 U.S.C. sections 154(i), 154(j), 201-205, 215, 218, 219, and 220, the amendments to Part 32 of the Commission's Rules and Regulations set forth at the end of this document are adopted, effective May 22, 1989.

List of Subjects in 47 CFR Part 32

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 32 Uniform System of Accounts for Telecommunications Companies is amended as follows:

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 219, 220.

2. The table of contents to Part 32 is amended to remove § 32.7991 and to add § 32.5280 to read as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

* * * * *

Subpart D—Instructions for Revenue Accounts

Sec.

* * * * *

32.5270 Carrier billing and collection revenue.
32.5280 Nonregulated operating revenue.
32.5300 Uncollectible revenue.

* * * * *

Subpart F—Instructions for Other Income Accounts

* * * * *

32.7990 Nonregulated net income.

Subpart G—Glossary

* * * * *

3. Section 32.14 is amended by revising paragraph (c) to read as follows:

§ 32.14 Regulated accounts.

* * * * *

(c) In the application of detailed accounting requirements contained in this part, when a regulated activity involves the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, companies shall account for these activities within the accounts

prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Companies shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not qualifying for incidental treatment, as provided in § 32.4999(1), shall be recorded in Account 5280, Nonregulated operating revenue.

4. Section 32.23 is amended by revising paragraph (c) to read as follows:

§ 32.23 Nonregulated activities.

* * * * *

(c) When a nonregulated activity does involve the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, carriers shall account for these activities within accounts prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Carriers shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not qualifying for incidental treatment, as provided in § 32.4999(1), shall be recorded in separate subsidiary record categories of Account 5280, Nonregulated operating revenue. Amounts assigned or allocated to regulated products or services shall be subject to Part 36 of this Chapter.

5. Section 32.1220 is amended by revising paragraph (i) to read as follows:

§ 32.1220 Inventories.

* * * * *

(i) *1220.2 Property held for sale or lease.* This subaccount shall include the cost of all items purchased for resale or lease. The cost shall include applicable transportation charges, sales and use taxes, and cash and other purchase discounts. Inventory shortage and overage shall be charged and credited, respectively, to Account 5280, Nonregulated operating revenue.

6. Section 32.4999 is amended by redesignating (l) and (m) as (m) and (n), adding a new paragraph (l) and by revising paragraph (m) and amending (n) to add Account 5280 to the list of revenue accounts to be maintained as follows:

§ 32.4999 General.

* * * * *

(l) Nonregulated revenues. The nonregulated revenue account shall be used for nonregulated operating revenues when a nonregulated activity involves the common or joint use of assets or resources in the provision of regulated and nonregulated products or services and when such activity is accounted for, as required in §32.23(c) of this subpart, within the accounts prescribed in this system for telephone company operations. Revenues from nontariffed activities offered incidental to tariffed services may be accounted for as regulated revenues, provided the activities are outgrowths of regulated operations and the revenues do not exceed, in the aggregate, one percent of total revenues for three consecutive years. Such activities must be listed in the Commission-approved Cost Allocation Manual for any company required to file a Cost Allocation Manual.

(m) Uncollectible revenues. Uncollectible revenues shall include amounts originally credited to the revenue accounts which have proved impracticable of collection.

(n) Revenue accounts to be maintained.

Account title	Class A account	Class B account
* * *	*	*
Miscellaneous Revenues:	*	*
Carrier billing and collection revenue	5270	.....
Nonregulated Revenues:		
Nonregulated operating revenue	5280	5280
Uncollectible Revenues:	*	*

7. Section 32.5280 is added to read as follows:

§ 32.5280 Nonregulated operating revenue.

(a) This account shall include revenues derived from a nonregulated activity involving the common or joint use of assets or resources in the provision of regulated and nonregulated products or services, which are not provided for elsewhere in this system of accounts.

(b) This account shall be debited and regulated revenue accounts shall be credited at tariffed rates when tariffed services are provided to nonregulated activities that are accounted for as prescribed in § 32.23(c) of this subpart.

(c) Separate subsidiary record categories shall be maintained for each nonregulated revenue item recorded in this account.

§ 32.699 [Amended]

8. Section 32.6999 is amended by amending paragraph (b) to delete the listing of Account 7991.

§ 32.7991 [Removed]

9. Section 32.7991 is removed in its entirety.

[FR. Doc. 27406 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-149; RM-6128]

Radio Broadcasting Services; Wabasha, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 273A to Wabasha, Minnesota, in response to a petition filed by Interstate Communications, Inc. The allotment could provide Wabasha with its first FM broadcast service. The coordinates for Channel 273A are 44–23–06 and 92–05–12. With this action, this proceeding is terminated.

DATES: Effective January 9, 1989; The window period for filing applications will open on January 10, 1989, and close on February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–149, adopted October 28, 1988, and released November 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In Section 73.202(b), the Table of FM Allotments is amended under Minnesota by adding Wabasha, Channel 273A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28125 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-522; RM-5971 & RM-6243]

Radio Broadcasting Services; Red Lodge, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 258C1 for Channel 257A at Red Lodge, Montana, and modifies the construction permit for Channel 257A to specify Channel 258C1. This action is taken in response to a counterproposal filed by C. R. Crisler. Petitioner had originally requested the substitution of Channel 258C2 for Channel 257A at Red Lodge, as was proposed in the Notice. The coordinates for Channel 258C1 at Red Lodge are 45-11-15 and 109-14-46. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-522, adopted October 28, 1988, and released November 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana is amended by removing Channel 257A and adding Channel 258C1 at Red Lodge.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28126 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-456; RM-4632]

Television Broadcasting Services; Minneapolis-St. Paul, MN and Crandon, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the license of Station WCCO-TV, Minneapolis-St. Paul, Minnesota to specify a channel offset of "plus" in lieu of "zero", and allots Channel 4 to Crandon, Wisconsin. In response to an *Order to Show Cause* directed against the licensee of Station WCCO-TV, the licensee argued that the failure of the proponent of the Crandon allotment to demonstrate its financial ability to reimburse Station WCCO-TV for the expenses incurred in changing the channel offset raises a substantial and material question of fact requiring a hearing. The Commission disagreed with this contention and ordered the Station WCCO-TV license modified in order to accommodate the Channel 4 allotment in Crandon. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84-456, adopted October 13, 1988, and released November 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended under Minnesota by removing Channel 4 and adding Channel 4+ at Minneapolis-St. Paul.

3. Section 73.606, the Television Table of Allotments, is amended under Wisconsin by adding Crandon, Channel 4.

Federal Communications Commission.

Donna R. Searcy,

Acting Secretary.

[FR Doc. 88-28129 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

[Ex Parte No. 55 (Sub-No. 71)]

Policy and Final Rule Governing Submission and Evaluation of Safety Fitness Evidence in Motor Carrier Licensing Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of policy statement and final rule.

SUMMARY: The Commission is publishing this policy statement to inform the public about its policies governing motor carrier licensing proceedings in which the applicants hold less-than-satisfactory Department of Transportation (DOT) safety fitness ratings. As part of this policy, the Commission will require all applicants for motor carrier operating authority to provide, as a supplement to the existing OP-1 application form, the applicant's DOT safety rating, and other evidence as appropriate. In addition, the Commission is adopting final rules at 49 CFR 1011, governing delegations of authority, that withdraw the Motor Carrier Board's delegated authority to process applications of conditionally rated motor carriers for authority to transport property (other than hazardous materials, *e.g.*, bulk flammables). Such applications will be

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reviewed and disposed of in the first instance by the entire Commission. Effective immediately, the Commission's Motor Carrier Board will reject all applications for operating authority filed by carriers holding "unsatisfactory" safety ratings and all applications for motor passenger or hazardous materials authority filed by carriers holding "conditional" ratings. Such rejections will be issued without prejudice to the involved carriers refiling for authority upon receipt of an improved safety fitness rating from DOT if they otherwise qualify under our policy (*e.g.*, a passenger carrier with an "unsatisfactory" rating could not obtain authority unless its rating improved to "satisfactory").

Applicants for motor property authority (that does not involve transportation of hazardous materials) holding "conditional" safety fitness ratings will also be required to submit with their applications evidence specifically addressing: (1) The measures taken to achieve full compliance with DOT safety requirements and to correct any deficiencies cited in the audit upon which their performance rating was based; and (2) proof that the applicant has requested a reaudit by DOT. This evidence will be evaluated by the Commission as part of an applicant's case-in-chief to determine its fitness to perform the proposed service.

DATE: The rule revisions announced here will be effective December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne M. O'Malley, (202) 275–7292 or Richard B. Felden, (202) 275–7691. (TDD for hearing-impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: The Commission conscientiously strives to fulfill its mandate to license only those carriers that affirmatively demonstrate their overall fitness to provide transportation. We repeatedly have emphasized that the primary component of the fitness licensing prerequisite is an applicant's operational safety profile—specifically, observance of safety regulations and compliance with applicable bodily injury and property damage insurance limits. Assessment of fitness in this light is fully consistent with—indeed, required by—our national transportation policy mandate to maintain a safe and sound motor carrier system. 49 U.S.C. 10101(a)(7). *See Acceptable Forms of Requests for Operating Authority*, 133 M.C.C. 328, at 330–331 (1984). Our implementation of this policy has evolved over time, and has been accomplished, in part, through case-by-case handling of the licensing docket. One purpose of this notice is to offer, in one place, an explanation of our policy governing safety fitness determinations in licensing cases so that more comprehensive information will be readily available to applicants and their representatives in advance of filing new applications for authority.

Accordingly, to promote better understanding and implementation of our policy, we set forth below our general standards with regard to new licensing of motor carriers with less than "satisfactory" ratings from DOT:

1. All applications for new authority filed by carriers holding "unsatisfactory" safety ratings from DOT will be rejected.[1]

2. All applications seeking authority to transport passengers or hazardous materials filed by conditionally rated carriers will be rejected.

3. All other applications filed by carriers with "conditional" ratings will be reviewed by the Commission on a case-by-case basis; whether an application is granted or denied will depend upon the evidence of record in each case including the carrier's presentation regarding correction of the violations that led DOT to assign the "conditional" rating.

In the past, we have addressed safety issues that arise in new licensing cases only after the application has been noticed in the "ICC Register" and preliminarily granted. This procedure has become inefficient and wasteful of our resources. Moreover, publication in the "ICC Register" may create the false impression that the authority will be granted regardless of the carrier's rating. Thus, confusion often results when the Commission itself reopens the case and either conditions the authority or denies it. To eliminate this confusion and streamline our internal process, we are here adopting final rules which move our examination of safety fitness to the very beginning of the application process, remove certain matters from the authority now delegated to the Motor Carrier Board, and provide direction to the Board in those areas where policy is clear so that the Board may implement it.

This past procedure for addressing safety fitness has often also required that carriers later submit safety-related evidence in addition to evidence now required in the OP–1. Moreover, the OP–1 does not require a carrier to provide its DOT safety rating. We, therefore, independently obtain safety ratings and background material from DOT. These matters have delayed final action in many cases.

The Commission is in the process of revising and streamlining its general licensing application, Form OP–1, and developing corresponding revisions to its regulations governing motor property and passenger applicants and intends to issue a notice instituting Ex Parte No. 55 (Sub-No. 69) in which it will seek public comments on those proposed changes. However, we believe submission of safety-related evidence is so important and its timing so ministerial in nature that we should require, effective immediately, that this type of evidence be introduced with the OP–1, as a supplement. Accordingly, and effective immediately:

1. All carriers shall submit a verified statement of their current DOT safety rating and when it was obtained. Applications without this information will be rejected.

2. The Commission's Motor Carrier Board will reject applications of all applicants holding "unsatisfactory" ratings and applications for motor passenger and motor property hazardous materials authority filed by carriers holding "conditional" ratings. Rejection will be without prejudice to the application being refiled upon receipt of an upgraded safety fitness rating—to "satisfactory" for motor passenger applicants and motor property transporters of hazardous materials; to at least "conditional" for all other motor property applicants.

3. Motor property applicants holding "conditional" ratings (other than those seeking hazardous materials authority) will also be required to submit with their Form OP–1 licensing application (in addition to certifying their current DOT rating and the date it was obtained) proof that the applicant has requested a reaudit by DOT, and verified evidence specifically addressing the measures taken to achieve full compliance with DOT safety requirements and to correct any safety deficiencies cited in the most recent DOT audit. Applications filed by these conditionally rated carriers will be ruled on by the entire Commission, which will base its decision on a thorough case-by-case review of the safety compliance evidence introduced.

Generally, in those instances where an applicant in this category has requested a reaudit by DOT and affirmatively establishes that it has

[1] There is one minor procedural difference between our prior policy and that described here. In the past we either denied applications from carriers with "unsatisfactory" ratings or granted their application but withheld the actual issuance of any authority to them until DOT upgraded their safety ratings. Now we will reject their applications. This change in policy to rejecting applications works no harm on applicants. The substantive result is the same—authority is not issued—but rejection will allow return of the filing fee.

eliminated any safety deficiencies cited in DOT's most recent audit report and brought its operations into full compliance with DOT regulations, the Commission will tentatively grant the authority, subject to a 1-year term limitation. The preliminary grant of authority will be published in the "ICC Register" with this term limitation. If no legitimate protest to the application is filed, the certificate or permit will be issued with a self-executing condition, indicating that the authority will expire at the conclusion of 1 year unless applicant petitions to remove the term limitation based on its receipt of a satisfactory fitness rating.

Applicants in this category are also advised that the Commission will not extend limited term authorities unless the carriers have received satisfactory safety ratings prior to expiration of their authorities. However, such carriers may petition for post-expiration reopening of their licensing proceedings to receive unrestricted authority if a subsequent DOT safety audit results in a "satisfactory" rating.

We will further discuss our role in evaluating safety fitness as an essential component of the licensing process in the forthcoming Ex Parte No. 55 (Sub-No. 69) proceeding. In the notice instituting that proceeding we will invite comment on certain matters discussed here.

We note that our policy statement and the authority delegation change announced here do not require public notice and opportunity for comment prior to implementation. Under 5 U.S.C. 553(b)(A), interpretive rules, general policy statements, and rules of agency organization, procedure, or practice are specifically exempted from the notice and comment requirements of the Administrative Procedure Act. The policy announced here merely provides a uniform and consistent expression of the manner in which we carry out our mandate to license only operationally safe carriers and thereby ensure a safe and efficient motor transportation system. Similarly, the rule revision that withdraws from the Motor Carrier Board previously delegated authority, consistent with our safety fitness policy, represents a matter of internal agency organization. And, as discussed earlier, the new supplement to the OP-1 simply changes the time when safety-related evidence must be filed. Thus, these matters fall squarely within 5 U.S.C. 553(b)(A) and may be implemented without public notice and comment procedures. Nevertheless, as noted above, we will invite comment on certain aspects of this policy in the upcoming rulemaking.

Environmental and Energy Considerations

We conclude that the policy announced here and the corresponding rule revision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine the impact of an action on small business and small organizations. We conclude that the policy and corresponding rule revision adopted here will not have a significant impact on a substantial number of these entities. To the extent that small transportation providers and new applicants are influenced at all by our action, it will be a result of increased certainty and predictability in the disposition of licensing matters involving safety fitness issues.

Although this policy statement requires certain conditionally rated applicants to introduce evidence of corrective safety measures and current compliance with DOT regulations, such supplemental testimony does not impose additional burdens on applicants for operating authority or unduly protract or complicate the licensing process. Rather, by requiring that, where appropriate, applicants affirmatively introduce such safety compliance evidence as part of their case-in-chief, we have ensured against the need to hold open or otherwise needlessly delay licensing proceedings in order to obtain supplemental information to clarify the safety fitness profile of particular applicants.

We, therefore, conclude that the policy statement and rule revision announced here will not have a significant impact on a substantial number of small carrier applicants or other entities. The policy and rule will not impose additional reporting, recordkeeping, or compliance requirements upon small entities, nor will the amended rule duplicate, overlap, or conflict with any existing Federal rule.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure.

Decided: November 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons commented with a separate expression. Commissioner Lamboley dissented in part.

Noreta R. McGee,

Secretary.

Title 49, Chapter X, Part 1011, of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.6(i)(1) is revised to read as follows:

§ 1011.6 Employee boards.

* * * * *

(i) * * *.

(1) Pre-publication matters in operating rights applications of motor carriers (except those requesting authority to transport non-hazardous property filed by applicants with "conditional" DOT safety fitness ratings), water carriers, household goods freight forwarders, and property brokers.

* * * * *

[FR Doc. 88-28109 Filed 12-6-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the western zone of the Gulf migratory group. The Secretary has determined that the commercial quota for Gulf group king mackerel from the western zone was reached on December 2, 1988. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, December 3, 1988, until 12:00 p.m. (midnight), local time, June 30, 1989.

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FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Regulations effective July 1, 1988, implemented catch limits recommended by the Councils for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1988, through June 30, 1989). Those regulations set the commercial allocation at 1.09 million pounds divided into quotas of 0.75 million pounds for the eastern zone and 0.34 million pounds for the western zone (53 FR 25611, July 8, 1988). The boundary between the eastern and western zones is a line directly south from the Florida/Alabama boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

Under § 642.22(a), the Secretary is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial quota of 0.34 million pounds for the western zone of the Gulf migratory group of king mackerel was reached on December 2, 1988. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., on December 3, 1988, through June 30, 1989, the end of the fishing year.

Except for a person on a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ king mackerel from the western zone. A person aboard a charter vessel may continue to fish for king mackerel in the western zone under the bay limit set forth in § 642.28(a)(1), provided the vessel is under charter, i.e., there are more than three persons aboard, including captain and crew. During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: December 2, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–28169 Filed 12–2–88; 4:46 pm]

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15 CFR P

[Docket N

Exports
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AGENCY:
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ACTION: P

SUMMARY
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Proposed Rules

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 776

[Docket No. 81136-8236]

Exports From Abroad of Foreign Products Incorporating U.S.-Origin Parts and Components

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise § 776.12 of the Export Administration Regulations (EAR) to reduce U.S. export controls on U.S.-origin parts and components incorporated in foreign products. The reduction in controls is required by section 5(a)(5)(A) of the Export Administration Act of 1979, as amended by the Omnibus Trade and Competitiveness Act of 1988. This change would expand the existing 25% exemption to additional destinations and would create a new exemption based on the Advisory Notes that indicate a likelihood of approval for exports to Country Groups Q, W, and Y.

Comments on this proposed rule will be considered in the development of the final rule.

EFFECTIVE DATE: Comments must be received by January 23, 1989.

ADDRESSES: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Room 1622, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act has amended section 5(a)(5)(A) of the Export Administration Act of 1979 (the Act), as amended, to require a reduction of U.S. controls on U.S.-origin parts and components incorporated in foreign products. Currently, when U.S.-origin parts and components are valued at $10,000 or less and comprise 10% or less of the value of a foreign-made product, the Export Administration Regulations permit the foreign-made products to be exported from abroad to any destination without written U.S. authorization. With certain exceptions, written U.S authorization is also not required for exports, from foreign countries, of foreign-made products with a U.S. content value of 25% or less to countries listed in Supplement No. 2 or 3 to part 773.

This proposed rule would make two significant revisions to § 776.12 that exempt additional foreign-made products incorporating U.S.-origin parts and components from written authorization requirements. First, the 25% exemption is expanded to apply to *any* destination if the export of the foreign product to the new destination would be subject to U.S. national security controls *only*. The existing 25% exemption for countries listed in Supplement No. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua) is continued regardless of the basis of control.

The second major revision would exempt foreign-made products containing U.S.-origin content from written authorization requirements when none of the U.S. content, regardless of its value, exceeds the technical performance characteristics of any Advisory Note on the Commodity Control list that indicates licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y *and* where the export of the foreign product to the new destination would be subject to U.S. national security controls *only*. When the new destination is a country listed in Supplement No. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua), this exemption will apply regardless of the basis of control.

This rule also proposes to revise what U.S. content is to be counted when calculating "U.S. content value" as defined in § 776.12(d). Parts, components, or materials that could be exported from the United States to the new country of destination under General Licenses G-DEST, G-COCOM, G-COM, or GFW may be excluded from the calculation of "U.S. content value." Currently, only G-DEST items are excluded from this calculation.

However, this rule would not change the policy that prior written approval from the Office of Export Licensing is always required for the export from a foreign country of a foreign-made supercomputer containing U.S. parts, components, or materials, *without exception*. In addition, a foreign-made product that is the direct product of U.S.-origin technical data may require U.S. authorization regardless of the U.S. content. This rule deals only with U.S. origin parts and components incorporated in foreign products. Section 5(m) of the Act, "Goods Containing Controlled Parts and Components," will be implemented in a separate rule.

Rulemaking Requirements and Invitation to Comment

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0010.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of

proposed rulemaking, an opportunity for public comment, and a delay in effective data. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule is being issued in proposed form, this rule complies with section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 23, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

5. This proposed rule does not contain policies with Federalism implications sufficient to warrent preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 776

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 776 of the Export Administration Regulations is proposed to be amended as follows:

1. The authority citation for 15 CFR Part 776 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.)*, as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 776—[AMENDED]

3. Section 776.12 is amended by revising the introductory text, by revising paragraphs (a), (b), (c), and (d), and by removing paragraph (h), as follows:

§ 776.12 Parts, components, and materials incorporated abroad into foreign-made products.

U.S. origin parts, components, materials, or other commodities incorporated abroad into a foreign-made product are subject to United States export controls under § 776.12. United States parts, components, materials, or other commodities that are not incorporated abroad into products are subject to the reexport provisions of Part 774. U.S. origin peripheral or accessory devices that are merely rack mounted with or cable connected into foreign equipment are not deemed to be incorporated components even though intended for use with products made abroad. Rather, such items are treated as U.S. items that retain their identity and remain subject to the reexport provisions of Part 774. The Department of Commerce asserts control over parts, components, and materials incorporated in foreign-made products to prevent the use of such U.S. origin parts, components, or materials in a manner detrimental to the national security or foreign policy of the United States. These controls do not apply if either the U.S. content or the foreign-made product is subject to control only for a short supply reasons.

(a) *Calculation of values.* Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(1) *U.S. content value.* (i) U.S. content value is the delivered cost to the foreign manufacturer of the U.S. origin parts, components, or materials. (When affiliated firms have special arrangements that result in lower than normal pricing, the cost should reflect "fair market" prices that would normally be charged to similar, unaffiliated customers.)

(ii) In calculating the U.S. content value, do not include parts, components, or materials that could be exported from the United States to the new country of destination under General License G–DEST, G–COCOM, G–COM, or GFW.

(2) The foreign-made product value is the normal export selling price f.o.b. factory (excluding value added taxes or excise taxes).

(b) *Determining approval requirements.* The prior written approval of the Office of Export Licensing is required for the export from a foreign country of a foreign-made supercomputer containing U.S. origin parts, components, or materials that are not G–DEST to the new destination, *without exception.* Such prior written approval also is required for any other foreign-made product incorporating U.S. origin parts, components, or materials, *except:*

(1) If at the time of export of the foreign-made product to the new country of destination, the export of the foreign-made product meets any of the conditions of § 774.2 (permissive reexports); or

(2) If the U.S. content value is both 10% or less *and* $10,000 or less; or

(3) If the U.S. content value is greater than 10%, or greater than $10,000, but not more than 25%, *and:*

(i) The ultimate destination of the foreign product is a country listed in Supplement Nos. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua) or

(ii) The ultimate destination of the foreign product is Ethiopia, Lebanon, Nicaragua or a country *not* listed in Supplement Nos. 2 or 3 to Part 773 *and* the foreign-made product is subject only to national security controls;

Note.—To determine the reason for control, see the *"Reason for Control"* paragraph in each CCL entry. If the reason is given only as "national security", you must also review §§ 776.14, 776.16, 776.18, 785.1, 785.2, 785.4, 785.7, and Part 778 to establish whether a

foreign policy or nuclear nonproliferation control might apply to the commodity and destination.

or

(4) If none of the technical performance characteristics of the U.S. content exceed those of any Advisory Note in the CCL that indicates licenses are likely to be approved for country Groups Q, W, and Y, *and* either:

(i) The ultimate destination of the foreign product is a country listed in Supplement Nos. 2 or 3 to Part 773 (excluding Ethiopia, Lebanon, and Nicaragua); or

(ii) The ultimate destination of the foreign product is Ethiopia, Lebanon, Nicaragua or a country *not* listed in Supplement Nos. 2 or 3 to Part 773 *and* the foreign-made product is subject only to national security controls. (see Note to § 776.12(b)(3)(ii) above.)

Note.—See § 776.12(g) for other controls that may apply even if the export would be excepted by this paragraph (a).

(c) *Applicability of exceptions to approval requirements.* The exceptions to the approval requirements in paragraph (b) of this section apply only if the U.S. content is normal and usual for the product being exported and is not physically incorporated in the foreign product as a device to evade the requirement for reexport authorization.

(d) *Spare parts.* Shipments of foreign-made items that incorporate U.S. origin components may be accompanied by U.S. origin controlled spare parts, provided they do not exceed the value of the controlled U.S. content.

* * * * *

Dated: December 2, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-28181 Filed 12-6-88; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 851 0162]

Cleveland Automobile Dealers' Association; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Cleveland Automobile Dealers' Association (CADA) from limiting its members' hours, from maintaining any policy concerning hours of operation, and from encouraging members to influence each other as to their hours. Respondent would be required to advertise in the newspaper that dealers' hours are no longer restricted and also change its Articles of Incorporation or other policy statements to reflect the consent agreement.

DATE: Comments must be received on or before February 6, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Kindt, Cleveland Regional Office, Federal Trade Commission, Suite 500—Mall Building, 118 St. Clair Ave., Cleveland, OH. 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Automobile dealers, Trade practices.

Agreement Containing Consent Order To Cease and Desist

Before Federal Trade Commission in the matter of Cleveland Automobile Dealers' Association, a corporation, File No. 851 0162.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Cleveland Automobile Dealers' Association ("Proposed Respondent"), a corporation, and it now appearing that Proposed Respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It Is Hereby Agreed by and between Proposed Respondent, by its duly authorized officer and its attorney, and counsel for the Federal trade Commission that:

1. Proposed Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Suite 300, The Lincoln Building, 1367 East 6th Street, Cleveland, Ohio 44114.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal

Service of the Complaint and Decision containing the agreed-to Order to Proposed Respondent's address as stated in this Agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It Is Ordered that for purposes of this Order, the following definitions shall apply:

(A) "Respondent" means the Cleveland Automobile Dealers' Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, and assigns, or any other person acting for or on behalf of the Cleveland Automobile Dealers' Association in any capacity;

(B) "Dealer" means any person who receives on consignment or purchases new motor vehicles for sale to the public, and any director, officer, employee, representative, or agent thereof;

(C) "Member" means any dealer who is a member of the Cleveland Automobile Dealers' Association;

(D) "Person" includes any natural person, corporate entity, partnership, association, joint venture, trust, or any other organization or entity, but does not include any government entity; and

(E) "Hours of operation" means any period of time (whether that period be stated as specific hours, specific days, or otherwise) that any dealer holds itself out to the public as open to sell new cars. For purposes of this Order, "hours of operation" shall not include any period of time that a dealer conducts the operation of parts or service departments or aspects of its operation other than new car sales.

II

It Is Further Ordered that Respondent, directly, indirectly, or through any corporate or other device, shall forthwith cease and desist from:

(A) Entering into, continuing or carrying out any agreement, contract, combination, or conspiracy with any dealer or any other person regarding hours of operation;

(B) Adopting, implementing, or maintaining any article, bylaw, regulation, code of conduct, or other policy, whether formal or informal, regarding hours of operation;

(C) Exchanging information or communicating with any dealer or any other person concerning hours of operation, directly or by implication, except to the extent necessary to comply with any order of the Federal Trade Commission;

(D) Requesting, coercing, influencing, encouraging, persuading, or attempting to request, coerce, influence, encourage, or persuade any dealer to adopt, agree to, or adhere to any hours of operation, or taking any other action intended to or likely to influence any dealer to adopt, agree to, or adhere to any hours of operation; and

(E) Encouraging any person to, or suggesting that any person, engage in any of the acts or practices set forth in Part II (A), (B), (C), or (D), above.

III

It Is Further Ordered that:

(A) With respect to Respondent's Articles of Incorporation, Code of Regulations, Code of Bylaws, Statement of Policies, or any other policy statements, within sixty (60) days after this Order becomes final, Respondent shall explicitly and formally remove any provision, rule, standard, interpretation, policy statement, or guideline that is inconsistent with Part II of this Order, by amendment, revision, or in such other manner as to eliminate the inconsistency, including, but not limited to, formal rescission of any existing Resolution of the Board of Trustees addressing hours of operation, including the Resolution adopted in August 1954 and the Resolution adopted in September 1964 and amended in September 1976;

(B) Within sixty (60) days after this Order becomes final, and until February 28, 1999, Respondent shall incorporate in its Code of Regulations:

(1) A provision that requires members to report to Respondent in writing any agreement, contract, combination or conspiracy between members regarding hours of operation. For a period of five (5) years after receipt, Respondent shall maintain, and upon request make available to the Federal Trade Commission, all report filed pursuant to this part.

(2) A provision that prohibits its trustees, members, officers, employees, and agents from discussing, directly or by implication, hours of operation at any of Respondent's membership, Board of Trustees, or committee meetings, formal or informal, except to the extent necessary to comply with any order of the Federal Trade Commission;

(3) A provision that requires members to destroy any decals or signs provisions provided to them by Respondent that referred in any way to hours of operation; and

(4) A respondent that requires expulsion from membership in Respondent of any member, discharge from employment, or the termination of its relationship with any member, employee or agent who fails to comply with the provision required by Part III (B)(1), (B)(2), or (B)(3), above.

(C) Within ten (10) days after the amendment, revision, or any other change of its Articles of Incorporation, Code of Regulations, Code of Bylaws, Statement of Policies, or any other policy statement of Respondent pursuant to this Order, Respondent shall send by first-class mail a copy of such amended Articles of Incorporation, Code of Regulations, Code of Bylaws, Statement of Policies, or any other policy statement to all members, accompanied by a cover letter clearly and conspicuously drawing the member's attention to the amendment, revision, or other change and briefly summarizing its nature and purpose;

(D) Promptly, and in no case in excess of ninety (90) days after acquiring reason to believe that a member violated Part III (B)(1), (B)(2), or (B)(3) of this Order, Respondent shall, in accordance with its Code of Regulations relating to expulsion of members, make a determination whether a violation has occurred and shall expel any member it so determines to have violated Part III (B)(1), (B)(2), or (B)(3) of this Order;

(E) Within thirty (30) days after this Order becomes final, Respondent shall provide each member, officer, agent, and employee with a copy of this Order and attached Complaint and the Notice set out in Appendix A;

(F) For a period of two (2) years after this Order becomes final, Respondent shall provide each new member who joins Respondent, and each new officer, new agent, or new employee employed by Respondent, with a copy of this Order and attached Complaint and the Notice set out in Appendix A; and

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(G) Within sixty (60) days after this Order becomes final, Respondent shall provide each member with replacement decals and signs for any decals or signs previously provided by Respondent that referred in any way to hours of operation, along with a cover letter explaining that members must destroy the original decals and signs and urging them to substitute the replacement decals and signs for the original ones. Replacement decals and signs either shall have no reference to hours of operation or shall be designed so the individual member may insert any hours of operation it wishes.

It Is Further Ordered that:

(A) Beginning thirty (30) days after this Order becomes final, and for a period of not less than eight (8) weeks thereafter, Respondent shall place and cause to be disseminated each week at least two (2) advertisements, including one in the Thursday edition and one in the Saturday edition of *The Plain Dealer*. The advertisements must contain a principal message devoted to explaining that dealers who are members of Respondent are free to offer expanded shopping hours as required in Part IV(B) of this Order. The advertisements shall be a minimum of one-eighth (⅛) of a page and shall be placed in the same location in *The Plain Dealer* at which advertisements for the sale of new automobiles ordinarily appear; and

(B) Prior to placement of the first such advertisement, Respondent shall conduct, or cause to be conducted, copy testing of such advertisement. The copy testing shall be based on monadic interviews (such as the "mall intercept" procedure) of not fewer than thirty (30) subjects screened and selected to have purchased a new automobile within the last three (3) years, and shall be conducted by a reputable advertising or research organization using techniques commonly accepted in the advertising profession. Such organization shall provide a written report to Respondent explaining the result of such copy testing, and Respondent may use such advertisement to satisfy its obligations under Part IV(A), above, only if the report establishes that the advertisement effectively communicates (1) that until [date of Order], most Cleveland-area automobile dealers have not been open for business on Sundays and most weekday evenings; and (2) that Cleveland-area automobile dealers are free to choose their own hours of operation so that dealers may now have shopping hours on Sundays, weeknights, or any other times they choose. In the event any subsequent advertisement prepared pursuant to this paragraph differs significantly from the first advertisement disseminated in accordance with this paragraph, Respondent shall conduct or cause to be conducted copy testing of such advertisement in the same manner and for the same purpose as described above.

V

It Is Further Ordered that Respondent shall file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied and is complying with this Order, within ninety (90) days after this Order becomes final, and on the first anniversary of the date this Order becomes final.

VI

It Is Further Ordered that for a period of ten (10) years after this Order becomes final, Respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

Appendix A

Please Read This.

It Is Very Important.

Enclosed with this notice is a copy of a Consent Order agreed to between the Federal Trade Commission and the Cleveland Automobile Dealers' Association ("CADA"). In the Order, CADA has agreed that we will not have any part in suggesting or setting the hours during which any automobile dealer can be open.

YOU ARE FREE TO BE OPEN TO SELL NEW CARS AT ANY HOURS YOU WISH. CADA HAS NO POLICY OR GUIDELINES ABOUT HOURS REGARDING NEW SALES. THE HOURS YOU ARE OPEN ARE YOUR BUSINESS.

If you have any questions about this, please feel free to contact CADA.

* * * * *

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order from the Cleveland Automobile Dealers Association (CADA) located in Cleveland, Ohio. The agreement would settle charges by the Commission that the proposed respondent violated section 5 of the Federal Trade Commission Act by combining or conspiring to interfere with competition among automobile dealers in greater Cleveland by limiting its members' showroom hours.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The Complaint

A Complaint has been prepared for issuance by the Commisson along with the proposed Order. It alleges that CADA has limited the times during which its members sell new automobiles. The Complaint alleges, for example, that CADA adopted bylaws discouraging its member dealers from maintaining showroom hours on Sundays, on Saturday nights, and on weeknights except Mondays and Thursdays. In addition, the Complaint alleges that CADA's bylaws had the effect of limiting showroom hours of its member dealers to the suggested times. The Complaint further alleges that the combination or conspiracy constitutes an unfair method of competition.

The Proposed Consent Order

Part I of the proposed Consent Order contains definitions of terms used in the Order.

Part II of the Order prohibits CADA from maintaining any policies relating to, or from discussing, its members' operating hours.

Part III requires CADA to (1) amend its bylaws to remove any provision which might limit or restrict its members' showroom hours; (2) adopt bylaws prohibiting discussions regarding hours at membership meetings and requiring expulsion of any member violating the prohibition; (3) require its members, until 1999, to file a notice with CADA of hours agreements arrived at outside CADA meetings, and require expulsion of any member in violation; (4) provide its members with placement window decals which do not state opening and closing times; and (5) notify each of its members of the Order.

Part IV requires CADA to place sixteen (16) advertisements in the Cleveland *Plain Dealer* informing the public of the proposed Consent Order and of the possibility of non-traditional showroom hours.

Part V requires that CADA provide the Commission with compliance reports ninety (90) days after, and on the first anniversary of the effective date of the Order.

Part VI requires, for a period of ten (10) years, that CADA notify the Commission of any change in CADA's legal status.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 88-28151 Filed 12-6-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388

Developmental Disabilities Program

AGENCY: Administration on Developmental Disabilities, ADD Office of Human Development Services, (OHDS), Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend current regulations to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 (Pub. L. 100-146). The regulations propose standards for determining whether a State has used Federal funds to supplement and not supplant State and local funds. They also propose to establish a peer review process for applications under the University Affiliated Programs and make other clarifying, technical, and conforming changes.

DATE: To ensure consideration comments must be submitted on or before February 6, 1989.

ADDRESS: Please address comments to: Commissioner, Administration on Developmental Disabilities, Room 348-F (Regulations), Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Attention: Ms. Elsbeth Porter Wyatt.

It would be helpful if agencies and organizations submitted comments in duplicate. Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 347D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Monday through Friday, 9:00 a.m. to 4:00 p.m., telephone (202) 245-2890.

FOR FURTHER INFORMATION CONTACT: Ms. Elsbeth Porter Wyatt, (202) 245-2904.

SUPPLEMENTARY INFORMATION:

A. Program History

In 1963, the Mental Retardation Facilities and Construction Act (Pub. L. 88-164) was enacted to provide for planning activities and construction of facilities to provide services to the mentally retarded. This legislation was subsequently amended by the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub. L. 91-517) which constituted the first Congressional effort to address the needs of a group of persons with handicaps designated as developmental disabilities. The 1970 Amendments defined developmental disability to include individuals with mental retardation, cerebral palsy, epilepsy, and other neurological conditions closely related to mental retardation which originated prior to age 18 and constituted a substantial handicap. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for persons with developmental disabilities; it also authorized grants for constructing, administering and operating University Affiliated Facilities.

The legislation authorizing the Developmental Disabilities program has been revised periodically. The major changes of note included the following: (1) The 1975 Amendents (Pub. L. 94-103) deleted the construction authority, authorized studies to determine the feasibility of having University Affiliated Facilities establish Satellite Centers, established the Protection and Advocacy System, and added a section on "Rights of the Developmentally Disabled;" (2) the 1978 amendment (Pub. L. 95-602) included a functional definition of developmental disabilities; and (3) the Developmental Disabilities Amendments of 1984 (Pub. L. 98-527) added a new emphasis regarding the purpose of the program, i.e., to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

The 1987 amendments extend authorization of appropriations for programs under the Developmental Disabilities Assistance and Bill of Rights Act (the Act) through FY 1990, and made other revisions to the Act. The amendments revise definitions of priority activities under State plans; require additional activities under State protection and advocacy systems; and require a variety of new reviews, studies, and reports. They also require the Secretary to consider applications for four new university affiliated programs or satellite centers each year through FY 1990.

Developmental Disabilities Program

Basic State Grants

Formula grants are made to States for planning, coordinating, and administering services for citizens with developmental disabilities. This program assists States in developing and implementing a comprehensive plan to ensure that persons with developmental disabilities have the range of services available to them which best promote self-sufficiency.

Protection and Advocacy

Formula grants are made to States for the establishment of a system to protect and advocate for the rights of persons with developmental disabilities. This system must have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of developmentally disabled individuals who are receiving, or who are eligible to receive, treatment or habilitation services.

University Affiliated Programs

Awards are made to universities, or public or nonprofit entities associated with universities, to establish University Affiliated Programs or Satellite Centers. Such programs carry out interdisciplinary training, conduct demonstrations of exemplary services, provide technical assistance, and disseminate information which will assist in improving the service delivery system.

Projects of National Significance

This program provides funding through grants and contracts for projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, and pursue Federal interagency initiatives and other projects of national significance which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities.

B. Summary of Proposed Regulations

A section-by-section discussion of the changes we are proposing follows:

Part 1385 Requirements Applicable to the Developmental Disabilities Program

Editorial and technical changes are proposed in Part 1385 to comport with statutory changes. See §§ 1385.1, 1385.3, 1385.4, 1385.5 and 1385.9. In § 1385.3 we propose to amend the definition of "Act" to cite the U.S. Code and thus eliminate the need for revision each time the law is amended. In addition, we propose to define "ADD" and "OHDS."

Part 1376 Formula Grant Programs

Pursuant to section 125(b) and 142(c) of the Act, we are proposing to clarify in paragraph (a) of § 1386.2, Obligation of funds, that Federal funds will be available for obligation by States for a two year period beginning with the first day of the fiscal year in which the grant is awarded.

Current regulations at § 1386.23(c) require the State Protection and Advocacy agency to submit financial status reports quarterly. These reports are due 30 days after the close of each quarter of the Federal fiscal year except for the final report which is due 90 days following the close of the fiscal year.

We are proposing new language in paragraph (c) to continue the requirement that State agencies must submit financial status reports, but we have deleted the regulatory language specifying a time period for submittal. However, we will implement this requirement administratively through an OHDS Program Instruction rather than through language in regulations. This will avoid the need to amend the rules in the future.

In § 1386.30, State plan requirements, we propose to revise paragraph (e)(4) purusant to section 124(c)(1) of the Act. The proposed change clarifies that each State Planning Council shall receive from the State administering agency the amount of funds the State deems necessary to hire staff and obtain the services of other technical, professional, and clerical staff.

In § 1386.32 Periodic reports: Basic State grants, we are proposing to make the same change regarding financial status reports as we proposed in § 1386.23(c). OHDS will continue to require quarterly reports and will implement this requirement administratively through an OHDS Program Instruction rather than through language in the regulations. The new language proposed in paragraph (a) continues the requirement that the State agency must submit financial status reports but deletes the regulatory language specifying a time period for submittal.

Technical changes have been made in § 1386.33(a), Protection of employee's interests, to reflect the new statutory citations.

In § 1386.35, Allowable and non-allowable costs for Basic State grants, we are proposing to add a new paragraph (c) to specify objective standards for use in determining whether a State is in compliance with the provision in section 122(b)(4)(D) of the Act that basic State grant funds must be used to supplement and not supplant Federal funds. These provisions are proposed in response to Congressional concern expressed in the Joint Senate-House Explanatory statement on S. 12417. *See* S. Rep. No. 100–113, 100th Cong., 1st Sess. (1987).

Part 1387 Projects of National Significance

§ 1387.1(a), the statutory reference has been corrected to comport with the 1987 Amendments. Also, we are proposing to add in a new paragraph (b), that proposed priorities for projects under this part will be published in the **Federal Register** and a 60 day public comment period will be allowed. Finally, the current paragraph (b) has been redesignated as paragraph (c) and amended to delete an unnecessary word "services" and incorporate the requirement that final priority areas will be announced in the **Federal Register** pursuant to Section 162(c) of the Act.

Part 1388 University Affiliated Programs

The title of Part 1388—The University Affiliated Facilities Program—would be revised to read the University Affiliated Programs, based on Part D of the Act.

In § 1388.5, Program criteria—training, we are proposing to specify new priority areas for training in paragraph (f)(3) pursuant to sections 152(b) (2), (3) and (4) of the Act. Paragraph (f)(3) proposes that training priorities must consider national manpower needs with particular attention in the areas of early intervention, the elderly developmentally disabled, and community-based programs.

Throughout all of Part 1388, the term University Affiliated Facilities has been changed to University Affiliated Programs (UAPs).

A new § 1388.9, Peer review, has been proposed regarding peer review of UAPs applications pursuant to section 153 (e)(1) and (e)(2) of the Act. In paragraph (a) we are proposing a statement of the reason a peer review process is being established to review UAP applications. In paragraph (b) we are proposing that all applications for funding opportunities under Part D of the Act must be evaluated through the peer review process. In paragraph (c) we are proposing the requirements regarding the composition of the panel which is to include individuals with expertise and experience in the fields appropriate to the activities conducted by UAPs and Satellite Centers. (*See* S. Rep. No. 100–113, 100th Cong., 1st Sess. (1987)). Examples of disciplines related to the mentally retarded and developmentally disabled populations, are not limited to, but may include the following: (1) Administration; (2) audiology; (3) child psychiatry; (4) dentistry; (5) genetics; (6) gerontology; (7) medicine; (8) language/speech; (9) law; (10) neurology; (11) nursing; (12) occupational/physical therapy; (13) opthamology/optometry; (14) pediatrics; (15) program evaluation; (16) psychology; (17) social work; (18) special education; and (19) vocational rehabilitation. In addition, the following areas of expertise and experience may also be considered: (1) Experience in the UAPs, Mental Retardation and/or Developmental Disabilities networks; (2) demonstrated knowledge of UAP/Satellite Center mandates and program goals and objectives; and (3) professional association with national mental retardation/developmental disabilities organizations.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. These regulations primarily affect State agencies and University Affiliated Programs. The basic requirements of the program are established by the statute, not these regulations. Therefore, the Department concludes that these regulations are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of $100 million or more or meet the other threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", we prepare an analysis describing the rule's impact on small entities. The

primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule. This proposed rule does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

List of Subjects

45 CFR Part 1385

Grant programs/education, Grant programs/social programs, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1386

Administrative practice and procedure, Grant programs/education, Handicapped, Reporting and recordkeeping requirements.

45 CFR 1387

Grant programs/education, Grant programs/social programs, Handicapped.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, university affiliated program, satellite center.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities Basic Support and 13.631 Developmental Disabilities—Projects of National Significance, and 13.632 Developmental Disabilities-University Affiliated Program)

Dated: July 27, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: August 31, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble. Chapter XIII of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

Subchapter 1—The Administration on Developmental Disabilities, Developmental Disabilities Program

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

1. The authority citation for Part 1385 is revised to read as follows:

Authority: 42 U.S.C. 6000 et. seq.

2. Section 1385.1 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 1385.1 General.

* * * * *

(b) State Basic Program for Planning Priority Area Activities for Persons with Developmental Disabilities.

(c) Projects of National Significance; and

(d) University Affiliated Programs (UAPs)

3. Section 1385.3 is amended by revising the definition of "Act" and by adding the definition of "ADD" and "OHDS" to read as follows. The introductory text is republished for the convenience of the reader.

§1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. 6000 et. seq).

* * * * *

ADD means the Administration on Developmental Disabilities, within the Office of Human Development Services.

OHDS means the Office of Human Developmental Services within the Department of Health and Human Services.

4. Section 1385.4 is amended by revising paragraphs (b) and (c) to read as follows:

§1385.4 Rights of persons with developmental disabilities.

* * * * *

(b) In order to comply with section 122(b)(6)(C) of the Act (42 U.S.C. 6022 (b)(6)(C), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

5. Section 1385.5 is amended by revising paragraph (b) to read as follows:

§ 1385.5 Recovery of Federal funds used for construction of facilities.

* * * * *

(b) The State Council or the appropriate UAP official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

* * * * *

6. Section 1385.9 is amended by revising paragraph (a) introductory text to read as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386 and 1388 of this chapter and to projects of national significance under section 162 of the Act (42 U.S.C. 6082).

* * * * *

PART 1386—FORMULA GRANT PROGRAMS

7. The authority citation for Part 1386 is revised to read as follows:

Authority: 42 U.S.C. 6000 et.seq.

Subpart A—Basic Requirements

8. Section 1386.2 is amended by revising paragraph (a) to read as follows:

§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

* * * * *

Subpart B—State System for Protection and Advocacy of Individual Rights

9. Section 1386.23 is amended by revising paragraph (c) and the OMB statement to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

* * * * *

(c) Financial Status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

[Information collection requirements contained in paragraph (b) under control

number 0980–0160 and paragraph (c) under control number 0348–0039 are approved by the Office of Management and Budget.]

Subpart C—State Plan for Provision of Services for Persons With Developmental Disabilities

10. Section 1386.30 is amended by revising paragraph (e)(4) to read as follows:

§ 1386.30 State plan requirements.

* * * * *

(e) * * *

(4) Each Planning Council shall receive from the State administering agency funds to hire staff and obtain the services of other technical, professional, and clerical staff, consistent with State law to allow States to comply with this requirement however they see fit.

* * * * *

11. Section 1386.32 is amended by revising paragraph (a) and the OMB statement to read as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial official must submit quarterly financial status reports on the programs funded under this part. These reports are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year in which the grant was awarded. The quarterly reports must be submitted until the final report is submitted for each fiscal year.

* * * * *

[Information collection requirements contained in paragraph (a) under control number 0348–0039 and paragraph (b) under control number 0980–0172 are approved by the Office of Management and Budget.]

12. Section 1386.33 is amended by revising paragraph (a) to read as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(b)(7)(B) of the Act (42 U.S.C. 6022(b)(7)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

* * * * *

13. In § 1386.35 a new paragraph (c) is added to read as follows:

§ 1386.35 Allowable and non-allowable costs for basic State grants.

* * * * *

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

14. Part 1387 is revised to read as follows:

PART 1387 PROJECTS OF NATIONAL SIGNIFICANCE

§1387.1 General requirements.

Authority: 42 U.S.C. 6000 et. seq.

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to the developmentally disabled to comply with section 162 of the Act.

(b) Based on section 162(c), proposed priorities for grants and contracts will be published in the **Federal Register** and a 60 day period for public comments will be allowed.

(c) The requirements concerning format and content of the application, submittal procedures, eligible applicants and final priority areas will be published in program announcements in the **Federal Register**.

(d) Projects of national significance must be exemplary models and hold potential for replication.

15. The heading of Part 1388 is revised to read as follows:

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

16. The authority citation for Part 1388 continues to read as follows:

Authority 42 U.S.C. 6000 et. seq.

PART 1388—NOMENCLATURE CHANGE

17. In part 1388 wherever the term UAF is used, it is changed to UAP, and wherever the term University Affiliated Facilities is used, it is changed to University Affiliated Programs.

18. Section 1388.5 is amended by revising paragraph (f)(3) to read as follows:

§ 1388.5 Program criteria—training

* * * * *

(f) * * *

(3) Training priorities must consider national manpower needs with particular attention to the following areas:

(i) Early intervention programs;

(ii) Programs for elderly persons with developmental disabilities; and

(iii) Community based programs.

19. A new § 1388.9 has been added to read as follows:

§1388.9 Peer review

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP and Satellite Center applications.

(b) Peer review panels will evaluate all applications under Part D, Section 152, including applications for:

(1) Core UAP and Satellite Center funding;

(2) Feasibility studies: and

(3) Training projects in areas of emerging national significance.

(c) Panels will be composed of individuals with expertise and experience in the fields appropriate to the activities conducted by UAP and Satellite Centers.

[FR Doc. 88–28044 Filed 12–6–88; 8:45 am]
BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–531, RM–6383]

Radio Broadcasting Services; Paris, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Benton-Weatherford Broadcasting of Tennessee, Inc., licensee of AM Station WMUF, Paris, Tennessee, seeking the allotment of Channel 231A to Paris, Tennessee, as that community's first local FM station. The allotment can be made in compliance with the Commission's minimum distance separation requirements utilizing the city's reference coordinates at 36–18–12 and 88–19–24.

DATES: Comments must be filed on or before January 17, 1989 and reply comments on or before February 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Leonard C. Watson, 250 N. Hale, Palatine, Illinois 60067 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–531, adopted October 28, 1988, and released November 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.120(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–28131 Filed 12–6–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 73 and 76

[Gen. Docket No. 87–24]

Program Exclusivity in the Cable and Broadcast Industries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This action corrects an error in the Commission's *Further Notice of Proposed Rule Making* in MM Docket No. 87–24 (published October 28, 1988, 53 FR 43736) regarding the applicability of the non-network territorial exclusivity rule, § 73.658(m), to noncommercial television stations. It also is intended to make parties aware of § 74.780 of the low power station rules which cross-references § 73.658.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 73 and 76

Broadcast television, Cable television.

Erratum

Released: November 15, 1988.

By the Chief, Mass Media Bureau.

1. On October 13, 1988, the Commission adopted a *Second Further Notice of Proposed Rule Making*, FCC 88–322, in the above-captioned proceeding. This Notice addresses possible changes in a number of rules relating to the ability of television broadcasters to obtain exclusive rights in the programming they purchase *vis-a-vis* cable television systems carrying distant broadcast signals and against other television broadcast stations.

2. Paragraph 43 of this *Further Notice* incorrectly indicated that the non-network territorial exclusivity rule set forth in § 73.658(m) applied to both commercial and noncommercial stations. Note 3 at the end of § 73.658 specifies that the non-network exclusivity rule is presently limited in its applications to commercial station. Commenting parties should also be aware, in connection with the discussion in paragraph 44 relating to low power television stations, of § 74.780 of the low power station rules which cross-references § 73.658.

Federal Communications Commission

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88–28128 Filed 12–6–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Ch. II

[FRA Docket No. RSCG–3; Notice No. 1]

RIN 2130–AA27

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Adminstration (FRA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking; change of hearing date.

SUMMARY: FRA is changing the date of a public hearing on grade crossing signal system safety. The hearing, originally scheduled for December 14, 1988, is being changed to December 19 and 20, 1988.

On November 23, 1988, FRA published in the **Federal Register** an Advanced Notice of Proposed Rulemaking (ANPRM) (53 FR 47554) on grade crossing signal system safety and scheduled a public hearing to be held on December 14, 1988. Based on preliminary expressions of interest, FRA has determined that all parties desiring to appear at the hearing could not be accommodated in one day. As a consequence, FRA is rescheduling the public hearing to December 19 and 20, 1988. The hearing location remains the same as Room 4234 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

DATES: Public Hearing: FRA will hold a public hearing in this proceeding on December 19 and 20, 1988. The hearing will commence at 10:00 a.m. on both days. Any person desiring to make an oral statement at the hearing should submit their prepared statements to the FRA Docket Clerk at least five days before the hearing date.

ADDRESSES: The hearing will be held at Room 4234 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mark Tessler, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone: (202) 366–0628).

Issued in Washington, DC on December 5, 1988.

John H. Riley,

Administrator.

[FR Doc. 88–28258 Filed 12–6–88; 8:45 am]

BILLING CODE 4910–06–M

Notices

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 2, 1988.

The Department of Augriculture has submitted to OMB for review the following proposals for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, UDSA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Agricultural Marketing Service
Pork Promotion, Research, and Consumer Information Program
LS–35 and LS–36
On occasion; Monthly; Quarterly
Individuals or households; Farms; 76,300 responses; 76,150 hours; not applicable under 3504(h)
Robert Leverette (202) 447–2650

• Farmers Home Administration
7 CFR 1951–0, Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Community and Business Programs
On occasion
State or local governments; Non-profit institutions; 14 responses; 12 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

• Foreign Agricultural Service
FAS/Cooperator Market Development Program
Monthly; Annually
State or local governments; Non-profit institutions; 2,795 responses; 80,958 hours; not applicable under 3504(h)
Richard E. Passig (202) 447–4327

Extension

• Farmers Home Administration
7 CFR 1940–G, Environmental Program
FmHA 1940–20
On Occasion
Individual or huseholds; State or local governments; Farms; Businesses or other for-profit, Non-profit institiutions; Small Businesses or organization; 9,745 responses; 75,235 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

• Farmers Home Administration
7 CFR 1951–K, Predetermined Amortization Schedule System (PASS) Policies
On occasion
Individuals of households; Non-profit institutions; Small businesses or orgaizations; 300 responses; 75 hours; not applicable under 3504(h)
Jack Holson (202) 382–9736

• Agricultural Marketing Service
Dairy Promotion and Research Order
DA–15, –16, –17, –18, –19, –20, and –26
Recordkeeping; Monthly; Annually
Farms; Businesses or other for-profit; Small Businesses or organizations; 15,733 responses; 8,248 hours; not applicable under 3504(h)
Vernon Burkholder (202) 447–6932

• Animal and Plant Health Inspection Service
Proceeds from Animals Sold for Slaughter
VS Form 1–24
On occassion
Businesses or other for profit; 2,500 responses; 500 hours; not applicable under 3504(h)
Ralph L. Hosker (301) 436–8715

Reinstatement

• Food and Nutrition Service
Food Coupon Deposit Document
FNS–521
On occasion; Recordkeeping
Businesses or other for-profit; Federal agencies or employees; 600,000 responses; 5,810 hours; not applicable under 3504(h)
David Saarela (612) 370–3320.

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88–28160 Filed 12–6–88; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee

Date: January 5–6, 1989.

Time: 9:00 a.m. to approximately 5:00 p.m. on January 5, 9:00 a.m. to approximately 3:00 p.m. on January 6.

Place: Room 104–A, the "Williamsburg Room", USDA Administration Building, 14th and Independence Avenue SW., Washington, DC.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to

policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the development of guidelines for biotechnology research in agriculture, a field handbook for agricultural researchers using materials and methods of biotechnology, and biological containment and confinement of organisms used in research.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC, 20250. Telephone (202) 447–9165.

Done at Washington, DC, this 22d day of November, 1988.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 88–28161 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Tongass National Forest, Ketchikan Area; Intent To Prepare a Supplement to the Draft Environmental Impact Statement for the Cleveland Peninsula Area Analysis

The Department of Agriculture, Forest Service will prepare a Supplement to the draft Environmental Impact Statement previously issued for central Cleveland Peninsula on the Ketchikan Area of the Tongass National Forest.

The draft Environmental Impact Statement was released in July of 1987, but a decision on this Area Analysis has been delayed since that time. During this interim period the condition of the timber markets of Southeast Alaska has improved, and the demand for National Forest timber has increased accordingly. Additional resource information relevant to the decision has become available during the interim. The purpose of the Supplement is to identify a new Agency preference that is more responsive to the current situation, and to convey any additional information now available for public review and comment.

Preparation of this Supplement is expected to take three to four months, and it should be available for public comment by March of 1989. The final Environmental Impact Statement is scheduled to be completed by September of 1989.

Questions about the Supplement should be directed to Mark Voight, team leader, Ketchikan Area Supervisor's Office, phone 907–225–3101.

Date: November 25, 1988.

J. Michael Lunn,

Forest Supervisor.

[FR Doc. 88–28177 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Town Creek Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: L. Pete Heard, rsponsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the state of Mississippi, is hereby providing notification that a record of decision to proceed with the installation of the Town Creek Watershed project is available. Single copies of the record of decision may be obtained from L. Pete Heard at the address shown below.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Suite 1321, Jackson, Mississippi, 39269, telephone 601–965–5205.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: November 22, 1988.

L. Pete Heard,

State Conservationist.

[FR Doc. 88–28170 Filed 12–6–88; 8:45 am]

BILLING CODE 3410–16–M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: December 4, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202), 647–2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency. Each individual will serve one year renewable terms beginning on the effective date of this notice. Specific Performance Review Boards will be established as needed from this register.

These appointments supersede those in the announcement published at 52 FR 36291 on September 28, 1987.

Name	Title
George F. Murphy, Jr.	Deputy Director.
William Jeffrey Ankley	Executive Assistant.
Manfred Eimer	Assistant Director, Verification and Intelligence Bureau
Lynn Hansen	Assistant Director, Multilateral Affairs Bureau.
William Fite	Assistant Director, Strategic Programs Bureau.
Kathleen Bailey	Assistant Director, Nuclear and Weapons Control Bureau.
Norman Wulf	Deputy Assistant Director, Nuclear and Weapons Control Bureau.
Michael Guhin	Counselor.
William Montgomery	Administrative Director.
Thomas Graham, Jr.	General Counsel.
Mary Elizabeth Hoinkes	Deputy General Counsel.
Richard Toye	Senior Policy Advisor.
William Staples	Deputy for Policy Analysis.
David Clinard	Deputy for Long Range Planning.
R. Lucas Fischer	Deputy Assistant Director, Strategic Programs Bureau.
Stanley Riveles	Chief, Strategic Affairs Division, Strategic Programs Bureau.
Alfred Lieberman	Chief, Operations Analysis Division, Verification and Intelligence Bureau
Robert Summers	Chief, Verification Division, Verification and Intelligence Bureau.
O. James Sheaks	Chief, Science and Technological Division, Multilateral Affairs Bureau.
Joerg Menzel	Chief, Nuclear Safeguards and Technology Division, Nuclear and Weapons Control Bureau.
Michael Rosenthal	Chief, International Nuclear Affairs Division, Nuclear and Weapons Control Bureau.

William J. Montgomery,
Administrative Director.
[FR Doc. 88-28081 Filed 12-6-88; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requestes comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Officer of Export Trading Company Affairs, International Trade Administation, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary to Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00017." A summary of the application follows.

Applicant: Construction Industry Manufacturers Association (CIMA), 111 East Wisconsin Avenue, Suite 940, Milwaukee, Wisconsin 53202. Contact: J. Wm. Peterson, Director of Government Affairs. Telephone: (202) 479-2666.

Application #: 88-00017.

Date Deemed Submitted: November 23, 1988.

Members (in addition to applicant): Barber-Greene Overseas, Inc. (Controlling Entity: Astec Industries, Inc.); Blaw-Knox Construction Equipment Corporation (Controlling Entity: AB Electrolux); J.I. Case Company (Controlling Entity: Tenneco Inc.); Caterpillar Inc.; Cedarapids Inc. (Controlling Entity: Raytheon Company); Century II Inc.; CMI Corporation; Etnyre International Ltd.; Gomaco Corporation (Controlling Entity: Godbersen-Smith Construction Co., Inc.); Ingersoll-Rand Company; Nordberg Inc.; Payhauler Corp.; Power Curbers, Inc.; Rexworks Inc.; Ross Company; ScanRoad, Inc. (Controlling Entity: Nobel Industries Sweden AB); Taylor Machine Works, Inc.; and Terex Corporation.

Summary of the Application

Export Trade

1. Products

Construction machinery and equipment, including parts and components (SIC code 3531); gas turbines and turbine generator set units, including parts and components (SIC code 3511); internal combustion engines, including parts and components (SIC code 3519); farm machinery and equipment, including parts and components (SIC code 3523); lawn and garden tractors and equipment, including parts and components (SIC code 3524); mining machinery and equipment, including parts and components (SIC code 3532); oil and gas field machinery and equipment, including parts and components (SIC code 3533); conveyors and conveying equipment, including parts and components (SIC code 3535); overhead traveling cranes, hoists, and monorail systems, including parts and components (SIC code 3536); industrial trucks, tractors, trailers, and stackers, including parts and components (SIC code 3537); motors and generators, including parts and components (SIC code 3621); motor vehicles and bodies, including parts and components (SIC code 3711); truck bodies, including parts and components (SIC code 3713); truck trailers, including parts and components (SIC code 3715); ship building and repairing, including parts and components (SIC code 3731); and, other construction equipment, parts, attachments, accessories, components and assemblies not elsewhere classified.

2. Services

Engineering, technical, financial, and management services related to Products and to turn-key project contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

4. Export Trade Facilitation Services (as they relate to the export of Prodcuts, Services and Technology Rights)

Consulting; international market research; marketing; financing; trade promotion; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. CIMA and/or one or more of its Members may:

a. Engage in joint bidding, financing, leasing, or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of CIMA and/or its Members;

BEST COPY AVAILABLE

f. Coordinate with respect to the delivery, installation, assembly and servicing of Products in Export Markets, including the establishment of joint warranty, service, parts warehousing and training centers in such markets;

g. License associate Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with CIMA or any Member;

h. Engage in joint promotional activities, such as advertising, trade shows, trade missions, demonstrations and field trips aimed at developing existing or new Export Markets; and,

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. CIMA and/or one or more of its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) CIMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through CIMA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. When acting as an Export Intermediary, CIMA shall make its services available to any Member on non-discriminatory terms.

3. CIMA and/or one or more of its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets, customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products, and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quantity, source, and delivery dates must be on a transaction-by-transaction basis only;

d. Information about terms and conditions and contracts for sales in Export Markets to be considered and/or bid on by CIMA and/or its Members;

e. Infomation about joint bidding, distribution, financing, selling, or servicing arrangements for Export Markets and allocations of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Exports Markets, including, without limitation, transportation, warehousing, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and,

h. Information about CIMA's or its Members' export operations, including without limitation sales and distribution networks established by CIMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CIMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by CIMA itself, or by agreement with Members or other parties.

5. CIMA and/or one or more or its Members may meet to engage in the activities described in paragraphs one through four above.

6. CIMA and/or one or more of its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of CIMA, who choose to participate in this certificate, subject to the provisions of this paragraph. New CIMA members may be incorporated in this certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Department of Commerce and the Department of Justice stating changes in CIMA membership, identifying all new CIMA members that desire to become a Member under this certification pursuant to the abbreviated amendment procedure, and certifying for each new CIMA member so identified its sales of Products in its prior fiscal year. Notice of new members so identified shall be published in the **Federal Register**. However, CIMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the certificate of the new members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the certificate of review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the certificate of review, such amendment must be sought through the nonabbreviated amendment procedure.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Services, whether a Member or nonmember.

Date: December 1, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-28157 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Suply Review on Certain Railroad Axles; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Brazil Arrangement concerning Trade in Certain Steel Products with respect to certain railroad axles.

DATE: Comments must be submitted no later than December 19, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USDA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnagel shall be allowed for such product or products * * *"

We have received a short-supply request for the following sizes of railroad freight car axles as specified in the Association of American Railroads Manual of Standards and Practices, Section G, Specification M–101: (1) 6½×12, Classification F, Grade F; and (2) 6×11, Classification E, Grade U.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than December 19, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

December 1, 1988.

[FR Doc. 88–28158 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Baltimore, MD

December 1, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for a 3-year period, subject to availability of funds. The cost of performance for the first 12 months is estimated at $271,059 for the project performance of May 1, 1989 to April 30, 1990. The MBDC will operate in the Baltimore, Maryland, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $230,400 in Federal funds and a minimum of $40,659 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of business. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 23, 1989. Applications must be postmarked on or before January 23, 1989.

ADDRESS: Washington Regional Officer, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washigton, DC 20230, 202–377–8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Willie J. Williams,

Regional Director, Washington Regional Office.

Date: December 1, 1988.

[FR Doc. 88–28175 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Riviera Hotel (P434)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Riviera Hotel, 2901 S. Las Vegas Blvd., Las Vegas, Nevada 89109.

2. *Type of Permit:* Importation and Public Display.

3. *Name and Number of Marine Mammals:* California sea lions, *(Zalophus californianus)*

4. *Type of Take:* The animals will be imported and maintained.

5. *Location of Activity:* Las Vegas, NV.

6. *Period of Activity:* Two years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the application of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Services, 1335 East-West Highway, Rm. 7330, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California, 90731–7415.

Date: November 10, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Program.

[FR Doc. 88–28077 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent to Grant Exclusive Patent License; CETUS Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to CETUS Corporation, having a place of business in Emeryville, CA 94608, an exclusive license in the United States and certain foreign countries to practice an invention embodied in U.S. Patent Application Serial Number 7–209,108, entitled "Activated Killer Monocytes: Tumoricidal Activity and Method of Monitoring Same." Among the objectives of the invention are to produce a substantially pure, clinical grade, *a*ctivated *k*iller *m*onocyte that will more effectively attack human cancer cells, to assay AKM effectiveness *in vitro*, and to facilitate the body's immune response. Prior to any license granted by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–28083 Filed 12–6–88; 8:45 am]

BILLING CODE 2510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Hungarian People's Republic

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: In addition to setting forth limits for the 1989 agreement year, the limits for Categories 434 and 435 are being reduced for carryforward used in 1988.

A copy of the current bilateral textile agreement between the Governments of the United States and the Hungarian People's Republic is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories,

produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
300/301	1,202,020 kilograms.
313	11,743,409 square meters.
410	844,489 square meters.
433	8,105 dozen.
434	7,125 dozen.
435	13,256 dozen.
442	18,180 dozen.
443	85,434 numbers
444	25,197 numbers.
445/446	41,624 dozen of which not more than 31,218 dozen shall be in Category 445 and not more than 31,218 dozen shall be in Category 446.
448	20,163 dozen.
604	721,212 kilograms.
645/646	95,506 dozen.
669-P [1]	589,670 kilograms.

[1] In Category 669-P, only tariff numbers 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00.

Imports charged to these category limits for the periods beginning on November 1, 1987, March 1, 1988 and January 1, 1988 and extending through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Hungarian People's Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commowealth of Puerto Rico.

The Committee for the Implementation of Texitle Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28104 Filed 12-06-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 9, 1988.

Authroity: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: Inasmuch as consultations held November 2-4, 1988 between the Governments of the United States and Costa Rica have not resulted in a mutually satisfactory limit for Categories 347/348, the United States Government has decided to control imports in these categories for the period July 28, 1988 through July 27, 1989.

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in further consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRECTION: Textile and Apparel Categories with Tariff Schedule of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the Correction: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 30857, published on August 16, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 9, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Costa Rica and exported during the twelve-month period which began on July 28, 1988 and extends through July 27, 1989, in excess of 912,767 dozen.

Textile products in Categories 347/348 which have been exported to the United States prior to July 28, 1988 shall not be subject to this directive.

Textile products in Categories 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 45,381 dozen for Category 347 and 17,963 dozen for Category 348 to the limit established in this directive for Categories 347/348. these charges are for goods imported during the period July 28, 1988 through August 31, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 88-28113 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authroity: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Cutsoms port or call (202) 535-6735. For information on

embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and the Philippines is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Texiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
Group I:	
237	1,123,600 dozen.
239	6,029,331 kilograms.
331	842,700 dozen pairs.
333/334	156,538 dozen of which not more than 22,472 dozen shall be in Category 333.
335	101,890 dozen.
336	370,788 dozen.
338/339	1,235,960 dozen.
340/640	677,069 dozen of which not more than 372,388 dozen shall be in shirts made with two or more colors in the warp and/or filling in Categories 340–Y/640–Y.[1]
341/641	599,219 dozen.
342/642	309,051 dozen.
345	95,506 dozen.
347/348	1,123,600 dozen.
351/651	337,080 dozen.
352/652	1,348,320 dozen.
369–S [2]	484,174 kilograms.
431	154,545 dozen pairs.
433	4,096 dozen.
443	24,167 numbers.
445/446	25,133 dozen.
447	8,041 dozen.
604	1,132,277 kilograms.
631	2,752,820 dozen pairs.
633	20,665 dozen.
634	247,073 dozen.
635	274,572 dozen.
636	966,296 dozen.
638/639	1,269,668 dozen.
643	493,600 numbers.
645/646	551,250 dozen.
647/648	677,971 dozen.
649	4,698,155 dozen.
650	58,315 dozen.
659–H [3]	611,587 kilograms.
Group II:	
200, 201, 218–229, 300–326, 330, 332, 349, 350, 353, 354, 359, 360–363, 369–O [4], 400, 410, 414, 432, 434–442, 444, 448, 459, 464–469, 600–603, 606–629, 630, 632, 644, 653, 654, 659–O [5], 665–670 and 831–859, as a group.	77,212,077 square meters equivalent.

[1] In Categories 340–Y/640–Y, only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.46, 6205.20.20.50, 6205.20.20.60, in Category 340–Y; and 6205.30.20.10, 6205.30.20.20, 6205.30.20.50 and 6205.30.20.60 in Category 640–Y.

[2] In Category 369–S, only tariff number 6307.10.20.10.

[3] In Category 659–H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60, 6505.90.80.75.

[4] In Category 369–O, all tariff numbers except 6307.10.20.10.

[5] In Category 659–O, all tariff numbers except 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60, 6505.90.80.75.

Imports charged to these category limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Philippines.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28105 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Romania

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6497. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended, between the Governments of the United States and the Socialist Republic of Romania is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral

agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, between the Governments of the United States and Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
200, 201, 218–220, 222–227, 229, 237, 239, 300, 301, 313–315, 317, 326, 330–342, 345, 347–354, 359–363, 369, 800, 810, 831–836, 838–840, 842–847, 850–852, 858, 859, 863, 870, 871 and 899, as a group.	38,110,686 square meters equivalent.
Sublevels within the group:	
313	1,672,255 square meters.
314	1,254,191 square meters.
315	1,254,191 square meters.
333/833	79,500 dozen.
334	257,153 dozen of which not more than 36,320 dozen shall be in Category 334pt. all H.S. tariff numbers in Category 334 except 6112.11.00.10.
335/835	100,700 dozen.
338/339	434,600 dozen.
340	189,699 dozen.
341/840	79,500 dozen.
347/348	339,200 dozen.
352	181,818 dozen.
359	295,821 kilograms.
361	515,000 numbers.
369	295,821 kilograms.
810	4,180,637 square meters.
847	75,000 dozen.

Imports charged to these category limits, except Category 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, between the Governments of the United States and Romania.

The conversion factor for Categories 341/840 is 12.1.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 88–28114 Filed 12–6–88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of November 18, 1982, as amended and extended, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
Group I:	
200–227, 229, 300–317, 326, 360–369, 400, 410, 414, 464–469, 600–629 and 665–670, as a group.	553,073,622 square meters equivalent.
Sublevels within Group I:	
200	546,760 kilograms.
218	16,117,877 square meters.
219	17,366,810 square meters.
220	11,111,989 square meters.
225/317/326	27,035,294 square meters.
226	8,653,001 square meters.

Category	12-month restraint limit
229–F [1]	523,607 kilograms.
301	208,788 kilograms.
313	60,747,205 square meters.
314	34,049,300 square meters.
315	22,017,770 square meters.
360	871,556 numbers.
361	1,098,321 numbers.
363	13,048,761 numbers.
369–L [2]	1,077,087 kilograms.
604	230,198 kilograms.
611	1,085,437 square meters.
613/614/615/617	15,126,589 square meters.
619/620	8,726,864 square meters.
625/626/627/628/629	12,764,278 square meters.
669–P [3]	263,015 kilograms.
669–T [4]	854,851 kilograms.
670–F [5]	1,857,144 kilograms.
670–H [6]	18,871,882 kilograms.
670–L [7]	33,187,977 kilograms.
Group II:	
237, 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group.	827,394,399 square meters equivalent.
Sublevels within Group II:	
237	534,190 dozen.
239	2,339,971 kilograms.
331	487,376 dozen pairs.
333/334	82,253 dozen.
335	97,480 dozen.
336	91,012 dozen.
338/339	685,000 dozen.
340	664,126 dozen.
341	384,709 dozen.
342	203,029 dozen.
345	95,096 dozen.
347/348	1,033,788 dozen of which not more than 509,767 dozen shall be in Category 347 and not more than 817,617 dozen shall be in Category 348.
350	104,503 dozen.
351	337,772 dozen.
352	943,785 dozen.
353/354/653/654	239,909 dozen.
359–H [8]	2,002,725 kilograms.
433	13,797 dozen.
434	9,578 dozen.
435	31,268 dozen
436	4,528 dozen.
438	36,642 dozen.
440	10,406 dozen.
442	49,258 dozen.
443	38,628 numbers.
444	55,013 numbers.
445/446	130,124 dozen.
447/448	19,042 dozen.
631	4,154,629 dozen pairs.
632	4,525,633 dozen pairs.
633/634/635	1,694,961 dozen of which not more than 1,051,316 dozen shall be in Categories 633/634 and not more than 877,917 dozen shall be in Category 635.
636	342,110 dozen.
638	1,768,849 dozen.
639	4,823,270 dozen.
640	3,354,438 dozen of which not more than 1,677,219 dozen shall be in Category 640–Y. [9]
641	723,809 dozen of which not more than 253,333 dozen shall be in Category 641–Y. [10]
642	776,357 dozen.
643	487,129 numbers.
644	594,004 numbers.
645/646	4,087,255 dozen.
647	2,625,687 dozen.
648	3,082,187 dozen.
649	709,752 dozen.
650	48,664 dozen.
651	423,590 dozen.
652	1,470,832 dozen.
659–B [11]	743,236 kilograms.
659–C [12]	547,758 kilograms.
659–H [13]	2,420,660 kilograms.
659–S [14]	2,098,704 kilograms.
Group III:	
831–844 and 846–859, as a group.	7,808,681 square meters equivalent.
Individual limits not in a group:	
845	846,811 dozen.
870	2,494,710 kilograms.

[1] In Category 229–F, only tariff numbers 5608.11.00.00, 5608.19.10.10 and 5608.19.10.20.

[2] In Category 369–L, only tariff numbers 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00.

[3] In Category 669–P, only tariff numbers 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00.

[4] In Category 669–T, only tariff numbers 6306.12.00.00, 6306.19.00.10 and 6306.22.90.00.

[5] In Category 670–F, only tariff number 4202.32.95.50.

[6] In Category 670–H, only tariff numbers 4202.22.40.30 and 4202.22.80.50.

[7] In Category 670–L, only tariff numbers 4202.12.80.30, 4202.12.80.70, 4202.92.30.20, 4202.92.30.30 and 4202.92.90.20.

[8] In Category 359–H, only tariff numbers 6505.90.15.30 and 6505.90.20.60.

[9] In Category 640–Y, only tariff numbers 6205.30.20.10, 6205.30.20.20, 6205.30.20.50 and 6205.30.20.60.

[10] In Category 641–Y, only tariff numbers 6204.23.00.50, 6204.29.20.30, 6206.40.30.10 and 6206.40.30.25.

[11] In Category 659–B, only tariff numbers 6114.30.20.10 and 6114.30.20.20.

[12] In Category 659–C, only tariff numbers 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10.

[13] In Category 659–H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75.

[14] In Category 659–S, only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.20.

Imports charged to these category limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits are subject to adjustment in the future pursuant to the provisions of the agreement of November 18, 1982, as amended and extended.

The conversion factors are as follows:

Category	Conversion factor
237	19.2
333/334	33.0
633/634/635	34.1

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28115 Filed 12–6–88; 8:45 am]

BILLING CODE 3510–DR–M

Amending Requirements for Certain Textiles and Textile Articles Exported From the United Mexican States Under the Special Regime

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the requirements for using the ITA–370P Form.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1952, as amended. (7 U.S.C. 1854)

SUPPLEMENTARY INFORMATION: A notice published in the **Federal Register** on May 3, 1988 (53 FR 15724) stated that a shipment which includes several different products covering different categories and exported from Mexico on and after January 1, 1989 under the Special Regime may be accompanied by a single ITA–370P form, properly certified.

However, the directive published below amends that requirement to permit only one category or merged category to be used for each form. For example, a single shipment of parts to produce tops and bottoms, must be accompanied by two ITA–370P forms. If

two or more categories of merchandise are being shipped but all are included in a single merged category (e.g., men's and women's cotton and man-made fiber knit shirts and blouses—338/339/638/639), a single ITA-370P form should be used. This amendment will be effective for shipments of cut pieces accompanied by an ITA-370P form which are exported from the United States to Mexico on or after January 1, 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 32421, published on August 25, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 22, 1988, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and exempt certification requirements for certain textiles and textile articles, produced, manufactured or assembled in Mexico.

Effective on January 1, 1989, the directive of August 22, 1988 is amended further to require that shipments of cut pieces for re-entry under the Special Regime which include several different products covering different textile categories and exported from the United States to Mexico on and after January 1, 1989 must be accompanied by a separate properly certified Shippers Export Declaration (ITA-370P form) for each single category or merged category. Shipments exported from the United States to Mexico on and after January 1, 1989 which are accompanied by an ITA-370P form which includes more than one category or merged category will be denied re-entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28106 Filed 12-6-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 28, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypersonic Test Facilities will meet on 5 January 1989, from 8:00 a.m. to 5:00 p.m., at ANSER, Washington, DC.

The purpose of this meeting is to review the status of the study's final report. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-28176 Filed 12-6-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

November 28, 1988.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on 11-12 January 1989, from 8:00 a.m. to 5:00 p.m., at HQ AFLC, Wright-Patterson, AFB, OH.

The purpose of this meeting will be to facilitate the exchange of information on technical development and logistics operations issues. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-28088 Filed 12-6-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations; Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet January 11-12, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda for the meeting will consist of discussions of key issues related to national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: December 1, 1988.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 88-28096 Filed 12-6-88; 8:45 am]

BILLING CODE 3810-AE-M

Patent Licenses, Exclusive; American Cyanamid Co.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; American Cyanamid Company.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to American Cyanamid Company a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,626,383 entitled, "Chemiluminescent System Catalysts," issued December 2, 1986; inventors: Herbert P. Richter and Joseph H. Johnson, in the field of commercial fishing and the field of industrial and civic safety. The license will be revocable, nonassignable and nonexclusive in all other fields.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCCIP), Arlington, VA 22217-5000.

DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, VA 22217–5000, telephone (202) 696–4001.

Date: December 2, 1988.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 88–28095 Filed 12–6–88; 8:45 am]

BILLING CODE 3910-AE-M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Fees for Federal Interim Storage, Calendar Year 1989

AGENCY: Department of Energy.

ACTION: Notice of fees for Federal interim storage of spent nuclear fuel from civilian nuclear power plants in the United States for calendar year 1989.

SUMMARY: This notice updates the fees to be levied against users of Federal Interim Storage (FIS) services for spent nuclear fuel as required by section 136(a)(2) of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425, 42 U.S.C. section 10101 et seq. (Act). The fees previously established for Calendar Year 1988 are hereby rescinded on the effective date of this notice. The fees, shown in Table 1, have been updated to ensure full recovery of all costs incurred by the Department of Energy (Department) in providing these services. These fees are for calendar year 1989 and replace those in effect for calendar year 1988.

EFFECTIVE DATE: The updated fees will be effective on January 1, 1989, and will remain effective for a period of twelve months from the effective date.

FOR FURTHER INFORMATION CONTACT: Charles R. Head, Office of Systems Integration and Regulations (RW–32), Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5292.

SUPPLEMENTARY INFORMATION: The updated fees shown below in Table 1 were developed by the Department to comply with the requirement of section 136 of the Act which requires each user to pay its pro rata share of costs in order to ensure complete recovery of costs incurred by the Department in supplying FIS services.

TABLE 1.—FEES FOR FIS SERVICES FURNISHED BY THE DEPARTMENT OF ENERGY, DOLLARS PER KGU [1] [2]

Spent fuel committed to FIS (MTU)	Initial fee	Final fee	Total fee
100	385	350	735
300	190	140	330
800	135	80	215
1,500	120	65	185
1,900	115	60	175

[1] The cost of transportation of spent fuel is not included in the above fees. Each user's actual transportation costs will be billed directly after delivery of the fuel is completed.

[2] KgU—the weight of uranium contained in fresh fuel assemblies at the time of insertion into the reactor. One MTU is 1000 KgU.

The Department reexamined alternative methods for structuring fees for FIS services, as reported in 1988 Federal Interim Storage Fee Study: A Technical and Economic Analysis, (PNL–6727) October 1988. Based on this reexamination, the Department again concluded that the combined interests of the Department and the users would be best served, and costs would be most appropriately recovered, by a two-part fee payment consisting of an Initial Payment upon execution of a contract for FIS services followed by a Final Payment upon delivery of the spent fuel to the Department. In addition, each user will be invoiced by the Department for the actual costs of transportation of its spent fuel from the reactor site to the FIS facility.

The Initial Payment shall be made within 30 days after execution of the contract for FIS service; it is an advance payment covering the pro rata share of the preoperational costs including:

(1) The capital construction costs of the transfer facilities and storage area required to accommodate the initial storage service commitments, including design and construction costs;

(2) Costs of procuring storage modules;

(3) Development costs;

(4) Government administrative costs, including storage fund management;

(5) Impact aid payments made in accordance with section 136(e) of the Act; and

(6) Interest paid on any funds borrowed from the Treasury Department to conduct preliminary work.

The effective Initial Fee will be determined by the quantity of spent fuel committed to FIS by the first contract executed, or group of contracts executed simultaneously, by the Department in accordance with section 135(b) of the Act. Table 1 exhibits the appropriate fees for discrete quantities of contracted fuel, from 100 MTU to 1900 MTU. If the quantity of fuel covered by the first contracts is less than 100 MTU, the Initial Fee will be the Initial Fee shown in Table 1 for 100 MTU storage capacity. If the quantity of fuel covered by the first contracts exceeds 100 MTU and is not one of the discrete quantities shown, the Initial Fee will be recalculated by the Department for the exact quantity of spent fuel committed to storage under these first contracts. The Initial Fee so determined by the first contracts will then be charged to all subsequent contractors of FIS services until the Fee Schedule is next revised.

To ensure that the payments are equitable among the users of FIS services, the Department will annually update both the Initial and Final Fees to reflect changes in the estimated costs for providing FIS services as the amount of fuel under contract increases or as additional FIS facilities are activated. After all preoperational activities have been completed, the Department will determine the total costs incurred in connection with the preoperational activities (i.e., design, safety reviews, construction, storage module procurement, and associated activities) and will determine the difference between the Initial Payments made by each user and the subsequently revised Initial Payments that take into account the increased quantities of spent fuel being committed to FIS. The Department will then credit or debit the Final Payment of each user with the difference between the amounts paid as Initial Payments and its then pro rata share of the revised total preoperational costs (net of its pro rata share of interest earned on advance payments made).

The Final Payment shall be billed to the user within 60 days after delivery of the spent fuel to the Department and shall be payable within 60 days thereafter. It will be calculated to cover the sum of the following:

(1) Any under- or over-estimation in the costs used to calculate the Initial Payment of the fee, as described above;

(2) The total estimated cost of operation and decommissioning of the FIS facilities (including Government administrative costs, storage fund management and impact aid).

In addition, the Department will bill each individual user for the actual costs the Department incurs in the transportation of that user's spent fuel to the FIS facilities including but not limited to cask lease, freight charges, and security. Billing and payment for transportation will be on the same schedule as the Final Payment.

In addition to the Initial Payment and the Final Payment described above, the

Department will make a final adjustment for each user after the decommissioning of the FIS facilities, or March 31, 2007, whichever is earlier. This adjustment will be based on a determination of the total costs incurred in design, construction, operation and decommissioning of the FIS system through December 31, 2006. The Department will make final adjustments to the extent that there is a difference between the total amounts paid by each user in Initial and Final Payments and the user's pro rata share of these total costs (net of its pro rata share of interest earned on advanced payments made). This adjustment may be either a payment to the Department or a refund to the user.

Any payments not made on a timely basis will be subject to interest charged at the Treasury Current Value of Funds Rate plus 6% from the due data to the date of actual payment.

In order to include the time value of money in the fee update calculation, the revenue/expenditure projections are based on the following assumptions concerning the schedule of constructing and operating FIS facilities. These assumptions reflect the changes in spent fuel storage requirements which occurred during 1988:

Assumption 1: Design and construction of FIS facilities would commence in 1989 and be completed so that storage operations could commence in mid-1992;

Assumption 2: The FIS facility would receive spent fuel during the three-year period between mid-1992 and mid-1995. It would ship spent fuel to a Monitored Retrievable Storage faciilty or geologic repository during the three-year period commencing at the beginning of 2003 and terminating at the end of 2005. One-third of the storage capacity of the FIS facility would be received each year during the receiving period and one-third would be shipped each year during the shipping period;

Assumption 3: Decontamination and decommissioning of FIS facilities would be conducted in the year 2006.

In accordance with the constraints imposed by the Act, the Department plans to expend no funds in connection with the FIS program other than the minimal expenses for planning until clear evidence of a need exists. At that time, the Department will commence the design of the FIS facilities on the basis of the contractual commitments that then exist for FIS services. These facilities will have the capacity for only that amount of spent fuel which is committed to storage under the then-existing contracts.

The Department has again assumed that canistered consolidated spent fuel rods would be acceptable for strorage at the FIS facilities. However, consolidation would not be a criterion for acceptance, nor would the disassembly and consolidation of spent fuel be included in the capabilities of the FIS facilities. Until the cost effects of storing consolidated fuel have been accurately determined, the Department will collect the same fee for storage of canistered consolidated spent fuel rods as for intact fuel assemblies. At that time, any difference in operational costs which may result from receipt and handling of consolidated fuel rods will be included in the annual recalculation of the fee, and a separate fee for consolidated fuel will be published. If the revised intital fees are lower than any previously collected for consolidated fuel, a credit will be assigned to the Final Payment for that consolidated fuel. Any savings in transportation costs that result from shipping consolidated rods would be realized immediately.

Further information as to the Department's FIS services and charges is available in the cited report, PNL-6727.

Issued in Washington, DC, on November 30, 1988.

Samuel Rousso,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 88-28165 Filed 12-6-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1989. The five sources are electricity, natural gas, No. 2 heating oil, propane and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective January 6, 1989, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127).

Eugene Margolis, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507).

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619), by the National Appliance Energy Conservation Act of 1987 (Pub. L. 100-12), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100-357) (Act) [1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer product specified in the Act. DOE has prescribed test procedures for the major household products listed in section 322(a) of the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measures of energy use in a representative average-use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987 and by the National Appliance Energy Conservation Amendments of 1988.

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products on December 23, 1987. (52 FR 48563). Effective January 6, 1989, the cost figures published on December 23, 1987, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1989 representative average unit costs of electricity, natural gas and No. 2 heating oil found in this notice. These costs were taken from EIA's October 1988 *Short-Term Energy Outlook (Outlook)*, DOE/EIA–0202 (88/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. The development of these costs is discussed in detail in the October 1988 issue of this report, which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 5 of EIA's *Outlook*. Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

In the cases of kerosene and propane, the 1989 representative average unit costs found in this notice were developed by other means since EIA's *Outlook* does not provide a forecast of the retail costs of these fuels. However, historical refiner prices for kerosene and propane are available from another EIA publication, *Petroleum Marketing Monthly* (PMM), DOE/EIA–0380. Referring to Table 2 of the July 1988 issue of the *PMM*, DOE obtained refiner average sales prices to end users for kerosene and propane for 1987. To forecast a 1989 representative average unit cost for kerosene, DOE made the assumption that the percentage change in 1989 from the 1987 annual average (last complete year of available data) for No. 2 heating oil prices to residential customers (which can be calculated from Table 5 of the *Outlook*) would be applied to kerosene. Propane prices were assumed to change at the same rate as the residential price of natural gas (which also can be calculated from Table 5 of the *Outlook*). Refiner prices to end users for kerosene and propane were used since, of the comparable recent data available, these are believed to be most representative of prices to residential consumers.

The 1989 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(4) of the Act and will become effective January 6, 1989. They will remain in effect until further notice.

Issued in Washington, DC, November 30, 1988.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1989)

Type of energy	In common terms	As required by test procedure	Dollars per million Btu [1]
Electricity	7.70¢/kWh [2 3]	0.0770/kWh	$22.57
Natural Gas	55.20¢/therm [4] or $5.68/MCF [5 6]	0.00000552/Btu	5.52
No. 2 Heating Oil	$0.78/gallon [7]	0.00000562/Btu	5.62
Propane	$0.72/gallon [8]	0.00000788/Btu	7.88
Kerosene	$0.75/gallon [9]	0.00000555/Btu	5.55

[1] Btu stands for British thermal unit.
[2] kWh stand for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,029 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 88–28166 Filed 12–6–88; 8:45 am]
BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Adminstration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–213, 412, 759, 826, 860, and 861.
3. 1905–0129.
4. Electric Power Surveys.
5. Revision—The purpose of this request is to revise the following form, EIA–861, "Annual Electric Utility Report." The revision is necessary in order to establish and maintain a nonutility power producer frame and to identify utility expansion plans in this area. Question 1a asks the name, address, and telephone number of each nonutility electric power producer that is electrically connected and has the ability to supply electricity to the reporting electric utility. Question 1b asks the name, address, and telephone number of each nonutility electric power producer that will be electrically connected and has the ability to supply electricity to the reporting electric utility. Question 2 asks the reporting electric utility the total capacity it had available under contract from nonutility electric power producers at the end of the reporting period. Question 3 asks the reporting electric utility the total capacity it expects to have available under contract from nonutility electric power producers five years from the end of the current reporting period. (No changes are being proposed to the other forms in this program nor is any request being proposed at this time to extend any of these forms beyond the currently approved date of December 31, 1989.)
6. Monthly and Annually.
7. Mandatory.
8. Businesses or other for profit.
9. 6,938 respondents annually.
10. 19,313 respondents annually.
11. The estimated average hours per response for each of the Electric Power Surveys are: EIA–213, 5.753 hours; EIA–412, 31.796 hours; EIA–759, 1.404 hours; EIA–826, 3.36 hours, EIA–860, 16.142 hours; and EIA–861, 7.288 hours.
12. This revsion will add 232 hours of annual burden to the currently approved total of 83,767 hours for this program. See item 5 above.
13. The Electric Power Surveys collect information on capacity, generation, fuel consumption, receipts and stocks, prices, electric rates, typical electric bills, construction costs, operating income and revenue of electric utility companies. Data are published in various EIA reports. Respondents are primarily electric utilities.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 1, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–28167 Filed 12–6–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–78–000 et al.]

Boston Edison Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER89–78–000]

Take notice that on November 23, 1988, Boston Edison Company (Edison) tendered for filing supplemental Exhibits A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibits A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibits A to become effective as of the commencement date of the transactions of which they relate, November 1, 1988.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER89–79–000]

Take notice that on November 23, 1988, Boston Edison Company (Edison) tendered for filing supplemental Exhibits A to a Service Agreement for Hingham Municipal Lighting Plant (Hingham), under its FERC Electric Tariff, Original Volume No. III, Non-firm Transmission Service (the Tariff). The Exhibits A specifies the amount and duration of transmission service required by Hingham under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibits A to become effective as of the Commencement date of the transactions of which they relate, November 1, 1988.

Edison states that it has served the filing on Hingham and the Massachusetts Department of Public Utilities.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER84–705–010]

Take notice that on November 21, 1988, Boston Edison Company (Edison) tendered for filing its Compliance Refund Report pursuant to the Commisson's order issued March 25, 1988 and a letter from the Commission dated October 7, 1988.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company (CAPCO Group).

[Docket No. ER89–75–000]

Take notice that on November 22, 1988, the CAPCO Group filed Appendix 8 as a supplement to Schedule E of the CAPCO Basic Operating Agreement, as amended September 1, 1980, which is on file for each listed company:

Company	FERC rate schedule no.
The Cleveland Electric Illuminating	15
Duquesne Light Co.	15
Ohio Edison Co.	144
Pennsylvania Power Co.	35
The Toledo Edison Co.	27

Appendix 8 to Schedule E of the CAPCO Basic Operating Agreement provides that the basis for the determination of charges applicable to Unit Capacity and Energy transactions by the CAPCO member companies from Beaver Valley Unit No. 2. The services and compensation for Unit Capacity and Energy transactions from base load charges from particular CAPCO Units being set forth in Appendices to Schedule E. It is requested that Appendix 8 become effective as of November 1, 1988.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER87-476-002]

Take notice that on November 21, 1988, Minnesota Power & Light Company (MP&L) tendered for filing a compliance report in accordance with the Commission's order issued November 4, 1988.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER89-74-000]

Take notice that on November 21, 1988, Orange and Rockland Utilities, Inc. (O&R) tendered for filing proposed changes in its Power Supply Agreement with Pike County Light & Power Company, Rate Schedule FERC No. 55. This filing proposes to change the return on equity to 13.7 percent in two phases. Phase I rates, as proposed, would change the return on equity to 12.39 percent effective on November 17, 1988 (if requested waivers are granted), but not later than January 20, 1989 (if requested waivers are denied). Phase II rates, as proposed, would change the return on equity to 13.7 percent effective January 22, 1989. The return on equity is one component of the return on investment applied to utility plant serving a joint use function as between the two companies. The change in the return on equity is necessary to reflect current economic conditions as they affect the cost of capital.

Copies of filing were served upon the New York State Public Service Commission, the Pennsylvania Public Utility Commission and the Office of the Consumer Advocate in Pennsylvania.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER89-73-000]

Take notice that on November 21, 1988, Orange and Rockland Utilities, Inc. (O&R) tendered for filing proposed changes in its Power Supply Agreement with Rockland Electric Company, Rate Schedule FERC No. 56. This filing proposes to change the return on equity to 13.7 percent in two phases. Phase I rates, as proposed would change the return on equity to 12.39 percent effective on November 17, 1988 (if requested waivers are granted), but no later than January 20, 1989 (if requested waivers are denied). Phase II rates, as proposed, would change the return on equity to 13.7 percent effective January 22, 1989. The return on equity is one component of the return on investment applied to utility plant serving a joint use function as between two companies. The change in the return on equity is necessary to reflect current economic conditions as they affect the cost of capital.

Copies of the filing were served upon the New York State Public Service Commission, the New Jersey Board of Public Utilities and the Department of the Public Advocate (Division of Rate Counsel) in New Jersey.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

Comment date: Deceomer

8. Southern California Edison Company

[Docket No. ER89-77-000]

Take notice that on November 23, 1988, Southern California Edison Company (Edison) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 195, 1987-1988 Edison Vernon CDWR Firm Transmission Service Agreement between Edison and the City of Vernon, California.

Edison states that the services under this Agreement was to remain in force and effect until December 31, 1988.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Central Louisiana Electric Company, Inc.

[Docket No. ES89-8-000]

Take notice that on November 25, 1988, Central Louisiana Electric Company, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue not more than $90,000,000 of short-term debt on or before December 31, 1990, with a final maturity date no later than December 31, 1991.

Comment date: December 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. E.F. Oxnard, Inc.

[Docket No. QF86-968-002]

On November 14, 1988, E.F. Oxnard, Inc. (Applicant) of 401 B Street, Suite 1000, San Diego, California 92101 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility was originally certified on October 22, 1987. *E.F. Oxnard, Inc.*, Docket No. QF86-968-001, 41 FERC ¶ 62,073 (1987). Under the instant application, recertification is sought because of the following changes in the facility: (1) where the facility originally consisted of a General Electric MS-6000 combustion turbine generator set with a dual pressure heat recovery steam generator and an extraction/condensing steam turbine generator, it will now consist of a General Electric LM5000 STIG combustion turbine generator set with a three pressure level heat recovery steam generator; (2) the net electric power production capacity of the facility will decrease from 48.1 MW to 47.5 MW; and (3) where the original certification specified that steam would be sold to Oxnard Frozen Foods Cooperative for use in absorption chillers, the instant application states that steam will also be sold to Western Precooling Systems for use in a steam jet ejector vacuum system for the precooling of vegetables, to Terminal Freezers for use in absorption refrigeration storage of fruits, vegetables, fish and other food products, and to Pacific Linen for use in laundry services. The primary energy source is natural gas. Construction of the facility is expected to begin in early 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

11. Chalk Cliff Limited

[Docket No. QF87-132-001]

On November 21, 1988, Chalk Cliff Limited (Applicant), a Texas limited partnership of 9432 Old Katy Road, Suite 200, Houston, Texas 77055 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used for enhanced oil recovery operation.

The original application was filed on December 10, 1986 by Chalk Cliff CoGen, Inc. (CCCI) and was granted on March 23, 1987; 38 FERC ¶62,290. The recertification is requested due to change in ownership and increase in

electric power production capacity of the facility. The ownership interest will change from CCCI to Clalk Cliff Limited, a Texas limited parthership consisting of CCCI, Dominion Cogen, CA, Inc., an indirect wholly-owned subsidiary of Dominion Resources, Inc. (an exempt public utility holding company), Dominion Energy, Inc., a wholly-owned subsidiary of Dominion Resources, Inc. and SJC Cogen, Inc. The net electric power production capacity will increase from 44.453 MW to 45.058 MW. Installation of the facility is expected to begin by October 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR. Doc. 88-28137 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9676-001]

David Davison; Surrender of Preliminary Permit

December 1, 1988.

Take Notice that David Davison, Permittee for the Galloway Ridge Hydropower Project No. 9676, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9676 was issued May 10, 1986, and would have expired April 30, 1989. The project would have been located on an unnamed tributary to the North Yuba River in Sierra County, California.

The Permittee filed the request on May 9, 1988, and the preliminary permit for Project No. 9676 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR. Doc. 88-28138 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2466 Virginia]

Appalachian Power Co.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on November 8, 1988, Appalachian Power Company, the existing licensee for the Niagara Hydroelectric Project No. 2466, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2466 was issued effective March 1, 1968, and expires December 31, 1993.

The project is located on the Roanoke River in Roanoke County, Virginia. The principal works of the Niagara Project include a 52-foot-high, 452-foot-long concrete dam with a crest elevation at 885 feet m.s.l.; a reservoir of about 85 acres; a powerhouse with an installed capacity of 2,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at G. O. Hydro Department, 40 Franklin Road, Roanoke, Virginia 24022.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28139 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-217-006]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 1, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on November 28, 1988, pursuant to section 4 of the Natural Gas Act, the Commission's September 30, 1988, and August 12, 1988, orders in this docket, and Section 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Original Sheet Nos. 49 and 160H.

First Revised Sheet Nos. 46, 47, 48, and 160G.

Second Revised Sheet Nos. 40, 41, 42 and 160A.

Substitute Original Sheet No. 160G.

Substitute First Revised Sheet No. 160C.

The proposed effective date for the original and revised tariff sheets is December 1, 1988. The proposed effective date for the substitute sheets is August 1, 1988.

CNG states that the purpose of the filing is to change its take-or-pay passthrough provisions to reflect modifications and additions to Order No. 500 buyout and buydown costs that have been made recently by CNG's pipeline suppliers. The filing also corrects references to the refund provisions of the Commission's PGA regulations as was required by the Commission's September 30, 1988, order in this docket.

Copies of the filing were served upon GNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protect or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28140 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-32-000]

Florida Gas Transmission Co.; Filing

December 1, 1988.

Take notice that on November 23, 1988, Florida Gas Transmission Company (FGT) filed a motion for a limited waiver of section 4 (Minimum Bill) of its Rate Schedule G on behalf of the Utilities Board of the City of Florala, Alabama, for the contract year from October 1, 1986 through September 30, 1987.

FGT states that it has an effective service agreement with Florala which is dated before June 25, 1984, the effective date of Original Sheet Nos. 51 and 52 in Volume No., 1 of FGT's FERC Gas Tariff which contains section 16—Schedule of Effective Minimum Annual Contract Quantity. Thus, the Minimum Annual Quantities (MAQ) set forth in Section 16 are currently effective, FGT states that it determined that Florala had taken less than its applicable MAQ during the period October 1, 1986, to September 30, 1987, and sent an invoice to Florala for the deficiency. Florala requested that FGT grant relief from the minimum bill provisions of Rate Schedule G.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protects should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28141 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-13-001]

Gas Gathering Corp.; Tariff Filing

December 1, 1988.

Take notice that on November 25, 1988, Gas Gathering Corporation ("GGC") tendered for filing Third Revised Sheet No. 4 to First Revised Volume No. 1 of its FERC Gas Tariff.

The proposed effective date is October 20, 1988.

GGC states that it filed changes to its FERC Gas Tariff on September 20, 1988, which among other things provided for a unit surcharge thereby permitting GGC to collect from its customers the annual charges assessed by the Commission under § 382.202 of its Regulations.

GGC further states that due to arithmetical and clerical errors, the rate reflected in the filing was expressed as .0018 cents per MMBtu. The rate should have reflected an amount of .18 cents per MMBtu. Thus, states GGC, the instant filing is made to correct the error present on its Second Revised Sheet No. 4 to reflect the correct rate of .18 cents per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28142 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1494-002]

Grand River Dam Authority, Issuance of Annual License

December 1, 1988.

On December 23, 1985, the Grand River Dam Authority (GRDA), licensee for the Pensacola Hydropower Project No. 1494 filed an application for a new license pursuant to the provisions of the Federal Power Act and the Commission's regulations thereunder. Project No. 1494 is located on the Grand River in Mayes, Craig, Delaware and Ottawa Counties, Oklahoma.

The license for Project No. 1494 was issued for a period ending December 31, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, an annual license must be issued to the Grand River Dam Authority pursuant to section 15(a) of the Federal Power Act, 16 U.S.C. 808(a).

Take notice that an annual license is issued to the GRDA for a period effective January 1, 1989, to December 31, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1494, subject to terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before December 31, 1989, an annual license will be issued each year thereafter, effective January 1, of each year, until such time as a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28143 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2551 Michigan]

Indiana Michigan Power Co.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on November 8, 1988, Indiana Michigan Power Company, the existing licensee for the Buchanan Hydroelectric Project No. 2551, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2551 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the St. Joseph River in Berrien County, Michigan. The principal works of the Buchanan Project include a 13-foot-high, 387-foot-long dam with a spillway crest elevation at 634.07 feet m.s.l.; a reservoir of about 300 acres; a powerhouse with an installed capacity of 4,105 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No.

496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Hydro Generation, 13840 East Jefferson Road, Mishawaka, Indiana 46545, telephone (219) 255–8946.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28144 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–104–004]

Midwestern Gas Transmission Co.; Tariff Filing

December 2, 1988.

Take notice that on November 28, 1988, Midwestern Gas Pipeline Company (Midwestern) tendered for filing the following tariff sheets to Original Volume I of this FERC Gas Tariff to be effective June 1, 1988:

Original Volume No. 1

Fourth Revised Sheet No. 161.
Fourth Revised Sheet No. 162.
Sixth Revised Sheet No. 163.
Fifth Revised Sheet No. 164.
Second Revised Sheet No. 164A
Fourth Revised Sheet No. 165.
Third Revised Sheet No. 165A.
Fourth Revised Sheet No. 166.
Fifth Revised Sheet No. 167.
Fifth Revised Sheet No. 169.
Fourth Revised Sheet No. 169A.
Third Revised Sheet No. 169B.
Second Revised Sheet No. 169C.
Second Revised Sheet No. 169D.

Midwestern states it is filing revisions to the PGA clauses for its Northern and Southern Systems to comply with the Order of the Director (OPPR) in the referenced docket on October 28, 1988.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20425, in accordance with Rules 211 and 214 of the Commisson's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 88–28145 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–3–25–003 Docket No. RP89–12–001]

Mississippi River Transmission Corp.; Tariff Filing

December 2, 1988.

Take notice that on November 28, 1988 Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tariff sheet	Proposed effective date
First Revised Sheet No. 4A.1	Dec. 1, 1988.
First Revised Sheet No. 4A.2	Nov. 28, 1988.
Alternate First Revised Sheet No. 4A.2.	Nov. 28, 1988.
Sixth Revised Sheet No. 62	Nov. 28, 1988.
Alternate Sixth Revised Sheet No. 62.	Nov. 28, 1988.

MRT states that the purpose of its filing is to reflect the flow-through of additional fixed take-or-pay charges allocated to MRT by Natural Gas Pipeline Company of America ("Natural") in Docket No. RP88–94–010 and Trunkline Gas Company ("Trunkline") in Docket No. RP89–11–000.

MRT states that it is allocating the additional fixed take-or-pay charges it will be billed by Natural to its jurisdictional sales customers by utilizing the same cumulative purchase deficiency methodology used by it for allocation of Natural's initial take-or-pay costs in Docket No. TA88–3–25–000, *et al.*, which methodology was required and accepted by Commission order dated June 1, 1988. MRT claims that the impact of such additional take-or-pay charges on its jurisdictional customers is an annual increase of approximately $1.9 million.

MRT further states that its filing includes a primary tariff sheet which utilizes a Demand Component D–1 allocation methodology for the flow-through of Trunkline's take-or-pay charges. MRT asserts that the impact of the primary tariff sheet on its jurisdictional sales customers is approximately $265,000 annually. MRT states that its filing also contains an alternate tariff sheet which reflects utilization of the cumulative purchase deficiency allocation methodology for the flow-through of Trunkline's take-or-pay charges. MRT states that the impact of its alternate tariff sheet on its jurisdictional sales customers is approximately $219,000 annually.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 88–28146 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2536 Wisconsin & Michigan]

Niagara of Wisconsin Paper Corp.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on June 14, 1988, Niagara of Wisconsin Paper Corporation, the existing licensee for the Little Quinnesec Falls Hydroelectric Project No. 2536, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project

No. 2536 was issued effective July 1, 1943, and will expire June 30, 1993.

The project is located on the Menominee River in Marinette County, Wisconsin, and Dickinson County, Michigan. The principal works of the Little Quinnesec Project include a concrete dam; a reservoir of 320 acres; a 350-foot-long, 16-foot-diameter steel penstock; a powerhouse with an installed capacity of 8,388 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE.; Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1101 Mill Street, Niagara, WI 54151, Attn: Mr. William R. Roberts, telephone (715) 251-3151.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 29, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28147 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2337-001]

Pacific Power and Light Co.; Issuance of Annual License

December 1, 1988.

On December 24, 1985, the Pacific Power and Light Company (PP&LC), licensee for the Prospect No. 3 Hydroelectric Project No. 2337 filed an application for a new license pursuant to the provisions of the Federal Power Act and the Commission's regulations thereunder. Project No. 2337 is located on the South and Middle Forks of Rogue River and Imnaha and Daniels Creeks, in Jackson County, Oregon.

The license for Project No. 2337 was issued for a period ending December 31, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, an annual license must be issued to the Pacific Power and Light Company pursuant to section 15(a) of the Federal Power Act, 16 U.S.C. 808(a).

Take notice that an annual license is issued to PP&LC or its transferee [1] for a period effective January 1, 1989, to December 31, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2337, subject to terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before December 31, 1989, an annual license will be issued each year thereafter, effective January 1, of each year, until such time as a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28148 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-004]

Paiute Pipeline Co.; Proposed Revised Tariff Sheets

December 2, 1988.

Take notice that Paiute Pipeline Company (Paiute) on November 25, 1988, tendered for filing First Revised Sheet Nos. 10, 69 and 70 applicable to its FERC Gas Tariff, Original Volume No. 1-A. Paiute states that the purpose of said filing is to comply with the Commission's order issued October 28, 1988 in Docket Nos. RP88-227-000, RP88-227-002, RP88-227-003, CP87-309-004 and CP87-309-005 which, in part, directed Paiute to revise its transportation tariff concerning the general liability of Paiute for deliverability in order to be consistent with its sales tariff dealing with the same issues. Paiute further states that it has incorporated a revision to the (1) annual charge adjustment (ACA) surcharge amount in order to recover the Commission's annual charges for the 1988 fiscal year; and (2) effective date of ACA filings from November 1 to October 1 in order to coincide with the Commission's fiscal year.

Paiute has requested waiver of the notice requirements and any other applicable Commission regulations as may be necessary so as to permit First Revised Sheet Nos. 10 and 70, which reflect the ACA revisions, to become effective October 1, 1988; and First Revised Sheet No. 69 submitted in compliance with the aforementioned Commission order to become effective November 1, 1988.

Paiute states that copies of this filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Southwest Gas Corporation, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1988.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28149 Filed 12-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2689 Wisconsin]

Scott Paper Co.; Intent To File an Application for a New License

December 1, 1988.

Take notice that on November 3, 1988, Scott Paper Company, the existing licensee for the Oconto Falls Hydroelectric Project No. 2689, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The orginal license for Project No. 2689 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Oconto River in Oconto County, Wisconsin. The principal works of the Oconto Falls Project include a 425-foot-long rubble

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[1] *See* PacifiCorp, d.b.a. Pacific Power & Light Company, 45 FERC ¶ 62,146 (1988). The license transfer for Project No. 2337 is an element of the merger of Pacific Power & Light Company and Utah Power & Light Company. Approval of the transfer is conditioned upon acceptance of and compliance with all terms and conditions imposed by the Commission in Opinion No. 318, issued October 26, 1988, in Docket No. EC88-2-000.

masonry dam with concrete abutments; a reservoir of about 15 acres at normal water surface elevation of 701.6 feet m.s.l.; two powerhouse with a combined installed capacity of 1810 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b) (2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 106 E. Central Avenue, Oconto Falls, Wisconsin 54154.

Pursuant to section 15 (c) (1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28150 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Colorado River Storage Project Proposed Adjustment of Firm Transmission Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed adjustment of firm transmission rate.

SUMMARY: The Western Area Power Administration (Western) is proposing to adjust the Colorado River Storage Project (CRSP) firm transmission rate. The proposed adjustment would increase the firm transmission rate from the present $15.94 to $22.35 per kilowatt-year.

The proposed adjustment is estimated to increase FY 1989 CRSP revenues by $826,890, as compared to the total FY 1989 anticipated revenues for the entire system of $100,300,432. The rate adjustment results in a change of less than 1 percent in annual revenues for the CRSP, and therefore is a minor rate adjustment as defined by the current procedures for public participation in rate adjustments (10 CFR 903.2(f)). A brochure will be distributed in early December to all CRSP power and transmission system customers and other interested parties, and a combined public information and comment forum will be held in accordance with the current procedures for public participation in rate adjustments.

Need for Rate Adjustment

In the 1985 transmission system rate study, total CRSP transmission investment was projected to reach $357,540,618 by 1988 (the last year in the 1985 study). In the current 1988 transmission system rate study, additional transmission facilities planned to improve system reliability, to better manage inadvertent powerflows from other systems, and to conserve fuel by better coordination of thermal and hydro resources bring the projected 1991 transmission system investment to $410,976,726 (the last year in the current study). The current study shows that the system additions, along with associated increases in operations, maintenance, and replacement expenses, require a rate adjustment from the current $15.94 to the proposed $22.35 per kilowatt-year. The current rate expires on June 30, 1989.

Additional information in support of the need for and derivation of the proposed rate adjustment is explained in detail in the brochure.

DATES: The proposed adjustment of the CRSP firm transmission rate is expected to be effective for a 3-year period beginning on July 1, 1989. Western will outline the reasons for the rate increase, and the public will be given an opportunity to ask questions and comment orally or in writing at a combined public information and comment forum which will be held: January 19, 1989, 1:30 p.m., Red Lion Inn, 255 South West Temple, Salt Lake City, Utah. Interested persons will be given an opportunity to consult with and make comments to Western during the consultation and comment period that begins on the date of publication of this notice and ends 60 days thereafter or 15 days after the close of the combined public information and comment forum, whichever is later. Written comments may be submitted to the address below and should be received at that address by February 3, 1989.

ADDRESS: Written comments, as well as requests for further information, may be submitted to the following address throughout the consultation period: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147, telephone (801) 524–6372.

SUPPLEMENTARY INFORMATION: Transmission rates for CRSP are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.*); Colorado River Storage Project Act (43 U.S.C. 620, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C 485h(c)); and the acts specifically applicable to the project or system involved.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated to the Administrator of Western the authority to develop long-term power and transmission rates; to the Under Secretary of the Department of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove such rates. The Secretary of Energy, in a notice dated October 27, 1988, transferred the authority to place Western's rates into effect on an interim basis from the Under Secretary to the Deputy Secretary.

Procedures for public participation in rate adjustments by Western (10 CFR Part 903) were published in the **Federal Register** (50 FR 37835) on September 18, 1985.

Availability of Information

Information regarding this rate adjustment including studies, comments, and other supporting material is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; in the Office of the Director of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of the Assistant Administrator for Washington Liaison, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Environmental Compliance

Western will conduct an analysis of the proposed rate pursuant to the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations, and section D of the Department of Energy guidelines published in the **Federal Register** (52 FR 47662) on December 15, 1987.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to

publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment relates to nonregulatory services provided by Western.

Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Because the proposed rate is of limited applicability and is being set in accordance with specific legislation under particular circumstances, no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981). In addition, Western is exempt from sections 3, 4, and 7 of Executive Order 12291.

Conclusion

Following the consultation and comment period and after consideration of comments received, the Deputy Secretary will issue a rate order confirming and approving a transmission rate to be placed in effect on an interim basis and will promptly submit such rate to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Golden, Colorado, November 23, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-28168 Filed 12-6-88; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 30, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0259.

Title: Section 90.263, Substitution of frequencies below 25 MHz.

Action: Extension.

Respondents: Businesses and state and local governments.

Frequency of Response: On occassion.

Estimated Annual Burden: 60 responses; 30 hours; 30 minutes each.

Needs and Uses: This rule requires an applicant to make a special showing to demonstrate safety-of-life reasons why frequencies above 25 MHz will not meet the applicant's operational requirements. The Commission uses this information to evaluate the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

OMB Number: 3060-0221.

Title: Section 90.155(b), Time in which station must be placed in operation (exceptions).

Action: Extension.

Respondents: State or local governments.

Frequency of Response: On occasion.

Estimated Annual Burden: 55 responses; 55 hours; 1 hour each.

Needs and Uses: State and local governments may, upon a showing of need, take more than eight months to place their stations in operation. The Commission uses this information to determine if the exception to the eight month requirement is warranted.

OMB Number: 3060-0218.

Title: Section 90.41(b), Disaster relief organizations "Special eligibility showing."

Action: Extension.

Respondents: Non-profit institutions and small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 75 responses; 13 hours; 10 minutes each.

Needs and Uses: This rule is used to establish the eligibility of disaster relief organizations for Special Emergency Radio Service frequencies that are primarily used for emergency medical services. The Commission uses this information to ensure efficient communications operations.

OMB Number: 3060-0224.

Title: Section 90.151, Requests for waiver.

Action: Extension.

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 60 responses; 120 hours; 2 hours each.

Needs and Uses: Applicants that request waiver of various rules must submit justification for the proposed waiver. This is necessary to enable the Commission to make an informed decision on requests.

OMB Number: 3060-0261.

Title: Section 90.215, Transmitter measurements.

Action: Extension.

Respondents: Individuls or households, state or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 129,900 recordkeepers; 4,287 hours; 2 minutes each.

Needs and Uses: Rule requires technical measurements on each transmitter upon initial installation. Requirement helps ensure proper operation of transmitters, thereby reducing instances of interference.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-28132 Filed 12-6-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1760]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

December 1, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed Insert date of 16 days after FR. Pub. date. See § 1.4(b)(1) of the Commission's rules (47 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (New Ulm, Bryan, Huntsville, Cameron, Creedmoor and La Grange, Texas. (MM Docket No. 87-209, RM's 5700, 5768, 5926, 6079 & 6080); Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast

Stations. (Albert Lea, Red Wing and Stewartville, Minnesota) (MM Docket No. 87–306, RM's 5837, 6120 & 6121); Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (West Palm Beach, Florida) (MM Docket No. 87–438, RM–5894); Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Oakdale, Tioga and West Monroe, Louisiana) (MM Docket No. 88–47, RM's 5977, 6148, 6364 & 6365); Number of petitions received: 2.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Vero Beach, Florida) (MM Docket No. 88–111, RM–5359)

Filed By: John C. Quale & Jerry V. Haines, Attorneys for Gilmore Boardcasting Corporation, (WLVE–FM) on 11–22–88).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–28133 Filed 12–6–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Miami Valley Worldwide, Inc., 2382 South Dixie Drive, Dayton, OH 45409. Officers: John Francis Sweeney, President, Michael J. Serrney, Vice President

IPS Freight Services Limited, 1060 Randolph Road, Rahway, NJ 07065. Officers: Peter Maybury, President/Treasurer, Terri Brennan, Director/Stockholder, Andrew Finn, Director/Stockholder

Future Freight Systems, Inc., 48 Third Street, South Kearny, NJ 07032. Officers: Joseph Sade, President/Director/Stockholder, Owen Stewart, Vice President

MBC Freight Consultants (USA), Inc., 515 Saratoga Street, E. Boston, MA 02128. Officers: Christopher Staub, President, Leo Staub, Director, Timothy Staub, Director

Phoenix Global Services, Inc., Unit A–129 The Commons at Chadds Ford, Chadds Ford, PA 19139. Officers: Jamal Abu-Hakemeh, President, Steven G. Sewell, Exec. Vice President, Khalil Hamid, Exec. Vice President

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 2, 1988.

[FR Doc. 88–28159 Filed 12–6–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Vaccine Injury Compensation Program; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently at 53 FR 34588, September 7, 1988) is amended to reflect the establishment of the National Vaccine Injury Compensation Program under Part A (42 U.S.C. 300aa–10 et seq.) and Part D (42 U.S.C. 300aa–31 et seq.), Subtitle 2, Title XXI of the Public Health Service Act, as amended, within the Bureau of Health Professions, Health Resources and Services Administration.

Under HB–10, Organization and Functions, amend the functional statements for the *Bureau of Health Professions (HBP)* by deleting the "and" after item number (11), changing the period after item number (12) to a semicolon, and adding the following after item number (12): "and (13) administers the National Vaccine Injury Compensation Program."

Date: November 28, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–28097 Filed 12–6–88; 8:45 am]

BILLING CODE 4160–15–M

National Vaccine Injury Compensation Program; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Part A (42 U.S.c. 300aa–10 et seq.) and Part D (42 U.S.C. 300aa–31 et seq.), Subtitle 2 of Title XXI of the Public Health Service Act, as amended, pertaining to the National Vaccine Injury Compensation Program, excluding the authority under section 2114(e) (42 U.S.C. 300aa–14) to recommend to Congress revisions to the Vaccine Injury Table to change the vaccines covered by the table in section 2114 (42 U.S.C. 300aa–14) of the Public Health Service Act, as amended. Also excluded were the authority to promulgate regulations, to appoint members of the Advisory Commission under section 2119 (42 U.S.C. 300aa–19), and the authority to submit reports to the Congress.

This delegation became effective upon the date of signature. In addition, notification is hereby given that, effective on the date of this delegation, I have affirmed and ratified any actions taken by the Assistant Secretary for Health and his subordinates which involved the exercise of the delegated authorities prior to the effective date of delegation.

Date: November 28, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–28098 Filed 12–6–88; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

[Docket No. 88F–0376]

M&T Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that M&T Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrated monobutyltin oxide, monobutyltin trioctoate, and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4113) has been filed by M&T Chemicals, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing

BEST COPY AVAILABLE

that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) and § 177.2420 *Polyester resins, cross-linked* (21 CFR 177.2420) be amended to provide for the safe use of hydrated monobutyltin oxide, monobutyltin trioctoate, and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 18, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-28090 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: *Nashville District Office,* chaired by Hayward Mayfield, District Director. The topic to be discussed is the tampon absorbency labeling.

DATE: Monday, December 12, 1988, 1:30 p.m. to 3 p.m.

ADDRESS: FDA District Office, 297 Plus Park Blvd., Nashville, TN 37217.

FOR FURTHER INFORMATION CONTACT: Sandra Baxter, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615-736-2088.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 1, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-28091 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Vaccine Injury Compensation Program; Content of Medical Records

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice to advise the public of the content of medical records to be attached to petitions for compensation of vaccine related injuries under the National Vaccine Injury Compensation Program (the "Program"). The information set forth below does not constitute a requirement for filing, as the publication of such requirements is the prerogative of the United States Claims Court, but rather provides a statement of what information PHS views as necessary for it to carry out its responsibilities under the Program.

FOR FURTHER INFORMATION CONTACT: National Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, Maryland 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the United States Claims Court, which is responsible for adjudicating the petition. A copy of the petition is also to be served upon the Secretary of Health and Human Services, who is named as the respondent in each proceeding.

Section 2111(c)(2) of the PHS Act provides that each petition is to be accompained by:

> All available relevant medical records (including autopsy reports, if any) relating to the person who suffered such injury or who died from the administration of the vaccine and an identification of any unavailable records known to the petitioner and the reasons for their unavailability * * *.

While the United States Claims Court is responsible for issuing rules on the content of petitions and their accompanying medical and related records, PHS, as the respondent, will have the responsibility of reviewing these documents and advising the Court of its view as to whether compensation should be awarded. Accordingly, we are advising the public of the information that we would view as necessary for us to carry out this responsibility. For petitions that are not accompanied by sufficient information, we intend to request the missing materials, and if they are not provided (or an adequate explanation of their unavailability is not submitted), we may be forced to advise the Court that the records submitted are insufficient to support a determination that the petitioner is entitled to compensation.

Under the statue, the determination regarding eligibility for compensation requires examination of records related to the following: (a) The health status of the injured individual before the administration of the vaccine, (b) information related to the actual administration of the vaccine, (c) the effects of the vaccine, (d) the period in which those effects first occurred, and (e) the period for which the effects continued. Accordingly, while we recognize that not all of these materials will be relevant in each case, the materials that we would view as constituting complete medical and related records are as follows:

1. Maternal prenatal and delivery records;
2. Newborn hospital records, including all physicians' and nurses' notes and test results;
3. Vaccination records associated with the vaccine allegedly causing the injury;
4. Pre- and post-injury physician or clinic records, including all relevant growth charts and test results;
5. All post-injury outpatient records, including all provider notes, test results, and medication records;
6. If applicable, death certificate; and
7. If applicable, autopsy results (if an autopsy was conducted).

We are also requesting that petitioners make every effort to provide medical and related records that are legible. Clearly, our task of evaluating petitons will be significantly impeded if the records provided are not legible.

Section 2111(c)(3) of the PHS Act provides that petitions for compensation must also be accompanied by:

> Appropriate assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

This notice does not cover the medical and other records necessary to determine the amount of compensation once eligibility for compensation has been established. Accordingly, the Secretary (or the Department of Justice, which represents the Secretary in proceedings before the United States Claims Court) may require additional records in order to determine the amount of compensation.

Chapter 35 of Title 44, United States Code, related to paperwork reduction,

does not apply to information required for purposes of carrying out the Program.

Dated: December 2, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-28134 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Resolution of the Hoopa Valley Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Hoopa Valley Tribe of the Hoopa Valley Indian Reservation, Hoopa, California, is required under the Hoopa-Yurok Settlement Act of October 31, 1988 (102 Stat. 2924) to adopt and transmit to the Secretary of the Interior a tribal resolution waiving any claim such tribe may have against the United States arising out of the provisions of the Act, and affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Act. In accordance with the Settlement Act, the resolution is to be published in the **Federal Register**. Effective with such publication the joint reservation shall be partitioned as provided in the Act.

DATE: The Settlement Act requires that the tribal resolution be published in the **Federal Register** within 60 days after the date of enactment of the Settlement Act.

FOR FURTHER INFORMATION CONTACT: Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California, 96049-4879, telephone number: (916) 246-5141.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Pursuant to the Hoopa-Yurok Settlement Act of October 31, 1988 (102 Stat. 2924), Section 2(a)2(B), this is official notification that the Hoopa Valley Tribe has adopted a valid resolution which meets the requirements of section 2(a)(2)(A) of the Act, and said resolution reads as follows:

"RESOLUTION OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA VALLEY, CALIFORNIA

RESOLUTION NO: 88-115
DATE APPROVED: November 28, 1988
SUBJECT: WAIVER OF CERTAIN CLAIMS AND CONSENT TO USES OF TRIBAL FUNDS PURSUANT TO THE HOOPA-YUROK SETTLEMENT ACT

WHEREAS: The Hoopa Valley Business Council is the governing body of the Hoopa Valley Tribe under a Constitution and Bylaws approved by the Commissioner of Indian Affairs on August 18, 1972; and

WHEREAS: The *Jessie Short* case stated that the Hoopa Valley Reservation as extended is a single reservation in which tribes lack vested rights, and accordingly the court imposed liability on the United States for past per capita distributions of revenue from the Hoopa Square which went to Hoopa Valley tribal members only; and

WHEREAS: The *Puzz* case has interpreted *Short* and applicable law in a manner which prohibits the Hoopa Valley Tribe from exercising territorial management powers over the Hoopa Square and has crippled the power of the Hoopa Valley Business Council to exercise the authorities granted under the Tribe's Constitution to administer tribal property, to expend tribal funds, to protect tribal resources, to govern non-members and generally to safeguard and promote the peace, safety and general welfare of the Hoopa Valley Tribe; and

WHEREAS: The Hoopa people have petitioned the United States Congress to enact a law confirming the Hoopa Square as the property of the Hoopa Valley Tribe and reinforcing the governmental power of the Hoopa Valley Business Council pursuant to its Constitution; and

WHEREAS: On April 26, 1988, Representative Doug Bosco introduced H.R. 4469 which, after hearings, negotiations and introduction of substitute bills, was enacted as the Hoopa-Yurok Settlement Act on October 31, 1988; and

WHEREAS: Section 2(a)(2)(A) of the Act provides:

(A) The partition of the joint reservation as provided in this subparagraph, and the ratification and confirmation as provided by section 8, shall not become effective unless, within 60 days after the date of the enactment of this Act, the Hoopa Valley Tribe shall adopt, and transmit to the Secretary a tribal resolution:

(i) Waiving any claim such tribe may have against the United States arising out of the provisions of this Act, and

(ii) Affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in this Act.

WHEREAS: The Senate Report accompanying the Act states that the waiver required by the Act does not prevent the Hoopa Valley Tribe "from enforcing rights or obligations created by this Act", S. Rep. 100-564 at 17; and

WHEREAS: The Hoopa Valley Business Council has fully considered the claims to be waived and the consent to be granted and has balanced them against the benefits offered to the Hoopa Valley Tribe under the Act including, under Section 2, the "partition of the joint reservation" so that "the unallotted trust lands and assets of the [new] Hoopa Valley Reservation shall thereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe" and, under Section 8, a declaration that "the existing governing documents of the Hoopa Valley Tribe and the governing body established and elected thereunder, as heretofore recognized by the Secretary, are hereby ratified and confirmed," and has concluded that the Tribe would best be served by complying with Section 2(a) of the Act; and

WHEREAS: The Hoopa Valley Business Council has consulted with the members of the Hoopa Valley Tribe in a duly-noticed General Meeting held on November 12, 1988, and in previous General Meetings, and has been reassured and directed by the membership to comply with the Act; and

WHEREAS: The Hoopa Valley Business Council has carefully considered the Tribe's Constitution and other tribal law and custom concerning the method by which the resolution called for by the Act should be enacted;

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council has the power under the Constitution and Bylaws of the Hoopa Valley Tribe to approve and enact the resolution required by Section 2(a) of the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That this resolution is not intended, and shall not be construed, so as to prevent the Hoopa Valley Tribe from enforcing rights and obligations created by the Hoopa-Yurok Settlement Act, *see* S. Rep. 100-564 at 17; and

BE IT FURTHER RESOLVED: That the Hoopa Valley Tribe hereby waives any claim the Hoopa Valley Tribe may have against the United States arising out of

the provisions of the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That the Hoopa Valley Tribe affirms tribal consent to the contribution of Hoopa Escrow moneys to the settlement fund and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That the Chairman and Secretary of the Hoopa Valley Business Council are hereby authorized, directed and empowered to sign the resolution for and on behalf of the Hoopa Valley Tribe as its act and deed.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Business Council, do hereby certify that the Hoopa Valley Business Council is composed of eight members, of which 6 were present, constituting a quorum, at a special meeting thereof, duly and specially called, noticed, convened, and held this 28th day of November, 1988, and that this resolution was adopted by a vote of 5 FOR with 0 AGAINST; and that said resolution has not been rescinded or amended in any way.

DATED THIS 28TH DAY OF NOVEMBER, 1988.

/S/ JASPER A. HOSTLER, FOR WILFRED K. COLEGROVE, CHAIRMAN HOOPA VALLEY BUSINESS COUNCIL ATTEST: DEIRDRE R. YOUNG, TRIBAL SECRETARY, HOOPA VALLEY BUSINESS COUNCIL.

35–TLT1.8/WAIVER.RS4
klb/112888"

Donald F. Asbra,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–28294 Filed 12–6–88; 9:24 am]

BILLING CODE 4310–02–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Managemnet and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 1203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Facilities on the Outer Continental Shelf (OCS) Adjacent to California (30 CFR 250.47).

OMB Approval Number: None.

Abstract: Respondents are required to provide the Minerals Management Service (MMS) with information on emissions data and related data from existing and new facilities or modifications to existing and new facilities located on the Federal OCS adjacent to California. The MMS will use this information to identify any potential or existing pollutant emissions and evaluate the potential impact of those operations on the adjacent coastal areas of the State of California.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil and gas lessees.

Estimated Completion Time: 29.6 hours.

Annual Responses: 123.

Annual Burden Hours: 3,640.

Bureau Clearance Officer: Dorothy Christopher, (703) 435–6213.

Date: November 22, 1988.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–28092 Filed 12–6–88; 8:45am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Gulfstar Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5415, Block 117, Vermilion Area, offshore Louisiana. Proposed Plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 29, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: November 30, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–28084 Filed 12–6–88; 8:45 am]

BILLING CODE 4310–MX–M

Bureau of Reclamation

San Xavier Development Project, Pima County, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearings and notice of extension of public review on draft environmental impact statement (DEIS); INT–DES–88–50.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation has prepared a draft Environmental Impact Statement (DEIS) for the San Xavier Development Project, Arizona. The DEIS (INT–DES–88–50, dated October 26, 1988) was filed with the Environmental Protection Agency and is available to the public as specified in the Notice of Availability. The public review period for the DEIS has been extended to 90 days ending January 27, 1989. Public hearings to receive comments on the DEIS will be held as specified below.

DATES: The close of the public review period for the DEIS has been extended until January 27, 1989.

Three public hearings on the DEIS are scheduled as follows:

1. January 13, 1989, 1:00 p.m., Sells, Arizona.
2. January 13, 1989, 7:00 p.m., Tucson, Arizona.
3. January 14, 1989, 9:00 a.m., San Xavier District, Arizona.

ADDRESSES: The hearings will be held at tne following locations:

1. Sells—Tohono O'odham Nation Tribal Headquarters, Sells, Arizona.
2. Tucson—Day's Inn, 88 East Broadway, Tucson, Arizona.
3. San Xavier District Community Center—located just west of the San Xavier Mission on Mission Road, southwest of Tucson, Arizona.

Addresses for Comments and Requests to Testify:

Director, Public Affairs Office, Department of the Interior, Bureau of Reclamation, Room 7644, Washington, DC 20240; Telephone: (202) 3433–4662.

Assistant Commissioner—Resources Management, Department of the Interior, Bureau of Reclamation, Program Service Division—Environmental Services, Federal Center, Building 67, Room 638, Denver, CO 80225; Telephone: (303) 236–9336.

Regional Director, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, NV 89005; Telephone: (702) 293–8710.

Environmental Division, Bureau of Reclamation, Arizona Projects Office, P.O. Box 9980, Phoenix, AZ 85068; Telephone: (602) 870–6760.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Rinne (Regional Environmental Officer, Lower Colorado Region), (702) 293–8560; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver Federal Center), (303) 236–9336.

SUPPLEMENTARY INFORMATION: At the public hearing, oral statements will be limited to 5 minutes or less. Speakers will not be allowed to trade their time to obtain a longer presentation period; however, the presiding officer may allow any speaker additional time after all persons wishing to make comments have been heard.

Organizations and individuals wishing to make presentations should contact the Environmental Division, Arizona Projects Office at the address given below, or telephone (602) 870–6760, and announce their intention to participate. Requests for scheduled presentations at the hearings will be accepted until 4:00 p.m., January 10, 1989. Whenever possible, speakers will be scheduled according to the time preference indicated in their letter or telephone request.

Any scheduled speakers not present when called will lose their place in the scheduled order, and will be recalled after the scheduled speakers. Unscheduled speakers will be handled on a first-come, first-served basis following the scheduled presentations.

Written comments from those wishing to supplement their oral presentations, will be accepted for the record until January 20, 1989. Written comments should be addressed to the Regional Director at the address given above and should specify that the comments are to be included in the hearing record.

The DEIS analyzes the environmental consequences of the construction and operation of the San Xavier Development Project. The project is an authorized feature of the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA) (Pub. L. 97–293). The San Xavier Development Project was developed in response to the requirement in the SAWRSA to design and construct a new efficient irrigation system for agricultural purposes within the San Xavier District. The proposed project includes land leveling and construction of a main canal, pipelines, field ditches, turnouts, floodways, and operational headquarters.

The DEIS describes four alternatives: Full Development Alternative, Partial Development Alternative, Alternative 9B, and No Federal Action. The document describes the existing environment and presents the impacts of the alternative courses of action.

Construction of the project is scheduled to begin in mid-1990 with delivery of water by October 1992.

Date: November 25, 1988.

B.E. Martin,

Acting Deputy Commissioner.

[FR Doc. 88–28118 Filed 12–6–88; 8:45 am]

BILLING CODE 4310–09–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Georgia Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirement of Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for Vogtle Electric Generating Plant, Unit 2, located at the licensee's site in Burke County, Georgia.

Environmental assessment

Identification of Proposed Action

Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 states "Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such period at not less than P_a." The exemption to this paragraph would relax the requirement for air lock leakage testing in that such a test would not be necessary before entering mode 4 each time that an air lock has been opened in mode 5 or mode 6. This exemption would apply to situations when the periodic 6-month test requirement of Paragraph III.D.2(b)(i) and the 3-day test requirement of Paragraph III.D.2(b)(iii) are current, no maintenance has been performed on the air lock, and the air lock is properly sealed.

Whenever maintenance has been performed on an air lock, the requirements of Paragraph III.D.2(b)(ii) must still be met. The staff's technical evaluation of this request was published in Section 6.2.6 of the Vogtle Safety Evaluation Report (NUREG–1137, June 1985 and NUREG–1137 Supplement No. 5, January 1987). This exemption is responsive to the licensee's request for exemption which is set out in the Vogtle Final Safety Analysis Report.

The Need for the Proposed Action

The proposed exemption to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is needed because this requirement is not necessary in the circumstances pertaining here to achieve the underlying purpose of the rule and slows the process of returning to operation following a shutdown.

Environmental Impacts of the Proposed Action

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. The proposed exemption would apply to situations when the periodic 6-month test requirement of Paragraph III.D.2(b)(i) and the 3-day test requirement of Paragraph III.D.2(b)(iii) of Appendix J to 10 CFR Part 50 are current, no maintenance has been performed on the air lock, and the air lock is properly sealed. Appendix J to 10 CFR Part 50 ensures that containment leak-tight integrity can be verified periodically throughout service lifetime so as to maintain containment leakage within the limits specified in the facility Technical Specifications. Meeting the above specified criteria is sufficient to achieve this purpose because it provides adequate assurance of continued leak-tight integrity of the air lock. Therefore, the proposed exemption does not affect the potential for or consequences of radiological accidents and does not affect radiological plant effluents. The exemption has no effect on non-radiological impacts of facility operation. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Vogtle Electric Generating Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of no significant impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the Vogtle Final Safety Analysis Report which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Burke County Public Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 30th day of November 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28121 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Fort Calhoun Station Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-40 issued to the Omaha Public Power District (OPPD or the licensee), for the operation of Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) to support Cycle 12 operation.

The proposed action is in accordance with the licensee's application dated September 2, 1988, as supplemented November 22, 1988.

The Need for the Proposed Action

The proposed changes are needed to allow the licensee to support Cycle 12 operation with extended fuel irradiation levels.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications and the increase in the burnup limits for the fuel. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential non-radiological impacts of reactor operation with extended irradiation, the proposed changes involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the higher burnup of the fuel are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Extended Fuel Enrichment and Irradiation", which was published in the **Federal Register** on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the transportation due to the increases in the fuel enrichment up to 5% and irradiation limits up to 60,000 MWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c). These findings are applicable to this amendment for the Fort Calhoun Station, Unit 1.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of the Fort Calhoun Unit 1", dated August 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the forgoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 2, 1988, as supplemented November 22, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 30th day of November, 1988.

For The Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28120 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 15–17, 1988, in Room P–114, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the Federal Register on October 20, 1988.

Thursday, December 15, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–10:15 a.m.: Operator Requalification Program (Open)—Briefing regarding lessons learned from implementation of revised operator qualification methodology (Draft Examiner Standard 601).

10:30 a.m.—12:30 p.m.: Sodium Advanced Fast Reactor (Open)—Review of proposed standardized type of nuclear plant. Representatives of the Department of Energy and the NRC Staff will participate.

1:30 p.m.–3:30 p.m.: Equipment Qualification-Risk Scoping Study (Open)—Review and comment on NRC-sponsored Equipment Qualification-Risk Scoping Study including consideration of peer review comments.

3:45–6:30 p.m.: Quantitative Safety Goals (Open)—Review and comment on proposed NRC Staff plan for implementation of NRC Quantitative Safety Goals.

Friday, December 16, 1988

8:30 a.m.–9:00 a.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activity and topics proposed for consideration by the full Committee.

9:00 a.m.–10:00 a.m.: Nuclear Safety Research (Open)—Briefing by and discussion with the Director, Office of Nuclear Regulatory Research, NRC, regarding aspects of the safety research program of interest to the ACRS and RES.

10:15 a.m.–12:15 p.m.: Emergency Core Cooling (Open)—Review and comment on proposed code Scaling Applicability and Uncertainty proposed for use with best-estimate ECCS evaluation models.

1:45 p.m.–2:45 p.m.: US–USSR Exchange of Information (Open/Closed)—Briefing regarding agreement to exchange safety-related information related to the design, operation, etc. of nuclear reactors.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

2:45 p.m.–4:45 p.m.: Containment Systems (Open)—Review and comment on recommendations for containment performance requirements and specific aspects of the BWR Mk I containment.

4:45 p.m.–6:15 p.m.: Reactor Operating Experience (Open/Closed)—Briefing and discussion of lessons learned from power oscillation transient at the LaSalle Nuclear Power Station.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

Saturday, December 17, 1988

8:30 a.m.–9:00 a.m.: Selection of ACRS Officers (Closed)—Discuss qualifications of nominees proposed for election as Committee officers for Calendar Year 1989.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

9:15 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed reports to NRC regarding issues considered during this meeting.

1:00 p.m.–2:15 p.m.: ACRS Subcommittee Activities (Open)—Briefing and discussion regarding the status of activities assigned to cognizant subcommittees including thermal-hydraulic phenomena, E. Fermi plant visit and international conference on quality and quality assurance.

2:15 p.m.–3:00 p.m.: Regulatory Process (Open)—Discuss proposed review and discussion of NRC regulatory philosophy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)], to discuss Information provided in confidence by a foreign source [5 U.S.C. 552b(c)(4)], and to

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discuss Proprietary Information applicable to matters being considered [5 U.S.C. 552(b)(4)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: December 2, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–28122 Filed 12–6–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–333]

James A. Fitzpatrick Nuclear Power Plant; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59, issued to the Power Authority of the State of New York (the licensee), for operation of James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

By application dated November, 9, 1988, the licensee requested that the primary containment leak rate test requirements described in Technical Specification (TS) Section 4.7.A.2.a(10) and Section 4.7.A.2.f be amended for the 1988 refueling outage on an emergency basis under the provisions of 10 CFR 50.91(a)(5). The application stated that these TS changes were necessary to allow plant startup from the 1988 refueling outage without performing a Type A primary containment integrated lead rate test (ILRT) or a Type A, B, or C leak rate test (LRT) following replacement of the high pressure coolant injection (HPCI) system turbine exhaust line manual block valve, as explained below.

Section 4.7.A.2.a(10) of the TS and Section III.A.6(b) of Appendix J to 10 CFR Part 50 require that if two consecutive periodic Type A tests (ILRTs) fail to meet the acceptance criteria, a Type A test must be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria. When it was determined that the cause of the failure of tests, conducted in 1982, 1985 and 1987, to meet the acceptance criteria for the "As Found" condition was due to excessive combined leakage from several containment isolation valves, the licensee concluded that the most effective approach to eliminate the excessive leakage was to implement a Corrective Action Plan (CAP) using guidance given in Information Notice 85–71 dated August 22, 1985. In this CAP the licensee determined that 33 containment isolation valves, which previously were identified as having excessive leakage, should be replaced (21 during the 1988 refueling outage and 12 during the 1990 refueling outage). The 12 valves scheduled to be replaced during the 1990 refueling outage have acceptable leakage rates based on the test performed during the 1988 refueling outage.

As part of the CAP, the licensee replaced the HPCI turbine exhaust line manual block valve to the suppression chamber (23–HPI–11). TS 4.7.A.2.f and Section IV.A of 10 CFR Part 50, Appendix J require that following replacement of a component which is part of the primary containment boundary, either a Type A, Type B, or Type C LRT, as applicable for the area affected, must be conducted and the appropriate acceptance criteria met. Since an isolation volume for the resulting welds on the primary containment side of the valve could not be attained, the licensee conducted 100% radiography and dye penetrant tests on the welds to verify the structural integrity of the welds, in lieu of a Type A, B, or C test.

Based on an evaluation of the licensee's CAP, the alternate tests performed to ensure system integrity, and the implementation of an improved valve maintenenace program, an exemption to the requirements of Section III.A.6(b) and Section IV.A of Appendix J to 10 CFR Part 50 was issued to the licensee by letter dated November 16, 1988. The exemption was noticed on November 25, 1988 (53 FR 47784).

When it was recognized that the licensee had inadvertently failed to identify that a TS amendment would be required in addition to the exemption, the licensee submitted the necessary amendment request dated November 9, 1988. Based on an evaluation of the amendment application (which is virtually identical to the exemption), a temporary waiver or compliance from the provisions of TS Section 4.7.A.2.a(10) and Section 4.7.A.2.f was issued by the NRC staff to the licensee by letter dated November 16, 1988. This allowed plant startup from the refueling outage without compliance with these TS requirements pending the NRC staff's review of the licensee's amendment request. In order to complete its review in an expeditious manner, yet allow for public comment, the NRC is processing the licensee's amendment proposal on an exigent basis under the provisions of 10 CFR 50.91(a)(6).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

These proposed changes do not increase the probability or consequences of an accident previously evaluated. The containment leakage rates assumed in the Final Safety Analysis Report (FSAR) require that the valves which perform containment isolation functions, as well as the primary containment itself, exhibit superior leak rate characteristics. When the licensee found that the limit was frequently being exceeded, a CAP was initiated. The CAP involved a detailed analysis of the causes for exceeding the allowable limit, determination that the primary cause was valve seat leakage, identification of the valves which were causing the problems, determination of the best method to correct the problem valves, and implementation of the resulting plan to ensure that the leak limits are not exceeded in the future. It was determined that over time some of these valves exhibited gradual degradation to the point where their combined seat leakage rate, when added to the leakage rate resulting from the previous Type A test, caused the limit to be exceeded. This resulted in the determination that many valves needed to be replaced, some during the 1988 refueling outage and other during the 1990 refueling outage. All of these valves were tested prior to the end of the outage with satisfactory results. Using this program, the intergrity of the primary containment has been restored so that it is reasonable to assume that the design leakage rate limits of the

FSAR are satisfied without the need to perform a Type A test at the increased frequency. Therefore, the probability or consequence of an accident previously considered is not increased.

With respect to the replacement of the HPCI exhaust inboard manual block valve (23–HPI–11), the valve body and piping are part of the containment pressure boundary. The TS change allows installation of the valve without performing a leakage test on the welds connecting the valve to the containment penetration. Instead, 100% radiography of the welds ensures the structural integrity of the welds and a dye penetrant examination of the surface of the weld ensures that any surface flaws which could lead to leakage paths are detected. Since the valve is normally open, remains open under accident conditions, and the structural integrity of the containment pressure boundary associated with the valve is assured, no change is made to the probability of occurrence or consequences of any accident previously evaluated.

These proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. No plant operability, maintenance, or system design or functional requirements will be altered by these proposals.

The function of the primary containment is not affected by deletion of the additional 18-month Type A test. The containment shall still isolate, if required to mitigate the consequences of design basis accidents, to maintain site boundary doses below the required limits. Consequently, this change, as proposed, would not create the possibility of any new or different type of accident.

Valve 23–HPI–11 has no active safety function, since it remains open during normal and accident conditions, since alternate testing has been performed which ensures the integrity of the welds, and since it was replaced in kind with another valve, there is no change in the FSAR considerations for the replacement and no new or different kind of accident is created.

The proposed amendment will not involve a significant reduction in a margin of safety. A properly designed and implemented CAP in accordance with Information Notice 87–71, dated August 22, 1985, is superior to performing Type A tests at an increased frequency. The licensee has implemented the CAP to improve the long-term leakage characteristic of the FitzPatrick containment. This CAP was implemented in lieu of performing a Type A test during the 1988 outage and results in no reduction of any margin of safety.

Valve 23–HPI–11 has no operational or accident mitigation functions. Performance of 100% radiograph in lieu of a pneumatic leak rate test on the welds is conservative. The construction code (ANSI B–31.1–1967) allows for 100% radiography as an alternative to leakage testing when such testing is not practicable.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, Gleman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, desginated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing

held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commisison, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-600 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles M. Pratt, 10 Columbus Circle, New York, NY 10019.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balance of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 9, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Reference and Documents Department, Penefield Library, State University of New York, Oswego, NY 13126.

Dated at Rockville, Maryland, this 29th day of November, 1988.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28119 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Mechanical Components; Cancelled Meeting

The **Federal Register** published Monday, November 28, 1988 (53 FR 47886) contained notice of a meeting of the ACRS Subcommittee on Mechanical Components scheduled for December 12, 1988. This meeting has been *cancelled.*

Date: December 1, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review

[FR Doc. 88-28123 Filed 12-6-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, December 21, 1988
Wednesday, December 28, 1988
Wednesday, January 4, 1989
Wednesday, January 11, 1989
Wednesday, January 18, 1989

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415, (202) 632-9710.

December 1, 1988.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 88-28112 Filed 12-6-88; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Public Hearings

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of hearings and deadline for comment.

SUMMARY: Pursuant to the Pacific Northwest Electric Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*), the Council, in April 1983, adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS). The most recent complete amendment of the Plan was adopted in 1986. Although the Act requires the Council to review the Plan at least every five years, the Council has taken up various discrete parts of the Plan more frequently, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council has now proposed to amend the Plan by updating the technical data base on which portions of the Plan depend. This notice explains how to participate in the amendment process.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments will close at 5 p.m. Pacific time on Friday, January 13, 1989. Public hearings on the proposed amendments will be held in each of the four Northwest states as follows:

January 3, 1989, 1:00 p.m. to 5:00 p.m., the Host International Meeting Room on the Mezzanine, Seattle/Tacoma Airport.

January 4, 1989, 1:30 p.m. the Holiday Inn, 200 S. Pattee, Missoula, Montana.

January 5, 1989, 2:30 p.m. at the Council's Central Office, 851 SW. 6th Avenue, Suite 1100, Portland, Oregon.

January 11, 1989, during the Council's January Council meeting at the Owyhee Plaza, Eleventh and Main, Boise, Idaho. Time will be published with the Council's agenda.

The Council expects to take final action on the proposed Supplement amendments at its February 1989 meeting in Olympia, Washington.

Guidelines for Presenting Oral Comments at Hearings.

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office no later than the day before the hearing. The Council's address is: 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222–5161 and (toll free) (800) 222–3355 in Idaho, Montana, and Washington or (800) 452–2324 in Oregon.

2. Those who did not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

Guidelines for Submitting Written Comments

1. All written comments must be received in the Council's central office, at 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on January 13, 1989.

2. Please provide three (3) copies of all written submissions.

3. Please clearly mark your comments "SUPPLEMENT".

FOR FURTHER INFORMATION CONTACT: If you would like a copy of the Draft Supplement to the 1986 Power Plan and/or a copy of the Draft Supplement Appendices, please contact Judi Hertz, in the Council's office of Public Information and Involvement, at the address and telephone numbers listed above.

Edward Sheets,

Executive Director.

[FR Doc. 88–28079 Filed 12–6–88; 8:45 am]

BILLING CODE 0000–00–M

RAILROAD RETIREMENT BOARD

1989 Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)), the Board gives notice of the following:

1. The montly compensation base under section 1(i) of the Act is $710 for months in calendar year 1989;

2. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $1,775 for base year (calendar year) 1989;

3. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $917 for months in calendar year 1989;

4. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $1,775 for base year (calendar year) 1989;

5. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $1,775 with respect to disqualifications ending in calendar year 1989;

6. The maximum daily benefit rate under section 2(a)(3) of the Act is $31 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1989.

DATES: The determinations made in notices (1) through (5) are effective January 1, 1989. The determination made in notice (6) is effective for registration periods beginning after June 30, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Mary R. Bartik, Bureau of Research and Analysis, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4786, (FTS) 386–4786.

SUPPLEMENTARY INFORMATION: The Board is required by section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)) as amended by Pub. L. 100–647, to publish by December 11, 1988, the computation of the calendar year 1989 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the Board is required to publish by June 11, 1989, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1989.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the growth in average national wages. The monthly compensation base for months in calendar year 1989 shall be equal to the greater of (a) $600 and (b) $600 [1 + {(A−37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1989 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 1989 tier 1 tax base is $48,000. Subtracting $37,800 from $48,000 produces $10,200. Dividing $10,200 by $56,700 yields a ratio of

0.17989418. Adding one gives 1.17989418. Multiplying $600 by the amount 1.17989418 produces the amount of $707.94, which must then be rounded to $710. Accordingly, the monthly compensation base is determined to be $710 for months in calendar year 1989.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1989 monthly compensation base of $710 produces $1,775. Accordingly, the amount determined under section 1(k) is $1,775 for calendar year 1989.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 1989 monthly compensation base is $710. The ratio is $710 to $600 is 1.18333333. Multiplying 1.18333333 by $775 produces $917. Accordingly, the amount determined under section 2(c) is $917 for months in calendar year 1989.

Under section 3, an employee shall be a "qualified employee" if his base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1989 monthly compensation base of $710 produces $1,775. Accordingly, the amount determined under section 3 is $1,775 for calendar year 1989.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 1989 monthly compensation base of $710 produces $1,775. Accordingly, the amount determined under section 4(a–2)(i)(A) is $1,775 for calendar year 1989.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the growth in average national wages. The maximum daily benefit rate for registration periods beginning after June 30, 1989, shall be equal to the greater of (a) $30 and (b) $25 [1+{(A−600)/900}], where A equals the applicable base with respect to tier 1 taxes under section 3231(e)(2) of the Internal Revenue Code of 1986 divided by 60, with the quotient rounded down to the nearest multiple of $100. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

The calendar year 1989 tier 1 tax base is $48,000. Dividing $48,000 by 60 yields $800. This amount is already a multiple of $100, so no further rounding is required. Subtracting $600 from $800 produces $200. The ratio of $200 to $900 is 0.22222222. Adding 1 produces 1.22222222. Multiplying $25 by 1.22222222 produces $30.56, which must then be rounded to $31. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness begining in registration periods after June 30, 1989, is determined to be $31.

By Authority of the Board.

Dated: December 1, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–28178 Filed 12–6–88; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Act (26 U.S.C. section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1989, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1989, 32.6 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 67.4 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated: December 1, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–28179 Filed 12–6–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Beckman Instruments, Inc.
Common Stock, $.10 Par Value (File No. 7–4051)
Bond International Gold
Warrants expiring 7/31/91 No Par Value (File No. 7–4052)
Huntway Partners, L.P.
Preference Units (File No. 7–4053)
International Telecharge
Common Stock $.01 Par Value (File No. 7–4054)
Pegasus Gold
Common Stock, No Par Value (File No. 7–4055)
Fredericks of Hollywood
Common Stock, $1.00 Par Value (File No. 7–4056)
Heritage Media Corporation
Class A Common Stock, $.01 Par Value (File No. 7–4057)
First Australia Fund Inc.
Common Stock, $.01 Par Value (File No. 7–4058)
First Iberian Fund
Common Stock, $.01 Par Value (File No. 7–4059)
Arctic Alaska Fisheries
Common Stock, $.01 Par Value (File No. 7–4060)

Koger Equity
Common Stock, $.01 Par Value (File No. 7–4061)
Organogenesis Inc.
Common Stock, $.01 Par Value (File No. 7–4062)
RAC Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7–4063)
Thermo Instrument Systems
Common Stock, $.10 Par Value (File No. 7–4064)
World Income Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–4065)
The Blackstone Target Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–4066)
DWG Corporation
Common Stock, $.10 Par Value (File No. 7–4067)
Hudson Foods, Inc.
Common Stock, $.01 Par Value (File No. 7–4068)
Hovnanian Enterprise, Inc.
Common Stock, $.01 Par Value (File No. 7–4069)
Jones Intercable Investors, LP
Class A Units (File No. 7–4070)
Medio Incorporated
Common Stock $1.00, Par Value (File No. 7–4071)
Municipal High Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4072)
Seamen's Corporation
Class A Common Stock, $.01 Par Value (File No. 7–4073)
Premier Industrial Corporation
Common Stock, Without Par Value (File No. 7–4074)

These securites are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 22, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–28155 Filed 12–6–88; 8:45 am]
BILLING CODE 8010–01–M

[File No. 22–16767]

Application and Opportunity for Hearing; TRINOVA Corp.

November 28, 1988.

Notice is hereby given that TRINOVA Corporation (the "Company"), an Ohio corporation, has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of National Bank of Detroit (the "Bank") under an indenture which provides for the issuance of unsecured debt securities between the Company and the Bank, which was heretofore qualified under the Act and dated as of January 28, 1988 (the "1988 Indenture") and under an indenture which provides for the issuance of unsecured debt securities between Libby-Owens-Ford Company, the former name of the Company, and the Bank, which was heretofore qualified under the Act and dated as of November 20, 1975 (the "1975 Indenture") is not so likely to involve a material conflict of interest under the Act as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under either indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Under the 1975 Indenture, the Company issued approximately $2,964,724 of 9% Installment Notes (the "Notes") due in annual installments through November 19, 1990 of which approximately $588,600 remains outstanding. The Notes were registered under the Securities Act of 1933 (the "1933 Act") and the 1975 Indenture was qualified under the Act.

(2) Under the 1988 Indenture, the Company issued $50,000,000 of 9.5% Senior Sinking Fund Debentures (the "Debentures") due February 1, 2018. The Debentures were registered under the 1933 Act and the 1988 Indenture was qualified under the Act.

(3) The Company is not in default in any respect under the 1975 Indenture or the 1988 Indenture.

(4) The Notes and Debentures are wholly unsecured and rank *pari passu.*

(5) Trusteeship under the 1975 Indenture and the 1988 Indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the 1988 Indenture.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application, which is on file in the Offices of the Commission's Public Reference Section, File No. 22–16767, 450 Fifth Street NW., Washington, DC 20549.

Notice is Further Given that any interested person may, not later than December 23, 1988 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised the application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–28156 Filed 12–6–88; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0051.
Form Number: 990–C.
Type of Review: Resubmission.
Title: Farmers' Cooperative Association Income Tax Return.
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Response/ Recordkeeping

Recordkeeping
69 hours 7 minutes
Learning about the law or the form
17 hours 49 minutes
Preparing the form
34 hours 37 minutes
Copying, assembling, and sending the form to IRS
4 hours 17 minutes

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 754,980 hours.
OMB Number: 1545–0717.
Form Number: W–4S.
Type of Review: Resubmission.
Title: Request for Federal Income Tax Withholding From Sick Pay.
Description: Section 3402(o) of the Internal Revenue Code extends income tax withholding to sick pay payments made by third parties upon request of the payee. The information is used to determine the amount to be withheld from the third-party sick pay payments.
Respondents: Individuals or households.
Estimated Number of Respondents: 500,000.

Estimated Burden Hours Per Response/ Recordkeeping

Recordkeeping
40 minutes
Learning about the law or the form
7 minutes
Preparing the form
38 minutes
Copying, assembling, and sending the form
23 minutes

Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 685,210 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Irving W. Wilson, Jr.,
Departmental Reports Management Officer.
[FR Doc. 88–28085 Filed 12–6–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0092.
Form Number: 1041 and related Schedules D, J, and K–1
Type of Review: Resubmission.
Title: U.S. Fiduciary Income Tax Return; Capital Gains and and Losses; Trust Allocation of an Accumulation Distribution; Beneficiary's Share of Income, Deductions, Credits, etc.
Description: Internal Revenue Code section 6012 requires that an annual income tax return be filed for estates and trusts. Data is used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 2,250,000.
Estimated Burden Hours Per Response/Recordkeeping:

Form 1041	Sched. D	Sched. J	Sched. K–1
Record-keeping: 2 hrs. 37 min.	59 min	13 min	1 hr. 12 min.
Learning about the law or the form: 1 hr. 40 min.	16 min	17 min	15 min.
Preparing the form: 2 hrs. 38 min.	1 hr. 16 mins.	58 min	32 min.
Copying, assembling, and sending the form to IRS: 35 min	28 min	35 min	20 min.

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 23,343,524 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Irving W. Wilson, Jr,
Departmental Reports Management Officer.
[FR Doc. 88–28086 Filed 12–6–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224,

15th and Pennsylvania Avenue NW., Washington DC 20220.

Internal Revenue Service

OMB Number: 1545–0984.

Form Number: 8586.

Type of Review: Resubmission.

Title: Low-Income Housing Credit.

Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Response:

Recordkeeping, 5 hours 1 minute;
Learning about the law or the form, 3 hours 40 minutes;
Preparing the form, 10 hours 26 minutes; and
Copying, assembling, and sending the form to IRS, 1 hour 53 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,050,000 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 88–28087 Filed 12–6–88; 8:45 am]

BILLING CODE 4810–25–M

VOL 53 ISS 235 DE 7 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

Amended Notice of Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 48613 (December 1, 1988).

MEETING TIME AND DATE: 3:30 p.m., Friday, December 9, 1988.

CORRECTED ADDRESS: The location of the meeting published in the previous announcement noted above was incorrect. The correct address is: Rooms 108 and 109 of the Nashville Convention Center, 601 Commerce Street, Nashville, Tennessee 37203–3724.

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–28194 Filed 12–5–88; 2:39 pm]

BILLING CODE 6335–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Monday, December 5, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY 1990 Budget

The Commission will consider issues related to the Commission's budget for Fiscal Year 1990.[1]

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

November 5, 1988.

[FR Doc. 88–28188 Filed 12–5–88; 2:39 pm]

BILLING CODE 6355–01–M

[1] The Commission decided that agency business required scheduling the FY 90 Budget matter without the usual advance notice.

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Friday, December 2, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the applications of Summit Bank of Indianapolis, Indianapolis, Indiana, a proposed new bank in organization, for Federal deposit insurance, for consent to purchase the assets of and assume the liability to pay deposits made in Indianapolis Morris Plan Corporation, Indianapolis, Indiana, an operating noninsured industrial loan and development company, and for consent to establish nine offices of Indianapolis Morris Plan Corporation as branches of the resultant bank.

The Board also considered matters relating to the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 2, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–28198 Filed 12–5–88; 2:39 pm]

BILLING CODE 6714–01–M

UNITED STATES INSTITUTE OF PEACE

DATES: Thursday, and Friday, December 8, and 9, 1988.

TIME: 9:15 a.m. to 5:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—9:15 a.m. to 12:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

AGENDA (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-seventh meeting. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457–1700.

Dated: December 5, 1988.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 88–28197 Filed 12–5–88; 2:39 pm]

BILLING CODE 3155–01–M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 4:00–7:00 p.m., Monday, December 12, 1988.

PLACE: Marvel Hall, The American Chemical Society Building, 1155–16th Street, NW., Washington, DC

STATUS: Open.

PURPOSE AND AGENDA: The fourth of a series of Public Workshops scheduled by the growing United States Institute of Peace, "The Meaning of Munich Fifty Years Later," will focus on basic questions regarding the significance of Munich regarding thinking on contemporary peace and international security issues. The panel members will be drawn from the scholarly and policymaking worlds.

CONTACT: Ms. Aileen C. Hefferren, Telephone 202–457–1700.

Dated: November 28, 1988.

Samuel W. Lewis,

President.

[FR Doc. 88–28180 Filed 12–5–88; 8:54 am]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 53, No. 235
Wednesday, December 7, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Deposit of Customer Funds in Foreign Depositories

Correction

In notice document 88-26860 beginning on page 46911 in the issue of Monday, November 21, 1988, make the following corrections:

1. On page 46913, in the second column, in the first complete paragraph, in the fourth line, "option" was misspelled. Also, in the seventh line, "county" should read "country" and "those" should read "whose".

2. On page 46914, in the second column, under **Subordination Agreement**, in the first paragraph, remove the following sentence:
Such accounts also may be subject to the risk that events could occur which would hinder or prevent the availability of these funds for distribution to customers.

3. On page 46915, in the third column, in the heading for *Example 4*, in the third line, "*Available*" should read "*Unavailable*".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-69-NG]

Seagull Marketing Services, Inc.; Application To Import Natural Gas From and Export Natural Gas To Canada

Correction

In notice document 88-27140 beginning on page 47569 in the issue of Wednesday, November 23, 1988, make the following corrections:

1. On page 47569, in the second column, under the **DATE**, in the fifth line, "November 23, 1988" should read "December 23, 1988".

2. On page 47570, in the first column, at the end of the document, "FR Doc. 88-27104" should read "FR Doc. 27140".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-137-000 et al.]

Mid-Louisiana Gas Co. et al.; Natural Gas Certificate Filings

Correction

In notice document 88-27657 beginning on page 48578 in the issue of Thursday, December 1, 1988, make the following correction:

On page 48578, in the second column, under **2. Northwest Pipeline Corporation**, the bracketed information should read as follows:
[Docket No. CP89-263-000]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3468-5]

Federal Agency Hazardous Waste Compliance Docket

Correction

In notice document 88-24828 beginning on page 46364 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46365, in the third column, in the first complete paragraph, in the fourth fifth lines, "* *" should read "***".

2. On the same page, in the same column, in the third complete paragraph, in the sixth line, after "As" insert "of".

3. On page 46366, in the third column, in the first line, "was" should read "were".

In the table, "REVISIONS TO 2/12/88 DOCKET.—REMOVALS, beginning on page 46366, make the following corrections:

4. On page 46366, in the 1st column, in the 2nd "Interior" entry, in the 2nd column, remove "No. 5."; in the 3rd column, remove "St. NW."; and in the 10th column, insert "X".

5. On page 46367, in the first column, in the second entry for "Navy", in the third column, "Center" was misspelled.

6. On the same page, in the first column, in the sixth entry for "Agriculture", in the third column, "?" should read ".".

7. On page 46368, in the first column, in the first entry for "Army", in the third column, "Lymanb" should read "Lyman".

8. On the same page, in the first column, in the first entry for "Interior", in the second column, "CO" should read "Co" and "Marshing" should read "Marsing".

9. On the same page, in the first column, in the second entry for "Interior", the second column should read "BLM—Bunker Hill.".

10. On the same page, in the first column, in the second entry for "Army", in the fourth column, "Jolet" should read "Joliet".

11. On the same page, in the first column, in the entry for "Corps of Engineers, Civil", in the second column, "Cir." should read "Ctr.".

12. On the same page in the first column, in the entry for "Defense", in the third column, "Herwood" should read "Hernwood".

13. On page 46369, in the first column, in the entry for "Navy", in the second column, "Facility" was misspelled.

14. On the same page, in the first column, in the first entry for "Agriculture", in the second column, "Chipewa" should read "Chippewa".

15. On the same page, in the first column, in the fifth entry for "Army", in the second column, "Mt." should read "MT.".

16. On the same page, in the first column, in the sixth entry for "Army", in the second column, "MD" should read "ND".

17. On the same page, in the 1st column, in the 10th entry for "Army", in the 2nd column, remove "Ship" and insert "Shop No. 5"; and in the third column after "15th" insert "St., NW."

18. On the same page, in the 1st column, in the 12th entry for "Army", in the second column, "MD" should read "ND".

19. On page 46371, in the first column, in the entry for "Interior", in the second column, "USODI" should read "USDOI".

20. On the same page, in the 1st column, in the 14th entry for "Army" in

the 6th column, "85601" should read "84601".

In the table, "REVISIONS TO 2/12/88 DOCKET.—ADDITIONS, beginning on page 46372, make the following corrections:

21. On page 46372, in the first column, in the third entry for "Air Force", in the third column, "Iliamma" should read "Iliamna".

22. On page 46373, in the first column, in the entry for "Defense", in the second column, "Center-Estero" should read "Center—Estero"; and in the third column, "Panorama" was misspelled.

23. On page 46374, in the first column, in the second entry for "Air Force", in the third column, "mi" should read "Mi"; and in the fourth column, "Spring" should read "Springs".

24. On the same page, in the first column, in the first entry for "Army, in the second column, "Fitzsmons" should read "Fitzsimons".

25. On the same page, in the first column, in the third entry for "Transportation", in the second column, "Materials" was misspelled.

26. On the same page, in the first column, in the third entry for "Air Force", in the third column, "HG" should read "HQ".

27. On page 46376, in the first column, in the first entry for "Energy", in the third column, "RD" should read "Rd".

28. On the same page, in the first column, in the entry for "Defense", in the seventh column, remove "X".

29. On page 46377, in the first column, in the entry for "Interior", in the fourth column, "Cristi" should read "Christi".

30. On the same page, in the first column, in the first entry for "Energy", in the second column, remove "3"; and in the third column, "2400" should read "3 2400".

31. On the same page, in the first column, in the sixth entry for "Energy", in the fourth column, "Opympia", should read "Olympia".

In the table, "CORRECTIONS TO DOCKET LISTING, beginning on page 46378, make the following corrections:

32. On page 46378, in the first column, in the third entry for "Air Force", in the eighth column, remove "X".

33. On the same page, in the first column, in the sixth entry for "Air Force", in the eighth column, insert "X".

34. On the same page in the first column, in the eighth entry for "Air Force", in the ninth column, insert "X".

35. On the same page, in the 1st column, in the 14th entry for "Air Force", the 1st column should read "C—Air Force".

36. On the same page, in the first column, in the third entry for "Army", in the eighth column, insert "X".

37. On page 46379, in the first column, in the first entry for "Transportation", in the fourth column, "Kokiak" should read "Kodiak".

38. On the same page, in the first column, in the second entry for "Tennessee Valley Authority", in the second column, "pit." should read "Plt.".

39. On the same page, in the first column, in the seventh entry and in the eighth entry for "Tennessee Valley Authority" in the first column, "Authority" was misspelled.

40. On the same page, in the first column, in the fifth entry for "Air Force", in the ninth column, remove "X".

41. On page 46380, in the first column, in the fifth entry for "Interior", in the second column, "Kennecott" should read "Kenecott".

42. On the same page, in the first column, in the ninth entry for "Interior", the third column should read "T1NR14ESEC35,36".

43. On the same page, in the 1st column, in the 10th entry for "Interior", the 1st column should read "O—Interior"; the fourth column should read "AZ"; the fifth column should read "85343" and in the sixth column remove "85343".

44. On the same page, in the 1st column, in the 11th entry for "Interior", the third column should read "T7SR17WSEC34".

45. On the same page, in the 1st column, in the 14th entry for "Interior", in the eighth column, insert "X".

46. On the same page, in the first column, in the first entry for "Air Force", the third column should read "20th Street & E Aves. D & M."

47. On the same page, in the first column, in the sixth entry for "Air Force", the third column should read "63ABG/DE".

48. On the same page, in the first column, in the eighth entry for "Air Force", in the eighth column, insert "X"; and in the ninth column, remove "X".

49. On the same page, in the first column, in the second entry for "Army", in the seventh column, remove "X".

50. On the same page, in the first column, in the third entry for "Army", in the fourth column, "Riverbrook" should read "Riverbank".

51. On the same page, in the 1st column, in the 1st entry for "Defense", in the 6th column, "94533" should read "94553"; and in the 10th column, remove "X".

52. On page 46381, in the first column, in the ninth entry for "Navy", in the second column, after "Crows" insert "Land".

53. On page 46382, in the first column, in the first entry for "Army", in the fifth column, "DO" should read "CO".

54. On the same page, in the first column, in the second entry for "Energy", in the second column, after "Research" insert "Inst.".

55. On the same page, in the first column, in the first entry for "EPA", in the first column, "EAP" should read "EPA".

56. On the same page, in the first column, in the sixth entry for "Interior", in the sixth column, insert "81435".

57. On the same page, in the first column, in the first entry for "Treasury", in the fifth column, "CD" should read "DC".

58. On the same page, in the first column, in the second entry for "Treasury", in the fifth column, "CD" should read "DC".

59. On page 46383, in the first column in the second entry for "Air Force", in the seventh column, insert "X".

60. On the same page, in the first column, in the fifth entry for "Air Force", in the seventh column, remove "X".

61. On the same page, in the first column, in the seventh entry for "Air Force", in the seventh column, remove "X".

62. On the same page, in the first column, in the ninth entry for "Air Force", in the seventh column, remove "X".

63. On the same page, in the 1st column, in the 14th entry for "Air Force", in the 3rd column, "CSB/DE" should read "CSG/DE".

64. On the same page, in the first column, in the second entry for "Energy", in the second column, "Penellas" should read "Pinellas".

65. On the same page, in the first column, in the second entry for "EPA", seventh column, remove "X"; and in the eighth column, insert "X".

66. On the same page, in the 1st column, in the 7th entry for "Navy", in the 10th column, insert "X".

67. On page 46384, in the first column, in the third entry for "Army", in the fourth column, remove "Forest Park".

68. On page 46385, in the first column, in the first entry for "Interior", in the third column, the address "T3N R24W SEC15" should read "T3N R24E SEC 15".

69. On the same page, in the first column, in the fourth entry for "Interior", "O—Interior" should read "C—Interior".

70. On the same page, in the first column, in the fifth entry for "Army", "D—Army" should read "O—Army".

71. On page 46386, in the first column, in the first entry for "Air Force", in the seventh column, delete the "X".

72. On the same page, in the first column, in the second entry for "Air

Force", in the seventh column, add an "X".

73. On the same page, in the first column, in the first and second entries for "Army", in the second column, "IUS Army" should read "US Army".

74. On the same page, in the first column, in the seventh and eighth entries for "Air Force", in the second column, "Hascom" should read "Hanscom".

75. On the same page, in the first column, in the fourth entry for "Army", in the fifth column, "01433" should read "01432".

76. On the same page, in the first column, in the fifth entry for "Army", in the second column, the facility name should read "US Army Natick Research Devel and Engineering Ctr.".

77. On the same page, in the first column, in the sixth entry for "Army", in the second column, the facility name should read "US Army Research Devel and Engineering Ctr.".

78. On the same page, in the first column, in the seventh entry for "Army", in the second column, the facility name should read "USW Army Natick R&D Labs, Sudbury Anx.".

79. On the same page, in the first column, in the eighth entry for "Army", in the second column, the facility name should read "US Army Fort Devens Sudbury, Annex".

80. On the same page, in the first column, in the ninth entry for "Army", in the second column, the facility name should read "US Army Matls and Mech Res Ctr.".

81. On the same page, in the 1st column, in the 10th entry for "Army", in the second column, the facility name should read "US Army Matls Tech Lab.".

82. On the same page, in the first column, in the second entry for "Defense", "O—Defense" should read "C—Defense".

83. On page 46387, in the first column, in the third entry for "Navy", in the fourth column, add the city "Clinton".

84. On the same page, in the first column, in the fifth entry for "Navy", the agency name should read "C—Defense".

85. On the same page, in the first column, in the eighth entry for "Navy", in the sixth column, "209003" should read "20903".

86. On the same page, in the first column, in the fourth entry for "Air Force", in the ninth column, add an "X".

87. On page 46388, in the first column, in the third and fourth entries for "Air Force", in the fourth column, "Seymour Johnson Air Force Base" should read "Seymour Johnson AFB".

88. On the same page, in the first column, in the first entry for "Navy", in the seventh column, delete the "X".

89. On the same page, in the first column, in the third and fourth entries for "Navy", in the third column, the facility address should read "Fire Fighting Training Pit."

90. On the same page, in the 1st column, in the 1st entry for "Agriculture", in the 10th column, delete the "X".

91. On the same page, in the first column, in the fifth entry for "Air Force", in the second column, " Offut" should read "Offutt".

92. On the same page, in the 1st column, in the 6th entry for "Air Force", "O—Air Force" should read "C—Air Force"; in the 2nd column, "Offut" should read "Offutt"; and in the 10th column, add an "X".

93. On page 46389, in the first column, in the third entry for "Air Force", in the fourth column, "Holloman" should read "Hollman".

94. On the same page, in the first column, in the third entry for "Interior", in the second column, "Materials" should read "Manerals".

95. On page 46390, in the 3rd and 5th entries for "Interior", in the 10th column, add an "X".

96. On the same page, in the first column, in the seventh entry for "Interior", in the third column, "T28NR44SEC4" should read "T28NR44ESEC4".

97. On the same page, in the first column, in the 12th entry for "Interior", delete the "X" in the seventh column and add an "X" to the 8th column; and delete the "X" in the 9th column and add an "X" to the 10th column.

98. On the same page, in the first column, in the fourth entry for "Air Force", in the seventh and eighth columns, delete the "X's".

99. On page 46391, in the first column, in the second entry for "Corps of Engineers, Civil.", in the seventh column, add an "X".

100. On the same page, in the first column, in the first entry for "Air Force", in the eighth column, delete the "X".

101. On the same page, in the first column, in the ninth entry for "Army", in the second column, "Hayes" should read "Hays".

102. On page 46392, in the first column, in the second entry for "EPA", in the fourth column, "Narragansett" was misspelled.

103. On the same page, in the first column, in the second entry for "Interior", in the third column, "Sachvest" should read "Sachuest".

104. On the same page, in the first column, in the second entry for "Navy", in the fourth column, "North Kingston" should read "North Kingstown".

105. On the same page, in the first column, in the fourth entry for "Navy", in the sixth column, "02905" should read "03445".

106. On the same page, in the first column, in the sixth entry for "Navy", in the sixth column, "02840" should read "02841".

107. On the same page, in the 1st column, in the 2nd entry for "Defense", in the 10th column, delete the "X".

108. On the same page, in the first column, in the first and second entries for "Energy", in the second column, the facility name should read "US DOE Savannah River Plt.".

109. On the same page, in the 1st column, in the 11th, 12th and 14th entries for "Navy", in the 10th column, delete the "X".

110. On the same page, in the 1st column, in the 13th entry for "Navy", in the 8th column, add an "X"; and in the 10th column, delete the "X".

111. On page 46393, in the first column, in the fourth entry for "Army", in the fourth column, "San Antonio" was misspelled.

112. On page 46394, in the first column, in the second entry for "NASA", in the ninth column, add an "X".

113. On the same page, in the first column, in the second entry for "Army", in the second column, "Dougway" should read "Dugway".

114. On the same page, in the first column, in the third entry for "Interior", in the second column, "Buying" should read "Buyin".

115. On the same page, in the first column, in the third and fourth entries for "Interior", in the third column, in the second lines "Moab PARLABC" should read "PARLABC".

116. On the same page, in the 1st column, in the 5th entry for "Army", in the 10th column, delete the "X".

117. On page 46395, in the 1st column, in the 1st entry for "Navy", in the 10th column, add an "X".

118. On the same page, in the first column, in the first and second entries for "Agriculture", in the third column, "T31NR17E WM SEC7." should read "T31N R17E WM SEC7.".

119. On the same page, in the first column, in the second entry for "Air Force", in the ninth column, add an "X".

120. On the same page, in the 1st column, in the 3rd entry for "Army", in the 10th column, add an "X".

In the table, "UPDATE TO 2/12/88 DOCKET—NEW FACILITIES", beginning on

page 46396, make the following corrections:

121. On page 46396, in the first column, in the second entry for "Army", in the sixth column, "99793—5500" should read "99703-5500".

122. On the same page, in the first column, in the third entry for "Army", in the second column, "DA/Wheeler National Wildlife Refuge." should read "DOA/Wheeler National Wildlife Refuge.".

123. On page 46397, in the first column, in the first entry for "Army", in the third column, "Street" was misspelled.

124. On the same page, in the first column, in the second entry for "Army", in the sixth column, "97692" should read "96792"

125. On page 46398, in the first column, in the first entry for "NASA", in the third column, "Gentilly Rd" was misspelled.

126. On the same page, in the first column, in the second entry for "Agriculture", in the second column, "Laboratory" was misspelled.

127. On page 46400, in the first column, in the first entry for "Defense", in the third column, "Perry" was misspelled.

128. On the same page, in the first column, in the first entry for "Interior", in the sixth column, "76106" should read "79106".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 135 and 145

[Docket No. 25454; Amdt. Nos. 135-29 and 145-21]

RIN 2120-AC50

Foreign Repair Station Rules

Correction

In rule document 88-26934 beginning on page 47362 in the issue of Tuesday, November 22, 1988, make the following corrections:

1. On page 47366, in the third column, in the first complete paragraph, in the seventh line from the bottom, "of" should read "on".

2. On page 47368, in the second column, in the second complete paragraph, in the second line from the bottom, "for" should read "of".

3. On page 47369, in the second column, in the first complete paragraph, in the ninth line from the bottom, "deregulation" should read "derogation".

4. On page 47372, in the second column, in the second line from the bottom, "FAA" should read "FAR".

5. On page 47374, in the first column, in the first complete paragraph, in the fifth line, "collaborating" should read "collaboration".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments

Correction

In the issue of Friday, November 18, 1988, on page 46634 in the first column, a correction to FR Doc. 88-26718 appeared. Amendatory instruction 3 was inaccurately printed and should be corrected as follows: In the third and fourth lines, "(1)(1)(iii) through (1)(1)(v)" should read "(l)(1)(iii) through (l)(1)(v)".

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Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 393 and 396

Parts and Accessories Necessary for Safe Operation; Inspection, Repair and Maintenance; Final Rules

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VOL 53 ISS 235 DE 7 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC-127]

RIN 2125-AB45

Parts and Accessories Necessary for Safe Operation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 393, Parts and Accessories Necessary for Safe Operation, of the Federal Motor Carrier Safety Regulations (FMCSRs). These amendments affect the requirements for axles and attached parts, brake systems, frame and frame assemblies, lights, steering systems, suspension systems, fuel systems, and other vehicle parts and accessories. This action is being taken to implement Sections 206 and 210 of the Motor Carrier Safety Act of 1984 (the Act) and to ensure that commercial motor vehicles have the parts and accessories necessary for safe operation in interstate commerce. These amendments also make technical amendments to various sections of Part 393 to provide nomenclature changes, to make editorial changes, to make the regulations more readable, and to add new authority provided by the Act.

The today's **Federal Register**, in the same part, is published another final rule amending Part 396, Inspection, Repair and Maintenance.

EFFECTIVE DATE: March 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 366-1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832). The Act was signed into law by the President on October 30, 1984.

On January 10, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) (50 FR 1245) seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSRs. Due to the complexity of these two areas of rulemaking, the FHWA separated the rulemaking action for Part 393 (OMCS Docket No. MC-127; Notice No. 52 FR 5893) and published a notice of proposed rulemaking (NPRM) on February 26, 1987 (52 FR 5892). The comment period was extended to June 29, 1987. While the dockets for Parts 393 and 396 were separated, the FHWA has reviewed both parts together because of the close relationship of the subjects.

A total of 90 comments were received on this NPRM. Most of these comments addressed more than one part of the regulation. Approximately 2,000 pages of comments were received. The responses included:

35 from truck and bus industry trade associations,
6 from individual motor carriers,
11 from government agencies,
7 from individuals,
28 from manufacturers, and
3 from research institutions.

Background

The FHWA is charged with the important role of promulgating regulations for commercial motor vehicles operating on our Nation's highways. These regulations have a vital role in ensuring, to the maximum extent practical, the safe operation of such vehicles. At the same time, the FHWA is properly concerned that its regulations do not impose unnecessary burdens on the motor carrier industry, and yet protect the safety of the general public.

Section 210 of the Act directs the Secretary of Transportation to afford interested parties an opportunity to comment on Part 393 of the FMCSRs. Section 206 of the Act directs the Secretary to issue regulations to ensure that commercial motor vehicles are safely equipped. A commercial motor vehicle is defined by Section 204 of the Act as any self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property which: (1) Has a gross vehicle or combination weight rating of 10,001 pounds or more; (2) is designed to transport more than 15 passengers, including the driver; or (3) is used to transport hazardous materials in a quantity which requires the vehicle to be placarded.

The FHWA was assisted in reviewing Part 393. The FHWA funded the University of Michigan's Transportation Research Institute (UMTRI) to review European Safety Standards, the Society of Automotive Engineers, Inc.'s (SAE) Recommended Practices, and the various Canadian Safety Standards. The UMTRI was also charged with consulting with experts involved in the motor carrier industry (manufacturers, carriers, drivers, State and Federal enforcement personnel). An attempt was made to have this group of experts reach a consensus on various items contained in Part 393 (lighting devices, brakes, fuel systems, coupling devices, tires, protection against shifting or falling cargo, and miscellaneous parts and accessories). This study, including its recommendations, has been included in Docket No. MC-127 and used in this rulemaking.

Part 393 is the basis for the vehicle inspection currently performed on vehicles operated by motor carriers subject to the jurisdiction of the FMCSRs. It is important to note that Section 210 of the Act requires that each commercial motor vehicle pass an inspection, upon request, of all safety equipment required under Part 393 of the FMCSRs.

The final rule published today is substantially the same as proposed in the NPRM except that § 393.68, Natural Gas Fuel Systems, is deleted. Additional technical changes have been made to provide nomenclature changes consistent with the terminology of the Motor Carrier Safety Act of 1984. Technical changes have also been made to provide consistency with current FMVSS (Federal Motor Vehicle Safety Standards, 49 CFR Part 571). In response to comments, changes in format and wording have been made to the regulations for purposes of clarity. Minor editorial changes have also been made to make the regulations more readable. Those changes that are deemed significant are discussed in the Section-By-Section Analysis.

Review of Comments

The level of public interest was extensive. Due to the large number of comments to the NPRM, there will be no attempt to answer each individual comment; rather, the comments will be discussed by subject matter. Some comments request that additional research be done. Other commenters suggested changes that were not proposed initially in the NPRM and are therefore excluded from the final rule. However, since a number of these comments have merit, they will be addressed in future rulemaking in order to afford public comment on these proposals. As an example, the Environmental Protection Agency (EPA) requested that the minimum fill rate for gasoline fuel systems be changed to a rate of 10 gallons per minute.

One commenter supported all proposed revisions to Part 393. The other commenters supported various changes to Part 393. Several commenters requested closer coordination with the FMVSS. Every effort is being made to ensure the FMVSS and FMCSRs are

closely coordinated and consistent. This situation is made more complex because of a very detailed interrelationship between manufacturing, operations, maintenance, and inspection of a commercial vehicle. The FHWA fully intends to continue to work closely with the National Highway Traffic Safety Administration (NHTSA), the agency which promulgates the FMVSS, to ensure that future revisions to the FMCSRs and revisions to the FMVSS are consistent where appropriate.

Because of the close relationship of this Part with Part 396, Inspection, Repair and Maintenance, as discussed earlier, the FHWA also intends to continue to examine both parts in a future rulemaking. The intent of this action will be to streamline and consolidate the two parts. This examination will look at the possible elimination of standards that are contained in or will be included in the FMVSS or be eliminated because of minimal effects on safety.

One commenter requested raising the gross vehicle weight rating (GVWR) in the scope of this part from 10,000 to 15,000 pounds. The Act defines a commercial motor vehicle as any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property, if such vehicle has a GVWR of 10,001 or more pounds. Therefore, the Act mandates that commercial motor vehicles with a GVWR of 10,001 pounds or more be subject to these regulations.

One commenter questioned why § 393.1 was revised. The NPRM proposed to revise the terminology used in that section to conform to the language of section 204 of the Act. The amendment is intended to provide conformity with the Act and does not change the scope of Part 393. The proposed amendment has been adopted in the final rule.

One commenter questioned compliance dates. This regulation "grandfathers" all existing equipment and grants appropriate lead time for new vehicles when necessary as indicated in that specific paragraph of this part. The requirement for parking brakes on all vehicles has an effective date 1 year after the effective date of this regulation. FHWA believes that minor changes in light lenses, fuel tank certification, and certification of tow-bars can be accomplished within the effective date of the rulemaking.

Five commenters wanted to revise the definition of "rear extremity" as found in § 393.5. This definition was placed in the rule to improve the understanding of the requirements for location and placement of lighting devices. There were no attempts made to regulate the more complex issues of size and weight. Therefore, the definition used in this part will apply only to the placement of safety devices such as lights, reflectors, or reflective materials. Overall length and width should be properly addressed in the FHWA Docket No. 87-5 (52 FR 7834, March 13, 1987) (23 CFR Part 658).

Fifty-two comments were received on Subpart B—Lighting Devices, Reflectors, and Electrical Equipment. The FHWA agrees with many of the commenters that more research is needed for any major change of this regulation. Despite the ease with which lighting standards can be criticized, the present system has remained basically intact since the early 1950's and has served its purpose reasonably well. Some users have experimented with and recommend rear-facing turn signal repeater lamps mounted about midway back along the trailer on the right and left sides. Such recommendations need more data and information regarding cost-effectiveness before rulemaking can be considered.

Rather than specifying a distance from which the lamp is visible under specified conditions, the FHWA deemed it appropriate to require the wiring to be of such size so as to deliver the required design voltage to the lamp for which it is serving as a conduit. Section 393.77 has been revised accordingly.

The only other section to receive a large amount of comments was Subpart E—Fuel Systems, which received 36 comments. Five commenters mentioned that fuel gauges are not necessary and are very difficult to maintain. One commenter supported this requirement as being necessary for the safe operation of motor vehicles. The majority of those opposed to requiring fuel gauges believed gauges are not needed and should remain optional at the discretion of operators. The FHWA has decided not to require fuel gauges due to lack of supporting data concerning safety. Therefore, proposed § 393.65(h) has been deleted from this final rule.

Several commenters raised questions about the size of crossover lines and their protection. The FHWA believes that additional research is required to answer the questions regarding size and strength of protection for crossover lines.

Sixteen comments dealt with compressed natural gas (CNG) fuel systems. The FHWA has decided to postpone rulemaking on the subject of compressed natural gas as a fuel in commercial motor vehicles until the Gas Research Institute's (GRI's) 24-month, $400,000 research program under contract to Southwest Research Institute (SWRI) is completed. The contract is scheduled for completion in early 1989. That research program addresses the issues of stress corrosion cracking in vehicle-mounted CNG storage cylinders, nondestructive test procedures for cylinders, and derivation of national inspection intervals to ensure safe cylinder operation. It is clear that, at present, insufficient data is available on CNG cylinder fatigue mechanisms with which to establish a national maximum retest interval. The FHWA agrees with the Gas Research Institute that a major goal of the ongoing GRI-SWRI research program is to develop a test procedure which can be performed with the cylinder in place, and which provides at the minimum, the same amount of information about cylinder integrity as the established hydrostatic retest procedures in 49 CFR 173.34(c).

Several commenters indicated that Supart I, Protection Against Shifting or Falling Cargo, is not adequate for today's demands. Research in this area is being conducted and changes will be issued in a future NPRM if appropriate.

Section-by-Section Analysis

Section 393.1 Scope of the rules in this part

Wording in § 393.1 has been changed to comply with the terminology of the Motor Carrier Act of 1984.

Section 393.3 Additional equipment and accessories

Redesignated § 393.3 is former § 393.2.

Section 393.5 Definitions

Section 393.5 has been added to define certain terms used in this regulation. After review of the comments from the NPRM, the following definitions were changed to provide greater clarity and accuracy: Brake tubing/hose, converter dolly, emergency brake system, fittings, lash, lower half fifth wheel, play, stop lamp, and upper half fifth wheel.

The following definitions have been added to the final rule: Agricultural commodity trailer, heater, heavy hauler trailer, pulpwood trailer, reflective material, and saddle-mount.

The following definitions have been deleted: Composite container, container, container appurtenance, container valve, cylinder, dew point, flammable range, fuel supply container, pressure relief device, pressure relief channels, and manual shut-off valve. These definitions have been deleted because the FHWA has decided to delay rulemaking on compressed natural gas as explained in the discussion of the comments below.

Section 393.11 Lighting devices and reflectors

Section 393.11 incorporates into a tabular format §§ 393.12, 393.13, 393.14, 393.15, 393.16, and 393.18. The lighting requirements are amended to be in conformity with FMVSS 571.108. This change will require a lamp to illuminate the rear license plate on all vehicles, a backup lamp on buses, trucks, and truck tractors, and parking lamps on the front of buses and trucks of less than 80 inches in overall width.

After review of the comments from the NPRM, the proposed requirement for converter dollies to have 2 stop lamps and 2 tail lamps has been changed to require one each. Also based on comments received, several technical changes to the tabular format were incorporated into the final rule. For height above the road surface, the center of the lamp at curb weight of the vehicle will be used.

Section 393.19 Requirements for turn signaling systems

This section has been changed to correctly indicate that a bus, truck, or truck tractor shall have a switch or combination of switches that will cause the turn signals on a vehicle to flash simultaneously as a vehicular traffic hazard warning. The former rule used the term, "motor vehicle" which included a semitrailer and full trailer. The requirement was not intended to apply to such vehicles.

Section 393.20 Clearance lamps to indicate extreme width and height

After review of the comments, it was deemed appropriate to let this rule stand as is, due to the variance in trailer configurations, and variations in the manner in which cargo is covered.

Section 393.22 Combination of lighting devices and reflectors

The proposed change to § 393.22 in the NPRM has been deleted after review of the comments to avoid the possibility of confusing the approaching motorist with a combination turn signal/stop lamp of the same intensity, in the same housing, and using the same lens.

Section 393.24 Requirements for head lamps and auxiliary road lighting lamps

The footnote number 1 to § 393.24 is changed to update SAE references to 1985 and to show that should a conflict between SAE references and FMVSS 571.108 arise, FMVSS 571.108 will prevail.

Section 393.25 Requirements for lamps other than head lamps

Reference to a SAE 1959 standard is updated to 1985 in paragraph (c) and (d). As proposed in the NPRM, paragraph (e) is removed and paragraphs (f) and (g) redesignated (e) and (f), respectively. Color requirements are found in FMVSS 571.108.

Section 393.26 Requirements for reflectors

As proposed in the NPRM, paragraph (d) is removed. Paragraph (b) is changed to require compliance with the specifications in FMVSS 571.108 in effect at the time of manufacture.

Section 393.27 Wiring specifications

As proposed in the NPRM, specific reference is made to SAE recommended practices for ignition cable, battery cable, and primary cable. Subjective wording has been changed to require the power source and wiring to be of such size as to meet the requirements as found in FMVSS 571.108 for minimum candle power. The proposed requirements for 2 circuits on the trailer and color coding of these circuits have been deleted because they were determined to be too design restrictive.

Section 393.28 Wiring to be protected

The proposed change to this section in the NPRM has been modified so as not to require access to wiring from the outside of a fully loaded and locked trailer. This change was made as such a requirement would be counterproductive for the overall reliability of the total system. The proposed prohibition of wiring adjacent to the fuel tank has been changed to prohibit terminals or splices in the wiring above the fuel tank except for fuel gauge sender wiring and terminals.

Section 393.31 Overload protective devices

The wording in this section has been changed from "motor vehicle" to "bus, truck, or truck tractor" since overload protective devices are normally found on such vehicles. The exception for buses having a seating capacity of eight has been raised to 15, including the driver, to comply with the Motor Carrier Safety Act of 1984.

Section 393.41 Parking brake systems

The proposed change for parking brakes in the NPRM has been modified to conform to the requirements for parking brakes as found in FMVSS 571.121. Agricultural commodity trailers, heavy hauler trailers, and pulpwood trailers are exempt from FMVSS 571.121; however, this final rule requires such vehicles to carry sufficient chocking blocks to prevent movement when such vehicles are parked.

Section 393.42 Brakes required on all wheels

Section 393.42 is amended to include the illustration for light weight trailers inadvertently deleted from this section in OMCS Docket No. MC–124 (52 FR 2801, January 27, 1987).

Section 393.44 Front brake protection

The proposed change to § 393.44 in the NPRM is modified to read that a driver of a bus will have a means to apply the brakes on the rear wheels should breakage occur to any brake lines on any front wheel. This device may be located forward of the driver's seat. This change incorporates past interpretations of this rule.

Section 393.45 Brake tubing and hose, adequacy

In this section, general requirements remain the same as found in the present regulation. Paragraph (b) is changed to update the special requirements for brake tubing and hose to more current SAE recommended practices and test procedures. In paragraph (c) the reference to SAE Standard J844 has been moved to paragraph (b), and in paragraph (d) the intended use for metallic and nonmetallic brake tubing and hose is explained. Paragraph (d) also allows the use of tubing through a point of articulation under certain specific conditions.

Section 393.46 Brake tubing and hose connections

To § 393.46, a new paragraph (f) has been added to set standards for splices in brake tubing. This additional paragraph is necessary to make enforcement reasonable and uniform.

Section 393.50 Reservoir required

In § 393.50, paragraph (c), concerning applicability of this section, is eliminated to be in conformity with the Motor Carrier Safety Act of 1984, and paragraph (a) is revised to delete reference to paragraph (c).

Section 393.51 Warning devices and gauges

Section 393.51 has been revised to eliminate paragraph (g), which provided exceptions for certain types of vehicles. This amendment is consistent with the Motor Carrier Safety Act of 1984.

Section 393.65 All fuel systems

The NPRM proposed that fuel gauges become mandatory. After review of the

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comments received on the proposal, FHWA has decided not to make this requirement mandatory; therefore, there is no change to § 393.65.

Section 393.67 Liquid fuel tanks

Section 393.67 is amended by revising paragraph (f). This change requires the name of the manufacturer to be included in the certification on the fuel tank. This requirement was inadvertently removed in a previous rule change.

Section 393.68 Natural gas fuel system

This section was proposed in the NPRM, but FHWA has decided that such a section would be premature in light of the research presently being conducted. (See Review of Comments section for a more complete discussion of this decision.)

Section 393.69 Liquefied petroleum gas system

This section is revised to indicate the correct address of the National Fire Protection Association whose standard is referenced in this section.

Section 393.71 Coupling and towing methods, driveaway-towaway operation

This section has been changed to better define the method used to measure off-tracking and to require allowable maximum gross weight to be marked on the tow-bar. The definition for saddle-mount in paragraph (i) has been removed and placed in § 393.5. Paragraph (i) has been placed in reserve for future use. These changes have been made in order that this section may be more enforceable and easier to follow.

Section 393.75 Tires

This section has been changed to be more specific regarding damaged tires not to be used, and to require tire load ratings to meet the requirements of FMVS 571.119. More specific requirements for the use of damaged tires have been added to provide safer operating conditions. Table 1, "Tire Load Rating Limits at Various Cold Inflation Pressures," has been deleted.

Section 393.76 Sleeper berth

This section has been changed to allow a fluid-filled mattress, such as one filled with air or a liquid, to be used in lieu of an innerspring, cellular rubber, or foam mattress. This change makes the required equipment for a sleeper berth less restrictive.

Section 393.77 Heaters

This section has been changed by removing the definition of a heater and placing the definition in § 393.5. The exception for a bus having a seating capacity of eight has been changed to 15, including the driver, to comply with the Motor Carrier Safety Act of 1984.

Section 393.83 Exhaust system location

Exhaust system location requirements have been amended to require an exhaust system, and to prohibit the use of patches or leaking at any point below or forward of the driver/sleeper compartment, or in the case of a bus, forward of any window or door designed to be opened. These changes will increase safety by ensuring that exhaust fumes will not affect the alertness of the driver while driving or affect the driver's health or the health of passengers when being transported.

Section 393.84 Floors

The wording in this section has been changed so that flooring will not be permeated with oil or other substances likely to cause injury to a person using the floor as a traction surface. This has been added to give better protection to personnel and was the original intent of the regulation.

Section 393.87 Flags on projecting loads

This section has been changed to allow projecting loads to extend up to 4 inches beyond the side of the vehicle before flags are required at each point where a lamp is required. This is a relaxation of the present requirement, but is more precise in meaning and therefore more readily enforceable in a uniform manner.

Section 393.91 Buses, aisle seats prohibited

In this section the eight seat capacity exception for buses is increased to 15 passengers, including the driver, to comply with the Motor Carrier Safety Act of 1984. The exception for any bus engaged exclusively in the transportation of agricultural workers has been more clearly worded to state that these buses cannot have more than eight temporary folding seats located in the center aisle.

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

As proposed in the NPRM, this subpart has been added to Part 393 because these items are commonly found to be a cause of commercial vehicle accidents and personal injury.

Section 393.201 Frames

This section has been added since most problems encountered in truck/trailer frame failures are the result of improperly installed frame-mounted accessories. Therefore, these regulations are added to prohibit cracked, loose, sagging or broken frames or frame members. This section will also require that all accessories to a frame be bolted or riveted securely and prohibit welds and the drilling of holes to certain areas of the frame. Field repairs to frames are authorized. Trailers having frames will not be allowed to have cracked or broken frames.

Section 393.203 Cab and body components

This section has been added to ensure that cab, doors, hood, and seat are securely fastened and not missing. Components are required to be attached in a secure manner. This addition has been made primarily to protect the driver.

Section 393.205 Wheels

Wheel and tire failures are historically one of the major mechanical defects related to commercial vehicle accidents reported to the FHWA. This final rule prohibits cracks in wheels and rims, elongated (out-of-round) stud or bolt holes and missing or loose nuts or bolts.

Section 393.207 Suspension systems

Accident statistics generated by motor carriers of property filing accident reports with the FHWA show that suspension systems are the fourth ranked mechanical defect causing accidents. The condition of springs, axles, adjustable axles assemblies, torsion bars, and related devices are now included in Part 393.

Section 393.209 Steering Wheel Systems

In 1983, 5.9 percent of the reported mechanical defect related accidents involved steering systems. According to accident reports filed with the FHWA, steering wheel system problems and failures account for the third most serious mechanical defect resulting in accidents of motor carriers. As proposed in the NPRM, regulations concerning free play in steering wheels, defects in the steering column system, universal joints, and power steering systems are included in the final rule.

Effect on State Laws; Preemption

In issuing this final rule, the FHWA has considered the effect of the rule on State laws and regulations pertaining to commercial motor vehicle safety. The FHWA has determined that the requirements contained in this rule are the minimum requirements necessary for

the safe operation of commercial motor vehicles. Many of the changes to Part 393 contained in this final rule were made to provide consistency with existing Federal requirements contained in the FMVSS for the manufacture of commercial motor vehicles. Other changes were made to provide the requirements for parts and accessories that are necessary to conduct the periodic inspection required by section 210 of the Act. Therefore, the FHWA has determined that this final rule does not unnecessarily preempt State laws and regulations pertaining to commercial motor vehicle safety.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It is considered to be a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the sizable number of individuals and companies that may be impacted economically by certain rule changes promulgated herein. However, despite the number of individuals and companies that may be affected, it is anticipated that the economic impact of this rule to all individuals will be minimal. It is also anticipated that the benefits and opportunities for benefits to be derived from the rule will offset any costs. A regulatory evaluation/regulatory flexibility analysis has been prepared and is available for review in the public docket.

Under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Federalism Impact

In promulgating this rule, the FHWA has considered the President's Executive Order on "Federalism" issued on October 26, 1987. (E.O. 12612, 52 FR 41685) The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between the national government and the States. This rule implements a specific legislative directive to establish minimum Federal safety standards for commercial motor vehicles in interstate commerce contained in section 206 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 2505). Therefore, it has been determined that the Federalism implications to be considered under the Executive Order do not apply to this rule.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, by revising Part 393 as set forth below.

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on November 21, 1988.

Robert E. Farris,

Federal Highway Administrator.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

1. The authority citation for Part 393 is revised to read as follows:

Authority: Sec. 210 of Pub. L. No. 98–554, 98 Stat. 2839 (1984) (49 U.S.C. App. 2505); 49 U.S.C. 3102; 49 CFR 1.48.

2. Subpart A is revised to read as follows:

Subpart A—General

Sec.
393.1 Scope of the rules in this part.
393.3 Additional equipment and accessories.
393.5 Definitions.

Subpart A—General

§ 393.1 Scope of the rules in this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employee shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

§ 393.3 Additional equipment and accessories.

Nothing contained in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

§ 393.5 Definitions.

As used in this part, the following words and terms are construed to mean:

Agricultural Commodity Trailer. A trailer that is designed to transport bulk agricultural commodities in off-road harvesting sites and to a processing plant or storage location, as evidenced by skeletal construction that accommodates harvest containers, a maximum length of 28 feet, and an arrangement of air control lines and reservoirs that minimizes damage in field operations.

Brake. An energy conversion mechanism used to stop, or hold a vehicle stationary.

Brake tubing/hose. Metallic brake tubing, nonmetallic brake tubing and brake hose are conduits or lines used in a brake system to transmit or contain the medium (fluid or vacuum) used to apply the motor vehicle's brakes.

Bus. A vehicle designed to carry more than 15 passengers, including the driver.

Chassis. The load-supporting frame in a truck or trailer, exclusive of any appurtenances which might be added to accommodate cargo.

Clearance Lamp. A lamp used on the front and the rear of a motor vehicle to indicate its overall width and height.

Container Chassis. A semitrailer of skeleton construction limited to a bottom frame, one or more axles, specially built and fitted with locking devices for the transport of cargo containers, so that when the chassis and container are assembled, the units serve the same function as an over the road trailer.

Converter dolly. A motor vehicle consisting of a chassis equipped with one or more axles, a fifth wheel and/or equivalent mechanism, and drawbar, the attachment of which converts a semitrailer to a full trailer.

Curb weight. The weight of a motor vehicle with standard equipment, maximum capacity of fuel, oil, and coolant; and, if so equipped, air conditioning and additional weight of optional engine. Curb weight does not include the driver.

Emergency Brake System. A mechanism designed to stop a vehicle after a single failure occurs in the service brake system of a part designed to contain compressed air or brake fluid or vacuum (except failure of a common valve, manifold brake fluid housing or brake chamber housing).

Fifth Wheel. A device mounted on a truck tractor or similar towing vehicle (e.g., converter dolly) which interfaces with and couples to the upper coupler assembly of a semitrailer.

Fuel Tank Fitting. Any removable device affixed to an opening in the fuel tank with the exception of the filler cap.

Grommet. A device that serves as a support and protection to that which passes through it.

Hazard Warning Signal. Lamps that flash simultaneously to the front and rear, on both the right and left sides of a commercial motor vehicle, to indicate to an approaching driver the presence of a vehicular hazard.

Head Lamps. Lamps used to provide general illumination ahead of a motor vehicle.

Heater. Any device or assembly of devices or appliances used to heat the interior of any motor vehicle. This includes a catalytic heater which must meet the requirements of § 177.834(1) of this title when flammable liquid or gas is transported.

Heavy Hauler Trailer. A trailer with one or more of the following characteristics:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) Its body consists only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent "front-end structure" as that term is used in Section 393.106 of this title.

Identification Lamps. Lamps used to identify certain types of commercial motor vehicles.

Lamp. A device used to produce artificial light.

License Plate Lamp. A lamp used to illuminate the license plate on the rear of a motor vehicle.

Parking Brake System. A brake system used to hold a vehicle stationary.

Play. Any free movement of components.

Pulpwood Trailer. A trailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container, and with an arrangement of air control lines and reservoirs designed to minimize damage in off-road operations.

Rear Extremity. The rearmost point on a vehicle when the vehicle's cargo doors, tailgate or other permanent structure are positioned as they normally are when the vehicle is being driven. Non-structural protrusions such as tail lights, hinges, and latches are deleted from the determination of the rearmost point.

Reflective Material. A material conforming to Federal Specification L–S–300, "Sheeting and Tape, Reflective; Non-exposed Lens, Adhesive Backing," (September 7, 1965) meeting the performance standard in either Table 1 or Table 1A of SAE Standard J594f, "Reflex Reflectors" (January, 1977).

Reflex Reflector. A device which is used on a vehicle to give an indication to an approaching driver by reflected lighted from the lamps on the approaching vehicle.

Saddle-mount. A device, designed and constructed as to be readily demountable, used in driveaway-towaway operations to perform the functions of a conventional fifth wheel:

(1) Upper-half. "Upper-half" of a "saddle-mount" means that part of the device which is securely attached to the towed vehicle and maintains a fixed position relative thereto, but does not include the "king-pin;"

(2) Lower-half. "Lower-half" of a "saddle-mount" means that part of the device which is securely attached to the towing vehicle and maintains a fixed position relative thereto but does not include the "king-pin;" and

(3) King-pin. "King-pin" means that device which is used to connect the "upper-half" to the "lower-half" in such manner as to permit relative movement in a horizontal plane between the towed and towing vehicles.

Service Brake System. A primary brake system used for slowing and stopping a vehicle.

Side Extremities. The outermost point on the sides of the vehicle. Nonstructural protrusions such as tail lights, hinges, and latches are excluded from the determination of the outermost point.

Side Marker Lamp (Intermediate). A lamp shown to the side of a trailer to indicate the approximate middle of a trailer 30 feet or more in length.

Side Marker Lamps. Lamps used on each side of a trailer to indicate its overall length.

Steering Wheel Lash. The condition in which the steering wheel may be turned through some part of a revolution without associated movement of the front wheels.

Stop Lamps. Lamps shown to the rear of a motor vehicle to indicate that the service brake system is engaged.

Tail Lamps. Lamps used to designate the rear of a motor vehicle.

Turn Signals. Lamps used to indicate a change in direction by emitting a flashing light on the side of a motor vehicle towards which a turn will be made.

Upper Coupler Assembly. A structure consisting of an upper coupler plate, king-pin and supporting framework which interfaces with and couples to a fifth wheel.

Upper Coupler Plate. A plate structure through which the king-pin neck and collar extend. The bottom surface of the plate contacts the fifth wheel when coupled.

3. Subpart B is amended by revising § 393.11 and removing §§ 393.12, 393.13, 393.14, 393.15, 393.16 and 393.18 as follows:

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

§ 393.11 Lighting devices and reflectors.

The following Table 1 sets forth the required color, position, and required lighting devices by type of commercial motor vehicle. Diagrams illustrating the locations of lighting devices and reflectors, by type and size of commercial motor vehicle, are shown immediately following Table 1. All lighting devices on motor vehicles placed in operation after (the effective date of this regulation) must meet the requirements of 49 CFR 571.108 in effect at the time of manufacture of the vehicle. Motor vehicles placed in operation on or before (the effective date of this regulation) must meet either the requirements of this Subchapter or Part 571 of this title in effect at the time of manufacture.

TABLE 1.—REQUIRED COMMERCIAL VEHICLE LIGHTING EQUIPMENT

Item on the vehicle	Quantity	Color	Location	Position	Height above road surface in inches measured from the center of the lamp at curb weight	Required lighting devices/vehicles
Headlamps	2 At Least	White	Front	On the front at the same height, an equal number at each side of the vertical centerline as far apart as practicable.	Not less than 22 nor more than 54.	A, B, C

TABLE 1.—REQUIRED COMMERCIAL VEHICLE LIGHTING EQUIPMENT—Continued

Item on the vehicle	Quantity	Color	Location	Position	Height above road surface in inches measured from the center of the lamp at curb weight	Required lighting devices/vehicles
Turn Signal (Front) See Footnotes #2 & 12.	2	Amber	At or Near Front.	One on each side of the vertical centerline at the same height and as far apart as practicable.	Not less than 15 nor more than 83.	A, B, C
Identification Lamp (Front) Footnote #1.	3	Amber	Front	Mounted on the vertical centerline of the vehicle or the vertical centerline of the cab where different from the centerline of the vehicle.	All three on same level as close as practicable to the top of the vehicle with lamp centers spaced not less than 6 inches or more than 12 inches apart.	B, C
Tail Lamp See Footnotes #5 & 11.	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 15 and 72.	A, B, C, D, E, F, G, H
Stop Lamp See Footnotes #5 & 13.	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 15 and 72	A, B, C, D, E, F, G
Clearance Lamps See Footnotes #9, 10, & 15.	2	Amber	One on each side of front.	One on each side of the vertical centerline to indicate width.	Both on same level as high as practicable.	B, C, D, G, H
	2	Red	One on each side of rear.	One on each side of the vertical centerline to indicate overall width.	Both on same level as high as practicable.	B, D, G, H
Side Marker Lamp, Intermediate	2	Amber	One on each side.	At or near midpoint between front and rear side marker lamps, if over 30' in length.	Not less than 15	A, B, D, F, G
Reflex Reflector Intermediate (Side).	2	Amber	One on each side.	At or near midpoint between front and rear side reflectors if over 30' in length.	Between 15 and 60	A, B, D, F, G
Reflex Reflector (Rear) See Footnotes #5, 6, & 8.	2	Red	Rear	One on each side of vertical centerline, as far apart as practicable.	Both on same level, between 15 and 60.	A, B, C, D, E, F, G
Reflex Reflector (Rear Side) Footnote #4.	2	Red	One on each side (rear).	As far to the rear as practicable	Both on same level, between 15 and 60.	A, B, D, F, G
Reflex Reflector (Front Side)	2	Amber	One on each side (front).	As far to the front as practicable	Between 15 and 60	A, B, C, D, F, G
License Plate Lamp Rear See Footnote #11.	1	White	At rear license plate.	To illuminate the license plate from the top or sides.	No requirements	A, B, C, D, F, G
Side Marker Lamp (Front)	2	Amber	One on each side.	As far to the front as practicable	Not less than 15	A, B, C, D, F
Side Marker Lamp (Rear) See Footnotes #4 & 8.	2	Red	One on each side.	As far to the rear as practicable	Not less than 15 and on the rear of trailer, not more than 60.	A, B, D, F, G
Turn Signal (Rear) See Footnotes #5 & 12.	2	Amber or Red.	Rear	One lamp on each side of the vertical centerline as far apart as practicable.	Both on the same level, between 15 and 83.	A, B, C, D, E, F, G
Identification Lamp (Rear) See Footnotes # 3, 7 & 15.	3	Red	Rear	One as close as practicable to vertical centerline. One on each side with lamp centers spaced not less than 6" or more than 12" apart.	All three on same level as close as practicable to the top of the vehicle.	B, D, G
Vehicular Hazard Warning Flashing Lamps See Footnote # 12.	2	Amber	Front	One lamp on each side of vertical centerline as far apart as practicable.	Both on same level, between 15 and 83.	A, B, C, D, E, F, G
	2	Amber or Red.	Rear			
Backup Lamp See Footnote # 14.	1	White	Rear	Rear	No requirement	A, B, C
Parking Lamp	2	Amber or white.	Front	One lamp on each side of vertical centerline as far apart as practicable.	Both on same level, between 15 and 72.	A

* Lighting Required per Type of Commercial Vehicle as Shown **Last Column of Table.**

A. Small buses and trucks less than 80 inches in overall width.
B. Buses and trucks 80 inches or more in overall width.
C. Truck Tractors.
D. Large semitrailers and full trailers 80 inches or more in overall width except converter dollies.
E. Converter dolly.
F. Small semitrailers and full trailers less than 80 inches in overall width.
G. Pole Trailers.
H. Projecting loads.
Lamps and reflectors may be combined as permitted by Paragraphs 393.22 and S4.4 of 49 CFR 571.108, Equipment combinations.

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Footnote—1

Identification lamps may be mounted on the vertical centerline of the cab where different from the centerline of the vehicle, except where the cab is not more than 42 inches wide at the front roofline, then a single lamp at the center of the cab shall be deemed to comply with the requirements for identification lamps. No part of the identification lamps or their mountings may extend below the top of the vehicle windshield.

Footnote—2

Unless the turn signals on the front are so constructed (double-faced) and located as to be visible to passing drivers, two turn signals are required on the rear of the truck tractor, one at each side as far apart as practicable.

Footnote—3

The identification lamps need not be visible or lighted if obscured by a vehicle in the same combination.

Footnote—4

Any semitrailer or full trailer vehicles manufactured on and after March 1, 1979, shall be equipped with rear side-marker lamps at a height of not less than 15 inches (381 mm) nor more than 60 inches (1524 mm) above the road surface, as measured from the center of the lamp on the vehicle at curb weight. The rear side marker lamps shall be visible in the vehicle's rearview mirrors when the trailer is tracking straight.

Footnote—5

For purposes of these regulations, each converter dolly shall be equipped with one stop lamp, one tail lamp, and two reflectors on the rear at each side when towed singly by another vehicle. Each converter dolly shall be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle.

Footnote—6

Pole trailers will have two reflectors, one on each side, placed to indicate extreme width of the trailer.

Footnote—7

Pole trailers may have three identification lamps mounted on the vertical centerline of the rear of the cab of the truck tractor drawing the pole trailer, and higher than the load being transported, in lieu of the three identification lamps mounted on the rear vertical centerline of the trailer.

Footnote—8

Pole trailers shall have on the rearmost support for the load, one combination marker lamp or two single lamps showing amber to the front and red to the rear and side, mounted on each side to indicate maximum width of the pole trailer; and one red reflector on each side of the rearmost support for the load.

Footnote—9

Any motor vehicle transporting a load which extends more than 4 inches beyond the width of the motor vehicle, or having projections beyond the rear of such vehicles, shall be equipped with the following lamps in addition to other required lamps, have the loads marked

Loads projecting more than 4 inches beyond sides of motor vehicles:

(1) The foremost edge of the projecting load at its outermost extremity shall be marked with an amber lamp visible from the front and both sides.

(2) The rearmost edge of the projecting load at its outermost extremity shall be marked with a red lamp visible from the rear and side.

(3) If any portion of the projecting load extends beyond both the foremost and rearmost edge, it shall be marked with an amber lamp visible from the front, both sides, and rear.

(4) If the protecting load does not measure more than 3 feet from front to rear, it shall be marked with an amber lamp visible from the front, both sides, and rear, except that if the projection is located at or near the rear it shall be marked by a red lamp visible from front, side, and rear.

Footnote—10

Projections beyond rear of motor vehicles. Motor vehicles transporting loads which extend more than 4 feet beyond the rear of the motor vehicle, or which have these tailboards or tailgates extending more than 4 feet beyond the body, shall have projections marked as follows:

(1) On each side of the projecting load, one red lamp, visible from the side, located so as to indicate maximum overhang.

(2) On the rear of the projecting load, two red lamps, visible from the rear, one at each side; and two red reflectors visible from the rear, one at each side, located so as to indicate maximum width.

Footnote—11

To be illuminated when tractor headlamps are illuminated.

Footnote—12

Every bus, truck, and truck tractor shall be equipped with a signaling system that, in addition to signaling turning movements, shall have a switch or combination of switches that will cause the two front turn signals and the two rear signals to flash simultaneously as a vehicular traffic signal warning, required by § 392-22(a). The system shall be capable of flashing simultaneously with the ignition of the vehicle on or off.

Footnote—13

To be actuated upon application of service brakes.

Footnote—14

Backup lamp required to operate when bus truck, or truck tractor is in reverse.

Footnote—15

When the rear identification lamps are mounted at the extreme height of a vehicle, rear clearance lamps need not meet the requirement that they be located as close as practicable to the top of the vehicle.

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Truck Tractor
Rear View

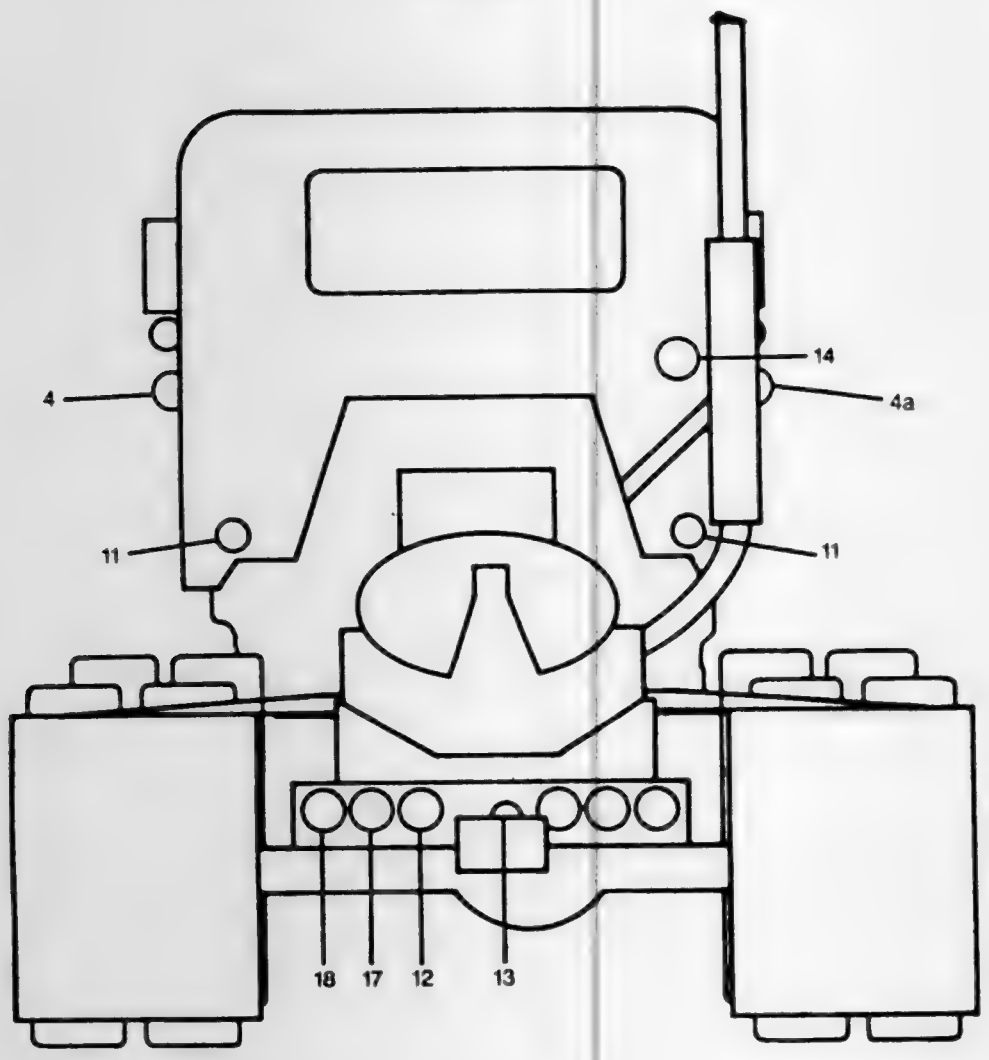

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Truck Tractor
Front & Side View

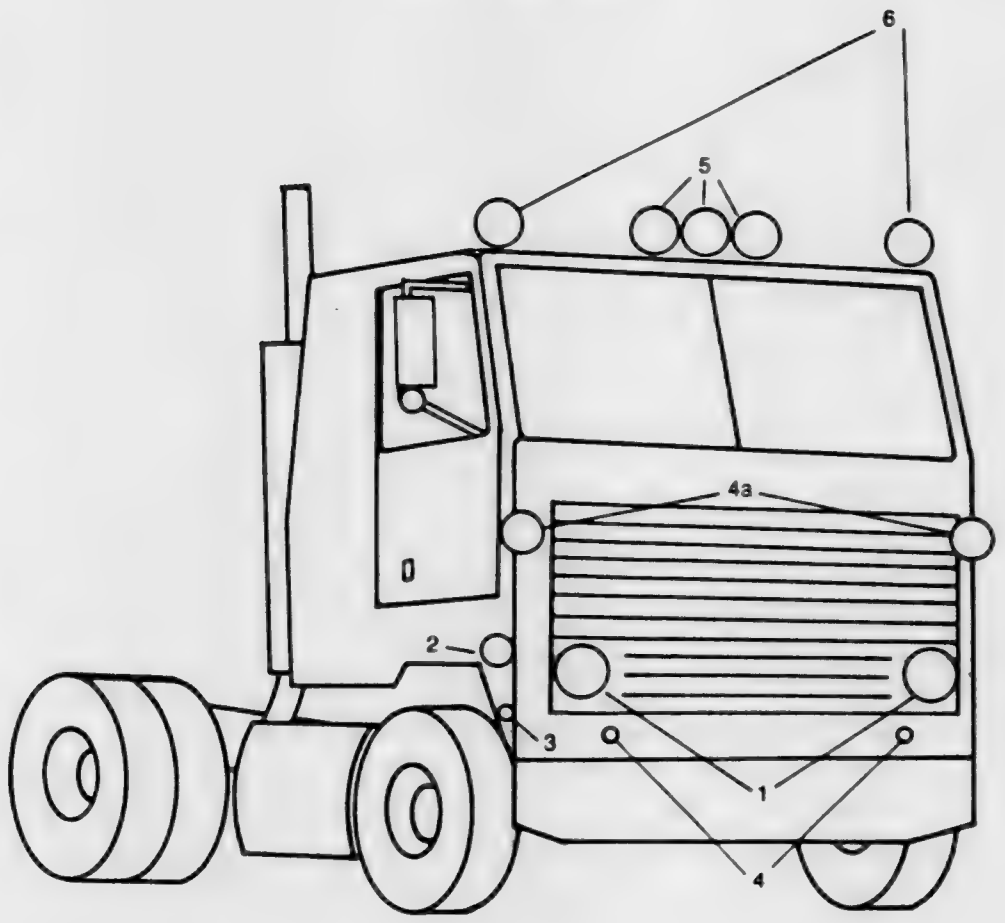

Large Trailers

Rear

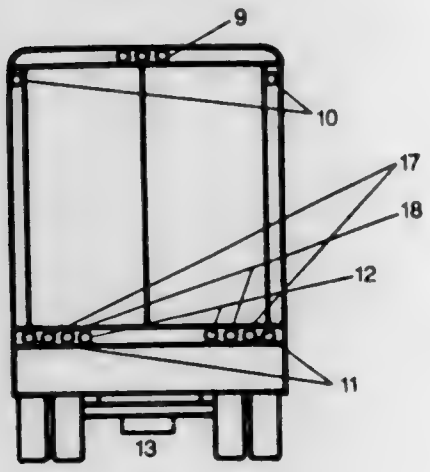

Front

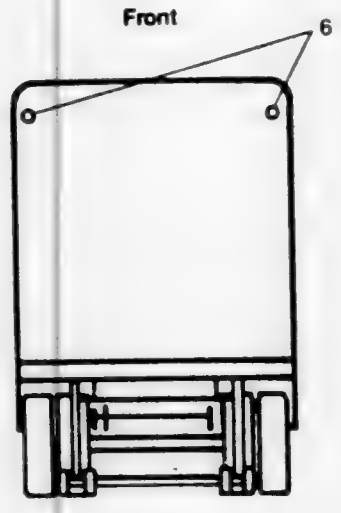

Each Side

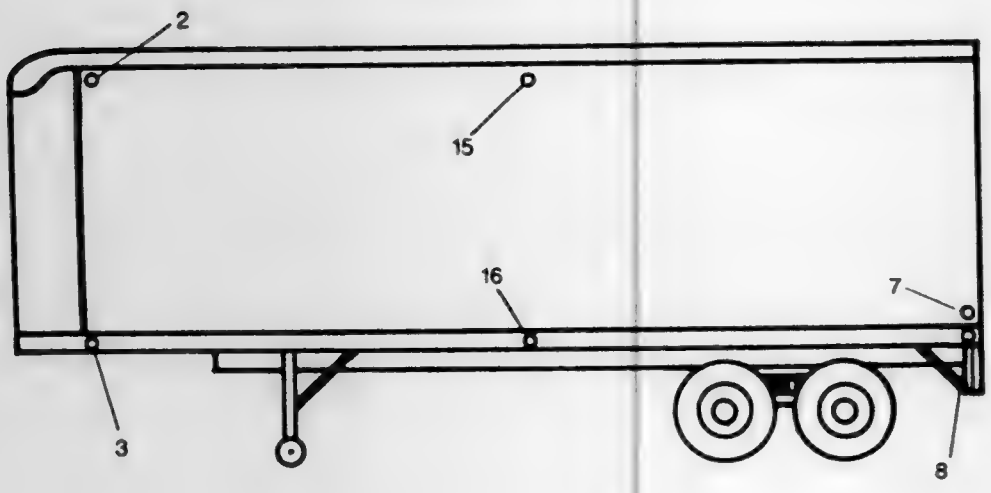

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Over 80 inches

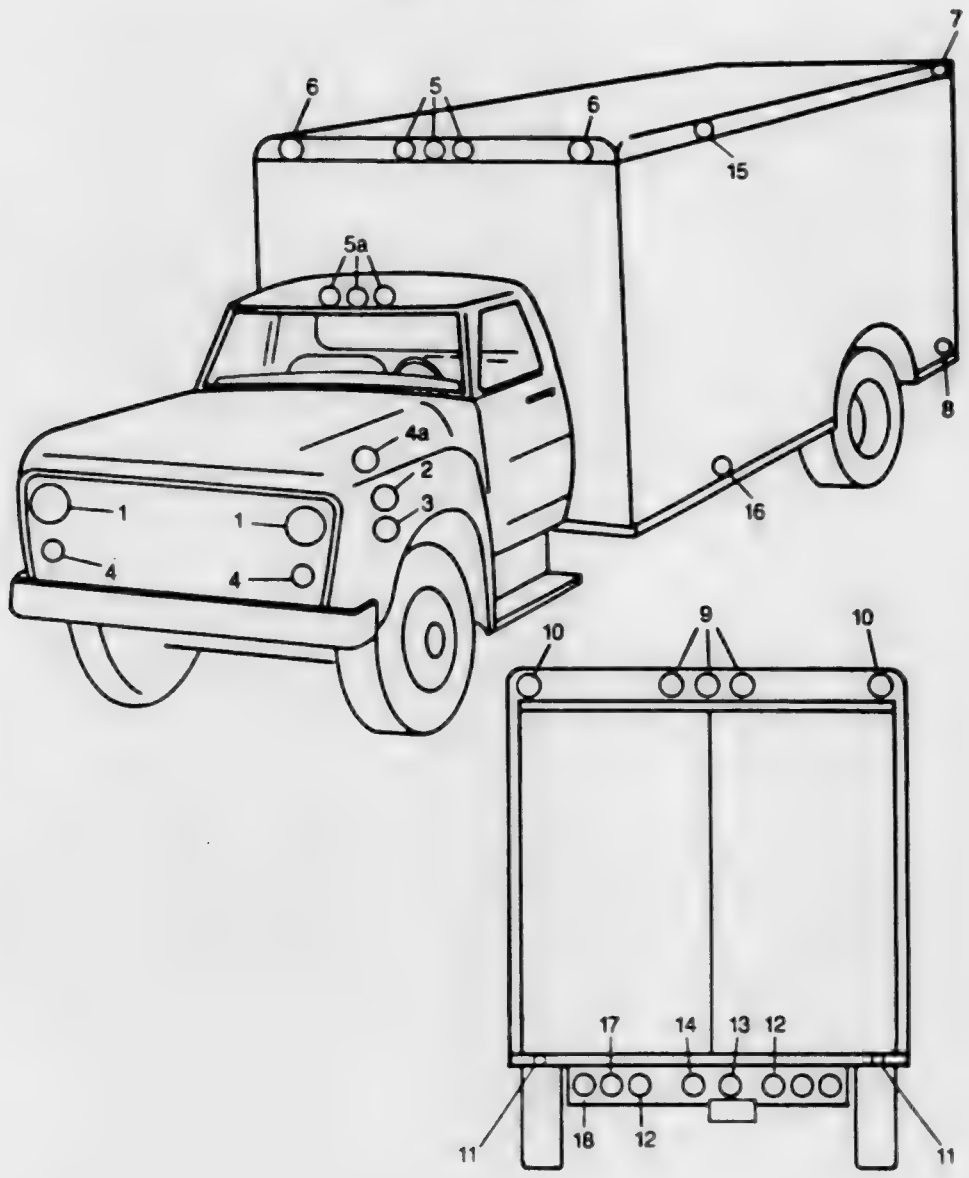

Under 80 Inches

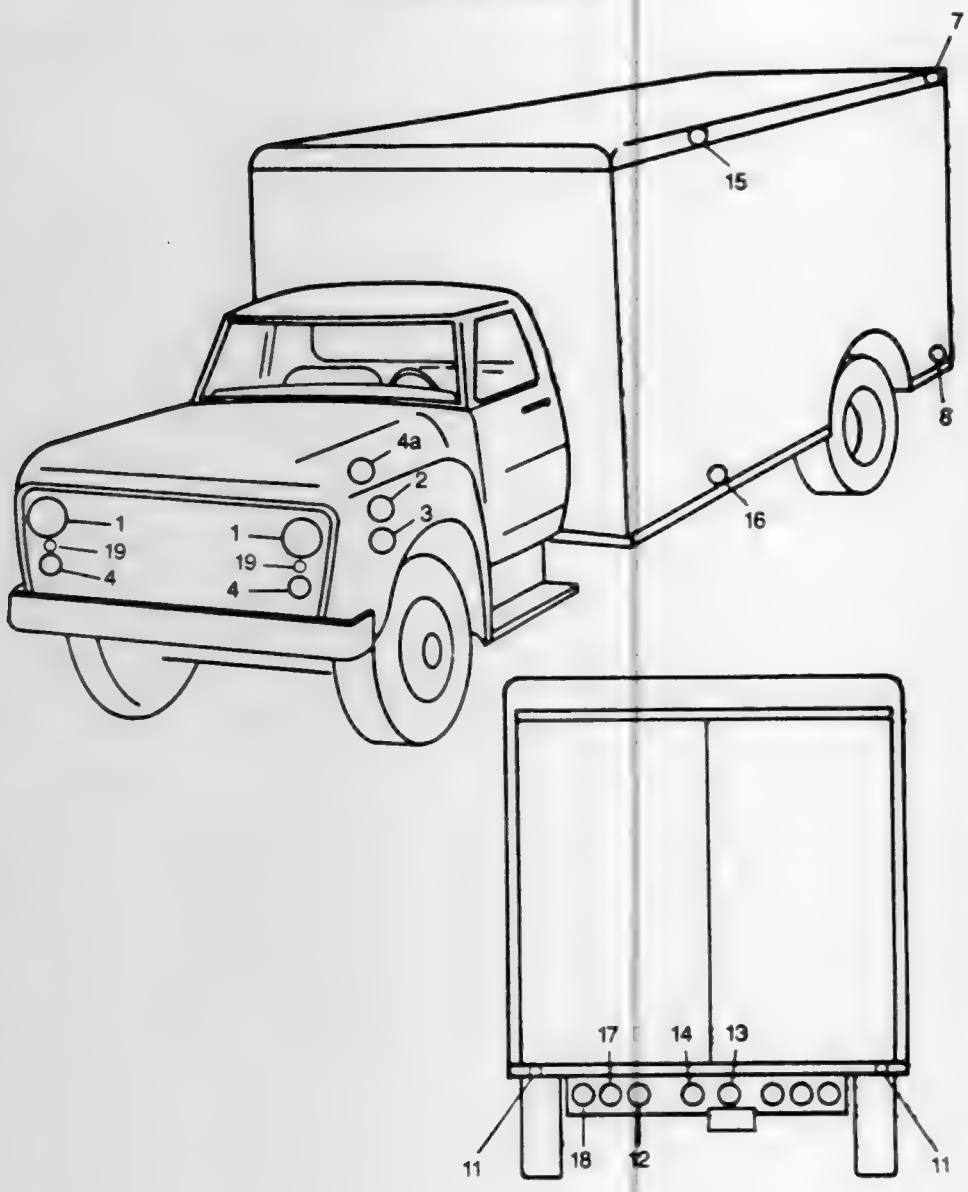

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Under 80 Inches

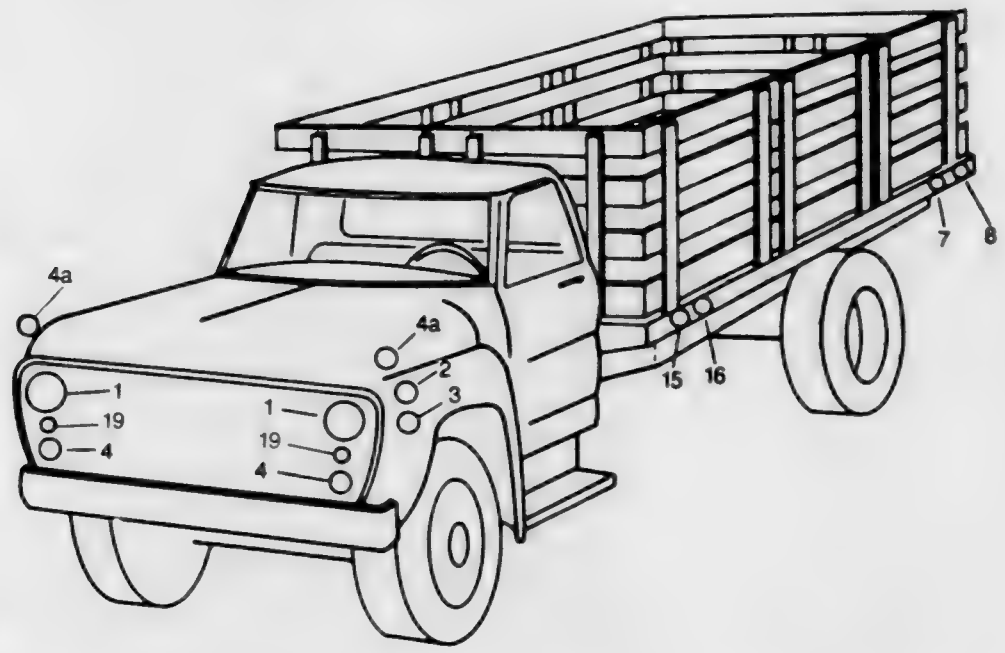

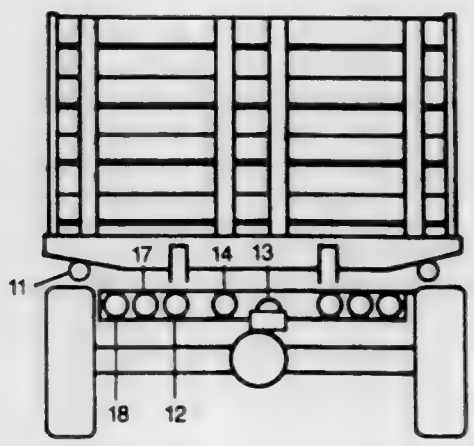

Large Bus

Front

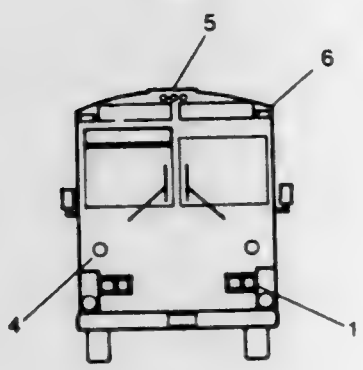

Rear

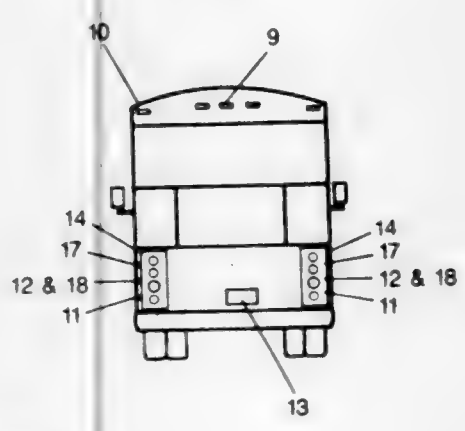

Each Side

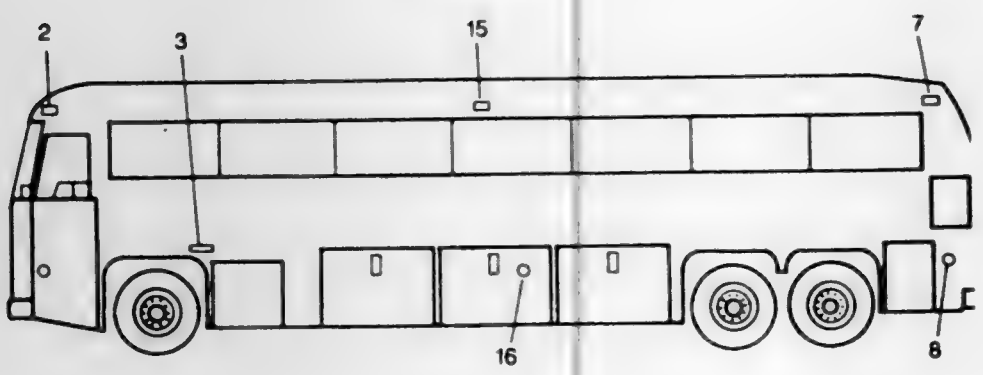

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Pole Trailers — All Vehicle Widths

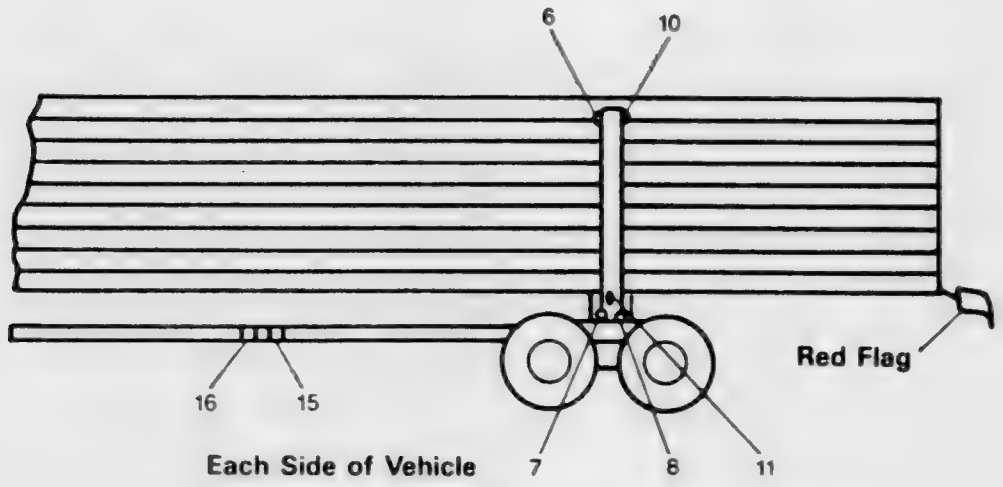

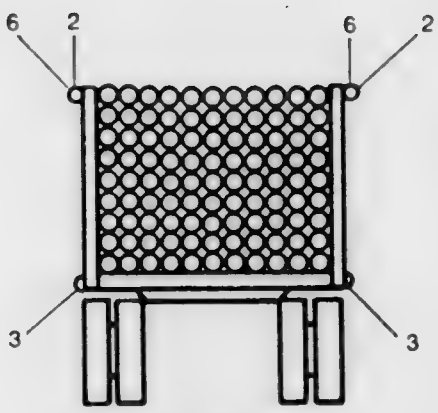

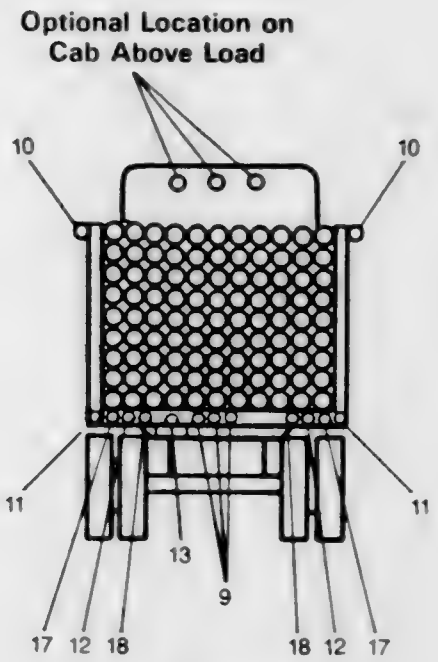

Container Chassis

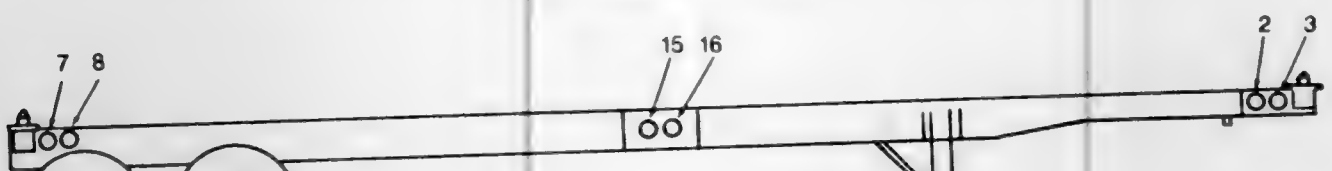

Chassis for Containers

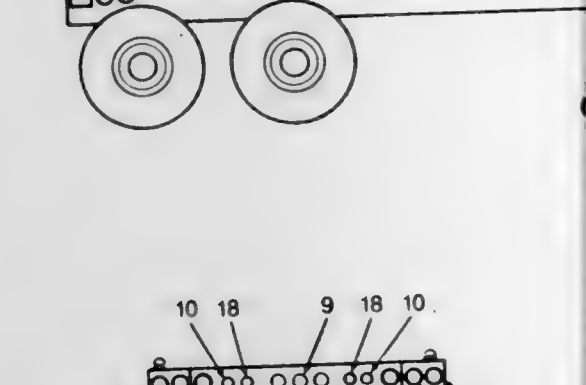

Rear

Front

Converter Dolly

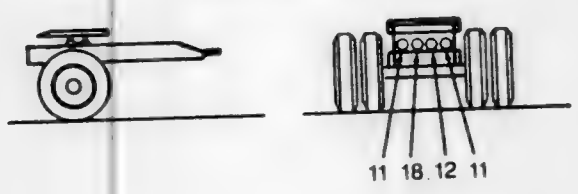

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Legend (Used in Illustrations)

1. Headlamps (2)-White (4 optional)
2. Side-marker lamps. Front (2)-Amber
3. Side reflectors. Front (2)-Amber
4. Turn-signal lamps. Front (2)-Amber
4a. Turn-signal lamps. Front (2)-Amber (Optional location)
5. Identification lamps. Front (3)-Amber
5a. Identification lamps. Front (3)-Amber (Optional location)
6. Clearance lamps. Front (2)-Amber
7. Side-marker lamps. Rear (2)-Red
8. Side-reflectors. Rear (2)-Red
9. Identification lamps. Rear (3)-Red
10. Clearance lamps. Rear (2)-Red
11. Reflectors Rear (2)-Red
12. Stop lamps. Rear (2)-Red
13. License plate lamp. Rear (1)-White
14. Backup lamp. Rear (1)-White (location optional provided optional requirements are met)
15. Side-marker lamps. Intermediate (2)-Amber (if vehicle is 30' or more overall length)
16. Side reflectors. Intermediate (2)-Amber (if vehicle is 30' or more overall length)
17. Turn signal lamps. Rear (2)-Amber of Red
18. Tail lamps. Rear (2)-Red
19. Parking lamps. Front 2-Amber or White

§ 393.12 [Removed]

§ 393.13 [Removed]

§ 393.14 [Removed]

§ 393.15 [Removed]

§ 393.16 [Removed]

§ 393.18 [Removed]

* * * * *

4. Section 393.19 is revised to read as follows:

§ 393.19 Requirements for turn signaling systems.

(a) Every bus, truck, or truck tractor shall be equipped with a signaling system that in addition to signaling turning movements shall have a switch or combination of switches that will cause the two front turn signals and the two rear turn signals to flash simultaneously as a vehicular traffic hazard warning as required by § 392.22 with the ignition on or off.

(b) Every semitrailer and full trailer shall be equipped so as to have the two rear turn signals to flash simultaneously with the two front turn signals of the towing vehicle as a vehicular traffic hazard warning as required by § 392.22(a).

5. The footnote to § 393.24(c) is amended by revising paragraph (a), removing paragraphs (b) and (c) and adding a new paragraph (b) to read as follows:

§ 393.24 Requirements for head lamps and auxiliary road lighting lamps.

* * * * *

1 * * *

(a) As found in the 1985 edition of the SAE Handbook with respect to parts and accessories other than lighting devices and reflectors.

(b) When reference is made in these regulations to SAE Standards or SAE Recommended Practices, they shall be as found in the 1985 edition of the SAE Handbook:

(1) With respect to parts and accessories other than lighting devices and reflectors:

(2) Lighting devices and reflectors on motor vehicles manufactured on and after March 7, 1990, shall conform to FMVSS 571.108 (49 CFR 571.108) in effect at the time of manufacture of the vehicle. Should a conflict arise between FMVSS 571.108 and a SAE Standard, FMVSS 571.108 will prevail.

* * * * *

§ 393.25 [Amended]

6. Section 393.25 is amended by substituting the date "1985" for "1959" in the introductory text of paragraph (c) and paragraphs (c)(2) and (3); amending the introductory text of paragraph (d) to remove the year "1959" preceding the words "SAE Standards"; by removing paragraph (e); by redesignating paragraphs (f) and (g) to (e) and (f), respectively; and correcting the reference in the last sentence of redesignated paragraph (f), Stop lamp operation, to read as "paragraph (e) of this section."

7. Section 393.26 is revised by removing paragraph (d) and redesignating paragraph (e) as (d). Paragraphs (b) and (c) are revised to read as follows:

§ 393.26 Requirements for reflectors.

* * * * *

(b) *Specifications.* All required reflectors except those installed on vehicles tendered for transportation in driveaway and towaway operations shall comply with FMVSS 571.108 (49 CFR 571.108) in effect at the time the vehicle was manufactured or the current FMVSS 571.108 requirements.

(c) *Certification and markings.* All reflectors required to conform to the specifications in paragraph (b) shall be certified by the manufacturer or supplier that they do so conform, by marking with the manufacturer's or supplier's name or trade name and the letters "SAE-A". The marking in each case shall be visible when the reflector is in place on the vehicle.

* * * * *

8. Section 393.27 is revised to read as follows:

§ 393.27 Wiring specifications.

(a) Wiring for both low voltage (tension) and high voltage (tension) circuits shall be constructed and installed so as to meet design requirements. Wiring shall meet or exceed, both mechanically and electrically, the following SAE Standards as found in the 1985 edition of the SAE Handbook:

(1) Commercial vehicle engine ignition systems-SAE J557-High Tension Ignition Cable.

(2) Commercial vehicle battery cable-SAE J1127-Jan 80-Battery Cable.

(3) Other commercial vehicle wiring-SAE J1128-Low Tension Primary Cable.

(b) The source of power and the electrical wiring shall be of such size and characteristics as to provide the necessary voltage as the design requires to comply with FMVSS 571.108.

(c) Lamps shall be properly grounded.

Note: This shall not prohibit the use of the frame or other metal parts of a motor vehicle as a return ground system provided truck-tractor semitrailer/full trailer combinations are electrically connected.

9. Section 393.28 is revised to read as follows:

§ 393.28 Wiring to be protected.

(a) The wiring shall—

(1) Be so installed that connections are protected from weather, abrasion, road splash, grease, oil, fuel and chafing;

(2) Be grouped together, when possible, and protected by nonconductive tape, braid, or other covering capable of withstanding severe abrasion or shall be protected by being enclosed in a sheath or tube;

(3) Be properly supported in a manner to prevent chafing;

(4) Not be so located as to be likely to be charred, overheated, or enmeshed in moving parts;

(5) Not have terminals or splices located above the fuel tank except for the fuel sender wiring and terminal; and

(6) Be protected when passing through holes in metal by a grommet, or other means, or the wiring shall be encased in a protective covering.

(b) The complete wiring system including lamps, junction boxes, receptacle boxes, conduit and fittings must be weather resistant.

(c) Harness connections shall be accomplished by a mechanical means.

10. In § 393.31 the first sentence shall be numbered (a) and the second sentence is designated as paragraph (b) and revised to read as follows:

§ 393.31 Overload protective devices.

* * * * *

(b) Trucks, truck-tractors, and buses meeting the definition of a commercial motor vehicle and manufactured after June 30, 1953 shall have protective devices for electrical circuits arranged so that:

(1) the headlamp circuit or circuits shall not be affected by a short circuit in any other lighting circuits on the motor vehicle; or

(2) the protective device shall be an automatic reset overload circuit breaker if the headlight circuit is protected in common with other circuits.

11. In Subpart C, § 393.41(a) is revised to read as follows:

§ 393.41 Parking brake system.

(a) Every commercial motor vehicle manufactured on and after [one year after [the effective date of this rulemaking]], except an agricultural commodity trailer, converter dolly, heavy hauler or pulpwood trailer, shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination under any condition of loading as required by FMVSS 571.121. An agricultural commodity trailer, heavy hauler or pulpwood trailer shall carry sufficient chocking blocks to prevent movement when parked.

* * * * *

§ 393.42 [Amended]

12. Section 393.42 is amended to add at the end of the section an illustration for brake requirements for light trailers as follows:

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(Diagrams to illustrate § 393.42 for brake requirements for light trailers.)

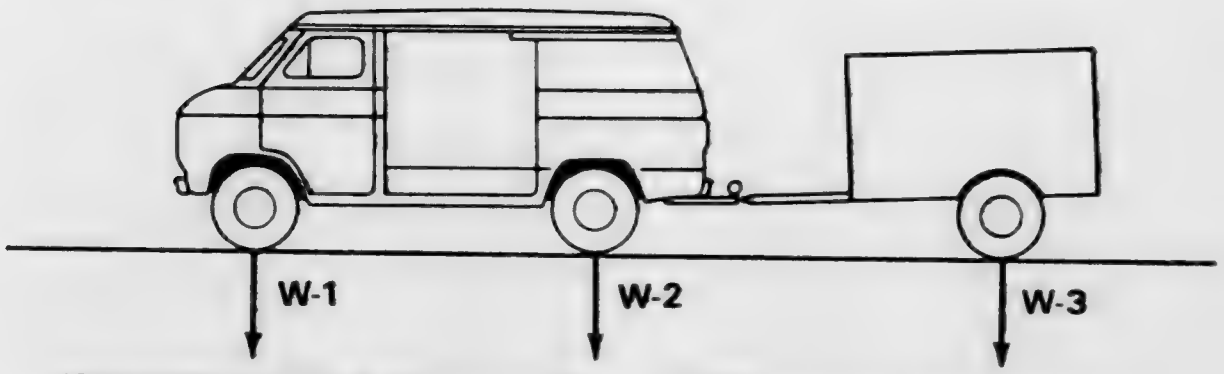

(Semitrailer or 2-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if W-3 is greater than 40 percent of the sum of W-1 and W-2.)

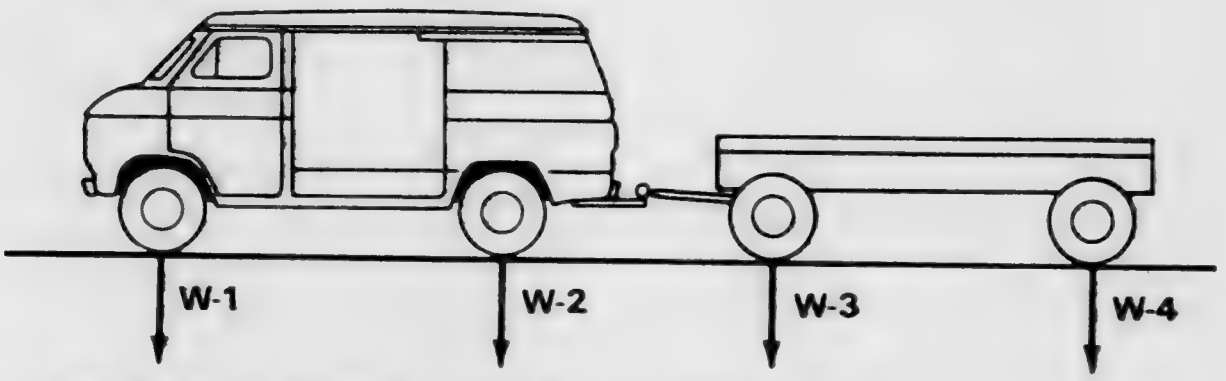

(Full trailer or 4-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if the sum of W-3 and W-4 is greater than 40 percent of the sum of W-1 and W-2.)

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13. Section 393.44 is revised to read as follows:

§ 393.44 Front brake lines, protection.

On every bus, if equipped with air brakes, the braking system shall be so constructed that in the event any brake line to any of the front wheels is broken, the driver can apply the brakes on the rear wheels despite such breakage. The means used to apply the brakes may be located forward of the driver's seat as long as it can be operated manually by the driver when the driver is properly restrained by any seat belt assembly provided for use. Every bus shall meet this requirement or comply with the regulations in effect at the time of its manufacture.

14. Section 393.45 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 393.45 Brake tubing and hose, adequacy.

* * * * *

(b) *Special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose.*

(1) Metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing, and brake hose installed on a commercial motor vehicle on and after March 7, 1989, must meet or exceed one of the following specifications set forth in the SAE Handbook, 1985 edition:

(i) Metallic Air Brake Tubing—SAE Recommended Practice J1149—Metallic Air Brake System Tubing and Pipe—July 76.

(ii) Nonmetallic Air Brake Tubing—SAE Recommended Practice J844—Nonmetallic Air Brake System Type B—OCT 80.

(iii) Air Brake Hose—SAE Recommended Practice J1402—Automotive Air Brake Hose and Hose Assemblies—JUN 85.

(iv) Hydraulic Brake Hose—SAE Recommended Practice J1401 Road Vehicle-Hydraulic Brake Hose Assemblies for Use with Non-Petroleum Base Hydraulic Fluid JUN 85.

(v) Vacuum Brake Hose—SAE Recommended Practice J1403 Vacuum Brake Hose JUN 85.

(2) Except as provided in paragraph (c) of this section, brake hose and brake tubing installed on a motor vehicle before March 7, 1989, must conform to 49 CFR 393.45 effective October 31, 1983.

(c) *Nonmetallic brake tubing.* Coiled nonmetallic brake tubing may be used for connections between towed and towing vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of that vehicle if—

(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 2 inches in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(2) The spring guard or similar device has at least 2 inches of closed coils or similar surface at its interface with the fitting and extends at least 1½ inches into the coiled segment of the tubing from its straight segment.

(d) *Brake tubing and brake hose, uses.* Metallic and nonmetallic brake tubing is intended for use in areas of the brake system where relative movement in the line is not anticipated. Brake hose and coiled nonmetallic brake tubing is intended for use in the brake system where substantial relative movement in the line is anticipated or the hose/coiled nonmetallic brake tubing is exposed to potential tension or impact such as between the frame and axle in a conventional type suspension system (axle attached to frame by suspension system). Nonmetallic brake tubing may be used through an articulation point provided movement is less than 4.5 degrees in a vertical plane, and 7.4 degrees in a transverse horizontal plane.

15. Section 393.46 is amended by adding a new paragraph (f) as follows:

§ 393.46 Brake tubing and hose connections.

* * * * *

(f) Splices in tubing if installed on a vehicle after March 7, 1989, must use fittings that meet the requirements of SAE Standard J512–OCT 80 Automotive Tube Fittings or for air brake systems SAE J246—March 81 Spherical and Flanged Sleeve (Compression) Tube Fittings as found in the SAE Handbook 1985 edition.

16. Section 393.50(a) is revised and paragraph (c) is removed as follows:

§ 393.50 Reservoirs required.

(a) *General.* Every commercial motor vehicle using air or vacuum for breaking shall be equipped with reserve capacity or a reservoir sufficient to ensure a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that pressure or degree of vacuum indicated by the gauge immediately before the brake application is made. For purposes of this section, a full service brake application is considered to be made when the service brake pedal is pushed to the limit of its travel.

* * * * *

§ 393.51 [Amended]

17. Section 393.51 is amended by removing paragraph (g) and in the introductory text of paragraphs (c) and (d), and in paragraph (e) by removing the words "Except as provided in paragraph (g) of this section, a" and substituting "A".

18. Section 393.67(f) is revised to read as follows:

§ 393.67 Liquid fuel tanks.

* * * * *

(f) *Certification and markings.* Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(1) The month and year of manufacture,

(2) The manufacturer's name on tanks manufactured on and after July 1, 1988, and means of identifying the facility at which the tank was manufactured, and

(3) A certificate that it conforms to the rules in this section applicable to the tank. The certificate must be in the form set forth in either of the following:

(i) If a tank conforms to all rules in this section pertaining to side-mounted fuel tanks: "Meets all FHWA side-mounted tank requirements."

(ii) If a tank conforms to all rules in this section pertaining to tanks which are not side-mounted fuel tanks: "Meets all FHWA requirements for non-side-mounted fuel tanks."

(iii) The form of certificate specified in paragraph (f)(3) (i) or (ii) of this section may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before March 7, 1989. The form of certification manufactured on or before March 7, 1989, must meet the requirements in effect at the time of manufacture.

§ 393.69 [Amended]

19. Section 393.69(a) introductory text is amended by revising the address for the National Fire Protection Association to read as follows: "National Fire Protection Association, Battery March Park, Quincy, MA 02269,".

20. Section 393.71 is amended by revising paragraphs (h)(7) and (h)(9) and removing and reserving paragraph (i), as follows:

§ 393.71 Coupling devices and towing methods, driveaway-towaway operations.

* * * * *

(h) * * *

(7) *Tracking.* The tow-bar shall be so designed, constructed, maintained, and mounted as to cause the towed vehicle to follow substantially in the path of the

towing vehicle. Tow-bars of such design on in our condition as to permit the towed vehicle to deviate more than 3 inches to either side of the path of a towing vehicle moving in a straight line as measured from the center of the towing vehicle are prohibited.

* * * * *

(9) *Marking tow-bars.* Every tow-bar acquired and used in driveaway-towaway operations by a motor carrier shall be plainly marked with the following certification of the manufacturer thereof (or words of equivalent meaning):

This tow-bar complies with the requirements of the Federal Highway Administration for (maximum gross weight for which tow-bar is manufactured) vehicles.
Allowable Maximum Gross Weight _____
Manufactured _____
(month and year)
by _____
(name of manufacturer)

Tow-bar certification manufactured before the effective date of this regulation must meet requirements in effect at the time of manufacture.

(i) [Reserved]

* * * * *

21. In Subpart G, § 393.75 is amended by revising paragraphs (a) and (f) to read as follows and by removing Table I, "Tire Load Limits at Various Cold Inflation Pressures," and redesignating Table II to read "Table I—Inflation Pressure Measurement Correction for Heat":

§ 393.75 Tires.

(a) No motor vehicle shall be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed.

* * * * *

(f) Tire load rating [1]. (1) General rule: No motor vehicle shall be operated with tires that carry a greater weight than that specified for the tires in any of the publications of the standardizing bodies listed in FMVSS 571.119 (49 CFR 571.119) and marked on the sidewall of the tire unless:

(i) The vehicle is being operated under the terms of a special permit issued by the State, and

(ii) The vehicle is being operated at a reduced speed that is appropriate to compensate for tire loading in excess of the manufacturer's normal rated capacity.

(2) Tire pressure. No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(3) If the inflation pressure of the tire has been increased by heat because of the recent operation of the vehicle, the cold inflation pressure shall be estimated by subtracting the inflation buildup factor shown in Table I from the measured inflation pressure.

22. In Subpart G, § 393.76 is amended by revising paragraph (e)(2)(iv) and removing paragraph (e)(2)(v) as follows:

§ 393.76 Sleeper berth.

* * * * *

(e) * * *

(2) * * *

* * * * *

(iv) A mattress filled with a fluid and of sufficient thickness when filled to prevent "bottoming-out" when occupied while the vehicle is in motion.

* * * * *

23. Section 393.77 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as (a) and (b), respectively, and revising paragraphs (b)(5) and (b)(11) as follows:

§ 393.77 Heaters.

* * * * *

(b) * * *

(5) *Operating controls to be protected.* On every bus designed to transport more than 15 passengers, including the driver, means shall be provided to prevent unauthorized persons from tampering with the operating controls. Such means may include remote control by the driver; installation of controls at inaccessible places; control of adjustments by key or keys; enclosure of controls in a locked space, locking of controls, or other means of accomplishing this purpose.

* * * * *

(11) *Heater fuel tank location.* Every bus designed to transport more than 15 passengers, including the driver, with heaters of the combustion type shall have fuel tanks therefor located outside of and lower than the passenger space. When necessary, suitable protection shall be afforded by shielding or other means against the puncturing of any such tank or its connections by flying stones or other objects.

* * * * *

24. Section 393.83 is revised to read as follows:

§ 393.83 Exhaust systems.

(a) Every motor vehicle having a device (other than as part of its cargo) capable of expelling harmful combustion fumes shall have a system to direct the discharge of such fumes. No part shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(b) No exhaust system shall discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe.

(c) The exhaust system of a bus powered by a gasoline engine shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus.

(d) The exhaust system of a bus using fuels other than gasoline shall discharge to the atmosphere either:

(1) At or within 15 inches forward of the rearmost part of the vehicle; or

(2) To the rear of all doors or windows designed to be open, except windows designed to be opened solely as emergency exits.

(e) The exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.

(f) No part of the exhaust system shall be temporarily repaired with wrap or patches.

(g) No part of the exhaust system shall leak or discharge at a point forward of or directly below the driver/sleeper compartment. The exhaust outlet may discharge above the cab/sleeper roofline.

(h) The exhaust system must be securely fastened to the vehicle.

(i) Exhaust systems may use hangers which permit required movement due to expansion and contraction caused by heat of the exhaust and relative motion between engine and chassis of a vehicle.

25. Section 393.84 is revised to read as follows:

§ 393.84 Floors.

The flooring in all motor vehicles shall be substantially constructed, free of unnecessary holes and openings, and shall be maintained so as to minimize the entrance of fumes, exhaust gases, or fire. Floors shall not be permeated with oil or other substances likely to cause injury to persons using the floor as a traction surface.

26. Section 393.87 is revised to read as follows:

§ 393.87 Flags on projecting loads.

Any motor vehicle having a load or vehicle component which extends beyond the sides more than 4 inches or

[1] The load and cold inflation pressure imposed on the rim and wheel must not exceed the rim and wheel manufacturer's recommendations even though the tire may be approved for a higher load or inflation. Rims and wheels may be identified (stamped) with a maximum load and maximum cold inflation rating.

more than 4 feet beyond the rear shall have the extremities of the load marked with a red flag, not less than 12 inches square, at each point where a lamp is required by Table 1, § 393.11.

§ 393.89 [Amended]

27. In § 393.89, delete the following: ", except buses having a seating capacity of eight or less persons,".

28. Section 393.91 is revised to read as follows:

§ 393.91 Buses, aisle seats prohibited.

No bus shall be equipped with aisle seats unless such seats are so designed and installed as to automatically fold and leave a clear aisle when they are unoccupied. No bus shall be operated if any seat therein is not securely fastened to the vehicle.

29. A new Subpart J is added to Part 393 to read as follows:

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

Sec.

393.201 Frames.
393.203 Cab and body components
393.205 Wheels.
393.207 Suspension systems.
393.209 Steering wheel systems.

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

§ 393.201 Frames.

(a) The frame of every bus, truck, and truck tractor shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.

(c) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(d) All accessories mounted to the truck tractor frame must be bolted or riveted.

(e) No holes shall be drilled in the top or bottom rail flanges, except as specified by the manufacturer.

(f) Field repairs are allowed.

§ 393.203 Cab and body components.

(a) The cab compartment doors or door parts used as an entrance or exist shall not be missing or broken. Doors shall not sag so that they cannot be properly opened or closed. No door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. **Exception:** When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame shall not be loose, broken, or missing.

(c) The hood must be securely fastened.

(d) All seats must be securely mounted.

(e) The front bumper must not be missing, loosely attached, or protruding beyond the confines of the vehicle so as to create a hazard.

§ 393.205 Wheels.

(a) Wheels and rims shall not be cracked or broken.

(b) Stud or bolt holes on the wheels shall shall not be elongated (out of round).

(c) Nuts or bolts shall not be missing or loose.

§ 393.207 Suspension systems.

(a) Axles. No axle positioning part shall be cracked, broken, loose or missing. All axles must be in proper alignment.

(b) Adjustable axles. Adjustable axle assemblies shall not have locking pins missing or disengaged.

(c) Leaf springs. No leaf spring shall be cracked, broken, or missing nor shifted out of position.

(d) Coil springs. No coil spring shall be cracked or broken.

(e) Torsion bar. No torsion bar or torsion bar suspension shall be cracked or broken.

(f) Air Suspensions. The air pressure regulator valve shall not allow air into the suspension system until at least 55 psi is in the braking system. The vehicle shall be level (not tilting to the left or right). Air leakage shall not be greater than 3 psi in a 5-minute time period when the vehicle's air pressure gauge shows normal operating pressure.

§ 393.209 Steering wheel systems.

(a) The steering wheel shall be secured and must not have any spokes cracked through or missing.

(b) The steering wheel lash shall not exceed the following parameters:

Steering wheel diameter	Manual steering system	Power steering system
16" or less	2"+	4½"+
18"	2¼"+	4¾"+
20"	2½"+	5¼"+
22"	2¾"+	5¾"+

(c) Steering column. The steering column must be securely fastened.

(d) Steering system. Universal joints shall not be worn, faulty or repaired by welding. The steering gear box shall not have loose or missing mounting bolts or cracks in the gear box or mounting brackets. The pitman arm on the steering gear output shaft shall not be loose. Steering wheels shall turn freely through the limit of travel in both directions.

(e) Power steering systems. All components of the power system must be in operating condition. No parts shall be loose or broken. Belts shall not be frayed, cracked or slipping. The system shall not leak. The power steering system shall have sufficient fluid in the reservoir.

[FR Doc. 88-27514 Filed 12-6-88; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

49 CFR Part 396

[FHWA Docket No. MC-113; Notice No. 87-02]

RIN 2125-AB34

Inspection, Repair and Maintenance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 396, Inspection, Repair and Maintenance of the Federal Motor Carrier Safety Regulations (FMCSRs) to require that commercial motor vehicles operated in interstate or foreign commerce pass an inspection at least annually. The amendments permit the motor carrier operating the vehicle to meet the inspection requirements through periodic inspection programs administered by the States, or by a self-inspection, a roadside inspection or an inspection performed by a commercial garage or similar commercial business, so long as the inspection complies with Federal standards or on State inspection standards that are as effective as the Federal standards. The Federal standards are based on Part 393, Parts and Accessories Necessary for Safe Operation and are similar to the North American Uniform Driver-Vehicle Inspection Procedure (NAUD-VIP). This action is being taken to implement section 210 of the Motor Carrier Safety Act of 1984 (the Act) and to improve the safe operation of commercial motor vehicles by requiring that such vehicles be inspected for compliance with Federal standards.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-1353, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829). The Act was signed into law by the President on October 30, 1984.

This supplementary information contains background information, on overview of the periodic inspection requirements for commercial motor vehicles, a section-by-section analysis of the rule, and a discussion of the FHWA's activities to monitor the effectiveness of this final rule. A discussion of the comments received in response to a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 26, 1987 (52 FR 5913), proposing revisions to Part 396 is included in the section-by-section analysis.

Background

Section 210 of the Act requires that the Secretary of Transportation establish standards for annual or more frequent inspection of commercial motor vehicles and for the retention by motor carriers of records of such inspections. These standards would also apply to foreign motor carriers operating in the United States. Foreign motor carriers were covered under the NPRM; this final rule clarifies their status under certain sections of the rule.

On January 10, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) at 50 FR 1245 seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSRs. Approximately 50 comments were received concerning these potential changes. Due to the complexity of these two areas, the FHWA established a separate docket for Part 393 (i.e., OMC Docket No. MC–127). The final rule for Part 393 is found elsewhere in today's **Federal Register**. While the dockets for Parts 393 and 396 were separated, the FHWA has reviewed both parts together because of the close relationship of their subjects.

The February 26, 1987, NPRM proposed an annual inspection and permitted self-inspections by motor carriers with five or more vehicles. The comment period for the NPRM was extended to June 29, 1987.

The FHWA received a total of 66 comments to Docket No. MC–113. The responses included:

24 from truck and bus industry trade organizations,
6 from individual motor carriers,
12 from government agencies,
11 from individual drivers,
9 from manufacturers, and
4 requests for extension of comment period.

Overall, the commenters were in favor of a periodic inspection. Over half of those expressing an opinion favored an annual, rather than a more frequent, inspection.

Overview of Inspection Requirements

Presently, §§ 392.7, 396.11 and 396.13 of the FMCSRs require the driver to perform a pre-trip and post-trip inspection of the vehicle driven that day. The driver is required to evaluate the vehicle's components and note any defects or deficiencies. The defects must be repaired prior to the vehicle's further use. In addition, the motor carrier is required by § 396.3 to develop and implement a systematic inspection program, including prescribed maintenance records, for the vehicles it operates. Furthermore, §§ 393.1 and 396.3(a)(1) require that the parts and accessories specified in Part 393, as well as any additional parts and accessories as allowed by § 393.2, shall be in safe and proper operating condition at all times.

The FMCSRs allow for inspections of vehicles in operation, i.e., roadside inspections, by certain FHWA personnel or special agents of the FHWA. Many of the current roadside inspections are being performed by State personnel and funded through grants from the FHWA under the Motor Carrier Safety Assistance Program (MCSAP). In addition to these federally supported inspection programs, States perform vehicle safety inspections as part of random roadside inspection programs and periodic inspections. Currently, 21 States have some form of a periodic inspection for commercial motor vehicles.

The fundamental requirement being added by this final rule is that a motor carrier, including a foreign carrier, will be required to ensure that all commercial motor vehicles operating in the United States in interstate or foreign commerce under the motor carrier's control are inspected and meet the vehicle component standards at least once every 12 months. Furthermore, this inspection is to be based on Federal inspection standards, also being added by this rule, or on State inspection standards as effective as the Federal standards. The section which addresses this requirement is § 396.17, Periodic inspection.

A commercial motor vehicle meeting the requirements of a State periodic inspection program will satisfy the inspection requirement of this rule, unless the State's program is not as effective as the Federal requirements. The FHWA requests that States with inspection programs provide FHWA with information on their programs and an assessment of whether the State program is as effective as this rule. The FHWA believes that relying on ongoing inspections programs administered by the States will eliminate any unnecessary duplication of inspections while maintaining a high level of confidence that an effective annual inspection is being performed.

This rule does not inhibit State's prerogatives in administering their programs. The FHWA agrees that the vehicle parts (e.g., brakes, tires, suspension, etc.) included for review by the State-developed and endorsed NAUD–VIP are essential to safe vehicle operations. Thus, the FHWA believes that any vehicle inspection program should look at the NAUD–VIP listed parts. The FHWA recognizes that States have a variety of periodic inspection programs. The FHWA believes that States with these various programs or States intending to implement such programs to meet this rule, do not have to adopt this rule verbatim to have a program as "effective" or "comparable" to this rule. States have flexibility to implement the procedure in this rule or to administer alternative methods to determine whether vehicles are in safe operating condition.

This rule does not affect situations where a vehicle may be subject to more than one State administered inspection because the vehicle is registered in more than one State that has a periodic inspection program. The requirements that the vehicle be inspected through a State administered program will be met if one of the programs meets the requirements of this rule. State authorized inspection programs are discussed in § 396.23 of this final rule.

If a vehicle is not subject to a mandatory State inspection program, or if the FHWA determines that the State's program is not as effective as this rule, then the requirement for a periodic inspection may be met by one of several methods. Section 396.17(d) permits the motor carrier to self-inspect the commercial motor vehicles under its control. Motor carriers may also meet the requirements of the Federal periodic inspection through systematic inspection, maintenance, and repair programs, if those programs meet the requirements of the Federal standards in this rule. Section 396.17(e) permits the motor carrier to have the inspection performed by a qualified commercial business, such as a commercial garage, fleet leasing company, or truck stop. A

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random roadside or periodic inspection conducted by a State or provincial government may also satisfy the annual inspection requirement, as provided in § 396.17(f).

Foreign motor carriers may use the periodic inspection requirement of the foreign jurisdiction in which its vehicles are registered provided that the carrier determines that the inspection program is at least as effective as this rule. This provides a greater assurance of a valid inspection while not placing an additional burden on these carriers. If those jurisdictions do not have an acceptable periodic inspection requirement, motor carriers must meet the requirements of Appendix G through self-inspection, use of a commercial garage, or acceptable roadside inspection, or through a State inspection program that is as effective as the Federal standards in this rule.

The periodic inspection requirement of this rule is intended to complement and be consistent with existing inspection programs. In those States with an acceptable periodic inspection requirement, motor carriers whose vehicles are required under State law to be inspected through the State's inspection program must continue to use that mechanism to meet the requirement of the rule.

Current State periodic inspection programs include a variety of inspection procedures, including the allowance for self-inspection by motor carriers if they meet certain requirements (such as motor carrier size). Some state programs allow self-inspection for only certain types of vehicles. The FHWA fully endorses these types of inspection procedures and if the specific program is as effective as this rule, such programs will meet the requirements of this rule.

Nothing precludes or is intended to imply that vehicles should only be checked once a year. To the contrary, the FHWA continues to encourage motor carriers to establish preventive maintenance programs whereby vehicles are inspected, repaired and maintained on a systematic schedule. As noted in § 396.3(a), motor carriers shall systematically inspect, repair and maintain all vehicles subject to its control. If a motor carrier chooses to meet the periodic inspection requirement through its systematic inspection program, then all vehicle components identified in Appendix G must meet the requirements of Appendix G at least every 12 months. If certain components are inspected at different times (i.e., a complete vehicle inspection is not performed at one time), then the inspection report (§ 396.21) must identify the date that each component passed the inspection. All persons performing these inspections must be identified and must meet the requirements of § 396.19, Inspector qualifications.

The FHWA is establishing a 1-year transition period, as proposed in the NPRM, during which compliance with the periodic inspection requirement will be recommended but not required. Comments on this provision were negligible. The FHWA believes a 12-month period will be needed to receive an assessment of and information on periodic inspection programs in the States and to determine if the State inspection programs are as effective as the standards established under this rule.

The FHWA intends to request that each State which has a periodic commercial motor vehicle inspection program submit a self-assessment and description of its program. The FHWA will then confirm or determine if the State program is as effective as that required under this rule. If a positive determination is made, without condition, all commercial motor vehicles passing the State's periodic inspection program will have met the requirements of this final rule. If a State's periodic inspection program is determined to be not as effective as the Federal program and the State wishes to modify its program to be as "effective" or comparable to this rule, the FHWA will work with the State to identify where modifications are required to make the State program acceptable. If the State decides not to change its program, or if a State does not have a periodic inspection program, motor carriers will need to comply with the annual inspection requirements through programs in other States or by relying on the other alternate inspection options in the rule. The basis for review of the State inspection programs is contained in a subsequent section of the Preamble entitled "FHWA Activities to Monitor the Effectiveness of this Rule." It is FHWA's intention to rely heavily on the States' initial assessments in making the determination of the effectiveness of each State's program. Section 210(b) of the Act clearly assigns the responsibility to the Secretary to make the final determination on the effectiveness of a State's program. Nothing in this rule implies that the FHWA intends to preempt a State from conducting periodic inspection of vehicles, or that a State's inspection program does not improve highway safety. The FHWA believes that any inspection of a vehicle, even under programs not as effective as this rule, should contribute to the removal of unsafe vehicles from the highway.

The FHWA will not require foreign jurisdictions to submit detailed descriptions of their inspection programs although they are encouraged to do so voluntarily. It is the responsibility of the carrier to assure that the program of the foreign jurisdiction in which its vehicles are registered is as effective as that required under this rule, and, if not, to meet the FHWA standard by one of the alternative methods established under this rule. The FHWA will use a post-inspection evaluation of carriers as a means to monitor the foreign carrier's compliance with the inspection requirements of this rule.

Section-by-Section Analysis

Section 396.15 | Driveaway-towaway operations and inspections

The FHWA proposed to expand the driveaway-towaway exemption to include an exemption from the periodic inspection requirements of this rule. There were no comments in opposition; therefore, the exemption as proposed is included in this final rule.

Section 396.17 | Periodic inspection

The FHWA proposed in the NPRM that the periodic inspection be performed at least once during the preceding 365 days. Several commenters indicated that a day-specific requirement was too restrictive and inconsistent with most inspection program periods. The FHWA agrees and has modified the time period to be once every 12 months. The FHWA believes that this is consistent with the congressional intent of the Act that there be an "annual" inspection.

The NPRM proposed that self-inspection by motor carriers be allowed. It further proposed that no governmental approval be required before self-inspection can be conducted. The majority of the commenters favored allowing self-inspection with some form of government approval. They were concerned that, without government oversight, some motor carriers might falsify inspection records or otherwise fail to comply with the inspection requirements. Three commenters were strongly opposed to any type of self-inspection. They contend that the annual inspection required by the Act should be performed by parties other than the owner or operator of the vehicle. Those in favor of the NPRM proposal contend that there would be an unduly burdensome paperwork requirement if government pre-approval is required.

The self-inspection option is consistent with the congressional intent, provided that adequate safeguards are in place to ensure that the requirements are followed. The Senate Committee on Commerce, Science, and Transportation stated "Many motor carriers currently have excellent self-inspection programs. The Committee expects and intends that the inspection requirement could be met by such programs." (S. Rep. No. 98–424, 98 Cong., 2d Sess. 15–16 (1984)). The requirements for documentation of the inspection and the inspector qualifications will provide the necessary proof for enforcement personnel to take corrective action if a motor carrier is found to violate these requirements.

In addition, the FHWA believes that a periodic inspection will improve safety but is not the only method to ensure that vehicle components are operating safely. The FHWA will continue to support roadside inspections as a primary means to monitor the condition of commercial motor vehicles and to remove unsafe vehicles from the road. The FHWA will also work for full implementation of SAFETYNET (a system whereby State roadside inspection results are telecommunicated to the FHWA for inclusion in the FHWA's individual motor carrier files). SAFETYNET and Motor Carrier Management Information System will be used to monitor the condition of vehicles on the road for individual motor carriers and to evaluate the effectiveness of the various motor carrier safety program elements. While commenters to the docket raised legitimate issues regarding the self-inspection option, the FHWA believes that there are compelling arguments to allow such an option at this time.

The FHWA has decided that the self-inspection option will not be available if the motor vehicle is required under State law to be inspected in the State's periodic motor vehicle inspection (PMVI) program, unless the State program provides for self-inspection. Commercial motor vehicles participating in State PMVI programs would meet the Federal standards through meeting the State inspection procedures and standards if they are determined to be compatible with or as effective as this rule. If a State's PMVI program allows for self-inspection, then the motor carrier must follow that State's requirements for self-inspection. The FHWA would prefer to have all States handle the periodic inspection of commercial motor vehicles, but the statute does not mandate such inspection programs. Regardless of whether a State's inspection program is as effective as the Federal standards, vehicles subject to that State's laws must continue to abide by them. This means that in States with an inspection program that is not as effective as the Federal standards, a vehicle would have to meet the State requirements as well as the Federal standards. Most State programs require certification or licensing of inspectors along with minimum requirements for the inspection facilities. The FHWA has noted that most State PMVI programs have some element of self-inspection of commercial vehicles by motor carriers. These self-inspection programs have some type of pre-certification or post-inspection audit. The FHWA has decided to use a post-inspection evaluation as the means to monitor the self-inspection program element. With a significant level of FHWA Motor Carrier Safety personnel already devoted to conducting safety reviews and compliance reviews, a review of a motor carrier's self-inspection program elements (inspector qualifications, documentation, etc.) is possible. A review and pre-certification of self-inspection programs prior to use of such an option is not possible given the relatively small number of Federal field personnel, the large number of motor carriers, and the desire of States and provinces, as evidenced by a recent vote of the Commercial Vehicle Safety Alliance, to devote resources to roadside inspection and not motor carrier site visits.

In a recent report, Feasibility of Required Periodic Inspection of Trucks (October 1987), the Maryland Department of Transportation (MDOT) conducted a literature review of state periodic motor vehicle inspection (PMVI) program studies. The MDOT concluded that most of the studies were inconclusive or conflicting when assessing the effectiveness of PMVI programs. In a 1985 report entitled "Cost Effectiveness of Periodic Motor Vehicle Inspection (PMVI): A Review of the Literature" (NHTSA, DOT HS 806750, January 1985), NHTSA found that "* * * not one of them [41 studies] was able to provide definitive evidence on the question of PMVI cost effectiveness." In light of these findings, there does not appear to be evidence which supports PMVI programs over random roadside inspection programs or the FHWA's Safety Review and Compliance Review Activities.

For these same reasons, it is also not practical for the FHWA to require that independent commercial garages be certified prior to their use by motor carriers for the vehicle inspection. Since the FHWA has direct authority over motor carriers and can penalize motor carriers who violate the periodic inspection requirements, the FHWA will review motor carrier files to determine if the motor carrier has asssurance that the independent commercial station meets the inspection qualifications. A later section of the Preamble, "FHWA Activities to Monitor the Effectiveness of this Rule," addresses the process which the FHWA will use to monitor the periodic inspection requirements, particularly the self-inspection element, and to make changes to the final rule if warranted.

The NPRM proposed that self-inspection be permitted only for those motor carriers with five or more vehicles. Many comments were received on this issue as well as on how to count the vehicles under a motor carrier's control. Comments were equally split on the threshold question—some indicating that the figure should be higher and others recommending that all motor carriers, including owner-operators, be permitted to self-inspect as long as the person performing the inspection meets certain minimum requirements.

With regard to the question of how to determine the number of commercial motor vehicles a motor carrier has, the FHWA received a variety of suggestions. Some commenters suggested that either a mileage-based or a gross receipts-based criterion be established, instead of a minimum number of vehicles. Others were concerned that, within a 1-year period, the size of a motor carrier's fleet varies and that to establish a fleet size criterion that is equitable and verifiable would be very difficult. Other commenters took issue with the FHWA's premise that motor carriers with larger fleets have better maintenance practices.

Based on the comments and the lack of any economic or safety data being submitted to support establishing a threshold level, using any criterion, the FHWA has deleted the fleet size requirement. All motor carriers will be permitted to self-inspect, provided the State in which the vehicle is registered does not have a periodic inspection program that the FHWA has determined is as effective as this rule (unless the State program allows self-inspection) and provided the carrier complies with the inspector qualifications and inspection standards requirements of §§ 396.17 and 396.19.

It should be noted that it is the responsibility of the motor carrier to meet the requirements of this rule. The existence or absence of a State

inspection program does not relieve the motor carrier of responsibility to ensure that the commercial motor vehicle under the carrier's control pass an inspection at least once every 12 months. The penalty provisions provided by 49 U.S.C. 521(b) apply to the motor carrier.

Commercial motor vehicles inspected through an acceptable State inspection program are required to follow the procedures of such programs. Commercial motor vehicles inspected through other means that do not pass the inspection (i.e., one or more components do not meet the standards contained in Appendix G) are considered not to have met the requirements of this rule even if the defective component was repaired immediately after the commercial motor vehicle left the site of the inspection. If the commercial motor vehicle was repaired at the site to the inspector's satisfaction and it is so recorded on the inspection report, then the FHWA will consider the commercial motor vehicle to have passed the inspection. A commercial motor vehicle which has not passed an inspection in accordance with the requirements of this part within the previous 12 months cannot be used.

If defective or missing vehicle components are noted during the inspection that are contained in Part 393 but not in Appendix G to the subchapter, the vehicle is considered to have met the requirements of this part. However, the defective or missing components must be repaired in accordance with § 396.9(d) (if the defective and/or missing component was noted during a State, provincial, or Federal roadside inspection) or §§ 393.1 and 396.3(a)(1) (if the defective and/or missing components were noted during an inspection performed by the motor carrier). Section 396.9(d) requires that the defective and/or missing component be repaired/replaced and that an FHWA field office be so notified within 15 days.

In keeping with the congressional intent that the requirement for a periodic inspection not be burdensome, the FHWA, in the ANPRM, requested comments on whether or not the Commercial Vehicle Safety Alliance (CVSA)/Essential Element Examination (roadside) type inspection should be considered as effective as an annual (periodic) or more frequent inspection system. As noted in the NPRM, the commenters pointed out the differences between random critical element roadside inspections and what they perceived as the intent of § 210 of the Act. They indicated that a random roadside inspection was basically concerned with ensuring that the vehicle did not pose an imminent danger on the roadway. The focus is on checking the more critical components such as brakes, headlights, brake lights, and steering and suspension systems. In contrast, a periodic inspection should be more concerned with the general overall safety condition of the vehicle, including those parts, which if defective, worn, or missing do not pose an immediate danger but nevertheless should be corrected as soon as possible. Therefore, the rule requires that roadside inspections meet the minimum standards contained in Appendix G in order to meet the periodic inspection requirements.

Section 396.19 Inspector qualifications

The FHWA believes that the qualification of the person performing the inspection is a very critical aspect of any inspection program. Comments on proposed § 396.19, Inspector qualifications, strongly supported this belief. Most commenters supported the proposed inspector qualification except the requirement that the combined training and experience total 2 years. Those commenting on this issue believed that 1 year of experience/training would be adequate. The FHWA agrees and has revised the qualifications to reflect this.

Persons who have successfully completed a Federal or State-sponsored training program or course or have a State or provincial certificate which qualifies them to perform commercial motor vehicle safety inspections would not have to meet the 1-year requirement. The FHWA believes that a person with such credentials is capable of performing an inspection without the need for a year of experience, provided he/she meets the other qualifications. Even when a State's PMVI is found not to be as effective as the Federal standards, if the individual conducting the inspection meets the minimum Federal inspector qualification requirements, then that person may certify that the vehicle being inspected meets the Federal standards as well as the State requirements.

The FHWA is deleting the requirement that the person performing the inspection "can read and write the English language to the extent necessary to understand the inspection criteria and prepare the required documentation." The FHWA believes that it is essential that the inspector understand the inspection criteria and methods and can complete the inspection report. However, the FHWA believes that the language requirement is unnecessary since the person performing the inspection need only be able to converse with the motor carrier. The ability to read and write English does not indicate a person's proficiency in identifying vehicle defects. Also, the FHWA is unaware of any potential safety problems which the elimination of such a requirement may cause. However, if the person performing the inspection is also a driver, as is the case for owner-operators, who comes in contact with law enforcement officers or the general public, the person must be able to meet the English language requirements of 49 CFR 391.11(b)(2).

The FHWA did not proposed specific minimum standards for inspection facilities; however, comments were requested on this issue. No comments were received. It is the motor carrier's and the inspector's responsibility to ensure that the proper tools and equipment are available and properly used to perform the inspection. Section 396.19 reflects this determination.

As with the self-inspection provisions, several commenters indicated that some type of certification or pre-authorization program needs to be established for inspectors. The general sentiment expressed is that allowing a motor carrier to ensure that the person performing the inspection (in the case of self-inspections) is qualified, without any precheck, is unenforceable and lacks the necessary quality control. The FHWA disagrees. The requirement that the motor carrier maintain documentation of the inspector's qualification (in the case of self-inspection) as well as the identification of the inspector on the inspection report will provide sufficient information to assist the FHWA in enforcing the inspector qualifications requirement during safety and/or compliance reviews. The FHWA also believes that it would be administratively impractical to establish a Federal inspector qualification program. For States and provinces with an acceptable periodic inspection program and that allow self-inspections, the State and provincial inspector qualification requirements would be used as long as they were comparable to the Federal standards. As discussed later in the Preamble, the FHWA will be evaluating the adequacy of self-inspections versus State periodic or roadside inspections. Based on the results of those studies the FHWA may reevaluate the provision for self-inspection in this rule.

Section 396.21 Recordkeeping

The comments on the NPRM proposal echoed those received on the ANPRM with regard to the need for some type of

evidence of the periodic inspection to be carried or placed on the vehicle. However, the commenters were almost unanimously opposed to the NPRM proposal that the vehicle be marked with the letters "PI" followed by the inspection date. The FHWA has decided that, as suggested by some commenters, a copy of the inspection report is to be carried in the vehicle.

Several other commenters suggested that decals be used. The FHWA does not believe this to be a viable alternative since it would be virtually impossible to manage the distribution of the decals. A situation could arise where a vehicle could pass an inspection but not have a decal because the carrier did not receive a sufficient supply. The FHWA believes that the requirement for evidence of an inspection needs to be flexible so that it will be applicable to different inspection scenarios. It must also provide adequate documentation to ensure enforcement officials that the requirements are being met. The FHWA is unaware of any inspection procedure where some form of written proof is not prepared which includes at least the information proposed. The documentation may be in a variety of formats, so long as the required information, specified in § 396.21, is included. The FHWA will encourage States, during random roadside inspections, to check for evidence of the periodic inspection. The proposal that the original or a copy of the inspection report for vehicles under the motor carrier's control for 30 days or more be retained by the motor carrier for 1 year from the date of the inspection is adopted in this final rule.

The statement in § 396.21(a)(7) that an inspector failing to comply with this section would be subject to the penalties provided in 49 U.S.C. 521(b) was deleted. The FHWA believes that the statement could cause confusion, inasmuch as the FHWA has jurisdiction only over motor carriers and their employees and has no authority to penalize inspectors who may be independent contractors of a motor carrier. Section 396.17(h) of the final rule states that motor carriers are subject to the penalty provisions of 49 U.S.C. 521(b) for failure to ensure that the annual inspection is properly performed.

Section 396.23 Equivalent to periodic inspection

As proposed in § 396.23, Equivalent to periodic inspection, the periodic inspection requirement of this rule must be met through a State periodic inspection program for those vehicles required under State law to be inspected through the State's inspection program, if the FHWA determines that the State program is as effective as this rule (§ 396.23(b)). For those vehicles not subject to a mandatory State periodic inspection or where the State program has *not* been determined by the FHWA to be as effective as that established under this final rule, the motor carrier may self-inspect or accept an inspection performed by someone else (§ 396.23(a)). The inspection performed by someone else may include, but is not limited to, inspections performed as part of State and provincial-sponsored random roadside inspections or inspections performed at commercial garages or dealerships. Only two comments were received on this Section, and they were supportive of the proposal. In any case, the inspection must meet the standards set forth in § 396.17 to be accepted as periodic inspections under this rule. Motor carriers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a periodic inspection program or at the roadside as part of a random roadside inspection program.

Appendix G Minimum Periodic Inspection Standards

The majority of the comments received in response to the NPRM addressed the specific technical inspection standards proposed in § 396.25. For example, several commenters suggested different allowable depths for tire treads. After thoroughly considering all the comments, the FHWA compared the proposed § 396.25 to the revised specifications contained in 49 CFR Part 393 (published elsewhere in today's **Federal Register**). The FHWA also compared the proposed § 396.25 with the vehicle out-of-service criteria (October 1986) adopted by the CVSA and the vehicle portion of the North American Uniform Driver-Vehicle Inspection Procedure (NAUD-VIP). Note that the NAUD-VIP is the recently changed name for the FHWA National Uniform Driver-Vehicle Inspection Procedure (NUD-VIP). Since all three inspection standards (CVSA, Appendix G, and NUD-VIP) have their bases in the specifications contained in the current 49 CFR Part 393, all were quite similar.

In reaching a decision on the inspection standards, the FHWA reviewed the proposed standards, the congressional intent (discussed earlier), comments to the proposal, as well as an analysis of existing inspection practices and requirements. This review led the FHWA to conclude that a new set of inspection standards, as proposed in the NPRM, would add extra burden and unnecessary complexity to the overall motor carrier safety inspection procedure. The NPRM, in effect, required almost every element of a vehicle to be inspected regardless of that item's propensity to affect safety of operation of the vehicle. The NPRM also required some disassembly of certain parts during the inspection. One commenter pointed out that disassembly/reassembly of parts could lead to premature failure of some parts. The FHWA agrees. The current inspection standards associated with the CVSA or NUD-VIP focus on random roadside inspections and examine certain key components of a vehicle to detect those defects most often identified as causing or contributing to the severity of commercial motor vehicle accidents. The CVSA or NUD-VIP standards, by their very nature, do not require disassembly of parts to effect a thorough inspection. The FHWA believes that the criteria on which to judge whether or not the vehicle passes the inspection should be more thorough than that used during roadside inspections. Appendix G contains a discussion of the comparison between the NUD-VIP and Appendix G criteria.

Under current rules, all vehicles must be equipped and operated in accordance with the requirements and specifications of 49 CFR Part 393 (49 CFR 393.1(a)). Furthermore, the FMCSRs also require motor carriers to systematically inspect, repair and maintain vehicles under their control. The parts and accessories on these vehicles shall be in a safe and proper operating condition at all times and based on the specifications in 49 CFR Part 393 (49 CFR 396.3(a)(1)). The FHWA believes that by also basing the periodic inspection requirement on the specifications contained in 49 CFR Part 393 there will be greater consistency and compliance with all three requirements (49 CFR Part 393, roadside inspections and periodic inspections).

The specifications in 49 CFR Part 393, however, do not provide adequate criteria for a vehicle inspection, whether it be performed on the road or in a garage. The specifications in 49 CFR Part 393 are comprehensive, and deal with vehicle manufacturing standards, as well as the condition of key safety components of the motor vehicle. The specfications in 49 CFR Part 393 were not intended for those purposes. Inspection criteria have been developed, however, through the years based on the specifications contained in 49 CFR Part 393. Of note are the CVSA vehicle out-of-service criteria and the NUD-VIP. Both sets of criteria have been used extensively. The FHWA has decided

that the vehicle portion of the FHWA North American Uniform Driver-Vehicle Inspection Procedure will be used as the criteria for successful completion of the periodic inspection. The FHWA has chosen to promulgate, in Appendix G of this rule, a modification of NUD-VIP, because it will provide the necessary inspection-related pass/no criteria for the periodic inspection at a more stringent level than the vehicle out-of-service criteria. The NUD-VIP will also provide the proper level of Federal oversight in establishing and revising the criteria.

The FHWA believes that most motor carriers are familiar with the requirements contained in 49 CFR Part 393 and the inspection criteria of NAUD-VIP and CVSA and that this familiarity will allow the Appendix G periodic inspection standards to be integrated into the existing inspection programs with minimum additional burden to the motor carrier industry.

The modified NAUD-VIP (vehicle portion) is included as Appendix G to the FMCSRs. Therefore, proposed § 396.25 is no longer needed and has been eliminated.

Vehicles subjected to random roadside vehicle checks which inspect vehicles using the criteria included in Appendix G will be considered to have met the requirements of this rule if they pass the inspection. Note that the current CVSA out-of-service criteria, while very similar to that contained in Appendix G, are not identical. The fact that a vehicle is subjected to and passes roadside inspection (e.g., receiving a CVSA decal) does not necessarily satisfy the requirements of the periodic inspection under this rule. In order to meet the requirements for a periodic inspection during a roadside inspection, the inspection must be performed using, as a minimum, the criteria contained in Appendix G of this subchapter. Included in Appendix G is a comparison of the standards in Appendix G and the CVSA out-of-service criteria.

By relating a portion of the periodic inspection standards (those relating to 49 CFR Part 393) to the standards used for other inspections and the general vehicle condition requirements noted earlier, the FHWA believes that a coherent and comprehensive inspection program will result.

FHWA Activities To Monitor the Effectiveness of this Rule

Over the next year, the FHWA will continue to work with the States, The Canadian Council of Motor Transport Administrators, the CVSA and the motor carrier industry to examine, and if necessary, strengthen existing inspection programs. Specifically, States will be encouraged to utilize their periodic vehicle inspection programs to meet the purposes of this rule. Those States which do not provide a State inspection program may wish to consider the safety benefits of such programs. Further, States which certify third parties (e.g., dealerships, garages, service centers) to perform inspections are encouraged to consider similar certification programs for motor carriers that wish to self-inspect under the provisions of this rule. The industry is also encouraged to focus on the quality of motor vehicle inspectors and institute programs to assure that those inspectors are aware of the most current and effective inspection techniques.

In order to implement § 396.23(b)(2), the FHWA will request that the State with periodic inspection programs provide FHWA with an assessment of whether its program is comparable or as "effective" as this rule. The FHWA also requests that States submit appropriate supporting data. The FHWA will review the information and will determine, based on the requirements of this part, if a State's periodic commercial motor vehicle inspection program, for States with such a program, is as effective as that required under this rule. If the States does not submit an assessment, the FHWA will initiate the review and determination absent that information. The FHWA does not envision that each element of a State's program will have to match exactly the requirements of this rule. However, the FHWA will expect the program be conducted at least annually and include a comprehensive inspection of the vehicle's key safety components. Inspection standards, recordkeeping, inspector qualifications and provisions/contracts for self-inspection or third party inspection (i.e., by commercial garages, dealers, etc.) will be evaluated. If only certain vehicle types are included in the State inspection programs which otherwise is as effective as the Federal standard, then approval could be given for those vehicle types included in the State program. The FHWA will notify the State of its determination and will publish this information in the **Federal Register** by September 5, 1989, to inform the public of its determinations.

The FHWA's evaluation of the States' periodic inspection programs for commercial motor vehicles is in no way intended to represent a Federal preemption of such programs. States would still be permitted, and encouraged, to conduct such periodic inspection programs. The intent of the evaulation is to determine whether a State's periodic inspection program is as effective as the Federal standards contained in this rule. If the State program is determined to be not as effective, commercial motor vehicles registered in that State will be required to self-inspect or obtain an inspection from a third party, or undergo an acceptable periodic inspection performed in another State, as set forth in § 396.17. The third party may be the State inspector conducting the State inspections.

The FHWA also intends to take a very active role in evaluating the effectiveness of this rule and inspection progams in general. Specifically, the FHWA will be performing special studies to determine levels of compliance as part of random roadside checks and motor carrier safety/compliance reviews. Documentation of inspector qualifications will be a key item to be checked during safety and/or compliance reviews. The FHWA fully intends to review and enforce these periodic inspection requirements and sanction motor carriers found to be violating the requirements. Use of unqualified inspectors will nullify the inspection performed by such individuals.

The FHWA intends to evaluate compliance with these requirements by motor carriers who choose to self-inspect and to evaluate the effectiveness of state sanctioned self-inspection programs. Particular attention will be given to the size of the carrier and the type of self-inspection performed (e.g., frequency, completeness, follow-up repair and maintenance procedures). The factors considered when evaluating the effectiveness of self-inspections will include: (1) The last date of State inspection, (2) whether inspection was done at a public inspection station or if the motor carrier self-inspected the vehicle, (3) mechanical deficiencies, and other factors deemed appropriate. The results of the FHWA's evaluations of State self-inspections will be reported to the Secretary within 1 year of publication of this final rule. As noted earlier, the FHWA intends to take a very active role in evaluating the effectiveness of this rule. An initial report on the overall effectiveness of this rule to the Secretary is anticipated to be completed by 1 year from the effective date of this rule.

The results of these evaluations will determine if more stringent requirements or other amendments are needed. If so, the FHWA fully intends to initiate further rulemaking in this area.

Effect on State Laws and Regulations; Preemption

Section 210(b) of the Act requires that the Secretary establish Federal standards for annual or more frequent inspections of commercial motor vehicles and retention by employers of records of such inspections.

Section 210(d)(1) states that except as provided in paragraph (2), this chapter of the United States Code shall not be construed as:

(A) Preventing any State or voluntary group of States from imposing more stringent standards for use in their own periodic roadside inspection programs of commercial motor vehicles;

(B) Preventing any State from having in effect and enforcing a program for inspection of commercial motor vehicles which the Secretary determines is as effective as the Federal standards established under subsection (b) of this section;

(C) Preventing any State from having in effect and enforcing a program for inspection of commercial motor vehicles which meets the requirements for membershp in the Commercial Vehicle Safety Alliance as such requirements were in effect on October 30, 1984;

(D) Requiring any State which has in effect and is enforcing a program described in subparagraph (B) or (C) to enforce any Federal standard established under subsection (b) of this section or to adopt any provision pertaining to inspection of commercial motor vehicles in addition to such program in order to comply with such Federal standards.

Section 210(d)(2) states that if, after notice and an opportunity for a hearing, the Secretary determines that any State which has in effect and is enforcing a program described in paragraph (1)(C) of this subsection is not enforcing such program in a manner which achieves the objectives of this section, the Federal standards established under subsection (b) of this section shall preempt such program, with respect to the inspection of commercial motor vehicles in such State and such program shall not be in effect and enforced with respect to such vehicles.

Section 210(f) states that the Federal standards established in this rule shall have no effect and shall not be enforced with respect to the inspection of commercial motor vehicles in any State which has in effect and is enforcing a program that is as effective as the Federal standards or which meets the requirements for membership in the CVSA if the Secretary determines that such Federal standards not having effect and being enforced with respect to such inspection is in the public interest and consistent with public safety.

The FHWA interprets the above provisions of law to mean that States or voluntary groups of States may, for their own purposes, impose more stringent standards for periodic roadside inspection programs than those established in this rule. However, commercial motor vehicles need only meet the Federal standards in this rule (or a States inspection program which is determined to be as effective as this rule) in order to satisfy the inspection requirements of this rule. States may also conduct inspection programs that are determined by the Secretary to be as effective as the standards established in this rule. States may also conduct inspection programs which meet the requirements for membership in the CVSA, unless, after notice and an opportunity for a hearing, the Secretary determines that the State is not enforcintg such a program in a manner which achieves the objectives of this section of the Act. In that case, the State roadside inspection program would not be available to the motor carrier to meet the requirements of this rule and the motor carrier must use an alternative means to meet the Federal standards. States that conduct inspection programs which are as effective as the Federal standards established in this rule and States that conduct inspection programs which meet the requirements for membership in the CVSA are not required to enforce the Federal standards in this rule or to adopt any inspection provision in addition to such programs in order to comply with the Federal standards in this rule.

States that have periodic inspection programs, other than the roadside programs, which are determined "not as effective" as this rule will not be preempted by this rule. Such programs, while not satisfying the motor carrier's annual vehicle inspection requirement, provide a supplemental review of the vehicle's condition, and as such, should contribute to the safe operation of a commercial vehicle.

Regulatory Impacts

Because the impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or significant adverse effects on the American economy, the FHWA has determined that this document does not contain a major rule under Executive Order 12291 but is a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the public interest involved. Pursuant to Executive Order 12498, this rulemaking is included on the Regulatory Program for Significant Actions. The FHWA evaluation indicates that accident reduction resulting from the rule would amount to approximately $93 million per year. The incremental cost of compliance would be about $16 million annually. Thus, the net benefit to society would be on the order of $77 million per year, and would be expected to continue for the life of the rule. A regulatory evaluation has been prepared and is available for review in the public docket.

Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action does not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 99–511), the recordkeeping provisions that are included in this regulation are being submitted to the Office of Management and Budget.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Federalism Impact

In promulgating this rule, the FHWA has considered the President's Executive Order on "Federalism" issued on October 26, 1987. (E.O. 12612, 52 FR 41685) The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between the national government and the States. This rule implements a specific legislative directive to establish minimum Federal safety standards for commercial motor vehicles in interstate commerce contained in section 206 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 2505). Therefore, it has been determined that the Federalism implications to be considered under the Executive Order do not apply to this rule.

In addition, the FHWA believes its requirement to determine if a State's periodic inspection program is as effective as that contained in this rule does not in any way place a requirement on a State to modify and/or develop a periodic inspection program and therefore, preserves a State's flexibility as required by the Executive Order.

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In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B as set forth below.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on November 21, 1988.

Robert E. Farris,

Federal Highway Administrator.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

1. The authority citation for 49 CFR Part 396 is revised to read as follows:

Authority: Section 210 of Pub. L. 98–554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 49 CFR 1.48.

2. Section 396.15 is amended by revising the heading and paragraph (a) to read as follows:

§ 396.15 Driveaway-towaway operations and inspections.

(a) *General.* Effective December 7, 1989, every motor carrier, with respect to motor vehicles engaged in driveaway-towaway operations, shall comply with the requirements of this part. **Exception:** Maintenance records required by § 396.3, the vehicle inspection report required by § 396.11, and the periodic inspection required by § 396.17 of this part shall not be required for any vehicle which is part of the shipment being delivered.

* * * * *

3. Part 396 is amended by adding §§ 396.17, 396.19, 396.21 and 396.23 to read as follows:

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle shall be inspected as required by this section. The inspection shall include, at a minimum, the parts and accessories set forth in Appendix G of this subchapter.

Note: The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, fulltrailer combination, the tractor, semitrailer, and the fulltrailer (including the converter dolly if so equipped) shall each be inspected.

(b) Except as provided in § 396.23, a motor carrier shall inspect or cause to be inspected all motor vehicles subject to its control.

(c) A motor carrier shall not use a commercial motor vehicle unless each component identified in Appendix G has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and a copy of the inspection report is on the vehicle.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control which are not subject to an inspection under § 396.23(b)(1).

(e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FHWA, meeting the minimum standards contained in Appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed, except as provided in § 396.23(b)(1).

(g) It shall be the responsibility of the motor carrier to ensure that all parts and accessories not meeting the minimum standards set forth in Appendix G to this subchapter are repaired promptly.

(h) Failure to perform properly the annual inspection set forth in this section shall cause the motor carrier to be subject to the penalty provisions provided by 49 U.S.C. 521(b).

§ 396.19 Inspector qualifications.

(a) It shall be the motor carrier's responsibility to ensure that the individual(s) performing an annual inspection under § 396.17 (d) or (e) is qualified as follows:

(1) Understands the inspection criteria set forth in 49 CFR Part 393 and Appendix G of this subchapter and can identify defective components;

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Is capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a State or Federal-sponsored training program or has a certificate from a State or Canadian Province which qualifies the person to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training and/or experience totaling at least 1 year. Such training and/or experience may consist of:

(A) Participation in a truck manufacturer-sponsored training program or similar commercial training program designed to train students in truck operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier maintenance program;

(C) Experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial vehicle inspector for a State, Provincial or Federal Government.

(b) Evidence of that individual's qualifications under this section shall be retained by the motor carrier for the period during which that individual is performing annual motor vehicle inspections for the motor carrier, and for one year thereafter. However, motor carriers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report which:

(1) Identifies the individual performing the inspection, including the individual's printed or typed name and signature;

(2) Identifies the registered owner of the vehicle;

(3) Identifies the motor carrier operating the vehicle, if other than the registered owner;

(4) Identifies the date and location of the inspection;

(5) Identifies the license plate number and vehicle identification number of the vehicle being inspected;

(6) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in Appendix G to this subchapter; and

(7) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b)(1) The original or a copy of the inspection report shall also be retained by the motor carrier under whose control the vehicle operates for 30 consecutive days or more, for a period

of 1 year. The inspection report shall be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report shall be maintained on the vehicle and available for inspection upon demand of an authorized Federal, State or local official.

§ 396.23 Equivalent to periodic inspection.

(a) The motor carrier may meet the requirements of § 393.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in Appendix G to this subchapter. When accepting such an inspection report, the motor carrier must ensure that the report complies with the requirements of § 396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program which is determined by the Administrator to be as effective as § 396.17, the motor carrier shall meet the requirement of § 396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier under the auspices of a State authorized self-inspection program.

(2) Should the FHWA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier must ensure that the periodic inspection required by § 396.17 is performed on all commercial motor vehicles under its control in a manner specified in § 396.17.

4. Subchapter B is amended by adding Appendix G to read as follows:

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

A vehicle does not pass an inspection if it has one of the following defects or deficiencies:

1. *Brake System.*

a. *Service brakes.*—(1) Absence of braking action on any axle required to have brakes upon application of the service brakes (such as missing brakes or brake shoe(s) failing to move upon application of a wedge, S-cam, cam, or disc brake).

(2) Missing or broken mechanical components including: shoes, lining, pads, springs, anchor pins, spiders, cam rollers, push-rods, and air chamber mounting bolts.

(3) Loose brake components including air chambers, spiders, and cam shaft support brackets.

(4) Audible air leak at brake chamber (Example-ruptured diaphragm, loose chamber clamp, etc.).

(5) Readjustment limits. The maximum stroke at which brakes should be readjusted is given below. Any brake ¼" or more past the readjustment limit or any two brakes less than ¼" beyond the readjustment limit shall be cause for rejection. Stroke shall be measured with engine off and reservoir pressure of 80 to 90 psi with brakes fully applied.

BOLT TYPE BRAKE CHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
A	12	6 15/16	1⅜
B	24	9 3/16	1¾
C	16	8 1/16	1¾
D	6	5¼	1¼
E	9	6 3/16	1⅜
F	36	11	2¼
G	30	9⅞	2

ROTOCHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
9	9	4 9/32	1½
12	12	4 13/16	1½
16	16	5 13/32	2
20	20	5 15/16	2
24	24	6 13/32	2
30	30	7 1/16	2¼
36	36	7⅝	2¾
50	50	8⅞	3

CLAMP TYPE BRAKE CHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
6	6	4½	1¼
9	9	5¼	1⅜
12	12	5 1/16	1⅜
16	16	6⅜	1¾
20	20	6 23/32	1¾
24	24	7 1/32	[1] 1¾
30	30	8 3/32	2
36	36	9	2¼

[1] (2" for long stroke design).

Wedge Brake Data.—Movement of the scribe mark on the lining shall not exceed 1/16 inch.

(6) Brake linings or pads.

(a) Lining or pad is not firmly attached to the shoe;

(b) Saturated with oil, grease, or brake fluid; or

(c) Non-steering axles: Lining with a thickness less than ¼ inch at the shoe center for air drum brakes, 1/16 inch or less at the shoe center for hydraulic and electric drum brakes, and less than ⅛ inch for air disc brakes.

(d) Steering axles: Lining with a thickness less than ¼ inch at the shoe center for drum brakes, less than ⅛ inch for air disc brakes and 1/16 inch or less for hydraulic disc and electric brakes.

(7) Missing brake on any axle required to have brakes.

(8) Mismatch across any power unit steering axle of:

(a) Air chamber sizes.

(b) Slack adjuster length.

b. *Parking Brake System.* No brakes on the vehicle or combination are applied upon actuation of the parking brake control, including driveline hand controlled parking brakes.

c. *Brake Drums or Rotors.*

(1) With any external crack or cracks that open upon brake application (do not confuse short hairline heat check cracks with flexural cracks).

(2) Any portion of the drum or rotor missing or in danger of falling away.

d. *Brake Hose.*

(1) Hose with any damage extending through the outer reinforcement ply. (Rubber impregnated fabric cover is not a reinforcement ply). (Thermoplastic nylon may have braid reinforcement or color difference between cover and inner tube. Exposure of second color is cause for rejection.

(2) Bulge or swelling when air pressure is applied.

(3) Any audible leaks.

(4) Two hoses improperly joined (such as a splice made by sliding the hose ends over a piece of tubing and clamping the hose to the tube).

(5) Air hose cracked, broken or crimped.

e. *Brake Tubing.*

(1) Any audible leak.

(2) Tubing cracked, damaged by heat, broken or crimped.

f. *Low Pressure Warning Device* missing, inoperative, or does not operate at 55 psi and below, or ½ the governor cut-out pressure, whichever is less.

g. *Tractor Protection Valve.* Inoperable or missing tractor protection valve(s) on power unit.

h. *Air Compressor.*

(1) Compressor drive belts in condition of impending or probable failure.

(2) Loose compressor mounting bolts.

(3) Cracked, broken or loose pulley.

(4) Cracked or broken mounting brackets, braces or adapters.

i. *Electric Brakes.*

(1) Absence of braking action on any wheel required to have brakes.

(2) Missing or inoperable breakaway braking device.

j. *Hydraulic Brakes. (Including Power Assist Over Hydraulic and Engine Drive Hydraulic Booster).*

(1) Master cylinder less than ¼ full.

(2) No pedal reserve with engine running except by pumping pedal.

(3) Power assist unit fails to operate.

(4) Seeping or swelling brake hose(s) under application of pressure.
(5) Missing or inoperative check valve.
(6) Has any visually observed leaking hydraulic fluid in the brake system.
(7) Has hydraulic hose(s) abraded (chafed) through outer cover-to-fabric layer.
(8) Fluid lines or connections leaking, restricted, crimped, cracked or broken.
(9) Brake failure or low fluid warning light on and/or inoperative.
k. *Vacuum Systems.* Any vacuum system which:
(1) Has insufficient vacuum reserve to permit one full brake application after engine is shut off.
(2) Has vacuum hose(s) or line(s) restricted, abraded (chafed) through outer cover to cord ply, crimped, cracked, broken or has collapse of vacuum hose(s) when vacuum is applied.
(3) Lacks an operative low-vacuum warning device as required.
2. *Coupling devices.*
a. *Fifth Wheels.*
(1) Mounting to frame.
(a) Any fasteners missing or ineffective.
(b) Any movement between mounting components.
(c) Any mounting angle iron cracked or broken.
(2) Mounting plates and pivot brackets.
(a) Any fasteners missing or ineffective.
(b) Any welds or parent metal cracked.
(c) More than ⅜ inch horizontal movement between pivot bracket pin and bracket.
(d) Pivot bracket pin missing or not secured.
(3) Sliders.
(a) Any latching fasteners missing or ineffective.
(b) Any fore or aft stop missing or not securely attached.
(c) Movement more than ⅜ inch between slider bracket and slider base.
(d) Any slider component cracked in parent metal or weld.
(4) Lower coupler.
(a) Horizontal movement between the upper and lower fifth wheel halves exceeds ½ inch.
(b) Operating handle not in closed or locked position.
(c) Kingpin not properly engaged.
(d) Separation between upper and lower coupler allowing light to show through from side to side.
(e) Cracks in the fifth wheel plate.
Exceptions: Cracks in fifth wheel approach ramps and casting shrinkage cracks in the ribs of the body of a cast fifth wheel.
(f) Locking mechanism parts missing, broken, or deformed to the extent the kingpin is not securely held.
b. *Pintle Hooks.*
(1) Mounting to frame.
(a) Any missing or ineffective fasteners (a fastener is not considered missing if there is an empty hole in the device but no corresponding hole in the frame or vice versa).
(b) Mounting surface cracks extending from point of attachment (e.g., cracks in the frame at mounting bolt holes).
(c) Loose mounting.
(d) Frame cross member providing pintle hook attachment cracked.
(2) Integrity.
(a) Cracks anywhere in pintle hook assembly.
(b) Any welded repairs to the pintle hook.
(c) Any part of the horn section reduced by more than 20%.
(d) Latch insecure.
c. *Drawbar/Towbar Eye.*
(1) Mounting.
(a) Any cracks in attachment welds.
(b) Any missing or ineffective fasteners.
(2) Integrity.
(a) Any cracks.
(b) Any part of the eye reduced by more than 20%.
d. *Drawbar/Towbar Tongue.*
(1) Slider (power or manual).
(a) Ineffective latching mechanism
(b) Missing or ineffective stop.
(c) Movement of more than ¼ inch between slider and housing.
(d) Any leaking, air or hydraulic cylinders, hoses, or chambers (other than slight oil weeping normal with hydraulic seals).
(2) Integrity.
(a) Any cracks.
(b) Movement of ¼ inch between subframe and drawbar at point of attachment.
e. *Safety Devices.*
(1) Safety devices missing.
(2) Unattached or incapable of secure attachment.
(3) Chains and hooks.
(a) Worn to the extent of a measurable reduction in link cross section.
(b) Improper repairs including welding, wire, small bolts, rope and tape.
(4) Cable.
(a) Kinked or broken cable strands.
(b) Improper clamps or clamping.
f. *Saddle-Mounts.*
(1) Method of attachment.
(a) Any missing or ineffective fasteners.
(b) Loose mountings.
(c) Any cracks or breaks in a stress or load bearing member.
(d) Horizontal movement between upper and lower saddle-mount halves exceeds ¼ inch.
3. *Exhaust System.*
a. Any exhaust system determined to be leaking at a point forward of or directly below the driver/sleeper compartment.
b. A bus exhaust system leaking or discharging to the atmosphere:
(1) Gasoline powered—excess of 6 inches forward of the rearmost part of the bus.
(2) Other than gasoline powered—in excess of 15 inches forward of the rearmost part of the bus.
(3) Other than gasoline powered—forward of a door or window designed to be opened. (exception: Emergency exits).
c. No part of the exhaust system of any motor vehicle shall be so located as would be likely to result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.
4. *Fuel System.*
a. A fuel system with a visable leak at any point.
b. A fuel tank filler cap missing.
c. A fuel tank not securely attached to the motor vehicle by reason of loose, broken or missing mounting bolts or brackets (some fuel tanks use springs or rubber bushings to permit movement).
5. *Lighting Devices.* All lighting devices and reflectors required by Section 393 shall be operable.
6. *Safe Loading.*
a. Part(s) of vehicle or condition of loading such that the spare tire or any part of the load or dunnage can fall onto the roadway.
b. Protection Against Shifting Cargo—Any vehicle without a front-end structure or equivalent device as required.
7. *Steering Mechanism.*
a. *Steering Wheel Free Play (on vehicles equipped with power steering the engine must be running).*

Steering wheel diameter	Manual steering system	Power steering system
16"	2"	4½"
18"	2¼"	4¾"
20"	2½"	5¼"
22"	2¾"	5¾"

b. *Steering Column.*
(1) Any absence or looseness of U-bolt(s) or positioning part(s).
(2) Worn, faulty or obviously repair welded universal joint(s).
(3) Steering wheel not properly secured.
c. *Front Axle Beam and All Steering Components Other Than Steering Column.*
(1) Any crack(s).
(2) Any obvious welded repair(s).
d. *Steering Gear Box.*
(1) Any mounting bolt(s) loose or missing.
(2) Any crack(s) in gear box or mounting brackets.
e. *Pitman Arm.* Any looseness of the pitman arm on the steering gear output shaft.
f. *Power Steering.* Auxiliary power assist cylinder loose.
g. *Ball and Socket Joints.*
(1) Any movement under steering load of a stud nut.
(2) Any motion, other than rotational, between any linkage member and its attachment point of more than ¼ inch.
h. *Tie Rods and Drag Links.*
(1) Loose clamp(s) or clamp bolt(s) on tie rods or drag links.
(2) Any looseness in any threaded joint.
i. *Nuts.* Nut(s) loose or missing on tie rods, pitman arm, drag link, steering arm or tie rod arm.
j. *Steering System.* Any modification or other condition that interferes with free movement of any steering component.
8. *Suspension.*
a. Any U-bolt(s), spring hanger(s), or other axle positioning part(s) cracked, broken, loose or missing resulting in shifting of an axle from its normal position. (After a turn, lateral axle displacement is normal with some suspensions. Forward or rearward operation in a straight line will cause the axle to return to alignment).
b. *Spring Assembly.*
(1) Any leaves in a leaf spring assembly broken or missing.
(2) Any broken main leaf in a leaf spring assembly. (Includes assembly with more than one main spring).

(3) Coil spring broken.
(4) Rubber spring missing.
(5) One or more leaves displaced in a manner that could result in contact with a tire, rim, brake drum or frame.
(6) Broken torsion bar spring in a torsion bar suspension.
(7) Deflated air suspension, i.e., system failure, leak, etc.

c. *Torque, Radius or Tracking Components.* Any part of a torque, radius or tracking component assembly or any part used for attaching the same to the vehicle frame or axle that is cracked, loose, broken or missing. (Does not apply to loose bushings in torque or track rods.)

9. *Frame.*

a. *Frame Members.*

(1) Any cracked, broken, loose, or sagging frame member.

(2) Any loose or missing fasteners including fasteners attaching functional component such as engine, transmission, steering gear, suspension, body parts, and fifth wheel.

b. *Tire and Wheel Clearance.* Any condition, including loading, that causes the body or frame to be in contact with a tire or any part of the wheel assemblies.

c. (1) *Adjustable Axle Assemblies (Sliding Subframes).* Adjustable axle assembly with locking pins missing or not engaged.

10. *Tires.*

a. Any tire on any steering axle of a power unit.

(1) With less than 4/32 inch tread when measured at any point on a major tread groove.

(2) Has body ply or belt material exposed through the tread or sidewall.

(3) Has any tread or sidewall separation.

(4) Has a cut where the ply or belt material is exposed.

(5) Labeled "Not for Highway Use" or displaying other marking which would exclude use on steering axle.

(6) A tube-type radial tire without radial tube stem markings. These markings include a red band around the tube stem, the word "radial" embossed in metal stems, or the word "radial" molded in rubber stems.

(7) Mixing bias and radial tires on the same axle.

(8) Tire flap protrudes through valve slot in rim and touches stem.

(9) Regrooved tire except motor vehicles used solely in urban or suburban service (see exception in 393.75(e).

(10) Boot, blowout patch or other ply repair.

(11) Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure.

(12) Tire is flat or has noticeable (e.g., can be heard or felt) leak.

(13) Any bus equipped with recapped or retreaded tire(s).

(14) So mounted or inflated that it comes in contact with any part of the vehicle.

b. All tires other than those found on the steering axle of a power unit:

(1) Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure.

(2) Tire is flat or has noticeable (e.g., can be heard or felt) leak.

(3) Has body ply or belt material exposed through the tread or sidewall.

(4) Has any tread or sidewall separation.

(5) Has a cut where ply or belt material is exposed.

(6) So mounted or inflated that it comes in contact with any part of the vehicle. (This includes a tire that contacts its mate.)

(7) Is marked "Not for highway use" or otherwise marked and having like meaning.

(8) With less than 2/32 inch tread when measured at any point on a major tread groove.

11. *Wheels and Rims.*

a. *Lock or Side Ring.* Bent, broken, cracked, improperly seated, sprung or mismatched ring(s).

b. *Wheels and rims.* Cracked or broken or has elongated bolt holes.

c. *Fasteners (both spoke and disc wheels).* Any loose, missing, broken, cracked, stripped or otherwise ineffective fasteners.

d. *Welds.*

(1) Any cracks in welds attaching disc wheel disc to rim.

(2) Any crack in welds attaching tubeless demountable rim to adapter.

(3) Any welded repair on aluminum wheel(s) on a steering axle.

(4) Any welded repair other than disc to rim attachment on steel disc wheel(s) mounted on the steering axle.

12. *Windshield Glazing.* (Not including a 2 inch border at the top, a 1 inch border at each side and the area below the topmost portion of the steering wheel.) Any crack, discoloration or vision reducing matter except: (1) coloring or tinting applied at time of manufacture; (2) any crack not over 1/4 inch wide, if not intersected by any other crack; (3) any damaged area not more than 3/4 inch in diameter, if not closer than 3 inches to any other such damaged area; (4) labels, stickers, decalcomania, etc. (see 393.60 for exceptions).

13. *Windshield Wipers.* Any power unit that has an inoperative wiper, or missing or damaged parts that render it ineffective.

Comparison of Appendix G, and the new North American Uniform Driver-Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria)

The vehicle portion of the FHWA's North American Uniform Driver-Vehicle Inspection Procedure (NAUD–VIP) requirements, CVSA's North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria and Appendix G of subchapter B are similar documents and follow the same inspection procedures. The same items are required to be inspected by each document. FHWA's and CVSA's out-of-service criteria are intended to be used in random roadside inspections to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) out-of-service. A vehicle(s) is placed out-of-service only when by reason of its mechanical condition or loading it is determined to be so imminently hazardous as to likely cause an accident or breakdown, or when such condition(s) would likely contribute to loss of control of the vehicle(s) by the driver. A certain amount of flexibility is given to the inspecting official whether to place the vehicle out-of-service at the inspection site or if it would be less hazardous to allow the vehicle to proceed to a repair facility for repair. The distance to the repair facility must not exceed 25 miles. The roadside type of inspection, however, does not necessarily mean that a vehicle has to be defect-free in order to continue in service.

In contrast, the Appendix G inspection procedure requires that all items required to be inspected are in proper adjustment, are not defective and function properly prior to the vehicle being placed in service.

Differences Between the Out-of-Service Criteria & FHWA's Annual Inspection

1. *Brake System.*

The Appendix G criteria rejects vehicles with any defective brakes, any air leaks, etc. The out-of-service criteria allows 20% defective brakes on non-steering axles and a certain latitude on air leaks before placing a vehicle out-of-service.

2. *Coupling Devices.*

Appendix G rejects vehicles with any fifth wheel mounting fastener missing or ineffective. The out-of-service criteria allows up to 20% missing or ineffective fasteners on frame mountings and pivot bracket mountings and 25% on slider latching fasteners. The out-of-service criteria also allows some latitude on cracked welds.

3. *Exhaust System.*

Appendix G follows Section 393.83 verbatim. The CVSA out-of-service criteria allows vehicles to exhaust forward of the dimensions given in Section 393.83 as long as the exhaust does not leak or exhaust under the chassis.

4. *Fuel System.*

Same for Appendix G and the out-of-service criteria.

5. *Lighting Devices.*

Appendix G requires all lighting devices required by Section 393 to be operative at all times. The out-of-service criteria only requires one stop light and functioning turn signals on the rear most vehicle of a combination vehicle to be operative at all times. In addition one operative head lamp and tail lamp are required during the hours of darkness.

6. *Safe Loading.*

Same for both Appendix G and the out-of-service criteria.

7. *Steering Mechanism*

Steering lash requirements of Appendix G follows the new requirements of § 393.209.

8. *Suspension*

Appendix G follows the new requirements of § 393.207 which does not allow any broken leaves in a leaf spring assembly. The out-of-service criteria allows up to 25% broken or missing leaves before being placed out-of-service.

9. *Frame*

The out-of-service criteria allows a certain latitude in frame cracks before placing a vehicle out-of-service. Appendix G follows the new requirements of 393.201 which does not allow any frame cracks.

10. *Tires*

Appendix G follows the requirements of 393.75 which requires a tire tread depth of 4/32 inch on power unit steering axles and 2/32 inch on all other axles. The out-of-service criteria only requires 2/32 inch tire tread depth

on power unit steering axles and 1/32 inch on all other axles.

11. *Wheel and Rims*

The out-of-service criteria allows a certain amount latitude for wheel and rim cracks and missing or defective fasteners. Appendix G meets the requirements of the new 393.205 which does not allow defective wheels and rims non-effective nuts and bolts.

12. *Windshield Glazing*

The out-of-service criteria places in a restricted service condition any vehicle that has a crack or discoloration in the windshield area lying within the sweep of the wiper on the drivers side and does not address the remaining area of the windshield. Appendix G addresses requirements for the whole windshield as specified in 393.60.

13. *Windshield Wipers*

Appendix G requires windshield wipers to be operative at all times. The out-of-service criteria only requires that the windshield wiper on the driver's side to be inspected during inclement weather.

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Part III

Environmental Protection Agency

40 CFR Parts 122, 123, 124 and 504

National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124 and 504

[FRL 3376-8]

National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 405 of the Water Quality Act of 1987 (WQA) added Section 402(p) of the Clean Water Act (CWA) to require the Environmental Protection Agency (EPA) to establish regulations setting forth National Pollutant Discharge Elimination System (NPDES) permit application requirements for: storm water discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 250,000 or more; and discharges from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000. Today's notice requests comments on proposed permit application requirements for these discharges and for storm water discharges which are designated on a case-by-case basis for a permit for which the Administrator, or State, as the case may be, determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

Section 401 of the WQA amended Section 402(1)(2) to provide that NPDES permits shall not be required for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. Today's notice requests comments on regulations proposed to clarify and implement this provision.

DATES: Comments on this proposed rule must be received on or before March 7, 1989.

Public meetings are scheduled as follows:

(1) January 13, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Washington, DC.

(2) January 24, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Chicago, IL.

(3) January 26, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Dallas, TX.

(4) January 31, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Oakland, CA.

(5) February 7, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Jacksonville, FL.

(6) February 9, 1989, 9:00 a.m. to 12:00 p.m. to discuss permit application and notification requirements for storm water discharges associated with industrial activity and 1:00 p.m. to 4:00 p.m. to discuss requirements for municipal separate storm sewer systems, in Boston, MA.

The morning and afternoon sessions may be adjourned earlier if there are no remaining comments.

Persons wishing to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

ADDRESSES: The public should send an original and two copies of their comments to Tom Seaton, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public record is located at EPA Headquarters, NE-208, and is available for viewing from 9:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling Yvonne Marshall at (202)-475-7460. Copies cost $.15/page.

Public meetings will be held at the following addresses:

(1) Washington—Auditorium of the EPA Education Center at U.S. Environmental Protection Agency Headquarters, 401 M St. SW; Washington, DC 20460.

(2) Chicago—Lakeview Conference Room, Southeast Corner, 16th Floor, U.S. Environmental Protection Agency Region V, 230 South Dearborn St., Chicago, IL 60604.

(3) Dallas—Arkansas Room, 12th Floor, U.S. Environmental Protection Agency Region VI, 1445 Ross Ave., Dallas TX 75270.

(4) Oakland—Hyatt at Oakland International, 455 Hegenberger Rd., Oakland, CA 94621.

(5) Jacksonville—Jacksonville Hilton, 14000 Dixie Clipper Drive, Jacksonville Airport, Jacksonville, FL 32218.

(6) Boston—John F. Kennedy Federal Building, Room 2003, U.S. Environmental Protection Agency Region I, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rule contact: James Gallup, Kevin Weiss, or Tom Seaton, Office of Water Enforcement and Permits (EN-336), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202)-475-9518.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Water Quality Concerns

The 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act or CWA), prohibit the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. Efforts to improve water quality under the NPDES program have traditionally focused primarily on reducing pollutants in discharges of industrial process wastewater and municipal sewage. This program emphasis has developed for a number of reasons. At the onset of the program in 1972, many sources of industrial process wastewater and municipal sewage were not adequately controlled, and represented pressing environmental problems. In addition, sewage outfalls and industrial process discharges were easily identified as responsible for poor, often drastically degraded water quality conditions. However, as pollution control measures were initially developed for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as agricultural and urban runoff were also major causes of water quality problems. Some diffuse sources of water pollution, such as agricultural storm water discharges and irrigation return flows, are statutorily exempted from the NPDES program. Controls for other diffuse sources have been slow to develop under the NODES program.

Since enactment of the 1972 amendments to the CWA, considering the rise of economic activity and population, significant progress in cleaning up water pollution has been made, particularly with regard to industrial process wastewater and municipal sewage. Expenditures by EPA, the States, and local governments to construct and upgrade sewage treatment facilities have substantially increased the population serviced by higher levels of treatment. Permitting backlogs for industrial process wastewater discharges have been reduced. Continuing improvements are expected for these discharges as the NPDES program continues to shift to toxic and water quality-based pollution control.

Although assessments of water quality are extremely difficult to perform and verify, several National assessments of water quality are available. For the purpose of these assessments, urban runoff is considered to be a diffuse source or nonpoint source pollution, although legally, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA, and are subject to the NPDES program. The "National Water Quality Inventory, 1986 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under Section 305(b) of the CWA. In preparing the Section 305(b) Reports, the States were asked to indicate the fraction of the States' waters that were fully supporting, partly supporting, or not supporting designated uses. The Report indicates that of the rivers, lakes, and estuaries that were assessed by States (approximately one-fifth of stream miles, one-third of lake acres and one-half of esturine waters), roughly 75% are supporting the uses for which they are designated. For waters with use impairments, States were asked to determine impacts due to nonpoint (agricultural and urban runoff and other sources), municipal sewage, industrial (process wastewaters), combined sewer overflows, natural, and other sources, then combine impacts to arrive at estimates of the relative percentage of State waters affected by each source. In this manner, the relative importance of the various sources of pollution causing use impairments was assessed and weighted national averages were calculated. Based on 37 States that provided information of sources of pollution, industrial process wastewaters were cited as the cause of nonsupport for 9% for rivers and streams, 1% lakes, and 8% for estuaries. Municipal sewage was the cause of nonsupport for 17% of rivers and streams, 8% lakes, and 22% estuaries. Nonpoint sources was the cause of nonsupport for 65% of rivers and streams, 76% lakes and 45% estuaries. The Assessment concluded that pollution from diffuse sources such as runoff from agricultural and urban areas is cited by the States as the leading cause of water quality impairment. These sources appear to be increasingly important contributors of use impairment as discharges of industrial process wastewaters and municipal sewage plants come increasingly under

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control and intensified data collection efforts provide additional information.

The States conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report "America's Clean Water—The States' Nonpoint Source Assessment, 1985" which indicated that 38 States reported urban runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

To provide a better understanding of the nature of urban runoff from commercial and residential areas, from 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP). The NURP program included 28 projects across the Nation, conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP program was to characterize the water quality of discharges from separate storm sewers which drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in the study were analyzed for eight conventional pollutants and three metals. Data collected in NURP indicated that on an annual loading basis, suspended solids in discharges from separate storm sewers draining runoff from residential, commercial and light industrial areas are around an order of magnitude or more greater than effluent from sewage treatment plants receiving secondary treatment. In addition, the study indicated that annual loadings of chemical oxygen demand (COD) is comparable in magnitude to effluent from sewage treatment plants receiving secondary treatment. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent, and that the short-term loadings associated with individual events will be high and may have shockloading effects on receiving water such as sag in dissolved oxygen levels. NURP data also showed that fecal coliform counts in urban runoff are typically in the tens to hundreds of thousand per 100 ml of runoff during warm weather conditions, although the study suggested that fecal coliform may not be the most appropriate indicator organism for identifying potential health risks in storm water runoff. Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely important source of oil pollution to receiving waters, with hydrocarbon levels in urban runoff typically being reported at a range of 2 to 10 mg/1. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time, and exert adverse impacts on benthic organisms.

A portion of the NURP program involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. Seventy-seven priority pollutants were detected in samples of storm water discharges from residential, commercial and light industrial lands taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table A–1 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

Priority Pollutants Detected in at Least 10% of NURP Samples

TABLE A–1

	Frequency of detection (percent)
Metals and Inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated aliphatics: Methane, dichloro	11
Phenols and cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate esters: Phthalate, bis(2-ethylhexyl)	22
Polycyclic aromatic hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria.

The NURP study provides insight on what can be considered background levels of pollutants for urban runoff, as the study focused primarily on monitoring runoff from residential, commercial and light industrial areas. However, NURP concluded that the quality of urban runoff can be adversely impacted by several sources of pollutants that were not directly evaluated in the study and are generally not reflected in the NURP data, including illicit connections, construction site runoff, industrial site runoff and illegal dumping.

Other studies have shown that many storm sewers contain illicit discharges of non-storm water, and that large amounts of wastes, particularly used oils, are improperly disposed in storm sewers. Removal of these discharges present opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain, in addition to illicit connections and improperly disposed wastes, toxics and conventional pollutants when material management practices allow exposure to storm water.

In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not emphasize identifying illicit connections to storm sewers other than to assure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Other studies have shown that illicit connections to storm sewers can crate severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built.

Intensive construction activities may result in severe localized impacts on water quality because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus and

nitrogen from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment runoff rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and typically 1,000 to 2,000 times that of forest lands. Even a small amount of construction may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

B. Previous Regulatory Approaches

The appropriate means of regulating storm water point sources within the National Pollutant Discharge Elimination System (NPDES) program has been a matter of serious concern since implementation of the NPDES program. Each attempt to devise a workable program has been the focus of substantial controversy in view of the large number of storm water sources, the nature of storm water runoff and the realities of program priorities and resources. In 1973, EPA promulgated its first storm water regulations exempting from permit requirements those conveyances carrying storm water runoff uncontaminated by industrial or commercial activity unless the particular storm water discharger had been identified by the NPDES Director as a significant contributor of pollution (38 FR 13530 (May 22, 1973)). The Agency maintained that, while these sources fell within the definition of a point source, they were nonetheless ill-suited to the traditional end-of-pipe, technology-based controls that are the basis of the NPDES program for process discharges and discharges from Publicly-Owned Treatment Works (POTWs). Because of the intermittent, variable and unpredictable nature of storm water discharges, EPA reasoned that the problems caused by storm water discharges were better managed at the local level through nonpoint source controls such as the imposition of specific management practices to prevent the pollutants from entering the runoff. The Agency also justified its decision by noting that issuing individual NPDES permits for the hundreds of thousands of storm water point sources in the United States would create an overwhelming administrative burden and would divert resources away from control of industrial process wastewater and municipal sewage, which at the time, were more pressing and identifiable environmental problems.

In the first in a series of challenges to the storm water regulations, the Natural Resources Defense Council (NRDC) brought suit in the U.S. District Court for the District of Columbia, challenging the Agency's authority to selectively exempt categories of point sources from permit requirements, *NRDC v. Train*, 396 F.Supp. 1393 (D.D.C. 1975), *aff'd, NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977). The District Court held that EPA could not exempt discharges identified as point sources from regulation under the NPDES permit program. However, in acknowledging the administrative burden placed on the Agency by requiring individual permits, the court recognized EPA's discretion to use certain administrative devices, such as area permits, to help manage its workload. In addition, the court recognized some discretion on EPA's part to define what constitutes a point source.

In response to the District Court's decision in *NRDC v. Train*, EPA issued a rule on March 18, 1976, (41 FR 11307) establishing a comprehensive permitting program for all storm water discharges except for rural runoff uncontaminated by industrial or commercial activity. This rule substantially increased the number of storm water discharges subject to the NPDES program. Permits continued to be required for conveyances carrying contaminated storm water runoff from areas used for industrial or commercial activities, as well as storm water discharges designated by the permit-issuing authority as significant contributors of pollution. These sources were required to submit the then-existing individual permit applications required of industrial and commercial process wastewater dischargers. In addition, the 1976 rule brought into the permitting program separate storm sewers which were defined as "conveyance or system of conveyances . . . located in an urbanized area and primarily operated for the purpose of collecting and conveying storm water runoff." Channelized storm water runoff from rural areas continued to be defined as non-point sources unless designated otherwise by the permitting authority. Individual permit applications were not required for separate storm sewers at that point in time. EPA planned to study such discharges and issue "general" or area permits to such sources as these discharges were expected to be less significant than storm water contaminated by industrial wastes.

On June 7, 1979 and May 19, 1980, EPA published comprehensive revisions to the NPDES regulations (44 FR 32854 (June 7, 1979); 45 FR 33290 (May 19, 1980)). With regard to storm water discharges, these rules essentially retained the March 18, 1976 broad definition of storm water discharges subject to NPDES permit requirements, but applied new application requirements to storm water point sources. Under these regulations the same application information required of all industrial and commercial process wastewater dischargers would be required of all storm water point sources. This meant that the new individual permit application requirements of the 1979/1980 rules applicable to process wastewater discharges would also be required for all storm water discharges. These new requirements included testing under certain circumstances for a substantially greater number of pollutants identified in the 1977 amendments to the Clean Water Act (CWA) which stressed the control of toxic pollutants.

This regulation brought suits in several Court of Appeals and District Courts by a number of major trade associations, several of their member companies, NRDC and Citizens for a Better Environment. The suits challenged many aspects of the NPDES regulations, including the storm water provisions. Eventually all petitions for review were consolidated in the D.C. Circuit Court of Appeals (*NRDC v. EPA*, 673 F.2d 392 (D.C. Cir. 1980)).

After two years of intensive settlement negotiations with representatives of most of the petitioners, the Agency and industry petitioners signed a settlement agreement on July 7, 1982, which addressed a number of issues relating to the NPDES program, including storm water. Under the terms of the agreement, EPA agreed to propose changes to the storm water regulations (47 *FR* 52073 (November 18, 1982)). The proposal reflected the Agency's attempt to balance the environmental concerns associated with such discharges with the practical limitations of individual NPDES permits and the reality of limited resources. Thus, the proposal significantly narrowed the definition of storm water point source and reduced the application requirements. The proposal defined storm water point sources as consisting only of conveyances of storm water contaminated by process wastes, raw materials, toxics, hazardous pollutants or oil and grease.

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The proposal also reduced application requirements. Storm water discharges were proposed to be divided into two groups based on their potential for significant pollution problems. Group I sources (expected to pose more significant pollution problems) would continue to be required to submit Application Forms 1 and 2C applicable to industrial and commercial process wastewater dischargers except that effluent testing data would be required only for conventional pollutants. For all other pollutants, the applicant would only have to indicate whether they believed any such pollutants were present or absent and explain why. Application requirements were further reduced for Group II. Essentially, the only information that would be required for Group II sources would consist of basic information to identify the type, number and location of Group II discharges. No effluent testing data was proposed to be required at that time from these sources. The Agency also proposed to extend the deadline for submission of storm water permit applications to six months after promulgation of a final rule.

Finally, as also agreed to in the Settlement Agreement, EPA issued a letter stating that while the proposal was pending, EPA would not take enforcement action against storm water dischargers other than those (1) covered by an existing NPDES permit; (2) subject to effluent limitations guidelines or toxic pollutant standards; or (3) designated as a significant contributor of pollutants. This "non-enforcement policy" did not apply to existing enforcement actions, and did not affect the right of an approved NPDES State or citizens group to bring a suit against a storm water discharger.

EPA's 1982 proposal to address the storm water issue again generated considerable reaction and comment from industrial groups and trade associations. They asserted that the proposal did not go far enough in restricting the definition of storm water point sources. They maintained that most storm water discharges were *de minimis* sources of pollution and thus are not appropriately regulated under the NPDES program. States and environmental groups took the position that the CWA requires permits for storm water discharges regardless of the level of pollutants present in such discharges. They contended that the proposal went too far in narrowing the scope of coverage and questioned whether EPA had a legally sufficient or technically supportable basis for the Group I/Group II designations in the proposal. EPA considered these public comments and published final storm water regulations on September 26, 1984 (49 FR 37998).

The 1984 final rule recognized that there are two fundamental issues regarding the NPDES regulation of storm water: (1) which storm water discharges are point sources and therefore within the NPDES program, and (2) what is the best way to regulate these sources.

On the first issue, the Agency was persuaded by commenters that the 1982 proposal had gone too far in narrowing the scope of coverage. Data available to EPA, such as the National Urban Runoff Program (NURP) study, indicated that there are water quality problems associated with storm water runoff in some situations. Thus, the final rule retained the broad coverage of the 1980 rule in mandating the permitting of all storm water point sources that discharge pollutants into waters of the United States. The September 26, 1984 rule defined a storm water point source as a channelized conveyance of storm water runoff that (1) is located in an urbanized area as defined by the Bureau of Census, or (2) discharges from lands of facilities used for industrial or commercial activities, or (3) is designated by the Director.

To address the second issue of how to regulate these sources administratively, the final rule retained the two-tiered classification described in the November 18, 1982 proposal. Thus, the final rule set forth two categories of storm water point sources with different application requirements for each. Group I storm water point sources were defined as those subject to effluent limitations guidelines, located at an industrial plant or plant associated area, or designated by the Director. All other storm water point sources were classified as Group II. Group I dischargers were required to complete both Form 1 and Form 2C, the NPDES Application Form for industrial and commercial process wastewater discharges, including certain sampling and testing data. The application requirements for Group II were significantly reduced from their existing requirements. Group II sources were required to submit only Form 1 plus a narrative description of the drainage area, receiving water, and any treatment applied to the discharge. Since Group II sources were expected to pose less significant pollution problems generally and therefore be a lower priority for permit issuance, additional information could be collected on these sources at a later date when permits were issued to these sources.

The final rule also revoked the non-enforcement letter issued as part of the Settlement Agreement and a new permit application deadline of April 26, 1985 was established.

These storm water regulations generated considerable controversy (through post-promulgation comment) and, once again, suits were filed. With regard to coverage, it was claimed that the new definitions would subject thousands of discharges to the program for the first time. In fact, the EPA's view, the coverage of storm water point sources under the NPDES program was essentially unchanged by the September 26 rulemaking. The 1984 rules deleted the term "contaminated" and relied instead on geographic criteria. However, this change in nomenclature resulted in the same coverage of discharges.

In post-promulgation comments on the 1984 rule, various industries and trade associations claimed that the April 26 application deadline would be impossible for many dischargers to meet. It was argued that many discharges were located in areas where testing during the winter months would not be feasible. It was also pointed out that the intermittent and unpredictable nature of storm water would result in difficult and time-consuming data gathering, and that six months was not enough time to locate, identify, sample and test thousands of storm water point sources. Many comments expressed the view that requiring full samplying from every single Group I discharger was excessive in terms of providing sufficient data for general permits, the preferred means of regulating these sources. They argued that the Agency would be overwhelmed with an unmanageble amount of data that would only be outdated by the time EPA and the States were able to issue permits. Commenters also objected to the expense of the testing when such data might not be utilized in a timely manner.

The environmental groups maintained that, at a minimum, EPA's decisions as reflected in the final rule were supported by the record and should not be changed without strong justification supported by hard data. They expressed concern that any change or delay would only exacerbate what they perceived as EPA's failure to regulate these sources of pollutants.

Upon consideration of these post-promulgation comments, EPA concluded that it was essential to obtain additional data on storm water discharges to assess their significance as an enviromental problem, and to identify the best means of control. However, even though the number of dischargers

required to submit quantitative testing data had been reduced by the 1984 rule, tens of thousands of storm water point sources remained to be identified, tested and analyzed. Despite the improvments made in the 1984 regulation, EPA realized it was appropriate to request comment on whether the collection of data from each individual Group I discharger was necessary and efficient. In addition, EPA realized that new deadlines would need to be established. Thus, in an attempt to balance environmental concerns with administrative and practical feasibility, EPA published proposed changes to the storm water regulations on March 7, 1985 at 50 FR 9362.

II. March 7, 1985, Proposed Rule

A. Discussion

Several changes to the application requirements for Group I sources were proposed in the March 7, 1985 proposal. For industrial facilities, the system proposed in the March 7 notice would rely primarily on voluntary, written commitments from trade associations to submit quantitative data from selected representative Group I sources. In this way, EPA could obtain a manageable quantity of data to allow for the establishment of permitting priorities and the development of general permits, thereby reducing the cost to applicants and the administrative burden on EPA and State resources.

EPA proposed that the requirement that Group I dischargers submit Form 2C (sampling and analysis data of effluent) be eliminated. In lieu thereof, Group I dischargers would submit Form 1 and the narrative already required of Group II, with two additions: Group I applicants would also submit any available existing quantitative data for certain pollutants, and would identify (no sampling required) the presence of pollutants listed in the rule: oil and grease, total organic carbon, chemical oxygen demand, and any pollutant listed in Appendix D of 40 CFR Part 122 that the applicant knew or had reason to believe were present in its storm water discharge. The March 7 notice proposed no changes to the Group II application requirements.

As noted above, in proposing to suspend Form 2C, the Agency was relying in part on commitments from industries and trade associations that they would submit representative quantitative effluent testing data during 1985. In December 1984 and February 1985, EPA held meetings with representatives of several industries and trade associations who had raised concerns with the requirements of the September 26 final rule. At those meetings, a number of industry groups indicated a willingness to provide the Agency with representative data on the storm water discharges of their membership.

To follow up on these assurances, the Agency held a meeting on March 7, 1985, in order to clarify the details of this data-gathering initiative. This meeting was attended by representatives of several dozen industry trade associations, a few individual companies and an environmental group. At this meeting, EPA set forth criteria and minimum standards for the voluntary group data submissions. EPA requested that trade associations make a formal commitment to provide representative data and submit these data to EPA by Septembr 1, 1985. The Agency envisioned that these data would supplement existing data available to it and could provide a basis for establishing permitting priorities and setting permit terms and conditions. EPA held a second meeting on March 22 to further refine and explain the data-gathering process. Twenty-nine commitment letters were ultimately received.

With regard to the application deadline, the March 7 proposal suggested a deadline of December 31, 1985, and requested comments on the possibility of extending the deadline still further for Group II storm water point sources. As discussed in greater detail below, this part of the proposal was addressed in a final rule (50 FR 35200 (August 29, 1985)). The August 29 rule extended the deadline to December 31, 1987 for Group I, and June 30, 1989 for Group II.

The March 7 proposal also requested comments on whether, in the event the Form 2C requirement was retained, the regulations should include discretionary authority for the Director of the Office of Water Enforcement and Permits to waive the quantitative data submission requirement for a class or category of Group I storm water point sources.

B. Reaction of Comments

On hundred and thirty-two comments on the March 7 proposal were received from industries, trade associations, States, cities, Federal agencies and environmental groups. All but two commenters supported EPA's proposal as a manageable and environmentally sound approach to the storm water permitting problem. The two environmental groups commenting on the proposal objected to it on a number of grounds. At a minimum, they favored withdrawal of the proposal and retention of the September 26 requirements.

After evaluating the comments received on the March 7 proposal, assessing the commitments received from trade associations, and re-examining the issues, EPA decided to reopen the comment period on the March 7 notice to provide additional information and issues for public comment.

III. August 12, 1985, Reopener Notice

A. Group Application Option, Process and Procedures

On August 12, 1985 (50 FR 32548), EPA reopened the comment period on the March 7 proposal and requested comments on a group application approach for Group I applicants that essentially would codify the plan for submission of representative data detailed in the March 7, 1985 proposal and discussed at the two public meetings held that same month with representatives of trade associations, individual companies, and an environmental group.

Although EPA had received 29 commitment letters from trade associations (and a few individual companies) that indicated a willingness to voluntarily submit representative storm water data from their memberships, the Agency was concerned that such letters might not provide a sufficient basis for suspending the Application Form 2C requirement for all Group I sources. In EPA's view, the voluntary data submissions would not necessarily justify the elimination of testing requirements for those Group I sources that were either not covered by a trade association submission or chose not to participate in the voluntary data submissions. The 29 commitment letters that the Agency received also indicated widespread confusion about the scope of coverage for the data submissions by the trade associations. In addition, there was confusion about the appropriate pollutants to be sampled and analyzed and then submitted to the Agency as representative of the storm water discharges of the members of the group.

Nevertheless, the Agency still regarded the submission of representative data as the most practical and efficient means of determining appropriate permit terms and conditions, as well as permitting priorities, for the multitude of storm water point source discharges requiring NPDES permits. The August 12 proposal attempted to build upon the efforts expended by both the Agency and those

trade associations that cooperated under the March 7 voluntary approach.

The major element of the August 12 proposal was that all Group I storm water point sources would have to submit either an individual NPDES application (Form 1 and Form 2C) or participate in an approved group application. The group application was an optional alternative to the submission of the usual individual NPDES application, with the normal regulatory provisions governing permit application and issuance still applicable.

Under the proposed group application option, representative data on storm water discharges would be compiled by a trade association or similar representative entity for a subcategory or category of dischargers. The group submission would satisfy the application requirements for any storm water discharger falling within the particular subcategory or category.

The group application was to consist of two parts: Part 1 and Part 2. Part 1 would be a commitment by the trade association or representative entity to submit quantitative data from individual representative facilities within the subcategory or category, as well as a complete description of the group's data collection plans. Part 1 would also characterize the facilities covered under the group application and provide an identification of those individual facilities that would do the actual pollutant sampling and analyses. EPA proposed that those individual facilities submitting quantitative data would have to appropriately represent the subcategory or category covered by the group application. Factors proposed to ensure representativeness were a range of operations, sizes and geographic locations, facilities with and without treatment of their storm water discharges, data from facilities connected to sanitary sewers and from facilities discharging storm water directly to waters of the U.S. The Agency also proposed that the group application contain submissions from 10 percent of the subcategory or category, with a minimum of 10 individual facilities. Any historical data on storm water discharges from facilities within the group application were also to be submitted. Other discharges covered by the group application would not be required to submit individual Forms 1 and 2C.

EPA proposed to accept group applications based upon industrial subcategories as defined in 40 CFR Subchapter N. The Agency felt that the submission of a group application covering a subcategory of dischargers would allow for more effective analysis of any quantitative data received, as well as provide a clearer basis for subsequently developed permit terms and conditions. Submission on the basis of subcategories was also considered appropriate to avoid the "blurring of categories" due to the overlap of trade associations' memberships identified in the 29 voluntary commitment letters. However, the Agency did not preclude the submission of data by categories as long as the criteria for representativeness was met. Comments were requested on the acceptance of group applications based upon subcategories.

The August 12 notice also proposed that Part 1 of a group application would be submitted to the Office of Water Enforcement and Permits (OWEP) at EPA Headquarters in Washington, D.C. no later than 90 days after the publication date of any final rule. The Agency also solicited public comments on whether any group application should be accepted after the 90-day deadline. The Agency stated that it preferred the 90-day deadline be mandatory, such that failure to submit a Part 1 within that time would preclude the group application option for those dischargers within the subcategory or category.

Part 1 applications submitted to OWEP would be reviewed for acceptability based on the proposed representative ceriteria and in accordance with 40 CFR 122.21(e) [completeness of NPDES permit applications]. Comments were solicited on the appropriateness of the proposed representative criteria.

The Agency proposed that a notice would be published in the Federal Register if OWEP determined that a Part 1 application was accepted for a particular subcategory or category of storm water dischargers. If a Part 1 application were unacceptable, OWEP could either deny the group application or request changes to the application and then make a final decision on the acceptability of the group application. Even if a group application were accepted, permitting authorities would retain the right to require an individual permit application from any individual storm water discharger.

Any storm water discharger falling within a subcategory or category for which a group application had been accepted would have the option of being covered under the group application or submitting an individual NPDES permit application. If the discharger chose coverage under the group application, no individual information would be required (unless that discharger was identified as one of the individual facilities submitting quantitative data for the group application). The Agency proposed that in lieu of all sources covered by the group application submitting a Form 1, sources would submit a Notice of Intent (NOI) to the permitting authority if the facility wished to be covered under the general permit for that subcategory or category.

Any Group I source that did not fall within a group application (or desiring not to be covered by the group application) would submit an individual NPDES permit application for their storm water discharges. Individual permit applications would be submitted to the applicable permitting authority (i.e., an EPA Regional Office or an NPDES State). the deadline for submittal of individual applications would be the same as that for Part 2 of the group application, December 31, 1987.

The August 12 proposal explained that Part 2 of the group application would consist of the actual quantitative effluent data from the representative facilities within the covered subcategory or category. Those individual facilities selected to perform sampling and analyses under the group application were to test for:

- Any pollutant limited in an effluent limitations guideline for its subcategory or category;
- Any pollutant listed in the individual facility's NPDES permit for its process wastewater;
- Oil and grease, TOC, COD, pH, BOD; and
- Any information on the discharge required under 40 CFR 122.21 (g)(7)(iii) (A) and (B).

The Agency requested public comments on the suitability of the pollutants to be tested, and their sufficiency to determine accurately the characteristics of storm water discharges.

EPA also proposed that those individual facilities selected to provide quantitative data under the group application would sample all of their storm water outfalls. EPA stated that since the individual facilities' data would be considered representative of the subcategory or category, it was appropriate to require information on all storm water outfalls in order to fully characterize the facilities' discharges.

Further, the August 12 proposal requested comment on the possibility of a waiver from testing certain pollutants for group applicants. 40 CFR 122.21(g)(7)(i)(B) of the existing NPDES regulations provides authority to the permitting authority to waive permit application reporting requirements for certain pollutants if the applicant

demonstrates to the satisfaction of the permitting authority that such information is unnecessary. Comment was also solicited on what data should be furnished to support such a waiver request.

Each individual facility submitting actual quantitative data under Part 2 of the group application would complete an NPDES permit Application Form 1 and form 2C. Both Form 1 and Form 2C would be signed by the individual facilities in accordance with the signatory requirements contained in 40 CFR 122.22.

The trade association or representative entity that submitted Part 1 of the group application would compile the individual Form 1s and Forms 2Cs, and would attach a narrative certifying that the Part 2 submission corresponds to the submission described in Part 1. The Agency requested comments on its proposal that the Part 2 narrative would be signed by an association officer (or comparable individual) responsible for policy or decision making functions and to whom authority to sign documents on behalf of the group applicants had been assigned. All Form 1s and Form 2Cs would be signed by the individual facilities in accordance with the general signatory requirements of 40 CFR 122.22.

Like Part 1 of the group application, Part 2 would be submitted to OWEP for review and used to develop permit issuance priorities and model general permit terms and conditions. The group application option and process comported with the Agency's intent to issue general permits in most instances to cover storm water point sources.

The August 12 proposal explained that the group application option, if promulgated as proposed, would only apply to those facilities in States not approved to administer the NPDES permit program (i.e., where EPA is the permit-issuing authority). Facilities within approved NPDES States must follow existing State regulations. Approved NPDES States, of course, would be free to amend their regulations to adopt the group application option for all storm water dischargers or as an alternative to individual storm water permit applications in certain cases. The Agency requested that States, especially NPDES States, comment on the proposed group application process. In addition, EPA strongly recommended in the proposal that NPDES States without general permit authority approved by EPA seek such authority since the ability to issue general permits provide an effective and efficient means of permitting certain storm water point sources and would allow States to make the best use of the results of the group applications.

B. Classification of Publicly-Owned Separate Storm Sewers

The August 12 reopener notice also requested comments on the Agency's clarification of whether publicly-owned separate storm sewers located in urbanized areas were classified as Group I or Group II storm water point sources. The Agency considered the September 26, 1984 final regulations to be ambiguous on this point, as evidenced by the numerous telephone inquiries received immediately after publication of the final rule addressing this issue. The August 12 proposal stated the Agency's view that municipal storm water sewers designed only to convey storm water runoff (a.k.a., publicly-owned separate storm sewers) are Group I storm water point sources based on the data available to the Agency through the National Urban Runoff Program (NURP) study. The NURP study found that in many instances storm water discharged from publicly-owned separate storm sewers was indeed contaminated with conventional pollutants (e.g., suspended solids and fecal coliform) as well as heavy metals (e.g., lead, copper, zinc, and cadmium). Because of the significance such discharges can have for water quality, the Agency felt that it was appropriate to classify publicly-owned separate storm sewers as Group I sources. The Agency requested comments on whether this clarification/classification was appropriate.

C. Discharges into Publicly-Owned Separate Storm Sewers

Under the September 26, 1984 final rule, dischargers into a publicly-owned separate storm sewer must either be covered by an individual NPDES permit or by a permit issued to the municipality or public entity operating the system. This provision, one of the items clarified under the terms of the NPDES Settlement Agreement (June 1982), which EPA proposed in November 1982, allowed the operator of the outfall discharging directly to waters of the U.S. to decline responsibility for discharges into the system while applying for a permit for the outfall.

The "either/or" nature of the September 26 rule allowed a municipality to decline responsibility for non-municipal storm water discharges into the publicly-owned separate storm sewer system. In this case, all non-municipal dischargers into the municipal system would be responsible for applying for and obtaining individual NPDES permits. This approach might conceivably mean that hundreds of thousands of individual NPDES permit applications would be received duplicating the information contained in the municipal storm water permit application(s).

The catch basins, pipes and outfalls that comprise a publicly-owned separate storm sewer system may be owned by a municipality, a flood control district, or various other public service entities. Under the NPDES regulations, such systems are not considered to be a "publicly-owned treatment works" (POTW) because they do not convey discharges to the POTW. For purposes of the NPDES regulations, separate storm sewers are non-POTW point sources and are subject to regulation in a manner that is analogous to privately-owned treatment systems. Under 40 CFR 122.44(m) [privately-owned treatment works], the Agency can require permits for any, some, or all of the contributors to the system.

In the August 12 notice, EPA solicited public comment on the appropriateness of relying on the issuance of permits to the municipality or public entity responsible for the separate storm sewer system, thereby relieving all dischargers of storm water into the system of the need to apply for and obtain individual NPDES permits. The permitting authority would retain the authority to designate operators of such contributing storm water discharges as co-permittees or to require individual permits.

EPA proposed that the municipality or other public entity responsible for the separate storm sewer would be required to identify all those Group I discharges into the system but would not be required to identify those Group II discharges into the system. The Agency stated that this was the most feasible means of covering the hundreds of thousands of discharges into publicly-owned storm water collection systems. Since the public entity (e.g., a municipality) is currently required to obtain an NPDES permit for the separate storm sewer system's individual outfalls, a "single permit" approach would relieve the paperwork burden on both potential permittees and permitting authorities. The Agency also felt that such an approach was likely to be the most environmentally sound, since the ability of permitting authorities to issue quality permits and address the cumulative impacts of storm water discharges would be enhanced.

IV. Water Quality Act of 1987

At the same time that EPA was evaluating the appropriate means to regulate storm water discharges,

Congress was examining the storm water issue in the course of the reauthorization of the Clean Water Act. Both the Senate and the House of Representatives passed bills to amend the Clean Water Act in the summer of 1985 that contained provisions addressing the storm water issue. The separate House and Senate bills were reconciled in Conference Committee in 1986, and on February 4, 1987, Congress passed the Water Quality Act of 1987 (WQA).

The WQA contains three provisions which specifically address storm water discharges. The central provision governing storm water discharges is section 405 which adds section 402(p) to the CWA. Section 402(p)(1) provides that EPA or NPDES States cannot require a permit for certain storm water discharges until October 1, 1992 except for storm water discharges exempted under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are required to obtain a permit prior to October 1, 1992:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p)(2) requires EPA to promulgate final regulations governing storm water permit application requirements for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more), by "no later than two years" after the date of enactment (i.e., no later than February 4, 1989). The WQA also requires EPA to promulgate financial regulations governing storm water permit application requirements for discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000) by "no later than four years" after enactment (i.e., no later than February 4, 1991).

In addition, Section 402(p)(4) provides that permit applications for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems "shall be filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990). Permit applications for discharges from medium municipal systems must be filed "no later than five years" after enactment (i.e., no later than February 4, 1992).

NPDES permits for all other storm water discharges cannot be required until October 1, 1992, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards.

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including technology and water quality based standards. However, the new Act makes significant changes to the permit standards for discharges from municipal storm sewers. Section 402(p)(3)(B) provides that permits for such discharges:

(i) May be issued on a system- or jurisdiction-wide basis;

(ii) Shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and

(iii) Shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Director determines appropriate for the control of such pollutants.

These changes, including the standard of maximium extent practicable (MEP), are discussed in more detail later in today's notice.

The EPA, in consultation with the States, is required to conduct two studies on storm water discharges that are in the class of discharges for which EPA and NPDES States cannot require permits prior to October 1, 1992. The first study will identify those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992 and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study is for the purpose of establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. Based on the two studies, the EPA in consultation with State and local officials, is required to issue regulations by no later than October 1, 1992 which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. This program must, at a minimum, (A) establish priorities, (B) establish requirements for State storm water management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

Section 401 of the WQA amends section 402(l)(2) of the CWA to provide that the EPA shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities if the storm water discharge is not contaminated by contact with, or does not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations.

Section 503 of the WQA amends section 502(14) of the CWA to exclude agricultural storm water discharges from the definition of point source.

V. Remand of 1984 Regulations

On December 4, 1987, the United States Court of Appeals for the District of Columbia Circuit vacated 40 CFR 122.26 (as promulgated on September 26, 1984), and remanded the regulations to EPA for further rulemaking (*NRDC* v. *EPA*, No. 80–1607). EPA had requested the remand because of significant changes made by the storm water provisions of the WQA. The effect of the decision was to invalidate the storm water discharge regulations then found at § 122.26.

At the time of remand, § 122.26 set forth, among other things, the definitions for "storm water point source", "Group I storm water discharge", and "Group II storm water discharge" and criteria for designating a conveyance or system of conveyances as a storm water point source on a case-by-case basis.

On February 12, 1988 (53 FR 4157), EPA published a notice which deleted § 122.26 pursuant to the Court of Appeals' remand. The February 12, 1988, notice also deleted the deadlines for submittal of Group I and Group II storm water discharge permit applications set forth in § 122.21(c)(2). Section 122.21(c)(2) provided that permit applications must be submitted by

December 31, 1987, for Group I storm water discharges and June 30, 1989, for Group II storm water discharges. The section also required that any discharge that is designated on a case-by-case basis pursuant to § 122.26 must submit a storm water discharge permit application within 6 months of notification.

Storm water discharges which have been issued an NPDES permit prior to February 4, 1987, were not affected by the Court remand or the February 12, 1988, rule. (See section 402(p)(2)(A) of the CWA.) Similarly, the remand and the rulemaking did not affect the authority of EPA or an NPDES State to require a permit for any storm water discharge (except an agricultural storm water discharge) designated under section 402(p)(2)(E) of the CWA. The notice clarified that such designated discharges meet the regulatory definition of point source found at 40 CFR 122.2 and that EPA or an NPDES State can rely on the statutory authority and require the filing of an application (Form 1 and Form 2C) for an NPDES permit with respect to such discharges, on a case-by-case basis.

VI. Codification Rule

In the near future, EPA intends to publish a final rule which will codify numerous provisions of the WQA into EPA regulations. The codification rule will include several provisions dealing with storm water discharges. The codification rule will promulgate the language found at sections 402(p) (1) and (2) of the amended Clean Water Act at 40 CFR 122.26(a)(1). In addition, the codification rule will promulgate Section 503 of the WQA which exempted agricultural storm water discharges from the definition of point source at 40 CFR 122.2. Finally, EPA intends to codify Section 401 of the WQA addressing uncontaminated storm water discharges from mining or oil and gas operations at 40 CFR 122.26(a)(2).

In the codification notice, EPA intends to codify the statutory authority of section 402(p)(2)(E) of the CWA for the Administrator or the State, as the case may be, to designate storm water discharges for a permit on a case-by-case basis at 40 CFR 122.26(a)(1)(v). The provision authorizes such a designation if the Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. The case-by-case designation authority can be used to require a designated storm water discharge associated with industrial activity or a discharge from a municipal separate storm water system serving a population of 100,000 or more to obtain a permit prior to the time frame proposed in today's notice for the particular class of storm water discharges in question. In addition, the designation authority applies to storm water discharges that are not otherwise required to obtain a permit prior to October 1, 1992, under section 402(p)(1), but that are contributing to a violation of a water quality standard or are a significant contributor of pollutants to waters of the United States.

In determining that a storm water discharge contributes to a violation of a water quality standard or is a sigificant contributor of pollutants to waters of the United States for the purpose of a designation under section 402(p)(2)(E), the legislative history for the provision provides that "EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria (contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States) are met, and should require additonal sampling as necessary to determine whether or not these criteria are met". Conference Report, *Cong. Rec.* S16443 (daily ed. October 16, 1986). In accordance with this legislative history, EPA intends to require storm water dischargers whose discharges are being considered for designation to submit permit applications in accordance with the requirements of 40 CFR 122.21 to be used to aid in the determination of whether the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. The agency will consider a number of factors when determining whether a storm water discharge is a significant contributor of pollution to the waters of the United States. These factors include: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors. Today's notice proposes to incorporate these factors at 40 CFR 122.26(a)(1)(v).

Today's notice proposes to modify the permit application requirements for certain storm water discharges, including discharges designated on a case-by-case basis. Until these requirements are promulgated, operators of storm water discharges considered for designation must submit permit applications in accordance with the requirements of 40 CFR 122.21 (Form 1 and Form 2C). The exemption from certain application requirements given to Group II storm water discharges does not apply to facilities designated on a case-by-case basis. The Group II classification, which was remanded by the Court of Appeals in its December 4, 1987, order, was never intended to apply to storm water discharges which were designated on a case-by-case basis.

Until today's notice is promulgated and becomes effective, case-by-case designations, where appropriate, will be modeled after existing regulatory procedures found at 40 CFR 124.52 for NPDES permits required on a case-by-case basis. The procedures at 124.52 require that whenever the Regional Administrator decides that an individual permit is required, the Regional Administrator shall notify the discharger in writing of the decision that the discharge requires a permit and the reasons for the decision. In addition, an application form is to be sent with the notice. In implementing § 402(p)(2)(E), the Regional Administrator generally will notify the discharger in writing that the discharge is being considered for designation, and the reasons for the consideration. An application form will be sent with the notice. Deadlines for submitting permit applications will also be established on a case-by-case basis. Section 124.52 provides a 60 day period from the date of notice for submitting a permit application. Although this 60 day period may be appropriate for many designated storm water discharges, site specific factors may dictate that the Administrator or NPDES State provide additional time for submitting a permit application. For example, due to the complexities associated with designation of a municipal separate storm sewer system for a system- or jurisdiction-wide permit, the Administrator or NPDES State may provide the applicant with additional time to submit relevant information or may require that information be submitted in several phases.

VII. Today's Notice

Because of the long and complex history of the storm water permit application rulemaking and the subsequent enactment of the WQA, significant changes from the March 7, 1985 proposal and August 12, 1985 reopener have been made in today's notice. Where appropriate, EPA addresses major comments to these earlier proposals in the presentation of today's notice. However, to avoid potential confusion between current and past proposals, EPA requests that comments submitted on today's notice focus on the regulatory proposal

presented in today's notice. EPA intends to promulgate final regulations based on a consideration of comments received on today's notice and will not necessarily address comments received during previous proposals in the final rule. In printing the proposed regulatory changes at the end of today's notice, where existing regulations are modified, this notice may contain the existing regulatory language along with proposed changes. The existing regulatory language that is printed without proposed change is printed for the purpose of clarifying associated proposed changes for commenters. EPA does not request comment on existing regulatory language that is printed without proposed change.

A. Overview

Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT)), but permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP) and must include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Furthermore, EPA in consultation with State and local officials must develop a comprehensive program to designate and regulate other storm water discharges to protect water quality.

Section 402(p)(1) of the amended CWA provides that EPA or NPDES States shall not require, with certain exceptions, permits for storm water discharge prior to October 1, 1992. During this grace period, EPA has three tasks.

EPA's first task is to identify storm water discharges which should be designated for immediate permitting because they contribute to a water quality standard violation or are significant contributors of pollutants to waters of the United States. Today's notice proposes to clarify the authority of the Administrator or NPDES State to require a permit for a storm water discharge prior to October 1, 1992, applies to any storm water discharge which the Administrator or NPDES State determines contributes to a water quality violation or is a significant contributor of pollutants to waters of the United States, unless the discharge is explicitly excluded from the NPEDES program (e.g., agricultural storm water discharges).

The second task is to begin to implement the storm water program by establishing permit application requirements and issuing permits for classes of storm water discharge that were specifically identified in section 402(p)(2). These priority storm water discharges include storm water discharges associated with industrial activity and discharges from a municipal separate storm sewer serving a population of 100,000 or more.

During this time, EPA will evaluate appropriate modifications for permit application requirements for storm water discharges which are designated for immediate permitting because they contribute to a water quality violation or are significant contributors of pollutants to waters of the United States.

EPA's third task under section 402(p) of the CWA is to consult with the States and conduct studies for the purpose of identifying storm water dischargers or classes of discharges for which permits are temporarily not required; determining the nature and extent of pollutants in such discharges; and establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. EPA is then required to issue regulations on or before October 1, 1992 which identify storm water discharges for which permits will be required to protect water quality. Identified storm water discharges are to be regulated under the comprehensive program which, at a minimum, establishes priorities, requirements for State storm water management programs, and expeditious deadlines.

Congress did not intend to limit the scope of the studies authorized by Section 402(p)(5) to the definition of storm water point source that was in EPA's regulations at 40 CFR 122.26(b)(1) on the date of enactment of the WQA. For example, the legislative history accompanying the provision states that after October 1, 1992, "*all* municipal separate storm sewers are subject to the requirements of sections 301 and 402." (emphasis added) (Vol. 132 Cong. Rec. H10576 (daily ed. October 15, 1986) Conference Report). Under the Agency's 1984 regulations, municipal separate storm sewers located outside urban areas were not storm water point sources unless designated on a case-by-case basis. However, Congress clearly did not intend to exclude these discharges from the section 402(p)(5) studies.

Today's notice does not propose to revive the remanded regulatory definition of storm water point source at this time. This action is taken to minimize the confusion between the regulatory program for storm water that was in place before the WQA was enacted and the new program that will be developed in accordance with the manadates of Section 405 of the WQA. In accordance with Congressional intend, EPA will continue to define the scope of the comprehensive program to regulate storm water discharges in rulemaking authorized under section 402(p)(6) of the CWA after completing the CWA section 402(p)(5) studies.

Until the scope of the storm water regulatory program is more completely defined, EPA will define which storm water discharges are required, in accordance with section 402(p)(2), to obtain permits. EPA will rely on the regulatory definition of "point source" at 40 CFR 122.2 to provide authority for requiring permits for those storm water discharges which are to be permitted prior to the completion of the rulemaking authorized under section 402(p)(6).

In addition, EPA does not propose to revive the remanded regulatory definitions of Group I and Group II storm water discharges. EPA is proposing and requesting comments on technical amendments to existing NPDES regulations to remove references to these terms.

B. Definition of Storm Water

Today's notice proposes to clarify the definition of storm water at 122.26(b)(10) as storm water runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infiltration contaminated by seepage from sanitary sewers or by other discharges) and drainage related to storm events or snow melt. This proposed definition is consistent with the regulatory definition of "storm sewer" at 40 CFR 35.2005(b)(47) which is used in the context of grants for construction of treatment works. This definition aids in distinguishing separate storm sewer conveyances from sanitary sewers, combined sewers, process discharges and non-storm water non-process discharges.

In the WQA and other places, the term "storm water" is presented as a single word. The Agency, in preparing this notice, has attempted to consistently use the Government

Printing Office's approved form where storm water appears as two words. The Agency requests comment on the form (one-word or two) of the term perferred by the public.

C. Responsibility for Storm Water Discharges Associated with Industrial Activity into Municipal Separate Storm Sewers

1. Prior Approaches

In past rulemakings concerning permit applications and applicability for storm water discharges, EPA has, within the framework of the CWA, attempted to balance the need for addressing the environmental risk associated with storm water discharges with the administrative burden associated with processing permits and permit applications for the large number of storm water discharges. The regulatory term "storm water point source" was used to define which storm water discharges were subject to the NPDES program. However, under previous regulatory schemes, not all storm water point sources were required to submit an individual permit application. Under regulations promulgated under the September 26, 1984 final rule, one permit could be issued covering all storm water point sources that are discharged to a storm water conveyance system. Under this approach, all "storm water point sources" that discharge into a storm water conveyance system had to be covered either by an individual permit or a permit issued to an operator of the portion of conveyance which discharges directly to waters of the United States. Any permit written to cover more than one operator would have been required to identify the limitations applicable to each discharge. This "either/or" approach in the September 26, 1984 rule allowed the operator of the portion of the conveyance which discharges directly to waters of the United States to decline to assume responsibility for certain discharges into its separate storm sewer system. In that situation, operators of individual storm water point source discharges into the conveyance would have been responsible to file permit applications for their discharges.

In the August 12, 1985 (50 *FR* 32552) reopener notice, EPA requested comments on a proposal that would primarily hold municipalities responsible for obtaining a permit that would cover all the storm water point sources that discharged to a municipal storm water system. Under this approach, all operators of storm water point source discharges into a municipal separate storm sewer were to be relieved of the responsibility of having to obtain individual permits, unless the permitting authority designated such dischargers as a co-permittee with the municipality or required an individual permit from the operator of the discharge into the system. Under the August 12, 1985 proposal, the municipality responsible for the system would be required to identify Group I discharges into the municipal system. Sampling requirements for municipal separate storm sewers that received discharges from non-municipal Group I discharges were not specifically addressed in the August 12, 1985 notice, although the regulations in effect at that time required that applications for discharges from storm sewer systems contain any information regarding discharges into the system that would be required if separate applications were submitted for those discharges.

Fifty-seven (57) commenters addressed the proposal in the August 12 notice that would place the responsibility for applying for and obtaining an NPDES permit for all storm water discharges into the system upon the municipality or public service entity. Twenty-six (26) of the 57 felt that such an approach would relieve many individual operators of discharges from having to obtain permits, which would thereby reduce paperwork, but not reduce EPA's ability to address pollution problems. One municipality felt that under this approach, critical pollution sources could be identified and permitted individually if necessary. One industry representative claimed that individual municipalities are in the best position to determine if individual permits are needed for specific storm water discharges into the municipal system, while another industry representative argued that industrial dischargers into a municipal system should not be singled out for individual permits over discharges from shopping centers, parking lots, etc., which may have significant water quality impacts.

Twenty-one (21) commenters of the 47 were opposed to municipalities being responsible for obtaining a permit covering all discharges of storm water into the system. Eight (8) commenters, a county public service agency, 6 municipalities, and a land development company, cited the substantial costs involved in making a municipality responsible for all storm water discharges into its system, both in terms of identifying all discharges into the system and sampling and analytical costs. Three commenters (a county agency, a municipality, and a State) pointed out that a municipality may lack the authority to regulate non-municipal storm water point source discharges into its system, as well as nonpoint source runoff from many sources that drain into the municipal storm water sewer system. Two municipalities felt that industrial storm water discharges should be controlled by EPA, not the municipalities, while several other municipalities stated that the pollution generator may not be held responsible under the proposed approach.

Several municipalities argued that it is impossible to monitor all storm water inlets to the municipal system since municipalities, stated at least one municipal commenter, do not maintain records identifying dischargers into the system. Another municipality claimed that municipalities have already implemented activities to control storm water discharges (e.g., controls on construction site runoff, spill prevention and abatement ordinances, etc.) in order to improve water quality.

Several commenters objected to the requirement that municipalities identify all industrial storm water discharges into the municipal system since it shifts the burden of the regulatory requirements from the individual facility discharging to the municipal system to the municipality. They argued that there is no benefit to the municipalities under the proposed approach, and that the proposed approach was very complex and counterproductive. A county flood control district commented that a municipal storm water system does not create water pollution or change its ultimate destination. One municipality felt that any municipal group application should not require data on discharges into the municipal system, since that data should be similar to data from direct discharges.

An individual company felt that municipalities should not have the option of excluding non-municipal storm water discharges into the system in the permit covering the system, while on the other hand, two municipalities argued strongly that municipalities should be able to decline to assume responsibility for non-municipal discharges into the municipal system.

2. Today's Proposal Regarding Storm Water Discharges Associated with Industrial Activity into Large and Medium Municipal Separate Storm Sewer Systems

Under the scheme of section 405 of the WQA, operators of large municipal separate storm sewer systems (systems serving a population of 250,000 or more) and medium municipal separate storm sewer systems (systems serving a

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population of 100,000 or more but less than 250,000), are required to submit permit applications for discharges from these systems prior to October 1, 1992. However, generally, permits are not required from operators of many storm water discharges (such as storm water discharges from certain commercial and residential facilities) into these large or medium municipal separate storm sewer systems prior to October 1, 1992, unless the Administrator or NPDES State determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States. Thus, in enacting the WQA, Congress endorsed a regulatory scheme where municipalities responsible for obtaining NPDES permits for discharges from large and medium municipal separate storm sewer systems are clearly responsible for many storm water discharges which discharge into these municipal systems.

In addition to receiving storm water discharges that are generally not required to obtain a permit prior to October 1, 1992 under section 402(p)(1), large and medium municipal separate storm sewer systems receive storm water discharges that are also excluded from section 402(p)(1), including: storm water discharges which have been issued a permit prior to the enactment of the WQA (section 402(p)(2)(A)); storm water discharges associated with industrial activity (section 402(p)(2)(B)); and storm water discharges which the Administrator or NPDES State determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (section 402(p)(2)(E)).

Today's notice requests comments on whether EPA should hold operators of large and medium municipal separate storm sewer systems primarily responsible for obtaining system-wide or area permits which cover storm water discharges associated with industrial activity which discharge into the municipal system, or if non-municipal operators of storm water discharges associated with industrial activity which discharge to large or medium municipal systems should be required to submit individual permit applications (or participate in a group application) for such discharges.

After a consideration of comments on the August 12, 1985 reopener, and reevaluation of the issue in light of the WQA, EPA still favors holding municipal operators of large or medium municipal storm sewer systems primarily responsible for applying for and obtaining an NPDES permit covering system discharges as well as storm water discharges to the system. Holding municipalities primarily responsible for obtaining a permit to cover storm water discharges associated with industrial activity which discharge into the municipal system would reduce the tremendous administrative burden associated with preparing and processing the thousands of permit applications that would be necessary if each storm water discharge associated with industrial activity that goes into a large or medium municipal separate storm sewer system had to apply individually (or as part of a group application). The Agency believes this approach is the most practical option available and holds the most promise for long-term environmental improvements.

The permit application requirements that EPA is proposing for large and medium municipal separate storm sewer systems, discussed in more detail later in today's notice, are intended to begin the development of this approach. EPA is proposing that municipal permit applications include the location of facilities which discharge storm water associated with industrial activity to the municipal system (see § VII.G.6 of the preamble). In addition, EPA is proposing that municipal applicants provide a description of a proposed management program to reduce, to the maximum extent practicable, pollutants from storm water discharges associated with industrial activity which discharge to the municipal system (see § VII.G.8.c of the preamble). The proposed management program will identify priorities and procedures for inspecting industrial facilities and for establishing and implementing measures to reduce the discharge of pollutants in such discharges. The municipal application will be used by permit writers to develop management programs which will be incorporated as permit conditions in the permit issued for discharges from the municipal separate storm sewer system.

Controls developed in management plans for municipal system permits may take a variety of forms. Where necessary, municipal permittees can pursue local remedies to develop measures to reduce pollutants or halt troublesome discharges into the large or medium municipal storm sewer system. This approach is consistent with several comments to the August 12, 1985 proposal, which stated that many local entities have already implemented ordinances or laws that regulate the discharge of pollutants, while other municipalities have developed a variety of techniques to control pollutants in storm water. Alternatively, where appropriate, municipal permittees may develop end-of-pipe controls such as wet detention ponds or diverting flow to Publicly Owned Treatment Works. Finally, municipal applicants will be provided with an opportunity to bring individual storm water discharges which cannot be adequately controlled by the municipal permittees to the attention of the permitting authority who then could, at the Director's discretion, require an individual permit for the storm water discharges into the public system or require such dischargers to be co-permittees to the municipal system permit by establishing conditions applicable to such users.

Some municipal agencies with certain storm water responsibilities have commented on previous rulemakings that they lack legal authority to regulate discharges into their system. The Agency's initial analysis of legal authorities such as ordinances and controls on construction site runoff indicate that such local municipalities have adequate legal authority either to control storm water flows or control pollutant discharges to municipal systems, to the degree necessary to implement the programs envisioned in today's proposal. The Agency requests comments on the legal authority of municipal permittees, including detailed legal analysis of the legal authority of municipalities which contend that they are precluded from exercising adequate authority to implement such controls due to lack of authorization from the State in which the municipality is located. The Agency requests comments on the circumstances when it is not appropriate to hold a municipality responsible for discharges to municipal systems and under what circumstances it is feasible to rely on treatment of storm water discharges in lieu of controls which require legal authority to implement.

Section 402(p)(3) of the CWA estabishes different standards for permits for storm water discharges associated with industrial activity and discharges from municipal separate storm sewers. Where individual permits are required for storm water discharges associated with industrial activity, these permits are required to meet all the applicable provisions of sections 402 and 301 of the Clean Water Act, including technology-based and, where necessary, water-quality based requirements. Permits for discharges from municipal separate storm sewers are required to adopt controls to reduce

the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. EPA anticipates that the application of maximum extent practicable controls developed in management programs in municipal system permits will generally result in similar levels of control on industrial discharges to the municipal separate storm sewer system as conditions placed in individual NPDES permits for storm water discharges associated with industrial activity.

In comparing the control mechanisms of individual permits and management plans developed in municipal separate storm sewer permits, it is important to note that currently, EPA has established effluent guideline limitations for storm water discharges for eight subcategories of industrial dischargers (Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), and Ore Mining and Dressing (40 CFR Part 440)). Most of the existing facilities in these subcategories already have individual permits for their storm water discharges. Under today's proposal, facilities with existing NPDES permits for storm water discharges to a municipal storm sewer will generally be required to maintain these permits. EPA requests comments on whether storm water discharges associated with industrial activity from industries with promulgated effluent guidelines which discharge to municipal storm sewers should be required to obtain individual permits.

In order to aid municipalities in developing and implementing management programs, EPA is proposing that operators of storm water discharges associated with industrial activity which discharge to a large or medium municipal separate storm sewer system are not required to submit individual permit applications (or participate in a group application) provided:

- The operator of such a storm water discharge submits to the municipality responsible for the municipal separate storm sewer receiving the discharge the name of facility; the location of the discharge; and a certification that the discharge has been tested for the presence of non-storm water discharges;
- Such discharge is composed entirely of storm water;
- Such discharge is in compliance with applicable conditions of the NPDES permit issued for the discharge from the municipal separate storm sewer which receives the storm water discharge associated with industrial activity provided the discharger has been notified of such conditions; and
- Such discharge does not contain a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4.

The Agency specifically requests comments on requiring municipal permittees to develop controls to reduce pollutants in storm water discharges associated with industrial activity into municipal systems as an alternative to requiring individual permits (or issuing general permits) for storm water discharges associated with industrial activity.

3. Today's Proposal Regarding Storm Water Discharges Associated with Industrial Activity from Federal Facilities into Large and Medium Municipal Separate Storm Sewer Systems

EPA recognizes that storm water discharges associated with industrial activity from Federal facilities to municipal separate storm sewer systems may pose unique legal and administrative situations. In today's notice, the Agency favors proposing regulations which address storm water discharges from Federal facilities to municipal systems in the same manner as privately-owned storm water discharges to municipal storm sewers. That is, storm water discharges associated with industrial activity from Federal facilities to municipal storm sewers are generally covered by the permit issued for the municipal storm sewer system discharges and are not required to obtain an individual NPDES permit unless the Director of the NPDES program designates the discharge as a co-permittee with the municipality or requires an individual permit. However, the Agency specifically requests comments on applying this approach to Federal facilities, and whether Federal facilities which discharge storm water associated with industrial activity into municipal systems should be required to submit individual applications (or, where appropriate, participate in a group application), and obtain individual permits for such discharges.

4. Today's Proposal Regarding Storm Water Discharges Associated with Industrial Activity into Municipal Separate Storm Sewer Systems Serving a Population of Less than 100,000

Sections 402(p) (1) and (2) of the CWA provides that discharges from municipal separate storm sewer systems serving a population of less than 100,000 are not required to obtain a permit prior to October 1, 1992, unless designated on a case-by-case basis under section 402(p)(2)(E). Such discharges are to be included in the set of storm water discharges to be studied under section 402(p)(5) of the CWA and are subject to regulation under section 402(p)(6) of the Act. However, NPDES permits could be required under section 402(p)(2)(B) for storm water discharges associated with industrial activity which discharge into these municipal systems prior to October 1, 1992. EPA requests comments on whether industrial facilities discharging storm water to these systems should not be required to obtain a permit until after the completion of the studies mandated under section 402(p)(5) of the CWA. Evaluating these discharges under the studies mandated under section 402(p)(5) would provide EPA additional flexibility to evaluate procedures and methods to control these storm water discharges to the extent necessary to mitigate impacts on water quality and to determine whether the municipalities responsible for discharges from municipal separate storm sewer systems serving a population of less than 100,000 or the industrial facility generating the discharge to the municipal system should be responsible for obtaining a NPDES permit. Alternatively, operators of storm water discharges associated with industrial activity to municipal systems serving less than 100,000 would be required to submit permit applications (or participate in group applications) in accordance with the deadlines established for other storm water discharges associated with industrial activity that would be required to obtain a permit under today's proposal.

D. Storm Water Discharge Sampling

Storm water discharges are intermittent by their nature. Pollutant concentrations in storm water discharges will be highly variable. Not only will variability arise between given events, but the flow rate and pollutant concentrations of such discharges will vary with time during an event. This variability raises two technical problems: what is the best way to

characterize the discharge associated with a single storm event; and what is the best way to characterize the variabilty beween discharges of different events that may be caused by seasonal changes, changes in material management practices, and other factors.

The current regulations at 40 CFR 122.21(g)(7) require that applicants for storm water discharges submit quantitative data based on one grab sample taken every hour of the discharge for the first four hours of discharge. In today's notice, EPA is proposing to modify this requirement such that instead of collecting and analyzing four grab samples individually, applicants provide data as indicators of two sets of conditions; first flush pollutant concentrations and flow-weighted average storm event concentrations.

Data describing pollutants in the first flush (i.e., a grab sample taken during the first twenty minutes of the discharge) can often be used as a screen for illicit discharges and illegal dumping to the storm water because pollutants associated with such activities may be flushed out of the system during the initial portion of the discharge. In addition, first flush data is useful because much of the traditional structural technology used to control storm water discharges, including detention and retention devices, may only provide controls for the first flush of the discharge, with relatively little or no treatment for the remainder of the discharge. First flush data will give an indication of the potential usefulness of these techniques to reduce pollutants in storm water discharges. Also, first flush discharges may be primarily responsible for pollutant shocks to the ecosystem in receiving waters.

Studies such as NURP have shown that flow-weighted average concentrations of storm water discharges are useful for estimating pollutant loads and estimating pollutant loads and for evaluating certain concentration-based water quality impacts. The use of flow-weighted composite samples are also consistent with comments raised by various industry representatives during previous Agency rulemakings that continuous monitoring of discharges from storm events is necessary to adequately characterize such discharges.

In order to provide flexibility where it is not feasible to obtain a flow weighted composite sample, EPA is also proposing that applicants may, in lieu of submitting data based on a flow weighted composite, submit quantitive data from individual samples taken during a representative storm event.

EPA requests comment on the feasibility of the proposed modification of sampling procedures at § 122.21(g)(7) and the ability to characterize pollutants in storm water discharges with an average concentration and a first flush concentration compared to collecting and separately analyzing four grab samples. The Agency invites commenters to submit any data that can be used to compare the accuracy and the cost of the proposed changes relative to the exisiing regulations.

In the proposed regulation, the entire provision at 122.21(g)(7) has been presented to provide ease of review. Today's notice only requests comments on those portions of § 122.21(g)(7) that relate to sampling storm water discharges.

E. Storm Water Discharges Associated with Industrial Activity

1. Permit Applicability

a. Storm Water Discharges to Municipal Storm Sewers. As discussed in more detail in § VII.C of today's notice, EPA is proposing that, in general, the operator of a storm water discharge associated with industrial activity will not be required to individually obtain a permit if their discharge goes to a municipal separate storm sewer serving a population of 250,000 or more, or a population of 100,000 or more, but less than 250,000, but that the operators of these municipal separate storm sewer systems are primarily responsible for obtaining system-wide or area permits which cover storm water discharges associated with industrial activity which discharge into the municipal system. In addition, EPA is proposing that operators of storm discharges associated with industrial activity which discharge to municipal separate storm sewer systems serving a population of less than 100,000 are not required to obtain a permit prior to the completion of studies mandated under section 402(p)(5) of the CWA. In these cases, the Director may still designate such discharges for an individual permit or to be co-permittee.

b. Storm Water Discharges to Non-Municipal Conveyances. Today's notice proposes at § 122.26(a)(5) to require all operators of storm water discharges associated with industrial activity that discharge into a privately or Federally owned storm water conveyance (a storm water conveyance that is not a municipal separate storm sewer) to either be covered by an individual permit or a permit issued to the operator of the portion of the system that directly discharges to waters of the United States. This "either/or" approach, which is similar to the approach taken in the September 26, 1984 final rule, allows a non-municipal operator of a storm water conveyance to decline to assume responsibility for the non-municipal storm water discharges into the non-municipal conveyance.

EPA considers this approach to be appropriate because some of the permit applications requirements proposed in today's notice require the applicant to have access to information regarding the site where the storm water is generated. Operators of non-municipal systems will generally be in a poorer position to gain knowledge of pollutants in storm water discharges and to impose controls water discharges from other facilities than will municipal system operators. In addition, best management practices and other site-specific controls are often most appropriate for reducing pollutants in storm water discharges and operators of non-municipal separate storm sewers may not be able to institute such controls. Also, some non-municipal operators of storm water conveyances which receive storm water runoff from industrial facilities may not be industrial facilities themselves and therefore should generally be excluded from obtaining a permit prior to October 1, 1992, unless specifically designated.

EPA requests comments on the advantages and disadvantages of retaining the "either or" approach for non-municipal storm sewers. Alternatively, EPA could adopt an approach where the operator of the portion of the conveyance which discharges directly to waters of the United States is responsible for obtaining a permit which covers all discharges to the non-municipal storm sewer.

2. Scope of "Associated with Industrial Activitity"

The September 26, 1984 final regulation divided those discharges that met the regulatory definition of storm water point source into two groups. The term Group I storm water discharges was defined in an attempt to identify those storm water discharges which had a higher potential to contribute significantly to environmental impacts. Group I included those discharges that contained storm water from an industrial plant or plant associated areas. Other storm water discharges (such as those from parking lots and administrative buildings) located on lands used for industrial activity were classifed as Group II discharges. The regulations defined the term "plant

associated areas" by listing several examples of areas that would be associated with industrial activities. However, the resulting definition led to confusion among the regulated community regarding the distinctions between the Group I and Group II classifications.

When enacting section 405 of the WQA, Congress did not explicitly adopt EPA's regulatory classification of Group I and Group II discharges. Rather, Congress required EPA to develop permit application requirements for storm water "discharges associated with industrial activity" by no later than February 1, 1989. In light of the adoption of the term "associated with industrial activity" in the WQA, and the ongoing confusion surrounding the previous regulatory definition. EPA has eliminated the regulatory terms "Group I storm water discharge" and "Group II storm water discharge" pursuant to the Court remand and does not propose to revive it. In addition, EPA is proposing to define the term "storm water discharge associated with industrial activity" at § 122.26(b)(13) and to clarify the scope of the term.

In describing the scope of the term "associated with industrial activity", several members of Congress explained in the legislative history that the term applied if a discharge was "directly related to manufacturing, processing or raw materials storage areas at an industrial plant." (Vol. 132 Cong. Rec. H10932, H10936 (daily ed. October 15, 1986); Vol. 133 Cong. Rec. H176 (daily ed. January 8, 1987). EPA is proposing to clarify the regulatory definition of "associated with industrial activity" by adopting the language used in the legislative history and supplementing it with a description of various types of areas that are directly related to an industrial process (e.g., industrial plant yard, immediate access roads and rail lines, drainage ponds, material handling sites, sites used for the application or disposal of process waters, sites used for the storage and maintenance of material handling equipment, and sites that are presently or have been used in the past for residual treatment, storage or disposal). Today's proposal would clarify that the term applies to plant areas that are no longer used for such activities as well as areas that are currently being used for industrial processes.

The same comments in the legislative history cited above were careful to state that the term "associated with industrial activity" does not include storm water "discharges associated with parking lots and administrative and employee buildings". To accommodate this legislative intent, EPA is proposing that generally, segregated storm water discharges from these areas will not be required to obtain a permit prior to October 1, 1992. However, if a storm water discharge from a parking lot at an industrial facility is mixed with a storm water discharge associated with industrial activity, the combined discharge is subject to permit application requirements for storm water discharges associated with industrial activity.

Storm water discharges from parking lots and administrative buildings along with other discharges from industrial lands that do not meet the regulatory definition of "associated with industrial activity" and that are segregated from such discharges may be required to obtain a NPDES permit prior to October 1, 1992 under certain conditions. For example, large parking facilities, due to their impervious nature may generate large amounts of runoff which may contain significant amounts of oil and grease and heavy metals which may have adverse impacts on receiving waters. The Administrator or NPDES State has the authority under section 402(p)(2)(e) of the amended CWA to require a permit prior to October 1, 1992 by designating storm water discharges such as those from parking lots that are significant contributors of pollutants or contribute to a water quality standard violation. EPA will address storm water discharges from lands used for industrial activity which do not meet the regulatory definition of "associated with industrial activity" in the section 402(p)(5) study to determine the appropriate manner to regulate such discharges.

EPA requests comments on clarifying the types of facilities that involve industrial activities and generate storm water. EPA prefers basing the clarification, in part, on the use of Standard Industrial Classification (SIC) codes, which have been suggested in comments to prior storm water rulemakings because they are commonly used and accepted and would provide definitions of facilities involved in industrial activity.

EPA requests comments on the scope of the definition (types of facilities addressed) as well as the clarity of regulation. EPA has identified the following types of facilities which it requests comments on with respect to suitability for inclusion in the regulatory definition as facilities which generate and discharge storm water associated with industrial activity:

(i) Facilities subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;

(ii) Facilities classified as Standard Industrial Classification 20 through 39 (manufacturing industry);

(iii) Facilities classified as Standard Industrial Classification 10 through 14 (mineral industry) including active or inactive mining operations and oil and gas exploration, production, processing, or treatment operations, or transmission facility that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations;

(iv) Hazardous waste treatment, storage, or disposal facilities that are operating under interim status or a permit under Subtitle C or RCRA;

(v) Landfills, land application sites, and open dumps that receive industrial wastes and that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in significant recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards;

(vii) Steam electric power generating facilities, including coal handling sites, and onsite and offsite ancillary transformer storage areas;

(viii) Transportation facilities classified as Standard Industrial Classification 40 through 45, and 47 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations and airport deicing operations. Only those facilities or portions of facilities that are either involved in vehicle maintenance, loading, storage or unloading activities, or equipment cleaning operations or which are subject to another subparagraph under this paragraph are associated with industrial activity;

(ix) POTW lands used for land application treatment technologies, sludge disposal, handling or processing areas, and chemical handling and storage areas;

(x) Facilities classified as Standard Industrial Classification 15 and 16 (General building contractors and heavy construction contractors) including clearing, grading and excavation activities except operations that result in the disturbance of less than 1 acre total land area which are not part of a larger common plan of development or sale; or that are designed to serve single family residential projects, including duplexes, triplexes or quadruplexes, that result in the disturbance of less than 5

acre total land areas which are not part of a larger common plan of development or sale.

(xi) Automotive repair shops classified as Standard Industrial Classification 751 or 753 including general automotive repair shops, paint shops, and body repair shops, and miscellaneous repair shops classified as Standard Industrial Classification 769;

(xii) Gasoline service stations classified as Standard Industrial Code 5541;

(xiii) Lands other than POTW lands (offsite facilities) used for sludge management;

(xiv) Lumber and building materials retail facilities classified as Standard Industrial Classification 5211;

(xv) Landfills, land application sites, and open dumps that do not receive industrial wastes and that are subject to regulation under Subtitle D of RCRA.

(xvi) Facilities classified as Standard Industrial Classification 46 (pipelines, except natural gas), and 492 (gas production and distribution); and

(xvii) Major electrical powerline corridors.

Of the facilities listed above, EPA prefers that storm water discharges from facilities listed in paragraphs (xi) through (xvii) not be classified as storm water discharges associated with industrial activity, but rather be part of the class of discharges for which storm water permits are not required prior to October 1, 1992, unless designated under section 402(p)(2)(E) of the CWA. EPA prefers to study under section 402(p)(5) of the CWA storm water discharges from these and other facilities for appropriate regulation under section 402(p)(6). In addition, storm water discharges from certain facilities listed above that are not associated with industrial activity (such as storm water discharges from parking lots which are not used for material management), and which are segregated from storm water discharges will be studied under section 402(p)(5).

EPA is requesting comments on how the regulatory definition of "associated with industrial activity" can be further clarified and on clarifying the types of facilities that are engaged in industrial activities. Some activities at certain facilities will be listed in more than one category. For example, an inorganic chemical facility with an SIC code of 28 may have an on-site unit which is subject to Subtitle C of RCRA. Although the majority of Subtitle C facilities will be addressed by other classifications listed above, listing Subtitle C facilities separately provides additional clarification. EPA requests comments on further classifications that would serve to clarify the proposed definition of storm water discharge associated with industrial activity (for example, are distinct categories for treatment, storage or disposal facilities for source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. or sites listed on the National Priority List (other than sites that are Fund-financed pursuant to CERCLA section 106 which are exempt from permitting (see 40 CFR 300.65(f))) necessary to clarify that these are facilities covered by the definition?) Today's proposal is intended to address Department of Defense and Department of Energy facilities which are engaged in the industrial activities listed above, even though SIC codes do not apply to these facilities. EPA requests comments on whether the proposed regulatory language should be clarified with respect to these facilities.

EPA also requests comment on limiting the definition of storm water discharge associated with industrial activity to those discharges which do not discharge into municipal separate storm sewers. This limitation may be useful in clarifying which discharges are required to submit permit applications and obtain an NPDES permit.

If EPA promulgates a final regulatory definition of "storm water discharge associated with industrial activity" that does not include certain facilities that are listed in today's proposal, then those facilities would be studied under Section 402(p)(5) of the CWA for appropriate regulation after October 1, 1992 under Section 402(p)(6) of the Act. Comments which oppose inclusion of proposed facilities to the regulatory definition of "storm water discharge associated with industrial activity" should address the nature and extent of pollutants in the storm water discharge as well as the appropriate procedures and methods to control pollutants in storm water discharges from such facilities to the extent necessary to mitigate impacts on water quality. For facilities which EPA requests comments on in today's notice, but that the Agency does not include in the final definition of "storm water discharge associated with industrial activity", the information received during the rulemaking, along with other information, will constitute a portion of the Section 402(p)(5) study. In such a case, the Agency, where appropriate, will consider today's request for comments as a proposal for regulation under Section 402(p)(6) and establish appropriate regulations (such as delaying the date of permit application submittal) based on today's proposal.

Today's proposed permit application requirements for storm water discharges associated with industrial activity at §122.26(c)(1)(i) include special requirements for storm water discharges originating from mining operations, oil or gas operations (§ 122.26(c)(1)(ii), and from the construction operations listed above (§ 122.26(c)(1)(iii)). These requirements are discussed in more detail in § VII.E.7 and § VII.E.9 of today's notice.

3. Individual Application Requirements

Today's notice addresses whether the requirements for permit applications for discharges which contain storm water associated with industrial activity should be modified from the requirements associated with the Form 1 and Form 2C permit applications. The proposed modifications to the permit application requirements would apply to both storm water discharges associated with industrial activity that are required to submit a permit application (§ VII.E.1 of the preamble discusses permit applicability) and to other discharges from non-municipal separate storm sewers which have been designated by the Administrator or NPDES State as contributing to a violation of a water quality standard or as a significant contributor of pollutants to waters of the United States.

As discussed earlier in today's notice, the September 26, 1984 regulation required operators of Group I storm water discharges to submit the full NPDES Form 1 and Form 2C permit applications. In response to post-regulation comments received on that rule, EPA proposed new permit application requirements (March 7, 1985, (50 FR 9362) and August 12, 1985, (50 FR 32548)) which would have decreased the analytical sampling requirements of the Form 2C and provided procedures for group applications. The passage of the WQA has given the EPA additional time to consider the appropriate permit application requirements for storm water discharges.

Today's notice proposes to modify the permit application requirements found at 122.21 by providing special requirements for storm water discharges associated with industrial activity at § 122.26(c). In response to comments on earlier rulemakings addressing storm water discharges, EPA is proposing to shift the emphasis of the permit application requirements for storm water discharges associated with industrial activity from the existing requirements for collection of quantitative data (sampling data) in Form 2C towards collection of less

quantitative data supplemented by additional information needed for evaluation of the nature of the storm waters discharges. The permit application requirements proposed for storm waters discharges reduce the amount of quantitative data required in the permit application and exempt discharges which contain entirely storm water (and contain no other discharge that, without the storm water component, would require a NPDES permit), from certain reporting requirements of the Form 2C. The proposed modifications also would exempt applicants for discharges which contain entirely storm water from several non-quantitative information collection provisions currently required in the Form 2C. The proposed modifications would rely more on descriptive information for assessing impacts of the storm water discharge.

A proposed application form, Form 2F, for storm water discharges has been included with today's notice. A complete permit application for discharges composed entirely of storm water, will be comprised of Form 2F and Form 1. Operators of discharges which are composed of both storm water and non-storm water will submit a Form 1, an entire Form 2C (or Form 2D) and Form 2F when applying. In this case, the applicant will provide quantitative data describing the discharge during a storm event in Form 2F and quantitative data describing the discharge during non-storm events in Form 2C. Non-quantitative information reported in the Form 2C will not have to be reported again in the Form 2F.

Under today's proposal, Form 2F for storm water discharges associated with industrial activity would not require the submittal of all the quantitative information required in Form 2C, but would require that quantitative data be submitted for:

- Any pollutant limited in an effluent guideline for its subcategory;
- Any pollutant listed in the facility's NPDES permit for its process wastewater;
- Oil and grease, TOC, TSS, COD, pH, BOD_5, total phosphorus, total nitrogen; and
- Any information on the discharge required under 40 CFR 122.21(g)(7) (iii) and (iv).

In order to characterize the discharge(s) sampled, the applicant would be required to submit information regarding the storm event(s) that generated the sampled discharge, including the date(s) the sample was taken, flow measurements or estimates of the duration of the storm event(s) sampled, rainfall measurements or estimates from the storm event(s) which generated the sampled runoff, and the duration between the storm event sampled and the end of the previous storm event. Information regarding the storm event(s) sampled is necessary to evaluate if the discharge(s) sampled was generally representative of other discharges expected to occur during storm events, and to characterize the amount and nature of runoff discharges from the site.

Today's notice proposes that the applicant test for oil and grease, COD, pH, BOD_5, TSS, total nitrogen and total phosphorus. Oil and grease and TSS are a common component of storm water and can have serious impacts on receiving waters. Oxygen demand (COD and BOD_5) will help the permitting authority evaluate the oxygen depletion potential of the discharge. BOD_5 is the most commonly used indicator of oxygen demand. COD is considered a more inclusive indicator of oxygen demand, especially where metals interfere with the BOD_5 test. The pH will provide the permitting authority with important information on the potential availability of metals to the receiving flora, fauna and sediment. Total nitrogen and total phosphorus are measures of nutrients which can impact water quality.

The proposed Form 2F requirements regarding submission of quantitative data are intended to allow tailoring the sampling and reporting of pollutants to site-specific parameters that potentially have an impact on the quality of the storm water discharge. In addition to the conventional pollutants listed above, today's notice proposes to require applicants to, when appropriate, sample other pollutants based on a consideration of site-specific factors. These pollutants account for pollutants associated with materials used for production and maintenance, finished products, waste products and non-process materials such as fertilizers and pesticides associated with the facility. Today's notice proposes that the applicant sample for any pollutant limited in an effluent guideline applicable to the facility or limitation in the facility's NPDES permit. These pollutants will generally be associated with the facility's manufacturing process or wastes. Other process and non-process-related pollutants, will be addressed by complying with the requirements of 40 CFR 122.21(g)(7) (iii) and (iv).

Section 122.21(g)(7)(iii) requires an applicant to indicate whether the applicant knows or has reason to believe that any pollutant listed in Table IV (conventional and nonconventional pollutants) of Appendix D to 40 CFR Part 122 are discharged. If such pollutant is either directly limited or indirectly limited by the expressed terms of the permit through limitations on an indicator, the applicant must report quantitative data. For pollutants that are not limited in an effluent limitations guideline, the applicant must either report quantitative data or describe the reasons the pollutant is expected to be discharged. With regard to pollutants listed in Table II (organic pollutants) or Table III (metals, cyanide and total phenol) of Appendix D, the applicant must indicate whether he knows or has reason to believe such pollutants are discharged from each outfall and, if they are discharged in amounts greater than 10 parts per billion (ppbs), the applicant must report quantitative data. An applicant qualifying as a small business under 40 CFR 122.21(g)(8), (e.g., coal mines with a probable total annual production of less than 100,000 tons per year or, for all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars)), is not required to analyze for pollutants listed in Table II of Appendix D (the organic toxic pollutants).

Section 122.21(g)(7)(iv) requires an applicant to indicate whether it knows or has reason to believe that any pollutant in Table V of Appendix D to 40 CFR Part 122 (certain hazardous substances) is discharged. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any existing quantitative data it has for the pollutant.

When collecting data for permit applications, applicants may make use of 40 CFR 122.21(g)(7), which provides that "when an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls." Where the facility has availed itself of this provision, an explanation of why the untested outfalls are "substantially identical" to tested outfalls must be provided in the application. Where the amount of flow associated with the outfalls with substantially identical effluent differs, measurements or estimates of the total flow of each of the outfalls must be provided.

The outfalls are to be sampled in accordance with the requirements of 40 CFR 122.21(g)(7), which are discussed in this section and section VII.D of today's

notice. EPA is proposing that the facility must sample during "representative storm events." EPA request comments on the following definition of a representative storm event. A representative storm event is one that is typical for the area in terms of duration and severity. The event must be greater than 0.1 inch and must be at least 96 hours from previously measurable (greater than 0.1 inch rainfall) storm event. In general, variance of the parameters such as the duration of the event and the total rainfall of the event should not exceed 50 percent from the average rainfall event in that area. EPA also requests comments on addressing snow melt events under this definition.

Today's proposal would also modify the Form 2C requirements by exempting applicants from the requirements at § 122.21(g)(2) (line drawings), (g)(4) (intermittent flows), (g)(7) (i), (ii), and (v) (various sampling requirements to characterize discharges) if the discharge covered by the application is composed entirely of storm water. Permit applications for discharges containing storm water associated with industrial activity would require applicants to provide other non-quantitative information which will aid permit writers to identify which storm water discharges are associated with industrial activity and to characterize the nature of the discharge.

Under existing permit application regulations, 40 CFR 122.21(f)(7) requires all permit applicants to submit as part of Form 1 a topographic map extending one mile beyond the property boundaries of the source, depicting the facility and each intake and discharge structure; each hazardous waste treatment, storage, or disposal facility; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in the map area in public records or otherwise known to the applicant within one-quarter mile of the facility property boundary. (See 47 *FR* 15604, April 8, 1982). However, the information provided under § 122.21(f)(7) is generally not sufficient by itself for evaluating the nature of storm water discharges associated with industrial activity.

EPA is proposing that application requirements for storm water discharges associated with industrial activity include a drainage map of the site in addition to the topographic map required with the Form 1. A drainage map can provide important site specific information for evaluating the nature of the storm water discharge than the existing requirements, which require a larger map with only general information. The volume of a storm water discharge and the pollutants associated with it will depend on the configuration and activities occurring at the industrial site. The Agency requests comments under what conditions, if any, it would appropriate to submit a site drainage map in lieu of the Form 1 topographic map.

EPA is also proposing that a narrative description be submitted to accompany the drainage map. The proposed narrative will provide a description of on-site features, including existing structures (buildings which cover materials and other material covers, dikes, diversion ditches, etc.) and non-structural controls (employee training, visual inspections, preventive maintenance, and housekeeping measures) that are used to prevent or minimize the potential for release of toxic and hazardous pollutants; a description of significant materials that are currently or in the past have been treated, stored or disposed outside; and the method of treatment, storage or disposal used. The narrative will also include a description of activities at materials loading and unloading areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; a description of the soil; the impact of storm water runoff on production areas; and a description of the areas which are predominantly responsible for first flush runoff.

Today's notice is also proposing that permit applicants for storm water discharges associated with industrial activity certify that all of the outfalls covered in the permit application have been tested for non-storm water discharges which are not covered by a NPDES permit. Section 405 of the WQA added section 402(p)(3)(B)(ii) to the CWA to require that permits for municipal separate storm sewers effectively prohibit non-storm water discharges to the storm sewer system. As discussed in § VII.F.7.b of today's notice, untreated non-storm water discharges to storm sewers can crate severe, wide-spread contamination problems and removing such discharges presents opportunities for dramatic improvements in the quality of such discharges. Although section 402(p)(3)(B)(ii) specifically addresses municipal separate storm sewers, EPA believes that illicit non-storm water discharges are as likely to be mixed with storm water at a facility that discharges directly to the waters of the United States as it is at a facility that discharges to a municipal storm sewer. Accordingly, EPA feels that is appropriate to consider potential non-storm water discharges in permit applications for storm water discharges associated with industrial activity. The certification requirement would not apply to outfalls where storm water is intentionally mixed with process waste water streams which are already identified in and covered by a permit.

EPA is proposing to provide regulatory language that would provide that appropriate tests for non-storm water discharges include smoke tests, fluorometric dye tests and analysis of accurate schematics. EPA requests comment on whether analysis of storm water discharges associated with industrial activity for various parameters (such as fecal coliform, fecal streptococcus, volatile organic carbon (VOC), residual chlorine and detergents) would be an appropriate method for satisfying the certification requirement. EPA requests comments on other technologies and the use of visual observations of flow during dry weather conditions which may be appropriate for this certification requirement. The Agency also requests comments on when a variance from this provision may be appropriate.

Today's proposal would also require applicants to submit known information regarding the history of significant spills at the facility. Such information is necessary to aid in the determination of which drainage areas are likely to generate storm water discharges associated with industrial activity, evaluate pollutants of concern and to develop appropriate permit conditions. Significant spills at a facility would generally include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.20 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Like the regular NPDES permit applications, individual applications are submitted to the State if it is approved to administer the NPDES program, otherwise to the appropriate EPA Regional Office.

In the August 12, 1985 notice, EPA requested comments on the appropriateness of allowing for a waiver from the requirement to submit quantitative data if the applicant can demonstrate that the information is unnecessary for permit issuance. Although overall the commenters supported such a waiver, EPA is not proposing this type of a waiver in this notice. A waiver is inappropriate since EPA is proposing to reduce the number of pollutants that must be sampled and

analyzed from previous regulations. The proposed requirements for quantitative data are limited to pollutants that are appropriate for given site-specific operations, thereby making a waiver unnecessary.

Although the concept of a waiver is attractive because of the perceived potential reduction in burdens for applicants, the Agency believes that because the storm water discharge testing reequirements have already been streamlined, a waiver would not in practice provide significant reductions in burden for either applicants or permitting authorities. Requirements to provide and verify data demonstrating that a waiver is appropriate for a storm water discharge may prove to be more of a burden to the applicant and the permitting authorities. Establishing such a waiver procedure would be administratively complex and time-consuming for both the Agency and the applicants, without any justifiable benefit. Therefore, today's proposal does not include a waiver provision.

4. Group Applications

For two major reasons, EPA continues to support the group application approach. First, group applications will reduce the burden on the regulated community associated with submitting permit applications by requiring the submission of quantitative data from only selected members of the group. Second, the group application process will reduce the burden on the permit issuing authority by forming an appropriate basis and providing adequate information for issuing general permits. Where general permits are not appropriate or cannot be issued, a group application can be used to develop model individual permits, which can significantly reduce the burden of issuing individual permits.

Today's notice refines and clarifies the proposal for the group application approach set forth in the August 12, 1985 Reopener Notice. The proposal would establish a regulatory procedure whereby a representative entity, such as a trade association, may submit a group application to the Office of Water Enforcement and Permits (OWEP) at EPA headquarters, in which quantitative data from certain representative members of a group of industrial facilities is supplied. Information received in the group application will be used by OWEP to develop models for individual permits or general permits. These model permits are not issued permits, but rather they will be used by EPA Regions and the NPDES States to issue individual or general permits for participating facilities in the State. In developing such permits, the Region or NPDES States will, where necessary, adapt the model permits to take into account the hydrological conditions and receiving water quality in their area.

a. Facilities Covered. Today's proposal differs from the August 12 proposal in that the group application is submitted for only the facilities specifically listed in the application, and not necessarily for an entire industry. This is quite different from the August 12 proposal, which proposed that the application was to be submitted for, and be representative of, the industry as a whole, and any facility fitting within the industry subcategory did not have to submit an individual application. Based on comments to the August 12, 1985 proposal, the Agency agrees that submitting an application for an entire industry is simply unworkable. Under the August 12 proprosal, it was likely that there would have been only one application for an entire industry, and the one submission would have had to be representative of the industry as a whole. Under today's proposal, a group application will only cover facilities listed in the application, and not the industry as a whole. The facilities in the group application selected to do sampling must be representative of the group, not of the industry. This approach eliminates the problem expressed by some trade associations that because they represented only a portion of the industry, they would be unable to assure representativeness.

Facilities that would be sufficiently similar to members of a group application, but that are not identified in the group application must, if they are required to obtain a permit, submit individual NPDES permit applications in accordance with the deadlines that will be established in the final rule. Storm water discharges that are sufficiently similar to those covered in a general permit that commence discharging after an applicable general permit has been issued must refer to the provisions of that general permit to determine if they are eligible for coverage and the procedures established in the general permit for obtaining coverage. Facilities that have already been issued an individual permit for their storm water discharge would generally not be eligible for participation in a group application.

b. Scope of Group Applications. In the August 12, 1985 notice, EPA proposed that the groups would be based on EPA subcategories for process waste water (as defined by 40 CFR Subchapter N). Over half of the comments which addressed this issue supported the use of subcategories over categories. However, several commenters to the August 12, 1985 proposal noted that this was too restrictive, and would deny the group application option to those industries not defined by one of the Agency's subcategories or to facilities with integrated operations, where processes could fall within several subcategories.

EPA subcategories are functional classifications, breaking down facilities into groups, for purposes of setting effluent limitations guidelines. Thus, they are tighter than the EPA categorical designations and narrow the wide differences among processes within a broad category. The use of EPA subcategories will save time for both applicants and permitting authorities in determining whether a particular group is appropriate for a group application.

EPA recognizes that the subcategory designations may not always be available. Also, there are situations where processes that are subject to different subcategories are combined. The Agency agrees that the group application option should be flexible enough to allow groups to be created where facilities are integrated or overlap into other subcategories. For these reasons, today's proposal does not limit the submission to EPA subcategories alone, but rather allows groups to be formed where facilities are similar enough to be appropriate for general permit coverage.

In determining whether a group is appropriate for general permit coverage, EPA intends that the group applicant use the factors set forth in 40 CFR 122.28(a)(2)(ii), the current general permit regulation, as a guide. If facilities all involve the same or similar types of operations, discharge the same types of wastes, have the same effluent limitation and same or similar monitoring requirements, where applicable, they would probably be appropriate for a group application. The criteria currently used for defining group application coverage are reasonable for defining the scope of a group application in view of the logical assumption that similar types of industrial facilities are likely to have some similar pollutants in their storm water runoff.

C. Group Application Requirements. The group application requirements proposed today will consist of a Part 1 and a Part 2 application which are to be submitted on different dates. In Part 1 of the application, applicants are to provide information to demonstrate that participants in the group application are sufficiently similar to be included in one group and preliminarily identify

representative facilities which will be responsible for collecting and submitting quantitative data on behalf of the entire group. In Part 2 of the application, representative facilities approved by EPA will be responsible for collecting and submitting quantitative data on behalf of the entire group.

Part 1 of the group application will consist of two components, Part 1A and Part 1B. Part 1A of the application will be used to provide an overview of the group. The second component of Part 1, Part 1B, will provide site-specific information which will be used to evaluate whether individual facilities are appropriate for the group application and whether the representative facilities selected in Part 1A will indeed provide representative quantitative data.

Part 1A of the Group Application. Part 1A will consist of four elements: (1) The name and location of all facilities participating in the group application; (2) a narrative description summarizing the major industrial activities of the participants in the group application and why the participants are appropriate for a group application; (3) a list of the significant materials stored outside by members of the group, and a description of the primary materials management practices, if any; and (4) a commitment to provide quantitative sampling data from representative facilities in Part 2 of the permit application, and a list of the facilities which will provide quantitative information.

EPA is proposing that in Part 1A of the group application, the names of facilities participating in the group application be divided into nine subdivisions based on the facility location relative to nine precipitation zones [see attached map, Appendix E]. These nine divisions will enable the data in the permit application to be more easily analyzed and patterns observed on the basis of hydrology and other regional factors. The need to identify precipitation zones arises because the amount of rainfall is likely to have a significant impact on the quality of the receiving water. According to a recent EPA study (Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality; Office of Water, Nonpoint Source Branch, Sept. 1986) the United States can be divided into nine general precipitation zones. These zones are characterized by differences in precipitation volume, precipitation intensity, precipitation duration, and precipitation intervals. Industrial facilities that seek general permits via the group application option may show significantly different loading rates as a result of these regional precipitation differences. As an example, precipitation in Seattle, Washington, located in Zone 7, approaches the mean annual storm intensity of .024 inches/hour with a mean annual storm duration of 20 hours for that Zone. In contrast, precipitation in Atlanta, Georgia, located in Zone 3 approaches the mean annual storm intensity of .102 inches/hour and a mean storm duration 6.2 hours for that Zone. Atlanta, receives on the average four times more precipitation per hour with storms lasting one-third as long. As a result of these differences, if identical facilities within a group application were situated in each of these areas, their storm water discharges would likely exhibit different pollutant characteristics.

As mentioned above, the group application must provide a list of significant materials stored outside by members of the group. Such a list shall include, for example, raw materials (fuels, storage piles); intermediate materials, such as solvents and detergents; finished materials such as metallic products; and waste products such as ashes, slag and sludge. EPA is proposing that materials are significant, for the purpose of preparing a group application, if they are periodically used or stored in quantities that, if released and mixed with storm water, could result in impacts to receiving waters. As an example, materials in quantities sufficient to be stored in a 55-gallon drum generally would be regarded as significant. However, some materials are sufficiently toxic that smaller quantities would be considered significant, such as certain pesticides and solvents. Therefore, any materials conistently used that are known to be highly toxic in small quantities would also be regarded as significant materials.

With regard to the materials identified, the applicant is to discuss the materials management practices employed by members of the group. For example, the applicant should identify whether such materials are commonly covered, contained, or enclosed, whether storm water runoff from materials storage areas is collected in settling ponds prior to discharge, or diverted away from such areas to minimize the likelihood of contamination. Also, the approximate percentge of facilities in the group with no practices in place to minimize materials stored outside is to be identified.

The Agency considers that the processes and materials used at a particular facility may have a bearing on the quality of the storm water. Thus, if there are different processes and materials used by members of the group, the application is to contain data from facilities utilizing the different processes and materials. Accordingly, if the group members are all very similar in their processes and materials, then such distinctions would not be necessary.

The fourth element of Part 1A of the group application is a commitment to submit quantitative data from ten percent of the facilities listed. EPA is proposing that there must be a minimum of ten and a maximum of one hundred facilities within a group that submit data. There must be a sufficient number of facilities submitting data for any patterns and trends to be detectable. However, it is felt that one hundred facilities would in most cases be sufficient to characterize the nature of the runoff. If not, EPA has the authority to request more sampling under section 308 of the CWA.

Because storm water loading rates may differ significantly as a result of regional precipitation differences, it is necessary that each precipitation zone containing representatives of a group application have some of those representatives take samples. Thus, today's proposal would require that Part 2 of the group application contain sampling data from at least two facilities within each precipitation zone in which two or more members of group are located (the application need contain sampling data for only one facility in a precipitation zone if that facility is the only member of the group located in that zone). Several commenters to the August 12, 1985 proposal suggested, and the Agency agrees, that the amount of rainfall will affect the degree of impact a storm water discharge may have on the receiving stream. In addition, facilities selected to do the sampling should be representative of the group as a whole in terms of those characteristics identifying the group which were described in the narrative, i.e., number and range of facilities, types of processes used, and any other relevant factors. If there is some variation in the processes used by the group (40 percent of the group of food processors are canners and 60 percent are canners and freezers, for example), the different processes are to be represented. Also, samples are to be provided from facilities utilizing the materials management practices identified, including those facilities which use no materials management practices. The representation of these different factors, to the extent feasible, is to be roughly equivalent to their proportion in the group.

Part 1B of the Group Application. Under today's proposal, Part 1B of the group application is intended to provide sufficient site specific information to allow EPA to evaluate whether all members of a group are sufficiently similar as to be appropriate for coverage in a group application or general permit, and to ensure that the facilities selected to collect quantitative data are representative of the group.

Each facility in the group application would be required to submit the non-quantitative information that is required in an individual application for storm water discharges associated with industrial activity: a drainage map, a narrative description of material management practices and control measures to control the discharge of pollutants in storm water discharges, and the history of significant spills at the facility.

EPA is requiring this information because the Agency is persuaded by comments on previous proposals suggesting that site-specific practices are likely to have a significant impact on the quality of the runoff. In addition, comparing the results of different control practices will assist in selecting management practices for inclusion in NPDES permits.

In addition, individual members of the group application will be required to certify that their facility has tested all outfalls that should contain entirely storm water discharges and which drain storm water associated with industrial activity for the presence of nonstorm water discharges which are not covered with a NPDES permit. Illicit discharges are by nature site-specific, and hence a representative analysis involving testing of a fraction of the facilities in the group is not appropriate for a group application.

Submittal of Part 1 of the Group Application. Each facility in the group can submit the information required in Part 1B on Form 1 and Form 2F. The entire Form 2F does not need to be completed—only that nonquantitative information for individual applicants described in today's proposal is required. Facilities participating in a group application will not be required to submit quantitative data describing their storm water discharges with Part 1 of the group application.

The Form 1 and Form 2F must be signed by an authorized corporate official of the facility submitting data, in accordance with the requirements of 40 CFR 122.22. This official will make the required certifications that the document was prepared under his supervision, and based on inquiry of the persons responsible for gathering the information, the information is, to the best of their knowledge and belief, true, accurate and complete.

These forms should be collected prior to submission to EPA and submitted at one time along with the information required under Part 1A to the EPA Office of Water Enforcement and Permits (OWEP) in Washington, DC. OWEP will review the Part 1 application for completeness (40 CFR 122.21(e), completeness of NPDES permit applications) and for compliance with the permit application requirements. Factors likely to contribute pollutants to storm water discharges, such as specific material management practices, will be considered in approving the facilities chosen for representative sampling of the group. Then a judgment will be made as to whether the described group, as a whole, is appropriate for a single group application. If a submission is deficient, EPA will either: reject the group application, limit the facilities participating in the group application, or request that corrections be made to the group application prior to a final decision on acceptability. If the application is rejected or if EPA determines that some facilities must be excluded from the group application, facilities no longer covered by the group application would be required to submit additional information such that complete individual applications can be evaluated.

Part 2 of the Group Application. Under today's proposal, groups for which the Part 1 permit application have been accepted will submit Part 2 of the group application within 18 months of the promulgation of a final rule. Part 2 of the application will consist of quantitative data from the representative facilities in the group that were selected in Part 1 of the application. Each facility submitting representative data in Part 2 will submit quantitative sampling data on Form 2F. The individual facilities themselves, in filling out permit applications for their facilities, certify that the data provided are true, accurate, and complete. Individual applications submitted in Part 2 of the group application will contain sampling from each outfall, except that individual applicants may avail themselves of 40 CFR 122.21(g)(7) for multiple outfalls at the same site with substantially identical effluents, as discussed under the proposed requirements for individual applications. These forms are to be submitted to the entity representing the group, which will compile them.

As with Part 1, Part 2 of the Group Application would be submitted to the Permits Division, Office of Water Enforcement and Permits, in Washington, DC. Submission of a Part 2 application which meets Part 1 commitments and the other standard NPDES regulatory requirements satisfies the application requirements for the facilities listed on Part 1. If the information is incomplete, or simply is found to be an inadequate basis for establishing general permit limits, EPA has the authority under section 308 of the Clean Water Act to require that more information be submitted, which may include sampling from facilities that were part of the group application but did not provide data with the initial submission. If the group application is used by a Region or NPDES State to issue a general permit, the general permit should specify procedures for additional coverage under the permit.

If a Part 2 is unacceptable or insufficient, EPA has the option to request additional information or to require that the facilities that participated in the group application submit complete individual applications (e.g., facilities that have submitted Form 1 with the group application would be required to submit Form 2F, and facilities which have submitted complete Form 1 and Form 2F information in the group application would generally not have to submit additional information).

Once the group applications are reviewed and accepted, EPA will use the information to establish draft permit terms and conditions for models for individual and general permits. The information will also allow States and EPA regional offices to estimate the pollutant loads from storm water dischargers associated with the group to assist in identifying groups for which individual permits may be more appropriate. NPDES-approved States and EPA regional offices will continue to be the permit-issuing authority for storm water discharges. The NPDES-approved States accepting the group application approach and the EPA Regions may then take the model permits and adapt them for their particular area, making adjustments for local water quality standards and other localized characteristics, and making determinations as to the need for an individual storm water permit where general permit coverage is felt to be inappropriate. Permits would be proposed by the Region or NPDES-approved State in accordance with current regulations for public comment before becoming final. In NPDES States without general permit authority, or where an individual permit is deemed appropriate, the model permit can serve

as the basis for issuing individual permits.

The group application is an NPDES permit application just like any other, and as such would be handled through normal permitting procedures, subject to the regulatory provisions applicable to permit issuance. Incomplete or otherwise inadequate submissions would be handled in the same manner as any other permit application. The permitting authority would retain the right to require submission of Form 1, Form 2C and Form 2F from any individual discharger it designates.

5. Group Application: Applicability in NPDES States

The relationship between EPA and the States that are authorized to administer the NPDES program (there are 39 such States, called "approved States") that will implement the storm water program is one of the most complicated aspects of today's proposal. Approved States must have requirements that are at least as stringent as the federal program; they may be more stringent if they choose. Authority to issue general permits is opptional with NPDES States. If they choose to issue general permits they may include such authority in their NPDES program and, upon approval of the program by EPA, may then issue general permits. There are currently thirteen approved States that have authority to issue general permits: Arkansas, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, New Jersey, Oregon, Rhode Island, Utah, West Virginia and Wisconsin.

Because today's group application option is a relaxation of existing NPDES permit application requirements, the State is free to adopt this option, but is not required to. If the State chooses to adopt the group application and it does not have general permit authority, the group application can be used to issue individual permits, However, EPA recommends that such States consider obtaining general permit authority as a means to efficiently issue permits for storm water discharges. These States should contact the Office of Water Enforcement and Permits at EPA Headquarters (see the **FOR FURTHER INFORMATION** section at the beginning of this notice), as soon as possible.

If an approved State chooses not to adopt the group application, facilities that discharge storm water associated with industrial activity that are located in that State must submit individual applications to the respective State permitting authority. For facilities that discharge storm water associated with industrial activity which are named in a group application, the Director may require an individual facility to submit an individual application where it determines that general permit coverage would be inappropriate for the particular facility.

6. Group Application: Procedural Concerns

Comments received on the August 12, 1985 group application proposal included comments from an environmental group that the proposed group application process and procedures violated federal law. This commenter claimed that EPA was abrogating its responsibility by allowing a trade association to design a data collection plan in lieu of completing an NPDES application form designed by the Agency, thus violating the Federal Advisory Committee Act. The commenter stated that EPA would be improperly influenced by special interests if trade associations were able to design their own storm water data gathering plans. The commenter further asserted that any decisions by EPA on the content of specific group applications would be rulemakings and thus subject to the provisions of the Administrative Procedure Act.

EPA disagrees with the comment that the group application violates the Federal Advisory Committee Act (FACA). FACA governs only those groups that are established or "utilized" by an agency for the purpose of obtaining "advice" or "recommendations". The group application option does not solicit or involve any "advice" or "recommendations". It simply allows submission of data by certain members of a group in accordance with specific regulatory criteria for determining which facilities are "representative" of a group. As such, the group application is merely a submission in accordance and in compliance with specific regulatory requirements and does not contain discretionary uncircumscribed "advice" or "recommendations" as to which facilities are representative of a group.

Thus, the determination of which facilities should submit testing data in accordance with regulatory criteria is little different from many other regulatory requirements where an applicant must submit information in accordance with certain criteria. For example, under 40 CFR 122.21 all outfalls must be tested except where two or more have "substantially identical" effluents. Similarly, quantitative data for certain pollutants is to be provided where the applicant knows or "has reason to believe" such pollutants are discharged. Both of these provisions allow the applicant to exercise discretion in making certain judgments but such action is circumscribed by regulatory standards. EPA further has authority to require these facilities to submit individual applications. In none of these instances are "recommendations" or "advice" involved. EPA also notes that it is questionable whether, in providing for group applications, it is "soliciting" advice or recommendations from groups of that such groups are being "utilized" by the Agency as a "preferred source" of advice. See 48 FR 19324 (April 28, 1983). Furthermore, this data collection effort may be supplemented by EPA if, after review of the data, EPA determines additional data is necessary for permit issuance. Other information gathering may act as a check on the group applications received.

EPA also does not agree with commenters' claims that the group application scheme represents an impermissible delegation of the Administrator's function in violation of the CWA regarding data gathering. The Administrator has the broadest discretion in determining what information is needed for permit development as well as the manner in which such information will be collected. The CWA does not require every discharger required to obtain a permit to file an application. Nor does the CWA require that the Administrator obtain data on which a permit is to be based through a formal application process (see 40 CFR 122.21). For years "applications" have not been required from dischargers covered by general permits. EPA currently obtains much information beyond that provided in applications pursuant to section 308 of the CWA. This is especially true with respect to general permit and effluent limitations guidelines development. The group application option is simply another means of data gathering. The Administrator may always collect more data should he determine it necessary upon review of a groups' data submission. And, he may obtain such additional data by whatever means permissible under the Statue that he deems appropriate. Thus, it can hardly be said that by this initial data gathering effort the Administrator has delegated his data gathering responsibilities. In addition, since groups are required to select "representative" facilities, etc., in accordance with specific regulatory requirements established by the Administrator and because EPA will scrutinize Part 1 of the group applications and either accept or reject the group as appropriate for a group application, no impermissible delegation

has occurred. EPA will make an independent determination of the acceptability of a group application in view of the information required to be submitted by the group applicant, other information available to EPA (such as information on industrial subcategories obtained in developing effluent limitations guidelines as well as individual storm water applications received as a result of today's rule) and any further information EPA may request to supplement Part 1 pursuant to section 308 of the CWA. Moreover, any concerns that a general permit may be based upon biased data can be dealt with in the public permit issuance process.

Finally, EPA also does not agree that the group application option violates the Administrative Procedures Act. Again, the group application scheme is simply a data gathering device. EPA could very well have determined to gather data informally via specific requests pursuant to section 308 of the CWA. In fact, general permit and effluent limitations guideline development proceed along these lines. It would make little sense if the latter informal data gathering process were somehow illegal simply because it is set forth in a rule that allows applicants some relief upon certain showings. In this respect, several of EPA's existing regulations similarly allow an applicant to be relieved from certain data submission requirements upon appropriate demonstrations. For example, testing for certain pollutants and or certain outfalls may be waived under certain circumstances. Most importantly, the operative action of concern that impacts on the public is actual general permit issuance based upon data obtained. As previously stated, ample opportunity for public participation is provided in the permit issuance proceeding.

7. Permit Applicability and Applications for Oil, Gas and Mining Operations

Section 401 of the WQA amended section 402(1)(2) of the CWA to prohibit the Director of the NPDES program from requiring permits for uncontaminated storm water discharges from oil and gas operations and from mining operations. In the near future, EPA intends to issue a notice that will codify this provision into 40 CFR 122.26(a)(2). Today's notice proposes to modify 40 CFR 122.26(a)(2) to clarify the scope of the provision.

As discussed in more detail earlier in today's notice, on March 18, 1976 (41 FR 11307), EPA promulgated permit application requirements for storm water discharges that were located in an urbanized area or that were from lands used for industrial or commercial activities that were contaminated by contact with materials or contaminated soils. The approach to regulating storm water discharges was modified on September 24, 1984 (49 *FR* 37998) which deleted the term "contaminated" and relied instead on geographic criteria which resulted in the same coverage (e.g., discharges meeting the geographic criteria were expected to meet the contaminated criteria).

Congress adopted a similar geographic criterion to generally define the scope of the first phases of the storm water program when enacting Section 405 of the WQA by requiring EPA to develop permit applications for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving populations of 250,000 or more or serving populations of 100,000 or more, but less than 250,000.

However, Section 401 of the WQA, amended Section 402(1)(2) of the CWA to provide that the Director shall not require a NPDES permit for storm water runoff from mining or oil and gas operations if the runoff is not contaminated by contact with, or does not come into contact with any overburden, raw material, intermediate product, finished product, byproduct or waste product located on the site. This provision relies on both a geographic criterion and a contamination criterion to define permit applicability.

The legislative history accompanying Section 402(1)(2) clarified that Congress intended that the factors considered in determining if storm water discharges from oil and gas operations are contaminated are different from the factors considered for storm water discharges from mining operations. Congress intended that for these discharges, if the storm water is "not contaminated by contact with such materials, as determined by the Administrator, permits are also not required. With respect to oil or grease or hazardous substances, the determination of whether stormwater is 'contaminated by contact with' such materials, as established by the Administrator, shall take into consideration whether these materials are present in such stormwater runoff in excess of reportable quantities under section 311 of the Clean Water Act or Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or in the case of mining operations, above natural background levels." (Vol. 132 Cong. Rec. H10574 (daily ed. October 15, 1986) Conference Report).

a. Gas and Oil Operations. EPA is proposing that contaminated storm water from oil and gas operations includes, but is not limited to, runoff that contains a hazardous substance in excess of reporting quantities (RQs) established at 40 CFR 117.3 or 40 CFR 302.4; or contains oil in excess of the reporting quantity established at 40 CFR 110.3.

In order to implement the storm water permit requirements for oil and gas operations, the Agency is proposing to rely primarily on notification requirements for releases in excess of RQs established under the CWA and CERCLA to trigger the submittal of permit applications for storm water discharges from oil and gas operations. EPA is proposing that oil and gas operations which do not or have not in the past discharged storm water which contains an RQ of a hazardous substance or oil are not required to submit a permit application for such storm water discharges unless the Director requests a permit application on a case-by-base basis.

Oil and gas operations that have been required to notify the release of a RQ of either oil or a hazardous substance via a storm water route will be required to submit a permit application, including quantitative sampling data, in accordance with proposed § 122.26(c)(1)(iii). Oil and gas operations which have had a release via a storm water route in excess of an RQ will be required to obtain a NPDES permit even if the quantitative data submitted in the application does not indicate that the storm water discharge sampled contained a hazardous substance or oil in excess of a reportable quantity.

The proposal also provides the Director authority to require, on a case-by-case basis, operators of oil and gas operations which have certified that its discharge is not contaminated to submit a permit application. In addition, the Director may require an operator of an oil and gas operation to submit information regarding the storm water discharge under Section 308 of the CWA.

Based on a consideration of pollutants in a storm water discharge from an oil or gas facility, the Director may determine that the discharge is contaminated even though the discharge does not contain oil or a hazardous substance in amounts which exceeds an RQ. Also, RQs only serve as one guide in allowing the Director to determine if the discharge is contaminated. RQs have not been developed for some pollutants, such as suspended solids and other various indicator parameters (BOD, COD, pH,

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etc.), which are not classified as oil or a hazardous substance.

b. Use of Reportable Quantities to Determine if a Storm Water Discharge from an Oil or Gas Operation Is Contaminated. Section 311(b)(5) of the CWA requires reporting of certain discharges of oil or a hazardous substance into navigable waters (see 44 FR 50766 (August 29, 1979)). Section 304(b)(4) of the Act requires that quantities of oil and hazardous substances that require notification be determined at quantities which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public or private property, shorelines and beaches. Facilities which discharge oil or a hazardous substance in quantities equal to or in excess of an RQ, with certain exceptions, are required to notify the National Response Center (NRC).

Section 102 of CERCLA extended the reporting requirement for releases equal to or exceeding an RQ of a hazardous substance by adding chemicals to the list of hazardous substances, and by extending the reporting requirement (with certain exceptions) to any releases to the environment, not just those to navigable waters. Releases of oil are not addressed by the reporting requirements under CERCLA.

Pursuant to Section 311 of the CWA, EPA determined reportable quantities for discharges by correlating aquatic animal toxicity ranges with 5 reporting quantities, i.e. 1-, 10-, 100-, 1000-, and 5000-pounds per 24 hour period levels. Reportable quantity adjustments made under CERCLA relied on a different methodology. The strategy for adjusting reportable quantities begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined, called "primary criteria", are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, and chronic toxicity. In addition, substances that were identified as potential carcinogens have been evaluated for their relative activity as potential carcinogens. Each intrinsic property is ranked on a five-tier scale, associating a specific range of values on each scale with a particular reportable quantity value. After the primary criteria reportable quantities are assigned, the hazardous substances are further evaluated for their susceptibility to certain extrinsic degradation processes called secondary criteria. Secondary criteria consider whether a substance degrades relatively rapidly to a less harmful compound, and can be used to raise the primary criteria reportable quantity one level.

Also pursuant to § 311, EPA has developed a reportable quantity for oil, and associated reporting requirements at 40 CFR 110. These requirements, known as the oil sheen regulation, defines the RQ for oil to be the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited.

Reportable quantities developed under the CWA and CERCLA were not developed as effluent guideline limitations which establish allowable limits for pollutant discharges to surface waters. Rather, a major purpose of the notification requirements is to alert government officials to releases of hazardous substances that may require rapid response to protect public health and welfare and the environment. Notification based on reportable quantities serves as a trigger for informing the government of a release so that the need for response can be evaluated and any necessary response undertaken in a timely fashion. The reportable quantities do not themselves represent any determination that releases of a particular quantity are actually harmful to public health or welfare or the environment.

In relying in today's proposal on the reporting requirements associated with releases in excess of RQs for oil or hazardous substances to trigger the submittal of permit applications for oil and gas operations, the Agency believes that the use of the reporting requirements for oil will be particularly useful. The Agency believes that the release of oil to a storm water discharge in amounts that cause an oil sheen is a good indicator of the potential for water quality impacts from storm water releases from oil and gas operations. In addition, given the extremely high number of such operations (the Agency estimates that there are over 750,000 oil wells alone in the United States), relying on the oil sheen test to determine if storm water discharges from such sites are "contaminated" is more appropriate than sampling. The detection of a sheen does not require sophisticated instrumentation since a sheen is easily perceived by visual observation.

EPA requests comments on the use of reportable quantities for determining whether storm water from mining operations or oil and gas operations is contaminated. EPA is particularly concerned with the use of RQs to define contamination for storm water discharges from oil and gas operations.

c. Mining Operations. Today's notice proposes to clarify that contaminated storm water runoff from mining operations includes runoff which contains pollutants above natural background levels. When evaluating whether a storm water discharge from a mining operation contains contaminates above background levels, EPA will consider both contaminate concentrations and flowrates to estimate total pollutant loads. Concentration values alone are not sufficient to indicate whether a discharge contains contaminates above background levels. Development of land generally causes increased runoff volumes. Thus, even where concentrations of pollutants remain the same as during predevelopment, an increase in runoff volumes will result in increases in pollutant loadings.

EPA is proposing that operators of mining operations will be required to submit permit applications for storm water discharges from active and inactive mining areas (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(l)) and haul roads where storm water comes into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products. EPA is proposing at § 122.26(b)(12)(iii) to define storm water discharges from these areas of a mining operation as storm water discharges associated with industrial activity. Accordingly, the permit application requirements proposed at § 122.26(c)(1) will apply to these dischargers. Data in the permit application, and if necessary, other data required by the Director under Section 308 of the CWA, will be used to determine if the discharge contains contaminants above background levels, and therefore a permit is necessary. Mining operations with storm water discharges that are known to be contaminated may participate in appropriate group applications which comply with proposed § 122.26(c)(2).

8. Application Requirements for Construction Activities

As discussed above, EPA is proposing that storm water discharges from facilities classified as Standard Industrial Codes 15 and 16 (General building contractors and heavy construction contractors) (except construction operations that result in the disturbance of less than one acre total land area which are not part of a larger common plan of development or sale; or

operations that are for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas which are not part of a larger common plan of development or sale), be included in the regulatory definition of storm water discharges associated with industrial activity.

The Agency believes that storm water permits are appropriate for the construction industry for two reasons. First, runoff generated while construction activities are occurring have potential for serious water quality impacts. Where construction activities are intensive, the localized impacts of water quality may be severe because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus, nitrogen and nutrients from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment runoff rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and 1,000 to 2,000 times that of forest lands. Even small construction sites may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

Techniques to control pollutants in storm water discharges from construction are well developed and understood. A primary control technique is good site planning. A combination of nonstructural and structural best management practices are typically used on construction sites. Relatively inexpensive nonstructural vegetative controls, such as seeding and mulching, are effective control techniques. In some cases, more expensive structural controls may be necessary, such as detention basins or diversions. The most efficient controls result when a comprehensive storm water management system is in place.

The second major reason for addressing storm water discharges from the construction industry at this time is that studies such as NURP indicate that it is much more cost effective to develop measures to reduce pollutants during new development. Many of these controls, which can take the form of grading patterns as well as other controls, generally remain in place after the construction activities are completed.

a. Permit Application Requirements. In today's notice, EPA is proposing distinct permit application requirements for these construction activities, at 122.26(c)(1)(ii). Under the proposal, such facilities will be required to provide a narrative description of:

- The nature of the construction activity;
- The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a description of applicable Federal requirements and State or local erosion and sediment control requirements;
- Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a description of applicable State or local requirements;
- An estimate of the runoff coefficient (fraction of total rainfall that will appear as runoff) of the site and the increase in impervious area after the construction addressed in the permit application is completed, a description of the nature of fill material and existing data describing the soil or the quality of the discharge; and
- The name of the receiving water.

EPA is proposing that permit application requirements for the covered construction activities will not include the submission of quantitative data. EPA believes that the changing nature of construction activities at the site to be covered by the permit application requirements generally would not be adequately described by quantitative data.

The Agency specifically requests comments on today's proposed permit application requirements for construction facilities which discharge storm water associated with industrial activity, on appropriate measures to reduce pollutants in construction site runoff, and on appropriate application deadlines.

The application requirements proposed in today's notice are designed to provide flexibility in developing controls to reduce pollutants in storm water discharges from construction sites. The proposed application requirements recognize that many State and local governments have implemented erosion and sediment control programs. The permit application requirements requiring a description of these programs are intended to ensure consistency between NPDES permit requirements and other State and local controls.

b. Administrative Burdens. Ideally, model individual permits and general permits will be issued for storm water discharges for construction activities subject to NPDES requirements to minimize administrative delays associated with permit issuance. EPA requests comment on administrative burdens and delays associated with issuing NPDES permits for storm water discharges from certain construction activities. In addressing the administrative burdens of regulation, commenters should consider the proposed limitation on the definition of storm water discharge associated with industrial activity and the proposed regulatory scheme for storm water discharges associated with industrial activity which discharge to municipal separate storm sewer systems.

Proposed § 122.26(b)(12)(x) limits the definition of "storm water discharge associated with industrial activity" by exempting from the definition construction operations that result in the disturbance of less than one acre total land area which are not part of the larger common plan of development or sale; or operations that are for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas which are not part of a larger common plan of development or sale. In considering the appropriate scope of the definition of storm water discharge associated with industrial activity as it relates to construction activities, EPA recognizes that a wide variety of factors can affect the water quality impacts associated with construction site runoff, including receiving waters, the size of the area disturbed, soil conditions, seasonal rainfall patterns, the slope of area disturbed, and the intensity of construction activities.

EPA favors the one acre/five acre limit primarily because of administrative concerns. EPA recognizes that State and local sediment and erosion controls may address construction activities disturbing less than one acre or five acres for residential development. The one acre/five acre limit proposed in today's notice is not intended to supersede more stringent State or local sediment and erosion controls. For construction facilities that are not included in the definition of storm water discharge associated with industrial activity, EPA will consider the appropriate procedures and methods to

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reduce pollutants in construction site runoff under the studies authorized by section 402(p)(5) of the CWA. EPA will also consider under section 402(p)(5) appropriate procedures and methods during post-construction for maintaining structural controls developed pursuant to NPDES permits issued for storm water discharges associated with industrial activity from construction sites.

EPA favors distinguishing between single family residential development and other commercial development because other commercial development is more likely to occur in more densely developed areas. Also, other commercial development provides a more complete opportunity to develop controls that remain in place after the construction activity is completed, as continued maintenance, after the permit has expired, is more feasible.

EPA requests comments on the use of no limit or other limits such as 2, 10 or 20 acres. In addition, limitations could be based on or modified by other factors. Time limitations which consider the length of the construction activity or the season during which the activity occurs may provide a more workable administrative system while still addressing the major water quality impacts associated with construction activities. Other factors, such as steep slopes at the site, which affect the nature of the runoff, may be appropriate for defining special cases which would be addressed in this rulemaking. EPA also requests comments on other factors, such as the intensity of the development within the watershed, which affect the water quality impacts in receiving waters. Such site specific factors may be difficult to define in federal regulations. For example, a definition based on relatively easily interpreted criteria such as Census designated urban areas may not provide adequate protection for rapidly developing areas which are located outside the urban area. EPA requests comments on other factors which can be used to develop a limit on storm water discharges from construction sites which are classified as storm water discharges associated with industrial activity.

Proposed 122.26(a) would specify that storm water discharges, including construction site runoff, that discharge to municipal storm sewers are not required to obtain individual or group permits unless specifically designated by the Director. Under today's proposal, municipal permittees will be responsible for developing a proposed management plan to control pollutants in runoff from construction sites which discharge to large and medium municipal separate storm sewer systems (see § VII.G.8.d of the preamble). The Agency believes that the majority of construction sites do not discharge storm water directly to waters of the United States, but rather discharge to a municipal storm sewer or manage storm water on-site. For example, construction site runoff from a new subdivision which discharges to the drainage system of an existing road or a road that is being built by a developer for a municipality is, under this proposal, discharging to a municipal storm sewer.

9. Application Requirements for New Sources and New Discharges

Today's proposed permit application requirements provide that new sources and new discharges which discharge storm water include estimates of pollutants or parameters for which other storm water discharges are required to submit data. Under the proposal, operators of such discharges are required to provide the quantitative data which is required for other similar existing storm water discharges within two years after the commencement of the discharge, unless the data has already been reported under the monitoring requirements of the NPDES permit for the discharge.

F. Municipal Separate Storm Sewer Systems

1. Municipal Separate Storm Sewers

Today's notice proposes to define "municipal separate storm sewer" at § 122.26(b)(8) as any conveyance or system of conveyances that is owned or operated by a State or local government entity and is used for collecting and conveying storm water which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

It is important to note that the proposed permit application requirements for discharges from municipal separate storm sewers do not apply to discharges from combined sewers that are designed as both a sanitary sewer and a storm sewer. Discharges from combined sewer systems are not regulated under this proposed rule.

The Agency also wants to clarify that streams, wetlands and other water bodies that are waters of the United States are not storm sewers for the purpose of this rule. This use of the term "storm sewer" differs from the way that the term has often been used in the context of flood control, where natural streams and other water bodies are sometimes considered storm sewers. Activities such as stream channelization, and stream bed stabilization, which occur in waters of the United States would generally not be subject to permits issued under § 402 of the CWA. However, such activities occurring within waters of the United States may be subject to dredge and fill permits required under section 404 of the CWA by the Corps of Engineers. Applicants should consult the regulatory definition of "waters of the United States" at 40 CFR 122.2 to distinguish between storm sewers and waters of the United States.

Some municipalities have maintained in previous comments that difficulties may arise with determining owners or operators of municipal storm sewers as clear title to the storm sewer may not exist. Often, where the ownership of such conveyances is in question, the storm sewer is not maintained and hence an "operator" criteria is not particularly useful. EPA requests comments on different wording for the definition of municipal separate storm sewer to clarify responsibility under the NPDES permit system. Do legal classifications such as storm sewers that are not private (e.g., public, district or joint district sewers) provide a clearer definition than an owner or operator criteria? Does the definition need to be clarified by explicitly stating that municipal streets and roads with drainage systems (curb and gutter, ditches, etc.) are part of the municipal storm sewer system, and the owners or operators of such roads are responsible for such discharges? To what extent should the owner or operator concept apply to municipal governments with land-use authority over lands which contribute storm water runoff to the municipal storm sewer system, and how should this responsibility be clarified?

2. Effective Prohibition on Non-Storm Water Discharges

Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers.

EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an "effective prohibition" would require separate NPDES permits for non-storm water discharges to municipal storm sewers. In many cases in the past, applicants for NPDES permits for process wastewaters and other non-

storm water discharges have been granted approval to discharge into municipal separate storm sewers, provided that the permit conditions for the discharge are met at the point where the discharge enters into the separate storm sewer. Permits for such discharges must meet applicable technology-based and water-quality based requirements of Sections 402 and 301 of the CWA. If the permit for a non-storm water discharge to a municipal separate storm sewer contains water-quality based limitations, then such limitations should generally be based on meeting applicable water quality standards at the boundary of a State mixing zone (for States with mixing zones) located in a water of the United States. Water-quality based limitations would also generally be established during dry weather conditions, when the discharge would not be mixed with storm water in the municipal separate storm sewer (unless receiving water conditions during wet weather dictate more stringent water-quality based limitations).

The legislative history to Section 405 of the WQA supports EPA's interpretation of the non-storm water prohibition. Senator Durenberger stated that the prohibition on non-storm water discharges into municipal separate storm sewers provision applies to non-storm water discharges to municipal separate storm sewers that are currently illegal under the Act (Vol. 133 Cong. Rec. S752 (daily ed. January 14, 1987)). By stating that the provision applies to discharges that are currently illegal, it is clear that Senator Durenberger intended that the effective prohibition apply to non-storm water discharges without NPDES permits, which have been illegal under the CWA since 1972.

The Agency believes that the effective prohibition does not apply to discharges with separate NPDES permits because there would be no additional treatment or environmental benefit from constructing a new sewer line discharging into the same receiving water. If the discharge was not directed into a new discharge line, it might be forced into a Publicly Owned Treatment Works (POTW). However, certain discharges, such as high volumes of non-contact cooling water, may decrease the overall treatment efficiency of the POTW without notable treatment benefits for the cooling water. Overall, the quality of the receiving water is not likely to be improved by installing new discharge lines.

All options will be considered when an applicant applies for a NPDES permit for a non-storm water discharge to a municipal separate storm sewer. In some cases, permits will be denied for discharges to storm sewers that are causing water quality problems in receiving waters. However, not all discharges present such problems, and in these cases EPA or State permit writers may allow such discharges to municipal separate storm sewers within appropriate permit limits.

Today's notice proposes two permit application requirements that are designed to begin to implement the effective prohibition. The first proposed requirement, discussed in § VII.G.6.a, addresses a screening analysis which is intended to provide sufficient information to develop priorities for a program to detect and remove illicit discharges. The second provision, discussed in § VII.G.7.b, requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.

Conveyances which continue to accept other "non-storm water" discharges (e.g., discharges without an NPDES permit) do not meet the definition of municipal separate storm sewer, and are not subject to section 402(p)(3)(B) of the CWA unless the non-storm water discharges are issued separate NPDES permits. Instead, conveyances which continue to accept non-storm water discharges which have not been issued separate NPDES permits are subject to section 301 and 402 of the CWA. For example, combined sewers which convey storm water and sanitary sewage are not separate storm sewers and must comply with permit application requirements at 40 CFR 122.21 as well as other regulatory criteria for combined sewers.

3. Site-Specific Storm Water Quality Management Programs for Municipal Systems

Today's notice proposes fundamental changes to EPA's approach to control the discharge of pollutants from municipal separate storm sewers. Prior to the enactment of the WQA, NPDES permits for such discharges were required to meet all applicable provisions of section 402 and section 301 of the CWA. The WQA amended this requirement by adding section 402(p)(3)(iii) to the CWA which mandates that permits for discharges from municipal separate storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Director determines appropriate for the control of such pollutants.

When enacting this provision, Congress was aware of the difficulties in regulating discharges from municipal separate storm sewers solely through traditional end-of-pipe treatment and intended for EPA and NPDES States to develop permit requirements that were much broader in nature than requirements which are traditionally found in NPDES permits for industrial process discharges or POTWs. As Senator Stafford explained, municipal storm sewer system "permits will not necessarily be like industrial discharge permits. Often, an end-of-the-pipe treatment technology is not appropriate for this type of discharge. As an EPA official explained in a meeting of the conferees:

> These are not permits in the normal sense we expect them to be. These are actual programs. These are permits that go far beyond the normal permits we would issue for an industry because they in effect are programs for stormwater management that we would be writing into these permits." (Vol. 132 Cong. Rec. S16425 (daily ed. Oct. 16, 1986))

A shift towards comprehensive storm water quality management programs to reduce the discharge of pollutants from municipal separate storm sewer systems is appropriate for a number of reasons. First, discharges from municipal storm sewers are highly intermittent, and are usually characterized by very high flow rates occurring over relatively short time intervals. For this reason, municipal storm sewers are usually designed with an extremely high number of outfalls within a given municipality, to reduce potential flooding. Traditional end-of-pipe controls are limited by material management problems that arise with high volume, intermittent flows occurring at a large number of outfalls.

Second, the nature and extent of pollutants in discharges from municipal systems will depend on the activities occurring on the lands which contribute runoff to the system. Municipal separate storm sewers tend to discharge runoff drained from lands used for a wide variety of activities. Given the material management problems associated with end-of-pipe controls, management programs that are directed at pollutant sources are often more practicable than relying solely on end-of-pipe controls.

In past rulemakings, much of the critcism of the concept of subjecting discharges from municipal separate storm sewers to the NPDES permit

program focused on the perception that the rigid regulatory program applied to industrial process waters and effluents from public sewage treatment plants was not appropriate for the site-specific nature of the sources which are responsible for the discharge of pollutants from municipal storm sewers.

The water quality impacts of discharges from municipal separate storm sewer systems depends on a wide range of factors including: the magnitude and duration of rainfall events, the time period between events, soil conditions, the fraction of land that is impervious to rainfall, land use activities, the presence of illicit connections, and the ratio of the storm water discharge to receiving water flow. In enacting Section 405 of the WQA, Congress recognized that permit requirements for municipal separate storm sewer systems should be developed in a flexible manner to allow site-specific permit conditions to reflect the wide range of impacts that can be associated with these discharges. The legislative history accompanying the provision explained that "[p]ermits for discharges from municipal separate stormwater systems * * * must include a requirement to effectively prohibit non-stormwater discharges into storm sewers and controls to reduce the discharge of pollutants to the maximum extent practicable, * * * These controls may be different in different permits. All types of controls listed in subsection [(p)(3)(C)] are not required to be incorporated into each permit" (Vol. 132 Cong. Rec. H10576 (daily ed. October 15, 1986) Conference Report). Consistent with the intent of Congress, EPA intends to develop permit application requirements that are sufficiently flexible to allow the development of site-specific permit conditions.

4. Large and Medium Municipal Storm Sewer Systems

Earlier regulatory efforts addressing NPDES permit requirements for storm water discharges required permits for discharges from municipal separate storm sewers located in urbanized areas that were designated by the Census Bureau. The Census Bureau defines urbanized areas to provide a description of the separation of urbanized and rural population and housing in the vicinity of large cities. A designated urbanized area consists of a central city or cities and surrounding closely settled territory or "urban fringe". Urbanized areas comprise an incorporated place and adjacent densely settled surrounding area that together have a minimum population of 50,000. However, for a number of reasons, the NPDES permit program for municipal separate storm sewers was not successfully implemented.

During the reauthorization of the CWA, Congress intervened by reaffirming its intent to establish a permit program for municipal separate storm sewers and establishing phased deadlines for its implementation. The amended CWA establishes priorities for EPA to develop permit application requirements and issue permits for discharges from three classes of municipal separate storm sewer systems. The WQA requires that NPDES permits be issued for discharges from large municipal separate storm sewer systems (systems serving a population of more than 250,000) by no later than February 4, 1991. Permits for discharges from medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000) must be issued by February 4, 1993. After October 1, 1992, the permit requirements of the CWA are restored for all other discharges from municipal separate storm sewers.

The priorities established in the Act are based on the size of the population served by the system because, in general, discharges from municipal separate storm sewers located in municipalities with higher populations are thought to present a higher potential for contributing to adverse water-quality impacts. NURP and other studies have verified that the event mean concentration of pollutants in urban runoff from residential and commercial areas remains relatively constant from one area to another, indicating that pollutant loads from urban runoff strongly depend on the total area of developed land, which in turn is related to population.

The term "municipal separate storm sewer system" is not defined by the Act. By not defining the term, Congress intended to provide EPA discretion to define the scope of municipal systems consistent with the objectives of developing site-specific management programs in permits to reduce pollutants in discharges from municipal separate storm sewer systems.

In evaluating options for defining large and medium municipal separate storm sewer systems, EPA will consider:

- The inter-jurisdiction complexities associated with municipal governments;
- The fact that many municipal storm water management programs have traditionally focused on water quantity concerns, and have not evaluated water quality impacts of system discharges or developed measures to reduce pollutants in such discharges;
- The advantages of developing system-wide storm water management programs for municipal systems;
- The geographic basis necessary for planning of comprehensive management programs to reduce pollutants in discharges from municipal separate storm sewers to the maximum extent practicable;
- The geographic basis necessary to provide flexibility to target controls on areas where water quality impacts associated with discharges from municipal systems are the greatest and to provide an opportunity to develop cost-effective controls;
- Need to establish a reasonable number of permits for municipal systems during the initial phases of program development that will provide an adequate basis for a storm water quality management program for over 13,000 municipalities after the October 1, 1992 general prohibition on storm water permits expires; and
- Congressional intent to allow the development of jurisdiction-wide, comprehensive storm water management programs with priorities given to the most heavily populated areas of the country.

a. Geographic Basis for Developing Storm Water Quality Management Programs for Developed Areas. Municipal storm sewer systems are installed to provide drainage for developed lands. In larger urbanized areas, extensive development continues beyond the boundaries of individual incorporated cities and towns. The concentration of many pollutants in discharges from municipal separate storm sewers are often low relative to many industrial process and POTW discharges. However, where a widespread area supports a high population, the cumulative impact of pollution loads associated with discharges from many municipal separate storm sewers can have significant water quality impacts. Where water quality impacts are associated with discharges from municipal storm sewer systems, the opportunity to develop appropriate controls must be related to the pollution source.

Most larger urbanized areas in the country are comprised of one or more core cities surrounded by urbanized areas outside of the city boundaries. Often, the population which resides outside of the core cities greatly exceeds the population which resides within the core cities' boundaries. Generally, the core areas have experienced development earlier than surrounding areas, with most new development occurring outside of the boundaries of

the core cities. For urbanized areas which follow this model, it may often be practicable to emphasize different aspects of a comprehensive storm water quality management program to reduce pollutants in discharges from separate storm sewers in different parts of the urbanized area.

Problems associated with illicit discharges of non-storm water to municipal separate storm sewers are generally expected to be more severe in areas which have undergone extensive development prior to the enactment and implementation of ordinances and other controls which prohibit illicit discharges to separate storm sewers. In these areas, identification and removal of illicit discharges provides opportunities for dramatic improvements in the quality of discharges from separate storm sewers.

In heavily developed areas, the opportunities for municipalities to implement some types of controls to reduce pollutants in municipal separate storm sewer discharges may be limited by the scarcity of land for controls, the high cost of retrofitting and institutional constraints. Areas of new development offer municipalities a more practicable opportunity to reduce pollutants in storm water discharges for a number of reasons. First, land is more readily available for structural controls such as detention and retention devices, which when incorporated into the design of a developing area can often offer multipurpose amenities to the development and may raise the value of the development. Second, other controls such as grass swales and grading patterns can be more easily implemented during the initial phases of development. Also, programs such as those in Florida and Maryland have focused on controls on new development because the storm water program can be administratively coordinated with other administrative procedures associated with new development such as subdivision, grading or building approvals.

Ideally, storm water quality management controls should be planned, developed, and coordinated on a watershed basis. This is true because pollutants in discharges from municipal storm sewer systems can come from diffuse sources over a wide area and a comprehensive pollutant control program is often needed to adequately protect receiving water quality. This geographical approach to water quality management has been identified as a key element to success in reducing pollutant discharges associated with urban runoff. Also, watershed planning allows priorities to be evaluated as part of a comprehensive assessment of all pollutant sources (all point and non-point sources) to the receiving water and the physical nature of the receiving water. Finally, many storm water pollution controls also control peak flow rates. These measures to control water quality should be coordinated with water quantity control measures. For example, retention basins which discharge into the lower portions of a watershed may create larger peak flows in small or medium-sized rivers and streams by delaying discharges in the lower portion of the watershed to coincide with increased flows caused by runoff in the upper portions of the watershed. The increased peak flows may cause flooding problems or accelerate flow velocities which can accelerate stream-bank and stream-bed erosion. In this manner, situations where controls which affect the rate of flow have adverse impacts on downstream water quality can be avoided.

Unfortunately, several administrative burdens are associated with defining, for the purpose of implementing the WQA, municipal storm sewer systems on a watershed basis. First, it is difficult to accurately estimate the population served by a given watershed. Second, watersheds do not follow political boundaries, thereby creating administrative difficulties in developing basin-wide control programs. Finally, it is difficult to establish an objective definition for the appropriate size of watershed basins, as smaller streams combine to form larger ones. The EPA requests comments on the use of watershed boundaries to define large and medium municipal separate storm sewer systems. Although the Agency does not prefer this option for large and medium systems, the Agency does favor incorporating watershed planning concepts and controls into the permit application requirements proposed in today's notice, and ultimately into permits for municipal separate storm sewer systems. As discussed in more detail later in today's notice, the permit application requirements proposed in today's notice encourage that, where practicable, management plans be developed which are consistent with the nature of the watershed. EPA requests comments on adapting the permit application requirements discussed in today's notice to accommodate the development of management programs based on a watershed basis.

b. Municipal Governments. A wide range of municipal entities may have primary responsibility for municipal storm sewers, including cities, towns, counties, flood control districts, and State Departments of Transportation. These municipalities perform a wide variety of other functions and are delegated a wide variety of legal authority by the State in which they are located. The potential role of various municipalities in reducing pollutants in discharges from municipal separate storm sewers will vary greatly as reflected by the nature of the pollution problem and the legal authority, functions, and administrative and financial capabilities of the municipality.

As discussed above, in larger urbanized areas, water quality impacts associated with diffuse sources contributing pollutants to discharges from municipal separate storm sewers will extend beyond the boundaries of core cities. In these areas, it is possible that a significant number of municipalities may own or operate municipal separate storm sewers.

Section VII.G.2 of this preamble provides a proposed strategy for developing storm water quality management programs for reducing pollutants in discharges from municipal separate storm sewers through NPDES permits. The components of the storm water quality management programs discussed in today's notice can be divided into two general categories. The first category is comprised of measures that do not require the use of police powers to implement. These components include source identification measures associated with mapping, characterizing discharges by estimating flow rates, pollutant concentrations, pollutant loadings, sampling discharges and identifying illicit connections, and implementing certain controls to reduce pollutants such as public education measures to encourage proper oil disposal or recycling or proper pesticide use. This category also includes activities such as maintaining the separate sewers, and design and engineering methods such as designs for new roads to minimize curb and gutter storm water collection systems. Municipal dischargers generally will not lack legal authority to implement these components of the storm water quality management program.

The second category is comprised of measures that generally may require municipal police powers to implement. Examples of these types of controls include reducing pollutants in construction site or industrial site runoff which discharges to municipal separate storm sewers. The police power required to implement these provisions can take a variety of forms including the power to

develop and enforce ordinances, contracts, orders or similar means.

The municipal entity with primary control over a storm sewer may not have sufficient police powers to implement all aspects of a comprehensive storm water quality management plan. In such cases, a combination of municipal entities may be required in order to guarantee sufficient legal authority, financial capability and administrative capability to implement all components of a storm water quality management program. The degree to which municipalities without sufficient police powers are addressed is a major difference between the options presented below for defining large and medium municipal separate storm sewer systems.

C. Options Considered. EPA requests comments on a number of options for defining large and medium municipal separate storm sewer systems. Generally, the options on which EPA is requesting comments can be classified into two categories. The first category of options, listed below as Options 1, 2, 3, and 4 would define municipal systems in terms of the municipal entity which owns or operates storm sewers. The second category of options would define municipal systems on a geographic basis. With Options 5, 6, and 7, all municipal separate storm sewers within the specified geographic area would be part of the municipal system, regardless of which municipal entity owns or operates the storm sewer.

EPA favors those options for defining municipal separate storm sewer systems that rely primarily on the municipal entity which owns or operates or otherwise has jurisdiction over storm sewers. These options are preferred because they will lessen the administrative complexities of initially developing the permit program for discharges from municipal separate storm sewers by decreasing the number of municipal entities which will initially be subject to the permit program.

EPA requests comments on a wide range of options. The Agency will use the comments received on the various options when developing a final regulation defining large and medium municipal separate storm sewer systems. In addition, the Agency believes that in certain circumstances, comments received on the various options will be beneficial when developing strategies for designating municipal separate storm sewers on a system-wide basis under section 402(p)(2)(E) of the CWA for a permit prior to promulgation of final permit application regulations or prior to development of additional regulations under section 402(p)(6) of the CWA.

Also, EPA intends to consider those municipal separate storm sewers which are ultimately not included in the definition of large and medium separate storm sewer systems, along with other municipal storm sewers, in the studies mandated under section 402(p)(5) of the CWA for appropriate regulation after October 1, 1992 under section 402(p)(6) of the Act. Comments received during this rulemaking, along with other information, will constitute a portion of the section 402(p)(5) study. Therefore, EPA requests comments on the appropriateness of all options for study under section 402(p)(5), and on corresponding procedures and methods to reduce pollutant in discharges from municipal separate storm sewer systems described in each option that would be appropriate as regulations under section 402(p)(6). EPA will, where appropriate, consider today's request for comments on the discharges from those municipal separate storm sewers identified in the various options for defining municipal systems as a proposal for regulation under section 402(p)(6) and establish appropriate regulations (for example, the final regulation may define large and medium municipal separate storm sewer system as proposed in Option 1, and also promulgate permit application requirements for counties with a population of 100,000 or more in unincorporated areas (see Option 3) under section 402(p)(6) with a later date for permit application submittal).

It should be noted that discharges from municipal separate storm sewer systems that are not included in the final regulatory definition of large or medium municipal separate storm sewer system may still be required to obtain an NPDES permit if they are determined, under section 402(p)(2)(E) of the CWA, to be a significant contributor of pollutants or to be contributing to a violation of a water quality standard (see § 122.26(a)(1)(v) of the proposed regulation). The Agency is considering the use of the section 402(p)(2)(E) authority to determine the appropriate scope of large or medium municipal separate storm sewer systems on a case-by-case basis (see Option 2 below).

The Agency prefers to use different criteria to determine the appropriate scope of large or medium municipal separate storm sewer systems on a case-by-case basis (see Option 1 below).

The Agency also requests comments on whether non-municipal, non-industrial storm water discharges (e.g., storm water discharges from Federal facilities without industrial activities) that have been determined to be significant under section 402(p)(2)(E) should be addressed as part of a large or medium municipal separate storm sewer system.

In addition, the Agency requests comments on providing municipalities with an opportunity (see proposed § 122.26(f)(3)), to submit a petition to adjust the Census estimates of the population of the municipality to account for storm water discharges to combined sewers. The Agency prefers that storm water discharges to combined sewers be addressed in permits issued for discharges from combined sewer overflows (CSOs) and from publicly owned treatment works (POTWs).

Option 1: Systems Owned or Operated by Incorporated Places Augmented by Potential Inclusion of Interrelated Discharges. EPA proposes that the definition of large and medium municipal separate storm sewer system include those municipal separate storm sewers owned or operated by "incorporated places" with a population which exceeds the appropriate limit. (EPA is proposing to define the term "incorporated place" at 40 CFR 122.26(b)(3) to include the District of Columbia, or a city, town or village that is incorporated under the laws of the State in which it is located. The proposed term "incorporated place" does not include county governments, and certain other municipal entities such as flood control districts, and sewer districts.)

The Agency believes that this approach would provide for the initial development of core storm water management programs in the largest cities in the Nation. The Census Bureau estimates for 1986 indicate that 60 incorporated places have populations of more than 250,000 and that 122 places have populations of more than 100,000 but less than 250,000. The Agency recognizes that many of these cities currently do not have comprehensive programs to address storm water quality. In addition, most of the NPDES States and EPA Regions have limited experience in addressing storm water quality management in the comprehensive manner that is envisioned in this rulemaking. Because of the relative newness of the storm water NPDES program for discharges from municipal systems, the Agency anticipates that, generally, more resources will be needed to begin to implement the initial phases of the program, and therefore, Option 1 provides a reasonable and realistic basis for the initial phases of

development of this program. In addition, this option provides the maximum flexibility for EPA to continue to study the appropriate manner to expand the NPDES program after October 1, 1992 for discharges from municipal separate storm sewers. In this manner, additional flexibility to develop requirements which are tailored to the legal nature and capabilities of various municipalities will be provided.

Option 1 focusses primarily on discharges from municipal separate storm sewer systems that are owned or operated by one municipality, an "incorporated place" with a population of 250,000 or more, or of 100,000 or more. However, in many cases, discharges from municipal separate storm sewers owned or operated by "incorporated places" with a population of 250,00 or more, or of 100,000 or more, will have interrelated impacts and be otherwise interrelated (but not necessarily physically interconnected) to discharges from municipal separate storm sewers owned or operated by municipal entities *other than* an "incorporated place" with a population of 250,000 or more, or 100,000 or more. Wide differences in the physical nature and in water-quality impacts can be expected between drainage systems of various developed areas, as well as differences in the legal authorities and jurisdictions associated with municipalities responsible for storm water discharges.

EPA prefers the Director of the NPDES program make case-by-case decisions on the total scope of each large and medium municipal separate storm sewer system. The Agency is proposing that the definitions of large and medium municipal separate storm sewer system provide for case-by-case designation of interrelated discharges from municipal separate storm sewers that are owned or operated by municipal entities *other than* an "incorporated place" with a population of 250,000 or more, or 100,000 or more based on a discretionary consideration of: the physical interconnections between the municipal separate storm sewers; the location of discharges; the quantity and nature of pollutants discharged; the nature of the receiving waters; or other relevant factors (see proposed § 122.26(b)(4)(ii) and (7)(ii)). For example, discharges from separate storm sewers associated with a State highway running through an "incorporated place" with a population of over 100,000 along with discharges from separate storm sewers owned by the "incorporated place" may adversely impact a stream. In such a case, the Director may consider designating the discharge from the State highway as *part* of the municipal separate storm sewer system serving that "incorporated place".

Accordingly, the proposed definitions of the terms large and medium municipal separate storm sewer system are intended to provide, within the definitions themselves, a flexible and administratively simple way for the Director to decide, on a case-by-case basis, whether and how to include other relevant "interrelated" municipal discharges (for example, discharges from one or more other adjacent smaller municipalities' separate storm sewers systems) into each large or medium municipal separate storm sewer system for NPDES permitting purposes. The approach in the proposed definitions would not require the Director to first determine that the smaller municipality's discharge meets the standard of section 402(p)(2)(E).

Thus, under Option 1, a consideration of location-specific factors would provide flexibility to establish the appropriate total scope of each "municipal separate storm sewer system". In addition, this approach may reduce the burden on some municipalities designated into the "system" when they participate, with the "incorporated place" whose storm sewers are the core of the same system in the development of a single system-wide permit application.

The municipality to be designated into the NPDES-regulated "system" on this basis would not have to meet any criteria for size of population.

EPA requests comments on the appropriate criteria and procedures for designating other municipalities into the large and medium municipal separate storm sewer systems on a case-by-case basis.

Option 2: Systems Owned or Operated by Incorporated Places Augmented by Including Other Municipal Discharges Determined to be Significant Under Section 402(p)(2)(E) Authority. This Option is similar to Option 1, in that it would focus primarily on discharges from municipal separate storm sewer systems that are owned or operated by one municipality, an "incorporated place" with a population of 250,000 or more, or of 100,000 or more. However, this option would differ in the approach to addressing interrelated municipal separate storm sewer discharges from multiple municipalities.

Under Option 2, a discharge from a municipal separate storm sewer that is owned or operated by a municipal entity *other than* an incorporated place with a population of 250,000 or more or a population of 100,000 or more, but less than 250,000, could be designated as *part* of the large or medium municipal separate storm sewer system if the Director of the NPDES program determines that the discharge is contributing to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. Such a determination could be based on the consideration of: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants discharged to waters of the United States; and other relevant factors (see § 122.26(a)(1)(v)(A)–(D) of the proposed regulation).

This option provides different designation criteria and standards and less administrative flexibility than the designation process described in Option 1. Option 2 would still allow consideration of location specific factors, but would establish a more stringent threshold which must be met before expanding the scope of a large or medium municipal separate storm sewer system on a case-by-case basis.

Municipalities included in the NPDES-regulated "system" on the basis of section 402(p)(2)(E) would not have to meet any specific criteria based on size of population.

As in Option 1, Option 2 may reduce the burden on some municipalities deemed to be part of the large or medium municipal separate storm sewer system when they participate, with the "incorporated place" whose storm sewers are the core of the same "system", in the development of a single system-wide permit application.

EPA request comments on the appropriate criteria and procedures for making case-by-case determinations of the scope of large and medium municipal separate storm sewer systems using the § 402(p)(2)(E) authority.

Option 3: Systems Owned or Operated by Counties. In most States, the primary divisions of the State are counties. In Louisiana, the primary divisions are parishes. In Alaska, the State is divided into organized or unorganized boroughs.

The importance of a county in the government structure of a State varies greatly from State to State. In some western and southern States, counties are divided into townships for limited administrative purposes. In these States, the county is the basic unit of government. In a group of States extending from New York and New Jersey into the Mid-West, the entire county may be divided into townships. In other States, the county is divided

into incorporated and unincorporated areas, with the importance of the county government varying throughout the county. Generally, counties have an important role in highway construction and maintenance [the Census Bureau estimates that, nation-wide, counties are responsible for 32 percent of the expenditures of local governments made for highways], and may assume other responsibilities for drainage.

EPA requests comments on extending the definition of large and medium municipal separate storm sewers to include, in addition to municipal separate storm sewer systems owned or operated by an incorporated place with a population equal to, or exceeding the appropriate limit, storm sewers that are owned or operated by a county government entity in counties with the appropriate population. Under this approach, municipal separate storm sewers owned or operated by cities, towns, townships, boroughs and other municipal entities with a population of less than 100,000 within the county would not be defined as part of the county system.

As discussed above, the legal authority of county governments will vary from State to State, and in many counties may vary throughout the county. To successfully implement this approach with respect to county owned or operated separate storm sewers, permits will have to incorporate storm water quality management programs which would reflect and be compatible with the variations in the county government's legal authority. Thus, the requirements in the management program may vary to reflect the legal authority of the county in a given location. For example, in unincorporated areas of the county, where the county is the primary municipal entity, the storm water quality management program may have all of the appropriate components that are discussed in today's notice. However, in certain areas of the county with incorporated places with a population of less than 100,000, the permit may only address control measures which do not require legal authority to implement [see above].

Census estimates for 1986 indicate that 185 counties have populations of 250,000 or more, while 225 counties have populations of 100,000 or more, but less than 250,000. After considering the number of permits that would be initially required under this option, along with the extensive surface area covered by the combined counties, the Agency believes that this option is not practicable for the initial phases of program development. Rather than addressing all counties with a population of 250,000 or more or between 100,000 and 250,000, many of which encompass extensive rural areas, in the initial phases of program development the Agency will consider various alternatives for establishing the size of the population which is served by the county.

EPA also requests comment on basing the definition of the population served by the municipal storm sewer system on the population of a county which resides within urbanized areas that have been defined by the Census Bureau. This system of measuring populations would provide a means to establish priorities for counties based on the amount of urban developed land in the county. Although all municipal storm sewers owned or operated by an applicable county would be part of the municipal separate storm sewer system, and would be subject to permit requirements, measures to reduce pollutants to the maximum extent practicable would be focused on where water quality improvements are needed, i.e., on the most heavily populated areas of the county and on industrial lands, which are generally expected to cause more water quality impacts.

EPA also requests comment on defining the population served by the county owned or operated municipal storm sewer system as that population of the county which resides outside of incorporated areas of the county. This approach would focus on counties with high populations in unincorporated areas, because these counties would be assumed to generally have greater legal authority, and financial capability for developing and implementing a storm water quality management program. This approach assumes that, in unincorporated areas of a county with a high population, the county government is the functional equivalent of an incorporated government.

Option 4: Systems Owned and Operated by States. Each State has an extensive separate storm sewer system that drains State highways. EPA requests comments on, in addition to other systems of municipal storm sewers, all separate storm sewers associated with State highways should constitute a single system. This approach may simplify the permit application and issuance process for State Departments of Transportation and for the permit issuing agency by consolidating all State highways into one system. In addition, this approach provides a basis for consistent regulation of municipal separate storm sewers associated with State highways which would allow priorities to be established on a consideration of the entire State system. EPA is considering this option in conjunction with other options (for example, EPA could define large municipal separate sewer systems to include municipal storm sewers described in Option 1 and Option 4).

Option 5: Incorporated Place Boundaries. Within the boundaries of an incorporated place, in addition to the storm sewer owned or operated by the incorporated place, some municipal separate storm sewers may be operated by county agencies, State agencies, flood control districts or sewer districts.

Option 5 differs from Option 1 in that all municipal separate storm sewers within an incorporated place with an appropriate population would always be part of the municipal system, instead of beginning with only those municipal storm sewers owned or operated by the incorporated place. Where multiple agencies within a single jurisdiction have storm water management responsibilities, the Agency would consider appropriate interagency agreements to ensure the development of comprehensive control programs and the development of permit conditions which may, for a given discharge, require one municipal entity to implement one set of controls which require police power to implement and another municipal entity to implement a different set of controls which pertain to the operation of the storm sewer.

This approach would create some additional complexity to the initial phases of development of the NPDES storm water program by increasing the scope of the program to include additional municipal permittees. Option 5 would also provide for case-by-case designations as discussed under Option 1 for interrelated discharges from municipal separate storm sewers outside of the incorporated place with a population of 250,000 or more, or of 100,000 or more.

However, the basis of the Option 5 approach would ensure that all discharges from municipal separate storm sewers within the incorporated place were initially addressed under the NPDES program and would provide a mechanism for developing intergovernmental agreements where necessary.

Option 6: County Boundaries. EPA requests comments on defining large and medium municipal separate storm sewer systems to include all municipal separate storm sewers that are located in a county with a population that exceeds the appropriate statutory population limit. Under this approach,

all municipal separate storm sewers that are located within a county with the appropriate population would constitute a large or medium municipal system.

The Agency does not favor defining large and medium municipal systems based on county boundaries at this time because of the extremely large number of municipal entities which would be affected during the initial phases of the storm water program. In addition to the 410 counties with populations of 100,000 or more, several thousand other municipal entities would be affected under this approach. The Agency prefers to develop core programs within the central cities before addressing these municipalities. For this reason, EPA prefers, at this time, to continue to consider this option under the studies mandated under Section 402(p)(5).

In comparing this option to option 1, it should be noted that addressing discharges from separate storm sewers within counties would, in larger urbanized areas, provide a geographic basis necessary for the planning of comprehensive programs to reduce pollutants in discharges from municipal separate storm sewer systems to the maximum extent practicable.

The EPA believes that basing the definition of large and medium municipal storm sewer systems on counties would offer additional flexibility in developing pollution control strategies and targeting controls where water quality improvements are needed and can be achieved in a practicable manner. For example, the NURP study indicated that it is much more feasible and cost-effective to develop controls for areas that are in the process of being developed than it is to develop controls for areas that are more fully developed. This option would allow municipalities flexibility to address storm water concerns associated with many areas of rapid development, rather than relying more heavily on retrofitting controls in older urban core areas defined by city limits.

The water quality impacts of urban runoff are generally more significant for smaller rivers and streams where the ratio of the portion of the drainage basin that is developed to the portion that is undeveloped is relatively high. The county option provides an adequate basis to address existing and future water quality impacts associated with municipal separate storm sewers for many of these water bodies.

Option 7: Unbanized Areas. The storm water permit application regulations that were promulgated in September 26, 1984 established the scope of the requirement to obtain a permit by limiting the definition of storm water point source as it related to municipal separate storm sewers to areas that were located on urbanized areas designated by the Bureau of Census. Prior to the enactment of the WQA, the use of the urbanized area designation to limit the scope of NPDES permit program served as an important tool to establish manageable limits on the large administrative burden associated with preparing and processing permit applications for individual discharges from municipal separate storm sewers. However, the WQA provides several mechanisms which ease this burden, including authorizing the Director to issue permits for municipal storm sewers on a system- or jurisdiction-wide basis, thereby greatly reducing the administrative burden associated with permitting municipal storm sewers. Under this new authority, the advantages of retaining the use of urban area designations to determine initial permit applicability are outweighed by the difficulties associated with defining which discharges are within the urban area and with using urban area boundaries which often do not follow political boundaries. Because the boundaries of urban areas do not follow political boundaries, this option may create additional administrative complexity where some discharges from in a given municipality are addressed initially, and other discharges in other parts of the municipality must be addressed later under regulations developed under section 402(p)(6). Further, the urban areas designated in 1980 do not include many other areas that are undergoing rapid development today. Using more recent estimates of urban areas may create uncertainty in the regulatory definition. Also, areas of new development would not be addressed until after the development had progressed significantly, and therefore, opportunities to limit pollutants from the areas of new development would be limited. Nationwide, urban areas increased by approximately 4% in area annually.

5. System-Wide Permit Applications

Section 402(p)(3)(B)(i) of the amended CWA provides that permits for municipal discharges from municipal storm sewers may be issued on a system-wide or jurisdiction-wide basis. This provision is an important tool towards reaching the goal of developing the comprehensive storm water management programs envisioned by the Act.

The system-wide permit approach represents a drastic change from the regulatory approach taken in the 1984 regulations, which required individual permit applications for each outfall located in a Census designated urban area. The 1984 permit applications were to serve as the basis for developing conditions for individual permits for each discharge. EPA proposes to abandon the individual permit approach for municipal storm sewer outfalls in favor of a program approach that will allow system-wide planning and implementation and appropriate targeting of controls based on an evaluation of priorities.

Under the permit application requirements proposed in today's rule, if the appropriate co-applicants are identified, one permit application may be submitted for a large or medium municipal separate storm sewer system (see § VII.E.4 above). System-wide permit applications can in turn be used to issue system-wide permits which could cover all discharges in the system.

Where several municipal entities are responsible for obtaining a permit for various discharges within a single systems, the Agency will encourage system-wide permit applications involving the several municipal entities for a number of reasons. The system-wide approach not only provides an appropriate basis for planning activities and coordinating development, but also provides municipal entities participating in a system-wide application the means to spread the resource burden of monitoring, evaluating water quality impacts, and developing and implementing controls. The system-wide approach provided in today's notice recognizes differences between individual municipalities with responsibilities for discharges from the municipal system by allowing for different permit conditions to apply to different municipalities. To encourage this flexibility, the permit application requirements proposed in today's notice allow individual municipalities participating in system-wide applications to submit information regarding municipality specific storm water quality management programs to reduce pollutants in system discharges.

In some cases, it may be undesirable for all municipal entities with storm water responsibility within a municipal system to be co-permittees under one system-wide permit. The permit application requirements proposed in today's notice allow individual municipal entities within the system to submit permit applications and obtain a permit for that portion of the storm sewer system for which they are responsible. Thus, several permits may be issued to cover various subdivisions of a single municipal system.

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6. Co-Permittees to System-wide Permits

Although several of the proposed options for defining large and medium separate storm sewer systems focus primarily on municipal separate storm sewers that are owned or operated by incorporated cities, towns or villages with the appropriate population (e.g., options 1, 2, or 5), the definition of the "system" could be modified by the Director of the NPDES program on a case-by-case basis to include municipal separate storm sewers owned or operated by other municipal entities.

To accommodate the issuance of permits in which several municipalities are co-permittees, the permit applications for municipal storm sewers described in today's proposal have been designed to facilitate multiple municipal agencies (i.e. flood control districts, local governments, State Departments of Transportation) submitting a joint permit application appropriate for issuing system-wide permits with multiple co-permittees. EPA is requesting comments on this approach, and when it would be appropriate to tailor the permit application requirements to meet the needs of different types of municipal agencies (for example, should distinct permit application requirements be developed for State Departments of Transportation).

G. Permit Application Requirements for Large and Medium Municipal Systems

The August 12, 1985 notice had proposed to clarify that storm water discharges from municipal separate storm sewers would be classified as Group I storm water discharges. The Group I classification, indicating a higher potential for contributing to an adverse environmental impact, was justified on the basis of data from the NURP study of urban runoff which indicate that in many instances BOD loadings in urban runoff were estimated as comparable to that from secondary treatment facilities, while TSS loadings were estimated to be a factor of ten times higher than loadings from secondary treatment plants. The NURP study also found high levels of heavy metals and several organic chemicals in urban runoff.

The Group I classification triggered permit application requirements which included quantitative data sampling for each Group I outfall. In the August 12, 1985 notice, EPA proposed to require that quantitative sampling data for all outfalls from municipal separate storm systems be submitted in permit applications. Eight comments were received on this issue. Six of the commenters objected to the proposal because they felt that such a requirement would create an undue burden on municipalities which have many outfalls. Some municipalities suggested identifying the area drained by the system and then selecting points for representative sampling. Another commenter argued that if three or four outfalls are receiving similar runoff, the participant should only be required to sample one outfall. Other commenters suggested that only outfalls that are suspected of having pollution problems should be tested, although no basis for determining such "problem" outfalls were offered. Two of the eight commenters, both State agencies, felt that all outfalls should be tested.

Today's notice proposes to abandon the Group I classification system and requests comments on replacing the prior permit application system for discharges from municipal systems, based primarily on sampling all outfalls, with a system that involves comprehensive system-wide evaluation of pollutant sources. The permit application requirements for discharges from large and medium municipal separate storm sewer systems proposed in today's notice do not focus on the collection of data at each outfall of the municipal system, but rather require a screening analysis to identify areas of the system affected by illicit non-storm water discharges and some representative sampling.

The permit applications for municipal storm sewer systems proposed in today's notice are applicable to large municipal storm sewer systems (systems serving a population of more than 250,000); medium municipal storm sewer systems (systems serving a population of more than 100,000 but less than 250,000) and any other municipal separate storm sewer system that is required to obtain a permit that the Administrator or NPDES State designates under section 402(p)(2)(E).

1. Strategy for Implementing the Permit Program

Given the differing nature of discharges from municipal separate storm sewer systems in different parts of the country, and the varying water quality impact of municipal storm sewer discharges on receiving waters, EPA intends to develop permit application requirements designed to lead to the development of site-specific storm water management programs. In order to effectively implement this goal, EPA is currently rethinking the appropriate structure and purpose of the NPDES permit program as it applies to municipal separate storm sewers systems. EPA believes that the appropriate permitting strategy (including both the permit application and the permit) for controlling pollutants from municipal separate storm sewers should involve the following components:

- Identifying significant sources of pollutants;
- Characterizing pollutants associated with discharges from the municipal separate storm sewer system;
- Estimating expected changes in the characteristics of pollutants in discharges from the municipal separate storm sewer system associated with population growth and changes in land use activities;
- Initially assessing impacts on the water quality of receiving water bodies;
- Proposing controls to reduce pollutants to the maximum extent practicable;
- Estimating the changes in the characteristics of pollutants in discharges from municipal separate storm sewer systems associated with proposed controls;
- Modifying the proposal of controls to reduce pollutants to reach desired objective (control pollutants to the maximum extent practicable);
- Implementing controls; and
- Evaluating changes in water quality associated with implementing controls.

EPA is proposing to structure the permit application requirements for large- and medium-sized municipal systems to address:

- The development of a municipal storm water management program to control pollutants in municipal storm water discharges. Viable management programs must have adequate legal authority and financial capabilities to ensure compliance with permit conditions;
- A process to identify sources which contribute pollutants to municipal storm water discharges;
- Initial characterization of the discharges from the municipal storm sewer system; and
- Proposed management plans to reduce the discharge of pollutants from municipal storm sewers to the maximum extent practicable.

This information is necessary to allow permits to be based on site-specific best professional judgement evaluations of appropriate pollution control measures. EPA requests comment on the overall strategy for developing a permit program for discharges from municipal separate storm sewers and on which aspects of the strategy should be incorporated into permit applications.

2. Structure of the Permit Application

EPA is proposing a two part permit application that is consistent with the goal of developing site-specific water quality management programs for storm water in NPDES permits

a. Part 1 Application. Part 1 of the permit application is intended to provide an adequate basis for identifying sources of pollutants to the municipal storm sewer system; to preliminarily identify discharges of storm water that are appropriate for individual permits; and to formulate a strategy for characterizing the discharges from municipal separate storm sewer systems.

The components of Part 1 of the permit application include a description of:

- General information regarding the permit applicant or co-applicants (§ 122.26(d)(1)(i));
- A description of the existing legal authority of the applicant(s) to control pollutants in storm water discharges and a plan to augment legal authority where necessary (§ 122.26(d)(1)(ii));
- Source identification information including a description of the historic use of ordinances or other controls which limited the discharge of non-storm water discharges to municipal separate storm sewer systems and the location of known municipal separate storm sewer outfalls (§ 122.26(d)(1)(iii));
- Information characterizing the nature of system discharges including existing quantitative data, the results of a field screening analysis to detect illicit discharges and illegal dumping to the municipal system; an identification of receiving waters with known water quality impacts associated with storm water discharges; a proposed plan to characterize discharges from the municipal storm sewer system by estimating pollutant loads and the concentration of representative discharges, and a plan to obtain representative data (§ 122.26(d)(1)(iv)); and
- A description of existing structural and non-structural controls to reduce the discharge of pollutants from the municipal storm sewer (§ 122.26(d)(1)(v)).
- The submittal of Part 1 of the permit application will allow EPA, or approved NPDES States, to adjust the Part 2 permit application requirements to assure flexibility in developing permit application requirements that are appropriate for the permit applicant given the site specific characteristics of the municipal storm sewer system.

b. Part 2 Application. Part 2 of the proposed permit application is designed to supplement information provided in the Part 1 permit application and to provide municipalities with the opportunity of proposing a comprehensive program of structural and non-structural control measures that will control the discharge of pollutants, to the maximum extent practicable, from municipal storm sewers. The components of the proposed Part 2 permit application include:

- A demonstration that the legal authority of the permit applicant satisfies regulatory criteria (§ 122.26(d)(2)(i));
- Supplementation of the source identification information submitted in the Part 1 application to assure that all major outfalls are identified (§ 122.26(d)(2)(ii));
- Information to characterize discharges from the municipal system including quantitative data from a screening analysis for detecting illicit discharges and illegal dumping, representative data and estimates of pollutant loadings and concentrations of pollutants in discharges (§ 122.26(d)(2)(iii));
- A proposed management program to control the discharge of pollutants to the maximum extent practicable, from municipal storm sewers (§ 122.26(d)(2)(iv));
- Assessment of the performance of proposed controls (§ 122.26(d)(2)(v));
- A financial analysis estimating the cost of implementing the proposed management programs along with identifying sources of revenue (§ 122.26(d)(2)(vi)); and
- A description of the roles and responsibilities of co-applicants (§ 122.26(d)(2)(vii)).

In addition to providing site-specific information, the permit application requirements proposed in today's notice have been designed to allow municipalities an opportunity to propose the set of controls that, in the applicant's opinion, representing the most appropriate means of controlling the discharge of pollutants from municipal storm sewer systems. These proposed plans will be used by the permitting authority to develop permit conditions to control pollutants in the discharges from municipal separate storm sewer systems to the maximum extent practicable. This overall scheme recognizes that local government entities have a critical responsibility for evaluating the nature and sources of pollutant discharges from municipal separate storm sewer systems and for devising appropriate methods of control. Proper development of proposed municipal storm water management programs affords municipalities the opportunity to propose model conditions for their own permits.

3. Major outfalls

In past rulemakings, a controversial issue has been the appropriate sampling requirements for municipal separate storm sewer systems. Earlier storm water rulemakings have been based primarily on the principle that all discharges to waters of the United States from municipal separate storm sewers located in urban areas must be covered by an individual permit. This approach required that individual permit applications contain quantitative data to be submitted for all such discharges. This approach was criticized because of the extremely large number of outfalls in some municipal separate storm sewer systems. Most incorporated cities with a population of 100,000 or more do not know the exact number of outfalls from their municipal systems, but estimates range from 50 to 1,000 or more.

Under the approach taken in earlier rulemakings, the impacts of pollutant loads and impacts on ambient water concentration from municipal storm sewer systems would be analyzed by evaluating samples from all of the discharges from the system. This approach would involve evaluating water quality impacts through the use of models to estimate pollutant loads and to estimate ambient water concentrations during and immediately after storm events, and to calibrate the models using the quantitative data from each outfall. Under this earlier approach, limited information regarding pollutant sources would be available in the permit application to select appropriate models for estimating pollutant loads. Rather, relatively general models would be used which relied on limited quantitative data to assure that the model was calibrated.

In light of the increased flexibility provided by the WQA for regulating municipal separate storm sewer discharges, the approach proposed in today's notice will not require submittal of individual permit applications with quantitative data for each outfall of a municipal system, but rather will encourage systemwide permit applications to provide information suitable for developing effective storm water management programs. Under this approach, not all outfalls of the municipal system will be sampled, but rather more specific and accurate models for estimating pollutant loads and discharge concentrations will be used. The use of these models will require the identification of sources which are responsible for discharging

pollutants into municipal separate storm sewers and will not require as much data to calibrate due to the source-specific nature of the model. A number of standard and localized models have been developed for estimating pollutant loads from storm water discharges. For example, the United States Geological Survey (USGS) has developed four sets of regression equations for 10 pollutants in urban runoff (see "Estimation of the Urban Storm-Runoff Quality and Quantity Data in Metropolitan Areas throughout the United States", 1988). The NURP study provides event mean concentration estimates for 10 pollutants. EPA requests comments on the use of these and other standard and localized models.

By adopting an approach that incorporates source identification measures, the amount of quantitative data required to characterize discharges from the municipal systems will be reduced because of the increased accuracy of site-specific models which can be used. Consistent with a system-wide permit application approach, EPA is proposing to focus source identification measures on "major outfalls". The proposed definition of major outfalls includes any municipal separate storm sewer outfall that discharges from a pipe with a diameter of more than 36 inches or its equivalent (discharges from a drainage area of more than 50 acres); or municipal separate storm sewers that receive storm water from lands zoned for industrial activities, an outfall that discharges from a pipe with a diameter of more than 12 inches or its equivalent (discharges from a drainage area of 2 acres or more). EPA views that it is appropriate to focus source identification and characterization measures conducted as permit application requirements on these outfalls to provide initial screening information that will allow priorities to be set for the system. However, it should be clarified that *all* outfalls from medium and large municipal separate storm sewer systems need to be covered by the permit applications proposed in today's notice and that *all* outfalls from such systems will need to be covered by a permit.

EPA requests comments on the proposed definition of major outfall, and whether outfalls with a diameter of more than 36 inches or its equivalent, or for municipal separate storm sewers that receive storm water from lands zoned for industrial activities, an outfall that discharges from a pipe with a diameter of more than 12 inches or its equivalent provides an appropriate number of outfalls for focusing source identification requirements. Where practicable, comments should include data indicating the distribution of outfall sizes within municipal systems.

4. Viable Program

Perhaps the most important function of the NPDES permit program for municipal separate storm sewers is to ensure that local governments establish viable programs to control pollutants in discharges from municipal separate storm sewers. The proposed permit application requirements address three components of a viable local program for controlling pollutants in discharges from municipal separate storm sewers: legal authority, financial and administrative capability. The ability of a permit applicant or a set of permit applicants to satisfy these criteria will be evaluated in light of the site-specific proposed management plans proposed at 122.26(d)(2)(iv) (discussed in § VII.E.7 of the preamble).

Although pollutants in discharges from municipal separate storm sewers can be controlled by providing end-of-pipe treatment, many representatives from municipalities have expressed concerns that providing treatment for all outfalls from large and medium municipal separate storm systems is technically and economically infeasible. These representatives have expressed a willingness to explore alternative methods, such as developing a variety of preventive source control measures, to control pollutants in such discharges.

However, if source controls are to function in lieu of end-of-pipe treatment, then the permittee, or a set of co-permittees, must have adequate legal authority to ensure that controls on discharges to a municipal storm sewer are implemented and that permit conditions based on source control measures do not become ineffective "paper" requirements.

EPA is proposing that municipal separate storm sewer system permit applicants demonstrate legal authority established by statute, ordinance, or series of contracts which authorizes or enables the applicant at a minimum to:

- Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by each storm water discharge associated with industrial activity;
- Prohibit through ordinance, order or similar means, the discharge of illicit discharges to the municipal separate storm sewer;
- Control through ordinance, order or similar means, the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;
- Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;
- Require compliance with conditions in ordinances, permits, contracts or orders; and
- Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

EPA requests comments on the process by which municipal applicants should demonstrate legal authority and how EPA should evaluate the legal authority of municipal applicants.

In order to ensure that all permit conditions, including both structural and source control measures, are implemented, EPA is proposing to require that permittees demonstrate that they have the fiscal resources and administrative capabilities to carry out the objectives of the permit.

EPA is proposing to require municipal permit applicants to submit a fiscal analysis of expenditures that will be required in order to implement the proposed management plans required in Part 2 of the application. The description of fiscal resources should include a description of the source of the funds.

EPA is requesting comments as to the appropriateness of these criteria for permit applicants for municipal separate storm sewer systems and on what additional criteria should be defined to ensure a viable program to control pollutants in discharges from municipal storm sewers.

5. Source Identification

The identification of sources which contribute pollutants to municipal separate storm sewers is a critical step in characterizing the nature and extent of pollutants in discharges and in developing appropriate control measures. Source identification can be useful for providing an analysis of pollutant source contribution and for identifying the relationship between pollutant sources and receiving water quality problems. In cases where end-of-pipe controls alone are not practicable, it is essential to identify the source of pollutants into the municipal storm sewer systems to support a targeted approach to control pollutant sources.

The relative contribution of pollutants from various sources will be highly site-specific. The first step in developing a

targeted approach for controlling pollutants in discharges from municipal storm sewer systems is identifying the various sources in each drainage basin that will contribute pollutants to the municipal storm sewer system.

Source identification information can serve as the basis for loading estimates (see § VII.E.6.C) and the identification of those discharges to the municipal system with a higher potential to create adverse environmental impacts.

EPA is proposing to phase in the source identification requirements of the permit program by establishing minimum objectives in Part 1 of the application and by requiring applicants to submit a source identification plan in Part 2 of the application to provide additional information during the term of the permit. The minimum source identification requirements of Part 1 have been designed to provide sufficient information to provide an initial characterization of pollutants in the discharges from the municipal storm sewer system. EPA realizes that with many large, complex municipal storm sewer systems, it may be difficult to identify all outfalls during the permit application process. EPA is proposing that known outfalls be reported in Part 1 of the application. Part 1 of the application will also include a description of procedures and a proposed program to identify additional major outfalls. The information required in the proposed Part 1 application also includes identification of the drainage area associated with known outfalls, a description of major land use classifications in each drainage area, descriptions of soils, the location of industrial facilities, open dumps, landfills or RCRA hazardous waste facilities which discharge storm water to the municipal storm sewer system.

Although many municipalities have extensive information regarding the network of conveyances in their municipal separate storm sewer systems, others do not. Municipalities without existing maps would face extreme difficulties in attempting to identify during the permit application process the network of conveyances in their municipal systems. Therefore, applicants are *not* required to identify the conveyance network of the municipal system, but rather need to provide the location of major outfalls (certain points where the municipal system discharges to waters of the United States) and estimates of the area drained by the portion of the system associated with the outfall.

In addition to identifying outfalls from municipal storm sewer systems for the development of a management program to reduce pollutants in storm water discharges, it is also important to identify the location of such outfalls to clarify where the storm sewer system ends and where waters of the United States begin. In many situations, waters of the United States that receive discharges from municipal storm sewers can be mistakenly considered to be part of the storm sewer system. Permit applicants should refer to the regulatory definition of waters of the United States at 40 CFR 122.2 for appropriate guidance. The Director of the NPDES program will be able to make any necessary clarifications during the application process.

The proposed Part 1 application requires applicants to submit ten year projections of population growth and development activities. Population data and development projections will be useful for future predictions of loadings to receiving waters from municipal storm sewer systems, and capacities required for treatment systems. In general, population projections should reflect various scenarios of development (high, medium, low relative to recent trends).

Part 2 of the application will supplement the information reported in the Part 1 application so that, at a minimum, all major outfalls are identified.

Some municipalities, in recognition of the importance of mapping and source identification, have already developed extensive maps of their municipal storm sewer system. In addition, much of the information required in today's proposal will usually have been compiled by other planning agencies in a variety of forms such as land use plans and soil survey maps. Population data are readily available from the Census Bureau, municipal planning departments or public utility records.

Although municipalities or public entities may not keep records identifying dischargers into the storm water collection system, methods usually exist from which such information can be gathered (e.g., water and sewer bills, tax records, zoning permits, etc.). EPA is also proposing that facilities that discharge storm water associated with industrial activity to large or medium municipal separate storm sewer systems submit notifications of the discharge to the municipality (see proposed § 122.26(a)(3)(vii)). Under today's proposal, municipal or public entities responsible for applying for and obtaining an NPDES permit will be required to identify the location of an open dump, sanitary landfill, municipal incinerator or hazardous waste treatment, storage, and disposal facility under RCRA which may discharge storm water to the system as well as all facilities which discharge storm water associated with industrial activity into a large or medium municipal separate storm sewer system.

Requiring these source identification measures is supported by the legislative history of section 405 of the WQA, which instructs that "[i]n writing any permit for a municipal separate storm sewer, EPA or the State should pay particular attention to the nature and uses of the drainage area and the location of *any* industrial facility, open dump, landfill, or hazardous waste treatment, storage, or disposal facility which may contribute pollutants to the discharge." (emphasis added) (Vol 133 Cong. Rec. S752 (daily ed. Jan. 14, 1987)).

EPA is requesting comment on the appropriate elements and level of detail of the source identification process. Comments should address the adequacy of the proposed requirements for preparing initial estimates of pollutant loads and for estimating the concentration of pollutants in discharges from the municipal system based on the minimum source identification requirement in Part 1 of the application and for developing appropriate background information or developing storm water management plans.

6. Characterization of Discharges

The characterization plan proposed in today's notice is comprised of several major components:

- A screening analysis to provide information to develop a program for detecting and controlling illicit connections and illegal dumping to the municipal separate storm sewer system;
- Initial quantitative data to allow the development of a representative sampling program to be incorporated as permit conditions;
- System-wide estimates of annual pollutant loadings and the mean concentration of pollutants in discharges resulting from a representative storm and a program to, during the life of the permit, provide estimates for each major outfall of the seasonal pollutant loadings and the event mean concentration of pollutants in discharges resulting from a representative storm; and
- An identification of receiving waters with known water quality impacts associated with storm water discharges.

a. Screening Analysis for Illicit Discharges. Illicit discharges (non-storm water discharges without a NPDES permit) and illegal dumping to municipal separate storm sewer systems occur in a

relatively haphazard manner. Due to the unpredictability of such discharges, a field analysis is necessary for the developing priorities for detecting and controlling such discharges. As discussed in greater detail in § VII.G.7.b of today's notice, EPA is proposing to require that municipal applicants submit a comprehensive plan to develop a program to detect and control illicit connections and illegal dumping. In order to develop appropriate priorities for these programs, EPA is proposing that applicants submit the results of a two-phased screening analysis to be performed on known major outfalls in the systems to detect the presence of illicit hookups and illegal dumping.

The results of the first phase of the screening analysis, referred to as the field screen, would be reported in Part 1 of the permit application. The information received from the field screen would be used to develop requirements for the second phase of the screening analysis, the results of which would be reported in Part 2 of the application.

Under the proposed requirements for a field screen, the applicant or co-applicants would submit a description of observations of dry weather discharges for all known major outfalls in Part 1 of the application. At a minimum, the field screen would include a description of visual observations made during a dry weather period. If any flow is observed during a dry weather period, two grab samples would be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observation regarding the potential presence of non-storm water discharges or illegal dumping would be provided. In addition, the results of a field screen using on-site methods to estimate pH, total chlorine, total copper, total phenol, total and hexavalant chromium, detergents (or surfactants) and free cyanide would be provided along with an estimate of the flow rate. EPA does not intend to require that analytical methods approved under 40 CFR Part 136 be used exclusively in the field screen. Rather, the use of inexpensive field sampling techniques such as the use of colormetric detection methods is anticipated. Where the field screen does not involve analytical methods approved under 40 CFR Part 136, the applicant would be required to provide a description of the method used which includes the name of the manufacturer of the test method, including the range and accuracy of the test. EPA is requesting comments on appropriate field techniques for a field screen of dry weather discharges. EPA also requests comments on requiring the field screen for all major outfalls, whether the proposed definition of major outfalls is appropriate for this purpose, or whether the number of major outfalls subject to the field screen in the Part 1 application should be limited.

It should be clarified that data from the field screen would generally not be appropriate for comprehensive evaluation of water quality impacts, or estimating pollutant loadings. Rather the Director will use the information from the field screen in Part 1 of the application, along with other information, such as the age of development and degree of industrial activity in the drainage basin, to identify major outfalls which are appropriate for study during the second phase of the screening analysis.

The Second phase of the screening analysis requires that wet-weather and dry-weather samples be collected and analyzed in accordance with analytical methods approved under 40 CFR 136 from designated major outfalls for the following pollutants:

TABLE M–1

pH	lead
fecal coliform	copper
fecal streptococcus	chromium
volatile organic carbon (VOC)	cadmium
surfactants (MBAS)	silver
oil and grease	nickel
TSS	zinc
total organic carbon (TOC)	cyanides
biological oxygen demand (BOD_5)	total phenol
chemical oxygen demand (COD)	total chlorine

These pollutants have been selected as indicators of illegal dumping and illicit connections of process and nonprocess waste waters as well as sanitary wastewaters. Fecal coliform, fecal streptococcus and chlorine were selected as indicators of municipal sanitary wastewater discharges. Oil and grease, surfactants (MBAS), pH, TSS COD BOD_5, and TOC were selected as indicators of illicit connections from commercial and industrial operations. VOC, TOC and total phenol were selected as indicators of illicit connections from facilities that discharge wastewaters contaminated by solvents and other organic materials. The metals selected are metals for which EPA has developed effluent guidelines for industires which are generally expected to be located in an urban setting.

EPA requests comments on the use of these parameters for performing a field screen to detect discharges containing illicit connections, particularly the use of fecal coliform and fecal streptococcus (see 41*FR* 8013 (March 7, 1986)). The Agency also requests comment on the usefulness of additional parameters for use in a field screen. In addition, the Agency requests comment on alternative procedures, such as inspections of separate storm sewers that are suspected to contain illicit connections, that can be relied on in lieu of the field screen procedures proposed as Part 2 application requirements. Also, the Agency requests comments on incorporating a maximum limit on the number of major outfalls that would be subject to field screen procedures of the Part 2 application requirements and what an appropriate limit may be. Under this approach, where information in the Part 1 field screen indicated a high potential for extensive illicit connections within the system, the field sceen requirements of the Part 2 application would be limited to a specified number of major outfalls (for example, 50 major outfalls for large systems, and 25 major outfalls for medium systems). In this case, permit conditions would be developed for studying, during the term of the permit, other major outfall with a high potential for illicit connections.

b. Representative data. The NURP study showed that pollutant concentrations in urban runoff can exhibit significant variation. Pollutant concentrations in such discharges vary during storm events and from storm event to storm event. Given the complex, variable nature of storm water discharges from municipal systems, EPA favors a permit scheme where the

collection of representative data is primarily a task that will be accomplished through monitoring programs during the term of the permit. Permit writers have the necessary flexibility to develop monitoring requirements that more accurately reflect the true nature of highly variable, complex discharges.

In today's notice, EPA is proposing a strategy for performing an initial assessment of water quality impacts of discharges from municipal separate storm sewers based primarily on source identification measures and existing information received in the permit application. This information will be used to characterize system discharges. The analysis developed under this approach will incorporate existing data bases such as the one developed under the NURP study. Under today's proposal, some quantitative data will be collected to ensure the system discharges can be appropriately represented by the various existing data bases and to provide a basis for developing a monitoring plan to be implemented as a permit condition.

EPA is proposing that quantitative data be submitted for representative storm events for between five and ten outfalls. The municipality will recommend and the Director will then designate the outfalls as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system, on the basis of information received in Part 1 of the application. The applicant will be required to collect samples of a storm discharge from a representative storm event for each outfall designated. In addition, for at least one outfall designated by the Director, the applicant will be required to collect samples of storm water discharges from three representative storm events that occur at least one month apart. This requirement will be modified by the Director if the type and frequency of storm events require different sampling. For example, the Director may require samples of discharges be collected during snow melts, or during specified seasons. The Director may also require additional testing during a single event if it is unlikely that there will be three storm events suitable for sampling during the year.

All samples collected will be analyzed for all pollutants listed in Table II (organic pollutants except bis (chlormethyl) ether, dichlorofluoromethane and trichlorofluoromethane) and Table III (toxic metals, cyanide and total phenol) of Appendix D of 40 CFR Part 122, and for:

TABLE M-2

total suspended solids (TSS)	dissolved solids
COD	BOD_5
oil and grease	fecal coliform
fecal streptococcus	pH
total nitrogen	dissolved phosphorus
total ammonia plus organic nitrogen	total phosphorus

Table M-2

A portion of the NURP program involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. The NURP program excluded testing for asbestos and dioxin. Results for seven other organic priority pollutants were not considered valid due to changes in, or constraints on test methods. Seventy-seven priority pollutants were detected in samples of storm water discharges from lands used for residential, commercial and light industries taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table M-3 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

TABLE M-3.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES

	Frequency of detection (percent)
Metals and Inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated Aliphatics:	
Methane, dichloro-	11
Phenols and Cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate Esters:	
Phthalate, bis(2-ethylhexyl)	22

TABLE M-3.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES—Continued

	Frequency of detection (percent)
Polycyclic Aromatic Hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria. The exceedence of water quality criteria does not necessarily imply that an actual violation of standards will exist in the receiving water body in question. Rather, the enumeration of exceedences serves as a screening function to identify those constituents whose presence in urban storm water runoff may warrant high priority for further evaluation.

Members of this group represented all of the major organic chemical fractions found in Table II of Appendix D of Part 122 (volatiles, acid compounds, base/neutrals, pesticides). EPA favors requiring testing for all organic constituents in Table II (except bis (chlormethyl) ether, dichlorofluoromethane and trichlorofluoromethane which have been suspended from the list of organic toxic pollutants in the NPDES regulations (see 46 FR 2266, (January 8, 1981), and 46 FR 10723, (February 4, 1981)) rather than limiting the sampling requirements to the 24 toxic constituents found in the NURP study because they will provide a better description of the discharge at essentially the same cost. The NURP study focused on characterizing storm water discharges from lands used for residential, commercial and light industrial activities, and in general, did not focus on other sources of pollutants to municipal separate storm sewer systems, and therefore, does not reflect all potential pollutants that may be present in discharges from municipal separate storm sewer systems.

EPA is requesting comment on appropriate sampling requirements for discharges from large and medium municipal separate storm sewer systems and to what extent such requirements should be included in permit applications or developed as site-specific permit conditions. The option favored in today's proposal includes

sampling requirements to provide screening data for developing a more intensive program to detect illicit connections and illegal dumping. The sampling requirements proposed for the permit application address a limited number of outfalls and storm events, but require analysis of a wide range of pollutants. Sampling for a wide range of pollutants as a permit application requirement may provide permit writers with appropriate data to target more specific pollutants when developing requirements for a monitoring program established as a permit condition. In addition, the favored option requires limited sampling of representative outfalls. The favored option does not require applicants to submit quantitative data for storm water discharges associated with industrial activity as part of the permit application but instead requires applicants to submit a proposed program to monitor and control such discharges to the municipal system (see § VII.E.7.C).

EPA is working with the United States Geological Survey (USGS) to evaluate the availability of USGS technical assistance to municipalities through cooperative funding programs to aid in collecting representative quantitative data of storm water discharges from municipal systems.

USGS data collection programs with municipalities typically include storm water discharge samples obtained at various times during a storm hydrograph event. Various USGS filed procedures can be used to obtain discharge data for pipes, culverts, etc. typically found in urban areas. Pollutant models can be calibrated with data and long-term rainfall records to simulate the quality of system discharges and compared to other storm water models.

In addition, the Agency recognizes that many municipalities have participated in studies, such as NURP, that involve sampling of urban runoff as well as other components of discharges from municipal separate storm sewer systems. All existing storm water sampling data along with relevant water quality data, sediment data, fish tissue data or biosurvey data, taken over the last ten years is considered relevant and under today's proposal must be submitted with Part 1 of the application. Sampling data that is submitted must be accompanied with a narrative description of the drainage area served by the outfall monitored, a description of the sampling and quality control program, and the location of receiving water monitoring.

EPA requests comment on the use of existing data, such as that generated under the NURP study, to satisfy the requirement of providing representative sampling data. The Agency is concerned with establishing criteria that can be used to verify the validity of existing data.

c. Loading and Concentration Estimates. The assessment of the water quality impacts of discharges from municipal separate storm sewer systems on receiving waters requires the analysis of both pollutant loadings and concentrations of pollutants in discharges.

The loading and concentration estimates proposed in today's notice will be used to evaluate two types of water quality impacts: (1) Short-term impacts; and (2) long-term impacts.

Short term impacts from discharges from municipal separate storm sewers involve changes in water quality that occur during and shortly after storm events. Examples of short term impacts that can lead to impairments include periodic dissolved oxygen depression due to the oxidation of contaminants, high bacteria levels, fish kills, acute effects of toxic pollutants, contact recreation impairments and loss of submerged macrophytes. Characterization of instream pollutant concentrations based on estimated pollutant concentration in system discharges are important for evaluating these types of impacts.

Long-term water quality impacts from discharges from municipal separate storm sewers may be caused by contaminants associated with suspended solids that settle in receiving water sediments and by nutrients which enter receiving water systems with long retention times. Pollutant loading data are important for evaluation of impairments such as loss of storage capacity in streams, estuaries, reservoirs, lakes and bays, lake eutrophication caused by high nutrient loading, and destruction of benthic habitat. Other examples of the long-term water quality impacts include depressed dissolved oxygen caused by the oxidation of organics in bottom sediments and biological accumulation of toxics as a result of up-take by organisms in the food chain. An estimate of annual pollutant loading associated with discharges from municipal storm water sewer systems is necessary to evaluate the magnitude and severity of the environmental impacts of such discharges and to evaluate the effectiveness of controls which are imposed at a later time.

Municipal storm water sewer systems generally handle runoff from large drainage areas and the sources of pollution are usually very diffuse. The concentrations of many pollutants in discharges from these systems are often low relative to many industrial process and Publicly Owned Treatment Works discharges. The water quality impacts of low concentration pollution discharges tend to be cumulative and need to be evaluated in terms of aggregate loadings as well as pollutant concentrations. A site-specific loading analysis can be used to evaluate the relative contribution of various pollutant sources.

Physical impacts, such as streambed scour, streambank erosion and low stream flow during dry weather can be caused by urban runoff. Today's proposed regulations do not specifically require that the physical impacts of urban runoff be addressed in the permit application. Although NPDES permits in many jurisdictions may contain controls designed to limit these physical impacts, EPA believes that the most appropriate Federal policy is to encourage jurisdiction-specific decisions regarding the appropriateness of controls designed to lessen the physical impacts of urban runoff.

7. Proposed Storm Water Quality Management Programs

Traditionally, NPDES permits for industrial process waste discharges and for municipal sanitary sewers have relied primarily on end-of-pipe treatment technology. The basic approach for these discharges under the CWA, the application of uniform technology-based controls to classes of discharges, is often not appropriate for municipal separate storm sewer discharges. Instead, flexible site-specific and source-specific decisions on management controls are often appropriate.

A wide variety of control measures to reduce the discharge of pollutants from municipal storm sewer systems are currently available The performance of appropriate control measures is highly dependent on site-specific factors. It is therefore not practicable to define one standard set of controls which will control all pollutants in all municipalities.

In today's notice, EPA is proposing to facilitate the development of site-specific permit conditions by requiring permit applicants to submit, along with other information, a description of existing structural and non-structural control measures on discharges of pollutants from municipal storm sewers in Part 1 of the permit application. Proposed § 122.26(d)(2)(iv) requires the applicant to identify in Part 2 of the application, to the degree necessary to meet the MEP standard, additional

control measures which will be implemented during the life of the permit. Although, in many cases, it will not be possible to identify all control measures that are appropriate as permit conditions, EPA believes that the process of identifying components of a comprehensive control program should begin early and that applicants should be given the opportunity to identify and propose the components of the program that they believe are appropriate for controlling discharges of pollutants.

The permit application requirements in today's notice require the applicant or co-applicant to develop management programs for four types of pollutant sources which discharge to large and medium municipal storm sewer systems. Discharges from large and medium municipal storm sewer systems are usually expected to be composed primarily of (1) runoff from commercial and residential areas, (2) storm water runoff from industrial areas, (3) runoff from construction sites, and (4) non-storm water discharges. Part 2 of the proposed permit application has been designed to allow the applicant the opportunity to propose MEP control measures for each of these components of the discharge. Discharges from some municipal systems may also contain pollutants from other sources, such as runoff from land disposal activities (leaking septic tanks, landfills and land application of sewage sludge). Where other sources, such as land disposal, contribute significant amounts of pollutants to a municipal storm sewer system, appropriate control measures should be included on a site specific basis. Proposed management programs will then be evaluated in the development of permit conditions.

There is some overlap in the manner in which these pollutant sources are classified. Also, some control measures will reduce pollutant loads for multiple components of the municipal storm sewer discharge. These measures should be identified under all appropriate places in the application; as discussed below however, double counting of pollutant removal must be avoided when the total assessment of control measures is performed.

Although many land use programs involve multiple purposes which include measures to reduce pollutants in discharges from municipal separate storm sewer systems, the proposed management program in today's notice is intended to address only those controls which can be implemented by the permit applicant or co-applicants. The Agency cannot abrogate its responsibilities under the CWA to implement the NPDES permit program by relying on pollution control programs that are outside the NPDES program.

The Agency anticipates that storm water management programs will evolve and mature over time. The permits for discharges from municipal separate storm sewer systems will be written to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality. The proposed permit applications will require applicants to provide a description of the range of control measures considered for implementation during the term of the permit. Flexibility in developing permit conditions will be encouraged by providing applicants an opportunity to identify in the permit application priority controls appropriate for the initial implementation of management programs. Applicants will propose priorities based on a consideration of appropriate controls including, but not limited to, consideration of controls that address reducing pollutants to municipal separate storm sewer system discharges that are associated with storm water from commercial and residential areas (§ 122.26(d)(2)(iv)(A)), illicit discharges and illegal disposal (§ 122.26(d)(2)(iv)(B)), storm water from industrial areas (§ 122.26(d)(2)(iv)(C)), and runoff from construction sites (§ 122.26(d)(2)(iv)(D)). Permits for different municipalities will place different emphasis on controlling various components of discharges from municipal storm sewers. For example, the potential for cross-connections (such as municipal sewage or industrial process wastewater discharges to a municipal separate storm sewer) is generally expected to be greater in municipalities with older developed areas. On the other hand, municipalities with larger areas of new development will have a greater opportunity to focus controls to reduce pollutants in storm water generated by the area after it is developed, discharges from construction sites, and other planning activities. EPA requests comments on the process and methods for developing appropriate priorities in management programs proposed in applications and how the development of these priorities can be coordinated with controls on other discharges to ensure the achievement of water quality standards and the goals of the Clean Water Act. In addition, the Agency requests comments on the costs of implementing various components of management programs.

The Agency requests comments on the appropriateness of the individual components of the proposed management programs and whether additional provisions should be added. Comments on various components of the management programs should address the cost of program development and implementation as well as the potential for pollutant removal and water quality benefits.

In addition, the Agency will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under Section 402(p)(5) of the CWA (see section IV of today's notice). One purpose of these studies will be to evaluate the costs and water quality benefits associated with implementing these procedures and methods. This evaluation will address a number of factors which impact the implementation costs associated with these programs, such as the extent to which similar municipal ordinances are currently being implemented, the degree to which existing municipal programs (such as flood management programs or construction site inspections) can be expanded to address water quality concerns, the resource intensiveness of the control, and whether the control program will involve public or private expenditures. This information, along with information gained during permit implementation will aid in the dynamic long-term development of municipal storm water management programs. EPA invites the public to submit information that can be used in the development of these studies.

a. Measures to Reduce Pollutants in Runoff from Commercial and Residential Areas. The NURP program evaluated runoff from lands primarily dedicated to residential and commercial activities. The areas evaluated in the study reflect some other activities, such as light industry, which are commonly dispersed among residential and commercial areas. The NURP study selected sampling locations that were thought to be relatively free of illicit discharges and storm water from heavy industrial sites including storm water runoff from heavy construction sites. Of course, in a study such as NURP, it was impossible to totally isolate various contributions to the runoff. In developing the proposed permit application requirements in today's notice, EPA has, in general, relied on the NURP definition of urban runoff, that is, runoff from lands used for residential, commercial and light industrial activities.

NURP and numerous other studies have shown the runoff from residential

and commercial areas washes a number of pollutants into receiving waters. Of equal importance is the volume of storm water runoff leaving urban areas during storm events. Large intermittent volumes of runoff can destroy aquatic habitat.

As the percentage of paved surfaces increases, the volume and rate of runoff and the corresponding pollutant loads also increase. Thus, the amount of storm water from commercial and residential areas and the pollutant loadings associated with storm water runoff increases as development progresses and remains at an elevated level for the lifetime of the development.

Proposed § 122.26(d)(2)(iv)(A) requires municipal storm sewer system applicants to provide in Part 2 of the application a description of a proposed management program that will describe priorities for implementing management programs based on a consideration of appropriate controls including:

- A description of maintenance activities and a maintenance schedule for structural controls;
- A description of planning procedures including a comprehensive master plan to control after construction is completed, the discharge of pollutants from municipal separate storm sewers which receive discharges from new development and significant redevelopment after construction is completed;
- A description of practices for operating and maintaining public highways and procedures for reducing the impact on receiving waters of such discharges from municipal storm sewer system;
- A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies; and
- A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

Water quality problems caused by municipal storm sewer discharges will generally be most acute in heavily developed areas. Usually, the most effective control measures are structural, and opportunities for implementing these measures may be limited in previously developed areas. Commonly used structural technologies include a wide variety of treatment techniques, including first flush diversion systems, detention/infiltration basins, retention basins, extended detention basins, infiltration trenches, porous pavement, oil/grit separators, grass swales, and swirl concentrators. A major problem associated with sound storm water management is the need for operating and maintaining the systems for their expected life.

The unavailability of land in highly developed areas often makes the use of structural controls infeasible for modifying many existing systems. Non-structural practices can play a more important role. Non-structural practices can include erosion control, streambank management techniques, street cleaning operations, vegetation/lawn maintenance controls, debris removal, road salt application management and public awareness programs.

The second component of the proposed program to reduce pollutants in storm water from commercial and residential areas which discharge to municipal storm sewer systems provides that applicants describe the planning procedures and a comprehensive master plan that will assure that increases of pollutant loading associated with newly developed areas are, to the maximum extent practicable, limited. These measures should address storm water from commercial and residential areas which discharge to the municipal storm sewer that occur after the construction phase of development is completed. Controls for construction activities are addressed later in today's notice.

As urban development occurs, the volume of storm water and its rate of discharge increases. These increases are caused when pavement and structures cover soils and destroy vegetation which otherwise would slow and absorb runoff. Development also accelerates erosion through alteration of the land surface. Areas that are in the process of development offer the greatest potential for utilizing the full range of structural and non-structural best management practices. If these measures are to provide controls to reduce pollutant discharges after the area has been developed, comprehensive planning must be used to incorporate these measures as the area is in the process of developing. These measures offer an important opportunity to limit increases in pollutant loads.

The third component of § 122.26(d)(2)(iv)(A) provides a description of practices for operating and maintaining public roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems. General guidelines recommended for managing highway storm water runoff include litter control, pesticide/herbicide use management, reducing direct discharges, reducing runoff velocity, grassed channels, curb elimination, catchbasin maintenance, appropriate streetcleaning, establishing and maintaining vegetation, development of management controls for salt storage facilities, education and calibration practices for deicing application, infiltration practices, and detention/retention practices.

The fourth component of § 122.26(d)(2)(iv)(A) provides that applicants identify procedures that enable flood management agencies to consider the impact of flood management projects on the water quality of receiving streams. A well-developed storm water management program can reduce the amount of pollutants in storm water discharges as well as benefit flood control objectives. As discussed above, increased development can increase both the quantity of runoff from commercial and residential areas and the pollutant load associated with such discharges. Disturbing the land cover, altering natural drainage patterns, and increasing impervious area all increase the quantity and rate of runoff, thereby increasing both erosion and flooding potential. Increases in the quantity of runoff can result in increasing the area of a flood plain. An integrated planning approach helps planners make the best decisions to benefit both flood control and water quality objectives.

The fifth component of § 122.26(d)(2)(iv)(A) would provide that municipal applicants submit a description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer. Such a program may include, as appropriate, controls such as educational activities and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities. Discharges of these materials to municipal storm sewer systems can be controlled by proper application of these materials.

b. Measures for Illicit Discharges and Improper Disposal. The WQA requires that NPDES permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." In today's proposal, EPA will begin to implement this statutory mandate by focusing on two types of discharges to large and medium

municipal separate storm sewer systems. One type of non-storm water discharges are illicit discharges which are plumbed into the system or that result from leakage of sanitary sewage system. The other class of non-storm water discharges result from the improper disposal of materials such as used oil and other toxic materials.

Illicit Discharges

In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not emphasize identifying illicit connections to storm sewers other than to assure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Other studies have shown that illicit connections to storm sewers can create severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built.

A wide variety of technologies exist for detecting illicit discharges. The effectiveness of these measures largely depends upon the site-specific design of the system. Under today's proposal, permit applicants would develop a description of a proposed management program, including priorities for implementing the program and a schedule to implement a program to identify illicit discharges to the municipal storm sewer system. The proposed program will identify initial priorities for analyzing various portions of the system and the appropriate detection techniques to be used.

Improper disposal

The permit application requirements proposed today for municipal storm sewer systems include a requirement that the municipal permit applicant describe a program to assist and facilitate in the proper management of used oil and toxic materials.

Improper management of used oil can lead to discharges to municipal storm sewers that in turn may have a significant impact on receiving water bodies. EPA estimates that annually, 267 million gallons of used oil, including 135 million gallons of used oil from do-it-yourself (DIY) automobile oil changes, are disposed improperly. An additional 70 million gallons of used oil, most coming from service stations and repair shops, are used for road oiling. Most of this oil contains metals, such as lead and chromium, at such high levels that the Agency proposed to list used oil as a hazardous waste (November 29, 1985, (50 *FR* 49258)). This proposal was not made final because the Agency thought that a hazardous waste listing of all used oil may discourage recycling. The Agency is presently considering listing used oil that is not recycled as a hazardous waste (March 10, 1986, (51 *FR* 8206), and November 19, 1986 (51 *FR* 41900). However, even if these rules are promulgated, due to various exclusions many individuals and facilities that generate or handle used oil are not regulated under RCRA.

Although EPA is developing a regulatory program under RCRA for the management of recycled oil, the RCRA regulations will likely only apply to certain facilities that will be classified as used oil marketers and used oil recyclers. DIY oil changers and certain other facilities are generally not subject to regulation under the RCRA program. A recent EPA report, "Revised Baseline Flow Data for Used Oil Modelling" (March 13, 1987) suggests that a large fraction of service stations no longer accept DIY used oil and that as a result DIYs are having increasing difficulty recycling oil, thereby leading to increases in uncontrolled disposal.

EPA is proposing that permit applicants for large and medium municipal storm sewer systems describe a program to facilitate the proper management of used oil. EPA requests comments on when various components of this program may be appropriate, including providing information to handlers of used oil and DIY generators and household toxic waste generators, adopting appropriate controls on road oiling, and establishing and operating oil and household waste recycling/disposal programs.

c. Measures to Reduce Pollutants in Storm Water Discharges Associated with Industrial Activities Into Municipal Systems. As discussed in § VII.B of today's notice, industrial facilities that discharge storm water to a large or medium municipal separate storm sewer system are not required to obtain an individual permit for such discharges unless the Director requires the facility to obtain a permit or to become a co-permittee. EPA is proposing to require the municipal storm sewer permittee to describe control programs for such discharges that are covered under the municipal storm sewer permit. At a minimum, the program would require the municipal applicant to identify such discharges (see source identification requirements at § 122.26(d)(1)(vi)(C)), provide for monitoring certain discharges and where necessary, implement control measures. Should a municipality suspect that an individual discharger into the system is causing a problem, and the municipality or management agency has no authority over the discharge, the municipality should contact the NPDES permitting authority and request that an individual permit be issued, or at a minimum, request that such a discharge be designated a co-permittee.

Although the Agency has not proposed specific regulatory language, EPA is requesting comment on two groups of options for programs to characterize storm water discharges associated with industrial activity that go to municipal separate storm sewers. Under the first group of options, municipal applicants would describe the development of a program to characterize discharges from certain outfalls from the municipal storm sewer system that contain runoff from industrial facilities. Under these options, the municipal applicant would submit a proposed characterization program as part of the permit application. Quantitative data collected under an approved monitoring program would be submitted during the life of the permit and would be used to develop a comprehensive control program. Under the second group of options, certain industrial facilities would be responsible for characterizing storm water discharges into large or medium municipal separate storm sewer systems.

Under the first group of options, several issues arise in the development of an appropriate characterization program for municipal systems. The first issue is identifying which storm water discharges from industrial facilities into municipal systems should be monitored. One approach would be to require data on portions of the municipal system which receives storm water from facilities which are listed in the proposed regulatory definition at § 122.26(b)(13) of "storm water discharge

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associated with industrial activity" (with the exception of construction activities and uncontaminated storm water from oil and gas operations) which discharge into the municipal system. However, given the potentially large number of facilities that meet this definition and would discharge into municipal systems, a monitoring program that requires the submission of quantitative data regarding portions of the municipal systems receiving storm water from such facilities may not be practicable. Such a requirement could, for some systems, potentially become the most resource intensive requirements in the municipal permit. Therefore, EPA is considering various ways to develop appropriate targeting for monitoring programs.

EPA requests comments on a requirement that, at a minimum, monitoring programs address discharges from municipal separate storm sewer outfalls that contain storm water discharges from municipal landfills, hazardous waste treatment, disposal and recovery facilities, and runoff from industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 313 of Title III requires that operators or certain facilities that manufacture, import, process, or otherwise use certain toxic chemicals report annually their releases of those chemicals to any environmental media. Section 313(b) of Title III specifies that a facility is covered for purposes of reporting if it meets all of the following criteria:

- The facility has ten or more full-time employees;
- The facility is in Standard Industrial Classification (SIC) codes 20 through 39;
- The facility manufactured (including quantities imported), processed, or otherwise used a listed chemical in amounts that exceed certain threshold quantities during the calendar year for which reporting is required.

Listed chemicals include 329 toxic chemicals listed at 40 CFR 372.45. After 1989, the threshold quantities of listed chemicals that the facility must manufacture, import or process in order to be required to submit a release report is 25,000 pounds per year. The threshold for a use other than manufacturing, importing or processing of listed toxic chemicals is 10,000 pounds per year. EPA promulgated a final regulation clarifying these reporting requirements on February 16, 1988 (53 FR 4500).

EPA requests comments on whether Section 313 of SARA identifies facilities which provide an appropriate basis for establishing priorities for municipal permittees to develop monitoring and control programs for storm water associated with industrial activity. Several advantages are associated with this approach. First, the potential for toxic materials in discharges from these facilities is relatively high due to the large volume of hazardous substances located at these facilities. Second, some information regarding storm water discharges and material management at these facilities will be available through the Section 313 of SARA reporting process.

The Agency requests comments on monitoring programs for municipal discharges, including the submission of quantitative data on the following constituents:

- Any pollutant limited in an effluent guideline for the industry subcategory, where applicable;
- Any pollutant listed in the facility's NPDES permit for its process wastewater, if it has one;
- Oil and grease, COD, pH, BOD_5, TOC, TSS, total phosphorus, total nitrogen, and
- Any information on the discharge required under 40 CFR 122.21(g)(7) (iii) and (iv).

These are the same constituents that EPA is proposing to require individual permit applicants for storm water discharges associated with industrial activity to provide quantitative data.

A third issue concerning appropriate monitoring programs for runoff from industrial facilities discharging to municipal systems involves the sampling location. Several commenters on earlier storm water proposals asserted that all pollutants discharged to waters of the United States via storm water runoff may not be of concern due to the dilution factor at a specific location. The Agency initially favors establishing monitoring requirements to be applied to those outfalls that directly discharge to waters of the United States. Monitoring of outfalls close to the point of discharge to waters of the United States is generally preferable when attempting to identify priorities for developing pollutant control programs. However, under certain circumstances, it may be preferable to monitor at the point where the runoff from the industrial facility discharges to the municipal system. For example, if many facilities discharge substantially similar storm water to a municipal system (e.g., storm water discharges from general automotive repair shops) it may be more practicable to monitor discharges from representative facilities in order to characterize pollutants in the discharge.

Under the second group of options considered under today's notice, all industrial facilities which discharge storm water into a large or medium municipal storm sewer system would submit information to either the Director of the NPDES program (the EPA or States with approved NPDES programs) or the municipal permit applicant for the municipal storm sewer that receives the discharge. The information that the facility would submit to the permit applicant would be the same information that would be required in an individual permit application for a facility that discharges storm water associated with industrial activity directly to waters of the United States. For example, of facilities that discharge storm water to municipal storm sewer systems, only municipal landfills, hazardous waste treatment, storage and disposal facilities and those facilities subject to Section 313 of Title III of SARA would be required to submit a permit application. Facilities that discharge storm water to a municipal storm sewer would have the option of participating in a group application in lieu of submitting information directly to the municipal applicant. These members of the group application would be required to indicate in the group application the municipal storm sewer to which they are discharging. EPA would forward a summary of the information in the group application to the appropriate municipal applicants for use in developing appropriate controls for the member of the group application.

EPA is also requesting comment on whether facilities that discharge to large and medium municipal storm sewer systems and that are not participating in a group application should submit individual permit applications to EPA regions or NPDES States. Under this option, the permit applications would be used to determine if an individual permit or a co-permittee arrangement is appropriate. Where it is not appropriate to require an individual permit or a co-permittee arrangement, the application would be sent to the appropriate municipal permit applicant (under the authority of Section 402(j) of the CWA), who would use the information to develop appropriate controls for the facility.

This option recognizes that the operator of the facility is in the best position to know which pollutants may be in the storm water discharge and to provide the non-quantitative information that is required in individual permit applications. Further, as with facilities discharging storm water associated with industrial activity directly to waters of the United States, the facility would be responsible for

certifying that it has tested its storm water outfalls for illicit connections. By shifting this burden to the facility discharging storm water associated with industrial activity, the applicant for the municipal storm sewer would be able to concentrate effort on detecting illicit connections from other types of facilities with a high potential for illicit connections.

EPA is requesting comment on these approaches to control pollutants in storm water from industrial facilities which discharge to a large or medium municipal separate storm sewer system. In particular, should municipalities or individual industrial facilities be required to collect sampling data? If high levels of pollutants are detected in samples from a municipal storm water outfall, and storm water from industrial facilities is a suspected contributor, how will municipalities determine which facilities are responsible? Is end-of-pipe treatment generally more appropriate than source controls for storm water from industrial facilities which discharge to municipal systems? If municipalities are responsible for sampling these discharges, are indicator parameters such as VOC more appropriate than the specific constituents that individuals industrial facilities with storm water discharges which do not discharge to municipal systems are required to sample under individual storm water permit application requirements?

d. Measures to Reduce Pollutants in Runoff from Construction Sites Into Municipal Systems. Section VII.D.2 of today's notice discusses EPA's proposal to define the term "storm water discharge associated with industrial activity" to include runoff from construction facilities classified as Standard Industrial Codes 15 and 16 (general building contractors and heavy construction contractors) including preconstruction activities, *except:* (a) operations that result in the disturbance of less than 1 acre total land area which are not part of a larger common plan of development or sale; or (b) that are designed to serve single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than 5 acre total land areas which are not part of a larger common plan of development or sale. Under today's proposal, facilities that discharge runoff from construction sites that meet this definition will be required to submit permit applications under today's rulemaking unless they are to be covered by another NPDES permit or discharge to a municipal separate storm sewer (see § VII.C.1). Permit application requirements for such discharges are proposed at 40 CFR 122.26(c)(1)(ii).

Section 122.26(d)(2)(iv)(D) of the proposed regulations would require applicants for a permit for large or medium municipal separate storm sewer systems to submit a description of a proposed management program to control pollutants in all construction site runoff that discharges to municipal systems. Under the proposed provision, municipal applicants will submit a proposed program for implementing and maintaining structural and non-structural best management practices for controlling storm water runoff at construction sites. The program will address procedures for site planning; enforceable requirements for nonstructural and structural best management practices; procedures for inspecting sites and enforcing control measures; and educational and training measures.

Generally, construction site ordinances are effective when they are implemented. However, in many areas, even though ordinances exist, they have limited effectiveness because they are not adequately implemented. Maintaining best management practices also presents problems. Retention and infiltration basins fill up and silt fences may break or be overtopped. Weak inspection and enforcement point to the need for more emphasis on training and education to complement regulatory programs.

8. Assessment of Controls

EPA is proposing that municipal applicants provide an initial assessment of the effectiveness of the control method for structural or non-structural controls which have been proposed in the management program. Such an assessment is needed because the performance of appropriate management controls is highly dependent on site-specific factors. The assessment will be used in the development of pollutant loading and concentration estimates (see VII.E.6.C) and the evaluation of water quality benefits associated with implementing controls. Such assessments do not have to be verified with quantitative data, but can be based on accepted engineering design practices.

H. Annual reports

As discussed earlier in today's notice, EPA is proposing flexible permit application requirements to facilitate the development of site-specific programs to control the discharge of pollutants from large and medium municipal separate storm sewer systems. Many municipalities are in early stages of the complex task of developing a program suitable for controlling pollutants in discharges under a NPDES permit, while other municipalities have relatively sophisticated programs in place. In order to ensure that such site-specific programs are developed at the maximum extent practicable rate, EPA is proposing to require permittees of municipal separate storm sewer systems to submit annual status reports which reflect the development of their control programs.

The reports will be used by the permitting authority to aid in evaluating compliance with permit conditions and where necessary, modify permit conditions to address changed conditions. EPA requests comments on the appropriate content of the annual reports.

I. Application Deadlines

The WQA provided a statutory time frame for implementing the storm water permit application requirements. The Act establishes deadlines for EPA to establish permit applications, permit application submittal and permit compliance.

The WQA requires EPA to promulgate permit application requirements for storm water discharges associated with industrial activity and large municipal separate storm sewer systems by "no later than two years" after the date of enactment (i.e., no later than February 4, 1989). In conjunction with this requirement, the Act requires that permit applications for these classes of discharges be submitted within one year after the statutory date by which EPA is to promulgate permit application requirements by providing that such applications "shall be filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990).

The WOA also requires EPA to promulgate final regulations governing storm water permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000 by "no later than four years" after enactment (i.e. no later than February 4, 1991). Permit applications for medium municipal separate storm sewer systems "shall be filed no later than five years" after the date of enactment of the WQA (i.e., no later than February 4, 1992). The WQA did not establish the time period between designation and permit application submittal for case-by-case designations under section 402(p)(2)(E).

Comments on earlier rulemakings involving storm water application

deadlines have indicated that applicants need adequate time to obtain "representative" storm water samples, at least one full rain year. This is because many discharges are located in areas where testing during dry seasons or winter would not be feasible. The intermittent and unpredictable nature of storm water discharges can result in difficult and time-consuming data gathering. Moreover, some operators have many storm water discharges associated within industrial activity which can require considerable time to identify, analyze, and submit applications. This creates a tremendous practical problem for the extremely high number of unpermitted storm water discharges. The Agency's and the public's interest in a sound storm water program and the development of a useful data base on these sources is best served by establishing an application deadline which will allow sufficient time to gather, analyze, and submit meaningful applications. Based on a consideration of these factors, EPA favors proposing that individual permit applications for storm water discharges associated with industrial activity which currently are not covered by a permit and that are required to obtain a permit be submitted not later than one year after the final rule is promulgated.

Operators of storm water discharges which are currently covered by a permit, will, of course, not be required to submit a permit application until their existing permit expires. Facilities which must reapply for a permit for a storm water discharge prior to the promulgation of a final rule based on today's proposal are required to submit complete Form 1 and Form 2C applications. In recognition of the time required to collect storm water discharge data, EPA will consider allowing facilities that currently have a NPDES permit for a discharge and which must reapply for permit renewal the option of applying in accordance with existing Form 1 and Form 2C requirements in lieu of applying in accordance with the revised application requirements during the first year following promulgation of the revised permit application requirements.

As discussed in § VII.E.4 and § VII.G.2 of today's notice, EPA favors a two part permit applications for both group applications for sufficiently similar facilities that discharge storm water associated with industrial activity and for operators of large or medium municipal separate storm sewer systems. The deadlines for submitting permit applications that are proposed in today's notice are based on providing adequate time for: applicants to prepare Part 1 of the application, adequate review of Part 1 of the application by EPA or, in the case of permit applications for large and medium municipal storm sewer systems, approved NPDES States, and preparation of the contents of the Part 2 application.

For permit applications for storm water discharges associated with industrial activity, EPA is proposing that Part 1 of the group application be submitted within 120 days from the publication of final permit application regulations. This time is necessary to form groups and for individual members of the group to prepare the non-quantitative information required in Part 1 of the application. Part 1 of the group application will be submitted to EPA Headquarters in Washington, DC and approved or disapproved within 60 days after being received. Part 2 of the application would then be submitted within one year after the Part 1 application is approved.

For large municipal separate storm sewer systems (systems serving a population of more than 250,000), EPA is proposing that Part 1 of the permit applications be submitted within one year of the date of the final rule. The Director will approve or disapprove the provisions of the Part 1 permit application within 90 days after receiving the Part 1 application. The Part 2 portion of the application shall then be submitted within two years of the date of the final rule.

For medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000), EPA is proposing that permit applications will be required on November 4, 1990. The Director will approve or disapprove the provisions of the Part 1 permit application within 90 days after receiving the Part 1 application. The Part 2 portion of the application shall then be submitted no later than February 4, 1992, one year after the Part 1 application has been approved.

Operators of storm water discharges that are not normally required to obtain a permit, may be required to obtain a permit for their discharge on the basis of a case-by-case designation by the Administrator or the NPDES State. EPA is proposing that operators of storm water discharges associated with industrial activity which discharge to municipal separate storm sewers are generally not required to obtain a NPDES permit for their discharge, unless required by the Director on a case-by-case basis. The Administrator or NPDES State may also designate storm water discharges (except agricultural storm water discharges) that contribute to a violation of a water quality standard or that are significant contributors of pollutants to waters of the United States for a permit. Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Administrator or NPDES State may require the operator of the discharge to submit a permit application. EPA is proposing at § 124.52(c) to require the operator of designated discharges to submit a permit application within 60 days of notice, unless permission for a later date is granted. The 60-day deadline is consistent with the procedures for designating other discharges for a NPDES permit on a case-by-case basis found at § 124.52. The 60-day deadline recognizes that case-by-case designations often require an expedited response, but at the same time, is flexible to allow for case-by-case adjustments.

In recognition of the time required to promulgate rational final regulations which address the complex issues associated with storm water permit application requirements, the Agency realizes that given the date of this proposal, the agency may not be able to promulgate permit application requirements by the statutory deadline of February 4, 1989 for storm water discharges associated with industrial activities and discharges from large municipal separate storm sewer systems. Based on an analysis of the comments received on today's proposal, the Agency will consider promulgating a final rule specifying permit application requirements for storm water discharges associated with industrial activity prior to the date of promulgation of permit application requirements for large and medium municipal storm sewer systems.

EPA requests comments on the relationship between the proposed deadlines and the proposal for a two part permit application for discharges from a large or medium municipal separate storm sewer system. Specifically, EPA requests comments on an alternative approach to a two part permit application where only some of the requirements discussed in today's notice (primarily the Part 1 application requirements) would be established as application requirements and other requirements (primarily the Part 2 application requirements) would be established as permit conditions. Under this approach, applicants would be required to include plans to submit information with the Part 1 application. These plans would be used to develop compliance schedules which would be

incorporated as permit conditions. This option is not favored in today's notice because of the Agency's concerns about the additional complexities associated with the scheme and the additional time that may be required to develop and implement municipal storm water management programs.

J. State Storm Water Management Programs

Today's notice proposes permit application requirements which apply to only the following storm water discharges:

- A discharge with respect to which a permit has been issued prior to February 4, 1987;
- A discharge associated with industrial activity;
- A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;
- A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or
- A discharge for which the Administrator or NPDES State determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

The EPA, or NPDES approved States cannot require NPDES permits for other discharges composed entirely of storm water prior to October 1, 1992. EPA is required to submit to Congress a report on a study, conducted in consultation with the States, for the purpose of:

- Identifying those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992; and
- Determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges.

Not later than October 1, 1989, EPA, in consultation with the States, is required to conduct a study for the purpose of establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality.

These studies are to be used by EPA, in consultation with State and local officials, to issue regulations which designate additional storm water discharges to be regulated to protect water quality and to establish a comprehensive storm water quality regulatory program. Section 402(p)(6) of the CWA requires that the comprehensive regulatory program shall, at a minimum, establish priorities, establish requirements for State storm water management programs, and establish expeditious deadlines. The provision provides EPA with broad authority and discretion to fashion the comprehensive regulatory program, which may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

As stated earlier in today's notice, one goal in evaluating public comments received in response to today's notice is to gather information for these studies. To facilitate information gathering for the studies, the Agency is proposing an initial framework for State storm water management programs. This initial framework is intended to encourage States to participate in the development of the Section 402(p)(5) studies, and the subsequent development of regulations. EPA will use information collected in this manner, along with other information, such as section 305(b) reports, as guidance in developing storm water programs with the flexibility to target priorities of individual States to the extent necessary to mitigate impacts on water quality associated with storm water discharges.

VIII. Economic Impact

EPA has prepared an Information Collection Request for the purpose of estimating the information collection burden imposed on Federal, State and local governments and industry by proposed revisions to NPDES permit application requirements for storm water discharges codified in 40 CFR Part 122. The Agency is proposing these revisions in response to Section 402(p)(4) of the Clean Water Act, as amended by the Water Quality Act of 1987 (WQA). The proposed revisions would apply to: storm water discharges associated with industrial activity; discharges from municipal separate storm sewer systems serving a population of 250,000 or more and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000.

The annual cost for applying for NPDES permits for discharges from municipal separate storm sewer systems was estimated to be $5.7 million. EPA estimates that an average application for a permit for all discharges from a municipal separate storm sewer system serving a population of 250,000 or more would cost $131,200 to prepare, or 8,534 hours, while an average application for a permit for all discharges from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000 would cost $83,600 to prepare, or 5,438 hours, annually. The annual respondent cost for NPDES permit applications for storm water discharges for industrial activities was estimated to be $7.6 million or 238,644 hours. EPA estimates that an average application for a permit application for a storm water discharge associated with industrial activity (other than construction activities) would cost $1011.20, or 31.6 hours to prepare. The average cost to prepare a prepare a permit application for a storm water discharge associated with industrial activity from a construction activities would be $144.00 or 4.5 hours. The annual respondent cost for facilities which discharge storm water associated with industrial activity to a municipal separate storm sewer system serving a population of 100,000 or more to notify the operator of the municipal storm sewer is estimated to be $9.4 million. The average cost for facilities which discharge storm water associated with industrial activity to municipal separate storm sewer system serving a populaton of 100,000 or more to notify the operator of the municipal separate storm sewer system would be $195.20 or 6.1 hours. The annual cost to the Federal Government and approved states for administration of the program was estimated to be $0.46 million. In summary, the total burden for municipalities, industry, and state and federal authorities was estimated to equal $23.4 million.

In general, the cost estimates provided in the ICR focus primarily on the costs associated with developing, submitting and reviewing the permit applications associated with today's notice. The Agency will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under Section 402(p)(5) of the CWA (see section IV of today's notice). One purpose of these studies will be to evaluate the costs and water quality benefits associated with implementing these procedures and methods. This information, along with information gained during permit implementation will aid in the dynamic long-term development of storm water control efforts. EPA invites the public to submit information regarding the cost of implementing storm water controls to aid in the completion of these studies.

IX. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. Today's proposed amendments

would generally make the NPDES permit application regulations more flexible and less burdensome for the regulated community. These regulations would not, if promulgated satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, would not constitute a major rule. This regulation was submitted to the Office of Management and Budget (OMB) for review.

X. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 0226.04) and a copy may be obtained from: Florice Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC or by calling (202) 382–2740.

Public reporting burden for permit applications for storm water discharges associated with industrial activity (other than from construction facilities) is estimated to average 31.6 hours per response. The public reporting burden for permit applications for storm water discharges associated with industrial activity from a construction activities is estimated to average 4.5 hours per response. The public reporting burden for facilities which discharge storm water associated with industrial activity to municipal separate storm sewers serving a population of 100,000 to notify the operator of the municipal separate storm sewer system is estimated to average 6.1 hours per response.

The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 250,000 or more is estimated to average 945.5 hours per response in the Part 1 application and 7589 hours per response in the Part 2 application. The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000 is estimated to average 515.5 hours per response in the Part 1 application and 4923 hours per response in the Part 2 application. Estimates of reporting burden include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20490; and to the Office of Information and Regulatory Affairs, Office of Management and Budget; Washington, DC 20503, marked "Attention: Desk Officer for EPA.". The final rule will respond to OMB or public comments on the information collection requirements contained in this proposal.

XI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 USC 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed amendments to the regulations would generally make the NPDES permit applications regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments would not, if promulgated, have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122,123, 124 and 504

Administrative practice and procedure, Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Lee M. Thomas,

Administrator.

Date: November 23, 1988.

For the reasons stated in the preamble, Parts 122, 123, 124 and 504 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1. The authority citation for Part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 122.1 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 122.1 Purpose and scope.

* * * * *

(b) * * *

(2) * * *

(iv) Discharges composed entirely of storm water as set forth in § 122.26; and

* * * * *

3. Section 122.21 is amended by revising paragraph (c), removing paragraph (f)(9), amending paragraph (g)(3) by adding the sentence shown below, revising paragraph (g)(7), removing and reserving paragraph (g)(10) and revising the introductory text of paragraph (k) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) *Time to apply.* Any person proposing a new discharge, (including new discharges containing storm water associated with industrial activity), shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. See also paragraph (k) of this section and paragraphs 122.26(c)(1)(i)(G) and 122.26(c)(1)(ii).

* * * * *

(f) * * *

(9) (removed)

* * * * *

(g) * * *

(3) * * * The average flow of point sources composed of storm water may be estimated and the rainfall event and the method of estimation that the estimate is based on must be indicated.

* * * * *

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph (except information on storm water discharges which is to be provided as specified in § 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7)(iii)

and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from the first storm event after a minimum period of 96 hours without a measurable (greater than 0.1 inch rainfall) storm event. For storm water discharges, a grab sample shall be taken during the first twenty minutes of the discharge, and a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples quantitative data must be reported for the grab sample taken during the first twenty minutes of the discharge for all pollutants specified in § 122.26, and for flow-weighted composites, quantitative data must be reported for all pollutants specified in § 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. The Director may establish appropriate site-specific sampling requirements, including the location of the outfall to be sampled, the season the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled and the form of percipitation sampled (snow melt or rain fall). An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

* * * * *

(g)(10) (removed and reserved)

* * * * *

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of § 122.21(h) or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

* * * * *

4. Section 122.22 is amended by revising paragraph (b) introductory text, to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

* * * * *

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

* * * * *

5. Section 122.26 is revised to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity;

(iii) A discharge from a large municipal separate storm sewer system;

(iv) A discharge from a medium municipal separate storm sewer system;

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at 122.2. The Director or the EPA Regional Administrator may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director or the EPA Regional Administrator may consider the following factors:

(A) The location of the discharge with respect to waters of the United States;

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States; and

(D) Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation, runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. Contaminated storm water runoff from mining operations includes runoff which contain pollutants above natural background levels. Contaminated storm water runoff from oil and gas exploration, production, processing or treatment operations or transmission facilities includes, but is not limited to, runoff which:

(i) Contains a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4;

(ii) Contains oil in excess of the reporting quantity established at 40 CFR 110.3; or

(iii) Contributes to a violation of a water quality standard.

(3) *Large and Medium Municipal Separate Storm Sewer Systems.*

(i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system; or

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.

(iv) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(v) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(vi) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(vii) (A) Operators of storm water discharges associated with industrial activity which discharge to a municipal separate storm sewer system are not required to submit an individual NPDES permit application or participate in a group application for such discharge provided:

(*1*) The operator of such a storm water discharge submits, to the municipality responsible for the municipal separate storm sewer receiving the discharge by no later than [*insert 180 days from date of publication of final rule*] or prior to commencing such discharge: the name of the facility; the location of the discharge; a description (such as SIC codes) which best reflects the principal products or services provided by each facility; existing quantitative data (including flow estimates and sampling data) describing the discharge; and a certification that, if feasible, the discharge has been tested for the presence of non-storm water discharges. The certification shall include a description of the results of any test for the presence of non-storm water discharges, the method used, the date of any testing, and the on-site drainage points that were directly observed during a test, or why the test was not feasible;

(*2*) Such discharge is composed entirely of storm water;

(*3*) Such discharge is in compliance with applicable conditions of the NPDES permit issued for the discharge from the municipal separate storm sewer which receives the storm water discharge associated with industrial activity, provided the discharger has been notified of such conditions; and

(*4*) Such discharges do not contain a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4.

(B) Notwithstanding paragraph (a)(3)(vii) (A) of this section, for the purpose of appropriate oversight and enforcement, the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, may require an individual permit for a discharge of storm water associated with industrial activity to a municipal separate storm sewer. Cases where an individual permit may be required include, but are not limited to:

(*1*) The discharge is not compliance with the provisions of paragraph (a)(3)(vii) (A) of this Section; or

(*2*) The discharge potentially contains toxic pollutants or hazardous substances in amounts that may interfere with water quality objectives.

(viii) All discharges to a municipal separate storm sewer that are not composed entirely of storm water must obtain a NPDES permit in accordance with the requirements of Part 122.

(4) *Other Municipal Separate Storm Sewers.* The Director may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(5) *Non-Municipal Separate Storm Sewers.* For storm water discharges associated with industrial activity from point sources which do not discharge to a municipal separate storm sewer, the Director, in his discretion, may issue a single NPDES permit covering all storm water discharges associated with industrial activity which discharge into the same set of conveyances which discharge from a single outfall, or multiple permits which cover all storm water discharges associated with industrial activity into such a system.

(i) All storm water discharges associated with industrial activity that discharge into a storm water discharge system that is not a municipal separate storm sewer must either be covered by an individual permit or a permit issued to the operator of the portion of the system that directly discharges to waters of the United States.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must be identified in the application submitted by the operator of the portion of the system that discharges directly to waters of the United States. Any such application shall include all information regarding storm water discharges associated with industrial activity that discharge into the system that would be required if the dischargers submitted separate applications. The operator of a storm water discharge so identified shall not be required to obtain an individual NPDES permit unless the Director specifies otherwise.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(6) *Combined Sewer Systems.* Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must

obtain NPDES permits in accordance with the procedures of § 122.21 and are not subject to the provisions of this section.

(7) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the Clean Water Act. See 40 CFR Part 35, Subpart I, Appendix A(b)H.2.j.

(b) *Definitions.*

(1) "Co-permittee" means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer.)

(3) "incorporated place" means the District of Columbia, or a city, town or village that is incorporated under the laws of the State in which it is located.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) Owned or operated by an incorporated place with a population of 250,000 or more as determined by the most recent Bureau of Census estimates; or

(ii) Owned or operated by a municipality other than an incorporated place with a population of 250,000 or more, and that are designated by the Director as part of the large municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) of this Section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a pipe with a diameter of more than 36 inches or its equivalent (discharges from conveyances other than circular pipe which are associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a pipe with a diameter of 12 inches or more or from its equivalent (discharges from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) Owned or operated by an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the most recent Bureau of Census estimates; or

(ii) Owned or operated by a municipality other than an incorporated place with a population of 100,000 or more, and that are designated by the Director as part of the medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors.

(8) "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems) that:

(i) Is owned or operated by a city, town, borough, country, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) That is designed solely for collecting or conveying storm water; and

(iii) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) "Outfall" means "point source" as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

(10) "Runoff coefficient"' means the fraction of total rainfall that will appear at the conveyance as runoff.

(11) "Significant materials" includes raw materials; fuels; materials such as solvents and detergents; finished materials such as metallic products; and waste products such as ashes, slag and sludge that are used or stored in quantities at an industrial plant that, if released and mixed with storm water, could result in impacts to receiving waters.

(12) "Storm water" means storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infilitration contaminated by seepage from sanitary sewers or by other discharges) and drainage.

(13) "Storm water discharge associated with industrial activity" means any "point source" as defined by 40 CFR 122.2 which is used for collecting and conveying storm water and which is located at an industrial plant or directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term includes, but is not limited to, storm water discharges from drainage areas in which are located: industrial plant yards; immediate access roads and rail lines; drainage ponds; material handling sites; refuge sites; sites used for the application or disposal or process waters; sites used for the storage and maintenance of material handling equipment; and sites that are presently or have been used in the past for residual treatment, storage or disposal. Material handling activities include: storage, loading and unloading of any raw material, intermediate product, finished product, byproduct or waste product. The term excludes areas located on plant lands separate from the

plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from lands used for the plant's Industrial activities.
industrial plants (including industrial plants at Federally owned or operated facilities) include, but are not limited to, the following:

(i) Facilities subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (see 40 CFR Subchapter N);

(ii) Facilities classified as Standard Indistrial Classifications 20 through 39 (manufacturing industry);

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Active and inactive landfills, land application sites, and open dumps and that have received any industrial wastes, including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in significant recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards;

(vii) Steam electric power generating facilities, including coal handling sites, and onsite and offsite ancillary transformer storage areas;

(viii) Transportation facilities classified as Standard Industrial Classifications 40 through 45, and 47 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, loading, storage and unloading activities or equipment cleaning operations, or which are subject to another subparagraph under this paragraph are associated with industrial activity;

(ix) POTW lands used for land application treatment technologies, sludge disposal, handling or processing areas, and chemical handling and storage areas; and

(x) Facilities classified as Standard Industrial Classifications 15 and 16 (General building contractors and heavy construction contractors) including clearing, grading and excavation activities except: (A) operations that result in the disturbance of less than 1 acre total land area which are not part of a larger common plan of development or sale; or (B) that are designed to serve single family residential projects, including duplexes, triplexes, or guadruplexes, that result in the disturbance of less than 5 acre total land areas which are not part of a larger common plan of development or sale.

(c) *Application requirements for storm water discharges associated with industrial activity*— (1) *Individual application.* Any discharge that contains storm water associated with industrial activity and that an operator is required to obtain a permit for, or any discharge of storm water which the Director is evaluating for designation (see 40 CFR 124.52(c)) under paragraph (a)(1)(v) and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph (c)(2) of this section, shall submit an NPDES application in accordance with the requirement of § 122.21 and shall provide the following information (Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F. Applicants for new sources or new discharges (as defined in section 122.2 of this part) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F):

(i) Except as provided in paragraphs 122.26(c)(1) (ii) and (iii), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall and a narrative description of significant materials that are currently or in the past have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal; past and present materials management practices employed to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge.

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested for the presence of non-storm water discharges which are not covered by a NPDES permit, tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility;

(E) Representative quantitative data based on samples collected during representative storm events and collected in accordance with section 122.21 of this Part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(*1*) Any pollutant limited in an effluent guideline to which the facility is subject;

(*2*) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(3) Oil and grease, pH, TOC, BOD_5, COD, TSS, total phosphorus, total nitrogen;

(4) Any information on the discharge required under § 122.21(g)(7) (iii) and (iv) of this Part;

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration of the storm event(s) sampled, rainfall measurements or estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21(g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(i), (g)(7)(ii), and (g)(7)(v).

(G) Operators of new sources or new discharges (as defined in section 122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this paragraph instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this paragraph within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new sources or new discharges which is composed entirely of storm water are exempt from the requirements of § 122.21(k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) The operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(13)(x) of this section, is exempt from the requirements of § 122.21(g) and § 122.26(c)(1)(i) of this Part. Such operator shall provide a narrative description of:

(A) The nature of the construction activity;

(B) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements; and

(D) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

(E) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(F) The name of the receiving water.

(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility:

(A) Is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless storm water runoff discharged from the facility:

(1) Contains a release of hazardous substance in excess of reporting quantities established at 40 CFR 177.3 or 40 CFR 302.4;

(2) Contains a release of oil in excess of the reporting quantity established at 40 CFR 110.3; or

(3) Contributes to a violation of a water quality standard.

(B) Notwithstanding paragraph (c)(1)(iii)(A) of this section, the Director may require on a case-by-case basis the operator of an existing or new storm water discharge from an oil or gas exploration, production, processing, or treatment operation, or transmission facility to submit a permit application in accordance with paragraph (c)(1)(i) of this section.

(iv) The Director may require additional information under § 122.21(g)(13) of this Part and may require any facility subject to paragraph (c)(1)(ii) of this section to comply with paragraph (c)(1)(i) of this section.

(2) *Group application for discharges associated with industrial activity.* In lieu of individual applications for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants that are part of the same subcategory (see 40 CFR Subchapter N) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under § 122.28 of this Part. The Part 1 application (Parts 1A and 1B) shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460 for approval. Once a Part 1 application is approved, group applicants are to submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:

(i) *Part 1A.* Part 1A of a group application shall:

(A) Identify the participants in the group application by name and location. Facilities participating in the group application shall be listed in nine subdivisions, based on the facility location relative to the nine precipitation zones indicated in Appendix E to this Part.

(B) Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be covered by a general permit;

(C) Include a list of significant materials stored outside by participants in the group application and materials management practices employed to minimize contact by these materials with storm water runoff;

(D) Identify 10 percent of the dischargers participating in the group application with a minimum of 10 dischargers, and either a minimum of 2 dischargers from each precipitation zone indicated in Appendix E of this Part in which two or more members of the group are located, or one discharger from each precipitation zone indicated in Appendix E of this Part in which only one member of the group is located) from which quantitative data will be submitted in Part 2. If more than 1,000 facilities are identified in a group application, no more than 100 dischargers must submit quantitative data in Part 2. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole, in terms of the information provided in paragraphs (c)(2)(i)(B) and (i)(C) of this section, shall accompany this section. Different factors impacting the nature of the storm water discharges, such as processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

(ii) *Part 1B.* Part 1B of the group application shall, for each participant in the group application:

(A) Provide the information described under § 122.26(c)(1)(i) (A), (B), (C) and (D) of this Part;

(B) List all constituents that are addressed in a NPDES permit issued to the facility for any non-storm water discharge; and

(C) Include a narrative description of industrial activities at the facility that are different from or that are in addition

to the activities described under paragraph (c)(2)(i)(B) of this section.

(iii) *Part 2.* Part 2 of a group application shall contain quantitative data (NPDES Form 2F) as modified by paragraph (c)(1) of this section so that when Part 1 and Part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C and Form 2F) can be evaluated for each discharger identified in paragraph (c)(2)(i)(D) of this section.

(d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(V) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include:

(1) *Part 1.* Part 1 of the application shall consist of:

(i) *General Information.* The applicants' name, address, telephone number, ownership status and status as a Federal, State or local government entity.

(ii) *Legal Authority.* A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) *Source Identification.*

(A) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost-effective) extended one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(*1*) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(*2*) An estimate of the outer perimeter and area of the drainage area associated with each major outfall and a description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area. For each land use division, an etimate of a runoff coefficient shall be provided;

(*3*) The name, address, location, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge to the municipal separate storm sewer storm water associated with industrial activity;

(*4*) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(*5*) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(*6*) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(*7*) The identification of publicly owned lands.

(iv) *Discharge Characterization.*

(A) Monthly mean rain and snow fall estimates and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfall sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(*1*) Assessed and reported in Section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(*2*) Listed under section 304(1)(1)(A)(i), 304(1)(1)(A)(ii), or 304(1)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(*3*) Waterbodies listed in State Nonpoint Source Assessments required by Section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards in which storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adds significant pollution (or contributes to a violation of water quality standards);

(*4*) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under Section 314(a) of the CWA and a description of those publicly owned lakes for which uses are known to be impaired, and a description of procedures, processes and methods relating to pollutants discharges in municipal systems to control sources of pollutants on such lakes and a description of methods and procedures to restore the quality of such lakes;

(*5*) Areas of concern of the Great Lakes that have been identified by the International Joint Commission;

(*6*) Estuaries of national significance that have been designated under the National Estuary Program under § 320 of the CWA;

(*7*) Other water bodies that the applicant recognizes as highly valued or sensitive waters; and

(*8*) Existing data showing pollutants in bottom sediments, fish tissue or biosurvey data.

(D) *Field Screening Analysis.* Results of a field screening analysis for illicit connections and illegal dumping for all major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description for each major outfall of a visual observation made during a dry weather period. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observation regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, total and hexavalant chromium, detergents (or surfactants) and free cyanide shall be

provided along with an estimate of the flow rate. Where the field analysis does not involve analytical method approved under 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test.

(E) *Characterization plan.* Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this Section. Such description shall include:

(*1*) The identification of major outfalls that, based on information provided in the field screen analysis of paragraph (d)(1)(iv)(D) of this paragraph and other relevant information, are suspected of containing illicit discharges, for sampling under paragraph (d)(2)(iii)(A) of this section; for identified outfalls, a plan to detect and control illicit discharges and improper disposal to the storm sewer may be submitted in lieu of sampling under paragraph (d)(2)(iii)(A) of this section; and

(*2*) The location of outfalls appropriate for representative data collection under paragraph (d)(2)(iii)(B) of this section, a description of why the outfall is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls for such sampling should reflect water quality concerns (see paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) *Management Programs.*

(A) A description of the existing management program to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented, accompanied with an estimate of the reduction of pollutant loads. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions and emergency spill response programs. The description may address controls established under State law as well as local controls.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(2) *Part 2.* Part 2 of the application shall consist of:

(i) *Adequate Legal Authority.* A demonstration that the applicant shall operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by each storm water discharge associated with industrial activity or the quantity of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

(ii) *Source Identification.* The location of any major outfall that discharges to waters of the United States that was not reported under paragraph (d)(1)(iii)(B)(*1*) of this section. For any major outfall identified under this paragraph but not identified in Part 1 of the application, the applicant shall submit appropriate information required under paragraph (d)(1)(iv)(D) of this section;

(iii) *Characterization data.* When "quantitative data" for a pollutant are required under paragraphs (d)(2)(iii)(A)(*3*), (B)(*4*) and (B)(*5*) of this section, the applicant must collect a sample of effluent in accordance with 40 CFR 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(A) Dry weather and storm event sampling requirements established by the Director on the basis of the results of the screening analysis for illicit discharges and illegal dumping submitted under paragraph (d)(1)(ix) of this section. At a minimum, the Director shall require that for appropriate major outfalls:

(*1*) An estimate of the dry weather flow be provided and a 24-hour composite sample be collected during dry weather;

(*2*) Samples be collected of a storm water discharge from a representative storm event and an estimate of the flowrate during the storm event, the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event be provided; and

(*3*) For samples collected under paragraphs (d)(2)(iii)(A)(*1*) and (A)(*2*) of this section, quantitative data shall be provided for:

pH: lead
fecal coliform: copper
fecal streptococcus: chromium
volatile organic carbon (VOC): cadmium
surfactant (MBAS): silver
oil and grease: nickel
TSS: zinc
total organic carbon (TOC): cyanides
biological oxygen demand (BOD_5): total phenol
chemical oxygen demand (COD)

(B) Quantitative data from representative outfalls designate by the Director (based on information received in Part 1 of the application, the Director shall designate between five and ten outfalls as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) including:

(*1*) For each outfall designated under this subparagraph, the applicant shall collect samples of a storm water discharge from a representative storm event;

(*2*) For a minimum of one outfall designated under this subparagraph, the applicant shall collect samples of storm water discharges from three representative storm events that occur at last one month apart;

(*3*) The applicant shall provide a narrative description of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(4) For samples collected under paragraphs (d)(2)(iii)(B)(1) and (B)(2) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II (except his (chlormethyl) ether, dicloroflúoromethane and trichlorofluoremethane); the pollutants listed in Table III (toxic metals, cyanide, and total phenol) of Appendix D of 40 CFR Part 122, and for the following pollutants:

total suspended solids (TSS): dissolved solids
COD: BOD_5
oil and grease: fecal coliform
fecal streptococcus: pH
total nitrogen: dissolved phosphorus
total ammonia plus organic nitrogen: total phosphorus

(5) Additional quantitative data required by the Director (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(C) Estimates of the annual pollutant load of the cumulative discharges from all outfalls (including outfalls that are not classified as major outfalls) represented in the permit application and the event mean concentration of the cumulative discharge from all outfalls (including outfalls that are not classified as major outfalls) represented in the permit application during a representative storm for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including a description of the representative storm, discharge monitoring, modelling, data analysis, and calculation methods;

(D) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(1) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(B) of this section; and

(E) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) *Proposed management program.* A proposed program covers the duration of the permit including a comprehensive planning process which includes public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on a consideration of appropriate controls including:

(A) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(1) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants in discharges from municipal separate storm sewers;

(2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;

(3) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems;

(4) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies;

(5) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph (d)(2)(iv)(C) of this section); and

(6) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(1) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system;

(2) A description of sampling requirements during storm events and during non-storm events for the following constituents: fecal coliform, fecal streptococcus, VOC, surfactants (MBAS), and residual chlorine;

(3) A description of other testing programs based on smoke testing, and testing with fluorometric dyes;

(4) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(5) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(6) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and

disposal of used oil and toxic materials; and

(7) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary.

(C) A description of a program to monitor pollutants in runoff from industrial facilities that discharge to the municipal storm sewer, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges.

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(1) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(2) A description of requirements for nonstructural and structural best management practices;

(3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(4) A description of appropriate educational and training measures for construction site operators.

(v) *Assessment of Controls.* Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment will also identify known impacts of storm water controls on ground water.

(vi) *Fiscal Analysis.* For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the proposed programs under paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(viii) Where such requirements are not practicable to are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from the requirements of paragraphs (d)(1)(iv)(E)(2), (d)(2)(ii), (d)(2)(iii)(B) of this section and non-applicable portions of paragraph (d)(2)(iv) of this section. The Director shall not exclude from any permit application requirements under this paragraph, the operator of a discharge from a municipal separate storm sewer that is owned or operated by, or public conveyances within, an incorporated place with a population of 100,000 or more as determined by the most recent Bureau of Census estimates.

(e) *Application deadlines.* Any operator of a point source required to obtain a permit under paragraph (a)(1) of this section that does not have an effective NPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) For any storm water discharge associated with industrial activity that is not part of a group application as described in paragraph (c)(2), of this section, the application shall be submitted to the Director by [*insert 12 months from date of publication of final rule*];

(2) For any group application:

(i) Part 1 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by [*insert 120 days from the date of publication of final rule*];

(ii) Based on information in the Part 1 application, the Director will approve or deny the members in the group application within 60 days after receiving Part 1 of the group application.

(iii) Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by [*insert 18 months from the date of publication of final rule*].

(3) For any discharge from a large municipal separate storm sewer;

(i) Part 1 of the application shall be submitted to the Director by [*insert 12 months from date of publication of final rule*];

(ii) Based on information received in the Part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the Part 1 application;

(iii) Part 2 of the application shall be submitted to the Director by [*insert 24 months from date of publication of final rule*].

(4) For any discharge from a medium municipal separate storm sewer;

(i) Part 1 of the application shall be submitted to the Director by November 4, 1990.

(ii) Based on information received in the Part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the Part 1 application.

(iii) Part 2 of the application shall be submitted to the Director by February 4, 1992.

(5) A permit application shall be submitted to the Director within 60 days of notice, unless permission for a later date is granted by the Director (see 40 CFR 124.52(c)), for:

(i) A storm water discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraph (a)(1)(v) of this section);

(ii) A discharge of storm water associated with industrial activity to a municipal separate storm sewer for which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, requires an individual permit under paragraph 122.26(a)(3)(vii)(B);

(iii) A storm water discharge from an oil or gas exploration, production, processing or treatment operation or transmission facility which is required to submit a permit application on a case-by-case basis under paragraph (c)(1)(iii)(B) of this section; or

(iv) A storm water discharge subject to paragraph (c)(1)(iv) of this section.

(f) *Petitions.* (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require an NPDES permit (or a permit issued under an approved NPDES State program) for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be

reduced proportional to the fraction, based by estimating lengths, of length of combined sewers over the sum of the lengths of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition.

6. Section 122.28(b)(2)(i)(A) is revised to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) The discharge(s) is a significant contributor of pollution. In making this determination, the Director may consider the following factors:

(*1*) The location of the discharge with respect to waters of the United States;

(*2*) The size of the discharge;

(*3*) The quantity and nature of the pollutants discharged to waters of the United States; and

(*4*) Other relevant factors;

* * * * * *

7. Section 122.42 is amended by adding paragraph (c) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25)

* * * * * *

(c) *Municipal Separate Storm Sewer Systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) of this Part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

(2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this Part; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this Part.

7a. Appendix E is added to Part 122 to read as follows:

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Appendi

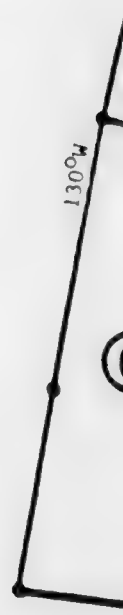

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Appendix E to Part 122—Rainfall Zones on the United States

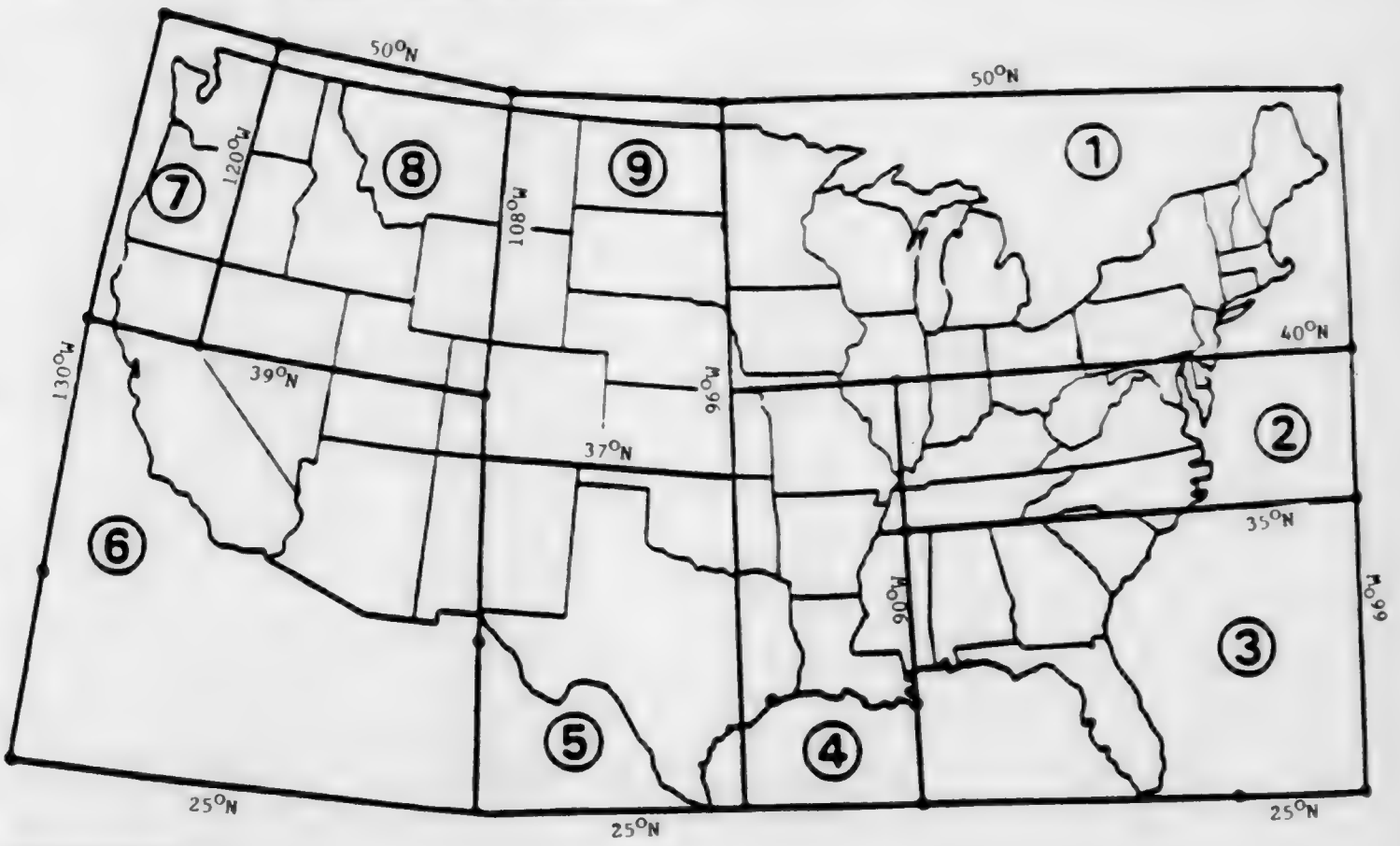

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Not Shown: Alaska (Zone 7); Hawaii (Zone 7); Puerto Rico (Zone 7); Virgin Islands (Zone –3).

Source: Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality, prepared for U.S. Environmental Protection Agency, Office of Water, Nonpoint Source Division, Washington, DC 1986.

PART 123—STATE PROGRAM REQUIREMENTS

8. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

9. Section 123.25(a)(9) is revised to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(9) Section 122.26—(Storm water discharges);

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

10. The authority citation for Part 124 is revised to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Clean Water Act, 33 U.S.C. 1251 et seq.; and Clean Air Act, 42 U.S.C. 1857 et seq.

11. Section 124.52 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, except as provided in paragraph (c) of this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice. The question whether the designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (c)(1)(iii) and (c)(1)(iv)), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under § 122.26 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

12. Part 504 is added to read as follows:

PART 504—STATE STORM WATER MANAGEMENT PROGRAMS

Sec.
504.0 Program summary and purpose.
504.3 Storm water management plans.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

§ 504.0 Program summary and purpose.

(a) This subpart establishes State storm water management programs under section 402(p) of Clean Water Act. State storm water management programs, along with the NPDES requirements for storm water discharges, are to establish comprehensive programs to regulate storm water discharges, including a framework for establishing procedures and methods to control storm water discharges.

(b) State storm water management programs are to include the development of management plans to assist continuing planning necessary to implement comprehensive programs to regulate storm water discharges to mitigate water quality impacts. Initially, State storm water management plans will provide States with a voluntary means of participating in studies of storm water discharges under Section 402(p)(5) of the CWA.

§ 504.3 Storm water management plans

EPA requests that States wishing to participate in studies of storm water discharges under Section 402(p)(5) of the CWA, prepare and submit storm water management plans which include the following plan elements or reference such plan elements contained in separate documents:

(a) Existing State programs, including appropriate Non-Point Source programs, to reduce pollutants in discharges from municipal separate storm sewers and other storm water discharges;

(b) Storm water discharges or classes of storm water discharges in addition to storm water discharges described in 40 CFR 122.26(a). At a minimum, plans should include the identification of municipal agencies which own or operate or are otherwise responsible for discharges from municipal separate storm sewers including State agencies, county agencies associated with cities, towns, villages, townships, with a population of 10,000 or more, or located in whole or in part in urban areas designated by the Bureau of Census. Such identification shall include a description of the limitations under State law of legal authorities of such municipal agencies in developing and implementing measures to reduce pollutants in discharges from municipal separate storm sewers;

(c) To the maximum extent practicable, the nature and extent of pollutants in such discharges;

(d) Procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality; and

(e) Priorities for developing a comprehensive program to reduce pollutants in storm water discharges. Priorities should be based on:

(1) The magnitude of water quality impacts associated with storm water discharges on various receiving waters relative to other discharges causing water quality impacts;

(2) The nature of the storm water discharges considering:

(i) The nature of impacts on receiving waters;

(ii) The size of and pollutants in the storm water discharges;

(iii) The nature of the pollution source;

(iv) Available measures to reduce pollutants in storm water discharges; and

(v) Other relevant factors.

Appendix

Note: The following Appendix will not appear in the Code of Federal Regulations.

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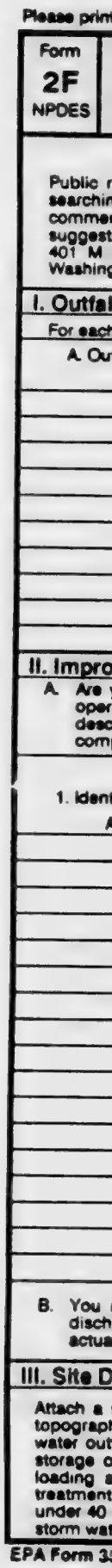
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EPA Form 3

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Form Approved. OMB No. xxxx-xxxx
Approval expires xx-xx-xx

Form 2F NPDES

EPA

United States Environmental Protection Agency
Washington, DC 20460

Application for Permit To Discharge Stormwater Discharges Associated with Industrial Activity

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 31.6 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of this collection of information, or suggestions for improving this form, including suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Outfall Location

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. Outfall Number *(list)*	B. Latitude	C. Longitude	D. Receiving Water *(name)*

II. Improvements

A. Are you now required by any Federal, State, or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

1. Identification of Conditions, Agreements, Etc.	2. Affected Outfalls		3. Brief Description of Project	4. Final Compliance Date	
	number	source of discharge		a. req.	b. proj.

B. You may attach additional sheets describing any additional water pollution (or other environmental projects which may affect your discharges) you now have under way or which you plan. Indicate whether each program is now under way or planned, and indicate your actual or planned schedules for construction.

III. Site Drainage Map

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including: each of its intake and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal units (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility.

Continue on Page 2

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Continued from the Front

IV. Narrative Description of Pollutant Sources

A. For each outfall, provide an estimate of the area (include units) of impervious surfaces (including paved areas and building roofs) drained to the outfall, and an estimate of the total surface area drained by the outfall.

Outfall Number	Area of Impervious Surface (provide units)	Total Area Drained (provide units)	Outfall Number	Area of Impervious Surface (provide units)	Total Area Drained (provide units)

B. Provide a narrative description of significant materials that are currently or in the past have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage, or disposal; past and present materials management practices employed to minimize contact by these materials with storm water runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied.

C. For each outfall, provide the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the schedule and type of maintenance for control and treatment measures and the ultimate disposal of any solid or fluid wastes other than by discharge.

Outfall Number	Treatment	List Codes from Table 2F-1

V. Nonstormwater Discharges

A. I certify under penalty of law that the outfall(s) covered by this application have been tested for the presence of nonstormwater discharges, and that all nonstormwater discharges from these outfall(s) are identified in either an accompanying Form 2C or Form 2E application for this outfall.

Name and Official Title (type or print)	Signature	Date Signed

B. Provide a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test.

VI. Significant Leaks or Spills

Provide existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility, including the approximate date and location of the spill or leak, and the type and amount of material released.

Continued

VII. Discha

A,B,C, & D:

E: Potential currently

Ye

VIII. Biolog

Do you have on a receiving

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I certify supervis the infor directly belief, tr including

A. Name & Of

C. Signature

EPA ID Number *(copy from Item I of Form 1)*

Continued from Page 2

VII. Discharge Information

A,B,C, & D: See instructions before proceeding. Complete one set of tables for each outfall. Annotate the outfall number in the space provided. Tables VII-A, VII-B, and VII-C are included on separate sheets numbered VII-1 and VII-2.

E: Potential discharges not covered by analysis - Is any pollutant listed in Table 2F-2 a substance or a component of a substance which you currently use or manufacture as an intermediate or final product or byproduct?

☐ Yes *(list all such pollutants below)* ☐ No *(go to Section IX)*

VIII. Biological Toxicity Testing Data

Do you have any knowledge or reason to believe that any biological test for acute or chronic toxicity has been made on any of your discharges or on a receiving water in relation to your discharge within the last 3 years?

☐ Yes *(list all such pollutants below)* ☐ No *(go to Section IX)*

IX. Contract Analysis Information

Were any of the analyses reported in Item V performed by a contract laboratory or consulting firm?

☐ Yes *(list the name, address, and telephone number of, and pollutants analyzed by, each such laboratory or firm below)* ☐ No *(go to Section X)*

A. Name	B. Address	C. Area Code & Phone No.	D. Pollutants Analyzed

X. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. Name & Official Title *(type or print)*	B. Area Code and Phone No.
C. Signature	D. Date Signed

BEST COPY AVAILABLE

EPA ID Number *(copy from Item I of Form 1)*

Form Approved. OMB No. xxxx-xxxx
Approval expires xx-xx-xx

VII. Discharge Information *(Continued from page 3 of Form 2F)*

Part A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite		
Oil and Grease						
Biological Oxygen Demand (BOD5)						
Chemical Oxygen Demand (COD)						
Total Suspended Solids (TSS)						
Total Nitrogen						
Total Phosphorus						
pH	Minimum	Maximum	Minimum	Maximum		

Part B - List each pollutant that is limited in an effluent guideline which the facility is subject to or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See the instructions for additional details and requirements.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite		

Continued

Part C -

Pollut and CAS Num *(if availa*

Part D -

1. Date of Storm Event	

7. Prov

EPA Form 3

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Continued from the Front

Part C - List each pollutant shown in Tables 2F-2, 2F-3, and 2F-4 that you know or have reason to believe is present. See the instructions for additional details and requirements. Complete one table for each outfall.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite	Grab Sample Taken During First 20 Minutes	Flow-weighted Composite		

Instructions—Form 2F

Application for Permit to Discharge Stormwater Associated with Industrial Activity

Who Must File Form 2F

Form 2F must be completed by operators of facilities which discharge stormwater associated with industrial activity or by operators of stormwater discharges that EPA is evaluating for designation as a significant contributor of pollutants to waters of the United States, or as contributing to a violation of a water quality standard.

Operators of discharges which are composed entirely of stormwater must complete Form 2F (EPA Form 3510–2F) in conjunction with Form 1 (EPA Form 3510–1).

Operators of discharges of stormwater which are combined with process wastewater (process wastewater is water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, waste product, or wastewater) must complete and submit Form 2F, Form 1, and Form 2C (EPA Form 3510–2C).

Operators of discharges of stormwater which are combined with nonprocess wastewater (nonprocess wastewater includes noncontact cooling water and sanitary wastes which are not regulated by effluent guidelines or a new source performance standard, except discharges by educational, medical, or commercial chemical laboratories) must complete Form 1, Form 2F, and Form 2E (EPA Form 3510–2E).

Operators of new sources or new discharges of stormwater associated with industrial activity which will be combined with other nonstormwater new sources or new discharges must submit Form 1, Form 2F, and Form 2D (EPA Form 3510–2D).

Where to File Applications

The application forms should be sent to the EPA Regional Office which covers the State in which the facility is located. Form 2F must be used only when applying for permits in States where the NPDES permits program is administered by EPA. For facilities located in States which are approved to administer the NPDES permits program, the State environmental agency should be contacted for proper permit application forms and instructions.

Information on whether a particular program is administered by EPA or by a State agency can be obtained from your EPA Regional Office. Form 1, Table 1 of the "General Instructions" lists the addresses of EPA Regional Offices and the States within the jurisdiction of each Office.

Completeness

Your application will not be considered complete unless you answer every question on this form and on Form 1. If an item does not apply to you, enter "NA" (for not applicable) to show that you considered the question.

Public Availability of Submitted Information

You may not claim as confidential any information required by this form or Form 1, whether the information is reported on the forms or in an attachment. Section 402(j) of the Clean Water Act requires that all permit applications will be available to the public. This information will be made available to the public upon request.

Any information you submit to EPA which goes beyond that required by this form, Form 1, or Form 2C you may claim as confidential, but claims for information which are effluent data will be denied.

If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice to you. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations at 40 CFR Part 2.

Definitions

All significant terms used in these instructions and in the form are defined in the glossary found in the General Instructions which accompany Form 1.

EPA ID Number

Fill in your EPA Identification Number at the top of each odd-numbered page of Form 2F. You may copy this number directly from item I of Form 1.

Item I

You may use the map you provided for item XI of Form 1 to determine the latitute and longitude of each of your outfalls and the name of the receiving water.

Item II–A

If you check "yes" to this question, complete all parts of the chart, or attach a copy of any previous submission you have made to EPA containing the same information.

Item II–B

You are not required to submit a description of future pollution control projects if you do not wish to or if none is planned.

Item III

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including:

each of its drainage and discharge structures;

the drainage area of each stormwater outfall;

paved areas and building within the drainage area of each stormwater outfall, each past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in stormwater runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied;

each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste for less than 90 days under 40 CFR 262.34);

each well where fluids from the facility are injected underground; and

springs, and other surface water bodies which receive stormwater discharges from the facility;

Item IV–A

For each outfall, provide an estimate of the area drained by the outfall which is covered by impervious surfaces. For the purpose of this application, impervious surfaces are surfaces where stormwater runs off at rates that are significantly higher than background rates (e.g., predevelopment levels) and include paved areas, building roofs, parking lots, and roadways. Include an estimate of the total area (including all impervious and pervious areas) drained by each outfall. The site map required under item III can be used to estimate the total area drained by each outfall.

Item IV–B

Provide a narrative description of significant materials that are currently or in the past have been treated, stored, or disposed in a manner to allow exposure to stormwater; method of treatment, storage or disposal of these materials; past and present materials management practices employed to minimize contact by these materials with stormwater runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied.

Significant materials should be identified by chemical name, form (e.g., powder, liquid, etc.), and type of container or treatment unit. Indicate any materials treated, stored, or disposed of together.

Item IV–C

For each outfall, structural controls include structures which enclose material handling or storage areas, covering materials, berms, dikes, or diversion ditches around manufacturing, production, storage or treatment units, retention ponds, etc. Nonstructural controls include practices such as spill prevention plans, employee training, visual inspections, preventive maintenance, and housekeeping measures that are used to prevent or minimize the potential for releases of pollutants.

Item V

Provide a certification that all outfalls that should contain stormwater discharges associated with industrial activity have been tested for the presence of nonstormwater discharges which are not covered by an NPDES permit. Tests for such nonstormwater discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. Part B must include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test. All nonstormwater discharges must be identified in a Form 2C or Form 2E which must accompany this application (see beginning of instructions under section titled "Who Must File Form 2F" for a description of when Form 2C and Form 2E must be submitted).

Item VI

Provide a description of existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility. Significant spills at a facility include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Items VII–A, B, and C

These items require you to collect and report data on the pollutants discharged for each of your outfalls. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following general instructions apply to the entire item.

General Instructions

Part A requires you to report at least one analysis for each pollutant listed. Parts B and C require you to report analytical data in two ways. For some pollutants addressed in Parts B and C, if you know or have reason to know that the pollutant is present in your discharge, you may be required to list the pollutant and test (sample and analyze) and report the levels of the pollutants in your discharge. For all other pollutants addressed in Parts B and C, you must list the pollutant if you know or have reason to know that the pollutant is present in the discharge, and either report quantitative data for the pollutant or briefly describe the reasons the pollutant is expected to be discharged. (See specific instructions on the form and below for Parts A through C.) Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, material management practices, maintenance chemicals, history of spills and releases, intermediate and final products and byproducts, and any previous analyses known to you of your effluent or similar effluent.

A. Sampling: The collection of the samples for the reported analyses should be supervised by a person experienced in performing sampling of industrial wastewater or stormwater discharges. You may contact EPA or your State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. Any specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc. The time when you sample should be representative, to the extent feasible, of your treatment system operating properly with no system upsets. Samples should be collected from the center of the flow channel, where turbulence is at a maximum, at a site specified in your present permit, or at any site adequate for the collection of a representative sample.

For pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform, grab samples taken during the first 20 minutes of the discharge must be used (you are not required to analyze a flow-weighted composite for these parameters). For all other pollutants both a grab sample collected during the first 20 minutes of the discharge and a flow-weighted composite sample must be analyzed. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period of greater than 24 hours.

All samples shall be collected from a discharge resulting from the first storm event after a minimum period of 96 hours without a measurable (greater than 0.1 inch rainfall) storm event.

A grab sample shall be taken during the first twenty minutes of the discharge, and a flow-weighted composite shall be taken for the entire event or for the first three hours of the event.

Grab and composite samples are defined as follows:

Grab sample: An individual sample of at least 100 milliliters collected during the first twenty minutes of the discharge. This sample is to be analyzed separately from the composite sample.

Flow-Weighted Composite sample: A flow-weighted composite sample may be taken with a continuous sampler that proportions the amount of sample collected with the flow rate or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire event or for the first three hours of the event, with each aliquot being at least 100 milliliters and collected with a minimum period of fifteen minutes between aliquot collections. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. Only one analysis for the composite sample is required.

The Agency is currently reviewing sampling requirements in light of recent research on testing methods. Upon completion of its review, the Agency plans to propose changes to the sampling requirements.

Data from samples taken in the past may be used, provided that:

All data requirements are met;

Sampling was done no more than three years before submission; and

All data are representative of the present discharge.

Among the factors which would cause the data to be unrepresentative are significant changes in production level, changes in raw materials, processes, or final products, and changes in stormwater treatment. When the Agency

promulgates new analytical methods in 40 CFR Part 136, EPA will provide information as to when you should use the new methods to generate data on your discharges. Of course, the Director may request additional information, including current quantitative data, if they determine it to be necessary to assess your discharges.

B. Reporting: All levels must be reported as concentration and as total mass. You may report some or all of the required data by attaching separate sheets of paper instead of filling out pages VII–1 and VII–2 if the separate sheets contain all the required information in a format which is consistent with pages VII–1 and VII–2 in spacing and in identification of pollutants and columns. Use the following abbreviations in the columns headed "Units."

Concentration	Mass
ppm = parts per million	lbs = pounds.
mg/l = milligrams per liter	ton = tons (English tons).
ppb = parts per billion	mg = milligrams.
µg/l = micrograms per liter.	g = grams.
kg = kilograms	T = tonnes (metric tons).

All reporting of values for metals must be in terms of "total recoverable metal," unless:

(1) An applicable, promulgated effluent limitation or standard specifies the limitation for the metal in dissolved, valent, or total form; or

(2) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium); or

(3) The permitting authority has determined that in establishing case-by-case limitations it is necessary to express the limitations on the metal in dissolved, valent, or total form to carry out the provisions of the CWA. If you measure only one grab sample and one flow-weighted composite sample for a given outfall, complete only the "Maximum Values" columns and insert "1" into the "Number of Storm Events Sampled" column. The permitting authority may require you to conduct additional analyses to further characterize your discharges.

If you measure more than one value for a grab sample or a flow-weighted composite sample for a given outfall and those values are representative of your discharge, you must report them. You must describe your method of testing and data analysis. You also must determine the average of all values within the last year and report the concentration mass under the "Average Values" columns, and the total number of storm events sampled under the "Number of Storm Events Sampled" columns.

C. Analysis: You must use test methods promulgated in 40 CFR Part 136; however, if none has been promulgated for a particular pollutant, you may use any suitable method for measuring the level of the pollutant in your discharge provided that you submit a description of the method or a reference to a published method. Your description should include the sample holding time, preservation techniques, and the quality control measures which you used. If you have two or more substantially identical outfalls, you may request permission from your permitting authority to sample and analyze only one outfall and submit the results of the analysis for other substantially identical outfalls. If your request is granted by the permitting authority, on a separate sheet attached to the application form, identify which outfall you did test, and describe why the outfalls which you did not test are substantially identical to the outfall which you did test.

Part VII–A

Part VII–A must be completed by all applicants for all outfalls who must complete Form 2F.

Analyze a grab sample collected during the first twenty minutes of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results except use only grab samples for pH and oil and grease. See discussion in General Instructions to Item VII for definitions of grab sample collected during the first twenty minutes of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Part VII–B

List all pollutants that are limited in an effluent guideline which the facility is subject to (see 40 CFR Subchapter N to determine which pollutants are limited in effluent guidelines) or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See discussion in General instructions to item VII for definitions of grab sample collected during the first twenty minutes of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Analyze a grab sample collected during the first twenty minutes of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results, except as provided in the General Instructions.

Part VII–C

Part VII–C must be completed by all applicants for all outfalls which discharge stormwater associated with industrial activity, or that EPA is evaluating for designation as a significant contributor of pollutants to waters of the United States, or as contributing to a violation of a water quality standard. Use both a grab sample and a composite sample for all pollutants you analyze for in this part except use grab samples for residual chlorine and fecal coliform. The "Average Values" column is not compulsory but should be filled out if data are available. Part C requires you to address the pollutants in Table 2F–2, 2F–3, and 2F–4 for each outfall. Pollutants in each of these Tables are addressed differently.

Table 2F–2: For each outfall, list all pollutants in Table 2F–2 that you know or have reason to believe are discharged (except pollutants previously listed in Part VII–B). If a pollutant is limited in an effluent guideline limitation which the facility is subject to (e.g., use of TSS as an indicator to control the discharge of iron and aluminum), the pollutant should be listed in Part VII–B. If a pollutant in Table 2F–2 is indirectly limited by an effluent guideline limitation through an indicator, you must analyze for it and report data in Part VII–C. For other pollutants listed in Table 2F–2 (those not limited directly or indirectly by an effluent limitation guideline), that you know or have reason to believe are discharges, you must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Table 2F–3: For each outfall, list all pollutants in Table 2F–3 that you know or have reason to believe are discharged. For every pollutant in Table 2F–3 expected to be discharged in concentrations of 10 ppb or greater, you must submit quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, you must submit quantitative data if any of these four pollutants is expected to be discharged in concentrations of 100 ppb or greater. For every pollutant expected to be discharged in concentrations less than 10 ppb (or 100 ppb for the four pollutants listed above), then you must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Small Business Exemption—If you are a "small business," you are exempt from

the reporting requirements for the organic toxic pollutants listed in Table 2F–3. There are two ways in which you can qualify as a "small business". If your facility is a coal mine, and if your probable total annual production is less than 100,000 tons per year, you may submit past production data or estimated future production (such as a schedule of estimated total production under 30 CFR 795.14(c)) instead of conducting analyses for the organic toxic pollutants. If your facility is not a coal mine, and if your gross total annual sales for the most recent three years average less than $100,000 per year (in second quarter 1980 dollars), you may submit sales data for those years instead of conducting analyses for the organic toxic pollutants. The production or sales data must be for the facility which is the source of the discharge. The data should not be limited to production or sales for the process or processes which contribute to the discharge, unless those are the only processes at your facility. For sales data, in situations involving intracorporate transfer of goods and services, the transfer price per unit should approximate market prices for those goods and services as closely as possible. Sales figures for years after 1980 should be indexed to the second quarter of 1980 by using the gross national product price deflator (second quarter of 1980=100). This index is available in National Income and Product Accounts of the United States (Department of Commerce, Bureau of Economic Analysis).

Table 2F–4: For each outfall, list any pollutant in Table 2F–4 that you know or believe to be present in the discharge and explain why you believe it to be present. No analysis is required, but if you have analytical data, you must report them. *NOte:* Under 40 CFR 117.12(a)(2), certain discharges of hazardous substances (listed at 40 CFR 177.21 or 40 CFR 302.4) may be exempted from the requirements of section 311 of CWA, which establishes reporting requirements, civil penalties, and liability for cleanup costs for spills of oil and hazardous substances. A discharge of a particular substance may be exempted if the origin, source, and amount of the discharged substances are identified in the NPDES permit application or in the permit, if the permit contains a requirement for treatment of the discharge, and if the treatment is in place. To apply for an exclusion of the discharge of any hazardous substance from the requirements of section 311, attach additional sheets of paper to your form, setting forth the following information:

1. The substance and the amount of each substance which may be discharged.
2. The origin and source of the discharge of the substance.
3. The treatment which is to be provided for the discharge by:

a. An onsite treatment system separate from any treatment system treating your normal discharge;

b. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above; or

c. Any combination of the above.

See 40 CFR 117.12 (a)(2) and (c), published on August 29, 1979, in 44 FR 50766, or contact your Regional Office (Table 1 on Form 1, Instructions), for further information on exclusions from section 311.

Part VII–D

If sampling is conducted during more than one storm event, you only need to report the information requested in Part VII–D for the storm event(s) which resulted in any maximum pollutant concentration reported in Part VII–A, VII–B, or VII–C.

Provide flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, the method of flow measurement, or estimation. Provide the data and duration of the storm event(s) sampled, rainfall measurements, or estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

Part VII–E

List any toxic pollutant listed in Table 2F–2, 2F–3, or 2F–4 which you currently use or manufacture as an intermediate or final product or byproduct. In addition, if you know or have reason to believe that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is discharged or if you use or manufacture 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorphenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); then list TCDD. The Director may waive or modify the requirement if you demonstrate that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue your permit. You may not claim this information as confidential; however, you do not have to distinguish between use or production of the pollutants or list the amounts.

Item VIII

Self explanatory. The permitting authority may ask you to provide additional details after your application is received.

Item X

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(4) of the Clean Water Act provides that "Any person who knowingly makes any false material statement, representation, or certification in any application, . . . shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction of such person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both." 40 CFR Part 122.22 requires the certification to be signed as follows:

(A) For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegation of authority to responsible corporate officers identified in 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate position under 122.22(a)(1)(ii) rather than to specific individuals.

(B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

TABLE 2F-1.—CODES FOR TREATMENT UNITS

Physical Treatment Processes

1-A—Ammonia Stripping
1-B—Dialysis
1-C—Diatomaceous Earth Filtration
1-D—Distillation
1-E—Electrodialysis
1-F—Evaporation
1-G—Flocculation
1-H—Flotation
1-I—Foam Fractionation
1-J—Freezing
1-K—Gas-Phase Separation
1-L—Grinding (Comminutors)
1-M—Grit Removal
1-N—Microstraining
1-O—Mixing
1-P—Moving Bed Filters
1-Q—Multimedia Filtration
1-R—Rapid Sand Filtration
1-S—Reverse Osmosis (Hyperfiltration)
1-T—Screening
1-U—Sedimentation (Setting)
1-V—Slow Sand Filtration
1-W—Solvent Extraction
1-X—Sorption

Chemical Treatment Processes

2-A—Carbon Adsorption
2-B—Chemical Oxidation
2-C—Chemical Precipitation
2-D—Coagulation
2-E—Dechlorination
2-F—Disinfection (Chlorine)
2-G—Disinfection (Ozone)
2-H—Disinfection (Other)
2-I—Electrochemical Treatment
2-J—Ion Exchange
2-K—Neutralization
2-L—Reduction

Biological Treatment Processes

3-A—Activated Sludge
3-B—Aerated Lagoons
3-C—Anaerobic Treatment
3-D—Nitrification-Denitrification
3-E—Pre-Aeration
3-F—Spray Irrigation/Land Application
3-G—Stabilization Ponds
3-H—Trickling Filtration

Other Processes

4-A—Discharge to Surface Water
4-B—Ocean Discharge Through Outfall
4-C—Reuse/Recycle of Treated Effluent
4-D—Underground Injection

Sludge Treatment and Disposal Processes

5-A—Aerobic Digestion
5-B—Anaerobic Digestion
5-C—Belt Filtration
5-D—Centrifugation
5-E—Chemical Conditioning
5-F—Chlorine Treatment
5-G—Composting
5-H—Drying Beds
5-I—Elutriation
5-J—Flotation Thickening
5-K—Freezing
5-L—Gravity Thickening
5-M—Heat Drying
5-N—Heat Treatment
5-O—Incineration
5-P—Land Application
5-Q—Landfill
5-R—Pressure Filtration
5-S—Pyrolysis
5-T—Sludge Lagoons
5-U—Vacuum Filtration
5-V—Vibration
5-W—Wet Oxidation

TABLE 2F-2.—CONVENTIONAL AND NON-CONVENTIONAL POLLUTANTS REQUIRED TO BE TESTED BY EXISTING DISCHARGER IF EXPECTED TO BE PRESENT

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Magnesium, Total
Tin, Total
Titanium, Total

TABLE 2F-3—TOXIC POLLUTANTS REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT

Toxic Pollutants and Total Phenol

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

GC/MS Fraction Volatiles Compounds

Acrolein
Acrylonitrile
Benzene
Bis (Chloromethyl) Ether
Bromoform
Carbon Tetrachloride

TABLE 2F-3—TOXIC POLLUTANTS REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT—Continued

Chlorobenzene
Chlorodibromomethane
Chloroethane
2-Chloroethylvinyl Ether
Chloroform
Dichlorobromomethane
Dichlorodifluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethylene
1,2-Dichloropropane
1,3-Dichloropropylene
Ethylbenzene
Methyl Bromide
Methyl Chloride
Methylene Chloride
1,1,2,2-Tetrachloroethane
Tetrachloroethylene
Toluene
1,2-Trans-Dichloroethylene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene
Trichlorofluoromethane
Vinyl Chloride

Acid Compounds

2-Chlorophenol
2,4-Dichlorophenol
2,4-Dimethylphenol
4,6-Dinitro-O-Cresol
2,4-Dinitrophenol
2-Nitrophenol
4-Nitrophenol
p-Chloro-M-Cresol
Pentachlorophenol
Phenol
2,4,6-Trichlorophenol

Base/Neutral

Acenaphthene
Acenaphthylene
Anthracene
Benzidine
Benzo(a)anthracene
Benzo(a)pyrene
3,4-Benzofluoranthene
Benzo(ghi)perylene
Benzo(k)fluoranthene
Bis(2-chloroethoxy)methane
Bis(2-chloroethyl)ether
Bis(2-chloroisopropyl)ether
Bis(2-ethylyhexyl)phthalate
4-Bromophenyl Phenyl Ether
Butylbenzyl Phthalate
2-Chloronaphthalene
4-Chlorophenyl Phenyl Ether
Chrysene
Dibenzo(a,h)anthracene
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
3,3'-Dichlorobenzidine
Diethyl Phthalate
Dimethyl Phthalate
Di-N-Butyl Phthalate
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Di-N-Octylphthalate
1,2-Diphenylhydrazine (as Azobenzene)
Fluoranthene
Fluorene
Hexachlorobenzene
Hexachlorobutadiene
Hexachloroethane
Indeno(1,2,3-cd)pyrene
Isophorone
Naphthalene
Nitrobenzene

TABLE 2F-3—TOXIC POLLUTANTS REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT—Continued

N-Nitrosodimethylamine
N-Nitrosodi-N-Propylamine
N-Nitrosodiphenylamine
Phenanthrene
Pyrene
1,2,4-Trichlorobenzene

Pesticides

Aldrin
Alpha-BHC
Beta-BHC
Gamma-BHC
Delta-BHC
Chlordane
4,4'-DDT
4,4'-DDE
4,4'-DDD
Dieldrin
Alpha-Endosulfan
Beta-Endosulfan
Endosulfan Sulfate
Endrin
Endrin Aldehyde
Heptachlor
Heptachlor Epoxide
PCB-1242
PCB-1254
PCB-1221
PCB-1232
PCB-1248
PCB-1260
PCB-1016
Toxaphene

Ioxic Pollutant

Asbestos

TABLE 2F-4—HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cylcohexane
2,4-D (2,4-Dichlorophenoxyacetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dinitrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane

TABLE 2F-4—HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY APPLICANT IF EXPECTED TO BE PRESENT—Continued

Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Naphthenic acid
Nitrotoluene
Parathion
Phenolsulfonate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Stronthium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
TDE (Tetrachlorodiphenyl ethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofan
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

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Part IV

Department of Labor

Employees' Compensation Appeals Board

20 CFR Part 501
Rules of Procedure; Final Rule

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DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

20 CFR Part 501

Rules of Procedure

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule amends two sections of the Rules of Procedure of the Employees' Compensation Appeals Board [hereinafter Board] as set forth in Part 501 of 20 CFR. The amendments clarify the rules for computing the time for filing a notice of appeal or other document in connection with proceedings before the Board. In addition, the amendments provide for the first time that a notice of appeal will be considered as timely filed if the evidence substantiates that the notice was mailed on the due date. The amendments also explicitly provide that a party may, by motion, request an extension of the time limitations for filing any document other than a notice of appeal or a petition for reconsideration.

EFFECTIVE DATE: These final regulations shall become effective January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Groom, Senior Board Attorney, Employees' Compensation Appeals Board, U.S. Department of Labor, Washington, DC 20210, (202) 472–5611.

SUPPLEMENTARY INFORMATION: This rule makes two minor changes to the Board's Rules of Procedure. The first amends 20 CFR 501.3(d)(3) to permit the use of the date of mailing, rather than the date of receipt by the Board, for the purpose of determining the timeliness of a notice of appeal. The second amends 20 CFR 501.10 to clarify the proper method for computing the time for filing any notice of appeal or other document in connection with proceeding before the Board. In addition, the second amendment provides that any party may by motion request an extension of the time for filing any paper other than a notice of appeal or a petition for reconsideration. These changes in the Board's Rules of Procedure will facilitate the efficient operation of the appeals process and will make the appeals and process more understandable to appellants.

Publication in Final

Inasmuch as the revised regulations contained herein consist of rules of practice and procedure, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and opportunity for public comment are inapplicable.

Classification-Executive Order 12291

The Department has determined that these revisions are procedural in character and, therefore, that this rule is not a major rule under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. No regulatory impact analysis is therefore required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, do not apply to these rules because they are, as discussed above, not subject to the notice and comment procedures of the Administrative Procedure Act. See 5 U.S.C. 603(a).

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain a collection of information requirement.

List of Subjects in 20 CFR Part 501

Rules of procedure.

Accordingly, 20 CFR Part 501 is amended as set forth below:

PART 501—[AMENDED]

1. The authority citation for 20 CFR Part 501 continues to read as follows:

Authority: Sec. 32, 39 Stat. 749, 5 U.S.C. 8145; sec. 3, Reorganization Plan No. 2 of 1946, 60 Stat. 1095; 3 CFR 1943–48 Comp., p. 1064; sec. 2, Reorganization Plan No. 19 of 1950, 64 Stat. 1272; 3 CFR 1949–53 Comp., p. 1010.

2. By revising § 501.3(d)(3) to read as follows:

§ 501.3 Application for review.

* * * * *

(d) *Time for filing.* * * *

(3) *Date of filing*—(i) *Date or receipt.* Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received in the office of the clerk of the Board.

(ii) *Date of mailing.* If the notice is sent by mail and the fixing of the date of delivery as the date of filing would render the appeal untimely, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the date of mailing.

* * * * *

3. By revising the section heading and adding paragraph (d) to § 501.10 to read as follows:

§ 501.10 Number of copies of pleadings and related documents; service; computation of time.

* * * * *

(d) *Computation of Time.* (1) In computing any period of time prescribed or allowed by these rules or by direction of the Board, the first day counted shall be the day after the event from which the time period begins to run, and the last day for filing shall be included in the computation. If the last day for filing falls on a Saturday, Sunday, or Federal holiday, the first working day thereafter shall be the last day for timely filing. For purposes of computing the time for filing a notice of appeal or a petition for reconsideration, the event which commences the running of the time period shall be construed as occurring on the date the relevant decision is issued, and not the date the decision is actually received.

(2) Whenever a paper is served on the Board by mail, paragraph (d)(1) of this section will be deemed complied with if the envelope containing the paper is postmarked within the time period allowed, computed as in paragraph (d)(1) of this section. If there is no postmark, or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the date of mailing.

(3) A waiver or an extension of the time limitations for filing a paper, other than a notice of appeal or a petition for reconsideration, may be requested by motion.

Signed at Washington, DC this 1st day of December 1988.

Ann McLaughlin,

Secretary of Labor.

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Part V

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; California—South Coast Air Basin; Ozone and Carbon Monoxide Plans; Advance Notice of Proposed Rulemaking

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3487-1]

Approval and Promulgation of Implementation Plans; California—South Coast Air Basin; Ozone and Carbon Monoxide Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA today solicits comment on how it should fulfill its legal obligation to create a federal implementation plan (FIP) under the Clean Air Act to produce attainment of the national ambient air quality standards (NAAQS) for ozone and carbon monoxide in the South Coast Air Basin (Los Angeles area) of California. This notice describes in particular the choices that EPA faces in determining the date by which the FIP must bring about attainment, the statutory interpretations the Agency might make to support the different attainment date options, and the social and economic consequences of these alternatives. As it prepares a notice of proposed rulemaking to create the FIP for the South Coast, EPA intends to consider the information it receives from the public in response to today's notice.

DATE: Comments may be submitted to EPA at the address below on or before February 6, 1989.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Attention: Air Management Division, State Liaison Section (A–2–2), U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974–7634, FTS: 454–7634.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of This Notice

In the course of administering the Clean Air Act, EPA often has been called upon to interpret the law where Congress has left a gap that must be filled. But few of EPA's prior determinations have been so difficult, or threatened such upheaval, as the judgment we must now make about the ozone and carbon monoxide problems in the South Coast Basin that surrounds Los Angeles.

Ozone is a pollutant with serious health effects that, as we are increasingly becoming aware, may cause permanent long-term damage if breathed at certain concentrations. The effects are unmistakable at levels commonly encountered in the Los Angeles area, which has the worst ozone problem in the United States, suffering from both the highest levels and the most frequent violations of the national ozone standard.

CO reduces the amount of oxygen delivered to all tissues of the body, and, at certain levels, poses a threat to human health. The Basin frequently violates the federal air quality standards for CO.

EPA wants to—and must—do something constructive to remedy this unacceptable public health threat. But, in its present form, the law intended to address the problem cannot deal with it effectively. This is because the last statutory deadline for a plan to meet the standard—December 31, 1987—has now passed, and Congress has given EPA no instructions as to what to do under these circumstances.

EPA has acknowledged a duty under the Clean Air Act to develop a federal implementation plan (FIP) to help the South Coast Basin attain the primary national ambient air quality (NAAQS)

standard for ozone and carbon monoxide (CO).[1] But the Act does not specify the date by which such a plan must project attainment. Since the deadline has passed, and Congress has not extended it, must an EPA plan require immediate attainment? Or should it call for attainment within a period (three to five years) analogous to the relevant previous rounds of planning required by the statute (specifically, section 110 (a) and (e), and the second round of planning for areas that received attainment date extensions from 1982 to 1987 under Section 172(a)(2))? Attainment of the ozone NAAQS appears to require, in the case of the South Coast Basin, extreme restrictions on the use of fossil fuels and the reactive hydrocarbons that are now essential components of many industrial, commercial, and consumer products and activities. It is for this reason that an immediate or a near-term attainment FIP for the South Coast, if determined to be statutorily required, would raise serious questions of enforceability and potential conflicts with other statutes. As a practical matter, immediate attainment is impossible and a five-year plan would impose requirements so draconian as to remake life in the South Coast Basin.

The South Coast authorities estimate that an 80 to 90 percent reduction in volatile organic compound ("VOC") emissions is necessary to attain the ozone standard. Thus a plan that provides for attainment in the South Coast immediately or even within five years would have to prohibit most traffic, shut down major business activity, curtail the use of important consumer goods, and dramatically restrict all aspects of social and economic life. Implementation and enforcement of such drastic measures may well be impossible, and could prevent satisfaction of the basic necessities of life—including food, shelter, and medical services. Such a plan would effectively usurp many state and local government functions and would radically restrict individual opportunity. Indeed, an immediate or a near-term attainment FIP for ozone would destroy the economy of the South Coast, so that most of the population would be forced to resettle elsewhere. Similar drastic consequences would flow from a short-term plan to attain the CO standard.

Given these consequences of short-term plans, should EPA instead allow a longer term for attainment—one that supports local efforts in making progress over a period such as the twenty years provided for in the plan under consideration by the South Coast Air Quality Management District (SCAQMD)? Such a course appeals to common sense, but is without precedent in the Act.

A long-term FIP might appear to offer a more realistic (though still exceedingly difficult) path to attainment, and would complement ongoing state and local efforts to develop a SIP. But it also raises significant issues. Such a FIP would require EPA to make difficult legislative-type decisions about the projected pace and direction of technological and life-style change, over a long period of time. A long-term plan would have more gradual and less dislocating impacts than a short-term FIP, but would still have profound implications for much of the local economy, for some national and foreign industries, and for the entire way of life in the South Coast Basin. Moreover, in either circumstance, EPA arguably must to some extent exercise legislative-type powers that, while perhaps permitted by the courts (*see Chevron, U.S.A., Inc.* v. *NRDC*. 467 U.S. 837 (1984)), are more appropriately exercised by Congress. Nonetheless, in the absence of legislative direction, EPA believes it may need to resolve several fundamental issues of legislative scope to comply with its legal obligation to develop a FIP for the South Coast.

The Agency believes that, in fulfilling this obligation, it should seek to act consistently with at least the key principles underlying the statute, while minimizing the extent to which EPA performs legislative-type decisionmaking. As discussed in detail below, this is a very difficult task. EPA officials have repeatedly urged the 100th Congress to come to grips with this issue and to amend and extend the Clean Air Act. Their failure to do so leaves EPA with no course other than to press on and try to discern, as best the Agency can, what the prior enacting Congress would have intended us to do.

Because the issues before us are of such moment and complexity, EPA wishes to explore them in a detailed and public fashion. To that end we are publishing today EPA's preliminary view of the problem it confronts, the approaches it might choose to solve that problem, and the consequences that are likely to follow from that choice.

B. Outline of Notice

The Notice begins by setting out the legislative and regulatory history of the Clean Air Act and its Amendments with respect to the control of ozone and CO, both nationally and in the South Coast Basin. This history recounts EPA's prior futile attempt to impose FIPs on the South Coast and other areas in the 1970's. It describes EPA's recent proposal on requirements for state plans in areas that, by the end of 1987, have not attained the air quality standards for these pollutants. The Notice then proceeds to identify the perplexing technical, legal, and policy questions EPA confronts in constructing a practicable and effective FIP for the South Coast. It describes the severity of pollution problems in the South Coast—with respect to ozone, plainly the worst in the Nation, and with respect to CO, one of the worst. Although air quality has improved as a result of the efforts of local governmental agencies, the ozone and CO problems have proved intractable due to the environmental consequences of economic and population growth in a geographically enclosed region. Local authorities in the South Coast have labored for years to put together an ambitious draft pollution abatement plan that is intended to provide for attainment of the standard for CO in ten years, and for attainment of the standard for ozone in twenty years. The Notice outlines the draft South Coast plan, expected to be submitted to EPA in the spring of 1989.

Next, the Notice considers the statutory provisions that define EPA's duty to promulgate a FIP. It sets forth the applicable principles of statutory interpretation that govern our reading of these provisions and their legislative history. Included among the judicial maxims that guide EPA's interpretation are: (1) Where Congressional intent is unclear, EPA must construe the statute in accordance with its terms, history, and purposes, and may reach reasonable accommodations among conflicting interests; (2) EPA should construe the statute so as to avoid absurd results and impossibility; and (3) EPA should construe the statute to avoid conflicts with other statutes.

The Notice proceeds to apply these principles in discussing three different interpretations of the post-1987 deadline for a FIP to show attainment. The alternative interpretations of the FIP deadline are: (1) Immediate attainment; (2) attainment within five years; (3) attainment over a long term, but as expeditiously as possible without causing severe economic and social disruption. The Notice describes the legal and equitable arguments for and against each alternative, and outlines the type of FIP each deadline would require.

[1] *Coalition for Clean Air* v. *EPA*, CV No. 88-4414-H. (C.D. Cal.) In an Order dated September 19, 1988, the Court affirmed that EPA has such a duty.

The Notice recognizes that each of these alternative interpretations has significant strengths and weaknesses, and that none of them presents an easy resolution of the vexing legal and environmental problems that beset the South Coast. At this point, it appears difficult to project attainment of the standards in the South Coast Basin, even under a plan stretching over twenty years, and containing measures that require some serious economic and social dislocation.

In filling the gap in the current statute, EPA must attempt to reconcile conflicting Congressional values embodied in the Clean Air Act, and each of the interpretations advanced fulfills different of these values to varying degrees. The immediate and five-year FIP interpretations—while satisfying an arguable Congressional desire for short-term attainment dates—would impose health control measures that would disrupt daily life in the South Coast beyond anything Congress might have envisioned, or that would be impossible to enforce, even with gargantuan efforts.

The longer-term FIP approach, while mitigating economic disruption by offering the possibility of more realistic and workable requirements, represents a departure from EPA's prior interpretations of the Act, and arguably puts EPA in shoes that only Congress should fill. While any significant extension of the attainment date beyond 1987 would necessarily reflect some legislative-type gap-filling by EPA, a longer-term plan might impose upon the Agency the responsibility for making especially difficult legislative choices about the direction and pace of technological, social, and economic change in the South Coast.

EPA solicits comment on how it should interpret the Clean Air Act to provide an appropriate attainment date for a FIP under the circumstances presented here. We seek comments on the legal interpretations we present, on whether EPA should explore any alternatives that it has not considered, on what EPA should conclude to be the most appropriate FIP attainment date under the current Act, and on what form the FIP should take.

II. Statutory and Regulatory Background

This section discusses the historical development of the Clean Air Act and how the South Coast has attempted to comply with its requirements. Included is a review of EPA's development of several short-term attainment FIPs in response to the Act and litigation, and the subsequent failure of these plans because of political, judicial and public opposition.

The federal government first became involved in the regulation of air pollution in 1955 with the passage of the Air Pollution Control Act, Pub. L. No. 84–159, 69 Stat. 322 (1955). This statute, as expanded in 1963 in the Clean Air Act, Pub. L. No. 88–206, 77 Stat. 392 (1963), provided technical and financial assistance to encourage the States to define and address the problem of air pollution. When the States failed to respond adequately to this encouragement, the federal government increased its role, primarily by the passage of the 1970 Clean Air Act.

A. The 1970 Clean Air Act

In 1970, Congress amended the Clean Air Act to establish a joint State and Federal program to control air pollution. New sections 109 and 110 of the statute directed EPA to establish in 1971 NAAQS for such pollutants as photochemical oxidants (currently measured as ozone and therefore referred to here as ozone) and CO, and these sections called on States to submit by early 1972 "State Implementation Plans" (SIPs), providing for attainment of those standards within nine months of promulgation of the NAAQS.

Section 110(a)(2) of the 1970 statute specifies the requirements for these initial SIPs. It directs EPA to approve a SIP within four months after its submission if, among other things, it "provides for the attainment" of the standard "as expeditiously as practicable but [subject to subsection (e)] in no case later than 3 years from the date of approval of such plan * * *." The law (section 110(a)(2)(H) also directs each State to revise its SIP whenever the Administrator finds that it is "substantially inadequate" to achieve the NAAQS or otherwise meet the requirements of the Act.

Section 110(e) permits a two-year extension of the three-year atainment period if the technology to attain within three years is not available and the State has applied "reasonably available alternative means" of attaining the standard in the interim. In the event a State fails to submit an approvable SIP or fails to submit a plan to promulgate its own implementation measures, section 110(c) directs EPA to make up this failure, by promulgating a FIP. Finally, under section 110(a)(3), a State may revise its plan at any time, but EPA may approve the change only if the SIP continues to conform to the requirements of the Act.

B. Implementation of the Act in the 1970's

1. Implementation of the Act Nationally: 1970–1977

In August 1971, EPA recognized that many States would find it extremely difficult if not impossible to attain primary standards [2] by 1975, that is, roughly within three years of the time their SIPs would be approved.[3] Accordingly, the Agency bowed to reality and granted blanket two-year extensions to all control regions that, even given the application of reasonably available technology, could not attain primary air quality standards by 1975. EPA also extended (or, as we shall see, tried to extend) another statutory deadline. Section 110(a)(1) required States to submit, by January 30, 1972, the transportation control portions of their plans for controlling ozone and CO. EPA, following the statute, required transportation control plans for all areas in which stationary source controls and federal emissions standards for new cars would not be sufficient to attain compliance by May 31, 1975. EPA proposed to move the deadline for submitting these plans from January 30, 1972 to February 1973.

EPA's efforts to read the law in the light of the real world problems of implementing it, however, were stymied in 1973, when the United States Court of Appeals for the District of Columbia Circuit held illegal EPA's grant of the one-year extension for States to submit the transportation control portions of SIPs. *See Natural Resource Defense Council* (*NRDC*) v. *EPA*, 475 F.2d 968 970–71 (D.C. Cir. 1973). The Court also ordered EPA to rescind its blanket two-year extension for NAAQS attainment. Furthermore it held that the Agency could allow additional extensions only if the requesting States had demonstrated under section 110(e) that, even given the application of reasonably available alternative technologies, they could not achieve air quality standards by 1975. *Id.* at 971. Thus, States were still required to produce SIPs showing attainment by 1975 in order to obtain an extension of the deadline to 1977. Finally the Court ordered EPA to

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[2] Section 109(b)(1), 42 U.S.C. 7609(b)(1) defines the primary standards as "ambient air quality standards the attainment and maintenance of which, in the judgment of the Administrator, based upon such [air quality] criteria and allowing an adequate margin of safety, are required to protect the public health."

[3] EPA arrived at the year 1975 by adding together: nine months (after the 1971 NAAQS promulgation) in which the SIPs were to be submitted to EPA, four months for EPA to act on the SIPs, and three years from the date of approval in which to attain.

promulgate the necessary plans under section 110(c) by September 1975. The decision in *NRDC* gave EPA a broad mandate to develop transportation control programs to attain the standards by 1977.

The obstacles to the States' attainment of air pollution control deadlines soon grew even greater. Under an agreement with NRDC, in April, 1973, EPA issued ambitious guidelines regulating a broad range of non-point or "indirect" pollution sources—including not only shopping centers and highways, for example, but also residential and commercial developments. These guidelines had the attention of NRDC and ultimately the courts, which, under the language of the law, directed EPA to promulgate them. Few States followed them, however. Technical problems, political opposition, and legal difficulties compelled the Agency to narrow the scope of these guidelines and to propose its own indirect source review (ISR) program.

EPA's attempt in its own ISR program to interpret the law to make it more practicable, however, faltered once again. EPA lacked the resources necessary to implement and to enforce its ISR program. The final regulations EPA published in 1974, therefore, failed to offer the technical support necessary for carrying them out. Because it operated under short-term deadlines, the ISR Program, moreover, had to apply fairly severe remedies—and it could not wait for better ones to be developed. And so, bearing questionable environmental results, confronted by various legal challenges, and troubled by technical infeasibility, the ISR Program, for all its lofty ambitions, became the victim of the same problems that doomed the earlier ISR guidelines. Perhaps recognizing this problem, Congress, in section 110(a)(5) of the 1977 Amendments to the Clean Air Act, prohibited EPA from conducting ISR (except for federally funded projects) and allowed the states to rescind previously published proposals.

This was not the last obstacle to EPA's efforts to improve air quality. EPA's transportation control program proved no more edifying than its attempt at enforcing ISR guidelines.

In light of the *NRDC* holding, states would not be eligible even for two-year extensions under section 110(e) until they submitted plans showing attainment by 1975. States therefore submitted such plans—whether or not for *pro forma* reasons—in which they endorsed costly and possibly unworkable measures that would, colorably, attain air quality standards by the 1975 deadline. (The states might have considered that these measures, or many of them, might be rendered superfluous in any case by 1977, when the fleet of emission-controlled cars began to take over the highways and cause lower levels of ozone and CO.) Accordingly, states may have begun to write SIPs that they knew to be partly fictional in order to obtain the extensions they required to make realistic progress toward air pollution goals.

When several states, rather than submitting SIPs they knew to be unworkable, balked at submitting plans showing attainment by 1975, EPA was forced to promulgate its own transportation controls programs for them. Thus, in 1973, EPA proposed control strategies containing a combination of far-reaching measures, including parking restrictions, mandatory bus and carpool lanes, and expansion of mass transit. Some of these provisions, however, ran into insurmountable political opposition. In early 1974, for example, Congress passed a provision, ultimately codified in the Energy Supply and Environmental Coordination Act of 1974, prohibiting EPA from imposing surcharges on fees for parking cars.

By 1977, EPA found itself in a double bind. On the one side, the courts, as in *NRDC*, held EPA firmly to the deadlines that were explicitly stated or implied in the Clean Air Act. If the states did not submit plans to attain air quality standards by those dates, EPA would be required to prepare plans, programs, or guidelines to make up for this failure. Hence, EPA's efforts at ISR review, transportation control programs, and the like.

On the other side, in a series of cases challenging EPA's legal and constitutional authority to adopt various transportation controls and other measures, the courts found that EPA had overstepped its statutory and constitutional authority in telling states what to do to clean up their air.

For example, in *Brown v. EPA*, 521 F.2d 827 (9th Cir. 1977), vacated on mootness grounds in *EPA v. Brown*, 431 U.S. 99 (1977), the 1973 California transportation control plan was challenged.There, the United States Court of Appeals for the Ninth Circuit ruled that the Clean Air Act "permits sanctions against a State that pollutes the air, but not against a State that chooses not to govern pollutants as the Administrator directs." *Id.* at 839. The court ruled, in effect, that the Agency could direct States to improve air quality or to stop pollution within their boundaries, but EPA could not require States to pass legislation that affected the polluting behavior of individual citizens.

The plaintiffs in *Brown*, moreover, challenged the constitutionality of EPA's transportation control regulations on Tenth Amendment and Commerce Clause grounds. *Id.* at 837–842. Although the court expressed serious misgivings about whether the regulations would pass ocnstitutional muster, it chose to rest its opinion solely on statutory grounds. *Id.* at 840. *See also District of Columbia* v. *Train*, 521 F.2d 971 (D.C. Cir. 1975) *vacated* 431 U.S. 99 (1977) (Act did not support Administrator's regulations, which required states to enact statutes).[4] Other hastily prepared FIPs that included transportation controls were challenged and overturned for lack of adequate technical support. *See, e.g., Texas* v. *EPA*, 499 F.2d 289 (5th Cir. 1974) *cert. denied* 427 U.S. 905 (1976) (Texas FIP); *South Terminal Corp.* v. *EPA*, 504 F.2d 646 (1st Cir. 1974) (Boston FIP). Lacking judicial and political support, generating nothing but public outrage, and draining resources, EPA's FIP efforts eventually failed.

2. Implementation of the Act in California: 1970–1977

California submitted its SIP for ozone and CO to EPA in February 1972. In May of the same year, EPA Administrator William Ruckelshaus disapproved the plan because it failed to show attainment by the deadline stated in the Act 1975. When EPA failed to promulgate a FIP under section 110(c) within six months of its disapproval of the SIPs for Los Angeles, a Los Angeles-based public interest group brought suit. In *City of Riverside* v. *Ruckelshaus*, 4 E.R.C. 1728 (C.D. Cal. 1972), the U.S. District Court for the Central District of California ordered EPA to produce by January 15, 1973 a plan adequate to bring Los Angeles—an area plagued with the worst air pollution in the country—into attainment by 1975 (three years from adoption of the plan) or 1977 (if the governor requested a two-year extension).

[4] With respect to the state inspection and maintenance regulation, *Brown*, along with other cases from the Fourth and District of Columbia Circuits, was granted *certiorari* by the Supreme Court. When EPA admitted that it lacked authority under the act to force states to enforce EPA-promulgated transportation control programs, the Court declined to rule on the program, as its ruling would amount to an advisory opinion, and remanded the cases for consideration of mootness and ripeness. *EPA* v. *Brown* 431 U.S. 104 (1977). *See also Brown* v. *EPA*, 566 F.2d 665 (9th Cir. 1977) (holding EPA's inspection and maintenance program for California invalid).

Ruckelshaus obeyed the order by proposing a plan that included, among other traffic control measures, a provision that would have required reducing gasoline supplies by 82 percent by the summer of 1977. 38 FR 2194 (1973). As Ruckelshaus explained to the citizens of Los Angeles, "Faced with the choice between my freedom and your mobility, my freedom wins." R. Shep Melnick, *Regulation and the Courts: The Case of the Clean Air Act, at 331–22 (1983).* With the intention of drawing wide public and Congressional attention to the dilemma presented EPA by the Clean Air Act, EPA held public hearings in 1972. The plan was decried by all concerned.

On July 2, 1973, the Administrator proposed a revised plan that set forth three options. Under the first option, literal compliance with the Act would be achieved through 100% gasoline rationing. Nothing else would do to meet the letter of the law. Under the second, gasoline consumption would be limited to 1972–3 levels and other transportation control measures would be introduced. Finally, under the third option, only existing control measures would be implemented. Again, the plans were assailed as unduly restrictive and unworkable.

On October 12, 1973, the Administrator announced a third attempt at formulating a plan for the Los Angeles area. 38 FR 31232. This third plan included several specific and drastic transportation control measures. It required the use of specified freeway lanes and surface streets exclusively by buses and carpools. In addition, by imposing a surcharge on commercial parking rates, it called for a radical change in the Basin's parking rate structure. It also imposed initial annual surcharges on free parking spaces provided by businesses to their customers.

The plan went further. Employers were to impose a charge on employee parking spaces; they also were to provide employees with various other incentives to use carpools and mass transit systems. Portions of the funds collected were to be used to support mass transit facilities. The final plan also included a provision stipulating that literal compliance with the Clean Air Act would require a further reduction of vehicle miles traveled, and that gasoline limitations would be necessary. Commenting on the plan, the Administrator asserted: "The EPA does not believe that massive gasoline rationing is either socially acceptable or enforceable, and will work toward alleviating the necessity for such drastic control in 1977." *See* Chernow, Implementing the Clean Air Act in Los Angeles; the Duty to Achieve the Impossible, 4 *Ecol. L.Q.* 537, 553 (1975). (*citing* 38 FR 31232, 31237 (1973)).

These transportation control measures pleased the public no more than their predecessors. Soon after promulgation of the plan, plaintiffs filed many suits to enjoin the plan's enforcement, and the Administrator deferred the effective date of its more extreme provisions. 38 FR 34124 (1973). Eventually, EPA's authority to promulgate gas rationing regulations was upheld, *see City of Santa Rosa v. EPA*, 534 F.2d 150, 154 (9th Cir. 1976).

Public outrage at the Ruckelshaus plan ultimately led to its withdrawal in 1976. In explaining his rationale for withdrawal of the plan, Acting Administrator John Quarles stated: "I realize that this revocation will render the affected SIP defective as a legal matter, since such SIPs will no longer contain regulations which provide for NAAQS attainment. I am convinced, however, that whatever benefits may be gained from keeping a technically legal SIP on the books by retaining the gasoline rationing regulations are outweighed by the seriously disruptive social and economic consequences of such regulations." *See* 41 FR 45565 (Oct. 15, 1976). The withdrawal went unchallenged.

C. The Clean Air Act Amendments of 1977

Congress in 1977 amended the Clean Air Act in response to persistent nonattainment of the NAAQS for ozone and CO and in reaction to the failed FIP and SIP efforts of the early 1970's. The House of Representatives Report on a bill to amend the Act (H.R. 6161) reviewed the history of the EPA Administrator's inability to use section 110(c)(1) promulgations to achieve the statutory objectives. H. Rep. No. 6161, 95–294, 95th Cong., 1st Sess., *reprinted in* 4 Legislative History of the Clean Air Act Amendments of 1977, at 2748–55 (1978). The Report noted that "this is a delicate area of Federal-State relations. Clearly, a careful balance is required as a matter of wise legislative policy, if not as a matter of constitutional requirement." *Id.* at 2755.

The Committee Report therefore concluded that the wisest course was to adopt "an approach that is intended to involve the least possible intrusion into State affairs consistent with the primary task of protecting public health." *Id.* at 4 *Legislative History* 2755. Noting that, "as a practical matter, State and local governments are in a better position than EPA to resolve those pollution problems, which involve millions of motor vehicles, through inspection and maintenance programs and similar measures," the Report stressed the need to induce States voluntarily to adopt and implement their own transportation control programs. *Id.*

Similarly, the Committee Report on the Senate bill (S. 252) stated that the transportation control aspects of the bill had been designed to take into account that "[t]he Federal Government does not have and will not have the resources to do an effective job of running the air pollution control programs of the State." S. Rep. No. 95–127, 95th Cong., 1st Sess. 10 (1977), *reprinted in* 3 *Legislative History* at 1384–85. The Senate committee noted that "transportation planning", in particular, "is a local political process" and that any amendments to the Act should create incentives for local planning and remedy the "lack of local involvement in the process". *Id.* at 3 *Legislative History*, 1412.

Conceding that the plans had "imposed vast economic and social costs for relatively small improvement in the quality of the environment," Clean Air Act Amendments of 1977, H. Rep. 95–294, pp. 228–29, S. Rep. 95–127 (GPO, 1977, p. 14), Congress extended the Act's deadlines and created a new Part D, a planning process to get the States to revise the SIPs for areas that were exceeding the standards.

The new Section 107(d) required EPA, by roughly March 1978, to identify those areas that in August 1977 were still experiencing NAAQS violations. The States were then required by January 1, 1979, to adopt and submit such revisions to the SIPs for these "nonattainment" areas that would meet the requirements of Part D and the new section 110(a)(2)(I). Section 129(c).

Under Part D, each revision was to provide for attainment of the relevant primary NAAQS as expeditiously as practicable, but in general no later than December 31, 1982. Section 172(a)(1), 42 U.S.C. 7502(a)(1). A revision could provide for attainment of the primary standards for ozone and CO as late as December 31, 1987, if the State demonstrated that attainment by the 1982 deadline was not possible, despite the implementation of all reasonably available control measures (RACM). Section 172(a)(2).

In any event, each revision due in 1979 was to provide for the implementation of RACM and for "reasonable further progress" (RFP)—defined as annual incremental reductions in emissions sufficient in EPA's judgment to provide for

attainment by the applicable deadline, including such reduction as may be obtained through the adoption of "reasonably available control technology" (RACT). Sections 172(6)(3), 171(1).

Each revision also was to have, among other things, a permit program for the preconstruction review of major new sources of the relevant pollutants. Section 172(b)(6). As outlined by section 173 of the Act, the permit program would allow construction even before attainment occurs, upon a determination that (1) the source would have state-of-the-art controls; (2) its emissions would be offset by greater than one-for-one reductions elsewhere, or would be accounted for in an approved demonstration of attainment by the applicable date for the area in which the source was locating; (3) the applicant's other sources in the state were in compliance with the SIP; and (4) the state was carrying out the SIP.

With respect to the areas with 1987 deadlines (*i.e.*, "extension" areas), each revision due in 1979 had to identify any measures beyond RACM that would be necessary to assure timely attainment, and it had to continue commitments to adopt a motor vehicle inspection and maintenance program. In addition, each state with an "extension" area was to submit a supplemental revision before July 1, 1982, containing those additional measures necessary to assure attainment in those areas by the end of 1987. Section 129(c).

As part of the 1977 Amendments, section 110(a)(2)(I) required a construction ban that would operate against major new sources and major modifications of existing sources of the relevant pollutants in each nonattainment area after June 30, 1979, "* * * unless, as of the time of application of a permit for such construction * * *, such pain meets the requirements of Part D * * *."

As further incentive for timely submission of Part D SIP revisions, Congress added sections 176(a) and 316(b). Section 176(a) bars the Department of Transportation from funding certain highway projects, and EPA from making air program grants in an ozone or CO nonattainment area, upon a determination by EPA that the State has failed to make "reasonable" efforts to submit SIP revisions for the area that meet Part D requirements. Section 316(b) authorizes EPA to withhold certain grants for sewage treatment construction where an area has failed, among other things, to submit an adequate Part D SIP for the area.[5]

D. History of Regulatory Development Under Part D

1. Implementation of Part D Nationally: 1978–1985

The EPA began its administration of Part D with the promulgation in 1978 of attainment status designations under section 107(d). *See, e.g.*, 43 FR 8962 (March 3, 1978); 43 FR 40502 (September 12, 1978). Then, on April 4, 1979, EPA published a notice describing in detail the prerequisites to EPA approval of the SIP revisions that Part D required the states to submit in 1979 for areas that were designated nonattainment (44 FR 20372).

On July 2, 1979, EPA issued an interpretive rule establishing that the construction ban in section 110(a)(2)(I) would begin to operate immediately in any designated nonattainment area that was not yet covered by an approved Part D SIP (44 FR 38471 [now codified at 40 CFR 52.24(a) (1987)]. At the time, EPA had yet to approve a Part D SIP for any ozone or CO nonattainment area, so the ban came into effect in all of them. Gradually, the states submitted for most of these areas the first round of Part D SIP revisions that were due at the beginning of 1979, and EPA approved or conditionally approved these revisions. Thus, by the end of 1982, most ozone and CO nonattainment areas were free of the ban.

With respect to areas, like the South Coast, that had received an extension of the attainment date for CO or ozone to the end of 1987, EPA issued a new policy describing the criteria it would use to judge the supplemental SIP revisions that were due for such extension areas in mid-1982. 46 FR 7182 (January 22, 1981). The Agency received 1982 SIP revisions from all extension areas and approved many of them as adequate to produce attainment by the end of 1987. *See, e.g.*, 48 FR 51472 (November 9, 1983) (New Jersey, ozone); 50 FR 25073 (June 17, 1985) (New York City, ozone and CO). EPA also disapproved the SIPs for some extension areas and imposed the construction ban under section 110(a)(2)(I). *See, e.g.*, 50 FR 8616 (March 4, 1985) (Albuquerque, CO).

2. Implementation of Part D in the South Coast: 1978–1984

In the initial round of section 107 nonattainment designations in 1978, EPA found the South Coast in nonattainment for both CO and ozone. Several years after EPA's July 2, 1979 imposition of the section 110(a)(2)(I) construction moratorium, California submitted and EPA approved the 1979 Part D SIP for the area. As a result of that approval, on November 25, 1983, the Agency lifted the construction ban that it had imposed in July 1979. (48 FR 53114).

As part of the initial round of Part D SIP planning, the State of California requested that EPA approve an extension of the statutory attainment date to December 31, 1987 for CO and ozone for the South Coast. EPA approved the request. The State then submitted 1982 updates for the ozone and CO SIPs for the South Coast. Although these SIP revisions included control measures that would produce expeditious progress toward attainment of the applicable standards, the State conceded that the revisions did not demonstrate that the area would attain the standard by the statutory date of December 31, 1987. As a result EPA proposed to disapprove the plan on February 3, 1983. 48 FR 5074.

In final rulemaking published July 30, 1984 (49 FR 30300), however, EPA approved the emission control measures in the CO and ozone extension SIPs, on the ground that they strengthened the SIP. In addition, in that same rulemaking, EPA held open the question of whether the attainment and reasonable further progress (RFP) demonstrations in the South Coast SIP submittals met the requirements of Part D. In September 1984, a citizen named Mark Abramowitz filed a petition in the United States Court of Appeals for the Ninth Circuit, seeking review of EPA's July 30, 1984 decision. *See Abramowitz v. EPA*, 832 F.2d 1071 (9th Cir. 1987).

3. The Reasonable Extra Efforts Program: 1984–1987

Beginning approximately in 1984, EPA began to explore how it might address the likelihood that many extension areas, as well as some non-extension areas that had already received SIP calls,[6] would not attain the ozone and

[5] Congress also added two other funding sanctions for failure to implement a SIP. First, it extended the discretionary withholding of sewage treatment grants under section 316 to such failures. Second, it provided in section 176(b) for a withholding of air grants for any area in which the State is not implementing an applicable SIP. Beyond those funding sanctions, the requirement in section 173(4) operates, in effect, as a ban on the construction of major new sources in the event that a State is not "carrying out" its SIP. This means that, even when the SIP for a designated nonattainment area has been approved and is adequate, the area may become subject to a construction ban if it fails to carry out the SIP.

[6] Under section 110(a)(2)(H), 42 U.S.C. 7610(a)(2)(H), EPA may call for a SIP revision

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CO standards in the near term with their existing SIPs and pending SIP revisions. In particular, EPA began to consider withholding disapprovals of the pending plan revisions and deferring sanctions where, though the states had failed to demonstrate attainment of the standards by the end of 1987 (or even shortly thereafter), they had submitted commitments to adopt all control measures that became reasonably available. EPA solicited comment on whether such an approach, as applied to the South Coast Air Basin and three other California (extension) areas, would be consistent with the Act. *See* 51 FR 34428 (September 26, 1986) (soliciting comment on the "Reasonable Extra Efforts Program" ("REEP") for four areas in California).

After reviewing the language and legislative history of the relevant provisions of the Act,[7] EPA concluded that the REEP approach, as well as a similar approach called the "Sustained Progress Program" ("SPP"), would be inconsistent with the Act—both for extension areas that had not yet received approval of their Part D SIPs and for areas that, though receiving such approvals, needed to revise their SIPs in response to notices of SIP deficiency under section 110(a)(2)(H). 52 FR 26404, 26.407 (July 14, 1987) (General Preamble). With regard to applying REEP and SPP to areas without approved Part D SIP's, EPA stated:

> On its face Part D * * * contemplates an entirely different planning process [from REEP], under which such an areas [sic] must develop within a set period a full plan to produce attainment by a fixed near-term deadline.
>
> * * * * *
>
> The only argument supporting REEP in the face of this statutory language is the one sketched by EPA in its REEP proposal and by industry in its comments, namely, that some extension areas could produce attainment by the end of 1987 only by the application of measures that would tear the economic and social fabric of the areas and that the 95th Congress could not really have intended the areas to put such draconian measures into enforceable form and actually begin to implement them.
>
> The argument, however, misses the point * * *. In fact, the legislative history shows that the Congress set up the Part D system in order to force communities and industry to do their utmost to bring about attainment as rapidly as possible and expected that a future Congress would change the course it had set, if necessary, to avoid any unacceptable consequences.
>
> In sum, REEP and SPP would frustrate the purposes of Part D by abandoning upfront, complete planning for attainment by a near-term fixed deadline in favor of iterative planning for progress alone.

(52 FR 26404, 26408 col. 3 (July 14, 1987)).

Based on this conclusion, EPA proposed to disapprove several pending ozone and CO SIPs for extension areas that did not contain persuasive demonstrations of attainment within such a short-term period, and to impose the construction moratorium in those areas. *See, e.g.*, 52 FR 26431 (July 14, 1987) (reproposal to disapprove California ozone and CO SIPs for the South Coast and Fresno; reproposal to disapprove California ozone SIPs for Ventura and Sacramento).

On November 3, 1987, the Ninth Circuit issued its opinion in *Abramowitz* v. *EPA*, the challenge to EPA's 1984 decision to approve control measures in the 1982 South Coast SIP and to defer action on the plan as a whole. The court found that EPA had exceeded its authority by approving the South Coast control measures without finding whether California had submitted an adequate demonstration of attainment by December 31, 1987, and the Court ordered EPA to take final action to disapprove the relevant SIP provisions forthwith. 832 F.2d 1071, 1079 (9th Cir. 1987). Pursuant to the court order, EPA took final action to disapprove those SIPs and to lay the groundwork for imposing the construction ban under section 110(a)(2)(I). 53 FR 1760 (January 22, 1988). The ban did not take effect until August 31, 1988, due to the sanctions freeze imposed by the Mitchell-Conte Amendment to the 1987 Continuing Resolution (Pub. L. 100–202).[8]

4. Formulation of Post-1987 Policy

On November 24, 1987, EPA issued a proposed policy on how, after passage of the December 31, 1987 statutory attainment date, states should correct their remaining ozone and CO nonattainment problems. 52 FR 45044. The proposal reflected EPA's view at that time of how to apply Part D to state plans after the statutory dates have passed. The Agency received over 2,000 comments on the proposal, and is still analyzing how those comments should affect EPA's final decisions on post-1987 ozone/CO policy. The Agency has not yet reached any conclusions on issues raised by the commenters. A summary of relevant sections of the proposed policy is provided below.

On its face, Part D (section 172(a)) calls for plans that "provide for attainment" of the standard by the stated date (December 31, 1982, or December 31, 1987). Because plans developed after 1987 cannot provide for attainment by either of these dates, under the strictest reading of Part D, a state (or EPA) could never develop a plan that meets Part D requirements, and hence could not actually satisfy the applicable requirements. But EPA stated its belief that Congress would have intended EPA in such circumstances to select, in place of the elapsed dates, a subsequent date consistent with the general principles of the Act and Part D. *See Chevron, U.S.A.* v. *NRDC*, 467 U.S. 837 (1984).

Although it is not clear what subsequent date Congress would have intended in these circumstances, EPA's post-1987 proposed policy referred to the history of the Act's planning requirements and suggested that Congress would have provided EPA (and these areas) an additional period analogous to the three- and five-year periods set forth in section 110(a)(2)(A) and section 110(e), respectively. 52 FR 45065. The Agency reasoned that, when Congress in 1977 directed EPA to initiate a new round of planning for areas that had failed earlier to produce adequate plans meeting the section 110 requirements, it created new planning periods comparable to the section 110 periods (three-to-five years from EPA's approval of the State plan), rather than shortening those periods and thereby demanding plans for immediate attainment. Section 172(a)(1) required the SIPs for nonextension areas to provide for attainment by the end of 1982, four years from the date these submittals were due (January 1, 1979) (*see* section 129(c)).

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whenever the Administrator finds that the plan is "substantially inadequate" to achieve the NAAQS or in other respects fails to comply with the 1977 Clean Air Act Amendments.

[7] This analysis appears in a memorandum of EPA's General Counsel dated November 25, 1986. The evaluation in this memorandum is reflected in the General Preamble discussed in the text below.

[8] The Mitchell-Conte Amendment to the Budget Reconciliation Act of 1987 (Pub. L. 100–202) (December 22, 1987), provided in relevant part:

> No restriction or prohibition on construction, permitting or funding under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of the Clean Air Act shall be imposed or take effect during the period prior to August 31, 1988 by reason of (1) the failure of any nonattainment area to attain the national primary ambient air quality standard under the Clean Air Act for photochemical oxidants (ozone) or carbon monoxide (or both) by December 31, 1987, (2) the failure of any State to adopt and submit to the Administrator of the Environmental Protection Agency an implementation plan that meets the requirements of part D title I of such Act and provides for attainment of such standards by December 31, 1987, (3) the failure of any State or designated local government to implement the applicable implementation plan, or (4) any combination of the foregoing.

EPA stated in the policy proposal that, to be sure, Congress had provided a much longer attainment period for extension areas—from January 1, 1979 to December 31, 1987, approximately nine years from the date the initial Part D SIPs were due. But the Agency then noted that Congress had set up two planning periods for these areas—one to apply all "reasonably available" measures and a second to supplement those measures. Since one might assume that most reasonably available measures should already have been implemented in areas such as the South Coast by now, EPA stated that post-1987 planning for the area might be viewed as comparable to the second Part D planning period. That period spanned from the July 1982 submittal date (*see* section 129(c)) to the end of 1987, a period roughly consistent with the three- and five-year periods in section 110.

Based on analogy to sections 110 (a) and (e) and the second Part D planning period of three to five years, the November 1987 policy proposed that EPA apply the relevant construction moratorium (or leave it in place) in all areas whose new plans do not contain a persuasive showing of attainment within three to five years after EPA action on the plan. Other sanctions would not follow if the plan indicated reasonable efforts. These reasonable efforts would be reflected in a rate of progress that would bring (at least presumptively) an average annual emission reduction of at least 3% of the base year inventory for the area, not including the reduction from certain baseline control measures.

The post-1987 proposed policy focused on how states should develop SIPs now that the December 31, 1987 statutory attainment date has passed. The proposal addressed FIPs only tangentially, and did not contain a detailed evaluation of the statute's FIP provisions. Nor did it describe how EPA might construct a post-1987 FIP for the South Coast Basin.

E. Recent and Current FIP Litigation

As the December 31, 1987 attainment date approached, citizens groups began to seek court action to compel EPA to promulgate FIPs for areas still lacking approved Part D ozone and CO SIPs. The first such case was a suit by the Arizona Center for Law in the Public Interest (ACLPI) to compel the Agency to impose highway funding sanctions and promulgate CO FIPs for Phoenix and Tucson, two areas whose 1982 Part D CO SIPs had not received EPA approval. In August 1987 the United States District Court for Arizona held that, although EPA was not under a nondiscretionary duty to impose the highway funding sanctions, its 1986 disapproval of the CO SIPs for those areas had triggered a duty for the Agency to create FIPs. *McCarthy* v. *Thomas*, slip op. (D. Ariz. 1987). The court then set a schedule for EPA to produce the FIPs or approve corrective SIPs for the two areas.

EPA proposed to promulgate a CO FIP for the Phoenix area on May 16, 1988. 53 FR 17378. The proposed FIP would have consisted of two measures that, together with the previously submitted SIP, would produce attainment of the CO standard within three years of FIP promulgation. Thus, the proposal would have applied EPA's views on post-1987 SIP attainment to the FIP for Phoenix. EPA stated that, while the two measures in the proposed FIP could not be said to be clearly practicable to implement, their implementation *might* be practicable and hence the Agency could not find grounds to support a two-year extension of the attainment date under section 110(e).

Subsequent to the FIP proposal, Arizona supplemented its SIP with new state-adopted measures sufficient in EPA's view to remove the need for a FIP for the Phoenix area. Because the SIP as supplemented would produce attainment within three years of SIP approval, EPA approved it. 53 FR 30220 (August 10, 1988). The notice stated, however:

> Certain important qualifications apply to this analysis. First, EPA is here dealing with a situation in which attainment within 3 years is a practicable possibility given the size of the nonattainment problem and the measures that the state has submitted. EPA currently has rulemaking and policy proposals outstanding which raise the question of whether EPA must disapprove a SIP and thereby trigger a construction ban, even where a state has failed to submit measures that would provide for attainment with 3 to 5 years *and* where attainment by means of any measures would be impossible as a practical matter. See 52 FR 26404 (July 14, 1987) and 52 FR 45044 (November 24, 1987). Thus EPA has yet to decide in final form what the role of impossibility is under the Act for the purpose of approval or disapproval of SIPs.
>
> Second, EPA is not deciding in this notice of final action what its obligations under section 110(c) to promulgate a federal implemention plan are. Again, the role of the doctrine of impossibility is uncertain. Further, it is uncertain in any event that EPA must promulgate a FIP that provides for attainment by a near term fixed date. EPA currently is exploring these issues in connection with the ozone and CO SIPs for certain areas in California including the South Coast Air Quality Management District. EPA does not intend by means of the discussion and analysis in this notice to express a final view on these issues. *Id.* at 30,227, n.l. Thus, the Arizona rulemaking did not purport to address what section 110(c) requires in relation to an area facing such severe nonattainment that attainment within three to five years would destroy its socioeconomic fabric.

In early 1988, the Coalition for Clean Air and Sierra Club filed a complaint in the U.S. District Court in California to compel EPA to promulgate a FIP for ozone and CO in the South Coast Air Basin. Following some initial procedural filings, the court transferred the case from the Northern District (San Francisco) to the Central District (Los Angeles). Just before that transfer took effect, EPA had filed a response to the plaintiffs' motion on the issue of whether EPA has a duty to promulgate a FIP. EPA's response acknowledged such a duty, which was affirmed by the court in an order dated September 19, 1988. Today's Advance Notice of Proposed Rulemaking reflects EPA's initial efforts to describe and solicit comment on how the Agency can and should fulfill its obligation.

The Agency is involved in similar litigation relating to ozone in other cities. A citizens group, Citizens to Preserve the Ojai, filed suit in the U.S. District Court for the Central District of California to compel EPA to disapprove the 1982 Ventura County ozone SIP and write an ozone FIP for that area. EPA published its disapproval of that SIP on October 5, 1988. 53 FR 39087. The Sierra Club and the Environmental Council of Sacramento have filed suit in the U.S. District Court for the Eastern District of California to compel EPA to disapprove the 1982 Sacramento ozone SIP and promulgate a FIP. Finally, the State of Wisconsin has filed suit in the U.S. District Court for the Eastern District of Wisconsin to compel EPA to disapprove the 1982 Illinois and Indiana ozone SIPs for the Chicago area and to create a FIP. EPA published its disapproval of those SIPs on October 17, 1988 (53 FR 40415) and November 18, 1988 (53 FR 46608). None of those three courts has ruled on the FIP issues.

III. The South Coast Basin: Current Problems and Planning

The South Coast Air Basin (Basin) consists of Orange County, and portions of Los Angeles, San Bernardino, and Riverside Counties. The Basin is bounded on the north by the San Gabriel Mountains, on the northeast by the San Bernardino Mountains, and on the east by the San Jacinto Mountains Lying off the semi-permanent high pressure zone of the eastern Pacif

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Ocean, the region's climate is mild, tempered by cool sea breezes.

A. Scope of Problem

Attainment of the NAAQS for ozone and CO is uniquely difficult for the Basin. Despite unprecedented air pollution control accomplishments by one of the largest and most ambitious local air pollution control programs in the country, the Basin retains its position as the nation's worst ozone nonattainment area and is at or near the top rank of the worst CO nonattainment areas.

1. Pollutants

The two pollutants of concern in the context of this Notice are ozone and CO. Problems also arise with respect to oxides of nitrogen (NO_x) and other pollutants.

a. *Ozone.* Ozone is a secondary pollutant, formed primarily as a result of the photochemical reactions between hydrocarbons (HC) and nitrogen dioxide (NO_2) in sunlight. Ozone severely irritates the mucous membranes of one's nose and throat, impairs normal functioning of the lungs, and reduces one's ability to perform physical exercise. Individuals with health respiratory systems, observed while exercising under closely monitored acute (1–2 hours) exposure conditions, suffered health effects and reduced physical capacities in response to even relatively low concentrations of ozone. When ozone levels go higher, chest pains, coughing, wheezing, pulmonary and nasal congestion, labored breathing, sore throat, nausea, and other dysfunctions begin to occur.

Emissions that react to form ozone come from hundreds of sources, including major stationary sources such as refineries, power generating stations, auto assembly plants; and small stationary sources like dry cleaners, corner gas stations, bakeries, and auto body paint shops. Important sources of ozone precursor emissions include motor vehicles, the burning of fossil fuels generally, and consumer and industrial products such as paints and cleaning solvents.

Air quality monitoring data show that of all areas in the country, the Basin has the highest peak ozone concentrations, and experiences the greatest number of days with ozone above the ozone NAAQS. To compare and characterize peak ozone levels, EPA uses an "air quality design value," which is the fourth highest monitored value recorded at a single air quality monitoring station in the area over the past three years. The 1985–1987 design value for the basin is 0.35 parts per million (ppm). This value is nearly three times the NAAQS for ozone (0.12 ppm daily maximum one-hour average); the next highest design value for the same period in another area is Houston's 0.20 ppm, or only 60 percent of the Basin's design value. The estimated annual exceedance of the ozone standard in the Basin for the same period was 143 days per year. No other area in the nation exceeded the ozone standard for more than an average of 35 days per year during that period.

b. *Carbon Monoxide.* CO is a colorless, odorless, and poisonous gas produced by the incomplete burning of carbons in fuels. As much as 95 percent of the CO in the Basin comes from mobile sources, principally motor vehicles.

CO binds chemically to hemoglobin, the substance in the blood that carries oxygen to the cells, and thus reduces the amount of oxygen available to the body tissues. CO weakens heart contractions, reducing the amount of blood pumped, and thus the amount of oxygen available to the muscles and organs. Such oxygen depletion impairs the functioning even of healthy individuals, and can be life threatening to those with heart disease. Exposure to relatively low concentrations of CO can disrupt mental functions, reduce alertness, and impair vision.

The Basin consistently violates the health-based federal air quality standards for CO. As a benchmark for comparison, EPA uses the second highest monitored CO value occurring over an eight-hour period during a year. The Basin's second high peak hour concentrations are approximately twice that of the 9 ppm/8-hour CO NAAQS. During 1986, the Basin exceeded this standard on 49 days.

c. *Other Pollutants.* The Basin is the only area of the country that violates the NO_2 NAAQS. Due in large part to the formation of fine particulate from secondary aerosols, the Basin also has recorded the highest annual average fine particulate matter (PM–10) levels of any major urban area. Reductions in the principal ozone precursors, volatile organic compounds (VOCs) and oxides of nitrogen (NO_x), are essential to the attainment of the NAAQS for NO_2 and PM–10. Nitrogen oxides can irritate the lungs, cause bronchitis and pneumonia, lower resistance to respiratory infections such as influenza, and cause pulmonary edema. Particulate matter can irritate or damage the respiratory system, cause acute respiratory illnesses, and increase the number and severity of chronic respiratory diseases.

2. Severity of the South Coast Attainment Shortfall

The emissions reductions required to bring the Basin into attainment of the ozone NAAQS exceed those needed for other nonattainment areas. The South Coast Air Quality Management District (SCAQMD) and the Southern California Association of Governments (SCAG) are now capping a four-year effort to develop a new South Coast Air Quality Management Plan (AQMP). This plan strives for attainment of the ozone NAAQS in approximately 20 years (by 2007) and attainment of the CO NAAQS in approximately 10 years by (1997). The proposed AQMP estimates that attainment of the ozone NAAQS will require an 80 to 90 percent reduction in VOC emissions along with reductions in NOx emissions.

The SCAQMD already strongly controls most of the industrial and commercial activities which have been identified for regulation across the country. The massive emission reductions that are necessary to close the remaining attainment shortfall must, therefore, come mostly from previously unregulated sources. These include small industrial, commercial or domestic source categories and mobile source categoies not yet subject to emissions control requirements. Further reductions will also require the application of unprecedented control limits on already regulated existing sources, and the widespread substitution of clean fuels in all source categories.

Three additional factors make the task of achieving the NAAQS in the Basin even more formidable. First, the South Coast is the country's largest and most diverse industrial area, dominated by small companies—pollution sources that are particularly difficult to inventory and regulate. Over the next 20 years, the South Coast's enormous projected growth will make it one of the most populated areas in the United States. Currently, one in 18 persons in the U.S. live in the six-county region covered by SCAG. This region includes Ventura and Imperial Counties, as well as the four South Coast Air District counties. By the year 2010, one in every 15 persons in the U.S. will live in this area, as the population increases to 18,300,000. By the year 2010, population is projected to increase by 37 percent, employment by 47 percent, vehicle miles traveled by 68 percent and vehicle trips by 72 percent.

Second, because of the widely scattered physical locations of jobs, services, entertainment, and housing, and the lack of developed or accepted

mass transit alternatives, residents of the South Coast are intensely dependent upon private motor vehicles trips for commuting to work and for access to essential services and entertainment. SCAG's recent Regional Mobility Plan (February 1988) predicts that today's level of traffic congestion will progress to gridlock by 2010 and that "there may not be enough money, land, or time to simply build our way out of the coming congestion" (p. 1). SCAG calculates that, absent significant changes in driving patterns, the average systemwide speed will drop from 35 miles per hour (MPH) to 19 MPH during that period, with average morning rush hour speeds dropping from 31 MPH to 11 MPH. This congestion will dramatically increase per-vehicle emissions of CO and VOC, since tailpipe emissions of these pollutants are higher at low speeds and, like running loss VOC emissions,[9] increase with time on the road.

Third, the peculiar meteorology and topography of the South Coast make the area especially susceptible to the formation and persistence of high concentrations of ozone in the spring, summer, and fall months. The coincidence of protracted meteorological inversions, light onshore breezes, and high mountains to the east combine to trap air pollutants within the Basin and inhibit normal dispersion for periods of up to several days. Sunlight, a necessary factor in the photochemical reactions that produce ozone, is plentiful year-round; the Basin experiences more days of sunlight than any other major urban area except Phoenix. The Basin has an additional geographical handicap to attainment: high levels of ozone and ozone precursors are transported into the Basin from the urban areas to the north and, potentially, from the outer continental shelf petroleum development activities to the north and west.

3. Proposed South Coast Air Quality Management Plan

The SCAQMD and SCAG publicly issued their proposed AQMP in September 1988. A series of public meetings was convened in July, and will continue until the SCAQMD Board and the SCAG Executive Committee adopt the Plan. Once the plan is adopted locally, it must be approved by the California Air Resources Board (CARB) before submission to the EPA and a SIP revision. The plan addresses all four nonattainment pollutants: ozone, CO, NO_2, and PM–10.

Although the modeling analyses submitted with the draft plan are still being revised, results from preliminary analyses indicate that VOC emission reductions of 80 to 90 percent would be required to achieve the ozone NAAQS.

The SCAQMD estimates that mobile sources account for approximately 50% of the Basin's VOC emissions; industrial and manufacturing account for another 25%; and commercial, residential, and agricultural activities account for the remaining 25%.

a. *Outline of South Coast AQMP.* The draft plan outlines the proposed development and implementation of more stringent controls on currently regulated sources; new stationary-source, area-source, transportation, land use, and energy measures; and additional mobile-source controls. It identifies schedules for adoption and implementation of the controls by numerous local, state, and federal agencies, and it presumes new enabling legislation.

Appendices to the plan discuss near-term control measures, including 69 specific controls on stationary and area source controls; 19 controls on motor vehicles; 22 controls on transportation, land use and energy; and 13 controls on other mobile sources (such as aircraft, pleasure boats, off-road motorcycles).

The draft plan calls for a three-tiered approach to emission reductions from stationary, area, and mobile sources. This approach is based upon estimates of the availability of technology and necessary lead time for the adoption and implementation of new control measures.

Tier I controls cover emissions for which the control technology is assumed available today and for which the necessary control measures can be adopted within the next five years. The plan specifies an adoption schedule and an implementing agency for each control measure. Tier I measures include: a revised, very stringent new source review rule applicable to almost every new or modified source; major NO_x retrofit controls on refineries, utilities, and industrial boilers and turbines; substitute solvents and coatings and further emissions controls for most industrial VOC sources; installation of Best Available Retrofit Control Technology; transit improvements; freeway capacity enhancements; stricter NO_x standards for light-duty vehicles, heavy-duty diesel trucks, and buses; bus electrification or clean fuel retrofit; truck delivery restrictions; out-of-Basin transport of biodegradable solid waste; emission standards on new pleasure boat engines; and control of emission from such sources as aerosol spray deodorants, marine vessels, livestock waste, and residential gas water heaters.

Tier II controls require significant advancement of technology and vigorous regulatory intervention. Research, development, and implementation are scheduled by 2003. The measures include: converting 40 percent of on-road passenger vehicles and 50 percent of off-road vehicles to clean fuels (*e.g.*, neat methanol, fuel cells, or electric power); converting 70 percent of freight vehicles to methanol; converting all diesel transit buses to methanol, liquid petroleum gas (LPG), compressed natural gas (CNG) or electricity; maintaining vehicle miles traveled and the number of vehicle trips at current levels through growth management and increased ridesharing; restrictions on driving, licensing, and vehicle registration, if necessary; and reducing 50 percent of the remaining VOC emissions from mobile sources, solvents and coatings, and consumer products.

Tier III programs are designed to bring about major technological breakthroughs to further reduce emissions of VOCs and NO_x. Research, development, and commercialization are scheduled to be completed by 2007. The proposed strategies anticipate almost complete elimination of VOC from solvents and coatings, and a total on-road automobile fleet conversion to electricity. As a contingency, the plan discusses the removal of high-polluting industry from the Basin. Tier III also relies on the replacement of industrial and commercial combustion units with electric power generated outside the Basin.

The SCAQMD Board is funding a multi-million dollar research and development program to advance the creation and application of technologies needed for the Tier II and Tier III control programs.

The plan also identifies the need for state and/or federal agencies to lower emissions standards on new jet aircraft engines; to control fugitive emissions from marine vessel tanks and from outer continental shelf exploration, development, and production; and to limit emissions from pesticide application.

[9] So-called "running losses" are emissions of VOC released from points other than the tailpipe or crankcase, while an engine is running. They are distinguished from evaporative emissions, which are those VOC losses that occur when the engine is turned off. Running losses are nearly all due to evaporation (and in extreme cases, boiling) of fuel from the fuel tank. This is especially apt to occur with high volatility fuels, at high ambient temperatures, and under driving conditions conducive to high fuel tank temperatures.

b. *Recent Legislation in California.* Recent major legislative enactments in California have reinforced the SCAQMD's and ARB's powers to achieve significant progress in the air quality of the Basin.

In the fall of 1987, through the passage of Senate Bill (SB) 151 (Presley) the California State Legislature gave strengthened authority to the SCAQMD for control of mobile source emissions. SB 151 imposes a state-mandated local program requiring that SCAQMD's rules and regulations provide for indirect source controls and transportation control measures. The Bill also permits the SCAQMD Board to adopt regulations specifying the composition of motor vehicle fuel for sale in the Basin. In addition, it gives the SCAQMD the authority to prohibit or restrict the operation of heavy-duty vehicles on freeways and high volume highways during peak commuter travel periods.[10]

On September 30, 1988, the Governor of California signed Assembly Bill (AB) 2595 (Sher), "The California Clean Air Act of 1988." AB 2595 further strengthens the authority of local air pollution control districts, such as the SCAQMD, to enact transportation control measures (TCMs) and regulate indirect sources. It requires these districts, with the cooperation of the Councils of Governments, to prepare comprehensive plan revisions to attain the federal and state ambient air quality standards. The Act establishes different requirements for three classes of areas, depending upon the scope of the nonattainment problem, but all areas are required to achieve at least a five percent reduction in emissions per year. The most severe nonattainment areas (those unable to attain by 1997) must include in their plan: (1) Permitting programs to achieve no net increase in permitted emissions; (2) TCMs to achieve an average commute ridership of 1.5 after 1999, and no net increase in vehicle emissions after 1997; (3) measures to achieve the use of a significant number of low-emission motor vehicles by fleet operators; (4) measures to reduce average per capita ambient exposure to levels above the standards by 25% by 1994; and by 50% in the year 2000. Finally, AB 2595 requires the ARB to adopt, by the end of 1992, consumer product VOC emissions regulations reflecting the maximum technologically feasible control. It also requires the ARB to take, by the beginning of 1992, all "necessary, cost-effective and technologically feasible" actions to achieve a 55 percent reduction in VOCs, a 15 percent reduction in NO_x and the maximum feasible reductions in CO from vehicular and mobile sources by 2000.

c. *Current Schedule for Adoption of South Coast AQMP.* The current schedule for adoption of the proposed South Coast AQMP calls for local adoption hearings by SCAG and the SCAQMD in December 1988, and for adoption by ARB in the spring of 1989. If ARB adopts the plan, ARB would submit it to EPA for approval as a SIP revision soon afterward. The AQMP includes detailed schedules for later adoption by the various responsible jurisdictions of individual measures in the plan.

If this draft plan is submitted to EPA as a SIP revision, it would precede by at least two years the national submittal deadline for post-1987 SIPs suggested by EPA's post-1987 ozone/CO policy proposal. That proposal would require a plan to contain state and local control measures that provide an annual reduction in emissions of at least three percent per year beyond a baseline of measures previously required or promulgated by EPA. The South Coast SIP would appear to be more stringent than this minimum "reasonable efforts" progress requirement in the proposed policy, provided the SCAQMD and the relevant governments supplement the plan framework with regulations sufficient to produce the projected emissions reductions.

EPA's preliminary review of the South Coast plan suggests that such a plan as the South Coast has developed, if adopted and implemented on schedule, would provide for: (1) The near-term application of currently available technologies; (2) an ambitious commitment to the development and widespread application of future technologies; (3) an aggressive program for the implementation of transportation control measures; and (4) useful proposals for new source review and indirect source review.

On the other hand, optimism over this plan must be tempered by realism. The plan provides for marginal attainment throughout the Basin, even though it evinces a readiness to adopt harsh measures. At this point, moreover, the South Coast plan must still be regarded as a blueprint for attainment. Much remains to be done before it will embody enforceable measures, and before its hoped-for emissions reductions can be counted upon. Moreover, because the plan is so ambitious—it mandates sweeping changes in established industries—its impact on social and economic life in the Basin will be profound, and may stand in the way of its thorough implementation.

IV. What Attainment Deadline Governs Post-1987 FIPs?

EPA's current dilemma arises from the Clean Air Act's failure to be explicit about the deadline by which a federal implementation plan for the South Coast—or for any area still subject to Part D of the Act—must show attainment of the ozone standard mow that the Decemberr 31, 1987 attainment date in Part D has passed.[11] To address the problem, we must first review the applicable principles of statutory construction.

A. Principles of Statutory Interpretation

The Supreme Court recently outlined these principles in *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). The first question to ask is whether Congress:

> has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.

Id. at 843. If there is no statutory language that directly speaks to the issue, then we must look beyond the immediate language to the statute as a whole, and to the legislative history. Should we find expressed a specific Congressional intention, our search is at an end. If, however, Congress has not directly addressed the precise question at issue—"if the statute is silent or ambiguous with respect to the specific issue"—then we must proceed to construe the statute in accordance with

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[10] The SCAQMD has taken the following steps to exercise this newly acquired authority:

a. In January 1988, the SCAQMD approved a $30.6 million clean fuels demonstration program that will test cleaner burning fuels for both stationary and mobile sources. The SCAQMD has already approved $6 million in 1988 for such projects as a fuel cells demonstration project, electrification of curing and drying plants, methanol projects for commercial boilers, new treatments for municipal solid wastes, alternative fuels for mobile sources (electrification, compressed LNG/LPG, methanol), and conversions and retrofits for buses to methanol. The program is a demonstration of the SCAQMD's commitment to a shift from petroleum-based fuels to methanol as a long-term strategy.

b. Regulation XV, a trip-reduction/indirect-source rule, was adopted by the SCAQMD Board in December 1987. This regulation requires all employers in the South Coast Basin who employ over 100 persons at any worksite to promote employee participation in ridesharing programs. The intent of Regulation XV is to reduce emissions from vehicles used for commuting between home and the worksite.

[11] The impetus for this discussion is the FIP obligation EPA faces in the South Coast, an area that does not yet have an EPA-approved Part D SIP. Most of the principles EPA describes however, logically apply also to areas with approved Part D SIPS that failed to produce attainment by the end of 1987.

its language, history, and purposes. Id. at 843–845, to 865.

When the plain meaning of the language of a statute is sufficient to determine the purpose of legislation, courts generally follow it. *See United States* v. *American Trucking Association*, 310 U.S. 534, 543 (1940). But courts also have been willing to look beyond the plain language of the statute to divine Congressional intent.

> When that meaning has led to absurd or futile results, * * * this Court has looked beyond the words to the purpose of the Act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole," this Court has followed that purpose rather than the literal words.

Id. at 543 (footnote omitted). *See also TVA* v. *Hill*, 437 U.S. 153, 184 n. 29 (1978). Conversely, when the legislative history, combined with the plain language, supports seemingly harsh or absurd results, courts are unwilling to reconstrue statutes. *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1978) (citing *Crooks* v. *Harrelson*, 282 U.S. 55, 60 (1930)). *See also Commissioner of Internal Revenue* v. *Asphalt Products Co., Inc.*, 107 S. Ct. 2275, 2278 (1987).

Beyond that, several courts have examined EPA's failure to perform a statutory duty, such as issuing regulations or guidelines within a statutory period, in light of the Agency's argument that compliance with the deadline was infeasible or impossible. See, e.g., *NRDC* v. *Train*, 510 F.2d 692, 712–13 (D.C. Cir. 1975); *Sierra Club* v. *Thomas*, 658 F. Supp. 165, 170–173 (N.D. Cal. 1987); *Sierra Club* v. *Ruckelshaus*, 602 F. Supp. 892, 898–99 (N.D. Cal. 1984). When the agency can establish impossibility by demonstrating manpower, methodological or budgetary constraints, courts will not force the Agency "to do an impossibility." *Sierra Club*, 602 F. Supp. at 899 (citing *Maggio* v. *Zeitz*, 333 U.S. 56 (1948)).

Along the same lines, courts also disfavor statutory constructions that infer broad agency powers to effect radical economic and social change. In determining not to interpret section 112 of the Clean Air Act to require EPA to set a zero-emissions standard for hazardous air pollutants, the United States Court of Appeals for the District of Columbia Circuit, *NRDC* v. *EPA*, 824 F.2d 1146, 1154 (D.C. Cir. 1987 *en banc*), stated:

> The EPA has determined that a zero-emissions standard for non-threshold pollutants would result in the elimination of such activities as the "generation of electricity from either coal-burning or nuclear energy; the manufacturing of steel; the mining, smelting or refining of virtually any mineral * * *; the manufacture of synthetic organic chemicals; and the refining, storage, or dispensing of any petroleum product." *It is simply not possible that Congress intended such havoc in the American economy and not a single representative or senator mentioned that fact.*

(citations omitted) (emphasis added). *Cf. Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 645 (1980) ("In the absence of a clear mandate in the Act, it is unreasonable to assume that Congress intended to give the Secretary [this] unprecedented power over American industry.")

Finally, when two statutory provisions conflict, the maximum possible effect should be given the provisions. As the Court of Appeals for the District of Columbia Circuit stated in *Citizens to Save Spencer County* v. *EPA*, 600 F.2d 844, 871 (D.C. Cir. 1979) (footnotes omitted) (emphasis in orginal):

> * * * If the inconsistent provisions point generally in a common direction * * * it is the task of an agency with the requisite authority to pursue a middle course that vitiates neither provision but implements to the fullest extent possible the directives of each, and it is the task of a reviewing court to ensure that the agency has effected an appropriate harmonization of the conflicting provisions while remaining within the bounds of that agency's statutory authority.

Furthermore, it is appropriate for the agency to look to the underlying goals and purposes of the legislature in enacting the statute, "while avoiding unnecessary hardship or surprise to affected parties and remaining within the general statutory bounds prescribed." *Id.* (footnotes omitted).

B. The Starting Point: The Search for a Specific Congressional Intent

As stated earlier, the first step in our analysis is to see whether the statutory language or the legislative history reveals a specific congressional intent as to what attainment date applies to a post-1987 FIP for an area like the South Coast. The leading statutory provision is section 110(c)(1). It defines not only the conditions that trigger EPA's duty to promulgate a FIP, but also the elements a FIP must include. It goes only so far as to indicate, however, that a FIP must satisfy "the requirements of this section," that is, section 110. First, EPA must promulgate a FIP for a state when a state fails to submit a SIP that "meets the requirements of [section 110]." Moreover, the only escape from this obligation is if, prior to promulgation, the "state has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section." Section 110(d) corroborates this general guidance: it states that an "applicable implementation plan" is one "which has been approved under subsection [110](a) or promulgated under subsection (c) and which implements the requirements of this section." Thus, it appears that Congress intended a FIP to be a complete substitute for an approvable SIP, or to form, together with a SIP that is not fully adequate by itself, a plan that is fully approvable under section 110.

Section 110, in turn, impliedly incorporates for nonattainment areas the requirements of Part D. It does so by its reference in section 110(a)(2)(A) to the construction ban in section 110(a)(2)(I) and by that section's reference to Part D. *See also* section 172(b)(1), 42 U.S.C. 7502(b)(1) (express recognition that the plan for a nonattainment area might be promulgated by EPA). Thus it appears that Congress intended an FIP for a nonattainment area to comply with the requirements of Part D.

But when it comes to determining the appropriate date for a SIP or a FIP to show attainment, the last date specified in either section 110 or Part D is December 31, 1987. If the parenthetical reference in section 172(b)(1) to a plan "promulgated by the Administrator" incorporates the dates in section 172(a), and if EPA had been compelled to create a Part D FIP for a nonattainment area in, say, 1983, then EPA would have been required to issue an FIP providing for attainment by the end of 1987. This date is now past, however, and it is impossible for areas without Part D SIP approval to meet it. Moreover, the statute contains no explicit instructions as to what attainment date applies to FIPs adopted after 1987. Thus, the language itself does not reveal a specific congressional intent as to what the attainment date for post-1987 FIPs should be. We must therefore look to the legislative history to discover whether Congress had such an intent.

The history contains very little direct discussion of the attainment date requirements for FIPs. Senator Muskie, one of the sponsors of the 1977 Clean Air Act Amendments, spoke of FIP deadlines, but failed to make clear in his remarks whether FIPs were intended to adhere to the December 1987 final date. Senator Muskie stated:

> [1982 Extension SIPs] must provide for attainment as expeditiously as practicable, but not later than the firm deadline of December 31, 1987. Where States do not submit adequate plans, the Administrator

must promulgate his own plan insuring attainment by *firm deadlines*.

123 Cong. Rec. 26,847 col. 1 (August 9, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 355. (emphasis added). The Senator further remarked that "the Administrator will be required to promulgate plan revisions insuring NAAQS attainment by the *appropriate deadlines* where a State's plan is inadequate." 123 Cong. Rec. 26,847 col. 2 (August 4, 1977) (Statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 356. Senator Muskie's omission of any reference to the date by which an FIP must assure attainment, coupled with his identification of the date by which an SIP must assure attainment, means that it is simply unclear whether he intended the FIP attainment schedule to track, or to vary from, the SIP attainment schedule. Further, there is absolutely no discussion of what constitutes a "firm" or "appropriate" SIP or FIP deadline after 1987. Thus we must look elsewhere in the history to divine whether Congress had a specific intent with respect to post-1987 FIP deadlines.

The history reveals that Congress intended 1987 to be a firm deadline, and that Congress believed it would provide legislative relief if that date proved impossible for some areas to meet.

First, there is evidence that Congress anticipated that it would be impossible for some areas of the country to attain the standards by 1982, and, for some, even by 1987. Senator Domenici stated:

> Now I understand that we may very well find ourselves at a point in time where these particular standards and dates set for them cannot be met.

Transcript, Mark-Up, Clean Air Act Amendments at 13 (May 4, 1977). *See also* Floor Statement of Rep. Maguire (stating that "many of [our major cities]—perhaps 26 of those cities—will not [attain the primary air standards] even by the year 2000"), 123 *Cong. Rec.* 16,208 col, 1 (May 24, 1977), *reprinted in* 4. Leg. Hist. 3066. Furthermore, a number of members noted the need to keep fixed deadlines, even as "somewhat of a legal myth" because they "provide a basis for attaining maximum progress towards clean air." Transcript, Mark-Up, Clean Air Act Amendments, at 13 (May 4, 1977) (statement by Sen. Domenici). Finally, several legislators anticipated the need to provide legislative relief from the 1982, and from even the 1987, deadlines. For example, Sen. Stafford stated that:

> It should be noted that these [1982 and 1987] deadlines will not require adoption of "draconian" control measures. The bill provides that those areas with the most intractable oxidant problems commit themselves in 1979 plan revisions only to reasonable measures to meet the 1987 deadlines. A second round of planning must be completed by 1982, providing plenty of time for legislative relief, should the 1987 date prove unattainable for a handful of areas.

123 Cong. Rec. 18,038 col. 3 (June 8, 1977) (statement of Sen. Stafford), *reprinted in* 3 Leg. Hist. 771.

It is apparent from these passages that Congress understood that some areas would find attainment by the end of 1987 impossible, and that Congress, arguably, did not intend to force the development of plans that would result in attainment in those areas by the end of 1987.[12] Nevertheless, Congress also wanted to force as much air quality improvement as possible. As a result, it adopted a strategy of (1) commanding the creation of legal structures that, through tight deadlines and the threat of enforcement, would pressure polluters and local governments to do their utmost, and (2) expressly recognizing that a subsequent Congress might provide relief. Indeed, all explicit references in the legislative history to the prospect of relief from the 1987 deadlines are to relief provided by *Congress*.

Here, however, 1987 has come and gone, and Congress has provided no such relief. While the history reveals an intent that only Congress provide relief from the 1987 attainment date, it reveals absolutely no specific intent as to what should happen if Congress failed to provide such relief (or new direction) by the time EPA was faced with having to create a post-1987 FIP.

Since neither the language nor the legislative history reveals a specific intent as to post-1987 FIP attainment dates in these circumstances, the statute contains a gap that, under *Chevron*, the Agency may fill by reaching a reasonable accommodation with other aspects of the Act's language, history, purposes, and structure.[13]

[12] A further indication that Congress may have intended the requirement for attainment by 1987 to be more in the nature of an incentive (or threat) to induce the greatest effort possible may be inferred from the fact that the legislative history includes almost no discussion of what types of measures the 1982 extension SIPs were to include to assure attainment by 1987. For example, the Senate Report included a lengthy discussion of the types of measures to be included in the 1979 SIPs, but stated only that the 1982 extension SIPs must "contain [] the enforceable measures needed to achieve the standard by 1987." S. Rep. No. 95–127, 95th Cong., 1st Sess. at 39 (1977), *reprinted in* 3 Leg. Hist. at 1413.

[13] Here, this task is not an easy one, since, as the Court noted in *Chevron*, "the Clean Air Act Amendments of 1977 are a lengthy, detailed, technical, complex and comprehensive response to a major social issue." 467 U.S. at 850. As the Supreme Court has recognized, the statute represents Congress' effort to a reconcile competing interests. *Id.* at 863.

C. EPA's Chevron Analysis: Description of the Act's Basic Themes

Some portions of the Act's language are useful to our analysis under *Chevron* of how best to fill the attainment date gap in the statute. For example, the requirement that plans "provide for attainment" (sections 172 (a) and (c) and 110(a)(2)(A)) makes it clear that a post-1987 FIP must have some fixed attainment date. The Agency concluded as much when it rejected the REEP concept in the July 14, 1987 **Federal Register**.

Other language suggests that the post-1987 FIP attainment date should not be so stringent as to end all significant economic activity in an area. For example, section 110(a)(2) of the Act appears to contemplate that pollution controls would be consistent with significant continuing economic activity. Section 110(a)(2) calls for "emission *limitations*" and "transportation controls" (section 110(a)(2)(B)); "*regulation* of the modification, construction, and operation of any stationary source" (section 110(a)(2)(D)); "requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources" (section 110(a)(2)(F)); and "periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards" (section 110(a)(2)(G)) (emphasis added). Moreover, sections 172(b)(6) and 173 contain requirements for allowing new sources to construct in nonattainment areas. These requirements by their terms contemplate ongoing socio-economic activity consistent with reasonable and acceptable programs to meet the goals of the law.

Finally, the residual requirement that all plans provide for attainment "as expeditiously as practicable" (sections 172(a) and 110(a)(2)(A)), if read in isolation, suggests that if the Act contains no uniform nationwide attainment date EPA might consider choosing a FIP attainment date suitable to the practicalities of attainment in each particular area—even if for some areas that date were to extend far into the future.

The Act's structure and the history of how Congress has addressed similar in the past suggest that fairly short attainment periods would be most consistent with the goals of the statute. First, the structure of Section 110 and Part D is biased toward creation of

plans to attain within relatively short periods of three to ten years. On the previous occasion when Congress was able to address the problem, it did not require immediate attainment, or even shorten subsequent planning periods. Instead, in 1977, when Congress ordered a new round of planning for areas that had failed to meet section 110 deadlines, it extended planning deadlines for periods comparable to previous section 110 periods. Moreover, the structure of the Act's planning provisions and the history reveal that Congress was interested more in ensuring the creation of *plans* for attainment by dates in the future than with forcing immediate shutdowns and curtailments of driving.

The legislative history "plainly identifies the policy concerns that motivated" enactment of the statute. 467 U.S. at 863. Congress, in its consideration of the Clean Air Act Amendments of 1977, struggled to reconcile the goal of clean air with that of continued economic development.[14] Congress sought to improve air quality, and to impose tough measures to do so, but also tried to minimize economic disruption, and foresaw that the target dates it set might prove too difficult for all to meet.

Several Congressmen indicated that they envisioned that tough measures would be required to implement the 1977 Amendments. Rep. Rogers emphasized that the legislation "retains and even strengthens the technology forcing and technology encouraging goals of the 1970 Act." 123 Cong. Rec. 27,070 col. 1 (August 4, 1977) (statement of Rep. Rogers), *reprinted in* 3 Leg. Hist. at 319. Senator Muskie stated that the requirement to impose reasonably available control technology may result in "some dislocation and disruption * * * during the beginning stages of [the] control program * * *." 123 *Cong. Rec.* 18,019 col. 3 (June 8, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 720.

But during a colloquy in the Senate on a provision to exempt from highway and air planning funding sanctions those areas making reasonable efforts, three Senators suggested that some states might avoid such dislocation and disruption by planning for attainment in the long term. Senator Stevens questioned Senator Gravel about an area such as Fairbanks, Alaska, which has a naturally-caused problem with CO that is aggravated by ice and fog and CO emissions from cars. Senator Gravel reassured Senator Stevens that even if the problem could not be solved "by the year 2000, we still will not get hurt."

Mr. Stevens: This means that the State of Alaska will not lose those funds if we cannot solve the ice-fog problem?

Mr. Gravel: If that happens, I will come to the floor of the Senate and slash my wrists * * *.

Senator Muskie stated that it was "reasonable" to retain "some sanctions for those jurisdictions which make no effort * * * to put together implementation plans * * *." 123 Cong. Rec. 18476 col. 3 (June 10, 1977) (statements of Sens. Gravel, Stevens, Muskie), *reprinted in* 3 Leg. Hist. 1063. (Such sanctions subsequently were enacted in section 176(a)). Thus, rather than focusing on the point that Alaska's failure to solve the ice-fog problem by the Part D deadlines would result in a FIP to do just that, the Senators indicated that, to the contrary, the state could do only what was reasonable, implicitly with *no* FIP consequences.

The history reveals other indications that Congress did not intend EPA to impose harsh measures on localities. As Senator Randolph stated:

> While the general objective of the Clean Air Act is the continued reduction of pollution, this bill recognizes that industrial and commercial activity cannot and should not be stopped to achieve this purpose.

123 Cong. Rec. 26852 (August 4, 1988) (statement of Sen. Randolph), *reprinted in* 3 Leg. Hist. 369. Indeed, in 1974 and in the 1977 Clean Air Act amendments, Congress removed EPA's authority to impose parking surcharges and indirect source review, since they viewed these powers as too harsh and intrusive. The Senate Report explained some of these changes in these terms:

> To avoid placing unreasonable burdens on transportation control mechanisms, this section amends existing law in several basic respects:
>
> (1) it prevents EPA from requiring any measures that would have serious and adverse economic or social impact * * *

S. Rep. 95–127, 95th Cong., 1st Sess. 38 (1977), *reprinted in* 3 Leg. Hist. 1412.

Similarly, the 1977 House Report stated:

> [T]he Committee is especially cognizant of the potentially sweeping consequences and potentially socially and economically disruptive impacts which may result from efforts to reduce automobile pollution through mandated reductions on new parking facilities. This risk of such adverse effects can be minimized only if the program is designed, implemented and enforced by State and local governments. H.R. Rep. 95–294, 95th Cong., 1st Sess. 222 (1977), *reprinted in* 4 Leg. Hist. 2689.

Congress also emphasized that one of the purposes of the 1977 Clean Air Act amendments was to strengthen the State and local role in improving air quality, and correspondingly, to reduce that of the Federal government. In particular, Congress emphasized that transportation control measures ("TCMs")—which Congress recognized would be essential for nonattainment areas—must be directed by state and local government. Speaking about the Conference bill in general, Sen. Muskie stated that, in comparison to EPA's power under the 1970 Clean Air Act Amendments:

> The Administrator [of EPA] will be more reliant on local and State capabilities to create the institutional and infrastructural changes necessary to achieve clean air * * *. We have learned that there is little political support for inartfully conceived national measures which require people to change their way of living. We have learned that where change can be made it must be made with the full understanding and support of the people who are affected by the change.

123 Cong. Rec. 26841 col. 3 to 26842 col. 1 (August 4, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 341. Senator Muskie, speaking more specifically of TCMs, also observed that:

> * * * State and local governments are in a better position than EPA to attack those problems, which involve millions of motor vehicles, through inspection and maintenance programs and similar measures.
>
> In addition, the scheme contemplated by the act is a reasonable approach to this problem, one that is designed to involve the least possible intrusion into State affairs consistent with the task that is necessary.

123 Cong. Rec. 18020 col. 1 (June 8, 1977) (statement of Sen. Muskie) *reprinted in* 3 Leg. Hist. 721. Thus, two clear strands of legislative purpose are Congress' desire to avoid imposition of draconian measures and to intrude as little as possible upon State and local initiatives.

From this review of the Act's language, structure, history, and purposes, we can identify several themes, not all of which are consistent with one another. We see a desire for fixed deadlines limited to a decade or less, yet not so short as to cause the cessation of economic activity and

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[14] Representative Waxman stated:

> We have struck a proper balance between environmental controls and economic growth in the dirty air areas of America. . . . There is no other single issue which more clearly poses the conflict between pollution control and new jobs. We have determined that neither need be compromised.

123 *Cong. Rec.* 27076, col. 1 (August 4, 1977) (Statement of Rep. Waxman), *reprinted in* 3 Leg. Hist. 336. Senator Randolph agreed that the revised Act "recognizes that industrial and commercial activity cannot be and should not be stopped to [reduce pollution]." 123 Cong. Rec. 26852 col. 2 (August 4, 1977) (statement of Sen. Randolph), *reprinted in* 3 Leg. Hist. 369 (this reprinting erroneously attributes this statement to Sen. Stevens).

growth in any area. We see a desire to attain the standards through practicable means,, but an acceptance (perhaps even desire) for a certain amount of technology forcing. Finally, the Alaska colloquy reveals little recognition that in severe nonattainment areas EPA would actually impose draconian measures.

A review of these themes yields three possible answers to the FIP deadline question, each of which offers a different means of reconciling "manifestly competing interests." 467 U.S. at 865–66. These alternative solutions are: (1) Immediate attainment; (2) attainment within five years; (3) attainment in a longer term, but as expeditiously as practicable without causing severe economic and social disruption. In the next section, we will discuss each of these alternatives in turn, summarizing the legal and equitable arguments for and against each. In doing so, we will also describe the type of FIP each of the interpretations would impose.

Selecting an interpretation that would prescribe a post-1987 attainment deadline for the South Coast has profound implications. The South Coast authorities estimate that an 80–90 per cent reduction in VOC emissions is necessary to attain the ozone standard. Consequently, any FIP for the area would need to eliminate or severely limit practically every human activity that produces VOC emissions. Since a significant portion of the Basin's ozone problem, and almost all of its CO problem, is due to mobile sources, a plan aimed at attaining these standards in five years would have to ban the sale or use of fossil fuels for cars and trucks, airplanes, boats, and trains. To achieve the necessary emission reductions, and still allow the minimum essential vehicles—*e.g.*, police cars, emergency response vehicles, and delivery trucks of food and medical supplies—a short-term FIP would have to prohibit entirely the use of all non-essential pollutant-emitting vehicles, since even vehicles burning relatively clean fuels, such as methanol, could still cause continued nonattainment.

Thus, under a short-term attainment FIP, people would be forbidden to operate any private vehicle that was not "emission-free"; only vehicles such as bicycles or electric cars would be permitted. The development, on a mass scale, of clean vehicles for private use, or of mass transit alternatives that do not burn gasoline or diesel fuel, could not take place within five years. Nor would there be any realistic opportunity to establish clean transportation substitutes for aircraft, locomotives, marine vessels, and heavy-duty diesel trucks. If a short-term FIP were enforced, it would be impossible for most people to commute to work, and for most forms of commerce to continue.

As noted above, industrial and manufacturing facilities contribute about one quarter of the Basin's VOC emissions; consumer products and related services account for another quarter. A short-term FIP would necessarily prohibit almost all VOC emissions from manufacturing activities, and ban all products with VOC emissions—for example paints, waxes, pesticides, auto antifreeze, cleaning products, lubricants, and suntan lotions. The ban would extend to the manufacture, sale, and use of any reactive hydrocarbon-based solvent, coating or solution.

A short-term FIP would also prohibit refining, storage, transportation and combustion of fossil fuel. Southern California is the largest petroleum refining and distribution area on the West Coast. Federally required shutdowns of the petroleum refining and trans-shipping operations in the South Coast would have severe effects not only in the Basin, but in other areas as well.

Other major industries in the Basin—for example, auto asembly plants, furniture manufacturing plants, printing plants, aerospace plants, semi-conductor plants and electronics plants—would be forced to discontinue or drastically curtail operations.

A more detailed description of the elements and probable effects of a five-year FIP is contained in Appendix A. But it is evident that a short-term FIP would have catastrophic consequences. Only a FIP that forced emission reductions gradually over a fairly long period could temper those consequences by allowing economic and societal adjustments.

D. Analysis of Three Ways to Fill the Statute's Gap

1. Interpretation 1: Immediate Attainment

This interpretation is premised on the fact that the last deadline specified in the statute is now past, and nothing in the statute provides explicit authority for EPA to extend it. Since it is impossible for EPA, as well as any state, to fashion a plan that would produce attainment by this deadline, arguably EPA must do the next best thing, and prepare a plan demonstrating immediate attainment (e.g., within 30 days of publication of the FIP in **Federal Register**).

In the past, in a similar situation involving the Federal Water Pollution Control Act (FWPCA), EPA concluded that immediate compliance with lapsed deadlines is required. The FWPCA authorized EPA to issue permits requiring dischargers to achieve effluent limits based on the "best practicable control technology currently available" (BPT) by July 1, 1977. But EPA was unable to issue implementing guidelines or permits in time. Thus, in spite of good faith efforts, some companies found it impossible to meet this deadline, and petitioned in court for EPA to grant extensions. Upon examination of the legislative history, the United States Court of Appeals for the Third Circuit found that the deadline "was intended by Congress to be a rigid guidepost" and "an inflexible target." *Bethlehem Steel Corp.* v. *Train*, 544 F.2d 657, 661 (3rd Cir. 1976) [citing portions of legislative history]. Thus the court concluded that Congress did not authorize EPA to deviate from the deadlines. The court stated that:

> *Union Electric Company* v. *EPA*, [427 U.S. 246 (1976)], appears to indicate that the Supreme Court is willing to construe environmental statutes in a manner that may impose major burdens on polluters, and if the plain language of the applicable legislation so indicates, relief from such hardships must flow from Congress.

Indeed, in 1976, on the previous occasion that EPA was required to prepare a FIP for Los Angeles, EPA and the Ninth Circuit regarded the statutory deadline then applicable—May 1977—as absolute. The court upheld gas rationing regulations in a FIP aimed at meeting the deadline prescribed in the statute, observing that the Clean Air Act has permitted postponement of the initial 1975 attainment deadline until 1977, if there was no reasonably available alternative. But the court noted that:

> There is no comparable language contained in the requirements for development of the alternative plan after the extension has been granted. Thus, while Congress indicated its desire to take social and economic factors into consideration when granting extensions, the lack of comparable language elsewhere indicates that those factors would not affect the implementation of the only plan available to meet the standards. *South Terminal Corp.* v. *EPA*, 504 F.2d 646, 675–76 (1st Cir. 1974).

City of Santa Rosa v. *EPA*, 534 F.2d at 150, 154. The court expressed its concern with the effects of its ruling, but concluded that only Congress could come to the rescue:

> The situation in which petitioners find themselves is not an enviable one. Absent Congressional action, their constituents face substantial economic loss and social

disruption as the result of gasoline reductions. We sympathize but we have no authority to alter the regulation. The relief which petitoners seek is in the hands of Congress, not the Courts.

Id. at 155. *See also Public Citizen* v. *Young*, 831 F.2d. 1108 (D.C. Cir. 1987).[15]

The argument in support of Interpretation 1—requiring immediate attainment of the ozone and carbon monoxide standards—is that Congress set firm, fixed statutory deadlines for SIPs and FIPs, and that, as the Court found in the *Santa Rosa* and FWPCA cases, Congress intended to be the sole dispenser of relief from these deadlines.

On the other side of the ledger, calling for immediate attainment is inconsistent with past Congressional reaction when deadlines under the Clean Air Act were missed. As stated earlier, Congress' reaction in 1977 to the failures of 1970–77 was to create new planning periods, not to demand immediate attainment.

Furthermore, the situation we confront here is different from what the Ninth Circuit encountered in 1976 when it decided the *Santa Rosa* case and the Third Circuit encountered in *Bethlehem Steel*. First, unlike those cases, the statutory deadline has passed. And second, we are not writing on a blank slate. We now know that when Congress *did* consider the problem of the statutory deadlines in 1977, it did *not* require immediate attainment.

Another argument against requiring immediate attainment is that it is inconsistent with a key element in the legislative history—the statements evincing a concern with avoiding serious economic disruption.[16] Indeed, when Congress discussed the amount of economic hardship it expected to result from the Act, it appears that it did not want to impose harsh measures on those areas making reasonable efforts to improve air quality. For instance, Senators Muskie, Stevens, and Gravel, in their colloquy concerning Fairbanks, Alaska, took the position that, as long as an area made reasonable efforts, even if it could not attain "by the year 2000", a construction ban would be imposed, but otherwise, that area "will not get hurt". 123 Cong. Rec. 18,476. (June 10, 1977) (statements of Sens. Gravel, Stevens, Muskie), *reprinted in* 3 Leg. Hist. 1063. But, as explained below, the requirement of immediate attainment would, if enforced, to a cataclysmic event for Los Angeles, and far harsher than anything Muskie and the Alaska Senators seem to have anticipated or desired for any area under Part D.

One could find further arguments against the immediate attainment option by analogizing to the judicial doctrines avoiding absurd results, impossibilities, and conflicts between statutory provisions. As set forth earlier, even where the meaning of a statute is plain (and here, as shown above, it is not), if applying that meaning would lead to "absurd or futile results", a court may look "beyond the words to the purpose of the Act", and follow that purpose rather than the literal words, unless the legislative history shows that Congress intended such results. *United States v. American Trucking Association*, 310 U.S. at 543. *See also TVA v. Hill*, 437 U.S. at 184 n. 29. Similarly, the courts seek to avoid an interpretation that will result in a practical impossibility. *NRDC* v. *EPA*, 824 F.2d at 1154. Here, where Congress does not appear to have provided plainly and intentionally that FIPs produce immediate attainment, the case is even stronger for trying to avoid this outcome, and reaching a more reasonable accommodation among the conflicting statutory purposes. A FIP whose goal was instant attainment would have to prohibit immediately operation in the Basin of nearly every fossil-fueled vehicle, prohibit almost all industrial and commercial VOC emissions, curtail drastically most agricultural activities producing VOC emissions, and ban many consumer products containing reactive solvents. Such a plan would shut down major business activity, halt traffic, and dramatically restrict all aspects of social and economic life. Implementing and enforcing such drastic measures may well be impossible, and could prevent satisfaction of the basic necessities of life—including food, shelter, and medical services.

Enforcement of the FIP measures would begin upon the effective date of the FIP promulgation, usually 30 days following publication of the rule in the **Federal Register**. The disruptive consequences and enforcement difficulties of immediate FIP prohibitions would be more extreme than FIP measures that could be phased in over a number of years. There would be no opportunity to transform or relocate industrial and commercial operations, or to identify and develop any alternatives to the existing transportation systems. Even the development of effective emergency systems to provide necessary services and commodities to Basin residents might be preempted by a FIP that required instant attainment. Consequently, the residents of the area would face the destruction of daily life as they know it, and the likely prospect of mass evacuation.[17]

Another difficulty with a plan calling for immediate attainment is that it may conflict with other statutory requirements concerning enforcement. A literal interpretation of section 110(c)(1) would require, through section 110(a)(2)(D), that the FIP include "a program to provide for the enforcement of emissions limitations * * * as necessary to assure that [the NAAQS] are achieved and maintained." In addition, section 172(c), which applies to extension areas, like the South Coast, would require an SIP submitted in 1982 to "contain enforceable measures to assure attainment" by the end of 1987. By extrapolation, the requirements of section 172(c) could also be read to apply to a FIP promulgated after 1987. One of the requirements of section 110(a), applicable to SIPs, is that a plan must provide:

> Necessary assurances that the State will have adequate personnel, funding, and

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[15] In holding that the FDA lacks the authority to grant, with respect to carcinogenic dyes, a *de minimis* exception to the Delaney Clause of the Color Additives Amendments, the D.C. Circuit held:

> We believe that * * * Congress intended that if this rule produced unexpected or undesirable consequences, the agency should come to it for relief. That moment may well have arrived, but we cannot provide the desired escape.

Public Citizen v. *Young*, 831 F.2d at 1122.

[16] For example, Senator Muskie pointed out that:

> The advantage of the two-tiered approach, with a possible 10-year extension for attainment, is to provide a longer time frame to plan for and phase in necessary controls so as to minimize disruption.

123 *Cong. Rec.* 26,847 Col. 2 (August 4, 1977) (statement of Sen. Muskie), *reprinted in* 3 Leg. Hist. 356. Senator Stafford noted that "existing dates for attainment are extended to avoid economic or social hardships." 123 Cong. Rec. 18,038 col. 2 (June 8, 1977) (statement of Sen. Stafford), *reprinted in* 3 Leg. Hist. 770.

[17] For similar reasons, EPA recently rejected immediate attainment as a criterion for measuring the SIP for carbon monoxide in Maricopa County, Arizona. In its final notice, EPA stated that the Act does not require SIPs to provide for attainment more quickly than the general formulation in section 172(a)(2) ("as expeditiously as practicable"), provided that the three-to-five-years criterion that the Agency was applying at the time was satisfied.

53 FR 30,233 (August 10, 1988). EPA stated:

> If EPA were to adopt [the] position that post-1987 planning should provide for attainment at the soonest time, many post-1987 non-attainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no-drive restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 non-attainment situation now being faced, would have required such a result, even after passage of the Part D dates. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" requirement to be still in place, albeit bounded in situations, such as that of Maricopa County, by fixed attainment deadlines.

Id. at 30,233. *See also American Lung Association* v. *Kean*, 18 Envt. L. Rptr. 20317 (D. N.J. 1987).

authority to carry out such implementation plan.

Section 110(a)(2)(F)(i), 42 U.S.C. 7410(a)(2)(F)(i); 172(b)(7), 42 U.S.C. 7502(b)(7). When EPA prepares an FIP, arguably it also must comply with this section, and demonstrate that it, rather than the state, possesses means adequate to carry out the plan.

But enforcing a federal plan calling for immediate attainment would be highly problematic. Implementation of such a plan would call for massive and intrusive enforcement efforts—to halt traffic, shut down businesses and schools, and restrict gasoline—and could well require resources beyond those available to EPA. Although the federal government as a whole might be able to call on the National Guard, state and local police, FBI, and contractors, these enforcement efforts may require resources beyond what the federal government can muster, given its other responsibilities. Thus, although it may be possible to draft on paper a plan requiring immediate attainment, EPA may not be able to comply with section 110(a)(2)(F)(i)'s mandate that EPA provide assurances that it can carry out such a plan. Arguably, EPA should avoid construing the FIP deadline term of the statute in a way that brings it into conflict with these enforceability requirements. *Citizens to Save Spencer County v. EPA*, 600 F.2d at 844.

EPA's experience in Los Angeles in the 1970's when it attempted to impose an FIP containing gasoline rationing and other drastic control measures, dramatically illustrates the folly of enacting regulations that are virtually unenforceable. (See section II. D. 2, *infra*).

2. Interpretation 2: Attainment in Three to Five Years

In EPA's November 24, 1987, ozone policy proposal, the Agency proposed an option other than immediate attainment. The Agency proposed the view that Congress intended EPA, in formulating FIPs for areas without approved Part D plans, to provide, not necessarily for immediate attainment, but instead for attainment as expeditiously as practicable within three to five years. As noted above, section 110(c) specifies that an FIP must meet the requirements of section 110. That section, in turn, contains the fundamental requirement that SIPs provide for attainment as expeditiously as practicable, but within three to five years after approval. *See* section 110(a)(2)(A) and (E), 42 U.S.C. 7410(a)(2)(A) and (E). Section 110 also implicitly contains the 1987 attainment deadline in Part D, but that deadline is arguably now a nullity by virtue of its passage, and the only remaining guidance in section 110 is the three to five year boundary. Since Congress intended that boundary to govern original SIPs and arguably also SIP revisions in response to findings of inadequacy under section 110(a)(2)(H), it arguably would have wanted the same boundary to govern post-1987 SIPs, absent operative language to the contrary. Indeed, the basic pattern of Congressional behavior has been to allow attainment date extensions on the order of five years.

As noted above, when Congress enacted the 1977 Clean Air Act Amendments, it allowed in Part D two additional planning periods for extension areas—the first period, about four years, to apply all "reasonable available" measures, and the second, roughly three to five years, to supplement those measures. Since enough time has elapsed for the South Coast already to have adopted all "reasonable available" measures, an analogy to the second Part D planning period appears most appropriate to the current situation. Following this reasoning, Congress arguably would have intended post-1987 FIPs to attain in three to five years.[18]

The strengths of this approach are that: (1) It is grounded in the language of the statute and in a close analogy to the periods specified in both section 110(a) and Part D; (2) as we have noted above, it adopts an approach somewhat akin to the approach Congress took in 1977 when attainment deadlines were missed; and (3) it conforms to the elements of the legislative history indicating Congress intended firm, near-term planning deadlines that forced some changes in technology and lifestyle.

If these factors were sufficient to amount to a "clear" Congressional intent that EPA create new three to five year planning periods, that would be the end of the matter. *Chevron*, 467 U.S. at 843. The Agency doubts, however, that that is the case. The statute is ambiguous, and the evidence in the legislative history is, at best, conflicting. If EPA adopted this Interpretation, rather than Interpretation 1, it would be assuming authority to extend the 1987 statutory deadline. As we noted above, Congress in the 1977 Amendments appeared to anticipate the need to provide relief from some of the later deadlines in the Act—and to reserve to itself the power to dispense such relief. But the legislative history also shows that Congress thought it would confront this issue *before* the deadlines had passed—not after. For example Senator Dominici stated, after describing the two-stage procedure in Part D (which calls for submission of a plan in 1979, followed by a subsequent submission, if necessary, in 1982):

> I clearly understand that the result of the five-year part [1982 plan to attain in 1987] may bring back issues to us in terms of attainment. But I believe this will give the opportunity for growth, yet assure that we are pushing with a maximum clean-up during that interim, *and previous to the expiration of the five years, only Congress could make some judgment as to the next goal.*

Transcript, Mark-Up, Clean Air Act Amendments at 15 (May 3, 1977), (emphasis added).

In addition, there is some evidence, as discussed above in connection with immediate attainment, that Congress did not anticipate and therefore did not intend to stimulate plans that would have catastrophic consequences if put into effect. As explained above and in Appendix A to this notice, a three-to-five-year FIP for the South Coast would be nearly as draconian as an immediate FIP, given the extent of the pollution problem.

Thus, one can raise two quite different objections to the five-year FIP interpretation. The first objection is based on the elements in the legislative history indicating Congress' intent to be the sole authority for extension of deadlines. This objection argues in favor of the immediate attainment interpretation, since it is premised on a lack of EPA power to extend the deadline beyond the immediate attainment. The second objection, on the other hand, reads the relevant case law and history to confer upon EPA some power to adopt a new attainment date, but holds that the consequences of promulgating a five-year FIP are—as they were for immediate attainment—so harsh that Congress could not have intended them.

As we noted in our discussion of an immediate attainment FIP, even where statutory language is plain, courts avoid constructions that lead to absurd or radically unreasonable results. There is even more reason to steer clear of such intolerable consequences when, as here, the statute itself does not command them and where a major theme of the legislative history is minimization of economic and social disruption.

In terms of its destructive force on the economy of the South Coast, there is little to distinguish a five-year FIP from

[18] EPA can only venture its best judgment as to what Congress would have us do now. Setting and changing deadlines in the Act is a function reserved for Congress.

one requiring immediate attainment. Such a plan must include restrictions and prohibitions that effectively prevent from operating within the Basin, in the fifth year, almost all fossil fuel-powered vehicles; eliminate almost all aircraft and marine vessels from the Basin; prohibit almost every industrial source from emitting any VOCs; dramatically reduce VOC emissions from commercial and residential solvents and fuel combustion; and substantially limit agricultural VOC emissions.[19] A five-year FIP would impose requirements so draconian as to remake life in the South Coast Basin. Under a five-year FIP, the population would effectively face a choice of resettling elsewhere, or living in almost complete dependence on the governing authorities for life's basic necessities.

Moreover, as was the case for a FIP requiring immediate attainment, there would be serious questions of enforceability and potential conflicts with other statutes. A five-year FIP, if enforced, would prohibit such essential elements of daily life as transportation to work, school, ambulance service, and mail delivery. It inevitably would interfere with rights protected by other statutes.

One might content that the creation of a FIP that, when fully implemented, would produce absurd results, might not in itself be considered an absurd result. This is so, the argument would go, because Congress could always look at the FIP EPA has prepared, and "veto" it with new legislation before the FIP actually takes effect. But even if this is the case, one cannot discern in the legislative history a "clear" Congressional intent that EPA go through the exercise of creating a five-year plan after 1987. Without clear instructions from Congress, and based on EPA's experience in developing a FIP for Los Angeles in the 1970s, arguably EPA should not develop a plan that would impose dire consequences upon a major center of economic and social activity. Such an effort would likely be futile and might also seriously undermine the local effort to adopt its own plan.

3. Interpretation 3: Longer-Term Attainment FIP

To adopt an interpretation that leads to the harsh results discussed above, one must conclude that Congress intended to require quick attainment, no matter what the cost or the consequences. But, one might argue, this vision of the Clean Air Act reads out important elements of the statute, and its legislative history. One could also argue that, in the circumstances presented here, Congress would permit the Administrator to decide upon the earliest attainment date that would avoid such results, avoid a conflict within the statute, and carry out the technology- and lifestyle-change forcing goals of the law.

EPA might consider interpreting the statute to require attainment "as expeditiously as practicable",[20] and by a fixed date. Moreover, other terms of the statute offer some implicit support for a longer-term attainment date, since, as noted above, section 110(a)(2) and Part D criteria assume significant ongoing economic activity.

The legislative history, as we have seen, also reflects deep concern with the need to balance progress towards clean air with avoidance of severe economic disruption. It is therefore unlikely that this Congress would have intended EPA to engage in a FIP process that would overwhelmingly intrude upon and transform a local area.

The principal appeal of the longer-term FIP approach is that it provides the best means of reconciling the twin but conflicting policies embodied in the statute—that is, it would allow EPA to develop a plan that provides for progress in air quality, but does not defeat itself with unworkable or preposterously severe requirements. This interpretation would require attainment at the earliest date possible, but without the severe disruption that a shorter-term plan would produce. An outline of what a longer term FIP would include appears in Appendix A.

Although the case before us is without direct precedent, we find support for this third approach in court decisions in analogous situations. Where statutes contain conflicting provisions, or conflicting statutory purposes, courts have held that EPA must harmonize these provisions as best it can, by giving effect to as much of the purposes of the conflicting provisions as possible. *See Citizens to Save Spencer County v. EPA*, 600 F.2d 844 (D.C. Cir. 1979); *NRDC v. Train*, 510 F.2d 692, 712 (D.C. Cir. 1974) (allowing extensions of statutory deadlines for EPA issuance of regulations when EPA demonstrated impossibility; setting new deadlines by reference to the purpose of the statutory provisions).

As explained above, the requirement that a FIP "provide for attainment as expeditiously as possible" and by a near-term date (section 110(a)(2)(A)) may conflict head-on with the requirements in sections 110(a)(2)(D) and 110(a)(2)(F) that such a plan be enforceable. Here, as in *Chevron*, this third interpretation could represent "a reasonable accommodation of manifestly competing interests * * *." 467 U.S. at 865–866.

Another important aspect of a longer-term FIP is that it might help vindicate Congress' interest in reinforcing state and local responsibility for air quality. A longer-term FIP could complement, rather than ignore or undermine, ongoing state and local efforts to develop a SIP.

Consideration of the long-term FIP interpretation raises important questions about how SIPs should be treated in similar circumstances: where the Act's firm deadline is past; Congress has failed to provide the relief it expected to provide; and short-term attainment is impossible. Even if one decided that Interpretations 1 or 2 would be most appropriate for determining post-1987 deadlines for SIPs, one might still argue that longer deadlines are permissible for FIPs. Where SIPs are concerned, the legislative history shows that Congress explicitly contemplated that, at least prior to 1987, short term deadlines would apply. The history arguably reveals a Congressional understanding that, if these deadlines proved too harsh to meet, the major consequence would be the imposition of a construction ban, a result that Congress addressed and did not find absurd. But the statute does not provide that the construction ban can be imposed as an alternative to writing the required FIP, and the legislative history demonstrates that the promulgation of a short-term FIP for an area like the South Coast—either before or after 1987—received no attention when Congress amended the law in 1977.

But one might also conclude that the better approach is one that treats SIPs and FIPs equally. That is, if impossibility, absurd results, and the failure of Part D to operate as anticipated, suggest that it would be an *unreasonable* accommodation of the Act's purposes for EPA to prepare a near-term FIP, a state, too, should be relieved of the burden of preparing and enforcing a near-term SIP.

In EPA's proposed ozone strategy, the Agency suggested a rationale for requiring SIPs to demonstrate attainment within three to five years. 52 FR 45050 (November 24, 1987). A variant of that suggestion would be to apply the three-to-five year date as a general rule,

[19] A description of the types of measures that a five-year FIP would include appears in Appendix A to this Notice.

[20] This formulation corresponds to the goals set forth in sections 110 and 172 of the Act.

but to exempt states from that requirement where they can make the same kind of showing that Interpretation 3 argues would relieve EPA of its duty to prepare a short-term FIP. Under this approach, in circumstances where either SIP or FIP attainment within a three- to five-year period would be impossible or lead to absurd results, EPA would rely on the statutory requirement that attainment occur "as expeditiously as practicable" to derive a fixed attainment date and to identify reasonable further progress. Sections 110(a)(2)(a) and 172(a)(1). A final ozone policy would identify what reasonable further progress would mean under these circumstances. A state that made the proper showings of impossibility or absurd results, and submitted a SIP that met all the elements of the ozone policy, could then obtain EPA's full approval for its SIP, even if the attainment date extended beyond five years.[21] Even if EPA were unable to fully approve such a state plan, it is not clear that the courts would demand that EPA impose a FIP in such circumstances. If EPA reasonably concluded that the SIP measures were as stringent as any plan EPA could justifiably issue, there would no point in having EPA issue a FIP, since the FIP would merely duplicate the SIP.

The main objection to the longer-term FIP approach is that, like Interpretation 2, it makes EPA, instead of Congress, the dispenser of relief from statutory deadlines. Arguably, under the Clean Air Act only Congress is authorized to make this kind of choice.[22]

Conclusion

EPA here finds itself confronted by a most painful dilemma—one that clearly needs a Congressional solution. Absent action by Congress, however, EPA must do its best to achieve a result most consistent with the language, history, and purposes of the Clean Air Act.

If EPA interprets the Act to permit a FIP attainment deadline significantly beyond 1987, it may stretch the boundaries of the statute in an unprecedented way, and arguably assume legislative-type authority to direct the pace of technological, economic, and environmental change in the South Coast. The scope of any plan attempting to address the pollution problem in the South Coast must be equal to the enormity of that problem. Should EPA determine to prepare a long-term FIP for the South Coast, it would no doubt encounter great practical difficulties in developing and implementing such a massive plan.

But EPA would also face serious legal and practical problems if it undertook a plan requiring immediate and short-term attainment. The immediate and short-term FIP interpretations are arguably more in keeping with the original lapsed deadline, and with Congress' expressions of intent to be the provider of relief if deadlines proved too harsh. But these interpretations, if imposed here, would wreak a level of economic and social disruption that is likely beyond anything Congress would have imagined would be imposed without some mitigation.

Thus, there appears to be no easy solution to the problem before us. EPA solicits comments on the questions raised in this Notice, and on the approaches EPA might take to preparing a FIP for the South Coast.[23]

Dated: November 28, 1988.

Lee M. Thomas,

Administrator.

Appendix A—Description of Five-Year and Longer-Term FIPs

This Appendix first explores likely components of a five-year FIP. It then describes possible elements of a longer-term FIP. The discussion of the five-year FIP focuses on drastic prohibitions that would be required on transportation, industrial processes, and consumer products, as well as out-of-Basin effects of refinery shutdowns, and other secondary effects throughout the country. The discussion of the long-term FIP considers several approaches to promulgating and implementing a longer-term FIP, perhaps in combination with the current South Coast planning process. EPA solicits comments on these possible approaches.

A. Five-Year Federal Implementation Plan

SCAQMD and SCAG estimate that the South Coast must reduce VOC emissions by 80 to 90 percent to attain the ozone standard. A five-year attainment plan for the South Coast, however, leaves little room for choice among measures, insufficient lead time for the development of the necessary technologies, and hence no opportunity to minimize the most severe social and economic impacts.

1. Likely Measures

To achieve the extraordinary emissions reductions necessary for attainment in the Basin within five years, any plan for the area must wrest substantial reductions from every controllable source of emissions. Such a plan must include restrictions and prohibitions that effectively prevent from operating within the Basin, in the fifth year, almost all reactive hydrocarbon-based fuel-powered vehicles; eliminate almost all aircraft and marine vessels from the Basin; prohibit almost every industrial source from emitting any VOCs; dramatically reduce VOC emissions from commercial and residential solvents and fuel combustion; and substantially limit agricultural VOC emissions.

Assuming that attainment of the ozone standard requires an 80 to 90 percent reduction in VOC emissions, and using the draft SIP's 1985 base year emissions inventory, the following list of possible federal prohibitions gives a partial example of a FIP that could bring the area into attainment of the ozone standard. The fuel limitations applying in the ozone FIP to the mobile source category should also reduce total CO emissions to a level where attainment of the CO NAAQS throughout the Basin would be achieved. The list set out below represents one possible combination of control measures with sufficient cumulative emissions reductions to attain the ozone and CO NAAQS. Such a potential FIP would achieve the required emissions level by applying, in general, an across-the-board reduction to all controllable source categories.

Full implementation of the FIP might be suspended until the fifth year unless EPA determines that: (1) Inadequate progress is occuring under the SIP, or (2) earlier implementation of particular FIP measures is necessary, as a practical matter, in order to ensure that all needed emissions reductions are achieved by the end of the fifth year.

The FIP would apply within the Counties of Orange, Los Angeles, San Bernardino, and Riverside (alternatively, only within the nonattainment portion of the counties) and within coastal waters extending 3 miles from the onshore county boundaries. The entire Basin must demonstrate attainment at the end of the the fifth year.

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[21] Under this rationale, an attainment deadline of three-five years would be derived from the text of section 110(a)(2)(A) and by analogy from Part D; EPA would, however, read the Act as implicitly authorizing a long-term deadline where compliance with that statutory deadline would be impossible or would produce absurd results. There is, however, another possible rationale for a long-term attainment deadline in this circumstance. EPA could conclude that the Clean Air Act contains no uniform, nationwide deadline applicable now to the South Coast and to the other areas that failed to attain the ozone or CO NAAQS by December 31, 1987. EPA would reason that the attainment deadlines in Part D (1982 or 1987 for an area with extreme nonattainment) applied only to the SIP revisions for which Congress also specified the submittal deadlines (respectively, 1979 and 1982); that Part D does not authorize EPA to set a nationwide attainment deadline after 1987; and that section 110's deadline of three-five years applies not to a plan revision developed after a SIP call or disapproval, but only to the initial SIP following NAAQS promulgation (or NAAQS revision). Under this rationale, a long-term deadline in the South Coast would satisfy the residual mandates, in sections 110 and 172, that attainment occur by a fixed date that is set, given local circumstances, so as to provide for such attainment "as expeditiously as practicable."

[22] Under the rationale for Interpretation 3 set forth in fn. 21, however, EPA would make this legislative choice for the South Coast under its express authority to require or prepare plan revisions that provide for attainment as expeditiously as practicable. The FIP would not override any nationwide deadline since, under this rationale, those deadlines specified in the Act have expired or are inapplicable in this circumstance.

[23] EPA has included at the end of today's notice Appendix A, describing different FIP approaches, and Appendix B, a Technical Appendix describing other issues that the Agency must face in creating a FIP for the South Coast. The Agency solicits comment on these Appendices as well.

The overwhelming impacts of a five-year plan might be somewhat lessened by phasing in implementation over the five-year period. For example, a phased five-year approach could progressively eliminate motor vehicle use of reactive hydrocarbon-based fuels in the Basin, such as at a rate of 20 percent per year. A modest degree of prohibition on products, activities, and fuels might stimulate public awareness of, and committment to, less polluting options. Measures such as a prohibition on multiple car registration, a requirement for no drive days, and mandatory ridesharing at a more stringent level than currently required by the SCAQMD might foster some incremental adjustments in vehicle dependency, by stimulating the development of additional commute alternatives, the elimination of unnecessary vehicle use, and the relocation of jobs and housing. However, EPA does not expect that such adjustments could allow the great majority of residents of the Basin to cope with the ultimate fifth-year prohibition on essentially every form of private vehicle use, combined with the effective elimination of most industrial and commercial opportunities for employment in the Basin.

• *Fuel restriction for motor vehicles:* The FIP would prevent the sale or use of any reactive hydrocarbon-based fuel in all classes of on-road motor vehicles, with the exception of certain vehicles and specified vehicle uses determined to be essential to the public interest. Depending on the emissions still remaining from the motor vehicle category as a result of allowing this exemption, the FIP might need to require exclusive use in the exempted vehicles of such low-emitting fuels as methanol, propane, compressed natural gas, or liquified natural gas in lieu of high-emitting fuels such as gasoline or diesel fuel. Since substantial emissions occur from motor vehicle traffic into the South Coast, the FIP restriction would need to prohibit this traffic from entering the area.

• *Fuel restriction for other mobile sources:* All other mobile sources (such as farm and non-farm equipment; boats and vessels; commercial and civic aircraft; and railroads) would be prohibited from using any fossil fuel, unless the source fell into an exempt category, because it was vital to the public interest.

• *Fuel restriction:* The FIP would prevent the manufacture, transport, storage, sale, use, and disposal of any reactive hydrocarbon based fuel within the basin, unless exempted as essential to the public interest. The restriction would effectively prohibit refining, storage, and transportation of liquid and gaseous fossil fuels, and combustion of solid, liquid, and gaseous fossil fuels and resource recovery derived fuels.

• *Industrial and Commercial Solvent and Lubricant restriction:* the FIP would prevent the manufacture, transport, storage, sale, use, and disposal of any reactive hydrocarbon based solvent, lubricant degreaser, surface coating, ink, adhesive, fountain solution, thinner, retarder, filler, surfactant, and resin. (Again, a partial exemption for uses in the public interest might be allowed.)

• *Restriction on VOC emissions from manufacturing:* The FIP would prohibit almost all VOC emissions from manufacturing activities, unless EPA determined that attainment could be achieved through a less stringent requirement. The FIP restrictions probably would need to be sufficient to reduce total VOC emissions from all manufacturing facilities by as much as 90 percent from current SIP levels. Affected industries would include not only manufacturers of chemicals, pharmaceuticals, cosmetics, and rubber products, but also most small users of VOC-emitting raw materials.

• *Restriction on consumer product solvents and aerosol propellants:* The FIP would either prohibit all products with any VOC emissions or establish VOC limitations to achieve at least a 90 percent reduction from the level of existing VOC emissions. Consumer products affected by this prohibition would include: paints and related products; health and beauty products; automotive polishes and lubricants; cleaners and waxes; and household and garden pesticides.

• *Restriction on pesticides and herbicides:* The FIP would establish VOC limitations to achieve at least a 90 percent reduction from the level of existing VOC emissions.

Unfortunately, the full range of measures in the South Coast plan are clearly not available in a five-year plan because of the time needed to develop or implement many of those measures. In order to accomplish attainment within five years, any control plan would drastically alter the life of everyone in the Basin. Indeed, a five year attainment plan would eliminate practically any possibility of economic survival for most residents within the Basin, either because of the disappearance of jobs from the Basin or the inaccessibility of jobs to workers living within the Basin.

Typical, everyday life in the Basin generally consists of homelife, including recreational activities, time at work, and time traveling. Every aspect of a person's life would be changed dramatically by a five year plan. The following discussion will allow the reader to more clearly envision the sort of changes that will be necessary.

a. *Transportation.* As described previously, a significant portion of the basin's ozone problem, and essentially all of its CO problem, are due to mobile sources. Under a five-year plan, emissions from almost all vehicles must be eliminated by the fifth year in order to achieve the needed reductions from this emissions category. EPA believes that it is necessary and appropriate to exempt from these restrictions, at least partially, certain classes of vehicles, such as mass transit buses, trains, and vans; police cars; emergency response vehicles; fire engines; garbage collection trucks; and delivery trucks of food and medical supplies.

Any exemption for these vehicles, however, places an even greater reduction burden on other sources of vehicular emissions. The only way to realize such a reduction would be to prohibit entirely the use of all non-essential pollutant-emitting vehicles, since even vehicles burning relatively clean fuels, such as methanol, propane, compressed natural gas, or liquid natural gas, could cumulatively emit enough emissions of hydrocarbons, nitrogen oxides, and carbon monoxide to cause continued nonattainment.

A plan that eliminated from the area every privately-owned vehicle except those that are completely clean (i.e., electrified vehicles) would deny access to employment to all but those capable of working at home or commuting to work by mass transit, vanpool, electric vehicle, bicycle, or foot. Since the average home-to-work commute in the Basin is more than 20 miles round trip, it is reasonable to assume that only a small fraction of the current work force would have the ability (either for physical reasons or from critical time constraints) to commute by bicycle or foot. Furthermore, the opportunities to telecommute are not expected to increase dramatically within five years, though they may develop significantly over the next 20 years. All of those jobs heavily dependent upon the use of cars or trucks (including many of the services and trades) would be impossible to pursue, assuming that the FIP were unable to exempt or partially exempt these vehicles from the fuel restriction.

If the non-commute transportation modes of the residents of the South Coast were effectively limited by the FIP to mass transit, vanpool, bicycles, and foot, this severe restriction on mobility would drastically circumscribe most opportunities for shopping; health care; social, service and recreational activity; and general education and vocational training. Thus, the severely restricted transportation options of the five-year FIP would profoundly and comprehensively diminish the quality of life in the area. This restriction on the public's non-commute activities would contribute still further to the general economic decline of the area by its extreme impacts on service, recreational, and commercial enterprises.

If a five-year attainment FIP were promulgated, greatly expanded mass transit systems could not be reasonably anticipated, since the general economic decline of the area would, if anything, require cutbacks in public subsidies for transit operation and expansion. Expanded service would be particularly unlikely if the plan needed to prevent mass transit vehicles from burning high-emitting gasoline or diesel fuel. Even if these factors were absent, it is clear that significant expansions to urban mass transit systems require lead time for implementation beyond the five-year time frame.

Under any ozone attainment plan in the South Coast, electric vehicles ultimately may be the only feasible motorized alternative to a total dependence on mass transit. There is no evidence, however, that more than a small portion of public, private, or commercial transportation needs could be met by electric vehicles within a five-year time frame. This is due to the enormous costs of fleet conversion; the need to improve and perfect technologies; the lengthy construction period for developing electrified mass transit; the time requirements of vehicle manufacturers to redesign, retool, and produce significant numbers of electric vehicles; and the period required for the electric utilities to construct or purchase adequate electric power

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generation and distribution systems to meet the radically increased demands for electricity.

A five-year plan would offer no realistic opportunity for clean transportation alternatives to aircraft, locomotives, marine vessels, and heavy duty diesel trucks. Since significant emissions reductions appear to be necessary from these transportation categories, elimination of most commerce is likely to result. For example, it is unlikely that the many industries dependent upon these transportation sources would be able to continue operation in the Basin.

The five-year FIP would have national and possibly global implications if it did eliminate these current means of transportation, since the Basin includes the most active commercial port area on the West Coast. In addition, air, truck, and rail transport into and through the Basin plays a critical role for industry, commerce, and communication in the Western United States.

b. *Industry.* Approximately a quarter of the Basin's VOC emissions comes from industrial and manufacturing facilities. Industrial sources of ozone precursors and CO include both manufacturing facilities that use solvents in their processes and other facilities, such as fossil-fuel fired boilers, turbines, internal combustion engines, and furnaces that emit ozone precursors and CO directly as a result of the combustion process, manufacturing, fabrication, or assembly. In a five-year time frame there is no viable technological or economic opportunity to eliminate emissions from many if not all of these facilities without effectively requiring shutdown. The draft South Coast plan contemplates the eventual elimination of combustion sources and an almost total replacement of solvent emissions. It envisions this change as taking place over 20 years through a process of forced technological advances (most prominently, in the area of solvent composition and use), expanded energy conservation projects, and almost total electrification of the area, with all generating capacity located outside of the basin.

In order to obtain the needed reductions from industry, a five-year plan must not only secure an 80 to 90 percent reduction in VOC emissions from existing industry, it must also prohibit economic growth of any kind. Remaining sources that are not currently operating at full capacity would be prohibited from increasing production, because, to do so, they would generate more emissions.

It would also be necessary to ban the use of reactive solvents in coatings, degreasing, and other uses or, at the least, apply restrictions that would achieve an additional 90% reduction in VOC emissions from industrial activities. The largest contributor to point source VOC emissions are of surface coating operations whose emissions come from the evaporation of the solvent contained in the coatings. In a five-year time frame it will not be possible for technology to totally replace solvent-based coatings; thus, it will be necessary to ban the use of coatings which cannot be changed. Major industries in the basin such as paint manufacturers, paint contractors, auto assembly plants, wood furniture manufacturers, can and coil coaters, paper coaters, printers, aerospace, and semiconductor and electronics will be forced to discontinue or drastically curtail operations, with the inevitable result of massive unemployment and the ripple effects of unemployment on the area's economy.

c. *Out-Basin Impacts of Refinery/Marine Terminal Shutdowns in the Basin.* Southern California is the largest petroleum refining and distribution area on the West Coast. Some of the refined petroleum products now produced in the Basin or produced elsewhere but imported into the Basin through Los Angeles harbor are subsequently exported to markets outside the Basin. Thus, federally required shutdowns of petroleum refining and trans shipping operations in the South Coast Air Basin would have severe effects not only in the Basin, but in other areas as well.

Virtually all of the gasoline, diesel fuel, jet fuel, and heating oil used in Yuma, Arizona; Las Vegas, Nevada; and the Imperial Valley of California is shipped from the Basin via the Southern Pacific Pipeline and the Calnev Pipeline. There are no refineries outside the Basin which can supply these landlocked markets via existing pipelines. A shutdown in the Basin would therefore require that new pipelines be built or that petroleum products be shipped by tank truck on public highways or by rail car, resulting in much higher transportation costs. Even if refineries in other areas could increase production to satisfy these markets (which fortunately are relatively small), prices to consumers would increase substantially.

A portion of the petroleum products used in San Diego, California, also are delivered via pipeline from producers and/or marine importers located in the basin. San Diego presently receives shipments via vessels as well, and these would presumably be increased at some cost for facility expansion.

A very serious situation would also develop in Phoenix and Tucson, Arizona and outlying areas that receive deliveries by tank truck from these cities. About two-thirds of the refined products used in or distributed from these two large and rapidly growing urban areas come from the South Coast Air Basin via pipeline. The remainder now comes via pipeline from El Paso, Texas but the capacity of this pipeline is too limited to supply the full demand. The four refiners with access to this pipeline (located in El Paso and Odessa, Texas and Artesia, New Mexico) may also lack sufficient processing capacity and/or crude oil supply to compensate for loss of product from Basin sources, even if transporting the additional volume to Phoenix and Tucson were not a problem.

Finally, a number of military air bases in California and Arizona rely on Basin sources for their supplies of jet fuel. Costs would increase and reliability of supply decrease if jet fuel had to be transported by tank truck from other refineries or ports.

d. *Consumer sources.* Almost a quarter of the VOC emissions in the Basin comes from the direct consumer use of certain products and related services. Products affected by a prohibition would include paints, primers, varnishes, lubricants and silicones, hair sprays, car polishes and waxes, room deodorants and disinfectants, moth control products, personal deodorants, auto antifreezes, brake cleaners, engine starting fluids, all purpose cleaners, floor waxes, insect repellants, starch and fabric finish, rug and upholstery cleaners, aftershaves, animal insecticides, shaving lathers, perfumes, spot removers, adhesives, insect sprays, caulking and sealing compounds, window cleaners, herbicides and fungicides, suntan lotions, and many other items.

Many of these products are also used by small businesses which provide consumer services, such as drycleaners, painting contractors, automotive and small engine repair shops, printers, barber and beauty shops, bakeries, exterminators, and home and office cleaning services.

In order to achieve the needed reductions from this category, a five-year FIP would have to impose nearly a total ban on the use of these products and related services. While a five-year time frame may be adequate to develop and market some technological alternatives, there would certainly be many products to which the public has become accustomed that would disappear with such a ban. The repercussions from this action would be far-ranging, affecting the consumer and the industries involved. It is unknown at this time whether alternative products can be found in the amount of time available.

A major exemption from this category would be hospitals, health care centers, nursing homes, schools, child day care centers and other facilities where high levels of cleanliness are required to protect the public health. Again, these exempted emissions would need to be offset by tighter restrictions on the remaining sources.

e. *"Multiplier Effect".* As the above consequences are encountered over five years, there will be "multiplier" effects. As industries, auto dealerships, service stations, and other enterprises close and are forced to lay off thousands of people, the companies and employees will try to relocate outside the Basin. The relocation costs will be enormous. The tax base of the Basin's jurisdictions will be depleted, so that those jurisdictions will be hard pressed to provide necessary services (police protection, water and sewer treatment, primary and secondary education, health and welfare benefits, etc.). Since the Basin will become an economically undesirable place in which to live, housing prices will drop dramatically, and most persons forced to leave the Basin will be unable to sell their houses or business, so they will suffer tremendous financial losses. The lending institutions will be unable to resell those properties after the borrowers default on their mortgages, so many of them will also be forced out of business. If these institutions or their depositors are rescued by Federal insurance agencies, the cost of doing so will be felt throughout the nation.

Recreational activities for those remaining Basin residents would be severely limited. Sporting events would be affected by the lack of transportation alternatives. Amusement parks, movie theaters, shopping malls, restaurants, and many other entertainment sources would be forced to close because patrons would be unable to drive to them as in the past. Many other weekend activities

would be eliminated as a result of prohibitions against private vehicle use.

National companies with offices or plants in the Basin may be economically affected so severely that they may go out of business altogether. This would cause a dramatic drain on the national economy from higher unemployment, higher prices, product shortages, and higher taxes to offset lost revenues.

Many other ripple effects may result which cannot be anticipated at this time. However, the above discussion provides a suggestion of the magnitude of impact a five-year FIP would have on the South Coast and the entire country.

B. Possible Approaches to Longer-Term FIP

In the body of this notice, EPA described the draft Air Quality Management Plan (AQMP) that the South Coast Air Quality Management District is developing. This plan contemplates attainment within roughly ten years for CO and twenty years for ozone. The following discussion describes the relative roles that the South Coast and EPA are capable of playing in producing an adequate plan, and how EPA might coordinate its FIP effort with the current South Coast planning process. EPA discusses three approaches it might take to meet its FIP obligation without undermining the state and local planning effort, but in fact building on those efforts. EPA specifically requests comments on all aspects of these options as well as identification of and comments on any other FIP options that EPA should consider.

Option 1: The "Reasonable Progress Backstop" Approach

This approach assumes that EPA's analysis of the South Coast plan as finally submitted as a SIP revision allows the Agency to conclude that the 1997 and 2007 deadlines in the proposed South Coast plan satisfy the "reasonable efforts" requirements of the Clean Air Act. It assumes further that the South Coast AQMP includes a schedule by which the State would submit various measures in legally binding form after the date by which EPA must promulgate its FIP. In that event, EPA could promulgate "backstop" FIP control measures which would be triggered automatically upon EPA's determination of a failure to achieve the progress in emission reductions that the AQMP schedule prescribed. The FIP backstop measures would consist of a predetermined sequence of control measures (possibly adjusted from time to time based on development of new control technologies) that could be implemented to eliminate any shortfall in the emission reductions required in the SIP. It is impossible to predict a complete list of measures that may be considered appropriate at that time, but the list would include at least the kinds of prohibitions and limitations discussed in the previous description of five-year FIP options (e.g., limitations on industrial and commercial activities, fuel sales or usage restrictions). The FIP backstop control measures would be implemented only to the extent necessary to eliminate any shortfall in targeted SIP emission reductions, and would be rescinded if the state and local agencies adopted mitigating control measures of their own.

If EPA decides to promulgate FIP further progress targets that are different from those included in the SIP, this could alter the size of the shortfall to be mitigated by the backstop measures. For instance, EPA might use the targets set in its own post-1987 ozone and CO policy proposal. The proposed policy, which may be revised before final issuance, would require a three percent annual emissions reduction in actual emissions from a fixed baseyear emissions inventory, exclusive of reductions attributable to Federally implemented control measures and certain other "baseline" measures (see 52 FR 45066 and 45091). Alternatively, EPA could select a non-linear schedule extending from the emissions baseline to the allowable emissions level for the Basin, and reflecting EPA's estimation of expeditious progress based upon an ambitious schedule of developing and applying new technologies.

EPA's proposed post-1987 policy allows compliance with the three percent minimum reduction through demonstrations every three years that a nine percent reduction has been achieved (for the first five years, the proposed policy would allow a showing that a fifteen percent reduction has been met). The proposed South Coast plan shows future emissions levels only at the years 2000 and 2010, with interim year emissions levels identifiable only through extrapolation. EPA invites public comment on whether, under this approach, emissions levels should be promulgated, tracked, and enforced on an annual basis, or whether the FIP might prescribe emissions levels on a less frequent basis (such as biennially or triennially).

Under the various versions of this approach, the FIP could promulgate specific basinwide emissions levels for interim years leading to eventual attainment. The emissions levels could be expressed as basinwide emissions in tons per day representative of typical summer weekday conditions for ozone and representative of typical winter weekday conditions for CO. In the case of ozone, the basinwide emissions could be prescribed for NO_x as well as volatile organic compounds (VOC), if EPA concludes that reductions in emissions of NO_x (a precursor to ozone, along with VOC) are necessary or cost-effective to prescribe.

This approach requires that EPA keep close watch on the progress the South Coast achieves as it implements the SIP. The FIP might include a special provision requiring from the State timely annual reports on progress in achieving emissions reductions from individual control measures. The FIP might also require the State to track basin-wide emissions increases and decreases in accordance with detailed EPA instructions and then calculate actual emissions for the basin. EPA may also need to impose some specific record keeping and reporting requirements for sources, transportation agencies, and other jurisdictions to assist in monitoring activity levels. With or without these requirements for data collection, EPA would remain responsible for determining the emissions levels in the basin and whether, and to what extent, surplus emissions exist.

Option 2: "SIP Backstop" Approach

The "SIP Backstop" option is similar to Option 1 but uses, as a measure for progress, the State and local adoption schedule and implementation of control measures, rather than the annual emissions ceiling in the SIP. Under this option, backstop measures promulgated in the initial FIP (or as subsequently adjusted) would become effective automatically if the State and local authorities failed to adopt either the SIP rules or substitute control measures with equivalent emissions reductions. As in Option 1, backstop measures would be rescinded if and when the State or local agencies adopted mitigating measures on their own.

Option 3: SIP Approval in Lieu of FIP

As discussed in the body of this notice, EPA believes that approval of a state or local air quility plan is far preferable to EPA's promulgating a FIP, and EPA strongly supports the South Coast AQMP development process now underway. The proposed AQMP, however, relies heavily on the development of future technologies, funding mechanisms, governmental infrastructures, and long-term societal adjustments. Inevitably, many of the most significant AQMP measures are represented largely as commitments to develop in enforceable form over many years the rules, ordinances, and other implementation mechanisms necessary for the success of the plan.

EPA intends to approve these state and local SIP commitments, at least for the purposes of making them federally enforceable, as soon as they are adopted and submitted in legally binding form, and assuming that they otherwise comply with other Federal requirements. EPA does not anticipate that the state and local agencies will be able to submit most control measures in fully developed and fully approvable form for many years.

Therefore, the proposed AQMP is not expected to meet initially all of EPA's existing requirements for proper adoption of measures, including provisions for legal authority, binding commitments, specificity of limitations, funding, scheduling, approval of appropriate governmental agencies, and monitoring. As such, under EPA's current policies, full and complete approval of the entire pending SIP in lieu of a FIP must be considered a romote possibility.

If, however, the State were to submit a complete, legally adopted plan by the time EPA were to promulgate its FIP, then EPA could find that the SIP measures are sufficient to meet Clean Air Act requirements without additional Federal measures. EPA would then be able to avoid any FIP action and approve the State plan in full, under at least one of the legal theories described in the test of today's notice (see footnotes 20 and 21 and accompanying text).

C. Discussion of the Possibility of Other Types of Federal Measures

In addition to the relatively simple prohibitory FIP measures discussed above, or the list of measures in the local plan, EPA could promulgate in the FIP, at least in theory, other types of federal initiatives that might expedite emission reduction progress in the Basin. These measures would consist of

rules that would supplement the existing and proposed state and local regulations with particular measures applying specific control technology requirements or embodying other available regulatory approaches.

As explained elsewhere in this notice, EPA generally believes that the responsibility for selecting and implementing air pollution control measures rests principally with state and local agencies rather than with EPA. In addition, this notice also discusses the possibility that EPA may lack the authority and resources to promulgate and enforce many types of regulations in a South Coast FIP, particularly those rules that would mandate substantial economic and social change. EPA considers most conventional FIP control approaches to be difficult to implement under a FIP, even assuming federal resources and authority sufficient for enforcement of regulations that require the compliance of thousands of sources or millions of residents. Such controls could also be expected to attract state and local opposition, rather than to enlist that level of support that is a prerequisite to successful implementation. However, we discuss below certain areas where EPA believes a limited active supplemental federal role is or may be possible and appropriate.

1. Currently Planned Federal Measures

EPA proposed to impose nationally two VOC control measures See 52 FR 31162; 52 FR 31,274; (August 19, 1987): (1) Control of refueling emissions through onboard vehicle control systems for gasoline fueled light-duty vehicles and trucks and heavy-duty trucks; and (2) volatility regulations for gasoline and alcohol blends. Because of the current South Coast regulation imposing Stage II refueling controls at service stations, the first of these proposed national promulgations would not be expected to provide significant emissions reductions within the Basin. EPA's proposed restrictions on gasoline volatility would contribute emission reductions beyond those identified in the South Coast plan, and would therefore expedite progress in reducing ozone concentrations in the Basin.[1]

[1] The most common measure of fuel volatility is the Reid Vapor Pressure (RVP). RVP is a measure of the tendency of gasoline to evaporate at 100 degrees Fahrenheit. As RVP increases, evaporative hydrocarbon emissions from gasoline related sources, i.e., motor vehicles and the gasoline transportation and distribution system, increase.

California State law currently limits the RVP of gasoline in the South Coast Basin to 9 pounds square inch (psi) for the seven-month period, April 1 through October 31. EPA has proposed national standards for RVP that would limit fuel for the period May 16 through September 15 to the following levels: 7.8 psi in Orange County and western Los Angles County, and 7.0 psi in Riverside County, San Bernardino County, and eastern Los Angeles County (see 52 FR 31274 and 31315, August 19, 1987). The draft South Coast plan includes a measure to tighten the State standard to 8.0 psi. In the year 2000, this would amount to reductions of 9.6 tons per day of VOC, 16.5 tons per day of CO, and 7.4 tons per day of NO_x. The proposed plan also encourages EPA to work with the PAA to demonstrate and evaluate the potential for methanol-jet fuel use. The plan estimates that significant additional reductions could result from a requirement for methanol fuel.

2. Other Federal Measures

The South Coast plan assigns to either EPA or other federal agencies the following measures, because of legal constraints on the authority of state or local governments. EPA solicits comment as to whether these or other measures should be included in a FIP or another federal promulgation in the case of other federal agencies:

a. *Lower Emissions Standards for Aircraft Engines.* The proposed South Coast plan lists as one of the Tier I control measures lower emission standards for VOC and NO_x from new jet aircraft engines. The plan's control measure (I–2) projects a 50 percent reduction in emissions for all pollutants.

Under Section 231 of the Clean Air Act EPA has authority to promulgate such standards, but under Section 233 state and local governments are prohibited from adopting standards of their own, although they may adopt and enforce EPA's standards. Because aircraft must circulate freely throughout the U.S. to serve their purpose, nationwide regulation would be needed to achieve reductions in the basin.

At present, EPA standards for aircraft engines apply only to commercial jet engines. The standards exclude non-commercial aircraft and all piston-driven engines. Engines smaller than a certain size are also excluded. There are EPA standards for VOC, smoke, and fuel venting, but not for NO_x or CO. The VOC standards apply only for engines manufactured after 1983, although EPA has statutory authority to require retrofit of engines manufactured previously. However, smoke standards apply to all in-use commercial jet engines, regardless of age, and the technology used, for smoke control on pre-1983 engines provides some degree of VOC control. The present standards were established by a rulemaking process that spanned eleven years, ending in 1984. The draft plan in effect proposes that these current exclusions be removed, and that more stringent standards for newly certified engines be adopted.

Some degree of NO_x control, more stringent VOC control, retrofit of 1983 and older engines, controls on smaller engines, and controls on some non-commercial jet engines may be technologically feasible with adequate lead time for development, certification, production, and installation. However, the previous rulemaking process surfaced several concerns about safety, costs, industry disruption, and unintentional disincentives for technological process that led EPA to adopt the standards as they now exist. The cost and favorable emission reduction estimates contained in the draft plan appear to be based largely on EPA analyses from about 1978, and apparently have not been adjusted for inflation and aircraft fleet mix and usage changes since then. EPA's experience from having established the current standards in the 1970's is that adoption of standards for jet engines is a process that requires much more time than for most stationary sources or for motor vehicles. The time frame for implementation of new standards would most likely entend beyond five years, the typical period for Tier I control measure implementation. Thus, new standards most likely would not play a role in a five-year FIP.

b. *Outer Continental Shelf (OCS) Controls.* It may be possible to assist attainment in the South Coast basin by tightening federal controls on OCS emissions sources (primarily, petroleum exploration and development), or by negotiating agreements between the Department of Interior and state or local agencies to allow for partial state or local regulation of OCS sources. The amount of ozone or ozone precursors affecting the South Coast basin from OCS emissions is difficult to forecast. It is heavily dependent upon the scale, location, and form of future petroleum development, as well as the type of emissions control applied.

3. Potential Federal Measures Not Included in South Coast Draft Plan

Lastly, there are a few potential measures that are not included in the draft South Coast Plan. In theory, these measures could be in a FIP if they are not included in the final South Coast plan. EPA solicits comment from the public as to whether any of the following measures should be included in the FIP. As stated above, EPA continues to feel that the state and local agencies are the appropriate level of government for selection and implementation of these potential measures.

a. *Wintertime Oxygenated Gasoline Blend Program.* The use of oxygenated gasoline blends to reduce the CO emissions from motor vehicles is a recent development in air pollution control strategies. The use of these fuels during the CO season (winter months) has been mandated for the Denver nonattainment area, and more recently, for the Phoenix and Tucson nonattainment areas. Oxygenated fuels reduce CO emissions because the air-to-fuel ratio is made leaner, thus providing more oxygen which results in more complete combustion.

Oxygenated blends are produced by adding an oxygenate in the form of aliphatic alcohols and/or ethers to gasoline. Blends currently on the market include methyl-tertiary-butyl-ether (MTBE) blends, ethanol ("gasohol") blends, and methanol/co-solvent blends.

All alcohol-based oxygenates affect the volatility of the gasoline, i.e., its tendency to evaporate at various temperatures. Unless completely offset, these volatility changes may increase a vehicle's evaporative hydrocarbon emissions (i.e., fuel which evaporates and escapes to the air before it is burned in the engine). The use of oxygenated blends could increase hydrocarbon emissins from motor vehicles and possibly interfere with the attainment of the ozone standard in the South Coast basin during those time periods when the ozone and CO seasons overlap. Additionally, the use of oxygenated fuels results in increased NO_x emissions (less than 10 percent) which could adversely affect the attainment of the NO_2 standard and the PM–10 standard due to secondary aerosol formation.

EPA requests comments on the following:

(1) whether the promulgation of a wintertime oxygenated blends program is an appropriate CO control strategy for the South Coast basin given the impact the program might have on other pollutants;

(2) if an oxygenated fuel blends program is promulgated, whether all blends should be subject to sufficiently stringent Reid Vapor Pressure (see discussion above) so that there is no increase in hydrocarbon emissions due to the use of these blends;

(3) whether an oxygenated blends program will impact the introduction into the basin of alternatively fueled vehicles capable of using, for example, a fuel consisting of at least 85 percent methanol, compressed natural gas or liquid petroleum gas; and (4) whether an oxygenated fuels program would be compatible with the draft plan's proposal to require electrification of most motor vehicles in the basin by the year 2007.

b. *Enhanced Inspection and Maintenance Program.* California's current Inspection and Maintenance (I/M) program requires that gasoline-fueled motor vehicles be subjected to a tailpipe emissions test for hydrocarbons (HC) and carbon monoxide (CO) in an idle or idle and 2500 rpm (1980 and newer model year vehicles) mode and a tampering inspection biennially. Vehicles twenty years of age or newer and up to 8500 pounds gross vehicle weight are included in the program. Vehicles are tested at independently run authorized stations. Vehicles receive waivers if they fail the emissions test but cannot be repaired to the standards for $50 or less. Heavy duty gasoline vehicles are scheduled to be included in the program beginning in October 1989.

In September 1988, the Governor of California signed legislation (SB 1997, Presley) amending the repair cost ceiling to between $50 for 1971 and older model year vehicles up to $300 for 1990 and newer vehicles, effective January 1, 1990. The new law has the following additional provisions: 1966 and newer vehicles will be subject to the program; new, more sophisticated exhaust gas analyzers must be in place no later than January 1, 1992; and local air pollution control districts may request NO_x testing which might be implemented by means of loaded mode testing.

In order to obtain the maximum benefit from the I/M program, EPA might promulgate an enhanced I/M program which could require annual inspection of all 1966 and newer gasoline fueled vehicles. Other potential enhancements could include: (1) Inspections conducted at centralized facilities; (2) emissions testing of vehicles in a loaded mode as well as in the idle mode condition; and (3) measurements of NO_x emissions as well as HC and CO emissions. Also all vehicles could be required to be repaired to the standards, *i.e.*, there would be no limit on the amount the motorist might have to spend to bring the vehicles into compliance with the standards.

Any centralized inspection facilities would be run by an independent contractor or an agency under contract to EPA. EPA would maintain oversight over the program. EPA would hope that the program would continue to be enforced by registration through the California Department of Motor Vehicles. Although EPA may have the authority to assess fees for such a program, any monies generated would go directly into the U.S. Treasury and would require a Congressional appropriation to be returned to a federally promulgated I/M program.

c. *New Source Review (NSR) Program.* While the proposed South Coast plan includes a new source review measure (F–8) tightening the existing NSR requirements for the permitting of new or modified emissions sources, it is not clear that the SCAQMD now contemplates, or will ultimately embody, NSR provisions comparable to the two discussed below.

i. *Prohibition on the Use of Shutdown Emission Reduction Credits.* Relatively unmitigated minor source growth and the use of banked emissions credits to offset stationary source growth in the South Coast severely restrict or eliminate potential NSR contribution to achieving air quality goals. While control technologies have gotten increasingly effective at reducing emissions from permitted sources, the use of certain types of offsets, often from shutdowns many years past, has neutralized possible air quality gains. The SCAQMD and Region 9 agree that the current federal construction ban on major new or modified sources will have a negligible impact on the number and types of sources receiving permits in the South Coast Basin.[2] The SCAQMD thresholds for the aplication of BACT/LAER and offsetting are already significantly below federal levels and affect a large proportion of sources within the basin. On the other hand, applications for new or modified sources with emissions above the federal construction ban levels are extremely rare.

EPA could promulgate an NSR rule for the basin using the existing South coast offset threshold levels but prohibiting for use as an offset or in the determination of net emission increase all Emission Reduction Credits (ERC's) derived from shutdowns prior to 1985. Thereafter, credits from shutdowns would be available for use as ERC's (to the extent not otherwise disallowed by federal NSR requirements) but only within a three-year period following the actual shutdown. In addition, ERC's would be available from the application of innovative or excess controls. These ERC's would not be subject to the three-year restriction on use.

EPA's promulgation could also expedite progress toward attainment by discounting all ERC's derived from shutdowns. The discount could provide that the calculation of shutdown credits assume that the source were controlled to a level equivalent to the best available retrofit control technology (BARCT), determined as of the date of permit application for the source intending to use the credit.

ii. *Penalty for Failure to Obtain an NSR Permit.* Sources constructing and operating in the basin without a permit may be considered to be emitting the equivalent of uncontrolled and/or unmitigated air pollution. Many permit applications in the SCAQMD backlog are for facilities that were constructed without a permit.

EPA could promulgate a penalty for failure to apply for an NSR permit. The penalty should be substantial enough to act as a deterrent to sidestepping the regulations.

d. *Conformity Program.* Section 176(c) of the Clean Air Act prohibits federal agencies from taking actions that do not conform to approved SIPs, and prohibits metropolitan planning organizations, such as SCAG, from approving such actions. Strong conformity provisions in the South Coast would ensure that federally funded and approved projects do not lead to further degradation of the Basin's air quality.

The 1982 South Coast SIP includes conformity requirements. Conformity provisions are also included in the draft South Coast plan. SCAG has also formed a conformity working group, which includes EPA, to refine these conformity provisions. The FIP would address any deficiencies that remain after agency revision.

EPA will review the South Coast Plan according to, and base any needed FIP requirements on, previously published notices addressing conformity: 45 FR 21590 (April 1, 1980); 46 FR 7182 (January 22, 1981); and 52 FR 45055 (November 24, 1987). The elements needed for a fully effective conformity program include: (a) Conformity review procedures, (b) growth projections and a disaggregation process, (c) estimates of emissions for major federal projects, (d) conformity review criteria (45 FR 21590), (e) specification of information that must be provided for conformity determinations (growth, emissions, TCM consistency, modeling) and, (f) requirements for a finding of non-conformity if projects do not satisfy the review criteria or insufficient information is provided.

D. Comparison of Five-year and Longer-Term FIPS

How would the impact of the five-year FIP compare with that of the South Coast twenty-year plan? First, both plans envision roughly the same reductions, one within five, the other within 20 years.

The South Coast's proposed plan, however, pursues a technology forcing strategy in order to establish clean alternatives to existing transportation, industrial, commercial, and domestic fuels, equipment, materials, and activities. The South Coast plan avoids much of the sudden and extreme social and economic dislocations that are unavoidable in a five-year attainment period, by allowing time for the development and practical application of the technologies that are required or encouraged by the proposed plan. These technologies include, most notably, clean fuels or engines for mobile sources (with electrification of most surface vehicles); nonreactive industrial, commercial, and domestic solvents; and further stringent controls for a viarety of stationary and area sources of VOC or NO_x. In addition, the South Coast plan seeks to minimize the technological burden borne by the transportation sector by providing a comprehensive variety of transportation and land use control measures to reduce the

[2] The Clean Air Act requires EPA to enforce a ban on construction of major stationary sources and major modifications, following disapproval of a nonattainment area plan (see discussion above on EPA's disapproval of the South Coast SIP for ozone and CO). The construction ban regulations apply only to new sources with the potential to emit 100 tons per year or more of the relevant pollutant or pollutant precursor, and to modifications with a net emissions increase of 100 tons per year for CO and 40 tons per year of VOC. See 40 CFR 52.24.

existing dependency on private vehicle use, and to reduce future needs for additional private vehicle trips to accommodate growth in population and employment. Most of these transportation and land use measures (such as provisions for jobs-housing balance or construction of new mass transit facilities) necessarily involve lead times of at least five years and, in some cases, more than 15 years, for full implementation.

1. State and Local Expertise

EPA has not yet fully analyzed all features of the South Coast AQMP, and does not yet know if it is adequate to provide for attainment, or whether it can be fully implemented within its projected timeframe. But the SCAQMD has consistently been recognized as one of the nation's most comprehensive, progressive, and effective air quality control agencies, particularly with respect to the development, application and refinement of effective controls of ozone precursors, VOC and NO_x. Their effort on the proposed AQMP, in conjunction with SCAG's, includes identifying and scheduling for adoption every feasible stationary source, transportation, and mobile source control measure. The plan has scheduled pilot studies, legislative needs, funding commitments, public awareness programs, and implementation time frames.

EPA's involvement in the South Coast planning effort has primarily been to oversee and provide technical assistance to the state and local agencies. EPA has limited expertise in the specific approaches that would be used to control emissions in the Basin. Much of EPA's regulatory approach to the control of emissions continues to be derived from the knowledge and experience of the SCAQMD and the ARB in the control of stationary, area, and mobile sources.

EPA would be unable to implement many of the measures identified in the South Coast draft plan. Many control strategies require commitments on the local level and must be initiated by local agencies. These include land use measures, incentive based transportation control measures (TCMs), and long-range transit planning. Because of the nature of these control measures, and the fact that there are over 150 local jurisdictions in the basin, local government coordination is essential.

EPA believes that air quality benefits are best achieved through a federal partnership with the state and local planning agencies to ensure that all needed control measures are adopted, monitored, and enforced primarily at the state and local levels. The SCAQMD, SCAG, ARB, and EPA have been working together successfully to refine control strategies included in the draft plan to generate local support for controversial measures. Federal preemption of the planning process, at the culmination of a uniquely ambitious and resource intensive planning process, could jeopardize the extensive efforts and progress of the state and local agencies and jurisdictions.

2. Federal Versus State/Local Resource Allocation

The staff and budgets of the local and state agencies responsible for solving the air pollution problems in the Basin far exceed currently budgeted federal sources. The staff levels in the fiscal year 1989 budgets of the SCAQMD and the ARB are 900 and 670, respectively; this combined work force is more than 22 times the staff size (70) of the Air Management Division (AMD) in the EPA Region 9 office in San Francisco. The Region 9 office is responsible for directly implementing or overseeing the implementation of the Clean Air Act throughout the states of California, Arizona, Nevada, Hawaii, and the Pacific Islands. The approximate fiscal year 1989 budgets of the three agencies are similarly proportioned:

SCAQMD	$75,000,000
ARB	$58,000,000
EPA Region 9 (AMD)	$3,500,000

The imbalance of federal and state/local air pollution planning resources is still more extreme when the staff and budget of SCAG are considered. SCAG, which is the largest of the approximately 700 Councils of Government in the country, shares responsibility with the SCAQMD for preparation of the local air pollution control plan.

Appendix B: Technical Issues

I. Developing the Federal Implementation Plan

This Appendix is intended to provide a better understanding of the technical issues associated with the FIP process. The process of developing an implementation plan is similar whether the plan is to be promulgated by the state, as a SIP, or by the federal government, as a FIP. Typically, states have been given only nine months to prepare and submit to EPA a fully adopted and approvable plan. During this time, EPA must complete appropriate guidance, and the state must gather information, conduct an analysis of the problem, select appropriate control measures, and write and adopt a plan. Because the development of post-1987 plans is expected to be more difficult than previous efforts, EPA, in its proposed policy to address continued nonattainment of the ozone and CO NAAQS, proposed to allow states two years to develop post-1987 ozone and CO SIPs.

In order to produce a technically sound plan, the following types of activities are required:

a. development of data bases (inventories)
b. determination of emission reduction requirements
c. selection of control measures
d. preparation of the FIP or SIP
e. review and adoption of the plan.

A. Development of Data Bases

1. *Current Emission Inventory.* An emission inventory of air pollutants and their sources is essential in identifying major contributors of air contaminants. Sources of emissions are classified as either stationary or mobile sources. Stationary sources are further divided into point and area sources.

The most recent comprehensive inventory for the South Coast is for the base year 1983. For the purposes of the South Coast draft plan, the 1983 inventory was updated to create a 1985 base year emission inventory. The next comprehensive update is expected in 1990 for the base year 1987.

A technical evaluation of the South Coast draft plan inventory and projections has not yet been performed. However, some preliminary conclusions can be drawn about the inventory. Stationary VOC sources in the South Coast include surface coating operations, consumer use products, petroleum processing, and industrial/manufacturing processes. The total VOC contribution from stationary point and area sources comprises 48 percent of the inventory. For NO_x, stationary point and area sources contribute 28 percent of the inventory. The major stationary NO_x sources include electric utilities, petroleum refineries, and manufacturing/industrial process. Stationary sources contribute only 4 percent to the CO inventory and are mostly fuel combustion sources.

Mobile source emissions are attributed to on-road vehicles (automobiles; light, medium, and heavy duty trucks; buses; and motorcycles) and other mobile sources (airplanes, ships, trains, and mobile utility equipment). On-road vehicles account for 46 percent of the VOC emissions, 59 percent of the NO_x emissions, and 87 percent of the CO emissions in the South Coast.

2. *Forecasted Emission Inventories.* The 1985 base year inventory has been projected to create the baseline inventory for 2000 and 2010. The projected inventories take into account existing control strategies presently in the South Coast, including the California and the Federal Motor Vehicle Control Programs (CMVCP) and (FMVCP), and anticipated stationary and mobile source growth.

Due to existing efforts of local, state and federal air pollution control agencies, per source emissions of VOC, CO, and NO_x in the South Coast are declining. The SCAQMD estimates that per source emissions will continue to decline in the near future because of the effect of existing controls on air pollution sources. The major reason for this steady decrease in per source emissions is the expected turnover of vehicles in use due to the implementation of the CMVCP and the FMVCP. As older cars, which have higher emissions, are replaced by newer, cleaner burning cars, the associated emissions have decreased.

As noted above, however, the South Coast Basin is growing in population at a remarkable rate. If the excess cumulative emissions caused by this growth are not offset or mitigated, the South Coast will quickly begin to experience a net increase in emissions throughout the basin.

3. *FIP Emission Inventory.* The FIP emission inventory would give an indication of what sources would be able to provide additional reductions and would provide an overall baseline against which the adequacy of the control strategy is judged. The FIP emission inventory would include VOC, NO_x, and CO.

EPA would need to establish a base year inventory; a projected inventory for future years with no new control measures; and a series of projected control strategy inventories. This would involve the identification of sources; data collection on stationary source production levels;

estimation of traffic volumes; a calculation of emissions for each mobile and stationary source category; and a determination of growth factors for each source or source category. This effect would require extensive cooperation from the SCAQMD, SCAG, ARB, and the California Department of Transportation (Caltrans) since these agencies are typically the source for emissions data.

For the purposes of the greater than five year plan, EPA would use a 1987 base year emission inventory. This emission inventory is already in preparation, and a final draft could be ready as soon as December 1989. Due to limited time, the five-year FIP would use the 1983 inventory.

To be consistent with EPA's proposed post-1987 policy, some revisions to the South Coast's 1987 base year inventory are necessary. The inventory would have to be revised to include all sources which emit more than 10 tons per year. Also, the inventory area would need to be expanded to include sources within a 25 mile boundary of the Basin and additional source categories such as treatment, storage, and disposal facilities of hazardous materials and publicly owned water and sewage treatment facilities.

The projected inventory would take into account existing control measures and expected growth in the South Coast. To be consistent with the proposed post-1987 policy, EPA will project the inventory over five years (1992). The inventories would then be gridded in preparation as input into the Urban Airshed Model (see discussion below).

The quantified emission reductions from the federal control strategies must be allocated to each of the emission inventory categories to produce a series of projected control strategy inventories. Initially, EPA would project the emission reductions over the first five years, then update every three years. To remain consistent with the proposed post-1987 policy, an 80 percent control effectiveness factor would apply to the inventory control categories.

The proposed post-1987 ozone/CO policy give states one year to produce a base year emission inventory. EPA's requirements under a FIP might range between having to do an entire inventory to only having to do a part, depending upon the selection of the base year and the status of any work already done by the state and local agencies. EPA would have to rely heavily on contractor assistance for all phases of inventory preparation.

B. Determination of Emission Reduction Requirements

1. *Ozone Modeling.* There are two modeling techniques recognized by EPA for ozone evaluations and demonstrations of attainment: the Empirical Kinetics Modeling Approach (EKMA) and the Urban Airshed Model (UAM). UAM is the preferred model for ozone control strategy evaluations, but is more complex and expensive to run than EKMA.

EKMA simulates the full range of atmospheric chemical reactions involved in ozone formation, but employs a very simplistic treatment of transport, mixing, and dispersion of the reacting pollutant species. The advantages of EKMA are: (1) That it requires only a limited amount of aerometric input data; (2) it does not require extensive computer resources; and (3) it can provide a fixed VOC emission reduction target necessary to reach attainment. It cannot, on the other hand, be used to evaluate the impact of the spatial variability of emissions, the spatial distribution of ozone, or multi-day effects during ozone episodes.

The UAM is a three dimensional grid-based model which utilizes the same set of chemical reactions as EKMA, but employs a much more rigorous treatment of transport and dispersion. The primary disadvantage to using this model is that it is more costly. It requires detailed, three dimensional data, considerable effort to assemble and input the aerometric and emissions data, and extensive computer resources.

The aerometric and emissions database has been assembled and UAM analyses have been performed by the SCAQMD. Therefore, EPA intends to base its control strategy and attainment analyses on UAM results. EPA would resort to an EKMA analysis only if, by Court order, EPA must promulgate the FIP in a very short time frame, or as discussed below, the SCAQMD modeling analyses or database are found unusable.

Ideally, EPA would build upon the South Coast modeling efforts. If problems are discovered with the model or the data, EPA, or an EPA contractor, will work with the SCAQMD and/or conduct the modeling itself. If serious flaws are found in the SCAQMD's modeling analyses or input data, then EPA may resort to an EKMA analysis.

Two types of modeling analyses will be undertaken: sensitivity and control strategy. Sensitivity analyses will verify that the model is accurately depicting the physics and chemistry of the basin and will provide a rough approximation of the types and magnitudes of emission reduction necessary to attain the NAAQS. The control strategy analysis will be more specific in terms of what types of input parameter changes are analyzed. It is important to note that peak ozone concentrations will not react dramatically to individual control measures. The analysis will evaluate the impact on ozone concentrations of a large group of control measures, with a fairly large overall emission reduction associated with them.

Some of the specific types of analyses which would be performed are the following:

a. *Attainment Demonstration.* The primary analysis needed is the determination of the level of emission reduction necessary to attain the ozone standard. The suggested approach, as outlined by EPA, is to determine the level of VOC reductions, in the absence of NO_X reductions, necessary to reach the standard. Then, if the VOC to NO_X ratio in the nonattainment area is greater than 10 to 1, the effects of NO_X control on the maximum ozone concentrations will be evaluated to determine the overall level of VOC reductions necessary.

In the case of the South Coast Basin, PM–10 and NO_2 ambient levels are also in excess of the standard. The South Coast draft plan proposes major reductions in NO_X emissions as necessary particularly for attainment of the PM–10 standard. EPA would need to take into account the NO_X reductions required by the South Coast. Those reductions will affect ozone attainment, and will make the ozone attainment analyses more complex.

b. *Spatial Effects.* The initial precursor reduction targets will be based on an overall basin reduction level. When actual controls are implemented, some controls may only apply to certain geographic locations. If certain source types are only located in one area of the basin, controls applied to those sources may have different effects on the ozone concentrations than similar controls applied elsewhere in the Basin.

c. *Baseline Changes.* As population patterns shift within the basin, the spatial and temporal distribution of emissions may change, especially vehicle miles traveled (VMT) and associated emissions. Such changes could affect the attainment demonstration.

d. *Maintenance of the Standard.* The modeling must demonstrate maintenance as well as attainment of the NAAQS. Future year projected inventories will be used for this maintenance demonstration.

2. *Carbon Monoxide Modeling.* CO impacts occur on both an urban scale and a microscale. The overall buildup of pollutants on a large scale defines an urban scale impact, while high, but more transient, levels of pollutants near a roadway are considered microscale impacts. Most CO problems are the result of a combination of both types of impacts; however, the CO nonattainment problem in the South Coast basin primarily involves a large urban scale component. Therefore, an attainment demonstration for the basin will require urban scale modeling.

Although the UAM was developed primarily for ozone applications, it can also be used for evaluating relatively inert pollutants, such as CO. It has been successfully used for this purpose in Denver, Colorado, and Phoenix, Arizona. Because of the complex meteorology and disparate emission patterns in the South Coast basin, the model would be appropriate for use there as well.

At this time, only proportional rollback procedures have been used in the analysis of CO in the South Coast basin. Therefore, CO airshed modeling will require assembling an appropriate aerometric and emissions database. EPA intends to construct the CO FIP attainment demonstration based on the UAM unless time and resource contraints disallow its use. In that event, EPA's analysis must use rollback modeling.

C. Selection of Control Measures

Before being selected for inclusion in a plan, measures must be evaluated for their emission reduction potential, costs, technical and administrative feasibility, and social and political impacts.

The evaluation process is expected to take considerable time and resources, and will involve contractor assistance and the input of numerous outside agencies and affected industries. The evaluation of measures is normally performed by the state and local agencies; however, under a FIP, EPA would assume this responsibility.

The selection process is also typically handled by the state and local agencies, with little federal input aside from measures

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mandated by the Clean Air Act, such as inspection and maintenance (I/M) or Reasonably Available Control Technology. Again, under a FIP, EPA would have the legal responsibility for selecting measures which are sufficient to accomplish the goal for attaining and maintaining the standard in the required time period.

D. Preparation of the FIP

After all the data have been collected, analyses conducted, and measures selected, EPA would assemble the results into a usable form. This entire process would be documented and represented in the form of selected measures and regulations, and a description of how those measures will enable the standard to be attained and maintained. This is the draft implementation plan.

A major portion of the effort involved in preparing a plan would be the development of the regulations needed to implement those selected control measures which are in addition to measures currently approved. Regulations need to be technically defensible and legally enforceable. This will require considerable effort, expertise, and time, especially for measures which address less traditional source categories and controls.

E. Adoption of the Plan

The final state in the preparation of a plan is the process of public review, formal approval, and adoption or promulgation. The purpose of the adoption process is the same for a SIP and a FIP, that is, to provide all interested parties an opportunity to examine the control strategy chosen as well as the technical and legal basis for the strategy, and to make the plan a legally enforceable document. However, the process is somewhat different for a FIP because of the necessity to conform to federal procedural requirements. EPA would be required to publish a summary of the FIP's demonstration of attainment and draft control measures in the **Federal Register**, provide for a public comment period, and hold formal public hearings. A final **Federal Register** notice would contain the final control measures and responses to public comments. EPA regional offices are primarily responsible for drafting **Federal Register** notices, holding public hearings, and obtaining public comment.

II. Implementing a Plan

After a plan has been prepared and promulgated, it must be implemented. Implementation is an ongoing process of administering programs to achieve and maintain compliance with the control measures set forth in the plan. The following activities are encountered in the implementation of a plan:

A. Source Permitting, Testing, and Inspection

B. Enforcement

C. Effectiveness evaluation

The implementation phase is critical, as it, along with the quality of the planning effort, determines how effective the plan is. As in the case of plan preparation, the responsibility for implementing a FIP rests with EPA. While EPA cannot legally require another agency to implement FIP control measures, it would hope that state and local air agencies would want to be involved.

A. Source Permitting, Testing, and Inspection

The process of implementing the measures in a plan requires that the compliance status of the various stationary and mobile sources be determined, corrected when necessary, and maintained. Ideally, a FIP would build from the existing state rules which have been approved, adding federal measures where necessary but leaving the state or local measures in place. Implementation would then be shared between the state and local agencies and EPA. Compliance determination inspection could be a cooperative venture also; however, since sources subject to federal measures would be operating under federally issued permits, enforcement actions probably would be carried out at the federal level.

The task of determining compliance varies with the nature of the source. Stationary sources such as manufacturing facilities, industrial plants, and gasoline terminals require emissions testing and visual inspection of stack emission points, probable non-stack or fugitive emissions points, and production and control equipment. Mobile source measures require not only emission testing and visual inspection, as with an I/M program, but more non-traditional techniques as well, in order to gauge compliance with control measures such as reduced fuel volatility, oxygenated fuels, gasoline rationing, parking restrictions, and mandatory ridesharing.

B. Enforcement

Enforcement is the process of compelling sources to comply, generally through actual or threatened legal action. As previously mentioned, enforcement of federal measures would mean that EPA would have the responsibility for initiating action against sources operating out of compliance with those measures. While EPA routinely conducts enforcement activities against large emitters, these activities are limited. Under a FIP, EPA's enforcement role would expand significantly in the affected area.

C. Plan Tracking

Essential to the FIP process is a program to monitor how measures are being implemented and if emission reductions are occurring as scheduled and committee to assure attainment of the NAAQS. Reports on the plan's implementation status must be timely and made public. EPA could promulgate a plan provision for such a tracking program. This program would include emission quantification techniques, required resources, and time frames for completing the analysis. Quarterly reports would document current control measures development, adoption and implementation, and how they would provide the quantitative analysis necessary to document emission changes. Both quarterly and annual reports would be distributed to the public. EPA would rescind this measure if the SCAQMD and SCAG adopt such a provision in their SIP and show evidence of sufficient staff and financial resources for implementation.

[FR Doc. 88–28036 Filed 12–6–88; 8:45 am]
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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, 127, 135 and 145

Special Federal Aviation Regulation No. 36; Development of Major Repair Data; Final Rule

VOL 53 ISS 235 DE 7 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 127, 135, and 145

[Docket No. 17551; SFAR No. 36-4]

Special Federal Aviation Regulation No. 36; Development of Major Repair Data

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment extends the effective date of Special Federal Aviation Regulation (SFAR) No. 36 which provides that repair stations, air carriers, air taxis, and commercial operators of large aircraft may accomplish major repairs using self-developed repair data which have not been specifically approved by the FAA. In addition, the regulation will continue to provide an alternative from the need to obtain FAA approval of repair data on a case-by-case basis and allow additional time for the FAA to incorporate the SFAR provisions into the regulations.

DATES: Effective Date January 23, 1989. Comments must be received on or before January 6, 1989.

ADDRESS: Comments on this rule may be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 17551, 800 Independence Ave., SW., Washington DC 20591. Comments delivered must be marked Docket No. 17551. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jess Lewis, Continued Airworthiness Staff, Aircraft Engineering Division, AWS–100, Office of Airworthiness, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC 20591, telephone: (202) 267–9287.

SUPPLEMENTARY INFORMATION:

Background

SFAR 36, which became effective on January 23, 1978, was issued to provide qualifying certificated air carriers, air taxis, commercial operators, and repair stations with an alternative to the need to obtain FAA approval of data developed by them for major repairs on a case-by-case basis. The certificate holders eligible for authorization under the SFAR are those employing adequately trained personnel and complying with specified procedural requirements.

SFAR 36 was adopted as an interim rulemaking action to obtain information upon which to base a permanent rule change. However, most of the affected certificate holders did not utilize the provisions of SFAR 36 until it was well into its second year and near its expiration date of January 23, 1980. Since the FAA did not have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended an additional 2 years, to January 23, 1982.

Although the FAA initiated rulemaking to consolidate certain authorizations along with those issued under SFAR 36 and make them a permanent part of the Federal Aviation Regulations (FAR) the rulemaking action was not completed and the termination date for SFAR 36 was extended two additional periods. The first period was for 2 years and the second period, with a termination date of January 23, 1989, was for 5 years. Each authorization issued under the SFAR was made effective from the date of issuance. There are presently more than 30 certificated air carriers and repair stations holding SFAR 36 authorizations. For reasons unrelated to the subject matter of SFAR 36, the rulemaking project that was to permanently codify SFAR 36 was canceled. A new regulatory project which will codify the provisions of SFAR 36 into FAR 21 (14 CFR Part 21) is underway. This new project broadens existing delegation of aircraft certification and approval functions and extends these functions to domestic organizations which possess the necessary technical and managerial qualifications. These changes are beyond the scope of SFAR 36 and are likely to stimulate significant interest and comment. This will prevent codification before SFAR 36 expires. Consequently, to provide continuity and avoid hardships to those relying on SFAR 36 as it presently exists, the FAA finds it necessary to extend the effective date of SFAR 36 an additional 5 years, to January 23, 1994.

Paperwork Reduction Act

Information collection requirements in this regulation [SFAR 36] have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0507.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 36 and the authorizations issued thereunder is January 23, 1989. The reasons which supported the adoption of SFAR 36 still exist and, to avoid hardships to those relying on the provisions of SFAR 36, it is in the public interest to extend the termination date of SFAR 36 from January 23, 1989, to January 23, 1994. The amendment also extends the effective date of each current authorization issued under this SFAR from the date of issuance until January 23, 1994. This rule extension should provide ample time for provisions to be incorporated into a permanent rule change.

This amendment is necessary to provide regulatory continuity and avoid hardship and costs to those relying on SFAR 36 as it presently exists. Since this amendment continues to effect the provisions of a currently effective SFAR and imposes no additional burden on any person, we find that notice and public procedures hereon are unnecessary. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: the rule change does not involve a major action under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that an evaluation is not required.

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Airworthiness directives and standards, Safety.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness, Helicopters.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Safety, Helicopters.

14 CFR Part 145

Air Carriers, Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Parts 121, 127, 135, and 145 (14 CFR Parts 121, 127, 135, and 145) as follows, effective January 23, 1989.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

2. The authority citation for Part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

PART 145—REPAIR STATIONS

4. The authority citation for Part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. 1354(a), 1355, 1421, and 1427; unless otherwise noted.

5. By amending Parts 121, 127, 135, and 145, Special Federal Aviation Regulation No. 36 (the text of which is found at the beginning of Part 121), by revising the termination date from "January 23, 1989" to "January 23, 1994" and by revising paragraph 5 to read as follows:

SFAR–36

* * * * *

5. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 1994, unless it is surrendered or the Administrator suspends, revokes, or otherwise terminates it at an earlier date.

* * * * *

Issued in Washington, DC, on November 28, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–28101 Filed 12–6–88; 8:45 am]

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December 7, 1988

Part VII

Department of Education

Drug Prevention Programs in Higher Education; Institution-Wide Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

VOL 53 ISS 235 DE 7 1988 UMI

DEPARTMENT OF EDUCATION

[CFDA No. 84.183A]

Drug Prevention Programs in Higher Education; Institution-Wide Program; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: March 1, 1989.

Applications Available: December 20, 1988.

Available Funds: $10,200,000.

Estimated Range of Awards: $10,000 to $250,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 75 to 125.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention as described at 34 CFR 612.21(b). The Secretary funds under this competition only applications that meet this absolute priority.

Selection Criteria

In evaluating applications for Institution-Wide grants, the Secretary will use the specific competition selection criteria for Institution-Wide awards listed in 34 CFR 612.23(c)(1). The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Methods and management plan. (34 CFR 612.23(c)(1)(iii)) Five (5) points will be added to this criterion for a possible total of 20 points.

Cost effectiveness and budget clarity. (34 CFR 612.23(c)(1)(vi)) Five (5) points will be added to this criterion for a possible total of 15 points.

Organizational commitment. (34 CFR 612.23(c)(1)(vii)) Five (5) points will be added to this criterion for a possible total of 20 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, Drug Prevention Programs in Higher Education, FY 1989–A Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets, SW., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211.

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–26171 Filed 12–6–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.183B]

Drug Prevention Programs in Higher Education: Special Focus Program Competition: National College Student Organizational Network Program; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: May 1, 1989.

Applications Available: December 9, 1988.

Available Funds: $900,000.

Estimated Range of Awards: $100,000 to $250,000.

Estimated Number of Awards: 2 to 4.

Note: The Department is not bound by any estimate in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) the regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884)); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to Special Focus Program competitions, described at 34 CFR 612.21(c)(2), for projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs. The Secretary has chosen as an absolute priority one approach from the list at 34 CFR 612.21(c)(2): the development and implementation of programs conducted in conjunction with national student networks or organizations (34 CFR 612.21(c)(2)(ii)). The Secretary funds under this competition only applications that meet this absolute priority.

Eligible Applicants: IHEs are the only eligible applicants for grants under this competition. Therefore, interested national student networks or organizations must be sponsored by an IHE which will serve as the applicant and fiscal agent for a grant award.

Selection Criteria

In evaluating applications for National College Student Organizational Network grants, the Secretary will use the specific competition selection criteria for National College Student Organizational Network awards listed in 34 CFR 612.23(c)(2)(ii). The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Design. (34 CFR 612.23(c)(2)(ii)(A)) Five (5) points will be added to this criterion for a possible total of 25 points.

Organizational commitment. (34 CFR 612.23(c)(2)(ii)(F)) Ten (10) points will be added to this criterion for a possible total of 20 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, Drug Prevention Programs in Higher Education, FY 1989–B Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets SW., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211.

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–28172 Filed 12–6–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.183C]

Drug Prevention Programs in Higher Education: Special Focus Program Competition: Approaches to Accountability in Prevention Program; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: February 8, 1989.

Applications Available: December 9, 1988.

Available Funds: $100,000.

Estimated Range of Awards: Up to $15,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 9 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884)); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to Special Focus Program competitions, described at 34 CFR 612.21(c)(2), for projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs. The Secretary has chosen as an absolute priority one approach from the list at 34 CFR 612.21(c)(2): the formulation of promising new approaches to individual and institutional leadership and responsibility (34 CFR 612.21(c)(2)(i)). The Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: In accordance with EDGAR at 34 CFR 75.105(c)(1), the Secretary invites applications from IHEs to produce papers which develop and articulate new theories, theoretical models, and conceptual approaches on a variety of topics and issues in a number of fields and areas of knowledge related to individual and institutional leadership and responsibility in drug abuse education and prevention.

Areas of knowledge which applicants may wish to consider in developing their formulations include, but are not limited to, the following: higher education, psychology (including motivation, character, and responsibility), social psychology (including social deviance), ethics and moral education, health, sociology of organizations, management science, and leadership. Applications that meet this invitational priority will not receive a competitive or absolute preference over other applications that do not meet this priority.

The Secretary is not interested in inviting applications for grants for research, the development of instructional or training materials, program evaluation, restatements of existing theory, or literature reviews that are not conducted as part of a theoretical formulation.

Selection Criteria

In evaluating applications for Approaches to Accountability in Prevention grants, the Secretary will use the selection criteria for Approaches to Accountability in Prevention awards listed in 34 CFR 612.23(c)(2)(i). The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Design. (34 CFR 612.23(c)(2)(i)(B)) Five (5) points will be added to this criterion for a possible total of 35 points.

Methods and management plan. (34 CFR 612.23(c)(2)(i)(C)) Five (5) points will be added to this criterion for a possible total of 20 points.

Key personnel. (34 CFR 612.23(c)(2)(i)(D)) Five (5) points will be added to this criterion for a possible total of 25 points.

For Applications or Information Contact: Donald R. Fischer, Drug Prevention Programs in Higher Education, FY 1989–C Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets, SW., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–28173 Filed 12–6–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.183D]

Drug Prevention Programs in Higher Education: Special Focus Program Competition: Specific Approaches to Prevention Projects; Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provide grants to institutions of higher education to develop, implement, operate, and impove drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Deadline for Transmittal of Applications: June 1, 1989.

Applications Available: January 6, 1989.

Available Funds: $1,800,000.

Estimated Range of Awards: $5,000 to $40,000.

Estimated Number of Awards: 30 to 60 awards.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 612 (Final regulations for this program were published in the **Federal Register** on June 30, 1988 (53 FR 24884)); and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77.

Absolute Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105 (c)(3), the Secretary gives an absolute preference for Special Focus Program competitions, described at 34 CFR 612.21 (c) (2), for projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs. The Secretary has chosen as an absolute priority one approach from the list at 34 CFR 612.21 (c) (2); specific approaches to the prevention of drug use or alcohol abuse (34 CFR 612.21 (c) (2) (iii). The Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: In accordance with EDGAR at 34 CFR 75.105 (c) (1), the Secretary invites applications from IHEs to develop, implement, operate, or improve higher education consortia for drug prevention. Applicants are invited to propose consortia arrangements to assist local and nearby prevention professionals, representing institutions of higher education, to meet on a monthly basis to discuss, investigate, and act on efforts to develop and improve their own comprehensive,

institution-wide programs of drug education and prevention. Other specific approaches meeting the absolute priority are also eligible. Applications that meet this invitational priority will not receive a competitive or absolute preference over other applications that do not meet this priority.

Selection Criteria

In evaluating applications for specific approaches to prevention grants, the Secretary will use the selection criteria for awards for specific approaches to prevention listed in 34 CFR 612.23(c) (2) (iii). The program regulations in 34 CFR 612.23 (b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the 15 points will be distributed as follows:

Need. (34 CFR 612.23 (c) (2) (iii) (A)) Five (5) points will be added to this criterion for a possible total of 20 points.

Methods and management plan. (34 CFR 612.23 (c)(2) (iii) (C)) Five (5) points will be added for a possible total of 20 points.

Cost effectiveness and budget clarity. (34 CFR 612.23 (c) (2) (iii) (F)) Five (5) points will be added for a possible total of 15 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, Drug Prevention Programs in Higher Education, FY 1989–D Competition, Fund for the Improvement of Postsecondary Education, ROB–3—Room 3100, 7th and D Streets, S.W., Washington, DC 20202–5175. Telephone: (202) 732–5750.

Program Authority: 20 U.S.C. 3211.

Dated: December 1, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–28174 Filed 12–6–88; 8:45 am]

BILLING CODE 4000–01–M

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federal register

Wednesday
December 7, 1988

Part VIII

Office of Management and Budget

Budget Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States

In accordance with the Impoundment Control Act of 1974, I herewith report four new deferrals of budget authority totaling $4,635,275,000 and three revised deferrals of budget authority now totaling $3,725,586,833.

The deferrals affect programs in Funds Appropriated to the President, and the Departments of State and Transportation.

The details of these deferrals are contained in the attached report.

Ronald Reagan,

The White House.

November 29, 1988.

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D89-11	Foreign military sales credit.....	4,122,750
D89-1A	Economic support fund.....	2,646,760
D89-12	Military assistance.....	457,000
D89-13	International military education and training.....	37,400
	Agency for International Development:	
D89-14	International disaster assistance....	18,125
	Department of State:	
	Bureau for Refugee Programs:	
D89-9A	U.S. emergency refugee and migration assistance fund.....	53,135
	Department of Transportation:	
	Federal Aviation Administration:	
D89-10A	Facilities and equipment (Airport and airway trust fund).....	1,025,692
	Total, deferrals.....	8,360,862

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1989
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Second special message:		
New items	---	4,635,275
Revisions to previous special messages	---	2,283,084
Effects of second special message	---	6,918,359
Amounts from previous special messages that are changed by this message (changes noted above)	---	1,442,503
Subtotal, rescissions and deferrals	---	8,360,862
Amounts from previous special messages that are not changed by this message	---	581,669
Total amount proposed to date in all special messages	---	8,942,531

Deferral No: D89-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol:

Foreign military sales credit 1/

1191082

OMB identification code:

11-1082-0-1-152

Grant program: [ ] Yes [X] No

Type of account or fund:

[X] Annual

[ ] Multiple-year _____ (expiration date)

[ ] No-Year

New budget authority..... $4,272,750,000
(P.L. 100-461)
Other budgetary resources.. _____

Total budgetary resources.. 4,272,750,000

Amount to be deferred:
Part of year..... $4,122,750,000

Entire year..... _____

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit or guarantee articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order No. 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guarantee transactions that are based upon national security and financial policies. These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-20).

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D89-1A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-1 transmitted to Congress on September 30, 1988.

This increases by $2,054,000,000 the previous deferral of $592,760,000 in the Economic support fund, Funds Appropriated to the President, resulting in a total deferral of $2,646,760,000. The increase in the amount deferred results from the deferral of funds included in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989. Funds are deferred pending approval of specific grants by the Secretary of State.

Deferral No: D89-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol:

Economic support fund 1/
118/91037
11X1037
*119/01037

OMB identification code:

11-1037-0-1-152

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual
[X] Multiple-year Sept. 30, 1989 (expiration date) *Sept. 30, 1990
[X] No-Year

New budget authority.....* $3,258,500,000
(P.L. 100-461)
Other budgetary resources.* 378,855,012

Total budgetary resources.* 3,637,355,012

Amount to be deferred:
Part of year.....* $2,646,760,000

Entire year..... _____

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act
[ ] Other _____

Type of budget authority:

[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
Economic support fund.....	11 X 1037	11-1037-0-1-152	1,000,000
*Economic support fund.....	119/01037	11-1037-0-1-152	2,054,000,000
Economic support fund.....	118/91037	11-1037-0-1-152	591,760,000
			2,646,760,000

***Justification:** This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-1A).

* Revised from previous report.

Deferral No: D89-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol:

Military assistance 1/

1191080

OMB identification code:

11-1080-0-1-152

Grant program: [X] Yes [ ] No

Type of account or fund:

[X] Annual

[ ] Multiple-year _____ (expiration date)

[ ] No-Year

New budget authority..... $ 467,000,000
(P.L. 100-461)
Other budgetary resources.. _____

Total budgetary resources.. 467,000,000

Amount to be deferred:
Part of year..... $ 457,000,000

Entire year..... _____

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-21A).

Deferral No: D89-13

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol:

International military education and training 1/

1191081

OMB identification code:

11-1081-0-1-152

Grant program: [ ] Yes [X] No

Type of account or fund:

[X] Annual

[ ] Multiple-year _____ (expiration date)

[ ] No-Year

New budget authority..... $ 47,400,000 (P.L. 100-461)

Other budgetary resources.. _____

Total budgetary resources.. 47,400,000

Amount to be deferred:

Part of year..... $ 37,400,000

Entire year..... _____

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military training to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain of the President's functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a deferral in 1987 (D87-24).

Deferral No: D89-14

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 25,000,000 (P.L. 100-461)
Bureau: Agency for International Development	**Other budgetary resources..** 4,000,000
Appropriation title and symbol: International disaster assistance, Executive 1/ 11X1035	**Total budgetary resources..** 29,000,000
	Amount to be deferred:
	Part of year..... $ 18,125,000
	Entire year.....
OMB identification code: 11-1035-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other
Type of account or fund:	**Type of budget authority:**
[ ] Annual	[X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. Responsibility for administration of this account has been delegated by Executive Order to the Administrator of the Agency for International Development. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 provided $25 million for disaster assistance activities. Funds are deferred pending the development of country-specific plans and to insure that funds are available to meet emergency needs throughout the year. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1988 (D88-22).

D89-9A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-9 transmitted to Congress on September 30, 1988.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported from $26,135,000 to $53,135,000. This net increase of $27,000,000 results from the deferral of 1989 appropriations pending Presidential designation of the refugees to be assisted.

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Deferral No: D89-9A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of State
Bureau:
Bureau for Refugee Programs
Appropriation title and symbol:
United States emergency refugee and migration assistance fund 1/
11X0040

OMB identification code:
11-0040-0-1-151

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority.....* $ 50,000,000
(P.L. 100-461)
Other budgetary resources.* 23,835,000
Total budgetary resources.* 73,835,000

Amount to be deferred:
Part of year.....* $ 53,135,000
Entire year.....* _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: * Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed $50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461) expressly waived the provision that placed a limit on the amounts in the fund.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

1/ This account was the subject of a similar deferral in FY 1988 (D88-11).

* Revised from previous report.

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* These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-10 transmitted to Congress on September 30, 1988.

This increases by $202,084,287 the previous deferral of $823,607,546 in the Department of Transportation's Facilities and equipment, FAA trust fund account, resulting in a total deferral of $1,025,691,833. The increase results from the multi-year funding of modernization and improvement projects in the Department of Transportation and Related Agencies Appropriations Act, 1989. Due to the complexity and lengthy lead time for many of these projects, some of these funds will not be obligated until after FY 1989. This is fully consistent with the full-funding approach used for most projects in this account and ensures that sufficient funds will be available in future years to complete the acquisition, testing, and installation of improved air traffic control equipment and facilities.

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Deferral No: D89-10A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:

Department of Transportation

Bureau:
Federal Aviation Administration

Appropriation title and symbol:

Facilities and equipment (Airport and airway trust fund) 1/

69X8107 695/98107 *699/38107
697/18107 698/28107 696/08107

OMB identification code:

69-8107-0-7-402

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual — Sept. 30, 1989 / Sept. 30, 1990
[X] Multiple-year — Sept. 30, 1991 (expiration date)
[X] No-Year — Sept. 30, 1992 / Sept. 30, 1993

New budget authority.....* (P.L. 100-457)	$1,384,528,000
Other budgetary resources.*	1,354,416,717
Total budgetary resources.*	2,738,944,717
Amount to be deferred: Part of year.....	$
Entire year.....*	1,025,691,833

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act
[ ] Other _____

Type of budget authority:

[X] Appropriation
[ ] Contract authority
[ ] Other _____

***Justification:** Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, and the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. Funds to continue these activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested.

Because of the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with FAA's full funding approach and Congressional intent to provide resources for a project's total cost, and is taken under provision of the Antideficiency Act (31 U.S.C. 1512).

1/ This account was the subject of a similar deferral in FY 1988 (D88-12A).

* Revised from previous report.

D89-10A

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 88-28184 Filed 12-6-88; 8:45 am]
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is publishing interim regulations to provide for entitlement to pay retention when a Federal prevailing rate (wage) schedule is reduced as the result of the findings of a wage survey. This change will address certain anomalies in the statutory wage and survey process for Federal wage employees by providing that wage employees will not be reduced in pay solely because of changes in the local private sector economy over which they have no control.

DATES: This interim rule becomes effective on December 8, 1988; comments must be received on or before February 6, 1989.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jan B. Karicher, (202) 632–5056.

SUPPLEMENTARY INFORMATION: In a report that accompanied Pub. L. 100–71, Congress recommended that the Office of Personnel Management (OPM) "* * * examine the possibility of proposing changes in the underlying statute to address * * * anomalies in the statutory wage and survey process [for Federal prevailing rate (wage) employees] and report to the Committee * * *."

Based on the philosophy that wages in a prevailing rate system should follow the local economy, regardless of which direction the economy moves, OPM has considered the use of pay retention as inappropriate when a wage schedule is reduced as a result of a decline in the local private sector economy. However, in recent years we have noticed that wage schedule reductions generally are short-lived, usually affect the lowest-paid wage employees, and have little impact on Federal spending. Further, over the past several years pay increases have been capped, and Federal wage rates have not always kept pace with prevailing rates in the local economy.

OPM now believes that pay retention would be appropriate in reducing the impact of survey anomalies. In addition, we believe there is sufficient flexibility in the existing statute governing grade and pay retention (5 U.S.C. 5365) to allow OPM adequately to protect wages when schedules are reduced by revising § 536.104(a)(3)(ii) of Title 5, Code of Federal Regulations. This revision will remove the restriction on granting pay retention to a wage employee whose rate of basic pay is reduced as the result of the findings of a wage survey.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice is being waived and the regulation is being made effective immediately in the event a prevailing rate is reduced as the result of a wage survey in the near future.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending Part 536 of Title 5, Code of Federal Regulations, as follows:

PART 536—GRADE AND PAY RETENTION

1. The authority citation for Part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366.

2. In § 536.104, the introductory text to paragraph (a) and (a)(3) is republished for the convenience of the reader, and paragraph (a)(3)(ii) is revised to read as follows:

§ 536.104 Coverage and applicability of pay retention.

(a) Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced—

* * * * *

(3) As a result of a reduction or elimination of scheduled rates, special schedules, or special rates, but not as the result of—

* * * * *

(ii) A statutory reduction in a prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, and Part 532 of this chapter.

* * * * *

[FR Doc. 88–28252 Filed 12–7–88; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Section 22 Dairy Import Quota for Uruguay

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations governing the importation under license of certain dairy products which are subject to quantitative limitations proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, in order to implement Presidential Proclamation No. 5908 of

November 18, 1988, as amended by Presidential Proclamation No. 5916 of November 28, 1988, which modified such quantitative limitations to allow for an additional importation of 392,418 pounds of Italian-type cheese in original loaves from Uruguay. A special application period for the 1988 quota year is being established for importers who desire to receive import licenses for the importation of cheese from Uruguay.

DATES: This regulation is effective December 8, 1988. Comments must be submitted on or before February 6, 1989.

ADDRESSES: Mail comments to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616 South Building, Department of Agriculture, Washington, DC 20250–1000.

Copies of all written comments received will be available for examination by interested persons in Room 6622 of the South Building, Department of Agriculture (14th and Independence Avenue SW.), Washington, DC, during regular business hours (8:15–4:45 weekdays).

FOR FURTHER INFORMATION CONTACT: Richard Warsack, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616 South Building, Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since this interim rule will not have any of the significant effects specified in those documents.

Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this interim rule, the Administrator, Foreign Agricultural Service (FAS), hereby certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The interim rule will enhance the capability of both large and small firms to import certain cheese from Uruguay. The public is invited to comment on the impact of this interim rule on small entities, and the Administrator, FAS, will review this determination in light of those comments.

An environmental impact statement has not been prepared since FAS is excluded from the requirements to prepare procedures implementing the National Environmental Policy Act in accordance with 7 CFR 1b.4.

Presidential Proclamation No. 4708 of December 11, 1979 established quantitative limitations on imports of certain dairy articles in accordance with section 701 of the Trade Agreements Act of 1979 (Pub. L. 96–39) and section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Presidential Proclamations No. 8411 of December 30, 1980, No. 5425 of January 6, 1986, No. 5618 of March 16, 1987, and No. 5832 of June 16, 1988 modified those quantitative restrictions. Pursuant to those proclamations, the Department of Agriculture issued regulations providing that the dairy articles subject to such quantitative restrictions could be entered into the United States only by or for the account of a person or firm to which a license has been issued by or under the authority of the Secretary of Agriculture and only in accordance with the terms of such license.

Presidential Proclamation No. 5425 of January 6, 1986, modified such quantitative limitations to permit imports of up to 551,150 pounds of Italian-type cheese in original loaves from Uruguay. The purpose of this interim rule is to amend the regulations governing the importation of dairy articles subject to quotas in order to implement Presidential Proclamation No. 5908 as amended. This interim rule amends the regulations to provide a special application period for licenses for this cheese for 1988 and amends Appendix 2 "Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year" to 7 CFR Part 6, Subpart—Section 22 Import Quotas by revising the line for Uruguay. The quantity which now may be imported annually from Uruguay is 943,569 pounds.

The Department will issue supplementary import licenses authorizing the importation of such cheese from Uruguay to qualified importers. The application period for import licenses for the 1988 quota year was the period from August 1, 1987 through November 1, 1987. However, since there has been no opportunity for importers to apply for the additional supplementary import licenses for cheese imported from Uruguay, it has been determined to provide for a special application period for such licenses.

Importers who desire to receive supplementary import licenses for the importation of Italian-type cheese in original loaves from Uruguay during the 1988 quota year must submit their application in writing to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616, South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 no later than December 23, 1988. Eligibility to receive such licenses and the allocation of such licenses will be determined in accordance with the established rules and procedures for supplementary import licenses.

Since the 1988 quota year has already begun, it is important that licenses to import the specified quantity of cheese from Uruguay be issued as quickly as possible so that importers will have sufficient time to import such cheese for the remainder of the 1988 quota year. In addition, this rule merely implements Presidential Proclamation No. 5908, as amended, which amended the quantitative limitations on imports of certain cheeses in accordance with the Agreement on Trade between the United States and the Oriental Republic of Uruguay.

Accordingly, it has been determined that this interim rule shall become effective on December 8, 1988. However, comments from interested persons are requested. Comments must be received by February 6, 1989 in order to be assured of consideration. After the comments have been received and reviewed, a final rule will be published setting forth any changes which may be necessary in these regulations.

List of Subjects in 7 CFR Part 6

Section 22, Import quotas, Dairy products.

Accordingly, 7 CFR Part 6, Subpart—Section 22 Import Quotas, is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

1. The authority citation for 7 CFR Part 6, Subpart—Section 22 Import Quotas, continues to read as follows:

Authority: Sec. 3, Pub. L. 80–897, 62 Stat. 1248, as amended (7 U.S.C. 624); secs. 701, 703, Pub. L. 96–39, 93 Stat. 268, 272; Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202); Sec. 501, Pub. L. 82–137, 65 Stat. 290, as amended (31 U.S.C. 9701).

§ 6.25 [Amended]

2. Section 6.25 is amended by adding paragraph (c)(3) to read as follows:

(3)(i) Supplementary license eligibility for the additional 392,418 pounds of Italian-type cheese in original loaves from Uruguay made available by Presidential Proclamation No. 5908 of November 18, 1988 as amended by Presidential Proclamation No. 5916 of November 28, 1988, will be established in accordance with paragraph (c)(1) except as provided in paragraph (c)(3) (ii of this section).

(ii) Notwithstanding paragraph (b)(4) of this section, certification required to establish supplementary eligibility for licenses for the additional TSUS item 950.10 (Harmonized Tariff Schedule of the United States subheading 9904.10.42) from Uruguay for 1988 must be postmarked no earlier than December 8, 1988, and no later than December 23, 1988. Importers who have already submitted supplementary license certification for the application period which ended November 1, 1987, may simply request license for this additional article for 1988 by submitting a letter without further documentation postmarked as required in this paragraph.

Appendix 2 [Amended]

3. Group IV(a) of "Appendix 2—Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year" is amended by revising the line beginning with "Uruguay" to read as follows:

"Uruguay.....	428.000	943.569".

Signed this 28th day of November, 1988.

Ann M. Veneman,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 88-28102 Filed 12-7-88; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-37-AD; Amdt. 39-6086]

Airworthiness Directives; Empresa Brasileira de Aeronautica, SA (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts a new Airworthiness Directive (AD) applicable to certain EMBRAER Models EMB-110P1 and EMB-110P2 airplanes which requires replacement or internal modification of the flap control switch P/N 110-898-14. This AD is prompted by a recent incident in which uncommanded full flap extension occurred on the ground prior to take-off. The actions specified in this AD will preclude uncommanded full flap extensions and prevent possible loss of airplane control.

DATES: *Effective Date:* January 5, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: EMBRAER Service Bulletin (SB) 110-027-0084, dated March 23, 1988, and EMBRAER Maintenance Manual with Illustrated Parts List No. T.P. 27-50-00/646, dated February 15, 1985, may be obtained from EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may also be examined at the FAA, Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. William Trammell, Aerospace Engineer, ACE-130A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: The manufacturer issued SB 110-027-0084, dated March 23, 1988, identifying the possibility of an electrical short caused by chafing between an electrical resistor and a potentiometer fastener screw within the body of the flap control switch on Model EMB-110 airplanes. An evaluation of this condition at that time by EMBRAER indicated that should this occur the flaps would not function. Subsequently, a foreign registered airplane experienced an incident where uncommanded full flap deployment occurred prior to take-off. It was determined that this incident had to have been caused by the resistor shorting to ground within the flap control switch body. This condition, if not corrected, could result in loss of control of the airplane during a critical phase of flight. The above incident prompted the Brazilian Airworthiness Authority (CTA) to issue Brazilian AD, 88-09-01, dated September 2, 1988, requiring compliance with the EMBRAER SB 110-027-0084, dated March 23, 1988. This service bulletin requires the modification or replacement of the flap selector switch. The CTA, who has the responsibility and authority to maintain the continued airworthiness of these airplanes in Brazil, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Brazilian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of the CTA combined within FAA review of the design of these airplanes with the applicable U.S. airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of the EMBRAER service bulletin and the mandatory classification of this bulletin by the CTA. Based on the foregoing, the FAA has determined that the condition described herein is an unsafe condition that may exist or develop on other airplanes of the same type design certificated for operation in the United States. Therefore, an AD is being issued requiring replacement or modification of the flap selector switch on certain EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Empresa Brasileira de Aeronautica, SA (EMBRAER): Applicable to Models EMB–110P1 and EMB–110P2 (serial numbers (S/N) 110001 up to and including S/N 110466) airplanes equipped with multi position flap control switch P/N 110–898–14, certificated in any category.

Compliance: Within the next 50 hours time-in-service after the effective date of this AD, unless previously accomplished.

To reduce the potential for inadvertent full flap extension that could result in loss of control of the airplane in a critical phase of flight, accomplish the following:

(a) Replace the flap control switch, P/N 110–898–14, with flap control switch P/N 110–898–14, Revision S, in accordance with Part I of EMBRAER Service Bulletin (SB) 110–027–0084, dated March 23, 1988; or

(b) Modify the flap control switch, P/N 110–898–14, in accordance with Part II of EMBRAER SB 110–027–0084, dated March 23, 1988, and electrically test the reassembled switch and adjust the potentiometer, if necessary to resistance values specified for P/N 110–898–14, Revision G, after the above modification in accordance with Section 2A "Adjusting the Potentiometer" as described in EMBRAER "Maintenance Manual with Illustrated Parts List", No. T.P. 27–50–00/646, dated February 15, 1985. The above modification, test and adjustment must be performed by an appropriately rated repair station.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 5, 1989.

Issued in Kansas City, Missouri, on November 21, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28218 Filed 12–7–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–CE–36–AD; Amdt. 39–6085]

Airworthiness Directives; Mooney Models M20J and M20K Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Mooney Models M20J and M20K airplanes which requires modification of the baggage door for certain Mooney Models M20J and M20K airplanes. There have been eight reports of baggage door in-flight openings, one of which involved fatalities. The actions of this AD will prevent further in-flight openings of the baggage door by providing additional instructions and procedures to ensure proper operation and security.

DATES: *Effective Date:* January 5, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Mooney Aircraft Corporation Service Bulletin (SB) No. M20–239, dated September 28, 1988, and Pilots Operating Handbook/Airplane Flight Manual (POH/AFM) Supplement, dated September 30, 1988, applicable to this AD may be obtained from the Mooney Aircraft Corporation, P.O. Box 72, Kerrville, Texas 78029. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Efrain E. Esparza, Aerospace Engineer, ASW–150, FAA, Airplane Certification Branch, Fort Worth, Texas 76193–0150; Telephone (817) 624–5156.

SUPPLEMENTARY INFORMATION: The FAA has received eight reports of baggage door in-flight openings on Mooney Models M20J and M20K airplanes equipped with an auxiliary exit mechanism that allows the baggage door to be opened from the inside. The earlier of these reports indicated the in-flight opening of the baggage door occurred due to incorrect positioning of the clevis pin in the auxiliary handle. This can occur if the auxiliary exit is not properly secured even though the door is properly latched and locked from the outside. As a result of these reports, the manufacturer issued Service Instruction (SI) M20–63, dated April 12, 1983, to modify the auxiliary exit handle mechanism by installing a spring to provide a positive means of pin engagement in the cam slot.

Subsequent reports indicated that in some cases the ABS cover had fallen off and the plastic knob did not retain the red handle in the closed and locked position as it should, allowing the handle to extend into the cabin. When this condition exists, the exposed handle, which is designed to swing aft to open the door, can be moved to the open position by inadvertent contact, resulting in the opening of the baggage door. Investigation revealed there were no instructions in the POH/AFM to instruct the pilot on the proper operation of the auxiliary exit to prevent the baggage door from opening in-flight.

The manufacturer issued SI M20/82, dated March 14, 1988, to modify the auxiliary exit handle mechanism by replacing the plastic knob with a safety pin designed for positive security of the baggage door. On September 28, 1988, the manufacturer issued SB No. M20–239, that incorporates the modification contained in SI M20/82 and a POH/AFM supplement dated September 30, 1988. The POH/AFM supplement provides instructions for a preflight check of the auxiliary exit handle mechanism as well as information for the pilot on a recommended course of action should the baggage door open in-flight.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring modification of the auxiliary exit provided by the baggage door on certain Mooney Models M20J and M20K airplanes in accordance with the instructions in SB No. M20–239. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance

with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mooney: Applies to Models M20J (Serial Numbers 24–0004, 24–0376 through 24–1645, and 24–3000 through 24–3056) and M20K (Serial Numbers 25–0001 through 25–1100) certificated in any category.

Compliance: Required within the next 25 hours time-in service after the effective date of this AD, unless already accomplished.

To prevent in-flight opening of the baggage door, accomplish the following:

(a) Modify the auxiliary exit mechanism in the baggage door, install a placard, and incorporate the Pilots Operating Handbook/Airplane Flight Manual Supplement as specified in Mooney Aircraft Corporation Service Bulletin No. M20–239, dated September 28, 1988, and operate the airplane in accordance with these instructions.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, FAA, Fort Worth, Texas 76193–0150.

All persons affected by this directive may obtain copies of the document referred herein upon request to the Mooney Aircraft Corporation, P.O. Box 72, Kerrville, Texas 78029; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 5, 1989.

Issued in Kansas City, Missouri, on November 21, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28219 Filed 12–7–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–ANM–18]

Amendment of Transition Area; Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Denver, Colorado 700 foot transition area. This action is necessary to provide additional controlled airspace which will encompass a new instrument approach procedure for the Denver Front Range Airport. The area will be depicted on aeronautical charts for pilot reference, and is intended to segregate aircraft operating under Instrument Flight Rules conditions from other aircraft which are operating under Visual Flight Rules conditions.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 88–ANM–18, C–68968, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

History

On August 31, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Denver, Colorado transition area (53 FR 33504). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment of Part 71 of the Federal Aviation Regulations adds controlled airspace to the Denver, Colorado transition area. This action is necessary to enhance safety at Front Range Airport during the oncoming winter months. It is therefore necessary to publish this final rule within 30 days of its effective date.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under E.O. 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Denver, Colorado (Revised)

On the third line and on the fifth line change 078° to read 065°.

Issued in Seattle, Washington, on November 14, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–28100 Filed 12–7–88; 8:45 am]

BILLING CODE 4910–13–M

VOL 53 ISS 236 DE 8 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Biological Response Modifiers Advisory Committee; Establishment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment by the Secretary of Health and Human Services of the Biological Response Modifiers Advisory Committee in FDA's Center for Biologics Evaluation and Research. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice requesting nominations for membership on this committee. This document adds to the agency's list of standing advisory committees.

DATES: Effective December 8, 1988. Authority for the committee being established will end on October 28, 1990, unless the Secretary of Health and Human Services formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 and 21 CFR 14.40(b)), FDA is announcing the establishment by the Secretary of Health and Human Services of the Biological Response Modifiers Advisory Committee.

The committee will review and evaluate data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases. The committee will also consider the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and advise the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Commissioner of Food and Drugs of its findings.

Because this is a technical amendment to Part 14, the Commissioner of Food and Drugs finds under 21 CFR 10.40 (c), (d), and (e) that notice and public procedure in § 10.40(b) are unnecessary and contrary to the public interest.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: 5 U.S.C. 5332 note; 15 U.S.C. 1451 et seq.; 21 U.S.C. 41 et seq.; 141 et seq., 321–371, 467f(b), 679(b), 821, 1031 et seq.; 42 U.S.C. 201 et seq.; 257a; 21 CFR 5.10.

2. Section 14.100 is amended by adding a new paragraph (c) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) *Center for Biologics Evaluation and Research.*

(1) [Reserved]

(2) *Biological Response Modifiers Advisory Committee.*

(i) *Date established.* October 28, 1988.

(ii) *Function.* Reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases. The committee will also consider the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and advise the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Commissioner of Food and Drugs of its findings.

* * * * *

Dated: December 1, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–28278 Filed 12–7–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 87F–0387]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione as an antioxidant in certain olefin copolymers containing not less than 85 weight-percent of polymer units derived from propylene. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective December 8, 1988; written objections and requests for a hearing by January 9, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 6, 1988 (53 FR 289), FDA announced that a food additive petition (FAP 8B4047) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the increased use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione as an antioxidant in propylene copolymers.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed increased use of the food additive is safe, and that 21 CFR 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4

p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before January 9, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specified factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table in paragraph (b) by adding new entry "5" under the heading of "Limitations" for the entry "1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
. . . . .	. . . . .
1,3,5-Tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*)trione (CAS Reg. No. 27676-62-6).	For use only: * * * 5. At levels not exceeding 0.25 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1 and 3.2, and also containing not less than 85 weight percent of polymer units derived from propylene.
. . . . .	. . . . .

Dated: November 25, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-28276 Filed 12-7-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6692

[AK-932-09-4214-10; AA-8253]

Public Land Order No. 5566, Correction and Modification; Partial Revocation of Public Land Order No. 5550, Withdrawal of Lands for Native Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct errors in the land description and will also modify Public Land Order No. 5566 to further withdraw the lands pursuant to section 14(h)(3) of the Alaska Native Claims Settlement Act (ANCSA) for selection by the Natives of Kodiak, Inc.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 14(h)(3) of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 704; 43 U.S.C. 1613, it is ordered as follows:

1. The land description in Public Land Order No. 5566, published in the **Federal Register** on December 23, 1975 (40 FR 59347–59348), is hereby corrected as follows:

In the land description for Parcel 2 on page 59348, first column, line 19, which reads "2,968.12 feet to the point of beginning." is hereby corrected to read "2,968.12 feet to the point of beginning, *excluding* the Diesel Power Plant, a tract of land within lot 2, U.S. Survey No. 2539, Kodiak Island Borough, State of Alaska, more particularly described as follows:

Beginning at Corner No. 1, Swampy Acres Tract, Lat 57°46'20.441"N., Long. 152°28'48.003"W., which bears S. 60°15'14"W., 10,251.96 feet from Corner No. 1, U.S. Survey No. 2539;
Thence North, 2,000.00 feet;
Thence East, 1,600.00 feet;
Thence South, 2,000.00 feet;
Thence West, 1,600.00 feet to the point of beginning.

The excluded tract as described contains approximately 73.46 acres.

2. PLO No. 5566, as amended, is hereby modified to further withdraw the lands described in paragraph 1 pursuant to section 14(h)(3) of ANCSA, 43 U.S.C. 1613(h)(3), for selection by the Natives of Kodiak, Inc.

3. The actions taken in this order do not serve to otherwise affect the provisions or limitations of PLO No. 5566.

November 29, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-28210 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-JA-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 4

Service of Process—National Vaccine Injury Compensation Program

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: In order to permit the expedited review of petitions and related filings, the Secretary is amending the regulation regarding service of legal process to provide that all service of process related to petitions for compensation under the National Vaccine Injury Compensation Program are to be filed with the Director, Bureau of Health Professions, in Rockville, Maryland.

EFFECTIVE DATE: This regulation is effective December 8, 1988.

FOR FURTHER INFORMATION CONTACT: David Benor, Office of the General Counsel, 5600 Fishers Lane, Suite 4A–53, Rockville, MD 20857,(301) 443–2006. For information about how to file petitions for compensation, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633–7257.

SUPPLEMENTARY INFORMATION: 45 CFR Part 4 provides that service of legal process in proceedings involving the Secretary of Health and Human Services or employees of the Department of Health and Human Services is to be upon the General Counsel or the Deputy General Counsel. Under the National Vaccine Injury Compensation Program (the "Program") at Subtitle 2 of Title XXI of the Public Health Service Act, 42 U.S.C. 300aa–10 *et seq.*, the Secretary is named as respondent in all proceedings based on petitions for compensation of vaccine-related injuries and deaths. While petitions for compensation are to be filed with the United States Claims Court, which is responsible for adjudicating the petitions, the statute also provides that a copy of the petition is to be served upon the Secretary. In order to permit the expedited review of petitions and related filings, the Secretary is amending 45 CFR Part 4 to provide that such materials are to be served directly upon the office within the Public Health Service that is responsible for the Program.

Paperwork Reduction Act

This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal management of the Department of Health and Human Services.

Cost/Regulatory Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule will not constitute a "major" rule and therefore is not subject to a regulatory impact analysis requirement of the Order. Major rules are those which impose a cost on the economy of $100 million or more a year or have certain other economic impacts.

The rule will not have a significant economic impact on small entities; therefore, preparation of a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

Waiver of Notice and Public Comment

Because this is a procedural rule, related solely to internal Department management, the Secretary has determined that notice of proposed rulemaking, public comment, and a delayed effective date are unnecessary and would not be in the public interest. Accordingly, this regulation is issued in final form and is effective upon publication.

List of Subjects in 45 CFR Part 4

Courts, Vaccine injury petitions.

For the reasons set forth above, 45 CFR Part 4 is amended as follows:

PART 4—[AMENDED]

1. The authority citation for 45 CFR Part 4 is revised to read as follows:

Authority: 5 U.S.C. 301, 42 U.S.C. 300aa–11.

2. The table of sections is amended by adding at the end the following:

4.6 Materials related to petitions under the National Vaccine Injury Compensation Program.

3. A new § 4.6 is added at the end of Part 4 as follows:

§ 4.6 Materials related to petitions under the National Vaccine Injury Compensation Program.

Notwithstanding the provisions of §§ 4.1, 4.2, and 4.3, service of the Secretary's copies of petitions for compensation under the National Vaccine Injury Compensation Program and of related filings, whether by mail or in person, shall be upon the Director, Bureau of Health Professions, 5600 Fishers Lane, Suite 8–05, Rockville, Maryland 20857.

Dated: November 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–28254 Filed 12–7–88; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Pacific cod from the nonspecific reserve to domestic fishermen processing fish or delivering fish to domestic processors (DAP). This action, taken under provisions on the Fishery Management Plan (EMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), is necessary to assure optimum use of Pacific cod in the groundfish fishery. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council.

DATES: Effective December 4, 1988, 0001 hours, Alaska Standard Time. Comments will be accepted through December 20, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Michael Sigler, Fishery Research Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: Rules appearing at 50 CFR 611.93 and Part 675 implement the FMP.

Initially, 15 percent of the 1988 total allowable catch (TAC) for each species or species group in the BSAI was placed in reserve, DAP was specified, and remaining amounts were provided to domestic fishermen delivering fish to foreign processors (JVP) (53 FR 894, January 14, 1988). No amounts of groundfish were provided for foreign harvest because U.S. fishermen are able to harvest the entire 1988 TAC amounts.

The following 1988 inseason actions have apportioned amounts from the reserve to DAP, JVP, or both, or amounts from DAP to JVP: April 19 (53 FR 12772), May 10 (53 FR 16552), May 25 (53 FR 19303), June 22 (53 FR 23402), July 14 (53 FR 26599), July 27 (53 FR 28229), August 30 (53 FR 33140), September 9 (53 FR 35081), October 5 (53 FR 39097), October

19 (53 FR 40894), and November 23 (53 FR 47544).

The Acting Director, Alaska Region, NMFS (Regional Director), has determined from fishery data, including DAP catches to date and a DAP survey completed in August 1988, that DAP fisheries have the potential to harvest and process about 88,590 mt of Pacific cod in the BSAI by the end of 1988. The reported DAP catch of Pacific cod in the BSAI as of November 12 was 69,738 mt, 92 percent of the current apportionment of 75,416 mt. The current apportionment is expected to have been reached on November 19.

Based on the above information, the Regional Director has determined that the current DAP amounts of Pacific cod in the BSAI are insufficient to meet DAP needs in 1988. Therefore, 8,193 mt of the reserve are apportioned to the DAP category for Pacific cod, effective December 3, 1201 AST (2101 GMT).

These apportionments will not result in overfishing of Pacific cod because the resulting TAC is less than the allowable biological catch for this species (Table 1). Directed fishing, as defined at 50 CFR 675.2, for Pacific cod by DAP fishermen in the BSAI remains open for 1988.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice will allow DAP fishermen to continue directed fishing for Pacific cod and for species that require Pacific cod as bycatch, reducing waste that would otherwise occur. Interested parties are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i).

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 5, 1988.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management.

TABLE 1.—BSAI AREA REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

	Current	This action	Revised
BSAI			
Pacific cod DAP	75,416	+8,193	83,609
JVP	112,584	No change	112,584
TAC=196,193; ABC=385,000			
BSAI			
Total			
DAP	690,173	+8,193	698,366
JVP	1,301,634	No change	1,301,634
Reserve	8,193	−8,193	0
Total (TAC=2,000,000)			

[FR Doc. 88-28206 Filed 12-5-88; 1:07 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 236
Thursday, December 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-183-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to de Havilland Model DHC-8-100 series airplanes, which currently requires flight manual limitations to prohibit takeoff, landing and climb in the vicinity of lightning or thunderstorms, and requires continuous ignition operation during takeoffs, takeoff climb to 1500 feet above ground level (AGL), final approach, and landing within 5 nautical miles of lightning and thunderstorms. That AD was prompted by reports of lightning strike incidents which damaged the electronic controls units. This action would require the installation of four modifications which, when incorporated, will eliminate the unsafe condition addressed and obviate the need for the flight manual limitations.

DATES: Comments must be received no later than February 1, 1989.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthness Rules Docket No. 88-NM-183-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd. de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Murry Schoenberger, Aerospace Engineer, FAA, New York Aircraft Certification Office, ANE-174, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-183-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On October 1, 1986, the FAA issued AD 85-14-51-R1, Amendment 39-5440 (51 FR 36003; October 8, 1986), to require a revision of the FAA-approved Airplane Flight Manual (AFM) to prohibit takeoff, landing, and climb in the vicinity of lightning or thunderstorms; and to require continuous ignition operation during takeoffs, takeoff climb to 1500 feet above ground level (AGL), final approach, and landing within 5 nautical miles of lightning and thunderstorms. That AD was prompted by two lightning strike incidents where the engine electronic control units and associated wiring were found to be vulnerable to induced transients. This could cause engine flameout or power loss, and could adversely affect the electronic control units and propeller auto-feathering function.

Since issuance of that AD, the manufacturer has developed four modifications which, when installed (on the production line or in the field), will provide the necessary lightning strike protection to preclude unacceptable power losses during critical flight phases:

De Havilland DHC-8 Service Bulletin 8-73-7, Revision E, dated October 14, 1988, Modification No. 8/0597, describes procedures for installation of left and right shielded harness incorporating electronic control unit (ECU) and signal conditioning unit (SCU) wiring. This modification will prevent ECU and SCU malfunction due to lightning strike effects.

De Havilland DHC-8 Service Bulletin 8-71-10, Revision B, dated October 14, 1988, Modification No. 8/0598, describes procedures for installation of improved engine grounding jumpers. This modification will prevent lightning strikes from inducing high transient voltage levels on the ECU and SCU.

De Havilland DHC-8 Service Bulletin 8-72-2, Revision A, dated October 14, 1988, Modification 8/0964, describes procedures for replacement of the electrical wiring harness assembly. This modification will improve lightning strike protection by improving conductivity between conductors.

De Havilland DHC-8 Service Bulletin 8-72-4, Revision A, dated October 14, 1988, Modification 8/0813, describes procedures for installation of an SCU grounding strap on Pratt & Whitney PW120A engines. This modification will decrease susceptibility of the SCU to lightning damage.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 85-14-51-R1 to require installation of the four modifications described above, in accordance with the service bulletins

previously mentioned. Installation of these modifications would constitute terminating action for this AD and would allow the removal of the operating limitations previously added to the AFM.

The manufacturer has advised that all four modifications have been incorporated on the production line staring with airplanes Serial Number 94. Some, but not all, of the modifications have been incorporated on earlier airplanes. Therefore, the FAA has determined that the existing AD must be revised to limit the applicability to only those airplanes up to and including Serial Number 93.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD and that it would take a total of approximately 120 manhours per airplane to accomplish the required actions. Modification 8/0597 in itself would require 98 of these manhours to accomplish. Because of the extent and criticality of procedures involved in installing this particular modification, de Havilland is sending a team to the operators to perform its installation. The kits for all four modifications will be supplied to operators by de Havilland and/or Pratt and Whitney of Canada (the engine manufacturer) at no or reimbursed cost for parts and labor.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 85–14–51–R1, Amendment 39–5440 (51 FR 36003; October 8, 1986), by revising the applicability statement, adding new paragraphs B. and D., and revising and redesignating existing paragraph B. as C., as follows:

Boeing of Canada, Ltd., de Havilland Division: Applies to Model DHC–8–100 series airplanes, Serial Numbers up to and including 93, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the danger of lightning transient-induced damage to the electronic engine control units, accomplish the following:

A. Prior to further flight, incorporate the following limitations into the Limitations Section of the Airplane Flight Manual. This may be accomplished by including a copy of this AD in the flight manual:

1. To preclude unacceptable loss of power during critical phases of flight, takeoff is prohibited when lightning or thunderstorms are observed or reported within 5 nautical miles of the takeoff climb path of the airplane, or when existing weather conditions may reasonably be expected to result in a lightning strike of static discharge.

2. Operating with engine ignition selected to manual is required when operating below 1500 feet AGL within 5 nautical miles of any observed or reported lightning or thunderstorms, or any weather condition that may reasonably be expected to result in a lightning strike of static discharge.

B. Within 12 months after the effective date of this amendment, install the following modifications. Installation of all four of these modifications constitutes terminating action for this AD, and the operating limitations required by paragraph A., above, may be removed from the Airplane Flight Manual.

1. Modification No. 8/0597, installation of left and right shielded harnesses incorporating electronic control unit (ECU) and signal conditioning unit (SCU) wiring, in accordance with de Havilland DHC–8 Service Bulletin 8–73–7, Revision E, dated October 14, 1988.

2. Modification No. 8/0598, installation of improved engine grounding jumpers, in accordance with de Havilland DHC–8 Service Bulletin 8–71–10, Revision B, dated October 14, 1988.

3. Modification No. 8/0964, replacement of the electrical wiring harness assembly, in accordance with de Havilland DHC–8 Service Bulletin 8–72–2, Revision A, dated October 14, 1988.

4. Modification No. 8/0813, installation of an SCU grounding strap on Pratt & Whitney PW120A engines, in accordance with de Havilland DHC–8 Service Bulletin 8–72–4, Revision A, dated October 14, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ANE–170), FAA, Engine and Propeller Directorate, Aircraft Certification Service.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on November 30, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28220 Filed 12–7–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–167–AD]

Airworthiness Directives: British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain British Aerospace BAe/DH/BH/HS 125 series airplanes, which would require inspection of the elevator mass balance side plate assembly and spigot for corrosion, and repair, if necessary. This proposal is prompted by reports of corrosion on the elevator

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mass balance side plate assembly and the balance weight spigot. This condition, if not corrected, could lead to displacement of the side plate which could cause control surface interference and jamming of flight controls.

DATES: Comments must be received no later than February 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice or Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace (BAe) Model BAe/DH/BH/HS 125 series airplanes. There have been six reports of corrosion found in the elevator mass balance weight side plate assembly and spigot, on airplanes ranging in ages from 6 to 22 years. This condition, if not corrected, could lead to displacement of the side plate causing control surface interference and jamming of the flight controls.

British Aerospace has issued Service Bulletin No. 27-142, Revision 2, dated June 10, 1987, which describes procedures for inspection of the side plate assembly and balance weight spigot for corrosion, and repair, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the elevator mass side plate assembly and the balance weight spigot for corrosion, and repair, if necessary, in accordance with the British Aerospace service bulletin.

It is estimated that 420 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $168,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($400). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace (BAe), PLC: Applies to Model BAe/DH/BH/HS 125 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent control surface interference and jamming of flight controls, accomplish the following:

A. Within 3 years since date of airplane manufacture or within 60 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3 years, inspect the elevator mass balance weight side plate assembly and balance weight spigot for corrosion, in accordance with BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987. Any corrosion detected as a result of this inspection must be repaired prior to further flight, in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-28221 Filed 12-7-88; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-169-AD]

Airworthiness Directives; British Aerospace Model BAe 146 100A and 200A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146 100A and 200A series airplanes, which would require modification of the aileron disconnect units (ADU). This proposal is prompted by reports of the ADU failing to cock and/or release when tested. This condition, if not corrected, could lead to loss of all roll control should a jam in the aileron flight control system occur.

DATES: Comments must be received no later than February 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe 146 100A and 200A series airplanes. The manufacturer reports that there have been several incidents where the aileron disconnect units (ADU) failed to cock and/or release when tested. Subsequent investigation revealed that the circlip had become displaced, allowing the cocking lever to rotate freely. This condition, if not corrected, could lead to loss of all roll control should a jam in the aileron flight control system occur.

British Aerospace has issued Service Bulletin 27-75-70212A&B, dated June 16, 1988, which describes a modification of the ADU internal mechanism to correct cocking of the unit. This modification consists of replacing the existing pin and circlip with a threaded pin, of increased diameter, and a nut. A fixed stop is secured to the base of the cam assembly to prevent over-torquing. The service bulletin refers to Normalair-Garrett, Ltd. (NGL), Service Bulletin 1224R-27-5 and 1099R-27-4 for procedures to modify the ADU mechanisms. The British CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the ADU internal mechanism in accordance with the service bulletin previously mentioned.

It is estimated that 45 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2½ manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the modification is $100. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $9,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of

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compliance per airplane ($200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all British Aerospace (BAe) Model 146 100A and 200A series airplanes, as listed in BAe 146 Service Bulletin 27-75-70212A&B, dated June 16, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of all roll control should a jam in the aileron control system occur, accomplish the following:

A. Within 120 days after the effective date of this AD, modify all Normalair-Garrett LTD (NGL) Aileron Disconnect Units, in accordance with British Aerospace Service Bulletin 27-75-70212A&B, dated June 16, 1988.

Note.—British Aerospace Service Bulletin 27-75-70212A&B references Normalair-Garrett LTD (NGL) Service Bulletins 1224R-27-5 and 1099R-27-4 for specific procedures for installation of this modification.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-28222 Filed 12-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-176-AD]

Airworthiness Directives; Lockheed Models L-188A and L-188C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Lockheed Models L-188A and L-188C series airplanes, which would require replacement, if necessary, of the flap asymmetry shutoff valve; inspection and replacement, if necessary, of the flap drive torque tube bearings and housings; and modification of the annunciator light wiring. This proposal is prompted by reports of flap asymmetry. This condition, if not corrected, could lead to control difficulties at low altitude on takeoff or landing.

DATE: Comments must be received no later than February 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-176-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5228.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-176-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Operators of Lockheed Models L-188A and L-188C series airplanes have reported several cases of flap asymmetry. Investigation has revealed that this asymmetry has resulted from spline disengagement and the failure to provide the required information to the cockpit. This condition can result from several sources: (1) A new universal joint that was introduced on these airplanes lacks the necessary stop to center the spline; (2) the tolerance for centering the splines is too loose; (3) wear of bearing and housings can contribute to disengagement; and (4) once asymmetry occurs, annunciation to the cockpit does not always occur when the shutoff valve that triggers the warning light malfunctions, either through failure of the valve or slow response of the valve. Such flap asymmetry is a critical flight safety problem because of its occurrence at low altitude, its sudden onset, and when coupled with lack of cockpit warning.

the difficulty it presents to the pilot to determine what has occurred.

The FAA has reviewed and approved Lockheed Operator Letter PCS/87–516573–OL, dated July 24, 1987, which describes modification of the flap asymmetry system, including a change in the flap asymmetry warning light logic, installation of an improved flap asymmetry shut off valve, and replacement of flap drive torque tube bearings and housings.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the flap universal joints to determine if they are splined without a stop, and replacement, if necessary; repetitive inspections of the flap asymmetry universal joints torque tube bearings and housings for wear or out-of-tolerance conditions, and repair or replacement, if necessary, in accordance with the Lockheed operator letter previously mentioned; and modification of the flap asymmetry annunciator light wiring.

There are approximately 110 Lockheed Model L–188 series airplanes operated in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately 120 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $288,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any small entities operate Model L–188A or L–188C airplanes. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company: Applies to Lockheed Model L–188A and L–188C series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent airplane control difficulties due to flap asymmetry, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the flap universal joints to determine if they are splined without a stop. (Note: Flap universal joints that are splined without a stop are easily detected by the lack of a screw and washer that holds the pins in place.) If they do not have a stop, accomplish one of the following:

1. Remove from service any flap universal joints that are splined without a stop and install universal joints that are splined with a stop; or

2. Cut a circumferential groove into the splines of the torque tube shafts on each side of the universal joints (1 inch from the end of the shaft) and install a snap ring in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. The snap ring is to eliminate the possibility of spline disengagement. The snap ring should completely encircle the shaft.

B. Within 90 days after the effective date of this AD and thereafter at intervals not to exceed one year, accomplish the following:

1. Inspect the flap asymmetry universal joints, torque tube bearings, and housings for out-of-tolerance, wear, and spline engagement in accordance with the Lockheed Electra L–188 Maintenance Manual, Controls, Wing Flap, Section 27–6–8, Figure 201, dated October 15, 1961. Repair or replace any worn or out-of-tolerance components before further flight. Spline engagement at BL55 must be 5.50 to 5.87 inches.

2. Inspect the wing flap asymmetry shutoff valves to ascertain that the valves do not hang up or respond slowly. If the valves hang up or respond slowly (greater than 1 second), prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, or replace in accordance with Lockheed Operator Letter PSC/87–516573–OL, dated July 24, 1987. Replacement constitutes terminating action for the repetitive inspections required by this paragraph.

C. Within 90 days after the effective date of this AD, rewire the annunciator light in the cockpit in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, so that the light will illuminate when the asymmetry detector is tripped and not be dependent on the shutoff valve.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to accomplish the actions required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attn: L–188 Commercial Support Contracts, Dept. 63–11, Unit 33. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on November 30, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28223 Filed 12–7–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–166–AD]

Airworthiness Directives; SAAB-Scania Model SF–340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF–340A series airplanes which would require an inspection to determine if the jumper

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assembly fittings (bonding wires) have been attached to the midlevel and tank-full optical sensors, and to install the jumper assemblies if they are missing. This proposal is prompted by reports that, during production of certain airplanes, the optical sensors' jumper assemblies were not installed. This condition, if not corrected, could lead to electrical arcing in the fuel tank in the event of a lightning strike.

DATE: Comments must be received no later than February 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–166–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania Aircraft Division, Product Support, S–58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–166–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain SAAB-Scania Model SF–340A series airplanes. There has been a report that, during production of some of these airplanes, the fuel system optical sensor jumper assemblies were not installed. This condition, if not corrected, could result in arcing in the fuel tank in the event of a lightning strike.

SAAB-Scania has issued Service Bulletin SF 340–28–996, dated March 23, 1988, which describes the defueling and inspection procedures that are required to determine if the midlevel and tank-full optical sensor jumper assemblies have been installed. Installation procedures are provided if the jumper assemblies are not installed. The LFV has classified this service bulletin as mandatory, and has issued an airworthiness directive, SAD No. 1–025, dated March 24, 1988, addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection to determine if the midlevel and tank-full optical sensor jumper assemblies have been installed, and installation of the jumper assemblies if they are missing.

The proposed rule applies only to airplanes equipped with the "optical sensors." The optical sensor is identified as having a circular window. No action is required if the "mechanical float" switch has been installed. The mechanical float switch is identified as having an elongated hole. The part number may not be visible; therefore, identification may necessitate visual inspection of the size and shape of the window.

It is estimated that 41 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $13,120.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Scania: Applies to Model SF–340A series airplanes, serial numbers 003 through 106, certificated in any category, except those airplanes equipped with mechanical float switches. Compliance is required as indicated below, unless previously accomplished.

To prevent the potential for arcing in the fuel tanks should a lightning strike occur, accomplish the following:

A. Within 30 days after the effective date of this AD, conduct an inspection to determine if the jumper assemblies are fitted to the midlevel and tank full optical sensors, in accordance with SAAB Service Bulletin SF340–28–006, dated March 23, 1988.

B. If optical sensor jumper assemblies have not been installed, prior to further flight, install jumper assemblies and check resistance, in accordance with SAAB Service Bulletin SF340–28–006, dated March 23, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania Aircraft Division, Product Support, S–58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28224 Filed 12–7–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreement; New Mexico

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: The State of New Mexico is proposing to amend the cooperative agreement between the Department of the Interior and the State of New Mexico for the regulation of surface coal mining and reclamation operations on Federal lands in New Mexico under the permanent regulatory program. The proposed amendment would add the Archaeological Resources Protection Act of 1979 to the list of other applicable laws for permit coordination in Appendix A of the agreement. Cooperative agreements are provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice of proposed rulemaking provides information on the proposed change to the cooperative agreement. The amendment revises the cooperative agreement concerning the regulation of coal mining and reclamation operations on Federal lands within the State to be consistent with the revised Federal regulations regarding Historic Preservation.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 4:00 p.m. January 9, 1989. Comments received after the close of the comment period will not necessarily be considered.

Public Hearing: If requested, a public hearing on the proposed modification will be held on January 3, 1989, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: *Written comments:* Mail or hand deliver to: Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102.

Public Hearing: The New Mexico Capitol Building, Santa Fe, New Mexico 87503.

Request for public hearing: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

See "**SUPPLEMENTARY INFORMATION**" for addresses where copies of the proposed New Mexico amendment to the cooperative agreement and administrative record on the New Mexico program are available. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Availability of Copies
II. Public Comment Procedures
III. Background
IV. Proposed Amendment
V. Procedural Matters

I. Availability of Copies

Copies of the proposed New Mexico amendment to the cooperative agreement, the New Mexico program, and the administrative record on the New Mexico program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5215, Washington, DC 20240; Telephone: (202) 343–5492.

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, New Mexico 87501; Telephone: (505) 827–5970.

II. Public Comment Procedures

Written Comments

Written comments should be specific, pertain only to that issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Albuquerque, New Mexico, will not necessarily be considered and included in the Administrative Record for this final rulemaking. Where practicable, commenters should submit three copies of their comments (See "**ADDRESSES**").

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business December 23, 1988. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Individuals wishing to attend, but not testify at the hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow

OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public, and if possible, notices of meeting will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

III. Background

On February 9, 1981, the State of New Mexico requested a cooperative agreement between the Department of the Interior and the State of New Mexico to give the State primacy in the administration of its approved regulatory program of Federal lands in New Mexico. The Secretary approved the cooperative agreement effective December 20, 1982 (47 FR 56800). The text of the existing cooperative agreement can be found at 30 CFR 931.30.

On February 10, 1987, OSMRE promulgated revised regulations (52 FR 4244) concerning the consideration which must be accorded historic properties during the permitting of surface coal mining operations. Specific to this proposed amendment, OSMRE revised 30 CFR 773.12 to require that where Federal lands are involved, each regulatory program shall provide for the coordination of review and issuance of permits for surface coal mining and reclamation operation with applicable requirements of the Archaeological Resources Protection Act of 1979.

On June 9, 1987, OSMRE notified New Mexico (Administrative Record No. NM–361) of the change to 30 CFR 773.12 and the need for a corresponding amendment pursuant to 30 CFR 732.17(d). The State responded on October 16, 1987 (Administrative Record No. NM–388), and indicated its intent to modify the existing cooperative agreement to satisfy OSMRE's requirement to amend the State program.

IV. Proposed Amendment

On September 12, 1988, the State of New Mexico submitted to OSMRE a proposed amendment (Administrative Record No. NM–443) to its approved cooperative agreement under the permanent regulatory program. The proposed amendment consists of the addition of the Archaeological Resources Protection Act of 1979 to the list of other applicable laws for permit coordination in Appendix A of the agreement. There are now other changes proposed to the document.

V. Procedural Matters

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Department of the Interior received from the Office of Management and Budget (OMB) an exemption for State-Federal cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (Pub. L. 96–354). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

Paperwork Reduction Act

This proposed amendment to the New Mexico Cooperative Agreement does not contain information collection requirements which require clearance from the OMB under 44 U.S.C. 3507.

National Environmental Policy Act

Proceedings relating to adoption or amendment of a State-Federal cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Author

The author of this regulation is Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

Date: November 30, 1988.

Accordingly, it is proposed to amend 30 CFR Part 931 as set forth below:

PART 931—NEW MEXICO [AMENDED]

1. The authority citation for Part 931 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 931.30, State-Federal Cooperative Agreement, Appendix A is amended by redesignating items 14 and 15 as items 15 and 16, respectively, and adding new item 14 to read as follows:

§ 931.30 State-Federal cooperative agreement.

* * * * *

Appendix A

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14. The Archaeological Resources Protection Act of 1979.

* * * * *

[FR Doc. 88–28196 Filed 12–7–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13 88–09]

Security Zone; Sinclair Inlet, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a security zone in the waters of Sinclair Inlet immediately adjacent to the Puget Sound Naval Shipyard Bremerton, Washington. This action is necessary to safeguard U.S. Naval vessels from sabotage or other subversive acts, accidents, or other incidents of a similar nature while they are moored or in drydock at the shipyard. This security zone will provide protection to these vessels by prohibiting access to the waters around the shipyard except by certain authorized vessels, and by providing a sufficient area in which to detect unauthorized intrustions in time

to allow appropriate security measures to be taken.

DATES: Comments must be received on or before January 23, 1989.

ADDRESS: Comments should be mailed to Commander (mps), Thirteenth Coast Guard District, Federal Building, 915 Second Avenue, Seattle, WA, 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR W. O. Harper, (206) 442–1711.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 88–09) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are CDR W.O. Harper, Project Officer, Port and Vessel Safety Branch, Thirteenth Coast Guard District, and LCDR L. I. Kiern, Project Attorney, Legal Office, Thirteenth Coast Guard District.

Discussion of Proposed Regulations

After a review of Puget Sound Naval Shipyard's physical security, the Commanding Officer, Puget Sound Naval Shipyard requested the Coast Guard Captain of the Port, Puget Sound to establish a security zone around the shipyard's active piers and drydocks. Two restricted zones established by the U.S. Army Corps of Engineers at 33 CFR 207.750(k) already exist in the Sinclair Inlet. One zone restricts certain sized vessels from the entire inlet and the second zone restricts vessels from the shipyard waterfront. The proposed security zone overlaps portions of the waters covered by these existing restricted areas. The Coast Guard has concluded that a security zone is warranted and appropriate because the security zone is intended for the protection of assets which are vital to the national interest. Vessels moored or drydocked at the shipyard can easily be approached from the water and are vulnerable to acts of sabotage. Regulating access to the water areas around the Shipyard provides a means of countering this threat without unnecessarily interfering with the public's use of the waterway.

The security zone will keep unauthorized persons and vessels away from the vessels at the shipyard and will allow early detection of unauthorized entry. Yet, it will not significantly interfere with navigation of Sinclair Inlet. This security zone will be limited to water areas only. Present laws and regulation give the Commanding Officer, Puget Sound Naval Shipyard authority to restrict access to the shipyard's property and to deal with trespassers within the shipyard.

This proposal will exempt certain categories of vessels from some or all of the restrictions imposed by the security zone. Such exemptions will be granted where the Captain of the Port and Commanding Officer, Puget Sound Naval Shipyard have agreed that access to the shipyard does not pose a threat to the safety or security of the shipyard and is in the national interest. (Persons aboard exempted vessels also may enter the security zone without the permission of the Captain of the Port.)

Other persons who desire to enter the security zone will be required to request and receive authority for themselves and their vessels to enter or operate within the security zone from the Captain of the Port Puget Sound via the Security Office of the Puget Sound Naval Shipyard at Bremerton, WA.

This proposal preserves the Coast Guard's existing authority to control the movement of vessels and individuals on the waters subject to the jurisdiction of the United States, including those vessels and persons that are permitted to enter or remain within the security zone without the specific permission of the Captain of the Port. This authority is restricted by law to actions taken to prevent injury to vessels, waterfront facilities, or the waters of the United States, or to secure the observance of the rights and obligations of the United States. The reservation of this authority is necessary to ensure the Coast Guard has the ability to take prompt and adequate enforcement action within the security zone if a threat to the national security or the safety of any vessel arises. The reservation of this authority is not intended to, and should not, obstruct or hinder the ability of the Commanding Officer, Puget Sound Naval Shipyard to conduct operations at the yard. The authority of the Coast Guard that has been reserved by this proposal is no greater than the authority the Coast Guard has over vessels and individuals at other waterfront facilities, including commercial shipyard and dock facilities.

The Coast Guard does not intend to require the use of Port Security Cards or other special credentials for persons authorized to operate within the security zone, other than the certificate of exemption required for persons and vessels entering or operating within the security zone.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area affected by this security zone is already restricted to navigation by the restricted zones referred to above. Even in the absence of the restricted zones, the interests affected will be primarily recreational, and the loss of the use of this part of the Inlet should not affect their use of other parts of the Inlet for navigation or other purposes except in a very minor way. Special consideration was given to the Port Orchard passenger ferry route when the boundaries of this zone were developed. The zone does not interfere with that route.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial numbert of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

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Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.1303 is added to read as follows:

§ 165.1303 Puget Sound Naval Shipyard Bremerton, WA.

(a) *Location.* The following is a security zone: The waters of the Sinclair Inlet encompassed by a line commencing on the north shore of Sinclair Inlet at latitude 47°33′40″; longitude 122°37′29″W; thence to latitude 47°33′35″N, longitude 122°38′28W″; thence to latitude 47°33′21″N, longitude 122°37′37″W; thence to latitude 47°33′02″N, longitude 122°38′26″W; thence to latitude 47°33′02″N, longitude 122°38′40″W; thence to the shoreline at latitude 47°33′23″N, longitude 122°38′40″; thence easterly along the shoreline to the point of origin.

(b) *Special regulations.* (1) Section 165.33 paragraphs, (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(i) Public vessels of the United States.

(ii) Vessels that are performing work at Puget Sound Shipyard pursuant to a contract with the United States Navy which requires their presence in the security zone.

(iii) Any other vessels or class of vessels mutually agreed upon in advance by the Captain of the Port and Commanding Officer, Puget Sound Naval Shipyard. Vessels operating in the security zone under this exemption must have previously obtained a copy of a certificate of exemption permitting their operation in the security zone from the Security Office, Puget Sound Naval Shipyard Bremerton, WA. This written exemption shall state the date(s) on which it is effective and may contain any further restrictions on vessel operations within the security zone as have been previously agreed upon by the Captain of the Port and Commanding Officer, Puget Sound Naval Shipyard. The certificate of exemption shall be maintained on board the exempted vessel so long as such vessel is operating in the security zone.

(2) Other vessels desiring access to this zone shall secure permission from the Captain of the Port through the Security Office of the Puget Sound Naval Shipyard Bremerton, WA. The request shall be forwarded in a timely manner to the Captain of the Port by the appropriate Navy official.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and monitoring of this security zone by the U.S. Navy.

Dated: November 23, 1988.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 88–28259 Filed 12–7–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[AA–220–08–4322–02]

Grazing Administration Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule would revise § 4110.4–2(a) to allow the authorized officer, in his or her discretion and on a case-by-case basis, to permit livestock grazing preferences to continue unchanged despite a reduction in the acreage available for livestock grazing. The current regulation provides that the authorized officer must cancel or suspend a grazing preference when acreage is lost. This action is being considered in response to several stated concerns that the current regulation is restrictive in that cancellation or suspension, in some cases, serves no purpose. The proposed revision would allow the grazing preference on those allotments where there is a decrease in the public land available for livestock grazing, to be cancelled, suspended or remain unchanged where there is sufficient forage available, as determined by the authorized officer, to maintain the grazing preference authorized prior to the decrease in land available.

DATE: Comments should be submitted by February 6, 1989. Comments not received by the above date may not be considered in the decisionmaking process or issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 18th & C Streets, NW., Washington, DC 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, (202) 653–9193.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would provide the authorized officer discretion on a case-by-case basis to maintain, cancel or suspend a grazing preference where there is a reduction in the acreage available for livestock grazing.

The existing regulation at § 4110.4–2(a) requires that where there is a decrease in public land acreage available for livestock grazing use within an allotment, grazing permits or leases and grazing preferences must be canceled in whole or in part. However, in certain circumstances, the public land acreage lost to livestock grazing may be very small and the remaining acreage in the allotment may produce sufficient forage for livestock to maintian the grazing preference. In other situations, the land may be committed to a mining operation and later again be available for livestock grazing when the mining operation is completed and the land rehabilitated. For these reasons, in recognition of range administration purposes, the existing regulations would be revised to deal more equitably with the livestock grazing permittees and lessees. Rather than be required to cancel a grazing preference, the authorized officer should have the authority to make a determination that takes into account the level of available forage for livestock and the magnitude of the change in public land acreage.

The principal author of this proposed rulemaking is Billy R. Templeton of the Division of Rangeland Resources, assisted by staff of the Division of Legislation and Regulation Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to secion 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain information colleciton requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4110—Grazing Management

1. The authority citation for Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.*, 1182d, and 98 Stat. 1837.

2. Section 4110.4–2, paragraph (a) is proposed to be revised to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be canceled, suspended or modified as appropriate to reflect the changed area of use.

(2) Grazing preference may be cancelled or suspended in whole or in part, as determined necessary by the authorized officer through standard range analysis and/or study methods, to protect the remaining public lands. Cancellations or suspensions will be apportioned as agreed upon among authorized users or, in the event of failure to reach agreement, will be equitably apportioned among authorized users or, in the event of failure to reach agreement, will be equitably apportioned among authorized users by the authorized officer.

* * * * *

James E. Cason,

Acting Assistant Secretary of the Interior.

October 6, 1988.

[FR Doc. 88–28246 Filed 12–7–88; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1304 and 1306

Head Start Program

AGENCY: Office of Human Development Services (OHDS), DHHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) requests comments from the public on a new part, 45 CFR Part 1306, entitled Head Start Staff Requirements and Program Options. Head Start grantees may operate various types of Head Start programs, e.g., center-based or home-based programs. This Part consolidates and clarifies existing regulations and policies regarding Head Start program staffing patterns and qualifications and proposes new requirements regarding Head Start program staff. It also consolidates and clarifies existing regulations and policies regarding Head Start program options. It proposes specific new requirements for hours and days of program operations and class size.

Specifically, it proposes that local grantees have appropriate and qualified staff and volunteers in their programs; provide appropriate training for staff and volunteers; implement program option(s) based on the needs of the community; implement the options in conformance with all Performance Standards and other program regulations and policies; operate their programs to provide at least a minimum number of hours and days of direct services to children and parents; and maintain appropriate class sizes and number of families per home visitor.

The purpose of the proposed rule is to further ensure the quality and the long range effectiveness of the services being provided to children and families by the Head Start program.

DATE: In order to be considered, comments on this proposed rule must be received on or before February 21, 1989.

ADDRESS: Please address comments to: Elizabeth Strong Ussery, Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013.

It would be helpful if agencies and organizations would submit their comments in duplicate. Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 5755, 400 6th Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terry R. Lewis, 202–755–7787.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. In FY 1987, Head Start served 446,523 children through a network of 1,290 grantees and 620 delegate agencies, each of which has an approved written agreement with the grantee to operate a Head Start program.

While Head Start is targeted primarily on children whose families have incomes at or below the poverty line or are eligible for public assistance, Head Start regulations permit up to 10 percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. Head Start also requires that a minimum of 10 percent of the enrollment opportunities in each State be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-handicapped peers and to receive necessary special education and related services.

The Head Start program presently operates with two paid staff (one teacher and one aide) and, whenever possible, a volunteer in each classroom. Appropriate training is provided to staff and program volunteers.

Head Start programs may currently operate one or more of five program options:

Standard Head Start operates for five days per week and can be part day or full day.

Variations in Center Attendance operate for four days or less per week.

Double sessions operate with a teacher who works with two groups of children, one in the morning and one in the afternoon.

Home-based programs provide weekly home visits to the child's parents and have an organized socialization experience for a small group of children approximately once each month.

Locally designed options are programs designed to meet the unique needs of the local community, and are operated with special approval from the Administration for Children, Youth and Families (ACYF).

II. Purpose of the NPRM

The purpose of this proposed rule is to ensure that Head Start programs maintain levels of quality that will continue to promote long range benefits to children and families. The proposed program staffing requirements have been developed to assure that Head Start children are being served by qualified staff. The requirements regarding program options have been developed to identify the levels of service that grantees must provide to children and parents in operating a Head Start program.

In addition, as required by section 108 of Pub. L. 98–558, these proposed additions and revisions to the Head Start regulations do not result in the elimination of, or any reduction in, the scope or types of health, education, parent involvement, social or other services required to be provided under the Performance Standards in effect on November 2, 1978.

ACYF is proposing that this NPRM supercede some existing Head Start regulations and policies. Other Head Start regulations and policies are incorporated or recodified within the NPRM. The Redesignation Table found in section VI. of the Preamble specifies the superceded regulations and policies. It also identifies new requirements.

III. Data Used in the Development of the NPRM

Background

This NPRM proposes new requirements regarding program staffing and options, including staffing patterns, staff qualifications, staff and volunteer training, hours and days of operation and class size as a new Part 1306, Head Start Staff Requirements and Program Options. Research and other data indicate that the program variables addressed in this Notice of Proposed Rulemaking (NPRM) directly affect program quality and the number of children that can be served on an annual basis.

Basis for Change

The changes proposed in this NPRM are a result of findings from research studies, data from Head Start information systems and current information regarding effective early childhood education programs.

Research

The National Day Care Study (Abt Associates, 1980) addresses the issues of teacher qualifications and class size. There is evidence that children in programs with staff trained in early childhood education and development had better relationships with the teacher, were able to complete more projects and showed significant gains in skills and knowledge.

This Study also reported the advantages of preschool classrooms with smaller group sizes. Teachers engaged in more social interaction with children and less passive observation of activities. Children in smaller groups made greater gains on tests of cognitive skill, showed more cooperative behavior with peers, more verbal initiative in giving opinions, providing information, stating preferences and exhibited more reflective or innovative behavior in play or in assigned tasks. In addition, children showed fewer negative behaviors of hostility or conflict with others and were less likely to wander aimlessly around the classroom or to be uninvolved in activities.

A number of studies indicate that longer hours of service produce more and longer lasting gains for children (Head Start Synthesis Project, 1985; Head Start Measures Project, 1987). The 1985 Head Start Measures Project indicated that the effectiveness of the program depended on the time that children and teachers were engaged in learning activities. The 1969 Westinghouse Study showed that summer programs (approximately 240 hours of services per year per child) provide insufficient contact with children and families to result in long range benefits.

Based on this information, on the experience of the agency and on general practice in child development programs, a minimum number of hours of service was determined.

The Home Start Evaluation Study (1976) was implemented to review the methodology and effectiveness of home-based programs. That study found home-based programs effective when home visitors worked with 10 to 11 families. When home visitors worked with more than 12 families, however, home visits were made less frequently resulting in a decline in children's development in the areas of school readiness and language development.

Head Start Information Systems

There are two relevant Head Start data collection systems. The Head Start Program Information Report (PIR) provides program information on actual Head Start services provided to children and families. The Head Start Cost Analysis System (HSCOST) provides information on planned program design and cost. Combined, the two data bases provide information on both the efficiency and effectiveness of individual Head Start programs. These systems provided information that was used as a basis for raising issues and posing questions regarding the implementation of the Head Start program. The exploration of these issues resulted in this proposed rule.

Both data sources highlight differences among programs and regions. They provide information regarding such variables as class size, hours of service and program option being implemented:

Currently, the average class size in Head Start is 18 children. The range is 12 to 22 children.

Across the nation, the average center-based Head Start grantee offers a program of approximately 718 hours of service per child per year, but the variation among regions and programs is great. Full day programs offer an average of 1,223 hours per year to approximately 18% of the children served nationally. Programs implementing the variations in center attendance option offer an average of 544 service hours annually to 15% of the children. Part day programs offer an average of 734 hours per year to 32% of all Head Start children. Part day and variation programs that operate double sessions offer an average of 475 hours per year to 26% of all Head Start children. Home-based programs provide approximately 129 hours of service per year to 8% of the children.

The questions raised by these variations revolve around what is adequate in terms of:

- Providing effective services resulting in long range benefits to children and families, and,
- Operating as efficiently as possible so as to be able to serve as many children as possible.

Current Information From the Field of Early Childhood Education

Because research findings are often not definitive, early childhood professionals have long recognized and endorsed "best practices" as developmentally appropriate for young children and their families. Opinions and ideas regarding the effectiveness and efficiency of Head Start were solicited from professionals in the field of early childhood education and Head Start. These professionals include Head Start grantee and delegate agency staff (directors, education coordinators, teachers, etc.), training and technical assistance providers and the National Head Start Association Board of Directors and members (a national organization representing Head Start directors, parents, staff and friends). The contents of this rule regarding hours of service, staffing and options reflect the comments and ideas offered by the professionals and others in the early childhood education field.

In addition, the National Association for the Education of Young Children, a national organization that represents early childhood professionals, has developed *Accreditation Criteria and Procedures of the National Academy of Early Childhood Programs* (NAEYC, 1984) to which we looked for guidance. The Academy's *Criteria* confirm that low enrollment limits and trained staff

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are important to the success of any preschool program.

We have focused our efforts in four major areas:

1. *Program Flexibility.* One of the strengths of Head Start is that local programs have the flexibility to design the program to meet specific community needs. The result of this flexibility is that there is a wide variation in the manner in which local Head Start programs are implemented, which is generally a tribute to the ingenuity of Head Start program operators. The intent of this NPRM is to retain that flexibility, within parameters that protect program quality, by setting minimums or ranges on those program variables that affect long range benefits to children and families.

2. *Program Options.* ACYF is proposing that this NPRM incorporate into a new Part 1306, Appendix A of 45 CFR Part 1304, Program Options for Project Head Start. The NPRM also revises the program options requirements based on the need to relate program goals and design to community needs and on the need for sufficient hours and days of program operations. The NPRM also further specifies the various program options available to local Head Start programs and consolidates in one place all the information on each option which is presently scattered throughout Head Start requirements, manuals and other policy issuances.

3. *Hours and Days of Operation.* Based on data cited above, ACYF proposes to set minimum hours and days of operation for both the center-based and home-based program options. The specific requirements for each program option include days of planned classroom operation, number of group socialization activities and number of home visits to be made by the teaching staff or home visitors.

Currently, the frequency and length of this contact time vary tremendously across the country and among regions. Some programs operate for a number of hours that is insufficient to provide an adequate amount of contact between the program and the child and family. This NPRM will require that those programs increase the amount of contact time being provided.

4. *Class Size.* ACYF proposes to specify the minimum, maximum and average grantee class sizes that are acceptable for Head Start based on the ages of the children being served and the type of center-based program option being implemented. These proposed requirements are fully consistent with research findings regarding group size (Abt, 1980), the recommendations of early childhood professionals and information on current good practices (NAEYC, 1984).

IV. Section by Section Discussion of the NPRM

Subpart A

Subpart A, General, of the NPRM sets forth the purpose and scope of the proposed rule, proposes an effective date and provides definitions of terms used. Subpart A also indicates that the rule is not applicable to the 35 existing Parent Child Center programs which serve children below the age of three.

In § 1306.2, we propose to allow current grantees two years to come into compliance with the staff qualification requirements and at least 180 days to come into compliance with the program option requirements. New grantees must meet all requirements of the final rule at the time they are funded.

Subpart B

Subpart B, Head Start Program Staffing Requirements, sets forth program staffing requirements for all Head Start grantees and delegate agencies regardless of the program option being implemented. This subpart consolidates and clarifies existing staffing requirements and introduces new requirements regarding staff qualifications.

Section 1306.20 Program Staffing Patterns.

Section 1306.20 specifies that center-based programs must employ two staff persons responsible for each classroom (a teacher and a teacher aide) and must have a volunteer in the classroom whenever possible. Home-based programs must employ home visitors. Both classroom staff and home visitors must be able to communicate with the families they serve and must be familiar with the ethnic background of those families.

These requirements are designed to assure that sufficient adults are available so that children in the classroom can be provided with individualized attention. They are also designed to assure that families that participate in the home-based program will receive the individualized attention needed to meet the needs of the parents and children in that family.

Section 1306.21 Staff Qualification Requirements.

Section 1306.21 specifies, for the first time, staff qualification requirements for classroom staff and home visitors. The competence of the Head Start teacher and home visitor is one of the most important determinants of the success of the program. It is the training and experience of this staff that enables them to provide high quality and age appropriate experiences to children. Accordingly, ACYF proposes to require a minimum level of training for teachers prior to being put in charge of a classroom and for home visitors prior to being put in charge of a group of home based families. One way to meet these requirements is to hire teachers and home visitors with Child Development Associate (CDA) credentials. Individuals with CDAs have demonstrated their competence in working in center- or home-based child development programs.

The Administration for Children, Youth and Families encourages public comment on those activities and efforts that will be needed to insure that qualified teachers and home visitors are available to fill vacant positions. We are particularly interested in ways programs could provide training or help persons obtain the credentials necessary to become home visitors. Possible approaches might include hiring staff as home visitors trainees or providing training to staff currently employed in other positions.

Section 1306.22 Volunteers.

Current Head Start policies in the Head Start Manual of Policies and Instructions regarding volunteers are incorporated in § 1306.22. The proposed regulation requires that all programs have a system for actively encouraging volunteer participation and that special efforts must be made to have volunteer participation, especially parents, in the classroom. Volunteer participation must be organized so that there are specific opportunities to work at meaningful tasks both within the classroom and in other program and administrative areas.

Section 1306.23 Training.

Current Head Start regulations regarding staff and volunteer training are found in 45 CFR Part 1304, Appendix A. These requirements are incorporated in § 1306.23 of the proposed regulations.

Subpart C

Subpart C, Head Start Program Options, sets forth the proposed requirements regarding the direct service options that can be implemented by Head Start grantees and delegate agencies. It supercedes existing requirements found in 45 CFR Part 1304, Appendix A. The requirement at Appendix A, developed prior to the promulgation of 45 CFR Part 1304, the Head Start performance standards,

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contained a number of requirements related to parent involvement, education services, social services, nutrition and other Head Start components. These component requirements are being deleted as they are covered by the Head Start performance standards. These deletions are not to be interpreted as a de-emphasis on any Head Start program component.

The subpart details ranges of acceptable operations in regard to class size and hours and days of operation for each of the options.

Section 1306.30 Provision of Comprehensive Child Development Services.

This section incorporates existing requirements found in 45 CFR Part 1304, Appendix A, section A. It requires that grantees provide comprehensive child development services to all children enrolled in the program, meet the Head Start Performance Standards, provide classroom or home-based group socialization experiences for all children, provide home visits to all parents and utilize community resources to the greatest extent possible.

We are proposing a new requirement in § 1306.30(c) that the facilities for regularly scheduled center-based classroom or home-based group socialization activities must meet State and local licensing standards. Depending on various State and local licensing standards, this may include classrooms, outdoor play areas or, in some cases, homes. This new requirement is proposed to further ensure the health and safety of the Head Start children being served. In cases where no State and local licensing standards are applicable or where these licensing standards are less comprehensive than Head Start regulations, programs are required to assure that their facilities are in compliance with the Head Start Performance Standards related to health and safety found in 45 CFR 1304.2–3.

Section 1306.31 Choosing Head Start Program Options.

This section incorporates existing requirements found in 45 CFR Part 1304, Appendix A, section A. It allows grantees and delegate agencies to implement a center-based program option which focuses on delivery of services to the child, a home-based program option which focuses on delivery of services to the parents, or both options with different groups of children.

Some Head Start grantees may prefer to implement the center-based program option in which priority is placed on providing services to children in a classroom setting. This option encompasses those options previously termed standard option, part day and full day, double sessions and variations in center attendance. Other Head Start grantees may prefer to implement a home-based program option when the age or other characteristics of the children indicate the importance of working directly with parents to enhance their role as the primary factor in the development and education of their child(ren). Head Start grantees also have the option to implementing both a center-based and a home-based program.

Both home-based and center-based options as specified in the proposed rule allow sufficient flexibility for local grantees and delegates to be able to implement programs that provide serves appropriate to individual children and the families being served.

The Administration for Children, Youth and Families is aware that some Head Start grantees operate programs that combine aspects of both center- and home-based options. Some of these combination programs do not meet the minimum requirements of this NPRM for either option. This NPRM does not presently include a third option that would allow and regulate these programs. However, we are interested in public comment on these programs in three areas:

The goals and effectiveness of such programs, and the possibility of including a combination model as a third option in the rule.

Recommendations regarding acceptable minimums or ranges for days and hours of operations that a combination model would need to provide to assure gains to children and families. Minimums might be two days per week plus three home visits a month for thirty two weeks of operation or three days per week plus two home visits a month for thirty two weeks of operation.

The likely impact of this rule on existing combination programs if no third option is allowed.

Section 1306.32 Center-Based Program Option.

This section specifies the requirements for the operation of a center-based program including class size, hours and days of operation, double session and full day variations.

Paragraph (a) defines a Head Start class as a group of children, a qualified teacher, an aide and a volunteer and specifies new requirements for class size. It defines the appropriate size of the group of children based on the predominant age of the children in the class and whether or not the program is single or double session. Identifying the predominant age of the children in the class makes it possible to determine allowable class sizes for multi-age classrooms. Identifying whether a class is single or double session allows us to take into account the workload of the double session teacher.

The chart found in the proposed rule at § 1306.32(a)(11) summarizes the new class size requirements which are based on funded enrollment. Minimum and maximum class sizes have been specified to ensure that Head Start can reach as many children as possible while still providing quality services. The Administration for Children, Youth and Families is interested in public comment on whether or not Head Start can operate both effectively and efficiently within these requirements.

For the first time in Head Start regulations, proposed class size is more stringent for the implementation of double session classes than for the implementation of single session classes. Paragraphs (a)(4) and (6) set limits on double session class size to ensure that no teacher will be responsible for more than 34 children. This limit is imposed to make sure that teachers have time to provide individualized services to all children and still have sufficient time for recordkeeping, planning, home visits and parent-teacher conferences.

Paragraph (b) contains proposed new regulations on minimum days per week, days per year and hours per day that grantees must provide center-based classroom operations. It specifies that programs providing 4 days each week of classroom operations must provide a minimum of 128 days per year of classroom operations. Programs providing 5 days each week of classroom operations must provide a minimum of 160 days per year of classroom operations. The number of days required are exclusive of holidays and vacations which, when factored in, will increase the number of operating weeks. Establishing separate days of operation for four day and for five day programs will result in both types of programs operating for a minimum of approximately 32 weeks over an eight or nine month period.

Center-based programs will be expected to operate for at least the number of days specified in this proposed rule. Classroom operations should only be cancelled due to factors beyond the control of the program (adverse weather conditions, emergencies, etc.). When cancellations

do occur, programs should make every effort to make up the cancelled days of class using existing resources. Makeup classes must be provided if cancellations result in less than 128 days of class.

Paragraph (b) also allows grantees to implement a program with a combination of four and five days per week and to pro-rate the minimum required number of days of service based on 32 weeks of scheduled days of classroom operations. This program allows the fifth day of the week to be used alternately for classroom operations or for staff training, home visits, parent-teacher conferences or other relevant activities. In no instance are programs which operate five days per week being encouraged to reduce the number of days per week of operation except as noted below in § 1306.32(c) regarding double session programs.

Paragraph (b) has the effect of requiring that grantees and delegate agencies currently operating two or three days per week must increase their days of classroom operations to at least four days per week if they intend to continue to provide center-based program services. As an alternative, these grantees and delegates can choose to implement a home-based program as defined in § 1306.33, but only if the needs of children and families in the community indicate that such a change is appropriate.

Minimum requirements and acceptable ranges for planned hours per day are also proposed in paragraph (b). Both days and hours of operation include the scheduled days and hours of classroom operations during which time children are expected to be involved in learning opportunities, field trips or receiving Head Start nutrition or health services. These days and hours are exclusive of scheduled vacation days or holidays, the child's travel to and from the center or time for staff planning and record keeping. Programs are also expected to employ staff for an amount of time that allows them time, when children are not present, for pre-service training, for program startup and close down, for required record keeping and planning and for home visits and parent teacher conferences.

The NPRM includes a required minimum of 3½ hours of classroom operation per day. The Administration for Children, Youth and Families is aware that some Head Start grantees presently operate double session programs that may make it administratively difficult to operate for longer than 3 hours per day. We are also aware, however, that a 3½ hour day is developmentally appropriate for a Head Start child and think that the use of staggered working hours or additional part time or swing personnel will make it possible for double sessions to operate for the required hours. The Administration for Children, Youth and Families is interested in public comment on the difficulties and costs grantees would encounter putting this requirement into practice.

In the center-based option, the current requirement for two home visits for each child to be conducted by the child's teacher is found under 45 CFR 1304.2-2(e). This requirement is recodified in paragraph (b)(8) of this section. Home visits focus on parental goals for the child based on staff and parents' perceptions of the child's needs and progress.

Paragraph (b)(8) proposes a new requirement which specifies that each program must conduct two parent-teacher conferences during the school year for each child in a center-based program. These conferences, to be held in the Head Start Center, will be helpful to both the teacher and parent. They provide a formal opportunity to explore the child's progress within the classroom context and allow the teacher to show the parent specific activities and activity areas in which the child is involved. During the first conference, parents can provide useful information to the teaching staff about their child at the beginning of the program year. During the second conference, teachers can explain the child's progress to the parents before the child leaves the program.

Since the parent-teacher conference is traditionally used by public schools, its use in Head Start is also an effort to make the transition from Head Start to the public school system easier for both children and parents.

Head Start grantees are responsible for setting up and implementing a system to conduct home visits and parent-teacher conferences. The purpose of this system is to provide a vehicle for working with parents as the prime educators of their children. In those instances when parents implicitly or explicitly refuse to participate, the program must try to convince them of the usefulness of these activities and to encourage them to participate. Under no circumstances, however, is the program to drop the child from the center-based program if the parents will not participate in the visits and/or the conferences. The center-based program option allows the implementation of two center-based option variations: double session and full day. Both of these variations must comply with the general requirements set forth in § 1306.32 (a) and (b) for center-based program operations with specific additions and exceptions.

Section 1306.32(c) discusses the double session variation. As previously mentioned, the proposed regulations regarding double sessions are more stringent in terms of class size. In addition, paragraph (c) requires that double sessions operate for no more or less than four days per week to ensure that teachers have adequate class time to provide individualized services to all children and still have sufficient time for recordkeeping, planning, home visits and parent-teacher conferences. This may require the employment of additional part-time personnel or staggered times of staff arrival and departure.

Section 1306.32(d) defines full day as the provision of more than six hours of classroom operations per day using Head Start funds. Existing policies on the use of Head Start funds to provide full day services (Transmittal Notice 72.6) are incorporated in this paragraph. They require a search for alternative resources for implementing full day services and that full day services be provided based on the needs of individual children.

ACYF acknowledges that many Head Start families have a need for full day services. Head Start, however, does not have the resources to provide a substantial amount of full day care for children. Therefore, we are proposing that grantees work with State and local organizations to secure alternative resources to extend the services past the normal hours of the Head Start program or to operate and charge for an extended day program that is not administered under the Head Start Act. It should be noted that Head Start regulations at 45 CFR 1305.8 specifically prohibit Head Start agencies from prescribing a fee schedule or charging fees for participation in the Head Start program itself.

In instances where grantees decide to operate and charge for full day services outside the normal hours of the Head Start program, they should develop and follow operating rules and requirements that protect the health and safety of the program participants and provide the kinds of services desired and supported by the parents of the children being served. Head Start grantees may wish to consider other variations for the non-Head Start portion of the day such as using a non-Head Start funded full day program as a mechanism for providing after school care in addition to providing preschool services.

Section 1306.33 Home-Based Program Option.

This section proposes annual minimums of 32 home visits and 16 group socialization activities per child in home-based programs. These minimums also include minimum hours for home visits and group socialization activities which are exclusive of scheduled vacations or holidays, the child's travel to and from the group socialization activities, the home visitor's travel to and from family homes and time for staff planning and record keeping. In the home-based option, home visits are conducted by trained home visitors in the home and are designed to enhance the ability of parents to foster their child's growth and development.

Home visits are to be made by the home visitor with the parent, foster parent or guardian of the child or the persons with whom a child has been placed for purposes of adoption pending a final decree. Home visits are not to be made with only a baby sitter or other temporary caregiver in attendance. Programs may need to be flexible and schedule home visits on weekends or during evenings in order to carry out a home-based program and conduct home visits with working parents, parents in training or school or with parents who are otherwise out of the house during weekdays.

Group socialization activities must be designed to provide an opportunity for peer interaction for the children and to provide parents with the opportunity to enhance their understanding of child development and their skills as the primary educator of their children. In addition, there should be ample opportunity for parents to participate in activities of their own choosing. As with home visits, the intent of these activities is to involve the child's parent and not a babysitter or temporary caregiver.

Based on research data, a maximum caseload of 12 families per home visitor has been proposed in paragraph (a)(5). As with center-based programs, the purpose of this requirement is to ensure adequate time for the provision of quality services that will have long range benefits for Head Start children and their families.

Paragraph (c)(3) requires that home-based programs follow the nutrition requirements specified in 45 CFR 1304.3-10(b)(1) by providing appropriate snacks and meals during group socialization activities. This requirement is included because the Performance Standards specify nutrition requirements for center-based programs, but not for home-based group socialization activities.

Section 1306.34 Additional Head Start Program Option Variations.

This section incorporates requirements related to Locally Designed Options that are currently found in 45 CFR Part 1304, Appendix A, Section B.5. and in Transmittal Notice 72.11, N-30-211.a-1. Variations from the center- or home-based program options are allowable under this section for the purpose of meeting unique local needs or demonstrating innovative approaches to the provision of services.

V. Resource Implications

In order to comply with these regulations, some Head Start programs will have to make changes in class size and/or hours and days of operation. Estimates of the cost of those changes can be made based on a variety of assumptions.

On the assumption that no children will be dropped from the program, estimates can be made of the number of additional classes that would be needed to serve those children whose classes must be reduced in size. Estimates can also be made of the additional resources needed to increase days and hours of service. An alternative assumption is that children will be dropped where class size is too large and there are no classes with smaller numbers of children that can absorb them. In addition, it would be possible to drop classrooms in order to pay for additional hours and days of operation.

In reality, the promulgation of this rule will probably encompass both assumptions and increase total classes for some grantees and decrease the number of children served by other grantees. It should be noted that in no instances would currently enrolled children actually be dropped from the program. Decreases in enrollment would take place at the beginning of a new program year and would be accomplished by enrolling fewer children.

Some programs will have to decide whether or not to change the program option(s) they are presently operating. These are primarily center-based programs which are now operating split sessions (two and three days of classroom operations each week) or variations in center attendance.

We estimate that the changes proposed in the NPRM will cost approximately $15 million, an amount equal to 1¼ percent of current spending. These funds are needed primarily to reduce class size and to increase the amount of contact between the program and the child and family.

It is anticipated that these changes will not be required prior to FY 1990 and will be implemented over a two year period. These cost increases can be accommodated in current budget policy.

VI. Redesignation Table

Section of the proposed rule	Superceded rule policy or identification of new requirement
1306.20	Head Start Manual of Policies and Instructions, 6108-1, (1967).
1306.21	New Requirement.
1306.22	Head Start Manual of Policies and Instructions, 6108-1, (1967); Section 3(f).
1306.23	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section A.7.
1306.30(a)	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section A.4.
1306.30 (b) and (c).	New Requirement.
1306.30(d)	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section A.
1306.31	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section A.2., 3. and 9.
1306.32(a)	Enrollment and Attendance Policies in Head Start, S-30-317-1: Section S-30-317-1-30, Definition #9; Section S-30-317-1-40, A 2c(2), e(1 and 2).
	New Requirement.
1306.32(b)	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section B 1. and 2.
	Clarification of Program Options Policy, TN 72.12, N-30-336-2.
	New Requirement.
1306.32(c)	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section B 3.
	New Requirement.
1306.32(d)	Use of Head Start Funds to Provide Full Day Services, TN 72.6, N-30-336-1.
	Length of Full Year Part Day Programs Utilizing the Standard Head Start Model, TN 72.9, N-30-335-1.
	Clarification of Full Day Services Policy, TN 72.13, N-30-334-2.
1306.33 (a), (b), and (c).	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section B.4.
	New Requirement.
1306.34	Program Options for Project Head Start, 45 CFR Part 1304, Appendix A, Section B.5.
	Locally Designed Option Review Process, TN 72.11, N-30-211a-1.

VII. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. Since nothing in the NPRM is likely have an effect on the economy of $100 million, the Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch.6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", we prepare an analysis describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small entities. While these regulations would affect small entities, these requirements are not substantial and most Head Start programs already meet all or some of the proposals. We expect that less than 25 percent of the programs will have to make changes in class size and less than 20 percent of the programs will have to make changes in the amount of contact with children and families. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed or final rule. This proposed rule does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

List of Subjects

45 CFR Part 1304

Dental health, Education of disadvantaged, Grant programs—social programs, Health care, Mental health program, Parental Involvement, Nutrition.

45 CFR Part 1306

Head Start, Education, Grant programs/social programs, Handicapped, Pre-school education.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: April 8, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: June 21, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, Subchapter B, Chapter XIII, of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1304—[AMENDED]

1. The authority citation for Part 1304 continues to read as follows:

Authority: 42 U.S.C. 9831 et seq.

Appendix A—[Removed]

2. Appendix A of Part 1304 is removed.

3. Part 1306 is added to read as follows:

PART 1306—HEAD START STAFF REQUIREMENTS AND PROGRAM OPTIONS

Subpart A—General

Sec.

1306.1 Purpose and scope.
1306.2 Effective dates.
1306.3 Definitions.

Subpart B—Head Start Program Staffing Requirements

1306.20 Program staffing patterns.
1306.21 Staff qualification requirements.
1306.22 Volunteers.
1306.23 Training.

Subpart C—Head Start Program Options

1306.30 Provision of comprehensive child development services.
1306.31 Choosing a Head Start program option.
1306.32 Center-based program option.
1306.33 Home-based program option.
1306.34 Additional Head Start program option variations.

Authority: 42 U.S.C. 9831 et seq.

Subpart A—General

§ 1306.1 Purpose and scope.

This part sets forth standards for Head Start program staffing and program options that all Head Start programs, with the exception of the Parent Child Center programs, are required to implement. These standards, including staffing patterns and qualifications, the choice of the program option(s) to be implemented and the acceptable ranges in the implementation of those options, have been develped to help ensure the quality of the program and to help promote long range benefits to the children and families being served.

§ 1306.2 Effective dates.

(a) Except as provided in paragraph (b) of this section, existing Head Start programs refunded 180 or more days after the effective date of this part must comply with these requiremens by that time in their grant cycle when a new group of children begins receiving services. This does not preclude programs from voluntarily coming into compliance with these regulations prior to the effective date.

(b) Currently funded Head Start programs must be in compliance with the staff qualification requirements in § 1306.21 within two years from the effective date of this part. This does not preclude programs from voluntarily coming into compliance with these regulations prior to the effective date.

(c) All new Head Start programs must be in compliance with this rule at the time they are funded.

§ 1306.3 Definitions.

(a) *Center-based program option* means Head Start services provided to children primarily in classroom settings.

(b) *Days of operation* means the planned days during which children will be receiving direct Head Start component services in a classroom, on a field trip or on trips for health-related activities.

(c) *Double session variation* means a variation of the center-based program option that operates with one teacher who works with a group of children in a morning session and a different group of children in an afternoon session.

(d) *Full day variation* means a variation of the center-based program option in which program operations continue for longer than six hours per day.

(e) *Group socialization activities* means the sessions in which children and parents enrolled in the home-based program option interact with other home-based children and parents in a Head Start classroom, community facility, home or on a field trip.

(f) *Head Start classroom* means a group of children supervised and taught by two paid staff members (a teacher and a teacher aide) and, whenever possible, a volunteer.

(g) *Head Start parent(s)* means a Head Start child's parent(s), foster parent(s), guardian(s) or the person(s) with whom the child has been placed for purposes of adoption pending a final adoption decree.

(h) *Head Start program* means a Head Start grantee or delegate agency.

(i) *Home-based program option* means Head Start services provided to children through intensive work with the child's parents and family as the primary factor in the growth and development of the child.

(j) *Home visits* means the visits made to a child's home by the classroom teacher in a center-based program or home visitors in a home-based program for the purpose of assisting parents in fostering the growth and development of their children.

(k) *Hours of operation* means the planned hours per day during which children and families will be receiving direct Head Start component services in a classroom, on a field trip, while receiving medical or dental services or during a home visit or group socialization activity. Hours of operation does not include travel time to and from the center at the beginning and end of a session.

(l) *Parent-teacher conference* means the meeting held at the Head Start center between the child's teacher and the child's parent(s) during which the child's progress and accomplishments are discussed.

Subpart B—Head Start Program Staffing Requirements

§ 1306.20 Program staffing patterns.

(a) Programs must provide adequate supervision of their staff.

(b) Center-based programs must employ two staff persons responsible for each classroom (a teacher and a teacher aide) and, when ever possible, a third person in the classroom who is a volunteer.

(c) Home-based programs must employ home visitors responsible for home visits and group socialization activities.

(d) Classroom staff and home visitors must be able to communicate with the families they serve either directly or through a translator. They must also be familiar with the ethnic background of those families.

§ 1306.21 Staff qualification requirements.

(a) Every Head Start classroom teacher must:

(1) Have a Child Development Associate (CDA) credential that is appropriate to the age of the children being served in center-based programs (Preschool or Infant-Toddler CDA); or

(2) Have a State awarded certificate for preschool teachers which meets or exceeds the requirements for a CDA credential; or

(3) Have an Associate, Baccalaureate, or advanced degree in early childhood education; or

(4) Have a degree in a field related to early childhood education with experience in teaching preschool children and have a State awarded certificate required to teach in a preschool program.

(b) Each Head Start home visitor must:

(1) Have a CDA Home Visitor credential; or

(2) Have a State awarded certificate for home visitors which meets or exceeds the requirements for a CDA credential; or

(3) Have an Associate, Baccalaureate, or advanced degree in early childhood education or human development, including education and experience in social services and adult education.

§ 1306.22 Volunteers.

(a) Head Start programs must use volunteers to the fullest extent possible. Head Start programs must develop and implement a system to actively recruit, train and utilize volunteers in the program.

(b) Special efforts must be made to have volunteer participation, especially parents, in the classroom and during group socialization activities.

§ 1306.23 Training.

(a) Head Start programs must provide pre-service and in-service training opportunities to program staff and volunteers to assist them in acquiring or increasing the knowledge and skills they need to fulfill their job responsibilites. This training must be directed towards improving the ability of staff and volunteers to deliver services required by Head Start regulations and policies.

(b) Head Start programs must provide staff with information and training about the underlying philosophy and goals of Head Start and the program option being implemented.

Subpart C—Head Start Program Options

§ 1306.30 Provision of comprehensive child development services.

(a) All Head Start programs must provide comprehensive child development services.

(b) All Head Start programs must provide classroom or group socialization activities for the child as well as home visits to the parent(s). The major purpose of the classroom or socialization activities is to help meet the child's developmental needs and to foster the child's social competence. The major purpose of the home visits is to enhance the parental role in the growth and development of the child.

(c) The facilities used by Head Start programs for regularly scheduled center-based classroom or home-based group socialization activities must meet applicable State and local licensing standards. In cases where these licensing standards are less comprehensive or less stringent than Head Start regulations or where no State or local licensing standards are applicable, programs are, at a minimum, required to assure that their facilities are in compliance with Head Start performance standards related to health and safety found in 45 CFR 1304.2–3.

(d) All programs must identify, secure and use community resources in the provision of services to Head Start children and their families prior to using Head Start funds for these services.

§ 1306.31 Choosing a Head Start program option.

(a) Programs may choose to implement a center-based option, a home-based program option or both options.

(b) Programs must choose the program option(s) that meet the needs of the children and families as indicated by the community needs assessment conducted by the program.

(c) When assigning children to a particular option, Head Start programs that operate more than one option must consider such factors as the child's age, developmental level, handicaps, health or learning problems, previous preschool experiences and family situation. Programs must also consider parents' concerns and wishes prior to making final assignments.

§ 1306.32 Center-based program option.

(a) *Class Size.* (1) Head Start classes must be staffed by a teacher, an aide and, whenever possible, a volunteer.

(2) Using funded enrollment, programs must determine their class size based on the predominate age of the children in the classroom and whether or not a double session is being implemented.

(3) For classes serving predominantly four or five year old children, the average class size of that group of classes must be between 17 and 20 children with no more than 20 and no fewer than 13 children in any one class.

(4) When double session classes serve predominately four or five year old children, the average class size of that group of classes must be between 15 and 17 children. A double session class for four or five year old children may have no more than 17 and no fewer than 13 children enrolled. See paragraph (c) of this section for other requirements regarding the double session variation.

(5) For classes serving predominately three year old children, the average

class size of that group of classes must be between 15 and 17 children with no more than 17 and no fewer than 13 children enrolled in any one class.

(6) When double session classes serve predominately three year old children, the average class size of that group of classes must be between 13 and 15 children. A double session class for three year old children may have no more than 15 and no fewer than 13 children enrolled. See paragraph (c) of this section for other requirements regarding the double session variation.

(7) A class is considered to serve predominately four or five year old children if more than half of the children in the class will be four or five years old by whatever date is used by the State or local jurisdiction in which the Head Start program is located to determine eligibility for public school.

(8) A class is considered to serve predominately three-year-old children if more than half of the children in the class will be three years old by whatever date is used by the State or local jurisdiction in which the Head Start program is located to determine eligibility for public school.

(9) Head Start programs must determine the predominate age of children in the class at the start of the year. There is no need to change that determination during the year.

(10) In some cases, State or local licensing requirements may be more stringent than these class requirements, preventing the required minimum numbers of children from being enrolled in the facility being used by the Head Start program. Where this is the case, Head Start programs must try to find alternative facilities that satisfy licensing requirements for the numbers of children cited above. If no alternative facilities are available, the responsible HHS official has the discretion to approve enrollment of fewer children than required above.

(11) The chart below may be used for easy reference:

Predominate age of children in the class	Funded class size (funded enrollment)
4 and 5 year olds	Program average of 17–20 children enrolled per class in these classes. No less than 13 and no more than 20 children enrolled in any class.
4 and 5 year olds in double session classes.	Program average of 15–17 children enrolled per class in these classes. No less than 13 and no more than 17 children enrolled in any class.
3 year olds	Program average of 15–17 children enrolled per class in these classes. No less than 13 and no more than 17 children enrolled in any class.
3 year olds in double session classes.	Program average of 13–15 children enrolled per class in these classes. No less than 13 and no more than 15 children enrolled in any class.

(b) *Center-Based Program Requirements.* (1) Programs must operate classes for four or five days per week or some combination of four or five days per week.

(2) Programs must operate classes for a minimum of three and one half to a maximum of six hours per day with four hours per day considered to be optimal.

(3) The annual number of required days of planned classroom operations (days when children are scheduled to attend) is determined by the number of days per week each program operates. Programs that operate for four days per week must provide at least 128 days per year of planned classroom operations. Programs that operate for five days per week must provide at least 160 days per year of planned classroom operations. Programs implementing a combination of four and five days per week must plan to operate between 128 and 160 days per year. The minimum number of planned days of service per year can be determined by computing the relative number of four and five day weeks that the program operates. All center-based program must provide a minimum of 32 weeks of scheduled days of classroom operations over an eight or nine month period. Every effort should be made to schedule makeup classes using existing resources if planned classroom days fall below the number required per year.

(4) Programs must schedule makeup classes, when needed, to prevent the number of days of service available to the children from falling below 128 days per year.

(5) Each individual child is not required to receive the minimum days of service, although this is to be encouraged in accordance with Head Start policies regarding attendance. The minimum number of days also does not apply to handicapped children whose individualized education plan may require fewer planned days of service in the Head Start program.

(6) Head Start migrant programs are not subject to the requirement for a minimum number of planned days, but each migrant program must make every effort to provide as many days of service as possible to each migrant child and family.

(7) Staff must be employed for sufficient time to allow them to participate in pre-service training, to plan and set up to program at the start of the year, to close the program at the end of the year, to conduct home visits and parent-teacher conferences, to maintain records and to keep plans current and relevant. These activities should take place when no classroom activities with children present are planned.

(8) Head Start programs must develop and implement a system that actively encourages parents to participate in two home visits and two parent-teacher conferences annually for each child enrolled in a center-based option. These visits and conferences must be initiated and carried out by the child's teacher. Programs may not, however, drop the child from the center-based program if the parents will not participate in the visits and/or the conferences.

(9) Head Start migrant programs are required to plan for a minimun. of two parent-teacher conferences for each child during the time they serve that child. Should time and circumstance allow, migrant programs must make every effort to conduct home visits.

(c) *Double Session Variation.* (1) A center-based option with a double session variation employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon. Because of the larger number of children and families to whom the teacher must provide services, double session programs must comply with the requirements regarding class size explained in paragraph (a) of this section and with all other center-based requirements in paragraph (b) of this section with the exceptions and additions noted in this paragraph.

(2) Each program must operate classes for four days per week.

(3) Each double session classroom staff member must be provided adequate break time during the course of the day. In addition, each teacher, aide and volunteer must have appropriate time to prepare for each session together, to set up the classroom environment and to give individual attention to children entering and leaving the center.

(d) *Full Day Variation.* (1) A Head Start program implementing a center-based option with a full day variation provides more than six hours of classroom operations per day using Head Start funds. These programs must

comply with all the requirements regarding the center-based program option found in paragraphs (a) and (b) of this section with the exception of paragraph (b)(2) of this section regarding the hours of service per day.

(2) Programs are encouraged to meet the needs of the families for full day operations by securing funds from other agencies. A Head Start program implementing a full day variation must determine that all alternative sources for full day services have been contacted, that enrollment opportunities in other programs are not available for families and that non-Head Start resources are not available to operate the longer day.

(3) Head Start programs may provide full day services only to those children and families with special needs that justify full day services or to those children whose parents are employed or in job training with no caregiver present in the home. The records of each child receiving services for more than 6 hours per day must show how each child meets the criteria stated above.

(4) Programs may consider charging for services which are provided outside the normal hours of the Head Start program. When this alternative is utilized, no Head Start funds may be used to pay for these services. Head Start space, however, that would otherwise be unused may be made available for other activities outside the normal hours of the Head Start program.

§ 1306.33 Home-based program option.

(a) Programs implementing a home based option must:

(1) Provide one home visit per week per family (a minimum of 32 home visits per year) lasting for a minimum of 1½ hours each.

(2) Provide, at a minimum, two group socialization activities per month per child (a minimum of 16 group socialization activities each year). Each group socialization activity must operate for a minimum of 3½ hours to a maximum of 6 hours with 4 hours considered to be optimal.

(3) Make up planned home visits or scheduled group socialization activities that were cancelled by the program or by program staff if this is necessary to meet the minimums stated above. Medical or social service appointments may not replace home visits or scheduled group socialization activities.

(4) Allow staff sufficient employed time to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to maintain records and keep plans current and relevant. These activities should take place when no home visits or group socialization activities are planned.

(5) Maintain an average caseload of 10 to 12 families per home visitor with a maximum of 12 families for any individual home visitor.

(b) Home visits must be conducted by trained home visitors with the content of the visit jointly planned by the home visitor and the parent(s). Home visitors must conduct the home visit with the parent(s). Home visits may not be conducted by the home visitor with only baby sitters or other temporary caregivers in attendance.

(1) The purpose of the home visit is to help parents improve their parenting skills and to assist them in the use of the home as the child's primary learning environment. The home visitor must work with parents to help them provide learning opportunities that enhance their child's growth and development.

(2) Home visits must, over the course of the year, contain elements of all Head Start program components. The home visitor is the person responsible for introducing, arranging for and, in some component areas, actually providing Head Start services.

(c) Group socialization activities must be focused on both the children and parent(s). They may not be conducted by the home visitor with baby sitters or other temporary caregivers.

(1) The purpose of these activities for the children is to emphasize peer group interaction through age appropriate activities in a Head Start classroom, community facility, home or on a field trip. The children are to be supervised by the home visitor with parents observing at times and actively participating at other times.

(2) The program must design these activities so that parents are expected to accompany their children to the group socialization activities at least twice each month to observe, to participate as volunteers or to engage in activities designed specifically for the parents.

(3) Programs must follow the nutrition requirements specified in 45 CFR 1304.3–10(b)(1) and provide appropriate snacks and meals to the children during group socialization activities.

§ 1306.34 Additional Head Start program option variations.

In addition to the center/based and home-based program options as defined above, the Administration for Children, Youth and Families retains the right to fund alternative program variations to meet the unique needs of communities or to demonstrate or test alternative approaches for providing Head Start services.

[FR Doc. 88–28231 Filed 12–7–88; 8:45 am]
BILLING CODE 4130–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 585, 587 and 588

[Docket No. 88–24]

Actions To Address Adverse Conditions Affecting U.S.-Flag Carriers That Do Not Exist for Foreign Carriers in the United States

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 88–24 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due on or before December 19, 1988.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 88–24 (published November 1, 1988, 53 FR 44039) will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et. seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 88–24, the Commission proposes to add a new part to its regulations to implement the Foreign Shipping Practices Act of 1988. The new part sets forth general procedures for investigatory proceedings to address adverse conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The Commission also proposes to amend its rules implementing section 19(1)(b) of the Merchant Marine Act, 1920 and section 13(b)(5) of the Shipping Act of 1984, to add new sanctions made available to the Commission in

proceedings under those statutes, pursuant to the Foreign Shipping Practices Act.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR § 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28247 Filed 12–7–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286, FCC 88–303]

Amendment of the Commission's Rules and Establishment of a Joint Board; Universal Service Fund Expense Allocation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has issued a Notice of Proposed Rulemaking (NPRM) seeking comment and data from interested parties on revised separations procedures for the allocation of corporate operations expenses and taxes for the purpose of computing the additional interstate allocation known as the Universal Service Fund (USF) expense adjustment. Pursuant to Subpart F of Part 36 of the Commission's rules, the National Exchange Carriers Association (NECA) administers the USF and calculates which carriers receive support from the fund and the amount of support each carrier receives. NECA calculates the USF expense adjustment based on data submitted by the Local Exchange Carriers (LECs) June 30 of each year. The NPRM proposes to revise the rules to allocate corporate operations expenses on the basis of gross investment in calculating the USF expense adjustment. The NPRM also refers this issue to the Docket 80–286 Joint Board and requests that it prepare a recommended decision regarding the issues.

DATES: Comments and data must be filed on or before January 12, 1989, and reply comments on or before January 27, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Shipley, Accounting and Audits Division, Common Carrier Bureau, at (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, CC Docket No. 80–286, FCC 88–303; adopted September 27, 1988 and released November 22, 1988.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Notice of Proposed Rulemaking

1. On July 2, 1987, the NECA filed a waiver to permit it to allocate corporate operations expenses and taxes on the basis of gross investment rather than net investment in computing the level of additional interstate allocation known as the USF expense adjustment. The Common Carrier Bureau granted NECA a temporary waiver request [1] through December 31, 1988 pending further review of the issue.

2. The current procedures [2] provide the LECs, with higher-than-average loop costs, additional revenues from the USF to reduce their state revenue requirements. NECA calculates each carrier's USF expense adjustment and level of assistance based on data submitted to it by the carriers on June 30 each year. The level of assistance is calculated by comparing each study area's average loop costs [3] with the national average loop costs. Current rules require that, in computing average loop costs NECA must allocate corporate operations expenses and taxes on the basis of net plant investment.

3. The NPRM proposes to revise these rules to require the allocation of corporate operations expenses on the basis of gross investment. The proposed rules would continue to require allocation of taxes on the basis of net investment. The Commission found that, because net investment is affected by depreciation levels, this may cause distortions in the calculation of average loop costs. These distortions may not occur if the rules were revised to use gross investment in allocating corporate operating expenses.

4. The NPRM requests that parties file comments on the proposed separations procedures outlined in Appendix A and to propose alternative approaches. It also requests the Joint Board to analyze those proposals and submit a recommended decision to the Commission. The NPRM also requested NECA to file the information, by study area, that each LEC filed with NECA on June 30, 1988.

Comments

5. Interested parties may file comments and data on the issues discussed above on or before January 12, 1989 and reply comments on or before January 27, 1989.

Regulatory Flexibility Act

6. We certify that the Regulatory Flexibility Act [4] is not applicable to the rule changes we are proposing in this proceeding. In accordance with the provisions of section 605 of the Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Notice in the **Federal Register.** As part of our analysis of the proposal described in this Notice, however, we will consider the impact on small telephone companies, *i.e.,* those serving 50,000 or fewer lines.[5] The action proposed herein would have a beneficial economic impact on the majority of the small telephone companies because it would promote universal service by enabling the telephone companies and state regulators to establish local exchange

[1] National Exchange Carrier Association, Inc., Petition for Waiver of §§ 67.621(a)(4) and 36.621(a)(4) of the Commission's Rules, 3 FCC Rcd 1023 (1988).

[2] 47 CFR Part 36, Subpart F.

[3] The loop costs include the costs associated with Category 1.3 Cable and Wire Facilities investment and Category 4.13 Central Office Equipment investment.

[4] 5 U.S.C. 601.

[5] Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983). Thus, this Commission is not required by the terms of the Act to apply the formal procedures set forth therein. This Commission is nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

service rates in high cost areas that are lower than they otherwise would be.

Paperwork Reduction Act

7. We have analyzed the proposal contained herein with respect to the Paperwork Reduction Act of 1980 [6] and have tentatively concluded that it will not, if adopted, impose new or modified information collection requirements on the public. Therefore, implementation of the proposed requirements will not be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

Ex Parte Contacts

8. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period.[7] The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when this Commission: (1) Releases a text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first.[8] During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by this Commission or our staff for the clarification or addition of evidence or the resolution of issues in the proceeding.[9]

9. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which: (1) If written, is not served on the parties to the proceeding; or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present.[10] Any person who sububmits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to this Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.[11]

10. For Joint Board actions, special *ex parte* rules apply.[12] For those actions, all written materials that are not filed in accordance with a pleading cycle established by the Joint Board shall be accompanied by a Petition for Leave to File showing cause why the material should be considered by the Joint Board. The Joint Board will not consider any filing made outside the authorized pleading cycle and received by this Commission less than fifteen days[13] in advance of a Joint Board meeting at which is will consider the subject matter of that filing. Written *ex parte* presentations, as defined by our rules, need not be accompanied by a Petition for Leave to File and may be received at the discretion of the Joint Board member or staff personnel involved. No written *ex parte* presentations, however, shall be made during the fifteen day period immediately preceding a Joint Board meeting except in response to an inquiry initiated by a member of the Joint Board or its staff.

Ordering Clause

11. Accordingly, it is ordered, that the Joint Board in CC Docket No. 80–286 shall review the comments, proposals, and data filed in response to this Notice and prepare a recommendation to this Commission on the issues raised herein.

List of Subjects in 47 CFR Part 36

Communications common carrier, Telephone, Uniform system of accounts, Jurisdictional separations procedures.

This action is taken pursuant to 47 U.S.C. 154 (i) and (j), 201–205, 218, 221(c), 303(r), 403, and 410.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 36 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read:

Authority: 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

2. The title of Subpart F is proposed to be revised to read as follows:

Subpart F—Universal Service Fund Expense Allocation

3. Section 36.601 is proposed to be amended by revising paragraph (a) to read as follows:

§ 36.601 General.

(a) The Universal Service Fund Expense Allocation shall consist of an expense adjustment computed in accordance with this Subpart F. The expense adjustment will be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to Subpart D.

* * * * *

4. Section 36.621 is proposed to be amended by revising paragraph (a)(4) and by adding paragraph (a)(5) as follows:

§ 36.621 National and study area average unseparated loop costs per working loop.

(a) * * *

(4) Corporate Operations Expense, and the benefits and rent portions of operating expenses as reported in § 36.611(a)(5) attributable to investment in Category 1.3 Cable and Wire Facilities (C&WF), and Category 4.13 Central Office Equipment (COE). To calculate the amount of these expenses attributable to investment in Category 1.3 C&WF and Category 4.13 COE, multiply each of these expenses by the ratio of the unseparated gross plant investment in Category 1.3 C&WF and Category 4.13 COE, as reported in § 36.611(a)(1), to the unseparated gross telecommunications plant investment for the study area as reported in § 36.611(a)(6).

(5) Operating Taxes reported in § 3.611(a)(5) attributable to investment in Category 1.3 C&WF and Category 4.13 COE. To calculate the amount of these taxes attributable to investment in Category 1.3 C&WF and Category 4.13 COE, multiply each of these taxes by the ratio of the unseparated net plant investment in Category 1.3 C&WF and Category 4.13 COE as calculated in § 36.621(a)(1) to the unseparated net investment for the total telecommunications plant for the study area. The unseparated net investment for total telecommunications plant for the study area equals the unseparated gross telecommunications plant investment as reported in § 36.611(a)(6) minus the unseparated accumulated

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[6] 44 U.S.C. 501.

[7] *See generally* 47 CFR 1.1206(a).

[8] 47 CFR 1.1202(f).

[9] 47 CFR 1.1203.

[10] 47 CFR 1.1202(b).

[11] 47 CFR 1.1206.

[12] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80–286, 89 FCC 2d 36 (1982).

[13] In calculating this fifteen day period, neither the day on which the material is filed nor the day on which the Joint Board meeting is scheduled shall be counted.

depreciation and noncurrent deferred federal income taxes attributable to total telecommunications plant as reported in §36.611(a)(7).

[FR Doc. 88-28130 Filed 12-7-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219, 226, and 252

Department of Defense Federal Acquisition Regulation Supplement; Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and Request for Public Comments.

SUMMARY: The Department of Defense is proposing changes to Parts 219, 226 and 252 of the DoD FAR Supplement (DFARS) implementing section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180. Sections 219.001, 226.7003 and 252.219-7007(d) are being amended to provide that, in unrestricted procurements, Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) will be given the same evaluation preference as that accorded to small disadvantaged business (SDB) concerns. Sections 219.7000 and 252.219-7007 are being modified to provide that the evaluation preference will not be applied in acquisitions over the dollar threshold for the Trade Agreements Act only where the low offeror is offering an eligible end product or where the application would otherwise violate an agreement or memorandum of understanding with a foreign government. Sections 219.508, 219.7002, 252.219-7007, and 252.219-7010 are being modified to provide that, in an unrestricted procurement, an SDB regular dealer, in order qualify for the evaluation preference, must provide the product of an SDB concern if available; in a partial small business set-aside, in order to be eligible for preferential consideration, an SDB dealer or manufacturer must provide the product of an SDB concern, if available. Section 219.001, 219.502(S-70), 219.502-72, 219.508, and 252.219-7012 are being amended to assist disadvantaged business concerns in transitioning to large business status and in becoming viable business entities.

DATE: Comments should be received on or before January 9, 1989 to ensure their consideration in formulating a final rule. Please cite DAR Case 88.069 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 1988, DoD published a final and an interim rule with request for public comments (53 FR 20626) substantially implementing the requirements of section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180 that established an objective that five percent of total combined DoD obligations (i.e., procurement; research, development, test and evaluation; construction; and operation and maintenance) for contracts and subcontracts awarded during FY 1987 through FY 1989 be entered into with SDB concerns, HBCUs and MIs. Section 844 of Pub. L. 100-456 extended this objective through FY 1990.

During the development of the final rule implementing sections 1207 and 806, as part of the public comment period, several issues were raised that were considered beyond the scope of that rulemaking effort and were deferred for full public consideration and comment. Four of these issues have been consolidated into the present proposed rulemaking.

DFARS coverage has been added to afford HBCUs and MIs the same evaluation preference as that accorded to SDBs under the procedures at DFARS 219.7000. This change is proposed in recognition that in certain procurements (e.g., solicitations involving research and studies) HBCUs and MIs may very well compete with SDBs and other business entities for award. Since SDBs, HBCUs and MIs are defined equally as "1207(a) entities" for the purposes of the preference procedures of section 1207 of Pub. L. 99-661, the revisions will ensure that they are treated equally for evaluation purposes consistent with that statute. (See revisions at 219.7001, 226.7003 and 252.219-7007(d).)

Revised DFARS coverage is proposed with respect to the application of the evaluation preference to acquisitions under the Trade Agreements Act which equal or exceed the dollar threshold referenced in FAR 25.402. Under the proposed revision, the evaluation preference will be applied unless there is an offer of an eligible product which is otherwise low (before application of the evaluation preference). Thus, where the solicitation equals or exceeds the threshold of the Trade Agreements Act and the low offer is an offer of an eligible product, then the evaluation preference will not be applied. However, when the offer of the eligible product is not low, even where the dollar amount of the solicitation equals or exceeds the threshold of the Trade Agreements Act, the evaluation preference will be applied to all non-SDB offers. Application of the evaluation preference to the offer of an eligible product when it is not the low offer does not operate to the detriment of that offeror. It does, however, enhance the opportunities for SDBs even when the acquisition equals or exceeds the dollar threshold of the Trade Agreements Act and either there is no offer of an eligible product or the offer of the eligible product is not low. (See revision at 219.7000(a) and 252.219-7007(b).)

Revised DFARS coverage is proposed to require that, in order to be eligible for the evaluation preference under 219.7000, an SDB dealer must provide the product of an SDB manufacturer if one is available who can meet the requirements of the solicitation. Under the current coverage, to be entitled to the evaluation preference described at 219.7000, SDB concerns other than regular dealers must agree to the subcontracting limitations identified at 252.2.219-7007(c). An SDB dealer, on the other hand, may provide the product of any business concern (i.e., another SDB, a small business or a large business) and still be eligible for the evaluation preference. A similar situation exists under the preferential consideration given to SDBs under the partial small business set-aside procedures at 252.219-7010. Under those procedures, an award to an SDB concern on the set-aside portion may exceed the award price on the non set-aside portion by up to ten percent (10%). An SDB manufacturer or regular dealer need only provide the product of a small business concern in order to be granted this preferential consideration.

Some reservations were voiced that these policies could result in SDB dealers having an advantage over SDB manufacturers. It does not appear from the legislative history of the underlying statutes that Congress intended this result. Accordingly, in light of the growing concern over the erosion of the domestic industrial base and the need to foster and encourage the growth of U.S.-based industries, a decision was made to seek public comments on proposed

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revisions to certain aspects of the procedures outlined above.

Section 252.219–7007 is revised to state that in order to be entitled to an evaluation preference in an unrestricted procurement, SDB dealers would have to provide a product manufactured or produced by an SDB concern. However, in the event the contracting officer, in coordination with the activity small business specialist, determines that there are no SDB manufacturers available who can meet the requirements of the solicitation, then the dealer can provide the product of either a small or a large business concern and still obtain the evaluation preference. Section 252.219–7010 is revised to state that, to be eligible for preferential consideration in a partial small business set-aside, both an SDB manufacturer and an SDB dealer would have to provide an end item manufactured or produced by an SDB concern. In the event there is a determination that there are no SDB manufacturers available who can meet the requirements of the solicitation, the SDB manufacturer or dealer need only provide the product of a small business to be entitled to preferential consideration. It is intended that the foregoing would place all SDB concerns, dealers and manufacturers, on an even footing, foster the growth of SDB concerns, and assist in supporting the growth of a domestic industrial base. (See revisions at 219.508(d)(S–72), 219.7002, 252.219–7007(c).)

DFARS coverage is proposed with respect to follow-on procurements in order to assist disadvantaged business firms in transitioning to large business status and in becoming viable business entities. Under the proposed revisions, follow-on requirements to those procured by the contracting office under the existing contract on an unrestricted basis are to be procured under the successor contract on the basis of an unrestricted competition or by partial small business set-aside procedures, where the incumbent contractor certifies that it (i)(is a "disadvantaged business concern" as defined in DFARS 219.001, (ii) derived contract revenues under the existing contract representing at least one-third of its total revenues during the performance period of that contract, and (iii) desires to participate in a follow-on acquisition.

In addition, a new definition in DFARS 219.001, in essence, will define a "disadvantaged business concern" as a minority-owned business enterprise which meets U.S. Small Business Administration criteria for social and economic disadvantaged business status, but which no longer qualifies as a "small business". Thus, by providing for an unrestricted competition or partial small business set-aside when the circumstances in (i) through (iii) above exist, disadvantaged businesses which do not qualify as small businesses will not be denied an opportunity to compete for requirements which represent a large portion of their business base, as would be the case if the successor requirements were reserved for exclusive small or small disadvantaged business participation. However, in keeping with the requirements of section 806(b)(7) of Pub. L. 100–180 (which requires that DoD maintain the number and dollar value of contracts set-aside for small business or reserved under the 8(a) Program), the coverage will not apply to situations where award of the predecessor contract was made as the result of total small business or small disadvantaged business set-asides, or 8(a) Program reservations. (See revisions at 219.001, 219.502(S–70), 219.502–72(b), 219.508(S–74), and 252.219–7012).

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis has therefore been deemed necessary and will be provided to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties desiring to obtain a copy of the Analysis may contact the Executive Secretary of the DAR Council. Comments received from the public will be considered in drafting a final rule and in performing a Final Regulatory Flexibility Analysis.

Comments from small entities concerning the affected DFAR Subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, and OMB approval of the proposed rule is not required pursuant to 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 219, 226 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 219, 226 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 219, 226 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 500.35 and DoD FAR Supplement 201.301.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.001 is amended by adding a definition of "Disadvantaged Business Concerns" (DBC), alphabetically, as follows:

219.001 Definitions.

"Disadvantaged business concern", as used in this Part, means a business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the Small Business Administration (SBA) at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals, and which concern is not also a small business concern.

* * * * *

219.502-2 [Amended]

3. Section 219.502–2 is amended by adding paragraph (S–70) to read as follows.

* * * * *

(S–70) Total Set-Aside Exception Regarding Incumbent Disadvantaged Business Concerns.

(1) Notwithstanding FAR 19.502–2, a follow-on procurement for supplies or services (except construction or A&E), acquired by the contracting office under the existing contract on the basis of an unrestricted competition, shall not be totally set-aside for exclusive small business participation when the contracting officer determines based upon a written certification by the incumbent contractor, that the contractor—

(i) Is a disadvantaged business concern as defined in 219.001;

(ii) Derived contract revenues under the existing contract which represent at least one-third of the contractor's total revenues derived during the performance period of that contract; and

(iii) Desires to submit an offer in response to a follow-on solicitation.

(2) After learning of a follow-on requirement, the contracting officer shall notify the incumbent contractor of the requirement and permit the concern a period of ten (10) calendar days, or such longer period as the contracting officer may allow, to furnish a certification under the clause at 252.219–7012 together with any supporting documentation which the contracting officer deems necessary to verify the concern's status. Notification to the incumbent contractor need not be made when—

(i) A decision has been made to procure the follow-on requirement on an unrestricted basis, or through use of partial small business set-aside procedures under 219.502–3(S–70) or FAR 19.502–3; or

(ii) The contracting officer has information sufficient to conclude that the incumbent contractor is not a disadvantaged business concern as defined in 219.001.

(iii) The contracting officer shall accept the contractor's self-certification of its status as a disadvantaged business concern unless the contracting officer has reason to question that status. The contracting officer or the SBA may challenge the contractor's status as a disadvantaged business concern in accordance with the procedures at 219.302(S–70).

(3) When the contracting officer determines that the circumstances in (S–70)(1) above exist, the follow-on procurement shall be conducted either on an unrestricted basis or by using partial small business set-aside procedures under 219.502–3(S–70) or FAR 19.502–3 in the order of precedence set forth in 219.504(b) (5) and (6).

4. Section 219.502–72 is amended by adding paragraph (6) to paragraph (b), to read as follows:

219.502–72 Total SDB set-asides.

* * * * *

(b) * * *

(6) A determination has been made in accordance with 219.502–2(S–70)(a) to conduct the procurement either on an unrestricted basis or by using partial small business set-aside procedures.

* * * * *

5. Section 219.508 is amended by redesignating the existing paragraph (S–72) as (S–72)(1); by adding paragraph (S–72)(2); and by adding paragraph (S–74) to read as follows:

219.508 Solicitation provisions and contract clauses.

* * * * *

(S–72)(1) * * *

(S–72)(2) The contracting officer shall insert the clause with its Alternate I when the contracting officer, determines, in coordination with the contracting activity's SADBUS, that there are no SDB manufacturers available that can meet the requirements of the solicitation.

* * * * *

(S–74) The contracting officer shall insert the clause at 252.219–7012, Disadvantaged Business Concerns—Notice of Follow-On Procurement, in all solicitations and contracts when the procurement is conducted on an unrestricted basis.

6. Section 219.7000 is revised to read as follows:

219.7000 Policy.

(a) In furtherance of the Department of Defense objectives and initiatives undertaken to award acquisitions in all industrial categories in which small disadvantaged businesses (SDBs) have not dominated and to meet the five percent goal for SDBs established by section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180 (see 19.201), offers from SDB concerns shall be given and evaluation preference in accordance with the procedures of this subpart. The evaluation preference shall only be used in competitive acquisitions (except as provided in (b) below) where award is based on price and price related factors. However, in no event may award be made at a price which exceeds fair market price (see FAR 19.806–2) by more than 10 percent.

(1) The evaluation preference shall not apply when using—

(i) Small purchase procedures;

(ii) Total SDB set-asides;

(iii) Partial set-asides for LSA concerns;

(iv) Partial small business set-asides;

(v) Total small business set-asides.

(2) The evaluation preference shall: not be applied to—

(i) Otherwise low offers of eligible products under the Trade Agreements Act as defined in DFARS 25.401 when the acquisition equals or exceeds the dollar threshold stated in FAR 25.402, or qualifying country and products as defined in DFARS 25.001; or

(ii) Where the application would be inconsistent with a Memorandum of Understanding or any other international agreement with a foreign government (see Appendix T).

(b) Subject to the exceptions in (a) above, the evaluation preference may also be used in other competitive acquisitions, at the discretion of the source selection authority, when (1) SDBs are expected to possess the requisite qualification, consistent with the demands of the acquisition (e.g., see FAR 35.007 with regard to technical qualification of sources) and, (2) award price with not exceed fair market price by more than 10 percent.

7. Section 219.7001 is amended by adding a sentence following the first sentence to read as follows:

219.7001 Procedures.

* * * "Offers submitted by HBCUs/MIs shall be evaluated as through they were from SDB concerns (see 252.219–7007(d))." * * *

8. Section 219.7002 is amended by adding a sentence after the existing text as follows:

219.7002 Contract clause.

* * * The contracting officer shall insert the clause with its Alternate I when the contracting officer, determines, in coordination with the contracting activity's SADBUS, that there are no SDB manufacturers available that can meet the requirements of the solicitations.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

9. Section 226.7003 is revised to read as follows:

226.7003 General policy.

In furtherance of the Government policy of placing a fair proportion of its acquisitions with HBCUs, MIs, and SDBs, section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180 established an objective for the Department of Denfense of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987–89 to HBCUs, MIs and SDBs (see 219.201) and of maximizing the number of such entities participating in Defense prime contracts and subcontracts. Executive Order 12320 also contains additional guidance concerning HBCUs. It is the policy of the Department of Defense to strive to meet these objectives through the enhanced use of outreach efforts, technical assistance programs, and the special authorities conveyed by these laws (e.g., through a total set-aside for HBCUs and MIs to acquire research and studies normally acquired from Higher Education Institutions (HEIs). With, regard to technical assistance programs, it is the Department's policy to provide HBCUs and MIs, technical assistance, to include information about the Department HBCU and MI program, advice about acquisition procedures, instructions on preparation of proposal, and such other assistance as is consistent with the Department's mission. In the event an HBCU or MI submits an offer under an unrestricted

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acquisition that offers an evaluation preference for SDBs, the HBCU or MI offer shall be evaluated as if it had been submitted by an SDB concern (see 252.219–7007(d)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.219–7007 is revised to read as follows:

252.219–7007 Notice of evaluation preference for small disadvantaged business (SDB) concerns (unrestricted).

As prescribed in 219.7007(a), insert the following clause:

Notice Evaluation Preference for Small Disadvantaged Business (SDB) Concerns (Date) (Unrestricted).

(a) *Definition.* (1) The term "small disadvantaged business (SDB) concern", as used in this clause, has the meaning set forth in the clause entitled Small Disadvantaged Business Concern Representation (DoD FAR Supplement Deviation).

(b) *Evaluation.* (2) After all other evaluation factors described in this solicitation are applied, and except as set forth in (b)(2) below, offers will be evaluated by adding a factor of ten percent (10%) to offers from concerns that are not SDB concerns and to offers from those SDB concerns which elect to waive the SDB evaluation preference (see paragraph (c) below) by checking the box below. However, in no event may award to made to an SDB concern at a price which exceeds fair market price (as determined under FAR 19.806–2) by more than ten percent (10%).

The SDB offeror requests that the evaluation preference in subparagraph (b)(1) above not be given to this offer.

(3) The evaluation factor desirable in subparagraph (a)(1) above shall not be applied to (i) otherwise low offers of eligible products under the Trade Agreements Act as defined in DFARS 25.401 when the acquisition equals or exceeds the dollar threshold stated in FAR 25.402, or qualifying country end products as defined in DFARS 25.011; or (ii) where the application would be inconsistent with a Memorandum of Understanding or any other international agreement with a foreign government (see Appendix T of the DoD FAR: Supplement).

(c) *Agreement.* (1) By submission of an offer and execution of a contract, the SDB Offeror/Contractor (except a regular dealer) who did not waive the evaluation preference by checking the box in paragraph (b) above agrees that in performance of the contract in the case of a contract for—

(i) *Services (Except Construction).* At least fifty (50%) of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(ii) *Supplies.* The concern shall perform work for at least fifty percent (50%) of the cost of manufacturing the supplies, not including the cost of materials.

(iii) *General Construction.* The concern will perform at least fifteen percent (15%) of the cost of the contract, not including the cost of materials, with its own employees.

(iv) *Construction be special trade contractors.* The concern will perform at least twenty-five percent (25%) of the cost of the contract, not including the cost of materials, with its own employees.

An SDB regular dealer submitting an offer in its own name, who did not waive the evaluation preference by checking the box in paragraph (b) above, agrees to furnish, in performing this contract, only end items manufactured or produced by SDB concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(d) *HBCU/MI offer.* In the event an HBCU/MI as defined at 226.7002 submits to the contracting officer, upon request, a certification as to its HBCU/MI status.

(End of clause)

Alternate I (Date)

If a determination has been made in accordance with 219.7002 that there are not SDB manufacturers available who can meet the requirements of the solicitation, delete paragraph (c)(2) of the basic clause.

11. Section 252.219–7010 is amended by substituting the word "(Date)" in lieu of the date "(FEB 1988)"; by adding paragraph (4) to paragraph (c) of the clause and by adding Alternate I to read as follows:

252.219–7010 Notice of partial small business set-aside with preferential consideration for small disadvantaged business (SDB) concerns.

As prescribed at 219.508(S–72), insert the following clause:

Notice of Partial Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business (SDB) Concerns (FEB 1988)

* * * * * *

(c) *Agreement.*

* * * * * *

(4) In order to be entitled to preferential consideration, an SDB manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by SDB concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirements does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (Date)

If a determination has been made in accordance with 219.508(S–72) that there are no SDB manufacturers available who can meet the requirements of the solicitation, insert the following paragraph (c)(4) in lieu of paragraph (c)(4) of the basic clause:

(c)(4) In order to be entitled to preferential consideration, an SDB manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing this contract, only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However this requirement does not apply in connection with construction or service contracts.

12. Section 252.219–7012 is added to read as follows:

252.219–7012 Disadvanged business concerns—notice of follow-on procurement.

As prescribed in 219.508(S–74), insert the following clause:

Disadvantaged Business Concerns—Notice of Following Procurement (Date)

(a) *Definition.* As used in this clause, this term "disadvantaged business concern" means a business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals, which concern is not also a small business concern.

(b) DoD FAR Supplement 219.502(S–70)(a) provides that a follow-on procurement for supplies or services (except construction or A&E), acquired on the basis of an unrestricted competition, shall not be totally set-aside for exclusive small business participation when the contracting officer determines, based upon a written certification by the incumbent contractor, that contractor (1) is a disadvantaged business concern (as defined in paragraph (a) above, (2) derived contract revenues under the existing, contract which represent at least one-third of the contractor's total revenues derived during the performance period of that contract, and (3) desires to submit an offer in response to a follow-on solicitation.

(c) If the Contractor meets the criteria in paragraph (b) (1) and (2) of this clause and desires to participate in a follow-on procurement, the Contractor agrees that it shall, within ten (10) calendar days (or such longer period as the Contracting Officer shall allow after receipt of notice by the Contracting Officer of a follow-on requirement—

(1) Certify in writing that it meets the criteria in paragraph (b) (1) and (2) above, and

(2) Provide such supporting documentation, as the Contracting Officer may require to verify the contractor's status.

[FR Doc. 88–28030 Filed 12–7–88; 8:45 am]

BILLING CODE 3810–01M

Notices

Federal Register
Vol. 53, No. 236
Thursday, December 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Cooperative Agreement; University of Idaho

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into an agreement with the University of Idaho to provide funding for research on Disinfestation of Fruit Using Shrinkwrap.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1989 (FY1989) to provide funding support to the University of Idaho for a joint research project with the USDA Tropical Fruit and Vegetable Research Laboratory, Hilo, Hawaii. The cancellation of ethylene dibromide (EDB) as a postharvest fumigant and the continued concern over the use of agricultural chemicals on fresh fruit and vegetables has necessitated renewed efforts for the development of alternative quarantine treatments against quarantine pests. This project will examine the advantages of shrinkwrap in terms of disinfestation and/or prevention of reinfestation of quarantine pests such as fruit flies as a potential control system that will make the use of chemicals unnecessary.

Assistance will be provided only to the University which will utilize funds to support purchase of equipment and supplies, technicians salaries and travel.

Based on the above, this is not a formal request for application. An estimated $50,000 will be available in FY1989 as partial support for this project.

Information on proposed Agreement #58–319R–9–007 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: December 5, 1988.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 88–28282 Filed 12–7–88; 8:45 am]

BILLING CODE 3410–DP–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–801, A–427–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801, C–559–802, C–549–802]

Postponement of Final Antidumping Duty Determinations: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; and Postponement of Final Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore and Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from all respondents and the petitioner to postpone the final determinations as permitted by sections 735(a)(2)(A) and (B) of the Tariff Act of 1930, as amended (the Act). Based on these requests, we are postponing our final determinations as to whether sales of antifriction bearings (except tapered roller bearings) and parts thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom have occurred at less than fair value until not later than March 24, 1989.

Since the petitioner has already requested that the final determinations in the companion countervailing duty investigations be postponed to correspond with the date of the final antidumping duty determinations as permitted by section 705(a)(1) of the Act, we are postponing the deadline for our determinations as to whether sales of antifriction bearings from Singapore and Thailand have been subsidized until not later than March 24, 1989. We are also announcing the dates and locations of our public hearings in these investigations.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman (202–377–0161), Barbara Tillman (202–377–2438) or Mary Clapp (202–377–3965), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 9, 1988, we published preliminary determinations of sales at less than fair value of this merchandise (53 FR 45312–45367). On September 6, 1988, we published preliminary determinations that exports of this merchandise are being subsidized (53 FR 34329–34338).

From November 7 through November 21, 1988, we received requests from all respondents and the petitioner in these antidumping duty investigations that the final determinations in these investigations be postponed until not later than the 135th day after the date of publication of the preliminary determinations in the **Federal Register**. On September 29, 1988, we published a notice announcing that we had granted the request of the petitioner to extend the deadline date for the final determinations in the countervailing duty investigations to correspond to the final antidumping duty determinations of the same products pursuant to section 705(a)(1) of the Act (53 FR 38049). Accordingly, we are postponing the date of our final determinations in these antidumping and countervailing duty investigations until not later than March 24, 1989.

Public Comment

In conjunction with these postponements, we are scheduling the public hearings to afford interested parties an opportunity to comment on the preliminary determinations, in accordance with 19 CFR 353.47 and 355.35. Public hearings will be held as indicated below, at the U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW., Washington, DC 20230.

Country	Date	Time	Room
Countervailing Duty Investigations:			
Singapore	Feb. 1, 1989	9:00 a.m.	3708
Thailand	Feb. 1, 1989	1:30 p.m.	3708
Antidumping Duty Investigations:			
Federal Republic of Germany.	Feb. 22, 1989.	9:30 a.m.	4830
France	Feb. 15, 1989.	9:30 a.m.	3708
Italy	Feb. 16, 1989.	9:30 a.m.	3708
Japan	Feb. 21, 1989.	9:30 a.m.	4830
Romania	Feb. 9, 1989	9:00 a.m.	3708
Singapore	Feb. 10, 1989.	9:00 a.m.	3708
Sweden	Feb. 9, 1989	1:30 p.m.	3708
Thailand	Feb. 10, 1989.	1:30 p.m.	3708
United Kingdom.	Feb. 14, 1989.	9:30 a.m.	3708

Requests to participate in the hearings have been filed.

Pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary for Import Adminstration, Room B-099, at the above address seven days prior to each individual hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46 and 19 CFR 355.34, at the above address, in ten copies, within seven days after the hearing transcript is available.

The U.S. International Trade Commission is being advised of these postponements, in accordance with sections 735(d) and 705(d) of the Act. This notice is published pursuant to sections 735(d) and 705(d) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

December 2, 1988.

[FR Doc. 88-28280 Filed 12-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-805]

Postponement of Preliminary Countervailing Duty Determination: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Bethlehem steel Corporation, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigation of new steel rail, except light rail, from Canada. The preliminary determination will be made on or before February 23, 1989.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5414 or 377-2438.

SUPPLEMENTARY INFORMATION: On September 26, 1988, the Department initiated as countervailing duty investigation of new steel rail, except light rail, from Canada. In our notice of initiation we stated that we would issue our preliminary determination on or before December 20, 1988 (53 FR 41394, October 21, 1988).

On November 17, 1988, the petitioner filed a request that the preliminary determination in this investigation be postponed for 65 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in this investigation, the Department is postponing its preliminary determination until no later than February 23, 1989.

This notice is published pursuant to section 703(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

November 30, 1988.

[FR Doc. 88-28281 Filed 12-7-88; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

November 30, 1988.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7-049,251 (4,776,156) Variable Eccentricity Mass for Mechanical Shakers

SN 7-068,498 (4,773,911) Oxidation Process to Decrease Free Formaldehyde in Durable Press Finishing with Carbamate Agents

SN 7-227,211 Biological Control of Postharvest Rots in Fruits Using Pseudomonas Cepacia and Pyrrolnitrin Produced Therefrom

SN 7-240,304 Process and Apparatus for Extrusion Utilizing Force Measurements Means

SN 7-240,312 A Novel System for Monitoring and Controlling the Papaya Fruit Fly

SN 7-246,842 High Affinity Monoclonal Antibodies to Bowman-Birk Inhibitor and Immunoassay Methods

Department of Commerce

SN 7-244,762 Continous Nitrox Mixer

Department of Health and Human Services

SN 6-675,276 (4,775,759) Synthesis and Utilization of 17-Methyl and 17-Cyclopropylmethyl-3, 14-Dihydroxy-4, 5-Epoxy 6-Fluoromorphinans (Foxy and Cyclofoxy) As[18F]—Labeled Opioid Ligands for Positron Emission Transaxial Tomography (PETT)

SN 6-801,965 (4,777,133) Device for Quantitative Endpoint Determination in Immunofluorescence Using Microfluorophotometry

SN 6-817,189 (4,774,088) Method and Additives for Improving the Quality and Shelf Life of Stored Blood

SN 7-200,876 Sequencing DNA; A Modification of the Polymerase Chain Reaction

SN 7-207,617 Method of Treating Trichotillomania and Onchyphagia

SN 7-235,376 Improved Cytochemical Reagent for Neurons

SN 7-236,947 Anti-Tumor Vaccine

SN 7-238,746 Vaccine Against Plasmodium Malariae

SN 7–239,205 Recombinant Vaccinia Virus for Prevention of Disease Caused by Flavivirus
SN 7–239,208 Synthetic, Anti-Complement Protein and the Gene Encoding Same
SN 7–241,971 Cloned Human Genes for Muscarinic Acetylcholine Receptors and Cell Lines Expressing Same
SN 7–246,688 Phosphorothioate and Normal Oligodeoxynucleotides with 5'-Linked Acridine
SN 7–247,931 Animal Model for Testing Vaccines and Therapeutic Agents Against AIDS
SN 7–250,301 Diagnostic Test for HBLV
SN 7–255,712 Human B Lymphotropic Virus
SN 7–255,723 New Plasmid for High Level Production of Eukaryotic Proteins
SN 7–255,760 Monoclonal Antibodies Against Cytosolic Thyroid Hormone Binding Protein
SN 7–260,829 Novel Restriction Endonuclease
SN E–192–88 Quick Color Test to Detect Lead Release from Glazed Ceramic and Enameled Metal Ware
SN E–232–88 Use of Resiniferatoxin and Analogues Thereof to Cause Sensory Afferent C-Fiber and Thermoregulatory Desensitization
SN E–246–88 Laminin a Chain Deduced Amino Acid Sequence, Expression Vectors and Active Synthetic Peptides
SN E–265–88 Anthropomorphic Cardiac Ultrasound Phantom

Department of the Army

SN 7–204,153 Hybrid Optical Correlator
SN 7–227,570 Optical Data Processing Detection of Chemical Agents
SN 7–227,571 Method of Making a Pre-Aligned Optical Correlator
SN 7–252,945 Method of Making a Cathode from Tungsten and Iridium Powders Using a Barium Iridiate Formed from Barium Peroxide and Iridium Oxide as the Impregnant

Department of the Interior

SN 7–107,835 (4,773,612) Wading Tagline Reel

[FR Doc. 88–28295 Filed 12–7–88; 8:45 am]
BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; L.D. Caulk Division of Dentsply

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to L.D. Caulk Division of Dentsply, having a place of business in Milford, DE, an exclusive license in the United States under the rights of the United States of America to manufacture, use, and sell products and use methods embodying the invention entitled "Resin-Modified Glass Ionomer Dental Cements," United States Patent Application Number 7–160,856. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–28214 Filed 12–7–88; 8:45 am]
BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Urodynamic Systems, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Urodynamic Systems, Inc., having a place of business in Sunnyvale, CA 94089, an exclusive license in the United States and certain foreign countries to practice an invention embodied in U.S. Patent Number 4,553,533, entitled "Intra-Urethral Prosthetic Sphincter Valve." The invention consists of a prosthetic urethral sphincter valve which is installed without surgery within a patient's urethra. Such invention closely simulates the natural physiologic function and is controlled by the patient internally rather than by external manual control. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–28213 Filed 12–7–88; 8:45 am]
BILLING CODE 3510–04–M

COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Commission on Executive, Legislative and Judicial Salaries will hold a follow-up Executive Session on December 13, 1988 from 9:00 a.m. to 12:00 p.m. at 736 Jackson Place NW., Washington, DC.

Due to the late submission of needed data, it was not feasible to provide earlier notice of this meeting.

This final meeting is necessary to provide the Commission additional time to study the data in order to reach a decision concerning dollar figures to be recommended to the President on the 15th of December.

For further information, please contact the Commission's Office, 736 Jackson Place, NW. Washington, DC 20415, telephone 275–8031.

Polly L. Gault,

Executive Director.

[FR Doc. 88–28307 Filed 12–6–88; 11:17 am]
BILLING CODE 6325–01–M

VOL 53 ISS 236 DE 8 1988 UMI

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Polish People's Republic

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and the Polish People's Republic is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 15 and 31, 1984, as amended, between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following levels of restraint:

Category	12-mo restraint limit
Aggregate group: 200–239, 300–369, 400–469, 600–670 and 831–859, as a group.	74,383,760 square meters equivalent.
Limits subject to the aggregate group:	
313	836,127 square meters.
315	836,127 square meters.
363	3,000,000 numbers.
410	1,991,893 square meters.
611	1,152,184 square meters.
617	836,127 square meters.
620	1,672,255 square meters.
843	204,000 numbers.
Group II: 237, 239, 330–359, 630–642, 645–659 and 833, as a group.	55,552,678 square meters equivalent.
Sublevels within group II:	
237	46,640 dozen.
239	99,187 kilograms.
333/833	117,945 dozen.
334	289,327 dozen of which not more than 23,100 dozen shall be in Category 334pt.[1]
335	56,995 dozen.
338	885,471 dozen.
339	363,841 dozen.
340/640	111,300 dozen.
341/641	84,800 dozen.
347/348	159,000 dozen.
359	149,685 kilograms.
634	193,047 dozen.
635	101,120 dozen.
638	246,086 dozen.
639	184,565 dozen.
645/646	144,747 dozen.
647	191,963 dozen.
648	106,646 dozen.
659	110,392 kilograms.
Group III: 431–442 and 444–459, as a group.	2,005,608 square meters equivalent.
Sublevels within group III:	
433	7,748 dozen.
434	3,704 dozen.
435	6,198 dozen.
440	7,896 dozen.
444	61,982 numbers.
445	16,945 dozen.
446	11,173 dozen.
447	12,397 dozen.
448	5,556 dozen.
459	50,606 kilograms.
Group IV: 443/643/644, as a group.	176,750 numbers.

[1] In Category 334pt., all tariff numbers except 6112.11.00.10.

Imports charged to these category limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Polish People's Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28189 Filed 12–7–88; 8:45 am]

BILLING CODE 3510–DR–M

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates; Correction

December 5, 1988.

In the **Federal Register** notice published on November 7, 1988 (53 FR 44936), column 3, last line of paragraph 4, change June 27, 1987 to June 27, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28243 Filed 12–7–88; 8:45 am]

BILLING CODE 3510–DR–M

Extending Coverage of Export Visa and Exempt Certification Requirements for Certain Cotton Textile Products Produced or Manufactured in Uruguay

December 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending coverage of visa and exempt certification requirements.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the terms of the visa and exempt certification mechanism established under the terms of the current bilateral textile agreement and the Memorandum of Understanding dated October 17, 1988 between the Governments of United States and the Republic of Uruguay, export, visas will be required for cotton textile products in Category 334.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 50 FR 6232, published on February 14, 1985.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreement.

Committee for the Implementation of Textile Agreements

December 2, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 8, 1985, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, as amended on May 22, 1986, established export visa and exempt certification requirements for cotton and wool textile products, produced or manufactured in Uruguay.

Effective on January 1, 1989, the February 8, 1985 directive is being amended further to require an export visa or exempt certification for cotton textile products in Category 334, produced or manufactured in Uruguay and exported from Uruguay on and after January 1, 1989. Merchandise in Category 334 which has been exported prior to January 1, 1989 shall not be denied entry for lack of a visa or exempt certification.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28190 Filed 12–7–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for Discharge of Member or Survivor of Member of Group Certified to have Performed Active Duty with the Armed Forces of the United States; DD Form 2168; and OMB Control Number 0704–0100.

Type of Request: Extension

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Response: 1.

Number of Respondents: 1000.

Annual Burden Hours: 500.

Annual Responses: 1000.

Needs and Uses: DD Form 2168 is essential to identify and collect basic information needed to search available records or develop sufficient information to determine the applicant's membership in a group approved by the DoD Civilian/Military Service Review Board for equivalent active military service status.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Mrs. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

December 5, 1988.

[FR Doc. 88–28274 Filed 12–7–88; 8:45 am]

BILLING CODE 3810–01–M

Advisory Council on Dependents' Education; Meeting

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense, DoD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education. It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the DoDDS coordinator.

DATE: January 13, 1989, 9 a.m. to 5 p.m.; January 14, 1989, 9 a.m. to 4:30 p.m.

ADDRESS: January 13, 1989, The Pentagon, Room 3E869, Washington, DC. January 14, 1989, Embassy Suites, Adams Morgan Room, 1402 South Eads Street, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331–1100, (202/325–0867).

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Pub. L. 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Pub. L. 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school

administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes information on student attendance policy, expansion of the Drug Abuse Resistance Education program, staff development, programs to combat teenage alcohol abuse, teacher competency tests, parental communication, and responses to the recommendations made by the Council in its August meeting.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1988.

[FR Doc. 88-28299 Filed 12-7-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies; Meeting Change

ACTION: Change in Date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Army Subgroup on Low Observable Technologies scheduled for February 8–9, 1989 as published in the **Federal Register** (Vol. 53, No. 185, Page 37027, Friday, September 23, 1988, FR Doc. 88-21799) will be held on February 22–23, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1988.

[FR Doc. 88-28270 Filed 12-7-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of amendments to a system of records subject to the Privacy Act of 1974.

SUMMARY: The Department of the Army is amending one of its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice on January 9, 1989, unless comments are received which result in a contrary determination.

ADDRESS: Send comments to the record system manager identified in the record system notice set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, AS–OPS–MR, Fort Huachuca, AZ 85613–5000, telephone: 602–538–6568, autovon: 879–6568.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86-14667 (51 FR 23576) June 30, 1986
FR Doc. 86-19534 (51 FR 30900) August 29, 1986
FR Doc. 86-25274 (51 FR 40479) November 7, 1986
FR Doc. 86-580 (51 FR 44361) December 9, 1986
FR Doc. 87-8410 (52 FR 11847) April 13, 1987
FR Doc. 87-11379 (52 FR 18798) May 19, 1987
FR Doc. 87-15611 (52 FR 25905) July 9, 1987
FR Doc. 87-19686 (52 FR 32329) August 27, 1987
FR Doc. 87-26438 (52 FR 43932) November 17, 1987
FR Doc. 88-8671 (53 FR 12971) April 20, 1988
FR Doc. 88-10355 (53 FR 16575) May 10, 1988
FR Doc. 88-12861 (53 FR 21509) June 8, 1988
FR Doc. 88-16946 (53 FR 28247) July 27, 1988
FR Doc. 88-16901 (53 FR 28249) July 27, 1988
FR Doc. 88-17036 (53 FR 28430) July 28, 1988
FR Doc. 88-20256 (53 FR 34576) September 7, 1988

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, published in its entirety.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o), which require the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1988.

AMENDMENT

A0319.01DACA

System Name: Debt Collection System.

Where Published Last: 51 FR 30901, August 29, 1986.

Changes:

System Name: Debt Collection System(s)/FINCP–FF

Authority for Maintenance of the System: Add "E.O. 9397"

Purpose(s): Delete entire entry and add "To provide a basis for establishment of and post audit of each receivable to provide a history of collection activities and answer inquiries pertaining to such collection activity. This information is to establish, formulate, maintain, monitor accounts receivables and administer the Federal Claims Collection Act(s)."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses: Delete entire entry and add "Data necessary to identify the individual involved are disclosed to:

a. Consumer Reporting Agencies:

(1) Whenever a financial status report is requested for use in the administration of the Federal Claims Collection Act, Claims of the U.S. may be compromised, terminated or suspended, when warranted, by information collected.

(2) Pursuant to 5 U.S.C. 552a(b)(12) that an individual is responsible for a debt to the U.S. Army provided the debt has been validated, is overdue and the debtor has been advised of the disclosure and his rights to dispute, appeal or review the claim.

b. U.S. Department of Justice/U.S. Attorneys: For legal action and/or final disposition of the debt claims. The litigation brief(s) (comprehensive, written referral recommendations) will restructure the entire scope of the collection cases.

c. Internal Revenue Service:

(1) To obtain locator status for delinquent accounts receivable. (Automated controls exist to preclude redisclosure of solicited IRS address data.)

(2) To report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age.

(3) To provide for offset of tax refunds.

d. Private Collection Agencies: For collection service whenever USAFAC has exhausted its internal collection actions.

e. Credit Card Processing Institutions: To collect indebtedness by credit card.

f. Other Government Agencies: For the purpose of offset; administrative or salary.

g. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

Storage: Delete "and printouts; microfiche." Add "computer printouts and microfiche."

Retrievability: Delete "By Social Security Number, name, and substantiating document number, conventional indexing is used to retrieve data." Add "By SSN, alphabetically by name, and substantiating document number. Conventional indexing is used to retrieve data."

Safeguards: Delete "in effect." Add "utilized." Delete "in the performance of their official duties." Add "for need to know."

Retention and Disposal: Delete "these records are sent to the Federal Records Center General Services Administration at Dayton, Ohio;" Add "Disposition is to federal records centers and".

System manager(s) and address: Delete entire entry and add "Commander, USAFAC, Department 80, ATTN: FINCP–FF, Indianapolis, IN 46249–0001."

Notification Procedure: Delete "ATTN: FINCP–FF, Department 80". Delete "Social Security Number". Add "SSN".

Record Access Procedures: Add "or telephone (317)–542–28509"

Record Source Categories: Add after "installation," "Internal Revenue Service,".

AO319.01DACA

SYSTEM NAME:

Debt Collection System(s)/FINCP–FF.

SYSTEM LOCATION:

United States Army Finance and Accounting Center (USAFAC), Fort Benjamin Harrison, Indiana 46249–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Separated and retired military/civilian personnel and others indebted to the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of current and former military members and civilian employees' pay accounts showing entitlements, deductions, payments made, and any indebtedness resulting from deductions and payments exceeding entitlements. These records include, but are not limited to: individual military pay records, substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printouts from the Joint Uniform Pay System (JUMPS), records of travel payments, financial record data folders, miscellaneous vouchers, personal financial records, credit reports, promissory notes, indvidual financial statements, and correspondence. Applications for waiver of erroneous payments or for remission of indebtedness with supporting documents including, but not limited to, statements of financial status (personal income and expenses), statements of commanders, statements of accounting and finance officers, correspondence with members and employees. Claims of individuals requesting additional payments for service rendered with supporting documents including, but not limited to, time and attendance reports, leave and earnings statements, travel orders, travel vouchers, and correspondence with members and employees. Delinquent accounts receivable from field accounting and finance officers including, but not limited to, returned checks, medical services billings, collection records, and summaries of the U.S. Army Criminal Investigation Command and Federal Bureau of Investigation reports. Reports from probate courts regarding estates of deceased debtors. Reports from bankruptcy courts regarding claims of the United States against debtors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C., section 3711; 10 U.S.C., section 2774; 12 U.S.C., section 1715; and E.O. 9397.

PURPOSE(S):

To provide a basis for establishment of and post audit of each receivable to provide a history of collection activities and answer inquiries pertaining to such collection activity. This information is to establish, formulate, maintain, monitor accounts receivables and administer the Federal Claims Collection Act(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data necessary to identify the individual involved are disclosed to:

a. Consumer Reporting Agencies:

(1) Whenever a financial status report is requested for use in the administration of the Federal Claims Collection Act. Claims of the U.S. may be compromised, terminated or suspended, when warranted, by information collected.

(2) Pursuant to 5 U.S.C. 552a(b)(12) that an individual is responsible for a debt to the U.S. Army provided the debt has been validated, is overdue and the debtor has been advised of the disclosure and his rights to dispute, appeal or review the claim.

b. U.S. Department of Justice/U.S. Attorneys: For legal action and/or final disposition of the debt claims. The litigation brief(s) (comprehensive, written referral recommendations) will restructure the entire scope of the collection cases.

c. Internal Revenue Service:

(1) To obtain locator status for delinquent account receivables. (Automated controls exist to preclude redisclosure of solicited IRS address data.)

(2) To report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age.

(3) To provide for offset of tax refunds.

d. Private Collection Agencies: For collection service whenever USAFAC has exhausted its internal collection actions.

e. Credit Card Processing Institutions: To collect indebtedness by credit card.

f. Other Government Agencies: For the purpose of offset; administrative or salary.

g. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in collection file folders and bulk storage, card files, computer magnetic tapes, computer printouts and microfiche.

RETRIEVABILITY:

By SSN, alphabetically by name, and substantiating document number. Conventional indexing is used to retrieve data.

SAFEGUARDS:

USAFAC employs security guards. An employee badge and visitor registration system is utilized. Hard copy records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Computerized records are accessed by custodian of the records system and by person(s) responsible for servicing the records system for need-to-know. Certifying finance and accounting officers of debts have access to debt information to confirm if the debt is valid and collection action is to be continued. Computer equipment and files are located in a separate secured area.

RETENTION AND DISPOSAL:

Accounts receivables are converted to microfiche and retained for 6 years. Destruction is by shredding. Other records—retention periods vary according to category, but total retention periods do not exceed 56 years. Disposition is to federal records centers and destruction thereafter is by burning or salvage as waste paper.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, USAFAC, Department 89, ATTN: FINCP–FF, Indianapolis, IN 46249–0001.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information about them should contact the System Manager, furnishing full name, SSN, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure" and furnish information required therein or telephone (317)–542–2859.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Information is received from Department of Defense staff and field installations, Internal Revenue Service, Social Security Administration, Treasury Department, financial organizations, and automated system interface.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 28272 Filed 12–7–88; 8:45am]

BILLING CODE 3810–01–M

Department of the Navy (Marine Corps)

Privacy Act of 1974; Amended Record System

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of one amended system of records subject to the Privacy Act.

SUMMARY: The Marine Corps is amending one system of records subject to the Privacy Act, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice January 9, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. B.L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001, telephone: (202) 694–4008, autovon: 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 have been published in the **Federal Register** as follows:

FR Doc 85–10237 (50 FR 22674) May 29, 1985
FR Doc 86–22610 (51 FR 35548) October 6, 1986
FR Doc 86–28837 (51 FR 45932) December 23, 1986
FR Doc 87–13559 (52 FR 22670) June 15, 1987

The specific changes to the record system being amended are set forth below, followed by the systems notice, as amended, published in its entirety.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1988.

MMN00009

System name:

Military Police Information System (MILPINS) (50 FR 22712, May 29, 1985).

Changes:

Categories of individuals covered by the system:

Delete the entire entry and substitute, with the following: "Files contain information concerning both military and civilian personnel who have come in contact with the military victims, suspects, or witnesses to incidents, complaints reported to the Provost Marshal. Files also contain data on military personnel living in base sponsored housing, or who have registered weapons or pets aboard the base. Military personnel and civilians who have registered motor vehicles are also included."

Categories of records in the system:

Delete the entire entry and substitute the following paragraph: "Incidents/complaints reported to the installation Provost Marshal and all subjects listed on Field Interviews/Reports by the military police. The individual's name, description, social security number, address, offense charges, location of office/incident, date, time, blotter entry number, military police report number, and disposition of case are maintained. Housing information includes phone number, building number, address, and dependent information. Pet registration information includes species, sex, breed, color, name and inoculation dates. Weapon registration information includes brand name, caliber, type, and model. Motor vehicle information includes year, make, model, color, license number, insurance company, and decal information. Work section information includes phone number, division code, building number, building key access, and recall information. Personnel information includes date of birth, sex, race, age, and date transferred."

Authority for maintenance of the system:

Delete the entire entry and substitute with the following: "Title 10, U.S. Code 5031; E.O. 9397.'

Purpose(s):

Delete the entire entry and substitute with the following:

"To provide a rapid means for military police to access reports for proper disposition of cases. The system also provides a historical record of all reports on individuals who have come in contact with the military police as victims, suspects of witnesses to incidents."

Storage:

Delete the entire entry and substitute with the following: "Computer magnetic disks and tapes; index cards and printouts in security file cabinets."

Safeguards

Delete the last two sentences and replace with the following: "Passwords are required to access those programs which produce printed output. Access to the computer is controlled via a centralized security office and printouts may only be receipted for by designated personnel. All index cards and printouts are filed in locked security cabinets."

Retention and disposal

Delete the entire entry and substitute with the following: "Records are maintained three months to six years depending on the type of information."

MMN00009

SYSTEM NAME:

Military Police Information System (MILPINS).

SYSTEM LOCATION:

Decentralized segments—commands within area of jurisdiction.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files contain information concerning both military and civilian personnel who have come in contact with the military police as victims, suspects, or witnesses to incidents, complaints reported to the Provost Marshal. Files also contain data on military personnel living in base sponsored housing, or who have registered weapons or pets aboard the base. Military personnel and civilians who have registered motor vehicles are also included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incidents/complaints reported to the installation Provost Marshal and all subjects listed on Field Interviews/ Reports by the military police. The individual's name, description, social security number, address, offense charges, location of offenses/incident, date, time, blotter entry number, military police report number, and disposition of case are maintained. Housing information includes phone number, building number, address, and dependent information. Pet registration information includes species, sex, breed, color, name and inoculation dates. Weapon registration information includes brand name, caliber, type, and model. Motor vehicle information includes year, make, model, color, license number, insurance company, and decal information. Work section information includes phone number, division code, building number, building key access, and recall information. Personnel information includes date of birth, sex, race, age, and date transferred.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, U.S. Code 5031, E.O. 9327

PURPOSE(S):

To provide a rapid means for military police to access reports for proper disposition of cases. The system also provides historical record of all reports on individuals who have come in contact with the military police as victims, suspects or witnesses to incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Marine Corps compilation apply to this system.

Courts—By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U.S.—By the State or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U.S.—By the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office relating to the Marine Corps.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency or instrumentality initiate criminal or civil against an individual on behalf of the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U.S. Marine Corps, by the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic disks and tapes; index cards and printouts in security file cabinets.

RETRIEVABILITY:

Filed by full name or social security number (SSN).

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained. Passwords are required to access those programs which produce printed output. Access to the computer is controlled via a centralized security office and printouts many only be receipted for by designated personnel. All index cards and printouts are filed in locked security cabinets.

RETENTION AND DISPOSAL:

Records are maintained three months to six years depending on the type of information.

SYSTEM MANAGER(S) AND ADDRESS:

Installation Provost Marshal of activity concerned.

NOTIFICATION PROCEDURE:

Information may be obtained from Installation Provost Marshal of activity concerned.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to Provost Mashal of activity concerned.

Written requests for information should contain the full name of the individual, social security number, date and place of birth.

For visits, the individual should report to Provost Marshal of the respective installations.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES

Military Police Blotters and Field Interview Card.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–28273 Filed 12–7–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to National Association of State Utility Consumer Advocates (NASUCA)

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE28300 to NASUCA for the production of the "NASUCA Least-Cost Utility Planning Handbook" which will further the regulatory and technological transfer of Least-Cost Utility Planning (LCUP).

SCOPE: This grant will aid in providing funding for the research and preparation of a manual to be used by consumer groups interested in either initiating an LCUP process or participating effectively in a process already underway.

The purpose of this project will be to bring about an expansion and further transfer of information and data among consumers and their representatives to assist in achieving dependable energy service at rates that are reasonable, as well as assuring utility services to the consumer at the least cost for future generating capacity.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to NASUCA, a non-profit organization which serves as an information clearinghouse to educate its members on activities in other states and at the federal level. NASUCA has the exclusive domestic capability to perform this activity successfully based upon technical expertise and the unique nature of the organization. There is no known other entity which is conducting or planning to conduct activities such as preparation of this manual.

The term of this grant shall be six months from the effective date of award.

The estimated cost of this grant is $29,925.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88–28293 Filed 12–7–88; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Meeting Postponement

An open meeting of the National Petroleum Council which was scheduled to be held on Tuesday, December 13, 1988, at 9:00 a.m., the Madison Hotel, Dolley Madison Ballroom, 15th & M Streets NW., Washington, DC, has been postponed. This meeting was announced in the **Federal Register,** Vol. 53, No. 221 on Wednesday, November 16, 1988.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 28292 Filed 12–7–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Petition for Waiver and Application for Interim Waiver of Refrigerator and Refrigerator-Freezer Test Procedures From Amana Refrigeration Inc. (RF–005)

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" and "Application for Interim Waiver" from the Amana Refrigeration Inc. (Amana), of Amana, Iowa, requesting a waiver from the existing Department of Energy (DOE) test procedure for refrigerators and refrigerator-freezers for its model DE25 variable defrost control refrigerator-freezer. In addition, today's notice grants Amana's application for an Interim Waiver.

Amana is a manufacturer of home appliances including refrigerators and refrigerator-freezers. Amana has developed a variable defrost control that initiates defrost cycles in refrigerator-freezer in response to operating conditions and usage patterns. Amana requests relief from the existing test procedures because it believes they yield materially inaccurate estimates of the energy consumption for models equipped with the variable defrost controls.

DOE is soliciting comments, data and information regarding the petition.

DATE: DOE will accept comments, data and information not later than January 9, 1989.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. RF–005, Mail Stop CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public reasons to grant immediate relief pending a determination on the petition for waiver.

Amana's petition seeks a waiver from the DOE test provisions that requires the energy consumption of refrigerator-freezers be determined by Appendix A1 of Subpart B of 10 CFR Part 430. Amana states that the existing test procedure does not adequately evaluate the true energy consumption of its product because there is no provision in the existing test procedure to determine the interval between defrost cycles for a refrigerator-freezer with a variable defrost control. Amana believes that the existing test procedure is likely to incorrectly estimate the energy consumption of these models, thereby misleading the consumer. Since the current DOE test procedures do not address this control feature, Amana asks that the waiver be granted. Amana requests approval to perform testing to determine energy consumption in accordance with the DOE proposed test procedure as published in the **Federal Register** on September 26, 1988. 53 FR 37416.

In support of its position that the petition for waiver will likely be granted, Amana identified four current waivers which DOE has issued for similar control features.

Three of the four were issued to Whirlpool Corporation (Whirlpool), Case No. FR–001, January 11, 1985. 50 FR 1628. Case Nos. RF–003 and FR–004, October 14, 1986. 51 FR 36591.

The fourth waiver was issued to White Consolidated Industries, Case No. FR–002, on April 26, 1986. 51 FR 15679.

In reviewing Amana's Application for Interim Waiver, the Department finds that the company has not provided sufficient information for DOE to evaluate what, if any, economic impact or competitive disadvantage, Amana will likely experience absent a favorable determination on the Application for Interim Waiver.

However, Amana has demonstrated through the granting by DOE of the four previous waivers and the Department's proposed rule published in the **Federal Register** on September 26, 1988 (53 FR 37416) the likelihood of success of its petition for waiver.

Therefore, the Department finds that it would be desirable for public policy reasons to grant Amana's Application for an Interim Waiver. Specifically, in those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted a waiver for similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information regarding the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Amana Refrigeration, Incorporated.

Issued in Washington, DC, December 1, 1988.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

December 1, 1988

Mr. Robert DeHaan,

Director of Engineering, Amana Refrigeration, Inc., Amana, Iowa 52204.

Dear Mr. DeHaan: This is in response to your October 10, 1988, Application for Interim Waiver, from the Department of Energy (DOE) test procedures for refrigerators and refrigerator-freezers when testing Amana's model DE25 variable defrost control refrigerator-freezer.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure regulations on September 26, 1980, (45 FR 64108) and November 26, 1986 (51 FR 42823). These provisions allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments provide that an interim waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Paragraph 430.27.

Amana has demonstrated the likely success of its Petition for Waiver based upon the showing that DOE proposed test procedures for variable defrost control refrigerator-freezers on September 26, 1988, (53 FR 37416) and that four waivers had been granted from the Department's refrigerator and refrigerator-freezer test procedures for models with variable defrost controls. Amana's Application for Interim Waiver does not provide sufficient information for the Department to evaluate what, if any, economic impact or competitive disadvantage will likely be experienced absent a favorable determination on the Application for Interim Waiver. However, the Department finds that it would be desirable for public policy reasons to grant Amana's Application for Interim Waiver. Specifically, in those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted waivers for similar products tested and rated for energy consumption on a comparable basis.

Therefore, Amana's Application for an Interim Waiver requesting relief from the DOE test procedures for its model DE25 variable defrost control refrigerator-freezer is granted.

Amana shall be permitted to test its model DE25 variable defrost control refrigerator-freezer on the basis of the test procedures specified in 10 CFR Part 430, with the modification set forth below.

(i) A new section 5.2.1.3 is added as follows:

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times EP1/T1 + (EP2 - (EP1 \times T2/T1) \times 12/CT$

where ET and 1440 are defined in 5.2.1.1 and EP1, EP2, T1, and T2 and 12 are defined in 5.2.1.2

$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$

CT_L = least or shortest time between defrosts in tenths of an hour (but not less than 12 hours)

CT_M = maximum time between defrost cycles in tenths of an hour (but not more than 84 hours)

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per day energy consumption

$F = (1/CT - 1/CT_M)/(1/CT_L - 1/CT_M) = (ET - ET_L)/(ET_M - ET_L)$ or $F = 0.20$ in lieu of testing to find CT

ET_L = least electrical energy used (kilowatt hours)

ET_M = maximum electrical energy used (kilowatt hours)

This interim waiver shall remain in effect for 180 days from the date of issuance or until the Department of Energy issues a determination on Amana's Petition for Waiver, which ever occurs first.

This interim waiver is based upon the presumed validity of the statements and allegations submitted by the applicant. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Yours truly,

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

October 10, 1988

Petition for Waiver

To: Donna R. Fitzpatrick, Assistant Secretary for Conservation and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

From: Amana Refrigeration, Inc., Amana, Iowa 52204

Amana Refrigeration, Inc. submits this Petition for Waiver pursuant to the provisions of 10 CFR 430.27:

1. *Petitioner.* Amana Refrigeration, Inc. is a manufacturer of home appliances including refrigerator-freezers and hereby petitions for a waiver from the test procedure specified in 10 CFR Part 430, Subpart B, Appendix A1. Concurrently with the filing of this Petition for Waiver, Amana Refrigeration, Inc. is filing an Application for Interim Waiver.

2. *Identification of Model.* Amana Refrigeration has developed and plans to market a basic twenty-five (25) cubic foot side-by-side refrigerator-freezer model equipped with a through-the-door ice dispenser and an electronic variable defrost control. At this time the basic refrigerator has three versions identified as SXDE25, SLDE25, and SCDE25. The first two letters in the prefix may change in the future but the control system will not be affected. Suffix alpha or numeric designators may also be used to indicate model year or color/visual characteristics, but the "DE25" designation will remain. The prefix and

suffix changes will not indicate a change in the control system.

3. *Other Manufacturers.* White Consolidated Industries and Whirlpool Corporation are other manufacturers known to Amana to have models incorporating a non-time initiated defrost system similar to the Amana design. Both of these companies have submitted Petitions for Waiver which have been addressed by the Department.

4. *Electronic Variable Defrost Control Design Principles.* The variable defrost control employs a microcomputer utilizing an algorithm that initiates defrost cycles on a non-timed basis depending on (1) compressor run time and (2) the length of the preceding defrost period. The actual interval between defrost cycles with this control could range from eight (8) to seventy-two (72) compressor run time hours. Under normal operating conditions, the interval between defrost cycles ranges from eight (8) to sixteen (16) compressor run time hours. In a non-use vacation mode, the defrost cycle lenghtens to seventy-two (72) compressor run time hours.

5. *Basis for Waiver.* Without a waiver, this refrigerator-freezer must be tested under the provisions of 10 CFR Part 430, Subpart B, Appendix A1. That test does not adequately evaluate the true energy consumption of this product. There is no provision in the test procedure 10 CFR, Part 430, Subpart B, Appendix A1 to determine the interval between defrost cycles for a refrigerator-freezer with an electronic variable defrost control as described above, which would be comparable to normal usage patterns. Under the conditions specified in the test procedures, it is likely the actual energy consumption of the Amana variable defrost system will be estimated incorrectly, and be misleading to consumers. This result would be unfair to both consumers and to Amana. The consumer, when comparing operating costs, might be led into purchasing a product based upon incorrect judgments about energy consumption because the labeling information is not representative of normal usage patterns. Amana, on the other hand, would be placed in the position of providing cost of operation information for the energy guide label which it believes is inaccurate.

6. *Proposed and Alternative Test Procedures.* Amana Refrigeration, Inc. has reviewed the test procedure modifications requested and adopted by previous waivers (RF–001, RF–002, RF–003, and RF–004), as well as the Notice of Proposed Rulemaking, Federal Register Vol. 53, No. 186 p. 37416–37422, issued by the U.S. Department of Energy, regarding 10 CFR Part 430, Subpart B, Appendix A1. The Notice of Proposed Rulemaking prescribes test procedures for rating refrigerators with innovative features such as variable defrost control (VDC). Amana has investigated the formula calculations described in 5.2.1.3. of the Proposed Rule and finds that it substantially represents the function of our refrigerator in actual consumer usage. Therefore, Amana Refrigeration, Inc. requests that the proposed calculation procedure described in amended paragraph 5.2.1.3. of 10 CFR Part 430 Subpart B, Appendix A1, found in Federal Register Vol. 53, No. 186, p. 37416–37422, as corrected, be allowed for this model. This method will result in a CT=15 hours.

7. *Further Information.* If additional information is desired, please contact Robert L. Cushman (319/622–2300).

Robert DeHaan,

Director of Engineering, (319) 622–2744.

October 10, 1988

Application for Interim Waiver

To: Donna R. Fitzpatrick, Assistant Secretary for Conservation and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

From: Amana Refrigeration, Inc., Amana, Iowa 52204.

In accordance with 10 CFR 430.27, Amana Refrigeration, Inc. hereby submits this Application For Interim Waiver. This application is submitted concurrently with a Petition for Waiver pertaining to a 25 cubic foot refrigerator-freezer basic model which may be designated as SCDE25, SXDE25 or SLDE25. This refrigerator-freezer has an electronic variable defrost control system.

1. *Likely Success of the Petition for Waiver.* Amana Refrigeration believes that the Petition for Waiver will be successful in that the proposed test procedure allows the model to be tested in a manner that will accurately represent consumer usage patterns and thereby arrive at data representative of true energy consumption. This is consistent with public and the purposes of the National Appliance Energy Conservation Act of 1987.

2. *Favorable Determination on the Application for Interim Waiver.* Failure to reach a favorable determination on this Application for Interim Waiver will discourage future development of innovative control systems intended to address actual consumer usage patterns. Electronic variable defrost control systems better respond to actual consumer use patterns than do conventional timed defrost systems, thereby resulting in lower energy consumption. A favorable determination on this application for Interim Waiver will serve to further the nation's energy conservation policy by encouraging other manufacturers to provide more energy efficient appliances.

3. *Competitive and Economic Considerations.* Amana Refrigeration has invested heavily in both human and monetary resources to bring an innovative product to the point of production. If Amana cannot accurately label and market this product, it stands to lose both its investment and a competitive position in the overall market for energy conserving refrigerator/freezer appliances.

4. *Further Information.* If additional information is required, please contact Robert L. Cushman (319/622–2300).

Respectfully submitted,

Robert DeHaan,

Director of Engineering, (319) 622–2744.

Certificate of Notification

The undersigned hereby certifies that on the 10th day of October, 1988 Amana Refrigeration, Inc. forwarded by ordinary mail a Notice of an Application for Interim Waiver to all known manufacturers of domestically marketed units of side-by-side refrigerator/freezers. Attached hereto is a copy of the form of Notice.

The Notice was sent to the following:

Mr. Leonard A. Hadley, President, Admiral Division of Maytag Corp., Home Appliances, Monmouth Blvd., Galesburg, IL 61401

Mr. Roger Schipke, Senior Vice President, General Electric Co., Major Appliance Business Group, Building 3, Room 232, Appliance Park, Louisville, KY 40225

Mr. Homer Price, President/CEO, Sub-Zero Freezer Co., Inc., P.O. Box 4130, Madison, WI 53711–0130

Mr. David Whitwam, President/CEO, Whirlpool Corp., Administrative Center, 2000 M–63, Benton Harbor, MI 49022–2692

Mr. J. M. Ringler, President, White Consolidated Industries, Major Appliance Group, 300 Phillipi Road, Columbus, OH 43228.

Source:

Directory of Certified Refrigerators, Refrigerator-Freezers and Freezer; Publication P400–00–018, California Energy Commission, April 1988.

AHAM 1988 Directory of Certified Refrigerators and Freezers, Edition No. 2, June 1988.

Respectfully submitted,
Robert DeHaan,
Director of Engineering, (319) 622-2744.
October 10, 1988

Notice

To: [Name and Address]
From: Amana Refrigeration, Inc.,
Amana, Iowa 52204

Notification is hereby given to you that, pursuant to the terms of 10 CFR 430.27, Amana Refrigeration, Inc. has on the date of mailing of this Notice to you also mailed to Donna R. Fitzpatrick, Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, an Application for Interim Waiver. A copy of the Application for Interim Waiver is attached hereto for your information.

You are further advised that the Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

Respectfully submitted,
Robert DeHaan,
Director of Engineering, (319) 622-2744

[FR Doc. 88-28291 Filed 12-7-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission

December 2, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.
b. *Project No.:* 4114-009.
c. *Date Filed:* November 18, 1988, and revised on November 29, 1988.
d. *Applicant:* Long Lake Energy Corporation.
e. *Name of Project:* Lower Saranac.
f. *Location:* On the Saranac River in Clinton County, New York.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. *Applicant Contact:* Sanford L. Hartman, 420 Lexington Avenue, New York, NY 10170, (212) 986-0440.
i. *FERC Contact:* William Guey-Lee, (202) 376-9536.
j. *Comment Date:* December 15, 1988.
k. *Description of transfer:* Long Lake Energy Corporation, in order to facilitate financing of the project, proposes to transfer the license to Lower Saranac Hydro Partners L.P., a limited partnership. The license was issued June 26, 1987, and would expire May 31, 2027.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,
Secretary.

[FR Doc. 88-28289 Filed 12-7-88; 8:45 am]
BILLING CODE 6717-10-M

[Project Nos. 6986-003 et al.]

Hydroelectric Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Filing:* Major License.
b. *Project No.:* 6986-003.
c. *Date Filed:* September 15, 1986.
d. *Applicant:* Tranquility Irrigation District.
e. *Name of Project:* Griswold Creek Hydroelectric Project.
f. *Location:* In the Stanislaus National Forest, on Griswold Creek, in Tuolumne County, California. Township (T) 3N, Range (R) 15E, and T 4N, R 15E Mount Diablo Meridian.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. *Applicant Contact:* Mr. Keith Miller, Tranquility Irrigation District, P.O. Box 365, Tranquility, CA 93668, (209) 698-7225.
i. *FERC Contact:* Thomas Dean, (202) 376-9562.
j. *Comment Date:* January 12, 1989.
k. *Description of Project:* The proposed project would consist of: (1) A 23-foot-long, 10-foot-wide grated drop inlet diversion structure with an invert elevation of 3,289 feet msl; (2) a 50-foot-long, 50-inch-diameter penstock leading to; (3) a 100-foot-long by 12-foot-wide reinforced concrete fish screen structure; (3) a 12,800-foot-long steel penstock varying in diameter from 50-inches to 38-inches leading to; (4) a 45-foot by 60-foot reinforced concrete powerhouse containing a single 11,000 kW generating unit; (5) a 70-foot-long tailrace discharging flows into the Middle Fork Stanislaus River; (6) a 4.4-mile-long, 115-kV transmission line; and (7) appurtenant facilities.

The applicant estimates the average annual energy production to be 33.26 GWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

2 a. *Type of Filing:* Minor License.
b. *Project No.:* 10038-001.
c. *Date Filed:* September 9, 1988.
d. *Applicant:* Summit Hydro Power.
e. *Name of Project:* Cargill Falls Hydroelectric Project.
f. *Location:* On the Quinebaug River near Putnam, Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Duncan Broatch, P.O. Box 122, Putnam, CT 06260, (203) 928–2002.

i. *FERC Contact:* Ed Lee, (202) 376–5786.

j. *Comment Date:* January 12, 1989.

k. *Description of Project:* The proposed run-of-river project would consist of: (a) The existing 130-foot-long and 24-foot-high Putnam Dam; (b) an existing 16-acre reservoir having a gross storage capacity of 80 acre-feet at normal surface elevation of 253.4 feet msl; (c) an existing intake structure located at the southeast end of the dam consisting of four 3-foot-wide by 5-foot-high wooden head gate; (d) a new forebay consisting of masonry walls and a ledge floor; (e) a new masonry powerhouse housing a single 1.2–MW generating unit having an average annual generation of 5.4 GWh; (f) a new tailrace; (g) a proposed 25-foot-long, 23-kV transmission line; and (h) appurtenant facilities. The project dam is owned by the Town of Putnam, CT.

l. *Purpose of Project:* All project energy will be sold to Connecticut Light and Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10654–000.

c. *Date Filed:* September 1, 1988.

d. *Applicant:* Marseilles Hydro Assocaites.

e. *Name of Project:* Marseilles Hydroelectric Project.

f. *Location:* On the Illinois River near Marseilles, La Salle County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dominique Darne, Might Development Corporation, 1900 L Street NW., Suite 608, Washington, DC 20036, (202) 775–4692.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* January 9, 1989.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and reservoir and would consist of: (1) An existing headgate structure and canal; (2) an existing concrete powerhouse 100 feet by 200 feet housing four new hydropower units with a combined capacity of 10,500 kW; (3) a proposed tailrace 200 feet wide, 750 feet long and 15 feet deep; (4) a proposed 64-kV transmission line 2,500 feet long; and (5) appurtenant facilities. The estimated annual energy production is 55 GWh. Project energy would be sold to Illinois Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10657–000.

c. *Date Filed:* September 9, 1988.

d. *Applicant:* Pacific Water & Power, Inc.

e. *Name of Project:* San Antonio Reservoir/Turner Dam Power.

f. *Location:* On the outlet piping from the San Antonio Reservoir, which is owned by the San Francisco Water Department and is fed by San Antonio, Indian, Apperson, and South Fork Creeks in Alameda County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert R. Doelle, 960 La Mesa Drive, Portola Valley, CA 94025, (415) 854–3574.

i. *FERC Contact:* Mr. James Hunter, (202) 376–1943.

j. *Comment Date:* January 4, 1989.

k. *Description of Project:* The proposed project would consist of: (1) The 194-foot-high James H. Turner Dam and 120,000-acre-foot San Antonio Reservoir; (2) the 1500-foot-long, 5-foot-diameter penstock connecting the reservoir to a pumping station; (3) a powerhouse along the penstock, containing approximately three generating units with a total capacity of 1600 kW and an average annual output of 12.12 GHW; and (4) a transmission line connecting to the Pacific Gas & Electric Company (PG&E) distribution system. The estimated costs of permit activities is $20,000.

l. *Purpose of Project:* Power from the project would be sold to PG&E.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10658–000.

c. *Date Filed:* September 9, 1988.

d. *Applicant:* Pacific Water & Power, Inc.

e. *Name of Project:* Calaveras Reservoir/Dam Power.

f. *Location:* On the outlet piping from Calaveras Reservoir, which is on Calaveras Creek, and on a tunnel connecting the Alameda Creek Diversion Dam with Calaveras Reservoir, which are owned by San Francisco City and County and located in Alameda and Santa Clara Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert R. Doelle, 960 La Mesa Drive, Portola Valley, CA 94025, (415) 854–3574.

i. *FERC Contact:* Mr. James Hunter, (202) 376–1943.

j. *Comment Date:* January 4, 1989.

k. *Description of Project:* The proposed project would consist of: (1) The diversion dam on Alameda Creek with a diversion tunnel taking water to Calaveras Reservoir; (2) the 210-foot-high Calaveras Dam and 100,000-acre-foot Reservoir; (3) the 20,500-foot-long, 5-foot-diameter penstock connecting the reservoir to the Sunol Filtration Plant; (4) a powerhouse to be located just upstream of the Plant and a powerhouse to be located at the outlet of the Alameda Creek diversion tunnel, containing a total of aproximately three generating units with a total capacity of 4 MW and an average annual output of 26.5 GWH; and (5) a transmission line connecting to the Pacific Gas & Electric Company (PG&E) distribution system. The estimated cost of permit activities is $20,000 to $30,000.

l. *Purpose of Project:* Power from the project would be sold to PG&E.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10673–000.

c. *Date Filed:* October 5, 1988.

d. *Applicant:* Tuttle Creek Associates.

e. *Name of Project:* Tuttle Creek Hydro Project.

f. *Location:* On the Big Blue River near Manhattan Riley County, Kansas.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tom Forbes, 3244 106th Ave., SE., Bellevue, WA 98004, (206) 453–0500.

i. *FERC Contact:* Ed Lee, (202) 376–5786.

j. *Comment Date:* January 12, 1989.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Tuttle Creek Dam and Reservoir, and would consist of: (1) A new 775–foot-long steel penstock approximately 20 feet in diameter; (2) a new 75-foot-long and 64-foot-wide powerhouse located on the south side of the existing stilling basin; (3) a new 34.5 kV transmission line approximately 1-mile long; and (4) appurtenant facilities. Applicant estimates the total capacity of the project to be 14,500 kW, and the average annual generation to be 56,690 MWh. All energy generated would be sold to a local utility company. Applicant estimates that the cost of the studies under permit would be $125,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7. a. *Type of Application:* Transfer of License.

b. *Project No.:* 9951–012.

c. *Date Filed:* October 25, 1988.

d. *Applicant:* The Charter Township of Van Buren, Michigan Adirondack Hydro Development Corporation, and STS French Landing Ltd.

e. *Name of Project:* French Landing Project.

f. *Location:* On the Huron River in Wayne County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stephen O. Schultz, Foster, Swift, Collins & Coey, P.C., 313 South Washington Square, Lansing, MI 48933–2193, (517) 372–8050.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* January 6, 1989.

k. *Description of Transfer:* On October 25, 1988, The Charter Township of Van Buren, Michigan and Adirondack Hydro Development Corporation (licensee) and The Charter Township of Van Buren and STS French Landing Ltd. (transferee) filed a joint application for transfer of a major license for the French Landing Project No. 9951.

The purpose of the proposed transfer of license is to facilitate the financing of the project. No construction has started to date.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

8. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10675–000.

c. *Date Filed:* October 13, 1988.

d. *Applicant:* Northeast Utilities Service Company.

e. *Name of Project:* Dwight Project.

f. *Location:* On the Chicopee River, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Richard W. Thomas, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141–0270, (203) 665–3719

Mr. R.A. Rechert, Vice President, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270

i. *FERC Contact:* Mary Nowak, (202) 376–9634.

j. *Comment Date:* January 17 1989.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 15-foot-high and 306-foot-long stone masonry overflow spillway; (2) an existing reservoir with a surface area of 32 acres, a storage capacity of approximately 70 acre-feet, and a normal surface elevation of 78.8 feet mean sea level; (3) an existing 3,000-foot-long power canal of variable cross section delivering water from the headworks to the forebay; (4) three existing penstocks, each 168 feet long and 7 feet in diameter; (5) an existing powerhouse containing three generating units with a capacity of 480 kW each for a total installed capacity of 1,440 kW; (6) an existing 3.2-mile-long transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation is 8,520 MWh. The existing dam is owned by the Western Massachusetts Electric Company. The applicant estimates that cost of the studies under permit would be $236,000. The project was found jurisdictional under UL88–29–000.

l. This notice also consists of the following standard praragraphs: A5, A7, A9, A10, B, C, and D2.

9. a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10627–000.

c. *Date Filed:* July 15, 1988.

d. *Applicant:* Wailuku Hydroelectric Development, Inc.

e. *Name of Project:* Wailuku River Water Power Project.

f. *Location:* On the Wailuku River and its tributaries in Piihonua County, Hawaii.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* J. Paul Carrington, Kahala Energy Development Corp., 820 Mililani Street, Suite 701, Honolulu, Hawaii 96813, (808) 526–4552.

i. *FERC Contact:* Nanzo T. Coley, (202) 376–94156.

j. *Comment Date:* January 23, 1989.

k. *Description of Project:* The proposed project would utilize lands owned by the State of Hawaii and would consist of three proposed alternatives.

Alternate A would consist of: (1) Two proposed diversion structures, each approximately 25 feet high and 110 feet long; (2) two proposed forebays, each with a surface area of acres and a storage capacity of 50 acre-feet at an elevation of 1,880 feet m.s.l.; (3) two proposed 8-foot-diameter horseshoe tunnels or penstocks, each approximately 2,000 feet long, which converge into one 8-foot-diameter penstock and diverge for 8,400 feet and 2,600 feet, respectively; (4) a proposed upper and lower powerhouse with a generating unit rated at 12,000 kW and 14,000 kW, respectively; (5) proposed tailraces; (6) a proposed access road; (7) proposed 2,500-foot-long and 2,000-foot-long, 69 kV transmission lines; and (8) appurtenant facilities. The estimated average annual energy output for Alternate A is 86,000,000 kwh.

Alternate B would consist of: (1) A proposed diversion structure approximately 25 feet high and 110 feet long; (2) a proposed forebay with a surface area of 2 acres and a storage capacity of 25 acre-feet at an elevation of 1,880 feet m.s.l.; (3) a proposed bifurcated 60-inch-diameter, 13,000–foot-long penstock; (4) a proposed upper and lower powerhouse in the same location as Alternate A, containing a generating unit rated at 7,000–kW and 8,000 kW, respectively; (5) a proposed access road; (6) proposed transmission lines as in Alternate A; and (7) appurtenant facilities. The estimated average annual energy output for Alternate B is 68,000,000 kwh.

Alternate C would consist of: (1) Two proposed diversion structures each approximately 15 feet high and 50 feet long; (2) two proposed forbays, each with a surface area of 0.8 acre and a storage capacity of 8 acre-feet at an elevation of 1,420 feet m.s.l.; (3) two proposed 48-inch-diameter penstock, which conveys water from each diversion for 2,800 feet and 1,800 feet, respectively, and merge into one 60-inch-diameter, 2,900-foot-long penstock; (4) a proposed powerhouse containing a generating unit rated at 5,000 kW; (5) a proposed access road; (6) a proposed 69–kV, 6,500-foot-long transmission line; and (7) appurtenant facilities. The estimated average annual energy output for Alternate C is 17,000,000 kwh. The applicant estimates that the cost of the work to be performed under the preliminary permit in each case would be $150,000.

l. *Purpose of Project:* Energy produced at the project would be sold to Hawaii Electric and Light Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10676–000.

c. *Date Filed:* October 13, 1988.

d. *Applicant:* Northeast Utilities Service Company.

e. *Name of Project:* Red Bridge Project.

f. *Location:* On the Chicopee River, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*
Mr. Richard W. Thomas, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141–0270, (203) 665–3719
R. A. Reckert, Vice President, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270
i. *FERC Contact:* Mary Nowak, (202) 376–9634.
j. *Comment Date:* January 17, 1989.
k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 51-foot-high and 827-foot-long dam that consists of 527 feet of earthen embankment with a concrete core and a 300-foot, granite-faced rubble masonry spillway; (2) an existing reservoir with a surface area of 185 acres, a storage capacity of 530 acre-feet, and a normal maximum surface elevation of 272.3 feet mean sea level; (3) an existing power canal approximately 340 feet long and 73 feet wide leading from the headgate house to the powerhouse intake; (4) an existing 13-foot-diameter by 100-foot-long penstock supplying each generator unit; (5) an existing powerhouse containing two generating units with a capacity of 1,800 kW each for a total installed capacity of 3,600 kW; (6) an existing 4.8-mile-long transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation is 17,859 MWh. The existing dam is owned by the Western Massachusetts Electric Company. The applicant estimates that the cost of the studies under permit would be about $215,000. The project was found jurisdictional under UL88–33–000.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
11 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10677–000.
c. *Date Filed:* October 13, 1988.
d. *Applicant:* Northeast Utilities Service Company.
e. *Name of Project:* Putts Bridge Project.
f. *Location:* On the Chicopee River, Hampden County, Massachusetts.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:*
Mr. Richard W. Thomas, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141–0270, (203) 665–3719
R. A. Reckert, Vice President, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270
i. *FERC Contact:* Mary Nowak, (202) 376–9634.
j. *Comment Date:* January 17, 1989.
k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 22-foot-high, 221-foot-long concrete overflow spillway; (2) an existing reservoir with a surface area of 64.5 acres, a storage capacity of approximately 323 acre-feet, and a normal maximum surface elevation of 205.2 feet mean sea level; (3) two existing penstocks, 20 feet long and 12 feet in diameter connecting the generating units to the forebay; (4) two existing 675-foot-long concrete conduits delivering water from the headworks to the forebay; (5) an existing powerhouse containing two generating units each 1,600 kW each for a total installed capacity of 3,200 kW; (6) an existing 0.1-mile-long transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation is 15,397 MWh. The existing dam is owned by the Western Massachusetts Electric Company. The applicant estimates that the cost of the studies under permit would be about $215,000. The project was found jurisdictional under UL88–34–000.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
12 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10678–000.
c. *Date Filed:* October 13, 1988.
d. *Applicant:* Northeast Utilities Service Company.
e. *Name of Project:* Indian Orchard Project.
f. *Location:* On the Chicopee River, Hampden County, Massachusetts.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:*
Mr. Richard W. Thomas, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141–0270, (203) 665–3719
R.A. Reckert, Vice President, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 96141–0270
i. *FERC Contact:* Mary Nowak, (202) 376–9634.
j. *Comment Date:* January 17, 1989.
k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 20-foot-high, 402-foot-long stone masonry overflow spillway; (2) an existing reservoir having a surface area of 74 acres, a storage capacity of approximately 70 acre-feet, and a normal maximum surface elevation of 161.0 feet mean sea level; (3) an existing 1,160-foot-long power canal of variable cross section delivering water from the headworks to the forebay; (4) an existing 190-foot-long, 11-foot-diameter penstock; (5) an existing powerhouse containing two generator units having total installed capacity of 3,700 kW; (6) an existing transmission line 1.4 miles long; and (7) appurtenant facilities. The applicant estimates that the average annual generation is 12,821 MWh. The existing dam is owned by the Western Massachusetts Electric Company. The applicant estimates that the cost of the studies under permit would be about $215,000. The project was found jurisdictional under UL88–35–000.
1. This notice also consists of the following standard paragraphs: A5, A7, A10, B, C, and D2.
13 a. *Type of Application:* Transfer of License.
b. *Project No.:* 7115–007.
c. *Date Filed:* October 31, 1988.
d. *Applicant:* City of Dothan, Alabama Municipal Electric Authority of Georgia.
e. *Name of Project:* George W. Andrews Project.
f. *Location:* In Houston County, Alabama, and Early County, Georgia, on the Chattahoochee River.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. James C. Kilgore, Superintendent, Water and Electric Department, P.O. Box 2218, Dothan, AL 36301, (203) 793–0301.
i. *FERC Contact:* Mary Nowak, (202) 376–9634.
j. *Comment Date:* January 12, 1989.
k. *Description of Project:* The City of Dothan, Alabama (Dothan) and the Municipal Electric Authority of Georgia (MEAG) jointly propose to transfer its license for the George W. Andrews Project No. 7115–007 to MEAG alone. One of the co-licensees, Dothan, would like to withdraw from the project and to be relieved from the terms and conditions of the license. The remaining licensee, MEAG, will become the sole licensee.
l. This notice also consists of the following standard paragraphs: B, C, and D2.
14 a. *Type of Application:* Minor License.
b. *Project No.:* 9482–002.
c. *Date Filed:* May 26, 1988.
d. *Applicant:* Wisconsin Creek Limited Partnership.
e. *Name of Project:* Wisconsin-Noble.
f. *Location:* On Noble Forek, a tributary of Wisconsin Creek in Sec. 6, T4S, R4W, and Sec. 1 and 12, T4S, R5W, MPM, partially on BLM land near Sheridan in Madison County, Montana.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rhett Hurless, P.O. Box 3474, Bozeman, MT 59772, (460) 586–7017.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–9636.

j. *Comment Date:* January 27, 1989.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) A 4-foot-high concrete diversion dam at elevation 6,351 MSL; (2) an 18-inch-diameter, 7,460-foot-long buried penstock; (3) a powerhouse containing one generating unit with a rated capacity of 450 kW and an average annual energy production of 1.8 GWh; (4) a concrete tailrace; (5) a ¼-mile-long transmission line; and (6) apprutenant facilities.

l. *Purpose of Project:* The power produced would be sold to the Montana Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

15 a. *Type of Filing:* Major License (Over 5-NW).

b. *Project No.:* 9885–003.

c. *Date Filed:* March 11, 1988.

d. *Applicant:* Environmental Energy Company.

e. *Name of Project:* Falls River Hydro Project.

f. *Location:* On Fall River near the town of Ashton, in Fremout County, Idaho. Township 9N Range 44E Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Grant Durtschi, Environmental Energy Company, 2330 W. 12090 So., Riverton, Utah 84065, (801) 254–2289.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* January 27, 1989.

k. *Description of Project:* The proposed project consist of: (1) The Marysville Irrigation Company's existing 126-foot-long, 7-foot-high reinforced concrete diversion dam; (2) a 60-foot-wide by 56-foot-long river inlet facility with breast wall, trashrack, and fish screens; (3) 5.5 miles of the existing Marysville Irrigation canal to be expanded for increased flow capacity; (4) a penstock inlet facility; (5) an emergency canal overflow structure; (6) a 96-inch-diameter, 7,500-foot-long steel penstock leading to; (7) a reinforced concrete powerhouse 40-foot-wide, 60-foot-long, 18-foot-high containing two generating units rated at 3.0 megawatt (MW) and 4.5 MW with a combined installed capacity of 7.5 MW; (8) a 5.4-mile-long, 12.5-kV transmission line; and (9) appurtenant facilities.

The applicant estimates the average annual energy production to be 46.200 GWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Utah Power and Light Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

16. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10656–000.

c. *Date Filed:* September 6, 1988.

d. *Applicant:* Pacific Water and Power, Inc.

e. *Name of Project:* Casitas reservation/Dam Power Project.

f. *Location:* On Ayer Creek in Ventura County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025, (415) 854–3574.

i. *FERC Contact:* Nanzo Coley, (202) 376–9416.

j. *Comment Date:* January 27, 1989.

k. *Description of Project:* The proposed project would utilize the Bureau of Reclamation's Casitas dam and Reservoir and would consist of: (1) A proposed powerhouse No. 1a or lb, located near the Casitas dam; (2) an existing 2,000-foot-long, 7-foot-diameter penstock; (3) a proposed powerhouse No. 2a or 2b, located near the existing filtration plant. The powerhouses would contain generating units with a total rated capacity of 1,644 kW and would be connected to the existing penstock; (4) proposed transmission lines; and (5) appurtenant facilities. The estimated average annual energy output for the project is 13,068,000 kWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

l. *Purpose of Project:* Power produced at the project would be sold to California Edison Electric Company.

M. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10664–000.

c. *Date Filed:* September 22, 1988.

d. *Applicant:* Elements Power Company.

e. *Name of Project: Brownville Power Project.*

f. *Location:* On the Pleasant River, Piscataquis County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Cashman, Express Hydro Services, Inc. 6 West Market Squrare, Bangor, ME 04401 (207) 947–4199.

1. *FERC Contact:* Mary Nowak, (202) 376–9634.

J. *Comment Date:* February 3, 1989.

k. *Description of Project:* The proposed run-of river project would consist of the following facilities: (1) An existing 150-foot-long and 7-foot-high timber crib dam; (2) an existing reservoir approximately 6 acres in surface area with a storage capacity of approximately 40 acre-feet, and a normal surface elevation of 320 feet mean sea level; (3) an existing concrete headrace 10 feet wide, 10 feet hight, and 445 feet long; (4) a proposed penstock 3 meters in diameter and 30 feet long; (5) a proposed powerhouse with one or possibly two turbine generator units having an installed total capacity of 600 kW; (6) a proposed transmission line with a voltage of 12,470 and a length of 100 to 300 feet; and (7) appurtenant facilities. The applicant proposes to repair the existing dam to its original condition and build a new intake structure. The applicant estimates that the average annual generation would be 2 to 3 million kWh and that the cost of the studies under permit would be $10,000. The existing dam is owned by Lawrence A. Gamble of the Elements Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18 a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10672–000.

c. *Date Filed:* October 5, 1988.

d. *Applicants:* Blackfoot River Hydro Company, Inc.

e. *Name of Project:* Blackfoot Canyon Hydropower Project.

f. *Location:* On the Blackfoot River on lands administered by the Bureau of Land Management near the town of Shelley, in Bingham County, Idaho. Township 3 South, Range 38 East Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bruce N. Bradley, 382 Walnut, Idaho Falls, ID 83402, (208) 357–3390.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* January 27, 1989.

k. *Description of Application:* The proposed project would consist of: (1) A 10-foot-high embankment dam; (2) a 2-acre reservoir with a normal maximum water surface elevation of 5,090 feet msl; (3) a 96-inch-diameter, 8,200-foot-long pipeline leading to; (4) a powerhouse at elevation 4,860 feet msl containing 2 generating units with a combined capacity of 10 MW; and (5) a 11-mile-long, 12.5-kV transmission line.

The applicant estimates the average annual energy production to be 36.000

MWh. The approximate-cost of the studies under the permit would be $45,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Utah Power and Light Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

19 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10674–000.

c. *Date Filed:* October 11, 1988.

d. *Applicant:* Midtec Paper Company.

e. *Name of Project:* Midtec Protect.

f. *Location:* On the Fox River in Outagamie County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. C.E. Wise, Manager or Engineering, Maintenance & Utilities, Midtec Paper Company, North Main Street, Kimberly, WI 54136, (414) 788–3511 Ext. 447.

i. *FERC Contact:* Robert Bell, (202) 376–9237.

j. *Comment Date:* January 25, 1989.

k. *Description of Project:* The proposed project would utilize the U.S. Corps of Engineers Cedric Lock and Dam and impoundment and would consist of: (1) An existing intake structure; (2) 31 existing 12 foot 8 inch diameter penstocks 66 inches long; (3) an existing powerhouse containing 3 generating unit with a total installed capacity of 2700 kW; and (4) appurtenant facilities. The proposed project would have an average annual generators of 8600 MWh.

l. *Purpose of Project:* All energy generated would be used by applicant in its mills.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant

to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 5, 1988, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28290 Filed 12-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-305-000 et al.]

Northwest Pipeline Corporation et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-305-000]

December 1, 1988.

Take notice that on November 29, 1988, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-305-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Williams Gas Marketing (Williams), a marketer, under the blanket certificate issued in Docket No. CP86-578-000 on January 19, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to an agreement dated September 26, 1988, as amended September 26, 1988, and October 28, 1988, under Rate Schedule TI-1, it proposes to transport up to 35,500 MMBtu per day equivalent of natural gas for Williams, which transportation service may involve interconnections between Northwest and various transporters. Northwest states that it would receive the gas from existing wells located in Uintah County, Utah, and Garfield, Mesa, Rio Blanco, La Plata and Gunnison Counties, Colorado, and transport the gas to various delivery points on Northwest's system in Colorado and Utah.

Northwest advises that service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89-677 (filed November 14, 1988). Northwest further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. K N Energy, Inc.

[Docket No. CP89-278-000]

December 2, 1988.

Take notice that on November 23, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-278-000 a request pursuant to § 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the delivery of gas to end-users, under the blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

K N proposes to construct and operate seven sales taps. K N states that the taps would be located in Box Butte, Fillmore, Hamilton, Clay and Buffalo Counties, Nebraska, and in Thomas and Sheridan Counties, Kansas. K N further states that the end use of the gas delivered at each of the seven taps would be irrigation or domestic. K N indicates that the estimated cost of the taps would range from $850 to $1150.[1]

K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP88-279-000]

December 2, 1988.

Take notice that on November 23, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-279-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Summit Pipeline and Producing Company (Summit), under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Summit, pursuant to a gas transportation service agreement under dated September 22, 1988. The term of the transportation agreement is from the date of execution by Summit and shall continue in effect month-to-month thereafter, unless terminated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 35,000 MMBtu; on an average day up to 10,000 MMBtu; and on an annual basis 12,775,000 MMBtu for Summit. Texas Gas proposes to receive the subject gas from various exiting points of receipt on its system in Louisiana, Texas, and Arkansas. Texas Gas would then transport and redeliver such volumes to Summit at existing points of delivery in Ohio and Kentucky for ultimate use by Kroger Bakery. The proposed rate to be charged is contained in Texas Gas' currently effective T rate schedule. It is stated that Summit also agrees to pay the legally effective GRI funding unit, which is currently 1.47 cents per MMBtu, and the currently effective FERC ACA unit charge which is .2 cents per MMBtu, when applicable.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on October 11, 1988, as reported in Docket No. ST89-620-000.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-255-000]

December 2, 1988.

Take notice that on November 21, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas, 77251 filed in Docket No. CP89-255-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to a

[1] K N states that customers reimburse a portion of the construction costs to K N through imposition of a connection charge which varies by state. This charge is $250 in Kansas and $400 in Nebraska.

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certain existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to partially abandon sales service to North Penn Gas Company (North Penn). Transco performs this service under a December 5, 1968 Service Agreement and Transco's Rate Schedule ACQ–3. Transco requests that the abandonment be made effective January 1, 1989. Transco states that Article II of the Service Agreement provides that the agreement shall be in full force and effect for a period ending December 31, 1988, and year to year thereafter unless terminated by either party at the end of the primary period or any anniversary thereof by not less than thirty days' prior written notice. Transco states that by letter dated April 7, 1987, North Penn gave Transco written notice of North Penn's desire to reduce the existing annual contract quantity of 3,607,347 Mcf under the Service Agreement to 1,000,000 Mcf.

Comment date: December 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89–270–000]

December 2, 1988.

Take notice that on November 22, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP 89–270–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for BP Gas Marketing Company (BP), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86–582 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas from points of receipt located in Oklahoma, Louisiana, Offshore Louisiana, Illinois, Texas, and Kansas to points of delivery located in Illinois, Louisiana, New Mexico, Texas, Iowa, Arkansas, Oklahoma, and Kansas.

Natural further states that the maximum daily, average and annual quantities that it would transport for BP would be 500,000 MMBtu equivalent, 200,000 MMBtu equivalent and 73,000,000 MMBtu equivalent, respectively.

Natural indicates that in a filing made with the Commission on November 22, 1988, it reported that transportation service for BP began on September 21, 1988 under the 120-day automatic authorization provisons of § 284.233(a).

Comment Date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. PennEast Gas Services Company, CNG Transmission Corporation, Texas Eastern Transmission Corporation

[Docket No. CP88–195–001]

December 2, 1988.

Take notice that on November 10, 1988, PennEast Gas Services Company (PennEast), a general partnership, CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, WV 26301, and Texas Eastern Transmission Corporation (Texas Eastern) (jointly Applicants), P.O. Box 2521, Houston, TX 77252, filed a Compliance amendment to their joint application filed in Docket No. CP88–195–000 on January 15, 1988, for certificates of public convenience and necessity and related authorizations. The Compliance Amendment supplements and modifies Applicants' original application, solely to reflect a modification of the design of certain of the proposed facilities for which Commission authorization to construct and operate is requested. The Compliance amendment is currently on file with the Commission and is available for public inspection.

Applicants state that on January 15, 1988, applicants filed a joint application in abbreviated form for certificates of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act. Applicants sought authorization for:

(1) PennEast to render long-term firm transportation services for two industrial cogeneration developers with facilities in New York, New Jersey and New England under a new Rate Schedule T–4, and to construct and operate related pipeline, compression and metering facilities to be known as the "Niagara System."

(2) CNG Transmission to render related gas compression and metering services for PennEast in support of the Niagara System.

(3) Texas Eastern to render related gas compression and metering services for PennEast in support of the Niagara System.

(4) A blanket certificate of public convenience and necessity pursuant to 18 CFR 284.221 authorizing open access, non-discriminatory transportation of natural gas.

Applicants further state that specifically, PennEast sought construction and operation authorization in its application for its Niagara System, which could consist of incremental pipeline, compression and metering facilities, which would be operated in conjunction with existing facilities owned and operated by CNG Transmission and Texas Eastern to render the proposed transportation services from the proposed receipt points to the proposed New York delivery points. By the original application, PennEast proposed to construct and operate the following facilities:

In Conjunction With CNG Transmission

—27 miles of 24-inch pipeline between CNG Transmission's Ellisburg and Woodhull Storage Pools;

—4,000 HP, 2,700 HP, 1,350 HP, and 3,200 HP compression at CNG Transmission's Greenlick Compression Station, State Line Junction, Marilla measuring and regulating station, and Line No. PL–1 near Doylesburg, Pennsylvania, respectively;

—Metering and regulating facilities at the existing interconnection between CNG Transmissin and Texas Eastern at Leidy Storage Pool;

In Conjunction With Texas Eastern

—5.31 miles of 24-inch pipeline and 11.25 miles of 36-inch pipeline looping on Texas Eastern's Leidy pipeline on the suction side and discharge side, respectively, of PennEast's proposed Centre Hall compressor station;

—11 miles and 0.75 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's 20-inch pipeline at the discharge of Station 25 and Texas Eastern's Hanover Lateral in New Jersey, respectively;

—Installation and expansion of capacity of Texas Eastern's measuring and regulating stations No. 087, Perulack and Chambersburg.

Applicants state that the original application was filed in response to the Commission's Notice of July 24, 1987, soliciting applications for authority to provide new natural gas service to the Northeast United States, and that on March 17, 1988, the Commission issued an order consolidating various related applications into specific project proposals, designating certain applications to serve the Northeast as "discrete," and tentatively identifying certain other projects including the Niagara/Cogen project as mutually exclusive and requiring comparative consideration. It is stated that on July 27, 1988, the Commission issued an order

which, *inter alia*, appointed a settlement judge, whose role would be to "identify, additional discrete projects or separate groups of competitive projects" and to "simplify and focus any remaining competitive issues."

Applicants further state that on August 15, 1988, the Associated PennEast Customer (APEC) Group filed an offer of settlement that provided for the severance from the open season proceedings of various projects or portions of projects in order to provide service to the APEC members by the winter of 1989–90.

Applicants state that by its order of October 26, 1988, the Commission found the LNG reinstatement portion of the Capacity Restoration Project (CRP project) to be eligible for processing as a discrete project and directed Texas Eastern to file an application to implement that portion of the CRP project. It is stated that that application is being filed concurrently at Docket No. CP87–92–004 and that, as a result of the filing by Texas Eastern of the Fence-to-Fence facilities and the separate LNG reinstatement facilities, modifications are necessary to facilities proposed for other PennEast projects which were designed in conjunction with Texas Eastern's system and were in a subsequent design sequence. It is further stated that by its October 26, 1988, Order, the Commission ordered:

The sponsors of PennEast-Niagara/Cogen and the Greater Northeast project shall file, within 15 days, revised applications to reflect changes in facilities and services resulting from the severance of the APEC projects.

Applicants state that their Compliance Amendment is submitted in response to that directive and in compliance with the October 26, 1988, Order, to reflect only modifications to *facilities* resulting from changes in Texas Eastern facilities resulting from severance of the APEC project, and that no changes in PennEast-Niagara/Cogen project *services* result from the APEC severance.

PennEast requests authorization to construct and operate the following facilities in conjunction with Texas Eastern's system:

—16.24 miles of 36-inch pipeline looping on Texas Eastern's Leidy pipeline, M.P. 40.91 to M.P. 24.66;

—Replace 25.25 miles of 20-inch pipeline No. 2 with 36-inch pipeline between Station 25 and Station 26, M.P. 1405.47 to 1430.72;

—Additional modification of Measuring and Regulation Stations Nos. 087, Perulack and Chambersburg;

—Upgrade two existing 4,000 HP DC990/compressor units to 5,100 HP each at Station 28;

—Aerodynamic assembly changeout at Perulack Station.

The estimated capital cost of the proposed facilities is $101,343,500. PennEast's plan of financing remains unchanged from the original application.

Comment date: December 23, 1988, in accordance with Standard Paragraph F at the end of the notice.

7. Williams Natural Gas Company

[Docket Nos. CP89–243–000, CP89–250–000]

December 2, 1988.

Take notice that on November 18, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket Nos. CP89–243–000 and CP89–250–000, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Gulf Energy Marketing Company (Gulf Energy) and Access Energy Corporation (Access) marketers of gas, all as more fully set forth in the requests on file with the Commission and open to public inspection.

Williams proposes to transport up to a maximum of 156,000 MMBtu of natural gas for Gulf Energy and up to 50,000 MMBtu of natural gas per day for Access from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on Williams's pipeline system located in Kansas, Missouri, Nebraska and Oklahoma. Williams auticipates transporting up to 156,000 MMBtu on a peak day and average day, and 56,940,000 MMBtu on an annual basis for Gulf Energy; and up to 50,000 MMBtu on a peak day, 10,000 MMBTu on an average day, and 18,250,000 MMBtu on an annual basis for Access. Williams explains that service commenced October 7, 1988 and October 1, 1988, respectively, under § 284.223(a) of the Commission's Regulations, as reported in Docket Nos. ST89–615–000 and ST89–259–000, respectively.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Pelican Interstate Gas System

[Docket No. CP89–240–000]

December 2, 1988.

Take notice that on November 18, 1988, Pelican Interstate Gas System (Pelican), 1600 Smith Street, Suite 4775, Houston, Texas, 77002, filed in Docket No. CP89–240–000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport natural gas, on an interruptible basis, for the account of Bishop Pipeline Corporation (Bishop), an intrastate pipeline in Louisiana and a marketer of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pelican states that it has entered into a Gas Transportation Agreement dated October 15, 1988, to provide on an interruptible basis, transportation of up to a maximum of 40,000 MMBtu per day of natural gas for Bishop for a primary term ending October 15, 1989, and continuing month to month thereafter.

Pelican indicates it would receive volumes of gas for the account of Bishop at the existing subsea interconnection of Pelican and Bishop's designee, Sun Operating Limited Partnership, in the High Island Area, Block 129, offshore Texas. Pelican proposes to transport and redeliver such gas at the existing onshore terminus of Pelican's pipeline facilities located at the Oxy NGL Cameron Meadows plant (formerly owned by Mobil) in Cameron Parish, Louisiana.

Pelican proposes to charge Bishop a transportation fee of three and three-tenths cents (3.3. cents) per Mcf of gas received for transportation. Pelican states that this is its currently effective transportation rate in its Rate Schedule No. 1 of its FERC Gas Tariff, Original Volume No. 1.

Comment date: December 23, 1988, in accordance with Standard Paragraph F at the end of his notice.

9. Texas Gas Transmission Corporation

[Docket No. CP89–282–000]

December 2, 1988.

Take notice that on November 23, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 filed in Docket No. CP89–282–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Mid-South Oil & Gas, Inc. (Mid-South), under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Mid-South, pursuant to a gas transportation service agreement under

dated September 28, 1988. The term of the transportation agreement is from the date of execution by Mid-South and shall continue in effect month-to-month thereafter, unless terminated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 5,000 MMBtu; on an average day up to 1,500 MMBtu; and on an annual basis 1,825,000 MMBtu for Mid-South. Texas Gas proposes to receive the subject gas from an exciting point of receipt on its system in Warren County, Kentucky. Texas Gas would transport and redeliver such volumes to Mid-South at existing points of delivery in Kentucky for ultimate use by Western Kentucky Gas Company. The proposed rate to be charged is contained in Texas Gas' currently effective T rate schedule. It is stated that Mid-South also agrees to pay the legally effective GRI funding unit, which is currently 1.47 cents per MMBtu, and the currently effective FERC ACA unit charge which is .2 cents per MMBtu, when applicable.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on October 6, 1988, as reported in Docket No. ST89–507–000.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protect. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28288 Filed 12–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87–148–001, CP87–148–000 and CP87–390–000]

Columbia Gas Transmission Corp.; Motion To Vacate Order

December 2, 1988.

Take notice that on November 15, 1988, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP87–148–001 a motion that the Commission issue an order reinstating the 1,000 dt equivalent of natural gas per day of contract demand reduction authorized for Commonwealth Gas Pipeline Corporation (Commonwealth) by Commission order issued September 21, 1988, all as more fully set forth in the motion and open to public inspection. The Commission will consider this to be a motion to vacate, partially, the September 21, 1988, order.

Columbia Gas states that on December 31, 1986, it filed a request for permission and approval under section 7(b) of the Natural Gas Act, as amended, for the abandonment of certain firm sales service to existing wholesale customers in which, *inter alia*, Columbia Gas requested authority to abandon 1,000 dt equivalent of contract demand service to Commonwealth under Columbia Gas's Rate Schedule CDS. Columbia Gas indicates that the Commission approved its request for abandonment to Commonwealth by order issued September 21, 1988 in Docket Nos. CP86–240–001, CP87–148–000 and CP87–390–000, 44 FERC ¶61,365.

Columbia Gas states that Commonwealth withdrew its request for contract demand reduction of 1,000 dt equivalent by letter dated October 4, 1988. Columbia Gas states further that the capacity made available through the contract demand reduction by Commonwealth as approved September 21, 1988, has not been committed by Columbia Gas to provide either firm sales or transportation service to any other customer of Columbia Gas. Columbia Gas indicates that since the capacity is still available on its system to provide Commonwealth with the level of service that Commonwealth requires, Columbia Gas proposes to reinstate such 1,000 dt equivalent of contract demand to Commonwealth.

Any person desiring to be heard or to make any protest with reference to said motion to vacate should on or before December 23, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28287 Filed 12–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2290, California]

Southern California Edison Co.; Intent To File an Application for a New License

December 6, 1988.

Take notice that on November 1, 1988, Southern California Edison Company, the existing licensee for the Kern River No. 3 Hydroelectric Project No. 2290, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2290 was issued effective September 20, 1963, and expires December 31, 1993.

The project is located on the North Fork of the Kern River is Kern County, California. The principal works of the Kern River No. 3 Project include a 26-foot-high 270-foot-long dam; a 68,515-foot-long main conduit; small dams on Salmon Creek and Corral Creek with conduits to the main conduit; a forebay and a complex of flume, tunnel, syphon, reinforced concrete pipe, and steel penstocks; a powerhouse with an installed capacity of 32 MW; 66 kV transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, California 91770, telephone (818) 302–7803.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28286 Filed 12–7–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–62063A; FRL–3487–7]

Asbestos-Containing Materials in Schools; Clarification of EPA Interim Accreditation Awarded Asbestos Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of EPA interim accreditation awarded asbestos laboratories.

SUMMARY: Laboratories currently accredited in the April 1988 round of the EPA Interim Asbestos Bulk Sample Analysis Quality Assurance Program for polarized light microscopy (PLM) laboratories will maintain their EPA accredited status beyond January 12, 1989, provided the laboratory (1) enrolled in the National Institute of Standards and Technology (NIST, formerly the National Bureau of Standards (NBS)) National Voluntary Laboratory Accreditation Program (NVLAP) by September 30, 1988 and (2) is not found deficient by NIST before January 12, 1989. The conditions for maintaining EPA accreditation for PLM laboratories which analyze bulk building materials for asbestos are reviewed in this notice.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202–554–1404), TDD: (202–554–0551).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final rulemaking requiring all local education agencies (LEA) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control release of asbestos fibers from ACM. As part of the identification process, LEA's must sample all suspect materials that are not assumed to be ACM. The samples must be analyzed by PLM laboratories which have received interim accreditation in the EPA Interim Asbestos Bulk Sample Analysis Quality Assurance Program until the NIST NVLAP has accredited its first laboratories in the spring of 1989. The accredited status of laboratories accredited in the final round of the EPA interim program in April 1988 will expire on January 12, 1989.

To maintain accreditation of laboratories between the EPA and NIST accreditation programs, EPA and NIST made provision to continue the accredited status of EPA accredited laboratories by requesting these laboratories to enroll in the NIST NVLAP by September 30, 1988. In March 1988, EPA and NIST informed all laboratories enrolled in the EPA and NIST programs that if the EPA accredited laboratory desired to extend its accredited status past the expiration date of January 12, 1989, the laboratory must complete the final NIST application process and provide the full NVLAP fee by September 30, 1988 (53FR 10151). Approximately, six hundred commercial and noncommercial laboratories met this deadline.

NIST began its evaluation of these facilities in late October 1988. The evaluation process is two staged. NIST first conducts a site assessment of the facility. Next, proficiency testing samples are submitted to the laboratory for analysis. If a laboratory is found to be deficient in any part of the evaluation stages, NIST will not accredit the laboratory until corrections have been made. NIST will notify EPA of a laboratory's unsatisfactory performance at any point in the evaluation process. If the laboratory has major deficiencies, the interim EPA accreditation will be withdrawn by EPA.

For example, NIST may find deficiencies during the site visit to the facility. NIST will notify EPA of all major deficiencies, and EPA will remove the laboratory from its accredited status immediately. Since NIST began the site visits in October 1988, removal of EPA accreditation prior to January 12, 1989, is possible. Each deficient laboratory will be informed by EPA of its removal from the accredited listing in writing.

A laboratory found to be deficient should work to correct the problems and then complete the NIST accreditation process. When all NIST requirements have been met, NIST will accredit the laboratory and inform EPA of its action. The laboratory will be then recognized by EPA and NIST as having NIST accreditation.

Dated: November 29, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–28232 Filed 12–7–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[FHLBB No. 1872; No. AC-756]

American Federal Bank, F.S.B., Greenville, SC; Final Action; Approval of Conversion Application

Date: November 30, 1988.

Notice is hereby given that on November 10, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of American Federal Bank, F.S.B., Greenville, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat, at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent, at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-28226 Filed 12-7-88; 8:45 am]

BILLING CODE 6720-01-M

[FHLBB No. 1341; No. AC-754]

Home Federal Savings and Loan Association of Hamilton, Hamilton, OH; Final Action; Approval of Conversion Application

Date: November 30, 1988.

Notice is hereby given that on November 14, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association of Hamilton, Hamilton, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, 221 E. 4th Street, Cincinnati 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-28227 Filed 12-7-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-757]

Mohawk Valley Savings and Loan Association, Ilion, NY; Final Action; Approval of Conversion and Holding Company Applications

Date: November 30, 1988.

Notice is hereby given that on November 25, 1988, the General Counsel and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of Mohawk Valley Savings and Loan Association, Ilion, New York ("Mohawk"), for permission to convert to the stock form of organization in a voluntary supervisory conversion, and the application of United Northern Federal Savings Bank, Watertown, New York, and United Northern Bancorp, Inc., a wholly-owned subsidiary of United Northern Federal Savings Bank, to acquire control of Mohawk.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-28228 Filed 12-7-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-755]

Morristown Federal Savings and Loan Association, Morristown, TN; Final Action; Approval of Conversion and Holding Company Applications and Approval of Name Change

Date: November 30, 1988.

Notice is hereby given that on November 21, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of Morristown Federal Savings and Loan Association, Morristown, Tennessee ("Morristown") for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of Franklin Financial Group, Inc., Morristown, Tennessee to acquire control of Morristown. After conversion, the converted institution shall be known as the Franklin Federal Savings Bank.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-28229 Filed 12-7-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-753]

Vancouver Federal Savings Bank, Vancouver, WA; Final Action; Approval of Conversion Application

Date: November 30, 1988.

Notice is hereby given that on November 16, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Vancouver Federal Savings Bank, Vancouver, Washington for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101-1693.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-28230 Filed 12-7-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the time, deliver a copy of that document to the person filing the agreement at the address shown below

Agreement No.: 224-200186.

Title: Port of Houston Authority Terminal Agreement.

Parties: Port of Houston Authority of Harris County, Texas (Port) and Strachan Shipping Company (Strachan).
Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.
Synopsis: The agreement provides that Strachan will perform or have performed public marine terminal services, including freight handling, cargo loading and unloading, at the Port's wharves and transit sheds numbers 24 through 26. The term of the agreement expires December 31, 1990.
Agreement No.: 224–200187.
Title: Port of Houston Authority Terminal Agreement.
Parties: Port of Houston Authority of Harris County, Texas (Port) and Ceres Gulf Incorporated (Ceres).
Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.
Synopsis: The agreement provides that Ceres will perform or have performed freight handling at the Port's wharves and transit sheds numbers 19 through 20, for cargo loading and unloading, and such other incidental services needed to expedite the movement of cargo between vessels and land carriers. The term of agreement expires December 31, 1990.
Agreement No.: 224–200188.
Title: Port of Houston Authority Terminal Agreement.
Parties: Port of Houston Authority of Harris County, Texas (Port) and Port-Cooper/T. Smith Stevedoring (Assignee).
Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.
Synopsis: The agreement provides that Assignee will perform or have performed freight handling at the Port's wharves and transit sheds numbers 16 thorugh 18, for cargo loading and unloading, and such other incidental services needed to expedite the movement of cargo between vessels and land carriers. The term of agreement expires December 31, 1990.
Agreement No.: 224–200185.
Title: Port of Houston Authority Terminal Agreement.
Parties: Port of Houston Authority of Harris County, Texas (Port) and Ryan Walsh Incorporated (RWI).
Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.
Synopsis: The agreement provides that RWI will perform or have performed public marine terminal services, including freight handling and cargo loading and unloading, at the Port's wharves and transit sheds numbers 30 thorugh 32. The term of agreement expires December 31, 1990.

By Order of the Federal Maritime Commission.

Dated: December 2, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28192 Filed 12–7–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000150–092.
Title: Trans-Pacific Freight Conference of Japan.
Parties:

American President Lines, Ltd.
Barber Blue Sea
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Liner System, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Services, Inc.

Synopsis: The proposed modification would clarify the Conference's authority to provide for storedoor delivery service.

Agreement No.: 202–003103–094.
Title: Japan-Atlantic and Gulf Freight Conference.
Parties:

Barber Blue Sea
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Liner System, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.

Synopsis: The proposed modification would clarify the Conference's authority to provide for storedoor delivery service.

Agreement No.: 212–010027–021.
Title: Brazil/U.S. Atlantic Coast Agreement.
Parties:

Companhia De Navegacao Lloyd Brasileiro
Companhia De Navegacao Maritima Netumar
American Transport Lines, Inc.
A/S Ivarans Rederi
Empresa Lines Maritimas Argentinas S.A.
A. Bottacchi S.A. De Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co., B.V.

Synopsis: The proposed modification would extend certain special carrying adjustments for open rated cargo, deletes pool shares and accounting provisions which expired December 31, 1987.

Agreement No.: 202–010268–012.
Title: Australia/Eastern U.S.A. Shipping Conference.
Parties:

Columbus Line
Pacific America Container Express (PACE Line)

Synopsis: The proposed modification would permit the Conference to enter into loyalty contracts in accordance with the antitrust laws of the United States. It would also prohibit any party, either individually or jointly with any other carrier or carriers, from entering into an individual loyalty contract in the Agreement trade. It would further prohibit any party from taking independent action with respect to loyalty contracts.

Agreement No.: 202–010268–013.
Title: Australia/Eastern U.S.A. Shipping Conference.
Parties:

Columbus Line
Pacific America Container Express (PACE Line)

Synopsis: The proposed modification would provide that all Conference expenses be shared equally by the members.

Agreement No.: 212–010320–017.
Title: Brazil/U.S. Gulf Ports Agreement.
Parties:

Companhia De Navegacao Lolyd Brasileiro
Companhia Maritima Nacional
American Transport Lines, Inc.
Empresa Lineas Maritimas Agrentinas S.A.
A. Bottacchi S.A. De Navegacion C.F.I.I.
Transportacion Maritima Mexicana S.A

Synopsis: The proposed modification would extend the provisions governing the accounting for U.S. Gulf cargoes under alternate coast service and certain related cargo accounting provisions to December 31, 1989.

Agreement No.: 206–010715–04.

Title: Eurospan Agreement.

Parties:

North Europe-U.S. Gulf Freight Association
Gulf-European Freight Association

Synopsis: The proposed modification would set forth new rules of general applicability to service contracts adopted by the parties with respect to contract provisions concerning terminal handling, container service and currency adjustment charges.

Agreement No.: 202–010984–005.

Title: Mediterranean/Puerto Rican Conference.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification would permit the Conference to enter into loyalty contracts in accordance with the antitrust laws of the United States. It would also prohibit any party, either individually or jointly with any other carrier or carriers, from entering into an individual loyalty contract in the Agreement trade. It would further prohibit any party from taking independent action with respect to loyalty contracts.

Agreement No.: 203–011117–004.

Title: North America/Australasia Interconference and Carrier Discussion Agreement.

Parties:

Pacific Australia Direct Line
Pacific Coast/Australia-New Zealand Tariff Bureau
Blue Star Line, Ltd.
Hyundai Australia Direct Line
Columbus Line
Hong Kong Islands Line America S.A.
U.S. Atlantic & Gulf/Australia-New Zealand Conference
Associated Container Transportation (Australia) Ltd. (PACE Line)
Ocean Star Container Line A.G.
Australia-New Zealand Direct Line
Leif Hoegh & Co., S.A.
Nedlloyd Lines
Scancarriers

Synopsis: The proposed modification would delete Pacific Australia Direct Line and add Hyundai Australia Direct Line as a party to the Agreement. It would also change the identity of Scancarriers to reflect its change from a joint service to a service operated exclusively by Wilhelmsen Lines A/S. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 5, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28249 Filed 12–7–88; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License; Central Shipping Services

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/Address	Date reissued
2899	Ghaleb Paul Ghannoum, dba Central Shipping Services, 21483 Crozier Avenue, Boca Raton, Florida 33428.	Nov. 18, 1988.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88–28250 Filed 12–7–88; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations; Global Freight Forwarding, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2931.

Name: Global Freight Forwarding, Inc.

Address: 66 Mercer St., New York, NY 10012.

Date Revoked: November 3, 1988.

Reason: Surrendered license voluntarily.

License Number: 3124.

Name: International Freightforwarders, Inc.

Address: 3202 West Buffalo St., #2017, Tampa, FL 33607.

Date Revoked: November 10, 1988.

Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88–28251 Filed 12–7–88; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

[Wildlife Order 170; 7–I–NM–498G]

BUREC Subdivision, Chama, NM; Transfer of property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667b), notice is hereby given that

1. By deed from the General Services Administration dated July 5, 1988, the property, consisting of 0.59 of an acre, known as BUREC Subdivision, Chama, New Mexico, was transferred to the State of New Mexico.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: November 23, 1988.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 88–28217 Filed 12–7–88; 8:45 am]

BILLING CODE 6820–96–M

[Wildlife Order 171; 7–D–KS–430–III]

Tuttle Creek Lake Project, KS; Transfer of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667b), notice is hereby given that

1. By deed from the General Services Administration dated August 30, 1988, the property, consisting of 60 acres unimproved, known as Tuttle Creek Lake Project, Kansas, was transferred to the State of Kansas.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: November 23, 1988.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 88–28216 Filed 12–7–88; 8:45 am]

BILLING CODE 6820–96–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 47 FR 46142, October 15, 1982) is amended to clarify and update the functional statements of the Office of Health Affairs, Food and Drug Administration.

The changes include adding new functions regarding patent term restoration and international drug scheduling activities to the functional statements of the Offiice of Health Affairs and revising the functfonal statements to clarify and update them.

Section HF-B, Organization and Functions amended is as follows:

1. Delete paragraph (g), *Office of Health Affairs (HFA5)* in its entirety and insert a new paragraph (g), *Office of Health Affairs (HFA5)* reading as follows:

(g) *Office of Health Affairs (HFA5).* Advises and assists the Commissioner and other key officials on health issues which have an impact on policy, direction, and long-range program goals.

Coordinates Agency relations with health professional groups and represents the Agency on issues involving technology assessment and coverage decisions regarding FDA-regulated products.

Coordinates the nonregulatory international activities of Agency programs and acts as liaison with the Department of State and international components of other U.S. Government agencies, foreign governments, international organizations, and foreign firms and organizations. Coordinates international travel for Agency personnel. Promotes international scientific collaboration through Pub. L. 480 and other related statutes.

Develops Agency policy and coordinates Agency activities under the Drug Price Competition and Patent Term Restoration Act of 1984.

Coordinates Agency international drug scheduling programs for the Department of Health and Human Services through the Office of International Health. Represents the Agency in deliberations at the World Health Organization and the Commission on Narcotic Drugs.

Conducts informal hearings; provides medical/scientific review of hearing requests and of proposed Commissioner's decisions following initial decisions by a public board of inquiry or by the Administrative Law Judge after formal evidentiary hearings.

Coordnates Agency policies related to the protection of human subjects of research, including institutional review and ethical considerations.

Develops Agency policy and guidelines concerning medical research, training, and fellowship activities; provides for the continuing appraisal of these activities.

Evaluates the adequacy of medical resources available to the Agency.

Evaluates medical research results originating from other Government agencies and private institutions for potential Agency use.

Dated: November 28, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 88-28253 Filed 12-7-88; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees; Biological Response Modifiers Advisory Committee

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nine voting members to serve on the Biological Response Modifiers Advisory Committee in FDA's Center for Biologics Evaluation and Research. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the establishment of this committee.

DATE: Nominations should be received on or before February 6, 1989.

ADDRESS: All nominations for membership to Jack Gertzog (address below).

FOR FURTHER INFORMATION CONTACT: Jack Gertzog, Advisors and Consultants Staff (HFD-9), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nine voting members on the Biological Response Modifiers Advisory Committee. The function of the committee is to review and evaluate data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases. The committee will also consider the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and advise the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Commissioner of Food and Drugs of its findings.

Persons nominated for membership shall have adequately diversified experience appropriate to the work of the committee in such fields as biological response modifiers (cytokines and lymphokines; more specifically, interleukins, interferons, cell stimulating factors, and other growth and differentiating biological factors, tumor necrosis factor, and other anti-proliferative biological agents), immunology, virology, molecular biology, deoxyribonucleic acid (DNA) technology, infectious diseases, viral oncology, cytokine biology, and other related specialties. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but should include experience in two or more medical or bioscientific fields such as medical practice, teaching, clinical trials, basic research, and applied research relevant to the field of activity of the committee. The term of office is 4 years, except that initial appointments will be staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation or possible sources of conflict of interest.

FDA has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: December 1, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-28277 Filed 12-7-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88G-0377]

Grindsted Products; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 8G0339) has been filed on behalf of Grindsted Products, Inc., proposing to affirm that sorbitan tristearate is generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by February 6, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 8G0339), has been filed on behalf of Grindsted Products, Inc., c/o 1150 17th Street NW., Suite 1000, Washington, DC 20036, proposing that sorbitan tristearate be affirmed as GRAS for use as a crystal stabilizer (or "anti-bloom" agent) in nonstandardized chocolate coatings and in confections and frostings as a direct human food ingredient.

The GRAS affirmation petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before February 6, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance sorbitan tristearate is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 25, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-28279 Filed 12-7-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1989:

Name: National Advisory Committee on Rural Health.

Date and Time: January 23-25, 1989, 8:30 a.m.

Place: Ramada Renaissance Hotel, 1001 County Lane Road, Jackson, Mississippi 39221.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care service in rural areas.

Agenda: The meeting will include a welcome and opening remarks; Mississippi Congressional and State legislative perspectives; Congressional legislative update; regulatory update; approval of minutes of last meeting; update on Office of Rural Health Policy activities; meetings of the Committee's Work Groups: Health Services Delivery; Health Professions; and Health Care Financing; and setting priorities for future activities. There will be four brief periods (15 minutes each) for public comment.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835. Agenda Items are subject to change as priorities dictate.

Date: December 5, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-28275 Filed 12-7-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Tribal Services; Availability of Financial Assistance

December 2, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of availability of competitive planning grant funds for Federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs announces the availability of $1,200,000 to continue the planning phase of the Self-Governance Demonstration Project in fiscal year 1989. The ten tribes which received first year planning grants may receive a grant under this announcement provided they demonstrate a need for such a grant. Several other tribes may participate in the program in FY 1989. The grants, awarded for a six-month period, will permit tribes to develop a tribally designed budget as well as a proposal for an agreement based on the tribe's needs and priorities. The proposed agreement will serve as the basis for negotiation between the Bureau and tribe to arrive at a formal agreement under which the tribe may assume control over various Bureau programs, services and functions.

DATES: The closing date for the submission of applications under this announcement is January 9, 1989.

FOR FURTHER INFORMATION CONTACT: James J. Thomas (202) 343-1705 or James M. Abeita (202) 343-5012, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 18th

and C Street NW., Room 2616 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

A. Purpose of the Program

The purpose of the program under this announcement is to continue the Self-Governance project. This will permit the ten first year tribes (see list of first year tribes at end of this section) to develop a proposal reflecting tribally determined priorities and allow several other tribes to do the same. The self-governance project is designed to allow tribes to exercise a greater degree of Self-Determination by assuming more and more control over Bureau programs and services under negotiated agreements. That is, an agreement whereby the tribe determines the type and amount of programs and services to be available to its members rather than be limited to providing the same programs, services or functions as the Bureau would have provided. Funds will be awarded under section 203 of the 1988 Amendments to Pub. L. 93–638, The Indian Self-Determination and Education Assistance Act of 1975, (25 U.S.C. 450).

Grants will be awarded on a competitive basis to those tribes meeting the eligibility criteria and other provisions as contained in this announcement. Applications not meeting all provisions of this announcement will be considered non-responsive and will not be reviewed for funding, (e.g., an application requesting a grant in excess of $50,000 will be considered non-responsive).

First Year Tribes

Hoopa Valley
Jamestown Klallam
Lummi
Quinault
Salish and Kootenai
Mescalero Apache
Mille Lacs
Red Lake
Rosebud
Tlingit-Haida

B. Eligibility Criteria

To receive a grant under this announcement a tribe must:

1. Make a request for a grant by resolution of its governing body which contains: (a) A statement indicating a desire to participate in the Self-Governance project; (b) a commitment to develop a plan for a consolidated contract or other type agreement for direct funding of Bureau programs, services or functions;

2. Have operated two or more self-determination contracts for at least three years without significant or material audit exceptions (material audit exception as used here means audit findings which can result in criminal action against a responsible tribal official or bills of collection being issued against the tribe);

3. Furnish an organization-wide or single audit report as prescribed by Pub. L. 98–502, the Single Audit Act of 1984, for fiscal year 1987 which contains no significant or material audit exceptions (material exceptions here means the same as in item 2, immediately above and audit findings requiring a corrective action plan as prescribed by the Single Audit Act, Pub. L. 98–502);

4. The ten tribes participating in the first year of the project must demonstrate a need for funds to complete a proposed agreement. To demonstrate a need, a tribe must satisfy criterion number 1 above and lack funds to prepare a direct funding proposal.

C. Grant Period

Duration of planning grants awarded under this announcement shall be for a period of six Months or less.

D. Funds Available

The Bureau has an appropriation of $1,200,000 for planning grants in FY 1989. This will allow for the award of at least 24 grants in an amount not to exceed $50,000 for individual grant.

E. Application Process

Applications submitted for funding under this announcement shall be on SF–424 and as otherwise provided by OMB Circular A–102. In addition to a tribal council or governing body resolution, an applicant shall submit a narrative description of grant activities as well as a line budget and a budget justification. In formulating its proposal a tribe may use the following as guides for the effort:

1. *Authorizations.* The governing body of an eligible tribe for the purposes of this announcement is authorized to:

(a) Plan, conduct, consolidate and administer programs, services and functions authorized under the acts of April 16, 1934 (U.S.C. 452; 48 Stat. 596 and Nov. 2, 1921 (25 U.S.C. 13; 42 Stat. 208));

(b) Redesign programs, activities, functions or services and to reallocate funds for such programs, activities or services;

(c) Specify the services to be provided, the functions to be performed,and the respective responsibilities of the tribe and the Bureau under the proposed agreement.

2. *Other Conditions.* In proposing terms for a proposed agreement:

(a) A tribe is entitled to receive funds for any programs, services or functions in an amount equal to the amount the tribe would be eligible to receive under contracts and grants authorized by this Act; including direct program costs and indirect costs and for any funds which are specifically related to the provision by the Bureau of services and benefits to the tribe and its members; provided, however, that funds for trust services to individual Indians are available under any written agreement to the extent that the services would have been provided by the Bureau are provided to individual Indians by the tribe;

(b) A tribe may not receive funds under a self-determination contract for any program, service or function to be provided or performed under a proposed agreement udner this announcement;

(c) A tribe negotiating an agreement as a result of a grant under this annoucement assumes responsibility for the administration of the programs, services, and activities for which funds are provided under the agreement thereby relieving the Secretary of responsibility for any activities covered by the agreement;

(d) A tribe submitting a proposal for an agreement as a deliverable is not obligated to enter an agreement with the Bureau. The proposal merely serves as a starting point for negotiations between the tribe and Bureau for arriving at an agreement;

(e) A tribe may retrocede all or any portion of a direct funding agreement after completing the first year of the agreement;

(f) Participation by a tribe in the grant program or a subsequent self-governance agreement will not (i) affect, modify, diminish or otherwise impair the sovereign immunity from suit enjoyed by the tribe, or (ii) authorize, require or permit the termination of any existing trust responsibility of the United States with respect to the tribe or its members.

F. Application Review and Approval Process

Applications submitted in response to this announcement will be subject to a competitive review and evaluation. An independent review panel, appointed by the Assistant Secretary—Indian Affairs, will evaluate applications against the criteria, and the terms and conditions contained in this announcement including any statutory or regulatory requirements. Incomplete applications or applications which do not conform to this announce will not be reviewed (e.g., an application lacking a current tribal council or governing body resolution). Such applications will be returned to sender and the applicant shall have no

appeal rights. Applications will be reviewed and rated as follows:

1. The goals/objectives of the grant are consistent with the purpose of this announcement;
2. Grant activities are measurable;
3. Grant abjectives are fully and clearly described and reflect the needs of the tribe and its members;
4. The grant objectives can be accomplished with the resources requested and/or available;
5. The grant objectives/objectives are scheduled and indicate who will accomplish each objective;
6. The application contains evidence of capability and qualifications, i.e., resumes and position descriptions of key project staff are part of the application;
7. A line item budget is accompanied by a detailed justification for each expenditure; and
8. Reasonableness of cost will also be considered in the rating process.

G. Submission of Applications

1. The closing date for applications submitted for this announcement is January 9, 1989;
2. Applications may be mailed or hand delivered;
3. Late applications will not be considered for funding;
4. Applications shall be mailed or delivered to: Bureau of Indian Affairs, Attention: Hazel Elbert, Deputy to the Assistant Secretary—Indian Affairs (Tribal Services), 18th and C Street NW., Room 4600 MIB, Washington, DC 20240.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 88-28248 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-920-08-4111-15; WYW-88290]

Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

November 30, 1988.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), petition for reinstatement of oil and gas lease WYW-88290 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW-88290 effective October 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88-28209 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-22-M

[ID-943-09-4212-13; I-25460]

Realty Action; Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Jacob Blaine Wight and Viola J. Wight of Malta, Idaho 83342 for the following-described lands under section 206 of the Federal Policy and Management Act of 1976;

Boise Meridian

T. 14 S., R 30 E.,
Sec. 28, E½, SE¼NW¼.
Comprising 360 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian

T. 15 S., R. 29 E.,
Sec. 24, SW¼, W½SE¼, SE¼SE¼;
Sec. 25, NE¼NE¼, NW¼NW¼.
Comprising 360.00 acres of private land.

The purpose of the exchange was to acquire the non-federal lands for use in grazing, wildlife habitat and recreation. The public interest was well served through completion of this exchange.

The values of the Federal public land and the non-federal land in the exchange were both appraised at $18,000.

Dated: December 2, 1988.

John Davis,

Deputy State Director for Operations.

[FR Doc. 88-28212 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-GG-M

[NM-060-4760-90]

Availability of the Carlsbad Resource Area; Approved Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability

SUMMARY: The Carlsbad Resource Area, Roswell District, New Mexico, announces the availability of the approved Carlsbad Resource Management Plan (RMP) as approved in the Record of Decision (ROD) signed September 30, 1988. This follows several years of work during which a Draft RMP/Environmental Impact Statement (EIS), a Proposed RMP/EIS, and a Revised Proposed RMP was prepared and public input received. The ROD and the Approved RMP complete the planning process.

This Approved RMP provides the framework to guide management decisions during the next 10 to 20 years on the Carlsbad Resource Area's 2.2 million surface acres and 2.7 million subsurface acres. This Approved RMP provides for a combination of resource uses that will protect important environmental values and sensitive resources and at the same time allows the development of resources which produce commercial goods and services. The Approved RMP also describes how the five key resource issues that were identified early in the planning process have been resolved.

These issues were: (1) Land Tenure; (2) Minerals and Energy Resources; (3) Rangeland Resources; (4) Special Management Areas; and (5) Access

In addition to the analysis performed for the Draft and Final EIS portion of the RMP, in compliance with the requirements of the National Environmental Policy Act, further environmental analysis will be conducted for site-specific plans and actions resulting from implementation of the Approved RMP.

ADDRESS: Copies of the Draft RMP/EIS, Proposed RMP/Final EIS, and Revised Proposed RMP, are available for review at, and copies of the ROD and Approved RMP are available from: Area Manager Carlsbad Resource Area, Bureau of Land Management, P.O. Box 1778, Carlsbad, New Mexico 88220.

FOR FURTHER INFORMATION CONTACT: Richard L. Manus, Carlsbad Resource Area Manager at address given above telephone 505/887-6544.

SUPPLEMENTARY INFORMATION: Implementation of the Approved RMP

decisions will continue over a period of years. Priorities will be developed to guide the order of implementation for those decisions that cannot be immediately implemented.

The implementation priorities may be revised based upon new administrative policies, new Departmental directions or Bureau goals.

The ROD formally designates the following areas:

Five (5) Areas of Critical Environmental Concern (ACECs);
1. Chosa Draw Caves Complex—2,200 acres
2. Dark Canyon—1,480 acres
3. Lonesome Ridge—2,990 acres
4. Blue Spring—160 acres
5. Pecos River Canyons Complex—5,190 acres

Five (5) Research Natural Areas (RNAs);
1. Dry Cave—420 acres
2. South Texas Hill Canyon—1,360 acres
3. Yeso Hills—560 acres
4. Little McKittrick Draw—10 acres
5. Pecos River/Canyons Complex—2,320 acres

One (1) Outstanding Natural Area (ONA);
—Lonesome Ridge—2,990 acres

Eight (8) Special Recreation Management Areas (SRMAs);
1. McKittrick Hill Caves Complex—4,500 acres
2. Lost Cave—20 acres
3. Fence Canyon Caves—340 acres
4. Manhole Caves—100 acres
5. Yellowjacket/Lair Cave—260 acres
6. Chosa Draw Caves—720 acres
7. Mudgetts Caves—50 acres
8. Pecos River Corridor—6,000 acres

Seven (7) Cultural Resource Management Areas (CRMA's);
1. Honest Injun Cave—10 acres
2. Laguna Plata Archeological District—3,360 acres
3. Maroon Cliffs Archeological District—11,783 acres
4. Potash Bull Wheel—4 acres
5. Poco Site—51 acres
6. Bear Grass Draw—1,780 acres
7. Pope's Well Historic Site—40 acres

and two (2) Scenic Areas.
1. Dark Canyon—3,220 acres
2. Guadalupe Escarpment—49,570 acres.

The ROD also designates five (5) Right-of-way Corridors, covering 185 miles and encompassing 118,400 acres; several Right-of-way avoidance areas covering 37,361 acres; 159,017 acres as limited fire suppression areas; 220,770 acres for future disposal from Federal ownership; and completes the process to designate the public lands in the resource area as "Open", "Closed", or "Limited" for Off Road Vehicle use.

Of the surface acres in the Resource Area 5,943 acres are "Closed", 153,299 acres are "Limited", and 2,011,506 acres are "Open". Of the open category 56,700 acres are designated as intensive use areas for organized or competitive events.

The ROD has been sent to all recipients of the Revised Proposed RMP. Copies of the Approved RMP are available on request from the Carlsbad Area Manager.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-28211 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-FB-M

[ES-940-09-4520-13, ES-039859, Group 539]

Minnesota; Filing of Plat of Survey of Two Islands

November 29, 1988.

1. On November 22, 1988, the plat representing the survey of two islands in Lake Jessie, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on January 13, 1989.

The tracts shown below describes the islands omitted from the original survey.

Fifth Principal Meridian, Minnesota

T. 131 N., R. 39 W.
Tracts 38 and 39

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

3. Tracts 38 and 39 rise approximately 13 feet and 20 feet respectively, above the ordinary high water mark of Lake Jessie and are composed of glacial till parent material. Tree species consist of ash, basswood, elm, oak and willow.

4. The present water level of the lake compares favorably with that of the original meander line, therefore, the elevation and upland character of the islands along with the depth and width of the channels between the upland and the islands are considered evidence that the islands did exist in 1858, the year Minnesota was admitted into the Union.

5. Tracts 38 and 39 are more than 50% upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). Therefore, the islands are held to be public land.

6. Except for valid existing rights, these islands will not be subject to application, petition, location, or selection under any public law until January 13, 1989.

7. Interested parties protesting the determination that the island(s) is public land of the United States, must present valid proof showing that the island(s) did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Bureau of Land Management, Eastern States Office, prior to 7:30 a.m., January 13, 1989.

8. All inquiries concerning the color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, after January 13, 1989.

9. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-28296 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Seventh Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service publishes the time and place for the seventh regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora and invites the public to make suggestions for agenda items for the meeting.

DATE: Suggestions for agenda items should be communicated to the Service by December 21, 1988.

ADDRESS: Suggestions for agenda items should be sent to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international agreement designed to control international trade in certain listed animal and plant species which are or

may become threatened with extinction. Currently, 96 countries, including the United States are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties to review its implementation, make provisions enabling the Secretariat of CITES to carry out its functions, consider adopting amendments to Appendices I and II to CITES (2 of the 3 lists that contain the names of species and other taxonomic categories controlled by CITES; the third list, Appendix III, may be amended unilaterally), consider any reports presented by the Secretariat, any Party or a committee of the Conference of the Parties, and make recommendations for the improved effectiveness of CITES.

This if the first of a series of notices which together with several public meetings, provide the public with an opportunity to participate in the development of the United States negotiating positions for the seventh regular meeting of the Conference of the Parties to CITES. The Service's regulations governing this process are found in Title 50 of the Code of Federal Regulations §§ 23.31 through 23.39.

Notice of the Seventh Regular Meeting of the Conference of the Parties and Call for Agenda Items

The Service has received notice from the Secretariat of CITES of the convening of the seventh meeting of the Conference of the Parties (COP7) to be held in Lausanne, Switzerland, from October 9–20, 1989. That notice also stated that the provisional agenda for COP7 would be prepared by the Secretariat and the Standing Committee at its 18th meeting early in 1989 and invited Parties to make suggestions for COP7 agenda items before January 1, 1989.

Request for Suggestions for Agenda Items for COP7

The Service invites suggestions for agenda items for COP7. Suggestions should contain sufficient detail to enable the Service to evaluate their appropriateness for inclusion on the agenda for the meeting. Suggestions should be communicated to the Service by December 21, 1988.

Announcement of Public Meeting Concerning the 18th Meeting of the Standing Committee

Based on information received from the Secretariat, the 18th meeting of the Standing Committee will be held in Lausanne, Switzerland from February 27–March 4, 1989. To assist it in its preparations for the meeting, the Service announces that it will hold a public meeting on January 17, 1989, from 1:30 p.m. to 4:00 p.m. in the North Penthouse of the Department of the Interior's Main Building at 18th and C Streets, NW., Washington, DC.

Probable topics that will be discussed at the 18th meeting of the Standing Committee are:

1. The African Elephant Ivory Trade.
2. Secretariat Economy/Efficiency Study.
3. Secretariat Finances.
4. Location of the Secretariat.
5. Alleged Infractions Procedures.
6. Humane Transport.
7. Next Conference of the Parties: Agenda, Procedures.
8. Standing Committee Substitute Members.
9. Preparations for COP7.

Publication of COP7 Provisional Agenda in the Federal Register

Around March 15, 1989, the Service will publish in the Federal Register the Provisional Agenda for COP7. That notice will also announce a public meeting and procedures for written comments on COP7 agenda items. It will also set forth procedures for obtaining observer status for COP7.

This notice was prepared by Arthur Lazarowitz, Office of Management Authority.

Date: December 12, 1988.

Frank Dunkle,

Director.

[FR Doc. 88-28191 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Co. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 9412, Block 318, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on December 1, 1988. Comments must be received on or before December 23, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Emile H. Simoneaux; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: December 1, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-28215 Filed 12-7-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of Plan of Operations and Environmental Assessment, Proposed Exploratory Well; Christopher Oil & Gas, Inc., Big Thicket National Preserve, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Christopher Oil & Gas, Inc., a Plan of Operations for the proposed Exxon Fee No. 1 Exploratory Well, Turkey Creek Unit, Big Thicket National Preserve, Texas.

The Plan of Operations and environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Sant Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Date: November 29, 1988.

Hal Garland,

Acting Regional Director, Southwest Region.

[FR Doc. 88–28260 Filed 12–7–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–306 (Sub-No. 1X)]

Kewash Railroad, Inc.; Abandonment Exemption in Keokuk and Washington Counties, IA

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 14.86-mile line of railroad between milepost 248.79 at Washington, IA, and milepost 263.65 at Keota, IA, in Keokuk and Washington Counties.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic is not moved over the line or may be rerouted; and (3) no formal complaint filed by a user of rail service on the line (or by a State governmental entity acting on behalf of such user) regarding cessation of service over the line is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has ben notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10905(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 7, 1989 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involved environmental issues and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by December 19, 1988. Requests for stays regarding environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 30, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

T. Scott Bannister, 1300 Des Moines Building, Des Moines, IA 50309.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab inito*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 13, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[2] A stay will be routinely issued by the Commission in those proceeding where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

Decided December 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28182 Filed 12–7–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Cooperative Research and Development Project; Industrial Consortium for Research and Education

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), The University of Illinois at Urbana-Champaign has filed a written notification on behalf of itself and the other members of the Industrial Consortium for Research and Education ("ICRE") simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to a cooperative research and development agreement that became effective November 1, 1988 and (2) the nature and objectives of the venture. Notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The current parties to the ICRE are the University of Illinois at Urbana-Champaign (Department of Geology) 245 National History Building, 1301 West Green Street, Urbana, Illinois 61801; Mobil Research and Development Corporation, P.O. Box 819047, Dallas, Texas 75381; and Union Oil Company of California, Room El-183, P.O. Box 76, Brea, California 92621. Under the agreement the parties will engage in cooperative research and development activities to improve the efficiency of parallel process computing, to build models describing the flow of material and energy within the earth's crust, to apply those models to problems of interest, and to train research scientists and students in the field of hydrogeology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–28256 Filed 12–7–88; 8:45 am]

BILLING CODE 4410–01–M

VOL 53 ISS 236 DE 8 1988 UMI

National Cooperative Research Act of 1984; NAHB Research Foundation; Smart House Project

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on November 2, 1988 disclosing (1) the identities of six parties and eleven additional advisors to the Smart House Project,

Parties

Dicon System Ltd.
Dormont Manufacturing Company
Molex Incorporated
Multiplex Technology, Inc.
Northern Telecom, Inc.
SCICON Systems Control, Inc.

Advisors

Allegheny Power Service Corporation
Consumers Gas Company, Ltd.
Lone Star Gas Company
Michigan Consolidated Gas Company
National Joint Apprenticeship & Training Committee
Oklahoma Natural Gas Company
Pacific Gas & Electric Company
Pacific Power & Light Company
Paragon Design Resources S.W., Ltd.
Portland General Electric Company
Union Gas, Ltd.;

(2) the identities of two parties and one advisor that no longer are involved in the Smart House Project,

Parties

Pass & Seymour Incorporated
Systems Controls, Inc.

Advisor

Clark/Van Voorhis Architects, Inc.; and

(3) the revision of the listing or name for certain other parties and one advisor,

Parties

BRIntec Corporation
Canada Wire & Cable Limited
Honeywell Corporation
Shell Chemical Company (Division of Shell Oil Company)
Siemens Energy and Automation, Inc., Circuit Protection Division

Advisor

Delmarva Power & Light Company; and

(4) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of current parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following are current parties and have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.
Bose Corporation
BRIntec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Canada Wire & Cable Limited
Carrier Corporation
Challenger Electrical Equipment Corp.
Dicon System Ltd.
Dukane Corporation
Dormot Manufacturing Company
E.I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer, Ltd.
Gas Research Institute
General Electric Company
Honeywell Corporation
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
Molex Incorporated
Multiplex Technology, Inc.
NAHB Research Foundation, Inc.
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Northern Telecom, Inc.
Onan Corporation
Robertshaw Controls Company
Schlage Lock Company
SCICON Systems Control, Inc.
Scott Instruments Corporation
Scovill Inc.
Shell Chemical Company (Division of Shell Oil Company)
Siemens Energy and Automation, Inc., Circuit Protection Division
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
Allegheny Power Service Corporation
American Electric Power Service Corp.
American Gas Association
Arkla, Inc.
Baltimore Gas & Electric Company
Bell Canada
Bell South Services
Boston Edison Company
Columbia Gas Distribution Companies
Consolidated Natural Gas Company
Consumers Gas Company, Ltd.
Consumers Power Company
Copper Development Association Inc.
Delmarva Power & Light Company
Detroit Edison Company
Duke Power Company
Edison Electric Institute
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Houston Lighting & Power Company
Hydro Quebec
Illinois Consolidated Telephone Co.
International Conference of Building Officials
Kansas Gas & Electric Company
Lone Star Gas Company
Michigan Consolidated Gas Company
Minnesota Blue Flame Gas Asso.
National Association of Home Builders
National Cable Television Association
National Joint Apprenticeship & Training Committee
Northern Illinois Gas
Oklahoma Gas & Electric Company
Oklahoma Natural Gas Company
Ontario Hydro
Pacific Gas & Electric Company
Pacific Power & Light Company
Paragon Design Resource S.W., Ltd.
Portland General Electric Company
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwest Gas
Southwestern Bell Telephone Company
Union Gas, Ltd.
U.S. Dept. of Housing & Urban Dev.
U.S. West
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products.

including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, and April 5, 1988, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 186), on March 21, 1988 (53 FR 9154), and on May 3, 1988 (53 FR 15750), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–28255 Filed 12–7–88; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the OSI/Network Management Forum (the "Forum") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(d) of the Act, the identities of the parties to the venture and general areas of planned activities, are given below.

The voting members to the venture are listed as follows:

Amdahl Corporation, P.O. Box 3470, 1250 East Argues Avenue, Sunnyvale, California 94088–3470

AT&T, 55 Corporate Drive, Room C02–34A05, Bridgewater, New Jersey 08807–6991

British Telecommunications PLC, British Telecom Centre, 81 Newgate Street, London, EC1A 7AJ, England

Digital Communication Associations, Inc., 1000 Alderman Drive, Alpharetta, Georgia 30201–4199

Hewlett-Packard Company, 19420 Homestead Avenue, Cupertino, California 95014

Northern Telecom Inc., 2435 North Central Expressway, Richardson, Texas 75080

STC Telecommunications, Oakleigh Road South, New Southgate, London N11 1HR, England

Telecom Canada, 160 Elgin Street—Floor 23, Ottawa, Ontario K1G 3J4, Canada

UNISYS Networks, 470 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07675

In addition, the following companies are involved as associate members:

Avant-Garde Computing, Inc., 8000 Commerce Parkway, Mt. Laurel, New Jersey 08054–2227

Cable & Wireless PLC, Mercury House, 110–124 Theobalds Road, London WC 188RX, England

Dynatech Communications, 991 Annapolis Way, Woodbridge, Virginia 22191

Hekimian Laboratories, Inc., 9298 Gaither Road, Gaithersburg, Maryland 20877

Infotron Systems Corporation, 9 North Olney Avenue, Cherry Hill, New Jersey 08003

Interlan, Inc., 155 Swanson Road, Boxborough, Massachusetts 01719

Network Equipment Technologies, 400 Penobscot Drive, Redwood City, California 94063

Paradyne Corporation, 8550 Ulmerton Road, P.O. Box 2826, Largo, Florida 34641–3893

Prime Computer, Inc., 500 Old Connecticut Path, Framingham, Massachusetts 01701

Racal-Milgo, P.O. Box 407044, Ft. Lauderdale, Florida 33340–7044

Telwatch, 1241 Hawks Flight Court, El Dorado Hills, California 95630

The purpose of the Forum is to conduct research activities which will enable computer and telecommunications network management products manufactured by different vendors to operate with each other. In conducting its research activities, the Forum will focus on the reference model for Open Systems Interconnection ("OSI") which has been developed by the International Standards Organization (the "ISO"). Forum members will work together to contribute to the further development of those standards in instances where the standards have not yet been fully defined. In areas where the OSI model permits a series of options, Forum members will agree upon specific sets of options within the seven-layer OSI model which will promote product interoperability.

Network management can be broadly defined as a collection of hardware and software capabilities utilized in voice and data networks, which enable network service providers and users to identify, manage and control system reliability, configuration, security, accounting and performance.

Research work within the Forum will take place within various technical working groups. The research activities of these groups will include: (a) Identifying the current status of existing and draft network management standards produced by recognized international standards organizations such as the ISO, (b) generating interim technical specifications, using existing network management standards as a base, to achieve and demonstrate equipment interoperability, (c) developing and publishing documentation that will describe technical specification implementation methodologies and techniques, and (d) reexamining the interim technical specifications in light of further work conducted within standards bodies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–28257 Filed 12–7–88; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88–101)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATE: Comments are requested by January 9, 1989. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paper Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Philip D. Waller, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Paperwork Reduction Project (2700–0051), OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: NASA FAR Supplement, Part 18–23, Environment, Conservation, and Occupational Safety.
OMB Number: 2700–0051.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
No. of Respondents: 375.
Annual Responses: 750.
Annual Burden Hours: 30,000.
Abstract-Need/Uses: Where unique facility safety or health requirements exist, including hazardous deliverables or operations, suitable contractor's safety and health plans are required as are accident reports.

November 29, 1988.

Philip D. Waller,
Director, General Management Division.

[FR Doc. 88–28187; Filed 12–07–88; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before January 9, 1989.

ADDRESSES: Send comments to Ms. Ingrid Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0249 and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0249 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New Forms

Title: Organizational Survey.
Form Number: Not Applicable.
Frequency of Collection: One Time only.
Respondents: Nonprofit organizations and groups.
Use: Application for funding.
Estimated Number of Respondents: 30.
Frequency of Response: One Time only.
Estimated Hours for Respondents to Provide Information: .25 per respondent.
Estimated Total Annual Reporting and Recording Burden: 7.5 hours.

Susan H. Metts,
Assistant Chairman for Administration.

[FR Doc. 88–28240 Filed 12–7–88; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–603–CP/OL; ASLBP No. 88–570–01–CP/OL]

All Chemical Isotope Enrichment, Inc., AlChemIE Facility-1 CPDF; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *All Chemical Isotope Enrichment, Inc.* (AlChemIE Facility-1 CPDF), Docket No. 50–603–CP/OL, is hereby reconstituted by appointing Administrative Judge Frederick J. Shon in place of Administrative Judge Emmeth A. Luebke, who is unavailable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Morton B. Margulies, Chairman, Oscar H. Paris, Frederick J. Shon.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

B. Paul Cotter, Jr.,
Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 1st day of December 1988.

[FR Doc. 88–28264 Filed 12–7–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–604–CP; ASLBP No. 88–571–01–CP]

All Chemical Isotope Enrichment, Inc., AlChemIE Facility-2 Oliver Springs; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *All Chemical Isotope Enrichment, Inc.* (AlChemIE Facility-Oliver Springs),

Docket No. 50-604-CP, is hereby reconstituted by appointing Administrative Judge Frederick J. Shon in place of Administrative Judge Emmeth A. Luebke, who is unavailable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Morton B. Margulies, Chairman, Oscar H. Paris, Frederick J. Shon.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 1st day of December 1988.

[FR Doc. 88-28265 Filed 12-7-88; 8:45 am]

BILLING CODE 7590-01-M

All Chemical Isotope Enrichment, Inc. (AlChemIE Facility-1 CPDF) and All Chemical Isotope Enrichment, Inc. (AlChemIE Facility-2 Oliver Springs); Hearing

[Docket No. 50-603-CP/OL (ASLBP No. 88-570-01-CP/OL; Docket No. 50-604-CP (ASLBP No. 88-571-01-CP)]

December 1, 1988.

Before Administration Judges: Morton B. Margulies, Chairman, Oscar H. Paris, Frederick J. Shon.

Notice is hereby given that the hearing to be held in the captioned construction permit application proceedings on December 21, 1988, at 9:30 a.m., local time, at the University of Tennessee, College of Law Moot Courtroom, 1505 West Cumberland Avenue, Knoxville, Tennessee is cancelled and is rescheduled to commence on January 4, 1989 at the same time and location.

Persons will be permitted to make limited appearance statements at the session as authorized by 10 CFR 2.715(a).

It is so ordered.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 88-28261 Filed 12-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-53 and DPR-69, issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would (1) modify the current requirement of Technical Specification (TS) 6.2.2.g that the General Supervisor—Nuclear Operations (GS-NO) shall hold a senior reactor operator (SRO) license to a new requirement that the GS-NO shall hold or shall have held an SRO license at Calvert Cliffs; (2) add a new requirement to TS 6.2.2.g to require that the Assistant General Supervisor—Nuclear Operations shall hold an SRO license.

The proposed change to the SRO license requirement for the GS-NO would collaterally effect the qualifications required for the members of the Plant Operations and Safety Review Committee (POSRC). Currently, the POSRC includes a member, the GS-NO, with an active SRO license. Through modifying the SRO license requirement for the GS-NO, the POSRC will no longer contain any members that are required to maintain an SRO license.

This proposed TS revision is in response to the licensee's application for amendments dated March 15, 1988 as modified on December 2, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 9, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may

be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D.A. Brune, Jr., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 15, 1988, as modifed on December 2, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 5th day of December 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 88–28266 Filed 12–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co.; Modified Consideration of Issuance of Amendments To Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–53 and DPR–69, issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments were originally published in the Federal Register (53 FR 29791) on August 8, 1988 as a "Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing." Subsequently on October 25, 1988, the licensee requested a modification to the proposed amendment of Technical Specification 5.6.2, "Criticality-New Fuel." Currently, TS 5.6.2 requires that k_{eff} will not exceed 0.98 when the fuel is in place and various densities of unborated water are assumed including agueous foam moderation. The proposed modification would reduce the maximum k_{eff} limits for TS 5.6.2 from 0.98 to 0.95 and, in addition, would add the full flood condition to the various densities of unborated water conditions that are assumed in determining k_{eff}.

This proposed TS revision is in response to the licensee's application for amendments dated June 9, 1988 as modified on October 25, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 9, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be effected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the

above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D.A. Brune, Jr., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 9, 1988, as modified on October 25, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 5th day of December, 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects I/II.

[FR Doc. 88-28267 Filed 12-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-4 and 50-251-OLA-4 (P/T Limits); ASLBP No. 89-584-01-OLA]

Florida Power and Light Co.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Florida Power and Light Company, Turkey Point Plant, Unit Nos. 3 and 4, Facility Operating Licenses Nos. DPR-31 and DPR-41.

This Board is being established pursuant to a notice published by the Commission on October 19, 1988 in the **Federal Register** (53 FR 40981 and 10988) entitled, "Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations." The proposed amendments would revise section 3.1.2 of the Technical Specifications by incorporating modified pressure and temperature (P/T) limits for the Reactor Coolant System (RCS) and pressurizer.

The Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, 5Washington, DC 20555.

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Jerry Harbour, Atomic Safety and Licensing Board Panel, 5U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 30th day of November 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-28262 Filed 12-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Consideration of Issuance of Amendment To Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station in Lincoln County, Maine.

The proposed amendment would modify Technical Specification 1.1, "Fuel Storage." Technical Specification 1.1 describes and defines those aspects of fuel storage which relate to the prevention of criticality in the fuel storage facility. The proposed amendment changes specification D from "Spent fuel shipping casks shall not be lifted over the spent fuel storage pool," to "Spent fuel shipping casks shall not be lifted over the spent fuel storage pool until all irradiated fuel within 10 rows of the cask laydown area has cooled a minimum of 60 days."

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 9, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

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the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission' Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Directorate I–3 (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.A. Ritsher, Ropes and Gray, 255 Franklin Street, Boston, Massachusetts 02210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomtic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 1, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Wiscasset Library, High St., P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 2nd day of December 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28268 Filed 12–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to Steam and Feedwater Rupture Control System Instrumentation. Specifically, this amendment would revise Table 3.3–11, Section 3.3.2.2, Steam and Feedwater Rupture Control System (SFRCS) Instrumentation, to permit bypass of Functional Unit 1, Main Steam Pressure Low Instrument Channel, when steam pressure is below 700 psig vice 650 psig. The amendment also would change the main steam line pressure for automatic removal of the bypass to 750 psig from 650 psig.

The Need for the Proposed Action

With the present block-permissive value of 650 psig, the nominal pressure margin to the field setpoint for low-pressure SFRCS trip is only 38 psig. This small margin combined with instrument, inaccuracy, setability, and drift creates the possibility of an inadvertent and spurious SFRCS trip during plant cooldowns. Additionally, the arrangement of the instrumentation used for SFRCS low-pressure trip and that used for the block-permissive is such that the plant operators must maintain approximately the same pressure in both steam generators during cooldown, otherwise the steam generator with the lower pressure could experience a low-pressure trip before the block-permissive for the other steam generator is established.

The proposed changes are needed to reduce the potential for unnecessary isolation of a steam generator and challenge to the auxiliary feedwater system during plant cooldowns or startups by reducing the possibility of an inadvertent or spurious SFRCS trip on low main steam line pressure.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that neither the probability of accidents nor the post-accident radiological releases would be greater than previously determined. The proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological

environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 12, 1988 (53 FR 16920). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would only result in retaining the present potential for unnecessary isolation of a steam generator and challenge to an engineered safety feature.

Alternatives Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies for Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 29, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 2nd day of December 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate III–3, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulations.

[FR Doc. 88–28269 Filed 12–7–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Mangement and Budget

Agency Clearance Office—Kenneth Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

New, Form 5, File No. 270–323
Rev., Form 4, File No. 270–125
Rev., Form 3, File No. 270–126

Notice is hereby given that pursuant to the Paperwoek Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval amendments to Forms 3 and 4, as well as a new Form 5, which will restructure the manner in which trades by insiders are reported. The amendments should reduce the number of filings on Form 4, which is a report of changes in beneficial ownership. With respect to Form 3 currently approximately 13,265 respondents are effected and an estimated 2.5 burden hours are required per response. Currently 113,846 Forms 4 are filed annually at an estimated 2.5 burden hours per response. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0104, 0287, and 00XX), Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

November 29, 1988.

[FR Doc. 88–28203 Filed 12–7–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26334; File No. SR–PSE–88–14]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Revocation of a Market Maker Letter of Guarantee

On October 3, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change which provides that a Letter of Guarantee [3] is not[4] considered revoked until a final written notice of revocation is filed with the Exchange, and which adds a new Commentary providing that a market maker subject to an interim notice of revocation may effect only closing transactions in its market maker account.

The proposed rule change was noticed in Securities Exchange Act Release No. 26197 (October 18, 1988), 53 FR 43064 (October 25, 1988). No comments were received on the proposed rule change. On November 17, 1988, the Exchange filed clarifying amendments to the proposal.

The purpose of the proposal is to specify the obligations of a market maker who is subject to a written interim notice of revocation of a Letter of Guarantee with respect to open positions in the market maker account. Exchange Rule VI, section 77, is amended to reflect that a Letter of Guarantee is not considered revoked until a final written notice of revocation, as opposed to an interim notice of revocation, is filed with the Exchange. Additionally, Commentary .01, as amended, provides that a market maker [4] who is subject to an interim

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

[3] A Letter of Guarantee, issued by a clearing member and approved by the Options Clearing Corporation and the Exchange, must be in effect before a market maker can effect transactions on the floor of the Exchange.

[4] The amendment filed on November 17 (the "November amendment") replaced the term "individual" with "market maker" to make clear that only market makers can be subject to notices of revocation.

notice of revocation may effect only closing transactions in the market maker account during the period between the effective date of a written interim notice of revocation and the effective date of the final written notice of revocation. The November amendment to the proposed rule change also deleted language in the Commentary which implied that a market maker subject to an interim notice of revocation would have ceased to be a member of the Exchange. In fact, the interim notice of revocation was designed to permit the clearing firm to guarantee a market maker's closing transactions during the period between the time when the market maker ceased trading, *e.g.*, because of losses in excess of net capital requirements, and when he ceased to be a member of the Exchange.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[6] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will protect investors and the public interest by setting out a market maker's obligation to effect only closing transactions when subject to an interim notice of revocation. The Commission believes the added certainty of the clearing firm guarantee during this period will facilitate transactions, enabling the market maker to close out Open positions in the market maker account in an orderly fashion. In addition, the clarification that a Letter of Guarantee is not considered revoked until a written notice is filed with the Exchange will provide more guidance and certainty to members as to the procedures for such revocation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PSE–88–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[5] Of course, the market maker might not terminate his Exchange membership. In either case, the interim notice of revocation enables him to wind up his market making activities. If the market maker has terminated his membership, he could not effect even closing transactions; the clearing firm would close out open positions in the market maker account.

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1986).

Dated: December 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28283 Filed 12–7–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 28, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Sun Exploration and Production Company
Common Stock, $1.00 Par Value (File No. 7–4037)
Beckman Instruments, Inc.
Common Stock, $.10 Par Value (File No. 7–4038)
First Union Corporation
Common Stock, $3.33⅓ Par Value (File No. 7–4039)
The Jepson Corporation
Common Stock, $0.01 Par Value (File No. 7–4040)
Coles Myer, Ltd.
American Depositary Shares (File No. 7–4041)
Compumat, Inc.
Common Stock, $.01 Par Value (File No. 7–4042)
The Gitano Group, Inc.
Common Stock, $.10 Par Value (File No. 7–4043)
Huntway Partners, L.P.
Preference Units (File No. 7–4044)
CP National Corporation
Common Stock, $2.50 Par Value (File No. 7–4045)
Cincinnati Bell Inc.
Common Stock, $1 Par Value (File No. 7–4046)
Daxor Corporation
Common Stock, $0.01 Par Value (File No. 7–4047)
IGI, Inc.
Common Stock, $0.01 Par Value (File No. 7–4048)
Shaw Industries, Inc.
Common Stock, No Par Value (File No. 7–4049)
Kemper Municipal Income Trust
Common Shares, $.01 Par Value (File No. 7–4050)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secetary.

[FR Doc. 88–28207 Filed 12–7–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16667; 812–7163]

ABT Growth and Income Trust et al.; Application

December 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: ABT Growth and Income Trust, ABT Utility Income Fund, Inc., ABT Investment Series, Inc., and the Southern Master Trust (together, the "Load Funds"), ABT Money Market Series, Inc. (the "No-Load Fund", and together with the Load Funds, the "Funds", and individually, a "Fund"), Palm Beach Capital Management, Ltd. ("PBCM"), CKW Financial Services, Inc. ("CKW"), and each future investment company or additional portfolio of an existing Fund that has a sales load structure and exchange program substantially identical to the existing Funds and for which PBCM or CKW (or any of their respective subsidiaries or affiliates) serve as investment adviser, subinvestment adviser or administrator, or as distributor, respectively, of such investment companies (the "Additional Funds").

Relevant 1940 Act Section: Order requested under section 11(a).

Summary of Application: Applicants seek an order to permit exchanges of shares among the Funds on a basis

described herein that may be at other than their respective net asset values at the time of the exchange.

Filing Date: The application was filed on October 26, 1988, and a letter, dated November 29, 1988, was filed as an exhibit thereto.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants c/o Palm Beach Capital Management, Ltd., 205 Royal Palm Way, Palm Beach, Florida 33480, Attention: Timothy W. Cox, Esquire.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3026 or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Fund is an open-end management investment company registered under the 1940 Act. CKW, a registered broker-dealer, serves or is expected to serve as the distributor of the shares of each Fund. PBCM, a registered investment adviser, serves as investment adviser of each Fund.

2. Shares of the No-Load Fund are sold at their relative net asset value without a sales charge. Shares of each of the Load Funds are offered at their relative net asset value, plus a maximum sales load of 4.75% of the public offering price per share, except for shares of the Southern Master Trust which are offered with a maximum sales load of 4.50% of the public offering price per share. As set forth in the prospectuses of the Load Funds, all sales charges are subject to reduction depending on the size of the investment.

3. Applicants seek the flexibility to allow shareholders of any No-Load Fund or any Load Fund to exchange all or a portion of their shares (including shares acquired through the reinvestment of dividends and capital gains distributions) for shares of certain other Funds for which the Distributor serves as principal underwriter as specified herein. Any sales load charged with respect to an acquired security will be a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of any sales load previously paid on the exchanged security. No redemption fee will be imposed with respect to the exchanged security.

4. Applicants seek the ability to permit the following exchange offers between Funds: (i) Shares of a Load Fund may be exchanged for shares of another Load Fund on the basis of relative net asset value without the payment of a sales load, except that if the sales load applicable to the shares of the Load Fund being acquired in the exchange exceeds the maximum sales load that could have been imposed in connection with the purchase of the shares being surrendered in the exchange (at the time such shares were acquired), without giving effect to any applicable reduction in sales loads, the difference will be deducted as an additional sales load and will be paid to the Distributor; (ii) shares of a No-Load Fund may be exchanged for shares of another No-Load Fund on the basis of relative net asset value without the payment of a sales load; (iii) shares of a Load Fund may be exchanged for shares of a No-Load Fund on the basis of relative net asset value without the payment of a sales load; and (iv) shares of a No-Load Fund may be exchanged for shares of any Load Fund subject to the sales load normally charged by the Load Fund (unless the investment in those shares was previously subject to a sales load by one of the Load Funds or was acquired by dividend or distribution reinvestment in a Load Fund).

5. In the event that a sales charge is imposed on an exchange, any right of accumulation as described in the Fund's prospectus would be considered in determining the sales charge applicable to the exchange. If a shareholder has executed a Letter of Intent whereby he immediately qualifies for a reduced sales charge upon the purchase of shares of a Load Fund and effects an exchange prior to completing the Letter of Intent, his account will be charged an appropriate sales charge prior to the exchange, taking into account the terms and conditions of any Letter of Intent then in effect. Also, each exchange will be subject to the minimum investment requirements of the particular Fund's shares that are to be acquired in the exchange.

6. Any shares exchanged that were acquired through reinvestment of dividends and capital gain distributions will be deemed to have been sold with a sales load, if any, equal to the sales load, if any, previously paid on the shares on which the dividend was paid or distribution made. Moreover, where a shareholder exchanges less than all of his shares of a particular Fund, the shares upon which the highest sales load was previously paid will be deemed to be exchanged first.

7. Funds reserve the right to impose a nominal administrative fee (in an amount not exceeding $5.00 per exchange or such greater amount as the SEC or its staff may permit), applied uniformly to all shareholders. The amount of any administrative fee imposed on an exchange will be disclosed in each Fund's prospectus and any sales literature that mentions the existence of the exchange privilege. Also, the existence of the administrative fee will be disclosed in any advertising that mentions the existence of the exchange privilege.

Applicants' Legal Analysis

1. Applicants submit that the exemption requested is appropriate and in the public interest, and is consistent with the policies underlying the provisions of the 1940 Act. Applicants submit that the purpose of the proposed exchange privilege between Funds is (i) to remove any ambiguity concerning Applicant's ability to offer or exchange Fund shares in the manner described above, and (ii) to permit a shareholder of any Fund in the ABT family of funds (all funds for which PBCM serves as adviser) to exchange, in a simple transaction, his Fund shares for shares of any other Fund on a fair and equitable basis when market, tax considerations or changes in the shareholder's investment objectives warrant such an exchange. Such exchange privilege will facilitate an investor's desire to hold shares of a particular Fund that offers objectives and policies best suited to his current goals without delay or unnecessary expense.

2. Applicants submit that if exchanges between Funds were always made at their relative net asset values, the distribution system of the Load Funds

would be disrupted because an investor could easily avoid the sales charge by acquiring No-Load Fund shares and immediately exchanging the shares so acquired for Load Fund shares. The offers of exchange proposed by the Applicants would avoid this problem, would be equitable to all shareholders and would benefit exchanging shareholders by crediting them for sales charges previously paid. CKW has established sufficient internal review procedures to ensure that exchanges are made at the request of investors and not for the brokers' personal gain and that it is actively monitoring customer complaints and will continue to be alert to the possible abuses that might occur regarding the exchange privilege.

3. Applicants submit that the proposed exchanges would be consistent with proposed Rule 11a–3 under the 1940 Act.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. Any administrative fee or any scheduled variation thereof will be uniformly applied to all offerees of the class specified.

2. The exchange privilege among Funds, as well as any administrative fee, will comply with the requirements of revised proposed rule 11a–3 if and to the extent the Rule is adopted.

3. Shareholders of each Fund will be notified of any administrative fee that may be imposed on an exchange transaction by means of each Fund's prospectus and in other communications, including sales literature or advertising that describes the exchange program.

4. Shareholders of each Fund will be notified of the Fund's exchange program by means of the particular Fund's prospectus and in other communications, including sales literature or advertising.

5. Shareholders of each Fund will be notified by means of the particular Fund's prospectus and in sales literature and advertising that discusses the exchange privilege of the fact that the Fund reserves the right to modify or terminate its exchange privilege.

6. Shareholders will be notified in writing at least 60 days prior to any modification or termination of a particular Fund's exchange privilege, except in the case of a reduction or elimination or any administrative fee or sales load in which case notice shall not be required; provided, however, that the temporary cessation of the sale of Fund shares under extraordinary circumstances such as when the Fund is unable to invest effectively amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of Fund shares pursuant to section 22(e) of the 1940 Act and the rules and regulations thereunder shall not be considered a modification or termination of the particular Fund's exchange privilege.

7. Applicants undertake to obtain an amended order from the SEC prior to any modification (*i.e.*, manner, frequency or basis) of a Fund's exchange privilege in a manner not described in the application; provided, however, that an amended order is not required in order (i) to terminate a Fund's exchange privilege, (ii) to impose a nominal administrative fee ($5.00 or less or such greater amount as the SEC or the staff may permit) or (iii) to reduce any such administrative fee imposed.

8. Applicants acknowledge that any order issued prusuant to this application is prospective in nature and, therefore, Applicants will not rely on any such exemptive order prior to its issuance as authority for any exchanges which occurred prior to the date of the order.

9. Reductions in the sales load of any of the Load Funds will be in accordance with the provisions of Rule 22d–1 under the 1940 Act.

10. Any Additional Funds sold with a sales load that offer an exchange privilege and that seek to utilize the exemption provided hereby will have sales load structures and exchange privileges substantially identical to one or more of the Funds included herein and will be subject to the representations and conditions included herein.

For the Commission, by the Division of Investment Mangement, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28199 Filed 12–7–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–18655]

Application and Opportunity for Hearing; Centex Acceptance Corp.

Notice is hereby given that Centex Acceptance Corporation ("Company") has filed an application (the "Application"), pursuant to section 310(b)(1)(ii) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commisson (the "Commission") that the trusteeship of The First National Bank of Chicago ("First National") under an indenture dated as of April 1, 1983 ("April Indenture"), as supplemented as of May 1, 1983, July 12, 1983, September 17, 1985, and August 1, 1987 between the Company and First National which was heretofore qualified under the Act, and as the proposed successor trustee under an indenture dated as of October 3, 1983 ("October Indenture") (supplemented as of December 8, 1983, January 16, 1984, July 11, 1984, March 29, 1985, September 15, 1985, and December 20, 1985), as amended and restated in its entirety as of September 24, 1986, supplemented as of November 26, 1986 and September 1, 1988 between the Company and RepublicBank Dallas, National Association ("RepublicBank") pursuant to which NCNB Texas National Bank ("NCNB"), as successor to RepublicBank is currently Trustee, which was heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary, in the public interest or for the protection of investors, to disqualify First National from acting as trustee under both of such indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall, within 90 days of ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of such subsection (1), there may be excluded from the operation of section 310(b)(1) any indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under the qualified indentures is not so likely to involve a material conflict of interest as to make it necessary, in the public interest or for the protection of investors, to disqualify such trustee from acting as trustee under any such indentures.

The Company has alleged in the Application that:

1. Pursuant to the April Indenture, the Company has issued $165,477,000 aggregate principal amount of its GNMA-Collateralized Bonds ("Bonds"), Series A, B, G, P, Q, and R ("April Series"), respectively.

2. Pursuant to the October Indenture, the Company has issued $1,449,225,000

aggregate principal amount of its GNMA-Collateralized Bonds ("Bonds"), Series D, E, F, H, I, J, K, L, M, N, and O ("October Series"), respectively. NCNB, as successor to RepublicBank, is currently the Trustee.

3. The Bonds were registered for sale pursuant to Form S–3 Registration Statements under the Securities Act of 1933, as amended. Both of such Indentures and the trustees thereunder have been qualified under the Act.

4. Each Series of Bonds has been secured by a pledge and assignment to the independent trustee under the related Indenture of a separate and independent collateral package (a "Trust Estate") consisting of (i) GNMA Certificates, together with the payments to be received thereon, (ii) one or more accounts or funds maintained to receive and hold payments of principal and interest made on such GNMA Certificates pending distribution to Bondholders or, in certain instances meeting the applicable requirements of the rating agency or agencies rating the Bonds of such Series and specified in such Indenture, Company, (iii) if any of the GNMA Certificates pledged to secure such Series of Bonds are graduated payment GNMA Certificates, one or more reserve funds in the form of cash, a standby letter of credit or certain high quality eligible investments, and (iv) if required by the rating agency or agencies rating the Bonds of such Series, one or more reserve funds in the form of cash or a standby letter of credit.

5. The Indentures contain the provisions required by section 310(b) of the Act.

6. The Company intends to continue issuing from time to time pursuant to the Indentures new series of Bonds, in addition to the previously issued and currently outstanding Series of Bonds referenced above. Each such new series of Bonds will be issued on the same basis as described above and in the Application.

7. The Company intends to appoint First National as Trustee under the October Indenture.

8. As referenced above, the Bonds issued and to be issued by the Company under each Indenture are or will be secured by wholly separate and distinct pools of collateral so that, should First National have occasion to proceed against the trust assets or the security with respect to a particular Series of Bonds issued under either Indenture, such action would not effect the collateral, or the use of the collateral, with respect to any other Series of Bonds issued under the other Indenture or prejudice the rights of any of the holders of the Bonds. The proposal that First National serve as trustee under both Indentures is analagous to the situation contemplated by section 310(b)(1)(C) of the Act permitting the same person to act as trustee under two or more Indentures that are secured by wholly separate and distinct parcels of real estate.

9. The Company is not in default in any respect under the Indentures.

10. The company has waived notice of hearing, any right to a hearing on the issues raised by the Application and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the Application, which is a public document on file in the offices of the Commission at the Public Reference Room, File Number 22–18655, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than December 30, 1988, request in writing that a hearing be held on such matter, state the nature of his interest, the reasons for such request, and the issues of law or of fact raised by the Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the Application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28205 Filed 12–7–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC 16668; (812–6939)]

Discover Credit Corp.; Application

December 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption from all provisions of the Investment Company Act of 1940 ("1940 Act").

Applicant: Discover Credit Corp.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions.

Summary of Application: An amendment to an existing order (Investment Company Act Rel. No. 16006, September 28, 1987, "Existing Order") is sought to exempt Applicant from all provisions of the 1940 Act to permit it to operate as a finance subsidiary of Sears, Roebuck and Co. ("Sears") by borrowing money in domestic and foreign debt markets and utilizing the proceeds thereof to (1) lend funds to certain subsidiaries of Sears in exchange for such subsidiaries' unsecured promissory notes (as contemplated by the Existing Order with respect to certain of the subsidiaries), and (2) purchase certain accounts and notes receivable from such subsidiaries (as contemplated by the requested amended order).

Filing Dates: The application was filed on December 22, 1987, and amended on May 18, July 6, August 11, and November 22, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 27, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Discover Credit Corp., 12 Read's Way, New Castle, Delaware 19720.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney, (202) 272–3047, or Brion Thompson, Branch Chief, (202) 272–3016, (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282, (in Maryland, (303) 258–4300).

Applicant's Representations

1. Under the terms of the Existing Order Applicant operates as a wholly-owned subsidiary of Sears and its

primary business is to finance various activities of certain direct and indirect subsidiaries of Sears operating within the Dean Witter Financial Services Group ("DCC Borrowers"). Under the Existing Order, Applicant raises funds for such financing by offering and selling commercial paper notes and other debt securities. Applicant recognizes that because a majority of its assets consist of unsecured promissory notes of the DCC Borrowers that it receives in exchange for the proceeds of its debt offerings lent to such Borrowers, it may be deemed to be an investment company under section 3(a) of the 1940 Act.

2. Applicant now seeks an amendment to the Existing Order that would permit Applicant to use the proceeds of its debt offerings to purchase from the DCC Borrowers and from direct and indirect subsidiaries of Sears within the Coldwell Banker Real Estate Group ("CBREG Borrowers") open credit card accounts receivable generated by the Discover Card and notes receivable generated in connection with loans for consumer purchases of automobiles, boats and recreational vehicles ("Receivables"). Such purchases would be in lieu of or in addition to receiving the unsecured promissory notes of the DCC and CBREG Borrowers. Applicant represents that no such Receivables will be purchased if they have been delinquent (i.e., more than 30 days past due in the payment of any scheduled installment) during the one-year period preceding the date of purchase.

3. Applicant states that the general terms and conditions under which its debt securities are or may be issued have not changed from those contemplated by the Existing Order, and that all protections afforded investors pursuant to the Existing Order will remain essentially the same. In this regard, Applicant points out that the investor protection afforded under the Existing Order based on the Net Worth Maintenance Agreement will remain identical because that agreement will not change in any respect if the requested order is granted. Under the terms of the Net Worth Maintenance Agreement, prior to issuance of any debt securities by Applicant, Sears and Applicant will enter into a contractual agreement which will provide that (i) Sears will continue to hold all legal title to and beneficial interest in all of the outstanding voting stock of Applicant; (ii) Sears will cause Applicant to have a tangible net worth (defined to mean the sum of the capital stock, paid-in capital and retained earnings of Applicant plus subordinated indebtedness of Applicant held by Sears or its subsidiaries after deducting the book value of all intangible assets of Applicant) of at least $1.00 until the retirement of all outstanding debt of, and all outstanding debt guaranteed by, Applicant; (iii) such agreement is for the benefit of the holders of all outstanding debt securities issued or guaranteed by Applicant; (iv) Applicant will, for the benefit of such holders, timely take all necessary action under such agreement to require Sears to perform its obligations thereunder; (v) each holder will have a direct and immediate right of action against Sears to enforce Sears' obligations under such agreement should Applicant fail to take such action; and (vi) such agreement may not be amended in a manner so as to relieve Sears of its obligations thereunder, and may only be amended in ways no less favorable to Applicant and its creditors.

4. Under the Existing Order the DCC Borrowers were required to agree, absent regulatory restrictions, to pay Applicant on borrowings at rates sufficient to maintain Applicant's earnings (before income taxes and fixed charges) at a level of at least 1.25 times Applicant's aggregate interest costs and fixed charges. Applicant states that, in order to provide additional flexibility in setting interest rates with respect to loans to the DCC and CBREG Borrowers, it now wishes ot reserve the right to reduce the minimum ratio of interest income to interest costs and fixed charges (after giving effect to Applicant's earnings from its receivables portfolio) to 1.15 times such costs and charges. Applicant represents that this additional flexibility will have no adverse effect on Applicant's ability to honor its principal and interest obligations to holders of its debt securities, or the ratings afforded Applicant's debt instruments. Applicant states that no reduction of this ratio is presently contemplated.

Applicant's Legal Analysis

1. Applicant argues that the activities contemplated by the requested amended order should not change its status as an entity not intended to be regulated under the 1940 Act, and that granting such order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant submits that the Net Worth Maintenance Agreement, which Sears and Applicant entered into in connection with the Existing Order, provides the same protection to investors regardless of whether Applicant makes loans to, or purchases Receivable from, its affiliated borrowers. Sears' obligation under the Net Worth Maintenance Agreement to maintain Applicant's tangible net worth at not less than $1.00 until the retirement of all Applicant's outstanding debt is independent of any reason that Applicant (or, failing action by Applicant, holders of Applicant's debt securities) would have to make a claim under the Net Worth Maintenance Agreement. The Net Worth Maintenance Agreement would obligate Sears to take appropriate action whether any deficiency in Applicant's tangible net worth might arise from the failure of obligors on Receivables to satisfy their obligations or from the DCC or CBREG Borrowers' failure to satisfy their loan obligations to Applicant. As a result, Applicant concludes that an amendment to the Existing Order permitting the purchase of Receivables will have no impact on the essential protections afforded Applicant's investors under the terms of the Net Worth Maintenance Agreement.

2. Applicant also points out that, in enacting section 3(c)(5)(A) of the 1940 Act, Congress has made the policy determination that issuers primarily engaged in the business of "purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance and services" should not be regulated as investment companies. Applicant states that the open credit card accounts receivable and notes receivable referred to above that may be purchased from the DCC and CBREG Borrowers will be within the parameters of the section 3(c)(5)(A) exclusion. Applicant notes that it would have been unnecessary to obtain the Existing Order if it has been primarily engaged in the business of buying such Receivables. Applicant asserts that if the requested order is not granted, Applicant would be placed in the illogical position of being exempt from the 1940 Act with respect to its investment in the DCC and CBREG Borrowers' unsecured notes under the terms of the Existing Order *or* if it becomes primarily engaged in purchasing Receivables, but not exempt from the 1940 Act if it operates under the Existing Order *and* engages in activities permitted under section 3(c)(5)(A) of the 1940 Act. Because companies primarily purchasing Receivables are expressly excluded from investment company status by Congress, Applicant concludes that its purchases of Receivables from the DCC and CBREG Borrowers should not affect its current exempt status under the Existing Order, and requests

that the Existing Order be amended accordingly. Finally, Applicant acknowledges that any such amended order would not extend to Applicant's activities in the event Applicant becomes primarily engaged in the purchases of Receivables.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28200 Filed 12-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16670; File No. 811-5365]

Freedom Variable Annuity Funds

December 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Freedom Variable Annuity Funds ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on July 22, 1988 and amended on October 28, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Freedom Variable Annuity Funds, One Beacon Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Attorney (202) 272-3017 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On October 16, 1987, the Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-1A. The registration statement has not become effective, and there has been no public offering of any of Applicant's securities.

2. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

3. No distributions have been made in connection with the winding-up of Applicant affairs.

4. Applicant's assets at the time of filing this application consist of $50 in cash received at the time of the sale of shares of each of Applicant's five series to Applicant's sole security-holder, Tucker Anthony Management Corporation. Such assets have been retained in order to maintain Applicant's legal existence. Such assets have not and will not be invested in any securities.

5. Applicant has no debts or other liabilities and is not a party to any litigation or administrative proceedings.

6. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28201 Filed 12-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16671; 811-4668]

MarketAmerica Trust; Application

December 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: MarketAmerica Trust.

Relevant 1940 Act Sections: Order requested under section 8(f) and Rule 8f-1.

Summary of Application: Application for an order declaring that Applicant has ceased to be an investment company.

Filing Date: The application was filed on August 10, 1988, and amended on November 14, 1988. Supplemental letters to the application were filed on November 23, 1988 and November 30, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Metro Park III, 399 Thornall Street, Edison, New Jersey 08837.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, (202) 272-3022 or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Massachusetts business trust on April 22, 1986, and registered under the Act as an open-end management investment company on May 9, 1986. Applicant consisted of five separate portfolios: Bond MarketAmerica Fund ("BMA Fund"), High Yield Equity Fund ("High Yield Fund"), OTC MarketAmerica Fund ("OTC Fund"), Stock MarketAmerica Fund ("SMA Fund"), and Stock MarketAmerica Plus Fund ("SMA Plus Fund"). MarketAmerica Group, Inc. ("MAG") served as Applicant's investment adviser and MarketAmerica Securities, Inc. ("MAS") acted as its principal underwriter.

2. Due to a deterioration in MAG's finances, Applicant's Board of Trustees asked MAG to seek additional financing or make inquiries regarding the availability of a replacement investment adviser. MAG was unable to secure additional financing and on November 20, 1987, Applicant's Board of Trustees voted to suspend all further sales of its

shares. The Board reached an agreement with Colonial Management Associates, Inc. ("CMA") pursuant to which assets of SMA Fund would be transferred to Colonial United States Equity Index Trust ("CUSEIT") in exchange for shares of CUSEIT. No replacement investment adviser was found for the other portfolios. Applicant notified brokers and account executives who had sold shares in these portfolios of its decision to discontinue sales of its shares, who in turn notified existing securityholders.

SMA Plus Fund; BMA Fund

3. The SMA Plus Fund and the BMA Fund never commenced a public offering of their respective shares nor do they propose to make a public offering or engage in business of any kind. Neither of these portfolios has any shareholders, debts or liabilities as of the time of this filing.

OTC Fund; High Yield Fund

4. The OTC Fund and the High Yield Fund both commenced their public offering on May 15, 1987.

5. As of November 20, 1987, the OTC Fund had total assets of $172,955 and net asset value per share of $8.88. The OTC Fund had 37 unaffiliated shareholders who redeemed their shares between November 20, 1987 and March 4, 1988. Affiliated shareholders redeemed their shares thereafter with the final redemption occurring on March 15, 1988. All shares of the OTC Fund were redeemed at a higher net asset value due to an increase in the value of the fund's portfolio securities. As of December 31, 1987, there were 19,357 shares outstanding with a net asset value per share of $9.45. Brokerage fees or commissions paid in connection with the disposition of OTC Fund's portfolio securities totaled $337.

6. As of November 20, 1987, the High Yield Fund had total net assets of $19,854 and a net asset value per share of $10.05. The portfolio consisted only of cash and cash items, such as high quality short-term commercial paper or United States Treasury Bills. The High Yield Fund had only three (3) unaffiliated shareholders who redeemed their shares on January 28 and 29, 1988 at a net asset value of $10.01 per share as next determined for those dates. The only affiliated shareholder redeemed its shares on February 1, 1988 at a next determined net asset value of $10.01. No liquidation expenses were charged to the High Yield Fund (*See* ¶ 10 below). No brokerage fees or commissions were incurred in the sale of the fund's portfolio securities.

7. Applicant represents that the liquidation of the OTC Fund and the High Yield Fund through voluntary shareholder redemptions and the Board of Trustee's decision to discontinue sales of Applicant's shares was in conformity with Applicant's Amended and Restated Declaration of Trust dated July 10, 1986, and applicable Massachusetts laws governing business trusts.

SMA Fund Merger

8. On March 16, 1988, Applicant's Board of Trustees, including those Trustees who were not interested persons of Applicant, approved an Agreement and Plan of Reorganization (the "Plan") on behalf of the SMA Fund under which all SMA Fund Assets would be transferred to CUSEIT, an open-end, diversified investment company, after concluding that the merger of the SMA Fund into CUSEIT was in the best interest of SMA Fund securityholders. A majority of Applicant's securityholders, present in person or by proxy, approved the Plan and transfer of assets at a special meeting held April 22, 1988.

9. Pursuant to the Plan, SMA Fund transferred substantially all its assets to CUSEIT in exchange for shares of beneficial interest in CUSEIT following the close of business April 26, 1988. SMA Fund then distributed the shares received to its shareholders on a pro rata basis. Each shareholder received CUSEIT shares based on the relative net asset value per share of the SMA Fund immediately prior to the exchange. As of the date of the exchange, there were 727,482 SMA Fund shares outstanding with an aggregate net asset value of $13,429,516 and a per share net asset value of $18.45. The CUSEIT shares received have the same voting rights as SMA Fund shares. No brokerage fees were incurred in the transfer of portfolio securities to CUSEIT.

Applicant's Expenses and Legal Status

10. Expenses relating to the liquidation of Applicant and the merger of the SMA Fund and CUSEIT, including legal and accounting fees, printing costs, and administrative expenses, totalled $96,708. Merger-related expenses were allocated between MAG and CMA. Liquidation-related expenses were allocated to MAG. Of these expenses, $29,560 were paid by MAG.

11. Applicant has retained no assets. Applicant has no debts or other liabilities that remained outstanding. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust the beneficiaries of which are securityholders of Applicant.

12. As of this filing, Applicant has no securityholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding up of its affairs. Applicant's status as a Massachusetts business trust has terminated.

13. Applicant represents that it is current on all filings under the Act, including all N-SAR filings for each semi-annual period for which such filing is required.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28202 Filed 12-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24765]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 1, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 27, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company (70–7376)

The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037, a wholly owned subsidiary of Northeast Utilities, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(b), 9(a), 10 and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

By order dated May 18, 1987 (HCAR No. 24393), the Commission approved CL&P's proposal to issue and sell up to 8 million shares of Class A Preferred Stock ($200 million aggregate par value) ("Class A Preferred") in one or more series through December 31, 1988, with either a fixed dividend rate or an adjustable dividend rate. On June 2, 1987, CL&P issued 2 million shares ($50 million aggregate par value) of the Class A Preferred. CL&P now proposes to issue and sell the shares remaining unsold on or before December 31, 1989 and also requests authority to have the option of issuing the Class A Preferred as an auction rated preferred stock ("Auction Rated Stock"), under an exception from the competitive bidding requirements of Rule 50.

The Auction Rated Stock would have dividends established for short, successive periods, normally 49 days, through a bidding process among holders and prospective purchasers. Maximum dividend rates will apply in certain circumstances and will be based on specified percentages that will be determined by WMECO in consultation with the underwriter (currently expected to be no higher than 115% to 250%) of certain defined composite commercial paper rate. CL&P will pay all the auction fees, including the Trust Company fees and expenses, and a depository fee. In all other respects, the transactions as previously approved herein will remain unchanged.

CL&P is seeking an exception to permit it to engage the services of an investment banking firm to offer the Auction Rated Stock through a negotiated public offering, because, in addition to other factors, the auction process itself is essentially a competitive bidding process. CL&P is also requesting preliminary authorization to begin negotiations prior to the issuance of an order so that a selection of a lead underwriter for the Auction Rated Stock can be made. CL&P has stated that this authority is needed because the uniqueness and complexity of an Auction Rated Stock transaction requires that it begin negotiations with the potential underwriter as soon as possible. It may do so.

Columbia Gas System, Inc. et al. (70–7437)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and certain of its subsidiaries, Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Kentucky, Inc. ("Kentucky"), Columbia Gas of New York, Inc. ("New York"), Columbia Gas of Virginia, Inc. ("Virginia"), Columbia Gas of Maryland, Inc., and Lynchburg Gas Company ("Lynchburg"), all located at 200 Civic Center Drive in Columbus, Ohio 43215, and Columbia Gulf Transmission Company, 3805 W. Alabama Avenue, Houston, Texas 77057, Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77027, Columbia Gas Development of Canada Ltd., 639 5th Avenue, SW., Calgary, Alberta, Canada T2P OM9, and Commonwealth Gas Pipeline Corporation ("Pipeline"), Commonwealth Gas Services, Inc. ("Services"), Commonwealth Propane, Inc. ("Propane"), all located at 800 Moorefield Park Drive in Richmond, Virginia 23236, and Columbia Gas System Service Corporation ("Service Co."), Columbia LNG Corporation, Columbia Hydrocarbon Corporation, Columbia Alaskan Gas Transmission Corporation, Columbia Coal Gasification Corporation, The Inland Gas Company, Inc., Tristar Ventures Corporation, all located at 20 Montchanin Road in Wilmington, Delaware 19807, and Columbia Natural Resources, Inc., and Columbia Gas Transmission Corporation, both located at 1700 MacCorkle Avenue, SE, in Charleston, West Virginia 25314 ("Subsidiaries"), have filed a post-effective amendment to the application-declaration in this matter pursuant to sections 6(b), 9, 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By orders in this proceeding dated December 23, 1987 (HCAR No. 24541), January 7, 1988 (HCAR No. 24577), February 4, 1988 (HCAR No. 24571), March 30, 1988 (HCAR No. 24610) and August 30, 1988 (HCAR No. 24706), the Commission approved Columbia's proposals to provide short and long-term financing to certain of the Subsidiaries for the purpose of partially funding their 1988–1989 construction programs and for other corporate purposes, by making short-term open account advances, and through the issuance of, by the Subsidiaries, and the purchase of, by Columbia, installment promissory notes ("Installment Notes") and shares of common stock ("Common").

The Subsidiaries now seek approval to increase the amount of short and long-term financing for the period ending December 31, 1989 as follows:

Company	Previously authorized	Additional required	Total
	($000)	($000)	($000)
Long-Term Debt:			
Kentucky	11,400	1,500	12,900
Virginia	7,200	1,500	8,700
New York	4,500	200	4,700
Pipeline	0	10,800	10,800
Services	8,500	500	9,000
Propane	1,800	800	2,600
Service Co	2,600	1,100	3,700
Common:			
Kentucky	0	3,500	3,500
Virginia	0	3,800	3,800
New York	2,850	700	3,550
Pipeline	0	1,700	1,700
Services	6,000	1,700	7,700
Propane	1,300	700	2,000
Service Co	0	1,000	1,000
Short-Term Debt:			
Commonwealth Pipeline	2,000	4,000	6,000
Service Co	6,000	2,000	8,000

The terms and conditions of the additional Installment Notes, short-term debt and the form of Common will be the same as previously approved by the Commission.

On October 3, 1988, Columbia redeemed all the outstanding shares of its Adjustable Rate Cumulative Preferred Stock Series D, which were used as the basis for setting the interest rate on certain variable rate notes ("Notes") issued by the Subsidiaries to Columbia, and last approved for that purpose on December 31, 1984 (HCAR No. 23560). As a result, there no longer will be a practical means of computing an appropriate rate for such Notes. Therefore, Columbia requests approval of an agreement with the Subsidiaries which issued the Notes to begin, effective December 1, 1988, calculating interest on the Notes at a rate equal to the effective cost to Columbia of borrowings under its $750 million credit Agreement, dates as of October 5, 1988 (HCAR No. 24690, August 5, 1988).

Louisiana Power & Light Company (70–7580)

Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70114, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, Louisiana is currently leasing a portion of the nuclear fuel, including facilities incident to its

use ("Nuclear Fuel"), required for use at its Waterford 3 nuclear generating unit ("Waterford 3") from Bayou Fuel Company ("Bayou") (HCAR Nos. 20564, 22553, and 24444, May 31, 1987, June 28, 1982, and August 21, 1987, respectively). In order to restructure its leasing arrangements, Louisiana now proposes to enter into a Lease Agreement ("Lease") for the Nuclear Fuel with River Fuel Trust #2 ("Trust"). The Trust will be formed under the laws of the State of New York pursuant to a Trust Agreement between a commercial bank as trustor ("Trustor"), Bankers Trust Company, not in its individual capacity, but solely as trustee ("Trustee") and Louisiana, as beneficiary. The Trust will be specifically created for this restructuring by the Trustor.

It is proposed that the Trust will acquire the Nuclear Fuel owned by Bayou along with certain Nuclear Fuel owned by Louisiana. Promptly after such acquisition, Louisiana will terminate its lease agreement with Bayou, and Bayou will terminate its related credit agreements.

Under the terms of the Lease, the Trust will make payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for Waterford 3, or Louisiana will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially will be $122 million at any one time outstanding, although the Trust may make such payments of up to $125 million.

Under the Lease, Louisiana, which may use System Energy Resources, Inc., a subsidiary of MSU, as its agent in this connection, will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession or use thereof. The term of the Lease will be through January 31, 1994, which may be extended for one year by Louisiana giving notice prior to January 1, 1992, and each succeeding January 1 up to 2037, of its desire to so extend the term, and by the Trust's consenting to each such extension by Janaury 31, of the year in which such notice is given. In any event the Lease will terminate no later than January 31, 2039. Authorization is requested for additional extentions of the Lease through January 31, 2039 without seeking further Commission authorization prior to entering such extensions.

Payments under the Lease will be payable quarterly and will include (A) a Quarterly Lease Charge, as defined in the Lease, which will include allocated operational and financing costs of the Trust, and (B) a Burn-Up Charge, as defined, equal to the cost of the Nuclear Fuel consumed while the Nuclear Fuel is in the reactor and producing heat. When the Nuclear Fuel is not in the reactor and producing heat, Louisiana may elect to capitalize Quarterly Lease Charges or daily portions thereof so long as the commitment outstanding under the related Credit Agreement between the Trust and a commercial bank exceeds the sum of (i) the Stipulated Loss Value, as defined in the Lease, of the Nuclear Fuel, (ii) the amount of such charges and (iii) $3 million. Louisiana may consequently, subject to the foregoing limitation, defer rental payments until those times during commercial operation when the Nuclear Fuel is in the reactor and producing heat in the production of electric energy.

Massachusetts Electric Company, et al. (70–7582)

New England Electric System ("NEES"), a registered holding company, and Massachusetts Electric Company ("Mass Electric"), its wholly owned subsidiary, both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43 and 45 thereunder.

NEES proposes, from time to time through December 31, 1990, to make one or more capital contributions to Mass Electric, not to exceed an aggregate of $30 million. The proposed capital contributions, along with the proposed issues of first mortgage bonds (which are the subject of a separate filing with the Commission, S.E.C. File No.70–7409), will permit Mass Electric to raise external funds while maintaining a proper balance of debt and equity.

Mass Electric will apply the funds received from the capital contributions toward the cost of, or the reimbursement of the treasury for, or the payment of short-term borrowings incurred for capitalizable additions and improvements to plant and property.

AEP Generating Company, et al. (70–7584)

AEP Generating Company ("AEP Generating"), and its parent, American Electric Power Company, Inc. ("AEP"), a registered holding company, both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 43, 45 and 50(a)(5) thereunder.

AEP Generating proposes, from time to time through December 31, 1992, (i) to issue and reissue short-term notes ("Notes") pursuant to the Revolving Credit Agreement, as amended by Amendment No. 4 ("Agreement"), in an aggregate principal amount (including Notes heretofore issued) not to exceed $450 million at any time outstanding, and (ii) to issue Notes pursuant to certain term-loan agreements, ("Term Agreements") in an aggregate principal amount not to exceed $600 million, provided that the aggregate principal amount of Notes issued and outstanding under both the Agreement and the Term Agreements shall not exceed $650 million. This authorization is in addition to the authorization to incur short-term indebtedness recently requested in File No. 70–7550.

Under the Agreement, Notes may be issued in an aggregate amount of up to $450 million outstanding at any one time, bearing interest until maturity, at the prime rate of ½ of 1% above the London Interbank Offered Rate ("LIBOR"), at AEP Generating's option. Prime rate borrowings mature on the expiration date of the Agreement, and LIBOR rate borrowings mature in 1, 2, 3 or 6 months. Prime rate borrowings are prepayable. AEP Generating will pay a commitment fee of ⅜ of 1% per annum on the average daily unused amount of the commitment.

The Notes issued under the Term Agreement would bear interest at a fixed, fluctuating or some combination of fixed and fluctuating-rates, and will be outstanding at any one time in an aggregate principal amount of up to $600 million. They will have a term of not less than 9 months nor more than ten years. The actual rate of interest for each Note will be determined by negotiation at the time of issuance, but will not exceed 250 basis points above the yield at the time of issuance of U.S. Treasury obligations that mature on or about the date of maturity for fixed-rate Notes, or 200 basis points above the prime rate for fluctuating-rate Notes. AEP Generating may be required to pay a placement fee to third parties, not to exceed 0.5% of the amount borrowed.

AEP Generating and AEP also propose to execute, issue, deliver, and perform a new Capital Funds Agreement to replace the existing agreement between them. The new Capital Funds Agreement would require AEP to supply or cause to be supplied to AEP Generating amounts of capital (a) sufficient to satisfy certain capitalization ratios required by regulatory authorities, and (b) required by AEP Generating to complete construction of Rockport Generating Station Unit 2 ("Rockport") and to operate both units of Rockport, and (c) to perform its obligations under all loan,

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credit, security, reimbursement, and indemnity agreements, and leases and related documents to which AEP Generating is presently, or at any time may become a party, and all preferred stock held by persons other than AEP. AEP and AEP Generating, are requesting authorization to make any capital contributions required by the New Capital Funds Agreement, and to take such other actions required in order to perform its obligations under such agreement.

Any proceeds realized from the sale of Notes will be used to pay at maturity and to refund long-term debt, to repay unsecured short-term indebtedness, to reimburse AEP Generating's treasury for construction expenditures, to redeem pollution control bonds, and for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28204 Filed 12-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24767]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

December 1, 1988.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the declaration for a complete statement of the proposed transactions summarized below. The declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by December 27, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant declarant at the address specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the declaration, as filed or as amended, may be permitted to become effective.

National Fuel Gas Company, et al. (70-7581)

Notice of Proposal to Issue and Sell Common Stock; Order Authorizing Proxy Solicitation

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, 10112, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(e) of the Act and Rules 50(a)(5), 62 and 65 thereunder.

National proposes to amend its two stock option plans ("Plans"), as last authorized by the Commission on January 16, 1985 (HCAR No. 23575). Several of these amendments are subject to stockholder approval. National proposes to increase the number of shares of its common stock available for option or award under the Plans in the aggregate from 1,100,000 to 1,600,000 shares, and to extend the terms of both plans to December 7, 1998. The Plans have sold or awarded 685,464 shares of common stock under its existing authority so that with the addition of 500,000 shares herein the number of shares of National's common stock available under the Plans over the next 10 years will be 914,536 shares.

National has filed proxy solicitation material, and requests that the effectiveness of its declaration with respect to the solicitation of proxies for voting by its stockholders on the proposal to amend the Plans be accelerated as provided in Rule 62. National proposes to mail the notice of meeting, proxy statement and proxy to its stockholders on or about January 3, 1989, with a specified meeting date of February 16, 1989.

It appearing to the Commission that National's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28208 Filed 12-7-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before January 9, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Disaster Mitigation Measures.

Form No.: 1632.

Frequency: On Occasion.

Description of Respondents: Applicants for home disaster loans that may elect to request additional funds for mitigating measures.

Annual Responses: 16,100.

Annual Burden Hours: 2,688.7.

Title: Disaster Mitigation Measures.

Form No.: 1632.

Frequency: On Occasion.

Description of Respondents: Applicants for home disaster loans that may elect to request additional funds for mitigating measures.

Annual Responses: 12,000.

Annual Burden Hours: 2,004.

William A. Cline,

Chief, Administrative Information Branch.

[FR Doc. 88-28234 Filed 12-7-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2322]

Arkansas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 23, 1988, I find that Hot Spring, Johnson, Lonoke, Pulaski, and Van Buren Counties, in the State of Arkansas, constitute a disaster loan area due to tornadoes and severe storms beginning on November 15, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on January 23, 1989, and for economic injury until the close of business on August 23, 1989, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051; or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Arkansas, Clark, Cleburne, Conway, Dallas, Faulkner, Franklin, Garland, Grant, Jefferson, Logan, Madison, Montgomery, Newton, Perry, Pope, Prairie, Saline, Searcy, Stone, and White, in the State of Arkansas, may be filed until the specified date at this location.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster is 232212 for physical damage and for economic injury the number is 667200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: November 28, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-28235 Filed 12-7-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2324]

Missouri (and Contiguous Counties in the State of Illinois); Declaration of Disaster Loan Area

St. Charles County, in the State of Missouri, constitutes a disaster area as a result of damages from tornadoes which occurred on November 15, 1988. Applications for loans for physical damage may be filed until the close of business on January 30, 1989, and for economic injury until the close of business on August 30, 1989, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051; or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Franklin, Lincoln, St. Louis, and Warren, in the State of Missouri, may be filed until the specified date at the above location, and for Calhoun, Jersey, and Madison Counties in the State of Illinois, may be filed at: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The number assigned to this disaster is 232412 for physical damage and for economic injury the number is 667500 for the State of Missouri and 667600 for the State of Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: November 30, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-28236 Filed 12-7-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2323]

Oklahoma (And Contiguous Counties in the State of Texas); Declaration of Disaster Loan Area

The City of Altus, Oklahoma, Jackson County, constitutes a disaster area as a result of damages from a fire which occurred on November 15, 1988. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on January 30, 1989, and for economic injury as a direct result of this fire until the close of business on August 30, 1989, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051; or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Greer, Harmon, Kiowa, and Tillman, in the State of Oklahoma, and Hardeman and Wilbarger Counties in the State of Texas, may be filed until the specified date at this location.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EILD) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster is 232305 for physical damage and for economic injury the number is 667300 for the State of Oklahoma and 667400 for the State of Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: November 30, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-28237 Filed 12-7-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Cancellation of Public Meeting; Vermont

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Montpelier has cancelled the public meeting scheduled at 10:00 a.m. Wednesday, December 7, 1988, at the Brandon Inn, Brandon, Vermont, to discuss such matters as may be

presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602—802/828–4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 30, 1988.

[FR Doc. 88–28244 Filed 12–7–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02-0524]

First Wall Street SBIC, L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given fo the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.103 (1988)) by First Wall Street SBIC, L. P. 44 Wall Street, New York, New York 1005, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

	Percentage of ownership
General Partner	
First Wall Street Management Co., Inc., 44 Wall Street, New York, NY 10005	8.3
Limited Partners	
J. Morton Davis, D.H. Blair & Co., Inc., 44 Wall Street, New York, NY 10005	50.0
Benjamin Co. 70 South Orange Avenue, Suite 111, Livingston, NJ 07039	16.7
15 Other limited partners none of whom own more than 5 percent	25.0
Investment Advisor	
D.H. Blair Advisors, Inc., 44 Wall Street, New York, NY 10005	

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator of Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Date: December 5, 1988.

[FR Doc. 88–28238 Filed 12–7–88; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02-0521]

F/N Capital Limited Partnership; Issuance of a Small Business Investment Company License

On October 13, 1988, a notice was published in the **Federal Register** (53FR40161) stating that an application has been filed by F/N Capital Limited Partnership, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business November 12, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/20–0521 on November 29, 1988, to F/N Capital Limited Partnership to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: December 5, 1988.

[FR Doc. 88–28239 Filed 12–7–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1087]

Extension of the Restrictions on the Use of the United States Passport for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), the use of the United States Passport for travel to, in, or through Libya was restricted. These restrictions have subsequently been extended on November 29, 1982 (47 FR 54888), November 29, 1983 (48 FR 55529), November 29, 1984 (49 FR 47585), November 25, 1985 (50 FR 49809), December 9, 1986 (51 FR 44855), and December 10, 1987 (52 FR 46876). These actions were required by the unsettled relations between the United States and the Government of Libya and the threats of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Date: December 1, 1988.

George P. Shultz,

Secretary of State.

[FR Doc. 88–28245 Filed 12–7–88; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Dynamic Evaluation of Transport Airplane Seats; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of proposed Advisory Circular 25.562-1 and request for comments; Correction; Dates.

SUMMARY: FAA is correcting errors in Dates Section. In FR Doc. 88-27634, published Thursday, December 1, 1988, on page 48610-48611, please change the comment closing date from December 21, 1988, to read March 30, 1989.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist, Regulations Branch, ANM-114, telephone (206) 431-2126.

Michael D. Triplett,

Legal Technician, Docket Section, Program Management Staff.

[FR Doc. 88-28225 Filed 12-7-88; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

[Order 88-12-5]

Fitness Determination of Air Vegas, Inc.; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Air Vegas, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 18, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2342.

Dated: December 2, 1988.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-28185 Filed 12-07-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-12-6]

Fitness Determination of Samoa Aviation, Inc.; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Samoa Aviation, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-9721.

Dated: December 2, 1988.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-28186 Filed 12-07-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 2, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0019
Form Number: ATF Form 6A (5330.3c)
Type of Review: Extension
Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War

Description: This information collected is needed to verify importation of firearms, ammunition and implements of war. ATF Form 6A is completed by Federal firearms licensees, active duty military members, nonresident US citizens returning to the US, and aliens immigrating to the US.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Response: 24 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 8,000 hours
OMB Number: 1512-0199
Form Number: ATF F 5110.30
Type of Review: Extension
Title: Drawback on Distilled Spirits Exported

Description: ATF F 5110.30 is used by persons who export distilled spirits, wine and wish to claim a drawback or refund on taxes already paid in the U.S. The form describes the claimant, spirits or wine for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.

Respondents: Businesses and other for-profit, Small businesses or organizations
Estimated Number of Respondents: 100
Estimated Burden Hours Per Response: 2 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 10,000 hours
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 28241 Filed 12-7-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 2, 1988.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau

Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0023
Form Number: 720
Type of Review: Resubmission
Title: Quarterly Federal Excise Tax Return
Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacturer of various articles to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and windfall profit taxes, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code 6011).
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 81,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—6 hours 56 minutes
Learning about the law or the form—3 hours 38 minutes
Preparing and sending the form to IRS—13 hours 31 minutes
Frequency of Response: Quarterly
Estimated Total Recordkeeping/ Reporting Burden: 4,852,120 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–28242 Filed 12–7–88; 8:45 am]
BILLING CODE 4810–25–M

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 236
Thursday, December 8, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Monday, December 12, 1988
December 5, 1988.

The Federal Communications Commission will hold an *Open Meeting* on the subjects listed below on Monday, December 12, 1988, which is scheduled to commence at 2:00 p.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

General—1—*Title:* Amendment of Parts 2 and 90 of the Commission's rules to provide for stolen vehicle recovery systems. *Summary:* The Commission will consider whether to initiate a rulemaking proposing to allocate frequencies and promulgate service rules for stolen vehicle recovery systems.

Private Radio—1—*Title:* In the matter of amendment of Part 90 of the Commission's rules to implement conditional authorization procedure for proposed private land mobile radio service stations. *Summary:* The Commission will consider proposals by the Special Industrial Radio Service Association, Inc. (SIRSA) and the National Association of Business and Educational Radio, Inc. (NABER) for implementation of a conditional authorization procedure for applicants filing properly coordinated license applications that involve no special or non-routine issues.

Private Radio—2—*Title:* In the matter of trunking in the private land mobile radio services for more effective and efficient use of the spectrum. *Summary:* The Commission will consider whether to adopt a notice of proposed rule making concerning the possible expansion of trunking and intercategory sharing on private land mobile frequency above 800 MHz.

Common Carrier—1—*Title:* In the matter of regulatory policies and international telecommunications, CC Docket No. 86–494. *Summary:* The Commission will consider petitions for reconsideration of the reporting requirements established in the report and order in this proceeding.

Mass Media—1—*Title:* In the matter of amendment of Part 73 of the Commission's rules to permit short-spaced FM station assignment by using directional antennas. *Summary:* The Commission will consider further action for MM Docket No. 87–121 concerning short-space transmitter sites of commerical antenna systems for that purpose.

Mass Media—2—*Title:* Resolution of interference between UHF Channels 14 and 69 and adjacent-channel land mobile operations. *Summary:* The Commission will consider whether to adopt rules designed to prevent cross-service interference problems between TV broadcast stations on Channels 14 and 69 and land mobile stations operating in adjacent spectrum.

Mass Media—3—*Title:* In the matter of amendment of § 73.3555 of the Commission's rules, the broadcast multiple ownership rules. *Summary:* The Commission will consider further action in MM Docket No. 87–7 relating to the radio-TV cross-ownership provisions of the Commission's broadcast mutliple ownership rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Audrey Sprivack, Office of Public Affairs, telephone number (202) 632–5050.

Issued: December 5, 1988.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–28310 Filed 12–6–88; 11:34 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 13, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, December 14, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Draft AO 1988–45:
Donald B. Wassall on behalf of the Populist Party of America National Committee
Draft AO 1988–49:
Rodney D. Joslin on behalf of The Lawyers for Better Government Fund—Federal
Status of Presidential Audits
Administrative Matters
Election of Officers.

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88–28325 Filed 12–6–88; 12:55 pm]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 53, No. 236
Thursday, December 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

Correction

In proposed rule document 88-27258 beginning on page 47720 in the issue of Friday, November 25, 1988, make the following corrections:

1. On page 47720, in the second column, in the fifth complete paragraph, in the sixth line, "Subpart B" should read "Subpart V".

2. In the same column, under **Statutory Background**, in the first line, "Section 103A(a)(5)(i)" should read "Section 103A(a)(5)(E)(i)".

3. On page 47721, in the second column, in the second complete paragraph, in the sixth line, "there" should read "these".

4. On page 47722, in the first column, in the ninth line, "1 $\frac{3}{32}$" should read "1 $\frac{1}{32}$".

5. In the same column, in the first complete paragraph, in the fifth line, "(1)" should read "(i)".

§ 26.2 [Corrected]

6. On the same page, in the second column, in § 26.2(a), in the first line, "only" was misspelled.

§ 26.3 [Corrected]

7. On page 47723, in the second column, in the second line, in § 26.3(c)(2), "we" should read "week".

8. On the same page, in the third column, in § 26.3(e)(2)(ii), in the fifth line, "1 $\frac{3}{32}$" should read "1 $\frac{1}{32}$".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Environmental Reference Area

Correction

In notice document 88-26771 appearing on page 46910 in the issue of Monday, November 21, 1988, the subject heading was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 81024-8224]

Revision of Patent and Trademark Fees

Correction

In proposed rule document 88-27433 beginning on page 48402 in the issue of Wednesday, November 30, 1988, make the following corrections:

1. On page 48402, in the third column, in the second line, "filling" should read "filing".

2. On page 48403, in the first column, in the first complete paragraph, in the third and fourth lines, remove the following extraneous material: "other than design and plant patents issued on applications".

3. On the same page, in the same column, in the fourth complete paragraph, in the seventh line, "of" should read "to".

4. On the same page, in the same column, in the fifth complete paragraph, in the fourth line, before "except", insert "the Commissioner can not increase fees established under section 41(d)".

5. On the same page, in the 3rd column, in the 3rd complete paragraph, in the 12th line, "August 1998" should read "August 1988".

6. On page 48404, in the first column, in the fourth complete paragraph, in the ninth line, "fees" should read "Fees".

7. On the same page, in the third column, in the last complete paragraph, in the fourth line, after "above" insert "was".

8. On page 48405, in the first column, in the sixth line, after "during the " insert "fee".

§ 1.16 [Corrected]

9. On page 48409, in the fifth line, in § 1.16(a), after "which is" insert "in".

§ 1.21 [Corrected]

10. On page 48412, in the seventh line, in § 1.21, "[(1)" should read "(1)]". Also, in the ninth line, "](2)" should read "[(2)".

§ 1.53 [Corrected]

11. On the same page, in the 2nd column, in the 5th line, in § 1.53(c), "to" should read "of"; in the 9th line, "submitted;" should read "submitted,"; in the 10th line, reverse the direction of the last arrow.

§ 1.60 [Corrected]

12. On page 48413, in the 1st column, in the 11th line, in § 1.60(b), "of" should read "or".

§ 1.445 [Corrected]

13. On page 48414, in § 1.445, in the second column of figures, in the first line, "380.00" should read "550.00".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-381; RM-5352, RM-5663]

Radio Broadcasting Services; Folsom and Bolgalusa, LA

Correction

In rule document 88-26102 appearing on page 45481 in the issue of Thursday, November 10, 1988, make the following correction:

§ 73.202 [Corrected]

In the second column, in § 73.202, in amendatory instruction 2, in the third line, "258A" should read "285A"

BILLING CODE 1505-01-D

VOL 53 ISS 236 DE 8 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1989 Cost-of-Living Increase and Other Determinations

Correction

In notice document 88-25169 beginning on page 43932 in the issue of Monday, October 31, 1988, make the following corrections:

1. On page 43932, in the second column, in the last line, "$18,426.51" should read "$18,426.51".

2. On the same page, in the third column, in entry (7), in the first line, "the" should read "The".

3. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the 12th line, insert a closing parenthesis after "(iii)". Also, in the 20th line, "requirement" should read "retirement".

4. On page 43933, in the third column, under **Average of the Total Wages for 1987**, in the third line, "$17,321.82" should read "$17,321.82".

5. On page 43934, in the first column, under *Average Wages*, in the third line, "$17,321.82" should read "$17,321.82".

6. On the same page, in the second column, in the last paragraph, in the third line, "$9,226,48" should read "$9,226.48".

7. In the third column, the second italic heading should read "*(b) Beneficiaries Aged 65 Through 69*".

8. On page 43935, in the first column, under "Average Wages", in the second line, "was" should read "way as".

9. On the same page, in the same column, under "Exempt Amount for Beneficiaries Under Age 65", in the 11th line, "in" should read "is".

10. On page 43936, in the first column, under *General*, in the eighth line, "contributions" should read "contribution".

11. On the same page, in the second column, in the fourth line, "benefit" should read "benefits". Also in the same column, under *General*, in the seventh line, "assets" was misspelled.

12. On the same page, in the third column, in the third line, "increase" was misspelled.

13. On the same page, in the table at the bottom of the page, in the heading of the second column, in the second line, "earnings" was misspelled. Make the same correction in the table at the top of page 43937.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 82F-0185]

Direct Food Additives; Food Additives Permitted for Direct Addition to Food for Human Consumption; Dimethyl Dicarbonate

Correction

In rule document 88-24417 beginning on page 41325 in the issue of Friday, October 21, 1988, make the following correction:

On page 41329, in the first column, in the paragraph designated 8, in the first line, "Mones" should read "Jones".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0310]

Hoechst-Celanese, Inc,; Filing of Food Additive Petition

Correction

In notice document 88-22022 beginning on page 37646 in the issue of Tuesday, September 27, 1988, make the following correction:

On page 37647, in the first column, in the seventh line, "for" should read "from".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1305-88]

Unfair Immigration-Related Employment Practices

Correction

In rule document 88-27521 beginning on page 48248 in the issue of Wednesday, November 30, 1988, make the following correction:

§ 44.101 [Corrected]

On page 48249, in the second column, in § 44.101(c)(2)(ii), in the fourth line, "INS Form N-135" should read "INS Form N-315".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 841

Court Orders Affecting Retirement Benefits

Correction

Editorial Note: Rule document 88-27789 beginning on page 48629 in the issue of Friday, December 2, 1988, was submitted and published in error. Rule document 88-27573 beginning on page 48895 in the issue of Monday, December 5, 1988, is the effective document.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-15]

Alteration of VOR Federal Airways; TX

Correction

In rule document 88-27522 beginning on page 48243 in the issue of Wednesday, November 30, 1988, make the following correction:

§ 71.123 [Corrected]

On page 48244, in the first column, in § 71.123, under **V-77 [Amended]**, in the last line, "radicals" should read "radials".

BILLING CODE 1505-01-D

Thursday
December 8, 1988

Part II

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3400
Special Research Grants Program; Administrative Provisions; Final Rule

BEST COPY AVAILABLE

VOL 53 ISS 236 DE 8 1988 UMI

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3400

Special Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends the Cooperative State Research Service (CSRS) regulations relating to the administration of the Special Research Grants Program conducted under the authority of section 2(c)(1) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(c)(1)). The issuance of the Special Research Grants Program regulations, published in the **Federal Register** (50 FR 5498–5504, dated February 8, 1985), established the procedures to be followed annually in the solicitation of special research grant proposals, the evaluation of such proposals, and the award of special research grants. This rule will amend those regulations to facilitate the evaluation of applications and the award of project grants by modifying the weight factors associated with the selection criteria and by making a few additional changes.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky, Chief, Grants Administrative Management Office, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250–2200. (Telephone: (202) 475–5024).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in this rule have been approved under OMB Document No. 0524–0022.

Classification

This rule has been reviewed under Executive Order 12291 and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or on geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 2(c)(1) of the Act of August 4, 1965, as amended, the Secretary of Agriculture is authorized to make grants to carry out research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the Nation to land-grant colleges and universities, research foundations established by land-grant colleges and universities, State agricultural experiment stations, and to all colleges and universities having a demonstrable capacity in food and agricultural research. In the past, a Notice was published in the **Federal Register** annually announcing the availability of funds for special research grants and soliciting proposals. In addition, the Notice set forth the procedures and criteria for the evaluation of the proposals and procedures and conditions relating to the award and administration of these grants. On February 8, 1985, the Department published a Final Rule in the **Federal Register** (50 FR 5498–5504), which established and codified such procedures, criteria, and conditions to be employed annually. It standardized the rules applicable to the administration of the Special Research Grants Program and eliminated the need to republish them annually. On August 11, 1988, the Department published a Notice in the **Federal Register** (53 FR 30414–30416) proposing the amendment of this Rule and inviting comments from interested individuals and organizations. Written comments on that proposal were requested by September 12, 1988.

During the comment period, the Department received one response. A copy of this response may be examined in the Department's Office of Grants and Program Systems, Cooperative State Research Service, Suite 322, Aerospace Building, 901 D Street SW., Washington, DC 20250–2200.

Discussion of Comments

The respondent expressed concern that the proposed provision concerning laboratory animal care has the potential to impact substantially the cost and ability of Land-Grant universities to perform research and teaching activities involving agricultural animals in that it does not define the term "laboratory animal." The respondent noted that the absence of this definition becomes significant when related to § 3400.4(c)(13)(iii), *Laboratory Animal Care*, which has the potential to impose significant new requirements on the use of agricultural species for CSRS research activities. The respondent further explained that the new regulations should differentiate carefully between the requirements for the various species of laboratory (vertebrate) animals, as well as, between the purposes of the research and teaching activities. The respondent proposed that the new *Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching* be applied to certain animal care and use options and, where appropriate, used as a standard in the regulations pertaining to the Special Research Grants Program.

We agree with the commenter that the term "laboratory animal" should be defined. The definition of *laboratory animal* as used in this rule is the same as the definition of "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended, (7 U.S.C. 2132(g)). Accordingly, CSRS has made appropriate changes in § 3400.4(c)(13)(iii) of this rule to clarify the definition of *laboratory animal*, and it has revised the wording to provide that in the case of a laboratory animal used or intended for use in CSRS-administered research, grant recipients must adhere to the applicable requirements of the Animal Welfare Act and the regulations issued thereunder. In addition, CSRS has determined that the proposed provision, which would have required special grant recipients to adhere to the higher standard found in

either the *Guide for the Care and Use of Laboratory Animals*, NIH Publication No. 86–23 (Revised 1985) or the USDA regulations issued under the Animal Welfare Act, 9 CFR Parts 1, 2, 3, and 4, is potentially confusing since it may not be apparent when one standard would in fact prevail over another. Therefore, the reference to the NIH *Guide for the Care and Use of Laboratory Animals* has been eliminated.

In addition, CSRS has revised the proposed language of § 3400.4(c)(9) of this rule, concerning collaborative arrangements, to clarify that only an eligible recipient under the provisions of the Special Research Grants Program legislation (7 U.S.C. 450i(c)(1)) may be the recipient of a proposed grant.

List of Subjects in 7 CFR Part 3400

Grant programs—agriculture, Grants administration.

For the reasons set out in the preamble, Title 7, Chapter XXXIV, Part 3400 of the Code of Federal Regulations is amended as follows:

PART 3400—[AMENDED]

1. The authority citation for Part 3400 continues to read as follows:

Authority: Section 2(h) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(h)).

§ 3400.2 [Amended]

2. In § 3400.2(j), the word "advise" is revised to read "advice".

3. Section 3400.4 is amended by redesignating paragraphs (c)(9) through (c)(15) as paragraphs (c)(10) through (c)(16), by adding new paragraphs (c)(9) and (c)(13)(iii), and by revising paragraphs (a)(2), (b), the heading of (c)(1), (c)(2), the first sentence of (c)(11)(ii), the third through last sentences of (c)(12), paragraph (c)(13)(i), the last sentence of (c)(13)(ii), the third sentence of (c)(15), and (c)(16) to read as follows:

§ 3400.4 How to apply for a grant.

(a) * * *

(2) Deadline dates for having proposal packages postmarked;

* * * * *

(b) *Grant Application Kit.* A Grant Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.*

(1) *Grant Application.* * * *

(2) *Title of Project.* The title of the project must be brief (80–character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

* * * * *

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be fully explained and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state which proposer is to receive any resulting grant award, since only one eligible institution, as provided in § 3400.3 of this part, may be the recipient of a research project grant under one proposal.

* * * * *

(11) *Personnel support.* * * *

* * * * *

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff.

* * *

* * * * *

(12) *Budget.* * * * A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Grant Application Kit identified under § 3400.4(b) of this part and may be reproduced as needed by proposers. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. *No funds will be awarded for the renovation or refurbishment of research spaces; purchases or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.* All research project grants awarded under this part shall be issued without regard to matching funds or cost sharing.

(13) *Research involving special considerations.* * * *

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification of compliance.

(ii) *Human subjects at risk.* * * * The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any *laboratory animal*, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Special Research Grants Program funds rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing organization are required to comply with applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the proposer will be required to submit a statement certifying such compliance.

* * * * *

(15) *Additions to project description.* * * * Each set of such materials must be identified with the title of the research project as it appears in the Grant Application and the name(s) of the principal investigator(s). * * *

(16) *Organizational management information.* Specific management information relating to a proposing individual or organization shall be submitted on a *one-time basis prior to the award of a research project grant* identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section are available upon request from the agency specified in this part.

4. Section 3400.7 is amended by revising paragraph (d)(3) to read as follows:

§ 3400.7 Use of funds; changes.

* * * * *

(d) *Changes in approved budget.* * * *

* * * * *

(3) Involve transfers of amounts previously budgeted for training costs directly related to the research project;

* * * * *

5. Section 3400.8 is amended by revising the last item to read as follows:

§ 3400.8 Other Federal statutes and regulations that apply.

* * * * *

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

6. Section 3400.10 is revised as follows:

§ 3400.10 Establishment and operation of peer review groups.

Subject to § 3400.5, the Secretary will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3400.14.

7. Section 3400.15 is amended by revising the selection criteria appearing in the peer panel scoring form under paragraph (a) and constructing a revised form as follows:

§ 3400.15 Review criteria.

(a) * * *

Peer Panel Scoring Form

* * * * *

II. Selection Criteria

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal		10		
2. Scientific and technical quality of the approach		10		
3. Relevance and importance of proposed research to solution of specific areas of inquiry		6		
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment		5		

Score _____

Summary comments _____

* * * * *

Done at Washington, DC, this 2nd day of December, 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–28193 Filed 12–7–88; 8:45 am]

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federal register

Thursday
December 8, 1988

Part III

Department of Education

Cooperative Demonstration Program (Dropout Prevention); Notices

VOL 53 ISS 236 DE 8 1988 UMI

DEPARTMENT OF EDUCATION

Vocational Education Cooperative Demonstration Program (Dropout Prevention)

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for Fiscal Years 1988 and 1989.

SUMMARY: The Secretary establishes an absolute priority for the grant awards from fiscal years 1988 and 1989 appropriations under the Vocational Education Cooperative Demonstration Program (Dropout Prevention). Under the priority, funds are reserved for exemplary dropout prevention and reentry projects in vocational education that will be coordinated with an in-depth Federal evaluation of this program. The Secretary also uses new selection criteria in evaluating applications submitted for this competition.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Kate Holmberg, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Mary E. Switzer Building, Room 4512) Washington, DC 20202–7242. Telephone: (202) 732–2363.

SUPPLEMENTARY INFORMATION:

Program Information

Although some statistics indicate that the overall dropout rate in this country may have leveled off or even decreased slightly in recent years, the dropout rate for some disadvantaged groups remains intolerably high. In addition, there are fewer career opportunities for those who drop out, as often they do not possess even the most basic skills required for most jobs.

The problem of high school dropouts is highlighted in the Senate Report No. 100–189 for Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988). In this report, the Congress directed the Department of Education to make available $4,787,000 to support exemplary dropout prevention and reentry programs within vocational education. In addition, the Department is to evaluate the effectiveness of these programs. It is clear that Congress recognizes the serious, negative effects that the dropout problem has on our society and intends that funds be used to ameliorate this problem through the use of vocational education.

Many education program administrators believe that participation in vocational education programs can in itself help to lower dropout rates. Moreover, certain components of vocational training such as job readiness training, work experience, and individualized instruction have been found to be very effective in working with potential or actual dropouts. This program will be able to test these theories in order to demonstrate vocational education's role in dropout prevention.

The Secretary, therefore, will award grants under the Vocational Education Cooperative Demonstration Program (Dropout Prevention) for model exemplary projects that have proven to be effective in dealing with the problems of potential or actual dropouts. Applicants must be able to provide evidence of program success based on past performance.

In order to assess the effectiveness of the projects funded and to identify which of the exemplary projects have models most suitable for replication, the Department of Education will conduct an independent evaluation under this program.

On July 26, 1988, the Secretary published a notice of proposed priority and selection criteria for the Cooperative Demonstration Program (Dropout Prevention) in the **Federal Register** (53 FR 28170).

There are minor clarifying changes but no major differences between the notice of proposed priority and selection criteria and this final notice.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority and selection criteria, thirteen parties submitted comments on the proposed notice. An analysis of the comments follows:

Additional Items Should Be Included in the Selection Criteria

Comments: The Secretary received several suggestions to amend the selection criteria. One commenter said that parental involvement is an important part of any dropout program and should be included under criterion (c) *Program Factors.* Another commenter added that tutoring, mentoring, child care, and transportation from school to work are also positive factors in a successful dropout program. A third commenter wanted to see more points allotted to the criteria for (a) *Need* and (d) *Quality of Key Personnel.*

Discussion: The Secretary agrees that the items suggested for improving (c) *Program Factors* are beneficial and should be included. The Secretary also agrees that both (a) *Need* and (d) *Quality of Key Personnel* are important however, each is assigned 15 points, which should help to ensure that only projects that have a well-established need and quality personnel will be funded.

Changes: The selection criterion (c) *Program Factors* has been revised to reflect the above concerns including parental involvement which is an important priority in achieving student retention.

Clarity is Needed Regarding Certain Requirements for Award

Comments: The Secretary received several comments asking if the proposed model projects can be adopted from other locations. The commenters were concerned that some schools do not have the staff or resources to have collected empirical data on their own dropout programs.

Discussion: The priority for this program requires "evidence of the success of the approach the project will demonstrate." This would allow applicants to adopt models from another site and propose them for use under this program.

Changes: The priority statement clarifies that applicants may adopt model projects.

The Age Group To Be Served Needs To Be Clarified

Comments: Some commenters asked what age group is eligible to be served under this program. In particular, commenters asked if projects could serve 12-year-olds or older individuals who may have literacy needs. Another commenter wondered if the Department intended to target the elderly in this program.

Discussion: Although the focal group here is clearly potential or actual high school dropouts, it would not be appropriate to set age limits for this program. Since the ages of students served by vocational education vary from State to State, applicants may propose to serve the age groups that are appropriate for vocational programs in their State or locale.

Although the elderly were listed in proposed criterion (b)(4)—the standard language prohibiting discrimination—the Secretary did not intend to give special preference to this group.

Changes: The language in the criterion (b) *Plan of Operation* has been reworded accordingly.

Additional Priorities Should Be Added

Comments: Several commenters recommended that special priorities be established for "high risk" groups such as disadvantaged youth, teen parents, the limited English-proficient, and the incarcerated.

Some commenters also requested that the Department require coordination between the applicant and all other agencies, services, programs, schools, etc., that are serving the potential or actual dropouts.

In addition, one commenter wanted special priority to be given to applications that are cooperatively developed. Another said innovative ideas should get preference.

Discussion: The Secretary recognizes that "high risk" groups are disproportionately represented among the ranks of those who have dropped out. Although these groups are not singled out for special priority, applicants responding to the first selection criterion (a) *Need* should include the dropout rates for their own communities. Applications will be rated on the case they make for the need of their students for a dropout program.

The Secretary agrees that coordination among agencies serving the same population is beneficial. Although specific agency coordination is not required, coordination is included under criterion (b) *Program Factors* as an indicator of a potentially successful program.

The Secretary does not agree that priority should be given to cooperative ventures, since such a priority could result in the exclusion of self-contained projects. Applicants are in a better position to decide the most advantageous way of applying.

As for encouraging innovative ideas, the emphasis in this competition is on proven models. This in no way excludes innovative ideas. However, these ideas must have been tested and must be substantiated by data.

Changes: The language in criterion (b) *Plan of Operation* has been reworded accordingly.

The Proposed Federal Evaluation is Too Restrictive

Comments: One commenter suggested that because of the difficulty a small school might have in implementing the random assignment of students, it could be excluded from this competition.

Another commenter expressed concern that the evaluation design (in particular, the random assignment of students) could have negative social consequences by limiting the access of the needy population to the dropout project. This commenter suggested that a design based on school records would be sufficient to determine if the project is worthwhile, and that, therefore, random assignment of student would not be necessary.

A third commenter said that the requirement for providing empirical data on proven programs should be dropped.

Discussion: It is the Department's intent to identify a variety of program models that can be used for dropout prevention in the future. Random assignment of potentially eligible participants is the most rigorous method of evaluating program effects by comparing the impact of a program on participants, versus the impact of other available services on individuals with similar characteristics.

It is not the intent of this program to exclude rural or small schools from competition. A project will need more potentially eligible participants than openings to qualify for random assignment, but if random assignment is not feasible, a matched pairs method can be used.

The use of random assignment of potentially eligible participants to the program or to a control group will not limit the access of the eligible population to the program. Only the method of selecting potentially eligible participants will be changed to random assignment rather than, for example, order of referral or application The same number of people will be able to participate.

Changes: None.

A Federal Definition of Dropouts Should Be Included

Comments: One commenter raised the issue of the lack of a common definition and method for presenting statistical information on dropouts. The commenter suggested that the priority notice include a definition of "dropout" and guidelines for determining dropout rates.

Discussion: At this time, the methods for calculating dropout rates vary widely from State to State. Although the Department agrees that a standardized method of calculating dropout rates would be beneficial, it could be overly burdensome to require applicants to revise their methodologies for this competition. Applicants are asked to include their definition of "dropout" and to describe the method by which dropout rate calculations were made.

Changes: None.

What Additional Work Will Be Required of the Grantees in This Demonstration Program?

Comments: One commenter was concerned about the amount of extra work the grantees might have to undertake because of the requirement for comparison groups. This commenter agreed that collection of data was essential but was wary of unnecessary, burdensome work.

A second commenter wanted to know what materials, if any, the grantees will be responsible for developing under this program.

Discussion: An independent evaluator under contract with the U.S. Department of Education will be working with each project to ensure that comparable data are kept on program participants and comparison groups in a standardized format. These data, usually maintained routinely by a program or school, would include, for example, attendance, punctuality, disciplinary actions, grades, test scores, course completion, and program completion or withdrawal. No more than one day per month should be needed for project staff to fill out an evaluation study form using previously compiled data. All efforts will be made to keep this task a reasonable one.

In addition, depending upon the results of the Federal evaluation, some grantees may be encouraged to submit their projects to the National Diffusion Network in order to promote replication.

Changes: The description of the evaluation design has been revised to clarify the amount of additional work by the grantees.

Priority

In accordance with the Education Department General Administration Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary establishes an absolute priority by reserving funds under the Cooperative Demonstration Program for grant awards from fiscal years 1988 and 1989 appropriations to support exemplary models of dropout and reentry projects within vocational education. Projects must exhibit exemplary approaches for encouraging vocational education students to remain in school or for encouraging dropouts to reenter school (or other alternative training programs) through vocational education programs. Exemplary approaches in past successful dropout projects have included such factors as small class size, individualized treatment, active recruitment, and thorough assessment and feedback on student progress as a part of their comprehensive programs. An applicant

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may propose to use its own model project or adopt a model project from another site. Proposed projects should be located in communities with high dropout rates.

Applicants must provide evidence of the success of the approach their projects will demonstrate. Results of past performance must include empirical data on the performance of project participants such as improved dropout rates, increased attendance rates, and successful grade progression.

All applicants must agree to participate, if selected, in the Federal evaluation. That evaluation would require the applicants to establish control groups through random assignment of participants to their projects or to establish comparison groups through matched pairs. Applicants that are prohibited by State law from engaging in random assignment will be excused from consideration for this approach but may still be required to participate in the Federal evaluation through a matched pairs design.

Federal Evaluation

The Secretary intends to conduct an independent evaluation of the effectiveness of as many as two-thirds of the dropout prevention and reentry demonstration projects funded under this program. This in-depth evaluation will require collection and recording of data on the project and participants, entailing some additional effort on the part of project staff in recordkeeping. However, no more than one day of staff time per month should be needed for this task.

The in-depth evaluation will involve the use of comparison groups developed through:

- Random assignment of potentially eligible participants to the program or the control group, or
- The use of matched pairs—a method that identifies non-participants who have characteristics that are similar to those of the program participants.

The appropriate method of selecting a comparison group will be determined, based on program characteristics, by an independent evaluator under contract with the U.S. Department of Education. A project will need more potentially eligible participants than openings to qualify for random assignment. In order to match pairs, there must be a readily identifiable population from which selections can be made.

Random Assignment

Random assignment of potentially eligible participants is the most rigorous method of evaluating program effects. When participants are randomly assigned to a program or to a control group, all independent variables (i.e. ability, motivation, socioeconomic background) are controlled. Individuals in the control group will receive no services from the project funded under this program, but will be free to receive other available services. Random assignment is used to test the impact of the program on participants versus the impact of other available services on individuals with similar characteristics.

Matched Pairs

An alternative evaluation design is the selection of a comparison group that is matched with the participant group on various characteristics. While this design is used more frequently than random assignment, it is less rigorous. It is difficult to match participants with non-participants on multiple characteristics. As a result, differences in outcome measures between program participants and persons in the matched comparison groups are not necessarily related to program effects, but may be instead related to factors not matched. For instance, one of the most difficult factors to control for in a matched evaluation design is motivation. Program participants could be expected to be more motivated than non-participants unless program participants are randomly assigned.

The contractor will work closely with each project selected for in-depth evaluation in implementing the evaluation design procedures. In the Fall of 1989, the contractor will visit the selected project sites to observe program characteristics and practices such as problems and successes with program implementation, the employment of program strategies, and staff and participant interactions.

The in-depth evaluation will be implemented beginning in the Fall of 1989. Participants and controls will be assigned by the contractor through random assignment or matched pairing. Data will be collected from program participants and controls on factors such as demographic characteristics, family background, academic history, test scores, educational expectations, and attitudes toward education. Program participants who complete an open-exist program or leave the program prior to completion will be followed up on an ongoing basis. Participants and controls will be followed up in the Spring of 1990 and Spring of 1991 to collect information on outcome measures such as attendance, program or school retention, academic progress, vocational training, educational expectations, program completion, and job placement. The evaluation of the effectiveness of dropout prevention and reentry programs in vocational education will be based on a comparison of program participants and controls on these outcome measures.

Applicants should plan and budget for their own independent evaluations in the event they are not selected to participate in the Federal evaluation. The contractor will be available to provide technical assistance to projects not selected for Federal evaluation, including assistance in refining the design of their evaluation, data collection procedures, and survey forms, to facilitate the collection of comparable data by all funded projects. The Secretary will consider that the evaluation requirements in 34 CFR 75.590 are met by a grantee's participation in the in-depth Federal evaluation.

Criteria for Evaluating Applications

The Secretary will use the following selection criteria and to assign points as indicated, for this competition only.

(a) *Need* (15 points).

The Secretary reviews each application to determine the extent to which the project addresses the needs of the targeted population, including—

(1) A clear description of the needs of the proposed target population;

(2) Characteristics of that population, including numbers to be served directly;

(3) Community and State dropout rates, as well as the definition of "dropout" used by the applicant's community and how the dropout rates in the application were computed;

(4) Specific evidence of how the proposed project will meet the needs of the target population;

(5) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship to the State Plan for Vocational Education; and

(6) A clear statement of what the project seeks to demonstrate.

(b) *Plan of Operation* (20 points).

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timeliness for each activity;

(2) A clear description of, and the interrelationship among, goals, objectives, and activities;

(3) The way the applicant plans to use the resources and personnel from the grant to achieve each objective; and

(4) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Program Factors* (25 points).

The Secretary reviews each application to determine the extent to which there is—

(1) A clear description of the model to be used, including services to be provided, who will provide them, and how they will be provided;

(2) Evidence of past successful performance using this model, including empirical data such as lowered dropout rates, successful grade progression, improved attendance, and increased graduation or GED rates;

(3) A complete description of methodology to be used including some or all of the following components—

(i) A thorough assessment of individual students;

(ii) Flexibility in the structure of the present delivery system, e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios;

(iii) Active recruitment;

(iv) Small class size;

(v) Thorough assessment and feedback of student progress;

(vi) Individualized treatment;

(vii) Tutoring and mentoring;

(viii) Adjustments for childcare;

(ix) Coordination of vocational instruction, academic instruction, and counseling services;

(x) Coordination with other agencies providing services to dropouts or potential dropouts;

(xi) Inclusion of some relevant work-related experience and transportation from school to work;

(xii) Parental involvement; and

(xiii) Community and business involvement.

(d) *Quality of Key Personnel* (15 points).

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, the Secretary considers experience and training in fields particularly related to the objectives of the project, as well as other information that the applicant provides.

(e) *Evaluation Plan* (15 points).

The Secretary reviews each application to determine the quality of the project's independent evaluation plan for the project, including the extent to which—

(1) The plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations; and

(2) The plan includes, at a minimum, a description of the participant data to be collected based on the project objectives, tracking and followup of progress by all project participants throughout the project period, and outcome measures to be used for each objective.

(f) *Budget and Cost Effectiveness* (5 points).

The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Adequacy of Resources* (5 points).

The Secretary reviews each application to determine the adequacy of the resources, other than those to be funded by the Federal grant, that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Additional Consideration

In selecting applications for funding, the Secretary may consider whether funding a particular application would contribute to the funding of a variety of approaches.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strenthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Authority: 20 U.S.C. 2411.)

Dated: November 22, 1988.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 88-28297 Filed 12-7-88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.199B]

Invitation of Applications for New Awards Under the Cooperative Demonstration Program (Dropout Prevention) From Fiscal Year 1988 and 1989 Appropriations

Purpose: To provide financial assistance for exemplary dropout prevention and reentry projects within vocational education that provide direct service to the individuals enrolled and that are capable of wide replication by service providers.

Deadline for Transmittal of Applications: February 13, 1989.

Deadline for Intergovernmental Review Comments: April 12, 1989.

Applications Available: December 13, 1988.

Funds Available: $4,337,000.

Estimated Range of Awards: $200,000–$500,000.

Estimated Average Size of Awards: $310,000.

Estimated Number of Awards: 14.

Note.—The Department is not bound by any estimate in this notice.

Project Period: Up to 36 months (two 18 month grant cycles).

Applicable Regulations: (a) The regulations in 34 CFR Part 400 and the Vocational Education Cooperative Demonstration Program Regulations in 34 CFR Part 412 with certain exceptions as noted in the Notice of Final Priority and Selection Criteria, published in this issue of the **Federal Register**, and (b) the Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

Priority: To be eligible, an applicant must meet the priority established in the Notice of Final Priority and Selection Criteria published in this issue of the **Federal Register**.

For Applications or Information Contact: Kate Holmberg, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4512, Switzer Building, Washington, DC 20202-7242. Telephone: (202) 732-2363.

Program Authority: 20 U.S.C. 2411.

Dated: November 30, 1988.

Bonnie Guiton,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 88-28298 Filed 12-7-88; 8:45 am]

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**MERIT SYS
BOARD**

5 CFR Part

Privacy Act

AGENCY: Me
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1205

Privacy Act

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The U.S. Merit Systems Protection Board (Board) is amending its regulations at 5 CFR Part 1205 by revising the sections on fees and on administrative appeals. The fee provisions are being changed to establish a threshold for providing copies of records without charge to requesters; to establish a fee schedule for the duplication of records in various formats; and to establish a policy for collecting fees and requiring advance payment when fees exceed a stated amount. The administrative appeal provisions are being changed to provide for appeal of denial of requests for amendment of records to the Executive Director rather than to the Chairman of the Board.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7262.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1205

Privacy, Government employees.

Accordingly, the Board amends 5 CFR Part 1205 as follows:

PART 1205—PRIVACY ACT

1. Authority for Title 5 CFR Part 1205 continues to read:

Authority: 5 U.S.C. 552a.

2. Section 1205.16, is revised to read as follows:

§ 1205.16 Fees.

(a) No fees will be charged by the Board except for making copies of records.

(b) Photocopies of records duplicated by the Board shall be subject to a charge of 10 cents per page.

(c) If the fee to be assessed for any request is less than $25 (the cost to the Board of processing and collecting the fee), no charge will be made to the requester.

(d) Fees for duplicating audio and automated tapes will be charged at the actual cost to the Board, as follows:

(1) Audio tapes will be subject to a charge of $5.75 per cassette tape;

(2) Computer printouts will be subject to a charge of 0.1 cent per page;

(3) Records reproduced on magnetic computer tapes will be subject to a charge of $21 per tape; and

(4) Records produced on computer diskettes will be subject to a charge of $2.70 per diskette.

(e) If duplication costs exceed $25, the Board may notify the requester of the estimated amount prior to copying the records. The Board may require the requester to send an estimated fee.

(f) When the Board determines that the charges for a request are likely to exceed $250, the Board will require the requester to provide an advance payment of the entire fee before continuing to process the request.

(g) The Board will provide one copy of the amended parts of any record free of charge as evidence of the amendment.

3. Sections 1205.31 and 1205.32 are revised to read as follows:

§ 1205.31 Submission of appeal.

(a) A partial or complete denial of a request for amendment by the Clerk of the Board or a Regional Director may be appealed to the Executive Director, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

(b) Any appeal must be in writing, must be clearly marked "PRIVACY ACT APPEAL" on both the envelope and letter, and must include:

(1) A copy of the original request for amendment of the record;

(2) A copy of the denial; and

(3) A statement of the reasons the original denial should be overruled.

§ 1205.32 Determinations on appeal.

(a) The Executive Director will decide the appeal within 30 working days unless he or she determines that there is good cause for extension. If an appeal is improperly labeled, does not contain the necessary information, or is submitted to an inappropriate official, the time limitation for processing the appeal will run from the time it is received by the Executive Director.

(b) If the request for amendment of a record is granted on appeal, the Executive Director will direct that the amendment be made. A copy of the amended record will be provided to the requester.

(c) If the request for amendment of a record is denied, the Executive Director will notify the requester of the denial and inform the requester of:

(1) The basis for the denial;

(2) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A); and

(3) The right to file a concise statement with the Board stating the reasons the requester disagrees with the denial. This statement will become a part of the record.

Dated: December 6, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88–28393 Filed 12–8–88; 8:45 am]
BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 678]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: Regulation 678 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 9, 1988 through December 15, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 678 (§ 907.978) is effective for the period December 9, 1988, through December 15, 1988. Comments are due January 9, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: R. Charles Martin, Volume Control Section, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issues thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

At the beginning of each marketing year, the Navel Orange Administrative Committee (Committee) submits a marketing policy to the U.S. Department of Agriculture (Department) which discussses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1988–89 season marketing policy, considered the use of volume regulation for the season. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

Although handlers and/or marketers are affected by the issuance of weekly volume regulations, the intent of the Act is to benefit agricultural producers. The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The highest proportion of the production is located in District 1, Central California, which represented 84 percent of the total production in 1987–88. District 2 is located in the southern coastal area of California and represented 13 percent of the 1987–88 production; District 3 is the desert area of California and Arizona, which represented approximately 2 percent and District 4 is northern California and represented approximately 1 percent. The estimated production for the 1988–89 crop season is 73,200 cars (1 car equals 1,000 cartons; 1 carton equals 37.5 pounds).

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is the preferred market for California-Arizona navel oranges. It is estimated that 64 percent of the 1988–89 crop of 73,200 cars will be utilized in fresh domestic channels (47,000 cars), with the remainder being exported fresh (9 percent) or processed (27 percent). This compares to 45,087 cars shipped to fresh domestic markets in 1987–88, about 69 percent of the 1987–88 crop, totalling 65,594 cars.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to both producers and consumers. Producers benefit in areas such as increased grower returns and improved market conditions. Reduced fluctuations in supplies and price result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of oranges in the market throughout the marketing season.

Benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring their effects. Although information currently available to the AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to the potential benefits of regulation.

The reporting and recordkeeping requirements under the navel orange marketing order are incurred by handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If volume regulations were not to be used for the 1988–89 season, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of navel oranges for fresh shipments by handlers for any given week is based on information gathered over several previous weeks. Therefore, there is an incentive to keep and maintain records in anticipation of future implementation of regulation.

The foundation for the use of volume regulations under this marketing order is to foster market stability and enhance grower revenue. Prices for navel oranges, as well as other perishable agricultural commodities, tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on price and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits incurred by growers, particularly for smaller growers. Consequently, when weighing costs and benefits derived from the use of volume regulations, it seems highly probable that if actual data were available, the monetary benefit would far outweigh the costs. Therefore, it is the USDA's view that if a "significant economic impact on a substantial number of small entities" would be present, this impact would be positive rather than adverse.

The Fruit and Vegetable Division of the AMS, however, encourages the submission of comments on the

potential economic impact upon small entities from all interested parties. The Department's position on this certification of the regulatory action will be further evaluated in view of the applicable comments received.

This action is consistent with the marketing policy for 1988–89 adopted by the Committee. The Committee met publicly on December 6, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a vote of 6 to 4, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for fresh navel oranges is good for large sizes and weak for small sizes.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.978 is added to read as follows:

Note.—This section will not appear in the annual Code of Federal Regulations.

§ 907.978 Navel Orange Regulation 678.

The quantity of navel oranges grown in California and Arizona which may be handled during the period December 9, 1988, through December 15, 1988, are established as follows:

(a) District 1: 1,748,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: 152,000 cartons;
(d) District 4: Unlimited cartons.

Dated: December 7, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28514 Filed 12–8–88; 8:45 am]
BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Regulation 643]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 643 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 322,875 cartons during the period December 11 through December 17, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 643 (§ 910.943) is effective for the period December 11 through December 17, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on December 6, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

VOL 53 ISS 237 DE 9 1988 UMI

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.943 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.943 Lemon Regulation 643.

The quantity of lemons grown in California and Arizona which may be handled during the period December 11, 1988, through December 17, 1988, is established at 322,875 cartons.

Dated: December 7, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28474 Filed 12–8–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, and 284

[Docket No. RM87–17–002; Order No. 493–B]

Natural Gas Data Collection System; Order Granting Reconsideration

Issued November 30, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to extend from March 31, 1989 to October 31, 1989, the implementation date for electronic submission of certain rate, tariff and certificate filings. The Commission has received three requests urging the Commission to extend the implementation date for the electronic submission of rate, tariff and certificate filings. They argue that this date should be extended because the effort needed to prepare these filings and other complex filings that must be made in March and April of 1989 will place undue pressure on natural gas companies' limited data processing staffs.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text of diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Order Granting Reconsideration

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) is amending its regulations to extend from March 31, 1989 to October 31, 1989, the implementation date for electronic submission of certain rate, tariff and certificate filings.

In Order No. 493,[1] issued on April 5, 1988, the Commission amended its regulations to require that on or after September 30, 1988, rate filings (including the affected tariff sheets) submitted pursuant to § 154.63, certificate and abandonment applications (including the affected tariff sheets) under Subparts A, E and F of Part 157, blanket certificate applications under Subpart G of Part 284, and FERC Form Nos. 8, 11, and 16 in Part 260, must be filed on an electronic medium.[2] In Order No. 493–A, issued on August 1, 1988,[3] the Commission stayed the implementation date for the rate and tariff filings and certificate and abandonment applications until March 31, 1989.[4]

The Commission has received three requests for reconsideration and clarification of Order No. 493–A.[5] The requests urge the Commission to extend the implementation date for the electronic submission of rate, tariff and certificate filings. They argue that this date should be extended because the effort needed to prepare these filings and other complex filings that must be made in March and April of 1989 will place undue pressure on natural gas companies' limited data processing staffs.

The Commission is granting the requests by revising its regulations to provide that the implementation date for electronic data submission of rate, tariff, certificate and abandonment applications will be October 31, 1989. This will provide the Commission additional time to develop record formats for rate filings that will satisfy the various data presentation methods currently used by natural gas companies, and to enhance the record formats for tariffs and certificates. Also, this action will provide the industry more time to review and comment on the proposed record formats for rates, tariffs and certificates due to be issue on November 30, 1988. The Commission will schedule a second implementation conference under a separate notice to provide for this further review and comment period.

The Administrative Procedure Act [6] provides that in certain limited circumstances, a federal agency can, for good cause, issue an order effective upon issuance. The Commission finds that this order relieves natural gas companies from certain implementation dates that may be unduly burdensome. This order, therefore, is effective on November 30, 1988.

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[1] 53 FR 15,023 (Apr. 27 1988), III FERC Stats. & Regs. ¶ 30,808, *reh'g* 53 FR 30,027 (Aug. 10, 1988), III FERC Stats. & Regs. ¶ 30,826 (Aug. 1, 1988).

[2] Order No. 493 also provided that: (1) On or after September 30, 1988, the tariff sheets filed pursuant to § 154.301(a) must be filed on an electronic medium, and that any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff pursuant to § 154.303(e), must make a one-time only filing which resubmits the company's entire tariff, except for executed service agreements, on an electronic medium; and (2) on or after December 30, 1988, FERC Form Nos. 2, 2A, 14 and 15 must be submitted on an electronic medium.

[3] *Supra* note 1.

[4] The Commission also extended the implementation dates for electronic filing of FERC Form Nos. 8 and 11 to November 30, 1988, and of FERC Form No. 16 to April 30, 1989.

[5] Request of the Interstate Natural Gas Association of America (INGAA), filed November 7, 1988; Request for Clarification of Columbia Gas Transmission Corporation (Columbia Gas), filed on November 15, 1988; and Joint Petition of ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG) for Reconsideration, filed on November 18, 1988.

[6] 5 U.S.C. 553(d)(3)(1982).

List of Subjects

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 154, 157 and 284, Title 18, Chapter I, "Code of Federal Regulations", as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C 9701 (1982).

§ 154.1 [Amended]

2. In § 154.1, paragraphs (b) and (c), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.26 [Amended]

3. In § 154.26, paragraph (b), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.31 [Amended]

4. In § 154.31, paragraphs (a) and (b), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.32 [Amended]

5. In § 154.32, paragraphs (a) and (b), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.34 [Amended]

6. In § 154.34, paragraphs (a) (1) and (2), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.61 [Amended]

7. In § 154.61, the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.62 [Amended]

8. In § 154.62, paragraph (a), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.63 [Amended]

9. In § 154.63, paragraphs (b)(1)(iv), (b)(5), (c)(1)(i) and (ii), (d)(3) and (d)(4)(i), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 154.303 [Amended]

10. In § 154.303, paragraph (e)(1)(ii), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

11. The authority citation for Part 157 continues to read as follows

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 157.6 [Amended]

12. In § 157.6, paragraph (a)(1), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 157.14 [Amended]

13. § 157.14, paragraph (a), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 157.17 [Amended]

14. In § 157.17, paragraphs (a) and (b), the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

§ 157.20 [Amended]

15. In § 157.20, paragraphs (c) introductory text and (d) introductory text, the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

16. In § 157.205, paragraph (b) introductory text is revised to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) *Contents.* In addition to the fee prescribed in paragraph (c) of this section, for any activity subject to the requirements of this section, the certificate holder must file with the Secretary of the Commission before October 31, 1989, an original and fifteen copies, and on or after October 31, 1989, as prescribed in §§ 157.6(a) and 385.2011 of this chapter, a request for authorization under the notice procedures of this section that contains:

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

17. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982) as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 284.221 [Amended]

18. In § 284.221, paragraph (b)(1) introductory text, the words "March 31, 1989" are removed and the words "October 31, 1989" are inserted in their place.

[FR Doc. 88–28136 Filed 12–8–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is extending the parole procedures and policies used for the YCA inmates in the class action litigation of *Watts* v. *Belaski*, Civil Action No. 78–M–495 (D. Colo.) to all offenders who have been sentenced under the repealed Youth Corrections Act (formerly 18 U.S.C. 5005 *et seq.*). The Parole Commission is taking this action to assist the Bureau of Prisons in its plan to transfer YCA prisoners to institutions across the country, and to reduce the possibility of disciplinary problems caused by the use of different parole policies for YCA prisoners confined in the same institution.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland, 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Since the Youth Corrections Act was repealed in October, 1984, the number of inmates sentenced under this act has continued to decrease as the sentences expire. The YCA population is rapidly moving to the point where it will be composed solely of parole violators serving the remainder of their 18 U.S.C. 5010(b) sentences (which normally expire 6 years from the date of conviction) and those inmates serving lengthy sentences imposed under section 5010(c) (which may be for a term up to the maximum sentence authorized for an adult prisoner).

In the class action litigation in *Watts v. Belaski*, the Bureau of Prisons has been required in several orders from the Court of Appeals for the Tenth Circuit and the U.S. District Court in Colorado to segregate YCA inmates from adult prisoners and the Parole Commission has been required to make response to treatment a significant factor in parole decision-making for the class members. *See, e.g., Watts v. Hadden*, 651 F.2d 1354 (10th Cir. 1981); *Benedict v. Rodgers*, 748 F.2d 543 (10th Cir. 1984) (related case); and *Watts. v. Hadden*, 627 F.Supp. 727 (D. Colo. 1986). In response to these decisions, the Bureau of Prisons has confined almost all YCA inmates at the Federal Correctional Institution, Englewood, Colorado, segregating them from adult prisoners. In recent years, the district court has permitted the Bureau to incarcerate some adult prisoners at FCI, Englewood in order to ensure that the facility is used to its approximate potential. The Parole Commission implemented a decision-making policy which provides for the consideration of an inmate's response to treatment along with the criteria specified at 18 U.S.C. 4206 (*i.e.*, severity of the offense and risk to the public) in determining when a *Watts* class member should be released on parole. The Commission did not extend the *Watts* procedures to YCA inmates who were not members of the *Watts* class, since it had prevailed in other courts which considered the issue of the proper criteria for deciding when YCA inmates should be paroled. *E.g., Adams v. Keller*, 736 F.2d 320 (6th Cir. 1984) (*en banc*).

Given the continuing decline in the number of YCA inmates, the Bureau of Prisons is developing a plan to transfer a number of YCA inmates presently at FCI, Englewood to institutions across the country, preferably an institution near the inmate's residence after release. Such transfers will be made with the permission of the district court in Colorado. As part of this plan, the Bureau requested the Parole Commission to consider extending the *Watts* parole policies to YCA inmates who are not members of the *Watts* class. In the Bureau's view, the extension of the *Watts* procedures to all YCA inmates would facilitate the Bureau's monitoring of the treatment of the remaining inmates wherever they may be confined and would reduce the possibility of any discipfinary problems caused by the use of different parole policies for YCA inmates confined in the same institution.

The Commission published a proposed rule which extended its present *Watts* policies to all youth offenders and sought public comment on the proposal. See 53 FR 34546 (September 7, 1988). No public comment was received by the Commission. There are no substantive changes from the proposed rule in this final version of the regulation. A number of editorial changes have been made, including the elimination of some passages covering only the policies or practices of the Bureau of Prisons. This rule will become effective on January 9, 1989 and will be used for any hearing or record review conducted on or after that date with regard to a YCA inmate or parolee.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation, Parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended to add § 2.65 as follows:

§ 2.65 Youth Corrections Act.

(a) The provisions of this section only apply to offenders serving sentences imposed under former 18 U.S.C. section 5010 (b) and (c).

(b) *Approval of program plans.* (1) The criteria outlined in paragraph (d) of this section (on determining successful response to treatment) shall be considered in determining whether a proposed program plan will effectively reduce the risk to the public welfare presented by the YCA prisoner's release.

(2) If the prisoner's program plan has not already been approved by the Commission, the examiner panel shall be given the plan at a hearing for review and approval. The examiners shall indicate their approval or disapproval of the program plan (with relevant comments and recommendations) in the hearing summary.

(3) If the examiners consider the plan inadequate, they will discuss their concerns with institutional staff. If there is still a disagreement on the plan, the case will be referred by the Commission's regional administrator to the Bureau's regional correctional programs administrator with the recommended changes. Unresolved disputes concerning the adequacy of the program plan shall be decided by the Regional Commissioner and the Regional Director of the Bureau of Prisons. The Regional Commissioner shall render the final decision on approving or disapproving each program plan on behalf of the Commission. Once the program plan has been approved, subsequent approvals are not necessary, unless significant modifications are made by institutional staff.

(c) *Parole hearings and progress reports.* (1) Initial hearings shall be conducted in accordance with §§ 2.12 and 2.13. The examiner panel will discuss with the prisoner and a staff member who is knowledgeable about the case the program plan and the importance of good conduct and program participation is setting the release date.

(2) An interim hearing must be scheduled for a YCA prisoner every six months. In addition, within 60 days of receipt of any special progress from the warden recommending parole, the prisoner shall be scheduled for a special interim hearing, unless the recommendation can be timely considered at a regularly scheduled interim hearing. An institutional staff member who has personal knowledge of the case shall be present to assist the examiners in their evaluation of the prisoner's conduct, program performance, and response to treatment.

(3) After any interim hearing or review on the record, the Commission may advance the presumptive release date, let the date stand, or retard/rescind the date if the prisoner has committed disciplinary infractions or new criminal conduct.

(4) An interim hearing will not be scheduled after receipt of a progress report, if the Commission decides on the record to parole the prisoner as soon as a release plan is approved (normally within 60 days of the decision).

(5) The institution shall send a progress report to the Commission:

(i) No more than 60 days before each interim hearing;

(ii) Upon determining that a prisoner should be recommended for parole; and

(iii) Before presumptive parole date to allow for the pre-release record review under § 2.14(b).

The warden may forward progress reports to the Commission at other times in his discretion. Progress reports shall also be sent to the Commission every six months for prisoners who have waived interim hearings to enable the Commission to verify that these prisoners have satisfied the conditions of securing their release on an alternative parole date granted under the former YCA compliance plan (*i.e.*, completion of the program plan) or the normal presumptive release date (*i.e.*, obedience to institutional rules).

(6) For prisoners granted earlier parole dates under former compliance plans in *Watts* v. *Bleaski:* A prisoner may waive interim hearings under this section, in which case he would retain an alternative parole date previously granted to him or a presumptive parole date granted as a result of a finding that the prisoner had responded to treatment. A prisoner who waives an interim hearing under this section may, at any time, re-apply for the hearing and be considered under this section in accordance with the application/waiver provisions at § 2.11. The Commission will not review the program plans for prisoners who waive interim hearings pursuant to this paragraph, unless the prisoner subsequently is scheduled for a hearing to consider new criminal conduct or a rule infraction *and* a modification of the original program plan appears warranted due to the prisoner's new criminal offense or infraction. If the prisoner is scheduled for a hearing that may not be waived (*e.g.*, an interim hearing where there has been a finding of a disciplinary infraction since the last hearing, or any hearing scheduled pursuant to § 2.20 (b) through (f), this section will be applied at such hearing.

(7) *Warden's recommendation.* Based on the completion of the program by the prisoner, and the quality of effort demonstrated by the prisoner in completing the plan, the warden will recommend to the Commission a conditional release date for its consideration. This recommendation shall be accompanied by a report on the prisoner's participation and level of achievement in different aspects of his program.

(d) *Criteria for finding successful response to treatment programs.* (1) In determining whether a prisoner has successfully "responded to treatment" the Commission shall examine whether the prisoner has shown that he has received sufficient corrective training, counseling, education, and therapy that the public would not be endangered by his release. See former 18 U.S.C. 5006(f) (definition of "treatment" under the YCA). The Bureau of Prisons shall assist the Commission in this determination by informing the Commission when the prisoner has completed his program plan and by advising the Commission of the quality of effort demonstrated by the prisoner in completing the plan.

(2) In determining the extent of a prisoner's positive response to treatment, the Commission shall examine the degree by which the prisoner has increased the likelihood that his release would not jeopardize public welfare through his program performance and conduct record. See 18 U.S.C. 4206(a)(2). The starting report for the analysis of a prisoner's response to treatment will be the original parole prognosis reached by the use of the salient factor score, and an evaluation of the nature of the prisoner's prior criminal history and other characteristics of the prisoner. The nature of the current offense may also be considered in determining the risk to the public welfare presented by the prisoner's release. The Commission will then proceed to evaluate whether the prisoner's program participation and institutional conduct has improved the original risk prognosis and evidences an alteration of his valued system, including an understanding of the wrongfulness of his past criminal conduct. For those prisoners who have exhibited serious or violent criminal behavior, the Commission will exercise more caution in making a finding that the prisoner has responded to treatment to the degree that he should be released.

(3) With regard to program performance, significant weight will be given to the following factors in determining a prisoner's response to treatment. This is not intended as an exhaustive list.

(i) *Vocational training:* Where the inmate originally had few job skills, the acquisition of a marketable job skill through vocational training or an apprenticeship program.

(ii) *Education:* Participation in educational programs to acquire an educational level at least the level of a high school graduate.

(iii) *Psychological counseling and therapy:* Where the prisoner's behavior has shown that he may be affected by personality disorders or a mental illness that has hampered his ability to lead a law-abiding life, or that he may otherwise benefit from such programs, participation in psychological and/or other specialized programs which lead to a judgment by the therapist/counselor that the prisoner has significantly improved his ability to obey the law and favorably modified his value system. Participation in these programs will normally be required for a significant advancement of the presumptive release date for a prisoner who has either committed or attempted a crime of violence.

(iv) *Drug/alcohol abuse programs:* Where the prisoner has a history of drug/alcohol abuse, participation in a drug/alcohol abuse program which leads to the judgment by the therapist/counselor that there is a significant likelihood that the prisoner will not revert to drug/alcohol abuse and has thereby significantly improved his ability to obey the law.

(v) *Work:* Assuming the prisoner is physically and mentally able to do so and is not otherwise engaged in an institutional activity which prevents him from obtaining a job, participation in a job on a regular basis so as to demonstrate a stable life pattern and a favorable modification of his value system.

(4) Prison misconduct (*i.e.*, disobedience to institutional rules, escape) and new criminal conduct in the institution shall be considered in the decision as to whether (or to what degree) a prisoner has successfully responded to treatment. The rescission guidelines of 2.36 shall be used in retarding or rescinding the original presumptive release date set according to the guidelines and the factors described in 18 U.S.C. 4206. If the original presumptive date has been advanced based on response to treatment, the rescission guidelines may also be used to retard or rescind the new date to maintain institutional discipline, if the misconduct is not deemed serious enough to affect the decision that the prisoner has responded to treatment. But misconduct subsequent to the advancement of a release date based on a finding of response to treatment may also result in a reversal of that finding and the cancellation of any advancement of the original presumptive release date.

(e) *Setting the parole date (balancing Sec. 4206 factors with response to treatment).* At any hearing or review on the record, the presumptive release date may be advanced if it is determined that the prisoner has responded to a sufficient degree to his treatment programs. The amount of the advancement should be proportional to the degree of response evidenced by the prisoner. In making the advancement, no rule restricting the amount of the

reduction—whether based on the guidelines (§ 2.20) or the rule on superior program achievement (§ 2.60)—shall be used. The decision will be the result of a case-by-case evaluation in which response to treatment programs, the seriousness of the offense, and the original parole prognosis are all weighed by the Commission with no one factor capable of excluding all others.

(f) *Parole violators.* Parole violators returned to an institution following a local revocation hearing shall normally be considered for reparole under this section at a hearing within six months of their arrival at the institution.

(g) *Early termination from supervision.* (1) A review of the YCA parolee's file will be conducted at the conclusion of each year of supervision (following receipt of the annual progress report—Form F–3) and six months prior to the expiration of his sentence (after receipt of the final report).

(2) A YCA parolee shall not be continued on supervision beyond the time periods specified in the early termination guidelines (§ 2.43), unless case-specific factors indicate further supervision is warranted. The guidelines at § 2.43 shall not be routinely used to *deny* early discharge to a YCA parolee who has yet to complete two (or three) years of clean supervision.

(3) The Commission shall consider the facts and circumstances of each YCA parolee's case, focusing on the risk he poses to the public and the benefit he may obtain from further supervision. The nature of the offense and parolee's past criminal record shall be taken into account only to evaluate the risk that the parolee may still pose to the public.

(4) In denying early discharge, the Commission shall inform the probation office by letter (with a copy to the YCA parolee) of the reasons for continued supervision. The reasons should pertain, whenever possible, to the facts and circumstances of the YCA parolee's case. If there are no case-specific factors which indicate that discharge should be either granted to denied and further supervision appears warranted, the Commission may inform the YCA parolee that he is continued on supervision because of its experience with similarly situated offenders.

Dated: November 17, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88–28195 Filed 12–8–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Approval of Amendments to the Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of an amendment to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment repeals the exemption from regulation for coal extraction operations affecting one-half acre or less. The amendment is intended to clarify the State program by removing a provision which was preempted by Federal legislation.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64104; Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program, can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning proposed amendments are codified at 30 CFR 915.15.

II. Submission of Amendments

On June 9, 1988, the State of Iowa proposed to amend its permanent regulatory program by repealing language in its statute granting an exemption from regulation for coal extraction operations affecting one-half acre or less (Administrative Record No. IA–320). The proposed change revises Section 83.26 of the Code of Iowa by deleting subsection 2.

The Director announced receipt of the proposed amendment in the July 14, 1988, **Federal Register** (53 FR 26606) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment (Administrative Record No. IA–331). No public comments were received by August 15, 1988, the close of the comment period. The public hearing, scheduled for August 8, 1988, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by Iowa on June 9, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

As originally approved, Section 83.26 of the Code of Iowa excluded coal extraction operations affecting one-half acre or less from regulation. Similarly, as originally enacted, section 528(2) of SMCRA exempted coal extraction operations affecting two acres or less. However, on May 7, 1987, the President signed Pub. L. 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations. The amendment under consideration in this rulemaking removes the State statutory language preempted by Pub. L. 100–34. Therefore, the Director finds section 83.26 of the Code of Iowa, as revised by this amendment, to be no less stringent than section 528 of SMCRA. Removal of the acreage exemption from the Iowa statute will avoid confusion on the part of the public, which may not be aware of the Federal preemption.

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received and, since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various Federal and State agencies with an actual or potential interest in the Iowa program. None of the agencies notified offered any substantive comments.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Iowa on June 9, 1988. The Federal regulations at 30 CFR Part 915 codifying decisions concerning the Iowa program are being amended to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act. The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act. On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

Paperwork Reduction Act. This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

Date: December 2, 1988.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 915—IOWA

1. The authority citation for Part 915 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 915.15 is amended by adding paragraph (h) to read as follows:

915.15 Approval of regulatory program amendments.

* * * * *

(h) The following amendment to the Iowa program, as submitted to OSMRE on June 9, 1988, is approved effective December 9, 1988: Revisions to Section 83.26 of the Code of Iowa repealing the provision excluding coal extraction operations affecting one-half acre or less from regulation.

[FR Doc. 88-28355 Filed 12-8-88; 8:45 am]
BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 29 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on ancillary service endorsements, and the revised regulations on eligibility of "Plus" issues for second-class mail privileges, have previously been published in the **Federal Register**.

EFFECTIVE DATE: December 18, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 29, dated December 18, 1988. The text of all published changes is filed with the Director of the Federal Register Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 29 covers the minor changes not previously described in interim or final rules published in the **Federal Register**.

Summary of Changes

Chapter 1, Domestic Mail Services. Section 115.231b, Mail Sealed Against Inspection, and 152.71, Who May Recall Mail, are revised to clarify matters concerning Customs clearance of domestic and international mail.

* * * * *

Section 122.422a is revised to clarify the existing regulations to specify acceptable wording and the location of address formats for mailers who choose to use the exceptional address format.

The following Exhibits in 122.63 are updated: 122.63c, Sectional Center Facilities Serving a Single Three-Digit ZIP Code Area; 122.63e, Optional Area Distribution Center (ADC) Labeling List for Use with Presort First-Class Mailings Only; 122.63o Area Distribution Center (ADC) labeling list for optional combined ZIP+4, and presorted first-class mail; and 122.63p, originating mixed states labeling list for mailer prepared second-class publications.

In 125.15, Airlift Mail, section 125.152b is revised to change the size limits for parcels of any class that are mailed from an APO/FPO outside the contiguous 48 states. The parcels may not be more than 100 inches in length and girth combined.

Section 137.16, General Instructions, is revised to clarify the procedures for handling undeliverable-as-addressed franked mail bearing a Washington, DC, return address.

In Part 137, Official Mail, section 137.264b is revised to change the limit for insured mail sent as penalty mail. Items insured for over $100 cannot be sent as penalty mail and must have postage and fees prepaid.

Section 137.275f(3) is revised to raise the minimum dollar amount for orders for penalty mail stamp stock. Each order must now total $50.

Section 137.275f(4) is revised to state that $1 and $5 denomination stamps can only be ordered in multiples of $10.

Section 137.276h(4)(b) is revised to raise the limit for insured mail sent as penalty merchandise return mail. Items insured for over $100 cannot be sent as penalty merchandise mail.

In 144.52, Place of Mailing, section 144.524a, is revised to state that metered mail, regardless of its class, may be deposited at the area mail processing center (AMPC) which does the initial distribution of the originating mail and serves the post office where the meter is licensed.

In 159.326, Other Mail, section 159.326f is revised to include postage-due mail. The post office retains postage-due mail for 10 days; and, if no one claims it within that timeframe, it returns the mail to the sender. This same retention and return policy applies to postage-due mail addressed to a post office box.

Section 159.327, Return of Third- and Fourth-Class Mail, is revised to state that the sender of third- and fourth-class mail may identify pieces considered

valuable and ensure their return by using one of the return postage guaranteed endorsements in Exhibits 159.151a-f.

In 164.1, Definition and Policy, section 164.13d is added to grant authority to the General Manager, Philatelic Sales Division, Philatelic and Retail Services Department, to allow backdating of mail for philatelic purposes. Permission to backdate mail for philatelic purposes must be obtained from the General Manager in writing.

Section 164.53i, Cancellation Deadlines, is added to state the Postal Service policy concerning cancellation deadlines for bulk orders of first day covers.

Section 164.73, Special Materials on Which Cancellations Are Requested, is revised to restate Postal Service policy concerning cancellations on special materials. The Postal Service is not responsible for smudged cancels or offsetting on this type of work.

In 164.82, Mailback Service, section 164.82a is revised to require that cover servicers or dealers obtain written authorization from the Philatelic Sales Division for more than 50 rubber composition cancellations. Section 164.82e is added to state the mailback service with overwrapping for cover servicers and dealers submitting 50 or more addressed covers will be subject to a service charge established by the Philatelic Sales Division. Section 164.82f is added to state that cover servicers and dealers wishing to use a protective envelope other than the protective overwrapping provided by the USPS for mailing first day covers must have a signed agreement on file with the Philatelic Sales Division.

Sections 164.83a, First-Day-of-Issue-Cancellations, 164.83b, Pictorial Cancellations, and 164.83d, Standard Cancellations, are revised to change the phrases "hand cancellations" and "hand-stamped cancellations" to "rubber composition cancellations," since not all such cancellations are done "by hand." Some are done by machine.

Section 176.22, Backdating, is added to specify that backdating of mail to comply with customer requests is prohibited unless authorized specifically by the General Manager, Philatelic Sales Division.

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Section 441.121, *Application,* is revised to include the procedures for Form 3541–EX.

Section 441.151, *Application,* is revised to specify that if the frequency of the publication will include more than one issue during a week, Form 3541–EX must be completed and submitted with Form 3541, *Statement of Mailing—2nd Class Pubs Except Requester Publications.*

Section 444.1, *Change in Title, Frequency, or Office of Publication,* is revised to state that when the frequency of a publication is being changed to one that includes more than one issue during a week, Form 3541–EX must be completed by the publisher and submitted with Form 3510, *Application for Additional Entry, Reentry, or Special Rate Request for Second-Class Publication.*

Part 445, *Applications for Exceptional Dispatch and for the Acceptance of Air Freighted Second-Class Mail at Airport Mail Facilities (AMFs),* is revised in its entirety to incorporate the regulations that govern the acceptance at AMFs of second-class publications that were sent to those facilities as air freight.

Exhibit 447 is revised to add Form 3541–EX as page 4.

* * * * *

Sections 463.32a, *Optional City Sacks,* 464.32a, *Optional City Sacks,* 667.132b, *Optional City Sacks, and* 767.222, *Optional City Sacks,* are revised to include new labeling instructions for optional city sacks of second-, third-, and fourth-class mail. The requirements will make it possible to differentiate between labels of an optional city sack and a five-digit sack.

* * * * *

Sections 667.11, *General,* 667.911, and 667.92, *Authorizing Commingling,* are revised to clarify the exemption from packaging requirements for bulk rate third-class mailings.

* * * * *

Chapter Nine, Special Services. Section 917.342c, *Affixing Stamps or Meter Strips,* is revised to update the procedures for using Form 3611, *Postage Due Statement for Automated BRM,* when deducting postage charges from the mailer's Business Reply Advance Deposit Account.

Section 917.622, *Cards,* is revised to delay the implementation of the enforcement of basis paper weight requirements until January 1, 1989.

Minor, nonsubstantive changes include: 137.274c(1), 137.274c(2)(c), 144.37, 145.222, Exhibit 145.51b. Exhibit 145.51c, Exhibit 145.51d, 146.32, 262.2, 263.3, 294, 364.42a, 364.44, 425.225, 482.23a, 482.23b, 622.144f(1), 622.144f(2), 622.154f(1), 622.154f(3). 622.164d(1), 622.164f, 622.164f(5), 667.132a, 667.311b(5), and 682.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
29	December 18, 1988.	53 FR * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–28343 Filed 12–8–88; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) in the Department of the Interior (DOI) is revising its rules at 43 CFR Part 4, Subpart B, by adding a new provision to establish a procedure enabling a party to an administrative proceeding to submit privileged or confidential information as evidence and request limitation on the disclosure of that evidence. Certain existing regulations are also being revised to include references to the new provision.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Kleiler, Attorney-Adviser, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203; Telephone: (703) 235–3750.

SUPPLEMENTARY INFORMATION:

I. Discussion of Rule

On June 3, 1987, OHA published its proposed rulemaking concerning the submission of confidential information in OHA proceedings in the **Federal Register** (52 FR 20755–57), indicating that comments would be accepted through July 6, 1987. Six letters containing comments from the public were received.

This rule amends Subpart B by adding a new section, 43 CFR 4.31, which establishes a procedure for submitting documents containing confidential information and for requesting limitation on the disclosure of such documents. The new section establishes conditions under which the confidential information may be provided to other participants to the proceeding. If such conditions are not adequate to protect the confidentiality of information forming the basis for a decision, the rule allows the decisionmaker to consider such evidence without disclosing it to the parties, but only if the proceeding is not conducted pursuant to 5 U.S.C. 554.

The rule amends § 4.22(b) by adding a provision to except documents and requests filed pursuant to § 4.31 from the general requirement for service on all parties. Subsection 4.31 documents and requests would be served only as required by that section.

Section 4.22(c) is amended by adding a provision for securing confidential information against unauthorized disclosure and retaining it with the official record.

The rule amends § 4.24(a)(4) to except evidence reviewed pursuant to § 4.31(d) from the provision that no decision can be based on evidence not open to inspection by the parties.

The rule amends § 4.27(b) by providing an exception for the disposition of *ex parte* matters as authorized by law from the prohibition of any *ex parte* communication as defined in that rule.

The final rule mainly differs from the proposed rule in its organization, not its substance. The provisions of § 4.31(e) of the proposed rule, for example, have been redesignated as § 4.31(d) and revised to more closely parallel the provisions of § 4.31(a). Changes were also made in response to public comments. Any reference in this preamble to a specific subsection of the rule relates to the final rule unless otherwise specified.

OHA notes that this rulemaking is not intended to affect the availability of information subject to disclosure under the FOIA, 5 U.S.C. 552; nor is it intended to authorize the withholding from Congress of information to which Congress is entitled under law.

II. Discussion of the Public Comments

One comment observed that in amending the first sentence of § 4.27(b)(1), the proposed rule would delete the remaining sentences of that subsection. The final rule retains those remaining sentences.

One comment noted that § 4.31, as proposed, required a party to submit, together with the document containing confidential information, a copy from which the information had been deleted. The comment observes that there may be circumstances where such deletion would be nearly impossible. For example, if the confidential information is embodied in a map, it would be extremely difficult to obliterate the confidential information without almost completely obscuring the information on the map. In response to this problem, the final rule provides that if it is not practicable to submit a copy of the document because deletion of the information would render the document unintelligible, a description of the document may be substituted.

One comment questions why the rule requires that a submitter of confidential information indicate in the document that it is exempt or contains information which is exempt from disclosure. This provision appeared in § 4.31(a)(2) of the proposed rule and now appears in § 4.31 (a)(1) and (d)(1). The primary purpose of this provision is to ensure that Government employees handling the document are aware of its exemption from disclosure so that they will take the necessary precautions to maintain its confidentiality.

One comment notes that § 4.31(d), as proposed, required the party requesting confidential information to adhere to the agreements against disclosure, but suggested that such agreement be verified in writing. We have responded to concerns about the enforceability of this provision by adding language to final § 4.31(c) requiring the party to agree in writing under oath to protect confidential information.

Several comments criticized the provision in § 4.31(d) that enables the presiding officer or an appeals board to consider information not available to all the parties to a proceeding. Some commenters contend that due process requires that such information always be made available, regardless of whether or not a proceeding arises under 5 U.S.C. 554.

Some of the concern appears to arise from a misunderstanding of the scope of the rule. Documents containing confidential information cannot be withheld under § 4.31(d) from another party in a proceeding under 5 U.S.C. 554. Nor can a document be withheld under § 4.31(d) from another party to any type of proceeding if that party's agreement to abide by the requirements of § 4.31(c) would adequately protect the confidentiality of the documents.

Several comments observe that § 4.31(d) provides that confidential information could be withheld from a party only if disclosure is "prohibited by law." The commenters question the breadth or narrowness of this provision, and note the difference between this standard and the provision set forth at § 4.31(a). It is important to note that subsection (a) applies to any proceeding and does not authorize the withholding of information from parties to a case who agree to keep the information confidential. Rather, that subsection concerns the exclusion of confidential information from the public record, and OHA considers it appropriate to give full effect to the exemptions contained in the FOIA. Subsection (d) differs from subsection (a) because it sets forth the requirements for withholding information from a party to a case. Under subsection (d), an FOIA exemption does not provide a sufficient basis for withholding information from a party who agrees to keep the information confidential; rather the party requesting nondisclosure under that provision must demonstrate that disclosure is prohibited by law. As we indicated in the notice of proposed rulemaking, the final rulemaking merely codifies the standard for disclosure which the Interior Board of Land Appeals has already applied a number of years. *Southern Union Exploration Co.*, 51 IBLA 89 (1980).

One comment refers to the provision in § 4.31(d)(2) that if the request for nondisclosure is intended to protect a nonparty, the party submitting the document must demonstrate that the nonparty refused to consent to the disclosure of the evidence to the other parties to the proceeding. The comment expresses concern that certain agencies tend to be overly protective in claiming that information upon which a decision is based is proprietary and also in claiming that agency-generated information is proprietary. To remedy this perceived problem, the comment recommends that the rule be clarified to indicate that "party" refers to the agency and not just to private parties. We reject this comment because we do not consider such clarification necessary. The procedural regulations under Part 4 are replete with references to party or person, and OHA has

required Government agencies as well as private parties to adhere to those regulations. Accordingly, a bureau or office of the Department can submit confidential information for review by OHA only in the same manner as a private party pursuant to this final rule.

One comment notes that § 4.31(d)(3) provides that a party requesting nondisclosure may withdraw the evidence if the request is denied, but further provides that the evidence may not be withdrawn if an FOIA request, administrative appeal from the denial of a request, or a lawsuit seeking release of the information is pending. The comment suggests that these provisions are inconsistent and recommends that the second provision be deleted. We have not deleted this provision. When a document is submitted pursuant to § 4.31, it arguably becomes an agency record for the purposes of the FOIA, and if an FOIA request has been filed, the agency may not allow the withdrawal of the information until final disposition of the FOIA request.

One comment expresses concern about the potential applicability of these rules to states and tribes operating under delegation or cooperative agreements with the Secretary under the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1701. The comment observes that such delegates have agreed to abide by Federal disclosure and confidentiality laws and assume the liability for penalties for wrongful disclosure. The comment asserts that FOGRMA requires the Secretary to make available to such delegates all information including trade secrets and other confidential data bearing on the collection of royalties from Federal production in the particular state or tribal area. Accommodation of this concern requires no revision of the rule because the rule does not purport to restrict the availability of information to any person who has a statutory right to receive it. The regulation only restricts disclosure of information which is "exempt from disclosure" or where disclosure to a party would be "prohibited by law." If a person is entitled by statute or agreement to receive the information, such information is neither exempt from disclosure to that person nor is such disclosure prohibited by law.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 (Feb. 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis because the rule only sets forth the details of necessary procedures for hearings and appeals.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because the rule simply provides procedures for administrative review of agency actions.

National Environmental Policy Act

The Office of Hearings and Appeals has determined, on the basis of the categorical exclusion of regulations of a procedural nature set forth at 516 DM 2 Appendix 1, § 1.10, that this rule will not significantly affect the quality of the human environment.

Drafting

This rule was drafted by James R. Kleiler, an Attorney-Adviser with the Interior Board of Land Appeals in OHA.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Lawyers.

Date: November 7, 1988.

Earl E. Gjelde,

Under Secretary.

Accordingly, 43 CFR Part 4, Subpart B, is revised as follows:

PART 4—DEPARTMENT HEARING AND APPEALS PROCEDURES

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. 1201, unless otherwise noted.

Subpart B—General Rules Relating to Procedures and Practice

2. Section 4.22 is amended by revising paragraphs (b) and (c) to read as follows:

§ 4.22 Documents.

* * * * *

(b) *Service generally.* A copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case, except as otherwise provided by § 4.31. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his/her client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by order of a presiding official or an appeals board. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(c) *Retention of documents.* All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding before the Office of Hearings and Appeals will be retained with the official record of the proceedings. However, the withdrawal of original documents may be permitted while the case is pending upon the submission of true copies in lieu thereof. When a decision has become final, an appeals board in its discretion may, upon request and after notice to the other party or parties, permit the withdrawal of original exhibits or any part thereof by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal. Transcripts of testimony and/or documents received or reviewed pursuant to § 4.31 of these rules shall be sealed against disclosure to unauthorized persons and retained with the official record, subject to the withdrawal and substitution provisions hereof.

* * * * *

3. Section 4.24 is amended by revising paragraph (a)(4) to read as follows:

§ 4.24 Basis of decision.

(a) * * *

(4) In any case, no decision after a hearing or on appeal shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the hearing or appeal, except for documents or other evidence received or reviewed pursuant to § 4.31(d).

* * * * *

4. Section 4.27 is amended by revising paragraph (b)(1) to read as follows:

§ 4.27 Standards of conduct.

* * * * *

(b) *Ex parte communication*—(1) *Prohibition.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, there shall be no communication concerning the merits of a proceeding between any party to the proceeding or any person interested in the proceeding or any representative of a party or interested person and any Office personnel

involved or who may reasonably be expected to become involved in the decisionmaking process on that proceeding, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Proceedings include cases pending before the Office, rulemakings amending this Part 4 that might affect a pending case, requests for reconsideration or review by the Director, and any other related action pending before the Office. The terms "interested person" and "person interested in the proceeding" include any individual or other person with an interest in the agency proceeding that is greater than the interest that the public as a whole may have. This regulation does not prohibit communications concerning case status or advice concerning compliance with procedural requirements unless the area of inquiry is in fact an area of controversy in the proceeding. Any oral communication made in violation of this regulation shall be reduced to writing in a memorandum to the file by the person receiving the communication and shall be included in the record. Any written communication made in violation of this regulation shall be included in the record. In proceedings other than informal rulemakings copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

* * * * *

5. A new § 4.31 is added to Subpart B to read as follows:

§ 4.31 Request for limiting disclosure of confidential information.

(a) If any person submitting a document in a proceeding under this part claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of title 18 of the United States Code (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must indicate in the document that it is exempt, or contains information which is exempt, from disclosure;

(2) Must request the presiding officer or appeals board not to disclose such information except to the parties to the proceeding under the conditions provided in paragraphs (b) and (c) of this section, and must serve the request upon the parties to the proceeding. The request shall include the following items:

(i) A copy of the document from which has been deleted the information for which the person requests nondisclosure; if it is not practicable to submit such copy of the document because deletion of the information would render the document unintelligible, a description of the document may be substituted;

(ii) A statement specifying why the information is confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information;

(iii) A statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(b) If information is submitted in accordance with paragraph (a) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with Part 2 of this title, or upon request from a party to the proceeding under the restrictions stated in paragraph (c) of this section.

(c) At any time, a party may request the presiding officer or appeals board to direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding officer or board will so direct, unless paragraph (d) of this section is applicable, if the party requesting the information agrees under oath in writing:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this part; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(d) If any person submitting a document in a proceeding under this Part other than a hearing conducted pursuant to 5 U.S.C. 554 claims that a disclosure of information in that document to another party to the proceeding is prohibited by law, notwithstanding the protection provided under paragraph (c) of this section, such person:

(1) Must indicate in the original document that it contains information of which disclosure is prohibited;

(2) Must request that the presiding officer or appeals board review such evidence as a basis for its decision without disclosing it to the other party or parties, and serve the request upon the parties to the proceeding. The request shall include a copy of the document or description as required by paragraph (a)(2)(i) of this section and state why disclosure is prohibited, citing pertinent statutory or regulatory authority. If the prohibition on disclosure is intended to protect the interest of a person who is not a party to the proceeding, the party making the request must demonstrate that such person refused to consent to the disclosure of the evidence to other parties to the proceeding.

(3) If the presiding officer or an appeals board denies the request, the person who made the request shall be given an opportunity to withdraw the evidence before it is considered by the presiding official or board unless a Freedom of Information Act request, administrative appeal from the denial of a request, or lawsuit seeking release of the information is pending.

(e) If the person submitting a document does not submit the copy of the document or description required by paragraph (a)(2)(i) or paragraph (d)(2) of this section, the presiding officer or appeals board may assume that there is no objection to public disclosure of the document in its entirety.

(f) Where a decision by a presiding officer or appeals board is based in whole or in part on evidence not included in the public record or disclosed to all parties, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

[FR Doc. 88-28359 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-79-M

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02; Circular No. 2613]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: The Bureau of Land Management, Department of the Interior, is correcting the final rulemaking adding Onshore Oil and Gas Order No. 2, Drilling Operations, by restoring an inadvertent omission from the Order published in the **Federal Register** on November 18, 1988 (53 FR 46798).

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FOR FURTHER INFORMATION CONTACT:
Robert Kent at (202) 653–2174.

The following correction is made in the final rulemaking amending 43 CFR Part 3160 published in the **Federal Register** on November 18, 1988 (53 FR 46798).

1. The following diagram is added immediately following the title of diagram 5M on page 46813 and preceding the paragraph beginning "Although not required * * *."

Eleanor R. Schwartz,
Federal Register Liaison Officer.

BILLING CODE 4310-84-M

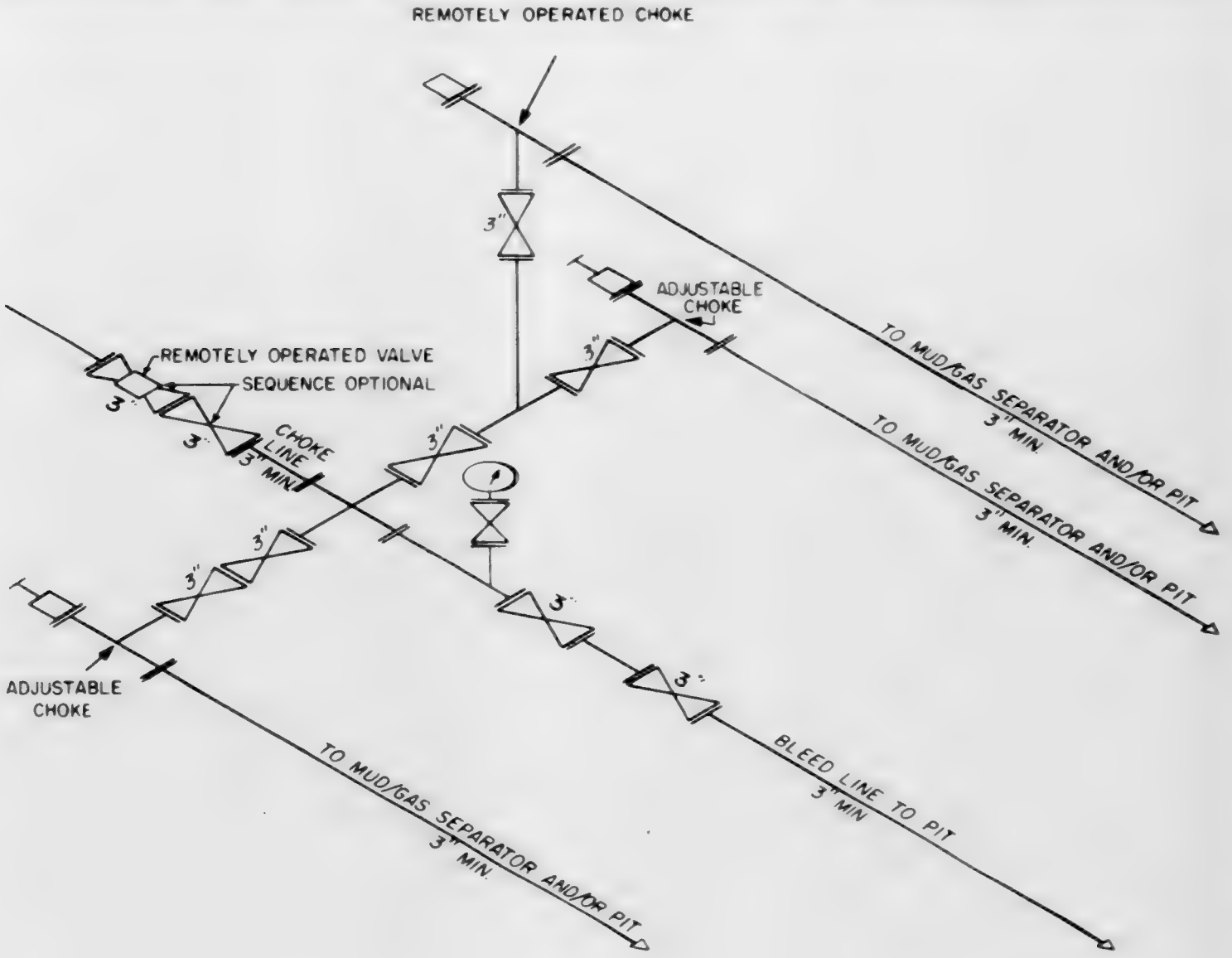

10M AND 15M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY

[FR Doc. 88-28367 Filed 12-8-88; 8:45 am]
BILLING CODE 4310-84-C

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43 CFR Parts 3830, 3850, and 3860

[AA-680-09-4310; Circular No. 2614]

Location of Mining Claims; Assessment Work; Mineral Patent Applications; Amendment Establishing Service Charges and Making Clarifications; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: The Bureau of Land Management, Department of the Interior, is correcting an editorial error in the final rulemaking establishing service charges and making clarifications in the regulations on location of mining claims, the performance of assessment work, and mineral patent applications published in the **Federal Register** on December 2, 1988 (53 FR 48876).

FOR FURTHER INFORMATION CONTACT: Ted R. Hudson at (202) 343-8735.

The following correction is made in the final rulemaking amending 43 CFR Part 3830 published in the **Federal Register** on December 2, 1988 (53 FR 48876).

Amendatory language inadvertently omitted is inserted between item 5 and item 6 in the middle column, page 48881, to read as follows:

5a. Section 3833.1-4 is added to read as follows:

Eleanor R. Schwartz,

Federal Register Liaison Officer.

[FR Doc. 88-28366 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6691

[CO-930-09-4214-10; C-44666]

Withdrawal of National Forest System Land for Protection of Deep Creek Caves, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 2,761 acres of National Forest System lands from mining for a period of 100 years for the protection of Deep Creek Caves near Glenwood Springs, Colorado. These lands have been and remain open to such other forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect unique and irreplaceable geologic features:

Sixth Principal Meridian

White River National Forest

T. 4 S., R. 87 W.,
Sec. 16: Lots 1-4;
Sec. 17: Lots 1-8, S½N½, E½W½SW¼, E½SW¼, SE¼;
Sec. 18: Lots 5-12, E½W½, W½W½NE¼, W½SE¼;
Sec. 19: Lots 5-12, W½SE¼NE¼, W½E½, E½W½, W½NE¼SE¼, SE¼SE¼;
Sec. 20: Lots N½NE¼, NE¼NW¼, SW¼SW¼, SW¼SE¼SW¼;
Sec. 30: Lots 5, 6, 8, E½NW¼, NE¼.

The areas described aggregate approximately 2,761.62 acres of National Forest System lands.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 100 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

November 29, 1988.

[FR Doc. 88-28387 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-JB-M

43 CFR Public Land Order 6693

[WY-930-09-4214-10; WYW 101899]

Withdrawal of Public Land for Natural Corrals Archeological Site; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 357.34 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Natural Corrals Archeological Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-772-2072.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management archeological site:

Sixth Principal Meridian

T. 21 N., R. 101 W.,
Sec. 18, lots 1-3, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

The area described contains 357.34 acres in Sweetwater County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles

Assistant Secretary of the Interior.

November 29, 1988.

[FR Doc. 88-28385 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2804, 2806, 2845, and 2852

[Justice Acquisition Circular 88-2]

Amendments to the Justice Acquisition Regulations (JAR) Regarding Waiver of Requirements for Preaward Contract Review, Increase in Contract Review Thresholds, and Government Property

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: Justice Acquisition Circular (JAC) 88-2 amends the JAR, 48 CFR, Chapter 28 as follows: To amend Part 2801 to implement Attorney General Order 1298-88 which delegates authority to the Assistant Attorney General for Administration and/or the Procurement Executive to waive any requirement for preaward contract review, except those specifically required by statute; to increase the contract review threshold; to add a new Part 2845 to provide Government property reporting requirements; and, make editorial amendments.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division, telephone (202) 272-8354.

SUPPLEMENTARY INFORMATION: The determination is hereby made that these amendments must be issued as a final rule. Any delay in issuing these amendments could impair the Department's ability to provide timely contractual support to its ongoing activities. These amendments were not published for public comment because they do not have an effect beyond the internal operating procedures of the agency.

The Director, Office of Management and Budget, by memorandum dated December 14, 1984 exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exemption applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 48 CFR Parts 2801, 2804, 2806, 2845, and 2852.

Government procurement.

Harry H. Flickinger,

Assistant Attorney General for Administration.

For the reasons set out in the preamble, Title 48, Chapter 28 of the Code of Federal Regulations is amended as follows.

The authority citation for Parts 2801, 2804, 2806, and 2852 continues to read as follows:

Authority: 28 U.S.C. 510, 40 U.S.C. 486(c); 28 CFR 0.75(j); 28 CFR 0.76(j); and, 28 CFR Part 39.

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Subpart 2801.3—[Amended]

2801.301 [Amended]

1. Section 2801.301(c) is amended by adding "(AAG/A)" at the end of the last sentence.

Subpart 2801.6—[Amended]

2. A new section 2801.602-3 Ratification of unauthorized commitments is added as follows:

2801.602-3 Ratification of unauthorized commitments.

The HCA may delegate to subordinate individuals approval of ratification requests of $5,000 and below; however, in no case shall the authority be delegated below the level of chief of the contracting office.

3. Section 2801.602-70 Office of the Procurement Executive is amended by revising (a), (b), (c), and (d) to read as follows:

2801.602-70 Office of the Procurement Executive.

(a) Prior to execution of any contractual action which:

(1) Exceeds $50,000 and was solicited using other than full and open competition procedures, including amendments or modifications to these contracts which cause the total contract costs to exceed $50,000;

(2) Exceeds $100,000 and was solicited using full and open competition procedures, including amendments or modifications to these contracts which cause total contract costs to exceed $100,000; or,

(3) All contracts evaluated on the basis of system life costs and/or are evaluated on the basis of option pricing regardless of dollar value,

the contracting officer shall forward the proposed contract action to the Office of the Procurement Executive for review. For the purposes of this section contractual actions include all pre-award and post-award contractual actions above the thresholds in paragraphs (a)(1) through (3) above, including but not limited to modifications, ratifications, and options but excluding orders from Federal Supply Schedules and orders from Basic Ordering Agreements. Review by the Office of the Procurement Executive is applicable to all organization elements in the Department with the exception of the FBI. It is the responsibility of the FBI's Contract Review Board to ensure that procurement actions are awarded in conformity with applicable statutes, regulations, and procedures. This exemption does not exempt the FBI from other oversight responsibilites of the Office of the Procurement Executive, including Procurement Executive review and approval of justifications for other than full and open competition on contracts over $10 million.

(b) Prior to submission to the Procurement Executive, the legal office for each bureau-level procurement activity is responsible for reviewing and approving all such procurement actions for legal sufficiency.

(c) The AAG/A and/or the Procurement Executive may waive any requirement for preaward contract review, except one specifically required by statute. Requests for waivers shall be submitted to the Procurement Executive in accordance with paragraph (d) of this section.

(d) Except for extreme emergencies, waiver requests must be in writing and include a detailed explanation as to why a waiver is required as well as information explaining reasons why a contract or class of contracts cannot be reviewed on a preaward basis. Telephone waivers may be granted in extreme emergencies. All contract documents that are available at the time a waiver request is made must accompany the request for review. All available documents will be reviewed to assure that the award is legally sufficient prior to the granting of a waiver. A postaward review of the completed contract file is required. Waivers will not be granted near the end of a fiscal year for the purpose of obligating year end funds.

* * * * *

2801.603 [Amended]

4. Section 2801.603(b)(2) is amended by adding the word "than" in the last sentence between "lower" and "the".

PART 2804—ADMINISTRATIVE MATTERS

Subpart 2804.70—[Removed]

5. Subpart 2804.70 is removed.

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PART 2806—COMPETITION REQUIREMENTS

Subpart 2806.5—[Amended]

2806.501 [Amended]

6. Section 2806.501(b) is amended by removing the words "or be in direct supervision of" from the last sentence.

SUBCHAPTER G—CONTRACT MANAGEMENT

7. Part 2845 is added as follows:

PART 2845—GOVERNMENT PROPERTY

2845.000 Scope of part.

Subpart 2845.1—General

2845.102 Policy.
2845.105 Records of Government property.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Reports of Government property.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

2845.000 Scope of part.

This part prescribes policies and procedures for providing Department of Justice property to contractors; contractors' use, and management of Departmental property; and reporting, redistribution and disposal of contractor property.

Subpart 2845.1—General

2845.102 Policy.

Subject to the provisions in Part 45 of the Federal Acquisition Regulations:

(a) The contracting officer is responsible for the delivery of Government property to contractors and serves as property administrator unless property administration responsibilities are explicitly delegated in the contract. Property management responsibilities may be delegated to contracting officer's technical representatives or other representatives authorized to act in the contracting officer's behalf with respect to Government-furnished property.

(b) The contracting officer shall ensure that contractor property responsibilities are clearly delineated and that, consistent with internal bureau policies and procedures, requirements are coordinated with the bureau property managers before award and throughout the course of a contract in which property is furnished.

2845.105 Records of Government property.

If departmental elements maintain the Government's official property management records, the contract records may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally designated property administrator shall serve as custodian of the account.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Reports of Government property.

(a) In compliance with FAR 45.505–14, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the Department of Justice property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit a summary report of Departmental property furnished under each contract, as of the end of the calendar year, to the Facilities and Administrative Services Staff, Justice Management Division. The report shall be categorized in accordance with FAR Subpart 45.505 and shall include contracts for which the bureau maintains the official government records.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

Policies pertaining to reutilization and disposal of Department of Justice property, including requirements for internal screening, waivers, and disposal reporting, are prescribed in the Justice Property Management Regulations Subpart 128–43. Unless otherwise specified, the "plant clearance officer" shall be a designated utilization and disposal representative of a bureau's property management office.

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2852.1—[Amended]

2852.105–70 [Amended]

8. Paragraph 2852.105–70(b) is amended by removing "DOJ" from the last sentence.

Subpart 2852.2—[Amended]

2852.232–79 [Amended]

9. Clause 2852.232–79 Inspection and Acceptance is revised to read as follows:

* * * * *

Inspection and Acceptance

(a) Inspection and acceptance of the supplies or services to be furnished hereunder shall be performed at *——— by the COTR or his designated representative, in accordance with the Inspection clause and any other provisions specified in this contract. The Government reserves the right to conduct any tests it deems reasonably necessary to ensure that the supplies or services provided conform in all respects to the contract specifications. Supplies or services which upon inspection are found not to be in conformance with contractual specifications shall be promptly rejected and notice of such rejection, together with appropriate instructions, will be provided the contractor by the Contracting Officer.

(b) The Government will use its best efforts to inspect and accept/reject the supplies or services provided within **——— days. Failure of the Government to so inspect the supplies or services within the above stated time shall not be construed as acceptance of such supplies or services.

(End of Clause)
(Oct. 1988)

* Contracting officer to insert the appropriate place of inspection:

** Contracting officer to insert the appropriate number of days required for inspection and acceptance.

[FR Doc. 88–28082 Filed 12–8–88; 8:45 am]
BILLING CODE 4410–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 11A)]

Abandonment Regulations; Costing (Implementation of the Railroad Accounting Principles Board Findings)

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting abandonment (and subsidy) rule changes in 49 CFR Part 1152 to implement the recent findings of the Railroad Accounting Principle's Board. The proposed rules were published in the **Federal Register** on May 16, 1988, at 53 FR 17234. Specifically, the Commission will: (1) Determine opportunity cost in abandonment proceedings (and "return on investment" in subsidy proceedings) using the nominal cost of capital rate; (2) include

as a reduction (or increase) of opportunity cost (and return on investment in subsidy proceedings) any projected holding gains (or losses) that would accrue to the carrier from retention of the branch line assets for a one-year period; and (3) add a new "Forecast Year" column to Exhibit 1 showing the projected operating results on the line during the 12-month period beginning with the month of the abandonment filing.

Also, we have decided to continue our practice of not making a deferred tax adjustment in abandonment (and subsidy) proceedings.

EFFECTIVE DATE: The rules are effective January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489 (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: The revised rules are set forth below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

The rule modifications will not have a significant economic impact on a substantial number of small entities. Nor will this action significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National Trail System, National resources, Recreation and recreation areas.

Decided: December 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioners Lamboley and Phillips concurred with separate expressions.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Part 1152 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903, 11161, 11162, 11163, *et seq.*

2. In Subpart A, § 1152.2, paragraphs (h) through (o) are redesignated as paragraphs (i) through (p) and a new paragraph (h) is added to read as follows:

§ 1152.2 Definitions.

* * * * *

(h) "Forecast Year" means the 12-month period, beginning with the first day of the month in which the application is filed with the Commission, for which future revenues and costs are estimated.

* * * * *

3. In Subpart C, § 1152.22, paragraphs (d)(3) through (d)(5) are redesignated as (d)(4) through (d)(6), a new paragraph (d)(3) is added and paragraph (e)(2) is revised to read as follows:

§ 1152.22 Contents of application.

* * * * *

(d) * * *

(3) The carrier shall compute an estimate of the future revenues attributable, avoidable costs and reasonable return on the value for the line to be abandoned, for the "Forecast Year" (as defined in § 1152.2(h)) in the form called for in Exhibit 1. The carrier shall fully support and document all dollar amounts shown in the Forecast year column including an explanation of the rationale and key assumptions used to determine the Forecast Year amounts.

* * * * *

(e) * * *

(2) Identification of significant users, as defined in § 1152.2(n), by name, address, principal commodity, and by tonnage and/or carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application and for that part of the current year for which information is available.

* * * * *

4. In Subpart D, § 1152.30, paragraph (a)(2) is revised to read as follows:

§ 1152.30 General.

(a) * * *

(2) This subpart also sets forth a method by which the carrier may establish its Forecast Year estimates and Estimated Subsidy Payment to be included in its application (§ 1152.22(d) of this part). Furthermore, an offeror of financial assistance may use this method to formulate a subsidy offer and/or Proposed Subsidy Payment under 49 U.S.C. 10905 and § 1152.27 of Subpart C of this part.

* * * * *

5. In Subpart D, § 1152.34 is amended by revising paragraphs (a)(1), (b)(3), (c)(1) introductory text, (d) introductory text, (d)(2), (d)(3), (d)(4), (d)(5) and (d)(6) and adding a new paragraph (e) to read as follows:

§ 1152.34 Return on investment.

* * * * *

(a)(1) Return on investment-freight cars. Return on investment-freight cars shall be determined by multiplying the current values of each type of car developed in § 1152.32(g)(1) by one minus the ratio of accumulated depreciation to the total original cost investment. This will determine the net current value for each type of car. The net current value for each type of car will then be multiplied by the nominal rate of return calculated in paragraph (d) of this section to obtain nominal return on investment for each type of car. The total return on investment will then be calculated by deducting the projected holding gain (loss) for the forecast and or subsidy year from the nominal return on investment for each type of car.

* * * * *

(b) * * *

(3) The return on investment for each category or type locomotive shall be the nominal rate of return less the holding gain (loss). The nominal rate of return is calculated by multiplying the replacement cost determined in paragraph (b)(1) of this section by the nominal rate of return determined in paragraph (b)(2) of this section. The holding gain (loss) shall be gain (loss) projected to occur during the forecast and/or subsidy year.

* * * * *

(c) * * *

(1) The investment base to which the nominal return element shall apply shall be the sum of:

* * * * *

(d) Reasonable return. A rail carrier shall furnish to the Commission, and to any financially responsible person considering making a offer of a rail service continuation payment, a substantiated statement showing its current nominal cost of capital. The railroad's nominal cost of capital shall be the current before tax cost of capital, weighted to the capital structure, and adjusted for the effects of the combined

statutory Federal and State income tax rates. This rate of return expressed as a percent, shall be calculated as follows:

* * * * *

(2) The current nominal cost of debt shall be determined by taking the average of all debt instruments (including bonds, equipment trust certificates, financial lease arrangement, et cetera) issued by the carrier in the most recent 12 month period. The debt cost calculated by this procedure is a before-tax rate and is not adjusted for inflation or income taxes.

(3) The current nominal after tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investment in the market place. The current after tax nominal cost of equity is divided by 1 minus the combined statutory Federal and State income tax rates. This will develop the nominal cost of equity on a before tax basis.

(4) The current nominal before-tax cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted before-tax nominal cost of current debt.

(5) The current nominal before-tax cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted nominal before-tax cost of current equity.

(6) The results of paragraphs (d)(4) and (d)(5) are added together to determine the current nominal cost of capital.

(e) Holding gain (loss)-road properties. The railroad shall determine the holding gain (loss) that is projected to occur during the forecast and/or subsidy year.

6. In Subpart D, § 1152.36 is revised to read as follows:

§ 1152.36 Submission of revenue and cost data.

The following information shall be submitted by applicant as Exhibit 1 to an abandonment or discontinuance application (§ 1152.22(d)) and shall be developed in accordance with the methodology established in §§ 1152.31 through 1152.35, as applicable. Such information, form and methodology shall also be used by an offeror of financial assistance to formulate a Proposed Subsidy Payment (§ 1152.27).

	Base year operations	Forecast year operations	Projected subsidy year operations
Revenues attributable for—			
1. Freight originated and/or terminated on branch			
2. Bridge traffic			
3. All other revenue and income			
4. Total revenues attributable (lines 1 through 3)			
Avoidable costs for—			
5. On-branch costs (lines 5a through 5i)			
a. Maintenance of way and structures			
b. Maintenance of equipment			
c. Transportation			
d. General administrative			
e. Deadheading, taxi, and hotel			
f. Overhead movement			
g. Freight car costs			
h. Revenue taxes			
i. Property taxes			
6. Off Branch Costs			
7. Total avoidable costs (line 5 plus line 6)			
Subsidization costs for—			
8. Rehabilitation [1]			
9. Administration costs (subsidy year only) [2]			
10. Casualty reserve account [2]			
11. Total subsidization costs (lines 8 through 10)			
Return on value for—			
12. Freight cars			
13. Locomotives			
14. Road properties			
a. Current valuation of road properties			
b. Nominal rate of return			
c. Nominal return on road properties (line 14a times 14b)			
d. Holding gain (Loss) on road properties (forecast and subsidy years only)			
e. Total return on road properties (line 14c minus 14d)			
15. Total return on value (Sum of lines 12, 13, and 14e)			
16. Avoidable loss from operations (line 4 minus line 7)			
17. Estimated forecast year loss from operations (line 4 minus lines 7 and 15)			
18. Estimated subsidy (line 4 minus lines 7, 11, and 15)			

[1] This projection shall be computed in accordance with § 1152.22 (n).
[2] Omit in applications pursuant to §§ 1152.22 and 1152.23.

7. In Subpart E, § 1152.41, paragraph (e)(2) is revised to read as follows:

§ 1152.41 Contents of the application

* * * * *

(e) * * *

(2) Identification of significant users, as defined in § 1152.2(n), by name, address, principal commodity, and by tonnage and/or carloads for that part of the current year and the previous calendar year for which information is available.

* * * * *

[FR Doc. 88-28323 Filed 12-8-88; 8:45 am]
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VOL 53 ISS 237 DEC 9 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 237
Friday, December 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 87-185]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea Vaccine etc.

AGENCY: Animal and Plant Health Inspections Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would codify in the regulations standard requirements for evaluating Bovine Virus Diarrhea Vaccine, Chlamydia Psittaci Vaccine, Bovine Rhinotracheitis Vaccine, Pasteurella Hamemolytica Vaccine (Bovine Isolate), Pasteurella Multocida Vaccine (Bovine Isolate), and Pasteurella Multocida Vaccine (Avian Isolate). The purpose of this rule is to make the proposed uniform standard requirements and test methods available for use by any producer making the products concerned. Certain section designations would be changed to allow for the addition of the new standard requirements.

DATED: Consideration will be given only to comments postmarked or received on or before January 9, 1989.

ADDRESSES: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-185. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologies, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been classified as a "Nonmajor Rule."

The proposed action would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. It would also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises, in domestic markets. Its purpose is to publish in the regulations the test methods and procedures currently used by manufacturers to evaluate certain animal biologics.

Certification Under the Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601), the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not result in adverse economic impact on a substantial number of small entities. Its purpose is to codify in the regulations standard requirements for veterinary biological products.

Background

Standard requirements consist of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service for evaluating biological products for purity, safety, potency, and efficacy. Until such standard requirements for a given biological product are codified in the regulations (9 CFR Part 113), the test methods, procedures, and criteria to be used in the evaluation of the product are developed by the licensees and are written into the applicable Outlines of Production which are required to be filed with the Animal and Plant Health Inspection Service for each veterinary biological product. Outlines of production are required to be approved by the Animal and Plant Health Inspection Service.

When uniform standard requirements for a biological product have been approved by the Animal and Plant Health Inspection Service, they are proposed for codification in the regulations. Each of the standard requirement test methods proposed in these amendments has been used for evaluation of at least two currently licensed products. Development of such requirement is accomplished through cooperative efforts involving academic institutes, research organizations, licensees and applicants, and the National Veterinary Services Laboratories. Codification assures uniformity and general availability of the standard requirements.

These proposed amendments contain the standard requirements for all products containing live and modified live pasteurella haemolytica bacteria and pasteurella multocida bacteria, live chlamydia psittaci, and killed bovine virus diarrhea virus and bovine rhinotracheitis virus.

To allow for the addition of the proposed standard requirements for killed virus vaccines, and new standard requirements in the future, certain sections in this part would be redesignated.

List of Subjects in 9 CFR Part 113

Animal biologics.

Accordingly, 9 CFR Part 113 would be amended as follows:

1. Authority Citation for Part 113 would be revised to read as follows:

Authority: 21 U.S.C. 151-159; 37 FR 28477, 28646; 38 FR 19141.

2. In 9 CFR Part 113—Standard Requirements, certain sections, footnotes, and references thereto, would be redesignated and for the convenience of the user the table of contents would read as follows:

PART 113—STANDARD REQUIREMENTS

Applicability

Sec.
113.1 Compliance.
113.2 Testing aids.
113.3 Sampling of biological products.
113.4 Exemptions to tests.
113.5 General testing.
113.6 APHIS testing.
113.7 Multiple fractions.
113.8 In vitro tests in lieu of animal tests for immunogenicity.
113.9 New potency test.
113.10 Testing of bulk material for export or for further manufacture.

Standard Procedures

113.25 Culture media for detection of bacteria and fungi.
113.26 Detection of viable bacteria and fungi except in live vaccine.
113.27 Detection of extraneous viable bacteria and fungi in live vaccines.
113.28 Detection of mycoplasma contamination.
113.29 Determination of moisture content in desiccated biological products.
113.30 Detection of Salmonella contamination.
113.31 Detection of avian lymphoid leukosis.
113.32 Detection of Brucella contamination.
113.33 Mouse safety tests.
113.34 Detection of hemagglutinating viruses.
113.35 Detection of viricidal activity.
113.36 Detection of pathogens by the chicken inoculation test.
113.37 Detection of pathogens by the chicken embryo inoculation test.
113.38 Guinea pig safety test.
113.39 Cat safety tests.
113.40 Dog safety test.
113.41 Calf safety test.
113.42 Detection of lymphocytic choriomeningitis contamination.
113.43 Detection of chlamydial agents.
113.44 Swine safety test.
113.45 Sheep safety test.
113.46 Detection of cytopathogenic and/or hemadsorbing agents.
113.47 Detection of extraneous agents by the fluorescent antibody technique.

Ingredient Requirements

113.50 Ingredients of biological products.
113.51 Requirements for primary cells used for production of biologics.
113.52 Requirements for cell lines used for production of biologics.
113.53 Requirements for ingredients of animal origin used for production of biologics.
113.54 Sterile diluent.
113.55 Detection of extraneous agents in Master Seed Virus.

Live Bacterial Vaccines

113.64 General requirements for live bacterial vaccines.
113.65 Brucella Abortus Vaccine.
113.66 Anthrax Spore Vaccine—Nonencapsulated.
113.67 Erysipelothrix Rhusiopathiae Vaccine.
113.68 Pasteurella Haemolytica Vaccine, Bovine.
113.69 Pasteurella Multocida Vaccine, Bovine.
113.70 Pasteurella Multocida Vaccine, Avian Isolate.
113.71 Chlamydia Psittaci Vaccine (Feline Pneumonitis), Live Chlamydia.

Inactivated Bacterial Products

113.100 Bacterins, toxoids, bacterin-toxoids, and bacterial extracts.
113.101 Leptospira Pomona Bacterin.
113.102 Leptospira Icterohaemorrhagiae Bacterin.
113.103 Leptospira Canicola Bacterin.
113.104 Leptospira Grippotyphosa Bacterin.
113.105 Leptospira Hardjo Bacterin.
113.106 Clostridium Chauvoei Bacterin.
113.107 Clostridium Haemolyticum Bacterin.
113.108 Clostridium Novyi Bacterin-Toxoid.
113.109 Clostridium Sordellii Bacterin-Toxoid.
113.110 Clostridium Botulinum Type C Bacterin-Toxoid.
113.111 Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid.
113.112 Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid.
113.113 Autogenous Biologics.
113.114 Tetanus Toxoid.
113.115 Staphylococcus Aureus Bacterin-Toxoid.
113.116 Pasteurella Multocida Bacterin, Avian Isolate, Type 4.
113.117 Pasteurella Multocida Bacterin, Avian Isolate, Type 1.
113.118 Pasteurella Multocida Bacterin, Avian Isolate, Type 3.
113.119 Erysipelothrix Rhusiopathiae Bacterin.
113.120 Salmonella Typhimurium Bacterin.
113.121 Pasteurella Multocida Bacterin.
113.122 Salmonella Choleraesuis Bacterin.
113.123 Salmonella Dublin Bacterin.

Killed Virus Vaccines

113.200 General requirements for killed virus vaccines.
113.201 Canine Distemper Vaccine, Killed Virus.
113.202 Canine Hepatitis Vaccine, Killed Virus.
113.203 Feline Panleukopenia Vaccine, Killed Virus.
113.204 Mink Enteritis Vaccine, Killed Virus.
113.205 Newcastle Disease Vaccine, Killed Virus.
113.206 Wart Vaccine, Killed Virus.
113.207 Encephalomyelitis Vaccine, Eastern and Western, Killed Virus.
113.208 Avian Encephalomyelitis Vaccine, Killed Virus.
113.209 Rabies Vaccine, Killed Virus.
113.210 Feline Calicivirus Vaccine, Killed Virus.
113.211 Feline Rhinotracheitis Vaccine, Killed Virus.
113.212 Bursal Disease Vaccine, Killed Virus.
113.213 Pseudorabies Vaccine, Killed Virus.
113.214 Parvovirus Vaccine, Killed Virus (Canine).
113.215 Bovine Virus Diarrhea Vaccine, Killed Virus.
113.216 Bovine Rhinotracheitis Vaccine, Killed Virus.

Live Virus Vaccines

113.300 General requirements for live virus vaccines.
113.301 Ovine Ecthyma Vaccine.
113.302 Distemper Vaccine—Mink.
113.303 Bluetongue Vaccine.
113.304 Feline Panleukopenia Vaccine.
113.305 Canine Hepatitis Vaccine.
113.306 Canine Distemper Vaccine (Ferret Avirulent).
113.307 Canine Distemper Vaccine (Ferret Virulent).
113.308 Encephalomyelitis Vaccine, Venezuelan.
113.309 Bovine Parainfluenza Vaccine.
113.310 Bovine Rhinotracheitis Vaccine.
113.311 Bovine Virus Diarrhea Vaccine
113.312 Rabies Vaccine.
113.313 Measles Vaccine.
113.314 Feline Calicivirus Vaccine.
113.315 Feline Rhinotracheitis Vaccine.
113.316 Canine Parainfluenza Vaccine.
113.317 Parovirus Vaccine (Canine).
113.318 Pseudorabies Vaccine.
113.319–113.324 [Reserved].
113.325 Avian Encephalomyelitis Vaccine.
113.326 Avian Pox Vaccine.
113.327 Bronchitis Vaccine.
113.328 Fowl Laryngotracheitis Vaccine.
113.329 Newcastle Disease Vaccine.
113.330 Marek's Disease Vaccines.
113.331 Bursal Disease Vaccine.
113.332 Tenosynovitis Vaccine.

Diagnostics and Reagents

113.400–113.405 [Reserved].
113.406 Tuberculin, Intradermic.
113.407 Pullorum antigen.
113.408 Avian mycoplasma antigen.
113.409 Tuberculin—PPD Bovis, Intradermic.

Blood Origin Products

113.450 General requirements for biological products of animal blood origin.
113.451 Tetanus Antitoxin.
113.452 Erysipelothrix Rhusiopathiae Antiserum.
113.453 Canine Distemper Hepatitis-Leptospira Antiserum.
113.454 Clostridium Perfringens Type C Antitoxin.
113.455 Clostridium Perfringens Type D Antitoxin.

3. 9 CFR Part 113, under the heading "Live Bacterial Vaccines," would be amended by adding new §§ 113.68 through 113.71 to read as follows:

§ 113.68 Pasteurella Haemolytica Vaccine, Bovine.

Pasteurella Haemolytica Vaccine, Bovine, shall be prepared as a desiccated live culture bacterial vaccine of an avirulent or modified strain of *Pasteurella haemolytica*, identified as

serotype 1. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.64 and the requirements in this section.

(b) Each lot of Master Seed used for vaccine production shall be tested for immunogenicity. The immunogenicity of a selected bacterial count from the lot of Master Seed shall be established as follows:

(1) Fifteen *Pasteurella haemolytica* susceptible calves shall be used as test animals (10 vaccinates and 5 controls) for each route of administration recommended on the label.

(2) An arithmetic mean count of the colony forming units from vaccine produced from the highest passage of the Master Seed shall be established before the immunogenicity test is conducted. The 10 calves to be used as vaccinates shall be injected as recommended on the label with a predetermined quantity of vaccine bacteria. The five control calves shall be held separately from the vaccinates. To confirm the dosage calculation, five replicate titrations shall be conducted on a sample of the bacterial vaccine used. Only plates containing between 30 and 300 colonies shall be considered in a valid test.

(3) The vaccinates and controls shall be examined and their average body temperature determined prior to challenge. Fourteen to twenty-one days postvaccination, the vaccinates and controls shall each be challenged by the respiratory route with a (virulent) pneumonia producing *Pasteurella haemolytica* serotype 1 culture and observed for 5 to 7 days. The challenge culture and instructions for preparation for use shall be furnished or approved by the Animal and Plant Health Inspection Service.

(4) A satisfactory challenge shall be evidenced in the controls by progression of clinical signs consistent with respiratory system infection following challenge, including but not limited to lacrimation, mucoid nasal exudates, expiratory dyspnea, tachypnea, pulmonary rales, and cough possibly terminating in death; moribundity, depression with anorexia; diarrhea with substantial weight loss; or any combination of these symptoms.

(5) Lung lesion response to challenge will be assessed in all calves. Lung lesions will be assessed at necropsy in calves that succumb to challenge. Surviving calves will be euthanized on day five to seven following challenge and lung lesions assessed at necropsy. Lung lesion scores will be used in the assessment of the response to challenge exposure. If a significant difference in lung lesion scores cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed is unsatisfactory.

(6) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Only five vaccinates and five controls need to be used in the retest: Provided, that at least four of five vaccinates and four of five controls shall meet the criteria prescribed in paragraphs (b)(4) and (b)(5) of this section.

(7) An Outline of Production change must be made before authority for use of a new lot of Master Seed is granted by the Animal and Plant Health Inspection Service.

(c) *Test Requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in 9 CFR 113.64 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety Test.* Samples of completed product from each serial or first subserial shall be tested for safety in calves as provided in 9 CFR 113.41(a) and 113.41(b) except, that the equivalent of two doses of vaccine shall be used and administered in the manner recommended on the label.

(2) *Bacterial count requirements.* Final container samples of completed product shall be tested for bacterial count using the method used in paragraph (b)(2) of this section. Two replicate titrations shall be conducted on each serial and subserial. Each sample shall be rehydrated with accompanying sterile diluent to the volume indicated on the label. To be eligible for release, each serial and subserial shall have a bacterial count sufficiently greater than that of the vaccine used in the immunogenicity test to assure that, when tested at any time within the expiration period, each serial and subserial shall have a bacterial count at least two times greater than that used in the immunogenicity test.

§ 113.69 Pasteurella Multocida Vaccine, Bovine.

Pasteurella Multocida Vaccine, Bovine, shall be prepared as a desiccated live culture bacterial vaccine of an avirulent or modified strain of *Pasteurella multocida*, of bovine origin. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.64 and the requirements in this section.

(b) Each lot of Master Seed used for vaccine production shall be tested for immunogenicity. The immunogenicity of a selected bacterial count from the lot of Master Seed shall be established as follows:

(1) Fifteen *Pasteurella multocida* susceptible calves shall be used as test animals (10 vaccinates and 5 controls) for each route of administration recommended on the label.

(2) An arithmetic mean count of the colony forming units from vaccine produced from the highest passage of the Master Seed shall be established before the immunogenicity test is conducted. The 10 calves to be used as vaccinates shall be injected as recommended on the label with a predetermined quantity of vaccine bacteria. The five control calves shall be held separately from the vaccinates. To confirm the dosage calculation, an arithmetic mean count shall be established by conducting five replicate titrations on a sample of the bacterial vaccine used. Only plates containing between 30 and 300 colonies shall be considered in a valid test.

(3) The vaccinates and controls shall be examined and their average body temperature determined prior to challenge. Fourteen to twenty-one days post vaccination, the vaccinates and controls shall each be challenged by the respiratory route with a (virulent) pneumonia producing *Pasteurella multocida* culture and observed for 7 to 10 days. The challenge culture and instructions for preparation for use shall be furnished or approved by the Animal and Plant Health Inspection Service.

(4) A satisfactory challenge shall be evidenced in the controls by progression of clinical signs consistent with respiratory system infection following challenge, including but not limited to acute illness with higher body temperature and respiration rate, lacrimation, mucoid nasal exudate, expiratory dyspnea, tachypnea, pulmonary rales, and cough, possibly terminating in death; moribundity, depression with anorexia; diarrhea with substantial weight loss; or any combination of these symptoms.

(5) Lung lesion response to challenge will be assessed in all calves. Lung

lesions will be assessed at necropsy in calves that succumb to challenge. Surviving calves will be euthanized on day 7 to 10 following challenge and lung lesions assessed at necropsy. Lung lesion scores will be used in the assessment of the response to challenge exposure. If a significant difference in lung lesion scores cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed is unsatisfactory.

(6) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Only five vaccinates and five controls need to be used in the retest: Provided, that at least four of five vaccinates and four of five controls shall meet the criteria prescribed in paragraphs (b)(4) and (b)(5) of this section.

(7) An Outline of Production change must be made before authority for use of a new lot of Master Seed is granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in 9 CFR 113.64 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety Test.* Samples of completed product from each serial or first subserial shall be tested for safety in calves as provided in 9 CFR 113.419(a) and 113.41(b) except, that the equivalent of two doses of vaccine shall be used and administered in the manner recommended on the label.

(2) *Bacterial count requirements.* Final container samples of completed product shall be tested for bacterial count using the method used in paragraph (b)(2) of this section. Two replicate titrations shall be conducted on each serial and subserial. Each sample shall be rehydrated with accompanying sterile diluent to the volume indicated on the label. To be eligible for release, each serial and subserial shall have a bacterial count sufficiently greater than that of the vaccine used in the immunogenicity test count per dose established to assure that, when tested at any time within the expiration period, each serial and subserial shall have a bacterial count at least two times greater than that used in the immunogenicity test.

§ 113.70 Pasteurella Multocida Vaccine, Avian Isolate.

Pasteurella Multocida Vaccine, Avian Isolate, shall be prepared as a desiccated live culture of an avirulent or modified strain of Pasteurella Multocida. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for vaccine production.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.64 and the requirements in this section.

(b) Each lot of Master Seed used for vaccine production shall be tested for immunogenicity in each species and for each serotype for which the Master Seed is claimed to give protection.

(1) Thirty Pasteurella Multocida susceptible birds shall be used as test animals (20 vaccinates and 10 controls) for each bird species, route of administration, and serotype for which protection is claimed on the label.

(2) An arithmetic mean count of colony forming units from vaccine produced from the highest passage of Master Seed shall be established before the immunogenicity test is conducted. The 20 birds to be used as vaccinates shall be inoculated, as recommended on the label with a predetermined quantity of vaccine bacteria. The 10 control birds shall be held separately from the vaccinates. To confirm the dosage calculation, an arithmetic mean count shall be established by conducting five replicate titrations on a sample of the bacterial vaccine used. Only plates containing between 30 and 300 colonies shall be considered in a valid test.

(3) Not less than 14 days after vaccination, each of 20 vaccinates and each of 10 unvaccinated controls shall be challenged intramuscularly with a virulent Pasteurella multocida strain, for which protection is claimed, and observed daily for a 14 day post-challenge period.

(4) Eight or more of the unvaccinated controls must die for the test to be valid. If at least 14 of 20 of the vaccinates do not survive the 14 day post challenge period, the Master Seed is unsatisfactory at the selected bacterial count.

(5) The Master Seed shall be retested for immunogenicity in 3 years and shall meet the criteria prescribed in paragraph (b)(4) of this section.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable requirements in § 113.64 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* Samples of completed product from each serial or first subserial shall be tested for safety.

(i) Ten birds of a species for which the vaccine is recommended shall be given the equivalent of 10 doses each of the vaccine and observed for 10 days. If the vaccine is recommended for more than one species, only one species needs to be tested.

(ii) If unfavorable reactions attributable to the vaccine occur during the observation period in two or more of the test birds, the serial is unsatisfactory.

(iii) If unfavorable reactions occur which are not attributable to the test vaccine, th: test is inconclusive and may be repeated once. If the results of the second test are not satisfactory, or if the test is not repeated, the serial shall be considered unsatisfactory.

(2) *Bacterial count requirements.* Two final container samples of each serial or subserial shall be tested for bacterial count using the method used in paragraph (b)(2) of this section.

(i) Two final container vials of completed product shall be tested for the number of viable organisms per dose of rehydrated vaccine. Each vial shall be rehydrated with accompanying diluent or sterile purified water to the volume recommended on the label. To be eligible for release, each serial and subserial shall have a colony count sufficiently greater than that of the vaccine used in the immunogenicity test to assure that, when tested at anytime within the expiration period, each serial and subserial shall have a bacterial count at least two times greater than that used in such immunogenicity test.

(ii) If the average count of the initial test is less than the required minimum, the serial or subserial may be retested one time using four additional final container vials. If the average count of the four vials is less than the required minimum, the serial or subserial is unsatisfactory. If the average count of the four vials is not less than the minimum count and the average count of the initial test is less than one-third the retest count, the initial test will be considered the result of test system error and the serial or subserial is satisfactory. If the average count of the four vials is not less than the minimum count and the average of the initial test is one-third or more of the retest count, a new average count shall be determined from the counts of all six vials. If the new average is not less than the required minimum, the serial or subserial is satisfactory.

§ 113.71 Chlamydia Psittaci Vaccine (Feline Pneumonitis), Live Chlamydia.

Chlamydia Psittaci Vaccine (Feline Pneumonitis), Live Chlamydia, shall be prepared from chlamydia-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable requirements prescribed in § 113.135 and the requirements in this section. Master Seed propagated in chicken embryos shall be tested for pathogens by the chicken embryo test prescribed in § 113.37. If found unsatisfactory by any prescribed test, the Master Seed shall not be used.

(b) Each lot of Master Seed used for vaccine production shall be tested for immunogenicity. The immunogenicity of a selected dose from the lot of Master Seed shall be established as follows:

(1) Thirty feline pneumonitis susceptible cats shall be used as test animals (20 vaccinates and 10 controls). Blood samples shall be drawn and individual serum samples tested. The cats shall be considered suitable for use if all serums are negative for pneumonitis antibody in a complement fixation test or other test of equal sensitivity.

(2) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed shall be established before the immunogenicity test is conducted. The 20 cats used as vaccinates shall be administered a predetermined quantity of vaccine by the method to be recommended on the label and the remaining 10 cats shall be held as controls. To confirm the dosage calculations, five replicate titrations shall be conducted on a sample of the vaccine dilution used. If two doses are used, five replicate confirming titrations shall be conducted on each dose.

(3) Twenty-one or more days after the final dose of vaccine, the vaccinates and controls shall each be challenged intranasally with a minimum of 10,000 yolk sac LD50 of virulent feline pneumonitis furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 28 days postchallenge. The rectal temperature of each animal shall be taken and the presence or absence of clinical signs noted and recorded each day.

(i) If less than 8 or 10 controls show clinical signs of feline pneumonitis infection other than fever, the test is inconclusive and may be repeated.

(ii) If a significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Either 10 vaccinates and 6 controls or 5 vaccinates and 3 controls shall be used in the retest.

(i) If less than five of six or three of three of the controls in the retest show clinical signs of feline pneumonitis infection other than fever, the test is inconclusive and may be repeated.

(ii) A significant difference in clinical signs shall be demonstrated between vaccinates and controls in a valid test as prescribed in paragraph (c)(3)(ii) of this section.

(5) An Outline of Production change must be made before authority for use of a new lot of Master Seed is granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release:* Except for § 113.135(a)(3)(ii), each serial and subserial shall meet the requirements prescribed in § 113.135 and in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) The test for pathogens prescribed in § 113.37 shall be conducted on each serial or one subserial of avian origin vaccine.

(2) *Chlamydia titer requirements.* Final container samples of completed product shall be tested for chlamydia titer using the titration method used in paragraph (b)(2) of this section. To be eligible for release, each serial and each subserial shall have a titer sufficiently greater than the titer of vaccine used in the immunogenicity test prescribed in paragraph (b) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a titer 0.7 greater than that used in such immunogenicity test but not less than 2.5 ID50 per dose.

4. In 9 CFR Part 113, the following sections would be redesignated as follows:

§§ 113.250–113.255 [Redesignated as §§ 113.450–113.455]

a. Sections 113.250–113.255, "Blood Origin Products," would be redesignated as §§ 113.450–113.455;

§§ 113.200–113.203 [Redesignated as §§ 113.400–113.409]

b. Sections 113.200–113.203, "Diagnostics and Reagents," would be redesignated as §§ 113.400–113.409;

§§ 113.135–113.167 [Redesignated as §§ 113.300–113.332]

c. Sections 113.135–113.167, "Live Virus Vaccine," would be redesignated as §§ 113.300–113.332, and "Vaccine" would be changed to "Vaccines;"

§§ 113.120–113.134 [Redesignated as §§ 113.200–113.216]

d. Sections 113.120–113.134, "Killed Virus Vaccines," would be redesignated as §§ 113.200–113.216; and

§§ 113.85–113.108 [Redesignated as §§ 113.100–113.123]

e. Sections 113.85–113.108, "Inactivated Bacterial Products," would be redesignated as §§ 113.100–113.123.

5. 9 CFR Part 113, under the heading "Killed Virus Vaccines," would be amended to add new §§ 113.215 and 113.216 to read as follows:

§ 113.215 Bovine Virus Diarrhea Vaccine, Killed Virus.

Bovine Virus Diarrhea Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed virus which has been established as pure, safe, and immunogenic shall be used for preparing seed cultures for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.200 and the requirements of this section.

(b) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production shall be established by a method acceptable to the Animal and Plant Health Inspection Service. Vaccine used for this test shall be at the highest passage from the Master Seed and at the minimum preinactivation titer provided in the Outline of Production.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (c)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions occur, including respiratory signs, which are attributable

to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated one time. If results of the second test are not satisfactory, or if the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product shall be tested for potency using the method described in this paragraph.

(i) Eight bovine virus diarrhea susceptible calves (five vaccinates and three controls) shall be used as test animals. The animals shall be at the minimum age recommended for vaccination. Individual serum samples shall be collected, inactivated, and individually tested for neutralizing antibody.

(ii) A constant virus decreasing serum neutralization test in cell culture using 50–300 TCID50 of virus shall be used. Calves shall be considered susceptible if there is no neutralization at 1:2 final serum dilution. Other tests of equal sensitivity approved by the Animal and Plant Health Inspection Service may be used.

(iii) The five calves used as vaccinates shall be administered one dose of vaccine as recommended on the label. If two doses are recommended, the second dose shall be given according to the interval recommended on the label.

(iv) Fourteen days or more after the last vaccination, blood samples shall be drawn and the individual serum samples inactivated and tested for bovine virus diarrhea virus neutralizing antibody by the same method used to determine susceptibility.

(v) *Test interpretation.* If the controls have not remained seronegative at 1:2, the test is a No Test (NT) and may be repeated. If at least four of the five vaccinates in a valid test have not developed 50 percent endpoint titers of 1:8 or greater and the remaining vaccinate has not developed at 50 percent endpoint titer of 1:4, the serial is unsatisfactory, except as provided in paragraph (c)(2)(vi) of this section.

(vi) *Virus Challenge Test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and controls may be challenged with virulent bovine virus diarrhea virus furnished or approved by the Animal and Plant Health Inspection Service. The animals shall be observed for 14 days post-challenge. If two of the three control calves do not show a temperature rise to 104.5 F and develop respiratory or clinical signs of bovine virus diarrhea, the test is inconclusive and may be repeated one time. If two or more vaccinates show a temperature of 104.0 F for 2 or more days and develop respiratory or clinical or other signs, the serial is unsatisfactory.

(vii) The prevaccination and postvaccination sera from a satisfactory potency test shall be submitted to the National Veterinary Services Laboratories for confirmatory testing.

§ 113.216 Bovine Rhinotracheitis Vaccine, Killed Virus.

Infectious Bovine Rhinotracheitis Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed virus which has been established as pure, safe, and immunogenic shall be used for preparing seed cultures for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120 and the requirements of this section.

(b) The immunogenicity of vaccine prepared in accordance with the Outline of Production shall be established by a method acceptable to the Animal and Plant Health Inspection Service. Vaccine used for this test shall be at the highest passage from the Master Seed and at the minimum preinactivation titer provided in the Outline of Production.

(c) *Test requirements for release.* Each serial and subserial shall meet the requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (c)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions occur, which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated one time. If the results of the second test are not satisfactory, or if the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product shall be tested for potency using the method described in this paragraph.

(i) Eight infectious bovine rhinotracheitis susceptible calves (five vaccinates, three controls) shall be used as test animals. The animals shall be at the minimum age recommended for vaccination. Individual serum samples shall be collected, inactivated, and individually tested for neutralizing antibody.

(ii) A constant virus decreasing serum neutralization test in cell culture using 50–300 TCID50 of virus shall be used. Calves shall be considered susceptible if there is no neutralization at 1:2 final serum dilution. Other tests of equal sensitivity acceptable to the Animal and Plant Health Inspection Service may be used.

(iii) The five calves used as vaccinates shall be administered one dose of vaccine as recommended on the label. If two doses are recommended, the second dose shall be given according to the interval recommended on the label.

(iv) Fourteen or more days after the last vaccination, blood samples shall be drawn and the individual serum samples inactivated and tested for infectious bovine rhinotracheitis virus neutralizing antibody by the same method used to determine susceptibility.

(v) *Test interpretation.* If the three controls have not remained seronegative at 1:2, the test is a No Test (NT) and may be repeated. If at least four of the five vaccinates in a valid test have not developed 50 percent endpoint titers of 1:8 or greater and the remaining vaccinate has not developed a 50 percent endpoint titer of 1:4, the serial is unsatisfactory, except as provided in paragraph (c)(2)(vi) of this section.

(vi) *Virus Challenge Test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and controls may be challenged with virulent infectious bovine rhinotracheitis virus furnished or approved by the Animal and Plant Health Inspection Service. The animals shall be observed each day for 14 days post-challenge. If two of the three control calves do not show a temperature rise to 104.5 F and develop respiratory or other clinical bovine rhinotracheitis, the test is a No Test (NT) and may be repeated one time. If more than one of the vaccinates shows a temperature of 104.0 F for 2 or more days or if more than one of the vaccinates develops respiratory or clinical or other signs, the serial is unsatisfactory.

(vii) The prevaccination and postvaccination sera from a satisfactory potency test shall be submitted to the National Veterinary Services Laboratories for testing by the Animal and Plant Health Inspection Service.

Done in Washington, DC, this 29th of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–27820 Filed 12–8–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

10 CFR Part 785

Class Patent Waiver

AGENCY: Department of Energy.

ACTION: Proposed rule; cancellation of public hearing.

SUMMARY: On November 4, 1988, the Department of Energy published in the **Federal Register** a proposed rule 10 CFR Part 785, Class Patent Waiver (53 FR 44602). That notice provided for a Public Hearing on the matter to be held on December 13, 1988, and provided further that requests to present oral statements thereon must be received no later than November 30, 1988.

Since no requests to present oral statements thereon have been received by the Department, the Public Hearing on the matter scheduled for December 13, 1988 is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard E. Constant, Department of Energy, Assistant General Counsel for Patents, GC–42, Washington, DC 20585; Telephone: (202) 586–2802.

Frank S. Ruddy,

General Counsel.

[FR Doc. 88–28378 Filed 12–8–88; 8:45 am]

BILLING CODE 6450–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 129

International Trade; International Market Assistance

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In compliance with the Small Business International Trade and Competitiveness Act, Pub. L. No. 100–418, SBA is proposing to amend its regulations on international trade to reflect changes made to SBA's Office of International Trade. The proposed rule sets forth the services the Office of International Trade intends to provide to assist small businesses to increase their ability to compete in international markets.

DATES: Comments must be submitted by January 9, 1989.

ADDRESS: Comments should be submitted to Julius Toma, Office of International Trade, Small Business Administration, Rm. 501–A, 1441 L Street, Washington, DC 20416, (202) 653–7794.

FOR FURTHER INFORMATION CONTACT: Julius Toma (202) 653–7794.

SUPPLEMENTARY INFORMATION: The proposed rule incorporates into existing regulations changes made to the SBA Office of International Trade by the provisions of the Small Business International Trade and Competitiveness Act (1988).

Section 129.100 of the proposed regulation reflects Congressional policy on small busness international trade and competitiveness. That policy requires SBA to cooperate with the Department of Commerce and other relevant Federal and State agencies to aid and assist small businesses to increase their ability to compete in international markets. In carrying out its decisions and actions, the Office of International Trade will be guided by the principles enumerated in the statute and restated in the proposed rule, § 129.100 (a) through (f).

Section 129.200 of the proposed regulation reflects greater statutory specification of the Office's activities. Information on existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs will be disseminated and marketed through a distribution network composed of SBA and Department of Commerce regional and local offices and the Small Business Development Centers (SBDCs).

Small businesses interested in market research, identifying areas of demand in foreign markets, or sub-sectors of the small business community with strong export portential will be encouraged to use SBA's Export Information System (XIS) Data Reports, available through SBA regional, local or SBDC offices. Small businesses will also be advised of the many sources of market research available through the Department of Commerce, such as International Market Research studies or Country Market Surveys.

Small Business considering the formation of international joint ventures will be advised of the resources available to identify potentially compatible firms, including the Department of Commerce's Export Mailing List Service and Trade Opportunities Program.

The Office, through the distribution network, will also make available to small business exporters information on existing domestic and foreign credit checking agencies that screen foreign and domestic firms for commercial and credit purposes.

Information on the availability of existing translation services will be identified and publicized through the distribution network, other Federal agencies, and relevant state and local export promotion programs.

Information and assistance in the formation and utilization of export trading companies, export management companies and research and development pools will be provided in cooperation with the Department of Commerce's Office of Export Trading Company Affairs.

Small businesses interested in obtaining counseling with respect to initiating and participating in any procedures relating to the administration of the United States trade laws will be advised of services provided by the Trade Remedy Assistance Office of the International Trade Commission or referred to the national coordinator of the Export Legal Assistance Network (ELAN). ELAN is a nationwide network of attorneys knowledgeable in export-related matters who have agreed to provide free initial consultations to small busineses new to the export market. The network includes a number of attorney with expertise in trade remedy proceedings who will participate under the same agreement.

Section 129.300 of the proposed regulation related to small business access to export financing programs. The Office will facilitate the access of small busineses to relevant export and pre-export financing programs of the Export-Import Bank, SBA and the private sector. This will be carried out by marketing existing Federal programs to financial institutions and the small business community. Additional training will also be provided to appropriate SBA personnel on export finance programs of SBA and the Export-Import Bank. A series of export finance briefings and education programs will be used to encourage financial intermediaries, such as lending institutions, to utilize existing Federal and State export financing programs.

Section 129.400 provides that the Office will work with experts in relevant fields to develop recommendations for policies and programs that will actively assist small businesses in the export process. The recommendations will be developed at a seminar to be held within one year from the date of enactment of the statute. The seminar will also be used to make recommendations on the utility of a subsequent international conference on small business and trade.

Compliance with Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act 44 U.S.C. Chapter 35

This proposed rule is not a major rule for purposes of Executive Order 12291.

because it is not likely to have an economic impact of over $100 million annually; the total Office budget does not exceed $1.5 million and the primary effect of the rule is to modify program office operations. Nor will it increase costs to consumers, individual industries, Federal and State government agencies or geographic regions, nor can it have an adverse effect on competition, employment investment, productivity, innovation or the ability of U.S. based businesses in domestic or export markets. For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities because the primary effect will be to modify program office operations. For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA certifies that the proposed rule if adopted, would not impose any additional reporting or record-keeping requirements. Finally, this proposed rule, if adopted in final form will not require a Federalism Assessment pursuant to E.O. 12612.

List of Subjects in 13 CFR Part 129

Foreign Trade, Small businesses, Technical Assistance.

For the reasons set forth above, Part 129 of Title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 129—[AMENDED]

1. The authority citation for Part 129 is proposed to be revised as follows:

Authority: Title VIII of Pub. L. 100–418, Secs. 2 and 8. Small Business Act, as amended (15 U.S.C. 631, 637(b); secs 7(i) and 7(j) of the Small Business Act, as amended (15 U.S.C. 636 (i) and (j); sec. 302(c)(2), Domestic Volunteer Service Act, Pub. L. 93–113, 87 Stat. 404; E.O. 11871 dated July 18, 1975.

§§ 129.1 through 129.4 [Designated as Subpart A]

§§ 129.5 [Removed]

§§ 129.6 through 129.9 [Redesignated as §§ 129.5 through 129.8 and Designated Subpart B]

Subpart C—[Reserved]

2. It is proposed that §§ 129.1–129.4 be designated as Subpart A—General, that § 129.5 be removed, that §§129.6–129.9 be redesignated as §§ 129.5–129.8 and that such sections be designated as Subpart B—Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE)—Payment of Out-of-Pocket Expenses to Volunteers, and that a new Subpart C be added and designated as Subpart C—[Reserved].

3. A new Subpart D is proposed to be added to read as follows:

Subpart D—Office of International Trade

129.100 Policy.
129.200 Export Assistance.
129.300 Access to Export Financing Programs.
129.400 Stimulating Small Business Exports.

Subpart D—Office of International Trade

§ 129.100 Policy.

It is the declared policy of Congress that the Small Business Administration, acting in cooperation with the Department of Commerce and other relevant Federal and State agencies, should aid and assist small businesses to increase their ability to compete in international markets by:

(a) Enhancing their ability to export;

(b) Facilitating technology transfers;

(c) Enhancing their ability to compete effectively and efficiently against imports;

(d) Increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;

(e) Disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and

(f) Ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

§ 129.200 Export assistance.

SBA's Office of International Trade offers several services to assist small businesses to increase their ability to compete in international markets.

(a) The Office works in close cooperation with the Department of Commerce and other Federal agencies, Small Business Development Centers (SBDCs) engaged in export promotion efforts, regional and local SBA offices, the small business community, and relevant state and local export promotion programs to provide information to small businesses on:

(1) Existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs through use of the SBA's regional, district and branch offices and the SBDC network;

(2) Marketing, including computerized marketing data and marketing leads;

(3) The formation of joint ventures;

(4) Existing programs which prescreen foreign buyers for commercial and credit purposes;

(5) Existing translation services, including those available through colleges and universities participating in the SBDC program; and

(6) Conferences on exporting and international trade sponsored by the public and private sector.

(b) In addition, the Office of International Trade works with the Department of Commerce, the International Trade Commission, and other Federal agencies, Small Business Development Centers (SBDCs) engaged in export promotion efforts, regional and local SBA offices, the small business community, and relevant state and local export promotion programs to:

(1) Identify sub-sectors of the small business community with strong export potential;

(2) Identify areas of demand in foreign markets;

(3) Assist in increasing international marketing by developing a mechanism to link potential sellers and buyers;

(4) Assist small businesses in the formation and utilization of export trading companies, export management companies and research and development pools authorized under section 9 of the Small Business Act, 15 U.S.C. 631, *et seq.*; and

(5) Assist small businesses in obtaining counseling with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws.

§ 129.300 Access to export financing programs.

The Office of International Trade works in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant Federal agencies, and the States to develop programs through which export specialists in SBA's regional offices, regional, district and branch loan officers, and SBDC personnel can facilitate the access of small businesses to relevant export and pre-export financing programs available from the Export-Import Bank, the SBA and the private sector. Such programs include:

(a) Providing information to small businesses on financing available under various Export-Import Bank programs;

(b) Assisting in the development of financial intermediaries and facilitating the access of those intermediaries to existing financing programs; and

(c) Promoting greater participation by private financial institutions in export

finance, particularly those institutions already participating in loan programs under the Small Business Act, 15 U.S.C. 631 *et seq.*

§ 129.400 Stimulating small business exports.

The Office of International Trade works with experts in the fields of international trade and small business development and representatives of small businesses, associations, the labor community, academic institutions, and Federal, State and local governments to develop recommendations designed to stimulate exports from small businesses.

Dated: November 25, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-28233 Filed 12-8-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-177-AD]

Airworthiness Directives: Boeing Models 737-300, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Models 737-300, 757 and 767 series airplanes, which would require the replacement of all 1½-turn pull rings with 2-turn pull rings in each oxygen module assembly, and the inspection and replacement, if necessary, of certain oxygen generators which may be defective. This proposal is prompted by reports of failures of the oxygen generators during a functional test at an airline, failures of the pull rings during one cabin decompression, and tests by the manufacturer. This condition, if not corrected, could lead to the oxygen generator not activating, resulting in no supplemental oxygen supply to passengers and flight attendants when necessary.

DATE: Comments must be received no later than February 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-177-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124 and the Puritan-Bennett Aero Systems Co., Attn: Customer Services Dept., 10800 Pflumm Road, Lenexa, Kansas 66215.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-177-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During functional tests of the passenger oxygen system conducted by an airline, some of the oxygen generators failed to activate. Upon further investigation, it was found that some of the pull rings which link the oxygen mask lanyard to the oxygen generator actuating mechanism release cable were uncoiling. During the same test, an oxygen generator failed to activate when the release cable was successfully pulled. Subsequent investigation revealed that the cause was a malfunctioning percussion primer.

During tests of the pull rings at the manufacturer, it was determined that a 1½-turn ring lacked sufficient strength in tension to activate the oxygen generator on a consistent basis. The failure of the oxygen generator to activate due to the pull ring separation has occurred in service at least once

The malfunctioning percussion primer in the oxygen generator is due to a previous manufacturing problem that has now been corrected. The problem was limited to an identifiable lot

The FAA has reviewed and approved Boeing Service Bulletins 767-35A0014 dated December 17, 1987, 757-35A(XXX) Revision 1, dated December 10, 1987 and 737-35A1029, Revision 2, dated September 29, 1988, which describe the replacement of the 1½-turn pull ring with 2-turn pull rings. These service bulletins also identify the airplanes to be inspected for the suspect lot of oxygen generators to be replaced

The inspection and replacement, if necessary, of the oxygen generators is described in Puritan-Bennett Aero Co Service Bulletin 117003-13-35-1, dated December 17, 1987. This service bulletin has been reviewed and approved by the FAA and is referenced in the Boeing service bulletins.

Since this condition is likely to exist or develop on other airplanes of these same type designs, an AD is proposed which would require replacement of all 1½-turn pull rings with 2-turn pull rings in the oxygen assembly, and inspection and replacement, if necessary, of certain oxygen generators on certain Boeing Model 737-300, 757, and 767 airplanes, in accordance with the service bulletins previously mentioned.

There are approximately 842 Model 737-300, 757, and 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 475 airplanes of U.S. registry would be affected by this AD, that it would take approximately 17.2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S operators is estimated to be $326,800.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Models 737, 757, or 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737-300, 757, and 767 series airplanes, identified in Boeing Alert Service Bulletins 737-35A1029, Revision 2, dated September 29, 1988; 757-35A0006, Revision 1, dated March 10, 1988; and 767-35A0014, dated December 17, 1987; certificated in any category. Compliance required within the next 3,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent failure of the oxygen generator to activate when required, accomplish the following:

A. Inspect Puritan chemical generators, P/N 11700-13, for Serial Numbers 06339 through 06559, and replace those units in accordance with Puritan-Bennett Service Bulletin 117003-13-35-1 dated December 17, 1987.

B. Inspect and, if installed, replace 1½-turn oxygen generator lanyard rings with 2-turn rings as follows:

1. For Model 767 series airplanes, in accordance with Boeing Alert Service Bulletin 767-35A0014 dated December 17, 1987;

2. For Model 757 series airplanes, in accordance with Boeing Alert Service Bulletin 757-35A0006, Revision 1, dated March 10, 1988;

3. For Model 737-300 series airplanes, in accordance with Boeing Alert Service Bulletin 737-35A1029, Revision 2, dated September 29, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note. The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207 and the Puritan-Bennett Aero Systems Co., Attn: Customer Services Dept., 10800 Pflumm Road, Lenexa, Kansas 66215. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 1, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-28313 Filed 12-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-173-AD]

Airworthiness Directives: Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which would require inspection for clearance between the engine fuel feed tube and adjacent thermal anti-ice (TAI) duct, and adjustment or replacement, if necessary. This action is prompted by two reports of fuel leaks caused by chafing of the fuel feed tube in the number two engine front right wing strut area. This condition, if not corrected, could result in fuel leakage causing a potential strut fire hazard.

DATE: Comments must be received no later than February 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-173-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch ANM 140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA.

Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-173-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During the course of an investigation, incidents of chafing and fuel leaks were found in the right strut fairing on Boeing Model 737-300 airplanes. It was determined that the fuel feed tube assembly had chafed through due to contact with the TAI duct assembly. Two operators reported that fuel was noted to be dripping from the number two engine strut area on two airplanes. One airplane showed leakage after 4,500 flight hours, the other after 7,500 flight hours. This condition, if not corrected, could result in fuel leakage causing a potential strut fire hazard.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-28A1077, dated October 6, 1988, which describes procedures for inspection of the right wing strut fairing leading edge area for specified minimum clearance between the engine fuel feed tube assembly and the adjacent TAI duct, and adjustment or replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require inspection of the right strut fairing leading edge, and modification or replacement, if necessary, in accordance with the service bulletin previously mentioned.

There are approximately 500 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,500.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive, or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes, listed in Boeing Alert Service Bulletin 737-28A1077, dated October 6, 1988, certificated in any category. Compliance required within three months after the effective date of this AD, unless previously accomplished.

To prevent a fire hazard associated with fuel leak, due to the fuel feed tube assembly chafing against the thermal anti-ice duct, accomplish the following:

A. Inspect and, if necessary, adjust fuel feed tube assembly clearance in accordance with Boeing Alert Service Bulletin 737-28A1077, dated October 6, 1988. Replace chafed tubes, before further flight, with a serviceable tube.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 1, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-28314 Filed 12-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-9]

Proposed Alteration of VOR Federal Airways; Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88-AGL-9, which was published in the **Federal Register** on June 14, 1988. That NPRM proposed to alter the description of Federal Airway V-412 located in the vicinity of Redwood Falls, MN, by realigning that segment via a north dogleg. Flight inspection data has confirmed the fact V-412 cannot be certified because the en route centerline radial failed its flight check.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

The Proposed Rule

On June 14, 1988, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the description of Federal Airway V-412 located in the vicinity of Redwood Falls, MN, by realigning a segment of that airway. This action withdraws that NPRM. Flight inspection data has confirmed the fact V-412 cannot be certified because

the en route centerline radial failed its flight check. No comments were received on the NPRM.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88–AGL–9, as published in the **Federal Register** on June 14, 1988 (53 FR 22182) is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on November 29, 1988.

Harold W. Becker,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–28315 Filed 12–8–88; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3487–9]

Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment deadline.

SUMMARY: By this notice, EPA is extending from December 7, 1988, to December 27, 1988, the deadline for receiving written comments on the Agency's proposed approval of a technical amendment to the state-wide sulfur dioxide emission limit as a revision to the Washington State Implementation Plan (SIP).

DATE: Comments must be received or postmarked on or before December 27, 1988.

ADDRESS: Comments should be addressed to: Laurie M. Kral (10A–88–4), Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101. Telephone: (206) 442–4253. FTS: 399–4253.

SUPPLEMENTARY INFORMATION: On November 7, 1988 (53 FR 44911) EPA solicited public comment on its proposal to approve a revision to WAC 173–400–040(6) (except paragraphs (a) and (b)) and its proposal to rescind approval of the exception provisions in the current SIP (WAC 173–400–040(6)(a) (i) and (ii)). The revision to WAC 173–400–040(6) involves a technical amendment which clarifies the averaging time for the sulfur dioxide emission limit.

As a result of a request to extend the public comment period, EPA is granting a 15 day extension. The party requesting the extension also requested additional information which, although not part of this rulemaking docket, is relevant with respect to EPA's SIP requirements for averaging times and exception provisions. A copy of this request and the information provided to the requester have been placed into the docket.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

Date: November 2, 1988.

Ralph R. Bauer,

Acting Regional Administrator.

[FR Doc. 88–28335 Filed 12–8–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3488–1]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by BF Goodrich Intermediates Company, Incorporated, Calvert City, Kentucky, to conditionally exclude certain solid wastes generated at its Calvert City facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until January 23, 1989. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by December 27, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–88–BFEP–FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Mr. Robert Kayser, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, corrosivity, reactivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste in non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and, is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of BF Goodrich's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the one-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because BF Goodrich is seeking an upfront delisting (*i.e.*, an exclusion for wastes not yet generated), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned wastestream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and thus, would serve no purpose.

BF Goodrich petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on the analytical data obtained from Vulcan Materials Company's treatment system (see 51 FR 16860, May 7, 1986), untreated waste characteristics (BF Goodrich's untreated waste), and process descriptions. Additionally, the Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from BF Goodrich's full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition), be made conditions of the exclusion. These conditions, if the exclusion is

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granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of BF Goodrich's upfront delisting petition, a list of constituents was developed for the verification testing, and tentative maximum allowable treated waste concentrations for these constituents were derived by back calculating from the regulatory standards through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know that treatment levels for constituents should be sufficient to render specific waste non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes, which without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting decision and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

BF Goodrich Intermediates Company, Incorporated, Calvert City, Kentucky

1. Petition for Exclusion

BF Goodrich Intermediates Company, Incorporated (BFG), located in Calvert City, Kentucky, produces chlorine and caustics for industrial use. BFG petitioned the Agency to conditionally exclude from regulation as a hazardous waste its brine purification muds and saturator insolubles, presently listed as EPA Hazardous Waste No. K071—"Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used." The listed constituent of concern for K071 waste is mercury.

BFG petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. BFG also believes that its treatment process will generate a non-hazardous waste because the constituent of concern, although present in the waste, is both low in concentration and is in an essentially immobile form. BFG further believes that the waste will not be hazardous for any other reason (*i.e.*, there are no additional hazardous constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of BFG's petition.

2. Background

BFG petitioned the Agency to exclude its treatment residues on April 6, 1987 and subsequently provided additional information to complete its petition. In support of its petition, BFG submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) analytical results from total constituent analyses for mercury, cyanide, sulfide, and oil and grease; (4) analytical results from EP leachate analyses for all the EP toxic metals; and, (5) results from testing for the hazardous waste characteristics performed on the untreated wastes. (BFG submitted this data to demonstrate that their untreated wastes and Vulcan Material's untreated wastes were similar in composition.) Because BFG has not yet completed the installation of its treatment system, BFG did not submit (1) results from total constituent or EP toxicity analyses for the EP toxic metals, nickel, and cyanide; (2) results from the total constituent analysis for reactive sulfide and reactive cyanide; (3) results from the analysis for total oil and grease content; and, (4) results of testing for the hazardous waste characteristics from representative samples of the treated brine purification muds or treated saturator insolubles. Instead, BFG is relying on the analytical data presented in Vulcan Materials' (Vulcan) delisting petition (see 51 FR 16860, May 7, 1986). BFG believes that the analytical data presented by Vulcan is representative of the treated waste that BFG will generate because (1) BFG's and Vulcan's production processes are similar and use the same raw materials; (2) BFG's untreated waste and Vulcan's untreated waste are similar in composition; and, (3) BFG plans to use a treatment system that will be identical to the one used by Vulcan. (The Agency granted Vulcan Materials Company a final exclusion on November 17, 1986—see 51 FR 41486.) Once BFG's treatment system is on-line, EPA proposes that BFG be required to submit the results of total constituent analyses for reactive cyanide and reactive sulfide, total oil and grease content, and results of EP toxicity analyses for all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions) on treated batches of waste. BFG also will be required to determine if the treated wastes meet any of the characteristics specified in 40 CFR 261.21 through 261.23 (see section 6 *Verification Testing Conditions*).

BFG produces chlorine and caustics using a mercury cell process (*i.e.*, electrolysis of sodium chloride brine). During the brine manufacturing process, rock salt is mixed with the depleted brine in the saturator tank. Approximately 98 percent of the rock salt dissolves. The remaining two percent consists of impurities including, calcium, magnesium, sulfates, dirt, and rocks. These impurities settle to the bottom of the saturator tank for "blowdown" (*i.e.*, removal). The blowdown (or saturator insolubles) is pumped to the saturator solids collection tank for subsequent treatment. To purify the replenished brine, the brine is pumped from the saturator tank to a clarifier and then through a series of brine filters. The settled solids on the bottom of the brine clarifier are removed and pumped to the clarifier solids collection tank. Solids accumulated on the brine filters are removed by

backwashing and are pumped to the brine filter solids collection tank.

The purified brine is cooled and then flows into the electrolytic cells containing dimensionally stable anodes and flowing mercury cathodes. Sodium chloride is removed from the brine by electrolysis and the depleted brine containing low levels of mercury is pumped back to the brine saturator tank, where additional rock salt is added in a continuous closed loop operation. During the process the saturator insolubles, clarifier blowdown and brine filter backwash solids may become contaminated with mercury.

BFG proposes to use a waste treatment system identical to the one used by Vulcan. As mentioned above, the brine clarifier blowdown will be sent to the waste treatment plant and stored in the brine clarifier solids collection tank. The brine filter backwash also will be sent to the waste treatment plant to be stored in the brine filter solids collection tank. The brine clarifier blowdown and brine filter backwash (collectively termed the brine purification muds) will be pumped to a pH adjustment tank where sulfuric acid will be added for pH control. The combined wastes then will be pumped to a hypochlorite treatment tank where sodium hypochlorite will be added in order to convert the mercury to a more soluble form. Residual chlorine, generated in the hypochlorite treatment tank, will be collected and vented back to the plant's chlorine recovery system. (The chlorine recovery system operates outside of the mercury cell process and does not contribute any waste to the mercury waste treatment system.) The brine purification muds then will be pumped to a rotary vacuum filter where they will be washed with diluted hydrochloric acid and rinsed with two water sprays and dried. BFG claims that the acid washing step will reduce the waste's mercury content by removing (*i.e.*, pre-leaching) the leachable mercury from the waste. BFG plans to dispose of the vacuum filter cake resulting from the rotary vacuum filter at an off-site sanitary landfill, if the exclusion is granted. The mercury-bearing filtrate and water rinse removed by the rotary vacuum filter will be sent to a separate treatment system for pH adjustment, reduction, and filtration. The filtration residual will be disposed at an off-site hazardous waste landfill and is not a subject of this petition.

Blowdown from the saturator (saturator insolubles) will be collected in the saturator solids collection tank. The saturator insolubles (blowdown) then will be washed. In the washing step, depleted acid brine (*i.e.*, brine which has undergone electrolysis) is added to the saturator solids collection tank in order to solubilize the mercury to accelerate mercury leaching. After washing, the depleted acid brine and soluble mercury will be gravity drained from the saturator solids collection tank and pumped back to the brine saturator tank for replenishment. The remaining treated saturator insolubles will be disposed of at an off-site landfill, if the petition is granted. As stated earlier, the recirculation of depleted acid brine to the brine purification system introduces trace concentrations of mercury into the saturator insolubles and brine purification muds.

3. Agency Analysis

As stated above, BFG has not submitted any analytical information characterizing the treated brine purification muds or saturator insolubles because their treatment system is not yet on-line. BFG instead is relying on the analytical data previously submitted to the Agency by Vulcan. Vulcan, in support of its petition, submitted the EP extraction results (mass of a particular constituent per unit volume of extract) for mercury from each batch of the treated brine purification muds and saturator insolubles. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, method No. 1310.

The Agency previously granted a conditional temporary exclusion to Vulcan; at that time, the Agency established a maximum EP leachate level of mercury as 0.05 mg/l. Vulcan, therefore, was required to retreat any waste exhibiting an EP leachate concentration of mercury above 0.05 mg/l. See 46 FR 61272, December 16, 1981. In accordance with this requirement, Vulcan was required to retreat only one batch of treated brine purification muds. Furthermore, even though the maximum allowable EP leachate concentration of mercury was 0.05 mg/l, 218 of the 266 batches (82 percent) of treated brine purification muds and 96 of the 101 batches (95 percent) of treated saturator insolubles exhibited EP leachate levels of mercury at 0.016 mg/l or less.

EPA susequently promulgated final conditional exclusion to Vulcan that established the 0.0129 mg/l verification testing level (*i.e.*, "delisting level") of EP leachate mercury. Since the final exclusion set a mercury leachate level that superceded that of the temporary conditional exclusion, Vulcan successfully retreated all samples exhibiting more than the 0.0129 mg/l level. See 51 FR 16860, May 7, 1986.

BFG is also relying on Vulcan's analytical data on the treated wastes for both the total constituent (*i.e.*, mass of a particular constituent per mass of waste) and EP leachate concentrations for the EP toxic metals, nickel, and cyanide, as well as for total oil and grease content. See 51 FR 16860, May 7, 1986. Vulcan's treated waste exhibited a maximum of 92 mg/kg of total oil and grease; therefore, EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 method number 1330.

To support the contention that FBG's and Vulcan's untreated wastes were similar in composition, BFG submitted analytical data characterizing its untreated wastes. BFG provided the results of EP leachate analyses for all the EP toxic metals from two samples of the brine clarifier solids, two samples of the saturator insolubles, and two samples of the brine filter backwash solids. The brine clarifier solids and saturator insolubles samples were collected in September and December, 1980, and the brine filter backwash solids samples were collected on August and October, 1980. Except for mercury, none of the EP toxic metals were present in the wastes at concentrations exceeding six times the National Primary Drinking Water Regulations. The maximum EP leachate concentration of mercury was 0.037 mg/l. The maximum total constituent concentrations of mercury, cyanide, and sulfide were 26.5 mg/kg, 0.1 mg/kg, and 0.1 mg/kg, respectively. The maximum total oil and grease content was 100 mg/kg. Lastly, based on analytical results, the untreated wastes did not exhibit the characteristics ignitability, corrosivity, or reactivity. (The Agency notes that BFG supplied these limited data to support the contention that BFG and Vulcan produced similar wastes.)

BFG also submitted material safety data sheets (MSDS) for all raw materials and chemical inputs to its manufacturing processes. Review of BFG's MSDSs indicated that a filter aid (flocculent) contained petroleum distillates. Therefore, it is possible for petroleum distillates to enter the waste treatment

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system. Although petroleum distillates are not specifically listed in 40 CFR Part 261 Appendix VIII, petroleum distillates can contain benzene, toluene, and xylene, which are constituents listed in Appendix VIII. BFG, therefore, was requested to either provide analytical test results for these constituents or a mass-balance demonstration of the maximum possible total constituent concentrations of benzene, toluene, and xylene. BFG elected to provide a mass-balance demonstration which showed, based on a maximum total concentration of 0.1 percent of benzene, toluene, and xylene in the filter aid and a maximum usage of 4 ppm of the filter aid (which is normally used at very low concentrations), a calculated maximum total constituent concentration of 4 ppb for each of the three constituents in the saturator insolubles and brine purification muds. (These data were used in the Agency's evaluation—see section 4—*Agency Evaluation*.)

Based on Vulcan's data, BFG also claims that the treated waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. BFG submitted limited analytical data indicating that the untreated saturator insolubles and brine purification muds do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

BFG submitted a signed certification stating that based on current annual waste generation, it anticipates generating annually no more than 6,500 tons of treated mercury brine purification muds and saturator insolubles. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts BFG's certified estimate of 6,500 tons (approximately 6,420 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant BFG's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may randomly select to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for the treated mercury brine purification muds and treated saturator insolubles and decided that a landfill scenario is the most reasonable, worts-case scenario for these wastes. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). In addition, the Agency used its organic leachate model (OLM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constitutents on the underlying ground water. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of BFG's waste.

Specifically, the delisting levels (*i.e.*, verification testing levels) were determined by back-calculating from the appropriate regulatory standard for each constituent (the maximum level allowed at the compliance point) through the VHS model, and are shown in Table 1. A detailed description of these calculations is available in the docket to this notice.

TABLE 1.—VHS MODEL: MAXIMUM ALLOWABLE EP LEACHATE LEVELS MERCURY BRINE MUDS AND SATURATOR INSOLUBLES

Constituents	Regulatory standards (mg/l) [1]	Verification levels (mg/l)
Arsenic	0.05	0.316
Barium	1.0	6.31
Cadmium	0.01	0.063
Chromimum	0.05	0.316
Cyanide	0.7	4.42
Lead	0.05	0.316
Mercury	0.002	0.0126
Nickel	0.5	3.16
Selenium	0.01	0.063
Silver	0.05	0.316

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities used in the Evaluation of Delisting Petitions," June 8, 1988, in the RCRA public docket.

The Agency has reviewed Vulcan's treatment data and believes that the Vulcan treatment system is capable of treating mercury brine purification muds and saturator insolubles to meet these back-calculated levels. The Agency compared the analytical data characterizing both BFG's and Vulcan's untreated wastes and believes that the two wastes are similar in composition. See 51 FR 16860, May 9, 1986, and the accompanying RCRA docket. Because BFG will be using an identical treatment system to treat comparable wastes, the Agency believes that BFG's treatment system will treat BFG's wastes so that they can meet below the verification testing limits presented in Table 1.

The Agency also calculated the mobile portion of the total constituent concentrations of the organics, derived from mass balance arguments (described above), that may potentially be present in the waste (as contaminants from the filter aid used by BFG) using the OLM. The leachable content of benzene, toluene, and xylene then were evaluated using the VHS model in order to assess the potential impacts of these constituents upon the ground water. The calculated compliance-point concentrations for these organic constituents are shown in Table 2. A detailed description of these calculations is available in the docket. The calculated compliance-point concentrations for benzene, xylene, and toluene were below the levels of regulatory concern.

TABLE 2—VHS/OLM MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS MERCURY BRINE MUDS AND SATURATOR INSOLUBLES

Constituents	Compliance-point concentrations (mg/l)	Levels of regulatory concern (mg/l) [1]
Benzene	1.3×10^{-4}	0.005
Xylene	5.69×10^{-5}	70
Toluene	8.24×10^{-5}	10

[1] See "Docket Report on Health-Based regulatory Levels and Solubilities used in the Evaluation of

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Delisting Petitions," June 8, 1988, in the RCA public docket.

The Agency reviewed BFG's list of raw materials and material safety data sheets and did not identify any other hazardous constituents of concern being used by BFG, other than those already evaluated, and believes that no other hazardous constituents of concern are likely to be present or formed as reaction products or by-products of BFG's waste. Vulcan did not supply analytical data characterizing either the reactive sulfide or reactive cyanide levels in the treated mercury brine purification muds or treated saturator insolubles because at the time Vulcan petitioned to exclude its wastes, the Agency did not require these data. BFG does not use cyanide or sulfide; therefore, these constituents could only enter the wastestream as contaminants. However, based on an evaluation of Vulcan's data and BFG's limited analytical data, EPA believes that the total constituent concentration of cyanide will not exceed the Agency's interim standard for reactive cyanide of 250 mg/kg because the total constituent concentration of cyanide is 0.1 mg/kg. See internal Agency memorandum dated July 12, 1985, regarding "Interim Agency Thresholds for Toxic Gas Generation" in the RCRA Public docket. Likewise, the Agency does not believe that the level of reactive sulfide in BFG's wastes will exceed the interim standard of 500 mg/kg because the total constituent concentration of sulfide is 0.1 mg/kg. See internal Agency memorandum dated July 12, 1985, regarding "Interim Agency Thresholds for Toxic Gas Generation" in the RCRA Public docket.

Lastly, the manufacturing and treatment processes are believed to be uniform and consistent since the facility neither operates as a job shop nor has seasonal product variations. Thus, EPA believes that the wastes generated by BFG will continue to resemble Vulcan's wastes.

5. Conclusion

The Agency is proposing that BFG's mercury brine purification muds and saturator insolubles, when treated with the "Vulcan technology," be considered non-hazardous if they meet certain verification testing requirements. The Agency believes that these treated wastes should not present a significant hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to BFG Intermediates Company's Calvert City Plant, located in Calvert City, Kentucky, for both its mercury brine purification muds (*i.e.*, brine clarifier solids and brine filter backwash solids) and saturator insolubles, described in their petition as EPA Hazardous Waste No. K071, when treated using the "Vulcan technology." If the proposed rule becomes effective BFG's mercury brine purification muds and saturator insolubles, when treated using the "Vulcan technology," would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitoned by BFG.

This proposed exclusion is conditional upon the following:

(1) BFG must collect representative grab samples of each treated batch of mercury brine purification muds and of each treated batch of saturator insolubles prior to disposal and must analyze for the EP leachate concentration of mercury. Analyses must be performed according to SW–846 methodologies. Any treated batch of mercury brine purification muds or saturator insolubles which exhibits EP leachate concentrations of mercury exceeding 0.0128 mg/l must either be retreated or managed and disposed in accordance with Subtitle C of RCRA. BFG must report the analytical data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report.

The Agency is proposing to require BFG to continue to test each batch of mercury brine purification muds and saturator insolubles prior to disposal for the EP leachate concentration of mercury in order to ensure that the EP leachate consentration of mercury has been reduced below the level of regulatory concern. This continuing mercury testing requirement is included because it may occasionally be necessary to retreat treated batches of either the mercury brine purification muds and/or saturator insolubles in order to reduce the concentration of EP leachate mercury to meet the delisting level.

(A) BFG must collect weekly composite samples comprised of representative grab samples from each batch of mercury brine purification muds generated during the particular week. BFG must analyze the weekly composite samples for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), the total constituent concentrations of reactive sulfide and reactive cyanide, total oil and grease content, and the characteristics of ignitability, corrosivity, and reactivity. Analyses must be performed according to SW–846 methodologies. BFG must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report.

(B) BFG must collect weekly composite samples comprised of representative grab samples from each batch of saturator insolubles generated during the particular week. BFG must analyze the weekly composite samples for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), the total constituent concentrations of reactive sulfide and reactive cyanide, total oil and grease content, and the characteristics of ignitability, corrosivity, and reactivity. Analyses must be performed according to SW–846 methodologies. BFG must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report.

(3) If, under conditions (2)(A) or (2)(B), the EP leachate concentrations for arsenic, chromium, lead, or silver exceed 0.316 mg/1; for barium exceeds 6.31 mg/1; for cadmium or selenium exceeds 0.063 mg/1; for nickel exceeds 3.16 mg/1; or for cyanide exceeds 4.42 mg/1, the waste exhibits any of the characteristics of ignitability, corrosivity, or reactivity, or if the total constituent concentrations of reactive cyanide or reactive sulfide exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated or managed and disposed in accordance with Subtitle C of RCRA.

(4)(A) The requirements of condition (2)(A) shall be terminated by EPA when the results of four consecutive weekly composite samples for the mercury brine purification muds show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies BFG that the requirements of condition (2)(A) have been lifted.

(B) The requirements of condition (2)(B) shall be terminated by EPA when the results of four consecutive weekly composite samples for the saturator insolubles show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies BFG that the requirements of condition (2)(B) have been lifted.

The Agency is not requiring testing for the three organic constituents listed in Table 2 because mass balance analyses indicate that the constituents would not be present at levels of regulatory concern. The Agency, however, is proposing a mechanism both to collect a minimum of four weekly composite samples and to terminate the testing and reporting requirements of conditions (2)(A) and (2)(B) after four consecutive weeks of meeting the delisting levels

listed in condition (3), for the following reasons.

First, the Agency is proposing to require sufficient analytical data from BFG necessary to demonstrate that BFG's treatment system is on-line and operating properly before terminating the testing and reporting requirements of conditions (2) (A) and (B). The Agency determined through its review of similar petitions that approximately four weeks are required for a facility to train operators and to collect sufficient data to verify that the full-scale treatment process is operating correctly. Accordingly, the Agency is proposing that BFG be required to collect a minimum of four weekly composite samples of both the mercury brine purification muds and saturator insolubles.

Second, based both on the data submitted by Vulcan and the characteristics of BFG's untreated wastes, the Agency believes that consistently non-hazardous levels of the EP toxic metals, nickel, cyanide, reactive sulfide, and reactive cyanide can be generated from BFG's fully-operational treatment system. Thus, the Agency believes that, in this case, a requirement for continued testing, after four consecutive weekly composite samples of the mercury brine purification muds and/or saturator insolubles meet the delisting levels of condition (3), is not necessary to protect human health and the environment. (As discussed above, EPA is proposing continual testing for mercury.)

Lastly, the termination of the sampling and reporting requirements of conditions (2)(A) and (2)(B) after four consecutive weekly composite samples of the mercury brine purification muds and saturator insolubles meet the delisting levels of condition (3) is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 FR 41323, November 14, 1986), may require continuous batch testing.

(5) Within one week of system start-up, BFG must notify the Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. The test data from Conditions (1), (2)(A), and (2)(B) must be kept on file by BFG for inspection purposes and must be compiled, summarized, and submitted to the Chief, Variances Section, PSPD/OSW (OS–343), U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460 within the time period specified in conditions (1), (2)(A), and (2)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke BFG's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

(Name of Certifying Person)

Date

(Title of Certifying Person)

If made final, the proposed exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an

agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: December 1, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
BF Goodrich Intermediates Company, Inc.	Calvert City, KY	Brine purification muds and saturator insolubles (EPA Hazardous Waste No. K071) after [insert date of final rule's publication]. This exclusion is conditional upon the submission of data obtained from BFG's full-scale treatment system because BFG's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFG must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) BFG must collect representative grab samples of each treated batch of mercury brine purification muds and of each treated batch of saturator insolubles prior to disposal and must analyze for the EP leachate concentration of mercury. Analyses must be performed according to SW–846 methodologies. Any treated batch of mercury brine purification muds or saturator insolubles which exhibits EP leachate concentrations of mercury exceeding 0.0126 mg/1 must either be retreated or managed and disposed in accordance with Subtitle C of RCRA. BFG must report the analytical data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report. (2)(A) BFG must collect weekly composite samples comprised of representative grab samples from each batch of mercury brine purification muds generated during the particular week. BFG must analyze the weekly composite samples for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), the total constituent concentrations of reactive sulfide and reactive cyanide, total oil and grease content, and the characteristics of ignitability, corrosivity, and reactivity. Analyses must be performed according to SW–846 methodologies. BFG must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report. (2)(B) BFG must collect weekly composite samples comprised of representative grab samples from each batch of saturator insolubles generated during the particular week. BFG must analyze the weekly composite samples for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), the total constituent concentrations of reactive sulfide and reactive cyanide, total oil and grease content, and the characteristics of ignitability, corrosivity, and reactivity. Analyses must be performed according to SW–846 methodologies. BFG must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report. (3) If, under condition (2)(A) or (2)(B), the EP leachate concentrations for arsenic, chromium, lead, or silver exceed 0.316 mg/1; for barium exceeds 6.31 mg/1; for cadmium or selenium exceeds 0.063 mg/1; for nickel exceeds 3.16 mg/1; or for cyanide exceeds 4.42 mg/1, the waste exhibits any of the characteristics of ignitability, corrosivity, or reactivity, or if the total constituent concentrations of reactive cyanide or reactive sulfide exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated or managed and disposed in accordance with Subtitle C of RCRA. (4)(A) The requirements of condition (2)(A) shall be terminated by EPA when the results of four consecutive weekly composite samples for the mercury brine purification muds show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies BFG that the requirements of condition (2)(A) have been lifted. (4)(B) The requirements of condition (2)(B) shall be terminated by EPA when the results of four consecutive weekly composite samples for the saturator insolubles show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies BFG that the requirements of condition (2)(B) have been lifted.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste descnption
		(5) Within one week of system start-up, BFG must notify the Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. The test data from Conditions (1), (2)(A), and (2)(B) must be kept on file by BFG for inspection purposes and must be compiled, summarized, and submitted to the Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street SW., Washington, DC 20460 within the time period specified in conditions (1), (2)(A), and (2)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke BFG's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

(Name of Certifying Person)

(Title of Certifying Person)

(Date)

[FR Doc. 88-28336 Filed 12-8-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 372

[OPTS-400020; FRL-3488-6]

Sodium Hydroxide; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environment Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting a petition by proposing to delete sodium hydroxide (solution) from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Sodium hydroxide does not meet section 313 criteria, and is dangerous only under conditions of (a) direct ingestion, which has no relationship to section 313 reporting, or (b) chemical spills, which are specifically covered under other reporting authorities. The proposal to delete sodium hydroxide is based on the Agency's conclusion that there is no evidence that sodium hydroxide releases cause adverse affects to human health or the environment under ordinary exposure scenarios. EPA recognizes the potentially dangerous properties of sodium hydroxide; however, these properties are only of concern under controlled conditions or misuse of the chemical. Therefore, EPA proposes to amend 40 CFR Part 372 by deleting sodium hydroxide.

DATE: Written comments must be submitted on or before February 7, 1989.

ADDRESSES: Written comments should be submitted in triplicate to: OTS Docket Clerk, TSCA Public Docket Office (TS-793), Environmental Protection Agency, Room NE-G004, 401 M Street, SW., Washinton, DC 20460. Attention: Docket Control Number OPTS-400020.

FOR FURTHER INFORMATION CONTACT: Renee Rico, Petition Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M Street, SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC, and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The proposed deletion is issued under section 313 (d) and (e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, "SARA" or "the Act"). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Section 313 of SARA Title III requires certain facilities using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed or more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. The Agency must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

In addition to responding to petitions, EPA has authority under section 313(d) to modify the list of chemicals in order to further the objectives of section 313. EPA has therefore begun to evaluate candidates for addition to the list based on data available to the Agency from its various chemical review and assessment activities. EPA anticipates that this review will result in the initiation of a rulemaking proceeding during calendar year 1989.

II. Description of Petition

On April 22, 1988, the Agency received a petition from The Chlorine Institute, Inc. to delete sodium hydroxide (NaOH) solution from the list of toxic chemicals. NaOH can exist in both solid and solution form, but since only NaOH solution is listed under section 313, only the solution is covered by the petition.

III. EPA's Review of Sodium Hydroxide

A. Toxicity Evaluation

1. *Acute toxicity.* NaOH is a strongly alkaline, caustic substance that is acutely toxic to human tissue upon direct contact. The extent of damage is dependent on concentration and duration of exposure, and can range from irritation to corrosion, erosion, chemical burn, and, in extreme and isolated cases, risk of early death. Most reported cases of tissue damage have involved occupational incidents or accidents in the home due to mishandling or misuse of NaOH-containing products. NaOH is not expected to be acutely toxic at concentrations that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases.

2. *Chronic toxicity.* The only available data on humans pertain to the workplace. However, there are no data that indicate that individuals occuptationally exposed for long period to 0.5 to 2.0 mg/m^3 or NaOH (as an 8-hour time-weighted average) suffer serious or irreversible chronic effects. Levels in ambient air are expected to be well below the levels encountered in the workplace.

3. *Carcinogenicity.* Under extremely unusual circumstances, there is some indication that NaOH may indirectly lead to the development of cancer in humans. None of these observed cases were of occupational origin nor were they the result of exposure to concentrations of NaOH that may reasonably be expected to occur in the environment. All cases involved a massive ingestion of NaOH (lye) which resulted in traumatic tissue destruction. These cancers appear to be the result of tissue destruction and scarring, rather than a direct action of NaOH itself (similarly, tissue destruction from severe burns can also result in cancer).

4. *Environmental effects.* NaOH is only slightly toxic to fish in acute exposures, and there is no indication of chronic effects. NaOH is not persistent in the environment and is not expected to bioaccumulate in organisms.

5. *Reproductive and developmental effects; heritable genetic mutations; neurological disorders.* There is insufficient information to evaluate NaOH in terms of reproductive, developmental, mutagenic, or neurological toxicity.

B. Use, Release, and Exposure

1. *Manufacture.* EPA estimates that air releases of NaOH during manufacture will be minor, ranging from 0 to 25 kg/yr per plant. This corresponds to a maximum inhalation exposure of less than 1 μg/yr/person.

2. *Processing and use.* The Agency estimates that the worst-case ambient air levels of NaOH may result from use in bottle washing operations in breweries in which no control technology is used. Average and maximum ambient air levels were calculated at 0.071 μg/m ^{3} and 24 μg/m^3, respectively.

C. Summary of Technical Review

NaOH is acutely toxic to human tissue, producing effects ranging from irritation to corrosion to risk of early death. The extent of damage is dependent upon concentration and duration of exposure. However, no acute human health effects are expected to result from exposures to concentrations of NaOH encountered in the environment under normal release conditions.

In terms of chronic human health effects, ingestion of massive doses of NaOH has led to the development of cancer in humans; however, it is believed that the cancer is a result of tissue destruction and scar formation and that it is not due to a direct carcinogenic potential of NaOH itself.

NaOH is only slightly toxic in the aquatic environment.

IV. Explanation for Proposed Action To Delete

EPA is granting the petition submitted by The Chlorine Institute by proposing to delete NaOH from the section 313 list of toxic chemicals. The decision to grant the petition is based on the EPA's evaluation of NaOH's toxicity and the levels of NaOH exposure to which humans may be subject. The Agency believes that there is no evidence that NaOH releases cause adverse affects to human health or the environment under ordinary exposure scenarios. The substance's toxic properties are dependent upon concentration and duration of exposure. Only under aberrant conditions of exposure (i.e., spills directly onto skin; deliberate ingestion) does NaOH pose a serious health hazard.

EPA does not believe that NaOH meets the statutory criterion of section 313(d)(2)(A) regarding acute human health effects, specifically, that the "* * * chemical is known to cause or can reasonably be anticipated to cause significant adverse human health effects at concentration levels that are reasonably likely to exist beyond facility boundaries as a result of continuous, or frequently recurring, releases." EPA's review of the toxicity and exposure information indicates that NaOH will not cause significant adverse acute human health effects under these circumstances.

NaOH can, however, present a danger in (1) deliberate or accidental exposure to consumer products (e.g. swallowing drain-cleaner) or (2) spills from transportation or industrial accidents. Section 313 data does not bear in any way on the first situation and only tangentially on the second (if a spill were to occur at a facility covered by section 313) by providing annual release data which would incorporate any environmental releases from spills. Neither circumstance represents "continuous, or frequently recurring, releases."

Nor does NaOH meet the criterion of section 313(d)(2)(B) which states that the "* * * chemical is known to cause or can reasonably be anticipated to cause in humans: (i) cancer or teratogenic effects, or (ii) serious or irreversible * * * reproductive dysfunction * * * neurological disorders * * * heritable genetic mutations, or * * * other chronic health effects." NaOH has been reported to cause cancer in humans in situations involving acute exposures to large quantities of the chemical. This appears to be an indirect effect of NaOH and is most likely the result of massive physical destruction of tissue and subsequent scarring. A NIOSH study concluded that observed carcinomas were "undoubtedly sequelae of tissue destruction and scar formation, rather than the result of a direct carcinogenic action of NaOH itself." No evidence is available to suggest that NaOH is even indirectly involved in tumor development in situations not involving massive tissue destruction. Thus, EPA does not believe that NaOH causes or can be reasonably anticipated to cause cancer in humans in the manner anticipated by the statutory language of section 313(d)(2)(B), and there is no evidence to suggest any other chronic health effects from exposure to NaOH.

Section 313(d)(2)(C) establishes a criterion pertaining to ecotoxicity: the "* * * chemical is known to cause or can reasonably be anticipated to cause, because of (i) its toxicity (ii) its toxicity and persistence in the environment or, (iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgement of the Administrator, to warrant reporting under this section." NaOH is only slightly toxic to fish in acute exposures and there is no indication of chronic effects. NaOH is not persistent in the environment and is

not expected to bioaccumulate in aquatic organisms. Thus, EPA does not believe that NaOH causes or can be reasonably anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting under section 313.

EPA's decision to propose removing NaOH from the list of section 313 chemicals is not meant to suggest that the Agency considers NaOH to be a "safe" chemical. The dangerous caustic nature of NaOH under unusual conditions is abundantly clear. Rather, EPA's proposal to delete NaOH reflects the fact that the chemical does not meet the toxicity criteria set forth in section 313(d)(2). Critical information on exposures of concern for NaOH is captured under other reporting requirements.

Regarding spills of NaOH, statutory mechanisms exist by which information on spills of NaOH will be made available to the public. For example, NaOH is a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Releases of 1,000 pounds or more of NaOH must be reported to the National Response Center under CERCLA section 103 and to State and local authorities under Title III section 304. In addition, data on storage of NaOH for emergency planning purposes are already being collected at the local level. Under sections 311 and 312 of Title III, facilities are required to submit lists and inventories of chemicals on-site to local emergency planning committees to plan for emergencies and inform the public about the kinds of chemicals in their communities.

EPA does not believe that deleting NaOH from the section 313 list will result in any significant loophole in providing the public with important information concerning the spills of NaOH. Because reporting of spills under section 313 is only required to be submitted to EPA as part of an overall annual release number, no direct and immediate notice to the public of such an accidental release or spill of NaOH would be available through the section 313 reports or through the computer data base, i.e. only annual release figures would be available. Information concerning accidental releases or spills of NaOH will be available to the public through the statutory reporting requirements discussed above.

This finding does not necessarily reflect a general policy for listing or delisting other bases or acids for the purposes of section 313 reporting. EPA welcomes comments on the proposal to delete NaOH as well as on the approach EPA has taken here to evaluate the health and environmental impacts of NaOH in the context of the Congressionally mandated criteria for listing or delisting section 313 chemicals.

V. Rulemaking Record

The record supporting this proposed rule is contained in docket control number OPTS–400020. All documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Room. NE–G004, 401 M Street, SW., Washington, DC 20460.

VI. Request for Public Comment

The Agency requests comments on all the analyses conducted for this review and on the Agency's proposal to delete NaOH from the list of toxic chemicals. EPA also requests that any pertinent data on NaOH be submitted to the address at the front of this document. All comments must be submitted on or before February 7, 1989.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more.

This proposed rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost-savings to industry, EPA, and States. Therefore, this is a minor rule under Executive Order 12291.

This proposed rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

There are 19 companies manufacturing NaOH at 45 sites in the U.S. EPA estimates the number of processors that might be subject to reporting requirements to be more than 10,000. The cost savings of delisting for industry over a 10-year period are estimated at $67 million, while the savings for EPA are estimated to be $1.5 million (10-year present values using a 10 percent discount rate).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the proposed rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by the rule.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 29, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 372 be amended as follows:

1. The authority citation for Part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65 (a) and (b) are amended by removing the entire entry for sodium hydroxide (solution) under paragraph (a) and removing the entire CAS. No. entry for 1310–73–2 under paragraph (b).

[FR Doc. 88–28333 Filed 12–8–88: 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Centers for Excellence

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes regulations to implement Grants for Centers for Excellence, authorized by section 788A of the Public Health Service Act, as added by the Excellence in Minority Health Education and Care Act.

DATE: As discussed below, comments are invited. To be considered, comments must be received no later than February 7, 1989.

ADDRESSES: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received

will be available for public inspection and copying at the Office of Program Development, BHPr, Room 7–74, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Clay E. Simpson, Jr., Ph.D., Director, Division of Disadvantage Assistance, Bureau of Health Professions, Health, Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–2100.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, proposes to amend Part 57 of Title 42 of the Code of Federal Regulations by removing Subpart V, entitled "Grants for Training in Emergency Medical Services", and adding a new Subpart V to implement section 788A of the Act, as established by Pub. L. 100–97, the Excellence in Minority Health Education and Care Act, enacted on August 18, 1987. Section 788A authorizes the Secretary to make grants to health professions schools to assist such schools in supporting programs of excellence in health professions education for minority individuals. A grant under this section shall be used by a health professions school to:

(1) Develop a plan to achieve institutional improvements, including financial independence, to enable such school to support programs of excellence in health professions education for minority individuals;

(2) Improve the capacity of such school to recruit and retain faculty;

(3) Provide improved access to the library and information resources of such school;

(4) Establish, strengthen, or expand programs to enhance the academic performance of students in such school;

(5) Establish, strengthen, or expand programs to increase the number and quality of applicants for admission to such school; and

(6) Develop curricula and carry out faculty training programs in order to enable such school to become, for the Nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome.

The major provisions of these proposed regulations are described below:

Section 57.2103 Who is eligible to apply for a grant?

Section 788A of the Act authorizes support only for a health professions school which: (1) Is a school as described in section 701(4) of the Act; and (2) has received support under section 788B of the Act (Advanced Financial Distress Assistance) for Fiscal Year (FY) 1987. However, these eligibility criteria were broadly expanded by the language of the Labor, Health, Human Services, and Education Appropriations for FY 1989, Pub. L. 100–436, enacted on September 20, 1988, to include any university which award a graduate degree in the health professions and which has a majority enrollment of minority students. This eligibility provision will end at the expiration of FY 1989 and the controlling eligibility provision will be that of section 788A as originally authorized. Therefore, these regulations have been written in accordance with the original section 788A eligibility provision. Should eligibility for support under section 788A again be changed, either by a legislative extension of the language of the FY 1989 Appropriations or by other Congressional action, the applicable legislation will, of course, control. If appropriate, the regulations will then be revised to reflect any such legislation.

Section 57.2104 Project requirements.

The Department proposes to implement section 788A by awarding grants for projects which support a minimum of three of the six statutory purposes listed above. One of these must be purpose (1) above, which relates to the development of a plan to achieve institutional improvements. It is also proposed that this plan be submitted by the grantee within 6 months of the date of the grant award. This approach is proposed for the following reasons:

1. The implementation plan would provide a means of assessing a grantee's progress in achieving its targeted improvements and financial independence. The specified time frame of 6 months from the grant award date for submission of the plan is intended to coincide with the submission of a continuation award application and the accompanying progress report.

2. The Department recognizes that the remaining five purposes include areas of need that may not exist for every potential grantee. Therefore, it is proposed that an applicant include in its application at least two of these purposes which would be appropriate for its institutional needs.

Also with respect to purpose (5), which relates to establishing, strengthening, or expanding programs to increase the number and quality of applicants for admission to such school, these proposed regulations would require that this activity not be offered to students before they enter the freshman year of high school. The Department believes that directing this activity to students at this level of education would maximize the available resources and would enable this program to reach students at the point in their education when course selection and career decisions begin to impact preparation leading to health careers. The offering of such activity prior to the ninth grade level is not considered a cost effective approach due to the length of time involved before elementary-level students are at the point of application to health professions schools, the numbers of students who could realistically be expected to pursue such a course, and the effort which would be involved in tracking these students to determine actual impact of the program. The Department also believes that by allowing these activities to take place as early as the freshman year, relationships will be encouraged between the health professions schools, and high schools, particularly those schools which emphasize a curriculum in math and science.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Section 57.2109 contains information collection requirements which are subject to the Office of Management and Budget (OMB) review. We have submitted an information request to OMB for approval of these requirements under section 3504(h) of the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collections should direct them to the

agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20505, ATTN: Desk Officer of HHS.

List of Subjects in CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Student aid.

Accordingly, the Department of Health and Human Services proposes to amend Part 57 of Title 42 of the Code of Federal Regulations as set forth below:

(*Catalog of Federal Domestic Assistance*, No. 13.157, Grants for Centers for Excellence)

Dated: August 25, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: September 21, 1988.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

1. 42 CFR Part 57 is amended by removing Subpart V, entitled "Grants for Training in Emergency Medical Services" and adding a new Subpart V, entitled "Grants for Centers for Excellence" to read as follows:

Subpart V—Grants for Centers for Excellence

Sec.

57.2101 To what projects do these regulations apply?
57.2102 Definitions.
57.2103 Who is eligible to apply for a grant?
57.2104 Project requirements.
57.2105 How will applications be evaluated?
57.2106 How long does grant support last?
57.2107 For what purposes may grant funds be spent?
57.2108 What additional Department regulations apply to grantees?
57.2109 What other audit and inspection requirements apply to grantees?
57.2110 Additional conditions.

Authority: Sec. 788A of the Public Health Service Act, as established by Pub. L. 100–97, 101 Stat. 713–714 (42 U.S.C. 295g–8a).

Subpart V—Grants for Centers for Excellence

§ 57.2101 To what projects do these regulations apply?

These regulations apply to grants awarded to public or nonprofit private health professions schools to assist such schools in supporting programs of excellence in health professions education for minority individuals.

§ 57.2102 Definitions.

"Act" means the Public Health Service Act, as amended.

"Health professions school" means any accredited school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health, and chiropractic or graduate program in health administration as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

"Nonprofit" means an entity owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 57.2103 Who is eligible to apply for a grant?

A health professions school described in section 701(4) which has received support under section 788B (Advanced Financial Distress Assistance) of the Act for Fiscal Year 1987, may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at the time the Secretary may prescribe.[1]

§ 57.2104 Project requirements.

(a) The Secretary will award grants to meet the cost of carrying out three or more of the following six purposes, one of which must be the purpose provided in paragraph (a)(1) of this section:

(1) Develop a plan to achieve institutional improvements, including financial independence, to enable such school to support programs of excellence in health professions education for minority individuals. This plan must be submitted within 6 months of the date of grant award;

(2) Improve the capacity of such school to recruit and retain faculty;

(3) Provide improved access to the library and information resources of such school;

(4) Establish, strengthen, or expand programs to enhance the academic performance of students in such school;

(5) Establish, strengthen, or expand programs to increase the number and quality of applicants for admission to such school. Activities designed to increase the number and quality of applicants to these schools may not be offered to students prior to the ninth grade; and

(6) Develop curricula and carry out faculty training programs in order to enable such school to become, for the Nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome.

(b) Each project must evaluate its program based on the evaluation plan provided in the grant application.

§ 57.2105 How will applications be evaluated?

(a) After consulting with the National Advisory Council on Health Professions Education, established in section 702 of the Act, the Secretary will decide which applications to approve by considering, among other factors:

(1) The degree to which the applicant can arrange to continue the proposed project beyond the federally funded project period;

(2) The degree to which the proposed project meets three or more of the purposes as described in § 57.2104;

(3) The relationship of the objectives to the goals of the implementation plan that will be developed pursuant to § 57.2104(a)(1);

(4) The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

(5) The adequacy of the staff and faculty to carry out the program;

(6) The soundness of the budget for assuring effective utilization of grant fund, and the proportion of total program funds which come from non-federal sources and the degree to which they are projected to increase over the grant period;

[1] Applications and instructions (Form PHS 6025–1, OMB 0915–0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(7) The number of individuals who can be expected to benefit from the project; and

(8) The overall impact the project will have on strengthening the school's capacity to train minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register.**

§ 57.2106 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 3 years.

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding the continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress, including the degree that the projected portion of non-federal funds supporting the project has been met, and management practices, the existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.2107 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

(c) The grantee may spend grant funds with the Secretary's prior approval to pay individual participants in the program a per diem up to a maximum daily amount established by the Secretary when the grantee determines that—

(1) The training program requires the individual to establish a temporary new residence;

(2) The program is offered at a time when the individual would not be at the training site in a regular course of education or employed as a faculty member at that institution; and

(3) No other Federal financial assistance program is authorized to provide this support.

(d) The grantee may spend grant funds with the Secretary's prior approval to provide one round trip per participant between the place of residence and the training site, provided that conditions in paragraphs (c) (1) and (2) of this section are met.

(e) The grantee may not spend grant funds for stipends, licensing exams, loan or schoarship support, support of research faculty or projects and related activities, establishment of research centers, establishment of planning offices, support of commercial ventures, entertainment, dependency allowances, new construction of facilities, acquisition of land, fund raising, or for sectarian instruction or any religious purposes.

§ 57.2108 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.2109 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

§ 57.2110 Additional conditions.

The Secretary may impose additional conditions in the grant award before or at the time of the award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 88-28317 Filed 12-8-88; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-138]

Availability of Broadcast Television Signals on Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Order reopening Docket for additional comment.

SUMMARY: The Commission has reopened MM Docket No. 88-138

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

concerning broadcast television signals on cable television systems (53 FR 18588) to afford parties an opportunity to comment on two reports that have been added to the record of this Docket.

DATES: Comments are due December 21, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 623–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Order Reopening the Period For Filing Comments

Adopted: November 10, 1988.
Released: November 21, 1988.

In the matter of inquiry into the availability of broadcast television signals on cable television systems, MM Docket No. 88–138.

By the Chief, Mass Media Bureau.

1. By this *Order*, we are reopening the above-captioned proceeding to afford parties an opportunity to comment on two reports that have been added to the record. These reports are: *Cable System Broadcast Signal Carriage Survey Report*, September 1, 1988, a staff report by the Policy and Rules Division, Mass Media Bureau of the FCC; and *Broadcast Station Carriage Survey*, September, 1988, a report prepared by the Research and Policy Analysis Department of the National Cable Television Association. We request that parties limit their comments to the information presented in these reports. The reports are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. Copies of the reports can also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Washington, DC. 20037.

2. Accordingly, *it is ordered*, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, That the period for filing comments in the above captioned proceeding is *reopened* to and including December 21, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

3. For further information concerning this proceeding, contact Scott Roberts, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88–28127 Filed 12–8–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 252

Department of Defense Federal Acquisition Regulation Supplement; Improper Business Practices and Personal Conflicts of Interest

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: This proposed rule revises DFARS coverage concerning employment prohibitions on persons convicted of fraud or other defense contract related felonies. These revisions are required by Section 831, Pub. L. 100–456, (10 U.S.C. 2408), which became effective September 29, 1988.

DATE: Comments on the proposed changes should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before January 9, 1989, to be considered in the formulation of the final rule. Please cite DAR Case 88–309 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 831 of the FY 1989 Department of Defense Authorization Act (Pub. L. 100–456) amended the provisions of 10 U.S.C. 2408(a) regarding employment prohibitions on persons convicted of fraud or other defense contract related felonies. This amendment added to existing prohibitions the additional prohibitions that defense contractors may not permit felons convicted of fraud or any other felony arising out of contracts with the Department of Defense to serve as a consultant to any defense contractor or in any other way as determined by regulation prescribed by the Secretary of Defense. This rule implements this amendment and adds acting as an agent or representative to the prescribed activities in order to make these prohibitions consistent with those contained in FAR 9.405. In addition, Section 831 increased the period of these employment prohibitions to a minimum of 5 years and permits waiver only in the interest of national security. These amended prohibitions were effective with enactment of Pub. L. 100–456 on September 29, 1988. This rule revises existing DFARS clauses to reflect these amendments and adds a new DFARS clause to provide for the waiver procedure.

B. Regulatory Flexibility Act.

This proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will not diminish any existing preferences for small businesses, affect small purchase procedures, impose either special skill requirements, administrative costs, or unusual business practices upon small business. It is also required by a statute requiring uniform application. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act.

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 203 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.571–1 is revised to read as follows:

203.571–1 Scope.

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408 which prohibits defense contractors from employing in a managerial or supervisory capacity on any defense contract, persons convicted of fraud or any other felony arising out of a contract with the Department of Defense, or allowing those persons to serve on the contractor's board of directors, as a consultant, or as an agent or representative. The nature and length of the statutory prohibitions depend upon the date of conviction.

3. Section 203.571–3 is revised to read as follows:

203.571–3 Policy.

(a) It is DoD policy that a contractor shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, to serve (1) in a management or supervisory capacity on any defense contract or subcontract or (2) upon its board of directors or (3) as a consultant or (4) as an agent or representative, for a period of five years from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer, unless waived in accordance with agency procedures in the interests of national security.

(b) Contractors shall not allow a person convicted prior to September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense to serve in a management or supervisory capacity on any defense contract or subcontract or upon its board of directors, for a period of one year from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer.

4. Section 203.571–6 is added to read as follows:

203.571–6 Waiver.

(a) Requests for waiver submitted under DFARS 252.203–7001(e) shall be reviewed by the contracting officer. If the contracting officer decides the requested waiver is not required in the interests of national security, the contracting officer shall deny the request and advise the contractor accordingly. If the contracting officer decides the requested waiver may be in the interests of national security, the contracting officer shall forward the request to the Head of the Agency or designee.

(b) The Head of the Agency or its designee shall report all waivers granted and the reasons therefor to the Under Secretary of Defense for Acquisition who shall forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.203–7001 is revised to read as follows:

252.203–7001 Special prohibition on employment.

As prescribed at 203.571–6, insert the following clause in all solicitations and contracts other than those entered into using the small purchase procedures of FAR Part 13:

SPECIAL PROHIBITION ON EMPLOYMENT (XXX 1988)

(a) Definitions. "Arising out of a contract with the Department of Defense," as used in this clause, means any act in connection with (1) attempting to obtain, (2) obtaining, or (3) performing a contract or subcontract of any agency, department, or component of the Department of Defense.

"Conviction of fraud or any other felony", as used in this clause, means any conviction for fraud or a felony in violation of state or Federal criminal statutes whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(b) 10 U.S.C. 2408 prohibits a person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense from working in a management or supervisory capacity on any defense contract or serving in various other capacities for a defense contractor for up to five years from the date of conviction, as set forth in (c) below. Defense contractors are subject to a criminal penalty of not more than $500,000 if they are convicted of knowingly employing a person under a prohibition or allowing that person to serve in violation of 10 U.S.C. 2408.

(c)(1) The Contractor agrees not to knowingly employ any person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, in a management or supervisory capacity on any Department of Defense contract or subcontract or allow that person to serve either on its board of directors, as a consultant, or as an agent or representative for a period of five (5) years from the date of conviction or for the period of any resultant debarment of the convicted person, unless waived.

(2) The Contractor agrees not to knowingly employ any person, convicted prior to September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, in a management or supervisory capacity on any Department of Defense contract or subcontract or allow that person to serve on its board of directors for a period of one (1) year from the date of conviction or for the period of any resultant debarment.

(d) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as suspension or debarment, may direct the cancellation of the contract at no cost to the Government, or terminate this contract for default.

(e) The Contractor may submit written requests for waiver of the prohibitions in (c)(1) above to the Contracting Officer who will process such requests in accordance with DFARS 203.571–4. Requests shall clearly identify the person involved, the nature of the conviction and resultant sentence or punishment imposed, the reasons for the requested waiver and an explanation of why waiver of the prohibitions of (c)(1) above is in the interests of national security.

(f) The Contractor agrees to include the substance of this clause, including this paragraph, appropriately modified to reflect identity and relationship of the parties, in all subcontracts exceeding $25,000.

(End of clause)

[FR Doc. 88–28348 Filed 12–8–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[FRA Docket No. RSEP–6, Notice No. 1]

[RIN 2130–AA49]

Railroad Safety Enforcement Procedures; Disqualification Proceedings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend Part 209 Subpart A and add a new Subpart D prescribing procedures for disqualifying railroad employees, including managers and supervisors, and other agents from performing safety-sensitive functions in the rail industry. Section 3(a) of the Rail Safety Improvement Act of 1988 authorizes FRA to disqualify such individuals who are shown to be unfit to perform safety-sensitive functions, based on the individual's violation of an FRA safety rule, regulation, order or standard. The procedures proposed in

this NPRM are intended to assure the prompt and efficient conduct of disqualification proceedings under the Act while affording administrative due process to those against whom such proceedings are initiated.

DATES: (1) Written comments (three copies) must be received no later than January 10, 1989. Comments received on or after that date will be considered to the extent possible without incurring additional expense or delay.

(2) An informal hearing on this proposal will be held on January 5, 1989, at 10:00 a.m. at Room 6332, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Prepared statements (five copies) must be received no later than January 2, 1989. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing.

ADDRESSES: Written comments and prepared statements should be submitted to the Docket Clerk (RCC-30), Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date the comments were received and return the postcard to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Peter J. Hannums, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC, 20590. Telephone: (202) 366-0637.

SUPPLEMENTARY INFORMATION:

Comments Invited

Because these are rules of procedure, public comment is not required by 5 U.S.C. 553(b)(3)(A) for the promulgation of these regulations. However, FRA believes that, in view of the adversarial nature of the proceedings and the grave consequences of the issuance of disqualification orders against railroad employees, including managerial and supervisory officials and other agents, the public should be given the opportunity to take part fully in the rulemaking process. Interested persons are invited to participate at the public hearings or through written submissions, or both.

Legislative Background

Section 3(a)(4) of the Rail Safety Improvement Act of 1988 ("RSIA"), Pub. L. 100-342, 102 Stat. 624 (June 22, 1988), which amends section 209 of the Federal Railroad Safety Act of 1970 ("FRSA") (to be codified at 45 U.S.C. 438(f)), authorizes FRA to issue orders disqualifying railroad employees, including supervisors, managers, and other agents from performing safety-sensitive functions in the rail industry. Before such an individual may be disqualified, he or she must receive notice alleging that he or she violated a rule, regulation, order, or standard issued under the Federal railroad safety laws, and that based in whole or in part on the violation, the individual is unfit to perform safety-sensitive functions. In addition, the individual must have received an opportunity for a hearing. The RSIA, however, specifically reserves the FRA's authority under section 203 of the FRSA (45 U.S.C. 432) to issue an emergency order immediately disqualifying an individual when he or she is engaging in unsafe practices that create an emergency situation involving a hazard of death or injury to persons.

Prior to the RSIA, FRA had no enforcement authority over an individual who violated its safety regulations. FRA's sole remedy was against the employing railroad. With enactment of the RSIA, FRA is empowered to (1) impose civil monetary penalties against individuals for willful violations of the rail safety regulations (See 53 FR 28594, July 28, 1988, Amendments to Railroad Safety Regulations to * * * Make Civil Penalties Available Against Individuals), and (2) disqualify individuals from performing safety-sensitive functions in the rail industry for violations that render the individual unfit to perform those functions.

Section-by-Section Analysis

1. Technical amendments have been proposed to various sections of Part 209, Subpart A, to conform the general provisions for railroad safety enforcement proceedings applicable to Subpart B, assessment of penalties under the Hazardous Materials Transportation Act, and Subpart C, issuance of compliance orders, to the new Subpart D, disqualification proceedings. Specifically, §§ 209.1, 209.3, 209.7, 209.9, 209.13, and 209.15 will be amended to reflect the inclusion of Subpart D within Part 209. In addition, § 209.5 will be amended to permit service by first-class mail of motions and requests for admissions and to require that a certificate of service accompany each pleading filed with the agency.

2. Proposed § 209.301 states the purpose for Subpart D, the establishment of the rules of practice for disqualification proceedings of railroad employees and agents from safety-sensitive functions in the rail industry. It is the view of FRA that railroad accidents caused, directly or indirectly, by violations of safety regulations may be prevented or avoided by disqualifying individuals who have shown themselves to be unfit to perform the safety-sensitive functions described in proposed § 209.303. Two purposes would be accomplished by suspending or barring such an individual from these functions in the rail industry: First, the person would be prevented from further violating safety regulations and the railroad's rules; and second, the person's suspension would serve to deter him or her and other railroad employees and agents from committing future violations. In the most serious cases, permanent disqualification could be deemed appropriate.

The exercise of FRA's disqualification authority does not supersede the railroad's independent disciplinary authority or any employee's rights secured under a collective bargaining agreement for review of a disciplinary action imposed under the carrier's independent authority. Those rights would not be applicable, of course, to a suspension imposed by FRA under this rule. FRA's disqualification authority is both narrower and broader than discipline imposed by a railroad on an employee. It is narrower in the sense that an employee may be disqualified only from performing safety-sensitive functions; the employee may remain in an active status with the railroad performing functions that are not designated as safety-sensitive. In a railroad disciplinary proceeding, however, an employee may be suspended without pay from his or her position. FRA's disqualification authority is broader in the sense that FRA may bar a railroad employee from performing safety-sensitive functions with any railroad, not just the employee's persent employer. In summary, an FRA disqualification order is independent of any disciplinary action that may be taken by a railroad against an employee for violating an FRA regulation, rule, order, or standard.

3. Proposed § 209.303 delineates the individuals in the rail industry who may be subject to disqualification by specifying the functions they perform. The proposed section lists these

functions that FRA views to be safety-sensitive within the meaning and intent of the FRSA, as amended by the RSIA. First, railroad employees who are assigned to perform services under the Hours of Service Act, 45 U.S.C. 61–64b, will be covered. Employees covered by the Hours of Service Act include those engaged in or connected with the movement of any train (primarily engineers, brakemen, firemen, and conductors); those who dispatch, report, transmit, or receive orders pertaining to or affecting train movements (primarily operators and dispatchers); and those engaged in installing, repairing, or maintaining signal systems (primarily signalmen and certain electricians).

Second, railroad employees and agents engaged in inspecting, installing, repairing or maintaining track and roadbeds will be subject to disqualification for safety regulation violations. Third, employees engaged in inspecting, repairing, and maintaining locomotives and freight cars will be covered. Fourth, employees who conduct training and testing of other employees required by FRA's safety regulations will be covered. Fifth, railroad supervisors, managers, or agents who supervise or perform the foregoing safety-sensitive functions will be subject to disqualification for safety regulation violations. Finally, supervisors, managers, or agents who are in a position to direct the commission of violations of FRA safety regulations may be disqualified from serving in any position in which they would have the ability to direct subordinates to violate safety regulations.

It is FRA's position that a person who is disqualified from performing safety-sensitive functions will be disqualified from performing all of the foregoing functions listed, not just the ones inherent to his or her job class. For example, a disqualified engineer may not perform work in any of the other safety-sensitive functions described for any railroad. The engineer could remain in an active duty status with his or her employing railroad in a position that does not require the performance of safety-sensitive functions. The proposed rule, however, neither precludes nor requires reassignment to a position that is not safety-sensitive.

4. Proposed § 209.305 sets forth the action that initiates a disqualification proceeding. The FRA Chief Counsel, after an initial determination that an alleged violation of a safety regulation establishes that an individual is unfit to perform safety-sensitive functions, issues a notice of disqualification order to the individual. The charging document is referred to as a notice of disqualification order to make clear that its issuance is an extremely serious matter, and if an individual chooses to ignore it, he or she may receive a disqualification order for the terms and duration set forth in the notice. See § 209.307(c), which discusses the repercussions of an individual's failure to reply to a notice of disqualification order. Consideration was given to entitling the charging document a notice of proposed disqualification, but FRA was concerned that this terminology could cause a recipient to misunderstand the severity of the action, and fail to recognize the need to reply to the notice. Comments are invited on this issue.

Paragraph (b) of this section prescribes the contents of the notice to include: A statement of the rule, regulation, order, or standard allegedly violated (e.g., identification of the regulation violated, the date of the violation, and a brief description of the underlying facts); the factual allegations supporting the initial determination that the individual is unfit to perform safety-sensitive functions (e.g., identification of the relevant factors cited in proposed § 209.329 and underlying facts in support thereof, which form the basis for the terms and conditions of the proposed disqualification); the terms and conditions, including effective dates, of the proposed disqualification (e.g., the duration and effective dates of any suspension or, if termination of a suspension is conditioned upon a subsequent evident other than the passage of time (completion of prescribed training, rehabilitation, respondent's application for permission to return to safety-sensitive service, etc.), identification of the event, if any, that will permit the individual to resume performance of safety-sensitive functions); and notice of the consequences of the individual's failure to reply to the charges.

Paragraph (b) also requires that the notice advise the individual of his or her following rights: To answer the charges in writing and provide supporting documentary evidence; to make an informal response to the Chief Counsel; to request an eventiary hearing; and to be represented by counsel or other designated representative.

Paragraph (c) requires the Chief Counsel to provide with the notice a copy of the material supporting the charges. The material relied on generally will include a copy of an FRA Safety Inspector's violation report and supporting exhibits, and may include other non-privileged information. Nothing in this section precludes the Chief Counsel from presenting at a subsequent hearing under § 209.325 any evidence of the charges set forth in the notice that the Chief Counsel acquired after service thereof upon the respondent.

5. Proposed § 209.307 describes the individual's reply rights to a notice of disqualification order and prescribes the time limit for submitting the reply and the basis for requesting extensions. Within 20 days of service of the notice of disqualification order, the individual must reply in writing to the charges, and he or she may submit documentary evidence in support of the reply. Although it is the FRA's policy to disfavor extension requests, the Chief Counsel may extend the reply period when the Chief Counsel concludes, for example, that the individual's right to reply to the notice would be materially impaired if the extension was denied. The individual may also make an informal response to the Chief Counsel, or request an evidentiary hearing. The individual may, of course, decide to forgo submitting a written reply and stipulate to the charges and consent to imposition of the disqualification order set forth in the notice. In any event, FRA believes that the interests of all parties will be best served by the efficient, expeditious conduct of these proceedings. The individual against whom charges have been made deserves a prompt determination as to his or her fitness, and the public safety demands no less. FRA will welcome any comments with respect to the means by which this process can be concluded more quickly.

Paragraph (c) prescribes the adverse consequences of an individual's failure to reply to a notice of disqualification order. Specifically, it will be treated as a waiver of the individual's right to contest the charges or the disqualification order that were the subjects of the notice. In that event, the Chief Counsel may find the individual unfit, issue and serve him or her with the disqualification order, and provide a copy of the order to the railroad by which the individual is employed.

6. Proposed § 209.309 prescribes the procedures for an informal response to a notice of disqualification order, the objective of which is to settle the charges against the individual without resort to litigation. If the parties are unable to reach a settlement within 30 days of service of the individual's reply upon the Chief Counsel, the Chief Counsel will terminate negotiations. The individual may then exercise his right to

a hearing within 10 days from service of the Chief Counsel's notice of termination of settlement negotiations. The individual does not waive his right to a hearing by filing a written response to the charges and requesting a conference with the Chief Counsel. (See paragraph (e)).

Paragraphs (a) and (b) provide that an individual who elects to pursue the informal process will file his or her written response, which may include supporting documents, and request a conference with the Chief Counsel. Pursuant to paragraphs (c) and (d), based on the individual's written response and information provided at any conference, the Chief Counsel will consider the issues raised in the notice of disqualification order and take one or more of the following actions: Dismiss the charges and notice of disqualification order; mitigate the proposed disqualification; sustain the charges and proposed disqualification; or settle the charges and the proposed disqualification. If the Chief Counsel dismisses the charges, the Chief Counsel will notify the individual in writing. If, without achieving settlement, the Chief Counsel mitigates the proposed disqualification or sustains the charges and the proposed disqualification, the Chief Counsel will issue an amended notice of disqualification order together with written notice to the individual that the charges cannot be resolved informally. If a settlement is achieved, the Chief Counsel will issue an order conforming to the terms of the settlement as soon as practicable after the settlement agreement is signed. Each settlement agreement will contain a written waiver from the charged individual of his or her right to any further hearing or appeal.

This informal process is intended to provide charged individuals with a relatively fast and inexpensive way to resolve the charges against them.

7. Proposed § 209.311 governs an individual's request for a hearing. Under paragraph (a), an individual who requests a hearing must do so within 20 days of service of the notice of disqualification order or, if the individual pursues an informal response, within 10 days of service of the notice of termination of settlement negotiations. The written request must be signed by the individual and include, at a minimum, the following information: Name, address, and phone number of the individual and his or her representative, if any; a specific response to the charges, admitting, denying, or explaining each allegation contained in the notice of disqualification order; and a description of the claims and defenses that the individual intends to raise at the hearing.

Under paragraph (b), upon receipt of a proper hearing request, the Chief Counsel shall arrange for the appointment of a presiding officer. Presiding officials for disqualification hearings will be Administrative Law Judges from the Department's Office of Hearings who are assigned cases by the Chief Administrative Law Judge. The Administrative Law Judge assigned will schedule the hearing.

8. Proposed § 209.313 specifies the material comprising the official record in each disqualification proceeding)—i.e., notice of disqualification order, reply, exhibits, hearing transcript, pleadings, stipulations, admissions, rulings, and orders. If no hearing is held because a settlement is reached and a stipulated disqualification order is issued, the record could consist of the settlement agreement, the order, the notice of disqualification order, supporting documentation (generally a violation report with supporting exhibits), and the individual's reply.

9. Proposed § 209.315 specifies the procedures for filing written motions and objections thereto. Objections must be filed within 10 days after service of the motion. The presiding officer may modify the time limit for objecting and rule on oral motions. No time limit is prescribed for filing motions. If that becomes an issue in a proceeding, the presiding officer has the authority to make appropriate rulings.

10. Proposed § 209.317 governs the procedures for obtaining requests for admission of facts, the genuineness of documents, and the application of law to facts. Requests for admission do not involve the participation of the presiding official unless the parties cannot resolve compliance issues that may arise. Answers to requests for admission or objections must be served within 20 days of service of the request. Failure to answer or object within that time period will result in an admission of the matter requested. Objections to requests may be tested by filing a motion to compel with the presiding officer who has the authority to compel an answer. Any matter admitted that is entered into the record is conclusively established.

11. Proposed § 209.319 provides that only the presiding officer, not the Chief Counsel, may issue subpoenas under § 209.7 after disqualification proceedings have been initiated by the issuance and service of a notice of disqualification order under proposed § 209.305. Since the Chief Counsel will serve as the prosecutor in disqualification proceedings, it would not be appropriate for him or her to issue subpoenas on behalf of FRA or to rule on requests for subpoenas filed by subjects of those proceedings.

12. Proposed § 209.321 governs the procedure for requesting, obtaining, and using depositions of witnesses at the hearing. The deposition of a witness may only be introduced as evidence at a disqualification proceeding if the witness is unavailable for the hearing. "Unavailable" as a witness includes the situations described in Rule 804(a) of the Federal Rules of Evidence (i.e., subject matter of declarant's proposed testimony is privileged, declarant refuses to testify despite an order of the presiding officer to do so, declarant testifies to lack of memory of the subject matter of the proposed testimony, declarant is unable to be present or to testify because of death or physical or mental illness, and declarant is absent from the hearing and the proponent is unable to procure the declarant's attendance by subpoena). If the witness is available, he or she must testify at the hearing. Any prior deposition may be used for impeachment purposes, and if the witness' testimony at the hearing is inconsistent with the prior deposition, the deposition may be introduced as substantive evidence.

Depositions may be taken only for good cause after a proper motion is granted by the presiding officer and an appropriate order is entered. Objections to motions for depositions are governed by proposed § 209.315.

The objective of this section is to limit the use of depositions to those situations in which a witness is reasonably expected to be unavailable for the hearing. The deposition should be taken, therefore, to preserve the testimony of the witness. It is not to be used as a discovery tool.

13. Proposed § 209.323 establishes the requirement for, and the minimum contents of, a prehearing conference. One of the primary purposes of a prehearing conference is to shorten the hearing, or eliminate it if settlement is achieved. Also, since discovery is limited in disqualification proceedings, it gives the parties the opportunity to exchange witness lists and exhibits that are approved by the presiding officer. The intent of the regulations is to provide for a fair, expeditious, and relatively inexpensive procedure to adjudicate proposed disqualification orders. FRA believes that the efficient use of requests for admission and stipulations coupled with the exchange of witness lists and exhibits at the

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prehearing conference should contribute to a fair hearing, while avoiding the cost, in dollars and time, of the broad, extensive discovery permitted in judicial proceedings under the Federal Rules of Civil Procedure.

14. Proposed § 209.325 contains the requirements for disqualification hearings conducted by administrative law judges. Witnesses will testify under oath and a verbatim transcript of the hearing will be made.

Paragraphs (b) and (e) prescribe the broad powers of the presiding officer in controlling the proceeding and conducting the hearing. Paragraph (c) sets forth the burden of proof for the Chief Counsel. The Chief Counsel has the burden of production and persuasion as to the facts alleged in the notice of disqualification order, respondent's unfitness and the reasonableness of the terms of the proposed disqualification. When the Chief Counsel, however, proves that the individual committed a willful violation of one of the requirements of 49 CFR Parts 213 through 236, the individual is conclusively presumed to be unfit to perform safety-sensitive functions. While the individual may not, therefore, proffer evidence to rebut the finding of his or her unfitness, he or she may adduce evidence in an effort to mitigate the conditions of the proposed disqualification. Should the Chief Counsel prove that the individual committed a violation of any of the foregoing safety requirements, but not willfulness, the burden shifts to the individual to prove that he or she is fit to perform safety-sensitive functions. In addition, the individual may proffer evidence in mitigation of the proposed disqualification. The standard of proof for both parties in the foregoing circumstances will be the preponderance of the evidence, the traditional standard used in most administrative and civil judicial proceedings.

15. Proposed § 209.327 prescribes the requirements for issuance and contents of the decision and order by the presiding officer. Each decision will be accompanied by a dispositive order, either a dismissal order or an appropriate disqualification order.

The decision of the presiding officer is the final agency action, and it is not subject to further review within the Department. An individual, therefore, who receives an adverse decision from the presiding officer has no administrative appeal rights. A presiding officer's decision, including a disqualification order, may only be reviewed by the individual's filing of a civil suit in an appropriate United States District Court. The Chief Counsel, however, may not seek judicial review of a presiding officer's decision.

FRA invites comments on whether the individual or the Chief Counsel, or both, should be permitted to appeal a presiding officer's decision to the FRA Administrator—if the Administrator was not involved in the issuance of the notice of disqualification order—or to some other Departmental official—if the Administrator was involved in the issuance of the notice. If an administrative appeal is allowed, the presiding officer's decision would be the initial decision, and the final decision would be made by the FRA Administrator or other designated reviewing official in the agency.

16. Proposed § 209.329(a) establishes a per se rule that proof of an individual's willful violation of any of the requirements of 49 CFR Parts 213 through 236 establishes that individual's unfitness. FRA's definition of a "willful" violation is discussed in detail in Appendix A to Part 209 of 49 CFR. See 53 FR 28594, 28597 (July 28, 1988). It is FRA's belief that an individual who willfully violates a safety requirement is not fit to perform safety-sensitive functions in the rail industry. For example, an employee or supervisor who is responsible for providing blue signal protection to other employees and who intentionally and voluntarily fails to display a blue signal when required by 49 CFR 218.25, is unfit to perform safety-sensitive functions. After the Chief Counsel proves the willful violation cited in the foregoing example, the only issue remaining in the proceeding is whether the terms of the disqualification order proposed are reasonable.

Proposed § 209.329(b) establishes the individual's burden of proof, as discussed in paragraph 14, above.

Paragraph (c) sets forth an illustrative list of factors to be used by the Chief Counsel and the presiding officer in fashioning an appropriate disqualification order. Given the sheer newness of this remedy, the seriousness of a disqualification action against an individual, and the myriad considerations that should be taken into account in developing an appropriate disqualification order, FRA is not at this time proposing a general schedule of offenses and penalties for disqualification proceedings. There may be aggravating factors involved in an individual's violation of a safety requirement that warrant the imposition of a lengthy or permanent disqualification. For example, an engineer who is drinking an alcoholic beverage while operating a locomotive in violation of 49 CFR 219.101(a) is unfit and could be barred from employment as an engineer or in any other position involving the performance of safety-sensitive functions for a lengthy period of time. On the other hand, there may be factors involved in an individual's violation of a safety requirement that warrant the imposition of a lesser disqualification period for a non-willful violation.

17. Proposed § 209.331(c) imposes a requirement on an individual who is subject to a disqualification order to disclose the existence of the order and to provide a copy of it to his or her current employer or a prospective employer in the railroad industry. Any individual who violates this requirement may be subject to another disqualification proceeding in which FRA will seek to bar permanently the individual from performing safety-sensitive functions and, if the violation is willful, the individual may be assessed a fine of between $1,000 and $5,000. (See proposed § 209.335).

Proposed paragraphs (a) and (b) impose disclosure requirements on railroads in an effort to prevent employees and agents from working in safety-sensitive positions for railroads other than the employee's present employer. For example, if a person is serving under a 120-day disqualification order, that person will be prohibited from working in the rail industry in any of the safety-sensitive functions identified in § 209.303. If the individual applies for a position involving the performance of safety-sensitive functions with any railroad, the railroad that is considering hiring him or her must inquire of the person's former employer as to whether he or she is presently subject to a disqualification order. Upon receipt of such an inquiry, the person's former employer must inform the inquiring railroad of the terms and conditions of any effective disqualification order. Failure of any railroad or other employer in the rail industry to meet the requirements of this section shall subject them, under proposed § 209.335, to a civil penalty of between $5,000 and $10,000.

18. Proposed § 209.333 prohibits an individual who is subject to a disqualification order from working for a railroad in any manner inconsistent with the terms and conditions of the order. In addition, railroads must not allow such individuals to work in any manner inconsistent with the order. For example, a person who is subject to a disqualification order suspending the person for 120 days and requiring the completion of a specified training

program may not be employed by a railroad in a position involving the performance of safety-sensitive functions until the expiration of 120 days and completion of the program. Violations of these provisions will subject the offending parties to the penalties proposed in § 209.335.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979). The proposed rule would not have any direct or indirect economic impact because it does not impose any additional regulatory burden on either railroads or individuals. Therefore, no further analysis of economic impact is required. The potential cost to an individual for participating in a disqualification proceeding and the imposition of a disqualification may and, hopefully, will serve as a deterrent to individuals who might contemplate violating safety regulations. These disqualifications, therefore, may result in the avoidance of substantial costs associated with railroad accidents caused, directly or indirectly, by violations of safety regulations. FRA welcomes any comments on this issue.

Regulatory Flexibility Act

FRA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules but are not required to do so.

Paperwork Reduction Act

The proposed rule has information collection requirements in § 209.331. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. Any comments on these revised information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This proposed rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 209

Railroad safety, Railroad safety enforcement procedures.

In consideration of the foregoing, FRA proposes to amend Chapter II, Subtitle B, of Title 49, Code of Federal Regulations as follows:

PART 209—[AMENDED]

1. The authority citation for Part 209 continues to read as follows:

Authority: 45 U.S.C. 6 and 13, as amended; 45 U.S.C. 34, as amended; 45 U.S.C. 43, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, and 438, as amended; 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c), (d), (f), (g), and (m).

Subparts B and C also issued under 49 App. U.S.C. 1802, 1804, 1808, and 1809; and 49 CFR 1.49(s).

2. Amend the table of contents to add new subpart D as follows:

Subpart D—Disqualification Procedures

Sec.
209.301 Purpose and scope.
209.303 Coverage.
209.305 Notice of disqualification order.
209.307 Reply.
209.309 Informal response.
209.311 Request for hearing.
209.313 Official record.
209.315 Motions.
209.317 Requests for admission.
209.319 Subpoenas.
209.321 Testimony by deposition.
209.323 Prehearing conference.
209.325 Hearing.
209.327 Decision and order.
209.329 Assessment considerations.
209.331 Enforcement of disqualification order.
209.333 Prohibitions.
209.335 Penalties.

3. Revise § 209.1(b) to read as follows:

§ 209.1 Purpose.

* * * * *

(b) Exercise of the authority vested in the Secretary by the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431–441, as amended by the Rail Safety Improvement Act, Pub. L. 100–342 (June 22, 1988) (49 CFR 1.49(m)); and

* * * * *

4. Amend § 209.3 by revising paragraph (e) and adding new paragraphs (f) through (i) to read as follows:

§ 209.3 Definitions.

* * * * *

(e) "Respondent" means a person upon whom the FRA has served a notice of probable violation, notice of investigation, or notice of disqualification order.

(f) "Motion" means a request to a presiding officer to take a particular action.

(g) "Presiding Officer" means any person authorized by the Administrator to preside over any hearing or to make a decision on the record, including an administrative law judge.

(h) "Day" means calendar day.

(i) "Pleading" means any written submission setting forth claims, allegations arguments, or evidence.

5. Amend § 209.5 by adding new paragraphs (d) and (e) to read as follows:

§ 209.5 Service.

* * * * *

(d) Service of requests for admission and motions may be made by first-class mail, postage prepaid.

(e) Each pleading must be accompanied by a certificate of service specifying how and when service was made.

6. Revise § 209.7(j) to read as follows:

§ 209.7 Subpoena; witness fees.

* * * * *

(j) Attendance of an FRA employee who had engaged in an investigation related to a proceeding under Subpart B, C, or D of this part for the purpose of providing testimony at the proceeding may be assured by filing a request with the Chief Counsel at least 15 days before the date of the hearing. The request must indicate the present intent of the requesting person to call the employee as a witness and state generally why the witness will be required.

7. Revise § 209.9 to read as follows:

§ 209.9 Filing.

All materials filed with FRA or any FRA officer in connection with a proceeding under Subpart B, C, or D of this part shall be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590, except that documents produced in accordance with a subpoena shall be presented at the place and time specified by the subpoena.

8. Revise § 209.13 to read as follows:

§ 209.13 Consolidation.

At the time a matter is set for hearing under Subpart B, C, or D of this part, the Chief Counsel may consolidate the matter with any similar matter(s) pending against the same respondent or with any related matter(s) pending against other respondent(s) under the same subpart. However, on certification by the presiding officer that a consolidated proceeding is unmanageable, the Chief Counsel will rescind or modify the consolidation.

9. Revise § 209.15 to read as follows:

§ 209.15 Rules of evidence.

The Federal Rules of Evidence for United States Courts and Magistrates shall be employed as general guidelines for proceedings under Subparts B, C, and D of this part. However, all relevant evidence shall be received into the record.

10. Add a new Subpart D to read as follows:

Subpart D—Disqualification Procedures

§ 209.301 Purpose and scope.

(a) This subpart prescribes the rules of practice for administrative proceedings relating to the determination of an individual's fitness for performing safety-sensitive functions under section 209(f) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(f)).

(b) The purpose of this subpart is to prevent accidents and casualties in railroad operations that result from the presence in the work force of railroad employees, including managers and supervisors, and agents who have demonstrated their unfitness to perform the safety-sensitive functions described in § 209.303. Employees and agents who evidence such unfitness may be disqualified, under specified terms and conditions, temporarily or permanently, from performing safety-sensitive functions. This subpart does not preempt a railroad from initiating disciplinary proceedings against its employees, including managers and supervisors, under its collective bargaining agreements or in the normal and customary manner.

§ 209.303 Coverage.

This subpart applies to the following individuals:

(a) Railroad employees who are assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

(b) Railroad employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair or maintain, locomotives and freight cars;

(3) Conduct training and testing of employees required by the FRA's safety regulations; or

(c) Railroad managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of Parts 213 through 236 of this title.

§ 209.305 Notice of disqualification order.

(a) FRA, through the Chief Counsel, begins a disqualification proceeding by serving a notice of disqualification order on the respondent charging him or her with having violated one or more rules, regulations, orders, or standards prescribed by the FRA, which render the respondent unfit to perform safety-sensitive functions described in § 209.303.

(b) The notice of disqualification order issued under this section shall contain:

(1) A statement of the rule(s), regulation(s), order(s), or standard(s) that the respondent is alleged to have violated;

(2) A statement of the factual allegations that form the basis of the initial determination that the respondent is not fit to perform safety-sensitive functions;

(3) A statement of the effective date, duration, and other conditions, if any, of the proposed disqualification;

(4) A statement of the respondent's right to answer the charges in writing and furnish affidavits and any other documentary evidence in support of the answer;

(5) A statement of the respondent's right to make an informal response to the Chief Counsel;

(6) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing;

(7) A statement of the respondent's right to counsel or other designated representatives; and

(8) Notice of the consequences of the respondent's failure to take any of the actions described in § 209.307(a).

(c) The Chief Counsel shall enclose with the notice of disqualification order a copy of the material that is relied on in support of the charges. Nothing in this section precludes the Chief Counsel from presenting at a subsequent hearing under § 209.325 any evidence of the charges set forth in the notice that the Chief Counsel acquired after service thereof upon the respondent.

§ 209.307 Reply.

(a) Within 20 days of the service of notice of disqualification order issued under § 209.305, the respondent must reply in writing to the charges. The respondent may furnish affidavits and any other documentary evidence in support of the reply. Further, the respondent may elect to—

(1) Stipulate to the charges and consent to the imposition of a disqualification order under the conditions set forth in the notice;

(2) Make an informal response as provided in § 209.309; or

(3) Request a hearing as provided in § 209.325.

(b) The Chief Counsel may extend the reply period for good cause shown, provided the request for extension is served before the expiration of the period provided in paragraph (a) of this section.

(c) Failure of the respondent to reply to the notice of disqualification order within the period provided in paragraph (a) of this section or an extension thereto provided under paragraph (b) of this section constitutes a waiver of the respondent's right to appear and contest the charges or the proposed disqualification. Respondent's failure to reply authorizes the Chief Counsel, without further notice to the respondent, to find the respondent unfit for the performance of the safety-sensitive functions described in § 209.303 and to order the respondent disqualified from performing them for the period and under the other conditions described in the notice of disqualification order. The Chief Counsel shall serve respondent with the disqualification order and provide a copy of the order to the

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railroad by which the respondent is employed.

§ 209.309 Informal response.

(a) If the respondent elects to make an informal response to a notice of disqualification order, he or she shall submit to the Chief Counsel such written explanations, information, or other materials as respondent may desire in answer to the charges or in mitigation of the proposed disqualification.

(b) The respondent may include in an informal written response a request for a conference. Upon receipt of such a request, the Chief Counsel shall arrange for a conference at a desiganted time and place.

(c) Written explanations, information, or materials submitted by the respondent and relevant information presented during any conference held under this section shall be considered by the Chief Counsel in reviewing the notice of disqualification order, including the question of the respondent's fitness and the conditions of any disqualification that may be imposed.

(d) After consideration of an informal response, including any relevant information presented at a conference, the Chief Counsel may dismiss the notice of disqualification order in whole or in part. If the notice of disqualification order is not dismissed in whole and if the respondent and the Chief Counsel settle the charges against the respondent, the settlement shall be evidenced by a disqualification order issued by the Chief Counsel reflecting the settlement and by a written statement from the respondent stipulating to the charges contained in the disqualification order, consenting to the imposition of the disqualification under the conditions set forth in the disqualification order, and waiving his or her right to appeal. The duration of the disqualification period may be less than, but shall be no greater than, the period set forth in the notice. If settlement of the charges against the respondent is not achieved, the Chief Counsel shall terminate settlement discussions no later than 30 days from service of the informal response upon the Chief Counsel by sending respondent written notice that the charges against the respondent cannot be resolved through the informal process.

(e) By electing to make an informal response to a notice of proposed disqualification, the respondent does not waive the right to a hearing. However, the respondent must submit the hearing request required by § 209.311(a) within 10 days of written notice from the Chief Counsel that the charges against respondent cannot be resolved through the informal process. Failure to submit such a request constitutes a waiver of the respondent's right to appear and contest the charges or the proposed disqualification.

§ 209.311 Request for hearing.

(a) If the respondent elects to request a hearing, he or she must submit a written request within the time periods specified in § 209.307(a) or § 209.309(e) to the Chief Counsel referring to the case number that appears on the notice of the proposed disqualification. The request must contain the following:

(1) The name, address, and telephone number of the respondent and of the respondent's designated representative, if any;

(2) A specific response admitting, denying, or explaining each allegation of the notice of disqualification order;

(3) A description of the claims and defenses to be raised by the respondent at the hearing; and

(4) The signature of the respondent or the representative, if any.

(b) Upon receipt of a request for a hearing complying with the requirements of paragraph (a) of this section, the Chief Counsel shall arrange for the appointment of a presiding officer and transmit the disqualification file to the presiding officer, who shall schedule the hearing for the earliest practicable date.

§ 209.313 Official record.

The notice of disqualification order, respondent's reply, exhibits, and a verbatim record of testimony, if a hearing is held, and all pleadings, stipulations, and admissions filed and rulings and orders entered in the course of the proceeding shall constitute the exclusive and official record.

§ 209.315 Motions.

Motions shall be in writing, filed with the presiding officer, and copies served upon the parties in accordance with § 209.5, except that oral motions may be made during the course of any hearing or appearance before the presiding officer. Each motion shall state the particular order, ruling, or action desired and the grounds therefor. Unless otherwise specified by the presiding officer, any objection to a written motion must be filed within 7 days from the date of service of the motion.

§ 209.317 Requests for admission.

(a) A party may serve upon any other party written requests for the admission of the genuineness of any relevant documents identified within the request, the truth of any relevant matters of fact, and the application of law to the facts as set forth in the request.

(b) Each matter of which an admission is requested shall be deemed to be admitted unless, within 20 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party.

(c) The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. If an objection is made, the reasons therefor shall be stated.

(d) Any matter admitted under this section is conclusively established unless the presiding official permits withdrawal or amendment of the admission.

(e) Upon motion, the presiding officer may order any party to respond to a request for admission.

§ 209.319 Subpoenas.

Only the presiding officer may issue, deny, quash, or modify subpoenas under this subpart in accordance with § 209.7.

§ 209.321 Testimony by deposition.

(a) For good cause shown, the testimony of any witness who may be unavailable to testify at the hearing may be taken by oral deposition before any disinterested person who is authorized by law to administer oaths.

(b) Any party desiring to take the deposition of such a witness shall file and serve a written motion setting forth the name of the witness, the date, time, and place of the deposition, the subject matter of the witness' expected testimony, whether any party objects to the taking of the deposition, and the reasons why such deposition should be taken.

(c) Such notice as the presiding officer shall order will be given for the taking of a deposition, but this shall not be less than 7 days written notice unless the parties agree to a shorter period.

(d) Each witness testifying upon deposition shall be sworn and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, subscribed by the witness, and certified by the reporter. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be offered in evidence by any party to the proceeding. No part

of a deposition shall be admitted in evidence unless there is a showing that the witness is unavailable and the other reasons for the taking of the deposition in the first instance exist at the time of the hearing.

§ 209.323 Prehearing conference.

(a) The parties shall meet with the presiding officer for a conference before the hearing to consider:

(1) Formulation and simplification of the issues;

(2) Stipulations, admissions of fact, and admissions of the contents and authenticity of documents;

(3) Advance rulings from the presiding officer on the admissibility of evidence;

(4) Identification of witnesses, including the scope of their testimony, and of hearing exhibits;

(5) Possibility of settlement; and

(6) Such other matters as the presiding officer deems necessary to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such a prehearing conference. The subsequent course of the hearing shall be controlled by such action.

§ 209.325 Hearing.

(a) When a hearing is requested and scheduled under § 209.113, a presiding officer designated by the Chief Administrative Law Judge of the Department convenes and presides over the hearing. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 209.7;

(3) Adopt procedures for the submission of evidence in written form;

(4) Take or cause depositions to be taken as provided in § 209.321;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, adjourn, and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and

(9) Take any other action authorized by or consistent with the provisions of this subpart and permited by law that may expedite the hearing or aid in the disposition of an issue raised therein.

(c) FRA has the burden of proof, by a preponderance of the evidence, as to the facts alleged in the notice of disqualification order, the reasonableness of the conditions of the disqualification proposed, and, except as provided in § 209.329 (a) and (b), the respondent's fitness to perform safety-sensitive functions. The Chief Counsel may offer relevant evidence, including testimony, in support of the allegations contained in the notice of disqualification order and conduct such cross-examination as may be required for a full disclosure of the material facts.

(d) The respondent may appear and be heard on respondent's own behalf or through respondent's designated representative. The respondent may offer relevant evidence, including testimony, in defense of the allegations or in mitigation of the proposed disqualification and conduct such cross-examination as may be required for a full disclosure of the material facts.

(e) The record shall be closed at the conclusion of the hearing. However, when the presiding officer allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, the record shall be left open for such time as the presiding officer grants for that purpose.

§ 209.327 Decision and order.

(a) The presiding officer shall prepare the decision after the closing of the record. That decision may dismiss the notice of disqualification order, in whole or in part, sustain the charges and proposed disqualification, or sustain the charges and mitigate the conditions of the proposed disqualification.

(b) If the presiding officer sustains the charges and the proposed disqualification, dismisses some of the charges, or mitigates the disqualification, the presiding officer shall issue and serve an appropriate order disqualifying respondent from engaging in any of the safety-sensitive functions described in § 209.303. If the presiding officer dismisses the charges set forth in the notice of disqualification order, a dismissal order shall be issued and served.

(c) Each decision shall contain:

(1) Findings of fact and conclusions of law, as well as the reasons or bases therefor, upon all the material issues of fact and law presented on the record;

(2) An order, as described in paragraph (b) of this section; and

(3) The dates any disqualification is to begin and end and other conditions, if any, that the repondent must satisfy before the disqualification order is discharged.

(d) The decision shall be served upon the Chief Counsel and the respondent. The Chief Counsel shall provide a copy of the disqualification order to the railroad by which the respondent is employed.

(e) The decision of the presiding officer is final, constitutes final agency action, and is not subject to further administrative review.

§ 209.329 Assessment considerations.

(a) Proof of respondent's willful violation of one of the requirements of Part 213 through 236 of this title establishes a conclusive presumption that the respondent is unfit to perform the safety-sensitive functions described in § 209.303.

(b) Proof of a respondent's violation of one the requirements of Parts 213 through 236 of this title establishes a rebuttable presumption that the respondent is unfit to perform the safety-sensitive functions described in § 209.303. The respondent has the burden of proving, by a preponderance of the evidence, that he or she is fit, taking account of the factors in paragraph (c) of this section, to perform the foregoing safety-sensitive functions for the period and under the other conditions, if any, proposed in the notice of disqualification order. In determining the duration and other conditions, if any, of the disqualification order, the presiding officer shall consider all relevant factors, which include the factors enumerated in paragraph (c) of this section.

(c) Relevant factors in determining appropriate disqualification orders under §§ 209.309 and 209.327 include, but are not limited to, the following:

(1) The nature and circumstances of the violation, including whether the violation was intentional, technical, or inadvertent, was committed willfully, or was frequently repeated; or whether respondent's actions were in obedience to a direct order of a railroad supervisor or other higher level official;

(2) The adverse impact or the potentially adverse impact of the violation on the health and safety of persons and the safety of property;

(3) The railroad's operating rules, safety rules, and repair and maintenance standards;

(4) Repair and maintenance standards adopted by the industry;

(5) The consistency of the conditions of the proposed disqualification with disqualification orders issued against other employees for the same or similar violations;

(6) Whether the respondent was on notice of any safety regulations that were violated or whether the respondent had been warned about the conduct in question;

(7) The respondent's past record of committing violations of safety regulations, including previous disqualifications imposed, civil penalties

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assessed, railroad disciplinary actions, and criminal convictions therefor;

(8) The civil penalty scheduled for the violation of the safety regulation in question;

(9) Mitigating circumstances surrounding the violation, such as the existence of an emergency situation endangering persons or property and the need for the respondent to take immediate action; and

(10) Such other factors as may be warranted in the public interest.

§ 209.331 Enforcement of disqualification order.

(a) A railroad that employs or formerly employed an individual serving under a disqualification order shall inform prospective or actual employers of the terms and conditions of the order upon receiving notice that the disqualified employee is being considered for employment with or is employed by another railroad to perform any of the safety-sensitive functions described in § 209.303.

(b) A railroad that is considering hiring an individual to perform the safety-sensitive functions described in § 209.303 shall ascertain from the individual's previous employer, if such employer was a railroad, whether the individual is subject to a disqualification order.

(c) An individual subject to a disqualification order shall inform his or her employer of the order and provide a copy thereof within 5 days after receipt of the order. Such an individual shall likewise inform any prospective employer who is considering hiring the individual to perform any of the safety-sensitive functions described in § 209.303 of the order and provide a copy thereof within 5 days after receipt of the order or upon application for the position, whichever first occurs.

§ 209.333 Prohibitions.

(a) An individual subject to a disqualification order shall not work for any railroad in any manner inconsistent with the order.

(b) A railroad shall not employ any individual subject to a disqualification order in any manner inconsistent with the order.

§ 209.335 Penalties.

(e) Any individual who violates §§ 209.331(c) and 209.333(a) may be permanently disqualified from performing the safety-sensitive functions described in § 209.303. Any individual who willfully violates §§ 209.331(c) and 209.333(a) may also be assessed a civil penalty of at least $1,000 and not more than $5,000.

(b) Any railroad that violates §§ 209.331 (a) and (b) and 209.333(b) may be assessed a civil penalty of at least $5,000 and not more than $10,000.

Issued in Washington, DC on December 6, 1988.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 88-28364 Filed 12-8-88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 237
Friday, December 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 88-028N]

Standards and Labeling Division Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Technical Services, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Acting Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists those SLD policy memoranda issued from April 1, 1988, through October 1, 1988.

Persons interested in obtaining copies of any of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
022B	Use of the term "Fresh" on Meat and Poultry Products, July 11, 1988.	Under what conditions may the term "fresh" be used on approved labeling of meat and poultry products?.	Supersedes Policy Memo 022A.
083A	Check-Off Blocks on Labeling, May 12, 1988	Should check-off blocks on immediate container labeling be used for identifying products that look alike or are different in composition?.	NA.
101A	Use of Quality Grade Terms and Subjective Terms on Labels, August 30, 1988.	How and when may terms which denote quality grades and certain other subjective terms be used on labels for meat and/or poultry products?.	Supersedes Policy Memo 101.
111	Labeling of Meat and Poultry Stick Items, June 6, 1988	What is the required labeling for meat and poultry stick items, (e.g., "beef sticks," "pepperoni sticks," or "beef jerky")?.	9 CFR 317 and 381, Subpart N; FSIS Notice 70-87.
112	Caramel Coloring, June 6, 1988	How are products to be labeled when they contain caramel coloring?.	NA.
113	Labeling of Products Which Are Artificially Colored, June 24, 1988.	How should products which are artificially colored be labeled?.	Policy Memos No. 112 and 095.
114	Point of Purchase Materials, July 6, 1988	To establish guidelines for use of point of purchase, promotional materials for meat and poultry products.	Policy memo N. 085B.
115	Pressure Sensitive Stickers, July 11, 1988	What are the guidelines for the review and approval of pressure sensitive stickers on meat and poultry products?.	NA.
116	Canadian Style Bacon Made With/From Pork Sirloin Hips, July 11, 1988.	What is the appropriate labeling for a Canadian Style Bacon product made exclusively from, or which includes the sirloin end or hip portion of pork loins?.	Policy Memo 050B; 9 CFR 319.104; Policy Memos 87A and 109.
117	Smoke Flavoring, August 30, 1988	What are the labeling requirements for products containing a component to which smoke flavoring has been added?.	9 CFR 317.2 (j)(3) and 381.119.

The SLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington DC, on December 6, 1988.

Ashland L. Clemons,

Acting Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service.

[FR Doc. 88-28322 Filed 12-8-88; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 33-88]

Foreign-Trade Zone 15—Kansas City, MO; Application for Subzone for Kawasaki Small Engine Manufacturing Plant, Nodaway County, MO

The comment period for the above case, involving a special-purpose subzone for the small engine manufacturing plant of Kawasaki Motors Manufacturing Corp., U.S.A. (53 FR 43912, 10/31/88), is extended to January 27, 1989, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW, Washington, DC 20230.

Dated: December 5, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-28369 Filed 12-8-88; 8:45 am]

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International Trade Administration

[A-583-009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 29, 1987, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part of the antidumping duty order on color television receivers, except for video monitors, from Taiwan.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. Based on the comments we received we have changed the final results from those presented in our preliminary results of review for AOC International Inc., Fulet Electronic Industrial Co., Ltd., Hitachi Television (Taiwan) Ltd., Nettek Corp., Ltd., RCA Taiwan, Ltd., Sampo Corp., Shin-Shirasuna Electric Corp., and Tatung Co. We also confirm our tentative determination to revoke in part with respect to Capetronic.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Maureen C. McPhillips or Phyllis L. Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 20130) the preliminary results of its administrative review of and tentative determination to revoke in part the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18337, April 30, 1984). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, from Taiwan. The order covers all color television receivers regardless of tariff classification.

The merchandise is currently classifiable under item numbers 684.9246, 684.9248, 684.9520, 684.9522, 684.9253, 684.9255, 684.9256, 684.9258, 684.9562, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, and 684.9663 of the *Tariff Schedules of the United States Annotated* and item number 8528.10.80 of the *Harmonized System.* The review covers eleven manufacturers and/or exporters of Taiwanese color television receivers, except for video monitors, to the United States, and the period April 1, 1985 through March 31, 1986.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part as provided by § 353.53a(c) of the Commerce Regulations. We received comments from the petitioners (International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO-CLC, Independent Radionic Workers of America, Industrial Union Department, AFL-CIO), Zenith Electronics Corporation, and the respondents, Hitachi, Sampo, Shin-Shirasuna, and Tatung.

We received additional comments from the respondents, the petitioners, and Zenith concerning mathematical or clerical errors. We have corrected such errors, but have not addressed them specifically in this notice.

Comment 1: Zenith states that constructed value calculations should not be adjusted for circumstance-of-sale expenses. The Department should delete all downward adjustments from its calculations.

Particularly with regard of Tatung, Zenith notes that the general, selling, and administrative expenses used in computing constructed value were exceeded by claimed direct selling expenses used to adjust the constructed value calculations.

Department's Position: We disagree. Section 773(a)(4)(B) of the Act provides that where it is established that the amount of any difference between United States price and foreign market value is due to differences in circumstances of sale, "due allowance shall be made." Section 773(a) of the Act does not distinguish constructed value from any other method of determining foreign market value. Thus, circumstance-of-sale adjustments are required where constructed value is used as the basis for foreign market value, just as they are required where home market or third-country prices are used. *See Timken Co. v. United States* 673 F. Supp. 495 (1987); *See also* the final results of the first administrative review on *Color Television Receivers, Except for Video Monitors, from Taiwan,* (51 FR 56895, December 29, 1986) and *Tapered Roller Bearings from Japan,* (52 FR 30700, August 17, 1987).

We have corrected an inadvertent error, however, and have reduced the amounts for circumstance-of-sale

adjustments made to Tatung's constructed value.

Comment 2: Zenith contends that the Department has failed to take into account the average age and balance of accounts payable relating to a respondent's home market sales activity, as opposed to product process activity. With respect to discounts, rebates, and differences in circumstances of sale in the home market, Zenith maintains that the true cost to the respondent is not the amount paid out, but rather that amount minus the savings realized by paying that amount sometime after the obligation to pay was incurred.

Department's Position: When an expense is inherent in a transaction (*e.g.* credit costs when payment is delayed), yet no sales-specific quantification of such costs exists, we impute expenses/costs. The Department avoids imputing expenses/costs where a company quantifies the actual expenses/costs and provides adequate documentation of those expenses. Our examination of the rebate and/or discount system used by the Taiwanese manufacturers indicates that the amount of the rebate/discount paid to the customer accurately represents the expense to the seller. *See Television Receivers, Monochrome and Color, From Japan, Final Results of Antidumping Duty Administrative Review,* (53 FR 4050, February 11, 1988).

Comment 3: Zenith contends that the Department should ascertain whether AOC's and Tatung's home market advertising adjustment claims are allocated over the total value of all types of sales which benefit from advertising and not just over the sales to the purchaser categories serving as the basis for the foreign market value calculation.

Department's Position: Tatung and AOC allocated home market advertising over the total value of all sales in the home market.

Comment 4: Zenith and the petitioners maintain that AOC, Fulet, Sampo, and Tatung should not have included certain non-selling general and administrative expenses in their calculation of the ESP offset. In addition, Zenith asserts that Fulet, Tatung, and Sampo should not be allowed to claim a financing expense on their home market inventories during the pre-sale period. The petitioners state that Fulet's general and administrative expenses are not selling expenses, but instead are fixed overhead expenses that are not related to Fulet's sales of color televisions under review. Fulet should explain how its home market indirect selling expenses relate to sales of color televisions in the home market.

Department's Position: From the documents submitted by respondents, the Department is satisfied that all the expenses included in the ESP offset are indirect selling expenses. Certain of the general expenses are associated with selling and respondents, therefore, included these expenses in the calculation of indirect expenses. We have accepted respondents' calculation of an indirect interest expense for the inventory carrying period from the time the merchandise leaves the central warehouse until the merchandise is sold in the home market. This period is equivalent to the time we use to calculate an inventory carrying cost for all ESP sales, *i.e.,* from the time the goods leave the central warehouse until they are shipped to the ultimate purchaser in the U.S. We agree with the petitioners that the inventory carrying cost should be calculated based on the cost of the inventory and not the inventory's invoice price. This is consistent with our methodology on the U.S. side. *See* the *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change* (November, 1985), p.10. We have corrected this calculation in our final determination.

Comment 5: Zenith states that failure to require respondents to submit full costs of manufacture for model matches should be corrected and the final calculations should include differences in merchandise determined by comparison of such fully developed costs.

Department's Position: We disagree. All respondents, where appropriate, submitted sufficient cost information to adjust for differences in the physical characteristics of the merchandise. Differences in manufacturing costs which are not due to physical differences in the merchandise itself do not qualify as adjustments. Comparing total manufacturing costs, as Zenith suggests, would result in characterizing all cost differences as resulting from physical differences in the merchandise, regardless of what actually generates the differences.

Comment 6: The petitioners and Zenith contend that the Department must account for taxes forgiven on exports by adding to U.S. price the amount actually forgiven and by capping that amount at the level of such taxes collected on home market sales and passed through to home market purchasers. It is not correct for the Department to conclude that a full pass through occurred and deduct such amount from the home market price. Zenith cites for support the ruling of the Court of International Trade ("CIT") in *Zenith* v. *United States* (April 24, 1986). AOC, Fulet, Sampo, and Tatung assert that indirect taxes exempted on exports should be added to the U.S. price, rather than deducted from the home market price. The Department's approach of deducting the amount of the exempted tax from home-market price misuses the statutory provisions for "best information available." However, the Department correctly determined that Taiwan's indirect taxes have been passed through to the home market customer.

Department's Position: The CIT issued its final decision in *Zenith* on January 14, 1988. Because the Department has appealed that decision, we are continuing to assume that all indirect taxes in the home market are included in the price paid by the ultimate customers. We did not attempt to measure the amount of tax "passed through" to customers in the Taiwanese market for several reasons.

First, we do not agree that the statutory language limiting the amount of the adjustment to the amount of the commodity tax "added to or included in the price" of televisions sold in Taiwan requires the Department to measure the incidence of the tax in an economic sense. Second, applying such an interpretation would be contrary to the obligations of the United States under the GATT Dumping Code. Third, measuring the incidence of the commodity tax in Taiwan would be an enormous and extremely complex task. The Department simply lacks the resources, in terms of both manpower and expertise, to shoulder such a burden. We do, however, agree that the amount of commodity tax forgiven by reason of the export of televisions to the United States must be added to United States price (USP) under the statute. We have made this change in the final determination.

For this review we did not have the tax base or tax that would have been paid on the exported televisions. As the best evidence of the tax forgiven by reason of export, we have assumed that the amount of commodity tax would be identical for the U.S. models and the home market comparison models.

Comment 7: Zenith argues that the Department should have included samples and damaged set sales in its preliminary determination. Accordingly, all Hitachi sales must be included in the final analysis, along with all movement and carrying costs associated with merchandise damaged beyond repair. Fulet's accommodation sales should be compared with ordinary home market sales, not home market accommodation sales.

Department's Position: We agree in part. Sample sales should be included in the analysis. The Department requested that any sales of samples sold within the meaning of section 772 of the Act be included in respondents' submissions and we have no reason to believe that any such sales were not included. Because we could not distinguish between insurance claims, damaged set sales, and billing mistakes in Hitachi's irregular sales information, we have chosen to include all such sales in the final determination.

We believe that comparing Fulet's accommodation sales in both markets results in the closest possible concordance between levels of trade as required by 19 CFR 353.19. We made these comparisons because the accommodation sales category in both markets involves sales to customers other than unrelated dealers. *See* the final results of the first administrative review in this case, cited *supra*.

Comment 8: Zenith is unsure whether the Department, with regard to Hitachi and RCA, included selling expenses incurred in the home market with respect to sales to the United States.

Department's Position: Hitachi and RCA only maintain production facilities in Taiwan. There are no selling expenses incurred by Hitachi and RCA at their production facilities.

Comment 9: Zenith states that the Department erroneously treated selling commissions in the United States as though they consist entirely of indirect expenses. Commissions in the U.S. should be broken down into their direct and indirect expense components and the offset to FMV should be capped at the level of the indirect expense element.

Department's Position: We disagree. Respondents have demonstrated that commissions paid to unrelated parties bear a direct relationship to the sales under consideration. It is not necessary to examine how the commissionaire spent the money; to the seller it is a direct expense, incurred only because a particular sale was made. We have treated these expenses as direct circumstance-of-sale adjustments according to § 353.15 of the regulations and, where appropriate, have deducted indirect selling expenses in the market where there is no commission up to the amount of the commission in the other market.

Comment 10: Zenith maintains that the Department should correct its exporter's sales price calculations by deducting the amount of antidumping-related legal expenses which respondents paid during the period under review.

Department's Position: We disagree. As a matter of administrative practice, the ITA does not consider legal fees incurred in connection with the antidumping duty investigations to be related directly or indirectly to sales. This practice is stated in our *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change* (November, 1985), p. 40. The antidumping law was intended to offset actual margins of dumping. Legal fees are incurred in defense against an allegation of dumping and are not expenses directly related to sales. The inclusion of legal fees as a circumstance-of-sale adjustment could alone produce a margin. *See* the final results of the first administrative review in this case, cited *supra*.

Comment 11: Zenith contends that the Department should reduce USP by the amount of estimated antidumping duties paid along with the amount of estimated ordinary duties paid.

Department's Position: We disagree. Unlike ordinary duties, antidumping duties paid upon entry of the merchandise are only estimates. We do not know the actual amounts per sale until we complete an administrative review of the period. To subtract these estimates from USP would cause higher margins, thereby skewing the accuracy of the Department's results. The Department would then need to determine the difference between the actual and estimated duty amounts and adjust its calculations accordingly. Because of the imprecise nature of such an exercise, the Department's practice is to make no adjustment for these duty deposits.

Comment 12: Zenith questions the lack of a royalty expense on U.S. sales by some of the respondents.

Department's Position: The Department requested information on any royalty paid by respondents in its questionnaire. We have no reason to believe the information submitted was inaccurate or otherwise insufficient.

Comment 13: Zenith maintains that the Department's present method of establishing the deposit rate as a percentage of reviewed entries' statutory USP, rather than as a percentage of their lower entered value, understates the best estimate of ultimate liability on future entries.

Department's Position: At the time of entry of any shipment, U.S. price has yet to be determined. Since cash deposits of estimated antidumping duties are required at that time, we instruct Customs to require such cash deposits expressed as a percentage of the only information available, which is entered value. *See Television Receivers, Monochrome and Color, from Japan,* (52 FR 8940, March 27, 1987).

Comment 14: The petitioners and Zenith object to the arbitrary determination of 0.5 percent as *de minimis*. In *Carlisle Tire & Rubber Co.* v. *United States*, the court acknowledged that, in the absence of a valid rule, the Department must explain the basis for *de minimis*.

Department's Position: In *Carlisle Tire and Rubber Co.* v. *United States*, 634 F. Supp. 419 (1986), the Court of International Trade held that the Department must either promulgate a rule in accordance with the Administrative Procedures Protective Act establishing 0.5 percent as the *de minimis* standard for its determinations or must explain the basis for each individual determination in which it decides that a weighted-average dumping margin below 0.5 percent is *de minimis*. The Department has elected to promulgate a rule establishing 0.5 percent as the *de minimis* standard for all antidumping and countervailing duty determinations, which is now final, 52 FR 30660–30662, (August 17, 1987). This rule adds § 353.24 to the antidumping regulations and § 355.8 to the countervailing duty regulations.

Comment 15: Zenith contends that the Department's failure to perform verification allowed the respondents to distort their calculations. The Department must continue to make the same changes in corresponding claims submitted for this review as it did following verification in the first annual review.

Department's Position: In accordance with section 776 of the Act, it is the Department's practice to conduct verifications only when we receive a request for revocation from a respondent or when we receive a request from the domestic industry and have not conducted a verification during the previous two reviews. We conducted a verification in the previous administrative review of this case. We agree with Zenith concerning consistency with our consideration of claims in the previous review. However, adjustments were made based upon verified information in the first review and concerned clerical or methodological errors specific to that review. Where circumstances have differed in this review, *i.e.*, where respondents have corrected such errors, we have not made adjustments to corresponding claims. Where the information presented indicates that circumstances have remained constant, *i.e.*, where respondents have not corrected such errors, we have made

adjustments to the data as we did in the previous review.

Comment 16: Zenith asserts that certain of AOC's model comparisons do not reflect the greatest degree of physical similarity available. The Department's statement regarding the ESP comparisons suggests that an apparently identical model was rejected in favor of an apparently less similar match. At the same time, a match between apparently very similar models was rejected in favor of a match between evidently less similar models. Zenith urges the Department to ensure that all information from the record of the preceding review which it considered in arriving at its decision in this review is contained in the administrative record of this review.

Department's Position: We agree with Zenith's model match comments and have corrected the error to use those matches which are most similar. We have also incorporated any data used from our previous analysis into the record of the current review.

Comment 17: Zenith maintains that the Department should resolve the inconsistency in its treatment of AOC's home market commissions. If AOC paid no home market commissions, then the Department should make no provision for the adjustment to home market price by whatever values may appear in AOC's data set for the commission variable. If on the other hand, home market commissions were paid, then the Department may not adjust foreign market value by any more than the difference between home market and U.S. commissions. To provide adjustments both for home market commissions and for an offset of U.S. commissions risks the calculation of artificially low foreign market values resulting from two downward adjustments, when only one is justified.

Department's Position: We agree and have corrected the error. AOC paid no commissions in the home market.

Comment 18: The petitioners and Zenith challenge AOC's claim for commission income realized on export sales. They maintain that the trading company's payments to AOC were not revenue from the sale of color televisions, but payments for services and, if allowed, should be considered only as an offset to AOC's indirect selling expenses.

Department's Position: We agree and have denied the claim.

Comment 19: Zenith notes several errors in Hitachi's cost of production figures. Zenith and the petitioners urge the Department to include the additional constructed value information supplied by Hitachi. In addition, the Department should apply an inflation factor to certain of the cost figures or at least account for the lengthy period from production to sale during which Hitachi was carrying these unsold receivers.

Department's Position: We have corrected the errors in Hitachi's constructed value calculations. According to section 773(e)(1)(A) of the Act, constructed value must consist of all fabrication costs associated with the merchandise. We used the costs of those color televisions which were produced closest to the date of exportation. Hitachi reported the actual costs to produce this merchandise and we have used these costs in our final determination.

The cost of carrying merchandise in inventory is indirect and is not absorbed by one particular television set, but by the company's entire operations. It is not necessary to specifically allocate indirect expense to particular models or sales. Therefore, we have used Hitachi's average inventory carrying costs in our final determination. Also, we did not find a high rate of inflation in Taiwan warranting an adjustment to the costs that were actually incurred.

Comment 20: Zenith points to several clerical errors in Hitachi's warranty claim. The petitioners maintain that the Department should treat the labor portion of Hitachi's U.S. warranty claim as a direct expense because it is not clear whether the labor services were performed within the company or by outside service centers.

Hitachi objects to the Department's model-by-model treatment of warranty expenses. It contends that the facts of this case justify the use of an average warranty cost based on historical experience in order to avoid the distortions that arise from deducting the specific amount of warranty expense incurred for each model sold during the period, including discontinued models and new models.

Department's Position: We have corrected all the warranty errors noted by Zenith. We agree with the petitioners that the labor portion of Hitachi's warranty is a direct expense. The majority of labor performed was completed by outside service centers. We have continued to calculate warranty claims on a model-by-model basis, except where the warranty claims exceeded actual sales revenue of the model during the period of review. In such instances, we have allocated actual warranty costs of a model and its successor over sales of both models. This allocation, in our view, offers the best approximation of the eventual warranty costs for the sales under consideration.

Comment 21: Zenith maintains that Hitachi's response does not contain an explanation for negative quantities of sales which appear to be the equivalent of a rebate in other uncancelled sales to that customer.

Department's Position: The negative sales quantities in Hitachi's response were caused by credit memos which reflect price changes or corrections.

Comment 22: Zenith asserts that Shin-Shirasuna made sales of certain models to Canada below cost. The sales below cost meet the ten percent guideline and should not be used in the margin analysis. Zenith also contends that each cost of production calculated is understated.

Department's Position: In our cost of production analysis for sales to Canada, we found a clerical error. With this correction, we have found certain sales to Canada to be below their costs of production. We excluded these sales from our consideration of sales to Canada as the basis for foreign market value.

Comment 23: Zenith points to discrepancies in bank commissions on third-country sales made by Shin-Sirasuna. It states that certain bank commission charges used in the Department's analysis are too high.

Department's Position: The differences between Shin-Shirasuna's submission and certain bank charges used in the Department's analysis, noted by Zenith, derive from the Department's use of weight-averaging of bank commissions on third-country sales.

Comment 24: Zenith and the petitioners contend that, if subcontractor costs cover the purchase of direct materials and/or direct labor, they should be included in the differences in merchandise calculation for Shin-Shirasuna. In addition, the petitioners remark that Shin-Shirasuna has not reported any variable overhead costs in its physical difference claim. These direct overhead costs for color televisions should be broken out and taken into account.

Department's Position: Shin-Shirasuna states that it does not distinguish between fixed and variable components in its subcontractor cost. Therefore, we have treated these costs as variable expenses and have included this component in calculating the adjustment for differences in the physical characteristics of the merchandise. Shin-Shirasuna did not report any variable overhead costs in its physical difference claims because it claims that its factory overhead expenses are essentially fixed in nature. We have reviewed Shin-

Shirasuna's response and agree with their assessment.

Comment 25: Zenith notes in the final determination in the preceding review, the Department correctly ruled that for purposes of antidumping calculations the cost of parts purchased by Shin-Shirasuna Taiwan from Shin-Shirasuna Japan is Shin-Shirasuna Taiwan's purchase price, not Shin-Shirasuna Japan's acquisition cost as Shin-Shirasuna had claimed. It appears that, in this review, the Department has employed Shin-Shirasuna Japan's acquisition cost rather than Shin-Shirasuna Taiwan's purchase price for calculating certain differences in merchandise adjustments.

Department's Position: In this review, Shin-Shirasuna Taiwan did not purchase parts from Shin-Shirasuna Japan. Therefore, we have used the prices as reported.

Comment 26: Zenith maintains that Shin-Shirasuna's material cost differences yield a lower difference than is justified by the parts list submitted in the original questionnaire response.

Department's Position: Zenith has miscalculated Shin-Shirasuna's difference in merchandise adjustments. Shin-Shirasuna's parts lists contain all parts included in the production of these models. When we calculate our difference in merchandise adjustment, we look only to those factors that are uniquely associated with the cost of manufacture of the physical differences. This does not include price differences of identical parts, as represented by Zenith's calculation.

Comment 27: Zenith requests that the Department determine whether there is an overlap between the costs reported by Shin-Shirasuna in the differences in merchandise and the packing costs data.

Department's Position: Shin-Shirasuna provided separate lists for packing materials and materials pertaining to its difference in merchandise claims. We have no evidence that costs reported in one list overlapped with costs reported in the other.

Comment 28: Zenith states that a number of sales appear to be missing from Shin-Shirasuna's final submission.

Department's Position: Shin-Shirasuna has corrected the error and has submitted the additional U.S. sales. We have included these sales in our analysis.

Comment 29: Zenith and the petitioners question Shin-Shirasuna's failure to report a stamp tax, when all other Taiwanese firms have indicated payment of this internal tax. In addition, the petitioners contend that an export promotion fee should be deducted from U.S. price.

Department's Position: We agree and have adjusted our calculations to include a stamp tax on all sales exported from Taiwan. Shin-Shirasuna included the stamp tax in its general and administrative expenses in constructed value. We have taken this item out of the constructed value calculations and made the appropriate deduction from U.S. price. The export promotion fee was included in the bank charges category and we deducted this amount from U.S. price.

Comment 30: The petitioners maintain that Tatung's home market discounts and rebates should be considered indirect selling expenses, for which no circumstance-of-sale adjustments are warranted, because they are not directly related to home market sales under review. Certain of the incentive programs are triggered not by sales of the subject color televisions, but by a dealer's purchases over time of various consumer products in sufficient overall values and/or quantities to be eligible for the incentives. Other programs are similarly triggered not by sales of Tatung's color televisions, but by either a separate and subsequent transaction, such as a trade-in for which Tatung pays for value received, or by the quantity of a dealer's overall purchases of consumer products generally from Tatung.

Department's Position: We disagree. We have continued to accept Tatung's discount and rebate claims as directly related to sales and deducted these claims from foreign market value as we did in our preliminary determination. When rebate programs were based on a variety of products, Tatung correctly allocated a proportionate share of the rebates to sales of comparison television models in the home market. *See* the *Study of Antidumping Adjustment Methodology and Recommendations for Statutory Change*, (November, 1985), p. 60. However, we agree with petitioners concerning rebates paid on trade-ins of merchandise and have continued to exclude this portion of Tatung's rebate claim.

Comment 31: Zenith maintains that the general and administrative expenses included in Sampo's constructed value calculations appear to be understated. Sampo should have generated the percentage figure by allocating financing and general expenses over cost of goods sold instead of allocating its expense over sales value.

Department's Position: The allocation of financing and general expenses over costs of goods sold was reflected in our preliminary determination. We have continued to follow this methodology in our final determination.

Comment 32: Zenith states that the Department failed to perform a cost of production test on Sampo's sales in the home market. During the preceding review, Sampo claimed circumstance-of-sale adjustment amounts which, in the aggregate, reduced constructed value to below the cost of manufacture.

Department's Position: Zenith did not provide any "reasonable grounds to believe or suspect" that Sampo's sales were below cost, as defined in section 773(b) of the Act. The only basis for Zenith's cost allegation was a clerical error from the previous review. Because we corrected that error in the previous review's final results, we did not consider Zenith's allegations as still valid.

Comment 33: The petitioners and Zenith claim that Fulet incorrectly allocated its home market advertising expenses. They request that all Fulet's general television home market advertising expenses be allocated over sales of all home market color televisions, not just the comparison models. Zenith asserts that Fulet has not provided the information necessary to determine the appropriate attribution and/or allocation of the expenses that may qualify for an adjustment and that Fulet has claimed more than the entire amount of advertising expenses it incurred. Zenith also contends that certain categories of Fulet's advertising expenses are not directly attributable to comparison model sales and some categories are not eligible as circumstance-of-sale adjustments at all. In addition, the petitioners point to pre-paid advertising expenses in Fulet's financial statements amortized over several years. All of these advertising expenses should be excluded from Fulet's claimed home market advertising adjustment.

Department's Position: Fulet correctly allocated its home market advertising expenses according to the methodology delineated in our questionnaire. We found certain clerical errors in Fulet's advertising calculations, however, and have corrected them in our final determination. Since all of Fulet's home market sales are sales of comparison models, all color television advertising is incurred in connection with the sales during the review period. Fulet provided the Department with primary source documents from which it determined per-model expenses. These direct and indirect expenses are the total of advertising costs reported by Fulet for the review period. For an explanation of the pre-paid advertising expense, *see* Comment 35.

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Comment 34: Zenith submits that the Department must conduct a cost of production examination of all Fulet's accommodation sales.

Department's Position: We disagree. Zenith had sufficient information prior to the preliminary determination concerning Fulet's accommodation sales to allow the filing of a timely allegation of sales at less than the cost of production. Absent such an allegation sufficiently prior to the preliminary determination to allow for collection and analysis of cost data, we will not institute a cost of production inquiry. *See,* 51 FR 29046, § 353.31(c)(ii), August 13, 1986.

Comment 35: Zenith and the petitioners allege that Fulet has understated its U.S. advertising expenses. Fulet should provide an explanation of the derivation of its direct advertising expenses and reallocate cooperative advertising only over the color televisions sold in the U.S. Fulet should also explain whether it included export-related advertising expenses incurred in the home market in its U.S. claim. In addition, the petitioners claim that an advertising expense clearly resulted from Fulet's barter transaction and that this expense should be accounted for as a U.S. advertising expense.

Department's Position: Fulet claimed only a portion of total advertising expenses as a direct adjustment to U.S. price. This is the figure quoted by the petitioners. The remainder is included in indirect expenses. Fulet's allocation of cooperative advertising is based on sales value and pertains only to the U.S. model that received this form of advertising. Fulet also included export-related advertising expenses in its indirect expense category. We have accepted Fulet's allocation of its U.S. advertising expenses as we have no basis not to. As for Fulet's barter transaction, Fulet received a credit towards future advertising in the U.S. in exchange for the subject color televisions. Because the credit for advertising services received from this transaction was not used until the subsequent review period, we have deferred action on this matter in this review.

Comment 36: Zenith requests that the Department examine its constructed value calculation for Nettek. In all probability, the difference in merchandise adjustment should be removed.

Department's Position: Since we constructed the value of similar, not such merchandise, an adjustment for physical differences was necessary.

Comment 37: The petitioners request that the Department investigate certain volume discrepancies in the various submissions made by Hitachi, RCA, Shin-Shirasuna, and Tatung.

Department's Position: The discrepancies noted by the petitioners were caused by clerical errors in the programming, in the case of Tatung, and by missing U.S. sales in Shin-Shirasuna's calculations. We have corrected both errors. The sales figures for Hitachi questioned by the petitioners are for imports of the merchandise from Taiwan and not sales in the United States. RCA's initial sales figures were incomplete and were subsequently revised.

Comment 38: The petitioners contend that they are impaired in their analysis by the lack of access to documents considered verification exhibits by respondents. When no verification is conducted, there should be no "verification exhibits."

Department's Position: It is our policy not to release a respondent's supporting source documents under an administrative protective order when we have requested this additional information solely to further clarify a respondent's claim. Release of such documents can be damaging to the competitive position of the respondent. If petitioners did not agree with our position, the proper remedy was to appeal to the Court of International Trade while this review was in progress. 19 U.S.C. 1677(f)(c)(2).

Comment 39: The petitioners believe that the tentative determination to revoke with respect to Capetronic is premature. It is not clear that there have been no sales at less than fair value for at least two years. Moreover, the first review's results as to Capetronic are being appealed.

Department's Position: The Department has established 0.5 percent as the *de minimis* standard for its determination, 52 FR 30660–30662, (August 17, 1987). Capetronic has had *de minimis* margins for at least two years. We are proceeding with the revocation process with regard to Capetronic. Under section 516A of the Act, petitioners may contest the Department's decision to revoke its order with respect to Capetronic. *See* 19 U.S.C. 1516A(a)(2)(B)(iii).

Comment 40: The petitioners maintain that the Department failed to analyze sales between AOC and an unrelated trading company as purchase price transactions. The sales invoice between AOC-Taipei and the unrelated trading company shows that AOC knew at the time of sale that the merchandise was destined for the United States. In the past, the Department has analyzed such sales as purchase price transactions.

Department's Position: We disagree. AOC controlled the price by the unrelated trading company to both related and unrelated U.S. purchasers. The unrelated trading company only served to facilitate the export of the merchandise. In this situation, we regard the trading company as acting only as an agent of AOC.

Comment 41: The petitioners state that the sales AOC made to unrelated buyers with terms confirmed by AOC–USA before the date of importation should be analyzed as ESP transactions and not purchase price transactions. They maintain that AOC-Taipei did not ship to an unrelated customer and that AOC–USA did not act solely as a processor of sales-related documentation, but clearly functioned as the U.S. marketing arm of AOC-Taipei.

Department's Position: We disagree. We have continued to treat these transactions as purchase price sales because AOC's subsidiary in the U.S. serves merely as the facilitator of the transaction and importer of record for the merchandise and not the U.S. marketing arm of AOC-Tapei. The merchandise was shipped directly from the manufacturer to the unrelated party without being introduced into the inventory of the other party. This was the customary commercial channel for sales between the parties involved. Furthermore, the subsidiary acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Comment 42: The petitioners contend that the Department incorrectly accepted AOC's reported claim that all of its U.S. advertising expenses were directed at the trade rather than end-users. They assert that AOC–USA has been participating in some kind of dealer cooperative advertising program. The Department should reject AOC's U.S. advertising claim and use the best information available. The best information available would be to offset completely the direct advertising expenses claimed by AOC on its home market sales.

Department's Position: The Department is satisfied with the information we received from AOC. We have not changed our analysis of AOC's U.S. advertising claim.

Comment 43: The petitioners believe that AOC's and Tatung's duty drawback and commodity tax claims were based on an unfair duty-paying value and should be denied by the Department.

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Department's Position: Each firm determines the duty-paying value for its merchandise. The customs authority in Taiwan periodically verifies this information. Based on these facts, the Department has accepted each respondent's methodology in calculating its duty drawback and commodity tax claims.

Comment 44: The petitioners contend that the Department erred in its preliminary analysis by comparing AOC's sales of certain U.S. models with home market sales of certain models made at prices below their cost of production. The Department should disregard all home market sales at prices below the cost of production in its final analysis.

Department's Position: We disagree. The petitioners had sufficient information prior to the preliminary determination concerning AOC's sales to allow the filing of a timely allegation of sales at less than the cost of production. Absent such an allegation sufficiently prior to the preliminary determination to allow for collection and analysis of cost data, we will not institute a cost of production inquiry.

Comment 45: The petitioners request that the Department should determine, prior to its final analysis, whether AOC and its selling agent were "related parties" within the meaning of the law and whether the home market sales are suitable to use for comparison purposes. Although AOC claims that prices to its selling agent were negotiated solely on the basis of market value, this claim does not appear to be supported by the sales price information on the record.

Department's Position: From the documents AOC submitted detailing its relationship with its selling agent, the Department determined that AOC and its selling agent were "related parties" for only the first quarter of the review period. During this period, we used sales between the related selling agent and unrelated dealers in the home market in our analysis. When AOC divested itself of all shares in the company serving as selling agent, they were no longer "related parties" within the meaning of section 771(13) of the Act. We then used sales between AOC and the unrelated selling agent in our analysis.

Comment 46: The petitioners assert that the Department should deny the portion of AOC's home market inland freight claim associated with owning trucks, including salaries of the drivers. These expenses are part of general overhead costs and as such cannot be tied directly to sales of color televisions in the home market.

Department's Position: We disagree. Since these expenses must be deducted from USP, it is necessary to also deduct them from home market selling prices to achieve a proper comparison. AOC reported the underlying *cost* (not a transfer price) of providing the inland freight service. We have accepted this cost as a reasonable proxy for an unrelated transaction price and have deducted said cost from foreign market value.

Comment 47: The petitioners contend that the Department erred in allowing AOC's home market rebate claims in its preliminary analysis. AOC claimed rebates on models not eligible to receive the rebates and did not claim amounts for rebates actually paid during the period of review.

Department's Position: AOC based its rebate claim on rebates actually paid during the review period. The discrepancies noted by petitioners were caused by clerical errors in AOC's submission which have been corrected.

Comment 48: In regard to AOC's home market warranty expenses, the petitioners state that only those expenses incurred during the period of review should be considered appropriate for adjustment purposes. In addition, the Department should not allow AOC's claim for material expenses. Since AOC provided its selling agent with free replacement parts, any value that the selling agent assigned to these parts for purposes of its warranty expense claim does not necessarily reflect an arm's length value. AOC should also be required to confirm that it incurred no U.S. warranty expenses during the period of review on sales of certain models.

Department's Position: We agree. We have included only warranty expenses incurred during the review period in our final analysis. However, we have continued to allow AOC's claim for material expenses. In both the U.S. and home market warranty calculations, AOC claimed its acquisition cost and not the retail value of the replacement parts. AOC reported its U.S. warranty costs on a model-specific basis in its response to the Department's questionnaire.

Comment 49: The petitioners contend that the Department should allow only the taxes paid by AOC's selling agent during the period when the two companies were related because the sales to the first unrelated home market customers were made by the selling agent during this period.

Department's Position: We agree. For the period in question, we have disallowed AOC's stamp tax as an expense directly related to sales by the related selling agent because only the related selling agent's stamp tax expense was the result of the sale to the first unrelated customer. However, we have allowed AOC's stamp tax as an indirect expense in our final calculations.

Comment 50: The petitioners state that the Department failed to deduct export duties on U.S. sales paid by AOC to the China External Development Council in its preliminary analysis.

Department's Position: We disagree. These export duties were included in bank charges.

Comment 51: The petitioners request that Fulet explain or correct the inconsistent sales volumes reported in its responses.

Department's Position: The petitioners have mistaken Fulet's list of shipments to the U.S. for sales. Model P619 was sold from stock; it was not shipped during the review period. The inconsistency in sales listings in Fulet's response was caused by one list including returns.

Comment 52: The petitioners contend that Fulet overstated its home market inland freight claim. Fulet's terms of sale on its home market color television sales appear to be ex-warehouse and no downward adjustment to foreign market value is warranted for inland freight. The adjustment should be restricted to no more than those expenses that are directly related to the color televisions under review. Any inland freight adjustment should not reflect costs entailed in the delivery of merchandise other than color televisions.

Department's Position: Fulet's terms of sale include the freight expenses to its customers. However, we agree with the petitioners that any adjustment for inland freight expenses should be restricted to no more than those expenses that are associated with the color televisions under review. We have corrected this error in our final analysis. *See* also Comment 46.

Comment 53: The petitioners ask that Fulet be required to substantiate that its cash discounts were based on the gross invoice price and document that timely payment was received on the home market color television sales on which the cash discount was earned. Furthermore, Fulet should demonstrate that early payment discounts claimed were actually awarded on its specified home market color television sales. The petitioners disagree with Fulet that only those home market sales should be used for comparison purposes to which the volume discount program applied. They state that no adjustment for volume discounts on accommodation sales should be awarded. In addition, they note a discrepancy in Fulet's volume

discount and rebate expenses that has exaggerated these claims. The petitioners assert that Fulet's "other discounts" should be denied because none of these discounts is directly related to sales in Taiwan of the color televisions under reveiw.

Department's Position: All of Fulet's discount claims, including early payment discounts, were prepared using a dealer-by-dealer, sale-by-sale methodology. The Department is satisfied with this methodology. Accommodation sales received no volume discounts. In our preliminary determination, we used all home market sales for our comparisons, and not only those to which volume discounts applied. We have continued to use this methodology in our final determination. The explanation of figures cited in petitioners' comment is incorrect. The amount stated as Fulet's total color television discounts and rebates in 1985 is actually the total for color televisions and stereos. As for "other discounts," Fulet allocated the amount of these expenses to color television receivers in its indirect expense adjustment. We have accepted this calculation.

Comment 54: The petitioners contend that because Fulet's home market "one-price" rebates appear to apply to a limited number of home market sales, the Department should not apply these expenses to all home market sales.

Department's Position: We disagree. Fulet's "one-price" rebate program applies to all sales of the home market merchandise and was paid to all dealers. We have continued to allow an adjustment for this program in our final analysis.

Comment 55: The petitioners assert that Fulet's actual credit terms on a sale-by-sale basis should be used rather than an averaging of home market credit costs. They ask for clarification as to whether Fulet's short-term borrowings were truly at arm's length. The home market accounts receivable should be net of any bad debt and trading loss allowances. It is not clear that Fulet has done so in this regard. Fulet should revise its accounts receivable calculations to include only color television credit sales. The petitioners believe that the credit period derived by Fulet erroneously overvalues the cost of credit on its home market sales of color televisions. In addition, the accounts receivable turnover ratio should ignore Fulet's notes receivable figure entirely. The figure used by Fulet is overstated because it includes all dealer sales of whatever product and not just sales of color televisions.

Department's Position: The Department is satisfied that the imputed method based on the average balance of accounts receivable accurately reflects the credit costs Fulet incurred on sales of the merchandise. We have no basis to believe that bad debt and trading loss allowances were included in Fulet's accounts receivable or that its short-term loans were not at arm's length. Fulet's accounts receivable ledger consists of all consumer electronics products. It does not maintain a separate account for color television receivers. Therefore, we calculated the credit expense associated with all consumer products. We have continued to allow Fulet's notes receivable in its credit calculation as we did in the previous review. The petitioners' interpretation of Fulet's financial statement is incorrect. The figure presented as the 1985 notes receivables from dealer sales is merely an adjusted amount for notes receivable that was added to accounts receivable at the end of the year. We have accepted Fulet's calculation of credit expenses in our final analysis as it accords with our methodology.

Comment 56: The petitioners maintain that the labor portions of Fulet's technicians' salaries and employee insurance should be disregarded as indirect overhead. Travel expenses should be disallowed unless they are directly related to the servicing of color televisions. If employee-owned vehicles are part of employees' compensation, or used for purposes other than servicing color televisions, these expenses are indirect and should not be allowed.

Department's Position: We disagree. We regard technicians' salaries and employee insurance as indirect warranty expenses. *See* our *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change*, (November, 1985), p. 46. In our questionnaire we request each respondent to submit *actual* warranty expenses related to sales of the merchandise during the period of review and to identify which elements are fixed or variable expenses. We have no basis to believe that travel expenses were not directly related to the servicing of color televisions.

Comment 57: The petitioners maintain that if there were no sales of model P619 by Fulet in the United States, then the home market sales of this model should be disregarded. Given that this model was defective and quickly gave way to replacement models, the home market sales of this model should be rejected as a basis for comparison because these sales were not made in the ordinary course of trade. The warranty expenses for this model are more accurately considered as design and engineering costs for which no circumstance-of-sale adjustment should be granted.

Department's Position: We disagree. This model was sold in the ordinary course of trade in Taiwan and there were sales of the model in the U.S. during the review period. However, we have employed the methodology stated in Comment 20 above in order to account for the excessive warranty claims over the review period.

Comment 58: The petitioners contend that Hitachi's use of weighted averages in reporting U.S. movement charges distorts the margins and, therefore, should be rejected. Ocean freight charges varied significantly during the review period. Hitachi's claim that it could not trace actual movement charges incurred on sales under review is not credible.

Department's Position: We disagree. Whenever possible the Department calculates movement charges based on actual costs for each sale. However, we use average movement charges on a model-by-model basis when, as here, transaction-by-transaction cost information is not available. See *Portable Electric Typewriters from Japan*, (48 FR 40764, September 9, 1983).

Comment 59: The petitioners contend that Hitachi failed to comply with the Department's request to supply information on its discounts on a sale-by-sale basis. The Department should adjust U.S. price downward in its final analysis by the largest discount amount reported in Hitachi's response as the best information available.

Department's Position: We disagree. Hitachi does not maintain a separate record that tabulates the amount of discounts granted. Since Hitachi's sales are negotiated on a case-by-case basis and not according to regulated discount schedules, we have used the invoice price net of discounts as the starting price in our calculations.

Comment 60: The petitioners maintain that the average short-term interest rate reported by Hitachi in its U.S. credit calculation is abnormally low. Unless the Department can satisfy itself that Hitachi has not understated its reported interest rate, the Department should use the published short-term interest rate in effect during the review period in its calculations.

Department's Position: Hitachi did not use the internal average short-term interest rate reported in its questionnaire response. Hitachi divided total short-term interest for the review period by total sales value. As this calculation of credit was higher than the Department's imputed methodology, we

have used Hitachi's credit expense in our final determination.

Comment 61: The petitioners claim that it is unclear whether depreciation and labor costs have been included in Hitachi's U.S. warehousing expenses.

Department's Position: According to the warehousing contracts supplied by Hitachi and its financial statements, all costs associated with warehouses rented or owned have been included in Hitachi's claim.

Comment 62: The petitioners request that prior to any final analysis, Hitachi should be required to submit the total amount of cooperative advertising expenses per customer so that the accuracy of its allocation methodology can be assessed.

Department's Position: In response to the Department's request, Hitachi revised its U.S. advertising claim to provide customer-specific information. We have accepted this revised calculation.

Comment 63: The petitioners contend that Hitachi's U.S. administrative expenses appear to be grossly understated. Because Hitachi has failed to supply the necessary supporting documentation either in the form of a list of individual expense items or the financial statements for Hitachi Sales Corporation of America ("HSCA"), the Department should use Hitachi Ltd.'s general expenses as a surrogate for HSCA's general expenses in its final analysis.

Department's Position: Hitachi submitted to the Department all financial statements for HSCA and Hitachi Sales Corp. of Hawaii ("HSCH"), including lists of the individual items. Based on this information, we have continued to use the general expenses of HSCA and HSCH in our final analysis.

Comment 64: The petitioners argue that Hitachi failed to report export promotion fees on its U.S. sales. The Department should adjust U.S. sales price downward by the amount of this expense in its final analysis.

Department's Position: We agree and have made the deduction to U.S. price.

Comment 65: The petitioners allege that the materials cost information submitted by Hitachi for constructed value may not have included all of the expenses associated with preparing the material and parts for production into the finished product. They further assert that Hitachi's reported standard cost of materials and actual cost of materials reported on its constructed value calculations cannot be reconciled. The Department must ensure that any parts obtained by Hitachi (Television) Taiwan ("HTT") for use in the production of the televisions under review are reported at the cost HTT paid to obtain these parts, not the cost that HTT's parent or related parties paid for these parts. Hitachi's constructed value calculations should also include all taxes and movement charges for material purchases and any adjustments for scrap or defective parts. Labor costs should be based on actual cost data and must include all labor elements. The Department must ascertain whether Hitachi was related to any subcontractors and whether Hitachi has accounted for any equipment lent to any subcontractors. Hitachi incorrectly allocated its factory overhead expenses and employed estimates in its constructed value calculations. In addition, it is unclear whether Hitachi included an amount for depreciation expenses and research and development in its factory overhead calculations.

Department's Position: Hitachi responded to the Department's constructed value questionnaire and has include all costs associated with the production of the merchandise, including taxes, movement charges, and adjustments for defective parts. Hitachi reported costs incurred by HTT and not the parent company. The differences between the labor and factory overhead allocation rates and actual labor and factory overhead are included in the variance amounts. HTT is not related to its subcontractor. The Department is satisfied that all subcontractor costs and depreciation expenses were included in HTT's constructed value calculations.

Comment 66: The Petitioners contend that constructed value should be the basis of comparison instead of Nettek's third-country sales. They note discrepancies in Nettek's response and request that the Department confirm certain cost elements.

Department's Position: The Department is satisfied that Nettek has submitted accurate cost of production information with regard to its third-country sales. Where we used third-country sales in our analysis, we found these sales to be above their cost of production. We have continued to use Nettek's sales to Chile in our final analysis. It is our policy, based on the legislative history of the 1979 Act, to use third-country sales, where possible, rather than constructed value as a basis for comparison in determining foreign market value. *See* also 19 CFR 353.4 (b).

Comment 67: The petitioners allege that Nettek's sales to Chile were below cost because Nettek undervalued its general, selling, and administrative expenses. Nettek has provided company-wide general expenses for all products instead of color television-specific expenses and has erroneously employed relative sales values in lieu of the Department's long-standing practice of using the relative cost of goods sold in its allocation. The petitioners urge that the Department use the general expense figure found from Nettek's internal financial statements in its sales below cost analysis.

Department's Position: We agree with petitioners that Nettek's general and administrative expenses must be allocated over cost of goods sold. In our final determination, we have used Nettek's general and administrative expenses from its internal financial statements for color televisions because they more accurately capture the expenses associated with color televisions.

Comment 68: The petitioners request that the Department employ the general expenses used in its sales below cost analysis in its constructed value calculations for Nettek. They maintain that constructed value should be used as the basis for comparison for all sales to the U.S. because the third-country merchandise was sold below cost. In addition, certain of Nettek's U.S. sales were not contemporaneous with any of the sales to Chile.

Department's Position: For our constructed value calculations, we have continued to employ the ten percent statutory minimum for general expenses since, according to the methodology outlined in Comment 67, the general, selling, and administrative expenses for third-country sales were less than ten percent. The petitioners have misunderstood our use of the 90/60 day contemporaneity rule. Nettek's U.S. sales were compared to sales to Chile up to 90 days back in time or 60 days forward from the date of the U.S. sale. Using this approach, we found contemporaneous third-country sales. *See* also Comment 67.

Comment 69: The petitioners request that the Department complete a sales below cost analysis on Shin-Shirasuna's sales to Panama and revise and update its sales below cost analysis on sales to Canada. The cost analyses for sales to Panama and Canada must include the mark-up for parts purchased from Shin-Shirasuna Japan, as well as all start-up costs involved in the production of the merchandise. In addition, Shin-Shirasuna has understated its expenses and employed a weighted-average cost of materials instead of providing lot-by-lot information. The petitioners conclude that the U.S. sales for which price-to-price comparisons have preliminarily been made against sales to Panama and

Canada should instead be analyzed in terms of constructed value.

Department's Position: The petitioners had sufficient information prior to the preliminary determination concerning Shin-Shirasuna's sales to Panama to allow the filing of a timely allegation of sales at less than the cost of production. Absent such an allegation sufficiently prior to the preliminary determination to allow for collection and analysis of cost data, we will not institute a cost of production inquiry of sales to Panama. See draft AD Regulations, 51 FR 29046 (August 13, 1986). With regard to our cost of production analysis on sales to Canada, we agree with the petitioners that we must use the price Shin-Shirasuna Taiwan paid for the part. However, since Shin-Shirasuna Taiwan did not purchase parts from Shin-Shirasuna Japan, we have continued to use the prices as reported. We disagree that we incorrectly averaged production costs. We believe that the correct way to compare material costs to selling price is by averaging the costs of all production lots for the period because such an average best represents the material costs over the period of review. We are satisfied that Shin-Shirasuna included all costs in its submission. We have continued to use sales to Panama and Canada in our final analysis.

Comment 70: The petitioners argue that the Department should disregard certain Shin-Shirasuna Canadian sales made through an intermediary company since these sales may have been negotiated in conjunction with certain sales to the United States. They note that the Canadian sales may not be distinct from the United States sales. Therefore, the Department should disregard these Canadian sales and base foreign market value on constructed value.

Department's Position: For these final results, we have continued to use the Canadian sales as the basis of foreign market value. Shin-Shirasuna knows at the time of sale to the unrelated intermediary company the destinations of the televisions. This approach is consistent with our normal practice of determining U.S. price and foreign market value when the seller knows the ultimate destination of the merchandise at the time of sale to an unrelated party. *See, Certain Forged Crankshafts from Japan*, 52 FR 36984 (October 2, 1987); *Nylon Impression Fabric from Japan*, 51 FR 15816 (April 2, 1987); *see also, The Trade Agreements Act of 1979, Report on H.R. 4537 by the Committee on Finance, United States Senate*, 96th Cong., 1st Sess. 94 (1979).

Comment 71: The petitioners encourage the Department to determine the foreign market value for Shin-Shirasuna with reference to its Japanese parent's home market prices. All the statutory prerequisites under the multinational provision in section 773(d) of the Act are satisfied: Shin-Shirasuna and its Japanese parent are integral parts of a multinational corporation; Shin-Shirasuna in Taiwan had no home market sales of the merchandise; and the Japanese parent's color television prices in Japan may be higher than the foreign market value of the televisions produced by Shin-Shirasuna in Taiwan.

Department's Position: We disagree. In order for the Department to make use of the special rule for certain multinational corporations, all criteria must be met. Petitioners did not provide sufficient evidence that the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation was higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation. Without such evidence, we cannot invoke this provision of the Act.

Comment 72: The petitioners contend that only direct delivery costs of Tatung's home market inland freight should be allowed. In addition, these direct costs should be prorated if the color television deliveries included other products. For U.S. inland freight, the petitioners request that Tatung explain why the Taiwanese inland freight costs for U.S. sales of certain models appear low as compared to other models.

Department's Position: In our final determination, we have allowed Tatung's entire home market inland freight claim since these expenses would be deducted from USP and it is necessary to deduct such expenses from home market price to achieve a proper comparison. *See* Comment 46. The Department is satisfied that Tatung appropriately allocated its U.S. inland freight costs to color television deliveries.

Comment 73: The petitioners allege that Tatung may have overstated its home market credit costs. Tatung's cost of credit should be a weighted-average of only its commercial paper and bank loan rates and should not include short-term loans from its employees and subsidiaries. Tatung should also supply its actual credit experience on sales of color televisions in the United States. Tatung has understated the average period of time during which it extended credit on its U.S. sales by calculating its accounts receivable turnover ratio using the value of its total sales, not just credit sales. The value of Tatung's U.S. c.o.d. and flooring sales on which it extends no credit should be excluded.

Department's Position: We do not consider employees to be related parties. Therefore, we have continued to include Tatung's short-term loans from its employees in our calculation of home market credit. Because loans from subsidiaries are not considered arm's length transactions, we have disregarded such loans in our credit calculation. Tatung did not include c.o.d. and flooring sales in its calculation of the accounts receivable period for its U.S. credit adjustment. Flooring sales credit was calculated separately. The Department is satisfied that the imputed method based on the average balance of accounts receivable accurately reflects the credit costs Tatung incurred on sales of the merchandise.

Comment 74: The petitioners state that Tatung's commissions to its salesmen on home market dealer sales are in reality intracorporate transfers of funds, for which no downward adjustment to foreign market should be allowed.

Department's Position: Commissions to unrelated salesmen in the home market on comparison models are a direct deduction from foreign market value. These expenses are incurred only because a particular sale is made. Such salesmen are not a part of the corporation and funds paid to them are not available for further use by the firm.

Comment 75: Tatung's claimed home market warranty expenses for labor costs, according to the petitioners, actually represent fixed overhead and should not be allowed as a downward adjustment to foreign market value. Tatung's servicemen are paid commissions in lieu of salaries. When the dealers have performed warranty work, Tatung should not be awarded a warranty adjustment because Tatung cannot relate this compensation to the products under review.

Department's Position: We disagree. We treated commissions to Tatung's servicemen in the same manner as we treat commissions to salesmen. In response to the Department's deficiency letter, Tatung calculated warranty expenses incurred by dealers by inspecting each warranty repair slip and reporting all warranty costs for the comparison models. Thus, these expenses are directly related to the color televisions under review.

Comment 76: In the opinion of the petitioners, Tatung's U.S. ocean freight costs appear to be unduly low.

Department's Position: We have no basis to disregard the ocean freight expenses reported by Tatung in its

questionnaire response and have continued to use these figures in our final determination.

Comment 77: The petitioners request that the Department seek clarification from Tatung that its claimed home market advertising expenses were directly related to the subject color televisions. In addition, the Department should inquire whether Tatung's related U.S. subsidiary incurs any color television advertising expenses on its own in the U.S. and why its home market advertising claim is greater than its U.S. claim.

Department's Position: Tatung reported its home market and U.S. advertising according to the methodology in our questionnaire. We are satisfied with the response provided by Tatung and have no reason to believe the information submitted was inaccurate or otherwise insufficient.

Comment 78: The petitioners note that, in many instances, Tatung's Taiwan f.o.b. prices do not seem to correlate with the f.o.b. foreign port prices that result from the computer printouts when all movement charges and direct and indirect selling expenses are subtracted from the U.S. unit prices. They are concerned that Tatung may have employed an unreasonably low transfer price to its U.S. subsidiary as the basis for not only its U.S. duty, but other U.S. selling and movement expenses as well.

Department's Position: Tatung has supplied the Department with the Taiwan f.o.b. prices of all sales to the United States. We have no reason to disregard Tatung's reported import duties or other expenses. The accuracy of the import duty is a matter for Customs to determine.

Comment 79: According to the petitioners, it appears that Tatung has inadvertently omitted bank negotiation and export customs brokerage fees from its deductions from U.S. price.

Department's Position: These charges were included in the "other charge" category in the computer printout.

Comment 80: The petitioners contend that non-material expenses, such as freight charges relative to Tatung's physical difference in merchandise, insurance premiums, brokerage, commodity taxes and other internal taxes, import duties, and handling in bringing the materials to Tatung's facilities, are not within the realm of the difference in merchandise adjustment. The guiding principle should be that only the cost differences actually due to physical differences in the merchandise being compared should be considered.

Department's Position: The Department has concluded that duty-paid parts do reflect the actual cost incurred by the manufacturer. *See Color Television Receivers from Korea,* (51 FR 41377, November 14, 1986) and *Bicycle Tubes and Tires from Taiwan,* (48 FR 31691, July 11, 1983). The items cited by the petitioners are considered to be associated with the cost of the differences, as they are necessary to bring the various parts to the place of manufacture.

Comment 81: The petitioners request that the Department determine how Tatung's average time in inventory was calculated and ensure that the period covers the entire time from date of shipment in Taiwan to the date of sale to the unrelated buyer in the U.S. In addition, they raise the question whether U.S. indirect selling expenses have been understated and home market expenses have been overstated.

Department's Position: Tatung's U.S. inventory carrying cost calculations did not include time on the water. We have added this period to our calculation. The Department is satisfied with Tatung's response to our questionnaire concerning other home market and U.S. indirect selling expenses.

Comment 82: In the calculations of Tatung's constructed value, the petitioners maintain that actual and not standard labor hours should be used.

Department's Position: Tatung's cost calculations include a variance amount which is incorporated at the end of the year to adjust for the difference between standard and actual labor hours. We have included this amount in the calculation of constructed value.

Comment 83: Hitachi contends that the Department should use the quarterly exchange rates during the period of production in calculating constructed value rather than those in effect on the date of the U.S. sale. Hitachi's costs should not be quantified on the basis of fluctuations in exchange rates that occurred long after the time of production and importation.

Department's Position: We disagree. The regulations provide for the use of exchange rates as of the date of purchase, for purchase price transactions (*see* § 353.56(a) of the regulations), and the statute provides for the use of exchange rates as of the time of the first sale in the U.S. to an unrelated customer for exporter's sales price transactions (*see* 19 U.S.C. 1677b(a)(1)).

Comment 84: Sampo claims that the Department should add travel expenses and reworking costs to the warranty adjustment in the constructed value calculations. The Department has recognized these items as direct warranty expenses for the price-to-price comparisons. In addition, it requests that the Department include service costs and costs of unsellable sets as part of the direct warranty adjustment.

Department's Position: We have corrected the error in Sampo's warranty claim regarding the inclusion of travel expenses and reworking costs. However, we consider in-house service costs to be an indirect expense. *See Television Receivers, Monochrome and Color, from Japan,* (52 FR 8945, March 20, 1987). The warranty portion claimed for the costs of unsellable sets represents unrecovered production costs and not an expense involved in servicing the sets under a warranty claim.

Comment 85: Shin-Shirasuna requests that the Department rule that model 5A3 is outside the scope of the antidumping duty order and recalculate Shin-Shirasuna's weighted-average dumping margin.

Department's Position: The Department determined this model to be included in the scope of this order based on the criteria set forth in *Diversified Products Corp. v. United States.* (*See* the final results of the first administrative review in this case, Comment 49. Model 5A3 is the same as model EEE in the first review.) We have continued to include this model in the current review.

Comment 86: Shin-Shirasuna alleges that the Department erred in using sales to Jamaica, rather than constructed value, to calculate foreign market value. The sale to Jamaica falls outside the Department's contemporaneity rule and the quantity of units sold to Jamaica fails to meet the five percent adequacy test set forth in the Department's regulations for home market sales which the Department applied to third-country sales by Shin-Shirasuna in the first administrative review.

Department's Position: In order for the Department to determine whether a sale in the home or third-country market is contemporaneous, we must look at the 90/60 guideline. Because the sale to Jamaica was made outside this time period and there were comparatively few sets sold, we have reconsidered our analysis and used constructed value in our final determination as the best measurement of foreign market value.

Final Results of the Review

As a result of the comments received, we have determined that the following weighted-average margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
AOC International, Inc	4/1/85–3/31/86	0.03
Capetronic (BSR) Ltd	4/1/85–5/29/86	.30
Fulet Electronic Industrial Co., Ltd	4/1/85–3/31/86	.22
Hitachi Television (Taiwan) Ltd	4/1/85–3/31/86	2.31
Nettek Corp., Ltd	4/1/85–3/31/86	1.49
RCA Taiwan, Ltd	4/1/85–3/31/86	1.51
Sampo Corp	4/1/85–3/31/86	.78
Sanyo Electric (Taiwan) Co., Ltd	4/1/85–3/31/86	[1] 4.66
Shinlee Corp	4/1/85–3/31/86	[1] 10.14
Shin-Shirasuna Electric Co	4/1/85–3/31/86	.09
Tatung Co	4/1/85–3/31/86	4.06

[1] No shipments during the review period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the precentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margins for AOC, Capetronic, Fulet and Shirasuna are less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, a cash deposit of 4.06 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese color television receivers, except for video monitors, complete or incomplete, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), and (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: November 29, 1988.

[FR Doc. 88–28370 Filed 12–8–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–016]

Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 26, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan. The review covers Taiyo Yuden Co., Ltd. and the period March 1, 1987 through February 29, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/5255.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 43251) the preliminary results of its administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan (36 FR 4877, March 13, 1971). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are magnetically soft ferrite magnets which are usually wound with wire. The merchandise is magnetized with the induction of electric current and is of the type commonly used as components in consumer electronic products such as household television receivers, projection television sets, radios, stereos and high fidelity radio systems, automobile radios, electronic home computers, etc. Ferrite cores are currently classifiable under item 535.1240 of the Tariff Schedules of the United States Annotated. This product is currently classifiable under item number 8504.90.00 of the Harmonized Tariff Schedule.

The review covers Taiyo Yuden Co., Ltd. and the period March 1, 1987 through February 29, 1988.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. The final results are unchanged from those presented in the preliminary results of review, and we determine that a margin of 28 percent exists for Taiyo Yuden Co., Ltd. for the period March 1, 1987 through February 29, 1988.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 28 percent shall be required on shipments by Taiyo Yuden. For any shipments from the remaining known manufacturers/exporters not covered by this review, a cash deposit shall be required at the rate published in the final results of the last administrative review for those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 29, 1988 and who is unrelated to Taiyo Yuden or any previously reviewed firm, a cash deposit of 1.08 percent shall be required.

These deposit requirements are effective for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: December 5, 1988.

[FR Doc. 88–28371 Filed 12–8–88; 8:45 am]

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[A-583-003]

Fireplace Mesh Panels From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on fireplace mesh panels from Taiwan. The review covers four manufacturers and/or exporters of this merchandise to the United States and the period June 1, 1987 through May 31, 1988.

Three of the firms failed to respond to our antidumping questionnaire and one submitted an inadequate response. As a result, the Department has preliminarily determined to assess dumping duties equal to the rate found as best information available for all four firms.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 16179) the final results of the last administrative review of the antidumping duty order on fireplace mesh panels from Taiwan (47 FR 24616, June 7, 1982). The petitioner requested, in accordance with section 353.53a(a) of the Commerce Regulations, that we conduct an administrative review for the period June 1, 1987 through May 31, 1988. We published a notice of initiation on July 28, 1988 (53 FR 28424). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Three of the firms failed to respond to our antidumping questionnaire. Taipoly Industries Ltd., an exporter of the subject merchandise, submitted an inadequate response including among other points failing to identify its supplier. For these firms we used the best information available. The best information available was the highest rate in the last published review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this *Harmonized Tariff Schedule* ("HTS") and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are fireplace mesh panels. Such panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of the kind used in the manufacture of safety screening for fireplaces. This product is currently classifiable under TSUSA item numbers 642.7800 and 654.0045 and HTS item numbers 7314.49.00 and 7323.99.00.

The review covers four manufacturers and/or exporters of this merchandise to the United States and the period June 1, 1987 through May 31, 1988.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the margin for Yeh Sheng Wire Mesh & Screen Co., Ltd., Tah Chung Iron of Superior Quality Co., Ltd., Yeh Sheng Wire Mesh & Screen Co./Taipoly Industries Ltd., and Dalvey Products Supply, Ltd. is 6.4 percent.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

For any shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the first administrative review (49 FR 28592, July 13, 1984). For any future entries of this merchandise from a new exporter not covered in this or in prior administrative reviews, whose first shipment occurred after May 31, 1988, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 6.4 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese fireplace mesh panels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: December 5, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-28372 Filed 12-8-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on ceramic tile from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 36 firms and 4.28 percent *ad valorem* for all other firms during the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3337.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 15090) the final results of its last administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20013; May 10, 1982). On May 27 and May 28, 1987, the Government of Mexico, and Mexican exporter, Azulejos Orion, S.A., respectively, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on June 19, 1987 (52 FR 23331). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS). All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the appropriate HTS item number(s) with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the HTS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile, currently classifiable under TSUSA item numbers 532.2400 and 532.2700. These products are currently classifiabile under HTS item numbers 6908.10.50—2 and 6907.10.00—0. The review covers the period January 1, 1986 through December 31, 1986 and 13 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purpsoes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export. We found that the annual interest rate financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 39.60 to 59.50 percent. The annual interest rate for dollar-denominated FOMEX export financing ranged from 5.40 to 7.40 percent during the period of review.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX Pre-export loans is paid at maturity, and those that matured during the period of review were obtained between November 1985 and October 1986. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's *Indicadores Economicos y Moneda* (I.E.). We calculated the average difference betgween the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1981 through 1984. We added this average difference to the 1985 and 1986 CPP rates. In this way, we calculated a benchmark of 86.39 percent for pre-export peso loans obtained in 1985, and 135.27 percent for pre-export peso loans obtained in 1986.

To determine the effective interest rate benchmark for dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which was 10.47 percent in 1986.

Five of the 46 known exporters of this merchandise used this progam during the period of review. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated each company's FOMEX benefit over the value of its total U.S. shipments during the period of review. We then weight-averaged the resulting benefits by each company's proportion of total exports to the United States during the period of review, excluding from firms with zero or *de minimis* aggregate benefits. we preliminarily determine the benefit from FOMEX pre-export loans to be 2.80 percent *ad valorem* for the period of review. We preliminarily determine the benefit from FOMEX export loans to be 0.31 percent *ad valorem* for the period of review. The total benefit from this program is 3.11 percent *ad valorem* for the period of review.

In May 1988, the Banco de Mexico changed the interest rates on FOMEX peso loans to 66.00 percent and on dollar loans to 7.70 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating assessment rates. For peso loans, we used as our benchmark the sum of the May CPP rate and the average 1981–1984 spread between the CPP and the I.E. effective rates. For dollar loans, we used as our benchmark the May 1988 weighted-average effective interest rate from the *Federal Reserve Bulletin*. On this basis, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 0.44 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

(2) Article 15

Article 15 of the General Law of Credit Institutions and Auxiliary

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Organizations ("the Banking Law") established that up to seven percent of a bank's total deposits must be funneled as loans into specially designated sectors of economic activity. The Banco de Mexico established eight industrial categories that are eligible to obtain financing under Article 15. One category consists only of exports of manufactured products.

Two firms received peso-denominated loans under Article 15 during the period of review. We consider such financing to constitute an export bounty or grant because it is provided at below market rates only for merchandise destined for export. The interest on these loans is paid at maturity. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans.

Since these Article 15 loans are based on exports to all countries, we allocated each company's benefit over the value of its total exports during the period of review. We then weight-averaged the resulting benefits by each company's proportion of total exports to the United States during the period of review, excluding exports from firms with zero or *de minimis* aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be 1.14 percent *ad valorem*.

(3) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA. One firm had a variable-rate peso-denominated FONEI loan for plant expansion or modernization outstanding during the period of review.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them to the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefit over the company's total sales to all markets. The benefit from this program is 0.003 percent. Because this firm had a *de minimis* benefit during the period of review, we did not include the benefit from this program in the country-wide rate.

(4) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small and medium-size firms in Mexico, regardless of the type of industry or location, some companies receive more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be counteravailable.

Three firms had FOGAIN loans on which interest payments were due during the period of review. Because the interest rates are variable, we treated each loan as a series of short-term loans. To determine the benefit, we used as our benchmarks the least beneficial interest rates in effect for each FOGAIN loan payment made during the period of review.

We allocated the benefits from each loan over each firm's total sales to all markets. We then weight-averaged the resulting benefits by each company's proportion of exports of this merchandise to the United States during the period of review, excluding exports from firms with zero or *de minimis* aggregate benefits. We preliminarily determine the benefit from this program during the period of review to be 0.03 percent *ad valorem*.

(5) Other Programs

We also examined the following programs and preliminarily determine that exporters of ceramic tile did not use them during the review period:

(A) Certificates of Fiscal Promotion ("CEPROFI");

(B) State tax incentives;

(C) National Industrial Development Fund ("FOMIN");

(D) NDP preferential discounts;

(E) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN");

(F) Bancomext loans;

(G) Delay of payments on loans;

(H) Delay of payments to PEMEX of fuel charges; and

(I) Import duty reductions and exemptions.

Firms Not Receiving Benefits

We preliminarily determine that the following 36 firms received zero or *de minimis* benefits during the period of review:

(1) Augustin Cedillo Ruiz
(2) Alfonso Cortez Coronel
(3) Azulejos Orion
(4) Benjamin Chavez Torres
(5) Ceramica Santa Julia
(6) Dionicio Sanchez Cruz
(7) Eduardo S. Garcia de la Pena
(8) Fernando Espinosa Sanchez
(9) Francisco Almanza Estrada
(10) Francisco Gallegos Olivares
(11) Idelfonso Chavez Parga
(12) Ines Bustos Vargas
(13) Isabel Cortez Coronel
(14) Jesus Ambrosio Garcia R.
(15) Jesus Garza Arocha
(16) Jesus Gallegos Olivares
(17) Jesus Jimenez Lucio
(18) Jose Angel Hernandez Martinez
(19) Jose Davilla Torres
(20) Jose Dolores Hernandez Zaucedo
(21) Jose R. Echavarria
(22) Juan Cortez Coronel
(23) Juan Rodriguez Rocha
(24) Ladrillera Monterrey
(25) Leopoldo Montiel Rincon
(26) Luis Najera Luna
(27) Manual Alvarez Ramon
(28) Pablo Cortez Coronel
(29) Pedro Lopez Alonso
(30) Pisos Coloniales de Mexico
(31) Reynold Martinez Chapa
(32) Rosendo Rodriguez Hernandez
(33) Sotero Jalomo Reyna
(34) Teofilo Cavarrubias Villareal
(35) Vincente Jalomo Reyna
(36) Zenon Cortez Coronel

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1986 through December 31, 1986 to be zero or *de minimis* for 36 firms and 4.28 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 36 firms listed above and to assess countervailing duties of 4.28 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and on or before December 31, 1986.

The Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1)

of the Tariff Act, on shipments of this merchandise from the 36 firms listed above and, due to the change in the FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 1.61 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: December 5, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-28373 Filed 12-8-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Lubbock/Midland—Odessa, TX

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $165,000 for the project performance of May 1, 1989 to April 30, 1990. The MBDC will operate in the Lubbock/Midland—Odessa, Texas, Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of applications is January 20, 1989. Applications must be postmarked on or before January 20, 1989.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the proceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on January 6, 1989 at 1:00 P.M. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Dallas Regional Office.

Date: December 5, 1988.

Project Specifications

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Lubbock/Midland-Odessa, Texas MBDC.
3. Project Identification Number: 06-10-89006-01.

Budget Period Duration

1. Budget Period (Check One): First X Second ____ Third ____.
2. Start Date: May 1, 1989.
3. End Date: April 30, 1990.

Project Cost

1. Required Federal Funding Level: $165,000.00.
2. Minimum Non-Federal Contribution: $29,118.00.
3. Total Project Cost: $194,118.00.

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $10,670,000.00.
2. Billable $M&TA Minimum Goal Level: $100,000.00.
3. Number of clients Minimum Goal Level: $80.

Other Project Specifications

1. Closing Date for Submission of this Application: January 20, 1989.
2. *Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: Lubbock/Midland-Odessa, Texas.
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for

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each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88-28363 Filed 12-8-88; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 80901-8201]

Intent To Revise FIPS PUB 140 (Formerly FED-STD 1027); General Security Requirements for Equipment Using the Data Encryption Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: National Institute of Standards and Technology plans to revise FIPS PUB 140 (formerly FED-STD 1027), General Security Requirements for Equipment Using the Data Encryption Standard. In revising the standard NIST will consider the following topics:

1. Extending the standard to cover embedded as well as stand-alone encryption modules.
2. Allowing physical security protection mechanisms other than physical locks.
3. Providing for a variety of key loader devices.
4. Permitting the implementation of automated key management functions.
5. Specifying the type of tests which must be passed in order to demonstrate conformance.
6. Modifying Electromagnetic Interference/Electromagnetic Compatibility (EMI/EMC) requirements.

Before proposing this revised standard for review and comment, NIST solicits the views of industry, the public, and State and local governments on the topics listed above and any other topics related to the current standard. Copies of the standard may be obtained from the Standards Processing Coordinator (ADP), Technology Building, Room B64, National Institute of Standards and Technology, Gaithersburg, MD 20899.

DATE: Comments on the FIPS PUB 140 should be submitted March 9, 1989.

ADDRESS: Written comments concerning FIPS PUB 140 should be sent to: National Institute of Standards and Technology, ATTN: Revision of FIPS 140, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Miles E. Smid, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2938.

SUPPLEMENTARY INFORMATION: Products are no longer being certified for conformance to FIPS PUB 140. The certification program had been conducted by the National Security Agency. NIST does not plan to reinstitute the certification program, but may develop and require the use of conformance tests for determining whether products and services implement the standard properly.

Heads of agencies may waive the provisions of the current standard in certain cases where equipment meeting this standard is not available or cost effective for the intended applications. Agencies should contact NIST at the address specified above (in "**FOR FURTHER INFORMATION CONTACT**" section) regarding waiver procedures and requirements.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100-235.

Date: December 5, 1988.

Raymond G. Kammer,

Acting Director.

[FR Doc. 88-28311 Filed 12-8-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the Riggings Homeowners Association

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On October 17, 1988, Aubrey Consulting, Inc., on behalf of The Riggings Homeowners Association (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the North Carolina Division of Coastal Management (State) to the Appellant's certification that its proposed beach nourishment and groin reconstruction project in Kure Beach would be consistent with North Carolina's coastal management program. The State's objection precludes the U.S. Army Corps of Engineers from issuing to the Appellant a permit to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: December 2, 1988.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 88-28326 Filed 12-8-88; 8:45 am]

BILLING CODE 3510-08-M

Endangered and Threatened Species; Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Determination.

SUMMARY: NMFS has determined, after reconsidering its original decision not to list the winter run of chinook salmon (*Oncorhynchus tshawytscha*) in the Sacramento River, California, that the decision not to list was appropriate. Recent developments related to drought conditions and elevated water temperatures were examined and found to be adequately addressed by the fish and water management agencies. The relevant Federal and State agencies are fulfilling their commitments to alleviate the habitat problems that are preventing the winter run from returning to its historically high population levels. The major actions that would likely be included in a recovery plan for this population are being implemented.

Therefore, NMFS finds that the existing State and Federal programs for managing winter-run chinook salmon in the Sacramento River are effecting remedies to restore the run, are adequately managing the threats to the population, and are flexible enough to respond to natural threats such as drought in a responsible manner. Further, NMFS concludes that the winter run is not likely to become endangered in the foreseeable future throughout all or a significant portion of its range (i.e., the winter run is not a threatened species).

FOR FURTHER INFORMATION CONTACT: James H. Lecky (NMFS Southwest Region, 300 S. Ferry Street, Terminal Island, CA 90731, 213–514–6199) or Charles Karnella (Office of Protected Resources, F/PR2, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, 301–427–2322).

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1985, the National Marine Fisheries Service (NMFS) received a petition from the American Fisheries Society (AFS) to list the winter run of chinook salmon in the Sacramento River as a threatened species under the Endangered Species Act of 1973 (ESA). NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted. On February 13, 1986, NMFS announced its intention to conduct a review of the status of the run to determine whether or not listing the run was appropriate.

The status review was based on a consideration of available information on the run relative to the five criteria specified in section 4(a)(1) of the ESA and a consideration of the conservation efforts of the State of California and Federal resource management agencies to restore the run, as required by section 4(b)(1)(A) of the ESA. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. The results of the status review, along with the Notice of Determination, were published on February 27, 1987 (52 FR 6041).

In the Notice of Determination, NMFS determined that the Sacramento River winter-run chinook was a species in the context of the ESA, recognized that the run had declined over a period of less than two decades, and was approaching a level below which genetic diversity might diminish. The primary causal agents in this decline were the construction and operation of a diversion dam at Red Bluff and other human activities that had collectively degraded spawning and rearing habitat to the point that productivity of the run declined.

Based on its assessment that restoration and conservation efforts which were being implemented or planned by State and Federal resource management agencies adequately provided for the rebuilding of the population, NMFS decided not to list winter-run chinook in the Sacramento River as a threatened species under the ESA. Subsequent to this determination, these restoration actions were incorporated into a Ten point Winter-run Restoration Plan and implemented by means of a Cooperative Agreement signed on May 20, 1988, by the California Department of Fish and Game (CDFG), the Bureau of Reclamation (BR), the Fish and Wildlife Service (FWS), and NMFS.

The Sierra Club Legal Defense Fund (SCLDF), on behalf of the AFS, alleged that NMFS exercised discretion not provided for in the ESA. They argued, if a population meets any of the criteria for listing, then the responsible agency (either NMFS or FWS) has a non-discretionary duty to list that population as a threatened or endangered species. On February 3, 1988, the SCLDF filed suit in the Eastern District of California seeking an order to compel NMFS to list the run.

Before the merits of the case were argued, information became available to NMFS indicating that the conservation measures in place to enhance the run might not be adequate to address the adverse effects of anticipated drought conditions. Specifically, drought conditions that arose in 1987 showed signs of persisting through 1988 and water forecasts indicated that river temperatures might reach levels lethal to developing winter-run eggs. Further, information on remedial measures taken in 1987 was becoming available and NMFS decided that reconsideration of its decision not to list the run would be prudent. The SCLDF agreed to stay the suit while NMFS reviewed this new information.

On June 2, 1988, NMFS announced its intent to reconsider its decision to not list the run and opened a public comment period to ensure that all information on the status of the run and factors affecting it was available for the reconsideration (53 FR 20155, June 2, 1988).

Summary of Comments Received

A total of 27 comments were received during the comment period. Twenty favored listing the run as a threatened species, six indicated the decision not to list the run should stand, and one provided information but did not make a recommendation on whether the run should be listed. The comments are summarized below along with brief responses.

Six commentors stated that the ten-point plan (contained in the Cooperative Agreement) did not address all the threats to the winter run. The Ten-point Restoration Plan and Cooperative Agreement address those activities that are having the greatest adverse effect on the winter-run population. NMFS believes that if the actions identified in the agreement are carried out, the run will rebuild. There are activities not included in the agreement that probably affect the run. For reasons explained in the next section (Review of the Listing Criteria) NMFS considers the risks of these other activities to be small compared to the activities addressed in the Cooperative Agreement. These commentors also identified several projects that, if implemented, would have adverse effects on the winter run. However, NMFS believes that existing legal mechanisms ensure that future projects will not be authorized unless the needs of the winter run are addressed adequately. These mechanisms are discussed below.

Six commentors stated that the ten-point plan (contained in the Cooperative Agreement) is not binding and is poorly implemented. NMFS believes that the signatories of the agreement have made a good faith commitment to see that each of the actions identified in the Cooperative Agreement is completed. Some of the actions require large expenditures, consequently, these projects are likely to proceed in phases over several years. In almost all cases the commitments to the projects have been made and the initial phases have been funded. These issues are also discussed in more detail below.

Three commentors stated that the ESA provides no discretion for NMFS to consider the adequacy of Federal programs in determining whether to list a species as threatened. Section 4(b)(1)(A) gives NMFS the authority to consider the adequacy of State and foreign conservation and protective programs in determining whether to list. NMFS believes that this section also applies to Federal programs, particularly because the State of California is so extensively involved in those Federal programs. For example, the CDFG has monitored temperatures in the upper Sacramento River, is restoring spawning gravel to the reach above Redding, and has restricted the recreational fishery for winter run in the river. The

California Department of Water Resources (DWR) is intimately linked to the BR in the management and delivery of water for agriculture.

Three commentors stated that the benefits of section 7 consultations and section 9 prohibitions are not available to protect the winter run unless it is listed under the ESA. Listing a specieies as threatened does not automatically invoke the prohibitions contained in section 9. Section 7 would require proposed Federal projects to be reviewed in consultation with the NMFS to ensure the project would not jeopardize the continued existence of the run. However, section 7 does not apply to State projects or actions. NMFS believes that other mandates for coordination (e.g., the National Environmental Policy Act (NEPA), Clean Water Act (CWA), Federal Power Act (FPA), Fish and Wildlife Coordination Act (FWCA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) provide for the comparable opportunity for review of impacts and development of mitigation plans for State and Federal projects.

Two commentors stated that the winter run did not constitute a species as defined by the ESA. One of the commentors stated there is no documentation of genetic distinctness between the runs and reproductive isolation between the runs is incomplete. NMFS reviewed this issue in the Notice of Determination. The term "species" is defined in the ESA as "* * * any subspecies of fish or wildlife or plant, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." There are a number of biological definitions of a "species" but they share in common the concept of reproductive isolation and a community of gene pools (Mayr 1963). Populations are defined as the community of potentially interbreeding individuals at a given locality in time or space (Mayr 1963). Thus a biological species is composed of numerous local populations each one intercommunicating and intergrading with the others (Mayr 1963). In defining the term "species" in the ESA, Congress essentially equated the biological definition of "species" with the biological definition of a "population". This allows the Secretaries of Commerce and Interior to use the tools provided by the ESA to protect populations thereby ensuring the preservation of genetic diversity within a species. Therefore, all that is needed to consider a group of animals as a species in the context of the ESA is to demonstrate that they compose a distinct population.

The commentor states that the winter run does not qualify as a species because the distinctness of the population has not been demonstrated electrophoretically. Although, the CDFG has contracted a study of the genetic distinctness of salmonid stocks in the Sacramento River, no winter-run chinook have been analyzed to date. Winter-run chinook are distinguishable from the other runs because, on average, they mature at a different rate and consequently are smaller, they return to the river at a different time, and they reside in the river before spawning. Presumably, these traits are controlled genetically and if the right set of proteins were analyzed, electrophoresis would show the run to be distinct. This presumption is supported by studies which have shown sequentially spawning runs in the Columbia River System to be genetically distinct (F. Utter, G. Milner, G. Stohl, and D. Teel in Press, Fishery Bulletin, Department of Commerce, NOAA, Seattle Washington).

Electrophoresis is a tool for confirming the hypothesis that two or more populations are distinct, but it can not be used to reject such a hypothesis. Currently, only small fractions of the thousands of proteins that are derived from an individuals' genome can be analyzed electrophoretically. If an electrophoretic analysis finds no distinctness, the possibility that a distinctness exists in the untested portion of the genome can not be rejected. Therefore, even if, as the commentor suggests, winter run are not distinct electrophoretically, we can not reject the possibility that the winter run is genetically different from the other runs. Regardless of the ultimate finding of the electrophoretic studies referenced by the commentor, genetic distinctness is not a requirement for considering a population to be species in the context of the ESA.

The commentor also asserts that the population is not reproductively isolated and therefore does not qualify for consideration as a species. Reproductive isolation is a criterion for determining whether a group of organisms are a biological species, but is not a criterion to be used in listing species under the ESA. The ESA allows the listing of populations, and populations, by definition, are not reproductively isolated [Mayr 1963). Therefore the NMFS, asserts that the winter run is a population within the species *Oncorhynchus tshawytscha* and, therefore, can be considered a species in the context of the ESA.

Four commentors stated that a listing of winter run would adversely affect water use or other human activities. As four other commentors stated, the ESA requires that the Secretary's listing determination be made solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts * * * to protect such species. Effects of a listing on human activities are not to be considered in the decision.

Three commentors supported the ten-points contained in the Cooperative Agreement as adequate to provide for the restoration of the winter run. The NMFS agrees.

Two commentors criticized the Ten Point Plan as being incomplete because it did not consider hydroelectric development, additional water marketing, bank stabilization, the Glen-Colusa Irrigation District's diversion, or gravel extraction. These problems are discussed below.

A. Hydroelectric Development

The City of Redding is pursuing two hydroelectric projects—one on the Sacramento River at Redding and one on the Sacramento River at Red Bluff. NMFS has been actively reviewing and critiquing these projects for many years. The Federal Energy Regulatory Commission (FERC), the licensing agency, has indicated that they are acutely aware of the plight of the winter-run stock and are taking full account in their deliverations. NMFS has made very specific recommendations to modify the project to reduce or eliminate adverse impacts and/or mitigate impacts to the other three salmon races. With regard to the winter run, the CDFG, FWS, and NMFS have indicated that no adverse impact would be allowed. NMFS and the FWS have also indicated to FERC and the City of Redding that they will use their authority under section 18 of the Federal Power Act to prescribe fish ladders and protective juvenile fish screens that would eliminate passage impacts from winter-run fry. NMFS believes that its authorities under section 18, as well as, under the Clean Water Act and the Fish and Wildlife Coordination Act, will be sufficient to ensure no new threats to the winter-run population are allowed to develop as a result of hydroelectric projects on the upper Sacramento River

B. Additional Water Marketing

The BR has expressed its intent to market an additional 1.1 million acre-feet of water from the Central Valley Project (CVP). All of the fishery agencies have already warned the BR that there is no water available from the Trinity River side of the system, because it is committed for fishery flows under the 1980 Secretarial Decision by Secretary of the Interior Andrus. Further, because the State of California is currently undergoing a three-year review and modification of water rights (known as the Bay-Delta Water Rights Hearings) in the Sacramento/San Joaquin/Trinity River systems, NMFS believes that the marketing effort is premature and effectively moot. Although the BR is still preparing an Environmental Impact Statement on their marketing plan, the BR has stated that they could not go forward until the State Water Resources Control Board had rendered its final water rights finding.

C. Bank Stabilization

There is a generally recognized fish habitat problem with bank protection projects on the Sacramento River. The fishery agencies have expressed concern over these projects to the Corps of Engineers, especially those using rock riprap, which can seriously affect the survival of juvenile salmon. The COE and the NMFS signed a Letter of Intent on November 1, 1988 to ensure the COE gives full deference to NMFS comments on projects proposed by the COE to ensure that those projects do not adversely affect the winter run.

Currently there are two projects being considered below the Red Bluff Diversion Dam. NMFS believes major modifications will be made to these projects to mitigate or eliminate fishery impacts before they are allowed to proceed, if at all. There are no projects proposed upstream from Red Bluff, which is considered to be the primary winter-run spawning and rearing area. NMFS does not believe that bank protection projects pose a major threat to winter-run chinook salmon in the Sacramento River.

D. GCID Diversions

One commentor expressed concern that the Glenn-Colusa Irrigation District (GCID) was operating with a Corps permit (Corps Section 404 Permit No. 5880) that did not provide fishery protection. On the contrary, we believe that extensive changes have been made in that project and that substantial protective conditions have been included in that Permit. The primary impact, we note occurs with the fall and perhaps late-fall run, since the GCID agricultural pumping operations are normally relatively low (or even concluded) when winter-run juveniles migrate downstream.

As part of the permit condition, the CDFG, GCID, FWS, and NMFS are investigating alternatives to completely eliminate fish passage problems at the diversion. NMFS believes that the COE will likely receive funding to begin restoration of the river elevation in the vicinity of the diversion. This will resolve the major part of the problem. Further, alternative analysis is underway concerning the solution to the fish screen problem at GCID. While NMFS does not believe that this is a major problem for the winter run, we believe that an extensive effort is being made to address the problem.

E. Gravel Extraction

A commentor expressed concern over the impact that gravel mining operations may have on gravel recruitment to spawning areas of the upper Sacramento River. The problem appears to be greatest in Cottonwood Creek. The Corps of Engineers has determined that the projects are outside of their jurisdiction, thus the permitting authority is at the County level. Cottonwood Creek is bounded by Shasta County and Tehama County. The fishery agencies, notably CDFG, have expressed their concern to the County planning agencies. Shasta County has passed a restrictive riparian habitat and gravel mining ordinance that forbids new mining in Cottonwood Creek, but Tehama County is continuing to permit mining on its side of the Creek. NMFS and the CDFG intend to continue to press their case to Tehama County and specifically alert them as to the crucial role that gravel recruitment plays with the winter run. Nevertheless, because it is local agency, it is not likely that a Section 7 consultation, pursuant to an ESA listing, would be able to provide any additional protection.

For completeness of the record and to answer other criticisms of the Ten Point Plan, the following is a brief update of the status of each of the points in the Ten Point Plan.

1. Raise RBDD Gates from December 1 to April 1

The purpose of raising the gates at RBDD from December 1 to April 1 is to reduce the blockage of returning adult winter run and the loss of outmigrating juvenile salmon during the period. One commentor expressed concern that, although use of this technique during the past two seasons made a positive contribution, the BR's commitment was not binding and the early lowering of the gates in February 1988 is an example of the BR's stronger commitment to irrigation.

NMFS believes that, although the commitment is not binding, the BR is committed to maximizing passage of winter-run chinook past the RBDD. The Cooperative Agreement, signed May 20, 1988, contains a mechanism for consultation and coordination between the NMFS and BR before decisions are made to lower to RBDD gates early. The Cooperative Agreement also extends the BR's commitment to raising the gates during the winter for four years. See section on Listing Criteria below for further discussion.

2. Develop Winter-Run Chinook Salmon Propagation Program at Coleman National Fish Hatchery (NFH)

Artificial propagation at Coleman NFH is to be used as a means to provide protection from the catastrophic effects of droughts or an El Niño event as well a means to speed the rate of recovery of the winter-run salmon. One commentor expressed concerns that Coleman NFH had neither the funding nor a comprehensive hatchery propagation plan.

The FWS is developing a hatchery culture program that would ultimately contribute twenty thousand adult winter-run chinook salmon. When fully implemented, the FWS' winter-run culture program will have the following capabilities: capture adult fish and transport to holding facilities, hold sufficient adult winter-run chinook salmon so that 1,800 adults survive to spawning, take and incubate up to 1.89 million eggs, and rear sufficient juvenile for release of 1.5 million smolts.

Mortality of adult fish being held for spawning has been a problem, with high temperature and disease being important sources of mortality. The FWS is currently constructing facilities for holding and spawning winter-run adults. This facility includes deep dark holding ponds, an insulated spawning building, water chillers, and adequate supply of CVP power to run the chillers. Construction will be complete in December of 1988—in time to take eggs from the next year's winter-run chinook spawning run. The FWS is presently developing the required Environmental Analysis for the complete Winter-run Propagation Program; the document should be released this winter.

Until the FWS secures full funding to implement the Coleman Station Development Plan, the FWS' short term plan is to spawn 900 adults, take about 925,000 eggs and rear for release about

500,000 smolts annually. The FWS will begin to trap and spawn adults and rear juvenile winter run during 1989.

3. Restore Spawning Habitat in the Redding Area

Severe degradation of much of the present winter-run salmon spwaning area downstream from Keswick Dam has been caused by loss of gravel recruitment from above Keswick Dam. Spawning riffle restoration is needed in order to increase natural reproduction to desirable levels. Until last year, plans for gravel restoration of this area were fairly general and one of the commentors was concerned that no active restoration was underway.

Active restoration is underway. The BR and CDFG are cooperating to improve salmon spawning habitat between the Anderson-Cottonwood Irrigation District and Keswick dams. The BR has provided $250,000 to contract to CDFG for placement of approximately 16,000 cubic yards of spawning grave (sorted one to four inch diameter) into the river. This spawning grave[illegible]oration project will be completed prior to the 1989 winter-run spawning season.

4. Develop Measures to Control Squawfish at RBDD

Sacramento River squawfish are a major predator on juvenile fall-run salmon in the upper Sacramento River. Data are lacking relative to the effect of squawfish predation on juvenile winter-run salmon which pass RBDD in the fall, but is assumed to be a factor. One commentor stated that there had been no real progress in squawfish control at RBDD.

NMFS has conducted a survey to determine the feasibility of commercial harvest and marketing of squawfish as a means of controlling the squawfish population. Indications were that a small fishery was feasible and that a viable commercial market was available. NMFS awarded a Saltonstall-Kennedy Grant to an individual in the Red Bluff area to develop such a small fishery.

During one of the regularly scheduled Winter-run Restoration Team meetings, the team discussed the concerns of some members that squawfish and also a native species and squawfish reduction measures should not be implemented before a specific predation problem was documented. As a result, NMFS has entered into a contract with the FWS to conduct an initial survey to document the presence or extent of the squawfish predation problem. This work is scheduled to be completed in March 1989.

5. Restrict In-River Fishery

NMFS concluded, in its initial consideration of the Petition to List, that ocean commercial and recreational harvests did not contribute to the decline of the winter-run stock and that eliminating these fisheries would not substantially aid in winter-run restoration.

Nevertheless, the California Fish and Game Commission instituted a limited annual quota of 175 winter-run chinook to be taken in the Sacramento River recreational fishery. In 1987, the first year of the annual quote, only 37 winter run were caught; in 1988, 90 were taken.

NMFS has acknowledged that salmon tagging data documenting the impacts of harvest on winter-run stocks were limited. NMFS has funded the CDFG to implant coded wire tags in the juvenile winter run that are produced by the FWS' hatchery program to collect information on migration patterns of winter-run salmon in the ocean and the Bay-Delta. This information should help NMFS decide whether additional management of the recreational fishery is warranted.

6. Develop Water Temperature Control for Warm Water Years

Existing water demands have resulted in releases from the Shasta-Keswick Dam complex of high temperature water during the summer and fall spawning periods for salmon which have caused serious morality, especially to the winter and spring runs. The releases of warm water during the summer and fall occur primarily during years of low precipitation and when storage in Shasta Reservoir is low. As more and more water is being exported from the system, these warm temperature conditions are occurring more frequently than in the past. Although substantial progress has occurred, one commentor was concerned that only incomplete and temporary solutions are being considered.

The California Water Quality Control Plan for Sacramento River, adopted by the California Regional Water Quality Control Board (Regional Board) in 1975, contains specific temperature objectives for anadromous fish in the upper Sacramento River. The Regional Board, reacting to concerns the Shasta Unit of the CVP was exceeding these objectives, set enforceable waste discharge temperature standards for the Shasta/Trinity Division of the CVP in March, 1988 (Order No. 88-043). These standards call for maintaining 56°F downstream from Keswick to RBDD.

Reacting to fishery agency concerns about temperature impacts and to the recent Regional Board temperature standards, the BR conducted a Value Engineering Study in September 1987 to investigate and develop alternative methods of controlling the temperature of Shasta releases. After evaluating a wide variety of structural alternatives, including multi-level dam outlets, and operational alternatives, the study concluded that a design, known as a Temperature Control Curtain would be the most effective solution. The Temperature Curtain will be designed and constructed as the BR's permanent engineered solution to the problem. The BR has committed to having the structure in place in time for the 1990 winter run. On August 11, 1988, President Reagan signed a Drought Relief Bill which included $5.5 million for construction of the temperature control curtain.

In addition, the BR implemented interim operational measures in 1987 and 1988 to control upper river temperatures utilizing cool, low-level releases from Shasta Reservoir. See the Listing Criteria section for further discussion.

7. Correct Spring Creek Pollution Problem

Acid mine wastes, containing toxic concentrations of heavy metals, are released from the abandoned Iron Mountain Mines site on Spring Creek, a tributary to the upper Sacramento River. These wastes are stored by the BR in the Spring Creek Debris Dam Reservoir, where they are released to the river when sufficient dilution flows occur. BR evaluated the problem and submitted its report to the Environmental Protection Agency (EPA). EPA placed the site on its Superfund Priority List; they have completed a Remedial Investigation/Fleasibility Study of the problem. EPA has identified a combination of source control, treatment, and water management as the most cost effective remedial solution. One commentor believed that there was no evidence of a commitment by EPA to successfully correct the Iron Mountain Mine pollution problem.

The EPA and the BR have drafted an Agreement to implement actions to resolve the Spring Creek toxicity. Under this Agreement the EPA will fund activities through its Superfund Program and will be the managing agency. The BR will be responsible for design and construction of the water management components that protect most of the Spring Creek Basin drainage from being contaminated and will reduce the possibility of a spill from Spring Creek Reservoir. Implementation of this Plan is

estimated to cost about $70 million. After extensive legal battles, EPA has gained access to the mine property and they recently conducted on-site testing of materials. They have spent $2 million this year to cap exposed tailings piles and have scheduled $1 million to conduct mine rehabilitation next fiscal year. The full EPA Superfund program is underway and on schedule.

In addition, the Regional Board, CDFG, and the BR have undertaken an emergency action program this summer/fall to treat concentrated mine effluent and disposed of the toxic sludge. The purpose of this emergency action is to avoid or minimize impacts that may occur this year, due to the drought and the problem of obtaining dilution flows.

8. Correct Problem at the Anderson-Cottonwood Irrigation District Dam (ACID)

There are two fishery problems associated with the ACID dam, 1) river flow reductions necessary to install and remove ACID dam flashboards, and 2) fish passage with the existing fish ladder is often ineffictive when the dam is in place. Although problems persist, we believe that CDFG and BR have made progress in addressing the problem and that the degree of the impact has been reduced. NMFS has recommended that, as an interim solution to the problem, the BR and ACID should amend their Contract to meet CDFG's specifications to limit the rate of low change allowed and forbid reduction below 6,000 cfs. See Listing Criteria for further discussion.

9. Correct Stilling Basin Problem at Keswick Dam

Adult winter-run chinook have become entrapped in Keswick Dam stilling basin following spills. In the past, the BR, FWS, and CDFG would cooperate to release fish that were caught in the stilling basin. However, after cooperatively evaluating alternatives with the fishery agencies, the BR recently made permanent modifications to the existing ladder facility. We believe that this is no longer a problem affecting winter-run chinook

10. Continue to Expand Studies on Winter-Run Chinook Salmon

One commentor expressed concern that only limited or token progress has been made towards gathering the additional winter-run data needed to develop a comprehensive restoration program. NMFS acknowledges that, over the past two years, priority has been given to physically reducing known adverse impacts which required immediate attention. However, NMFS, along with its sister fishery agencies, have developed a program of research studies that we believe are needed for complete restoration and effective management. This plan of research was presented to the Winter-run Chinook Salmon Restoration Team and the fishery agencies are beginning to program these studies into their budgets. Some studies have already commenced—for example: NMFS has funded an ongoing CDFG study to evaluate the pattern of migration and the extent of recreational and commercial harvest; conducted a survey to determine the feasibility of commercial harvest and marketing of squawfish and has funded a FWS survey to document the presence or extent of the squawfish predation problem, in addition to funding helicopter surveys of the winter-run spawning run to refine our knowledge about the distribution of spawning redds in the river and timing of spawning. The FWS and CDFG have conducted diving surveys to determine the locations of preferred spawning and rearing areas in the upper Sacramento River.

Current Winter-Run Status

The 1988 Sacramento winter-run spawning run was about the same size as in recent years. Based on counts at the Red Bluff Diversion Dam (RBDD) fish ladders, approximately 2,085 fish reached the winter-run spawning grounds above the RBDD. Only 90 in-river sport caught fish were taken out of a quota of 175 in 1988.

During the course of counting and sampling the winter-run chinook passing RBDD in 1988, it was determined that 36 percent of the run consisted of sexually precocious two-year old males (known as jacks); winter run normally mature sexually at three years of age. The winter run has historically (since 1967) averaged about 25 percent jacks. In some salmonid populations scientists have documented a proportional relationship between the number of jacks and the number of three-year olds returning the following year. Although no specific data exist for the winter run, such an assumption could lead one to expect a somewhat larger return of spawning 3-year-olds in 1989. The latest estimates of winter-run chinook salmon migrating upstream past RBDD, based on data developed by CDFG is:

Year	Number
1967	57,306
1968	84,414
1969	117,808
1970	40,409
1971	53,089
1972	37,133
1973	24,079
1974	21,897
1975	23,430
1976	35,096
1977	17,214
1978	24,862
1979	2,364
1980	1,156
1981	20,041
1982	1,242
1983	1,831
1984	2,663
1985	3,962
1986	2,422
1987	2,236
1988	2,085

Review of the Listing Criteria

Section 4(a)(1) of the ESA specifies five criteria to be evaluated in reviewing the status of a species or population proposed for listing. These criteria were reviewed in the first Notice of Determination (52 FR 6041). That review is incorporated into this document by reference. Each of the listing criteria are reviewed in light of information that has become available to the agency since it made its decision not to list the winter run.

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

This is the listing factor associated with the most adverse impacts to the winter run. The major elements that have contributed to the degradation of winter-run habitat are features of the Federal Central Valley Project. The RBDD blocks or impedes passage of winter-run chinook to suitable spawning habitat, essentially all of which is above the RBDD. Operation of the Shasta/Keswick dams contributes to adverse water temperatures in the reach of the Sacramento River that otherwise contains suitable spawning habitat. This is particularly a problem during drought years. Several other activities are ongoing that have lesser impacts on the winter run.

Red Bluff Diversion Dam. At the recommendation of the fishery resource agencies, the BR agreed to an experiemental period during which the gates at RBDD would be raised (opened) between December 1 and April 1, with the caveat that the gates may have to be lowered (closed) to deliver water for irrigation or maintenance of canals. The period of migration of the four runs past RBDD has been characterized by averaging the cumulative number of fish that passed RBDD during the years 1971 through 1982. Based on these data,

raising the gates through April 1 should allow about 66% of the winter run free access to its spawning habitat.

From December 1 to April 1, 1986–87, the gates were raised for a period of 94 days. The FWS conducted a study of fish passage during the period the gates were opened. The results of that study showed that 11 radio tagged salmon were delayed an average of 3.19 hours or 28 times less than when the gates were down. Also none of the tagged salmon that approached the dam, while the gates were raised, backed downstream away for the dam. Previous studies showed over half of the salmon tagged backed downstream after encountering the dam.

Further, data from an earlier year (1985) (with the RBDD gates closed in the winter) showed about 30 percent of the winter-run spawning took place downstream from RBDD, where temperatures were considered to be lethal for incubating eggs. During the 1986–87 winter, approximately 95 percent spawned above RBDD, indicating the relative effectiveness of raising the RBDD gates in improving winter-run passage.

During the winter of 1987–88, the gates were raised for a period of 77 days. Gates were lowered early in 1988 because of water demands serviced by the Tehama-Colusa Canal. The Cooperative Agreement (at Section II.A.8) signed May 20, 1988, minimizes this problem, because it establishes mechanisms for consultation and coordination between the BR and NMFS before decisison to lower the gates early are made. This will ensure other options for meeting irrigation demands are considered prior to lowering the gates at RBDD. The Cooperative Agreement also extends the period of experimentation for four additional years. This will allow adequate time to evaluate other fish passage alternatives that might be available.

The FWS completed its study on fish passage problems in September 1988. The BR is evaluating the FWS report and plans to propose recommendations for solving the fish passage problem by September 1989. The Central Valley Task Force (CVTF) provides a forum for discussing and selecting alternative solutions to protest the winter run. NMFS has appointed a Winter-Run Chinook Salmon Restoration Team, comprising agency and independent biologists most familiar with the winter run, to provide expert advice on the restoration actions. NMFS intends to use these forums as well as the Cooperative Agreement to ensure the success of winter-run passage at the RBDD. NMFS believes these mechanisms provide ample opportunity for consultation and protection of the winter run. The recent record of operation of RBDD by the BR and the mechanisms for coordination with the NMFS on changes in future operations ensures that the operation of RBDD by the BR will substantially reduce the impact on the winter-run migration.

The Tehama-Colusa Canal (TCC), which diverts Sacramento River water at RBDD, is protected by an inefficient fish screening facility. Consequently, outmigrating juvenile salmon and fry are entrained and lost. Although the effect of this mortality on the winter-run population has not been specifically quantified, studies by the FWS indicate that an estimated 3.9 percent of the outmigrating juvenile winter run are lost at these screens. As part of the BR's efforts to improve operation of the RBDD and the TCC, and to mitigate impacts to fish populations, the BR plans to construct a new fish screen and bypass system at the Tehama-Colusa canal. These new facilities will afford anadromous fish the maximum protection from entrainment at the TCC. The design and placement of the new fish screens was developed in consultation with the NMFS, FWS, and the CDFG. These screens are a state-of-the-art design and should minimize the effect of entrainment on winter run. The construction schedule is designed to "phase in" the new screens so that there will be fish protection at all times. Work on the new screens began in August 1988 and will be complete in fall 1990.

Shasta/Keswick Dams. Equally as important as the problems at RBDD are temperature problems in the upper Sacramento River. During the summer months, when winter-run eggs and fry are developing, water temperatures below RBDD exceed lethal temperatures in most years (Hallock and Fisher 1985, CDFG, Anadromous Fish Branch Office Report 28 pp.). During drought conditions lethal temperatures have occurred above Red Bluff as well. River temperatures of 56 °F are safe for spawning and incubation; 57.5 °F is considered to be the lower threshold for temperature induced mortality; and 62 °F is believed to produce 100 percent mortality. The design of the Shasta Dam spill gates and intake to the powerhouse penstocks contributes to this problem. The present intake design does not provide a mechanism for releasing cold, deep water during the summer without reducing hydropower generation. Therefore, warm surface water is withdrawn for power generation and released into the river where it adversely affects spawning habitat.

In May 1987, the fishery agencies expressed to BR their concern over predicted lethal temperatures above RBDD and estimates of substantial mortality of the 1987 winter-run year class. The BR responded with a water management strategy to lower river temperatures that included opening, for the first time since the Dam was constructed, a low-level outlet in Shasta Dam that draws deep, cold water. This low-level release contributed to maintaining an average river temperature of 57.5 °F over the period August 26, 1987 to September 10, 1987. NMFS believes that action should have salvaged almost all of the winter-run spawn. Complete assessment of the actual benefits of this and other actions taken to protect the 1987 winter run must wait until 1990, when the benefited year class will return from sea as sexually mature spawning adults; an assessment of the impact of the elevated temperatures cannot be made until then.

In March of 1988, the California Regional Water Quality Control Board issued Order No. 88–043, imposing waste discharge requirements (including temperature) on the BR's Shasta/Trinity River Division operation. The Order prescribes maintenance of Sacramento River temperatures upstream from the Red Bluff Diversion Dam at not more than 56 °F to protect fishery resources. This is the first time that specific, enforceable temperature standards have been imposed. The Order cited evidence that future BR Central Valley Project operations would cause water temperatures of Shasta Dam discharges to increase and "* * * typically exceed 56 °F" during the period of winter-run spawning and rearing. The BR opposed the order and is currently appealing the decision on jurisdictional grounds; they, instead, urged the use of non-binding, voluntary agreements to achieve similar ends.

With the drought conditions persisting into 1988, the BR, at the April 21, 1988 meeting of the CVTF, reported that unaltered operation of the Shasta/Trinity Division could produce temperatures at Keswick Dam of approximately 53 °F in July, 63 °F in August, 61 °F in September and 57 °F in October. The CVTF appointed an interagency task group (comprising CDFG, FWS, NMFS, BR, Western Area Power Administration, Regional Water Resources Control Board, California Department of Water Resources, and the U.S. Army Corps of Engineers) to develop a water management strategy that would maintain optimal temperatures in the river for incubation and survival of winter-run eggs and fry.

The task group presented six alternatives to the CVTF with a consensus recommendation for an alternative that, within the physical capabilities of the BR, maximized winter-run survival by ensuring the continuous availability of cold water through the spawning and incubation periods. The CVTF approved the recommended alternative at its July 15, 1988 meeting and the BR is committed to operating according to this plan.

The BR commenced cool water Shasta releases ten days ahead of its planned schedule, because monitoring programs showed river temperatures were rising faster than predicted. Further, they assured the fishery agencies that the BR would continue to alter its operations, where possible, to maintain safe river temperatures in areas where winter-run eggs and larvae were rearing. In fact, the BR fulfilled its commitment and maintained modified operations and suitable river temperatures through the end of September when all winter run were emerged from the gravel and dispersed to rearing habitat.

The use of low-level, cool water releases to protect the winter run was not without cost. Because such releases are below the powerhouse intake level, the BR must forego hydroelectric power generation. The task group estimated 1987 winter-run operations entailed a foregone power cost of $870,000; in 1988, temperature controls resulted in a foregone power cost nearly double (about $4.3 million) the $1.75 to $2.45 million estimated by the CVTF task group, because low level releases had to be initiated earlier than had been anticipated. While such economic considerations cannot enter into the NMFS' listing evaluation, they do indicate the extent of the BR's commitment to employing cooperative programs for protecting the winter run during the critical months of the summer.

Finally, the BR has committed to constructing a permanent temperature control device at Shasta Dam that will allow cold bottom water to be drawn into the power penstocks so the river temperatures can be controlled without foregoing power production. Funding for the curtain is secure and design of the device has begun. Installation is expected by June of 1990.

At the October 14, 1988 meeting of the Winter-Run Restoration Team, the team expressed a consensus opinion that the BR's implementation of the CVTF task group's efforts addressed the threat presented by 1988 drought conditions in the Sacramento Basin and saved the run from a major natural environmental insult. NMFS believes these mitigating actions approximate and probably exceed what could have been accomplished pursuant to a formal consultation conducted under Section 7 of the ESA

Anderson Cottonwood Irrigation District Diversion Dam

The Anderson-Cottonwood Irrigation District (ACID) Diversion Dam presents two problems to salmonids in the upper Sacramento River. It impedes upstream migration when the dam is operational and it contributes to flow modifications that can cause dewatered spawning nests (redds). While these problems contribute to the winter run's condition, the NMFS points out that these problems existed annually from 1946 when Shasta Dam was built. Whereas winter-run population estimates are not readily available for the years preceding the construction of the RBDD, counts at RBDD in late 1960s indicate the run was large despite problems created by the ACID Diversion Dam.

Nevertheless, measures are in place that address these problems. The ACID is prohibited, for safety reasons, from installing the flashboards between December 1 and March 15. Much like the fish passage experiment at the RBDD, this restriction allows about 50 percent of the winter run to migrate upstream of the ACID Dam unimpeded. Unlike the RBDD though, there is suitable spawning habitat below the ACID Dam. In addition, there is some preliminary indication that the ACID Dam has a beneficial impact because of its tendency to retain spawning gravel in the prime spawning area immediately upstream from ACID.

The problem of stranded redds (discussed in the Notice of Determination (52 FR 6041)) is caused largely by the need to change the configuration of the ACID Dam to accommodate high flow releases from Keswick Dam. In 1987, ACID was able to modify their operational criteria to minimize the period when ACID Dam modification would be required. These improved operating procedures are likely to persist while the CDFG, BR, and ACID research methods to eliminate the problem entirely. The NMFS believes that these ongoing efforts substantially reduce any short-term threats to the winter run created by the operation of the ACID Dam.

Hydroelectric Projects. The Federal Energy Regulatory Commission (FERC) is considering licensing applications for two hydroelectric projects which, if authorized, would adversely affect the winter run. These are the Lake Redding Project and the Lake Red Bluff Project, which was recently reactivated by the FERC. If built, these projects would result in significant loss of winter-run habitat and aggravated fish passage problems. However, Section 18 of the Federal Power Act (16 U.S.C. 791 *et seq.*) grants the NMFS authority to prescribe standards for fish passage. These standards must be met before the projects can be authorized. Consequently, the NMFS believes that its authority under section 18 is sufficient to ensure no new threats to the winter-run population will be allowed to develop as a result of hydroelectric projects on the upper Sacramento River.

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Use of the winter run by commercial and recreational fishermen has not changed since the original determination to not list the population as threatened. The best information available indicates that the catch in the ocean troll fishery and the ocean recreational fishery is not substantial. The recreational fishery in the Sacramento River is limited by the California Fish and Game Commission to less than 175 fish per year. The actual catches in 1987 and 1988 were well below that limit. As stated in the original Notice of Determination, NMFS had concluded that harvests have not been instrumental in the decline of the winter run and that elimination of harvests would not significantly aid the restoration of the run.

Point 10 of the Ten-Point Restoration Plan called for more information to be gathered on the winter run. The NMFS, FWS, and CDFG have proposed research projects which would provide key information on this run. One of the research projects that the agencies are currently attempting to fund would update and refine the estimates of sport and commercial harvest.

3. Disease or Predation

Squawfish was identified in the status review as the piscine predator with the greatest potential for interfering with the rebuilding of the winter-run population. In 1987, NMFS assisted in an experimental fishing operation and test marketing of squawfish which demonstrated that a commercial fishery for squawfish is feasible. NMFS has contracted with FWS to document the extent of the influence of squawfish predation on the winter-run population. Another study will follow to determine the impact of various harvest levels on the squawfish population. NMFS will fund further development of a demonstration commercial squawfish

fishery through a Saltonstall-Kennedy grant during 1988–89.

4. The Inadequacy of Existing Regulatory Mechanisms

Relevant laws that comprise the existing regulatory mechanisms were listed in the Notice of Determination (52 FR 6041) and described as providing adequate mechanisms for restoring the winter run in the Sacramento River. However, the decline in the size of the run since the late 1960s indicates that these regulatory mechanisms were not applied effectively with respect to the winter run. NMFS now believes that with the Cooperative Agreement among the NMFS, BR, FWS, and CDFG and the Letter of Intent between NMFS and the COE in place, these mechanisms will be used and are adequate to provide for the restoration of the run. The signatory agencies have also committed to better coordinating the use of their individual authorities to foster the restoration of the run. This improved coordination is expected to increase the effectiveness of the regulatory mechanisms.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The impact of manmade factors is addressed under criterion 1. Natural factors of greatest concern are periodic droughts and the oceanographic phenomenon known as El Niño. The 1976–77 drought severely reduced the size of two consecutive cohorts leaving the 1978 brood as the only large spawning cohort. The strong El Niño event during 1982–83 contributed to the decline of the last strong cohort. The only measure to mitigate the profound impact of a strong El Niño is hatchery rearing to increase smolt production from the returning spawners that survive the poor ocean conditions.

Drought conditions, such as those that existed during the past two dry years in Northern California, most directly threaten the winter run by causing elevated water temperatures on the spawning grounds. This problem was resolved using interim measures in 1987 and 1988. If drought conditions persist into 1989 a similar drought response strategy will be developed and implemented. Beginning in 1990, the installation of a temperature control curtain will provide a longer-term solution. In addition, the FWS is preparing to raise winter run at the Coleman National Fish Hatchery. If the techniques for holding and spawning winter run in the hatchery can be perfected, that program will provide an extra measure of protection against drought and high water temperatures. NMFS believes that these actions will mitigate the losses to the winter-run population due to periodic drought.

Conclusions

For the reasons presented in the discussion above, NMFS concludes the following:

1. The status of the winter-run population has not deteriorated since the original determination by NMFS not to list the run as threatened.

2. The comments received during the reconsideration period did not provide substantial new information that would persuade NMFS to list this species.

3. There have been substantial commitments by State and Federal agencies to implement the Ten Point Restoration Plan and several actions identified in that Plan are underway.

NMFS reaffirms its determination (under sections 4 (a)(1) and (b)(1)(A) of the ESA) that the actions of State and Federal agencies to restore the winter run of chinook salmon population and its habitat adequately address the threats to the population and that the population is not likely to become endangered throughout all or a significant portion of its range in the foreseeable future (i.e. the winter run is not a threatened species). Therefore, listing is not appropriate under the current conditions.

Dated: December 6, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88–28380 Filed 12–8–88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish Plan Monitoring Team will convene a public meeting on December 19, 1988, from 1 p.m. to 3:30 p.m., at the Honolulu Laboratory, National Marine Fisheries Service (NMFS), 2570 Dole Street, Honolulu, HI, to review the Northwestern Hawaiian Islands (NWHI) bottomfish voluntary logbood results, i.e. Kurt Kawamoto's comments on a voluntary NWHI bottomfish logbook and recommendations for improvement of the program's data results and usefulness. The Team will also plan for production of the 1988 Annual Report, i.e. review Team members' responsibilities for respective modules and review the draft timeable to produce the final report by June 31, 1989. Other appropriate Team business will also be discussed.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: December 5, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–28358 Filed 12–8–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 9, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 17, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 22688) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1989: Mailroom Service, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-28356 Filed 12-8-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 commodities and a military resale commodity to be produced by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: January 9, 1989.

ADDRESS: Committee to Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and military resale commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and military resale commodity to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Mirror, Glass, 7105-00-133-4846, 7105-00-496-9866

Military Resale Item No. and Name

No. 906 Broom, Push, 18", Indoor/Outdoor.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-28357 Filed 12-8-88; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 89-1-87JB]

1987 Jukebox Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of controversy; notice of commencement of proceedings; notice of partial distribution.

SUMMARY: Notice is given that a controversy exists regarding the distribution of the copyright royalties from the 1987 jukebox royalty fund. Accordingly, the Tribunal commences the 1987 jukebox distribution proceeding, and announces a partial distribution of 90% of the fund.

DATE: The effective date of the controversy is December 15, 1988. The date of the partial distribution shall be December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: Section 301.72(b) of the Tribunal's rules require that after October 1 of each year, the Tribunal shall ascertain whether a controversy exists with regard to the distribution of jukebox royalties to the copyright owner-claimants and to publish notice of its findings in the **Federal Register**.

The Tribunal has been informed that the American Society of Composers, Authors and Publishers (ASCAP), and Broadcast Music, Inc. (BMI) have reached a settlement and together they claim 100% of the 1987 jukebox royalty fund. Asociacion de Compositores y Editores de Musica Latinoamericana (ACEMLA) claims between 5% and 8% of the fund. SESAC, Inc. (SESAC), whose motion for acceptance of a late-filed claim is still pending with the Tribunal, has claimed 7% of the fund.

Accordingly, the Tribunal has determined that a controversy exists, and notice is hereby given that the 1987 jukebox royalty distribution proceeding is commenced, effective December 15, 1988. The structure of the 1987 proceeding will be announced in an order to the claimants at a later date.

ASCAP and BMI have moved for a partial distribution of 99% of the 1987 jukebox royalty fund pursuant to 17 U.S.C. 116(c) which provides for distribution of those portions of the fund that are not in controversy. ASCAP and BMI base their request on their belief that SESAC is not properly a party to the 1987 jukebox distribution proceeding, and that retention of 1% of the fund is sufficient to satisfy the claim of ACEMLA. ASCAP and BMI further state that in the event SESAC is admitted into the proceeding, they believe that retention of 5% of the fund by the Tribunal is sufficient to satisfy both the claims of SESAC and ACEMLA.

SESAC disagrees with ASCAP and BMI and states that the Tribunal should retain 7% to cover the controversy with SESAC and any additional amount the Tribunal considers necessary to cover the controversy with ACEMLA.

As stated above, the Tribunal has not acted on SESAC's motion for acceptance of its late-filed claim. Therefore, the Tribunal, while agreeing with ASCAP and BMI that the mere assertion of percentage claims by parties do not, in and of themselves, describe the true extent of the controversy, has determined nonetheless, that a retention of 10% of the fund is prudent under these circumstances. Accordingly, the Tribunal orders a partial distribution to ASCAP and BMI collectively of 90% of the fund to take place on December 15, 1988.

Dated: December 5, 1988.

Edward W. Ray,

Chairman.

[FR Doc. 88-28324 Filed 12-8-88; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 4-5 January 1989.

Time: 0800-1600 each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its third meeting. Briefings will be given by the USAF Safety Office, National Transportation Safety Board, Army Safety Action Team Chairman, Marine Corps Safety Office, and Canadian military

safety personnel. Past, current and planned actions will be discussed in accordance with the Terms of Reference. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–28365 Filed 12–8–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by December 30, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting and/or Recordkeeping burden; and (6) abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 6, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office Of Elementary and Secondary Education

Type of Review: Expedited.

Title: Application For The Magnet Schools Assistance Program.

Abstract: This application is used by local educational agencies to apply for magnet schools projects. The department needs this information to make awards and insure that proposed projects meet the requirements of the statute and regulations. This application contains the following Standard Forms: The SF424, Application for Federal Assistance and the SF424A, Budget Information- Non-Construction Programs.

Additional Information: The Magnet Schools Program is requesting expedited review in order to comply with the statutory deadline which requires that the program awards be made by June 30, 1989. In order to meet this deadline, the program must have sufficient time to receive information from the applicants.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 150.

Burden Hours: 3,750.

Recordkeeping:

Recordkeepers: 0.

Burden Hours: 0.

BILLING CODE 4000–01–M

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Form Approved,
OMB No.
Form Expires

DRAFT

U.S. DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

MAGNET SCHOOLS ASSISTANCE PROGRAM

INSTRUCTIONS FOR APPLICATION FOR FEDERAL ASSISTANCE
(Nonconstruction Program)

This form shall be used to apply for Federal assistance for projects authorized by Title III of the Elementary and Secondary Education Act of 1965.

Submit the original and two copies of the application to:

U.S. Department of Education
Application Control Center
Attention: Magnet Schools
Assistance Program
Washington, D.C. 20202

No grant will be awarded unless a completed application has been filed.

(20 U.S.C. 3021-3032)

PART I

Federal Assistance Form (424)

Part I consists of the standard face page for Federal financial assistance and the instructions for completing the standard face page.

The general instructions for completing this form begin on page F1 of this application package. Use those instructions except for the following items:

1. Preprinted.
9. Preprinted.
10. Preprinted.

PART II

Budget Information (424A)

Use the standard Instructions to complete the forms. These instructions begin on page F8 of this application package.

PART III

Program Narrative

Include information that addresses sections 280.20, 280.32 and each of the selection criteria in section 280.31 of the Magnet Schools Assistance Program Rules and Regulations.

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PART IV

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Other Information

1. Desegregation Plan:

Complete the Desegregation Plan Information Sheet on page F09.

2. Supplemental Data:

Complete the Supplemental Data Sheet on page F10 of the application package, as follows:

a. Recentness of implementation of the approved desegregationn plan

Indicate the date of implementation of the desegregation plan or modification, and provide the appropriate and supporting information (which may include reference to the desegregation plan attached to the application).

b. Involvement of minority group children

Complete both data items.

For the first data item, provide the total number of minority group children in the applicant's schools.

For the second data item provide the number of minority group children involved in the applicant's approved desegregation plan.

c. Need for assistance

Complete either of the two data items, or both items.

An applicant that submits a narrative description of "Need for assistance" should limit that narrative to no more than two pages.

If an applicant completes both data items, the data item that receives the higher score will be used to award the points for the special consideration described in section 280.32(d).

d. Degree of achievement

In addition to the Supplemental Data Sheet, provide a narrative of not more than one page addressing the special consideration for "Degree of achievement" described in section 280.32(e) of the Magnet Schools Assistance Program Rules and Regulations.

PART V

Assurances and Certification

Pages _____ thru _____

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MAGNET SCHOOLS ASSISTANCE PROGRAM
DESEGREGATION PLAN INFORMATION

Check the box next to item "a" or "b", as appropriate, and attach the requested information.

☐ a. If the applicant has a desegregation plan that 1) includes the magnet school(s) for which it is requesting assistance; and 2) has been previously approved by the Secretary of Education, a court, or a State agency or official of competent jurisdiction, attach a copy of that desegregation plan.

NOTE: If the applicant is implementing a previously approved plan that does not include the magnet school(s) for which assistance is requested, the plan must be modified to include the new magnet school(s) component. The applicant must obtain approval of the new magnet school(s) component, or any other modification to its desegregation plan, from the court, agency, or official that originally approved the plan.

☐ b. If the applicant does not have an approved desegregation plan, attach the following information:

1) a copy of the plan that the applicant is submitting for approval; and

2) a copy of the school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement the plan upon the award of assistance under the Magnet Schools Assistance Program; and

3) evidence that the plan is a "desegregation" plan as defined in section 280.4(b). In the case of a plan for the reassignment of children or faculty to remedy illegal separation of minority group children or faculty in the schools of the applicant, an example of the type of evidence required is a letter of findings from the Office for Civil Rights. In the case of a plan for the reduction, elimination, or prevention of minority group isolation in one or more of the applicant's schools, such evidence would include enrollment data for the schools involved in the plan that demonstrates the reduction, elimination, or prevention of minority group isolation which has been or would be achieved by the plan.

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MAGNET SCHOOLS ASSISTANCE PROGRAM

SUPPLEMENTAL DATA SHEET

a. Recentness of the implementation of the approved desegregation plan

The desegregation plan attached to this application--

☐ is being submitted for approval to the Office for Civil Rights as adequate under Title VI of the Civil Rights Act of 1964 for the desegregation of minority group children or faculty of the applicant.

☐ is being implemented by the applicant. The implementation date of this desegregation plan or modification is _____. State how the implementation date was determined.

b. Involvement of minority group children

The total number of minority group children in the applicant's schools: _____

The number of minority group children involved in the applicant's approved plan: _____

Describe the method used to determine the number of minority group children involved in the approved plan.

c. Need for assistance

☐ The incremental expense of operating the approved desegregation plan (expressed as a percentage increase in the applicant's operating budget) is ____%, based on desegregation plan expenses in the amount of $_____ and an operating budget of $_____. Describe the basis on which the desegregation plan expenses were calculated or attach a summary of those expenses. Also describe the basis on which the operating budget was calculated or attach a summary of that budget.

☐ Narrative describing the difficulty of effectively carrying out such a plan and program or project for which assistance is sought is attached.

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MAGNET SCHOOLS ASSISTANCE PROGRAM ASSURANCES

In accordance with section 3007 of Title III of the Elementary and Secondary Education Act of 1965, the applicant hereby assures and certifies that it agrees--

(1) to use funds made available under the Magnet Schools Assistance Program for the purposes specified in section 3007 of Title III of the Elementary and Secondary Education Act of 1965;

(2) to employ teachers in the courses of instruction assisted under the Magnet Schools Assistance Program who are certified or licensed by the State to teach the subject matter of the courses of instruction;

(3) that it will not engage in discrimination based upon race, sex, religion, color, national origin or handicap in the hiring, promotion, or assignment of its employees or other personnel for whom it has any administrative responsibility;

(4) that it will not engage in discrimination based on race, sex, religion, color, national origin or handicap in the mandatory assignment of students to its schools or to courses of instruction within its schools expect to carry out the approved plan;

(5) that it will not engage in discrimination based upon race, sex, religion, color, national origin or handicap in designing or operating extracurricular activities for students; and

(6) that it will carry out a high quality educational program that will encourage greater parental decisionmaking and involvement.

* * * * * *

FOR THOSE APPLICANTS THAT HAVE PREVIOUSLY APPROVED DESEGREGATION PLANS ONLY.

The applicant hereby assures and certifies that it is implementing that desegregation plan as approved.

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by December 7, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting and/or Recordkeeping burden; and (6) abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 6, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: Survey on the Use of Research and Development Resources.

Abstract: The findings of this survey will provide information to the Department about the OERI-funded research and development resources that local school districts now use, including the regional education laboratories and about the types of resources they may need in the future.

Additional Information: Expedited review for this submission is requested in order to provide the Secretary with sufficient time to formulate policy based on the data which is being collected in this survey.

Frequency: Non-recurring.

Affected Public: State or local governments.

Reporting Burden:

Responses: 1000.

Burden Hours: 500.

Recordkeeping:

Recordkeepers:

Burden Hours: 0.

BILLING CODE 4000-01-M

DRAFT

National Center for Education Statistics

January 1989

Dear School District Superintendent:

We request your cooperation in completing this questionnaire on school districts' use of research and development (R&D) resources. The survey was requested by the Office of Educational Research and Improvement, U.S. Department of Education.

The attached questionnaire is designed to be completed by the staff member who is most knowledgeable about your district's use of R&D resources. The survey focuses specifically on four organizations from which your district may receive R&D services and products: the Regional Educational Laboratories, National Research and Development Centers, ERIC Clearinghouses, and National Diffusion Network (NDN) Facilitators.

While your participation in this survey is voluntary, your cooperation is needed to make the results of the survey comprehensive, reliable, and timely. The information collected will be presented as aggregated statistics only, with no individually identifying information. The survey has been coordinated with the Council of Chief State School Officers through its Committee for Evaluation and Information Systems (CEIS).

The survey is being conducted by our contractor, Westat, a research firm in Rockville, Maryland, using the Fast Response Survey System (FRSS). According to FRSS practice, Westat will send you a report of the survey findings when they are available.

We estimate that it will take approximately 30 minutes to complete the questionnaire. If you have any comments regarding this estimate or another aspect of this survey, send them to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

We would appreciate your completing the questionnaire and mailing it to the address on the back of the form within two weeks. If you have any questions about the survey, please call Judy Thorne, Westat's Survey Manager, at the toll-free Westat number (800) 937-8281 or Jeffrey Williams, the NCES Survey Manager for FRSS, at (202) 357-6333. Your cooperation is greatly appreciated.

Sincerely,

Emerson J. Elliott
Acting Commissioner

Enclosure

FAST RESPONSE SURVEY SYSTEM (FRSS)

NATIONAL CENTER FOR EDUCATION STATISTICS
U.S. DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20208-5651

Form Approved
OMB No.
App. Exp.

USE OF RESEARCH & DEVELOPMENT RESOURCES

This report is authorized by law (20 U.S.C. 1221e-1). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

This survey seeks information about the use within your school district of R&D resources funded through the Office of Educational Research and Improvement (OERI), of the U.S. Department of Education and what R&D resources your district needs in the future. "R&D" refers to research and/or development that has provided knowledge, guidelines for practice or policy, or information about new developments that can be used to improve schools. R&D resources are services and products that are intended to make R&D generally available and useful in schools. Services include technical assistance, training, literature searches, and responses to inquiries. Products include publications, bulletins, and research reviews that contain R&D findings.

Please indicate here if your district has received assistance from a Chapter 1 Technical Assistance Center (TAC) since the beginning of the school year 1987-88: ☐ Yes ☐ No

This survey excludes R&D that focuses exclusively on Chapter 1. Therefore, in your responses to the questions below, please do not include assistance from a Chapter 1 TAC.

1. Listed below are a number of types of OERI-funded organizations which may have provided R&D services or products, directly or indirectly, during the past 2 school years (that is, since the beginning of school year 1987-88).

   A: If you do not recognize, or are not sure of the identity of one of these types of organizations, indicate "Don't Recognize" (DR) under Column A. If you circle DR, please skip to the next organization.

   B: Estimate the frequency of use within your district of services and/or products from each type of organization since the beginning of school year 1987-88 by circling the number which best describes that use, as follows: DK = don't know or not sure whether we made any use of services/products from this type of organization, 1 = infrequent or no use, 2 = somewhat frequent use; 3 = very frequent use throughout the year. NOTE: Your district may have received products or services from these organizations directly or indirectly (through state education agencies or professional organizations, for example). Please include both types of delivery in your answer.

   C: Indicate the type of resources received, by circling all appropriate letters, as follows: S = services were received, P = products were received.

ORGANIZATIONS	A. DO NOT RECOGNIZE	B. FREQUENCY OF USE	C. TYPE OF RESOURCES RECEIVED
a. Regional Educational Laboratories	DR	DK 1 2 3	S P
b. National Research and Development Centers	DR	DK 1 2 3	S P
c. ERIC (Educational Resources Information Center) Clearinghouses	DR	DK 1 2 3	S P
d. NDN (National Diffusion Network) Facilitators	DR	DK 1 2 3	S P

2. Listed below are a number of R&D topics about which you may have received products or services.

   A: Indicate whether, since the beginning of school year 1987-88, your district has received R&D services or products dealing with that topic, whether from the above or other organizations (e.g., SEAs) but excluding Chapter 1 TACs. As above, S = services were received, P = products were received.

   B: Indicate if your district will need products or services on that topic in the future, whether from the above or other organizations: S = services are needed; P = products are needed; N = neither are needed.

R&D TOPICS	A. HAVE RECEIVED	B. WILL NEED IN FUTURE:
a. Student Populations (at-risk students, students with limited English proficiency, handicapped, urban students, rural students, gifted students, etc.)	S P	S P N
b. Staffing and Staff Development (teacher/administrative incentives, evaluation, professional development, leadership, teacher testing, collective bargaining, etc.)	S P	S P N
c. Curriculum (content areas, higher order thinking skills, course requirements for graduation, etc.)	S P	S P N
d. School and Classroom Management (teaching/learning strategies, educational technology, classroom procedures, discipline, student testing and evaluation, etc.)	S P	S P N
e. Student Testing and Evaluation (for placement, school-wide assessment, competency testing, etc.)	S P	S P N
f. Early Childhood Education (prekindergarten)	S P	S P N
g. Other (specify)_____	S P	S P N

3. If your district has used services or products since the beginning of school year 1987-88 from Regional Educational Laboratories (excluding Chapter 1 TACs), what has been the nature of the cost to your district? (check all that apply)

   ☐ Free ☐ Cost-shared ☐ Entirely paid for by the district

Name of person completing form: _____ Title: _____

District name: _____ Phone: (___) _____

NCES Form No.

DRAFT

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by December 9, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting and/or recordkeeping burden; and (6) abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 6, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office Of Planning, Budget and Evaluation

Type of Review: Expedited.
Title: Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation.

Abstract: This survey is used by the Department to evaluate the personnel shortages and training needs of organizations providing vocational rehabilitation services and to establish training priorities.

Additional Information: The Office of Planning, Budget and Evaluation is requesting expedited review in order to comply with the 1984 Amendments to the Rehabilitation Act which require that the Department target rehabilitation training funds in areas with personnel shortages. In order to meet this requirement, the Department needs the data collected in this survey by February to allocate the 1989 funds.

Frequency: Biennially.
Affected Public: State or local governments; Non-profit institutions; businesses or other for-profit; small businesses or organizations.
Reporting Burden:
Responses: 533.
Burden Hours: 442.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.

BILLING CODE 4000—01—M

BEST COPY AVAILABLE

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QUESTIONNAIRE FOR DIRECTORS OF
STATE VOCATIONAL REHABILITATION AGENCIES

INTRODUCTION:

This survey is being conducted under the auspices of the Department of Education. The questions in this survey are intended to identify training needs and possible critical shortages of rehabilitation specialists which can be meaningfully addressed through special priorities governing the allocation of Federal training funds available through RSA.

Critical shortages are defined as regional or national shortages which result in reductions in the quantity or quality of services to levels substantially below those judged necessary to serve current rehabilitation clients or to expand services to underserved populations.

INSTRUCTIONS:

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Please base all your answers on the most recent reporting period for which you have complete information. Special instructions (e.g., **GO TO, SKIP,** etc.) are in bold type throughout the questionnaire. Where code numbers of particular education/training areas are requested, please refer to the yellow pages. Where code numbers of particular professional discipline specialties are requested, please refer to the blue pages. **FEEL FREE TO REMOVE THESE COLOR CODED PAGES FOR EASIER REFERENCE.** Definitions are provided along with each code. Please note that for all counseling specialties, there are corresponding treatment/technical specialties. Please note that only counselors belong in the former category.

A postage paid, addressed envelope has been provided for returning the questionnaire. In order to complete the current budget allocation, it is imperative that this questionnaire be returned by _____. If you have any questions about the questionnaire, please call Diane Pelavin at (202) 785-3308.

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SECTION I

THIS SERIES OF QUESTIONS WILL BE ABOUT YOUR ORGANIZATION'S EXPERIENCE IN FINDING QUALIFIED PERSONNEL.

1. During the most recent twelve month reporting period, what was the total number of budgeted professional positions in your organization excluding support staff? _____

2. How does this number compare with the number of positions one year earlier?

No change _____

An increase of _____ positions.

A decrease of _____ positions.

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2

3. For each specialty listed below, indicate the number of budgeted full-time equivalent (FTE) positions in column A and the number of unfilled positions in column B. Definitions for each specialty are provided on the blue pages at the end of this survey. In column C indicate the minimum educational requirement for the position using the codes at the bottom of the page.

Description	A. Number of Budgeted FTE Positions	B. Number of Unfilled Positions	C. Minimum Qualification Needed *
Rehabilitation Counseling:			
General Rehabilitation Counselor			
Job Development/Placement			
Independent Living			
Deafness			
Blindness/Visual Impairment			
Mental Illness			
Specific Learning Disability			
Supported Employment			
Traumatic Brain Injury Counselor			
Medical and Allied Health			
Audiology			
Phsyiatry/Physician -- Rehabilitation Specialist			
Prosthetics and Orthotics			
Physical Therapy			
Occupational Therapy			
Speech-Language Pathology			
Rehabilitation Nursing			
Psychology/Psychiatry			
Recreation Therapy			
Rehabilitation Dentistry			
Traumatic Brain Injury Specialist			
Blindness/Low Visions Specialist			
Vocational Personnel:			
Vocational Evaluators			
Work Adjustment Specialist			
Resident Supervisor			
Production Supervisor			
Vocational Instructors			
Business Enterprise Specialist			

*Qualification Codes: 01 - High School Diploma; 02 - Any Bachelors Degree; 03 - Specific Bachelors Degree; 04 - Specific Masters Degree

Description	A. Number of Budgeted FTE Positions	B. Number of Unfilled Positions	C. Minimum Qualification Needed *
Rehabilitation Related:			
Social Worker			
Orientation and Mobility Specialists			
Rehabilitation Teachers			
Client Assistance Personnel			
Independent Living Personnel			
Deaf Personnel			
Job Development Personnel			
Supported Employment Personnel/Job Coaches			
Rehabilitation Engineers			
Interpreters for the Deaf			
Administration:			
Rehabilitation Facility			
Rehabilitation			
Independent Living			
Client Assistance Program			

*Qualification Codes: 01 - High School Diploma; 02 - Any Bachelors Degree; 03 - Specific Bachelors Degree; 04 - Specific Masters Degree

4. What was your organization's experience in hiring rehabilitation professionals during the most recent reporting period?

   a. _____ Total number of positions your organization sought to fill. **(IF ZERO, GO TO SECTION II, QUESTION 7, PAGE 5.)**

   b. _____ Number of positions still not filled at end of the year.

   c. _____ How many of these positions remained vacant due to financial constraints or a hiring freeze.

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5. Using the Codes for Professional Discipline Specialties provided on the blue pages, list the specialties for which you have an unsatisfactory pool of applicants, in the first column. Circle each factor that contributes to this inadequacy.

Specialty Code	Low Salary	Remote or Undesirable Location	Poor Working Conditions	Competition with Proprietary Organizations	Inadequate Education/ Training	Other (Specify)
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____

6. Rank the top three disciplines for which unfilled positions most severely affect the greatest number of clients. **(PLEASE USE THE SPECIALTY CODES ON THE BLUE PAGES.)**

Rank	Specialty Code
First	_____
Second	_____
Third	_____

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SECTION II

NOW, SOME QUESTIONS ABOUT YOUR TRAINING NEEDS FOR NEWLY EMPLOYED STAFF AND THE MOST APPROPRIATE METHODS FOR MEETING THESE NEEDS.

7. In column A below, list up to three specialties for which services are most hindered because newly employed personnel in that specialty require additional training. Please order these specialties from most critical to less critical. The codes are provided on the blue pages. In column B, indicate the most critical educational or training need of personnel in the specialty indicated in column A. Use the codes on the yellow page. In column C, circle the answer that indicates whether this need is best addressed before employment, after employment, or no preference. If education/training is needed for these personnel both prior to and after employment, circle both responses. In the last column, use the codes below to indicate the most appropriate method to provide this training.

If your organization has not experienced deficiencies among its new employees, PLEASE CHECK THE FOLLOWING BOX AND PROCEED TO THE NEXT QUESTION. / /

	A. Specialty	B. Educational/ Training Need	C. Timing of Training/Education Before	After	No Preference	D. Appropriate Method*
1.	_____	_____	.. 1 ..	.. 1 ..	.. 1 ..	_____
2.	_____	_____	.. 1 ..	.. 1 ..	.. 1 ..	_____
3.	_____	_____	.. 1 ..	.. 1 ..	.. 1 ..	_____

* Codes for Method of Response
  01. Program awarding one- or two-year certificate.
  02. Program awarding Baccalaureate degree.
  03. Program awarding Graduate
  04. Seminar/workshop of one week or less.
  05. Seminar/workshop of more than one week (not necessarily in one
  06. Academic coursework - nondegree.

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SECTION III

NOW, SOME QUESTIONS ABOUT YOUR TRAINING NEEDS FOR EXISTING EMPLOYEES AND THE MOST APPROPRIATE METHODS FOR MEETING THESE NEEDS.

8. In Column A below, list up to three specialties for which services are most hindered because existing personnel in that specialty require additional training. Please order these specialties from most critical to less critical. The codes are provided on the blue pages. In Column B, indicate the most critical educational or training need of personnel in the specialty indicated in Column A. Use the codes on the yellow page. In the last column, use the codes below to indicate the most appropriate method to provide this training.

If your organization has not experienced deficiencies among its existing employees, PLEASE CHECK THE FOLLOWING BOX AND PROCEED TO THE NEXT QUESTION. / /

	A. Specialty	B. Educational/ Training Need	C. Appropriate Method*
1.			
2.			
3.			

* Codes for Method of Response:
01. Program awarding one- or two-year certificate.
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05. Seminar/workshop of more than one week (not necessarily in one
06. Academic coursework - nondegree.

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SECTION IV

NOW, SOME QUESTIONS ABOUT YOUR ORGANIZATION'S EXPERIENCE IN ARRANGING FOR NEEDED CLIENT SERVICES THROUGH OUTSIDE PROVIDERS.*

9. In Column A, list up to three specialties for which your organization has experienced difficulty finding outside providers for services to your clients. Please list these specialties from the most difficult to the less difficult. The codes for these specialties can be found on the blue pages. In Column B, circle all the factors which have contributed to this difficulty.

A.	B.		
	Difficulty Factors		
Specialty Code	High Costs	Long Delays	No Local Providers
1. _____	.. 1 ..	.. 1 ..	... 1 ...
2. _____	.. 1 ..	.. 1 ..	... 1 ...
3. _____	.. 1 ..	.. 1 ..	... 1 ...

* Outside providers are rehabilitation specialists who provide services to state vocational rehabilitation clients at the state's request.

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10. Rate the value of each of the following approaches for reducing the difficulties that organizations experience in arranging for services from outside providers by circling the appropriate number.

Possible approaches	No value	Some value	Real value	A key factor
a. Increase the portion of agency budgets that are used to purchase services.	.. 1 ..	.. 2 ..	.. 3 ..	.. 4 ..
b. Raise limits on fees and/or client service costs.	.. 1 ..	.. 2 ..	.. 3 ..	.. 4 ..
c. Reduce requirements for practice in the field.	.. 1 ..	.. 2 ..	.. 3 ..	.. 4 ..
d. Establish state-wide referral networks.	.. 1 ..	.. 2 ..	.. 3 ..	.. 4 ..
e. Establish regional referral networks.	.. 1 ..	.. 2 ..	.. 3 ..	.. 4 ..
f. Establish national referral networks.	.. 1 ..	.. 2 ..	.. 3 ..	.. 4 ..
g. Create new incentives to attract people into particular specialties.	.. 1 ..	.. 2 ..	.. 3 ..	.. 4 ..

Other

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SECTION V

IN CONCLUSION, HAVE WE MISSED SOMETHING IMPORTANT?

11. From your responses to the previous questions we will attempt to infer your staffing needs, the training needs of your professional staff, and the appropriate responses to those needs. Is there something else you feel we need to know regarding your organization's personnel and training needs.

WOULD YOU LIKE A COPY OF THE SURVEY REPORT? IF SO, CHECK HERE: _____.

If the analysis and reports are to go to a different person than that designated as the contact person on the face sheet of this survey, please specify name and address:

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_____
Name and Title

_____

_____

_____

_____

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CODES FOR EDUCATION/TRAINING AREAS

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SERVICES

101 Behavior Management
102 Outreach -- Providing rehabilitation service opportunities to under-served persons with disabilities
103 Community Resources -- Knowledge of and use of appropriate community services
104 Assessment -- Of the person to determine functional skills and limitations
105 Rehabilitation Planning -- Analysis, synthesis, and utilization of assessment data to develop appropriate intervention strategy
106 Treatment -- To remove, ameliorate, or stabilize the handicapping effects of the disability including medical, psychological, vocational, and social interventions
107 Supportive Relationship -- Support to enable the person with a disability to better adjust
108 Placement -- Vocational, community, independent living, and family

SKILLS

109 Emerging Population -- New groups receiving rehabilitation services, e.g., traumatically brain-injured, chronically mentally ill
110 New Technology -- Technological applications to improve employability and independent living opportunities
111 Supported/Transitional Employment -- Competitive work in integrated work settings
112 Maintaining Facilitative Relationships -- Enhancement of the provider/professional relationship with the person with a disability
113 Team Building -- Of the rehabilitation professionals and improved professional inter-relationships
114 Case Management -- Assuring the proper services are rendered in a timely and appropriate manner
115 Knowledge of Disabilities -- Application of the knowledge of the medical, psychological, social, and emotional aspects of disabling conditions
116 New Techniques -- Applications in rehabilitation
117 Vocational Knowledge -- Applications of the knowledge of the world and vocational information
118 Independent Living -- Applications of the knowledge of independent living
119 Management/Supervisory Skills -- To improve performance of practitioners in delivery of services
120 Maintenance of Skill -- Maintenance and reinforcement of already acquired service-delivery skills

ADMINISTRATIVE AND SUPPORT

121 Orientation -- Orientation to services and an awareness of the needs of persons with disabilities and their families and communities
122 Documentation -- Of services rendered, needs outcomes, etc.
123 Legal and Ethical Issues -- As applied to treatment and services
124 Applications of Technology -- To provide better, more timely, cost efficient, and sensitive administrative services
125 Program Evaluation -- A system to provide data from the constituent parts of a services deliverer to improve services
126 Program Planning -- Identification and development of future strategies and services needed
127 Advocacy Services -- enhancing and increasing the involvement of persons with disabilities in the rehabilitation program
128 Public Information -- Increasing public awareness of the abilities and needs of persons with disabilities

CODES AND DEFINITIONS OF PROFESSIONAL SPECIALTIES

The following definitions have been provided to help you classify your personnel within the categories used in this personnel needs assessment. Please note that for all counseling, there are corresponding treatment/ trechnical specialties. Please be sure to correctly categorize personnel.

Rehabilitation Counseling

01 General Rehabilitation Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in General Rehabilitation.

02 Job Development/Placement Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Job Development/Placement.

03 Independent Living Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Independent Living.

04 Deafness Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Deafness.

05 Blindness/Visual Impairment Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Blindness/Visual Impairment.

06 Mental Illness Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Mental Illness.

07 Specific Learning Disability Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Specific Learning Disabilities.

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08 Supported Employment Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Supported Employment.

09 Traumatic Brain Injury Specialist - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Traumatic Brain Injury.

Medical and Allied Health Personnel:

10 Audiologist - Provides diagnosis and treatment services concerned with hearing disabilities.

11 Physiatrist/Physician-Rehabilitation Specialist - A physician licensed to practice medicine and work with physical, psychological, vocational rehabilitation units, programs, or facilities providing services to clients.

12 Prosthetist/Orthotist - Specializes in the fitting and fabrication of appliances to improve the function and cosmesis of patients who have suffered an amputation or loss of parts or whole of an extremity or muscoskeletal impairments.

13 Physical Therapist - Through a variety of physical procedures, treats clients to relieve pain, develop or restore motor function and maintain maximum performance.

14 TBI Specialists - Provides treatment services for individuals with traumatic brain injuries.

15 Occupational Therapist - Provides assistance in the restoration, maintenance, and development of performance capabilities required in activities of daily living and productivity. Facilitates adaption to reduce or correct pathology and promote health.

16 Speech Pathologist - Provides diagnosis and treatment services for individuals with speech and language disorders.

17 Rehabilitation Nurse - A registered Nurse who has training and/or experience in dealing with the needs of rehabilitation populations and is assigned to a physical, psychological, vocational rehabilitation unit, program, or facility.

18 Psychologist/Psychiatry - Meets the legal requirements in the State for the practice of psychology or psychiatry.

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19 Recreation Therapist - Provides evaluation and treatment services, by utilizing adaptive activities, to achieve specific medical and/or rehabilitation goals, as well as maximum integration of the person into the community.

20 Blindness/Low Vision Specialist - Facilitates, through technology, the use of residual sight in visually impaired persons.

21 Rehabilitation Dentist - A dentist who restores the function, form, and aesthetics of the dento-facial complex to maximize quality of life for the physically and mentally handicapped and to assist in maintaining or regaining the individual's highest level of physical function and social interaction.

Vocational Personnel:

22 Vocational Evaluator - Assess clients in specific work skills, occupational potentials, and vocational interests through the performance of tasks using materials, tools, and equipment found in particular job families.

23 Work Adjustment Specialist - Works with clients to assist in developing both basic and advanced skills essential to effective functioning in the work environment.

24 Resident Supervisor - Provides supervision in community based facilities.

25 Production Supervisor - Assists and monitors clients in simulated and real occupational activities.

26 Vocational Instructor - Utilizes an organized systematic instructional program to assist clients in the acquisition of specific marketable occupational skills.

27 Business Enterprise Specialist - Assists in the development of vending facilities in public and private buildings. Provides assistance in the installation or operation of these sites.

Rehabilitation Related Personnel:

28 Social Worker - Assists persons in personal, social, family, and financial adjustment.

29 Orientation and Mobility Specialist - Assists blind and visually impaired clients in achieving independent orientation, mobility, and travel skills.

30 Rehabilitation Teacher for the Blind - Assists blind and visually impaired clients with adaptations for independent living skills.

31 Client Assistance Personnel - Provides support and advocacy services for persons with disabilities.

32 Independent Living Specialist - Provides clients the experiences and practice with real or simulated life situations, assistive devices, special equipment, and specialized assistance to obtain independent living skills.

33 Deafness Specialists - Provides aid and training to deaf clients towards style development of independent living goals.

34 Job Development/Placement Personnel - Primarily responsible for planning and/or providing job placement/job development services, including job seeking skills training. Identifies potential employers and facilitates the placement of clients.

35 Supported Employment/Job Coaches -

36 Rehabilitation Engineer - Applies technology for the disabled in the modification of existing systems or devices for adaption in work and independent living.

37 Interpreter for the Deaf - Primarily provides interpreting services for the deaf.

Administration:

38 Rehabilitation Facility Administration - Provides direct support to management of rehabilitation facilities.

39 Rehabilitation Administration - Provides direct support to managment in program planning, data processing, and/or other staff.

40 Independent Living Administration - Provides direct support to managment of independent living facilities in program planning, data processing, and/or other staff.

41 Client Assistance Administrator - Responsible for advising individuals with disabilities about services available to them under the State-Federal rehabilitation program, and advocating for and assisting them in accessing these services.

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QUESTIONNAIRE FOR ORGANIZATIONS THAT PROVIDE
VOCATIONAL REHABILITATION SERVICES FOR
STATE VOCATIONAL REHABILITATION AGENCIES

INTRODUCTION:

This survey is being conducted under the auspices of the Department of Education. The questions in this survey are intended to identify training needs and possible critical shortages of rehabilitation specialists which can be meaningfully addressed through special priorities governing the allocation of Federal training funds available through RSA.

Critical shortages are defined as regional or national shortages which result in reductions in the quantity or quality of services to levels substantially below those judged necessary to serve current rehabilitation clients or to expand services to underserved populations.

INSTRUCTIONS:

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Please base all your answers on the most recent reporting period for which you have complete information. Special instructions (e.g., **GO TO, SKIP,** etc.) are in bold type throughout the questionnaire. Where code numbers of particular education/training areas are requested, please refer to the yellow pages. Where code numbers of particular professional discipline specialties are requested, please refer to the blue pages. **FEEL FREE TO REMOVE THESE COLOR CODED PAGES FOR EASIER REFERENCE.** Definitions are provided along with each code. Please note that for all counseling specialties, there are corresponding treatment/technical specialties. Please note that only counselors belong in the former category.

A postage paid, addressed envelope has been provided for returning the questionnaire. In order to complete the current budget allocation, it is imperative that this questionnaire be received by _____. If you have any questions about the questionnaire, please call Diane Pelavin at (202) 785-3308.

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SECTION I

If your agency has provided services for the state vocational rehabilitation agency in the past year, GO TO QUESTION 1. If your agency has provided NO SERVICES for the state vocational rehabilitation agency in the past year, please check the following box / / and return this form uncompleted. It is important that you return this questionnaire promptly.

FIRST, SOME QUESTIONS ABOUT YOUR ORGANIZATION.

1. Which category best describe your organization. Circle the number preceding the correct category.

1 Educational Institution
2 Business or Vocational School
3 Hospital or Sanitorium
4 Health Organization/Agency
5 Rehabilitation Facility
6 Welfare Agency
7 Other Public Agency
8 Other Private Agency
9 Private Individual

2. Where is your organization located? (CIRCLE THE NUMBER OF THE APPROPRIATE DESCRIPTION.)

__1__ Rural area

__2__ Small urban area (reasonable commuting distance to metropolitan area or city of at least 50,000 population)

__3__ Large urban/suburban (city of 250,000 or more population)

3. What was the total caseload at your organization in the reporting year? _____

4. How many clients did your organization serve last year who were referred to you by a State Vocational Rehabilitation Agency? _____

5a. Does your organization specialize in serving only individuals with a certain handicap or handicaps?

__1__ Yes __2__ No

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5b. If yes, please specify area(s) of specialization:

DO NOT WRITE IN THIS BOX

_____ ___ ___ ___

_____ ___ ___ ___

_____ ___ ___ ___

_____ ___ ___ ___

_____ ___ ___ ___

6. Does your organization serve vocational rehabilitation clients only from your area or are clients referred to your organization from other areas? (CIRCLE THE APPROPRIATE NUMBER.)

1 local referrals only 2 statewide referrals 3 state and interstate referrals

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SECTION II

THIS SERIES OF QUESTIONS WILL BE ABOUT YOUR ORGANIZATION'S EXPERIENCE IN FINDING QUALIFIED PERSONNEL.

7. During the most recent twelve month reporting period, what was the total number of budgeted professional positions in your organization excluding support staff? _____

8. How does this number compare with the number of positions one year earlier?

No change _____

An increase of _____ positions.

A decrease of _____ positions.

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9. For each specialty listed below, indicate the number of budgeted full-time equivalent (FTE) positions in column A and the number of unfilled positions in column B. Definitions for each specialty are provided on the blue pages at the end of this survey. In column C indicate the minimum educational requirement for the position using the codes at the bottom of the page.

Description	A. Number of Budgeted FTE Positions	B. Number of Unfilled Positions	C. Minimum Qualification Needed *
Rehabilitation Counseling:			
General Rehabilitation Counselor			
Job Development/Placement			
Independent Living			
Deafness			
Blindness/Visual Impairment			
Mental Illness			
Specific Learning Disability			
Supported Employment			
Traumatic Brain Injury Counselor			
Medical and Allied Health			
Audiology			
Phsyiatry/Physician -- Rehabilitation Specialist			
Prosthetics and Orthotics			
Physical Therapy			
Occupational Therapy			
Speech-Language Pathology			
Rehabilitation Nursing			
Psychology/Psychiatry			
Recreation Therapy			
Rehabilitation Dentistry			
Traumatic Brain Injury Specialist			
Blindness/Low Visions Specialist			
Vocational Personnel:			
Vocational Evaluators			
Work Adjustment Specialist			
Resident Supervisor			
Production Supervisor			
Vocational Instructors			
Business Enterprise Specialist			

*Qualification Codes: 01 - High School Diploma; 02 - Any Bachelors Degree; 03 - Specific Bachelors Degree; 04 - Specific Masters Degree

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Description	A. Number of Budgeted FTE Positions	B. Number of Unfilled Positions	C. Minimum Qualification Needed *
Rehabilitation Related:			
Social Worker			
Orientation and Mobility Specialists			
Rehabilitation Teachers			
Client Assistance Personnel			
Independent Living Personnel			
Deaf Personnel			
Job Development Personnel			
Supported Employment Personnel/Job Coaches			
Rehabilitation Engineers			
Interpreters for the Deaf			
Administration:			
Rehabilitation Facility			
Rehabilitation			
Independent Living			
Client Assistance Program			

*Qualification Codes: 01 - High School Diploma; 02 - Any Bachelors Degree; 03 - Specific Bachelors Degree; 04 - Specific Masters Degree

10. What was your organization's experience in hiring rehabilitation professionals during the most recent reporting period?

a. _____ Total number of positions your organization sought to fill. (IF ZERO, GO TO SECTION III, QUESTION 13, PAGE 7.)

b. _____ Number of positions still not filled at end of the year.

c. _____ How many of these positions remained vacant due to financial constraints or a hiring freeze.

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12.

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11. Using the Codes for Professional Discipline Specialties provided on the blue pages, list the specialties for which you have an unsatisfactory pool of applicants in the first column. Circle each factor that contributes to this inadequacy.

Specialty Code	Low Salary	Remote or Undesirable Location	Poor Working Conditions	Competition with Proprietary Organizations	Inadequate Education/ Training	Other (Specify)
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
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_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
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_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____
_____	.. 1 ..	.... 1	... 1 ...	.... 1	... 1 ...	_____

12. Rank the top three disciplines for which unfilled positions most severely affect the greatest number of clients. **(PLEASE USE THE SPECIALTY CODES ON THE BLUE PAGES.)**

Rank	Specialty Code
First	_____
Second	_____
Third	_____

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SECTION III

NOW, SOME QUESTIONS ABOUT YOUR TRAINING NEEDS FOR NEWLY EMPLOYED STAFF AND THE MOST APPROPRIATE METHODS FOR MEETING THESE NEEDS.

13. In Column A below, list up to three specialties for which services are most hindered because newly employed personnel in that specialty require additional training. Please order these specialties from most critical to less critical. The codes are provided on the blue pages. In Column B, indicate the most critical educational or training need of personnel in the specialty indicated in Column A. Use the codes on the yellow page. In Column C, circle the answer that indicates whether this need is best addressed before employment, after employment, or no preference. If education/training is needed for these personnel both prior to and after employment, circle both responses. In the last column, use the codes below to indicate the most appropriate method to provide this training.

If your organization has not experienced deficiencies among its new employees, PLEASE CHECK THE FOLLOWING BOX AND PROCEED TO THE NEXT QUESTION. / /

	A. Specialty	B. Educational/ Training Need	C. Timing of Training/Education Before	After	No Preference	D. Appropriate Method*
1.	_____	_____	.. 1 ..	.. 1 ..	.. 1 ..	_____
2.	_____	_____	.. 1 ..	.. 1 ..	.. 1 ..	_____
3.	_____	_____	.. 1 ..	.. 1 ..	.. 1 ..	_____

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SECTION IV

NOW, SOME QUESTIONS ABOUT YOUR TRAINING NEEDS FOR EXISTING EMPLOYEES AND THE MOST APPROPRIATE METHODS FOR MEETING THESE NEEDS.

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14. From your responses to the previous questions we will attempt to infer your staffing needs, the training needs for your professional staffing, and the appropriate responses to those needs. Is there something else you feel we need to know regarding your organization's personnel and training needs.

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124 Applications of Technology -- To provide better, more timely, cost efficient, and sensitive administrative services
125 Program Evaluation -- A system to provide data from the constituent parts of a services deliverer to improve services
126 Program Planning -- Identification and development of future strategies and services needed
127 Advocacy Services -- enhancing and increasing the involvement of persons with disabilities in the rehabilitation program
128 Public Information -- Increasing public awareness of the abilities and needs of persons with disabilities

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CODES AND DEFINITIONS OF PROFESSIONAL SPECIALTIES

The following definitions have been provided to help you classify your personnel within the categories used in this personnel needs assessment. Please note that for all counseling, there are corresponding treatment/ trechnical specialties. Please be sure to correctly categorize personnel.

Rehabilitation Counseling

01 General Rehabilitation Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in General Rehabilitation.

02 Job Development/Placement Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Job Development/Placement.

03 Independent Living Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Independent Living.

04 Deafness Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Deafness.

05 Blindness/Visual Impairment Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Blindness/Visual Impairment.

06 Mental Illness Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Mental Illness.

07 Specific Learning Disability Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Specific Learning Disabilities.

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08 Supported Employment Counselor - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Supported Employment.

09 Traumatic Brain Injury Specialist - Through utilizing counseling skills, case management skills, and community resources, provides support in the client's adjustment to disabling conditions and assistance in the choice, preparation, and acquisition of suitable employment. Specializes in Traumatic Brain Injury.

Medical and Allied Health Personnel:

10 Audiologist - Provides diagnosis and treatment services concerned with hearing disabilities.

11 Physiatrist/Physician-Rehabilitation Specialist - A physician licensed to practice medicine and work with physical, psychological, vocational rehabilitation units, programs, or facilities providing services to clients.

12 Prosthetist/Orthotist - Specializes in the fitting and fabrication of appliances to improve the function and cosmesis of patients who have suffered an amputation or loss of parts or whole of an extremity or muscoskeletal impairments.

13 Physical Therapist - Through a variety of physical procedures, treats clients to relieve pain, develop or restore motor function and maintain maximum performance.

14 TBI Specialists - Provides treatment services for individuals with traumatic brain injuries.

15 Occupational Therapist - Provides assistance in the restoration, maintenance, and development of performance capabilities required in activities of daily living and productivity. Facilitates adaption to reduce or correct pathology and promote health.

16 Speech Pathologist - Provides diagnosis and treatment services for individuals with speech and language disorders.

17 Rehabilitation Nurse - A registered Nurse who has training and/or experience in dealing with the needs of rehabilitation populations and is assigned to a physical, psychological, vocational rehabilitation unit, program, or facility.

18 Psychologist/Psychiatry - Meets the legal requirements in the State for the practice of psychology or psychiatry.

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19 Recreation Therapist - Provides evaluation and treatment services, by utilizing adaptive activities, to achieve specific medical and/or rehabilitation goals, as well as maximum integration of the person into the community.

20 Blindness/Low Vision Specialist - Facilitates, through technology, the use of residual sight in visually impaired persons.

21 Rehabilitation Dentist - A dentist who restores the function, form, and aesthetics of the dento-facial complex to maximize quality of life for the physically and mentally handicapped and to assist in maintaining or regaining the individual's highest level of physical function and social interaction.

Vocational Personnel:

22 Vocational Evaluator - Assess clients in specific work skills, occupational potentials, and vocational interests through the performance of tasks using materials, tools, and equipment found in particular job families.

23 Work Adjustment Specialist - Works with clients to assist in developing both basic and advanced skills essential to effective functioning in the work environment.

24 Resident Supervisor - Provides supervision in community based facilities.

25 Production Supervisor - Assists and monitors clients in simulated and real occupational activities.

26 Vocational Instructor - Utilizes an organized systematic instructional program to assist clients in the acquisition of specific marketable occupational skills.

27 Business Enterprise Specialist - Assists in the development of vending facilities in public and private buildings. Provides assistance in the installation or operation of these sites.

Rehabilitation Related Personnel:

28 Social Worker - Assists persons in personal, social, family, and financial adjustment.

29 Orientation and Mobility Specialist - Assists blind and visually impaired clients in achieving independent orientation, mobility, and travel skills.

30 Rehabilitation Teacher for the Blind - Assists blind and visually impaired clients with adaptations for independent living skills.

31 Client Assistance Personnel - Provides support and advocacy services for persons with disabilities.

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32 Independent Living Specialist - Provides clients the experiences and practice with real or simulated life situations, assistive devices, special equipment, and specialized assistance to obtain independent living skills.

33 Deafness Specialists - Provides aid and training to deaf clients towards style development of independent living goals.

34 Job Development/Placement Personnel - Primarily responsible for planning and/or providing job placement/job development services, including job seeking skills training. Identifies potential employers and facilitates the placement of clients.

35 Supported Employment/Job Coaches -

36 Rehabilitation Engineer - Applies technology for the disabled in the modification of existing systems or devices for adaption in work and independent living.

37 Interpreter for the Deaf - Primarily provides interpreting services for the deaf.

Administration:

38 Rehabilitation Facility Administration - Provides direct support to management of rehabilitation facilities.

39 Rehabilitation Administration - Provides direct support to managment in program planning, data processing, and/or other staff.

40 Independent Living Administration - Provides direct support to managment of independent living facilities in program planning, data processing, and/or other staff.

41 Client Assistance Administrator - Responsible for advising individuals with disabilities about services available to them under the State-Federal rehabilitation program, and advocating for and assisting them in accessing these services.

[FR Doc. 88-28396 Filed 12-8-88; 8:45 am]
BILLING CODE 4000-01-C

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DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-70-NG]

Atlantic Richfield Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 22, 1988, of an application filed by Atlantic Richfield Company (ARCO) for blanket authorization to import up to 25 Bcf of Canadian natural gas per year for two years, for use as fuel in its oil refinery located in Ferndale, Washington. The gas, to be purchased from various Canadian suppliers, would be transported from a point of importation at the International Border near Sumas, Washington, through new pipeline facilities to be jointly owned and operated by ARCO and Intalco Aluminum Corporation (Intalco). The application requests that the ERA approve the authorization for a two-year period beginning on the date that the new pipeline, which is known as the Ferndale Pipeline System, is built and operable, which is expected to be no later than November 1, 1989. ARCO proposes to file quarterly reports with the ERA giving the specific terms of each import transaction.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 9, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F–091, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1657

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ARCO and Intalco have a joint application pending with the Federal Energy Regulatory Commission for authority to construct the Ferndale Pipeline System. It will consist of a 16-inch outside diameter mainline originating at an interconnection with the pipeline facilities of Westcoast Energy Inc. at the International Border near Sumas, Washington and extending 29 miles to ARCO's refinery near Ferndale, Washington.

ARCO currently receives gas acquired on the spot market in Canada which is imported on its behalf by Cascade Natural Gas Corporation (Cascade) and transported through the pipeline facilities of Northwest Pipeline Corporation and Cascade. The requested authorization would enable ARCO to secure the necessary gas supplies directly from Canadian sellers under individually-negotiated, market-responsive contracts, and the new pipeline would provide a significant savings over ARCO's present cost of transportation and delivery.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

In accordance with the National Environmental Policy Act of 1969, no final decision will be issued in this proceeding until the DOE has considered the environmental effects of any such decision.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. EST, January 9, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ARCO's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 5, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-28375 Filed 12-8-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-71-NG]

Intalco Aluminum Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 22, 1988, of an application filed by Intalco Aluminum Corporation (Intalco) for blanket authorization to import up to 2 Bcf of Canadian natural gas per year for two years, for use as fuel in its aluminum smelting plant located in Ferndale, Washington. The gas, to be purchased from various Canadian suppliers, would be transported from the point of importation at the International Border near Sumas, Washington, through new pipeline facilities to be jointly owned and operated by Intalco and Atlantic Richfield Company (ARCO). The application requests that the ERA approve the authorization for a two-year period beginning on the date that the new pipeline, known as the Ferndale Pipeline System, is built and operable, which is expected to be no later than November 1, 1989. Intalco proposes to file quarterly reports with the ERA giving the specific terms of each import transaction.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 9, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F-091, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1657.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Intalco, a Delaware corporation with its principal place of business in Ferndale, Washington, is a wholly-owned subsidiary of Alumax Inc., also a Delaware corporation, which, in turn, is a wholly-owned subsidiary of AMAX Inc., a New York corporation. Intalco and ARCO have a joint application pending with the Federal Energy Regulatory Commission for authority to construct the Ferndale Pipeline System. It will consist of a 16-inch outside diameter mainline originating at an interconnection with the pipeline facilities of Westcoast Energy Inc. at the International Border near Sumas, Washington and extending 29 miles to ARCO's oil refinery near Ferndale, Washington. Intalco would be supplied its imported gas from a four-mile delivery line to be built between the refinery and the smelting plant.

Intalco currenlty receives gas acquired on the spot market in Canada which is imported on its behalf by Cascade Natural Gas Corporation (Cascade) and transported through the pipeline facilities of Northwest Pipeline Corporation and Cascade. The requested authorization would enable Intalco to secure the necessary gas supplies directly from Canadian sellers under contracts that are individually-negotiated and market-responsive, and the new pipeline would provide a significant savings over Intalco's present cost of transportation and delivery.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

In accordance with the National Environmental Policy Act of 1969, no final decision will be issued in this proceeding until the DOE has considered the environmental effects of any such decision.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. EST, January 9, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant

to this notice, in accordance with 10 CFR 590.316.

A copy of Intalco's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 5, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–28376 Filed 12–8–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–68–LNG]

Yukon Pacific Corp.; Public Conference

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of public conference.

SUMMARY: The Economic Regulatory Administration of the Department of Energy announces that it is holding a conference on January 24, 1989, beginning at 10:00 a.m. in Room C 121–122, Federal Building, 722 West 7th Avenue, Anchorage, Alaska, to discuss the contested issues raised by the parties in connection with Yukon Pacific Corporation's application for authority to export liquefied natural gas from the North Slope of Alaska to the Pacific Rim countries of Japan, South Korea, and Taiwan. The informal conference will be open to the public, but participation will be limited to the applicant and intervenors.

A transcript of the conference will be made an official part of the record in the proceeding and will be available for public review at the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., EST, Monday through Friday, except Federal holidays. Individual arrangements may be made with the recorder at the conference to purchase a copy of the transcript.

For further information, please contact Mr. P.J. Fleming of the Natural Gas Division, Office of Fuels Programs, at (202) 586–4819 or Mr. Ben McRea, Natural Gas and Minerals Leasing, Office of General Counsel, (202) 586–6667.

Issued in Washington, DC, December 5, 1988.

Constance L. Buckly,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–28377 Filed 12–8–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–432–000 et al.]

Tucson Electric Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Company

[Docket No. ER88–432–000]

December 2, 1988.

Take notice that on October 28, 1988, Tucson Electric Power Company (Tucson) tendered for filing an amendment to its filing on May 27, 1988, pursuant to 18 CFR 35.12, in which it tendered an agreement entitled "1990–2011 Power Sale Agreement Between Tucson Electric Power Company and Salt River Project Agricultural Improvement and Power District." The amendment, filed October 28, 1988, contains supplemental information in support of the original filing.

Copies of the supplementary information offered by way of amendment have been served to all parties affected by this proceeding.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Cimarron Chemical, Inc.

[Docket No. QF89–50–000]

December 2, 1988.

On November 17, 1988, Cimarron Chemical, Inc. (Applicant) of 1400 Post Oak Boulevard, Suite 625, Houston, Texas 77056 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Baca County, Colorado. The facility will consist of two combustion turbine generating units, two heat recovery steam generators and an extraction/condensing steam turbine generating unit. Extraction steam from the facility will be used to produce chilled water, via an absorption chiller, for refrigeration in an adjacent cold storage plant. The net electric power production capacity will be 68 MW. The primary energy source will be natural gas. Installation of the facility will begin in the summer of 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Indiana

[Docket No. ER88–573–000]

December 2, 1988.

Take notice that on November 4, 1988, Public Service Company of Indiana (PSI), tendered for filing its Refund Compliance Report pursuant a Commission letter dated October 12, 1988.

Comment date: December 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Merck, Sharp & Dohme, a Division of Merck & Co., Inc.

[Docket No. QF89–57–000]

December 2, 1988.

On November 21, 1988, Merck, Shapr & Dohme, a Division of Merck & Co., Inc. (Applicant), of Sumneytown Pike, West Point, Pennsylvania 19486, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in West Point, Pennsylvania. The facility consists of a boiler, a steam turbine generating unit, a combustion turbine generating unit and a heat recovery steam generator. Thermal energy recovered from the facility will be used for Applicant's heating and process requirements. The maximum net electric power production capacity of the facility is 36.24 MW. The primary energy sources are natural gas, No. 2 and No. 6 fuel oil. Installation of the facility began on August 4, 1986.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. Utah Power & Light Company

[Docket Nos. ER84–571–007, ER85–486–003, and ER86–300–003 (Phase II)]

December 5, 1988.

Take notice that on November 4, 1988, Utah Power & Light Company (Utah) tendered for filing an amendment to its compliance filing submitted on October 12, 1988. The amendment corrects certain oversights and typographical errors.

Copies of the filing were served upon all parties to the proceeding.

Comment date: December 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER88-302-002]

December 5, 1988.

Take notice that on November 17, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing its compliance filing pursuant to the Commission's order issued October 20, 1988.

Comment date: December 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power & Light Company and Superior Water, Light and Power Company

[Docket No. ER89-89-000]

December 5, 1988.

Take notice that on November 23, 1988 Minnesota Power & Light Company (MP&L) and Superior Water, Light and Power Company (Superior) tendered for filing a rate schedule applicable to Dahlberg Light and Power Company (Dahlberg). The propoosed rate schedule supersedes service provided by Superior, a subsidiary of MP&L, to Dahlberg. The proposed rate schedule will reduce revenues from Dahlberg by $453,000 for the-12 month period ending October 31, 1989. The rate is proposed to take effect on November 1, 1988.

Superior also filed on November 23, 1988, Supplement No. 2 to the Electric Service Agreement between Superior and Dahlberg, terminating said Agreement as of October 31, 1988. In addition, in order to effectuate such filing and such cancellation, MP&L filed on November 23, 1988, a letter agreement amending the Interchange Service Agreement between MP&L and Superior to reflect the termination of Superior's service to Dahlberg in rates charged Superior by MP&L.

Copies of the proposed rate contract and statements comparing the sales and revenues therefrom were served on Dahlberg, the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin. Notice of the proposed cancellation was served upon Dahlberg and the Public Service Commission of Wisconsin.

Comment date: December 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER88-577-000]

December 5, 1988.

Take notice that on November 28, 1988, Southern California Edison Company (Edison) tendered for filing an amendment to their filing date August 22, 1988, Docket No. ER88-577-000, a change of rates for transmission service as embodied in Edison's agreements with the following entities which reflects the compliance with FERC deficiency letter dated September 27, 1988; and corrections to previously filed rates.

	Rate schedule FERC No.
1. City of Anaheim (Anaheim).	130, 164, 193, 200, 204, 208.
2. City of Azusa (Azusa)...	160, 189, 196, 201, 209.
3. City of Banning (Banning).	159, 190, 199, 210.
4. City of Colton (Colton)..	162, 191, 202, 211.
5. City of Riverside (Riverside).	129, 165, 192, 194, 198, 205, 212.
6. City of Vernon (Vernon).	149, 154.7, 172, 195, 207.
7. Contract Rate TN.....	FPC Electric Tariff Original Volume No. 1.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 19, 1988, in accordance with Standard Paragraph E at the end of this document.

9. Delmarva Power & Light Company

[Docket No. ER87-556-003]

December 5, 1988.

Take notice that on November 17, 1988, Delmarva Power & Light Company filed a Refund Compliance Report pursuant to the Commission's letter order of September 20, 1988 approving the Settlement Agreement in this docket.

Delmarva states that on October 18, 1988 it refunded to the affected wholesale customers the difference between the amounts collected under "interim" rates, approved by letter order of July 26, 1988, and the rates contained in the Settlement Agreement in Docket No. ER87-556-000. Such refund included interest through the date of refund, October 18, 1988.

Copies of the Report were served upon each affected wholesale Customers, the parties of record and the state regulatory agencies in Delaware, Maryland and Virginia.

Comment date: December 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. American Ref-Fuel Company of Hempstead

[Docket No. ER89-90-000]

December 5, 1988.

Take notice that on November 23, 1988 American REF-FUEL Company of Hempstead (REF-FUEL), a general partnership of second tier subsidiaries of Air Products and Chemicals, Inc. (APCI) and Browning Ferris Industries, Inc. (BFI) tendered for filing, proposed Rate Schedule No. 1, applicable to sales of energy by REF-FUEL to Long Island Lighting Company (LILCO) from a biomassfired electric generating facility to be located at Westbury, New York (the facility).

Comment date: December 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 88-28397 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-298-000 et al.]

ANR Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP89-298-000]

December 2, 1988.

Take notice that on November 28, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-298-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for EP Operating Company (EP) a

marketer, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 81,250 dt equivalent of natural gas per day on an interruptible basis for EP. ANR states it would receive the gas at an existing point of receipt in the Ship Shoal Area, offshore Louisiana, and redeliver the gas for the account of EP at 16 existing interconnections located in the state of Louisiana. ANR states it commenced service for EP under § 284.223(a) on October 15, 1988, as reported in Docket No. ST89–740.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89–307–000]

December 2, 1988.

Take notice that on November 30, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–307–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Western Gas Marketing U.S.A., Ltd. (Western Gas), a broker, under the blanket certificate issued in Docket No. CP86–585–000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated August 29, 1988, and under its Rate Schedule PT, it proposes to transport up to 26,500 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Western Gas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Michigan Consolidated Gas Company in Wayne County, Michigan, for ultimate consumption by 444 end-users.

Panhandle advises that service under § 284.223(a) commenced on October 20, 1988, as reported in Docket No. ST89–742. Panhandle further advises that it would transport 26,500 dt on an average day and 9,672,500 dt annually.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89–269–000]

December 2, 1988

Take notice that on November 22, 1988, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP89–269–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for PSI, Inc., (Shipper) under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it proposes to transport for PSI 80,000 dt on a peak day, 80,000 dt on an average day and 29,200,000 dt on an annual basis. Tennessee also states that pursuant to a transportation agreement dated October 10, 1988 between Tennessee and PSI, it proposes to transport natural gas for PSI from points of receipt located offshore Louisiana, offshore Texas, and in the states of West Virginia, Mississippi, Louisiana, Pennsylvania, Alabama, and Texas. The points of delivery and ultimate points of delivery are located in the states of Texas and Mississippi.

Tennessee further states that it commenced this service October 20, 1988, as reported in Docket No. ST89–702.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Women's Natural Gas Corporation, et al.

[Docket No. CI89–102–000, et al.]

December 5, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorization, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Docket No. and date filed	Applicant
CI89–102–000, 11–23–88.	Women's Natural Gas Corporation, Presidio Building, Suite 380, 6907 Capitol of Texas Highway North, Austin, Texas 78731.
CI89–103–000, 11–23–88.	Santanna Natural Gas Corporation, Presidio Building, Suite 380, 6907 Capitol of Texas Highway North, Austin, Texas 78731.
CI89–107–000, 11–29–88.	ARCO Natural Gas Marketing, inc., Room 24–024 DAB, P.O. Box 2819, Dallas, Texas 75221–2819.

Comment date: December 22, 1988, in accordance with Standard Paragraph J at the end of the notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–293–000]

December 2, 1999.

Take notice that on November 25, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–293–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Mobil Natural Gas, Inc. (Mobil) a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 20,000 MMBtu of natural gas equivalent per day on behalf of Mobil pursuant to a transportation agreement dated November 1, 1988, between Northern and Mobil. Northern would receive the gas at an existing delivery point in Kansas and redeliver equivalent volumes at existing delivery points in Nebraska and Wisconsin.

Northern further states that the estimated average daily and annual quantities would be 15,000 MMBtu and 7,300,000 MMBtu, respectively. Service under § 284.223(a) commenced on November 1, 1988, as reported in Docket No. ST89–831, it is stated.

Comment date: January 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89–229–000]

December 5, 1988.

Take notice that on November 17, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–229–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of General Motors Corporation (GM), a shipper and end-user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on a firm basis up to 775 dt equivalent of natural gas on a peak day for GM, 775 dt equivalent on an average day and 282,875 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for GM's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Kokomo Gas Company in Tipton, Indiana. It is explained that the service commenced October 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–535.

Comment date: January 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. ANR Pipeline Company

[Docket No. CP89–297–000]

December 5, 1988.

Take notice that on November 28, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–297–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Placid Oil Company, a marketer, under the blanket certificate issued in Docket No. CP88–532–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states the transportation service would be provided pursuant to a transportation agreement dated August 16, 1988, wherein ANR proposes to transport up to 131,250 dt equivalent of natural gas per day on an interruptible basis for Placid. ANR states it would receive the gas at an existing point of receipt in the Ship Shoal Area, offshore Louisiana, and redeliver the gas for the account of Placid at existing interconnections located in the state of Louisiana. ANR indicates that it would transport on a peak day and average day 131,250 dt equivalent of natural gas, and 47,906,250 dt equivalent of natural gas annually.

ANR states that it would not be required to construct any facilities to implement the service. ANR also indicates that it would charge the rates and abide by the terms and conditions provided by its Rate Schedule ITS. It is also indicated that the transportation agreement provides for a primary term expiring on December 31, 1989, but that the contract would continue on a month-to-month basis until terminated by either party upon thirty days written notice.

ANR states that it commenced a 120-day transportation service for Placid on October 15, 1988, as provided by § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–646.

Comment date: January 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89–300–000]

December 5, 1988.

Take notice that on November 29, 1988, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303–2563, filed in Docket No. CP89–300–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Sonat Marketing Company (Sonat) under its blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service, on an interruptible basis, for Sonat, a marketer, pursuant a service agreement dated September 13, 1988. It is stated that the term of the service agreement is for a primary term of one month, to continue and remain in effect for successive terms of one month unless cancelled by either party. Southern proposes to transport on a peak day up to 16,000 MMBtu; on an average day 7,476 MMBtu; and on an annual basis 2,728,740 MMBtu of natural gas for Sonat. Southern proposes to receive the gas at various receipt points in Louisiana, offshore Louisiana, Mississippi, Alabama, and Texas for delivery to a point in Alabama. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Sonat pursuant to its Rate Schedule IT. It is further stated that Southern may agree from time to time to discount the rate charged Sonat for transportation services in accordance with the provisions of Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on October 1, 1988, as reported in Docket No. ST89–221–000.

Comment date: January 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–285–000]

December 5, 1988.

Take notice that on November 23, 1988, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–285–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Transco Energy Marketing Company (Shipper) under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 170,000 dt equivalent of natural gas; on an average day will be 170,000 dt equivalent of natural gas; and on an annual basis will be 62,050,000 dt equivalent of natural gas. It is stated that Transco will receive the gas at points of receipt in Pennsylvania, New Jersey, Alabama, Georgia, Texas, Louisiana, offshore Louisiana and offshore Texas and will deliver the gas at an existing point of interconnection between Transco and United Gas Pipe Line Company in Victoria County, Texas. It is stated that Transco will

construct no new facilities to provide this transportation service, utilizing instead existing facilities as reflected in Exhibit A of the service agreement. It is stated that there is no agency relationshp under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper. Transco states that service for Shipper commenced October 4, 1988, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89–0639.

Comment date: January 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–277–000]

December 5, 1988.

Take notice that on November 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–277–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Niagara Mohawk Power Corporation (Shipper) under Transco's blanket certificate issued in CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported hereunder for Shipper on a peak day will be 1,928,000 dt equivalent of natural gas; on an average day will be 100,000 dt equivalent of natural gas; and on an annual basis will be 36,500,000 dt equivalent of natural gas. Transco states it will receive the gas at points of receipt in Pennsylvania, New Jersey, Alabama, Georgia, Texas, Louisiana, offshore Louisiana and offshore Texas and deliver the gas at an existing point of interconnection between Transco and Consolidated Gas Supply Corporation at Leidy, Clinton County, Pennsylvania. Transco states that it will construct no new facilities in order to provide this transportation service, utilizing instead existing facilities as reflected in Exhibit A of the transportation agreement. Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper. Transco states that service for Shipper commenced October 24, 1988, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89–0640. Transco states further that it has verified that transportation hereunder will be pursuant to Subpart F, Part 157 of the Regulations and Subpart G, Part 284 of the Regulations.

Comment date: January 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89–230–000]

December 5, 1988.

Take notice that on November 17, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–230–000 a request, as supplemented November 22, 1988, pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of General Motors Corporation (GM), a shipper and end-user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on a firm basis up to 258 dt equivalent of natural gas on a peak day for GM, 258 dt equivalent on an average day and 94,170 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Panhandle would receive the gas for GM's account at existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is further stated that Panhandle would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Citizens Gas Fuel in Lenawee County, Michigan. It is explained that the service commenced October 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–535.

Comment date: January 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Distrigas of Massachusetts Corporation

[Docket No. CP89–245–000]

December 6, 1988.

Take notice that on November 18, 1988, Distrigas of Massachusetts Corporation (Applicant), Two Oliver Street, Boston, Massachusetts, 02109, filed in Docket No. CP89–245–000 an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization to install and operate two compressors at Applicant's liquified natural gas ("LNG") terminal, all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission and open to public inspection.

Applicant operates an LNG terminal and storage facility at Everett, Massachusetts. As a consequence of normal operation of the terminal a small amount of LNG naturally vaporizes, or "boils off". Applicant currently captures a portion of that boil-off vapor, compresses it, and sells it under existing regulatory authority. Applicant proposes to replace its present boil-off compressor, having a capacity of 54.5 Mcf per hour, with two compressors having a total capacity of 165 Mcf per hour. Applicant states that the cost of the compressors would be approximately $1,300,000 with the Applicant bearing the cost and assuming the risk of recovery of the cost of the proposed compressors. Applicant proposes to finance said cost through cash on hand. Applicant states that the expanded compressor capacity will increase the capture and sale of otherwise wasted boil-off vapor and would thus enhance the efficiency of Applicant's LNG terminal.

Comment date: January 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. Midwestern Gas Transmission Company

[Docket No. CP89–276–000]

December 6, 1988.

Take notice that on November 23, 1988, Midwestern Gas Transmission Company (Midwestern), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89–276–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to a total of 265,000 Dt per day on an interruptible basis for five shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it would transport gas on its northern system for the following shippers:

Shipper	Transportation volume (Dt/day)
1. Northern Natural Gas Company	100,000
2. Iowa Public Service Company	100,000

Shipper	Transportation volume (Dt/day)
3. Wisconsin Public Service Corporation	25,000
4. Inland Steel Company	20,000
5. Petro-Canada Hydrocarbons, Inc	20,000

Midwestern states that each shipper would pay a rate equal to the rate set forth in Midwestern's Rate Schedule IT–2 and each shipper would deliver quantities of gas at Emerson, Manitoba, on each day for Midwestern's system fuel and use requirements associated with the transportation quantity.

Midwestern states that each shipper would need to obtain necessary United States authorizations to import natural gas from Canada and the Canadian suppliers would need to obtain necessary Canadian authorizations to export natural gas from Canada.

Further, Midwestern states that the proposed transportation service would benefit the shippers by enabling them to meet existing and future market requirements plus the service would provide some of the shippers alternate sources of supply to meet such requirements.

Comment date: December 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

14. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–256–000]

December 6, 1988.

Take notice that on November 21, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas, 77251, filed in Docket No. CP89–256–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a certain transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the transportation service rendered Florida Gas Transmission Company (FGT) under Transco's Rate Schedule X–199. Transco states that 21,000 Mcf of natural gas per day is transported through FGT's capacity in a jointly owned line from South Marsh Island (SMI) Blocks 149 and 150 to Transco in SMI Block 132. Transco explains that it transports such natural gas on a firm basis for FGT from SMI Block 132 to an existing interconnection with FGT at St. Helena Parish, Louisiana. Transco states that FGT has requested full and permanent abandonment of service under Rate Schedule X–199. Transco further states upon abandonment of service under Rate Schedule X–199, Transco and FGT would enter into an arrangement for substitute firm transportation of 4,000 Mcf of natural gas per day under Transco's Rate Schedule FT. Transco explains that the service would be rendered under the authority of its blanket certificate.

Comment date: December 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89–274–000]

December 6, 1988.

Take notice that on November 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–274–000 an application pursuant to section 7(b) of the Natural Gas Act, for issuance of an order permitting and approving abandonment of certain natural gas pipeline facilities.

Specifically, United proposes to abandon in place 6.92 miles of 12-inch pipeline in Baldwin County, Alabama. United states that the line is old and no longer needed and that replacing or maintaining it would be economically unfeasible. United further states this abandonment will be implemented without any termination of service or detriment to any of its customers. The facility was certificated in Docket No. G–232.

Comment date: December 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28398 Filed 12–8–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89-239-000]

ANR Pipeline Co.; Application

December 6, 1988.

Take notice that on November 17, 1988, ANR Pipeline company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-239-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain certificated levels of firm sales entitlements of nine of its firm sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that pursuant to section 284 of the Commission's Regulations, nine of ANR's eligible firm sales customers, City of Albany, Missouri; Allerton Gas Company; City of Bethany, Missouri; City of Milan, Missouri; St. Joseph Power & Light Company; City of Stanberry, Missouri; City of Unionville, Missouri; City of Wayland, Iowa; and Wisconsin Power and Light Company, have elected to convert a portion of their firm sales entitlements to firm transportation. ANR proposes to abandon a total of 8,117 dt of contract demand and 589,086 dt of annual contract quantity for such nine firm sales customers under Rate Schedules CD-1 and SGS-1 of Original Volume No. 1 of its FERC Gas Tariff.

Pursuant to 18 CFR 284.10(d)(2) of the exercise of the customers' option to convert constitutes consent to the proposed abandonment. Accordingly, any person desiring to be heard or any person, other than the converting customers, desiring to make any protest with reference to said application should on or before December 27, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission with be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28402 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-32-000]

Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment

December 5, 1988.

On November 30, 1988, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"):

Thirty-sixth Revised Sheet No. 7
Thirty-sixth Revised Sheet No. 8

CIG requests that these proposed tariff sheets be made effective on January 1, 1989.

CIG states this filing, *inter alia*, reflects no change in demand, and a 4.9 cent increase in the commodity rate for the G-1, P-1, PR-1, H-1, F-1 and SG-1 Rate Schedules, compared with rates filed by CIG on August 1, 1988, and accepted by the Commission effective October 1, 1988 in Docket No. TA89-1-32.

CIG states that copies of the filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) by December 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28403 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-201-004]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Provisions

December 5, 1988.

Take notice that on November 30, 1988, East Tennessee Natural Gas Company (East Tennessee) filed Thirteenth Revised Sheet No. 5 to its FERC Gas Tariff to be effective January 1, 1989.

East Tennessee states that the purpose of the filing is to flow through the second demand surcharge implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191 effective January 1, 1989. East Tennessee is flowing these charges to its customers pursuant to Article 30 of its FERC gas tariff, which was accepted by order of the Commission on July 28, 1988.

East Tennesseee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to be come a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28404 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1988.

Take notice that Northern Border Pipeline Company (Northern Border), on November 30, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. Northern Border projects that the proposed changes will increase jurisdictional revenues by $8.5 million during the first year that such changes are in effect.

By this filing Northern Border is proposing to increase its Operation Phase Rate, which is its allowed rate of return on equity to 16.0 percent from the currently effective rate of 14.5 percent. Northern Border is also proposing to include amounts recorded in 426.1 Donations, not to exceed $20,000 a year, in Northern Border's cost of service and to allocate interest expense, used in the calculation of income taxes, on a ratio of debt to total capitalization.

Northern Border proposes an effective date for this filing of January 1, 1989. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before December 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28405 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

December 5, 1988.

Take notice that North Penn Gas Company (North Penn) on November 30, 1988 tendered for filing Ninety-First Revised Sheet No. PGA-1 to its FERC Gas Tariff First Revised Volume No. 1.

North Penn states that the revised tariff sheet is filed pursuant to section 14 of the General Terms and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period December 1, 1988 through February 28, 1989 and is proposed to be effective December 1, 1988. The proposed change reflects a decrease in the average cost of gas for the G-1 Rate Schedule of 81.792¢ per Mcf.

North Penn requests waiver of the Commission's Rules and Regulations pertaining to the thirty-day notice requirement stating that it did not receive its suppliers' changes in rates in order to make a timely filing and that it has been awaiting the Commission's actions on these changes in rates so that it would not have to make duplicate filings to reflect the proper supplier rates.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective December 1, 1988, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective December 1, 1988, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervent. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28406 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-272-000]

Panhandle Eastern Pipe Line Co.; Application

December 6, 1988.

Take notice that on November 22, 1988, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-272-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in part certain certificated levels of firm sales entitlements of Central Illinois Light Company (CILCO), one of its firm sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to section 284 of the Commission's Regulations, CILCO has elected to convert a portion of its firm sales entitlements to firm transportation. Panhandle proposes to abandon a total of 29,060 dt of contract demand for CILCO under Rate Schedule G-2 of Original Volume No. 1 of its FERC Gas Tariff.

It is stated that Panhandle and CILCO have entered into a Service Agreement dated April 1, 1988, which provides, effective April 1, 1988, for a reduction of CILCO's sales contract demand level by nine percent. Panhandle states that the sales service was converted to firm transportation on April 1, 1988. Subsequently, it is stated that CILCO and Panhandle entered into a second Service Agreement, dated August 1, 1988, effective August 1, 1988, to reduce firm sales service further, as a result of a second conversion pursuant to § 284.10, for an aggregate reduction of fifteen percent. According to Panhandle, the corresponding firm transportation is being performed in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm, as such may be amended from time to time, or a successor tariff. Accordingly, Panhandle seeks authority for partial abandonment of CILCO's current firm sales entitlement by 17,727 Mcf per day (Mcfd), to be effective April 1, 1988, and by a further 11,333 Mcfd to be effective August 1, 1988.

Panhandle requests an April 1, 1988, effective date for the initial abandonment authorization requested and an August 1, 1988, effective date for the subsequent abandonment requested. The effective date of the reduction and conversion is proposed to be simultaneous, as agreed upon by Panhandle and CILCO. Panhandle states that this proposal is in accordance with the Commission's stated concern that customers be protected from the potential of incurring the cost of both transportation and sales for the portion of firm sales service to be converted.

It is stated that the abandonment requested is without prejudice to recovery of any costs associated with service to CILCO including those matters pending in Docket Nos. RP88-240-000, RP88-241-000, RP89-9-000 and RP89-10-000.

BEST COPY AVAILABLE

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment. Accordingly, any person desiring to be heard or any person, other than the converting customers, desiring to make any protest with reference to said application should on or before December 27, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CAR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28407 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

Tennessee Gas Pipeline Co.;

[Docket No. RP88-191-005]

December 6, 1988.

Take notice that on November 30, 1988, Tennessee Gas Pipeline Company (Tennessee) filed First Revised Sheet Nos. 40 through 44 to Volume No. 1 of its FERC Gas Tariff.

Tennessee states that this filing is in accord with the Stipulation and Agreement (October 14, 1987) in *Tennessee* Docket Nos. RP86-119, *et al.* and sets forth the Take-or-Pay Demand Rate Surcharge for each of its Rate Schedules CD, G and GS customers to be effective for the period January 1, 1989 through June 30, 1989. The surcharge is based on fifty percent of the non-affiliate, non-recoupable take-or-pay and contract reformation costs incurred by Tennessee through November 30, 1988. These costs include (i) the amounts Tennessee has commenced recovery of pursuant to its June 10, 1988 filing in this proceeding, representing costs incurred through May 31, 1988, (ii) carrying charges on those amounts calculated at the FERC rate, and (iii) an additional $69,387,331, representing amounts incurred during the period June 1, 1988 through November 30, 1988.

The tariff sheets are proposed to be effective January 1, 1989.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28408 Filed 2-6-88; 8:45 am]

BILLING CODE 6717-01-M

Trunkline Gas Co.; Informal Settlement Conference

[Docket No. RP88-180-000]

December 5, 1988.

Take notice that a conference will be convened in this proceeding on December 19, 1988, at 9:30 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo (202) 357-5737 or Paul Biancardi (202) 357-8517.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28414 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-27-010 and Docket No. RP88-264-002]

United Gas Pipe Line Co.; Tariff Filing

December 6, 1988.

Take notice that on November 30, 1988, United Gas Pipe Line Company (United) tendered for filing revised tariff sheets, and work papers and schedules related thereto, as follows:

Substitute First Revised Sheet No. 4-G1
Substitute First Revised Sheet No. 4-H
Substitute First Revised Sheet No. 4-I
Substitute First Revised Sheet No. 4-J
Substitute First Revised Sheet No. 4-K

United states that this filing is made pursuant to the order of the Federal Energy Regulatory Commission (Commission) issued in Docket Nos. RP88-27 and RP88-264 on October 31, 1988.

United states this filing revises its September 30, 1988 filing to reflect (1) that customers which depart United's system after the effective date of the proposal and which are assessed costs under it may pay their remaining liability as a lump sum or continue under the amortization schedule at their option; (2) only the inclusion of those costs attributable to binding agreements entered before September 30, 1988; (3) the crediting of any unused take-or-pay credits arising from Docket No. RP85-209 against that customers liability under Docket No. RP88-264; and (4) procedures for reconciling the take-or-pay costs collected with actual settlement payments made.

Further, United states that due to the Commission's November 23, 1988 order in Docket No. CP87-524-001, its compliance filing reflects the same allocation of take-or-pay costs as that contained in United's September 30, 1988 filing. United avers that the Commission's November 23, 1988 order obscures the holding of Ordering Paragraph (B)(1) of the Commission's October 31, 1988 order. United has continued to reflect in this filing the allocation of take-or-pay costs to those

customers who have previously received abandonment authorization, and United therefore requests the Commission to clarify the alleged conflict created by its October 31, 1988 and November 23, 1988 orders.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before December 13, 1988, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motion will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28413 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 5, 1988

Take Notice that on November 30, 1988, United Pipe Line Company (United) tendered for filing the following tariff sheets:

First Revised Volume No. 1
Eighty-Fourth Revised Sheet No. 4
Third Revised Sheet No. 4.1

United States the proposed effective date of the tariff sheets in this docket is January 1, 1989. The above referenced tariff sheets are being filed pursuant to §§ 154.304 and 154.308 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in Section 19 of United's FERC Gas Tariff, First Revised Volume No. 1.

United states that it has filed tariff sheets to reflect a 1.38¢ decrease in gas cost. This includes a decrease of 9.97¢ in its current gas cost. The surcharge to be effective on January 1, 1988, and remain in effect throughout 1989, is 16.59¢. This reflects projected recovery of approximately $7.1 million in Additional Deferred Costs in accordance with United's settlement in Docket Nos. TA87-1-11-000, *et al.* and TA87-2-11-000 *et al.*

United states that the revised tariff sheet and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before December 13, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 88-28409 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

West Texas Gas, Inc.; Filing

[Docket No. TQ89-1-35-000]

December 6, 1988.

Take notice that on November 30, 1988, West Texas Gas, Inc. (WTG) filed Thirteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective January 1, 1989. This tariff sheet was filed by WTG in accordance with the Commission's purchased gas adjustment regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such motions or protests should be filed on or before December 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28410 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

Williston Basin Interstate Pipeline Co.; Proposed Changes In FERC Gas Tariffs

[Docket No. RP89-34-000]

December 5, 1988.

Take notice that on November 30, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing proposed changes to its FERC Gas Tariffs, First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B, and Original Volume No. 2 applicable to its jurisdictional gas sales and transportation customers. Williston Basin states that the proposed changes are designed to increase revenues from jurisdictional sales and transportation services by $4,666,050 based on the 12-month period ending July 31, 1988, as adjusted. The proposed effective date is January 1, 1989.

Williston Basin states this filing continues the basic rate design structure proposed in Docket Nos. RP88-197-000 *et al.* which was authorized to become effective September 24, 1988, pursuant to the Commission's Order Accepting Tariff Sheets, Rejecting Alternate Tariff Sheets, Granting Request for Clarification and Requiring Revised Filing, issued November 25, 1988. Williston Basin's filing in Docket Nos. RP88-197-000 *et al.* provided for the implementation of the IT-1 and FT-1 rate schedules and the commencement of NGPA Section 311 transportation service. Just prior to the submission of the instant filing, Williston Basin tendered an application to the Commission under section 7 of the NGA requesting authority to institute revised Maximum Daily Delivery Quantities and Annual Entitlement Quantities applicable to Williston Basin's sales customers. The instant filing reflects these two impacts on the billing determinants.

Copies of this filing were served on the Company's jurisdictional customers and interested state regulatory agencies.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before December 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28411 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket TQ89-1-49-001]

Williston Basin Interstate Pipeline Co.; Additional Purchased Gas Cost Adjustment Filing

December 5, 1988.

Take notice that on November 29, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

Original Volume No. 1-A

Eleventh Revised Sheet No. 11
Fourteenth Revised Sheet No. 12
Fifth Revised Sheet No. 97A

Original Volume No. 1-B

Fourth Revised Sheet No. 10
Fourth Revised Sheet No. 11

Original Volume No. 2

Substitute Seventeenth Revised Sheet No. 10
Ninth Revised Sheet No. 11B

The Company respectfully requests waiver of the Commission's Regulations to the extent necessary for these tariff sheets to become effective as of November 1, 1988.

Williston Basin states the instant filing is tendered to revise the fuel adder rates coincide with Williston Basin's latest filed PGA in Docket No. TQ89-1-49-000 which was subsequently approved by the Commission by an OPPR Letter Order dated October 31, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a motion to intervene on or before December 13, 1988. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28412 Filed 12-8-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3488-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describe the nature of the information collection and its expected cost burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Recordkeeping Requirements for Producers of Pesticides (EPA ICR #0143; OMB #2070-0028). This is a renewal of a previously approved collection.

Abstract: This collection requires producers of pesticides to maintain records related to production and other operations. EPA may inspect these records to determine compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Producers themselves may use the records to fulfill various FIFRA-mandated reporting requirements.

Burden Statement: The estimated public recordkeeping burden for this collection of information is 2 hours per pesticide producer.

Respondents: Pesticide producers.

Estimated No. of Respondents: 13,918.

Estimated Total Annual Burden on Respondents: 27,836.

To obtain a copy of the FCR package contact Sandy Farmer on (202) 382-2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt (ICR #0143), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: November 28, 1988.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-28330 Filed 12-8-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3488-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed November 28, 1988 Through December 2, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880394, Draft, FHW, MD, US 1 Improvements, Silver Spring Road to MD-152, Funding and 404 Permit, Baltimore and Harford Counties, MD, Due: January 23, 1989, Contact: Herman Rudrigo (301) 962-4010.

EIS No. 880395, Final, GSA, IL, Chicago Downtown Federal Office Building Construction, Implementation, Cook, DuPage, Lake, Kane, Will and McHenry Counties, IL, Due: January 9, 1989, Contact: Robert A. Nawrocki (312) 353-5610.

EIS No. 880396, Draft, SFW, KY, TN, Reelfoot Lake Water Level Management Plan, Implementation, Fulton County, KY and Lake and Obion Counties, TN, Due: January 23, 1989, Contact: Bruce Blanchard (202) 343-3891.

EIS No. 880397, Final, COE, CA, Marathon Industrial/Commercial Business Park Development, Section 10 and 404 Permits, City of Hayward, Alameda County, CA, Due: January 9, 1989, Contact: Scott Miner (415) 974-0446.

EIS No. 880398, Final, EPA, LA, Southwest Pass/Mississippi River Ocean Dredged Material Disposal Site (ODMDS) Designation for Material Dredged from the Southwest Pass Channel, Jefferson and Plaquemines Parishes, Due: January 9, 1989, Contact: Norman Thomas (214) 255-2260.

EIS No. 880399, Draft, IBR, CA, Kellogg Unit Reformation Study, Contra Costa Canal Intake Relocation, Approval and Implementation, Contra Costa

County, CA, Due: March 6, 1989, Contact: Gerald L. Wright (916) 978–5116.

EIS No. 880400, Draft, BLM, NM, Molycorp Guadulupe Mountain Tailings Disposal Facility, Construction, Operation and Closure, Plan of Operation Approval, Tasco County, NM, Due: January 23, 1989, Contact: Robert T. Dale (505) 761–4546.

EIS No. 880401, Draft, AFS, AL, GA, KY, NC, SC, TN, VA, WV, Appalachian Mountains National Forests Vegetation Management Plan, Implementation, AL, GA, KY, NC, SC, TN, VA and WV, Due: February 17, 1989, Contact: Steve McCorquodale (404) 347–7076.

EIS No. 880402, DSuppl, COE, WA, Mill Creek Flood Control Project, Storage Dam Seepage Control, Implementation, Walla Walla County, WV, Due: January 25, 1989, Contact: Sandra Shelin (509) 522–6626.

Dated: December 6, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–28399 Filed 12–8–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3489–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 21, 1988 through November 25, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DS–AFS–J28015–CO, Rating EC2, Rock Creek Reservoir, Routt National Forest or Muddy Creek Reservoir, Kremmling Resource Area, Construction, Special Use and 404 Permits, Routt and Grand Counties, CO.

Summary: EPA is pleased to see the shift to Muddy Creek as the proposed reservoir site. However, environmental concerns over the need to adquately mitigate the loss of 892 acres of wetlands remain. Further, EPA is concerned that the proposed 390 acres of wetland mitigation proposed may not be adequate to fully compensate for the loss wetland functions. Questions also remain on how the HEP model was applied.

ERP No. D–UAF–K11032–CA, Rating EC2, March Air Force Base Land Conveyance for Construction of a New 15th Air Force Headquarters Building, a Non-commissioned Officers Professional Education Center and a 15th Air Force Band Center, Implementation, Riverside County, CA.

Summary: EPA expressed environmental concerns, primarily on the need for the proposed project to fully comply with the legislative and regulatory requirements of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (CERCLA/SARA). The final EIS needs to disclose whether any CERCLA hazardous substances exist on the 845 acres proposed for conveyance to a private party and whether the construction of three new buildings on the Main Base would affect any ongoing or planned CERCLA investigation or remedial work.

Final EISs

ERP No. F–BLM–K60017–CA, Western Mojave Land Tenure Adjustments Project, Implementation, Kern, Los Angeles, and San Bernandino Counties, CA.

Summary: EPA requested that the Record of Decision contain a commitment that the BLM will have a mechanism in place to ensure that all future site-specific environmental analyses for land exchanges provide inventory for hazardous substances.

Dated: December 6, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–28400 Filed 12–8–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3489–2]

Designation of Ocean Dredged Material Disposal Sites (ODMDS) Offshore Freeport, TX; Intent To Prepare an Environmental Impact Statement (EIS)

AGENCY: U.S. Environmental Protection Agency (EPA), Region VI.

ACTION: Notice of intent to prepare an EIS on the designation of two ODMDSs offshore Freeport, Texas.

Purpose: In accordance with section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping), EPA will prepare a Draft EIS on the designation of two ODMDSs offshore Freeport, Texas.

For Further Information and to Be Placed on the Project Mailing List Contact: Mr. Norm Thomas (6E–F), Chief, Federal Activities Branch, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (Commerical) 214/655–2260 or (FTS) 255–2260.

SUMMARY: The Corps of Engineers (COE), Galveston District, proposes to expand and relocate the Freeport Harbor Entrance and Jetty Channels. This expansion and relocation will produce approximately 5.1 million cubic yards (mcy) of construction (new work) material to be discharged offshore. In addition, approximately 2.1 mcy of maintenance material will be dredged annually and disposed offshore.

Need for Action: The COE has requested that EPA designate two ODMDSs offshore Freeport, Texas. One site is for the one-time disposal of virgin construction material and the other site is for the routine disposal of future maintenance material from Freeport Harbor (45-Foot Project), Texas. An EIS is required to provide the necessary information to evaluate alternatives and designate disposal sites.

Alternatives: Alternatives to be considered in the Draft EIS include no action, upland disposal, and ocean disposal.

Scoping: A scoping meeting will not be held. Scoping with affected federal, state and local agencies and with interested parties is being accomplished by correspondence.

Estimated Date of Release: The Draft EIS should be available in January 1989.

Responsible Official: Mr. Robert E. Layton Jr., P.E., Regional Administrator.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–28401 Filed 12–8–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59265A; FRL–3488–5]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(l) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–89–2. The test marketing conditions are described below.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(l) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–89–2. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–89–2. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T–89–2

Date of Receipt: October 20, 1988.
Notice of Receipt: November 9, 1988 (53 FR 45385).
Applicant: Confidential.
Chemical: (G) Acrylate acrylonitrile vinylacetate copolymer.
Use: Laminating adhesives.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Eighteen months, commencing on first day of manufacture.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 2, 1988.

Wendy Cleland-Hamnett,

Deputy Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 88–28329 Filed 12–8–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51721; FRL–3488–7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TRSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for secton 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-six such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89–98, 89–99, February 6, 1989.
P 89–100, 89–101, February 7, 1989.
P 89–103, 89–105, 89–106, 89–107, February 11, 1989.
P 89–108, 89–109, February 12, 1989.
P 89–112, 89–113, 89–114, February 15, 1989.
P 89–116, 89–117, 89–118, 89–119, 89–120, 89–121, 89–122, 89–123, 89–124, 89–125, 89–126, 89–127, February 19, 1989.
P 89–128, February 20, 1989.

Written comments by:

P 89–98, 89–99, January 7, 1989.
P 89–100, 89–101, January 8, 1989.
P 89–103, 89–105, 89–106, 89–107, January 12, 1989.
P 89–108, 89–109, January 13, 1989.
P 89–112, 89–113, 89–114, January 16, 1989.
P 89–116, 89–117, 89–118, 89–119, 89–120, 89–121, 89–122, 89–123, 89–124, 89–125, 89–126, 89–127, January 20, 1989.
P 89–128, January 21, 1989.

ADDRESS: Written comments, identified by the document control number "OPTS–51721" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–98

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Thermoplastic polyamide.
Use/Import. (S) Hot melt adhesive for automobile filters. Import range: Confidential.

P 89–99

Manufacturer. Lonza, Inc.
Chemical. (G) Cocoamphodipropionate.
Use/Production. (G) Industrial surfactant. Prod. range: Confidential.

P 89–100

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylate methacrylate polymer.
Use/Production. (G) Industrial coating polymers. Prod. range: 10,000–60,000 kg/yr.

P 89–101

Importer. Rohm and Haas Company.
Chemical. (G) Modified polyacrylamide.

Use/Import. (G) For use with aqueous solution in a contained use. Import range: Confidential.

P 89–103

Manufacturer. Confidential.
Chemical. (G) Modified rosin.
Use/Production. (S) Ink binder. Prod. range: Confidential.

P 89–105

Manufacturer. Confidential.
Chemical. (G) Humic acid, sodium salt, polymer with acrylic monomer.
Use/Production. (G) Fluid loss additive for oil and gas production. Prod. range: Confidential.

P 89–106

Manufacturer. Confidential.
Chemical. (G) Humic acid, sodium salt, polymer with acrylic monomer.
Use/Production. (G) Fluid loss for additive oil and gas production. Prod. range: Confidential.

P 89–107

Manufacturer. Confidential.
Chemical. (G) Humic acid, sodium salt, polymer with acrylic monomer.
Use/Production. (G) Fluid loss additive for oil and gas production. Prod. range: Confidential.

P 89–108

Manufacturer. Confidential.
Chemical. (G) Substituted modified cation exchange resin.
Use/Production. (S) Fixed bed catalyst. Prod. range: Confidential.

P 89–109

Manufacturer. Confidential.
Chemical. (G) Trisubstituted heteromonocycle.
Use/Production. (S) Fixed bed catalyst. Prod. range: Confidential.

P 89–112

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Polyphosphonic acid-alkaline salt mixture.
Use/Production. (G) Dye bath additive. Prod. range: Confidential.

P 89–113

Importer. Pennwalt Corporation.
Chemical. (S) 3-Ethoxylthiobutanal.
Use/Import. (G) Destructive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>3,677 mg/kg species(Rat). Acute dermal toxicity: LD50>2,000 mg/kg species(Rabbit). Eye irritation: strong species(Rabbit). Skin irritation: strong species(Rabbit). Mutagenicity: negative.

P 89–114

Manufacturer. Confidential.
Chemical. (G) Dithiocarbamate.
Use/Production. (G) Water clarifier during crude oil production. Prod. range: Confidential.

P 89–116

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium compound.
Use/Production. (G) Fabric softener, cosmetic conditioner. Prod. range: Confidential.

P 89–117

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium compound.
Use/Production. (G) Cosmetic conditioner fabric antistat. Prod. range: Confidential.

P 89–118

Manufacturer. Quantum Chemical Corp., Emery Div.
Chemical. (G) Substituted lactone.
Use/Production. (S) Chemical intermediate. Prod. range: 1,000 kg/yr.

P 89–119

Manufacturer. Quatum Chemicals Corp., Emery Div.
Chemical. (G) Substituted lactone.
Use/Production. (G) Intermediate chemical. Prod. range: 1,000 kg/yr.

P 89–120

Manufacturer. NL Chemicals.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Polyurethane resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89–121

Manufacturer. NL Chemical.
Chemical. (G) Acrylic modified alkyd.
Use/Production. (G) Acrylic modified alkyd to be in an open, nondispersive manner. Prod. range: Confidential.

P 89–122

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Organic phosphate ester.
Use/Production. (S) Antistatic agent. Prod. range: 25,000–120,000 kg/yr.

P 89–123

Manufacturer. Confidential.
Chemical. (G) Alkyl amine.
Use/Production. (G) Dispersive agent use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5.0 g/kg species(Rat).

P 89–124

Manufacturer. Confidential.
Chemical. (G) Halogenated polyacrylate/methacylate.
Use/Production. (G) Resin in a millwork prome. Prod. range: 80,000–100,000 kg/yr.

P 89–125

Manufacturer. Confidential.
Chemical. (G) Acrylic methacrylic polymer.
Use/Production. (G) Openly applied industrial coating. Prod. range: 16,000–163,000 kg/yr.

P 89–126

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate-methacrylate.
Use/Production. (S) Chemical intermediate. Prod. range: 22,000–27,000 kg/yr.

P 89–127

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.,
Chemical. (G) Diisocyanate.
Use/Production. (S) Monomer to make polyurethane. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 760 mg/kg species(Rats). Acute dermal toxicity: LD50>4640 mg/kg species(Rabbit). Eye irritation: strong species(Rabbits). Skin irritation: moderate species(Rabbit).

P 89–128

Manufacturer. Hercules Incorporated.
Chemical. (G) Hydrophhobically-modified hydroxethyl cellulose (HMHEC).
Use/Production. (S) Thickening agent for latex paint, inks, & industrial application. Prod. range: Confidential.

Date: November 29, 1988.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–28327 Filed 12–8–88; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–59858; FRL–3488–8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in

the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of twelve such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 89–24, 89–25, November 30, 1988.
Y 89–26, 89–27, 89–28, 89–29, November 21, 1988.
Y 89–30, December 4, 1988.
Y 89–31, 89–32, November 21, 1988.
Y 89–33, December 6, 1988.
Y 89–34, December 8, 1988.
Y 89–35, December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–24

Manufacturer. Performance Polymers International.
Chemical. (G) Aromatic polyester based thermoplastic polyurethane polymer.
Use/Production. (S) Process aid, polymer modifier. Prod. range: 50,000–250,000 kg/yr.

Y 89–25

Manufacturer. Cyro Industries.
Chemical. (G) Acrylic modified rubber.
Use/Production. (S) Modifier for thermoplastic polymers. Prod. range: Confidential.

Y 89–26

Importer. Confidential.
Chemical. (G) Polyurethane.
Use/Import. (G) Polyurethane used in plastic and textile industries. Import range: Confidential.

Y 89–27

Importer. Confidential.
Chemical. (G) Polyurethane.
Use/Import. (G) Polyurethane for use in the plastic and textile industry. Import range: Confidential.

Y 89–28

Importer. Confidential.
Chemical. (G) Polyurethane dispersion.
Use/Import. (G) Additive used in the plastic industry. Import range: Confidential.

Y 89–29

Importer. Confidential.
Chemical. (G) Aqueous polyurethane dispersion.
Use/Import. (G) Polyurethane used in the plastic and textile industry. Import range: Confidential.

Y 89–30

Importer. Huls America, Inc.
Chemical. (G) "Polyester of aryl & alkyl dicarboxylic acids and alkyl diols."
Use/Import. (S) Adhesive for the assembly of plastic components. Import range: Confidential.

Y 89–31

Manufacturer. Confidential.
Chemical. (G) Polyuethane.
Use/Import. (G) Polyurethane used in textile industries. Prod. range: Confidential.

Y 89–32

Importer. Confidential.
Chemical. (G) Polyurethane dispersion.
Use/Import. (G) Adhesive used in the adhesive and plastic industry. Import range: Confidential.

Y 89–33

Manufacturer. Mitsui Toatsu Chemicals America.
Chemical. (S) 2,2-bis(4-(2-hydroxypropoxyl)phenyl) propane polymer with isophtalic acid neopentyl glycol trimethyrol propane and tolyene diisocyanate.
Use/Production. (S) Toner binder. Prod. range: Confidential.

Y 89–34

Manufacturer. Confidential.
Chemical. (G) Ethane olefin terpolymer.
Use/Production. (S) Raw material for polyolefin film. Prod. range: Confidential.

Y 89–35

Manufacturer. Confidential.
Chemical. (G) Polyether polyurethane polymer.
Use/Production. (S) Glass lamination market. Prod. range: Confidential.

Date: November 29, 1988.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–28328 Filed 12–8–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51720; FRL–3488–3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of ten such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89–88, 89–89, 89–90, 89–91, 89–92, 89–93—February 1, 1989.

P 89–94, 89–95, 89–96, 89–97—February 4, 1989.

Written comments by:

P 89–88, 89–89, 89–90, 89–91, 89–92, 89–93—January 2, 1989.

P 89–94, 89–95, 89–96, 89–97—January 5, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51720]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding legal holidays.

P 89-88

Importer. Emser Industrial.
Chemical. (G) N-Butyltriphenylphosphonium chloride.
Use/Import. (S) Catalyst for polycondensation of polyester. Import range: Confidential.

P 89-89

Manufacturer. Confidential.
Chemical. (G) Polyether.
Use/Production. (G) Openly used coating formulation. Prod. range: 2,000,000-3,000,000 kg/yr.

P 89-90

Manufacturer. Confidential.
Chemical. (G) Polyether.
Use/Production. (G) Openly used coating formulation. Prod. range: 2,000,000-3,000,000 kg/yr.

P 89-91

Manufacturer. Confidential.
Chemical. (G) Polyether.
Use/Production. (G) Openly used coating formulation. Prod. range: 2,000,000-3,000,000 kg/yr.

P 89-92

Manufacturer. Confidential.
Chemical. (G) Aryl polyurethane.
Use/Production. (G) Openly used coating formulation. Prod. range: 200,000-2,000,000 kg/yr.

P 89-93

Manufacturer. Confidential.
Chemical. (G) Functionalized acrylate methacrylate.
Use/Production. (G) Coating with an open use. Prod. range: 20,000-60,000 kg/yr.

P 89-94

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic elastomeric resin.
Use/Production. (S) Injection molding of plastic articles. Prod. range: Confidential.

P 89-95

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic elastomeric resin.
Use/Production. (S) Injection molding of plastic articles. Prod. range: Confidential.

P 89-96

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aliphatic thermoplastic urethane.
Use/Production. (S) Manufacture of plastic articles for use in: Industrial, medical, transportation. Prod. range: Confidential.

P 89-97

Manufacturer. Confidential.
Chemical. (S) 2,6-diiodonaphtalene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (guinea pig). Eye irritation: Slight species (Rabbit). Skin irritation: moderate species (guinea pig).

Date: November 28, 1988.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-28331 Filed 12-8-88; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3487-8]

Announcement of a Public Hearing on the Proposed Determination To Prohibit, or Deny the Specification, or the Use for Specification of an Area as a Disposal Site; Ware Creek, James City County, VA

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: A public notice entitled "Proposed Determination to Prohibit, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: Ware Creek, James City County, Virginia" was published in the **Federal Register** on November 18, 1988. (Request for a copy of that notice should be made to the person listed in the section below entitled **FURTHER INFORMATION.**) The November 18, 1988 notice announced the Environmental Protection Agency's (EPA) Region III Administrator's proposed determination to take action under section 404(c) of the Clean Water Act (CWA) to prohibit, deny, or restrict specification or use of certain Ware Creek waters in the area of James City County, Virginia, as a disposal site for dredged or fill materials in connection with construction of an impoundment for county water supply. The waters of the United States which are subject to the proposed section 404(c) action include those which would be affected by a dam proposed to be constructed across Ware Creek approximately 1,000 feet downstream from the confluence of Ware Creek and France Swamp. This section 404(c) action is being proposed because EPA Region III has reason to believe that filling and inundating the above-described waters of the United States, including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas. Furthermore, the EPA has reason to believe that alternatives are available to James City County which will meet projected water supply needs at less environmental cost and which are economically feasible. The purpose of this notice is to announce the scheduling of a hearing to provide the opportunity to comment on the Regional Administrator's proposed determination to prohibit, deny, or restrict the specification or use of all or portions of Ware Creek and its tributaries as a disposal site pursuant to section 404(c) of the Clean Water Act.

Public Hearing

A public hearing is scheduled for January 18, 1989 at the James City County Government Center's Board Room at 101-C Mounts Bay Road, Williamsburg, Virginia at 7 pm. Written comments may be submitted prior to the hearing. Any person may appear at the hearing and present oral or written statements and may be represented by counsel or other authorized representative. Participants will be afforded an opportunity for rebuttal. The Regional Administrator's designee will be the Presiding Officer at the hearing. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentation. No cross examinations of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant. The hearing record will remain open for the submittal of written comments until February 2, 1989, 15 days from the close of the public hearing. A record of the hearing proceeding shall be made by a verbatim transcript. Copies of the transcript of the proceedings may be purchased by any person from EPA after the close of the comment period. Copies will be available for public inspection at the Region III EPA office, 841 Chestnut Building, Philadelphia, PA after the close of the comment period. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

All written statements and information offered in evidence at the hearing will constitute a part of the hearing file which will become part of the administrative record of the Regional Administrator's determination.

DATES: All written comments should be submitted to the person listed under **ADDRESSES,** below, no later than

February 2, 1989, 15 days from the close of the public hearing. Written comments may be submitted to the Presiding Officer at the time of the hearing.

ADDRESSES: Comments should be sent to Ms. Barbara D'Angelo, Environmental Assessment Branch (3ES40), U.S. Environmental Protection Agency Region III, 841 Chestnut Bldg., Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara D'Angelo, Environmental Assessment Branch (3ES40), U.S. EPA Region III, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9301. If you wish to receive a copy of the public notice entitled "Proposed Determination to Prohibit, or Deny the Specification, of an Area as a Disposal Site: Ware Creek, James City County, Virginia" published on November 18, 1988, please contact Ms. D'Angelo and a copy will be mailed to you.

SUPPLEMENTARY INFORMATION: The November 18, 1988 public notice entitled "Proposed Determination to Prohibit, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: Ware Creek, James City County, Virginia" reviewed the 404(c) process, provided a description of the subject wetland site, reviewed the proceedings to date on the subject action, discussed the basis for the proposed determination and, solicited comments.

During the scheduled hearing, EPA would like to obtain comments on: (1) Whether filling and/or inundating the above-described Ware Creek waters including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas; (2) the vegetative, hydrologic and other ecological characteristics of the project area including the proposed lake impact area and balance of the Ware Creek watershed; (3) observations of, or information concerning, fish and wildlife (including but not limited to endangered, or threatened species) utilizing the project area and recreational use (including hunting and fishing) of the project area; (4) whether the Regional Administrator should recommend to the EPA Assistant Administrator for Water the determination to prohibit, deny, or restrict the specification or use of all or portions of Ware Creek and its tributaries as a disposal site for construction of the Ware Creek reservoir. Comments should be submitted no later than February 2, 1989 to the person listed above under **ADDRESSES.** All comments received will be fully considered by the Regional Administrator in making his determination to prohibit, deny, or restrict filling of the Ware Creek site or to withdraw this proposed determination.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 88–28334 Filed 12–8–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–817–DR]

Amendment to Notice of a Major Disaster Declaration; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–817–DR), dated November 23, 1988, and related determinations.

DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: The notice of a major disaster for the State of Arkansas, dated November 23, 1988, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 23, 1988: The Counties of Chicot, Clark, Columbia, Craighead, Faulkner, Garland, Greene, Independence, Izard, Logan, Nevada, Ouachita, Phillips, Poinsett, Prairie, Saline, Stone, White, and Woodruff for Individual Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88–28312 Filed 12–8–88; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200190.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties:

The Port Authority New York and New Jersey (Port Authority)
Mitsui OSK Lines (America) Inc. (Mitsui).

Synopsis: The agreement provides for the Port Authority to pay Mitsui $25/import and $50/export container with cargo loaded or unloaded from Mitsui's vessels at a marine terminal in the Port of New York/New Jersey. Each container must have been shipped by rail to or from points more than 260 miles from the Port, and must have been the subject of a rail freight bill or waybill issued after September 12, 1988.

Agreement No.: 224–010862–002.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority
Scanbarber A/S.

Synopsis: The agreement extends the term of the basic lease agreement to December 31, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 6, 1988.

[FR Doc. 88–28319 Filed 12–8–88; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission,

Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200189.

Title: Port of Houston Authority Terminal Agreement.

Parties: Port of Houston Authority of Harris County, Texas (Port) and James J. Flanagan Steveodres (Flanagan).

Filing party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The agreement provides that Flanagan will perform public marine terminal services, including freight handling, cargo loading and unloading, at the Port's wharves and transit sheds numbers 21 through 23. The term of the agreement expires December 31, 1990.

By Order of the Federal Maritime Commission.

Dated: December 6, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28320 Filed 12–8–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 2, 1988.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT: *Federal Reserve Board Clearance Officer*—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3181).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Request for OMB Approval to Extend, Without Revision, the Following Reports

Report title: Quarterly Country Exposure Report.

Agency form number: FFIEC 009.

OMB Docket number: 7100–0035.

Frequency: Quarterly.

Reporters: State member banks and bank holding companies that have a foreign office or subsidiary, International Banking Facility or Edge or Agreement subsidy.

Estimated number of respondents: 31.

Average hours per response: 24.

Annual reporting hours: 2,976.

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a) and 1844(c)] and is given confidential treatment [5 U.S.C. 552(b)(4) and (b)(8)].

This interagency report collects information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries.

2. *Report title:* Country Exposure Information Report.

Agency form number: FFIEC 009a.

OMB Docket number: 7100–0035 (formerly 7100–0188).

Frequency: Quarterly.

Reporters: State member banks and bank holding companies.

Estimated number of respondents: 31.

Average hours per response: 5.

Annual reporting hours: 620.

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a) and 1844(c)]. The information is available to the public.

This report is a supplement to the Quarterly Country Exposure Report (FFIEC 009) and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. Reporting institutions must also furnish a list of countries in which they have lending exposures above .75 percent of total assets or 15 percent of total capital, whichever is less.

Board of Governors of the Federal Reserve System, December 2, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–28300 Filed 12–8–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 2, 1988.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. National Survey of Health and Sexual Behavior: AIDS Behavior Pretest—NEW—This request is for approval of an AIDS Behavior Pretest sponsored by the National Institute of Child Health and Human Development of the National Institute of Health (NICHS/NIH). The project provides data on the distribution of sexual behavior of the general population of the U.S. The results of the pretest will be used to develop the strategy for a full-scale study and offer some interim measures of sexual activity in the U.S. Respondents will include a sample of all persons in the civilian non-institutional populations of the United States. Respondents: Individuals or households. Number of Respondents: 2,300; Number of Responses per Respondent: 1.058; Average Burden per Response: 1.07; Estimated Annual Burden: 2,610 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance

packages can be obtained by calling the Reports Clearance Officer on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
SSA: (301) 965–4149
OS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: December 6, 1988.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–28360 Filed 12–8–88; 8:45 am]

BILLING CODE 4150–04–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 2, 1988.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. Drug Quality Reporting System (DQRS)—0910–0024—This voluntary reporting system monitors the quality of drugs in the marketplace. The system has rapidly uncovered health hazards or circumstances which may increase patient/consumer risk. This mechanism utilizes the professionalism of the nation's pharmacists. DQRS information also provides FDA with timely surveillance data to direct field inspection operations. Respondents: Individuals or households, Businesses or other for-profit; Number of Respondents: 3,500; Number of Responses per Respondent: 1.15; Average Burden Per Response: 0.13; Estimated Annual Burden: 530 hours.

2. Assessment of NIH, Industry, and Academic Relationships in Restorative Material Research—NEW—To utilize federal research funds most effectively, information is needed about the role played by private industry in support of similar research. This study of dental materials research will use data from research performers and research sponsors to examine research collaboration among federal and private sources regarding support and performance of research, and to develop methods that can be used in other areas of biomedical research. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 988; Number of Responses per Respondent: 1; Average Burden Per Response: .362; Estimated Annual Burden: 358 hours.

3. Data collection for Analysis of the Use and Costs of Medical, Social, and Support Services for Persons with HIV-Related Illnesses—Concept Clearance—NEW—This survey will obtain health resources utilization, cost and insurance information from patients with AIDS and other HIV-related illnesses across the country. Data will be used to estimate total resources used by patients and variations in patterns of use in order to guide policymakers in decisions regarding allocation of resources. Respondents: Individuals or households; Non-profit institutions; Estimated Annual Burden: 1 hour.

4. Regulation—Foreign Quarantine (42 CFR Part 71)—0920–0134—Foreign quarantine regulations implement the provisions of the Public Health Services (PHS) Act in preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Inspections and control measures are undertaken with respect to conveyances, persons and shipments of animals and etiologic agents. The clearance request has been submitted with five separate information collection itemized burdens. Each collection is listed below. Respondents: Individuals or households/Businesses or other for-profit.

1st information collection, vehicle reporting		2nd information title reporting: dogs and cats
(§§ 71.21, 71.33(c), 71.35)		(§§ 71.51(b)(3), 71.51(d))
Number of Responses.	208	2505
Number of Responses Per Respondent.	10.2	1
Average Burden Per Responses.	1/60 or (.02)	16/30 or (.25)

3rd information collection		4th information collection
Title: Reporting (turtles) §71.52(d)		Reporting (nonhuman primates §71.53(d))
Number of Respondents.	10	100
Number of Responses Per Respondent.	1	1
Average Burden Per Response.	30/60 or (.5)	10/60 or (.167)

5th Information Collection	
Title: Recordkeeping (nonhuman primates) §71.533(e)	
Number of Respondents	175
Number of Respondents Per Respondent	—
Average Burden Per Response	—

Total Annual Burden for all Collection: 777.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. Hospital Provider of Long Term Care Services (Swing-Bed) Survey Report Form—0938–0485—This survey form is an instrument used by the State agency to record data colleced in order to determine compliance with individual conditions of participation and report it to the Federal government. Respondents: Individuals or households, State or local governments, Federal agencies or employees, Small businesses or organizations. Number of Respondents: 1,500; Number of Responses per Respondent: 1; Average Burden per Response: .25; Estimated Annual Burden: 375.

2. Medicaid Eligibility Quality Control (MEQC)—Information Collection Requirements in 42 CFR 431.804 (d) (3) and (4)—0938–0344—The information being collected is an optional additional sample of Medicaid eligibility cases which may be used by Medicaid state agencies to demonstrate that their actual current error rate is lower than that projected by HCFA. The clearance request has been submitted reflecting Reporting and Recordkeeping burden hours separately. Each collection is listed below.

1st information collection		2nd information collection
TITLE: *Reporting*		*Record-keeping*
Annual Number of Respondents	10	10
Annual Frequency	400	
Annual Burden Per Response	.3475	92.6
Total Burden Hours	2,316	

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Report by Former Representative Payee—0960–0112—This form collects information from State agencies or institutions which were formerly payees for persons receiving Social Security benefits. The form is used by the Social Security Administration to determine if those benefits were received and used properly. Respondents: State or local governments. Number of Respondents: 8,000; Frequency of Response: 1; Average Burden Per Response: 15 minutes; Estimated Annual Burden: 2,000 hours.

OMB Desk Officer: Justin Kopca.

As mentioned above, copies of the information collection clearance package can be obtained by calling the Reports Clearance Officer on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
SSA: (301) 965–4149
OS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 6, 1988.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–28361 Filed 12–8–88; 8:45 am]

BILLING CODE 4150–04–M

Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I have delegated to the Director, Office for Civil Rights, the authority to enforce the provisions of section 307(a) (1) and (2) of Pub. L. 98–457, Family Violence Prevention and Services Act (42 U.S.C. 10406). This delegation excludes the authority to issue regulations under the authority listed above. This authority may not be redelegated.

This delegation became effective upon date of signature.

Date: December, 1, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–28318 Filed 12–8–88; 8:45]

BILLING CODE 4150–04–M

Centers for Disease Control

National Institute for Occupational Safety and Health; Meeting on Manual Materials Handling

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Final Review of the Proposed Lifting Limits for Manual Materials Handling.

Date: December 16, 1988.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Room B32, Cincinnati, Ohio 45226.

Time: 9:00 a.m.—5:00 p.m.

Status: Open to the public, limited only by space available.

Purpose: To provide a final review of the revised NIOSH lifting recommendations and to discuss the format of the revised NIOSH lifting guidelines.

Additional information may be obtained from: Thomas R. Waters, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, Applied Psychology and Ergonomics Branch, Robert A. Taft Laboratories (Mail Stop C24), 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533–8291, FTS: 684–8291.

Dated: December 5, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–28353 Filed 12–8–88; 8:45 am]

BILLING CODE 4160–19–M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting

Notice of meeting of the Fogarty International Center Advisory Board Pursuant to Pub. L. 92–463, notice is hereby given of the eleventh meeting of the Fogarty International Center (FIC) Advisory Board, January 24, 1989, in Building 31, A–Wing, Conference Room 4, at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 2:30 p.m. The morning agenda willl include a report by the Director of the FIC; a report on the meeting of the Advisory Committee to the Director, NIH, on "Human Fetal Tissue Transplantation Research;" a report of the Commission on Health Research for Development Study on "The Role of Biomedical Research in Developing Countries Worldwide;" a presentation on the potential for collaborative activities between NIH's National Center for Nursing Research and FIC; an analysis of U.S. scientists who had postdoctoral foreign research experiences and their perceived hindrances or disincentives; and reports from working groups of the FIC Advisory Board.

In accordance with the provisions set forth in 552b(c)(9)(B), Title 5, U.S.C., the Board meeting will be closed to the public from 2:30 to 4:00 p.m. for discussion of specific long-range initiatives, the premature disclosure of which might hinder the implementation of such initiatives.

In accordance with the provisions of 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will also be closed to the public from 4:00 p.m. to adjournment for the review, discussion, and evaluation of research fellowship applications. These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary), Building 38A, Room 609, telephone 301–496–1491, will provide substantive program information.

Dated: November 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–28344 Filed 12–8–88; 8:45 am]

BILLING CODE 4140–01–M

VOL 53 ISS 237 DE 9 1988 UMI

National Center for Nursing Research; Meeting of the Nursing Science Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Nursing Science Review Committee (NRRC), National Center for Nursing Research, January 11–13, 1989, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on January 11, from 9 a.m. to 12:00 noon. Agenda items to be discussed will include Report of the Director, NCNR, NRRC Chairperson's Report, NRRC Executive Secretary's Report, and a presentation on the grant application review process.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d)) of Pub. L. 92–463, the meeting will be closed to the public on January 11 from 12 noon to recess, on January 12 from 9:00 a.m. to recess, and on January 13 from 9:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Eileen Raizen, Executive Secretary, Nursing Science Review Committee, National Center for Nursing Research, National Institutes of Health, Building 31A, Conference Room 2, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: November 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–28345 Filed 12–8–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development, Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of meeting of the National Advisory Child Health and Human Development Council, January 23–24, 1989, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on January 23 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council Meeting will be open to the public on January 23 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Prevention Research Program. The meeting will be open on January 24 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 23 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 24 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Council Secretary, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: November 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–28346 Filed 12–8–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee.

Date: January 11, 1989 (Planning Subcommittee).

Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: 1 p.m.—3 p.m.

Closed: 3 p.m.—5 p.m.

Dates: January 12–13, 1989 (Council).

Place: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: January 12, 9 a.m.—1 p.m.

Closed: January 12, 1 p.m.—recess, January 13, 8:30 a.m.—adjournment.

Executive Secretary: John C. Dalton, Ph.D, Associate Director for Extramural Activities, NINCDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: February 16–18, 1989.

Place: Holiday Inn-Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: February 16—8 p.m.– 8:30 p.m.

Closed: February 16, 8:30 p.m.—recess, February 17, 8 a.m.—recess, February 18, 8 a.m.—adjournment

Executive Secretary: Dr. A. Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: February 19–21, 1989.

Place: Bethesda Hyatt Regency, One Metro Center, Bethesda, Maryland 20814.

Open: February 19, 8 a.m.—8:30 a.m.

Closed: February 19, 8:30 a.m.—recess, February 20, 8 a.m.—recess, February 21, 8 a.m.—adjournment.

Executive Secretary: Dr. Herbert Yellin, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.

Name of Committee: Communicative Disorders Review Committee.

Dates: February 23–24, 1989.

Place: Bethesda Hyatt Regency, One Metro Center, Bethesda, Maryland 20814.

Open: February 23, 8:30 a.m.—9 a.m.

Closed: February 23, 9 a.m.—recess, February 24, 8:30 a.m.—adjournment.

Executive Secretary: Dr. Marilyn Semmes, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone 301/496–9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: November 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–28347 Filed 12–8–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Preparation of a Settlement Roll of Indians of the Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Superintendent of the Northern California Agency of the Bureau of Indian Affairs is preparing a settlement roll of Indians of the Reservation under the Hoopa-Yurok Settlement Act of October 31, 1988. The Settlement Act directs the Secretary of the Interior to prepare a settlement roll of Indians of the Reservation who meet stated eligibility criteria. Persons named on the settlement roll will be entitled to participate in certain settlement provisions under the Hoopa-Yurok Settlement Act. In accordance with the Settlement Act, notice of the preparation of the settlement roll is to be published in the **Federal Register**.

DATE: Application forms for inclusion on the settlement roll of Indians of the Reservation are to be filed with the Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049, and must be postmarked, if mailed, or received, if delivered, no later than close of business on March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049, telephone number: (916) 246–5141; or the Klamath Field Office, Bureau of Indian Affairs, P.O. Box 789, Klamath, California 95548, telephone number: (707) 482–6421.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Notice

Pursuant to the Hoopa-Yurok Settlement Act, Pub. L. 100–580, section 5(b), this is official notification to all "Indians of the Reservation," who were not on August 8, 1988, enrolled members of the Hoopa Valley Tribe, that they may apply for inclusion on the Indians of the Reservation Settlement Roll.

Application forms will be mailed to all plaintiffs in the *Short* cases. "*Short* cases" as defined in section 1(b)(11) of the Hoopa-Yurok Settlement Act means the cases entitled *Jessie Short et al.* v. *United States,* (Cl. Ct. No. 102–63); *Charline Ackley* v. *United States,* (Cl. Ct. No. 460.78); *Bret Aanstadt* v. *United States,* (Cl. Ct. No. 146–85L); and *Norman Giffen* v. *United States,* (Cl. Ct. No. 746–85L). In addition, application forms may be picked up or requested from the Klamath Field Office, Bureau of Indian Affairs, P.O. Box 789, Klamath, California 95548; the Hoopa Field Office, Bureau of Indian Affairs, P.O. Box 369, Hoopa, California 95546; the Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049; or the Sacramento Area Office, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Parents and guardians should also request and submit applications for all minors or non compos mentis individuals. The executor of any estate is requested to submit an application for any "Indian of the Reservation" who died on or after October 31, 1988.

To establish eligibility applicants must meet the following criteria:

A. Be born on or prior to the living upon the date of enactment of the Act, October 31, 1988; and

B. Be citizens of the United States; and

C. Not be, on August 8, 1988, enrolled members of the Hoopa Valley Tribe, and

D. Qualify as an "Indian of the Reservation" as established by the United States Court of Claims in its March 31, 1982, decision, and by the United States Claims Court in its May 14, 1987, and March 1, 1988, decisions in the case of *Jessie Short et al.* v. *United States,* Cl. Ct. No. 102–68. The March 31, 1982, opinion sets out eligibility Standards A–E. The May 14, 1987, and March 1, 1988, decisions delineated the manifest injustice standard.

Standards A–E are as follows:

Standard A: Allottees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of allottees living on October 1, 1949.

Standard B: Persons living on October 1, 1949, and resident on the Reservation at that time, who have received Reservation benefits or services, and hold an assignment, or can make other proof that though eligible to receive an allotment, they have not been allotted, and the lineal descendants of such persons, living on October 1, 1949.

Standard C: Persons living on June 2, 1953, who have at least ¼ Reservation blood, as defined below, have forebears born on the Reservation and were resident on the Reservation for 15 years prior to June 2, 1953.

Standard D: Persons of at least ¼ Indian blood, born after October 1, 1949, and before August 9, 1963, to a parent who is or would have been, when alive, a qualified Indian of the Reservation under Standards A, B, or C, or has previously been held entitled to recover in the *Short* cases.

Standard E: Persons born on or after August 9, 1963, who are of at least ¼ Indian blood, derived exclusively from the qualified parent or parents who is or would have been, when alive, a qualified Indian of the Reservation under Standards A, B, or C, or has previously been held entitled to recover in the *Short* cases.

Reservation blood, as used in Standard C above, means the blood of the following tribes or bands: Yurok; Hoopa/Hupa; Grouse Creek; Hunstang/Hoonsotton/Hoonsolton; Miskut/Miscotts/Miscolts; Redwood/Chilula; Saiaz/Nongatl/Siahs; Sermalton; South Fork; Tish-tang-atan; Karok; Tolowa; Sinkyone/Sinkiene; Wailake/Wylacki; Wiyot/Humboldt; and Wintun.

Manifest Injustice Standard: A person may be enrolled under the *Short* cases' manifest injustice exception if he or she does not qualify under the A–E Standards and it would be manifestly unjust to exclude him or her from enrollment. To qualify under the manifest injustice exception, a person

must adequately demonstrate all of the following:

1. A significant degree of Indian blood (at least ¼ degree Indian blood), and

2. Personal connections to the Reservation shown through a substantial period of residence on the Reservation (approximately ten years of residence); and

3. Personal ties to the land of the Reservation and/or ties to the land through a lineal ancestor.

Any named plaintiff in the *Short* cases determined by the United States Claims Court to be eligible as a Short plaintiff will be required to submit a timely application. Any other Indian who feels he or she qualifies under the above eligibility criteria must provide, in addition to the application, documented evidence including birth certificates that he or she meets the eligibility requirements.

All applications must be postmarked, if mailed, or received, if delivered at the Bureau of Indian Affairs, Northern California Agency, Redding, California 96049, no later than the close of business on March 29, 1989. Application forms filed after March 29, 1989, will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility.

All substantive requirements which applicants must meet, including the deadline for filing applications, to qualify for inclusion on the settlement roll of Indians of the Reservation have been set out in the Hoopa-Yurok Settlement Act. However, to provide procedures for BIA personnel to follow, a rulemaking document amending Part 62 of Title 25 of the Code of Federal Regulations will be published at a later date in the **Federal Register**. The rulemaking action will result in the procedures contained in Part 62 being applicable in the preparation of the settlement roll of Indians of the Reservation under the Hoopa-Yurok Settlement Act.

Donald F. Ashbra,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-28306 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-02-M

Request for Applications for Planning of Detention Centers

November 28, 1988.

ACTION: Notice of request for applications.

SUMMARY: The Bureau of Indian Affairs (BIA), Division of Law Enforcement Services in association with the Office of Facility Management and Construction Center, will be receiving applications for the Planning of New Institutions (PONI) Program for construction or renovation of detention centers in Indian Country. The PONI applications may be obtained by writing to Warren D. LeBeau, Staff Assistant—Detention, Bureau of Indian Affairs, Pinal Air Park, Building 18, Marana, Arizona, 85653. The completed applications must be received by the BIA Staff Assistant—Detention, no later than 45 days after publication of this notice in the **Federal Register**.

All PONI applications will be reviewed by an independent panel, rated and ranked according to an established criteria and prioritized according to demonstrated need. The panel will also consider the findings of the survey of detention facilities conducted by the National Academy of Public Administration and the applicant's demonstrated history of performance in maintaining and operating facilities. A list of the rankings will be published in the **Federal Register** after the completion of the review process. The Office of Construction Management, Department of the Interior, will use the list published in the **Federal Register** to determine priority of construction or renovation of detention center projects with available funds and for long range planning purposes.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Warren D. LeBeau, Staff Assistant—Detention, Division of Law Enforcement Services, (602) 629-5406 or Mr. Robert Montoya, Facility Management and Construction Center, (505) 766-2846.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-28382 Filed 12-8-88; 8:45 am]

BILLING CODE 4310-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31349]

Wisconsin & Calumet Railroad Co., Inc.; Acquisition and Operation of Trackage Rights Exemption Over a Rail Line of the Northeast Illinois Regional Commuter Corp. (METRA)

Wisconsin & Calumet Railroad Company, Inc. (W&C) filed a notice of exemption to acquire overhead trackage rights to operate over a rail line owned by the Northeast Illinois Regional Commuter Corporation (METRA) between Fox Lake, IL (milepost 49.79) and Cragin Yard in Chicago, IL (milepost 7.0). The trackage rights became effective on November 9, 1988.

Comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 North Wacker Drive, Chicago, IL 60606.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-28183 Filed 12-8-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report to keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration
Administrative Procedures—20 CFR 601 including form MA 87
1205-0222; MA 87
As needed
State or local governments
53 respondents; 53 hours; 1 hour per response; 1 form

Requires States to submit copies of their unemployment compensation laws for approval by the Secretary of Labor, as well as all relevant State materials which allow the Secretary to make findings required by the Internal Revenue Code, Social Security Act, and Wagner-Peyser Act.

Designation of Competent Person—OSHA 73 #1218-0011
Log of Inspection and Tests by Competent Person—OSHA 74
Occupational Safety and Health Administration
Business or other for profit; small business or organizations
3400 responses; 825 hours, .236 hours per response, 2 forms

To ensure that shipyard personnel do not enter confined spaces that contain oxygen deficient, toxic of flammable atmospheres, qualified personnel must test these spaces and the results of these tests must be available to those who must enter these spaces. Shipyards, barge cleaners, and repair facilities are affected.

Signed at Washington, DC this 6th day of December, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88-28391 Filed 12-8-88; 8:45 am]

BILLING CODE 4510-30-M

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, Title III, Pub. L. 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Thursday, January 12, 1989, at 2:00 p.m., in the Secretary's Conference Room, S-2508, FPB.

Written comments are welcome and may be submitted by addressing them to: Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

The primary item on the agenda is the report of the Workforce 2000 and America's Veterans forum.

The public is invited.

Signed at Washington, DC this 6th day of December, 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88-28390 Filed 12-8-88; 8:45 am]

BILLING CODE 4510-79-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

Illinois:
IL88-7 (Jan. 8, 1988) ..... p. 136.
IL88-19 (Jan. 8, 1988) ..... p. 232.
Wisconsin:
WI88-8 (Jan. 8, 1988) ..... p. 1113.

Volume III

Colorado:
CO88-1 (Jan. 8, 1988)..... p. 104.
CO88-2 (Jan. 8, 1988)..... p. 114.
CO88-4 (Jan. 8, 1988)..... p. 120.
Montana:
MT88-1 (Jan. 8, 1988)..... p. 169.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd day of December 1988.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88-28110 Filed 12-8-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; M. Grossman & Sons, et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 7-18, 1988 and November 21-25, 1988

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers, in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,923; M. Grossman & Sons, Passaic, NJ
TA-W-20,964; St. Marys Box Co., Inc., St. Marys, PA
TA-W-20,959; Murray Machine, Wausau, WI
TA-W-21,060; Beacon Construction, Pittsburgh, PA
TA-W-20,911; Bethlehem Steel Corp., Steelton, PA
TA-W-21,002: G & A Style, Inc., Newark, NJ
TA-W-20,957; Mattoon Garmet Co., Mattoon, IL
TA-W-20,998; Enpex Corp., LaPryor, TX
TA-W-20,997; Enpex Corp., San Diego, CA
TA-W-21,025; Petrolero Corp., San Antonio, TX
TA-W-20,965; Standard Oil Production, Casper Operation Sector of the Onshore Business Unit, Casper, WY
TA-W-20,966; Standard Oil Production, Oklahoma City Operations Sector of The Onshore Business Unit, Oklahoma City, OK
TA-W-20,967; Standard Oil Production, Lafayette Operation Sector of The Onshore Business Unit, Lafayette, LA
TA-W-21,004; General Cable Co., Fiber Optics Div., North Adams, MA
TA-W-20,950; Greater El Paso Corp., Formerly Greater Texas Finishing Corp., El Paso, TX
TA-W-21,041; Wessely Energy Co., Dallas, TX
TA-W-21,042; Wessely Energy Co., Denver, CO
TA-W-21,267; Ernest E. Fey, Inc., West New York, NJ
TA-W-21,007; Jackets By Tommy, Inc., East Newark, NJ

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-21,006, Chance Collar Manufacturing Co., Lafayette, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,360; International Telecharge, Inc., Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,992; Dawson Operating Co., Inc., Amarillo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,988; Christeve Oil Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,065; Cannelton Industries, Peyton, WV

U.S. imports of coal are negligible.

TA-W-21,017; Montgomery Exploration Co., Dallas, TX

The investigation revealed that criterion (1) has not been met. Emplolyment did not decline during the relevent period as required for certification.

TA-W-21,017; Montgomery Exploration Co., LTD, Dallas, TX

The investigation revealed that criterion (1) has been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,033; Texo Oil Co., Wichita Falls, TX

The investigation revealed that criterion (1) has been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,095; General Motors Corp., Thousand Oaks, CA

The investigation revealed that criterion (1) has been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,046; ACA Denver (American Consulting Association), Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,993; DynMac Corp., Tulsa, OK

U.S. imports of oil field pumps are negligible.

TA-W-20,943; Culberson Well Service, Victoria, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,934; Bayou Resources, Inc., (Now Patrick Bayou Co.), Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,076; Cystal Brands, Inc., Aston, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,031; Stahl Petroleum Co., Amarillo, TX

The investigation revealed that criterion (1) has been met. Employment did not decline during the relevant period as required for certification.

TA-W-20,984; Bethenergy Mines, Inc., Wilson Shop, Ellsworth, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,962; Sears Truck Tire Service Center, Clay, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,034; The Permian Corp., Hays, KS

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,960; Pacesetter Sportswear, Portage, PA

Increased imports did not contribute importantly to workers separations at the firms.

TA-W-20,947; French Tool & Supply Co., Inc., Odessa, TX

Increased imports did not contribute importantly to workers separations at the firms.

TA-W-21,053; Arrow Pump & Supply Co., Ada, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,054; Arrow Pump & Supply Co., Seminole, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,063; Cachuma Drilling Corp., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,064; Cachuma Drilling Corp., Vernal, UT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-21,014; Mineral Search, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before September 1, 1988.

TA-W-20,913; Ciba-Geigy Corp., Toms River Plant, Toms River, NJ

A certification was issued covering all workers separated on or after October 29, 1988.

TA-W-21,078; Dale Exploration Co., Vidalia, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-20,933, A.D.G. Sportswear Co., Newark, NJ

A certification was issued covering all workers separated on or after August 30, 1987.

TA-W-21,286; Joe Melton Drilling Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,292; Melton Drilling & Exploration, Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before February 29, 1988.

TA-W-21,151; Wilson Drilling Co., Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,169; Comet Drilling Co., Eunice, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,334; Connor Sales Co., Inc., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,324; Atlas Wireline, Victoria, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20,991; D.B. Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-20,987; Cherokee Drilling & Development Corp., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1987.

TA-W-21,008; Johns Roustabout Service, Lamesa, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20,948; Geophysical Service, Inc., Stafford, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,336; Dowell Schlumberger, Inc., Mt. Carmel, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-20,961; S.W. Jack Drilling, Buckhannon, WV

A certification was issued covering all workers separated on or after October 1, 1985 and before February 11, 1989.

TA–W–20,969; Willis Drilling Co., Edinburg, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,985; Black, Sivalls & Bryson, Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,080; Dawson Geophysical Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,174; Discovery, Inc., Great Bend, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA–W–21,103; Great Southern Oil and Gas Co., Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,152; Wisco, Inc. (Williston Industrial Supply Corp), Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before October 1, 1987.

TA–W–20,958; Murfin Drilling Co., Wichita, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before March 1, 1987.

TA–W–20,958A Murfin Drilling Co., Located in the State of Colorado

A certification was issued covering all workers separated on or after October 1, 1985 and before March 1, 1987.

TA–W–20,958B Murfin Drilling Co., Located in the State of Kansas

A certification was issued covering all workers separated on or after October 1, 1985 and before March 1, 1987.

TA–W–20,958C Murfin Drilling Co., Located in the State of Nebraska

A certification was issued covering all workers separated on or after October 1, 1985 and before March 1, 1987.

TA–W–21,040; Wellpro, Inc., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before April 1, 1988.

TA–W–21,040A Wellpro, Inc., Located in the State of Montana

A certification was issued covering all workers separated on or after October 1, 1985 and before April 1, 1988.

TA–W–21,040B Wellpro, Inc., Located in the State of North Dakota

A certification was issued covering all workers separated on or after October 1, 1985 and before April 1, 1988.

TA–W–21,040C Wellpro, Inc., Located in the State of South Dakota

A certification was issued covering all workers separated on or after October 1, 1985 and before April 1, 1988.

TA–W–20,990; DA and S Oil Well Service, Inc., Hobbs, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,990A and TA–W–20,990B; DA and S Oil Well Service, Inc., Eunice, NM and Andrews, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,016; Monroe Well Service, Tullos, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,016A Monroe Well Service and SSN Partnership, Tullos, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,016B Monroe Well Service and SSN Partnership Located in the State of Arkansas

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,016C Monroe Well Service and SSN Partnership Located in the State of Indiana

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,016D Monroe Well Service and SSN Partnership Located in the State of Louisiana

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,016E Monroe Well Service and SSN Partnership Located in the State of Pennsylvania

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,016F Monroe Well Service and SSN Partnership Located in the State of Texas

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,970; Brazos Gas Compressing Co., Choudrant, LA

A certification was issued covering all workers separated on or after August 30, 1987 and before January 1, 1988.

TA–W–21,085; Ed Martin Drilling Co., Oil City, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before April 30, 1988.

TA–W–20,952; ISC Systems Corp., Spokane, WA

A certification was issued covering all workers separated on or after August 26, 1987.

TA–W–20,963; SCT Yarns, Chattanooga, TN

A certification was issued covering all workers separated on or after August 31, 1987.

TA–W–20,916; GI GI Fashions, Howell, NJ

A certification was issued covering all workers separated on or after August 22, 1987 and before March 12, 1988.

TA–W–21,030; South Texas Drilling & Exploration, Inc., San Antonio, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before April 1, 1987.

TA–W–21,139; South Texas Drilling & Exploration, Inc., Pleasanton, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before April 1, 1987.

TA–W–20,935; Brazos Gas Compressing Co., Bridgeport, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,929; Roosevelt Mills, Inc., Vernon, CT

A certification was issued covering all workers separated on or after August 15, 1987 and before August 9, 1988.

TA–W–21,246; V & B Drilling Co., Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,003; G & G Tank Rental, Freer, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,061; Big B Industries, Normangee, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before March 31, 1987.

TA–W–20,931; Via Veneto Fashions, South River, NJ

A certification was issued covering all workers separated on or after August 22, 1987 and before April 30, 1988.

TA–W–21,082; Double E Well Service, St. Louis, OK

A certification was issued covering all workers separated on or after January 1, 1987 and before June 30, 1987.

TA–W–21,106; Hack Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,067; Chase Well Service, Great Bend, KS

A certification was issued covering all workers separated on or after January 1, 1986 and before December 31, 1987.

TA–W–20,317; Trainer Survey, Inc., Shreveport, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,369; Mestas Drilling Co., Sidney, MT

A certification was issued covering all workers separated on or after October 1, 1985 and before July 20, 1986.

TA–W–21,013; Mark E. Hennes, Inc., Garland, TX

A certification was issued covering all workers separated on or after May 1, 1988.

TA–W–21,115; MGF Oil Corp., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1986.

TA–W–21,012; Lugo Welding Service, Laredo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,945; Dubrow and Bravman, Inc., Boston, MA

A certification was issued covering all workers separated on or after August 31, 1987.

TA–W–20,989; Clovis Riley, Inc., Pearsall, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,072; Compulog, Inc., Shreveport, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before February 1, 1986.

TA–W–21,037; Ultramar Oil & Gas Limited, Houston, TX

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,037A Ultramar Oil & Gas Limited Located in the State of Mississippi

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,037B Ultramar Oil & Gas Limited Located in the State of Oklahoma

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,037C Ultramar Oil & Gas Limited Located in the State of Texas

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,023; O'Bryan Brothers, Inc., Nashville, TN

A certification was issued covering all workers separated on or after January 1, 1988 and before July 1, 1988.

TA–W–21,448; Marathon Letourneau, Brownsville, Div., Brownsville, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,978; General Motors Corp., AC Spark Plug Div., Turbine Fuel Pump Dept., Wichita Falls, TX

A certification was issued covering all workers separated on or after January 1, 1988.

TA–W–21,026; Petroleum, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,027; Petroleum, Inc., Norman, OK

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,027A; Petroleum, Inc., Wichita, KS

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,027B; Petroleum, Inc., Gread Bend, KS

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,027C; Petroleum, Inc., Liberal, KS

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,027D; Petroleum, Inc., Casper, WY

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–21,027E; Petroleum, Inc., Denver, CO

A certification was issued covering all workers separated on or after September 6, 1987.

TA–W–20,980; Atlas Wireline Service (Formerly Dresser Atlas), Alice, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,982; Atlas Wireline Service (Formerly Dresser Atlas), Laredo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,981; Atlas Wireline McCullough (Formerly NL Industries), Alice, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,983; Atlas Wireline McCullough (Formerly NL Industries), Laredo, TX

A certification was issued covering all workers separated on or after January 1, 1988.

TA–W–21,010; K W Well Service, Inc., Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,015; Molen Drilling Co., Inc., Headquartered in Billings, MT

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,015A; Molen Drilling Co., Inc., Located in The State of Montana

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,015B; Molen Drilling Co., Inc., Located in The State of Wyoming

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,015C; Molen Drilling Co., Inc., Located in The State of Idaho

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,986; C.J. Penn Truck Service, Inc., Midkiff, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,081; Drelco Service, Iraan, TX

A certification was issued covering all workers separated on or after January 1, 1986.

TA–W–21,084; Eagle Well Service, Zurich, KS

A certification was issued covering all workers separated on or after December 1, 1986 and before June 30, 1988.

BEST COPY AVAILABLE

TA–W–21,035; The Western Co. of North America, Western Petroleum Service, Laredo, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before June 1, 1987.

TA–W–21,398; Armstrong Drilling, Inc., Wooster, OH

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA–W–21,006; Harmony Drilling, Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before September 30, 1988.

TA–W–21,024; Petro-Core Service, Sugar Land, TX

A certification was issued covering all workers separated on or after January 1, 1987.

TA–W–21,141; Spun Steel, Inc., Canton, OH

A certification was issued covering all workers separated on or after September 12, 1987 and before September 1, 1988.

TA–W–21,021; OSCA, Inc. (Formerly Oilfield Service Co. of America), Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before September 31, 1986.

TA–W–21,022; OSCA, Inc. (Formerly Oilfield Service Co. of America), Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before September 31, 1986.

TA–W–21,142; States Exploration, Inc., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985 and before April 1, 1986.

TA–W–21,132; Ruthco, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,133; Ruthco, Inc., Levelland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,134; Ruthco, Inc., Gainsville, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,135; Ruthco, Inc., Perryton, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,136; Ruthco, Inc., Hobbs, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,137; Ruthco, Inc., Bryan, TX

A certification was issued covering all workers separated on or after October 1, 1985.

I hereby certify that the aforementioned determinations were issued during the period November 7, 1988–November 18, 1988 and November 21, 1988–November 25, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated November 29, 1988.

[FR Doc. 88–28388 Filed 12–8–88; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.P. Parts Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 19, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 19, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 14th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition	Articles produced
A.P. Parts Co. (UAW)	Toledo, OH	11/14/88	10/27/88	21,594	Exhaust systems.
American Penn Energy, (company)	Denver, CO	11/14/88	11/3/88	21,595	Oil and gas.
Aqua-Chem, Inc. (workers)	Milwaukee, WI	11/14/88	10/26/88	21,596	Water desalination equipment.
Basin Well Servicing, Inc. (company)	Roosevelt, UT	11/14/88	10/27/88	21,597	Oil and gas.
Bethlehem Supply Corp. (workers)	Tulsa, OK	11/14/88	10/28/88	21,598	Do.
Bibbins & Rice Electronics Inc. (company)	Morgan City, LA	11/14/88	10/19/88	21,599	Electronic equipment.
Buzzini Drilling Co, Inc. (workers)	Kennedy, TX	11/14/88	10/14/88	21,600	Oil and gas.
CSX Oil & Gas Corp./Western Region (workers)	Denver, CO	11/14/88	10/20/88	21,601	Do.
Callon Petroleum (workers)	Natchez, MS	11/14/88	10/28/88	21,602	Do.
Cardinal Drilling Co. (company)	Billings, MT	11/14/88	10/19/88	21,603	Do.
Caronado Transmission Co./Energy Gathering Inc. (workers).	Houston, TX	11/14/88	9/3/88	21,604	Do.
Challenger Circle F (company)	Trenton, NJ	11/14/88	10/26/88	21,605	Wiring devices.
Chevron Geosciences Co. (workers)	Houston, TX	11/14/88	10/20/88	21,606	Oil and gas.
Clark & Son, Inc. (workers)	St Clair, MO	11/14/88	10/26/88	21,607	Do.

APPENDIX—Continued

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition	Articles produced
Colonial Manufacturing (workers)	Portland, TN	11/14/88	10/26/88	21,608	Ladies tops.
Cornish Wireline Service (company)	Chanate, KS	11/14/88	10/14/88	21,609	Oil and gas.
Crystal Oil Co. (company)	Shreveport, LA	11/14/88	10/26/88	21,610	Do.
Dakota Drilling Co. (workers)	Bottineari, ND	11/14/88	10/25/88	21,611	Do.
David New Drilling Co. (workers)	Natchez, MS	11/14/88	10/25/88	21,612	Do.
Denton Oil Well Cementing Co. (company)	Artesia, NM	11/14/88	11/1/88	21,613	Do.
Diamond Services Corp. (workers)	Morgan City, LA	11/14/88	10/25/88	21,614	Do.
Drag Specialties (workers)	Minnetonka, MN	11/14/88	11/11/88	21,615	Aftermarket motorcycle.
Dresser Magcobar (workers)	Shreveport, LA	11/14/88	11/1/88	21,616	Oil and gas.
Dresser-Rand Co., Worthington, Division (workers)	Buffalo, NY	11/14/88	10/26/88	21,617	Compressors.
Donham Oil Tools Co. (workers)	Watford City, ND	11/14/88	10/26/88	21,618	Oil and gas.
Eastern Lithograph Label (company)	Englewood, NJ	11/14/88	10/31/88	21,619	Printed labels.
Elder Well Servicing Co. (workers)	San Angelo, TX	11/14/88	10/20/88	21,620	Oil and gas.
Enserch (workers)	Prudhoe Bay, AK	11/14/88	10/31/88	21,621	Do.
Exeter Drilling Co. (workers)	Denver, CO	11/14/88	11/4/88	21,622	Do.
Forman Petroleum Corp. (company)	New Orleans, LA	11/14/88	11/2/88	21,623	Do.
Do	Houston, TX	11/14/88	11/2/88	21,624	Do.
GCO Drilling Co. (company)	Abilene, TX	11/14/88	10/23/88	21,625	Do.
Gard Drilling Co. (workers)	Gallipolis, OH	11/14/88	10/24/88	21,626	Do.
Geosearch, Inc. (workers)	Tulsa, OK	11/14/88	11/4/88	21,627	Do.
Glenn Drilling Co. (workers)	Owensboro, KY	11/14/88	9/29/88	21,628	Do.
Hydrostatic Tubing Testers (workers)	Williston, ND	11/14/88	10/7/88	21,629	Do.
JVA Operating Co., Inc.	Midland, TX	11/14/88	10/31/88	21,630	Do.
John A. Faye Co. (The) (workers)	Wilkes-Barre, PA	11/14/88	10/26/88	21,631	Boots and shoes.
John Drilling Co. (workers)	Odessa, TX	11/14/88	10/25/88	21,632	Oil and gas.
Justiss Oil Co. (workers)	Gena, LA	11/14/88	10/21/88	21,633	Do.
Kaiser Coal Corp. (workers)	Raton, NM	11/14/88	8/22/88	21,634	Bituminous coal.
Kerr Finishing, Inc. (workers)	Travelers Rest, SC	11/14/88	10/25/88	21,635	Fabric finishing.
Key Petroleum & Exploration, Inc. (company)	Russell, KS	11/14/88	10/24/88	21,636	Oil and gas.
Little's Machine, Inc. (company)	Odessa, TX	11/14/88	10/25/88	21,637	Do.
Loeffler Oil Corp. (workers)	Allendale, IL	11/14/88	10/21/88	21,638	Crude oil.
Lone Star Steel Co. (USWA)	Lone Star, TX	11/14/88	10/31/88	21,639	Steel pipe & tubing.
Louis Industries, Inc. (ILGWU)	Aguadilla, PR	11/14/88	10/21/88	21,640	Women's lingene.
M.I. Drilling Fluids (workers)	Houston, TX	11/14/88	9/7/88	21,641	Oil and gas.
Macmillan Petroleum (Arkansas) Inc. (company)	Norphlet, AK	11/14/88	10/18/88	21,642	Do.
Magnum Marine LTD II (workers)	Conroe, TX	11/14/88	10/20/88	21,643	Do.
Mansell Bnne Sales, (workers)	Midland, TX	11/14/88	10/1/88	21,644	Do.
Martin Exploration Co. (workers)	Metaire, LA	11/14/88	11/4/88	21,645	Do.
Maxus Exploration Co. (workers)	Denver, CO	11/14/88	10/28/88	21,646	Do.
Milpark Drilling Fluids (Oklahoma City, OK (workers)	Oklahoma City, OK	11/14/88	10/2/88	21,647	Do.
Mud-Co, Inc. (workers)	Wichita, KS	11/14/88	10/17/88	21,648	Do.
Do	Hays, KS	11/14/88	10/17/88	21,649	Do.
Mundy Maintenance Co. (workers)	Houston, TX	11/14/88	10/25/88	21,650	Do.
Newman Oil Co. (company)	Bradford, PA	11/14/88	10/21/88	21,651	Do.
Newman Drilling Co. (company)	Bradford, PA	11/14/88	10/21/88	21,652	Do.
Newman & Uhl Oil Co. (company)	Bradford, PA	11/14/88	10/21/88	21,653	Do.
Nordrill, Inc. (workers)	Beaumont, TX	11/14/88	3/6/88	21,654	Drilling services.
Oklahoma Petroleum Management Corp. (workers)	Okemah, OK	11/14/88	10/19/88	21,655	Oil and gas.
Do	Tulsa, Ok	11/14/88	10/19/88	21,656	Do.
Phillips Petroleum Co. Permian Basin Regional Office (workers).	Odessa, TX	11/14/88	10/31/88	21,657	Do.
Phoenix Management Corp. (workers)	Houston, TX	11/14/88	10/21/88	21,658	Do.
Portland Manufacturing Co., Inc. (workers)	Portland, TN	11/14/88	10/27/88	21,659	Ladies blouses.
Prestolite Wire Co. (AIW)	Port Huron, MI	11/14/88	10/28/88	21,660	Auto and appliance wire.
Rawling Sporting Goods (workers)	St. Louis, MO	11/14/88	10/29/88	21,661	Men's football shirts.
Revell Oilfield Construction Co. (workers)	Russell, KS	11/14/88	10/21/88	21,662	Oil and gas.
SIA Amercia, Inc. (ICWU)	Alliance, OH	11/14/88	10/20/88	21,663	Coated abrasives.
Sam's Well Service Inc. (workers)	Guymon, OK	11/14/88	10/17/88	21,664	Oil and gas.
Simond Industries (USWA)	Portland, OR	11/14/88	11/1/88	21,665	Wide band saws.
Sipple Oil Co. (company)	Beattyville, KY	11/14/88	10/25/88	21,666	Oil and gas.
Steven A. Zanetis (workers)	Olney, IL	11/14/88	11/4/88	21,667	Do.
Struthers Dunn (IUE)	Pitman, NJ	11/14/88	10/25/88	21,668	Electro-mechanical devices.
Swenson Drilling Inc. (company)	Sidney, MT	11/14/88	10/24/88	21,669	Oil and gas.
Teledyne Exploration (workers)	Midland, TX	11/14/88	10/25/88	21,670	Do.
Teledyne Movible Offshore, Inc.	New Iberia, LA	11/14/88	10/14/88	21,671	Do.
Thompson Petroleum, Inc. (company)	Wichita, KS	11/14/88	11/2/88	21,672	Do.
Tolle, Inc. (workers)	Corpus Christi, TX	11/14/88	10/17/88	21,673	Do.
Utility Trailer Co. (UAW)	El Paso, TX	11/14/88	10/31/88	21,674	Semi (commercial) trailers.
Vanderbilt Energy Corp. (workers)	Denver, CO	11/14/88	10/7/88	21,675	Oil and gas.
Vernitron Medical Products	Carlstadt, NJ	11/14/88	10/21/88	21,676	Hospital supplies.
WEK Drilling Co. (workers)	Roswell, NM	11/14/88	10/21/88	21,677	Oil and gas.
Wil-Mc Oil Corp. (workers)	Irving, TX	11/14/88	10/19/88	21,678	Do.
Williston Basin Sales & Service, Inc. (workers)	Williston, ND	11/14/88	9/23/88	21,679	Do.

[FR Doc. 88-28389 Filed 12-8-88; 8:45 am]
BILLING CODE 4510-30-M

VOL 53 ISS 237 DE 9 1988 UMI

Mine Safety and Health Administration

[Docket No. M-88-213-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.330 (sealing abandoned sections) to its Martwick Mine (I.D. No. 15-14074) located in Muhlenberg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the mining system be designed in accordance with a plan and revisions thereof approved by the Secretary and adopted by such operator so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion-proof seals or bulkheads.

2. Due to a squeeze, mining has ceased at the 9 west panel off the northeast submain. Tests are being conducted and measurements are being compiled at a yield pillar test area within the panel.

3. As an alternate method, petitioner proposes that a certified person would monitor the air entering and exiting the panel, and monitor the methane concentrations of the panel. The area would be sealed after all pertinent data from the squeeze and the yield pillar have been compiled. In support of this request, petitioner states that—

(a) Due to the reduced clearance caused by the squeeze, the area is inaccessible and abandoned, and the air exiting the panel would not be used to ventilate active working places in the mine; and

(b) The area is being observed to ascertain the cause of the squeeze and to complete the aforementioned tests.

4. The proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 9, 1989.

Copies of the petition are available for inspection at that address.

Date: December 1, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28392 Filed 12-8-88; 8:45 am]

BILLING CODE 4510-43-M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Meeting

Pursuant to its authority under Subtitle A of Pub. L. 100-203, the Nuclear Waste Policy Amendments Act of 1987, notice is hereby given that the Monitored Retrievable Storage (MRS) Review Commission will hold a meeting on Thursday, December 15, 1988 from 10:00 a.m.-12:00 p.m. in Room 6E069 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

The purpose of the meeting will be to obtain information from the U.S. Department of Energy on its program to construct a permanent repository for the disposal of nuclear waste. Department of Energy officials will brief the Commission on the status of its efforts to characterize the Yucca Mountain site in Nevada and the schedule for providing a permanent repository for the disposal of high level radioactive waste and spent fuel.

Members of the public are invited to attend this meeting only as observers. The meetings will be transcribed and transcripts of the meetings will be placed in the Commission's Public Document Room.

Persons planning to attend the meeting are asked to contact Ms. Paula N. Alford by Tuesday, December 13, 1988 at the Monitored Retrievable Storage Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006, (202) 653-5361.

Further information on this meeting or other activities of the Commission can be obtained from Ms. Paula N. Alford, Director, External Affairs, Monitored Retrievable Storage Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006, (202) 653-5361.

December 6, 1988.

Jane A. Axelrad,

Executive Director and General Counsel.

[FR Doc. 88-28379 Filed 12-8-88; 8:45 am]

BILLING CODE 6820-BE-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-499]

Houston Lighting & Power Co., et al. South Texas Project, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Houston Lighting & Power Company, et al., (the licensee) for the South Texas Project, Unit 2, located at the licensee's site in Matagorda County, Texas.

Environmental assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable

and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of §50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland this 5th day of December, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28349 Filed 12-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2), located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the NA-1&2 Technical Specifications (TS) containment air temperature upper limit to 120 °F, and would increase the required containment test pressure for the integrated (Type A) and local (Types B and C) leak rate tests (NA-1&2 TS 3.6.1.2) from the current value of 40.6 psig to 44.1 psig.

The proposed action is in accordance with the licensee's application for amendments dated March 2, 1988.

The Need for the Proposed Action

The proposed change to the TS is needed due to the fact that the current containment bulk air temperature and the service water temperature limits represent a severe constraint to the operation of NA-1&2 during the summer months.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would allow the licensee to operate with an allowable containment air temperature of up to 120 °F. The plant design basis was reviewed to determine which transients are impacted by the increased service water temperature and containment bulk temperature. The maximum service water temperature, while analyzed at 97 °F, would not be changed at this time since the service water system modifications recently put into place at NA-1&2 can maintain the reservoir temperature below the currently allowable 95 °F. In addition, the results of the review of the containment bulk temperature indicate that the containment design criteria are not violated at the initial conditions of 120 °F containment temperature, 97 °F service water temperature and the lower volume of refueling water storage tank water. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 12, 1988 (53 FR 16921). No request for hearing or petition

for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the North Anna Power Station, Units No. 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated March 2, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 5th day of December, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28350 Filed 12–8–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–338]

Virginia Electric and Power Co. and Old Dominion Electric Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering the issuance of an exemption from the requirements of 10 CFR 50.46 to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee) for the North Anna Power Station, Unit 1, located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action and Need for Proposed Action

NA–1 is currently operating in Cycle 7 with two assemblies containing fuel rods clad with an advanced zirconium-based material as approved by the NRC letter of May 13, 1987. The licensee is proposing to use additional zirconium-based advanced cladding material in the same two fuel assemblies starting with NA–1 Cycle 8. These assemblies will contain fuel rods clad with an additional zirconium-based advanced alloy. Although this new zirconium-based alloy is very similar to "Zircaloy," whether or not this new alloy falls within the scope of 10 CFR 50.46 which applies to "Zircaloy" clad fuel is unclear. In the absence of a clear definition of the actual compound "Zircaloy" as stated in 10 CFR 50.46, an exemption from the provisions of 10 CFR 50.46 limiting its application to "Zircaloy" clad fuel is needed to permit authorization of the use of the new clad material. Furthermore, test experience with a limited number of assemblies for design development purposes provides important data to determine whether new designs can provide performance improvement while maintaining a high standard of safety performance.

Environmental Impacts of the Proposed Action

Reactor operation with the additional new cladding material will not be significantly affected. The composition of this zirconium-based alloy is very similar to "Zircaloy" in essential respects; moreover, the test assemblies are not located in the portions of the core expected to experience highest burnup and highest power density. The safety assessments performed by the licensee and the NRC staff demonstrate that performance of these assemblies in the event of a Loss of Coolant Accident (LOCA) will be bounded by the performance previously calculated for other zircaloy clad assemblies in the core, which was based on accepted ECCS evaluation models. Further, the staff has concluded that the use of two test assemblies containing the additional new alloy in the NA–1 reactor would conform to all current fuel design bases, would not change the existing reload design safety analysis limits, and would satisfy the NRC guidelines for lead test assemblies. As a result, the use of the two lead test assemblies would not affect the probability or consequences of potential reactor accidents. In addition, this proposed exemption does not otherwise affect radiological plant effluents. Accordingly, the staff concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. Implementation of the proposed exemption will not affect non-radiological plant effluents and will have no other significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts associated with operation of the facility and requiring compliance with the rule would negate design development purposes which provide important data to determine whether new fuel assemblies with advanced cladding material (zirconium-based alloy) can provide performance improvement while maintaining a high standard of safety performance.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (as amended) for the North Anna Power Station, Units No. 1 and No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for using two lead test assemblies with advanced cladding material dated

September 30, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 5th day of December, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28351 Filed 12–8–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Kansas Gas & Electric Co. et al.; Issuance of Amendment to Facility Operating License

In the matter of Kansas City Power and Light Co., and Kansas Electric Power Cooperative, Inc., Wolf Creek Generating Station.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 22 to Operating License No. NPF–42 issued to Kansas Gas & Electric Company, et al., which revised the Technical Specifications for operation of the Wolf Creek Generating Station located in Coffey County, Kansas. The amendment is effective as of the date of issuance.

The amendment revised Technical Specification (TS) 3/4.7.6, Control Room Emergency Ventilation System, 3/4.7.7, Emergency Exhaust System (Plant Systems), 3/4.9.13, Emergency Exhaust System (Refueling Operations), TS Bases B 3/4.7.7, Emergency Exhaust System (Plant Systems) and B 3/4.9.13, Emergency Exhaust System (Refueling Operations).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 26, 1988 (53 FR 32804). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated February 26, 1988 as supplemented October 31, 1988, (2) Amendment No. 22 to License No. NPF–42, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW 20555 and at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 5th day of December, 1988.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Project Manager, Project Directorate—IV Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–28352 Filed 12–8–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26337; File No. SR–MBS–88–18]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change; Depository Division Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 22, 1988, MBS Clearing Corporation, Depository Division, filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed change to the Rules of the Depository Division ("the Depository") of MBS Clearing Corporation ("the Corporation") is the addition of Rule 14 to Article VI, providing for assignment by the Corporation of any Depository Participants Agreement to another registered clearing agency ("the successor") in connection with sale of the business and assets of the Depository to the successor. Upon such assignment and the successor's assumption of obligations and liabilities of the Corporation under the Participants Agreement, the subject Participant shall be a participant in the successor and bound by the rules and procedures of the successor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule change is intended to facilitate the sale of Depository assets to Participants Trust Company ("PTC"), which is being formed as a New York limited purpose trust company, for the purpose of acquiring the business of the Depository. In connection with the sale of its assets to PTC, the Corporation intends to assign to PTC the Participant Agreements of all Depository Participants who are eligible for participation in PTC, and PTC intends to assume all obligations of the Depository thereunder. The Depository's form of Participants Agreement contains no prohibitions against assignment.

On September 30, 1988, PTC filed a Form CA–1 application with the Securities and Exchange Commission ("the Commission") to be registered as a clearing agency under section 17A of the Securities Exchange Act of 1934. The Form CA–1 includes a copy of the form of PTC's participants agreement as Exhibit P and a copy of PTC's proposed

rules as Exhibit E–3. PTC's form of participants agreement is substantially identical to the form of Participants Agreement currently used by the Depository, and the proposed rules of PTC are substantially identical to the amended and restated Depository Rules submitted in File No. SR–MBS–88–14 as amended.

The proposed Rule change permits the efficient transfer of the Depository's business to PTC. The Depository's assignment of Participants Agreements to PTC avoids the costs and delays entailed by termination of each Participants Agreement and each participant's execution of a new agreement with PTC. Therefore, the proposed Rule change is consistent with section 17A of the Securities Exchange Act of 1934 ("the Act"), in that it facilitates the prompt and accurate settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Corporation has not received comments on the proposed Rule change from Participants. The Corporation has neither distributed the text or a summary of the proposed Rule change among Participants nor has it solicited comments on the proposed Rule change.

The text and a summary of the proposed Rule change will be distributed to all Participants shortly after the submission of this Form. The Corporation will notify the Commission upon receipt of any written comment.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization comsents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–18 and should be submitted by December 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28337 Filed 12–8–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26341; File No. SR–NYSE–88–35]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Extensions of Time for Payment or Delivery of Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on November 16, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a new rule that would require all member organizations for which the Exchange has been appointed the designated examining authority ("DEA") by the Commission pursuant to Rule 17d–1 under the Act [1] to submit requests for extensions of time for payment or delivery of securities to the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Authority to grant extensions of time on payment for purchases and delivery on sales of securities is given to a registered national securities exchange or a registered national securities association under Regulation T [2] of the Federal Reserve Board ("FRB") and Rule 15c3–3(n)[3] under the Act when the self-regulatory organization ("SRO") is satisfied that a creditor (broker/dealer) is acting in good faith in making such a request and when, according to the creditor, exceptional circumstances warrant such action.

Proposed new Rule 434 would require all member organizations for which the Exchange has been appointed the DEA by the Commission pursuant to Rule 17d–1 under the Act to submit requests for extensions of time for payment or delivery of securities to the Exchange.

Since no FRB or Commission standards for extension requests exist each SRO that processes extension requests (other SROs currently include the Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges as well as the National Association of Securities Dealers) has its own parameters and procedures for evaluating, granting, and controlling extension requests. As a result, acceptable reasons, number of

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[1] 17 CFR 240.17d–1 (1988).

[2] 12 CFR 220.4(c) and 220.8(d) (1988)

[3] 17 CFR 240.15c–3–3 (1988).

extensions permitted, special limitations and restrictions on customers are not uniformly applied and in some cases, possibly, not applied at all. Therefore, broker/dealers can apply for extensions from several or all SROs to circumvent any special requirements or the maximum number of extensions allowed by another SRO (*i.e.*, while the NYSE restricts customers to 5 extensions in 12 months, the NYSE understands that some SROs allow more extensions or have no limitations).

The Exchange has devoted considerable effort and expense to develop a computerized extension processing system which provides significant regulatory information to member organizations, the Exchange and industry regulators. The Exchange system contains specific criteria regarding acceptable reasons, number of days permitted per extension and limits on number of extensions permitted per code and in total. These criteria facilitate the prompt collection of monies and securities due and reduce exposure to losses for both customers and member organizations.

The Exchange system generates daily and monthly reports which provide member organizations and exchange staff a means to monitor the incidence and reasons for the extension, potential abuses, compliance with appropriate regulations and indications of possible operational problems. In addition, the system is currently being expanded to allow for collection of information regarding the description and quantity of the security and debit balance. This will allow for monitoring of potential sales practice problems.

The Exchange has been designated by the SEC as the DEA for almost all of its members. This designation places *sole* responsibility upon the Exchange for examining its members for compliance with industry financial responsibility rules. Other SROs of which these broker/dealers are members are statutorily relieved of all such responsibilities. Therefore, the Exchange is the only SRO in a position to monitor and effectively impose restrictions on the extension of credit by its members. This is an essential regulatory function that can affect the financial viability of a firm.

Requiring firms to file all extension requests with its DEA would:

- Facilitate monitoring for compliance with appropriate regulations based upon review of all extensions requested by a particular firm.
- Allow credit related financial restrictions placed upon a member firm to be made based upon complete information comprising all extensions requested.
- Enhance operational surveillance, e.g., excessive extension requests can be an early indication of back office problems.
- Ensure uniform application of standards to *all* customers of NYSE firms and uniform application of the extension of credit provisions of Federal Reserve Board Regulation T and SEC Rule 15c3–3(n).
- Provide a valuable surveillance tool in detecting manipulation and other illegal trading activities.
- Provide the ability to detect possible sales practice problems.

(b) The proposed rule change is consistent with the requirements of Rule 17d–1 under the Act in that the Exchange has been designated as having responsibility for examining its members for compliance with applicable financial responsibility rules such as Regulation T of the FRB and Rule 15c3–3 under the Act. It is also consistent with section 7(a) of the Act in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities and supports the purposes of Regulation T of the FRB.

3. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have an impact on competition in that other SROs will no longer receive revenue from processing extension requests from broker/dealers which are dual members for which the Exchange has been appointed DEA. The Exchange does not believe that such impact will result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As DEA for most of its members, the Exchange is the only SRO charged with the duty to oversee compliance by these broker/dealers with financial responsibility rules. The Exchange believes that information gathered in processing extension requests is essential in carrrying out its statutory oversight responsibilities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization All submissions should refer to the file number in the caption above and should be submitted by December 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 5, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28374 Filed 12–30–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16676; (811–154)]

Bullock Growth Shares, Inc.; Application

December 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for De-Registration under Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock Growth Shares Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f–1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application was filed on October 18, 1988, and amended on December 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3047, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant (formerly Bullock Fund, Ltd.) was organized on November 10, 1932, and has engaged in the sale of its shares since 1932. Applicant has been registered under the 1940 Act as an open-end, diversified management investment company since shortly after the 1940 Act was passed. To the best of Applicant's knowledge, Applicant registered one class of capital stock pursuant to the Securities Act of 1933 shortly after that Act was passed.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to The Alliance Fund, Inc. (formerly the Chemical Fund, Inc., File No. 811–204) in exchange for shares of common stock of The Alliance Fund, Inc. to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the Forn N–14 Registration Statement filed with the SEC on December 24, 1986 (File No. 33–11093). On January 29, 1987, a Prospectus/Proxy Statement forming a part of said registration statement was mailed to Applicant's shareholders of record. On February 27, 1987, at a meeting duly called and held, a majority of the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 16, 1987, Applicant transferred all its assets to The Alliance Fund, Inc. in exchange for shares of common stock of The Alliance Fund, Inc. The shares of The Alliance Fund, Inc. received by Applicant were thereafter all distributed to Applicant's shareholders in liquidation. All expenses incurred in connection with the reorganization were paid by Applicant's investment adviser, Alliance Capital Management Corporation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28338 Filed 12–8–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16675; (812–7128)]

MacKay-Shields MainStay Series Fund; Application

December 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: MacKay-Shields MainStay Series Fund.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from section 32(a)(1).

Summary of Application: Applicant seeks an order to permit it and any future investment company or series as may be added to the group of investment companies having as its adviser, administrator or distributor MacKay-Shields Financial Corporation ("MacKay-Shields"), Gamma Advisers Ltd. ("Gamma") or NYLIFE Securities Inc. ("NYLIFE") to file with the SEC financial statements signed or certified by an independent accountant selected at a Board of Trustees meeting held more than 30 but not more than 90 days before or after the beginning of their respective fiscal years.

Filing Date: The application was filed on September 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 51 Madison Avenue, New York, NY 10010, Attention: Michelle S. Lenzmeier, Esq.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland at (301) 258–4300).

Applicant's Representations and Legal Conclusions

1. The Applicant is an open-end, diversified management investment company consisting of ten series, with different investment objectives and policies: MacKay-Shields Capital Appreciation Fund, MacKay-Shields Convertible Fund, MacKay-Shields Global Fund, MacKay-Shields Gold and Precious Metals Fund, MacKay-Shields Government Plus Fund, MacKay-Shields High Yield Corporate Bond Fund, MacKay-Shields Money Market Fund, MacKay-Shields Tax Free Bond Fund, MacKay-Shields Total Return Fund and

MacKay-Shields Value Fund (collectively, "Series"). The Series is advised by MacKay-Shields or Gamma. NYLIFE is the administrator and distributor of the Series. The Applicant was established as a Massachusetts business trust dated January 9, 1986.

2. The Applicant's fiscal year ends August 31. Applicant is governed by a Board of Trustees, of which at least 40 percent of the members are not "interested persons" within the meaning of section 2(a)(19) of the 1940 Act. Applicant holds regularly scheduled Board of Trustees meetings four times each year, approximately 90 days apart. Because of the timing of the Board of Trustees meeting that follows the completion of the Applicant's annual audit, it is not usually practicable to have a Board of Trustees meeting within 30 days before or after the beginning of Applicant's fiscal year.

3. The Applicant is not required to hold annual shareholder meetings and will do so only to the extent required by the 1940 Act. Thus, section 32(a)(1) of the 1940 Act would require additional meetings of the Board of Trustees for the sole purpose of selecting the Applicant's independent accountant.

4. The Applicant submits that it would be desirable for it to consider the selection of its independent accountant at a regularly scheduled quarterly Board of Trustees meeting during its fiscal year. Expanding the 30-day window under section 32(a)(1) to 90 days will permit a regular and systematic consideration of the independent accountant for the Applicant at a meaning full time. This is preferable to incurring the expense of holding extra Board of Trustees meetings solely for the purpose of selecting an independent accountant, which would be necesary if the 30-day window is not expanded.

5. By permitting the Applicant to schedule the selection of the independent accountant at one of the regularly scheduled Board of Trustees meetings through expansion of the 30-day window to 90 days, the SEC will allow the establishment of a review procedure for its Board of Trustees that will ensure that selection of the Applicant's independent accountant is considered on a systematic basis. This review procedure will provide detailed review by the Applicant and result in more thorough consideration of all information developed by the audit committee of its Board. Moreover, the process will more accurately reflect the reality of doing business in complexes having a substantial number of funds, a situation which is markedly different from the time the 1940 Act was passed when funds primarily were operated on an individual basis or in small fund groups. The Applicant further submits that the granting by the SEC of the relief requested will benefit its shareholders through cost savings.

6. For the reasons set forth above, Applicants submit that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant, therefore, requests that the SEC issue an order, pursuant to section 6(c) of the 1940 Act, granting the exemption as requested.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28339 Filed 12-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16677; (812-6634)]

Pacific American Income Shares, Inc., et al; Application

December 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Pacific American Income Shares, Inc. ("Fund") and Western Asset Management Company ("Adviser") (collectively, "Applicants").

Relevant 1940 Act Section: Exemption requested pursuant to section 6(c) from the provisions of section 15(a) of the 1940 Act.

Summary of Application: Applicants seek an order to permit the Adviser to receive retroactive reimbursement of the lesser of the advisory fee earned (the "Contingent Management Fee") or the costs incurred for providing services to the Fund from December 31, 1986 through February 12, 1987.

Filing Dates: The application was filed on February 13, 1987, amendments thereto on October 22, 1987, February 18, 1988, and November 10, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be recieved by the SEC by 5:30 p.m., on December 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, Pacific American Income Shares, Inc., 245 South Los Robles Avenue, Pasadena, California 91109. Western Asset Management Company, 117 East Colorado Boulevard, Pasadena, California 91105.

FOR FURTHER INFORMATION CONTACT: Richard Pfordte, Special Counsel at (202) 272-2811, or Karen L. Skidmore, Branch Chief (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Fund, a Delaware corporation, is a diversified, closed-end management investment company registered under the 1940 Act. On December 31, 1986, the Fund had approximately $100 million of net assets. The Adviser, a California corporation, is an investment adviser registered under the Investment Advisers Act of 1940. Until December 31, 1986, it was a wholly-owned subsidiary of First Interstate Investment Services, Inc., a subsidiary of First Interstate Bancorp, and provide investment advice to the Fund pursuant to an investment advisory agreement (the "Old Advisory Agreement") approved by the Fund's stockholders. On December 31, 1986, the Old Advisory Agreement terminated as the result of the acquisition of the Adviser described in paragraph 2. For the period December 31, 1986, through February 12, 1987, the Adviser provided advisory services pursuant to an interim investment advisory agreement (the "Interim Advisory Agreement"), which except for termination dates and conditions precedent to receiving compensation, was identical in all respects to the Old Advisory Agreement. The Interim Advisory Agreement provided that the Advisor would not be entitled to receive the Contingent Management Fee unless: (A) Fund stockholders approved (i) a new advisory agreement (the "New Advisory Agreement"), substantially identical to the Old Advisory Agreement, and (ii) payment of the Contingent Management Fee, and (B) the Commission issued an order permitting

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payment of the Contingent Management Fee. On February 12, 1987, Fund shareholders approved the New Advisory Agreement and the payment of the Contingent Management Fee.

2. On October 31, 1986, Legg Mason, Inc. ("LMI") acquired all of the Adviser's capital stock (the "Acquisition") pursuant to agreements entered into on that date (collectively, the "Purchase Agreement"). LMI is a holding company which, through its subsidiaries, is engaged in various securities-related businesses. The Acquisition is more fully described in the Fund's proxy statement dated January 6, 1987, a copy of which is attached to the application.

3. Pursuant to the Purchase Agreement, "control" of the Adviser changed within the meaning of section 2(a)(9) of the 1940 Act; the Acqusition constituted an "assignment" of the Old Advisory Agreement within the meaning of section 2(a)(4) of the 1940 Act; and, upon such assignment, the Old Advisory Agreement terminated pursuant to its terms. The New Advisory Agreement could not be implemented without shareholder approval, according to the requirements of section 15(a) of the Act. Such approval could not practicably have been held until some time after the occurrence of the assignment.

4. In anticipation of the possible assignment and termination of the Old Advisory Agreement, the Fund's Board of Directors (including a majority of the Directors who were not "interested persons" as defined in section 2(a)(19) of the 1940 Act) in mid-December 1986, approved entering into the New Advisory Agreement and the Interim Advisory Agreement and the payment arrangements described above concerning the Contingent Management Fee. These decisions were made upon the Board's determination that it was in the best interests of the Fund and its stockholders to avoid interruption of investment advisory services and the change in control of the Adviser resulting from the Acquisition did not and would not have a detrimental effect on the ability of the Adviser to provide the same quality of services.

5. The Acquisition was the subject of intense negotiations with material terms uncertain even until immediately prior to the execution of the definitive Acquisition Agreement on the night of December 31, 1986. The lack of an agreement by year-end 1986, may have prevented the consummation of the Acquisition, therefor the parties determined that it was in the Fund's best interests not to solicit shareholder or Commission approval until the parties agreed upon definitive terms. Having reached a definitive agreement, with payment of the Contingent Management Fee conditioned upon obtaining approvals from Fund shareholders and the Commission, the parties sought to obtain first shareholder approval of the Interim Advisory Agreement and then the Commission's approval of the application. Applicants submit that such approach was proper because, if shareholders did not approve the payment of the Contingent Management Fee, there would have been no reason to proceed with the application.

6. In anticipation of successful negotiations, proxy materials were submitted for review by the Commission's Staff on Decembr 23, 1986, and proxy materials were mailed to Fund shareholders on January 8, 1987. On February 12, 1987, holders of a majority of the Fund's outstanding shares approved the New Advisory Agreement and payment of the Contingent Management Fee.

7. No material changes were made in the Adviser's business, corporate structure, capitalization or composition of senior management or personnel responsible for rendering investment advice to the Fund during the period the Interim Advisory Agreement was in effect. Notwithstanding the Acquisition, the investment advisory and other services provided to the Fund were not diminished during the period the Interim Advisory Agreement was in effect. Under the Interim Advisory Agreement, the Fund continued to receive the same advisory services, provided by substantially the same personnel, as prior to the Acquisition.

8. The Adviser submits that to deprive it of the Contingent Management Fee for no reason other than the fact that the Acquisition resulted in termination of the Old Advisory Agreement would be a harsh result and an unreasonable penalty to attach to a transaction having no substantive impact upon the Fund. Applicants represent that the Fund will not bear any of the costs of the preparation and the filing of this application.

9. Applicants state that while it is difficult to quantify precisely the aggregate costs of the Adviser's services to the Fund during the term of the Interim Advisory Agreement, based on the methodology provided in the application, such costs totalled $50,140. an amount approximately $9,000 less than the fees that would have been earned by the Adviser under the Interim Advisory Agreement.

10. According to the application, the Adviser does not keep expense tabulations on a per client basis. To calculate the cost of providing services to the Fund during the Interim Advisory Agreement, the Adviser multiplied the aggregate expense for each line item for all clients managed by the Adviser by a fraction, the numerator of which is the average revenues attributable to the Fund for the respective period and the denominator of which is the aggregate average revenues of all client accounts managed by the Adviser for the relevant period. The Adviser believes the foregoing method to be reasonable and appropriate.

11. Applicants will not rely on any exemptive order prior to its issuance as authority for the Adviser serving as investment adviser to the Fund from December 31, 1986, the termination date of the Old Advisory Agreement, through February 12, 1987, the date the New Advisory Agreement was approved by the fund's stockholders.

Applicants' Legal Conclusions

1. The requested exemption would be appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants believe that the relief afforded by Rule 15a–4 is unavailable because a controlling person of the Adviser received money or benefits in connection with the assignment of the Old Advisory Agreement. Applicants submit, however, that the Fund solicited proxies promptly in accordance with the spirit of Rule 15a–4. (*See IC Rel No 10809, August 6, 1979).*

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28340 Filed 12–8–88, 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–16674; (811–3185)]

Principal Equity Fund, Inc.; Applications

December 2, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for De registration under the Investment Company Act of 1940 ("1940 Act")

Applicant: Principal Equity Fund, Inc

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant requests an order under section 8(f) declaring that it has ceased to be an investment company

Filing Dates: The application was filed on October 28, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, Suite B304, 6991 East Camelback Road, Scottsdale, Arizona 85251.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant registered under the 1940 Act as an open-end, diversified, management investment company on May 15, 1981. Applicant's Registration Statement was declared effective on December 15, 1982 and Applicant commenced public offering of its securities on or about that date.

2. Applicant incorporated on May 12, 1981 in the State of Maryland and has been dissolved as a corporation. Applicant filed Articles of Transfer with the State of Maryland on September 22, 1988 and Articles of Dissolution on or about October 26, 1988.

3. At a special meeting of Applicant's Board of Directors (the "Board") held on December 14, 1987, the Board approved the Agreement and Plan of Acquisition (the "Plan") between Applicant and Princor Growth Fund, Inc. ("Princor") (811–1873) and submitted the Plan to its shareholders for their consideration.

4. On June 20, 1988, a Proxy Statetment and the Agreement and Plan of Acquisition (the "Proxy") was filed on Form N–14 with the SEC. On August 3, 1988, Applicant mailed the Proxy to all of its shareholders entitled to vote on the matter. At a special meeting held on August 29, 1988, a majority of Applicant's shareholders approved the Plan.

5. On September 16, 1988, Applicant had 69,937.88 shares outstanding with a total aggregate net asset value of $359,280.88 and a per share value of $5.137. On this date, Applicant transferred all of its assets and liabilities to Princor. In exchange, Applicant received Princor shares having an aggregate net asset value equal to the aggregate net asset value of Applicant's shares. Applicant distributed those shares to its shareholders on the same date.

6. In connection with the merger, legal expenses of approximately $75,000 and general administration expenses of approximately $2,500 were incurred, all of which was assumed by Principal Management, Inc.

7. Applicant is not a party to any current or pending litigation or administrative proceedings, and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28341 Filed 12–8–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16673; (811–3260]

Principal Equity Fund Accumulation Plan; Application

December 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for De-registration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Principal Equity Fund Accumulation Plan.

relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant requests an order under section 8(f) declaring that it has creased to be an investment company.

Filing Dates: The Application was filed on October 28, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, Suite B304, 6991 East Camelback Road, Scottsdale, Arizona 85251.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a business trust created under the laws of the State of New York. Applicant registered under the 1940 Act on September 17, 1981 and its Registration Statement was declared effective on March 16, 1983. Applicant was created for the sole purpose of investing in shares of Principal Equity Fund, Inc. (811–3185) ("PEF") on a periodic basis. PEF was merged into Princor Growth Fund on September 16, 1988.

2. On December 14, 1987, Applicant's Board of Directors (the "Board") approved the Agreement and Plan of Acquisition (the "Plan") between Princor Growth Fund, Inc. ("Princor") and PEF. The Board further agreed under the Plan that Applicant be terminated and that PEF be merged into Princor. The Board then submitted the Plan to Applicant's planholders for their consideration.

3. On June 20, 1988, a Proxy Statement and the Agreement and Plan of Acquisition (the "Proxy") was filed on

planholders of record advising them that all accumulation plans would be terminated on August 29, 1988. Planholders were requested to inform the Applicant whether they wanted to liquidate their holdings or invest their total plans into PEF. The number of shares of planholders who elected to receive a check for the value of their plans totaled 2,417.622 or $13,929.24. The remaining planholders either elected to invest their total plans directly into PEF or were automatically invested into PEF. There were 8,777.409 such shares with an aggregate value of $50,750.98 which were invested into PEF. All plans were terminated on August 29, 1988 and PEF's shareholders approved the merger of PEF into Princor Growth Fund, Inc. on August 29.

4. A portion of the $2,500 in general administration expenses and $75,000 in legal fees incurred in PEF's merger were attributable to the Applicant's liquidation. However, Principal Management, Inc. assumed all of these expenses.

5. Applicant is not a party to any current or pending litigation or administrative proceedings, and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28342 Filed 12-8-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 2, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 45968

Date Filed: November 28, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 1988.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests an amendment of its certificate of public convenience and necessity for Route 176, reissued by Order 86-8-78, which will permit Continental to operate flights between Guam and Brisbane/Sidney, Austrialia.

Docket No.: 45979

Date Filed: December 1, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1988.

Description: Application of Air Transport International, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests authority to provide foreign scheduled air transportation of property and mail between any point or points in any State of the United States (including all points in the United States commonwealths, territories and possessions), and the District of Columbia, on the one hand, and a point or points in the following countries, on the other hand: Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Greece, Ireland, Luxembourg, The Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom.

Docket No. 45985

Date Filed: December 2, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 30, 1988.

Description: Application of The Flying Tiger Line Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity to provide scheduled foreign air transportation making permanent certain of its existing exemption authorizations and integrate such authority, along with Flying Tigers' existing foreign trade route certificate authority, into one unified certificate.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-28386 Filed 12-8-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-88-46]

Petition For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 29, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ——, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 5, 1988.

Denise Donohue Hall,

Manager, Program Management Staff.

Petitions For Exemption

Docket No.: 22690.

Petitioner: Boeing Commercial Airplane Company.

Sections of the FAR Affected: 14 CFR 61.57(c).

Description of Relief Sought: To extend and amend Exemption No. 4779 that permits certain pilots employed by petitioner to satisfy the general recent flight experience requirements of that section by alternate means. Exemption No. 4779 will expire on April 30, 1989.

Docket No.: 23392.
Petitioner: Beaver Aviation Service, Inc.
Sections of the FAR Affected: 14 CFR 141.91(a).
Description of Relief Sought: To extend Exemption No. 3682, as amended, that allows petitioner to conduct flight training at a satellite base, which is more than 25 nautical miles from its main operations base.

Docket No.: 25659.
Petitioner: Eastern Air Charter, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b).
Description of Relief Sought: To allow extended overwater operations between Boston and Bermuda, utilizing one long-range navigation receiver and one HF transceiver for emergency aeromedical flights.

Docket No.: 25683.
Petitioner: Christopher C. Foltz.
Sections of the FAR Affected: 14 CFR 61.197.
Description of Relief Sought: To allow the petitioner a 90-day extension on his current flight instructor certificate.

Docket No.: 25245.
Petitioner: United States Air Force.
Sections of the FAR Affected: 14 CFR 91.24(b).
Description of Relief Sought: To reissue Exemption No. 4633B which provides relief from the requirements of § 91.24(b) while conducting flight operations within specifically designed airspace. Additionally, petitioner requests that Restricted Area R–4807 be included in the area designated for exempted operations and that additional military aircraft be authorized to conduct flight operations under the provisions of the exemption.

Docket No.: 24052.
Petitioner: United States Navy.
Sections of the FAR Affected: 14 CFR 91.70(a) and (b), 91.71(c) and (d), and 91.79(c).
Description of Relief Sought: To amend Exemption No. 4504 to allow the Navy Flight Demonstration team to conduct airshow rehearsals and to perform airshows at speeds up to 600 knots, to perform acrobatic maneuvers in weather conditions of 1,000 feet ceiling and 3-mile visibility, and to permit acrobatic maneuvers during takeoff or landing with pilot and controller coordination.

Docket No.: 21789.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.49.
Description of Relief Sought: To extend Exemption No. 3474, as amended, for 3 years. Exemption No. 3474, as amended, permits the airman employees of the petitioner's member airlines and similarly situated Part 121 certificate holders to take a written or flight test without waiting 30 days provided a Part 121 authorized instructor has given the applicant additional flight or ground instruction, as appropriate, and finds that applicant competent to pass the test. *Partial Grant, November 14, 1988, Exemption No. 3474D.*

Docket No.: 24256.
Petitioner: Dalfort Corporation.
Regulations Affected: 14 CFR 61.57(a)(1), (c), and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); and 61.157(e)(1) and (2) and portions of Appendix A of Part 61 and Appendix H of Part 121.
Description of Relief Sought/Disposition: To amend Exemption No. 4955 that allows the petitioner to use the FAA-approved advanced simulators to the extent necessary to permit the petitioner and persons who contract for services with the petitioner to complete certain training and checking. *Grant, November 14, 1988, Exemption No. 4955A.*

Docket No.: 25079.
Petitioner: Montex Drilling Company.
Sections of the FAR Affected: 14 CFR 61.58(c)(1).
Description of Relief Sought/Disposition: To extend Exemption No. 4736 that allows petitioner's pilots to complete the entire 24-month pilot-in-command check in an FAA-approved simulator provided the pilot taking the flight check has completed three takeoffs and three landings within the preceding 90 days in a BAC 1–11 aircraft. *Grant, November 23, 1988, Exemption No. 4736A.*

Docket No.: 25556.
Petitioner: McDonnell Aircraft Company, McDonnell Douglass Corporation.
Sections of the FAR Affected: 14 CFR 21.187.
Description of Relief Sought/Disposition: To allow petitioner to operate certain aircraft in both experimental and normal category operations without complying with procedural requirements specified in § 21.187. *Denial, November 10, 1988, Exemption No. 4994.*

Docket No.: 25608.
Petitioner: Aviation Methods, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b)(5) and (6)
Description of Relief Sought/Disposition: To allow extended overwater operations using one high frequency (HF) transceiver. *Partial Grant, November 22, 1988, Exemption No. 4996.*

Docket No.: 25709.
Petitioner: First Chicago Leasing Corp.
Sections of the FAR Affected: 14 CFR 145.73.
Description of Relief Sought/Disposition: To allow Messerschmitt Bolkow-Blohm GmbH/Aircraft Service Center (MBB) to perform certain structural modifications on L–1011 aircraft, U.S. Registration Number N309EA, Serial Number 1010, that is owned by petitioner, beginning October 26, 1988. *Grant, November 16, 1988, Exemption No. 4995.*

[FR Doc. 88–28316 Filed 12–8–88; 8:45 am]
BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Orientation Program

The United States Information Agency seeks applications from cooperating institutions of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright Teacher Exchange Program provides opportunities for U.S. teachers to exchange teaching positions with foreign counterpart teachers for an academic year.

Universities or colleges in metropolitan Washington, DC with schools or colleges of education or graduate programs in international studies, and located within reasonable proximity of Washington, DC's three international gateway airports, are invited to submit project proposals. For application information, please contact Ms. Ilo-Mai Harding, no later than December 19, 1988, at the following address: Teacher Exchange Branch (E/ASX), Office of Academic Programs, United States Information Agency, 301 4th Street SW., Washington, DC 20547, Phone: (202) 485–2556.

Date: December 1, 1988.

Guy Story Brown,

Director, Office of Academic Programs.

[FR Doc. 88–28354 Filed 12–8–88; 8:45 am]
BILLING CODE 8230–01–M

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UNITED STATES INSTITUTE OF PEACE

Announcement of Awards; Albert Einstein Institution, et al.

The United States Institute of Peace announces awards made in the unsolicited grants category, from March through September 1988. The following forty-three awards amount to a total funding of $1,408,483.

- Albert Einstein Institution, Cambridge, MA (Mr. Ronald McCarthy, Project Director): $43,755 (USIP 500).
- Alston, Dr. Philip, the Fletcher School of Law and Diplomacy, Tufts University, MA: $20,000 (USIP 298).
- American University, Washington, DC (Abdul Aziz Said, Professor, School of International Service, Project Director): $23,333 (USIP 416).
- Atlantic Council of the United States, Washington, DC (Dr. John A. Baker, Director of Education, Project Director): $30,000 (USIP 469).
- California Seminar on International Security and Foreign Policy, Santa Monica, California (Mr. James Digby and Mr. Joseph Nation, Project Directors): (USIP 448).
- Carnegie Endowment for International Peace, Washington, DC (Dr. Geoffrey Kemp, Project Director): $40,000 (USIP 515).
- Catholic University of America, Washington, DC (Professor Joseph Komonchak, Project Director): $15,000 (USIP 399).
- Coats, Dr. Wendell, Connecticut College, New London, Connecticut: $15,000 (USIP 460).
- Columbia University, Peace Education Program, Teachers College (Dr. Betty Reardon, Project Director): $50,000 (USIP 445).
- Copson, Dr. Raymond W., National Defense University and the Congressional Research Service, Library of Congress, Washington, DC: $18,550 (USIP 303).
- Council for the Advancement of Citizenship, Washington, DC (Ms. Diane Eisenberg, Project Director): $118,656 (USIP 484).
- Dartmouth College, Hanover, New Hampshire (Professor Ian Lustick, Project Director): $15,000 (USIP 392).
- Gerson, Allan, Esq., Chevy Chase, Maryland, former Senior Advisor to the Attorney General of the United States on International Affairs and Special Counsel to the United States Permanent Representative to the United Nations: $17,500 (USIP 422).
- Green, Dr. W., S. Freidzon and L. Avrashev, Boston, MA: $40,000 (USIP 461).
- Hebrew University of Jerusalem, Leonard Davis Institute for International Relations (Mr. Yair Kagan and Dr. J. Rothman, Project Directors): $40,000 (USIP 454).
- Heston, Alan W., Professor of Economics, University of Pennsylvania: $30,000 (USIP 327).
- Horowitz, Donald L., Professor of Law, Public Policy Studies, and Political Science, Duke University, Durham, North Carolina: $25,000 (USIP 406).
- John W. McCormack Institute of Public Affairs, University of Massachusetts at Boston (Mr. Padraig O'Malley, Project Director): $15,000 (USIP 098).
- Johnson, Dr. James, Rutgers University and Dr. John Kelsay, Florida State University (Project Directors): $30,000 (USIP 451).
- Massachusetts Institute of Technology, Cambridge, MA (Dr. Nazli Choucri, Project Director): $56,000 (USIP 497).
- Mississippi State University, Center for International Security and Strategic Studies (Professor Janos Radvanyi, Project Director): $50,000 (USIP 423).
- New Hampshire Council on World Affairs, Durham, New Hampshire (Dr. David L. Larson, University of New Hampshire, Project Director): $11,500 (USIP 479).
- New York University (Dr. Steven Brams, Project Director): $26,595 (USIP 362).
- Northwestern University, Center for International Studies and Center for Urban Affairs and Policy Research, Evanston, Illinois (Professors Jack A. Goldstone, Ted Robert Gurr, and Mr. Farrokh Moshiri, Project Directors): $24,000 (USIP 387).
- Oxford Research Group, Great Britain (Mr. Hugh Miall, Project Director): $30,000 (USIP 429).
- Princen, Dr. Thomas E., Program on Negotiation, Harvard Law School: $6,000 (USIP 351).
- Salzburg Seminar, Cambridge, MA (Mr. Lloyd Cutler and Mr. Roger Lort, Project Directors): $25,000 (USIP 477).
- School of Advanced International Studies, The Johns Hopkins University, Washington, D.C. (Professor I. William Zartman, Project Director): $50,000 (USIP 293).
- Shanor, Donald R., Columbia University: $20,000 (USIP 417).
- Sinai, Dr. Joshua, Washington, D.C.: $25,000 (USIP 456).
- Tanter, Dr. Raymond, Michigan State University, East Lansing, Michigan: $6,383 (USIP 106).
- Tufts University, Medford, MA (Dr. Jean Mayer, President, and Jeffrey Rubin, Professor of Psychology, Project Directors): $60,000 (USIP 375).
- United Nations Regional Centre for Peace and Disarmament in Africa (Dr. Sammy Kum Buo, Project Director): $50,000 (USIP 466).
- University of Connecticut, War and Ethics Program (Dr. Robert Phillips, Project Director): $15,000 (USIP 443).
- University of Hawaii Foundation, Honolulu, Hawaii (R.J. Rummel, Project Director: $80,000 (USIP 433).
- University of Hawaii Institute for Peace, Honolulu, Hawaii (Ms. Caroline Stephenson, Project Director): $12,500 (USIP 050).
- University of Hawaii Institute for Peace, Honolulu, Hawaii (Mr. Stephen Uhalley, Project Director): $24,274 (USIP 446).
- University of Michigan, Dr. J. David Singer, Ann Arbor, Michigan: $32,000 (USIP 464).
- University of Missouri-St. Louis (Dr. Frederic S. Pearson and Dr. Michael Brzoska (University of Hamburg, FRG) Project Directors): $35,000 (USIP 482).
- Washington and Lee University School of Law, Lexington, Virginia (Professor Gregory Stanton and Ms. Morrow Cater, Project Directors): $46,767 (USIP 378).
- Whittier College, Whittier, California (Project Director, Joyce Kaufman): $53,820 (USIP 397).
- Wiarda, Dr. Howard, American Enterprise Institute for Public Policy Research, Washington, DC: $29,300 (USIP 205).
- Yankelevich, Mr. Efrem, Newton Massachusetts: $37,000 (USIP 468).

Contact: Hrach Gregorian, Director of Grant Programs, United States Institute of Peace, 1550 M Street NW., Suite 700, Washington, DC 20005–1708, (202) 457–1700.

Date: November 22, 1988.

Samuel W. Lewis,

President.

[FR Doc. 88–28383 Filed 12–8–88; 8:45 am]

BILLING CODE 3155–01–M

Announcement of Fellowships Awarded; Jennings Randolph Program for International Peace

The United States Institute of Peace has announced the appointment of 22 fellows for 1988–1989 in its Jennings Randolph Program for International Peace. This is the first year an international competition was held for all three types of awards offered by the Program: Distinguished Fellow, Peace Fellow and Peace Scholar.

The fellowships enable outstanding scholars, diplomats, professionals and university doctoral students to conduct research and education projects focused

on the nature of international conflict and methods for achieving peace. Ten fellows will work at the Institute's Washington, DC offices; the others will be based at universities and other organizations throughout the U.S. Projects generally take one year.

This year's fellowship recipients represent thirteen U.S. states and the District of Columbia as well as eight foreign countries. Fellows come from such diverse backgrounds as diplomacy, law, political science, psychology, sociology, international relations and economics.

The U.S. Institute of Peace is an independent, nonpartisan government institution created and wholly funded by Congress to strengthen the nation's capacity to promote the peaceful resolution of international conflicts. The Institute is governed by a bipartisan 15-member, Presidentially appointed Board of Directors and is precluded from playing a direct role in foreign policy making or in mediating international disputes.

The fellowship program is named for former Senator Jennings Randolph (D-WVa), a leading proponent of the legislation passed in 1984 establishing the Institute. The Institute also awards grants, directs research and studies projects, and conducts a variety of citizen education activities.

Distinguished Fellows are eminent scholars and practitioners with careers marked by extraordinary achievement. The three Distinguished Fellows announced for 1988–89 are:

- John Burton, Distinguished Visiting Professor, George Mason University, Virginia. Australian. Widely recognized as a founding father of the field of international conflict resolution, Burton will complete a six-volume series synthesizing the leading insights of the field;
- Herbert Kelman, Professor, Harvard University, Massachusetts. A social psychologist, Kelman will examine the practical applications of techniques of collective problem solving in helping to resolve Israeli-Palestinian differences; and
- John Reinhardt, Professor, University of Vermont. Formerly U.S. Ambassador to Nigeria and Director of the U.S. Information Agency, Reinhardt will study and write articles on the subject of how governmental communication with foreign publics can help to reduce international tension and conflict.

Peace Fellow awards are made to persons in varied careers who show substantial accomplishment and promise of future leadership. The first Peace Fellows announced by the Institute are:

- Bruce Berlin, Founder and Executive Director of the Trinity Forum for International Security and Conflict Resolution, Santa Fe, New Mexico. Berlin will engage diplomats, scholars, and college students in a series of workshops that will derive lessons on conflict resolution from the recent peace process in Central America;
- Raymond Cohen, Senior Lecturer, Hebrew University, Jerusalem. Israeli. Cohen will write a book on how intercultural communication difficulties may affect U.S. negotiations with other countries;
- Lily Gardner Feldman, Associate Professor, Tufts University, Massachusetts. British. Gardner Feldman will seek clues to how former enemies in war have developed close ties of friendship, by looking at Germany's postwar reconciliation with Israel, France and the United States;
- Ted Robert Gurr, Professor, University of Colorado. Gurr will study why certain nations historically seem prone to violent behavior while others are inclined toward non-violent means for resolving problems;
- Mark Katz, International Affairs Consultant, Washington, DC. Katz will develop and conduct a series of workshops that examine the role that the U.S., the United Nations and other third-party mediators have played and can play in achieving progress toward peace in Afghanistan, the Iran-Iraq war, Central America and other regional conflicts;
- Paul Kimmel, Senior Research Associate, Creative Associates International, Inc., Washington, DC. Kimmel will develop and test a model for overcoming cultural barriers in international negotiations;
- Robin Ranger, Arms Control Analyst, Washington, DC. Canadian. Ranger will develop effective and workable safeguards to ensure compliance with Strategic Arms Reduction Talks (START) and other proposed arms control agreements;
- Shirin Tahir-Kheli, Director of Near East and South Asian Affairs, National Security Council. Washington, DC. Tahir-Kheli will examine how a relative stability has been achieved between India and Pakistan and how it may be maintained following the Soviet departure from Afghanistan; and
- Goshu Wolde, former Foreign Minister of Ethiopia, currently living in Pennsylvania. Wolde will study possible regional efforts to reduce conflicts and increase cooperation in the Horn of Africa.

Peace Scholars are outstanding students in university doctoral programs who are undertaking dissertation research that advances the state of knowledge about international peace and conflict management. Recipients of the Peace Scholar awards and their topics are:

- George Agbango, Atlanta University. Ghanaian. The impact of conflict on economic development in Africa;
- Anthony Armstrong, University of Washington. Good-will initiatives that improve relationships between long-time adversaries;
- Daniel Bahr, Iowa State University. The roots of international cooperation in the absence of global authorities;
- Orna Ben-Naftali, Tufts University. Israeli. The United States and the International Court of Justice;
- Lisa Brandes, Yale University. The impact of women on nations' attitudes toward war and peace;
- Jurgen Brauer, University of Notre Dame. West German. The effect of military spending on developing nation's economies;
- Fernando Lopez-Alves, University of California at Los Angeles. The role of labor unions in preserving democratic stability in Latin America;
- Raul Pangalangan, Harvard University. Filipino. International human rights theories and Third World elites;
- Luigi Sensi, Rutgers University. Italian. Superpower intervention in civil wars; and
- James Winkler, Tufts University. Security and development objectives in U.S. policy toward the Third World.

The second annual international competition for the three types of awards will accept applications postmarked no later than February 1, 1989. Applications are available from the Jennings Randolph Program for International Peace, U.S. Institute of Peace, 1550 M Street, NW., Suite 700, Washington, DC 20005.

Contact: Michael Lund, *Director, Jennings Randolph Program for International Peace.*

Date: November 28, 1988.

Samuel W. Lewis,
President.

[FR Doc. 88–28383 Filed 12–8–88; 8:45 am]
BILLING CODE 3155–01–M

VOL 53 ISS 237 DE 9 1988 UMI

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of System Notice; Revision of Routine Use Statement

Notice is hereby given that the Veterans Administration (VA) is considering revising a routine use statement for the system of VA records entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA" (55VA26) as set forth in the **Federal Register** publication, "Privacy Act Issuances", 1986 Compilation, Volume V, page 794, and amended at 52 FR 721 (January 8, 1987).

The purpose of the revision is to assist in the sale of vendee loans without recourse by expanding the number of parties to whom vendee loan records may be disclosed. Vendee loans are loans made by the VA to purchasers of VA acquired properties in order to finance the sale of these properties. Routine use No. 16 currently provides for disclosure of these records to actual and prospective investors in order to provide a basis for their submitting offers to purchase these loans and to enable them to establish loan accounts on loans which they have purchased. This was sufficient to conduct vendee loan sales with recourse, that is, with a Government guarantee to repurchase the loan in the event the borrower defaulted. However, VA may now also sell vendee loans without recourse. In order to market these loans effectively, on a no-recourse basis, VA must secure the assistance of financial advisors, investment bankers and other parties, all of whom require access to the vendee loan records in the performance of their duties.

In order to provide for this access, routine use No. 16 is being amended to also allow disclosure of these records to financial advisors, to assist VA in developing strategies for marketing these loans, and to investment bankers, bond rating agencies, other governmental agencies, private mortgage insurance companies, bonding companies or other parties involved in the marketing or sale of vendee loans.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed revision to the routine use statement to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before January 9, 1989, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 18, 1989.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective January 9, 1989.

Approved: November 21, 1988.

Thomas K. Turnage,

Administrator.

Notice of Amendment to System of Records

The system identified as 55VA26, "Loan Guaranty Home, Condominiums and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA," appearing on pages 794–796 of the **Federal Register** publication "Privacy Act Issuances," 1986 Compilation, Volume V, and amended at 52 FR 721, January 8, 1987, is amended as follows:

55VA26

SYSTEM NAME:

Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

16. Any information in a direct or vendee loan account record may be disclosed to active investors purchasing or considering the purchase of VA direct or vendee loans from VA or from a previous investor. Such information will be furnished to active prospective investors to provide a basis for their submitting an offer to purchase loans and to actual investors in order that they may establish loan accounts on purchased loans. Such information may also be disclosed to financial advisors to assist VA in developing strategies for marketing these loans, and to investment bankers, bond rating agencies, other governmental agencies, private mortgage insurance companies, bonding companies, master servicers, and others involved in the marketing or sale of vendee loans, including legal counsel, accountants and auditors for such entities.

* * * * *

[FR Doc. 88-28308 Filed 12-8-88; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Proposed Amendment of Systems Notice; Additional Routine Use Statements

Notice is hereby given that the Veterans Administration (VA) is considering adding two new routine use statements to the system of records entitled, "Patient Medical Records—VA" (24VA136) which is set forth on pages 771 and 772 of the **Federal Register** publication, "Privacy Act Issuances, 1986 Compilation, Volume V" and amended at 52 FR 381, January 5, 1987.

Section 4132 of Title 38, United States Code, provided for the confidentiality of Veterans Administration patient medical records that are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, or sickle cell anemia. Section 121 of Pub. L. No. 100–322, Veterans' Benefits and Services Act of 1988, amended 38 U.S.C. section 4132 and added medical records of patients who are infected with the Human Immunodeficiency Virus (HIV) to the confidentiality provisions of this section. The statute provides an exception for the disclosure of record information relating to HIV infection to a Federal, State, or local public health authority that is charged under Federal or State law with the protection of the public health. A Federal or State law must require disclosure of the record information and a qualified representative of the public health authority must make a written request which states the purpose for providing the information. The purpose must be authorized by law and the request must clearly identify such lawful purposes. The public health authority may not redisclose or use the information for a purpose other than that for which the disclosure was made. Routine use statement number 27 is proposed to provide for those disclosures which are authorized by 38 U.S.C. 4132(b)(2)(C) as amended by section 121 of Pub. L. No. 100–322.

The statute provides also for the disclosure of information indicating that a patient or subject is infected with the HIV, under certain circumstances, to (1) the spouse of the patient or subject, or (2) to an individual whom the patient or

subject has, during the process of professional counseling or of testing to determine whether the patient or subject is infected with such virus, identified as being a sexual partner of such patient or subject. Before any patient or subject gives consent to being tested for the HIV, as part of pre-test counseling, the patient or subject must be informed fully about these notification provisions.

Disclosures under these provisions may be made only if the physician or professional counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information and that the disclosure is necessary to protect the health of the spouse or sexual partner. Routine use statement number 28 is proposed to provide for these disclosures which are authorized by 38 U.S.C. 4132(f) as amended by section 121 of Pub. L. No. 100–322.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine uses to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before January 9, 1989, will be considered. All written comments received will be available for public inspection only in room 132 of the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until January 18, 1989.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the VA, the routine use statements included herein are effective January 9, 1989.

Approved: November 18, 1988.

Thomas K. Turnage,

Administrator.

Notice of System of Records

In the system identified as 24VA136, "Patient Medical Record—VA" appearing on pages 771 and 772 of the **Federal Register** publication, "Privacy Act Issuances, 1986 Compilation, Volume V" and amended at 52 FR 381, January 5, 1987, the following additions are made:

24VA136

SYSTEM NAME:

Patient Medical Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

27. In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the Human Immunodeficiency Virus (HIV), information may be disclosed to a Federal, State, or local public health authority that is charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. The person to whom information is disclosed should be advised that they may not redisclose or use such information for a purpose other than that for which the disclosure was made (38 U.S.C. 4132(b)(2)(C)). The disclosure of patient name and address under this routine use must comply with the provisions of 38 U.S.C. 3301(f)(2).

28. Information indicating that a patient or subject is infected with the Human Immunodeficiency Virus (HIV) may be disclosed by a physician or professional counselor to the spouse of the patient or subject or to an individual whom the patient or subject has, during the process of professional counseling or of testing to determine whether the patient or subject is infected with the virus, identified as being a sexual partner of the patient or subject. Disclosures may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner. Such disclosures should, to the extent feasible, be made by the patient's or subject's treating physician or professional counselor. Before any patient or subject gives consent to being tested for the HIV, as part of pre-testing counseling, the patient or subject must be informed fully about these notification provisions.

[FR Doc. 88–28309 Filed 12–8–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 237
Friday, December 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m. Wednesday, December 14, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Kerosene Heaters Petition CP87-1

The Commission will consider petition CP 87-1 from the National Kerosene Heater Association. The Commission was briefed on this matter at the meeting on September 27, 1988. The petition requests the development of a consumer product safety rule for kerosene heaters containing requirements to limit nitrogen dioxide emissions and imposing all of the requirements now set forth in the Underwriters Laboratories standard for kerosene heaters designated UL standard 647. The Commission will also consider the request of the International Association of Fire Chiefs to require kerosene heaters to be labeled to warn against flare-up fires.

2. Exemptions from Preemption Under Commission Statutes

The Commission will consider a **Federal Register** notice which would propose a new regulation to govern procedures for applications for exemption from preemption under the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

December 7, 1988.

[FR Doc. 88-28481 Filed 12-7-88; 3:29 pm]

BILLING CODE 6355-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on November 22, 1988, from 12:00 noon until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The matters considered at the meeting were:

Open Session

1. FCA Merger-Related Policy Statements;

Closed Session [1]

2. Stock Purchase Requirements Associated with the Sale of Receivership Loans; and
3. Section 411 Merger in Louisville District.

Dated: December 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-28482 Filed 12-8-88; 3:29 pm]

BILLING CODE 6705-01-M

FARM CREDIT ADMINISTRATION:

Correction of Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on December 5, 1988 (53 FR 49007) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for December 6, 1988. This notice is to revise the exemptions for the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The exemptions for the Tuesday, December 6 regular meeting are revised to read as follows:

Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8), and (9).

Dated: December 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-28483 Filed 12-7-88; 3:29 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, December 13, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution regarding an extension of time for compliance with that portion of the Corporation's rules and regulations, entitled "Foreign Banks," which limits country exposure concentrations of an insured domestic branch of a foreign bank to borrowers in the country in which the foreign bank parent is chartered to 200 percent of the branch's required capital equivalency ledger account and 100 percent for all other countries.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled, "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," which amendments, to implement certain amendments to the Change in Bank Control Act made by section 1360 of the Anti-Drug Abuse Act of 1986, (1) Permit the Corporation to (a) waive the newspaper publication or comment solicitation requirements of 12 CFR 303.4(b)(2)(ii), or to act on a proposed change in control prior to

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552(c) (4), (8) and (9).

the expiration of the public comment period, only if the Corporation makes a written finding that newspaper publication or comment solicitation would seriously threaten the safety or soundness of the bank to be acquired, and (b) for good cause, shorten the public comment period to a period of not less than ten days; and (2) provide for publication and solicitation of comment in situations in which notice has not been filed pursuant to the Change in Bank Control Act.

The meeting will be held in the Board Room of the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 6, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–28452 Filed 12–7–88; 3:27 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, December 13, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Kansas City Consolidated Office, Cost Center—301 (Memo dated October 31, 1988)
Audit Report re:
EDP Audit Report, Oklahoma City Consolidated Office Cost Center—401 (Memo dated November 4, 1988)
Trend Analysis Report re:
Analysis of Regional/Consolidated Office Audit Results (Memo dated November 9, 1988)

Discussion Agenda:

Application for Federal deposit insurance:

Pioneer Financial, A Cooperative Bank, an operating non-FDIC-insured cooperative bank, located at 46 Pleasant Street, Malden, Massachusetts.

Application for Federal deposit insurance for a State-chartered branch of a foreign bank:

Bank of Oman Limited, Dubai, United Arab Emirates, for Federal deposit insurance of deposits received at and recorded for the account of its State-chartered branch to be located at 255 Fifth Avenue, New York (Manhattan), New York.

Application for consent to merge:

Wilburton State Bank, Wilburton, Oklahoma, an insured State nonmember bank, for consent to merge, under its charter and with the title "Latimer State Bank," with Latimer State Bank, Wilburton, Oklahoma.

Report of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Vendor Tax Reporting and Withholding (Memo dated November 7, 1988)

Memorandum regarding the Corporation's corporate activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 6, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–28453 Filed 12–7–88; 3:27 pm]

BILLING CODE 6714–01–M

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Corrections

Federal Register
Vol. 53, No. 237
Friday, December 9, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations With the Government of the People's Republic of China To Review Trade in Categories 330/630

Correction

In notice document 88-24465 beginning on page 41621 in the issue of Monday, October 24, 1988, make the following correction:

On page 41622, in the second column, under *Summary and Conclusions*, the third paragraph should be removed and the following text should be inserted in it's place:

The sharp and substantial increase in imports of hankerchiefs (Category 330/630) from China is causing a real risk of market disruption.

U.S. Production and Market Share

Between 1984 and 1987, U.S. production of cotton and man-made fiber hankerchiefs (Category 330/630) remained relatively flat, fluctuating within a very narrow range declining in one year and increasing in the next. U.S. production in 1987 was flat, remaining at the 1986 level, but was two percent below the 1984 level. The share of this market held by domestic manufacturers fell from 70 percent in 1984 to 64 percent in 1987.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 242

[Defense Acquisition Circular (DAC) 88-1]

Department of Defense Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

Correction

In rule document 88-26453 beginning on page 46455 in the issue of Thursday, November 17, 1988, make the following correction:

242.7300 [Corrected]

On page 46458, in the first column, in 242.7300(a), in the fourth line, "in-death" should read "in-depth".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3480-7]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry

Correction

In the issue of Tuesday, November 29, 1988, on page 47955, in the first column, in FR Doc.88-27067, a correction to FR Doc. 88-22483 (53 FR 38914, October 3, 1988) appeared. In the second column, the section designation "**§ 60.712 [Amended]**" should read "**§ 60.711 [Amended]**".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42084F; FRL 3473-3]

Commercial Hexane; Proposed Pharmacokinetics Test Requirements and Revision of Proposed Test Guideline

Correction

In proposed rule document 88-25929 beginning on page 45289 in the issue of Wednesday, November 9, 1988, make the following correction:

On page 45289, in the second column, under **SUPPLEMENTARY INFORMATION**, in the fourth line, "40 CFR 795.323" should read "40 CFR 795.232".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180793; FRL-3473-1]

Pesticide Programs; Annual Report on Crisis Exemptions

Correction

In notice document 88-25930 appearing on page 45384 in the issue of Wednesday, November 9, 1988, in the second column, the portion of the table beginning with Texas was inaccurate and should read as follows:

State/ Federal agency	No. of crisis exemptions	Pesticide	Site
•	•	• •	•
Texas	4	Ethyl parathion.	Rape.
		Propiconazole.	Peanuts.
		Iprodione	Rice.
		Permethrin	Leafy vegetables.
USDA	4	Calcium cyanide.	Beehives.
		Fluvalinate	Beehives.
		Methyl bromide.	Bananas.
		Ethylene oxide.	Sunflower seeds.
Washington	2	Baythroid	Pears.
		Disulfoton	Hops.
Wisconsin	3	Propargite	Soybeans.
		Sethoxydim	Lupines.
		Sodium chlorate.	Oats.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 83F-0020]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sodium Polyacrylate

Correction

In rule document 88-23204 beginning on page 39455 in the issue of Friday, October 7, 1988, make the following correction:

§ 173.73 [Corrected]

On page 39456, in the third column, in § 173.73(a)(2), in the fourth line, "(HRR-330)" should read "(HFF-330)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Carfentanil Citrate Injection

Correction

In rule document 88-23572 beginning on page 40056 in the issue of Thursday, October 13, 1988, make the following correction:

§ 510.600 [Corrected]

On page 40057, in the first column, in § 510.600(c)(1), in the table, below the entry for "Wildlife Laboratories, Inc." insert five asterisks.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 546, and 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In rule document 88-23997 beginning on page 40726 in the issue of Tuesday, October 18, 1988, make the following correction:

On page 40726, in the first column, under **SUPPLEMENTARY INFORMATION**, in the table, in the second column, in the sixth entry, "Diethylcarbamazine" was misspelled. In the seventh entry, after "SDM", the entry should read "10% Injection (Sulfadimethoxine)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 87C-0253]

Listing of Color Additives for Coloring Contact Lenses; Chromium-Cobalt-Aluminum Oxide

Correction

In rule document 88-24458 beginning on page 41324 in the issue of Friday, October 21, 1988, make the following correction:

On page 41324, in the third column, under **IV. Safety Evaluation**, in the second paragraph, in the ninth line, after "that", insert "the color additive is noncytotoxic by direct contact at".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0323]

Innovative Optics, Inc.; Premarket Approval of I.O.—18 (Kolfocon A) and I.O.—32 (Kolfocon B) Rigid Gas Permeable Contact Lenses (Clear and Tinted)

Correction

In notice document 88-24625 beginning on page 43044 in the issue of Tuesday, October 25, 1988, make the following corrections:

1. On page 43045, in the 1st column, under **SUPPLEMENTARY INFORMATION**, in the 22nd and 23rd lines, "(21 CFR 74-3206)" should read "(21 CFR 74.3206)"; in the 27th line, "(21 CFR 74-3602)" should read "(21 CFR 74.3602); and in the 35th line, "copper" was misspelled.

BILLING CODE 1505-01-D

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0333]

Sandoz AG; Filing of Food Additive Petition

Correction

In notice document 88-24624 appearing on page 43043 in the issue of Tuesday, October 25, 1988, make the following corrections:

1. In the second column, in the **SUMMARY**, in the seventh line, "piphenyl" should read "biphenyl". In the eighth line "methylpentene"was misspelled.

2. In the third column, under **SUPPLEMENTARY INFORMATION"**, in the third line , "see." should read "section". In the sixth line, "CH-442" should read "CH-4402".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

Correction

In rule document 88-26448 beginning on page 46546 in the issue of Thursday, November 17, 1988, make the following correction:

§ 57.215 [Corrected]

On page 46550, in the second column, in § 57.215, the parenthetical phrase at the end of the section should read as follows:
(Approved by the Office of Management and Budget under control number 0915-0115)

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Nursing Student Loan Program

Correction

In rule document 88-26449 beginning on page 46552 in the issue of Thursday, November 17, 1988, make the following correction:

§ 57.315 [Corrected]

On page 46555, in the second column, in § 57.315, the parenthetical phrase at the end of the section should read as follows:
(Approved by the Office of Management and Budget under control number 0915-0115)

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

[AA-320-89-4212-13]

Land Exchange Regulations

Correction

In proposed rule document 88-26199 beginning on page 45782 in the issue of Monday, November 14, 1988, make the following corrections:

1. On page 45782, in the second column, in the **SUMMARY**, in the first line, "Facilities" should read "Facilitation".

2. On the same page, in the third column, under **SUPPLEMENTARY INFORMATION**, in paragraph 4, in the fourth line, "$15,000" should read "$150,000".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-10; I-9793]

Termination of Proposed Withdrawal and Reservation of Lands; Idaho

Correction

In notice document 88-25379 beginning on page 44242 in the issue of Wednesday, November 2, 1988, make the following corrections:

1. On page 44242, in the third column, under "T. 8 S., R. 10 E.," the fifth line should read "Sec. 12, S½SW¼, SW¼SE¼;".

2. On the same page, in the same column, under "T. 8 S., R. 11E.," the fifth line should read "Sec. 28, SW¼NW¼, W½SW¼, SE¼SW¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Frederick Douglass National Historic Site

Correction

In notice document 88-27249 beginning on page 47770 in the issue of Friday, November 25, 1988, make the following corrections:

On page 47771, in the first column, in the land description, in the third line, "13° 13'" should read "13° 03'". Also, in the seventh line, "10° 14' 40"" should read "10° 23' 40"".

BILLING CODE 1505-01-D

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

Correction

In rule document 88-27401 appearing on page 47927 in the issue of Tuesday, November 29, 1988, make the following correction:

Appendix II to Part 1201—[Corrected]

In the first column, under **Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals**, in the paragraph designated "6", in the third line, after "New Jersey" remove the closing parenthesis.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-41]

Establishment of Transition Area; Ruidoso, NM

Correction

In rule document 88-26959 beginning on page 47182 in the issue of Tuesday, November 22, 1988, make the following correction:

§ 71.181 [Corrected]

On page 47183, in the first column, in the second line, in § 71.181,"38°27'42"N." should read "33°27'42"N.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 152

Application of Criteria Utilized in Determining the Eligibility of Planetaria for Duty-Free Admission Under Item 862.10, Tariff Schedules of the United States (TSUS)

Correction

In proposed rule document 88-26707 beginning on page 46625 in the issue of Friday, November 18, 1988, make the following correction:

On page 46626, in the first column, in the 15th line, after "university" insert "and".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 152

Dutiability of Quota Charges

Correction

In proposed rule document 88-26708 beginning on page 46626 in the issue of Friday, November 18, 1988, make the following corrections:

On page 46627, in the 3rd column, in the 22th line, "moneys" should read "monies"; in the 26th line, "moneys" should read "monies" and "charged" should read "charges".

BILLING CODE 1505-01-D

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December 9, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Revised Contract Rent Annual Adjustment Factors

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-88-1897; FR-2550]

Section 8 Housing Assistance Payments Program; Revised Contract Rent Annual Adjustment Factors

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: The United States Housing Act of 1937 (1937 Act) requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments Progams provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This Notice announces revised Annual Adjustment Factors, which are based on a formula using rent and utility data from the Consumer Price Index and using the Bureau of the Census American Housing Surveys. The revised Factors are to be used to adjust contract rents in the Section 8 Housing Assistance Payments Programs.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Existing Housing Division, Office of Elderly and Assisted Housing (202) 755-6887; James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 426-3970. For technical information regarding the development of the schedules for specific areas or the method used for calculating the Adjustment Factors, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (202) 755-5577. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) requires the Department to provide for adjustments in the maximum monthly rents for units covered by the Section 8 Housing Assistance Payments (HAP) Contracts. Adjustments must reflect changes in the fair market rents (FMRs) prevailing in particular market areas or be based on a reasonable formula.

This Notice establishes revised Annual Adjustment Factors (AAFs) based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys (AHS). The revised AAFs are to be used to adjust Contract rents under the Section 8 Housing Assistance Payments Programs. HUD regulations provide that the AAFs will be published annually in the **Federal Register** (24 CFR 888.202). The annual anniversary date for publication of the AAFs is November 8. These revised AAFs apply (subject to the limitations on applicability discussed below) to adjust Contract Rents on or after November 8, 1988.

Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this Notice are used to adjust Contract Rents for Section 8 units. The following provides a general description of how AAFs apply under the several Section 8 Housing Assistance Payments Programs. The application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations.

In certain cases, AAFs are not used to adjust Contract Rents. AAFs are not used for Section 8 Certificate Program units subject to 24 CFR 882.110(d), which applies to units in certain otherwise subsidized projects that are rented to Section 8 Certificate Program families. (The housing assistance payment for such a unit is equal to the difference between the subsidized rent and the rent payable by the eligible family. Adjustments to the subsidized rents are made in accordance with rules and procedures governing the particular subsidized housing program involved.) In addition, AAFs are not used for units placed under HAP contract in recent years under the Section 202/Section 8 Program. Instead, rents are based on a HUD-approved budget for the project.

Contract Rents for many projects receiving Section 8 subsidies under the Loan Management provisions of 24 CFR Part 886, Subpart A, and for projects receiving Section 8 subsidies under the Property Disposition provisions of 24 CFR Part 886, Subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19 (e)(2) and (e)(4).

The AAFs developed by the formula apply to rental units of all bedroom sizes in each rent interval. Under the Section 8 Moderate Rehabilitation Program, the public housing agency (PHA) should use the base rent, not the Contract Rent, to select the correct AAF to apply to the base rent.

Each AAF applies to a specified geographical area, as indicated in the Table at the end of this document. Program participants should refer to the Table that provides the list of States included in each of the four Census Regions and the metropolitan areas with separate local CPI surveys (defined by counties or New England towns) to make certain that they are using the correct factors. Units located in metropolitan areas with separate local CPI surveys must use the corresponding AAFs for that metropolitan area. Units that are located outside those metropolitan areas with separate local CPI surveys must use the AAFs for the respective Census Region within which the state is located.

Application of an AAF to the prior Contract Rent for a unit may not result in material differences between the rents charged for assisted units and unassisted units of similar quality and age in the same market area, as determined by the Secretary. (See 42 U.S.C. 1437f(c)(2)(C), and the applicable program regulations in 24 CFR Ch. VIII.) Thus, an AAF for an entire primary metropolitan statistical area (PMSA) may not be uniformly applicable to all rental housing within that broad area, if a project-specific rent comparability test shows that a material difference exists between the rents charged for assisted projects and unassisted projects of similar quality and age in the same market area.

In certain cases, however, the AAF established for a particular area may result in rents that are substantially lower than rents charged for comparable units not receiving assistance under the Section 8 Program. If this occurs, a PHA or private owner may apply to the HUD Field Office for consideration of a revised AAF for the area, as provided in 24 CFR 888.204.

Owners of Section 8 units (other than units assisted under the Section 8 Certificate and FmHA Programs) who have HAP Contracts with anniversary dates falling on November 8, 1988 through December 9, 1988, may request that the AAFs be applied retroactively to the anniversary date of their HAP Contracts. Retroactivity is permitted to avoid any detriment to owners because of HUD's delay in the annual publication of the factors as required by 24 CFR 888.202. For units assisted under the section 8 Certificate and the FmHA Programs, the factors are not applied retroactively; the annual adjustments, as of any anniversary date, are determined

using the AAFs most recently published in the **Federal Register** (see 24 CFR 882.108(a)(1)(i) and 884.109(b)(2)).

Calculation of Adjustment Factors

AAFs are provided for the four Census Regions, the states of Alaska and Hawaii, and the 72 metropolitan areas with local CPI surveys (listed in alphabetical order). Since Westchester County, NY has been established as a separate Fair Market Rent area (see section 142(b) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) (1987 Act)), a separate listing for that county is included in this publication of AAFs as well. The CPI data are no longer collected for the Scranton—Wilkes-Barre, PA metropolitan area. The five counties that defined this area (Columbia, Lackawanna, Luzerne, Monroe, Wyoming) will now use the AAFs for the Northeast Census Region.

As a result of decreases in the local CPI surveys, the department is publishing AAFs that are less than 1.00 for five metropolitan areas in Texas. These areas are: The Houston PMSA; the Brazoria PMSA; The Galveston-Texas City PMSA; the Dallas PMSA; and the Fort Worth–Arlington PMSA. The AAFs for the state of Alaska, also less than 1.00, are based on a reduction in the Anchorage CPI. AAFs that are less than 1.00 normally would result in rent reductions. However, section 8(c)(2)(C) of the 1937 Act, as amended by section 142(d) of the Housing and Community Development Act of 1987, prohibits the reduction of contract rents for newly constructed, substantially rehabilitated, or moderately rehabilitated projects (including projects assisted under section 8 as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Therefore, contract rents for newly constructed, substantially rehabilitated, or moderately rehabilitated projects (including projects assisted under Section 8 as in effect prior to November 30, 1983) in areas with factors of less than 1.00 will not be reduced as a result of such factors.

For the Denver, CO PMSA and the Boulder–Longmont, CO PMSA, there was no change in the CPI factor used to determine the AAFs for Contract Rents for units including the highest cost utility. The AAFs for Contract Rents for units excluding the highest cost utilities reflects the slight increase in the CPI data for these same two areas.

Except for rent adjustments for manufactured home space rents under the Section 8 Certificate Program, the formula for calculating the AAFs for each area was developed as follows: (1) The increases in the residential rent component and the fuel and utilities component of the CPI were based on the most recent available average annual changes; (2) a shelter rent factor was calculated by eliminating the effect of heating costs on the CPI residential rent component as determined by Bureau of Labor Statistics data; (3) a gross rent factor for each of the metropolitan areas covered by the CPI and for each of the four Census Regions was calculated by weighing the shelter rent and the fuel and utilities charges in accordance with updated 1980 Census State weights of these component parts of rent, as derived from 1983 AHS data; (4) AAFs for Contract Rents including the highest cost utility were calculated by adjusting the gross rent factors to reflect variations by rent range in each area, based on variations developed from 1983 national AHS data as applied to the local FMR levels; and (5) AAFs for Contract Rents excluding the highest cost utility were calculated by developing updated shelter rents from the updated gross rents, by rent ranges, and then dividing the updated shelter rents by that of the previous year.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

This notice contains a separate set of AAFs for adjusting Contract Rents for manufactured home spaces. There is one factor for each area, which represents the change in the median rent for the area. These factors were derived by following steps one and two in the formula described above.

Other matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment Programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment Programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance Programs (Section 8) is 14.156.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program as set forth in the following tables:

Dated: December 2, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

BILLING CODE 4210-27-M

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 103188

NORTH EAST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.081	1.088
$ 230 TO 279	1.061	1.082
$ 280 TO 339	1.057	1.074
$ 340 TO 399	1.053	1.073
$ 400 TO 449	1.051	1.068
$ 450 TO 509	1.049	1.058
$ 510 TO 569	1.048	1.052
$ 570 TO 629	1.042	1.052
$ 630 TO 679	1.039	1.052
$ 680 PLUS	1.034	1.051

MIDWEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.046	1.052
$ 180 TO 229	1.034	1.044
$ 230 TO 269	1.032	1.044
$ 270 TO 319	1.030	1.044
$ 320 TO 359	1.029	1.038
$ 360 TO 409	1.028	1.031
$ 410 TO 449	1.027	1.030
$ 450 TO 499	1.024	1.029
$ 500 TO 539	1.022	1.029
$ 540 PLUS	1.019	1.029

SOUTH CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.029	1.034
$ 170 TO 219	1.022	1.026
$ 220 TO 259	1.020	1.025
$ 260 TO 299	1.019	1.025
$ 300 TO 349	1.018	1.022
$ 350 TO 389	1.018	1.019
$ 390 TO 429	1.017	1.017
$ 430 TO 479	1.015	1.017
$ 480 TO 519	1.014	1.017
$ 520 PLUS	1.012	1.017

WEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.052	1.052
$ 240 TO 299	1.039	1.048
$ 300 TO 369	1.037	1.042
$ 370 TO 429	1.034	1.042
$ 430 TO 489	1.033	1.041
$ 490 TO 549	1.032	1.037
$ 550 TO 609	1.031	1.033
$ 610 TO 669	1.027	1.030
$ 670 TO 729	1.025	1.029
$ 730 PLUS	1.022	1.029

STATE ALASKA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	.899	.858
$ 180 TO 229	.899	.858
$ 230 TO 269	.899	.858
$ 270 TO 319	.899	.858
$ 320 TO 359	.899	.858
$ 360 TO 409	.899	.858
$ 410 TO 449	.899	.858
$ 450 TO 499	.899	.858
$ 500 TO 539	.899	.858
$ 540 PLUS	.899	.858

STATE HAWAII

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.071	1.079
$ 250 TO 319	1.053	1.056
$ 320 TO 379	1.050	1.051
$ 380 TO 449	1.046	1.051
$ 450 TO 509	1.045	1.048
$ 510 TO 569	1.043	1.046
$ 570 TO 639	1.042	1.040
$ 640 TO 699	1.037	1.031
$ 700 TO 759	1.034	1.031
$ 760 PLUS	1.030	1.031

PMSA AKRON, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.024	1.031
$ 180 TO 219	1.018	1.030
$ 220 TO 259	1.017	1.029
$ 260 TO 309	1.015	1.025
$ 310 TO 349	1.015	1.024
$ 350 TO 399	1.014	1.021
$ 400 TO 439	1.014	1.021
$ 440 TO 479	1.012	1.021
$ 480 TO 529	1.011	1.021
$ 530 PLUS	1.010	1.021

PMSA ANAHEIM-SANTA ANA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.074	1.069
$ 320 TO 409	1.056	1.066
$ 410 TO 489	1.052	1.062
$ 490 TO 569	1.048	1.058
$ 570 TO 649	1.047	1.056
$ 650 TO 729	1.045	1.049
$ 730 TO 809	1.044	1.045
$ 810 TO 889	1.039	1.041
$ 890 TO 969	1.036	1.041
$ 970 PLUS	1.031	1.041

PMSA ANN ARBOR, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.057	1.060
$ 230 TO 289	1.043	1.058
$ 290 TO 349	1.040	1.053
$ 350 TO 409	1.037	1.050
$ 410 TO 469	1.036	1.045
$ 470 TO 529	1.035	1.036
$ 530 TO 589	1.034	1.036
$ 590 TO 639	1.030	1.036
$ 640 TO 699	1.028	1.036
$ 700 PLUS	1.024	1.036

MSA ATLANTA, GA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.084	1.077
$ 220 TO 269	1.063	1.069
$ 270 TO 319	1.059	1.064
$ 320 TO 379	1.055	1.063
$ 380 TO 429	1.053	1.052
$ 430 TO 489	1.051	1.050
$ 490 TO 539	1.050	1.043
$ 540 TO 589	1.044	1.041
$ 590 TO 649	1.041	1.041
$ 650 PLUS	1.035	1.041

PMSA AURORA-ELGIN, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.064	1.068
$ 250 TO 309	1.048	1.068
$ 310 TO 369	1.045	1.062
$ 370 TO 429	1.042	1.060
$ 430 TO 489	1.040	1.050
$ 490 TO 549	1.039	1.042
$ 550 TO 609	1.038	1.042
$ 610 TO 669	1.033	1.042
$ 670 TO 739	1.031	1.042
$ 740 PLUS	1.027	1.042

MSA BALTIMORE, MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.032	1.050
$ 210 TO 269	1.024	1.046
$ 270 TO 319	1.023	1.044
$ 320 TO 369	1.021	1.043
$ 370 TO 429	1.020	1.042
$ 430 TO 479	1.020	1.040
$ 480 TO 529	1.019	1.036
$ 530 TO 589	1.017	1.036
$ 590 TO 639	1.016	1.036
$ 640 PLUS	1.013	1.036

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 103188

PMSA BEAVER COUNTY, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.020	1.034
$ 170 TO 219	1.015	1.026
$ 220 TO 259	1.014	1.025
$ 260 TO 309	1.013	1.021
$ 310 TO 349	1.013	1.021
$ 350 TO 389	1.012	1.019
$ 390 TO 439	1.012	1.019
$ 440 TO 479	1.011	1.019
$ 480 TO 519	1.010	1.019
$ 520 PLUS	1.009	1.018

PMSA BERGEN-PASSAIC, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.098	1.100
$ 310 TO 389	1.074	1.097
$ 390 TO 469	1.069	1.091
$ 470 TO 549	1.064	1.084
$ 550 TO 619	1.061	1.082
$ 620 TO 699	1.060	1.074
$ 700 TO 779	1.058	1.062
$ 780 TO 859	1.051	1.061
$ 860 TO 929	1.048	1.061
$ 930 PLUS	1.041	1 061

PMSA BOSTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.098	1.098
$ 320 TO 409	1.074	1.093
$ 410 TO 489	1.069	1.082
$ 490 TO 569	1.064	1.079
$ 570 TO 649	1.061	1.079
$ 650 TO 729	1.060	1.065
$ 730 TO 809	1.058	1.056
$ 810 TO 889	1.051	1.056
$ 890 TO 969	1.048	1.056
$ 970 PLUS	1.041	1.056

PMSA BOULDER-LONGMONT, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.000	1.010
$ 230 TO 289	1.000	1.008
$ 290 TO 349	1.000	1.008
$ 350 TO 409	1.000	1.008
$ 410 TO 459	1.000	1.007
$ 460 TO 519	1.000	1.007
$ 520 TO 579	1.000	1.007
$ 580 TO 639	1.000	1.007
$ 640 TO 699	1.000	1.007
$ 700 PLUS	1.000	1.007

PMSA BRAZORIA, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	.972	.969
$ 310 TO 389	.972	969
$ 390 TO 469	.972	.969
$ 470 TO 549	.972	969
$ 550 TO 619	.972	.969
$ 620 TO 699	.972	.969
$ 700 TO 779	.972	969
$ 780 TO 859	.972	969
$ 860 TO 929	.972	.969
$ 930 PLUS	.972	.969

PMSA BRIDGEPORT-MILFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.091	1.105
$ 250 TO 309	1.069	1.093
$ 310 TO 369	1.064	1.091
$ 370 TO 429	1.059	1.090
$ 430 TO 489	1.057	1.078
$ 490 TO 559	1.056	1.072
$ 560 TO 619	1.054	1.064
$ 620 TO 679	1.048	1.064
$ 680 TO 739	1.044	1.064
$ 740 PLUS	1.038	1.064

PMSA BROCKTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.098	1.096
$ 260 TO 319	1.074	1.093
$ 320 TO 379	1.069	1.083
$ 380 TO 449	1.064	1.080
$ 450 TO 509	1.061	1.077
$ 510 TO 579	1.060	1.068
$ 580 TO 639	1.058	1.057
$ 640 TO 709	1.051	1.056
$ 710 TO 769	1.048	1.056
$ 770 PLUS	1.041	1.056

PMSA BUFFALO, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.042	1 062
$ 170 TO 219	1.032	1 056
$ 220 TO 259	1.030	1.054
$ 260 TO 299	1.028	1.054
$ 300 TO 349	1.027	1.049
$ 350 TO 389	1:026	1.049
$ 390 TO 429	1.025	1.041
$ 430 TO 469	1.022	1.041
$ 470 TO 519	1.021	1.041
$ 520 PLUS	1.018	1.041

PMSA CHICAGO, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.069	1.071
$ 240 TO 299	1.052	1.063
$ 300 TO 359	1.049	1.061
$ 360 TO 419	1.045	1.061
$ 420 TO 479	1.043	1.051
$ 480 TO 539	1.042	1.049
$ 540 TO 599	1.041	1.042
$ 600 TO 659	1.036	1.041
$ 660 TO 719	1.034	1.041
$ 720 PLUS	1.029	1.041

PMSA CINCINNATI, OH-KY-IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 160	1.061	1.071
$ 160 TO 199	1.046	1.067
$ 200 TO 239	1.043	1.064
$ 240 TO 279	1.040	1.058
$ 280 TO 319	1.038	1.053
$ 320 TO 359	1.037	1.044
$ 360 TO 399	1.036	1.044
$ 400 TO 439	1.032	1.044
$ 440 TO 479	1.030	1.043
$ 480 PLUS	1.026	1.043

PMSA CLEVELAND, OH.

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.024	1.039
$ 180 TO 229	1.018	1.029
$ 230 TO 269	1.017	1.028
$ 270 TO 319	1.015	1.027
$ 320 TO 369	1.015	1.023
$ 370 TO 409	1.014	1.021
$ 410 TO 459	1.014	1.021
$ 460 TO 499	1.012	1.021
$ 500 TO 549	1.011	1.021
$ 550 PLUS	1.010	1.021

PMSA DALLAS, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	.987	.990
$ 240 TO 299	.987	.990
$ 300 TO 359	.987	.990
$ 360 TO 419	.987	.990
$ 420 TO 479	.987	.990
$ 480 TO 539	.987	.990
$ 540 TO 599	.987	.990
$ 600 TO 659	.987	.990
$ 660 TO 719	.987	.990
$ 720 PLUS	.987	.990

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
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PMSA DANBURY, CT

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 270	1.091	1.108
$ 270 TO 329	1.069	1.093
$ 330 TO 399	1.064	1.090
$ 400 TO 469	1.059	1.087
$ 470 TO 539	1.057	1.077
$ 540 TO 599	1.056	1.074
$ 600 TO 669	1.054	1.065
$ 670 TO 739	1.048	1.065
$ 740 TO 799	1.044	1.065
$ 800 PLUS	1.038	1.065

PMSA DENVER, CO

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 210	1.000	1.011
$ 210 TO 269	1.000	1.008
$ 270 TO 319	1.000	1.007
$ 320 TO 379	1.000	1.007
$ 380 TO 429	1.000	1.007
$ 430 TO 479	1.000	1.007
$ 480 TO 539	1.000	1.007
$ 540 TO 589	1.000	1.007
$ 590 TO 639	1.000	1.007
$ 640 PLUS	1.000	1.007

PMSA DETROIT, MI

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 210	1.057	1.067
$ 210 TO 269	1.043	1.058
$ 270 TO 319	1.040	1.054
$ 320 TO 369	1.037	1.049
$ 370 TO 429	1.036	1.045
$ 430 TO 479	1.035	1.035
$ 480 TO 529	1.034	1.035
$ 530 TO 589	1.030	1.035
$ 590 TO 639	1.028	1.035
$ 640 PLUS	1.024	1.035

PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 230	1.014	1.020
$ 230 TO 279	1.010	1.020
$ 280 TO 339	1.010	1.016
$ 340 TO 389	1.009	1.014
$ 390 TO 449	1.008	1.014
$ 450 TO 509	1.008	1.014
$ 510 TO 559	1.008	1.013
$ 560 TO 619	1.007	1.012
$ 620 TO 679	1.007	1.012
$ 680 PLUS	1.006	1.012

PMSA FORT WORTH-ARLINGTON, TX

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 210	.987	.990
$ 210 TO 269	.987	.990
$ 270 TO 319	.987	.990
$ 320 TO 379	.987	.990
$ 380 TO 429	.987	.990
$ 430 TO 479	.987	.990
$ 480 TO 539	.987	.990
$ 540 TO 589	.987	.990
$ 590 TO 639	.987	.990
$ 640 PLUS	.987	.990

PMSA GALVESTON-TEXAS CITY, TX

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 210	.972	.969
$ 210 TO 269	.972	.969
$ 270 TO 319	.972	.969
$ 320 TO 369	.972	.969
$ 370 TO 429	.972	.969
$ 430 TO 479	.972	.969
$ 480 TO 529	.972	.969
$ 530 TO 589	.972	.969
$ 590 TO 639	.972	.969
$ 640 PLUS	.972	.969

PMSA GARY-HAMMOND, IN

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 200	1.064	1.072
$ 200 TO 239	1.048	1.064
$ 240 TO 289	1.045	1.064
$ 290 TO 339	1.042	1.060
$ 340 TO 389	1.040	1.049
$ 390 TO 439	1.039	1.043
$ 440 TO 489	1.038	1.043
$ 490 TO 539	1.033	1.043
$ 540 TO 589	1.031	1.043
$ 590 PLUS	1.027	1.043

PMSA HAMILTON-MIDDLETOWN, OH

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 180	1.061	1.069
$ 180 TO 219	1.046	1.065
$ 220 TO 269	1.043	1.061
$ 270 TO 309	1.040	1.061
$ 310 TO 359	1.038	1.054
$ 360 TO 399	1.037	1.045
$ 400 TO 449	1.036	1.045
$ 450 TO 489	1.032	1.045
$ 490 TO 539	1.030	1.043
$ 540 PLUS	1.026	1.043

PMSA HOUSTON, TX

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 210	.972	.969
$ 210 TO 269	.972	.969
$ 270 TO 319	.972	.969
$ 320 TO 369	.972	.969
$ 370 TO 429	.972	.969
$ 430 TO 479	.972	.969
$ 480 TO 529	.972	.969
$ 530 TO 589	.972	.969
$ 590 TO 639	.972	.969
$ 640 PLUS	.972	.969

PMSA JERSEY CITY, NJ

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 210	1.096	1.100
$ 210 TO 269	1.072	1.096
$ 270 TO 319	1.068	1.088
$ 320 TO 369	1.063	1.084
$ 370 TO 429	1.060	1.084
$ 430 TO 479	1.059	1.075
$ 480 TO 539	1.057	1.063
$ 540 TO 589	1.050	1.062
$ 590 TO 639	1.047	1.062
$ 640 PLUS	1.040	1.061

PMSA JOLIET, IL

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 250	1.069	1.073
$ 250 TO 309	1.052	1.064
$ 310 TO 369	1.049	1.059
$ 370 TO 429	1.045	1.059
$ 430 TO 489	1.043	1.052
$ 490 TO 549	1.042	1.048
$ 550 TO 619	1.041	1.041
$ 620 TO 679	1.036	1.041
$ 680 TO 739	1.034	1.041
$ 740 PLUS	1.029	1.041

PMSA KANSAS CITY, MO-KS

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 180	1.069	1.044
$ 180 TO 219	1.052	1.035
$ 220 TO 269	1.049	1.033
$ 270 TO 309	1.045	1.031
$ 310 TO 359	1.043	1.021
$ 360 TO 399	1.042	1.013
$ 400 TO 449	1.041	1.012
$ 450 TO 489	1.036	1.011
$ 490 TO 529	1.034	1.011
$ 530 PLUS	1.029	1.011

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PMSA KENOSHA, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.068	1.073
$ 190 TO 239	1.051	1.065
$ 240 TO 289	1.048	1.060
$ 290 TO 329	1.044	1.058
$ 330 TO 379	1.042	1.054
$ 380 TO 429	1.041	1.049
$ 430 TO 479	1.040	1.042
$ 480 TO 519	1.035	1.042
$ 520 TO 569	1.033	1.042
$ 570 PLUS	1.028	1.042

PMSA LAKE COUNTY, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.069	1.073
$ 250 TO 309	1.052	1.068
$ 310 TO 379	1.049	1.061
$ 380 TO 439	1.045	1.061
$ 440 TO 499	1.043	1.051
$ 500 TO 559	1.042	1.049
$ 560 TO 629	1.041	1.042
$ 630 TO 689	1.036	1.041
$ 690 TO 749	1.034	1.041
$ 750 PLUS	1.029	1.041

PMSA LAWRENCE-HAVERHILL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.098	1.098
$ 260 TO 329	1.074	1.095
$ 330 TO 399	1.069	1.082
$ 400 TO 459	1.064	1.081
$ 460 TO 529	1.061	1.079
$ 530 TO 589	1.060	1.068
$ 590 TO 659	1.058	1.058
$ 660 TO 729	1.051	1.056
$ 730 TO 789	1.048	1.056
$ 790 PLUS	1.041	1.056

PMSA LORAIN-ELYRIA, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.024	1.028
$ 170 TO 219	1.018	1.028
$ 220 TO 259	1.017	1.028
$ 260 TO 299	1.015	1.025
$ 300 TO 349	1.015	1.025
$ 350 TO 389	1.014	1.022
$ 390 TO 429	1.014	1.020
$ 430 TO 479	1.012	1.020
$ 480 TO 519	1.011	1.020
$ 520 PLUS	1.010	1.020

PMSA LOS ANGELES-LONG BEACH, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.074	1.069
$ 280 TO 349	1.056	1.063
$ 350 TO 419	1.052	1.060
$ 420 TO 489	1.048	1.059
$ 490 TO 559	1.047	1.055
$ 560 TO 629	1.045	1.049
$ 630 TO 699	1.044	1.045
$ 700 TO 769	1.039	1.039
$ 770 TO 839	1.036	1.039
$ 840 PLUS	1.031	1.039

PMSA LOWELL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.098	1.095
$ 250 TO 309	1.074	1.089
$ 310 TO 369	1.069	1.082
$ 370 TO 429	1.064	1.080
$ 430 TO 489	1.061	1.078
$ 490 TO 559	1.060	1.069
$ 560 TO 619	1.058	1.058
$ 620 TO 679	1.051	1.057
$ 680 TO 739	1.048	1.056
$ 740 PLUS	1.041	1.056

PMSA MIAMI-HIALEAH, FL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.014	1.016
$ 220 TO 279	1.010	1.016
$ 280 TO 339	1.010	1.016
$ 340 TO 389	1.009	1.014
$ 390 TO 449	1.008	1.014
$ 450 TO 509	1.008	1.014
$ 510 TO 559	1.008	1.011
$ 560 TO 619	1.007	1.011
$ 620 TO 669	1.007	1.011
$ 670 PLUS	1.006	1.011

PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.096	1.102
$ 290 TO 359	1.072	1.098
$ 360 TO 429	1.068	1.089
$ 430 TO 499	1.063	1.084
$ 500 TO 569	1.060	1.084
$ 570 TO 649	1.059	1.075
$ 650 TO 719	1.057	1.063
$ 720 TO 789	1.050	1.062
$ 790 TO 859	1.047	1.062
$ 860 PLUS	1.040	1.062

PMSA MILWAUKEE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.068	1.059
$ 190 TO 229	1.051	1.048
$ 230 TO 279	1.048	1.047
$ 280 TO 329	1.044	1.046
$ 330 TO 369	1.042	1.037
$ 370 TO 419	1.041	1.035
$ 420 TO 469	1.040	1.029
$ 470 TO 509	1.035	1.029
$ 510 TO 559	1.033	1.028
$ 560 PLUS	1.028	1.028

MSA MINNEAPOLIS-ST. PAUL, MN-WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.041	1.053
$ 220 TO 279	1.030	1.052
$ 280 TO 329	1.029	1.049
$ 330 TO 389	1.026	1.047
$ 390 TO 439	1.025	1.046
$ 440 TO 499	1.025	1.043
$ 500 TO 549	1.024	1.038
$ 550 TO 609	1.021	1.038
$ 610 TO 659	1.020	1.038
$ 660 PLUS	1.017	1.038

PMSA MONMOUTH-OCEAN, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.096	1.104
$ 260 TO 319	1.072	1.100
$ 320 TO 389	1.068	1.087
$ 390 TO 449	1.063	1.086
$ 450 TO 519	1.060	1.085
$ 520 TO 579	1.059	1.075
$ 580 TO 639	1.057	1.062
$ 640 TO 709	1.050	1.062
$ 710 TO 769	1.047	1.062
$ 770 PLUS	1.040	1.062

PMSA NASHUA, NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.098	1.100
$ 260 TO 319	1.074	1.097
$ 320 TO 389	1.069	1.085
$ 390 TO 449	1.064	1.081
$ 450 TO 519	1.061	1.078
$ 520 TO 579	1.060	1.067
$ 580 TO 649	1.058	1.059
$ 650 TO 709	1.051	1.057
$ 710 TO 779	1.048	1.057
$ 780 PLUS	1.041	1.057

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PMSA NASSAU-SUFFOLK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.098	1.104
$ 300 TO 379	1.074	1.097
$ 380 TO 459	1.069	1.088
$ 460 TO 529	1.064	1.085
$ 530 TO 609	1.061	1.082
$ 610 TO 689	1.060	1.074
$ 690 TO 759	1.058	1.061
$ 760 TO 839	1.051	1.061
$ 840 TO 909	1.048	1.061
$ 910 PLUS	1.041	1.061

PMSA NIAGARA FALLS, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.042	1.060
$ 170 TO 209	1.032	1.053
$ 210 TO 249	1.030	1.053
$ 250 TO 289	1.028	1.053
$ 290 TO 329	1.027	1.048
$ 330 TO 369	1.026	1.046
$ 370 TO 409	1.025	1.044
$ 410 TO 449	1.022	1.044
$ 450 TO 499	1.021	1.044
$ 500 PLUS	1.018	1.044

PMSA ORANGE COUNTY, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.098	1.102
$ 230 TO 279	1.074	1.098
$ 280 TO 339	1.069	1.087
$ 340 TO 399	1.064	1.084
$ 400 TO 449	1.061	1.084
$ 450 TO 509	1.060	1.073
$ 510 TO 569	1.058	1.070
$ 570 TO 629	1.051	1.062
$ 630 TO 679	1.048	1.061
$ 680 PLUS	1.041	1.061

PMSA PITTSBURGH, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.020	1.032
$ 180 TO 229	1.015	1.024
$ 230 TO 279	1.014	1.024
$ 280 TO 319	1.013	1.024
$ 320 TO 369	1.013	1.023
$ 370 TO 419	1.012	1.018
$ 420 TO 459	1.012	1.018
$ 460 TO 509	1.011	1.018
$ 510 TO 549	1.010	1.018
$ 550 PLUS	1.009	1.018

PMSA NEW YORK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.098	1.100
$ 230 TO 289	1.074	1.096
$ 290 TO 339	1.069	1.089
$ 340 TO 399	1.064	1.084
$ 400 TO 459	1.061	1.084
$ 460 TO 519	1.060	1.073
$ 520 TO 569	1.058	1.070
$ 570 TO 629	1.051	1.062
$ 630 TO 689	1.048	1.062
$ 690 PLUS	1.041	1.062

PMSA NORWALK, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.091	1.108
$ 280 TO 359	1.069	1.094
$ 360 TO 429	1.064	1.091
$ 430 TO 499	1.059	1.090
$ 500 TO 569	1.057	1.077
$ 570 TO 639	1.056	1.073
$ 640 TO 709	1.054	1.065
$ 710 TO 779	1.048	1.064
$ 780 TO 849	1.044	1.064
$ 850 PLUS	1.038	1.064

PMSA OXNARD-VENTURA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.074	1.069
$ 280 TO 349	1.056	1.063
$ 350 TO 419	1.052	1.060
$ 420 TO 479	1.048	1.060
$ 480 TO 549	1.047	1.056
$ 550 TO 619	1.045	1.050
$ 620 TO 689	1.044	1.046
$ 690 TO 759	1.039	1.040
$ 760 TO 829	1.036	1.039
$ 830 PLUS	1.031	1.039

PMSA PORTLAND, OR

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 200	1.042	1.044
$ 200 TO 239	1.032	1.041
$ 240 TO 289	1.030	1.034
$ 290 TO 339	1.028	1.034
$ 340 TO 389	1.027	1.034
$ 390 TO 439	1.026	1.031
$ 440 TO 489	1.025	1.028
$ 490 TO 539	1.022	1.025
$ 540 TO 589	1.021	1.025
$ 590 PLUS	1.018	1.025

PMSA NEWARK, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.096	1.105
$ 240 TO 299	1.072	1.096
$ 300 TO 359	1.068	1.088
$ 360 TO 419	1.063	1.087
$ 420 TO 479	1.060	1.082
$ 480 TO 539	1.059	1.075
$ 540 TO 599	1.057	1.061
$ 600 TO 659	1.050	1.061
$ 660 TO 719	1.047	1.061
$ 720 PLUS	1.040	1.061

PMSA OAKLAND, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.064	1.061
$ 320 TO 399	1.048	1.056
$ 400 TO 479	1.045	1.050
$ 480 TO 559	1.042	1.050
$ 560 TO 639	1.040	1.050
$ 640 TO 719	1.039	1.043
$ 720 TO 799	1.038	1.039
$ 800 TO 879	1.033	1.035
$ 880 TO 959	1.031	1.034
$ 960 PLUS	1.027	1.034

PMSA PHILADELPHIA, PA-NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.068	1.081
$ 210 TO 259	1.051	1.072
$ 260 TO 319	1.048	1.069
$ 320 TO 369	1.044	1.067
$ 370 TO 419	1.042	1.058
$ 420 TO 469	1.041	1.056
$ 470 TO 529	1.040	1.048
$ 530 TO 579	1.035	1.048
$ 580 TO 629	1.033	1.048
$ 630 PLUS	1.028	1.048

PMSA RACINE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.068	1.063
$ 180 TO 219	1.051	1.055
$ 220 TO 269	1.048	1.049
$ 270 TO 309	1.044	1.048
$ 310 TO 359	1.042	1.039
$ 360 TO 399	1.041	1.037
$ 400 TO 439	1.040	1.029
$ 440 TO 489	1.035	1.029
$ 490 TO 529	1.033	1.027
$ 530 PLUS	1.028	1.027

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PREPARED ON 103188

PMSA RIVERSIDE-SAN BERNARDINO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.074	1.068
$ 230 TO 279	1.056	1.067
$ 280 TO 339	1.052	1.061
$ 340 TO 399	1.048	1.057
$ 400 TO 449	1.047	1.056
$ 450 TO 509	1.045	1.050
$ 510 TO 569	1.044	1.046
$ 570 TO 619	1.039	1.040
$ 620 TO 679	1.036	1.040
$ 680 PLUS	1.031	1.039

MSA SAN DIEGO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.059	1.050
$ 270 TO 329	1.044	1.047
$ 330 TO 399	1.042	1.044
$ 400 TO 469	1.038	1.044
$ 470 TO 539	1.037	1.040
$ 540 TO 599	1.036	1.033
$ 600 TO 669	1.035	1.031
$ 670 TO 739	1.031	1.027
$ 740 TO 799	1.029	1.027
$ 800 PLUS	1.025	1.027

PMSA SANTA CRUZ, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.064	1.059
$ 310 TO 389	1.048	1.054
$ 390 TO 469	1.045	1.051
$ 470 TO 549	1.042	1.049
$ 550 TO 619	1.040	1.048
$ 620 TO 699	1.039	1.042
$ 700 TO 779	1.038	1.039
$ 780 TO 859	1.033	1.034
$ 860 TO 939	1.031	1.034
$ 940 PLUS	1.027	1.034

PMSA STAMFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.091	1.105
$ 340 TO 429	1.069	1.094
$ 430 TO 509	1.064	1.091
$ 510 TO 599	1.059	1.088
$ 600 TO 679	1.057	1.078
$ 680 TO 769	1.056	1.073
$ 770 TO 859	1.054	1.065
$ 860 TO 939	1.048	1.064
$ 940 TO 1029	1.044	1.064
$1030 PLUS	1.038	1.064

PMSA ST. LOUIS, MO-IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.042	1.041
$ 190 TO 229	1.032	1.041
$ 230 TO 279	1.030	1.041
$ 280 TO 329	1.028	1.039
$ 330 TO 369	1.027	1.034
$ 370 TO 419	1.026	1.034
$ 420 TO 469	1.025	1.029
$ 470 TO 509	1.022	1.029
$ 510 TO 559	1.021	1.028
$ 560 PLUS	1.018	1.028

PMSA SAN FRANCISCO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 350	1.064	1.059
$ 350 TO 439	1.048	1.056
$ 440 TO 519	1.045	1.050
$ 520 TO 609	1.042	1.050
$ 610 TO 699	1.040	1.049
$ 700 TO 789	1.039	1.042
$ 790 TO 869	1.038	1.039
$ 870 TO 959	1.033	1.034
$ 960 TO 1049	1.031	1.034
$1050 PLUS	1.027	1.034

PMSA SANTA ROSA-PETALUMA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.064	1.060
$ 270 TO 339	1.048	1.056
$ 340 TO 409	1.045	1.051
$ 410 TO 479	1.042	1.049
$ 480 TO 549	1.040	1.049
$ 550 TO 619	1.039	1.043
$ 620 TO 689	1.038	1.040
$ 690 TO 749	1.033	1.035
$ 750 TO 819	1.031	1.034
$ 820 PLUS	1.027	1.034

PMSA TACOMA, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.020	1.037
$ 180 TO 219	1.015	1.035
$ 220 TO 269	1.014	1.035
$ 270 TO 309	1.013	1.034
$ 310 TO 349	1.013	1.030
$ 350 TO 399	1.012	1.029
$ 400 TO 439	1.012	1.029
$ 440 TO 489	1.011	1.028
$ 490 TO 529	1.010	1.028
$ 530 PLUS	1.009	1.028

PMSA SALEM-GLOUCESTER, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.098	1.098
$ 290 TO 359	1.074	1.092
$ 360 TO 429	1.069	1.084
$ 430 TO 499	1.064	1.080
$ 500 TO 579	1.061	1.078
$ 580 TO 649	1.060	1.065
$ 650 TO 719	1.058	1.057
$ 720 TO 789	1.051	1.057
$ 790 TO 869	1.048	1.057
$ 870 PLUS	1.041	1.057

PMSA SAN JOSE, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.064	1.059
$ 330 TO 409	1.048	1.057
$ 410 TO 499	1.045	1.051
$ 500 TO 579	1.042	1.050
$ 580 TO 659	1.040	1.048
$ 660 TO 739	1.039	1.043
$ 740 TO 829	1.038	1.039
$ 830 TO 909	1.033	1.034
$ 910 TO 989	1.031	1.034
$ 990 PLUS	1.027	1.034

PMSA SEATTLE, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 200	1.020	1.040
$ 200 TO 249	1.015	1.040
$ 250 TO 309	1.014	1.036
$ 310 TO 359	1.013	1.036
$ 360 TO 409	1.013	1.034
$ 410 TO 459	1.012	1.030
$ 460 TO 509	1.012	1.029
$ 510 TO 559	1.011	1.028
$ 560 TO 609	1.010	1.028
$ 610 PLUS	1.009	1.028

PMSA TRENTON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.071	1.079
$ 270 TO 329	1.053	1.070
$ 330 TO 399	1.050	1.066
$ 400 TO 469	1.046	1.066
$ 470 TO 529	1.045	1.066
$ 530 TO 599	1.043	1.055
$ 600 TO 669	1.042	1.049
$ 670 TO 729	1.037	1.047
$ 730 TO 799	1.034	1.047
$ 800 PLUS	1.030	1.047

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 103188

PMSA VALLEJO-FAIRFIELD-NAPA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.064	1.062
$ 240 TO 299	1.048	1.056
$ 300 TO 359	1.045	1.052
$ 360 TO 419	1.042	1.049
$ 420 TO 479	1.040	1.049
$ 480 TO 539	1.039	1.041
$ 540 TO 599	1.038	1.040
$ 600 TO 659	1.033	1.035
$ 660 TO 719	1.031	1.035
$ 720 PLUS	1.027	1.035

MSA WASHINGTON, DC-MD-VA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.079	1.081
$ 270 TO 339	1.060	1.079
$ 340 TO 409	1.056	1.075
$ 410 TO 479	1.052	1.067
$ 480 TO 549	1.050	1.067
$ 550 TO 619	1.048	1.060
$ 620 TO 689	1.047	1.056
$ 690 TO 749	1.041	1.049
$ 750 TO 819	1.039	1.049
$ 820 PLUS	1.033	1.049

PMSA VANCOUVER, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.042	1.044
$ 180 TO 219	1.032	1.040
$ 220 TO 259	1.030	1.037
$ 260 TO 309	1.028	1.035
$ 310 TO 349	1.027	1.035
$ 350 TO 389	1.026	1.030
$ 390 TO 439	1.025	1.029
$ 440 TO 479	1.022	1.024
$ 480 TO 529	1.021	1.024
$ 530 PLUS	1.018	1.024

COUNTY WESTCHESTER, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.096	1.102
$ 270 TO 339	1.072	1.095
$ 340 TO 409	1.068	1.088
$ 410 TO 479	1.063	1.083
$ 480 TO 549	1.060	1.080
$ 550 TO 609	1.059	1.072
$ 610 TO 679	1.057	1.068
$ 680 TO 749	1.050	1.060
$ 750 TO 819	1.047	1.060
$ 820 PLUS	1.040	1.060

PMSA VINELAND-MILLVILLE-BRIDGETON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.071	1.078
$ 210 TO 269	1.053	1.067
$ 270 TO 319	1.050	1.067
$ 320 TO 369	1.046	1.064
$ 370 TO 429	1.045	1.064
$ 430 TO 479	1.043	1.053
$ 480 TO 539	1.042	1.049
$ 540 TO 589	1.037	1.048
$ 590 TO 639	1.034	1.047
$ 640 PLUS	1.030	1.047

PMSA WILMINGTON, DE-NJ-MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.063	1.079
$ 220 TO 279	1.047	1.072
$ 280 TO 339	1.044	1.068
$ 340 TO 389	1.041	1.068
$ 390 TO 449	1.039	1.060
$ 450 TO 499	1.038	1.051
$ 500 TO 559	1.037	1.051
$ 560 TO 609	1.033	1.051
$ 610 TO 669	1.030	1.051
$ 670 PLUS	1.026	1.051

SCHEDULE C - ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - FOR MANUFACTURED HOME SPACE
PREPARED ON 103188

AREA	FACTOR
NORTH EAST CENSUS REGION	1.070
SOUTH CENSUS REGION	1.023
STATE ALASKA	.858
PMSA AKRON, OH	1.028
PMSA ANN ARBOR, MI	1.050
PMSA AURORA-ELGIN, IL	1.061
PMSA BEAVER COUNTY, PA	1.025
PMSA BOSTON, MA	1.079
PMSA BRAZORIA, TX	.969
PMSA BROCKTON, MA	1.079
PMSA CHICAGO, IL	1.058
PMSA CLEVELAND, OH	1.028
PMSA DANBURY, CT	1.087
PMSA DETROIT, MI	1.050
PMSA FORT WORTH-ARLINGTON, TX	.990
PMSA GARY-HAMMOND, IN	1.061
PMSA HOUSTON, TX	.969
PMSA JOLIET, IL	1.058
PMSA KENOSHA, WI	1.059
PMSA LAWRENCE-HAVERHILL, MA-NH	1.079
PMSA LOS ANGELES-LONG BEACH, CA	1.056
PMSA MIAMI-HIALEAH, FL	1.016
PMSA MILWAUKEE, WI	1.045
PMSA MONMOUTH-OCEAN, NJ	1.083
PMSA NASSAU-SUFFOLK, NY	1.082
PMSA NEWARK, NJ	1.083
PMSA NORWALK, CT	1.087
PMSA ORANGE COUNTY, NY	1.082
PMSA PHILADELPHIA, PA-NJ	1.066
PMSA PORTLAND, OR	1.034
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.056
PMSA SALEM-GLOUCESTER, MA	1.079
PMSA SAN FRANCISCO, CA	1.047
PMSA SANTA CRUZ, CA	1.047
PMSA SEATTLE, WA	1.033
PMSA TACOMA, WA	1.033
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.047
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.065
COUNTY WESTCHESTER, NY	1.082
MIDWEST CENSUS REGION	1.042
WEST CENSUS REGION	1.040
STATE HAWAII	1.046
PMSA ANAHEIM-SANTA ANA, CA	1.056
MSA ATLANTA, GA	1.061
MSA BALTIMORE, MD	1.043
PMSA BERGEN-PASSAIC, NJ	1.082
PMSA BOULDER-LONGMONT, CO	1.006
PMSA BRIDGEPORT-MILFORD, CT	1.087
PMSA BUFFALO, NY	1.053
PMSA CINCINNATI, OH-KY-IN	1.059
PMSA DALLAS, TX	.990
PMSA DENVER, CO	1.006
PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC	1.016
PMSA GALVESTON-TEXAS CITY, TX	.969
PMSA HAMILTON-MIDDLETOWN, OH	1.059
PMSA JERSEY CITY, NJ	1.083
PMSA KANSAS CITY, MO-KS	1.028
PMSA LAKE COUNTY, IL	1.058
PMSA LORAIN-ELYRIA, OH	1.028
PMSA LOWELL, MA-NH	1.079
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.083
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.047
PMSA NASHUA, NH	1.079
PMSA NEW YORK, NY	1.082
PMSA NIAGARA FALLS, NY	1.053
PMSA OAKLAND, CA	1.047
PMSA OXNARD-VENTURA, CA	1.056
PMSA PITTSBURGH, PA	1.025
PMSA RACINE, WI	1.045
PMSA ST. LOUIS, MO-IL	1.039
MSA SAN DIEGO, CA	1.039
PMSA SAN JOSE, CA	1.047
PMSA SANTA ROSA-PETALUMA, CA	1.047
PMSA STAMFORD, CT	1.087
PMSA TRENTON, NJ	1.065
PMSA VANCOUVER, WA	1.034
MSA WASHINGTON, DC-MD-VA	1.067
PMSA WILMINGTON, DE-NJ-MD	1.067

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF REGIONS

AREA TITLE	DEFINITION
NORTHEAST CENSUS REGION	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont
MIDWEST CENSUS REGION	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin
SOUTH CENSUS REGION	Alabama, Arkansas, Delaware, Dist. Of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia
WEST CENSUS REGION	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming
OUTLYING AREAS	Puerto Rico and Virgin Islands use the south census region factors Guam and Trust Territories use the west census region factors

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Akron, Oh	COUNTY(IES) Portage, Summit Oh
Anaheim-Santa Ana, Ca	COUNTY(IES) Orange Ca
Ann Arbor, Mi	COUNTY(IES) Washtenaw Mi
Atlanta, Ga	COUNTY(IES) Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding, Walton Ga
Aurora-Elgin, Il	COUNTY(IES) Kane, Kendall Il
Baltimore, Md	COUNTY(IES) Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, Baltimore Ct Md
Beaver County, Pa	COUNTY(IES) Beaver Pa
Bergen-Passaic, Nj	COUNTY(IES) Bergen, Passaic Nj
Boston, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Mansfield, Norton, Raynham COUNTY Essex, Ma (PART): TOWNS OF Lynn, Lynnfield, Nahant, Saugus COUNTY Middlesex, Ma (PART): TOWNS OF Acton, Arlington, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Groton, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Readin, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn COUNTY Norfolk, Ma (PART): TOWNS OF Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham COUNTY Plymouth, Ma (PART): TOWNS OF Carver, Duxbury, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleboroug, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate COUNTY Suffolk, Ma (PART): TOWNS OF Boston, Chelsea, Revere, Winthrop COUNTY Worcester, Ma (PART): TOWNS OF Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, Upton

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Boulder-Longmont, Co.	COUNTY(IES) Boulder Co
Brazoria, Tx.	COUNTY(IES) Brazoria Tx
Bridgeport-Milford, Ct.	COUNTY Fairfield, Ct (PART): TOWNS OF Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull COUNTY New Haven, Ct (PART): TOWNS OF Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour
Brockton, Ma.	COUNTY Bristol, Ma (PART): TOWNS OF Easton COUNTY Norfolk, Ma (PART): TOWNS OF Avon COUNTY Plymouth, Ma (PART): TOWNS OF Abington, Bridgewater, Brockton, East Bridgew, Halifax, West Bridgew, Whitman
Buffalo, Ny.	COUNTY(IES) Erie Ny
Chicago, Il.	COUNTY(IES) Cook, Du Page, Mchenry Il
Cincinnati, Oh-Ky-In.	COUNTY(IES) Dearborn In; Boone, Campbell, Kenton Ky; Clermont, Hamilton, Warren Oh
Cleveland, Oh.	COUNTY(IES) Cuyahoga, Geauga, Lake, Medina Oh
Dallas, Tx.	COUNTY(IES) Collin, Dallas, Denton, Ellis, Kaufman, Rockwall Tx
Danbury, Ct.	COUNTY Fairfield, Ct (PART): TOWNS OF Bethel, Brookfield, Danbury, New Fairfiel, Newtown, Redding, Ridgefield, Sherman COUNTY Litchfield, Ct (PART): TOWNS OF Bridgewater, New Milford
Denver, Co.	COUNTY(IES) Adams, Arapahoe, Denver, Douglas, Jefferson Co
Detroit, Mi.	COUNTY(IES) Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair, Wayne Mi
Fort Lauderdale-Hollywood-Pompano Beach, Fl.	COUNTY(IES) Broward Fl
Fort Worth-Arlington, Tx.	COUNTY(IES) Johnson, Parker, Tarrant Tx
Galveston-Texas City, Tx.	COUNTY(IES) Galveston Tx
Gary-Hammond, In.	COUNTY(IES) Lake, Porter In
Hamilton-Middletown, Oh.	COUNTY(IES) Butler Oh
Houston, Tx.	COUNTY(IES) Fort Bend, Harris, Liberty, Montgomery, Waller Tx
Jersey City, Nj.	COUNTY(IES) Hudson Nj
Joliet, Il.	COUNTY(IES) Grundy, Will Il
Kansas City, Mo-Ks.	COUNTY(IES) Johnson, Leavenworth, Miami, Wyandotte Ks; Cass, Clay, Jackson, Lafayette, Platte, Ray Mo
Kenosha, Wi.	COUNTY(IES) Kenosha Wi
Lake County, Il.	COUNTY(IES) Lake Il

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Lawrence-Haverhill, Ma-Nh	COUNTY Essex, Ma (PART): TOWNS OF Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andove, Salisbury, West Newbury COUNTY Rockingham, Nh (PART): TOWNS OF Atkinson, Brentwood, Danville, Derry, East Kingsto, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham
Lorain-Elyria, Oh	COUNTY(IES) Lorain Oh
Los Angeles-Long Beach, Ca	COUNTY(IES) Los Angeles Ca
Lowell, Ma-Nh	COUNTY Middlesex, Ma (PART): TOWNS OF Billerica, Chelmsford, Dracut, Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford COUNTY Hillsborough, Nh (PART): TOWNS OF Pelham
Miami-Hialeah, Fl	COUNTY(IES) Dade Fl
Middlesex-Somerset-Hunterdon, Nj	COUNTY(IES) Hunterdon, Middlesex, Somerset Nj
Milwaukee, Wi	COUNTY(IES) Milwaukee, Ozaukee, Washington, Waukesha Wi
Minneapolis-St. Paul, Mn-Wi	COUNTY(IES) Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright Mn; St Croix Wi
Monmouth-Ocean, Nj	COUNTY(IES) Monmouth, Ocean Nj
Nashua, Nh	COUNTY Hillsborough, Nh (PART): TOWNS OF Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton COUNTY Rockingham, Nh (PART): TOWNS OF Londonderry
Nassau-Suffolk, Ny	COUNTY(IES) Nassau, Suffolk Ny
New York, Ny	COUNTY(IES) Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland Ny
Newark, Nj	COUNTY(IES) Essex, Morris, Sussex, Union Nj
Niagara Falls, Ny	COUNTY(IES) Niagara Ny
Norwalk, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Norwalk, Weston, Westport, Wilton
Oakland, Ca	COUNTY(IES) Alameda, Contra Costa Ca
Orange County, Ny	COUNTY(IES) Orange Ny
Oxnard-Ventura, Ca	COUNTY(IES) Ventura Ca
Philadelphia, Pa-Nj	COUNTY(IES) Burlington, Camden, Gloucester Nj; Bucks, Chester, Delaware, Montgomery, Philadelphia Pa
Pittsburgh, Pa	COUNTY(IES) Alleghany, Fayette, Washington, Westmoreland Pa
Portland, Or	COUNTY(IES) Clackamas, Multnomah, Washington, Yamhill Or
Racine, Wi	COUNTY(IES) Racine Wi

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Riverside-San Bernardino, Ca	COUNTY(IES) Riverside, San Bernadin Ca
St. Louis, Mo-Il	COUNTY(IES) Clinton, Jersey, Madison, Monroe, St Clair Il; Franklin, Jefferson, St Charles, St Louis, St Louiscity Mo
Salem-Gloucester, Ma	COUNTY Essex, Ma (PART): TOWNS OF Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield, Wenham
San Diego, Ca	COUNTY(IES) San Diego Ca
San Francisco, Ca	COUNTY(IES) Marin, San Francisc, San Mateo Ca
San Jose, Ca	COUNTY(IES) Santa Clara Ca
Santa Cruz, Ca	COUNTY(IES) Santa Cruz Ca
Santa Rosa-Petaluma, Ca	COUNTY(IES) Sonoma Ca
Seattle, Wa	COUNTY(IES) King, Snohomish Wa
Stamford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Darien, Greenwich, New Canaan, Stamford
Tacoma, Wa	COUNTY(IES) Pierce Wa
Trenton, Nj	COUNTY(IES) Mercer Nj
Vallejo-Fairfield-Napa, Ca	COUNTY(IES) Napa, Solano Ca
Vancouver, Wa	COUNTY(IES) Clark Wa
Vineland-Millville-Bridgeton, Nj	COUNTY(IES) Cumberland Nj
Washington, Dc-Md-Va	COUNTY(IES) Washington Dc; Calvert, Charles, Frederick, -columbia(u), Montgomery, Prince Georg Md; Arlington, Fairfax, Loudoun, Princewillia, Stafford, Alexandria, Fairfax City, Falls Church, Manassas, Manassas Prk Va
Wilmington, De-Nj-Md	COUNTY(IES) New Castle De; Cecil Md; Salem Nj

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Monday, December 12, 1988

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-122]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Authorization of an Additional Container

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule provisions of an interim final rule which authorized an additional container for bulk shipments of Texas orange and grapefruit to retailers. This container is needed by the Texas orange and grapefruit industry to more successfully ship these fruits to the fresh market.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order, and approximately 2,500 orange and grapefruit producers in Texas. The number of handlers has been changed to 78 from 22 and the number of producers to 2,500 from 3,000 in this final rule, from that in the interim final rule, reflecting further analysis of pertinent statistical data. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

An interim final rule amending § 906.340 *Container, pack, and container marking regulations* was issued September 22, 1988, and published in the **Federal Register** (53 FR 37728, September 28, 1988; and corrected at 53 FR 43319, October 26, 1988). The interim final rule provided that interested persons could file public comments through October 28, 1988. No comments were received.

The interim final rule revised paragraph (a)(1) of § 906.340 to authorize the use of a third container for bulk shipments of Texas oranges and grapefruit. This container is a fiberboard crib, either rectangular or octagonal in shape, with approximate dimensions of 46 inches to 47-½ inches in length, 37 to 38 inches in width, and 36 inches in height. The container must have a Mullen or Cady test of at least 1,300 pounds and must be used only once for shipment of citrus fruit. This container was used on an experimental basis last season, and it was found acceptable. The major use of this crib is for bulk shipments of fruit to retailers. This action was unanimously recommended by the Texas Valley Citrus Committee, which administers the order locally, at its meeting on June 29, 1988.

The interim final rule also removed obsolete language pertaining to a container no longer authorized but still listed in paragraph (a)(1)(iii) of § 906.340, made minor language changes for clarity in the introductory text and paragraph (a)(1) of § 906.340, and renumbered several paragraphs within paragraph (a)(1).

The Department's view is that the impact of this action, continuing in effect changes made by the interim final rule, will be beneficial to producers and handlers because it will continue to provide handlers with more flexibility in marketing Texas oranges and grapefruit.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendation submitted by the committee, and other available information, it is found that the final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed container requirements currently in effect for Texas oranges and grapefruit; (2) handlers of these fruits are aware of this action which was recommended unanimously by the committee at a public meeting and they will need no additional time to continue to comply with the requirements; (3) shipment of the 1988–89 season Texas orange and grapefruit crops is currently in progress; (4) the interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas grapefruit, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 906.340, which was published in the **Federal Register** (53 FR 37729, September 28, 1988; and corrected at 53 FR 43319, October 26, 1988), is adopted as a final rule without change.

Note: This section will appear in the Code of Federal Regulations.

Dated: December 7, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28451 Filed 12–9–88; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 301, 304, 305, 313, 318 and 327

[Docket No. 87–022F]

Mandatory Meat Inspection; Definitions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to arrange the terms defined in § 301.2 (9 CFR 301.2) in alphabetical order and to make minor clerical revisions in certain of those definitions. The definitions of terms in § 301.2 are being rearranged to permit easier reference to them. Four of the definitions are amended by removing the pronoun "his" and replacing it with the pronouns "his/her" to correct gender terminology within the text of the definitions. The definition for "circuit supervisor" is amended to remove the term "circuit" for clarity. The definition of the term "program" is revised to reflect organizational units that are involved in the administration of inspectional activities. In addition, §§ 304.1(b), 305.5(c), 313.1(c), 318.308(d)(vi)(*a*)(*1*), and 327.5(a), which contain references to certain terms defined in § 301.2 are being amended to be consistent with § 301.2 as revised.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Ralph E. Stafko, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–8168.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" within the scope of Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets. This rule requires administrative changes only and the costs of such action are minor.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*) because only nonsubstantive administrative changes are being made and do not effect any member of the public.

It has been decided that the list of terms and definitions in § 301.2 (CFR 301.2) be arranged in alphabetical order so that they will be easier to find in the text. FSIS has considered and adopted the recommendation that the terms be arranged alphabetically in § 301.2, accordingly.

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 304

Meat inspection.

9 CFR Part 305

Meat inspection.

9 CFR Part 313

Meat inspection.

9 CFR Part 318

Meat inspection.

9 CFR Part 327

Meat inspection.

For reasons set forth in the preamble, Title 9, Subchapter A, Parts 301, 304, 305, 313, 318, and 327 are amended as set forth below.

PART 301—[AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 301.2 is amended by rearranging and revising the terms in alphabetical order and revising the definition of the term "program" as follows (in effect, paragraphs (a) through (iii) and (kkk) through (yyy) are revised, paragraph (jjj) is added, and paragraph (zzz) is removed):

§ 301.2 Definitions.

* * * * *

(a) *The Act.* The Federal Meat Inspection Act, as amended, (34 Stat. 1260, as amended, 81 Stat. 584, 84 Stat. 438, 92 Stat. 1069, 21 U.S.C., sec. 601 *et seq.*).

(b) *Administrator.* The Administrator of the Food Safety and Inspection Service or any officer or employee of the Department to whom authority has heretofore been delegated or may hereafter be delegated to act in his/her stead.

(c) *Adulterated.* This term applies to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If it bears or contains any such poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2)(i) If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is:

(A) A pesticide chemical in or on a raw agricultural commodity;

(B) A food additive; or

(C) A color additive) which may, in the judgment of the Administrator, make such article unfit for human food;

(ii) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

(iii) If it bears or contains any food additive which is unsafe within the

meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(iv) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: *Provided*, That an article which is not deemed adulterated under paragraphs (aa)(2) (ii), (iii), or (iv) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical food additive, or color additive in or on such article is prohibited by the regulations in this subchapter in official establishments;

(3) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

(8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or,

(9) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise adulterated.

(d) *Anesthesia.* Loss of sensation or feeling.

(e) *Animal food.* Any article intended for use as food for dogs, cats, or other animals derived wholly, or in part, from the carcass or parts or products of the carcass of any livestock, except that the term animal food as used herein does not include:

(1) Processed dry animal food or

(2) Livestock or poultry feeds manufactured from processed livestock byproducts (such as meatmeal tankage, meat and bonemeal, bloodmeal, and feed grade animal fat).

(f) *Animal food manufacturer.* Any person engaged in the business of manufacturing or processing animal food.

(g) *Area.* One or more circuits under the supervision of an area supervisor.

(h) *Area Supervisor.* The official in charge of an area.

(i) *Artificial coloring.* A coloring containing any dye or pigment, which dye or pigment was manufactured by a process of synthesis or other similar artifice, or a coloring which was manufactured by extracting a natural dye or natural pigment from a plant or other material in which such dye or pigment was naturally produced.

(j) *Artificial flavoring.* A flavoring containing any sapid or aromatic constituent, which constituent was manufactured by a process of synthesis or other similar artifice.

(k) *Biological residue.* Any substance, including metabolites, remaining in livestock at time of slaughter or in any of its tissues after slaughter as the result of treatment or exposure of the livestock to a pesticide, organic or inorganic compound, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.

(l) *Capable of use as human food.* This term applies to any carcass, or part or product of a carcass, of any livestock, unless it is denatured or otherwise identified as required by the applicable provisions of §§ 314.3, 314.10, 325.11, and 325.13 of this subchapter to deter its use as a human food, or it is naturally inedible by humans; e.g., hoofs or horns in their natural state.

(m) *Captive bolt.* A stunning instrument which when activated drives a bolt out of a barrel for a limited distance.

(n) *Carbon dioxide.* A gaseous form of the chemical formula CO_2.

(o) *Carbon dioxide concentration.* Ratio of carbon dioxide gas and atmospheric air.

(p) *Carcass.* All parts, including viscera, of any slaughtered livestock.

(q) *Chemical preservative.* Any chemical that, when added to a meat or meat food product, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices or substances added to meat and meat food products by exposure to wood smoke.

Other definitions, if any, that are applicable only for purposes of a specific part of the regulations in this subchapter, are set forth in such part.

(r) *Circuit.* One or more official establishments included under the supervision of a circuit supervisor.

(s) *Circuit supervisor.* The supervisor of a circuit.

(t) *Commerce.* Commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia.

(u) *Consciousness.* Responsiveness of the brain to the impressions made by the senses.

(v) *Cutting up.* Any division of any carcass or part thereof, except that the trimming of carcasses or parts thereof to remove surface contaminants is not considered as cutting up.

(w) *Dead livestock.* The body (cadaver) of livestock which has died otherwise than by slaughter.

(x) *The Department.* The United States Department of Agriculture.

(y) *Dying, diseased, or disabled livestock.* Livestock which has or displays symptoms of having any of the following:

(1) Central nervous system disorder;

(2) Abnormal temperature (high or low);

(3) Difficult breathing;

(4) Abnormal swellings;

(5) Lack of muscular coordination;

(6) Inability to walk normally or stand;

(7) Any of the conditions for which livestock is required to be condemned on ante-mortem inspection in accordance with the regulations in Part 309 of this subchapter.

(z) *Edible.* Intended for use as human food.

(aa) *Experimental animal.* Any animal used in any research investigation involving the feeding or other administration of, or subjection to, an experimental biological product, drug, or chemical or any nonexperimental biological product, drug, or chemical used in a manner for which it was not intended.

(bb) *Exposure time.* The period of time an animal is exposed to an anesthesia-producing carbon dioxide concentration.

(cc) *Federal Food, Drug, and Cosmetic Act.* The Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

(dd) *Firm.* Any partnership, association, or other unincorporated business organization.

(ee) *Food Safety and Inspection Service.* The Food Safety and Inspection Service of the Department.

(ff) *Further processing.* Smoking, cooking, canning, curing, refining, or

rendering in an official establishment of product previously prepared in official establishments.

(gg) *Immediate container.* The receptacle or other covering in which any product is directly contained or wholly or partially enclosed.

(hh) *Import Field Office (IFO).* The office of the supervisor of import inspection activities for a particular importing field area. The areas are as follows:

IFO #1. Boston, MA—Covering the States of Massachusetts, New York (excluding New York City), Connecticut, Rhode Island, Vermont, New Hampshire and Maine.

IFO #2. New York, NY—Covering the areas of New York City and northern New Jersey.

IFO #3. Philadelphia, PA—Covering the State of Pennsylvania and the area of southern New Jersey.

IFO #4. Baltimore, MD—Covering the States of Maryland, Delaware, West Virginia, Virginia and Kentucky.

IFO #5. Charleston, SC—Covering the States of Tennessee, North Carolina, South Carolina, Georgia and Florida (excluding south Florida).

1IFO #6. Miami, FL—Covering the areas of southern Florida, Puerto Rico and the Virgin Islands.

1IFO #7. New Orleans, LA—Covering the States of Louisiana, Mississippi, Alabama, Arkansas, Texas, Oklahoma, Kansas, New Mexico and Colorado.

1IFO #8. San Pedro, CA—Covering the States of Hawaii, Arizona, Utah, Nevada, the area of southern California, American Samoa, Guam, and the Northern Marianas.

1IFO #9. Tacoma, WA—Covering the States of Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Alaska, and Nebraska, and the area of northern California.

1IFO #10. Detroit, MI—Covering the States of Michigan, Wisconsin, Minnesota, Iowa, Missouri, Illinois, Indiana and Ohio.

(ii) *Import Supervisor.* The official in charge of import inspection activities within each of the import field offices.

(jj) *Inedible.* Adulterated, uninspected, or not intended for use as human food.

(kk) *Inhumane slaughter or handling in connection with slaughter.* Slaughter or handling in connection with slaughter not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901 through 1906, as amended by the Humane Methods of Slaughter Act of 1978, 92 Stat. 1069) and Part 313 of this subchapter.

(ll) *"Inspected and passed" or "U.S. Inspected and Passed" or "U.S. Inspected and Passed by Department of Agriculture" (or any authorized abbreviation thereof).* This term means that the product so identified has been inspected and passed under the regulations in this subchapter, and at the time it was inspected, passed, and identified, it was found to be not adulterated.

(mm) *Inspector.* An inspector of the Program.

(nn) *Inspector in charge.* A designated program employee who is in charge of one or more official establishments within a circuit and is responsible to the circuit supervisor or his/her designee.

(oo) *Label.* A display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(pp) *Labeling.* All labels and other written, printed, or graphic matter:

(1) Upon any article or any of its containers or wrappers, or

(2) Accompanying such article.

(qq) *Livestock.* Cattle, sheep, swine, goat, horse, mule, or other equine.

(rr) *Meat.* The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(ss) *Meat broker.* Any person engaged in the business of buying or selling carcasses, parts of carcasses, meat or meat food products of livestock on commission, or otherwise negotiating purchases or sales of such articles other than for his/her own account or as an employee of another person.

(tt) *Meat byproduct.* Any part capable of use as human food, other than meat, which has been derived from one or more cattle, sheep, swine, or goats. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(uu) *Meat food product.* Any article capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, except those exempted from definition as a meat food product by the Administrator in specific cases or by the regulations in Part 317 of this subchapter, upon a determination that they contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and provided that they comply with any requirements that are imposed in such cases or regulations as conditions of such exemptions to assure that the meat or other portions of such carcasses contained in such articles are not adulterated and that such articles are not represented as meat food products. This term, as applied to food products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(vv) *Misbranded.* This term applies to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing:

(i) The name and place of business of the manufacturer, packer, or distributor; and

(ii) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; except as otherwise provided in Part 317 of this subchapter with respect to the quantity of contents;

(6) If any word, statement, or other information required by or under authority of the Act to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations in Part 319 of this subchapter unless:

(i) It conforms to such definition and standard, and

(ii) Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container

have been prescribed by the regulations in Part 319 of this subchapter, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of paragraph (vv)(7)(ii) of this section unless its label bears:

(i) The common or usual name of the food, if any there be, and

(ii) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except as otherwise provided in Part 317 of this subchapter;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as is required by the regulations in Part 317 of this subchapter.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact; except as otherwise provided by the regulations in Part 317 of this subchapter; or

(12) If it fails to bear, directly thereon or on its containers, when required by the regulations in Part 316 or 317 of this subchapter, the inspection legend and, unrestricted by any of the foregoing, such other information as the Administrator may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(ww) *Nonfood compound.* Any substance proposed for use in official establishments, the intended use of which will not result, directly or indirectly, in the substance becoming a component or otherwise affecting the characteristics of meat food and meat products, excluding labeling and packaging materials as covered in Part 317 of the subchapter.

(xx) *Official certificate.* Any certificate prescribed by the regulations in this subchapter for issuance by an inspector or other person performing official functions under the Act.

(yy) *Official device.* Any device prescribed by the regulations in Part 312 of this subchapter for use in applying any official mark.

(zz) *Official establishment.* Any slaughtering, cutting, boning, meat canning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under the regulations in this subchapter.

(aaa) *Official import inspection establishment.* This term means any establishment, other than an official establishment as defined in paragraph (zz) of this section, where inspections are authorized to be conducted as prescribed in § 327.6 of this subchapter.

(bbb) *Official inspection legend.* Any symbol prescribed by the regulations in this subchapter showing that an article was inspected and passed in accordance with the Act.

(ccc) *Official mark.* The official inspection legend or any other symbol prescribed by the regulations in this subchapter to identify the status of any article or animal under the Act.

(ddd) *Packaging material.* Any cloth, paper, plastic, metal, or other material used to form a container, wrapper, label, or cover for meat products.

(eee) *Person.* Any individual, firm, or corporation.

(fff) *Pesticide chemical, food additive, color additive, raw agricultural commodity.* These terms shall have the same meanings for purposes of the Act and the regulations in this subchapter as under the Federal Food, Drug, and Cosmetic Act.

(ggg) *Prepared.* Slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(hhh) *Product.* Any carcass, meat, meat byproduct, or meat food product, capable of use as human food.

(iii) *Program.* The organizational unit within the Department having the responsibility for carrying out the provisions of the Act.

(jjj) *Program employee.* Any inspector or other individual employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the Program.

(kkk) *Regional Director.* The official [1] in charge of the program within each of the following regions:

Northeastern Region—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia (except for Northwestern part).

Southeastern Region—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (Northwestern), West Virginia, Puerto Rico, and the Virgin Islands.

North Central Region—Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin.

Southwestern Region—Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

Western Region—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, American Samoa, Guam, and the Northern Mariana Islands.

(lll) *Renderer.* Any person engaged in the business of rendering carcasses or parts or products of the carcasses of any livestock except rendering conducted under inspection or exemption under Title I of the Act.

(mmm) *Secretary.* The Secretary of Agriculture of the United States or his/her delegate.

(nnn) *Shipping container.* The outside container (box, bag, barrel, crate, or other receptacle or covering) containing or wholly or partly enclosing any product packed in one or more immediate containers.

(ooo) *State.* Any State of the United States or the Commonwealth of Puerto Rico.

(ppp) *Supervision.* The controls, as prescribed in instructions to Program employees, to be exercised by them over particular operations to insure that such operations are conducted in compliance with the Act and the regulations in this subchapter.

(qqq) *Surgical anesthesia.* A state of unconsciousness measured in conformity with accepted surgical practices.

(rrr) *Territory.* Guam, the Virgin Islands of the United States, American Samoa, and any other territory or possession of the United States, excluding the Canal Zone.

(sss) *U.S. Condemned.* This term means that the livestock so identified has been inspected and found to be in a dying condition, or to be affected with any other condition or disease that would require condemnation of its carcass.

(ttt) *U.S. Inspected and Condemned (or any authorized abbreviation thereof).* This term means that the carcass, viscera, other part of carcass, or other product so identified has been inspected, found to be adulterated, and condemned under the regulations in this subchapter.

(uuu) *U.S. Passed for Cooking.* This term means that the meat or meat byproduct so identified has been inspected and passed on condition that it be cooked or rendered as prescribed

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[1] The addresses of the Regional Directors are as follows:

Northeastern Region—Seventh Floor, 1421 Cherry Street, Philadelphia, PA 19102.

Southeastern Region—Room 299 South, 1718 Peachtree Street, NW., Atlanta, GA 30309.

North Central Region—607 East Second Street, Des Moines, IA 50309.

Southwestern Region—Room 5–F41, 1100 Commerce Street, Dallas, TX 75201.

Western Region—Room 620 Central Avenue, Building 2C, Alameda, CA 94501.

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by the regulations in Part 315 of this chapter.

(vvv) *U.S. Passed for Refrigeration.* This term means that the meat or meat byproduct so identified has been inspected and passed on condition that it be refrigerated or otherwise handled as prescribed by the regulations in Part 311 of this subchapter.

(www) *U.S. Retained.* This term means that the carcass, viscera, other part of carcass, or other product, or article so identified is held for further examination by an inspector to determine its disposal.

(xxx) *U.S. Suspect.* This term means that the livestock so identified is suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by an inspector to determine its disposal.

(yyy) *United States.* The States, the District of Columbia, and the Territories of the United States.

PART 304—APPLICATION FOR INSPECTION; GRANT OR REFUSAL OF INSPECTION

2. The authority citation for Part 304 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

§ 304.1 [Amended]

3. Section 304.1(b) is amended by removing "§ 301.2(iii)" and inserting in its place "§ 301.2(kkk)".

PART 305—OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION; REPORTS OF VIOLATION

4. The authority citation for Part 305 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

§ 305.5 [Amended]

5. Section 305.5(c) is amended by removing "§ 301.2(ooo) (9 CFR 301.2(ooo))" and inserting in its place "§ 301.2(kk) (9 CFR 301.2(kk)."

PART 313—HUMANE SLAUGHTER OF LIVESTOCK

6. The authority citation for Part 313 continues to read as follows:

Authority: 92 Stat. 1069, 72 Stat. 862, 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 91, 438; 21 U.S.C. 71 *et seq.*; 601 *et seq.*; 7 U.S.C. 1901–1906.

§ 313.1 [Amended]

7. Section 313.1(c) is amended by removing "§ 301.2(gg)" and "§ 301.2(ccc)" and replacing with "§ 301.2(xxx)" and "§ 301.2(y)", respectively.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

8. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260 as amended, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

Subpart G—Canning and Canned Products

§ 318.308 [Amended]

9. Section 318.308(d)(vi)(*a*(*1*) is amended by removing "§ 301.2(ee)" and inserting in its place "§ 301.2(ttt)".

PART 327—IMPORTED PRODUCTS

10. The authority citation for Part 327 continues to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

§ 327.5 [Amended]

11. Section 327.5(a) is amended by removing "§ 301.2(yyy)" and inserting in its place "§ 301.2(hh).".

The amendments are not substantive changes and do not affect any member of the public. Therefore, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making the amendments effective less than 30 days after publication in the **Federal Register**.

Done at Washington, DC, on: November 16, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88–28321 Filed 12–9–88; 8:45 am]

BILLING CODE 3410–DM–M

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9 CFR Parts 317 and 318

[Docket No. 85–030F]

Ascorbic Acid, Erythorbic Acid, Citric Acid, Sodium Ascorbate, and Sodium Citrate in Fresh Pork Cuts

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; confirmation of interim rule.

SUMMARY: On August 22, 1986, FSIS published an interim final rule (51 FR 30052) (corrected on September 22, 1986, at 51 FR 33565) amending the Federal meat inspection regulations to permit the use of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination, to maintain the color of fresh pork cuts. Fresh pork cuts which have been treated to maintain color by the addition of these substances are required to be labeled with a qualifying phrase, contiguous to the product name, which indicates that they have been treated to maintain color. The Administrator of FSIS determined that the Agency had sufficient information and data to satisfy the requirements for amending the regulations. However, an interim rule was published to permit public comments because of the novelty of the new use of these substances, and to allow additional time for the Agency to assess data under actual market conditions before confirming the interim rule. FSIS has determined the interim rule should be made final.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Acting Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" within the scope of E.O. 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule affirms the discretionary use of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination, to maintain the color of fresh pork cuts.

Effect on Small Entities

The Administrator certifies that this final rule will not have a significant economic impact on a substantial

number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

This final rule will impose no new requirements on industry. This rule affirms FSIS approval for the meat industry to use a new method of color preservation to help maintain the fresh appearance of fresh pork cuts. Costs should be incidental and would be offset by distribution efficiencies and reduction of losses due to color deterioration of fresh pork cuts.

Background

FSIS was petitioned [1] by Wilson Foods Corporation to permit the addition of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, in conjunction with phosphates, to fresh port cuts packaged in a controlled atmosphere of carbon dioxide, oxygen and nitrogen in order to maintain the fresh appearance of such meat. This treatment was claimed to result in the extension of a fresh color and appearance during the product's microbiological shelf life.

Fresh pork which is packaged and stored at low temperatures will remain safe and wholesome for 30 days or more. During storage, however, pork color changes and the product loses its appeal and marketability while still safe and wholesome. These color changes detract from the appearance of the product.

The petitioner presented data demonstrating that the addition of the above mentioned substances resulted in extension of the color and appearance of fresh pork cuts for a period of time less than or equal to the microbiological shelf life of fresh port cuts.

The Administrator of FSIS found that information provided by the petitioner and other data available to the Agency disclosed that (1) the use of these substances is functional and suitable for the product, (2) the substances would be used at the lowest level necessary to accomplish their intended technical effect, and (3) the use of these substances will not render the product on which they are used, adulterated, misbranded, or otherwise not in accordance with the requirements of the Act provided treatment occurs only under an approved partial quality control (PQC) program monitored by FSIS. The Agency published an interim final rule (51 FR 30052) amending the Federal meat inspection regulations to permit the use of ascorbic acid, citric acid, erythorbic acid, sodium ascorbate and sodium citrate, singly or in combination, to maintain the color of fresh pork cuts. However, public comments were solicited so that commercial experience could be obtained and considered prior to confirmation of the rule as final.

The petitioner provided further data on consumer tests to determine the habits of consumers when purchasing fresh pork, as well as methods used by consumers to evaluate freshness and wholesomeness. Additionally, data were evaluated on typical duration of refrigerated and frozen storage by consumers. These data indicated that product color was the first test for wholesomeness, but that consumers also used odor and flavor as indicators. It was determined that consumers typically prepare or freeze fresh meat within the first three days of refrigerated storage.

Webb Foodlab, Inc., conducted an independent study for FSIS, which corroborated data provided by the petitioner. The study evaluated the treatment under commercial and retail conditions rather than laboratory conditions and included sensory analysis, microbiological evaluation and chemical analysis. Samples of treated pork were obtained from retail stores in two cities. Retail storage conditions were maintained throughout the study. Analyses were performed on samples which were fresh, three days old and seven days old.

For the sensory analysis, samples were evaluated by ten panelists trained to focus on color as the sole criterion of freshness. The samples were rated as to whether the panelist would purchase the pork chops. The samples were then rated in categories of color, odor, cooked odor, flavor and off flavor.

The microbiological evaluation involved several tests including aerobic plate count, *Salmonella, Listeria,* and the Mugg test (PTG agar plate) for total Enterobacteriaceae and *E. Coli.* The chemical tests included analysis of rancidity (thiobarbituric acid (TBA) content), ascorbic acid content, and pH.

Following the sensory, microbiological, and chemical analyses, the study concluded that if pork chops treated with ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate are handled in the same manner as untreated fresh pork cuts regarding both retail storage and domestic usage, the appearance of a spoiled or unwholesome product would not be enhanced to the extent that it might be purchased and eaten by the consumer who relied on the appearance of the product.

Comments Received on Interim Rule

A total of 88 comments was received in response to the interim final rule. There were 65 from consumers, 9 from university professors, 7 from trade associations, 2 from meat processors, 2 from chemical manufacturers, 2 from supermarket chains and 1 from a consultant to the meat industry. Thirty-nine of the comments supported the rule, and 49 of the comments opposed the rule. Three of those comments in opposition were signed by 41 additional people for a total of 90 who opposed the rule.

All of the 16 consumers supporting the rule believed this would enable consumers to have a wider variety of products available, with better quality and longer shelf life.

The consultant, supermarket chains, chemical manufacturers, meat processors, trade associations and 7 of the 9 university professors supported the rule. Many of the comments from these groups stressed the need for controls to ensure that proper amounts of the color maintenance additives are utilized and excessive amounts are not added.

The Agency agrees that controls are necessary to assure proper use of these substances. Therefore, when processors request to apply the above mentioned substances to fresh pork cuts, they will be required to apply for an approved Partial Quality Control (PQC) program pursuant to 9 CFR 318.4(d) and, if approved, to follow that program. Processing will not be permitted, nor will labeled products be permitted to be distributed in commerce until such PQC programs are evaluated and approved according to the requirements set forth in 9 CFR 318.4(e). This will ensure that the substances will not be applied in excessive amounts and that color maintenance will not exceed microbiological shelf life. All such PQC programs must cover certain critical control points, including but not necessarily limited to:

(1) Condition of meat before treatment (must be fresh or previously frozen meat maintained in a wholesome conditions as evidenced by time and temperature records from the point of slaughter),

(2) Solution formulation control,

(3) Single application control,

(4) Finished product ingredient analysis monitoring,

(5) Integrity of packaging during storage, transportation, and distribution, and

(6) Further processing control (ascorbate treated cuts may not be further processed into fresh, ground pork products).

[1] Petition submitted on April 22, 1985, by Wilson Foods Corporation.

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The chemical manufacturers and 1 meat processor commented that the list of acceptable substances should be expanded to include sodium erythorbate. This would not comply with the procedures stipulated in 9 CFR 318.7(a)(2) for the approval of food additives and therefore cannot be included in this final rulemaking.

Two of the university professors expressed concern that treatment of fresh pork cuts at the permitted levels would result in color maintenance exceeding the microbiological shelf life. They suggested that further studies be conducted to ensure that this would not occur at the permitted levels. These studies have been conducted, as described above, and it was found that the use of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate does not mask unwholesomeness. These results support issuance of a final rule.

The consumer comments opposing the rule were generally based on the objection to meat additives. Many felt that such additives were unnecessary and deceptive in nature. Six of the commenters strongly objected to use of these substances because of allergic reactions to them. The Agency permits an additive only if "its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the stated technical effect as determined in specific cases" (9 CFR 318.7(a)(2). Data show that the use of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate on fresh pork cuts does provide the useful function of maintaining product color and that the additive levels permitted by this final rule are the lowest levels that will achieve this function. Further, a label declaration regarding the use of these substances and a listing of the substances in the ingredient statement is required. Consumers can readily avoid buying these products. The requirement to prominently disclose the presence and purpose of the additives, by use of a qualifying statement adjacent to the product name, was endorsed by many commenters.

One commenter objected to use of the term "fresh" when labeling pork cuts that had been treated with a preservative. The Agency believes consumers understand the word "fresh" to indicate a meat product has not been cured (9 CFR 317.8(b)(6)). Although the product for which these substances have been approved is "fresh pork cuts," from the time of application, the product is no longer "fresh" as defined in the regulations. As such, the Agency will not permit use of the term "fresh" to be included as part of the name of pork cuts that have been treated with these substances.

Several commenters suggested that the use of color maintainers be extended to fresh meat cuts of other species. The Agency will consider the use of these substances on meat from other species at such time that data is submitted to FSIS to demonstrate efficacy and the lowest use levels necessary to achieve the intended technical effect.

Provisions of the Final Rule

Pork cuts treated with ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate that were used to provide data supporting the petition were packaged in a controlled atmosphere of carbon dioxide, oxygen and nitrogen. Packing gases are already permitted for use and are not a part of this rule.

The intended technical effect of the ascorbic acid, erythorbic acid and sodium ascorbate is to serve as antioxidants. The amount of these substances required to achieve the intended technical effect is between 250 and 500 parts per million (ppm), or up to 1.8 milligrams per square inch of surface area collectively. This rule provides for use of these substances at levels not to exceed either 500 ppm or 1.8 milligrams per square inch of surface, singly or in combination. Neither of these levels may be exceeded.

The intended technical effect of the citric acid and sodium citrate is to serve as sequestrants. Sequestrants are "substances which combine with polyvalent metal ions to form a soluble metal complex, to improve the quality and stability of products" (21 CFR 170.3 (o)(26)). The amount of these substances required to achieve the intended technical effect is 250 ppm or 0.9 milligrams per square inch of surface area collectively. This rule provides for use of these substances at levels not to exceed either 250 ppm or 0.9 milligrams per square inch of surface, singly or in combination. Neither of these levels may be exceeded.

Fresh pork cuts which are treated with these substances to maintain the color during distribution will be required to be labeled with a statement identifying each specific approved substance by its common or usual name and the purpose for which it is added, such as "sprayed with a solution of water, ascorbic acid and citric acid to maintain color." This phrase must be contiguous to the product name and must be in the same style of print no smaller than one fourth the size of the print in the product name. The requirement of the presence of the qualifying statement is consistent with established regulatory standards when other preservatives, such as antioxidants or mold inhibitors, are added to meat food product (9 CFR 317.2(j)(10) and 317.8(b) (27) and (28)).

The substances addressed in this rulemaking are generally recognized as safe (GRAS) as direct human food ingredients by the Food and Drug Administration, when used in accordance with good manufacturing practice. Ascorbic acid is listed as a chemical preservative in 21 CFR 182.3013, erythorbic acid is listed as a chemical preservative in 21 CFR 182.3041, citric acid is listed as a sequestrant in 21 CFR 182.6033, sodium ascorbate is listed as a chemical preservative in 21 CFR 182.3731, and sodium citrate is listed as a sequestrant in 21 CFR 182.6751.

Based on all of the information and data available to the Agency, the Administrator reaffirms his findings that (1) the use of these substances is functional and suitable for the product, (2) the substances would be used at the lowest level necessary to accomplish their intended technical effect, and (3) the use of these substances will not render the product on which they are used adulterated, misbranded, or otherwise not in accordance with the requirements of the Act provided treatment occurs only under an approved partial quality control (PQC) program monitored by FSIS, as indicated above.

Therefore, FSIS is confirming the interim rule published on August 22, 1986, (51 FR 30052) which (1) amended the table of approved substances in 9 CFR 318.7(c)(4) to include the use of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate, singly or in combination, as color maintainers for fresh pork cuts and (2) required descriptive labeling of fresh pork products to which ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate, singly or in combination, are added to maintain color.

List of Subjects in 9 CFR Parts 317 and 318

Food labeling, Food additives, Meat inspection.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

2. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

§§ 317.8 and 318.7 [Amended]

Accordingly, FSIS is adopting as a final rule, without change, the interim rule that amended §§ 317.8(b)(37) and 318.7(c)(4), that was published on August 22, 1986, at 51 FR 30052.

Done at Washington, DC, on November 17, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-28584 Filed 12-9-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 057CE, Special Condition No. 23-ACE-42]

Special Conditions; Gyroflug Model SC-01 Speed Canard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to Gyroflug Ingenieurgesellschaft mbH to become part of the type certification basis for the Model SC-01 Speed Canard airplane. The airplane will have novel or unusual design features related to the aerodynamic configuration of the airplane, the location of the engine and propeller, and the use of composite materials for primary flight structure, which were not envisaged in the applicable airworthiness standards and for which the regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Type Certification Basis

The type certification basis for the Gyroflug Model SC-01 airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; Part 23 of the FAR, effective January 9, 1965, including amendments 23-1 through 23-25; Part 36 of the FAR, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions adopted by this rulemaking.

Background

On January 27, 1984, Gyroflug Ingenieurgesellschaft mbH, Flughafen, 7570 Baden-Baden Oos, West Germany, filed an application to the FAA Brussel's Office for U.S. type certification for its Model SC-01 Speed Canard airplane. The Gyroflug Model SC-01 is a small, two-place, composite structure, canard configuration airplane with a pusher propulsion system. It is powered by a 116-horsepower Avco Lycoming 0-235-P2A reciprocating engine and the airplane has a maxium takeoff weight of 1,500 pounds. The airplane received German type certification on September 30, 1983.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Model SC-01 airplane contains a number of novel or unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model SC-01 airplane.

A Notice of Proposed Special Conditions, Notice No. 23-ACE-42, was published in the **Federal Register** on June 7, 1988 (53 FR 20860). No comments were received.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

PARTS 21 AND 23—[AMENDED]

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

Adoption of the Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Gyroflug Model SC-01 series airplanes:

1. Evaluation of Composite Structure.

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, in each wing, wing carry-through, wing attaching structure, fuselage, wing mounted vertical stabilizer, wing flap, and moveable control surfaces must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (i) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established

threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) Each wing, fuselage, wing carry-through, wing attaching structure, wing flap, moveable control surface, and wing-mounted vertical stabilizer structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(h) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(j) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Loads

(a) In addition to the requirements of § 23.301, paragraph (b), the following shall be required: Methods used to determine load intensities and distribution over the various aerodynamic lifting and control surfaces must be validated by flight test measurements unless the methods used for determining those loads are shown to be reliable or conservative for the configuration under consideration.

(b) In lieu of § 23.301, paragraph (d), the following applies: The forward lifting surface of a canard or tandem wing configuration must meet all of the requirements of Part 23, Subpart C—Structure, applicable to a wing.

(c) In lieu of § 23.331, the following apply:

(1) The appropriate balancing loads must be accounted for in a rational or conservative manner when determining forward and main wing loads and linear inertia loads corresponding to any of the symmetrical flight conditions specified in §§ 23.333 through 23.341.

(2) The incremental forward wing loads due to maneuvering and gusts must be reacted by the angular inertia of the airplane in a rational or consevative manner.

(3) Mutual influence of the aerodynamic surfaces must be taken into account when determining flight loads.

(d) In addition to the gust load requirements of § 23.341, the following applies: The gust loads for a canard or tandem wing configuration must be computed using a rational analysis considering the gust criteria of § 23.333(c), or may be computed in accordance with § 23.341 provided the resulting loads are shown to be conservative with respect to the gust criteria of § 23.333(c).

(e) In lieu of the balancing loads requirements of § 23.421, the following apply:

(1) A horizontal surface balancing load is a load necessary to maintain equilibrium in any specified flight condition with no pitching acceleration.

(2) Horizontal balancing surfaces must be designed for balancing loads occurring at any point on the limit maneuvering envelope and in the flap conditions specified in § 23.345. The distribution in figure B6 of Appendix B of Part 23 may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(f) In lieu of the maneuvering load requirements of § 23.423, the following apply:

(1) Each horizontal surface with pitch control must be designed for maneuvering loads imposed by the following conditions:

(i) A sudden movement of the pitching control at V_A, to (1) the maximum aft movement, and (2) to the maximum forward movement, as limited by the control stops, or pilot effort, whichever is critical.

The average loading of B23.11 of Appendix B and the distribution in figure B7 of Appendix B may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(ii) A sudden aft-movement of the pitching control at speeds above V_A, followed by a forward movement of the pitching control resulting in the following combinations of normal and angular acceleration:

Condition	Normal acceleration (n)	Angular acceleration (radian/sec.^{2})
Nose up pitching	1.0	$+\frac{39 n_m (n_m - 1.5)}{V}$
Nose down pitching	n_m	$-\frac{39 n_m (n_m - 1.5)}{V}$

where—

(a) n_m = positive limit maneuvering load factor used in the design of the airplane; and

(b) V = initial speed in knots.

(2) The conditions in this section involve loads corresponding to the loads that may occur in a "checked

maneuver", i.e., a maneuver in which the pitching control is suddenly displaced in one direction and then suddenly moved in the opposite direction. The deflection and timing of the "checked maneuver" must avoid exceeding the limit maneuvering load factor. The total horizontal surface load for both down-load and up-load conditions is the sum of the balancing loads at V and the specified value of the normal load factor, n, plus the maneuvering load increment due to the specified value of the angular acceleration. The maneuvering load increment in figure B2 of Appendix B and the distribution in figure B7 for nose-up pitching and in figure B8 for nose-down pitching of Appendix B may be used only on airplane configurations with aft-mounted surfaces unless their use elsewhere is shown to be conservative.

(g) In lieu of the gust loads requirements of § 23.425, the following apply:

(1) Each horizontal surface, other than the main wing, must be designed for loads resulting from—

(i) Gust criteria specified in § 23.333(c) with the flaps retracted; and

(ii) Positive and negative gusts of 25 feet per second (f.p.s.) nominal intensity at V_F corresponding to the flight conditions specified in § 23.345(a)(2).

(2) When determining the total load on the horizontal surfaces for the conditions specified in paragraph (g)(1) of this special condition, the initial balancing loads for steady unaccelerated flight at the pertinent design speeds, V_F, V_C, V_D must first be determined. The incremental load resulting from the gusts must be added to the initial balancing load to obtain total load.

(h) In lieu of the unsymmetrical load requirements of § 23.427, the following apply:

(1) Horizontal surfaces, other than the main wing, and their supporting structure must be designed for unsymmetrical loads arising from yawing and slipstream effects, in combination with the loads prescribed for the flight conditions set forth in paragraphs (e) through (g) of this special condition.

(2) In the absence of more rational data:

(i) 100 percent of the maximum loading from the symmetrical flight conditions may be assumed on the surface on one side of the plane of symmetry; and

(ii) The following percentage of that loading must be applied to the opposite side:

Percent = 100 − 10(n−1), where n is the specified positive maneuvering load factor, but this value may not be more than 80 percent.

(3) The vertical and horizontal surfaces and their supporting structures must be designed for combined vertical and horizontal surface loads resulting from each prescribed flight condition taken separately.

(i) In the absence of specific requirements for wing mounted vertical stabilizers, the following apply: Vertical stabilizers mounted on the wing must meet the applicable requirements of §§ 23.441, 23.443, and, in lieu of a more rational method, § 23.445 for vertical tail surfaces. The effect of these surfaces on the spanwise loading of the wing must also be accounted for.

3. Propeller Ground Clearance

In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propeller will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(b) If a tail wheel, bumper, or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable design loads must be established for the tail wheel, bumper, or energy absorption device; and

(2) The supporting structure of the tail wheel, bumper, or energy absorption device must be designed to withstand the loads established in paragraph (b)(1) of this special condition and inspection/replacement criteria must be established for the tail wheel, bumper, or energy absorbing device and provided as a part of the information required by § 23.1529.

4. Propeller Marking

In the absence of specific regulations, the propeller must be marked so that the disc is conspicuous under normal daylight ground conditions.

Issued in Kansas City, Missouri, on November 16, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-28429 Filed 12-9-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-50; Amdt. 39-6090]

Airworthiness Directives; Sikorsky Model S-58 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires repetitive inspections and replacement, as necessary, of pylon and tail cone fittings on Sikorsky S-58 helicopters. The amendment provides for optional alternate methods of compliance which could result in reduced maintenance impacts and the elimination of unnecessary operational costs.

DATES:

Effective Date: December 27, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Sikorsky Aircraft, 6900 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Rotorcraft Standards Staff, Forth Worth, Texas 76193-0111, telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 674 (29 FR 559; January 21, 1965), AD 64-02-06, which currently requires repetitive inspections and replacement, as necessary, of pylon and tail cone fittings on Sikorsky Model S-58 series helicopters. After issuing Amendment 674, the FAA has determined that the AD should be revised to include provisions for the issuance of special flight permits and alternate means of compliance, when appropriate for this helicopter series.

Since this amendment provides a clarification only, allows an alternate means of compliance which is optional, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is

determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is clarifying in nature and imposes no additional regulatory or economic burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 674 (29 FR 559), AD 64–02–06, by adding paragraphs (c) and (d) as follows:

Sikorsky Aircraft: Applies to all Sikorsky Model S–58 series helicopters.

Compliance is required as indicated unless already accomplished.

* * * * *

(c) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirement of this AD may be used when approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, ASW–110, FAA, Forth Worth, Texas 76193–0110.

(d) In accordance with §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

This amendment becomes effective December 27, 1988.

This amendment amends AD 64–02–06, Amendment 674 (29 FR 559; January 21, 1964).

Issued in Forth Worth, Texas, on December 1, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88–28430 Filed 12–9–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–ASW–30, Amdt. 39–6091]

Airworthiness Directives; Sikorsky Model S–76A/B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires removal of electrical door locking actuators to prevent passenger door locks from jamming in the locked position on Sikorsky Model S–76A/B helicopters. This amendment allows those helicopters which have installed an electric door lock manual override retrofit kit to be exempt from further compliance with the AD.

EFFECTIVE DATE: January 11, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Sikorsky Aircraft, 6900 Main Street, Stratford, Connecticut 06601–1381.

A copy of the service bulletin is contained in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, ANE–153, FAA, New England Region, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone number (617) 273–7103.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to amend Amendment 39–5754 (52 FR 43054; November 9, 1987), AD 87–23–07, was published in the **Federal Register** on August 12, 1988 (53 FR 30435). Amendment 39–5754 currently requires removal of Part Number (P/N) 22020256 electrical door locking actuators to prevent the passenger door locks from jamming in the locked position on Sikorsky Model S–76A/B helicopters. After issuing Amendment 39–5754, the FAA determined that Sikorsky has designed a manual override kit, P/N 76070–20097, which allows the door lock to be manually overridden if the electrical door lock jams in the locked position. Therefore, the FAA is amending Amendment 39–5754 to exempt those helicopters which have installed a manual override kit, P/N 76070–20097, from compliance with the AD. The noted electric door locks may only be used with a manual override.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessement.

The FAA has determined this amendment is relieving in nature and imposes no additional burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983) and 14 CFR 11.89).

§ 39.13 [Amended]

2. By amending Amendment 39–5754 (52 FR 43054; November 9, 1987), AD 87–23–07, by revising the applicability paragraph to read as follows:

Sikorsky Aircraft Division: Applies to all Sikorsky Model S-76A/B helicopters, certificated in all categories, equipped with electrical door locking actuators installed in accordance with Sikorsky Drawing 76088-20016 using actuator P/N 22020256 in left and right passenger doors, except those helicopters which have installed a manual override kit, P/N 76070-20097. (Docket 87-ASW-30)

* * * * *

This amendment becomes effective January 11, 1989.

This amendment amends Amendment 39-5754 (52 FR 43054; November 9, 1987), AD 87-23-07.

Issued in Fort Worth, Texas, on December 1, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88-28431 Filed 12-9-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-88-1894; FR-2591]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice is the annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and each such area's applicable limits. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, Room 9160; telephone (202) 755-6880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710 through 1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features. (See 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And third, changes were made to the list based on a new definition of "Metropolitan area".

The last comprehensive list of high-cost areas was published on March 3, 1988 (53 FR 6922). Since then a number of areas have had increases to their mortgage limits published in the **Federal Register**. In addition, HUD in this Notice is adding a number of new high-cost areas and increasing the limits in some other areas previously listed.

This Document

In this document, the Department publishes its entire list of high-cost areas with applicable mortgage limits. This document incorporates the changes published on March 28, 1988 (53 FR 9869), April 12, 1988 (53 FR 11997), April 25, 1988 (53 FR 13405), June 1, 1988 (53 FR 19897), August 1, 1988 (53 FR 28872), September 20, 1988 (53 FR 36448) and December 2, 1988 (53 FR 48636).

In addition, this document adds to the list the following new high-cost areas, with applicable limits:

New Areas

Greeley, CO MSA	York, PA MSA
Panama City, FL MSA	Chattanooga, TN-GA MSA
Pensacola, FL MSA	Clarksville-Hopkinsville, TN-KY MSA
Rockford, IL MSA	Killeen-Temple, TX MSA
Fort Wayne, IN MSA	Texarkana, TX-ARK MSA
Wichita, KS MSA	Wichita Falls, TX MSA
Monroe, LA MSA	Provo-Orem, UT MSA
Salem-Gloucester, MA PMSA	Huntington-Ashland, WV-KY-OH MSA
Grand Rapids, MI MSA	Parkersburg-Marietta, WV-OH MSA
Lincoln, NE MSA	Wheeling, WV-OH MSA
Asheville, NC MSA	Green Bay, WI PMSA
Fargo-Moorehead, ND-MN MSA	Racine, WI PMSA
Akron, OH PMSA	Clarke County, GA
Dayton-Springfield, OH PMSA	Oconee County, GA
Lorain-Elyria, OH PMSA	Hall County, GA
Harrisburg-Lebanon-Carlisle, PA MSA	Granville County, NC
	Merrimack County, NH

This document also revises the limits previously listed for the following areas:

Revised Limits

Birmingham, AL MSA
Mobile, AL MSA
Denver, CO MSA
Pueblo, CO MSA
Wilmington, DE-NJ-MD MSA
Bradenton, FL MSA
Fort Myers, FL MSA
Jacksonville, FL PMSA
Miami-Hialeah, FL MSA
Orlando, FL MSA
Sarasota, FL MSA
Tallahassee, FL MSA
Tampa-St. Petersburg-Clearwater, FL MSA
West Palm Beach-Boca Raton-Delray Beach, FL MSA
Atlanta, GA MSA
Aurora-Elgin, IL PMSA
Champaign-Urbana-Rantoul, IL MSA
Chicago, IL PMSA
Joliet, IL PMSA
Gary-Hammon, IN PMSA
Indianapolis, IN MSA
Des Moines, IA MSA
Waterloo-Cedar Falls, IA MSA
Lexington-Fayette, KY MSA
Alexandria, LA MSA
Shreveport, LA MSA
Baltimore, MD MSA
Detroit, MI PMSA
Rochester, MN MSA
St. Cloud, MN MSA
Reno, NV MSA
Atlantic City, NJ MSA
Trenton, NJ PMSA
Albany-Schenectany-Troy, NY MSA
Syracuse, NY MSA
Charlotte-Gastonia-Rock Hill, NC-SC MSA
Greensboro-Winston-Salem—High Point, NC MSA
Grand Forks, ND MSA
Cleveland, OH PMSA
Columbus, OH MSA
Allentown-Bethlehem, PA-NJ MSA
Lancaster, PA MSA
Philadelphia, PA PMSA
Pittsburgh, PA PMSA
Reading, PA MSA
Scranton-Wilkes-Barre, PA MSA
Greenville-Spartanburg, SC MSA
Knoxville, TN MSA

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Memphis, TN-AR-MS MSA
Nashville, TN MSA
Austin, TX MSA
Corpus Christi, TX MSA
Dallas, TX PMSA
Forth Worth-Arlington, TX MSA
Galveston-Texas City, TX PMSA
Longview-Marshall, TX MSA
Lubbock, TX MSA
Midland, TX MSA
Waco, TX MSA
Norfolk-Virginia Beach-Newport News, MSA
Richmond-Petersburg, VA MSA
Roanoke, VA MSA
Tacoma, WA PMSA
Vancouver, WA PMSA
Yakima, WA MSA
Appleton-Oshkosh-Neenah, WI MSA
Milwaukee, WI PMSA
Lyon County, NV

These high-cost limits are effective December 12, 1988 and supersede other published amounts in effect, to the extent they are inconsistent with figures appearing in this document.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under section 203(b), 234(c) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Fire prevention, Health facilities, Historic preservation, Home improvement, Loan programs-housing and community development, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 203

Home improvement, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D). Combination Manufactured Home and Lot (Excluding Alaska, Guam and Hawaii)

To determine the high-cost limit for a combination manufactured home and loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Cumberland County, ME, has a one-family limit of $101,250. The combination home and lot loan limit for is $101,250 x .80, or $81,000.

B. Section 2(b)(1)(E): Lot Only (Excluding Alaska, Guam and Hawaii)

To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Cumberland County, ME, has a one-family limit of $101,250. The lot-only loan limit for Cumberland County, ME is $101,250 x .20, or $20,250.

C. Section 2(b)(2). Alaska, Guam and Hawaii Limits

The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 X 140%).

2. For combination manufactured homes and lots: 75,600. ($54,000 X 140%).

3. For lots only: $18,900. (13,500 X 140%).

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
REGION I				
HUD Field Office: Bangor Office				
Portland, ME MSA:				
Cumberland County	$101,250	$114,000	$138,000	$160,500
Lewiston-Auburn, ME MSA:				
Androscoggin County	$101,250	$114,000	$138,000	$160,500
Portsmouth-Dover-Rochester, NH-ME MSA:				
York County, ME	$101,250	$114,000	$138,000	$160,500
HUD Field Office: Burlington Office				
Burlington, VT MSA:				
Chittenden County	$90,000	$101,300	$122,650	$142,650
Franklin County	$81,700	$92,000	$111,800	$129,000
Grand Isle County				
Washington County	$90,000	$101,300	$122,650	$142,650
Rutland County	$85,000	$95,750	$116,350	$134,250
Addiston County	$85,500	$96,300	$117,000	$135,000
HUD Field Office: Manchester Office				
Portsmouth-Dover-Rochester, NH-ME MSA:				
Rockingham County	$101,250	$114,000	$138,000	$160,500
Strafford County	$101,250	$114,000	$138,000	$160,500
Hillsborough County	$101,250	$114,000	$138,000	$160,500

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II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Merrimack County				
Cheshire County	$81,700	$92,000	$111,800	$129,000
HUD Field Office: Hartford Office				
State of Connecticut	$101,250	$114,000	$138,000	$160,500
HUD Field Office: Boston Office				
State of Massachusetts	$101,250	$114,000	$138,000	$160,500
HUD Field Office: Providence Office				
State of Rhode Island	$101,250	$114,000	$138,000	$160,500
REGION				
HUD Field Office: Caribbean Office				
San Juan, PR PMSA:				
Barceloneta Municipio	$93,050	$104,800	$127,300	$146,900
Bayamon Municipio				
Canovanas Municipio				
Carolina Municipio				
Catano Municipio				
Corozal Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guaynabo Municipio				
Humacao Municipio				
Juncos Municipio				
Las Piedras Municipio				
Loiza Municipio				
Luquillo Municipio				
Manati Municipio				
Naranjito Municipio				
Rio Grande Municipio				
San Juan Municipio				
Toa Alta Municipio				
Toa Baja Municipio				
Trujillo Alto Municipio				
Vega Alta Municipio				
Vega Baja Municipio				
Caguas, PR PMSA:				
Aguas Buenas Municipio	$93,050	$104,800	$127,300	$146,900
Caguas Municipio				
Cayey Municipio				
Cidra Municipio				
Gurabo Municipio				
San Lorenzo Municipio				
Mayaguez, PR MSA:				
Anasco Municipio	$79,650	$89,700	$109,000	$125,800
Cabo Rojo Municipio				
Hormigueros Municipio				
Mayaguez Municipio				
San German Municipio				
Ponce, PR MSA:				
Juana Diaz Municipio	$81,700	$92,000	$111,800	$129,000
Ponce Municipio				
Virgin Islands:				
St. Thomas	$90,000	$101,300	$122,650	$142,650
HUD Field Office: Albany Office				
Albany, NY MSA:				
Albany County	$101,250	$114,000	$138,000	$160,500
Saratoga County				
Schenectady County	$90,000	$101,300	$122,650	$142,650
Greene County	$85,550	$96,400	$117,100	$135,100
Montgomery County				
Rensselaer County				
Binghampton, NY MSA:				
Broome County	$73,150	$82,350	$100,100	$115,500
Tioga County				
Syracuse, NY MSA:				
Onondaga County	$84,350	$95,000	$115,400	$133,200

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Madison County	$83,600	$94,150	$114,400	$132,000
Oswego County				
Other Areas:				
Dutchess County	$101,250	$114,000	$138,000	$160,500
Warren County				
Ulster County	$90,000	$101,300	$122,650	$142,650
Tompkins County	$86,300	$97,200	$118,100	$136,250
HUD Field Office: New York Office				
New York, NY PMSA:				
Bronx County	$101,250	$114,000	$138,000	$160,500
Kings County				
New York County				
Putnam County				
Queens County				
Richmond County				
Rockland County				
Westchester County				
Nassau-Suffolk, NY PMSA:				
Nassau County	$101,250	$114,000	$138,000	$160,500
Suffolk County				
Orange County, NY PMSA:				
Orange County	$101,250	$114,000	$138,000	$160,500
HUD Field Office: Newark Office				
Bergen-Passaic, NJ PMSA:				
Bergen County	$101,250	$144,000	$138,000	$160,500
Passaic County				
Jersey City, NJ PMSA:				
Hudson County	$101,250	$114,000	$138,000	$160,500
Middlesex-Somerset-Hunterdon, NJ PMSA:				
Hunterdon County	$101,250	$114,000	$138,000	$160,500
Middlesex County				
Somerset County				
Monmouth-Ocean, NJ PMSA:				
Monmouth County	$101,250	$114,000	$138,000	$160,500
Ocean County				
Newark, NJ PMSA:				
Essex County	$101,250	$114,000	$138,000	$160,500
Morris County				
Sussex County				
Union County				
Allentown-Bethlehem, PA-NJ MSA (part):				
Warren County, NJ	$101,250	$114,000	$138,000	$160,500
HUD Field Office: Camden Office				
Atlantic City, NJ MSA:				
Atlantic County	$101,250	$114,000	$138,000	$160,500
Cape May County				
Monmouth-Ocean, NJ PMSA:				
Ocean County	$101,250	$114,000	$138,000	$160,500
Trenton, NJ PMSA:				
Mercer County	$101,250	$114,000	$138,000	$160,500
Wilmington, DE-NJ-MD PMSA (part):				
Salem County, NJ	$90,300	$101,700	$123,550	$142,550
Philadelphia, PA-NJ PMSA (part):				
Burlington County, NJ	$101,250	$114,000	$138,000	$160,500
Camden County, NJ				
Gloucester County, NJ				
HUD Field Office: Buffalo Office				
Rochester, NY MSA:				
Monroe County	$90,000	$101,300	$122,650	$142,650
Livingston County				
Ontano County				
Orleans County				
Wayne County				
Buffalo, NY PMSA:				
Erie County	$78,850	$88,800	$107,900	$124,500

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
REGION III				
HUD Field Office: Philadelphia Office				
Allentown/Bethleham, PA–NJ MSA (part):				
Carbon County	$101,250	$114,000	$138,000	$160,500
Lehigh County				
Northhampton County				
Lancaster, PA MSA:				
Lancaster County	$79,200	$89,200	$108,400	$125,100
Philadelphia, PA–NJ PMSA (part):				
Bucks County, PA	$101,250	$114,000	$138,000	$160,500
Chester County				
Delaware County				
Montgomery County				
Philadelphia County				
Reading, PA MSA:				
Berks County	$89,300	$100,600	$122,250	$141,050
Scranton-Wilkes-Barre, PA MSA:				
Columbia County	$81,200	$91,450	$111,150	$128,250
Lackawanna County				
Luzerne County				
Monroe County				
Wyoming County				
Harrisburg-Lebanon-Carlisle, PA MSA:				
Cumberland County	$74,100	$83,450	$101,400	$117,000
Dauphin County				
Lebanon County				
Perry County				
York, PA MSA:				
Adams County	$81,700	$92,000	$111,800	$129,000
York County				
HUD Field Office: Baltimore Office				
Washington, DC–MD–VA MSA (part):				
Charles County, MD	$101,250	$114,000	$138,000	$160,500
Calvert County, MD				
Frederick County, MD				
Baltimore, MD MSA:				
Baltimore City	$101,250	$114,000	$138,000	$160,500
Anne Arundel County				
Baltimore County				
Carroll County				
Harford County				
Howard County				
Queen Anne's County				
Wilmington, DE–NJ–MD PMSA (part):				
Cecil County, MD	$90,300	$101,700	$123,550	$142,550
Other Areas:				
Worcester County, MD	$71,250	$80,250	$97,500	$112,500
St. Mary's County, MD	$81,900	$92,200	$112,000	$129,300
Talbot County	$101,250	$114,000	$138,000	$160,500
HUD Field Office: Washington, DC Office				
Washington, DC–MD–VA MSA (part):				
District of Columbia	$101,250	$114,000	$138,000	$160,500
Montgomery County, MD				
Prince Georges County, MD				
Alexandria City, VA				
Arlington County, VA				
Fairfax County, VA				
Falls Church City, VA				
Loudon County, VA				
Manassas City, VA				
Manassas Park City, VA				
Prince William County, VA				
HUD Field Office: Wilmington Office				
Wilmington, DE–NJ–MD PMSA (part):				
New Castle County, DE	$90,300	$101,700	$123,550	$142,550

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
HUD Field Office: Pittsburgh Office				
Pittsburgh, PA PMSA:				
Allegheny County	$72,200	$81,300	$98,800	$114,000
Fayette County				
Washington County				
Westmoreland County				
HUD Field Office: Richmond Office				
Washington, DC–MD–VA MASA (part:)				
Stafford County, VA	$101,250	$114,000	$138,000	$160,500
Richmond-Petersburg, VA MSA:				
Charles City County	$90,250	$101,650	$123,500	$142,500
Chesterfield County				
Colonial Heights City				
Dinwiddie County				
Goochland County				
Hanover County				
Henrico County				
Hopewell City				
New Kent County				
Petersburg City				
Powhatan County				
Prince George County				
Richmond City				
Norfolk-VA Beach-Newport News, VA MSA:				
Chesapeake City	$101,250	$114,000	$138,000	$160,500
Gloucester County				
Hampton City				
James City County				
Newport News City				
Norfolk City				
Poquoson City				
Portsmoth City				
Suffolk City				
Virginia Beach City				
Williamsburg City				
Roanoke, VA MSA:				
Botetourt County	$83,100	$93,600	$113,750	$131,250
Roanoke County				
Roanoke City				
Salem City				
State of Virginia:				
York County	$101,250	$114,000	$138,000	$160,500
Fauquier County	$99,300	$111,800	$135,850	$156,750
Albemarle County/Charlottesville City	$76,650	$86,300	$104,900	$121,050
Spotsylvania County/Fredericksburg City	$80,750	$90,950	$110,500	$127,500
Isle of Wight County	$78,350	$88,250	$107,250	$123,750
Frederick County	$70,500	$79,400	$96,450	$111,300
All Other Areas:	$68,300	$76,900	$93,500	$107,900
HUD Field Office: Charleston Office				
Charleston, WV MSA:				
Kanawha County	$79,800	$89,850	$109,200	$126,000
Putnam County				
Huntington-Ashland, WV–KY–OH MSA (part:)				
Cabell County, WV	$82,100	$92,450	$112,300	$129,600
Wayne County				
Parkersburg-Marietta, WV–OH MSA (part):				
Wood County	$75,400	$84,900	$103,150	$119,050
Wheeling, WV–OH MSA (part:)				
Marshall County	$69,550	$78,350	$95,150	$109,800
Ohio County				
REGION IV				
HUD Field Office: Columbia Office				
Charleston, SC MSA:				
Berkeley County	$85,500	$96,300	$117,000	$135,000
Charleston County				
Dorchester County				
Greenville-Spartansburg, SC MSA:				
Greenville County	$76,950	$86,650	$105,300	$121,500

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II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Pickens County				
Spartanburg County				
Horry County				
Charlotte-Gastonia-Rock Hill, NC-SC MSA (part:)				
York County, SC	$82,000	$92,350	$112,200	$129,450
Augusta, GA-SC MSA (part:)				
Aiken County, SC	$82,550	$92,950	$112,950	$130,300
Columbia, SC MSA:				
Lexington County	$88,350	$99,500	$120,900	$139,500
Richland County				
Other Areas:				
Beaufort County	$94,050	$105,900	$128,700	$148,500
HUD Field Office: Atlanta Office				
Atlanta, GA MSA:				
Barrow County	$101,250	$114,000	$138,000	$160,500
Butts County				
Cherokee County				
Clayton County				
Cobb County				
Coweta County				
DeKalb County				
Douglas County				
Fayette County				
Forsyth County				
Fulton County				
Gwinnett County				
Henry County				
Newton County				
Paulding County				
Rockdale County				
Spalding County				
Walton County				
Augusta, GA–SC MSA:				
Columbia County GA	$82,550	$92,950	$112,950	$130,300
Richmond County, GA				
McDuffie County, GA				
Macon-Warner Robins, GA MSA:				
Bibb County	$75,400	$84,900	$103,150	$119,050
Houston County				
Jones County				
Peach County				
Savannah, GA MSA:				
Chatham County	$70,300	$79,150	$96,200	$111,000
Effingham County				
Chattanooga, TN–GA MSA (part):				
Catoosa County	$73,050	$82,250	$99,950	$115,350
Dade County				
Walker County				
Other Areas:				
Clarke County	$75,050	$84,500	$102,700	$118,500
Oconee County	$75,500	$85,050	$103,350	$119,250
Hall County				
HUD Field Office: Birmingham Office				
Anniston, AL MSA:				
Calhoun County	$76,000	$85,600	$104,000	$120,000
Birmingham, AL MSA:				
Blount County	$96,900	$109,100	$132,600	$153,000
Jefferson County				
St. Clair County				
Shelby County				
Walker County				
Florence, AL MSA:				
Colbert County	$68,450	$77,050	$93,650	$108,050
Huntsville, AL MSA:				
Madison County	$78,600	$88,500	$107,550	$124,100
Mobile, AL MSA:				
Baldwin County	$90,700	$102,150	$124,150	$143,250
Mobile County				
Montgomery, AL MSA:				
Atauga County	$84,500	$95,150	$115,650	$133,400

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Elmore County				
Montgomery County				
Tuscaloosa, AL MSA:				
Tuscaloosa County	$76,750	$86,400	$105,000	$121,150
HUD Field Office: Greensboro Office				
Asheville, NC MSA:				
Buncombe County	$82,150	$92,550	$112,450	$129,750
Charlotte-Gastonia-Rock Hill, NC–SC MSA (part):				
Mecklenburg County	$101,250	$114,000	$138,000	$160,500
Cabarrus County	$88,700	$99,900	$121,400	$140,100
Gaston County				
Lincoln County				
Rowan County				
Union County				
Fayetteville, NC MSA:				
Cumberland County	$72,050	$81,150	$98,550	$113,750
Greensboro—Winston-Salem—High Point, NC MSA:				
Davidson County	$88,350	$99,500	$120,900	$139,500
Davie County				
Forsyth County				
Guilford County				
Randolph County				
Stokes County				
Yadkin County				
Raleigh-Durham, NC MSA:				
Durham County	$101,250	$114,000	$138,000	$160,500
Franklin County				
Orange County				
Wake County				
Wilmington, NC MSA:				
New Hanover County	$79,600	$89,650	$108,900	$125,560
Other Areas:				
Currituck County	$76,500	$86,000	$104,500	$120,500
Johnston County	$71,250	$80,250	$97,500	$112,500
Craven County	$81,350	$91,600	$111,300	$128,400
Granville County	$72,200	$81,300	$98,800	$114,000
Pitt County	$75,050	$84,500	$102,750	$118,500
Carteret County	$70,300	$79,150	$96,200	$111,000
HUD Field Office: Jackson Office				
Jackson, MS MSA:				
Hinds County	$86,450	$97,350	$118,300	$136,500
Madison County				
Rankin County				
Pascagoula, MS MSA:				
Jackson County	$77,400	$87,200	$106,000	$122,200
Biloxi-Gulfport, MS MSA:				
Hancock County	$79,100	$89,100	$108,200	$124,900
Harrison County				
Warren County	$80,000	$90,100	$109,450	$126,300
Oktibbeha County	$73,300	$82,600	$100,350	$115,800
Memphis, TN–AR–MS MSA:				
Desoto County, MS	$87,750	$98,850	$120,100	$138,600
Other Areas:				
Lowndes County	$70,200	$79,100	$96,100	$110,900
HUD Field Office: Coral Gables Office				
Ft. Lauderdale-Hollwood-Pompano Beach, FL MSA:				
Broward County	$87,400	$98,400	$119,600	$138,000
Miami-Hialeah, FL PMSA:				
Dade County	$85,500	$96,300	$117,000	$135,000
West Palm Beach-Boca Raton-Delray Beach, FL MSA:				
Palm Beach County	$86,450	$97,350	$118,300	$136,500
Ft. Pierce, FL MSA:				
Martin County	$76,000	$85,600	$104,000	$120,000
Ft. Myers, FL MSA:				
Lee County	$76,950	$86,650	$105,300	$121,500
Other Areas:				
Collier County	$76,000	$85,600	$104,000	$120,000
Monroe County	$80,750	$90,950	$110,500	$126,500

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
HUD Field Office: Knoxville Office				
Chattanooga, TN-GA MSA (part):				
Hamilton County	$73,050	$82,250	$99,950	$115,350
Marion County				
Sequatchie County				
Knoxville, TN MSA:				
Anderson County	$91,250	$102,700	$124,800	$144,000
Blount County				
Graninger County				
Knox County				
Jefferson County				
Sevier County				
Union County				
HUD Field Office: Memphis Office				
Memphis, TN-AR-MS MSA:				
Shelby County, TN	$101,250	$114,000	$138,000	$160,500
Tipton County, TN				
HUD Field Office: Nashville Office				
Nashville, TN MSA:				
Cheatham County	$101,250	$114,000	$138,000	$160,500
Davidson County				
Dickson County				
Robertson County				
Rutherford County				
Sumner County				
Williamson County				
Wilson County				
Clarksville-Hopkinsville, TN-KY MSA (part):				
Montgomery County	$76,750	$86,400	$105,000	$121,150
HUD Field Office: Louisville Office				
Cincinnati, OH-KY-IN PMSA (part):				
Boone County, KY	$80,750	$90,950	$110,500	$127,500
Campbell County, KY				
Kenton County, KY				
Lexington-Fayette, KY MSA:				
Bourbon County	$95,000	$107,000	$130,000	$150,000
Clark County				
Fayette County				
Jessamine County				
Scott County				
Woodford County				
Clarksville-Hopkinsville, TN-KY MSA (part):				
Christian County	$76,750	$86,400	$105,100	$121,150
Huntington-Ashland, WV-KY-OH MSA (part):				
Boyd County	$82,100	$92,450	$112,300	$129,600
Carter County				
Greenup County				
Other Areas:				
Jefferson County	$91,650	$103,200	$125,400	$144,700
HUD Field Office: Orlando Office				
Orlando, FL MSA:				
Orange County	$88,350	$99,500	$120,900	$139,500
Osceola County				
Seminole County				
Melbourne-Titusville-Palm Bay, FL MSA:				
Brevard County	$77,900	$87,700	$106,600	$123,000
Other Areas:				
Indian River County, FL	$69,800	$78,600	$95,550	$110,250
HUD Field Office: Jacksonville Office				
Jacksonville, FL MSA:				
Clay County	$87,850	$98,950	$120,250	$138,750

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Duval County				
Nassau County				
St. Johns County				
Gainesville, FL MSA:				
Alachua County	$71,250	$80,250	$97,500	$112,500
Bradford County				
Tallahasse, FL MSA:				
Gadsden County	$81,700	$92,000	$111,800	$129,000
Leon County				
Panama City, FL MSA:				
Bay County	$70,500	$79,400	$96,450	$111,300
Pensacola, FL MSA:				
Escambia County	$75,600	$85,150	$103,500	$119,400
Santa Rosa County				
HUD Field Office: Tampa Office				
Sarasota, FL MSA:				
Sarasota County	$86,850	$97,850	$118,850	$137,150
Tampa-St. Petersburg-Clearwater, FL MSA:				
Hernando County	$80,750	$90,950	$110,500	$127,500
Hillsborough County				
Pasco County				
Pinellas County				
Bradenton, FL MSA:				
Manatee County	$77,700	$89,850	$109,200	$126,000
Lakeland-Winter Haven, FL MSA:				
Polk County	$76,450	$86,100	$104,600	$120,700
REGION V				
HUD Field Office: Chicago Office				
Chicago, IL PMSA:				
Cook County	$101,250	$114,000	$138,000	$160,500
DuPage County				
McHenry County				
Lake County, IL PMSA:				
Lake County	$101,250	$114,000	$138,000	$160,500
Joliet, IL PMSA:				
Grundy County	$95,000	$107,000	$130,000	$150,000
Will County				
Aurora-Elgin, IL PMSA:				
Kane County	$95,950	$108,050	$131,300	$151,500
Kendall County				
Rockford, IL MSA:				
Boone County	$74,550	$83,950	$102,050	$117,750
Winnebago County				
HUD Field Office: Detroit Office				
Detroit, MI PMSA (part):				
Livingston County	$79,700	$89,750	$109,050	$125,850
Macomb County				
Monroe County				
Oakland County				
St. Clair County				
Wayne County				
Ann Arbor, MI PMSA:				
Washtenaw County	$99,200	$100,450	$122,050	$140,800
HUD Field Office: Grand Rapids Office				
Grand Rapids, MI PMSA:				
Kent County	$74,550	$83,950	$102,050	$117,750
Ottawa County				
HUD Field Office: Flint Office				
Detroit, MI PMSA (part):				
Lapeer County	$79,700	$89,750	$109,050	$125,850
HUD Field Office: Cleveland Office				
Cleveland, OH PMSA:				
Cuyahoga County	$77,900	$87,700	$106,600	$123,000

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Geauga County				
Lake County				
Medina County				
Akron, OH PMSA:				
Portage County	$70,300	$79,150	$96,200	$111,000
Summit County				
Lorain-Elyria, OH PMSA:				
Lorain County	$74,100	$83,450	$101,400	$117,000
HUD Field Office: Springfield Office				
Bloomington-Normal, IL MSA:				
McLean County	$78,400	$88,300	$107,250	$123,750
Champaign-Urbana-Rantoul, IL MSA:				
Champaign County	$73,150	$82,350	$100,100	$115,500
St. Louis, MO–IL PMSA (part):				
Monroe County	$99,150	$111,650	$135,650	$156,550
Alton-Granite City, IL PMSA:				
Jersey County	$85,500	$96,300	$117,000	$135,000
Madison County				
East St. Louis-Belleville, IL PMSA:				
Clinton County	$85,500	$96,300	$117,000	$135,000
St. Clair County				
HUD Field Office: Minneapolis-St. Paul Office				
Minneapolis-St. Paul, MN–WI MSA (part):				
Anoka County	$101,250	$114,000	$138,000	$160,500
Carver County				
Chisago County				
Dakota County				
Hennepin County				
Isanti County				
Ramsey County				
Scott County				
Washington County				
Wright County				
St. Croix County				
St. Cloud, MN MSA:				
Benton County	$87,100	$98,100	$119,200	$137,550
Sherburn County				
Stearns County				
Rochester, MN MSA:				
Olmstead County	$101,250	$114,000	$138,000	$160,500
Fargo-Moorhead, ND–MN MSA (part):				
Clay County, MN	$84,000	$94,850	$115,200	$132,950
HUD Field Office: Milwaukee Office				
Minneapolis-St. Paul, MN–WI MSA (part):				
St. Croix County	$101,250	$114,000	$138,000	$160,500
Milwaukee, WI PMSA:				
Milwaukee County	$81,750	$92,050	$111,850	$129,050
Ozaukee County				
Washington County				
Waukesha County				
Madison, WI MSA:				
Dane County	$83,800	$94,350	$114,650	$132,300
Appleton-Oshkosh-Neenah, WI MSA:				
Calument County	$71,700	$80,750	$98,150	$113,250
Outagamie County				
Winnebago County				
Green Bay, WI MSA:				
Brown County	$83,300	$93,800	$113,950	$131,500
Racine, WI PMSA:				
Racine County	$85,450	$96,200	$116,900	$134,900
HUD Field Office: Indianapolis Office				
Cincinnati, OH–KY–IN PMSA:				
Dearborn County, IN	$80,750	$90,950	$110,500	$127,500
Gary-Hammond, IN PMSA:				
Lake County	$80,650	$90,800	$110,350	$127,350
Porter County				
South Bend—Mishawaka, IN MSA:				
St. Joseph County	$74,600	$84,000	$102,050	$117,750

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Indianapolis, IN MSA:				
Boone County	$89,300	$100,550	$122,200	$141,000
Hancock County				
Shelby County				
Morgan County				
Hendricks County				
Johnson County				
Marion County				
Hamilton County				
Bloomington, IN MSA:				
Monroe County	$75,900	$85,450	$103,850	$119,650
Elkhart-Goshen, IN MSA:				
Elkhart County	$76,450	$86,150	$104,650	$120,750
Fort Wayne, IN MSA:				
Allen County	$76,000	$85,600	$104,050	$120,050
Dekalb County				
Whitley County				
Lafayette, IN MSA:				
Tippecanoe County	$76,750	$86,400	$105,000	$121,150
HUD Field Office: Columbus Office				
Columbus, OH MSA:				
Delaware County	$82,150	$92,550	$112,450	$129,750
Fairfield County				
Franklin County				
Licking County				
Madison County				
Pickaway County				
Union County				
Lima, OH MSA:				
Allen County	$70,400	$79,250	$96,300	$111,150
Auglaize County				
Dayton-Springfield, OH MSA (part):				
Clark County	$69,200	$77,950	$94,750	$109,300
Huntington-Ashland, WV-KY-OH MSA (part):				
Lawrence County	$82,100	$92,450	$112,300	$129,600
Parkersburg-Marietta, WV-OH MSA (part):				
Washington County	$75,400	$84,900	$103,200	$119,050
Wheeling, WV-OH MSA (part):				
Belmont County	$69,550	$78,350	$95,150	$109,800
HUD Field Office: Cincinnati Office				
Cincinnati, OH-KY-IN (Part):				
Clermont County, OH	$80,750	$90,950	$110,500	$127,500
Hamilton County, OH				
Warren County, OH				
Hamilton-Middletown, OH PMSA:				
Butler County	$80,750	$90,950	$110,500	$127,500
Dayton-Springfield, OH MSA (part):				
Greene County	$69,200	$77,950	$94,750	$109,300
Miami County				
Montgomery County				
REGION VI				
HUD Field Office: Dallas Office				
Dallas, TX PMSA (part):				
Collin County	$101,250	$114,000	$138,000	$160,500
Dallas County				
Rockwall County				
HUD Field Office: Fort Worth Office				
Abilene, TX MSA:				
Taylor County	$74,200	$83,550	$101,500	$117,150
Dallas, TX PMSA (part):				
Denton County	$101,250	$114,000	$138,000	$160,500
Ellis County				
Kaufman County				
Ft. Worth-Arlington, TX PMSA:				
Johnson County	$101,250	$114,000	$138,000	$160,500

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II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Parker County				
Tarrant County				
Hood County				
Killeen-Temple, TX MSA:				
Bell County	$76,550	$86,250	$104,750	$120,900
Coryell County				
Longview-Marshall, TX MSA (part):				
Gregg County	$75,850	$85,400	$103,800	$119,750
Sherman-Denison, TX MSA:				
Grayson County	$78,000	$88,000	$106,500	$124,000
Texarkana, TX-Texarkana, AR MSA (part):				
Bowie County	$76,750	$86,400	$105,000	$121,150
Tyler, TX MSA:				
Smith County	$77,400	$87,200	$106,000	$122,200
Waco, TX MSA:				
McLennan County	$74,950	$84,400	$105,550	$118,350
Wichita Falls, TX MSA:				
Wichita County	$93,900	$105,800	$126,550	$148,300
HUD Field Office: Houston Office				
Houston, TX PMSA:				
Ft. Bend County	$90,000	$101,300	$122,650	$142,650
Harris County				
Liberty County				
Montgomery County				
Waller County				
Beaumont-Port Arthur, TX MSA:				
Hardin County	$71,250	$80,250	$97,500	$112,500
Jefferson County				
Orange County				
Galveston-Texas City, TX PMSA:				
Galveston County	$101,250	$114,000	$138,000	$160,500
Brazoria, TX PMSA:				
Brazoria County	$90,000	$101,300	$122,650	$142,650
Other Areas:				
Angelina County	$68,400	$77,000	$93,600	$108,000
HUD Field Office: Lubbock Office				
Amarillo, TX MSA:				
Potter County	$74,200	$83,550	$101,500	$117,150
Randall County				
Lubbock, TX MSA:				
Lubbock County	$93,950	$105,800	$128,600	$148,350
Midland, TX MSA:				
Midland County	$101,250	$114,000	$138,000	$160,500
HUD Field Office: San Antonio Office				
Austin, TX MSA:				
Hays County	$101,250	$114,000	$138,000	$160,500
Travis County				
Williamson County				
San Antonio, TX MSA:				
Bexar County	$82,750	$93,250	$113,250	$130,700
Comal County				
Guadalupe County				
Corpus Christi, TX MSA:				
Nueces County	$81,450	$91,750	$111,450	$128,600
San Patricio County				
Other Areas:				
Kendall County	$79,500	$89,500	$108,750	$125,500
HUD Field Office: Little Rock Office				
Memphis, TN-AR-MS MSA (part):				
Critten County, AR	$101,250	$114,000	$138,000	$160,500
Little Rock, AR MSA:				
Faulkner County	$86,200	$97,050	$117,950	$136,100
Lenoke County				
Pulaski County				
Saline County				
Texarkana, TX-Texarkana, AR MSA (part):				
Miller County	$76,750	$86,400	$105,000	$121,150

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
HUD Field Office: Oklahoma City Office				
Oklahoma City, OK MSA:				
Canadian County	$72,800	$82,000	$99,600	$114,950
Cleveland County				
Logan County				
McClain County				
Oklahoma County				
Pottawatomie County				
HUD Field Office: New Orleans Office				
Baton Rouge, LA MSA:				
Ascension Parish	$76,000	$85,600	$104,000	$120,000
East Baton Rouge Parish				
Livingston Parish				
West Baton Rouge Parish				
New Orleans, LA MSA:				
Jefferson Parish	$96,500	$108,650	$132,050	$152,350
Orleans Parish				
St. Bernard Parish				
St. Charles Parish				
St. John the Baptist Parish				
St. Tammany Parish				
Lake Charles, LA MSA:				
Calcasieu Parish	$73,650	$82,950	$100,750	$116,250
Other Areas:				
Lafayette Parish	$76,000	$85,600	$104,000	$120,000
HUD Field Office: Shreveport Office				
Shreveport, LA MSA:				
Bossier Parish	$86,700	$97,650	$118,600	$136,850
Caddo Parish				
Alexandria, LA MSA:				
Rapides Parish	$86,100	$97,000	$117,850	$135,950
Longview-Marshall, TX MSA (part):				
Harrison County, TX	$75,850	$85,400	$103,800	$119,750
Monroe, LA MSA:				
Ouachita Parish	$71,600	$80,650	$98,000	$113,050
HUD Field Office: Albuquerque Office				
Albuquerque, NM MSA:				
Bernalillo County	$101,250	$114,000	$138,000	$160,500
Other Areas:				
Santa Fe County	$95,000	$107,000	$130,000	$150,000
Los Alamos County	$98,300	$110,700	$134,550	$155,250
HUD Field Office: Tulsa Office				
Tulsa, OK MSA:				
Creek County	$82,500	$92,900	$112,900	$130,300
Osage County				
Rogers County				
Tulsa County				
Wagoner County				
REGION VII				
HUD Field Office: Kansas City Office				
Kansas City, MO PMSA:				
Cass County, MO	$81,600	$91,900	$111,700	$128,900
Clay County, MO				
Jackson County, MO				
Lafayette County, MO				
Platt County, MO				
Ray County, MO				
Kansas City, KS PMSA:				
Johnson County, KS	$93,550	$105,350	$128,050	$145,750
Leavenworth County, KS	$81,600	$91,900	$111,700	$128,900

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Miami County, KS Wyandotte County, KS				
HUD Field Office: St. Louis Office				
St. Louis, MO–IL PMSA (part): St. Louis City, MO Franklin County, MO Jefferson County, MO St. Charles County, MO St. Louis County, MO	$99,150	$111,650	$135,650	$156,550
HUD Field Office: Des Moines Office				
Des Moines, IA MSA: Dallas County Polk County Warren County	$75,800	$85,400	$103,750	$119,700
Omaha, NE–IA MSA (part): Pottawattamie County, IA	$78,800	$88,750	$107,800	$124,400
Dubuque, IA MSA: Dubuque County	$79,500	$89,500	$108,750	$125,500
Waterloo-Cedar Falls, IA MSA: Black Hawk County Brewer County	$78,950	$88,950	$108,050	$124,700
HUD Field Office: Omaha Office				
Omaha, NE–IA MSA (part): Douglas County, NE Sarpy County, NE Washington County	$78,800	$88,750	$107,800	$124,400
HUD Field Office: Topeka Office				
Topeka, KS MSA: Shawnee County	$70,300	$79,150	$96,200	$111,000
Wichita, KS MSA: Butler County Harvey County Sedgwick County	$78,450	$88,350	$107,350	$123,900
REGION VIII				
HUD Field Office: Denver Office				
Denver, CO PMSA: Adams County Arapahoe County Denver County Douglas County Jefferson County	$101,250	$114,000	$138,000	$160,500
Boulder-Longmont, CO PMSA: Boulder County	$101,250	$114,000	$138,000	$160,500
Fort Collins-Loveland, CO MSA: Larimer County	$93,550	$105,350	$128,050	$147,750
Colorado Springs, CO MSA: El Paso County	$101,250	$114,000	$138,000	$160,500
Pueblo, CO MSA: Pueblo County	$75,500	$85,050	$103,350	$119,250
Greeley, CO MSA: Weld County	$90,700	$102,150	$124,150	$143,250
State of Colorado: Eagle County	$101,250	$114,000	$138,000	$160,500
Elbert County	$83,900	$94,500	$114,850	$132,500
Garfield County	$75,200	$84,700	$102,950	$118,800
Grand County	$80,750	$90,950	$110,500	$127,500
Routt County	$90,000	$101,300	$122,650	142,650
Summit County	$101,250	$114,000	$138,000	$160,500
Teller County	$80,750	$90,950	$110,500	$127,500
Pitkin County	$90,000	$101,300	$122,650	$142,650
Other Areas	$71,800	$80,900	$98,300	$113,400
HUD Field Office: Helena Office				
State of Montana	$75,500	$85,050	$103,350	$119,250

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
HUD Field Office: Salt Lake City Office				
Salt Lake City-Ogden, UT MSA:				
Davis County	$80,450	$90,600	$110,100	$127,050
Salt Lake County				
Weber County				
Provo-Orem, UT MSA:				
Utah County	$90,700	$102,150	$124,150	$143,250
Other Areas:				
Washington County	$75,900	$85,450	$103,850	$119,850
Summit County	$94,500	$106,450	$129,350	$149,250
HUD Field Office: Casper Office				
Teton County	$91,200	$102,700	$124,800	$144,000
State of Wyoming	$75,000	$84,000	$102,500	$118,000
HUD Field Office: Fargo Office				
Fargo-Moorhead, ND-MN MSA (part):				
Cass County, ND	$84,000	$94,850	$115,200	$132,950
Grand Forks, ND MSA:				
Grand Forks County	$84,000	$94,850	$115,200	$132,950
Other Areas:				
Burleigh County	$70,750	$79,700	$96,850	$111,750
Morton County				
HUD Field Office: Sioux Falls Office				
Sioux Falls, SD MSA:				
Minnehaha County	$77,950	$87,750	$109,050	$125,800
Lincoln County	$75,000	$84,000	$102,500	$118,000
Meade County				
Rapid City, SD MSA:				
Pennington County	$75,000	$84,000	$102,500	$118,000
REGION IX				
HUD Field Office: Los Angeles Office				
Los Angeles Office Metro and Non-Metro Areas:				
Los Angeles County	$101,250	$114,000	$138,000	$160,500
San Luis Obispo County				
Santa Barbara County				
Ventura County				
Kern County				
HUD Field Office: San Francisco Office				
San Francisco Office Metro and Non-Metro Areas:				
Alameda County	$101,250	$114,000	$138,000	$160,500
Contra Costa County				
Del Norte County				
Humboldt County				
Lake County				
Marin County				
Mendocino County				
Monterey County				
Napa County				
San Benito County				
San Francisco County				
San Mateo County				
Santa Clara County				
Santa Cruz County				
Solano County				
Sonoma County				
HUD Field Office: Fresno Office				
Fresno Office Metro and Non-Metro Areas:				
Fresno County	$101,250	$114,000	$138,000	$160,500

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II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Kern County				
Kings County				
Madera County				
Mariposa County				
Merced County				
Stanislaus County				
Tulare County				
HUD Field Office: Sacramento Office				
Sacramento Office Metro and Non-Metro Areas:				
Alpine County	$101,250	$114,000	$138,000	$160,500
Amador County				
Butte County				
Calaveras County				
Colusa County				
El Dorado County				
Glenn County				
Lassen County				
Modoc County				
Nevada County				
Placer County				
Plumas County				
Sacramento County				
San Joaquin County				
Shasta County				
Sierra County				
Siskiyou County				
Sutter County				
Tehama County				
Trinity County				
Tuolumne County				
Yolo County				
Yuba County				
HUD Field Office: San Diego Office				
San Diego Office Metro and Non-Metro Areas:				
Imperial County	$101,250	$114,000	$138,000	$160,500
San Diego County				
HUD Field Office: Santa Ana Office				
Orange County	$101,250	$114,000	$138,000	$160,500
Riverside County				
San Bernardino County				
Mono County	$75,000	$84,000	$102,500	$118,000
Inyo County				
HUD Field Office: Las Vegas Office				
Las Vegas, NV MSA:				
Clark County	$101,250	$114,000	$138,000	$160,500
State of Nevada Non-Metro Areas:				
Lincoln County	$75,000	$84,000	$102,500	$118,000
Nye County (part)				
HUD Field Office: Reno Office				
Reno, NV MSA:				
Washoe County	$101,250	$114,000	$138,000	$160,500
State of Nevada Non-Metro Areas:				
Carson City County	$85,500	$96,300	$117,000	$135,000
Douglas County	$82,650	$93,050	$113,100	$130,500
Lyon County	$77,400	$87,200	$105,950	$122,250
Churchill County	$75,000	$84,000	$102,500	$118,000

II. TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREA WIDE MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Elko County Esmeralda County Eureka County Humboldt County Lander County Mineral County Nye County (part) Pershing County Storey County White Pine County				
HUD Field Office: Phoenix Office				
Phoenix, AZ MSA: Maricopa County	$101,250	$114,000	$138,000	$160,500
Other Areas: Coconino County	$80,750	$90,950	$110,500	$127,500
Pinal County	$69,350	$78,100	$94,900	$109,500
HUD Field Office: Tucson Office				
Tucson, AZ MSA: Pima County	$101,250	$114,000	$138,000	$160,500
HUD Field Office: Honolulu Office				
State of Hawaii: Metro and Non-Metro Areas	$151,850	$171,000	$207,000	$240,750
Territory of Guam	$101,250	$114,000	$138,000	$160,500
REGION X				
HUD Field Office: Seattle Office				
Seattle, WA PMSA: King County Snohomish County	$101,250	$114,000	$138,000	$160,500
Tacoma, WA PMSA: Pierce County	$89,750	$101,050	$122,800	$141,700
Yakima, WA MSA: Yakima County	$83,350	$93,850	$114,050	$131,600
Bremerton, WA MSA: Kitsap County	$80,200	$90,350	$109,750	$126,650
Olympia, WA MSA: Thurston County	$79,800	$89,850	$109,200	$126,000
HUD Field Office: Portland Office				
Portland, OR PMSA: Clackamas County Multnomah County Washington County Yamhill County	$89,750	$101,050	$122,800	$141,700
Vancouver, WA PMSA: Clark County	$98,300	$110,700	$134,550	$155,250
All Other Areas	$85,200	$95,950	$116,600	$134,550
HUD Field Office: Anchorage Office				
State of Alaska: All Areas	$135,000	$151,950	$183,950	$213,950
HUD Field Office: Spokane Office				
Richland-Kennewick-Pasco, WA MSA: Benton County Franklin County	$85,500	$96,300	$117,000	$135,000
Spokane, WA MSA: Spokane County	$75,350	$84,850	$103,100	$118,950
HUD Field Office: Boise Office				
Boise City, ID MSA: Ada County	$88,000	$99,100	$120,400	$138,900

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Date: December 5, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88–28529 Filed 12–9–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8236]

Allocation and Apportionment of Deduction for State Income Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations relating to the allocation and apportionment of deductions for state income taxes in computing taxable income from sources inside and outside the United States. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATES: The rules of § 1.861–8T(e)(6)(i) and the language preceding the examples in § 1.861–8T(g) are effective for all taxable years beginning after December 31, 1976. The remaining regulations are effective for taxable years beginning on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: David F. Chan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:CORP:T:R) (202–634–5404, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under sections 861(b), 862(b), and 863(a) of the Internal Revenue Code of 1986. The temporary regulations are issued under the authority contained in section 7805 (26 U.S.C. 7805) of the Internal Revenue Code of 1986.

Sections 861(b) and 862(b) of the Code provide that, in determining taxable income attributable to items of United States source income enumerated in section 861(a) and foreign source income enumerated in section 862(a), deductions must be properly allocated and apportioned to such income. In addition, section 863(a) provides that deductions must be properly allocated and apportioned to items of income not described in section 861(a) or 862(a) in order to compute taxable income under section 863. The allocation and apportionment of deductions is fundamental to the computation of taxable income of foreign corporations under section 882 and the foreign tax credit limitation under section 904(a) of the Code. Questions have recently arisen about the allocation and apportionment of the deduction for state taxes in situations not explicitly addressed by the current regulations. The temporary regulations promulgated herein provide guidance with respect to these questions.

Need for Temporary Regulations

Because of the significant number of taxpayers needing immediate guidance for purposes of filing income tax returns, the Internal Revenue Service has found it to be impractical to issue these temporary regulations after the notice and public comment procedure under section 553(b) of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Discussion

Section 1.861–8

This document revises § 1.861–8 by reserving paragraph (e)(b) of § 1.861–8, the language of § 1.861–8(g) that precedes the examples, and Examples (25) and (26) of paragraph (g) of § 1.861–8.

Section 1.861–8T(e)(6)

Paragraph (e)(6)(i) of § 1.861–8T as promulgated herein restates the previously promulgated general principle that state, local, and foreign income, war profits and excess profits taxes are definitely related and allocable to the gross income with respect to which such taxes are imposed. Paragraph (e)(6)(ii) clarifies that the deduction for a state franchise tax that is computed based on income is to be allocated in the same manner as an income tax. This paragraph also cites five examples illustrating the application of the general principle for allocation of that deduction, and provides that taxpayers may use another method of allocation or apportionment if shown to the satisfaction of the district director that such method produces a more accurate result. This allocation and apportionment is necessary because states may tax income that is foreign source under the Internal Revenue Code provided the income is attributable to activities performed in the state. *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425 (1980). Paragraph (e)(6)(iii) of § 1.861–8T provides that the regulations in paragraph (e)(6)(i) are effective for all taxable years, and that the regulations in paragraph (e)(6)(ii) and *Examples* (25) through (29) of § 1.861–8T(g) are effective for taxable years beginning on or after January 1, 1988. This paragraph also provides taxpayers with the option to apply the regulations to deductions for state tax incurred in taxable years beginning before January 1, 1988.

Section 1.861–8T(g)

Paragraph (g) of § 1.861–8T as promulgated herein first restates the previously promulgated language that precedes the examples in § 1.861–8(g), and supplements that language to clarify that the examples do not establish as substantive rules the particular methods of allocation set forth therein. Because the application of the general rule is inherently factual in nature and an allocation must be reasonable under all the facts and circumstances, this paragraph provides that the methods of allocation illustrated in the examples may not be used if the result is not a reasonable allocation, under all of the facts and circumstances, of the deduction to the gross income to which it relates.

Paragraph (g) § 1.861–8T(g) then provides five examples, Examples (25) through (29), that illustrate the general rule for allocation and apportionment of the deduction for state income tax.

Examples (25) and (26)

Examples (25) and (26) of § 1.861–8T(g) are modifications of previously promulgated examples. The modification to each example provides that for purposes of allocating the deduction for state taxes neither U.S. nor foreign source income is reduced by the amount of the state income tax deduction being allocated. Example (25) provides that the deduction for state income taxes is allocable to a class of income that includes foreign source income when the laws of the states imposing tax on the taxpayer do not specifically exempt foreign source income, and the total amount of income taxed by the states, as determined under state law, exceeds the amount of U.S. source income for Federal income tax purposes. Example (26) describes the allocation and apportionment of state income tax when one (but not all) of the states imposing an income tax on the

taxpayer explicitly exempts foreign source income. If, under the facts of Examples (25) and (26), the total amount of state taxable incomes is less than or equal to the amount of U.S. source income for Federal income tax purposes, none of the state income tax is allocable to a class of income that includes foreign source income.

Example (27)

Example (27) of § 1.861–8T(g) indicates that when a taxpayer conducts income producing operations in a state that does not impose an income tax, an adjustment is necessary before the allocation and apportionment methods contained in Examples (25) and (26) may be applied. Examples (25) and (26) determine whether foreign source income is taxed by states by comparing total state taxable incomes with U.S. source taxable income for Federal income tax purposes. Without an adjustment, this comparison may be inaccurate when the taxpayer has significant activities in a state that does not impose a tax computed on income attributable to activities in that state.

Example (27) provides that the allocation and apportionment of state income taxes is to be made by first making a reasonable estimate of the taxable income attributable to activities in states that do not impose a tax computed on state taxable income and subtracting this estimated amount from U.S. source taxable income for Federal income tax purposes. The taxpayer must then apply the allocation and apportionment methods described in Example (26) by comparing total state taxable incomes in states that imposed an income tax with the reduced amount of U.S. source taxable income for Federal income tax purposes. Example (27) of the temporary regulations provides a method that will be deemed to produce a reasonable estimate of the taxable income attributable to activities in a state that does not define state taxable income.

Example (28)

Example (28) of § 1.861–8T(g) provides for the allocation and apportionment of the deduction for a state income tax imposed by a state that defines a corporation's business income to include dividends from noncontrolled companies ("portfolio dividends") and that determines the corporation's state taxable income by apportioning the corporation's business income based upon a ratio of its factors in the state to those outside the state. Under state law, the factors used to compute the ratio used to apportion income to the state do not include factors attributable to corporations paying portfolio dividends. In such a situation, a portion of the state tax is definitely related to the portfolio dividends and must be allocated to the classes of gross income consisting of foreign source and U.S. source portfolio dividends, respectively. Any remaining tax is to be allocated and apportioned separately under the principles illustrated in the other examples of § 1.861–8T(g).

Example (29)

Example (29) of § 1.861–8T(g) illustrates the allocation and apportionment of the deduction for state income taxes when a state imposes an income tax on a worldwide unitary basis. Under this example, an appropriate portion of unitary tax is first allocated to the taxpayer's portfolio dividends in the manner described in Example (28). An appropriate portion of unitary tax is then allocated to state taxable income attributable to the inclusion, under state tax rules, of controlled foreign corporations (CFCs) and "80/20" companies as defined in section 861(c)(1) in the unitary group. The state tax imposed on such income is apportioned on the basis of the income earned by the CFCs and the 80/20 companies. The state tax remaining after reduction for tax attributable to portfolio dividends and tax attributable to the inclusion of other related companies in the unitary group is added to the state tax imposed by the other states and apportioned under the principles illustrated in Examples (25) through (27).

Special Analyses

It has been determined that this temporary rule is not a major legislative regulation subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is David F. Chan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in United States, Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.861–8 (e)(6) and the introductory text of paragraph (g) and *Examples* (25) and (26) are revised to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) *Allocation and apportionment of certain deductions.*

* * * * *

(6) *Income taxes.* [Reserved] For guidance see § 1.861–8T (e)(6).

* * * * *

(g) *General examples.* [Reserved] For guidance see § 1.861–8T (g).

* * * * *

Example (25)—Income Taxes. [Reserved] For guidance see § 1.861–8T (g) *Examples* (25) through (29).

Example (26)—Income Tax. [Reserved] For guidance see § 1.861–8T (g) *Examples* (25) through (29).

Par. 3. Section 1.861–8T is amended by adding paragraph (e)(6), the introductory text of paragraph (g) and Examples (25) through (29) to read as follows:

§ 1.861–8T Computation of taxable income from sources within the United States and from other sources and activities (Temporary).

* * * * *

(e) * * *

(6) *Income taxes*—(i) *In general.* The deduction for state, local, and foreign income, war profits and excess profits taxes allowed by section 164 shall be considered definitely related and allocable to the gross income with respect to which such taxes are imposed. For example, if a domestic corporation is subject to state income tax and such state income tax is imposed in part on an amount of foreign source income, that part of the taxpayer's state income tax attributable to foreign source income is definitely related and allocable to foreign source income. A state franchise tax that is

computed on the basis of income attributable to business activities conducted within the state must be allocated and apportioned in the same manner as an income tax.

(ii) *Methods of allocation and apportionment. Examples* (25) through (29) of paragraph (g) of this section illustrate the application of this paragraph (e)(6). Taxpayers may utilize methods of allocation or apportionment other than those illustrated in these examples if it is established to the satisfaction of the District Director upon examination that a different method yields a more accurate allocation and apportionment of state taxes, based on the factual relationship of the state tax to the income on which the tax is imposed.

(iii) *Effective dates.* The rules of § 1.861–8T(e)(6)(i) are effective for all taxable years. The rules of § 1.861–8T(e)(6)(ii) and *Examples* (25) through (29) of § 1.861–8T(g) are effective for taxable years beginning on or after January 1, 1988. At the option of the taxpayer, however, the rules of § 1.861–8T (e)(6)(ii) and *Examples* (25) through (29) of § 1.861–8T(g) may be applied with respect to deductions for state taxes incurred in taxable years beginning before January 1, 1988.

(g) *General examples.* The following examples illustrate the principles of this section. In each example, unless otherwise specified, the operative section which is applied and gives rise to the statutory grouping of gross income is the overall limitation to the foreign tax credit under section 904(a). In addition, in each example, where a method of allocation or apportionment is illustrated as an acceptable method, it is assumed that such method is used by the taxpayer on a consistent basis from year to year (except in the case of the optional method for apportioning interest under paragraph (e)(2)(vi) of this section or the optional method for apportioning research and development expense under paragraph (e)(3)(iii) of this section). Further, it is assumed that each party named in each example operates on a calendar year accounting basis and, where the party is a U.S. taxpayer, files returns on a calendar year basis. The examples contained in this section illustrate the general rule that a deduction must be allocated to the class of gross income with respect to which the deduction is factually related. The application of this general rule is inherently factual in nature. These illustrations of this inherently factual rule are presented as examples because the particular methods of allocation utilized merely illustrate in particular factual situations the regulatory rule requiring an allocation that is reasonable under all the facts and circumstances. These examples do not establish as substantive rules the particular methods of allocation therein set forth. Thus, these particular methods of allocation may not be used if the result is not a reasonable allocation, under all of the facts and circumstances of the particular case, of the deduction to the class of gross income to which it relates.

* * * * *

Example (25)—Income Taxes—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of electronic equipment with operations in states A, B, and C. X also has a branch in country Y which manufactures and distributes the same type of electronic equipment. In 1988, X has taxable income from these activities, as determined under the Code (without taking into account the deduction for state taxes), of $1,000,000, of which $200,000 is foreign source general limitation income subject to a separate limitation under section 904(d)(1)(I) ("general limitation income") and $800,000 is domestic source income. States A, B, and C each determine X's income subject to tax within their state by making adjustments to X's taxable income as determined under the Code, and then apportioning the adjusted taxable income on the basis of the relative amounts of payroll, property, and sales with respect to each state as compared to worldwide payroll, property, and sales of the taxpayer. The adjustments made by states A, B, and C all involve adding and subtracting enumerated items from taxable income as determined under the Code. However, in making these adjustments to taxable income, none of the states specifically exempts foreign source income as determined under the Code. On this basis, it is determined that X has taxable income of $550,000, $200,000, and $200,000 in states A, B, and C, respectively. The corporate tax rates in states A, B, and C are 10 percent, 5 percent, and 2 percent, respectively, and X has total state income tax liabilities of $69,000 ($55,000 + $10,000 + $4,000), which it deducts as an expense for Federal income tax purposes.

(ii) *Allocation.* X's deduction of $69,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Presumptively, states A, B, and C only tax income from domestic sources. However, since the statutes of states A, B, and C do not specifically exempt foreign source income (as determined under the Code) from taxation and since, in the aggregate, states A, B, and C tax $950,000 of X's income while only $800,000 is domestic source income under the Code, it is presumed that state income taxes are imposed on $150,000 of foreign source income. The deduction for state income taxes is therefore related and allocable to both X's foreign source and domestic source income.

(iii) *Apportionment.* For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation gross income, and one residual grouping, gross income from sources within the United States. The state income tax deduction of $69,000 must be apportioned between these two groupings. Corporation X calculates the apportionment on the basis of relative amounts of foreign source general limitation taxable income and U.S. source taxable income subject to state taxation. In this case, state income taxes are imposed on $800,000 of domestic source income and $150,000 of foreign source general limitation income.

State income tax deduction apportioned to foreign source general limitation income (statutory grouping):	
$69,000 × ($150,000/$950,000)	$10,895
State income tax deduction apportioned to income from sources within the United States (residual grouping):	
$69,000 × ($800,000/$950,000)	58,105
Total apportioned state income tax deduction	69,000

Example (26)—Income Taxes—(i) *Facts.* Assume the same facts as in *Example* (25) except that state A's statute exempts from taxation all foreign source income as determined under the Code, so that foreign source income is not included in adjusted taxable income subject to apportionment in state A (and factors relating to X's country Y branch are not taken into account in computing the state A apportionment fraction).

(ii) *Allocation.* X's deduction of $69,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Since state A exempts all foreign source income by statute, state A is presumed to impose tax on $550,000 of X's $800,000 of domestic source income. X's state A tax of $55,000 is allocable, therefore, solely to domestic source income. Since the statutes of states B and C do not specifically exclude all foreign source income as determined under the Code, and since states B and C impose tax on $400,000 ($200,000 + $200,000) of X's income of which only $250,000 ($800,000 − $550,000) is presumed to be domestic source, the deduction for the $14,000 of income taxes imposed by states B and C is related and allocable to both X's foreign source and domestic source income.

(iii) *Apportionment.* For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation gross income, and one residual grouping, gross income from sources within the United States. The deduction of $14,000 for income taxes of states B and C must be apportioned between these two groupings.

Corporation X calculates the apportionment on the basis of relative amounts of foreign source general limitation income and U.S. source income subject to state taxation.

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States B and C income tax deduction apportioned to foreign source general limitation income (statutory grouping):	
$14,000 × ($150,000/$400,000).....	$5,250
States B and C income tax deduction apportioned to income from sources within the United States (residual grouping):	
$14,000 × ($250,000/$400,000).....	8,750
Total apportioned state income tax deduction.....	14,000

Of X's total income taxes of $69,000, the amount allocated and apportioned to foreign source general limitation income equals $5,250. The total amount of state income taxes allocated and apportioned to U.S. source income equals $63,750 ($55,000 + $8,750).

Example (27)—Income Tax—(i) *Facts.* Assume the same facts as in *Example* (25) except that state A, in which X has significant income producing activities, does not impose a corporate income tax or other state tax imposed on income derived from business activities conducted in state A. X therefore has a total state income tax liability in 1988 of $14,000 ($10,000 paid to state B plus $4,000 paid to state C), all of which is subject to allocation and apportionment under paragraph (b) of this section.

(ii) *Allocation.* (A) X's deduction of $14,000 for state income taxes is definitely related and allocable to the gross income with respect to which the taxes are imposed. An adjustment is necessary, however, before the aggregate state taxable incomes can be compared with U.S. source income on the Federal income tax return in the manner described in *Examples* (25) and (26). Unlike the facts in *Examples* (25) and (26), state A imposes no income tax and does not define taxable income attributable to activities in state A. The total amount of X's income subject to state taxation is, therefore, $400,000 ($200,000 in state B and $200,000 in state C). This total presumptively does not include any income attributable to activities performed in state A and therefore can not properly be compared to total U.S. source income reported by X for Federal income tax purposes, which does include income attributable to state A activities. Under these facts, the application of the method used in *Examples* (25) and (26), which compares total state taxable incomes with total U.S. source income for Federal income tax purposes, would presume that states B and C are taxing U.S. source income attributable to state A before taxing any foreign source income, a result which may or may not be warranted depending on the particular facts.

(B) Before applying the method used in *Examples* (25) and (26) to the facts of this example, it is necessary to estimate the amount of income that state A could reasonably attribute to X's activities in state A. The rules of the Uniform Division of Income for Tax Purposes Act ("UDITPA") attribute income to a state on the basis of the average of three ratios that are based upon the taxpayer's facts—property within the state over total property, payroll within the state over total payroll, and sales within the state over total sales—and may be used, with adjustments, for this purpose. In order to estimate U.S. source income derived from state A activities, the taxpayer's UDITPA factors must be adjusted to eliminate taxable income and any factors attributable to a foreign branch. In this example all taxable income as well as UDITPA apportionment factors (property, payroll, and sales) attributable to X's country Y branch must be eliminated.

(C) Since it is presumed that state A would not attempt to tax the income derived by X's country Y branch, a reasonable estimate of the income that would be taxed by state A if state A had an income tax equals Federally defined taxable income (before deduction for state income taxes) less income derived by X's country Y branch, multiplied by the average of the taxpayer's state A property, payroll, and sales ratios, determined using the principles of UDITPA (adjusted to eliminate the country Y branch factors). The amount so determined is presumed to be imposed exclusively on U.S. source income and the allocation and apportionment method described in *Example* (26) must be applied. If, for example, state A taxable income is determined to equal $550,000, then $550,000 of U.S. source income for Federal income tax purposes is presumed to constitute state A taxable income. The remaining $250,000 of U.S. source income for Federal income tax purposes is presumed to be subject to tax in states B and C. Since states B and C impose tax on $400,000, of which $150,000 is presumed to be foreign source income and $250,000 is presumed to be domestic source income, the deduction for the $14,000 of income taxes of states B and C is related and allocable to both X's foreign source and domestic source income and is subject to apportionment.

(iii) *Apportionment.* The deduction of $14,000 for income taxes of states B and C is apportioned in the same manner as in *Example* (26). As a result, $5,250 of the $14,000 of state B and state C income taxes is apportioned to foreign source general limitation income ($14,000 x $150,000/$400,000), and $8,750 ($14,000 x $250,000/$400,000) of the $14,000 of state B and state C income taxes is apportioned to U.S. source income.

Example (28)—Income Tax—(i) *Facts.* (A) Assume the same facts as in *Example* (25) (X has $1,000,000 of taxable income from Federal income tax purposes, $800,000 of which is U.S. source income and $200,000 of which is foreign source general limitation income), except that $100,000 of X's $200,000 of foreign source general limitation income consists of dividends from controlled foreign corporations ("CFCs") in which X owns stock representing 10 to 50 percent of the vote and value in such corporations. The income derived by the CFCs paying the dividends consists entirely of foreign source general limitation income.

(B) State A taxable income is computed by first making adjustments to X's Federal taxable income. These adjustments result in X having a total of $1,000,000 of apportionable taxable income for state A tax purposes. None of the $100,000 of adjustments made by state A relate to the dividends paid by the CFCs. As in *Example* (25), the amount of apportionable taxable income attributable to business activities conducted in state A is determined by multiplying apportionable taxable income by a fraction (the "state opportionment fraction") that compares the relative amounts of X's payroll, property, and sales within state A with X's worldwide payroll, property and sales. An analysis of state A law indicates that state A includes "portfolio dividends" in its definition of the taxable income of X which is apportionable to X's state A activities. However, the factors of the corporations paying those dividends are not included in the state A apportionment fraction for purposes of apportioning income to the state. Portfolio dividends are defined under state A law as any dividends paid from less than 50 percent owned subsidiaries. The dividends received by X from the 10 to 50 percent owned controlled foreign corporations, therefore, are considered to be portfolio dividends for state A tax purposes. The comparison of X's state A factors with X's worldwide factors results in a state apportionment fraction of 50 percent. Applying this fraction to apportionable taxable income of $1,100,000, as determined under state law, results in attributing 50 percent of apportionable taxable income to state A, and produces total state A taxable income of $550,000. State A imposes an income tax at a rate of 10 percent on the amount of income that is attributed to state A, which results in $55,000 of tax imposed by state A.

(ii) *Allocation.* (A) States A, B, and C impose income taxes of $69,000 which must be allocated to the classes of income upon which the taxes are imposed. A portion of X's Federal income tax deduction of $55,000 for state A income tax is definitely related and thus allocable to the class of gross income consisting of foreign source portfolio dividends. A definite relationship exists between a deduction for state income tax and portfolio dividend income when a state includes portfolio dividends in state taxable income apportionable to the state on the basis of an apportionment fraction that includes the factors of the corporations paying the dividends. By applying a state apportionment fraction that excludes factors of the corporations paying portfolio dividends to apportionable taxable income that includes the $100,000 of foreign source portfolio dividends, $50,000 (50 percent of the $100,000) of the portfolio dividends is attributed to X's activities in state A and subjected to state A income tax. Applying the state A income tax rate of 10 percent to the $50,000 of foreign source portfolio dividends subjected to state A income tax, $5,000 of X's $55,000 total state A income tax liability is definitely related and allocable to a class of income consisting of the foreign source portfolio dividends. (If a state imposes a graduated tax rate, the average effective state tax rate for the taxpayer for the taxable year may be utilized to determine the amount of tax attributable to the portfolio dividends.) Since under the look-through rules of section 904(d)(3) the foreign source portfolio dividends are included within the general

limitation described in section 904(d)(1)(I), the $5,000 of state A tax on foreign source portfolio dividends is allocated entirely to foreign source general limitation income and, therefore, is not apportioned. (If the total amount of state A tax imposed on foreign source portfolio dividends were to exceed the actual amount of X's state A income tax liability (for example, due to net operating losses), the actual amount of state A tax would be entirely allocated to the foreign source portfolio dividends.) After allocation of a portion of the state A tax to portfolio dividends, $50,000 ($55,000–$5,000) of state A tax remains to be allocated.

(B) A total of $64,000 (the aggregate of the $50,000 remaining state A tax, and the $10,000 and $4,000 of taxes imposed by states B and C, respectively) is to be allocated as provided in *Example* (25), by comparing U.S. source taxable income, as determined under the Code, with the aggregate of the state taxable incomes determined by states A, B, and C, after reducing state apportionable taxable incomes by the amount of any portfolio dividends to which tax has been specifically allocated. X's state A taxable income, after reduction by the $50,000 of portfolio dividends taxed by state, equals $500,000. X also has taxable income of $200,000 and $200,000 in states B and C, respectively. In the aggregate, therefore, states A, B, and C tax $900,000 of X's income, after including state taxable income attributable to portfolio dividends. Since X has only $800,000 of U.S. source taxable income for Federal income tax purposes, it is presumed that state income taxes are imposed on $100,000 of foreign source income. The remaining deduction of $64,000 for state income taxes is therefore related and allocable to both X's foreign source and domestic source income and is subject to apportionment.

(iii) *Apportionment.* For purposes of computing the foreign tax credit limitation, there is one statutory grouping, foreign source general limitation income, and one residual grouping, gross income from sources within the United States. The remaining state income tax deduction of $64,000 must be apportioned between these two groupings on the basis of relative amounts of foreign source general limitation taxable income and U.S. source taxable income subject to state taxation. In this case, the $64,000 of state income taxes is considered to be imposed on $800,000 of domestic source income and $100,000 of foreign source general limitation income and is apportioned as follows:

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $64,000×($100,000/$900,000)	$7,111
State income tax deduction apportioned to income from sources within the United States (residual grouping): $64,000×($800,000/$900,000)	56,889
Total apportioned state income tas deduction	64,000

Of the total state income taxes of $69,000, the amount allocated and apportioned to foreign source general limitation income equals $12,111 ($5,000+$7,111). The total amount of state income taxes allocated and apportioned to U.S. source income equals $56,889.

Example (29)—Income Taxes—(i) *Facts.* (A) P, a domestic corporation, is a manufacturer and distributor of electronic equipment with operations in states F, G, and H. P also has a branch on country Y which manufactures and distributes the same type of electronic equipment. In addition, P has three wholly owned subsidiaries, US1, US2, and FS, the latter a controlled foreign corporation ("CFC") ad defined in section 957 (a) of the Code. P also holds interests ranging from 10 to 50 percent ownership in various controlled foreign corporations.

(B) In 1988, P derives $1,000,000 of Federal taxable income (without taking into account the deduction for state income taxes), which consists of $250,000 of foreign source general limitation income and $750,000 of U.S. (domestic) source income. The foreign source general limitation income consists of a $25,000 Subpart F inclusion with respect to FS, $150,000 of dividends from other CFCs in which P owns stock representing 10 to 50 percent of the vote and value, and $75,000 of manufacturing and sales income derived by P's U.S. operations and country Y branch. The $750,000 of U.S. source income consists of manufacturing and sales income derived by P's U.S. operations.

(C) For Federal income tax purposes, US1 derives $75,000 of taxable income, before deduction for state income taxes, which consists entirely of U.S. source income. US2, a so-called "80/20" corporation described in section 861(c)(1), derives $250,000 of Federal taxable income before deduction for state or foreign income taxes, all of which is derived from foreign operations and consists entirely of foreign source general limitation income. FS is not engaged in a U.S. trade or business and derives $550,000 of foreign source general limitation income before deduction for foreign income taxes.

(D) State F imposes a corporate income tax of 10 percent on P's state F taxable income, which is determined on the basis of a worldwide unitary apportionment. State F determines P's taxable income for state F tax purposes by first making adjustments to the taxable income, as determined for Federal income tax purposes, of the members of the unitary group to determine the unitary business income of the group. State F then attributes a portion of the unitary business income to activities of P that are conducted in state F by multiplying the unitary business income (adjusted Federal taxable income) of the unitary group by a fraction (the "state apportionment fraction") that compares the relative amount of the unitary group's payroll, property, and sales (the "factors") in state F with the payroll, property, and sales of the unitary group. P is the only member of its unitary group that has state F factors and that is thereby subject to state F income tax and filing requirements. State F defines the unitary group to include any corporation more than 50 percent of which is directly or indirectly owned by a state F taxpayer and is engaged in the same unitary business. P's unitary group, therefore, includes P, US1, US2, and FS, but does not include the 10 to 50 percent owned CFCs. The unitary business income of the unitary group excludes intercompany dividends between members of the unitary group and subpart F inclusions with respect to a member of the unitary group. Dividends paid from nonmembers of the unitary group (the 10 to 50 percent owned CFCs) are referred to as portfolio dividends for state F tax purposes and are included in unitary income. None of the factors (in state F or worldwide) of the corporations paying portfolio dividends are included in the state F apportionment fraction for puposes of apportioning unitary business income to P's state F activities.

(E) After adjustments to Federal taxable income, the unitary business income of P's unitary group equals $2,000,000, consisting of $1,050,000 of P's income ($100,000 of foreign source manufacturing and sales income, $150,000 of foreign source portfolio dividends, and $800,000 of U.S. source manufacturing and sales income, but excluding the $25,000 subpart F inclusion attributable to FS since FS is a member of the unitary group), $100,000 of US1's income (from sales made in the United States), $275,000 of US2's income (from an active business outside the United States), and $575,000 of FS's income. The differences between Federal taxable income and state F apportionable taxable income for P, US1, US2, and FS represent adjustments to Federal taxable income pursuant to the tax laws of state F.

(F) The Federal and state taxable income for each member of the unitary group is summarized in the following table. (The items of income listed in the "Federal" column of the table refer to taxable income before deduction for state income tax.)

	Federal	State F
P		
U.S. source income	$750,000	$800,000
Foreign source general limitation income:		
Portfolio dividends	150,000	150,000
Subpart F income	25,000	0
Manufacturing and sales income	75,000	100,000
Total taxable income	1,000,000	1,050,000
US1		
U.S. source income	75,000	100,000
US2		
Foreign source general limitation income	250,000	275,000
FS		
Foreign source general limitation income	550,000	575,000
Unitary business income		2,000,000

(G) P's state F taxable income equals $500,000, which is determined by multiplying the group's unitary business income ($2,000,000) by the group's state F apportionment fraction, which equals 25 percent in these facts. P's state F taxable income is multiplied by the state F tax rate of 10 percent, resulting in a state F tax liability of $50,000. State G and state H, unlike state F, do not tax portfolio dividends. Although state G and state H apportion taxable income to

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those states on the basis of an apportionment fraction that compares state factors to total factors. state G and state H, unlike state F, do not tax on a unitary basis and only consider P's taxable income and factors in computing P's taxable income. P's taxable income under state G law equals $300,000, which is subject to a 5 percent tax rate resulting in a state G tax liability of $15,000. P's taxable income under state H law is $300,000, which is subject to a tax rate of 2 percent resulting in a state H tax liability of $6,000. P has a total Federal income tax deduction for state income taxes of $71,000 ($50,000 + 15,000 + 6,000).

(ii) *Allocation.* (A) P's deduction of $71,000 for state income taxes is definitely related and allocable to the gross income with respect to which the taxes are imposed. Adjustments may be necessary, however, before aggregate state taxable incomes can be compared with U.S. source income on the Federal income tax return in the manner described in *Examples* (25) and (26). In allocating P's deduction for state income taxes, it is necessary first to determine the portion, if any, of the deduction that is definitely related and allocable to a particular class of gross income. A definite relationship exists between a deduction for state income tax and dividend income when a state includes portfolio dividends in state taxable income apportionable to the state on the basis of an apportionment fraction (whether or not calculated on a unitary basis) that excludes the factors of the corporations paying portfolio dividends.

(B) In this case, $150,000 of foreign source portfolio dividends are subject to a state F apportionment fraction of 25 percent, which results in a total of $37,500 of state F taxable income attributable to such dividends. As illustrated in *Example* (28), $3,750 ($150,000 × 25 percent state F apportionment percentage × 10 percent state F tax rate) of P's state F income tax is definitely related and allocable to a class of gross income consisting entirely of the foreign source portfolio dividends. Since under the look-through rules of section 904(d)(3) the foreign source portfolio dividends are included within the general limitation described in section 904(d)(1)(I), the $3,750 of state F tax on foreign source portfolio dividends is allocated entirely to foreign source general limitation income and, therefore, is not apportioned.

(C) After reducing state F taxable income of the unitary group by the taxable income attributable to portfolio dividends, state F taxes P on $462,500 ($500,000–$37,500), the income of a unitary group that includes P and other affiliated companies. Accordingly, in order to allocate and apportion the remaining $46,250 of state F tax ($50,000 of state F tax minus the $3,750 of state F tax allocated to foreign source portfolio dividends), it is necessary first to determine if state F is taxing only P's separate company income or is imposing its tax partly on income of other members of the unitary group. If state F is taxing income of other members of the unitary group, a portion of the state F tax must be allocated and apportioned on the basis of the income of the other members of the group subject to state F taxation. In order to determine if state F is taxing only P's separate company income, it is necessary to compute P's separate company taxable income using only P's income (excluding portfolio dividends) and state F apportionment factors. If P's separate company taxable income equals or exceeds the $462,500 of remaining state F taxable income, it is presumed that state F is only taxing P's separate company income and the entire amount of the remaining state F tax should be allocated and apportioned in the manner described in *Example* (25).

(D) If P's separate company taxable income is less than the $462,500 of remaining state F taxable income (after reduction for the $37,500 of state F taxable income attributable to portfolio dividends), it is presumed that state F is taxing the income of other affiliates included in the unitary group. In such a case, it is necessary to determine if the state is imposing tax in part on the foreign source income of foreign affiliates and 80/20 companies included in the unitary group or is limiting its taxation to U.S. source income of domestic members of the unitary group.

(E) Assume for purposes of this example that P's separate company taxable income equals $396,000, computed by multiplying P's state F taxable income of $900,000 (P's state F taxable income (before state F apportionment) of $1,050,000 less the $150,000 of foreign source portfolio dividends) by P's separate company state F apportionment fraction of 44 percent. Because P's separate company taxable income of $396,000 is less than the $462,500 of remaining state F taxable income, state F is presumed to be taxing the income of P's affiliates that are included in the unitary group. To determine if state F tax is being imposed on members of the unitary group (other than P) that produce foreign source income, it is necessary to compute a hypothetical state F taxable income for all companies in the unitary group with significant U.S. operations. (For this purpose, the hypothetical group of companies with significant domestic operations is referred to as the "water's edge group.") State F is presumed to be taxing income of foreign corporations and 80/20 companies to the extent that the remaining state F taxable income ($462,500) exceeds the hypothetical state F taxable income for the water's edge group.

(F) The members of the water's edge group are P and US1. The unitary business income of this water's edge group equals $1,000,000, the sum of $900,000 (P's state F taxable income (before state F apportionment) of $1,050,000 less the $150,000 of foreign source portfolio dividends) and $100,000 (US1's separate company state F taxable income). For purposes of this example, the state F apportionment fraction determined on a unitary basis for this water's edge group is assumed to equal 40 percent, the average of P and US1's state F payroll, property, and sales factor ratios (the water's edge group's state F factors over its worldwide factors). Applying this apportionment fraction to the $1,000,000 of unitary business income of the water's edge group yields state F water's edge taxable income of $400,000. The excess of the remaining $462,500 of state F taxable income over the $400,000 of state F water's edge taxable income equals $62,500, and is attributable to the inclusion of US2 and FS in the unitary group. The state F tax attributable to US2 and FS equals $6,250 and is allocated entirely to a class of gross income consisting of foreign source general limitation income, because the income of FS and US 2 consists entirely of such income. The $6,250 of state F tax attributable to US2 and FS is subtracted from the remaining $46,250 of net state F tax, and P has $40,000 of state F tax remaining to be allocated and apportioned.

(G) To the extent that the remaining state F taxable income ($400,000) exceeds P's separate company state F taxable income ($396,000), it is presumed that state F is taxing U.S. source income of members of the water's edge group other than P. In these facts, the $4,000 excess over P's separate company state F taxable income is attributable to the inclusion of US1 in the unitary group. The $400 of state F tax attributable to the inclusion of US1 in the unitary group (10 percent of $4,000) is allocated entirely to U.S. source income. P's remaining $39,600 of state F tax ($40,000 of state F tax attributable to the water's edge group minus $400 of state F tax attributable to US1 and allocated to U.S. source income) is the state F tax attributable to P's separate company state F taxable income and is to be allocated and apportioned together with P's state G tax of $15,000 and state H tax of $6,000 as illustrated in *Example* (25).

(H) In allocating the $60,600 of state tax liabilities ($39,600 state F tax attributable to P's separate company state F income + $15,000 state G tax + $6,000 state H tax) under *Example* (25), P's state taxable income in state G and state H ($300,000 + $300,000) must be added to P's separate company state F taxable income ($396,000). The resulting $996,000 of combined state taxable incomes is compared with $750,000 of U.S. source income on P's Federal income tax return. It is presumed that the $60,600 of state income taxes are imposed in part on $246,000 of foreign source income, which is the excess of P's combined state taxable incomes over P's Federal U.S. source taxable income. Accordingly, P's remaining deduction of $60,600 ($39,600 + $15,000 + $6,000) for state income taxes is related and allocable to both P's foreign source and domestic source income and is subject to apportionment.

(iii) *Apportionment.* The $60,600 of state taxes (the remaining $39,600 of state F tax + $15,000 of state G tax + $6,000 of state H tax) must be apportioned between foreign source general limitation income and U.S. source income for Federal income tax purposes. This apportionment is based upon the relative amounts of foreign source general limitation taxable income and U.S. source taxable income comprising the $996,000 of income subject to tax by the states after reducing the total amount of income subject to tax by the portfolio dividends and income attributable to the inclusion of other members of the unitary group. The deduction for the $60,600 of state income taxes is apportioned as follows:

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $60,600 × ($246,000/$996,000)	$14,967
State income tax deduction apportioned to income from sources within the United States (residual grouping): $60,600 × ($750,000/$996,000)	45,633
Total apportioned state income tax deduction	60,600

Of the total state income taxes of $71,000, the amount allocated and apportioned to foreign source general limitation income is $24,967—the sum of $14,967 of state F, state G, and state H taxes apportioned to foreign source general limitation income, $3,750 of state F tax allocated to foreign source portfolio dividend income, and the $6,250 of state F tax allocated to foreign source general limitation income as the result of state F's worldwide unitary method of taxation (*i.e.*, the inclusion of US2 and FS in the unitary group). The total amount of state income taxes allocated and apportioned to U.S. source income equals $46,033—the sum of the $400 of state F tax attributable to the inclusion of US1 in the state F unitary group and $45,633 of combined states F, G, and H tax apportioned under the method provided in *Example* (25).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved October 7, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-28460 Filed 12-7-88; 3:39 pm]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Parts 2 and 14

Delegations of Authority; Federal Tort Claims

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulations to delegate to the VA General Counsel and designees the authority to adjust, determine, compromise, and settle a claim under the Federal Tort Claims Act where the amount of settlement does not exceed $100,000. This authority was granted to the Administrator under 38 U.S.C. 223 and 28 CFR Appendix to Part 14. The previous authority was limited to $25,000 by 28 U.S.C. 2672. This amendment will facilitate processing of claims under the Federal Tort Claims Act in a more timely manner.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: E. Douglas Bradshaw, Jr., Deputy Assistant General Counsel (021B), Veterans Administration, 810 Vermont Avenue NW., Washington, DC (202) 233-2252.

SUPPLEMENTARY INFORMATION: Section 203 of the Veterans Benefits and Services Act of 1988 (Pub. L. 100-322) added section 223 to Title 38, United States Code, permitting the Administrator to settle tort claims not exceeding an amount to be delegated by the Attorney General, with the delegation not to exceed the maximum amount delegated to the United States Attorneys. The Attorney General has delegated settlement authority to the Administrator not to exceed $100,000.

This amendment to 38 CFR 2.6(e)(1) delegates to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), or those authorized to act for them, authority to consider, ascertain, adjust, determine, compromise, and settle a claim arising under the Federal Tort Claims Act; provided that any award, compromise, or settlement in excess of $100,000 shall be effected only with the prior written approval of the Attorney General or his designee. The amendment also provides for the execution of a memorandum explaining the basis for settlement of a claim in excess of $50,000 to be sent to the Department of Justice, as required by the Attorney General's delegation to the Administrator. Authority is also delegated to the District Counsels or those authorized to act for them and the Deputy Assistant General Counsel (Professional Staff Group I) to consider, ascertain, adjust, determine, compromise, and settle any claim under the Federal Tort Claims Act; provided that any award, compromise, or settlement does not exceed $50,000.

Conforming amendments are made to 38 CFR 14.602(a), 14.602(a)(4), and 14.602(b)(2), and sections which are no longer necessary are deleted.

Under 38 CFR 1.12 and 5 U.S.C. 553(d)(3), prior publication of these delegations of authority for public comment is unnecessary since they concern only internal VA management. Because a prior notice of proposed rulemaking is not required and will not be published, these changes do not come within the term "rule" as defined in and made subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 602(2).

In any case, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in that Act. No regulatory or administrative burdens are imposed upon small entities. Also, since these amendments are related solely to internal agency management, they do not come within the term "rule" as defined in section 1(a)(3) of Executive Order 12291, entitled Federal Regulation; consequently, they are not subject to requirements of that order.

There are no Catalog of Federal Domestic Assistance numbers associated with these amendments.

List of Subjects in 38 CFR Parts 2 and 14.

Administrative practice and procedure, Claims, Government employees, Lawyers, Legal services, Organization and functions.

Approved: November 9, 1988.

Thomas K. Turnage,

Administrator.

In 38 CFR Part 2, *Delegations of Authority*, and Part 14, *Legal Services, General Counsel*, are amended as set forth below:

PART 2—[AMENDED]

1. In § 2.6, introductory text of paragraph (e), paragraphs (e)(1)(i), and (e)(1)(ii) are revised, and paragraph (e)(1)(iii) is removed, to read as follows:

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(e) *General Counsel.* (1) Under the Federal Tort Claims Act, pursuant to the provisions of 28 U.S.C. 2672; Pub. L. 100-322; 38 U.S.C. 223, and the delegation of authority from the Attorney General in 28 CFR Appendix to Part 14:

(i) Authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, or those authorized to act for them, to consider, ascertain, adjust, determine, compromise, and settle any claim accruing on and after January 18, 1967, and asserted under the Federal Tort Claims Act, as amended by Pub. L. 89-506 (80 Stat. 306), and to execute an appropriate voucher and other necessary instruments in connection therewith; *Provided*, that any award, compromise, or settlement in excess of $100,000 shall be effected only with the prior written approval of the Attorney General or his designee; provided further, that whenever a settlement is effected in an amount in excess of $50,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(ii) Authority is delegated to the District Counsels or those authorized to act for them and the Deputy Assistant General Counsel (Professional Staff Group I) to consider, ascertain, adjust,

determine, compromise, and settle any claim under the Federal Tort Claims Act and to execute an appropriate voucher and other necessary instruments in connection therewith: Provided, That any award, compromise, or settlement does not exceed $50,000.

(Authority: 38 U.S.C. 223; 28 CFR Appendix to Part 14)

* * * * *

2. In § 14.602, paragraphs (a), (a)(4), and (b)(2) are revised to read as follows:

§ 14.602 Scope and authority to consider claims.

(a) The Administrator and those delegated such authority in § 2.6(e) of this chapter are authorized to consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the United States in accordance with regulations prescribed by the Attorney General (38 CFR 14.1 *et seq.*). Any award, compromise, or settlement exceeding $100,000 shall be effected only with the prior written approval of the Attorney General or designee. In addition, a claim may be compromised or settled only after consultation with the Department of Justice when:

(Authority: 38 U.S.C. 223; 28 CFR Appendix to Part 14)

* * * * *

(4) For any reason, the compromise of a particular claim, as a practical matter, will, or may, control the disposition of a related claim in which the amount to be paid may exceed $100,000; or

(Authority: 38 U.S.C. 223; 28 CFR Appendix to Part 14)

* * * * *

(b) * * *

(2) Where full development of a claim indicates that liability exists and the potential settlement value exceeds $50,000, the District Counsel who received the claim will submit the case to the General Counsel for consideration.

(Authority: 38 U.S.C. 223; 28 CFR Appendix to Part 14)

* * * * *

§ 14.602 [Amended]

3. In § 14.602, paragraphs (c) and (e) are removed. Paragraph (d) is redesignated as paragraph (c).

[FR Doc. 88-28427 Filed 12-9-88; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Endorsement of Single-Piece Rate Third-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule requires that all pieces of third-class matter mailed at the single-piece third-class rate be endorsed "Third-Class", so that postal employees can better identify it in checking postage and providing the appropriate service. Formerly only sealed pieces of single-piece rate third-class mail had to be so endorsed.

EFFECTIVE DATE: March 19, 1989.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

SUPPLEMENTARY INFORMATION: On October 13, 1988, the Postal Service published a proposed rule to require that all mailpieces sent at the third-class single-piece rates of postage, whether sealed or not, be endorsed "Third-Class" (53 FR 40097-40098). The Postal Service received three comments concerning the proposed rule.

One commenter supported the proposal. A second commenter found it "noncontroversial." That same commenter, however, questioned why single-piece rate third-class mail should continue as a subclass since so little demand exists for a level of service that offers no advantage over a superior service of equal price (e.g., single-piece First-Class Mail). While the commenter may be correct in perceiving little to attract customers to single-piece third-class mail in the lower weight increments where it is priced the same as First-Class Mail, the subclass extends up to, but not including, sixteen ounces. In the increments above four ounces, the price spread compared to single-piece First Class Mail grows quickly. Further, regular First-Class rates extend only to pieces not exceeding 11 ounces, beyond which the higher Priority Mail rates apply. For example, a 15.5-ounce item mailed at the existing third-class single-piece rate would cost $1.50; the same item mailed at Priority Mail rates would cost $2.40. Therefore, notwithstanding the aforementioned duplication in the lower weight cells, the Postal Service feels that single-piece rate third-class mail continues to offer an alternative for customers who do not desire the level of service associated with First-Class and Priority Mail.

The third commenter opposed the proposal, stating it would serve no useful purpose and arguing that failure to comply with the proposed rule would result in the piece being reclassified as First-Class Mail. Such action by the Postal Service, it is said, would not represent a real "penalty" to the mailer, and would not serve as an incentive to comply. We recognize the fact that unendorsed single-piece third-class mail will be treated as First-Class Mail; at the same time, however, we must point out that this treatment is not unearned since pieces weighing up to four ounces would bear sufficient postage for that rate and service. Also, as noted above, the third-class single-piece rate is not limited to pieces weighing four ounces or less, and there is little benefit to establishing separate marking criteria based on the weight of the piece and how the applicable rate may compare to the comparable First-Class postage. As stated in the proposed rule, aside from questions of classification, postage, and handling, the Postal Service must be able to identify what is in the mailstream for its own measurement purposes. Therefore, despite the absence of a "penalty" for violators in the lower weight increments, we believe there is a benefit in the rule with little or no appreciable impact on the mailing public.

Accordingly, after consideration of all the comments received, the Postal Service hereby adopts the following revisions to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 662—MARKING

2. In Part 662, revise 662.1 to read as follows:

662.1 Single-Piece Rate.

662.11 General.

Each piece mailed at the single-piece third-class rates of postage described in 611.1 must be legibly marked with the words "Third-Class."

662.12 Location.

The marking must appear on the address side of each piece, preferably below the postage and above the name of the addressee. It may be included as part of a permit imprint, or it may be printed adjacent to the meter stamp by a

postage meter. The marking will not be considered adequate if it is included as part of a decorative design or advertisement.

662.13 Unmarked Pieces.

Pieces lacking the endorsement required by 662.11 or not properly marked as required by 662.12 will be treated as First-Class Mail and charged postage at the applicable First-Class rate.

PART 141—STAMPED ENVELOPES, POSTAL CARDS, AEROGRAMMES

3. In Part 141, revise 141.254c to read as follows:

145.254 Postal Instructions.

* * * * *

c. *Third-class Mail.* On single-piece rate third-class mail, whether sealed or not (see also 621.4), the following must appear: *Third-Class.*

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-28503 Filed 12-9-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[FRL-3481-4; NC-038]

Approval and Promulgation of Implementation Plans; State Plans for Designated Facilities and Pollutants; North Carolina: Approval of Minor Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving minor revisions to various regulations in the State Implementation Plan (SIP) and revisions to regulations developed pursuant to section 111(d) of the Clean Air Act (Plan for designated pollutants and facilities) submitted by the North Carolina Department of Natural Resources and Community Development on May 2, 1988. These revisions are of a bookkeeping nature and are the result of the review of the North Carolina Administrative Code by North Carolina's Administrative Rules Review Commission.

DATES: This action will be effective on February 10, 1989, unless notice is received by January 11, 1989, that someone wishes to submit adverse or critical comments. Such notice may be submitted to Gregg Worley at the EPA Regional Office address listed below.

ADDRESSES: Copies of the State submittal for this action are available for public inspection during normal business hours at the following locations:

EPA Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregg M. Worley at the above EPA address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On May 2, 1988, the State of North Carolina submitted to EPA regulatory amendments which were adopted by the Environmental Management Commission on April 14, 1988. These amendments were the subject of three separate public hearings held on February 15, 1988.

The first of these hearings dealt with the adoption of an additional New Source Performance Standard (NSPS). A notice announcing delegation of authority to enforce this NSPS was published on June 22, 1988 (53 FR 23390).

The second hearing dealt with various amendments to regulations which are included in North Carolina's State Implementation Plan (SIP), including provisions for PM_{10}. These regulatory revisions will be handled in a separate notice.

The third hearing dealt with amendments to various regulations that are part of the federally approved SIP. The amendments were made to make corrections and remove out-of-date material. These amendments were not made to meet EPA requirements but were made upon the recommendation of North Carolina's Administrative Rules Review Commission (ARRC) after a review of all the regulations in the North Carolina Administrative Code. It is these regulatory changes that are being considered in today's notice.

Six of the amendments are to regulations that are included in the SIP: 15 NCAC 2D.0103, Copies of Referenced Federal Regulations; 15 NCAC 2D.0304, Preplanned Abatement Program; 15 NCAC 2D.0604, Sources Covered by Implementation Plan Requirements; 15 NCAC 2D.0608, Program Schedule; 15 NCAC 2D.0606, Other Coal or Residual Oil Burners; and 15 NCAC 2H.0607, Copies of Referenced Documents.

The other amended regulations, 15 NCAC 2D.0528, Total Reduced Sulfur from Kraft Pulp Mills, and 15 NCAC 2D.0529, Fluoride Emissions from Primary Aluminum Reduction Plants, are part of North Carolina's 111(d) plan for designated facilities and pollutants, which are not required to be part of the North Carolina SIP. These regulations are approved pursuant to 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants).

SIP Amendments

Regulations 15 NCAC 2D.0103, Copies of Referenced Federal Regulation, and 15 NCAC 2H.0607, Copies of Referenced Documents, have been amended to correct the address of the Washington Regional Office. The new address is Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889. 2D.0103 was first federally approved on April 18, 1977 (42 FR 20133) and subsequently revised three times, with the latest revision being approved on February 29, 1988 (53 FR 5974). 2H.0607 was first federally approved on July 26, 1982 (47 FR 32118), and subsequently revised three times, with the latest revision being approved on February 29, 1988 (53 FR 5974).

Regulation 15 NCAC 2D.0304, Preplanned Abatement Program, was amended to delete an obsolete submittal schedule that required sources to submit emergency abatement plans by April 20, 1972. Language was also added to the regulation to require owners or operators of a source to submit a plan within 30 days of a request for such a plan by the director of the Division of Environmental Management. 2D.0304 was first federally approved on May 31, 1972 (37 FR 10084), and subsequently revised twice, with the latest revision being approved on October 11, 1985 (50 FR 41501).

Regulation 2D.0604, Sources Covered by Implementation Plan Requirements, has been amended to delete an obsolete exemption provision that allowed sources with an approved emissions monitoring system purchased before September 11, 1974, to use that system until April 18, 1982, instead of meeting the new requirements that were adopted

in 1974. 2D.0604 was first federally approved on April 18, 1977 (42 FR 20133), and was revised once, on October 11, 1985 (50 FR 41501).

Regulation 2D.0608, Program Schedule, was amended to delete an obsolete schedule that required sources to submit programs for complying with self-monitoring requirements by October 15, 1976. 2D.0608 was first federally approved on April 18, 1977 (42 FR 20133), and revised once; the revision was approved on October 11, 1985 (50 FR 41501).

Regulation 15 NCAC 2D.0606, Other Coal or Residual Oil Burners, was amended to correct a cross-reference in the statutory authority. 2D.0606 was first federally approved on April 18, 1977 (42 FR 20133), and revised twice, with the latest revision being approved on November 19, 1986 (51 FR 41786).

The preceding amendments are very minor in scope and are of a bookkeeping nature. Consequently, EPA views these regulatory changes as approvable for amendments to the SIP for North Carolina.

Section 111(d) Plan Amendments

Regulation 15 NCAC 2D.0528, Total Reduced Sulfur from Kraft Pulp Mills, was first approved as part of North Carolina's 111(d) Plan for Designated Facilities and Pollutants on July 8, 1983 (48 FR 31407) and amended on July 18, 1986 (51 FR 41788). The original plan contained a compliance schedule which called for final compliance for affected facilities by December 1, 1985. This compliance schedule is now obsolete and consequently is being removed. 2D.0528 is also being amended to make a minor spelling correction.

Regulation 15 NCAC 2D.0529, Fluoride Emissions from Primary Aluminum Reduction Plants, was first federally approved as part of North Carolina's 111(d) plan on December 29, 1981 (46 FR 62852) and amended on July 18, 1986 (51 FR 41788). The original rule contained a compliance schedule which called for final compliance by June 1, 1983. This schedule, which is now obsolete, has been removed. 2D.0529 has also been amended to correct a cross-reference.

The preceding amendments to 2D.0528 and 2D.0529 are minor changes of a bookkeeping nature. Consequently, EPA views these regulatory changes as approvable for amendments to the 111(d) Plan for North Carolina.

EPA is publishing this action without prior proposal because the Agency views it as a noncontroversial amendment and anticipates no adverse comments. This action will be effective February 10, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective February 10, 1989.

Final Action

In view of the minor nature of the previously discussed regulatory changes, EPA is today approving the changes to Regulations 15 NCAC 2D.0103, 2D.0304, 2D.0604, 2D.0606, 2D.0608, 2D.0607, 2D.0528, and 2D.0529.

Under 5 U.S.C. section 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 62

Administrative practice and procedure, Air pollution control, Aluminum, Paper and paper products industry, Fluoride, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: November 9, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(60) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(60) Revisions to 15 NCAC 2D.0103, Copies of Referenced Federal Regulations; 2D.0304, Preplanned Abatement Program; 2D.0604, Sources Covered by Implementation Plan Requirements; 2D.0606, Other Coal or Residual Oil Burners; 2D.0608, Program Schedule; and 2H.0607, Copies of Referenced Documents, were submitted by the North Carolina Department of Natural Resources and Community Development on May 2, 1988.

(i) Incorporation by reference.

(A) Letter of May 2, 1988 from the North Carolina Department of Natural Resources and Community Development and revised regulations 15 NCAC 2D.0103(a)(6), 2D.0304(a), 2D.0604(b), 2D.0606(a)(4)(E), 2D.0608(b), and 2H.0607(a)(6), adopted by the North Carolina Environmental Management Commission on April 14, 1988.

(ii) Additional material—none.

Part 62 of Chapter I, Title 40, Code of Federal Regulations in amended as follows:

PART 62—[AMENDED]

3. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

4. Section 62.8350 is amended by adding paragraph (b)(6) to read as follows:

§ 62.8350 Identification of plan.

* * * * *

(b) * * *

(6) Revisions to regulations 15 NCAC 2D.0528(c), (f), (g), and (h)—Total Reduced Sulfur from Kraft Pulp Mills, and 2D.0529 (a) and (c)—Flouride Emissions from Primary Aluminum Reduction Plants, were submitted by the North Carolina Department of Natural Resources and Community Development on May 2, 1988, following adoption by the North Carolina Environmental Management Commission on April 14, 1988.

[FR Doc. 88–27197 Filed 12–9–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6818]

List of Communities Eligible for the Sale of Flood Insurance; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706. Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717. Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measurements aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the last column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Florida: Hernando County, Unincorporated Areas	120110	Aug. 27, 1974, Emerg.; Apr. 17, 1984, Reg.; Sept. 30, 1988, Susp.; Oct. 25, 1988, Rein.	4–17–84
Iowa: Garber, City of, Clayton County	190076	Mar. 7, 1975, Emerg.; Aug. 1, 1986, Reg.; June 3, 1988, Susp.; Nov. 2, 1988, Rein.	8–1–86
Idaho: Rockland, City of, Power County	160110	Dec. 11, 1975, Emerg.; Apr. 1, 1977, Reg.; July 4, 1988, Susp.; Nov. 2, 1988, Rein.	4–1–77
New York: Gainesville, Village of, Wyoming County	361511	June 27, 1975, Emerg.; Feb. 15, 1985, Reg.; Sept. 16, 1988, Susp.; Nov. 3, 1988, Rein.	2–15–85
Oklahoma: Manitou, Town of, Tillman County	400302	Nov. 26, 1976, Emerg.; Aug. 3, 1982, Reg.; Aug. 4, 1988, Susp.; Nov. 4, 1988, Rein.	8–3–82
Florida: Haines City, City of, Polk County	120266	May 28, 1975, Emerg.; Sept. 16, 1981, Reg.; Mar. 4, 1988, Susp.; Nov. 4, 1988, Rein.	9–16–81
Maryland: Worcester County, Unincorporated Areas	240083	Jan. 29, 1971, Emerg.; Feb. 15, 1979, Reg.; Oct. 18, 1988, Susp.; Nov. 7, 1988, Rein.	2–15–79
Florida: Longwood, City of, Seminole County	120292	Mar. 12, 1975, Emerg.; Mar. 18, 1980, Reg.; Oct. 18, 1988, Susp.; Nov. 11, 1988, Rein.	3–18–80
New York: Hannibal, Village of, Oswego County	360652	Oct. 29, 1974, Emerg.; Apr. 1, 1987, Reg.; Sept. 16, 1988, Susp.; Nov. 11, 1988, Rein.	4–1–87
Idaho: Kooskia, City of, Idaho County	160070	Apr. 4, 1975, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.; Nov. 14, 1988, Rein.	3–18–85
New Mexico: Lordsburg, City of, Hidalgo County	350026	Mar. 19, 1974, Emerg.; Sept. 1, 1978, Reg.; Aug. 16, 1988, Susp.; Nov. 14, 1988, Rein.	9–1–87
Washington: Asotin County, Unincorporated Areas	530007	Nov. 11, 1988, Emerg.; Nov. 11, 1988, Reg	1–6–88
Mississippi: D'Iberville, City of, Harrison County.[1]	280336	Nov. 14, 1988, Emerg.; Nov. 14, 1988, Reg	
Kentucky:			
Mentor, City of, Campbell County	210275	Feb. 21, 1975, Emerg.; Mar. 4, 1980, Reg.; Oct. 18, 1988, Susp.; Nov. 15, 1988, Rein.	3–4–80
Hawesville, City of, Hancock County	210239	May 19, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.; Nov. 17, 1988, Rein.	11–5–86
Texas: Trinidad, City of, Henderson County	480333	Sept. 23, 1975, Emerg.; Jan. 16, 1979, Reg.; Sept. 2, 1988, Susp.; Nov. 18, 1988, Rein.	1–16–79

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Florida:			
Malabar, Town of, Brevard County	120024	Aug. 28, 1974, Emerg.; Sept. 28, 1979, Reg.; Oct. 18, 1988, Susp.; Nov. 18, 1988, Rein.	9-30-82
Melbourne Beach, Town of, Brevard County	125128	Jan. 15, 1971, Emerg.; Sept. 30, 1982, Reg.; Oct. 18, 1988, Susp.; Nov. 10, 1988, Rein.	9-30-82
Arkansas: Reed, Town of, Desha County	050070	July 3, 1975, Emerg.; Nov. 23, 1982, Reg.; Aug. 16, 1988, Susp.; Nov. 28, 1988, Rein.	11-23-82
Pennsylvania: New Britain, Township of, Bucks County	420987	Apr. 18, 1973, Emerg.; Mar. 4, 1988, Reg.; Mar. 4, 1988, Susp.; Nov. 28, 1988, Rein.	3-4-88
Tennessee: Blaine, City of, Grainger County	470398	Nov. 26, 1988, Emerg	
Region I			
Maine:			
Bucksport, Town of, Hancock County	230065	Nov. 4, 1988, Suspension Withdrawn	11-4-88
Ellsworth, City of, Hancock County	230066	do	11-4-88
Region III			
Pennsylvania:			
Conway, Borough of, Beaver County	420107	do	11-4-88
Mead, Township of, Warren County	422123	do	11-4-88
Ohio, Township of, Allegheny County	421089	do	11-4-88
West Virginia:			
Friendly, Town of, Tyler County	540259	do	11-4-88
Middlebourne, Town of, Tyler County	540195	do	11-4-88
Sistersville, City of, Tyler County	540197	do	11-4-88
Tyler County, Unincorporated Areas	540277	do	11-4-88
Region IV			
Florida: Waldo, City of, Alachua County	120003	do	11-4-88
Region V			
Florida: Waldo, City of, Alachua County	120003	do	11-4-88
Illinois: Clark County, Unincorporated Areas	170940	do	11-4-88
Ohio: Geauga County, Unincorporated Areas	390190	do	11-4-88
Wisconsin: Montreal, City of, Iron County	550184	do	11-4-88
Ohio: Rittman, City of, Wayne and Medina Counties	390578	do	11-4-88
Michigan: Grosse Pointe, City of, Wayne County	260228	do	11-4-88
Region VII			
Missouri: Marshall, City of, Saline County	290403	do	11-4-88
Region I			
Connecticut: North Canaan, Town of, Litchfield County	090149	Nov. 18, 1988, Suspension Withdrawn	11-18-88
Maine: Machias, Town of, Washington County	230140	do	11-18-88
Massachusetts: Walpole, Town of, Norfolk County	250254	do	11-18-88
Region III			
Pennsylvania: Findlay, Township of, Allegheny County	421286	do	11-18-88
Region IV			
Florida: St. Augustine, City of, St. Johns County	125145	do	11-18-88
North Carolina: Guilford County, Unincorporated Areas	370111	do	11-18-88
Region VI			
Texas: Fort Worth, City of, Tarrant and Denton Counties	480596	do	11-18-88

[1] The City of D'Iberville has adopted Harrison County's Flood Insurance Study with accompanying maps that became effective on June 15, 1984 for floodplain management and flood insurance purposes.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: December 7, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-28443 Filed 12-9-88; 8:45 am]

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DEPART

Animal a
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7 CFR Pa

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SUPPLEM
October
Federal

Proposed Rules

Federal Register
Vol. 53, No. 238
Monday, December 12, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-197]

Interstate Movement of Citrus Fruit and Calamondin and Kumquat Plants From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment periods.

SUMMARY: We are reopening and extending the comment periods for two documents: (1) A proposal to revise the "Citrus Canker" regulations and (2) an interim rule that amended the nursery inspection provisions of those regulations. Extending these comment periods will give interested persons additional time to prepare comments.

DATE: Consideration will be given only to written comments that are postmarked or received on or before December 27, 1988.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please specify the document to which your comments are addressed, that is, either Docket 88–105 or Docket 88–180. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141, South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782; 301–436–6365.

SUPPLEMENTARY INFORMATION: On October 21, 1988, we published in the **Federal Register** (53 FR 41538–41549, Docket 88–105) a proposal to revise the "Citrus Canker" regulations, contained in 7 CFR Part 301, Subpart 301.75. Comments on the proposal were to be postmarked or received on or before November 21, 1988. On November 8, 1988, we published in the **Federal Register** (53 FR 45071–45073, Docket 88–180) an interim rule that amended the nursery inspection provisions of the "Citrus Canker" regulations. Comments on this docket also were to be postmarked or received on or before November 21, 1988.

In response to a request from a commenter, we are reopening the comment period for our proposed rule, Docket 88–105. In conjunction with this action, we are also reopening the comment period for Docket 88–180. We will consider all written comments on these dockets that are postmarked or received on or before December 27, 1988. The new deadline will give interested persons additional time to prepare comments.

Done in Washington, DC, this 7th day of December, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–28515 Filed 12–9–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 971

[FV–89–007]

Lettuce Grown in Lower Rio Grande Valley in South Texas; Proposed Amendment to Continuing Handling Regulation To Authorize a New Container and Change the Effective Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize a new carton for shipping South Texas lettuce and change the beginning of the effective period of the handling regulation from December 1 to November 15. The intent of these actions is to meet the industry's need for a container of the proper dimensions for palletization and to make the effective period of the handling regulation coincide with the shipping season.

DATE: Comments must be received by January 11, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR Part 971), as amended, regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of South Texas lettuce subject to regulation under the marketing order, and approximately 30 producers in the production area. The Small Business

Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas lettuce may be classified as small entities.

As of October 14, 1988, estimated South Texas lettuce acreage planted was 1,086 acres compared to 476 acres at the same time in 1987. Total plantings for the 1988–89 season are expected to approximate 2,500 acres, which is up considerably from last year's total of 1,629 acres. Total shipments of South Texas lettuce for the 1987–88 crop were approximately 738,000 cartons. Total shipments for the 1988–89 crop are projected by the committee at 750,000 cartons. The majority of the crop is shipped to the fresh markets, with only a small volume utilized by processors.

The handling requirements for South Texas lettuce are specified in § 971.322 (51 FR 2, January 2, 1986). The current requirements for South Texas lettuce specify the inside dimensions of the four containers that may be used to pack lettuce and the number of heads that may be packed per container. Additionally, inspection is required and packaging lettuce on any Sunday or on Christmas Day is prohibited.

This proposed rule would authorize a new container for shipping South Texas lettuce and change the beginning of the effective period for the handling regulation for December 1 to November 15. These changes were unanimously recommended by the South Texas Lettuce Committee.

The four containers currently authorized under the handling regulation do not have the correct dimensions necessary to be properly stacked on pallets. The recommended new container, with inside dimensions of 23¼ inches (length) × 15¼ inches (width) × 10⅜ inches (depth), is of proper size to be palletized. The dimensions of a standard pallet are 48 inches (length) × 40 inches (width). The recommended container would be stacked in layers of five on the pallet and 100 percent pallet utilization would be possible when using such container.

The majority of lettuce shipped from California and Arizona, the top two lettuce producing States, is shipped on pallets. The use of pallets reduces the handling of individual containers, which in turn reduces damage caused by excessive handling and reduces handling costs. Palletized loads are preferred by produce warehouses and retail outlets because of the ease of loading and unloading palletized merchandise by fork lifts and pallet jacks. Authorizing a container of the correct size to be palletized should facilitate the efficient movement of lettuce from the packinghouse to the consumer.

The use of this container would enable lettuce shippers to take advantage of the benefits derived by the use of pallets. Texas lettuce shippers would also be able to fill orders for palletized loads and compete with California and Arizona shippers for this market. The proposed container is designated as carrier container No. 79–47, which is consistent with the manufacturers identification number. In addition, the proposed regulation would require that only 18, 24, or 30 heads of wrapped and unwrapped lettuce may be packed in this container. Packing 24 or 30 heads of lettuce in the proposed container is the industry norm. However, the committee believes it is necessary to include the 18-count limit to allow for packing larger heads of lettuce.

In recent years, the shipping season for South Texas lettuce has begun in late November rather than early December. This shift has been caused by changes in cultural practices, such as the use of black plastic and the transplanting of seedlings. The committee has recommended that the beginning of the effective period for the handling regulation be changed from December 1 to November 15 wo that it will coincide with the shipping season. This action will ensure the uniform application of marketing order requirements to all shipments of South Texas lettuce.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce, South Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 971 be amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 971 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

2. Section 971.322 is amended by revising the introductory text, redesignating paragraphs (a)(4) and (a)(5) as (a)(5) and (a)(6), respectively, and adding new paragraphs (a)(4) and (b)(3) to read as follows:

§ 971.322 Handling regulation.

During the period beginning November 15 and ending March 31 each season, no person shall handle any lot of lettuce grown in the production area unless such lettuce meets the requirements of paragraphs (a), (b), and (c) of this section, or unless such lettuce is handled in accordance with paragraph (d) or (e) of this section. Further, no person may package lettuce during the above period on any Sunday, or on Christmas Day unless approved in accordance with paragraph (f) of this section.

(a) * * *

(4) Cartons with inside dimensions of 10⅜ inches × 15¼ inches × 23¼ inches (designated as carrier container No. 79–47), or

* * * * *

(b) * * *

(3) Lettuce heads in carrier container No. 79–47 may be packed only 18, 24, or 30 heads per container.

Dated: December 7, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–28450 Filed 12–9–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Policy Statement on Exemptions From Regulatory Control

AGENCY: Nuclear Regulatory Commission.

ACTIONS: Advance notice of proposed statement and meeting.

SUMMARY: The NRC is in the process of developing a broad policy on exemptions from regulatory control for practices whose health and safety impacts could be considered below regulatory concern. This policy statement would provide for more efficient and consistent regulatory actions in connection with exemptions from various specific Commission requirements. The Commission, in formulating this Advance Notice, is seeking public input on some specific

questions which are key considerations in developing such a policy. The NRC staff will conduct a meeting to inform the public of its intentions, specifically to clarify and answer questions concerning the advance notice, and to hear preliminary views concerning a policy for exemptions with emphasis on the specific questions raised by the Commission.

DATES: Meeting to be held on January 12, 1989. Written comments should be submitted by January 30, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can only be given as to comments received on or before this date.

ADDRESSES: Meeting will be held at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814 (4 blocks north of the Bethesda Metro Station). Telephone: (301) 652–2000, 1–800–465–4329. Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch. Comments may be delivered to 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. weekdays. Copies of the comments received may be examined and copied for a fee at the NRC Public Document Room at 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, telephone (301) 492–3638, or William R. Lahs, telephone (301) 492–3774, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555.

SUPPLEMENTARY INFORMATION:

International Workshop

In addition to conducting this public meeting, the Commission has sought input from the international regulatory community through an international workshop on exemptions from regulatory control which was held October 17–19, 1988 in Washington, DC. The importance of such interaction stems from the fact that many existing and potential exemptions involve radioactive materials purposefully used in consumer products or introduced into various products or materials through the recycling of contaminated scrap, either of which may enter international trade. Even effluents and waste disposal can involve exposures to people in countries other than those from which the effluent or waste originated. This aspect is a significant issue in the European community. Thus, some degree of consistency internationally is desirable, since exemption decisions can affect populations outside each country's border. It is hoped that exchanges of ideas and information such as occurred at the international workshop will, besides providing one avenue of input to the Commission's actions, lead toward a greater degree of consistancy in such exemptions world-wide. At the international workshop, the "Advance Notice of the Development of a Commission Policy on Exemptions from Regulatory Control for Practices Whose Public Health and Safety Impacts are Below Regulatory Concern", presented in this notice, was made available for discussion. The transcript of the international workshop which includes all the papers presented at the meeting may be examined and copied for a fee at the NRC Public Document Room at 2120 L Street, NW., Washington, DC.

Advance Notice of the Development of a Commission Policy

Introduction and Purpose

Over the last several years, the Commission has become increasingly aware of the need to provide a general policy on the appropriate criteria for release of radioactive materials from regulatory control. To address this need, the Commission is expanding upon its existing policy for protection of the public from radiation, currently expressed in existing regulations (Title 10, Code of Federal Regulations) and policy statements (30 FR 3462, Use of Byproduct Material and Source Material, dated March 16, 1965; 47 FR 57446, Licensing Requirements for Land Disposal of Radioactive Waste, dated December 27, 1982; and 51 FR 30839, General Statement of Policy and Procedures Concerning Petitions Pursuant to § 2.802 for Disposal of Radioactive Waste Streams Below Regulatory Concern, dated August 29, 1986). The expansion includes the development of an explicit policy on the exemption from regulatory control of practices whose public health and safety impacts are below regulatory concern. A practice is defined in this policy as an activity or a set or combination of a number of similar sets of coordinated and continuing activities aimed at a given purpose which involve the potential for radiation exposure. Under this policy, the definition of "practice" is a critical feature which will assure that the formulation of exemptions from regulatory control will not allow deliberate dilution of material or fractionation of a practice for the purpose of circumventing controls that would otherwise be applicable.

The purpose of this policy statement is to establish the basis upon which the Commission may initiate the development of appropriate regulations or make licensing decisions to exempt from regulatory control persons who receive, possess, use, transfer, own, or acquire certain ratioactive material. This policy is directed principally toward rulemaking activities, but may be applied to license amendments or license applications involving the release of licensed radioactive material either to the environment or to persons who would be exempt from Commission regulations. It is important to emphasize that this polciy does not assert an absence or threshold of risk but rather establishes a baseline where further government regulations to reduce risks is unwarranted.

The concept of regulatory exemptions is now new. For example, in 1960 and 1970, the Commission promulgated tables of exempt quantities and concentrations for radioactive material which a person, under certain circumstances, could recieve, possess, use, transfer, own, or acquire without a requirement for a license (25 FR 7875; August 17, 1960 and 35 FR 6426; April 22, 1970). Other exemptions allowing distribution of consumer products or other devices to the general public, or allowing releases of radioactive material to the environment, have been embodied in the Commission's regulations for some time. More recently, the Low Level Radioactive Waste Policy Amendments Act of 1985 directed the Commission to develop standards and procedures for expeditious handling of petititons to exempt from regulation the disposal of slightly contaminated radioactive waste material that the Commission determined to be below regulatory concern. The Commission responded to this legislation by issuing a policy statement on August 29, 1986 (51 FR 30839). That statement contained criteria which, if satisfactorily addressed in a petition for rulemaking, would allow the Commission to act expeditiously in proposing appropriate regulatory relief on a "practice-specific" basis consistent with the merits of the petition.

The Commission believes that these "practice-specific" exemptions should be encompassed within a broader NRC policy which defines levels of radiation risk below which specified practices would not require NRC regulation based on public health and safety interests. For such exemption practices, the Commission's regulatory involvement could therefore be essentially limited to licensing, inspection, and compliance activities associated with the transfer of

the radioative material from a controlled to an exempt status.

The Commission recognizes that, if a national policy on exemptions from regulatory control is to be effective, Agreement States will pay an important implementation role. In the past, States have been encouraging findings that certain wastes are below regulatory concern and the Commission believes that States will support an expansion of these views to all practices involving exempt distribution or release of radioactive material. The Commission intends that rulemakings codifying regulatory control exemptions will be made a matter of compatibility for Agreement States. Consequently, any rulemakings that evolve from this policy will be coordinated with the States.

Advisory and scientific bodies have offered diverse views to the Commission in anticipation of this Policy Statement. There is not clear consensus based on existing scientific evidence or research regarding the selection of numerical criteria for use in this Policy Statement. Further, the Commission is aware that there are differing views within the NRC staff on the selection of numerical criterial for BRC.

In the absence of a scientific consensus, it is the Commission's task to assess the diversity of views in establishing a responsible BRC policy. The authority and responsibility to make the final selection of criteria rests with the Commission. Criteria selected must: (1) Provide reasonable assurance that public health and safety will be protected, and (2) consistent with such assurance, permit practices in the public domain which involve the use of radioisotopes for which society perceives a demand.

It is recognized that there is a delicate balance here. Criteria can be set sufficiently restrictive such that there is absolute assurance that health and safety will always be protected, no matter what events might transpire. However, in doing so, the regulator may then place undue and unnecessary restrictions on practices which should be permitted because of otherwise reasonable social, economic, or industiral considerations. There is always the danger of over-regulation which results in effects that are felt in areas where the NRC does not have authority and responsibility. Moreover, the Atomic Energy Act does not require absolute assurances of safety in the use of radioactive material and licensed facilities.

The numerical criteria ultimately selected will have significant impact on nuclear regulation here in the United States and potentially in the international community. The values under consideration in this Policy Statement do not necessarily agree with those selected or under consideration by other countries. The Commission has carefully reviewed those alternate criteria, and does not find significant scientific evidence that would dictate preferential selection of any of those views over what is proposed in this Policy Statement.

Radiation Protection Principles

The Commission recognizes that three fundamental principles of radiation protection have historically guided the formulation of a system of dose limitation to protect workers and the public from the potentially harmful effects of radiation. They are: (1) Justification of the practice, which requires that there be some net benefit resulting from the use of radiation or radioactive materials, (2) dose limits, which define the upper boundary of adequate protection for a member of the public which should not be exceeded in the conduct of nuclear activities, and (3) ALARA, which requires that radation dose be as low as is reasonably achievable, economic and social factors being taken into account. The term, ALARA, is an acronym for As Low As is Reasonably Achievable. The Commission is interested in assessing how these principles should be applied in establishing appropriate criteria for release of radioactive materials from regulatory control.

Because of the absence of observed health effects below 5 rem/year (50 mSv/year), scientific experts including the International Commission on Radiological Protection (ICRP) and the National Council on Radiation Protection and Measurements (NCRP) make the assumption that the frequency of occurrence of health effects per unit does at low dose levels is the same as at high doses (10 RAD (0.1 Gy)) where health effects have been observed and studied in humans and animals. This linear non-threshold hypothesis assumes that the risk of radiation induced effects (principally cancer) is linearly proportional to dose, no matter how small the dose might be. The coefficient used in the model as a basis for estimating statistical health risk is on the order of 2×10^{-4} risk of fatal cancer per person-rem of radiation does (2×10^{-2} per SV). The Commission recognizes that it is a conservative model based upon data collected at relatively high doses and dose rates which is then extrapolated to the low dose and dose rate region where there are no statistically reliable epidemiological data available. Alternative hypotheses have been proposed and reevaluations of the data base at higher doses continue. The Commission believes that use of the linear non-threshold hypothesis allows the theoretical establishment of upper limits on the number of heatlh effects that might occur at very low doses which are the subject of the exemption policy.

The risk of death to an individual, as calculated using the linear model, is shown in Table 1 for various defined levels of individual dose. A radiation exposure of 10 mrem per year (0.1 mSv per year) for a lifetime corresponds theoretically to an increase of 0.1% of the individual's annual risk of cancer death. The lifetime risk is based upon the further assumption that the exposure level is the same for each year of a 70-year lifetime.

In estimating the dose rates to members of the public that might arise through the use of various practices for which exemptions are being considered, the Commission has decided to apply the concept of the "effective dose equivalent." This concept, which is based on a comparison of the delayed mortality effects of ionizing radiation exposures, permits through use of weighting factors, the calculation of the whole body dose equivalent of partial body exposures. This approach was originally developed by the International Commission on Radiological Protection and was first expressed in its Publication 26 issued in 1977. Since that time, the concept has been reviewed and evaluated by radiation protection organizations throughout the world and has gained wide acceptance.

TABLE 1 [1]

Incremental annual dose	Incremental annual risk	Lifetime risk from continuing annual dose
100 mrem [3]	$2X10^{-5}$	$1X10^{-3}$
10 mrem [2]	$2X10^{-6}$	$1X10^{-4}$
1 mrem	$2X10^{-7}$	$1X10^{-5}$
0.1 mrem	$2X10^{-8}$	$1X10^{-6}$

[1] Risk coefficient of $2X10^{-4}$ per rem ($2X10^{-2}$ per Sv) based upon publications of the ICRP.

[2] For purposes of comparison, the annual risk to an individual of dying from cancer from all sources in the U.S. is 1 in 500. The additional risk to an individual of dying from cancer when exposed to 10 mrem (0.1 mSv) is 2 in one million.

[3] Unless otherwise indicated, the expression of dose in mrem refers to the Total Effective Dose Equivalent. This term is the sum of the deep dose equivalent for sources external to the body and the committed effective dose equivalent for sources internal to the body.

The Commission recognizes that it is impossible to measure risk to individuals or populations directly, and,

that in most situations, it is impractical to measure annual doses to individuals at the low levels implied by exemption decisions. Typically, radioisotope concentrations or radiation levels from the material to be exempted are the actual measurements that can be made, and doses are then estimated by exposure pathway analysis combined with other types of assumptions related to the ways in which people might become exposed. Under such conditions, conservative assumptions are frequently used in modeling so that the actual dose is on the low side of the calculated dose. The Commission believes that this is the appropriate approach to be taken when determining if an exemption from regulatory controls is warranted.

Collective dose is the sum of the individual doses resulting from a practice or source of radiation exposure. By assigning collective dose a monetary value, it can be used in cost benefit and other quantitative analysis techniques. It is a factor to consider in balancing benefits and societal impact.

Considerations in Granting Exemptions From Regulatory Control

The following elements are being considered by the Commission as a basis for evaluating practices which are proposed to be exempt from regulatory control. These practices, if approved, would result in products containing low levels of radioactive material being distributed to the general public and radioactive effluents and solid waste being released to areas of the publicly-accessible environment.

• Justification—The Commission seeks comment on the extent to which exposures resulting from any practice should be justified. As lower levels of radiation exposure are projected, should lower levels of benefit be required for practice justification? In establishing its exemption policy, should the Commission exclude certain practices for which there appears to be no reasonable justification? In considering proposals for exemptions, should the Commission evaluate the social acceptability of practices? Should the Commission determine a practice to be unjustified if nonradioactive economical alternatives exist?

• Dose Limits and Criterion—Individual doses from practices exempted under this policy should not be allowed to exceed 100 mrem per year (1 mSv per year). This is the dose limit for members of the public specified in the final revision of 10 CFR Part 20, Standards for Protection Against Radiation. The dose limits in the final revision of 10 CFR Part 20 apply to all sources of radiation exposure under a licensee's control (natural background and medical exposures are excluded). Because of the small risks involved, a 10 mrem (0.1 mSv) individual dose criterion is proposed as the basis for exemption decisions based on simple analysis and judgements. The Commission specifically seeks comment on the need for establishing a collective dose limit in addition to an individual dose criterion. If such a collective dose criterion is needed, what is the basis for this need? If the Commission decides that a collective dose criterion is needed, what approaches allowing truncation of individual dose in calculation of collective dose or weighting factors for components of collective dose would be appropriate? What alternatives should be considered for assessing societal impact?

• ALARA—The ALARA principle generally applies to determining dose levels below which exemptions may be granted on a cost-benefit basis. However, it is the purpose of this policy to establish criteria which would, in effect, delineate achievement of ALARA without cost-benefit analysis.

Although it is possible to reasonably project what the dose will be from a practice, and then take this information into account in controlling regulated practices so that the dose limits are not exceeded, exemptions imply some degree of loss of control. The Commission believes that a key consideration in establishing a policy for exemptions, and subsequently in specific rulemaking or licensing decisions, is the question of whether individuals may experience radiation exposure approaching the limiting values through the cumulative effects of more than one practice, even though the exposures from each practice are only small fractions of the limit. The Commission specifically seeks comment on the issue. By appropriate choices of exemption criteria and through its evaluations of specific exemption proposals in implementing the policy, the Commission intends to assure that it is unlikely that any individual will experience exposures which exceed the 100 mrem per year (1 mSv per year) limit.

Principles of Exemption

A major consideration in exempting any practice from regulatory control hinges on the general question of whether or not application or continuation of regulatory controls are necessary and cost effective in reducing dose. To determine if exemption is appropriate, the Commission must determine if one of the following conditions is met:

1. The application or continuation of regulatory controls on the practice does not result in any significant reduction in the dose received by individuals within the critical group and by the exposed population or;

2. The costs of the regulatory controls that could be imposed for dose reduction are not balanced by the commensurate reduction in risk that could be realized.

For purposes of implementing its policy, the Commission recognizes that only under unusual circumstances would practices which cause radiation exposures approaching the 100 mrem per year (1 mSv per year) limit be considered as candidates for exemption. The Commission will consider such circumstances on a case specific basis using the general principles outlined in this policy statement. However, as the doses and attendant risks to members of the exposed population decrease, the need for regulatory controls decreases and the analysis needed to support a proposal for exemption can reasonably be somewhat simplified.

The Commission is evaluating the use of two numerical criteria in defining the region where ALARA has been achieved. They are: (a) A criterion for the maximum individual annual dose reasonably expected to be received as a result of the practice and (b) a measure of societal impact to the exposed population. These criteria are being considered to assure that, for a given exempted practice, no individual will be exposed to a significant risk and that the population as a whole does not suffer a significant impact.

If the individual doses from a practice under consideration for exemption are sufficiently small, the attendant risks will be small compared with other societal risks. The Commission believes that annual individial fatality risks below approximately 10^{-5} (one in 100,000) are of little concern to most members of society. Providing for some margin below this level, the Commission proposes 10 mrem (0.1 mSv) as the level of annual individual exposure. The incremental annual individual cancer fatality risk associated with an exposure level of 10 mrem per year (0.1 mSv per year) is about 2×10^{-6} (two in one million) as indicated in Table 1 and of the order of 0.1 percent (one in one thousand) of the overall risk of cancer death.

In evaluating the need for a collective dose criterion, the Commission recognizes that this criterion could be the limiting consideration for practices involving very small individual doses to very large numbers of people. It is also

recognized that in such cases the collective dose criterion would, in effect, apply the ALARA concept to individual doses less than the below regulatory concern level of 10 mrem per year to the individual. Conversely, where the collective dose criterion would not be limiting, it would serve no purpose. The Commission requests comments on this issue, including comments on what the magnitude of the collective dose criterion, if any, should be.

If the dose is less than the below regulatory concern criteria, then the risk from a practice would be considered to be ALARA without further analysis. The Commission stresses that adoption of the criteria should not be construed as a decision that smaller doses are necessary before a practice can be exempted, while doses above the criteria would preclude exemptions. On the contrary, the criteria simply represent a range of risk which the Commission believes is sufficiently small compared to other individual and societal risks that a cost benefit analysis is not required in order to make a decision regarding the acceptability of an exemption. Practices not meeting these criteria may be granted exemptions on a case-by-case basis in accordance with the principles embodied within this policy. To further emphasize the Commission's recognition that a rigid limitation on collective dose would be inappropriate, it notes that for some practices, such as use of smoke detectors, appreciable benefits can only be attained through extensive utilization and, hence, with a commensurate collective dose.

The Commission is aware that existing regulations of the Environmental Protection Agency establish criteria more restrictive than exemptions which could otherwise be granted under this proposed policy. With regard to its own regulations, the Commission will evaluate whether there are exemption criteria embodied therein for which modification, according to the principles of this policy, would be beneficial.

Exclusions From Exemptions

The Commission's March 16, 1965, notice on the Use of Byproduct Material and Source Material-Products Intended for use by General Public (Consumer Products) (30 FR 3462) provides the basis for the Commission's approval of the use of these materials in consumer products without regulatory control on the consumer-user. This is accomplished by case-by-case exemption of the possession and use of approved items from applicable licensing requirements. Approval of a proposed consumer product depends upon an assessment of exposures of persons to radiation as well as an evaluation of the usefulness of the product.

Certain practices involving radiation or radioactive materials have been judged by NRC to be socially unacceptable regardless of how trivial the resulting dose might be and, therefore, have been excluded from exemption. Excluded practices include, but are not limited to, the intentional introduction of radioactive material into toys and products intended for ingestion, inhalation or direct application to the skin (such as cosmetics).

In addition to socially unacceptable uses of radioactive materials, a question also arises regarding uses where there are clear economical alternatives, and no unique benefits exist from using radioactive material. Where risks are trivial, the regulatory prohibition of such uses could pose an unnecessary regulatory burden by interfering with the conduct of business.

The Commission seeks comments on whether practices should be categorically excluded based on the Commission's judgement regarding social acceptability or the existance of alternatives. An alternative to categorical exclusion could be a case specific determination based on a safety analysis.

Proposals for Exemption

A proposal for exemption must provide a basis upon which the Commission can determine if the basic conditions described above have been satisfied. In general, this means that the proposal should address the individual dose and societal impact resulting from the expected activities under the exemption, including the use of the radioactive materials, the pathways of exposure, the levels of activity, and the methods and constraints for assuring that the assumptions used to define a practice remain appropriate as the radioactive materials move from regulatory control to an exempt status.

If a proposal for exemption results in a rule containing generic requirements, a person applying to utilize the exemption would not need to address justification or ALARA. The Commission decision on such proposals will be based on the licensee's meeting the conditions specified in the rule. The promulgation of the rule would, under these circumstances, constitute a finding that the exempted practice is justified, and that ALARA considerations have been dealt with. This approach is consistent with past practice, e.g., consumer product rules in 10 CFR Part 30.

In evaluating proposals for exemption under this policy, the projected exposures to different components of the exposed population will be considered with regard to the potential that some individuals may receive doses near the 100 mrem per year (1 mSv per year) limit when doses from other practices are also taken into consideration. If exposures from multiple practices can occur which are significantly beyond the individual dose criterion (10 mrem per year (0.1 mSv per year)), the exemption will not be granted without further analysis. As experience is gained, this policy and its implementation will be reevaluated with regard to this issue to assure that the exposures to the public remain well below 100 mrem per year (1 mSv per year).

In addition to considerations of expected activities and pathways, the Commission recognizes that consideration must also be given to the potential for accidents and misuse of the radioactive materials involved in the practice. A proposal for exemption of a defined practice must therefore also address the potentials for accidents or misuse, and the consequences of these exceptional conditions in terms of individuals and collective dose.

Verification of Exemption Conditions

The Commission believes that the implementation of an exemption under this broad policy guidance must be accompanied by a suitable program to monitor and verify that the basic considerations under which an exemption was issued remain valid. In most cases, the products or materials comprising an exempted practice will move from regulatory control to the exempt status under a defined set of conditions and criteria. The monitoring and verification program must therefore be capable of providing the Commission with the appropriate assurance that the conditions for the exemption remain valid, and that they are being observed. The Commission will determine compliance with the specific conditions of an exemption through its established licensing and inspection program and will, from time to time, conduct studies as appropriate to assess the impact of an exempted practice or combinations of exempted practices.

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Tentative Meeting Agenda

I. Introduction and Summary-NRC Staff

II. Discussion of Specific Questions-Brief NRC Staff summary and presentations or questions from scheduled participants.

A. Application of principle of justification including the questions:

1. As lower levels of radiation exposures are projected, should lower levels of benefit be required for justification of a practice which is a candidate for exemption?
2. In establishing exemption policy, should the Commission exclude certain practices for which there appears to be no reasonable justification?
3. In considering proposals for exemption, should the Commission evaluate social acceptability of the practice?
4. Should the Commission determine a practice to be unjustified if non-radiological economical alternatives exist?

B. Individual dose criterion for determining achievement of the "as low as reasonably achievable" (ALARA) principle in exemption decision-making:

1. Is the 10 mrem/year criterion proposed by the Commission appropriate?
2. Is the appropriateness of this number affected by the decision regarding whether a collective dose criterion should be used with the individual dose criterion?
3. Should the individual dose criterion be chosen on the basis of negligible risk as is done internationally (i.e., IAEA Safety Series No. 89) or can a somewhat higher number be used based on a Commission policy decision regarding a level of individual risk for which expenditure of resources is not warranted?
4. How important is international consistency in choosing an individual dose criterion?

C. Use of a collective dose criterion for determining achievement of the ALARA principle in exemption decision-making:

1. Is a collective dose criterion needed in addition to an individual dose criterion?
2. If so, what is the basis of that need?
3. If the Commission decides a collective dose criterion should be used, what should its magnitude be?
4. What alternative to a collective dose criterion should be considered for assessing societal impact?
5. In calculating collective dose, what approaches allowing truncation of individual doses or the use of weighting factors for components of collective dose are appropriate?

D. Approaches for assuring total exposures of individuals from mutiple practices will not exceed the 100 mrem/year limit.

1. Is the approach of generally limiting individuals doses from each source or practice to a fraction of the overall limit appropriate?
2. Although most exempted sources would be expected to involve individual doses which are a small fraction of the overall limit, should flexibility be maintained by considering exemptions on a cost-benefit basis above 10 mrem/year?
3. Is the evaluation of collective dose important in considering the multiple exposure issue?
4. Will the application of justification of practice help to maintain a smaller number of sources making it easier to control overall exposures?
5. How important is monitoring to maintaining assurance that individual exposures do not exceed to the overall limit?

III. General Discussion/Question Period-Comments or questions by scheduled participants. Open to the floor as time permits.

Those members of the public who wish to participate by speaking at the meeting should notify one of the contacts listed above, so that they can be scheduled in the agenda.

Dated in Rockville, Maryland, this 2d day of December 1988.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-28491 Filed 12-9-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-46]

Airworthiness Directives; Sikorsky Aircraft Model S-76 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require a service life limit on the tail rotor horn on Sikorsky Model S-76 series helicopters. The proposed AD is needed to prevent a fatigue failure of the tail rotor horn which could result in loss of directional control of the helicopter and subsequent loss of the helicopter.

DATE: Comments must be received on or before January 11, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193-0007, or delivered in duplicate to Office of the Assistant Chief Counsel, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 88-ASW-46. Comments may be inspected at the above location between the hours of 8 a.m. and 4 p.m. weekdays, except Federal holidays.

A copy of the applicable service bulletin may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, ANE-152, Boston Aircraft Certification Office, New England Region, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Forth Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 88-ASW-46. The postcard will be date/time stamped and returned to the commenter.

As a result of additional fatigue testing by Sikorsky, the FAA has determined that the Sikorsky Model S–76 series helicopter tail rotor horn, Part Number (P/N) 76101–05006, component has a limited service life. A tail rotor horn component fatigue failure could result in the loss of directional control of the helicopter. Since this condition is likely to exist or develop on Sikorsky Model S–76 series helicopters incorporating this design, the proposed AD would require a service life limit be placed on the tail rotor horn component on Sikorsky Model S–76 series helicopters.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 300 helicopters at an added cost of $16,000 each for every 12,000 flight hours or $1.33 each flight hour. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact, positive or negative, is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S–76 series helicopters certificated in any category that are equipped with tail rotor horn P/N 76101–05006.

Compliance is required as indicated, unless already accomplished.

To prevent possible fatigue failure of the tail rotor component, which could result in a reduction of directional control and hazardous tail rotor vibration in the helicopter, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD or before the accumulation of 12,000 hours' time in service, whichever occurs later, replace the tail rotor horn, P/N 76101–05006, with a serviceable tail rotor horn that has not exceeded 12,000 hours' time in service. Thereafter, replace the tail rotor horn P/N 76101–05006, with a serviceable tail rotor horn before the accumulation of 12,000 hours' time in service:

(b) Operators who have not kept records of hours' time in service on individual tail rotor horn component parts must substitute the hours' time in service of the tail rotor blade bonded assembly, P/N 76101–05020 or P/N 76088–20077.

(c) For purposes of complying with this AD, the hours' time in service for the individual tail rotor horn and blade components that were not installed at the time of issuance of the initial rotorcraft airworthiness certificate must be determined from rotorcraft records.

(d) Upon request, an alternate means of compliance which provides a level of safety equivalent to the requirements of this AD may be used when approved by the Manager, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7118.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7118, may adjust the compliance time specified in this AD.

Issued in Fort Worth, Texas, on December 1, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88–28432 Filed 12–9–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Organization and Functions; Proposed Consolidation of Tampa, St. Petersburg, and Port Manatee, FL, for Marine Purposes

AGENCY: Customs Service, Treasury.

ACTION: Proposed limited consolidation of ports.

SUMMARY: This document proposes to amend the Customs Regulations to consolidate the ports of entry of Tampa, St. Petersburg, and Port Manatee, Florida, for marine purposes only. If adopted, this change would enable Customs to obtain more efficient use of its personnel, facilities and resources. It would eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. Moreover, it would simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved, thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

DATE: Comments must be received on or before February 10, 1989.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2119, Washington, DC 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–9425).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to continue to provide better service to carriers, importers, and the public, Customs proposes to consolidate the ports of entry of Tampa, St. Petersburg, and Port Manatee, Florida, located in the Tampa, Florida, Customs district in the Southeast Customs Region, for marine purposes only.

Because of the close proximity of the respective ports of entry in the Tampa Bay area, and the similar services performed, it was estimated that the proposed consolidation would significantly reduce costs without impairing Customs ability to provide services to area businesses and to the general public. Customs believes that the proposed consolidation will result in a more economical and efficient use of its personnel and resources in carrying out the Customs mission.

Under the present system, a vessel entering Tampa Bay and wishing to touch at more than one port must enter at the first port and obtain a permit to proceed to travel up the bay a short distance to the next port where it also must enter. This is an unnecessary documentation burden on both Customs

and the vessel operators. Under the proposed consolidation, each of the ports, Tampa, St. Petersburg, and Port Manatee, would retain its port code and geographic limits. Although each port would retain its identity, the 3 ports would be designated as a consolidated port in Tampa Bay for purposes of the vessel arrival, entry and clearance laws, which would benefit all the ports. It would not be necessary for vessels entering one of the consolidated ports to obtain a permit in order to proceed to another of the consolidated ports. The original vessels entry documentation would describe the ports which the vessel intended to touch and the cargo to be unladen at each location. In addition, vessel entry could be filed either at the port for which the cargo is destined or at the Tampa District office.

The 3 ports would be considered to be one port for the purposes of the navigation laws. All of the requirements prescribed by the navigation laws administered and enforced by Customs, such as reporting the arrival and making formal entry of vessels arriving at the consolidated marine port from a foreign or another U.S. port (depending upon the vessel's nationality) and obtaining a permit to proceed between the consolidated port and other U.S. ports, would have to be complied with, as is now the case in existing consolidated ports.

It is anticipated that the proposed consolidation will also result in reducing penalties incurred under the navigation laws if carriers fail to enter and properly clear merchandise being shipped in a residue cargo movement within the consolidated marine port, and will reduce paperwork for carriers, importers, and Customs.

If this proposal is adopted, there would be no change in the current geographic limits of each port. However, it will be necessary to amend the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), to reflect the consolidation of these ports for the purposes of the navigation laws.

Executive Order 12291

Because this proposal relates to the organization of Customs, it is not a regulation or rule subject to E.O. 12291.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this proposal because it will not have a significant economic impact on a substantial number of small entities.

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the affected areas, it is not expected to be significant because changes in the Customs field organization in other areas have not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Goverment agencies).

PART 101—GENERAL PROVISIONS

If the proposed consolidation of the ports of Tampa, St. Petersburg, and Port Manatee, Florida, for the purposes of the navigation laws, is adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), will be amended as follows:

§ 101.3 [Amended]

In the Southeast Region-Miami, Fla., under the column headed "Name and headquarters," the following phrase would be added under the listing "Tampa, Fla." (The ports of Tampa, St. Petersburg, and Port Manatee, consolidated for purposes of the navigation laws. See T.D. 89– ____, 54 FR ____, 1989.)

The authority citation for Part 101 continues to read as follows:

Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14, 79 Stat. 1317; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. H'dnote. 11), 1624, Reorganization Plan of 1965; 3 CFR 1965 Supp.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Authority

This change is proposed under 19 U.S.C. 66 and 1624 as well as the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Michael H. Lane,

(Acting) Commissioner of Customs.

Approved: November 4, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88–28464 Filed 12–9–88; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Part 1

[INTL–41–88]

Allocation and Apportionment of Deduction for State Income Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to the allocation and apportionment of deductions for state income taxes in computing taxable income from sources inside and outside the United States. The text of those

temporary regulations also serves as the text for this Notice of Proposed Rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 10, 1989. This regulation is proposed to be effective on the date that final regulations are published in the **Federal Register**.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL–41–88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David F. Chan of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:CORP:T:R) (202–634–5404, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary Income Tax Regulations in the Rules and Regulations portion of this issue of the **Federal Register** supplement the Income Tax Regulations (26 CFR Part 1) under sections 861(b), 862(b), and 863(a) of the Internal Revenue Code. These temporary Income Tax Regulations add paragraph (e)(6) and examples (25) through (29) of paragraph (g) of § 1.861–8T. Paragraph (e)((6)(i) of § 1.861–8T as promulgated herein restates the previously promulgated general principle that state, local and foreign income, war profits and excess profits taxes are definitely related and allocable to the gross income with respect to which such taxes are imposed. Paragraph (e)(ii) of § 1.861–8T refers to five examples of the application of the principle in paragraph (e)(6)(i) and provides that methods other than those illustrated in the examples may be more appropriate in facts that differ from those in the examples. Paragraph (e)(6)(iii) of § 1.861–8T provides taxpayers with the option to apply the provisions of paragraph (e)(ii) of § 1.861–8T and examples (25) through (29) of paragraph (g) of § 1.861–8T to deductions for state tax incurred in taxable years beginning before January 1, 1988, which is the effective date of the temporary Income Tax Regulations. Paragraph (g) of § 1.861–8T restates and supplements the language preceding the examples in § 1.861–8(g), and adds examples (25) through (29) to provide five specific examples of the allocation and apportionment of the deduction for state income taxes.

Special Analyses

It has been determined that this proposed rule is not a major legislative regulation subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking which solicits public comment, it has been concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is David F. Chan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in United States, Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary Income Tax Regulations, FR DOC. [T.D. 8236], published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under sections 861(b), 862(b), and 863(a) of the Internal Revenue Code.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–28461 Filed 12–7–88; 3:39 pm]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[INTL—934–86]

Branch Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on proposed regulations.

SUMMARY: This document contains a correction to a notice of a public hearing on proposed regulations relating to the branch tax. This regulation will provide immediate guidance to taxpayers concerning the imposition of tax on profits of a U.S. branch of a foreign corporation that are removed from the branch and on interest that is paid, or deemed paid, by the branch.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On Tuesday, December 6, 1988, the **Federal Register** published a notice of public hearing on proposed regulations under section 884, as added to the Code by section 1241 of the Tax Reform Act of 1986. The notice of public hearing appeared in the **Federal Register** for Tuesday, December 6, 1988, at page 49208 (53 FR 49208).

Need for Correction

As published, the notice of public hearing contains an typographical error in the deadline date for submitting outlines of oral comments to be presented at the public hearing.

Correction of Publication

Accordingly, the publication of the notice of public hearing which was the subject of FR Doc. 88–28032 (53 FR 49208), is corrected as follows:

PARTS 1 AND 602—[AMENDED]

Par. 1. On page 49209, first column, sixth line from the top of the column should read, "January 3, 1989, an outline of the oral".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88–28462 12–9–88; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[INTL-49-86 and INTL-362-88]

Treatment of Related Person Factoring Income; Certain Investments in United States Property; Stock Redemptions Through Related Corporations; and Definition of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the treatment of related person factoring income; the determination of the amount of earnings of a controlled foreign corporation invested in United States property; redemptions of stock through the use of related corporations; and, the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of foreign corporations beginning after December 31, 1986.

DATES: The public hearing will begin at 10:00 a.m. on Thursday, February 9, 1989, and continue, if necessary, at the same time on Friday, February 10, 1989. Outlines of oral comments must be delivered or mailed by Thursday, January 26, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:CORP:T:R (INTL-49-86 and INTL-362-88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jackie Burgess or Carroll Field of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing relates to proposed regulations under sections 864 (d) and 956 (b) (3) on the treatment of related person factoring income; certain investments in United States property; stock redemptions through related corporations which were added to the Internal Revenue Code of 1954 by section 123 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 644, 646) and amended by sections 1201 (d) (4), 1221 (a) (2), 1223 (b) (1), 1275 (c) (7) and 1810 (c) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2525, 2550, 2558, 2599, 2824).

On June 14, 1988, proposed and temporary regulations (T.D. 8209) interpreting sections 864 (d) and 956 (b) (2) of the Internal Revenue Code of 1986 were published in the **Federal Register** (53 FR 22186, 22163).

In addition, the subject of the public hearing relates to proposed regulations under sections 954 (b), 954 (c), and 957 (a), which were amended by sections 1201, 1221, 1222, and 1223 of the Tax Reform Act of 1986 (Pub. L. 99-514).

On July 21, 1988, proposed and temporary regulations (T.D. 8216) interpreting sections 954 (b), 954 (c), and 957 (a) were published in the **Federal Register** (53 FR 27532, 27489).

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notices of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, January 26, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-28463 Filed 12-9-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 390

[Docket No. R-120]

RIN 2133-AA65

Capital Construction Fund; Extension of Comment Period

AGENCY: Maritime Administration, DOT.

ACTION: Proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period for a Notice of Proposed Rulemaking (NPRM) that MARAD has issued with respect to its Capital Construction Fund Program, 46 CFR Part 390 (Docket No. R-120) published October 31, 1988 (53 FR 43907). In view of the errors in the original publication of the NPRM and the subsequent correction of errors in the NPRM, MARAD believes that an extension of the comment period is warranted in order to allow more time for preparation of comments.

DATE: NPRM comment period expiration date is extended to January 3, 1989.

ADDRESSS: Submit comments to James E. Saari, Secretary, Maritime Administration, Room 7300, 400 Seventh Street, SW., Washington, DC 20590. The Maritime Administration requests that commenters submit five copies of their comments.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Chief, Division of Capital Assets Management, 400 Seventh Street, SW., Washington, DC 20590, Tel: (202) 366-1905.

Date: December 7, 1988.

By Order of the Maritime Administrator.
Approved:

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 88-28513 Filed 12-9-88; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-149F, Notice No. 88-9]

Exceptions for Specified Quantities of Radioactive Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

BEST COPY AVAILABLE

SUMMARY: RSPA proposes to renew for two years the exceptions (statutory exemptions) for specified quantities of radioactive materials found in 49 CFR 173.4, 173.421–1 and 173.421–2. This action is necessary to update the exceptions in these sections which permit the transportation by passenger-carrying aircraft of certain quantities of radioactive materials under the existing restrictions. Updating these exceptions will prevent the disruption of routine and ongoing shipments which have been made safely for 12 years under the existing exceptions. These materials do not present a significant hazard to passengers or crew on an aircraft.

DATE: Comments must be received on or before January 11, 1988.

ADDRESS: Address comments to Dockets Unit, Office of Hazardous Materials Transportation, (DHM–30), U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, when possible, in five copies and should identify the docket number. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except public holidays.

FOR FURTHER INFORMATION CONTACT: Ann Boylan, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. (202) 366–4488.

SUPPLEMENTARY INFORMATION: On May 1, 1987, RSPA published a final rule under Docket HM–149E (52 FR 15948). In that final rule, RSPA renewed for two years the exceptions (statutory exemptions) for specified quantities of radioactive materials found in 49 CFR 173.4, 173.421–1 and 173.421–2. This action was taken because the existing exceptions were due to expire on May 2, 1987.

In accordance with section 107 of the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1806) governing exemptions, the exceptions provided in §§ 173.4, 173.421–1 and 173.421–2 are limited to two years unless reexamined and renewed. These exceptions expire on May 2, 1989. Historically, these exceptions have been issued and subsequently renewed under Docket HM–149. The legal background and regualtory history of these exceptions can be found in Docket HM–149C (46 FR 24184) published on April 30, 1981, and in preceding amendments dating back to April 17, 1975 (40 FR 17141).

In accordance with 49 CFR 106.13 and 49 U.S.C. 1806, RSPA is once again reexamining the provisions of the exceptions provided in §§ 173.4, 173.421–1 and 173.421–2 and proposes to extend the effective dates of these exceptions. Specifically, in §§ 173.4(b), 173.421–1(b)(2) and 173.421–2(d), the date "May 2, 1989" would be amended to read "May 2, 1991". These amendments would permit the continued transportation of specified quantities of radioactive material by passenger-carrying aircraft.

Administrative Notices

Executive Order 12291

The RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Impact on Small Entities

Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify that the regulations proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Part 173 of Title 49 of the Code of Federal Regualtions would be amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

§ 173.4 [Amended]

2. In paragraph (b) of § 173.4, the year "1989" would be changed to read "1991".

§ 173.421–1 [Amended]

3. In paragraph (b)(2) of § 173.421–1, the year "1989" would be changed to read "1991".

§ 173.421–2 [Amended]

4. In paragraph (d) of § 173.421–2, the year "1989" would be changed to read "1991".

Issued to Washington, DC, on December 7, 1988, under the authority delegated in 49 CFR Part 1, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–28421 Filed 12–9–88; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 53, No. 238
Monday, December 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-030-09-4143-09; ES-00157-004]

Environmental Impact Statement; Mark Twain National Forest, Carter, Oregon and Shannon Counties, MO

AGENCY: Forest Service, USDA and Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement and U.S.D.A. Forest Service Record of Decision for Hardrock Mineral Leasing, Mark Twain National Forest, Carter, Oregon, and Shannon Counties, Missouri.

SUMMARY: The Doe Run Company holds interest in two preference right lease applications (PRLA's) filed with the Bureau of Land Management (BLM) for lead and associated metals underlying the Winona Ranger District of the Mark Twain National Forest, Missouri. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM and U.S.D.A.-Forest Service, in cooperation with the U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers, and the Missouri Department of Conservation, have prepared a Final Environmental Impact Statement (FEIS) for hardrock mineral leasing for an area encompassing approximately 119,000 acres of National Forest System Lands and Federally-owned minerals. Although the two PRLA's comprise only 3,743 acres, the FEIS has been prepared for a much larger area in the anticipation of future leasing activity.

The Draft EIS (DEIS), which was published in November 1987, analyzed five alternatives identified by the letters A through E. The preferred alternative identified in the DEIS was Alternative D, Modified Forest Plan (visual quality). In response to comments received during the review of the DEIS, and agency concerns, it was determined that none of the original alternatives were acceptable and a new alternative (F) was developed. Alternative F permits only exploration and development drilling on the two lease areas and includes a "No Guaranteed Development" stipulation along with other standard and special stipulations. The FEIS incorporates the entire DEIS by reference.

This notice announces the availability of the FEIS and the Forest Service Record of Decision whereby the Forest Service has decided to consent to the issuance of the two leases in accordance with Alternative F, which includes the "No Guarantee Development" stipulation allowing for exploration and development drilling while denying any mine development activities pending further environmental review and public involvement.

The BLM has the authority to issue leases for National Forest System Lands but only after receiving the consent of the Forest Service. The BLM will consider whether or not to issue the leases after receiving a letter of consent from the Forest Service. BLM's final decision will be published in a Record of Decision.

SUPPLEMENTARY INFORMATION: Public reading copies of the FEIS are available for review at the public libraries in Alton, Birch Tree, Columbia, Eminence, Jefferson City, Kansas City, Mountain View, St. Louis, St. Louis County, Springfield, Thayer, West Plains, and Winona, Missouri. In addition, copies of the FEIS may be inspected at the following locations:

USDA-Forest Service, Supervisor's Office, Mark Twain National Forest 401 Fairgrounds Road, Rolla, Missouri
Bureau of Land Management, Milwaukee District Office, Division of Solid Minerals, 901 Pine Street, Rolla, Missouri
USDA-Forest Service, Doniphan Ranger District, 1104 Walnut, Doniphan Missouri
USDA-Forest Service, Van Buren Ranger District, Watercress Road, Van Buren, Missouri
USDA-Forest Service, Winona Ranger District, Highway 19 North, Winona, Missouri
USDA-Forest Service, Ranger District Offices in Ava, Cassville, Fredericktown, Fulton, Houston, Poplar Bluff, Potosi, Rolla, Salem, and Willow Springs, Missouri
USDA-Forest Service, Eastern Region 310 W. Wisconsin Avenue, Suite 600, Milwaukee, Wisconsin
Bureau of Land Management, Eastern States Office 350 S. Pickett Street, Alexandria, Virginia
Bureau of Land Management, Milwaukee District Office 310 W. Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Leon Kridelbaugh, Staff Officer for Lands, Minerals, Soils and Watershed, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401; telephone (314)364–4621 or Mr. Vincent Vogt, Assistant District Manager for Solid Minerals, Milwaukee District Office (BLM), 901 Pine Street, Rolla, Missouri 65401; telephone (314)364–0203.

Date: December 2, 1988.

James R. Jordon,

Deputy Regional Forester, Region 9, USDA-Forest Service.

Date: November 30, 1988.

G. Curtis Jones, Jr.,

State Director, Eastern States Office, Bureau of Land Management.

[FR Doc. 88–28423 Filed 12–9–88; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation, 1989 Panel Wave 2
Form Number: SIPP–9200, Wave 2 Questionnaire SIPP–9205L, Introductory Letter
Agency Approval Number: 0607–0643
Type of Request: Revision
Burden: 12,180 hours
Number of Respondents: 24,360
Avg Hours Per Response: 30 minutes
Needs and Uses: This survey provides the executive and legislative branches

improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. Changes in status and participation will be measured over time. The data will be used to support policy and program planning.
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Edward Michals,
Department Clearance Officer, Office of Management and Organization.
[FR Doc. 88–28471 Filed 12–9–88; 8:45 am]
BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: Bureau of the Census
Title: Survey of State and Local Agencies Preparing Population Estimates
Form Number: S–136
Agency Approval Number: N/A
Type of Request: New
Burden: 333 hours
Number of Respondents: 1,500
Avg Hours Per Response: 13.3 minutes
Needs and Uses: This survey is used to identify those public agencies making population estimates, the methodology used, and the areas estimated; and to collect population and housing unit estimates for census tracts for 1990 census review of the field counts.
Affected Public: State or Local Governments
Frequency: Every 10 years
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 1988.
Edward Michals,
Department Clearance Officer, Office of Management and Organization.
[FR Doc. 88–28472 Filed 12–9–88; 8:45 am]
BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: Bureau of the Census
Title: Charter, Rural, and Intercity Bus Survey
Form Number: B–530, B–531
Agency Approval Number: N/A
Type of Request: New
Burden: 4,000 hours
Number of Respondents: 2,000
Avg Hours Per Response: 2 hours
Needs and Uses: This survey will be the only annual source of data for the universe of employer firms providing intercity, rural, and charter bus transportation services. These data will be used by the Federal Government for computation of the national accounts, and by private industry for marketing analysis.
Affected Public: Businesses, small businesses
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 1988.
Edward Michals,
Department Clearance Officer, Office of Management and Organization.
[FR Doc. 88–28473 Filed 12–9–88; 8:45 am]
BILLING CODE 3510–07–M

National Institute of Standards and Technology

Announcement of Workshop for Users and Implementors of Integrated Services Digital Network (ISDN)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The NIST announces another workshop of a continuing workshop series to discuss issues related to the use and implementation of Integrated Services Digital Network (ISDN) technology. These workshops are part of the North American ISDN Users' Forum (NIU–FORUM) which was formed recently under the auspices of NIST to create a strong user voice in the implementation of ISDN and ISDN applications and to ensure that the emerging ISDN meets users' application needs.

DATES: A joint ISDN Users' and Implementors' Workshop will be held in Gaithersburg, Maryland on January 17, 18, and 19, 1989. A tutorial "An Introduction to ISDN" will be conducted on the afternoon of January 16, 1989. The Users' Workshop will continue to identify, define and prioritize applications of ISDN and the Implementators' Workshop will define implementation agreements for ISDN and sponsor multivendor trials and demonstrations.

ADDRESS: To obtain registration forms for the North American ISDN Users' Forum, contact: ISDN Workshop Series, Attn: Kim Brashears, National Institute of Standards and Technology, Building 225, Room A224, Gaithersburg, MD 20899, Telephone: (301) 975–4853.

FOR FURTHER INFORMATION CONTACT: Steve Recicar (301) 975–2937.

SUPPLEMENTARY INFORMATION: A registration fee will be charged for attending the workshop. Credit cards will not be accepted. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshop.

Date: December 6, 1988.

Raymond G. Kammer,

Acting Director.

[FR Doc. 88-28447 Filed 12-9-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: Meeting will convene at 9:00 a.m., December 16, 1988.

PLACE: Auditorium of Building 9, 7600 Sand Point Way, NW., Seattle, Washington.

MATTERS TO BE CONSIDERED: Implementation of recent amendments to the Marine Mammal Protection Act. These major changes to the law are especially important in the conduct of commercial fisheries, and will require much work to successfully implement. NOAA Fisheries has formed a Task Force and given them the responsibility to design and carry out implementation of the new legislation. Before any important decisions are made, NOAA Fisheries would like to hear your points of view. We will discuss the major tasks necessary to implement the amendments. However, we will not deal with tuna-porpoise issues at this meeting, since these are being addressed separately by the NOAA Fisheries Southwest Regional Office. A similar meeting with the same agenda is scheduled for December 19 at the Main Commerce Building, Room 5230 at 9:00 a.m., in Washington, DC. Upon conclusion of the meetings we will formulate our decisions and publish in the **Federal Register**. You will have the opportunity for additional comments on our decisions at that time.

FOR FURTHER INFORMATION CONTACT: Herb Kaufman, Task Force Coordinator, Office of Protected Resources, NOAA Fisheries, 1335 East-West Highway, Silver Spring, Maryland. Telephone: (301) 427-2319.

Date: December 7, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 88-28582 Filed 12-9-88; 8:45 am]

BILLING CODE 3510-08-M

National Marine Fisheries Service; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: Meeting will convene at 9:00 a.m., December 19, 1988.

PLACE: Main Commerce Building, 14th Street and Constitution Avenue, Room 5230, Washington, DC.

MATTERS TO BE CONSIDERED: Implementation of recent amendments to the Marine Mammal Protection Act. These major changes to the law are especially important in the conduct of commercial fisheries, and will require much work to successfully implement. NOAA Fisheries has formed a Task Force and given them the responsibility to design and carry out implementation of the new legislation. Before any important decisions are made, NOAA Fisheries would like to hear your points of view. We will discuss the major tasks necessary to implement the amendments. However, we will not deal with tuna-porpoise issues at this meeting, since these are being addressed separately by the NOAA Fisheries Southwest Regional Office. A similar meeting with the same agenda is scheduled for December 16 in the Auditorium of Building 9, 7600 Sand Point Way, NE., Seattle, Washington. Upon conclusion of the meetings we will formulate our decisions and publish in the **Federal Register**. You will have the opportunity for additional comments on our decisions at that time.

FOR FURTHER INFORMATION CONTACT: Herb Kaufman, Task Force Coordinator, Office of Protected Resources, NOAA Fisheries, 1335 East-West Highway, Silver Spring, Maryland. Telephone: (301) 427-2319.

Date: December 7, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 88-28581 Filed 12-9-88; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products from Haiti

December 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of a Special Access Program.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and Haiti is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 51 FR 21208, published on June 11, 1986, and 52 FR 26057, published on July 10, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 26 and 30, 1986, as amended, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption or withdrawal from

warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Haiti and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following designated levels:

Category	Twelve-month restraint level
237	160,000 dozen.
331	310,000 dozen pairs.
340/640	310,000 dozen.
341/641	320,000 dozen.
347/348	350,000 dozen.
350	32,000 dozen.

Imports charged to these category limits for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustments in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Haiti.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057) (July 10, 1987), you are directed to establish guaranteed access levels for properly cerfified cotton and man-made fiber textile products in the following categories which are assembled in Haiti from fabric formed and cut in the United States and exported to the United States from Haiti during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989.

Category	Guaranteed access level
237	300,000 dozen.
331	500,000 dozen pairs.
340/640	440,000 dozen.
341/641	440,000 dozen.
347/348	800,000 dozen.
349/649	2,500,000 dozen.
350	120,000 dozen.

Any shipment for entry under tariff number 9802.00.80.10 which is not accompained by a valid and correct certification and CBI Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Haiti authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as tariff number 9802.00.80.10 but found not to qualify for the Special Access Program shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28415 Filed 12-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan

December 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6583. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: In addition to establishing limits for the new agreement year, deferred import charges for goods in Category 611 exported during 1986 in the amount of 2,926,446 square meters will be charged to the 1989 limit established for Category 611.

A copy of the current bilateral textile agreement between the Governments of the United States and Japan is available from the Textiles Divsion, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and Japan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Japan and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the indicated restraint limits:

Category	Twelve-month restraint limit
Group I:	
237, 239, 330-354, 359, 431-448, 459, 630-654 and 659, as a group.	111,556,119 square meters equivalent.
Sublevels within group I:	
237	105,010 dozen.
239	431,523 kilograms.
331/631	2,360,200 dozen pairs.
333	16,390 dozen.
334	27,683 dozen.
335	185,671 dozen.
338	824,521 dozen.
339	1,292,243 dozen.
340	109,261 dozen.
341/641	530,604 dozen.
342/642	359,490 dozen.
347/348	1,639,091 dozen.
350	22,073 dozen.
435	29,042 dozen.

Category	Twelve-month restraint limit
442	22,474 dozen.
444	186,709 numbers.
448	37,982 dozen.
634	105,205 dozen.
644	248,918 numbers.
645/646	194,320 dozen.
659pt.[1]	47,087 kilograms.
Group II:	
200–229, 300, 301, 313–326, 360–369, 400–414, 464–469, 603, 604, 607, 611–629 and 665–670, as a group.	430,222,860 square meters equivalent.
Subgroup:	
218–220, 225–227 and 313–326, as a group.	111,153,079 square meters.
Sublevels within the subgroup:	
218	30,155,778 square meters.
313	6,901,574 square meters.
314	23,252,307 square meters.
315	14,671,005 square meters.
317/326	13,281,756 square meters of which not more than 8,503,935 square meters shall be in Category 326.
Sublevels within group II:	
300/301	1,299,283 kilograms.
410	9,045,360 square meters.
604pt.[2]	1,683,807 kilograms.
611	15,311,662 square meters.
613/614/615/617.	9,527,051 square meters.
619	109,532,684 square meters
620	47,380,457 square meters.
624	7,322,434 square meters.
624	7,322,434 square meters.
625/626/627/628/629.	16,518,231 square meters.
Group II:	
600 and 606, as a group.	114,995,457 square meters equivalent.

[1] In Category 659pt., coveralls, overalls, etc., in tariff numbers 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10.

[2] In Catetory 604pt., only tariff number 5509.32.00.00.

Imports charged to these category limits, except Category 439, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and Japan.

Also effective on January 1, 1989, you are directed to charge 2,926,446 square meters, for shipments exported in 1986, to the limit established in this directive for Category 611.

In carrying out the above directions the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28416 Filed 12-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

December 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and Malaysia is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter of the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	Twelve-month restraint limit
218, 219, 220, 225–227, 313–315, 317, 326, 613/614/615/617, as a group.	62,040,650 square meters equivalent.
Sublevels within the group:	
218	3,988,328 square meters.
219	19,321,231 square meters.
220	19,321,231 square meters.
225	19,321,231 square meters.
226	19,321,231 square meters.
227	19,321,231 square meters.
313	23,043,670 square meters.
314	24,816,260 square meters.
315	19,321,231 square meters.
317	19,321,231 square meters.
326	2,658,885 square meters.
613/614/615/617.	19,321,231 square meters.
Other specific limits:	
200	168,187 kilograms.
237	226,293 dozen.
300/301	1,783,797 kilograms
331/631	1,224,729 dozen pairs.
333/334/335/835.	140,450 dozen of which not more than 70,225 dozen shall be in Category 333, not more than 70,225 dozen shall be in Category 334, not more than 70,225 dozen shall be in Category 335 and not more than 70,225 dozen shall be in Category 835.
336/636	259,702 dozen.

Category	Twelve-month restraint limit
338/339	643,863 dozen.
340/640	787,475 dozen.
341/641	1,020,597 dozen of which not more than 364,098 dozen shall be in Category 341.
342/642/842	244,455 dozen.
345	93,739 dozen.
347/348	263,669 dozen.
351/651	151,686 dozen.
363	4,494,400 numbers.
369-S [1]	486,753 kilograms.
435	13,985 dozen.
438-W [2]	11,446 dozen.
442	17,046 dozen.
445/446	27,056 dozen.
604	782,156 kilograms.
634/635	476,342 dozen of which not more than 207,866 dozen shall be in Category 635.
638/639	280,602 dozen.
645/646	214,621 dozen.
647/648	1,009,982 dozen of which not more than 706,987 dozen shall be in Category 647-K [3] and not more than 706,987 dozen shall be in Category 648-K.[4]
Group II:	
201, 222-224, 229, 239, 330, 332, 349, 350, 352-354, 359-362, 369-O [5], 400-434, 436, 438-O [6], 439, 440, 443, 444, 447, 448, 459, 464-469, 600-603, 606, 607, 611, 618-622, 624-630, 632, 633, 643, 644, 649, 650, 652-654, 659, 665-670, 831-834, 836, 838, 839, 840 and 843-859, as a group.	25,097,541 square meters equivalent.

[1] In Category 369-S, only tariff number 6307.10.20 10.

[2] In Category 438-W, only tariff numbers 6104 21.00.60, 6104.23.00.20, 6104.29.20.48, 6106.20.10.10, 6106.20.10.20, 6106.90.10.10, 6106.90.10 20, 6106.90.20.20, 6106.90.30.20, 6109.90.15.40, 6110.10.10.60, 6110.10.20.80, 6110.30.15.60, 6110 90.00.74 and 6114.10.00.40.

[3] In Category 647-K, only tariff numbers 6103 23.00.40, 6103.29.10.20, 6103.43.15.20, 6103.43 15.40, 6103.49.10.20, 6103.49.30.14, 6112.12.00 50, 6112.19.10.50, 6112.20.10.60, 6113.00.00 45, 6103.23.00.45, 6103.29 10.30, 6103.43.15.50, 6103 43 15.70 and 6103.49.10.60.

[4] In Category 648-K, only tariff numbers 6104.23.00.32, 6104.23.00.34, 6104.29.10.30, 6104.29.10.40, 6104.29.20.38, 6104.63 20.10, 6104.63.20.25, 6104.63.20.30, 6104.63.20.60, 6104.69.20.10, 6104.69.20.20, 6104.69.30.26, 6112.12.00.60, 6112.19.10.60, 6112 20.10.70, 6113.00.00.50 and 6117.90.00.46.

[5] In Category 369-O, all tariff numbers except 6307.10.20.10 in Category 369-S.

[6] In Category 438-O, only tariff numbers 6103.21.00.50, 6103.23.00.25, 6105.20.10.00, 6105.90.10.00, 6105.90.30.20, 6109.90.15.20, 6110.10.10.50, 6110.10.20.70, 6110 30.15.50, 6110.90.00.72, 6114.10.00.20 and 6117.90.00.24.

Imports charged to these categories, except Categories 439 and 839, for the period January 1, 1988 thourgh December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28418 Filed 12-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Nepal

December 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and Nepal is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton Textile Agreement of May 30 and June 1, 1986, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	Twelve-month restraint limit
340	214,383 dozen.
341	714,610 dozen.
342	119,102 dozen.

Imports charged to these category limits for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28417 Filed 12-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Limits for Certain Man-Made Fiber, Silk Blend and Other Vegetable Fiber Luggage Produced or Manufactured in Thailand

December 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations between the Governments of the United States and Thailand have not resulted in mutually satisfactory limits for Categories 670–L and 870, the United States Government has decided to control imports in these categories for the period May 25, 1988 through May 24, 1989.

There is no visa requirement for Categories 670–L and 870 imported from Thailand. If visas for these categories will be required in the future, advance notice will be given in the **Federal Register.**

The United States remains committed to finding a solution concerning Categories 670–L and 870. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 449237, published on November 7, 1988). Also see 53 FR 22205, published on June 14, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 13, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber, silk blend and other vegetable fiber luggage in Categories 670–L [1] and 870, produced or manufactured in Thailand and exported during the twelve-month period which began on May 25, 1988 and extends through May 24, 1989, in excess of the following levels of restraint:

Category	Twelve-month limit
670–L	6,082,616 pounds.
870	5,917,287 pounds.

Textile products in Categories 670–L and 870 which have been exported to the United States prior to May 25, 1988 shall not be subject to this directive.

You are directed to charge 1,977,332 pounds and 214,624 pounds to the limits established in this directive for Categories 670–L and 870, respectively. These charges are for goods imported during the period May 25, 1988 through September 30, 1988.

Merchandise exported from Thailand to the United States in Categories 670–L and 870 does not require a visa.

Textile products in Categories 670–L and 870 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28419 Filed 12–9–88; 8:45 am]

BILLING CODE 3510–DR–M

[1] In Category 670–L, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange; Proposed Amendments Relating to Minimum Fiber Tensile Strength Requirements Applicable to Cotton Delivered on the Cotton No. 2 Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Cotton Exchange ("NYCE" or "Exchange") has submitted proposed amendments to the cotton No. 2 futures contract establishing a requirement that cotton must have a minimum fiber tensile strength of 22 grams per tex, in addition to the other current specifications of the contract, in order to be deliverable on the contract. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before January 11, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the NYCE cotton No. 2 futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, 2033 K Street NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The current terms of the cotton No. 2 futures contract do not specify any fiber strength requirement for deliverable cotton. Under the proposed amendments, cotton would be required to have a minimum fiber strength of 22 grams per tex in order for it to be deliverable on the cotton No. 2 futures contract. The Exchange intends to make the proposed amendments effective for all deliveries made in October 1990 and all subsequent delivery months.

The proposed amendments would set only a minimum fiber strength requirement. The proposal does not include any system of premiums and

discounts for cotton of different fiber strengths that satisfy the minimum requirement of 22 grams per tex.

The Exchange stated that cotton with a strength of less than 22 grams per tex is susceptible to breakage on today's high-speed spinning equipment. According to the Exchange, the testing of cotton for fiber strength is expected to be a regular industry practice for all cotton by the 1991 crop year.

The Division, on behalf of the Commission, specifically requests comment on the following questions regarding current commercial practices for cotton, in addition to any other information or views that commenters may wish to provide:

1. What minimum standards for fiber strength currently are used in the cotton trade?

2. What percentage of commercial transactions is based on such fiber-strength standards?

3. To what extent are premiums or discounts applied to the pricing of commercial transactions based on the level of fiber strength?

4. In instances where a system of premiums or discounts for differences in fiber strength is utilized for commerical cotton transactions, what schedule of specific premiums and discounts currently is used for various fiber strengths? What is the par specification?

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC on December 6, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–28465 Filed 12–9–88; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 88–C0003]

Miracle Recreation Equipment Co., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Miracle Recreation Equipment Co., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 27, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

Dated: November 29, 1988.

Sheldon D. Butts,

Deputy Secretary.

SUPPLEMENTARY INFORMATION:

CONSUMER PRODUCT SAFETY COMMISSION

Consent Agreement and Order

In the matter of Miracle Recreation Equipment Co., a corporation, CPSC Docket No. 88–C0003.

1. In 1986 the United States Department of Justice, at the request of the Consumer Product Safety Commission, filed a civil penalty action, pursuant to section 20 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2059, against Miracle Recreation Equipment Co., a corporation (hereinafter referred to as Miracle or Respondent), in the U.S. District Court for the Southern District of Iowa. The case involves two types of public playground equipment manufactured by Miracle known as "Bounce-Around Whirl" and the "Buckaroo Whirl," *United States* v. *Miracle Recreation Equipment Co.*, Civil No. 86–334–B. That case is still pending, however, the Consumer Product Safety Commission will request that the United States Department of Justice seek dismissal with prejudice upon the execution of this Agreement.

Early in 1986 the staff began an investigation of all of Miracle's various products and narrowed the scope of its investigation down to the products named in this Agreement.

In December 1987, the Commission authorized that staff to issue an Administrative Complaint (CPSC Docket No. 87–1) pursuant to section 15 of the Federal Hazardous Substances Act (hereinafter referred to as FHSA), as amended, 15 U.S.C. 1274, against Miracle seeking public notification and remedial action regarding an item of public playground equipment known as the "Flying Animal Swing." That action is also still pending, however, it will be settled with the entry of an order in that case as agreed to by the parties.

2. This Consent Agreement (hereinafter referred to as Agreement) is made by and between Miracle and the staff of the Consumer Product Safety Commission (hereinafter referred to as staff). This Agreement and accompanying Order are entered into to resolve allegations regarding alleged hazards presented by several items of public playground equipment manufactured by Miracle including, but not limited to, the "Slashproof Swing Seats," the "Lifetime Whirl," the "Therapeutic Whirl," and the "Arch Swing."

3. The provisions of this Agreement shall apply to the Respondent and its successors and assigns.

4. Settlement shall be contingent upon the Consumer Product Safety Commission's (hereinafter referred to as Commission) approval and acceptance of the Agreement and its issuance of the attached Order. It is agreed by the parties that should the Commission fail to approve and accept this Agreement, the parties will jointly request the Administrative Law Judge in CPSC Docket No. 87–1 for an extension of time to resume discovery at the point where the parties left off. Respondent by entering into this Agreement consents to the issuance of the attached Order. The

terms of the Order shall take effect upon its issuance.

Parties

5. The Commission is an independent regulatory commission of the United States of America established pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended (15 U.S.C. 2053).

6. Respondent Miracle is a corporation organized and existing under the laws of the State of Iowa with its principal corporate offices located at Hwy 6 West, P.O. Box 275, Grinnell, Iowa 50112 and at Highway 60 and Bridal Lane, P.O. Box 420, Monett, Missouri 65708.

Staff Allegations and Miracle's Responses

Staff Allegation

7. The staff alleges that Miracle's "Slashproof Swing Seat" contains a defect in that the rubber casing can crack allowing the inner spring steel core of the seat (which serves to reinforce the rubber casing) to be exposed to moisture and corrode to the point where it breaks. The staff alleges that once the core breaks, the seat becomes weakened and the rubber casing will eventually tear at the points of maximum stress, usually where the grommets are attached. The staff alleges that when this occurs, the grommets pull through the rubber casing. The staff alleges that when the rubber casing tears, the user can drop to the ground, abruptly and without warning, potentially resulting in an injury.

The staff alleges that there have been numerous reported injuries to children associated with this defect in the Slashproof Swing Seat. The injuries allegedly consist of fractures of the vertebrae, ankle, lower leg, and wrist.

Miracle's Response

8. Miracle contends that it does not and never has manufactured the Slashproof Seat. Miracle contends that any problem with the seat is due to manufacturing imperfections or problems. Also, premature wear that can lead to breakage has been caused by improper maintenance and use by others of the incorrect size S-hook. When the too small S-hook is closed, it pinches the ends of the seat, breaking it. To further put the staff allegations in context, Miracle points out that it has sold more than 300,000 Slashproof Swing Seats since approximately 1960. Miracle denies each and all of the staff allegations.

Staff Allegation

9. The staff further alleges that the welds on the horizontal support of Miracle's models 296 and 298 "Arch Swing" can fail causing the horizontal support and the attached swings to collapse. The staff alleges that falls from this sudden, unexpected failure have resulted in at least ten (10) injuries to children using the swings. The injuries ranged from bruises and scrapes to a fractured pelvis and skull.

Miracle's Response

10. Miracle states that it has sold approximately 70 model 298 "Arch Swings" through 1976, the last year of sale of that model, and approximately 550 model 296 "Arch Swings" between 1960 and 1984. Miracle denies each and all of the staff allegations. Miracle contends that the few incidents involving "Arch Swings" are due to a failure to observe and maintain the units since weld deterioration occurs gradually over a long period.

Staff Allegation

11. The staff further alleges that because of its design, the center plate of Miracle's "Lifetime Whirl" is susceptibnle to removal. The staff alleges that once removed, and if not replaced, the stationary inner structure becomes exposed and readily accessible to children. The staff alleges that this exposed cavity creates a risk of fracture and laceration should a child insert an arm or a leg while the whirl is rotating. In addition, the staff alleges that the "Lifetime Whirl" has a design or manufacturing defect that results in a sharp metal edge or sharp burrs or irregularities along the under turned portion of the platform. The staff alleges that the accessibility of the sharp metal edge and burrs creates an added risk of severe laceration.

The staff further alleges that this whirl has been involved in at least eight (8) incidents of severe lacerations or fractures of children's legs and feet.

Miracle's Response

12. To place the staff's allegations in context, Miracle notes that the Lifetime Whirl has been sold and used throughout the country since approximately 1946. Miracle denies each and all of the staff allegations and contends that the few incidents reported were due to a failure to properly maintain the unit.

Staff Allegation

13. The staff further alleges that Miracle's "Therapeutic Whirl", designed for use by people in wheelchairs, poses a risk of injury to non-wheelchair bound children who sit on the edge of it with their legs or feet dangling. The staff alleges that as the "Therapeutic Whirl" rotates, the legs of unsuspecting children strike that stationary boarding ramp. The staff alleges that such incidents have caused three (3) fractures and two (2) reports of severe laceration to children's legs.

Miracle's Response

14. To place the staff allegations in context, Miracle notes that it has sold 199 "Therapeutic Whirls" between 1977 and 1985. Miracle denies each and all of the staff allegations. Miracle contends that the cause of any accident is due to a lack of supervision and misuse since the Therapeutic Whirl was designed for use by wheelchair-bound children.

Staff Allegation

15. The staff further alleges that each of the products described in paragraphs 7, 9, 11, and 13 above, may contain a defect or defects which create a substantial risk of injury to children within the meaning of section 15(c) of the FHSA, 15 U.S.C. 1274(c).

Miracle's Response

16. Miracle denies each and all of the staff allegations herein. It further specifically denies that any of its products contain a defect which creates or could create a substantial risk of injury to children or others in general or within the meaning of section 15(c) of the FHSA, 15 U.S.C. 1274(c).

Staff Allegation

17. The staff finally alleges that although it has conducted only a preliminary investigation, Miracle may have violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b) with respect to the hazards presented by its "Slashproof Swing Seats," "Arch Swing," "Lifetime Whirl," "Therapeutic Whirl," and "Flying Animal Swing" (the subject of CPSC Docket No. 87–1).

Miracle's Response

18. Miracle specifically denies that any of its products contain a defect which creates or could create a substantial risk of injury to children or others in general or within the meaning of any relevant statutes and also specifically denies any violation of its obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Agreement of the Parties

19. The staff and Miracle are entering into this Agreement because they agree

that it is in the public interest to minimize any possibility of further injury as soon as possible. The Commission has not made and does not hereby make any determination that any of the products described herein contain a defect which creates a substantial risk of injury to children or any determination that Miracle may have failed to report a defect which could create a substantial product hazard as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). Respondent by so doing, does not admit the allegations raised by the staff herein.

20. Respondent agrees that the Commission has jurisdiction over it and over the subject matter of this Agreement for purposes for entry and enforcement of this Agreement.

21. The parties agree that the Respondent will knowingly, voluntarily, and completely waive any rights it may have in this matter (1) to an administrative or judicial hearing and any other procedural steps; (2) to seek judicial review or otherwise challenge or contest the validity of the Commission's Order; (3) to a determination by the Commission whether any of its products described in paragraphs 7, 9, 11, 13 above present a substantial risk of injury to children and whether action under 15 U.S.C. 1274 (c), (d) and (e) is in the public interest; and, (4) to a statement of findings of fact and conclusions of law by the Commission. Miracle does not agree to waive any rights it may have on any other matter or any other rights it may have in this matter.

22. Miracle agrees to notify the public of the remedial actions it is taking, in accordance with the attached Order. It shall inform the public of actions being taken to repair/retrofit or otherwise change the products described in paragraphs 7–14 above and in the attached Order.

23. The parties agree that for purposes of information disclosure which shall be pursuant to section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a Complaint pursuant to 15 U.S.C. 1274 had been issued in this matter. The staff of the Consumer Product Safety Commission agrees that records produced in this matter by Miracle shall be held as confidential documents to the extent required by the Freedom of Information Act, 5 U.S.C. 553 or by section 6 of the CPSA, 15 U.S.C. 2055(a).

24. The parties agree that mutual consideration has been given for this Agreement as follows: (1) Miracle has agreed to a payment of a $100,000 civil penalty to be recited in Case No. 86–334–B; (2) Miracle agrees to carry out the specified corrective actions involving the "Slashproof Swing Seats," the "Lifetime Whirl," the "Therapeutic Whirl," and the "Arch Swing." Because the staff believes that it is in the public interest to expedite these corrective action plans, the staff, in consideration for the payment of the $100,000 civil penalty and corrective actions to be taken by Miracle, agrees that this Agreement providing for the payment of the $100,000 civil penalty resolves any potential civil penalty proceeding for any violations of section 15(b) of the CPSA, 15 U.S.C. 2064(b), involving the "Flying Animal Swing," "Slashproof Swing Seats," "Lifetime Whirl," "Therapeutic Whirl," "Arch Swing," "Bounce-A-Round Whirl," "Buckaroo Whirl," and any other Miracle product based on the information Miracle has previously provided to the Commission as of the date this Agreement is entered into.

Miracle has an obligation to report pursuant to 15 U.S.C. 2064(b) based on (1) new information that it obtains or becomes aware of after the date that this Agreement is entered into, when this new information evidences or reveals problems other than those evidenced or revealed in information previously made available to the Commission by Miracle, (2) information it has previously obtained and not made available to the Commission concerning the "Bounce-Around-Whirl," "Buckaroo Whirl," "Flying Animal Swing," "Slash Proof Swing Seat," "Lifetime Whirl," "Therapeutic Whirl," and "Arch Swing" when this information evidences or reveals problems other than those identified in paragraphs 7 through 14 of this Agreement, (and, in the case of the Bounce-Around-Whirl" and "Buckaroo Whirl", problems other than those identified in paragraphs 7 through 8 of the complaint filed in *United States* v. *Miracle Recreation Equipment Company*, Civil Action No. 86–334–B (S.D. Iowa)), and (3) information it has previously obtained and not made available to the Commission concerning any products other than those identified above in this paragraph, if such information reasonably supports the conclusion that a Miracle product contains a defect that could create a substantial product hazard.

This Agreement eliminates any claim under section 15(b) of the CPSA, 15 U.S.C. 2064(b), that the Commission had or may have had that would have been revealed by the information Miracle previously provided to the Commission. Miracle has no obligation to report when it has actual knowledge that the Commission has been adequately informed of a defect that could create a substantial product hazard. For the sole purpose of determining the effectiveness of the remedial and notice activities *set out* in the Order, Miracle agrees, however, that it will inform the Commission of any new incidents or injuries regarding the seven (7) products named herein. Nothing in this Agreement shall be interpreted as limiting Miracle's obligation to report pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b); and nothing herein shall be interpreted as expanding Miracle's legally required duties beyond those established by law.

25. Upon provisional acceptance of this Consent Agreement and Order by the Commission, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Consent Agreement and Order within 15 days, the Consent Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

26. The parties further agree that the incorporated Order be issued under the FHSA, 15 U.S.C. 1261 *et seq.*, and that a violation of the Order will subject Miracle to appropriate legal action.

27. No agreement, understanding, representation, or interpretation not contained in this Consent Agreement and Order may be used to vary or to contradict its terms.

Dated: October 25, 1988.

Miracle Recreation Equipment Co.,

Paul K. Wallen,

President and CEO, Miracle Recreation Equipment Co., Hwy 60 and Bridal Lane, P.O. Box 420, Monett, Missouri 65708.

Consumer Product Safety Commission,

David Schmeltzer,

Associate Executive Director Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Dated: October 26, 1988.

Melvin I. Kramer,

Staff Attorney, Directorate for Compliance and Administrative Litigation.

Order

The staff and Miracle having entered into a Consent Agreement in this matter whereby Miracle has agreed to take the remedial action specified below in consideration of the undertakings of the

Commission set forth in the Agreement and the Commission having approved the terms of the Consent Agreement;

It is therefore ordered that;

1. Miracle will carry out the remedial action described in the "Safety Notice" (contained in Attachment A—which is available at the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207) for its "Slashproof Swing Seats," its "Arch Swing," its "Senior/Lifetime Whirl," and its "Thereapeutic Whirl."

2. Miracle will search its records and compile a list of anyone who has ever purchased any of its products.

3. Miracle will send, by certified mail, a copy of the "Important Safety Notice" (Attachment A) to anyone identified by Miracle, by the Commission, or by any other source, as having purchased, owned, or presently owning one of the "Arch Swings." Miracle will send a follow-up mailing, to be approved by the Commission staff, to any such purchaser who, within a reasonable time, fails to respond to the initial mailing.

4. All purchasers or present owners of any Miracle product identified through Miracle's records search or which come to Miracle's attention through any other source, will receive a copy of the "Important Safety Notice" with Miracle's 1989 product catalogue to be mailed in October 1988.

5. All letters, notices, communications and the envelopes containing them will be imprinted with the words "IMPORTANT SAFETY NOTICE" in bold, red letters prominently across the top.

6. Miracle will carry out the retrofit program detailed in the "Important Safety Notice" in Attachment A, for all "Slashproof Swing Seats" purchased since 1978, and all "Senior/Lifetime Whirls," "Thereapeutic Whirls," and "Arch Swings," still in existence.

7. Miracle will expend its best efforts to ensure that this retrofit/repair program is performed on all of the products specified in paragraph 1 above, incuding any of these products identified through means other than those specified in paragraphs 3 and 4 above, (e.g., Miracle becomes aware that the original owner has sold, or no longer owns the product, and the product and present owner or location of the product is identified or identifiable).

8. Miracle will, as detailed in the "Important Safety Notice" at Attachment A, supply the replacement "Slashproof Swing Seats" for $13 each (including handling and shipping changes); and the warning signs for the "Therapeutic Whirls" and the hardware to repair the "Arch Swing", free-of-charge (including the handling and shipping charges).

9. Miracle will, as detailed in the "Important Safety Notice" (Attachment A), pay $50 to cover the welding costs for repair of the "Arch Swing". Further, if necessary on an individual basis, Miracle will negotiate a higher fee for the welding costs.

10. Miracle will, upon request, provide the list of known purchasers of any of these four (4) products to the staff.

11. Miracle will file monthly compliance reports detailing the progress of the retrofit program until such time as the staff determines that the reports are no longer necessary.

12.. The staff will assess the results of the October 1988 mailing and, if the staff determines it to be necessary, Miracle will conduct another mailing (the form and content of the notice to be approved by the staff).

Provisionally accepted on 28th day of November, 1988.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-27887 Filed 12-9-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Army Subgroup on Low Observable Technologies will meet in closed session on March 8–9 and March 29–30, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine and provide advice regarding Army activities in the area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

December 7, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-28507 Filed 12-9-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on February 3, 1989 at the Hughes Corporation, Rosslyn, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the potential for achieving US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

December 7, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-28508 Filed 12-9-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on January 11, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the

perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

December 7, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–28509 Filed 12–9–88; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 3, 1989; Tuesday, January 10, 1989; Tuesday, January 17, 1989; Tuesday, January 24, 1989 and Tuesday, January 31, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

December 7, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–28510 Filed 12–9–88; 8:45 am]

BILLING CODE 3810–01–M

Per Diem, Travel and Transportation Allowance Committee; Publication of Changes in Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 145. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 145 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1988.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 145 to the Heads of the Executive Departments and Establishments

Subject: Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 144 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$25
Anaktuvuk Pass	140
Anchorage	125
Atqasuk	215
Barrow	146
Bethel	127
Bettles	110
Cold Bay	120
Coldfoot	122
College	114
Cordova	130
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	114
Elmendorf	125
Fairbanks	114
Ft. Richardson	125
Ft. Wainwright	114
Homer	115
Juneau	114
Katmai National Park	148
Kenai	119
Ketchikan	111
King Salmon [3]	134
Kodiak	118
Kotzebue [3]	143
Kuparuk Oilfield	127
Murphy Dome [3]	114
Noatak	143
Nome	129
Noorvik	143
Petersburg	111
Point Hope	160
Point Lay	179

Locality	Maximum rate
Prudhoe Bay	113
St. Paul Island	115
Sand Point	103
Seward	122
Shemya AFB [3]	30
Shungnak	143
Sitka-Mt. Edgecombe	111
Skagway	111
Spruce Cape	118
St. Mary's	100
Tanana	129
Tok	109
Umiat	160
Unakakleet	105
Valdez	147
Wainwright	165
Walker Lake	136
Wrangell	111
Yakutat	110
All Other Localities [3 4]	91
American Samoa	81
Guam M.I	122
Hawaii:	
Hawaii, Island of:	
Hilo	70
Other	91
Kauai, Island of:	
12-20—3-31	127
4-1—12-19	95
Oahu, Island of	116
All Other Islands	91
Johnston Atoll [2]	23
Midway Islands [1]	13
Northern Mariana Islands:	
Rota	76
Saipan	92
Tinian	68
All Other Islands	20
* Puerto Rico:	
Bayamon:	
12-16—5-15	163
5-16—12-15	133
Carolina:	
12-16—5-15	163
5-16—12-15	133
Fajardo (including Luquillo):	
12-16—5-15	163
5-16—12-15	133
Ft. Buchanan (including GSA Service Center, Guaynabo):	
12-16—5-15	163
5-16—12-15	133
Roosevelt Roads:	
12-16—5-15	163
5-16—12-15	133
Sabana Seca:	
12-16—5-15	163
5-16—12-15	133
San Juan (including San Juan Coast Guard Units):	
12-16—5-15	163
5-16—12-15	133
All Other Localities	121
Virgin Islands of U.S.:	
12-1—4-30	180
5-1—11-30	144
Wake Island [2]	20
All Other Localities	20

[1] Commercial facilites are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters and U.S. Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters and U.S. Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 7, 1988.

[FR Doc. 88-28506 Filed 12-9-88; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a permit application by the Puerto Rico Electric Power Authority (PREPA) To Dredge the Aguirre Channel in Jobos Bay, PR

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement (DEIS) on a permit application by the Puerto Rico Electric Power Authority (PREPA) to dredge the Aguirre Channel in Jobos Bay to facilitate delivery of oil to the Aguirre Power Plant. PREPA is investigating widening and deepening the existing natural and dredged portions of the Aguirre ship channel and turning basin in Bahia de Jobos, to accommodate ocean-going bulk carriers of up to 30,000 DWT capacity. The approximately 7 million cubic yards of dredged material may be transported to an ocean disposal site located approximately 6 miles offshore the eastern end of the island.

FOR FURTHER INFORMATION CONTACT: Ms. Lizabeth Rhodes, (904) 791-1691, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida. Requests for information on the permit should be directed to Ms. Marie Burns, (904) 791-1687, at the same address.

SUPPLEMENTARY INFORMATION:

a. The PREPA has applied for a Department of the Army permit to dredge and enlarge a navigation channel through Jobos Bay. The existing channel is 150 feet wide by 28 feet deep and turning basin diameter and depth is 350 feet and 26 feet, respectively; and, the proposed channel dimensions are 425 feet wide by 38 feet deep, with a 13,000-foot-diameter by 36-foot-deep turning basin. Alternative modes of transporting fuel (including using other port facilities and the railroad) to the power plant will be considered as will alternative disposal methods. A no-action plan will also be evaluated.

b. Scoping: The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, Commonwealth, local agencies, and other interested persons and organizations. A scoping letter will be sent to interested Federal, Commonwealth, and local agencies requesting their comments and concerns. Interested persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the address above. Significant issues anticipated include concern for: Local groundwater; estuarine habitats such as grass beds, coral reefs, and mangroves; fish and wildlife; water qualify; threatened and endangered species; and air quality.

c. Coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and Commonwealth laws and policies will be conducted. Any discharge of materials into waters of the United States will be specified by application of the criteria of section 404(b) of the Clean Water Act, or section 103 of the Marine Protection, Research, and Sanctuaries Act.

d. DEIS Preparation: It is estimated that the DEIS will be available to the public in the fourth quarter of calendar year 1989.

* Date: November 28, 1988.

A.J. Salem,

Chief, Planning Division.

[FR Doc. 88-28492 Filed 12-9-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Hearings and Appeals Office

Cases Filed With the Office of Hearings and Appeals During the Week of October 7 through October 14, 1988

During the Week of October 7 through October 14, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

December 5, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 7 through October 14, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Sept. 29, 1988	Coline/Maryland, Baltimore, MD	RM2-132	Request for Modification/Rescission. If Granted: The November 28, 1986 Decision and Order issued to the State of Maryland regarding the State's application in the Coline second stage refund proceeding (Case No. RM2-29) would be modified.
Sept. 29, 1988	Perry Gas/Maryland, Baltimore, MD	RM183-133	Request for Modification/Rescission. If Granted: The November 28, 1986 Decision and Order issued to the State of Maryland regarding the State's application in the Perry Gas second stage refund proceeding (Case No. RF183-31) would be modified.
Oct. 7, 1988	Marathon/Rogers Oil Co., Washington, DC	RR250-5	Request for Modification/Rescission. If Granted: The August 1, 1988 Decision and Order issued to the Rogers Oil Company regarding the firm's application for refund in the marathon special refund proceding would be modified.
Oct. 11, 1988	Amoco/South Dakota and Belridge/South Dakota, Pierre, SD.	RM21-130 RM8-131	Request for Modification/Rescission. If Granted: The November 24, 1987 Decision and Order issued to the State of South Dakota (Case Nos. RM21-89 and RM8-90) regarding the State's application in the Amoco and Belridge second stage refund proceedings would be modified.
Oct. 11, 1988	Compton Corp., Washington, DC	KRD-0033 KRH-0033	Motions for Discovery and Evidentiary Hearing. If Granted: Discovery would be granted and an evidentiary hearing convened in connection with the proposed remedial order issues to the Compton Corporation and the Gratex Corporation (Case No. HRO-0230).
Oct. 11, 1988	Local Union 425, IBEW, Fairmont, WV	KFA-0224	Appeal of an Information Request Denial. If Granted: The October 4, 1988 Freedom of Information Request issued by the Morgantown Energy Technology Center would be rescinded, and Local Union 425 of the International Brotherhood of Electrical Workers would receive access to copies of the Electrical Equipment Company's employee benefits records.
Oct. 11, 1988	Maryland, Baltimore, MD	KEG-0035	Petition for Special Redress. If Granted: The Office of Hearings and Appeals would review and approve the State of Maryland's proposed expenditures for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Oct. 12, 1988	Anchor Gasoline Corp., Washington, DC	KEF-0120	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the September 19, 1988 Consent Order entered into with the Anchor Gasoline Corporation.
Oct. 13, 1988	Coca Cola Bottling Co. of L.A. and Mid-South Bottling Co., Washington, DC.	RR272-14 RF272-15	Request for Modification/Rescission. If Granted: The August 25, 1988 Decision and Order issued to Coca Cola Bottling Co. of Los Angeles and Mid-South Bottling Co. (Case Nos. RF272-288 and RF 272-329) regarding the firm's application submitted in the Crude Oil refund proceeding would be modified.
Oct. 12, 1988 Getty/Atchison, Topeka, Santa Fe Railway, Washington, DC,.	RR265-1	Request for Modification/ Rescission. If Granted:	The June 19, 1987 Decision and Order issued to the Atchison, Topeka, Santa Fe Railway regarding the firm's application in the Getty refund proceeding (Case No. RF265-1411), would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of Refund Proceeding/ Name of Refund Application	Case Number
05/05/86	Zipp-Hill Grocery	RF241-12
12/08/86	Grand Rapids Veteran's Tran.	RF270-2516
10/06/88	Leolie Weatherly	RF300-10552

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of Refund Proceeding/ Name of Refund Application	Case Number
10/06/88	James Wintercorn.	RF300-10553
10/11/88	Ilers Gulf	RF300-10554

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of Refund Proceeding/ Name of Refund Application	Case Number
Do	Jbhn's Gulf	RF300-10555
Do	Yutan Oil Company.	RF265-2705

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of Refund Proceeding/ Name of Refund Application	Case Number
Do	Anderson Propane Service.	RF139–188
Do	City of Tulsa	RF139–189
Do	McPherson Propane.	RF312–3
Do	Bon Aire Gas Service.	RF277–92
10/12/88	Segrest Gas Company, Inc..	RF300–10556
Do	James J. Lasecki	RF300–10557
10/13/88	City of Tulsa	RF139–191
10/14/88	Burling Sales Association.	RF139–190
10/7/88 thru 10/14/88.	Crude Oil Refund Applications Received.	RF272–74970 thru RF272–74988
10/7/88 thru 10/14/88.	Atlantic Richfield Co. Refund Applications Received.	RF304–6673 thru RF304–6781

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of Refund Proceeding/ Name of Refund Application	Case Number
10/7/88 thru 10/14/88.	Exxon Refund Applications Received.	RF307–6018 thru RF307–6130
10/7/88 thru 10/14/88.	Murphy Refund Applications Received.	RF309–256 thru RF309–347

[FR Doc. 88–28520 Filed 12–9–88; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed With the Office of Hearing and Appeals During the Week of October 21 Through October 28, 1988

During the week of October 21 through October 28, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 5, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 21 through October 28, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Oct. 24, 1988	Mobil/Cantro Petroleum Corp., New Haven, CT	RR225–37	Request for Modification/Rescission. If Granted: The August 2, 1988, Decision and Order issued to Cantro Petroleum Corporation (Case No. RF225–6740) would be modified, regarding the firm's application in the Mobil Oil refund proceeding.
Oct. 25, 1988	Meeker and Co., Washington, DC	KEF–0121	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the September 19, 1985, Consent Order (Case No. 6A0C00070) entered into with Meeker and Company.
Oct. 27, 1988	Technology for Energy Corp., Knoxville, TN	KFA–0228	Appeal of an Information Request Denial. If Granted: The September 27, 1988 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded and the Technology for Energy Corporation would receive access to complete copies of information on Delta M Corporation Proposal Number DMQ70060 Volumes I and II.
Oct. 28, 1988	Toledo Coalition for Safe Energy, Toledo, OH	KFA–0227	Appeal of an Information Request Denial. If Granted: The October 17, 1988 Freedom of Information Request Denial issued by the Office of Remedial Action and Waste Technology and Office of Nuclear Energy would be rescinded and Toledo Coalition for Safe Energy would receive access to certain DOE documents.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Refund Proceeding/ Name of Refund Application	Case Number
5/5/86	Pettyjohn Oil Company.	RF225–11050
Do	Pettyjohn Oil Company.	RF225–11051
Do	Pettyjohn Oil Company.	RF225–11052
10/3/88	Rural Gas Company.	RF139–187
10/21/88	Andersen Propane Service.	RF139–194
Do	Anchor Gas and Fuel.	RF 139–195

REFUND APPLICATIONS RECEIVED—Continued

Date Received	Name of Refund Proceeding/ Name of Refund Application	Case Number
10/21/88 thru 10/28/88.	Exxon Refund Applications Received.	RF307–6306 thru RF307–6453
10/21/88 thru 10/28/88.	Gulf Oil Refund Applications Received.	RF300–10568 thru RF300–10575
10/21/88 thru 10/28/88.	Crude Oil Refund Applications Received.	RF272–75007 thru RF272–75059
10/21/88 thru 10/28/88.	Atlantic Richfield Refund Applications Received.	RF304–6954 thru RF304–7058

REFUND APPLICATIONS RECEIVED—Continued

Date Received	Name of Refund Proceeding/ Name of Refund Application	Case Number
10/21/88 thru 10/28/88.	Murphy Refund Applications Received.	RF309–439 thru RF309–467
10/24/88	Northside Propane, Inc.	RF306–3

[FR Doc. 88–28522 Filed 12–9–88; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed With the Office of Hearings and Appeals During the Week of October 28 Through November 4, 1988

During the Week of October 28 through November 4, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

December 5, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 28 through November 4, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Oct. 17, 1988	Consolidated Edison Co. of New York, *et al.*, Philadelphia, PA.	RS272-1	Request for Stay. If Granted: The Office of Hearings and Appeals would refrain from disbursing any additional funds in the crude oil refund proceedings (RF272) to various governmental entity claimants pending final determination of appeals of certain refund Decision and Orders.
Oct. 31, 1988	Calumet Industries, Inc., Washington, DC	KEF-0122	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the October 6, 1986 Consent Order (Case No. N00S90139) entered into with Calumet Industries, Inc.
Oct. 31, 1988	Glen Milner, Seattle, WA	KFA-0229	Appeal of an Information Request Denial. If Granted: The September 29, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Glen Milner would receive access to information regarding *Trident* nuclear warheads.
Nov. 3, 1988	Glen Milner, Seattle, WA	KFA-0230	Appeal of an Information Request Denial. If Granted: The October 13, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Glen Milner would receive access to a complete copy of TP45-51A "Transportation of Nuclear Weapons Materials."
Nov. 3, 1988	Mobile/Ridgeway Petroleum, Inc., Washington, DC	RR225-38, RR225-39	Request for Modification/Rescission. If Granted: The August 26, 1988 Decision and Order issued to Ridgeway Petroleum, Inc. (Case Nos. RF225-9729 and RF225-9730) would be modified, regarding the firm's applications in the Mobil Oil refund proceeding.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Refund Proceeding/ Name of Refund Applicant	Case Number
10/28/88 thru 11/4/88.	Exxon Refund Applications Received.	RF307-6454 thru RF307-6543
10/28/88 thru 11/4/88.	Gulf Oil Refund Applications Received.	RF300-10576 thru RF300-10591
10/28/88 thru 11/4/88.	Crude Oil Refund Applications Received.	RF272-75059 thru RF272-75080
10/28/88 thru 11/4/88.	Atlantic Richfield Applications Received.	RF304-7059 thru RF304-7121
10/28/88 thru 11/4/88.	Murphy Refund Applications Received.	RF309-467 thru RF309-495
10/31/88	Hofer, Inc.	RF310-315
10/31/88	Midwest Specialized Transp. Inc.	RF310-316
11/2/88	Ed's LP Gas Service.	RF139-196
11/2/88	City of Glenburn	RF139-197
11/3/88	Ash Oil Company, Inc.	RF310-317
Do	Kent Oil and Trading Company.	RF310-318

REFUND APPLICATIONS RECEIVED—Continued

Date Received	Name of Refund Proceeding/ Name of Refund Applicant	Case Number
Do	Joslin Tire Serve	RF310-319
Do	Pulp Apco	RF310-320
Do	Alma Oil Company, Inc.	RF310-321
Do	Drake's Refinery Stations, Inc.	RF310-322
11/4/88	Green Construction of Indiana.	RD272-63297
11/2/88	Aluminum Company of America.	RD272-64893
Do	Gencorp, Inc.	RD272-66920
Do	Fort Howard Cup Corporation.	RD272-69564
Do	Kaiser Aluminum and Chemical Co.	RD272-70481

[FR Doc. 88-28521 Filed 12-9-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed With the Office of Hearings and Appeals During the Week of November 4 Through November 11, 1988

During the Week of November 4 through November 11, 1988, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

December 5, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 4 through November 11, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Nov. 8, 1988	Los Angeles Times, Washington, DC	RR272-19	Request for Modification/Rescission. If Granted: The October 6, 1988 Decision and Order issued to the Los Angeles Times (Case No. RF272-7917) would be modified, regarding the refund application submitted in that crude oil refund proceeding.
Nov. 10, 1988	Petrolane/Lomita/International Drilling & Energy Corp., Washington, DC.	RR208-2	Request for Modification/Rescission. If Granted: The October 20, 1988 Decision and Order issued to International Drilling and Energy Corp. (Case No. RF208-14) would be modified, regarding the firm's application in the Petrolane/Lomita Gasoline refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week November 4, 1988 to November 11, 1988]

Date Received	Name of Refund Proceeding/ Name of Refund Applicant	Case Number
11/3/88	Enron Corporation.	RF139-201
11/4/88	City of Portal	RF139-200
Do	Mutch Oil Company.	RF139-199
Do	City of Wildrose	RF139-198
Do	Musolino and Sons, Inc.	RF299-87
Do	Enron Liquids Marketing Company.	RF253-60
11/4/88 thru 11/11/88.	Gulf Oil Refund	RF300-10592 thru RF300-10597
11/4/88 thru 11/11/88.	Exxon Refund	RF307-6544 thru RF307-6677
11/4/88 thru 11/11/88.	Crude Oil Refund	RF272-75081 thru RF272-75099
11/4/88 thru 11/11/88.	Atlantic Richfield Refund.	RF304-7122 thru RF304-7220
11/4/88 thru 11/11/88.	Murphy Oil Refund.	RF309-496 thru RF309-528
11/7/88	NGL Supply Inc	RF308-4
11/8/88	Capital City Products Company.	RD272-61357
Do	American Synthetic Rubber Company.	RD272-61843
Do	Honeywell, Inc	RD272-67216

[FR Doc. 88-28523 Filed 12-9-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-38-NG]

Consumers Power Co.; Order Granting Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Consumers Power Company (Consumers Power) authorization to import natural gas from Canada pursuant to four supply contracts with Norcen Energy Resources Limited, Shell Canada Ltd., Canterra Energy Ltd., and TransCanada PipeLines Limited. The order issued in ERA Docket No. 88-38-NG authorizes Consumers Power to import up to an aggregate of 59,000 Mcf of Canadian natural gas per day from these suppliers over a 15-year period beginning on the date of first delivery. The gas would be used for Consumers Power's system supply at an initial weighted average delivered price of $2.16 per Mcf from the border. The price consists of a demand/commodity rate that is indexed to the monthly weighted average cost of Consumers Power's domestic interstate gas purchase.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-28524 Filed 12-9-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-30-NG]

Union Gas Limited; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import and export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Union Gas Limited (Union) blanket authorization to import and export natural gas from and to Canada. The order issued in ERA Docket No. 88-30-NG authorizes Union to import and then re-export up to 100 Bcf of Canadian natural gas and to export up to 250 Bcf of domestic gas over a two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 28, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-28525 Filed 12-9-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2376; Virginia]

Appalachian Power Co.; Intent To File an Application for a New License

December 8, 1988.

Take notice that on November 8, 1988, Appalachian Power Company, the existing licensee for the Ruesens Hydroelectric Project No. 2376, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2376 was issued effective January 1, 1964, and expires December 31, 1993.

The project is located on the James River in Campbell County, Virginia. The principal works of the Ruesens Project include a concrete and masonry gravity dam, 86 feet high and about 700 feet long; a pond about 7 miles long; two powerhouses at the dam with a combined installed capacity of 12,500 kW; transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at G. O. Hydro Department, 40 Franklin Road, Roanoke, Virginia 24022.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28517 Filed 12-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI74-118-001 and CS76-842]

Devon Energy Corp. (Nevada); Redesignation

December 8, 1988.

Take notice that on November 21, 1988, Devon Energy Corporation (Nevada) of 1500 Mid-America Tower, 20 North Broadway, Okalhoma City, Oklahoma 73102-8260, filed an application pursuant to §§ 154.21, *et seq.*, and §§ 157.23, *et seq.*, of the Federal Energy Regulatory Commission's Regulations to amend the certificates held by Devon Energy Corporation in Docket Nos. CI74-118-000 and CS76-842 to reflect the change in name from Devon Energy Corporation to Devon Energy Corporation (Nevada) and to substitute Devon Energy Corporation (Nevada) for Devon Energy Corporation in any pending proceedings before the Commission. The application is on file with the Commission and open for public inspection.

Effective September 29, 1988, Devon Energy Corporation changed its name to Devon Energy Corporation (Nevada) as evidenced by a Certificate of Amendment of Articles of Incorporation dated September 29, 1988.

Notice is hereby given that the certificates of Devon Energy Corporation in Docket Nos. CI74-118-000 and CS76-842 and Devon Energy Corporation's related FERC Gas Rate Schedule No. 1 are hereby redesignated to reflect the corporate name change from Devon Energy Corporation to Devon Energy Corporation (Nevada) and that Devon Energy Corporation (Nevada) is substituted for Devon Energy Corporation in all pending proceedings.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28516 Filed 12-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2579; Indiana]

Indiana Michigan Power Co.; Intent To File an Application for a New License

December 8, 1988.

Take notice that on November 8, 1988, Indiana Michigan Power Company, the existing licensee for the Twin Branch Hydroelectric Project No. 2579, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2579 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the St. Joseph River in St. Joseph County, Indiana. The principal works of the Twin Branch Project include a 402-foot-long concrete-topped timber crib dam with flashboards; a reservior of about 1,100 acres at elevation 717.4 feet m.s.l.; a powerhouse with an installed capacity of 7,200 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Hydro Generation, 13840 East Jefferson Road, Mishawaka, Indiana 46545, telephone (219) 255-8946.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28518 Filed 12-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-104-000]

Mobil Oil Exploration and Producing Southeast, Inc.; Petition for Declaratory Order

December 7, 1988.

Take notice that on November 23, 1988, Mobil Oil Exploration & Producing Southeast, Inc. (Petitioner) filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over certain natural gas facilities which petitioner intends to construct and operate in state and federal waters offshore Alabama. Petitioner contends that the facilities are gathering and production facilities under section 1(b) of the Natural Gas Act (NGA) and are, therefore, exempt from jurisdiction and the certificate requirements of the NGA.

Petitioner states that the proposed facilities will deliver sour gas from offshore wells completed in the Norphlet formation to an onshore processing facility for removal of hydrogen sulfide and carbon dioxide. Residue gas will be sold at the tailgate, and may be moved

through one or more of the "Mobile Bay Pipeline Projects" to be considered by the Commission in Docket No. CP88–570–001. Petitioner requests expedited consideration, in part because of the relationship of the subject facilities to the proceedings in Docket No. CP88–570–001.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, within 15 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28519 Filed 12–9–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $7,652,000 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Crown Central Petroleum Corporation of Baltimore, Maryland (Case No. KEF–0044). The fund will be available to customers who purchased refined petroleum products from Crown during the period August 20, 1973 through January 27, 1981.

DATE AND ADDRESS: Applications for Refund of a portion of the consent order fund must be filed in duplicate no later than July 31, 1989 and should be addressed to: Crown Central Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF–0044.

FOR FURTHER INFORMATION CONTACT: Gary Comstock, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by the DOE and Crown Central Petroleum Corporation of Baltimore, Maryland. The consent order settled possible violations of the Federal petroleum price and allocation regulations with respect to the firm's operations during the period August 20, 1973 through January 27, 1981. On August 15, 1986, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 51 FR 30404 (August 26, 1986).

As the Decision and Order indicates, Applications for Refunds from the portion of the Crown consent order fund available for distribution to purchasers of Crown refined petroleum products may now be filed. Applications will be accepted provided they are filed no later than July 31, 1989. Applications will be accepted from customers who purchased refined petroleum products from Crown during the period August 20, 1973 through January 27, 1981. The specific information required in the Application for Refund is set fourth in the Decision and Order.

Date: December 5, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER—DEPARTMENT OF ENERGY IMPLEMENTATION OF SPECIAL REFUND PROCEDURES

December 5, 1988.

Name of Firm: Crown Central Petroleum Corporation.

Date of Filing: June 30, 1986.

Case Number: KEF–0044.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding, in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On June 30, 1986, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with the Crown Central Petroleum Corporation (Crown).

I. Background

During the period of Federal petroleum price and allocation controls, Crown was engaged in the production, importation, sale, and refinement of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products; and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the period of controls, the ERA conducted audits of Crown's operations and, as a result of the audits, alleged in several judicial and administrative proceedings that Crown had violated certain applicable DOE pricing and allocation regulations in its sales of covered products.

On March 4, 1986, ERA and Crown signed a Proposed Consent Order settling a number of issues pertaining to Crown's crude oil and refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (consent order period).[1] 51 FR 8532 (March 12, 1986). Under the terms of the Proposed Consent Order, Crown agreed to remit a total of $8,300,000, plus interest, to the DOE and the ERA agreed not to pursue its allegations regarding Crown's compliance with the DOE regulations, with the exception of certain specific issues.[2] *See id.*, ¶ 501, 51 FR at 8536. The Proposed Consent Order specifically stated that "[e]xecution of this Consent Order constitutes neither an admission by Crown nor a finding by DOE of any violation by Crown of any statute or regulations." *Id.*, ¶ 506, 51 FR at 8537. On April 29, 1986, the DOE and Crown finalized the Crown Consent Order as proposed. 51 FR 15959 (April 29, 1986). Pursuant to the terms of the Consent Order, Crown remitted a total of $8,431,323.68 (the consent order

[1] Although the "consent order period" begins on January 1, 1973, no Crown products were "covered" by mandatory controls prior to August 20, 1973. Accordingly, we have determined that because refunds in this proceeding are only warranted for purchases of regulated products, the appropriate "refund period" should be August 20, 1973 through January 27, 1981 rather than January 1, 1973 through January 27, 1981.

[2] These issues concerned Crown's compliance with the terms of the Entitlements Program and related reporting requirements.

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fund) [3] to the DOE for distribution through Subpart V. These consent order monies were paid in full on July 10, 1986, and were placed in an interest-bearing escrow account maintained at the Department of the U.S. Treasury, pending a determination regarding their proper distribution.

On August 15, 1986, we issued a Proposed Decision and Order (PDO) setting forth a tentative plan for the distribution of the Crown consent order funds. In order to notify all interested parties, the PDO was published in the **Federal Register**, 51 FR 30404 (August 26, 1986). We allowed 30 days for interested parties to comment on the proposed refund procedures. In this Decision and Order we will address the comments which were submitted in response to the PDO, and will adopt final refund procedures for distribution of the funds in the Crown escrow account.[4]

II. Distribution of the Crown Crude Oil Funds

Because the Crown Consent Order resolves alleged violations involving both the sales of crude oil and refined petroleum products, in the PDO we proposed dividing the consent order funds into two pools. *Accord Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,048 (1982). As we stated in the PDO, approximately 7.8 percent of the alleged violations settled by the consent order concern Crown's production and sales of crude oil. We therefore proposed that this same percentage of the Crown principal, or $647,400, plus accrued interest, be set aside as a pool of crude oil funds available for disbursement. There were no objections to this division, and final procedures for disbursing the Crown crude oil refund pool were set forth in *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988).

[3] This amount consists of the principal consent order amount of $8,300,000 plus $131,323.68 in interest which accrued prior to Crown's payment to the DOE.

[4] In its audit of Crown, ERA did not allege that the firm committed any allocation violations. However, because the consent order covers Crown's compliance with all aspects of the Federal Petroleum Price and Allocation Regulations, the escrow funds may be used to provide restitution to firms that show that they were injured by Crown's allocation practices. For these claimants, we will follow the same procedures that have been used in prior Subpart V proceedings involving alleged allocation violations. *See, e.g.*, Mobil Oil Corp./ Reynolds Industries, 17 DOE ¶ 85,608 (1988); Tenneco Oil Co./Research Fuels, Inc., 10 DOE ¶ 85,012 (1982). The remainder of this Decision concerns only the filing of claims involving Crown's alleged pricing violations.

III. Final Refund Procedures for the Crown Refined Product Funds

In the PDO we further proposed that the remaining 92.2 percent of the principal contained in the Crown escrow account, $7,652,600, plus interest, be made available for distribution to purchasers of Crown refined petroleum products who demonstrate that they were injured as a result of Crown's alleged regulatory violations. The PDO set forth a two-stage procedure we have used in previous decisions under which purchasers of Crown refined products could apply for refunds from this pool. *See, e.g., Marathon Petroleum Comany*, 14 DOE ¶ 85,269 (1986) *(Marathon)*.

In the PDO, however, we did not propose specific procedures for disbursing residual petroleum product monies which may remain after all such Applications for Refund have been considered. In three sets of comments, the Controller of California and the Attorneys General of the states of Arkansas, Delaware, Iowa, Louisiana, Maryland, North Dakota, Pennsylvania, Rhode Island, and West Virginia requested that these funds be distributed to state governments as a way of effecting indirect restitution to their citizens. On October 21, 1986, after the PDO had been issued and after these comments had been filed, Congress enacted the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III (PODRA). *See* Fed. Energy Guidelines ¶ 11,702 *et seq.* The PODRA requires the Secretary of Energy to determine annually the amount of petroleum product overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings, and to make those funds available to state governments for use in four energy conservation programs. PODRA, sections 3003 (c) and (d). The Secretary has delegated these responsibilities to OHA, and any funds in the product portion of the Crown escrow account that OHA determines will not be needed to effect direct restitution to injured parties are to be distributed in accordance with the provisions of PODRA. Pursuant to PODRA, $1,986,391.63, comprised of $1,943,420.11 in principal plus $42,971.52 in accrued interest, was disbursed from the Crown refined product pool in 1986. 51 FR 43965 (December 5, 1986). Because all PODRA monies will ultimately be distributed to the states, compliance with the PODRA essentially responded to the commenters' suggestion.

In view of the initial PODRA distribution noted above, approximately $5,709,180, of the Crown refined product monies, plus accrued interest, remains available to provide direct refunds to claimants that demonstrate that they were injured by the regulatory violations allegedly committed by Crown. From our experience with Subpart V proceedings, we expect that most applicants will fall into the following categories of Crown refined product purchasers: (1) End users, *i.e.*, ultimate consumers; (2) resellers and retailers; and (3) regulated entities, such as public utilities, and cooperatives.

In order to receive a refund, each claimant will be required to submit a schedule of its purchases of Crown refined petroleum products during the refund period.[5] Crown has agreed to assist claimants with these purchase schedules where a claimant's purchase records have been lost, destroyed, or are otherwise unavailable.[6] If the product was not purchased directly from Crown, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Crown.[7]

A. *Calculation of refund amounts.* In establishing the procedures which will govern this refund proceeding, we will adopt certain presumptions [8] which will permit claimants to participate without incurring inordinate expense, and which will enable OHA to consider and process refund applications in the most efficient manner possible. *See Marathon, supra.* First, in order to determine the potential refund amounts for applicants in this proceeding, we adopt the presumption that the alleged

[5] The OHA has developed a sample set of refund application forms, with instructions, as well as answers to questions commonly asked by refund applicants. These documents are available upon request. Such requests should be addressed to: Crown Central Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

[6] Claimants that require this assistance should address a request by mail to: Paul J. Ebner, General Manager, Marketing Support Services, Crown Central Petroleum Corporation, P.O. Box 1168, Baltimore, Maryland 21203, or by calling Mr. Ebner at: (301) 539–7400.

[7] Indirect purchasers who establish that the purchases originated with Crown will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the alleged Crown overcharges to its customers. *Compare* Southern Union Co./Union Carbide Corp., 16 DOE ¶ 85,026 (1987) (full refund to indirect purchaser) with Resources Extraction & Processing Co./Mobil Oil Corp., 15 DOE ¶ 85,145 (1986), *reconsideration denied*, 15 DOE ¶ 85,334 (1987), (no refund to indirect purchaser). The level of the refund will depend on (i) whether the indirect purchaser falls within one of the classes of applicant whose injury is presumed, or demonstrates injury, and (ii) whether the intermediate supplier demonstrates that it absorbed a portion of the alleged overcharges.

[8] The Subpart V regulations specifically authorize the use of presumptions in special refund proceedings. *See* 10 CFR Part 205, Subpart V.

overcharges were spread equally over all the gallons of covered products that Crown sold during the refund period and that refunds therefore should be made on a volumetric basis. Under this volumetric presumption, a claimant's maximum potential refund will generally be computed by multiplying $0.001 per gallon, the per-gallon refund amount, by the number of gallons of refined covered products [9] that the applicant purchased from Crown during the refund period.[10] The resulting figure is referred to as the claimant's "full volumetric share" of the Crown consent order funds.[11] Successful applicants will also receive proportionate shares of the interest that has accrued on the Crown escrow account.

The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than its full evidence detailing the specific amount of overcharges that it incurred in order to be potentially eligible for a larger refund. *See, e.g., Standard Oil Company (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

B. *Determination of injury.* The calculation of potential refund amounts is only the first step in the distribution process. We must also determine whether claimants were injured by the alleged overcharges. In this regard, injury means that the claimant was forced to absorb the alleged overcharges. Our experience in Subpart V refund proceedings has led us to adopt several presumptions concerning injury. Applicants that are not covered by one of the presumptions must demonstrate injury in accordance with the non-presumption procedures outlined below in section 2.

1. Injury Presumptions. The injury presumptions we have adopted in this case are designated to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider refund applications in the most efficient way possible. Each of these presumptions is listed below along with the rationale underlying its use.

a. End Users. In keeping with prior Subpart V proceedings, we will presume that end users, *i.e.*, ultimate consumers of Crown covered petroleum products whose businesses are unrelated to the petroleum industry, were injured by Crown's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. Therefore, they were not required to base their pricing decisions on cost increases or to keep records that would show whether they passed cost increases through to their customers. Consequently, an analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corporation*, 12 DOE ¶ 85,014 (1984), and cases cited therein. Therefore, end users need only document the volume of Crown refined covered products that they purchased during the refund period in order to show that they were injured by the alleged overcharges and are eligible to receive a refund.

b. Regulated Firms and Cooperatives. Public utilities, agricultural cooperatives, and other firms whose prices are regulated by government entities or governed by cooperative agreements do not have to submit detailed proof of injury. Such firms would have routinely passed through price increases to their customers. Likewise, it is expected that their customers will share the benefits associated with refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982). In order to ensure this result, such firms applying for refunds, in addition to documenting the volume of their Crown purchases, must certify that they will pass through any refund received to their customers and also submit a plan explaining both how their customers will benefit from a refund and how they will alert the appropriate regulatory body or membership group to the refund monies received. Purchases by a cooperative that were subsequently resold to nonmembers will not be covered by this presumption.

c. Resellers and Retailers Filing Small Claims. Resellers and retailers of Crown refined covered products claiming refunds of $5,000 or less, excluding accrued interest, are presumed to have been injured by Crown's alleged overcharges. Without this presumption, such an applicant would have to gather and analyze records dated as far back as 1973 in order to assemble proof that it absorbed the alleged overcharges. The cost to the applicant of gathering this information and to OHA of analyzing it, could exceed the actual refund amount. Under this injury presumption, a small claimant must only document the volume of Crown refined covered products that it purchased during the refund period in order to demonstrate injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210; *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984).

d. Resellers and Retailers Filing Medium-Range Claims. In the PDO we proposed adopting the presumption that medium-range resellers and retailers (those seeking refunds of more than $5,000 but less than $50,000) absorbed 35 percent of Crown's alleged overcharges. Therefore, such resellers and retailers could elect to receive 35 percent of their full volumetric shares, without providing detailed demonstrations of injury. The use of a medium-range presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon, supra.* Joint comments on the PDO were received from the Controller of California and the Attorney General of Maryland objecting to the 35 percent injury presumption as being excessive, and unsupportable as to the amount of

[9] Purchases of deregulated products, *i.e.*, products that were no longer "covered" by the Mandatory Petroleum Price and Allocation Regulations, cannot be use in the calculation of an applicant's potential refund amount. Below is a list of products sold by Crown and the dates on which they were deregulated:

Product	Deregulation date
Motor gasoline, propane	January 28, 1981.
Butane, natural gasoline	January 1, 1980.
Aviation gas, jet fuel	February 26, 1979.
Naptnas, gas oils	September 1, 1976.
Benzene, toluene	September 1, 1976.
Middle distillates	July 1, 1976.
Residual fuel	June 1, 1976.

[10] The volumetric factor of $0.001 per gallon was computed by dividing the $7,652,600 in Crown consent order funds that were attributable to Crown's sales of refined covered products during the refund period by the 7,893,654,932 gallons of covered products sold by the firm during that same period. In the PDO the volumetric factor was incorrectly set at $0.0011 per gallon due to an unintentional understatement of the amount of Crown's sales of refined covered products.

[11] Only claims for at least $15 in principal will be processed. This minimum has been adopted in previous refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See e.g.*, Uban Oil Company et al., 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). In this proceeding, this consideration precludes claims based on purchases of less than 14,500 gallons of Crown refined covered products.

[12] Citing Getty Oil Company, 15 DOE ¶ 85,064 (1986) (Getty), Energy Refunds asserts that when calculating refund amounts under the medium-range presumption, the following absorption fractions should apply: (1) 40% for motor gasoline; (2) 50% for middle distillates; (3) 60% for natural gas liquid products; and (4) 100% for all other products. The different absorption fractions that we adopted in Getty, however, were based strictly on Getty's pricing data. Getty at 88,117. They are not relevant to the present proceeding. In addition, the use of a single average absorption fraction simplifies the refund procedures for the benefit of both the claimants and the DOE. Therefore, we will not adopt Energy Refunds' suggestion in this regard.

overcharge absorption. These comments, however, have been overtaken by more recent decisions in which we have adopted a general 40 percent absorption presumption for all medium-range claimants. *See* discussion, *infra*. In its comments on the PDO, Energy Refunds, Inc. of Hardin, Kentucky, (Energy Refunds) suggested that we adopt a variety of absorption fractions for the different products sold by Crown.[12] In a number of prior special refund proceedings, we performed a detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Based upon the results of that prior analysis, and also based upon national average profit margin data for resellers and retailers, we determined in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987) (*Gulf II*), that it was most efficient to adopt a single general presumptive level of injury of 40 percent for all medium-range claimants. *Gulf II* at 88,737. Because our decision in *Gulf II* was issued subsequent to the issuance of the Crown PDO, we will adopt the 40 percent presumptive level of injury for all medium-range claimants in this proceeding.

Therefore, in lieu of making a detailed showing of injury, a reseller or retailer claimant whose full volumetric share of the Crown refined product consent order funds exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its full volumetric share up to $50,000.[13]

e. Spot Purchaser. In the PDO we also proposed adopting the presumption that resellers and retailers that were spot purchasers of refined covered products from Crown, *i.e.*, made only sporadic, discretionary purchases, were not injured by the alleged overcharges, and therefore generally will not be eligible for refunds. The basis for this presumption is that spot purchasers tended to have considerable discretion as to where and when to make purchases and therefore would not have made purchases from Crown Central at increased prices unless they were able to pass through the full amount of their purchase price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Energy Refunds, citing *Tresler Oil Company/ Swifty Oil Company*, 16 DOE ¶ 85,659 (1987) (*Tresler*), also suggests that we allow spot purchasers to receive twenty percent of their full volumetric shares, without demonstrating injury. There is nothing in *Tresler*, however, to support such a suggestion,[14] and Energy Refunds has not provided any other reasoning that would support its suggestion regarding spot purchasers. Consequently, we will adopt the presumption of non-injury for spot purchasers outlined in the PDO.

The spot purchaser presumption, however, is rebuttable. In past refund proceedings, we have waived the presumption of non-injury for spot purchasers that demonstrated that (i) they did not have discretion in making the spot purchases; and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. If a spot purchasers is able to rebut the non-injury presumption, its refund application will be evaluated according to the standards applicable to the claims of all other resellers and retailers. *See, e.g. Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

f. Consignees. As in previous cases, in the PDO we proposed that consignees of Crown refined covered products were not injured by Crown's alleged pricing violations. *See, e.g., Jay Oil Company*, 16 DOE ¶ 85,147 (1987). In its comments, Energy Refunds, citing *Gulf II*, suggests that we allow Crown consignees to receive ten percent of their full volumetric shares without demonstrating injury. We explicitly stated in *Gulf II*, however, that the decision to adopt a ten percent injury level presumption for Gulf consignees was based solely on our previous experience in Gulf refund proceedings. *Gulf II* at 88,739. There is no basis for assuming that the factual body underlying the consignee presumptions in *Gulf II* is applicable to this case. Consequently, we will not adopt Energy Refunds' suggestion with regard to consignees. A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee with a fixed commission based upon the volume of products sold. A consignee may rebut this presumption of non-injury by showing that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Crown's pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. Non-Presumption Demonstration of Injury. A reseller or retailer with a full volumetric share in excess of $5000 that does not elect to receive a refund under either the small claims presumption or the 40 percent medium-range presumption will be required to document its injury. This showing will generally consist of two distinct elements. First, the claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed [15] for each refined covered product that it purchased from Crown during the consent order period. *See 10 CFR 212.93(e).* Cost banks for a product should cover the period November 1, 1973,[16] through the date on which the product was decontrolled.[17] If a firm no longer has records of contemporaneously calculated cost banks for a particular product, it may approximate those banks by submitting the following information:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product between

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[12] Citing Getty Oil Company, 15 DOE ¶ 85,064 (1986) (Getty). Energy Refunds asserts that when calculating refund amounts under the medium-range presumption, the following absorption fractions should apply: (1) 40% for motor gasoline; (2) 50% for middle distillates; (3) 60% for natural gas liquid products; and (4) 100% for all other products. The different absorption fractions that we adopted in Getty, however, were based strictly on Getty's pricing data. Getty at 88,117. They are not relevant to the present proceeding. In addition, the use of a single average absorption fraction simplifies the refund procedures for the benefit of both the claimants and the DOE. Therefore, we will not adopt Energy Refunds' suggestion in this regard.

[13] That is, claimants who purchased between 5,000,000 gallons and 125,000,000 gallons of Crown refined petroleum products during the refund period (medium-range claimants) may elect to utilize this presumption. It should be noted, however, that claimants who purchased less than 12,500,000 gallons (and whose full volumetric share therefore does not exceed $12,500) could receive a larger refund under the small claims presumption than under the 40 percent medium-range injury presumption. Large resellers and retailers, *i.e.*, those who purchased more than 125,000,000 gallons (and whose full volumetric shares would therefore exceed $125,000) may elect to limit their claims to $50,000 and thereby qualify for a refund under the medium-range injury presumption.

[14] In Tresler, the applicant was granted a refund on its purchases that were made under a long-term contract with the consent order firm, but was denied a refund on its spot purchases.

[15] Claimants who have previously relied upon banked costs in order to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090 at 88,179 (1987).

[16] The regulations allowing resellers and retailers to bank unrecouped increased product costs did not take effect until November 1, 1973. *See* 10 CFR 212.93(e)(1)(i).

[17] Retailers and resellers of motor gasoline were required to maintain cost banks only until July 15, 1979 and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank data up to the January 28, 1981 decontrol date of motor gasoline.

November 1, 1973, and the date on which the product was decontrolled. Because cost banks were not supplier specific, the calculation of these monthly weighted average gross profit margins should be based on the claimant's purchases of the product from all of its suppliers; and

(3) A monthly schedule of the firm's sales of the product between November 1, 1973, and the date on which the product was decontrolled.[18]

Second, a claimant must also provide evidence that market conditions forced it to absorb the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F.Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Crown. *Id.; see also Allied Materials Corp./Great Plains Corp.*, 13 DOE ¶ 85,289 (1985). Generally, we will infer this to be true if the prices the applicant paid Crown were higher than average market prices for the same level of distribuition.[19] Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Crown for each covered product that it purchased between August 20, 1973, and the date on which the product was decontrolled. *See* note 9, *supra*.

If a firm provides the above-mentioned cost bank and price data and subsequent analysis by this office shows that the firm is entitled to a smaller refund than it would have received under the small or medium-range claims injury presumptions, the firm cannot elect to receive a refund using either of those injury presumptions. If our analysis shows that the firm was not injured by any of its purchases, the firm will not be eligible to receive any refund.

IV. Applications for Refund

We will not accept Applications for Refund from purchasers of refined covered products sold by Crown during the period August 20, 1973, through January 27, 1981. All Applications for Refund must contain the following information:

(1) A conspicuous reference to the "Crown Central Corporation Refund Proceeding", the applicant's present name and address, and the name and address of the applicant during the refund period;

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the application;

(3) An explanation of how the claimant used the Crown products, *i.e.*, whether the applicant was a reseller, retailer, consignee, end user, public utility, cooperative, etc.;

(4) For each refined covered product, a monthly schedule of the number of gallons that it purchased from Crown during the August 20, 1973 through January 27, 1981 refund period.[20] If a claimant was an indirect purchaser of Crown refined covered products, it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by Crown;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above in Section III, Part B;

(6) If the applicant was or is in any way affiliated with Crown, an explanation of the nature of that affiliation;

(7) A statement as to whether there was a change in ownership of the applicant's firm during or since the refund period. If there was such a change, the applicant must submit a detailed explanation of the transaction, as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the claimant is or has been involved in any DOE enforcement proceeding or private action filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its change in status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant has received a refund, from any source, for the alleged overcharges identified in the ERA audits underlying this proceeding;

(10) A statement as to whether the claimant or a related firm has filed any other Application for Refund in this proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other firm or individual(s) to file an Application for Refund on the claimant's behalf in the Crown proceeding; and

(12) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c).

All Applications for Refund should be sent to: Crown Central Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any claimant that believes that its Application for Refund contains confidential informaiton must submit two additional copies of the application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Crown Central Petroleum Company pursuant to the Consent Order finalized on April 29, 1986, may now be filed.

(2) All applications for Refund from the alleged Crown Central Petroleum Company refined product overcharge funds must be postmarked by July 31, 1989.

(3) This is a final order of the Department of Energy.

Date: December 5, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc 88-28526 Filed 12-9-88; 8:45 am]

BILLING CODE 6450-01-M

[18] For motor gasoline, retailers and resellers have to submit the information detailed in subparagraphs (2) and (3) only through July 15, 1979 and April 30, 1980, respectively. *See* note 17, *supra*.

[19] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available from Platt's, the burden of supplying alternative information will be on the claimant.

[20] Because we will not process claims for less than $15 in principal, *see* note 11, *supra*, an applicant must have purchased at least 14,500 gallons of refined covered products from Crown during the refund period in order for us to consider its application. If an applicant submits estimated purchase volume figures, it must provide a detailed explanation of how it derived the estimates.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3489-8]

Carcinogen Risk Assessment Guideline Meeting

AGENCY: U.S. Environmental Protection Agency.

VOL 53 ISS 238 DE 12 1988 UMI

ACTION: Notice of meeting.

SUMMARY: This notice announces a scientific workshop, sponsored by the Environmental Protection Agency (EPA), for analysis and review of issues relating to EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992, September 24, 1986). The meeting will be held at the Virginia Beach Hotel and Conference Center in Virginia Beach, Virginia.

DATES: The Workshop will be held on January 11, 12, and 13, 1989, beginning on Wednesday, January 11 at 8:30 a.m. and ending Friday, January 13 at approximately 12:00 noon. Members of the public may attend as observers.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the Workshop. To attend the Workshop as an observer, contact Ms. Trish Hasch, Eastern Research Group, Inc., 6 Whittemore Street, Arlington, Massachusetts 02174, Tel. (617) 646–7811/7800 by December 19, 1988. Space is limited.

FOR FURTHER INFORMATION CONTACT: Linda C. Tuxen, U.S. Environmental Protection Agency, RD–689, 401 M Street SW., Washington, DC 20460, Tel. (202) 475–6743 (FTS: 475–6743).

SUPPLEMENTARY INFORMATION: In 1984, EPA proposed, and Agency scientists began to apply, risk assessment guidelines for carcinogenicity, mutagenicity, suspect developmental toxicants, chemical mixtures, and exposure assessment. This guidance was developed with the understanding that risk assessment is an evolving scientific process and that continued study would lead to changes. As expected, there is new information and thinking in several areas of carcinogen risk assessment and the Agency has decided that review of EPA's Guidelines for Carcinogen Risk Assessment is appropriate at this time.

EPA is now assembling a panel of scientifically and technically qualified persons to discuss these guidelines at the workshop. Workshop panelists will address technical issues such as qualitative criteria for identifying carcinogenic hazards to humans and quantitative methods for extrapolating animal tumor data to expected levels of human exposure. Panelists will study and exchange information on the technical basis for the carcinogen risk assessment guidelines, and discuss any need for possible amendments. Approximately forty experts in toxicology, pharmacology, statistics, and related disciplines, are expected to participate as panelists.

EPA will use the workshop discussions as part of its information gathering efforts to assess the advisability of revising the Agency's carcinogen risk assessment guidelines. If the Agency proposes any changes in those guidelines, ample opportunity will be provided for public review and submission of written comments.

Dated: December 6, 1988.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88–28649 Filed 12–9–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3489–8]

Sole Source Aquifer Designation for the Head of the Neponset Aquifer Area, Massachusetts

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In response to a petition from the Town of Walpole, Massachusetts, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Head of the Neponset Aquifer (HNA) satisfies all determination criteria for designation as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The designation criteria include the following: The Head of the Neponset Aquifer area is the principal source of drinking water for the residents of that area; there are no viable alternative sources which can completely replace the drinking water supplied by the aquifer; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and if contamination were to occur, it would pose a significant public health hazard to the area's residents. As a result of this action, all federal financially assisted projects proposed for construction or modification within the HNA area can be reviewed by EPA to reduce the risk of ground water contamination from these projects.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time December 27, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Water Management Division, WGP–2113, Boston, MA 02203. The designation petition submitted may also be inspected at the Wapole Town Library in Walpole, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP–2113, Boston, MA 02203, 617–565–3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a signficant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On May 10, 1988, EPA received a petition from the Town of Walpole, Massachusetts requesting designation of the Head of the Neponset Aquifer area as a sole source aquifer. EPA determined that the petition, after receipt and review of additional requested information fully satisfied the Completeness Determination Checklist. A public hearing was then scheduled and held on September 8, 1988, in Walpole, Massachusetts, in accordance with all applicable notification and procedural requirements. A four week public comment period followed the hearing.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were:

(1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer;

(2) whether contamination of the aquifer would create a significant hazard to public health; and

(3) whether the boundaries of the deisgnated area; the project review area;

the aquifer service area; and the steamflow source area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the HNA area as a sole source aquifer:

1. The HNA is the principal source of drinking water to the residents within the service area.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to replace the amount supplied to the designated service area.

3. EPA has found that the Town of Walpole has appropriately delineated the boundaries of the designated area, project review area, aquifer service area and streamflow source area.

4. Although the quality of the area's ground water is rated as good to excellent, it is highly vulnerable to contamination due to the area's geological characteristics. Because of this, contaminants can be rapidly introduced into the aquifer system from a number of sources with minimal assimilation. This may include contamination from chemical spills, highway, urban and rural runoff, septic systems, leaking storage tanks, both above and underground, road salting operations, saltwater intrusion, and landfill leachate. Since more residents are dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard to the service area's residents.

III. Description of the Head of the Neponset Aquifer Area, Aquifer Service Area, and Project Review Area

The HNA area covers over 30 square miles in eastern Massachusetts, south of Boston. It encompasses most of Walpole, and portions of Dover, Foxboro, Medfield, Norwood, Sharon, and Westwood. The area petitioned is the eastern portion of the Neponset River Watershed Basin. This area is the headwaters of the Neponset River; from here the river flows northward out of the basin and discharges into the Massachusetts Bay. The aquifer material consists of extensive deposits of stratified drift.

The designated area is defined as the surface area above the aquifer system and its recharge area. The northern, western, and southern boundaries of the area were delineated according to the USGS Hydrologic Investigations Atlas HA–484 (1973). The eastern boundary is based upon surface topography. This eastern boundary represents the surface water divide which separates those areas contributing to eastern portions of the Neponset Basin from those areas contributing to the western portion of the Basin. However, where the Neponset River flows out of the HNA area, the boundary was not based upon topography. Here the boundary was located at the border of the stratified drift and till deposits.

The project review area is defined as the area within which federal financially assisted projects can be reviewed by EPA. For the HNA, the boundary of the designated area coincides with the boundary of the project review area. This area includes the recharge area to the HNA. There is no separate streamflow source area.

The aquifer service area is the areal extent above the HNA and those lands where the entire population served by the aquifer live. For the HNA, this includes all of the towns of Foxboro, Medfield and Walpole, and portions of Dover, Norwood, Sharon and Westwood. Most residents of the service area depend on the ten public wells located in the HNA for their drinking water supply. There are also private wells located in the HNA. The population of the aquifer service area is 45,110 people. The petitioner determined that 68% of the drinking water for the aquifer service area is supplied by the HNA.

The petitioner also demonstrated that there were no reasonably available alternative sources of drinking water for the HNA area. Eight alternatives were investigated for this petition. Six of the alternatives were eliminated as possibilities for several reasons. The remaining alternative sources could potentially supply an amount that is significantly below the amount currently supplied by the HNA. There were no alternative sources that could completely replace the HNA.

IV. Information Utilized in Determination

The information utilized in this determination includes: The petition submitted to EPA Region I by the Town of Walpole; additional information requested from and supplied by the petitioner; written and verbal comments submitted by the public, and the technical papers and maps submitted with the petition. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by federal agencies to projects which could contaminate the HNA area. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration, and EPA's review will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state or local control measures to protect the quality of ground water in the HNA area.

VI. Summary and Discussion of Public Comments

The maority of comments received from the public supported designation of the HNA as a sole source aquifer. Over twenty comments were received from the public. None of these comments expressed opposition to the designation. A few comments raised questions about the implications of the designation and the status of the petition review. These questions were all answered completely. Notable letters of support were received from federal and local governments, as well as from residents. Reasons given for support include the following: (1) The dependence of the residents on the HNA for their drinking water supply; (2) there are no reasonably available alternative sources that can replace the amount of drinking water supplied by the HNA; (3) the growth and development in the HNA area which threaten the continued purity of the resource; and (4) the hope that the HNA's designation as a sole source aquifer will heighten public awareness of the vulnerability of the resource, and encourage further protective efforts.

Date: November 30, 1988.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-28459 Filed 12-9-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-817-DR]

Amendment to Notice of a Major Disaster Declaration; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA-817-DR), dated November 23, 1988, and related determinations.

DATED: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective November 20, 1988.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-28444 Filed 12-9-88; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-818-DR]

Notice of Major Disaster and Related Determinations; North Carolina

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina FEMA-818-Dr), dated December 2, 1988, and related determinations.

DATED: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated December 2, 1988, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from tornadoes and severe storms on November 28, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288, as amended by Pub. L. 100-707. I, therefore, declare that such a major disaster exists in the State of North Carolina.

You are authorized to provide Individual Assistance in the affected areas. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster: Currituck, Dare, Franklin, Halifax, Hyde, Nash, Northampton, Pamlico, and Wake Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-28445 Filed 12-9-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; North Carolina State Ports

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200096-002

Title: North Carolina State Ports Authority Terminal Agreement.

Parties:

North Carolina State Ports Authority
Senator Linie.

Synopsis: The agreement adds a new paragraph (20) which clarifies that the term "Tariff Rate" whenever it appears in the agreement shall mean the tariff rate which was in effect at the beginning of any contract year as defined in paragraph 2 of the agreement.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 7, 1988.

[FR Doc. 88-28479 Filed 12-9-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; American President Lines, Ltd., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000150-093

Title: Trans-Pacific Freight Conference of Japan.

Parties:

American President Lines, Ltd.,
Barber Blue Sea,
Kawasaki Kisen Kaisha, Ltd.,
Mitsui O.S.K. Lines, Ltd.,
A.P. Moller-Maersk Line,
Neptune Orient Lines Limited,
Nippon Liner System, Ltd.,
Nippon Yusen Kaisha,
Orient Overseas Container Line, Inc.,
Sea-Land Service, Inc.

Synopsis: The proposed modification would prohibit any member from entering into a loyalty contract, individually or jointly with another carrier, in the Agreement trades. It

would also prohibit members from entering into loyalty contracts by taking independent action.

Agreement No.: 202–003103–095

Title: Japan-Atlantic and Gulf Freight Conference.

Parties:

Barber Blue Sea,
Kawasaki Kisen Kaisha, Ltd.,
Mitsui O.S.K. Lines, Ltd.,
A.P. Moller-Maersk Line,
Neptune Orient Lines Limited,
Nippon Liner System, Ltd.,
Nippon Yusen Kaisha,
Orient Overseas Container Line, Inc.

Synopsis: The proposed modification would prohibit any member from entering into a loyalty contract, individually or jointly with another carrier, in the Agreement trades. It would also prohibit members from entering into loyalty contracts by taking independent action.

Agreement No.: 202–008054–031

Title: United States/South and East Africa Agreement.

Parties:

The Bank Line, Limited,
Navinter,
Lykes Bros. Steamship Co., Inc.,
P and O Containers, Ltd.,
Safbank Line, Ltd. (Safbank).

Synoposis: The proposed modification would permit the individual conference subgroups to meet with other outside parties to discuss and arrange matters of mutual interest. It would also make a number of non-substantive, administrative changes to the agreement.

Agreement No.: 202–009502–024

Title: United States/South and East Africa Agreement.

Parties:

The Bank Line, Limited,
Navinter,
Lykes Bros. Steamship Co., Inc.,
P and O Containers, Ltd.,
Safbank Line, Ltd. (Safbank).

Synopsis: The proposed modification would permit the individual conference subgroups to meet with other outside parties to discuss and arrange matters of mutual interest. It would also make a number of non-substantive, administrative changes to the agreement.

Agreement No.: 202–010829–007

Title: Eurocorde Discussion Agreement.

Parties:

North Europe-U.S. Atlantic Conference,
U.S. Atlantic-North Europe Conference,
Evergreen Marine Corp. (Taiwan), Ltd.,
American Transport Lines, Inc.,
Mediterranean Shipping Co.,
Orient Overseas Container Line (UK) Ltd.,
South Atlantic Cargo Shipping, N.V.,
Lykes Bros. Steamship Co., Inc.,
Polish Ocean Lines.

Synopsis: The proposed modification would set forth guidelines of general applicability to service contracts adopted by the parties with respect to terminal handling, container service, currency adjustment charges and Crazy Eddie/Most Favored Shipper clauses.

By Order of the Federal Marine Commission.

Dated: December 7, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28480 Filed 12–9–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

December 6, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within ten calendar days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m., Comments received may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to Approve Under OMB Delegated Authority the Extension With Revision of the Following Report

1. *Report title:* Pretest of the 1989 Survey of Consumer Finances

Agency form number: FR 3058

OMB Docket number: 7100–0238

Frequency: One-time

Reporters: Sample of households nationwide

Annual reporting hours: 63 hours

Estimated average hours per response: ¾ hour

Estimated number of respondents: 50

Small businesses are not affected.

General description of report:

This information collection is voluntary (12 U.S.C. 225a, 1828(c), 1842 and 1843). No problem of confidentiality arises since names and other characteristics that would permit personal identification of respondents will not be provided to survey sponsors.

This pretest would allow the testing of questions anticipated for the 1989 Survey of Consumer Finances to collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. households. The pretest will consist of inperson interviews from a sample of approximately 50 households.

Board of Governors of the Federal Reserve System, December 6, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-28441 Filed 12-9-88; 8:45 am]

BILLING CODE 6210-01-M

Brunswick Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizng the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than Deecember 26, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Brunswick Bancorp*, New Brunswick, New Jersey; to engage *de novo* in making, acquiring, and servicing commercial loans, including but not limited to, loans secured by real property pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Hudson Valley Holding Company*, Yonkers, New York; to engage *de novo* through its subsidiary, Hudson Valley Mortgage Corp., Valhalia, New York, and thereby engage in originating and making residential and mortgage loans for its own portfolio and sale in the secondary market and servicing loans originated and sold to other investors pursuant to § 225.25(b)(1) of Board's Regulation Y. Comments on this application must be received by December 22, 1988.

3. *KeyCorp*, Albany, New York; Key Atlantic Bancorp, Albany, New York; and Key Bancshares of New York, Inc., Albany, New York; to engage *de novo* through its subsidiary, Key Services Corporation, Albany, New York, in providing data processing and data transmission services, facilities, data bases, or access to such services, facilities data bases by any technological means where: the data to be processed or furnished are financial, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services, the facilities are designed, marketed and operated for the processing and transmission of financial, banking, or economic data; and the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by December 22, 1988.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North Sixth Street, Philadelphia, Pennsylvania 19105:

1. *Keystone Financial, Inc.*, Harrisburg, Pennsylvania; to engage *de novo* through its subsidiary, Keystone Brokerage, Inc., Williamsport, Pennsylvania, in the provision of brokerage services restricted to buying and selling securities solely as agent for the account of customers and the purchase and redemption of shares of mutual funds and unit investment trusts as agent for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the State of Pennsylvania.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Commonwealth Financial Corporation*, Indiana, Pennsylvania, and S&T Bancorp, Inc., Indiana, Pennsylvania; to engage *de novo* through its subsidiary, Commonwealth Trust Credit Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and accident and health insurance directly related to extensions of credit by entities of the Applicants pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Western and Central Pennsylvania.

D. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Maryland Bancorp*, Baltimore, Maryland, and Allied Irish Banks Limited, Dublin, Ireland; to engage *de novo* through its subsidiary, First National Mortgage Corporation, Baltimore, Maryland, in making, acquiring, or servicing loans or other extensions of credit for its own account or the account of others, secured by mortgages or deeds of trust on real property or condominiums; and participating in the secondary mortgage market in connection therewith pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Aurora First National Company*, Aurora, Nebraska; to engage *de novo* through its subsidiary, First National Agency, Aurora, Nebraska, in insurance activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted within the city limits of Aurora, Nebraska.

Board of Governors of the Federal Reserve System, December 5, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28437 Filed 12-9-88; 8:45 am]

BILLING CODE 6210-01-M

CB&T Bancshares, Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to acquire Calumet Financial Associates, Inc., Columbus, Georgia, and thereby expand its activities to include discount brokerage activities pursuant to § 225.25(b)(15) and investment advisory activities pursuant to § 225.25(b)(4) of the Board's Regulation Y. Applicant proposes to offer the services on a combined basis to both retail and institutional customers and its affiliates.

Board of Governors of the Federal Reserve System, December 5, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28438 Filed 12-9-88; 8:45 am]

BILLING CODE 6210-01-M

Fairfield County Bancorp, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 3, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Fairfield County Bancorp, Inc.*, Stamford, Connecticut; to acquire 100 percent of the voting shares of Greenwich Trust Company, Cos Cob, Connecticut.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Enterprise Bancorp, Inc.*, Raleigh, North Carolina; to become a bank holding company by acquring 100 percent of the voting shares of Enterprise Bank, National Association, Raleigh, North Carolina.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bank of Blue Island Employee Stock Ownership Trust*, Blue Island, Illinois; to become a bank holding company by acquiring 39 percent of the voting shares of Great Lakes Financial Resources, Inc., Blue Island, Illinois, and thereby indirectly acquire First National Bank of Blue Island, Blue Island, Illinois, and Community Bank of Homewood-Flossmoor, Homewood, Illinois.

Board of Governors of the Federal Reserve System, December 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doic, 88-28434 Filed 12-9-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f)) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closed related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 29, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusets 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to acquire Cary Grant & Company, Inc., Chicago, Illinois, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lakota Bank Holding Company, Inc.*, Lakota, North Dakota; to acquire Anderson Agency of Lakota, Inc., Lakota, North Dakota, and thereby engage in general insurance agency activities in a place with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A)) of the Board's Regulation Y. These activities will be conducted in Lakota, North Dakota.

Board of Governors of the Federal Reserve System, December 5, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 28439 Filed 12–9–88; 8:45 am]

BILLING CODE 6210–01–M

Greenville Financial Corp. et al.; Formations of; Acquisition by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise, noted, comments regarding each of these applications must be received not later than December 30, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Greenville Financial Corporation*, Greenville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Greenville National Bank, Greenville, South Carolina.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. **SouthTrust of Florida, Inc.**, St. Petersburg, Florida, and SouthTrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust Bank of Sarasota County, Sarasota, Flordia, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Bluestem Financial Corp.**, Fairbury, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Fairbury, Fairbury, Illinois.

2. **Foresight Financial Corp.**, Freeport, Illinois; to acquire 100 percent of the voting shares of Northwest Funding Co., Rockford, Illinois, and thereby indirectly acquire Northwest Bank of Rockford, Rockford, Illinois.

3. **Wellington Bancrop, Inc.**, Springfield, Illinois; to become a bank holding company by acquiring 97.6 percent of the voting shares of Community Bank, Hoopeston, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **Freedom Financial Corporation**, Louisville, Kentucky; to become a bank holding company by acquiring at least 33.92 percent of the voting shares of Pennyrile Citizens Bank and Trust Company, Hopkinsville, Kentucky.

2. **Golden Triangle Banschares, Inc.**, Carrollton, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, New Liberty, Kentucky.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. **Jorgenson Holding Company**, Kenmare, North Dakota; to acquire 100 percent of the voting shares of The Citizens State Bank at Mohall, Mohall, North Dakota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Sequoyah County Bankshares, Inc.**, Sallisaw, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Sallisaw, Sallisaw, Oklahoma.

Board of Governors of the Federal Reserve System, December 5, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 28440 Filed 12–9–88; 8:45 am]

BILLING CODE 6210–01–M

PNC Financial Corp.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.*, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of Bank of Delaware

Corporation, Wilmington, Delaware, and thereby indirectly acquire Bank of Delaware, Wilmington, Delaware.

In connection with this application, New Financial Corp, Wilmington, Delaware; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Delaware Corporation, Wilmington, Delaware, and thereby indirectly acquire Bank of Delaware, Wilmington, Delaware.

In connection with these applications, Applicants have also applied to acquire two nonbank subsidiaries of Bank of Delaware Corporation, Wilmington, Delaware: Del Vest, Inc., Wilmington, Delaware—a Delaware Corporation which provides portfolio investment advisory services for institutional and individual customers pursuant to § 225.25(b)(4) of the Board's Regulation Y; and Christine Life Insurance Company, Wilmington, Delaware—an Arizona Corporation which underwrites, as reinsurer, credit life, disability, accident, and health insurance policies written in conjunction with loans made by Bank of Delaware pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–28435 Filed 12–9–88; 8:45 am]

BILLING CODE 6210–01–M

Village Financial Corp. Employee Stock Ownership Plan et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 224.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 29, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Village Financial Corporation Employee Stock Ownership Plan,* Gilford, New Hampshire; to acquire 13.15 percent of the voting shares of Village Financial Corporation, Gilford, New Hampshire, and thereby indirectly acquire Village Bank and Trust Company, Gilford, New Hampshire.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Lifton Family* (Martin Lifton, Elinor Lifton, Steven J. Lifton, Bruce G. Lifton and Judie B. Lifton), all of Old Westbury, New York; to acquire 35.0 percent of the voting shares of Great Neck Bancorp, Great Neck, New York, and thereby indirectly acquire Bank of Great Neck, Great Neck, New York.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First State Bank of Fort Benton Employee Stock Ownership Plan and Trust,* Fort Benton, Montana; to acquire 17.62 percent of the voting shares of Chouteau County Bancshares, Inc., Fort Benton, Montana, and thereby indirectly acquire First State Bank of Fort Benton, Fort Benton, Montana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alfred F. Boudreau, Jr. Trust,* Tulsa Oklahoma; to acquire an additional 0.24 percent of the voting shares of Brookside Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Brookside State Bank, Tulsa, Oklahoma.

2. *Katherine F. Boudreau Trust,* Tulsa Oklahoma; to acquire an additional 0.24 percent of the voting shares of Brookside Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Brookside State Bank, Tulsa, Oklahoma.

3. *Robert E. Craine, Jr.,* Tulsa Oklahoma; to acquire an additional 33.3 percent of the voting shares of Woodland Bancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Woodland Bank, Tulsa, Oklahoma.

4. *Mary K. Sanditen,* Tulsa, Oklahoma; to acquire an additional 0.91 percent of the voting shares of Woodland Bancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Woodland Bank, Tulsa, Oklahoma.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mr. Sammy P. Pierce,* Bellville, Texas, to acquire 16.29 percent of the voting shares of Community Bancorporation, Inc., Bellville, Texas and thereby indirectly acquire The First National Bank of Bellville, Bellville, Texas, and The Waller Bank, N.A., Waller, Texas.

2. *Pierce Sale Company, Trustee of Profit Sharing Plan and Trust,* Bellville, Texas, to acquire 10.25 percent of the voting shares of Community Bancorporation, Inc., Bellville, Texas, and thereby indirectly acquire The First National Bank of Bellville, Bellville, Texas, and The Waller Bank, N.A., Waller, Texas.

3. *Pilot Point Bancorp, Inc., Employee Stock Ownership Plan,* Pilot Point, Texas, to acquire 13.33 percent of the voting shares of Pilot Point Bancorp, Inc., Pilot Point, Texas, and thereby indirectly acquire The Pilot Point National Bank, Pilot Point, Texas.

Board of Governors of the Federal Reserve System, December 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–28436 Filed 12–9–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88B–0357]

Recommendations for Chemistry Data for Indirect Food Additive Petitions; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of single copies of the "Recommendations for Chemistry Data for Indirect Food Additive Petitions." These recommendations replace the "FDA Guidelines for Chemistry and Technology Requirements of Indirect Food Additive Petitions" that are currently in use.

ADDRESS: Requests for single copies of the "Recommendations for Chemistry Data for Indirect Food Additive Petitions" to the Division of Food and Color Additives (HFF–330), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of single copies of the "Recommendations for Chemistry Data for Indirect Food Additive Petitions" from the Division of Food and Color Additives. These recommendations supersede the "FDA Guidelines for Chemistry and Technology Requirements of Indirect Food Additive Petitions" issued in March 1976. Single copies of the recommendations may be requested from the Division of Food and Color Additives (address above).

Dated: December 2, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-28420 Filed 12-9-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0414]

Drug Export; ENLON® (Edrophonium Chloride Injection, USP)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Anaquest has filed an application requesting approval for the export of the human drug ENLON® (edrophonium chloride injection, USP) to Canada and Switzerland.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Anaquest, 100 Mountain Ave., Murray Hill, New Providence, NJ 07974, has filed an application requesting approval for the export of the drug ENLON® (edrophonium chloride injection, USP), to Canada and Switzerland. This drug is recommended as a reversal agent or antagonist of nondepolarizing muscle relaxants (neuromuscular blocking agents) such as tubocurarine, atracurium, vecuronium, metocurine, or pancuronium, and as adjunctive therapy in the treatment of respiratory depression caused by curare overdosage. The application was received and filed in the Center for Drug Evaluation and Research on November 15, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 22, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: December 2, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-28478 Filed 12-9-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Vaccines and Related Biological Products Advisory Committee Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. December 19, 1988, 8:30 a.m., Lister Hill Auditorium, National Institutes of Health, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD.

Type of Meeting and Contact Person

Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3:30 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General Function of the Committee

The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person as soon as possible.

Open Committee Discussion

The committee will review a pending investigational new drug for tumor-infiltrating lymphocyte cells into which a gene marker (neoR) has been inserted.

FDA is giving less than 15 days public notice of this Vaccines and Related Biological Products Advisory Committee meeting because it involves an expedited review of a biologic intended for a life-threatening illness, consistent with FDA's new initiative for expediting the review of such products. The next

regularly scheduled meeting of the committee is January 30 to February 1, 1989. FDA did not believe it appropriate to wait that long. The agency decided that it was in the public interest to hold this scientific review on December 19, 1988, even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (FHI–35), Food and Drug Administration, Room 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: December 7, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–28477 Filed 12–7–88; 3:11 pm]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Funding Priorities for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration announces the final funding priorities for Fiscal Year 1989 for Grants for Faculty Development in Family Medicine authorized under section 786(a), Title VII of the Public Health Service Act, as amended by Pub. L. 100–607.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathy, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project provides for the project requirements;

(2) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(3) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding Preferences

Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding Priorities

Favorable adjustment of review scores when applications meet specified objective criteria.

3. Special Considerations

Enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed funding priorities were published in the **Federal Register** of September 13, 1988 (FR 35385) under Grants for Faculty Development in Family Medicine. No comments were received during the 30-day comment period.

Therefore, the funding priorities as proposed are retained as follows.

Final Funding Priorities

In determining the order of funding of approved applications a funding priority will be given to the following:

(1) Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent to which applicant attracts, retains and assures program completion of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native Minority trainees).

(2) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

(3) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

(4) Applications designed to develop faculty competence for teaching geriatrics content and/or develop educational materials for teaching geriatric content to medical students, residents and practitioners.

This program is listed at 13.895 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: December 7, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-28476 Filed 12-9-88; 8:45 am]

BILLING CODE 4160-15-M

Final Funding Priorities for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration announces the final funding priorities for Fiscal Year 1989 for Grants for Residency Training in General Internal Medicine and General Pediatrics authorized under section 784, Title VII of the Public Health Service Act, as amended by Pub. L. 100-607.

Section 784 authorizes the award of grants for planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine or general pediatrics. In addition, section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such program, and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Eligible applicants are accredited schools of medicine and osteopathy, public and private nonprofit hospitals, or other public or private nonprofit entities.

To receive support, programs must meet the requirements of final regulations as specified in 42 CFR Part 74, Subpart FF.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project adequately provides for the project requirements set forth in the regulations;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(3) The qualifications of the proposed staff and faculty; and

(4) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special consideration—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed funding priorities were published in the **Federal Register** of September 13, 1988 (53 FR 35385) for public comment under Grants for Residency Training in General Internal Medicine and General Pediatrics. No comments were received during the 30-day comment period.

Therefore, the funding priorities as proposed are retained as follows.

Final Funding Priorities

In determining the order of funding of approved applications a funding priority will be given to:

(1) Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increase of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population.

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

This program is listed at 13.884 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: December 7, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-28475 Filed 12-9-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Office of the Assistant Secretary for Health; National Vaccine Injury Compensation Program; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of November 28, 1988, from the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has redelegated the authorities delegated to him under Part A (42 U.S.C. 300aa-10 *et seq.*) and Part D (42 U.S.C. 300aa-31 *et seq.*), Subtitle 2 of Title XXI of the Public Health Service Act, as amended, to the Administrator, Health Resources and Services Administration.

Redelegation

This authority may be redelegated.

Effective Date: This delegation became effective on December 2, 1988. In addition, I have affirmed and ratified any actions taken by the Administrator, Health Resources and Services Administration and his subordinates, which involved the exercise of the authorities delegated herein prior to the effective date of delegation.

Date: December 2, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-28442 Filed 12-9-88; 8:45 am]

BILLING CODE 4160-15-M

Centers for Disease Control General Powers and Duties Under Title III of the Public Health Service Act, as Amended; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of September 21, 1988 (53 FR 36644), by the Assistant Secretary for Health to the Director, Centers for Disease Control (CDC), the Director, CDC, has delegated to the Director, National Center for Health Statistics, CDC, with authority to redelegate, the following authorities under title III of the Public Health Service Act (42 U.S.C. 241 *et seq.*), as amended:

Section 304

General Authority Respecting Research, Evaluations, and Demonstrations in Health Statistics, Health Services, and Health Care Technology Assessment, excluding the authority under section 304(b)(4).

Section 306

National Center for Health Statistics, excluding the authorities under sections 306(j) and 306(k).

This delegation includes the authority to determine what assurances of confidentiality under section 308(d) are necessary.

Provision has been made for previous delegations and redelegations from the Director, National Center for Health Statistics, of authorities under sections 304 and 306 to remain in effect for no longer than 90 days from the effective date of this delegation, provided they are consistent with this delegation.

This delegation to the Director, National Center for Health Statistics, CDC, became effective on November 25, 1988.

Date: November 25, 1988.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 88-28528 Filed 12-9-88; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Impact Statement; National Wildlife Refuges Management

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a draft environmental impact statement for the management of the national wildlife refuges.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a Draft Environmental Impact Statement for the Management of the National Wildlife Refuges pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The Statement describes four alternatives for managing the national wildlife refuges and the environmental consequences of implementing each alternative.

DATES: During the public review period, public meetings will be held at various locations throughout the United States. Meetings have been scheduled as follows:

January 4, 1989, at 7:00 p.m. at the Fairview Community Center, 1121 East 10th Avenue, Anchorage, AK. USFWS Contact: Bill Knauer (907) 786–3399.

January 10, 1989, at 7:00 p.m. at the 7th Floor Conference Room, One Gateway Center, Newton Corner, MA. USFWS Contact: Curt Laffin (617) 965–5100 Ext. 222.

January 17, 1989, at 7:00 p.m. at the Sheraton Hotel and Conference Center, 360 Union Boulevard, Lakewood, CO. USFWS Contact: Jerry Nugent (303) 236–8150.

January 18, 1989, at 7:00 p.m. at the L. D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring St., SW., Atlanta, GA USFWS Contact: Ken Butts (404) 331–0834.

January 18, 1989, at 9:00 p.m. at the Large Buffet Room, Main Interior Building Cafeteria, 18th and C Streets, NW., Washington, DC. USFWS Contact: Sean Furniss (202) 343–4944.

January 19, 1989, at 7:00 p.m. at the Doublewood Ramada, Exit 36 and I–94, Bismark, ND. USFWS Contact: Jerry Nugent (303) 236–8150.

January 20, 1989, at 12:00 noon at 16th Floor Conference Room, 500 NE Multnomah St., Portland, OR. USFWS Contact: Ty Planz (503) 232–6171.

January 24, 1989, at 8:00 p.m. at the Continuing Education Conference Center, 1634 University Boulevard, Albuquerque, NM. USFWS Contact: Linda Hagen (505) 765–8044.

January 24, 1989, at 7:30 p.m. at the Thunderbird Motel, 2201 East 78th St., Bloomington, MN. USFWS Contact: Wayne Weier (612) 725–3306.

January 26, 1989, at 7:30 p.m. at the Stouffer Concourse Hotel, 9801 Natural Bridge Road, St. Louis, MO. USFWS Contact: Wayne Weier (612) 725–3306.

FOR FURTHER INFORMATION CONTACT: Sean Furniss, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240: telephone (202) 343–4944.

SUPPLEMENTARY INFORMATION: A summary of the environmental impact statement has been prepared and will be sent to all persons and organizations who participated in any part of the review process, such as scoping meetings or in other types of communication with the planning team. Copies of the complete draft environmental impact statement will be sent to Federal and State agencies, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from the environmental impact statement coordinators listed below.

Written and oral comments will be accepted at the public meetings. To be considered in the preparation of the final environmental impact statement, all comments should be received by no later than March 13, 1989.

Copies of the Draft Environmental Impact Statement are available for public review at the offices listed below:

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW., Room 1306, Albuquerque, NM 87103.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, MN 55111.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, Room 1200, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 9503.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240.

Date: December 6, 1988.

Frank Dunkle,

Director.

[FR Doc. 28448 Filed 12-9-88; 8:45 am]

BILLING CODE 4310-55

VOL 53 ISS 238 12 1988 DE UMI

Bureau of Land Management

Meetings; Las Vegas District Advisory Council

ACTION: Las Vegas District Advisory Council Meeting, Clark County, Nevada.

Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Bureau of Land Management Las Vegas District Advisory Council has been set for Thursday, December 22, 1988.

The meeting will be held in the Conference Room of the Bureau of Land Management Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada, beginning at 8:00 a.m.

The Meeting Agenda is as follows:

1. Agenda approval and review of last meeting's minutes.
2. Review of TRI-District Advisory Council Meeting.
3. Preview of the Las Vegas District Tortoise Management Plan.
4. Review of the nomination process for appointment to the advisory council.
5. Public Comments.

The meeting of the Las Vegas District Advisory Council is open to the public. Persons wishing to appear before the Council and give public comments may do during the Public Comment portion of the agenda. Those wishing to make comments should notify the BLM Las Vegas District Manager, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada, (702) 646–8800, during normal business hours (7:30 a.m. until 4:15 p.m. week days) prior to the meeting.

Summary minutes of the District Advisory Council meeting will be maintained at the BLM Las Vegas District Office.

Ben F. Collins,

District Manager.

[FR Doc. 88–28485 Filed 12–9–88; 8:45 am]

BILLING CODE 4310–HC–M

[AK 040–09–4230–10; AA–44380]

Realty Action; Classification of Public Lands for Federal Land Policy Management Act Section 302 Lease

AGENCY: Anchorage District Office, Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands, located approximately 26 miles west of Haines, Alaska in the Haines Borough have been classified as suitable for lease pursuant to section 302 of the Federal Land Policy Management Act (FLPMA):

Section 18, T. 30 S., R. 55 E., Copper River Meridian, containing 1.0 acres.

Albert C. Gilliam, d.b.a. Alaska CrossCountry Guiding and Rafting has applied for a one (1) acre site on which to operate a commercial recreation guiding business. The lease is intended to legalize improvements in existence for several years. This lease is a non-competitive offering at fair market value to the existing holder of titled improvements. Fair market rental is estimated to be $100.00 per year.

The terms and conditions of the lease are as follows:

The lease authorizes only existing improvements. Additional construction must be approved in writing by the authorized officer. The term is initially 10 years. The lease is renewable at the discretion of the authorized officer and transferable only with BLM approval. As a condition of holding this lease, the applicant or holder will comply with the requirements for a Special Recreation Permit by June 30, 1989, specifically the requirements contained in 43 CFR 8370. If the applicant or holder fails to meet these requirements, the BLM will terminate the lease, require that the premises be vacated and treat the improvements an unauthorized occupancy and use of public lands according to regulations found in 43 CFGR 9230.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action, including the Land Report and Environmental Assessment, is available for review at the Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507 or call Robert Lloyd, Realty Specialist, at (907) 267–1254.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments at the above address. Any adverse comments will be evaluated by the Anchorage District Manager who may cancel or modify this action and issue a final determination. In the absence of any adverse action by the Anchorage District Manager, this will become the final determination of the Department of the Interior.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 88–28467 Filed 12–9–88; 8:45 am]

BILLING CODE 4310–JA–M

[AK–040–09–4210–12]

Classification Termination; Alaska

AGENCY: Anchorage District Office, Bureau of Land Management, Interior.

ACTION: Notice; classification termination, Alaska.

SUMMARY: This notice terminates the recreation and public purposes classification of November 12, 1963.

FOR FURTHER INFORMATION CONTACT: Richard J. Vernimen, District Manager, 6881 Abbott Loop Road, Anchorage, AK 99507 (907) 267–1248.

EFFECTIVE DATE: November 30, 1988.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2091.7–1, the Bureau of Land Management hereby terminates the Recreation and Public Purposes Classification of November 12, 1963 which involves the following described lands:

Seward Meridian, Alaska

Partially Surveyed T. 16 N., R. 4 E., Sec. 34.

The area described contains 640 acres located within the Matanuska-Susitna Borough, Alaska.

In 1963 the Bureau of Land Management classified these lands as suitable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, (43 U.S.C. 869, 869–1 to 869–4), as amended, for public sanitation, protection and recreation, subject to application by a governmental body only. The classification provided for segregation of the lands against all forms of appropriation under the public land laws, including location under the mining laws, but not including the Recreation and Public Purposes Act or the mineral leasing laws. The state of Alaska wishes to receive conveyance of these lands for recreational purposes. The state is eligible to receive these lands under section 6(b) of the Alaska Statehood Act of July 7, 1958, (48 U.S.C. prec. 21), and section 906(e) of the Alaska National Interest Lands Conservation Act of December 2, 1980, (43 U.S.C. 1635(e)). It is BLM-Alaska's policy that state entitlements under the Alaska Statehood Act take priority over other disposals of public land. Therefore, the Recreation and Public Purposes classification and segregation is hereby terminated. The lands are not available for application or entry under the public land laws; they will be made available to the state of Alaska under the above authorities.

Richard J. Vernimen,

District Manager.

[FR Doc. 88–28466 Filed 12–9–88; 8:45 am]

BILLING CODE 4310–JA–M

[AZ-920-09-4212-12 and 15; A-8168(E), A-21576 and A-23651]

Arizona; Reconveyance and Classification of Public Land for Recreation and Public Purposes and State Indemnity Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the reconveyance of land by the State of Arizona and Lake Havasu City to the United States. The State of Arizona incorrectly selected a 1.38 acre parcel of land in sec. 20, T. 13 N., R. 20 W., under State Indemnity Selection Application A-8168(E). The parcel was transferred to the State of Arizona in Indemnity Selection List No. 591. The parcel the State of Arizona intended to select was transferred to Lake Havasu City under the Recreation and Public Purpose Act by Patent No. 02-87-0009. Lake Havasu City has agreed to accommodate the State of Arizona by reconveying their parcel to the United States for transfer to the State of Arizona. In return, the State of Arizona has reconveyed their parcel to the United States for transfer to Lake Havasu City.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241-5534.

SUPPLEMENTARY INFORMATION: On November 7, 1986, the Bureau of Land Management issued Indemnity Selection List No. 591 under the Act of June 20, 1910 (36 Stat. 557), as authorized by Pub. L. 99-632 dated November 7, 1986. On September 12, 1988, the State of Arizona notified the Bureau of Land Management that they erroneously selected a 1.38 acre parcel of land in Mohave County. This parcel is reconveyed to the United States by Deed of Reconveyance 96-96098 and is described as:

Gila and Salt River Meridian

T. 13 N., R. 20 W.,
Sec. 20 metes and bounds parcel in lot 6.

Title to the above land was accepted December 1, 1988. The land has been found suitable for classification for convenyance to Lake Havasu City under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Lake Havasu City has filed an application to use the land for a fire station site.

The land is not needed for Federal purposes. Conveyance of this parcel to Lake Havasu City is consistent with current BLM land use planning and would be in the public interest.

The conveyance document, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States.

4. Rights-of-way A-9075, A-9076, A-11637, A-18455 and A-21580.

5. Excepting and reserving to the United States ownership of all land below elevation 450 feet mean sea level with certain limitations. Title thereto shall remain in the United States as required by 43 U.S.C. 498.

Subject to all valid existing rights, the land is hereby segregated from appropriation under all other public land laws, including location under the mining laws. This segregation will terminate upon issuance of a patent, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

In return, Lake Havasu City reconveyed the following land to the United States:

Gila and Salt River Meridian

T. 13 N., R. 20 W.,
Sec. 21, lot 5.

The area described contains 1.38 acres in Mohave County.

Title to the above land was accepted December 1, 1988.

The Arizona State Land Department has filed a corrected application to acquire the land described above under the provisions of sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), in lieu of certain State Trust land taken by the Secretary of Interior, Bureau of Reclamation, for construction of the Central Arizona Project. This application has been assigned serial number A-8168 (E).

The land described above has been determined suitable to be classified for transfer. This classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and section 7 of the Act of June 28, 1934.

The land will be subject to the following reservations, terms and conditions:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States.

2. Rights-of-way A-9075, A-9076, A-1137, A-18455 and A-21580.

3. All valid existing rights.

The filing of the corrected application under the provisions of Subpart 2621 segregated the land described above from settlement, sale, location or entry under the public land laws, including the mining laws, but not the mineral leasing laws. This segregation will terminate upon issuance of a document of conveyance, publication of Notice of Termination, or the expiration of 2 years from the date of filing.

For a period of 60 days from the date of publication of this Notice in the **Federal Register**, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification, may present their views in writing to the State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Any adverse comments will be evaluated by the State Director who will issue a notice of determination to proceed with, modify or cancel the action. In the absence of any action by the State Director, this classification will become the final determination of the Department of the Interior.

John T. Mezes,

Chief, Branch Lands and Minerals Operations.

[FR Doc. 88-28484 Filed 12-11-88; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-09-4212-14; N-49532]

Realty Action; Direct Sale on Public Lands in Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of the community landfill to the City of Carlin, Nevada.

SUMMARY: The following land has been found suitable for direct sale to the City of Carlin under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at the appraised fair market value of $3,100.00:

Mount Diablo Meridian, Nevada

T. 33 N., R. 52 E.,
Sec. 16, W½SE¼.
Containing approximately 80 acres.

This land is occupied in part by a landfill that was leased to the City of Carlin under the Recreation and Public Purposes Act. It is being offered by direct sale to the City of Carlin in support of BLM policy to divest itself of all management responsibilities of landfills that are located on public land. The proposal is in conformance with the Elko Resource Management Plan and would not conflict with any known state or local planning, ordinance or zoning.

An opening order for the subject land was published in the **Federal Register** on

July 14, 1988, opening the land to disposal under section 203 of the Federal Land Policy and Management Act. The land described remains segregated from appropriation under other public land laws, including the mining laws. The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register.**

The land is not within any grazing allotment and contains no known mineral values except for oil and gas. Therefore, mineral interests, excluding oil and gas will be conveyed simultaneously with the sale of the land. Acceptance of the direct sale offer will constitute an application to purchase the mineral estate having no known mineral value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the timeframe specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following:

1. A reservation for ditches and canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. A reservation for oil and gas to the United States.

Further information regarding this sale is available for review at the Elko District Office, Bureau of Land Management, 3900 East Idaho, Elko, Nevada 89801. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Elko District at the above address. All objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Date: December 2, 1988.

Rodney Harris,

District Manager.

[FR Doc. 88-28499 Filed 12-9-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-010-09-4212-13-7122-09-1101; N-41646]

Realty Action; Exchange of Public Land in Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been proposed for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 3 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 39 N., R. 65 E.,
Sec. 24, All;
Sec. 26, All;
Sec. 34, All.
T. 40 N., R. 65 E.,
Sec. 12, All;
Sec. 24, All;
Sec. 36, All.
T. 39 N., R. 66 E.,
Sec. 6, All;
Sec. 8, All;
Sec. 18, All;
Sec. 20, All;
Sec. 30, All;
Sec. 32, All.
T. 40 N., R. 66 E.,
Sec. 4, All;
Sec. 6, All;
Sec. 8, All;
Sec. 10, Lots 4, 5, 10, 11;
Sec. 16, All;
Sec. 18, All;
Sec. 20, All;
Sec. 22, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 28, All;
Sec. 30, All;
Sec. 32, All.

The areas described above aggregate 13,007.62 acres.

In exchange for these lands the United States would acquire the following described private lands from Lands of Sierra, Inc.:

Mount Diablo Meridian, Nevada

T. 41 N., R. 61 E.,
Sec. 1, Lots 1, 2, S½NE¼, SE¼;
Sec. 12, N½NE¼.
T. 40 N., R. 62 E.,
Sec. 1, S½N½, S½;
Sec. 2, W½SW¼, SE¼;
Sec. 3, All;
Sec. 4, Lots 1–8, inclusive, S½N½, N½SW¼, SE¼SW¼, SE¼.
T. 41 N., R. 62 E.,
Sec. 4, S½S½;
Sec. 5, NW¼SW¼, S½S½;
Sec. 6, All;
Sec. 7, All;
Sec. 8, NW¼NW¼, S½NW¼, S½;
Sec. 9, SW¼SW¼;
Sec. 16, W½E½, W½, SE¼SE¼;
Sec. 17, All;
Sec. 18, E½, E½NW¼, NE¼SW¼;
Sec. 20, E½, E½W½, NW¼NW¼;
Sec. 21, All;
Sec. 22, NE¼NE¼, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 25, All;
Sec. 28, All;
Sec. 29, All;
Sec. 32, E½E½, NW¼NE¼;
Sec. 33, All.

The areas described above aggregate 10,579.38 acres.

The purpose of the exchange is to acquire non-federal lands in the Snake Mountain Range with demonstrated wildlife, riparian and recreational opportunities. The lands to be disposed of will be used in conjunction with private lands already owned by Lands of Sierra to construct eight, 250-megawatt, coal fired, steam-electric generating units, which after licensing and approvals, would be built one or two units at a time over a period of approximately 20 years. An Environmental Impact Statement (EIS) is being prepared to assess the regional effects resulting from the power plant and the exchange of public lands. A Notice of Intent to prepare an EIS and to conduct scoping for the proposed project was published in the **Federal Register** on June 16, 1988. Comments were accepted until July 27, 1988, with a public scoping meeting held in Wells, Nevada, on July 6, 1988.

Lands of Sierra does not own the mineral estate for the private offered lands, therefore no mineral estates would be exchanged. The exchange would not be consummated until completing of the EIS and a subsequent Notice of Realty Action is published in the **Federal Register.**

The above described lands will be subject to an appraisal to determine the fair market value of the lands to be exchanged. Some adjustments of acreage may be required to equalize values following the completion of the appraisal.

Publication of this notice in the **Federal Register** will segregate the subject lands from all appropriations under the public land laws, the mining laws, but not the mineral leasing laws. The segregation will terminate two years from the date of this notice or upon publication of a Termination of Segregation.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Management, 3900 E. Idaho Street, Elko, Nevada 89801.

Date: November 29, 1988.

Rodney Harris,

District Manager.

[FR Doc. 88-28500 Filed 12-9-88; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Concession Contract Negotiations; R and R Enterprises

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with R and R Enterprises authorizing it to continue to provide lodging accommodations, groceries, gifts, restaurant and food service, trailer sites, and marina facilities and services for the public at Ross Lake National Recreation Area, in the state of Washington, for a period of ten (10) years from January 1, 1989, through December 31, 1998.

EFFECTIVE DATE: March 13, 1989.

ADDRESS: Interested parties should contact the Regional Director, Pacific Northwest Region, 83 South King Street, Suite 212, Seattle, Washington 98104, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

This proposed contract does not require a construction and improvement program.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Dated: November 18, 1988.

Rory D. Westberg,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 88-28512 Filed 12-9-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: December 1, 1988.
Submitting Agency: Agency for International Development.
OMB Number: None.
Type of Submission: New Collection.
Title: IAP-66A Usage Report.
Purpose: The IAP-66A Usage Report form is to establish a procedure to ensure accountability in the use of the IAP-66A forms. The IAP-66A forms are applications submitted to the Immigration and Naturalization Service for entry visas or extension of visas of A.I.D. participants who are being trained in the U.S. Collection of this information from AID field missions and participating contractors is used to improve accuracy in the accountability of IAP-66A forms being issued, voided, or lost. Respondents will have a submission burden of one submission per year which is estimated to average 65 minutes per response.
Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: November 30, 1988.

Wayne H. Van Vechten,

Information Resources, Management, Planning and Evaluation Division.

[FR Doc. 88-28494 Filed 12-9-88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31320]

Indiana and Ohio Railway Co.; Construction and Operation; in Hamilton, Warren and Butler Counties, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare an environmental impact statement and to hold a public scoping meeting.

SUMMARY: The Indiana and Ohio Railway Company will formally seek authorization, in the coming months, to construct and operate approximately 2.9 miles of railroad line. Due to the potential for significant environmental impacts, preparation of an environmental impact statement may be necessary. An informal public scoping meeting is planned on January 20 and 21, 1989. Therefore, a preliminary scope of study is proposed within this document.

DATES: The scoping meeting will take place in the general area of the proposed railroad construction. The times and location of the meeting will be decided in the near future. Requests to participate and written comments are due by January 13, 1989.

ADDRESS: Any interested persons wishing to file written comments should send them to: John O'Connell, Section of Energy and Environment, Interstate Commerce Commission, Washington, DC 20423, Tel. (202) 275-6842.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the Indiana and Ohio Railway Company (I&O) notified the Commission that it intends to file an application seeking authorization to construct approximately 2.9 miles of railroad line located between Monroe and Mason, in Hamilton, Warren and Butler Counties, Ohio.[1] The purpose of the construction is to connect two other Indiana and Ohio line segments that currently terminate at Monroe and Mason. The connector line would provide the railroad with a less circuitous routing for some of I&O's traffic as well as providing its northern route, the Mason to Middletown Branch, with more convenient connections with other railroads at the McCullough Yard.[2]

[1] The application will be filed under the Commission's regulations pursuant to 49 U.S.C 10901.

[2] Railroads which connect to the McCullough Yard are CSX, NW, and Conrail.

BEST COPY AVAILABLE

The scope of study for the development of the environmental analysis will include the identification of impact-producing actions that could occur as a result of construction activity and rail service operations. Preliminary analysis by the Commission's Section of Energy and Environment (SEE) indicates that the rail line could adversely affect safety and noise quality in the communities surrounding the rail corridor. A discussion of these issues and others that may be of community concern will be addressed at the scoping meeting.

Construction activity can pose a threat to local communities when general construction activities such as cut and fill operations take place and in the building of rail track structures. During the scoping meeting, identificaton of all relevant Federal, State and local construction regulations and constaints will be discussed in relation to railroad construction.

On the operational aspects of safety concerns, we will address four major components: Grade crossing and pedestrian conflicts as well as possible train derailments and hazardous materials spills which may occur.

During the course of the environmental analysis any or all of these components of safety during construction and operation may eventually be found to present an adverse effect. If adverse effects are discovered, mitigation measures will be recommended in the draft EIS in order to partially or fully eliminate these adverse effects.

The scoping process will assist us in identifying the type and proximity of sensitive receptors, such as homes, school, hospitals, among others.

It has been the Commission's experience that a threshold of eight or more trains per day are required to exceed a noise level of 65 DBL,[3] a level which is normally unacceptable for housing environments. Available information indicates that rail service along the subject line will be comprised of only two trains daily. However, the environmental review process will consider the possibility that long-term traffic levels may exceed the eight trains a day threshold.

The scoping meeting will address the question of alternatives to the proposed rail line. Alternative rail alignments which will connect the existing end points at Monroe and Mason but deviate from the proposed right-of-way will be evaluated from an environmental standpoint. Additionally, other forms of railroad actions such as trackage rights, haulage rights and joint rates/competitive access agreements must be considered as courses of action which achieve, although indirectly, the overall objectives of the railroad, while protecting the local environment.

Although no preferred rail corridor exists, possible types of mitigating measures if needed will be discussed and evaluated. These measures may include: fencing, sound barriers, ditches, berms, and crossing signals which could be installed during the construction phase of the project. From an operational standpoint mitigation could result in limits on train speed and/or the times of day the trains may operate.

The SEE invites comments from interested individuals, organizations, and agencies to aid us in identifying additional items that should be addressed as part of the individual areas of investigation identified above or in additional areas that may be of environmental concern.

Any individual, organization, or agency who wishes to make a presentation at the informal public scoping meeting must call John O'Connell (202) 275–6842) by January 13, 1989 for scheduling purposes. It would be helpful if common concerns or interests were expressed by a single spokesperson. Written comments are also welcome and should be submitted on or before January 13, 1989. A final scope of study will be published in the **Federal Register** and served on all parties to the proceeding.

Anyone wishing to receive copies of the final scope, the draft environmental report and all other documentation served by the ICC on this proceeding (including decisions) should call the Office of the Secretary at (202) 275–7999 and request placement on the service list as an "advise of proceedings" party for docket number FD No. 31320. Those individuals who intend to participate more actively and wish, additionally, to receive all documentation as submitted by all parties to the proceeding must submit a written request to the same office for listing as a "party of record."

Date: December 6, 1988.

Decided by: John F. Hennigan, Jr., Director, Office of Transportation Analysis.

Noreta McGee,

Secretary.

[FR Doc. 88–28469 Filed 12–9–88; 8:45 am]

BILLING CODE 7035–01–M

[3] DBL is a noise description that is used to derive sound levels in decibels.

[Docket No. AB–290 (Sub–No. 54X)]

Central of Georgia Railroad Co.; Abandonment Exemption; in Meriwether County, GA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1-mile line of railroad between milepost R–54.0 near Allie and milepost R–55.0 at Allie, in Meriwether County, GA.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 11, 1989, (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent of file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by December 23, 1988. Petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 3, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environmental in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Line*, 4 I.C.C.2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

Peterson, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 17, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 6, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28470 Filed 12–9–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AG–39 (Sub-No. 12)]

St. Louis Southwestern Railway Co.; Abandonment; In Smith and Cherokee Counties, TX; Findings

The Commission has found that the public convenience and necessity permit St. Louis Southwestern Railway Company (Cotton Belt) to abandon service over a 23.56-mile portion of the Lufkin Branch, between milepost 553.0, at or near Gresham, and milepost 576.56, at or near Jacksonville, in Smith and Cherokee Counties, TX.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelop: "**Rail Section, AB–OFA.**" Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: December 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28468 Filed 12–9–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Competitive Impact Statement and Proposed Consent Judgement; United States v. TRW, Inc.; Correction

In notice document 88–27811 appearing on page 48735 in the issue of Friday, December 2, 1988, make the following additions:

1. Attached Stipulation;
2. Attached Final Judgment; and
3. Attached Competitive Impact Statement.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Stipulation

United States of America, Plaintiff, *v.* TRW Inc., Defendant., Civil No. C–88–4253, Judge John M. Manos.

Filed November 17, 1988.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendant and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: ——

For the plaintiff:

Charles F. Rule.

Assistant Attorney General.

John W. Clark,

Barry Grossman,

Attorneys, U.S. Department of Justice, Antitrust Division.

Partick M. McLaughlin,

United States Attorney, Northern District of Ohio.

George S. Baranko,

Richard L. Irvine,

Jonathan M. Rich,

Katherine M. Jones,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001. (202) 272–4265.

For the Defendant TRW Inc.:
Jones, Day, Reavis & Pogue

By: William S. Swope

A Member of the Firm, 1450 G Street, NW., Washington, DC 20005. 202–879–3836.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on November 15, 1988 and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, the defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain remedial action, to ensure that the defendant's acquisition of Chilton does not reduce the number of firms competing in the sale of consumer credit reports in overlap areas, or otherwise lessen competition in those markets, is the essence of this agreement; *And Whereas,* the defendant has represented to the plaintiff that the remedial action required below can be made and that defendant will later raise no claims of financial hardship or any other difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "TRW" means defendant TRW Inc., each subsidiary or division thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them. TRW shall include the Chilton Corporation and any of its assets after such time as TRW acquires a majority of the voting stock of Chilton Corporation.

B. "Chilton" means Chilton Corporation, each subsidiary or division thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

C. "Consumer credit report" means a compilation of consumer credit information supplied to a credit grantor or other person at their request.

D. "Consumer credit file" means an organized collection of consumer credit information records stored in and retrievable from a computer storage medium.

E. "Consumer credit information" means information relating to the credit worth, financial responsibility or paying habits of any consumer purchase or proposed consumer purchaser of goods or services on credit.

F. "Copy of consumer credit files" means an electronically reproduced complete copy, in machine readable format, of the compilation of credit information, concerning individuals having a current address within a particular overlap area, stored in and retrievable from either TRW Credit Data's or Chilton's electronic data processing system, immediately prior to the date the data transfer process is completed, no matter how or by whom such information was collected.

G. "Data transfer process" means the process of producing and transferring a complete copy of the consumer credit files for an overlap area, or the data to compile such consumer credit files, from the electronic data processing system of either TRW Credit Data or Chilton, as the case may be, to a purchaser. The data transfer process for an overlap area shall be considered completed when the designated copy of consumer credit files has been transferred to the purchaser in a form required by the purchase contract, or, in the event of a dispute between the defendant and purchaser, when plaintiff has been satisfied that the data transfer process has been completed.

H. "Network services" means the computerized storage, updating, and retrieval of consumer credit information and the provision of consumer credit information from such computerized storage base to credit bureaus.

I. "Overlap affiliates" means the entities listed below. Also set out below are the dates on which the current terms of their contracts for network service expire. Their marketing areas are set out in Attachment I.

Affiliate	Termination date
Credit Data of Hawaii, Inc., Honolulu, HI	4/30/89
Credit Data of Central Massachusetts, Inc., Framingham, MA	7/10/89
Credit Data of Rhode Island, Inc., Pawtucket, RI	5/22/89
Credit Bureau of Albuquerque, Inc., Albuquerque, NM	11/1/89
Credit Bureau of Santa Fe, Inc., Santa Fe, NM	11/1/89
Credit Bureau Services of New Hampshire, Inc., Manchester, NH	7/1/90
Rochester Credit Center, Inc., Rochester, NY	6/1/90

J. "Overlap area" means each of the geographic areas defined by U.S. Postal Service zip codes set forth in Attachments II and III.

K. "Person" means any natural person, corporation, association, firm, partnership or other legal entity.

III

A. The provisions of this Final Judgment shall apply to the defendant, to each of its successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

A. Unless such notice has already been provided, TRW is ordered and directed to provide written notice to overlap affiliates of its intent to terminate contracts relating to the sale of network services for the marketing areas set forth in Attachment I at the conclusion of such contracts' current term.

B. TRW is enjoined and restrained from renewing or extending any existing contract with an overlap affiliate relating to the sale of network services for any marketing area set forth in Attachment I, without the consent of plaintiff.

C. TRW is enjoined and restrained from entering into any new contract to provide network services to any overlap affiliate for any marketing area set forth in Attachment I for a period of five (5) years from the date of entry of this Final Judgment.

D. After the provision of notice required in Section IV. A., TRW is further enjoined and restrained from refusing to allow or acting materially to inhibit overlap affiliates from terminating their contractual obligations to TRW, or from entering into a new contract with any other person, with respect to the purchase of network services for any marketing area set forth in Attachment I. TRW may, however, assert contractual rights to preserve current relationships with Credit Data of Hawaii, Inc., Credit Data of Central Massachusetts, Inc., and Credit Data of Rhode Island, Inc. for a period of six (6) months from the date this Final Judgment is entered.

E. TRW is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment from directly or indirectly acquiring any overlap affiliate without the consent of plaintiff.

V

A. (1) TRW, having entered into agreements to sell a copy of the consumer credit files maintained on TRW Credit Data's electronic data processing system for each of the geographic areas identified in Attachment II of this Final Judgment, is hereby ordered and directed to take all reasonable steps to consummate such agreements and to provide the purchasers such information, services, or assistance as are reasonably required to complete the data transfer process.

(2) TRW, having entered into an agreement to sell a copy of the consumer credit files maintained on Chilton's electronic data processing system for each of the geographic areas identified in Attachment III of this Final Judgment, is hereby ordered and directed to take all reasonable steps to consummate such agreement and to provide the purchaser such information, services, or assistance as are reasonably required to complete the data transfer process.

B. TRW shall take all reasonable steps to complete the data transfer process in accordance with the agreement it has with each purchaser no later than one hundred twenty (120)

days after the entry of this Final Judgment.

C. With the consent of plaintiff, the period in which the data transfer process is to be completed may be extended for up to sixty (60) days.

D. Copies of consumer credit files will be provided to the purchaser in a format that is agreeable to TRW and the purchaser.

E. Upon the request of a purchaser, TRW shall use all reasonable efforts to provide in an expedient manner such information as the purchaser may reasonably request, at any time up to sixty (60) days following the completion of the data transfer process, in connection with a purchase and transfer of a copy of consumer credit files in an overlap area, subject to reimbursement by the purchaser of TRW's reasonable expenses incurred in connection therewith.

F. TRW shall provide plaintiff notice when the data transfer process has been completed with respect to each overlap area.

G. If TRW is unable to complete a data transfer process for an overlap area to a person with whom it currently has a contract for sale of a copy of consumer credit files, TRW shall transfer a copy of the consumer credit files for that overlap area to a person as to whom plaintiff is satsified that: (i) The transfer is for the purpose of enabling the transferee to complete in the sale of consumer credit reports in the overlap area, (ii) the transferee currently has the managerial, operational, technical, and financial capability to compete in the sale of consumer credit reports, and (iii) the transfer will not adversely affect competition in any overlap area. TRW shall not finance all or any part of the purchase of a copy of the consumer credit files without the consent of plaintiff.

VI

Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the data transfers required by section V have been completed, TRW shall submit to the plaintiff a written report setting forth in detail the fact and manner of compliance with section V of this Final Judgment. TRW shall maintain full records of all efforts made to transfer copies of the consumer credit files in the overlap areas pursuant to section V.A. and to sell and transfer copies of the consumer credit files in the overlap areas pursuant to section V.G.

VII

A. For each overlap area, TRW shall maintain a complete copy of the consumer credit files to be sold and shall follow its usual business practices to ensure that the consumer credit information in the copy of the consumer credit files to be sold is current and up-to-date at the time of the data transfer process.

B. TRW shall not take any action that would materially jeopardize the sale or transfer of a copy any consumer credit file to be sold pursuant to the terms of this Final Judgment.

C. TRW shall not take any action that would materially jeopardize the operation of any overlap affiliate.

VIII

If the data transfer process for any overlap area has not been completed within one hundred twenty (120) days of entry of this Final Judgment (or such longer period if the period for completion of the data transfer process has been extended by Plaintiff pursuant to section V.C.), TRW shall file with the Court, within seven days of the date the data transfer process was to have been completed, a report setting forth its efforts to complete the data transfer process and explaining why the data transfer process has not been completed. TRW and Plaintiff may recommend to the Court any further orders to be entered. The Court shall enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, including appointment of an agent to sell copies of the consumer credit files in any overlap area for which the data transfer process has not been completed.

IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or other persons acting for or on behalf of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendant's principal office. defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section IX, shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendeant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of privilege under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceedings (other than grand jury proceedings) to which defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling plaintiff and the defendant to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgement, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI

This Final Judgment will expire on the fifth anniversary of its entry by the Court.

XII

Entry of this Final Judgment is in the public interest.

United States District Judge

Dated: ——

Attachment I—Affiliate Marketing Areas

Credit Data of Hawaii, Inc., Honolulu, Hawaii
All zip codes within the state of Hawaii.

Credit Data of Central Massachusetts, Inc., Framingham, Mass.
Zip codes 01005–01006, 01031, 01037, 01068, 01074, 01083, 01094, 01331, 01366, 01368, 01374, 01420, 01430–01433, 01436–01438, 01440, 01450–01453, 01460, 01462–01469, 01472–01473, 01475, 01477, 01501, 01503–01510, 01515–01520, 01522–01527, 01529–01532, 01534–01543, 01545, 01549–01550, 01560–01562, 01564–01566, 01568–01570, 01581, 01583, 01585–01588, 01590, 01601–01613, 01701, 01719–01721, 01730–01731, 01740–01742, 01745–01749, 01752, 01754, 01756–01757, 01760, 01770, 01772–01773, 01775–01776, 01778, 01780, 01784, 01803, 01821, 01824, 01826–01827, 01850–01854, 01863, 01876, 01879, 01886–01887, 02019, 02030, 02038, 02052–02054, 02056, 02154, 02158–02167, 02173, 02181, and 02192–02194 within the state of Massachusetts.

Credit Data of Rhode Island, Inc., Pawtucket, Rhode Island
All zip codes within the state of Rhode Island.

Credit Bureau of Albuquerque, Inc., Albuquerque, New Mexico
Zip codes 87034, 87100–87125, 87154, 87174, 87176, 87184, 87185, 87190–92, 87194–98, 87001, 88312–88313, 88020, 87820, 88022, 88210, 87410, 87002, 88111, 87004, 87815, 87412–13, 87005, 87006, 87068, 87310, 88112, 88025, 88103, 88316, 88213, 88220–21, 88301, 87007, 88113, 87008, 87009, 87311, 87011, 88028, 87070, 88101, 88029, 87312, 88318, 87048, 87018, 88114, 87014, 87932, 87821, 88230, 88115, 88319, 87934, 88320, 87015, 88116, 88321, 87016, 88231, 87401, 87499, 87315, 88118, 88322, 88323, 88119, 87316, 87416, 87301, 87317, 88038, 88324, 88423, 88039, 88120, 87020, 88232, 88240–41, 88335, 88336, 88250, 88121, 88251, 87022, 88252, 87023, 88122, 87417, 87418, 87026, 87028, 88253, 88254, 87823, 88338, 88123, 88255, 88426, 87031, 88256, 88260, 87824, 87825, 88263, 88264, 88427, 88262, 88124, 87319, 87320, 87021, 88125, 88050, 87939, 88265, 87035, 87036, 88051, 87037, 87328, 87419, 87038, 88341, 88266, 87040, 88126, 87042, 88343, 87827, 87043, 88009, 87828, 88130, 87045, 88433, 87829, 87321, 88055, 87046, 87322, 87830, 88132, 88201–02, 88345, 88346, 88133, 87831, 87832, 87049, 88434, 87050, 88348, 87051, 87053, 87047, 87052, 87055, 87420, 87801, 87056, 88134, 87057, 88267, 88135, 87323, 88350, 87059, 88351, 87324, 87325, 87060, 88401, 88064, 87326, 88353, 87062, 87421, 88268, 87063, 87943, 88136, and 87327 within the state of New Mexico.

Credit Bureau of Santa Fe, Inc., Santa Fe, New Mexico
Zip codes 87539 through 87753, inclusive, and 88410 through 88441, inclusive, except zip codes 88423, 88426, 88427, 88433, and 88434, in the state of New Mexico.

Credit Bureau Services of New Hampshire, Inc., Manchester, N.H.
All zip codes within the state of New Hampshire.

Rochester Credit Center, Inc., Rochester, New York
Zip codes 13065, 13143, 13146, 13148, 13154, 13165, and 14001 through 14787, inclusive, except zip codes 14029, 14529, 14572, 14707–14709, 14711, 14713–14715, 14717, 14721, 14727, 14735, 14739, 14744, 14745, 14754, 14765, 14774, 14776, 14777, and 14786. In addition, zip codes 14837, 14842, 14846, 14847, 14860 and 14863 in the state of New York.

Attachment II—Overlap Areas

1. Zip codes 80000 through 81699, inclusive, in the state of Colorado.

2. All zip codes within the state of Connecticut.

3. Zip codes 77000–78612, 78614, 78616, 78618, 78622–78626, 78629–78633, 78635–78639, 78643–78663, 78665, 78667–78675, 78677–78679, and 78682–78699 in the state of Texas.

4. Zip codes 75000–76500, 76529, 76531–76532, 76555–76556, 76575, 76581–76620, 76629, 76688, 76700, 76800–76843, 76845–76852, 76854–76876, 76878–76950, 76952–76999, 79200–79299, 79500–79510, and 79512–79699 in the state of Texas.

ATTACHMENT III—Overlap Areas

1. All zip codes within the state of Arizona.

2. Zip codes 01700 through 02799, inclusive, except zip codes 01718, 01719, 01720, 01740, 01745, 01747, 01749, 01752, 01754, 01756, 01757, 01772, and 01775 in the state of Massachusetts.

3. Zip codes 01000 through 01399, inclusive, except zip codes 01005, 01006, 01010, 01031, 01037, 01057, 01068, 01069, 01074, 01081, 01082, 01083, 01092, 01094, 01331, 01364, 01366, 01368, 01372, 01374, 01379, and 01380, in the state of Massachusetts.

4. Zip codes 48000 through 48399, inclusive, except zip codes 48003, 48029, 48116, 48137, 48139, 48143 and 48169 in the state of Michigan. In addition, zip codes 48442, 48462, 48667, and 49000 through 49299, inclusive, except 49021, 49060, 49076, 49096, 49251, 49264, 49285, 49010, 49035, 49046, 49050, 49058, 49070, 49078, and 49080 in the state of Michigan.

5. Zip codes 12010, 12025, 12032, 12078, 12095, 12108, 12117, 12134, 12139, 12164, 12190, 12589, 12812, 12842, 12847, 12864, 12922, 12926, 12927, 12938, 12940, 12949, 12965, 12967, 12973 and 12986. In addition, zip codes 13020 through 13999, inclusive, except 13053, 13062, 13068, 13073, 13732, 13734, 13736, 13743, 13811, 13812, 13827, 13835, 13840, 13845, 13864, 13065, 13143, 13146, 13148, 13154, and 13165, in the state of New York.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b) through (h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding.—On November 15, 1988, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the proposed acquisition of Chilton Corporation ("Chilton") by TRW Inc. ("TRW") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The complaint names TRW as defendant.

The complaint alleges that the effect of the acquisition may be substantially to lessen competition in sales of consumer credit reports in sixteen (16) geographic markets. Both companies sell credit reports, either directly through credit bureau offices that they own (called "owned offices" herein) or indirectly through affiliated credit bureaus, in each of these markets. The complaint seeks, among other relief, to enjoin the transaction and thereby to prevent its anticompetitive effects and to maintain existing competitive conditions in the relevant markets.

On November 15, 1988, the United States and TRW filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, TRW would be required to consummate contracts to sell copies of the consumer credit files in some markets and end affiliation agreements with independent credit bureaus in others. The United States and TRW

have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II

Events Giving Rise to the Alleged Violation. On March 20, 1988, TRW and Borg-Warner Corporation ("Borg-Warner") entered into a Stock Purchase agreement by which TRW would purchase all of the issued and outstanding stock of Chilton from Borg-Warner. TRW and its affiliates sell consumer credit reports to banks, finance companies, credit card companies, and other credit grantors under the trade name Credit Data. In many areas of the country, TRW competes with Chilton or its affiliates, which sell consumer credit reports under the trade name Credimatic.

Consumer credit reports are compilations of information on individual consumers that assist credit grantors in deciding whether or not to grant credit to particular consumers. Consumer credit reports normally include a consumer's age, marital status, number of dependents, social security number, current and most recent addresses, current and recent employers, and salary. Consumer credit reports also contain information obtained from the accounts receivable files of national, regional, and local credit grantors, including information on the current status of the account, the amount owed, any amount overdue and how long overdue, and any amount written off as uncollectable. In addition, consumer credit reports contain information compiled from public records, such as judgments, liens and bankruptcies. Consumer credit reports also disclose inquiry information that indicates each instance in which a credit grantor has purchased a credit report about an individual and reveals the extent to which the person has recently received or been denied credit.

The information in a credit report covers an extended period of time. The Fair Credit Reporting Act, 15 U.S.C. 1681 *et. seq.*, provides that a credit bureau may retain and report adverse credit information on an individual for up to seven years, except bankruptcy information which may be retained and reported for ten years. 15 U.S.C. 1681c. A company selling credit reports in a given area must possess information on the overwhelming majority of individuals residing in that area, for substantially that period of time, in order to be viewed by credit grantors as an adequate source of credit reports. A credit report that contains all the information desired by credit grantors and that covers a sufficient period of time is called a "full file."

Buyers purchase consumer credit reports primarily on the basis of the quality and quantity of information in the reports. A consumer credit report that does not contain all types of credit information or that does not contain information that covers a sufficient period of time is not a substitute for a full file consumer credit report.

The Complaint alleges that the provision of full file consumer credit reports is a relevant product market for antitrust purposes. There is no reasonable substitute to which a substantial number of customers would turn in response to a small, but significant and nontransitory, price increase for such reports.

Competition in the sale of credit reports occurs in local geographic markets, usually individual metropolitan areas. Credit grantors require credit information on a specific individual. For most areas there are only a small group of firms that compile information for and sell consumer credit reports on individuals that reside in that area.

Credit information is stored, updated and retrieved by computers. Only four companies, including TRW and Chilton, maintian data bases in which consumer credit information is stored. These companies sell credit reports primarily through their owned offices, but also through affiliated credit bureaus. Affiliated credit bureaus are independently owned and operated companies, or associations, that collect consumer credit information and store it in the centralized data bases of one of the four companies.

The owned offices and affiliated bureaus of each of the four companies make up a network for the provision of credit reporting services to credit grantors. Currently, each of the networks has particular regional strengths. Most of Chilton's offices and affiliated bureaus, for example, are in the southwest, midwest, and northeast. TRW is strongest on the east and west coasts. Although national coverage is an advantage for a network, TRW in many areas has not established an office. Rather, it has "Autofiles" which consist primarily of accounts receivable data gathered from national credit grantors, but does not include the accounts receivable data of local credit grantors. In other areas, it has opened local offices and collected some local accounts receivable and public record information, but for less than the three to five years necessary to establish a competitive file. Given the different reigonal strengths of TRW and Chilton, the acquisition will expedite TRW's entry into many markets and increase the geographic area in which it offers full files.

However, in a number of local markets, TRW and Chilton are direct competitors in the sale of credit reports. The Complaint identifies sixteen areas in which the transaction is likely to reduce competition substantially: The state of Arizona; Denver, Colorado; the state of Connecticut; the state of Hawaii; Boston, Massachusetts; Worcester, Massachusetts; Springfield, Massachusetts; Detroit, Michigan; the state of New Hampshire; the state of New Mexico; Syracuse, New York; Rochester, New York; Buffalo, New York; the state of Rhode Island; Dallas and Fort Worth, Texas; and Houston, Texas. Both companies have full files in these areas and significant market share. In no case is there more than two other competitors in the sale of consumer credit reports. The Complaint alleges that each of these markets is highly concentrated, that each would become substantially more concentrated as a result of TRW's proposed acquisition of Chilton, and that the transaction would cause the Herfindahl-Hirshman Index,[1] a measure of market concentration, to increase by at least 700 points to at least 3900.

Entry into the business of providing consumer credit reports is difficult, time consuming and expensive. Generally it takes three to five years to collect sufficient information to provide full file credit reports in a given market. Consequently, new entry by another party could not be accomplished rapidly enough in any relevant geographic area to prevent the anticompetitive results of this transaction.

[1] The Herfindahl-Hirshman Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and them summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

III

Explanation of the Proposed Final Judgment. The United States brought this action because the effect of the acquisition may be substantially to lessen competition in the market for consumer credit reports in the relevant geographic markets in violation of section 7 of the Clayton Act. The risk to competition posed by this acquisition substantially would be eliminated by the relief provided in the proposed Final Judgment which will ensure that all of the relevant geographic markets will have as many competitors after the acquisition as they do currently.

Specifically, the proposed Final Judgment requires that TRW not renew agreements with affiliates located in Honolulu, Hawaii; Framingham, Massachusetts; Manchester, New Hampshire; Albuquerque and Santa Fe, New Mexico; Rochester, New York; and Pawtucket, Rhode Island. Agreements with these affiliates must be terminated at the end of their current term and TRW cannot enter into new affiliation agreements with those affiliates for at least five years. In addition, the proposed Final Judgment enjoins TRW from taking any action to prevent these affiliates from entering into new affiliation agreements with other vendors before their existing contracts with TRW expire. Termination of affiliation agreements will ensure that the acquisition will have no effect on competition in the relevant geographic markets where the affiliates operate because the affiliates will be free to enter into affiliation agreements with vendors other than TRW or Chilton. The terminated affiliates will have strong financial incentives to enter into new contractal relationships with a credit information data base service not fully represented in the local market. As a result, the number of competitors and their local market positions will remain substantially unchanged.

In order to eliminate the potential anticompetitive effects of the acquisition in the other relevant geographic markets, TRW has entered into agreements to sell a copy of either the file it now owns or a copy of the file it will acquire from Chilton for such markets to one of the other companies providing network services. Copies of these agreements are attached hereto (see Section VII below). The United States has reviewed the agreements and has determined to its satisfaction that the purchasers intend to use the data to compete with TRW in the sale of credit reports in the affected markets. The purchasers currently are not significant competitors in these markets. Thus, consummation of these agreements will preserve the current number of firms with full files in the affected markets. By requiring TRW to sell the credit information to a new competitor, the Final Judgment will preserve competitive options for credit grantors and thus eliminate the adverse effects on competition that would otherwise result from the acquisition.

The proposed Final Judgment affords TRW one hundred twenty (120) days from the date of entry of the Final Judgment to fulfill its contractual obligation to transfer a copy of the consumer credit files. This period may be extended for up to sixty (60) days with the consent of the Department of Justice. TRW shall take all reasonable steps necessary to accomplish the sales quickly and shall cooperate with purchasers of the consumer credit files in completing the data transfer process.

If TRW is unable to consummate a contract to sell copies of consumer credit files, the Final Judgment provides that TRW shall transfer a copy of the consumer credit files for that overlap area to some other person acceptable to the Department of Justice. Copies of the data must be sold to a purchaser or purchasers who can and will use it to compete in the specific relevant geographic market.

If TRW is unable to transfer a copy of the consumer credit files for an overlap area within the time provided for transfers in the proposed Final Judgment, TRW shall file with the Court, within seven days of the date the transfers were to have been completed, a report setting forth its efforts to consummate the contracts and transfer the consumer credit files and stating why the transfer process has not been completed. TRW and the Department of Justice may then recommend what further action should be taken and the Court shall enter such orders as it shall deem appropriate to accomplish the purpose of the Final Judgment.

The United States and TRW have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

IV

Remedies Available to Potential Private Litigants. Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. section 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment. The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to Barry Grossman, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

Alternatives to the Proposed Final Judgment. For the markets in which TRW is required to consummate contracts to sell a copy of its or Chilton's consumer credit files, the United States considered requiring TRW to sell either the Chilton or TRW office along with the files. The United States rejected this alternative because it concluded that the most significant impediment to entry is acquisition of the data contained in consumer credit files. The United States concluded that other aspects of entry are not so substantial that a person with a copy of either the Chilton or TRW consumer credit files could not successfully enter a relevant geographic market within a reasonable time.

The United States also considered not allowing TRW to retain a copy of the consumer credit files that it must sell. The United States rejected this alternative because if TRW can retain a copy of both the Chilton and TRW consumer credit files it can provide consumers with a higher quality product.

As another alternative, the United States considered requiring TRW to sell copies of the combined TRW and Chilton consumer credit files that it will be retaining. This alternative was rejected because the United States believes that a copy of either firm's full file will be sufficient to enable the new firm to compete effectively in the relevant markets. The new firm will have all the credit information previously owned by one of the leading competitors in the market. That information will consist of full files, which means that it will cover most of the residents of the area for a substantial period of time.

As a final alternative to the proposed Final Judgment, the United States considered seeking a preliminary injunction to block TRW's acquisition of Chilton. The United States rejected that alternative because the sale of a copy of the consumer credit files or the termination of affiliates will establish viable independent competitors to TRW in all the relevant markets and will prevent the acquisition from having a significant anticompetitive effect in those markets. The United States is satisfied that the proposed Final Judgment provides substantially all the relief it would seek if it were to litigate the case in a full trial on the merits.

VII

Determinative Materials and Documents. The United States considers TRW's contracts with The Credit Bureau Inc. of Georgia and the Trans Union Credit Information Company to sell copies of consumer credit files in certain markets to be determinative documents. These contracts include the terms of the proposed divestiture and were determinative in formulating this proposed Final Judgment. Accordingly, they are being filed with this Competitive Impact Statement. However, insofar as the contracts contain confidential, commercially sensitive information relating to the price to be paid or the content of the files, that information has been redacted. The United States is prepared to file unredacted contracts with the Court, under seal, at its request.

Respectfully submitted,

George S. Baranko,

Richard L. Irvine,

Jonathan M. Rich,

Katherine M. Jones.

[FR Doc. 88-28454 Filed 12-9-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Wednesday, February 1, 1989. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and Government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-8274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Edward R. Faison,

Master Sergeant, USAF.

Terrance N. Danner,

Captain, USN Assistant Manager, NCS Joint Secretariat.

Steven E. Elsen,

Major, USA.

Bruce G. Weiner,

Lieutenant Colonel, USAF.

[FR Doc. 88-28552 Filed 12-9-88; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp., et al.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation, et al., (GPUN or the licensee) for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The proposed amendment requests two changes to the Oyster Creek Technical Specifications Table 3.1.1 in accordance with the licensee's application for amendment dated November 30, 1988. The first requested change deletes the requirement in Table 3.1.1.A.6 for a Low-Condenser Vacuum Scram when the Reactor Mode Switch is in the Refuel Position. The second requested change would revise Table 3.1.1.C.1 to add a reference to note "11" in the startup mode for the High Reactor Pressure Isolation Condenser initiation function. Note "11" states: This function not required to be operable with the reactor vessel head removed or unbolted."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's first proposed change deletes the requirement for Low Condenser Vacuum Scram when the Reactor Mode Switch is in the Refuel Position. This change would clarify the Technical Specifications to allow Rod Scram time testing to be performed while shutdown. The existing specifications are contradictory and would allow the surveillance to be performed following a refueling outage only after establishing a vacuum in the Main Condenser.

The Low Condenser Vacuum Scram provides overpressure protection for the Main Condenser, assuming that the Main Condenser initially had a vacuum, and was in the process of losing it. A loss of Condenser vacuum causes turbine steam stop valves to close, resulting in a turbine trip transient. The low condenser-vacuum trip anticipates this transient and scrams the reactor.

When the Reactor Mode Switch is in the refuel position, only one rod can be in any position other than fully inserted. With only one rod not fully inserted, the reactor cannot go critical and cannot produce sufficient steam to maintain a condenser vacuum.

As the function of the Low Condenser Vacuum Scram is to anticipate the loss of turbine transient, and neither a vacuum nor an on line turbine can be maintained while in the Refuel position, the Low Condenser Vacuum Scram serves no function in the Refuel position.

Therefore, the requested change has been determined to contain No Significant Hazards in that it does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

As requested the change is only applicable during those times when the function is not required, no effect on probability or consequences is possible.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As the requested change is only applicable to those conditions where the function is not required, no new kind of accident is created.

3. Involve a significant reduction in a margin of safety.

As the requested change is only applicable to those conditions when the function is not required, and would allow Rod Scram time testing to be performed while shutdown, the margin of safety is increased.

The licensee's second proposed change adds a reference to note "11" in the startup model for the High Reactor Pressure Isolation Condenser initiation function. Note "11" states:

> This function not required to be operable with the reactor vessel head removed or unbolted.

This change is necessary to install new analog pressure sensors during refueling outage 12R, presently in progress.

When reactor temperature is less than 212 °F and either the vessel head is removed or unbolted, there is no possibility of a major reactor pressure excursion. As a major excursion is not possible, the instrumentation required to initiate the Isolation Condenser in response to an excursion serves no purpose.

Therefore, the requested change has been determined to contain No Significant Hazards in that it does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested change is applicable only under those previously evaluated conditions where the function has been determined to be not required. Therefore, it does not increase the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As the requested change is only applicable to those conditions when the protective function has been determined to be not required, no new or different kind of accident is created.

3. Involve a significant reduction in a margin of safety.

As the applicability of the requested change has been limited to those times when the function is not required, no reduction in a margin of safety is possible.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 11, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested,

the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr. Esquire, Shaw, Pittman, Potts and Trowbridge, 200 N Street NW., Washignton, DC 20037, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 30, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 7th day of December 1988.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28486 Filed 12–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Mississippi Power and Light Co., System Energy Resources, Inc., and South Mississippi Electric Power Association; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 51 to Facility Operating License No. NPF–29, issued to Mississippi Power and Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Association to change the Operating License and the Technical Specifications to incorporate changes resulting from the May 26, 1987 revision to 10 CFR Part 55, "Operators' License," for the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amendment is effective as of the date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 25, 1988 (53 FR 32485). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated December 16, 1987, as revised August 3, 1988, (2) Amendment No. —— to License No. NPF–29, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154. A copy of items (2) and (3) may be obtained upon request, addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 5th day of December 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28487 Filed 12–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–354]

Public Service Electric and Gas Co., Atlantic City Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric and Gas Company and Atlantic City Electric Company (the licensees) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would revise the spent fuel storage capacity limitation presently stated in the

Technical Specifications, Design Features Section 5.6.3 to read, "The spent fuel storage pool shall be limted to a storage capacity of no more than 1290 fuel assemblies," in accordance with the licensee's application for amendment dated October 26, 1988.

Technical Specification 5.6.3 presently limits spent fuel storage capacity to 1108 fuel assemblies. The licensee stated in this request:

> This limit was based on the installed storage capacity at the Hope Creek Generating Station (HCGS) at the time that the Operating License and Technical Specifications were issued and not on the design storage capacity of 4006 assemblies as described in FSAR section 9.1.2.2.2.2. The current restrictive limit on storage capacity effectively prohibits continued operation of HCGS by not providing core offload capability for fuel loaded beyond the second fuel cycle.
>
> The requested change, while not increasing storage capacity to the plant design limit, will permit the installation of an additional storage rack to accommodate the third fuel cycle. Fuel cycle design changes beyond the third cycle, currently under review regarding cycle length and fuel enrichments, may require a reanalysis and redesign of the storage racks. Any future modifications to the Technical Specifications brought about by a new fuel cycle strategy will be submitted, along with attendant fuel cycle design changes, for NRC approval.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7751). One of these examples of actions involving no significant hazards considerations is example (x):

> An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:
>
> (1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;
>
> (2) The storage expansion method does not involve rod consolidation or double tiering;
>
> (3) The Keff of the pool is maintained less than or equal to 0.95; and (4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

The licensee stated in its request that the requested increase in allowed spent fuel storage capacity:

> a. Consists of placing an additional rack of the original design on the spent fuel pool floor;
>
> b. Does not involve rod consolidation or double tiering;
>
> c. Does not result in the Keff of the pool exceeding 0.95; and
>
> d. Will utilize no new or unproven technology in the construction process or analytical techniques necessary to justify the expansion.

Therefore, the proposed change falls within the scope of the example. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 11, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–5000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Bulter, Director, Project Directorate I–2, Division of Reactor Projects I/II; petitioner's name and telephone number; date petition was mailed; plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of sectiosn 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions). The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated October 26, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 5th day of December 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28488 Filed 12–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No 50–298]

Nebraska Public Power District, Cooper Nuclear Station, Unit 1; Exemption

I

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR–46 that authorizes operation of the Cooper Nuclear Station, 1 (the facility) at a steady state reactor power level not in excess of 2381 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Nemaha County, Nebraska. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.54(w)(1) of 10 CFR Part 50 requires that licensees of nuclear power reactors maintain a minimum property insurance coverage for operating nuclear power plants in the sum of $1.06 billion.

By letter dated October 2, 1987, the licensee, by its attorney, requested a schedular exemption from the full requirements of 10 CFR 50.54(w)(1) until a satisfactory final order from a state or Federal court has been obtained and the licensee is able to obtain the necessary insurance policies from Nuclear Electric Insurance Limited (NEIL). Currently, the licensee maintains $750 million of property insurance obtained through

American Nuclear Insurers (ANI) and the Mutual Atomic Energy Reinsurance Pool (MAERP). The only source of additional insurance to comply with the Commission's new regulations is NEIL. However, NEIL is a mutual company and under the provisions of the Nebraska Constitution, as interpreted by the Nebraska Supreme Court, there is considerable doubt as to whether the licensee may lawfully purchase insurance from NEIL. In an effort to satisfy the limitations of Nebraska law, effective on March 29, 1985, NEIL amended its charter and by-laws, together with a proposal to issue appropriate policy endorsements. Based upon NEIL's actions, the licensee submitted an application to NEIL for decontamination and property insurance. By letter from NEIL dated June 28, 1985, the licensee was advised NEIL would not issue a policy to the licensee until the licensee had secured a declaratory judgment from the Nebraska Supreme Court that non-voting membership in NEIL and the issuance of policies with appropriate endorsements would not violate the Nebraska Constitution. On July 1, 1985, the licensee, jointly with the Omaha Public Power District (the Districts), commenced an action for a declaratory judgment in the District Court of Lancaster County, Nebraska. The District Court issued its decision on December 1, 1986 in which it declined to grant a declaratory judgment. The Districts appealed the ruling of the District Court to the Nebraska Supreme Court. On September 9, 1988, the Nebraska Supreme Court denied the District's request for a declaratory judgment that the Districts may, consistent with Nebraska law, purchase insurance from NEIL. The Districts assert they plan to appeal the Nebraska Supreme Court's ruling. If such appeal fails, they plan to commence an action for a declaratory judgment in the United States District Court in Nebraska and ask the Federal court to declare that the Commission's new regulations preempt any provisions of the Nebraska Constitution.

In this regard, the Districts estimate that if, as appears necessary, they must seek a declaratory judgment from the United States District Court, that process would likely require approximately 18 months. As a result, the Districts continue to be unable to comply with § 50.54(w)(1) and, by letter dated November 4, 1988, have requested renewal of their temporary exemption until a satisfactory order from a state or Federal court has been obtained and NEIL has issued the necessary policies.

III

The NRC staff has reviewed the licensee's request for renewal of a schedular exemption from the requirements of 10 CFR 50.54(w)(1). The licensee has reasserted, and the Commission has found, 52 FR 28966, that it is unable to provide equivalent protection in lieu of purchasing the NEIL coverage. NEIL coverage cannot be secured until a satisfactory final order from either a state or Federal court is obtained. For these reasons, the staff finds that the licensee has shown good cause for the requested renewal of the schedular exemption from the full requirements of 10 CFR 50.54(w)(1). However, the staff does not believe the exemption should be for an indefinite period. Accordingly, the requested schedular exemption is acceptable for a period of eighteen months from December 5, 1988. If an appropriate state or Federal court order has not been obtained by such date, the staff would give consideration to a new application for an exemption.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption. The licensee has been making, and continues to make, a good faith effort to secure the necessary state or Federal court order. Upon securing the necessary court order, the licensee intends to purchase the insurance policy from NEIL which would put it in compliance with the requirements of 10 CFR 50.54(w)(1).

Accordingly, the Commission hereby grants an exemption, as described in Section III above, from § 50.54(w)(1) of 10 CFR Part 50 to extend the date for acquiring the full amount of property insurance required by the Commission's regulations to no later than eighteen months from December 5, 1988. The licensee is exempt from purchasing property insurance in excess of that available from ANI/MAERP.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no signficant impact on the environment (53 FR 48992).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of December, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28489 Filed 12-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Exemption

I

Omaha Public Power District (the licensee) is the holder of Facility Operating License No. DPR-40 that authorizes operation of the Fort Calhoun Station, Unit 1 (the facility) at a steady state reactor power level not in excess of 1420 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Washington County, Nebraska. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.54(w)(1) of 10 CFR Part 50 requires that licensees of nuclear power reactors maintain a minimum property insurance coverage for operating nuclear power plants in the sum of $1.06 billion.

By letter dated October 2, 1987, the licensee, by its attorney, requested a schedular exemption from the full requirements of 10 CFR 50.54(w)(1) until a satisfactory final order from a state or Federal court has been obtained and the licensee is able to obtain the necessary insurance policies from Nuclear Electric Insurance Limited (NEIL). Currently, the licensee maintains $750 million of property insurance obtained through American Nuclear Insurers (ANI) and the Mutual Atomic Energy Reinsurance Pool (MAERP). The only source of additional insurance to comply with the Commission's new regulations is NEIL. However, NEIL is a mutual company and under the provisions of the Nebraska Constitution, as interpreted by the Nebraska Supreme Court, there is considerable doubt as to whether the licensee may lawfully purchase

insurance from NEIL. In an effort to satisfy the limitations of Nebraska law, effective on March 29, 1985, NEIL amended its charter and by-laws, together with a proposal to issue appropriate policy endorsements. Based upon NEIL's actions, the licensee submitted an application to NEIL for decontamination and property insurance. By letter from NEIL dated June 28, 1985, the licensee was advised NEIL would not issue a policy to the licensee until the licensee had secured a declaratory judgment from the Nebraska Supreme Court that non-voting membership in NEIL and the issuance of policies with appropriate endorsements would not violate the Nebraska Constitution. On July 1, 1985, the licensee, jointly with the Nebraska Public Power District (the Districts), commenced an action for a declaratory judgment in the District Court of Lancaster County, Nebraska. The District Court issued its decision on December 1, 1986 in which it declined to grant a declaratory judgment. The Districts appealed the ruling of the District Court to the Nebraska Supreme Court. On September 9, 1988, the Nebraska Supreme Court denied the District's request for a declaratory judgment that the Districts may, consistent with Nebraska law, purchase insurance from NEIL. The Districts assert they plan to appeal the Nebraska Supreme Court's ruling. If such appeal fails, they plan to commence an action for a declaratory judgment in the United States District Court in Nebraska and ask the Federal court to declare that the Commission's new regulations preempt any provisions of the Nebraska Constitution.

In this regard, the Districts estimate that if, as appears necessary, they must seek a declaratory judgment from the United States District Court, that process would likely require approximately 18 months. As a result, the Districts continue to be unable to comply with § 50.54(w)(1) and, by letter dated November 4, 1988, have requested renewal of their temporary exemption until a satisfactory order from a state or Federal court has been obtained and NEIL has issued the necessary policies.

III

The NRC staff has reviewed the licensee's request for renewal of a schedular exemption from the requirements of 10 CFR 50.54(w)(1). The licensee has reasserted, and the Commission has found, 52 FR 28966, that it is unable to provide equivalent protection in lieu of purchasing the NEIL coverage. NEIL coverage cannot be secured until a satisfactory final order from either a state or Federal court is obtained. For these reasons, the staff finds that the licensee has shown good cause for the requested renewal of the schedular exemption from the full requirements of 10 CFR 50.54(w)(1). However, the staff does not believe the exemption should be for an indefinite period. Accordingly, the requested schedular exemption is acceptable for a period of eighteen months from December 5, 1988. If an appropriate state or Federal court order has not been obtained by such date, the staff would give consideration to a new application for an exemption.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption. The licensee has been making, and continues to make, a good faith effort to secure the necessary state or Federal court order. Upon securing the necessary court order, the licensee intends to purchase the insurance policy from NEIL which would put it in compliance with the requirements of 10 CFR 50.54(w)(1).

Accordingly, the Commission hereby grants an exemption, as described in Section III above, from § 50.54(w)(1) of 10 CFR Part 50 to extend the date for acquiring the full amount of property insurance required by the Commission's regulations to no later than eighteen months from December 5, 1988. The licensee is exempt from purchasing property insurance in excess of that avaialble from ANI/MAERP.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 48993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of December, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28490 Filed 12-9-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26342; File No. SR-NYSE-88-36]

Self-Regulatory Organization; Proposed Rule Change By New York Stock Exchange, Inc. Relating to Its New Rule 130 Regarding Overnight Comparison of Exchange Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 25 U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1988, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of new NYSE Rule 130 which generally would require comparison of transactions effected on the Exchange by the close of business on the NYSE on the business day following the trade date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), (C), and (D) below.

A. Purpose

The purpose of the proposed rule change is to require that transactions effected on the Exchange be compared or otherwise closed out within one business day from the date of trade. This new procedure will require the adoption of a new Overnight Comparison System which is set forth in proposed new NYSE Rule 130 (see Exhibit A). The proposed rule does not affect the settlement of transactions, the majority of which are currently compared and settled within five business days from the date of trade.

In order that transactions can be compared by the end of the next business day, the proposed rule requires that members and member organizations submit trade data for the

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purpose of comparison by a specified time to be determined by the Exchange. The Exchange, of course, would determine a reasonable deadline for submission to the comparison process, in order that overnight comparison be operationally feasible.

The Exchange believes that the Overnight Comparison System will substantially increase the efficiency of the post trade comparison process. Additionally, it will reduce—by four entire business days—the length of time members and member organizations are exposed to the risk of loss due to market fluctuations on uncompared or "questioned" trades. The Exchange expects to implement the Overnight Comparison System within 18 months subsequent to Commission approval of this rule. This delayed effectiveness is expected to enable the Exchange and the Exchange community to work out the details of additional rules and procedures that will be necessary to implement the Overnight Comparison System and to become operationally ready when the proposed new rule becomes effective. The Exchange has endeavored to explain the new system and has sought comment on the proposed rule and will continue to work with the membership to facilitate the introduction of the Overnight Comparison System.

B. Statutory Basis for the Proposed Rule Change

By ensuring that transactions are compared or otherwise closed out on the business day following trade date, the proposed rule change will increase the efficiency of the post trade comparison process and reduce the length of time that investors, members and member organizations are exposed to the risk of market fluctuations on uncompared trades, and this, in turn, will protect investors and the public interest, as called for in section 6(b)(5) of the Act.

The proposed rule change meets other requirements of section 6(b)(5), in that it will: (i) Help prevent fraudulent and manipulative acts and practices; (ii) promote just and equitable principles of trade; and (iii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. It also meets requirements of section 17A(a)(1) in that it will enhance the prompt and accurate clearance and settlement of securities transactions.

C. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not in furtherance of the purposes of the Act.

D. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In a Special Membership Bulletin dated May 27, 1988, the Exchange notified its membership that its Board of Directors had approved the circulation, for comment, of a proposed new rule requiring that transactions effected on the Exchange be compared or otherwise closed out within one business day from the date of trade. Due to the many responses received and the importance of this subject, the Exchange issued a second Special Membership Bulletin dated July 15, 1988, which extended the comment period.

The Exchange has received a total of 36 letters in regard to the Overnight Comparison System from: (i) 33 non-public and public clearing and introducing member firms, (ii) one non-member correspondent firm, (iii) the Organization of Two Dollar Brokers, and (iv) the Data Management Division of Wall Street of the Securities Industry Association. The concept of overnight comparison was generally strongly endorsed by the respondents, the majority of whom emphasized the importance of reducing the time period during which uncompared trades are exposed to the risk of the market.

Two commentators expressed opposition to the proposed system, basically on operational grounds, while another ten commentators, which were in favor of the system, had some operation questions and/or reservations. The Exchange believes that the concerns raised by these respondents have been largely addressed by the August 19, 1988, Membership Notice, which provided considerable operational information, and by thorough discussions with the Exchange staff. The Exchange recognizes that, as several of the respondents have noted, the new system will require some additional expenditures on the part of member firms, but the Exchange believes that such expenditures will be more than offset by the reduction by four full days of the risk of market exposure from uncompared trades.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–88–36 and should be submitted by January 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 6, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A—Next Day Comparison of Exchange Transactions

Rule 130. (a) Notwithstanding any other rule to the contrary, on and after (intentional blank) each transaction effected on the Exchange shall be compared or otherwise closed out by the close of business on the Exchange on the business day following the day of the contract.

(b) The provisions of paragraph (a) above shall apply regardless of whether the transaction has been submitted to a "Qualified Clearing Agency" for comparison or settlement, but such provisions shall apply only to contracts for "regular way" settlement in stocks, rights and warrants unless (i) the Exchange determines to apply the provisions to contracts in other securities or contracts for other

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settlement terms or (ii) the terms of the contract (for example, "next day settlement") require comparison to be effected on or before the business day following the day of the contract.

(c) To facilitate next day comparison of transactions effected on the Exchange as provided for in paragraph (a) above, by such time following any such transaction as the Exchange may prescribe, each member or member organization which is a party to the contract shall submit, or cause to be submitted, such trade data as may be required by the Exchange or the Qualified Clearing Agency it selects, in such form as the Exchange or the Qualified Clearing Agency shall prescribe, to:

(i) The Qualified Clearing Agency it selects; or

(ii) Such facility as the Exchange may develop and implement to facilitate comparison of transactions effected on the Exchange; and,

(iii) In the case where a Qualified Clearing Agency will not be used to compare or settle the transaction, to the party or parties on the other side of the trade.

(d) Members and member organizations shall comply with such other rules and procedures as may be adopted by the Exchange or the Qualified Clearing Agency they select, for the comparison or settlement of transactions, for the resolution of uncompared or questioned trades, and for the collection and submission of audit trail data.

* * * Supplementary Material:

.10 For purposes of paragraph (b) of this Rule 130, the term "Qualified Clearing Agency" shall have the same meaning as set forth in paragraph .10 of Rule 132, provided further that a clearing agency shall be deemed a "Qualified Clearing Agency" only if it has established rules and procedures to facilitate next day comparison of transactions as provided for in paragraph (a) of this Rule 130.

[FR Doc. 88-28495 Filed 12-9-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26343; File No. SR-SCCP 88-01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change By the Stock Clearing Corp. of Philadelphia Relating to fees for Clearance and Settlement of Market Basket Trades

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 17, 1988, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes as a rule change pilot fees for the clearance and settlement of basket trades.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

With the emergence of stock index related instruments and the development of fast and efficient stock execution mechanisms, the 1980s have given rise to "Basket trading" whereby relatively risk-free, locked-in rates of return are achieved through the purchase or sale of stock index futures or options with the simultaneous and off-setting sale or purchase of baskets of stocks replicating those index positions.[1] SCCP's fee schedule traditionally has recognized the costs and appropriate fees associated with various types of trades. For example, SCCP's current schedule of charges establishes separate trade recording charges and value charges for regular trades, PACE trades, municipal bond trades and trades between two accounts. In this regard, SCCP believes that Basket trades represent a distinct type of trade with correspondingly different clearing implications. First, the stock execution portion of a Basket trade is one generally in highly capitalized listed stocks, *e.g.*, S&P 500 stocks. Moreover, because of the generally large dollar amount of the executed stock portion of a Basket trade, imposition of a clearing value charge could make basket trading prohibitively expensive. Accordingly, SCCP, desirous of attracting the business of participants whom engage in Basket trading to clear the stock execution side of those trades, has revised its fee schedule on a six-month pilot basis to accommodate this type of business. The pilot fees, which will not be added to the published SCCP Schedule of Charges until they become permanent, are as follows:

Trade Recording Charge

Basket Trades:

$0.60 per side for participants with 1 to 2,000 Basket trades per month.
$0.54 per side for participants with 2,001 to 6,000 Basket trades per month.
$0.48 per side for participants with 6,001 to 10,000 Basket trades per month.
$0.40 per side for participants with over 10,000 sides per month.

Value Charge: None.

Additionally, PHILADEP discounts are not applicable.

Before authorizing any participant to utilize the pilot fees, SCCP will determine that such participant is engaged in bona fide Basket trading and have assurance that only that segment of the participant's business is availed of the pilot fees. In this regard, SCCP will coordinate with the organization that clears the participant's index futures/options leg of its Basket trades to assure that the stock side of the trade is properly offset. While the Participants Fund contribution will be established and revised based on the quantity and type of Basket trading in which it engages, SCCP will also enhance its internal risk management department and will review daily, via a mark-to-maket report, potential exposure, and specifics relating to trading activity of the Basket trading participant.

The proposed rule change is consistent with section 17A(b)(3)(D) of the Exchange Act is providing for equitable allocations of reasonable dues, fees and other charges among participants. In this regard, SCCP has the computer and systems capacity to process the clearance and settlement of Basket trades. Because of the computer effeciency of handling the high trade volumes attendant to Basket trading and in order to attract this type of business to the clearing corporation, SCCP believes that the substantial clearing fee

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[1] SCCP's definition of "Basket trading" corresponds to the Commission's Division of Market Regulation's definitions of "portfolio insurance" and "index arbitrage" as delineated in *The October 1987 Market Break A Report by the Divison of Market Regulation U.S. Securities and Exchange Commision*, dated February 1988 at pp. 1-2, 1-3.

discounts entailed by the new fees are appropriate under the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change, which is intended to provide a pilot specialized fee schedule for clearance and settlement of a particular type of trade.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to File No. SR–SCCP–88–01 and should be submitted by January 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 6, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28496 Filed 12–9–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16678; 812–7181]

Banco Espanol Central de Credito, S.A.; Application December 6, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940").

APPLICANT: Banco Expanol Central de Credito, S.A. (to be formed).

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) from all provisions.

SUMMARY OF APPLICATION: Applicant seeks an order to permit the issuance and sale of its equity securities in the United States.

FILING DATE: The application was filed on November 21, 1988.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of services by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o Richard L. Russell, Esq., Baer Marks and Upham, 805 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3026 or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copies who can contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is a new bank which will be incorporated in Spain in 1989 after all required governmental consents and approvals have been obtained. The application is made on behalf of Applicant by Banco Central, S.A. ("BC") and Banco Espanol de Credito, S.A. ("BE"), but under Spanish law is deemed to have been made by Applicant on its incorporation, with all undertakings, consents and conditions in the application by operation of Spanish law being binding upon and fully assumed by Applicant on the date of its incorporation and thereafter. Upon incorporation, Applicant will acquire all of the assets and assume all of the liabilities of each of BC and BE. At the same time, the shares of each of BC and BE will be converted into and become exchangeable for shares of the Applicant and BC and BE will be dissolved. BC has previously received orders exempting it from all of the provisions of the 1940 Act in connection with the issuance and sale of its commercial paper notes and other debt securities and its equity securities in the United States. *See Banco Central, S.A.*, Investment Company Act of 1940 Release No. IC–15015 (March 26, 1986); *Banco Central, S.A.*, Investment Company Act of 1940 Release No. IC–15471 (December 10, 1986).

2. Upon acquiring all of the assets and assuming all of the liabilities of BC and BE, the Applicant will be a full-service commercial bank with 10 Spanish bank subsidiaries. On a combined pro forma basis at June 30, 1988, Applicant was the largest Spanish banking group in terms of total consolidated loans and advances (US $24 billion) and total consolidated assets (US $58.1 billion). Applicant and its Spanish bank subsidiaries will provide services to the public through approximately 5,399 branches in Spain and through 170 branch and representative offices in 28 other countries and territories. Applicant's principal business will be the taking of deposits and the making of loans. Together with the banking and financial subsidiaries, Applicant will conduct a commercial banking business and be subject to banking regulation in each of these countries and territories, and various members of Applicant's group will be subject to reserve requirements and regulatory controls imposed by the central banks and other authorities in most of these countries.

3. Governmental regulation of the Spanish banking industry is administered by its central bank, the Bank of Spain. Spanish banks are

subject to continuing central bank supervision of their activities and operations and to periodic inspection and regular reporting requirements designed to insure compliance with various rules, regulations and formulas governing capital, assets and liabilities. Applicant will be subject to the very same regulation and administrative supervision as BE and BC.

4. Applicant will conduct its banking activities in the United States through a branch in New York, agencies in Miami and San Francisco, a subsidiary commercial bank and a subsidiary state-chartered bank in New York, and a subsidiary commercial bank in Puerto Rico. Those banking activities subject the Applicant to the supervisory authority of the Board of Governors of the Federal Reserve System (the "FRB"), the Federal Deposit Insurance Corporation (the "FDIC"), the banking departments of the States of New York, Florida and California, and the Commissioner of Financial Institutions of the Government of Puerto Rico. In addition, Banco Central Corp. (a Puerto Rican licensed bank of the BC group) is a reporting company under the Securities Exchange Act of 1934 ("1934 Act") and upon listing of Applicant's shares in the form of American depository shares ("ADSs") on the New York Stock Exchange ("NYSE"), Applicant will be subject to compliance with the provisions of the Securities Act of 1933 (the "1933 Act"), the periodic reporting and filing requirements of the 1934 Act, and the rules and regulation of the NYSE. Applicant will be a registered foreign bank holding company, subject to all provisions of the Bank Holding Company Act of 1956, including the reporting and examination provisions. In addition, the Applicant is subject to the provisions of the International Banking Act of 1978 (the "IBA") as a foreign banking organization engaged in the business of banking in the United States. Under the IBA, Applicant's branch and agencies are subject to interstate banking restriction, direct examination by and reporting to the FRB and the maintenance of reserves with the local Federal Reserve Banks.

5. Applicant's New York branch and subsidiary state-chartered bank had total assets of approximately $1.5 billion on a combined pro forma basis at June 30, 1988. The branch and the subsidiary will be subject to regular supervision and examination by the New York State Banking Department. Applicant's New York subsidiary commercial bank had total assets of $416 million at June 30, 1988 and will be regulated by both the New York State Banking Department and the FDIC. Applicant's agencies in Florida and California, although smaller in terms of assets than the New York branch, will be supervised by the Florida and California banking authorities in a manner essentially similar to that in New York. Applicant's subsidiary bank in Puerto Rico had total assets of $1.28 billion at June 30, 1988, will be regulated by the Government of Puerto Rico and subject to examination by and reporting to both the Commissioner of Financial Institutions and the FDIC and will continue to be subject to such examination and reporting.

6. Applicant proposes to list its shares on the NYSE in the form of ADSs and to issue and sell equity securities in the future in the United States. Applicant would issue and sell its equity securities either directly or in the form of ADSs evidenced by American Depositary Receipts.

Applicant's Legal Analysis

1. Applicant states that the proposed exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The exemption will advance the policies underlying the IBA of nondiscriminatory treatment of foreign banks in the United States. Applicant states that access to the United States investment market will provide United States investors with an ability to achieve greater diversification and lower risk by investing in its equity securities subject to the protection afforded by the 1933 Act and 1934 Act. Applicant submits that the section 3(c)(3) exception for domestic banks from the 1940 Act's definition of investment company was provided because comprehensive regulation and supervision of banks obviated the need for regulation under the 1940 Act. Applicant contends that these reasons also apply to Applicant because its operations will be controlled and overseen by Spanish banking authorities and its United States operations are subject to United States banking laws and various state banking laws. Hence, Applicant concludes that it is unnecessary and inappropriate to subject it to regulation under the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant undertakes that it will not make an offering of equity securities in the United States requiring registration under the 1933 Act unless (a) the offering of such securities is registered under the 1933 Act or (b) in the opinion of United States counsel for the Applicant an exemption from registration under the 1933 Act is available with respect to such offer and sale or (c) the staff of the SEC states that it would not recommend that the SEC take any action under the 1933 Act if such securities are not registered. No such securities shall be offered or sold unless, at the time, the Applicant is supervised and examined by governmental authorities in Spain having supervision over banks in that country and by State or Federal authorities in the United States having supervision over banks in this country.

2. Applicant undertakes that any offering of its equity securities in the United States will be made on the basis of disclosure documents which are appropriate and customary for such offering, whether made pursuant to a registration statement under the 1933 Act or an exemption therefrom.

3. Applicant undertakes that in connection with any offering by the Applicant of its equity securities in the United States, Applicant will appoint an agent to accept service of process in any suit, action or proceeding with respect to Applicant's offer and sale of such securities and instituted in any State or Federal court in New York City by the holder of any such securities and will expressly submit to the jurisdiction of any such court for the purpose of any such suit, action or proceeding.

4. Applicant represents that it has no present intention to curtail its banking operations in either the United States or Spain so that it would cease to be regulated as a bank in both the United States and Spain. If, however, such operations in the future are curtailed with the result that the Applicant is no longer regulated as a bank in the United States, Applicant agrees that it will continue to comply with its undertakings concerning the Applicant's appointment of an agent in New York City and the Applicant's submission to jurisdiction until such time as there shall be no holders in the United States of equity securities of the Applicant issued in reliance upon any SEC order made pursuant to this application.

5. Applicant further consents to the requested order being expressly conditioned on its compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28497 Filed 12-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16679; File No. 812-7126]

Keystone Provident Life Insurance Co. et al.

December 6, 1988.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of filing of application foir an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Keystone Provident Life Insurance Company ("Keystone"); KMA Variable Account; Keystone Provident Variable Account I; Keystone Provident Variable Account II; Keystone Custodian Funds, Inc. (as Trustee); Keystone Custodian Funds, Inc.; Keystone Provident Financial Services Corp.; certain registered management investment companies: Cash Income Trust ("CIT"), Government Guaranteed Securities Trust ("GGST"), Government Securities Zero Coupon Trust ("ZCT"), Mortgage Securities Income Trust, Managed Growth Stock Trust, Investment Grade Bond Trust, High Yield Bond Trust ("HYBT"), Managed Assets Trust ("MAT"), and Aggressive Stock Trust ("AST") (the "Current Eligible Funds"), Money Market/Options Investments, Inc. ("MMOI"), Keystone Liquid Trust ("KLT"), Keystone Custodian Fund, Series B-1, Keystone Custodian Fund, Series B-2, Keystone Custodian Fund, Series B-4, Keystone Custodian Fund, Series S-1, Keystone Custodian Fund, Series S-3, and Keystone Custodian Fund, Series S-4 (the "Public Mutual Funds"); SteinRoe Variable Investment Trust ("SteinRoe Trust") and Stein Roe & Farnham Incorporated.

RELEVANT 1940 ACT SECTIONS: Applicants request an order pursuant to sections 6(c), 17(b), and 26(b) of the Investment Company Act of 1940 (the "1940 Act") and Rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order approving the redemption in-kind of shares of the Current Eligible Funds, the redemption for cash of certain shares of the Public Mutual Funds, and the purchase with the redemption proceeds of shares of the portfolios of the SteinRoe Trust ("Substitution"), which will thereafter serve as the funding vehicles for certain variable annuity contracts ("Contracts") offered by the KMA Variable Account, and certain variable life insurance policies ("Policies") offered by the Keystone Provident Variable Account I and Keystone Provident Variable Account II (collectively referred to with the KMA Variable Account as the "Accounts").

FILING DATE: The application was filed on September 19, 1988 and an amendment was filed on November 29, 1988.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Robert R. Baird, Esq., Keystone Provident Life Insurance Company, 99 High Street, Boston, Massachusetts 02110. Copies to Joan E. Boros, Esq., Freedman, Levy, Kroll and Simonds, 1050 Connecticut Avenue, NW., Suite 825, Washington, DC 20036, and John Benning, Esq., Senior Vice President, SteinRoe Variable Investment Trust, 800 Atlantic Avenue, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Keystone is a stock life insurance company, and is currently a wholly-owned subsidiary of The Travelers Insurance Company of Hartford, Connecticut ("Travelers"). Travelers has entered into a definitive Sales Agreement ("Agreement") with Liberty Mutual Insurance Company ("Liberty Mutual") to sell all of the capital stock of Keystone to Liberty Mutual. Among Liberty Mutual's indirect subsidiaries is the investment advisory firm of Stein Roe & Farnham Incorporated ("Stein Roe"). The sales transaction is subject to approval of the Commissioner of Insurance of the State of Rhode Island, the domiciliary state of Keystone. Keystone and Liberty Mutual have scheduled the closing of the sales transaction ("Closing") to occur on or before December 30, 1988. Keystone has scheduled the Substitution to occur on December 31, 1988 for accounting, tax and other reasons, including anticipated benefits to owners of the Contracts ("Contract Owners") and owners of the Policies ("Policy Owners").

2. The KMA Variable Account, registered as a unit investment trust under the 1940 Act, serves as the funding medium for Contracts issued and administered by Keystone, including individual deferred variable annuity contracts designed for use in connection with retirement plans defined as qualified plans or receiving special income tax treatment under sections 401, 403, 408, 457 or any similar provisions of the Internal Revenue Code of 1986, as amended ("Code") ("Qualified Contracts"), and for use with plans not qualifying for special income tax treatment under such provision of the Code ("Non-Qualified Contracts"). Retirement plans under section 457 of the Code are not defined as qualified plans by the Code, although they enjoy certain tax benefits under the Code. Keystone Provident Financial Services Corp. ("KPFSC") serves and will continue to serve as principal underwriter for the Contracts following the Closing and Substitution.

3. Purchase payments under the Contracts are currently allocated by Contract Owners among one or more KMA Subaccounts for investment in the Current Eligible Funds, except for GGST and ZCT. Each Current Eligible Fund is a separate, diversified, open-end management investment company registered under the 1940 Act. Shares of each of these Current Eligible Funds may be sold only to Keystone for the KMA Variable Account and other insurance company separate accounts. For each Current Eligible Fund there is a corresponding KMA Sub-account. Keystone Custodian Funds, Inc. ("KCF") is the investment adviser to the Current Eligible Funds, the Public Mutual Funds and also serves as Trustee to the Public Mutual Funds other than MMOI and KLT.

4. Prior to September 25, 1981, purchase payments from both Qualified

and Non-Qualified Contracts could be invested in one or more KMA Sub-accounts investing in the Public Mutual Funds, shares of which are also offered and sold to members of the general public without the purchase of a Contract, except for MMOI as explained below.

5. On September 25, 1981, the Internal Revenue Service ("IRS") issued Revenue Ruling 81-225. In response to Revenue Ruling 81-225 and Revenue Ruling 82-55, which was issued to clarify Ruling 81-225, Contracts are funded by different underlying Funds, as follows: Qualified and Non-Qualified Contracts issued prior to September 25, 1981 and Contracts issued pursuant to section 457 of the Code ("Section 457 Contracts") issued after September 25, 1981 and prior to May 1, 1986 are funded by the Public Mutual Funds. The Public Mutual Funds, as well as Keystone Custodian Fund, Series K-2 serve as the investment medium for a separate account that is not registered under the 1940 Act, pursuant to section 3(c)(11) and the contracts are not registered under the 1933 Act pursuant to section 3(a)(2). All other Contracts issued after September 25, 1981 and prior to July 1, 1986 are funded by the Current Eligible Funds and MMOI. Current KMA Sub-accounts now invest purchase payments from the Qualified and Non-Qualified Contracts in the available Current Eligible Funds, except for ZCT and for GGST. Non-Qualified Contracts purchased between April 9, 1981 and September 25, 1981 may not make any additional purchase payments ("Affected Contracts").

6. Keystone Provident Variable Account I and Keystone Provident Variable Account II ("VLI Accounts") are segregated investment accounts registered under the 1940 Act as unit investment trusts. The VLI Accounts were established to fund the Policies which are Individual Single Premium Variable Life Insurance Policies. Each VLI account is divided into sub-accounts that correspond to the Current Eligible Funds, including GGST and Government Securities Zero Coupon Trust ("ZCT"). KPFSC serves and will continue to serve as principal underwriter for the Policies following the Closing and Substitution.

7. The SteinRoe Trust is a series company with nine types of investment portfolios, called Funds, that have investment objectives, policies and restrictions that are similar, if not identical, to the investment objectives, policies and restrictions of the Current Eligible Funds. The fees for advisory and management services to be paid by the SteinRoe Trust will not be greater than the corresponding fees paid by the Current Eligible Funds.

8. The SteinRoe Trust has the following Funds that will be substituted for the Current Eligible Funds and the Public Mutual Funds ("Keystone Funds") and will be offered under the Contracts and Policies immediately following the Substitution: Cash Income Fund, Government Guaranteed Securities Fund, Mortgage Securities Income Fund, Investment Grade Bond Fund, High Yield Bond Fund, Managed Assets Fund, Managed Growth Stock Fund, Aggressive Stock Fund and Government Securities Zero Coupon Fund (referred to collectively as the "Funds"). Following the Substitution, interests under Qualified Contracts may be invested in the Government Guaranteed Securities Fund of the SteinRoe Trust.

9. Keystone on its own behalf and on behalf of the Accounts proposes to effect a substitution of all shares of the Keystone Funds, except as noted below in 10, for shares of the appropriate Funds of the SteinRose Trust, which is currently scheduled to occur on December 31, 1988. Within five days after the Substitution, the Contract Owners and Policy Owners (collectively referred to as "Owners") will receive written notice of the Substitution ("Notice") that identifies the shares that have been eliminated and substituted. Included in the mailing will be the Prospectus for the SteinRoe Trust and the supplements to the prospectuses of the Accounts that describe the purchase of Keystone by Liberty Mutual and the related Substitution. Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available KMA or VLI Sub-account as appropriate.[1] Any such transfer will not be counted toward the current limitations on transfers under the Contracts or Policies. Following the Substitution, Owners will be afforded the same contract rights with regard to amounts invested under the Contracts and Policies at they currently have.

10. Contract Owners who purchased the Affected Contracts are required to include in their gross income earnings and gains from the ownership of Public Mutual Fund shares. Some uncertainty exists as to whether proceeds from the redemption of shares of the Public Mutual Funds relating to the Affected Contracts may be invested in the SteinRoe Trust in compliance with Treasury Regulation § 1.817-5(T) ("Diversification Regulations"). A similar uncertainty exists with regard to investing proceeds from the redemption of shares of the Public Mutual Funds relating to the section 457 Contracts. To avoid any uncertainty and further the SteinRoe Trust's compliance with the Diversification Regulations, Keystone proposes to retain investments under such Contracts in the Public Mutual Funds. Keystone will proceed with the Substitution with respect to all other Contracts invested in the Public Mutual Funds, including MMOI. The investment of proceeds from the redemption of interests in MMOI in the Funds of the SteinRoe Trust is permitted by the Diversification Regulations.

11. Keystone will redeem all shares of the Current Eligible Funds it currently holds on its own behalf, on behalf of certain unregistered separate accounts and on behalf of the Accounts on December 31, 1988. The Current Eligible Funds propose to effect the redemptions in-kind, e.g., to deliver, in return for its shares, the portfolio securities held by each Current Eligible Fund. In most cases, Keystone will receive all of the assets of the Current Eligible Fund, however, with regard to CIT, HYBT, MAT and AST, in which The Travelers Funds U for Variable Annuities and The Travelers Fund UL for variable life insurance have investments, an equitable division of the portfolio assets will be made between Keystone and its separate accounts and Travelers' two separate accounts, under directives of the Boards of Trustees of such funds. The directives will require the division of each portfolio holding to be on a basis proportionate to each Company's separate accounts' investments in the applicable Current Eligible Fund, to the extent possible. Keystone believes that the Current Eligible Funds' decisions to effect the redemptions in-kind will minimize transaction costs and maximize the full investment of the corresponding Funds of the SteinRoe Trust. Travelers and KCF have advised Keystone that registration statements of each Current Eligible Fund will be maintained pending their availability for investment under programs to be developed by Travelers and/or KCF.

12. The custodian, State Street Bank and Trust Company ("State Street"), will record all portfolio assets received from the Current Eligible Funds on its records for the corresponding Funds of the SteinRoe Trust upon issuance of shares of the Funds to the Accounts. The portfolio assets received from the Current Eligible Funds will be used to simultaneously purchase shares of

[1] Applicants will provide in the Notice of Substitution that the Owners will be given sixty days, instead of thirty days, to make such transfers.

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corresponding Funds of the SteinRoe Trust. As a result, at all times, monies attributable to Owners currently invested in the Current Eligible Funds will be fully invested.

13. Keystone will redeem all shares of the Public Mutual Funds it currently holds on its own behalf, on behalf of any unregistered separate accounts and on behalf of the KMA Variable Account on December 31, 1988, except as discussed above in 12. Such redemption proceeds shall be in cash and simultaneously applied to purchase shares of certain Funds of the SteinRoe Trust. The investment objectives, policies and restrictions of the Public Mutual Funds do not in all cases directly correspond to the proposed investment objectives, policies and restrictions of the Funds of the SteinRoe Trust. In all cases, however, there is a Fund whose objective approximates the objective of the Public Mutual Fund. Keystone has reviewed the respective investment objectives, policies and restrictions and has determined which Fund of the SteinRoe Trust most closely corresponds to the Public Mutual Fund for purposes of the Substitution.

14. State Street will record the receipt of cash and subsequent investments on the books and records of the SteinRos Trust.

15. Applicants represent that the transactions effecting transfer of the portfolio assets of the Current Eligible Funds in return for shares of the SteinRoe Trust and the redemption of shares of the Public Mutual Funds for cash and the purchase of shares of the Funds of the SteinRoe Trust will be effected in conformity with section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Owner interests, in practical economic terms, will be the same in any measurable way after the Substitution as such interests immediately prior to the Substitition. In each case, the consideration to be received and paid is, therefore, reasonable and fair.

16. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses it is designed to prevent. Of primary significance is that the Substitution is occasioned by a compelling corporate purpose. Travelers' sale of Keystone and the acquisition by Liberty Mutual presents a situation giving rise to the need for the Substitution. The Agreement contemplates that Liberty Mutual is purchasing a company with substantial assests attributable to variable life insurance products and that future management of such assets will be by an affiliate of Liberty Mutual, SteinRoe.

17. The Substitution will not result in the type of costly forced redemption that section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (1) The Substitution is of shares of Funds of the SteinRoe Trust whose objectives, policies and restrictions are identical or similar to the Keystone Funds in all material respects so as to continue fulfilling the Owner's objectives and expectations; (2) Owners have thirty days [2] to reconsider the Substitution and reallocate the assets for investment in an Owner-selected Fund; (3) the Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge; (4) the Substitution will not be counted against the number of permissible transfers; (5) the Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of Keystone and Owners will continue to look to Keystone with regard to their rights under the contracts and Policies; (6) Owners may choose to withdraw amounts credited to them following the Substitution; (7) the Substitution is expected to confer other economic benefits to Owners; (8) the Substitution is fair to all interests, including the interests of Owners of the Affected Contracts, Section 457 Contracts, owners of Travelers' contracts and the public shareholders investing in the Public Mutual Funds; (9) the voting rights of Owners will be the same before and after the Substitution; (10) the fees and charges paid by the Owners of Contracts and Policies will be no greater after the Substitution than before the Substitution as a result of the Substitution; (11) operating expenses of the SteinRoe Trust will be no greater than the operating expenses of the Current Eligible Funds as a result of the Substitution; (12) with respect to those Public Mutual Funds that experience expense ratios greater than the Current Eligible Funds, Keystone believes that it is reasonable to anticipate that the Owners may benefit from the expense ratios of the SteinRoe Trust that may be significantly lower than the expense ratios of the Public Mutual funds; and (13) the costs of the Substitution, including the costs of establishing the SteinRoe Trust, will not be borne by Owners.

18. The Substitution will produce various benefits to Owners and Keystone. There are seventeen Keystone Funds, and only nine Funds in the SteinRoe Trust. The Substitution constitutes a consolidation of assets among nine investment alternatives (ten series as defined under the 1940 Act) of a single investment company as opposed to the dispersion between seventeen separate funds. The consolidation may result in economies of scale and reduced administrative costs. The elimination of duplicative administrative expenses may be expected to result in some reduction of the expenses associated with the operations of the SteinRoe Trust. Keystone anticipates future benefits to Owners as a result of investment in a series form of investment company. The feasibility of adding additional investment alternatives is enhanced by the series form of the SteinRoe Trust. The Substitution may also provide benefits to Keystone by reducing certain of the administrative burden on and costs to Keystone. Moreover, the Substitution is occasioned by the compelling corporate purpose arising from the sale of Keystone to Liberty Mutual.

19. Section 17(d) of the 1940 Act and Rule 17d–1(a) thereunder prohibits any affiliated person or any affiliated person of such affiliated person, of a registered investment company, acting as principal, from participating or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered investment company or a company controlled by such registered company, is a participant unless the Commission has entered an order approving the plan. Each Applicant may be deemed to be an affiliated person of certain or each other Applicant under section 2(a)(3) of the 1940 Act, and the Substitution may be deemed to be the type of transaction prohibited under section 17(d) of the 1940 Act and Rule 17d–1 thereunder. The Substitution anticipates simultaneous purchase and sale transactions involving a number of registered investment companies, and each such purchase and sale transaction is dependent on the other. Each purchase and sale transaction is, thus, an essential aspect of a more comprehensive plan. In this sense, each transaction may be deemed to be in connection with a joint arrangement within the contemplation of section 17(d) of the 1940 Act and Rule 17d–1 thereunder. Without necessarily agreeing to the applicability of section 17(d), Applicants are requesting an order of the Commission.

[2] *See infra* note 1.

Applicants' Legal Conclusion

Applicants submit, for all of the reasons stated herein, that their exemptive requests meet the standards set out in sections 6(c), 17(b) and 26(b) of the 1940 Act and Rule 17d–1 thereunder and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28498 Filed 12–9–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program 14 CFR Part 150, Anchorage International Airport, Anchorage, AK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the State of Alaska for Anchorage International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On January 22, 1987, the FAA determined that the noise exposure maps submitted by the State of Alaska under Part 150 were in compliance with applicable requirements. On October 11, 1988, the Administrator approved the Anchorage International Airport noise compatibility program except aviation noise abatement measures 3, 4, and 5. Measure 3 (limitation of the number of aircraft in the Lake Hood traffic patterns by holding incoming traffic at Pt. MacKenzie) relates to flight procedures under provisions of 104(b) for which no action is requires at this time, since it does not identify a demonstrative noise benefit, and can only be predicated on completion of an FAR Part 93 airspace review requested by the State of Alaska. Measure 4 (displacement of the east and threshold of the east/west waterlane) relates to flight procedures under provisions of 104(b) for which no action is required at this time, since Measure 4 is predicated on Measure 3 and does not indicate any demonstrative noise benefit. Measure 5 (restriction of touch-and-go training operations at the Lake Hood complex) is disapproved from an FAR Part 150 viewpoint due to lack of identified, specified noise benefits above the 65 Ldn contour.

EFFECTIVE DATE: The effective date of the FAA's approval of the Anchorage International Airport noise compatibility program is October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Perham, Civil Engineer, Planning and Programming Branch, Airports Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, Alaska 99513, telephone (907) 271–5448. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Anchorage International Airport, effective October 11, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel. Each airport noise compatibility program developed in accordance with Federal Aviation Administration Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden or interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Regional Office in Anchorage, Alaska.

The State of Alaska submitted to the FAA on October 24, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 5, 1985, through December 31, 1987. The Anchorage International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 22, 1987. Notice of this determination was published in the **Federal Register** on February 13, 1987.

The Anchorage International Airport study contains a proposed noise implementation by airport management and adjacent jurisdictions from date of study completion beyond the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 14, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapproval such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 16 proposed actions on and off the airport for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 11, 1988.

Approval was granted for all of the specific program elements. Summarized approved elements include:

a. Airport

Maximizing the existing preferential runway system; adoption of AC–91–53 and NBAA's close in departure procedures; and after the Lake Hood segment development, establishment of preferential runway use in segment barriers and construction of noise barrier.

b. Off Airport

Land use management techniques including compatible use zoning, mobile home and camper park restrictions, soundproofing, easements, noise levels identified on plats, comprehensive planning, adoption of noise compatibility planning criteria, and public land development criteria.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 11, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the State of Alaska, Anchorage International Airport.

Issued in Anchorage, Alaska, November 18, 1988.

Russel S. Hathaway,

Manager, Airports Division, Alaskan Region.

[FR Doc. 88–28433 Filed 12–9–88; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program; Missoula County Airport, Missoula, MT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Manager of the Missoula County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980).

On May 25, 1988, the FAA determined that the noise exposure maps submitted by the Airport Manager under Part 150 were in compliance with applicable requirements. On November 4, 1988, the Associate Administrator for Airports approved the Missoula County Airport noise compatibility program. Most of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Missoula County Airport noise compatibility program is November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 17900 Pacific Highway South; C–68966; Seattle, Washington 98168. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Missoula County Airport, effective November 4, 1988. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Helena, Montana.

Missoula County submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Missoula County Airport. The Missoula County Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 25, 1988. Notice of this determination was published in the **Federal Register** on June 23, 1988.

The Missoula County Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the

program on May 25, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 9 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective November 4, 1988.

Outright approval was granted for 7 specific program elements. Program Element A.1 was disapproved because local conditions are such that a formal preferential runway use procedure is not practical. Program Element B.1 was disapproved pending submission of additional analysis regarding the zoning of land proposed for acquisition.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on November 4, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Missoula County Airport.

Issued in Seattle Washington on November 18, 1988.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 88-28428 Filed 12-9-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[Docket No. LI-88-4]

Petition for Waiver of Compliance; Canadian Pacific Ltd.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with a requirement of its locomotive safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Canadian Pacific Limited

[Waiver Petition Docket Number LI-88-4]

The Canadian Pacific Limited (CP Rail) requests a waiver of compliance with certain provisions of the railroad locomotive safety standards (49 CFR Part 229). CP Rail seeks a temporary waiver of compliance with § 229.29, which stipulates that all brake valves, with the exception of 26 L Type, must be cleaned, tested and inspected every 736 calendar days. The 26 L type air brake equipment must be cleaned, inspected and tested every 1104 calendar days. The extended cleaning time period for 26 L type air brake equipment resulted from test data derived from a safe service test program started in 1981 and expanded in 1985 (see **Federal Register** Notices of June 29, 1981 (46 FR 33401) and January 29, 1985 (50 FR 3910) for details. CP Rail and the Canadian National Railways (CN Rail), in conjunction with the Canadian government's National Transportation Agency, will test and evaluate the condition of 26 L type locomotive air brake valves after 48 months of service instead of 36 months (approximately 1104 days). There will be 60 locomotives in the test program, 30 from each railroad. CP Rail has included the following ten locomotives, which are in international service:

DE1816, DE4234, DE4550, DE4733, DE5509, DE4211, DE4501, DE4708, DE5508 and DE8035.

The test commenced on February 15, 1988. The extended test period for each locomotive will commence at the expiration of its normal 36-month service period. This arrangement staggers both the beginning and ending period for the 60 locomotives under test. The National Transportation Agency states that the test locomotives will be operated over the entire system of both railroads under variable conditions, such as weather, temperature and geographical locations. The locomotives will be closely monitored, and brake valves will be disassembled throughout the test program to determine their condition.

Based on CP Rail's representations, FRA has conditionally approved CP Rail's petition and granted an interim conditional waiver permitting the carrier to operate the ten locomotives in the United States while its petition is being announced for public comments, considered by FRA, and finally resolved. FRA has granted this interim waiver in order to preserve the integrity of the test.

The following conditions apply to each of the ten locomotives in international service:

(1) That each locomotive included in this waiver have a notice prominently displayed in the control compartment with the information:

Air Brake Equipment Under Test with FRA Waiver Approval;

(2) That the specific equipment under test be identified in some manner or be listed on the Inspection and Repair Report on display in the control compartment;

(3) That the results of the test be provided to the FRA when the program is completed; and

(4) That the FRA Office of Safety RRS-10, 400 Seventh Street, SW., Washington, DC 20590, be notified as soon as practicable if any incident occurs that is attributable to the air brake on a locomotive covered by this waiver.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number LI-88-4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before January 26, 1989, will be considered by FRA before final decision is made. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on December 6, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-28504 Filed 12-9-88; 8:45 am]

BILLING CODE 4910-06-M

Federal Highway Administration

Environmental Impact Statement; City of Raleigh and Wake County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an

environmental impact statement will be prepared for a proposed highway project within the City of Raleigh and Wake County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790–2856.

SUPPLEMENTARY INFORMATION: The FHWA, in connection with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on Duraleigh Road between I–40 and US 70 in Raleigh and Wake County. The proposed action includes the construction of a multilane partially controlled access highway on new location between I–40 and SR 1664 near Crabtree Creek and widening to a multilane facility along the existing alignment from near Crabtree Creek to US 70. The proposed action is a part of the 1986 Greater Raleigh Urban Area Thoroughfare Plan.

Alternatives under consideration include:

(1) Construction of a multi-lane facility along one of several alignments on the new location portion of the project

(2) The "no build" alternative

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, regional and local agencies. A public meeting and meetings with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided to the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Roy C. Shelton,

District Engineer.

[FR Doc. 88–28422 Filed 12–9–88; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–842]

American President Lines, Ltd.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Certain Foreign-Flag Operations

American President Lines, Ltd. (APL), by application dated November 7, 1988, as amended, requests waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag feeder operations to the People's Republic of China (PRC).

APL's Existing Services

APL now performs four subsidized containership services. Its two transpacific services cover the range of former Trade Route (TR) 29 to/from California on up to 108 annual sailings (Line A) and to/from Oregon-Washington on up to 80 annual sailings (Line B). Former TR 29 includes ports in the Far East on the continent of Asia from the U.S.S.R. to Thailand, inclusive, Japan, Taiwan, and the Philippines. APL's two extension services add authority to serve the ports of Southeast and South Asia and the Persian Gulf on up to 28 sailings to/from California (Line A Extension) and up to 80 sailings to/from Oregon-Washington (Line B Extension) annually. APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its Line A and Line B services primarily with line-haul vessels making direct calls at most major foreign TR 29 ports, including Yokohama, Kobe, and Okinawa, Japan; Kaoshiung and Chi-lung, Taiwan; and Hong Kong. Korea and the Philippines are served by APL subsidized feeder vessels.

APL Extension services are currently performed by a feeder network that includes two subsidized U.S.-flag APL owned vessels providing service on a relay basis to Singapore and Colombo via Kaohsiung, and to Fujayrah, Masqat, and Karachi via Colombo. The remaining feeder services have been foreign-flag common carriers. However, on June 3, 1988, APL was granted an 804 waiver to substitute 10 APL-owned or chartered foreign-flag vessels for 10 vessels in six of its feeder services in southern and southwestern Asia. This waiver is for five years, until June 3, 1993.

In April 1988, The Maritime Administration extended, for a second period of two years, until May 22, 1990, its waiver of the provisions of section 804 originally granted to APL in May 1986. This waiver allowed APL to own/charter and operate three foreign-flag vessels of 350 FEU capacity each for feeder service between APL's Line A or Line B ports, including Singapore, and Manila and Thailand.

The Requested Waiver

A mainland China waiver authority originally granted in May 1986 along with the above-mentioned Thailand service, was never used by APL, therefore the April 1988 two year extension did not include—and was not requested by APL—any mainland China waiver authority. Thus APL's November 7, 1988, request for "renewal of the 1986 permission" for two foreign-flag vessels of approximately 200 FEU capacity to be operated between a foreign port on Line A or Line B as described in APL's ODSA, including Singapore, and a port of ports in the People's Republic of China, is being considered a new 804 waiver application.

APL hopes that an apparent PRC restriction against supplying export cargo to foreign lines' feeder services may be removed, by diplomatic or commercial negotiation. APL states that such negotiations may be aided if APL is in a position to make prompt implementation of any agreement which may be reached. Thus the application for waiver for the PRC feeder is requested now.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on January 6, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Date: December 7, 1988.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 88-28501 Filed 12-9-88; 8:45 am]

BILLING CODE 4910-81-M

[Docket S-841]

Chestnut Shipping Co. and Margate Shipping Co.; Application for a Waiver of Section 804 of the Merchant Marine Act, 1936, as Amended To Permit the Acquisition of an Interest in or Charter of Foreign-Flag Vessels

By application of November 23, 1988, Margate Shipping Company (Margate), with respect to Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-134, and Chestnut Shipping Company (Chestnut), with respect to ODSA, Contract MA/MSB-299, request a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), until December 23, 1993, and November 11, 1996, the termination dates of the respective ODSAs, under special circumstances and for good cause shown pursuant to section 804(b) of the Merchant Marine Act, 1936, as amended (Act), so as to permit their affiliate Keystone Shipping Co. (Keystone) to acquire an interest in or charter nine foreign-flag crude and product tankers of 40,000 to 130,000 deadweight capacity. According to Keystone and Margate, they request nothing more than the Maritime Administrator (Administrator) granted Mormac Marine Group, Inc. (Mormac) in Docket S-831.

In response to Margate and Chestnut's original application of March 31, 1988, the Administrator by action of August 5, 1988, granted limited waivers under section 804(a) of the Act for their affiliate Keystone to charter in and charter out foreign-flag liquid bulk vessels ranging from 50,000 to 150,000 deadweight tons (DWT) for a limited period of six months from the date of its first foreign-flag charter. The first charter commenced on October 23, 1988, and thus the waivers will expire on April 22, 1989.

The applicants state that the essential facts, policy, law and arguments governing the Mormac application are indistinguishable from the instant application. For the special circumstances and good cause shown in support of this application, they respectively refer the Administrator to their original application for a section 804(a) waiver submitted on March 31, 1988; the support for such a waiver contained in Mormac's section 804(a) application of May 20, 1988; the findings of fact and determinations made by the Administrator in Docket S-826, dated August 5, 1988, and September 28, 1988, with respect to the waivers granted Margate and Chestnut and Docket S-831 dated November 1, 1988, with respect to the waiver granted Mormac.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on January 6, 1989. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Date: December 7, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-28502 Filed 12-9-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 6, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB No. 1545-0895.

Form No. IRS Form 3800.

Type of Review: Resubmission.

Title: General Business Credit.

Description: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credit carryforward. Form 3800 is used to figure the correct credit.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 200,000.

Estimated Burden Hours Per Response:

Recordkeeping—10 hours, 2 minutes
Learning about the law or the form—7 hours, 24 minutes
Preparing the form: 25 hours, 34 minutes
Copying, assembling, and sending the form to IRS—5 hours, 5 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 9,620,000 hours.

Clearance Office: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-28424 Filed 12-9-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 6, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB No. 1505-0091.

Form No. TD F 90-22.27 (TFAC 31; TD F 90-22.28 (TFAC 32).

Type of Review: Revision.

Title: South African Transactions Regulations.

Description: Submisssions will provide the U.S. Government information to be used in administering and enforcing sanctions against South Africa.

Respondents: Individuals or households, Businesses and other for-profit.

Estimated Number of Respondents: 560.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,120 hours.

Clearance Officer: Dale A. Morgan, (202) 343–0263, Departmental Offices, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–28425 Filed 12–9–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information collection Requirements Submitted to OMB for Review

Date: December 6, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB review listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0092.

Form Number: ATF F 5100.31 (1648) (1649) (1650).

Type of Review: Extension.

Title: Application for Certification/ Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to determine falsification of unfair advertising practices on alcoholic beverages.

Respondents: Businesses and other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27,300 hours.

OMB Number: 1512–0204.

Form Number: ATF F 5110.38.

Type of Review: Extension.

Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).

Description: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Respondents: Businesses and other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1512–0482.

Form Number: 5100/1.

Type of Review: Extension.

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

Description: Under the Federal Alcohol Administration Act, bottlers and importers of alcohol beverages are required to display certain information for consumers on labels and in advertisements. Other optional statements are also required.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–28426 Filed 12–9–88; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 238
Monday, December 12, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION
December 7, 1988

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5. U.S.C. 552B:

TIME AND PLACE: December 14, 1988, 10:00 a.m.

PLACE: 825 North Captiol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda

888th Meeting—December 14, 1988, Regular Meeting (10:00 a.m.)

CAP–1.
Project Nos. 10406–002 and 10405–005, Craig W. Scott
CAP–2.
Project No. 10409–002, Meldahl Hydropower Development Corporation
CAP–3.
Project No. 8863–003, Northeast Hydrodevelopment Corporation
CAP–4.
Project Nos. 2543–006 and 012, The Montana Power Company
CAP–5.
Project Nos. 8936–003 and 004, BES Hydro Company
CAP–6.
Project No. 6432–001, Liberty County, Montana, Town of Chester, Montana and MRR Partnership
CAP–7.
Project No. 9711–000, Inghams Corporation
CAP–8.
Project No. 9712–000, Beardslee Corporation
CAP–9.
Docket No. EL88–37–000, Kentucky Utilities Company
CAP–10.
Docket No. ER88–463–000, Connecticut Light and Power Company
CAP–11.
Docket No. ER83–726–002, Boston Edison Company
CAP–12.
Docket Nos. ER86–694–003 and ER88–273–001, New England Power Pool
CAP–13.
Docket No. ER81–177–008, Southern California Edison Company
CAP–14.
Docket No. ER88–501–000, Montana-Dakota Utilities Company
CAP–15.
Docket No. ER84–560–005, Union Electric Company
CAP–16.
Docket No. ER84–560–006, Union Electric Company
CAP–17.
Docket No. ER88–224–000, Carolina Power and Light Company
CAP–18.
Docket No. EL88–27–000, North Carolina Eastern Municipal Power Agency v. Carolina Power and Light Company
CAP–19.
Project No. 2899–003 Idaho, Twin Falls Canal Company and North Side Canal Company, Ltd.

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM88–25–000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM–2.
Docket No. RM88–28–000, Revision of Filing Fees for Natural Gas Rate and Tariff Filings
CAM–3.
Omitted
CAM–4.
Docket No. GP87–20–000, ANR Pipeline Company v. Plains Resources, Inc.
CAM–5.
Docket No. GP87–45–000, Anadarko Petroleum Corporation and APX Corporation (Formerly Pan Eastern Exploration Company) v. Brent Ranch Operating, Inc., Canadian Commercial Bank, Houston Pipe Line Company, Intratex Gas Company, Liquid Energy Corporation, Northern Natural Gas Company and South Cen-Tex Gas Company
CAM–6.
Docket No. SA88–5–001, Red River Gas Pipeline Corporation
CAM–7.
Docket No. RM87–34–000, Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol

Consent Gas Agenda

CAG–1.
Docket No. RP89–18–000, Northern Border Pipeline Company
CAG–2.
Docket No. RP89–23–000, Northern Natural Gas Company, Division of Enron Corp.
CAG–3.
Docket No. RP88–187–008, Columbia Gas Transmission Corporation
CAG–4.
Docket Nos. RP88–194–004 and 005, Transwestern Pipeline Company
CAG–5.
Docket No. TQ89–2–37–001, Northwest Pipeline Corporation
CAG–6.
Docket No. RP88–190–001, North Penn Gas Company
CAG–7.
Docket No. TQ89–2–25–000, Mississippi River Transmission Corporation
CAG–8.
Docket No. RP88–191–000, Tennessee Gas Pipeline Company
CAG–9.
Docket No. TA88–2–22–000, CNG Transmission Corporation
CAG–10.
Docket No. RP88–201–001, East Tennessee Natural Gas Company
CAG–11.
Docket Nos. RP88–126–000 and 001, Colorado Interstate Gas Company
CAG–12.
Docket No. RP88–267–002, South Georgia Natural Gas Company
CAG–13.
Docket Nos. ST88–4985–000, ST88–2555–000, ST88–2905–000 and ST88–3337–000, Louisiana Intrastate Gas Corporation
CAG–14.
Docket Nos. ST88–4888–000, ST88–4889–000 and ST88–5419–000, Gulf States Pipeline Corporation
CAG–15.
Docket Nos. ST88–4014–000 and ST88–4795–000, Taft Pipeline Company
CAG–16.
Docket Nos. ST88–3008–000 and ST88–4082–000, The Tekas Corporation
CAG–17.
Docket No. RP88–202–001, Panhandle Eastern Pipe Line Company
CAG–18.
Docket Nos. RP88–27–009 and RP88–264–001, United Gas Pipe Line Company
Docket No. CP87–524–002, Texas Gas Transmission Corporation
CAG–19.
Docket No. RP88–45–010, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–20.
Docket No. RP89–13–001, Mississippi River Transmission Corporation
CAG–21.
Docket Nos. RP88–263–002 and RP88–92–006, United Gas Pipe Line Company
CAG–22.
Docket No. RP88–96–007, Southern Natural Gas Company
CAG–23.
Docket No. RP88–253–000, Florida Gas Transmission Company
CAG–24.

Docket No. RP88–267–003, South Georgia Natural Gas Company

CAG–25.
Docket No. RP88–259–004, Northern Natural Gas Company, Division of Enron Corp.

CAG–26.
Docket No. RP88–258–002, Southern Natural Gas Company

CAG–27.
Docket No. RP89–3–001, Lawrenceburg Gas Transmission Corporation

CAG–28.
Docket No. TA89–1–51–001, Great Lakes Gas Transmission Company

CAG–29.
Docket No. TA89–1–41–003, Paiute Pipeline Company

CAG–30.
Omitted

CAG–31.
Docket No. TA89–1–45–001, Inter-City Minnesota Pipelines Ltd., Inc.

CAG–32.
Docket NoS. RP82–121–001, RP82–125–024 and RP88–228–000, Tennessee Gas Pipeline Company

CAG–33.
Docket No. RP88–239–003, Truckline Gas Company

CAG–34.
Docket Nos. RP88–240–001 and 000, Panhandle Eastern Pipe Line Company

CAG–35.
Docket No. RP88–241–001, Panhandle Eastern Pipe Line Company

CAG–36.
Docket Nos. RP89–30–000, RP88–119–007, TA84–2–9–009 and TA85–1–9–006, Tennessee Gas Pipeline Company

CAG–37.
Docket No. RP89–17–000, Northwest Pipeline Corporation

CAG–38.
Docket Nos. RP88–211–001, 003 and RP88–214–002, CNG Transmission Corporation

CAG–39.
Docket No. RP87–30–002, Colorado Interstate Gas Company

CAG–40.
Docket No. RP86–45–020, El Paso Natural Gas Company

CAG–41.
Docket Nos. RP86–130–002 and RP86–79–002, Northern Natural Gas Company, Division of Enron Corp.

CAG–42.
Docket Nos. TA88–1–27–003, RP88–57–002, RP88–109–001 and RP88–110–002, North Penn Gas Company

CAG–43.
Docket Nos. TA85–2–42–001 and 002, Transwestern Pipeline Company

CAG–44.
Docket Nos. ST86–1657–001, ST86–1660–001, ST86–1663–001, ST86–1687–001, ST86–1688–001, ST86–1689–001, ST86–1690–001, ST86–1691–001, ST86–1692–001, ST86–1752–001, ST86–1778–001, ST86–1779–001, ST86–1781–001, ST86–1790–001, ST86–1849–001, ST86–1853–001, ST86–1876–001, ST86–1877–001, ST86–1896–001, ST86–1898–001, ST86–1899–001, ST86–1900–001, ST86–1901–001, ST86–1902–001, ST86–1903–001, ST86–1904–001, ST86–1905–001, ST86–1906–001, ST86–1954–001, ST86–1955–001, ST86–1956–001, ST86–1957–001, ST86–1959–001, ST86–1971–001, ST86–2009–001, ST86–2014–001, ST86–2035–001, ST86–2048–001, ST86–2049–001, ST86–2050–001, ST86–2113–001, ST86–2114–001, ST86–2115–001, ST86–2116–001, ST86–2117–001, ST86–2126–001, ST86–2128–001, ST86–2132–001, ST86–2133–001, ST86–2134–001, ST86–2137–001, ST86–2142–001, ST86–2144–001, ST86–2146–001, ST86–2147–001, ST86–2151–001, ST86–2201–001, ST86–2202–001, ST86–2203–001, ST86–2204–001, ST86–2205–001, ST86–2206–001, ST86–2210–001, ST86–2211–001, ST86–2212–001, ST86–2213–001, ST86–2214–001, ST86–2215–001, ST86–2216–001, ST86–2254–001, ST86–2255–001, ST86–2257–001, ST86–2258–001, ST86–2260–001, ST86–2261–001, ST86–2262–001, ST86–2419–001, ST86–2422–001, ST86–2431–001 and ST86–2432–001, ANR Pipeline Company

CAG–45.
Docket No. RP88–127–004, Carnegie Natural Gas Company

CAG–46.
Docket Nos. RP88–68–000 and 001, Transcontinental Gas Pipe Line Corporation

CAG–47.
Docket No. RP89–22–000, ANR Pipeline Company

CAG–48.
Docket No. RP87–93–000, Columbia Gas Transmission Corporation

CAG–49.
Omitted

CAG–50.
Docket Nos. RP88–51–000 and 001, Northwest Pipeline Corporation

CAG–51.
Omitted

CAG–52.
Docket No. RP87–14–000, Algonquin Gas Transmission Company

CAG–53.
Docket No. RP87–7–000, Transcontinental Gas Pipe Line Corporation

CAG–54.
Docket No. ST88–2205–000, Llano, Inc.

CAG–55.
Docket Nos. ST83–429–001, ST81–105–002, ST81–106–001, ST82–193–001, ST82–193–002, ST82–194–001, ST82–195–000, ST82–195–002, ST83–50–001, ST83–141–001, ST83–327–000, ST83–327–001, ST83–441–000, ST83–441–001, ST83–481–000, ST83–634–000, ST83–634–001, ST84–2–000, ST84–101–000, ST84–101–000, ST84–215–000, ST84–218–000, ST84–219–000, ST84–524–000, ST84–728–000, ST84–1138–000, ST85–70–000, ST85–71–000, ST85–385–000, ST85–529–000, ST85–530–000, ST85–701–000, ST85–815–000, ST85–815–001, ST85–912–000, ST85–1116–000, ST85–1116–001, ST85–1221–000, ST85–1224–000, ST85–1607–000, ST85–1608–000, ST85–1608–001, ST85–1707–000, ST86–81–000, ST86–94–000, ST86–156–000, ST86–208–000, ST86–223–000, ST86–650–000, ST86–651–000, ST86–661–000, ST86–662–000, ST86–663–000, ST86–750–000, ST86–751–000, ST86–912–000, ST86–913–000, ST86–914–000, ST86–931–000, ST86–1013–000, ST86–1321–000, ST86–1796–000, ST86–1915–000, ST86–1915–001, ST86–1916–000, ST86–1950–000, ST86–2428–000, ST86–2717–000, ST86–2718–000, ST86–2719–000, ST87–752–000, ST87–753–000, ST87–1336–000, ST87–1483–000, ST87–1484–000, ST87–1488–000, ST87–1489–000, ST87–1490–000, ST87–1508–000, ST87–1847–000, ST87–2065–000, ST87–2066–000, ST87–2067–000, ST87–2245–000, ST87–2263–000, ST87–2415–000, ST87–2416–000, ST87–2417–000, ST87–2418–000, ST87–2587–000, ST87–2931–000, ST87–2932–000, ST87–2933–000, ST87–2934–000, ST87–2935–000, ST87–2936–000, ST87–2937–000, ST87–3318–000, ST87–3319–000, ST87–3320–000, ST87–3321–000, ST87–3322–000 and ST89–295–000, BP Gas Transmission Company

CAG–56.
Docket No. CI87–395–000, Williams Natural Gas Company

CAG–57.
Docket No. CI88–251–000, Arkla Exploration Company
Docket No. CP88–214–000, Arkla Exploration and Production, a Division of Arkla, Inc.

CAG–58.
Docket No. CI89–27–000, Exxon Corporation and Hunt Petroleum Corporation

CAG–59.
Docket No. CP88–428–000, NRM Operating Company, L.P., EnerMark, Inc., Hall-Houston Oil Company and Union Pacific Resources Company

CAG–60.
Docket No. CP88–681–001, Panhandle Eastern Pipe Line Company

CAG–61.
Docket No. CP87–451–018, Northeast U.S. Pipeline Projects
Docket No. CP87–92–000, 001, 002 and CP87–312–000, Texas Eastern Transmission Corporation and PennEast Gas Services Company
Docket No. CP87–312–003, Texas Eastern Transmission Corporation
Docket Nos. CP66–43–001 and CP88–179–000, Texas Eastern Transmission Corporation
Docket Nos. CP88–188–000 and CP88–197–000, PennEast Gas Services Company
Docket No. CP87–380–000, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
Docket No. CP88–177–000, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP87–5–000, CP87–313–000 and CP87–314–000, CNG Transmission Corporation
Docket Nos. CP87–554–000, CP88–186–000, CP88–187–000 and CP88–192–000 Algonquin Gas Transmission Company
Docket No. CP88–195–000, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket No. CP88–171–000, Tennessee Gas Pipeline Company

CAG–62.
Docket No. CP88–79–002, National Steel Corporation

CAG–63.

Docket Nos. CP87-467-004, CP79-462-010 and CP86-110-037, Great Lakes Gas Transmission Company

CAG-64.
Docket No. CP88-397-002, Great Lakes Gas Transmission Company

CAG-65.
Docket No. CP89-5-000, CNG Transmission Corporation

CAG-66.
Docket No. CP88-473-000, Southern Natural Gas Company

CAG-67.
Docket No. CP88-312-000, Natural Gas Pipeline Company of America

CAG-68.
Docket No. CP88-412-000, Texas Gas Transmission Corporation

CAG-69.
Docket No. CP87-451-017, Northeast U.S. Pipeline Projects
Docket No. CP88-194-000, *et al.*, National Fuel Gas Supply, *et al.*

CAG-70.
Docket No. CP89-148-000, Northwest Pipeline Corporation

CAG-71.
Docket No. CP85-806-009, Texas Eastern Transmission Corporation

CAG-72.
Docket Nos. CP88-307-001 and 002, Great Lakes Gas Transmission Company

CAG-73.
Docket No. CP88-266-001, Midwestern Gas Transmission Company

CAG-74.
Docket No. CP87-103-003, Tennessee Gas Pipeline Company

I. Licensed Project Matters

P-1.
Project No. 1250-001, City of Pasadena Water and Power Department. Application for a new license for Azusa project on Forest Service lands.

II. Electric Rate Matters

ER-1.
Omitted.

ER-2.
Docket Nos. ER89-31-000, ER88-304-000 and ER88-305-000, Niagara Mohawk Power Corporation. Order on rate filing.

ER-3.
Docket No. QF88-158-001, Petrolia Power Company. Order on appeal of staff action.

Miscellaneoous Agenda

M-1.
Reserved

M-2.
Reserved

I. Pipeline Rate Matters

RP-1.
Reserved

II. Producer Matters

CI-1
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP88-6-001 and RP88-8-007, United Gas Pipe Line Company. Order ruling on experimental capacity brokering proposal.

CP-2.
Docket No. CP88-587-000, Distrigas Corporation and Distrigas of Massachusetts Corporation. Order ruling on application to restructure liquefied natural gas sales service.

Lois D. Cashell,
Secretary.
[FR Doc. 88-28654 Filed 12-8-88; 3:10 p.m.]
BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:00 p.m. on Tuesday, December 6, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to: (1) The possible closing of certain insured banks; (2) the Corporation's assistance agreement with an insured bank; and (3) an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and c(9)(B)).

Dated: December 7, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-28527 Filed 12-8-88; 8:50 am
BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—December 14, 1988.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Section 18 Report.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.
[FR Doc. 88-28553 Filed 12-8-88; 10:24 am]
BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 53, No. 238
Monday, December 12, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1002

[Docket No. A0-71-A76; DA-88-107]

Milk in the New York-New Jersey Marketing Area; Order Amending Order

Correction

In rule document 88-27727 beginning on page 48515 in the issue of Thursday, December 1, 1988, make the following correction:

§ 1002.90 [Corrected]

On page 48516, in the 1st column, in § 1002.90 introductory text, in the 15th line, "and" should read "the".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Part 324

OMB Control Numbers

Correction

In rule document 88-27955 beginning on page 49141 in the issue of Tuesday, December 6, 1988, make the following correction:

On page 49145, in the first column, the authority citation immediately following amendatory instruction 47 should read as follows:

Authority: 20 U.S.C. 1441-1444, unless otherwise noted.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84014B; FRL-3439-9]

Health and Safety Data Reporting Period Terminations

Correction

In the issue of Thursday, November 10, 1988, on page 45656, in the second column, a correction to FR Doc. 88-20002 appeared. The third item contained an error and should have appeared as follows:

§ 716.120 [Corrected]

3. On page 38649, in the same section, in the same table, under "Effective Date", in the seventh entry, "6/20/98" should read "6/20/88"; and in the corresponding entry, under "Sunset Date", "6/20/88" should read "6/20/98".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42054B; FRL-3431-9]

Testing Consent Orders on Aniline and Seven Substituted Anilines

Correction

In rule document 88-18727 beginning on page 31804 in the issue of Friday, August 19, 1988, make the following correction:

§ 799.5000 [Corrected]

On page 31813, in the third page-column, in § 799.5000, in the table, in the third table-column, in the first entry, "(Insert FR date)" should read "August 19, 1988".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53110; FRL-3473-6]

Premanufacture Notices; Monthly Status Report for September 1988

Correction

In notice document 88-25937 beginning on page 47910 in the issue of Monday, November 28, 1988, make the following correction:

On page 47913, in Table IV., in the first column, in the seventh line from the bottom, "Y 88-0106" should read "Y 86-0106".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51716; FRL-3473-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-25938 beginning on page 45547 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45548, in the third column, under **P 88-2113**, in the fifth line, "etheylethylbenzene" should read "ethenylethylbenzene".

2. On page 45550, in the second column, under **P 88-2159**, in the first line, "chemical" should read "Chemical".

3. On page 45551, in the first column, under **P 88-2168**, the seventh line should read "methyltris(ethylmethylketoxime)silane, trimethoxy(3-".

4. On the same page, in the second column, under **P 88-2175**, the seventh line should read "LD50 > 5,000 mg/kg species (Rat)."

5. On the same page, in the same column, under **P 88-2176**, in the fourth line, "*Use*" was misspelled.

6. On the same page, in the same column, under **P 88-2177**, in the fifth line, "*Use*" was misspelled.

7. On the same page, in the third column, under **P 88-2185**, in the sixth line, "*Use*" was misspelled.

8. On page 45552, in the second column, under **P 88-2204**, in the fourth line, "*Use/Imports*" should read "*Use/Import*".

9. On the same page, in the same column, under **P 88-2207**, in the second line, "acids" was misspelled.

10. On the same page, at the end of the third column, insert the following text:

Use/Production. (G) Additive in cleaning formulation. Prod. range: Confidential.

P 88-2217

Manufacture. Confidential.

Chemical. (G) Alkyl disulfonate, disodium salt.

11. On page 45554, in the first column, under **P 88-2249**, in the third line, "polyacrylkate" should read "polyacrylate"; and in the fifth line, "polyacrylated" should read "polyacrylate".

12. On the same page, in the third column, under **P 88-2267**, in the second line, "Saturated" was misspelled.

13. On page 45556, in the first column, under **P 88-2295**, in the fifth line, "eiocosenes" should read "eicosenes".

14. On the same page, in the second column, under **P 88-2305**, the ninth line should read "ethanediyl)bis(omega-hydroxy-,".

15. On the same page, in the third column, under **P 88-2312**, in the eighth line, "(omega-hdroxy-," should read "(omega-hydroxy-,".

16. On page 45557, in the second column, under **P 88-2322**, in the third line, "resin" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51715; FRL-3473-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-25939 beginning on page 45557 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45557, in the 3rd column, under **DATES**, in the 12th and 13th lines, after "88-1970," remove "88-1968,".

2. On page 45560, in the first column, under **P 88-1966**, in the fifth line, "textiles" was misspelled.

3. On the same page, in the second column, under **P 88-1980**, in the fourth line, "reacted" was misspelled.

4. On page 45561, in the third column, under **P 88-2008**, in the second line, "easter" should read "ester".

5. On page 45562, in the first and second columns, each time "Substituted-substituted-substituted-benezene" appears, it should read "Substituted-substituted-substituted-benzene".

6. On the same page, in the third column, under **P 88-2028**, in the third line, "*Use/Production*" should read "*Use/Import*".

7. On the same page, in the same column, under **P 88-2030**, in the eighth line, "*Toxicity Date*" should read "*Toxicity Data*".

8. On the same page, in the same column, under **P 88-2032**, in the seventh line, "*Toxicity Date*" should read "*Toxicity Data*".

9. On page 45563, in the third column, under **P 88-2060**, in the second line, after "aliphatic" insert "aromatic".

10. On page 45564, in the first column, under **P 88-2065**, in the second line, "oligoner" should read "oligomer".

11. On the same page, in the same column, under **P 88-2067**, in the sixth line, "modifier" was misspelled.

12. On the same page, in the second column, under **P 88-2079**, in the second line, "Blocking" should read "Blocked".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51717; FRL-3474-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-25940 beginning on page 45565 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45566, in the 2nd column, in the 12th line, after "2508," insert "88-2509,".

2. On page 45567, in the second column, under **P 88-2347**, in the sixth line, "Power" should read "Powder".

3. On the same page, in the same column, under **P 88-2348**, in the sixth line, "Power" should read "Powder".

4. On page 45569, in the second column, under **P 88-2403**, the third line should read "*Chemical.* (S) 4,4'-(2,2,2-trifluoro-1-".

5. On page 45571, in the first column, after the entry for **P 88-2442**, insert the following entry:

Importer. Atlantic Industries, Inc.

Chemical. (G) Substituted aromatic azo compound.

Use/Import. (S) Reactive dye for textile. Import range: Confidential.

6. On page 45571, in the third column, under **P 88-2459**, in the first line, "Ciga-Geigy", should read "Ciba-Geigy".

7. On page 45574, in the first column, under **P 88-2516**, in the third line, "susbstitutedethylene" should read "substituted-ethylene".

8. On the same page, in the same column, under **P 88-2522**, in the second line, "Chemicals" should read "Chemical".

9. On page 45577, in the 3rd column, under **P 88-2607**, the 11th line should be removed and inserted as the 1st line below **P 88-2608**.

10. On the same page, in the same column, under **P 88-2611**, in the third line, "potassium" was misspelled.

11. On page 45578, in the first column, under **P 88-2620**, in the sixth line, "or" should read "of".

12. On the same page, in the third column, under **P 88-2632**, in the second line, "Alken" should read "Alkene"; and in the third line, "2,5-furandion" should read "2,5-furandione".

13. On page 45579, in the first column, under **P 88-2639**, in the second line, "acid dibasic" should read "dibasic acid".

14. On the same page, in the same column, under **P 88-2640**, in the third line, "dibasic" should be removed.

15. On the same page, in the same column, under **P 88-2641**, in the third line, "dibasic" should be removed.

16. On the same page, in the same column, under **P 88-2642**, the first line should read "*Manufacturer.* Confidential."; and in the third line, "dibasic" should be removed.

17. On the same page, in the second column, under **P 89-3**, in the eighth line, "3.66g/Kg" should read "3.66 g/kg"; and in the ninth line, "89/kg" should read "8 g/kg".

18. On the same page, in the same column, under **P 89-4**, in the eighth line, "3.88g/kg" should read "3.88 g/kg".

19. On the same page, in the third column, in the first line, "8g/kg" should read "8 g/kg".

20. On page 45580, in the third column, under **P 89-33**, in the third line, "*Use/PImport*" should read "*Use/Import*".

21. On the same page, in the same column, under **P 89-36**, in the first line, "Chemicals" should read "Chemical".

22. On page 45581, in the first column, under **P 89-37**, in the first line, "Chemicals" should read "Chemical"; and in the ninth line, "moderate" should read "strong".

23. On the same page, in the third column, under **P 89-61**, in the seventh line, "LD50 > mg/kg" should read "LD50 > 5,000".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51719; FRL-3481-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-27206 beginning on page 47760 in the issue of Friday,

November 25, 1988, make the following correction:

On page 47761, in the first column, under **P 89-78**, in the fourth line, "link" should read "ink".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0335]

Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producing Animals; Opportunity for Hearing

Correction

In notice document 88-26344 beginning on page 46050 in the issue of Tuesday, November 15, 1988, make the following correction:

On page 46050, in the first column, under **DATES**, in the fourth and fifth lines, "February 13, 1989" should read "January 17, 1989".

BILLING CODE 1505-01-D

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89-1; Order No. 810]

Petition of Warshawsky and Co. for Third-Class Cost Data Rulemaking, 1988

Correction

In proposed rule document 88-27739 appearing on page 48654 in the issue of Friday, December 2, 1988, make the following correction:

In the first column, under **DATES**, in the seventh line, "December 19, 1988" should read "January 17, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 396

[FHWA Docket No. MC-113; Notice No. 87-02]
RIN 2125-AB34

Inspection, Repair and Maintenance

Correction

In rule document 88-27515 beginning on page 49402 in the issue of Wednesday, December 7, 1988, make the following correction:

On page 49402, in the third column, in the **EFFECTIVE DATE** line, "March 7, 1990" should read "December 7, 1989".

BILLING CODE 1505-01-D

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.l15New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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Title 3—

The President

Proclamation 5921 of December 8, 1988

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1988

By the President of the United States of America

A Proclamation

The second week in December commemorates two important dates. December 10 marks the 40th anniversary of the signing of the Universal Declaration of Human Rights, and December 15 marks the date almost 200 years ago when, in 1791, the first 10 amendments to the United States Constitution—our Bill of Rights—were ratified.

The human rights we regard today as inherent and unalienable were by no means universally accepted 2 centuries ago. Such rights as freedom of worship, speech, assembly, and the press were just beginning to be asserted by popular movements that would sweep Europe and elsewhere in the next century. The United States thus foreshadowed and fostered a powerful drive to improve the lot of mankind everywhere. During the drafting of our Constitution, Thomas Jefferson wrote that "a Bill of Rights is what people are entitled to against every government on earth."

Now, 200 years later, the Universal Declaration, enshrining many of the principles of our Founders, has become that worldwide Bill of Rights. Elaborating such a list of basic rights was one of the first tasks undertaken by the new United Nations Organization; the Chair of the drafting committee was Eleanor Roosevelt, who was later nominated for a Nobel Peace Prize for this work. Urging adoption of the Universal Declaration, then-Secretary of State George C. Marshall told the United Nations that "denials of basic human rights lie at the root of most of our troubles. . . . Governments which systematically disregard the rights of their own people," he said, "are not likely to respect the rights of other nations and other people." He called for adoption of the Universal Declaration as "a standard of conduct for us all."

The Universal Declaration, like our own Bill of Rights, starts from the premises that civil liberties and political freedom are the birthright of all mankind and that all of us are equal in the eyes of the law. Like our own Declaration of Independence, it also makes the inescapable connection between freedom, human rights, and government by the consent of the governed.

We are proud that the truths expressed by our Founding Fathers—America's source of strength, stability, and authority for more than 2 centuries—have also provided a standard for liberty and the rule of law emulated in dozens of other countries as well.

Nevertheless, many individuals and nations do not enjoy the rights enumerated in our Constitution and in the Universal Declaration. Some governments voice ringing guarantees but fall far short in practice. Some, such as Communist regimes, wrongly subordinate fundamental rights to other goals. These goals are often defined by political groups or parties that claim to know what is best for the individual and for peoples subject to their control. Fundamental goals—free elections and due process—are concepts not welcomed by dictators of any ideological or political stripe.

Despite this entrenched resistance of tyrants to practical guarantees of liberty, the Universal Declaration has done much to promote observance of human rights around the world. Over the past decade in particular we have seen great strides.

As we move toward the final decade of this century, we can truly say that the heroism, prayers, and sacrifices of countless heroes and heroines who have braved threats and persecution in the long struggle for human rights have produced noteworthy results. But we still have far to go. We must and will dedicate ourselves as a Nation to continue this effort, and to stand in solidarity with those who resist, until the blessings of democracy, freedom, and respect for human dignity are assured throughout the world.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1988, as Human Rights Day, and December 15, 1988, as Bill of Rights Day, and I call upon all Americans to observe the week beginning December 10, 1988, as Human Rights Week.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-28737
Filed 12-9-88; 2:54 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Dec. 8 on signing Proclamation 5921, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 49).

VOL 53 ISS 239 DE 13 1988 UMI

Presidential Documents

Proclamation 5922 of December 8, 1988

National Burn Awareness Week, 1989

By the President of the United States of America

A Proclamation

At least 2 million people in the United States receive burn injuries each year. Seventy thousand of them require some hospitalization, and more than 12,000 die from their injuries. Children, the elderly, and people with disabilities are often burn victims.

The risk of burn injury exists in our homes, cars, and workplaces. The key to reduction of death and suffering from burn injury is available to everyone; awareness is the action word. Burn awareness is how people can prevent injury to themselves, their families, and their neighbors. The use of fire/smoke detectors and safety containers for flammables, the safe use of electric power, and development of good safety habits can reduce the number of injuries.

In recent years, medical research has made major advances through improved treatments that shorten hospitalization and save lives. New products are available for fire detection, safer fabrics, and personal protection. There are organized safety programs in the office and workplace. There is more assistance to ease the psychological impact on those who suffer burn injury.

Much more can be done to make ourselves safe from burn injury. We can all cooperate with the dedicated professionals who are working to prevent burns and care for the injured. And we can practice and promote fire safety.

The Congress, by House Joint Resolution 604, has designated February 5 through February 11, 1989, as "National Burn Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim February 5 through February 11, 1989, as National Burn Awareness Week. I call upon all government agencies, health organizations, public safety organizations, the communications media, and the people of the United States to observe this week with ceremonies, activities, and personal participation to make our country safer and to assist in the reduction of death and suffering associated with burn injury.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-28738
Filed 12-9-88: 2:55 pm]
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Rules and Regulations

Federal Register
Vol. 53, No. 239
Tuesday, December 13, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-185]

7 CFR Part 301

Gypsy Moth Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Gypsy Moth Quarantine and Regulations by (1) removing all regulated areas in Illinois, Indiana, Minnesota, Washington, and Wisconsin from the list of regulated areas and removing these states from quarantined status; (2) removing regulated areas in Ohio from the list of gypsy moth low-risk areas and correcting an earlier omission by adding Ohio to the list of states quarantined because of gypsy moth; (3) removing a portion of a previously regulated gypsy moth high-risk area in Oregon and redesignating the remaining portion of the regulated area as a gypsy moth low-risk area; (4) designating previously nonregulated areas in Maine, Maryland, Michigan, and Ohio as gypsy moth low-risk areas; and (5) designating previously nonregulated areas in Virginia and West Virginia as gypsy moth high-risk areas and redesignating areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas. The regulations restrict the interstate movement of certain articles from gypsy moth high-risk and low-risk areas. The rule is necessary to prevent the spread of gypsy moth and to remove unnecessary restrictions on the interstate movement of certain articles.

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Sidney Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective September 2, 1988 (53 FR 34014-34020, Docket Number 88-094), we amended the Gypsy Moth Quarantine and Regulations by (1) removing all regulated areas in Illinois, Indiana, Minnesota, Washington, and Wisconsin from the list of regulated areas and removing these states from quarantined status; (2) removing regulated areas in Ohio from the list of gypsy moth low-risk areas and correcting an earlier omission by adding Ohio to the list of states quarantined because of gypsy moth; (3) removing a portion of a previously regulated gypsy moth high-risk area in Oregon and redesignating the remaining portion of the regulated area as a gypsy moth low-risk area; (4) designating previously nonregulated areas in Maine, Maryland, Michigan, and Ohio as gypsy moth low-risk areas; and (5) designating previously nonregulated areas in Virginia and West Virginia as gypsy moth high-risk areas and redesignating areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas.

Comments on the interim rule were required to be postmarked or received on or before November 1, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers; individuals, industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from gypsy moth regulated areas in Illinois, Indiana, Maine, Maryland, Michigan, Minnesota, New York; Ohio, Oregon, Pennsylvania, Virginia, Washington, West Virginia, and Wisconsin. For areas designated as high-risk areas, individual and commercial movers moving outdoor household articles to areas outside the quarantined areas must determine that their articles are free of gypsy moth. Mobile home haulers, loggers, nurserymen, and firewood haulers are required to obtain certification or a limited permit from an inspector. These documents indicate that their articles are free of gypsy moth. For areas designated as low-risk areas, the same conditions apply for movement of regulated articles when it is determined by an inspector that the movement of an article presents a hazard of spreading the gypsy moth. For areas determined to be free of gypsy moth and deregulated, no restrictions are imposed for movement of regulated articles.

All regulated articles are inspected and certified without charge to the business. A business not requesting this service in advance of shipment may be delayed in moving the product until service can be provided. A homeowner moving outdoor household articles from a high-risk area to an uninfested area may pay a qualified certified applicator (QCA) to inspect his goods. These charges average between $50-100. In some instances the company moving that person reimburses the mover for their expense. Most QCA's are small businesses. By declaring an area as a high-risk area the regulations may increase business for the QCA's located in high-risk areas. These businesses will average $50 to $150 per month in additional income per business. Approximately 90 new businesses will be trained to inspect outdoor household articles and will offer this service to the general public. Based on information compiled by the U.S. Department of

Agriculture it has been determined that there are many hundreds of small entities that move regulated articles interstate from gypsy moth regulated areas and many thousands of small entities that move regulated articles interstate from other states. However, based on such information, it has been determined that approximately 759 small entities move regulated articles interstate from the specified areas affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Gypsy moth.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR Part 301 that was published at 53 FR 34014–34020 on September 2, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, on this 8th day of December 1988.

Larry B. Slagle,

Acting Adminstrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–28578 Filed 12–12–88; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 330

9 CFR Part 94

[Docket No. 87–072]

Garbage

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that apply to garbage that can spread diseases or pests of livestock, poultry, or plants. The regulations expand the definition of garbage, exempt some garbage from certain regulation, and clarify which garbage is to be considered, for purposes of regulation, as "arriving" in a jurisdiction. This action is necessary to protect against the spread of diseases and pests without unnecessarily regulating garbage that does not present these risks.

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald B. Caffey, Assistant to the Deputy Administrator, PPQ, APHIS, USDA, Room 656, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7633.

SUPPLEMENTARY INFORMATION:

Background

The garbage regulations concerning plant pests in 7 CFR 330.400 and garbage regulations concerning livestock and poultry diseases in 9 CFR 94.5 regulate garbage arriving in the United States, and its territories and possessions, in order to prevent the spread of plant pests and animal diseases.

On April 20, 1987, we published in the **Federal Register** (52 FR 12917–12921, Docket Number 85–345), a document proposing to expand the definition of garbage, free some garbage from regulation, and clarify which garbage is to be considered, for purposes of regulation, as "arriving" in a jurisdiction.

Our proposal invited the submission of written comments on or before May 20, 1987. We received five comments. One comment supported the proposed rule. The second comment was received from the California Department of Food and Agriculture. It suggested that in the **"SUPPLEMENTARY INFORMATION"** section, under the heading "Regulated Garbage," the second sentence of the last paragraph should read:

> A means of conveyance, for example, that has *not* (emphasis added) been out of the United States and Canada during the previous two years is highly unlikely to be carrying potentially harmful garbage even if it has been to a foreign port sometime in its history.

This suggestion has been implemented. When the proposed rule was published, the **Federal Register** inadvertently omitted the word "not" from the sentence. On April 30, 1987, the **Federal Register** (52 FR 15802, Docket Number 85–345), corrected the error by inserting the word "not".

A third commenter, the American Veterinary Medical Association, is concerned with the risk of transmitting pests or disease organisms through garbage items from the continental United States to Hawaii and other territories and possessions. We are making no changes based on this comment. Aside from citrus canker, for which the affected areas have been quarantined, there has been no recent occurrence of an exotic plant or animal disease in the continental United States. The only exotic plant pests that have occurred recently in the continental United States—the Oriental fruit fly and the Mediterranean fruit fly—are already found in Hawaii, and APHIS has quarantined the infested areas in the continental United States to control pest spread. If an exotic plant or animal disease or pest outbreak does occur, certain regulations and policies that are currently in effect prohibit both the interstate movement and export movement of regulated items. If it were determined that these policies and regulations were ineffective, APHIS would then amend the regulations. Consequently, APHIS has determined that items moved from the continental United States to Hawaii and other territories and possessions pose very little risk of spreading new pests or diseases.

The California Department of Food and Agriculture, Division of Animal Industry, commented that California has a number of international ports and airports. Consequently, they are concerned with APHIS's ability to effectively enforce the regulations to ensure that means of conveyance have not been to foreign ports since cleaning and disinfecting or removal of stores. We are making no changes based on this comment. APHIS has had no problem documenting where a means of conveyance has traveled from when arriving in the United States. Standard industry documentation—e.g., ships' logs and documentation at airline representatives' offices—is available to APHIS and enables the agency to determine where a means of conveyance has been before arriving in the United States.

Also, the Division of Animal Industry feels that the phrases, "has not visited" and "has not moved to non-Canadian foreign ports", as they appeared in proposed 9 CFR 94.5(b)(1)(ii), are vague. They suggest that both phrases be amended to read "has not been in" to preclude the interpretation that the inspection or removal of garbage and

stores could be accomplished in a non-Canadian foreign port. We are making the suggested change.

The California Department of Food and Agriculture, Division of Plant Industry, expressed concern about applying different restrictions to garbage and stores arriving on ships and planes from non-Canadian foreign ports and to garbage and stores arriving from Canadian ports. The Division of Plant Industry suggests that we amend the regulations to apply identical restrictions in both cases, stating that employees of the State's Department of Food and Agriculture have visited the United States-Canadian border and found that many items that are regulated in the United States are freely available in Canada. Further, the Division of Plant Industry states that the United States Department of Agriculture has intercepted these regulated items in Canadian origin aircraft stores.

We are making no changes based on this comment. The current regulations already exempt garbage derived from stores obtained in the continental United States or Canada, on vessels or aircraft that move "solely" between the continental United States and Canada. Our proposed rule would not regulate garbage on vessels or aircraft from Canada if the conveyances have not been to a foreign port (other than in Canada) in the 2 years before arriving in the United States. Vessels or aircraft from Canada that have been to a foreign port during that 2-year period would be subject to the garbage regulations. We consider any vessel or aircraft that has moved only between Canada and the United States for 2 years to be one that moves "solely" between those two countries. Because stores are not kept on conveyances for more than 2 years, a vessel or aircraft exempted under the "2-year" provision would be carrying only stores obtained in the United States or Canada. Therefore, with regard to vessels or aircraft from Canada, our proposed rule included no changes to the current regulations. Although we are making no change in this final rule regarding vessels and aircraft from Canada, we believe it is appropriate to respond to the Division of Plant Industry's observation concerning our interception of Canadian origin aircraft stores. Our monitoring of Canadian origin flights has very rarely revealed any prohibited items, and we therefore have determined that those flights pose no significant risk of spreading exotic plant or animal pests or diseases in the United States.

In this final rule, we are clarifying our implicit intent regarding certain provisions of this rule. According to this rule, garbage will be regulated if it is on or removed from a means of conveyance that has been to specified locations within specified periods of time. However, the garbage will not be regulated if certain conditions are met regarding the means of conveyance the garbage is on or removed from. In some cases, these conditions require, among other things, removal of all garbage and other specified items previously on board, followed by cleaning and disinfection of the means of conveyance. In other cases, all garbage and other specified items previously on board must be removed, but no cleaning and disinfection is required. The clarification we are making in this final rule concerns the removal and disposal of the other specified items. Although the proposed rule included no explicit direction as to the disposal of these items, it was implicit that the items be disposed of in the same manner as that prescribed for the disposal of regulated garbage. We are including language in this final rule to clearly specify that intent.

Additionally, we are adding a definition of "shelf-stable" to clarify its meaning as used in the regulations. The definition, which is substantially the same as a definition already included in USDA regulations at 9 CFR 318.300 concerning meat inspection, and which is commonly accepted in the industry, specifies "shelf-stable" as meaning the condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product at nonrefrigerated conditions (over 50° F or 10° C). If a shelf-stable product is opened, contaminated, handled or treated in a manner which could introduce microorganisms capable of growing in the product under nonrefrigerated conditions, it is no longer considered shelf-stable.

We are also removing the definition of "garbage" at redesignated § 94.5(h)(1). The proposed rule included a new description of "garbage" at § 94.5(a), superseding the old definition at redesignated § 94.5(h)(1), which was inadvertently retained in the proposed rule.

Based on the rationale set forth in the proposal, and except for the nonsubstantive changes indicated above, we are amending the regulations as proposed.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although this document makes changes that are significant for helping to prevent the dissemination of plant pests and livestock and poultry diseases, in almost all cases this rule will not require persons to change their current practices. In those cases where persons may have to change their current practices, we believe that the change required would not have a significant economic impact.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 330

Customs duties and inspection, Garbage, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

List of Subjects in 9 CFR Part 94

Animal diseases, Garbage, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

PART 330—FEDERAL PLANT PEST REGULATIONS, GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

Accordingly, 7 CFR Part 330 is amended as follows:

1. The authority citation for Part 330 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 330.100, the definitions of "garbage" and "territories or possessions" are revised and new definitions of "regulated garbage" and "shelf-stable" are added, to read as follows:

§ 330.100 Definitions.

* * * * *

Garbage. That material designated as "garbage" in § 330.400(b).

* * * * *

Regulated garbage. That material designated as "regulated garbage" in § 330.400(c) and § 330.400(d).

* * * * *

Shelf-stable. The condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product at nonrefrigerated conditions (over 50° F. or 10° C.).

* * * * *

Territories or possessions. Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

* * * * *

3. In § 330.400, the heading is revised; paragraph (a) is revised; paragraphs (b), (c), and (d) are redesignated as paragraphs (g), (h), and (i) respectively; and new paragraphs (b), (c), (d), (e) and (f) are added, as follows:

§ 330.400 Regulation of certain garbage.

(a) Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam, and all other Insular Possessions of the United States are hereby quarantined, and the movement therefrom to other parts of the United States of garbage is hereby regulated as provided in this section to prevent the spread of dangerous plant diseases and insect pests specified in §§ 318.13, 318.58, and 318.82 or other plant pests which exist in these areas. Also, to prevent the dissemination of plant pests and livestock and poultry diseases, garbage is regulated as otherwise provided in this part because of international movements of means of conveyance.

(b) *Garbage.* For purposes of this part, garbage means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on means of conveyance. For purposes of this part, garbage also means meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

Note.—Not all garbage is regulated for the purposes of this part. Garbage regulated for the purposes of this part is defined as "regulated garbage" in paragraphs (c) and (d) of this section.

(c) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed in the United States from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c) of this section, if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (g)(1) of this section.

(B) That the means of conveyance had then been cleaned and disinfected in the presence of the inspector; and

(ii) Since being cleaned and disinfected, the means of conveyance has not been in a non-Canadian foreign port.

(2) *Exception 2.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (c) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had been cleared of all garbage and all stores; and the items cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (g)(1) of this section.

(ii) After the garbage and stores referred to in paragraph (c)(2)(i) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(d) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by certificate from an inspector, saying that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables; and the items cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (g)(1) of this section.

(ii) After being cleared of the garbage and stores referred to in paragraph (d)(1)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had been previously cleared of all garbage and all fresh fruits and vegetables; and the items cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for

disposing of regulated garbage, as specified in paragraph (g)(1) of this section.

(ii) After the garbage and stores referred to in paragraph (d)(2)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(e) Garbage that is commingled with regulated garbage is also regulated garbage.

(f) *Restrictions on regulated garbage.* (1) Regulated garbage shall not be on or removed from a means of conveyance, or be disposed of, unless in accordance with the provisions of this part. (2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to such disposal measures as authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), section 10 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 164a), section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, 1930, as amended (19 U.S.C. 1306), to prevent the dissemination of plant pests and livestock or poultry diseases.

* * * * *

4. In § 330.400, all references to "garbage" in redesignated paragraphs (g)(1), (h), and (i)(1) and (i)(2) are changed to "regulated garbage"; and the first sentence in redesignated paragraph (g)(1) is revised and made into two sentences to read as follows:

§ 330.400 Regulation of certain garbage.

* * * * *

(g)(1) All regulated garbage must be contained in tight, leak-proof covered receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft.

* * *

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PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.5, the heading is revised; paragraph (a) is revised; paragraphs (b), (c), and (d) are redesignated as paragraphs (f), (g), and (h), respectively; and new paragraphs (b), (c), (d), and (e) are added, as follows:

§ 94.5 Regulation of certain garbage.

(a) *Garbage.* For purposes of this part, garbage means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on means of conveyance. For purposes of this subpart, garbage also means meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

Note: Not all garbage is regulated for the purposes of this part. Garbage regulated for the purposes of this part is defined as "regulated garbage" in paragraphs (b) and (c) of this section.

(b) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (b) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had first been cleared of all garbage and of the following: All meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section.

(B) That the means of conveyance had been cleaned and disinfected in the presence of the inspector; and

(ii) Since being cleaned and disinfected, the means of conveyance has not been in a non-Canadian foreign port.

(2) *Exception 2.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (b) of this section if the following two conditions are met:

(i) The aircraft had been cleared of all garbage and all stores; and the items cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section.

(ii) After the garbage and stores referred to in paragraph (b)(2)(i) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(c) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector, stating that the means of conveyance has been cleared of all garbage and all fresh fruits and vegetables; and the items cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section.

(ii) After being cleared of the garbage and stores referred to in paragraph

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(c)(1)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (c) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The aircraft had been cleared of all garbage and all fresh fruits and vegetables; and the items cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section.

(ii) After being cleared of the garbage and stores referred to in paragraph (c)(2)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(d) Garbage that is commingled with regulated garbage is also regulated garbage.

(e) *Restrictions on regulated garbage.* (1) Regulated garbage shall not be on or removed from a means of conveyance, or be disposed of, unless in accordance with the provisions of this part. (2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to such disposal measures as authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), section 10 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 164a), section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, 1930, as amended (19 U.S.C. 1306), to prevent the dissemination of plant pests and livestock or poultry diseases.

* * * * *

3. In § 94.5, all references to "garbage" in redesignated paragraphs (f)(1), (g) and (h)(2) and (h)(3) are changed to "regulated garbage"; the first sentence in redesignated paragraph (f)(1) is revised and made into two sentences; and redesignated paragraph (h)(1) is removed and a new paragraph (h)(1) is added, to read as follows:

§ 94.5 Regulation of certain garbage.

* * * * *

(f)(1) All regulated garbage must be contained in tight, leak-proof covered receptables during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft. * * *

* * * * *

(h)(1) "Shelf-stable" means the condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product under nonrefrigerated conditions (over 50° F or 10° C).

* * * * *

Done in Washington, DC, this 8th day of December 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-28579 Filed 12-12-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-157-AD; Amdt. 39-6088]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which currently requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This action clarifies the AFM wording and requires the installation of a placard on the instrument panel to reduce the risk of engine flameout in adverse weather conditions. This action is prompted by a recent single engine flameout that occurred during descent through thunderstorm activity.

EFFECTIVE DATE: December 30, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On October 6, 1988, the FAA issued AD 88-13-51, Amendment 93-6046 (53 FR 41151; October 20, 1988) which requires operational limitations when flying in moderate to heavy precipitation to prevent potential engine flameouts. That AD was prompted by two recent dual engine flameouts during descent through thunderstorm activity. This condition, if not corrected could lead to dual engine flameouts.

Since issuance of AD 88-13-51 an additional incident occurred where one engine flamed out during descent in heavy rain.

Based on the investigations of this incident, the FAA has determined that the AFM revisions required by the existing AD are insufficient to ensure that the flight crew is adequately apprised of the operational limitations, and that the installation of a placard is also necessary.

In addition, the FAA has received a comment requesting clarification of the types of precipitation that may cause engine flameout. Flight through clouds, fog, drizzle or snow will have minimal or no effect on engine operation, assuming current procedures for these conditions are observed. However, flight through moderate to heavy rain, hail, or sleet can cause engine spool down or flameout if thrust settings are below 45% N_1. To clarify weather conditions of concern, the commenter proposed changing the operational procedure headline in paragraph A. of the AD to "Operation In Rain, Hail, Or Sleet," because it is difficult for the flight crew to determine different levels of (moderate to heavy) precipitation.

The FAA agrees with the need for additional clarification as to those types of conditions which may cause engine flameout; however, the FAA considers that the flight crew's capability in determining different levels of precipitation has not been relevant in the above noted incidents. A more general confusion has existed regarding proper crew procedure, which is intended to be addressed by installation of a placard in the cockpit.

Since this condition is likely to exist or develop on other airplanes of the

same type design, the FAA has determined that AD 88–13–51 must be revised to require a placard on the instrument panel to alert the flightcrew of the required operational limitations for flight in moderate to heavy rain, hail, or sleet, and to clarify the wording in the Airplane Flight Manual revision.

This is considered interim action. Experimental engine design solution(s) are currently under evaluation. Pending the results of these engineering evaluations and flight tests, the FAA may consider further rulemaking to require incorporation of a final engine design change into the existing Boeing Model 737–300 fleet.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88–13–51, Amendment 39–6046 (53 FR 41151; October 20, 1988) to read as follows:

Boeing: Applies to Model 737–300 series airplanes, equipped with CFM International CFM56–3 series engines, certificated in any category. Compliance required within 10 days of the effective date of this AD, unless previously accomplished.

To reduce the risk of engine flameout in adverse weather conditions, accomplish the following:

A. Revise the Limitation's Section of the FAA-approved Airplane Flight Manual (AFM) by adding the following instructions. This may be accomplished by inserting a copy of this AD into the AFM. (Where appropriate, remove the previous inserted copy of AD 88–13–51 from the AFM).

Operation in Moderate to Heavy Rain, Hail, or Sleet

When operating in or in the vicinity of (near) moderate to heavy rain, hail, or sleet, accomplish the following:

1. Engine start switches—FLIGHT
2. Minimum Engine N_1—45%.
3. Auto-throttle—OFF

Note: Operation in or in the vicinity of (near) moderate to heavy rain, hail, or sleet is to be assumed if indicated by any of the following sources: weather radar, reports, or observations.

Operating in Thunderstorm Activity

Cautionary Note

Flight operation should be conducted so that operation within five miles of thunderstorm activity is avoided.

B. For operations in known or forecast rain, hail, or sleet, notwithstanding the Minimum Equipment List (MEL), the following items must be operable for dispatch:

1. Weather radar.
2. Engine Ignition System—both left and right engine ignitors.

C. Install a placard (red base, white lettering) on the instrument panel in clear view of the flightcrew and in close proximity of the engines' N_1 indication gauges, that reads as follows:

"Maintain At Least 45% N_1 When Operating In Or Near Moderate To Heavy Rain, Hail Or Sleet."

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective December 30, 1988.

Issued in Seattle, Washington, on December 1, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88–28541 Filed 12–12–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 61, 63, 65, 121, and 135

[Docket 25148; Amdt. 121–200]

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, amendment number; correction.

SUMMARY: FAA is correcting an error in the Amendment Number. In FR Doc. 88–26609, published Monday, November 21, 1988, on page 47024, please change the Amendment number 121–201 to read 121–200.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Bartanowicz, Office of Rulemaking (ARM–1), (202) 267–9679.

Michael D. Triplett,

Legal Technician, Program Management Staff.

[FR Doc. 88–28542 Filed 12–12–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 43

[SD–108–878]

Visas; Documentation of Immigrants

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Final rule.

SUMMARY: This final rule makes those amendments to 22 CFR Part 43 necessitated by the enactment of Pub. L. 100–658, Immigration Amendments of 1988. 22 CFR Part 43 was promulgated to implement section 314 of Pub. L. 99–603, the "NP–5" program. Section 2 of Pub. L. 100–658 extends the "NP–5" program for two additional fiscal years, 1989 and 1990, and increases the annual

numerical limitation from 5,000 to 15,000 for each of those years. This rule favorably affects a certain class of aliens who will benefit from the continuation of the separate annual numerical limitation program established by Pub. L. 99–603 and extended by Pub. L. 100–658.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC 20520, (202) 663–1184.

SUPPLEMENTARY INFORMATION: Section 314 of Pub. L. 99–603 established a separate annual numerical limitation of 5,000 each for Fiscal Years 1987 and 1988 available to natives of countries "adversely affected" by the enactment of Pub. L. 89–236. The Department's implementation of that provision is set forth in 22 CFR Part 43. The Department promulgated an Interim Rule on January 14, 1987, 52 FR 1447, and a Final Rule on May 13, 1987, 52 FR 17944. The supplementary information in those publications contains an extensive discussion of the Department's rationale for its method of implementation and detailed information concerning the outcome of its implementation.

Section 2 of Pub. L. 100–658 amends section 314 to provide that 15,000 visas shall be made available under that provision annually during Fiscal Years 1989 and 1990. Section 2 also requires that, in making the additional visas available, the Department use the list of applicants established in connection with the original version of section 314 and authorizes, but does not require, the Department to administer the extension under the regulations previously promulgated.

As described in the Final Rule, 52 FR 17944, at pp. 17947–9, the Department received about 1,000,000 pieces of mail during the registration period in January 1987. The mail was marked to indicate the chronological order of its receipt from the United States Postal System (USPS). A private contractor was hired to open mail and to enter the names of the applicants, together with other necessary identifying information, into a computer. As pointed out in the Final Rule, only the first 25,000 applicants were processed in this manner. All additional mail has been retained, unopened, in the chronological order of its receipt from USPS.

Initially, as pointed out in the Final Rule, the Department had contemplated destroying the additional mail after a short period of time, because of storage costs. Legal challenges to the Department's regulations implementing section 314 required retention of the mail, against the possibility of an adverse decision. Although the Department's regulations were upheld in both cases—*Fakheri-Rad* v. *Shultz*, No. 87–0393 (C.D. CA, March 25, 1987) and *Mulligan* v. *Shultz*, 848 F.2d 655 (5th Cir. 1988)—the decision in *Mulligan* is so recent that no action has been taken to dispose of any of the unopened mail. As a result, the Department is in a position to implement the requirement of section 2(b) of Pub. L. 100–658 that the additional 30,000 visas be made available to applicants in the original "NP–5" registration.

Section 2(b) also authorizes, but does not require, the Department to carry out the extension under the regulations previously published. The Department has carefully considered whether any changes to the previously published regulations are desirable or necessary. Section 2 of Pub. L. 100–658 makes no substantive changes in section 314. The initial registration period in January 1987 produced a quantity of applicants more than sufficient to permit the issuance of the additional 30,000 visas authorized by section 2. The fact that all mail received during the initial registration period has been retained in chronological order of receipt allows for resumption of processing under the original regulations. The existing regulations have been held to be appropriate in two separate court actions. The first of the two additional fiscal years has already begun and the formulation and implementation of a revised plan of implementation would impose unacceptable delays on the program, as well as add significantly to the cost of implementation. For all of the foregoing reasons, the Department will make no changes in section 43.1, 43.2, 43.3, or 43.5 and will implement the two-year extension of the "NP–5" program in the same manner as the first two years.

Because of the addition of the two further fiscal years and the increase in annual authorized visas for those years from 5,000 to 15,000, it is necessary to amend section 43.4 to conform with those two changes. Section 43.4 provides for control of the numerical limitations under section 314 and establishes both a monthly limitation on overall visa issuance and an annual limitation on visa issuance to natives of any single adversely affected country. All of these provisions were based upon the 5,000 overall annual limitation established by section 314, as originally enacted. All must be amended to take into account the tripling of the annual overall limitation for fiscal years 1989 and 1990.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

In addition, compliance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553, relative to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because this rule extends an established benefit upon certain classes of intending immigrants in accordance with Pub. L. 100–658 which provides for extension of two additional fiscal years of a program established in 1987 (Pub. L. 99–603) and which increases the annual numerical limitation for those two years.

List of Subjects in 22 CFR Part 43

Aliens, Nonpreference immigrants, Visas.

PART 43—[AMENDED]

In view of the foregoing, 22 CFR Part 43 is amended to read as follows:

1. The authority citation for Part 43 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 314, 100 Stat. 3359, 8 U.S.C. 1153 Note; Sec. 2, 102 Stat. 3359.

2. In section 43.4 paragraphs (a) and (b) are revised as follows:

§ 43.4 Control of numerical limitation.

(a) *Centralized control.* Centralized control of the numerical limitation specified in section 314(a) of Pub. L. 99–603, as amended, is established in the Department. In order to effect this control the Department shall limit the number of immigrant visas and the number of adjustments of status that may be granted to aliens applying under section 314 of Pub. L. 99–603, as amended, to (1) a number not to exceed 5,000 each in fiscal years 1987 and 1988 and not to exceed, in any month of either such fiscal year, 500 plus any balance remaining from authorizations for preceding months in the same fiscal year; and (2) a number not to exceed 15,000 each in fiscal years 1989 and 1990 and not to exceed, in any month of either such fiscal year, 1,500 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Limitation for individual adversely affected country.* Within the limitations specified in subsection (a) of this section, there shall be a numerical limitation on the issuance of immigrant visas and the granting of adjustment of

status to natives of any individual adversely affected country. For fiscal years 1987 and 1988 the numerical limitation for any individual adversely affected country shall be the difference between its average annual rate of immigration during the period from July 1, 1953, to June 30, 1965, and its average annual rate of immigration during the period from July 1, 1966, to September 30, 1985, or 5,000, whichever is the lesser. For fiscal years 1989 and 1990 the numerical limitation for any individual adversely affected country shall be three times the difference between its average annual rate of immigration during the period from July 1, 1953, to June 30, 1965, and its average annual rate of immigration during the period from July 1, 1966, to September 30, 1985, or 15,000, whichever is the lesser.

* * * * *

Date: December 7, 1988.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 88-28583 Filed 12-12-88; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Access to Employee Exposure and Medical Records; Effective Date and Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of effective date of final rule; approval of information collection requirements.

SUMMARY: On September 29, 1988, the Occupational Safety and Health Administration (OSHA) published a final amendment (53 FR 38140) to the standard on Access to Employee Exposure and Medical Records (Access) (29 CFR 1910.20, 45 FR 35212). This amendment was transmitted to the Office of Management and Budget (OMB) for review and clearance of the information collection requirements contained in the final rule, in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320. At the same time, extension of clearance for information collection requirements found in the existing standard was also requested in the event that clearance for the revised standard was not received prior to expiration of clearance for the existing standard.

All information requirements contained in § 1910.20 in paragraphs (d), (e), (f)(2), (f)(8), (f)(12), and (h), have now received OMB paperwork clearance under OMB clearance number 1218-0065. The OMB clearance expires in November 1989.

The above mentioned paragraphs in the amended Access rule are effective as of December 13, 1988.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Information, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA published a proposed amendment to the rule on Access on July 13, 1982 (47 FR 30420) and adopted the final amendments on September 29, 1988 (53 FR 38140). The final amendment contained the following paragraphs which were determined by OMB to constitute information collection requirements under the Paperwork Reduction Act: (d), Preservation of records; (e), Access to records; (f)(8) and (f)(12), Trade secrets; and (h), Transfer of records. The final amendment provided for an effective date of November 28, 1988.

As noted in the final rule at 53 FR 38140, the information collection provisions associated with adoption of the final rule had not been cleared by OMB at that time. Accordingly, the effective dates for those requirements in the final amendment have remained in abeyance pending OMB paperwork clearance. OMB has now cleared the information collection requirements contained in § 1910.20, as amended, under clearance number 1218-0065, through November 1989. (Clearance number 1218-0065, which covered the Access standard prior to new rulemaking, now covers the amended standard as well. A reference to that clearance already is included at the end of § 1910.20 in the Code of Federal Regulations and no change in that reference is necessary). In accordance with that clearance, OSHA is hereby providing notice that paragraphs § 1910.20 (d), (e), (f)(2), (f)(8), (f)(12), and (h) of the revised Access rule will become effective on December 13, 1988. The Agency finds good cause pursuant to the Administrative Procedure Act, to have those sections become immediately effective. This will prevent a lapse in coverage which could lead to harm to the health of affected employees. In addition, similar predecessor provisions have been in effect since 1980.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 4 of the Administrative Procedures Act, 9 U.S.C. 553(d)(3), Secretary of Labor's Order No. 9-83 (48 FR 3576) and 29 CFR Part 1911.

Signed at Washington, DC, this 8th day of December 1988.

John A. Pendergrass,

Assistant Secretary, Occupational Safety and Health.

[FR Doc. 88-28658 Filed 12-12-88; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 68

[DoD Directive 1342.16]

Provision of Free Public Education for Eligible Dependent Children

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This amendment is made to correct administrative errors printed in the **Federal Register** on Thursday, November 19, 1987 (52 FR 44389) to subject document.

EFFECTIVE DATE: October 16, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez, 202-697-0481.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 68

Dependents, Education.

PART 68—PROVISION OF FREE PUBLIC EDUCATION FOR ELIGIBLE CHILDREN PURSUANT TO SECTION 6, PUBLIC LAW 81-874

1. The title of Part 68 is revised to read as set forth above.

2. The authority citation for Part 68 continues to read as follows:

Authority: 20 U.S.C. 241.

§ 68.6 [Amended]

3. Section 68.6 is amended by redesignating paragraphs (d) through (f)

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as (e) through (g), and the second paragraph (c) as (d).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 8, 1988.

[FR Doc. 88-28626 Filed 12-12-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-39]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Surf City, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation and the Mayor of the Town of Surf City, North Carolina, the Coast Guard is changing the regulations governing the operation of the drawbridge across the Atlantic Intracoastal Waterway at mile 260.7, in Surf City, North Carolina, by restricting bridge openings to pleasure craft year-round. This action will alleviate vehicular traffic congestion caused by excessive bridge openings, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: On June 27, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (53 FR 24102) concerning the bridge at Surf City, North Carolina. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice dated July 12, 1988. In both the notice of proposed rulemaking and the public notice, interested persons were given until August 11, 1988, to submit comments.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Comments

The North Carolina Department of Transportation and the Mayor of the Town of Surf City, North Carolina, requested on March 10, 1988, that the NC 50 (S.R. 50) drawbridge over the Atlantic Intracoastal Waterway be regulated to open on the hour, daily, between 7:00 a.m. and 7:00 p.m., year-round, or from March 15 through November 15 if the year-round request was denied. This request was made as a result of the steady increase of pleasure craft traffic on the AICWW since 1985, resulting in excessive draw openings, which are causing vehicular traffic congestion on NC 50.

A proposed rule restricting openings year-round was published in the **Federal Register** (53 FR 24102) on June 27, 1988, and the proposal was announced in a Public Notice dated July 12, 1988. Comments were solicited through August 11, 1988, and five comments were received. One commenter totally supported the proposed rule. Three comment were from private citizens, all boat owners, objecting to further restrictions of the Surf City drawbridge. Of these, one commenter suggested opening the draw every 20 minutes for the passage of boaters, and another suggested openings every 30 minutes from 7:00 a.m. to 7:00 p.m. and in between if highway traffic conditions warranted it. The third individual was totally opposed to further restrictions. The comments of the three opponents to the rule have been considered, and it is felt that the year-round regulation on the drawbridge should inconvenience boaters very little. Once the schedule is known, boaters may plan their transits accordingly, thus avoiding lengthy delays at the bridge. The only commercial response received was from S.C. Loveland, Co., who requested that a provision allowing commercial traffic to pass through the bridge at any time be retained. This provision, Section 117.821(a), was not affected by the proposed regulation and it remains untouched by the final rule.

With the exception of minor editorial changes to the title of the section, the final rule is adopted as originally proposed.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. Although the rule does impact both the Town of Surf City and the State of North Carolina, specifically the Department of Transportation, which operates the bridge, the effect on state and local operations is minimal and entirely positive. The rule actually decreases the burden on both entities by reducing the number of bridge openings that will be required during the boating season. In fact, this rule was originally requested by the State Department of Transportation and the Mayor of the Town of Surf City.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In section 117.821, paragraph (b)(4) is revised as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach

* * * * *

(b) * * *

(4) S.R. 50 bridge, mile 260.7, at Surf City, NC, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

* * * * *

Dated: November 23, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-28586 Filed 12-12-88; 8:45 am]

BILLING CODE 491-014-M

POSTAL SERVICE

39 CFR Part 265

Amendments to Release of Information Regulations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to publish minor changes to the Postal Service's release of information regulations governing disclosure of names and addresses of customers. The changes are clarifying in nature and reflect no change in agency policy.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Records Office, (202) 268–5158.

SUPPLEMENTARY INFORMATION: On March 14, 1986 (51 FR 8824), the Postal Service issued a final rule modifying its regulations government disclosure of customer names and addresses. These regulations are amended to clarify the circumstances under which the fee is waived for providing change of address information and to provide guidance to requesters seeking information needed to serve legal process, including a suggested format for submission of such requests.

List of Subjects in 39 CFR Part 265

Release of Information, Postal Service.

The Postal Service amends Part 265 of 39 CFR as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

§ 265.6 [Amended]

2. Section 265.6(d)(1), is amended by adding "or handwritten order" after "Form 3575" in the first sentence; and by removing "these later circumstances" in the next to last sentence and inserting in lieu thereof "the circumstances at paragraph (d)(6) of this section."

3. Section 265.6(d)(2) is amended by deleting "Information" in the first sentence and inserting in lieu thereof "Address Information"; by removing "Copies of the change of address order" in the second sentence and inserting in lieu thereof "Other information on the temporary change of address form or copies of the"; and by removing "these latter circumstances" in the next to last sentence and inserting in lieu thereof "the circumstances at paragraph (d)(6) of this section".

4. Section 265.6(d)(4) is amended by adding at the end thereof: "The fee is waived for providing information under the circumstances at paragraph (d)(6) of this section. See paragraph (g)(5) of § 265.8."

5. Section 265.6(d)(5), the heading, "Fee" is corrected to read "Post".

6. Section 265.6(d)(6)(ii)(B) is amended by removing "if pertinent" and inserting in lieu thereof "if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*"; and by adding at the end of the paragraph before the "Note": "The Postal Service suggests use of the standard format appearing at the end of this section when requesting boxholder information under this paragraph. If the request lacks any of the required information or a proper signature, the postmaster will return it to the requester specifying the deficiency."

7. Section 265.6(d)(8) is amended by removing "following format" in the fourth sentence and inserting in lieu thereof "format appearing at the end of this section"; and by removing format.

8. At the end of § 265.6, add the formats shown below and referenced at § 265.6 (d)(6)(ii) and (d)(8), respectively.

§ 265.8 [Amended]

9. Section 265.8(g)(5) concluding text, last sentence, is amended by correcting "122.5" to read "945".

Fred Eggleston,

Assistant General Counsel, Legislative Division.

(Suggested Format Referenced at Paragraph 265.6(d)(6)(ii)(B))

To: Postmaster

Date: —

Request for Boxholder Information

Please furnish the name and/or street address of the following boxholder:

Name (if known) _____

P.O. Box _____

City, State, ZIP Code _____

The following information is provided in accordance with 39 CFR 265.6(d)(6)(ii):

1. Capacity of requester (e.g., process server, attorney, party representing himself):

2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party representing himself):

3. The names of all known parties to the litigation:

4. The court in which the case has been or will be heard:

5. The docket or other identifying number if one has been issued:

6. The capacity in which the boxholder is to be served (e.g., defendant or witness):

7. A brief description of the nature of the litigation (e.g., domestic relations, personal injury, property damage, indebtedness):

I certify that the above information is true and that the name and/or street address of the boxholder is needed and will be used solely for service of legal process in connection with actual or prospective litigation.

Signature

Printed Name

Address

City, State, ZIP Code

For Post Office Use Only

The name and/or street address as recorded on the boxholder's application (Form 1093):

Name _____

Street Address _____

City, State, ZIP Code _____

Postmark ☐

(Required Format Referenced at Paragraph 265.6(d)(8))

(AGENCY LETTERHEAD)

To: Postmaster

Agency Control No. _____

Date: _____

ADDRESS INFORMATION REQUEST

Please furnish this agency with the new address, if available, for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. *If the following address is a post office box, please furnish the street address as recorded on the boxholder's application form.*

Name: _____

Last Known Address: _____

I certify that the address information for this individual is required for the performance of this agency's official duties.

(Signature of Agency Official)

(Title)

FOR POST OFFICE USE ONLY

[ ] MAIL IS DELIVERED TO ADDRESS GIVEN

[ ] NOT KNOWN TO ADDRESS GIVEN

[ ] MOVED, LEFT NO FORWARDING ADDRESS

[ ] NO SUCH ADDRESS

[ ] OTHER (SPECIFY): _____

_____

_____

Agency return address
NEW ADDRESS

_____

_____

BOXHOLDER'S STREET ADDRESS

_____

_____

Postmark/Date Stamp

[FR Doc. 88-28446 Filed 12-12-88; 8:45 am]
BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3480

[AA-660-09-4120-02; Circular No. 2615]

Coal Exploration and Mining Operations Rules; Diligence Requirements

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth the regulations of the Department of the Interior for the administration of section 7(a) and section 39 of the Mineral Leasing Act (30 U.S.C. 207(a) and 30 U.S.C. 209 (1982)). It amends the existing regulations at 43 CFR 3483.3 to provide that, if suspension of operations and production of a coal lease has been approved or directed under section 39 of MLA, the 10-year production period set in section 7(a) of MLA will be extended by an amount of time equal to the duration of the suspension of operations and production.

EFFECTIVE DATE: January 12, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Paul W. Politzer (202) 343-7722,
or
Allen B. Agnew (202) 343-7753.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing revisions to two paragraphs of 43 CFR 3483.3 was published in the **Federal Register** on August 26, 1988 (53 FR 32631), with a 30-day comment period. During that comment period, comments were received from seven sources, with 2 coming from businesses, 3 from associations, 1 from an attorney, and 1 from a Federal Agency. All of the comments were given full consideration during the preparation of this final rulemaking. The Supplementary Information preamble to that proposed rulemaking is incorporated herein in its entirety, to the extent not modified by this Supplementary Information.

This final rulemaking provides that, upon approval of a suspension of operations and production under section 39 of the Mineral Leasing Act, the regulatory 10-year diligent development period shall be extended for a period of time equal to the suspension.

In general, all comments received were favorable to the changes proposed in the rulemaking. None of the comments suggested changes in the provisions amended in the proposed rulemaking, and the proposed rulemaking is adopted without amendment in this final rulemaking.

One comment concerned the adequacy of the Solicitor's conclusion that the Department of the Interior has defined the diligent-development requirement of section 7(b) of the Mineral Leasing Act to equate to the requirement in section 7(a) that the lease be producing at the end of 10 years. The comment stated that the definition of diligent development period should "clearly specify that it is the same 10-year period as referred to in section 7(a)." This suggested amendment is unnecessary at this time. The 10-year diligent development period and the 10-year production period of section 7(a) for new Federal coal leases have been equated since the Department of the Interior first proposed regulations to implement the Federal Coal Leasing Amendments Act of 1976 (41 FR 45571, October 15, 1976). In the 1982 amendments to the regulations, this concept was extended to pre-Federal Coal Leasing Amendments Act Federal coal leases as they became subject to that Act. The Bureau of Land Management is currently reviewing the coal exploration and mining operations regulations, and related portions of 43 CFR Group 3400. This comment will be considered during that review.

The comment continued that a second area of concern related to whether the effects on the 10-year diligent development period of a *force majeure* suspension pursuant to section 7(b) of MLA and a suspension of operations and production pursuant to section 39 of MLA are identical. *Force majeure* suspensions are not the subject of this final rulemaking. However, this question will be considered during the review of the 43 CFR Group 3400 regulations mentioned above.

One comment related to the issue of whether or not a lessee must have been in operation in order to qualify for a Section 39 suspension of operations and production, stating: "In reviewing the decisions in the cases of *Copper Valley Machine Works, Inc.* v. *Andrus*, 653 F.2d 595 (D.C. Cir. 1981) and *Getty Oil Co.* v. *Clark*, 614 F. Supp. 904 (D.C. Wyo. 1985), it appears that there is a distinction in the authority of the Secretary depending upon whether or not actual operations are being conducted on a lease prior to the Section 39 suspension. It would appear, under these decisions, that if no development exists then the Secretary must 'direct' a suspension [of operations and production] in the interest of conservation in order for the Section 39 suspension to apply. On the other hand, if operations have commenced, then it would appear that the lessee can apply for and obtain approval of a suspension and the suspension will serve to suspend all other terms and conditions of the Federal coal lease."

Section 39 of MLA is silent as to when a suspension of operations and production may be granted or directed. In the cases cited in the comment, no operations were occurring on the Federal coal leases. In the *Copper Valley* case, the court construed a stipulation, placed by the Bureau of Land Management on the permit to drill an oil well, as a directed suspension. In the *Getty* case, the lessee requested a suspension of operations and production while the Bureau of Land Management prepared an environmental impact statement on an application for a permit to drill an oil well. Thus, the timing of the suspension of operations and production in relation to commencement of operations has no bearing on the manner in which a Federal coal lease is suspended. *Copper Valley*, supra, at 600.

One comment stated that "the proposed rulemaking appears to be effecting a change in the regulations * * * that should have no impact on the scope or the result of the suspension of operation [sic] and production for conservation purposes." The comment continued that the Solicitor's Opinion (M-36958, July 14, 1988) "could be construed to allow leases to be suspended for 'conservation purposes' prior to the initiation of production * * * and potentially would pave the way for a huge loophole in the diligent development requirements * * *. This situation would be contrary to the intent of Congress * * [*." The comment concluded that the final regulation "must clarify that the suspension of operations [and production] for conservation purposes only applies to

producing mines." The Department has consistently declined to allow Section 39 suspensions of operation and production for speculative purposes to be directed or approved. *Mountain States Resources Corp.*, 84 IBLA 616, June 12, 1986. The intent of Congress is to discourage speculation on Federal coal leases. In general, a Section 39 suspension of operations and production is only warranted where operations have commenced and production has occurred. However, there will be situations where a Federal coal lease qualifies for a suspension of operations and production even though operations have not commenced, similar to the Federal oil and gas lease suspension of operations and production described in the *Getty* case.

The Department, with judicial approval, has construed the term "conservation" to include not only maximizing recovery and avoiding or minimizing waste or loss of the leased mineral resource, but also avoiding or minimizing damage to other natural resources, such as wildlife, water quality, air quality, and other minerals. An example would be where the development of an existing Federal coal lease is totally dependent upon the issuance, or lack thereof, of an adjacent Federal coal lease and the issuance decision on the adjacent Federal coal lease is dependent on preparation of an environmental impact statement. The environmental impact statement would be prepared to ensure that, if the adjacent lease is issued, the impacts of any operations on both leases will be mitigated. A section 39 suspension of operations and production, in the interest of conservation of other resources, would be warranted for the duration of the preparation of the environmental impact statement.

One comment stated that under existing regulations, "as diligent development dates for these leases come up * * * there will be no alternative in the present market to their forfeiture. If one lease in a larger reserve is forfeited, the potential for development of other leases in that reserve will be even further reduced. The United States, however, will in no way be benefited by having that lease back, since no one else will want it or be able to develop it with economic feasibility." Another comment stated that: "It is virtually impossible in the current regulatory environment, particularly with existing coal markets, to meet the ten year production requirements." Agencies in the Department of the Interior have addressed speculative holding of Federal coal leases many times, and disagree with the presumption that economics or markets are included in the term "in the interest of conservation of natural resources." This issue was addressed in Solicitor's Opinion M-36951 (92 I.D. 537, 540 (1985)). In enacting the Federal Coal Leasing Amendments Act of 1976, Congress sought to eliminate speculative holding of Federal coal leases. When the Act was enacted, only about 60 of the 533 outstanding Federal coal leases were in production. Although the total number of Federal coal leases approached 640 in the early 1980's, during fiscal year 1987 only 120 of the remaining 536 Federal coal leases were producing. Congress identified several reasons for this situation. First, the Secretary of the Interior had failed to enforce strictly the statutory coal lease conditions of diligent development and continued operation. Second, the availability of Federal coal leases on a noncompetitive basis under the prospecting permit/preference-right leasing system had enabled energy resource speculators to enter the market for Federal coal in large numbers and at little cost.

Three provisions of the Federal Coal Leasing Amendments Act of 1976 were designed to discourage speculation in nonproducing Federal coal leases. First, subject to valid existing rights, the noncompetitive leasing system was terminated. Second, Section 6 of the Act amended Section 7 of the Mineral Leasing Act to require the termination of new leases (and old leases readjusted or otherwise made subject to the 1976 Amendments) not producing coal in commercial quantities in 10 years. Third, in Section 3 of the 1976 Amendments, Congress added section 2(a)(2)(A) to the Mineral Leasing Act to prohibit lessees that hold Federal coal leases for 10 years after 1976 and are not then producing coal in commercial quantities from acquiring a lease or leases under the Mineral Leasing Act. The intent of Congress cannot be circumvented by allowing across-the-board suspensions for lessees that cannot find an economic market, as the comment implies. As discussed earlier, there may indeed be specific situations which may warrant a Section 39 suspension of operations and production for a nonproducing lease. However, "economic feasibility" and "market" are not within the meaning of the phrase "in the interest of conservation." The phrase "in the interest of conservation" refers to natural resources, as described in the *Copper Valley* decision, and the test is required to be satisfied on a case-by-case basis.

This final rulemaking makes it clear that, when warranted and either directed or approved, the 10-year diligent development period will be extended by a period of time equal to the duration of a Section 39 suspension of operations and production.

The principal author of this final rulemaking is Allen B. Agnew, Branch of Technical Support, Division of Solid Mineral Operations, assisted by other Washington Office staff, staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and that it will not have a substantial direct effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government under Executive Order 12612.

The economic impacts of this final rulemaking will not exceed the economic threshold of Executive Order 12291 and the rulemaking will affect all Federal coal lessees equally, regardless of their size.

This final rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3480

Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 3480, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 3480—[AMENDED]

1. The authority citation for Part 3480 continues to read:

Authority: The Mineral Leasing Act, as amended (30 U.S.C. 181 *et seq.*); the Mineral

Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441, as amended (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*); and the Freedom of Information Act (5 U.S.C. 552).

§ 3483.3 [Amended]

2. Section 3483.3(b)(1) is amended by removing from where it appears in the second sentence the phrase ", except the diligent development period,".

3. Section 3483.3(b)(3) is amended by inserting the phrase ", including the diligent development period," between the words "term" and "of" in the first line of the paragraph.

James R. Cason,

Deputy Assistant Secretary of the Interior.

November 4, 1988.

[FR Doc. 88–28568 Filed 12–12–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 87–134; FCC 88–357]

Communications Common Carriers; Reporting and Recordkeeping Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends §§ 43.42 and 43.43 of its Rules so as to reduce the number of communications common carriers who must file with the Commission the reports specified in those sections.

EFFECTIVE DATE: January 9, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herbert H. Wilson, Jr., Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (CC Docket No. 87–134), FCC 88–357, adopted November 3, 1988 and released December 2, 1988. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The Notice of Proposed Rulemaking in this proceeding, 2 FCC Rcd 3878, was published in the **Federal Register** at 52 FR 26,704, June 30, 1987.

SUMMARY OF THE REPORT AND ORDER: Section 43.42 of the Commission's Rules previously required that all communications common carriers which had operating revenues for the proceeding year in excess of $1,000,000 to file specified reports on their employee pension and benefit plans. The Commission amends Subsection 43.42(a) to require the filing of these reports only by carriers which the Commission determines to be "dominant" carriers and which have operating revenues for the preceding year in excess of $100,000,000.

Section 43.43 previously required all carriers which had operating revenues for the preceding year in excess of $1,000,000 to file reports as specified in that section before making any changes in the depreciation rates applicable to their operated plants. Carriers for which the Commission has previously prescribed depreciation rates may not make changes in such rates unless the charges are also prescribed by the Commission. The Commission amends § 43.43(a) so as to apply these requirements only to carriers which the Commission determines to be "dominant" carriers and which have operating revenues for the previous year in excess of $100,000,000.

All comments received favored the increase in the threshold filing level. The rule changes only address the designation of which carriers must file the reports specified in §§ 43.42 and 43.43. No changes are made in the contents of the reports themselves. The Commission rejected a proposal that the threshold for filing reports be tied to the definition of "Class A" carrier in 47 U.S.C. Part 32, because the reasons underlying the accounting classification in Part 32 do not provide a basis for treating benefit and depreciation reports differently from other reports required by Part 43. The filing of benefit and depreciation reports involves far less effort and planning than a change in accounting systems under Part 32.

The Commission certifies that the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (1982) is not applicable to the rule changes which it adopted in this proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification was sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of the Notice of Proposed Rulemaking in this proceeding in the **Federal Register**. As part of the Commission's analysis of the proposal described in this Order, however, the Commission has considered the impact of the proposal on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines. Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See MTS and WATS Market Structure*, 93 FCC 2d 241, 338–39 (1983). The Commission is therefore not required by the terms of that Act to apply the formal procedures set forth therein. However, the Commission is committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with its other public interest responsibilities. Accordingly, it has chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of the proposed regulations on small telephone companies. The Commission concluded that the proposed amendments to Part 43 will have a beneficial economic impact on many smaller local exchange companies and other carriers since the amendments will eliminate recordkeeping and reporting requirements applicable to such companies under the prior rules.

ORDERING CLAUSE: Accordingly, it is ordered, that pursuant to sections 4(i), 4(j), 201–205, 219(b), 220(b), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 219(b), 220(b), and 403, Part 43 of the Commission's Rules and Regulations IS REVISED as set forth at the end of this document, effective January 9, 1989.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 43 of the Commission's Rules and Regulations, 47 C.F.R. Part 43, is amended as follows:

PART 43—[AMENDED]

1. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. The introductory text of § 43.42(a) is revised to read:

§ 43.42 Reports on pensions and benefits.

(a) Each communication common carrier with annual operating revenues of $100 million or more and which has been found by this Commission to be a dominant carrier with respect to any communications service shall, within thirty (30) days after the adoption of a plan (or within thirty (30) days of first becoming subject to this section, if such carrier has adopted a plan), furnish the Commission with the following information (see, however, § 43.01):

* * * * *

3. Section 43.43(a) is revised to read:

§ 43.43 Reports of proposed changes in depreciation rates.

(a) Each communication common carrier with annual operating revenues of $100 million or more and which has been found by this Commission to be a dominant carrier with respect to any communications service shall, before making any change in the depreciation rates applicable to its operated plant, file with the Commission a report furnishing the data described in the subsequent paragraphs of this section, and also comply with the other requirements thereof.

* * * * *

[FR Doc. 88-28565 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-419; RM-5800]

Radio Broadcasting Services; Burlington, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237A to Burlington, Kansas, as that community's first FM broadcast service, in response to a petition filed by Douglas R. Lawrence. There is a site restriction 6.0 kilometers (3.7 miles) east of the community. The coordinates for Channel 237A at Burlington are 38-11-02 and 95-40-21. With this action, this proceeding is terminated.

DATES: Effective January 17, 1989; The window period for filing applications will be open on January 18, 1989 and close on February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-419, adopted November 1, 1988, and released November 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Kansas, by adding Burlington, Channel 237A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28531 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-299; RM-5789 and RM-6253]

Radio Broadcasting Services; Rozel and Ness City, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 254A to Rozel, Kansas, in response to a petition filed by Lee E. Scott. The coordinates for Channel 254A at Rozel are 38-11-42 and 99-24-24. In response to a counterproposal filed by Dennis Franz in this proceeding we shall also allot FM Channel 285A to Ness City, Kansas. The coordinates for Channel 285A at Ness City are 38-27-06 and 99-53-36. The Class A channels will provide first local service to each community. With this action, this proceeding is terminated.

DATES: Effective January 17, 1989. The window period for filing applications for Channel 254A at Rozel, Kansas and Channel 285A at Ness City, Kansas will open on January 18, 1989, and close on February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-299, adopted November 1, 1988, and released November 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Kansas by adding Rozel, Channel 254A and Ness City, Channel 285A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28532 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-242; RM-5604]

Radio Broadcasting Services; Bastrop, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230C2 in lieu of Channel 232A at Bastrop, Louisiana, and modifies the

license of Station KTRY-FM to specify operation on the higher class channel, as requested by North Delta Broadcasting, Inc. This action could provide Bastrop with its first wide coverage area FM station. The substitution can be made in compliance with the Commission's minimum distance separation requirements at the reference coordinates, which are 32-46-48 and 91-54-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-242, adopted November 1, 1988, and released November 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 232A and adding Channel 230C2 at Bastrop.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28533 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-234; RM-6197]

Radio Broadcasting Services; Aberdeen, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 287A for Channel 288A at Aberdeen, Mississippi, and modifies the license of Station WWZQ-FM to specify operation on Channel 287A. This action is taken in response to a petition filed by Tenn-Tom Broadcasting Corporation. The coordinates for Channel 287A at Aberdeen are 33-48-32 and 88-32-33. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-234, adopted November 1, 1988, and released November 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Mississippi by removing Channel 288A and adding Channel 287A at Aberdeen.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28534 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-451; RM-5631, RM-5639, RM-5647, RM-5655, RM-5695, RM-5763, RM-6238, RM-6239 and RM-6240]

Radio Broadcasting Services; Cordova, Demopolis, Evergreen, Hartselle, Linden, Marion, Sheffield, Trinity and Tuscaloosa, AL and Columbus, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots a Channel 291A to Hartselle, AL, as that community's first local FM service and grants eight proposals to modify existing facilities at Cordova, Demopolis, Evergreen, Linden, Marion, Sheffield, and Tuscaloosa, AL, as well as Columbus, MS, as set forth *infra* (see Supplementary Information). With this action, this proceeding is terminated.

EFFECTIVE DATE: January 13, 1989. The window period for filing applications on Channel 291A at Hartselle, AL, will open on January 17, 1989, and close on February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-451, adopted November 1, 1988, and released November 29, 1988. The Commission, at the request of Radio Hartselle, allots Channel 291A to Hartselle, AL, as that community's first local FM service, at a restricted site 2.8 kilometers southeast of the community. Reference coordinates for Channel 291A are 34-25-52 and 86-54-26. Additionally, at the request of Radio South, Inc., Channel 225C2 is substituted for Channel 224A at Tuscaloosa, AL, and the license of Station WTUG(FM) modified to specify operation on the higher powered channel. Channel 225C2 is allotted at the preferred site for Station WTUG(FM), 24.3 kilometers east of Tuscaloosa. Reference coordinates for Channel 225C2 are 33-09-08 and 87-18-48. In order to accommodate the Tuscaloosa modification, Channel 237A is substituted for Channel 225A at Cordova, AL, and the license of Station WFFN(FM) modified to specify operation on Channel 237A. Channel 237A is allotted with a site restriction 9.4 kilometers north, at reference coordinates 33-50-33 and 87-11-40. As a result of the Cordova substitution, it is not necessary to disturb the current allotment of Channel 223A at Trinity, AL, as contemplated in the *Notice*. Channel 253C2 is substituted for Channel 296A at Linden, AL, as requested by Marengo County Broadcasting, Inc., and the license for Station WDAL(FM) modified accordingly. Channel 253C2 is allotted to Linden with a site restriction 13.6 kilometers (8.5 miles) east of the community at reference coordinates 32-20-50 and 87-39-43. Channel 248A is substituted for Channel 280A at Marion, AL, and the permit held by Marion Radio, Inc. for Station WJAM-FM is modified to specify Channel 248A. This allotment requires a site restriction 1.7 kilometers north of Marion at reference coordinates 32-38-38 and 87-19-29. Channel 227C2 is substituted for Channel 228A at Evergreen, AL, at the request of Wolff Broadcasting Corporation, and the license for Station

WIJK–FM modified to specify operation on the higher powered channel. Channel 227C2 is allotted to Evergreen at the present site of Station WIJK–FM, at reference coordinates 31–26–29 and 86–56–08. Channel 293C2 is substituted for Channel 292A at Demopolis, as requested by Southstar Communications, Inc., and the license for Station WZNJ(FM) modified accordingly. Channel 293C2 is allotted to Demopolis with a site restriction 26 kilometers southeast of the community, at reference coordinates 32–20–25 and 87–38–55. Channel 292C2 is substituted for Channel 292A at Sheffield, AL, as requested by Paul Slatton and Associates Broadcasters, and the license for Station WBTG–FM modified to specify operation on the higher powered channel. Channel 292C2 is allotted to Sheffield with a site restriction 26.3 kilometers northwest of the community at reference coordinates 34–55–12 and 87–53–18. Channel 280C2 is substituted for Channel 280A at Columbus, Mississippi, at the request of T&W Communications Corporation, and the license for Station WACR–FM modified accordingly. Channel 280C2 requires a site restriction 23.2 kilometers northeast of the community, at reference coordinates 33–37–45 and 88–13–19.

The complete text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Alabama with respect to the communities listed below, as follows:

Cordova—remove Channel 225A and add Channel 237A;
Demopolis—remove Channel 292A and add Channel 293C2;
Evergreen—remove Channel 228A and add Channel 227C2;
Hartselle—add Channel 291A;
Linden—remove Channel 296A and add Channel 253C2;
Marion—remove Channel 280A and add Channel 248A;
Sheffield—remove Channel 292A and add Channel 292C2;
Tuscaloosa—remove Channel 224A and add Channel 225C2.

3. Section 73.202(b), the Table of FM Allotments is amended under Mississippi with respect to the community listed below, as follows:
Columbus—remove Channel 280A and add Channel 280C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–28530 Filed 12–12–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–15; RM–6104, RM–6333 and RM–6334]

Radio Broadcasting Services; Poplar Bluff, Campbell, and Ellington, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 278C2 to Poplar Bluff, Missouri, in response to a petition filed by James M. Hunt. There is a site restriction 10.9 kilometers (6.8 miles) northeast of the community. The coordinates for Channel 278C2 are 36–49–50 and 90–18–54. In response to a counterproposal filed by Richard DeAnglis, we shall allot Channel 298A to Campbell, Missouri, with a site restriction 7.3 kilometers (4.5 miles) northeast at coordinates 36–32–45 and 90–01–35. In response to a second counterproposal filed by Saul Waksman, we shall allot Channel 280A to Ellington, Missouri, without a site restriction. The coordinates for Channel 280A at Ellington are 37–14–24 and 90–58–06. With this action, this proceeding is terminated.

DATES: Effective January 17, 1989; The window period for filing applications for Channel 278C2 at Poplar Bluff, Missouri, Channel 298A at Campbell, Missouri, and Channel 280A at Ellington, Missouri, will open on January 18, 1989, and close on February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–15, adopted November 1, 1988, and released November 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri is amended by adding Channel 278C2 at Poplar Bluff; Campbell, Channel 298A; and Ellington, Channel 280A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–28535 Filed 12–12–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73–20; Notice 12]

Federal Motor Vehicle Safety Standards; Fuel System Integrity; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical correction.

SUMMARY: This notice corrects a typographical error in 49 CFR 571.301, *Fuel System Integrity*, concerning the application of the standard to large school buses. This standard limits the amount of fuel spillage that can occur from vehicle fuel systems during and after specified front, rear, and lateral barrier impact tests.

DATE: This correction is effective December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. William J.J. Liu, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–4923.

SUPPLEMENTARY INFORMATION: The agency has become aware of a typographical error in paragraph S3,

Application, of Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity* (Title 49 of the Code of Federal Regulations (CFR), § 571.301). Standard No. 301 limits the amount of fuel spillage that can occur from fuel systems of vehicles subject to the standard during and after specified front, rear, and lateral barrier impact tests.

Paragraph S3 should state: "This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks, and buses that have a GVWR of 10,000 pounds or less and use fuel with a boiling point above 32° F. and to school buses that have a GVWR greater than 10,000 pounds and use fuel with a boiling point *above* 32° F." (Emphasis added.) However, as published in the CFR, the latter portion of S3 states: "* * * and to schoolbuses that have a GVWR greater than 10,000 pounds and use fuel with a boiling point *about* 32° F."

The change in wording occurred between the issuance and publication of the final rule establishing Standard No. 301. On October 8, 1975, NHTSA issued for publication in the **Federal Register** the final rule which established the application of Standard No. 301 to school buses over 10,000 pounds GVWR, and amended paragraph S3 to reflect that application. As issued, the wording in question in paragraph S3 read "above 32° F." This was in accord with the preamble to the final rule, which stated that: "This notice extends the proposed exclusion for vehicles that use fuel with a boiling point below 32° F. to school buses having a GVWR greater than 10,000 pounds." 40 FR 48352; October 15, 1975. However, as published, the final rule used the word "about" instead of "above" with respect to those more heavily rated school buses. This notice corrects that error.

This technical correction to Part 571 imposes no new duties or obligations on any party, nor alters any existing ones. Making this amendment ensures that the public will have a correct copy of the requirements in Part 571. For the preceding reasons, NHTSA finds that notice and comment on this correction notice are unnecessary, and that there is good cause for making the amendments effective in less than 30 days.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.301 Standard No. 301; Fuel System Integrity.

2. Paragraph S3 is revised to read as follows:

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses that have a GVWR of 10,000 pounds or less and use fuel with a boiling point above 32° F. and to school buses that have a GVWR greater than 10,000 pounds and use fuel with a boiling point above 32° F.

Issued on December 7, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-28543 Filed 12-12-88; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1140

[Ex Parte No. 402]

Reasonably Expected Costs; Implementation of the Railroad Accounting Principles Board Findings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting surcharge rule changes in 49 CFR Part 1140 to implement the recent findings of the Railroad Accounting Principles Board. The proposed rules were published in the **Federal Register** on May 16, 1988 at 53 FR 17234. For purposes of computing reasonably expected costs, the Commission will: (1) Determine return on investment using the nominal cost of capital rate; (2) include as a reduction (or increase) of return on investment any projected holding gains (or losses) that would accrue to the carrier from retention of the line's assets for a one-year period; and (3) emphasize that reasonably expected costs should be calculated on the basis of those costs anticipated during the 12-month period beginning on the effective date of the surcharge. Also, we have decided against making a deferred tax adjustment in surcharge proceedings.

EFFECTIVE DATE: The rules are effective January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION:

The revised rules are set forth below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

The rule modifications will not have a significant economic impact on a substantial number of small entities. Nor will this action significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1140

Administrative practice and procurement, Railroads, Reporting and recordkeeping requirements, Uniform system of accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National trail system, National resources, Recreation and recreation areas.

Decided: December 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioners Lamboley and Phillips concurred with separate expressions. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Part 1140 of the Code of Federal Regulations is amended as follows:

PART 1140—REASONABLY EXPECTED COSTS UNDER 49 U.S.C. 10705a

1. The authority citation for 49 CFR Part 1140 continues to read as follows:

Authority: 49 U.S.C. 10321, 11161, 11162, 11163, and 10705a; and 5 U.S.C. 559.

§ 1140.2 [Amended]

2. Section 1140.2 is amended by revising paragraphs (b)(7)(i), (7)(ii) introductory text, (7)(ii)(B)-(F), (7)(iii), (12)(ii) introductory text, (12)(ii)(B)-(E), and (12)(iii) to read as follows:

§ 1140.2 Reasonably expected costs.

* * * * *

(b) * * *

(7) * * *

(i) The current replacement cost for each type of locomotive used to serve the line at the beginning of the surcharge period shall be based on the most recent purchase of that particular type and size locomotive by the carrier indexed to the midpoint of the year or an amount quoted by the manufacturer. This unit cost shall be multiplied by 1 minus the

ratio of total accumulated depreciation to original total cost of that type of equipment owned by the railroad, as shown by company records. If the carrier anticipates that additions and retirements within its locomotive fleet will occur during the surcharge period, the carrier may adjust the ratio of total accumulated depreciation to original cost to reflect this change. The adjustment shall be determined by the carrier so long as the method employed is reasonable, rational and fully explained.

(ii) The current nominal cost of capital used in the calculation of return on investment for locomotives shall be the current before-tax cost of capital, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and State income tax rates. The current cost of capital, expressed as a percent, shall be calculated as follows:

* * * * *

(B) The current nominal cost of debt shall be the current rate quoted to the railroad for debt instruments normally used by the railroad in financing new equipment purchases, such as bonds, equipment trust certificates, et cetera. Because this is a before-tax rate there is no adjustment for income taxes.

(C) The current nominal after-tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investments in the financial marketplace. This current nominal cost of equity shall be divided by 1 minus the combined Federal and State income tax rates. This will yield the before tax current nominal cost of equity capital.

(D) The current before-tax nominal cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted nominal before-tax cost of current debt.

(E) The current before-tax nominal cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted current before-tax cost of equity capital.

(F) The results of paragraphs (b)(7)(ii)(D) and (E) of this section are added together to calculate the current nominal cost of capital used in the calculation of the return on investment for equipment.

(iii) The annual return on investment for each type of locomotive shall be calculated as follows:

(A) The annual nominal return on investment shall be calculated by multiplying the average replacement cost developed in paragraph (b)(7)(i) of this section by the current nominal cost of capital determined in paragraph (b)(7)(ii) of this seciton.

(B) The carrier shall determine the holding gain (loss) which is projected to occur during the surcharge period.

(C) The results of paragraph (b)(7)(iii)(B) of this section is deducted from paragraph (b)(7)(iii)(A) of this section to determine the annual return on investment.

* * * * *

(12) * * *

(i) *Valuation of rail properties.* The carrier shall determine the investment base to which the return element is applied. The investment base shall be the sum of:

(A) The net liquidation value, at the beginning of the surcharge period, of the rail properties that have no further value for railroad proposes and the market value, at the beginning of the surcharge period, for those materials that have remaining value for railroad purposes. The net liquidation value shall be deemed as their highest and best use for nonrail purposes. This amount shall be determined by computing the estimated appraised value of such properties, less all costs (dismantling and disposition of improvements) necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations. The market value shall be the estimated sales value of the assets based on their remaining useful life less all cost of dismantling. No amounts shall be included that are the results of investments of state DOT's, shippers or parties other than the surcharging railroad. In addition, properties to which the railroad does not have title, such as those with reversionary rights, shall also be excluded. If the carrier anticipates that additions and retirements in the investment base of the line will occur during the surcharge period, the carrier may adjust the investment base to reflect this change. The adjustment shall be determined by the carrier so long as the method employed is reasonable, rational and fully explained.

(B) The allowable working capital computed at 15 days cash costs (on-branch costs less depreciation).

(C) The amount of current income tax benefits the carrier would realize were it to abandon the line which would have been applicable to the period of the surcharge. (Conversely, if the railroad would incur an income tax liability from abandonment, the liability should be deducted from the investment base.)

(ii) *Rate of return.* The railroad's cost of capital shall be the current before-tax cost of capital, weighted to the capital structure, and adjusted by the effects of the combined statutory Federal and State income tax rates. This rate of return, expressed as a percent, shall be calculated as follows:

* * * * *

(B) The current nominal cost of debt shall be determined by taking the average of all debt instruments (including bonds, equipment trust certificates, financial lease arrangements, et cetera) issued by the carrier in the most recent 12-month period. The debt cost calculated by this procedure is a before-tax rate and is not adjusted for income taxes.

(C) The current nominal after-tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investments in the financial market place. The current after-tax nominal cost of equity is divided by 1 minus the combined statutory Federal and State income tax rates. This will develop the current nominal cost of equity on a before-tax basis.

(D) The current nominal before-tax cost of debt is multipled by the current percentage of debt to total capital to obtain a weighted current nominal before-tax cost of debt.

(E) The current nominal before-tax cost of equity is multipled by the current percentage of equity to total capital to obtain a weighted current nominal before-tax cost of equity.

* * * * *

(iii) *Return on value.* The return on value that shall be included in the cost of sustaining service is calculated as follows:

(A) The current return on value is calculated by multiplying the value of the properties at the beginning of the surcharge period, as determined in paragraph (b)(12)(i) of this section, by the current cost of capital determined in paragraph (b)(12)(ii) of this section.

(B) The carrier shall determine the holding gain (loss) which is projected to occur, during the surcharge period, in the carrier's property investment in the line.

(C) The result of paragraph (b)(12)(iii)(B) of this section is deducted from paragraph (b)(12)(iii)(A) of this section to determine the annual return on investment.

* * * * *

§ 1140.2 [Amended]

3. In § 1140.2 *Notes*, Note 15 is amended by revising paragraphs (2)(C)(i) and (2)(C)(ii) to read as follows:

* * * * *

Note 15 * * *

(2) * * *

(C) * * *

(i) The current value for each type of car shall be calculated by first arriving at the current cost per car at the beginning of the surcharge period using the most recent purchase of this type of car by the railroad indexed to the midpoint of the year or an amount quoted by the manufacturer. This cost per car shall be multiplied by the number of cars of that type in the carrier's car fleet at the beginning of the surcharge period as shown by company records, to determine the investment in this type of equipment. The investment in this type of car shall be multipled by the composite depreciation rate for that type of car as shown in the latest annual report filed with the Commission or company records.

(ii) Add the return on investment which shall be determined as follows:

(A) Multiply the current value of each type of car, developed in subparagraph (i) of this note, by one minus the ratio of accumulated depreciation to the total original cost investment of that type of car owned by the railroad. If the carrier anticipates that additions and retirements of this particular type of car will occur during the surcharge period, the carrier may adjust the investment to reflect this change. The adjustment shall be determined by the carrier so long as the method employed is reasonable, rational and fully explained. The return on investment is determined by multiplying the net current value by the rate of return calculated for locomotives in § 1140.2(b)(7).

(B) The carrier shall determine the holding gain (loss) which is projected to occur, during the surcharge period, in the carrier's property investment in the line.

(C) The result of subparagraph (B) of this note is deducted from subparagraph (A) of this note to determine the return on investment.

* * * * *

[FR Doc. 88-28599 Filed 12-12-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80993-8222]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Partial approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces the partial approval of Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Approved portions of Amendment 4: (1) Update problems in the fishery and revise the FMP's objectives accordingly, (2) simplify the annual review processes for the Tortugas shrimp sanctuary and the Texas closure, (3) recommend a program to assist in the recovery of endangered and threatened sea turtles, (4) broaden the FMP's measure relating to obstructions to shrimp trawling, and (5) update the FMP's habitat information. The disapproved portion of Amendment 4 proposed that the minimum-size landing and possession limits of the State where landed apply to white shrimp taken in the exclusive economic zone (EEZ). The approved portions of Amendment 4 are intended to clarify the FMP and simplify its administration.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION:

Background

The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR Part 658 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 4 was submitted by the Gulf of Mexico Fishery Management Council (Council) in December 1987. It was preliminarily disapproved on January 4, 1988 because it did not contain enough information to justify the proposed management measure for white shrimp, and because the economic analyses regarding the catch of small white shrimp taken in association with the directed fishery for seabobs and the directed fishery for white shrimp in the EEZ were not adequate (53 FR 266, January 6, 1988). Amendment 4 was resubmitted by the Council on August 21, 1988, with limited additional information. A proposed rule to implement Amendment 4 was published on September 21, 1988 (53 FR 36609).

Approved Measures

Amendment 4 identifies additional problems which have developed in the fishery and revises the objectives of the FMP accordingly. The annual review process for the Tortugas sanctuary is simplified, and the period for annual review of the Texas closure is extended to February 1. An educational program and an expansion of the sea turtle headstart and research programs to assist in the recovery of endangered and threatened species of sea turtles is recommended. A previously approved measure for addressing obstructions to shrimp trawling is broadened to reflect consideration of underwater and surface obstructions as hazards to trawling and navigation. Amendment 4 also updates the habitat information in the FMP by including readily available information regarding habitat significant to the fishery and the effects changes in the habitat may have upon the fishery. These measures in Amendment 4 are approved.

Disapproved Measure

Amendment 4 proposed that white shrimp taken in the EEZ conform to the minimum-size landing and possession limits of the State where landed. According to the Council, this action would provide consistency between State and Federal regulations, facilitate enforcement, and enhance yield in volume and value from this fishery by deferring harvest of small shrimp, thus allowing growth and promoting efficient use of the resource. Because of the existence of a seasonal fishery for seabobs off Louisiana in which small white shrimp often occur as an unavoidable bycatch, this measure would not have been implemented until Louisiana provided for an allowable bycatch of white shrimp which would reduce or avoid disruption of its seabob fishery.

Reasons for Disapproval

NOAA disapproved this measure because (1) it was not justified by adequate economic rationale; (2) the use of size counts as a management tool for shrimp is inconsistent with the FMP; and (3) the measure included an open-ended deferral to changes in State count laws for white shrimp that would not be reviewable for conformance with the FMP prior to becoming applicable to white shrimp harvested from the EEZ. Upon the record developed, NOAA cannot conclude that this measure meets the requirements of the Magnuson Act, E.O. 12291, Regulatory Flexibility Act (RFA), and other applicable law.

The economic analysis within the amendment was deficient in two areas. First, the analysis did not review the range of impacts on the seabob fishery that might result from potential levels of white shrimp bycatch. During the periods of seasonal mixing of small white shrimp with seabobs, a 100-count law with no allowable white shrimp bycatch for the seabob fishery would necessitate intensive culling of small white shrimp and would therefore have a significant adverse economic impact unless some relief is provided. Pursuant to the amendment, this measure was not to be implemented until Louisiana provided for a bycatch of undersize white shrimp in the seabob fishery. The Louisiana Department of Wildlife and Fisheries (LDWF) indicates that

provision for such a bycatch allowance will be considered by the State legislature when it convenes in April 1989. Until Louisiana provides for an allowable white shrimp bycatch, analysis cannot analytically demonstrate compliance with the RFA and E.O. 12291.

Second, the economic analysis did not address the potential impacts on fishermen that might result from uncertain future actions by Louisiana or the other Gulf States. Information is not available to indicate effects of the proposed rule on fishermen attempting to land in Louisiana white shrimp taken from the EEZ that do not comply with Louisiana's minimum-size count laws. Furthermore, Louisiana may change its minimum-size count laws and the other Gulf States may choose to apply their minimum-size count regulations to shrimp taken in the EEZ. Therefore, no basis exists for determining compliance with E.O. 12291 and the RFA unless an analysis of the potential changes is completed.

Although this measure was intended to assist Louisiana with enforcement of its management program for white shrimp, the choice of size counts as a management tool for shrimp is inconsistent with the FMP. The FMP reviewed use of size-counts as a management option for shrimp and concluded that they are unnecessary, result in increased biological waste of the resources, and generally have a negative cost/benefit ratio. This apparent conflict with the FMP is adequately addressed with reference to Louisiana's 100-count size limit for white shrimp. However, the amendment does not address the effects of future count laws that Louisiana or the other Gulf States might adopt if this measure were approved, nor what level of bycatch the Louisiana legislature might allow in the seabob fishery. Furthermore, the amendment does not contain sufficient supporting data to change previous cost/benefit conclusions, or to establish that the behavior of fishermen has changed since development of the FMP. Thus, little additional information exists to rebut the record supporting decisions in the original FMP which established that count laws, in general, are not cost beneficial.

Under this measure, regulatory changes by the States would become immediately applicable for white shrimp harvested in the EEZ. Absent identified standards or a process for evaluating subsequent State actions, future alterations of specific minimum-size and possession regulations by the States may affect the catch and revenue of vessels fishing for white shrimp in the EEZ, and the consistency of such action with the FMP's objective to prevent waste in ways that cannot presently be analyzed. Such an open-ended deferral offers NMFS and the Council no recourse but to amend the FMP in the event a State adopts a minimum count-size that negatively alters the cost/benefit ratio of causes waste. Thus, this measure fails to satisfy the requirements of the Magnuson Act, the Administrative Procedure Act, E.O. 12291, and the RFA.

Comments and Responses

Eight written responses were received commenting on Amendment 4 and the proposed rule. The issues raised by commenters are summarized by category.

1. General Comments

Comments were received from seven different entities on three topics. Each topic follows:

Approval of Amendment 4

The U.S. Coast Guard did not object to Amendment 4. The U.S. Department of Interior, Fish and Wildlife Service (USFWS); Florida Marine Fisheries Commission (FMFC); LDWF; the American Shrimp Processing Association (ASPA), a professional trade association from Louisiana; and the Texas Shrimp Association (TSA), a commercial shrimping association, supported implementation of Amendment 4 in its entirety. The Gulf Council urged approval of Amendment 4, since it contained all available scientific information from NMFS and Louisiana. NOAA agrees and approved Amendment 4, except for the measure requiring that white shrimp taken in the EEZ conform to the minimum-size landings and possession limit of the State where landed. Reasons for rejecting this measure are stated above under "Reasons for Disapproval." This measure is severable because its omission does not alter the effectiveness of the remaining measures in the Amendment.

Enforcement of Minimum Size Limits

The U.S. Coast Guard concluded that due to the difficulty of determining where the shrimp would be landed, enforcement of minimum size limits at sea would be difficult, at best. Enforcement of this measure would be conducted ashore. NOAA agrees.

Headstart Program for Sea Turtles

USFWS urged NOAA to reject the Council's recommendation on enhancing a headstart program for sea turtles as not scientifically supportable. NOAA will receive the Council's recommendation for the headstart program and will consider it along with other measures designed to restore the depleted species of sea turtles.

2. Comments on Management Options for White Shrimp

The Secretary of Commerce (Secretary) was concerned whether the proposed white shrimp management measure is the most cost effective and beneficial way to achieve the objectives of the FMP and Amendment 4. Therefore, the Secretary requested comments on the following options for effective management of the white shrimp fishery.

Application of Minimum-Size Landing and Possession Limits of the State Where Landed to White Shrimp Harvested in the EEZ

The Council commented that this is the preferred option to make the proposed rule more compatible with State regulations. FMFC supported this concept for the present, but felt that Louisiana should consider additional measures that would raise the yield per recruit of shrimp in the future. Meanwhile, enforcement of the 100-count law would increase landings from State waters and the EEZ off Louisiana. LDWF supported use of the 100-count law because it would provide a mechanism to better enforce the State count law for white shrimp. ASPA recommends this measure because the fishery should be managed throughout its range. TSA supported this measure, but felt that a concurrent closure of a limited portion of the EEZ in conjunction with a closure of State waters by Louisiana would be a more progressive management step.

Minimum Size Count in the EEZ

The Council stated that originally the preferred measure in Amendment 4 was a 100-count size limitation for white shrimp taken from the EEZ. Based on advice from NMFS, this was revised to provide that white shrimp taken in the EEZ and transported into a State shall be in accordance with that State's landing and possession laws with respect to size. The premise for the change was that this procedure would make the proposed rule more compatible with the regulations of all Gulf States. FMFC opposed the concept of an EEZ-wide minimum count because this may undermine Florida's rules for State waters. LDWF supported this concept. TSA opposed this concept because of the waste involved.

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Revision of State Regulations to Expand State Powers

The Council stated that the FMP made this recommendation years ago. Some States, including Louisiana, have not accepted this recommendation. FMFC stated that the Florida Legislature has not given the Commission the authority to regulate fisheries outside State waters. TSA said that States are best suited to establish rules, either autonomously or in concert with the Council via a management plan, to deal with the problems expressed in the proposed rule.

Removal of White Shrimp From the Management Unit of the FMP

The Council stated that at one time it considered removing white shrimp from the FMP, an action that would leave white shrimp management wholly to the States. The Council indicated it rejected this option primarily because statistics provided by the Southeast Fisheries Center, NMFS, showed that approximately 45 percent of the 55 million pound annual Gulf white shrimp catch came from the EEZ. FMFC, ASPA, and TSA did not support removal of white shrimp from the FMP. The Coastal Concern Association, a commercial shrimping organization from Louisiana, supported the removal of white shrimp and seabobs from the FMP only if Louisiana adopted an allowable bycatch level of 20–25 percent of undersized (over 100-count) white shrimp in the directed fishery for seabobs.

Other Matters

The only measure in Amendment 4 that would have necessitated a regulatory change was the disapproved measure concerning white shrimp. Accordingly, the proposed regulatory change published at 53 FR 36609 (September 21, 1988) is not adopted.

Because the approved portions of Amendment 4 have no implementing regulations, a final regulatory impact review/regulatory flexibility analysis normally required by E.O. 12291 and the RFA, was not prepared. The Paperwork Reduction Act does not apply since neither a collection-of-information nor a record-keeping requirement is included in Amendment 4.

The Council determined that Amendment 4 is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, Alabama, Mississippi, and Louisiana. Those States agreed with this determination. Texas does not have an approved coastal zone management program.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment that would result from approval of Amendment 4. Based on the EA, the Assistant Administrator for Fisheries, NOAA, determined that the approved portions of Amendment 4 would not significantly affect the quality of the human environment, as defined under the National Environmental Policy Act.

The Secretary partially approved Amendment 4 on October 19, 1988. The Secretary determined that the approved portions of this Amendment are necessary for the conservation and management of the shrimp fishery of the Gulf of Mexico and that they are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. Therefore, NOAA issues this notice announcing partial approval of Amendment 4 to the FMP.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 6, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–28381 Filed 12–12–88; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 80859–8251]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; closure modification.

SUMMARY: NOAA modifies a closure notice that will allow U.S. vessels to conduct a directed fishery for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00′ N. latitude and east of 165°00′ W. longitude (Zone 1) under specified conditions intended to limit the incidental or bycatch of Pacific halibut, *Chionoecetes bairdi* Tanner crabs, and red king crabs. Directed fishing for yellowfin sole and "other flatfish" in Zone 1 was prohibited on March 8, 1988 due to attainment of the prohibited species catch (PSC) limit for *C. bairdi* Tanner crabs. Subsequent reassessment of data on bycatches of crabs in the directed fisheries for yellowfin sole and "other flatfishes" indicate that the risk of biological harm to Tanner crabs and other prohibited species from reopening Zone 1 is not significant. Therefore, the previous closure notice is modified to allow directed fishing for yellowfin sole and "other flatfishes" by U.S. vessels in Zone 1 under specified conditions. The intended effect is to relax a restriction on domestic fishermen while maintaining protective measures for prohibited species.

DATE: Effective December 8, 1988, through December 31, 1988.

ADDRESS: Copies of documents supporting this action may be obtained from James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) area are managed under the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) in 1981. Federal regulations implementing the FMP and governing domestic fisheries in the BSAI area appear under 50 CFR Part 675.

A description of the problem addressed by this action is given in the notice of proposed closure modification and request for comments published in the **Federal Register** on August 25, 1988 (53 FR 32415). In summary, NOAA is responding to a request from representatives of the domestic annual processing (DAP) sector of the U.S. groundfish industry. This sector includes U.S. vessels that process their catch onboard or deliver it to U.S. processors. The other component of the domestic annual harvest (DAH) is the joint venture processing (JVP) sector, which includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive U.S. catches in the EEZ.

NOAA closed Zone 1 on March 8, 1988 to DAP and JVP directed fishing for yellowfin sole and "other flatfish" due to the attainment of the PSC limit for *C. bairdi* Tanner crabs (53 FR 7941, March 11, 1988) . Representatives of DAP fishing interests requested the Director, Alaska Region, NMFS (Regional Director) to reopen Zone 1 to DAP fishing to allow a harvest of up to 25,000 mt of yellowfin sole. The Council reviewed this issue on request of the Regional Director at its April 13–15, 1988

meeting and supported, in principle, the reopening of Zone 1 to directed fishing for yellowfin sole by DAP vessels under authority of § 675.21(d).

In authorizing and conditioning fishing in an otherwise closed zone, the Secretary is required to take into account five determinations by the Regional Director regarding the probable effects of allowing continued or resumed fishing. The Regional Director made these determinations on June 17, 1988 and they were made available for public review and comment by notice of proposed closure modification in the **Federal Register** on August 25, 1988 (53 FR 32415). In summary, the Regional Director determined that the expected additional fishing mortality resulting from reopening Zone 1 to a harvest of 25,000 mt yellowfin sole would be no more than 60,200 halibut, 50,000 *C. bairdi* Tanner crabs, and 21,500 red king crabs. The Regional Director determined further that these additional amounts of fishing mortality are not likely to have a measurable effect on the respective populations of these species and that the added risk of overfishing these species due to reopening Zone 1 according to the above conditions is insignificant.

Difference Between Proposed and Final Action

The proposed action would have reopened Zone 1 to directed fishing for yellowfin sole and "other flatfish" by DAP fishing vessels exclusively. This final action, however, will reopen Zone 1 to such fishing by all domestic (i.e. DAP and JVP) fishing vessels. The reason for this change is that JVP directed fishing for yellowfin sole was prohibited when the proposed action was published, but currently, this fishery is not prohibited. Directed fishing for yellowfin sole was prohibited to JVP fishermen on June 3, 1988 (53 FR 21454). This prohibition was anticipated to remain in effect through the remainder of the fishing year, which would have made reopening Zone 1 to JVP fisheries an academic exercise.

In September and in October, however, the Regional Director found that there would be amounts of yellowfin sole surplus to DAP harvesting and processing needs for 1988. In August 1988, NMFS projected the DAP harvest of yellowfin sole for the final 6 months of 1988 to be 20,050 mt. Subsequent survey of the DAP industry indicated that DAP harvest of yellowfin sole during this period is more likely to be 10,910 mt. Hence, in two separate actions, the Secretary: (1) Reapportioned 2,000 mt of yellowfin sole from DAP to JVP and 4,000 mt of yellowfin sole from reserve to JVP (53 FR 35081), and (2) reapportioned 8,650 mt of yellowfin sole from DAP to JVP (53 FR 40894). Therefore, directed fishing for yellowfin sole by JVP fishermen resumed in the BSAI on September 6, 1988, although Zone 1 remained closed.

The original PSC limit for *C. bairdi* Tanner crabs in Zone 1 does not distinguish between DAP and JVP fisheries. Although incidental catches of crabs while fishing for yellowfin sole in the reopened Zone 1 are likely to be greater with both fisheries operating than with only one, prevention of overfishing the crab population will be assured by prohibiting fishing in excess of the supplemental PSC limit. From an economic perspective, the closure of Zone 1 has been equally burdensome on DAP and JVP fisheries as they have had to explore other areas of the BSAI for commercial quantities of yellowfin sole.

Public Comments Received

Four letters of comment were received before the comment period ended. One comment was in favor and three were opposed to reopening Zone 1. The favorable and opposed comments are summarized and responded to below under comments one and two respectively.

Comment 1: Zone 1 is important to the yellowfin sole fishery as it contains the largest concentrations of this species and fishing outside Zone 1 results in greater catches of other flounder species which have lower or no economic value. In addition, fishing outside Zone 1 requires a minimum of 25 percent more running time than fishing inside the zone. Hence, fishing for yellowfin sole inside Zone 1 reduces fuel costs and increases production. The current Tanner crab biomass is 4.5 times that when the PSC limit was established. The additional Tanner crab PSC limit proposed is completely justified. Full observer coverage on DAP vessels, as proposed, imposes an unjustified cost on the DAP industry. The level of observer coverage could be reduced to 33 percent and still provide a representative sample of what is being caught. The time taken to respond to the original request to reopen Zone 1 is unnecessarily long. This zone will be urgently needed by the DAP yellowfin sole fishery if Zone 2 is closed due the attainment of its PSC limit before the end of this year. Finally, the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act) clearly gives DAP fishermen preference over JVP fishermen for available fish. This preference should extend to the prohibited species bycatch required to take those fish.

Response: NOAA agrees that there is an economic burden imposed on fishermen by closing Zone 1. Avoiding this burden was the intended incentive for fishermen to minimize their incidental catches of prohibited species while fishing for yellowfin sole and "other flatfish." NOAA agrees also that the apparent population of *C. bairdi* Tanner crabs has increased significantly since the implementation of the Zone 1 PSC limit for this species. This is partly the reason why the Regional Director determined that an additional bycatch of 50,000 *C. bairdi* Tanner crabs would not be likely to lead to overfishing of this species. This additional bycatch was determined by the Regional Director to be less than 0.01 percent of the estimated biomass of this species.

Full or 100 percent observer coverage is intended to mean at least one observer on every catching or receiving fishing vessel. This does not imply that 100 percent of all catches are required to be sampled by the observer. Total groundfish catch, its species composition, the bycatch of all prohibited species, and other biological information will be extrapolated from the samples taken by the observer of catches brought onboard while the observer is on duty. As a condition of fishing in Zone 1, full observer coverage is essential to the accurate monitoring of prohibited species catches and the collection of biological information. Any level of coverage less than 100 percent would require an assumption that the harvests of un-observed vessels is not statistically different from harvests of vessels carrying observers. The experience of NMFS after 11 years of monitoring foreign and JVP fisheries through on-board observers suggests that this assumption cannot be made.

In addition, Zone 1 was established specifically because it contains large concentrations of the Tanner and red king crab populations which are important to crab fisheries. Groundfish fisheries using trawl gear must be conducted carefully in this and adjacent crab-sensitive areas to minimize crab bycatches. NMFS and the groundfish fishing industry should apply extra effort to assure that this care is exercised on all vessels. The biological data derived from full observer coverage also will contribute to understanding crab population dynamics and DAP groundfish fishery/crab interaction in Zone 1 late in the fishing year. Currently, there are few data on these subjects.

The original request to reopen Zone 1 was made in February, 1988. The Regional Director sought the advice of

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the Council on this issue at its next meeting in April, 1988. After receiving affirmative advice from the Council, the Regional Director decided to postpone action until after the majority of crabs in Zone 1 had completed their molting and mating cycle in mid-June, 1988, to reduce bycatch mortality. Certain administrative and legal requirements then necessitated publication of the proposed action (in August) and opportunity for public comment (ending September 21, 1988). Although this process has been lengthy, it was not designed to inhibit DAP fishing operations but to protect the interests of all persons concerned with marine fishery resources. This process could have been shorter if the specific circumstances and conditions leading to the request for this reopening were anticipated in implementing the original Zone 1 rule. Public comment on the potential reopening of Zone 1 at that time would have obviated the need for it now.

The processor preference amendments to the Magnuson Act provide U.S. fish processors priority access to U.S. harvested fish. Foreign processing vessels' access to U.S. harvested fish is restricted by decisions to apportion amounts of fish to JVP or DAP. Prohibited species are not part of the groundfish fishery as defined in the FMP, and may not be processed by U.S. or foreign processors. While fishing for a species of groundfish may be predicated on the availability of uncaught PSC limits, this FMP does not express the Council's intent that certain U.S. harvesters be given priority access to PSC species.

Comment 2: Too many crabs and juvenile halibut are being taken out of Zone 1 as bycatch in the trawl fisheries. Yellowfin sole can be harvested in adjacent areas (north and west) of Zone 1 without as much potential impact on the longline fishery for halibut. Bering Sea populations of red king and (*C. bairdi*) Tanner crabs have been characterized by the State of Alaska Department of Fish and Game as depressed. The conservation of crabs and halibut should prevail over the desires of groundfish fisheries in Zone 1.

Response: Estimates of the numbers of crabs and halibut taken as bycatch in the Bering Sea groundfish fisheries are high. The critical issue here, however, is whether the incremental bycatch that will occur by reopening Zone 1 will significantly add to the risk of overfishing these prohibited species. The Regional Director has determined that the additional bycatch mortality of *C. bairdi* Tanner crabs, and Pacific halibut, up to the supplemental PSC limits prescribed below, is not likely to overfish the species. Red king crab bycatches in a reopened Zone 1 are not expected to attain the existing PSC limit for this species. These determinations did take into consideration the relatively low population levels of mature red king and *C. bairdi* Tanner crabs. Although commercial harvests of yellowfin sole and "other flatfish" have occurred outside of Zone 1, the allowance of fishing for these species within the zone balances the economic interests of groundfish fishermen with the conservation interests of crab fishermen.

Closure Modification and Conditions

Directed fishing for yellowfin sole and "other flatfish" by DAH fishing vessels will be allowed to resume on the effective date in Zone 1 providing that those vessels comply with the following conditions:

1. Any DAP fishing vessel on which trawl-caught groundfish are brought onboard must carry an observer approved by the Regional Director.

2. Directed fishing for yellowfin sole and "other flatfish" will cease by notice in the **Federal Register** when any of the following occurs:

(a) The total number of red king crabs taken by JVP and DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 since the beginning of the 1988 fishing year equals the PSC limit of 135,000 animals:

(b) The total number of *C. bairdi* Tanner crabs taken by JVP and DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 after this notice became effective equals the supplemental PSC limit of 50,000 animals;

(c) The total number of Pacific halibut taken by JVP and DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 after this notice became effective equals the supplemental PSC limit of 60,200 animals.

Classification

This action is taken under authority of § 675.21(d). For the reasons stated above, the Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) has determined that this action is necessary and consistent with the Magnuson Act. In addition, based on the above discussion and the Regional Director's determinations, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this action: (1) Qualifies for a categorical exclusion from the requirement to prepare an environmental assessment under the National Environmental Policy Act, (2) is not a major rule requiring regulatory impact analysis under Executive Order 12291, (3) will have no significant effects on small entities under the Regulatory Flexibility Act, and (4) contains no collection of information requirement subject to the Paperwork Reduction Act. However, the Under Secretary finds that the Regional Director's determinations substantially satisfy the environmental and economic documentation requirements of these laws.

The reopening of Zone 1 to directed fishing for yellowfin sole and "other flatfishes" by U.S. vessels relieves a restriction and is not subject to the delayed effectiveness period required by the Administrative Procedures Act (APA). However, for operation purposes, the effective date of this action is delayed to ensure a fair start.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-28589 Filed 12-8-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 239
Tuesday, December 13, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Public Meeting on Notice of Proposed Rulemaking on Maintenance of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: On November 28, 1988 (53 FR 47822), the Commission published a notice of proposed rulemaking on maintenance of nuclear power plants. This meeting is scheduled as a result of a request from Nuclear Management and Resources Council (NUMARC). The agenda for the meeting will mainly include time for NRC staff responses to questions from NUMARC on the notice of proposed rulemaking including the Commission's solicitation of proposals for the development of a maintenance standard.

DATE: 1:00 p.m., December 14, 1988.

ADDRESS: Room 4B11, One White Flint North, 11155 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3730.

Dated in Rockville, Maryland this 6th day of December, 1988.

For the Nuclear Regulatory Commission.

Moni Dey,

Task Manager, Advanced Reactors & Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 88–28629 Filed 12–12–88; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, 249, 270, and 274

[Rel. Nos. 34–26333; 35–24768; IC–16669; File No. S7–26–88]

Ownership Reports and Trading by Officers, Directors and Principal Stockholders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission today is publishing for comment proposed revisions to its rules and forms regarding the filing of ownership reports by corporate officers, directors, and principal shareholders, and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of the Securities Exchange Act of 1934 and related provisions of the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935. The Commission proposes to revise these rules to achieve greater clarity, enhance consistency with the statutory purposes, rescind unnecessary requirements, streamline mandated procedures, and enhance compliance with the reporting provisions of the rules.

DATE: Comments should be received on or before March 13, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–26–88.

All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian J. Lane, Elizabeth M. Murphy, or Mark W. Green, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 (202) 272–2589.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a comprehensive revision of its rules promulgated under section 16 [1] of the Securities Exchange Act of 1934 ("Exchange Act").[2] Every rule under section 16 would be amended, deleted, or reorganized except for Rule 16c–1 [3] and Rule 16e–1.[4] Further, Exchange Act Rule 12h–2 [5] would be deleted and Rule 30f–1 [6] under the Investment Company Act of 1940 ("Investment Company Act")[7] would be amended.

In addition, the Commission is proposing changes to Regulation S–K,[8] Schedule 14A,[9] and Forms 10–K,[10] 3, 4,[11] and N–SAR.[12] The Commission also is proposing a new Form 5.

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[3] 17 CFR 240.16c–1.
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[5] 17 CFR 240.12h–2.
[6] 17 CFR 270.30f–1.
[7] 15 U.S.C. 80a–1 *et seq.* (1982).
[8] 17 CFR 229.10–229.802.
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I. Executive Summary

Section 16(a) of the Exchange Act [13] requires that the officers, directors, and principal shareholders of an issuer with equity securities registered under section 12 [14] disclose the extent of, and changes in, their ownership of equity securities of that issuer. Under section 16(b),[15] the issuer may recover trading profits realized by those persons incident to short-swing transactions in the issuer's *equity* securities.

The amendments proposed today reflects the first comprehensive review of the regulatory scheme under section 16 since the adoption of the Exchange Act. There currently are two forms and 25 rules in place, of which only five rules have been revisited within the past 18 years. These regulations have been the subject of frequent and continous requests for interpretive advice. A fresh look at the rules also is warranted in light of changes in the nature of securities. Trading has mushroomed in both old and new derivative securities,[16] and employee benefit plans have become more widespread, complex, and diverse. Fitting these developments into the existing regulatory framework has resulted in interpretive uncertainty, substantial litigation, and, in some instances, unnecessary regulatory burdens. Further, in light of the widespread deliquency of corporate insiders in meeting their reporting responsibilities under section 16(a), the regulatory scheme under section 16 should be amended to improve compliance and detection of deliquent filers.

Major substantive changes proposed in the regulatory scheme include: (1) Specific definitions of the terms "beneficial owner," "equity security of such issuer," and "officer;" (2) a definition of the term "owner of any equity security of the issuer" that would address the criteria for standing in private suits under section 16(b); (3) use of a new Form 5 for the annual reporting of transactions that are exempted from short-swing profit recovery and transactions that are required to be reported, but were not; (4) a provision requiring insiders to provide the issuer with copies of their Forms 3, 4, and 5; (5) deletion of the shareholder approval provision of the employee benefit plan rule, Rule 16b-3, and inclusion of a more stringent disinterested administration requirement; (6) a change in the reporting date for derivative securities to the date of acquisition, rather than the date the securities become exercisable; (7) exemption of most exercises and conversions of derivative securities from short-swing profit recovery; (8) inclusion of derivative securities in the same class of securities as the underlying securities; (9) alternative profit calculation measures for short-swing transactions involving derivative securities; (10) imposition of reporting status on trusts when the trustee is a reporting person; (11) an exemption from section 16(c) for a short derivative securities position that hedges an underlying securities position; (12) amendment of the proxy rules to require issuers to disclose late reporting by their insiders in the annual proxy statement and annual report on Form 10-K; and (13) a provision that a section 16(a) report be deemed timely filed with the Commission if the filing person shows that the report was mailed to the Commission by the due date. Apart from substantive changes, the rules under section 16 are proposed to be reorganized to provide greater clarity.

II. Background

Section 16 of the Exchange Act was designed both to provide the public with information on securities transactions and holdings of corporate officers, directors, and principal shareholders, and to deter those individuals from profiting on short-term trading in the securities of their corporations while in possession of material, non-public information. It applies to every person who is directly or indirectly the beneficial owner of more than ten percent of any class of equity security that is registered pursuant to section 12 of the Exchange Act ("ten percent holders"), and to every director and officer of such issuer (collectively referred to as "insiders").

The legislative history of the Exchange Act describes in detail instances where insiders with advance knowledge of facts that could produce a rise or fall in the market value of their companies' securities bought and sold such securities to their personal advantage.[17] In some cases, insiders manipulated the market price of their stock and caused the company to follow financial policies calculated to produce sudden changes in market prices. To combat these abuses, Congress enacted section 16 to require reports of securities transactions by insiders and to provide for the recovery of any short-swing profits.[18]

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[13] 15 U.S.C. 78p(a) (1982).
[14] 15 U.S.C. 78/ (1982).
[15] 15 U.S.C. 78p(b) (1982).

[16] The term "derivative securities" refers to convertible securities, options, warrants, and similar rights.

[17] *See generally* Stock Exchange Practices: Hearings on S. Res. 84 and S. Res. 56 and S. Res. 97 Before the Senate Comm. on Banking and Currency, 73d Cong., 1st Sess. 55 (1934) [hereinafter "Stock Exchange Practices"].

[18] Substantially identical provisions appear as sections 17(a) and 17(b) of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79q(a), (b) (1982)], and the reporting requirements of section 16 are adapted in section 30(f) of the Investment Company Act [15 U.S.C. 80a-29(f) (1982)]. The exemptive rules under section 16 also are applicable to these parallel statutory provisions.

"For the purpose of preventing the unfair use of information which may have been obtained by [an insider] by reason of his relationship to the issuer," [19] Congress enacted section 16(b), which provides for automatic recovery of any profits made by an insider on securities purchased and sold within a six month period. Unlike other provisions applicable to insider trading, *i.e.*, sections 10(b), 14(e), and 21(d)(2) of the Exchange Act,[20] section 16 is a strict liability provision under which an insider's short-swing profits can be recovered regardless of whether that insider actually was in possession of material, non-public information.[21] Congress used this "automatic recovery provision [to] cut [ ] through the formidable difficulties on proving intent and actual misuse of inside information that serve to hinder the effectiveness of traditional remedies against insider speculation." [22] The Commission was given specific rulemaking authority to exempt transactions as not comprehended within the purpose of the subsection.

Believing prompt publicity to be a potent weapon in the effort to curb the abuse of inside information, Congress also adopted section 16(a), which requires insiders to file public reports with respect to transactions in the equity securities of their corporations. In mandating reporting by insiders, Congress intended not only to discourage abuse of inside information and encourage voluntary maintenance of proper fiduciary standards by those in control of corporations, but also to give public investors information concerning purchases and sales by insiders, which might in turn indicate such insiders' private opinions of the company's prospects.[23] Reflecting this additional informational purpose, the exemptive rules from section 16(b) short-swing profit liability do not exempt an insider from reporting under section 16(a), while a reporting exemption carriers with it an exemption from section 16(b).[24]

Section 16(c) [25] prohibits the sale of any equity security of the issuer if the selling insider either (1) does not own the security, or (2) does not deliver it within 20 days after sale or mail it within five days. However, Congress provided an exception for persons who, acting in good faith, were unable to deliver in time or were able to prove that timely delivery would have caused undue inconvenience or expense.

When Congress added section 12(g) [26] to the Exchange Act to extend Exchange Act registration requirements to securities traded in the over-the-counter market in 1964, section 16(d) [27] was added to provide an exemption from section 16 (b) and (c) for over-the-counter marketmakers. Only trades executed in the ordinary course of market making activities are exempt; trading involving a marketmaker's investment account is not. This provision also gives the Commission rulemaking authority to define and prescribe conditions regarding investment accounts and market maintenance.

Section 16(e) [28] provides an exemption for "foreign and domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section." Unlike section 16(d), this exemption explicitly provides relief from section 16(a) as well as from sections 16 (b) and (c).

The current regulatory scheme requires insiders to file a Form 3, Initial Statement of Beneficial Ownership of Securities, with the Commission when a company first registers an equity security pursuant to section 12, or when an insider otherwise becomes subject to the reporting requirements of section 16(a).[29] A copy of the report also must be forwarded to each national securities exchange on which the registered security is listed.[30]

Subsequently, an insider must file a Form 4, Statement of Changes in Beneficial Ownership of Securities, for any month in which there has been a change in the beneficial ownership last reported on a Form 3 or Form 4, except for changes resulting from transactions exempted from the reporting requirements. The Form 4 must be filed within ten days of the end of the month in which the change in beneficial ownership occurs.[31]

In light of the importance of the information provided by Form 4 filings to investors, many major newspapers [32] routinely publish information gleaned from the reports filed by insiders of selected companies, such as those of local interest. Moreover, there are a number of private newsletters and services that analyze or report trades by reporting persons.[33] Analysts and investors routinely monitor insider trades to detect early warning signs of trouble or positive trends among companies.[34]

The staff of the Division of Corporation Finance receives more requests for interpretative and no-action advice concerning the section 16 rules than any other area.[35] This is due, in

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[19] 15 U.S.C. 78p(b) (1982).

[20] 15 U.S.C. 78j(b), 78n(e) (1982), 78u(d)(2)(A) (Supp. III 1985); *see* Rule 10b–5 [17 CFR 240.10b–5]; Rule 14e–3 [17 CFR 240.14e–3].

[21] Unlike other provisions of the Exchange Act, section 17(b) is enforced by shareholders bringing derivative actions on behalf of the issuer, rather than by the Commission or by shareholders directly pursuing claims for damages.

[22] S. Rep. No. 379, 88th Cong., 1st Sess. 9 (1963).

[23] H. Rep. No. 1383, 73d Cong., 2d Sess. 13, 24 (1934).

[24] *See* current Rule 16a–10 [17 CFR 240.16a–10]; proposed Rule 16a–10.

[25] 15 U.S.C. 78p(c) (1982).

[26] 15 U.S.C. 78l(g) (1982).

[27] 15 U.S.C. 78p(d) (1982).

[28] 15 U.S.C. 78p(e) (1982).

[29] The Form 3 must be filed within ten days after an officer, director or ten percent holder achieves such status. If, however, the reporting person already occupies such a position at the time of the initial registration pursuant to section 12, the Form 3 must be filed by the time the registration becomes effective. Form 3 requires disclosure of the title of the securities held, the amount of securities directly or indirectly owned, the nature of the beneficial ownership, the relationship of the reporting person to the issuer, the date of the event triggering the reporting requirement, and other related information.

[30] 15 U.S.C. 78p(a) (1982).

[31] Form 4 requires disclosure of the date of transaction, amount of securities, price, amount owned at the end of the month, and nature of beneficial ownership.

[32] *E.g., The Wall Street Journal, USA Today, The Chicago Tribune, The Philadelphia Inquirer, The Washington Post.*

[33] Numerous studies have been conducted as to the value of tracking insider transactions. *See, e.g., "Bullish" Insider-Trade Data May Mislead,* Wall St. J. at C1, col. 3 (Nov. 30, 1988); Scholes, "The Market for Securities: Substitution Versus Price Pressure and the Effects of Information on Share Prices," 45 J. Bus. 179 (1972), *as cited in* Carney, "Signalling and Causation in Insider Trading," 36 Cath. U.L. Rev. 863, 889 (1987); Baesel and Stein, "Value of Information: Inferences from the Probability of Insider trading," 14 J. Fin. & Quantitative Analysis 553 (1979), *as cited in* Cox "Insider Trading and Contracting: A Critical Response to the 'Chicago School'," Duke L.J. 628 (Sept. 1986); Rose, *Tracking the Trades of Corporate Insiders Doesn't Always Give an Edge to Investors,* Wall St.J. Dec. 19, 1985 at 31, col. 4; Bilson and Kraakman, "The Mechanisms of Market Efficiency," 70 Va.L.Rev. 549 (1984).

[34] *See, e.g.,* Dorfman, *Journal Launches Insider Trading Feature,* Wall St. J., Aug. 31, 1988, at 28 col. 3; Boland, *Those Tardy Insider Filings,* NY Times, Jan. 24, 1988, § 3, at 8, col. 4; Novack, *Stale Dope,* Forbes, Nov. 2, 1987, at 180; Boland, *The Insiders Turn Surprisingly Bullish,* NY Times, Jul. 12, 1987, at 10, col. 1; Scheibla, *Better Never Late,* Barron's, Oct. 20, 1986, at 15; McFadden, *Companies the Bosses Bet On,* Fortune, Jul. 21, 1986, at 112; Koretz, *Tracking Corporate Insiders to Get in on a Good Thing,* Bus. Wk., May 19, 1986, at 34; Marcial, *Taking a Cue from Company Insiders,* Bus. Wk., May 12, 1986, at 88.

[35] Since 1971, the staff has issued over 2000 no-action letters that have addressed section 16. About 190 section 16 letters were issued in 1987 and 200 letters in the first ten months of 1988.

large part, to the complexity of the rules and continual changes in the market, including the increasing number of types of unorthodox transactions and constantly evolving employee benefit plan arrangements. In the last five years, there have been repeated requests from the corporate community,[36] the securities industry,[37] and the securities bar [38] that the Commission revisit the section 16 regulatory scheme.

Furthermore, the Commission is concerned that the rate of delinquency in Form 3 and 4 filings has become very high in the past several years.[39] A number of enforcement actions to enforce filing requirements have been and continue to be brought.[40] To address the reporting problem, the Commission is proposing a four-part response: (1) Simplifying the reporting provisions to focus on timely reporting of those securities transactions that are more discretionary in nature and have greater potential for abuse;[41] (2) providing for annual reporting by insiders of their securities ownership and previously unreported transactions; (3) requiring annual disclosure by companies of those insiders who have failed to comply with the filing requirements within the past year; and (4) supporting legislation to provide for fines for late filings.[42]

[36] Letter to Catherine C. McCoy, Associate Director, Division of Corporation Finance, from Richard H. Troy, Chairman, Securities Law Committee, American Society of Corporate Secretaries, Inc. (Oct. 11, 1984).

[37] Letter to John J. Huber, Director, Division of Corporation Finance, from Saul S. Cohen, Chairman, Federal Regulations Committee, Securities Industry Association (Oct. 20, 1983).

[38] Letter to John J. Huber, Director, Division of Corporation Finance, from Donald W. Glazer, Co-Chairman, Simon M. Lorne, Co-Chairman, and Timothy Tomlinson, Secretary, American Bar Association Subcommittee on Employee Benefits and Executive Compensation (Nov. 9, 1983).

[39] A study conducted by the Commission's staff has revealed a delinquency rate in excess of 40 percent for the years 1986, 1987, and 1988. *See* Section VII.A. *infra*.

[40] *See, e.g., SEC v. Beall*, Litigation Release No. 11328 (Jan. 6, 1987); *SEC v. Lee*, Litigation Release No. 11191 (Aug. 11, 1986).

[41] As part of the effort to make the rules less complex, minor language changes to some of the current rules would be proposed. *See* proposed Rules 16a–5(b), 16a–6, 16a–7, 16b–7, and 16b–8.

[42] The Commission has proposed legislation, the "Securities Law Enforcement Remedies Act of 1988," to amend section 15(c)(4) of the Exchange Act [15 U.S.C. 78o(c)(4) (Supp. III 1985)] to include authority for section 16(a) non-compliance, which would, as a result, provide fining authority for section 16(a). This legislative proposal was forwarded to Congress on September 28, 1988.

III. Section 16(a) Reporting

A. Who Must Report

The proposed rules would clarify the meaning of the terms "officer" and "ten percent beneficial owner."

1. Officer

Proposed Rule 16a–1(g) would define "officer" for section 16 purposes in the same manner as "executive officer" is defined in Rule 3b–7.[43]

In applying the definition of "officer" currently applicable to section 16, which is currently contained in Rule 3b–2,[44] courts have construed the term to encompass only those officers who have access to non-public information,[45] excluding officers who hold only an honorary title or who have no significant executive duties and do not participate in management decisions.[46] If applied literally, the Rule 3b–2 definition of "officer" can be too broad in the context of section 16; of particular concern is the inclusion of all vice presidents in the definition.[47] Many businesses give the title of vice president to employees who do not have significant managerial or policymaking duties and are not privy to inside information.

The reporting and short-swing profit recovery provisions of section 16 were intended to apply to those officers who have routine access to material non-public information, not those with particular titles. The Commission, therefore, proposes to amend the definition of officer to parallel the Exchange Act definition of the term executive officer. Those exercising a policy-making function, by the very nature of that responsibility, have routine access to material non-public information. Officers without policy-making responsibility are not as likely to have such access and, therefore, should not be subject to the reporting and automatic liability provisions of Section 16. Should these officers in fact come into possession of material non-public information, the Exchange Act antifraud provisions will prohibit their abuse of the information and impose liability for profits made or losses avoided.[48] The Commission does, however, solicit comment on whether "officer" should instead be defined to include all officers with routine access to inside information, whether or not they are executive officers.

The proposed definition, like Rule 3b–7, specifically addresses officers of the issuer's subsidiary, but not officers of a parent. Comment is solicited as to whether the rule also should make it clear, consistent with current interpretation, that an officer of the issuer's parent company who performs policy-making functions for the issuer is deemed an officer of the issuer.

2. Director

No definition for the term "director" is proposed because there appears to be little confusion about the definition of that term in section 3(a)(7) of the Exchange Act.[49] Comment is solicited, however, as to whether a definition specific to section 16 is necessary.

The Commission does not propose to codify case law relating to deputization. Under that theory, a corporation, partnership, trust or other person can be deemed a director for purposes of section 16 where it has expressly or impliedly "deputized" an individual to serve as its representative on a company's board of directors. In determining whether a person has been deputized for purposes of section 16, the courts have looked at a variety of factors, focusing primarily on the alleged deputy's position of control within the deputizing entity and the deputy's independent qualifications to serve on the board of the issuing corporation.[50] This fact-intensive analysis appears best left to a case-by-case determination. Nonetheless, comment is

[43] 17 CFR 240.3b–7.

[44] "The term 'officer' means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated." 17 CFR 240.3b–2.

[45] *See, e.g., C.R.A. Realty Corp. v. Crotty*, 663 F. Supp. 444 (S.D.NY 1987).

[46] *See* Exchange Act Release No. 18114 (Sept. 24, 1981) [46 FR 48147] [hereinafter "Release 34–18114"] Question 1(c); *Merrill Lynch Pierce Fenner & Smith, Inc. v. Livingston*, 566 F.2d 1119 (9th Cir. 1978).

[47] *Report of the Task Force on Regulation of Insider Trading Part II: Reform of Section 16*, 42 Bus. Law. 1067 (1987) (American Bar Association report). A recent survey by the American Society of Corporate Secretaries reveals that approximately 30 percent of the members responding used the Rule 3b–7 definition to determine which officers are subject to section 16. American Society of Corporate Secretaries, "Section 16 Survey Report" (Nov. 1988).

[48] *See* Exchange Act sections 10(b), 14(e), 21(d)(2)(A).

[49] 15 U.S.C. 78c(a)(7) (1982).

[50] *See Blau v. Lehman*, 368 U.S. 403 (1962); *Feder v. Martin Marietta*, 406 F. 2d 260 (2d Cir. 1969); *Lowey v. Howmet Corp.*, 424 F. Supp. 461 (S.D.NY 1977); *Lewis v. The Dekcraft Corp.*, [1973–1974 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶94,620 (S.D.NY 1974). Although most of the cases involving deputization have not addressed specifically whether deputizing entities are subject to the reporting requirements of section 16(a), the court stated in *Sterling v. Chemical Bank*, 382 F. Supp. 1146 (S.D.NY), *aff'd*, 516 F. 2d 1398 (2d Cir. 1975), that the concept of deputization has never been extended to that section. The Commission, however, stated in Release 34–18114, Q.3, that a person who designates another to be a director should be deemed a director for purposes of section 16(a).

requested as to whether further guidance is needed either by codification of current judicial interpretation or otherwise.

In making a determination as to whether a particular advisory, emeritus, or honorary director should be treated as a director for puposes of section 16, the focus should be on such person's underlying responsibilities or privileges with respect to the issuer and access to inside information. The person's formal title does not govern that determination. In general, honorary directors need not be treated as directors for purposes of section 16, because they usually do not take part in formulating and deciding policy issues concerning the issuer, and do not have general access to material, non-public information.[51] On the other hand, advisory and emeritus directors generally should be treated as directors for such purposes.[52] They commonly are invited to attend board meetings of the issuer to assist in policy formation and, therefore, do have access to material, non-public information.

3. Transactions While not an Officer or Director

Rule 16a–1(d) [53] currently requires an officer or director (but not a ten percent holder) [54] to disclose all trades conducted six months before becoming an insider. This requirement would be retained in proposed Rule 16a–2(a), because, once becoming an officer or director and gaining access to inside information, a person would have the opportunity to take advantage of that information to offset transactions made shortly before attaining insider status.

Comment is requested as to whether it is useful to require disclosure of trades made by insiders prior to attaining insider status. If so, should the transaction effected prior to becoming an insider nonetheless be exempted from section 16(b) profit recapture because the insider may not have known at the time of that transaction that the initial transaction could be subject to profit recovery?

Proposed rule 16a–2(b) would continue to require that an officer or director disclose all trades executed six months after termination of insider status or termination of section 12 registration for the class of securities. An insider's leaving office does not diminish the ability to develop a plan to purchase and sell or sell and purchase while in possession of inside information.

4. Beneficial Owners

The third class of reporting persons is ten percent beneficial owners. The term beneficial ownership under section 16 has evolved under case law and is not specifically defined in the Exchange Act or the Commission's rules. Uncertainty as to the status of indirect interests in securities of the issuer, such as ownership of derivative securities and holdings of the immediate family, trusts, corporations, and partnerships, has raised requests for a definition.

Congress, in applying Section 16 to ten percent holders, intended to reach those persons who could be presumed to have access to inside information because of their interest in the issuer's securities. Thus, in determining beneficial ownership for purposes of ascertaining who is a ten percent holder, the analysis properly should turn on the person's potential for control. The proposed rules would rely on section 13(d) definitions for determining who is a ten percent holder.[55] The identification of ten percent holders by the issuer will be facilitated by use of schedule 13D reports.[56]

The determination of which securities transactions should be subject to section 16(a) reporting and section 16(b) profit recovery, on the other hand, should focus only on those transactions from which the insider may realize a profit. Rule 16a–1(a)(2), therefore, would define beneficial ownership for purposes of section 16(a) reports and section 16(b) profit recovery in terms of pecuniary interest, thereby codifying case law.[57] Inclusion of a specific definition of beneficial ownership for reporting and profit recovery purposes, particularly those provisions of the definition that address specific situations such as family and trust ownership, will provide for greater certainty. It will, however, substantially reduce the flexibility of the courts to take into account the facts and circumstances of a specific case that might militate against a finding of beneficial ownership. For example, one court found beneficial ownership for reporting purposes and not recovery purposes.[58] Under the proposed definition that would no longer be possible. The Commission requests comment on the advisability of defining beneficial ownership for reporting and profit recovery purposes; would it be preferable to continue to allow the courts to proceed on a more flexible facts and circumstances analysis?

a. *Proposed Definitions*—(i) *Ten Percent Holder.* Proposed Rule 16a–1(a)(1) would state that a person would be deemed a ten percent holder for purposes of Section 16 if that person is deemed a ten percent beneficial owner under section 13(d) of the Exchange Act and the rules thereunder. All aspects of the section 13(d) analysis, such as the exclusion of non-voting securities [59] and counting only those derivative securities exercisable within 60 days,[60] would be imported into the ten percent holder determination for section 16 purposes.[61]

Proposed Rule 16a–2(c) would state that the transaction resulting in a person becoming a ten percent holder need not be reported,[62] although the existence of the holding would be required to be disclosed on the Form 3.[63]

(ii) *Pecuniary Interest.* The proposed definition of the term beneficial owner for reporting and profit recovery purposes in Rule 16a–1(a)(2) would include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares a pecuniary interest in the subject securities." It thus would codify the courts' emphasis on pecuniary interests and deem that indirect pecuniary interests are sufficient to establish a reporting obligation and the potential for short-swing profit recovery with respect to those securities.[64] Use of voting

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[51] Release 34–16114 Q.2.

[52] *Id.*

[53] 17 CFR 240.16a–1(d).

[54] The rule was adopted in response to court decisions permitting short-swing profit recovery for transactions made prior to becoming an officer and director. *See* Exchange Act Release No. 8697 (Sept. 18, 1969) [34 FR 15246]; *Adler v. Klawans*, 267 F. 2d 840 (2d Cir. 1959); *Blau v. Allen*, 163 F. Supp. 702 (S.D.N.Y. 1958). Section 16(b) expressly precludes short-swing profit recovery from ten percent holders unless they had that status at the time of both transactions. *See* proposed Rule 16a–2(c).

[55] *See* Proposed Rule 16a–1(a)(1); 15 U.S.C. 78m(d) (1982); 17 CFR 240.13d–1 *et seq.*

[56] 17 CFR 240.13d–101.

[57] *See, e.g., Whitaker* v. *Whitaker Corp.*, 639 F.2d 516 (9th Cir.), *cert. denied*, 454 U.S. 1031 (1981); *Whiting* v. *Dow Chemical Co.*, 523 F.2d 680 (2d Cir. 1975). The proposed definition, however, would go beyond most of the judicial decisions and state that an indirect pecuniary interest is sufficient to convey beneficial ownership.

[58] *See Colan* v. *Monumental Corp.*, 830 F.2d 818 (7th Cir. 1983) (derivative securities).

[59] 17 CFR 240.13d–1(d).

[60] 17 CFR 240.13d–3(d)(1).

[61] For example, just as with section 13(d), insiders could not purchase put options or write call options for the purpose of affecting ten percent holder status.

[62] The rule is in accord with the holding in *Foremost-McKesson v. Provident Securities Co.*, 423 U.S. 232 (1976) that such transactions would not be subject to section 16(b).

[63] There is less of a need for reporting such transactions on Form 4 since these trades would be reported on a Form 13D.

[64] Proposed Rule 16a–1(a)(2) would address specifically three forms of indirect pecuniary interests: Derivative securities, family holdings, and general partnership holdings.

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power or investment power to make money for the user or immediate family members would satisfy the pecuniary standard of the proposed rule. Comment is solicited as to whether the right to receive dividends, without any other interest, should be sufficient to satisfy the standard.

b. *Derivative securities.* Under proposed Rule 16a–1(a)(2)(i), derivative securities, whether or not presently exercisable, would be deemed to carry a pecuniary interest in, and thus beneficial ownership of, the underlying securities for purposes of section 16. Insiders holding derivative securities are affected by the performance of the underlying securities and, therefore, have a pecuniary interest in those securities, even if the derivative securities are not presently exercisable.[65] The proposed rule expands current Rule 16a–6(b),[66] which attributes beneficial ownership in the underlying securities only to presently exercisable derivative securities.

c. *Family holdings.* The status of family holdings and transactions under section 16 has been the subject of many requests for interpretive advice and much litigation. The Commission has expressed the view that family holdings presumptively should be attributed to the insider. Enrichment of a family member living in the same household can benefit the insider by reducing the need or the potential need of the insider to lend or contribute funds to support the family member, or by increasing the family members' contributions to the support of the insider and the household.[67] The judicial decisions are mixed, but, in contrast to the Commission's position taken in releases, most hold that beneficial ownership need not be attributed to the insider where the financial independence of the family member can be shown.[68]

Proposed Rule 16a–1(a)(2)(ii) would codify the Commission's historic position, deeming an insider to be the beneficial owner of securities held by a member of the immediate family sharing the same residence.[69] The Commission recognizes the increasing prevalence of multi-career, multi-income families in which members of the family may have independent financial status. Nonetheless, the potential for abuse of family holdings calls for aggregation. The proposed definition focuses on family members in the same residence, who reasonably may be assumed to act in one degree or another as an economic unit, and who may benefit from each other's enrichment.

The definition would, however, deviate from the Commission's historic position in one respect in order to provide greater certainty. Instead of a persumption of attribution, the rule would uniformally and automatically attribute beneficial ownership for holdings of the immediate family. Comment, however, is solicited on whether the rule should provide that the attribution is a rebuttable presumption only.

The Commission also recognizes that in many circumstances people who are not family members may live together and form an economic unit. As an alternative to the proposed definition, the Commission is considering adopting a definition whereby insiders are deemed to be the beneficial owners of all holding held by "any person sharing the same residence, except for employees or tenants." Comment is solicited as to which alternative is preferable.

d. *Partnership holdings.* The holdings of a general partnership consistently have been attributed to the general partners, in proportion to their partnership interests, because they have a direct pecuniary interest in the holdings of their partnership.[70]

Proposed Rule 16a–1(a)(2)(iii) would codify the present interpretation of general partnership holdings.

In contrast, the general or limited partners of a limited partnership have only a limited indirect pecuniary interest in the holdings of the limited partnership and, by virtue of the operation of partnership law, limited partners have no right to control the partnership. General partners of a limited partnership have a measure of control over the limited partnership that is similar to that of a corporate director.[71] Under current interpretation and consistent with the treatment of the holdings of a corporate director, absent other circumstances, neither limited nor general partners of a limited partnership are treated as beneficial owners of the securities held by the entity. This interpretation would be retained. Comment is solicited as to whether a rule relating to limited partnership holdings, codifying or modifying present interpretation, is necessary. Additionally, comment is solicited as to whether a general partner of a limited partnership should be treated the same as a general partner in a general partnership. Commenters should provide reasons supporting their conclusion.

The Commission has determined not to propose a rule specifically addressing corporate holdings, to permit courts flexibility in applying the proposed pecuniary interest standard. Comment is solicited as to whether a rule is necessary and whether the determination as to attribution should be based upon the number of shareholders, or the percentage of voting stock they own.

e. *Dual ownership.* Where beneficial ownership is attributed to more than one person (*e.g.* family members, trusts, and beneficiaries), each beneficial owner may be required to report a securities transaction. This will arise, for example, where two members of the immediate family are insiders in their own right. Proposed Rule 16a–1(a)(3) would specify that both beneficial owners would report holdings and transactions. It would also state that the issuer could recover short-swing profits only once. The courts would decide how to apportion liability.

f. *Disclaiming Beneficial Ownership.* Proposed Rule 16a–1(a)(4) is similar to current Rule 16a–3,[72] which permits a

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[65] For a complete discussion of the treatment of derivative securities, *see* Section IV, *infra*.

[66] 17 CFR 240.16a–6(b).

[67] "Absent countervailing facts, it is expected that securities held by a spouse, minor children and other relatives who share the same home as the insider will be reported as being beneficially owned by the insider since such relationships ordinarily result in the insider obtaining benefits substantially equivalent to ownership." Release 34–18114 Q.4.

[68] *See CBI Industries v. Horton*, 682 F.2d 643 (7th Cir. 1982) (no attribution for insider who was co-trustee for his adult sons, since he had no duty to support); *Whittaker v. Whittaker Corp., supra* (invalid mother's holdings were attributed to insider because he had power of attorney, was her sole heir, and used her money for his benefit); *Whiting v. Dow Chemical Co.*, 523 F.2d 680 (2d Cir. 1975) (spouse's holdings were attributed because couple shared a joint investment plan); *Schur v. Salzman*, 365 F. Supp. 725, 732 (S.D.NY. 1975) (spouse's purchase was attributed because money came from joint account and there were no "special circumstances" to support claim that insider was not beneficial owner); *Blau v. Potter*, [1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,115 (S.D.NY. 1973) (no attribution where spouse was financially independent, had separate accounts, and there was no control or input by insider); *but see Altamil Corp. v. Pryor*, 405 F.Supp. 1222 (S.D. Ind. 1975) (the only court to find that an indirect benefit of enriching spouse was sufficient; however, holding was questioned in *CBI Industries*).

[69] "Immediate family" would be defined in proposed Rule 16a–1(b).

[70] *See, e.g., Blau* v. *Lehman, supra;* Exchange Act Release No. 1985 (Dec. 21, 1938) [11 FR 10971]. In contrast, holdings generally have not been attributed to the individual shareholders of a corporate shareholder, except in situations involving closely held corporations. Release 34–18114 Q.8.

[71] *See Integrated Resources American Insured Mortgage Investors—Series 85* (March 25, 1986).

[72] This would not affect the ability of a person to disclaim beneficial ownership for purposes of section 13(d). *See* 17 CFR 240.13d–4.

person to declare that filing a statement does not equate to an admission that the person is the beneficial owner of the securities reported. Given the addition of the beneficial ownership definition, the proposed rule, unlike the current rule, would limit the ability to disclaim beneficial ownership to situations where beneficial ownership is not specified by rule.[73] Thus, for example, an insider could not disclaim beneficial ownership of securities held by a member of the immediate family.

5. Trusts and Trustees

a. *Trustees.* A trust may become a ten percent holder of a class of equity securities, and therefore become an insider subject to section 16. The trustee generally makes the trust's investment decisions and administers the trust. Thus, when a trust becomes a ten percent holder, the trustee is required to file Forms 3 and 4 to report holdings and transactions on behalf of the trust. In addition, because the trust is a ten percent holder, the statute presumes that the trust, and therefore the trustee through whom the trust acts, has access to inside information. Trustees thus are treated as insiders in their own right and are required to report their personal transactions under current Rule 16a–8(c).[74]

No changes are proposed. The trust and the trustee would have separate reporting obligations for their respective transactions, so there is no duplicative reporting or liability. Thus, a trustee reports the transactions of the trust as agent of the trust and would not be personally responsible for short-swing profit derived by the trust. Trustees would be personally responsible only for profits realized with respect to securities deemed to be beneficially owned by them for reporting and profit recovery purposes.

The proposed rules would expand the current scheme to address situations where the trustee is an insider and the trust is not a ten percent beneficial owner.[75] If a trustee has access to inside information, this access should be attributed to the trust because of the substantial potential for the trust to benefit from the trustee's insider status. Thus, if an officer or director is selected to be a trustee of a friend's trust, that trust would be treated as an insider because it has access to inside information through the trustee. Separate reporting responsibilities would result, as would separate liabilities. The trust would remain an insider until a non-insider trustee was appointed or the trustee ceased to be an insider.

Comment is requested as to whether trustees should become insiders if they administer more than one trust that collectively, but not individually, hold over ten percent. Under the proposed rule, the trustee, assuming the trustee exercises voting power or investment control, would be deemed to have beneficial ownership for purposes of section 13(d), and therefore the trustee would be a ten percent holder. Comment is requested as to whether this is an appropriate result in the case of professional trust companies such as banks. Do such institutions exercise their voting or disposition authority on a company-wide basis or is there a different voting policy applicable for each trust? Would exemptions from section 16(a) and/or (b) be appropriate for professional trust companies (such as banks), which administer numerous trusts in the ordinary course of business?

b. *Beneficiaries.* Beneficiaries of trusts rarely exercise voting or investment conrol over the securities held in trust. Therefore, trust beneficiaries have not been presumed to have access to material non-public information and have not historically been deemed insiders merely because the trust or the trustee is an insider. The revised rules would preserve this approach.

Where a trust's beneficiaries are insiders, they, as beneficial owners of the turst corpus, would be required to report trust transactions that are executed at their direction or with their approval as their own, in proportion to their beneficial interest, because they have a pecuniary interest in the trust holdings. Proposed Rule 16a–5(a)(4) continues this approach.[76] Thus, under certain circumstances, trust transactions on behalf of insider beneficiaries could be matched with other transactions inside or outside the trust to yield a short-swing profit.[77]

c. *Beneficial owners.* Where a settlor or trustee has a pecuniary interest in the trust holdings, beneficial ownership would be attributed to the settlor or trustee, just as to each other person with a pecuniary interest. Such situations are listed in proposed Rule 16a–5(a)(3) and current rule 16a–8(a).[78] There may be other situations where a settlor or trustee would have a pecuniary interest therefore, the proposed rule is not intended to be exclusive.

d. *Remote interests.* In contrast to the situations mentioned above, where additional persons are deemed beneficial owners of the trust holdings, there are situations where a beneficiary's pecuniary interest in a portfolio of securities held by a trust is so remote that attribution of beneficial ownership to the beneficiary is inappropriate. Proposed Rule 16a–5(d) would retain the exemptions for remote interests contained in current Rule 16a–8(g),[79] with one exception. The Commission proposes to delete the exemption for a business trust with over 25 beneficiaries because these entities operate similarly to a corporation and different treatment appears inappropriate.[80]

The proposed rule would exempt remainder interests in trusts as being too remote to convey beneficial ownership. This would be accomplished by redesignating and simplifying Rule 16a–8(f).[81] Whereas the current rule addresses only beneficial ownership for purposes of ten percent holder analysis, the proposed rule would expand the exemption for all purposes. The proposal would not exempt acquisitions of securities by a holder of a remainder interest upon the death of the prior beneficiary. However, comment is solicited as to whether such an exemption is appropriate and whether acquisitions upon the termination of trusts should be exempted under other specified circumstances when not predictable by or under the control of the remainder holder.

e. *Intra-trust exemption.* Current Rule 16a–8(b) provides a dual exemption for intra-trust transactions.[82] First, an exemption is provided for settlors or beneficiaries of a trust if less than 20 percent of the market value of the trust (as determined at the end of the preceding fiscal year) consists of the issuer's equity securities. Additionally, an exemption is provided for

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[73] 17 CFR 240.16a–3. The language of the proposal is identical to the current rule, except that the last clause was added.

[74] 17 CFR 240.16a–8(c). The Rule would be renumbered Rule 16a–5(a)(1), and the language would be amended to conform to the statutory standard of more than ten percent beneficial ownership.

[75] *See* Proposed Rule 16a–5(a)(2).

[76] This is in accord with current practice. *See* Rule 16a–8(a)(2) [17 CFR 240.16a–8(a)(2)]. *See also* proposed Rule 16a–8; Section III.A.5.e., *infra.*

[77] For example, if a beneficiary directs the trustee to buy 1,000 shares of stock, the beneficiary would report (and be responsible for any short-swing profits derived from) his share of the securities purchased.

[78] 17 CFR 240.16a–8(a).

[79] 17 CFR 240.16a–8(g).

[80] *See* 17 CFR 240.16a–8(g)(4).

[81] 17 CFR 240.16a–8(f).

[82] 17 CFR 240.16a–8(b).

transactions made without prior approval of the insider.

Proposed Rule 16a–8 would eliminate the Rule 16a–8(b) exemption for trusts with less than 20 percent of their market value in securities of the registrant. The 20 percent ceiling is not consistent with the purposes underlying section 16, because it permits settlors and beneficiaries total discretion. In recent years there has been an increase in the number of plans in trust form that provide insiders with a choice of investment vehicles (such as company stock, government securities, and mutual funds) within the same plan. The company stock portion of the plan may account for less than 20 percent of the value securities in the trust, but the determination to move funds into or out of company stock is an investment decision that could be made while in possession of material non-public information and result in significant profits.

Unlike the 20 percent of market value exemption, the Commission would retain the Rule 16a–8(b) exemption for intra-trust transactions made without the prior approval of the insider. Where an insider does not direct or approve a transaction, there is a commensurate lack of opportunity to abuse inside information. To clarify the intended result, the proposed Rule would add the words "or direction" after the words "prior approval." Comment is solicited as to whether the proposed exemption should be further conditioned upon a beneficiary's lack of consultation with the trustee concerning the transaction.

B. How and When To Report

Proposed Rule 16a–3 would combine all current rules that state how, what, when, and where to file. As discussed below, there are three significant changes from the current rules: (1) Insiders would be required to forward a copy of each filing to the issuer; (2) reporting of exempt transactions would be deferred; and (3) a new annual filing requirement would be added.

1. Copies to Issuer

Proposed Rule 16a–3(e) would require insiders to forward copies of Forms 3, 4 and 5 to the issuer's corporate secretary or other person designated to receive such reports at the same time that a report is forwarded to the Commission for filing.[83] This new requirement would be added to encourage compliance with the reporting requirements of section 16(a). It would enable issuers to monitor filings more effectively and to assist insiders in meeting their reporting obligations. Comment is solicited on whether the rule should specify the method of furnishing this copy (*e.g.*, by delivery at the issuer's offices, by registered or certified mail, or by first class mail) or require that the copy be furnished by a means reasonably calculated to reach the issuer by the date on which the Form 3, 4 or 5 is due at the Commission.

2. Reporting Exclusions

Under the current rules, some transactions (such as intra-trust transactions) are exempted from reporting, by virtue of a rule pursuant to section 16(a), and thus from the short-swing profit recovery provisions of section 16(b). In contrast, other types of transactions (such as employee benefit plan awards) are exempted from section 16(b) short-swing profit recovery but must be reported at the same time as is required for a non-exempt transaction. The proposed rules would change the current dichotomy between reportable and non-reportable transactions to a three-part classification: transactions exempt from section 16, transactions required to be reported on a current basis, and transactions required to be reported in an annual filing.

Certain transactions are beyond the control of the insider or are part of the ordinary course of a legitimate business. Where the disclosure of such transactions would not further the purposes of section 16(a)—to provide shareholders with a mechanism to monitor insider transactions for possible short-swing profit recovery, and to provide investors with a possible indication of the insider's view concerning the prospects of the company—it is appropriate to exclude them from section 16(a) reporting. The proposed rules would contain five such exclusions: (1) A temporary 12 month exclusion for fiduciaries that are liquidating estates;[84] (2) transactions involving remote and indirect interests, such as remainder interests in trusts, indirect interests in a portfolio of securities held by designated companies or pension plans;[85] (3) transactions by an underwriter relating to a distribution of securities;[86] (4) intra-trust transactions conducted without the prior approval of the insider;[87] and (5) odd-lot trades by odd-lot dealers.[88]

The first exclusion relates to fiduciaries such as executors and trustees in bankruptcy. Trades by these persons, where conducted to liquidate an estate holding ten percent of a class of equity securities, will in effect end insider status. They perform a useful service for purposes of probate. Generally, requiring reports of such trades would serve no section 16 purpose.

The same is true for remote interests. For example, disclosure of the fact that an insider owns shares in a mutual fund that holds some stock of the insider's company serves no section 16 purpose because the transactions do not reflect the insider's view of the company's prospects and are not likely to involve abuse of inside information. It is not the insider who makes the investment decision. The same is true for contingent interests and holdings in retirement plans.

Distributions by underwriters and selling group dealers would be excluded for reasons similar to those supporting exclusion of transactions by liquidating agents. Underwriters and selling group dealers are conduits for securities in a distribution and their ownership is generally brief. Although they may have access to inside information in some cases, their market activity generally is constrained by other rules.[89] As long as they act in those capacities, rather than as investors, there is no need for a report.

Insiders that are beneficiaries of a trust sometimes have little or no control over transactions conducted by the trustee, but could be subjected to short-swing profit recovery because of the trustee's trading decisions. Where the insider has no prior opportunity to approve or direct the transactions, reporting is not necessary, and no liability is appropriate. As with the current rule, the exemption would apply

[83] Such a filing requirement is similar to other Exchange Act rules requiring copies of forms to be sent to the registrant. *E.g.*, Rules 13d–1(a), 13d–2(a), and 14d–3(a)(2) [17 CFR 240.13d–1(a); 17 CFR 240.13d–2(a); 17 CFR 240.14d–3(a)(2)].

[84] Proposed Rule 16a–5(b) would retain, with minor language changes, the exemption contained in current Rule 16a–4 [17 CFR 240.16a–4].

[85] Proposed Rule 16a–5(d) would retain the beneficial ownership exclusions of current Rule 16a–8 (f) and (g). *See* Section III.A.5.d., *supra*.

[86] Proposed Rule 16a–7 would retain the exemption of current Rule 16b–2 [17 CFR 240.16b–2], but would delete the requirement that insider underwriters participate equally with non-insider underwriters.

[87] Proposed Rule 16a–8 would retain part of the exemption contained in current Rule 16a–8(b). *See* Section III.A.5.e., *supra*.

[88] Proposed Rule 16a–9 would retain current Rule 16a–5 [17 CFR 240.16a–5] without change. An "odd-lot" is generally a quantity of stock less than 100 shares.

[89] *See, e.g.*, Rule 10b–6 [17 CFR 240.10b–6]. Note that the term "distribution" has different meanings under sections 10 and 16.

to only intra-trust transactions and not to distributions from a trust.

Finally, the reporting exclusion for odd-lot dealers would be retained, because odd-lot prices are tied to the market price of round lot transactions,[90] and odd-lot dealers may engage in hundreds of trades in one day. Disclosure would be both time-consuming and unnecessary for shareholders and investors.

Current Rule 16a–11[91] provides a reporting exclusion for Dividend Reinvestment and Interest Plans ("DRIPs"). The provisions dealing with DRIPs would be moved to proposed Rule 16b–9 and the reporting exclusion would no longer be provided. While DRIPs generally are unlikely vehicles for abuse, shareholders and investors have an interest in monitoring insiders' total holdings. Reporting on an annual basis, as proposed, would not be unduly burdensome.

3. Reported Transactions

Under the present reporting scheme, virtually all transactions not exempted under section 16(a) must be reported in a current manner, regardless of whether the trades are exempt from short-swing profit recovery under section 16(b). The only exception is deferred reporting relating to small acquisitions.[92] Reporting of such acquisitions is deferred until the purchases exceed $10,000 or the next regular Form 4 is required to be filed, whichever occurs first.

The Commission proposes to amend the rules to permit annual reporting of transactions exempt from section 16(b) liability, including those involving stock splits, dividends, gifts, and specified small acquisitions. The current report on Form 4 will be reserved for the acquisitions and dispositions that have greater potential either for revealing the insider's assessment of the company or for abuse of inside information.

Proposed Rule 16a–3(f) would require that transactions entitled to annual reporting be reported on a new Form 5, which would be required to be filed on or before the thirtieth day after the end of the issuer's fiscal year. Reporting persons also would be required to disclose on Form 5 all transactions during the fiscal year that should have been, but were not, reported at an earlier time on Form 4, and their total beneficial holdings of equity securities of the issuer as of year end. If there were no reportable transactions during the fiscal year, the form would be submitted with such a notation. In addition to filing the Form 5 with the Commission, the insider would have to provide the report to the designated exchange as well as the issuer.

The small acquisition reporting deferral would be modified to reflect the addition of the annual Form 5 filing. Under that proposal, reporting would be deferred until the earliest of the filing of the next Form 4, the filing of the next Form 5, or the cumulative acquisition in excess of $10,000.

Form 5 would enable interested parties to compare the year-end holdings of reporting persons with their Form 4 reports filed during the year, and to identify and explain discrepancies. The Form would provide a mechanism for reporting events such as gifts and dividends.[93] The annual reporting requirement, as opposed to a reporting exemption, also would provide interested parties with the opportunity to challenge reporting persons' claims to exemptions.

The requirement to file an annual report on holdings on Form 5, regardless of whether the reporting person had traded during the year, should aid compliance with section 16(a) by compelling insiders to review their transactions annually. In addition, the Form 5 filing requirement would enhance the Commission's ability to identify non-reporting insiders.[94]

The proposed filing period, 30 days following the end of the registrant's fiscal year, is intended to provide the issuer with a copy of the report to use in the preparation of its Form 10–K annual report and annual proxy statement. As discussed in section VIII of this Release, the Commission is proposing to require annual disclosure by issuers of those insiders who have been delinquent in compliance with the reporting requirements under section 16(a). The registrant would be entitled to rely upon the disclosures made in Forms 3, 4, and 5 filings. The Commission requests comment on the practicality of the 30 day period to file the Form 5; should it be shorter (*e.g.*, 15 days) or longer (*e.g.*, 45 or 60 days)? If the period were extended, would the issuers still be able to use the forms as the basis for determining insider reporting delinquencies that must be disclosed in the Form 10–K or proxy statement? If not, commenters should address what other obligation of inquiry could be placed on the issuer to document the disclosure required as to delinquent filers.

Several minor changes are also proposed. Paragraphs (a) and (b) of proposed Rule 16a–3 would be almost identical to current paragraphs (a) and (b) of Rule 16a–1. Current Rule 16a–1(a) requires that initial statements of ownership be filed on Form 3 and subsequent changes in beneficial ownership be filed on Form 4. As proposed, new paragraph (a) also would require that an annual statement be filed on Form 5. Current Rule 16a–1(b) states that another Form 3 is not required when a class of equity securities is registered if another class of the issuer's securities already is registered under section 12, or if an insider assumes an additional relationship with the issuer. This rule would be retained.

Proposed Rule 16a–3(c) would be similar to current 16a–1(c). Section 16(a) requires all reports pursuant to the Section to be filed not only with the Commission, but also with any exchange on which the registrant's securities are traded. The current rule permits issuers that are listed on more than one exchange to designate one exchange as the sole exchange to receive copies of its insiders' Forms 3 and 4. No changes are proposed, but the requirement to file reports with exchanges would be extended to Form 5 as well.

Proposed Rule 16a–3(d) would be identical to current Rule 16a–7[95] which requires only a single filing for compliance with sections 16(a), 17(a) of the Public Utility Holding Company Act, and 30(f) of the Investment Company Act.

4. Date of Filing

A new Rule 16a–3(g) is proposed, which would state that, as is currently the case, the date of filing is the date on which a Form 3, 4 or 5 is received at the Commission,[96] but add a proviso that would in some cases permit reliance on having transmitted the filing to the Commission. The proviso would deem a Form timely filed, even if not received by the due date, if the filer established that the Form was transmitted on or before the due date by first class mail or equally prompt means. The burden of proof would be on the filer. This change

[90] A round lot is generally 100 shares of stock.

[91] 17 CFR 240.16a–11.

[92] As modified, the reporting deferral for small acquisitions in current Rule 16a–9 [17 CFR 240.16a–9] would be retained as proposed Rule 16a–6. This rule is not an exemption from Section 16(b) liability; thus, it is more appropriate to place the rule under section 16(a).

[93] Stock splits and stock dividends are not generally viewed as purchases in that there is no change in the percentage of ownership. Nonetheless, the increase in the number of shares needs to be explained.

[94] *See* Section VIII, *infra*, for a discussion of section 16(a) compliance.

[95] 17 CFR 240.16a–7.

[96] *See* Exchange Act Rule 0–3 [17 CFR 240.0–3].

would make it less likely that insiders be in non-compliance with the reporting requirements as a result of delays in the mail. It also would provide a small amount of additional time for insiders to prepare their filings, as the mailing could take place on the due date. Comment is solicited on this approach.

IV. Derivative Securities

Much of the current treatment of derivative securities under section 16 has been left to court interpretation, and the results have been inconsistent. The proposed rules are intended to provide a comprehensive framework for the treatment of derivative securities and specifically address a number of common interpretive issues. Under the proposal, the Commission would treat derivative securities as indirect ownership of the underlying equity securities.

Derivative securities would be defined in proposed Rule 16a–1(c) to include options,[97] warrants, stock appreciation rights ("SARs"), convertible securities, and similar rights related to an equity security. As proposed, the definition of derivative securities excludes securities issued pursuant to an employee benefit plan qualifying under Rule 16b–3 that must be settled in cash ("cash-only"), all broad-based index options, and broadbased index futures. Transactions involving such instruments thus would not be subject to section 16(a) or (b).

Cash-only derivative securities that are not standardized and are awarded as part of an employee benefit plan are similar to cash bonuses, rather than equity securities. The Commission solicits comment on whether derivative securities that provide a choice between cash or stock should likewise be excluded from section 16, if the insider does not in fact choose which form of compensation to receive.

Broad-based index options and index futures are not susceptible to the types of abuses addressed by section 16.[98] Such options and futures relate to a large number of component securities. As a result, the interest in any one component security is so small that the holder of the option or future should not be deemed the beneficial owner of the component securities for Section 16 purposes. The exemption, however, would not extend to options on narrow-based indices where one issuer may account for a substantial amount of the index weighing and, therefore, a movement in the price of a component stock would result in a similar move in the index.[99]

In addition to a proposed definition of derivative security, the Commission proposes to define the terms "call equivalent position" and "put equivalent position." Proposed Rule 16a-1(d) would define call equivalent position to mean a derivative security position that increases in value as the underlying equity security increases in value (*e.g.* long call options, long warrants, long convertible securities, and short put options). Proposed Rule 16a-1(e) would define put equivalent position to mean a derivative security position that increases in value as the underlying equity security decreases in value (*e.g.* long put options and short call options).

A. Reporting

1. Acquisitions

The current rules require that an insider file a Form 4 to report an acquisition of securities when derivative securities held by that person become exercisable.[100] Proposed Rule 16a-4(a) would change the current reporting scheme by requiring that derivative securities be reported upon their grant or acquisition, regardless of when they are exercisable. Only the derivative security would be reported, rather than the underlying security to which it relates. Thus, the purchase for purposes of section 16 would occur at grant or acquisition.[101]

The Commission is proposing this change for three reasons. First, the investment is made when the derivative securities are acquired, and it is possible to realize a profit from derivative securities that are transferable even if not yet exercisable.[102] The insiders is at risk of price fluctuation from the time of acquisition, even before the derivative security becomes exercisable. If the value of the underlying stock increases, the value of a call equivalent position increases and that of a put equivalent position decreases, notwithstanding the fact that the derivative security may not yet be exercisable. Under the current rules, an insider could both purchase and sell a derivative security that is not yet exercisable, realize a short-swing profit, and yet never have to report the transactions (nor be responsible for short-swing profits pursuant to section 16(b)).

Second, under the current scheme, profit recovery can include long-term appreciation from holding non-exercisable derivative securities. By calculating the holding period as beginning on the date of acquisition or disposition, rather than the date of exercise, this will no longer be the case.[103]

The third benefit of changing the period is that it is more likely that reporting persons will remember to report the transaction at acquisition, while they may forget to do so when a derivative security becomes exercisable days, months, or years later. Thus, the proposed change should aid section 16(a) compliance by decreasing the number of reporting delinquencies due to oversight.

2. Exercises and Conversions

Presently, all exercises and conversions of derivative securities must be reported on a current basis on Form 4, as they are viewed as dispositions of the derivative securities and acquisitions of the underlying securities. Under proposed rule 16a-4(b), an exercise or conversion of or against a call equivalent position would continue to be treated by the person who had held that position as a closing of the derivative security and an acquisition of the underlying security for reporting purposes. An exercise of or against a put equivalent position would be treated by the person who had held that position as a closing of the derivative security and a disposition of the underlying security. Any exercise or conversion exempted from short-swing profit liability by operation of proposed rule 16b-6,[104] however, could be reported on an annual basis pursuant to proposed Rule 16a-3(f). This is consistent with the proposed approach of permitting exemption transactions to be reported annually. Any exercise or conversion not exempted from section 16(b) would be required to be reported currently on Form 4. Comment is solicited as to

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[97] Both standardized and non-standardized options would be included.

[98] The Commission determines whether an index is broad or narrow-based when it approves the option for trading. *See, e.g.*, Exchange Act Release No. 21032 (June 8, 1984) [49 FR 24964].

[99] Under the Commodities Exchange Act section 2(a)(1)(B) [7 U.S.C. 2a(ii) (1982)], futures on such narrow-based indices are effectively precluded. *See* Exchange Act Release No. 20578 (Jan. 18, 1984) [49 FR 2884].

[100] *See* 17 CFR 240.16a–6(a).

[101] This would be true for all options, including employer granted options. No court has deemed an employer grant the equivalent of a purchase. Most employer granted options, however, would be exempt acquisitions, if granted pursuant to a plan meeting the conditions of rule 16b-3.

[102] For example, some warrants may not be exercisable for a year after issue, yet independent markets may develop for trading these warrants.

[103] For example, under the current rules, a person may receive an option that is not exercisable for five years. During that five years, the value of the option may increase significantly, yet currently it will not be deemed to be purchased until it becomes exercisable. As a result, another six month holding period is required before sale of the securities to avoid short-swing profit recovery.

[104] *See* discussion in Section IV.B.2, *infra*.

whether an exercise or conversion of a derivative security should be reported currently on a Form 4, even though the acquisition or disposition of underlying stock may be exempt from section 16(b).

3. Dispositions

Currently, dispositions of derivative securities through sale, exercise, conversion, expiration, surrender, or cancellation are considered reportable events.[105] The writing of an option constitutes a sale. Under proposed Rule 16a-4(a), dispositions of derivative securities that involve sales would continue to be reported on a current basis on Form 4. Dispositions not involving sales (*e.g.*, exercises, conversions, gifts, and expirations of long derivative securities positions) would be exempted from section 16(b)[106] and would be eligible for annual reporting on Form 5. Expirations of long derivative securities positions cannot result in a short-swing profit and so are impliedly exempt from section 16(b); thus, they are reported on Form 5. Expirations of short derivative securities positions, however, may result in short-swing profit and should be reported on Form 4.

4. Put Options

Unlike the current rules under section 16, the proposed rules specifically address the treatment of put options. The acquisition of a put option would be reported on Form 4 as the acquisition of a derivative security. For purposes of sections 16(b) and (c), however, it would also be treated as the sale of the underlying security. When the exercise of a put option is exempt from section 16(b) under proposed Rule 16b-6(b), the transaction would be reported on the annual Form 5; otherwise, it would be reported currently on Form 4. The cancellation of expiration of a long put option would be reported in a manner similar to the cancellation or expiration of a long call option.[107] The writing of a put option would be treated as a call equivalent position (just as the writing of a call option would be treated as a put equivalent position).

B. Short-Swing Profit Recovery

The current rules under section 16 do not address the issue of section 16(b) liability for transactions in derivative securities. When the Commission adopted current Rule 16a-2(b), it specifically declined to decide whether transactions in derivative securities could give rise to an action for short-swing profit recovery. It chose instead to leave the decision to the courts.[108] The courts, however, have not provided definitive guidance in the area. Some cases have found that an option does not confer beneficial ownership of the underlying security for purposes of section 16(b) until exercised, unless the down payment is so large that an exercise is compelled economically,[109] or unless the option conveys significant rights of ownership (such as voting power).[110] In contrast, other cases have stated that derivative securities do convey beneficial ownership of the underlying security.[111]

1. Acquisitions

The proposed rules would treat the acquisition or disposition of a derivative security as a transaction in the underlying security for section 16(b) purposes. Thus, for example, a purchase of a call option could be matched with a sale of convertible preferred stock, if they both shared the same class of underlying equity security. In general, the acquisition or disposition of the underlying security through exercise would be viewed as an exempt transaction, as discussed below.

The determination as to whether a transaction should be subject to short-swing profit recovery is based upon profit potential and the opportunity for abuse of inside information. Derivative securities clearly provide such opportunity for abuse and have figured largely in a number of the Commission's insider trading cases.[112] Indeed, the opportunity for profit is usually magnified through the use of derivative securities because the leverage involved allows a substantially greater profit opportunity.

There is little economic difference between the potential for abuse of inside information by the combined trading of underlying securities and derivative securities, as opposed to trading just one type of security, and the distinction drawn in some cases does not further the purposes of section 16.[113] For example, an insider might purchase a call option, instead of stock, to take advantage of favorable inside information. If the insider were to sell stock within six months, a short-swing profit would be realized. Under the current rules, it is uncertain that a court would order recovery of such profit.

2. Exercises and Conversions

Currently, exercises and conversions of derivative securities are treated differently, for purposes of section 16(b), even though they are substantially similar in effect. In the case of call equivalent positions, both exercises and conversations entail a closing of a derivative security and a simultaneous acquisition of the underlying security. Exercises of put equivalent positions entail a disposition of a derivative security and a simultaneous disposition of the underlying security. An exercise generally is accompanied by a payment of cash equal to the strike price, whereas a conversion usually does not involve a cash payment. While current case law exempts the disposition of the derivative security from section 16(b) for both exercises and conversions,[114] the acquisition of the underlying security has been treated differently. Apparently because there generally is no cash paid in a conversion, the courts have treated the acquisition of the underlying security through a conversion as an exempt transaction, while exercise of an option is treated as a non-exempt acquisition.[115]

The current rules encourage insiders to change the form, rather than the substance, of transactions to avoid short-swing profit liability. A few examples illustrate the problem:

(1) Insider A is granted a stock option pursuant to an employee benefit plan of the registrant, while Insider B is granted stock (rather than an option) pursuant to another benefit plan of the registrant. Five years later, both insiders decide it is time to sell their stock for personal

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[105] *See* current Rule 16a-6(a).

[106] *See* Section IV.B.3., *infra*.

[107] *See* Section IV.A.3., *supra*.

[108] Exchange Act Release No. 8325 (June 6, 1968) [33 FR 8774].

[109] *E.g., Bershad v. McDonough*, 428 F.2d 693 (7th Cir. 1970).

[110] *See Colan v. Monumental Corp.*, 713 F.2d 330 (7th Cir. 1983); *Newman v. RKO General, Inc.*, 425 F.2d 348 (2d Cir.), *cert. denied*, 400 U.S. 854 (1970).

[111] *See Gund v. First Florida Banks, Inc.*, 726 F.2d 682 (11th Cir. 1984) (sale of convertible debentures may be matched with purchase of underlying stock); *Seinfeld v. Hospital Corp. of America*, 685 F.Supp. 1057 (N.D. Ill. 1988) (acquisition of option should be matched with sale of underlying stock).

[112] A number of cases brought by the Commission for insider trading have involved derivative securities. *See, e.g., SEC v. Tome*, 833 F.2d 1086 (2d Cir. 1987); *SEC v. Collier*, Litigation Release No. 11817 (July 26, 1988); *SEC v. Certain Unknown Purchasers, et al.*, Litigation Release No. 11012 (Feb. 26, 1986).

[113] *See, e.g., Morales v. Mapco, Inc.*, 541 F.2d 233 (10th Cir. 1976); *Silverman v. Landa*, 306 F.2d 422 (2d Cir. 1962). These judicial decisions did not match a transaction in a derivative security with a transaction in the underlying security.

[114] *See, e.g., Blau v. Lamb*, 363 F.2d 507 (2d Cir. 1966), *cert. denied*, 385 U.S. 1002 (1967) (conversions); *Blau v. Ogsbury*, 210 F.2d 426 (2d Cir. 1954) (exercises).

[115] *E.g., Blau v. Lamb, supra; Ferraiolo v. Newman*, 259 F.2d 342 (6th Cir. 1958), *cert. denied*, 359 U.S. 927 (1959). Current Rule 16b–9 [17 CFR 240.16b–9] exempts only conversions where 15 percent or less of the market value of the securities acquired is paid as part of the exercise of the derivative security.

reasons. Insider A exercises the option and sells the stock received from the plan. Insider A is subject to short-swing profit recovery [116] and may be compelled to disgorge much of the profit derived from the five year accretion in value of the underlying stock. Insider B, absent a separate purchase of stock, is not subject to shortswing profit recovery and may keep the resulting profit.

(2) An insider owns 1000 shares of stock and decides to purchase a call option that is exercisable into 100 shares of stock. Two months later, the insider sells 200 shares of stock. One month after the sale, the insider decides to exercise the call option as it is about to expire. The insider exercises the option and keeps the 100 shares received. This insider might be found responsible for two short-swing trades of 100 shares each, even though the insider actually purchased only 100 shares of stock.[117] Thus, the insider might be subjected to double recovery because the current rules would find two purchases of an equity security from one derivative security.[118]

(3) Two insiders purchase warrants and seven months later want to realize the profit. The insider who exercises the warrant and sells the underlying stock that is received, is subject to short-swing profit recovery. The insider who sells the warrant to someone else (for the same amount of profit) is not subject to short-swing profit recovery.[119]

The Commission proposes a significant departure from most of the current case law concerning exercises and conversions. Proposed Rule 16b–6(b) would treat exercises and conversions identically, since they operate in a like manner.[120] Both exercises and conversions of in-the-money [121] derivative securities would be deemed purchases of the underlying securities exempt from section 16(b), because they merely change from indirect to direct the nature of the beneficial ownership in the underlying stock, without causing any change in the potential for profit. Exempting the conversion and exercise also appears appropriate since any profit is realized at the time the underlying securities are sold for cash or its equivalent.[122]

The proposed rules would resolve each of the problems illustrated above. Although there would be two purchases (a purchase at acquisition or grant of the derivative security and a purchase at exercise) for reporting purposes, the purchase incident to an exercise of an in-the-money derivative security would be exempt from the short-swing profit recovery provisions of section 16(b).[123] An insider could purchase a call option, exercise it at any time, and sell the underlying stock without being subject to recovery, if the sale occurred at least six months after the initial purchase of the call option.

Current Rule 16b–6 was intended to limit the profit recoverable from the exercise of a long-term option. It provides that a price not lower than the lowest stock price within six months (before or after) the date of sale shall be deemed the purchase price. Thus, an insider exercising an option held over six months would have the purchase price equal to either the strike price or the lowest stock price within six months of the sale, whichever resulted in the least profit. The proposed exemption for exercises renders current Rule 16b–6 unnecessary. Accordingly, current Rule 16b–6 is proposed to be rescinded.

As drafted, proposed Rule 16b–6(b) would not exempt exercises of out-of-the-money derivative securities. There appear to be few, if any, legitimate reasons for such exercises. Convertible securities, however, would not be subject to this limitation because most convertible securities trade at a premium over the underlying securities and otherwise would be viewed as being out-of-the-money.

The Commission requests comment on the appropriateness of extending the exemption to include out-of-the-money derivative securities. Those favoring such an extension should address specifically those instances where such exercises could be legitimately expected. The Commission requests comment on any additional limitations on the exemption that would be appropriate.

3. Dispositions

a. *Background.* As discussed above, acquisitions of derivative securities would be deemed to convey beneficial ownership in the underlying securities. A decrease in or liquidation of a call equivalent position could be matched with either an acquisition of the underlying security or an increased put equivalent position exercisable for the same underlying equity security.[124]

There are several different types of dispositions of derivative securities: sales, exercises or conversions, expirations, and cancellations. As proposed, if an insider sells a derivative security such as a call option, warrant, or convertible security, that transaction could be matched with a purchase of another derivative or the underlying security for short-swing liability. If a derivative security were disposed of through an exercise or conversion, the disposition of the derivative security generally would be exempt from short-swing profit recovery by operation of proposed Rule 16b–6(b). In most cases, expirations of a long position in a derivative instrument cannot result in short-swing profits. However, in the case of an expiration of a short option position, the expiration would be treated as the purchase of the option because there is short-swing profit potential in such a case.[125] Cancellations generally would not be considered sales where the option issuer paid no compensation to the holder. The issuer's replacement of the cancelled security with a comparable derivative security would be viewed as a redemption of the old

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[116] The exercise of the option would be deemed a purchase of the underlying stock, followed by an immediate sale of that same stock.

[117] The purchase of the option might be matched with the sale of the first 100 shares (*see Gund v. First Florida Banks, Inc.*, 726 F.2d 682 (11th Cir. 1984)), and the exercise of the option would be deemed another purchase, but of the underlying stock that could be matched with the other 100 shares sold.

[118] While a court has yet to address the double recovery issue, it is doubtful that such a recovery would be permitted. The example, however, illustrates the problem with the current scheme.

[119] *See Portnoy v. Seligman & Latz, Inc.*, 516 F. Supp. 1188 (S.D.NY 1981)

[120] *See Seinfeld v. Hospital Corp. of America, supra*, where the court stated: "The courts have strayed because they have viewed the intervening event—the exercise of the option for stock—as an independent purchase. This is incorrect. Because the option holder already owns the right to purchase the stock at a fixed price, his decision to actually exercise the option does not provide him the ability to earn insider profits and thus does not constitute a section (b) 'purchase'." 685 F. Supp. at 1066.

[121] When the exercise price for a derivative security is less attractive than the market price (higher in the case of call options or lower in the case of put options), the option is considered out-of-the-money. If the exercise price and market price are the same, the option would be considered at-the-money and if the exercise price is more attractive than the market price, the option would be considered in-the-money.

[122] The Internal Revenue Service, in certain cases, considers an exercise as a taxable event (*see* IRC §§ 83(b), 421–425 (1986)); however, the purposes of section 16 are different from the purposes of the tax code. *See Greene v. Dietz*, 247 F.2d 669, 694 upon securities transactions is irrelevant to the Commission's determination to exempt a type of transaction).

[123] Two purchases, one of the option and one of the underlying security, would be reported so that shareholders could monitor the insider's actual holdings, even if the reporting was deferred to the annual Form 5.

[124] This would include derivative securities that are exercisable or convertible into other derivative securities that are, in turn, exercisable for the same underlying security.

[125] For example, an insider writes—that is, sells—a standardized call option for $2 per share. Three months later it expires worthless and the insider profits the full $2 per share.

security and issuance of a new security and would not be exempt, unless satisfying the exemption for redemptions in proposed Rule 16b–4.[126] An extension of a derivative security that is about to expire would be viewed similarly. Comment is solicited on whether the proposed treatment of extensions of derivative instruments would affect the considerations under which such extensions commonly are made.

A grant of an option may be viewed as a sale of the derivative security by the writer of the option, if consideration is received for the option. The courts have stated generally that writing an option is not a sale unless an exercise of the option is compelled economically through a sufficiently large downpayment.[127] However, that analysis has evolved in the context of viewing the exercise of options as an acquisition or disposition subject to section 16(b) liability. Given the theory underlying the proposed rules, that transactions in the derivative securities generally should be viewed for Section 16 purposes as proxies for transactions in the underlying securities, the proposed rules would treat the writing of a put or call option as an acquisition or disposition of the underlying security subject to section 16(b).

b. *Determination of profit.* As a result of the proposed treatment of derivative securities, there will be short-swing purchases and sales involving both derivative securities and underlying securities or two different types of derivative securities. For ease of administration, the Commission is proposing alternative rules to assist courts in calculating short-swing profits in such cases.

The Commission recognizes that the measurement of short-swing profits in transactions involving derivative securities can be a source of substantial confusion and complexity in actions brought pursuant to section 16(b). The difficulty in assessing short-swing profits in transactions involving derivative securities arises from two distinct sources.

First, section 16(b) of the Act specifically provides for recovery of short-swing profits "realized" by an insider "from any purchase or sale, or sale and purchase, of any equity security of such issuer." Thus, if an insider realizes profits from a transaction involving derivative securities, but that profit is not attributable to changes in the price of the underlying equity, then it can be argued that those short-swing profits should not be subject to recovery under section 16(b).

For example, suppose an insider purchases a convertible instrument on January 1 when the price of the underlying security is $50 per share. The price of the underlying equity remains at $50 for all of January. By February 1, however, interest rates decline sharply and the insider sells the convertible at a profit. The profit realized by the insider in this transaction appears to be attributable to changes in interest rates, and not to changes in equity prices that could be related to the sort of insider abuse that Congress intended to prevent through the adoption of section 16(b). Accordingly, it could be argued that profit recovery techniques applied in transactions involving derivative securities should ideally separate profits attributable to changes in the price of the underlying equity from profits attributable to changes in interest rates or other factors.

The second source of difficulty in calculating damages in short-swing transactions involving derivative securities arises from the inherent complexity of these instruments. For example, the value of a call option depends on the price of the underlying stock, the exercise price of the option, prevailing interest rates, the option's time to expiration, and the volatility of the underlying equity.[128] Even if there is no change in the price or volatility of the underlying equity, the value of the option will change simply because the time to expiration changes or because interest rates change. Instruments that are more complex than a straightforward call option will be correspondingly more difficult to value. For example, the value of convertible bonds and convertible preferred stocks contains a fixed income component that is priced like a bond and a warrant or option on the underlying equity.[129] It could be argued that a short-swing profit rule should focus on the profits earned from the warrant or optionlike component of such an instrument and separate out profits attributable to changes in the value of the bond-like component.

Substantial progress has been made in the valuaiton of options and derivative instruments, and techniques such as the Black-Scholes option valuation formula and its progeny are now widely used by traders in the marketplace.[130] Indeed, many traders who rely on these rather intricate mathematical formulas are not mathematically sophisticated and "are not for the most part trained in the formula's mathematical derivation; they just use a specially programmed calculator or set of tables to find the value of [an] option."[131]

The Commission recognizes, however, that the interests of precision must be balanced against the costs of computation. The interests of justice and Congress' purpose in adopting section 16(b) will not be served by turning every case involving derivative instruments into a battle of experts over competing models of option valuation. Accordingly, the Commission seeks to provide certain benchmarks or rules of thumb to be applied in short-swing transactions involving derivative securities. These benchmarks, or rules of thumb, are not meant to preclude reliance on more detailed evaluation techniques when circumstances warrant.

Under Alternative A, proposed Rule 16b–6(d)(1) would provide a benchmark measure of recovery in relatively simple transactions involving purchases and sales of the same derivative instrument (*e.g.*, the purchase and sale of call options with identical strike prices and expiration dates—the opening and closing of a call option position—or the purchase and sale of the same series of convertible debentures). Under these circumstances, the actual prices realized are likely to provide reasonable benchmarks for a seciton 16(b) short-swing profits calculation. Changes in valuation due to change sin interest rates, the passage of time, or other factors are likely to be dominated by changes in valuation due to changes in the price or volatility of the underlying equity—factors that Congress intended to address through adoption of section 16(b). In circumstances where this benchmark is likely to misstate the short-swing profits attributable to changes in the price or volatility of the underlying equity, proposed Rule 16b–6(d)(2) would provide for the application of more precise measurement techniques. The Commission requests comment on the appropriateness of this

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[126] In many cases, this type of stock swap will not result in a short-swing profit because the purchase and sale will take place at the same time. Further, if the swap was made pursuant to an employee benefit plan satisfying Rule 16b-3, the acquisition of the new security would be exempt.

[127] *See Kern County Land Co. v. Occidental Petroleum*, 411 U.S. 582, 601 (1973); *Bershad v. McDonough*, *supra*.

[128] *See, e.g.*, R.A. Brealey & S.C. Meyers, *Principles of Corporate Finance* 484, Table 20–2 (1988, 3d ed.).

[129] *See e.g.*, G. Gastineau, *The Options Manual* 233 (1988, 3d ed.).

[130] *See, e.g.*, Brealey & Meyers, *supra* n. 128; J. Cox & M. Rubinstein, *Options Markets* (1985); Gastineau, *supra* n. 129.

[131] Brealey & Meyers at 488.

proposed benchmark and suggestions regarding other suitable approaches.

Proposed Rule 16b–6(d)(2) of Alternative A would address more complicated situations involving purchases and sales of derivative securities that do not have identical financial characteristics, as well as combined purchases and sales of derivative securities and underlying securities. For example, an insider may but call options and then sell convertible debentures, or buy put options and then buy the underlying equity. Rule 16b–6(d)(2) sets the difference in price of the underlying security on the relevant trade dates as the maximum potential recovery. For example, if on January 1 an insider buys call options covering 1,000 shares when the underlying equity is trading at $50 per share and on February 1 sells debentures convertible into 500 shares when the underlying equity is trading at $60 per share, the maximum recovery in this situation would be $5,000 (the $10 per share change in valuation of the underlying equity between January 1 and February 1 multiplied by the 500 share equivalents purchased and then sold in the derivative securitites transactions).

This measure of maximum recovery is most likely to approximate actual short swing profits in situations in which the purchases and sales involve derivative instruments that are deep in the money. This maximum recovery measure is likely to overstate short swing profits when at least one of the instruments purchased or sold was out of the money at the time of the transaction. This measure of maximum recovery does, however, provide a reasonable ceiling on profit recovery because, absent sharp changes in the volatility of the underlying security, the value of the option component of a derivative security will increase or decrease by no more than $1 for every $1 change in the value of the underlying equity.

Proposed Rule 16b–6(d)(2) also provides a rule of thumb for approximating short-swing profits in situations involving short-swing purchases or sales of dissimilar derivative securities. This rule of thumb would approximate short-swing profits by calculating the profits that would have been realized had the transaction involved only the security that was actually purchased or only the security that was actually sold. Thus, consider the previous example of a purchase of a call option covering 1,000 shares followed by the sale of debentures convertible into 500 shares. The short-swing profits realized in this transaction could be approximated either by (1) calculating the price that would have been received on February 1 had the insider sold call options covering 500 shares at the same strike price as the options bought on January 1, and matching those proceeds against the January 1 purchase, or (2) calculating the price that would have been paid on January 1 had the insider purchased convertible debentures covering 500 shares and matching that acquisition cost against the February 1 sale. In effect, this rule of thumb translates the transaction that actually occurred into matched transactions in identical derivative securities. The rule of thumb then applies the valuation method proposed in Rule 16b–(d)(1) to the reconstructed transaction.

The Commission requests comment on the appropriateness of the benchmarks and rules of thumb contained in proposed Rule 16b–6(d)(2) of Alternative A and specifically seeks discussion of situations in which these guidelines may be inappropriate or should be modified, as well as suggestions for further clarification that should be provided by the rule. The Commission also requests comment providing suggestions for other benchmarks or rules of thumb that can usefully be employed in situations involving purchases and sales of derivative instruments with dissimilar characteristics, or combined transactions involving both derivative securities and underlying securities.

The Commission recognizes, however, that benchmarks and rules of thumb are not appropriate in all situations. Accordingly, proposed Rule 16b–6(d)(3) of Alternative A would provide that, to the extent practical and necessary in order to provide an equitable measure of recovery, short-swing profits may be calculated through the application of more advanced valuation techniques, including the Black-Scholes model and its progeny, that specifically adjust the valuation of derivative securities for changes in a wide variety of factors. The Commission requests comment on the application of these valuation techniques in actions arising under section 16(b), whether more precise guidance regarding the application of these techniques can or should be provided, and any other matters relating to the method of calculating recoveries under section 16(b) for transactions involving derivative instruments.

As an alterative to the above measure of recovery, the Commission proposes a simple measure of recovery to cover all types of deriviate securities, which is to be used in situations involving two different types of securities. Alternative B would define profits based upon the price movement in the underlying security during the short-swing period in question.

The time of day of the transaction is important in determining profit because the price could fluctuate significantly during the day. Thus, if the convertible preferred was purchased in the morning, it is important to ascertain the value of the underlying stock at the same time.[132] If, for example, the underlying stock was always valued at the end of the day, the price could change enough to defeat the purpose of a standarized measure.[133]

While a more complex rule, such as Alternative A, might result in a more precise measure of profit, Alternative B would provide a simple measure of short-swing profit while leaving litigants free to propose and the courts free to adopt alternative measures of recovery.

Commenters should address which alternative rule is preferable. In addition, commenters are requested to address whether the calculation of profit is best left to the evolution of case law before the courts.

4. Put Options

For purposes of section 16(b), a put option would be the mirror image of a call option. Acquisitions of put options would be considered sales of the underlying securities. Thus, a purchase of stock and a purchase of a put option, within six months, would be considered a short-swing transaction, subject to section 16(b). The exercise of a put option would be deemed an exempt disposition of the put option (if the option was in-the-money) and an exempt sale of the underlying securities. Thus, in-the-money put options would be eligible for the exercise exemption of proposed Rule 16b–6(b) and out-of-the-money puts would not. The rationale for the exemption would be the same as for call options, discussed above. Finally, the writing of a put option would be deemed a purchase of the underlying securities, as establishing a call equivalent position.

C. Short Sales

There has been uncertainty concerning the application of the short

[132] This could be done by contacting the exchange or quotation dissemination service. Most securities underlying derivative securities are publicly traded and subject to last sale reporting. *See, e.g.*, 17 CFR 240.9b–1 (standardized options).

[133] For example, an insider could buy stock at $10 per share in the morning, but by the end of the day bad news might send the price down to $7. If the insider were to sell an option one month later when the stock was at $9, a proposed measure based upon closing prices would yield a two dollar short-swing profit, when the insider actually lost one dollar.

sale prohibitions of section 16(c) to derivative securities.[134] In the absence of a rule, there has been only one judicial decision addressing the issue.[135] In that case the court found that the sale of a call option and a put option did not violate Section 16(c) for three reasons: (1) The writing of the option was not viewed as a rule of the underlying stock; (2) the writer of an option cannot control when an option is exercised, which enables the seller to qualify for the good faith "undue inconvenience" exemption of the provision; and (3) the Commission had failed to regulate trading in options. In the 26 years since the case was decided, much has changed. In particular, derivative securities have become more widespread and options are now traded on exchanges in accord with Commission regulations.

The proposed treatment of derivative securities is intended to subject derivative securities to the short sale prohbitions of section 16(c). The potential for abuse is not less when insiders establish put equivalent positions, rather than selling short underlying securities. Indeed, options were instrumental to insiders in the notorious "bear raids" of the early 1930's.[136] A reading of the legislative history indicates the Congress did not want insiders, with access to inside information, speculating in their company's stock by acquiring short positions. Further, Congress did not want insiders to take short positions in conflict with their fiduciary duties, because insiders could use short positions to manipulate a stock price or to profit by a fall in the price of their company's stock. Derivative securities can be used to establish a short position, even where the insider has large stock holdings. The proposed rule thus would ensure that an insider does not have an economic interest in the poor performance of the issuer's stock.

Under the proposal, insiders could establish put equivalent positions as a hedge [137] against underlying stock positions. Proposed Rule 16c–4(a) would permit an insider to conduct these transactions, as long as the securities underlying those derivative securities do not exceed the underlying securities otherwise owned by the insider.[138]

This permits insiders flexibility in trading derivative securities. The exemption would be lost if the insider later sold enough underlying securities that the securities underlying the put equivalent positions exceeded the number of underlying securities otherwise owned.[139]

The proposed rule would permit trading derivative securities against a long underlying security position, but would not permit selling underlying securities short against derivative securities. The prior position is a legitimate conservative hedging strategy, whereas the latter position is more akin to true short selling.

The most abusive investment pools of the early 1930's (that involved short selling) involved short selling of the stock while holding options to protect against a price increase. In each pool mentioned in the legislative history, Congress was quite concerned that the pool insiders would not exercise the option but would instead repurchase the stock in the open market. This practice was viewed as unethical.[140] Based on this Congressional concern, no relief is proposed for short selling against derivative securities. Comment is requested, however, as to whether it is appropriate to differentiate between short selling against derivative securities and trading derivative securities against stock.

V. Employee Benefit Plans

Section 16 can present an obstacle to corporate compensation plans that distribute or confer rights in employer securities. Distributions from such a plan or transactions within the plan are generally deemed to be purchases or sales within the meaning of section 16. However, the Commission, aware that some benefit or retirement plan transactions do not afford an opportunity for abuse of inside information, adopted current Rules 16a-8(b),[141] 16a-8(g)(3), and 16b-3[142] to exempt specified transactions. The first two rules provide an exemption from both reporting and short-swing profit recovery for designated intratrust or intra-plan transactions. In contrast, Rule 16b-3 applies to distributions from a benefit plan and is an exemption from short-swing profit recovery only.

A. Current Rules

Current Rule 16a-8(g)(3) provides an exemption for intra-trust transactions in indirect interests in portfolio securities held by "a pension or retirement plan holding securities of an issuer whose employees generally are the beneficiaries of the plan." The Commission has defined the term "pension or retirement plan" to mean a plan "in which participants generally are not entitled to receive a distribution until their death, retirement or other termination of employment." [143] The exemption is not available to plans with withdrawal provisions unless significant penalties are imposed upon withdrawal.[144] The exemption would be retained under proposed Rule 16a-5(d)(2)(iii).[145] Comment, however, is solicited on whether the exemption should be available only for transactions made without the prior approval or direction of the insider, paralleling proposed Rule 16a-8.

Current Rule 16b-3 provides an exemption for distributions of employer securities from plans that have been approved by shareholders and are administered by disinterested persons. It also permits participants to tender shares of stock to the employer to exercise an option and to cash-out SARs under specified circumstances.

B. Proposed Rules

1. General Scheme

The proposed amendments would effect three major changes to current Rule 16b-3: (1) Deletion of the shareholder approval requirement; (2) increased disinterested administration requirements; and (3) addition of a six-month holding requirement for derivative securities.

2. Plan Awards and Distributions

a. *Shareholder approval.* Availability of current Rule 16b-3 is conditioned on the issuer's securing shareholder approval of the compensation plan and any material amendments to the plan.[146] Compensation plans must be described in the issuer's proxy statement, [147] and shareholder sanction

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[134] Section 16(c) provides, in part, that it is unlawful for insiders to directly or indirectly sell any equity securities that they do not own or do not deliver within 20 days. There is a good faith exception. Short selling is discussed further in Section VI.D., *infra*.

[135] *Silverman v. Lando*, 306 F.2d 422 (2d Cir. 1962).

[136] The options were granted to the insiders so they would have protection when they sold short. If they were unsuccessful in manipulating the price down and were forced to cover their short sales, they could exercise the options and acquire the necessary stock. *See* Stock Exchange Practices at 51–52.

[137] The term "hedging" means lessening the risk of loss by offsetting the risk of a securities position with an opposite position in a related security.

[138] *See* 17 CFR 240.3b–3 (definition of short sale).

[139] Proposed Rule 16c–4(b).

[140] Stock Exchange Practices at 51–52.

[141] The Rule 16a-8(b) intra-trust transaction exemption applies to trusts generally, but is commonly used for benefit plans. For a discussion of that exemption, see Section III.A.5.e. *supra*.

[142] 17 CFR 240.16b-3.

[143] Release 34–18114 Q. 69 n.86.

[144] *See* Release 34–18114 Qs. 70, 71.

[145] *See* Section III.A.5.d., *supra*.

[146] 17 CFR 240.16b-3(a).

[147] 17 CFR 229.402.

of plan provisions has been viewed as a measure that deters insiders from implementing compensation plans that allow for abuse of inside information.

The shareholder approval requirement has been criticized as unclear, burdensome, and ineffective as a deterrent. The need to determine whether an amendment is material has resulted in a multitude of interpretive requests, many provoked by changes in plans in response to changes in the tax laws.[148]

The proposed rules would delete the requirement for shareholder approval and place greater reliance upon the disinterested administration requirement to assure that opportunities for abuse are minimized. Comment is requested, however, on whether the shareholder approval requirement should be retained or whether there are other mechanisms that provide better safeguards.

b. *Disinterested administration.* Under current Rule 16b-3, decisions regarding participation in and awards under an exempt plan must be made either (1) by a committee, the majority of whom are disinterested persons, or (2) by a pre-established formula.[149]

Under the proposed rule, the definition of "disinterested person" would be amended. Currently, a disinterested administrator is one who is not eligible for participation in any discretionary company plan and has not participated in any such plan for the past year. To be a disinterested administrator under the amended definition, a person could not participate in any discretionary plan of the issuer for the year before the transaction and could not be eligible to participate in any discretionary plan for the three years subsequent to the transaction. The exemption would be lost if an administrator failed to satisfy the conditions of the rule; loss of the exemption would not, however, be retroactive.

Given the multiplicity of plans an issuer frequently has, the Commission requests comment as to whether the rule should prohibit prior and/or future participation only in the plan as to which the person is an administrator.[150] The Commission recognizes the administrative burdens the proposed rule will impose, and requests comment on alternative mechanisms that would serve adequately the purposes of section 16 and be more efficient from the issuer's perspective. The Commission also requests comment on whether the proposed prohibition on subsequent participation would be equally effective if it covered only a shorter period, such as one or two years.

The disinterested administration requirement in proposed Rule 16b-3(b)(1)(i) has been further revised to require an administrator to exercise sole discretion in administering the plan. This is similar to the current requirement in Rule 16b-3(e)(3)(ii) for SARs. Current Rule 16b-3(b) does not have a sole discretion requirement and, thus, the participant is permitted more investment control.

As an alternative, proposed Rule 16b-3(b)(1)(ii) provides that the disinterested administration requirement is satisfied if insiders exercise no control or discretion in awarding securities under any plan in which the administrator participated during the past year or participates in the following three years.[151] In these non-discretionary plans, securities awards are determined automatically by application of a formula. Given the proposed deletion of the shareholder approval requirement, the proposed rule would limit the number of amendments to the formula that could be made to one every six months. Comment is solicited as to whether amendments should be permitted more often if necessary to comport with tax law changes.

c. *Plan limitations.* Current Rule 16b-3(c), [152] which provides that plans must limit dollar and security awards to a fixed amount, would be deleted as unnecessary. The provision was intended to prevent adoption of open-ended plans that could avoid shareholder approval requirements. Since the Commission proposes elimination of the shareholder approval requirement, this safeguard would be unnecessary.

The proposal would add a new requirement that derivative securities be held six months.[153] The change would be added to the definition of "plan" in proposed Rule 16b-3(c)(1)(ii), because this definition already imposes the requirement that securities awarded under a plan must be non-transferable. Because acquisitions of stock upon the exercise or conversion of a derivative security would be exempted under proposed Rule 16b-6(b), as discussed above, absent such a six-month holding requirement, short-term options, warrants, or rights could be used to undermine the purposes of section 16. For example, an acquisition of an option under the rule would be an exempt purchase and the immediate exercise of the option could be an exempt purchase of the underlying securities so that the immediate sale of the underlying stock would not result in a short-swing profit.

d. *Stock Appreciation Rights.* SARs appear in many different forms, but they generally have two common elements: The receipt of cash in tandem with or instead of stock, and a value governed by the market price of an underlying equity security. Current Rule 16b-3(e)[154] provides a safe harbor exemption from Section 16(b) liability for cash settlements of SARs. The safe harbor protects both the settlement for cash and the disposition of the SAR. A safe harbor was deemed necessary for the exercise of SARs to avoid the possibility that the exercise of an SAR would be determined to be a purchase of the underlying security, while the receipt of cash, instead of stock, would be deemed a concurrent sale of that security.[155] Thus, all profit resulting from the exercise of an SAR could be deemed to involve a short-swing profit subject to recovery under section 15(b). An SAR exercised for stock was simply viewed as a non-exempt purchase of securities.

The current safe harbor for cash-settled SARs was crafted with four conditions: (1) Information about the issuer must be current; [156] (2) the SAR must not be exercised in the first six months after grant; [157] (3) the disinterested plan administrators must have sole discretion over the form of payment or approval of the participant's election; [158] and (4) an election to

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[148] *See, e.g., Centex Corp.* (Nov. 7, 1988) (withholding taxes); *Hibernia Corp.* (Nov. 23, 1987) (amendments to conform with recent changes in tax law).

[149] 17 CFR 240.16b-3(b). "Disinterested person" is defined in 16b-3(d)(3), which would be redesignated proposed Rule 16b-3(c)(3).

The disinterested administration requirement was adopted in 1949 [Exchange Act Release No. 4253 (May 6, 1949) [14 FR 2522]], deleted in 1956 [Exchange Act Release No. 5312 (May 21, 1956) [21 FR 3646]], and reinstated in 1960 [Exchange Act Release No. 6275 (May 26, 1960) [25 FR 4901]].

[150] The staff has interpreted the rules to permit participation in other plans of the issuer that are not subject to the discretion of any individual or committee (non-discretionary plans). *See, e.g., Hadco Corporation* (Oct. 19, 1987). This interpretation would be codified in proposed Rule 16b-3(c)(3).

[151] This is similar to current Rule 16b-3(b)(1)(iii).

[152] 17 CFR 240.16b-3(c).

[153] The general six month holding period requirement for options in current Rule 16b-6 would be rescinded.

[154] 17 CFR 240.16b-3(e).

[155] *See* Exchange Act Release No. 13097 (Dec. 22, 1976) [52 FR 754]; *Matas v. Seiss*, 467 F. Supp. 217 (S.D.NY. 1979 (an exercise of an SAR can be a simultaneous purchase and sale).

[156] 17 CFR 240.16b-3(e)(1).

[157] 17 CFR 240.16b-3(e)(2).

[158] 17 CFR 240.16b-3(e)(3)(ii).

exercise the SAR must be made during the period beginning on the third business day and ending on the twelfth business day ("10 day window") following the release of the periodic financial information required under section 13 of the Exchange Act.[159]

Under the proposed rules, the acquisition by an insider who chose to receive stock in exercising an SAR that offered a cash-or-stock election would be exempt from short-swing profit liability.[160] If the insider chose to receive cash, an exemption from section 16(b) liability would continue to be provided under proposed Rule 16b-3(d), if the conditions imposed currently were satisfied. The exemption for the cash election protects against liability arising from an analysis that the elected cash settlement was a simultaneous purchase and sale of the equity securities. While proposed Rule 12b–6(b) would exempt the hypothetical acquisition, there would be no exemption for the hypothetical sale if not for that afforded by proposed Rule 16b–3(d).

Cash settled SARs issued under a section 16b–3 exempt plan that do not provide the holder with a stock election would be wholly exempt from section 16.[161]

e. *Effect of proposed changes on pre-existing plans.* The proposed changes to Rule 16b–3 could compel registrants to amend their benefit plans to comply with the proposed changes relating to disinterested administration and the six month holding period. Comment is solicited as to the need for a phase-in period or some other form of temporary relief should the proposed rules be adopted. Comment is further solicited as to whether the proposed changes should have only a prospective application, so that a plan need not be amended until there is a material change in the plan, which under the current rules requires shareholder approval. In such case, the issuer could avoid the necesssity for shareholder approval (unless required by the terms of the plan) by amending the plan to comply with the new rules.

f. *Other changes.* Current Rule 16b–3(d) [162] defines several operative terms used in the Rule. The definitions would be retained without change in proposed Rule 16b–3(c), except that the definitions of "plan" and "distinterested person" would be amended to conform with the changes described above. It should be noted that the definition of "exercise of an option, warrant or right" in current Rule 16b–3(d)(2) has been retained as proposed Rule 16b–3(c)(2). Although exercises generally would be exempt under proposed Rule 16b–6(b), this definition was retained because the transactions enumerated are deemed to be entirely outside the purview of section 16, both for reporting and liability purposes.

In addition, the introductory paragraph to Rule 16b–3 would be simplified and designated proposed Rule 16b–3(a). No substantive change is intended.

VI. Synopsis of other changes

The other proposed changes are discussed in the order in which they would appear if the proposed amendments are adopted. A chart showing how the current rules would be restructured is included in Section IX below.

A. Rules under Section 16(a)

1. Definitions

a. *Equity security of such issuer.* Proposed Rule 16a–1(f) would define "equity security of such issuer" to include derivative securities overlying the issuer's equity securities, regardless of whether the derivative securities are issued by that registrant. Thus standardized and other third party options would be included in the definition, which codifies the Commission's interpretive position.[163] While standardized options had not been developed when section 16 was enacted, they are an equity security with great potential for abuse because they are short-term vehicles which offer the ability to leverage small investments into great profits. Consistent with the proposed treatment, Congress showed concern with all instruments known at the time of enactment (including issuer options) which provided an opportunity for abuse.[164]

b. *Owner of any security of the issuer.* Proposed Rule 16a–1(h) would define "owner of any security of the issuer" for purposes of section 16(b) short-swing profit recovery actions. The statute provides that, if the issuer fails to bring suit within 60 days of demand, such an owner may institute suit in the name and on behalf of the issuer to capture short-swing profits.

The section 16(b) action is similar to a derivative action under the Federal Rules of Civil Procedure.[165] However, there are differences, primarily with respect to standing. Unlike standard derivative actions, there is no requirement that a plaintiff have held the shares at the time of the alleged short-swing trading.[166] In fact, a plaintiff may achieve standing by purchasing a nominal number of shares of the issuer's stock subsequent to the discovery of a short-swing transaction.[167] Currently, the plaintiff is required to hold these shares throughout the legal process.[168] As set forth below, this result would be changed if the plaintiff ceased to be an owner because of a statutory merger or consolidation or other transaction over which the individual shareholder had no control.

When an issuer merges with and becomes a wholly-owned subsidiary of another company, shareholders of the issuer are compelled to dispose of their securities, receiving either cash or securities of the acquiring company. One court permitted a former shareholder of the issuer and current shareholder of the parent to bring a section 16(b) action when the issuer ceased to exist as a separate entity.[169] Where the issuer continues to exist as a wholly-owned subsidiary, however, the courts have uniformly denied standing to former shareholders and shareholders of the parent.[170] Thus, potential section 16(b) defendants in the acquired companies are shielded from liability, unless the parent decides to sue the former insiders of its subsidiary.

This result undercuts the policing function played by shareholders in section 16(b) actions. To preserve Congress' intent, the proposed rules would provide standing to the former public shareholders whose equity securites have been acquired in a business combination or similar corporate transaction over which the individual shareholder had no control.

The proposed rule would define "owner of any security of the issuer" as either a current beneficial owner of securities of the issuer (at the time of filing the suit) or a former beneficial owner who was compelled to dispose of

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[159] 15 U.S.C. 78m (1982).

[160] *See* proposed Rule 16b–6(b).

[161] *See* proposed Rule 16a–1(c), discussed at Section IV.A.1., *supra.*

[162] 17 CFR 240.16b–3(d).

[163] *See* Release 34–18114 Qs.21, 54.

[164] *See generally* Stock Exchange Practices at 51–52 (short selling against options); *id.* at 7541–7543 (perferred stock).

[165] Fed. R. Civ. P. Rule 23.1.

[166] *See, e.g., Blau v. Mission Corp.*, 212 F.2d 77 (2d Cir.), *cert. denied*, 347 U.S. 1016 (1954) (distinguishing Rule 23.1); *see also Portnoy v. Kawecki Berylco Industries, Inc.*, 607 F.2d 765, 767 n.3 (7th Cir. 1979).

[167] *Morales v. Great American Corp.*, 445 F. Supp. 869 (M.D. La. 1978).

[168] *Portnoy v. Kawecki Berylco Industries, Inc., supra.*

[169] *See Blau v. Oppenheim*, 250 F. Supp. 881 (S.D.N.Y. 1966).

[170] *Untermeyer v. Valhi, Inc.*, 841 F.2d 26 (2d Cir.), *cert. denied*, 109 S. Ct. 175 (1988); *Lewis v McAdam*, 762, F.2d 800 (9th Cir. 1985) (per curiam); *Portnoy v. Kawecki Berlyco Industires, Inc., supra.*

the securities because of a business combination resulting in the issuer's becoming a non-reporting company.[171] This would address situations where the issuer becomes a subsidiary of another company as well as situations involving leveraged buy-outs and other forms of securities ownership redistribution. The standing would be determined at the time of suit and would not be affected if the issuer returned to reporting status during pendency of the action.

Comment is requested whether the definition should include only those former shareholders who are current shareholders of the parent company that controls the former company. The former shareholder who is a shareholder of the parent company that would receive the short-swing profit could be expected to have an economic interest in pursuing the case. Comment is also requested on alternative definitions of publicly owned company other than one referring to reporting status. The purpose of the definition is to assure that a section 16(b) action could be brought by security holders unaffiliated or unassociated with the controlling person.

2. Distributions

Current Rule 16b–2[172] would be moved from the section 16(b) rules to the Section 16(a) rules because there is little need for reports that disclose trades carried out as part of a distribution. The Commission promulgated Rule 16b–2 to exempt from section 16(b) transactions by persons involved in a distribution if three conditions are met: (1) The person must be in the business of distributing substantial blocks of stock and participating in the underwriting in good faith and in the ordinary course of business; (2) the security involved must be part of a substantial block of stock acquired with a view to distribution or the security must have been purchased to cover an over-allotment or to stabilize the market price; and (3) non-insider underwriters must participate in the distribution on terms as favorable, and to an equal extent, as the underwriters that are deemed to be insiders of the issuer ("equal participating requirement").[173]

The Commission proposes to eliminate the equal participation requirement. Transactions can be structured to avoid this requirement,[174] and it appears to address competitive concerns rather than the potential for abuse of inside information.

As with the current rule, proposed Rule 16a–17 would apply only to distributions and not to sales from an investment account of the seller.[175]

3. Exemptions for Both 16(a) and 16(b)

Current Rule 16a–10[176] would be retained with one minor change, the inclusion of the clause "except as provided in § 240.16a–6." The Rule would provide generally that any transaction exempted by a rule pursuant to section 16(a) likewise will be exempted from section 16(b), with the exception of proposed Rule 16a–6, which would provide a reporting deferral for small acquisitions, rather than an exemption.

B. Exemptive Rules under Section 16(b)

1. Transactions Approved by Regulatory Authority

Proposed Rule 16b–1 would exempt from the operation of section 16(b) specified transactions effected by issuers registered under the Investment Company Act and the Public Utility Holding Company Act, as well as exchanges of securities by persons subject to the Interstate Commerce Act ("Commerce Act").[177] The proposed rule would combine the current provisions of Rules 16b–1,[178] 16b–4,[179] and 16b–10[180] into a single rule without substantive change.

Current Rule 16b–1 exempts trades by registered investment companies where both the purchase and sale are exempt from the provisions of section 17(a) of the Investment Company Act, by order of the Commission pursuant to section 17(b).[181] Rule 16b–4 now exempts trades by public utility holding companies, or their subsidiaries, where both the purchase and sale have been approved or permitted by rules pursuant to the Public Utility Holding Company Act. Existing rule 16b–10 exempts exchanges by railroads that are approved by the Interstate Commerce Commission ("ICC") if the securities are acquired by persons subject to Part One of the Commerce Act, the acquiror is ordered to dispose of all securities exchanged for acquired securities, issuance of the securities was approved by the ICC pursuant to section 20(a)[182] of the Commerce Act, and the acquiror has transferred voting rights of the issuer's stock to a bank or trust until final disposition.

Proposed paragraph (a) of Rule 16b–1 would contain one clarifying change, to reflect the current staff interpretation that the exemption from section 16(b) embodied in current Rule 16b–1 is available where an issuer has not obtained a formal order from the Commission pursuant to the Rule's requirements, but instead meets the conditions of an exemptive rule under section 17(a) of the Investment Company Act.[183]

2. Bona Fide Gifts and Inheritance

Proposed Rule 16b–5 would exempt all acquisitions and dispositions via bona fide gifts or the laws of descent. Current Rule 16a–9 provides an exemption from section 16(b) for gifts under $10,000 and a reporting deferral (until the next required Form 4) for purposes of section 16(a).[184]

a. *Gifts.* There has been some uncertainty as to whether a gift is a sale for purposes of section 16. The issue has been addressed in three cases, all of which found that a bona fide gift was not a sale within the meaning of section 16.[185] Yet, the presence of a partial exemption for small gifts in Rule 16a–9 may undercut the holdings of those cases. The proposed rule would expand the exemption explicitly to cover all bona fide gifts. Bona fide gifts are those that are not required or inspired by any legal duty or that are in any sense a payment to settle a debt or other obligation,[186] and not made with thought of reward for past services or hope for future consideration. Employee benefit plan awards would not be considered gifts.

The Commission proposes to eliminate the reference to gifts in Rule 16a–9 and create a short-swing profit exemption in proposed Rule 16b–5(a), with deferred reporting required under proposed Rule 16a–3(f). Bona fide gifts present less likelihood for opportunities for abuse. Comment is solicited on the appropriateness of this exemption.

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[171] The two year statute of limitations would not be affected.

[172] 17 CFR 240.16b–2.

[173] *See generally Rules 16b–2 and 16c–2* (Oct. 6, 1987).

[174] Underwriters or dealers can sell the securities on an agency, rather than a firm commitment, basis, or they can delay registration under section 12 until after the initial distribution.

[175] *See generally* Release 34–16114 § IV.B.

[176] 17 CFR 240.16a–10.

[177] 49 U.S.C. 10101–11917 (1982).

[178] 17 CFR 240.16b–1.

[179] 17 CFR 240.16b–4.

[180] 17 CFR 240.16b–10.

[181] 15 U.S.C. 80a–17(a), 80a–17(b) (1982).

[182] 49 U.S.C. 11301 (1982).

[183] Release 34–18114 Q.81.

[184] As noted above in Section III.B.3., the reporting deferral for small acquisitions not involving gifts is retained as proposed Rule 16a–6.

[185] *Shaw* v. *Dreyfuss*, 172 F.2d 140 (2d Cir. 1949), *cert. denied*, 337 U.S. 907 (1949); *Lewis* v. *Adler*, 331 F. Supp. 1258, 1268 (S.D.NY 1971); *Truncale* v. *Blumberg*, 80 F. Supp 367 (S.D.NY 1948).

[186] *See* Staff Accounting Bulletin 65 n.6 (Nov. 5, 1986).

b. *Inheritance.* There is no current rule to exempt transactions which occur as a result of the laws of descent. Under proposed Rule 16b–5(b), the Commission would exempt from section 16(b) both acquisitions and dispositions of equity securities through will or testament.[187] These transactions, however, would be disclosed on Form 5.

3. Dividend or Interest Reinvestment Plans (DRIPs)

Current Rule 16a–11 [188] provides an exemption from both section 16(a) reporting and section 16(b) profit recovery for dividend or interest reinvestment made pursuant to a plan available on the same terms to all holders.[189] While there are those who advocate extending the rule to exempt additional cash contributions to these plans, the proposed rules would not do so. Additional capital contributions call for an investment decision that could benefit from access to non-public information. Comment is requested, however, on whether a reporting deferral until the annual Form 5 would be appropriate for these additional capital contributions, even though they are not exempt from section 16(b). In addition, proposed Rule 16b–9 would limit the exemption to one from short-swing profit recovery.[190] No other substantive changes are proposed.

C. Other Rules Affected

1. Rule 12h–2

The proposal would rescind Rule 12h–2 [191] as being no longer necessary. The rule provides an exemption from section 16 for specified pre-registration transactions, but the exemption is limited to transactions in the securities of issuers registering pursuant to Section 12 prior to November 1, 1967.

2. Rule 30f–1

Rule 30f–1 [192] of the Investment Company Act would be amended to clarify that satisfying the reporting provisions under section 16(a) would satisfy section 30(f) of the Investment Company Act as well. Additionally, the amended rule would clarify that the rules under Section 16 of the Exchange Act apply to registered closed-end investment companies within the ambit of section 30(f). The proposed change would broaden Rule 30f–1 to require proposed Form 5.

[187] *See* Stock Exchange Practices at 6558 (discussing securities passing to an estate).

[188] 17 CFR 240.16a–11.

[189] Exchange Act Release 34–18114 Q.78.

[190] *See* Section III.B.2., *supra.*

[191] 17 CFR 240.12–h–2.

[192] 17 CFR 240.30f–1.

D. Short Sale Prohibition [193]

Section 16(c) prohibits the sale of any equity security of the issuer if the selling insider either (1) does not own the security or (2) even if owning it, does not deliver it within 20 days after sale or mail it within 5 days.[194] An exemption is provided for persons acting in good faith who cannot deliver the securities in time, without undue inconvenience or expense.

Although the legislative history concerning section 16(c) is sparse, it indicates that Congress was concerned about and intended to eliminate abuses attendant on short selling. The legislative history focuses on investment pool operations conducted by certain insiders in conjunction with exchange members, which involved short selling that permitted them to repurchase shares at a much lower price.[195] These practices became known as "bear raids." In essence Congress was concerned about the manipulative effect of short selling and appeared to be troubled that insiders were taking positions that would benefit by an adverse movement in the price of the company's stock.

Total elimination of short selling was considered, but proponents argued that short sales were necessary to the market.[196] Congress decided to give the Commission general authority to regulate short selling in section 10(a) [197] of the Act, but specifically prohibited insiders from engaging in short sales.

Under the proposed rules, as described below, the three current rules under section 16(c) would not be changed substantially. Current Rule 16c–1 [198] provides an exemption for brokers who execute short sales for others, and Rule 16c–3 [199] provides an exemption for securities sold with the designation "when issued." No changes are proposed. Rule 16c–4 would be added to help eliminate the uncertainty surrounding short sales and derivative securities.[200] The rule would provide an exemption for hedging transactions with derivative securities.

Current Rule 16c–2 [201] provides an exemption for an underwriter where the sale is an over-allotment of an underwriting group and there is a good faith intention to offset the short position with a later purchase. Rule 16c–2(b) requires, similarly to current Rule 16b–2, that the insider underwriter must permit other members of the distributing group to participate equally. As with proposed Rule 16a–7, the Commission proposes deletion of the equal participation requirement of Rule 16c–2(b) as being unnecessary.

E. Market Making Exemption

Section 16(d) was added in 1964 in order to provide an exemption for over-the-counter ("OTC") market makers from sections 16(b) and (c). The exemption covers only market making transactions and excludes transactions for the market maker's investment account. There are no rules promulgated under section 16(d), although the section provides specific rulemaking authority to define "investment account." The proposed rules would not define the term, since no problems have been noted; however, the Commission solicits comment on the need for guidance in this area.

There is one aspect of section 16(d) that has been the subject of repeated interpretive requests—whether market makers are required to report transactions under section 16(a). The statute does not provide an express exemption from section 16(a) for market makers.[202] Given the changes in OTC trading and surveillance, however, the staff has issued interpretive letters exempting market makers from reporting.[203] Proposed Rule 16d–1 would codify the interpretive position. There appears to be little utility in requiring market maker reports where positions change constantly and the burden would be overwhelming.

F. Arbitrage

Section 16(e) provides an exemption from all of section 16 for bona fide arbitrage transactions. The Section gives the Commission rulemaking authority to define "bona fide arbitrage," but the Commission has not exercised this

[193] *See* discussion about short selling and derivative securities in Section IV.C., *supra.*

[194] The alternative delivery provision appears to have been a response to comments from the San Francisco Stock Exchange that, when doing business with investors in the Philippines, Hawaii, and other islands, it was difficult to ensure that securities could be delivered in time. Stock Exchange Practices at 6836.

[195] *See* Stock Exchange Practices at 50–68.

[196] *See generally* Stock Exchange Practices at 53–55.

[197] 15 U.S.C. 78j(a) (1982).

[198] 17 CFR 240.16c–1.

[199] 17 CFR 240.16c–3.

[200] *See* proposed Rule 16c–4, discussed in Section IV.C., *supra.*

[201] 17 CFR 240.16c–2.

[202] *See* S. Rep. No. 379, 88th Cong., 1st Sess. 23 (1963).

[203] *See Prudential–Bache Securities Inc.* (December 2, 1985); *L.F. Rothschild, Unterberg, Towbin* (October 28, 1983); *see also Simon v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 482 F.2d 880, 886 (5th Cir. 1973) (court implied that a market maker need not report trades).

authority, opting instead to leave such interpretation to the courts.[204] Only one rule has been promulgated under section 16(e)[205] and it prohibits officers and directors from using the exemption because they should not be engaged in performing arbitrage functions in their company's stock.

No changes and no additional rules are proposed, but comment is solicited as to whether further guidance in this area is needed.

VII. Revisions to Forms 3 And 4

The Commission proposes several minor revisions to Forms 3 and 4 and their instructions in order to enhance their usefulness, eliminate unnecessary provisions, and conform them to the proposed changes to section 16 described in the other sections of this release.

A. Revisions Common to Forms 3 and 4

1. The instructions to the forms captioned "When Statements are to Be Filed" and "Where Statements are to Be Filed" would be combined. A sentence would be added to the combined instruction stating that reporting persons shall file a duplicate original of the form with the issuer pursuant to proposed Rule 16a–3(e).

2. References appearing throughout the forms and instructions thereto to "puts," "calls," "options," "warrants," "convertible debentures," would be deleted and replaced with a general reference to "derivative securities."

3. The sequence of items in Tables I and II of the forms would be rearranged.

4. The instruction to the forms captioned "Statement of Amounts of Securities" would be revised to clarify that only those reporting pursuant to section 17(a) of the Public Utility Holding Company Act or section 30(f) of the Investment Company Act need to report debt securities.

The instruction also would be revised to state that a person owning securities beneficially through a trust, partnership, corporation or other entity shall indicate only the amount of securities representing the person's proportionate interest in the transaction or holdings of that entity. At the filer's option, the entire amount of the entity's holdings may be indicated instead of the proportionate interest. Other information concerning indirect ownership of securities in this paragraph would be deleted and addressed under the instruction captioned "Type of Ownership of Securities."

5. Two categories relating to the type and nature of reporting persons' beneficial ownership of securities, rather than just one, would appear in Tables I and II of the forms. In one category, reporting persons would indicate whether their ownership is direct or indirect; in the other category, reporting persons would describe the nature of any indirect ownership of securities.

6. The instruction to both forms captioned "Nature of Ownership of Securities" would be re-captioned "Type of Ownership of Securities" and revised to include all information regarding direct ownership in the first paragraph, and all information regarding indirect ownership in the second paragraph. The statements currently appearing in the second paragraph that discuss when a reporting person may be regarded as the indirect beneficial owner of securities would be deleted and replaced with a reference to proposed Rule 16a–1(a), which defines the term "beneficial owner." A statement would be added to clarify that securities holdings attributed to a reporting person due to the person's interest in a trust, partnership, corporation, or other entity are considered to be owned indirectly. A third paragraph would be added to provide information regarding disclaimers of beneficial ownership.

7. The instruction to the forms captioned "Puts, Calls, Options and Other Rights—Table II" would be recaptioned "Type of Derivative Security" and revised to state that reporting persons shall state whether a derivative security reported represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying security.

8. New columns would be added to Table II of the forms for information concerning the type and nature of ownership of derivative securities.

B. Revisions Related Only to Form 3

1. The instruction captioned "Price at Which Options may be Exercised" would be deleted.

2. Paragraph (b) of the instruction captioned "Reporting of Ownership in Certain Cases" would be revised to delete the reference to transferable warrants. The instruction currently states that transferable warrants issued by the issuer of the security subject to the warrants shall be reported in Table I; since transferable warrants are derivative securities, they would be reported in Table II of the Form 3, as revised, and no special instruction would be necessary.

The portion of the paragraph relating to convertible securities also would be revised. At present, it indicates that in reporting the ownership of a convertible security, the number of shares or units subject to the conversion privilege should be set forth in the explanation space on page 2 of the form. The revised instruction would state that only common stock convertible into another type of common stock shall be reported in this manner (*i.e.*, the common stock should be reported in Table I with an explanation on page 2 of the form that it is convertible into another type of common stock) and that all other convertible securities shall be reported as derivative securities in Table II of Form 3.

C. Revisions Related Only to Form 4

1. The instruction captioned "All Transactions to be Reported" would be re-captioned "Transactions to Be Reported" and revised to indicate that only transactions required to be reported on the Form 4, and not necessarily every transaction consummated by the reporting person, shall be so reported.

2. The instruction captioned "Character of Transaction" would be deleted. Instead, a new category captioned "Code for Character of Transaction" would be added to Tables I and II on Form 4. Reporting persons would choose a code from a list appearing on Form 4 that best identifies the character of the transaction being reported. Many types of transactions currently listed under the "Character of Transaction" caption would not have to be reported on the Form 4 under the proposed rules.

3. Paragraph (b) to the instruction captioned "Reporting of Transactions" would be revised to delete the reference to transferable warrants since, as stated in Section V.B.2 above, there is no reason to distinguish them from other types of derivative securities. The portion of the paragraph relating to the acquisition or disposition of convertible securities also would be revised in the manner set forth in Section VII.B.2. Finally, the last sentence in paragraph (b) would be deleted since conversions and exercises of derivative securities would, in most instances, be reported on Form 5 under the proposed rules.

4. Paragraph (d) of the instruction captioned "Reporting of Transactions" would be deleted. The first and second sentences in this paragraph state that certain types of derivative securities shall be reported in Table II. Since many of these transactions would be reported on Form 5, rather than on Form 4, under the proposed rules, and the revised Form 4 would indicate clearly that all

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[204] *See Falco v. Donner Foundation*, 208 F.2d 600 (2d Cir. 1953) (court defines bona fide arbitrage).

[205] 17 CFR 240.16e–1.

transactions in derivative securities shall be reported in Table II, these directions would not be necessary. The last sentence of the paragraph states that transferable warrants shall be reported in Table I; this sentence would be deleted for the same reasons set forth in Section VII.C.3 above.

5. The instruction captioned "Statement of Dates" would be deleted. Instead, the information contained in the instruction would be incorporated in the "Date of Transaction" category on the form itself.

6. The instruction currently captioned "Statement of Dates" contains a reference to stock splits. That reference would be deleted from the instructions to the revised form because stock splits would be reported on Form 5 under the proposed rules.

7. A new category captioned "Purchase or Sale Price of Derivative Security" would be added to Table II of Form 4.

8. The instruction captioned "Purchase or Sale Price of Securities" would be revised to state that if a transaction did not involve cash, the nature of the consideration given or received shall be disclosed. The current instruction states that no information regarding the purchase or sale price of securities need be given for transactions not involving cash.

The instruction to Form 4 captioned "Beneficial Ownership at End of Month" would not be revised; however, comment is solicited as to whether the commission should continue to require reporting persons to report their month-end beneficial ownership of securities in which no transactions have been conducted. In light of the fact that the proposed Form 5 would require an annual reconciliation of beneficial holdings, this month-end information may not prove as useful or necessary as in the past.

D. Special Instructions—Privacy Act of 1974

A set of instructions would be added to the instructions to both forms regarding reporting persons' disclosure of their social security account numbers. The Commission issued a release in 1975 [206] stating that, in light of section 7 of the Privacy Act of 1974, [207] it would no longer require that social security account numbers be disclosed on certain forms, including Forms 3 and 4, that collect information from or about individuals. In order to avoid the costs that would have been involved in revising the forms to include the new instructions, a special notice was prepared indicating that disclosure of social security numbers is voluntary. This notice has been furnished to all persons requesting copies of Forms 3 and 4 from the Commission. Since additional revisions to the forms are being proposed, the Commission proposes to incorporate these special instructions into the forms.

VIII. Compliance with Section 16(a)

A. Lack of Compliance with Section 16(a)

The Commission is very concerned over the widespread lack of compliance with the reporting requirements under section 16(a). A review by the Commission of filings in calendar year 1987 indicated that more than 50 percent of filings made were more than three days late. [208] The high delinquency rate led to an increased focus on Forms 3 and 4 by the Commission's delinquent filing program, which identifies and prosecutes non-compliance with the filing requirements of the federal securities laws. [209] The Commission's staff has sent individual notices to persons and entities that repeatedly are late in filing their Form 4 reports and provided interpretive guidance in an effort to improve compliance with section 16(a). [210] In addition, the commission has recommended federal legislation that would provide it with fining authority for violations of section 16(a). [211]

B. Discussion of Proposals

While the proposed revisions to the rules under section 16, particularly the deferral of a number of transactions to an annual report and the requirement of an annual reconciliation, should reduce the amount of delinquencies due to insiders' oversight, the Commission believes further steps are necessary to address the problem. It is therefore proposing to amend the proxy rules, Form 10–K, and Form N-SAR to add a new Item 405 to Regulation S-K. The Item would require disclosure of delinquent filers and a brief discussion of the procedures designed by the registrant to assist insiders in meeting their filing obligations under sections 16(a) and 16(b).

The information about delinquent filers would consist of the names of all directors, officers, and ten percent holders that fail to comply with the filing requirements of section 16(a) during the registrant's fiscal year by failing to file or filing late any required Form 3, 4 or 5 and how many times each such person failed to file or failed to file in a timely manner. Comment is solicited as to whether registrants should also be required to disclose the dollar amount involved and the nature of the transactions not reported. It should be emphasized that proposed Item 405 specifies that the registrant is required to report only those delinquencies disclosed on the Forms 3, 4 and 5. There would be no further duty of inquiry.

As noted above, all reporting persons would be required to send copies of all of their Form 3, 4 and 5 reports to the registrant pursuant to proposed Rule 16a–3(e). [212] In addition, many registrants already assist their reporting persons in fulfilling the requirements of Section 16(a) and the Commission, by this action, anticipates that it will provide incentives to registrants to implement procedures to assist their insiders to the extent they do not already do so. [213]

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[206] Exchange Release No. 11831 (Nov. 14, 1975) [40 FR 55318].

[207] 5 U.S.C. 552(a) (1982 and Supp. 1986).

[208] The review showed a 48 percent rate in 1986, and a 43 percent rate in 1988. A recent private study of more than 100,000 trades by reporting persons consummated between August, 1986 and July, 1987, came to similar results. *See generally* Novack, *State Dope*, FORBES, Nov. 2, 1987, at 180 (discussing a study by Jonathan Berntley); *see also "The Bentley Report*, Statutory Insider Trading 1983 to 1987" (1988) (this more recent study by Jonathan Bentley covering only the 1,000 largest issuers registered under section 12 and, among the other registered issuers, the 1,000 with the most active trading by insiders revealed a delinquency rate of about 33 percent). The earlier Bentley study, discussed by Novack, indicates that 40% of required sell reports and 39% of required buy reports on Form 4 were filed with the Commission at least three days late. The three day standard was used to allow for delays in the mail. Approximately 36% of the late buy reports and 26% of the late sell reports were overdue by one month ormore. Moreover, $8 billion of the $26 billion worth of stock trades analyzed allegedly were not reported until beyond the filing deadline. Of the $8 billion, more than $5 billion, or about 60% in market value of the trades, were filed two months or more after the trades occurred. These problems in compliance were found to exist in three out of every four companies involved in the study. These statistics do not reveal fully the extent of the compliance problem since the delinquency figures do not reflect purchases or sales for which no reports were filed.

[209] *See, eg., SEC* v. *Beall, SEC* v. *Geiringer, SEC* v. *Shanley*, Litigation Release No. 11328 (jan. 6, 1987); *SEC* v. *Lee, SEC* v. *Michael Industries, Inc., SEC* v. *Ziegler*, Litigation Release No. 11191 (Aug. 11, 1986).

[210] *See* Release 34–18114 and numerous interpretive letters addressing the section 16(a) reporting requirements.

[211] Letter to the Hon. George Bush, President United States Senate, from David S. Ruder, Chairman (Sept. 28, 1988). The proposed bill would be entitled the "Securities Law Enforcement Remedies Act of 1988." Should the Commission proposed bill be enacted, the Commission will consider permitting a six month grace period before seeking fines from insiders failing to comply.

[212] *See supra* Section III.B.3.

[213] *See* American Society of Corporation Secretaries, Inc., "Section 16 Survey Report" (Nov. 1988) (reporting that the majority of responding members of the organization assist their insiders).

The Item 405 disclosure would be required to be disclosed in the proxy statement by new Item 7 of Schedule 14A and in the Form 10–K by new Item 10 and in Form N–SAR by new Item 88.E. Pursuant to Item 7 of Schedule 14A, the disclosure would appear in all proxy and information statements relating to the election of directors. The requirement would supplement the information concerning directors, executive officers, and certain beneficial holders already provided under Item 10 of Part III of Form 10–K.[214]

Registrants would have a duty only to disclose information derived from reviewing Form 3, 4, and 5 filings by directors, officers, and ten percent holders for timeliness and disclosures revealing transactions in violation of section 16(a) that occurred during the year. Registrants may rely on Schedule 13D and 13G filings for the identities of their ten percent holders. All filings received by the registrant with a postmark after the due date should be presumed late, unless the reporting person demonstrates to the registrant that the form was filed timely with the Commission. (As provided by proposed Rule 16a–3(g), discussed above, the filer may be able to rely on the mailing date.) No additional inquiry by the registrant is necessary.

C. Request for Comment

The Commission solicits comment as to whether a distinction should be made between ten percent holders and directors and officers for purposes of the delinquent filers and compliance assistance procedures disclosure proposal. Specifically, comment is solicited as to whether ten percent holders should be excluded from the proposed disclosure requirement on grounds that the relationship between registrants and ten percent holders is substantially different and less direct than the relationship between registrants and their directors and officers.

Commenters are asked to comment on the effect of the proposed rule changes on compliance with the section 16(a) reporting requirements. The Commission also solicits comment on additional or alternative means to improve the prompt disclosure to investors of the information required by Forms 3 and 4.

IX. Proposed Treatment of Current Rules

A. The following chart lists the current rules and the corresponding proposed rules and indicates which rules would be changed substantively or reorganized.

[214] General Instruction G(3) to Form 10–K states that the information required by Part III shall be incorporated by reference from the registrant's definitive proxy or information statement which involves the election of directors, if such statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10–K. The instruction further states that if such proxy or information statement is not filed with the Commission in the 120-day period, the items comprising the Part III information must be filed as part of the Form 10–K, or as an amendment to the Form 10–K filed under cover of Form 8 not later than the end of the 120-day period.

Current rule	Content	Proposed rule	Substantive changes
12h–2	Offerings before 1967	Deleted	Yes.
16a–1(a)	Forms 3 and 4	16a–3(a)	No.
(b)	Filing another Form 3	16a–3(b)	No.
(c)	Copies to exchange	16a–3(c)	No.
(d)	Pre-insider reporting	16a–2(a)	No.
(e)	Post-insider reporting	16a–2(b)	No.
16a–2(a)	10 percent holders	16a–1(a)	Yes.
(b)	Derivative securities	deleted	Yes.
16a–3	Disclaimer	16a–1(a)(4)	No.
16a–4	Fiduciaries	16a–5(b)	No.
16a–5	Odd-lot dealers	16a–9	No.
16a–6	Derivative securities	16a–4	Yes.
16a–7	Multiple filings	16a–3(d)	No.
16a–8	Trusts	16a–5 and 16a–8	Yes.
16a–9	Small trades and gifts	16a–6 and 16b–5	Yes.
16a–10	Exemption from Section 16(b)	16a–10	No.
16a–11	DRIPs	16b–9	No.
16b–1	Investment companies	16b–1	No.
16b–2	Underwriters	16a–7	Yes.
16b–3	Benefit plans	16b–3	Yes.
(a)	Shareholder approval	Deleted	Yes.
(b)	Disinterested administration	16b–3(b)	Yes.
(c)	Plan limits	Deleted	Yes.
(d)	Definitions	16b–3(c)	Yes.
(e)	SARs	16b–3(d)	No.
16b–4	Utility holding companies	16b–1(b)	No.
16b–5	Redemptions	16b–4	No.
16b–6	Options	16b–6	Yes.
(a)	Holding period	Deleted	Yes.
(b)	Formula	16b–6(d)	Yes.
(c)	Mergers	16b–6(c)	Yes.
(d)	Short sales	Deleted	Yes.
(e)	Burden of Proof	Deleted	Yes.
(f)	Prior judgments	Deleted	Yes.
16b–7	Mergers	16b–7	No.
16b–8	Voting trusts	16b–8	No.
16b–9	Conversions	16b–6(b)	Yes.
16b–10	Railroads	16b–1(c)	No.
16b–11	Subscription rights	16b–2	No.
16c–1	Brokers	16c–1	No.
16c–2	Underwriters	16c–2	Yes.
16c–3	When-issued securities	16c–3	No.
16e–1	Arbitrage	16e–1	No.
30f–1	Investment Companies	30f–1	No.

* * * * *

B. The following chart lists the proposed rules and the corresponding current rules, and indicates which current rules would be changed substantively or reorganized.

Proposed rule	Content	Current rule	Substantive changes
16a-1(a)(1-3)	Beneficial Owner	None	N/A
(a)(4)	Disclaimer	16a-3	No.
(b)	Immediate Family	None	N/A
(c)	Derivative Securities	None	N/A
(d)	Call Equivalent Position	None	N/A
(e)	Put Equivalent Position	None	N/A
(f)	Equity Security of Such Issuer	None	N/A
(g)	Officer	None	N/A
(h)	Owner of any Security of the Issuer	None	N/A
16a-2(a)	Pre-insider Reporting	16a-1(d)	No.
(b)	Post-insider Reporting	16a-1(e)	No.
(c)	Transaction Creating 10 Percent Holder	None	N/A
16a-3(a)	Forms 3, 4 and 5	16a-1(a)	Yes.
(b)	Filing Another Form 3	16a-1(b)	No.
(c)	Copies to Exchange	16a-1(c)	No.
(d)	Multiple Filings	16a-7	No.
(e)	Copies to Issuer	None	N/A
(f)	Form 5	None	N/A
(g)	Time of Filing	None	N/A
16a-4	Derivative Securities	16a-2(b)	Yes.
16a-5(a)(1)	Trust 10 Percent Holder	16a-8(c)	No.
(a)(2)	Insider Trustee	None	N/A
(a)(3)	Attribution	16a-8(a)	No.
(a)(4)	Beneficiary Proportionate Ownership	None	N/A
(a)(5)	Persons Also Subject to Sections 16(b) and (c)	None	N/A
(b) and (c)	Fiduciaries	16a-4	No.
(d)	Interests Too Remote	16a-8(g)	Yes.
16a-6	Small Acquisitions	16a-9	Yes.
16a-7	Distributions	16b-2	Yes.
16a-8	Intra-Trust Transactions	16a-8(b)	Yes.
16a-9	Odd-lot Dealers	16a-5	No.
16a-10	Exemption from Section 16(b)	16a-10	No.
16b-1(a)	Investment Companies	16b-1	No.
(b)	Utility Holding Companies	16b-4	No.
(c)	Railroads	16b-10	No.
16b-2	Subscription	16b-11	No.
16b-3(a)	Tenders to Issuer	16b-3	No.
16b-3(b)	Disinterested Administration	16b-3(a)	Yes.
(c)	Definitions	16b-3(d)	Yes.
(d)	SARs	16b-3(e)	No.
16b-4	Redemptions	16b-5	No.
16b-5	Gifts and Inheritance	16a-9(b)	Yes.
16b-6(a)	Derivative Security Purchase/Sale	None	N/A
(b)	Conversions/Exercises	16b-9	Yes.
(c)	Mergers	16b-6(c)	No.
(d)	Formula	16b-6(b)	Yes.
(e)	Expiring Short Position Profit	None	N/A
16b-7	Mergers	16b-7	No.
16b-8	Voting Trusts	16b-8	No.
16b-9	DRIPs	16a-11	No.
16c-1	Brokers	16c-1	No.
16c-2	Underwriters	16c-2	Yes.
16c-3	When-issued Securities	16c-3	No.
16c-4	Derivative Securities Short Positions	None	N/A
16d-1	Marketmakers	None	N/A
30f-1	Investment Companies	30f-1	No.

X. Request for Comment

Any interested persons wishing to submit written comments on; the proposed amendments to Rules 16a–1 through 16c–3, Schedule 14A, Forms 10–K, 3 and 4; the addition of a new Rule 16d–1 and a new Form 5; the deletion of Rule 12h–2 under the Exchange Act; the addition of a new item to Regulation S–K; and the proposed amendments to Rule 30f–1 and Form N–SAR under the Investment Company Act; as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. In addition, the Commission requests comments on whether any further changes to the Section 16 rules are necessary or appropriate at this time. The Commission also requests comment on whether the proposed rules, if adopted,

would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[215]

XI Cost—Benefit Analysis

To evaluate the costs and benefits associated with the proposed amendments addressed in this release, the Commission requests commentators to provide views and data as to the costs and benefits associated with these proposals.

It is expected that the proposed amendments to the rules promulgated pursuant to section 16 would decrease significantly the reporting, recordkeeping, and compliance requirements imposed upon reporting persons subject to Section 16 for the following reasons.

Proposed Rule 16a–1(e) would define the term "officer" for purposes of section 16 in the same manner that "executive officer" currently is defined in Rule 3b–7. The proposed definition reflects concerns that the current definition of "officer" is over-broad and extends to some employees that do not have significant managerial or policy-making duties.

Proposed Rule 16a–1(a)(1) would state that for purposes of determining who is a ten percent beneficial owner only the rules under section 13(d) of the Exchange Act shall apply. Furthermore, proposed Rule 16a–4(a) would deem derivative securities to be of the same class of equity securities as the underlying securities and not a separate class of equity securities for purposes of determining ten percent beneficial ownership. Finally, proposed Rule 16a–1(c) would exclude derivative securities awarded pursuant to an employee benefit plan satisfying proposed Rule 16b–3, if exercisable solely for cash.

Proposed Rule 16a–3(f) would provide a reporting deferral for all trades exempted pursuant to rules promulgated under section 16(b), small acquisitions of securities, stock splits and stock dividends. Under the current rules, trades entitled to reporting deferrals must be reported in the first Form 4 filed by the insider subsequent to the exempted transaction. Under the proposed rules, the deferred period generally would be longer; all trades entitled to reporting deferrals except those falling under the small acquisitions deferral category only would be reported by the insider at the same time, within 30 days after the registrant's fiscal year end, on a Form 5.

Proposed Rule 16a–7 would provide a reporting exclusion for insider underwriters regarding trades associated with a distribution. Elimination of the need for insider underwriters to participate equally with non-insider underwriters in a distribution also is proposed.

Proposed Rule 16b–6(b) generally would exempt from section 16(b) exercises and conversions of derivative securities.

Proposed Rule 16b–5 would exempt from section 16(b) all acquisitions and dispositions via bona fide gifts regardless of their size. Current Rule 16a–9 provides such an exemption only for bona fide gifts under $10,000. Proposed Rule 16b–5 also would exempt from section 16(b) all acquisitions and dispositions via the laws of descent.

Proposed Rule 16c–4 would provide that selling a derivative security short or purchasing a put option is not prohibited under section 16 if the securities underlying the derivative security or put option do not exceed the amount of underlying securities otherwise owned. This exemption would become unavailable when a person sells underlying securities such that the securities underlying the derivative securities sold short exceed the amount of underlying securities otherwise owned. As a result of the proposal, put equivalent positions will be deemed violations of section 16(c) in certain circumstances. The current rules prohibit insiders from maintaining short positions in equity securities at any time.

The following proposed amendments may increase the reporting, recordkeeping, and compliance requirements imposed upon reporting persons subject to section 16. It is expected, however, as stated above, that the overall effect of the proposed amendments would be to decrease significantly the impact of such requirements upon reporting persons.

Under current Rule 16a–8(e) with respect to trustees and proposed Rule 16a–1(b), an insider is deemed to be the beneficial owner of securities owned by members of the insider's immediate family sharing the same residence. The current definition of "immediate family" in Rule 16a–8 would be broadened by proposed Rule 16a–1(b) to apply throughout Section 16 and to include siblings, fathers-in-law, mothers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law, as well as children, grandchildren, stepchildren, parents, stepparents, and spouses.

Current Rule 16a–8(c), which deems the trustee of a trust holding ten percent of a class of equity securities to be a reporting person for purposes of section 16, would be expanded by proposed Rule 16a–5(a)(2). Under the proposed rule, a trust would report not only when it is a ten percent holder, but also when the trustee is an insider. Furthermore, the exemption from section 16(a) provided in current Rule 16a–8(b) for beneficial ownership of securities solely as settlor or beneficiary or a trust where less than 20 pecent in market value of the trust consists of the registrant's securities would be deleted. Section III.A.5.a of the release discusses proposed Rule 16a–5 as well as the proposed modifications of current Rule 16a–8(b).

Proposed Rule 16a-3(a) would require all reporting persons subject to section 16 to file an annual reconciliation of beneficial holdings on Form 5. This requirement would increase the burden on reporting persons, particularly those who had no transactions during the year that otherwise would have been reportable on Form 4.

Proposed Rule 16a–3(e) would require insiders to forward copies of their Forms 3, 4 and 5 to the registrant's corporate secretary or other person designated to receive such filings.

Proposed Rule 16b–6(a) would clarify that a derivative security confers beneficial ownership in the underlying security for purposes of section 16(b).

The proposed amendments should not result in any substantial increase in the compliance requirements imposed upon companies registered pursuant to section 12 of the Exchange Act or whose securities are for any other reason subject to section 16. The proposed addition of a new Item 405 to Regulation S–K, triggered by Item 7 of Schedule 14A, Item 10 of Form 10–K and sub-item 88.E of Form N–SAR, would require registrants to describe their procedures for assisting insider compliance with sections 16(a) and 16(b) and report certain information regarding the non-compliance of their insiders with the reporting requirements of section 16(a). In order to fulfill their disclosure obligations, registrants would have to review the Form 3, 4, and 5 reports filed by their insiders. The proposed requirements should not place a significant burden on registrants since reporting persons would be required to send copies of all their Form 3, 4, and 5 reports to the registrants as well as to the Commission. Furthermore, Item 12 of Form 10–K already requires registrants to monitor annually the security

[215] 15 U.S.C. 78w(a) (1982).

holdings of officers, directors, and five percent security holders.

The Commission's proposal to eliminate entirely the current provision in Rule 16b–3(a) requiring shareholder approval of compensation plans and any material amendments thereto should decrease the burdens imposed on companies by section 16. The benefit of the deletion of the shareholder approval requirement would be offset to some extent, however, by the strengthened disinterested administration requirement in proposed Rule 16b–3(b).

XII. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to Rules 16a–1 through 16c–3, Schedule 14A, Forms 10–K, 3 and 4; the addition of a new Rule 16d–1 and a new Form 5; the deletion of Rule 12h–2 under the Exchange Act, as well as the addition of a new item to Regulation S–K. Also a subject of this analysis are proposed amendments to Rule 30f–1 and Form N-SAR under the Investment Company Act. The analysis notes that the proposed amendments are intended to help assure that persons meet their reporting obligations and to ensure the fair and effective operation of section 16(b) by limiting the opportunities for abuse and removing transactions that do not involve the potential for abuse from the scope of the rules.

As discussed more fully in the analysis, many of the reporting persons the proposed amendments would affect are small entities, as defined by the Commission's rules.

It is expected that the overall effect of the proposed amendments would be to decrease significantly the impact of reporting, recordkeeping, and compliance requirements upon reporting persons subject to section 16, although certain of the proposed amendments may increase such requirements, as noted in the analysis.

The analysis discusses several possible significant alternatives to the proposed amendments including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis implementing any of these alternatives either would be duplicative of the proposed amendments or would not be consistent with the Exchange Act.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Brian J. Lane or Mark W. Green, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

XIII. Statutory Basis

The amendments to the proxy rules and section 16 rules are being proposed by the Commission pursuant to Exchange Act sections 3(a)(11), 3(b), 9(b), 10(a), 12(h), 13(a), 14, 16, and 23(a). The amendments to the section 30 rule are being proposed pursuant to Investment Company Act of 1940 section 38.

List of Subjects in 17 CFR Parts 229, 240, 249, 270, and 274

Reporting and recordkeeping requirements, Securities.

XIV. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation of Part 229 continues to read:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 71*l*, 78m, 78n, 78*l*(d), 78w(a), unless otherwise noted.

2. Section 229.405 is added to Subpart 229.400 to read as follows:

§ 229.405 (Item 405) Compliance with Section 16(a) of the Exchange Act.

Every person having a class of equity securities registered pursuant to section 12 of the Exchange Act, every closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] and every holding company registered pursuant to the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 *et seq.*] shall:

(a) Describe briefly its procedures for assisting directors, officers, beneficial owners of more than ten percent of any class of equity securities of the registrant, and any other person subject to section 16 of the Exchange Act because of the requirements of section 30 of the Investment Company Act or of section 17 of the Public Utility Holding Company Act, in complying with sections 16(a) and 16(b) of the Exchange Act; and

(b) Based on a review of the Forms 3, 4, and 5 provided to the registrant concerning transactions conducted during the fiscal year, list each such director, officer, beneficial owner and other person who failed to file any form required by section 16(a) of the Exchange Act in a timely manner. For each such filer, the registrant also shall disclose the number of times that filing was not timely.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

§ 240.12h–2 [Removed]

2. Section 240.12h–2 is removed.

3. By amending § 240.14a–101 by adding a paragraph (h) before the concluding text to Item 7 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and Executive Officers

* * * * *

(h) The information required by Item 405 of Regulation S-K (§ 229.405 of this chapter).

* * * * *

4. Sections 240.16a–1 through 240.16a–10 and the undesignated center heading preceding them are revised and § 240.16a–11 is removed, as follows:

Reports of Directors, Officers, and Principal Shareholders

§ 240.16a–1 Definitions.

All terms defined in this rule shall be used only for purposes of section 16 of the Act. These terms shall not be limited to section 16(a) but shall apply to all subsections under section 16.

(a) Beneficial Ownership.

(1) Solely for purposes of determining who is a ten percent beneficial owner, the term "beneficial owner" shall mean any person who is deemed a ten percent beneficial owner by operation of the rules under section 13(d) of the Act.

(2) For all other purposes, the term "beneficial owner" shall mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares a pecuniary

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interest in the subject securities. A person shall be deemed the beneficial owner of securities:

(i) That such person has the right to acquire through the exercise or conversion of any derivative security, whether it is presently exercisable or not;

(ii) That are held by any member of the immediate family sharing the same residence as the person; or

(iii) That are held by a general partnership, in proportion to that person's partnership interest.

(3) Where more than one person is deemed to be a beneficial owner of the same equity securities, both persons must report as beneficial owners of the securities. In such cases, short swing profit recovery would not be increased over what would otherwise be recoverable if there were only one beneficial owner.

(4) Any person filing a statement may declare expressly therein that the filing of such statement shall not be construed as an admission that such person is, for the purpose of section 16 of the Act, the beneficial owner of any equity securities covered by the statement, unless beneficial ownership is otherwise mandated by § 240.16a-1(a).

(b) The term "immediate family" shall mean any child, stepchild, grandchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law. For the purpose of determining whether any of the foregoing relations exist, a legally adopted child of a person shall be considered a child of such person by blood.

(c) The term "derivative securities" shall mean any option, warrant, convertible security, stock appreciation right, or other similar right related to an equity security, but shall not include:

(1) The right of a pledgee of securities to sell the pledged securities;

(2) The right to acquire or the obligation to sell securities in connection with a merger, exchange offer, or consolidation involving the issuer of the securities;

(3) Securities awarded pursuant to an employee benefit plan satisfying § 240.16b-3 that can be exercised only for cash and permit no discretion as to whether to receive another form of equity security in lieu of cash; and

(4) Broad-based index options and broad-based index futures.

(d) The term "call equivalent position" shall mean a derivative security position that increases in value as the value of the underlying equity increases, including, but not limited to, a long convertible security, long call option, and short put option position.

(e) The term "put equivalent position" shall mean a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

(f) The term "equity security of such issuer" shall mean any equity security or derivative security of or relating to a particular issuer, whether or not issued by that issuer.

(g) The term "officer" shall mean a registrant's president, any vice-president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Officers of subsidiaries may be deemed officers of the registrant if they perform such policy-making functions for the registrant. In addition, when the registrant is a limited partnership, officers or employees of the general partners with policy-making functions are deemed officers of the registrant.

(h) The term "owner of any security of the issuer" for purposes of section 16 of the Act shall mean a beneficial owner of securities of the issuer at the time of suit or, if as a result of a business combination the issuer, at the time of suit, does not have a reporting obligation under section 13 or 15(d) of the Act with respect to an equity security, a former beneficial owner of the issuer who was required to surrender such securities due to such business combination.

§ 240.16a-2 Persons subject to section 16.

All directors, officers, and persons who are the beneficial owners of more than 10 percent of a class of equity securities of an issuer registered pursuant to section 12 of the Act shall be subject to the provisions of section 16, subject to the following:

(a) Any director or officer who is required to file a statement on Form 4 with respect to any change in beneficial ownership of equity securities which occurs within 6 months after becoming a director or officer of the issuer of such securities, or within 6 months after equity securities of such issuer first became registered pursuant to section 12 of the Act, shall include in the first such statement the information called for by Form 4 with respect to all changes in beneficial ownership of equity securities of such issuer which occurred within 6 months prior to the date of the changes which require the filing of such statement.

(b) Any person who has ceased to be a director or officer of an issuer that has equity securities registered pursuant to section 12 of the Act, or who is a director or officer of an issuer at the time it ceased to have any equity securities so registered, shall file a statement on Form 4 with respect to any change in beneficial ownership of equity securities of such issuer that shall occur on or after the date on which such person ceased to be such director or officer or the date on which the issuer ceased to have any equity securities so registered if such change shall occur within 6 months after any change in such person's beneficial ownership of such securities prior to such date.

(c) The transaction that results in a person becoming a 10 percent beneficial owner need not be reported unless the person already is required to file reports concerning securities of that issuer in another capacity. A 10 percent beneficial owner must report only those transactions conducted while holding at least 10 percent of any class of equity securities.

§ 240.16a-3 How to report.

(a) Initial statements of beneficial ownership of equity securities required by section 16(a) of the Act shall be filed on Form 3 (§ 249.103 of this chapter). Statements of changes in such beneficial ownership required by the section shall be filed on Form 4 (§ 249.104). Annual statements of reconciliation shall be filed on Form 5 (§ 249.105). All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) A person who already is filing statements pursuant to section 16(a) of the Act with respect to equity securities registered pursuant to either section 12 (b) or (g) of the Act need not file an additional statement on Form 3 (§ 249.103):

(1) When an additional class of equity securities of the same issuer becomes registered pursuant to the same section of the Act; or

(2) When such person assumes a different or an additional relationship to the same issuer; for example, when an officer becomes a director,

(c) Any issuer that has equity securities listed on more than one national securities exchange may designate one such exchange as the only exchange with which reports pursuant to section 16(a) of the Act need be filed. Such designation shall be made in writing and shall be filed with the Commission and with each national securities exchange on which any equity

security of the issuer is listed. The obligation to file with each national securities exchange on which any equity security of the issuer is listed shall be satisfied by filing with the designated exchange.

(d) Any person required to file a statement under both section 16(a) of the Act and section 17(a) of the Public Utility Holding Company Act of 1935 or section 30(f) of the Investment Company Act of 1940 may file a single statement containing the required information which will be deemed to be filed under both Acts. To comply with the requirement of section 16(a), where applicable, that statements be filed with national securities exchanges, a duplicate original of such statement shall be filed with such exchanges or with the exchange designated pursuant to § 240.16a-3(c).

(e) Any person required to file a statement under section 16(a) shall, at the time of filing, send or deliver a duplicate to the registrant's corporate secretary or other person designated by the registrant.

(f) A Form 5 filing shall be required from every person required to file statements under section 16(a) as of the end of the registrant's fiscal year. This statement shall be filed within 30 days of the end of the registrant's fiscal year. This filing shall be required regardless of whether the reporting person is the beneficial owner of any securities or there have been any transactions in the reported securities conducted during the year. All transactions during the fiscal year shall be reported on Form 4, except that the following shall be reported on Form 5:

(1) Changes in ownership resulting from stock splits or stock dividends occurring during the fiscal year;

(2) Small acquisitions during the fiscal year, unless previously reported on Form 4 pursuant to § 240.16a-6;

(3) All transactions conducted during the fiscal year that were exempted by operation of any rule pursuant to section 16(b) of the Act; and

(4) Any occurrence or transaction required to be reported on Form 3 or 4 under section 16(a) of the Act that was required to be filed prior to, and that has yet to be reported as of the date by which the Form 5 is filed; *Provided, however,* that the required Form 3 or 4 shall be appended to the Form 5.

(g) The date of filing with the Commission shall be the date of receipt by the Commission; *Provided, however,* the Form 3, 4 or 5 shall be deemed to have been timely filed if the filing person establishes that the Form had been transmitted to the Commission by first class mail or any equally prompt means on or before the date on which the filing was due.

§ 240.16a-4 Derivative securities.

(a) The granting, acquisition or disposition of any derivative security, or any expiration or cancellation thereof shall be deemed to effect a change in the beneficial ownership of the underlying securities to which the derivative security relates. For purposes of section 16 of the Act, both derivative securities and the underlying securities to which they relate shall be deemed to be the same class of equity securities, except that they shall be reported separately.

(b) For reporting purposes, the exercise or conversion of a call equivalent position shall be treated as:

(1) A purchase of the underlying security; and

(2) A closing of the derivative security position.

(c) For reporting purposes, the exercise of a put equivalent position shall be treated as:

(1) A sale of the underlying security; and

(2) A closing of the derivative security position.

Note.—Under § 240.16b-6(b), a purchase or sale incident to an exercise or conversion of a derivative security generally is exempt from section 16(b) of the Act.

§ 240.16a-5 Trusts and remote interests.

(a) The following provisions apply to trusts:

(1) In the event that more than 10 percent of any class of any equity security (other than an exempted security) that is registered pursuant to section 12 of the Act is held in a trust, as determined pursuant to Rule 16a-1(a)(1), both the trust and trustee shall file reports as specified in § 240.16a-3. The trustee shall report on behalf of the trust, and shall report separately transactions on behalf of the trustee as any other person subject to section 16 of the Act.

(2) In the event that a trustee is a person required to file reports pursuant to § 240.16a-3, the trustee shall report on behalf of each trust in which the trustee exercises investment decision-making authority, and also shall report separately transactions on behalf of the trustee.

(3) In the event that the following conditions are met, transactions of a trust will be attributable to a person specified in § 240.16a-2 as well as the trust:

(i) If a person specified in § 240.16a-2 is the trustee and at least one beneficiary of the trust is a member of the trustee's immediate family, all transactions of the trust will be attributed to the trustee and the trustee shall report the transactions of the trust as transactions of the trustee.

(ii) If a person specified in § 240.16a-2 owns securities as settlor of a trust and has the power to revoke the trust without obtaining the consent of the beneficiaries, all transactions of the trust will be attributed to the settlor and the settlor shall report the transactions of the trust as transactions of the settlor.

(4) If a person specified in § 240.16a-2 owns a vested beneficial interest in a trust, that person shall report the transactions of the trust unless meeting the conditions of § 240.16a-8. The person may report trust transactions in proportion to that person's beneficial interest.

(5) In the event a trust or other person becomes a reporting person pursuant to this rule, it shall likewise be subject to sections 16 (b) and (c) of the Act.

Note.—Transactions by a trustee on behalf of a settlor or beneficiary without such person's prior approval or direction need not be reported by such person, as specified in § 240.16a-8.

(b) A trustee is exempt from the provisions of section 16(a) under the Act for the 12 months following its appointment and qualification, to the extent the trustee is acting as:

(1) Executor or administrator of the estate of a decedent;

(2) Guardian or member of a committee for an incompetent; or

(3) Receiver, trustee in bankruptcy, assignee for the benefit of creditors, conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of another person.

(c) After the 12 month period following its appointment or qualification, a trustee previously exempt pursuant to paragraph (b) of this rule must report and be liable for all transactions of the estate being administered only where the estate is a beneficial owner of more than 10 percent of any class of equity security (other than an exempt security) that is registered pursuant to section 12 of the Act.

(d) The following interests are considered too remote to confer beneficial ownership for purposes of section 16(a) of the Act, notwithstanding the provisions of Rule 16a-1(a)(2):

(1) The remainder interest of a trust;

(2) Indirect interests in portfolio securities held by:

(i) Any holding company registered under the Public Utility Holding Company Act;

(ii) Any investment company registered under the Investment Company Act; and

(iii) A pension or retirement plan holding securities of an issuer whose employees generally are the beneficiaries of the plan.

§ 240.16a–6 Small acquisitions.

(a) Any acquisition that does not exceed $10,000 in market value is permitted to be reported on either a Form 4 or Form 5 (whichever is required to be filed first), subject to the following conditions:

(1) Total acquisitions of securities of the same class (including derivative securities) within the prior six months do not exceed $10,000 in market value; and

(2) The person effecting the acquisition does not within six months thereafter effect any disposition, other than by a transaction exempted from section 16(b) of the Act.

(b) Should an acquisition no longer qualify for the reporting deferral in paragraph (a) of this rule, all such acquisitions that have not yet been reported shall be reported on a Form 4 within 10 days after the close of the calendar month in which the conditions of paragraph (a) no longer are met.

§ 240.16a–7 Transactions effected in connection with a distribution.

(a) Any transaction of purchase and sale, or sale and purchase, of a security which is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of section 16(a) of the Act, to the extent specified in this rule, as not comprehended within the purpose of said section, upon the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities; and

(2) The security involved in the transaction is:

(i) A part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities, or

(ii) A security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution.

(b) Each person participating in the transaction must qualify on an individual basis for an exemption pursuant to this rule.

§ 240.16a–8 Intra-trust transactions.

Transactions on behalf of a settlor or beneficiary within a trust conducted by the trustee without the prior approval or direction of the settlor or beneficiary, are exempt from the provisions of section 16(a) of the Act. This exemption does not extend to distributions from a trust.

§ 240.16a–9 Odd-lot dealers.

Securities purchased or sold by an odd-lot dealer in odd lots as reasonably necessary to carry on odd-lot transactions or in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section 16(a), with respect to participation by such odd-lot dealer in such transaction.

§ 240.16a–10 Exemptions under section 16(a).

Except as provided in § 240.16a–6, any transaction which has been or shall be exempted by the Commission from the requirements of section 16(a) shall, insofar as it is otherwise subject to the provisions of section 16(b), be likewise exempted from section 16(b).

5. Sections 240.16b–1 through 240.16b–9 are revised, §§ 240.16b–10 and 240.16b–11 are removed and the undesignated center heading preceding them is republished to read as follows:

Note: Two alternatives are proposed for § 240.16b–6(d).

Exemption of Certain Transactions From Section 16(b)

§ 240.16b–1 Transactions approved by regulatory authority.

(a) Any purchase and sale, or sale and purchase, of a security shall be exempt from the operation of section 16(b) of the Act, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 and both the purchase and sale of such security have been exempted from the provisions of section 17(a) of that Act by rule or order of the Commission entered pursuant to section 17 of the Act.

(b) Any purchase and sale, or sale and purchase, of a security shall be exempt from the provisions of section 16(b) of the Act if:

(1) The person effecting such transaction is either a holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary thereof; and

(2) Both the purchase and the sale of such security have been approved or permitted by the Commission pursuant to the applicable provisions of that Act or the rules and regulations thereunder.

(c) Any acquisition of securities made in exchange for other securities shall be exempt from the provisions of section 16(b) of the Act if:

(1) The securities are acquired from the issuer;

(2) The person acquiring the securities is subject to one or more of the provisions of Part I of the Interstate Commerce Act;

(3) The person acquiring the securities is:

(i) Subject to an order of, or has accepted a condition imposed by, the Interstate Commerce Commission in an approval of a unification, merger or acquisition of control pursuant to section 5(2) of the Interstate Commerce Act, requiring such person to dispose of all securities of the same class as those exchanged for the securities acquired; and

(ii) The issuance of the securities acquired by such person has been approved by the Interstate Commerce Commission pursuant to section 20(a) of the Interstate Commerce Act; and

(4) The person acquiring voting equity securities has transferred all voting rights on an unrestricted basis to one or more banks and such transfer remains in effect until such securities are disposed of by such person.

§ 240.16b–2 Subscription rights.

(a) Any sale of a subscription right to acquire any subject security of the same issuer shall be exempt from the provisions of section 16(b) of the Act if:

(1) Such subscription right is acquired, directly or indirectly, from the issuer without the payment of consideration;

(2) Such subscription right by its terms expires within 45 days after the issuance thereof;

(3) Such subscription right by its terms is issued on a pro rata basis to all holders of the beneficiary security of the issuer; and

(4) A registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*) is in effect as to each subject security, or the terms of any exemption from such registration have been met in respect to each subject security.

(b) When used within this Section the following terms shall have the meaning indicated:

(1) The term "subscription right" means any warrant or certificate

evidencing a right to subscribe to or otherwise acquire an equity security;

(2) The term "beneficiary security" means a security registered pursuant to section 12 of the Act to the holders of which a subscription right is granted; and

(3) The term "subject security" means a security that is the subject of a subscription right.

(c) Notwithstanding anything contained herein to the contrary, if a person purchases subscription rights for cash or other consideration, then a sale by such person of subscription rights otherwise exempted by this Section will not be so exempted to the extent of such purchases for consideration within the 6-month period preceding or following such sale.

§ 240.16b-3 Benefit plans.

(a) *Exempt transactions.* The following transactions by a director or officer shall be exempt from the operation of section 16(b) of the Act if they occur pursuant to a plan which satisfies the conditions of this rule:

(1) The acquisition of an option, warrant, right, or shares of stock;

(2) The expiration, cancellation or surrender to the issuer of a stock option or stock appreciation right; and

(3) The surrender or delivery to the issuer of shares of its stock as payment for the exercise of an option, warrant or right with respect to shares of the same class.

(b) *Disinterested administration.* (1) The plan shall satisfy one of the following conditions:

(i) The plan is administered solely by a committee of directors, the majority of which are disinterested persons; or

(ii) The plan by its terms:

(A) Predetermines which officers and directors may receive grants;

(B) Predetermines the timing of the grants for all participants;

(C) Predetermines the amount of securities to be granted to individual participants (which shall be governed by a formula or standardized criteria for all participants, such as earnings of the issuer, value of the securities, years of service, etc.);

(D) Provides that no discretion, concerning the administration of the plan, shall be afforded to a person who is not a disinterested person; and

(E) Provides that the requirements described in paragraph (b)(1)(ii) (A) through (C) of this section shall not be amended more than once every six months.

(2) Compliance with this paragraph shall not be necessary with respect to any option or right granted, or other equity security acquired, prior to the date of the first registration of an equity security under section 12 of the Act.

(3) Plans that permit participation of persons other than those subject to section 16 of the Act need not comply with this paragraph regarding administration of the plan as it relates to those persons not subject to Section 16 of the Act.

(c) *Definitions.* Unless the context otherwise requires, all terms used in this rule shall have the same meaning as in the Act, the General Rules and Regulations thereunder, or the Rules under this section 16. In addition, the following definitions apply:

(1) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings or similar plan that meets the following conditions:

(i) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined; and

(ii) The plan must provide, with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan, that such option or right is not transferable other than by will or the laws of descent and distribution, and that it is exercisable during the employee's lifetime only by the employee or the employee's guardian or legal representative, but not for at least six months after grant, unless death or disability of the grantee occurs before the expiration of the six-month period.

(2) The term "exercise of an option, warrant or right" contained in paragraph (a) of this section shall not include:

(i) The making of an election to receive under any plan compensation in the form of stock or credits therefor, provided that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and, provided further, that such election is irrevocable until at least six months after termination of employment;

(ii) The subsequent crediting of such stock;

(iii) The making of any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(iv) The fulfillment of any condition to the absolute right to receive such stock; or

(v) The acceptance of certificates for shares of stock.

(3) The term "disinterested person" used in paragraph (b) of this rule shall mean an administrator of a plan who

(i) During one year prior to the time of exercising discretion in administering the plan, the person has not been eligible for selection as a person to whom equity securities may be allocated or granted pursuant to the plan (or any other plan of the issuer or any of its affiliates) entitling the participants therein to acquire equity securities; and

(ii) Is not so eligible for three years after such exercise: *provided, however,* that a disinterested person may participate in a plan that satisfies the conditions of paragraph (b)(1)(ii) of this section if awards are not subject to the discretion of any person.

(d) *Cash Settlements of Stock Appreciation Rights.* Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the operation of section 16(b) of the Act, as not comprehended within the purpose of that section, if all the following conditions are met:

(1) *Information about the issuer.* (i) The issuer of the stock appreciation right has been subject to the reporting requirements of section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year.

(ii) The issuer of the stock appreciation right on a regular basis does release for publication quarterly and annual summary statements of sales and earnings. This condition shall be deemed satisfied if the specified financial data appears—

(A) on a wire service,

(B) in a financial news service,

(C) in a newspaper of general circulation, or

(D) is otherwise made publicly available.

(2) *Administration of the plan.* (i) The plan shall be administered in the manner specified in paragraph (b)(1)(i) of this section.

(ii) The board or committee shall have sole discretion either

(A) to determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof) or

(B) to consent to or disapprove the election of the participant to receive cash in full or partial settlement of the

right. Such consent or disapproval may be given at any time after the election to which it relates.

(iii) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by the participant of the stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in paragraph (d)(1)(ii) of this section and ending on the twelfth business day following such date. This paragraph (d)(3)(iii) of this section, however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise:

(A) Is automatic or fixed in advance under the plan; and

(B) Is outside the control of the participant.

§ 240.16b–4 Issuer redemptions.

Any acquisition of an equity security (other than a convertible security or right to purchase a security) by a director or officer of the issuer of such security shall be exempt from the operation of section 16(b) upon condition that:

(a) The equity security is acquired by way of redemption of another security of an issuer, substantially all of whose assets other than cash (or government bonds) consist of securities of the issuer of the equity security so acquired;

(b) The acquired equity security:

(1) Represented substantially and in practical effect a stated or readily ascertainable amount of such equity security;

(2) Had a value which was substantially determined by the value of the redeemed equity security; and

(3) Conferred upon the holder the right to receive the acquired equity security without the payment of any consideration other than the security redeemed;

(c) No security of the same class as the security redeemed was acquired by the director or officer within six months prior to such redemption or is acquired within six months after such redemption; and

(d) The issuer of the acquired equity security has recognized the applicability of paragraph (a) of this section by appropriate corporate action.

§ 240.16b–5 Bona fide gifts and inheritance.

Both acquisitions and dispositions of equity securities shall be exempt from the operation of section 16(b) if they are:

(a) Bona fide gifts; or

(b) Transfers of securities by will or the laws of descent and distribution.

§ 240.16b–6 Derivative securities.

(a) The establishment of or increase in a call equivalent position or liquidation of or decrease in a put equivalent position shall be deemed a purchase of the underlying security for purposes of section 16(b) of the Act, and the establishment of or increase in a put equivalent position or liquidation of or decrease in a call equivalent position shall be deemed a sale of the underlying securities for purposes of section 16(b) of the Act.

(b) The closing of a derivative security position as a result of its exercise shall be exempt from the operation of section 16(b) of the Act, and the acquisition of underlying securities due to the exercise or conversion of a call equivalent position or the disposition of underlying securities due to the exercise of a put equivalent position shall be exempt from the operation of section 16(b) of the Act; *Provided, however,* that the acquisition or disposition of securities from the exercise of an out-of-the-money option, warrant, or right shall not be exempt.

(c) The disposition of a security received from the exercise of a derivative security awarded pursuant to a plan satisfying § 240.16b–3 shall be exempt from the provisions of section 16(b) if the disposition is pursuant to a plan or agreement for merger or consolidation, or reclassification of the issuers' securities, or for the exchange of its securities for the securities of another person which has acquired its assets, or which is in control, as defined in section 368(c) of the Internal Revenue Code of 1986, of a person which has acquired its assets, where the terms of such plan or agreement are binding upon all stockholders of the issuer except to the extent that dissenting stockholders may be entitled, under statutory provisions of provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

Alternative A

* * * * *

(d) In determining the short-swing profit recoverable pursuant to section 16(b) of the Act from transactions involving the purchase and sale or sale and purchase of derivative and underlying securities the following rules apply:

(1) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities that have identical characteristics (*e.g.*, purchases and sales of call options of the same strike price and expiration date, or purchases and sales of the same series of convertible debentures) shall be measured by the actual prices paid or received in the short-swing transactions.

(2) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities having different characteristics (*e.g.*, the purchase of a call option and the sale of convertible debenture) or derivative securities and underlying securities shall not exceed the difference in price of the underlying security from the time of purchase or sale to the time of sale or purchase. Such profits may be approximated by measuring the short-swing profits that would have been realized had the subject transactions involved purchases and sales solely of the derivative security that was actually purchased or solely of the derivative security that was actually sold, valued as of the time of the matched purchase or sale, and calculated for the lesser of the number of ultimate underlying securities covered by the derivative security actually purchased or sold.

(3) Short-swing profits shall, to the extent practicable and necessary in order to provide an equitable measure of short-swing profit, be measured through the application of valuation techniques that adjust the measure of short-swing profit recovery to account for changes in—

(i) The price of the underlying equity,

(ii) The volatility of the underlying equity,

(iii) Prevailing interest rates,

(iv) The strike price, conversion price or conversion ratio of the derivative security

(v) The time to expiration of the derivative security, as well as

(vi) Any other factors that the court may deem relevant.

Alternative B

* * * * *

(d) In determining the short-swing profit recoverable, pursuant to section 16(b) of the Act, from the purchase and sale or sale and purchase of two different types of derivative securities or of derivative securities and underlying equity securities, the following rules apply:

(1) In the absence of a contrary judicial determination pursuant to paragraph (d)(2) of this section, the measure of short-swing profit liability shall be the difference in price of the underlying security from the time of purchase or sale to the time of sale or purchase.

(2) Nothing in this rule shall preclude courts from using valuation methods that are different than those contained in this rule, when the facts so require in

order to provide an equitable measure of profit.

(e) Any profit derived from writing an option upon expiration of the option, where the expiration was within six months of the writing of the option, shall be recoverable under section 16(b) of the Act.

§ 240.16b-7 Mergers, reclassifications, and consolidations.

(a) The following transactions shall be exempt from the provisions of section 16(b):

(1) The acquisition or disposition of a security of a company, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger or consolidation (except in the case of consolidation, owned 85 percent of the resulting company); or

(2) The acquisition or disposition of a security of a company, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, held over 85 percent of the combined assets of all the companies undergoing merger or consolidation, computed according to their book values prior to the merger or consolidation as determined by reference to their most recent available financial statements for a 12 month period prior to the merger or consolidation.

(b) A merger within the meaning of this rule shall include the sale or purchase of substantially all the assets of one company by another in exchange for stock which is then distributed to the security holders of the company that sold its assets.

(c) Notwithstanding the foregoing, if an officer, director or stockholder shall make any purchase (other than a purchase exempted by a rule under section 16(b) of the Act) of a security in any company involved in the merger or consolidation and any sale (other than a sale exempted by a rule under section 16(b) of the Act) of a security in any other company involved in the merger or consolidation within any period of less than 6 months during which the merger or consolidation took place, the exemption provided by this rule shall be unavailable.

§ 240.16b-8 Voting trusts.

Any acquisition or disposition of an equity security or certificate involved in the deposit or withdrawal from a voting trust or deposit agreement shall be exempt from the operation of section 16(b) of the Act if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal consisted of equity securities of the same class as the security deposited or withdrawn: *Provided, however,* that this section shall not apply to the extent that there shall have been a purchase or sale of an equity security of the class deposited and a sale or purchase of any certificate representing such equity security (other than the actual deposit or withdrawal) transaction within a period of less than 6 months during which the deposit or withdrawal took place.

§ 240.16b-9 Dividend or interest reinvestment plans.

Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16(b) if it is made pursuant to a plan providing for the regular reinvestment of such dividends or interest; *Provided, however,* that the plan shall be made available on the same terms to all holders of securities of the class on which the reinvested dividends or interest are being paid.

6. Sections 240.16c–1 through 16c–3 are revised, and §§ 240.16c–4 and 16d–1 are added and the undesignated center heading is republished to read as follows:

Exemption of Certain Securities From Section 16(c)

§ 240.16c-1 Brokers.

Any security shall be exempt from the operation of section 16(c) of the Act to the extent necessary to render lawful the execution by a broker of an order for an account in which the broker has no direct or indirect interest.

§ 240.16c-2 Transactions effected in connection with a distribution.

Any security shall be exempt from the operation of section 16(c) of the Act to the extent necessary to render lawful any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, where the sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling, or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be so acquired is subject to a prior offering to existing security holders or some other class of persons.

§ 240.16c-3 Exemption of sales of securities to be acquired.

(a) Whenever any person is entitled, as an incident to his ownership of an issued security and without the payment of consideration, to receive another security "when issued" or "when distributed," the sale of the security to be acquired shall be exempt from the operation of section 16(c) provided, that:

(1) The sale is made subject to the same conditions as those attaching to the right of acquisition;

(2) Such person exercises reasonable diligence to deliver such security to the purchaser promptly after his right of acquisition matures; and

(3) Such person reports the sale on the appropriate form for reporting transactions by persons subject to section 16(a).

(b) This rule shall not be construed as exempting transactions involving both a sale of a security "when issued" or "when distributed" and a sale of the security by virtue of which the seller expects to receive the "when-issued" or "when-distributed" security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received by the seller pursuant to the seller's right of acquisition.

§ 240.16c-4 Derivative securities.

(a) Establishing or increasing a put equivalent position shall not be prohibited under section 16(c) of the Act, provided that the securities underlying the put equivalent position so transacted do not exceed the amount of underlying securities otherwise owned.

(b) This rule shall become unavailable when a person sells underlying securities such that the securities underlying the put equivalents exceed the amount of underlying securities otherwise owned.

§ 240.16d-1 Market maker reporting.

Transactions exempt pursuant to section 16(d) of the Act, need not be reported on Forms 3, 4 or 5.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read as follows:

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78a, unless otherwise noted.

2. By revising Item 10 of Form 10–K in § 249.310 to read as follows:

Item 10. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401 and 405 of Regulation S–K. (§§ 229.401 and 229.405 of this chapter).

3. By revising the last sentence in § 249.104 to read as follows:

§ 249.104 Form 4, statement of changes in beneficial ownership of securities.

* * * Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violations of provisions of the Federal securities laws and the rules promulgated thereunder.

4. By adding 249.105 to Subpart B to read as follows:

§ 249.105 Form 5 annual reconciliation of beneficial ownership of securities.

(a) This form shall be filed pursuant to Rule 16a–1(a) (17 CFR 240.16a–1(a)) for annual reconciliation of beneficial ownership of securities required to be filed pursuant to section 16(a) of the Securities Exchange Act of 1934. Under sections 16(a) and 23(a) of the Securities Exchange Act of 1934; sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935; and sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form by officers, directors and certain security holders of registered issuers.

(b) Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered companies. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

(c) Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in identifying officers, directors and security holders and, therefore, in promptly processing statements of beneficial ownership of securities on this form.

(d) Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and the rules promulgated thereunder.

5. By revising Forms 3 and 4 and adding a new Form 5.

Note: Forms 3 and 4 are not and Form 5 will not be included in the Code of Federal Regulations [§§ 249.103, 249.104 and 249.105].

Form 3—Initial Statement of Beneficial Ownership of Securities Special Instructions For Completing Form 3

Under sections 16(a) and 23(a) of the Securities Exchange Act of 1934; sections 17(a) and 30(a) of the Public Utility Holding Company Act of 1935; and sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form by officers, directors and certain security holders of a registered issuer.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered companies. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to the other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in identifying officers, directors, and security holders and, therefore, in promptly processing initial statements of beneficial ownership of securities.

Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and rules promulgated thereunder.

General Instructions

1. When and Where Statements are To Be Filed

(a) Within 10 days after the occurrence of any event which requires the filing of the statement on this form, three copies, at least one of which shall be manually signed, shall be filed with the Securities and Exchange Commission, Washington, DC 20549. The events which require the filing of a statement on this form are set forth in section 16(a) of the Securities Exchange Act of 1934, section 17(a) of the Public Utility Holding Company Act of 1935 and section 30(f) of the Investment Company Act of 1940. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the company is registered, unless the company has, in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be filed with the company pursuant to Rule 16a–3(e). The filing date is the date of receipt at the Commission except as otherwise provided by Rule 16a–3(g).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped postal card identifying the statement filed.

2. Separate Statement for Each Company—Exception

A separate statement shall be filed with respect to the securities of each company, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and of all of its subsidiary companies.

3. Date as of Which Information Is To Be Given

Information as to the amount of securities beneficially owned, including those subject to derivative securities, shall be given as of the date on which the event occurred that requires the filing of the statement on this form.

4. Classes of Securities To Be Reported

(a) Persons reporting pursuant to section 16(a) of the Securities Exchange Act of 1934 shall include information as to their beneficial ownership of all classes of equity securities of the company even though one or more of such classes may not be registered pursuant to section 12 of the Act.

(b) Persons reporting pursuant to section 17(a) of the Public Utility Holding Company Act of 1935 shall include information as to their beneficial ownership of all classes of securities of the registered holding company and of all of its subsidiary companies.

(c) Persons reporting pursuant to section 30(f) of the Investment Company Act of 1940 shall include information as to their beneficial ownership of all classes of securities of the registered closed-end investment company (other

than "short-term paper" as defined in section 2(a)(38) of the Act).

5. Statement Required Although No Securities are Owned

If any person required to file a statement on this form does not own any securities required to be reported, a statement shall be made on this form to report that fact.

6. Reporting of Ownership in Certain Cases

(a) When two or more securities are owned as a unit and both are required to be reported, report each security separately and describe the unit relationship in the space provided for explanation on the form. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the ownership of common stock that is convertible into another type of common stock, the stock should be listed in Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities shall be reported as derivative securities.

7. Title of Securities

The title of securities in Column 1 of Table I and Columns 1 and 2 of Table II shall be stated as specifically as possible; for example, "Common Stock," "Class A Common Stock," "$6 Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

8. Statement of Amounts of Securities

(a) In stating amounts of securities in Column 2 of Table I and Column 3 of Table II, give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing his proportionate interest in the holdings of the partnership, corporation, trust, or other entity. See Instruction 9(b) below. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported.

9. Type of Ownership of Securities

(a) The following securities shall be reported as owned directly: Securities held in the name of the reporting person or in the name of a bank, broker, or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety, or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.*, through a spouse, child, or other member of the reporting person's immediate family, shall be reported as indirectly owned; "beneficial owner" and "immediate family" are defined in Rules 16a–1 (a) and (b), respectively. Furthermore, securities holdings attributed to a reporting person due to the person's interest in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securities reported on this form may be disclaimed. See Rule 16a–1(a)(4).

10. Type of Derivative Security

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether it represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the securities subject to the derivative security.

11. Inclusion of Additional Information

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

12. Signature

If the statement is filed for a corporation, partnership, trust or other entity, the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing as soon as practicable by the individual for whom the statement is filed, unless such a confirmation which is still in effect is on file with the Commission.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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FORM 3

INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. REPORTING PERSON NAME *(Last, First, Middle)*	ADDRESS	CITY	STATE	ZIP CODE
2. ISSUER COMPANY NAME	ADDRESS	CITY	STATE	ZIP CODE

3. ISSUER COMPANY STATE OF INCORPORATION	4. IRS OR SOC. SEC. IDENTIFYING NUMBER OF REPORTING PERSON (Optional)	5. RELATIONSHIP(S) OF REPORTING PERSON TO COMPANY *(Check all which apply)* ☐ DIRECTOR ☐ OFFICER ☐ 10% OWNER ☐ OTHER (Specify)

6. JOB TITLE OF OFFICER/DIRECTOR *(e.g. "President and Director," "Chief Financial Analyst," etc.)*	7. DATE OF EVENT REQUIRING FILING OF THIS STATEMENT			8. IF AN AMENDMENT, GIVE DATE OF STATEMENT TO BE AMENDED.		
	MONTH	DAY	YEAR	MONTH	DAY	YEAR

TABLE I. SECURITIES BENEFICIALLY OWNED

Furnish the information required by the following table as to securities beneficially owned directly or indirectly by the reporting person, including derivative securities required to be reported in Table II. (Instructions 4 and 6)

1. Title of Securities Owned (Report different types of ownership on separate lines) (Instruction 7)	2. Amount of Securities Owned (Instruction 8)	3. Type of Ownership (Place A "✓" in appropriate category) (Instruction 9) DIRECT	INDIRECT	4. Nature of Indirect Ownership *(e.g. "By Spouse," "By X Trust," "By Y Corporation," By Self as Trustee for Children," etc.)*

TABLE II. DERIVATIVE SECURITIES

Furnish the information required by the following table as to all derivative securities of the company owned by the reporting person (The term "derivative securities" is defined in Rule 16(a)-1(c) (Instructions 4 and 6)

1. Title and Type of Derivative Security (Instructions 7 and 10)	2. Title of Securities Subject to Derivative Security (Report different types of ownership on separate lines) (Instruction 7)	3. Amount of Securities Subject to Derivative Security (Instruction 8)	4. Purchase or Sale Price of Securities Subject to Derivative Security	5. Date Derivative Security Becomes Exercisable if not Presently Exercisable	6. Date of Expiration of Derivative Security MONTH	DAY	YEAR	7. Type of Ownership (Place a "✓" in appropriate category) (Instruction 9) DIRECT	INDIRECT	8. Nature of Indirect Ownership (e.g. "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.)

Explanation of items in tables.

DATE OF STATEMENT

SIGNATURE OF REPORTING PERSON (Instruction 12)

NOTE: If the space provided in either table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010-01-C

Form 4—Statement of Changes in Beneficial Ownership of Securities Special Instructions for Completing Form 4

Under sections 16(a) and 23(a) of the Securities Exchange Act of 1934; sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935; and sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form by officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered companies. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in identifying officers, directors and security holders and, therefore, in promptly processing statements of changes in beneficial ownership of securities.

Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and rules promulgated thereunder.

General Instructions

1. When and Where Statements Are To Be Filed

(a) On or before the 10th day after the end of the month in which any change in beneficial ownership has occurred, three copies of the statement on this form, at least one of which is manually signed, shall be filed with the Securities and Exchange Commission, Washington, DC 20549. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the company is registered, unless the company has, in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be filed with the company pursuant to Rule 16a–3(e). The filing date is the date of receipt at the Commission except as otherwise provided.

(b) Acknowledgement of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped postal card identifying the statement filed.

2. Separate Statement for Each Company—Exception

A separate statement shall be filed with respect to the securities of each company, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies.

3. Classes of Securities To Be Reported

(a) Persons reporting pursuant to section 16(a) of the Securities Exchange Act of 1934 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership, and the amount of their beneficial ownership at the end of the month of all classes of equity securities of the company, even though one or more of such classes may not be registered pursuant to section 12 of the Act.

(b) Persons reporting pursuant to section 17(a) of the Public Utility Holding Company Act of 1935 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the month of all classes of securities of the registered holding company and all of its subsidiary companies.

(c) Persons reporting pursuant to section 30(f) of the Investment Company Act of 1940 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the month of all classes of securities of the registered closed-end investment company (other than "short-term paper," as defined in section 2(a)(38) of the Act).

4. Transactions to Be Reported

The following transactions which result in a change of beneficial ownership should be reported on Form 5 rather than this form: Stock splits and stock dividends occurring during the fiscal year; small acquisitions that are to be reported on a deferred basis pursuant to Rule 16a–6; and transactions conducted during the company's fiscal year that were exempt from the provisions of section 16(b) of the Exchange Act by operation of any rule pursuant to such section. All other transactions which result in a change of beneficial ownership in the company's securities shall be reported on this form, except those that are excluded from the reporting and liability provisions of section 16 by operation of Rule 16a–5, 16a–7, 16a–8 or 16a–9. Transactions required to be reported on this form shall be reported even though acquisitions and dispositions during the month are equal, or the change involves only the nature of ownership, such as a change from indirect ownership through a trust or corporation to direct ownership by the reporting person.

5. Reporting of Transactions

(a) When a transaction relates to the acquisition or disposition of two or more securities as a unit and both are required to be reported, report each security separately and describe the unit relationship in the space provided for explanation. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the acquisition or disposition of common stock that is convertible into another type of common stock, the transaction should be listed in Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities shall be reported as derivative securities.

6. Title of Securities

The title of securities in Column 1 of Table I and Columns 1 and 3 of Table II shall be stated as specifically as possible: for example, "Common stock," "Class A stock," "$6 Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

7. Statement of Amounts of Securities

(a) In stating amounts of securities in Columns 3, 4 and 7 of Table I and

Columns 4 and 7 of Table II, give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction conducted by the partnership, corporation, trust, or other entity. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported. See Instruction 9(b) below.

8. Purchase or Sale Price of Securities

(a) If any transaction reported in Table I or II involved a purchase or sale of securities for cash or obligation to pay cash, state in Column 6 the purchase price per share or other unit, exclusive of brokerage commissions or other costs of execution. If the transaction was only partly for cash and partly for other consideration, state the amount of cash per share or other unit and the nature of the additional consideration. If the transaction did not involve cash, state the nature of the consideration given or received.

(b) When two or more securities are purchased or sold as a unit, the purchase or sale price of the unit shall be stated in Column 6 with respect to one of the securities and cross-referenced with respects to the other security or securities.

9. Type of Ownership of Securities

(a) The following securities shall be reported as owned directly: Securities held in the name of the reporting person or in the name of a bank, broker or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.*, through a spouse, child, or other member of the reporting person's immediate family, shall be reported as indirectly owned; "beneficial owner" and "immediate family" are defined in Rules 16a–1(a) and (b), respectively. Furthermore, securities holdings attributed to a reporting person due to the interest of the person in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securities reported on this form may be disclaimed. See Rule 16a–1(a)(4).

10. Beneficial Ownership at End of Month

Beneficial ownership at the end of the month covered by the statement (Column 7 of Tables I and II) of all accounts required to be reported shall be shown even though there has been no change during the month in the ownership of securities of one or more classes or accounts. For example, a person reporting a transaction relating to common stock shall in addition to providing all the information in Table I relating to such transaction, report the amount of preferred stock, convertible debentures, etc., owned at the end of the month.

11. Type of Derivative Security

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether the derivative security represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities; for example, "Purchase of Put," "Sale of Put," "Purchase of Call," "Sale of Call," etc.

12. Inclusion of Additional Information

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

13. Signature

If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing as soon as practicable by the individual for whom the statement is filed, unless such a confirmation which is still in effect is on file with the Commission.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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FORM 4

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. REPORTING PERSON: NAME *(Last, First, Middle)*	ADDRESS	CITY	STATE	ZIP CODE
2. ISSUER COMPANY NAME	ADDRESS	CITY	STATE	ZIP CODE

3. ISSUER COMPANY STATE OF INCORPORATION	4. IRS OR SOC. SEC. IDENTIFYING NUMBER OF REPORTING PERSON (Optional)	5. RELATIONSHIP(S) OF REPORTING PERSON TO COMPANY *(Check all which apply)* ☐ DIRECTOR ☐ OFFICER ☐ 10% OWNER ☐ OTHER (Specify)

6. JOB TITLE OF OFFICER/DIRECTOR *(e.g. "President and Director," "Chief Financial Analyst," etc.)*	7. STATEMENT FOR CALENDAR MONTH OF (MONTH / YEAR)	8. DATE OF LAST PREVIOUS STATEMENT (MONTH / DAY / YEAR)	9. IF AN AMENDMENT, GIVE DATE OF STATEMENT TO BE AMENDED (MONTH / DAY / YEAR)

TABLE I. SECURITIES BOUGHT, SOLD, OR OTHERWISE DISPOSED OF

Furnish the information required to be reported on this form as to securities of the company bought or sold or otherwise acquired or disposed of by the Reporting person during the month for which this statement is filed. (Instructions 4 and 5) Transactions involving derivative securities of the company shall be reported in Table II.

1. Title of Securities (Report different types of ownership on separate lines) (Instruction 6)	2. Date of Transaction (Give trade date of market transactions) MONTH / DAY / YEAR	3. Amount of Securities Acquired (Instruction 7)	4. Amount of Securities Disposed of (Instruction 7)	5. Code for Character of Transaction (See Below)	6. Purchase or Sale Price Per Share or Other Unit (Instruction 8)	7. Amount of Securities Owned At End of Month (Instruction 7)	8. Type of Ownership (Place a "x" in appropriate category (Instruction 5) DIRECT / INDIRECT	9. Nature of Indirect Ownership *(e.g. "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.*

TABLE II. DERIVATIVE SECURITIES

If, during the month for which this statement is filed, the reporting person acquired or disposed of any derivative security required to be reported on this form, furnish the following information (the term "derivative securities" is defined in Rule 16a-1(c) (Instructions 4 & 5)

1. Title and Type of Derivative Security (Instructions 6 and 11)	2. Date of Transaction (Give trade date of market transactions) MONTH / DAY / YEAR	3. Title of Securities Subject to Derivative Security (Instruction 6)	4. Amount of Securities Subject to Derivative Security (Instruction 7)	5. Code for Character and Transaction (See Codes Below)	6. Purchase or Sale Price of Derivative Security (Instruction 8)	7. Amount of Securities Subject to Derivative Security (Instruction 9)	8. Purchase or Sale Price of Securities Subject to Derivative Security	9. Date Derivative Security Becomes Exercisable if not Presently Exercisable MONTH / DAY / YEAR	10. Date of Expiration of Derivative Security MONTH / DAY / YEAR	11. Type of Ownership (Place a "x" in appropriate category (Instruction 5) DIRECT / INDIRECT	12. Nature of Indirect Ownership *(e.g. By Spouse," By X Trust," By Y Corporation," By Self, etc.*

CODES FOR CHARACTER OF TRANSACTION (Enter in Item 5 of Tables I and II)

(P) — Open Market Purchase
(S) — Open Market Sale
(J) — Private Purchase
(K) — Private Sale
(D) — Stock Dividend
(O) — Acquired by Exercise of Out-of-the Money Derivative Security
(OO) — Disposed of by Exercise of Out of the Money Derivative Security
(O) — Acquired by Conversion of Out-of-the Money Derivative Security
(F) — Disposed of by Conversion of Out of the Money Derivative Security
(E) — Expiration of Out of the Money Derivative Security (if short position)
(B) — Acquisition Pursuant to Qualified Benefit Plan
(T) — Other Acquisition (Specify)
(U) — Other Disposition (Specify)

Explanation of Items in tables

DATE OF STATEMENT

SIGNATURE OF REPORTING PERSON (Instruction 13)

NOTE: If the space provided in either table is insufficient, use a continuation sheet which identifies the table and columns to which it relates

BILLING CODE 8010-01-C

Form 5—Annual Reconciliation of Beneficial Ownership of Securities

Special Instructions for Completing Form 5

Under sections 16(a) and 23(a) of the Securities Exchange Act of 1934; sections 17(a) and 30(a) of the Public Utility Holding Company Act of 1935; and sections 30 (f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form by officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered companies. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in identifying officers, directors and security holders and, therefore, in promptly processing statements of beneficial ownership of securities on this form.

Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and the rules promulgated thereunder.

General Instructions

1. When and Where Statements Are To Be Filed

(a) On or before the 30th day after the end of the company's fiscal year, three copies of the statement on this form, at least one of which is manually signed, shall be filed with the Securities and Exchange Commission, Washington, DC 20549. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the company is registered, unless the company has in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be filed with the company pursuant to Rule 16a–3(e). The filing date is the date of receipt at the Commission except as otherwise provided by Rule 16a–3(g).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped postal card identifying the statement filed.

2. Separate Statement for Each Company—Exception

A separate statement shall be filed with respect to the securities of each company, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiaries.

3. Classes of Securities To Be Reported

(a) Persons reporting pursuant to section 16(a) of the Securities Exchange Act of 1934 shall include information as to transactions required to be reported on this form in all classes of equity securities of the company even though one or more of such classes may not be registered pursuant to section 12 of the Act.

(b) Persons reporting pursuant to section 17(a) of the Public Utility Holding Company Act of 1935 shall include information as to transactions required to be reported on this form in all classes of securities of the registered holding company and all of its subsidiary companies.

(c) Persons reporting pursuant to section 30(f) of the Investment Company Act of 1940 shall include information as to transactions required to be reported on this form in all classes of securities of the registered closed-end investment company (other than "short-term paper", as defined in section 2(a)(38) of the Act).

4. Statement Required Even if No Transactions Have Been Conducted or No Securities Are Owned

A statement on this form is required regardless of whether the reporting person conducted any transactions in the company's securities during the company's fiscal year. See Rule 16a–3(f). If any person required to file a statement on this form does not own any securities required to be reported, a statement shall be made on this form to report that fact.

5. Transactions To Be Reported

Stock splits or stock dividends occurring during the fiscal year shall be reported on this form. See Rule 16a–3(f)(1). Small acquisitions that are to be reported on a deferred basis pursuant to Rule 16a–6 shall be reported on this form. In accordance with Rule 16a–3(f)(1), all transactions in the company's securities conducted during the company's fiscal year that were exempted from liability under section 16 of the Exchange Act (by operation of rules promulgated pursuant to section 16(b) of such Act) and, therefore, are to be reported on a deferred basis, shall be reported on this form. Any occurrence or transaction required to be reported on Form 3 or 4 under section 16(a) of the Act that was required to be filed prior to, and that has yet to be reported as of the date by which this Form 5 is filed shall be reported on this Form 5; *Provided, however,* that such Form 3 or 4 shall be appended to this Form 5. Transactions involving derivative securities shall be reported in Table II; all other transactions shall be reported in Table I.

6. Reporting of Transactions

(a) When a transaction relates to the acquisition or disposition of two or more securities as a unit and both are required to be reported, report each security separately and describe the unit relationship in the space for comments below Table II. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above. In reporting the acquisition or disposition of common stock that is convertible into another type of common stock, the transaction should be listed in Table I with the number of shares or units subject to the conversion privilege and the conversion price set forth in the space for comments below Table II. Other convertible securities should be reported as derivative securities.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) If a derivative security is converted or exercised, the transaction shall be reported in Table II and the acquisition or disposition of the security subject to the derivative security shall be reported in Table I.

7. Title of Securities

The title of securities in Column 1 of Table I and Columns 1 and 3 of Table II shall be stated as specifically as possible; for example, "Common stock," "Class A common stock," "$6 Convertible Preferred Stock," etc.

Include the name of the issuer of the seccurities if it is a public utility holding company or a subsidiary thereof.

8. Statement of Amounts of Securities

(a) In stating amounts of securities in Columns 3 and 4 of Table I and Column 4 of Table II and in Section A under the heading "Additional Information," give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction or holdings of the partnership, corporation, trust, or other entity. See Instruction 10(b) below. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported.

9. Purchase or Sale Price of Securities

(a) If any transaction reported in Table I or II involved a purchase or sale of securities for cash or obligation to pay cash, state in Column 6 the purchase price per share or other unit, exclusive of brokerage commissions or other costs of execution. If the transaction was only partly for cash and partly for other consideration, state the amount of cash per share or other unit and the nature of the additional consideration. If the transaction did not involve cash, state the nature of the consideration given or received.

(b) When two or more securities are purchased or sold as a unit, the purchase or sale price of the unit shall be stated in Column 6 with respect to one of the securities and cross-referenced with respect to the other security or securities.

10. Type of Ownership of Securities

(a) The following securities shall be reported as owned directly: Securities held in the name of the reporting person or in the name of a bank, broker, or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety, or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.*, through a spouse, child, or other member of the reporting person's immediate family, shall be reported as indirectly owned; "beneficial owner" and "immediate family" are defined in Rules 16a–1(a) and (b), respectively. Furthermore, securities holdings attributed to a reporting person due to the person's interest in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securities reported on this form may be disclaimed. See Rule 16a–1(a)(4).

11. Type of Derivative Security

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether the derivative security represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities; for example, "Purchase of Put," "Sale of Put," "Purchase of Call," "Sale of Call," "Acquisition of Warrant," "Disposition of Warrant," "Exercise of Rights," etc.

12. Beneficial Ownership at End of Fiscal Year

(a) The title and amount of securities beneficially owned by the reporting person as of the last day of the company's fiscal year shall be disclosed in Part A of this form. See Instructions 7 and 8.

(b) When two or more securities are owned as a unit, report each security separately and describe the unit relationship in the space provided for comments below Part A. If one or more of the securities comprising the unit is not requried to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(c) In reporting the ownership of common stock that is convertible into another type of common stock, the number of shares or units subject to the conversion privilege should be set forth in the space for comments below Part A. Other convertible securities should be reported as derivative securities.

13. Certification of Compliance with Section 16(a)

(a) All reporting persons shall certify in Part B of the "additional Information" section on page 2 of this form whether or not they have filed with the Commission and each exchange with which filing is required all required Form 3 or 4 reports relating to events occurring and/or transactions consummated during the company's fiscal year.

(b) If the certification cannot be given, the reporting person must either: (1) Provide an indication that three copies of all reports on Forms 3 and 4 that should have been, but were not, filed are attached to this Form; or (2) list the events and/or transactions that triggered the reporting requirements, the dates on which such events and/or transactions occurred, and explain why the required reports have not been filed.

14. Inclusion of Additional Information

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

15. Signature

If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing as soon as practicable by the individual for whom the statement is filed, unless such a confirmation which is still in effect is on file with the Commission.

BILLING CODE 8010–01–M

U.S. Securities and Exchange Commission
Washington, D.C. 20549

Form 5

Annual Report of Beneficial Ownership of Securities
Filed Pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935,
or Section 30(f) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0xxx
Expires:	Pending Approval
Estimated average burden hours per response.....	1.00

1. Name and Address of Reporting Person Last, First, Middle Number and Street City, State, Zip Code	2. Name and Address of Issuer Company Name Number and Street City, State, Zip Code	3. Issuer Company State of Incorporation 4. IRS or Social Security Identifying Number of Reporting Person (Optional)	5. Relationship of Reporting Person to Company (Check all which apply) ☐ Director ☐ Officer ☐ 10% Owner ☐ Other (Specify)
6. Job Title of Officer/Director (e.g., President and Director, Chief Financial Officer, etc.)		7. Statement for Company's Fiscal Year Ending Month Day Year	8. If an Amendment, give date of Statement to be Amended Month Day Year

Table I - Securities Transactions Reported on a Deferred Basis
(Transactions Involving Derivative Securities of the Company Shall be Reported in Table I - Instructions 5 and 6)

1. Title of Securities (Report Different Types of Ownership on Separate Lines) Instruction 7	2. Date of Transaction (Give Market Transaction Trade Date or Stock Split or Dividend Record Date) Month / Day / Year	3. Amount of Securities Acquired Instruction 8	4. Amount of Securities Disposed of Instruction 8	5. Code for Character of Transaction Reported (See Codes Below)	6. Purchase or Sale Price Per Share or Other Unit Instruction 9	7. Type of Ownership (Place a "v" in appropriate category) Instruction 10 Direct / Indirect	8. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.)

Codes for Character of Transaction (Enter in Item 5 of Tables I and II)

Stock Split (Rule 16a-3(f)(1)..... [Z]
Reverse Stock Split..... [Y]
Small Acquisition (Rule 16a-6)..... [A]
Issuer Redemption (Rule 16b-4)..... [R]
Deposit or Withdrawal from Voting Trust or Deposit Agreement (Rule 16b-8)..... [V]
Acquired by Bonafide Gift (Rule 16b-5)..... [G]
Disposed of by Bonafide Gift..... [h]

Acquired by Exercise of In-the-Money or At-the-Money Derivative Security (Rule 16b-6) [x]
Disposed of by Exercise of In-the-Money or At-the-Money Derivative Security..... [Q]
Transfer by Will or the Laws of Descent Rule 16b-5)..... [W]
Acquired by Conversion of In-the-Money or At-the-Money Derivative Security (Rule 16b-6) [M]

Disposed of by Conversion of In-the-Money or At-the-Money Derivative Security.... [N]
Acquisition or Disposition Pursuant to Merger or Consolidation (Rule 16b-7)... [I]
Acquisition Pursuant to Reinvestment of Dividends or Interest (Rule 16(b)-9)... [L]
Other Acquisition (Specify)..... [T]
Other Disposition (Specify)..... [U]

Table II - Derivative Securities Transactions Reported on a Deferred Basis
(The Term "Derivative Securities defined in Rule 16a-1(c)
Instructions 5 and 6

1. Type of Derivative Security (Report Different Types of Ownership on Separate Lines) Instruc. 7 and 11	2. Date of Transaction (Give Trade Date of Market Transactions) Mo.	Day	Year	3. Title of Securities Subject to Derivative Security Instruc. 7	4. Amount of Securities Subject to Derivative Security Instruction 8	5. Code for Character of Transaction Reported (See Codes Below Table I)	6. Purchase or Sale Price of Securities Subject to Derivative Security Instruction 9	7. Purchase or Sale Price of Derivative Security Instruction 9	8. Date Derivative Security Becomes Exercisable if not Presently Exercisable Month	Day	Year	9. Date of Expiration of Derivative Security	10. Type of Ownership (Place a "v" in Appropriate Category) Instruction 10 Direct	Indirect	11. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.)

Comments regarding items in Tables I and II:

ADDITIONAL INFORMATION

A. Securities Beneficially Owned (Instruction 12)

Furnish the following information as to securities of the company beneficially owned directly or indirectly as of the last day of the company's fiscal year (Report different types of ownership on separate lines):

1. Title and Type of Security (Other than derivative security) owned	Amount
2. Title and Type of Security Subject to Derivative Security owned	**Amount**

Comments

Note: If the space provided in any table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010-01-C

B. Certification of Compliance with Section 16(a) (Instruction 13)

1. The reporting person certifies that all Form 3 and Form 4 reports required by Section 16(a) relating to events occurring (i.e., person becomes officer, director or 10% owner of a registered company) and/or transactions consummated by the reporting person in the company's securities during the fiscal year have been filed with the Commission.....Check Box ☐ Yes ☐ No

2. If the above certification was not given, either:

a. Attach three copies of all reports on Forms 3 or 4 relating to events occurring and/or transactions consummated during the company's fiscal year that should have been, but were not, filed with the Commission.

or b. List below the events and/or transactions that triggered the reporting requirements, the date on which the events or transactions occurred, and explain why the required reports have not been filed to date:

Event/Transaction	Date of Occurrence	Explanation

Date of Statement	Signature of Reporting Person (Instruc. 15)

VOL 53 ISS 239 DE 13 1988 UMI

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted.

2. Section 270.39f–1 is revised to read as follows:

§ 270.30f–1 Applicability of section 16 of the Exchange Act to section 30(f).

(a) The filing of any statement prescribed under section 16(a) of the Securities Exchange Act of 1934, shall satisfy the corresponding requirements of section 30(f) of the Investment Company Act of 1940.

(b) The rule under section 16 of the Securities Exchange Act of 1934 shall apply to any duty, liability or prohibition imposed with respect to a transaction involving any security of a registered closed-end company under section 30(f) of the Act.

(c) No statement need be filed pursuant to section 30(f) of the Act by an affiliated person of an investment adviser in his capacity as such if such person is solely an employee; other than an officer, of such investment adviser.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read in part as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*

2. By adding sub-item 88.E. of Form N–SAR in § 274.101 to read as follows:

Note: Form N–SAR is not included in the Code of Federal Regulations.

Form N–SAR

* * * * *

88.

E. Furnish the information required by Item 405 of Regulations S–K.

By the Commission.

Jonathan G. Katz,

Secretary.

December 2, 1988.

[FR Doc. 88–28284 Filed 12–12–88; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 230

[Rel. No. 33–6808, File No. S7–23–88]

Resale of Restricted Securities; Changes of Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from December 31, 1988 to January 31, 1989, the date by which comments on Securities Act Release No. 33–6806 (October 25,1988) [53 FR 33147] regarding proposed Rule 144A and proposed changes to the method of determining the holding period of restricted securities under Rules 144 and 145 must be submitted.

DATE: Comments on Release No. 33–6806 must be received on or before January 31, 1989.

ADDRESS: Comments on Release No. 33–6806 should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–23–88. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sara Hanks or Samuel Wolff, (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 33–6806, the Commission requested comments on proposed Rule 144A, which would provide a non-exclusive safe harbor from the registration requirements of the Securities Act for resales of securities to institutional investors. Release 6806 also proposed for comment amendments to Rules 144 and 145, changing the method of determining the holding period of restricted securities. In view of the many questions raised in the Release, potential commenters have requested additional time. The Commission had determined to extend the comment period from December 31, 1988 to January 31, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

December 2, 1988.

[FR Doc. 88–28602 Filed 12–2–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–301B]

Concrete and Masonry Construction Safety Standards; Lift-Slab Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period and period for requesting an informal hearing.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notice of proposed rulemaking which OSHA issued on September 15, 1988 [53 FR 35972] on lift-slab construction. This notice also restates the procedures for submitting hearing requests.

DATE: Written comments and requests for a hearing must be postmarked by February 12, 1989.

ADDRESS: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Docket S–301B, Room N–2634, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–7894. All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA issued a Notice of Proposed Rulemaking on September 15, 1988, [53 FR 35972] which proposed to revise the safety standards for lift-slab construction. Interested parties were given until November 14, 1988, to submit comments pertaining to the proposal. The notice of proposed rulemaking also informed the public of the opportunity to request an informal public hearing on the proposal. Subsequently, OSHA received a request for an extension of the comment period. OSHA published a notice in the **Federal Register** on November 8, 1988 [53 FR

45102] announcing that it was extending the period for comments and hearing requests until December 14, 1988.

OSHA has received another request from an interested person to extend the comment period once again to allow ample opportunity for a complete and full response to the proposed provisions and the specific issues raised in the proposal. To ensure the fullest participation of interested persons, OSHA is hereby extending the period until February 12, 1989.

In addition, interested persons have until February 12, 1989, to request an informal hearing on the proposal. The notice of proposed rulemaking sets forth five conditions that objections and hearing requests must satisfy. It is important that hearing requests clearly indicate the subjects to be addressed at the hearing and the evidence to be presented by the party requesting the hearing. Therefore, OSHA is restating the conditions for submitting objections and hearing requests.

Objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 12, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken, or concerning which a hearing request is made, and must state the grounds therefor;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (49 FR 35736), and 29 CFR Part 1911.

Signed at Washington, DC, this 8th day of December 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–28601 Filed 12–12–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Rescission of Bank Secrecy Act Exemption Regarding Merchant Shippers

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Request for comments on proposed rescission of Bank Secrecy Act CMIR exemption.

SUMMARY: The Treasury Department is requesting comments before rescinding the limited exemption of merchant shippers from the reporting requirements of 31 CFR 103.23.

DATE: Comments are due February 13, 1989.

ADDRESS: Comments should be sent to Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of Assistant General Counsel (Enforcement), Department of Treasury, (202) 566–9947.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. 91–508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311–5324), authorizes the Secretary of the Treasury to require reports on the international transportation and receipt of monetary instruments. 31 U.S.C. 5316. Pursuant to this authority, Treasury has issued regulations requiring that a form be filed reporting the international tranportation and receipt of monetary instruments that exceed $10,000. (Form 4790, the "CMIR"). *See* 31 CFR 103.11(k) and 103.23. The Secretary may prescribe and revoke exemptions from the requirements of the Act or its regulations. *See* 31 U.S.C. 5318 (a)(5) and 31 CFR 103.45(a).

Merchant shipping companies were granted an exemption to this requirement for moneys on board ship for their own use. The exemption states:

> An exemption is granted to any merchant shipping company from the requirement to report the transportation into or out of the United states of currency or bearer instruments in amounts in excess of $5,000 with respect to currency or bearer instruments placed on board ship by the owner or operator in order to provide for reasonable shipping needs. Records of such money placed on board are to be maintained by the shipping companies.

This exemption was promulgated prior to the statutory increase in the transportation filing amount to $10,000 in 1984. *See* Pub. L. 98–473, Title II, section 901(c), October 12, 1984.

Treasury has reviewed this exemption and has concluded, in light of the law enforcement utility of data regarding the international flow of currency, that there should be reporting of transportation or receipt of monetary instruments in excess of $10,000 by merchant shipping companies. In addition, this rescission would be consistent with the policy of the Department of the Treasury to deny discretionary CMIR exemptions, except to those involved in financial institution transactions. *See* 31 CFR 103.23(c).

While Treasury has absolute discretion in granting and revoking exemptions from the Bank Secrecy Act and the regulations thereunder, it has decided to request comments as to the impact, if any, of revocation of this exemption. After the comments are received and analyzed, the Department of the Treasury will publish its final decision on whether the exemption will be revoked or continued.

Submission of Comments

Treasury requests comments from all interested persons concerning this notice. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at (202) 566–8022.

Dated: November 18, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-28590 Filed 12-12-88; 8:45 am]

BILLING CODE 4910-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3489-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Mason Chamberlain, Incorporated, Bay St. Louis, Mississippi, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluation the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and the fate and transport models used to evaluate the petition. Comments will be accepted until January 27, 1989. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by December 28, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-MCEP-FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or mixture is the same as previously described for listed wastes.

B. *Approach Used to Evaluate This Petition*

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that

the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Mason Chamberlain's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned wastes, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Mason Chamberlain utilizes off-site disposal of the petitioned waste, ground-water monitoring data collected from the petitioner's facility would not characterize the effects of the petitioned waste on the underlying aquifer at the off-site disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

Mason Chamberlain, Inc., Mississippi Army Ammunition Plant, National Space Technology Laboratories Base, Bay St. Louis, Mississippi

1. Petition for Exclusion

Mason Chamberlain, Inc. (Mason Chamberlain), located at the Mississippi Army Ammunition Plant, formerly the National Space Technology Laboratories Base, Bay St. Louis, Mississippi, produces the 155 millimeter M483 projectile (body, base, and ogive) and cargo grenade metal parts, and loads, assembles, and packs the round except for the propellant charge and the projectile fuse. Mason Chamberlain has petitioned the Agency to exclude its wastewater treatment sludge listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludge from the chemical conversion coating of aluminum." The wastewater treatment sludge is generated from the metal finishing operations associated with production of the projectile and cargo grenade metal parts. The listed constituents of concern for EPA Hazardous Waste No. F019 are chromium and complexed cyanide. Mason Chamberlain petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Mason Chamberlain also believes that its treatment process generates a non-hazardous waste because the constituents of concern, although present in the waste, are in essentially immobile form. Mason Chamberlain further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Mason Chamberlain's petition.

2. Background

Mason Chamberlain petitioned the Agency to exclude its wastewater treatment sludge on December 22, 1986. Additional information was submitted to the Agency on September 25, 1987, December 22, 1987, and April 29, 1988. In support of its petition, Mason Chamberlain submitted (1) detailed descriptions of its manufacturing and waste treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent analyses for all the EP toxic metals, nickel, and cyanide; (4) results from the extraction procedure (EP) and Oily Waste extraction procedure (OWEP) toxicity analyses for all the EP toxic metals, nickel, and cyanide; (5) results from total constituent analyses for total sulfide; (6) results from total oil and grease analyses; (7) results from analyses for the characteristics of ignitability, corrosivity, and reactivity; and (8) results from total constituent analyses for the priority pollutants.[1]

Three production operations are in use at Mason Chamberlain's Bay St. Louis facility: (1) The projectile metal parts operation; (2) the cargo grenade metal parts operation; and (3) the production support operation. The projectile metal parts operation consists of forging, machining, cleaning/surface preparation, chemical finishing, and welding of aluminum and steel. The cargo grenade metal parts operation consists of machining and chemical finishing of cargo grenade metal parts. The production support operation, is a combined waste treatment system for the treatment of eight waste streams generated by the following processes: (1) Chromate conversion coating of

[1] A subset of 40 CFR 261, Appendix VIII constituents which include the volatile, semi-volatile acid extractable compounds and the base/neutral extractable compounds.

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aluminum; (2) anodizing of aluminum; (3) anodic hard coating of aluminum; (4) zinc phosphating of ferrous surfaces; (5) surface treatment; (6) various cleaning of oils and coolants from machinery; (7) coal pile runoff water; and (8) boiler blowdown wastewater from the production of steam.

These eight waste streams contain alkaline waste, soluble coolant waste, non-detergent oily waste, acid/alkali rinse, chromium rinse, and containerized wastewater. The waste streams are pretreated prior to entering the combined waste treatment system; pretreatment methods vary depending on the chemical characteristics of each of the waste streams. The alkaline waste, acid/alkali rinse water, boiler blowdown, and coal pile runoff undergo pH adjustment prior to entering the combined treatment system. Soluble coolant waste pretreatment consists of flocculation, separation, and skimming or settling. Non-detergent oily waste is skimmed before entering the combined treatment system, and hexavalent chromium from the chromium rinse is reduced to trivalent chromium by the addition of bisulfate. Containerized wastewater from batch processes or spent tanks receives one of these pretreatment methods on the basis of constituents contained in the wastewater.

After pretreatment, the various waste streams are pumped to the combined waste treatment system for final treatment. Wastes are treated by reducing any remaining hexavalent chromium, separating oily constituents, and precipitating metal hydroxides. The combined waste treatment systems consists of two-stage (primary and secondary) solid contact clarification, sand filtration, and teriary pH adjustment. Effluent from the treatment system is discharged or returned to the system for further filtration. The sludges from the primary and secondary contact clarifiers are dewatered using a filter press. The waste stream covered by this petition is the dewatered sludge filter cake obtained from the primary and secondary contact clarifiers only. Sludges from the pretreatment of soluable oily wastes are further treated and shipped off site to a regulated facility, and are not included in this exclusion petition.

To collect representative samples from filter presses like Mason Chamberlain's petitoners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985.

Mason Chamberlain collected six composite samples of filter cake sludge during the period of August 27, 1986 through October 8, 1986. Total constituent concentrations (*i.e.*, mass of a particular constitute per mass of waste) were determined for cadmium, chromium, lead, nickel, cyanide, and sulfide. Standard extraction procedure (EP) concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) were determined for all the EP toxic metals, nickel, and cyanide. The wastewater treatment sludge filter cake exhibited an oil and grease content ranging from 0.037 percent to 3.63 percent. Wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be detected using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. Because the percentage of total oil and grease exceeded one percent in four of the six samples, Mason Chamberlain collected an additional four composite samples during the period of May 11, 1987 through June 5, 1987, and performed the Oily Waste Extraction Procedure (OWEP) on these samples. See SW-846 Method No. 1330. Results from total constitutent analyses for arsenic, barium, mercury, selenium, and silver were also submitted.

Based on the Agency's review of Mason Chamberlain's manufacturing and waste treatment process descriptions, the Agency requested total constituent analyses for hazardous constituents (*e.g.*, those listed in 40 CFR Part 261, Appendix VIII) that might potentially enter the waste stream as runoff from the on-site coal pile. As a result, Mason Chamberlain also performed total constituent analyses for the priority pollutants on these four additional composite samples. The detection limits for several of the priority pollutants exceeded those specified in "Methods for Chemical Analysis of Waste Water," U.S. EPA (EPA/600/4-79-020), March 1983. Mason Chamberlain, therefore, collected an additional four composite samples during the period of January 18, 1988 through February 13, 1988. Thus, Mason Chamberlain submitted analyses for a total of fourteen composite samples, two with a percentage of oil and grease less than one percent, and twelve with a percentage of oil and grease greater than one percent.

All samples were collected using a time composite sampling method. Sampling was conducted once on each day that the filter cake sludge was dumped from the filter press (which varied from one to four times per week). From each batch of the filter cake sludge, three grab samples were collected, one from each end of the press and one from the center of the press. The three grab samples from each sampling event were then combined to form weekly composite samples. Mason Chamberlain claims that due to a consistent manufacturing and treatment process, the analyses from samples collected over each of the three sampling periods are representative of any variation in the wastewater treatment sludge constituent concentrations.

3. Agency Analysis

Mason Chamberlain used SW-846 method numbers 7060 through 7760, 9010, and 9030 to quantify the total constituent concentrations of all the EP toxic metals, nickel, cyanide, and sulfide in their waste. Mason Chamberlain used SW-846 method numbers 1310 (standard EP) and 1330 (OWEP) to quantify the leachable concentrations of all the EP toxic metals, nickel, and cyanide. (The cyanide extractions were modified by using distilled water instead of acetic acid in order to prevent the volatilization of cyanide. Analyses for EP or OWEP leachable concentrations of sulfide or reactive sulfide are not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Mason Chamberlain used SW-846 method numbers 8240 and 8270 to quantify the total constituent concentrations of the priority pollutants present in the waste. Table 1 presents the maximum total constituent concentrations of all the EP toxic metals (except selenium), nickel, cyanide, and sulfide. Table 2 presents the maximum leachate values of the EP toxic metals, nickel, and cyanide, obtained using the standard EP or OWEP tests. Table 3 presents the maximum total constituent concentrations for the three priority pollutants identified in Mason Chamberlain's waste (*i.e.*, phenol, dimethylphthalate, and bis(2-ethylhexyl)phthalate).

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS

[Wastewater treatment sludge filter cake]

Constituents	Total constituent concentrations (mg/kg)
Arsenic	ND (0.007)
Banum	ND (0.5)
Cadmium	1.8
Chromium	1196.0
Lead	22.7
Mercury	0.008
Selenium	0.24
Silver	0.028
Nickel	157.0
Cyanide	ND (0.05)
Sulfide	ND (1.0)

ND: Not Detected. Denotes concentrations below the detection limit specified in the parenthesis.

TABLE 2.—MAXIMUM LEACHATE CONCENTRATIONS

[Wastewater treatment sludge filter cake]

Constituents	Leachate concentrations (mg/l)
Arsenic	0.005 [1]
Banum	0.4 [1]
Cadmium	0.06 [2]
Chromium	0.13 [2]
Lead	0.25 [2]
Mercury	ND (0.002) [1]
Selenium	0.026 [2]
Silver	0.20 [2]
Nickel	1.5 [1]
Cyanide	ND (0.05) [1]

ND: Not Detected. Denotes concentrations below the detection limit specified in the parenthesis.
[1] Obtained from the Standard EP toxicity test.
[2] Obtained from the OWEP toxicity test.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS

[Wastewater treatment sludge filter cake]

Constituents	Concentrations (ppm)
Phenol	247.22
Dimethylphthalate	1.82
Bis(2-ethylhexyl)phthalate	6.14

These detection limits represent the lowest concentrations quantifiable by Mason Chamberlain, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Based on the results obtained from the characteristics testing, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Mason Chamberlain submitted a signed certification stating that, based on current annual waste generation, its maximum annual generation rate of wastewater treatment sludge filter cake will be 1,262 cubic yards per year. The Agency may review a petitioner's estimates and, on ocasion, has requested a petitioner to re-evalaute estimated waste volume. EPA accepts Mason Chamerlain's certified estimate of 1,262 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Mason Chamberlain's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit this facility in the furutre for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contamianted ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 *FR* 7882 (February 26, 1985), 50 *FR* 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (i.e., the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). In addition, the Agency used its organic leachate model (OLM) to estiamte the leachable portion of the organic constituents in the petitioned waste. See 50 *FR* 48953 (November 27, 1985), 51 *FR* 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying ground water. The Agency requests comments on the use of the OLM and VHS model as applied to the evalaution of Mason Chamerblain's waste.

Specifically, the Agency used the VHS model to evalaute the mobility of all the hazardous inorganic constituents (except mercury and cyanide—see explanation below) from Mason Chamberlain's waste. The Agency's evaluation, using the waste volume of 1,262 cubic yards and the maximum reported EP or OWEP leachate concentrations, generated the compliance-point concentrations shown in Table 4. The Agency did not evalaute the mobility of the remaining inorganic constituents (i.e., mercury and cyanide) from Mason Chamberlain's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes it is inappropriate to evalaute non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 4—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS

[Wastewater treatment sludge filter cake]

Constituents	Compliance-point concentrations (mg/1)	Levels of regulatory concern (mg/1) [1]
Arsenic	0.00039	0.05
Banum	0.031	1.0
Cadmium	0.00470	0.01
Chromium	0.010	0.05
Lead	0.019	0.05
Selenium	0.002	0.01
Silver	0.016	0.05
Nickel	0.12	0.5

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket

The wastewater treatment sludge filter cake exhibited arsenic, barium, cadmium, chromium, lead, selenium, silver, and nickel levels at the compliance point below the levels used in delisting decision-making.

Because the concentrations of total cyanide and total sulfide are less than

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0.05 mg/kg and 1.0 mg/kg, respectively, the Agency believes that the concentrations of reactive cyanide and reactive sulfide will be below the Agency's interim standards of 250 ppm and 500 ppm, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency evaluated the mobility of the organic constituents detected in Mason Chamberlain's waste using the VHS model. The agency used the OLM to predict leachable concentrations of the organic compounds detected in Mason Chamberlian's waste. The resulting leachable concentrations and estimated volume of waste (*i.e.*, 1,262 cubic yards) were then used as inputs in the VHS model in order to assess the potential impacts of these constituents upon the ground water. Table 5 presents the calculated compliance-point concentrations.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS PRIORITY POLLUTANT CONSTITUENTS

[Wastewater treatment sludge filter cake]

Constituents	Compliance-point concentrations (mg/l)	Levels of regulatory concern (mg/l) [1]
Phenol	0.49	10
Dimethylphthalate	0.01	350.0
Bis(2-ethylhexyl)phthalate	0.001	0.0042

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

As indicated by Table 5, the waste does not exhibit levels of phenol, dimethylphthalate, or bis(2-ethylhexyl)phthalate at the compliance point in concentrations exceeding the health-based levels. The Agency determined that no other hazardous constituents of concern are likely to be present or formed as reaction products or by-products of Mason Chamberlain's waste. In addition, on the basis of test results submitted by the petitioner, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The agency believes that Mason Chamberlain's wastewater treatment system renders its F019 wastes non-hazardous. Mason Chamberlian's manufacturing and wastewater treatment processes are believed to be uniform and consistent because the facility does not perform as a job shop or have seasonal product variations. The Agency, therefore believes that analyzed samples of treated waste reflect the day-to-day variations in manufacturing and treatment processes that will continue to be used. The Agency, therefore, is proposing that Mason Chamberlian's wastewater treatment sludge filter cake be considered non-hazardous, as it would not present a hazard to either human health or the environment.

The Agency proposes to grant an exclusion to Mason Chamberlain, Inc., located in Bay St. Louis, Mississippi, for its wastewater treatment sludge filter cake described in its petition as EPA Hazardous Waste F019. If the proposed rule becomes effective, the wastewater treatment sludge filter cake would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the proposed exclusion will apply only to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes were altered and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisied waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, resure, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that these exclusions should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. This proposal is not a major regulation and no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: December 5, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922.)

2. In Table 1 of Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
• • • • •	
Mason Chamberlain, Incorporated; Bay St. Louis, Mississippi.	Wastewater treatment sludge filter cake (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum. This exclusion was published on [insert date of final rule's publication in the **Federal Register**].
• • • • •	

[FR Doc. 88-28651 Filed 12-12-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 88-526, RM-6122; FCC 88-348]

Radio Broadcasting Services; Modification of FM and TV Authorizations To Specify a New Community of License

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to adopt a procedure whereby existing licensees and permittees of FM and TV broadcast authorizations could request a new city of license during the course of rule making proceedings to amend the FM and TV Tables of Allotments, without subjecting the licensee or permittee to the risk of losing its authorization to competing applicants. Currently, the risk of losing an authorization may discourage changes in the city of license, even though the changes may be beneficial to the community and the licensee. The proposed action could allow licensees and permittes to change city of license more easily, resulting in a fairer, more equitable, and more efficient distribution of services.

DATES: Comments must be filed on or before January 9, 1989, and reply comments on or before January 24, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Karl Kensinger, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 88-526, adopted October 28, 1988, and released December 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. Any licensee or permittee currently seeking to change its city of license during the course of rule making proceedings to amend the FM and TV Tables of Allotments must compete with other applicants for the same allotment, regardless of whether the frequency is already occupied. The Christian Voice of Cental Ohio ("petitioner"), an FM licensee, filed a petition for rule making requesting an amendment of the Commission's rules to implement a procedure for FM licensees to upgrade facilities on higher class adjacent or co-channel frequencies, but in a different city of license, at the request of the licensee. Petitioner requested the amendment after learning that it could not upgrade its FM station without opening a filing window for competing applications, as the upgrade required a change of city of license.

2. The Commission believes petitioner's claims have merit, not only in the narrow case presented by petitioner, but also in a wider context. Therefore, we propose to amend our rules to provide a procedure whereby a licensee or permittee may petition the Commission for an amendment to the FM and TV Tables, and modification of its license accordingly, without placing its existing authorization at risk, and regardless of whether that change involves a change in transmitter site, a change in class of channel, or both. The proposal could also apply to television licensees and permittees desiring to exchange intraband noncommercial/commercial channels.

3. Two primary public interest benefits could result from the proposed change. First, removing the licenee's or permittee's risk of losing its present authorization in requesting a new city of license may promote a fair, equitable, and efficient distribution of facilities. Secondly, the proposed procedure, used in conjunction with a transmitter site relocation or in conjunction with the Commission's procedures for modifying licenses to a higher class of channel in the course of rule making proceedings to amend the Tables, my allow licensees and permittees to upgrade facilities in a manner that was previously procedurally impractical.

4. The Commission is of the tentative view that the proposal should be limited in certain respects. First, the proposal should be limited to cases in which the proposed allotment is mutually exclusive with the present allotment. Second, the proposal should not apply to nonadjacent channel upgrades. Finally, the proposed procedure should be utilized only where the petition is able to demonstrate that the proposed new community of license is preferable under our allotment priorities and policies to the present community of license. The Commission requests comments on these views.

5. This is a non-restricted notice and comment rulemaking proceeding. *See* Section 1.1206 of the Commission's Rules, 47 CFR 1.1206 for rules governing permissible *ex parte* contracts.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant impact on small licensees because the new rule is not burdensome. The new rule will allow greater licensee and permittee discretion in choosing facilities.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified requirements or burden upon the public.

8. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 9, 1989, and reply comments on or before January 24, 1989. All relevant and timely

comments will be considered by the Commission before final action is taken in this proceeding.

9. This Notice of proposed Rule Making is issued pursuant to authority contained in Sections 4(i) and 303 of the Commnications Act of 1934, as amended.

List of Subjects in 47 CFR Part 1

Radio, Television.

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

§ 1.420 [Amended]

2. Section 1.420 is proposed to be amended by adding new paragraph (i) preceeding the concluding paragraph to read as follows:

* * * * *

(i) In the course of the rulemaking proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license on the same channel, or on an adjacent or co-channel, or on any channel mutually exclusive with the licensee's or permittee's present assignment, where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

* * * * *

Federal Communications Commission.

Joyce Butler,

Acting Secretary.

[FR Doc. 88-28536 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR 73

[MM Docket No. 88-533; RM-6398, 6470]

Radio Broadcasting Service; Clarksville and Lanesville, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually-exclusive petitions for rule making seeking the allotment of Channel 226A. The first, filed by Janet Miller, seeks the allotment to Lanesville, Indiana, as that community's first local broadcast service (RM-6398). The second proponent, Owen-Jackson seeks the allotment to Clarksville, Indiana, as that community's first local broadcast service (RM-6470). Reference coordinates used for Lanesville are 38-14-13 and 85-59-09. Those for Clarksville are 38-17-01 and 85-50-32.

DATES: Comments must be filed on or before January 20, 1989 and reply comments on or before February 6, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners or their counsel, as follows: Janet Miller, 1680 Hwy. 62E, Corydon, IN 47112, and John Wells King., Esq., Haley, Bader & Potts, 2000 M St., NW., Suite 600, Wash., DC 20036-4574.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-533, adopted November 1, 1988, and released November 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *all ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1. 1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28537 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-532, RM-6415]

Radio Broadcasting Services; Yazoo City, MS and Rayville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by St. Pé Broadcasting, Inc., proposing the substitution of FM Channel 221C2 for Channel 221A at Yazoo City, Mississippi, and modification of the license of Station WJNS(FM) to reflect the higher class of channel. The coordinates used for Channel 221C2 at Yazoo City are 33-03-57 and 90-35-01. To accommodate the substitution at Yazoo City, it would be necessary to substitute FM Channel 222A for Channel 221A at Rayville, Louisiana, Station KTJC(FM). The coordinates for Channel 222A at Rayville are 32-27-22 and 91-39-27.

DATES: Comments must be filed on or before January 20, 1989, and reply comments on or before February 6, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy K. Brady, P.O. Box 986, Brentwood, Tennessee 37024-0986, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-532, adopted October 28, 1988, and released November 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-28538 Filed 12-12-88; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1837

Proposed Changes to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule provides NASA's policy regarding pension portability in service contracts.

DATE: Comments are due not later than January 12, 1989.

ADDRESS: Comments should be addressed to W.A Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

NASA has recently assessed use of pension portability clauses in service contracts. The purpose of these clauses is to transfer pension benefits for contractor employees from one service contract to the successor contract. This proposed rule establishes agencywide policy for the use and approval of pension portability requirements.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because we do not believe that a substantial number of small entities, who are NASA contractors, will have a significant economic impact from this rule. The rule would appear to primarily affect large, consolidated service contracts. Moreover, it will not impose compliance costs with a demonstrably greater impact on small businesses than large businesses, such that small business competition would be adversely affected. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Part 1837

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

PART 1837—[AMENDED]

1. The authority citation for 48 CFR Part 1837 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1837.1—Service Contract—General

2. Subpart 1837.1 is amended by adding 1837.101, 1837.110, and 1837.170 to read as follows:

1837.101 Definitions.

"Pension portability" means the recognition and continuation in a successor service contract of the predecessor service contract's pension rights and benefits for contractor employees.

1837.110 Solicitation provisions and contract clauses.

The contracting officer shall obtain the Assistant Administrator for Procurement's (Attn: Code HP) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

1837.170 Pension portability.

It is NASA's policy not to require pension portability in service contracts. However, if it is in the Government's best interest, NASA may consider the inclusion of pension portability requirements in a service contract under the following conditions:

(a) Only defined contribution plans shall be permitted in portability provisions;

(b) At a minimum, vesting shall be 100 percent at contract completion or termination; and

(c) There must be a clear description of the plan, including coverage regarding service, pay, and benefits, as appropriate, from prior contractors.

[FR Doc. 88-28585 Filed 12-12-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-24; Notice 01]

RIN 2127-AC06

Federal Motor Vehicle Safety Standards; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petitions for rulemaking; request for comments and notice of proposed rulemaking (NPRM).

SUMMARY: This notice grants two related petitions for rulemaking from Mr. Dale T. Fanzo and Mr. Mark E. Goodson and proposes to amend Safety Standard No. 202, *Head Restraints*, to extend the applicability of the standard to trucks, multipurpose passenger vehicles (MPV's) and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The agency tentatively concludes that applying Standard No. 202 to these vehicles would significantly reduce neck and head injuries to front seat occupants in rear impact crashes. This notice also requests comments on issues relating to the use of the rear window as a head restraint in light trucks.

DATES: Comment closing date: February 13, 1989. The proposed effective date is September 1, 1991.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5267.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Jettner, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4917.

SUPPLEMENTARY INFORMATION: This notice grants two related petitions for rulemaking from Mr. Dale T. Fanzo of Bethel Park, Pennsylvania and Mr. Mark E. Goodson of Lewisville, Texas, and proposes to amend Safety Standard No.

202, *Head Restraints*, to extend the applicability of the standard to trucks, multipurpose passenger vehicles (MPV's) and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. (This notice will occasionally use the term "light trucks and vans" to refer to trucks, MPV's and buses with a GVWR of 10,000 pounds or less.) Currently, the standard applies only to passenger cars.

In his petition, Mr. Fanzo informed the agency that his "mini-van" was struck from behind by a welding truck. The petitioner believes that the neck injury he experienced could have been prevented or at least reduced in severity if his seat had been equipped with a head restraint. He asserts that there is no reason to distinguish between his type of vehicle, which appears to have been designated a "multipurpose passenger vehicle" by its manufacturer, and a passenger car for the purposes of Standard No. 202, since he uses his vehicle as he would a passenger car. The petitioner believes further that most "mini-vans" are purchased by families for personal use. To the petitioner, this fact warrants regarding these vehicles on par with passenger cars for the purpose of determining the appropriate application of Federal head restraint requirements. Accordingly, the petitioner requests that NHTSA require head restraints "on vehicles other than passenger cars."

Mr. Goodson requests that NHTSA issue a safety standard that would "minimize spinal, cerebral, cranial, and vertebral injuries that occur when light trucks (i.e., less than 5000 pounds GVWR) are involved in rear end collisions." In particular, Mr. Goodson suggests that the standard should focus on the glazing material used for the rear window in light trucks and require that these vehicles "have safety features so as to minimize compression of the head and spine due to striking the rear glass." This petitioner said that the standard should require the use of certain types of glazing and mounting systems that ensure that the glazing would deform in a manner that absorbs some of the kinetic energy generated by an occupant hitting the rear window and reduce any chances of occupant ejection from the vehicle through the rear window. Mr. Goodson believes that a standard for minimizing the severity of injuries occurring to occupants of light trucks in rear end collisions is needed to make the light truck "a safer vehicle," and, similarly to Mr. Fanzo, cites in particular the increased usage of the vehicle for carrying passengers as a reason for achieving that end.

Mr. Goodson suggests that Standard No. 202 head restraints and energy-absorbing rear window glazing would in combination provide the protection necessary to reduce the number and severity of injuries to light truck occupants in rear impacts. However, because the "spirit and intent" of Mr. Goodson's suggestion is "to lessen the severity of injuries that occur when a small truck is rear ended" (quoting from page two of the Goodson petition), NHTSA has determined that the two petitioners share similar interest in requirements for head restraints in light trucks and vans providing protection in rear end and other collisions. The agency has therefore combined the Fanzo and Goodson petitions and will respond to both petitions in this notice.

After carefully reviewing the issues raised in the petitions, NHTSA has determined that further consideration of those issues is warranted. The agency has therefore decided to grant the petitions insofar as they request an extension of Standard No. 202 to light trucks and vans, and issue a proposal for amending the standard along those lines. As explained below, NHTSA is proposing to extend the standard only to MPV's, trucks and buses with a GVWR of 10,000 pounds or less, and to limit the proposal for small school buses.

The agency emphasizes that the proposal contained herein is limited to the issue of head restraints only, and does not propose a new standard for glazing as suggested by the Goodson petition. Instead, NHTSA is interested in obtaining more information about possible trends in manufacturers' use of glazing as a head restraint in light trucks, and requests comments to specific questions set forth in the "Rear Windows" subsection of the part of this notice entitled, "Other Issues."

Background

Standard No. 202 requires a head restraint for the driver position and the right front seating position in passenger cars, to reduce the frequency and severity of neck injuries in rear impacts and other collisions. The standard also sets height, width and strength requirements for the restraint. The restraint is intended to limit rearward motion of an occupant's head in a rear impact crash, thereby preventing whiplash injury due to hyperextension of the neck.

Whiplash injuries typically occur in the soft tissues (such as the intervertebral discs, ligaments and skeletal muscle) joining together the vertebrae that support the head (i.e., the cervical spine). Whiplash commonly occurs when the head is thrown suddenly rearward with a snap during a rear impact crash. Whiplash injuries may not be immediately apparent after the crash, and some crash victims may not develop symptoms of pain or discomfort until several days after the accident. Neck pain and stiffness are the most common whiplash symptoms, but if the cervical nerves and spine are injured, the head, shoulder, arms or upper back could be affected. Whiplash can be difficult to cure because of differing physiological responses among victims. The symptoms can last several days, or can cause long term (i.e., a year or more) disability. Data indicate that whiplash victims miss an average of four days of work. (National Crash Severity Study, June, 1980.)

In general, motor vehicle manufacturers currently use two types of head restraints to meet the requirements of Standard No. 202. "Integral head restraints" use the design of the seat to meet Standard No. 202. Typically, they consist of a seat back that is extended high enough to meet the height requirement of the standard and a seat structure strong enough to withstand the required force levels. The integral head restraint is a nonadjustable or "automatic" device requiring no action on the part of the occupant, regardless of his or her height, to be effective. "Adjustable head restraints" consist of a separate cushion that is attached to the seat back, typically by sliding metal shafts. Adjustable head restraints provide sufficient vertical motion to accommodate different occupant seating heights.

Information from manufacturers of light trucks indicates that head restraints were offered as either standard or optional equipment on approximately 64 percent of the 1986 light truck and van models. It appears that head restraints are more likely to be offered on "top line" or luxury models, rather than as an optional or standard feature on the full range of vehicle model types.

Safety Need

National estimates of accident data for 1982–1985 indicate that approximately 17,800 whiplash injuries occurred annually to front seat occupants 15 years and older in light trucks and vans involved in rear impacts. (NHTSA chose to highlight injuries to persons 15 years and older because the agency determined that current seat backs are high enough to provide sufficient head support to most children younger than 15 years old.) 4.6 percent of all occupants in light trucks in

reported rear impacts suffered whiplash injuries and 34.4 percent of those injured in rear impacts suffered whiplash injuries. The agency tentatively believes that these injury rates can be significantly reduced by applying Standard No. 202 to light trucks and vans. Further, accident data also indicate that there are 11,046 head injuries annually due to impacts with the rear window and/or window frame structure of pickup trucks. The agency believes that, in addition to preventing whiplash injuries, head restraints in light trucks might also prevent some minor head injuries to occupants of light trucks.

Additional information on these and other matters discussed in this notice can be found in the agency's preliminary regulatory evaluation, which analyzes in detail the impacts of this rulemaking action. This document is available in the docket.

The agency has previously given notice that it was considering extending the applicability of Standard No. 202 to light trucks and vans. In March 1974, the agency formally proposed consolidating Standards No. 202 and No. 207, *Seating Systems*, upgrading their requirements and extending them to all MPV's, trucks and buses with a GVWR of 10,000 pounds or less. (39 FR 10268) The agency stated that it was proposing to extend the head restraint requirement to light trucks and vans because their "broad and increasing use as passenger vehicles on the highway requires that they be well-equipped with passenger-car-type safety systems." While today's NPRM proposes slightly different requirements than those contained in the 1974 NPRM, NHTSA iterates its belief in upgrading the safety of light trucks and vans in issuing this proposal.

Effectiveness of 202

In 1982, NHTSA published an evaluation report concerning Safety Standard No. 202, which evaluated the effectiveness and costs of head restraints in passenger cars. "An Evaluation of Head Restraints, Federal Motor Vehicle Safety Standard 202," NHTSA, February, 1982. The report showed that both integral and adjustable head restraints have been performing as intended, supporting the neck and preventing hyperextension thereof, and that they *significantly reduce* the overall injury risk in rear impact crashes. Integral restraints reduce the overall risk by approximately 17 percent, and adjustable restraints by 10 percent. (Integral restraints were found to be nearly twice as effective as adjustable head restraints because 75 percent of the latter are left in the lowest position by occupants, which does not adequately protect an occupant of average or greater height.) Integral restraints were found to add $12 (in 1981 dollars) to the lifetime cost of owning and operating a car; adjustable restraints, $40. The lifetime cost of head restraints, including fuel consumption, was estimated to average $32.35 (1981 dollars), with 28 percent of the head restraints being integral and 72 percent adjustable.

Because the National Traffic and Motor Vehicle Safety Act makes it incumbent upon NHTSA to ensure that safety standards are appropriate for the type of vehicle to which they apply, even though Standard No. 202 has been proven effective for passenger cars it is important to determine whether its requirements are appropriate for light trucks and vans. The agency has tentatively made a positive finding on the appropriateness of and need for extending Standard No. 202 to light trucks and vans, based on changes in the use and user characteristics of such vehicles.

NHTSA concurs with the petitioners' belief that increasing numbers of light trucks and vans are being used to transport passengers instead of or in addition to property. The Census Bureau's "Truck Inventory and Use Survey" shows that pickup truck use has changed from 1967 to 1982 from being 51 percent personal transportation to 66 percent personal transportation, and from 26 percent agricultural use to 12 percent agricultural use. NHTSA tentatively concludes that the greater use of light trucks as passenger carrying vehicles is leading to increases in the number of light trucks and vans on the road, the number of persons transported in such vehicles, and consequently, the number of persons exposed to accident situations where whiplash and other injuries are likely to occur. In addition, the agency believes that as the use of light trucks and vans increases, and as the likelihood that an accident would occur involving a light truck or van increases, the overall number of rear impact collisions into these vehicles might increase.

NHTSA has found that there are indications that there will be continued growth in the number of light trucks and vans in the vehicle fleet and the amount of miles traveled by those vehicles. NHTSA's "Light Truck and Van Safety" report to Congress (May 1987) states that: (1) In general, light trucks have been capturing an increased share of the light duty vehicle market (including passenger cars), rising from a low of 14.9 percent in 1971 to an all time high of 28.7 percent in 1985 (the most recent year for which data were available); (2) in 1977, only 10.2 percent of light truck sales were compact vehicles, while in 1985, it was 52.6 percent; (3) pickup trucks have lost sales percentage, dropping from 66.8 percent in 1977 to 59.3 percent in 1985; (4) van sales have increased from 21.3 percent to 22.7 percent; and (5) there has been a large shift from conventional cargo vans toward compact passenger vans. NHTSA therefore believes extending Standard No. 202 in the manner proposed herein would not only reduce current whiplash and head injuries, but would also help prevent potential increases in injury rates that are likely to accompany the changes in the on-road vehicle fleet.

NHTSA also believes that there is a likelihood that whiplash injury rates for light trucks and vans will increase, absent an amendment to Standard No. 202 proposed herein, due not only to changes in the ways light trucks and vans are used, but also to changes in vehicle *user* characteristics. Several studies have shown that females are more vulnerable to neck injury than males, and accident data for passenger cars show that females have higher whiplash injury rates than males. (One explanation for this phenomenon is that females on the average have much narrower necks than males, with smaller muscle mass, yet their necks must support heads of roughly the same size as those of males.) National accident data also show that currently, more males drive light trucks than females. NHTSA believes that, as increasing numbers of light trucks and vans are used for transporting passengers, the number of female occupants in these vehicles will increase. The agency tentatively believes, therefore, that whiplash accident rates for light trucks and vans could increase coincident with increases in female occupancy rates for these vehicles.

In sum, the agency believes that the above data indicate that light trucks and vans are increasingly being used as passenger vehicles and that increasing numbers of passengers will therefore be subject to crash situations resulting in whiplash injuries. For these reasons, and because the agency tentatively concludes that Standard No. 202 would significantly reduce whiplash and other injuries to front seat occupants of light trucks and vans, the agency proposes to extend the applicability of the standard.

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Other issues

Exclusions

Vehicles over 10,000 pounds GVWR. This notice proposes to extend Standard No. 202 only to trucks, MPV's and buses with a GVMR of 10,000 pounds or less, and the school bus driver's seat of school buses with a GVWR of 10,000 pounds or less, and not to heavier vehicles. NHTSA has excluded heavier vehicles from this proposal because the agency has determined there is no safety need for head restraints in vehicles with a GVWR greater than 10,000 pounds. Based on national accident data estimates for 1982–1985, occupants of trucks with a GVWR greater than 10,000 pounds received an annual average of 1,400 whiplash injuries (compared to an annual 17,800 whiplash injuries for occupants of light trucks in the same time period). Further, while NHTSA estimates that 14.8 percent of front seat occupants in passenger cars and 4.6 percent of front seat occupants in light trucks received whiplash injuries in rear end collisions, the whiplash injury rate for occupants of heavy trucks is only 2.5 percent. Since the whiplash injury rate for heavy trucks is relatively low, and because the agency is aware of no indications that heavy trucks are becoming more similar in appearance or use to passenger cars, the same considerations for applying Standard No. 202 to light trucks and vans do not apply to vehicles with GVWR's greater than 10,000 pounds. NHTSA has therefore concluded that it is unnecessary at this time to propose extending Standard No. 202 to vehicles above the 10,000 pounds GVWR limit.

Light trucks within certain weight limits. In preparing this proposal, NHTSA analyzed the effect of vehicle weight on the risk of whiplash injury that a light truck occupant might experience in a crash. As a surrogate for vehicle weight, NHTSA compared domestic light trucks to foreign light trucks, since foreign light trucks weigh less as a group. The agency found no significant difference in whiplash injury rates between the two classes of trucks. Because of the relatively small sample size of foreign trucks in the data base, whether vehicle size or weight is a factor in whiplash injuries remains in doubt. The agency requests comments on whether size or weight are factors in whiplash injuries within the light truck category, and whether the proposed standard would be more cost-effective for certain sub-classes of vehicles (based on weight, size, type of use, or other factors.)

School bus right outboard front seating position. NHTSA has also decided to propose requiring a head restraint for only the driver's position of school buses with a GVWR of 10,000 pounds or less, and to exclude the right outboard front seating position on small school buses from the requirements of Standard No. 202. The agency believes that this exclusion is reasonable because passenger seats on small school buses must already meet their own seat back height and strength requirements, and it appears that a vast majority of the occupants of that seating position are children for whom current seat backs provide the type of head support that would be offered by a head restraint.

Rear seats. The national accident data estimates for 1982–1985 showed that while 17,800 whiplash injuries were suffered annually by front seat occupants in light trucks and vans in rear impacted vehicles, there were only an estimated 81 whiplash injuries annually involving rear seat occupants in those vehicle classes. Because of these estimates, NHTSA does not find adequate justification for proposing head restraints for the rear seats of light trucks and vans. Nonetheless, the agency is interested in information on the feasibility and costs of installing head restraints in the rear seating positions and the current or future availability of rear seat head restraints in vans and other MPV's.

Visibility

NHTSA does not believe that head restraints in light trucks and vans would obstruct a driver's visibility to a significant degree, or that any limitations in visibility resulting from the head restraints would be significantly causative of accident involvement. Nevertheless, comments are requested on this issue.

Rear Windows

In his petition, Mr. Goodson said that the rear window in light trucks can provide protection against head and neck injuries resulting from impact that window if proper glazing and mounting systems were used. NHTSA is interested in obtaining information on this issue. However, the agency emphasizes its concern about the practicability of the specific recommendation from Mr. Goodson to use rear window glazing as a means of providing head restraint in rear impact conditions. Of particular concern is the possibility that with laminated glass, lacerative injuries to the head, neck or shoulders could increase compared to tempered glass.

The agency sees many parameters influencing the effectiveness of the petitioner's suggestions for rear windows, including the size and shape of the rear window glazing, the spatial relationships between the window and the occupant, the angle of installation and the window frame arrangement. In particular, the head must be close to a restraining surface for that surface to limit the neck deflection angle to 45 degrees from the vertical. Many light trucks have movable seats that would significantly limit the effectiveness of the rear window as a head/neck restraint. Also, the type of glazing may be influential in determining overall effectiveness and expected safety benefits.

The agency is seeking research data which would bear directly on the efficacy of the various types of glazing which could be used in rear window openings to mitigate whiplash injuries. Currently, FMVSS No. 205, *Glazing Materials*, permits the use of 11 different types of glazing in this location. The agency is particularly interested in possible positive aspects of using tempered, laminated or glass-plastic glazing as a means of reducing whiplash injuries. However, the issue is *not* limited to the choice between the various types of glass because the selection of an engineering approach to implement the Goodson recommendations must take into account a variety of considerations, e.g., different types of glazing, thickness of glazing, mounting structure, size and shape of the window, location of the window from the occupant's head, modifications (such as sliding partitions) permitted in the proposed window, etc.

The agency requests comments on the issues outlined above and answers to the following specific questions. What contribution could cost-effective glazing mounting systems make to enhancing the head restraint capabilities of rear windows? What are the relative costs of different mounting systems? If rear windows were used as head restraints, should extra padding be specified for the mounting frame? Do rear window options such as sliding partitions reduce the safety benefits? How would scratches or other damage to the window affect its ability to function properly as a head restraint? How often are rear windows currently replaced in used light trucks because of damage to the glazing or mounting system? The agency is also interested in data on HIC (Head Injury Criteria) values for impacts on different types of glazing. Would a combination of restraints, such as glazing coupled with head restraints, provide significantly greater safety benefits than either restraint used singularly?

Leadtime

The current availability of engineering and manufacturing resources needed to implement the proposed extension of Standard No. 202 is illustrated by the availability of head restraints as standard or optional equipment on roughly 64 percent of the 1986 light truck and van models. The agency believes that a two year leadtime would be sufficient for the industry to meet 100 percent implementation of the proposed extension of the standard.

Costs and Benefits

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291. It is, however, significant within the meaning of the Department of Transportation's regulatory policies and procedures. The economic effects of this rulemaking action are discussed in detail in the regulatory impact analysis.

NHTSA estimates that the average cost per affected vehicle is approximately $29.20 ($20 per vehicle plus $9.20 lifetime fuel penalty cost accounting for 7 additional pounds of weight per vehicle). This estimate is based on the assumption that the proportion of adjustable to integral head restraints among the affected population of vehicles would be the same as the proportion in model year 1986 fleet of light trucks with head restraints, i.e., 60 percent adjustable; 40 percent integral. Under the assumption that approximately 30 percent of the total light truck and van fleet in use have head restraints, 3.0 million vehicles would be affected by this proposed amendment. The total estimated impact cost of the proposed amendment is $87.6 million per year.

At this time, the agency does not have as much information as it would like concerning whiplash injuries and their costs. Whiplash injuries are not like the typical AIS 1 (minor cuts or bruises) or even AIS 2 (moderate injuries—broken bones, etc.), because whiplash injuries often involve longer term pain and stiffness. These symptoms, and perhaps rehabilitation therapy, often last a year or longer. The agency is interested in comments from the public, insurance companies, and medical researchers regarding the average cost of whiplash injuries (or data relating to the cost of the more minor whiplash injuries and/or the cost of the more severe whiplash injuries, with some indication as to what percent of all whiplash injuries are represented by these costs). The agency is also interested in tort judgments and/or settlements made regarding the value of pain and suffering associated with whiplash injuries, as well as work days lost and impairment as a result of whiplash injury.

The 1982 evaluation of Standard No. 202 found that adjustable head restraints were 10 percent effective and the integral head restraints were 17 percent effective in reducing all rear impact injuries. Assuming that the same effectiveness estimates apply to light trucks, the average effectiveness for light trucks is estimated to be 12.8 percent. NHTSA estimates that approximately 3,690 to 8,270 injuries could be reduced annually when the remainder of the light truck fleet was equipped with head restraints. These injury reductions are over and above those currently obtained by head restraints already present in approximately 30 percent of the light truck and van fleet.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The primary cost effect of this proposed rule would be on manufacturers of light trucks and vans, which are large corporations. Altough some small businesses that supply the metal or padding parts for adjustable head restraints or the seats with integral head restraints might experience a greater demand for their products, the agency does not believe that these would be significant. Further, although many final stage manufacturers are small businesses, the impact on them should be minor since the relatively small increase in the price of the completed vehicles can be passed on to the ultimate consumer, small organizations and governmental units.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Federalism

This action has been analyzed in accordance with the principles and criteia contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this

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document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Paragraph S2 and the introductory text of paragraph S4 of Safety Standard No. 202, *Head Restraints*, [49 CFR 571.202], would be revised to read as follows:

§ 571.202 Standard No. 202; Head Restraints

* * * * * *

S2. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less.

* * * * *

S4. *Requirements.* Except for school buses, a head restraint that conforms to either (a) or (b) shall be provided at each outboard front designated seating position. For school buses, a head restraint that conforms to either (a) or (b) shall be provided for the driver's seating position.

* * * * *

Issued on: December 8, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-28540 Filed 12-8-88; 10:08 am]

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Notices

Federal Register
Vol. 53, No. 239
Tuesday, December 13, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Foster Grandparent Program and Senior Companion Program, Income Eligibility Levels

AGENCY: ACTION.

ACTION: SSI adjusted income eligibility levels for the Foster Grandparent and Senior Companion Programs.

SUMMARY: This notice adjusts the 1988 income eligibility levels for the Foster Grandparent and Senior Companion Programs published in the **Federal Register**, June 22, 1988 (53 FR 120).

This adjustment is based on the 1988 Supplemental Security Income (SSI) guidelines disseminated by the Social Security Administration in October 1988. Revised income eligibility level for each state adopts the higher amount of either: (a) 125% of the Department of Health and Human Services (DHHS) Proverty Income Guidelines, or (b) 100% of the DHHS Guidelines plus the current amount of each state supplemented federal SSI. Amounts are rounded to the next highest multiple of $5.00.

Persons whose incomes met the eligibility levels published on June 22, 1988, shall remain eligible under the conditions provided in current policy. The adjusted eligibility levels in this Notice shall apply to persons enrolling in the Programs on or after its effective date.

SCHEDULES OF INCOME ELIGIBILITY LEVEL: FOSTER GRANDPARENT PROGRAM AND SENIOR COMPANION PROGRAM

[For the following States]

State	One	Two	Three	Four	Five	Six	Seven	Eight
AK	$10,870	$14,990	$17,440	$19,890	$22,340	$24,790	$27,240	$29,690
CA	9,300	16,900	18,860	20,820	22,780	24,740	26,700	28,660
CO	7,215	11,235	13,195	15,155	17,115	19,465	21,915	24,365
CT	10,610	14,475	16,435	18,395	20,355	22,315	24,275	26,235
HI	8,315	11,125	13,940	16,750	19,565	22,375	25,190	28,000
MA	7,320	10,155	12,115	14,565	17,015	19,465	21,915	24,365
WI	7,215	9,725	12,115	14,565	17,015	19,465	21,915	24,365

For household units in all states, the District of Columbia, Puerto Rico, and the Virgin Islands (except Alaska, California, Colorado, Connecticut, Hawaii, Massachusetts, and Wisconsin) the following income eligibility levels as published in the June 22, 1988 **Federal Register**, shall apply.

[For Household Units Of]

One	Two	Three	Four	Five	Six	Seven	Eight
$7,215	$9,665	$12,115	$14,565	$17,015	$19,465	$21,915	$24,365

Four household units with more than eight members, add to each additional household member (over eight): Alaska *$2,450,* Hawaii *$3,250,* all others *$1,960.*

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program/Senior Companion Program, 806 Connecticut Avenue NW., M–1006, Washington, DC 20526 or telephone (202) 634–9349.

SUPPLEMENTARY INFORMATION: ACTION programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended Pub. L. 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guideline published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty income guidelines to be adjusted for Consumer Price Index changes.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 88–28655 Filed 12–12–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Lake Traverse Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Lake Traverse Sioux Reservation in South Dakota has been materially increased and become

acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Sisseton-Wahpeton Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon December 15, 1988, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC on December 8, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-28580 Filed 12-12-88; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Southern Forest Experiment Station; Southern Pine Beetle

AGENCY: Forest Service, USDA.

ACTION: Notice; request for research proposals.

SUMMARY: In Fiscal Year 1989, the Southern Forest Experiment Station will proivide $500,000.00 for southern pine beetle cooperative research. Proposals will be considered for funding as described in the supplementary information section.

DATE: For consideration, proposals must be postmarked by February 17, 1989.

ADDRESSES: To obtain information on how to submit a proposal for cooperative research, write to: Project Leader, RWU-4501, Southern Forest Experiment Station, 2500 Shreveport Highway, Pineville, LA 71360.

FOR FURTHER INFORMATION CONTACT: J. Robert Bridges at the Pineville address given above; telephone 318/473-7323, (FTS) 497-7232.

SUPPLEMENTARY INFORMATION: The Southern Forest Experiment Station research work unit in Pineville, Louisiana, conducts long-term research on the southern pine beetle, *Dendroctonus frontalis*, the most destructive insect pest of southern pines. Because of the seriousness of southern pine beetle outbreaks, Congress has appropriated money to accelerate work on this pest as part of Forest Service's Pest Outbreak Priority Research Program.

The goal of the research program is to develop environmentally acceptable intervention tactics and strategies for delaying and suppressing southern pine beetle outbreaks. Proposals will be accepted to:

(1) Develop technology for prediction of outbreaks.

(2) Develop and test innovative new control procedures including biological, chemical, and behavioral chemical techniques.

(3) Evaluate the area-wide effectiveness of cut-and-leave and other control practices.

Proposals will be approved for funding based on scientific merit. Proposals will be sent to peer scientists for review. In addition, a review panel of scientists and other experts will be assembled to provide advice on the scientific and technical merit of proposals.

James E. Bell,

Acting Director.

Date: December 6, 1988.

[FR Doc. 88-28660 Filed 12-12-88; 8:45 am]

BILLING CODE 3410-31-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38-88]

Foreign-Trade Zone 49—Newark/Elizabeth, NJ; Application for Subzone Squibb Pharmaceutical Plant, New Brunswick, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, requesting special-purpose subzone status for the pharmaceutical plant of E.R. Squibb & Sons, Inc. (Squibb), in New Brunswick, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 28, 1988.

The Squibb plant (96 acres) is located in the City of New Brunswick at 1 Squibb Drive. (A portion of the facilities are in the adjoining Township of North Brunswick.) The facility employs some 2,500 persons and is used to produce a number of therapeutic and diagnostic pharmaceutical products such as antibiotics, antiflammatory compounds, hormonal products and cardiovascular products. About one-half of the finished products made at the plant use foreign-sourced materials, and the amount of foreign materials used in these products ranges from 0 to 90 percent, averaging about 45 percent. The ingredients and materials sourced abroad include diatrizoic acid, meglumin, procainamide, iodamide, iopamidol, mebrofenen, and tetracycline. The company also imports insulia in finished form. Some of the products are exported.

Zone procedures would exempt Squibb from Customs duty payments on foreign materials used in its exports. On its domestic sales, the company will be able to choose the same duty rate that applies to finished pharmaceutical products. The application indicates that, under the present tariff system, most of the finished products made at the plant are subject to 3.7 percent duty rate, whereas the rates on the ingredients used in the production of those products range from 5.3 to 13.5 percent.

The applicant states that the Harmonized Tariff System, which goes into effect on January 1, 1989, will reduce the magnitude of duty differentials, but the significant tariff inversions will remain.

The application indicates that zone savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Peter J. Baish, Area Director, U.S. Customs Service, New York Region, Airport International Plaza, Room 210A, Newark, New Jersey 07114; and Colonel Marion C. Caldwell, District Engineer, U.S. Army Engineer Division New York, 26 Federal Plaza, New York, New York 10278-0090.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 24, 1989.

A copy of the application is available for public inspection at each of the following locations:

Area Director's Office, U.S. Customs Service, Airport International Plaza, Room 210A, Newark, New Jersey 07114

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th and Pennsylvania Avenue NW., Washiongton, DC 20230.

Dated: December 7, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-28554 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-802]

Final Determination of Sales at Less Than Fair Value; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Canada as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Maria Mac Kay or Marianne Stout, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: 202/377-8667 (Mac Kay) or 202/377-5760 (Stout).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margin of sales at less than fair value is 29.27 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

Case History

On September 22, 1988, we made an affirmative preliminary determination in this case (53 FR 37825—September 28, 1988). The following events have occurred since the publication of that notice.

We verified the responses submitted by ATCO Controls, Inc. (ATCO) in Canada from October 11 to October 14, 1988.

On October 13, 1988, we received a request from ATCO for a public hearing, which we denied because the request was untimely. We received written comments from ATCO on November 7, 1988. Petitioner submitted no written comments.

On October 24, 1988, pursuant to section 734 of the Act, ATCO requested a suspension agreement under which it would have changed its prices to eliminate completely any amount by which the merchandise exceeds the United States price. We have concluded that the suspension of this investigation would not be in the public interest, nor would effective monitoring of the proposed suspension agreement be practicable, within the meaning of section 734(d) of the Act.

Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plugs refers to any device designed to connect an electrical outlet (typically a common wall receptable) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

Period of Investigation

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada extends from November 1, 1987 through April 30, 1988.

Fair Value Comparisons

To determine whether sales in the United States of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada were made at less than fair value, we compared the United States price with the foreign market value for ATCO, using the data provided in the responses.

In its responses, ATCO stated that sales in Canada of the subject merchandise during the period of investigation fell into two categories. Certain models meeting Canadian technical specifications were sold to unrelated Canadian appliance manufacturers for packaging with various small appliances to be sold in the Canadian market. Other models meeting U.S. technical specifications were sold to unrelated Canadian appliance manufacturers for packaging with small appliances to be sold in the United States. ATCO contends that the second category of sales should be treated as sales to the United States for purposes of fair-value comparisons.

The Department, however, considers ATCO's second category of sales to be home-market sales because this merchandise, as such, is not sold in the United States. Rather, the products that are ultimately sold in the United States consist of small appliances, merchandise which is not subject to this investigation.

Therefore, the Department compared ATCO's sales of the subject merchandise meeting U.S. technical specifications to United States purchasers with ATCO's home-market sales of subject merchandise meeting U.S. technical specifications.

We did not take into account ATCO's sales of the subject merchandise meeting Canadian technical specifications in our preliminary determination based on the assumption that sales to the United States involved only merchandise meeting U.S. specifications, as indicated in the questionnaire response. During verification, however, we ascertained

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that small quantities of the subject merchandise meeting the Canadian technical specifications were sold to U.S. purchasers during the period of investigation. We did not take these transactions into account for purposes of our final determination because of the small volume involved.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because the merchandise was sold to an unrelated purchaser in the United States prior to its importation. We calculated purchase price based on the f.o.b. or delivered, packed prices to U.S. customers. We made additions to purchase price for duty drawback, *i.e.*, import duties which were rebated, or not collected, by reason of the exportation of the subject merchandise to the United States, in accordance with section 772(d)(1)(B) of the Act. Where appropriate, we made deductions from purchase price for inland freight, brokerage costs, and customs duty.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on f.o.b. or delivered, packed prices to unrelated purchasers in Canada. In accordance with § 353.15 of our regulations, we made an adjustment to foreign market value for differences in circumstances of sale for technical services. In accordance with § 353.16 of our regulations, where there was no identical product in the home market with which to compare a product in the United States, we made an adjustment to the foreign market value of similar merchandise to account for differences in the physical characteristics of the merchandise. In order to adjust for differences in packing between the two markets, we deducted Canadian packing costs from foreign market value and added U.S. packing costs.

Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. We made all currency conversions using the daily exchange rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776 of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Respondent's Comments

Comment 1: On November 7, 1988 ATCO requested that the Department extend the period of investigation to cover a May sale made by ATCO to one of its U.S. customers. ATCO's counsel argued that this sale was negotiated during the period of investigation, although written proof of the sale was not available until a couple of weeks after the end of the period of investigation.

DOC Position: The Department has considered the argument presented by the petitioner. Because a sufficient number of transactions were already included in the original period of investigation to make fair value comparisons, the Department found an extension to be unwarranted. Furthermore, the Department received such request after verification and was unable to verify the additional transactions. Thus, the Department decided against extending the period of investigation.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada that are entered, or withdrawn from warehouse, for consumption on or after September 28, 1988, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 29.27 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist in this case, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. If the ITC determines that material injury, or threat of material injury, does exist in this case, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada which are entered, or withdrawn from warehouse, for consumption on or after the date on which liquidation was suspended. The antidumping duty will equal the amount by which the foreign market value of the subject merchandise exceeds United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

December 5, 1988.

[FR Doc. 88-28555 Filed 12-12-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-583-805]

Initiation of Antidumping Duty Investigation; Martial Arts Uniforms From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of martial arts uniforms from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of martial arts uniforms materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before April 24, 1989.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On November 15, 1988, we received a petition filed in proper form by Century Martial Art Supply, Inc. on behalf of the domesic martial arts uniform industry. In compliance with the filing

requirements of 19 CFR 353.36, petitioner alleges that imports of martial arts uniforms from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price is based on a price to an unrelated party in the United States, less a wholesaler's mark-up, U.S. duty, ocean freight, brokerage fees, drayage and associated charges. Petitioner's estimate of foreign market value (FMV) is based on a retail price in the home market, less retailer and wholesaler mark-ups.

Based on a comparison of FMV to the United States price, petitioner alleges a dumping margin of 8.5 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on martial arts uniforms from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of martial arts uniforms from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 24, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HTS item numbers with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HTS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles: Martial art uniforms for men, boys, women, girls and infants. The uniforms consist of tops, pants and belts and are imported from Taiwan separately or as ensembles. They are made of cotton or of man-made fibers, either ornamented or not ornamented. They are suitable for wearing while practicing all forms of martial arts, including but not limited to: Judo, Karate, Kung Fu, Tae Kwon Do, Ninja, Ninjutsu, Hakama, Tai Chi, Jujitsu and Hapkido. These products are normally provided for in TSUSA items 381.6300, 381.0830, 381.3200, 384.0950, 281.9700, 384.2400, 384.5000 and 384.9200 (HTS subheadings 6203.22.1000, 6203.23.0070, 6203.23.0080, 6203.23.0090, 6203.29.20, 6204.22.1000, 6204.23.00 and 6204.29.20) and may also be entered under TSUS items 381.05, 381.08, 381.31, 381.32, 381.33, 381.56, 381.62, 381.63, 381.65, 381.95, 381.97, 381.98, 384.05, 384.07, 384.09, 384.23, 384.24, 384.26, 384.46, 384.47, 384.50, 384.52, 384.90, 384.91, 384.92, and 384.94 (HTS subheadings 6203.22.10, 6203.23.00, 6203.29.20, 6203.42.40, 6203.43.40, 6203.49.20, 6204.22.10, 6204.62.40, 6204.63.35, 6204.69.25, 6209.20.30, 6209.20.50, 6209.30.20, 6209.30.30, 6209.90.20, 6209.90.30, and 6217.10.00).

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 30, 1988, whether there is a reasonable indication that imports of martial arts uniforms from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

December 6, 1988.

[FR Doc. 88-28560 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-803]

Final Negative Countervailing Duty Determination: Thermostatically Controlled Applicance Plugs and International Probe Thermostats Therefor From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Canada of thermostatically controlled applicance plugs and internal probe thermostats therefor (the subject merchandise), as described in the "Scope of Investigation" section of this notice.

We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Roy Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers,

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or exporters in Canada of the subject merchandise.

Case History

Since the publication of the preliminary determination (*Preliminary Affirmative Countervailing Duty Determination: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Canada Malaysia and Taiwan* (53 FR 27738, July 22, 1988)), the following events have occurred. The Government of Canada (GOC) and ATCO Controls, Inc. (ATCO), the respondent of company in this investigation, submitted supplemental questionnaire responses on the following dates: July 22 and August 10, 1988.

From August 2 to August 5, 1988, we conducted verification in Canada of the questionnaire responses of the GOC and ATCO.

On August 22, 1988, we received a request from the petitioner, pursuant to section 705(a)(1) of the Act, to extend the date of the final determination to correspond with the date of the final determination in the antidumping investigations of the same products from Canada, Hong Kong, Japan, Malaysia and Taiwan. We extended the due date to December 6, 1988 and we published notice of the extension in the **Federal Register** Extension of the Due Dates for the Final Countervailing Duty Determinations: Certain Thermostatically Controlled Applicance Plugs and Internal Probe Thermostats Therefor From Canada, Malaysia and Taiwan (53 FR 39493, October 7, 1988).

An amended response based on information reviewed at verification was submitted by ATCO on August 10, 1988. None of the interested parties requested a public hearing or submitted briefs.

Exclusion Request

On June 10, 1988, ATCO stated that it has neither applied for nor received benefits from any of the programs under investigation and requested an exclusion from any countervailing duty order which might result from the investigation.

Because ATCO is the only respondent company in this investigation, and we have confirmed that it received no benefits, we are issuing a final negative determination. Therefore, the exclusion provision does not apply. Exclusion is relevant only within the context of an affirmative determination and a countervailing duty order.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

The products covered by this investigation are theromstatically controlled applicance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances), consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under TSUSA item numbers 711.7820 and 711.7840 and under HTS 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the review period) is ATCO's fiscal year, July 1, 1986, through August 31, 1987. Based upon our analysis of the petition, the responses to our questionnaires, and the verification, we determine the following:

I. Programs Determined Not to be Used

Based on verified information, we determine that manufacturers, producers, and exporters in Canada of the subject merchandise did not apply for, claim, or receive benefits during the review period for exports of the subject merchandise to the United States under the programs listed below. These programs were described in the preliminary determination in this investigation.

A. Federal Programs

1. Certain Types of Investment Tax Credits
2. Community-based Industrial Adjustment Program
3. Programs for Export Market Development and Promotional Projects
4. Regional Development Incentives Program
5. Industrial and Regional Development Program
6. Export Credit Financing

B. Joint Federal-Provincial Programs

1. Agricultural and Rural Development Agreements
2. General Development Agreements
3. Economic and Regional Development Agreements

C. Provincial Program

1. Ontario Development Corporation (ODC)

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including meeting with government and company officials and examining relevant accounting records and original source documents of the respondents. Our verification results are outlined in detail in the public versions of the verification reports which are on file in Central Records Unit (Room B–099) of the Main Commerce Building.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since we have determined that no subsidies are being provided to manufacturers, producers or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor, the investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

December 6, 1988.

[FR Doc. 88-28663 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-802]

Final Negative Countervailing Duty Determination: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor (the subject merchandise), as described in the "Scope of Investigation" section of this notice.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Roy Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of the subject merchandise.

Case History

Since the publication of the preliminary determination (*Preliminary Negative Countervailing Duty Determination: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Canada* (53 FR 27740, July 22, 1988)) the following events have occurred. On August 3, 1988, Power Electronics Sdn. Bhd. (Power Electronics), the respondent company in this investigation, submitted a revised version of its nonconfidential supplementary response.

On August 22, 1988, we received a request from the petitioner, under section 705(a)(1) of the Act, to extend the date of the final determination to correspond with the date of the final determinations in the antidumping investigations of the same products from Canada, Hong Kong, Japan, Malaysia, and Taiwan. Pursuant to petitioner's request, we extended the date of the final determination to December 6, 1988, and published notice of the extension in the **Federal Register** (*Extention of the Due Dates for the Final Countervailing Duty Determinations: Certain Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Malaysia and Taiwan* (53 FR 39493, October 7, 1988)).

From September 12 to September 22, 1988, we conducted verification in Malaysia of the questionnaire responses of the Government of Malaysia and Power Electronics.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under TSUSA item numbers 711.7820 and 711.7840 and under HTS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1987, which corresponds to the fiscal year of the respondent company. Based upon our analysis of the petition, the responses to our questionnaries, and the verification, we determine the following:

I. Programs Determined Not to Confer a Bounty or Grant

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Malaysia of the subject merchandise under the following programs:

A. Agreement with the Islamic Development Bank

The Islamic Development Bank (IDB) is a multilateral development bank subscribed to by 44 Islamic nations. It is located in Jeddah, Saudi Arabia. The Industrial Development Bank of Malaysia, generally referred to as Bank Kemajuan, is a development bank owned by the Government of Malaysia through the Ministry of Finance. Bank Kemajuan offers a foreign trade financing facility enabling importers to get short-term financing from the IDB.

At verification we found that Power Electronics had a foreign trade financing facility agreement with Bank Kemajuan and the IDB. Power Electronics, Bank Kemajuan and the IDB entered a tripartite agreement under which the IDB agreed to open letters of credit in favor of Power Electronics' foreign component suppliers. The agreement stipulated that the IDB purchase a quantity of goods and resell them at a mark-up to Power Electronics against the security of a guarantee from Bank Kemajuan.

The agreement with the IDB is not countervailable. Section 303 of the Act (19 U.S.C. 1303) states that "whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States . . . there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the next amount of such bounty or grant, however the same be paid or bestowed." Since the merchandise under investigation is produced in Malaysia and the agreement with Power Electronics is from an international development institution which is located outside of Malaysia, we determine that the agreement is not countervailable. See, for example, the *Final Affirmative Countervailing Duty Determination: Fuel Ethanol from Brazil*, (51 FR 3361, January 27, 1986) and *Initiation of Countervailing Duty Investigation: Certain Textiles and Textile Products from the Philippines*, (49 FR 34381, August 30, 1984).

B. Guarantee Agreement with Bank Kemajuan

Bank Kemajuan is required to guarantee all transactions between the IDB and Malaysian enterprises. Bank Kemajuan agreed to guarantee Power Electronics' liabilities to the IDB under the foreign trading financing facility agreement in return for a corporate guaranteed from Power Electronics' parent company and an annual guarantee fee of one percent. We confirmed that Power Electronics paid its guarantee fee at one percent per annum according to schedule.

We examined whether the guarantee received by Power Electronics was provided on terms inconsistent with commercial considerations by comparing the guarantee fee paid by Power Electronics with the commercial fee for a one-year loan guarantee. We verified that the commercial fee for a one-year loan guarantee is between one and 1.25 percent, depending on the client, or about one percent if the client is guaranteed by a parent company. Since Power Electronics paid a guarantee fee of one percent after its parent company pledged a corporate guarantee, we determine that the guarantee provided Power Electronics by Bank Kemajuan is not on terms inconsistent with commercial considerations and is not countervailable. Given this conclusion, we need not consider whether this program is provided to a specific enterprise or industry, or group of enterprises or industries.

II. Programs Determined Not to Be Used

Based on verified information, we determine that manufacturers, producers, or exporters in Malaysia of the subject merchandise did not apply for, claim or receive benefits during the review period for exports of the subject merchandise to the United States under the programs listed below. These programs were described in the preliminary determination in this investigation.

A. Export Tax Incentives

1. Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and an Abatement of Five Percent of the Value of Indigenous Materials Used in Exports
2. Allowance of Taxable Income of Five Percent for
Trading Companies Exporting Malaysian-made Products
3. Double Deduction for Export Credit Insurance Payments
4. Double Deduction for Export Promotion Expenses
5. Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales
6. Industrial Building Allowance

B. Other Export Incentives

1. Export Credit Refinancing
2. Export Insurance Program

C. Other Tax Incentives

1. Pioneer Status Under the Investment Incentives Act of 1968
2. Pioneer Status Under the Promotion of Investments Act of 1986
3. Investment Tax Allowance
5. Reinvestment Allowance

D. Medium-and Long-term Government Financing

E. Reduction in the Cost of State Land for New Industry

F. Preferential Financing for Bumiputras

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including meeting with government and company officials and examining relevant accounting records and original source documents of the respondents. Our verification results are outlined in detail in the public versions of the verification report which are on file in the Central Record Unit (Room B-099) of the Main Commerce Building.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-28664 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-802]

Final Affirmative Countervailing Duty Determination: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor (the subject merchandise), as described in the "Scope of

Investigation" section of this notice. The estimate net subsidy and duty deposit rate is 2.41 percent *ad valorem*.

We haved notified the U.S. International Trade Commission (ITC) of our determination. If the ITC determines that imports of these products materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume the suspension of liquidation of all entries of the subject merchandise from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Roy Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2815 or 377–5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Taiwan of the subject merchandise. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Export Financing.
- Export Loss Reserves.
- Preferential Income Tax Rate Ceiling of 22 Percent.
- Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise.
- Rebate of Import Duties and Indirect Taxes on Imported Materials not Physically Incorporated in Export Merchandise.

As discussed in the "Analysis of Programs" section below, the estimated net subsidy rate is based on best information available.

Case History

Since the publication of the preliminary determination in the **Federal Register**, (*Preliminary Affirmative Countervailing Duty Determination: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Taiwan* (53 FR 27742, July 22, 1988)), the following events have occurred. On August 22, 1988, we received a request from the petitioner, pursuant to section 705(a)(1) of the Act, to extend the date of the final determination to correspond with the date of the final determinations in the antidumping investigations of the same products from Canada, Hong Kong, Japan, Malaysia and Taiwan. We extend the due date to December 6, 1988 and we published notice of the extension in the **Federal Register** (*Extension of the Due Dates for the Final Countervailing Duty Determinations: Certain Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Malaysia and Taiwan* (53 FR 39493, October 7, 1988)).

As detailed in the *Case History* section of our preliminary determination, we received no responses to our questionnaire from either the Taiwanese authorities or the manufacturers, producers, or exporters of the subject merchandise.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as welll as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.Additionally, all U.S. Costoms offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances), consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under TSUSA item numbers 711.7820 and 711.7840 and under HTS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, 9033.00.00.

Analysis of Programs

Because we did not receive responses to our questionnaires, we are using the best information available as required under section 776(c) of the Act (19 U.S.C. 1677e(c)), adversely inferring countervailability and receipt of benefits based on the absence of responses. As best information available, we used the highest estimated net subsidy found from each program in any past countervailing duty final determination involving Taiwan.

For programs which have been alleged, but which we have never found to be used in any previous case, we inferred the use and countervailability of these programs in our preliminary determination and used, as best information available, the highest rate applied to a subsidy program in any investigation on Taiwan. Upon further evaluation, we have changed this approach for the final determination and are assuming that these programs were not used. We have made this assumption because the petitioner has not provided any information as to the extent or use of these programs, the programs were found not used in all previous investigations and we have never determined if the programs are countervailable. This approach is more consistant with our approach in cases involving similar circumstances. See, for example, the *Final Affirmative*

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Countervailing Duty Determination: Industrial Phosphoric Acid from Israel (52 FR 25447, July 7, 1987) and the *Preliminary Affirmative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel* (53 FR 48670, December 2, 1988).

Based upon our analysis of the petition and the past final countervailing duty determinations involving imports from Taiwan, we determine the following:

I. Programs Determined to Confer Subsidies

A. Preferential Export Financing

Petitioner alleges that under the Export Financing Program, registered exporters, upon presentation of a letter of credit to authorized foreign currency banks, are eligible for below-market financing covering up to 85 percent of an export transaction. The Central Bank then arranges an interest rate accommodation with the participating banks. The most recent investigation in which this program was determined to be countervailable was the *Final Negative Countervailing Duty Determination: Porcelain-on-Steel Cooking Ware from Taiwan* (51 FR 36453, October 10, 1986) *(Porcelain-on-Steel Cooking Ware.)*. We have received no further information on the preferential export financing program in this investigation. Therefore, as best information available, we determine that exporters of the subject merchandise in Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.10 percent *ad valorem*, which is the rate found in the *Final Negative Countervailing Duty Determination: Oil Country Tubular Goods from Taiwan* (51 FR 19583, May 30, 1986).

B. Export Loss Reserves

Petitioner alleges that Article 31 of the Statute for Encouragement of Investment (SEI) allows firms to set aside a reserve of up to one percent of the previous year's export sales to be used for compensation of export losses. Petitioner alleges that this reserve is treated as a deduction from taxable income and allows firms to shelter significant amounts of revenue from taxation. The most recent investigation in which this program was determined to be countervailable was the *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan* (51 FR 42891, November 26, 1986) (*Stainless Steel Cooking Ware).* We have received no further information on the export loss revenue program in this investigation. Therefore, as best information available, we determine that exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.02 percent *ad valorem*, which is the rate found in the *Final Negative Countervailing Duty Determinction: Welded Carbon Steel Line Pipe from Taiwan* (50 FR 53363, December 31, 1985).

C. Preferential Income Tax Rate Ceiling of 25 Percent for Big Trading Companies

Petitioner alleges that Article 15 of the SEI permits certain business firms to pay no more than 25 percent in corporate income tax rather than the standard 35 percent. We determined in *Stainless Steel Cooking Ware*, the most recent investigation in which this program was determined to be countervailable, that the 25 percent income tax ceiling granted to big trading companies is based on export performance; therefore, it confers an export subsidy. We have received no further information on the preferential income tax rate ceiling of 25 percent for big trading companies program in this investigation. Therefore, as best information available, we determine that manufacturers, producers or exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.16 percent *ad valorem*, which is the rate found in *Porcelain-on-Steel Cooking Ware.*

D. Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise

Taiwan authorities give duty drawback on imported materials physically incorporated in export products. Duty drawback is refunded on a shipment-by-shipment basis and is calculated by applying a pre-established duty drawback rate to the net weight of the finished product in each shipment. The most recent investigation in which this program was determined to be countervailable was *Stainless Steel Cooking Ware.* We have received no further information on the overrebate of duty drawback on imported materials physically incorporated in export merchandise program in this investigation. Therefore, as best information available, we determine that exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 2.13 percent *ad valorem*, which is the rate found in *Stainless Steel Cooking Ware.*

E. Rebate of Import Duties and Indirect Taxes on Imported Materials Not Physically Incorporated in Export Merchandise

Taiwan authorities approve rebates of import duties and indirect taxes on imported materials not physically incorporated in export merchandise. The most recent investigation in which this program was determined to be countervailable was *Stainless Steel Cooking Ware.* We have received no further information on the rebate of import duties and indirect taxes on imported materials not physically incorporated in export merchandise program in this investigation. Therefore, as best information available, we determine that exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.002 percent *ad valorem*, which is the rate found in *Stainless Steel Cooking Ware.*

II. Programs Determined Not to be Used

The following programs were found to be not used in all previous countervailing duty determinations involving imports from Taiwan. In our preliminary determination we inferred the use and counteravailability of these programs and used, as best information available, the highest rate applied to a subsidy program in any investigation on Taiwan. We have changed this approach for the final determination and are assuming that these programs were not used. The justification for this assumption is described in the *Analysis of Programs* section of this notice.

A. *Accelerated Depreciation and Tax Holidays*

Petitioner alleges that Article 6 of the SEI gives newly established "productive enterprises" the right to accelerate depreciation on fixed assets, machinery and equipment or to select a five-year holiday on corporate income taxes. In addition, expanding firms may select a four-year holiday on income derived from increased capacity or a rapid depreciation of newly purchased buildings or equipment.

B. *Duty Exemptions and Deferrals on Imported Equipment*

Petitioner alleges that Article 21 of the SEI allows productive enterprises to pay import duties and dues on selected capital equipment not manufactured domestically in a series of installments beginning one year from the date of importation. In addition, qualified enterprises may be exempted from paying import duties on machinery or equipment to be used for the establishment or expansion of an approved project or for research and development.

C. *Preferential Income Tax Rate Ceiling of 22 Percent*

Article 15 of the SEI permits firms designated by the Taiwan authorities as "important" productive enterprises to pay a marginal tax rate of 22 percent as opposed to the standard income tax rate of 35 percent.

Verification

In accordance with section 776(c) of the Act, we made our final determination on the basis of the best information available. We verified this information in prior countervailing duty investigations of merchandise from Taiwan.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on July 22, 1988, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond equal to the duty deposit rate. This final countervailing duty determination was extended to coincide with the companion final antidumping determinations, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). Under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidy and injury. Therefore, on October 7, 1988, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after November 21, 1988, but to continue the suspension of liquidation of all entries or withdrawals from warehouse, for consumption, of the subject merchandise entered between July 22, 1988, and November 20, 1988. We will reinstate suspension of liquidation under section 703(d) of the Act on the date of publication of the countervailing duty order, if the ITC issues a final affirmative injury determination, and again require duty deposits on all entries of the subject merchandise.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-28665 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-014]

Tuners (Of The Type Used In Consumer Electronic Products) From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping duty finding on tuners (of the type used in consumer electronic products) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Toa Electric Co., Ltd., and the period December 1, 1986 through November 30, 1987. There were no known shipments of this merchandise to the United States by this firm during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 20445) the final results of its last administrative review of the antidumping duty finding on tuners (of the type used in consumer electronics products) from Japan (35 FR 18914, December 12, 1970). A respondent, Toa Electric Co., Ltd., requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 27, 1988 (53 FR 2262). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the Harmonized Tariff Schedule ("HTS") and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item

number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

Imports covered by the review are shipments of tuners (of the type used in consumer electronic products) consisting primarily of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are virtually all in modular form, aligned and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic product" includes television sets, radios, and other electronic products of the type commonly bought at retail by household consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners. Tuners covered by the finding are currently classifiable under TSUSA item numbers 685.0200 and 685.3300, and HTS item numbers 8529.90.10 and 8529.90.50.

The review covers one manufacturer/exporter of Japanese tuners to the United States and the period December 1, 1986 through November 30, 1987. There were no known shipments of this merchandise to the United States by the firm during the period, and there are no known unliquidated entries.

Preliminary Results of the Review

Because there were no shipments during this review, we based our margin determination in this proceeding on the last margin found for this firm. We preliminarily determine that a margin of 1.9 percent exists for Toa Electric Co., Ltd. for the period December 1, 1986 through November 30, 1987.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 25 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for by section 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based on the above margin for the firm. For any future shipments from the remaining known manufacturers/exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review. The above margin does not change the current rate of cash deposit for new exporters. These deposit requirements are effective for all shipments of Japanese tuners (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53(a).

Date: December 1, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-28662 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-801]

Final Determination of Sales at Not Less than Fair Value; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Hong Kong

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Bruce Harsh, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-0182 (Harsh).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are not being, nor are likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). We have found that the weighted-average margin for the company being investigated is *de minimis*.

Case History

On September 22, 1988, we made a negative preliminary determination in this case (53 FR 37827—September 28, 1988). The following events have occurred since the publication of that notice.

We verified the responses submitted by Advance Thermo Control, Ltd. (ATC) in Hong Kong from October 3 to October 7, 1988. We received no request for a public hearing, nor did we receive any written comments, from any of the interested parties.

Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electrically and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item

numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

Period of Investigation

Because the original period of investigation from November 1, 1987 through April 30, 1988 would not have captured an adequate number of sales, we extended the period of investigation in order to encompass the twelve months from May 1, 1987 through April 30, 1988, instead of using the six-month period defined by § 353.38(a) of our regulations.

Fair Value Comparisons

To determine whether sales of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong in the United States were made at less than fair value, we compared the United States price with the foreign market value for ATC, using the data provided in the responses.

For purposes of our preliminary determination, we disregarded certain sales reported by ATC as being sales to the United States since it was unclear whether these were United States or third-country sales and the number of these sales was insignificant. During verification, we ascertained that these sales involved merchandise ultimately destined to the United States which were merely transshipped through a third country. Therefore, we have considered these sales as sales to the United States for purposes of our final determination.

Because there were no home-market sales of the subject merchandise during the period of investigation, we used ATC's sales of probe thermostats to Canada for purposes of comparison with sales to the United States, as provided by section 773(a)(1)(B) of the Act.

United States Price

We based United States price on purchase price (PP), in accordance with section 772(b) of the Act, because the merchandise was sold to an unrelated purchaser in the United States prior to its importation. We calculated purchase price based on the f.o.b. or c. & f. packed prices to U.S. customers. We made deductions, where appropriate, for foreign inland freight and ocean or air freight.

ATC also claimed an upward adjustment to purchase price to reflect the fact that it gave a discount on certain U.S. sales where the U.S. customer provided engineering assistance to ATC. We disallowed this adjustment because respondent was unable during verification to document or quantify either the discount or the amount of engineering assistance provided.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we calculated foreign market value based on f.o.b. or c. & f. packed prices to unrelated purchasers in Canada. We made deductions, where appropriate, for foreign inland freight and ocean or air freight. In accordance with § 353.16 of our regulations, where there was no identical product in the third-country market with which to compare a product in the United States, we made an adjustment to the foreign market value of similar merchandise to account for differences in the physical characteristics of the merchandise.

In accordance with § 353.15 of our regulations, we made an adjustment for differences in circumstances of sale for credit expenses. In order to adjust for differences in packing between the two markets, we deducted Canadian packing costs from foreign market value and added U.S. packing costs.

Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. We made all currency conversations using the daily exchange rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(d) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Final Result

The weighted-average dumping margin for all manufacturers, producers, and exporters in Hong Kong of the merchandise subject to this investigation is 0.06 percent *ad valorem*, which is *de minimis*.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

December 15, 1988.

[FR Doc. 88-28556 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-805]

Final Determination of Sales at Less than Fair Value; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S Internal Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Japan as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Jane Siegel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230, telephone: 202/377-3818 (Letort) or 202/377-0409 (Siegel).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margin of sales at less than fair value is 63.64 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

Case History

On September 22, 1988, we made an affirmative preliminary determination in this case (53 FR 37828—September 28, 1988). Since the publication of that notice, we have received no response or comments from Toshiba Heating Appliance Co. Ltd. (Toshiba), which accounted for virtually all the exports to the United States from Japan during the period of investigation. We have received no comments from any other interested party in this investigation.

Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therin; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

Period of Investigation

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan extends from Novermber 1, 1987 through April 30, 1988.

Fair Value Comparisons

To determine whether the sales of the subject merchandise in the United Sates were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because no questionnaire responses were submitted.

United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, U.S. customs duty, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in Japan or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on petitioner's manufacturing cost for the fourth quarter of 1987, adjusted to reflect Japanese manufacturing costs, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent of the cost of manufacture plus general expenses for profit.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan that are entered, or withdrawn from warehouse, for consumption, on or after September 28, 1988, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 63.64 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist in this case, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. If, however, the ITC determines that material injury, or threat of material injury, does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan which are entered, or withdrawn from warehouse, for consumption, on or after the date on which liquidation was suspended. The antidumping duty will equal the amount by which the foreign market value of the subject merchandise exceeds United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-28557 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-557-801]

Final Determination of Sales at Less Than Fair Value; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Malaysia as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Jane Siegel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-0409 (Siegel).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that thermostatically controlled applicance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margin of sales at less than fair value is 28.13 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

Case History

On September 22, 1988, we made an affirmative preliminary determination in this case (53 FR 37830—September 28, 1988). Since the publication of that notice, we have received no response or comments from Power Electronics Sdn. Bhd. (Power), which accounted for virtually all the exports to the United States from Malaysia during the period of investigation. We have received no comments from any other interested party in this investigation.

Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plug and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a code set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small hearing apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9032.00.00 of the *Harmonized Tariff Schedule* (HTS).

Period of Investigation

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia extends from November 1, 1987 through April 30, 1988.

Fair Value Comparisons

The determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because Power failed to respond to sections B through D of our questionnaire.

United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Malaysia or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on petitioner's manufacturing cost for the fourth quarter of 1987, adjusted to reflect Malaysian manufacturing costs, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent of the cost of manufacture plus general expenses for profit.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia that are entered, or withdrawn from warehouse, for consumption, on or after September 28, 1988, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 28.13 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist in this case, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. If, however, the ITC determines that material injury, or threat of material injury, does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia, which are entered, or withdrawn from warehouse, for consumption, on or after the date on which liquidation was suspended. The antidumping duty will equal the amount by which the foreign market value of the subject merchandise exceeds United States price.

This determination is published pursuant to section 753(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,
Assistant Secretary for Import Administration.

December 5, 1988.

[FR Doc. 88-28558 Filed 12-12-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-583-801]

Final Determination of Sales at Less Than Fair Value; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Taiwan as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Jane Siegel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-0409 (Siegel).

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SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margin of sales at less than fair value is 34.47 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

Case History

On September 22, 1988, we made an affirmative preliminary determination in this case (53 FR 37831—September 28, 1988). Since the publication of that notice, we have received no response or comments from Cheng Da Electronics Co Ltd., Etowah Taiwan Enterprises Co. Ltd., Inwardness Enterprise Co. Ltd., and Shin Chin Industrial Co. Ltd., which accounted for virtually all the exports to the United States from Taiwan during the period of investigation. We have received no comments from any other interested party in this investigation.

Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 wats or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

Period of Investigation

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan extends from November 1, 1987 through April 30, 1988.

Fair Value Comparisons

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because no questionnaire responses were submitted.

United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Taiwan or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on petitioner's manufacturing cost for the fourth quarter of 1987, adjusted to reflect Taiwanese manufacturing costs, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent of the cost of manufacture plus general expenses for profit.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after September 28, 1988, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 34.47 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

Article VI:5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies, since there is no reason to require a cash deposit or bond for that amount. However, in the parallel countervailing duty investigation of the same merchandise from Taiwan, the suspension of liquidation on entries of the subject merchandise was terminated on October 7, 1988 in accordance with Article 5:3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade. Since no cash deposit or bond is currently being posted in the countervailing duty investigation, the level of export subsidies (as determined in the final affirmative countervailing duty determination on thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan) will not be subtracted from the dumping margin for cash deposit or bonding purposes. If the ITC makes an affirmative determination of injury in both investigations, the level of export subsidies will be subtracted from the dumping margin for cash deposit or bonding purposes.

The cash deposit or bonding rate established in the preliminary determination of sales at less than fair value shall remain in effect with respect to entries, or withdrawals from warehouse, made prior to the date of publication of this notice in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist in this case, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. If, however, the ITC determines that material injury, or threat of material injury, does exist, we will issue an antidumping duty order directing Customs officers to assess an

antidumping duty on thermostatically controlled applicance plugs and internal probe thermostats therefor from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date on which liquidation was suspended. The antidumping duty will equal the amount by which the foreign market value of the subject merchandise exceeds United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

December 5, 1988.

[FR Doc. 88-28559 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Final Approval of Amendment; Florida Coastal Zone Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Approval of amendment to Florida Coastal Program.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Florida to amend the Florida Coastal Management Program (FCMP) to incorporate legislative changes to three Chapters of Florida Statutes: Creation of the Marine Fisheries Commission, Chapter 370 F.S.; measures to protect surface and ground water, Chapter 376 F.S.; and, the Warren S. Henderson Wetlands Protection Act of 1984, and related changes to Chapter 403 F.S. The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 14559(g) and implementing regulations at 15 CFR 923.81. These amendments to the FCMP provide new policy for, and a new entity to promulgate regulations dealing with living marine resources (Chapter 370 F.S.); provide additional regulatory authority and funds to protect Florida's ground water resources (Chapter 376 F.S.); and update and clarify the State regulatory policies and procedures for protecting wetlands. (Chapter 403 F.S.)

Notice is hereby given that the Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a determination that the FCMP as amended will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met.

Notice of intent to approve the amendment was published in the **Federal Register** on Wednesday, March 2, 1988, and interested parties had until April 1, 1988 to comment on the proposed changes. A full text of the proposed amendment along with an environmental assessment was distributed to Federal agencies and other interested parties. All comments have been responded to and Final Findings of Approvability approved by the Director of OCRM. The above mentioned amendment is now officially a part of the federally-approved Florida CZMP.

Inquiries regarding this program should be addresssed to: Mr. William Millhouser, Regional Manager, South Atlantic and Gulf Regions, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, Washington, DC 20235, (202) 673-5138.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Date: December 4, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-28627 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Exported From the Dominican Republic

December 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing guaranteed access levels.

EFFECTIVE DATE: December 8, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: In a Memorandum of Understanding dated May 20, 1988, the Governments of the United States and the Dominican Republic agreed to establish guaranteed access levels for certain cotton and man-made fiber textile products exported from the Dominican Republic during the period December 1, 1988 through May 31, 1989.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 53 FR 23143, published on June 20, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding dated May 20, 1988 between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program as set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), effective on December 8, 1988, guaranteed access levels are established for properly certified textile products in the categories listed below. These products shall be assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during the period which began on December 1, 1988 and extends through May 31, 1989:

Category	Guaranteed access levels
338/638	500,000 doz.
339/639	500,000 doz.

Category	Guaranteed access levels
340/640	500,000 doz.
342/642	500,000 doz.
347/348/647/648	1,750,000 doz.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 88-28561 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

December 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340/640 and 342/642 are being increased by application of swing, reducing Category 641 to account for the swing applied. The limit for Categories 340/640 is being increased also for carryover.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 752, published on January 12, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the period which began on February 1, 1988 and extends through January 31, 1989.

Effective on December 15, 1988, the directive of January 7, 1988 is amended further to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Bangladesh:

Category	Adjusted 12-mo. limit [1]
340/640	1,594,065 doz.
342/642	222,473 doz.
641	389,943 doz.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28562 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Exported From the Dominican Republic

December 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 15, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Inasmuch as a mutually satisfactory solution between the U.S. Government and the Government of the Dominican Republic has not been reached for Category 633 and the sixty-day consultation period stipulated under Article 3 of the Mulitifiber Arrangement has expired, the U.S. Government has decide to control imports in this category for the period June 30, 1988 through June 29, 1989.

The United States remains committed to finding a solution concerning Category 633. Should such a solution be reached in consultations with the Government of the Dominican Republic, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 27214, published on July 19, 1988.

Philip J. Martello,

Acting Chairman, Committee for the Implemetation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 15, 1988, entry into the United States for consumption of withdrawal from warehouse for consumption on man-made fiber textile products in Category 633, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on June 30, 1988 and extends through June 29, 1989, in excess of 54,869 dozen.

Textile products in Category 633 which have been exported to the United States prior to June 30, 1988 shall not be subject to this directive.

Textile products in Category 633 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 12,063 dozen to the limit established in this directive for Category 633. These charges are for goods imported during the period June 30, 1988 through September 30, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28563 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DK-M

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and India is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available is the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

December 8, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limits:

Category	12-month restraint limit
Group I:	
218	6,978,319 square meters.
219	35,451,800 square meters.
313	18,671,397 square meters
314	4,431,475 square meters
315	7,443,103 square meters
335	186,147 dozen.
336/636	465,032 dozen
338/339/340	1,310,025 dozen.
341	2,867,154 dozen of which not more than 1,720,292 dozen shall be in blouses made from fabrics with two or more colors in the warp and/or filling in Category 341-Y (tariff numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030)
342	426,968 dozen.
347/348	300,147 dozen.
363	22,898,000 numbers
Group II:	
200, 201, 220-229, 237, 239, 300/301, 317, 326, 330-334, 345, 349-352, 359-362, 369-S [1], 369-O [2], 600-607, 611-635, 638-652, 659, 665pt.[3], 666-670 and 831-859, as a group	109,856,763 square meters equivalent
Sublevels within Group II:	
300/301	2,926,657 kilograms
369-S	402,629 kilograms
640	140,526 dozen.
641	831,388 dozen
642	252,647 dozen.

[1] In Category 369-S, only tariff number 6307.10.20.10

[2] In Category 369-O, all tariff numbers except 6307.10.20.10 in 369-S and rugs exempt from the Bilateral Agreement in tariff numbers 5702.10.90.20, 5702.49.10.10 and 5702.99.10.10.

[3] In Category 665pt., all tariff numbers except rugs exempt from the Bilateral Agreement in tariff numbers 5702.10.90.30, 5702.42.20.10, 5702.92.00.10 and 5703.20.10.00

Imports charged to these category limits for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established during the period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and India.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28564 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

December 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Categories 338/339/340 is being increased for swing, reducing the limit for Category 219. As a result, the limit for Categories 338/339/340, which is currently filled, will re-open.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Appeal Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1988). Also see 53 FR 58, published on January 4, 1988; and 53 FR 43467, published on October 27, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on Dec. 14, 1988, the directive of December 30, 1987 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted 12-mo limit [1]
219	41,176,200 square yards.
338/339/340	1,338,124 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28771 Filed 12-12-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Freedom of Information Act Program

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Office of the Inspector General, Department of Defense is designated a DoD Component for the purposes of responding to requests pursuant to the Freedom of Information Act (FOIA). Consequently, FOIA requests for Office of the Inspector General records may be sent to the Department of Defense, Office of the Inspector General, Assistant Inspector General for Investigations, 400 Army Navy Drive, ATTN: FOIA Coordinator, Arlington, VA 22202.

DATE: January 3, 1989, for all Freedom of Information Act requests, appeals, and legal complaints received on or after January 3, 1989. All requests, appeals, and legal complaints received prior to January 3, 1989, will be transferred to the Office of the Inspector General, Department of Defense, effective April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Charlie Y. Talbott, Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301-1400, telephone (202) 697-1180.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1988.

[FR Doc. 88-28271 Filed 12-12-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Altered Systems of Records

AGENCY: Department of the Air Force.

ACTION: Notice of three altered systems of records subject to the Privacy Act of 1974, published for any public comment.

SUMMARY: The Air Force is altering three existing systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice January 12, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Ms. Linda G. Adams, SAF/AADA, The Pentagon, Washington, D.C. 20330-1000, telephone: (202) 694-3488, AUTOVON: 224-3488.

SUPPLEMENTARY INFORMATION: The Air Force published systems of records notices subject to the Privacy Act of 1974 in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22332) May 29, 1985 (Compilation)
FR Doc. 85-14122 (50 FR 24672) June 12, 1985
FR Doc. 85-15062 (50 FR 25737) June 21, 1985
FR Doc. 85-26775 (50 FR 48477) November 8, 1985
FR Doc. 85-29261 (50 FR 50337) December 10, 1985
FR Doc. 86-2527 (51 FR 4531) February 5, 1986
FR Doc. 86-4546 (51 FR 7371) March 3, 1986
FR Doc. 86-10044 (51 FR 16735) May 6, 1986
FR Doc. 86-11696 (51 FR 18927) May 23, 1986
FR Doc. 86-25787 (51 FR 41382) November 14, 1986

FR Doc. 86–25788 (51 FR 41402) November 14, 1986
FR Doc. 86–27635 (51 FR 44332) December 9, 1986
FR Doc. 87–8139 (52 FR 11845) April 13, 1987
FR Doc. 88–14507 (53 FR 24354) June 28, 1988
FR Doc. 88–26193 (53 FR 45800) November 14, 1988

The specific changes to the altered systems of records are set forth below, followed by the system notices, as amended, published in their entirety.

The Air Force submitted altered system reports, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 on December 2, 1988, to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 8, 1988.

F030 AF A

System name: Automated Personnel Management System (51 FR 41382), November 14, 1986.

Changes:

* * * * *

Categories of individuals covered by the system: Delete current entry and replace with "Personnel, including military, civilians, contractors, and TDY personnel, assigned to the office or unit as specified in the governing regulation or operating instruction for the system."

* * * * *

Authority for maintaining the system: In first line, change "10 U.S.C. 8012" to "10 U.S.C. 8013." In line two at end of first sentence, add "* * * and Executive Order 9397." Delete last sentence. "A copy of the directive * * * to the command Privacy Act Officer."

* * * * *

Safeguards: Replace "Regulation 300–13, Safeguarding Personal Information in Automatic Data Processing Systems" with "Regulation 700–10, Information Systems Security."

Retention and disposal: Replace entire item with "Destroy when no longer needed, or when individual transfers or separates from service, whichever is sooner.

System manager(s) and address: Delete current entry and replace with "Chief of the office or unit where records are maintained."

* * * * *

Contesting records procedures: At end of entry, add "* * * (32 CFR Part 806b)"

* * * * *

F030 AF A

SYSTEM NAME:

030 AF A—Automated Personnel Management System.

SYSTEM LOCATION:

Units or offices at all levels within the Air Force, and Headquarters United States Space Command (HQ USSPACECOM), who implement the system under a specific authorizing local or higher directive.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel, including military, civilians, contractors, and TDY personnel, assigned to the office or unit as specified in the governing directive for the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data obtained from existing personnel or training records or from the individual. Record includes name, grade, SSN, unit of assignment, security clearance, supervisor, duty title, office and telephone number, home address and telephone number, dependents, education and training, speciality or job qualifications, performance/effectiveness reports, awards/decorations, promotions, duty assignment history and similar information listed in the governing directive for the system.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by a specific governing directive, and Executive Order 9397. The system cannot be operated until a directive is published listing authorized locations, subjects, categories of records, safeguards, and management procedures.

PURPOSE(S):

Used to locate, manage and train assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer or word processor and output products as listed in the governing directive.

RETRIEVABILITY:

Filed by name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the system and by persons servicing the records who are properly cleared for need-to-know. Records are protected in accordance with Air Force Regulation 700–10, Information Systems Security.

RETENTION AND DISPOSAL:

Destroy when no longer needed, or when individual transfers or separates from service, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of the office or unit where records are maintained.

NOTIFICATION PROCEDURE:

Requests from individuals should be sent to the System Manager.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from personnel records, training records or the individual

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F030 AF MP B

SYSTEM NAME:

Substance Abuse Reorientation and Treatment Case Files (50 FR 22333), May 29, 1988.

Changes:

* * * * *

SYSTEM NAME:

Delete current system name and replace with "Substance Abuse Reorientation and Treatment Case Files."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In line three, delete "* * * a drug/alcohol * * * program," and replace with "* * * the Air Force Substance Abuse Reorientation and Treatment (SART) Program."

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entire entry and replace with "As a minimum, the file contains forms, automated data base, counseling case notes, and commander's letters documenting entry and participation in the Air Force SART Program, to include: Date and means of identification and substance of abuse." I95authority for maintaining of the system:I11Delete entire entry and replace with "42 U.S.C., Section 290dd–3, Confidentiality of Patient Records; 42 U.S.C., Section 290ee–3, Confidentiality of Patient Records; Air Force Regulation 30–2, Social Actions Program; Air Force Regulation 40–792, Drug and Alcohol Abuse Prevention and Control Program and Executive Order 9397."

PURPOSE(S):

Delete entire entry and replace with "The file is used to process members in the SART Program; to develop a reorientation or treatment plan; to assist commanders in decisions for program disposition; to document progress of individuals in the SART; and to prepare recurring reports. Records in this system which reveal the identity, diagnosis, prognosis, or treatment of any individual for substance abuse may be disclosed according to 42 U.S.C., Section 290dd–3 for those records related to alcohol abuse and 42 U.S.C., Section 290ee–3 for those records related to drug abuse. Disclosure within the Air Force is limited to those individuals who need the records in connection with programs relating to abuse treatment, reorientation, research, health, program evaluation or assignment to duty. Persons authorized by 42 U.S.C., Section 290dd–3 and 42 U.S.C., Section 290ee–3 may review, handle, or have access to the file. These persons include social actions and medical personnel, to include certified volunteers directly engaged in the reorientation and treatment of a person; Veterans Administration (VA) treatment personnel, when members are transferred directly to a VA facility; personnel attending a SART intervention meeting; commanders or persons acting under their authority for purposes consistent with those for which the case files are maintained; persons authorized to conduct program evaluations, with or without the consent of the member concerned; persons authorized in the official performance of their duties. The blanket routine uses ublished by the Department of the Air Force for its system of records no not apply in these cases. Disclosure is also authorized to other components of the Armed Forces when they provide health care to identified individuals."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete the entire entry and replace with "Records from this system of records may not be disclosed for any of the blanket routine uses published by the Air Force except for Congressional inquiries when the Congressional office is acting with the consent of a constituent who is the subject of the files maintained."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Add to end of entry "* * * and computer disks."

RETRIEVABILITY:

Delete entire entry and replace with "Filed by name, by SSN, by other identification number or system identifier."

SAFEGUARDS:

Delete last sentence and replace with "Records are stored and secured in lockable receptacles and are controlled by personnel screening."

RETENTION AND DISPOSAL:

Delete entire entry and replace with "Destroy forms, notes, and letters one year after completion of Track 4 of SART program or discharge from the service and six months after completion of Tracks 1, 2, and 3. All paper files will be destroyed by tearing into pieces, shredding, pulping, macerating, or burning, unless needed as background for case files supporting a separation action or other actions under directives, in which case, disposition will be the same as the file which they support. Data stored on automated computer screens at the servicing AF installation will be erased from memory two years after completion of SART Program."

SYSTEM MANAGER(S) AND ADDRESS:

In line one, delete "Chief, Drug/Alcohol Abuse Control Branch, * * *" and replace with "Chief, Social Actions Branch * * *."

* * * * *

CONTESTING RECORDS PROCEDURES:

At the end of entry, add "* * * and are published in Air Force Regulation 12–35 (32 CFR Part 806b)."

* * * * *

F030 AF MP B

SYSTEM NAME:

030 AF MP B—Substance Abuse Reorientation and Treatment Case Files.

SYSTEM LOCATION:

At servicing Air Force installations Social Actions offices. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel and dependents, Air Force civilian employees, and Air Force Reserve personnel, who are enrolled in the Air Force Substance Abuse Reorientation and Treatment (SART) Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

As a minimum, the file contains forms, automated data base, counseling case notes, and commander's letters documenting entry and participation in the Air Force SART Program, to include: Date and means of identification and substance of abuse.

AUTHORITY FOR MAINTAINING THE SYSTEM:

42 U.S.C, Section 290dd–3, Confidentiality of Patient Records; 42 U.S.C., Section 290ee–3, Confidentiality of Patient Records; Air Force Regulation 30–2, Social Actions Program; Air Force Regulation 40–792, Drug and Alcohol Abuse Prevention and Control Program, and Executive Order 9397.

PURPOSE(S):

The file is used to process members in the SART Program; to develop a reorientation or treatment plan; to assist commanders in decisions for program disposition; to document progress of individuals in the SART; and to prepare recurring reports. Records in this system which reveal the identity, diagnosis, prognosis, or treatment of any individual for substance abuse may be disclosed according to 42 U.S.C. 290dd–3 for those records related to alcohol abuse and 42 U.S.C. 290ee–3 for those records related to drug abuse. Disclosure within the Air Force its limited to those individuals who need the records in connection with programs relating to abuse treatment, reorientation, research, health, program evaluation or assignment to duty. Persons authorized by 42 U.S.C. 290dd–3 and 42 U.S.C. 290ee–3 may review, handle, or have access to the file. These persons include social actions and medical personnel, to include certified volunteers directly engaged in the reorientation and treatment of a person; Veterans Administration (VA) treatment personnel, when members are transferred directly to a VA facility; personnel attending a SART intervention meeting; commanders or persons acting under their authority for

purposes consistent with those for which the case files are maintained; persons authorized to conduct program evaluations, with or without the consent of the member concerned; persons authorized in the official performance of their duties. The blanket routine uses published by the Department of the Air Force for its system of records do not apply in these cases. Disclosure is also authorized to other components of the Armed Forces when they provide heatlh care to identified individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may not be disclosed for any of the blanket routine uses published by the Air Force except for Congressional inquiries when the Congressional office is acting with the consent of a constituent who is the subject of the files maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders and computer disks.

RETRIEVABILITY:

Filed by name, by SSN, by other identification number or system identifier.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored and secured in lockable receptacles and are controlled by personnel screening.

RETENTION AND DISPOSAL:

Destroy forms, notes, and letters one year after completion of Track 4 of SART program or discharge from the service and six months after completion of Tracks 1, 2, and 3. All paper files will be destroyed by tearing into pieces, shredding, pulping, macerating, or burning, unless needed as background for case files supporting a separation action or other actions under directives, in which case, disposition will be the same as the file which they support. Data stored on automated computer screens at the servicing AF installation will be erased from memory two years after completion of SART Program.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Social Actions Branch, Human Resources Development Division, Directorate of Personnel Programs, HQ USAF; and Directors or Assistants for Social Actions at Major Command Headquarters; and Chiefs, Social Actions at Air Force installations.

NOTIFICATION PROCEDURE:

Chief, Social Actions servicing AF installations. Requests to determine existence of a file should include full name, grade, and unit of assignment. Personal visit proof of identity requires full name and possession of Department of Defense (DD) Form 2 AF, Armed Forces Identification Card; DD Form 1173, Uniformed Services Identification and Privileges Card; or driver's license and personal recognition of substance abuse office personnel.

RECORD ACCESS PROCEDURES:

Chief, Social Actions servicing AF installation. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, personnel records, individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F045 ARPC B

SYSTEM NAME:

Inactive Duty Training, Extension Course Institute (50 FR 22333), May 29, 1985

Changes:

* * * * *

SYSTEM LOCATION:

In line one, replace zip code with "* * * 80280–5000."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entire entry and replace with "Air Force Reserve and National Guard personnel."

* * * * *

AUTHORITY FOR MAINTAINING OF THE SYSTEM:

At the end of entry, add "* * * and Executive Order 9397."

* * * * *

RETENTION AND DISPOSAL:

In line one after "* * * training documents * * *," add "* * * (originals) * * *." In line two after "* * * (duplicates) * * *," add "* * * issued on completion of a course * * *." In lines two and three after "* * * field personnel record * * *," add "* * * until it is outdated, then it is destroyed * * *." In last line after "* * * shredding * * *," add "* * * pulping * * *."

SYSTEM MANAGER(S) AND ADDRESS:

In line two, replace zip code with "* * * 80280–5000."

NOTIFICATION PROCEDURE:

In lines one and two, delete "* * * Documentation * * *," and substitute with "* * * Records * * *." In line two, replace zip code with "* * * 80280–5000."

RECORD ACCESS PROCEDURES:

In lines one and two, delete "* * * Documentation * * *," and substitute with "* * * Records * * *." In line two, replace zip code with "* * * 80280–5000."

CONTESTING RECORDS PROCEDURES:

At end of entry, add "* * * and are published in Air Force Regulation 12–35 (32 CFR Part 806b)."

* * * * *

F045 ARPC B

SYSTEM NAME:

045 ARPC B—Inactive Duty Training, Extension Course Institute (ECI) Training.

SYSTEM LOCATION:

Air Reserve Personnel Center (ARPC), Denver CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve and National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Authorization for inactive training, authorization for individual inactive duty training (for nonpay status only; for pay status authorization). Certificate of completion issued on completion of volume of a course. Point credit source document maintained on active Air Force Reserve member.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 1331, Age and service requirements; 1332, Computation of years of service in determining entitlement to retired pay; and 1333, Computation of years of service in computing retired pay as implemented

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by Air Force Regulation (AFR) 35–41, Vol II, Reserve Training; and Executive Order 9397.

PURPOSE(S):

To record completion of each volume of a correspondence course by a Reservist and show training performed for either paid or nonpaid status. Record is used by military personnel clerks to audit a Reservist point credit account and as a cross check to ensure accuracy of the Reservist's yearly point credit account as it pertains to his pay account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Filed by name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are protected by guards.

RETENTION AND DISPOSAL:

Inactive duty training documents (originals) are destroyed after 5 years. ECI certificates (duplicates) issued on completion of a course are filed in the field personnel record until it is outdated, then it is destroyed by tearing into pieces, macerating, shredding, pulping, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, ARPC, Denver CO 80280–5000.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the Records Manager, ARPC/DAD, Denver CO 80280–5000. Written requests for information should contain full name, SSN, current mailing address and, if known, the case (control) number on correspondence received from ARPC. Records may be reviewed in the Records Review Room, ARPC, Denver CO 80280–5000 between 8:00 a.m. and 3:00 p.m. on normal workdays. Visitors wishing to see their records should provide a current Reserve identification card and/or drivers license and some verbal information that could verify the person's identification.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the Records Manager, ARPC/DAD, Denver CO 80280–5000, telephone (303) 370–4667.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information from individual Reservist, Air National Guard and Air Force Reserve unit.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–28603 Filed 12–12–88; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Flood Control Study of Rio Grande de Arecibo, Arecibo, PR

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement on the feasibility of providing flood control along the Rio Grande de Arecibo, with particular interest in the city of Arecibo, Puerto Rico. Structural and nonstructural alternatives to alleviate flood damages will be studied.

FOR FURTHER INFORMATION CONTACT: Ms. Lizabeth Rhodes, 904–791–1691, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida.

SUPPLEMENTARY INFORMATION: a. The Rio Grande de Arecibo Feasibility Report is being undertaken under the authority of a resolution by the Committee of Public Works and Transportation of the House of Representatives dated September 23, 1982. The local sponsor for the study is the Department of Natural Resources. Several preliminary alternative plans will be evaluated in a definite project report (DPR). Plan 1 includes a 2.6-kilometer-long by 2.5-meter-high earth levee along the Rio Grande de Arecibo; a 1.4-kilometer-long diversion channel along the Rio Santiago; and channel improvements consisting of a 300-meter-long concrete channel and 1.2 kilometers of channel enlargement. Fill would be obtained from a nearby commercial quarry. A pump station would be constructed near the conjunction of Rio Grande de Arecibo and Rio Santiago. Plan 1 would protect against the 100-year flood event, Plan 2 is the same as plan 1 except 500-year flood protection would be provided. Plan 3 includes a 2.6-kilometer-long earth levee and 1.4-kilometer-long diversion channel as in plan 1, but also involves a detention basin. Plan 3 would provide 100-year flood protection. A no action plan will also be evaluated.

b. Scoping: The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, Commonwealth, local agencies, and other interested persons and organizations. A scoping letter (June 1, 1988) has been sent to interested Federal, Commonwealth, and local agencies requesting their comments and concerns. Interested persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the address above. Significant issues anticipated include concern for: wetlands, water quality, agricultural lands, wildlife, fisheries, recreation, groundwater resources, and endangered and threatened species. Preliminary coordination with the Puerto Rico State Historic Preservation Office (SHPO) revealed Arecibo as one of the oldest continuously inhabited settlements on Puerto Rico. Sites that are listed or may be eligible for inclusion on the National Register of Historic Places may be present in the vicinity of the study area. Identification of other significant issues to be addressed in the EIS will be determined through the scoping process.

c. Coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and Commonwealth laws and policies will be conducted. If discharge of material into waters of the United States is involved, the discharge will be specified by application of the criteria of section 404(b) of the Clean Water Act.

d. DEIS Preparation: It is estimated that the DEIS will be available to the public in May 1990.

Dated: November 28, 1988.

A.J. Salem,

Chief, Planning Division.

[FR Doc. 88-28661 Filed 12-12-88; 8:45 am]

BILLING CODE 3710-AJ-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement Between U.S. and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-JA-378, for the supply of 30 grams of plutonium-239 to the Japan Atomic Energy Research Institute, Tokai-Mura, Japan, for use in reactor physics experiments.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 8, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-28678 Filed 12-12-88; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent to Award Grant to the Improved Gravity Drainage Co.

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b) it is restricting eligibility for a grant under procurement request number 19-88BC14291.000 to the Improved Gravity Draining Company for "Development of a Novel Subsurface Oil Production Technology".

Scope: The grant is to fund the development of an oil mining project. A major goal of the proposed research effort is to demonstrate the technical and economic feasibility of recovering oil from shallow (less than 2,000 feet deep), heterogeneous petroleum reservoirs by the use of an novel subsurface oil production technology. The technology involves drilling shafts and mining tunnels into rock formations that underlie shallow oil-bearing zones and using directional drilling methods to place injection and production wells in strategic locations so that volumetric sweep and oil recovery efficiences can be maximized. State-of-the-art enhanced oil recovery techniques such as steam, gas, and chemical flooding will be modified as necessary to enhance the recovery of crude oil by gravity and pressure depletion. The proposed program is expected to significantly enhance DOE's effort to improve enhanced oil recovery methods and increase domestic reserves.

In accordance with 10 CFR 600.7(b)(2)(i) (B) and (D), the Improved Gravity Drainage Company (IGDC) has been selected as the grant recipient. IGDC is composed of an engineering firm, a mining firm, and consultants who are internationally recognized as experts in mining, reservoir engineering, and enhanced oil recovery. Due to the company's key personnel involvement in engineering studies involving design of conventional oil mining projects, the necessary expertise and familiarity reside with IGDC. Additionally, the industry has expressed a willingness to fund a portion of this effort.

The term of the grant will be for a four year period at an estimated value of $15,000,000.00, of which the DOE share is less than 50%.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: David N. Barnett, Telephone: AC 412/892-5912.

Date: November 10, 1988.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 88-28677 Filed 12-12-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission

December 8, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 8492-007.

c. *Date Filed:* November 15, 1988.

d. *Applicant:* Prodek, Inc. and Prodek/Hydro Resources Joint Venture.

e. *Name of Project:* McGee Creek Project.

f. *Location:* On the McGee Creek in Atoka County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* Mr. James B. Vasile, Newman & Holtzinger, P.C., 1615 L Street NW., Suite 1000, Washington, DC 20036, (202) 955-6654; Flake H. Wells, III, Vice President, Prodek, Inc., 2431 E. 61st Street, Suite 318, Tulsa, OK 74136, (918) 749-7749; Kenneth W. Oberg, Vice President, Hydro Resources Inc., 100 Australian Avenue, Suite 304, West Palm Beach, FL 33406, (407) 683-6996.

i. *FERC Contact:* Steven H. Rossi, (202) 376-9814.

j. *Comment Date:* December 23, 1988.

k. *Description of Transfer:* On November 15, 1988, Prodek, Inc. (licensee) and Prodek/Hydro Resources Joint Venture (transferee) filed a joint application for transfer of a minor license for the McGee Creek Project No. 8492.

The purpose of the proposed transfer of license is to facilitate the financing of the project. Construction started on October 26, 1988.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply wth all the terms and conditions of the license.

l. *This notice also consists of the following standard paragraphs:* B and C.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice

and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hyrdopower Licensing, Federal Energy Regulatory Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28604 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–39–000]

ANR Pipeline Co.; Proposed Changes In FERC Gas Tariff

December 7, 1988.

Take notice that on December 1, 1988, pursuant to section 4 of the Natural Gas Act and Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder, ANR Pipeline Company ("ANR") tendered for filing with the Commission Fifth Revised Sheet No. 570 of its FERC Gas Tariff, Original Volume No. 2 with an effective date of January 1, 1989.

ANR states Fifth Revised Sheet No. 570 shows an increase of $15,269 in the monthly charge paid by the High Island Offshore System ("HIOS") to ANR pursuant to Rate Schedule X–64 under Original Volume No. 2 of ANR's F.E.R.C. Gas Tariff. Rate Schedule X–64 is a Service Agreement dated August 4, 1977 between ANR and HIOS. Under the terms of this Service Agreement, which was approved by Commission Order issued July 6, 1978 at Docket No. CP78–134, ANR provides certain gas measurement, dehydration and related services for HIOS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28606 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–147–002; RP88–45–011; TQ89–2–31–000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment and Revised Tariff Lanaguage

December 8, 1988.

Take notice that on December 1, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

(1) *Docket No. RP88–147–000 Substitute Tariff Sheets effective June 1, 1988*
Rate Schedule No. X–26
Original Volume No. 3
Rate Schedule G–2
First Revised Volume No. 1
2nd Substitute 4th Rev. Sheet 187D
2nd Substitute 9th Rev. Sheet 12C
2nd Substitute 10th Rev. Sheet 12D

(2) *Docket No. RP88–45–000 Substitute Tariff Sheets effective July 1, 1988*
1st Substitute 5th Rev. Sheet 187D
1st Substitute 10th Rev. Sheet 12C
1st Substitute 11th Rev. Sheet 12D

(3) *Docket No. TQ89–2–31 Quarterly PGA filing effective January 1, 1989*
2nd Revised Sheet No. 185.1
99th Revised Sheet No. 4

AER states that in (1) above the substitute tariff sheets are filed to become effective June 1, 1988 in complianace with Commission order dated September 30, 1988 requiring AER to make certain PGA lanaguage changes in the tariff sheets which were filed September 1, 1988 in accordance with Order 483.

AER states that in (2) above the substitute tariff sheets are filed to become effective July 1, 1988 to track the changes in the tariff sheets in (1) above.

AER states that in (3) above the tariff sheets reflect its third quarterly PGA filing under the Commission's transitional rules of Order No. 483.

AER states that the proposed changes would increase its system cost by $216,243 and its jurisdictional sales and service by $10,569 for the PGA period of January, February, and March 1989 as adjusted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the apropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28607 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–184–005]

El Paso Natural Gas Co.; Tariff Filing

December 7, 1988.

Take notice that on December 1, 1988, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") submitted a filing pursuant to the Commission's "Order Accepting for Filing and Suspending Tariff Sheets, Subject to Refund and Conditions," issued June 30, 1988, at Docket No. RP88–185–000, and the "Order Granting Rehearing and Denying Rehearing In Part," issued November 21, 1988, at Docket No. RP88–184–001.

El Paso states that on June 1, 1988, at Docket No. RP88–184–000, El Paso tendered certain tariff sheets which served to establish the procedures by

which El Paso proposed to recover from its customers, as prescribed by Order No. 500, a portion of the payments (referred to herein as "buyout" or "buydown" payments or costs) to its natural gas suppliers made in settlement of claims arising under gas purchase agreements or to terminate or suspend such agreements. By order issued June 30, 1988, the Commission conditionally accepted and suspended such tariff sheets, subject to refund, until El Paso's acceptance of a blanket certificate under Subpart G of Part 284 or December 1, 1988, whichever is earlier. Ordering paragraphs (B), (C) and (D) directed El Paso to file revised tariff sheets and certain supporting data and information within thirty (30) days of the issuance of the order. On August 1, 1988, El Paso filed in compliance with the June 30, 1988 order.

El Paso further states that on August 1, 1988, El Paso also filed a request for rehearing and clarification wherein El Paso requested, among other things, modification of that portion of the June 30, 1988 order requiring El Paso to "first allocate costs between jurisdictional and non-jurisdictional customers based on the cumulative deficiency methodology" before making further allocations with regard to the take-or-pay costs to be paid in the fixed charge or absorbed by the pipeline. In its order on rehearing issued November 21, 1988, the Commission modified this portion of the June 30, 1988 order and directed El Paso to revise the methodology so that, after allocating 50 percent of the total take-or-pay settlement costs to the volumetric surcharge, El Paso would then allocate a share of the remaining 50 percent to its nonjurisdictional customers on the same purchase deficiency basis as it uses to allocate those costs among its jurisdictional customers. El Paso must then absorb 50 percent of the costs remaining after it has made this allocation to its nonjurisdictional customers and allocate the other 50 percent among its jurisdictional customers based upon the same purchase deficiency methodology used for the allocation between jurisdictional and nonjurisdictional customers. The tendered tariff sheets reflects such modification to the allocation methodology.

El Paso also states that the tendered tariff sheets reflect certain modifications with regard to the recovery period, the amortization period, the amortization amount and the dates for adjustments. All such modifications are in compliance with the Commission's June 30, 1988 suspension order. The tendered tariff sheets also reflect certain other clarifications which the Commission discussed in the November 21, 1988 order on rehearing.

With respect to the Commission's requirement in its June 30, 1988 suspension order that the tariff sheets are suspended until El Paso accepts a blanket certificates under Subpart G of Part 284, or December 1, 1988, whichever is earlier, El Paso states that it filed concurrently with this filing its acceptance of the blanket authorization granted by order issued November 2, 1988, at Docket No. CP88-433-000.

El Paso stated that it also filed concurrently with this filing its motion to place into effect on December 1, 1988, those tariff sheets accepted and suspended by the June 30, 1988 order together with the tariff sheets filed in this filing which tariff sheet contain the modifications described in this filing.

El Paso, as evidence of its election to participation in the equitable sharing mechanism, also filed, on December 1, 1988, to withdraw its pending petition for review of the Commission's orders at Docket No. RP87-16-000, rejecting El Paso's prior proposal to direct bill the full amount of its buyout or buydown costs.

El Paso requested that the Commission grant any and all waivers of its rules and regulations as may be necessary so as to permit the tendered tariff sheets to become effective on December 1, 1988, the date El Paso filed its acceptance of the blanket authorization granted by order issued November 2, 1988 at Docket No. CP88-433-000.

Copies of the filing were served upon all parties of record in Docket No. RP88-184-000 and, otherwise, upon all interstate pipeline system sales customers and shippers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 285.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants partis to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28608 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-184-004]

El Paso Natural Gas Co.; Motion to Place Tariff Sheets into Effect

December 7, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on December 1, 1988, tendered for filing pursuant to section 4(e) of the Natural Gas Act and §154.67(a) of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a motion to place into effect on December 1, 1988, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A, and the rates and modifications set forth therein.

El Paso states that on June 1, 1988, at Docket No. RP88-184-000, it tendered certain tariff sheets which served to establish procedures by which El Paso proposed to recover from its customers, as prescribed by Order No. 500, a portion of the payments (referred to herein as "buyout" or "buydown" payments or costs) to its natural gas suppliers made in settlement of claims arising under gas purchase agreements or to terminate or suspend such agreements. By order issued June 30, 1988, at Docket No. RP88-184-000, the Commission conditionally accepted and suspended such tariff sheets, subject to refund, until El Paso's acceptance of a blanket certificate under Subpart G of Part 284, or December 1, 1988, whichever is earlier.

El Paso further states that in a related filing made on June 1, 1988, at Docket No. RP88-44-004, El Paso filed primary and alternate tariff sheets to reflect certain modifications to those rates which were suspended until July 1, 1988, at Docket No. RP88-44-000. Such rates differed from previously filed rates at such docket in that they were adjusted for the removal of take-or-pay buyout and buydown costs, an increase in throughput quantity and certain other adjustments. The Commission, by order issued June 30, 1988, accepted the primary tariff sheets, subject to refund and conditions.

El Paso states the tariff sheets accepted by the Commission at Docket No. RP88-184-000 were conditioned, among other things, El Paso filing

revised tariff sheets within thirty (30) days of the date of the order to reflect the requirements of ordering paragraphs (B), (C) and (D) of the June 30, 1988 order. The Commission also stated that El Paso would need to refile the tariff sheets reflecting the rates implementing its passthrough proposal accepted by the June 30, 1988 order at Docket No. RP88–44–004, consistent with the terms of both June 30, 1988 orders. On August 1, 1988 at Docket No. RP88–184–001, El Paso filed revised tariff sheets in compliance with the June 30, 1988 order.

El Paso also states that on November 21, 1988 at Docket No. RP88–184–001, the Commission issued an "Order Granting Rehearing and Denying Rehearing in Part" wherein the Commission stated that "El Paso is directed to revise its methodology so that, after allocating 50 percent of the total take-or-pay settlement costs to the volumetric surcharge, El Paso will allocate a share of the remaining 50 percent to its non-jurisdictional customers on the same purchase deficiency basis it uses to allocate those costs among its jurisdictional customers. El Paso must then absorb 50 percent of the costs remaining after it has made allocation to its non-jurisdictional customers and allocate the other 50 percent among its jurisdictional customers based upon the same purchase deficiency methodology used for the allocation between jurisdictional and non-jurisdictional customers." El Paso filed concurrently with this motion certain tariff sheets which reflect the above-described Commission directive along with certain other modifications made pursuant to the Commission's June 30, 1988 suspension order and the November 21, 1988 rehearing order to clarify and simplify certain aspects of the recovery procedure. Such revisions are more fully explained in the concurrent tariff filing; however, the tariff sheets incorporating such changes were also included in the motion.

El Paso states that with respect to the requirement that the tariff sheets are suspended until El Paso accepts a blanket certificate under Subpart G of Part 284, or December 1, 1988, whichever is earlier, El Paso filed concurrently with this motion its acceptance of the blanket authorization granted by order issued November 2, 1988 at Docket No. CP88–433–000.

El Paso also states that, as required by the June 30, 1988 order, El Paso filed, on December 1, 1988, to withdraw its pending petition for review of the Commission's orders at Docket No. RP87–16–000, rejecting El Paso's earlier proposal to direct bill its buyout or buydown costs.

El Paso states that its motion placed into effect as of December 1, 1988 those tariff sheets approved by the Commission's June 30, 1988 order and those tariff sheets containing the revisions as filed concurrently with the motion pursuant to the November 21, 1988 and the June 30, 1988 orders.

Copies of the filing were served upon each person designated on the official service list compiled by the Secretary in Docket No. RP88–184–000, and otherwise, upon all interstate pipeline system sales customers and shippers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before Dec. 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28609 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–33–000]

El Paso Natural Gas Co.; Proposed Change in Rates

December 8, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on December 1, 1988, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of a Quarterly Adjustment in Rates, effective January 1, 1989, for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a net decrease of $0.0149 per dth below those rates placed in effect on October 1, 1988 at Docket No. TQ89–1–33–000. The decrease of $0.0149 per dth, after elimination of the Current Adjustment reflected in El Paso's Interim PGA effective December 1, 1988, results in a Current Adjustment of $.5731 per dth. Regarding the Surcharge Adjustment, El Paso will continue not collecting such surcharge in accordance with the Commission's September 30, 1988 order accepting and suspending El Paso's Quarterly PGA filing at Docket No. TQ89–1–33–000, *et al.*, effective October 1, 1988.

Copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28618 Filed 12–12–45; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–37–000]

High Island Offshore System; Proposed Changes in FERC Gas Tariff December 8, 1988.

Take notice that on December 1, 1988, High Island Offshore System ("HIOS") tenders for filing, pursuant to Section 4 of the Natural Gas Act, tariff sheets to its FERC GAS Tariff, Original Volume No. 1 as follows:

Twenty-First Revised Sheet No. 4

HIOS states Twenty-First Revised Sheet No. 4 will result in a net reduction in revenues of approximately $.1 million based on the 12 month period ending August 31, 1988 as adjusted, as compared with the revenues generated through use of HIOS' present rates.

However, some shippers may experience an increase in annual charges, based on varying load factors.

HIOS states the proposed changes in rates are necessary to reflect:

(a) A decrease in the level of operation and maintenance expenese, including adjusted costs from U-T Offshore System and ANR Pipeline Company for Cameron Meadows and Grand Chenier facilities, respectively;

(b) An existing depreciation rate of 4.48%, which includes a .15% negative salvage allowance;

(c) An increase in the cost of partners' capital and a refinancing of long-term debt at a higher rate of interest, which results in an overall rate of return of 13.07%, which is required to afford HIOS the opportunity to earn a fair and reasonable rate of return;

(d) Declining levels of transportation volumes, and

(e) A significant decrease in the demand rate, and a substantial increase in the commodity rate, relating principally to HIOS' refinancing of long term debt.

HIOS requests that Twenty-First Revised Sheet No. 4 and supporting data also considered to satisfy the two year compliance filing requirements, pursuant to the FERC order dated December 6, 1977, at Docket No. CP75–104, *et al.*, as well as a rate increase filed pursuant to Section 4 of the Natural Gas Act. In accordance with the provisions of the aforesaid Commission Order, HIOS requests that the Twenty-First Revised Sheet No. 4 be made effective, on January 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20425, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to became a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28610 Filed 12–12–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89–2–5–000]

Midwestern Gas Transmission Co.; Rate Filing

December 7, 1988.

Take notice that on December 1, 1988, Midwestern Gas Transmission Company (Midwestern) filed Forty-Fifth Revised Sheet No. 5 to Original Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1989.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected for Forty-Fifth Revised Sheet No. 5 consist of a .1210 cents per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, a (.29) per dekatherm adjustment applicable to the Demand D–1 component and a .0001 cents per dekatherm adjustment applicable to the Demand D–2 component of Midwestern's rates.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28611 Filed 12–12–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–193–004]

Midwestern Gas Transmission Co.; Rate Filing

December 7, 1988.

Take notice that on December 1, 1988, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1989:

Sixteenth Revised Sheet No. 7
Third Revised Sheet No. 192
Second Revised Sheet No. 193

Midwestern states that revisions to Sheet No. 7 are authorized by Article XVII of its gas tariff. Midwestern states that revisions to Sheet Nos. 192 and 193 are being filed in compliance with the Commission's order on October 6, 1988 in Subdocket Nos. RP88–193–001 and 003.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28612 Filed 12–12–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89–35–000]

Midwestern Gas Transmission Co.; Tariff Filing

December 7, 1988.

Take notice that on December 1, 1988, Midwestern Gas Transmission Company (Midwestern) tendered the following tariff sheets to its FERC Gas Tariff to be effective January 1, 1989.

Original Volume No. 1

Forty-Sixth Revised Sheet No. 5
Fourth Revised Sheet No. 32

Original Volume No. 2

Seventh Revised Sheet No. 64F
Ninth Revised Sheet No. 62K

Midwestern states that the purpose of this filing is to restate its Southern System Base Tariff Rates as required by

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§ 154.303 of the Commission's PGA regulations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions and protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28613 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-5-000]

Midwestern Gas Transmission Co.; Rate Filing

December 8, 1988.

Take notice that on December 1, 1988, Midwestern Gas Transmission Company (Midwestern) filed Thirty-Fourth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff to be effective December 1, 1988.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Thirty-Fourth Revised Sheet No. 6 consist of a 53.2 cents per dekatherm adjustment applicable to the gas component of Midwestern's sales rates. The need for this adjustment arises from dramatically increased purchases by Midwestern's customers, which in turn is causing Midwestern to purchase additional quantities of higher cost supplemental supplies.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28614 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-36-000]

Midwestern Gas Transmission Co.; Tariff Filing

December 7, 1988.

Take notice that on December 1, 1988, Midwestern Gas Transmission Company (Midwestern) tendered the following tariff sheets to its FERC Gas Tariff to be effective January 1, 1989.

Original Volume No. 1

Thirty-Fifth Revised Sheet No. 6

Original Volume No. 2

Fifteenth Revised Sheet No. 37
Fifth Revised Sheet No. 68D
Fourth Revised Sheet No. 68E

Midwestern states that the purpose of this filing is to restate its Northern System Base Tariff Rates as required by § 154.303 of the Commission's PGA regulations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28615 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchase Gas Cost Adjustment

December 8, 1988.

Take notice that on December 2, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending March 31, 1989.

Northwest states the current PGA adjustment for which notice is given herein, aggregates to an increase of 21.21¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the first quarter of 1989 would increase sales revenues by approximately $5,171,210. The instant filing also provides for a minor reduction in the demand components of Northwest's gas sales rates. The proposed rate changes have been reflected on Forty-Seventh Revised Sheet No. 10 with a proposed effective date of January 1, 1989. Northwest also filed Fourth Revised Sheet No. 302 to its Volume No. 1 tariff and Third Revised Sheet No. 601 to its Volume No. 1-A tariff to reflect adjustments to the Index of Purchasers and Index of Shippers.

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28616 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-1-002]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

December 8, 1988.

Take notice that on December 5, 1988, Northwest Pipeline Corporation ("Northwest") in compliance with ordering paragraph (c) of the Federal Energy Regulatory Commission ("Commission") order issued November 4, 1988 in the above-captioned docket, submitted the following tariff sheet to be a part of its FERC Gas Tariff:

First Revised Volume No. 1

Original Sheet No. 11

Northwest states Original Sheet No. 11 reflects the total principal and the monthly amount to be billed to each customer under Northwest's proposal. Northwest also filed certain additional information applicable to its Account No. 191 direct-bill proposal that was filed on October 6, 1988, as amended October 27, 1988 as required by the November 4 order.

A copy of this filing has been served on Northwest's jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28617 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

December 8, 1988.

Take notice that on December 2, 1988, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, suite 850, Houston, Texas 77081, filed Substitute Forty-Fifth Revised Sheet No. PGA-1 to its FERC Gas Tariff reflecting its current quarterly pursuant to 18 CFR 154.308, computed in accordance with technical suggestions by the Commission Staff, including the computation of Ringwood's surcharge adjustment.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.215, 385.211). All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to the taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28619 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-325-325-000]

Southern Natural Gas Co.; Request Under Blanket Authorization

December 8, 1988.

Take notice that on December 1, 1988 Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-325-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.020) for authorization to provide interruptible transportation services for Rangeline Corporation (Rangeline) under its blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would perform the proposed transportation services for Rangeline, a marketer, pursuant to service agreements dated September 16, 1988, September 30, 1988, and October 3, 1988, all under Southern's Rate Schedule IT. It is further stated that the service agreements each have a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern indicates that the receipt points would be located in Alabama, Georgia, Mississippi and the onshore and offshore areas of Louisiana and Texas. Delivery for each service would be at delivery points in South Carolina.

Southern states that the Service Agreement dated September 16, 1988, provides for a maximum transportation quantity of 500 MMBtu of gas on a peak day. Rangeline estimates that it would request 150 MMBtu on an average day and 54,750 MMBtu on an annual basis.

Southern states that the second Service Agreement dated September 30, 1988, provides for up to 5,000 MMBtu of gas to be transported on a peak day. Rangeline anticipates that it would request 2,000 MMBtu on an average day and 730,000 MMBtu on an annual basis.

Southern states that the third Service Agreement dated October 3, 1988, provides for a maximum transportation quantity of 15,000 MMBtu on a peak day. Rangeline estimates that it would request 3,500 MMBtu on an average day and 1,277,500 MMBtu on an annual basis.

Southern indicates that it commenced the transportation of gas for Rangeline pursuant to the Service Agreements dated September 16, 1988, September 30, 1988 and October 3, 1988 on October 1, 1988 (at Docket No. ST89-224), October 4, 1988 (at Docket No. ST89-226), and October 4, 1988 (at Docket No. ST89-227), respectively, for a 120-day period pursuant to § 284.223(a) of the Commission Regulations (18 CFR 284.223(a).

Lois D. Cashell,

Secretary.

[FR Doc. 88-28625 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 8, 1988.

Take notice that on December 1, 1988, South Georgia Natural Gas Company ("South Georgia") tendered for filing Fiftieth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting

information is being filed with a proposed effective date of January 1, 1989, pursuant to the Purchased Gas Cost Adjustments provision set out in Section 14 of South Georgia's FERC Gas Tariff.

South Georgia states that Fiftieth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Commission's Regulations. The Current Adjustment, which is proposed to be in effect from January 1, 1989, through March 31, 1989, reflects an increase in jurisdictional revenues of approximately $185,000, which is attributable to a decrease in the D–1 and commodity components of $.993 and $.065, respectively, and an increase in the D–2 components of Rate Schedules G–1/I1 and G–2/I–2 of $.132 and $.106, respectively.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28620 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 7, 1988.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 1, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourteenth Revised Sheet No. 10
Fourteenth Revised Sheet No. 10A

Texas Gas states that these tariff sheets reflect changes in purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff and are proposed to be effective February 1, 1989.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before December 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28621 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–42–000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 7, 1988.

Take notice that on December 1, 1988, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

51st Revised Sheet No. 5

Transwestern states this tariff sheet is filed pursuant to its Purchased Gas Adjustment provision set forth in Article 19.4 of the General Terms and Conditions of Transwestern's FERC Gas Tariff. Second Revised Volume No. 1. The Current Adjustment reflected herein represents an increase of $0.7019/dth as measured against Transwestern's flex PGA filing in Docket No. TF89–4–42, which became effective on December 1, 1988.

The proposed effective date for the tariff sheet listed above is January 1, 1989.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28622 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–288–000 et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP89–288–000]

December 6, 1988.

Take notice that on November 23, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–288–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an unterruptible basis for MidCon Marketing Corporation (MidCon), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, United requests authority to transoort a maximum daily quantity of 618,000 MMBtu on behalf of MidCon pursuant to the Interruptible Gas Transportation Agreement T1–21–1422, dated February 25, 1988, as amended on April 7, 1988, June 2, 1988, July 18, 1988, and August 24, 1988, between United and MidCon. Umted will receive the gas at various existing points in Texas, Louisiana and Mississippi for delivery at various existing delivery points in Louisiana and Mississippi.

Service under § 284.223(a) commenced on October 14, 1988, as reported in Docket No. ST89–389.

Comment date: January 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89–289–000]

December 6, 1988.

Take notice that on November 23, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–289–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for PSI, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, United requests authority to transport a maximum daily quantity of 61,800 MMBtu on behalf of PSI, Inc. pursuant to the Interruptible Gas Transportation Agreement T1–21–1869, dated October 1, 1988, between United and PSI, Inc. United will receive the gas at an existing receipt point in Vermilion Parish, Louisiana for delivery at various existing delivery points in Louisiana.

Service under § 284.223(a) commenced on October 1, 1988, as reported in Docket No. ST89–691.

Comment date: January 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89–290–000]

December 6, 1988.

Take notice that on November 23, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–290–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Amoco Production Company (Amoco), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 18,110 MMBTu of Natural gas on a peak day, 38,110 MMBtu on an average day and 13,910,150 MMBtu on an annual basis for Chevron. United States that it would perform the transportation service for Chevron under United's Rate Schedule ITS for a primary term of one year and continue on a monthly basis thereafter. It is explained that the service has commented under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–735. United indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 20, 1988, in accordance with Standard Paragraph G at the end of this notice

4. United Gas Pipe Line Company

[Docket No. CP89–291–000]

December 6, 1988.

Take notice that on November 23, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–291–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Victoria Gas Corporation (Victoria), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, United requests authority to transport a maximum daily quantiy of 103,000 MMBtu on behalf of Victoria pursuant to the Interruptible Gas Transportation Agreement T1–21–1750, dated July 14, 1988, as amended October 14, 1988, and October 24, 1988, between United and Victoria. United will receive the gas at various existing receipt points in Texas, Louisiana and Mississippi for delivery at various existing delivery points in Texas, Louisiana, Mississippi, Alabama and Florida.

Service under § 284.223(a) commenced on November 1, 1988, as reported in Docket No. CP89–693.

Comment date: January 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Moraine Pipeline Company

[Docket No. CP89–295–000]

December 7, 1988.

Take notice that on November 28, 1988, Moraine Pipeline Company (Moraine), 701 East 22nd Street, Lombard, Illinois, 61048, filed in Docket No. CP89–295–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportion service on behalf of PSI, Inc. (PSI), a marketer of natural gas, under Moraine's blanket certificate issued in Docket No. CP86–492–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation service agreement executed October 17, 1988, Moraine proposes to transport up to a maximum of 150,000 MMBtu of natural gas per day for PSI from a point of receipt located at the interconnection between the facilities of Moraine and Natural Gas Pipeline Company of America at Grayslake in Lake County, Illinois to a point of delivery located at the interconnection between the facilities of Moraine and Wisconsin Natural Gas Company (the ultimate purchaser) in Kenosha County, Wisconsin. PSI has advised Moraine that it expects the average daily transportation quantity to be 2,200 MMBtu and based on that average, it expects the annual transportation volume to be 803,000 MMBtu. It is stated that the transportation service would be performed under Moraine's Rate Schedule ITS and consistent therewith, Moraine may agree to accept additional quantities as overrun gas. Finally, Moraine states that the service commenced November 8, 1988, as reported in Docket No. ST89–934–000, pursuant to Section 284.223(a) of the Commission's Regulations.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP89–301–000]

December 7, 1988.

Take notice that on November 29, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP89–301–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation services for certain shippers under its blanket certificate issued in Docket No. CP88–316–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport gas on an interruptible basis for Hadson Gas Systems, Inc. (Hadson), a marketer; Arco Oil & Gas Company (Arco), a producer; and Archer Daniels Midland Company (ADM), an end user, pursuant to service agreements dated August 4, 1988; August 18, 1988; and August 26, 1988, respectively, all under Southern's Rate Schedule IT. It is stated that the service agreements each have a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Appendix A attached hereto sets forth the peak day, average day and annual information for each service, as well as receipt point/delivery

point information applicable to each service. Southern asserts that no new facilities are required to implement any of the proposed services.

Southern states that it commenced each of the transportation services pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations on the day set forth on Appendix A hereto as reported in the docket listed thereon.

In its request for authorization, Southern also petitions the Commission for a waiver of the 120-day limit on self-implementing transportation imposed by §284.223(a) of the Commission's Regulations for each of the services set forth herein. Southern states that this filing has not been made in time for the 45-day notice period to expire prior to expiration of said 120-day self-implementing period as a result of Southern overlooking first delivery dates for these services. Southern states that it has implemented check procedures to prevent such oversights in the future. Southern only requests a waiver to the extent necessary to allow it to continue these transportation services under §284.223(a) until the 45-day notice period expires.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

DOCKET NO. CP 89-301-000

[Appendix A]

Services	Peak day (MMBtu)	Average day (MMBtu)	Annual quantity (MMBtu)	Receipt point States	Delivery point States	Date service commenced	Docket No.
Hadson	250,000	8,200	2,993,000	(1)	Georgia	8/6/88	ST89-305
Arco	150,000	90,00	32,850-000	(2)	Texas	8/20/88	ST89-309
ADM	2,000	500	182,000	(3)	Alabama	8/27/88	ST89-306

[1] Louisiana, Offshore Louisiana, Texas, Offshore Texas, Mississippi and Alabama.
[2] Offshore Texas.
[3] Louisiana, Offshore Louisiana, Texas, Mississippi and Alabama.

7. High Island Offshore System

[Docket No. CP89-303-000]

December 7, 1988.

Take notice that on November 19, 1988, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-303-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport natural gas, on an interruptible basis, for NML Development Corporation (NML), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS states that it has entered into two gas transportation agreements dated November 14, 1988, to provide on an interruptible basis, transportation of up to a maximum daily quantity of 95,000 Mcf as long-haul gas and a maximum daily quantity of 20,000 Mcf as short-haul gas for NML for a primary term of 11 years for each transportation agreement and continuing year to year thereafter. HIOS states that the gas for the long-haul transportation would be received at various receipt points located along HIOS system in the High Island Area, offshore Texas. The gas for the short-haul transportation would be received at a receipt point located on HIOS system in the West Cameron Area, offshore Louisiana it is stated. HIOS proposes to transport the long-haul gas to an existing interconnection of ANR Pipeline Company (ANR) or U-T Offshore System (U-TOS) in Block 167, West Cameron Area, offshore Louisiana or Stringray Pipeline Company in Block A-330, High Island Area, offshore Texas and to transport the short-haul gas to an existing interconnection of ANR or U-TOS in Block 167, West Cameron area, offshore Louisiana.

HIOS proposes to charge NML 9.66 cents per Mcf for the long-haul transportation and 4.87 cents per Mcf for the short-haul transportation under its Rate Schedule IT for Interruptible Transportation Service.

Comment date: December 28, 1988, in accordance with Standard Paragarph F at the end of this notice.

8. Northwest Pipeline Corporation

[Docket No. CP89-304-000]

December 7, 1988.

Take notice that on November 29, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-304-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Williams Gas Marketing (Williams), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 37,000 MMBtu of natural gas per day for Williams, a marketer of natural gas, from existing wells located in La Plata County, Colorado and Rio Arriba and San Juan Counties, New Mexico, to the Ignacio Plant delivery point in La Plata County, Colorado, and the existing interconnections with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico. Northwest anticipates transporting, 3,000 MMBtu of natural gas on an average day and an annual volume of 1,100,000 MMBtu.

Northwest states that the transportation of natural gas for Williams commenced October 14, 1988, as reported in Docket No. ST89-678-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: January 23, 1989, in accordance with Standard Paragarph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP89-306-000]

December 7, 1988.

Take notice that on November 30, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-306-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Archer Daniels Midland Company (Archer Daniels), a shipper and end-user of natural gas, under Panhandle's blanket certificate issued in

Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 5,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Archer Daniels pursuant to a transportation agreement dated September 26, 1988, between Panhandle and Archer Daniels. Panhandle would receive gas at various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois and delivery equivalent volumes, less fuel used and unaccounted for line loss, to the City of Bushnell in Fulton County, Illinois.

Panhandle states that the estimated daily and estimated annual quantities would be 2,500 dkt and 912,000 dkt, respectively. Service under § 284.223(a) commenced on October 5, 1988, as reported in Docket No. ST89–819.

Comment date: January 23, 1989, in accordance with Standard Paragarph G at the end of this notice.

10. United Gas Pipe Line Company

Docket No. CP89–309–000]

December 7, 1988.

Take notice that on November 30, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, pursuant to its blanket certificate of public convenience and necessity issued in Docket No. CP82–430–000, filed in Docket No. CP89–309–000 a request pursuant to § 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon its firm sales service of natural gas to Maple Gulf Coast Properties Corporation (Maple), a direct industrial sales customer, at its gas engine water injection plant, Smith County, Texas, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that Maple has consented to the proposed authorization request and that the facilities are to remain in place to serve Maple at the same location under an existing interruptible gas sales contract.

Comment date: January 23, 1989, in accordance with Standard Paragarph G at the end of this notice.

11. Southern Natural Gas Company

[Docket No. CP89–314–000]

December 7, 1988.

Take notice that on November 30, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–314–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service on a firm basis for Arco Oil and Gas Company (Arco), a producer, under its balnket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fuly set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport 40,000 Mcf of gas on a peak day. Southern indicates that Arco anticipates requesting the full transportation demand of 40,000 Mcf of gas on an average day, and therefore, 14,600,000 Mcf of gas on an annual basis. Southern proposes to receive the gas at a receipt point in Offshore Texas and would transport it to a delivery point in Refugio County, Texas. Southern indicates that the service agreement is for a primary term through March 31, 1989 with successive terms of one month thereafter unless cancelled by either party. Southern asserts that no new facilities are required to implement the proposed service.

Southern indicates that it reported to the Commission in Docket No. ST89–222 that the Arco service began on October 1, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89–316–000]

December 8, 1988.

Take notice that on December 1, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–316–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Brock Gas Systems and Equipment Company (Brock). United explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–738. United explains that the peak day quantity would be 47,524 MMBtu, the average daily quantity would be 47,524 MMBtu, and that the annual quantity would be 17,346,260 MMBtu. United explains that it would receive natural gas for Brock's account at existing interconnections in the states of Louisiana and Mississippi. United states that it would redeliver the gas for Brock's account at existing interconnections in the state of Louisiana.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89–317–000]

December 8, 1988.

Take notice that on December 1, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–317–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for LaSER Marketing Company (LaSER). United explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–771. United explains that the peak day quantity woult be 5,150 MMBtu, the average daily quantity would be 5,150 MMBtu, and that the annual quantity would be 1,879,750 MMBtu. United explains that it would receive natural gas for LaSER's account at existing interconnections in the state of Texas. United states that it would redeliver the gas for LaSER's account at existing interconnections between United and Texas Eastern Transmission Corporation in Nacogdoches County, Texas.

Comment date: January 23, 1989, in accordance with Standard Paragaph G at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP89–318–000]

December 8, 1988.

Take notice that on December 1, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–318–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file

with the Commission and open to public inspection.

United proposes to transport natural gas for Marathon Oil Company (Marathon). United explains that service commenced October 27, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–877. United explains that the peak day quantity would be 30,900 MMBtu, the average daily quantity would be 80,900 MMBtu, and that the annual quantity would be 11,278,500 MMBtu. United explains that it would receive natural gas for Marathon's account at an existing interconnection between United and Sea Robin Pipeline Company in Vermilion Parish, Louisiana. United states that it would redeliver the gas for Marathon's account at existing interconnections in the state of Louisiana.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89–319–000]

December 8, 1988.

Take notice that on December 1, 1988 United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–319–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for MidCon Marketing Corporation (MidCon). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–876. United explains that the peak day quantity would be 103,000 MMBtu, the average daily quantity would be 103,000 MMBtu, and that the annual quantity would be 37,595,000 MMBtu. United explains that it would receive natural gas for MidCon's account at an existing interconnection between United and Sea Robin Pipeline Company in Vermilion Parish, Louisiana. United states that it would redeliver the gas for MidCon's account at existing interconnections in the state of Louisiana.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. United Gas Pipe Line Company

[Docket No. CP89–320–000]

December 8, 1988.

Take notice that on December 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1479, filed in Docket No. CP89–320–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Chevron, U.S.A. Inc. (Chevron), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 38,110 MMBtu of natural gas on a peak day, 38,110 MMBtu on an average day and 13,910,150 MMBtu on an annual basis for Chevron. United states that it would perform the transportation service for Chevron under United's Rate Schedule ITS for a primary term of one year and continue on a monthly basis thereafter. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–735. United indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP89–321–000]

December 8, 1988.

Take notice that on December 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1479, filed in Docket No. CP89–321–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Arco Oil and Gas Company (Arco), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 15,540 MMBtu of natural gas on a peak day, 15,540 MMBtu on an average day and 12,310,560 MMBtu on an annual basis for Arco. United states that it would perform the transportation service for Arco under United's Rate Schedule ITS for a primary term of one year and continue on a monthly basis thereafter. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–854. United indicates that existing facilities would be used to provide the subject service.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Company

[Docket No. CP89–322–000]

December 8, 1988.

Take notice that on December 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1479, filed in Docket No. CP89–322–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Citizen's Gas Supply Corporation (Citizen's), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 102,588 MMBtu of natural gas on a peak day, 102,588 MMBtu on an average day and 12,310,560 MMBtu on an annual basis for Citizen's. United states that it would perform the transportation service for Citizen's under United's Rate Schedule ITS for a primary term of one month from the date of the first delivery and continue on a monthly basis thereafter. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–826. United indicates that no new facilities would be needed to provide the subject transportation service.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. United Gas Pipe Line Company

[Docket No. CP89–323–000]

December 8, 1988.

Take notice that on December 1, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1479, filed in Docket No. CP89–323–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc. (Mobil), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as

more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 103,000 MMBtu of natural gas on a peak day, 103,000 MMBtu on an average day and 37,595,000 MMBtu on an annual basis for Mobil. United states that it would perform the transportation service for Mobil under United's Rate Schedule ITS for a primary term of one month from the date of first delivery and continue on a monthly basis thereafter. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–878. United indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Panhandle Eastern Pipe Line Company

[Docket No. CP89–308–000]

December 8, 1988.

Take notice that on November 30, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89–308–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to Northern Indiana Public Service Company (NIPSCO), an existing jurisdictional sales customer under Panhandle's Rate Schedule G–1, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle states that the proposed abandonment would reduce the total annual quantity of gas delivered to NIPSCO from 34,684,000 Mcf to 24,278,800 Mcf. Panhandle states that the term of its existing agreement with NIPSCO expired October 31, 1988 and accordingly, Panhandle requests that authority for the partial abandonment to be effective November 1, 1988 for a term through October 31, 1990.

Panhandle states that the partial abandonment of sales service reflects the result of contract negotiation between Panhandle and NIPSCO that will allow NIPSCO to realign its sales service contract demand to match its actual requirements.

Comment date: December 29, 1988, in accordance with Standard Paragraph F at the end of the notice.

21. Williams Natural Gas Company

[Docket No. CP89–129–000]

December 8, 1988.

Take notice that on November 3, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–129–000 an application, as supplemented on December 2, 1988, pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon Rate Schedule E for all future uses and to cancel such rate schedule, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that on July 20, 1988, it accepted a Revised Stipulation and Agreement and a certificate issued in Docket No. CP86–631–001 authorizing open access transportation and the restructured sales services established under the Revised Stipulation and Agreement. It is stated that these new sales services include: (1) A partial requirements, contract demand-type service under a new sales Rate Schedule PR(A) and (2) a new full requirements service under a new sale Rate Schedule F. It is stated that these new sales service options all provide various opportunities for sales customers to convert sales service to firm and/or interruptible transportation and, in the case of the new Rate Schedule F service, to reduce sales service.

WNG also requests permission for and approval of the abandonment of all future uses of Rate Schedule E and the cancellation of such rate schedule. WNG states that such authorization would be appropriate because Drumright Gas Authority (Drumright) and Oklahoma Natural Gas Company (ONG), the only customers under Rate Schedule E, have terminated their service agreements and no longer require service under that rate schedule. It is stated that Drumright and ONG currently receive sales service under WNG's recently authorized Rate Schedules PR(A) and F, respectively. WNG states that Rate Schedule E service is not available to new customers.

Comment date: December 29, 1988, in accordance with Standard Paragraph F at the end of this notice.

22. Natural Gas Pipeline Company of America

[Docket No. CP89–328–000]

December 8, 1988.

Take notice that on December 2, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–328–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central), a marketer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated May 27, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 300,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for American Central from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B," which transportation service involves interconnections between Natural and various transporters. Natural states that it would receive the gas at various existing points on its system offshore Louisiana and offshore Texas, and in Louisiana, Texas, Oklahoma, New Mexico, Kansas, Wyoming, Iowa, and Illinois. Natural states that it would transport and redeliver the gas to various delivery points in Texas, Louisiana, Arkansas, Nebraska, Kansas, Missouri, Iowa, Indiana, Michigan, New York, California, and Illinois.

Natural advises that service under § 284.223(a) commenced October 4, 1988, as reported in an ST docket filing made concurrently with the instant request. Natural further advises that it would transport 75,000 MMBtu on an average day and 27,375,000 MMBtu annually.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Southern Natural Gas Company

[Docket No. CP89–313–000]

December 8, 1988.

Take notice that on November 30, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP89–313–000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on a firm basis for Tejas Power Corporation (Tejas) under Southern's blanket certificate issued in Docket No. CP88–316–000, under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states it would perform the proposed transportation service for Tejas, a marketer, pursuant to a service agreement dated September 7, 1988, under Southern's Rate Schedule FT. Southern also states that the service agreement is for a primary term through April 1, 1989, with successive terms of one month thereafter unless cancelled by either party. Southern further states it shall transport 8,000 Mcf of gas on a peak day and Tejas anticipates requesting the full transportation demand of 8,000 Mcf of gas on an average day, and accordingly, 2,920,000 Mcf of gas on an annual basis. Southern proposes to receive the gas at various receipt points in Offshore Texas for delivery to delivery points in Texas. The receipt and delivery points are listed in Exhibit C of the application as Exhibits A and B of the September 7, 1989, transportation agreement which provides for this service and is on file with the Commission and open to public inspection. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it commenced transportation of natural gas for Tejas on October 1, 1988, as reported in Docket No. ST89–228 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern states that it proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–310–000]

December 8, 1988.

Take notice that on November 30, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77002, filed in Docket No. CP89–310–000, a request for authorization pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86–401–000 pursuant to section 7 of the Natural Gas Act, for authorization to install a small volume facility to provide natural gas service to Peoples Natural Gas (Peoples) for resale to Vess Oil Corp., an industrial user, in Rice County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the estimated peak and annual volumes to be delivered at the subject delivery point, in the fifth year of service, is 6 Mcf and 2,136 Mcf, respectively. Northern also states that the total cost of the proposed facilities would be $1,690, which would be reimbursed by Peoples. It is further stated that the volumes delivered would be served from existing firm entitlements of Peoples.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Tennessee Gas Pipeline Company

[Docket No. CP88–522–004]

December 8, 1988.

Take notice that on November 18, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 75252–2511, filed in Docket No. CP88–522–004, an amendment to its application in Docket No. CP88–522–000 for authorization to render standby service for its Rate Schedule CD, G and GS customers, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. In its application in Docket No. CP88–522–000, Tennessee proposed to allow its Rate Schedule CD, G and GS customers that convert a portion of their firm sales entitlement to firm transportation service to elect standby service equivalent to the amount of service converted, not to exceed fifty percent of the lesser of the customer's original or reduced sales entitlements.

Tennessee states that by this amendment, Tennessee is revising the availability conditions of standby service to reflect the effect of the Commission's requirement in Tennessee Docket No. RP–88–228 that Tennessee develop Demand$_2$ Rates on the basis of its customers' nominations. Specifically, Tennessee indicates that standby service would be available to customers that convert a portion of their firm sales service entitlement to standby service, provided that the level of standby service for any customer would not exceed (i) on a daily basis, fifty percent of the customer's daily entitlement to sales service, and (ii) on a monthly basis, fifty percent of the customer's nominated D_2 quantities for the month.

Comment date: December 29, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28605 Filed 12–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89-38-000]

U-T Offshore System; Proposed Changes in FERC Gas Tariff

December 7, 1988.

Take notice that on December 1, 1988, U-T Offshore System (U-TOS) tendered for filing Eleventh Revised Sheet No. 4 to its FERC Gas Tariff, Original volume No. 1. The proposed effective date of the enclosed Tariff Sheet is January 1, 1989. The rate changes proposed herein would increase annual revenues from jurisdictional transportation services by approximately $17,000 based on the 12-month period ending August 31, 1988, as adjusted, compared with the revenues generated through the presently effective rates.

U-TOS states that the principal reasons for the rate changes filed herein are as follows:

(a) Increased cost of capital which results in an overall rate of return of 13.51% which is required to afford U-TOS the opportunity to earn a fair and reasonable return,

(b) A reduction in rate base due to increase in reserve for depreciation, and

(c) A decrease in projected transportation quantities to a level equal to approximately 68% use of U-TOS' daily contract demand of 1,038,457 Mcf.

U-TOS states that it has served copies of this filing upon all of its shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211, 214). All such motions or protests should be filed on or before December 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28624 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-40-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 8, 1988.

Take notice that Williams Natural Gas Company (WNG) on December 1, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Fifth Revised Sheet No. 2
Original Sheet Nos. 6B-6D
First Revised Sheet No. 109
Original Sheets Nos. 110-111

The proposed effective date of these tariff sheets is December 2, 1988.

WNG states that this filing places tariff sheets into effect which establish the procedures pursuant to Order No. 500 through which WNG will recover from its customers the take-or-pay and contract reformation cost fixed charges and commodity surcharges which WNG's pipeline suppliers bill to WNG under § 2.104 of the Commission's General Policy and interpretations. In particular, this filing is being made pursuant to § 2.104(e) of the Commission's General Policy and Interpretations which permits downstream pipelines to flow through approved upstream pipeline take-or-pay and contract reformation costs to their customers on an "as billed" basis.

WNG states that copies of its filing were served on all jursidictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance iwth §§ 385.211, 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28623 Filed 12-12-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180796; FRL-3490-6]

Receipt of Application for a Specific Exemption To Use Thiophanate-Methyl; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of thiophanate-methyl (CAS 23564-05-8) to control white mold, *Sclerotinia sclerotiorum*, on 5,000 acres of potatoes in Florida. In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before December 28, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180796," should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By Mail:

Gene Asbury, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 7168, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7890)

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue an emergency exemption to permit the use of the fungicide, thiophanate-methyl available as Topsin M 70% WP (EPA Registration No. 4581–322) and Topsin M 4.5 F1 (EPA Registration No. 4581–352) from Penwalt Corp., to control *Sclerotinia* infections on 5,000 acres of potatoes in Florida.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant indicates that prior to 1971, potato growers were using calcium cyanamide to control *Sclerotinia*, but this product is no longer available. According to the Applicant, without effective control, potato growers could experience 34 percent crop losses. With the use of Topsin M, growers expect their crop losses to be at most 5 percent. The potential dollar loss without thiophanate-methyl for the 1988–89 season is estimated to be approximately four million dollars.

Topsin M will be applied at a maximum rate of 1.4 pounds active ingredient per acre. Up to two applications may be made. A maximum of 10,000 pounds active ingredient will be needed to treat a maximum of 5,000 acres. Applications will be completed by March 31, 1989.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which is or has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been the subject of the Special Review (40 CFR 166.24(a)(5)). A rebuttable presumption against registration (RPAR) for thiophanate-methyl was published December 7, 1977 (42 FR 61970). The risks considered in that document which could be similar to the risks posed by this proposed use are: Mutagenicity; and reduction to nontarget organisms. Thiophanate-methyl was removed from the special review process on October 20, 1982 (47 FR 46747) because it was determined that the potential risks were not unreasonable and were exceeded by the benefits associated with its use. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Date: November 22, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–28647 Filed 12–12–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180797; FRL–3490–7]

Receipt of Application for a Specific Exemption to Use Metalaxyl; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for use of metalaxyl (CAS 57837–19–1) to control downy mildew, *Peronospora sparsa*, on 400 acres of caneberries in California. In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before December 28, 1988.

ADDRESSES: Three copies of written comments, bearing the identifying notation "OPP–180797," should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Gene Asbury, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7890).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue an emergency exemption to permit the use of the fungicide, metalaxyl available as Ridomil 2E (EPA Registration No. 100–607) from Ciba Geigy Corporation, to control downy mildew on 400 acres of caneberries in California.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant indicates that this disease infects the plants during wet weather in the fall and overwinters in the roots. In the spring, the overwintering spores germinate and infect the growing canes and developing fruit. Warm, wet weather creates an ideal condition for the development and growth of this disease. According to the Applicant, there are no pesticides currently registered for the control of downy mildew on caneberries and without effective control, significant economic losses of thirty to fifty percent could result if mildew outbreaks occur this season. The potential dollar loss without metalaxyl for the 1988–89 season is estimated to be over one half of a million dollars.

Metalaxyl will be applied at a maximum rate of 0.25 pound active ingredient per linear feet of plant row or 1.38 pounds active ingredient per acre. Up to two applications may be made. A maximum of 1,104 pounds active ingredient may be needed to treat a maximum of 400 acres. Applications will be completed by April 30, 1989.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption that has been requested or granted for that use in any three previous years and a complete application for registration of the use and/or a petition for a tolerance for residues in or on the commodity has not been submitted to the Agency. Use of metalaxyl in or on caneberries was denied in 1983 and 1984 for lack of an

adequate toxicological data base and was subsequently granted in both 1987 and 1988. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: November 22, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-28646 Filed 12-12-88; 8:45 am]

BILLING CODE 6560-50-M

[FIFRA Docket No. 630, et al.; FRL-3490-4]

Pesticide Products Containing Tributyltin Compounds

AGENCY: Environmental Protection Agency.

ACTION: Notice of objections and request for hearing.

The U.S. Environmental Protection Agency (EPA) announced its final decision to cancel registrations and deny applications of all pesticide products containing tributyltin (TBT) compounds as active ingredients for use as antifoulants unless registrants modified certain terms and conditions of their registrations. (53 FR 39022, October 4, 1988.) Concerning EPA's decision, notice is hereby given, pursuant to the appropriate section of the Rules of Practice, 40 CFR 164.8, promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, *et seq.*, that objections and requests for hearings were filed by some registrants regarding certain of their enumerated and registered products containing TBT as an active ingredient.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the docket in this matter on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A-110) Room 3708, Waterside Mall, 401 M Street, SW., Washington, DC 20460. (202-382-4865).

Dated: December 7, 1988.

Frank W. Vanderheyden,

Administrative Law Judge.

[FR Doc. 88-28648 Filed 12-12-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3490-1]

Risk Assessment Forum Special Report on Ingested Inorganic Arsenic: Skin Cancer; Nutritional Essentiality

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of availability of Risk Assessment Forum Report.

SUMMARY: This notice announces the availability of an EPA Risk Assessment Forum report entitled "Special Report on Ingested Inorganic Arsenic: Skin Cancer; Nutritional Essentiality," EPA/625/3-87/013. Developed as guidance for EPA scientists, this report analyzes several issues relating to skin cancer risk from exposure to ingested inorganic arsenic and addresses the possible role of arsenic in human nutrition.

ADDRESSES: To obtain a single copy of the document, interested parties should contact the Office of Research and Development Publication Center, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, Tel: (513) 569-7562 or FTS 684-7562. Please provide your name, mailing address, and the EPA document number when requesting a copy of the document.

FOR FURTHER INFORMATION CONTACT: Linda C. Tuxen, Technical Liaison, Risk Assessment Forum, Tel: (202) 475-6743 or FTS 475-6743.

SUPPLEMENTARY INFORMATION: A Technical Panel of EPA scientists was convened by EPA's Risk Assessment Forum to study three major issues regarding ingestion exposure to arsenic: The validity of the Tseng et al. (1968) study (Prevalence of Skin Cancer in an Endemic Area of Chronic Arsenicism in Taiwan. J. Natl. Cancer Inst. 40(3):453-463) on ingested inorganic arsenic in relation to non-melanoma skin cancer in a Taiwanese population and the applicability of the study to the U.S. population; interpretation and use of arsenic-associated skin lesions reported by Tseng et al. for cancer risk assessment; and the possible role of arsenic in human nutrition. Also examined were other issues relating to hazard identification and dose-response assessment for arsenic-induced skin cancer, including the pathology of arsenic-associated skin lesions, the gene-level effects of arsenic and the possibility of a threshold mechanism. This report summarizes the Technical Panel's review and analysis of relevant data on these issues.

The Technical Panel concludes in the Forum report that the Tseng et al. study demonstrates a relationship between inorganic arsenic ingestion and elevated skin cancer risk in the study population. The report analyzes dose-response data from this study, as well as independent studies from other countries that also show an association between arsenic ingestion and elevated skin cancer.

The Forum report discusses a possible role for arsenic in human nutrition. The Technical Panel reviewed several studies on arsenic as a possible essential element in the diet to assess the overall impact of arsenic exposure on human health. The report concludes that while arsenic is a plausible nutritional requirement in animals and a possible requirement in humans, additional studies are needed to determine the nature of any human effects, the levels of arsenic that would be essential in the human diet, and the adequacy of current dietary levels.

EPA's Risk Assessment Council reviewed and concurred with the Forum's analysis. In detailed comments reprinted in the Forum report, the Council emphasized that the uncertainties and assumptions described in the report should be weighed in Agency risk assessments for this element.

Date: December 6, 1988.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88-28650 Filed 12-12-88; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before January 27, 1989. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, Room 386, 2401 E Street NW., Washington, DC 20507; Telephone (202) 634–1932.

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7316.

Type of Request: Extension (No change).

Title: Employer Information Report EEO–1.

Form Number: Standard Form 100.

Frequency of Report: Annually.

Type of Respondent: Private employers with 100 or more employees and certain Federal government contractors with 50 or more employees.

Standard Industrial Classification (SIC) Code: Multiple.

Description of Affected Public: IND/HHID and Farms and Businesses/INST.

Responses: 126,700.

Reporting Hours: 558,500.

Federal Cost: $610,000.

Applicable under section 3504(h) of Pub. L. 96–511: Not applicable.

Number of Forms: 1.

Abstract-Needs/Users: EEO–1 data are used by EEOC to investigate charges of discrimination against employers in private industry. Data are shared with several Federal government agencies, particularly the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor. Under section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with approximately 127 State and local FEPC agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 88–28539 Filed 12–12–88; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 1, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0308.

Title: Section 90.505, Developmental operation (Showing required).

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 100 responses; 200 hours; 2 hours each.

Needs and Uses: This rule specifies additional information that must be submitted by applicants requesting a developmental authorization. This information is used by the Commission to evaluate the use that will be made of the spectrum and the potential for interference.

OMB Number: 3060–0295.

Title: Sections 90.607 (b)(1) and (c)(1), Supplemental information to be furnished by applicants for facilities under this subpart.

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 2,028 responses; 507 hours; 15 minutes each.

Needs and Uses: This rule requires certain applicants requesting 800 MHz facilities to furnish a list of any other licensed facilities they hold within 40 miles of the base station applied for. This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns, and helps the Commission to distribute limited spectrum equitably.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–28566 Filed 12–12–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200192.

Title: Port of Houston Authority Terminal Agreement (Port).

Parties: Port of Houston Authority, Shippers Stevedoring Company (SSC).

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The agreement provides that SSC will perform or have performed public marine terminal services, including freight handling and cargo loading/unloading at the Port's wharves and transit shed Number 31. The term of the agreement expires December 31, 1990.

Agreement No.: 224–200191.

Title: Port of Houston Authority Terminal Agreement.

Parties: Port of Houston Authority of Harris County, Texas (Port) and Young & Company.

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The agreement provides that Young & Company will perform or have performed freight handling services at the Port's Wharves and Transit Sheds Numbers 28 and 29, including loading and unloading cargo from land carriers at the facility subject to the charges, rates, rules and regulations in the Port's Tariff No. 8. The term of the agreement expires December 31, 1990.

By Order of the Federal Maritime Commission.

Dated: December 8, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28628 Filed 12–12–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Comerica Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competitions, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to acquire the successor by merger of Alliance Financial Corporation, Dearborn, Michigan, and thereby indirectly acquire Dearborn Bank and Trust Company, Dearborn, Michigan, and Huron Community Bank, East Tawas, Michigan. In connection with this application, AFC Acquisition Corporation, Detroit, Michigan, has applied to become a bank holding company by merging with Alliance Financial Corporation.

In addition, Comerica and AFC Acquisition Corporation have applied to acquire Alliance Data Services, Inc., Dearborn, Michigan, and thereby engage in providing data processing services to Dearborn Bank and Trust Company, Dearborn, Michigan and Huron Community Bank, East Tawas, Michigan, and 5 other banks located throughout the State of Michigan, pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Michigan.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to merge with The Bank Group, Inc., Wayzata, Minnesota, and thereby indirectly acquire The Bank Wayzata, Wayzata, Minnesota; The Bank North, Crystal, Minnesota; and The Bank Excelsior, Excelsior, Minnesota.

In connection with this application, Applicant has also applied to acquire Wayzata Mortgage Company, Plymouth, Minnesota, and thereby engage in making, acquiring, and servicing loans or other extensions of credit as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y; and The I.M.F. Group, Inc., Wayzata, Minnesota, and thereby engage in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act of 1956, as amended.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–28544 Filed 12–12–88; 8:45 am]

BILLING CODE 6210–01–M

Johnson Heritage Bancorp, Ltd., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the office of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than Janaury 4, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Johnston Heritage Bancorp, Ltd.,* Racine, Wisconsin; to acquire 100 percent of the voting shares of Rock County Bancorp, Janesville, Wisconsin, and thereby indirectly acquire Rock County National Bank of Janesville, Janesville, Wisconsin, and Rock County Savings and Trust Company, Janesville, Wisconsin. In connection with this application, J.H. Acquisition Corp., Racine, Wisconsin, has applied to become a bank holding company by acquiring 100 percent of the voting

shares of Rock County Bancorp, Janesville, Wisconsin.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28546 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Frank Kiang, et al.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Frank or Rosaline Kiang,* Oakland, California; to acquire 24.9 percent of the voting shares of Met Financial Corporation, Oakland, California, and thereby indirectly acquire Metropolitan National Bank, Oakland, California.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28545 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale; Application to Deal in Foreign Currency Options as a Specialist

Societe Generale, Paris, France ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through Societe Generale Options-North America, Inc., Philadelphia, Pennsylvania ("Company"), in the activity of dealing as the specialist in Deutsche mark options and Japanese yen options traded on the Philadelphia Stock Exchange during the Exchange's day trading session.

Applicant states that the proposed activities consist of three basic functions:

(1) To use reasonable efforts to make a "fair and orderly" market in Deutsche mark and Japanese yen option and to engage, to a reasonable degree under existing circumstances, in dealings for its own account when a lack of price continuity or temporary supply/demand disparities exist;

(2) To collate and publish the best bids/offers for Deutsche mark and Japanese yen options; and

(3) To act as agent for orders in Deutsche mark and Japanese yen options, in particular for "limit orders" that are left on the specialists' "books."

The Board has not previously determined that the proposed activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant contends that the proposed activity is functionally equivalent to foreign exchange activities in which banks widely engage. Applicant also states that several banks have been permitted to engage in the proposed activity of acting as specialist in foreign currency options on the Philadelphia Stock Exchange.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Applicant contends that the proposed activity would result in public benefits by stimulating the development and liquidity of the options market which would aid banks generally in reducing their foreign exchange risk exposure. Applicant argues that the proposed activity would not result in adverse effects because they are not predominantly speculative. Rather, Company will generate revenues from its bid/ask spreads, on a carefully hedged basis, in a closely regulated environment.

In 1985, the Board denied an application by Compagnie Financiere de Suez and Banque Indosuez to act as a specialist in French franc options on the Philadelphia Stock Exchange due to the potential adverse effects that might stem from the proposal. 72 Federal Reserve Bulletin 141 (1968). Applicant contends that its proposal is distinguishable from the above case in light of its experience in the proposed activities gained in trading on overseas markets as well as changes in the domestic foreign currency options market since the Board's decision.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 6, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR § 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28549 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

United Banks of Colorado, Inc.; Applications to Engage de novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-25150) published at page 44123 of the issue for Tuesday, November 1, 1988.

Under the Federal Reserve Bank of Kansas City, the entry for United Banks of Colorado, Inc. is amended to read as follows:

1. United Banks of Colorado, Inc., Denver, Colorado; to engage de novo in data processing activities and employee benefits consulting services through a partnership joint venture between its 4(c)(8)(G) insurance subsidiary, United Banks Insurance Services, Inc., and an unaffiliated company, Thompson and Company Insurance Services, Inc., Pasadena, California, pursuant, respectively, to 12 CFR 225.25 (b)(7) and previous orders of the Board. *Centerre Bancorporation,* 73 Federal Reserve Bulletin 365 (1987); *Norstar Bancorp, Inc.,* 72 Federal Reserve Bulletin 729

(1986); *BankVermont Corporation*, 72 Federal Reserve Bulletin 377 (1986); *Norstar Bancorp, Inc.*, 71 Federal Reserve Bulletin 656 (1985). The joint venture will not sell insurance as part of its employee benefits consulting service.

Comments on this application must be received by December 27, 1988.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28548 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

Winter-Park Bancshares, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Winter-Park Bancshares, Inc.*, Exeland, Wisconsin; to engage *de novo* through its subsidiary, Winter Insurance Agency, Winter, Wisconsin, in insurance activities in a town of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Winter, Wisconsin; Park Falls, Wisconsin; Gilman, Wisconsin; and Owen, Wisconsin.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Limited*, Tokyo, Japan; to engage *de novo* through its subsidiary, MBL Futures, Inc., Chicago, Illinois, in acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, and certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account pursuant to § 225.25(b)(18) of the Board's Regulaton Y.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28547 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Statements of General Policy or Interpretation Staff Commentary On the Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Publication of staff commentary.

SUMMARY: The Commission staff is issuing its Commentary on the Fair Debt Collection Practices Act that will supersede all previously issued staff interpretations of the Act. The purpose of the Commentary is to clarify and codify these interpretations.

DATE: December 13, 1988.

ADDRESS: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Clarke W. Brinckerhoff, Program Advisor, John F. LeFevre, Program Advisor, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, (202) 326-3208 or (202) 326-3209.

SUPPLEMENTARY INFORMATION: On March 7, 1986, the staff of the Federal Trade Commission ("staff" or "FTC staff") published its proposed Staff Commentary on the Fair Debt Collection Practices Act ("FDCPA") in the **Federal Register** (51 FR 8019). That notice set forth the text of the proposed Commentary, along with (1) the staff's rationale for issuing the Commentary and (2) a list of the principal areas where it varied in appreciable measure from the informal opinions previously offered by the FTC staff. That notice also briefly described the FDCPA, the Commission's role in enforcing the statute, and the FTC's staff's interest in improving the present method of providing advice by making informal staff letters available to the public. It explained that the staff viewed the publication of the Commentary as an opportunity to provide a more comprehensive vehicle for providing staff opinions concerning the FDCPA, and to revise previous advice that the staff had come to believe was inconsistent or inaccurate. Both the notice dated March 7, 1986, and the introduction to the proposed Commentary specified that it does not have the force of a trade regulation rule or formal agency action, and that it is not binding on the Commission or the public.

The notice in the **Federal Register** dated March 7, 1986, stated that the FTC staff would accept public comments on the proposed Commentary to aid in preparation of the final product. Three trade associations, six corporations, the consumer protection division of the offices of three state Attorneys General, one state regulatory agency, one national consumer organization, two local consumer groups, and two law firms responded to this invitation. Although the notice stated the FTC staff was requesting comments until May 6, 1986, all comments were taken into account in preparing the Commentary, even those received after that date.

On July 9, 1986, four months after publication of the proposed Commentary, the President signed into law a bill (Pub. L. 99-3610 repealing former section 803(6)(F), which had exempted "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client." The FTC staff has responded to a large number of inquiries from attorneys seeking its views on how the FDCPA applies to their practices. Therefore, the staff has added comments in appropriate locations to reflect the advice it has provided to attorneys on these issues.

This notice (1) summarizes comments received from the public in response to the FTC staff's 1986 publication of the Fair Debt Collection Practices Act Commentary in "proposed" form, (2) highlights the major areas where the staff revised the Commentary based on those comments or refused to do so, and (3) outlines the major issues added to the Commentary, reflecting written advice which the staff has provided to attorneys following repeal of the

"attorney-at-law collecting a debt" exemption in July 1986.

In this notice, the word "comment" refers to an opinion set forth in the Commentary by the staff, "public commenter" refers to a party that submitted views on the proposed Commentary following its publication in the **Federal Register**, and "public comments" refers to those views.

Principal Revisions To Commentary Based on Public Comments

Generally, the FTC staff found the public comments helpful in preparing the final version of the Commentary, although not all the proposals were adopted. Most of the public comments were aimed at clarifying the staff's intent. The redraft adopted these suggestions where it appeared that they resulted in an appreciable improvement. The overwhelming majority of the revisions the FTC staff made in the Commentary involved only minor changes (adding a word or parenthetical phrase or making some minor editorial change), and were designed to clarify points or to avoid possible unintended inferences. However, besides the addition of comments relating to attorney debt collectors, there were some changes of a substantive nature that were made based on public comments. This section highlights the most significant of the clarifications and revisions that were made based on public comments.

1. Location information (section 804 (1,5))

The FTC staff has made adjustments to two comments to acknowledge that a debt collector who is seeking location information by mail may identify his employer when expressly asked to do so. The staff added parenthetical references to comment #4 to section 804, and to comment #4 to section 807(14), which discusses section 804(1) and (5) under the heading "relation to other sections."

One public commenter pounted out that if the person from whom the locaton information is sought replies by expressly requesting the name of the employer of the individual debt collector who sent the letter,[1] sections 804(1) and 804(5) may appear to place conflicting obligations on the debt collection firm. On the one hand, section 804(1) requires a debt collector employee, in communications seeking location information, to "identify his employer" if "expressly requested." Yet section 804(5) generally prohibits a debt collector from using "any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt."

The FTC staff believes a proper interpretation of the FDCPA is to read section 804(1) as controlling this situation, because it specifically addresses the situation in which an individual expressly requests the name of the debt collection firm. In that case, we believe that the debt collection firm must reveal its identity in order to acquire location information. The comments bearing on this issue have therefore been changed to reflect that position.

2. Contact limited to consumer's attorney (section 805(a))

Public commenters argued forcefully that comment #3, stating that a debt collector could not communicate with a consumer who stated that an attorney would represent him with respect to all *future* debts, would place an unreasonable burden on the debt collector. They reported that the standard operating procedure for many debt collectors is to close the consumer's file once a debt is collected or efforts to collect it cease. Should a second debt from the same consumer be assigned to the debt collector, therefore, the collector might be unaware of the previous file on that debtor and would not know whether the consumer was represented by an attorney with respect to all future debts. These commenters contend that the only way a debt collector could comply with our proposed interpretation would be to check every new debtor file against the closed files to determine whether (1) the collector had ever previously contacted that debtor, (2) the debtor had previously been represented by an attorney, and (2) the debtor had given the collector a blanket notice of legal representation. They suggested instead that, when contacted about a subsequent debt, the consumer should simply inform the debt collector that he is still represented by an attorney and that the debt collector should contact the attorney.

The FTC staff now believes that the portion of comment #3 in the proposed Commentary regarding future representation is simply not supported by the statute, or envisioned by its legislative history. Furthermore, it could easily be the case that the attorney in fact no longer represents the consumer. Accordingly, the staff has modified the second paragraph of comment #3 to section 805(a) to replace the broad reference to "all current and future debts" with the more appropriate "other debts."

3. Consumer consent to third party contacts (section 805(b))

The statement in comment #1 that consumers consent to third party contacts "may be presumed from circumstances" has been deleted. One public commenter expressed concern that this formulation might open the door to overreaching by debt collectors. The deleted phrase was not necessary to the point involved—that consent need not necessarily be in writing—which is better made by providing a clear example of such consent.

4. Lists of debtors (Section 806(3))

One public commenter noted that this section of the proposed Commentary did not completely reflect the FDCPA's reference to sections of the Fair Credit Reporting Act. The description has been amended and a comment has been added to reflect that relationship, in accord with a prior staff opinion on the section and a Commission interpretation on the FCRA.

5. Statement by debt collector of possible action (Section 807(5))

A revision was made to correct the Commentary's inadvertent reference to the *creditor*, rather than to the *debt collector*, in comment #3 to this section. Comment #3 concerns statements by the debt collector about action that is unlikely to be taken in a particular case. Obviously, as several public commenters pointed out, the creditor's knowledge that action is unlikely is not automatically imputed to the debt collector.

6. Documents deceptive as to authorship (Section 807(9))

An appropriate clause has been added to the description and to comment #1, to give a more complete discussion of this section than in the proposed Commentary, which focused only on documents that fraudulently appear to be government documents. One public commenter correctly pointed out that the statute covers a much wider range of deceptive practices as to the source of the document.

7. Letters marked "personal" or "confidential" (Section 808(8))

Comment #3 to this section has been expanded to assert that use of the term "Personal" or "Confidential", as well as

[1] Such a communication would be signed by the individual debt collector, without indicating that the letter is from a debt collection firm.

the word "Telegram" or the like, does not violate this section.

One public commenter stated that debt collectors use designations of this sort to protect the consumer's privacy by attempting to ensure that the envelope is not opened by unauthorized persons, and argued that such terms are essentially part of the letter's address.

The FTC staff agrees that the proposed change is logical. The staff has already recognized that a rigid, literal approach to section 808(8) would lead to absurd results (i.e., taken literally, it would prohibit showing any part of the consumer's address on the envelope). The legislative purpose was to prohibit a debt collector from using symbols or language on envelopes that would reveal that the contents pertain to debt collection—not to totally bar the use of harmless words or symbols on an envelope. Indeed, it was for this reason that comment #3 to this section of the proposed Commentary (in accord with prior informal staff advice) explicitly recognized that the term "Telegram" or similar designation on an envelope does not violate this section.

8. Waiver of venue provision (Section 811)

Numerous public commenters objected to comment #1 to this section, indicating a fear that the staff's interpretation would lead to a flood of waiver provisions hidden in the fine print of consumer credit contracts. Although the FTC staff believes that these parties misread the comment, which clearly stated that any waiver "must be provided to the debt collector," the comment has been expanded to be even more explicit on the point.

Significant Public Comments Not Adopted

There were several areas in which public commenters suggested changes in the Commentary that were not adopted. This section discusses the most significant of those proposals, and sets forth the staff's principal reasons for maintaining its position.

1. Contacts in which the collector does not mention the debt (Sections 803(2), 805(a), 805(c))

Several public commenters contended that the FTC staff's treatment of certain contacts consumers as violations of the FDCPA was incorrect because the contacts did not involve a "communication" under the definition provided in section 803(2), which refers to "conveying of information regarding a debt directly or indirectly to any person." These commenters argued that contacts that do not explicitly refer to the debt are not "communications" and, hence, do not violate any provision where that term is used.

The FTC staff continues to believe that some contacts with consumers can violate section 805(a) or section 805(c) because they at least "indirectly" refer to the debt, even if the obligation isn't specifically mentioned. For example, there is no doubt that a debt collector who has previously contacted a consumer about a debt violates section 805(a) if he calls the consumer at 3 AM and says only only "Hi, this is Joe, I haven't forgotten you"—the words may not refer to the debt, but the consumer will know from previous collection efforts by "Joe" what the call is about. The words "or indirectly" in the definition make it clear that Congress intended a common sense approach to this situation. Furthermore, the word "communication" (or variations thereof) is used six times in section 804, which authorizes the seeking of location information from third parties with the general requirement that the debt will *not* be disclosed to such parties, demonstrating that this term was not intended to be limited throughout the statute to acts that specifically refer to the debt, regardless of the definition set forth in section 803(2).

2. Definition of "location information" (section 803(7))

Public commenters made varying suggestions that would effectively amend the section's definition of "location information"—i.e., "a consumer's place of abode and his telephone number at such place, or his place of employment." One public commenter expressed the view that a debt collector was somehow limited by this language to obtaining only one of the three enumerated items (home address or home phone or work address), while others suggested that we interpret the definition to include a fourth item (work phone). Because no public commenter provided a convincing rationale for its position, and because the FTC staff believes that the definition is clear, both suggestions were declined.

3. Use of "copy of a judgment" in notice (section 807(2)(A))

Some public commenters criticized the staff's statement in comment #3 to section 807(2) that the validation notice provided by a debt collector to comply with section 809(a)(4) may use the phrase "copy of a judgment" even where no judgment exists. Staff had previously advised in informal opinion letters that the use of those words violated section 807(2)(A) because they suggested that a judgment existed when it did not. Because the practical effect of these interpretations was to make verbatim use of the statutory language of section 809(a)(4)) of violation of section 807(2)(A), they were rejected by the leading court decision [2] and by the staff in the proposed Commentary. The FTC staff continues to believe its reasons for revising prior staff opinions (discussed in item 5 of the notice in the Federal Register dated March 7, 1986) are well-founded, and thus it has adhered to that position.

One public commenter suggested that we might also permit the phrase "copy of *the* judgment" as well. Because the phrase used in section 809(a)(4) is "copy of *a* judgment" (emphasis added) and this language led to the staff's current interpretation, the Commentary has not been revised on this point.

4. False allegations of fraud (section 807(7))

Some public commenters contended that the language of this section, which outlaws the "false representation or implication that the consumer committed any crime or other conduct *in order to disgrace the consumer*" (emphasis added) demonstrates that specific intent is essential to a violation. The FTC staff agrees that some element of intent is involved, but believes that an intent to disgrace can be inferred from the nature of the acts the consumer is being accused of—fraud (comment 1) or crime (comment 2). Therefore, the comments on this section have not been changed.

5. Disclosure of debt collection purpose (section 807(11))

Several public commenters questioned the staff's refusal to construe section 807(11) as requiring debt collectors to disclose the purpose of each and every written and oral contact, pointing out that court decisions have gone both ways on the issue. The staff's position, reflected in the Commission's Sixth and Seventh Annual Reports to Congress—that such disclosures need not be made where they are obvious or have already been made—has not changed, and the comments provide no new argument for revising that view.

Other public commenters asked the staff to retract the comment stating that a debt collector may not send a note saying only "please call me right away" to a consumer whom the collector has not previously contacted. They argued that such a note could not violate this

[2] *Blackwell v. Professional Business Services of Georgia, Inc.*, 526 F. Supp. 535, 538–39 (N.D. Ga. 1981).

section because it made no reference to the debt and therefore was not a "communication," as defined in section 803(2). Because the staff believes that (1) the intent of section 807(11) was to require that debt collectors' purposes be known to parties they contact, and (2) the use of the term "communication" in other sections of the FDCPA shows that its construction is not always limited to the definition set forth in section 803(2), this comment was retained.[3]

6. Elements of unfairness (section 808)

Some public commenters criticized comment #2, which concerns general violations of this section of the FDCPA, for construing the term "unfair" in the same way as the Commission has construed it under section 5 of the FTC Act. They argued that the comment would, in effect, repeal some of the subsections of section 808 because the proscribed conduct would not cause the type of injury required, or would not be considered unfair based on a cost/benefit analysis. Because the location of the comment—under section 808 *generally*, as opposed to any of its subsections—makes it clear that the staff did not intend to negate any of the eight types of conduct specified by Congress to be a violation of this provision in subsections (1) through (8), the staff retained this comment.

Other public commenters asked that comment #2 be expanded to state that section 808 does not cover inadvertent acts or any act that was reasonably calculated to collect the debt. Because this comment was meant simply to reflect the FTC staff's view that the Commission's approach to "unfair practices" (as reflected in its treatment of that concept in section 5 of the FTC Act) is applicable in analyzing general violations of section 808, comment #2 has not been substantially revised.

7. Details of validation notices (section 809(a))

Some public commenters objected to the staff's view that section 809(a) imposes no requirements as to form, sequence, location, or type size of the notice (comment 3); to our reasons for reversing prior informal opinions to the contrary (item 10 in the March 7, 1986 notice in the **Federal Register**); and to our view that the notice may be provided orally (comment 5). However, the public commenters provided no new analysis to change the staff's reading of the section. Therefore, the Commentary has not been changed on this point.

[3] See discussion of FDCPA section 804 in item 1 of this section of this notice.

8. Proper forum for suit on an oral contract (section 811(a)(2))

One public commenter suggested deletion of comment 4 to section 811. Section 811(a)(2) clearly states that there are only two districts where suit may be brought by a debt collector on a debt—where the consumer "signed the contract sued upon" and where the consumer "resides at the commencement of the action." The staff decided to retain the comment, which simply notes the obvious fact that if there is only an oral agreement (which by definition can not be "signed"), suit may only be brought where the consumer resides.

9. Miscellaneous requests for added comments.

Some public commentors made a number of suggestions that the FTC staff establish *new* principles in the Commentary.[4] Although not all of the proposals were without merit, the staff believes it is unwise to add major new sections to the final version of the Commentary to address issues that have never been the subject of staff correspondence.

New Comments Based on Recent Staff Letters To Attorneys

The staff has added comments to reflect the large volume of written advice it has provided to attorneys following repeal of the "attorney-at-law" exemption in July 1986.[5] This section synthesizes the conclusions reached in the most significant additions made to the Commentary based on this recent correspondence.

1. Coverage (Sections 803(2, 5, 6), 811)

Attorneys or law firms that engage in traditional debt collection activities (sending dunning letters, making collection calls to consumers) are covered by the FDCPA, but those whose practice is limited to legal activities are not covered.[6] Similarly, filing or service of a complaint or other legal paper (or transmission of a notice that is a legal prerequisite to enforcement of a debt) is not a "communication" covered by the FDCPA, but traditional collection efforts are covered.[7]

A student loan is a "debt" covered by the FDCPA;[8] however, alimony, tort claims, and non-pecuniary obligations are not covered.[9]

A salaried attorney who collects debts on behalf of, and in the name of, his creditor employer,[10] and a state educational agency that collects student loans,[11] are exempt from coverage by the FDCPA.

Debt collectors (including attorney debt collectors) are subject to the venue limitations of the FDCPA.[12]

2. Communications by debt collectors (sections 805(b), 806(3–4))

An attorney debt collector, who represents either (1) a creditor or (2) a debt collector that previously tried to collect an account, may report his collection efforts to the debt collector.[13] An attorney may communicate with a witness in a lawsuit that has been filed.[14]

A debt collector may provide a list of consumers, against whom judgments have been entered, to an investigator in order to locate such individuals.[15] A debt collector may place a public notice required by law as a prerequisite to enforcing the debt.[16]

3. Dispute and verification (section 809)

An attorney debt collector must provide the required validation notice, even if a previous debt collector (or the creditor) has given such notice.[17] A debt collector does not comply with the obligation to verify the debt simply by including proof with the first communication to the consumer.[18]

[4] The principal proposals were that the staff add to the Commentary (1) a lengthy new comment in section 803(6) that a party could be a "debt collector" with respect to some accounts but not others, (2) a definition of "default" in connection with section 803(6)(G)(iii) (now section 803(6)(F)(iii)) concerning accounts not in default when received, (3) a statement that section 806(3) does not prohibit a debt collector from responding to a specific credit reference inquiry from a creditor, (4) substantial new material to various comments in section 807(14) to cover a situation where one debt collector provides services as a contractor for another debt collector, (5) a statement that section 808(1) does not prohibit an agreement between a consumer and debt collector, and (6) a statement that the verification required by section 809(b) may be provided by an agent of the debt collector.

[5] Although most of the issues raised in those letters related to attorneys as debt collectors, a few of them also asked for interpretations on other issues as well. For the sake of completeness, all significant staff opinions included in this correspondence (which has been widely circulated already) have been included in the Commentary.

[6] Section 803(6), comments 1–2.

[7] Section 803(2), comment 2; section 809(a), comments 6–7.

[8] Section 803(5), comment 1.

[9] Section 803(5), comment 2.

[10] Section 803(6)(A), comment 4(a).

[11] Section 803(6)(C), comment 4(c).

[12] Section 811, comment 6.

[13] Section 805(b), comment 8.

[14] Section 805(b), comment 8.

[15] Section 806(3–4), comment 5.

[16] Section 806(3–4), comment 6.

[17] Section 809(a), comment 7.

[18] Section 809(b), comment 1.

An attorney debt collector may take legal action within 30 days of sending the required validation notice, regardless of whether the consumer disputes the debt; if the consumer disputes the debt, the attorney may still take legal action but must cease other collection efforts (*e.g.*, letters or calls to the consumer) until verification is obtained and mailed to the consumer.[19]

4. Permissible forum to enforce a judgment on a debt (section 811)

If a judgment has been obtained from a forum that satisfies the requirements of this section, a debt collector may bring suit to enforce it in another jurisdiction.[20]

By direction of the Commission.

Donald S. Clark,

Secretary.

Federal Trade Commission Staff Commentary on the Fair Debt Collection Practices Act

Introduction

This Commentary is the vehicle by which the staff of the Federal Trade Commission publishes its interpretations of the Fair Debt Collection Practices Act (FDCPA). It is a guideline intended to clarify the staff interpretations of the statute, but does not have the force or effect of statutory provisions. It is not a formal trade regulation rule or advisory opinion of the Commission, and thus is not binding on the Commission or the public.

The Commentary is based primarily on issues discussed in informal staff letters responding to public requests for interpretations and on the Commission's enforcement program, subsequent to the FDCPA's enactment. It is intended to synthesize staff views on important issues and to give clear advice where inconsistencies have been discovered among staff letters. In some cases, reflection on the issues posed or relevant court decisions have resulted in a different interpretation from that expressed by the staff in those informal letters. Therefore, the Commentary supersedes the staff views expressed in such correspondence.

In many cases several different sections or subsections of the FDCPA may apply to a given factual situation. This results from the effort by Congress in drafting the FDCPA to be both explicit and comprehensive, in order to limit the opportunities for debt collectors to evade the underlying legislative intention. Although it may be of only technical interest whether a given act violates one, two, or three sections of the FDCPA, the Commentary frequently provides cross references to other applicable sections so that it may serve as a more comprehensive guide for its users. The Commentary attempts to discuss the more common overlapping references, usually under the heading "Relation to other sections," and deals with issues raised by each factual situation under the section or subsection that the staff deems most directly applicable to it.

The Commentary will be revised and updated by the staff as needed, based on the experience of the Commission in responding to public inquiries about, and enforcing, the FDCPA. The Commission welcomes input from interested industry, consumer, and other public parties on the Commentary and on issues discussed in it.

The staff will continue to respond to requests for informal interpretations. Updates of the Commentary will consider and, where appropriate, incorporate issues raised in correspondence and other public contacts, as well as the Commission's enforcement efforts. Therefore, a party who is interested in raising an issue for inclusion in future editions of the Commentary does not need to make any formal submission or request to that effect.

The Commentary should be used in conjunction with the statute. The abbreviated description of each section or subsection in the Commentary is designed only as a preamble to discussion of issues pertaining to each section and is not intended as a substitute for the statutory text.

The Commentary should not be considered as a reflection of all court rulings under the FDCPA. For example, on some issues judicial interpretations of the statute vary depending on the jurisdiction, with the result that the staff's enforcement position can not be in accord with all decided cases.

Section 801—Short Title

Section 801 names the statute the "Fair Debt Collection Practices Act."

The Fair Debt Collection Practices Act (FDCPA) is Title VIII of the Consumer Credit Protection Act, which also includes other federal statutes relating to consumer credit, such as the Truth in Lending Act (Title I), the Fair Credit Reporting Act (Title VI), and the Equal Credit Opportunity Act (Title VII).

Section 802—Findings and Purpose

Section 802 recites the Congressional findings that serve as the basis for the legislation.

Section 803—Definitions

Section 803(l) defines "Commission" as the Federal Trade Commission.

1. *General.* The definition includes only the Federal Trade Commission, not necessarily the staff acting on its behalf.

Section 803(2) defines "communication" as the "conveying of information regarding a debt directly or indirectly to any person through any medium."

1. *General.* The definition includes oral and written transmission of messages which refer to a debt.

2. *Exclusions.* The term does not include formal legal action (e.g., filing of a lawsuit or other petition/pleadings with a court; service of a complaint or other legal papers in connection with a lawsuit, or activities directly related to such service). Similarly, it does not include a notice that is required by law as a prerequisite to enforcing a contractual obligation between creditor and debtor, by judicial or nonjudicial legal process.

The term does not include situations in which the debt collector does not convey information regarding the debt, such as:

- A request to a third party for a consumer to return a telephone call to the debt collector, if the debt collector does not refer to the debt or the caller's status as (or affiliation with) a debt collector.
- A request to a third party for information about the consumer's assets, if the debt collector does not reveal the existence of a debt.
- A request to a third party in connection with litigation (e.g., requesting a third party to complete a military affidavit that must be filed as a prerequisite to enforcing a default judgment, if the debt collector does not reveal the existence of the debt."

Section 803(3) defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt."

1. *General.* The definition includes only a "natural person" and not an artificial person such as a corporation or other entity created by statute.

Section 803(4) defines "creditor" as "any person who offers or extends credit creating a debt or to whom a debt is owed". However, the definition excludes a party who "receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another."

1. *General.* The definition includes the party that actually extended credit or became the obligee on an account in the normal course of business, and excludes

[19] Section 809(a), comment 8.

[20] Section 811, comment 5.

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a party that was assigned a delinquent debt only for collection purposes.

Section 803(5) defines "debt" as a consumer's "obligation . . . to pay money arising out of a transaction in which the money, arising out of a transportation in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes. . . ."

1. *Examples.* The term includes:

• Overdue obligations such as medical bills that were originally payable in full within a certain time period (e.g., 30 days).

• A dishonored check that was tendered in payment for goods or services acquired or used primarily for personal, family, or household purposes.

• A student loan, because the consumer is purchasing "services" (education) for personal use.

2. *Exclusions.* The term does not include:

• Unpaid taxes, fines, alimony, or tort claims, because they are not debts incurred from a "transportation (involving purchase of) property * * * or services * * * for personal, family or household purposes."

• A credit card that a cardholder retains after the card issuer has demanded its return. The cardholder's account balance is the debt.

• A non-pecuniary obligation of the consumer such as the responsibility to maintain adequate insurance on the collateral, because it does not involve an "obligation * * * to pay money."

Section 803(6) defines "debt collector" as a party "who uses any instrumentality of interstate commerce or the mails in * * * collection of * * * debts owed * * * another."

1. *Examples.* The term includes:

• Employees of a debt collection business, including a corporation, partnership, or other entity whose business is the collection of debts owned another.

• A firm that regularly collects overdue rent on behalf of real estate owners, or periodic assessments on behalf of condominium associations, because it "regularly collects * * * debts owned or due another."

• A party based in the United States who collects debts owned by consumers residing outside the United States, because he "uses * * * the mails" in the collection business. The residence of the debtor is irrelevant.

• A firm that collects debts in its own name for a creditor solely by mechanical techniques, such as (1) placing phone calls with pre-recorded messages and recording consumer responses, or (2) making computer-generated mailings.

• An attorney or law firm whose efforts to collect consumer debts on behalf of its clients regularly include activities traditionally associated with debt collection, such as sending demand letters (dunning notices) or making collection telephone calls to the consumer. However, an attorney is not considered to be a debt collector simply because he responds to an inquiry from the consumer following the filing of a lawsuit.

2. *Exclusions.* The term does not include:

• Any person who collects debts (or attempts to do so) only in insolated instances, becuause the definition includes only those who "regularly" collect debts.

• A credit card issuer that collects its cardholder's account, even when the account is based upon purchases from participating merchants, because the issuer is collecting its own debts, not those "owed or due another."

• An attorney whose practice is limied to legal activities (e.g., the filing and prosecution of lawsuits to reduce debts to judgment).

3. *Application of definition to creditor using another name.* Creditors are generally excluded from the definition of "debt collector" to the extent that they collect their own debts in their own name. However, the term specifically applies to "any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is" involved in the collection.

A creditor is a debt collector for purposes of this act if:

• He uses a name other than his own to collect his debts, including a fictitious name.

• His salaried attorney employees who collect debts use stationery that indicates that attorneys are employed by someone other than the creditor or are independent or separate from the creditor (e.g., ABC Corp. sends collection letters on stationery of "John Jones, Attorney-at-Law").

• He regularly collects debts for another creditor; however, he is a debt collector only for purposes of collecting these debts, not when he collects his own debt in his own name.

• The creditor's collection division or related corporate collector is not clearly designated as being affiliated with the creditor; however, the creditor is not a debt collector if the creditor's correspondence is clearly labeled as being from the "collection unit of the (creditor's name)," since the creditor is not using a "name other than his own" in that instance.

Relation to other sections. A creditor who is covered by the FDCPA because he uses a "name other than his own" also may violate section 807(14), which prohibits using a false business name. When he falsely uses an attorney's name, he violates section 807(3).

4. *Specific exemptions from definition of debt collector.*

(a) *Creditor employees.* Section 803(6)(A) provides that "debt collector" does not include "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor".

The exemption includes a collection agency employee, who works for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision, because he has become the *de facto* employee of the creditor.

The exemption includes a creditor's salaried attorney (or other) employee who collects debts on behalf of, and in the name of, that creditor.

The exemption does not include a creditor's former employee who continues to collect accounts on the creditor's behalf, if he acts under his own name rather than the creditors's.

(b) *Creditor-controlled collector.* Section 803(6)(B) provides that "debt collector" does not include a party collecting for another, where they are both "related by common ownership or affiliated by corporate control, if the (party collects) only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts".

The exemption applies where the collector and creditor have "common ownership or * * * corporate control." For example, a company is exempt when it attempts to collect debts of another company after the two entities have merged.

The exemption does not apply to a party related to a creditor if it also collects debts for others in addition to the related creditors.

(c) *State and federal officials.* Section 803(6)(C) provides that "debt collector" does not include any state or federal employee "to the extent that collecting or attempting to collect any debt is in the performance of his official duties".

The exemption applies only to such governmental employees in the performance of their "official duties" and, therefore, does not apply to an attorney employed by a county government who also collected bad checks for local merchants where that activity is outside his official duties.

The exemption includes a state educational agency that is engaged in the collection of student loans.

(d) *Process servers.* Section 803(6)(D) provides that "debt collector" dos not include "any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt".

The exemption covers marshals, sheriffs, and any other process servers while conducting their normal duties relating to serving legal papers.

(e) *Non-profit counselors.* Section 803(6)(E) provides that "debt collector" does not include "any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors".

This exemption applies only to non-profit organizations; it does not apply to for-profit credit counseling services that accept fees from debtors and regularly transmit such funds to creditors.

(f) *Miscellaneous.* Section 803(6)(F) provides that "debt collector" does not include collection activity by a party about a debt that "(i) is incidental to a bona fide fiduciary obligation or * * * escrow arrangement; (ii) * * * was originated by such person; (iii) * * * was not in default at the time it was obtained by such person; or (iv) (was) obtained by such person as a secured party in a commercial credit transaction involving the creditor."

The exemption (i) for bona fide fiduciary obligations or escrow arrangements applies to entities such as trust departments of banks, and escrow companies. It does not include a party who is named as a debtor's trustee solely for the purpose of conducting a foreclosure sale (i.e., exercising a power of sale in the event of default on a loan).

The exemption (ii) for a party that originated the debt applies to the original creditor collecting his own debts in his own name. It also applies when a creditor assigns a debt originally owed to him, but retains the authority to collect the obligation on behalf of the assignee to whom the debt becomes owed. For example, the exemption applies to a creditor who makes a mortgage or school loan and continues to handle the account after assigning it to a third party. However, it does not apply to a party that takes assignment of retail installment contracts from the original creditor and then reassigns them to another creditor but continues to collect the debt arising from the contracts, because the debt was not "originated by" the collector/first assignee.

The exception (iii) for debts not in default when obtained applies to parties such as mortgage service companies whose business is servicing current accounts.

The exemption (iv) for a secured party in a commercial transaction applies to a commercial lender who acquires a consumer account that was used as collateral, following default on a loan from the commercial lender to the original creditor.

(g) *Attorneys.* A provision of the FDCPA, as enacted in 1977 (former section 803(6)(F)), providing that "debt collector" does not include "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client," was repealed by Pub. L. 99–361, which became effective in July 1986. Therefore, an attorney who meets the definition set forth in section 803(6) is now covered by the FDCPA.

Section 803(7) defines "location information" as "a consumer's place of abode and his telephone number at such place, or his place of employment."

This definition includes only residence, home phone number, and place of employment. It does not cover work phone numbers, names of supervisors and their telephone numbers, salaries or dates of paydays.

Section 803(8) defines "state" as "any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing."

Section 804—Acquisition of Location Information

Section 804 requires a debt collector, when communicating with third parties for the purpose of acquiring information about the consumer's location to "(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;" (2) not refer to the debt, (3) usually make only a single contact with each third party, (4) not communicate by post card, (5) not indicate the collection nature of his business purpose in any written communication, and (6) limit communications to the consumer's attorney, where the collector knows of the attorney, unless the attorney fails to respond to the communication.

1. *General.* Although the FDCPA generally protects the consumer's privacy by limiting debt collector communications about personal affairs to third parties, it recognizes the need for some third party contact by collectors to seek the whereabouts of the consumer.

2. *Identification of debt collector (section 804(1)).* An individual employed by a debt collector seeking location information must identify himself, but must not identify his employer unless asked. When asked, however, he must give the true and full name of the employer, to comply with this provision and avoid a violation of § 807(14).

An individual debt collector may use an alias if it is used consistently and if it does not interfere with another party's ability to identify him (*e.g.,* the true identity can be ascertained by the employer).

3. *Referral to debt (section 804(2)).* A debt collector may not refer to the consumer's debt in any third party communication seeking location information, including those with other creditors.

4. *Reference to debt collector's business (section 804(5)).* A debt collector may not use his actual name in his letterhead or elsewhere in a written communication seeking location information, if the name indicates collection activity (such as a name containing the word "debt", "collector", or "collection"), except when the person contacted has expressly requested that the debt collector identify himself.

5. *Communication with consumer's attorney (section 804(6)).* Once a debt collector learns a consumer is represented by an attorney in connection with the debt, he must confine his request for location information to the attorney. (See also comments on section 805(a)(2)).

Section 805—Communication in Connection With Debt Collection

Section 805(a)—Communication with the consumer. Unless the consumer has consented or a court order permits, a debt collector may not communicate with a consumer to collect a debt (1) at any time or place which is unusual or known to be inconvenient to the consumer (8AM–9PM is presumed to be convenient), (2) where he knows the consumer is represented by an attorney with respect to the debt, unless the attorney fails to respond to the communication in a reasonable time period, or (3) at work if he knows the consumer's employer prohibits such contacts.

1. *Scope.* For purposes of this section, the term "communicate" is given its commonly accepted meaning. Thus, the section applies to contacts with the consumer related to the collection of the debt, whether or not the debt is specifically mentioned.

2. *Inconvenient or unusual times or places (section 805(a)(1)).* A debt collector may not call the consumer at any time, or on any particular day, if he has credible information (from the consumer or elsewhere) that it is inconvenient. If the debt collector does not have such information, a call on Sunday is not *per se* illegal.

3. *Consumer represented by attorney (section 805(a)(2)).* If a debt collector learns that a consumer is represented by an attorney in connection with the debt, even if not formally notified of this fact, the debt collector must contact only the attorney and must not contact the consumer.

A debt collector who knows a consumer is represented by counsel with respect to a debt is not required to assume similar representation on other debts; however, if a consumer notifies the debt collector that the attorney has been retained to represent him for other debts placed with the debt collector, the debt collector must deal only with that attorney with respect to such debts.

The creditor's knowledge that the consumer has an attorney is not automatically imputed to the debt collector.

4. *Calls at work (section 805(a)(3)).* A debt collector may not call the consumer at work if he has reason to know the employer forbids such communication (e.g., if the consumer has so informed the debt collector).

Section 805(b)—Communication with third parties. Unless the consumer consents, or a court order or section 804 permits, "or as reasonably necessary to effectuate a postjudgment judicial remedy," a debt collector "may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector."

1. *Consumer consent to the third party contact.* The consumer's consent need not be in writing. For example, if a third party volunteers that a consumer has authorized him to pay the consumer's account, the debt collector may normally presume the consumer's consent, and may accept the payment and provide a receipt to the party that makes the payment. However, consent may not be inferred only from a consumer's inaction when the debt collector requests such consent.

2. *Location information.* Although a debt collector's search for information concerning the consumer's location (provided in § 804) is expressly excepted from the ban on third party contacts, a debt collector may not call third parties under the pretense of gaining information already in his possession.

3. *Incidental contacts with telephone operator or telegraph clerk.* A debt collector may contact an employee of a telephone or telegraph company in order to contact the consumer, without violating the prohibition on communication to third parties, if the only information given is that necessary to enable the collector to transmit the message to, or make the contact with, the consumer.

4. *Accessibility by third party.* A debt collector may not send a written message that is easily accessible to third parties. For example, he may not use a computerized billing statement that can be seen on the envelope itself.

A debt collector may use an "in care of" letter only if the consumer lives at, or accepts mail at, the other party's address.

A debt collector does not violate this provision when an eavesdropper overhears a conversation with the consumer, unless the debt collector has reason to anticipate the conversation will be overhead.

5. *Non-excepted parties.* A debt collector may discuss the debt only with the parties specified in this section (consumer, creditor, a party's attorney, or credit bureau). For example, unless the consumer has authorized the communication, a collector may not discuss the debt (such as a dishonored check) with a bank, or make a report on a consumer to a non-profit counseling service.

6. *Judicial remedy.* The words "as reasonably necessary to effectuate a postjudgment judicial remedy" mean a communication necessary for execution or enforcement of the remedy. A debt collector may not send a copy of the judgment to an employer, except as part of a formal service of papers to achieve a garnishment or other remedy.

7. *Audits or inquiries.* A debt collector may disclose his files to a government official or an auditor, to respond to an inquiry or conduct an audit, because the disclosure would not be "in connection with the collection of any debt."

8. *Communications by attorney debt collectors.* An attorney who represents either a creditor or debt collector that has previously tried to collect an account may communicate his efforts to collect the account to the debt collector. Because the section permits a debt collector to communicate with "the attorney of the creditor, or the attorney of the debt collector", communications between these parties (even if the attorney is also a debt collector) are not forbidden.

An attorney may communicate with a potential witness in connection with a lawsuit he has filed (e.g., in order to establish the existence of a debt), because the section was not intended to prohibit communications by attorneys that are necessary to conduct lawsuits on behalf of their clients.

Section 805(c)—Ceasing communication. Once a debt collector receives written notice from a consumer that he or she refuses to pay the debt or wants the collector to stop further collection efforts, the debt collector must cease any further communication with the consumer except "(1) to advise the consumer that the debt collector's further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy."

1. *Scope.* For purposes of this section, the term "communicate" is given its commonly accepted meaning. Thus, the section applies to any contact with the consumer related to the collection of the debt, whether or not the debt is specifically mentioned.

2. *Request for payment.* A debt collector's response to a "cease communication" notice from the consumer may not include a demand for payment, but is limited to the three statutory exceptions.

Section 805(d)—"consumer" definition. For section 805 purposes, the term "consumer" includes the "consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."

1. *Broad "consumer" definition.* Because of the broad statutory definition of "consumer" for the purposes of this section, many of its protections extend to parties close to the consumer. For example, the debt collector may not call the consumer's spouse at a time or place known to be inconvenient to the spouse. Conversely, he may call the spouse (guardian, executor, etc.) at any time or place that would be in accord with the limitations of section 805(a).

Section 806—Harassment or Abuse

Section 806 prohibits a debt collector from any conduct that would "Harass, oppress, or abuse any person in connection with the collection of a debt." It provides six examples of harassement or abuse.

1. *Scope.* Prohibited actions are not limited to the six subsections listed as

examples of activities that violate this provision.

2. *Unnecessary calls to third parties.* A debt collector may not leave telephone messages with neighbors when the debt collector knows the consumer's name and telephone number and could have reached him directly.

3. *Multiple contacts with consumer.* A debt collector may not engage in repeated personal contacts with a consumer with such frequency as to harass him. Subsection (5) deals specifically with harassment by multiple phone calls.

4. *Abusive conduct.* A debt collector may not pose a lengthy series of questions or comments to the consumer without giving the consumer a chance to reply. Subsection (2) deals specifically with harassment involving obscene, profane, or abusive language.

Section 806(1) prohibits the "use or threat of use of violence or other criminal means to harm * * * any person."

1. *Implied threat.* A debt collector may violate this section by an implied threat of violence. For example, a debt collector may not pressure a consumer with statements such as "We're not playing around here—we can play tough" or "We're going to send somebody to collect for us one way or the other."

Section 806(2) prohibits the use of obscene, profane, or abusive language.

1. *Abusive language.* Abusive language includes religious slurs, profanity, obscenity, calling the consumer a liar or a deadbeat, and the use of racial or sexual epithets.

Section 806(3) prohibits the "publication of a list of consumers who allegedly refuse to pay debts," except to report the items to a "consumer reporting agency", as defined in the Fair Credit Reporting Act or to a party otherwise authorized to receive it under that Act.

Section 806(4) prohibits the "advertisement for sale of any debt to coerce payment of the debt."

1. *Shaming prohibited.* These provisions are designed to prohibit debt collectors from "shaming" a customer into payment, by publicizing the debt.

2. *Exchange of lists.* Debt collectors may not exchange lists of consumers who allegedly refuse to pay their debts.

3. *Information to creditor subscribers.* A debt collector may not distribute a list of alleged debtors to its creditor subscribers.

4. *Coded lists.* A debt collector that publishes a list of consumers who have had bad debts, coded to avoid generally disclosing the consumer's identity (e.g., showing only the drivers license number and first three letters of each consumer's name) does not violate this provision, because such publication is permitted under the Fair Credit Reporting Act.

5. *List for use by investigator.* A debtor collector does not violate these provisions by providing a list of consumers against whom judgments have been entered to a private investigator in order to locate such individuals, because section 805(b) specifically permits contacts "reasonably necessary to effectuate a post-judgment judicial remedy."

6. *Public notice required by law.* A debt collector does not violate these provisions by providing public notices that are required by law as a prerequisite to enforcement of a security interest in connection with a debt.

Section 806(5) prohibits contacting the consumer by telephone "repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number."

1. *Multiple phone calls.* "Continuously" means making a series of telephone calls, one right after the other. "Repeatedly" means calling with excessive frequency under the circumstances.

Section 806(6) prohibits, except where section 804 applies, "the placement of telephone calls without meaningful disclosure of the caller's identity."

1. *Aliases.* A debt collector employee's use of an alias that permits identification of the debt collector (*i.e.*, where he uses the alias consistently, and his true identity can be ascertained by the employer) constitutes a "meaningful disclosure of the caller's identity."

2. *Identification of caller.* An individual debt collector must disclose his employer's identity, when discussing the debt on the telephone with consumers or third parties permitted by section 805(b).

3. *Relation to other sections.* A debt collector who uses a false business name in a phone call to conceal his identity violates section 807(14), as well as this section.

Section 807—False or Misleading Representations

Section 807 prohibits a debt collector from using any "false, deceptive, or misleading representation or means in connection with the collection of any debt." It provides sixteen examples of false or misleading representations.

1. *Scope.* Prohibited actions are not limited to the sixteen subsections listed as examples of activities that violate this provision. In addition, section 807(10), which prohibits the "use of any false representation or deceptive means" by a debt collector, is particularly broad and encompasses virtually every violation, including those not covered by the other subsections.

Section 807(1) prohibits "the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State * * *"

1. *Symbol on dunning notice.* A debt collector may not use a symbol in correspondence that makes him appear to be a government official. For example, a collection letter depicting a police badge, a judge, or the scales of justice, normally violates this section.

Section 807(2) prohibits falsely representing either "(A) the character, amount, or legal status of any debt; or (B) any services rendered or compensation which may be lawfully received by" the collector.

1. *Legal Status of debt.* A debt collector may not falsely imply that legal action has begun.

2. *Amount of debt.* A debt collector may not claim an amount more than actually owed, or falsely assert that the debt has matured or that it is immediately due and payable, when it is not.

3. *Judgment.* When a debt collector provides the validation notice required by section 809(a)(4), the notice may include the words "copy of a judgment" whether or not a judgment exists, because section 809(a)(4) provides for a statement including these words. Compliance with section 809(a)(4) in this manner will not be considered a violation of section 807(2)(A).

Section 807(3) prohibits falsely representing or implying that "any individual is an attorney or that any communication is from an attorney."

1. *Form of legal correspondence.* A debt collector may not send a collection letter from a "Pre-Legal Department," where no legal department exists. An attorney may use a computer service to send letters on his own behalf, but a debt collector may not send a computer-generated letter deceptively using an attorney's name.

2. *Named individual.* A debt collector may not falsely represent that a person named in a letter is his attorney.

3. *Relation to other sections.* If a creditor falsely uses an attorney's name rather than his own in his collection communications, he both loses his exemption from the FDCPA's definition of "debt collector" (Section 803(6)) and violates this provision.

Section 807(4) prohibits falsely representing or implying to the consumer that nonpayment "will result in the arrest or imprisonment of any

person or the seizure, garnishment, attachment, or sale of any property or wages of any person * * *"

Section 807(5) prohibits the "threat to take any action that cannot legally be taken or that is not intended to be taken."

1. *Debt collector's statement of his own definite action.* A debt collector may not state that he will take any action unless he intends to take the action when the statement is made, or ordinarily takes the action in similar circumstances.

2. *Debt collector's statement of definite action by third party.* A debt collector may not state that a third party will take any action unless he has reason to believe, at the time the statement is made, that such action will be taken.

3. *Statement of possible action.* A debt collector may not state or imply that he or any third party may take any action unless such action is legal and there is a reasonable likelihood, at the time the statement is made, that such action will be taken. A debt collector may state that certain action is possible, if it is true that such action is legal and is frequently taken by the collector or creditor with respect to similar debts; however, if the debt collector has reason to know there are facts that make the action unlikely in the particular case, a statement that the action was possible would be misleading.

4. *Threat of criminal action.* A debt collector may not threaten to report a dishonored check or other fact to the police, unless he actually intends to take this action.

5. *Threat of attachment.* A debt collector may not threaten to attach a consumer's tax refund, when he has no authority to do so.

6. *Threat of legal or other action.* Section 807(5) refers not only to a false threat of legal action, but also a false threat by a debt collector that he will report a debt to a credit bureau, assess a collection fee, or undertake any other action if the debt is not paid. A debt collector may also not misrepresent the imminence of such action.

A debt collector's implication, as well as a direct statement, of planned legal action may be an unlawful deception. For example, reference to an attorney or to legal proceedings may mislead the debtor as to the likelihood or imminence of legal action.

A debt collector's statement that legal action has been recommended is a representation that legal action may be taken, since such a recommendation implies that the creditor will act on it at least some of the time.

Lack of intent may be inferred when the amount of the debt is so small as to make the action totally unfeasible or when the debt collector is unable to take the action because the creditor has not authorized him to do so.

7. *Illegality of threatened act.* A debt collector may not threaten that he will illegally contact an employer, or other third party, or take some other "action that cannot legally be taken" (such as advising the creditor to sue where such advice would violate state rules governing the unauthorized practice of law). If state law forbids a debt collector from suing in his own name (or from doing so without first obtaining a formal assignment and that has not been done), the debt collector may not represent that he will sue in that state.

Section 807(6) prohibits falsely representing or implying that a transfer of the debt will cause the consumer to (A) lose any claim or defense, or (B) become subject to any practice prohibited by the FDCPA.

1. *Referral to creditor.* A debt collector may not falsely state that the consumer's account will be referred back to the original creditor, who would take action the FDCPA prohibits the debt collector to take.

Section 807(7) prohibits falsely representing or implying that the "consumer committed any crime or other conduct in order to disgrace the consumer."

1. *False allegation of fraud.* A debt collector may not falsely allege that the consumer has committed fraud.

2. *Misrepresentation of criminal law.* A debt collector may not make a misleading statement of law, falsely implying that the consumer has committed a crime, or mischaracterize what constitutes an offense by misstating or omitting significant elements of the offense. For example, a debt collector may not tell the consumer that he has committed a crime by issuing a check that is dishonored, when the statute applies only where there is a "scheme to defraud."

Section 807(8) prohibits "Communicating or threatening to communicate to any person (false) credit information * * *, including the failure to communicate that a disputed debt is disputed."

1. *Disputed debt.* If a debt collector knows that a debt is disputed by the consumer, either from receipt of written notice (section 809) or other means, and reports it to a credit bureau, he must report it as diputed.

2. *Post-report dispute.* When a debt collector learns of a dispute after reporting the debt to a credit bureau, the dispute need not also be reported.

Section 807(9) prohibits the use of any document designed to falsely imply that it issued from a state or federal source, or "which creates a false impression as to its source, authorization, or approval."

1. *Relation to other sections.* Most of the violations of this section involve simulated legal process, which is more specifically covered by section 807(13). However, this subsection is broader in that it also covers documents that fraudulently appear to be official government documents, or otherwise mislead the recipient as to their authorship.

Section 807(10) prohibits the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer."

1. *Relation to other sections.* The prohibition is so comprehensive that violation of any part of section 807 will usually also violate subsection (10). Actions that violate more specific provisions are discussed in those sections.

2. *Communication format.* A debt collector may not communicate by a format or envelope that misrepresents the nature, purpose, or urgency of the message. It is a violation to send any communication that conveys to the consumer a false sense of urgency. However, it is usually permissible to send a letter generated by a machine, such as a computer or other printing device. A bona fide contest entry form, which provides a clearly optional location to enter employment information, enclosed with request for payment, is not deceptive.

3. *False statement or implications.* A debt collector may not falsely state or imply that a consumer is required to assign his wages to his creditor when he is not, that the debt collector has counseled the creditor to sue when he has not, that adverse credit information has been entered on the consumer's credit record when it has not, that the entire amount is due when it is not, or that he cannot accept partial payments when in fact he is authorized to accept them.

4. *Misrepresentation of law.* A debt collector may not mislead the consumer as to the legal consequences of the consumer's actions (*e.g.*, by falsely implying that a failure to respond is an admission of liability).

A debt collector may not state that federal law requires a notice of the debt collector's intent to contact third parties.

5. *Misleading letterhead.* A debt collector's employee who is an attorney may not use "attorney-at-law"

stationery without referring to his employer, so as to falsely imply to the consumer that the debt collector had retained a private attorney to bring suit on the account.

Section 807(11) requires the debt collector to "disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose", except where section 804 provides otherwise.

1. *Oral communications.* A debt collector must make the required disclosures in both oral and written communications.

2. *Disclosure to consumers.* When a debt collector contacts a consumer and clearly discloses that he is seeking payment of a debt, he need not state that all information will be used to collect a debt, since that should be apparent to the consumer. The debt collector need not repeat the required disclosure in subsequent contacts.

A debt collector may not send the consumer a note saying only "please call me right away" unless there has been prior contact between the parties and the collector is thus known to the consumer.

3. *Disclosures to third parties.* Except when seeking location information, the debt collector must state in the first communication with a third party that he is attempting to collect the debt and that information will be used for that purpose, but need not do so in subsequent communications with that party.

Section 807(12) prohibits falsely representing or implying that "accounts have been turned over to innocent purchasers for value."

1. *Relation to other sections.* Section 807(6)(A) prohibits a false statement or implication that threatening to affect the consumer's rights may be affected by transferring the account; this subsection forbids falsely stating or implying that a transfer to certain parties has occurred.

Section 807(13) prohibits falsely representing or implying that "documents are legal process."

1. *Simulated legal process.* A debt collector may not send written communications that deceptively resemble legal process forms. He may not send a form or a dunning letter that, taken as a whole, appears to simulate legal process. However, one legal phrase (such as "notice of legal action" or "show just cause why") alone will not result in a violation of this section unless it contributes to an erroneous impression that the document is a legal form.

Section 807(14) prohibits the "use of any business, company, or organization name other than the (collector's) true name".

1. *Permissible business name.* A debt collector may use a name that does not misrepresent his identity or deceive the consumer. Thus, a collector may use its full business name, the name under which it usually transacts business, or a commonly-used acronym. When the collector uses multiple names in its various affairs, it does not violate this subsection if it consistently uses the same name when dealing with a particular consumer.

2. *Creditor misrepresentation of identity.* A creditor may not use any name that would falsely imply that a third party is involved in the collection. The in-house collection unit of "ABC Corp." may use the name "ABC Collection Division," but not the name "XYZ Collection Agency" or some other unrelated name.

A creditor violates this section if he uses the name of a collection bureau as a conduit for a collection process that the creditor controls in collecting his own accounts. Similarly, a creditor may not use a fictitious name or letterhead, or a "post office box address" name that implies someone else is collecting his debts.

A creditor does not violate this provision where an affiliated (and differently named) debt collector undertakes collection activity, if the debt collector does business separately from the creditor (e.g., where the debt collector in fact has other clients that he treats similarly to the creditor, has his own employees, deals at arms length with the creditor, and controls the process himself).

3. *All collection activities covered.* A debt collection business must use its real business name, commonly-used name, or acronym in both written and oral communications.

4. *Relation to other sections.* If a creditor uses a false business name, he both loses his exemption from the FDCPA's definition of "debt collector" (section 803(6)) and violates this provision. If a debt collector falsely uses the name of an attorney rather than his true business name, he violates section 807(3) as well as this section. When a debt collector uses a false business name in a phone call, he violates section 806(6) as well as this section.

When using the mails to obtain location information, a debt collector may not (unless expressly requested by the recipient to identify the firm) use a name that indicates he is in the debt collection business, or he will violate section 804(5). When a debt collector's employee who is seeking location information replies to an inquiry about his employer's identity under section 804(1), he must give the true name of his employer.

Section 807(15) prohibits falsely representing or implying that documents are not legal process forms or do not require action by the consumer.

1. *Disguised legal process.* A debt collector may not deceive a consumer into failing to respond to legal process by concealing the import of the papers, thereby subjecting the consumer to a default judgment.

Section 807(16) prohibits falsely representing or implying that a debt collector operates or is employed by a "consumer reporting agency" as defined in the Fair Credit Reporting Act.

1. *Dual agencies.* The FDCPA does not prohibit a debt collector from operating a consumer reporting agency.

2. *Misleading names.* Only a bona fide consumer reporting agency may use names such as "Credit Bureau," "Credit Bureau Collection Agency," "General Credit Control," "Credit Bureau Rating, Inc.," or "National Debtors Rating." A debt collector's disclaimer in the text of a letter that the debt collector is not affiliated with (or employed by) a consumer reporting agency, will not necessarily avoid a violation if the collector uses a name that indicates otherwise.

3. *Factual issue.* Whether a debt collector that has called itself a credit bureau actually qualifies as such is a factual issue, to be decided according to the debt collector's actual operation.

Section 808—Unfair Practices

Section 808 prohibits a debt collector from using "unfair or unconscionable means" in his debt collection activity. It provides eight examples of unfair practices.

1. *Scope.* Prohibited actions are not limited to the eight subsections listed as examples of activities that violate this provision.

2. *Elements of unfairness.* A debt collector's act in collecting a debt may be "unfair" if it causes injury to the consumer that is (1) substantial, (2) not outweighed by countervailing benefits to consumers or competition, and (3) not reasonably avoidable by the consumer.

Section 808(1) prohibits collecting any amount unless the amount is expressly authorized by the agreement creating the debt or is permitted by law.

1. *Kinds of amounts covered.* For purposes of this section, "amount" includes not only the debt, but also any incidental charges, such as collection

charges, interest, service charges, late fees, and bad check handling charges.

2. *Legality of charges.* A debt collector may attempt to collect a fee or charge in addition to the debt if either (a) the charge is expressly provided for in the contract creating the debt and the charge is not prohibited by state law, or (B) the contract is silent but the charge is otherwise expressly permitted by state law. Conversely, a debt collector may not collect an additional amount if either (A) state law expressly prohibits collection of the amount or (B) the contract does not provide for collection of the amount and state law is silent.

3. *Legality of fee under state law.* If state law permits collection of reasonable fees, the reasonableness (and consequential legality) of these fees is determined by state law.

4. *Agreement not in writing.* A debt collector may establish an "agreement" without a written contract. For example, he may collect a service charge on a dishonored check based on a posted sign on the merchant's premises allowing such a charge, if he can demonstrate that the consumer knew of the charge.

Section 808(2) prohibits accepting a check postdated by more than five days unless timely written notice is given to the consumer prior to deposit.

Section 808(3) prohibits soliciting any postdated check for purposes of threatening or instituting criminal prosecution.

Section 808(4) prohibits depositing a postdated check prior to its date.

1. *Postdated checks.* These provisions do not totally prohibit debt collectors from accepting postdated checks from consumers, but rather prohibit debt collectors from misusing such instruments.

Section 808(5) prohibits causing any person to incur telephone or telegram charges by concealing the true purpose of the communication.

1. *Long distance calls to the debt collector.* A debt collector may not call the consumer collect or ask a consumer to call him long distance without disclosing the debt collector's identity and the communication's purpose.

2. *Relation to other section.* A debt collector who conceals his purpose in asking consumers to call long distance may also violate section 807(11), which requires the debt collector to disclose his purpose in some communications.

Section 808(6) prohibits taking nonjudicial action to enforce a security interest on property, or threatening to do so, where (A) there is not present right to the collateral, (B) there is no present intent to exercise such rights, or (C) the property is exempt by law.

1. *Security enforcers.* Because the FDCPA's definition of "debt collection" includes parties whose principal business is enforcing security interests only for section 808(6) purposes, such parties (if they do not otherwise fall within the definition) are subject only to this provision and not to the rest of the FDCPA.

Section 808(7) prohibits "Communicating with a consumer regarding a debt by post card."

1. *Debt.* A debt collector does not violate this section if he sends a post card to a consumer that does not communicate the existence of the debt. However, if he had not previously disclosed that he is attempting to collect a debt, he would violate section 807(11), which requires this disclosure.

Section 808(8) prohibits showing anything other than the debt collector's address, on any envelope in any written communication to the consumer, except that a debt collector may use his business name if it does not indicate that he is in the debt collection business.

1. *Business names prohibited on envelopes.* A debt collector may not put on his envelope any business name with "debt" or "collector" in it, or any other name that indicates he is in the debt collection business. A debt collector may not use the American Collectors Association logo on an envelope.

2. *Collector's name.* Whether a debt collector/consumer reporting agency's use of his own "credit bureau" or other name indicates that he is in the collection business, and thus violates the section, is a factual issue to be determined in each individual case.

3. *Harmless words or symbols.* A debt collector does not violate this section by using an envelope printed with words or notations that do not suggest the purpose of the communication. For example, a collector may communicate via an actual telegram or similar service that uses a Western Union (or other provider) logo and the word "telegram" (or similar word) on the envelope, or a letter with the word "Personal" or "Confidential" on the envelope.

4. *Transparent envelopes.* A debt collector may not use a transparent envelope, which reveals language or symbols indicating his debt collection business, because it is the equivalent of putting information on an envelope.

Section 809—Validation of Debts

Section 809(a) requires a collector, within 5 days of the first communication, to provide the consumer a written notice (if not provided in that communication) containing (1) the amount of the debt and (2) the name of the creditor, along with a statement that he will (3) assume the debt's validity unless the consumer disputes it within 30 days, (4) send a verification or copy of the judgment if the consumer timely disputes the debt, and (5) identify the original creditor upon written request.

1. *Who must provide notice.* If the employer debt collection agency gives the required notice, employee debt collectors need not also provide it. A debt collector's agent may give the notice, as long as it is clear that the information is being provided on behalf of the debt collector.

2. *Single notice required.* The debt collector is not required to provide more than one notice for each debt. A notice need not offer to identify the original creditor unless the name and address of the original creditor are different from the current creditor.

3. *Form of notices.* The FDCPA imposes no requirements as to the form, sequence, location, or typesize of the notice. However, an illegible notice does not comply with this provision.

4. *Alternate terminology.* A debt collector may condense and combine the required disclosures, as long as he provides all required information.

5. *Oral notice.* If a debt collector's first communication with the consumer is oral, he may make the disclosures orally at that time in which case he need not send a written notice.

6. *Legal action.* A debt collector's institution of formal legal action against a consumer (including the filing of a complaint or service of legal papers by an attorney in connection with a lawsuit to collect a debt) or transmission of a notice to a consumer that is required by law as a prerequisite to enforcing a contractual obligation is not a "communication in connection with collection of any debt," and thus does not confer section 809 notice-and-validation rights on the consumer.

7. *Collection activities by attorneys.* An attorney who regularly attempts to collect debts by means other than litigation, such as writing the consumer demand letters (dunning notices) or calling the consumer on the phone about the obligation (except in response to a consumer's call to him after suit has been commenced), must provide the required notice, even if a previous debt collector (or creditor) has given such a notice.

8. *Effect of including proof with first notice.* A debt collector must verify a disputed debt even if he has included proof of the debt with the first communication, because the section is intended to assist the consumer when a debt collector inadvertently contacts the

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wrong consumer at the start of his collection efforts.

Section 809(b) requires that, if the consumer disputes the debt or requests identification of the original creditor in writing, the collector must cease collection efforts until he verifies the debt and mails a response. Section 809(c) states that a consumer's failure to dispute the validity of a debt under this section may not be interpreted by a court as an admission of liability.

1. *Pre-notice collection.* A debt collector need not cease normal collection activities within the consumer's 30-day period to give notice of a dispute until he receives a notice from the consumer. An attorney debt collector may take legal action within 30 days of sending the notice, regardless of whether the consumer disputes the debt. If the consumer disputes the debt, the attorney may still take legal action but must cease collection efforts until verification is obtained and mailed to the consumer.

A debt collector may report a debt to a credit bureau within the 30-day notice period, before he receives a request for validation or a dispute notice from the consumer.

Section 810—Multiple Debts

Section 810 provides: "If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector my not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions."

Section 811—Legal Actions by Debt Collectors

Section 811 provides that a debt collector may sue a consumer only in the judicial district where the consumer resides or signed the contract sued upon, except that an action to enforce a security interest in real property which secures the obligation must be brought where the property is located.

1. *Waiver.* Any waiver by the consumer must be provided directly to the debt collector (not to the creditor in the contract establishing the debt), because the forum restriction applies to actions brought by the debt collector.

2. *Multiple defendants.* Since a debt collector may sue only where the consumer (1) lives or (2) signed the contract, the collector may not join an ex-husband as a defendant to a suit against the ex-wife in the district of her residence, unless he also lives there or signed the contract there. The existence of community property at her residence that is available to pay his debts does not alter the forum limitations on individual consumers.

3. *Real estate security.* A debt collector may sue based on the location of a consumer's real property only when he seeks to enforce an interest in such property that secures the debts.

4. *Services without written contract.* Where services were provided pursuant to an oral agreement, the debt collector may sue only where the consumer resides. He may not sue where services were performed (if that is different from the consumer's residence), because that is not included as permissible forum location by this provision.

5. *Enforcement of judgments.* If a judgment is obtained in a forum that satisfies the requirements of this section, it may be enforced in another jurisdiction, because the consumer previously has had the opportunity to defend the original action in a convenient forum.

6. *Scope.* This provision applies to lawsuits brought by a debt collector, including an attorney debt collector, when the debt collector is acting on his own behalf or on behalf of his client.

Section 812—Furnishing Certain Deceptive Forms

Section 812 prohibits any party from designing and furnishing forms, knowing they are or will be used to deceive a consumer to believe that someone other than his creditor is collecting the debt, and imposes FDCPA civil liability on parties who supply such forms.

1. *Practice prohibited.* This section prohibits the practice of selling to creditors dunning letters that falsely imply that a debt collector is participating in collection of the debt, when in fact only the creditor is collecting.

2. *Coverage.* This section applies to anyone who designs, complies, or furnishes the forms prohibited by this section.

3. *Pre-collection letters.* A form seller may not furnish a creditor with (1) a letter on a collector's letterhead to be used when the collector is not involved in collecting the creditor's debts, or (2) a letter indicating "copy to (the collector)" if the collector is not participating in collecting the creditor's debt. A form seller may not avoid liability by including a statement in the text of a form letter that the sender has not yet been assigned the account for collection, if the communication as a whole, using the collector's letterhead, represents otherwise.

4. *Knowledge required.* A party does not violate this provision unless he knows or should have known that his form letter will be used to mislead consumers into believing that someone other than the creditor is involved in collecting the debt.

5. *Participation by debt collector.* A debt collector that uses letters as his only collection tool does not violate this section, merely because he charges a flat rate per letter, if he is meaningfully "participating in the collection of a debt." The consumer is not misled in such cases, as he would be in the case of a party who supplied the creditor with form letters and provided little or no additional service in the collection process. The performance of other tasks associated with collection (*e.g.*, handling verification requests, negotiating payment arrangements, keeping individual records) is evidence that such a party is "participating in the collection."

Section 813—Civil Liability

Section 813 (A) imposes civil liability in the form of (1) actual damages, (2) discretionary penalties, and (3) costs and attorney's fees, (B) discusses relevant factors a court should consider in assessing damages, (C) exculpates a collector who maintains reasonable procedures from liability for an unintentional error, (D) permits actions to be brought in federal or state courts within one year from the violation, and (E) shields a defendant who relies on an advisory opinion of the Commission.

1. *Employee liability.* Since the employees of a debt collection agency are "debt collectors," they are liable for violations to the same extent as the agency.

2. *Damages.* The courts have awarded "actual damages" for FDCPA violations that were not just out-of-pocket expenses, but included damages for personal humiliation, embarrassment, mental anguish, or emotional distress.

3. *Application of statute of limitation period.* The section's one year statute of limitations applies only to private lawsuits, not to actions brought by a government agency.

4. *Advisory opinions.* A party may act in reliance on a formal advisory opinion of the Commission pursuant to 16 CFR 1.1–1.4, without risk of civil liability. This protection does not extend to reliance on this Commentary or other informal staff interpretations.

Section 814—Administrative Enforcement

Section 814 provides that the principal

federal enforcement agency for the FDCPA is the Federal Trade Commission, but assigns enforcement power to other authorities empowered by certain federal statutes to regulate financial, agricultural, and transportation activities, where FDCPA violations relate to acts subject to those laws.

Section 815—Reports to Congress by Commission

Section 815 requires the Commission to submit an annual report to Congress which discusses its enforcement and other activities administering the FDCPA, assesses the degree of compliance, and makes recommendations.

Section 816—Relations to State Laws

Section 816 provides that the FDCPA pre-empts state laws only to the extent that those laws are inconsistent with any provision of the FDCPA, and then only to the extent of the inconsistency. A State law is not inconsistent if it gives consumers greater protection than the FDCPA.

1. *Inconsistent laws.* Where a state law provides protection to the consumer equal to, or greater than, the FDCPA, it is not pre-empted by the federal statute.

Section 817—Exemption For State Regulation

Section 817 orders the Commission to exempt any class of debt collection practices from the FDCPA within any State if it determines that State laws regulating those practices are substantially similar to the FDCPA, and contain adequate provision for enforcement.

1. *State exemptions.* A state with a debt collection law may apply to the Commission for an exemption. The Commission must grant the exemption if the state's law is substantially similar to the FDCPA, and there is adequate provision for enforcement. The Commission has published procedures for processing such applications (16 CFR 901).

Section 818—Effective Date

Section 818 provides that the FDCPA took effect six months from the date of its enactment.

1. *Key dates.* The FDCPA was approved September 20, 1977, and became effective March 20, 1978.

[FR Doc. 88-28573 Filed 12-12-88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Initial Review Committees and Science Advisory Board; Meeting Agendas; January

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth schedules and proposed agendas of the forthcoming meetings of the agency's initial review committees and a science advisory board in the month of January 1989.

The Extramural Science Advisory Board, NIMH, will discuss the peer review process and the extramural program in the behavioral sciences of the National Institute of Mental Health.

The review committees will be performing initial review of applications for Federal assistance. Therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b) (6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIHM.

Date and Time: January 18–20: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: Open—January 18: 9:00–10:00 a.m., Closed—Otherwise.

Contact: Maureen Eister, Parkland Building, Room 9C–08, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Extramural Science Advisory Board, NIMH.

Date and Time: January 22–24: 10:00 a.m.

Place: January 22—Bethesda Marriott, 5151 Pooks Hills Road, Bethesda, Maryland 20814.

January 23–24—National Institutes of Health, Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open.

Contact: Anthony Pollitt, Parklawn Building, Room 17C–20, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3175.

Purpose: The Extramural Science Advisory Board, NIMH, advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: January 25–27: 9:00 a.m.

Place: Congressional Days Inn, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—January 25: 9:00–10:00 a.m., Closed—Otherwise.

Contact: Emilie A. Embrey, Parklawn Building, Room 9C–08, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: December 7, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-28656 Filed 12-12-88; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88N-0415]

Drug Export; Ifex (Ifosfamide) For Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bristol-Myers Co., has filed an application requesting approval for the export of the human drug Ifex (ifosfamide) for injection to Canada.

ADDRESS. Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bristol-Myers Co., 345 Park Ave., New York, NY 10154, has filed an application requesting approval for the export of human drug Ifex (ifosfamide) for injection, to Canada. This drug is to be used in the treatment of cancer. The application was received and filed in the Center for Drug Evaluation and Research on November 23, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 23, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: December 2, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–28567 Filed 12–12–88; 8:45 am]

BILLING CODE 4160–01–M

Office of Child Support Enforcement

Privacy Act of 1974; Revision To Existing System of Records

AGENCY: Office of Child Support Enforcement (OCSE), DHHS.

ACTION: Notice of Revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that OCSE is amending one of its system of records, the Federal Parent Locator Service (FPLS), DHHS/OCSE No. 09–90–0074. This system was last published at 52 FR 29732, August 11, 1987. The notice is being changed to reflect a change in the system location, system manager(s), address and routine uses of records maintained.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Donna Bonar, Program Operations Division, Office of Child Support Enforcement, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 252–5411.

The applicable text of the system of records is revised and an addition made to routine uses:

09–90–0074

SYSTEM NAME:

The Federal Parent Locator Service and Federal Tax Offset System, DHHS/OCSE.

SYSTEM LOCATION:

Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 252–5411.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In cases involving International Child Support cases, the FPLS will route the name and SSN of the absent parent to the U.S. Department of State. The State Department will review the cases to identify politically sensitive requests.

Information on any case identified as "sensitive" by the State Department will not be released.

* * * * *

THE U.S. DEPARTMENT OF STATE IS DESIGNATED AS THE CENTRAL AUTHORITY:

According to Public Law 100–300, Section 7(d), "The President shall designate a Federal agency * * * which may obtain information from the Federal Parent Locator Service." Executive Order 12648 of August 11, 1988 states, "The Department of State is hereby designated as the Central Authority of the United States for the purposes of the Hague Convention on the Civil Aspects of International Child Abduction."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Operations Division, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, 4th Floor, Washington, DC 20447.

* * * * *

Date: December 5, 1988.

Approval:

Robert C. Harris,

Associate Deputy Director, Office of Child Support Enforcement.

[FR Doc. 88–28362 Filed 12–12–88; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1902]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: November 22, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Program Utilization for use in the Section 8 Existing Housing and Housing Voucher Programs
Office: Housing
Description of The Need For The Information And Its Proposed Use: Under the Section 8 Certificate Program, this information collection provides data to HUD in monitoring the use of Certificates of Family Participation and housing vouchers. These data provide HUD with the number of families under a housing assistance program contract and housing voucher contract, and also the degree of success experienced by program participants in locating and renting suitable housing.
Form Number: HUD–52683
Respondents: State or Local Governments
Frequency of Submission: Monthly, Quarterly, and Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Monthly reporting	2,000		12		.21		5,100
Quarterly reporting	2,000		4		.14		1,152
Annually reporting	2,000		1		1.30		2,588

Total Estimated Burden Hours: 8,840
Status: Extension
Contact: Gwendolyn S. Carter, HUD, (202) 755–6477; John Allison, OMB, (202) 395–6880

Date: November 21, 1988.

Proposal: Certificate of Need for Health Facility and Assurance of Enforcement of State Standards
Office: Housing
Description of The Need For The Information And Its Proposed Use: Sections 232 and 242 of the National Housing Act authorize mortgage insurance for nursing homes and/or intermediate care facilities (ICFs), board care homes, and hospitals. The form, Certificate of Need, is used and needed by the nursing homes, ICFs, and hospitals to obtain approval for an insured loan.
Form Number: HUD–2576–HF
Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Certificate	100		1		.2		20
Study	20		1		150.0		3,000
Recordkeeping	120		1		.2		24

Total Estimated Burden Hours: 3,044
Status: Reinstatement

Contact: C. Edward Lewis, Jr., HUD, (202) 755–6223; John Allison, OMB, (202) 395–6880

Date: November 22, 1988.

[FR Doc. 88–38597 Filed 12–12–88; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–88–1901]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department has submitted to OMB, for emergency processing, an information collection package with respect to the Comprehensive Homeless Assistance Plan (CHAP) under Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

The information collection requirements in this package are the result of amendments to the CHAP contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (Approved November 7, 1988). Under Section 485 of the 1988 McKinney Act, the Department has 60 days from the date of statutory enactment (i.e., by January 6, 1989 in which to publish a notice implementing the new provisions. In order to meet this statutory deadline, the Department has requested OMB to complete its paperwork review of the Emergency Shelter Grants Notice by December 12, 1988. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the CHAP Notice to OMB for regular paperwork review. The public will then have an additional 60 day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of reponse; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3407 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 7, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Comprehensive Homeless Assistance Plan (FR–2386)
Office: Community Planning and Development
Description of the Need for the Information and Its Proposed Use: States, metroplitan cities, and urban counties are required to submit a comprehensive homeless assistance plan and annual progress report in order to receive assistance under Title IV—Housing Assistance.
Form Number: None
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Annual submission of CHAPS	375		1		31.00		11,625.00
Sharing of information copies of CHAPs	375		1		.75		281.25
Assurance of drug-free homeless facility	375		1		.25		93.75
Annual performance report	375		1		16.00		6,000.00
Substantive response to HUD recommendations on annual performance report	125		1		3.00		375.00

Total Estimated Burden Hours: 18,375
Status: Revision
Contact: James R. Broughman, HUD, (202) 755–5977; John Allison, OMB, (202) 395–6880.

Date: December 7, 1988.

[FR Doc. 88–28598 Filed 12–12–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 2, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 28, 1988.

John J. Knoerl,

Chief of Registration, National Register.

ALABAMA

Calhoun County

Aderholdt's Mill, Aderholdt's Mill Rd., Jacksonville vicinity, 88003077

Colbert County

Old Brick Presbyterian Church, Old Brick Rd., N of Leighton, Leighton vicinity, 88003078
Rock Creek Archeological District (ACt44, ACt45), Address Restricted, Maud vicinity, 88003068

Montgomery County

Dowe Historic District, 320 and 334 Washington Ave. and 114–116 S. Hull St., Montgomery, 88003076

ARIZONA

Maricopa County

Mesa Journal—Tribine FHA Demonstration Home, 22 D First Ave., Mesa, 88003056

DISTRICT OF COLUMBIA

District of Columbia

Glenwood Cemetery Mortuary Chapel, 2219 Lincoln Rd., NE, Washington, 88003064
True Reformer Building, 1200 U St., NW, Washington, 88003063

FLORIDA

Dade County

Atlantic Gas Station (Downtown Miami MRA), 668 N.W. 5th St., Miami, 88003060
Downtown Miami Commercial Historic District (Downtown Miami MRA), Roughly

bounded by N.E. 1st St., N.E. 1st Ave., S.E. 1st Ave., S.W. 1st St., and N. Miami Ave., Miami, 88003057
Lummus Park Historic District (Downtown Miami MRA), Roughly bounded by N.W. 4th Terr., N.W. 4th Ave., N.W. 3rd St., N.W. 3rd Ave., N.W. 2nd St., and N.W. North River Dr., Miami, 88003058
Mount Zion Baptist Church (Downtown Miami MRA), 301 N.W. 9th St., Miami, 88003059

GEORGIA

Floyd County

Between the Rivers Historic District (Boundary Increase), 107 W. Fourth St., Rome, 88003124
Between the Rivers Historic District (Boundary Decrease), 102 W. Second Ave. and Second Ave. at Oostanula River, Rome, 88003125

KANSAS

Douglas County

Stoebener Barn, SW of Worden, Baldwin City vicinity, 88003083

MARYLAND

Charles County

Stagg Hall, CR 469/Chapel Point Rd., Port Tobacco, 88003061

Dorchester County

Goldsborough House, 200 High St., Cambridge, 88003062

MINNESOTA

Sibley County

Sibley County Courthouse and Sheriff's Residence and Jail, 400 Court St. and 319 Park Ave., Gaylord, 88003071

Stearns County

Model School, 826 First Ave., South, St. Cloud, 88003072

NEW YORK

Ulster County

Hait, Thaddeus, Farm, 75 Alhusen Rd., Modena, 88003075

NORTH CAROLINA

Halifax County

Hoffman-Bowers-Josey-Riddick House, 1103 Church St., Scotland, Neck, 88003080
Roanoke Rapids Junior-Senior High School, 800 Hamilton St., Roanoke Rapids, 88003081

OHIO

Hamilton County

Greenhills Historic District, Roughly Damon Rd., Enfield St., Farragut Rd., Flanders Ln., Winton Rd., Andover Rd., Burley Cir., and Crowell Rd., Greenhills, 88003066

Portage County

Cleveland Worsted Mills Redfern Mill, S. Chestnut St., Ravenna, 88003065

RHODE ISLAND

Newport County

Army and Navy YMCA, 50 Washington Sq., Newport, 88003073

Providence County

Chemical Building, Fields Point Sewage Treatment Plant (Public Works and Utilities—Sewage Treatment Facilities in Providence, 1895–1935 TR), Ernest St. at Fields Point, Providence, 88003106
Clayville Historic District (Foster MPS), Roughly bounded by Cole Ave., Plainfield Pike, Field Hill Rd., Victory Hwy., Foster, 88003079
Ernest Street Sewage Pumping Station (Public Works and Utilities—Sewage Treatment Facilities in Providence, 1895–1935 TR), Ernest and Ellis Sts., Providence, 88003103
Reservoir Avenue Sewage Pumping Station (Public Works and Utilities—Sewage Treatment Facilities in Providence, 1895–1935 TR), Reservoir and Pontiac Aves., Providence, 88003108
Return Sludge Pumping Station, Fields Point Sewage Treatment Plant (Public Works and Utilities—Sewage Treatment Facilities in Providence, 1895–1935 TR), Ernest St., Providence, 88003105
Sludge Press House, Fields Point Sewage Treatment Plant (Public Works and Utilities—Sewage Treatment Facilities in Providence, 1895–1935 TR), Ernest St., Providence, 88003104
Temple Beth-El, 688 Broad St., Providence, 88003074
Washington Park Sewage Pumping Station (Public Works and Utilities—Sewage Treatment Facilities in Providence, 1895–1935 TR), Shipyard St., Providence, 88003107

VERMONT

Addison County

Heights, The, South St./VT 30, Middlebury, 88003082

VIRGINIA

Madison County

Corbin, George I., Cabin, 1.5 mi. off Skyline Dr. at jct. of Corbin Cabin Trail and Nicholson Hollow Trail, Methers vicinity, 88003067

WASHINGTON

Clark County

U.S. National Bank Building, 601 Main St., Vancouver, 84004010

WISCONSIN

Door County

Carnegie Free Library, 354 Michigan St., Sturgeon Bay, 88003069

Winnebago County

Metzig Garden Site (47WM283), Address Restricted, Wolf vicinity, 88003070

[FR Doc. 38–28666 Filed 12–12–88; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31370]

Orlando Utilities Commission; Operation Exemption; Between a Point Near Taft, FL, and Stanton Energy Center, FL

Orlando Utilities Commission (OUC) has filed a notice of exemption to operate as a Class III rail carrier over an existing spur track owned by OUC between a point near Taft, FL, and Stanton Energy Center, FL.[1]

The line extends from a location approximately 1.8 miles south of Taft and extends east and north for a distance of approximately 17.54 miles to the property boundary of the Stanton Energy Center, a coal-fueled electric generating facility owned and operated by OUC. The spur track, including sidings and sidetracks, is approximately 25.24 miles of trackage. All trackage is located in Orange County, FL. Any comments must be filed with the Commission and served on Tom B. Tart, Orlando Utilities Commission, 500 South Orange Avenue, Orlando, FL 32802; Frederic L. Wood, 1275 K Street, NW., Washington, DC 10005; and Ken van Assendserp, Gallie's Hall, Suite 200, 225 South Adams Street, Tallahassee, FL.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 8, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28657 Filed 12–12–88; 8:45 am]
BILLING CODE 7035–01–M

[1] The Railway Labor Executives' Association (RLEA) and the United Transportation Union filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. OUC replied, seeking denial of the request. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's and UTU's request is denied because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

[Docket No. AB-55 (Sub-No. 266)]

CSX Transportation, Inc.; Abandonment Between West Cedartown, GA and Maxwellborn, AL in Polk County, GA and Cleburne and Calhoun Counties, AL

The Commission has issued a Decision and Certificate authorizing CSX Transportation, Inc. to abandon its 28.65-mile rail line between milepost SG 632.35 (West Cedartown, GA) and milepost SG-661.00 (Maxwellborn, AL) in Polk County, GA and Cleburne and Calhoun Counties, AL. The certificate will become effective 30 days after publication in the **Federal Register** unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the applicant within 10 days after publication.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: December 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Chairman Gradison commented with a separate expression. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-28550 Filed 12-12-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-76]

Sica Pharmacy Inc. d/b/a Absecon Pharmacy, Inc. Absecon, NJ

Notice of hearing

Notice is hereby given that on July 20, 1988, the Drug Enforcement Administration, Department of Justice, issued to Sica Pharmacy, Inc., d/b/a Absecon Pharmacy, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificates of Registration, AS5464451 and BA1278806, and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, December 13, 1988, commencing at 10:00 a.m., at the Department of Transportation, Nassif Building, 400 7th Street, SW., Courtroom No. 5332, Washington, DC.

Dated: December 7, 1988.

John C. Lawn,

Administrator Drug Enforcement Administration.

[FR Doc. 88-28569 Filed 12-12-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-69]

Applications, Hearings, Determinations, etc.: Thomas N. Carter

Notice of Hearing

Notice is hereby given that on July 20, 1988, the Drug Enforcement Administration, Department of Justice, issued to Thomas N. Carter, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC4855346 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, January 5, 1989, commencing at 10:00 a.m., at the United States Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: December 7, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-28570 Filed 12-12-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-77]

Florida Mycology Research Center Cantonment, FL; Hearing

Notice is hereby given that on August 5, 1988 the Drug Enforcement Administration, Department of Justice, issued to Florida Mycology Research Center an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration PF0233623 and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, January 10, 1989, commencing at 9:30 a.m., at the U.S. Tax Court, Federal Building, 51 SW. First Avenue, Courtroom 1524, Miami, Florida.

Dated: December 7, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-28571 Filed 12-12-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket Nos. 88-20, 88-21, 88-22]

Sam's Bennett Road Drugs, Inc., et al., Toledo, OH; Hearing

Notice is hereby given that on February 2, 1988 the Drug Enforcement Administration, Department of Justice, issued to Sam's Bennett Road Drugs, Inc., Sam's Orchard Drugs, Inc., and Sam's Douglas Road Drugs, Inc., Orders to Show Cause why the Drug Enforcement Administration should not revoke their DEA Certificates of Registration AS2872326, AS9740982, and AS2938960, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by each Respondent, and written requests for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing on these matters will be held on Friday, January 6, 1989, commencing at 10:00 a.m., at the U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: December 7, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-28572 Filed 12-12-88; 8:45 am]

BILLING CODE 4410-09-M

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-21,057]

Badlands Shot Hole Service, Dickinson, ND; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a worker petition which was filed on behalf of workers at Badlands Shot Hole, Dickinson, North Dakota

All workers of Badlands Shot Hole, Dickinson, North Dakota were separated from the subject firm more than one year prior to the date of the petition. In accordance with section 223(b) of the Omnibus Trade and Competitivenes Act of 1988, as amended by Pub. L. 100–418, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before October 1, 1985. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of November, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28593 Filed 12–12–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-20,951 et al.]

Halliburton Co.; Adjustment Assistance

In the matter of:

TA–W–20,951, Halliburton Services, Hays, Kansas

TA–W–21,107, Halliburton Services, Eunice, Louisiana

TA–W–21,271, Halliburton Services Division, headquartered in Duncan, Oklahoma and operating at the following locations:

TA–W–21,272, Bakersfield Division, headquartered in Bakersfield, California, and operating at various locations in the following States:
- TA–W–21,272A—Alaska
- TA–W–21,272B—California

TA–W–21,273, Pittsburgh Division, headquartered in Pittsburgh, Pennsylvania, and operating at various locations in the following States:
- TA–W–21,273A—Illinois
- TA–W–21,273B—Kentucky
- TA–W–21,273C—Michigan
- TA–W–21,273D—Ohio
- TA–W–21,273E—Pennsylvania
- TA–W–21,273F—Virginia
- TA–W–21,273G—West Virginia

TA–W–21,274, Dallas Division, headquartered in Dallas, Texas
TA–W–21,274A, and operating at various locations in Texas

TA–W–21,275, Midland Division, headquartered in Midland, Texas, and operating at various locations in the following States:
- TA–W–21,275A—Colorado
- TA–W–21,275B—New Mexico
- TA–W–21,275C—Texas

TA–W–21,276, Oklahoma City Division, headquartered in Oklahoma City, Oklahoma
TA–W–21,276A, and operating at various locations in Oklahoma

TA–W–21,277, Shreveport Division, headquartered in Shreveport, Louisiana, and operating at various locations in the following States:
- TA–W–21,277A—Alabama
- TA–W–21,277B—Louisiana
- TA–W–21,277C—Mississippi

TA–W–21,278, Houston Division, headquartered in Houston, Texas
TA–W–21,278A, and operating at various locations in Texas

TA–W–21,279, New Orleans Division, headquartered in New Orleans, Louisiana
TA–W–21,279A, and operating at various locations in Louisiana

TA–W–21,280, Corpus Christi Division, headquartered in Corpus Christi, Texas
TA–W–21,280A, and operating at various locations in Texas

TA–W–21,281, Wichita Division, headquartered in Wichita, Kansas, and operating at various locations in the following States:
- TA–W–21,281A—Colorado
- TA–W–21,281B—Kansas
- TA–W–21,281C—Texas

TA–W–21,282, Denver Division, headquartered in Denver, Colorado, and operating at various locations in the following States:
- TA–W–21,282A—Colorado
- TA–W–21,282B—Montana
- TA–W–21,282C—Nebraska
- TA–W–21,282D—North Dakota
- TA–W–21,282E—Utah
- TA–W–21,282F—Wyoming

TA–W–21,283, Industrial Services Division, headquartered in Duncan, Oklahoma, and operating at various locations in the following States:
- TA–W–21,283A—Alabama
- TA–W–21,283B—Florida
- TA–W–21,283C—Georgia
- TA–W–21,283D—Illinois
- TA–W–21,283E—Louisiana
- TA–W–21,283F—New Mexico
- TA–W–21,283G—North Carolina
- TA–W–21,283H—Ohio
- TA–W–21,283I—Oklahoma
- TA–W–21,283J—Pennsylvania
- TA–W–21,283K—Texas

TA–W–21,352, headquartered in Duncan, Oklahoma, and operating at the following locations:

TA–W–21,353, Oklahoma City Division, headquartered in Oklahoma City, Oklahoma, and operating at various locations in the following States:
- TA–W–21,353A—Kansas
- TA–W–21,353B—Oklahoma
- TA–W–21,353C—Texas

TA–W–21,354, Midland Division, headquartered in Midland, Texas, and operating at various locations in the following States:
- TA–W–21,354A—New Mexico
- TA–W–21,354B—Texas

TA–W–21,355, Denver Division, headquartered in Denver, Colorado, and operating at various locations in the following States:
- TA–W–21,355A—Colorado
- TA–W–21,355B—New Mexico
- TA–W–21,355C—Utah
- TA–W–21,355D—Wyoming

TA–W–21,356, Houston Division, headquartered in Houston, Texas, and operating at various locations in the following States:
- TA–W–21,356A—Louisiana
- TA–W–21,356B—Texas

TA–W–21,357, Bakersfield Division, headquartered in Bakersfield, California
TA–W–21,357A, and operating at various locations in California

TA–W–21,358, New Orleans Division, headquartered in New Orleans, Louisiana, and operating at various locations in the following States:
- TA–W–21,258A—Louisiana
- TA–W–21,258B—Mississippi

TA–W–21,359, Vann Systems Division, headquartered in Houston, Texas, and operating at various locations in the following States:
- TA–W–21,359A—Arkansas
- TA–W–21,359B—California
- TA–W–21,359C—Louisiana
- TA–W–21,359D—New Mexico
- TA–W–21,359E—Texas

Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance

"All workers of the Halliburton Company, in the above cited locations who became totally or partially separated from employment on or after October 1, 1985 and before October 1, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 3rd day of November, 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–28594 Filed 12–12–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-21,238]

Reda Pump Division TRW Energy Products Group; Marshall, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 3, 1988 in response to a worker petition which was filed on behalf of workers at Reda Pump Division, TRW Energy Products Group,

Marshall, Texas. The workers were engaged in the production of electrical, submergible, and centrifugal pumps for the oil drilling industry.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation has been terminated.

Signed at Washington, DC, this 29th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-28592 Filed 12-12-88; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Annual Program Report and Quarterly Financial Report for Worker Adjustment Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed Annual Program Report and Quarterly Financial Report for Worker Adjustment Programs; request for comments.

SUMMARY: The Department of Labor is requesting comments on a proposed new reporting system needed to comply with the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act, which amended Title III of the Job Training Partnership Act (JTPA). The new provisions call for a new substate delivery system, new organizational units to provide rapid response assistance to workers and communities undergoing major layoffs, an emphasis on quality training, and other new and expanded approaches to serving dislocated workers. Amendments also revise the provisions regarding the Secretary's responsibilities and authority for setting performance standards, for monitoring performance and expenditures, for reallotment determinations, and for record keeping and reporting. The proposed system consists of an annual report of program outcomes and worker characteristics, and a quarterly financial report of funding availability and expenditures. These reports are needed (1) to set transitional substate performance standards and for future standards-setting, (2) to adjust standards for varying types of training to enable States to award incentives for long-term training, (3) to calculate reallotments and for financial reconciliation, (4) for program administration, management and oversight, and (5) for public and congressional information.

DATE: Comments must be submitted on or before January 6, 1989.

ADDRESS: Comments should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Karen Greene. Comments should also be sent to the OMB reviewer, Bernard Eydt: Telephone (202) 395-6880; Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen Greene. Telephone (202) 535-0687.

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing a new reporting system for dislocated workers. The system includes two reports; Workers Adjustment Annual Program Report and the Worker Adjustment Quarterly Financial Report. The proposed reports have been forwarded to the Office of Management and Budget (OMB) for review pursuant to the provisions of the Paperwork Reduction Act. The Department is also publishing the proposed reports in the **Federal Register** in order to obtain broad comment on the Department's intended EDWAA reporting requirements. Upon completion of the OMB review, the Department will notify the worker adjustment system of any resulting changes.

A. Authority and Purpose of the Worker Adjustment Program Reporting Requirements

Reporting instructions are necessary to comply with the provisions of JTPA regarding the Secretary's responsibilities and authority for setting performance standards and for record-keeping and reporting as indicated below.

- Section 106—*Performance Standards*. This section directs the Secretary to prescribe standards for dislocated worker programs under Title III. The new provisions amend (e) of this section to direct the Secretary to establish parameters within which Governors may vary standards for substate areas based on local economic factors, characteristics of the population to be served and types of services to be provided. Section 106(g)(2) further requires an adjustment in performance standards to account for the difference in costs resulting from serving workers receiving needs-related payments.
- Section 165—*Reports, Record Keeping, and Investigations.* This section requires States and substate grantees to maintain records and report information regarding program performance and fiscal management as specified by the Secretary.
- Section 169—*Administrative Provisions.* The Secretary is directed at (d)(1) to submit an annual report to Congress summarizing program achievements and problems in meeting statutory objectives and, where appropriate, suggest recommendations for program modifications or administrative action.
- Section 303—*Reallotment.* This section requires the Secretary to recapture all unexpended funds in excess of 20 percent of a State's prior year's allotment, plus any other unexpended funds from the year preceding that prior year. These funds will be realloted to those State that have expended at least 80 percent of their prior year's allotment.
- Section 311—*Incentives.* This section mandates that each State plan include incentives for programs that provide long-term training.
- Section 315—*Cost Limitations.* This section describes the limits on expenditures for retaining activities, needs-related payments and supportive services, and administration to which States and substate grantees must adhere.
- Section 322—*Federal Oversight.* The Secretary is directed at (a)(4) to monitor performance and expenditures of Title III programs and annually certify compliance with standards prescribed by the Secretary under 106(g).

These provisions require a new statewide worker adjustment reporting system to conform to programmatic changes and Departmental policy. The new reports include (1) quarterly State financial, and (2) expanded annual performance reporting at the State and substate levels. Justification for more frequent statewide expenditure reporting, and expanded annual reporting at the State and substate level, is:

- Quarterly reporting of expenditures is necessary to comply with the new reallotment requirements, increased Federal monitoring responsibility, and budget preparation. It is anticipated that more frequent monitoring will enable to the Department and States to identify financial management problems—especially those associated with the implementation of a new program during the first two years—and resolve them before the year's end to minimize Federal reallotment actions.
- Data on program performance, participant characteristics and types of services provided must be collected at

the substate level in order to set substate standards.

• Without substate data, objective and defensible local standards cannot be set because the effects on performance of varying significant local conditions cannot be systematically estimated.

• Federal reporting is the most cost effective method for collecting consistent financial, program activity and performance information needed for program management, oversight, and public information/congressional requests to show the status of high interest activities and program achievements. In addition, such a system ensures the comparability of the data across States and substate areas to make objective compliance, reallotment, budget and performance assessment determinations.

B. Reasons For Revisions

These revisions are being proposed for several reasons:

• The Department anticipates adding new standards in the future—postprogram job retention, a measure of pre/postprogram wage, and separate placement levels for programs offering basic readjustment services only as compared to those providing retraining. Data collection must begin in Program Year 1989 for the Secretary and governors to have adequate information to set and adjust these standards no later than PY 1992.

• The Department is considering adding a process measure for monitoring State rapid response activities. Data on the timeliness and scope of rapid response events will be used by the Department to make more objective assessments about the administrative management of this new activity for purposes of responding to the required report to Congress and on-going programmatic oversight.

• Reporting of training duration and completions by major area of retraining specified in the Act will enable the Department to improve its adjustments to program outcomes by accounting for differences in program intervention and duration. These data will also be used by States to make objective incentive awards for longer-term training, as required in the Act.

• New activities and service levels for newly defined eligibility groups will become the subject of public and congressional inquiry as the program is implemented.

C. Proposed Changes

Worker Adjustment Annual Program Report (9019)

The Department is proposing the following additions to currently reported items for inclusion in the Worker Adjustment Annual Program Report:

Status of Certificates of Continuing Eligibility:

• Number of Certificates of Countinuing Eligibility issued.

• Number of certificates redeemed.

These data items address a new program feature which has congressional interest. The total number of certificates issued is useful for public information and program oversight to determine the extent to which substate grantees are extending eligibility to displaced workers who do not immediately enroll in the program. In addition, data on number of participants who have redeemed certificates will identify a unique group within the eligible population. Performance expectations may differ for this group compared to other participants because they initially chose to postpone enrollment in EDWAA until after attempts to obtain employment or other training.

Performance Outcomes:

• Number placed by major program activity.

A subset of terminations who entered employment is needed to calculate separate employment rates for those in retraining programs and for basic readjustment services only.

• Numbers relocated in jobs out of area.

A subset of entered enployments from retraining that identifies those individuals who were placed in jobs outside the area. Data will identify those localities that have few alternative job sources, necessitating securing a placement outside the local labor market. Large numbers of relocations may identify programs in declining local economies, which are expected to have lower overall placement rates/wages and higher costs due to relocation expenses. Data will be used to adjust standards to account for these faltering economies.

• Called back/remained with the layoff employer.

• Transferred to other JTPA programs.

• Entered non-JTPA training.

A subset of terminations added to identify those for whom placement in unsubsidized employment was not the most appropriate outcome.

These three subsets of terminations identify those recalled to their old jobs or who are provided training elsewhere through Trade Adjustment Assistance (TAA), local labor union or other JTPA service provider. Data will allow States to account for what might otherwise be an excessive amount of negative terminations. These terminations reflect compliance with other programmatic goals—coordination and rapid response—in which participants receive services and/or training prior to dislocation, yet are not placed when they leave the program.

Replacement Wage Outcome:

• Average Hourly Wage (Pre-program): Necessary data element to compute the proposed replacement wage standard and/or an adjustment to the placement rate/job retention standard that accounts for participants' previous work experience.

Characteristics that affect outcomes:

• Age distinctions: (30–44 and 45–54 years olds). These distinctions were made to emphasize the differing levels of difficulty programs faced in placing adults at their prime versus pre-retirement age.

• Educational category: Allows adjustment to standards for those advantaged by having more education (college graduate and above).

• Economically disadvantaged: Allows adjustment to standards for those facing barriers to employment.

• Eligibility categories: Identifies groups that will be the focus of congressional interest, be indicators of dislocated worker coverage and have differing impacts on performance (e.g., those affected by substantial lay-off as opposed to previously self-employed or dis-placed homemaker). Identifying more adequately those eligible participants with more readily transferable skills as compared to those with minimal or obsolete skills will enable States to adjust performance standards for varying levels of service to those groups.

• Trade Readjustment Assistance (TRA) claimant: Enables standards to be adjusted for those participants who need long-term training in order to qualify for benefits who might otherwise not participate in such training because of insufficient supplemental income. This item is also included due to high congressional interest in tracking agency coordination.

• Veterans: The total number is included in response to congressional interest in the extent of service to this group. Breakout for Vietnam-era veterans is needed to comply with the statutory requirement to adjust standards for groups specifically cited in the Act at section 106(d)(3) as having special circumstances.

• Needs-related Recipients/ Payments: total expenditures and numbers of participants receiving payments are necessary to make mandated adjustment for the higher costs of serving those receiving needs-related payments; and/or an adjustment ot the placement/job retention standards to account for those in long-term training who might otherwise not participate in such training because of insufficient supplemental income.

Program Activity:

• Receipt of major program activity.

Differentiating between receipt of retraining and basic readjustment services alone is a critical distinction for estimating performance. Length of participation in training, placement and wage levels differ significantly depending on whether participants receive services only, or any retraining. Thus, data are necessary to make adjustments to standards based on the percentage of terminees in each major program activity. This information is essential for program management to determine how many received retraining, as compared to the total expenditures for this activity.

• Duration of retraining received:

—Less than 26 weeks
—26–51 weeks
—52 or more weeks

Distinguishes between short-term, long-term and multiyear training which will be critical in monitoring how well the system is meeting long-term training goals of the program. This information will enable States to make incentive awards based on objective measures of longer-term training as required by the Act. Data will also account initially of what might otherwise be considered excessive negative terminations and higher costs—in the lengthier or multi-year programs—until a sufficient number of participants complete the program.

• Completions of retraining by specific activity:

—Basic Education
—Occupational Skills Training
—On-the-Job Training
—General Educational Development Attainment

Reporting retraining completions by specific activitiy will provide program oversight data that relates the volume of those who complete each retraining activity to a program's success in attaining placements and higher wages for participants. Data will be critical for adjusting and rewarding program performance by accounting for differences in program interventions.

With the Departmental emphasis on substantive retraining, this information will be most timely in improving national and State standard-setting to adjust for quality of training.

The Department is proposing the follwing addition (Part B of the Worker Adjustment Annual Program Report) as a statewide summary of new rapid response activities.

• Number of Worker Adjustment and Retraining Notification (WARN) notices received.

• Number of rapid response contacts made:

—1–49 affected employees
—50–499 affected employees
—500 or more affected employees

• Number of labor-management committees formerd.

• Number of assessments for conducting a plant purchase study.

• Accrued costs of assessments.

These reporting items enable the Department to assess the effectiveness of rapid response activities in meeting program goals—timeliness and scope of onsite interventions and labor-management cooperation. These items will be used for program oversight to relate expenditures on rapid response to some measure of the scope and intensity of plant closures and layoffs that occur within States in a program year. As a new State responsibility, rapid response acitvities will be the focus of congressional and public interest.

Worker Adjustment Quarterly Financial Report (9020)

The Department is proposing the following financial report to be prepared by States on a quarterly basis to carry out the increased oversight and reallotment responsibilities of the new EDWAA provisions. This report is necessry to:

• Calculate reallotment;

• Facilitate financial reconciliation through more timely monitoring of expenditures;

• Prepare annual budgeting documents;

• Inform Congress about the impact of reallotment, new cost limitations and new program activities; and

• More closely oversee program service and expenditures for purposes of Federal administration and management.

The quarterly financial report will comprise the following information:

Funding availability: (Formual-Funded and Secretary's National Reserve grants).

• Current year.

• Reallotted funds (for Formula-Funded grants only).

• Unexpected prior year.

• Unexpected previous year.

Data on funding availability by year of allotment are needed to comply with statutory provisions requiring annual reallotments, and limiting obligational authority to three years.

Accrued expenditures: (Formula-Funded and Secretary's National Reserve grants).

• Current year allotment.

• Prior year allotment.

• Previous year allotment.

These data are needed to comply with required program administration and monitoring activities, including reallotments of excess unexpended funds, and in the case of National Reserve, review and approval of additional grant requests.

Funds reserved for substate grantees in need:

• Current year's reserve.

• Amount distributed within State to substate grantees.

Governor's Substate Discretionary Allocations:

These data are needed to comply with required program administration and monitoring activities to track the flow of funds in a timely manner. Analysis of expenditure and identification of causes of underexpenditure leading to reallotment will require information on the timeliness of within State distribution of funds.

Expenditures distributed by cost category: (State and substate funds)

• Rapid Response.

• Basic Readjustment.

• Retraining.

• Needs-Related Payments.

• Supportive Services.

• Administration.

Data are needed for required program administration and monitoring to track the flow of funds in a timely manner. Analysis of expenditures and timely identification of (1) causes of underexpenditures leading to reallotment; and (2) causes of overexpenditure leading to non-compliance with new cost limitations will assist the Department and States in reconciling financial management problems and in taking corrective action before deficiencies become serious enough to warrant reallotment or audit disallowances.

The method of data collection and frequency of reporting will be changed to permit fiscal data to be collected quarterly and program information and outcome data to be reported by substate grantees and forwarded to Governors. The State forwards reports to the

Department. The purpose of this reporting is to (1) enable the Secretary to establish performance standards, monitor statewide activities at the national level and calculate reallotments, (2) allow Governors to adjust standards for substate areas, (3) evaluate performance against standards, monitor local activities at the State level and make incentive determinations for long-term training, and (4) enable the Secretary to report to Congress and the Treasury and to prepare annual budgetary documents.

D. Public Comment

In the development of this new reporting system, meeting were held in September to obtain feedback from individuals from all sectors of the JTPA system regarding actual field experiences. In all, over 50 State and local policy makers, administrators, technicians and service providers, and other interested individuals participated in the various discussions held on the new reporting requirements. This request for comments is another important part of the participatory process.

E. Cost to the System

This data request is expected to increase the overall reporting burden as these proposed reports will not replace current Title III reporting for up to two years. Once the worker adjustment program is completely implemented, however, the net increase in costs should be minimal as existing management information systems in most States already collect (1) financial information on a quarterly, if not monthly basis; and (2) detailed information on each participant at entry, participation in program activities during enrollment, and at time of followup—13 weeks postprogram.

F. OMB Submission

The documents appended to this notice have been submitted to OMB for review under the Paperwork Reduction Act as a new information collection system.

Signed at Washington, DC, this 30th day of November, 1988.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix—Worker Adjustment Annual Program Report and Quarterly Financial Report

Worker Adjustment Program Annual Program Report (ETA 9019)

1. Purpose

The Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) Annual Program Report (WAPR), Part A, displays cumulative data on participation, termination, performance measures and the socio-economic charcteristics of all terminees on an annual basis. The information will be used to determine levels of program service and performance measures. Selected information will be aggregated to provide quantitative program accomplishments on a local, State, and national basis.

Part B displays cumulative information on selected Rapid Response activities in the State. Part C is a financial summary of Secretary's National Reserve Grants projects in the State.

These reporting requirements have been approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act of 1980, as amended, under OMB Approval No. 1205_____, expiration date _____.

2. General Instructions

The Governor will submit: (1) a separate WAPR for *each* designated Substate Area (SSA) (a Statewide summary of these SSA data need not be submitted); (2) a separate WAPR covering participants and terminees in statewide, regional or industrywide projects funded under section 302(c)(1)(B) of EDWAA; and (3) a separate WAPR covering participants and terminees in projects funded under Secretary's National Reserve Grants (Section 302(a)(2)). Recipients may determine whether the reports are submitted on WAPR forms or as a computer printout, with data, including signature and title, date signed and telephone number, arrayed as indicated on the WAPR form. If revisions are made to the WAPR data after the reporting deadline, revised copies of the WAPR should be submitted to DOL as soon as possible according to the required reporting procedures.

Note. For WAPR reporting purposes, EDWAA shall refer to: (1) programs operated by Substate grantees with funds authorized under Sections 302(c)(2) and 302(d) or otherwise distributed by the Governor uder Section 302(c)(1)(E) and (2) projects operated by the Governor with funds authorized under Sections 302(c)(1) and 302(a)(2) of EDWAA.

The reporting period begins on the starting date of each Job Training Partnership Act (JTPA) program year, as stated in section 161 of the JTPA. Reports are due in the National and Regional Offices no later than 45 days after the end of each program year. Two copies of the WAPR are to be provided to: Employment and Training Administration, U.S. Department of Labor, ATTN: TSVR—Rm. S-5306, 200 Constitution Avenue NW., Washington, DC 20210.

At the same time an additional copy of the WAPR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL Regional Office that includes the State in which the JTPA recipient is located.

Note. The current JASR, ETA 8580 (June 1988), is to continue to be used for programs operating with PY88 and earlier year's funds. The WAPR is to be used beginning July 1, 1989, for PY89 programs funded under EDWAA.

3. Facsimile of Form

See the following page.

4. Instructions for Completing the Worker Adjustment Program Annual Program Report (WAPR)

a. *State/Substate Area Name and Address.* On separate Section 302(c)(1) and Section 302(a)(2) reports, enter the name and address of the State agency that will administer the Statewide programs. For SSA reports, enter the name and address of the Substate grantee that will administer the SSA programs.

BILLING CODE 4510-30-M

OMB No. 1205-0211

U.S. DEPARTMENT OF LABOR Employment and Training Administration WORKER ADJUSTMENT PROGRAM Annual Program Report	a. STATE/SUBSTATE AREA NAME AND ADDRESS	b. ETA/SSA Code	c. REPORT PERIOD FROM 7/1/19___	TO 6/30/19___

PART A. DISLOCATED WORKER ACTIVITY I. PARTICIPATION AND TERMINATION SUMMARY		DISLOCATED WORKERS
A. Issued Certificate of Continuing Eligibility (CCE)		
B. TOTAL PARTICIPANTS		
1. All CCEs Redeemed for Retraining		//////////////
C. TOTAL TERMINATIONS		
1. Entered Unsubsidized Employment From Retraining		//////////////
a. Relocated Out of Area	//////////////	//////////////
2. Entered Unsubsidized Employment From Basic Readjustment Services ONLY		//////////////
3. Called Back/Remained with the Layoff Employer		//////////////
4. Transferred to Other JTPA Programs		//////////////
5. Entered Non-JTPA Training		//////////////
6. All Other Terminations		//////////////

II. TERMINEE CHARACTERISTICS AND PERFORMANCE MEASURES SUMMARY				
1		Male		
2		Female		
3		29 and Under		
4		30 - 44		
5		45 - 54		
6		55 and over		
7		Less Than High School		
8		H.S. Graduate or Equivalent (No Post-High School)		
9		Post-High School Attendee		
10		College Graduate and Above		//////////////
11		Single Head of Household With Dependent(s) Under Age 18		
12		White (Not Hispanic)		
13		Black (Not Hispanic)		
14		Hispanic		
15		American Indian or Alaskan Native		
16		Asian or Pacific Islander		
17		Limited English Language Proficiency		
18		Handicapped		
19		Reading Skills Below 7th-Grade Level		
20		Economically Disadvantaged		

DRAFT

d. SIGNATURE AND TITLE	e. DATE SIGNED	f. TELE. NO.

ETA 9019 (January 1989)

BEST COPY AVAILABLE

a. STATE/SUBSTATE AREA NAME AND ADDRESS	REPORT PERIOD FROM	TO
	7/1/19__	6/30/19__

	II. TERMINEE CHARACTERISTICS AND PERFORMANCE MEASURES SUMMARY - CONTINUED			
21	Terminated/Laid Off			
22	Plant Closure/Substantial Layoff			
23	Long-term Unemployed			
24	Previously Self-Employed			
25	Additional Dislocated Worker (Displaced Homemaker)			
26	U.C. Claimant			
27	TRA Claimant			
28	Unemployed: 15 or More Weeks of Prior 26 Weeks			
29	Veteran (Total)			
30	Vietnam-Era			////////////
31	Average Weeks Participated			
32	Average Hourly Wage -- Pre-Program			
33	Average Hourly Wage at Termination			
34	Total Program Costs			
35	Needs-Related Payments			////////////
36	Needs-Related Recipients		////////////	////////////
37	Total Available Federal Funds			
	III. FOLLOW-UP INFORMATION			
38	Employment Rate at Follow-up			
39	Average Hourly Wage at Follow-up			
40	Average Number of Weeks Worked in Follow-up Period			
41	Sample Size			
42	Response Rate			
	IV. RETRAINING/BASIC READJUSTMENT SERVICES			
43	Received Basic Readjustment Services ONLY			
44	Received ANY Retraining Activity			
45	Less than 26 Weeks			////////////
46	26 - 51 Weeks			////////////
47	52 or More Weeks			////////////
48	Completed Classroom Training: Basic Education			
48	Completed Classroom Training: Occupational Skills			
50	Completed On-the-Job Training			
51	Attained GED			

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Remarks:

ETA 9019 (January 1989)

BEST COPY AVAILABLE

a. STATE NAME AND ADDRESS	GOVERNOR/SECRETARY AGREEMENT NUMBER:	REPORT PERIOD FROM 7/1/19___	TO 6/30/19___

PART B. RAPID RESPONSE ACTIVITIES
(Only submit with Part A for Governor's Statewide Programs (Section 302(c)(1)).)

52	Number of WARN Notifications		
53	Number of Rapid Response Contacts		
54	1 - 49 Affected Employees		////////////
55	50 - 499 Affected Employees		////////////
56	500 or More Affected Employees		////////////
57	Number of Labor-Management Committees Formed		
58	Number of Assessments for Conducting a Plant Purchase Study		
59	Accrued Costs for Assessments		

PART C. SECRETARY'S NATIONAL RESERVE PROGRAM SUMMARY
(Only submit with Part A for Secretary's National Reserve Grants (Section 302(a)(2)).)

60	Total Federal Funds Available		
61	Total Accrued Costs		
62	Rapid Response		////////////
63	Basic Readjustment		////////////
64	Retraining		////////////
65	Needs-Related Payments		////////////
66	Supportive Services		////////////
67	Administration		////////////

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REMARKS:

BILLING CODE 4510-30-C

b. *ETA/SSA Code.* Enter the ETA-assigned Substate Area Code number on SSA reports. On State reports enter NA.

c. *Report Period.* Enter in "Form" the beginning date of the designated JTPA program year and enter in "To" the ending date of that progam year.

d. *Signature and Title.* (at bottom of the page) The authorized official signs here and enters his/her title.

e. *Date Signed.* Enter the date the report was signed by the authorized official.

f. *Telephone Number.* Enter the area code and telephone number of the authorized official.

5. General Information

Unless otherwise indicated, data reported on characteristics of terminees should be based on information collected at the time of eligibility determination.

Characteristics Information Obtained on an Individual at the Time of Eligibility Determination for the Recipient's EDWAA Program Should Not be Updated When the Individual Terminates From the EDWAA Program

Part A. Dislocated Worker Activities

This part is to be completed on single separate reports for: (1) *each* Substate Area; (2) all Statewide, Regional and Industrywide programs administered by the Governor, on a combined basis (Section 302(c)(1); and (3) all projects, on a combined basis, funded under Section 302(a)(2), Secretary's National Reserve Grants.

Section I—Participation and Termination Summary. Section I displays the EDWAA program's accomplishments in terms of the total cumulative number of participants in the program and the number and types of terminations from the program, as of the end of the reporting period.

Entries for Items I.A, I.B. and I.C. are cumulative from the beginning of the program year through the end of the reporting period.

Item I.A. *Issued Certificate of Continuing Eligibility (CCE)*

Enter the total number of applicants to whom a Certificate of Continuing Eligibility was issued during this program year, as provided in Section 316(b) of EDWAA, by the Substate grantee through the end of the reporting period. NOTE: Enter zero for this item on the Governor's State report (Section 302(c)(1)), and the report for Secretary's National Reserve Grants (Section 302(a)(2)).

Item I.B. Total Participants

Enter the total number of participants (as defined below), including both those on board at the beginning of the program year and those who have entered during the program year.

"Participant" means any individual who has: (1) been determined eligible for participation upon intake; and (2) started receiving Basic Readjustment Services or Retraining funded under EDWAA, following intake. Individuals who receive *only* outreach and/or intake and initial assessment, post-termination counseling or postprogram follow-up are excluded. NOTE: Also exclude individuals who receive *only* Rapid Response Assistance and information, per Section 314(b), provided by the State's Disclocated Worker Unit.

Item I.B.1. All CCES Redeemed for Retraining

Enter the total number of *unexpired* participant CCEs, regardless of year issued, redeemed for Retraining during this program year by the Substate grantee, through the end of the reporting period. Include all CCEs so redeemed that were issued by any Substate grantee for periods not to exceed 104 weeks prior to redemption. This item is a sub-breakout of Item I.B. NOTE: Enter zero for this item on the Governor's State report (Section 302(c)(1)), and the report for Secretary's National Reserve Grants (Section 302(a)(2)).

Item I.C. Total Terminations

Enter the total number of participants who terminated (as defined below) from the program during the reporting period. Include all participants who received no Basic Readjustment Services (except supportive services and/or counseling) or Retraining for 90 days. *This item is the sum of Items I.C.1. through I.C.6.*

"Termination" means the separation of a participant from the program who is no longer receiving Basic Readjustment Services or Retraining funded under EDWAA. Individuals may be considered participants for up to 90 days after last receipt of Basic Readjustment Services or Retraining, during which time they may continue to receive supportive services, as provided in Section 314 (c)(15) of EDWAA. For purposes of calculating average weeks participated, this single 90-day period between "last receipt of Basic Readjustment Services or Retraining under EDWAA" and actual date of termination is defined as "inactive status" and is not to be included in "Average Weeks Participated". Terminees may continue to receive counseling necessary to assist in the retention of employment, for not more than 6 months following last receipt of Basic Readjustment Services or Retraining.

Item I.C.1. Entered Unsubsidized Employment from Retraining

Enter the total number of participants who, at termination, entered full- or part-time unsubsidized employment from Retraining through the end of the reporting period. (These participants may or may not have received Basic Readjustment Services.) This item is a sub-breakout of Item I.C.

Item I.C.1.a. Relocated Out of Area.

Enter the total number of participants who, at termination, entered unsubsidized employment after relocating outside the Substate Area which provided such relocation assistance, or within or outside of the State, if this assistance was provided by a Statewide SSA or by a program administered by the Governor. This item is a sub-breakout of Item I.C.1.

Item I.C.2. Entered Unsubsidized Employment From Basic Readjustment Services Only

Enter the total number of participants who, at termination, entered full- or part-time unsubsidized employment from Basic Readjustment Services ONLY through the end of the reporting period. This item is a sub-breakout of Item I.C.

Item I.C.3. Called Back/Remained With the Layoff Employer

Enter the number of terminees from the Title III program who, after being laid off by an employer, were recalled by that employer to a permanent job. Also include Title III program terminees who remained in a permanent job with an employer after receipt of a layoff notice from that employer. This item is a sub-breakout of Item I.C. NOTE: Do not include such terminees in the entry for Item I.C.1. above.

Item I.C.4. Transferred to Other JTPA Programs

Enter the number of terminees so transferrred to programs funded under another JTPA title including Title III-Formula and Title III-National Reserve. Also include on this line terminees who transferred to EDWAA programs operated by another Substate grantee, or to EDWAA programs operated by the Governor (and conversely). This item is a sub-breakout of Item I.C.

Item I.C.5.

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Item I.C.6.

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Item I.C.5. Entered Non-JTPA Training

Enter the number of terminees who entered, during the program year, training not funded with JTPA monies. This item is a sub-breakout of Item I.C.

Item I.C.6. All Other Terminations

Enter by column the total number of participants who were terminated for reasons other than those in Items I.C.1. through I.C.5., successful or otherwise, through the end of the reporting period.

Section II—Terminee Performance Measures Information. Section II displays performance measures/parameters information. As indicated previously, data reported on characteristics of terminees should be based on information collected at time of eligibility determination unless otherwise indicated.

Governors may develop any participant record which meets the requirements of Section 629.35(c) and (d) of the JTPA regulations. The DOL/ETA *Technical Assistance Guide: The JTPA Participant Record,* dated May 1983, may be used as a reference.

Line Item Definitions and Instructions

Sex

Line 1 Male
Line 2 Female

Distribute the terminees according to Sex. The sum of Lines 1 and 2 should equal Item I.C.

Age

Line 3 29 and Under
Line 4 30–44
Line 5 45–54
Line 6 55 and Over

Distribute the terminees according to Age. The sum Lines 3 through 6 should equal Item I.C.

Education Status

Line 7 Less Than High School
Line 8 High School Graduate or Equivalent (No Post-High School)
Line 9 Post-High School Attendee
Line 10 College Graduate and Above

Distribute the terminees according to Education Status. The sum of Lines 7 through 9 should equal Item I.C. NOTE: Line 10 is a sub-breakout for a specific group included in Line 9.

Family Status

Line 11 Single Head of Household with Department(s) Under Age 18.

Enter the total number of terminees for whom the above Family Status classification applies.

RACE/Ethnic Group

Line 12 White (Not Hispanic)
Line 13 Black (Not Hispanic)
Line 14 Hispanic
Line 15 American Indian or Alaskan Native
Line 16 Asian or Pacific Islander

Distribute the terminees according to the Race/Ethnic Groups listed above. For purposes of this report, Hawaiian Natives are to be recorded as "Asian or Pacific Islander". The sum of Lines 12 through 16 should equal Item I.C.

Other Barriers to Employment

Line 17 Limited English Language Proficiency
Line 18 Handicapped
Line 19 Reading Skills Below 7th Grade Level
Line 20 Economically Disadvantaged

Enter the total number of terminees for whom *each* of the above Other Barriers to Employment apply.

Dislocated Status

Line 21 Terminated/Laid Off
Line 22 Plant Closure/Substantial Layoff
Line 23 Long-term Unemployed
Line 24 Previously Self-Employed
Line 25 Additional Dislocated Worker (Displaced Homemaker)

Distribute ther terminees according to Dislocated Status, as defined in Section 301(a) of the Act and further defined in 20 CFR 631.3 of the regulations. *Lines 21 through 25 are mutually exclusive and the sum of these five lines should equal Item I.C.* Include a terminee in the entry for the *single* most appropriate of the five status lines in this grouping for which s/he qualifies.

Benefits Status

Lien 26 U. C. (Unemployment Compensation) Claimant
Line 27 TRA (Trade Readjustment Assistance) Claimant

Enter the total number of terminees for whom each of the above benefits status classifications apply.

Labor Force Status

Line 28 Unemployed: 15 or More Weeks of Prior 26 Weeks

Enter the total number of terminees for whom the above Labor Force Status classification applies.

Veteran Status

Line 29 Veteran (Total)
Line 30 Vietnam Era

Enter the total number of terminees for whom *each* of the above Veterans classifications apply, as defined in Section 4 (26)(A)(B) and (D) of the Act. Line 30 is a sub-breakout for a specific group included in Line 29.

Other Program Information

Line 31 Average Weeks Participated

Enter the average number of weeks of participation in the EDWAA program for all terminees. Weeks of participation include the period from the date an individual becomes a participant in EDWAA through the date of a participant's last receipt of Basic Readjustment and/or Retraining. Exclude the single period of up to 90 days during which an individual may remain in an inactive status prior to termination. Time in inactive status for all terminees should not be counted toward the actual number of weeks participated. Inactive status is defined as that period between "last receipt of Basic Readjustment Services and/or Retraining under EDWAA" and actual date of termination. (See Item I.C.)

To calculate this entry: Count the number of days participated for each terminee, including weekends, from the start date of his/her participation in EDWAA until his/her last receipt of Basic Readjustment Services and/or Retraining under EDWAA. Divide this result by 7. This will give the number of weeks participated for that terminee. Sum all the terminees' weeks of participation and divide the result by the number of terminees, as entered in Item I.C. This entry should be reported to the nearest whole week.

Line 32 Average Hourly Wage—Pre-Program

Enter the average hourly pre-EDWAA wage of all terminees. In calculating this average, use the hourly wage from the job of dislocation, *unless that job ended more than 52 weeks before the date of application to the EDWAA program.* If the job of dislocation ended more than 52 weeks prior to date of application to the EDWAA program, use the hourly wage from the most recent job, if any. Those terminees who had no employment during the 52 weeks immediately before EDWAA should be counted as "$0.00" hourly wage. NOTE: Record the number of individuals with "$0.00" hourly wages in "Remarks" on Part A, Page 2.

To calculate this entry: Sum the pre-program hourly wage for all terminees shown in Item I.C. Divide the result by the number of terminees shown in Item I.C. NOTE: For the calculation, use the hourly wage regardless of whether the individual was employed full- or part-time.

Line 33 Average Hourly Wage at Termination

Enter the average hourly wage at termination for the total number of terminees in Items I.C.1. through I.C.3.

To calculate this entry: Sum the hourly wage at termination for all the terminees shown in Items I.C.1. through I.C.3. Divide the result by the number of terminees shown in Items I.C.1. through I.C.3.

Hourly wage includes any bonuses, tips, gratuities and commissions earned.

Line 34 Total Program Costs (Federal Funds)

Enter the total accrued expenditures, through the end of the reporting period, of the funds allocated to the SSA under Sections 302(c)(2) and 302(d) of the Act or otherwise distributed by the Governor to the SSAs under Section 302(c)(1)(E). On the separate WAPRs: (1) covering participants and terminees projects funded under Section 302(c)(1); (2) or participants and terminees in Secretary's National Reserve Grants projects funded under Section 302(a)(2) of EDWAA, enter the total expenditures for all participants and terminees served in such programs through the end of the reporting period. Include expenditures of Federal funds only.

Note.—Entries will be made to the nearest dollar. Negative entries are not acceptable. The WAPR program cost data will be compiled on an accrual basis. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

The sum of the entries for Line 34, Total Program Costs, of the WAPR (i.e., total for the State's SSAs under EDWAA) should equal the entry for Col. b., Line 22, Total Accrued Costs (Substate) of the WQFR, for the same recipient, that includes the final quarter of the same program year.

Line 34 on the WAPR for the Governor's Statewide activity (Section 302(c)(1)), should equal Line 22 on the WQFR for the same recipient that includes the final quarter of the same program year; and Line 34 on the WAPR for the Secretary's National Reserve Grants (Section 302(a)(2)) to the State should equal Line 16 on that WQFR.

Line 35 Needs-Related Payments

Enter the total accrued expenditures for needs-related payments to eligible dislocated workers who do not qualify or have ceased to qualify for Unemployment Compensation, in order to enable such workers to participate in training or education programs under EDWAA (Section 314(e)). This is a sub-breakout of Line 34.

Line 36 Needs-Related Recipients

Enter the total of eligible dislocated workers who received the needs-related payments, as entered in Line 35, in order to enable such workers to participate in training or education programs under EDWAA.

Line 37 Total Available Federal Funds

Enter the total Federal funds available for the EDWAA program described on this report including (1) unexpended funds carried over from previous program years, (2) funds allocated or awarded for this program year, and (3) any reallocation that *increased or decreased* the amount of funds available for expenditure through the end of this reporting period. Entries will be made to the nearest dollar.

Section III—Follow-up Information. Section III displays information based on follow-up data which must be collected through participant contact to determine an individual's labor force status and earnings, if any, during the 13th full calendar week after termination and the number of weeks s/he was employed during the 13-week period. Follow-up data should be collected from participants whose 13th full calendar week after termination ends during the program year (the follow-up group). Thus, follow-up will be conducted for individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year.

In order to ensure consistency of data collection and to guarantee the quality of the follow-up information, follow-up procedures must satisfy certain criteria. (See the Follow-up Guidelines included in these WAPR instructions, Appendix A.) Other procedures used to collect the follow-up data are at the discretion of the Governors.

Note.—Every precaution must be taken to prevent a "response bias" which could arise because it may be easier to contact participants who were employed at termination than those who were not and because those who entered employment at termination are more likely to be employed at follow-up. Special procedures have been developed by which SSAs and States can monitor response bias. If your response rates for those who were and were not employed at termination differ by more than 5 percentage points, the follow-up entries for the WAPR must be calculated using the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide. *If the response rates differ by 5 percentage points or less,* the following instructions for completing Lines 38–42 may be used.

Line 38 Employment Rate at Follow-up

Enter the employment rate at follow-up.

Calculate the employment rate by dividing the total number of respondents who were employed (full-time or part-time) during the 13th full calendar week after termination by the total number of respondents (i.e., terminees who completed follow-up interviews). Then multiply the result by 100. This entry should be reported to the nearest one decimal (00.0).

Line 39 Average Hourly Wage at Follow-up

Enter the average hourly wage of those employed (full-time or part-time) at follow-up.

To calculate this entry: Sum the hourly wage of each respondent employed at follow-up; and, if appropriate, add tips, overtime, bonuses, etc. Divide the sum of hourly wage for all respondents employed during the 13th full calendar week after termination by the number of respondents employed at the time of follow-up. Respondents not employed at follow-up are not included in this average. This entry should be reported to the nearest whole dollar.

Weekly earnings include any wages, bonuses, tips, gratuities, commissions *and* overtime pay earned.

Line 40 Average Number of Weeks Worked in Follow-up Period

Enter the average number of weeks worked in follow-up period.

To calculate the average number of weeks worked (full-time or part-time), divide the sum of the number of weeks worked during the 13 full calendar weeks after termination for all respondents who worked, by the *total* number of all respondents, whether or not they worked any time during this 13-week follow-up period. This entry should be reported to the nearest one decimal (00.0).

Line 41 Sample Size

Enter by column the size of the actual sample selected to be contacted for follow-up.

Note.—If oversampling was used, the sample size should include all those selected, not just the required minimum sample size. Those deceased or severely incapacitated to the point of being unable to respond at follow-up may be excluded from the sample size.

Line 42 Response Rate

Enter the overall response rate, i.e., the percentage of complete surveys obtained.

To calculate the overall response rate, divide the number of terminees with complete follow-up information by the total number of terminees included in

the follow-up sample (Line 45) and multiply by 100. This entry should be reported to the nearest whole percent.

Note.—Complete follow-up information consists of substantive answers to the required follow-up questions and may not include "don't know", "no answer" or "don't remember".

Section IV—Retraining/Basic Readjustment Services. Section IV displays information relevant to program activities.

Line 43 Received Basic Readjustment Services ONLY

Enter the total number of terminees, regardless of type of termination, who received Basic Readjustment Services ONLY, as indicated in Section 314(c) of the Act.

Note.—Individuals who receive only outreach and/or intake and initial assessment services are not participants/terminees.

Line 44 Received ANY Retraining Activity
Line 45 Less than 26 Weeks
Line 46 26–51 Weeks
Line 47 52 or More Weeks

Enter the total number of terminees, regardless of type of termination, who received ANY Retraining activity included in Section 314(d) of the Act. Lines 45–47 are sub-breakouts of Line 44 and should be used to distribute terminees who received ANY Retraining activity by actual length of stay in all Retraining activities, *whether or not such Retraining was completed.* These terminees may or may not have received Basic Readjustment Services. The sum of Lines 45–47 should equal Line 44.

Line 48 Completed Classroom Training: Basic Education
Line 49 Completed Classroom Training: Occupational Skills
Line 50 Completed On-the-job Training
Line 51 Attained GED

Enter the total number of terminees for which *each* of these Retraining completion/attainment classifications apply. A terminee should be included in *all* appropriate categories.

Note.—Basic Education in Line 48 includes remedial reading, writing, mathematics and/or English for non-English speakers. Attained GED in line 51 includes the attainment of a GED or a high school diploma upon completion of any training.

Part B. Rapid Response Activities

This part is to be completed on a single form for all EDWAA Rapid Response activities in the State and is to be submitted only with the Governor's Statewide Part A report (section 302(c)(1)). This part provides a summary of Rapid Response activities, on a statewide basis, from the beginning of the program year through the end of the reporting period. Entries are to be made as follows:

Line 52 WARN Notices Received

Enter the number of notices received under the Worker Adjustment and Retraining Notification Act (WARN) by the State Dislocated Worker Unit from the beginning of the program year.

Line 53 Number of Rapid Response Contacts

Enter the number of on-site rapid response contacts with employer and employee representatives, preferably *within 48 hours,* after the Dislocated Worker Unit became aware of a current or projected closure or substantial layoff. The purpose of such contacts are to 1) provide information on and facilitate access to available public programs and services and 2) provide emergency assistance adapted to the particular closure or layoff. (Section 314(b)(1)(A)).

Line 54 1–49 Affected Employees
Line 55 50–499 Affected Employees
Line 56 500 or More Affected Employees

Distribute by group, the number of Affected Employees included in the current or projected permanent closure or substantial layoff to which a rapid response contact was made, as reported in Line 53. The sum of the entries for Lines 54 through 56 should equal Line 53.

Note.—The entry for line 53 should be the same or greater than the entry for Line 52.

Line 57 Number of Labor-Management Committees Formed

Enter the number of labor-management committees formed through efforts of the dislocated worker unit. These committees may or may not have been formed in response to an announcement of a current or projected permanent closure or substantial layoff. (Section 314(b)(1)(B))

Line 58 Number of Assessments for Conducting a Plant Purchase Study

Enter the number of situations involving an impending permanent closure or substantial layoff in which the State provided EDWAA funds, *where other public or private sources were not expeditiously available,* for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue its operation. (Section 314(b)(2))

Line 59 Accrued Costs for Assessments

Enter the accrued costs of EDWAA funds provided by the State for the preliminary assessments in Line 58. Entries will be made to the nearest whole dollar.

Part C. Secretary's National Reserve Program Summary

This part is to be completed on a single form and is to be submitted only with the Statewide Part A report for Secretary's National Reserve Grants activity for all projects in the State operated with Section 302(a)(2) funds.

This part provides a summary of program activity supported with Secretary's National Reserve funds through the end of the reporting period. Entries are to be made as follows:

Line 60 Total Federal Funds Available

Enter the total Federal funds available for expenditure during the current program year. This includes the current year Secretary's National Reserve funds and unexpected National Reserve funds from prior years available for expenditure during the current year. Entries will be made to the nearest dollar.

Note.—Line 60 on this report should equal Line 12 on the WQFR, for the same recipient, that includes the final quarter of the same program year.

Line 61 Total Accrued Costs

Enter the total actual accrued costs during the report period, without regard to the year the funds were distributed to projects. This line is the sum of Lines 62 through 67. Entries will be made to the nearest whole dollar.

Note.—Line 61 on this report should equal Part A, Line 34 on this report and Line 16 on the WQFR, for the same recipient, that includes the final quarter of the same program year.

Line 62 Rapid Response

Enter the accrued costs that can be allocated to the Rapid Reponse services cost category (20 CFR 631.13(b)) under the Governor's Reserve column only. This line is a sub-breakout of Line 61.

Line 63 Basic Readjustment

Enter the accrued costs that can be allocated to the Basic Readjustment services cost category (20 CFR 631.13(c)). This is a sub-breakout of Line 61.

Line 64 Retraining

Enter the accrued costs that can be allocated to the Retraining services cost category (20 CFR 631.13(d)). This line is a sub-breakout of Line 61.

Line 65 Needs-Related Payments

Enter the accrued costs that can be allocated to the Needs-Related Payments cost category (20 CFR 631.13(e)). This line is a sub-breakout of Line 61.

Line 66 Supportive Services

Enter the accrued costs that can be allocated to the Supportive Services cost category (20 CFR 631.13(f)). This line is a sub-breakout of Line 61.

Line 67 Administration

Enter the accrued costs that can be allocated to the Administration cost category (20 CFR 631.13(g)). This line is a sub-breakout of Line 61.

Public reporting burden for this collection of information is estimated to average 97 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this burden to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205–), Washington, DC 20503.

Appendix A

Follow-up Guidelines

To ensure consistent data collection and as accurate information as possible, procedures used to obtain follow-up information must satisfy the following criteria:

- Participant contact should be conducted by telophone or in person. Mail questionnaires may be used in those cases where an individual does not have a telephone or cannot be reached.
- Participant contact must occur as soon as possible after the 13th full calendar week after termination but no later than the 17th calendar week after termination.
- Data reported are to reflect the individual's labor force status and earnings during the 13th full calendar week after termination and the number of weeks s/he was employed throughout the 13-week period after termination.
- Interview questions developed by DOL (see following Exhibit) must be used to determine the follow-up information reported on the WAPR. respondents must be told that responding is voluntary and that information provided by them will be kept confidential. Other questions may be included in the interview. Attitudinal questions may precede DOL questions, but questions related to employment and earnings must follow.
- Attempts must be made to contact *all* individuals unless terminee populations are large enought to use sampling.
- At least six attempts may need to be made to contact enough individuals in the follow-up group to obtain the required response rate.
- For each SSA and for Statewide and National Reserve reports (WAPR), minimum response rates of 70% are required for each of the following two groups of dislocated workers: those who entered employment at termination and those who did not enter employment at termination. The response rate is calculated as the number of terminees with complete follow-up information divided by the total number of terminees included in the group eligible for follow-up.

Exhibit

Minimum Postprogram Data Collection Questions

A. I want to ask you about the week starting on Sunday, ____, and ending on Saturday, ____, which was (last week/two/three/four weeks ago).

1. Did you do any work for pay during that week?

____Yes [Go to 2]
____No [Go to C]

2. How many hours did you work in that week?

____ Hours

3. How much did you get paid per hour in that week?

____ Dollars per hour

4. How much extra, if any, did you earn in that week from tips, overtime, bonuses, commissions, or any work you did on the side, before deductions?

____ Dollars

B. Now I want to ask you about the entire 13 weeks from Sunday, ____, to Saturday, ____.

5. Including the week we just talked about, how many weeks did you work at all for pay during the 13-week period?

____ Weeks [Go to end]

Alternative Questions

C. If answered "NO" to Question 1:
Now I want to ask you about the entire 13 weeks from Sunday, ____, to Saturday, ____.

6. Did you do any work for pay during that 13-week period?

____Yes [Go to 7]
____No [Go to end]

7. How many weeks did you do any work at all for pay during that 13-week period?

Sampling Procedures

Where sampling is used to obtain participant contact information, it is necessary to have a system which ensures consistent random selection of sample participant from *all* terminees in the group requiring follow-up.

- No participant in the follow-up group may be arbitrarily excluded from the sample.
- Procedures used to select the sample must conform to generally accepted statistical practice, e.g., a table of random numbers or other random selection techniques must be used.
- The sample selected for contact must meet minimum sample size requirements indicated in Table 1.

The use of sampling will depend on whether the terminee populations are large enought to provide estimates which meet minimum statistical standards. If the number of terminees for whom follow-up is required is less than 138, sampling cannot be used. In such cases attempts must be made to contact all the appropriate terminees.

Minimum Sample Sizes for Follow-up

To determine the minimum number of terminees to be included in the follow-up sample, refer to Table 1 in the following instructions. Find the row in the left-hand column that contains the planned number of dislocated worker terminees. The required minimum sample size is given in the middle column of that row. The last column gives sampling percentages that will assure that the minimum sample size is obtained.

Correcting for Differences in Response Rates

Different response rates for those terminees who entered employment at termination and those who did not are expected to bias the performance estimates because those who entered employment at termination are more likely to be employed at follow-up. It is assumed that those who were employed at termination are easier to locate than those who were unemployed because the interviewer has more contact sources (e.g., name of employer). The resulting response bias can artificially inflate performance results at follow-up.

To account for this problem, separate response rates should be calculated for those who were employed at termination and for those who were not.

If the response rates of those employed at termination and those not employed differ by more than 5 percentage points, then the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide must be used to correct the follow-up measures.

TABLE 1.—MINIMUM SAMPLE SIZES FOR FOLLOW-UP

Number of terminees in follow-up population	Minimum sample size	Sampling percentages
1 to 137	All	100
138 to 149	137	94
150 to 159	143	92
160 to 169	149	89
170 to 179	154	87
180 to 189	159	85
190 to 199	164	84
200 to 224	175	82
225 to 249	185	78
250 to 274	194	74
275 to 299	202	71
300 to 349	217	67
350 to 399	229	62
400 to 449	240	57
450 to 499	250	53
500 to 599	265	50
600 to 749	282	44
750 to 999	302	38
1,000 to 1,499	325	30
1,500 to 1,999	338	22
2,000 to 2,999	352	17
3,000 to 4,999	364	12
5,000 or more	383	7.3

Appendix B—Definitions of Terms Necessary for Completion of Reports

Employment/Training Services

Assessment—services are designed to initially determine each participant's employability, aptitudes, abilities and interests, through interviews, testing and counseling to achieve the applicant's employment related goals.

Follow-up—is the collection of information on a terminee's employment situation at a specified period after termination from the program.

Intake—includes the screening of an applicant for eligibility and: (1) A determination of whether the program can benefit the individual; (2) an identification of the employment and training activities and services which would be appropriate for that individual; (3) a determination of the availability of an appropriate employment and training activity; (4) a decision on selection for participation and (5) the dissemination of information on the program.

Outreach—activity involves the collection, publication and dissemination of information on program services directed toward economically disadvantaged and other individuals eligible to receive JTPA training and support services.

Education Status

Less Than High School—An adult or youth: (1) who is not attending school full-time and has not received a high school diploma or a GED certificate; or (2) who has not received a high school diploma or GED certificate and is enrolled full-time in an elementary, secondary or postsecondary-level vocational, technical, or academic school or is between school terms and intends to return to school.

High School Graduate or Equivalent (No Post-High School)—An Adult or youth who has received a high school diploma or GED Certificate, but who has not attended any postsecondary vocational, technical, or academic school.

Post High School Attendee—An adult or youth who has received a high school diploma or GED certificate and has attended (or is attending) any postsecondary-level vocational, technical, or academic school.

College Graduate—A terminee who has received a degree (usually a BA or BS) conferred by a four-year college, university or professional school or an advanced degree from one of these institutions.

Family Status

Single Head of Household—A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

Race/Ethnic Group

White (Not Hispanic)—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Black (Not Hispanic)—A person having origins in any of the black racial groups of Africa.

Hispanic—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (including Spain), regardless or race.

Note.—Among persons from Central and South American countries, only those who are of Spanish origin, descent, or culture should be included in the Hispanic category. Persons from Brazil, Guiana, and Trinidad, for example, would be classified according to their race, and would not necessarily be included in the Hispanic category. Also, the Portugese should be excluded from the Hispanic category and should be classified according to their race.

American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan), or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa. Hawaiian natives are to be recorded as Asian or Pacific Islanders.

Other Barriers to Employment

Limited English Language Proficiency—Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

Handicapped Individual—Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment. NOTE: This definition includes disabled veterans for reporting purposes.

Reading Skills Below 7th Grade Level—An adult or youth assessed as having English reading skills below the 7th grade level on a generally accepted standardized test.

Economically Disadvantaged—An individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom State or local government payments are made; or (E) in cases permitted by regulations of the Secretary, is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

Dislocated Status

Previously Self-Employed—An individual is to be considered self-employed if he/she has established a business which meets at a minimum the definition contained in IRS Publication No. 334, Tax Guide for Small Business Part I (i.e., A business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are regularity of activities and transactions and the production of income.). When a State or local statute contains stricter requirements for determining the existence of a business,

that statute should be followed. (Self-employed individuals include farmers and ranchers.)

Additional Dislocated Worker (Displaced Homemaker)—An individual whom:

(A) Was a fulltime homemaker for a substantial number of years; and

(B) Derived the substantial share of his or her support from:

(i) A spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

(ii) Public assistance on account of dependents in the home and no longer receives such support.

Benefits Status

Unemployment Compensation Claimant—Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs, and who has not exhausted benefit rights or whose benefit year has not ended.

Trade Readjustment Assistance Claimant—Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under the TAA program, and who has received, or is receiving, or during the course of participation in EDWAA begins to receive, such benefit payments.

Labor Force Status

Unemployed: 15 or More Weeks of Prior 26 Weeks—An individual who is unemployed at the time of eligibility determination and has been unemployed for any 15 or more of the 26 weeks immediately prior to such determination, has made specific efforts to find a job throughout the period of unemployment, and is not classified as "Not in Labor Force".

Veteran Status

Veteran—An individual who served in the active military, naval, or air service (of the U.S.), and who was discharged or released therefore under conditions other than dishonorable.

Note.—The term "active" means full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active" duty.

Vietnam-Era Veteran—A veteran, any part of whose active military, naval, or air service occured between August 5, 1964 and May 7, 1975.

Program Costs

Accrued Expenditures—The allowable charges incurred during the program year to date requiring provision of funds for: (1) Goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees.

Note.—These charges do not include "resources on order", i.e., amounts for contracts, purchase orders and other obligations for which goods and/or services have not been received.

Worker Adjustment Program Quarterly Financial Report (ETA 9020)

1. Purpose

The Worker Adjustment Program Quarterly Financial Report (WQFR) for the Economic Dislocation and Worker Adjustment Assisatnce (EDWAA) program displays data on fund availability, accrued costs, total participants, and total terminations on a cumulative quarterly basis. These data will be used to determine levels of program service and expenditures for State and total substate grantees. Selected information will be aggregated to provide quantitative program accomplishments on a State and national basis. Reallotment of formula funds, pursuant to Section 303 of EDWAA, will be based on these expenditure reports.

These reporting requirements have been approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act of 1980, as amended, under OMB Approval No. _____.

2. General Instructions

A single WQFR covering EDWAA programs will be submitted by the Governor on a Statewide basis. Entries are to be *cumulative* for the program year to date. Each report period begins on the start date of each program year, as stated in Section 161 of the Job Training Partnership Act. Reports are due in the National office no later than thirty (30) days after the end of each program quarter (i.e., submitted no later than 10/31; 1/31; 4/30; and 7/31).

Two copies of *each* WFQR are to be provided to: U.S. Department of Labor, ETA, Attention: TSVR—Room S–5306, 200 Constitution Avenue, NW., Washington, DC 20210.

An additional copy of each WQFR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL Regional Office that includes the State in which the JTPA recipient is located.

Recipients may determine whether the report is submitted on this form or as a computer printout, with data arrayed as indicated in this format, including identification and signature blocks.

Note: The current JTPA Semiannual Status Report (JSSR, ETA 9009) is to continue to be used for Title III funds allotted to States for Program Year (PY) 1988 and earlier that are expended under regulations published in the **Federal Register** on February 12, 1988. The WQFR is to be used beginning July 1, 1989, for all funds expended under the EDWAA provisions.

3. Facsimile of Form

See the following pages.

BILLING CODE 4510-30-M

WORKER ADJUSTMENT PROGRAM
Quarterly Financial Report (WQFR)

a. State Name and Address	b. Governor/Secretary Agreement Number
	c. Report Period From: To:

SECTION I: FORMULA ALLOTMENT AND REALLOTMENT TO THE STATE			
1.	Total Availability		
2.	Current Year Allotment		\\\\\\\\\\\\\\\\
3.	Reallotted Funds	\\\\\\\\\\\\\\\\	\\\\\\\\\\\\\\\\
4.	Unexpended Prior Year Funds		\\\\\\\\\\\\\\\\
5.	Unexpended Previous Year Funds		\\\\\\\\\\\\\\\\
6.	Total Accrued Expenditures		
7.	Current Year Allotment		\\\\\\\\\\\\\\\\
8.	Prior Year Allotment		\\\\\\\\\\\\\\\\
9.	Previous Year Allotment		\\\\\\\\\\\\\\\\
SECTION II: FUNDS RESERVED FOR SUBSTATE GRANTEES IN NEED			
10.	Current Year Funds Reserved		
11.	Reserve Funds Distributed to Substate Grantees		\\\\\\\\\\\\\\\\
SECTION III: SECRETARY'S NATIONAL RESERVE GRANTS TO THE STATE			
12.	Total Funds Available		
13.	Current Year Grants		\\\\\\\\\\\\\\\\
14.	Prior Year Grants		\\\\\\\\\\\\\\\\
15.	Previous Year Grants		\\\\\\\\\\\\\\\\
16.	Total Accrued Expenditures		
17.	Current Year Grants		\\\\\\\\\\\\\\\\
18.	Prior Year Grants		\\\\\\\\\\\\\\\\
19.	Previous Year Grants		\\\\\\\\\\\\\\\\

d. Signature and Title	e. Date	f. Telephone No.

ETA 9020 (January, 1989)

a. State Name	c. Report Period From: To:

SECTION IV: PROGRAM SUMMARY		a. Governor's Reserve	b. Substate
20.	Total Federal Funds Available		
21.	Governor's Substate Discretionary Allocations		\\\\\\\\\\\\\\\\
22.	Total Accrued Costs		
23.	Rapid Response		\\\\\\\\\\\\\\\\
24.	Basic Readjustment		
25.	Retraining		
26.	Needs-Related Payments		
27.	Supportive Services		
28.	Administration		
29.	Total Participants		
30.	Total Terminations		

REMARKS:

BILLING CODE 4510-30-C

4. Instru
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4. Instructions for Completing the Worker Adjustment Program Quarterly Financial Report

a. *State Name and Address.* Enter the name and address of the recipient.

b. *Governor/Secretary Agreement Number.* Enter the recipient's Governor/Secretary Agreement number, as assigned by ETA in a separate issuance.

c. *Report Period.* Enter in "From" the beginning date of the designated JTPA program year, and enter in "To" the ending date of the report period, as specified above.

d. *Signature and Title* (at bottom of page). The authorized official of the Governor signs here and enters his or her title.

e. *Date.* Enter the date the report was signed by the authorized official.

f. *Telephone No.* Enter the area code and telephone number of the authorized official.

Special Note: All availability and expenditures entries on the WQFR will be made to the nearest dollar. This information is to be completed *cumulatively* for the end of each program quarter from the beginning of the program year. Expenditures reported on the WQFR will be compiled on an accrual basis. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

Section I—Formula Allotment and Reallotment to the State

Line 1 Total Availability

Enter the total funds available for the EDWAA program that were allotted by formula, including (1) funds allotted for this program year pursuant to Section 302(a)(1); (2) unexpended formula-allotted funds carried over from earlier program years; and (3) any reallotment that *increased or decreased* the amount of formula funds available for expenditure through the end of the reporting period pursuant to Section 303. NOTE: This line is the sum of Lines 2, 4 and 5.

Line 2 Current Year Allotment

Enter the total formula-allotted funds for this program year. Include any reallotment that affected the amount of funds available.

Line 3 Reallotted Funds

Enter any reallotment that *increased or decreased* the amount of formula funds available for expenditure through the end of the reporting period. This line is a sub-breakout of Line 2. NOTE: Respondents must indicate either a plus (+) or a minus (−).

Line 4 Unexpended Prior Year Funds

Enter the total unexpended funds, if any, from last year's formula allotment (including reallotted funds, if any) that were carried in for use in the current program year.

Line 5 Unexpended Previous Year Funds

Enter the total unexpended funds, if any, from last year's formula allotment (including reallotted funds, if any) for the year before last year (i.e., 2 years before this program year) that were carried in for use in the current program year.

Line 6 Total Accrued Expenditures

Enter the total accrued expenditures for formula funded EDWAA programs. Include accrued expenditures of funds available from allotments for the current, prior and previous program years. This line is the sum of Lines 7, 8 and 9.

"Accrued Expenditures" are the allowable charges incurred during the program year to date requiring provision of funds for: (1) Goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees. These charges do not include "resources on order" (i.e., amounts for contracts, pruchase orders and other obligations for which the goods and/or services have not yet been received).

Line 7 Current Year Allotment

Line 8 Prior Year Allotment

Line 9 Previous Year Allotment

Distribute the total actual expenditures during this report period included in Line 6 by current year, prior year, or previous year fund source.

Section II—Funds Reserved for Substate Grantees in Need

Line 10 Current Year Funds Reserved

Enter the current program year Section 302(c)(2) funds reserved by the Governor for distribution to substate grantees in need.

Line 11 Reserve Funds Distributed to Substate Grantees

Enter the amount of current year Section 302(c)(2) funds that have been distributed to substate grantees in need through the end of the report period. This line is a sub-breakout of Line 10.

Section III—Secretary's National Reserve Grants to the State

Line 12 Total Funds Available

Enter the amount of Section 302(a)(2) funds received from the Secretary's National Reserve that were available for expenditure during the current program year. This line is the sum of Lines 13 through 15.

Line 13 Current Year Grants

Line 14 Prior Year Grants

Line 15 Previous Year Grants

Enter by current, prior or previous year the total National Reserve funds awarded to the State during that year which remained available for expenditure during the current program year.

Line 16 Total Accrued Expenditures

Enter the total actual section 302(a)(2) accrued expenditures for projects using these funds. This line is the sum of Lines 17 through 19.

Line 17 Current Year Grants

Line 18 Prior Year Grants

Line 19 Previous Year Grants

Distribute the total actual expenditures during this report period by current year, prior year or previous year according to when the National Reserve Grants were awarded to the State.

Section IV—Program Summary

This section provides a summary of program activity supported with formula-allotted funds at the State and substate levels through the end of the reporting period. Entries are to be made under the appropriate column heading as follows:

a. Governor's Reserve

All entries in this column refer to activities and services administered by the Governor pursuant to section 302(c)(1).

b. Substate

All entries in this column refer to activities and services administered by the substate grantees pursuant to section 302(d) as well as section 302(c)(1)(E) and 302(c)(2).

Line 20 Total Federal Funds Available

Enter the total Federal funds available for expenditure during the current program year. This includes the current year formula allotment, reallotted and reallocated funds, and unexpended formula-allotted funds from prior or

previous years that are available for expenditure during the current year.

Line 21 Governor's Substate Discretionary Allocations

Enter the total funds allocated by the Governor to substate grantees pursuant to section 302(c)(1)(E) under the Governor's Reserve column only. This is a sub-breakout of Line 20. Since these funds are not available for expenditure by the Governor, they are not included in the Governor's Reserve costs identified in Lines 22 through 28, nor the Governor's Reserve participants and terminations in Lines 29 and 30. These funds are to be included in the Program Summary under the Substate column for Lines 20 through 28. The sum of entries in Columns a and b on Line 20 minus this entry should equal the Total Availability on Line 1.

Line 22 Total Accrued Costs

Enter the total actual accrued costs during the report period, without regard to the year the funds were allotted to the State or allocated to State or substate grantees. The sum of the entries in the two columns on Line 22 should be equal to Total Accrued Expenditures on Line 6. This line is the sum of Lines 23 through 28.

Line 23 Rapid Response

Enter the accrued costs allocable to the Rapid Response services cost category (20 CFR 632.13(b)) under the Governor's Reserve column only. This line is a sub-breakout of Line 22.

Line 24 Basic Readjustment

Enter the accrued costs allocable to the Basic Readjustment services cost category (20 CFR 632.12(c)). This line is a sub-breakout of Line 22, and does not include amounts reported on Line 28.

Line 25 Retraining

Enter the accrued costs allocable to the Retaining services cost category (20 CFR 631.13(d)). This line is a sub-breakout of Line 22, and does not include amounts reported on Line 28.

Line 26 Needs-Related Payments

Enter the accrued costs allocable to the Needs-Related Payments cost category (20 CFR 631.13(e)). This line is a sub-breakout of Line 22, and does not include amounts reported on Line 28.

Line 27 Supportive Services

Enter the accrued costs allocable to the Supportive Services cost category (20 CFR 631.13(f)). This line is a sub-breakout of Line 22, and does not include amount reported on Line 28.

Line 28 Administration

Enter the accrued costs allocable to the Administration cost category (20 CFR 631.13(g)). This line is a sub-breakout of Line 22.

Line 29 Total Participants

Enter the total number of participants (as defined below) who were on board at the beginning of the program year and those who have entered during the program year. Governor's Reserve programs include those Statewide, regional and industrywide projects provided for at section 302(c)(1)(B).

"Participant" means any individual who has (1) been determined eligible for participation upon intake; and (2) started receiving basic readjustment services or retraining under EDWAA following intake. Individuals who receive only outreach and/or intake and initial assessment, post-termination counseling, or post-program followup, are excluded.

Note: Exclude individuals who receive only Rapid Response assistance and information provided by the State Dislocated Worker Unit.

Line 30 Total Terminations

Enter the total number of participants who terminated from the program (see definition of "termination" below) during the reporting period. Include all those participants who received no basic readjustment services (except supportive services and/or counseling) or retraining for 90 days.

"Termination" means the separation of a participant from the program who is no longer receiving basic readjustment services or retraining funded under EDWAA. Individuals may be considered participants for up to 90 days after last receipt of basic readjustment services or retraining, during which time they may continue to receive supportive services, as provided for in section 314(c)(15). Terminees may continue to receive counseling necessary to assist in the retention of employment for not more than 6 months following last receipt of basic readjustment services or retraining.

5. *Reporting Burden.* Public reporting burden for this collection of information is estimated to average eight hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this burden to the Office of Information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 88–28075 Filed 12–6–88; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Proposed Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed performance standards for the Economic Dislocation and Worker Adjustment Assistance Program; request for comments.

SUMMARY: The Employment and Training Administration (ETA) is publishing proposed performance standards for the Job Training Partnership Act Title III dislocated worker programs. Title III recently was revised by the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act (Title VI, Subtitle D, of the Omnibus Trade and Competitiveness Act of 1988), necessitating the issuance of standards for the new worker adjustment program. The worker adjustment program provides for a new substate delivery system, the ability to provide rapid response and early intervention to workers and to communities undergoing major layoffs, coordination to foster labor-management and community partnerships, and emphasis on quality training and other new and expanded approaches to serving dislocated workers.

DATE: Written comments are invited from the public. Comments must be submitted on or before January 12, 1989.

ADDRESS: Comments should be addressed to the Assistant Secretary of Labor, Employment and Training Administration, U.S. Department DC 20210, Attention: Karen Greene, Chief, Adult and Youth Standards Unit, Room N–5310.

FOR FURTHER INFORMATION CONTACT: Mrs. Karen Greene. Telephone: (202) 535–0687.

SUPPLEMENTARY INFORMATION: The Job Training Partnership Act (JTPA) under Title III provides employment and training assistance to dislocated workers. Title III recently was revised by the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act (Title VI, Subtitle D, of

the Omnibus Trade and Competitiveness Act of 1988). Regulations for Title III, as revised, are published at 20 CFR Part 631, 53 FR 41572–41589 (October 24, 1988).

Section 106 of the JTPA requires the Secretary of Labor to prescribe performance standards for dislocated worker programs under Title III. Performance standards for Title III, prior to its revision by EDWAA, were published at 53 FR 7252 (March 7, 1988). Amendments to Title III necessitate this proposed revision of those standards. The current performance management system for dislocated worker programs will also be revised to account for the new programmatic features introduced by the EDWAA provisions. The proposed standards are described in this notice and in the attached draft Training and Employment Guidance Letter.

The Department of Labor (Department) is proposing a transition strategy for the implementation of EDWAA performance standards. Initially, a single performance standard, the entered employment rate, is proposed for the worker adjustment program for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) as well as an optional wage at placement goal. Additional measures of job retention, replacement wage and postprogram and/or other standards will be implemented as appropriate after data are available from the substate reporting system proposed for the revised Title III programs.

The national numerical level for the entered employment rate is the same as that issued in the **Federal Register** on March 7, 1988 at 53 FR 7252 and is set at 64 percent. The entered employment rate level in PY 1990 will be revised.

A. Purpose of Performance Standards

Pursuant to section 106(g) of the JTPA, the Secretary of Labor shall prescribe performance standards for programs under Title III based on placement and retention in unsubsidized employment. These measures of performance reflect Congress' desire to emphasize program outcomes for individuals that assess how well the JTPA system is meeting its statutory goals of increased employment and earnings and reduced welfare dependency. Title III performance standards measure the effectiveness of worker adjustment programs to adequately prepare dislocated workers to reenter productive employment and to enable them to retain that employment over time. The new provisions contain a number of program features which emphasize the importance of quality training in ensuring the employability of dislocated workers. Other program objectives—increased coordination, timely service delivery to workers and communities undergoing economic change, and improved fiscal accountability—are designed to ensure that service and funding decisions will support the goals of the Act.

For PY 1989 the Secretary intends to set an entered employment rate standard and an optional wage at placement goal for Title III. To ensure systemwide accountability, substate areas and statewide programs will be subject to performance standards. Proposed reporting for the worker adjustment program will begin to gather the data needed to set and adjust a postprogram employment or other job retention standard, replacement wage, and any other standards appropriate for dislocated worker programs for future implementation.

Prior to EDWAA, substate administration was not required for dislocated worker programs; therefore, substate client characteristics and program performance data were not collected. Because of limited data, adequate adjustment models for follow-up standards for Title III are not currently available. Data from an alternative national database—the JTPA Quarterly Survey—will enable the Department to issue initial adjustment models for Governors' use in setting substate entered employment rate standards and placement wage goals that account for variations in worker characteristics, program design, and economic conditions.

B. Authority To Issue Performance Standards

Section 106(g) of the JTPA directs the Secretary to establish performance standards for Title III dislocated worker programs.

C. Public Comment and Participation

The Department is committed to a participatory process in the development of performance standards. In September 1988 the Department met with State and local job training administrators, private industry council (PIC) representatives, service providers and members of public interest groups to obtain field information critical to the development of these standards. This request for comments is another important part of the participatory process.

The Secretary especially requests comments on the following issues:

What are the critical responsibilities and activities in the worker adjustment program for which performance standards should account and how can these best be measured?

What are the appropriate performance outcomes for the worker adjustment program which help ensure the program is achieving a positive return on the public's investment?

D. Background

Since PY 1986, States have been required to set an entered employment rate standard and an optional cost standard for their Title III programs. In PY 1988 Governors were again required to set an entered employment rate standard, but the cost standard was replaced with an optional measure of job quality—the placement wage standard. A national entered employment rate was issued for States to use as a guide in setting their own standards. No incentives or sanctions were applied to these standards and no adjustment methodology was issued due to the lack of substate data.

E. Rationale for Substate Standards, Incentives, and Sanctions

Under the new provisions, funds are to flow to substate areas to provide services to dislocated workers. Section 106 of the JTPA requires the Secretary to establish standards for dislocated workers programs, and the Title III amendments call for the Secretary to set parameters to guide Governors in adjusting substate area standards for varying local conditions. National standards are set with adjustments available for substate areas based on who is being served and what services are being provided.

The revised Title III provisions do not specifically set aside funds for incentives. However, a portion of the 40 percent funds reserved for State activities under section 302(c)(1) should be used for rewarding substate area performance, in particular those programs that provide lengthier, more substantive training to ensure the long-term employability of participants. Departmental regulations clarify that sanctions in section 106(h) apply to worker adjustment programs. Because the new Title III provisions enable Governors to redesignate substate areas every two years, the additional imposition of a reorganization plan will not be required. For the transition year (PY 1989), rewards and sanctions are not required; however, States should establish such policies for implementation in PY 1990.

F. Rationale for the Proposed Measure

The appropriateness of any performance standard should be judged

by the extent to which it measures the goals of the program. The goals of the worker adjustment program are to adequately prepare workers for reemployment and to ensure their continued employability through a broad range of quality retaining, services and participant support. The measures defined in JTPA section 106(g) as appropriate for dislocated worker programs are placement and retention in unsubsidized employment.

As a transition strategy, the entered employment rate standard is proposed as the only measure against which performance will be assessed for PY 1989, continuing the standard set in PY 1988. The level may be updated in PY 1990 at the beginning of the next two-year cycle after the worker adjustment program is fully operational. The Department will provide guidance on adjusting substate area standards in early January. Additional measures will be adopted for this program in PY 1992 when sufficient substate data become available.

Signed at Washington, DC, this 7th day of December, 1988.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Training and Employment Guidance Letter No.

From: Roberts T. Jones, Assistant Secretary of Labor.

Subject: Secretary's Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act for Program Year 1989.

1. Purpose

To transmit to the State Worker Adjustment Liaisons the Secretary's national numerical standards and implementing instructions for new programs serving dislocated workers for PY 1989.

2. Background

Section 106(g) of the Job Training Partnership Act (JTPA) directs the Secretary to establish performance standards for dislocated worker programs. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's standards for substate areas.

3. Performance Management Goals for Program Year 1989

Program Year 1989 marks the beginning of a new performance management system, while serving as a transition year between the former Title III program and the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act. The objective of performance standards is to measure the effectiveness of worker adjustment programs in meeting the immediate goal of obtaining reemployment for dislocated workers and the long-term goal of their continued employment.

4. Performance Measures for PY 1989

One performance measure will be required for the worker adjustment transition year. This measure is the entered employment rate. An optional average wage at placement may also be adopted by Governors. The proposed reporting system will collect the data needed to set and adjust a job retention, replacement wage, postprogram and/or other standards appropriate for dislocated worker programs for future implementation.

5. Secretary's National Numerical Standards for PY 1989

The numerical standard is derived from the PY 1986 Title III performance data reported on the JTPA Annual Status Report (JASR). Although a new delivery system and broadened services are identified in the amended Title III program—and a new reporting system, with more appropriate data elements to account for EDWAA changes has been proposed—the JASR is the only data base available to set measures and standards for dislocated workers.

An entered employment rate of 64 percent is the Secretary's national standard for PY 1989 and is the departure point for adjustments using the Department's optional adjustment model. Governors may also establish an average wage at placement goal. The entered employment rate of 64 percent is set at a level that if worker adjustment programs continue to perform in the same manner as JTPA, Title III in PY 1986, 75 percent of the system should exceed this standard.

6. Implementation Provisions

The following implementation requirements must be followed:

a. Required standards.

Governors are required to set for each substate area a numerical performance standard for entered employment.

b. Setting the standards.

The Governor may set the substate area standards by using the Secretary's numerical standard or by adjusting this standard. Such adjustments must conform to the Secretary's parameters described below: Procedures must be:

- Responsive to the intent of the Act;
- Consistently applied among substate areas;
- Objective and equitable throughout the State; and
- In conformance with widely accepted statistical criteria.

Source data must be:

- Of public use quality; and
- Available upon request.

Results must be:

- Documented; and
- Reproducible.

Adjustment factors must be limited to:

- Economic factors;
- Labor market conditions;
- Characteristics of the population to be served;
- Geographic factors; and
- Types of services to be provided.

The Department has developed an initial adjustment methodology which will be available in January 1989 for Governors to use at their option. The Department's methodology conforms to the parameter criteria cited above. Should the Governor choose to use an alternative methodology, or further adjust the Departmental model, it must conform to the parameter criteria and be documented in the State plan prior to the program year to which it applies. The State Job Training Coordinating Council must have an opportunity to consider adjustments to the Secretary's standard and to recommend variations.

c. Performance standards definitions.

Governors must compute the performance of their substate areas according to the following definitions:

(1) Entered employment rate

—Number of individuals who entered employment at termination as a percentage of the total number of persons who terminated.

(2) Average wage at placement

—Average hourly wage for all persons who entered employment at the time of termination.

7. Application of the Performance Standards

Performance standards are to be applied to all programs funded under section 302. This includes all of section 302(c)(1) State activities, section 302(c)(2) and 302(d) substate area activities, and programs operated under the section 302(a)(2) Secretary's National Reserve.

8. State Action

States should ensure that all substate grantees are promptly informed of this planning and policy guidance.

9. Inquiries

Questions concerning this issuance may be directed to Karen Greene at (202) 535–0687.

[FR Doc. 88–28591 Filed 12–12–88; 8:45 am]
BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–219–C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.1805 (examination of electrical equipment; recording requirements; approved books) to its Galatia Mine 56–1 (I.D. No. 11–02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the results of examinations of electrical equipment required to be conducted under the provisions of certain standards be recorded in a book entitled "Examination of Electrical Equipment".

2. As an alternate method, petitioner proposes to use computer-generated forms as permanent records in hanging book binders in lieu of an approved book entitled "Examination of Electrical Equipment."

3. In support of this request, petitioner states that—

(a) The forms for the electrical equipment are generated by a maintenance computer, kept on file, and updated with pertinent information;

(b) The computer-generated records are used in the examinations and maintenance of the electrical equipment;

(c) All exceptions, maintenance work done during the inspections, and special notes concerning the inspections are recorded on the computer-generated forms and are stored on tape in the computer files. An exception report is generated by the computer each week and sent to the Maintenance Managers and the Electrical Instrumentation Foremen; and

(d) In the event that an inspection work request generated by the computer is not logged in as completed by the due date, a report is printed within four days and sent to the Maintenance Managers informing them that the inspection is overdue.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 12, 1988. Copies of the petition are available for inspection at that address.

Date: December 6, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–28595 Filed 12–12–88; 8:45 am]
BILLING CODE 4510–43–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Archives and Records Administration.

FOR FURTHER INFORMATION CONTACT: James C. Megronigle, Assistant Archivist for Management and Administration, National Archives and Records Administration (NA), 8th and Pennsylvania Avenue NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review performance ratings for SES members and make recommendations to the appointing authority on senior executive performance.

The Members of the Performance Review Board for the National Archives and Records Administration are James C. Megronigle, Assistant Archivist for Management and Administration, John T. Fawcett, Assistant Archivist for Presidential Libraries, and Linda N. Brown, Assistant Archivist for Public Programs. These appointments supercede all previous appointments.

Dated: December 6, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–28551 Filed 12–12–88; 8:45 am]
BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–603]

Environmental Assessment and Finding of No Significant Impact; All Chemical Isotope Enrichment, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50.34(a)(10), 50.34(b)(6)(v), and Appendix E to 10 CFR Part 50 to All Chemical Isotope Enrichment, Inc. (AlChemIE or "the applicant") for the AlChemIE Facility-1 CPDF located on the Federal reservation at Oak Ridge, Tennessee.

Environmental Assessment

Identification of Proposed Action: On April 28, 1988, the Commission noticed the receipt of application for construction permit and operating license, availability of applicant's environmental report, consideration of issuance of construction permit and notice of opportunity for hearing for AlChemIE Facility-1 CPDF in the **Federal Register** (53 FR 15317). As indicated in that Notice, the applicant intends to use centrifugal machines to enrich non-radioactive isotopes. As further indicated in that Notice, a license is required from the Commission for the above purpose, however, such a license would only govern possession of the centrifuge machines, but not the enriched stable isotopes produced.

Although the enriching of stable isotope is not ordinarily within the regulatory authority of the Commission, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission. Since the centrifuge machines AlChemIE will obtain from the Department of Energy are capable of enriching uranium, their possession and use must be licensed. The Commission rule which governs the licensing of production facilities is 10 CFR Part 50. Since all of the centrifuge machines proposed for use at the CPDF have been tested using uranium hexafluoride, a thin film of a contamination has been left in each machine, primarily in the rotor.

The deposited material is uranyl fluoride, UO_2F_2, a reaction product

formed when small amounts of moisture remaining in the low vacuum system react with the uranium hexafluoride. The Department of Energy has determined that the uranium contamination is sufficiently fixed that it did not carry over with either product or tails in tests with stable isotopes.

The applicant has conservatively assumed the occurrence of an accident which releases a fraction of the uranium and is then inhaled by a nearby operator. The resultant does is inconsequential. NRC staff analysis confirms this conclusion.

On August 17, 1988, the applicant requested a specific exemption from 10 CFR 50.34(a)(10) and (b)(6)(v). Both of these paragraphs refer to Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities." Thus the regulations is question are, on their face, applicable to the applicant's proposed operations. However, the content of the requirements is entirely related to potential radiological hazards, as indicated in the introduction in Appendix E, and as may be discerned throughout the Appendix. Since the only radioactive material to be possessed by the applicant is the uranium which previously became firmly fixed to the centrifuge machines, but is not available for dispersal, there is no potential radiological hazard for which planning and preparedness is necessary. Therefore, the action proposed is to exempt the applicant from the requirement to prepare an emergency plan in accordance with Appendix E to 10 CFR Part 50, which would have no practical effect.

The Need for the Proposed Action: The proposed action is needed since the preparation of an emergency plan for AlChemIE Facility-1 CPDF is unnecessary and would be inconsistent with the Commission's jurisdiction over the applicant as stated above.

Enviromental Impact of the Proposed Action: Since there is no potential radiological hazard associated with the applicant's proposed activities, the proposed action would have no environmental impact.

Alternative to the Proposed Action: The alternative to the proposed action is the preparation of an emergency plan consistent with the provisions of Appendix E to 10 CFR Part 50. However, such an emergency plan prepared for AlChemIE Facility-1 CPDF related to potential radiological hazard would serve no useful purpose based on the activities the applicant proposes to conduct.

Alternative Use of Resources: The proposed action does not involve the use of any resources.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request which supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the environmental assessment, we conclude that the proposed action will not have a significant adverse affect on the quality of the human environment.

For details with respect to this proposed action see the applicant's request for the exemption, dated August 17, 1988, and the **Federal Register** notice discussed earlier, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Rockville, Maryland, this seventh day of December, 1988.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Industrial and Medical Nuclear Safety Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-28637 Filed 12-12-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-604]

Environmental Assessment and Finding of No Significant Impact; All Chemical Isotope Enrichment, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50.34(a)(10), 50.34(b)(6)(v), and Appendix E to 10 CFR Part 50 to All Chemical Isotope Enrichment, Inc. (AlChemIE or "the applicant") for the AlChemIE Facility-2 Oliver Springs located at a site proposed for Oliver Springs, Tennessee.

Environmental Assessment

Idenification of Proposed Action: On April 28, 1988, the Commission noticed the receipt of application for construction permit, availability of applicant's environmental report, consideration of issuance of construction permit and notice of opportunity for hearing all AlChemIE Facility-2 Oliver Springs in the **Federal Register** (53 FR 15317). As indicated in that Notice, the applicant intents to use centrifugal machines to enrich non-radioactive isotopes. As further indicated in that Notice, a license is required from the Commission for the above purpose, however, such a license would only govern possession of the centrifuge machines, but not the enriched stable isotopes produced.

Although the enriching of stable isotope is not ordinarily within the regulatory authority of the Commission, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission. Since the centrifuge machines AlChemIE will obtain from the Department of Energy are capable of enriching uranium, their possession and use must be licensed. The Commission rule which governs the licensing of production facilities is 10 CFR Part 50. Since all of the centrifuge machines proposed for use at the CPDF have been tested using uranium hexafluoride, a thin film of a contamination has been left in each machine, primarily in the rotor.

The deposited material is uranyl flouride, UO_2F_2, a reaction product formed when small amounts of moisture remaining in the low vacuum system react with the uranium hexafluride. The Department of Energy has determined that the uranium contamination is sufficiently fixed that it did not carry over with either product or tails in tests with stable isotopes.

The applicant has conservatively assumed the occurrence of an accident which releases a fraction of the uranium and is then inhaled by a nearby operator. The resultant dose is inconsequential. NRC staff analysis confirms this conclusion.

On August 17, 1988, the applicant requested a specific exemption from 10 CFR 50.34(a)(10) and (b)(6)(v). Both of these paragraphs refer to Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities." Thus the regulations in question are, on their face, applicable to the applicant's proposed operations. However, the content of the requirements is entirely related to potential radiological hazards, as indicated in the introduction in Appendix E, and as may be discerned throughout the Appendix. Since the only radioactive material to be possessed by the applicant is the uranium which previously became firmly fixed to the centrifuge machines, but is not available for dispersal, there is no potential radiolocical hazard for which planning and preparedness is necessary.

Therefore, the action proposed is to exempt the applicant from the requirement to prepare an emergency plan in accordance with Appendix E to 10 CFR Part 50, which would have no practical effect.

The Need for the Proposed Action: The proposed action is needed since the preparation of an emergency plan for AlChemIE Facility-2 Oliver Springs is unnecessary and would be inconsistent with the Commission's jurisdiction over the applicant as stated above.

Environmental Impact of the Proposed Action: Since there is no potential radiological hazard associated with the applicant's proposed activities, the proposed action would have no environmental impact.

Alternative to the Proposed Action: The alternative to the proposed action is the preparation of an emergency plan consistent with the provisions of Appendix E to 10 CFR Part 50. However, any emergency plan prepared for AlChemIE Facility-2 Oliver Springs related related to potential radiological hazard would serve no useful purpose based on the activities the applicant proposes to conduct.

Alternative Use of Resources: The proposed action does not involve the use of any resources.

Agencies and Persons Consulted: The NRC staf reviewed the licensee's request which supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an enviromental impact statement for the proposed exemption. Based on the environmental assessment, we conclude that the proposed action will not have a significant adverse affect on the quality of the human environment.

For details with respect to this proposed action see the applicant's request for the exemption, dated August 17, 1988, and the **Federal Register** notice discussed earlier, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 7th day of December, 1988.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Industrial and Medical Nuclear Safety Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-28638 Filed 12-12-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of exemption from certain requirements of 10 CFR Part 50, Appendix R, to the Duke Power Company (Duke/licensee) for the Oconee Nuclear Station, Units 1, 2, and 3, located at the licensee's site in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of Appendix R, "Fire Protection Program For Nuclear Power Facilities Operating Prior To January 1, 1979." Duke has requested five exemptions: four from the requirements of Section III.G.2.a and one from Section III.G.2.d. Section III.G.2.a requires separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a three-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier. Section III.G.2.d requires separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than twenty feet with no intervening combustibles or fire hazards.

The Need for the Proposed Action

The proposed exemptions are needed because of plant specific circumstances as described in the licensee's submittals regarding three-hour fire barriers or redundant components separated by distances of less than twenty feet. Duke has demonstrated that equivalent protection is provided by the existing fire barriers for the fire hazards to which they are exposed. Use of the existing fire barriers and fire detection and suppression are the most practical means for meeting the intent of Appendix R, and literal compliance would not significantly enhance fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemptions, based on the existing physical plant design and fire protection features, will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at these facilities. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Because the Commission has concluded there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the applicable portions of Sections III.G.2.a and d of the Appendix R requirements. Such action would not enhance the protection of the environment and would result as unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement related to the Operation of the Oconee Nuclear Station, Units 1, 2 and 3," dated March 1972.

Agencies and Persons Consulted

The NRC staff has reviewed Duke's request that supports the proposed exemptions. The NRC staff did not consult with other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see Duke's letters dated November 11 and October 24, 1983, August 14, 1984, February 28 and September 30, 1985, December 26, 1986,

and April 21, 1987. The letters are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 5th day of December 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 88–28632 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company, (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise the provisions in Technical Specifications (TS) 4.9.6.1.c and 4.9.6.2.c to permit decreasing the minimum water coverage for irradiated fuel and control rods during their handling.

The proposed action is in accordance with the licensee's application for amendment dated August 12, 1988.

Need for the Proposed Action

The proposed change to the TS is required to relieve the licensee from the unnecessary hardship due to the narrow operating bands for pool levels in the containment and fuel building. The narrow operating bands have made it difficult to maintain the pool levels where the high or low water level annunciators are not actuated. The proposed action would also permit an easier transfer through the fuel transfer shield and would permit placing control rods on hangers provided for their storage in the fuel building pool.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would reduce the minimum water coverage above a single spent fuel assembly in the storage pool from 8 feet 6 inches to 8 feet 2 inches, and above an irradiated control rod from 8 feet 6 inches to 6 feet 9 inches. TS 4.9.6.1 would be modified to require demonstration that the normal uptravel stop interlock of the refueling platform main hoist maintains at least 8 feet 2 inches of water coverage above the top of the active irradiated fuel and that the normal uptravel stop interlock of the frame-mounted and monorail-mounted auxiliary hoists maintain at least 6 feet 9 inches of water coverage above the top of the irradiated control rod. The surveillance requirements of TS 4.9.6.2 would be modified in a similar manner to require demonstration that the normal uptravel stop interlock on the fuel handling platform main hoist maintains at least 8 feet 2 inches of water coverage above the top of the active irradiated fuel and that the normal uptravel stop interlock of the monorail-mounted auxiliary hoist maintains at least 6 feet 9 inches of water coverage above the top of the irradiated control rod.

The pool water (as well as the water level above the reactor pressure vessel flange) will remain unchanged at a minimum of 23 feet above the spent fuel in the storage racks. Therefore, the proposed change would not increase the probability or consequences of any accident previously evaluated.

The licensee estimated a radiation dose rate increase to personnel on the refueling platform of 0.2 mrem per hour due to the reduction of water coverage above the active zone of the irradiated fuel and 0.3 mrem per hour from an irradiated control rod. In addition, the licensee estimated that personnal radiation exposure over the plant design life would increase by 0.2 man-Rem from irradiated fuel and 0.01 man-Rem from irradiated control rods. Thus, there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

There are no changes being made in the types of any effluents that may be released offsite and the offsite dose consequences of a postulated fuel handling accident will not be affected by the proposed changes to the TS and the resulting offsite dose would remain well within the 10 CFR Part 100 guidelines.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involve systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 25, 1988 (53 FR 32484) and a correction was pulbished on October 24, 1988 (53 FR 41634). No request for hearing or petition for leave to intervene was filed following these notices.

Alternative to the Proposed Action

Since the Commission concluded that there is no significant adverse environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit 1, dated January 1985.

Agencies and Persons Consulted

The NRC Staff has reviewed the licensee' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 12, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 29th day of November, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–28633 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 15–17, 1988, in Room P–114, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on December 1, 1988.

Thursday, December 15, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD

8:30–8:45 A.M.: Chairman's Comments (Open)—The ACRS chairman will report briefly regarding items of current interest.

8:45–10:45 A.M.: Sodium Advanced Fast Reactor (SAFR) (Open)—Report of ACRS subcommittee chairman regarding the review of this type of standardized nuclear plant (initial session). Meeting with representatives of NRC and DOE.

11:00–12:00 Noon: Equipment Qualification-Risk Scoping Study (Open)—Report of ACRS subcommittee chairman regarding review and comment of this Scoping Study. Meeting with representatives of NRC Staff, as appropriate.

1:00–2:00 P.M.: Equipment Qualification-Risk Scoping Study (Open)—Continue meeting/discussion of Equipment Qualification-Risk Scoping Study.

2:00–4:15 P.M.: Containment System (Open)—Comments by ACRS subcommittee chairman regarding proposed NRC recommendations for containment performance and improvements for BWR Mark I containment. Meeting with representatives of NRC Staff, as appropriate.

4:15–6:30 P.M.: NRC Quantitative Safety Goals (Open)—Remarks by ACRS subcommittee chairman regarding proposed NRC Staff plan for implementation of NRC's Safety Goal Policy. Meeting with representatives of the NRC Staff, as appropriate.

Friday, December 16, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD

8:30–9:30 A.M.: Meeting with Director, NRC Office of Nuclear Regulatory Research (Open)—Briefing and discussion of items of mutual interest.

9:30–12:00 Noon: Energency Core Cooling Systems (Open)—Comments by ACRS subcommittee chairman regarding proposed NRC Code Scaling Applicability and Uncertainty (CSAU) Evaluation Methodology proposed for use with best-estimate ECCS evaluation models. Meeting with representatives of NRC Staff.

12:00–12:30 P.M.: Future ACRS Activities (Open)—Discuss anticipated subcommittee activities and discuss items proposed for consideration by the full Committee, including Split of responsibilities between ACRS/ACNW.

1:45–3:00 P.M.: Meeting with Director, Office of Governmental and Public Affairs (Open/Closed)—Briefing regarding US–USSR Exchange of Safety-Related Information.

(Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.)

3:15–4:45 P.M.: Operator Requalification (Open)—Briefing regarding lessons learned from implementation of revised operator requalification methodology (Draft Examiner Standard 601).

4:45–6:30 P.M.: Nuclear Power Plant Operations (Open)—Briefing regarding action taken in response to LaSalle Nuclear Station core power oscillation transient.

Saturday, December 17, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD

8:30–9:00 A.M.: Election of ACRS Officers for CY 1989 (Closed)—Discussion and election of ACRS chairman and vice-chairman for CY 1989 and Member-at-Large for ACRS Planning Subcommittee and report regarding Appointment of New Members.

(This session will be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy.)

9:00–12:00 Noon: Preparation of ACRS Report (Open)—Discuss proposed ACRS reports.

1:00–2:00 P.M.: ACRS Subcommittee Activities (Open)—Report of the December 1, 1988 meeting regarding International Seminar on Quality and Quality Control and report of visit to E. Fermi Nuclear Plant.

2:00–3:00 P.M.: ACRS Activities (Open)—Discuss area of interest/activity.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)], to discuss Information provided in confidence by a foreign source [5 U.S.C. 552b(c)(4)], and to discuss Proprietary Information applicable to matters being considered [5 U.S.C. 552b(c)(4)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 A.M. and 5:00 p.m.

Dated: December 7, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–28640 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–334 and 50–412]

Duquesne Light Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–66 and NPF–73 issued to Duquesne Light Company, et. al. (the licensee), for operation of the Beaver Valley Power Station, Units 1 and 2, located in Beaver County, Pennsylvania.

Environmental Assessment

Identificaiton of Proposed Action

The proposed amendments would exclude all containment isolation spring- and weight-loaded check values not subject to Type-C testing from the lift test requirements of Specification 4.6.3.1. Other tests currently specified by regulation and the Technical Specifications (TS) are not affected by these amendments.

The proposed amendments are in accordance with Duquesne Light Company's application dated June 22, 1988.

The Need for the Proposed Action

The proposed changes to the TS are needed since the lift tests can be shown to be unnecessary for the valves involved. Performing unnecessary tests only increases resource expenditures and increases occupational radiological exposure for no gain in safety.

BEST COPY AVAILABLE

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to Technical Specifications. The proposed revisions would only eliminate certain tests for these check valves, and would have no other effect on plant design or operation. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that these proposed actions would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve the containment system which is located within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiolgical plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on August 16, 1988 (53 FR 30880). no request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no signficiant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant cperation and would only continue to require that unnecessary tests be performed.

Alternative Use of Resources

These actions do not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Beaver Valley Power Station, Unit 1, dated July 1973, and the FES for Unit 2 dated September 1985.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, we concluded that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated June 22, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, Washington, DC and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 1st day of December, 1988.

For the Nuclear Regulatory Commission.

Lee H. Bettenhausen,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28636 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275–OLA and 50–323–OLA; ASLBP No. 89–586–02–OLA]

Pacific Gas and Electric Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to preside over the proceeding in the event that a remand hearing is ordered following the issuance of mandate and/or completion of any further review proceedings in *Sierra Club* v. *U.S. Nuclear Regulatory Commission*, 9th Cir. No. 87–7481 (November 30, 1988).

Pacific Gas and Electric Company

Diablo Canyon Nuclear Power Plant, Units 1 and 2
Facility Operating License Nos. DPR–80 and DPR–82

This Board is being established pursuant to the November 30, 1988 decision in *Sierra Club* v. *U.S. Nuclear Regulatory Commission* wherein the U.S. Court of Appeals for the Ninth Circuit remanded the proceeding for hearing before a licensing board to determine the likelihood and consequences of a zircaloy fire at Diablo Canyon and consider the Sierra Club's criticism of the Supplemental Environmental Assessment.

The Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555
Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555
Jerry Harbour, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 7th day of December 1988.

[FR Doc. 88–28641 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

James A. Fitzpatrick Nuclear Power Plant; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Correction

In the notice document appearing in the **Federal Register** of December 7, 1988 (53 FR 49366), make the following correction:

In the sixth full paragraph, in the second column, on page 49367, the date which reads "January 6, 1989" should be corrected to read "December 22, 1988".

Dated at Bethesda, Maryland, this 8th day of December 1988.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration and Resources Management.

[FR Doc. 88–28630 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 116 to Provisional Operating License No. DPR–13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised

the license for operation of the San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment authorizes transshipment of spent fuel from the Unit No. 1 spent fuel pool, and, taken together with Amendment Nos. 63 and 52 to Unit Nos. 2 and 3 respectively, grants authority to store the Unit No. 1 spent fuel in the spent fuel pools at Unit Nos. 2 and 3.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 24, 1988 (53 FR 23820). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environment Assessment related to this action which was published in the **Federal Register** on November 30, 1988 (53 FR 48347) and has concluded that an environmental impact statement need not be prepared because operation of the facility in accordance with this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 28, 1988, as supplemented April 25, June 10, September 23, October 18, November 10, and December 1, 1988, (2) Amendment No. 116 to License No. DPR–13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 2d day of December, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28631 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co., and San Diego Gas and Electric Co., (San Onofre Nuclear Generating Station, Unit No. 1); Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated November 7, 1988.

The proposed amendment would change the power supply for motor-operated valve MOV–358 (emergency core cooling recirculation flow to loop "C") from motor control center No. 3 (MCC–3) to the Uninterruptible Power Supply (UPS) to eliminate a single failure suseptibility in the recirculation system.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 12, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petitions for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may

be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kochner, Assistant General Counsel, and James Beoletto, ESQ., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 1st day of December 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–28634 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–112]

University of Oklahoma Research Reactor; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders authorizing the University of Oklahoma (the licensee) to dismantle the reactor facility and dispose of the component parts, and termination of Facility License No. R–53, in accordance with the licensee's application dated October 25, 1988.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By January 13, 1989, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). the Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller: petitioner's name and

telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Fred Gipson, Chief Legal Counsel, University of Oklahoma, 660 Parrington Oval, Room 213, Norman, Oklahoma 73019, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated October 25, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland, this 7th day of December 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28635 Filed 12–12–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth Fogash, (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension

Regulation A, SEC File No. 270–110

Form F–6, SEC File No. 270–270

Notice is hereby given that pursuant to the Paperwork Reduction of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted Form F–6 (17 CFR 239.36) for approval of an extension of clearance.

Regulation A is a stream-lined registration provision for small issues, affecting 326 filers at an estimated 912 burden hours per response.

Form F–6 is used by depository banks to register American Depositary Receipts of foreign companies pursuant to the Securities Act of 1933. All filings on Form F–6 are prepared and filed by a limited number of banks that act as depositaries.

Currently, 339 Forms F–6 are filed annually at an estimated one burden hour per response.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235–286 and 3235–0292), Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

December 9, 1988.

[FR Doc. 88–28667 Filed 12–12–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26344; File No. SR–DTC–88–19]

Self-Regulatory Organizations; Filing of Proposed Rule Change; The Depository Trust Company Relating to Its Automated Tender Offer Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 23, 1988, The Depository Trust Company filed with the Securites and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves the Automated Tender Offer Program ("ATOP") of The Depository Trust Company ("DTC"), as described in the DTC Memorandum dated November 10, 1988 which is attached as Exhibit 2 to DTC's filing on Form 19b–4, File No. SR–DTC–88–19.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

The proposedc rule change will automate further the manner in which tender and exchange offers can be processed through DTC's facilities. A principal feature of ATOP is the elimination of hardcopy (i.e., paper) letters of transmittal signed by DTC's Participants. In place of the signed letters of transmittal, DTC will receive electronic instructions from Participants and will transmit electronically messages containing those instructions to computer terminals in the offices of high volume tender and exchange agents. The electronic instructions received by DTC from Participant and transmitted to the tender or exchange agent will include a single character by which the Participant acknowledges its receipt of, and agreement to be bound by, the offeror's letter of transmittal. ATOP will alleviate problems arising from the use of hardcopy documents in tender and exchange offers, such as the risk of loss, delay during shipment and the expense and labor involved in the physical handling of documents. In addition, ATOP will provide agents for tender and exchange offers with an improved ability to control the processing of such offers by making a variety of information available to the agent (and to the offeror) while an offer is open. ATOP will not change current practices regarding the preparation and distribution of tender and exchange offer materials, including letters of transmittal.

The proposed rule change is consistent with the requirements of the Securities and Exchange Act of 1934 and the rules and regulations thereunder applicable to DTC since the proposed rule change will automate further the processing of tender and exchange

offers involving securities on deposit at DTC. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change enhances DTC's existing services for tender and exchange offers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed at the request of Participants who wish to maximize the electronic instructions they convey to and through DTC and after discussions with agents for tender and exchange offers. Written comments from DTC Participants or others have not been solicited or received on the proposed rule change. The DTC Memorandum attached as Exchibit 2 to DTC's filing on Form 19b–4, File No. SR–DTC–88–19, is being distributed to agents for tender and exchange offers and other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securites and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 7, 1988.

[FR Doc. 88–28670 Filed 12–12–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26346; File No. PHLX 88–37]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to French Franc Contract Specifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1988, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") proposes to change, pursuant to Exchange Rule 1013 Units of Trading and rule 1012(c) Series of Options Open for Trading, the size of the French franc foreign currency options contracts listed and eligible for trading on the PHLX. The PHLX proposes that the unit of trading respecting the French franc foreign currency options be increased to 250,000 francs from 125,000 francs presently. Additionally, the PHLX proposes to amend Rule 1034 regarding the minimum fractional change *i.e.*, minimum premium change for dealing on the Exchange on option contracts on the French franc from $.00005 to $.00002. The text of the proposed rule change is set forth below [Brackets] indicate deletions; *italics* indicates additions.

Minimum Fractional Changes

Rule 1034. The minimum fractional change for dealing on the Exchange in option contracts shall be as follows:

(i) In the case of options on stocks, one-eighth point in option contracts trading at $3.00 per share per option or higher, and one-sixteenth point in option contracts trading under $3.00 per share per option.

(ii) In the case of options on foreign currencies, $.0001 for option contracts on the British pound, $.0001 for option contracts on the German mark, $.0001 for option contracts on the Swiss franc, $.0001 for option contracts on the Canadian dollar, $.0001 for option contracts on the Australian dollar, $.0001 for option contracts on the ECU, *$.0002* [$.00005] for option contracts on the French franc and $.000001 for option contracts on the Japanese yen.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to increase the size of the unit of trading respecting French franc foreign currency options contracts from to 125,000 francs to 250,000 francs and enable market participants to more competitively transact business in this product. In recent months a number of market participants trading French franc options, as well as the PHLX Upstairs Advisory Committee, have maintained that the French franc options contract unit of trading was too small.

Currently, the French franc options contract is the smallest PHLX options contract, as measured by the dollar amount of underlying foreign currency. The increase in the size of the unit of trading in the French franc contract will bring it into a dollar range comparable to other foreign currency options contracts traded on the PHLX. In this regard, a French franc foreign currency

options contract of 250,000 francs represents a dollar value at current spot of $41,022.50 U.S., whereas the comparable ECU contract dollar value, for example, is $72,537.50 U.S., the Japanese yen contract dollar value is $49,862.50 U.S., the Canadian dollar contract value is $40,705.00 U.S., and the Australian dollar contract value is $41,055.00 U.S. Pursuant to its Rule 1012(a)(ii), the PHLX proposes to initiate trading and open French franc foreign currency options series respecting units of trading of 250,000 French francs in puts and calls with both American and European style expirations commencing on February 13, 1989. In order to prevent investor confusion the PHLX proposes not to continue to add French franc foreign currency options contract series with units of trading of 125,000 francs after the February 1989 expiration. The PHLX proposes to continue to trade those open and outstanding French franc options series with units of trading of 125,000 francs until their expiration in December 1989.

Additionally, by decreasing the minimum premium change from the equivalent of $6.25 per tick to $5.00 per tick the PHLX will enable market participants to more effectively trade and hedge their over the counter currency risk with Exchange traded French franc foreign currency options. In this regard, the Exchange understands that over-the-counter French franc currency options are usually transacted on a smaller tick basis than .00005.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to facilitate transactions in the French franc foreign currency options contracts.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 7, 1988.

[FR Doc. 88-28671 Filed 12-12-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16680; (811-3801)]

First Investors Kildoyle Fund, Inc.; Notice of Application

December 7, 1988. Q04

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: First Investors Kildoyle Fund, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on November 30, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 29, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 120 Wall Street, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On July 15, 1983, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On July 15, 1983, Applicant also filed Form N-1 pursuant to the 1940 Act and the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant does not have any assets or liabilities. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

2. Applicant is a duly organized and existing corporation under the laws of the State of Maryland. Applicant will not dissolve and intends to maintain its corporate existence under Maryland State law.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28668 Filed 12-12-88; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-16681; (812-7142)]

National Rural Utilities Cooperative Finance Corporation; Notice of Application

December 7, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an amended order under the Investment Company Act of 1940 ("1940 Act").

Applicant: National Rural Utilities Cooperative Finance Corporation.

Relevant 1940 Act Sections: Exemption requested pursuant to sections 6(c) and 6(e) from all provisions of the 1940 Act, with certain exceptions.

Summary of Application: Applicant seeks an order pursuant to sections 6(c) and 6(e) amending a prior order (Investment Company Act Rel. No. 15811, June 16, 1987, "Prior Order") exempting certain trusts ("Trust") established or to be established by Applicant, each Trust to hold a note guaranteed by the Rural Electricification Administration evidencing loans used to refinance certain borrowings from the Federal Financing Bank, from all provisions of the 1940 Act other than sections 26 (with certain exceptions), 36, 37 and (to the extent necessary to implement the foregoing Sections) 38 through 53 thereof in connection with the issuance of certificates ("Certificates") by each Trust to Applicant and the subsequent resale of the Certificates to the public by Applicant. The purpose of the requested amended order is to extend the relief granted in the Prior Order to Trusts established on behalf of certain rural telephone systems (the Prior Order contemplated only rural electric systems) and to consolidate into the requested amended order certain miscellaneous changes in the factual description of Applicant's proposal.

Filing Date: The application was filed on September 29, 1988 and a letter was submitted November 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., December 29, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Mark L. Weissler, Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3047, or Brion Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a tax exempt, not-for-profit cooperative association that was established by its members to provide them with a source of financing to supplement the loan programs of the Rural Electrification Administration of the United States Department of Agriculture ("REA"). Applicant's members are generally non-profit cooperative electric utilities and service organizations and represent 95% of the total number of such entities in the United States. Under the Prior Order, Applicant presently conducts a program ("Program") to assist rural electric systems ("Electric Borrowers") in refinancing certain borrowings from the Federal Financing Bank of the United States Treasury Department ("FFB Loans") as permitted by an amendment to the Rural Electrification Act of 1936. The FFB Loans are repaid from the proceeds of loans made by Applicant ("Private Loans"), repayment of which is guaranteed by the REA, which loans are evidenced by notes ("Private Notes") each deposited in a Trust. Each Trust's investment activities consist of receiving a single Private Note, issuing the Certificates representing the beneficial interest of the Trust, and collecting payments on the Private Note. The Certificates are issued initially to Applicant but may be resold to the public. The trust agreements governing each Trust will qualify under the Trust Indenture Act of 1939 if the Certificates are offered to the public. The trusteee of each Trust is a commercial bank having capital and surplus of at least $50 million.

2. Applicant now proposes to extend the Program to cover refinancing of FFB Loans by rural telephone systems ("Telephone Borrowers"). The legislation under which the Program was organized treats Electric Borrowers and Telephone Borrowers indiscriminately. To extend the Program, Applicant will act, in part, through Rural Telephone Finance Cooperative ("RTFC"), a cooperative of which Applicant is a member that makes loans to Telephone Borrowers. Applicant manages RTFC pursuant to a management contract and, under RTFC's charter, appoints a majority of its board of directors. Applicant combines RTFC's financial results with its own in Applicant's financial statements, as required by generally accepted accounting principals in light of Applicant's control over RTFC and the complete integration of the two entities' operations.

3. Under the Program as revised, the Trusts would be established and operate in substantially the same manner as under the Prior Order, except that in the case of a Telephone Borrower, RTFC (rather than Applicant as in the case of Electric Borrowers) would make the Private Loans the proceeds of which would be used to prepay the FFB Loans being refinanced. RTFC would derive its funds through a loan from (or borrowing guaranteed by) Applicant. Applicant would guarantee performance by RTFC of its obligations as lender. RTFC would receive the Certificates issued by each Trust holding a Private Note evidencing the Private Loan made by RTFC. Under the proposed amended order, REA would continue to provide the same full faith and credit obligation of the United States with respect to any principal and interest due on a Private Note as was provided under the Prior Order.

4. Applicant will continue to act as servicer for all Trusts, unless REA interprets applicable regulations to require that RTFC so act with respect to Telephone Borrowers, in which case RTFC will subcontract its servicing obligations to Applicant. Applicant will also guarantee RTFC's performance of its obligations as lender and as servicer or otherwise provide RTFC with credit support satisfactory to REA as permitted under applicable regulations. Given its responsibilities as servicer, Applicant will continue to sign registration statements under the Securities Act of 1933 with respect to the Certificates.

5. Applicant also proposes to amend the Prior Order to reflect the following changes in the Program:

(a) If the rate on a Private Note is fixed after a period during which it has borne interest at a variable rate, any savings theretofore realized (that is, the amount by which the interest rate it has actually borne is less than the weighted average rate on the refinanced FFB

Loans (the "FFB Rate"), will be available, as contemplated by applicable regulations, to permit fixing of a rate in excess of the FFB Rate to the extent of the savings. In no case would there be any change in the interest rates on the Certificates once they had been sold to the public.

(b) During the period when a Private Note bears interest at a variable rate, it may generally be prepaid on five days' notice rather than on 30 days notice as was stated in the application on which the Prior Order was granted. Funds deposited for prepayment of such Private Note during this period will be invested not for 30 days but only for the period between notice of prepayment and distribution to Certificateholders (a minimum of five and a maximum of 10 days). Funds will be invested only in instruments maturing before the date of distributions.

(c) Enforcement expenses and (unless REA consents in a particular transaction) offering costs for the Certificates will no longer be included in REA-guaranteed interest on the Private Notes. Instead, the servicer will be relegated to an unsecured claim for these expenses directly against the borrower, and offering costs (if REA does not permit otherwise) will be paid by the borrower at closing or financed by Applicant or RTFC for the borrower outside the refinancing transaction. Since the servicer will have no claim for these expenses and costs from the Trusts, it remains true (as stated in the original application) that payment of these costs and expenses will not reduce distributions to Certificateholders.

(d) The original application indicates that earnings on funds invested pending distribution to Certificateholders will be either paid to Applicant or returned to the borrower (or to REA to the extent of unreimbursed payments on the REA guaranty). Under the amended order the borrower and REA, and not Applicant, will receive all such earnings.

(e) While Applicant still holds the Certificates, the rate on a Private Note, once fixed, must remain so fixed until the maturity of the Private Note.

Applicant's Legal Conclusions

1. The requested amended order is necessary and appropriate in the public interest because Congress has acted to encourage prepayment of the FFB Loans with private capital, the structure proposed has been approved by REA and accommodates the government's concerns about issuance of federally guaranteed debt directly to the public and the investment activities of the Trusts will be very limited.

2. The requested amended order is consistent with the protection of investors because the limited activity of the Trusts and the extreme safety of the assets they will hold obviate the need for the complex regulatory safeguards of the 1940 Act. Finally, Applicant's proposal is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act because the Trusts' operations will not lend themselves to the abuses against which the 1940 Act is directed.

Applicant's Conditions

If the requested exemption is granted, Applicant agrees that the Trusts will comply with the following conditions:

1. To be subject pursuant to Section 6(e) of the 1940 Act to sections 26 (with the following exception), 36, 37 and (to the extent necessary to implement the foregoing sections) 38 through 53 of the 1940 Act. They will not be subject to the provisions of section 26(a)(2) of the 1940 Act to the extent such provisions are inconsistent with the servicer compensation arrangements (including the scheduled servicing fee and reimbursements for certain expenses) described in the application, which Applicant believes are fair and reasonable in light of the function the servicer undertakes.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28669 Filed 12-12-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0188]

MVenture Corp.; Application for Conflict of Interest Transaction

Notice is hereby given that MVenture Corp (MVC), 1717 Main, Dallas, Texas 75201, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1988)) for an exemption from the provisions of the cited Regulations.

MVC proposes to invest $600,000 in NYS Entertainment, Ltd. (NYSEL), 4312 Bordeaux, Dallas, Texas 75205.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because the proposed General Partner of NYSEL will be 25 percent-owned by an Associate of MVC, Mr. Raymond A. Hay. Mr. Hay is an Associate of MVC by virtue of the fact that he is a Director of MCorp, the indirect majority stockholder of MVC. His stock ownership of MCorp is de minimus.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 5, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-28652 Filed 12-12-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0298]

Southern Ventures, Inc.; Issuance of a Small Business Investment Company License

On September 30, 1988, a notice was published in the **Federal Register** (Vol. 53, No. 190 Page 38399) stating that an application has been filed by Southern Ventures, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988) for a license as a small business investment company.

Interested parties were given until close of business October 30, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06-0298 on November 30, 1988, to Southern Ventures, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 5, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 88-28653 Filed 12-12-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-101]

National Boating Safety Advisory Council; Charter Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of renewal.

SUMMARY: The Secretary of Transportation has approved the renewal of the Charter for the National Boating Safety Advisory Council.

The purpose of this Council is to advise the Secretary of Transportation with regard to major boat safety matters related to the Federal Boat Safety Act of 1971 (as recodified in Subtitle II of Title 46, U.S. Code).

FOR FURTHER INFORMATION CONTACT: Captain W. S. Griswold, Executive Director, National Boating Safety Advisory Council (G-NAB), Room 4302, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; (202) 267-1077.

Dated: December 6, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-28587 Filed 12-12-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD1 88-100]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on January 26, 1989, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Feedback on Group New York's Anchorage Management performance and the monitoring of channel 13 VHF-FM.
3. Update Kill Van Kull/Newark Bay Dredging Project.
4. Update on Navy Homeport project.
5. Discuss impact of revised Captain of the Port zones.
6. Topics from the floor.
7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (202) 668-7834.

Dated: December 1, 1988.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 88-28588 Filed 12-12-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Docket No. PE-88-47]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 4, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 7, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 24283
Petitioner: American Flyers
Regulations Affected: 14 CFR 141.91(a)
Description of Relief Sought: To extent Exemption No. 4419A that allows petitioner to conduct flight training and instruction in its approved courses of training at its satellite base located at Houston, Texas, and to conduct a pilot ground school at its facility in Farmers Branch, Texas.

Docket No.: 25671
Petitioner: Rocky Mountain Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.63(c)
Description of Relief Sought: To allow emergency helicopter hospital service without preparing the load manifest for multiengine helicopters operated by petitioner. Also, to provide for the relief of preparing a load manifest in duplicate containing information concerning the load of the aircraft.

Docket No.: 060CE
Petitioner: Fairchild Aircraft Corp.

Sections of the FAR Affected: 14 CFR 23.3(d)

Description of Relief Sought: Petition for exemption from § 23.3(d) to allow an optional cabin attendant seat.

Docket No.: 22451.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.613, 121.619, and 121.625.

Description of Relief Sought/ Disposition: To extend and amend Exemption No. 3585A, as amended, granted to People Express Airlines, Inc. (PEA), that allows PEA to (1) dispatch and airplane, under IFR, to a destination airport; and (2) list an alternate airport for that destination airport when the weather forecasts for either one or both of those airports indicate by the use of conditional words such as "occasionally," "intermittently," "briefly," or "a chance of," in the remarks section of such reports, that the weather could be below authorized weather minimums at the time of arrival, provided that the information contained in the main body of the weather reports or forecasts used by the certificate holder's dispatch center show, for each flight to be dispatched, that the weather at the destination airport and the alternate airport for that destination airport, listed in the dispatch release, will be at or above authorized weather minimums at the time of arrival. The amendment, if granted, would grant relief to ATA member airlines and any other similarly situated Part 121 certificate holders.

Grant, November 1, 1988, Exemption No. 3585F

Docket No.: 24056.

Petitioner: Aviation Methods, Inc.

Sections of the FAR Affected: 14 CFR 61.58(c)(1).

Description of Relief Sought/ Disposition: To allow petitioner's pilots to complete 100 percent of their required pilot-in-command 24-month biennial proficiency check requirements in an FAA-approved simulator for the F–27/ 227 aircraft.

Grant, November 23, 1988, Exemption No. 4997

Docket No.: 25254.

Petitioner: Omniflight Helicopters, Inc.

Regulations Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: to allow petitioner's pilots to replace medical oxygen cylinders on petitioner's helicopter after such cylinders have been depleted.

Denial, November 29, 1988, Exemption No. 4999

Docket No.: 25560.

Petitioner: Lake Mead Air, Inc.

Sections of the FAR Affected: 14 CFR 135.143(b).

Description of Relief Sought/ Disposition: To correct a typographical error in Condition No. 2 in Exemption No. 4968, that permits petitioner to operate single-engine airplanes using an FAA-approved minimum equipment list subject to certain conditions and limitations.

Grant, November 29, 1988, Exemption No. 4968A

Docket No.: 25596.

Petitioner: Air Service Center, Inc.

Sections of the FAR Affected: 14 CFR 141.35(d)(4)(i).

Description of Relief Sought/ Disposition: to allow Mr. Robert J. Larbes to be designated as petitioner's chief flight instructor without meeting certain experience requirements for such designation.

Denial, October 31, 1988, Exemption No. 4992

Docket No.: 25740.

Petitioner: Pan American World Airways, Inc.

Sections of the FAR Affected: 14 CFR 121.411(a)(1), (2), (3), and (6) and 121.413(b) and (c).

Description of Relief Sought: To allow petitioner to utilize certain highly qualified pilot flight and simulator instructors from Aeroformation for the purpose of training petitioner's initial cadre of pilots in the Airbus Industries A320 type airplane on Toulouse, Franc, without holding appropriate U.S. certificated and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121

Grant, November 29, 1988, Exemption No. 4998

[FR Doc. 88–28673 Filed 12–12–88; 8:45 am]

BILLING CODE 4910–13–M

Operating Limitations at O'Hare International Airport; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting to discuss the terms under which air carriers and commuter operators may use slots at O'Hare International Airport, including provisions for operation outside designated slot time periods, and to discuss air carrier and commuter operator schedules which will meet those conditions. The meeting is subject to a limited grant of antitrust immunity by the Department of Transportation for meeting participants.

DATE: The meeting will be held on Wednesday, December 14, 1988, at 10:00 a.m. The meeting will continue on Thursday, December 15 if necessary.

ADDRESS: The meeting will be held at the Marriott Crystal Gateway Hotel, 1750 Jefferson Davis Highway, Crystal City, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Manager, Airspace and Air Traffic Law Branch, AGC–230, Telephone: (202) 267–3491, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

In meetings held in Washington, DC, in March and April 1987, 6 air carriers serving O'Hare International Airport agreed to adjust their schedules at ORD in order to eliminate scheduling peaks and to distribute flights more evenly throughout the day, thereby reducing flight delays. In order to permit the necessary scheduling flexibility, the Federal Aviation Administration (FAA) agreed to permit carriers holding ORD slots to operate a slot outside of the half-hour time period of that slot, subject to certain limitations. Air Traffic Control (ATC) has express authority to authorize such exceptions to the High Density Rule quotas under FAR 93.123(a).

This arrangement was made formal in agreements submitted to the Office of the Secretary of Transportation and approved on May 29, 1987 (DOT Order 87–5–82). Two of those agreements, with American Airlines and United Air Lines, remain in effect.

The schedules initially approved by the FAA resulted in a depeaking of schedules which reduced operating delays and reduced ATC workload. However, the agreements did not require FAA approval of subsequent schedule changes. Since that time carriers have made incremental but significant changes to the schedules initially approved.

As a result of the effect of current operations on ATC resources in the

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Chicago area, the FAA has implemented traffic flow management procedures at O'Hare and Midway Airports on a regular basis to ensure an operationally acceptable level of arriving traffic. Also, the FAA has recently completed a System Safety and Efficiency Review of operations at O'Hare Airport and is in the process of implementing a number of the operational and procedural recommendations of that review.

In order to further improve the operational situation at O'Hare, the agency is convening a meeting to discuss the ATC authorization to schedule flights outside of designated slot time periods, the conditions that should apply to such an authorization, and the revision of air carrier and commuter operator schedules consistent with those conditions.

Public Meeting

This notice announces a meeting to discuss the terms under which air carriers and commuter operators may use slots at O'Hare International Airport, including provision for operation outside designated slot time periods, and to discuss air carrier and commuter operator schedules which will meet those conditions. The meeting is open to the public and all interested persons are invited to attend. The meeting will be held at the Marriott Crystal Gateway Hotel in Crystal City, Virginia. The meeting will begin at 10:00 a.m. on December 14, 1988, and will continue on December 15 if necessary.

The Office of the Secretary of Transportation has issued a limited grant of discussion authority and antitrust immunity for air carriers and commuter operators participating in discussions at the meeting. (DOT Order 88–12–12; December 7, 1988).

Issued in Washington, DC, on December 8, 1988.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88–28672 Filed 12–8–88; 4:38 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on January 19, 1989, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by January 12, 1989. If sufficient time is available, questions received after the January 12 date may be answered at the meeting. The individual, group or ccmpany submitting a question does not have to be present for the question to be answered. The agency will attempt to mail a consolidated list of questions submitted by January 12, and issues to be discussed, to interested persons by January 17, 1989. This list will also be available at the meeting.

ADDRESS: Questions for the January 19 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on January 19, 1989. The meeting will begin at 10:30 a.m., and will be held in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Issued on December 8, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–28659 Filed 12–12–88; 8:45 am]

BILLING CODE 28659

Maritime Administration

[Docket S–843]

Lykes Bros. Steamship Co., Inc.; Request To Exceed Its Contractual Maximum Sailing Allowance on Trade Route 13 (U.S. South Atlantic & Gulf/Mediterranean) and To Exceed Its Maximum Privilege Service Between Ports on the U.S. Atlantic and Gulf and Ports in Southwest Asia From Suez to Burma

Lykes Bros. Steamship Co., Inc. (Lykes), by letter dated December 8, 1988, has requested a one-time only increase in its maximum annual subsidized sailing authority from 48 to 49 on its Trade Route 13 (U.S. Atlantic & Gulf/Mediterranean) service; and a one-time only increase in its maximum privilege service allowance from 16 to 17 on its Trade Route 18 privilege service between the U.S. Atlantic and Gulf and ports in Southwest Asia from Suez to Burma.

Lykes advises that its vessel *Ashley Lykes*, Voyage 105, sailed outbound from the U.S. Great Lakes on a Line G (Trade Area 4) voyage in late September. While en route back to the Great Lakes, the vessel has encountered very heavy seas in the Atlantic and has been forced to substantially reduce its speed. As a result of these heavy seas, a passenger was seriously injured, and the vessel was forced to deviate to the Azores on November 30, where proper medical care could be provided. Prior to this heavy weather, the vessels's ETA at Montreal was November 25. After sailing from Azores, however, the vessel's ETA at Montreal was revised to December 6.

The vessel has continued to encounter bad weather, and as of December 8 was about 1,300 miles from Montreal. It is now impossible for the ship to meet its schedule to load the relief cargo destined for India at three Great Lakes ports (Duluth, Superior and Milwaukee), and general cargo for Alexandria at Milwaukee, prior to the closing of the Welland Canal on December 24. Recognizing this, the U.S. Department of Agriculture has agreed to allow Lykes to load this relief cargo (approximately 9,200 metric tons of canned vegetable oil and bagged food stuffs) in the U.S. Gulf. Lykes will bear the cost of moving all of the cargo from the Great Lakes to the U.S. Gulf. Because of the unusual circumstances surrounding this frustrated Great Lakes vessel call, and the need to load this cargo at an alternate port (Pensacola ETA December 16), Lykes requests a one-time only increasee in its maximum subsized

sailing authority on Trade Routes 13 and 18. Lykes advised that this Great Lakes cargo is the only cargo the vessel will be loading in the U.S. Gulf. The only other cargo to be carried on the vessel is to be loaded at Baltimore and discharged at Alexandria, Egypt. This is cargo that the Ashley Lykes was already scheduled to lift, and the call at Baltimore would, of course, be an unsubsidized deviation.

Lykes avers that this voyage would have been abandoned and the relief cargo would have probably moved foreign-flag if Lykes had not made the commitment to provide substitute service, at great additional cost. Lykes emphasis that the voyage is therefore, in reality, a Great Lakes voyage.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on December 15, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies).

By Order of the Maritime Subsidy Board.
Dated: December 9, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-28780 Filed 12-12-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 7, 1988.

The Department of the Treasury has submittee the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Laboratory Test on the Effect of Taxpayer Assistance on Compliance.
Description: IRS needs quantitative data on which to judge the effect of Taxpayer Assistance. Data collected for this study will be tabulated and analyzed to determine the effect of Taxpayer Assistance on voluntary compliance. The respondents will be a sample of taxpayers who meet the demographic profile of taxpayers contacting Taxpayer Assistance.
Respondents: Individuals or households.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Response: 4 hours 30 minutes.
Frequency of Response: On Occasion.
Estimated Total Reporting Burden: 1,850 hours.
Clearance officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-28596 Filed 12-12-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0495.
Form Number: 4506-A.
Type of Review: Revision.
Title: Request for Public Inspection or Copy of Exempt Organization Tax Form.
Description: Form 4506-A is used either to request a copy or to inspect an exempt organization tax form. It can also be used to request an aperture card of Form 990-PF.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping, 7 minutes; Learning about the law or the form, 2 minutes; Preparing the form, 17 minutes; Copying, assembling, and sending the form to IRS, 14 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 13,200 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-28679 Filed 12-12-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0469.
Form Number: None.

Type of Review: Extention.

Title: Labeling of Sulfites in Alcoholic Beverages.

Description: In a final rule published in the **Federal Register** on July 9, 1986 (51 FR 25012), the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986, published a final rule (ATF–236) (51 FR 34706) establishing the same threshold for declaration of sulfites in alcoholic beverages.

Respondents: Businesses and other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 4,787.

Estimated Burden Hours Per Response: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,159 hours.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–28680 Filed 12–12–88; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in Room 600, 301 4th Street, SW., Washington, DC on December 14 from 11:00 a.m. to 12 Noon.

The Commission will meet with Mr. Carl Howard, Deputy Area Director, Office of American Republics, for a discussion of U.S. public diplomacy policies and programs in Latin America.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: December 7, 1988.

Ledra L. Didly,

Staff Asst., Federal Register Liaison

[FR Doc. 88–28676 Filed 12–12–88; 8:45 am]

BILLING CODE 8230–01–M

VOL 53 ISS 239 DE 13 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 239
Tuesday, December 13, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday December 19, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Report of the operations review of the Division of Human Resources Management.
2. Proposals regarding a Federal Reserve Bank's building requirments.
3. Federal Reserve Bank and Branch director appointments.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a priviously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28764 Filed 12-9-88; 3:50 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, December 16, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Preemption determination under Regulation CC (Availability of Funds and Collection of Checks) regarding the funds availability laws of New Jersey. (Proposed earlier for public comment; Docket No. R-0647).
2. Cost of Federal Reserve notes in 1989.

Discussion Agenda:

3. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) implementing the Fair Credit and Charge Card Disclosure Act to require certain disclosures by credit and charge card issuers.
4. Proposed adoption of the Board's capital adequacy guidelines. (Proposed earlier for public comment; Docket No. R-0628)
5. Proposed 1989 Federal Reserve Bank budgets.
6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28683 Filed 12-9-88; 10:14 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Friday, December 16, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28684 Filed 12-9-88; 10:14 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., December 19, 1988.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED

1. Approval of minutes of last meeting.
2. Thrift Savings Plan activities report by Executive Director.
3. Status of legislative proposals.
4. Adoption of agency seal.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, or Catherine Ball, Deputy Director, Office of External Affairs, (202) 523-5660.

Dated: December 9, 1988.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 88-28736 Filed 12-9-88; 2:49 pm]

BILLING CODE 6760-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, January 4, 1989.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of December 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel.: (202) 523-5920.

Date of Notice: December 8, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-28702 Filed 12-9-88; 2:49 pm]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 12, 19, 26, 1988 and January 2, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 12

Thursday, December 15

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Promulgation of Final Rule Required by the Omnibus Budget Reconcilation Act of 1987 (Tentative)

Week of December 19—Tentative

Monday, December 19

10:00 a.m.
Briefing on Status of NUREG-1150 (Public Meeting)

Tuesday, December 20

10:00 a.m.
Briefing on Current Status of Possible Use of Substandard Components in Nuclear Power Plants (Public Meeting)
2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)

Wednesday, December 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Week of December 26—Tentative

Friday, December 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 2—Tentative

Wednesday, January 4

10:00 a.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)

Thursday, January 5

2:00 p.m.
Briefing on Regulatory Responsibilities and Schedules for the HLW Repository Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, January 6

10:00 a.m.
Briefing on Staff Actions to Reduce Testing at Power (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

December 8, 1988.

[FR Doc. 88-28763 Filed 12-9-88; 3:49 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

TIME AND DATE: Wednesday, December 14, 1988 at 2:30 p.m.

PLACE: Conference Room, 1333 H Street NW., Washington, DC. 20268-0001. Suite 300

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss the Commission decision in Docket No. C87-2.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 88-28686 Filed 12-9-88; 10:22 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 12, 1988.

Closed meetings will be held on Tuesday, December 13, 1988, at 9:30 a.m. and 2:30 p.m. An open meeting will be held on Tuesday, December 13, 1988, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8), (9)(a) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 13, 1988, at 9:30 a.m., will be:

Litigation matter.

The subject matter of the open meeting scheduled for Tuesday December 13, 1988, at 10:00 a.m., will be:

Consideration of a proposed rule change by the National Association of Securities Dealers, Inc. ("NASD") to define the term professional trading account and to prohibit NASD member firms from effecting transactions on behalf of professional trading accounts using the Small Order Execution System. For further information, please contact Katherine England at (202) 272-2378.

The subject matter of the closed meeting scheduled for Tuesday, December 13, 1988 at 2:30 p.m., will be :

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Formal orders of investigation
Litigation matters.
Consideration of *amicus* participation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2200.

Jonathan G. Katz,

Secretary.

December 12, 1988.

[FR Doc. 88-28735 Filed 12-9-88; 2:49 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 239
Tuesday, December 13, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-140-004]

Midwestern Gas Transmission Co.; Tariff Filing

Correction

In notice document 88-28145 appearing on page 49355 in the issue of Wednesday, December 7, 1988, the docket number was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 177 and 179

[OPP-260051; FRL-3384-7]

Food Additive Regulations Concerning Pesticide Residues; Procedural Regulations

Correction

In proposed rule document 88-24125 beginning on page 41126 in the issue of Wednesday, October 19, 1988, make the following corrections:

§ 177.98 [Corrected]

1. On page 41134, in the first column, in § 177.98 introductory text, in the fourth line, "date" should read "data".

§ 179.80 [Corrected]

2. On page 41139, in the second column, in § 179.80(b), in the seventh line, "pareties" should read "parties".

§ 179.95 [Corrected]

3. On page 41141, in the third column, in § 179.95(c), in the first line, "whenever" was misspelled; and in the third line, "evidence" was misspelled.

§ 179.117 [Corrected]

4. On page 41143, in the first column, in § 179.117(a), in the first line, "of the" should read "or".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59264A; FRL-34864]

Certain Chemicals; Approval of a Test Marketing Exemption

Correction

In notice document 88-27896 beginning on page 48974 in the issue of Monday, December 5, 1988, make the following correction:

On page 48974, in the third column, under **SUMMARY**, in the fourth line, "section 5(h)(l)" should read "section 5(h)(1)".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Temp. Reg. G-52]

Use of Carrier Contractor for Express Small Package Transportation

Correction

In rule document 88-26981 beginning on page 47191 in the issue of Tuesday, November 22, 1988, make the following corrections:

1. On page 47192, in the first column, in the paragraph designated "a.", in the third line, "contactors" should read "contractors".

2. On the same page, in the second column, in the paragraph designated "(a)" in the fourth line, "with" should read "within".

3. On page 47196, in the second column, under "*Texas*", in the 19th line, "McAllan" should read "McAllen".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 25034; Amendment Nos. 21-63 and 36-16]

Noise Certification Standards for Propeller-Driven Small Airplanes and Propeller-Driven Commuter Category Airplanes

Correction

In rule document 88-26887 beginning on page 47394 in the issue of Tuesday, November 22, 1988, make the following corrections

1. On page 47394, in the second column, under *B. Noise Level Standard*, in the third line, "measure the" should read "measure for".

2. On page 47395, in the second column, in the first line, "of all" should read "for all"; and in the ninth line, after "in", insert "the".

3. On the same page, in the same column, under **Analysis of the Amendments**, in the 1st paragraph, in the 16th line, "mufflers of" should read "mufflers or"; and in the 25th line, "allow" should read "allows".

4. On page 47397, in the 2nd column, under *1. Microphone Placement*, in the 2nd paragraph, in the 21st line, "certified" should read "certificated".

5. On the same page, in the third column, in the eighth line, "pilot" was misspelled.

6. On page 47399, in the third column, in the ninth line, after "16", insert "test".

§ 36.9 [Corrected]

7. On page 47400, in the second column, the heading of § 36.9 should read "§ 36.9 Acoustical change: Propeller-driven small airplanes and propeller-driven commuter category airplanes."

Appendix G—[Corrected]

8. On page 47401, in the first column, in Sec. G36.105(b), in the ninth line, after "with", insert "the".

9. On page 47403, in the first column, in Sec. G36.201(d)(4), in the first line, remove "the".

BILLING CODE 1505-01-D

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federal register

Tuesday
December 13, 1988

Part II

Department of Justice

Immigration and Naturalization Service

Department of State

8 CFR Part 217
22 CFR Part 41
Visa Waiver Pilot Program; Final Rules

VOL 53 ISS 239 DE 13 1988 UMI

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 1135-88]

Visa Waiver Pilot Program; Adjacent Islands and Transit Passengers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the current regulations on the Visa Waiver Pilot Program as provided at section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) to permit the temporary absence of aliens admitted under this program to travel to certain adjacent islands as well as to foreign contiguous territory within the 90-day period of admission. In addition, the rule is amended to authorize passengers who are in transit through the United States to avail themselves of the program, if otherwise eligible. The rule will enhance international travel, and would ease the administrative burden of carriers that are responsible for passengers in transit without visas.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Yanghe Peggy Wong, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7123, Washington, DC 20536. Telephone: (202) 633-2745.

SUPPLEMENTARY INFORMATION: The Visa Waiver Pilot Program was implemented on July 1, 1988, allowing British citizens with the right of abode in the United Kingdom to apply for admission into the United States without a visa as nonimmigrant visitors for business or pleasure for ninety days or less by arriving in the United States on carriers participating in the program. The designation of Japan is effective December 15, 1988 and the corresponding regulations are included in another part of this issue of the **Federal Register**.

First, the Visa Waiver Pilot Program regulations are amended to include for eligibility under the program, those who are in direct transit without visas, provided that they meet the eligibility criteria for admission under the program. Under regular procedure, nonimmigrant visitors for business or pleasure are permitted to present valid nonimmigrant visitors visas even if in transit through the United States. Further, the statute (8 U.S.C. 1187(a)(1)) places no limit on the minimum length of stay under the waiver program. Therefore, including in the program those in transit without visas is consistent with the procedures already in place for passengers in transit with visas. In addition to enhancing international travel, this amendment would ease the administrative and custodial burdens of carriers that are responsible for passengers in transit without visas.

Second, the regulations are amended to permit the temporary absence to adjacent islands, within the 90-day period of authorized stay under the Visa Waiver Pilot Program, as well as to contiguous territory. The amendment also includes a definition of the term "adjacent islands".

Compliance with 5 U.S.C. 533 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule will facilitate international travel and will have a favorable impact on the public and on the United States economy.

Further, the Immigration and Naturalization Service has decided to invoke the exception to the thirty-day effective date requirement of 5 U.S.C. 553(d), making the final rule effective December 15, 1988. Any further delays would seriously impede the travel of thousands of travelers to the United States.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under § 299.5 of this chapter.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Reporting and recordkeeping requirements, Passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for Part 217 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR 2.

2. In § 217.2 a new paragraph (d) is added to read as follows:

§ 217.2 Eligibility.

* * * * *

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under this program, provided that he or she meets the eligibility criteria set forth in paragraph (a) of this section.

* * * * *

§ 217.3 [Amended]

3. In § 217.3(c) the heading and the introductory text are amended by adding the term "or adjacent island" after the word "territory".

4. In § 217.3, paragraph (d) is added to read as follows:

§ 217.3 Maintenance of status.

* * * * *

(d) *Adjacent islands.* The term "adjacent islands" means Anguilla, Antigua, Aruba, Bahamas, Barbados, Barbuda, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Cuba, Curacao, Dominica, the Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Marie-Galante, Martinique, Miquelon, Montserrat, Saba, Saint-Barthelemy, Saint Christopher, Saint Eustatius, Saint Kitts-Nevis, Saint Lucia, Saint Maarten, Saint Martin, Saint Pierre, Saint Vincent and Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and other British, French and Netherlands territory or possession bordering on the Caribbean Sea.

* * * * *

Date: December 5, 1988.

Richard E. Norton,

Associate Commissioner Examinations.

[FR Doc. 88-28574 Filed 12-12-88; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 217

[INS No. 1131-88]

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Japan as a designated country under the Visa Waiver Pilot Program as provided at section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603). It will facilitate international travel, streamline and reduce the work of affected agencies, and ensure that vital national interests are protected.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Yanghe Peggy Wong, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7123, Washington, DC 20536, Telephone: (202) 633–2745.

SUPPLEMENTARY INFORMATION: The Visa Waiver Pilot Program was implemented on July 1, 1988, allowing British citizens with the right of abode in the United Kingdom to apply for admission into the United States without a visa as nonimmigrant visitors for business or pleasure for ninety days or less by arriving in the United States on carriers participating in the program.

Under the final rule published on June 30, 1988, the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, is added now as one of the countries participating in the Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Department of State Rule published elsewhere in this issue of the **Federal Register**). Section 217.5(a) is amended by adding a new sentence at the end thereof which sets forth the names of designated countries, the United Kingdom (effective as of July 1, 1988) and Japan (effective December 15, 1988). Therefore, effective on December 15, 1988, citizens of Japan shall be eligible for participation in the Visa Waiver Pilot Program. Compliance with 5 U.S.C. 533 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule will facilitate international travel and will have a favorable impact on the public and on the United States economy.

Further, the Immigration and Naturalization Service has decided to invoke the exception to the thirty-day effective date requirement of 5 U.S.C. 553(d), making the final rule effective December 15, 1988. If the Service had to wait thirty days before implementing the regulations, potentially thousands of travelers would be forced to cancel their travel plans to the United States at the height of the winter travel season for the Japanese. It is in the public interest to commence the program for the Japanese on December 15, 1988.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under § 299.5 of this chapter.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Reporting and recordkeeping requirements, Passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for Part 217 continues to read as follows:

Authority: 8 U.S.C. 1187.

2. In § 217.5, paragraph (a) is revised to read as follows:

§ 217.5 Designated countries.

(a) *Countries.* Japan (effective December 15, 1988) and the United Kingdom (effective July 1, 1988) have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

* * * * *

Date: December 5, 1988.

Richard E. Norton,

Associate Commissioner Examinations.

[FR Doc. 88–28575 Filed 12–12–88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[108.877]

Visas; Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 22 CFR 41.2(l) to bestow a benefit upon certain classes of aliens. Paragraph (l) waives the visa requirement for certain nonimmigrants applying for admission to the United States as visitors for a period not to exceed ninety days. Under established procedures, a nonimmigrant alien who wishes to enter the United States as a visitor must obtain a nonimmigrant B–2 visa. Only the United Kingdom was a designated country to receive this benefit as of July 1, 1988. Japan is added as a designated country, effective on December 15, 1988. On and after that date Japanese citizens may avail themselves of this benefit.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Washington, DC 20520 (202) 663–1205.

SUPPLEMENTARY INFORMATION: On pages 24903–24904 of the **Federal Register** of June 30, 1988 the Department of State published a final rule amending 22 CFR § 41.2. The final rule contained provisions designed to facilitate the admission of nonimmigrant alien visitors through the use of the United States Visa Waiver Pilot Program established by section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603 (section 217 of the Immigration and Nationality Act (8 U.S.C. 1187)). The Pilot Program waives the nonimmigrant visa requirement for admission of certain aliens into the United States for a period not to exceed ninety days. Under that final rule the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, is added now as one of the countries participating in the Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Immigration and Naturalization Service Rule published elsewhere in this issue of the **Federal Register**.) Section 41.2(l) is amended by adding a new sentence at the end thereof which sets forth the names of designated countries, the United Kingdom (effective as of July 1, 1988) and Japan (effective December 15, 1988). Therefore, effective on December 15, 1988, citizens of Japan shall be eligible for participation in the Nonimmigrant Visa Waiver Program. This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

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PART 41—NONIMMIGRANT CLASSES—WAIVER OF PASSPORT AND/OR VISA REQUIREMENTS

In view of the foregoing, Part 41 is amended as follows:

1. The authority citation for Part 41 continues to read:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec.109(b)(1), 91 Stat. 847; Sec. 313, 100 Stat. 3435, 8 U.S.C. 1187 and 1182.

2. Paragraph (l) of § 41.2 is revised to read as follows:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa Waiver Pilot Program.* Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act, if such a person is a citizen of a country designated as a participant in the Visa Waiver Pilot Program, who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure. Countries so designated are: the United Kingdom (effective July 1, 1988) and Japan (effective December 15, 1988).

Date: November 28, 1988

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 88-28576 Filed 12-12-88; 8:45 am]

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federal register

Tuesday
December 13, 1988

Part III

Department of Health and Human Services

Office of Human Development Services

Fiscal Year 1989 Discretionary Funds Program; Availability of Funds and Request for Applications

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office of Human Development Services

[Program Announcement No. AOA-89-1]

Fiscal Year 1989 Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program.

SUMMARY: The Administration on Aging (AoA) announces the beginning of its Discretionary Fund Program (DFP) for Fiscal Year 1989. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Pub. L. 89-73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and lists the statutory funding authority. Part II describes the programmatic priorities under which AoA solicits applications for funding for projects. Part III describes in detail the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following Part III. No separate application kit is necessary for submitting an application. If you have a copy of this announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of these activities.

DATE: The closing date for receipt of applications under this announcement is March 17, 1989.

ADDRESS: Application receipt point: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., Room 349F, Washington, DC 20201, Attn: AoA-89-1.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., Room 4260, Washington, DC 20201, telephone (202) 245-0441. For information regarding specific priority areas, please contact either Ms. Irma Tetzloff at 202/245-1268 (Priority Areas 2.2, 3.1, 3.2, and 3.3) or Mr. Alfred Duncker at 202/245-1269 (Priority Areas 1.1, 1.2, 1.3, 2.1, and 3.4).

SUPPLEMENTARY INFORMATION:

Part I—Preamble

A. Objectives of the Administration on Aging (AoA)

Consistent with its responsibilities for carrying out the Older Americans Act, the Administration on Aging has recently published a set of National Objectives in aging. These Objectives aim toward the establishment of a comprehensive system of community services that responds to the talents and needs of older persons in each and every community of the nation. Accessibility to such systems is an absolute necessity if all older persons are to have reasonable opportunities to lead independent and dignified lives in their own homes and communities for as long as possible. A statement of the AoA objectives is presented below:

Objectives for Implementation of the Older Americans Act for Fiscal Year 1989

All older people should have the opportunity to live independent, meaningful, and dignified lives in their own home and community for as long as possible today and in the future. Every community should have a system of services and opportunities to help older people serve and be served where they live. Older people, their family and friends must be familiar with the system and feel that it responds to them.

Listed below are the elements that comprise a comprehensive community system of services for older persons. These elements constitute the objectives that have been established for the Older Americans Act for FY 1989.

(1) To have a visible focal point of contact in each community where anyone can go or call for help, information or referral on any aging issue;

(2) To provide a range of options for services and opportunities that respond to the talents and the needs of older persons in each community;

(3) To assure that the options in each community are readily accessible to all older persons: the independent, semi-dependent and totally dependent, no matter what their income;

(4) To expand the commitment of public, private, voluntary and personal resources to support a system of services for older persons in each community;

(5) To assure collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in each community in the development and maintenance of systems of services for older persons;

(6) To offer special help or targetted resources in each community for the most vulnerable older persons, those most in danger of losing their independence;

(7) To assure in each community an effective referral from agency to agency concerning the needs of older persons so that information or assistance is received, no matter how or where contact is made;

(8) To assure that each community system of services for older persons provides sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) To assure a unique character for the service system for older persons which is tailored to the specific nature of the community; and

(10) To assure that each community system of services for older persons is directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

B. The AoA Discretionary Funds Program

The Discretionary Funds Program, as authorized by Title IV of the Older Americans Act, constitutes the major research, demonstration, training, education, and development effort of the Administration on Aging. The principal mission of the Title IV discretionary program is to assist in making the comprehensive community-based systems of options for older persons envisioned in the Older Americans Act—and underscored by AoA's Fiscal Year 1989 Objectives—a reality throughout the nation.

Toward this end, AoA seeks to fund projects which:

- Analyze trends and anticipate social issues that will become paramount in the future;
- Improve the effectiveness and efficiency of programs for the elderly by testing new models, systems and approaches for providing and delivering services; and
- Provide training, technical assistance, and information that will increase our ability to serve older people effectively, skillfully, and compassionately.

C. Linking Title IV Discretionary Resources to AoA's Objectives

Several of the AoA National Objectives outlined above constitute the organizing framework both for AoA's FY 1988 discretionary grant program initiatives and for the FY 1989 Priority Areas described in this Discretionary Funds Program announcement. Thus, the potential applicant is well advised to consider AoA's FY 1989 Title IV funding priorities not in isolation, but rather as part of a consistent effort to link systematically the discretionary program resources available under Title IV to the attainment of AoA's National Objectives. That linkage is demonstrated in more graphic terms by the following chart which arrays the FY 1988 AoA priority areas, and their concomitant 1988–1989 funding commitments, under the governing AoA Objective.

Fiscal Year 1988 Title IV Initiatives Responsive to AoA Objectives

FY 1988 priority areas arrayed by AoA objectives	Funding commitments	
	FY 1988	Estimated FY 1989 continuation costs
A. Targeting Resources to the Vulnerable Elderly		
Research on Indian Elderly	$494,835	0
Preventing Alcoholism Among Older Indians	204,481	0
National Aging Resource Center (NARC)—Elder Abuse	199,999	$400,000
NARC—Long Term Care Ombudsman	387,488	500,000
NARCs—Minority Aging, Rural Elderly	399,968	800,000
B. Assuring Collaborative Decision-Making		
Preventing Fire/Smoke Related Injuries	543,412	0
NARCs—Long Term Care	1,197,725	2,400,000
NARC—Health Promotion	223,008	400,000
C. Promoting State and Community Leadership		
Field Initiated Research	1,186,741	995,618
Statewide Short-Term Training	1,675,302	0
Aging Content in Professional Academic Training	2,017,015	0
Accrediation in Aging	568,399	0
Minority Training & Development	1,543,915	200,000
National Leadership Institute on Aging	326,690	500,000
SUA Leadership in Housing	542,695	588,756
D. Providing a Range of Options		
Education for Self Care	1,876,629	0
Legal Assistance	1,847,922	1,811,388
Quality Assurance	1,472,360	1,265,456
Total	16,708,584	9,861,218

As the chart shows, the Administration on Aging allocated almost $17 million in FY 1988 to new Title IV discretionary program projects in support of four (4) principal AoA Objectives:

A. Targeting Resources to the Vulnerable Elderly

B. Assuring Collaborative Decision-Making

C. Promoting State and Community Leadership

D. Providing a Range of Options

In FY 1989, the continuation costs for these projects are estimated at close to $10 million, a substantial investment of Title IV resources in AoA's national objectives. The Discretionary Funds Program priority areas presented in this announcement complement and expand upon that effort. Operating in tandem, these new and continuation projects represent a Title IV program commitment of over $16 million in FY 1989 toward the establishment or strenthening of a comprehensive system of services for older persons in every community of the nation.

D. Technical Assistance Workshops for Prospective Applicants

Workshops will be held in Washington, DC, and several other cities to provide guidance and technical assistance to prospective applicants. Please call the appropriate AoA contact person for the time and location of the technical assistance workshop you are interested in attending.

City	AoA contact person
Washington, DC	Edwin Marcus (202) 245–0441.
Boston, MA	Franklin Ollivierre (617) 565–1158.
New York, NY	Judith Rackmill (212) 264–2974.
Philadelphia, PA	Paul E. Ertel, Jr. (215) 596–6891.
Atlanta, GA	Franklin Nicholson (404) 331–5900.
Chicago, IL	Eli Lipschultz (312) 353–6503.
Dallas, TX	John Diaz (214) 767–2971.
Kansas City, MO	Richard Burnett (816) 426–2955.
Denver, CO	Clint Hess (303) 844–2951.
San Francisco, CA	John McCarthy (415) 556–6003.
Seattle, WA	Chisato Kawabori (206) 442–5341.

E. Statutory Authority

The statutory authority under which grants and cooperative agreements will be awarded through the AoA Discretionary Funds Program is:

- Title IV of the Older Americans Act, as amended (42 U.S.C. 3001 et seq.).

Part II—Priority Areas

This part contains an index of the AoA priority areas in this Discretionary Funds Program (DFP) announcement. The priority areas are referenced under the relevant AoA objective heading. Following the index, each priority area is described in detail.

Applications should be directly and explicitly responsive to the express concerns of a particular priority area. Applicants should peruse the priority area description before committing time

and resources to the preparation and submission of an application.

A. Eligible Applicants

Each priority area description specifies which organizations are eligible to apply under that priority area. Applications from organizations that do not meet the eligibility standards for the specific priority area will be screened out and not reviewed. Whatever the priority area, applications from individuals can not be considered because they are ineligible to receive a grant award under the provisions of Title IV of the Older Americans Act.

Any non-profit organization applying under this Program Announcement that is not a current DHHS grantee should verify its non-profit status by either (1) making reference to its listing in the Internal Revenue Service most recent list of tax-exempt organizations, or (2) submitting a copy of its IRS Code Section 501(c)(3) letter from IRS. A non-profit applicant can not be funded without acceptable proof of its status.

B. Available Funds

Under each priority area, AoA has estimated the number of projects to be funded and has set limits on the duration of those projects as well as on the Federal share of project costs. Applications which exceed the restriction on length of project period or request more than the limit placed on the Federal share of project costs will be screened out and not reviewed.

C. Priority Areas Indexed By AoA Objective

I. Targeting Resources to the Vulnerable Elderly

1.1 Alternatives to Guardianship
1.2 Developing Minority Elderly Agendas in National Organizations
1.3 Studies on Alcohol Abuse and Alcoholism Among the Aged

II. Assuring Collaborative Decision-Making

2.1 Community Systems Development Efforts
2.2 Prototype Health Education and Promotion Programs

III. Promoting State and Community Leadership

3.1 Gerontological Training and Development
3.2 Short Term Training and Continuing Education
3.3 Minority Management Traineeship Programs
3.4 Field Initiated Research and Demonstrations

Priority Area Descriptions

I. Targeting Resources to the Vulnerable Elderly

1.1 *Alternatives to Guardianship.* Among the most vulnerable elderly are those in danger of being placed in the legal status of guardianship. In most cases, these older individuals find themselves outside the formal system of services and cut off from the options available to others in the community.

Recent developments in the area of guardianship have shown that the current system is in need of improvement in many ways. Most importantly there is a need for less restrictive alternatives. AoA has supported, and continues to support, grants in the area of alternatives to guardianship, However, much still needs to be done in this area. Therefore, we invite organizations to submit applications which encourage the further development of alternatives to guardianship through: *research* which increases our understanding of the issues; *model projects* which demonstrate new and innovative methods and techniques for helping older people at risk of, or those currently under, guardianship; and *training* programs which teach families, professionals, and other concerned individuals about alternatives to the traditional guardianship programs.

Research programs are expected to provide information which is national in scope. Demonstrations may be Statewide or local in scope but should have the potential for replicability throughout the country. Training projects may be developed and tested locally but should be able to be replicated in other places. Demonstrations and training may involve a single project with multiple sites distributed nationally. However structured, the application must clearly demonstrate that the proposed activities will be (1) linked with the network of State Agencies on Aging and, where appropriate, their Area Agencies on Aging and (2) supportive of the community systems they are building or strengthening under the Older Americans Act. AoA will arrange for coordination among all projects funded under this priority area as well as related grants funded during FY 1988.

The following are some areas in which research, demonstrations, and/or training projects might be developed. However, applications are not limited to these areas and innovative concepts and approaches are encouraged. AoA believes that in addressing the issue of guardianship, as in other areas of service needs, communities should have a system that is sufficiently flexible to respond to an individual's special needs through a range of service options that are accessible and acceptable to that older person. This priority area is intended to develop and disseminate new knowledge and techniques that ultimately will assist communities to be responsive to the needs of older people in danger of guardianship.

1. *Early Intervention*: The National Center for Health Statistics (based on the National Health Interview Survey) estimates that approximately 5% of those 65+ have difficulty in managing money. For those 85+, the number increases to 24%. Inability to manage finances is often a reason for applying for a guardianship. Therefore, one of the most important services which can help older people to avoid guardianship is personal financial management assistance, which is designed to provide a range of services based upon the needs of the individual older person. It can help an individual to organize his finances, to pay his bills (using his own money), and to provide a representative payee.

AoA would like to examine the possibility that assistance and education, before the issue reaches the crisis stage, might reduce the level of service required, delay the need for the service or even make the service unnecessary.

This early intervention project would develop high quality community education modules which would help individuals learn to organize their basic finances. Individual assistance should be provided to insure that those older people needing more direct assistance, receive it. Much previous work has been done on more sophisticated money management issues such as financial planning but little has been done on simple issues like paying bills or balancing the checkbook. Specific target audiences might include:

- Families where one spouse handles all financial matters and the other spouse would find it difficult to take over the function in a crisis situation;
- Newly bereaved widows or widowers;
- Adult children who are caregivers of older parents; and
- Employees of financial institutions who work with older people.

This project must involve collaboration between service providers, family caregiving organizations, the appropriate State Agency(ies) on Aging, where applicable, their Area Agencies on Aging, and financial institutions in the community.

2. *Development and Testing of a National Training Model on Guardianship:* Most individuals working with older people are not familiar with the range of options available to older people when some assistance is required to continue living independently. In particular, the necessary groundwork needs to be laid for educating and training those who staff the Courts, Social/Protective Services agencies, and other appropriate organizations about alternatives to guardianship. For this purpose, applications are sought for the development and testing of a national training module which could be adapted by local communities to train a broad range of officials and others involved in planning and implementing alternatives to guardianship. While the details of guardianship vary from State to State, the needs of older wards and potential wards are similar. A national module on alternatives to guardianship would simplify the ability of communities to provide such training. It would also encourage communities to develop programs which provide alternatives to guardianship.

Applicants in this area are expected to describe a detailed dissemination and utilization plan as part of their implementation strategy to assure the use of the training modules at the community level after completion of the development stage.

3. *Use of Expert Systems:* One of the strategies currently used to support the use of alternatives to guardianship is an assessment of an individual at risk of guardianship by a multidisciplinary team. This technique insures that all aspects of the older person's situation are taken into account and allows the use of the least restrictive alternative. While this type of coordination is a very positive move toward coordination within the community, it is also expensive, requires a heavy use of staff time, and is difficult to achieve.

One alternative would be the use of expert systems on computers. These computer systems distill the issues which are important in making professional judgments and organize them in a computer. Such a system would allow a single professional to better understand the older person's total situation, consult with the appropriate other professionals and make accurate judgments. It should be very clear that the computer will support professional expertise and judgment, not replace it. Projects will not be considered which suggest decision making by computer.

Applications to conduct this type of project should include, in particular, a state of the art section on current attempts to use expert systems in the area of supportive services, and a section which shows how the proposed project will build upon that body of existing knowledge and practice.

4. *Increased Knowledge:* The lack of basic knowledge about the guardianship system, especially about guardians and wards, makes it difficult to determine the most effective means of improving the guardianship system to better serve older people. There are few answers to such basic questions as:

- How many older people currently are under guardianships? Figures ranging between 300,000 and 500,000 have been suggested.
- What causes older people to be brought into the court system?
- What are the characteristics of these older people?
- Who are their guardians and what are their characteristics?
- What happens to older people after they become wards?

A survey of several varied communities, supplemented by the use of secondary data, could help develop answers to these questions and provide the information to help plan future activities concerning alternatives to institutionalization.

Public and private nonprofit organizations, institutions and agencies are eligible to apply under this priority area. AoA anticipates that a total Federal share of up to $400,000 per year will be available to fund up to 4 projects in this priority area. The project period may not exceed 24 months. Approval of continuation requests beyond the initial 12-month budget period will depend upon a determination of the grantee's performance.

1.2 *Developing Low Income Minority Elderly Agendas in National Organizations.* This priority area is aimed at broadening the range of national organizations that are actively committed to meeting the needs of low income minority elderly. While the Administration on Aging (AoA) recognizes the importance of continuing to support organizations that have traditionally served and represented low income minority elderly, the introduction of the concerns of low income minority elderly into the agendas of national organizations will provide a much needed expanded base of resources and options for this population to draw upon.

This priority area seems especially timely as there are indications that low income minority aging concerns are being recognized by a growing number of national organizations. AoA has encouraged greater attention to the special needs of low income minority aging populations and has supported an extensive array of research, demonstration, and training projects focused on such matters as:

- Developing approaches to increase minority elderly participation in programs designed to serve the needs of older persons;
- A minority management traineeship program to increase the number of minorities in management/administrative positions in aging agencies; and
- A training program for Directors of Indian Programs under Title VI of the Older Americans Act.

Additionally, in 1988, AoA funded a National Resource Center on Ethnic Minority Aging under the joint auspices of the Center on Aging, San Diego State University and the Andrus Gerontology Center, University of Southern California.

Applications under this priority area are invited from national organizations committed to establishing or expanding an agenda of activities designed to improve the lives of low income minority aging persons. Those organizations applying under this priority area which already have an aging agenda must show how AoA support will significantly expand their ability to promote the interests of low income minority elderly.

Applicants should describe the full range of activities which will be carried out to address low income minority elderly concerns; demonstrate convincingly that those activities will result in significant national and/or community level changes in the organization's goals and operations; and show how the proposed project will have a sustained impact on the applicant organization's capacity to address low income minority aging issues, particularly at the community level. Applicants should also describe how their proposed activities will be appropriately linked with the network of State Agencies on Aging and, where applicable, their Area Agencies on Aging and with the Community systems they are building or strengthening under the Older Americans Act.

The types of project activities to be undetaken by national organizations must be linked to outcomes that demonstrate the organization's commitment to meeting the needs and responding to the talents of low income minority elderly. Those activities, include, but are not limited to, the following:

1. Developing capacity to focus the organization's activities at State and

local levels on low income minority elderly issues, i.e. special committees, offices, publications, research agenda;

2. Developing membership awareness of low income minority elderly issues, i.e. annual meeting presentations, articles in organization's journals;

3. Developing local chapter programs, in conjunctions with State Agencies on Aging and their Area Agencies on Aging, designed to meet the unique needs of low income minority elderly;

4. Developing community-based demonstration projects responsive to the needs and talents of low income minority elderly, in conjunction with State Agencies on Aging and their Area Agencies on Aging;

5. Developing or expanding national service projects to low income minority elderly, with such projects responsive to their needs, their talents, and their community and neighborhood settings;

6. Providing critical information to institutions associated with the organization's activities to increase knowledge about minority aging issues; and

7. Conducting research on minority leaderly issues or promoting such research as it relates to the organization's special area of expertise.

Eligibility to apply under this priority area is restricted to non-profit, national organizations. It is expected that up to 7 projects will be funded for up to two years with a maximum annual Federal share of $150,000 per project per year. Approval of continuation requests beyond the initial 12 month budget period will depend upon a determination of the grantee's performance and success in improving the quality of life of low income minority elders in the community where they live.

1.3 *Studies of Alcohol Abuse an Alcoholism Among the Aged.* Under the Older Americans Act, as amended, the Commissioner on Aging is authorized to support research to develop an information and knowledge base useful for the purpose of formulating public policy on behalf of elderly people. This research can, among other purposes, establish data bases which yield estimates of the incidence and prevalence of alcoholism and alcohol-related problems among older people. These studies may also generate working hypotheses concerning the etiology of alcohol problems, in the elderly population or segments of that population, including such probable causative factors as retirement and the resultant major changes in life style.

Alcoholism is America's third largest health problem, following heart disease and cancer. Acccording to the National Institute on Alcohol Abuse and Alcoholism, it afflicts 10 million people, costs 60 billion dollars, and is implicated in 200,000 deaths per year. The prevalence of alcoholism is reported to be lower among the elderly than middle aged persons, but its detection is difficult and vulnerability to harm is great in the elderly due to pharmacologic and physiologic factors. Elderly person suffering from alcohol abuse are frequently misdiagnosed and mismanaged by health care providers, social agencies and families due to the lack of understanding of the problem within this age group.

The social dynamics and epidemiological factors associated with alcoholism among older people are important areas for research because of the rapidly increasing numbers of elderly in the United States. Society is becoming more sensitive to their presence and issues related to their health and well-being. The use and misuse of alcohol by older people in the population have increased dramatically over the last 20 years with a concomitant impact on societal resources. This priority area is aimed at gaining greater understanding of these problems and their consequences.

Today AoA, as authorized by the Older Americans Act of 1965, as amended, provides funds to State Agencies on Aging in every State and most of these States also have designated a Statewide network of Area Agencies on Aging that assist communities to develop comprehensive systems of services for their elderly citizens. One of AoA's priorities is to ensure that older people have access to the needs of supportive community services that can respond to the needs of the most vulnerable older people, especially those most in danger of losing their independence, e.g., sufferers of alcoholism and alcohol abuse.

AoA recognizes that there have been efforts by several agencies and groups, over the past two decades, to address the concerns of aging and alcohol use on a national level and many avenues of research have been opened, but not fully addressed. In reviewing the literature on studies about aging and alcoholism, it is readily evident that most of what is reported is based on small studies and surveys that are neither age nor alcohol specific and the data are quite inadequate for drawing conclusions about problems in the older aged group. Studies focused on the problems that are found primarily among the aged would provide a firmer foundation for the development of policy and implementation of programs for detection, prevention, and treatment.

Acknowledging the multifaceted and complex nature of the problem area and the multidisciplinary approaches to addressing the issues, AoA invites applicants to conduct research in the following areas:

- Examine alcohol consumption patterns of the aged and their relationship to retirement, bereavement, changes in discretionary income, and other related factors.
- Examine the question: Are age-related differences in alcohol consumption patterns expressing individual behavior changes associated with the aging process, or are they reflecting historical or cultural experiences of particular age cohorts?

Applicants must provide a detailed description of a proposed study designed to investigate the given problem area; describe the significance of the proposed research in terms of how the knowledge to be gained could be used, benefits to be derived, and the potential implications for the aged population, policymakers and service providers; and develop a plan for dissemination of the results to appropriate audiences to promote widespread understanding of the problems of alcohol abuse and alcoholism among the aged population.

Public and private nonprofit organizations, institutions and agencies are eligible to apply under this priority area. AoA expects to fund up to two projects under this priority area with a Federal share of up to $125,000 per project per year, and a project duration of up to 24 months.

II. Assuring Collaborative Decision-Making.

2.1 *Community Systems Development Efforts.* The 1987 Amendments to the Older Americans Act and the parallel 1988 Title III regulations strongly emphasize the leadership and advocacy roles of the aging network—State Agencies on Aging, Area Agencies on Aging and aging service providers—in building responsive community based systems for older persons. Inherent in the process of system building is the critical role that State Agencies on Aging and their Area Agencies must play in assisting community leadership to make the best use of all programs and resources available at the community level to develop options which are readily accessible to the elderly and their caregivers.

Last year, through a series of grants to State Agencies on Aging, the Administration on Aging encouraged the development of leadership roles for

State Agencies through collaborative efforts in elderly housing. The response to the priority area by State Agencies was gratifying and showed strong interest in developing collaborative arrangements with housing related organizations at the State and community level.

The purpose of this priority area is to further encourage and support State Agencies on Aging in their efforts to foster effective collaborative efforts at the community level designed to meet the needs and respond to the talents of older Americans. These efforts should reflect defined needs and goals, with strategies and programs to meet these needs. They should result in improved coordination and more efficient use of resources from all sources—both public and private. They should contribute toward the building of a flexible system of services that enables the elderly to maintain their independence and dignity in communities throughout the State or throughout one or more planning and service areas in the State.

Applicants should focus on one or more unmet service needs particularly critical to the older population of the target geographic area of the State. Two outcomes are expected. The first is a demonstration of effective models for developing collaborative efforts by State Agencies on Aging at the State level which will have a direct and immediate impact on community systems in the State. State Agencies on Aging can play a leadership role in influencing the variety of State actions that can effect the cost, availability and types of services offered to the elderly in communities throughout the State. They can work with other State Agencies, statewide organizations representing providers in the public and private sectors, and organizations representing older persons and family caregivers, to develop a framework of collaboration which provides a responsive system of services in communities across the State.

The second expected outcome is the development of effective roles for State Agencies on Aging in encouraging their Area Agencies on Aging to work with individual communities in their planning and service area to establish new collaborative efforts essential for effective community based systems of services. State Agencies on Aging are expected to provide project funds as well as a high level of technical assistance to their Area Agencies on Aging participating in this effort. Area Agencies on Aging are expected to engage in activities which help local communities within a PSA respond to their older residents.

Only State Agencies on Aging are eligible to apply under this priority area. Applications must clearly demonstrate the collaborative nature of the proposed activities. Applications must identify the specific geographic areas of the State, their Area Agencies, where applicable, and the specific communities that will be the target of the proposed collaborative effort. To the extent possible, letters of commitment from the leadership of individual communities that will participate in the effort would be desirable.

It is expected that up to four (4) projects will be funded for up to two years with a maximum annual Federal share of $200,000 per project per year.

2.2 *Prototype Health Education and Promotion Programs.* The Administration on Aging is continuing to expand activities that assist older people in their efforts to prevent disease and promote healthy life styles. Demographic trends indicate that the older segment of America's population is growing rapidly. Increasingly heavy demands will be placed upon our health care delivery system. The American Medical Association has calculated that 55 percent of all disease, disability and death can be attributed to life style. Many of the health problems the elderly experience reflect past life styles and/or are compounded by present life styles. As we recognize these factors and their negative implications for health, our need for expanded, flexible health promotion programs becomes more important.

To encourage the development of prototype health education and health promotion programs, AoA has been promoting partnerships between health care professionals and older people that result in the older person's acquisition of the knowledge to effectively prevent disease and/or control chronic conditions. Since 1984, the AoA/U.S. Public Health Service National Health Promotion Initiative has been the primary vehicle for demonstrating programs that promote preventive health care through education. Past activities supported under the AoA Discretionary Grants Program have complemented efforts in the area of disease prevention and health promotion.

The 1987 amendments to the Older Americans Act present AoA with the opportunity to significantly increase these efforts. Section 422(a)(2), which was enacted with these amendments, authorizes AoA to support the design and development of prototype health education and promotion programs for older people. In addition, the 1988 U.S. Surgeon General's Workship on Health Promotion and Aging identified several areas for potential AoA action. This priority area has been developed in response to section 422(a)2 and the Surgeon General's Workshop recommendations.

The purpose of this priority area is to solicit applications which propose efforts by institutions of higher education (as described below) in collaboration with State Agencies on Aging, together with their Area Agencies on Aging, along with other appropriate public and private agencies, to design and development of prototype health education and promotion programs which may be adopted by States and their Area Agencies on Aging. Applications submitted under this priority area must propose collaborative projects to develop models for subsequent replication by States of effective educational strategies for identifying and encouraging the use of appropriate techniques for recognizing the symptoms of and/or preventing disability and disease; recognizing the early warning signs of disease and chronic conditions; and identifying solutions for problem behaviors that contribute to unhealthy life styles. Projects should be designed to (a) encourage older people to recognize the importance of assuming an active role in the management of their own health care and in identifying and seeking appropriate medical care when it is indicated and/or (b) train health and social service professionals to assist older adults and their families in the area of health promotion.

Applicants are encouraged to focus on one or more of the following topical areas:

(1) *Mental Health and Depression:* Applicants should develop programs which are accessible and acceptable to older persons which promote preventive and early intervention strategies for identifying depression with attention to drug induced symptoms and physical causes. Programs should be based on strategies to foster positive adaptation to illness and other later-life crises and the appropriate use of the range of existing formal services and informal caregiving.

(2) *Nutrition Education:* Applicants should develop programs which assist State Agencies on Aging in carrying out their mandates under the Older Americans Act to conduct nutrition education as part of the Title III congregate and home delivered meal program. Such strategies should be

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directed to motivating older people to make positive behavioral changes in their cooking and eating habits. Strategies must be based on behavioral objectives which are clearly related to the intended results.

(3) *Injury Prevention:* Applicants should develop strategies that promote collaboration among families and community organizations that interact with older adults in educating older people and their families about risk factors, resources for modification of living environments and the importance of injury prevention.

(4) *Smoking Cessation:* Applicants should develop strategies to encourage State and local agencies and public and private organizations to conduct educational campaigns aimed at older persons which incorporate strong smoking cessation messages based on the principle that it is never too late to stop smoking. Such campaigns would be particularly appropriate to discourage smoking in areas where older persons are likely to frequent. Projects should be directed toward educating older persons, professionals, and caregivers about the benefits of smoking cessation for older persons and on how to establish smoking cessation programs for older persons.

(5) *Hearing Impairment:* Applicants should proposed programs to reach older persons who may suffer from hearing impairment in order to educate older persons about the identification of the symptoms of hearing impairment and how to seek a proper evaluation and diagnosis. Programs also should provide information to older persons and their families about technologies available to relieve hearing impairments.

(6) *Physical Fitness and Exercise:* Applicants should develop model courses and inservice training programs that educate older people, their families, and professionals about the benefits of physical activity for the aging. Applicants should explain how their proposed activities will be coordinated with existing community physical fitness programs for persons of all ages.

(7) *Alcoholism:* Applicants should propose to train formal and informal caregivers; develop alternative models of detection and intervention; design public education strategies for prevention of late onset alcoholism; and address the special problems of older Native Americans.

Projects may be national or statewide in scope. Proposed activities must be the development and testing of prototype or model health education and health promotion programs which are appropriate for subsequent adoption and replication by the State or in other States. Projects must involve collaboration with the State Agency(ies) on Aging and involve State health promotion and aging coalitions and other appropriate national, statewide aging and/or professional organizations and health care agencies. Applications should identify all organizations that will collaborate on the project and include a description of the nature and scope of that collaboration. Evidence of such collaboration should be clearly presented, with the roles of all participants defined. Written assurances must be included with the application.

Applicants should be aware that AoA has funded a National Aging Resource Center on Health Promotion and Wellness at the American Association for Retired Persons. Projects funded in this priority area will be expected to work cooperatively with this Center and to coordinate their activities in areas where both are active.

Eligible applicants under this priority area are limited to public or private institutions of higher education with graduate programs that have capability in the following areas: public health; medical science; psychology; pharmacology; nursing; social work; health education; nutrition; or gerontology. Schools of public health are especially encouraged to submit applications under this priority area and will be given special consideration. Awards will be made after consultation with the appropriate State Agency(ies) on Aging to assure that the proposed project is compatible with their health promotion and education program strategies. AoA plans to fund up to seven projects under this priority area. Federal share may be up to $150,000 per project and a duration of up to 17 months.

III. Promoting State and Community Leadership

3.1 *Gerontological Training and Development.* Recent studies and reports funded by the Administration on Aging and others have identified a critical need for faculty development in gerontology and geriatrics. These studies indicate that all health and human services professional schools should have faculty with expertise in aging to teach their students about the aging process. They also should be able to assume leadership roles in training personnel to participate in community based service systems for older persons. Course offerings by academic institutions are strongly influenced by the formal preparation, research interests and departmental teaching orientation of new and tenured faculty.

These same studies also point to the need for specific faculty and institutional development at minority institutions to increase the numbers of minorities prepared for employment in the field of aging. Additionally, the Administration on Aging is interested in capitalizing upon the experience of established gerontological programs to work with and increase the capacity of less developed programs.

In response to the cited needs in the field, the Administration on Aging is proposing three areas for submission of applications under this priority area.

Faculty Development. The Administration on Aging is soliciting applications to conduct training activities in two categories: in-service faculty development and statewide or regional workshops.

1. Applications are requested for in-service faculty development programs that have the following characteristics:

- Involve at least 10 persons with instructional or faculty appointments in academic institutions or campuses outside the applicant organization.
- Have structured intermittent or continuous programmatic activity for participants for at least two academic semesters or three academic quarters.
- Require written commitment from participants and their academic chair or dean to develop or enhance teaching of aging concepts within one year of completion of their training.

2. Applications are requested for programs that support statewide or regional workshops for development of teaching faculty in human service and related discipline and professional instructional programs. Workshop topics must focus on one or more of the following areas:

- Course or content development in core topical area of psychology, biology/physiology or sociology of aging.
- Course or content development in applied knowledge areas of counseling, mental health, community service development for the elderly.
- Course or content development in planning, administration, management and evaluation of aging social service programs and community/in-home service system development.
- Course or content development in health promotion, health services, long-term care management for non-health care professionals.

Faculty and Institutional Development in Minority Institutions. Many institutions of higher education with predominately minority enrollments, including the Historically Black Colleges and Universities (HBCUs), could benefit from assistance in developing and

upgrading gerontological training programs. In particular, assistance is needed in the areas of faculty and institutional development.

The Administration on Aging solicits applications from institutions of higher education that place an emphasis on faculty development in efforts to establish and/or upgrade gerontological training programs. Programs can use the team approach in working together or a mentoring approach. In addition, applications are invited for the initiation of nationwide or region-wide faculty exchange programs between developing geronology programs at HBCUs, other predominately minority institutions, and comprehensive, established gerontology programs. This exchange program is designed to afford faculty at minority and non-minority institutions opportunities to transfer knowledge and share experiences and information in their areas of expertise.

Applications should include the following:

(1) Written assurance from each of the institutions involved in the collaborative effort regarding the types of activities planned and how they will be carried out.

(2) Written commitment from an appropriate official of the developing institution that the aging training program will continue after the funding period.

(3) Written commitment and plans from faculty participants and an appropriate official from the institutions to develop and/or enhance teaching of aging concepts within one year of program completion.

Curriculum Replication Consortium Program. For several years, the Administration on Aging has funded projects to develop gerontology curricula specifically for certain professions and paraprofessions that impact upon the lives of the elderly. Recent studies indicate that there continues to be a need to include aging content in the academic schooling of students preparing for employment in these professions and paraprofessions. Professionals and paraprofessionals who would benefit from specialized gerontological content in their career preparation include, physicians, psychiatrists, dentists, dental hygienists, pharmacists, podiatrists, audiologists, other allied health professionals, planners, clergy, and home economists.

The Administration on Aging is interested in disseminating curriculum in which gerontological knowledge has been integrated into the regular training of various professionals and paraprofessional disciplines. These projects will involve using the expertise of those institutions that have successfully developed gerontology curricula to collaborate with other schools that have little or no experience in developing curricula.

Applications are solicited from institutions of higher education, or national and state professional organizations that have demonstrated experience in curriculum development to work with three to five institutions interested in developing gerontology programs of instruction. The curriculum should focus on aging concepts and best practices for working with the elderly. Each application should include the following:

(1) A statement clearly specifying the profession or paraprofession being targeted.

(2) Written assurances from the institutions that will be involved in the collaborative arrangement.

(3) Evidence that the collaborative effort is based on a documented need for content in the profession targeted as well as a need for technical assistance by the institutions involved.

AoA plans to fund up to seven projects under this priority area with a Federal share of up to $150,000 per project and a project duration of up to 17 months. Applicants are encouraged to develop close linkages with State Agencies on Aging as well as other relevant professional organizations.

3.2 *Short Term Training and Continuing Education.* Applications are requested from State Agencies on Aging, State and national professional and aging service organizations, academic institutions and other non-profit organizations with training missions, to develop proven programs and materials for specialized training of professionals and paraprofessionals who directly impact the quality of life of older persons. Applications are sought which focus on short term and continuing education and training for groups of individuals who perform the same or similar functions or roles in serving the elderly, regardless of whether they share previous formal education in the same discipline or employment under the same professional or paraprofessional category.

Applicants must give explicit reasons why the need for training is not currently being met, and why Federal support will enable the applicant to overcome obstacles that cannot be met through allocation of existing local resources. Support will not be provided for applications which primarily seek AoA funding for existing training programs or replication of training curricula available through other sources.

Applicants must also indicate their awareness of funded, on-going Federal training projects related to the content area proposed, and how their application differs from those projects. To the extent possible, applicants should draw upon existing successful curricula and materials as they develop their curricula and materials. It is suggested that applicants contact the appropriate AoA funded National Resource Center if their training touches upon that topic area (e.g. long-term care, elder-abuse, ombudsman, health promotion, rural, minorities). Information on current projects and the National Resources Centers may be found in the AoA Compendium of Current Projects (write: Office of Program Development, AoA, 330 Independence Avenue, SW., Washington, DC 20201).

Applications are encouraged which:

(1) Focus on preparation of persons performing key roles in developing community and in-home supportive services for frail elderly.

(2) Emphasize preparation of minority personnel and individuals working with minority older persons.

(3) Include cost-sharing of individual training events with recovery through employing agency or participant payment of on-site costs.

(4) Involve applicable State Agencies on Aging in preparation and implementation of project design to assure compatibility of the proposed programs with their strategies and those of their Area Agencies on Aging, as appropriate.

(5) Have concrete plans for continuation of post-grant training activity.

(6) Involve representation of trainees and employers in development of training objectives, content and material preparation.

(7) Emphasize competency-based skill development as learner objectives.

(8) Use appropriate, cost-effective, and tested technology for delivery of training.

(9) Include post-training follow-up activity to reinforce and evaluate utilization of training content.

(10) Have dissemination plans for both professional and practice communities at the State and national levels.

(11) Include information and distribution of reference material during training sessions that identify and explain the functions and services of the Older American Network.

Low priority will be given to applicants which request support for:

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(1) Purchase of computers and audio-visual equipment unless a very strong rationale is provided as to why they are necessary and cost effective.

(2) Trainee stipend and expense support, except for low-income paraprofessionals. (If support is requested for trainee costs, an explanation must be given as to how the applicant expects to continue post-grant training without further AoA support).

(3) Development of new training curricula and materials unless evidence can be provided that no existing materials can be adapted, revised, modified, or supplemented with the consent of the original developer if not in the public domain.

(4) Development of training programs for personnel working in Federal programs which have provision for administrative or discretionary support of training, or in which the training proposed is mandated by State or Federal law. Training which include persons involved in such programs must indicate evidence of cost-sharing and involvement by responsible program agencies or their contractors and grantee, and identify in the application appropriate Federal program representative at the State or Regional Office level.

AoA expects to fund up to four projects under this priority area, with a Federal share of up to $100,000 per project, and a maximum duration of up to 17 months.

3.3 *Minority Management Traineeship Programs.* The Administration on Aging (AoA) is interested in funding special training projects to increase the number of qualified minorities in key management/administrative positions in State and Area Agencies and other agencies and organizations which impact on the elderly. Applications are solicited from State Agencies on Aging, Area Agencies on Aging where the proposal has the endorsement of their State Agency on Aging, educational institutions, Indian Tribal Organizations funded under Title VI of the Older Americans Act, and other appropriate aging related organizations to participate in the Minority Management Traineeship Program. The objective of this program is to increase the professional credentials of minority trainees to help these individuals make the transition from a staff level position to a managerial/administrative position.

The program is designed to assist highly motivated minority professionals with advanced degrees or persons with a bachelor's degree and several years of significant prior aging program experience to work in settings where they can serve as trainee in a managerial or administrative position. It is hoped that training experience will either result in the permanent placement of the individual as a manager, supervisor or administrator in the host organization providing the training experience or will equip participants in the program to be hired in comparable positions in other agencies or institutions upon completion of the training experience. Trainees selection should be based upon a strong commitment to work in the field of aging.

Applicants should seek commitments from host agencies who are willing to provide a varied work experience with ample opportunity for the trainee(s) to assume a managerial role. Trainees should be given on-the-job instruction, support, counseling, and feedback about work performance. The grantee organization under this priority area must be in a position to provide administrative support to trainees and host institutions, on site monitoring of the work experience on a periodic basis and assistance in the placement of trainees once the training experience is completed.

Applications should contain information about the host agencies, procedures for selecting and recruiting trainees, a description of the traineeship itself and information about training and supervision associated with the traineeship. Applicants must include a plan for assuring placement of trainees in a management or administrative position in an organization which serves older persons upon completion of the training program.

The level of Federal financial participation in projects under this priority area is somewhat limited; therefore, care should be taken to assure that stipends are commensurate with the cost of living in a particular geographic area and the qualifications and experience of a particular trainee. Applicants should endeavor to obtain other financial support for the trainee program. Host agency cost sharing is strongly encouraged.

AoA expects to fund up to three projects under this priority area with a Federal share of up to $200,000 per project, and a project duration of up to 17 months.

3.4 *Field Initiated Research and Demonstration Projects.* The establishment in every community of a comprehensive and coordinated community-based system of services for older persons has long been the cornerstone of the Older Americans Act and, in turn, the principle goal of the Administration on Aging. The 1987 Amendments to the Act have reinforced the priority placed on developing and implementing effective community service systems, while stimulating renewed attention to the creation of community focal points for achieving optimum colocation and coordination of services for older individuals. These two policy themes were underscored in 1988 by the Administration on Aging through the issuance of regulations for the Implementation of Title III of the Older Americans Act. The emphasis on building community based systems of care was given even further prominence on September 1, 1988, as the Administration on Aging published a set of National Objectives for Implementation of the Older Americans Act for Fiscal Year 1989. These objectives embody ten (10) specific elements, all of which are components of a comprehensive community system of services for the elderly.

In the past several years, the Administration on Aging has provided Title IV discretionary program resources for projects focused on community service systems to advance our knowledge and/or to test new approaches in this critical area. This priority area represents a further commitment of R&D resources, but for research and demonstration projects that reflect the heightened policy and program context for community service system changes resulting from the 1987 legislation and the new Title III regulations referred to above. This priority area addresses the leadership, organizational change, and policy reform issues at stake in creating community-based systems of services for the elderly. It is directed toward determining:

- Through policy-oriented research, whether and how these recent Federal legislative and regulatory policy decisions are being translated into practical reality at State and local levels. The research should relate the changes being made in terms of the *FY 1989* AoA Objectives for Implementation of the Older Americans Act, a copy of which has been reproduced in Part I of this Announcement.
- Through manpower research, the types of professional and paraprofessionals most critical to a viable community service system and what the supply and demand issues are for those occupations.
- Through program-level demonstrations, the kinds of community service system reforms which are required for the establishment of a comprehensive service system responsive to the needs of their older

citizens. Project activities should be fully documented as to the types and scope of reforms made, the problems encountered, the results achieved and the degree to which they help to implement one or more of the *FY 1989 AoA Objectives for Implementation of the Older Americans Act.*

All State, public and private nonprofit organizations, institutions, and agencies are eligible to submit an application under this priority area. Because the priority area has great relevance to State Agencies on Aging and their Area Agencies on Aging, all applications proposing activities which focus on specific geographic areas (a community, an area, a State, a selected group of States) must provide clear evidence of consultations with the leadership of the appropriate State Agency(ies) in the development of the proposal. Applicants are advised that, prior to funding decisions, AoA will consult with the cognizant State Agency(ies) on Aging.

AoA expects to fund up to three (3) projects under this priority area, with a Federal share of up to $150,000 per project per year, and a project duration of up to two years.

Part III—General Information and Guidelines for the Application Process and Review

This part contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal. General guidelines on applicant eligibility are provided in Part I. Specific guidelines are provided in Part II under each priority area.

A. General Information

1. Review Process and Considerations for Funding

Within the limits of available Federal funds, AoA makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this announcement. The following steps are involved in the review process.

a. *Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Screening:* To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in Section D below, *will not* be reviewed and will receive *no* further consideration for funding.

c. *Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Section G, below, by qualified persons from outside the Federal government and knowledgeable non-AoA Federal Government officials. These expert reviewers' scores and judgments are the primary basis for making award decisions.

d. *Other Comments:* AoA solicits comments from: other Federal Departments, Federal Regional Office staff, interested foundations, national organizations, specialists, experts, and State Agencies on Aging. These comments are considered by the Commissioner on Aging in making funding decisions.

e. *Other Considerations:* In making the funding award decisions, the Administration on Aging will pay particular attention to applications which focus on or feature: (1) Ethnic and/or racial minority populations and (2) a programmatic focus on those in greatest economic and social need.

Final decisions will also reflect the equitable distribution of assistance among: geographical areas of the nation, rural and urban areas, and ethnic populations. The Commissioner on Aging also guards against wasteful duplication of effort in making funding decisions.

f. *Other Funding Sources:* AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

g. *Decision-Making Process:* After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DCGM 3–785).

Timeframe: Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be as long as six months. This time is required to review and process grant application.

2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications under this program announcement is March 17, 1989. Applications must be either sent or hand-delivered to the address specified in Section D, below.

Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the mailing address on or before the deadline date; or

2. Sent before midnight of the deadline date and received in time to be considered during the competitive review process. Applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier or from the U.S. Postal Service as proof that the application was sent by the deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadline are considered late applications. The Acquisition and Assistance Management Branch will notify each late applicant that its application will not be considered in the current competition.

AoA may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail or when AoA determines an extention to be in the best interest of the government. However, if AoA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

C. Grantee Share of the Project

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Successful applicants must contribute $1 secured from non-Federal sources, for every $3 dollars received in Federal funding. The grantee share amounts to 25% of the entire project cost.

There is one exception to this cost sharing formula. Applications originating from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by section 510(d) of Pub L. 95–134, which requires the Department to waive "any requirement for local matching funds under $200,000" for these territories.

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred *direct or indirect* costs, third party in-kind contributions, and/or grant related

income. AoA strongly encourages applicants to propose a grantee share which is more than 25% of the project costs. AoA also encourages applications where the matching requirement will be met in cash (as opposed to in-kind contributions) from non-Federal funding sources.

If the required non-Federal share is not met by a funded project, AoA will disallow any unmatched Federal dollars. Therefore, applicants should be sure of any amount proposed as match before including these funds in their budgets.

D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. Applications which fail to meet one or more of the criteria described below will *not* be reviewed and will receive *no* further consideration for funding. Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. The application must include a completed SF 424 Application Form with an original signature of an authorized certifying representative of the applicant institution;

2. The application must *not* exceed forty-five (45) double-spaced pages (not single or space-and-a half) exclusive of required forms and assurances. The following documents are excluded from the 45 page limitation: Standard Forms (SF) 424, 424A (including up to a three page budget justification) and 424B, proof of non-profit status, and indirect cost agreements. Limits within the forty-five (45) page application requirements are:

—Summary description (one page)
—Narrative (not to exceed thirty pages)
—Capability statement (not to exceed three pages including a one page organization chart)
—Up to 3 individual vitae not to exceed two pages each, and;
—Letters of commitment verifying readiness to participate in the project and describing specific commitments. (Letters that merely endorse the proposed project will not be given to reviewers.)

3. Applications must be postmarked by midnight, March 17, 1989, or hand-delivered by 5:30 p.m. on March 17, 1989 to the following address: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., Room 349F, Washington, DC 20201, Attn: AoA–89–1.

4. Applications must meet all eligibility requirements specific to the priority area under which they are being submitted including type of organization, duration of project, and maximum Federal funding to be requested.

Under No Circumstances Will Applications That Do Not Meet These Screening Requirements be Assigned to Reviewers.

E. Funding Limitations on Training Costs

Federal support for individuals who receive training within the project budgets of organizations funded under this announcement is subject to the following limitations:

1. Total support for any single individual enrolled in an academic program related to the grant cannot exceed $1,500 per semester of undergraduate study or $2,500 per semester of graduate study including: stipend, tuition, fees, books, etc.

2. Stipend, travel and per diem costs for in-service and continuing education activities are limited to low-income or minority individuals who are unemployed, self employed, or employed by non-profit community and tribal organizations providing direct services to older persons.

3. Federal, State and local employees, and service providers supported by Federal programs are not eligible to receive individual trainee support.

F. Funding Limitations on Indirect Costs

1. Training projects awarded to institutions of higher education, hospitals, and other non-profit institutions, are limited to a Federal reimbursement of indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. See Section K–2, Item 6j.

2. For all other applicants, indirect costs may be requested if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency. If a negotiated indirect cost rate is not currently established, in the interests of economy and efficiency we ask applicants to charge all costs as direct costs. If an award is made, the new grantee can then begin negotiations with DHHS for an indirect cost rate agreement.

G. Evaluation Criteria

Applications which pass the screening will be reviewed by a panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Based on the specific programmatic considerations indicated in the individual priority area, reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Need, objectives, and expected benefit: 30 points

a. Is the need clearly and specifically described, related to the priority area and supported by documentation?

b. Are the needs of low income and minority elderly included and discussed?

c. Are the objectives clearly stated, justified, and related to the problem area and stated need?

d. Is the state of the art, as discussed by the applicant, relevant to the proposed project, complete and up to date? Are references included?

e. Are the expected project benefits and/or results clearly described and related to the objectives of the project? Are they quantifiable and realistic? Will they result in changes of direct benefit to older people?

2. Methodology and Approach: 35 points

a. Does the approach have a logical and detailed plan for accomplishing the objectives of the project?

b. Does the proposed approach offer a reasonable prospect of success in achieving the project's objectives and expected benefits/results? Is it likely to work; are there any potential weaknesses in this approach? Are there any unnecessary or inappropriate objectives, tasks or sub-tasks?

c. Is a time-line chart given? Are the time sequences, including start and ending dates for objectives and tasks clearly identified? Are they logical in terms of their order and placement?

Applications for *demonstration* projects are expected to include an evaluation component as part of their methodology/approach. That evaluation component will be reviewed in terms of the following elements:

a. Are the criteria for evaluation linked to the objectives and expected benefits/results of the project?

b. Are the evaluation measures and instruments appropriate, practical and complete?

c. Will an outside evaluator be used to perform the evaluation?

3. Dissemination and Utilization: 10 Points

a. Are the products described in terms of potential use?

b. Do the dissemination and utilization activities go beyond the distribution of written materials?

c. Are the audiences for the products carefully chosen and described? Are the audiences likely to use the products?

d. Are networking techniques clearly and practically discussed? Are potential users involved early in the project?

e. Are the activities described in the plan practical, complete, and appropriate?

4. Level of Effort: 25 points

a. Is the project management plan adequate to assure appropriate control and oversight? Is a member of the applicant organization responsible for overall project management?

b. Are the number of people and allocations of time adequate to carry out the proposal effectively and efficiently? Is the staff chart consistent with the project plan expressed in the Methodology/Approach section?

c. Are the key staff qualified to do their assigned tasks? Are consultants and advisors used appropriately? Is the use of volunteers proposed and are they to be used appropriately with supervision and support from project staff?

d. Has the applicant identified and secured the commitment of organizations needed to carry out this project effectively?

e. Does the budget justification adequately describe the resources necessary to conduct the project? Is the budget reasonable as measured against the intended results?

f. Are the authors of the proposal, their relationship with the applicant agency and their intended role in the project, if any, identified?

H. The Components of an Application

In order to expedite the processing of applications, we request that you *adhere to the following instructions exactly.* Each application package should include:

1. A copy of the *Check List of Application Requirements* (See Section L, below) with all the completed items checked.

2. An original and two copies of the application, including:

- SF 424, Application for Federal Assistance, SF 424A (Budget) and SF 424B (Assurances). The original copy of the application must have an original signature in item 18d on the SF 424.
- Proof of non-profit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Budget justification not to exceed three pages;
- Project summary description (one page);
- Program narrative (not more than 30 pages, double-spaced);
- Organizational capability statement including a 1 page organization chart (3 pages, double-spaced maximum);
- Letters of Commitment.

Each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be sequentially numbered. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

I. Communications with AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in *ALL* subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Acquisition and Assistance Management Branch by telephone at (202) 245–9016.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are to be advised that, prior to reaching a decision, AoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will been notified as soon as possible of the acceptance or rejection of the application.

J. Background Information and Guidance for Preparing the Application

1. Current Projects and Previous Project Results.

In the Program Narrative of the application (see Section K below) applicants are expected to demonstrate familiarity with recent and ongoing activity related to their proposal. To insure that information about AoA supported discretionary grant projects is conveniently available, AoA has disseminated this information widely. Source materials include:

a. For *Current AoA Projects:* A compendium of recently funded Title IV discretionary projects for FY 1987 and FY 1988 may be obtained by writing: Discretionary Project Compendium, Office of Program Development, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

The information from the compendium is also included in *AgeLine (see below)*

b. *For Completed Project Information:* Copies of all AoA discretionary grant final reports and printed materials are sent to: Project SHARE, an abstract clearinghouse on human services issues; The National Technical Information Service (NTIS), an abstract clearinghouse and document source for Federally sponsored reports; AgeLine, a bibliographic database service sponsored by the AARP; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information use the following addresses and telephone numbers:

Project SHARE, P.O. Box 2309, Rockville, MD 20852, (301) 231–9539.

National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4600.

AgeLine Database, BRS Customer Services, 1200 Route 7, Latham, NY 12110, (800) 345–4277.

Acquisition Unit, Library Programs Service, U.S. Government Printing Office, North Capital and H Streets, NW., Washington, DC 20401, (202) 275–1070.

2. Demographic Information

Two publications which can help applicants to find demographic information on older people are:

a. *The Guide to 1980 Census Data on the Elderly* will aid applicant in using published Census data. Write to: Guide to 1980 Census Data on the Elderly, Administration on Aging, 330 Independence Ave., SW., Washington, DC 20201.

b. *Aging America* contains a wide range of statistical information on older people. For copies, write to: American Association of Retired Persons, 1909 K Street, NW., Washington, DC 20049.

3. Dissemination and Utilization

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination which should be considered in developing your application:

- The most widely utilized projects make dissemination and utilization a central aspect of the project not a peripheral one,
- Dissemination starts at the beginning of a project not upon completion of the final report,
- Potential users should be involved in planning the project if possible,
- Products developed should be prepared with the needs of potential users in mind,
- Dissemination is a notworking process,
- At a minimum, dissemination should include sending out final products and making presentations at conferences,
- Coordination with other related projects may increase the chances of your products being used.

K. Completing the Application

Forms SF 424, SF 424A, and SF 424B have been reprinted for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the **Federal Register** announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of these forms have been provided as part of this announcement. These samples are to be used as a guide only. Please submit your application on the blank copies. When specific information is not required under this program, N/A (not applicable) has been preprinted on the form. All items which are not to be completed have been shaded.

Each copy of the application *must* contain Forms SF 424, SF 424A, and SF 424B. Prepare your application in accordance with the following instructions:

1. SF 424, Cover Page:

Complete only the items specified in the following instructions:

Top Left of Page. Enter the number of the priority area under which the application is being submitted in the box provided.

Item 1. Preprinted on the form.

Item 2. Date application submitted to AoA and applicant's control number (if applicable).

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number of the applicant organization as assigned by the Internal Revenue Service.

Item 7. Enter the appropriate letter in the space provided.

Item 8. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. The title should not exceed 10 to 12 words and 120 characters including spaces and punctuation. It should not repeat the title of the priority area or the name of the applicant institution.

Item 12. Leave blank.

Item 13. Enter the desired start date for the project, beginning on or after July 1, 1989, and the desired end date for the project. Projects are generally for 12 months, 24 months, or for the duration specified in the priority area description. Ensure that the duration of the project does not exceed the limitations indicated in the priority area description.

Item 14. List the applicant's Congressional district and any District(s) affected by the program or project.

Item 15. All budget information entered in these items should cover: (1) the total project period if that period is 17 months or less or (2) the first twelve months if the proposed project period exceeds 17 months.

The applicant should show the Federal grant support requested under sub-item 15a. Sub-items 15b–15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be included on appropriate lines as applicable. It is important that the dollar amounts entered in sub-item 15b–15e total at least 25 percent of the total project cost (total project cost is equal to the requested Federal funds plus funds from non-Federal sources).

Check: Does all information entered in Items 15a to 15f over (1) the total project period if that period is 17 months or less or (2) the first twelve months if the proposed project period exceeds 17 months.

Item 16. Preprinted on form.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form is designed so that application can be made for funds from one or more grant programs. Sections A, B, C, and D, should include the Federal as well as non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year if the proposed project exceeds 17 months.

Section A—Budget Summary

This section includes a summary of the budget. On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Under column (5) enter the total requirements for funds (both Federal and non-Federal) by object class category.

A separate *budget justification* should be included to fully explain and justify major items, as indicated below. The budget justification should not exceed three typed pages and should immediately follow SF 424 A.

Line 6a—Personnel: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h., Other

Justification: Identify the principal investigator or project director, if known. Specify the percentage of time and titles of the organization's staff who will be working on the project as part of the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health

insurance, FICA, retirement insurance, etc.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments is effective October 1, 1988 through implementation of 45 CFR Part 92, Uniform Administrative Requirements for State and Local Governments.

Justification: Equipment to be purchased with federal funds must contain sufficient justification to determine that it is necessary for the conduct of the project and that the applicant organization of its sub-grantees do not have the equipment or a reasonable facsimile that would be available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. if the name of contractor, scope of work, and estimated total are not available or have not been negotiated, include in Line 6h, "Other."

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount.

Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must provide a completed copy of this section [Section B, Budget Categories) for each delegate agency (contractor) by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying the name of contractor, purpose of contract and major cost elements.

Line 6g—Construction: Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, medical and dental costs, noncontractual fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Enter the total amount of indirect charges (costs). If no indirect costs are requested enter "none." This line should be used only when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Applicants other than State and local governments are requested to enclose a copy of this agreement. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in 45 CFR Part 74), Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the Federal reimbursement will be limited to 8%.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) indirect costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract b* from a*. The remainder is what the applicant can claim as part of its matching cost contribution.

Link 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and anticipated use of income in the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: Enter amounts of non-Federal resources that will be used on the grant. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs

Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project

This section should only be completed if the total project period exceeds 17 months.

Line 20—Totals: Enter the estimated required *Federal* funds for the period covering months 13 through 24 under column "(b) First." If appropriate, enter the Federal funds needed for months 25 through 36 under "(c) Second."

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable.

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains all of the assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office of Research Risks of the National Institutes of Health at (301) 496–7041.

4. Project Summary Description

Clearly mark this separate page with the applicant name as shown in SF 424, item 5 and the priority area as shown in the upper left hand corner of SF 424. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer data base on each project.

The description should be specific and concise. It should describe the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as software packages, materials, management procedures, data collection instruments, training packages or videos). The project summary description, together with the information on the SF 424, becomes the project "abstract." It is a major source of information about the proposed project and is usually the first part that the reviewers read in evaluating the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

5. SF 424, Program Narrative

The Part IV, Program Narrative, is the most important part of the application. It should be clear, concise, and specific to the priority area under which the application is being submitted. In its description of the nature, scope, and objectives of the proposed project, the program narrative should provide information on how the application meets the evaluation criteria in Section G above.

Applicants are required to follow the format described below in preparing their applications, using the four headings for sections of the application:

a. *Objectives and need for assistance.* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

b. *Results or Benefits Expected.* Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory and/or research should be indicated.

c. *Approach.* Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each project. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

d. *Geographic Location.* Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

This narrative must be no more than 30 double-spaced pages. It should be typed on a single-side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and need for assistance" as page number one. Applicants should not submit reproductions or larger size paper, reduced to meet the size requirement.

The narrative should conclude by identifying the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

5. Organizational Capability Statement

A brief (maximum 3 double-spaced pages including a 1 page organization chart) background description of how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized and the types and quantity of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under level of effort. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

L. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It is for use in ensuring proper preparation of your application.

Checklist

I have checked my application package to ensure that it includes the following:

—One original application plus two copies, which contains or is in accord with the following:
—SF 424, SF 424A—Budget Information, and SF 424B—Assurances;
—SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18), and the original has been included in the package to be mailed along with the two copies;
—As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;
—Summary description;
—Program Narrative (not more than 30 pages, double-spaced);
—Organizational capability statement (not more than 3 pages);
—SF 424B, Assurances;
—Up to 3 vitae of no more than 2 pages each;
—Proof of non-profit status, as necessary;
—Letters of Commitment;

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—The original and two copies of the application have been stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
—The original application, the two copies of the application and the summary description should be packaged together so that they can be processed together.

M. Points to Remember

1. There are various page limitations on different parts of the application that must be adhered to. Before submitting your application, please review those requirements as spelled out in Section D.

2. You are required to send an original and two copies of an application.

3. Designate a priority area in the box provided at the top left hand corner of the SF 424.

4. The summary description of 1,200 characters or less is an essential element of the application. It is important that this accurately reflect the nature and scope of the proposed project.

5. In making certain that you have met the minimum required match (see Section C above), remember that you must match $1 for every $3 requested in Federal funding to reach 25% of the *total* project cost (the Federal share plus your cost share). For example, if your request for Federal funds is $150,000, then the required minimum match or cost sharing is $50,000. The total project cost is $200,000, of which your $50,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. Follow the recommended format as closely as possible in preparing the program narrative. The format reflects the evaluative criteria which will be used by reviewers to evaluate applications.

8. Do not include general support letters endorsing the project. However, letters of commitment which describe and verify a tangible commitment, e.g., funds, staff, space should be included.

9. If duplicate applications are submitted under different priority areas, AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one application is submitted, each should be submitted under separate cover.

11. Have someone other than the author(s): 1) apply the screening requirements to the application; and 2) review it based upon the evaluation criteria prior to its submission. In this way, applicants will gain a better sense of their application's quality and potential competitiveness.

12. Applications must be sent by midnight, or hand delivered (by 5:30 p.m.), no later than March 17, 1989 to: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., Room 349F, Washington, DC 20201, Attn: AoA–89–1.

Dated: December 5, 1988.

Carol Fraser Fisk,

Commissioner, Administration on Aging.

Otis R. Bowen,

Secretary of Health and Human Services.

BILLING CODE 4130-01-M

OMB Approval No 0348 0043

APPLICATION FOR FEDERAL ASSISTANCE

2 DATE SUBMITTED		Applicant Identifier
3 DATE RECEIVED BY STATE: N.A.		State Application Identifier: N.A.
4 DATE RECEIVED BY FEDERAL AGENCY: N.A.		Federal Identifier: N.A.

1 TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) ____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 13.668

TITLE: Discretionary Funds Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

N.A.

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a Applicant	b Project

15. ESTIMATED FUNDING:

a Federal	$	.00
b Applicant	$	.00
c State	$	.00
d Local	$	.00
e Other	$	.00
f Program Income	$	.00
g TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ____

b NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

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VOL 53 ISS 239 DE 13 1988 UMI

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N.A.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
2. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
3 N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
4. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5. TOTALS		$ N.A.	$ N.A.	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$
b. Fringe Benefits	N.A.	N.A.	N.A.	N.A.	
c. Travel	N.A.	N.A.	N.A.	N.A.	
d. Equipment	N.A.	N.A.	N.A.	N.A.	
e. Supplies	N.A.	N.A.	N.A.	N.A.	
f. Contractual	N.A.	N.A.	N.A.	N.A.	
g. Construction	N.A.	N.A.	N.A.	N.A.	N.A.
h. Other	N.A.	N.A.	N.A.	N.A.	
i. Total Direct Charges (sum of 6a - 6h)	N.A.	N.A.	N.A.	N.A.	
j. Indirect Charges	N.A.	N.A.	N.A.	N.A.	
k. TOTALS (sum of 6i and 6j)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$
7 Program Income	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program		(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
9.	N.A.	N.A.	N.A.	N.A.	N.A.
10.	N.A.	N.A.	N.A.	N.A.	N.A.
11.	N.A.	N.A.	N.A.	N.A.	N.A.
12. TOTALS (sum of lines 8 and 11)		$	$	$	$

SECTION D - FORECASTED CASH NEEDS

		Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
14 NonFederal	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
15 TOTAL (sum of lines 13 and 14)	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program		FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
17.	N.A.	N.A.	N.A.	N.A.	N.A.
18.	N.A.	N.A.	N.A.	N.A.	N.A.
19.	N.A.	N.A.	N.A.	N.A.	N.A.
20. TOTALS (sum of lines 16 -19)		$	$ N.A.	$ N.A.	$ N.A.

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	N.A.	22. Indirect Charges:
23. Remarks		

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE 1.1

1 TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2 DATE SUBMITTED: 03/17/89 3 DATE RECEIVED BY STATE: N.A. 4 DATE RECEIVED BY FEDERAL AGENCY: N.A.	Applicant Identifier State Application Identifier: N.A. Federal Identifier: N.A.

5 APPLICANT INFORMATION

Legal Name: Department of Human Services	Organizational Unit: Division of Aging
Address (give city, county, state, and zip code): 1212 Jones Street, Smith, Montana 99999	Name and telephone number of the person to be contacted on matters involving this application (give area code): John Doe (999) 999-9999

6 EMPLOYER IDENTIFICATION NUMBER (EIN): 12-3456789

7 TYPE OF APPLICANT: (enter appropriate letter in box) N

A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify): Village Agency

8 TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐
A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify):

9 NAME OF FEDERAL AGENCY: Administration on Aging

10 CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 13.668

TITLE: Discretionary Funds Program

11 DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Improve Services to the Aging

12 AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): N.A.

13 PROPOSED PROJECT		14 CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a Applicant	b Project
08/01/89	07/31/91	2	1,2

15 ESTIMATED FUNDING:		
a Federal	$ 125,000	.00
b Applicant	$ 42,000	.00
c State	$	.00
d Local	$	00
e Other	$	00
f Program Income	$	00
g TOTAL	$ 167,000	00

16 IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17 IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18 TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
Jane Doe	Director	(777) 777-7777
d Signature of Authorized Representative		e Date Signed: 03/14/89

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SAMPLE

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N.A.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
2. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
3 N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
4. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5. TOTALS		$ N.A.	$ N.A.	$ 125,000	$ 42,000	$ 167,000

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 95,000
b. Fringe Benefits	N.A.	N.A.	N.A.	N.A.	16,250
c. Travel	N.A.	N.A.	N.A.	N.A.	2,000
d. Equipment	N.A.	N.A.	N.A.	N.A.	4,000
e. Supplies	N.A.	N.A.	N.A.	N.A.	7,250
f. Contractual	N.A.	N.A.	N.A.	N.A.	5,000
g. Construction	N.A.	N.A.	N.A.	N.A.	N.A.
h. Other	N.A.	N.A.	N.A.	N.A.	18,500
i. Total Direct Charges (sum of 6a - 6h)	N.A.	N.A.	N.A.	N.A.	148,000
j. Indirect Charges	N.A.	N.A.	N.A.	N.A.	19,000
k. TOTALS (sum of 6i and 6j)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 167,000
7 Program Income	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program		(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
9.	N.A.	N.A.	N.A.	N.A.	N.A.
10.	N.A.	N.A.	N.A.	N.A.	N.A.
11.	N.A.	N.A.	N.A.	N.A.	N.A.
12. TOTALS (sum of lines 8 and 11)		$ 42,000	$	$	$ 42,000

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
14. Nonfederal N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
15. TOTAL (sum of lines 13 and 14) N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16 N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
17 N.A.	N.A.	N.A.	N.A.	N.A.
18 N.A.	N.A.	N.A.	N.A.	N.A.
19 N.A.	N.A.	N.A.	N.A.	N.A.
20 TOTALS (sum of lines 16-19)	$ 171,000	$ N.A.	$ N.A.	$ N.A.

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges: N.A.	22. Indirect Charges:
23. Remarks	

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OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

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7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333). regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulation and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (4-88)

[FR Doc. 88-28301 Filed 12-12-88; 8:45 am]
BILLING CODE 4130-01-C

VOL 53 ISS 239 DEC 13 1988 UMI

federal register

Tuesday
December 13, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43 and 91

Inoperative Instruments or Equipment; Final Rule

VOL 53 ISS 239 DE 13 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43 and 91

[Docket No. 22320; Amdt. Nos. 43-30 and 91-206]

RIN 2120-AA19

Inoperative Instruments or Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments revise the Federal Aviation Regulations (FAR) to permit rotorcraft, nonturbine-powered airplanes, gliders, and lighter-than-air aircraft, for which an approved Master Minimum Equipment List has not been developed, to be operated with inoperative instruments and equipment not essential for the safe operation of the aircraft. Furthermore, these amendments permit general aviation operators of small rotorcraft, nonturbine-powered small airplanes, gliders, and lighter-than-air aircraft, for which a Master Minimum Equipment List has been developed, the option of operating under the minimum equipment list concept or in accordance with the provisions of this final rule.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Edna H. French-Manager, Project Development Branch (AFS-850) or John Lynch; General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Public Participation

These amendments are based on SNPRM No. 81-14A. All interested persons have been given an opportunity to participate in making these amendments, and due consideration has been given to their comments. Except for the changes discussed below, these amendments and the reasons for their adoption are the same as those stated in Notice 81-14A.

Background

Except as provided for in § 91.30, all instruments and equipment installed on an aircraft must be in operative condition for an operator to continue to meet the aircraft's airworthiness requirements. The FAA recognized that flight could be conducted with instruments and equipment inoperative under specified conditions with the adoption of the minimum equipment list (MEL) concept. Presently, the MEL concept extends to air carrier, commercial, and general aviation operators of multiengine aircraft, but only if the aircraft has a master MEL. Owners or operators of aircraft for which master MEL's have not been developed are required to adhere to § 91.165 which requires that all aircraft discrepancies which occur between required inspections be repaired in accordance with Part 43. This means that all of the aircraft's instruments and equipment must be operative, regardless of whether or not they are essential for the operation being conducted.

The FAA addressed this issue for operators of general aviation multiengine aircraft by issuing Amendment No. 91-157 (44 FR 43714; July 26, 1979). This amendment permitted the operation of multiengine aircraft with inoperative instruments or equipment within the limitations of §§ 91.29 and 91.165. After Amendment No. 91-157 was published, the FAA received strong negative reaction from the public. Generally, the commenters objected, because they believed the rules were confusing, the time allowed for compliance was insufficient, and very few master MEL's had been developed at the time. Many commenters stated that they use the listing in § 91.33 as the sole standard for determining whether or not an instrument or item of equipment is required to be operational. Although the FAA intended to provide relief to the general aviation community by issuing Amendment No. 91-157, it was perceived as restrictive and criticized as excluding single-engine aircraft. Therefore, the FAA issued Amendment No. 91-160 on October 26, 1979 (44 FR 62884; November 1, 1979), suspending § 91.30 so the FAA could study the matter further.

Following the suspension of § 91.30, operators desiring to use MEL's petitioned for exemptions from § 21.181. This allowed operators to obtain individual approvals to operate multiengine aircraft with inoperative instruments and equipment. The FAA was able to gain valuable information on the usefulness and safety aspects of MEL's when used in general aviation operations. Even though this experience was beneficial, processing exemptions was time consuming and costly to both the FAA and the public. Before the FAA reinstated § 91.30 on March 13, 1986, over 350 individual exemptions were processed.

On September 16, 1981, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 81-14 (46 FR 52278; October 26, 1981). This notice proposed permitting the operation of aircraft with inoperative instruments and equipment not essential for the operation being conducted. The proposal included provisions to consolidate all MEL requirements of Parts 121, 125, and 135 into Part 91. It also proposed to broaden the application of these provisions to other aircraft and to allow the operation of aircraft without an MEL with certain instruments or items of equipment inoperative through an approved aircraft flight manual or operating limitations statement. Even though this notice received more favorable response than Amendment No. 91-157, the general aviation community still had concerns and objections, and the FAA decided that the proposal needed further revision.

The FAA reinstated Amendment No. 91-157 (50 FR 51188; December 13, 1985) on December 6, 1985. This permitted operators of multiengine aircraft, under specific conditions, to operate their aircraft with inoperative instruments and equipment. The FAA, in making the decision to reinstate § 91.30, determined the reasons for suspending the rule no longer existed. However, as was the case when Amendment No. 91-157 was first published, aircraft for which master MEL's had not been developed were still excluded. The reinstatement of § 91.30 provided immediate relief to operators of multiengine aircraft, and allowed additional time for the FAA to resolve the problems confronting operators of other aircraft.

The FAA issued a Notice of Meeting announcement (51 FR 18800; May 22, 1986) to solicit public participation for this ongoing rulemaking project. The FAA determined that prior to initiating any further rulemaking projects involving this subject, it would request assistance from the public. On June 17, 1986, a public meeting was held at the FAA Headquarters in Washington, DC. The meeting was attended by thirty-nine FAA and industry personnel. One of the principal industry comments was that requiring all instruments and equipment to be operative at all times was totally unacceptable. Furthermore, the attendees disagreed that § 91.165 requires all instruments and equipment to be operative at all times. Also, industry expressed a concern that the MEL approval process is unnecessarily burdensome for both Part 91 operators and the FAA. The attendees stated that the Flight Standards District Offices (FSDO) are already backlogged with priority work, and past experience has shown the minimum time to complete the MEL approval process is six months.

The commenters stated that general aviation operators have operated safely for years, using the instrument and equipment listings in § 91.33 as their sole reference for determining whether an instrument or item of equipment was required for the operation being conducted. The attendees requested that the FAA develop rules to permit the operation of aircraft with inoperative instruments and equipment, and suggested they follow the procedures that operators have used successfully for years. On December 15, 1987, the FAA issued Supplemental Notice of Proposed Rulemaking (SNPRM) No. 81–14A (52 FR 47680), in which it proposed the rules that are contained in this final rule document. The FAA's intent in proposing the rules contained in Notice No. 81–14A was to provide a realistic approach to the inoperative instruments and equipment issue in response to the concerns of the general aviation community. The FAA determined that general aviation operators of small aircraft were in need of relief from § 91.165. In developing these amendments, specifically § 91.30(d), the FAA utilized a philosophy and rationale similar to that used in the development of the MEL concept.

In the past, many aircraft operators have incorrectly used the listing in § 91.33 as the sole standard for determining whether or not their aircraft met the requirements for the operation being conducted. With these new rules, the FAA provides a regulatory basis for the operation of these aircraft with inoperative instruments and equipment, when those instruments and equipment are not essential for the safe operation of the flight. These rules permit operation of aircraft with inoperative instruments and equipment within the framework of a controlled program of maintenance inspections, repairs, and parts replacements. It is imperative that the owner/operator exercise prudent judgment and at each required inspection, have any inoperative instrument or item of equipment inspected or repaired, as appropriate. In this good faith effort, the FAA has decided to conform §§ 43.11, 91.30, and 91.165 to the operational practices and procedures that the aviation public has requested.

Sections Affected

As a result of comments from the public and additional FAA review of Notice No. 81–14A, the FAA rearranged and renumbered some of the rules in this Final Rule document as compared to the proposed rules contained in Notice No. 14A (52 FR 47680; December 15, 1987). The following comparison table shows these differences:

COMPARISON BETWEEN THE PROPOSED RULES AND THE FINAL RULES

Notice No. 81–14A	Final rule
§ 43.11(b)	§ 43.11(b)
§ 91.30(a)	§ 91.30(a)
§ 91.30(c)	§ 91.30(c)
§ 91.30(d)	§ 91.30(d)
§ 91.30(d)(1)	§ 91.30(d)(1) (i) and (ii)
§ 91.30(d)(2)	§ 91.30(d)(2)
§ 91.30(d)(3)	§ 91.30(d)(3)
§ 91.30(d)(4)	§ 91.30(d)(4)
§ 91.165(a)	§ 91.165(a)
§ 91.165(b)	§ 91.165(c)
§ 91.165(c)	§ 91.165(b)
§ 91.165(d)	§ 91.165(d)

Section 91.30(d) permits rotorcraft, nonturbine-powered airplanes, gliders, and lighter-than-air aircraft, for which master MEL's and approved MEL's have not been developed, to be operated with inoperative instruments and equipment. Additionally, operators of small rotorcraft, nonturbine-powered small airplanes, gliders, and lighter-than-air aircraft, for which master MEL's and approved MEL's have been developed, may elect to operate in accordance with an approved MEL or in accordance with the provisions of § 91.30(d).

The pilot-in-command, owner, or operator will be required to identify the inoperative instruments or equipment, consult the aircraft's approved flight manual or owner's handbook, and review § 91.30(d)(2). After the pilot-in-command ensures that an inoperative instrument or equipment is not required, the aircraft may depart, provided—

(1) The inoperative instrument or item of equipment is deactivated or removed, the cockpit control of the affected instrument or item of equipment is placarded with the word "Inoperative," and the discrepancy is recorded in the aircraft's maintenance records in accordance with § 43.9 of this chapter. If the inoperative instrument or item of equipment is being removed from the aircraft or if deactivation requires maintenance, a certificated and appropriately rated maintenance person will be required to accomplish the removal and maintenance task; and

(2) At the next required inspection, the inoperative instrument or item of equipment is repaired, replaced, removed, or inspected, as appropriate.

Section 91.165 has been revised by rewording and rearranging the current text into separate paragraphs and by adding procedures for returning an aircraft to service with inoperative instruments and equipment. The revision establishes a requirement for owners and operators to have any inoperative instrument or item of equipment repaired, replaced, removed, or inspected, as appropriate. Also, this revision will ensure that after the aircraft has been inspected, and if maintenance is being deferred, the owner/operator of that aircraft is aware and responsible for ensuring that maintenance persons have made the appropriate entries in the aircraft's maintenance records and properly placarded the inoperative instruments or equipment "Inoperative."

When repair of inoperative instruments and equipment is deferred after an inspection, a maintenance person will make a determination that the inoperative instruments and equipment will not affect the intended function of any other operable instruments and equipment. An entry will then be made in the aircraft maintenance records in accordance with § 43.11. A maintenance person will place a placard that meets the aircraft's airworthiness certification regulation (e.g., §§ 23.1541, 27.1541, etc.) on the inoperative instrument or cockpit control of the inoperative item of equipment.

A new sentence has been added to § 43.11(b) to provide for an aircraft to be returned to service with inoperative instruments and items of equipment. The person approving the aircraft for return to service after any annual, 100-hour, progressive, or unscheduled inspection will be required to placard any inoperative instruments and equipment, and shall make an entry in the aircraft's maintenance records describing the deficiencies. Subsequent inspections will require reevaluating the instrument/equipment and updating the entry in the aircraft records.

Discussion of Comments to Notice No. 81–14

Sixty-five comments were received in response to Notice No. 81–14 (46 FR 52278; October 26, 1981), representing the views of manufacturers, associations, and individual operators. Generally, the comments favored rulemaking to provide relief for Part 91 operators to permit, under appropriate circumstances, operations with inoperative instruments and equipment. However, many commenters who favored rulemaking, strongly disagreed with the proposals contained in Notice No. 81–14. Therefore, the FAA withdrew the proposals.

The commenters were concerned with the operating limitations statements that were perceived as unnecessarily burdensome and time-consuming for

both industry and the FAA, without commensurate improvement in safety. The FAA agreed and the proposal has been withdrawn.

Concerning the proposal to develop an MEL in the FAA Approved Airplane or Rotorcraft Flight Manual, the FAA agreed with the comments that further evaluation of the means required to implement the procedure is necessary before this proposal can be adopted. Accordingly, the FAA has withdrawn the proposal to include MEL's in FAA Approved Airplane or Rotorcraft Flight Manuals.

Notice No. 81–14 proposed adding a new paragraph (g) to § 91.33 to permit operators of general aviation aircraft (for which a master MEL has not been developed) to be operated with inoperative instruments and equipment. After further consideration on how best to approach this matter, it was decided that proposed paragraph (g) should not be in § 91.33. Therefore, the FAA has withdrawn the proposal to add a new paragraph (g) to § 91.33.

In an effort to standardize and simplify the regulatory procedures applicable to operations with inoperative instruments or equipment, the FAA proposed to consolidate the MEL requirements contained in Parts 121, 125, and 135 into a single regulation under Part 91. The FAA has determined that this proposal should be addressed through separate rulemaking, and therefore, the proposal has been withdrawn.

The National Business Aircraft Association (NBAA) and 19 other commenters supported the proposal to allow Part 91 operators to use an approved MEL. However, the commenters suggested the master MEL's were developed for air carriers and include references to equipment (such as flight data and voice recorders) that may not be applicable to private operators. Commenters suggested these references should be eliminated from the master MEL. A master MEL originates when an aircraft is type certificated, and the master MEL is developed for the aircraft type, regardless of the aircraft's intended use. Any operator (air carrier or private) may use the master MEL as a guide to develop an MEL for a specific aircraft with specified operational requirements. Although private operators may not have the same instrument or equipment requirements as air carriers, the FAA does not agree that instruments and equipment should be eliminated from the master MEL.

Discussion of Comments to SNPRM No. 81–14A

One hundred seventy-four comments were received in response to Notice No. 81–14A (52 FR 47680), representing the views of manufacturers, associations, and individuals. One hundred and two commenters favored the proposals contained in Notice No. 81–14A, six were against, and sixty-six appeared to not understand that the proposals provided relief from the current rules.

The six commenters opposed to the proposals of Notice No. 81–14A, objected to the proposal on the grounds that they believe the current rule (i.e., § 91.33) is adequated in ensuring that an aircraft is operated with the proper instruments and equipment. Although many pilots believe the provisions of § 91.33 are the only requirements for determining whether or not an instrument or an item of equipment is needed for an aircraft to be considered airworthy for flight, they are not correct. Though many of the required instruments and equipment are covered by § 91.33, there are additional requirements. Some of these requirements are covered in an aircraft's applicable airworthiness certification regulations. Also, there are added requirements contained in an aircraft equipment list, kinds of operations equipment list, or aircraft flight manual. In addition, there are other instruments and equipment requirements listed in Part 91 (e.g., §§ 91.24, 91.90, etc.). Also, there are airworthiness directives (AD) that require certain instruments and equipment to be operational. As an example, AD 82–06–10 requires that a Cessna 210 have two operational vacuum pumps prior to entering IFR conditions. Considering these numerous airworthiness requirements, the FAA has determined that rules, as proposed in Notice No. 81–14A are needed to ensure that aircraft are properly equipped for flight. Therefore, the rules proposed in Notice No. 81–14A remain unchanged.

One commenter believes there must be a safety requirement shown to justify establishing new rules. The commenter suggested that present and past accident rates do not justify issuing new rules. The FAA does not use accident and incident data as the sole basis for proposing or establishing new rules. The FAA agrees that past accident and incident records show a minimal number of accidents and incidents caused by inoperative instruments and equipment, but the purpose of these new rules is to clarify the language in the existing rules to provide greater flexibility to Part 91 operators. Therefore, the rules as proposed in Notice No. 81–14A remain unchanged.

Several commenters suggested that the FAA expand the provisions of § 91.30(d) to include turbine-powered airplanes.

The FAA decided not to include the turbine-powered airplanes because operators of some of these aircraft may already use an MEL. This relief was granted to operators of multiengine turbine-powered airplanes when the FAA reinstated § 91.30 on December 13, 1985 (Amdt. No. 91–192; 50 FR 51188). In addition, the FAA decided to hold operators of these airplanes to a higher standard of safety, since these airplanes are more complex, are frequently involved in transporting a larger number of passengers, and operate more often in complex, high density airspace. Therefore, the rules as proposed in Notice No. 81–14A remain unchanged.

Several commenters suggested that the FAA expand the provisions of § 91.30 to include aircraft that are operated under Part 135. Currently, the FAA is working on a separate MEL rulemaking project to address aircraft operating under Part 135. Therefore, the rules as proposed in Notice No. 81–14A remain unchanged.

One commenter suggested that gliders be included in § 91.30(d). The FAA's intent in proposing the rules contained in Notice No. 81–14A was to provide a realistic approach to the inoperative instruments and equipment issue in response to the concerns of the general aviation community. Therefore, the FAA has clarified § 91.30(d) to specifically identify gliders and ligher-than-air aircraft as falling within the applicability of this rule.

Several commenters objected to the placarding requirements of §§ 43.11(b), 91.30(d)(3), and 91.165(d). The placarding requirement is a very simple procedure that will require a pilot or mechanic to place a placard on the inoperative instrument or cockpit control of an item of equipment marking it "Inoperative." This procedure can be as simple as writing the word "Inoperative" on a piece of masking tape or piece of paper and attaching it to the instrument or cockpit control. The purpose of the placarding requirement is to provide an additional safeguard for future users and maintenance personnel for ensuring they are aware of a discrepancy. Therefore, the rules as proposed in Notice No. 81–14A remain unchanged.

A few commenters requested clarification on who could placard

inoperative instruments or cockpit controls of inoperative equipment. Placards required by § 91.30 are operational in nature, and may be installed by certificated and appropriately rated pilots, or by persons certificated and appropriately rated to perform maintenance on the aircraft. At the first and each succeeding required inspection, placards required by § 91.165 may be installed only by the following certificated and rated persons: (1) The holder of a mechanic certificate; (2) The holder of a repairman certificate when performing those maintenance services for a certificated repair station; (3) Persons working under the supervision of a holder of a mechanic or repairman certificate; (4) The holder of a repair station certificate; (5) The manufacturer of the aircraft who holds a manufacturer's maintenance facility certificate. After further review of these comments, the FAA has revised and rewritten § 91.30(d)(3). The phrase "by a person authorized in § 43.3 of this chapter" has been deleted. The purpose of this change is to alleviate the confusion of who can placard inoperative instruments and cockpit controls.

One commenter questioned whether the kinds of aircraft provided for in these new rules would also be covered if the aircraft were operated in accordance with Parts 133, 137, or 141. Aircraft operated under these parts must comply with the operational and maintenance rules of Part 91, in addition to the rules of Parts 133, 137, or 141. Therefore, these aircraft are also covered by the provisions of these new rules.

One commenter questioned whether an individual who has an approved MEL could alternate between complying with the MEL or the provisions of § 91.30(d). The FAA intended § 91.30(d) to require any person having an approved MEL to use that MEL. If a person has an approved MEL and elects to operate under the provisions of § 91.30(d), then that person will be required to surrender the MEL and Letter of Authorization to the Flight Standards District Office having jurisdiction. Therefore, § 91.30 (c) and (d) have been rewritten to clarify this matter. One commenter pointed out an incorrect reference in the text of § 43.11(b). The commenter's question regarded a reference to "§ 135.41(a)(1)." This was a typographical error, and the reference should have been "§ 135.411(a)(1)." Therefore, § 43.11(b) has been revised to reflect this change.

A few commenters requested clarification of the term "deactivated" in § 91.30(d)(3)(ii). Depending on the specific instrument or item of equipment, the term "deactivated" may mean a process as simple as the pilot pulling a circuit breaker to the "open" or "off" position, or as complex as rendering instruments or equipment totally inoperable by complex maintenance tasks requiring a certificated and appropriately rated maintenance person to perform the deactivation. For example, the procedures for "deactivating" certain models of gasoline cabin heaters are to disconnect and cap off fuel supply lines at their sources, disconnect all electrical lines at their sources, and disconnect the electrical ignition. In other instances, deactivation may be accomplished by a certificated and appropriately rated pilot, provided the maintenance tasks required to "deactivate" an instrument or item of equipment are preventive maintenance as prescribed in paragraph (c) of Appendix A, Part 43. When these tasks are not preventive maintenance, "deactivation" must be accomplished by a certificated and appropriately rated maintenance person. After further review of these comments, the FAA has revised and rewritten § 91.30(d)(3). The phrase "by a person authorized in § 43.3 of this chapter" has been deleted. The purpose of this change is to alleviate the confusion of who can deactivate inoperative instruments and equipment.

One commenter requested clarification concerning the length of time an inoperative instrument or item of equipment could remain inoperative after deactivation or removal. Sections 91.29 (b) and 91.30(d)(4) require a person to determine whether an aircraft with inoperative instruments and equipment is in condition for safe operation. In addition, § 91.165(c) requires at every required inspection thereafter, the owner/operator of the aircraft to have any inoperative instrument and equipment reevaluated to ensure the discrepancy will not affect the operation of any other installed instrument or equipment. Therefore, the FAA believes compliance with §§ 91.29(b), 91.30(d)(4), and 91.165(c) will provide adequate safeguards without having to impose time limits on the repair or replacement of inoperative instruments and equipment.

Several commenters requested clarification of the phrase "next required inspection" contained in § 91.165(c). The phrase "next required inspections", as contained in § 91.165(c), are those inspections required to be conducted by:

(1) Section 91.169(a)(1), (b), or (d);

(2) An inspection program selected under the provisions of § 91.169 (e) and (f);

(3) Section 135.411(a)(1); or

(4) Inspections and maintenance programs selected under the provisions of Part 125. A few commenters requested advice on whether it would be better for them to operate under an MEL or the provisions of § 91.30(d). An MEL provides a precise list of instruments, equipment, and both operational and maintenance procedures that permit an aircraft to be operated with inoperative instruments and equipment. Under the MEL concept, those instruments and equipment not covered in the approved MEL would be required to be operative at all times regardless of the operation being conducted. The new § 91.30(d) requires only those instruments and equipment listed in § 91.30(d)(2) to be operative. Those instruments and equipment not listed in § 91.30(d)(2) would be permitted to be inoperative.

However, in comparing the two methods, certain instruments and equipment permitted to be inoperative by an MEL would not be permitted to be inoperative by § 91.30(d)(2). As an example, the master MEL for the Cessna 310, 320, 335, and 340 airplanes allow for the fuel quantity indicators of these airplanes to be inoperative. If these same airplanes were operating in accordance with § 91.30(d), these indicators will be required to be operative. However, the master MEL for these airplanes require that specific operational and maintenance procedures be developed to provide an equivalent level of safety.

The FAA believes that individuals must evaluate their own circumstances and situations and make their own decisions. Persons who lease their aircraft to multiple users may want strict, well defined procedures for renters to follow and may elect to obtain an approved MEL. Whereas, a person who is the only user of an aircraft may find the process of obtaining an approved MEL to be burdensome and unnecessary, and may elect to operate under § 91.30(d). Each person electing to obtain an MEL and a Letter of Authorization for an aircraft must ensure that others using that aircraft know the MEL discrepancy and logging procedures.

The term "multiengine" referenced in the proposed § 91.30(d)(1) has been deleted from the final rule, because the FAA is developing master MEL's for single engine aircraft. This deletion allows operators of single engine aircraft to use the MEL concept if desired. Therefore, § 91.30(d)(1)(i) and (ii) have been revised to reflect this change.

One commenter suggested that the removal of certain kinds of avionics

equipment be added to the list of items classified as preventive maintenance in Part 43. The FAA recognizes that in some instances this may be appropriate. However, the FAA has determined there is not sufficient data on which to base a decision that any and all such removals can be safely classified as preventive maintenance. Therefore, the rules as proposed in Notice No. 81–14A remain unchanged.

One commenter questioned the use of upper case letters for the phrase "Type Certificate Data" contained in text of § 91.30(d)(2)(i). The commenter stated that the use of upper case letters is misleading and would imply there is a document by that name. Subsequently, the FAA has determined that type certificate data information is not readily available to pilots, and the airworthiness certification regulations already cover this information. Therefore, the phrase, "Type Certificate Data" has been deleted, and § 91.30(d)(2)(i) has been revised to reflect this change.

Two commenters point out that some aircraft manufacturers have not made "aircraft equipment lists" or "kinds of operation equipment lists" available to aircraft owners. The commenters recommend the phrase "if available" be added to § 91.30(d)(2)(ii). The commenters did not provide any specific examples to support their claim, and the FAA is not aware of any aircraft not having an Aircraft Equipment List, a Kinds of Operation Equipment List, or some other acceptable equipment list. The rules (i.e., §§ 23.1583(h), 25.1583(e), 25.1525, 27.29, 27.1525, 27.1583(e), 29.29, 29.1525, and 29.1583(e)) contained in the aircraft certification regulations require an aircraft manufacturer to make information available on the kinds of operation in which an aircraft may or may not be used. Any installed equipment that affects any operating limitation must be listed and identified as to the operational function. Therefore, the rules as proposed in Notice No. 81–14A remain unchanged.

Fairchild Industries proposed an alternative to these new rules. Fairchild Industries petitioned the FAA to amend §§ 91.30 and 135.179 to require the FAA and aircraft manufacturers to establish a list of required instruments and equipment to be included in each airplane and rotorcraft flight manual. This list would be used by a pilot to determine what instruments and equipment are required to begin and/or continue a flight. The FAA has determined this petition has merit and will give it further consideration. However, since the petition is outside the scope of Notice Nos. 81–14 and 81–14A, the rules as proposed in Notice No. 81–14A remain unchanged.

Several commenters incorrectly believed that proposed § 91.30(d) would require an aircraft's instruments and equipment to be operative at all times. Operators complying with § 91.30(d) may operate aircraft with certain instruments and equipment inoperative. Persons who elect to operate their aircraft in accordance with § 91.30(d) will not have to go through the process of developing an MEL and getting it approved. The FAA sent a copy of Notice No. 81–14A and a letter explaining these new rules to every commenter who had this misunderstanding of § 91.30(d).

Regulatory Evaluation

Regulatory Evaluation Summary

The FAA conducted a regulatory evaluation of this final rule, which is included in the regulatory docket. The FAA determined that this final rule is consistent with the objective of Executive Order 12291 as part of the President's regulatory reform program to reduce regulatory burdens on the public.

Benefits

Implementing these rules enhances the flexibility of a regulatory requirement necessary for safety, provides greater operational flexibility to general aviation operators, and reduces the administrative workload for the FAA.

These amendments provide relief to Part 91 operators of rotorcraft and nonturbine-powered airplanes (not being utilized in an air carrier operation) from current rules that absolutely prohibit operation of these aircraft with inoperative instruments or items of equipment. These aircraft will be permitted to operate with inoperative instruments and equipment that are not needed for a particular type of operation (e.g., night lighting equipment would not be required to be operable during day VFR operations) pursuant to § 91.30.

These revisions to §§ 91.30, 91.165, and 43.11 provide cost savings to Part 91 operators by reducing aircraft downtime and eliminating the cost to repair the inoperative instrument or item of equipment not needed for a particular type of operation.

Costs

Part 91 operators of rotorcraft, gliders, nonturbine-powered airplanes, and lighter-than-air aircraft who use § 91.30 to operate with inoperative instruments or items of equipment, will incur negligible costs as a result of the placarding requirements. These additional costs result from having a person, who is returning an aircraft to service after completion of a required inspection, determine that the inoperative instrument or equipment does not affect the intended function of any operable instrument or equipment or the airworthiness of the aircraft, and then placard the inoperative instrument and/or cockpit control of an item of equipment. Placarding an inoperative instrument or item of equipment may be as simple as writing the word "Inoperative" on piece of masking tape and placing the tape on the instrument or cockpit control. Therefore, these revised rules impose only negligible costs, satisfy the airworthiness requirements of the maintenance rules, increase operational flexibility, and reduce costs by allowing an aircraft to be operated with certain inoperative instruments and equipment.

This rule imposes no new requirements on Part 91 operators of aircraft for which master MEL's have been developed. Finally, this rule imposes no new requirements on the Federal Government (FAA). Based on the aforementioned discussion of the benefit and cost aspects of the proposed rule, the FAA finds these revised rules to be cost effective.

International Trade Impact Statement

This rule will not influence or affect international trade involving aviation products or services. Furthermore, no comments on Notice Nos. 81–14 and 81–14A concerning international trade were received. Therefore, the FAA certifies that this rule will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States and will not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

These revised rules will impose negligible costs, as a result of the new requirement to placard inoperative instruments and equipment, on some operators of general aviation rotorcraft, gliders, non-turbine powered airplanes, and lighter-than-air aircraft.

Therefore, the FAA certifies that these revised rules will not have a significant economic impact on a substantial number of small entities.

Comments Received on NPRM

Twenty-eight comments concerning the regulatory evaluation were received in response to Notice Nos. 81–14 and 81–14A. These comments do not affect the regulatory evaluation of this final rule and are discussed above in the section titled "Discussion of Comments to Notice No. 81–14" and "Discussion of Comments to SNPRM No. 81–14A" of this document.

Paperwork Reduction Act

Information collection requirements contained in §§ 43.11 and 91.30 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Nos. 2121–0020 and 2120–0522, respectively.

Federalism Implications

These revised rules will be enacted under the authority of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.). This statute preempts State law regulating aviation safety. Therefore, in accordance with Executive Order No. 12612, these revised rules do not have federalism implication warranting the preparation of a federalism assessment.

Conclusion

Amendment Nos. 43–30 and 91–206 permit rotorcraft, gliders, nonturbine/powered airplanes, and lighter-than-air aircraft, to be operated with certain instruments and equipment inoperative that are not essential for the safe operation of the aircraft. As was previously stated in the Regulatory Evaluation section of this document, unnecessary maintenance and operational costs may be required by the current rules in Part 91. Operators of these types of aircraft will benefit from the relief permitted by Amendment Nos. 43–30 and 91–206, and the additional costs are minimal. Accordingly, the FAA has determined that these amendments do not involve a rule change that is major under Executive Order 12291 or significant under Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979). Although numerous small operators may be impacted by these amendments, the impact will be minimal since the costs of operating pursuant to § 91.30 do not exceed the FAA's criteria for "significant economic impact." For the reasons stated above, and in accordance with the Regulatory Flexibility Act, I certify that these amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety, Maintenance, Preventive maintenance.

14 CFR Part 91

Aviation safety, Safety, Aircraft, Pilots, Airworthiness directives, Flight rules general, Visual flight rule, Instrument flight rules.

Adoption of the Amendment

Accordingly, Parts 43 and 91 of the Federal Aviation Regulations (14 CFR Parts 43 and 91) are amended as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 43.11 by revising the title and paragraph (b) to read as follows:

§ 43.11 Content, form, and disposition of records for inspections conducted under Parts 91 and 125 and §§ 135.411(a)(1) and 135.419 of this chapter.

* * * * *

(b) *Listing of discrepancies and placards.* If the person performing any inspection required by Part 91 or 125 or § 135.411(a)(1) of this chapter finds that the aircraft is unairworthy or does not meet the applicable type certificate data, airworthiness directives, or other approved data upon which its airworthiness depends, that persons must give the owner or lessee a signed and dated list of those discrepancies. For those items permitted to be inoperative under § 91.30(d)(2), that person shall place a placard, that meets the aircraft's airworthiness certification regulations, on each inoperative instrument and the cockpit control of each item of inoperative equipment, marking it "Inoperative," and shall add the items to the signed and dated list of discrepancies given to the owner or lessee.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. By amending § 91.30 by revising the title, the introductory text of paragraph (a), and paragraph (c); by redesignating paragraph (d) as (e); and by adding a new paragraph (d) to read as follows:

§ 91.30 Inoperative instruments and equipment.

(a) Except as provided in paragraphs (d) of this section, no person may takeoff an aircraft with inoperative instruments or equipment installed unless the following conditions are met:

* * * * *

(c) A person authorized to use an approved Minimum Equipment List issued for a specific aircraft under Part 121, 125, or 135 of this chapter shall use that Minimum Equipment List in connection with operations conducted with that aircraft under this part without additional approval requirements.

(d) Except for operations conducted in accordance with paragraphs (a) or (c) of this section, a person may takeoff an aircraft in operations conducted under this part with inoperative instruments and equipment without an approved Minimum Equipment List provided—

(1) The flight operation is conducted in a—

(i) Rotorcraft, nonturbine-powered airplane, glider, or lighter-than-air aircraft for which a Master Minimum Equipment List has not been developed; or

(ii) Small rotorcraft, nonturbine-powered small airplane, glider, or lighter-than-air aircraft for which a Master Minimum Equipment List has been developed; and

(2) The inoperative instruments and equipment are not—

(i) Part of the VFR-day type certification instruments and equipment prescribed in the applicable airworthiness regulations under which the aircraft was type certificated;

(ii) Indicated as required on the aircraft's equipment list, or on the Kinds of Operations Equipment List for the kind of flight operation being conducted;

(iii) Required by § 91.33 or any other rule of this part for the specific kind of flight operation being conducted; or

(iv) Required to be operational by an airworthiness directive; and

(3) The inoperative instruments and equipment are—

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(i) Removed from the aircraft, the cockpit control placarded, and the maintenance recorded in accordance with § 43.9 of this chapter; or

(ii) Deactivated and placarded "Inoperative." If deactivation of the inoperative instrument or equipment involves maintenance, it must be accomplished and recorded in accordance with Part 43 of this chapter; and

(4) A determination is made by a pilot, who is certificated and appropriately rated under Part 61, or by a person, who is certificated and appropriately rated to perform maintenance on the aircraft, that the inoperative instrument or equipment does not constitute a hazard to the aircraft.

An aircraft with inoperative instruments or equipment as provided in paragraph (d) of this section is considered to be in a properly altered condition acceptable to the Administrator.

* * * * * *

5. By revising § 91.165 to read as follows:

§ 91.165 Maintenance required.

Each owner or operator of an aircraft—

(a) Shall have that aircraft inspected as prescribed in Subpart C of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in Part 43 of this chapter;

(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service;

(c) Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.30(d)(2) of this part, repaired, replaced, removed, or inspected at the next required inspection; and

(d) When listed discrepancies include inoperative instruments or equipment, shall ensure that a placard has been installed as required by § 43.11 of this chapter.

Issued in Washington, DC, on December 8, 1988.

T. Allan McArtor,

Administrator.

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Tuesday
December 13, 1988

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Formaldehyde; Stay of Hazard Communication Provisions

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225-C]

Occupational Exposure to Formaldehyde; Stay of Hazard Communication Provisions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** for occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). On February 2, 1988, the Office of Management and Budget (OMB), in accordance with its authority under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and (5 CFR Part 1320, approved the information collection requirements contained in the final rule with the exception of those contained in paragraphs (m)(1)(i) through (m)(4)(ii), concerning hazard communication. OSHA resubmitted its request for approval of paragraphs (m)(1)(i) through (m)(4)(ii), and on October 7, 1988, OMB approved paragraph (m)(1)(i) for one year and paragraphs (m)(1)(ii) through (m)(4)(ii) for three years. On November 8, 1988, OSHA announced that it intended to provide a sixty day start-up period from the date of OMB's approval, until December 6, 1988, before it would begin enforcing the newly approved hazard communication provisions (53 FR 45080). OSHA also announced that it would use this period to consider the petition filed by the Formaldehyde Institute and others for an administrative stay of these provisions and gave the public an opportunity to comment on whether to grant the petition and whether OSHA should initiate rulemaking to reconsider the hazard communication provisions contained in paragraph (m) of the formaldehyde standard.

OSHA has decided to administratively stay paragraphs (m)(1)(i) through (m)(4)(ii) of the formaldehyde standard for a period of nine months. During this period, OSHA will propose to revoke these paragraphs of the formaldehyde standard and to invite comments on the substitution of the full Hazard Communication Standard (29 CFR 1910.1200) or other equally protective alternatives commenters may submit. Pending completion of this rulemaking, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: Administrative stay effective until September 13, 1989.

ADDRESS: Docket H-225C, the docket for the formaldehyde standard, containing the exhibits mentioned in this document is available at the OSHA Docket Office, Room N2634, Department of Labor, 200 Constitution Avenue NW., DC 20210. Telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA published a final rule on formaldehyde on December 4, 1987 (52 FR 46168). On February 2, 1988, under the Paperwork Reduction Act, OMB approved all of the paperwork requirements of 29 CFR 1910.1048 with the exception of those contained in paragraphs (m)(1)(i) through (m)(4)(ii). OSHA subsequently informed the public of this fact and of the OMB clearance number (53 FR 6628, 3/2/88).

The disapproved paragraphs contained criteria for determining when the presence of formaldehyde constitutes a health hazard and prescribed information that must be included on hazard warning labels on containers of formaldehyde, and containers of certain formaldehyde-treated products as well as information to be included in the accompanying Material Safety Data Sheets (MSDSs).

On July 7, 1988, OSHA resubmitted its request for information collection approval of paragraphs (m)(1)(i) through (m)(4)(ii) of 29 CFR 1910.1048, with a more detailed justification (53 FR 26329, 7/12/88).

On October 7, 1988, OMB approved the information collection requirements in paragraph (m)(1)(i) for one year, until October 7, 1989. Paragraph (m)(1)(i) sets forth objective criteria that establish when formaldehyde constitutes a "health hazard" for purposes of triggering the labeling provisions and the requirements for availability of MSDSs. At the same time, paragraphs (m)(1)(ii) through (m)(4)(ii) were approved for three years, until October 7, 1991. These paragraphs prescribe the information to be included on hazard warning labels for formaldehyde and set forth procedures for developing, updating, and distributing MSDSs to accompany formaldehyde and formaldehyde-containing products.

OSHA subsequently announced it would begin enforcing these newly approved paragraphs on December 6, 1988, sixty days from the date of OMB's paperwork approval. This time was given so that the public could become familiar with these newly approved provisions (53 FR 45080, 11/8/88). OSHA also informed the public that it would consider, during this time, a petition filed by the Formaldehyde Institute and others for an administrative stay of the hazard communication provisions of the formaldehyde standard and requested public comment on whether it should administratively stay the hazard communication provisions of the formaldehyde standard. Specifically, the Agency sought public input concerning the appropriateness of the labeling requirement and the feasibility of measuring formaldehyde emissions at the 0.1 ppm level and whether the Agency should undertake additional rulemaking to reconsider the labeling requirements in the formaldehyde standard. Comments were to be received by November 29, 1988, so that the Agency could complete its consideration of the administrative stay petition by the December 6, 1988 effective date.

On November 22, 1988, OSHA extended the start-up date for compliance with the newly approved hazard communication provisions until December 20, 1988 (53 FR 47188). This extension was necessary to permit time for judicial consideration of the Formaldehyde Institute's motion for a judicial stay if the Agency decision on the administrative stay request did not render the motion for a judicial stay moot.

After thorough consideration of all of the material that has been received by OSHA since the promulgation of the formaldehyde standard (Docket H225-C, Exhibits 251-275), OSHA has decided for the reasons stated below that it is reasonable and appropriate to administratively stay paragraphs (m)(1)(i) through (m)(4)(ii) of the formaldehyde standard for a period of nine months. This will give the Agency time to propose to revoke these provisions, and to incorporate in full the provisions of OSHA's generic Hazard Communication Standard.

Background

The Hazard Communication Standard is a generic standard that is broadly scoped to ensure that the toxic effects of all chemicals are evaluated, and that information concerning health and safety hazards is transmitted to affected employers and employees. The standard

defines a chemical as posing a "health hazard" if it can cause an acute or chronic health effect. Health hazards include, *inter alia*, carcinogens, irritants, and sensitizers. The determination of whether a chemical constitutes a health hazard is based on the intrinsic characteristics of the chemical.

Because many chemicals that constitute "health hazards" are incorporated into materials or products in such a manner that individuals working with or using them will not be exposed to the chemical itself, the Hazard Communication Standard does not apply to "articles". The standard defines an "article" as "a manufactured item (i) which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use." Because of formaldehyde's unusual characteristic of "offgassing" from solids and resins used in apparel and wood products in particular, many formaldehyde-containing products would not be considered "articles" within the meaning of the Hazard Communication Standard.

During rulemaking on the formaldehyde standard, a number of participants requested that products that release small amounts of formaldehyde be granted a de minimis exemption from the labeling requirements of the standard (see, for example, Exhibits 139; 80–261, p. 85; 160; 170; 171; 201–12; 106; 110A; Tr. 5/5/86, pp. 145–157; 80–21; 80–54; 80–63; 80–78). In fact, this issue received more comment than any other provision in the proposed standard. Agreeing with the commenters that a de minimis exception was appropriate, in the final rule OSHA included a low level cut-off below which the hazard communication provisions of the formaldehyde standard would not apply.

In the final formaldehyde standard, labeling of containers, MSDSs, and training were required only for mixtures or solutions containing more than 0.1 percent formaldehyde or for materials capable of releasing formaldehyde into the air at concentrations reaching or exceeding 0.1 ppm under normal conditions of use.

The 0.1 percent composition element of the hazard communication exemption is analogous to the treatment of other carcinogens in the Hazard Communication Standard. However, the 0.1 ppm element in the de minimis exemption to the hazard communication provisions of the formaldehyde standard was a departure from the Hazard Communication Standard, which, with the arguable exception of the articles definition, does not base its labeling requirements on exposure levels.

Administrative Stay

Unfortunately OSHA's attempt at providing a de minimis exemption from the hazard communication requirements of the formaldehyde standard has been almost universally misunderstood and has resulted in widespread confusion (see, for example, Exhibits 251–4, pp. 24–25; 265–8; 265–11; 265–30). Others simply disagree with the cut-off which OSHA has chosen and have attacked OSHA's conclusions on the epidemiology of formaldehyde and the meaning of the risk assessment (Exhibits 251–4; 265–4; 265–17; 265–24; 265–32; 265–37).

OSHA does not find industry's substantive scientific arguments persuasive. After reviewing the evidence in the record, OSHA reaffirms its conclusions on the carcinogenicity of formaldehyde exposure.

However, on further reflection the Agency believes that by promulgating paragraphs (m)(1)(i) through (m)(4)(ii) in the formaldehyde standard, it failed to achieve its objective of providing substantially equivalent worker protection as the Hazard Communication Standard but with more objective criteria tailored to the properties of formaldehyde. Moreover, comments in the record question the wisdom of having separate hazard communication provisions in various substance specific standards (see, for example, Exhibits 77–2, Attach 2; 77–9; 77–16; 77–19A; 77–20; 77–21; Attach 1; 77–23; 77–24; 77–28; 80–26; 80–30; 80–58; 80–60; 80–64; 80–66; 80–67; 80–76; 80–78; 80–86; 80–261; 201–8; Tr. 5/13/86, p. 62). It might be simpler, less confusing, and therefore more effective to have one standard, OSHA's generic Hazard Communication Standard, control the information dissemination obligations of employers. In this way, employers would have one reference point and would not be confused by minor deviations to those requirements in substance specific standards.

For the reasons stated above, OSHA is administratively staying paragraphs (m)(1)(i) through (m)(4)(ii) of the formaldehyde standard. The Agency will propose to revoke these paragraphs shortly and invite comments on the substitution of the full Hazard Communication Standard or other equally protective alternatives commenters may submit. This action is consistent with the majority of comments received in response to its November 8 request for comments (see Exhibit 265). The effect of this administrative stay will be the continued implementation of the Hazard Communication Standard with respect to formaldehyde. Employers must comply with the provisions of OSHA's Hazard Communication Standard. Thus it is clear that there will be no diminution in worker safety or health during this interim period.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational Safety and Health, Chemicals, Cancer, Health, Risk assessment.

Therefore, § 1910.1048(m)(1)(i)–(m)(4)(ii) is stayed until Sept. 13, 1989.

Signed at Washington, DC, this 9th day of December 1988.

John A. Pendergrass,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 88–28740 Filed 12–12–88; 10:34 am]

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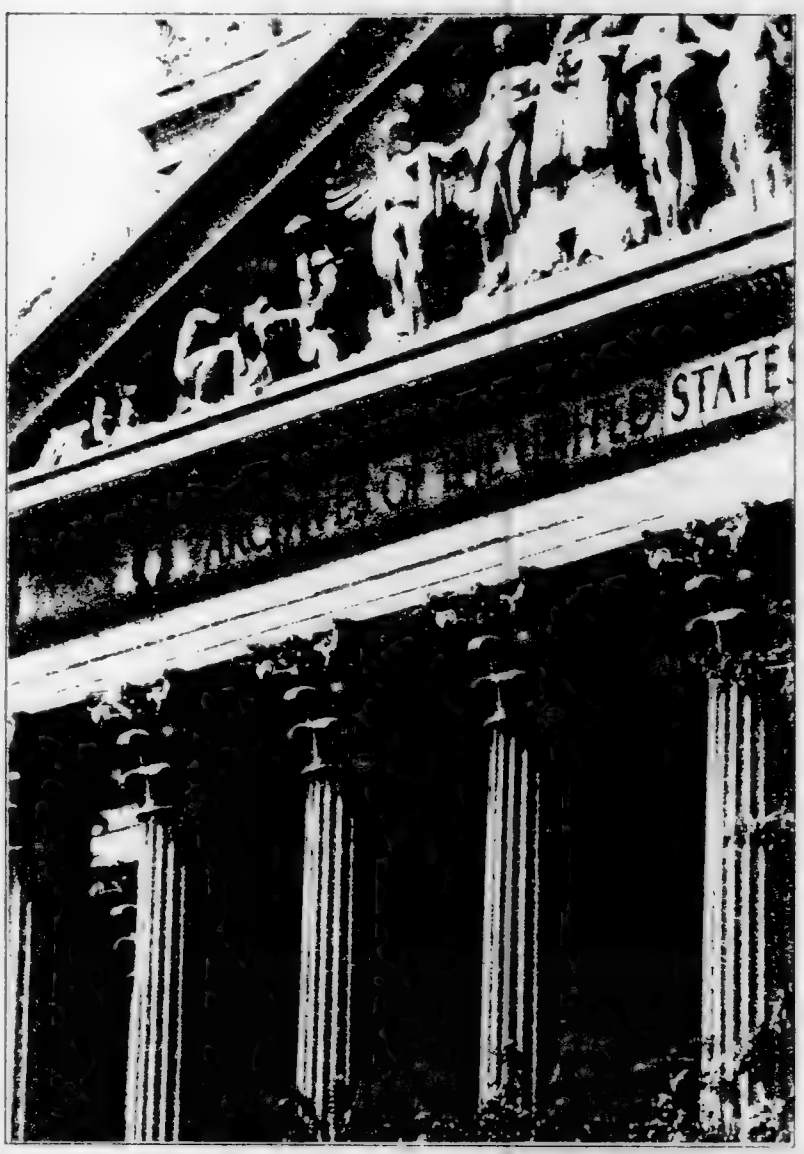

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 26, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

LOS ANGELES, CA

WHEN: January 12, at 9:00 a.m.
WHERE: Room 8544,
Federal Building,
300 N. Los Angeles St.,
Los Angeles, CA
RESERVATIONS: Call the Federal Information Center,
Los Angeles 213-894-3800

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Rules and Regulations

Federal Register
Vol. 53, No. 240
Wednesday, December 14, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 13

Setoffs and Withholdings; Federal Claims Collection

AGENCY: Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR Part 13, the provisions stating the conditions under which amounts approved by Agricultural Stabilization and Conservation county committees for disbursement to persons under programs administered by the Department of Agriculture, or any agency thereof, will be withheld or set off against debts of such persons owing to any department or agency of the United States. The intent of this rule is to extend the regulatory period of time allowed for setoff and withholding to ten years. This regulation would then allow a period of time similar to that allowed by the regulations issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). This rule also permits all agencies of the United States to submit administrative offset requests directly to the appropriate Agricultural Stabilization and Conservation Service State office. This rule adopts, unchanged, a proposed rule which was published in the Federal Register on July 13, 1988, at 53 FR 26443.

EFFECTIVE DATE: December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Specialist, (202) 382–0185.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

The titles and numbers of the Federal Domestic Assistance Programs to which this final rule applies are: Commodity Loans and Purchases, 10.051; Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Storage Facilities and Equipment loans, 10.056; Wheat Production Stabilization, 10.058; Rice Production Stabilization, 10.065; Grain Reserve Program, 10.067; as listed in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

This action is not expected to have any significant impact on the quality of the human environment, health and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This final rule makes two changes in existing regulations.

First, the final rule amends 7 CFR Part 13 to extend the period of time in which the Government may exercise its right to administrative offset against amounts approved by Agricultural Stabilization and Conservation county committees for disbursement to persons under programs administered by the Department of Agriculture, or any agency thereof. These include amounts disbursed on behalf of the Commodity Credit Corporation (CCC).

Currently, regulations provide that setoff under 7 CFR Part 13 against a debt owed the Government is barred when no suit has been filed and the applicable statute of limitation for enforcing payment of such a debt expires prior to the date the amount becomes payable to the debtor. Although the period may vary, the statutory period for bringing a civil action on a claim is usually six years. The Debt Collection Act of 1982 amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3716) (the Act) to allow a ten-year period during which a federal agency may collect a claim by administrative offset under setoff regulations. This ten-year period begins to run from the date a claim becomes due and payable and is not paid. This action allows a similar period for withholding and setoff under these regulations. The Act provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. CCC has authority under section 4(k) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714) to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not bound by the Federal Claims Collection Act. However, it is CCC policy that any action by CCC to collect a debt by administrative offset should be in conformity, to the extent feasible, with the Federal Claims Collection Standards promulgated under the Act.

This regulation is necessary to protect the financial integrity of many federal farm programs by ensuring the government will be able to collect debts incurred by program participants, including many with respect to which a civil action to enforce would be ineffectual, not sufficiently cost effective for the Government to pursue, or legally barred.

Second, the final rule amends 7 CFR Part 13 to permit all agencies of the United States to submit to the appropriate Agricultural Stabilization and Conservation Service (ASCS) State office all requests for administrative offset against amounts approved by

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ASC county committees for disbursement to persons under programs administered by the Department of Agriculture, or any agency thereof.

Currently most federal agencies are required to submit requests for offset directly to the Administrator of ASCS. This regulation permits such requests to be made directly to the appropriate ASCS State office. This change will streamline the offset process and promote better cooperation between federal agencies.

No comments to the proposed rule published July 13, 1988 were received.

List of Subjects in 7 CFR Part 13

Setoffs and withholdings.

Accordingly, the regulations at 7 CFR Part 13 are amended to read as follows:

PART 13—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: 15 U.S.C. 714b, 31 U.S.C. 3716.

2. 7 CFR 13.5 is amended by revising paragraph (b) to read as follows:

§ 13.5 Conditions under which setoff or withholding shall not be made.

Setoff or witholding shall not be made:

* * * * *

(b) If the claim has been outstanding for more than ten years, or legal action to enforce the debt is barred by an applicable statutory period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

* * * * *

3. 7 CFR 13.6 is amended by revising paragraph (c), removing paragraph (d), redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively, and adding a new paragraph (e)(5) to read as follows:

§ 13.6 Requests for setoff.

* * * * *

(c) All requests for setoff and Notices of Levy from agencies of the United States other than those set out in paragraph (a) of this section shall be mailed or delivered to the appropriate ASCS State office.

* * * * *

(e) * * *

(5) Each request shall include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with.

Singed at Washington, DC, on November 28, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-28778 Filed 12-13-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 971

Texas Lettuce; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule regarding Texas lettuce will authorize expenses and establish an assessment rate under Marketing Order 971 for the 1988–89 fiscal period. Authorization of this budget will allow the South Texas Lettuce Committee to incur expenses reasonable and necessary to administer the program. Funds for this program will be derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR Part 971), both as amended, regulating the handling of lettuce grown in the Lower Rio Grande Valley of South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of Texas lettuce under this marketing order, and approximately 30 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lettuce handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of lettuce. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of lettuce. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Lettuce Committee met on October 11, 1988, and unanimously recommended a 1988–89 budget of $34,305. The additional $942 over last season's budget of $33,363 will cover increases in the items of rent and utilities, insurance and bonds, and accounting and audit. The committee recommended an assessment rate of $0.05 per carton, the same as last year. This rate, when applied to anticipated shipments of 750,000 cartons, will yield $37,500 in assessment revenue. The surplus income of $3,195 will be added to the current program reserve of $42,000, resulting in an ending reserve of $45,195, an amount within the maximum

authorized under the order of three years' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register (53 FR 45767, November 14, 1988). That document contained a proposal to add § 971.228 to establish expenses and an assessment rate for the South Texas Lettuce Committee. That rule provided that interested persons could file comments through November 25, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce (Texas).

For the reasons set forth in the preamble, 7 CFR Part 971 is amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 971 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 971.228 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 971.228 Expenses and assessment rate.

Expenses of $34,305 by the South Texas Lettuce Committee are authorized and an assessment rate of $0.05 per carton of lettuce is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: December 9, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28708 Filed 12–13–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

1988–89 Expenses and Assessment Rate for Marketing Order 989 Raisins Produced From Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 989 for the 1988–89 fiscal year instituted under the marketing order for raisins produced from grapes grown in California. Authorization of this budget will allow the Raisin Administrative Committee (Committee) to incur reasonable and necessary expenses to administer the marketing order program. Funds for the program will be derived from assessments on handlers of California raisins.

EFFECTIVE DATE: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Tom Jacobs, Marketing Specialist, Marketing Order Administration Branch, Room 2526, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained herein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order, and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

The marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable raisins handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval. The members of the Committee are handlers and producers of regulated raisins. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, so that all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of assessable raisins. That rate is applied to actual shipments to produce sufficient income to pay the Committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the Committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the budget of annual expenses and assessment rate approval must be expedited so that the Committee will have funds to meet its obligations.

While this action will impose some additional costs on handlers of California raisins, including small entities, the costs are in the form of uniform assessments on all handlers. Any costs to handlers are expected to be more than offset by benefits derived from the operation of the marketing

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order. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule detailing the recommended budget and assessment rate was published in the **Federal Register** on November 8, 1988 (53 FR 45100). In the proposed rule, interested persons were invited to submit written comments until November 18, 1988. No comments were received on this action.

After review, it is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

Because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis throughout the year, this action should be expedited. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, the Secretary has also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Therefore, this action will become effective upon publication in the **Federal Register**, and will apply to the entire 1988–89 marketing year.

List of subjects in 7 CFR Part 989

Marketing Agreement and Order, California, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.339 is added to read as follows:

Note: This Section will not appear in the Code of Federal Regulations.

§ 989.339 Expenses and assessment rate.

Expenses of $435,000 by the Raisin Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 989.80 of $1.50 per ton of assessable raisins is established for the crop year ending July 31, 1989. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: December 9, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28710 Filed 12–13–88; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1408

Setoff, Withholding and Stop Payment Policies

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR Part 1408, which sets forth the policies of Commodity Credit Corporation (CCC) regarding the setoff of debts owing to CCC or other government agencies against amounts payable by CCC. The intent of this rule is to extend the regulatory period of time allowed for setoff and withholding to ten years. This regulation would then allow a period of time similar to that allowed by regulations issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). This rule adopts a proposed rule which was published in the **Federal Register** on July 11, 1988, at 53 FR 26081.

EFFECTIVE DATE: December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Specialist, (202) 382–0185.

SUPPLEMENTARY INFORMATION: This rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Furthermore, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking for this action. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

This regulation amends 7 CFR Part 1408 to extend the period of time CCC may exercise its regulatory right to administrative offset against amounts otherwise payable.

Currently, regulations provide that setoff under 7 CFR Part 1408 against a debt owed the Government is barred when no suit has been filed and the applicable statute of limitation for enforcing payment of such a debt expires prior to the date the amount becomes payable to the debtor, except for certain debts due to an overcharge or loss or damage by a carrier. The statutory period for bringing a civil action on a claim is six years.

The Debt Collection Act of 1982 amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3716) to provide a ten-year period of limitation on a federal agency to collect a claim by administrative offset. This ten-year period begins to run from the date the claim becomes outstanding. The Federal Claims Collection Act of 1966 and the Federal Claims Collection Standards (4 CFR Parts 101 through 105) promulgated thereunder by the Comptroller General and the Attorney General provide standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. CCC has authority under section 4(k) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714) to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not bound by the Federal Claims Collection Act. However, it is CCC policy that any action by CCC to collect a debt by administrative offset should agree, to the extent feasible, with the Federal Claims Collection Standards.

This regulation is necessary to protect the financial integrity of many federal agricultural programs by ensuring the

Government will be able to collect debts owed to it, including many on which a civil action to enforce would be ineffectual, not sufficiently cost effective for the Government to pursue, or legally barred.

Two comments were received from farm organizations in response to the proposed rule published in the **Federal Register** on July 11, 1988 (53 FR 26081). Both comments expressed confusion on the scope of the proposed amendment due to an apparent contradiction between the introduction and the amendment itself on whether 7 CFR Part 1408 applies to debts owed to all government agencies or only to debts owed to CCC. No change was made in the final rule because it has been determined that when 7 CFR Part 1408 is read in its entirety it is clear that the regulation applies to debts due all federal agencies.

In addition, both comments conveyed concern regarding the possible detrimental effect on farmers if disaster payments are offset. This amendment does not change CCC's longstanding policy on setoff of debts due federal agencies against amounts payable by CCC, it merely extends the period of time allowed for setoff to ten years. The amendment will have no effect on whether or not disaster payments are offset.

List of Subjects in 7 CFR Part 1408

Setoff, Withholding and stop payment policies of Commodity Credit Corporation.

Accordingly the regulations at 7 CFR Part 1408 are amended as follows:

PART 1408—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: 15 U.S.C. 714b.

2. 7 CFR 1408.4 is amended by revising paragraph (b)(3) to read as follows:

§ 1408.4 Setoff.

* * * * *

(b) * * *

(3) The claim has not been outstanding for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

* * * * *

3. 7 CFR 1408.11 is amended by revising paragraph (a) to read as follows:

§ 1408.11 Conditions under which setoff, withholding, or stop payment actions will not be taken.

* * * * *

(a) If the claim has been outstanding for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

* * * * *

Signed at Washington, DC, on December 9, 1988.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-28777 Filed 12-13-88; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 80-054F-E-3]

Production of Dry Cured or Country Ham Not Using Prescribed Methods To Destroy Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Partial waiver of final rule—extension.

SUMMARY: On December 31, 1987, the Food Safety and Inspection Service (FSIS) published a notice announcing its intent to permit producers of dry cured or country ham not using the prescribed methods for destroying trichinae in pork to continue to use nonconforming methods until December 31, 1988. This waiver was provided to protect consumers and to permit dry cured or country ham producers to continue production while research concerning the effectiveness of current processing techniques was undertaken. Due to unavoidable delays in conducting the research, FSIS is extending that waiver until the rulemaking procedures on this matter are completed next year.

EFFECTIVE DATE: December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bill Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Background

Prior to August 6, 1985, § 318.10(c)(3)(iv) of the Federal meat inspection regulations (9 CFR 318.10(c)(3)(iv)) provided two methods of destroying any possible live trichinae while processing dry salt cured hams, one of which may be used to manufacture country hams. These two methods have been in use for over 50 years. On February 7, 1985 (50 FR 5226), FSIS published a final rule, effective August 6, 1985, prescribing a third method for destroying live trichinae in dry salt cured hams and which could also be used for country hams. With the development and publication of the third method, FSIS believed it had addressed all dry curing methods currently in use. However, FSIS learned that many country ham producers use methods which still do not meet the requirements of any of the three prescribed methods. These procedures involve the use of ambient temperatures that may not meet the time/temperature requirements; involve a curing process that does not include a mid-cure re-exposure of the ham to salt (overhaul); or involve the washing of the ham before the required curing time is completed. For several years, the Agency has permitted the use of nonconforming processing methods since they were traditional, decades-old methods believed to be effective in destroying trichinae. In addition, the Department has not received any reports of trichinosis occurring from ingestion of any dry cured or country hams.

Because of the inability of certain producers to meet the August 6, 1985, effective date and since there were no reported cases of trichinosis from products not treated under the three prescribed methods, FSIS published a notice on June 18, 1985 (50 FR 25202), allowing producers of dry cured or country ham not using the prescribed methods to continue production until December 31, 1986, under the following conditions:

1. Any dry cured or country hams in processing prior to August 6, 1985, would be controlled under the previous two methods.

2. Dry cured ham producers using processing techniques not covered by the prescribed methods had to submit a description of their processes to FSIS by August 6, 1985. The description had to contain the following information:

a. The average and maximum ham weight;

b. The cure and the smoking times and temperatures and, if used, heating times and temperatures;

c. The amount of salt used and its application and, if applicable, how reapplied and/or replenished;

d. If and when hams are washed.

Dry cured and country ham producers were permitted to continue using their current processes until December 31, 1988, unless:

1. Upon initial review of the process, the Administrator determined that the method was not likely to prove effective; or

2. Data became available to substantiate ineffectiveness of the method.

In the notice, FSIS stated that research would be conducted between that time and December 31, 1988, to find one or more additional processing methods.

On January 2, 1987, FSIS published an extension of the waiver until December 31, 1987. The Agency stated that research was still under way due to unavoidable delays. Initially, a considerable amount of time had been consumed in developing a fully satisfactory protocol. Secondly, there had been problems in assembling experimental equipment. Thirdly, the experimenters experienced unexpected difficulties in conducting the experiment. Fourthly, there had been some difficulties with the interpretation and analysis of the test data. As a result, the experimenters did not submit a final report to the Agency until November 9, 1987.

On December 31, 1987, FSIS published an extension of the waiver for one year until December 31, 1988. The Agency stated that the experimental data from the research were complex, and were more indicative than conclusory. However, because of the importance of the indications for consumer health, using the experimental data coupled with other known data, the Agency decided a proposed rule could be developed and published by December 31, 1988.

The Agency has found that the 1-year extension on the waiver to December 31, 1988, was insufficient for accurate interpretation and analysis of the research data to be completed. However, the interpretation and analysis of the research data is now completed, and a proposed rule should be published in the early part of 1989, and further rulemaking procedures will be conducted in a timely fashion.

Because it is impossible to accurately estimate the time to complete the rulemaking, the Administrator is extending the waiver until next year.

Done at Washington, DC, on December 9, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-28715 Filed 12-13-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 302

[Docket No. 80219-7169]

Designation of Areas; Designation of Public Works Impact Program Areas

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 302.7–"Designation of public works impact program areas." This rule provides that under EDA's authorizing statute, Public Works Impact Program (PWIP) projects need not meet OEDP requirements. In addition, this amendment provides that in order to be designated under this Section, sufficient data establishing eligibility for designation must be available and must be specific to the area proposed for designation.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published an interim rule concerning designation of public works impact programs on July 3, 1986 (51 FR 24302), and allowed interested persons 60 days to comment. No comments were received. EDA is adopting as a final rule, 13 CFR Part 302, "Designation of Areas" § 302.7, "Designation of public works impact program areas."

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact analysis be prepared. This regulation is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact analysis has to be or will be prepared.

This rule exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefit and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, and sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), (604(a)), no initial or final Regulatory Flexibility Analysis has been or will be prepared.

This rules does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 302

Community development.

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702 as amended), the interim regulation amending 13 CFR Part 302 which was published July 3, 1986 (51 FR 24302) is adopted as final without changes.

Date: November 30, 1988.

Stanley M. McGeehan,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 88-28693 Filed 12-13-88; 8:45 am]

BILLING CODE 3510-24-M

13 CFR Part 302

[Docket No. 80991-8191]

Area Designation; Special Impact Areas

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This amendment to EDA's rule at 13 CFR 302.8(a)(3) regarding designation of special impact areas removes reference to average

unemployment rates based upon the calendar year. Only the most recent 12-month annual average unemployment rates will now be used as a qualifier for designation as a Special Impact Area (SIA). This change is needed in order to assure that those receiving EDA designations do so on the basis of the most current unemployment date.

DATES: Effective date December 14, 1988. Comments must be received by February 13, 1988.

ADDRESS: Send comments to Joseph M. Levine, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7001, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7001, Washington, DC 20230, (202) 377–5441.

SUPPLEMENTARY INFORMATION: This rule would amend the EDA regulation setting forth standards for the designation of redevelopment areas under the Public Works and Economic Development Act. EDA is deleting its 12-month annual average unemployment rate based upon the calendar year, for SIA designation. Under the current calendar year qualifier, it would be possible that an area's qualifying calendar year 1987 average rate could be used in support of its SIA designation as late as February 1989, regardless of a subsequently available, non-qualifying 12-month (non-calendar) rate. This could happen since 1988 calendar year average rates for areas will not be computed by state employment security agencies until February 1989, and EDA will not receive such data until March 1989. This change is needed in order to assure that those receiving EDA designations do so on the basis of the most current unemployment data. Applicants will no longer qualify under earlier higher unemployment rates when employment subsequently improves. EDA's mission is to help in areas of high unemployment. This change means that EDA will not designate areas no longer in need of EDA's assistance.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investments, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for this rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

However, because the Department is interested in receiving comments from those who benefit from the amendment, this rule is being issued as interim final. Public comments on the interim rule are invited and should be sent to the address listed in the **"ADDRESS"** section above.

Since a notice and an opportunity for comment are not required for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 302

Community development.

For the reasons set out in the preamble, Title 13, Chapter III, Part 302 is amended as set forth below:

PART 302—DESIGNATION OF AREAS

1. The authority citation for Part 302 continues to read as follows:

Authority: Sec. 701 Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Sec. 1–105, Department of Commerce Organization Order 10–4, as amended (40 FR 5670, as amended).

2. Section 302.8 is amended by revising paragraph (a)(3) to read as follows:

§ 302.8 Designation of special impact areas.

* * * * *

(a) * * *

(3) An area of substantial unemployment, meaning one which (i) experienced an average unemployment rate at least 50 percent higher than the U.S. average unemployment rate for the most recent 12-month period for which data are available, or (ii) is currently experiencing an unemployment rate at least 100 percent higher than the U.S. average unemployment rate.

* * * * *

Date: November 14, 1988.

Orson G. Swindle III,

Assistant Secretary for Economic Development.

[FR Doc. 88–28692 Filed 12–13–88; 8:45 am]

BILLING CODE 3510–24–M

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13 CFR Part 309

[Docket No. 51207–7179]

General Requirements for Financial Assistance; Unfair Competition Prohibitions

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 309.2—"Unfair Competition." This rule provides that under certain circumstances, EDA must conduct a study (verification and evaluation) of the capacity and demand for particular goods, materials, commodities, services or facilities, based upon specified information submitted by the applicant for financial assistance under PWEDA. EDA's verification and analysis is referred to as a "702 Study." These amendments revise the conditions under which EDA must conduct a "702 Study."

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC 20230, (202) 377–5441.

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SUPPLEMENTARY INFORMATION: EDA published an interim rule concerning unfair competition prohibitions on May 2, 1986, (51 FR 16292), and allowed interested persons 60 days to comment. No comments were received, EDA is adopting as a final rule, 13 CFR Part 309, "General Requirements for Financial Assistance" § 309.2, "Unfair Competition Prohibitions".

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a), no initial or final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702 as amended), the interim regulation amending 13 CFR Part 309 which was published May 2, 1986 (51 FR 16292) is adopted as final without changes.

Date: November 30, 1988.

Stanley M. McGeehan,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 88-28694 Filed 12-13-88; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 47 and 91

Aircraft Operation Outside U.S. Pending Receipt of Registration Certificate, Unauthorized by FAA; Legal Opinion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of legal opinion.

SUMMARY: The Federal Aviation Administration Aircraft Registration Branch (Registry) has received many inquiries and comments from the public concerning the authority to operate an aircraft outside the territory of the United States before issuance by the Registry of a certificate of registration. This notice confirms to the aviation community the legal opinion of the FAA that operation of an aircraft outside the United States pending receipt of a certificate of registration is not authorized by the Federal Aviation Act or its implementing regulations.

FOR FURTHER INFORMATION CONTACT: Irene E. Howie, Assistant Chief Counsel, International Affairs and Legal Policy (AGC-7), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3515.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(a)) (Act) requires registration as a condition to the operation of any applicable aircraft. That section further authorizes the Administrator, by regulation, to permit the operation of such aircraft without registration for a reasonable time after the transfer of ownership. The Federal Aviation Regulations (FARs) dealing with aircraft registration are found at 14 CFR Part 47. Section 47.31(b), which outlines the procedures for operation of the aircraft prior to its receipt of the certificate of registration, authorizes operation if the applicant carries the second duplicate copy ("pink slip") of the Aircraft Registration Application (AC Form 8050-1), in the aircraft. Operation with the pink slip is described in the regulation as temporary authority to operate *without registration* (14 CFR 47.31(b)).

Section 47.31(b) was adopted by the FAA in 1964 (29 FR 6485; May 19, 1964). The regulation required an individual who had applied for a certificate of registration to carry the duplicate copy of the application in the aircraft during aircraft operations. The regulation stated that the duplicate copy serves as "temporary authorization" to operate the aircraft for not more than 30 days after transmission of an application for a certificate of registration to the Registry. Based on comments received in response to the FAA's proposed rulemaking (Draft Release No. 61-25) (26 FR 10698; November 15, 1961), the FAA provided that the 30-day period for temporary authorization to operate an aircraft, under the authority of the duplicate copy of an application, could be extended for such additional time as the applicant may need to begin carrying the temporary or regular certificate of registration in the aircraft. The FAA noted that this extension "* * * alleviates situations in which, for example, an aircraft is abroad and it is physically impossible to comply with the 'carrying' requirement within the 30-day period."

In 1966, the FAA amended certain sections of Part 47 to implement amendments to the Federal Aviation Act of 1958 and to include revised form numbers related to aircraft registration that resulted from the new computer processing capability of the Registry (31 FR 4494; March 17, 1966). In the preamble of the revision, the FAA reaffirmed that "* * * an applicant would carry a duplicate copy of the Application for Aircraft Registration as temporary operating authority that is valid for no more than 30 days." The FAA provided for issuance of a letter of extension, serving as continuing authority to operate an aircraft, if the Registry could not issue the Certificate of Aircraft Registration within the 30-day period.

The FAA amended § 47.31(b) in 1968 to read as it does today (33 FR 11; January 3, 1968). The amendment extended the 30-day period during which aircraft operations were permitted under the authority of the pink slip to 90 days. Thus, an aircraft could be operated for 90 days before receipt of the Certificate of Registration, if the pink

slip, which evidenced submission of an application for registration and resulted in temporary authorization to operate, was carried in the aircraft. At the same time, the FAA added the phrase "without registration" to § 47.31(b). The preamble noted that § 47.31(b) was "clarified to reflect the fact that the temporary authority to operate an aircraft only authorizes operation 'without registration' " under section 501(a) of the Act; it does not constitute the fact of registration much less receipt of a *certificate* of registration.

Again, in 1972, the FAA reasserted that the duplicate copy of a Certificate of Aircraft Registration is "temporary authority" to operate an aircraft without the Certificate of Registration. This affirmation was contained in a document that clarified regulations regarding special identification numbers and revised airworthiness certificates (37 FR 25486; December 1, 1972). Prior to 1972, temporary authority to operate an aircraft after application for a special identification number was valid until the owner received from the Registry both a revised airworthiness certificate and a revised Certificate of Aircraft Registration, showing the special identification number. The 1972 revision to Part 47 eliminated the requirement to wait for a revised airworthiness certificate before the aircraft could be operated pursuant to the temporary authority of the pink slip. However, the rule required the duplicate copy of AC Form 8050–64 (Assignment of Special Registration Numbers) *and* the current Certificate of Aircraft Registration to be carried in the aircraft until a revised Certificate of Aircraft Registration was received.

As part of a notice of proposed rulemaking (NPRM) entitled "Revision of General Operating and Flight Rules" (Docket No. 18334; Notice No. 79–2C), the FAA proposed to amend § 91.27(a)(2) to provide that the temporary authority to operate an aircraft using the duplicate, pink-slip, copy of the Aircraft Registration Application is limited to aircraft operations solely within the United States (50 FR 11292; March 20, 1985). The FAA asserted that this limitation of the temporary authority to operate an aircraft without the Certificate of Aircraft Registration is necessary to comply with international treaty obligations and reflected current agency legal views and practice. The FAA received several comments in response to this proposal that strongly objected to the FAA's position regarding the proposal.

The commenters objected to the proposal because, in their view, it was a significant modification of previous policy and would have an adverse cost impact on the aviation industry. However, since at least 1982, the FAA has provided its legal opinion that a *Certificate of Aircraft Registration* must be carried in the aircraft during operations outside the territory of the United States. One of the commenters relied on the language from the 1964 preamble to the § 47.31(b) (quoted above) to claim that operation of an aircraft under the temporary authority of the pink slip is permitted outside the United States. Although this language in the preamble may fairly be read to permit aircraft operations outside the United States pursuant to the authority of the pink slip, similar language that would expressly permit these operations has never been included in the regulations. Ever since § 47.31(b) was adopted in 1964, the regulation has stated that the pink slip merely results in "temporary authority" or "temporary authorization" to operate an aircraft before the original Certificate of Aircraft Registration has been received and, thus, can be carried in the aircraft during operations. During the long history of amendments to Part 47, the FAA has not stated that the pink slip is a "temporary Certificate of Aircraft Registration" or that the pink slip is a form of, or replacement for, a Certificate of Aircraft Registration. The preamble to a rulemaking document is simply a statement of the basis and purpose of a rule and does not have the legal force and effect of a regulation. To the extent that the language in the 1964 preamble is inconsistent with the opinion stated herein, it is hereby refuted.

Domestic operation of aircraft under pink slip authority is permitted to facilitate transactions in aircraft. Aircraft operating under such authority may do so prior to any FAA evaluation of the information on the application for a Certificate of Aircraft Registration and the evidence of ownership submitted therewith. Because mere possession of a pink slip is not evidence that the applicant meets the requirements for eligibility for U.S. aircraft registration, such a form cannot be utilized outside of the United States to authorize aircraft operation.

Neither section 501 of the Act nor § 47.31(b) of the FARs contains language which explicitly limits the authority to operate the aircraft without registration to operations solely within the United States. However, section 1102(a) of the Act requires that the Administrator exercise his authority consistently with any treaty obligations of the United States. The United States is a party to the Convention on International Civil Aviation (Convention) (61 Stat. 1180; T.I.A.S. 1591; 15 U.N.T.S. 295). Article 29 of that Convention requires each civil aircraft of a Contracting State engaged in international air navigation to carry its certificate of registration.

Specifically, Article 29 states, in pertinent part:

> Every aircraft of a contracting state, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention:
> (a) certificate of registration * * *.

The FAA must respect the Convention's use of the term "certificate" in Article 29 instead of the term "authority" when addressing the obligations of contracting states to carry certain documents when engaged in international air navigation.

Therefore, in order for the United States to comply with this treaty obligation, it must require every civil aircraft of its Registry when engaged in operations to, or from, the United States, as well as operations conducted wholly outside the United States, to carry its certificate of registration. Section 91.27(a)(2) of the FARs in consistent with this requirement, which states that every civil aircraft may be operated only if it carries a registration certificate issued to its owner. Since § 47.31(b) of the FARs states that operation of an aircraft conducted under the authority of the pink slip is operation *without registration*, and has stated so since 1968, the United States would be in violation of Article 29 of the Convention by authorizing operations outside of the United States under the authority of a pink slip.

As a result of the comments submitted in response to the proposal to amend Part 91, the FAA is aware of the concerns of the aviation community regarding the potential practical effect and economic impact of this opinion. However, the aviation community has always been able to transfer ownership and register their aircraft with minimal difficulty. In order to mitigate the potential hardship that could result from grounding an aircraft used in international operations, pending receipt of a registration certificate, the Registry will, upon request, telex a copy of the Certificate of Aircraft Registration to the individual whose name appears on the application as the registered owner of the aircraft. The telex copy is issued after confirmation of the information contained on an Aircraft Registration Application and determination of eligibility for registration. The telex,

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which reflects critical and verified information resulting from the evaluation by the Registry of an application for aircraft registration, may be used as a temporary Certificate of Aircraft Registration until the original certificate is forwarded for carriage in the aircraft.

This telex certificate will assist owners who submit an application for aircraft registration and who wish to operate the aircraft as soon as possible in international operations. Since the telex, by its terms, is a form of registration certificate, the aircraft may be operated in international air navigation consistent with Article 29 of the Convention. The Registry will telex this copy within a matter of days—often within 48 hours—to be kept in the aircraft until the original Certificate of Aircraft Registration (AC Form 8050–3) is forwarded to the registered owner.

In conclusion, both section 502 of the Act and § 47.31(b) of the FARs indicate that aircraft operations before issuance of the certificate of registration are operations without registration. Section 501 of the Act and § 47.31 of the FARs must be interpreted in a manner consistent with our international obligations as required by section 1102 of the Act. Accordingly, operations outside the United States of aircraft for which an application for registration has been submitted but a certificate of registration has not been issued are not authorized under United States law.

Issued in Washington, DC, on December 8, 1988.

Gregory S. Walden,

Chief Counsel.

[FR Doc. 88–28687 Filed 12–9–88; 12:20 p.m.]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 87F–0152]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-propenoic acid, telomer with sodium 2-methyl-2-[(1-oxo-2-propenyl)amino]-1-propane sulfonate and sodium phosphinate as a deposit control additive in the manufacture of paper and paperboard in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective December 14, 1988; written objections and requests for a hearing by January 13, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 12, 1987 (52 FR 22536), FDA announced that a food additive petition (FAP 7B3993) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of acrylic acid, telomer with sodium 2-acrylamido-2-methyl-1-propanesulfonate and sodium phosphinate as a deposit control additive in the manufacture of paper and paperboard in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this review, the agency finds that a more appropriate name for the additive is "2-propenoic acid, telomer with sodium 2-methyl-2-[(1-oxo-2-propenyl)amino]-1-propane sulfonate and sodium phosphinate" (CAS Reg. No. 110224–99–2]. The agency also concludes that the proposed food additive use is safe, and that 21 CFR 176.170(a)(5) should be revised as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before January 13, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry in the table under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
2-Propenoic acid, telomer with sodium 2-methyl-2-[(1-oxo-2-propenyl)amino]-1-propane sulfonate and sodium phosphinate (CAS Reg. No. 110224-99-2).	For use only as a deposit control additive employed prior to the sheet forming operation in the manufacture of paper and paperboard and at a level not to exceed 0.15 percent by weight of the dry paper and paperboard.
* * * * *	

* * * * *

Dated: December 7, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-28688 Filed 12-13-88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3491-5]

Redesignation of Areas for Air Quality Planning Purposes; Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice changes the attainment status designation for Lincoln, Nebraska (Lancaster County), relative to the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). The current air quality status for the city of Lincoln is nonattainment of the CO standard. In this rulemaking, the EPA is approving the state's request to redesignate the area to attainment.

DATES: This action will become effective on February 13, 1989, unless notice is received by January 13, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: The Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Nebraska Department of Environmental Control, Air Quality Division, Box 94877, 301 Centennial Mall South, Lincoln, Nebraska 68509; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION: The 1977 Clean Air Act Amendments required, pursuant to section 107(d) of the act, that EPA publish a list of air quality control regions, or portions thereof, reflecting their attainment/nonattainment status for all criteria pollutants. Subsequently, on March 3, 1978, EPA designated over 400 areas as nonattainment for one or more primary or secondary NAAQS. At that time, the Lincoln, Nebraska, Lancaster County area was designated nonattainment for CO. An area is considered nonattainment for CO if the primary NAAQS for CO, which is set forth at 40 CFR 50.8, is violated; i.e., more than once in a year, CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 9 parts per million (ppm) of air, or (2) the maximum allowable 1-hour concentration of 35 ppm. The Lincoln nonattainment area comprises a relatively small portion of the city and is located in a shallow basin (Antelope Creek Basin). A major roadway, Capitol Parkway/Normal Boulevard, is located in the nonattainment area and runs parallel to the bed of the basin.

A revision to the State Implementation Plan (SIP) to meet the requirements of Part D and section 110 of the Clean Air Act was required for Lincoln and January 1979. The plan received from the state had a number of deficiencies which EPA asked the state to correct. In July 1979, a construction ban was imposed on the Lincoln nonattainment area for all stationary sources of CO. Although several deficiencies were corrected, the plan had not provided for attainment of the CO standard by the end of 1982 and was not approved.

In February 1984, the region requested that the Governor withdraw the inadequate CO plan, and prepare and submit a new plan to provide for attainment of the standard. In April 1984, the Governor withdrew the inadequate plan and submitted a new plan in April 1985. The Region reviewed the plan and found that it met the requirements of the Clean Air Act. The plan demonstrated attainment of the CO standard in the nonattainment area by the end of 1987 and showed continued compliance with the standard through 1991. On September 19, 1986, EPA approved the Nebraska SIP revision for CO in Lincoln.

There are no major stationary sources of CO in the city of Lincoln and no controllable minor stationary sources in the CO nonattainment area. The 1982 emission inventory indicates that 97 percent of the total CO emissions in the nonattainment area are generated by mobile sources. The state and city agencies believe that there was an accumulation of basin traffic-generated CO which built up during peak traffic hours and under very stable meteorological conditions became trapped in the basin area, causing high CO levels and occasional violations of the CO standards.

The city of Lincoln embarked on a program of transportation improvements about 1978 designed to improve traffic flow and thus decrease CO emissions from prolonged idling, traffic congestion, and delays. A program of computer-controlled synchronization of traffic signals in the Antelope Creek Basin was completed during 1982.

The Lincoln Transportation System provides for basic transportation needs through regularly scheduled public transit services covering 419.8 route miles and approximately 1,500,000 vehicle miles of bus service each year. Approximately 97 percent of the total population live, and 98 percent of those employed persons in Lincoln work, within one-quarter mile of a bus route. The 2005 Lincoln-Lancaster County Comprehensive Plan addresses long-range transit-related improvements including route expansion and bus replacement.

The city has operated a citywide carpool/vanpool program since 1976 to achieve a reduction in vehicle usage within the city. The City Planning Department estimates that ridesharing activities during 1984 resulted in a reduction of 1.2 million vehicle miles traveled (vmt) per month, or about two percent of total vmt, removing approximately 5,000 car trips from the streets each business day. Park and ride lots have been designated throughout the periphery of the city to promote carpooling and bus ridership. Bicycle storage facilities, maintained by the city and private interests, are located at the business center and activity centers throughout Lincoln. The city has promoted flexible working hours through technical assistance and consultation to individual employers. The SIP committed to an additional transportation control measure, the widening of Normal Boulevard by December 1, 1985, to further improve traffic flow and reduce CO levels. The

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city completed this project on schedule. Although not a part of the SIP, Lincoln conducted a vehicle CO emission testing program through the winter of 1987–88. This was an effort to seek voluntary help from citizens in reducing CO.

All of the above measures, combined with the effects of the Federal Motor Vehicle Control Program, have resulted in reduced emissions of CO in the nonattainment area.

Although the SIP adequately demonstrated attainment of the CO standard in the nonattainment area by 1987, a hotspot modeling analysis by EPA indicated that an area outside the designated nonattainment area was likely to exceed the standard. Consequently, EPA requested that the state and local agencies locate a special purpose monitor (SPM) at the modeled hotspot located at 27th and "O" Streets. A CO monitor was subsequently installed in October 1985, at the nearest available location, although it was not the preferred location. Three exceedances of the CO standard of 9.0 ppm were recorded in January and February of 1986, with a second-high value of 9.9 ppm. Due to the problems with obtaining representative CO values, the monitor was relocated ½ block west of the initial location, to the originally preferred location, in May of 1986. No exceedances have been recorded at the SPM since the monitor was relocated. Also, no exceedances have been recorded at the other CO monitor in Lincoln. This improvement in ambient air quality is a demonstration of the effectiveness of the previously discussed SIP control measures.

On April 14, 1988, the state submitted a request to reclassify the CO nonattainment area in Lincoln to attainment. Included with this request was information which showed that there have been no exceedances of the CO standard at the SPM monitor, or at the other CO monitor in Lincoln, for the past eight quarters (the period April 1986 to March 1988). The state submission also provided documentation that Lincoln has complied with all control strategy provisions of the SIP, as previously noted.

EPA's policy relevant to CO redesignations is discussed in the following memoranda:

1. June 12, 1979, from Richard G. Rhoads, to Directors of Air and Hazardous Materials Division, Regions I–X, Subject: "Section 107 Redesignation Criteria".

2. April 21, 1983, from Sheldon Meyers, to Directors of Air Management Divisions, Subject: "Section 107 Designation Policy Summary."

3. December 23, 1983, from G.T. Helms, to Chiefs of Air Programs Branches, Regions I–X, Subject: "Section 107 Questions and Answers".

In summary, the policy specifies the following criteria must be met to justify a redesignation request for CO:

1. Generally, eight quarters of ambient air quality data showing no violations of the NAAQS are required to support a redesignation to attainment.

2. All available data relative to the attainment status of an area must be reviewed. These data must include the most recent eight consecutive quarters of quality assured, representative air quality data, plus evidence of an implemented control strategy that EPA has fully approved. Available modeling data must also be considered.

3. An attainment designation can be supported using the most recent four quarters of exceedance-free ambient data if an acceptable state-of-the-art modeling analysis is provided showing that actual, enforceable emission reductions are responsible for the observed air quality improvement.

The state request and supporting documentation adequately demonstrate that the necessary EPA policy criteria for redesignation have been met for the Lincoln CO nonattainment area.

The EPA proposed post-87 ozone and CO policy, as discussed in the **Federal Register** of November 24, 1987, and June 6, 1988, applies to nonattainment areas based on air quality data for the period January 1986 to December 1987. This would include the Lincoln CO nonattainment area since the last violation recorded was in February 1986. However, as discussed above, there are now eight quarters of data (April 1986 to March 1988) showing no violations of the NAAQS. EPA received two comment letters pertaining to the June 6, 1988, **Federal Register** notice which proposed to designate this area as nonattainment for CO. Both letters requested that EPA reconsider its decision based on these new data. Given this information and the state's request for redesignation, submitted on Aprill 12, 1988, EPA is approving the redesignation to attainment of the Lincoln, Nebraska, nonattainment area. In addition, based on substantial improvements in air quality for CO in Lincoln (Lancaster County), Nebraska, EPA has determined that the portion of the proposed rulemaking (53 FR 20722, June 6, 1988), that would designate this area as nonattainment for CO (i.e., retain the current designation) is no longer applicable. Today's action also withdraws that part of the June 6, 1988, notice that proposed to retain Lincoln as nonattainment for CO. This action effectively removes Lincoln (Lancaster County) from Table B of the June 6, 1988, notice of areas proposed to be designated nonattainment for CO.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective February 13, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective February 13, 1989.

Final Action

EPA is taking final action to approve the state's request to redesignate the Lincoln CO nonattainment area to attainment.

Under 5 U.S.C. 605(b), I certify that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Date: December 9, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 81, Subpart C, is amended as follows:

PART 81—[AMENDED]

Subpart C—Nebraska

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.328 is amended by revising the table for "Nebraska—CO" to read as follows:

§ 81.328 Nebraska.

* * * * *

NEBRASKA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Entire state		x

* * * * *

[FR Doc. 88–28730 Filed 12–13–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL–3491–6]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving the redesignation of that part of Clark County, Ohio, which is currently designated as secondary nonattainment to attainment of the former secondary total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). This action makes the entire county full attainment.

Today's action is in response to the Ohio Environmental Protection Agency's (OEPA) January 5, 1987, request for a revision to the attainment status for TSP in Clark County. Under the Clean Air Act (Act), area designations can be changed if sufficient data become available to warrant a redesignation.

EFFECTIVE DATE: This final rulemaking becomes effective on January 13, 1989.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6029.

SUPPLEMENTARY INFORMATION: On October 5, 1978 (43 FR 46011), USEPA designated part of Clark County as secondary nonattainment for TSP. On January 5, 1987, the State of Ohio requested that USEPA redesignate that part of Clark County, which is currently secondary nonattainment, to full attainment of the former TSP NAAQS. Area designations are subject to revision whenever sufficient data becomes available to warrant a redesignation.

The primary TSP NAAQS was violated when, in a year, either: (1) The geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 ug/m^3) (the annual primary standard); or (2) the 24-hour concentration of TSP exceeds 260 ug/m^3 more than once (the 24-hour standard). The secondary TSP NAAQS was violated when, in a year, the 24-hour concentration exceeds 150 ug/m^3 more than once.

USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standards. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). The USEPA is, however, continuing to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. Authority to continue to process redesignations is contained in the July 1, 1987, notice (p. 24682, column 1) which describes USEPA's transition policy regarding TSP redesignations.

On October 29, 1987 (52 FR 41589), USEPA proposed to redesignate Clark County as full attainment for TSP. USEPA stipulated in the Notice of Proposed Rulemaking (NPR) that the State of Ohio must submit evidence, during the public comment period, showing that all the source shutdowns are permanent and irreversible. The State was also required to submit evidence showing that if these sources were to start up again, the sources would be required to undergo new source permit review, including Prevention of Significant Deterioration (PSD) review. The evidence submitted by the Ohio Environmental Protection Agency (OEPA) and the (Dayton) Regional Air Pollution Control Agency (RAPCA) fulfills the requirements specified in the NPR for redesignating Clark County to full attainment of the former NAAQS for TSP. (See the Notice of Proposed Rulemaking dated October 29, 1987 (52 FR 41589) for a detailed discussion of USEPA's TSP redesignation policy.)

USEPA has reviewed the most recent monitoring data (January 1986–September 1987) for this portion of Clark County. Current air quality was determined to be consistent with the proposed redesignation.

Additionally, USEPA reviewed the most recent information available to it to determine if any major sources in Clark County were not in compliance. No TSP sources in Clark County were found to be in violation. USEPA's redesignation policy requires that the State Implementation Plan (SIP) be fully implemented (i.e., no sources out of compliance).

Public Comments

Comments were submitted by OEPA and RAPCA in response to the October 29, 1987, NPR. These comments and USEPA's response are discussed below.

Comment: In the NPR, USEPA requested that OEPA submit evidence showing that the cited source shutdowns are permanent. USEPA specified that the evidence must be in the form of documentation showing that if these sources were to start up again, they would be required to undergo new source permit review, including PSD review.

In response to USEPA's request for documentation, OEPA submitted copies of Ohio's Air Permit System file which lists facilities and sources which have operating permits. This listing documents: The total removal of the Ohio Edison Rockaway Plant and the J&J Foundry, the revoked status of the coal-fired boilers at the Ohio Edison Mad River Plant, and the revoked status of all sources at the Wickham Piano Plate Company. OEPA also submitted relevant pages from the OEPA Emissions Inventory System (EIS) which documented the absence of the above-mentioned sources in the inventory.

RAPCA submitted a listing of the air permit-to-operate withdrawals within Clark County. This listing shows the permit withdrawal dates for Ohio Edison Rockaway, March 12, 1980; J&J Foundry, Inc., June 13, 1984; and Wickham Piano Plate Company, September 25, 1984. The Point Source Engineering Data Sheets for the Ohio Edison Mad River Plant document the shutdown of the coal-fired boilers in 1982 and removal from the EIS. RAPCA also submitted various newspaper clippings describing the permanent shutdowns of these sources.

USEPA's Response: For the following reasons USEPA believes that Ohio's and RAPCA's comments satisfy USEPA's concern that the start up of any

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shutdown source be treated as a new source.

(1) USEPA's PSD program was delegated to Ohio on May 1, 1980. USEPA's policy under this program includes the requirement that a source which has been shutdown for 2 or more years or removed from the State emission inventory be considered a permanent source shutdown. If these sources were to start up in an attainment area they would be considered new sources.

(2) In addition, the PSD Program (40 CFR 52.21) allows only those emission reductions defined as contemporaneous (the period of the 5 years before construction of the new source) to be used for netting out of PSD review. The Ohio Edison Mad River Plant is the only facility still in existence. Netting could be possible at Mad River if the facility met the contemporaneous criterion. However, because the shutdown of the coal-fired boilers at Mad River occurred more than 5 years ago, the emission reductions would not be contemporaneous and could not be used in the calculation of net emissions for TSP. Therefore, based on the additional documentation submitted by the State, USEPA finds that all source shutdowns are permanent and irreversible.

Final Action

USEPA is approving the redesignation of part of Clark County, as described below, from secondary nonattainment of the former TSP NAAQS to attainment. The secondary TSP nonattainment area was:

The area south and east of the line determined by: Route 41 east from the Clark-Miami County Line east to Route 235, north to the Clark-Champaign County Line, and bounded by the north-south line determined by: State Road 72 south to Interstate 70, Interstate 70 west to Old Mill Road, south to Fairfield Pike, north-east to Cross Road, east to Route 68, south to Jackson Road, east to Mosier Road, south to Clark-Green County Line.

This action makes the entire County full attainment for the TSP NAAQS.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Total Suspended Particulates.

Dated: December 9, 1988.

Lee M. Thomas,

Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESCRIPTION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for Part 81 Continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.336 the TSP table is amended by revising the entry for all of Clark County to read as follows:

§ 81.336 Ohio.

OHIO—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards.
• • • • • • •				
Clark County				X
• • • • • • •				

[FR Doc 88–28731 Filed 12–13–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office Of Human Development Services

45 CFR Part 1356

Title IV–E Adoption Assistance Program; Nonrecurring Expenses

AGENCY: Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department is issuing this final rule in order to implement the changes made in the Adoption Assistance Program under Title IV–E of the Social Security Act by the Tax Reform Act of 1986 (Pub. L. 99–514).

This final rule requires States to reimburse the nonrecurring adoption expenses of parents who adopt children with special needs. Federal financial participation (FFP) is available at the matching rate of 50 percent for State expenditures up to $2,000 for each adoptive placement. States may set either a lower or a higher maximum and are thus not precluded from spending more or less than $2,000. However, Federal financial participation is limited to a 50 percent share of a $2,000 maximum State expenditure.

EFFECTIVE DATE: December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Beverly Stubbee, (202) 755–7447.

SUPPLEMENTARY INFORMATION:

I. Program Description

The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272) was enacted on June 17, 1980. This legislation established Title IV–E (Federal Payments for Foster Care and Adoption Assistance) and made changes to Title IV–B (Child Welfare Services) of the Social Security Act (the Act). The purpose of this legislation was to strengthen the program of foster care for needy and dependent children, encourage the adoption of children with special needs, and improve child welfare services. Title IV–E replaced the Federally assisted foster care program previously in effect under Title IV–A, and created a new Federal adoption assistance program to provide Federal financial participation (FFP) in adoption assistance payments to encourage the adoption of children with special needs.

The Adoption Assistance Program under Title IV–E of the Act is designed to assist States in placing certain children with special needs in adoptive homes, thereby providing families and homes for more children and reducing States' foster care caseloads. Title IV–E Adoption Assistance is an open-ended entitlement program that reimburses States at the State's Federal medical assistance percentage for adoption assistance payments.

Currently, adoption assistance payments are being made for an average of 33,000 children monthly, at an estimated annual cost to the Federal Government of $62 million.

In order to be eligible for ongoing adoption assistance payments under Title IV–E, a child must be eligible for either Aid to Families with Dependent Children (AFDC), Title IV–E Foster Care or Supplemental Security Income for the Blind and Disabled (SSI) and meet the definition of "a child with special needs" according to section 473(c) of the Act. A child is considered a child with special needs only when the State has determined: (1) That the child cannot or should not be returned to the home of the parents; (2) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing assistance; and (3) that, except where it would be against the best interests of the child, a reasonable, but unsuccessful, effort has been made to place the child without providing adoption assistance.

The amendment to Title IV–E in the Tax Reform Act expanded FFP in adoption assistance to include payments made by States for nonrecurring expenses incurred in the adoption of any child with special needs, not just those receiving ongoing adoption assistance payments.

As long as the child meets all the requirements of section 473(c) and there is no violation of State or local laws; the nonrecurring expenses of a person who adopts a child with special needs (whether an independent adoption or an adoption facilitated by a public or private agency) must be reimbursed by the State agency responsible for the administration of Title IV–E.

II. Section 1711 of the Tax Reform Act of 1986

The Tax Reform Act of 1986 (Pub. L. 99–514) repealed section 222 of the Internal Revenue Code which permitted an itemized deduction of up to $1,500 of expenses incurred in the legal adoption of a child with special needs who was eligible for adoption assistance as provided under Title IV–E of the Social Security Act (the Act). Deductible expenses included reasonable and necessary adoption fees, court costs and attorney fees.

As an alternative to the repealed section 222 of the Internal Revenue Code, the Tax Reform Act of 1986 amended Title IV–E of the Act to require States to make payments for nonrecurring adoption expenses incurred by or on behalf of adopting parents in connection with the adoption of all children who meet the criteria for "special needs." The statute provides 50 percent Federal matching funds to States for the reimbursement to parents of nonrecurring expenses of adoption (as administrative costs of title IV–E).

III. Summary of Major Changes in the Final Rule

On April 14, 1988, the Department published a Notice of Proposed Rulemaking (NPRM) (53 FR 12346) to implement the amendments to the Title IV–E Adoption Assistance Program included in the Tax Reform Act of 1986 (Pub. L. 99–514).

The Department received 34 letters from individuals, national organizations, and State and local agencies in response to the NPRM. Of the 34 letters received by the Department, 20 were from State agencies, one from a local public agency, one from a private agency, ten from national and regional organizations and two from interested individuals. Following is a discussion of the changes made in the final rule as a result of these comments.

We have made two major changes in the final rule: First, the NPRM proposed that, for purposes of payment of nonrecurring expenses of adoption, the State must determine that the child is "a child with special needs" based on section 473 (c)(1) and (c)(2)(A), but did not need to meet the categorical eligibility requirements in sections 473 (a)(2) or (c)(2)(B). The exception to section 473(c)(2)(B) would have eliminated the requirement that a reasonable, but unsucessful effort be made to place the child with adoptive

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parents without providing adoption assistance.

After further analysis, we have concluded that all the requirements of section 473(c) must be met. The State must make a determination that the child cannot or should not be returned to the home of the parents (section 473(c)(1)); that there exists a special factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing assistance (section 473(c)(2)(A)); and that, except where it would be against the best interests of the child, a reasonable, but unsuccessful, effort has been made to place the child without providing adoption assistance (section 473(c)(2)(B)).

Second, the NPRM proposed that, at State option, the nonrecurring expenses of adoption incurred in intercountry adoptions could be reimbursed. Upon re-examination, we have determined that this cannot be an optional provision. Payments are available to such families as long as the child meets the definition of "a child with special needs."

Clarification to questions from respondents also resulted in minor changes which:

- Specified State agency procedures, including notification of and cooperation with private agencies;
- Specified which State agency is responsible for the nonrecurring adoption expenses payment in interstate adoptions; and
- Clarified claims procedures in cases where the final decree of adoption was issued prior to or within six months of the effective date of the final rule.

IV. Section by Section Discussion of Comments and the Department's Response

A. General Comments

Of the 34 letters received by the Department, all of the commenters supported, in principle, the expansion of Federal support for nonrecurring expenses for the adoption of special needs children. There was disagreement from some commenters on the method for providing this benefit, i.e., as a reimbursement program to the families for actual costs rather than as an itemized tax deduction as had been previously available. On this point the law is clear; the tax deduction is no longer available. The new law requires the State agencies administering title IV–E adoption assistance programs to reimburse parents for allowable nonrecurring expenses for the adoption of children with special needs.

One commenter challenged the legislative history referenced in the preamble, stating that the Department failed to address a significant change made by Pub. L. 97–448 to the prior Internal Revenue Code provision (section 222) for claiming the tax deduction in the adoption of a child with special needs. In the commenter's opinion, that amendment had previously eliminated the requirement of categorical eligibility for AFDC, Title IV–E foster care or SSI as a criterion for taking a tax deduction for expenses of adoption of a child with special needs.

We reexamined the legislative history and statutory language and do not agree with the commenter's position. Moreover the comment regarding Pub. L. 97–448 and former Internal Review Code section 222 is irrelevant, since the current law, implemented by these regulations, clearly excludes such categorical eligibility as a criterion. Eligibility for Title IV–E adoption assistance is not a requirement for the reimbursement of the nonrecurring expenses of adoption of a child with special needs.

B. Section By Section Discussion

Section 1356.40

Comment: In § 1356.40, Adoption Assistance Program: Administrative requirements to implement section 473 of the Act, the NPRM proposed to amend two paragraphs in order to comport with statutory changes. There were no comments on the technical change proposed in paragraph (b)(1) of this section to rescind the phrase "* * * at the time of or prior to the interlocutory decree * * *" in relation to the timing of the adoption assistance agreement.

However, there were comments on paragraph (b)(3). There was a question about the requirement that the adoption assistance agreement specify the "nature" of the payment, services and assistance to be provided. Another commenter asked whether there must be a separate agreement for nonrecurring expenses or if the nonrecurring expenses provision could be a part of an adoption assistance agreement for payments or services. A third commenter was confused by the language of the regulation at paragraph (b)(3) and questioned whether it was the adoption assistance agreement which made the child eligible for assistance under Title XIX.

Response: In paragraph (b)(3), the requirement that the "nature" of the payment, services and assistance be specified was intended to reflect the fact that different types of assistance may be provided under different agreements. Thus, agreements may include provisions for ongoing payments only, for services only, for services and payments, for nonrecurring expenses only, or for payments, services, and nonrecurring expenses. As we discuss in the next section (§ 1356.41(a)), an agreement for nonrecurring expenses may be either a separate agreement or included in an agreement for ongoing adoption assistance.

Regarding the question about Title XIX eligibility, a child eligible under section 473(a)(2), for whom a Title IV–E adoption assistance agreement is in effect, is deemed to be a dependent child as defined in section 406 of the Act (AFDC) and, therefore, is eligible for medical assistance under Title XIX. Paragraph (b)(3), currently in effect, merely requires that the child's eligibility for Title XIX be stated in the adoption assistance agreement.

It is important to note that a child with special needs who is not eligible for ongoing adoption assistance and for whom the State makes payments for nonrecurring expenses only is not deemed to be a dependent child under section 406. Such a child, therefore, would not be eligible for Title XIX under the nonrecurring adoption expenses program. However, the child may be eligible to receive Title XIX benefits as a result of meeting eligibility criteria under one or more of the various categories of Title XIX.

Comment: One commenter, in response to paragraph (b)(4), suggested a change in the regulatory language, making clear that payments for adoption assistance can be made when parents of a child receiving adoption assistance payments move out of the country, e.g., to Canada.

Response: Title IV–E adoption assistance payments can be continued when a family moves out of the country. The law is clear that, once the child is eligible for adoption assistance payments, the parent can continue to receive assistance unless one of the conditions cited in section 473(a)(4) is present. These conditions are: (1) The child reaches the age of 18 or, at State option under certain circumstances, the age of 21; (2) the parent is no longer legally responsible for support of the child; or (3) the State determines that the child is no longer receiving support from the parent. Therefore, it was unnecessary to amend the regulatory language.

Sections 1356.41 (a) and (b)

Comment: Commenters to paragraph (a) asked whether the agreement for

nonrecurring expenses could be a part of an adoption agreement for ongoing assistance and services or whether it must be a separate document. The issue of when the agreement must be signed was also raised by commenters.

Response: We have made no changes to paragraph (a) of the NPRM; however, a new paragraph (b) was added to § 1356.41. This paragraph clarifies that the agreement concerning nonrecurring expenses may be a separate agreement or it may be included in the adoption assistance agreement for ongoing payments or services.

We have also clarified that, like an adoption agreement for ongoing payments or services, it must be signed prior to the final decree of adoption with two exceptions:

(1) Those cases in which the final decree of adoption was entered into on or after January 1, 1987 and within six months after the effective date of the final rule, or

(2) Those cases in which a final decree was entered into before January 1, 1987 but nonrecurring adoption expenses were paid after this date.

These exceptions are included to assure the eligibility of all cases which meet statutory and regulatory requirements for the period between the effective date of the statute, the effective date of these rules, and a six month period of time for State implementation. See also § 1356.41(e)(3).

Section 1356.41(c)

Comment: One commenter proposed that the final rule be clear that States be permitted to assess the parents' financial circumstances, including utilization of assistance from other sources, in determining the amount of reimbursement for nonrecurring expenses of adoption.

Response: Paragraph (b) in the NPRM is now paragraph (c) in the final rule. We believe that Congress intended to encourage the adoption of special needs children by expanding the reimbursement of nonrecurring expenses to parents who adopt any children with special needs, not just those who meet the categorical eligibility requirements of Title IV–E foster care. Accordingly, section 473 clearly provides that eligibility for nonrecurring expenses is related to the child and not the parents. If parents have nonrecurring expenses that are allowable, the reimbursement of these expenses must not depend on the income and resources of the parents. However, the statute does direct that the State agency take into consideration the circumstances of adopting parents and the needs of the child being adopted. We have interpreted this to mean that adopting parents cannot be reimbursed for out-of-pocket expenses that are otherwise paid, e.g., by employee benefits.

Accordingly, paragraph (c) in the final rule reflects this interpretation.

Section 1356.41(d)

Comment: Paragraph (c) of the NPRM proposed that the child need not meet the categorical eligibility requirements in sections 473(a)(2) or 473(c)(2)(B). Two commenters challenged the exception in the NPRM to the requirement at section 473(c) of the Act. That exception would have eliminated the requirement that a reasonable, but unsuccessful, effort be made to place the child with appropriate adoptive parents without providing adoption assistance.

Response: Paragraph (c) in the NPRM is now paragraph (d) in the final rule. Upon reexamination of this issue, we have concluded that there is no statutory basis for excluding any requirement of section 473(c) in determining whether a child is "a child with special needs." Therefore, the final rule makes clear that section 473(c) must be applied in its entirety. Specifically, paragraph (d) has been rewritten so that no exceptions to the requirements of section 473(c) are permitted in the State's determination of whether a child is "a child with special needs" as described in the Act.

In light of the statutory criteria that require efforts to place without adoption assistance, it is evident that all parents adopting special needs children in the future will need to make known their plans for adoption to the State agency prior to the final decree so that the State agency can document such efforts before the final decree of adoption is issued. This will require close cooperation between the State agency and private nonprofit adoption agencies in relation to special needs children adopted through these agencies. With respect to adoptions that become final between January 1, 1987 and six months following the effective date of these rules, the State agencies are encouraged to document the requirements of section 473 so that payments in eligible cases may be made.

Comment: Several commenters asked whether stepparent adoptions and independent adoptions could qualify for reimbursement of nonrecurring expenses.

Response: The intent of this program is to assist families in the adoption of children with special needs. One factor in determining whether the definition of "a child with special needs" is met is that the State has determined that the child cannot or should not be returned to the home of his parents (section 473(c)(1) of the Act). If the child is living with one parent, the child is not eligible. Thus, cases involving stepparent adoption are not eligible when there is a natural parent in the home. On the other hand, if the natural parent is not present (e.g., because of death, divorce or abandonment), then a case involving a stepparent may qualify if all other requirements are satisfied.

Independent adoptions, as long as they are not in violation of State or local laws, may also qualify if the child meets the statutory definition of "a child with special needs" and the State has entered into an agreement with the prospective adoptive parents prior to the final decree of adoption (with the exception as provided in § 1356.41(e)(3)).

Comment: One commenter asked that the final rule permit licensed private agencies to certify a child as "a child with special needs" based on State criteria.

Response: We have not adopted this suggestion. The State remains the responsible party for carrying out the requirements of the Act. However, the State may wish to enlist the assistance of private agencies in this regard. This is a State decision and does not require a Federal regulation though we encourage the State agencies to engage in cooperative efforts with private agencies.

Comment: There were a number of widely divergent comments on paragraph (d) of the NPRM which proposed to permit States the option of including children adopted from other countries in the nonrecurring expenses reimbursement program. State agencies unanimously protested the inclusion of intercountry adoptions, as did some private organizations. States were concerned that public pressure would effectively force them to include intercountry adoptions. The result, it was feared, would be a significant financial burden for States, particularly since the expenses associated with intercountry adoptions are usually much higher than those of domestic adoptions and generally reach (and often exceed) the maximum of $2,000. Two States that opposed the option estimated annual costs of $425,000 to $750,000 for intercountry adoptions alone.

States and other agencies that objected maintained that already limited funds would be even more limited for children who are citizens of this country. Some commenters thought that the Immigration and Naturalization Act and Federal regulations prohibited the use of public funds for children brought into this country for the purpose of adoption.

On the other hand, all individuals and some private organizations supported the option. Several commenters proposed that it be a requirement, and not an option, the intercountry adoptions and domestic adoptions be treated equally. One commenter stated that adopting parents are citizens who pay taxes which fund this program of reimbursement; therefore, prospective adopting parents should have the choice of whether they adopt a child with special needs from this country or a foreign country.

Response: In our reexamination of the statute and legislative history, we found that there was no basis for excluding reimbursement for intercountry adoptions based on the Immigration and Naturalization Act. We further concluded that exclusion of intercountry adoptions as a group cannot be a State option. That is, the statute provides no basis for excluding these cases if they otherwise satisfy the statutory requirements. However, we believe that many children brought to this country for the purpose of adoption may not meet the criteria in section 473(c) of the Act.

We want to emphasize that the State must make a determination of each child's eligibility and assure that the definition of "a child with special needs" as stated in section 473(c) of the Act is met. In addition to the fact that the State must determine that the child cannot or should not be returned to the home of the parent, the State must also determine that there exists, with respect to the child, a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing assistance, and that a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without adoption assistance.

As no specific provision is needed for intercountry adoptions, we have deleted paragraph (d) of the NPRM.

Section 1356.41(e)

Comment: Paragraph (e) of the NPRM proposed that the State agency be required to notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for expenses incurred by or on behalf of families adopting children with special needs. There were several comments on paragraph (e). These comments indicated a need for greater clarity as to what was expected of the State agency in terms of notification to all affected parties. One commenter suggested that States notify all parties within 60 days of the publication of the final rule. Several commenters were concerned that prospective adoptive parents might not be aware of this benefit and wanted the final rule to reflect a process or procedure that would insure notification of affected parties, especially parents adopting through a private agency. Several commenters asked how the nonrecurring expenses incurred by parents for adoptions completed between January 1, 1987, and the effective date of the final rule were to be handled.

Response: We have added two new paragraphs to paragraph (e). New paragraph (e)(2) of the final rule clarifies the responsibility of the State agency on the matter of notice to all affected parties. No timeframe for notification was set in the final rule, but we expect that State agencies will immediately develop a process and procedures to meet the requirements for notification as described in the final rule.

A new paragraph (e)(3) was added in the final rule to address those cases in which (1) the final decree of adoption was entered into on or after January 1, 1987, and within six months after the effective date of the final rule; or (2) the final decree was entered into before January 1, 1987, but nonrecurring adoption expenses were paid after this date. Under paragraph (e)(3), parents in such cases may enter into an agreement with the State and file a claim within two years after the effective date of this final rule. This provision is included in order to assure that the benefit formerly available as a deduction under the Internal Revenue Code will be available to eligible persons.

In cases where the adoption becomes final more than six months after the effective date of the rule, the agreement for reimbursement of nonrecurring expenses must be signed on or before the date when the adoption becomes final. Claims must be filed within two years of the date of the final decree of adoption.

Section 1356.41(f)

Comment: More than half of the 34 commenters addressed the limitation of $2,000 set on nonrecurring expenses in paragraph (f) of the NPRM. In general, all States, with one exception, thought the $2,000 maximum was greater than a State would set as its limit. Some comments indicated confusion in the matter of whose expenses were being reimbursed under the nonrecurring expenses program.

For example, some commenters stated that costs of the State agency were greater than $2,000, apparently not realizing that the $2,000 is limited to the out-of-pocket expenses of the adoptive parents. Several commenters raised the issue of how sibling groups were to be considered in terms of the $2,000 maximum, i.e., as a unit or individually. Some commenters suggested indexing the $2,000 figure, and several other commenters questioned Federal authority to set a limit.

Response: Paragraph (f) of the NPRM has been designated paragraph (f)(1) of the final rule, and new paragraphs (f)(2) and (f)(3) have been added.

In regard to the issue of imposition of a Federal limit, legislative history reflects that the statutory amendment to Title IV–E was intended to replace the Internal Revenue Code deduction which imposed a limit of $1,500. The NPRM proposed a similar limitation on Federal reimbursement in order to control the flow of Federal dollars. Without a clear indication from Congress that it intended this provision to be open-ended, we believe we are carrying out congressional intent in setting a Federal limit on the amount to be reimbursed by Federal matching funds.

The proposed $2,000 maximum for each adoptive placement was based on information published in a survey of 120 private adoption agencies. As we had no other source of data on costs that are borne by adoptive parents who adopt through public agencies or independently, we specifically asked for comments from the public on the dollar limit being proposed. We requested discussion and information on expenses incurred by families in the adoption of children with special needs and asked for comments on the adequacy of the proposed limitations.

Some commenters described the costs to their agency, but the variation in how the information was submitted did not permit any reliable conclusions to be drawn about either the costs to the families or the adequacy of the $2,000 limitation. Most descriptions from State agencies about the costs of adoption reflected a misunderstanding that State administrative costs of adoption were at issue, e.g., placement and supervision costs and the adoption study. These costs are not borne by the family but are administrative costs of the public agency and, thus, are not appropriate for reimbursement under the nonrecurring expenses provision. Therefore, no change was made to modify the $2,000 limit since we received no new information to persuade us that a change was appropriate.

We did not accept the suggestion by several commenters that the maximum be linked to the Consumer Price Index. We believe that such a rule would be

burdensome for the States and administratively difficult to manage. Should the expenses to parents rise dramatically, the regulation may be revised accordingly.

New paragraph (f)(2) clarifies the conditions under which a State may set a maximum lower than $2,000 that is not overly restrictive and is reasonable and consistent with customary and usual charges for such services in that State.

New paragraph (f)(3) responds to the question of how sibling groups are considered in relation to the $2,000 limitation. Children in sibling groups are to be treated as individual adoptions, with the maximum limitation being applicable to each child and not to the group as a whole.

Section 1356.41(g)

Comment: Paragraph (g) of the NPRM proposed that payments for nonrecurring expenses be made either directly through the State agency or through another public or licensed nonprofit private agency. One commenter suggested that the final rule permit private nonprofit agencies, instead of the State agency, to enter into the agreement for reimbursement of nonrecurring expenses with those families with whom it has placed a child.

Response: The role suggested for the private agency is not a feasible one, as the ultimate responsibility for managing and administering this program is with the State agency. The law requires the State to enter into adoption assistance agreements with adoptive parents. However, the State is encouraged to enlist the aid of the private nonprofit agency in determining that the child meets the definition of "a child with special needs" in section 473(c). A State may include the private nonprofit agency, if it is appropriate, as a third party to the agreement.

Comment: Another commenter stated that the regulations should not require that parents first pay expenses and then be reimbursed by the State, but rather that a provision should be included permitting States to reimburse agencies which have incurred expenses on behalf of adopting parents.

Response: The specific procedures for implementing the reimbursement process are left to State discretion. Parents must enter into an agreement with the State before any expense is reimbursed. The State may decide to reimburse the parents or to pay allowable costs directly.

Comment: Several commenters questioned or asked for clarification of "costs incurred by or on behalf of" adoptive parents and wondered whether costs to the State agency could be claimed under the nonrecurring expenses claim.

Response: Only the one-time expenses of adoption for which parents are ultimately responsible, i.e., out-of-pocket costs, are considered to be nonrecurring expenses. The costs to the agency, either public or private nonprofit, or of an independent agent are not covered under this provision. If, for example, the costs of the adoption study and supervision are covered by a private nonprofit agency, then no reimbursement will be made. Only if the parents are billed and are ultimately liable to pay the charge does the expense qualify under this provision.

However, the State agency may claim the costs of administrative activities required for reimbursement of nonrecurring expenses, as well as the reimbursement itself, as administrative costs of title IV–E at the usual 50 percent reimbursement rate.

Section 1356.41(h)

Comment: Several commenters asked for clarification or direction on the matter of which State is responsible for the payment of nonrecurring expenses when a child is placed across State lines.

Response: New paragraph (h) clarifies that States which enter into agreements for ongoing State or Federal adoption assistance payments or services also have the responsibility for reimbursement of the adoptive parents for nonrecurring expenses. We believe this approach for adopting parents to be the most practical and least burdensome for the State agency, since the agency will have already developed a relationship with the adopting parents. In cases where there is no agreement for ongoing adoption assistance payments or services, we believe that it would be most reasonable for the State where the final decree of adoption is issued to reimburse parents for nonrecurring expenses.

Section 1356.41(i)

Comment: Paragraph (h) of the NPRM restated the statutory definition of the term "nonrecurring adoption expenses" and proposed to define the term "other expenses" as used in the statutory definition. There were a number of comments on this paragraph. Many questioned the language or suggested that the costs associated with making physical changes in order to permit the accommodation of a child's special needs within the family environment be included as allowable "other expenses." One commenter disagreed with the inclusion of food, lodging and transportation and suggested that States be permitted to make a case-by-case determination as to whether these types of costs are appropriate and necessary to "strengthen family life." The commenter suggested that the last sentence of this section end after the phrase "supervision of the placement prior to adoption." Other commenters responded in a similar vein and expressed reservations because they felt the proposed rule was too broad and the State would be subsidizing private agencies, attorneys and courts. One commenter suggested that payment of "other expenses" be optional. Another commenter asked whether the cost of family counseling during the period before the final adoption decree is issued would be considered as "other expense" allowable for reimbursement.

Response: Paragraph (h) of the NPRM is now paragraph (i) of the final rule. The language of this section has not been changed because the proposed language adequately described the reimbursable expenses. One-time costs associated with physical remodeling, renovation, and alternations of the adoptive parents' home or property are not expenses of the adoption process and thus, are not reimbursable.

In regard to the matter of family counseling prior to the final decree of adoption, we consider such services to be separate from the expenses of adoption and therefore not in the category of "other expenses" of adoption. The costs of such services for the child with special needs are the responsibility of the placing agency.

Finally, in response to the suggestion that the reimbursement of "other expenses" be an option, the law provides for the reimbursement of "other expenses." It would contravene the statute if reimbursement of such expenses were optional.

Section 1356.41(j)

Comment: Paragraph (i) in the NPRM, now paragraph (j) in the final rule, proposed to allow States until the close of the States' second general legislative sessions following publication of this final rule in order to comply with these new requirements. One commenter asked for clarification that the legislative session referred to in the proposed rule was the State session and not the Federal session.

Two commenters addressed the need to move quickly with implementation of this rule and not permit delays in the implementation based on State legislative sessions. Two commenters opposed the position that failure by the State agency to provide reimbursement

for expenses beginning with January 1, 1987 would result in noncompliance by the State with section 473 of the Act. Several commenters also asked for clarification of the State's ability to claim FFP for reimbursement of expenditures for nonrecurring expenses back to January 1, 1987.

Response: A minor change in paragraph (j) of the final rule clarifies that the legislative session referred to in the rule is that of the State government. We did not reduce the time in which the States must make legislative changes in order to meet the Federal requirements. We believe the final rule provides a balanced approach to meeting the needs of the State agencies and adoptive parents. On the one hand, States are permitted a reasonable period of time after the publication of the final rule to amend State statutes in order to conform to the Federal law. On the other hand, claims from parents must be paid if they meet the requirements of the law and regulation. States have two years from the date of their expenditures to claim FFP.

With respect to the issue of noncompliance, the rule simply clarifies what is already in the law. Section 471(a)(1) requires a State to have a plan "* * * which provides * * * for adoption assistance in accordance with section 473" and section 473 requires payment of nonrecurring expenses.

There were no comments on § 1356.41(j) of the NPRM (new paragraph (k) of the final rule) and § 1356.60, and they have not been changed.

IV. Impact Analysis

Executive Order 12606: The Family

Executive Order 12606 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact on family formation, maintenance and general well-being. We believe this rule will serve to strengthen and preserve family life and send a message of support and encouragement to all families who adopt children with special needs. This proposed regulation should have a significant positive impact in matters related to the family. Although no precise figures are available, as many as 20,000 families may receive reimbursement under this program for costs related to adopting special needs children.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. Nothing in either the statute or the proposed rule is likely to create substantial costs. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 5), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small nonprofit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this final rule to OMB for its review of the information collection requirements. However, we do not believe there are any new information collection requirements as State agencies administering the Title IV–E Adoption Assistance Program are already utilizing a format for adoption assistance agreements which may also be used with applicants for reimbursement of nonrecurring expenses of adoption.

List of Subjects in 45 CFR Part 1356

Adoption and foster care, Child welfare, Adoption assistance, Administrative costs, Nonrecurring expenses of adoption, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program No. 13.659 Adoption Assistance)

Date: November 9, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: November 15, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, we are amending 45 CFR Part 1356 as follows:

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E

1. The authority citation for Part 1356 continues to read as follows:

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272 as amended, 42 U.S.C. 670 *et seq.*, 94 Stat. 501, 42 U.S.C. 620 *et seq.*, 94 Stat. 516 *et seq.*, section 1102 of the Social Security Act as amended, 42 U.S.C. 1302.

2. Section 1356.40 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(3) and (b)(4) as follows:

§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

* * * * * *

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

* * * * *

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

* * * * *

§ 1356.40 [Amended]

3. Section 1356.40 is further amended by removing paragraph (c) and redesignating paragraphs (d), (e), (f) and (g), respectively as paragraphs (c), (d), (e), and (f).

4. A new § 1356.41 is added to read as follows:

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption

shall be determined through agreement between the adopting parent(s) and the State agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State or Federal adoption assistance payments or services. The agreement for nonrecurring expenses must be signed prior to the final decree of adoption, with two exceptions:

(1) Cases in which the final decree of adoption was entered into on or after January 1, 1987 and within six months after the effective date of the final rule; or

(2) Cases in which a final decree was entered into before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987.

(c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(d) For purposes of payment of nonrecurring expenses of adoption, the State must determine that the child is a "child with special needs" as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable State and local laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The State agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services after the publication date of this final rule.

(2) The State agency must send a notice to all public and private nonprofit adoption agencies directing them to notify all their clients who adopted a special needs child between January 1, 1986 and six months following the effective date of this rule of the availability of reimbursement for nonrecurring expenses paid after January 1, 1987.

(3) For adoptions in which a final decree is entered between January 1, 1987 and six months after the effective date of this rule, or where a final decree was entered before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987, individuals who seek reimbursement must enter into an agreement with the State agency and file a claim with the State agency within two years of the effective date of this rule. For adoptions in which a final decree is entered more than six months after the effective date of this rule, the agreement must be signed at the time of or prior to the final decree of adoption. In such cases, claims must be filed with the State agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the State under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV–E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for State expenditures up to $2,000, for any adoptive placement.

(2) States may set a reasonable lower maximum which must be based on reasonable charges, consistent with State and local practices, for special needs adoptions within the State. The basis for setting a lower maximum must be documented and available for public inspection.

(3) In cases where siblings are placed and adopted, either separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made either directly by the State agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves interstate placement, the State that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is interstate placement but no agreement for other Federal or State adoption assistance, the State in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources or other funds. "Other expenses which are directly related to the legal adoption of a child with special needs" means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) When State statutes must be amended in order to reimburse parents for nonrecurring expenses in the adoption of eligible children, legislation must be enacted before the close of the second general session following publication of the final rule and must apply retroactively to January 1, 1987. Failure to honor all eligible claims will be considered non-compliance by the State with Title IV–E of the Act.

(k) A State expenditure is considered made in the quarter during which the payment was made by a State agency to a private nonprofit agency, individual or vendor payee.

§ 1356.60 [Amended]

5. Section 1356.60 is amended by removing paragraph (c)(4) and redesignating paragraph (c)(5) as (c)(4).

[FR Doc. 88–28577 Filed 12–13–88; 8:45 am]
BILLING CODE 4130–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 59]
RIN 2127—AC01

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: On November 23, 1987, NHTSA published a final rule requiring light trucks and multipurpose passenger vehicles (MPVs) manufactured on or after September 1, 1991 and equipped

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with manual lap/shoulder safety belts at the front outboard seats to comply with the injury criteria set forth in Standard No. 208 in a 30 mile per hour (mph) barrier crash test. In order to minimize the impacts of this new requirement on multistage manufacturers, this new requirement will apply only to vehicles with a gross vehicle weight rating of 8,500 pounds or less *and* an unloaded vehicle weight of 5,500 pounds or less. The rule also responded to the dummy positioning issues raised in petitions for reconsideration of the final rule adopting the Hybrid III test dummy.

NHTSA received five petitions for reconsideration of this rule. Some of those petitions sought changes to the Hybrid III dummy positioning procedures. Those positions are not addressed in this notice, since NHTSA has not finished its evaluation of those petitions. This notice responds only to those petitions seeking some modifications of the dynamic testing requirements.

Three petitioners asked for changes to the dynamic testing requirements for light trucks and MPVs, for two reasons. First, it was alleged that the dynamic testing requirements were not practicable or appropriate for a particular type of light truck or MPV called a "forward control vehicle." In the final rule, NHTSA explained that the available evidence showed that these requirements were both practicable and appropriate for forward control vehicles. The petitioner did not provide any new evidence to the contrary, nor did it refer to some evidence that the agency failed to consider in its determination set forth in the final rule. The additional evidence that has become available since the final rule shows that a 1988 forward control vehicle manufactured by Nissan complies fully with the dynamic testing requirements. Therefore, this notice reaffirms the agency's prior determination that these requirements are practicable and appropriate for forward control vehicles.

Second, it was alleged that the dynamic testing requirements will impose some burdens on multistage manufacturers, notwithstanding the agency's stated intent to minimize burdens on these manufacturers. To better achieve the stated intent, these petitioners suggested that the rule be amended to exempt entirely from the dynamic testing requirements any vehicles completed by multistage manufacturers. In response to these petitions, NHTSA has reexamined the burdens imposed on multistage manufacturers. The burdens faced by multistage manufacturers to certify compliance of their vehicles with the dynamic testing requirements are not significantly different than the burdens they face currently, when they must certify that their vehicles comply with other standards whose compliance is determined in a 30 mph barrier crash. These burdens have not been excessive, and are the least that could be required consistent with the certification requirements set forth in the law. Hence, this notice denies the petitions for changes to the dynamic testing requirements.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1985 (50 FR 14589), NHTSA published a notice proposing a number of amendments to Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). Among the proposals was one that manual lap/shoulder belts at the front outboard seating positions of light trucks and multipurpose passenger vehicles (MPVs) comply with the dynamic testing requirements of Standard No. 208. Under those dynamic testing requirements, the level of protection afforded to vehicle occupants by the vehicles occupant protection system is measured by using test dummies and subjecting the vehicle to a 30 mile per hour frontal crash into a barrier.

On November 23, 1987 (52 FR 44898), the agency published a final rule adopting a dynamic testing requirement for light trucks and MPVs. The preamble to that rule explained in detail the agency's conclusion that there was a safety need to extend the dynamic testing requirements to these types of vehicles and that compliance with the dynamic testing requirements was feasible for these types of vehicles. The preamble also reflected the agency's decision to structure this rule so as to minimize the impact of the dynamic testing requirements on small businesses involved in the manufacture of light trucks and MPVs.

There is a specialized class of small businesses involved in the final stage manufacture of a vehicle manufactured in two or more stages, and/or in the conversion or alteration of new vehicles. Under NHTSA's regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. Additionally, a business that modifies or converts a new vehicle prior to its first sale to a consumer is a vehicle alterer under NHTSA's regulations. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. Throughout the rest of this preamble, the term "final stage manufacturer" is used to refer to both final stage manufacturers and alterers. The overwhelming majority of final stage manufacturers do not have the engineering or financial resources to conduct dynamic testing of the vehicles they have completed. Accordingly, the agency sought to structure the final rule so that the impacts on these small businesses would be minimized to the extent possible.

NHTSA obtained information from the Truck Body and Equipment Association, which represents many final stage manufacturers, that 90-95 percent of the chassis used by its members involved in final stage manufacturing have a gross vehicle weight rating (GVWR) of greater than 8,500 pounds and would have an unloaded vehicle weight greater than 5,500 pounds when the vehicle is completed. To reduce the potential problems arising from the dynamic testing requirements for these small businesses, the agency limited the applicability of the dynamic testing requirements to vehicles with a GVWR of 8,500 pounds or less *and* an unloaded vehicle weight of 5,500 pounds or less. Additionally, the agency exempted certain types of trucks and MPVs from the dynamic testing requirements, regardless of the vehicle's GVWR and unloaded vehicle weight. The exempted types were motor homes, open-body type vehicles, walk-in van-type vehicles, vehicles designed exclusively to be sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers.

For those vehicles produced by final stage manufacturers that were not exempted from the dynamic testing requirements, the final rule noted that those small businesses would still have available means to certify compliance that would not require the small business to conduct crash testing. First, the final stage manufacturer can stay within the limits set by the incomplete vehicle manufacturer. NHTSA's regulations require the manufacturers of truck or van chassis used by final stage manufacturers to provide information on what center of gravity, weight, and other limitations must be observed for the completed vehicle to comply with the safety standards. When the final stage manufacturer observes those limits, it simply states that fact on the certification label and the certification

of the vehicle's compliance with the safety standards is based on the incomplete vehicle manufacturer's certification. Thus, if the final stage manufacturer observes all of the limits specified by the incomplete vehicle manufacturer, the final stage manufacturer does not have to conduct any testing or analysis before certifying the vehicle complies with the safety standards, including the dynamic testing requirements.

Second, if the final stage manufacturer cannot stay within the incomplete vehicle manufacturer's limits for a given chassis, the final stage manufacturer may choose to use a heavier chassis to complete its vehicle. The heavier chassis would have given the final stage manufacturer greater flexibility in completing the vehicle, since it would have higher limits established by the incomplete vehicle manufacturer. It is also possible that the switch to a heavier chassis would result in the completed vehicle not being subject to the dynamic testing requirements, if the completed vehicle had an unloaded vehicle weight of more than 5,500 pounds or a GVWR of more than 8,500 pounds. By switching to a heavier chassis and staying within the incomplete vehicle manufacturer's limits for the heavier chassis, the final stage manufacturer would not have to conduct any additional testing or analysis before certifying that the completed vehicle conformed to all safety standards. The switch to a heavier chassis might offer other potential benefits as well, by reducing the possibility that chassis components, such as wheels, brakes, and axles, would be overloaded and fail during service.

If the final stage manufacturer chose not to remain within the incomplete vehicle manufacturer's specifications under either of these approaches, the final rule also permitted the final stage manufacturer to complete the vehicle outside of those limits. However, if a final stage manufacturer completes a vehicle outside of those limits, the final stage manufacturer can no longer rely on the incomplete vehicle manufacturer's specifications as the basis for certifying the completed vehicle. In such cases, the final stage manufacturer would have to conduct the necessary crash testing or engineering analysis to certify that the completed vehicle complies with applicable safety standards, including the dynamic testing requirement.

This final rule also responded to issues related to the positioning of the Hybrid III test dummy. These issues were originally raised in petitions for reconsideration of the final rule adopting the use of the Hybrid III test dummy (51 FR 26688; July 25, 1986). NHTSA decided to address the dummy positioning issues in the final rule establishing dynamic testing requirements for light trucks and MPVs, because the positioning procedures for the Hybrid III test dummy had to be established in order to use the Hybrid III dummy for testing light trucks and MPVs.

Petitions for Reconsideration

Five petitions for reconsideration of this rule were filed with the agency. Four of the petitioners were vehicle manufacturers (General Motors, Ford, Toyota, and Honda) and the fifth petitioner was a trade association representing some final stage manufacturers and alterers (National Truck Equipment Association). Some of the petitioners asked for reconsideration of the Hybrid III test dummy positioning procedures. The agency has not completed its evaluation of those petitions, so this notice does not address those petitions. NHTSA will soon publish a separate notice responding to the petitions for the Hybrid III test dummy. This notice addresses only those petitions seeking reconsideration of the dynamic testing requirements.

A. Forward Control Vehicles

General Motors asked that the dynamic testing requirements be "withdrawn" for a particular type of truck or MPV, the "forward control vehicle." A "forward control vehicle" is defined at 49 CFR 571.3 as a vehicle configuration in which more than half of the engine length is rearward of the foremost point of the windshield base and the steering wheel hub is in the forward quarter of the vehicle length. General Motors argued that, because of the configuration of forward control vehicles (the driver and passenger are closer to the front of the vehicle than in passenger cars and the engine is not as far in front of the occupant compartment as it is in passenger cars), these vehicles cannot fully rely on the crush of the forward part of the vehicle to dissipate crash energy, as passenger cars and conventional pickup trucks do. Because of this difference, General Motors alleged that the dynamic testing requirements were not "practicable," within the meaning of section 103(a) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(a); the Safety Act). Additionally, General Motors alleged that the dynamic testing requirements were not "appropriate for the particular type of motor vehicle for which it is prescribed" with respect to forward control vehicles, as required by section 103(f)(3) of the Safety Act (15 U.S.C. 1392(f)(3)).

General Motors had previously raised similar arguments in its comments on the proposed dynamic testing requirements. In response to those arguments, the preamble to the final rule set forth the following discussion:

> The agency recognizes that because of the smaller amount of frontal crush space available in forward control and forward control type vehicles, it is more difficult to provide occupant crash protection in frontal crashes of those vehicles. However, there is information showing that those vehicles can be designed to meet the peformance requirements of Standard No. 208. In its NCAP program, the agency has tested a 1984 Toyota Van, which is a forward control vehicle, in a 35 mph barrier impact test. In that test, which is a more severe test than the 30 mph barrier impact test used in Standard No. 208, both the driver and the passenger test dummies did not exceed the HIC and chest acceleration limits set in the standard. The femur loads for the driver did exceed the limit in Standard No. 208, but the passenger's loads were well below the limit. NHTSA believes that with the longer leadtime provided by this notice, manufacturers can adopt appropriate changes to enable forward control and forward control type vehicles to meet the performance requirements of Standard No. 208. Therefore, the agency has decided not to exempt forward control or forward control type vehicles from the dynamic test requirement. 52 FR 44902.

General Motors argued that this discussion showed that no forward control vehicles had met or exceeded all of the performance requirements of Standard No. 208 in an NCAP test, and that absent data showing that some design of forward control vehicle complies with all performance requirements of Standard No. 208, the agency cannot establish that the dynamic testing requirements are "practicable" for forward control vehicles. Stated otherwise, General Motors argued that the statutory requirements that standards be "practicable" means that:

1. Some manufacturer's forward control vehicles must already comply with all aspects of the dynamic testing requirements, or

2. The design and technology for complying with the dynamic testing requirements in forward control vehicles must already be incorporated in forward control vehicles, as an established industry practice.

NHTSA rejects this interpretation of the term "practicable," as used in the Safety Act. General Motors' suggested interpretation of "practicable" has already been considered and rejected by the courts. *See Chrysler Corporation* v.

Department of Transportation, 472 F.2d 659 (6th Cir. 1972). The court held that "the [NHTSA] is empowered to issue safety standards which require improvements in existing technology or which require the development of new technology, and it is not limited to issuing standards based solely on devices already fully developed." 472 F.2d at 673. The court further explained this holding as follows:

> We do not intend to suggest that the Agency might impose standards so demanding as to require a manufacturer to perform the impossible, or impose standards so imperative as to put a manufacturer out of business. But it is clear from the Act and its legislative history that the Agency may issue standards requiring future levels of motor vehicle performance which manufacturers could not meet unless they diverted more of their resources to producing additional safety technology than they might otherwise do. 472 F.2d at 672–673.

NHTSA agrees with General Motors' assertion that most forward control vehicle designs must be modified to comply with the dynamic testing requirements. The fact that few, if any, current designs of forward control vehicles would comply with the dynamic testing requirements does *not*, however, establish that those requirements are not practicable, within the meaning of the Safety Act. Instead, to determine whether a change to the safety standards is practicable, the agency must determine whether the manufacturers could make changes to, or incorporate new technology on, their forward control vehicles so that those vehicles could comply with the dynamic testing requirements. Such a determination requires the agency to make a technical evaluation of the available evidence.

In this case, the evidence available at the time of the final rule showed that few current designs of forward control vehicles would comply with the dynamic testing requirements, but that one forward control vehicle, the 1984 Toyota Van, could comply with the dynamic testing requirements without any major design changes and without incorporating any radically new or different technology. This fact suggested that it would be possible for other manufacturers to adopt appropriate changes to the designs of their forward control vehicles to enable those vehicles to comply with the dynamic testing requirements, without requiring the manufacturers to develop or incorporate any radically new or different occupant protection technology. Accordingly, the agency concluded that it would be practicable for forward control vehicles manufactured on or after September 1, 1991 to comply with the dynamic testing requirements.

NHTSA notes that additional evidence that the dynamic testing requirements are practicable for forward control vehicles became available after the final rule was published. As part of its 1988 New Car Assessment Program (NCAP) testing, the agency subjected a 1988 Nissan XE Van to a 35 mph barrier crash test. This is a much more severe test than the 30 mph barrier crash test conducted to determine if a vehicle complies with the dynamic testing requirements in Standard No. 208. Notwithstanding the 36 percent higher crash forces, the Nissan XE Van, which is a forward control vehicle, exceeded *all* of the Standard No. 208 performance requirements in this NCAP test. This reinforces NHTSA's previous conclusion that the dynamic testing requirements are practicable for forward control vehicles.

General Motor's assertion that the Toyota Van is not representative of all forward control vehicles, because of its engine location, misses the point. NHTSA agrees with the implication that a different combination of changes and occupant protection technologies may be needed in forward control vehicles with different engine locations, or with other differences from the Toyota and Nissan Vans. However, NHTSA was not suggesting that all vehicle manufacturers should simply copy what Toyota did for its 1984 van or what Nissan did for its 1988 van. Rather, NHTSA was expressing its conclusion that the vehicle manufacturers could incorporate appropriate occupant protection technologies and any necessary production changes to their own particular designs of forward control vehicles to allow those vehicles to comply with the dynamic testing requirements within the timeframe specified in the final rule.

NHTSA notes that General Motors did not provide *any* data in its petition or in its earlier submissions to show that it had made good faith efforts to design its forward control vehicles to comply with the dynamic testing requirements, but was unable to do so. Hence, there is *no* evidence available to the agency showing that dynamic testing requirements will not be practicable for forward control vehicles. Absent some such evidence, NHTSA has no basis for changing its determination, which is based on actual crash test data, that these requirements are practicable.

The agency would review its determination of practicability if some available evidence appears to show that the dynamic testing requirements are not practicable for forward control vehicles. For instance, if General Motors or any other manufacturer can show that it has made specific changes to its forward control vehicles and, in spite of those changes, the vehicles still do not comply with the dynamic testing requirements, NHTSA would carefully evaluate this submission. The 1991 effective date for dynamic testing of forward control vehicles allows both the agency and the manufacturers sufficient time to gather additional evidence about the practicability of the dynamic testing requirements for forward control vehicles. Additionally, the 1991 effective date would allow the agency to make appropriate changes to the requirements for forward control vehicles, if that additional evidence shows it is not practicable for forward control vehicles to comply with these dynamic testing requirements. To repeat, there simply is no such evidence presented in General Motors' petition or otherwise available to the agency at this time.

In its petition, General Motors stated that it was "especially concerned" that NHTSA gave the impression that the agency believes a longer leadtime is an alternative to an agency determination of practicability. The agency did not intend to give this impression, and did not follow such a course of action in connection with this rule. Instead, NHTSA expressly found that the dynamic testing requirements were practicable for forward control vehicles, as explained above. NHTSA also found that additional leadtime was necessary for the manufacturers to incorporate appropriate changes to their forward control vehicles, to avoid imposing undue hardships or unnecessary additional costs on the manufacturers. This authority is expressly granted to NHTSA by section 103(c) of the Safety Act (15 U..C. 1392(c)), and is consistent with the legislative intent of the Safety Act; *see* S. Rep. No. 1301, 89th Cong., 2d Sess., at 7 (1966).

General Motors' final argument was that the dynamic testing requirements were not appropriate for the particular vehicle type (forward control vehicles). This argument was expressed as follows: "Given the uncertainties that exist, a *possible* result of the agency rulemaking *may be* the demise of the forward control configuration" (NHTSA Docket No. 74–14–N53–022, at 3; emphases added). The agency's response to this argument is similar to its response to General Motors' practicability argument. At this time, both the Nissan and the Toyota Van show that it is possible for vehicles to retain their forward control configuration and comply with the

dynamic testing requirements. No data are available that substantiate General Motors' speculation about the demise of forward control vehicles, and the experience of the Toyota and Nissan vans refutes that speculation. Based on the available data, NHTSA reaffirms its previous determination that dynamic testing requirements are appropriate for forward control vehicles. Accordingly, the General Motors' petition for reconsideration is denied.

B. Impacts on Final Stage Manufacturers

Two petitioners asked that the dynamic testing requirements be modified to further reduce the burdens on final-stage manufacturers and alterers. The National Truck Equipment Association (NTEA) argued that the dynamic testing requirements were not "reasonable" or "practicable," within the meaning of the Safety Act, for vehicles that were manufactured in two or more stages. The bases for these assertions were that:

1. Such vehicles are not used primarily for personal or family transportation; and

2. The small businesses that produce these vehicles do not have the economic or technological expertise to conduct dynamic testing.

Even assuming that the vehicles in question are not used primarily for personal or family transportation purposes, this fact *by itself* does not have some special significance under the Safety Act. Section 103 of the Safety Act sets forth a number of criteria a safety standard must satisfy when it applies to a group of vehicles. These criteria include determinations of whether the standard "is reasonable, practicable, and appropriate for the particular type of motor vehicle for which it is prescribed," and whether the standard "meets the need for motor vehicle safety."

Certainly the fact that a vehicle carries special work-related equipment, such as a "cherry-picker" basket, could result in particular requirements in safety standards not being reasonable, practicable, or appropriate for that vehicle type. It is also possible that the special equipment or the vehicle's size might indicate that particular requirements of a standard need not apply to that vehicle to meet the need for safety for that vehicle. Additionally, a vehicle's intended use for some particular work-related purpose, such as plowing snow or as a delivery van, might make it unreasonable or impracticable to apply requirements of standards that apply to vehicles intended to be used primarily for family or personal transportation purposes.

It is not clear if NTEA was making such an assertion with respect to the dynamic testing requirements, since its petition did not identify any particular vehicle type, such as fire trucks, cherry-pickers, or ambulances, for which the dynamic testing requirements were not reasonable or practicable. The failure to identify any particular vehicle type for which dynamic testing is not reasonable and practicable gives the agency no basis on which to modify the requirements of the final rule. In connection with the final rule, NHTSA determined that the dynamic testing requirements satisfied all statutory criteria for trucks and MPVs with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, except for convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers. NTEA has not provided any data demonstrating that these determinations were erroneous, so NHTSA reaffirms those determinations on the basis of the available evidence.

It is possible that NTEA was asserting that it is not reasonable or practicable to require vehicles to comply with dynamic testing requirements if they are used for work-related purposes, instead of personal or family transportation purposes, regardless of any particular characteristics of the vehicle. If this is what NTEA meant, NHTSA disagrees. Since the dynamic testing requirements satisfy the statutory criteria for subject vehicles regardless of whether the vehicle is used for work-related purposes or personal transportation purposes, there is no basis in the Safety Act to permit a worker on the job to receive a lesser level of crash protection than is reasonable, practicable, and appropriate for the vehicle in which the worker is performing his or her job. Similarly, the need for motor vehicle safety does not diminish on the job. Therefore, NHTSA does not believe that the fact that vehicles are used extensively or solely for work-related purposes, by itself, suggests that the dynamic testing requirements are not reasonable and practicable for such vehicles.

With respect to NTEA's other basis for asserting that the dynamic testing requirements were not reasonable and practicable for vehicles completed by final stage manufacturers, NHTSA stated in the preamble to the final rule that it agrees with NTEA's assertion that most final stage manufacturers and alterers do not have the resources to conduct dynamic testing of their completed vehicles. However, that preamble also noted that these small manufacturers had several means whereby they would not need to conduct crash testing or engineering analyses to certify that their completed vehicles complied with the dynamic testing requirements.

The final stage manufacturer need not conduct any crash testing or engineering analyses if it completes its vehicles within the limits specified by the incomplete vehicle manufacturer. When the vehicle is completed within those limits, the final stage manufacturer simply states that fact in its certification of the vehicle. When a final stage manufacturer is unable to complete the vehicle within the specifications established by the incomplete vehicle manufacturer, the final stage manufacturer can build the vehicle on a heavier chassis, and remain within the limits specified for that heavier chassis. Again, the final stage manufacturer would not have to conduct any dynamic testing or engineering analyses prior to certifying the vehicle complies with the safety standards. Finally, if a final stage manufacturer chooses to complete a vehicle outside of the specifications established by the incomplete vehicle manufacturer, the final stage manufacturer must conduct the necessary crash testing or engineering analysis to show that the completed vehicle complies with the dynamic testing requirement.

The availability of these alternatives allowed the rule to strike a proper balance between two statutory goals. First, the alternatives assure the public that the enhanced safety protection of vehicles that are certified as complying with dynamic testing requirements will be provided in *all* vehicles subject to those requirements. Second, the alternatives minimize the burdens imposed by the newly-established dynamic testing requirements on multistage manufacturers, most of which are small businesses.

However, NTEA asserted that these alternatives were not sufficiently helpful to final stage manufacturers. With respect to the alternative of completing the vehicle within the specifications established by the incomplete vehicle manufacturer, NTEA asserted that this course of action might not be realistic, because "the customization demanded by the market often makes it impossible to stay within the boundaries of the incomplete vehicle manufacturer." With respect to the possibility of using a heavier chassis and remaining within the specifications established for the

heavier chassis, NTEA asserted that the contracts offered for bidding by final stage manufacturers often include the desired GVWR of the completed vehicle in the specifications, and that final stage manufacturers that use a heavier chassis would be unlikely to be awarded the contract. Finally, with respect to the possibility of the final stage manufacturers conducting engineering analysis or testing, NTEA asserted that this wasn't really a viable option because the agency has acknowledged that most final stage manufacturers do not have the engineering or financial resources to conduct the necessary testing or engineering analysis.

The agency did not suggest that the dynamic testing requirements would not impose *any* additional burdens on these small businesses. Rather, NHTSA said that it was "limiting the effects of this rule on small businesses *to the extent possible.*" 52 FR 44898; November 23, 1987 (emphasis added). Section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403) clearly requires *every* manufacturer, including every final stage manufacturer, to certify that each of its vehicles conforms to all applicable Federal motor vehicle safety standards. Because of this statutory provisions, final stage manufacturers will experience some additional burden to certify compliance with the dynamic testing requirements. NHTSA has no authority to exempt small businesses from the statutorily-imposed requirement to certify compliance with the dynamic testing requirements.

The final rule did, however, exercise the agency's authority to minimize the burdens imposed on small businesses by the dynamic testing requirements, so that those burdens will not be significant. To achieve this end, the final rule established limits on the GVWR and the unloaded vehicle weight of vehicles subject to the dynamic testing requirements. The agency determined that there was a lesser safety need for these heavier vehicles to comply with the dynamic testing requirements. Because of the lesser safety need for dynamic testing of these heavier vehicles, NHTSA exercised its authority to establish the weight limits and avoid any certification problems for the overwhelming majority of the vehicles manufactured by these small businesses.

Those vehicles completed by these small businesses within the weight limits established in the final rule will be subject to the dynamic testing requirements. The safety need for compliance with the dynamic testing requirements in these vehicles is identical to the safety need for the same size vehicles manufactured by the larger manufacturers. Since the dynamic testing requirements also satisfy all other criteria in the Safety Act for vehicles produced by these small manufacturers that are within the established weight limits, NHTSA has no basis for exempting these vhicles from the dynamic testing requirements.

The dynamic testing requirements are not the first or only instance where final stage manufacturers generally do not have the resources necessary to certify that their vehicles comply with the requirements of a safety standard. Only final stage manufacturers that have the necessary resources to conduct 30 mph barrier crash test or engineering analyses of that condition could certify that their completed vehicles complied with the windshield mounting and windshield zone intrusion standards (Standard Nos. 212 and 219, respectively), or the fuel system integrity standard (Standard No. 301). Additionally, only those final stage manufacturers that have the necessary resources to conduct brake testing could certify that their completed vehicles complied with the braking standards (Standard No. 105 for hydraulic brake systems and Standard No. 121 for air brake systems). Notwithstanding the fact that to this agency's knowledge few, if any, of the final stage manufacturers have the necessary financial and technical resources to certify that their completed vehicles comply with these standards, the Safety Act expressly requires them to so certify.

Absent some action by NHTSA, this statutory requirement could have imposed an unreasonably large burden on final stage manufacturers or required them to do something that was beyond their capabilities. To avoid such a result, the agency incorporated additional provisions in its certification regulations (49 CFR Parts 567 and 568). Those provisions require the incomplete vehicle manufacturers (companies such as Chrysler, Ford, and General Motors) to certify the compliance of their incomplete vehicles, and require the final stage manufacturers to certify the compliance of the components they mount on the vehicle and the effect of the mounting, to thus obtain effective certification of the completed vehicle without imposing unreasonable burdens on either incomplete or final stage manufacturers.

With respect to the brake standards and the standards where compliance is evaluated in a 30 mph barrier crash test, the agency's certification regulations require the incomplete vehicle manufacturer to either:

1. Certify that the completed vehicle will comply with these standards *if* it is completed within specifications established by the incomplete vehicle manufacturer; or

2. State that conformity with these standards is not substantially affected by the design of the incomplete vehicle.

When the incomplete vehicle manufacturer follows the first course of action listed above, it provides specifications that generally establish some limits on the parameters of the completed vehicle, such as its weight, height of center of gravity, and so forth. When the vehicle is completed within the incomplete vehicle manufacturer's specifications, the final stage manufacturer need only so state on its certification label and the responsibility for the vehicle's conformity with the standards rests entirely on the incomplete vehicle manufacturer.

However, when the final stage manufacturer chooses to complete the vehicle outside of the specifications established by the incomplete vehicle manufacturer, the final stage manufacturer must assume the responsibility for the vehicle's conformity with the safety standards. This means that the final stage manufacturer cannot rely upon the incomplete vehicle manufacturer's specifications as the basis for certifying that the completed vehicle conforms with applicable safety standards. Instead, the final stage manufacturer must conduct its own testing or engineering analysis as the basis for certifying that the completed vehicle conforms with the safety standards.

As noted in the final rule, very few final stage manufacturers and alterers have the technical and financial resources necessary to conduct testing or engineering analyses. Absent the resources necessary to conduct such testing or engineering analyses, the final stage manufacturer *cannot* legally complete its vehicles outside the incomplete vehicle manufacturer's specifications. Thus, even before the dynamic testing requirements apply to final stage manufacturers' completed vehicles, very few of those manufacturers could legally complete vehicles outside the specifications established by the incomplete vehicle manufacturers, because the vast majority of final stage manufacturers lack the resources needed to assume responsibility for the certification of the completed vehicle. NHTSA believes the dynamic testing requirements will have a minimal impact on these final stage

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manufacturers, since they are obliged to complete all of their vehicles within the limits established by the incomplete vehicle manufacturer in any case. These manufacturers can simply continue their current practice of completing their vehicles within the limits established by the incomplete vehicle manufacturer.

The small percentage of these small businesses that have the necessary resources to conduct crash testing and brake testing or engineering analyses were the only final stage manufacturers that could complete vehicles outside of the incomplete vehicle manufacturer's specifications prior to the establishment of the dynamic testing requirements. These final stage manufacturers can evaluate compliance with the dynamic testing requirements during the engineering analyses or crash testing they now conduct to evaluate the compliance of their completed vehicles with Standard Nos. 212, 219, and 301. If they conduct crash testing at present, the only change would be that the final stage manufacturers would now have to use instrumented test dummies, instead of the non-instrumented test dummies they currently use. Instrumented test dummies will increase the cost of a crash test by about $8,500 for each dynamic test conducted by these small businesses. This sum should not add a significant burden on these small businesses, considering the costs of the engineering analyses or crash testing they currently conduct.

When the incomplete vehicle manufacturer follows the second course of action listed above; i.e., states that conformance to a particular safety standard is not substantially affected by the design of the incomplete vehicle, the final stage manufacturer is responsible for certifying that the completed vehicle conforms to that safety standard. In this case, the final stage manufacturer is required by the Safety Act to exercise due care in certifying that the completed vehicle complies with the applicable safety standard. Any final stage manufacturer that has the necessary resources to do so may conduct the necessary testing or engineering analysis, and certify that the vehicles it completes from this manufacturer's incomplete vehicles comply with the applicable safety standards. On the other hand, if the final stage manufacturer lacks the financial or engineering resources to conduct the appropriate testing or engineering analyses to exercise due care in its certification, it cannot purchase any incomplete vehicles from manufacturers that state that conformance is not substantially affected by the design of the incomplete vehicle. Instead, these smaller final stage manufacturers must purchase their incomplete vehicles from those incomplete vehicle manufacturers that certify the completed vehicle will comply with the standard when completed within specifications.

Accordingly, the NTEA petition is denied. NHTSA concludes again that the vast majority of final stage manufacturers lack the financial and engineering resources necessary to establish due care in certifying that a completed vehicle complies with applicable safety standards. Because of this lack of resources, the vast majority of final stage manufacturers cannot legally complete a vehicle outside of the specifications established by the incomplete vehicle manufacturer. Hence, NTEA's point about the need to go outside the incomplete vehicle manufacturer's specifications to respond to the market demand for customization is not directly relevant to this decision, because the vast majority of final stage manufacturers are obligated to remain within the incomplete vehicle manufacturer's specifications *before* the dynamic testing requirements apply to these vehicles. For those few manufacturers that could exceed the incomplete vehicle manufacturer's specifications, they can continue to conduct their own engineering analyses or dynamic testing. It will cost more to conduct those analyses or test, but the higher costs will not be significant relative to these manufacturers' existing programs for certifying their vehicles.

Toyota also asked for reconsideration of the dynamic testing requirements as they applied to vehicles manufactured in more than one stage. In its petition, Toyota stated that it would have to impose stringent limitations on vehicle weight, weight distribution, and center of gravity height in order that its crash tests might be representative of the results of crash tests of the vehicles as completed or altered. Ford had raised a similar point in its comments on the proposal to require dynamic testing of light trucks and MPVs. Toyota asserted that these stringent limitations would put its incomplete vehicles at a competitive disadvantage compared to those incomplete vehicles that would not be subject to the dynamic testing requirements because of their GVWR or unloaded vehicle weight when completed.

With regard to Toyota's first point, Toyota's assertion that it will have to impose "stringent limitations on vehicle weight, weight distribution, and center of gravity height" for its incomplete vehicles subject to the dynamic testing requirements is simply speculation at this point. At this time, there is no indication that the incomplete vehicle manufacturers will have to include limits on specifications in addition to the limits currently set for such specifications as vehicle weight, weight distribution, and center of gravity height. Further, there is no evidence that the specifications established by the incomplete vehicle manufacturers for vehicles subject to the dynamic testing requirements will necessarily be more stringent than the specifications established at the present. Neither Toyota nor any other incomplete vehicle manufacturer can establish *unreasonably* stringent limitations for its incomplete vehicles, since the final stage manufacturers would then purchase their incomplete vehicles from other manufacturers, who would presumably establish more realistic limitations for their incomplete vehicles.

These determinations were made by the agency after considering the evidence available at this time. Neither Toyota nor any other incomplete vehicle manufacturer has submitted *any* testing or engineering analyses it has conducted to determine what additional limitations it will have to impose on its incomplete vehicles subject to the dynamic testing requirements. Until such evidence becomes available, however, the agency has no basis for changing the requirements established after considering the currently available evidence.

Toyota's assertion that final stage manufacturers and alterers may substitute the heavier incomplete vehicles not subject to the dynamic testing requirements for incomplete vehicles subject to the dynamic testing requirements is not in accord with NTEA's assertion that, in many instances, final stage manufacturers and alterers cannot use heavier chassis for their vehicles. Additionally, as noted in the final rule, 90 to 95 percent of the incomplete vehicles used in final stage manufacturing exceed the weight limits established for dynamic testing. Presumably, the final stage manufacturers have some compelling market-based reason for using the less heavy incomplete vehicles for 5 to 10 percent of their vehicles. Those market-based reasons for using lighter vehicles for 5 to 10 percent of final stage manufacturer production will not cease to exist because of the dynamic testing requirements. Hence, NHTSA has no reason to believe that the market share for incomplete vehicles in the weight range now subject to dynamic testing will decrease.

Toyota also asserted that NHTSA recognized the problems that the dynamic testing requirements would impose on vehicles like motor homes and vehicles carrying chassis-mount campers, so it exempted these types of vehicles from the dynamic testing requirements. According to Toyota, other "virtually-identical" vehicles would experience the same problems, yet not be exempted from the dynamic testing requirements. As an example, Toyota asserted that a plumber's or electrician's truck is "not unlike" a vehicle with a chassis-mount camper, yet the plumber's or electrician's truck is subject to the dynamic testing requirements, while the vehicle with a chassis-mount camper is not. Additionally, Toyota stated that half of its incomplete vehicles are motor homes after they are completed vehicles. Toyota alleged that the exclusion of motor homes from the dynamic testing requirements means that those final stage manufacturers that complete Toyota's incomplete vehicles into motor homes will not be subject to the dynamic testing requirements, while those final stage manufacturers that complete the identical incomplete vehicle into a different type of vehicle will be subject to the dynamic testing requirements.

NHTSA does not find this argument persuasive. In developing the final rule, NHTSA sought to determine whether compliance with the dynamic testing requirements would impose unreasonable burdens on any types of vehicles, and to exempt any such vehicle types from the dynamic testing requirements. In the case of those types of light trucks and MPVs that were not exempted from the dynamic testing requirements, NHTSA was not suggesting that compliance with the dynamic testing requirements would not impose *any* additional burdens. Rather, the agency found that the additional burdens were reasonable. NHTSA does not doubt that some non-exempted vehicles will face problems similar to those that would be faced if a type of exempted vehicle had to comply with the dynamic testing requirements. The difference is that the problems can be overcome with reasonable efforts in the case of non-exempted vehicle types, while reasonable efforts would not overcome similar problems for the exempted vehicle types. Toyota's petition did not set forth any basis for the agency to change its conclusion that the dynamic testing requirements would impose *reasonable* burdens on the subject light trucks and MPVs.

After considering these petitions, the agency has concluded that they have not presented any basis on which to change the dynamic testing requirements for light trucks and MPVs. These petitions are, therefore, denied. The dynamic testing requirements set forth in the November 23, 1987 final rule will apply to all subject light trucks and MPVs manufactured on or after September 1, 1991.

Issued on December 9, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-28784 Filed 12-13-88; 8:45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 240
Wednesday, December 14, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. FV-89-002]

Peaches Grown In Mesa County, Co; Proposal Redefining Producer Representation Districts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would redefine the districts into which the production area (Mesa County, Colorado) under the marketing order for Colorado peaches is divided. This proposal is needed to balance peach production between the five districts in order to provide equitable producer representation on the Administrative Committee.

DATES: Comments must be received on or before December 29, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 88 and Marketing Order No. 919 (7 CFR Part 919), regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities action on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 52 handlers of peaches regulated under this marketing order, and approximately 245 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the peach handlers and producers in Mesa County, Colorado may be classified as small entities.

The production area is divided into five districts for the purpose of producer representation on the Administrative Committee (committee). The committee consists of nine members. Five members, one for each district, represent producers. Three members represent cooperative handlers. There is also an independent handler member.

Paragraph (1) of § 919.32 of the order authorizes the committee, with the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee. Any such changes should reflect, insofar as practicable, shifts in peach production within the districts and the production area. Changes in the district boundaries were made in 1976 (41 FR 43709), and the districts are currently specified in § 919.111 of the rules and regulations issued under the order.

The committee unanimously recommended that the district boundaries once again be changed to correct imbalances in the distribution of production between the five districts. According to the committee, the boundary changes are needed to reflect shifts in peach production within the production area. These shifts are a result of the replacement of large areas that were once productive peach orchards with ranches and housing developments and of increased production in other areas. The proposed boundary changes also reflect expected production shifts as nonbearing acreage begins production within the next two years. It is desirable to have the districts as equal as possible in production potential because each district is represented by one producer member on the committee.

To accomplish a balance in production between districts, the proposal would increase District No. 1 by adding an area known as Rapid Creek that would be deleted from District No. 2. District No. 4 would be expanded by the addition of approximately 250 acres of production to be removed from District No. 3. In addition, the boundaries of District No. 5 would be clarified to show that the area known as Redlands has been, and would continue to be, a part of District No. 5

The proposed boundaries would evenly distribute production between the five districts with approximately 20 percent of the total production in each area. This is intended to provide equitable producer representation on the committee and would not impose any additional cost on producers or handlers.

Based on the above, the Administrator of AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

It is found and determined that a comment period of less than 30 days is appropriate because this proposed action needs to be effective in time to permit the nomination of members and

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alternates for terms of office beginning January 1, 1989.

List of Subjects in 7 CFR Part 919

Marketing agreements and orders, Peaches, Colorado.

For the reasons set forth in the preamble, 7 CFR Part 919 is proposed to be amended as follows:

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

1. The authority citation for 7 CFR Part 919 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 919.111 is revised to read as follows:

§ 919.111 Redefinition of districts.

The districts into which the production area is divided are redefined as follows:

(a) "District No. 1" shall include all that portion of Mesa County known as the Rapid Creek Area and that portion lying north of the Colorado River and east of 37.3 Road and an extension thereof to the Mesa County line. The Southern boundary is known as Sites Wash.

(b) "District No. 2" shall include all that portion of Mesa County lying south of the Colorado River, known as Vineland, on the floor of the valley and bounded by Sites Wash on the north.

(c) "District No. 3" shall include all that portion of Mesa County lying south of the Colorado River on the west of District No. 2, known as East Orchard Mesa, to the line designated as 35 Road.

(d) "District No. 4" shall include all that portion of Mesa County lying south of the Colorado River bounded on the west by the Gunnison River including that portion known as Whitewater and bounded on the east by 35 Road.

(e) "District No. 5" shall include all that portion of Mesa County west of 37.3 Road and an extension thereof to the Mesa County line, north of the Colorado River to the junction of the Colorado and the Gunnison Rivers, and all of the rest of Mesa County south of the Colorado River and west of the Gunnison River to include the area known as the Redlands.

December 9, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–28709 Filed 12–13–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[Atty. Gen. Order No. 1306–88]

INS/Executive Office for Immigration Review Fee Schedule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the existing fee schedule of the Immigration and Naturalization Service and the Executive Office for Immigration Review. These changes are necessary to place the financial burden of providing special services and benefits which do not accrue to the public at large on the recipients of these special services and benefits. Charges have been adjusted to more nearly reflect the current recovery cost of providing these special services and benefits taking into account public policy and other pertinent facts.

DATE: Comments must be received on or before January 13, 1989.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–4705. Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Falls Church, VA 22041, Telephone: (703) 756–6470.

SUPPLEMENTARY INFORMATION: The INS and EOIR have undertaken a study of their fee schedule as required under 31 U.S.C. 9701 and OMB Circular A–25. Under that law and the OMB Circular, it is required that a special service or benefit provided to or for any person by a Federal Agency be self-sustaining to the fullest extent possible. Charges are to be fair and equitable, taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts. All services and benefits provided to the public by the INS and EOIR were reviewed for applicability of user charges. Costs which should be recovered from recipients of special services and benefits provided were identified in order to be fair and equitable to the taxpayers and the recipients of these special services and benefits.

The following proposed fee changes to the existing INS/EOIR fee schedule are based upon a study by the INS and EOIR of their policies and practices for user charges, a review of the costs and fees, and on the principle of user charges prescribed by the Congress in 31 U.S.C. 9701 and the implementing guidelines of the Office of Management and Budget in OMB Circular A–25.

1. Increase the fee from $50 to $75 for filing Form I–17, application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof.

2. Increase the fee from $15 to $35 for filing Form I–90, application for Alien Registration Receipt Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, multilated or destroyed, or in a changed name.

3. Increase the fee from $15 to $35 for filing Form I–102, application (Form I–102) for Arrival-Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed.

4. Increase the fee from $35 to $50 for filing Form I–129B, petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act.

5. Increase the fee from $35 to $40 for filing Form I–129F, petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act.

6. Increase the fee from $35 to $50 for filing Form I–129L, petition to employ intra-company transferee.

7. Increase the fee from $35 to $40 for filing Form I–130, petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act.

8. Increase the fee from $15 to $45 for filing Form I–131, application for issuance of reentry permit.

9. Increase the fee from $35 to $50 for filing Form I–140, petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act.

10. Increase the fee from $15 to $50 for filing Form I–193, application for waiver of passport and/or visa.

11. Increase the fee from $35 to $45 for filing Form I–212, application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation.

12. Increase the fee from $125 to $155 for filing Form I–246, application for stay of deportation under Part 243 of this Chapter.

13. Increase the fee from $50 to $110 for filing Form I–290B, appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. (The fee of $110 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision).

14. Increase the fee from $50 to $60 for filing Form I–485, application on Form I–485 for permanent residence status or for creation of a record of lawful permanent residence.

15. Increase the fee from $15 to $35 for filing Form I–506, application for change of nonimmigrant classification under section 248 of the Act.

16. Increase the fee from $15 to $35 for filing Form I–538, application by a nonimmigrant student (F–1) for an extension of stay, a school transfer or permission to accept or continue employment or practical training.

17. Increase the fee from $15 to $35 for filing Form I–539, application for extension of stay of a nonimmigrant, other than one described in section 101(a)(15)(F) or 101(a)(15)(J) of the Act, and, upon a basis of reciprocity, a nonimmigrant described in section 101(a)(15)(A)(iii) or 101(a)(15)(G)(v) of the Act.

18. Increase the fee from $15 to $45 for filing Form I–570, application for issuance or extension of refugee travel document.

19. Increase the fee from $50 to $75 for filing Form I–600, petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee of $75 will be required).

20. Increase the fee from $50 to $100 for filing Form I–600A, application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee of $100 will be required).

21. Increase the fee from $35 to $45 for filing Form I–601, application for waiver of ground of excludability under section 212(h) or (i) of the Act. (Only a single application and fee of $45 shall be required when the alien is applying simultaneously for a waiver under both sub-sections).

22. Increase the fee from $15 to $50 for filing Form N–410, motion for amendment of petition for naturalization when motion is for the convenience of the petitioner.

23. Increase the fee from $15 to $40 for filing Form N–455, application for transfer of petition for naturalization under section 335(i) of the Act, except when transfer is of a petition for naturalization filed under the Act of October 24, 1968, Pub. L. 90–633.

24. Increase the fee from $15 to $55 for filing Form N–470, application for section 316(b) or 317 of the Act benefits.

25. Increase the fee from $15 to $50 for filing Form N–565, application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; or for a certificate of citizenship in a changed name under section 343(b) or (d) of the Act.

26. Increase the fee from $15 to $50 for filing Form N–577, application for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act.

27. Increase the fee from $15 to $50 for filing Form N–580, application for a certificate of naturalization or repatriation under section 343(a) of the Immigration and Nationality Act or the 12th subdivision of section 4 of the Act of June 29, 1906.

28. Increase the fee from $35 to $60 for filing Form N–600, application for certificate of citizenship under section 309(c) or section 341 of the Act.

29. Increase the fee from $35 to $60 for filing Form N–604, application for a certificate of citizenship (made on Form N–400) under section 341 of the Act.

30. Increase the fee from $50 to $110 for filing motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision).

31. Increase the fee from $15 to $50 for filing Form N–300/315, for receiving and filing a declaration of intention.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation (Government agencies), Fees, Forms.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 of Title 8 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166.

2. In § 103.7, paragraph (b)(1) is amended as follows:

§ 103.7 [Amended]

1. Increase the fee for Form I–17 from "$50.00" to "$75.00".

2. Increase the fee for Form I–90 from "$15.00" to "$35.00".

3. Increase the fee for Form I–102 from "$15.00" to "$35.00".

4. Increase the fee for Form I–129B from "$35.00" to "$50.00".

5. Increase the fee for Form I–129F from "$35.00" to "$40.00".

6. Increase the fee for Form I–129L from "$35.00" to "$50.00".

7. Increase the fee for Form I–130 from "$35.00" to "$40.00".

8. Increase the fee for Form I–131 from "$15.00" to "$45.00".

9. Increase the fee for Form I–140 from "$35.00" to "$50.00".

10. Increase the fee for Form I–193 from "$15.00" to "$50.00".

11. Increase the fee for Form I–212 from "$35.00" to "$45.00".

12. Increase the fee for Form I–246 from "$125.00" to "$155.00".

13. Increase the fee for Form I–290B from "$50.00" to "$110.00".

14. Increase the fee for Form I–485 from "$50.00" to "$60.00".

15. Increase the fee for Form I–506 from "$15.00" to "$35.00".

16. Increase the fee for Form I–538 from "$15.00" to "$35.00".

17. Increase the fee for Form I–539 from "$15.00" to "$35.00".

18. Increase the fee for Form I–570 from "$15.00" to "$45.00".

19. Increase the fee for Form I–600 from "$50.00" to "$75.00".

20. Increase the fee for Form I–600A from "$50.00" to "$100.00".

21. Increase the fee for Form I–601 from "$35.00" to "$45.00".

22. Increase the fee for Form N–410 from "$15.00" to "$50.00".
23. Increase the fee for Form N–455 from "$15.00" to "$40.00".
24. Increase the fee for Form N–470 from "$15.00" to "$55.00".
25. Increase the fee for Form N–565 from "$15.00" to "$50.00".
26. Increase the fee for Form N–577 from "$15.00" to "$50.00".
27. Increase the fee for Form N–580 from "$15.00" to "$50.00".
28. Increase the fee for Form N–600 from "$35.00" to "$60.00".
29. Increase the fee for Form N–604 from "$35.00" to "$60.00".
30. Increase the fee for motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction from "$50.00" to "$110.00".
31. Increase the fee for Form N–300/315 from "$15.00" to "$50.00".

Dated: December 2, 1988.

Harold G. Christensen,

Acting Attorney General.

[FR Doc. 88–28703 Filed 12–13–88; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

[Docket No. PRM–100–2]

Public Interest Research Group et al.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking filed by Louis J. Sirico, Jr., Esq. on behalf of the Public Interest Research Group, et al. The petitioner requested that the Commission amend its regulations to prohibit the construction of nuclear power reactors where the population in the surrounding area exceeds or will exceed specified numerical limits. The petition is being denied for the following reasons: (1) It would unnecessarily restrict NRC's regulatory siting policies and procedures by elevating population density criteria above other siting criteria such as environmental and ecological factors, and (2) it would not result in a substantial increase in overall protection of the public health and safety, as compared to the current siting criteria when combined with calculations of potential health effects. The NRC has carefully considered the issues raised in the petition, and has taken them into account in reaching a decision on the areas which fall within its jurisdiction.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John C. Stewart, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3618.

SUPPLEMENTARY INFORMATION:

I. Petition
II. Basis for Request
III. Public Comments on the Petition
IV. Staff Action on the Petition
V. Reasons for Denial

The Petition

By letter dated June 1, 1976, Mr. Louis J. Sirico, Jr., Esq., on behalf of the Public Interest Research Group and 25 other specified citizen groups, filed with the Nuclear Regulatory Commission a petition for rulemaking. The petitioners requested that the Commission amend its regulations of 10 CFR Part 100, "Reactor Site Criteria," to set numerical limits on allowable population density around nuclear power reactor sites. The amendments to 10 CFR 100.11(a) proposed by the petitioners would set 0.4 miles and 3 miles as the minimum distances for the outer boundries of the exclusion area and the low population zone, respectively. A new section of 10 CFR 100.12 proposed by the petitioners would set a maximum population density of 400 persons per square mile averaged over any radial distance out to a distance of 40 miles. The petitioners proposed that the Commission also deny Construction Permit Applications where, during the effective period of the plant's license, the maximum projected population density would exceed 800 persons per square mile averaged over any radial distance out to a distance of 40 miles. Additionally, the petitioners proposed that all population figures and projections include transit populations.

Basis for Request

The petitioners indicated that despite an official policy against building nuclear power reactors near cities, both the Nuclear Regulatory Commission (NRC), and its predecessor, the Atomic Energy Commission, have permitted utilities to build nuclear power reactors too close to metropolitan areas. It is the view of the petitioners that reliance on broad policy statements and regulatory guides in this matter are inadequate, and that current Commission policy should be incorporated into NRC regulations. The petitioners proposed criteria that would prohibit the construction of nuclear power plants where the population in the surrounding area exceeds or will exceed specified numerical limits.

Public Comments on the Petition

A notice of receipt of the petition for rulemaking was published in the **Federal Register** on July 1, 1976 (41 FR 27141). Interested persons were invited to submit written comments or suggestions concerning the petition by August 30, 1976. The NRC received 14 comments in response to the notice: 11 from public utilities, utility representative organizations, nuclear power plant vendors and industry representative organizations, and 3 from individuals. Twelve of the commenters (86%) opposed the petition. The main reasons cited by these commenters were: 1. The petition's proposal would result in a * * * "serious loss of regulatory flexibility * * *" because this would greatly reduce the number of suitable sites for nuclear power plants, especially in densely populated areas such as the State of New Jersey. The commenter stated that * * * "elevating population density criteria above these other concerns (ecological or environmental impacts) by a rigid and mechanical test (density criteria) cannot in every case work in the best interest of the public." 2. The petition's proposal * * * "has misjudged both the content and adequacy of the Nuclear Regulatory Commission's siting policies and practices. The NRC's regulations and siting practices when combined with the conservative accident calculational procedures they require are more than adequate to protect the health and safety of the public." 3. The petition's proposal established * * * "no factual basis for which the proposed amendments would further the public safety by establishing arbitrary values for minimum distances for exclusion area(s) and low population zones and on allowable population density." The two commenters supporting the petition's recommendation were from the petitioners themselves. The petitioner's chief concern was the * * * "fear that putting this plant (in Iowa) so close to so many people creates an unacceptable public health menace." The petitioner's position was that all future nuclear power plants should be sited in areas of low population density in order to better

protect the health and safety of the general population.

Staff Action

The response to the petition for rulemaking was delayed because of pending Commission action concerning population siting criteria. An NRC staff paper (SECY–78–624) was submitted to the Commission on December 4, 1978. In a memorandum to the Executive Director for Operations dated February 15, 1979, the Commission deferred action on the population density siting criteria issue pending submission of the Siting Policy Task Force report. The petitioners were notified of this deferral and that the petition would be considered in the context of the rulemaking on siting criteria.

Recent events, including the reactor accident at Chernobyl in the U.S.S.R., continued uncertainty over certain aspects of the accident source term work, and the lack of projected Construction Permit Applications have led the Commisson's Executive Director for Operations to conclude that the rulemaking on siting criteria should be terminated. Therefore, there is no reason to further delay action on this petition. However, the need for additional rulemakings or rule revisions will be considered in the context of a study on the readiness to resume licensing that is currently underway by the NRC staff. It is expected that the NRC staff will address the question of siting policy and criteria adequacy as part of this broad study.

Reasons for Denial

The NRC shares the petitioner's concern regarding siting future nuclear power plants in areas of low population density. As stated in NRC Regulatory Guide 4.7 * * * "Areas of low population density are preferred for nuclear power station sites. High population densities projected for any time during the lifetime of a station are considered during both the NRC staff review and public hearing phases of the licensing process. If the population density at the proposed site is not acceptably low, then the applicant will be required to give special attention to alternative sites with lower population densities." In addition, NRC Regulatory Guide 4.7 recommends a minimum exclusion distance of 0.4 miles and minimum distance of 3 miles for the outer boundary of the low population zone. Further, this Regulatory Guide indicates that transit population should be included in population density calculations for those sites where a significant number of people work, reside part-time, or engage in recreational activities, and are not permanent residents of the area.

However, the NRC's specific population density parameters for siting nuclear power plants differs from those indicated by the petitioners. The NRC's population density parameters are for no more than 500 persons per square mile averaged over any radial distance out to 30 miles, or the projected population density over the lifetime of the facility not to exceed 1,000 persons per square mile averaged over any radial distance out to 30 miles (Regulatory Guide 4.7). If this density siting requirement cannot be met, special attention should be given to the consideration of alternative sites with lower population densities. The petition's proposed criteria would limit existing permissible population density to 400 people per square mile within a 40-mile perimeter and limit maximum projected population density limited to 800 people per square mile.

At first glance, it might appear that the NRC's population density siting parameters and the population density siting parameters indicated by the petitioner are similar—500 vs. 400 per square miles averaged over any radial distance of 40 vs. 30 miles for the initial operation of the nuclear power plants. However, the real difference between the NRC's and the petitioner's population density siting requirements is regulatory flexibility. The NRC's siting requirements allow for the consideration of alternative sites with superior environmental parameters, e.g., suitable meteorological, natural resources and water temperature conditions or superior geophysical conditions, e.g., suitable geologic, hydrologic, and tectonic conditions if the population density parameters cannot be met. However, on the other hand, the petition's siting requirements would automatically eliminate any site from further consideration if specific population density criteria are not met regardless of any other mitigating factors.

The NRC believes the Regulatory Guide 4.7 adequately addresses population density siting considerations and that no new rulemaking as proposed by the petitioners is justified at this time. Also, the petitioner offers no basis for the specific numerical population density limits indicated in the petition. Therefore, the petition would not result in a substantial increase in the overall protection of the public health and safety, as compared to the current NRC siting criteria when combined with calculations of potential health effects.

However, the NRC staff is preparing to carry out an additional review of the Commission's present siting policy and criteria in light of its ongoing risk assessment activities and in view of a study by the NRC staff that is now underway to examine our readiness to resume licensing.

Dated at Rockville, Maryland, this 29th day of November, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–28741 Filed 12–13–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 398

[Docket No. 45995; Notice 88–18]

RIN 2105–AB43

Essential Air Service; Reductions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation is preparing temporary regulations to implement Essential Air Service (EAS) program reductions for Fiscal Year (FY) 1989. EAS assists certain small communities in receiving scheduled air service. The Department may obligate EAS subsidy payments for FY 1989 only within levels permitted by the 1989 DOT and Related Agencies Appropriations Act (Pub. L. 100–457), and the amount of subsidy necessary to support all currently guaranteed EAS exceeds those levels. This Notice of Proposed Rulemaking contains four principal alternatives for reducing EAS subsidies to the appropriated amounts.

DATE: Comments should be received by January 3, 1989.

ADDRESS: Comments should be addressed to the Documentary Services Division, Attention: Docket Section, Room 4107, Docket No. 45995, Department of Transportation, C–55, Washington, DC 20590. Persons requesting acknowledgment that their comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James M. Craun, Jr., Office of Aviation Analysis (202) 366–1059, or James R.

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Dann, Office of the General Counsel (202) 366–9154.

SUPPLEMENTARY INFORMATION: A comment period of only 20 days is being provided for this Notice of Proposed Rulemaking (NPRM). Normally a comment period of up to 60 days or more is provided. However, an abbreviated comment period is essential. Final rulemaking is needed as soon as possible in order to minimize the impact of the reductions in service that will be needed. If the Department were to continue to expend funds at present levels for an extended period, the service subject to elimination would be substantially greater.

The Department anticipates that the Final Rule will be published in the **Federal Register** on or before *January 30, 1989*, and that it will be made effective on or before *March 1, 1989*. This will allow for a 20 day period for public comment, about a 20 day period to analyze comments, about 10 days to process and publish the Final Rule, and a 30 day period after publication of the Final Rule so that air carriers can adjust schedules to accommodate the withdrawal of subsidy support for services.

Providing an opportunity for public comment in this rulemaking, even though only a brief comment period is possible, is important. Four alternatives are being proposed; however, combinations of these alternatives, or other alternatives, may be preferable choices for adoption in the Final Rule. Public comments on the impact that is likely to result from each of the various alternatives, including any that are proposed by commenters, are needed to assist the Department in making final determinations. The Department's principal goal in this rulemaking is to minimize, to the extent practicable, the inconvenience and disruption to small communities and airline passengers that the Final Rule may cause.

To assure that potentially affected communities receive timely notice of this NPRM, the Department is providing copies to communities that now receive subsidized EAS and to carriers that are providing such service. Copies are also being provided by direct mail to other persons and organizations that may have an interest in this NPRM. The Department regrets, in advance, that some interested persons and organizations may not immediately receive notice of this NPRM owing to the total number of direct mailings anticipated, the expedited nature of the effort, and the holiday period in which the mailings and subsequent comment period will occur.

What is EAS?

Essential Air Service (EAS) is a DOT program for subsidizing air service to generally smaller communities which would not otherwise receive scheduled air service. The Department, under this program, makes payments to air carriers for use in providing EAS to communities determined by the Department, using criteria mandated by statute, to be eligible for this service. Generally, carriers, unless they are subsidized, would not provide scheduled air service to certain EAS communities because these communities do not generate sufficient numbers of passengers at fares that cover carrier costs. The Department authorizes subsidy for a carrier to provide EAS only when no carrier is willing or able to provide the required level of service without subsidy support.

EAS Funding Shortfall Summarized

As discussed in more detail below, the Congress recently appropriated $25 million in EAS subsidies for FY 1989. This amount is $6.6 million less than the projected amount needed to support 1988 service levels, and approximately $19 million less than the full annual amount needed to support EAS at new levels authorized by the Congress. The reduced FY 1989 appropriation necessitates reductions in EAS subsidies, which will likely produce suspension of certain services and certain losses in airline revenues.

Background of the EAS Program

In 1978, when the Airline Deregulation Act (ADA) took effect, 746 communities in the United States and its territories were listed on air carrier certificates issued under section 401, Federal Aviation Act. Prior to deregulation, most of these communities were assured a minimum level of air service. In light of the ADA's provisions allowing air carriers to terminate service without prior Government approval, there was concern that communities that generated low traffic levels would lose service as carriers withdrew to larger, more lucrative markets. To address this concern, as part of the ADA the Congress added section 419 to the Federal Aviation Act, which ensured that these communities would continue to receive EAS for ten years, with Federal subsidy if needed.

Under this program, DOT determines the minimum level of EAS service that these communities require. DOT will provide subsidy to an air carrier, if necessary, to assure that this minimum level of service is provided. Of the approximately 550 communities for which EAS determinations have been issued, only about 150 communities receive service that is supported by EAS subsidy. No determinations are required for the approximately 200 cities which are technically guaranteed service by the ADA, but which have received service by two or more carriers since even the pre-ADA period, such as New York, Chicago, etc.

Extension of the EAS Program in Public Law 100–223

The ten year service period was scheduled to terminate on October 24, 1988. However, Congressional interest in ensuring continued service to these communities remained strong, and prior to the expiration date, legislation was enacted expanding the EAS program and extending it for ten additional years. *See* section 202 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (December 30, 1987; Pub. L. 100–223).

In the 1987 legislation, Congress provided for a continuation of EAS guarantees, termed "Basic EAS". Under Basic EAS, any point was to be provided ten more years of basic service if it was (1) eligible for service under the earlier program, (2) actually receiving service during any part of Fiscal Year 1988, and (3) situated at least 45 miles from the nearest "hub" airport—now defined as an airport enplaning annually at least 0.25% of all enplanements in the United States. Certain other service upgrades were also mandated, such as general employment of aircraft having at least 15 passenger seats, and use of pressurized aircraft if the flight normally flies higher than 8,000 feet above sea level. Further, there was to be no more than one intermediate stop between the EAS point and the hub airport (or small hub or nonhub, as appropriate).

The 1987 legislation also established two forms of service enhancement, by which communities could receive more service than basic EAS by agreeing to a subsidy-sharing commitment or by risking loss of basic service if DOT-funded enhanced service failed to meet agreed levels of passenger usage. The new legislation also provided that any community not entitled to basic EAS might agree with DOT on a reasonable service level and receive service as a "new point" on a subsidy-sharing basis.

Proposed rulemakings to implement the 1987 legislation are currently under development. Subsequent legislation, however, has made the rulemaking proposals in this document of more immediate concern.

Fiscal Year 1989 Funding

On September 30, 1988, the Congress enacted the Department of Transportation and Related Agencies Appropriations Act, 1989 (Pub. L. 100–457). As explained in more detail below, limitations imposed by the 1989 Appropriations Act will require significant cutbacks in even Basic EAS.

The funding level required to maintain EAS at current service levels, which-in many cases is below the minimum guarantee for Basic EAS, is projected to be $31.6 million for FY 1989. See Table I for a breakdown of this projection. In FY 1988, actual subsidy expenditures totaled $28.4 million, and the Department has processed or is processing subsidy proposals received before October 1, 1988, for eighteen points that did not require subsidy support for the full 12 months of FY 1988. The changes we anticipate would increase net subsidy expenditures in FY 1989 by approximately $2.6 million over FY 1988 levels. These eighteen points do remain subject to evaluation for continuation of subsidy support under the alternatives being proposed below.

Another $0.6 million is expected to be required for compensation to be paid to carriers that have been "held-in" (*i.e.* compelled to continue providing service, perhaps at increased rates) after having filed notices to terminate service. These two changes thus result in a projected increase of $3.2 million over FY 1988 spending levels, for a total of $31.6 million for FY 1989. Funding required for the increased minimum service elements added in by Pub. L. 100–223 is estimated to be an additional $12 million annually. No estimates have been prepared for the enhanced or new points provisions of the 1987 legislation due to the uncertain nature of the ability or desire of communities to participate in these program elements.

In the Department's Appropriations Act for 1989, Congress appropriated only $25 million for EAS air carrier payments. Further, in section 333 of this Act, the Congress provided that:

> Notwithstanding any other provision of law, the Secretary of Transportation shall make payment of compensation under subsection 419 of the Federal Aviation Act of 1958, as amended, only to the extent and in the manner provided in appropriations Acts, at times and in a manner determined by the Secretary to be appropriate, and claim for such compensation shall not arise except in accordance with this provision.

Section 333 thus directs that funding for the EAS program for FY 1989 be within the limits of the $25 million appropriation, and further directs the Secretary to determine the manner in which subsidy amounts are to be adjusted in order to meet those limits. It also clarifies that carriers will have no legal basis to make a claim for compensation in excess of the appropriated funds made available for payments to air carriers.

The Department must adhere to the $25 million limitation imposed by the 1989 Appropriations Act. No Government official may authorize an expenditure or obligation exceeding the amount available in the appropriation established for such expenditure or obligation (see 31 U.S.C. 1341). Further, the legislative history of the 1989 Appropriations Act indicates that, while Congress expected that imroved EAS program procedures would produce some savings, it also anticipated that the funds appropriated for FY 1989 might be insufficient to maintain program service levels. See Senate Rept. No. 100–411, 100th Cong. 2nd Sess. (1988) at 12–13; H. R. Report No. 100–691, 100th Cong. 2nd Sess. (1988) at 10–11. It is thus noteworthy that the Senate added language, which became section 333 of the Appropriations Act, to "mak[e] it clear that [EAS] subsidies are subject to the availability of appropriations," Senate Report No. 100–411 at 13.

Because the 1989 Approporiations Act was enacted after Pub. L. 100–223, it represents a later and thus overriding expression of the will of Congress. Finally, it is noted that section 333 begins with the words "notwithstanding any other provision of law" to spetify that compliance with its provisions is required independent of any other expression of law. The Department must and will comply with this explicit Congressional direction.

Formulating a General Approach to Making the Required Reductions

It is the Department's legal obligation to pursue as much of the principal purpose of the 1987 legislation as the appropriation will permit. The Department views as that principal purpose the provision of safe, reliable scheduled passenger air service to provide the maximum public benefit at small communities and isolated areas.

In developing options for reducing subsidy expenditures, we would not propose to eliminate subsidy for any Alaskan, Hawaiian, or Pacific points. These points are highly dependent on subsidized EAS, as air service is often the only practical means of transportation available, and passenger volumes are low. In contrast, in the 48 contiguous States and Puerto Rico a more completely integrated highway system is in place, and often bus or train travel is or can be made available. The Department specifically requests comments on whether all Alaska, Hawaii, and Pacific points should be excluded from subsidy cuts on this basis, as well as on the extent to which other EAS communities, vulnerable to service eliminations, have characteristics similar to points in Alaska, Hawaii, and the Pacific.

The Department proposes to meet the requisite budget constraints by first postponing implementation of those aspects of the 1987 legislation that would increase subsidy support costs over those incurred under the expired ADA provisions, including higher service levels for Basic EAS, enhanced service, and service to new points. The higher service levels for Basic EAS are listed in Table I. Tentatively, the Department has determined that it would be difficult to justify extending subsidy at this time for service to new points, or establishing increased service guarantees or enhancements on existing service, when doing so would deprive present EAS points of subsidy support for service they have been using and have come to rely upon.

Summary of Alternative Proposals

Four alternatives are proposed in this NPRM which describe what the Department believes to be the primary approaches toward making required EAS program reductions. However, combinations of these alternatives, or other options, may indeed be more appropriate for adoption in a Final Rule. Comments are specifically requested concerning other options, or combinations of the four proposed alternatives, which may be preferable choices.

The following paragraphs briefly summarize the four proposed alternatives, which are more fully set forth under the caption "THE PROPOSED ALTERNATIVES". Each of the alternatives is intended to produce $6.6 million in savings over the last 7 months of FY 1989, and each discussion notes the number of communities that will be affected, assuming that subsidy reductions are implemented on March 1, 1989. If the subsidy reductions are not implemented until a later date, the number of points affected would be greater.

Alternative 1: Eliminate subsidy for air service to communities that are close to alternate air service.

This alternative would eliminate EAS subsidies to communities that are close to alternate air service as measured by highway distance. The relative availability of alternate service should minimize the inconvenience to the

traveling public associated with affected communities. Approximately 44 communities would be affected by this alternative.

Alternative 2: Eliminate subsidy for air service to more than one connecting airport and to certain communities close to alternate air service.

Fifteen communities currently receive subsidized air service to a second connecting airport. (Most EAS communities receiving subsidized service receive it to only one connecting airport and there is no legal requirement that service be guaranteed to more than one airport.) Under this proposed alternative, these 15 communities would lose subsidized air service to the second connecting airport. Eliminating second hubs would achieve a savings of $1.85 million, which is not sufficient by itself to achieve the total savings required. If combined with an approach similar to that taken in Alternative 1, however, it would require elimination of subsidy at only 31 rather than 44 communities with only one connecting airport.

Alternative 3: Eliminate subsidy for air service to communities with the highest annual subsidy requirements.

Of the approximately 150 communities currently receiving subsidy supported EAS, 33 in the 48 contiguous states and Puerto Rico received subsidies in FY 1988 at levels exceeding $250 thousand annually. By eliminating EAS subsidy to those communities with the largest subsidies, the least number of communities would be affected.

Alternative 4: Eliminate subsidy for air service to communities that historically have enplaned the fewest passengers.

Under this alternative, 53 communities (many of which are in remote locations) would lose subsidy supported EAS. The significant benefit of this approach, however, is that the fewest number of passengers historically utilizing EAS would be affected.

Communities Affected by Each Alternative

Table II, which accompanies this NPRM, lists the EAS communities in the 48 contiguous states and Puerto Rico which received subsidized service, including those communities potentially affected by one or more of the four proposed alternatives. For each EAS community, Table II also lists the nearest airport available to provide alternate service if EAS subsidy were eliminated, the hub classification of the alternative service airport, the miles between that airport and the EAS community, and the average number of daily enplanements at the EAS point during 1987. Also, the far right column lists one or more alternatives under which the affected EAS community would lose subsidized service.

Tentatively Rejected Alternatives

(1) Percentage Reduction in Subsidies

In each of the 4 alternatives proposed in this NPRM, certain EAS communities would lose all subsidy support for the remainder of FY 1989. The Department has considered and tentatively rejected an alternative under which all air carriers participating in the EAS program would have their subsidies reduced by approximately 39%. This is the percentage reduction that would be needed to keep subsidy expenditures within FY 1989 appropriation levels. The effect of this alternative would be to have an across-the-board cut in subsidy affecting all EAS communities.

This alternative was tentatively rejected principally because resulting percentage cuts in air service to most affected communities would be such that most servicing air carriers would be forced to drop service entirely. Communities currently receiving subsidy supported service typically receive a minimum level of air service consisting of two round trips per day, six days per week. Major reductions in service would make remaining flights inconvenient for many passengers (*e.g.*, a business traveler with a Tuesday morning appointment might have to fly out Monday morning and return on Wednesday afternoon). The result would likely be sharp declines in enplanements, as alternative means of communications and travel became relatively more desirable. Such reductions in enplanements, with corresponding losses of passenger revenues, would likely make the remaining air service even less cost-efficient.

Although a percentage reduction in subsidies, as an alternative, has been tentatively rejected, comments are specifically requested concerning whether individual EAS communities could effectively retain EAS service with subsidies reduced under such an approach.

(2) Obligate EAS Subsidy at FY 1988 Service Levels Until Gone

The Department also considered and tentatively rejected the alternative of subsidizing all EAS communities at FY 1988 service levels until FY 1989 appropriated funds run out.

This option would result in the elimination of all subsidized service during the coming summer, without regard to the needs of individual EAS communities for air service. This alternative would be highly disruptive both to communities relying on the service, and to air carriers who might be very reluctant to reinstitute service thereafter except at much higher subsidy rates.

Evaluation of Costs, Benefits, and Impacts

The most significant benefit associated with this rulemaking relates to the substantial savings being provided to our national economy. From an overall perspective, reductions in EAS subsidies that would be implemented by this rulemaking would represent an important contribution toward our nation's goal of achieving a balanced budget. The full cost of the EAS program is reflected in the data set out in TABLE I of this NPRM. The table lists the "Total Estimated FY 1989 Subsidy For Current Levels of Service" (*i.e.*, at FY 1988 service levels) in the amount of $31.6 million. The amount of reduction from current spending needed to stay within the FY 1989 appropriation of $25 million is thus $6.6 million.

Individual benefits in this rulemaking relate to the continued availability of EAS subsidies for use in or by as many communities and/or air passengers as possible. These benefits are expressed in qualitative terms as "advantages" for each of the alternatives proposed in this NPRM. The actual amount of these benefits cannot, as yet, be quantified. As stated previously, the principal goal in this rulemaking is to minimize the impact of the EAS reduction as much as practicable. To the extent that the Department is successful in achieving this goal, the individual benefits available in this rulemaking will be maximized.

The potential impacts to individual communities in this rulemaking are listed in TABLE II of this NPRM. The far right column in the table lists the "Alternative(s) Under Which Subsidy Would be Eliminated" with respect to individual EAS communities. Only communities in the 48 contiguous United States and Puerto Rico are listed. As indicated in the table some communities would not be affected under any of the alternatives proposed in this NPRM.

The specific amounts of subsidy projected for FY 1989 for the EAS communities listed in Table II are not included. The subsidy rates will be subject to negotiations with carriers in the coming months, and subsidy estimates are confidential prior to the conclusion of such negotiations. To assist commenters in the evaluation of the alternatives presented in this NPRM, however, the Department has included

Table III which lists *current* subsidy rates, i.e. those in effect as of December 1, 1988. These rates of course may vary substantially during FY 1989, and should be considered only as a general guide to the relative standing of communities receiving subsidy supported service.

It is also important to note that discontinuation of EAS subsidy need not result in discontinuation of air service. State or local governments may be able to offer sufficient substitute funds to maintain service, air fares might be increased, or carriers might agree to maintain service to affected communities (perhaps in restructured form). Combinations of these alternatives are of course possible as well. Comments from specific communities, local governments, and carriers concerning the possibility of their absorbing reductions in Federal subsidy are specifically requested.

The costs associated with this rulemaking relate mostly to alternate transportation time and costs needed to travel to alternate air service locations. Air travelers to and from affected EAS communities would likely suffer some additional inconveniences. Also, business costs in affected areas would likely increase, proportionate to the amount of existing business travel expenses, due to mileage costs and delays incurred by having to use and rely on alternate service airports. A means to measure the extent of delays and additional travel expenses that would result under each of the proposed alternatives is reflected in TABLE II. The fourth column of the table lists the "Miles Between EAS Community and Alternate Service Airport".

Air carriers servicing an EAS community that lost subsidized service would also be affected by individual altenatives proposed in this NPRM. Loss of routes could potentially result in lost revenues, jobs and business opportunities, as well as in increased costs to the extent that planes, equipment, and personnel dedicated to serving the community could not be readily transferred into other profitable service. These increased costs and potential losses cannot, as yet, be quantified. However, to the extent that individual communities or carriers elected to absorb subsidy reductions, these costs and potential losses might not materialize, and in any event would be minimized as much as possible in whichever approach is selected.

The Department anticipates that the benefits potentially achievable in this rulemaking (*i.e.*, the cost savings to our national economy, and continued availability of EAS subsidies to the maximum extent possible) would clearly outweigh the resulting costs to individual communities and air carriers.

Regulatory Flexibility Act

The Department certifies that each of the alternatives proposed in this NPRM, if adopted, would not have a significant economic impact on a substantial number of small entities.

There are two types of small entities that would be affected by this rulemaking: small air carriers and small local governments. Air carriers are businesses, which, to come under the Regulatory Flexibility Act as small business concerns, must be independently owned and operated and not dominant in their field of operation. The Department estimates that 16 of the approximately 30 carriers that potentially could be affected by this proposal are truly independent and not dominant in their field of operations. Most of these carriers provide nonsubsidized service in other markets, and would remain viable without the profits expected from EAS subsidies. Also, since under any of the four alternatives most EAS service would be continued, most carriers would continue to receive full subsidies on many (or all) of their EAS routes. Some, however, which receive the bulk of their profits from providing EAS service, would be impacted financially if an option were selected which eliminated most or all of their EAS routes. However, even in these latter situations it is anticipated that the carriers could remain viable by converting to charter operations, moving to other markets, etc.

Local governments would also be affected by this rulemaking, principally with respect to whether communities they serve would remain eligible to participate in the EAS program. This is a matter which is very largely determined by statute, *i.e.*, the 1989 Appropriations Act. EAS reductions are required as a consequence of the reduced FY 1989 appropriation in the 1989 Appropriations Act. These reductions will result in having certain existing EAS communities lose eligibility for EAS subsidy. However, the impact should not be significant. Loss of EAS service would result in certain increases in transportation time and costs to utilize alternate service airports but these costs are not anticipated to be excessive. The principal impact is anticipated to be the resulting inconvenience of having to utilize an alternate service airport.

Executive Order 12291, "Federal Regulation"

This NPRM is considered to be non-major under Executive Order 12291, "Federal Regulation". None of the proposed alternatives, if adopted, is anticipated to result in a substantial effect on the economy (*i.e.*, an effect of $100 million or more), or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United Statea-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612, "Federalism"

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The EAS legislation sets forth the roles for the Federal, State, and local governments in carrying out the legislation, and this rulemaking merely reflects those roles.

DOT Regulatory Policies

This NPRM is considered to be significant under Department of Transportation "Regulatory Policies and Procedures" (44 FR 11034; February 28, 1979). This NPRM includes an evaluation of the relevant costs, benefits, and impacts, and related issues, which is required by DOT Regulatory Policies and Procedures. As explained in the evaluation, the principal benefits anticipated in this rulemaking are expected to outweigh the costs to individual communities and air carriers that would be affected by the Final Rule. Further, every effort is being made to minimize the economic impact that this rulemaking will have.

This NPRM is considered to be significant because of the substantial public interest that is anticipated.

Legal Authority

This proposed rulemaking is issued under the authority of section 204, Pub. L. 85–726 (49 U.S.C. 324—The Federal Aviation Act), section 202(b), Pub. L. 100–223 (49 U.S.C. 1389—the 1987 Legislation), and Pub. L. 100–457 (Department of Transportation and Related Agencies Appropriations Act, 1989).

List of Subjects in 14 CFR Part 398

Air transportation, Essential air service.

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The Proposed Alternatives

In accordance with the foregoing, the following proposed alternatives, as set forth below, are being considered for adoption, singly or in combination, as a Final Rule to apply to allocation of EAS appropriated funds for FY 1989. The selected alternative will be published as a temporary Final Rule in 14 CFR Part 398.

Issued in Washington, DC, on December 7, 1988.

Mimi W. Dawson,

Deputy Secretary of Transportation.

Alternative 1

Eliminate Subsidy for Air Service to Communities that are Close to Alternative Air Service

This alternative reflects the rationale that justification for subsidized air service should be a function, at least in part, of isolation from other air service. There are two primary factors that determine the reasonableness of ground access to the affected community: The surface transportation distance between the affected community and alternative air service, and the volume of air service available at the alternate airport.

In order to rank subsidized EAS communities by their relative accessibility to alternative air service, we have assumed that a person would travel an extra 10 miles to a small hub airport compared to a nonhub airport and an extra 20 miles to a medium or large hub airport compared to a small hub airport. (A large hub airport annually enplanes 1.0% or more of the total annual enplanements in the United States. A medium hub airport enplanes between 0.25% and 0.999% of the total enplanements; a small hub airport enplanes between 0.05% and 0.249%; and a nonhub enplanes less than 0.05%.) The Department projects that subsidized air service at 44 communities that appear to be closest to alternative air service would need to be eliminated in order to stay within the appropriation for the FY 1989 EAS program. The communities that would lose subsidized air service are indicated by a "1" in the last column of Table II. As worked out with actual travel distances involved here, communities that are more than 83 miles from a large or medium hub airport, more than 62 miles from a small hub airport or more than 54 miles from a nonhub airport would retain subsidized air service.

We have utilized road miles as the measure of distance between EAS points and alternate air service. In doing so, we recognize that the connecting highways range from interstate highways to secondary or lesser roads, and that terrain and weather conditions also contribute to highly varying travel times. Comments are specifically requested concerning individual communities potentially affected by this alternative which would not have adequate surface transportation to alternate airports.

Advantages: (1) The eligible points losing subsidized air service would be those having the most reasonable access to nearby air service, resulting in the least inconvenience to the traveling public.

(2) Nearly two-thirds of the communities that would lose subsidized air service enplane fewer than 10 passengers per day.

Disadvantages: (1) Some points with relatively high traffic levels or low subsidy requirements would lose subsidized air service.

(2) A total of 44 communities would lose subsidized air service.

Alternative 2

Eliminate Subsidy for Air Service to Second Hubs; also Eliminate Subsidy for Air Service to Communities Close to Alternative Air Service

There are 15 communities receiving subsidized air service to a second hub in addition to receiving air service to a first hub. At 8 of these communities, air service to the first hub is provided without subsidy support. At 7, air service to both the first and second hubs is subsidized. (The "second hub" may be an air service center that is classified by the FAA as a small hub or nonhub.) While there is no legal requirement for second hub service it has been defined as essential for some communities because of especially strong business, political or other ties the point has traditionally had with the second hub.

This alternative would eliminate subsidy for second-hub air service, saving an estimated $1.85 million over the last seven months of FY 1989. In order to stay within the appropriation for the EAS program, subsidy for air service to 31 of the 44 communities noted under Alternative 1 would still need to be eliminated. As worked out with the actual travel distances involved here, communities more than 71 miles from a large or medium hub, more than 53 miles from a small hub, or more than 42 miles from a nonhub would retain subsidized air service. The points that would lose subsidy for second-hub air service are indicated by a "2A" in the last column of Table II and the close-in communities that would lose subsidy for all service are indicated by a "2B".

Advantages: (1) More than one-half of the communities that would lose subsidy support for air service to a second hub currently receive a higher level of air service to another hub without subsidy support.

(2) Fewer points would lose all air service than under Alternative 1. (The 15 communities that would lose subsidized service to a second hub would retain service to a first hub.)

Disadvantages: (1) Some points with relatively high traffic levels or low subsidy requirements would lose subsidized air service.

(2) 46 communities would lose subsidized air service (15 would lose subsidy support for service to a second hub, and 31 would lose subsidy support for all service).

Alternative 3

Eliminate Subsidy for Air Serivce to Communities with the Highest Annual Subsidy Requirements

This alternative would eliminate subsidy for air service to communities where subsidy requirements are expected to be the greatest. The rationale underlying this approach is that by eliminating subsidy for air service to those communities absorbing the highest amounts of subsidy, fewer communities overall would lose subsidized air service. We project that subsidized air service at 33 communities would need to be eliminated in order to stay within the appropriation for the EAS program. Under this projection, subsidized air service that exceeds $250,000 annually would be curtailed. The points that would lose subsidized air service under this alternative are indicated by a "3" in the last column of Table II.

Advantages: (1) The fewest number of communities would lose subsidized air service compared to the other alternatives.

(2) This alternative would eliminate subsidy for air service at communities that would be among those having the least chance of attracting self-sufficient air service, in view of the relatively large amounts of subsidy they require.

Disadvantages: (1) 33 communities would lose subsidized air service under this alternative.

(2) Some of the 33 communities losing all subsidized air service under this alternative enplane a substantial number of passengers on a daily basis, or are in locations that are relatively remote from alternate air service.

Alternative 4

Eliminate Subsidy for Air Service to Communities that Historically Have Enplaned the Fewest Passengers

The underlying rationale for this alternative is to minimize the number of passengers inconvenienced by eliminating subsidized air service at communities that historically have enplaned the fewest passengers. In order to stay within the appropriation for the EAS program, subsidy for air service at 53 communities would be eliminated. The 53 communities are those that did not generate more than an average of 20 enplanements per day in any calender year since 1975. The communities that would lose subsidized air service under this alternative are indicated by a "4" in the last column of Table II.

Advantages: (1) This alternative would affect the fewest number of passengers that historically have benefited from the program.

(2) This alternative would eliminate subsidy for air service at communities that would be among those having the least chance of attracting self-sufficient air service, in view of the historically low level of trafffic that they have generated.

Disadvantages: (1) This alternative does not consider whether potentially affected communities have reasonable access to the national air transportation system.

(2) 53 communities would lose subsidized air service. One-third of these communities are over 100 miles from the closest alternative air service.

TABLE I.—ESTIMATES OF SUBSIDY NEED FOR THE ESSENTIAL AIR SERVICE PROGRAM

[Dollars in millions]

Fiscal year 1988 subsidy expenditures	$28.4
Increase over fiscal year 1988 due to 18 additional points not subsidized throughout fiscal year 1988 [1]	+2.9
Decrease from fiscal year 1988 due to three points coming off subsidy [2]	−.3
Subtotal	$31.0
Additional hold-in subsidy over fiscal year 1988 levels	+.6
Total estimated fiscal year 1989 subsidy for current levels of service	31.6
Annual cost of higher service levels under new basic EAS requirements:	
Larger minimum aircraft size	2.8
Pressurized aircraft	1.7
Reduction of intermediate stops	2.6
Load factor-related service increases	0.9
Changes in hubs	1.5
Increased hold-in compensation/emphasis on code-sharing arrangements	2.5
Total	12.0

[1] Battle Creek and Santa Fe did not receive scheduled air service throughout FY 1988; Terre Haute, Owensboro, Ft. Leonard Wood, Clovis, New Bedford, Iron Mountain, Ironwood, Benton Harbor, Elkhart, Vernal, Lewiston, Fairmont, Cortez, Alamosa, Rota (Northern Mananas) and Lake Minchumina (Alaska) received subsidy-free air service for all or part of FY 1988 but are likely to require subsidy to maintain air service throughout FY 1989.

[2] We anticipate that Athens, Winston-Salem and Cape Newenham (Alaska) will not require subsidy to maintain air service in FY 1989.

TABLE II.—SUBSIDIZED EAS COMMUNITIES AFFECTED BY THIS NPRM

EAS Community	Alternate air service if EAS subsidy is eliminated: Nearest airport providing alternate service if EAS subsidy is eliminated	Hub classification of alternate service airport	Miles between EAS community and alternate service airport	Average daily enplanements at EAS community (1987)	Alternative(s) under which subsidy would be eliminated
ALABAMA					
Gadsden	Anniston, AL	N	30	2.7	1,2B,3
ARIZONA					
Kingman	Las Vegas, NV	L	100	8.7	3,4.
Page	Flagstaff, AZ	N	137	14.6	4
Winslow	Flagstaff, AZ	N	58	1.9	4.
ARKANSAS					
El Dorado/Camden	Monroe, LA	N	66	14.3	2A,3
Harrison	Springfield, MO	N	71	5.9	2A,3
Hot Spngs	Little Rock, AR	S	53	3.4	1,2B,3.
Jonesboro	Memphis, TN	L	71	2.3	1,2B,3.
CALIFORNIA					
Blythe	Yuma, AZ	N	103	1.8	3,4.
Crescent City	Eureka, CA	N	38	6.0	4.
Merced	Modesto, CA	N	38	30.5	1,2A,2B,3.
COLORADO					
Alamosa	Pueblo, CO	N	121	29.8	None.
Cortez	Durango, CO	N	57	13.3	None.
Lamar	Pueblo, CO	N	120	2.5	4.
GEORGIA					
Moultrie/Thomasville	Albany, GA	N	39	1.9	1,2B,3,4.
ILLINOIS					
Mt. Vernon	Marion/Herrin, IL	N	40	3.1	1,2B,3.
Sterling/Rock Falls	Moline, IL	S	60	1.9	1.
INDIANA					
Elkhart	South Bend, IN	S	19	43.4	1,2B.
Kokomo	Indianapolis, IN	M	53	2.3	1,2B,3,4.
Terre Haute	Indianapolis, IN	M	64	46.7	1,2A.

TABLE II.—SUBSIDIZED EAS COMMUNITIES AFFECTED BY THIS NPRM—Continued

EAS Community	Alternate air service if EAS subsidy is eliminated			Average daily enplanements at EAS community (1987)	Alternative(s) under which subsidy would be eliminated
	Nearest airport providing alternate service if EAS subsidy is eliminated	Hub classification of alternate service airport	Miles between EAS community and alternate service airport		
IOWA					
Clinton	Moline, IL	S	35	2.0	1,2B,4
Ottumwa	Des Moines, IA	S	85	4.0	3
KANSAS					
Dodge City	Wichita, KS	S	156	5.6	4
Garden City	Wichita, KS	S	209	11.7	2A
Goodland	Denver, CO	L	190	2.1	4
Great Bend	Salina, KS	N	79	3.4	4
Hays	Salina, KS	N	94	10.5	2A
Hutchinson	Wichita, KS	S	53	1.0	1,2B,4
Parsons/Independence/Coffeyville	Joplin, MO	N	60	0.4	4
Liberal/Guymon	Amarillo, TX	S	162	6.8	None
KENTUCKY					
Owensboro	Evansville, IN	N	39	41.3	1,2A
MAINE					
Lewiston	Portland, ME	S	35	9.5	1,2B,3,4
MASSACHUSETTS					
New Bedford	Providence, RI	S	36	100.4	1,2B
MICHIGAN					
Alpena	Pellston, MI	N	123	12.5	None
Battle Creek	Kalamazoo, MI	N	20	17.3	1,2B
Benton Harbor	South Bend, IN	S	32	12.0	1,2B
Iron Mountain	Escanaba, MI	N	47	11.1	1,2B
Ironwood/Ashland	Duluth/Superior, MN	N	85	6.7	None
Manistee/Ludington	Muskegon, MI	N	59	3.6	4
Menominee/Marinette	Green Bay, WI	N	54	2.8	1,3
Jackson	Lansing, MI	N	39	1.3	1,2B,3
Sault Ste. Marie	Pellston, MI	N	61	10.4	None
MINNESOTA					
Fairmont	Fort Dodge, IA	N	98	4.6	3,4
Mankato	Minneapolis/St. Paul, MN	L	75	2.5	1,2B
Worthington	Sioux Falls, SD	S	62	2.3	1,4
MISSOURI					
Fort Leonard Wood	Springfield, MO	N	87	11.2	None
Kirksville	Quincy, IL	N	74	6.7	4
MONTANA					
Glasgow	Billings, MT	S	282	4.5	4
Glendive	Billings, MT	S	222	2.9	4
Havre	Great Falls, MT	N	113	2.7	4
Lewistown	Great Falls, MT	N	108	3.9	4
Miles City	Billings, MT	S	146	2.6	4
Sidney	Minot, ND	N	128	16.6	3,4
West Yellowstone	Bozeman, MT	N	90	57.0	None
Wolf Point	Minot, ND	N	222	4.5	4
NEBRASKA					
Alliance	Scottsbluff, NE	N	75	2.4	4
Chadron	Rapid City, SD	N	104	2.0	4
Columbus	Omaha, NE	M	85	1.4	4
Grand Island	Lincoln, NE	S	98	45.5	2A,3
Hastings	Grand Island, NE	N	26	3.0	1,2B,4
Kearney	Grand Island, NE	N	42	8.0	1,2B,4
McCook	North Platte, NE	N	70	4.4	4
Norfolk	Omaha, NE	M	111	3.9	None
North Platte	Grand Island, NE	N	138	53.0	2A,3
Scottsbluff	North Platte, NE	N	176	36.0	2A,3
Sidney	Scottsbluff, NE	N	76	2.4	4
NEVADA					
Ely	Elko, NV	N	188	6.5	3,4
NEW HAMPSHIRE					
Laconia	Manchester, NH	N	52	6.4	1
NEW MEXICO					
Alamogordo	El Paso, TX	M	83	12.4	1
Clovis	Lubbock, TX	S	100	11.7	None

TABLE II.—SUBSIDIZED EAS COMMUNITIES AFFECTED BY THIS NPRM—Continued

EAS Community	Alternate air service if EAS subsidy is eliminated			Average daily enplanements at EAS community (1987)	Alternative(s) under which subsidy would be eliminated
	Nearest airport providing alternate service if EAS subsidy is eliminated	Hub classification of alternate service airport	Miles between EAS community and alternate service airport		
Gallup	Farmington, MN	N	105	16.6	None.
Hobbs	Carlsbad, MN	N	72	10.7	None.
Santa Fe	Albuquerque, MN	M	59	(1)	1,2B,4.
Silver City	Las Cruces, MN	N	95	7.1	None.
NEW YORK					
Massena	Burlington, VT	S	137	12.9	4.
Ogdensburg	Syracuse, NY	M	127	14.6	4.
Plattsburgh	Burlington, VT	S	77	38.2	None.
Saranac Lake/Lake Placid	Burlington, VT	S	125	26.2	None.
Watertown	Syracuse, NY	M	70	22.0	1,2B,4.
NORTH CAROLINA					
Rocky Mount/Wilson	Raleigh/Durham, NC	M	54	30.9	1,2B.
NORTH DAKOTA					
Devils Lake	Grand Forks, ND	N	90	7.2	3,4.
Jamestown	Fargo, ND	S	94	12.2	3.
Williston	Minot, ND	N	128	16.6	2A,3.
OHIO					
Mansfield	Columbus, OH	M	67	3.6	1,2B,3.
OKLAHOMA					
Enid	Oklahoma City, OK	M	85	2.7	4.
McAlester	Tulsa, OK	M	91	1.6	3,4.
Ponca City	Tulsa, OK	M	92	4.8	4.
OREGON					
Salem	Portland, OR	M	47	5.9	1,2B.
PENNSYLVANIA					
Oil City/Franklin	Youngstown, OH	N	55	30.1	None.
PUERTO RICO					
Ponce	San Juan, PR	M	65	14.9	1,2B.
SOUTH DAKOTA					
Brookings	Sioux Falls, SD	S	57	7.1	1,4.
Huron	Aberdeen, SD	N	91	9.6	None.
Mitchell	Sioux Falls, SD	S	68	3.2	4.
Pierre	Aberdeen, SD	N	159	38.9	2A,3.
Yankton	Sioux Falls, SD	S	79	2.1	4.
TENNESSEE					
Clarksville	Nashville, TN	M	47	6.2	1,2B,3,4.
TEXAS					
Brownwood	Abilene, TX	N	77	6.0	4.
Paris	Dallas/Ft. Worth, TX	L	105	2.4	4.
Temple	Killeen, TX	N	16	14.9	1,2B,3.
UTAH					
Cedar City	St. George, UT	N	54	16.4	1,2A,3.
Moab	Grand Jct., CO	N	110	3.6	4.
Vernal	Salt Lake City, UT	L	171	9.5	None.
VERMONT					
Montpelier/Barre	Burlington, VT	S	37	2.3	1,2B.
VIRGINIA					
Danville	Greensboro, NC	S	46	24.0	1,2B,4.
Hot Springs	Roanoke, VA	S	77	5.8	4.
WASHINGTON					
Ephrata/Moses Lake	Wenatchee, WA	N	64	12.8	4.
WEST VIRGINIA					
Beckley	Charleston, WV	S	59	32.1	1.
Clarksburg/Fairmont	Morgantown, WV	N	34	63.2	1,2A.
Elkins	Clarksburg, WV	N	50	2.5	1,3,4.
Morgantown	Pittsburgh, PA	L	75	63.5	1,2A.
Princeton/Bluefield	Roanoke, VA	S	96	39.0	None.
WISCONSIN					
Beloit/Janesville	Rockford, IL	N	16	0.4	1,2B,3.

TABLE II.—SUBSIDIZED EAS COMMUNITIES AFFECTED BY THIS NPRM—Continued

EAS Community	Alternate air service if EAS subsidy is eliminated			Average daily enplanements at EAS community (1987)	Alternative(s) under which subsidy would be eliminated
	Nearest airport providing alternate service if EAS subsidy is eliminated	Hub classification of alternate service airport	Miles between EAS community and alternate service airport		
Manitowoc	Green Bay, WI	N	39	1.8	1,2[illegible]3.
WYOMING					
Worland	Cody, WY	N	92	6.1	None.

[1] No service.
[2] *Hub Classification Abbreviations:*
L=Large Hub (enplanes at least 1.0% of total U.S. enplanements)
M=Medium Hub (enplanes between 0.25% and 0.999% of total U.S. enplanements)
S=Small Hub (enplanes between 0.05% and 0.249% of total U.S. enplanements)
N=Nonhub (enplanes less than 0.05% of total U.S. enplanements)
[3] *Codes for Alternatives Under Which Subsidy Would be Eliminated:*
1—Eliminate Subsidy for Air Service to Communities that are Close to Alternative Air Service.
2A—Eliminate Subsidy for Air Service to Second Hubs.
2B—Eliminate Subsidy (in conjunction with 2A) for Air Service to Communities Close to Alternate Air Service.
3—Eliminate Subsidy for Air Service to Communities with the Highest Annual Subsidy Requirements.
4—Eliminate Subsidy for Air Service to Communities that Historically Have Enplaned the Fewest Passengers.

TABLE III.—CURRENT SUBSIDY RATES AT EAS POINTS AFFECTED BY THIS NPRM

[**Note:** The current subsidy rates are as of Dec. 1, 1988, and are subject to chance. In addition, the listing does not include past period hold-in compensation or subsidy rates for communities in Alaska or for Pacific points.]

EAS point	Current subsidy rate
Alabama: Gadseden	$183,317
Arizona:	
Kingman	263,591
Page	177,443
Winslow	203,654
Arkansas:	
El Dorado/Camden	398,066
Harrison	398,066
Hot Springs	398,066
Jonesboro	398,066
California:	
Blythe	354,336
Crescent City	154,660
Merced	310,521
Colorado:	
Alamosa	(1)
Cortex	(1)
Lamar	176,251
Georgia: Moultrie/Thomasville	427,211
Illinois:	
Mt. Vernon	307,772
Sterling/Rock Falls	248,011
Indiana:	
Elkhart	249,591
Kokemo	401,175
Terre Haute	148,594
Iowa:	
Clinton	203,708
Ottumwa	238,498
Kansas:	
Dodge City	176,291
Garden City	176,291
Goodland	176,291
Great Bend	176,291
Hays	176,291
Hutchinson	176,291
Parsons/Independence/Coffeyville	176,291
Liberal/Guymon	176,291
Kentucky: Owensboro	133,018
Maine: Lewiston	269,755
Massachusetts: New Bedford	(1)

TABLE III.—CURRENT SUBSIDY RATES AT EAS POINTS AFFECTED BY THIS NPRM—Continued

[**Note:** The current subsidy rates are as of Dec. 1, 1988, and are subject to chance. In addition, the listing does not include past period hold-in compensation or subsidy rates for communities in Alaska or for Pacific points.]

EAS point	Current subsidy rate
Michigan:	
Alpena	121,159
Battle Creek	(1)
Benton Harbor	149,591
Iron Mountain	182,799
Ironwood/Ashland	182,799
Manistee/Ludington	201,286
Menominee/Marinette	403,409
Jackson	321,657
Sault Ste. Marie	121,159
Minnesota:	
Fairmont	303,427
Mankato	179,600
Worthington	179,600
Missouri:	
Fort Leonard Wood	168,983
Kirksville	235,637
Montana:	
Glasgow	168,229
Glendive	131,515
Havre	190,495
Lewistown	190,495
Miles City	131,515
Sidney	315,815
West Yellowstone	(1)
Wolf Point	168,229
Nebraska:	
Alliance	222,727
Chadron	222,727
Columbus	218,079
Grand Island	457,977
Hastings	222,727
Kearney	222,727
McCook	222,727
Norfolk	218,079
North Platte	274,222
Scottsbluff	274,222
Sidney	222,727
Nevada: Ely	359,194
New Hampshire: Laconia	249,786

TABLE III.—CURRENT SUBSIDY RATES AT EAS POINTS AFFECTED BY THIS NPRM—Continued

[**Note:** The current subsidy rates are as of Dec. 1, 1988, and are subject to chance. In addition, the listing does not include past period hold-in compensation or subsidy rates for communities in Alaska or for Pacific points.]

EAS point	Current subsidy rate
New Mexico:	
Alamogordo	165,766
Clovis	133,651
Gallup	60,121
Hobbs	85,690
Santa Fe	132,314
Silver City	169,390
New York:	
Massena	166,289
Ogdensburg	166,289
Plattsburgh	166,289
Saranac Lake/Lake Placid	166,289
Watertown	166,289
North Carolina: Rocky Mount/Wilson	180,492
North Dakota:	
Devils Lake	294,396
Jamestown	294,396
Williston	315,815
Ohio: Mansfield	383,527
Oklahoma:	
Enid	187,646
McAlester	421,952
Ponca City	187,646
Oregon: Salem	113,705
Pennsylvania: Oil City/Franklin	128,504
Puerto Rico: Ponce	265,058
South Dakota:	
Brookings	108,938
Huron	108,938
Mitchell	108,938
Pierre	371,165
Yankton	218,079
Tennessee: Clarksville	307,772
Texas:	
Brownwood	189,876
Paris	146,596
Temple	425,825
Utah:	
Cedar City	190,642
Moab	172,930

TABLE III.—CURRENT SUBSIDY RATES AT EAS POINTS AFFECTED BY THIS NPRM—Continued

[**Note:** The current subsidy rates are as of Dec. 1, 1988, and are subject to chance. In addition, the listing does not include past period hold-in compensation or subsidy rates for communities in Alaska or for Pacific points.]

EAS point	Current subsidy rate
Vernal	203,784
Vermont: Montpelier/Barre	235,391
Virginia:	
Danville	217,856
Hot Springs	150,017
Washington: Ephrata/Moses Lake	164,336
West Virginia:	
Beckley	55,123
Clarksburg/Fairmont	128,830
Elkins	263,096
Morgantown	128,830
Princeton/Bluefield	55,123
Wisconsin:	
Beloit/Janesville	259,000
Manitowoc	393,296
Wyoming: Worland	352,655

[1] No subsidy rate currently in effect.

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BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-42-88]

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations on Procedure and Administration to authorize the disclosure of three additional items of return information to the Bureau of the Census for use in certain statistical programs and to delete the authority to disclose those items of return information which the Bureau no longer needs. The proposed regulations will provide guidance to Internal Revenue Service personnel responsible for disclosing the information.

DATES: Written comments and requests for a public hearing must be delivered by January 13, 1989. The amendments to the regulations are proposed to be effective as of the date on which the Treasury decision adopting them is published in the **Federal Register**.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention CC:CORP:T:R (IA-42-88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Paul Winkler of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R, (202) 566-3294 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the regulations on Procedure and Administration (26 CFR Part 301) under section 6103(j)(1) of the Internal Revenue Code of 1986. Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Internal Revenue Service is to furnish such tax return information as may be prescribed by Treasury regulations to the Bureau of the Census for statutorily authorized statistical activities. Section 301.6103(j)(1)-1 of the regulations currently provides an itemized description of the return information authorized to be disclosed for this purpose.

Periodically, the disclosure regulations are amended to reflect the changing statistical needs of the Bureau of the Census for tax information, and these proposed regulations would update those regulations.

Explanation of Provisions

The request by the Secretary of Commerce for amendment of the regulations indicates that the Bureau of the Census needs the following three new data items from returns of individual taxpayers for use in its statutorily authorized postcensal population and per capita income estimates programs: (1) The type of tax return filed (i.e., Form 1040, Form 1040A, etc.); (2) whether the taxpayer itemized deductions for federal income tax purposes; and (3) whether the taxpayer received Social Security benefits. The Bureau needs this information to help them determine whether a taxpayer is over 65 years of age.

These proposed regulations would amend § 301.6103(j)(1)-1 of the present regulations to add the above items to the list of disclosable tax return information. In addition, the proposed regulations would delete from the list certain items of return information which the Bureau of Census no longer needs.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Although this document is notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David White of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Accordingly, Title 26, Part 301 of the Code of Federal Regulations is proposed to be amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 continues to read in part:

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Authority: 26 U.S.C. 7805. * * * Section 301.6103(j) (1)–1 also issued under 26 U.S.C. 6103(j).

Par. 2. Section 301.6103(j)(1)–1 is amended by revising paragraph (b)(1) to read as follows:

§ 301.6103(j)(1)–1. Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.* (1) Officers or employees of the Service will disclose the following return information reflected on returns of an individual taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of Title 13, United States Code, intercensal estimates of population and per capita income for all geographic areas included in the general revenue sharing program and demographic statistics programs, censuses and related program evaluation—

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Code), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identifying number of spouse, if reported;

(ii) District office and service center codes;

(iii) Marital status;

(iv) Numbers and classifications of reported exemptions;

(v) Adjusted gross income;

(vi) Wage and salary income;

(vii) Dividend income;

(viii) Interest income;

(iv) Gross rent and royalty income;

(x) Type of tax return filed;

(xi) Residence information from the revenue sharing question;

(xii) Code indicators for Form 1040; Schedules C, D, E, F, and SE;

(xiii) Julian date relative to filing;

(xiv) Whether deductions were itemized; and

(xv) Social Security benefits.

* * * * *

Approved: November 2, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–28745 Filed 12–13–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to historic properties. The amendment is intended to revise the State program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Colorado program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., m.s.t. January 13, 1989. If requested, a public hearing on the proposed amendments will be held on January 9, 1989, at the location shown under "**ADDRESSES.**" Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. m.s.t. on December 29, 1988.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert H. Hagen at the address listed below. If a public hearing is requested, it will be held at the office of the Colorado Mined Land Reclamation Division. Copies of the Colorado program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the OSMRE offices and the office of the Colorado Mined Land Reclamation Division listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office.

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486;

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5215, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492; and

Colorado Mined Land Reclamation Division, 423, Centennial Building, 1313 Sherman Street, Denver, CO 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. Information regarding the general background of the Colorado program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register**, (45 FR 82173). Subsequent actions taken with regard to Colorado's program and program amendments can be found at 30 CFR 906.15.

II. Proposed Amendment

By letter dated October 14, 1988, Colorado submitted the proposed amendment on historic properties (Administrative Record No. CO–406) to its permanent regulatory program under SMCRA. This amendment is in response to OSMRE's 30 CFR Part 732 letter on historic properties dated June 9, 1987 (Administrative Record No. CO–342).

Colorado proposes to add Rule 2.05.6(4)(b) to provide the Mined Land Reclamation Division (MLRD) with the authority to require that permit applicants protect places listed on or eligible for listing on the National Register of Historical Places, as determined by the State Historic Preservation Officer (SHPO).

Colorado Rules 2.07.6(2)(e) and 2.10.3(1)(g) include permit application and permit approval requirements concerning places listed on the National Register of Historic Places. Colorado proposes to amend these rules to make the requirements applicable to places eligible for listing on the National Register of Historic Places, as determined by the SHPO.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Colorado satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking, or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed at "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. m.s.t. on December 29, 1988. The time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to commend have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 1, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-28721 Filed 12-13-88; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: OSMRE is reopening the period for review and public comment on the substantive adequacy of program amendments submitted by the State of New Mexico to modify the New Mexico permanent regulatory program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to coal mine waste. If approved, the amendments will become part of the State's permanent regulatory program. The amendments are intended to revise the State program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the New Mexico program and the proposed amendments to that program are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendments.

DATE: Written comments not received on or before 4:00 p.m., m.s.t. December 29, 1988, will not necessarily be considered in the Director's decision to approve or disapprove the amendments.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendments to the program, supporting information in the Administrative Record, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.**

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486

Office of Surface Mining Reclamation and Enforcement, Room 5215, 1100 L Street, NW., Washington, DC 20240 Telephone: (202) 343-5492

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87501, Telephone: (505) 827-5970

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background for New Mexico, including the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459).

Subsequent actions taken with regard to the New Mexico program and program amendments can be found at 30 CFR 931.15 and 931.16.

II. Proposed Amendments

By letter dated April 21, 1988, New Mexico submitted proposed amendments (Administrative Record No. NM-405) to the New Mexico program for OSMRE's review and approval. OSMRE published a **Federal Register** notice (53 FR 23415) announcing receipt of the proposed amendments to the New Mexico program on June 22, 1988 and invited public comment on the adequacy of the proposed amendments. The public comment period ended on July 22, 1988. The public hearing scheduled for July 18, 1988 was not held because no one requested an opportunity to testify.

After reviewing the proposed amendments and all comments received, OSMRE notified New Mexico by letter dated September 26, 1988 (Administrative Record No. NM-446), of several provisions in its proposal that appeared to be inconsistent with the Federal regulations. By letter dated

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October 20, 1988 (Administrative Record No. NM–452), New Mexico provided clarification of the amendment contents. These proposed changes at Coal Surface Mining Commission Rule 80–1, Sections 20–71, 20–81, 20–83, 20–85, and 20–92 all pertain to coal mine waste. These revisions are summarized below:

(1) New Mexico proposes to amend Section 20–71(b) to require certification of fills by a qualified registered professional engineer. The section did not previously require that the engineer be "qualified."

(2) New Mexico proposes to amend Section 20–81 to add a new subsection (a) to require that coal processing waste banks meet the design and maintenance requirements of 30 CFR 77.214 and 77.215.

(3) New Mexico proposes to amend Section 20–83(b) and 20–92(b) to clarify that drainage diversions associated with coal waste banks must be designed to carry peak runoff from a 100–year, 6–hour precipitation event.

(4) New Mexico proposes to amend Section 20–85 to delete subsections (b) and (c). Subsection (b) and (c) contain coal processing waste bank design requirements which are being revised and included under Section 20–81.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments and supporting information proposed by New Mexico satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the New Mexico program.

Written comments on the issues proposed in this rulemaking should be specific, pertain only to the issues proposed, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSMRE Albuquerque Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 1, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–28722 Filed 12–13–88; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 934

North Dakota Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment contains changes to North Dakota Administrative Code (NDAC) Article 69–05.2 in response to the OSMRE's letters of February 3, 1986 and June 9, 1987 that were issued in accordance with 30 CFR Part 732.

The amendment also contains extensive editorial changes intended to reduce the volume of the regulations and to improve clarity without changing their effect.

This notice sets forth the times and locations that the North Dakota program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., m.s.t. January 13, 1989. If requested, a public hearing on the proposed amendments will be held on January 9, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., m.s.t. on December 29, 1988.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis at the address listed below. Copies of the North Dakota program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. B Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5776.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

Edward J. Englerth, Director, Reclamation Division, North Dakota Public Service Commission, Bismarck, North Dakota 58505–0165, Telephone: (701) 224–4096.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.14, 934.15, and 934.16.

II. Proposed Amendments

On November 3, 1988, North Dakota submitted to OSMRE proposed amendments to its permanent regulatory program under SMCRA. The purpose of these amendments were twofold. North Dakota proposes changes to NDAC Article 69–05.2 Surface Coal Mining and Reclamation Operations, in response to OSMRE's letters of February 3, 1986 and June 9, 1987 that were issued in accordance with 30 CFR Part 732. Also, North Dakota at its own initiative proposes to extensively edit Article 69–95.2 to reduce the volume of the regulations and to improve clarity without changing their effect.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by North Dakota satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the

commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., m.s.t. on December 29, 1988. Location and time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 1, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–28723 Filed 12–13–88; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 936

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Oklahoma

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is proposing to adopt a cooperative agreement between the Department of the Interior and the State of Oklahoma for the regulation of surface coal mining and reclamation operations and certain coal exploration operations on Federal lands in Oklahoma. Such a cooperative agreement is provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This proposed rule provides the proposed terms of the cooperative agreement and additional information on other issues.

DATES: OSMRE will accept written comments on the proposed rule until 4:30 p.m. c.s.t. on January 13, 1989.

Upon request, OSMRE will hold a public hearing on the proposed rule on January 3, 1989 beginning at 9:00 a.m. c.s.t. The public hearing will be held at the location shown under **"ADDRESSES"** below.

OSMRE will accept requests for a public hearing until 4:30 p.m. c.s.t. on December 29, 1988. If no person has contacted OSMRE by that date to express an interest in testifying at the hearing, it will be canceled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, or hand-delivered to the same address.

If requested, a public hearing will be held at the Tulsa Field Office of the Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550.

Requests for a public hearing should be made by contacting the individual listed under **"FOR FURTHER INFORMATION CONTACT."**

Copies of the proposed agreement and the related information required under 30 CFR Part 745 are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m. excluding holidays, at the following addresses:

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107 Oklahoma City, Oklahoma 73105; Telephone: (405) 521–3859.

Office of Surface Mining Reclamation and Enforcement Western Field Operations, 1020 15th Street—Brooks Tower Denver, Colorado 80202; Telephone: (303) 844–2459.

Office of Surface Mining Reclamation and Enforcement Administrative Record Room 5131, 1100 L. Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement Tulsa Field Office, 5100 E. Skelly Drive, Suite 550 Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. State of Oklahoma's Application
IV. Summary of the Terms of the Proposed Cooperative Agreement
V. Procedural Matters

I. Public Comment Procedures

A. Written Comments

Written comments on the proposed agreement should be specific, should be confined to issues pertinent to the agreement, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

B. Public Hearing

The hearing will begin at 9:00 a.m. and continue until all persons then in attendance wishing to testify have been heard. The hearing will be transcribed by a court reporter.

To assist the court reporter and to ensure an accurate record, OSMRE requests that persons who testify give the reporter a written copy of their testimony. To assist OSMRE in preparing appropriate questions to clarify issues, OSMRE also requests that persons planning to testify submit an

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advance copy of their testimony to the OSMRE address for submission of written comments (see "**ADDRESSES**").

Persons interested in attending the hearing but not testifying should contact the individual isted under "**FOR FURTHER INFORMATION CONTACT**" prior to the scheduled hearing date to see if the hearing has been cancelled.

C. Public Meetings

Representatives of OSMRE will be available to meet during the comment period at the request of members of the public to receive recommendations and comments concerning the proposed cooperative agreement. Persons wishing to schedule or attend such meetings, should contact the individual listed under "**FOR FURTHER INFORMATION CONTACT.**" OSMRE representatives will be available for these meetings between 9 a.m. and 4 p.m., c.s.t., Monday through Friday, excluding holidays. All such meetings will be open to the public. Notices of such meetings and where they will be held will be posted in advance in the Tulsa Field Office of the Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135.

D. Contacts With State Representatives

The Department has previously announced (45 FR 58378, September 3, 1980) its intention to follow the "Guidelines for Contacts with Employees and Officials During Consideration of State Permanent Regulatory Programs: published at 44 FR 54444 (September 19, 1979), during the process of developing cooperative agreements with the States. As written, the guidelines apply only to the State program review and decision process under SMCRA. However, the Department believes that the guidelines should also be applied in the development of State-Federal permanent program cooperative agreements because of the interrelationship between each cooperative agreement and the approved State program. The need to preserve the ability of the Department and the State to work together through the stages of the cooperative agreement and the right of the public to be informed and to have the opportunity to comment meaningfully on issues raised are principally applicable to permanent program cooperative agreement rulemakings.

This decision requires that minor changes in the guidelines be made to clarify their applicability to cooperative agreement rulemakings. Accordingly, revised guidelines for contacts with Department employees and officials during permanent program cooperative agreement rulemakings are given below. See the notice of September 19, 1979, 44 FR 54444, for a full discussion of the guidelines and supporting principles. The September 19, 1979, guidelines remain fully applicable to the State program review process.

1. Upon request the Department will meet with any member of the public through the end of the public comment period. Notices of scheduled meetings will be posted in a public place. The meetings will be open.

2. The Department will meet the State representatives or have telephone conversation with them, upon the initiative of either party, up to the point of the Secretary's decision to enter into a permanent program cooperative agreement with a State. These meetings will be open to the public unless the Department decides an executive session is appropriate. Advance notice of scheduled meetings will be posted in a public place. Notice of the executive session will be posted in a public place.

3. The Department will keep a summary record of all meetings and discussions, whether in person or by telephone, on a proposed cooperative agreement. This record will include a summary of the discussion and a list of all written information OSMRE receives. All such records along with all written communications relating to the cooperative agreement shall be made available to the public.

4. In those instances where the Department has conducted meetings or discussions with a State after the close of the public comment period, the Department will include summaries of the meetings in the record and, if necessary to assume an effective opportunity for public participation, provide an opportunity for the public to review the record of such meetings and discussions and to comment on them before a decision is made to enter into a permanent program cooperative agreement.

II. Background

The Oklahoma program was conditionally approved on January 19, 1981 [46 FR 4910]. Information on the general background, revisions, modifications, and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4910), in the May 4, 1983, **Federal Register** (48 FR 20050), and in the August 28, 1984, **Federal Register** (49 FR 34002). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 936.10 and 936.15.

III. State of Oklahoma's Application

The purpose of this proposed rulemaking is to adopt a permanent program cooperative agreement between the Department of the Interior and the State of Oklahoma which will give Oklahoma primacy in the administration of its approved permanent regulatory progam on Federal lands in the State.

Section 523(c) of SMCRA, 30 U.S.C 1201 *et seq.*, and the implementing regulations at 30 CFR Part 745, allow a State and the Secretary of the Interior to enter into a permanent program cooperative agreement if the State has an approved State program for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands. Permanent program cooperative agreements are authorized by the first sentence of section 523(c), which provides that, "Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act." 30 U.S.C. 1273(c).

On September 21, 1988, Henry Bellmon, Governor of Oklahoma, requested that a permanent program cooperative agreement be entered into between the Secretary of the Interior and the Governor of Oklahoma.

Section 745.11(b) (1) through (8) of OSMRE's regulations require that certain information be submitted with a request for a permanent program cooperative agreement, if the information has not previously been submitted in the State program. Much of the information relating to the budget, staffing, organization, and duties of the State regulatory authority, the Oklahoma Department of Mines (ODM), was described in Oklahoma's Proposed Permanent Coal Program Text. See 30 CFR 745.11(b). In addition, the State of Oklahoma submitted a written certification from the General Counsel of ODM that no State statutory, regulatory or other legal constraint exists which would limit the capability of the ODM to comply fully with section 523(c) of SMCRA, as implemented by 30 CFR Part 745. See 30 CFR 745.11(b)(3).

IV. Summary of the Terms of the Proposed Cooperative Agreement

A summary of the proposed cooperative agreement appears below. OSMRE emphasizes that the proposed cooperative agreement may be subject to further change as a result of public comment and/or further discussion with the State of Oklahoma.

The nature and extent of the Secretary's ability to delegate authority for surface coal mining operations on Federal lands to States through cooperative agreements was a subject of a Federal District Court opinion in *In Re: Permanent Surface Mining regulation Litigation II,* Civil Action No. 79–1144 (D.D.C. July 6, 1984). The Oklahoma cooperative agreement proposed here is consistent with that opinion and delegates the Secretary's authority under SMCRA which is required to be covered under the Federal lands program and retains the Secretary's non-delegable responsibilities under the Mineral Leasing Act.

Although OSMRE has not yet amended the scope of the Federal lands program, 30 CFR Subchapter D, to be consistent with the District Court decision, this agreement encompasses the salient features of that decision. If changes to the Federal lands program are adopted which are not covered by this agreement, OSMRE and the Secretary will promptly initiate the steps necessary to conform the agreement.

A. Article I: Introduction, Purposes and Responsible Agencies

Paragraph A of Article I would set forth the legal authority for the Oklahoma Cooperative Agreement (Agreement), which is provided by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA). This paragraph would state that the Agreement provides for State regulation of surface coal mining and reclamation operations in Oklahoma on Federal lands. Paragraph B would set out the purposes of the Agreement.

Paragraph C would name the Oklahoma Mining Commission as the agency responsible for administering the Agreement on behalf of the Governor of Oklahoma (Governor), and the Office of Surface Mining Reclamation and Enforcement (OSMRE) as the agency responsible for administering the Agreement on behalf of the Secretary of the Department of the Interior (Secretary).

B. Article II: Effective Date

Article II would provide that after it has been signed by the Secretary and the Governor, the Agreement would become effective 30 days after publication as a final rule in the **Federal Register**. It would remain in effect until terminated as provided in Article XI.

C. Article III: Definitions

Article III would provide that any terms and phrases used in the Agreement have the same meanings as set forth in the Federal and State Acts, regulations promulgated pursuant to those Acts, 30 CFR Parts 700, 701, 740, and the approved State program (Program). Defining terms and phrases in this manner would ensure consistency between applicable regulations and the Agreement. Where there are conflicts in definitions, those included in the Program would apply.

D. Article IV: Applicability

Paragraph A of Article IV would state that the laws, regulations, terms, and conditions of Oklahoma's approved State program are applicable to Federal lands in Oklahoma except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4, 740.11(a), 745.13, and other applicable laws, Executive Orders, or regulations. This provision is consistent with the Federal lands program, which made the Oklahoma State program Federal law on all Federal lands in Oklahoma.

The reference to the Oklahoma State Program is intended to encompass the approval of that State program on January 19, 1981, and any amendments thereto which are approved in accordance with 30 CFR 732.17. Excluded from the scope of the Agreement are the authorities and responsibilities reserved to the Secretary pursuant to the Act, 30 CFR 740.4, 745.13, and other applicable laws, Executive Orders, or regulations.

Paragraph B would state that four existing Federal permits are not affected by this agreement, and that one previously submitted permit application would continue to be reviewed by OSMRE and would be transferred to ODM after OSMRE approves the application.

Paragraph C would state that appealable Orders or decisions would be appealed to ODM or OSMRE as appropriate in accordance with that agency's established appeal procedures.

E. Article V: General Requirements

Article V would mutually bind the Governor and the Secretary to the provisions of the Agreement.

Paragraph A would require that ODM continue to have authority under State law to carry out the Agreement.

Paragraph B (Funds) would provide that upon application for funds the State shall be reimbursed by OSMRE pursuant to section 705(c) of the Act if the necessary funds have been appropriated to OSMRE by Congress. Section 705(c) of SMCRA provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount the Federal government would otherwise have expended to regulate surface coal mining and reclamation operations on the Federal lands within the State. See 30 U.S.C. 1285(c). The reference in section 705(c) to section 523(d) is obviously a typographical error; the correct reference is section 523(c). The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.26.

If, when requested by the State adequate funds have not been appropriated, OSMRE and ODM would meet and decide on appropriate measures to ensure that mining operations are regulated in accordance with the Program.

Paragraph C of Article V would require the State to make annual reports to OSMRE with respect to compliance with this Agreement. Paragraph C would also provide for a general exchange of information developed under the Agreement, unless such an exchange is prohibited by Federal law. Final evaluation reports prepared by OSMRE on State administration and enforcement of this Agreement would be provided to ODM. The Agreement would require that ODM's comments on the report be appended before being sent to Congress and other interested parties.

Paragraph D would require ODM to maintain the necessary personnel to fully implement this Agreement.

Paragraph E would require that ODM avail itself of the facilities necessary to carry out the requirements of the Agreement. This provision would ensure that the State has access to and would utilize any resources necessary to conduct the inspections, investigations, studies, tests, and analyses required to fulfill the requirements of this Agreement.

Paragraph F of Article V concerns permit application fees and civil penalties. Permit fees would be determined according to section 745.1 of the State Act, section 771.25 of the State regulations, and the applicable provisions of the State program and Federal law. Any permit fees collected by the State that would be attributable

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to the Federal lands covered by this agreement would be considered program income. The State would retain all permit fees from operations on Federal lands and deposit them with the State Treasurer. The State would report the amount of these fees in the financial status report required under 30 CFR 735.26. Civil penalties or fines collected by the State would not be considered program income.

F. Article VI: Review of a Permit Application Package

Paragraphs A through C of Article VI would generally describe the procedures that the State and OSMRE would follow in the review and analysis of permit application packages (PAP) for operations on Federal lands.

"Permit application package" is a term adopted by OSMRE in the Federal lands program (48 FR 6912, February 16, 1983). It is the material submitted by an applicant proposing to mine on Federal lands, including applications for permit revisions and renewals. OSMRE adopted the term because there are requirements for mining on Federal lands in addition to those required by a permit application under the approved State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency under Federal laws other than SMCRA. The package concept allows for such information to be included with the permit application required by the approved State program. See the definition of "permit application package" under 30 CFR 740.5.

Under paragraph A, an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands would be required by ODM and the Secretary to submit a PAP in an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with the appropriate number of copies of the PAP.

The PAP would be in the form required by ODM and include any supplemental information required by OSMRE, the Federal land management agency and other agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. At a minimum, the PAP would be required to satisfy the requirements of 30 CFR Part 740 and must include the information necessary for ODM to make a determination of compliance with the approved State program and for OSMRE and appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, other Federal laws, Executive Orders, and regulations for which they are responsible.

The Agreement would also specify that for any outstanding or pending applications of Federal lands being processed by OSMRE prior to the effective date of this Agreement, OSMRE will maintain sole permit decision responsibility. After the final decision, all further responsibilities shall pass to ODM pursuant to the terms of this Agreement.

Paragraph B of Article VI discusses review procedures for PAP's where leased Federal coal is involved and consequently, where the Secretary must make a decision on a mining plan. The Agreement would not address Federal lands where leased Federal coal is not involved because no such areas are known to exist in Oklahoma.

Under paragraph B.1, ODM would assume the responsibilities listed in 30 CFR 740.4(c)(1),(2),(3),(4),(6), and (7), to the extent authorized.

ODM would, to the extent authorized, take on the delegable responsibilities for review and approval, disapproval or conditional approval of permit applications, revisions or renewals thereof, and applications for transfer, sale and assignment of such permits under 30 CFR 740.4(c)(1). OSMRE would assist ODM in this review, upon request, to the extent possible. The Secretary retains those responsibilities that cannot be delegated to ODM including those under the Federal lands program, the Mineral Leasing Act of 1920 (MLA), The National Environmental Policy Act of 1969 (NEPA), this agreement, and other applicable Federal laws. The Secretary would consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws. The Secretary would carry out his responsibilities in a timely manner and avoid, to the extent possible, duplication of those responsibilities delegated to the State in this Agreement and the Program.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE and ODM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

Paragraph B.2., would designate ODM as the primary contact for applicants in matters regarding review of the PAP. As such, ODM would inform the applicant of all joint State-Federal determinations. On matters concerned exclusively with 43 CFR Part 3480, Subparts 3480 through 3487, the Bureau of Land Management (BLM) would be the primary contact with the applicant, and would provide ODM with documentation on its decisions. ODM would provide OSMRE with copies of correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE would provide ODM with copies of all correspondence with the applicant which may have a bearing on the PAP.

OSMRE would not ordinarily contact the applicant regarding the PAP, although OSMRE would not be prevented from doing so.

The Secretary would reserve the right to act independently of ODM to carry out departmental responsibilities under law other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

ODM would consult with and obtain the consent of the Federal land management agency concerning post-mining land use and protection of non-coal resources, and would consult with and obtain the consent of BLM with respect to development, production, and recovery of mineral resources where operations involve leased Federal coal.

ODM would also obtain the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. ODM would request that all Federal agencies submit their findings or any requests for additional data to ODM, and, when necessary, to OSMRE within 45 days of receiving the PAP.

The review of the PAP will be conducted to ensure timely identification, communication, and resolution of issues relating to statutory requirements of Federal agencies. ODM will request that other agencies also inform OSMRE of their analyses and conclusions.

Under paragraph B.3., ODM would take on the responsibilities under 30 CFR 740.4(c)(2), (3), and (4). ODM would prepare documentation to comply with NEPA under 30 CFR 740.4(c)(7), but OSMRE would retain the non-delegable responsibilities under 30 CFR 740.4(c)(7)(i) through (vii).

OSMRE would assist the State in carrying out its responsibilities by coordinating resolution of conflicts between ODM and other Federal agencies in a timely manner. OSMRE would further assist by helping to schedule joint meetings, upon request.

OSMRE would exercise its responsibilities in a timely manner and would provide ODM with a work product within 50 days of receiving the

State's request for assistance in reviewing the permit application unless a different time is agreed upon by OSMRE and ODM.

Paragraph B.4. would describe the procedures that OSMRE and ODM would follow in reviewing the PAP. OSMRE and ODM would coordinate their activities and exchange information during the review process. The State would review the PAP to ensure compliance with the Program and State law and regulations, while OSMRE would review the PAP to ensure compliance with the non-delegable responsibilities of SMCRA and other Federal laws and regulations. OSMRE and ODM would plan and schedule PAP review and each would choose a project leader, who would serve as the primary point of contact during the review process. OSMRE would provide the State with its review comments within 50 days of receiving the PAP.

ODM would prepare a State decision package indicating whether the PAP complies with the Program. The review and finalization of the State's decision package would be conducted in accordance with procedures agreed upon by ODM and OSMRE for processing PAP's.

ODM could issue a SMCRA permit before the necessary Secretarial approval of the mining plan. However, ODM must advise the operator that Secretarial approval of the mining plan must be obtained before the operator begins mining operations on the Federal lease. The permit issued by the State would be required to include the terms and conditions required by the lease and those required by other applicable Federal laws and regulations.

After making its decision, ODM would notify the applicant, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP. A copy of the permit and written findings would be submitted to OSMRE.

OSMRE would provide technical assistance to ODM upon request, if available resources allow.

Paragraph C of Article VI addresses review procedures for permit revisions or renewals.

Paragraph C.1. would assign to ODM the authority to review, approve or disapprove permit revisions or renewals not constituting modifications of a mining plan pursuant to 30 CFR 746.18. ODM must consult with OSMRE on whether any permit revision or renewal constitutes a mining plan modification. OSMRE would inform ODM within 30 days of receiving a copy of the permit revision or renewal as to such a decision. Where approval of a mining plan modification is required. OSMRE and ODM would follow the procedures outlined in paragraphs B.1. through B.4 of this Article.

Under paragraph C.2., OSMRE may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions or renewals clearly do not constitute mining plan modifications. Those revisions or renewals meeting the criteria may be approved by ODM prior to contacting OSMRE.

Under paragraph C.3., permit revisions or renewals not constituting mining plan modifications or meeting the criteria outlined in paragraph C.2. would be reviewed and approved or disapproved by ODM.

G. Article VII: Inspections

Paragraphs A and B would state that ODM would conduct inspections on lands covered by this Agreement and prepare and file State inspection reports in accordance with the Program.

Paragraph C would designate ODM as the point of contact and primary inspection authority in dealing with the operator. However, the Secretary would retain the right to conduct inspections of surface coal mining and reclamation operations on Federal lands without prior notice to ODM for the purpose of evaluating the manner in which the Agreement is being carried out and ensuring that performance and reclamation standards are being met.

Paragraph D would state that when OSMRE intends to conduct an inspection under 30 CFR 842.11, ODM will ordinarily be given reasonable notice of such an inspection to provide an opportunity for State inspectors to join in the inspection. Citizen complaints not involving an imminent harm to the public or the environment will be referred to ODM for action.

Article VII would preserve OSMRE's obligation and authority to conduct inspection pursuant to 30 CFR Parts 842 and 843.

The right of Federal and State agencies to conduct inspections for purposes outside the scope of the proposed cooperative agreement would not be affected.

H. Article VIII: Enforcement

Article VIII would set forth the enforcement obligations and authorities of OSMRE and ODM.

Under paragraph A, ODM would have primary enforcement authority on Federal lands in accordance with the requirements of the Agreement and the Program. Enforcement authority given to the Secretary under other laws and orders would be reserved by the Secretary.

Under paragraph B, ODM would have primary responsibility for enforcement during joint inspections with OSMRE. Paragraph B would also include a requirement that ODM notify OSMRE prior to suspending or revoking a permit.

Paragraph C would preserve OSMRE's authority to take enforcement action to comply with 30 CFR Parts 843 and 845, where OSMRE conducted an inspection or where, during a joint inspection with ODM, the two could not agree on the appropriateness of a particular enforcement action. Such action would be based upon SMCRA or the substantive provisions contained in the Program, or both, but would use the Federal procedures and penalty system.

Paragraph D would provide that OSMRE and ODM notify each other of all violations of applicable regulations and all actions taken on the violations.

Paragraph E would provide that personnel of ODM and the Department of the Interior, including OSMRE, be mutually available to serve as witnesses in enforcement actions taken by either party.

Paragraph F would specify that this Agreement would not limit the Secretary's authority to enforce Federal laws other than SMCRA.

I. Article IX: Bonds

Under paragraph A, ODM and the Secretary would require each operator conducting operations of Federal lands to sumit a performance bond payable to both the State and OSMRE. All applicable State and Federal requirements must be fulfilled prior to releasing an operator from any obligation covered by the performance bond. If the agreement is terminated, paragraph A would require that the portion of the bond covering Federal lands reverts to being payable solely to the United States. ODM would advise OSMRE of annual adjustments to the performance bond pursuant to the Program.

Paragraph B would state that a performance bond shall be released by the State after OSMRE concurs with the release.

Paragraph C would state that forfeiture of performance bonds would be in accordance with the Program and subject to OSMRE concurrence.

Paragraph D clarifies that the performance bond does not meet the requirement for a Federal lease bond under 43 CFR Part 3474, or for the lessee protection bond required in certain circumstances by section 715 of SMCRA.

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J. Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

Paragraph A.1. of Article X would reserve to the Secretary authority to designate Federal lands as unsuitable for surface coal mining operations.

Paragraph A.2. states that ODM and OSMRE will notify each other of any petition to designate lands as unsuitable that could impact adjacent Federal and non-Federal lands, and solicit and consider each other's views on a petition. OSMRE will coordinate with the Federal land management agency with jurisdiction over the area covered by the petition, and will solicit comments.

Paragraph B discusses valid existing rights (VER) determinations. OSMRE's definition of VER, which was published on September 14, 1983 (48 FR 41314), relied on a general "takings" standard.

In its March 22, 1985, decision, the District Court remanded this definition because the promulgation process violated the Administrative Procedure Act. On November 20, 1986, OSMRE published a suspension notice for the definition of VER pending further rulemaking. OSMRE has decided, for areas covered by sections 522(e)(1) and (2), to make VER determinations in Oklahoma using the VER definition contained in the State regulatory program in accordance with 30 CFR 740.11(a) and the suspension notice. Because the Oklahoma State program has a takings test, OSMRE will not process VER applications in Oklahoma within units of the national park system until a Federal rule is finalized.

Paragraph B.1. would state that OSMRE has responsibility for processing requests for VER determinations on Federal lands within the boundaries of areas where mining is prohibited by section 522(e)(1) of SMCRA. For private inholdings within section 522(e)(1) areas, ODM, with the consultation and concurrence of OSMRE, would determine whether operations on such lands would or would not affect the Federal interest (Federal lands as defined in section 701(4) of SMCRA). OSMRE would have the responsibility for processing requests for VER determinations on private inholdings within the boundaries of section 522(e)(1) areas where mining affects the Federal interest.

Under paragraph B.2., OSMRE would be responsible for processing requests for determinations of VER for proposed operations on Federal lands within the boundaries of any national forest, as identified in section 522(e)(2) of SMCRA. OSMRE would process compatibility determinations on Federal lands pursuant to section 522(e)(2) of SMCRA.

Under paragraph B.3., ODM would determine for Federal lands, whether the prohibitions of limitations of section 522 (e)(3) of SMCRA are applicable to proposed mining operations which would adversely affect any public park, or any historic property listed on the National Register of Historic Places in consultation with the State Historic Preservation Officer. ODM would also make the VER determination for such lands using the State program. Procedures would also be included for ODM to coordinate with any affected agency or agency with jurisdiction over the proposed operation.

Under paragraph B.4., ODM would process and make VER determinations on Federal lands, using the State program, for all areas limited or prohibited by sections 522(e) (4) and (5) of SMCRA as unsuitable for mining. For such operations on Federal lands, ODM would coordinate with the affected agency and agency with jurisdiction over the proposed operations.

K. Article XI: Termination of Cooperative Agreement

Article XI would specify that this cooperative agreement may be terminated as specified under 30 CFR 745.15.

L. Article XII: Reinstatement of Cooperative Agreement

Article XII would provide that, if terminated, the cooperative agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by the State after remedying the defects for which the agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the agreement.

M. Article XIII: Amendment of Cooperative Agreement

Article XIII would provide that the cooperative agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.14.

N. Article XIV: Changes in State or Federal Standards

Paragraph A of Article XIV would recognize that the Secretary or the Governor may, from time to time, promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. If it is determined to be necessary to keep the Agreement in force, the State would request necessary legislative action and either the State or OSMRE would change or revise its regulations or promulgate new regulations, as applicable. Such changes would be made in accordance with 30 CFR Part 732 for changes to the approved State program and section 501 of the Act for changes to the Federal lands program.

Paragraph B would require the State and OSMRE to provide each other with copies of changes in their respective laws and regulations.

O. Article XV: Changes in Personnel and Organization

Article XV would require ODM and OSMRE to advise each other of substantial changes in organization, funding, staff, or other changes which could affect the implementation of the Agreement.

P. Article XVI: Reservation of Rights

Article XVI would recognize that the Act, 30 CFR 45.13, and other legal authorities prohibit the Secretary from delegating certain authorities to the State. Article XVI would state that this Agreement would not be construed as waiving or preventing the assertion of any right in this Agreement that the State or the Secretary may have under laws other than SMCRA, or their regulations, including those listed in Appendix A of the Agreement.

V. Procedural Matters

1. E.O. 12291 and Regulatory Flexibility Act

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget an exemption for Federal/State cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

2. Paperwork Reduction Act of 1980

There are recordkeeping and reporting requirements in the proposed Oklahoma Cooperative Agreement which are the

same as and required by the permanent program regulations. Those recordkeeping and reporting requirements needed clearance from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and were assigned the following clearance numbers:

Location of Requirement and OMB Clearance No.

Article V.C. (Required by 30 CFR Part 745) 1029–0028
Article VI.A. (Required by 30 CFR Part 773) 1029–0041
Article VII.A. (Required by 30 CFR Part 840) 1029–0051
Article IX.A. (Required by 30 CFR Part 800) 1029–0043

3. National Environmental Policy Act

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Author

The author of this regulation is Mr. David R. Alleman, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

For the reasons set forth herein, it is proposed to amend 30 CFR Part 936 as follows:

Dated: December 9, 1988.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

PART 936—[AMENDED]

1. The authority citation for Part 936 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq., Public Law 95–87.

2. Section 936.30 is added to read as follows:

§ 936.30 State-Federal Cooperative Agreement.

The Governor of the State of Oklahoma and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purpose, and Responsible Agencies

A. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of surface coal mining operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR, Chapter VII, Subchapter D) and the Oklahoma State program (Program) for surface coal mining and reclamation operations on Federal lands.

B. The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining (b) minimize intergovernmental overlap and duplication and (c) provide uniform and effective application of the Program on all non-Indian lands in Oklahoma in accordance with the Act and the Program.

C. The Oklahoma Mining Commission shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) shall administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement shall be effective upon publication in the Federal Register as a final rule. This Agreement shall remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR Parts 700, 701, 740, and §§ 740.4, 740.11(2), and the Program and the Oklahoma Coal Reclamation Act of 1979, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is conflict between the above-referenced State and Federal definitions, the definitions used in the approved State program will apply except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

Article IV: Applicability

A. In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Oklahoma Program are applicable to lands in Oklahoma except as otherwise stated in this Agreement, the Act, 30 CFR 740.4, 740.11(a), and 745.13, or other applicable Federal laws, Executive Orders, or regulations.

B. The following permits will not be transferred to the State by this Agreement and will remain under the jurisdiction of OSMRE: (1) CFI-Bokoshe (Federal Permit OK–0002), (2) Stigler No. 9 (Federal Permit OK–0009), (3) Bokoshe No. 10 (Federal Permit OK–0001), and (4) McCurtain No. 2 (Federal Permit OK–0002). Also, OSMRE will continue the permitting process initiated on Farrell-Cooper's Red Oak Federal Permit (OK–0010). When the permit package is approved by Western Field Operations, the documentation will be forwarded to the Oklahoma Department of Mines (ODM). ODM will then issue the permit and perform the inspections on this site.

C. Orders and decisions issued by the ODM in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency.* The ODM has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds.* Upon application by ODM and subject to appropriations, OSMRE will provide the State with the funds to defray the cost associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by ODM in carrying out those responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement; and provided that such State incurred cost per permitted acre of Federal lands does not exceed the per permitted acre cost for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

The ratio or cost split of Federal to non-Federal dollars allocated under this Agreement will be determined by OSMRE and ODM based on the projected cost for regulation of mines within Federal lands, in consideration of the relative amounts of Federal and non-Federal lands involved. The designation of mines based on Federal land will be prepared by ODM and submitted to OSMRE's Tulsa Field Office. OSMRE's Tulsa Field Office and OSMRE's Western Field Operations Office will work with ODM to estimate the amount the Federal government would have expended for regulation of Federal lands in Oklahoma in the absence of this Agreement.

OSMRE and the state will discuss the OSMRE Federal land cost estimate, the ODM prepared list of acres by mine, and the state overall cost estimate. After resolution of any issues, ODM will submit its grant application to OSMRE's Tulsa Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total state expenditures to arrive at the total Federal reimbursement due the state. This ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating the regulatory cost for the following grant year.

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OSMRE will notify ODM as soon as possible if such projections are unrealistic.

If ODM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and ODM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Oklahoma are regulated in accordance with the Program.

Funds provided to ODM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A–102 Attachment E.

C. *Reports and Records.* ODM will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d).

ODM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide ODM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. ODM comments on the report will be appended before transmission to the Congress or other interested parties.

D. *Personnel.* ODM shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act, Federal lands Program and the Program.

E. *Equipment and Laboratories.* ODM will assure the Federal lands program and the Program itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analysis can be performed which are necessary to carry out the requirements of the Agreement.

F. *Permit Application Fees and Civil Penalties.* The amount of the fee accompanying an application for a permit for operations on Federal land in Oklahoma shall be determined in accordance with section 745.1 of the Oklahoma Coal Reclamation Act of 1979, section 771.25 of the State regulations and the applicable provisions of the Program and Federal law. All permit fees and civil penalties collected from operations on Federal Lands will be retained by the State and shall be deposited with the State Treasurer in the Oklahoma Department of Mines Revolving Fund. Permit fees will be considered Program income and will be reported in an account for use in reclaiming abandoned mine sites. The financial status report submitted pursuant to 309 CFR 735.26 shall include the amount of fees collected and attributable to Federal lands during the prior State fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package

ODM and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) with an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by ODM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of the Act applies, ODM will work with the agency with jurisdiction over the publicly owned park, including units of the national park system, or place included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR Part 740 and include the information necessary for ODM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of the Act, the Federal lands program, and other Federal laws, Executive Orders, and the regulations for which they are responsible.

B. Review Procedures Where Leased Federal Coal Is Involved

1. ODM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7) to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), ODM will assume primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Oklahoma where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to ODM under the Federal lands program, the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the state as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and where appropriate, make decisions required by the Act, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working Agreements between OSMRE and ODM with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. ODM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. On matters concerned exclusively with regulations under 43 CFR Part 3480, Subparts 3480 through 3487, the Bureau of Land Management (BLM) will be the primary point of contact with the applicant. ODM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to ODM copies of all OSMRE correspondence which may have a bearing on the PAP. OSMRE will request additional information from the applicant through ODM. Copies of OSMRE's request will be sent to the operator by OSMRE to help expedite the permit review process. The information will be submitted to OSMRE through ODM.

BLM will inform ODM of its actions and provide ODM with a copy of documentation on all decisions. ODM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of BLM, the Federal land management agency, and other Federal agencies as required.

The Secretary reserves the right to act independently of ODM to carry out his responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program.

3. ODM will to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. ODM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP. ODM will request all Federal agencies to furnish their findings or any request for additional information to ODM within 45 days of the date of receipt of the PAP. OSMRE will assist ODM in obtaining this information upon request of ODM.

ODM will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4).

ODM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(4)(i)–(vii).

4. OSMRE will assist ODM in carrying out ODM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between ODM and other Federal agencies in a timely manner;

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies;

(c) Where OSMRE is assisting ODM in reviewing the PAP, furnishing to ODM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and ODM.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

5. Review of the PAP: (a) OSMRE and ODM will coordinate with each other during the review process as needed. ODM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to ODM.

(b) ODM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the applicable portions of the PAP for compliance with the non-delegable responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive Orders, and regulations.

(d) OSMRE and ODM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and ODM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish ODM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, ODM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) ODM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAP's agreed upon by ODM and OSMRE.

(f) ODM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the the Program prior to the necessary Secretarial decision on the mining plan, provided that ODM advises the operator on the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operators on the Federal lease. ODM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or condictions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of the Act where the proposed operation will adversely affect a unit of the National Park Service (NPS), ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this Agreement.

(i) After making its decision on the PAP, ODM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic place included in the NRHP affected by a decision under section 522(e)(3) of the Act. A copy of the written findings and the permit will also be submitted to OSMRE.

(j) OSMRE will provide technical assistance to ODM when requested, if available resources allow. OSMRE will have access to ODM files concerning operations on Federal lands.

C. Review Procedures for Permit Revisions or Renewals

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by ODM after consultation with OSMRE on whether such revision or renewal constitutes a mining plan modification. OSMRE will inform ODM within 30 days or receiving a copy of a proposed revision or renewal, whether the permit revision or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and ODM will follow the review procedures where leased Federal coal is involved as outlined in this Agreement.

2. OSMRE may establish criteria to determine which permit revisions and renewals clearly do not constitute mining plan modications.

3. Permit revisions or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications or that meet the criteria for not being mining plan modifications will be reviewed and approved by ODM.

Article VII: Inspections

A. ODM will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. ODM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE's Tulsa Field Office a legible copy of the completed State inspection report.

C. ODM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and its obligations under laws other than the Act.

D. OSMRE will ordinarily give ODM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ODM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to ODM for action. The Secretary reserves the right to conduct inspections without prior notice to ODM to carry out his responsibilities under the Act.

Article VIII: Enforcement

A. ODM will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program is accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and ODM, ODM will have primary responsibility for enforcement procedures including issuance of orders of cessation, notices of violation, and assessment of penalities. ODM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where ODM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

D. ODM and OSMRE will promptly notify each other of all violations of applicable, laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of ODM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

Article IX: Bonds

A. ODM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Oklahoma and the United States Office of Surface Mining Reclamation and Enforcement to cover the operator's responsibilities under the Act and the Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States Office of Surface Mining Reclamation and Enforcement. ODM will advise OSMRE of annual adjustments to the performance bond made pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, ODM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

A. Unsuitability Petitions

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either ODM and OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of the Act, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and rquest and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

1. The following actions will be taken when requests for determination of valid existing rights (VER) pursuant to section 522(e) of the Act or for determinations of compatibility pursuant to section 522(e)(2) of the Act are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

For Federal lands within the boundaries of any areas specified under section 522(e)(1) of the Act, OSMRE will determine whether VER exist for such areas.

For non-Federal lands within section 522(e)(1) areas ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the national park system, ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the national park system which affect the Federal interest, OSMRE will make the VER determination.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of the Act and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of the Act.

For Federal lands, ODM, with the consultation and concurrence of OSMRE, will determine whether any proposed operations will adversely affect units of the NPS with respect to the prohibitions or limitations of section 522(e)(3) of the Act. For such operations adversely affecting units of the NPS, ODM, with consultation and concurrence of OSMRE, will make the VER determination.

3. For Federal lands, ODM will determine whether any proposed operation will adversely affect all publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places (NRHP), with respect to the prohibitions or limitations of section 522(e)(3) of the Act.

4. For Federal lands other than those on which the proposed operation will adversely affect units of the NPS, ODM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of the Act. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of the Act where a proposed operation will adversely affect a unit of the NPS, ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of the Act or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by ODM and the Federal, State or local agency with jurisdiction over the publicly owned park or place included in the NRHP.

ODM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of the Act as unsuitable for mining. For operations on Federal lands, ODM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR Part 732 for changes to the Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

B. ODM and the Department will provide each other with copies of any changes to their respective laws, rules regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each Party to this Agreement will notify the other, when necessary, of any changes in personnel, organization, and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Dated:_____

Signed: _____

Governor of Oklahoma

Dated:_____

Signed: _____

Secretary of the Interior

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 243 CFR Part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservior Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection.

12. Executive Order 11990 (May 24, 1977), for wetlands protection.

13. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

14. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

15. The Constitution of the United States.

16. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1291 *et seq.*

17. 30 CFR Chapter VII.

18. The Constitution of the State and State Law.

[FR Doc. 88-28769 Filed 12-13-88; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3491-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Wright-Patterson Air Force Base in Greene County, Ohio. The proposed revision request is in the form of a variance to operate the fillstand to load tanker trucks with JP-4 jet fuel at the Wright-Patterson Air Force Base without meeting the requirements of Ohio Administrative Code (OAC) rule 3745-21-07(E). The tanker trucks are used to transfer JP-4 from the fillstand to military aircraft. USEPA action is based upon a January 27, 1987, revision request that was submitted by the State. USEPA is proposing to disapprove it, because the State did not demonstrate that it is technically or economically infeasible to meet the existing SIP limit and that the relaxation will not jeopardize attainment and maintenance of the ozone standard.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 13, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6034, before visiting the Region V, office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Water Mark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149

Comments on this prposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On January 27, 1987, the Ohio Environmental Protection Agency (OEPA) submitted, as a revision to it's ozone SIP, a variance to relax the SIP requirements for a jet fuel fillstand at Wright-Patterson Air Force Base in Greene County, Ohio, from the requrements contained in Ohio Administrative Code (OAC) Rule 3745-21-07(E).

That rule is applicable to Wright-Patterson Air Force Base because volatile photochemically reactive organic materials are loaded from its loading facilities and the average daily loading at the fillstand has exceeded the 40,000 gallon per day exemption within the rule. This rule contains the following requirements.

No person shall load, in any one day, more than 40,000 gallons of any volatile photochemically reactive material into any tank truck, trailer, or railroad tank car from any loading facility unless the loading facility is equipped with a vapor collection and disposal system properly installed, in good working order, in operation, and consisting of one of the following:

(a) An adsorber system or condensation system which processes and recovers at least NINETY PERCENT by weight of all vapors and gases from the equipment being controlled; or

(b) A vapor handling system which directs all vapors to a fuel gas system; or

(c) Other equipment or means for purposes of air pollution control as may be acceptable to and approved by the DIRECTOR.

The Wright-Patterson Air Force Base applied for a variance to operate the fillstand without meeting the requirements of OAC Rule 3745-21-07(E). This variance would limit annual throughput to 25,000,000 gallons per year; allowing estimated emissions of 16 tons of uncontrolled Volatile Organic Compounds (VOC) per year.

The variance is requested on the basis that for this level of throughput, it is not economically reasonable (cost-effective) to install controls.

SIP Relaxation

The State has not claimed that complying with the existing SIP is technically infeasible, but has attempted to make a demonstration that complying with the existing SIP was not economically feasible.

However, USEPA cannot make a judgement on the economic feasibility of complying with the existing SIP because the State did not adequately document the costs used to determine the cost-effectiveness of complying with carbon adsorption or incineration. As explained in the Technical Support Document for this action, which is available in the Region V office, the OEPA needs to explain the basis for the cost estimates and, where possible, provide documentation of costs.

SIP Revision Policy

The July 29, 1983, USEPA memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards to the Director, Air and Waste Management Division, Regions II-IV, VI-VIII and X, requires for the revision to be approvable that the State must demonstrate that the revision will not interfere with the timely attainment and maintenance of the ozone standard and, where relevant, "reasonable further progress" (RFP) towards timely attainment.

The Wright-Patterson Air Force Base is located in Greene County, which is designated nonattainment for the pollutant ozone under section 107 of the act (40 CFR 81.336),[1] and which is part of the Dayton Air Quality Control Region (AQCR) for ozone.

Although the Dayton Air Quality Control Region (AQCR) is currently designated nonattainment for ozone, the OEPA believes the current air quality data demonstrates attainment; and therefore this SIP revision request, which would not result in an increase in actual emissions, will not interfere with attainment. Additionally, the State believes that this SIP revision would not interfere with attainment because uncontrolled emissions are 16 tons per year while there is a growth margin of 6410 tons for 1985.

However, USEPA does not believe that this analysis has adequately addressed the air quality effects of the relaxation. First, although the air quality data submitted by OEPA may indicate attainment of the ozone standard, the area is still designated nonattainment and is not expected to be redesignated to attainment in the near future.

Second, the State has failed to demonstrate that this SIP revision would

[1] Because of the proximity of Greene County to Dayton, Greene County emissions and emission reductions were included as an integral part of the greater Dayton ozone demonstration area SIP. USEPA approved Ohio's attainment demonstration for the greater Dayton area, including Greene County, on October 31, 1980 (45 FR 72122), because the State's plan for the area as a whole demonstrated the attainment and maintenance of the ozone standard there by December 31, 1982. Violations of the ozone standard were recorded in the Dayton area subsequent to 1982.

not interfere with the timely attainment of the ozone standard and, where relevant "reasonable further progress" (RFP) towards final attainment. This would generally be done by comparing the margin for attainment predicted by the approved ozone attainment demonstration and the increased emissions that would result under the proposed extension. However, if the State or USEPA believes that there has been a substantial change in the inventory since the ozone SIP was approved so that the margin of attainment has changed significantly, a revised demonstration in support of the revision request is required. Such a demonstration would be necessary in areas which purported to demonstrate attainment by 1982, but for which post-1982 monitoring data are indicating exceedances of the ozone standard. Because Wright-Patterson Air Force Base is located in such an area, a revised demonstration of attainment for the Dayton area would be required before the revision can be approved.

Because the State has not provided a revised demonstration of attainment for the Dayton area, USEPA cannot determine whether this revision will interfere with attainment or maintenance of the applicable standard or RFP toward attainment.

Proposed Action

USEPA is proposing to disapprove this SIP revision because the State has failed to adequately demonstrate (1) that it is technically or economically infeasible to meet the existing SIP limit, and (2) that the relaxation will not interfere with attainment and maintenance of the ozone standard or RFP toward attainment.

Under 5 U.S.C. 605(b), I certify that this SIP disapprovals will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709), because it applies to only one source, the U.S. Air Force.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: June 29, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial note.—This document was received at the Office of the Federal Register on December 9, 1988.

[FR Doc. 88–28729 Filed 12–13–88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3644/P466; FRL–3489–7]

Pesticide Tolerance for Fluorine Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the raw agricultural commodity kiwifruit. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATES: Comments, identified by the document control number [PP 8E3644/P466], must be received on or before January 13, 1989.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 8E3644 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiement Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the raw agricultural commodity kiwifruit at 11.0 parts per million (ppm). The petition was revised to propose 15.0 ppm. The petitioner proposed that this use of cryolite on kiwifruit be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. An acute oral rat study with a lethal dose (LD_{50}) of $\geq$5.0 grams (g)/kg.

2. Mutagenicity studies: Ames (negative), DNA repair (negative), and an in vivo cytogenetics study in the rat (negative).

3. A rat teratogenicity study with a NOEL for maternal and fetotoxicity at 300 mg/kg (highest dose tested).

4. A 90-day feeding study in rats and a 90-day feeding study in dogs, which did not establish NOEL levels for fluoride accumulation in the bone. Fluoride accumulation in the bone occurred at 50 ppm (2.5 mg/kg) in the rat study and 500 ppm (12.5 mg/kg) in the dog, the lowest doses tested. NOELs for other effects were established at 50 ppm (2.5 mg/kg) in the rat and 10,000 ppm (250 mg/kg) in the dog.

The Agency has requested that the registrants submit chronic feeding, ocogenicity, reproduction and metabolism (pharmacodynamic) studies for cryolite. The studies are to be submitted according a specified timeframe, with the last of the studies due by 1992. The metabolism study (in rats) is needed to accurately quantitate the amount of floride which should be bioavailable from cryolite. The Agency

expects that the metabolism study will provide the information necessary to establish an acceptable daily intake (ADI) for cryolite.

The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5–kg daily diet is calculated to be 0.054088 mg/kg/day; the current action is not considered significant since the tolerance will increase the TMRC by less than 0.002 percent. The Agency generally considers as significant an increase in the TMRC of greater than 1 percent.

The nature of the residues is adequately understood and an adequate analytical method, spectrophotometry, is available for enforcement purposes. Analytical enforcement methods are currently available in the *Pesticide Analytical Manual* (PAM) Volume II. There are presently no actions pending against the continued registration of this chemical.

Several amendments to 40 CFR 180.145 *Flourine compounds; tolerances for residues* have been made to standardize the commodity entries. The following commodity entries have been replaced with the corresponding entries: Beets (with and without tops) and beet greens alone are replaced with beets, roots and beets, tops; radishes (with or without tops) or radish tops are replaced with radish, roots and radish, tops; rutabaga (with and without tops) and rutabaga tops are replaced with rutabaga roots and rutabaga tops; turnip (with and without tops) or turnip greens are replaced with turnip, roots and turnip tops; and squash is replaced with winter squash. These are technical amendments that impose no new regulatory requirements.

Based on the above information considered by the Agency and the fact that kiwifruit is not considered to be a livestock feed commodity, the tolerance established by amending 40 CFR 180.145 would protect the public health. Therefore it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 8E3644/P466]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section at the address given above from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 30, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.145 is revised to read as follows:

§ 180.145 Fluorine compounds; tolerances for residues.

(a) Tolerances are established for combined residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the following agricultural commodities:

Commodities	Parts per million
Apples	7
Apricots	7
Beans	7
Beets, roots	7
Beets, tops	7
Blackberries	7
Blueberries (huckleberries)	7
Boysenberries	7
Broccoli	7
Brussels sprouts	7
Cabbage	7
Carrots	7
Cauliflower	7
Citrus fruits	7
Collards	7
Corn	7
Cranberries	7
Cucumbers	7
Dewberries	7
Eggplant	7
Grapes	7
Kale	7
Kohlrabi	7
Lettuce	7
Loganberries	7
Melons	7
Mustard greens	7
Nectarines	7
Okra	7
Peaches	7
Peanuts	7
Pears	7
Peas	7
Peppers	7
Plums (fresh prunes)	7
Pumpkins	7
Quinces	7
Radish, roots	7
Radish, tops	7
Raspberries	7
Rutabaga, roots	7
Rutabaga, tops	7
Squash (winter)	7
Squash (summer)	7
Strawberries	7
Tomatoes	7
Turnip, roots	7
Turnip, tops	7
Youngberries	7

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the insecticidal fluorine compounds, cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the following raw agricultural commodities:

Commodities	Parts per million
Kiwifruit	15

[FR Doc. 88–28455 Filed 12–13–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 8E3648/P473; FRL–3489–4]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide glyphosate and its metabolite in or on the raw agricultural commodity

asparagus. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 8E3648/P473], must be received on or before January 13, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716C, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 8E3648 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California, Florida, Michigan, and New York.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine), and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodity asparagus at 0.5 part per million (ppm). This would require raising the already established tolerance for residues on asparagus from 0.2 ppm to 0.5 ppm.

The data submitted in the petition an other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 10 milligrams (mg) per kilogram (kg) per day.

2. A chronic feeding/oncogenicity study in rats with a systemic NOEL of 31 mg/kg/day, which was negative for oncogenic potential under the conditions of the study at all feeding levels tested (0, 3, 10, and 31 mg/kg/day). Although the rat study meets the requirement for a chronic feeding study, it does not satisfy guideline requirements for an oncogenicity study. There is no evidence that the highest dose tested (31 mg/kg/day) was a toxic or maximum tolerated dose (MTD).

3. A 1-year dog feeding study with a systemic NOEL of 500 mg/kg/day (highest dose tested).

4. A rat teratology study, negative for teratogenic effects at 3,500 mg/kg/day (highest dose tested), with maternal and developmental toxicity NOELs of 1,000 mg/kg/day.

5. A rabbit teratology study, negative for teratogenic effects at 350 mg/kg/day (highest dose tested), with a maternal NOEL of 175 mg/kg/day and a developmental toxicity NOEL of 350 mg/kg/day.

6. Mutagenicity studies as follows: Chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S–9 activation); DNA repair in rat hepatocytes (negative); *in vivo* bone marrow cytogenic in rats (negative); rec-assay with *B. subtilis* (negative up to 2,000 micrograms of test material per disk); reverse mutation with *S. typhimurium* (negative); Ames test with *S. typhimurium* (negative); and a dominant-lethal test in mice (negative).

Additionally, a 2-year oncogenicity study in CD–1 mice has been completed and reviewed by the Agency. Feeding levels in this study were 1,000, 5,000 and 30,000 ppm (equivalent to 150, 750 and 4,500 mg/kg/day, respectively). The NOEL for non-neoplastic chronic effects was established at 5,000 ppm. In this study glyphosate produced an equivocal oncogenic response, possibly causing a slight increase in the incidence of renal tubular adenomas (a benign tumor of the kidney) in male mice at the highest dose tested (30,000 ppm). Because of the equivocal nature of the oncogenic response in mice and the lack of an acceptable oncogenicity study in rats, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" recommendation. After receiving all available evidence, the SAP concluded that the oncogenic potential of glyphosate could not be determined from the available information and recommended that the mouse and/or rat studies be repeated to clarify unresolved questions. Subsequently, the Agency classified glyphosate as a "Category D Oncogen" (inadequate evidence of oncogenicity) and requested repeat oncogenicity studies in both mice and rats. The rat oncogenicity study is due in 1990 and a repeat mouse study in male mice is due in 1992.

Current Agency policy is to issue registrations for significant new uses of glyphosate on a case-by-case basis. Tolerances which change the theoretical maximum residue contribution (TMRC) for glyphosate by more than 1 percent are considered toxicologically significant. The TMRC from existing tolerances for a 1.5-kg daily diet is calculated to be 0.004987 mg/kg/day. The tolerance for asparagus will result in an increase in the TMRC of 0.000004 mg/kg/day (less than 0.1 percent).

The acceptable daily intake (ADI), based on the rat reproduction study NOEL of 10 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.1 mg/kg of body weight (bw)/day. Published tolerances utilize 5.0 percent of the ADI; the current action represents an insignificant increase in the percent of the ADI utilized.

No secondary residues in meat, milk, poultry, or eggs are expected since asparagus is not considered a livestock feed commodity. The nature of the residues is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. An analytical enforcement method is currently available in the *Pesticide Analytical Manual* (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

Based on the data and information considered, the Agency concludes that the tolerance proposed would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 8E3648/P473]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 21, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.364(a), in the entry for asparagus by revising the residue level of 0.2 ppm to 0.5 ppm, as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Asparagus	0.5
* * * * *	

[FR Doc. 88–28458 Filed 12–13–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 8E3637/P472; FRL–3489–5]

Pesticide Tolerance for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide metolachlor and its metabolites in or on the raw agricultural commodity cabbage. This proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 8E3637/P472], must be received on or before January 13, 1989.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 8E3637 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Florida, Hawaii, Massachusetts, New York, North Carolina, Oklahoma, Oregon, Virginia, and Wisconsin.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for combined residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the raw agricultural commodity cabbage at 1.0 part per million (ppm).

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The data considered in support of the tolerance include:

1. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 milligrams (mg)/kilogram (kg)).

2. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg).

3. A rat teratology study with no maternal, teratogenic, or fetotoxic effects at all levels tested (0, 60, 180, and 360 mg/kg/day).

4. A rabbit teratology study with a NOEL for maternal effects at 120 mg/kg and no teratogenic or fetotoxic effects at all levels tested (0, 36, 120, 360 mg/kg/day).

5. A 2-year oncogenicity study in mice with no observed oncogenic potential under the conditions of the study at 30, 1,000, and 3,000 ppm (highest dose level equivalent to 428 mg/kg) and a systemic NOEL of 1,000 ppm; and a repeated mouse oncogenicity study with no

observed oncogenic potential under the conditions of the study at the same dose levels as the original study.

6. A two-generation rat reproduction study with a reproductive NOEL of 300 ppm (15 mg/kg) and a lowest effect level (LEL) of 1,000 ppm (50 mg/kg).

7. Mutagenicity studies including: a mouse dominant-lethal study, negative for mutagenic effects; a mouse lymphoma mutation assay, not a mutagen in both presence and absence of metabolic activator; an Ames assay, negative for mutagenic effects; and a Chinese hamster micronucleus assay with no evidence of mutagenicity at dosage levels tested (0, 1,250, 2,500, and 5,000 mg/kg).

8. A 2-year chronic feeding/oncogenicity study (IBT validated) in the rat conducted at dietary doses of 0, 30, 300, and 3,000 ppm with a statistically significant increase in primary liver neoplasms in females at the high dose (3,000 ppm).

9. A repeated 2-year chronic feeding/oncogenicity study in the rat conducted at the same dietary doses as the original study with a systemic NOEL of 300 ppm (15 mg/kg), a systemic LEL of 3,000 ppm (testicular atrophy), and a statistically significant increased incidence of neoplastic liver nodules and proliferative hepatic lesions in females in the high-dose group (3,000 ppm).

The Agency has concluded that the available data constitute limited evidence for carcinogenicity of metolachlor. Metolachlor has been tentatively classified as a Category C carcinogen (limited evidence of carcinogenicity in animals) based on the following considerations:

1. The oncogenic responses observed in rats were confined to the high-dose females at one site (liver).

2. The proliferative liver lesions observed in rats were primarily benign (neoplastic nodules in 6 of 60 animals) rather than heptocellular carcinomas (1 of 60 animals). There was no apparent difference in the time-to-occurrence of the lesions (almost all liver tumors were observed at terminal sacrifice).

3. Metolachlor was not oncogenic to mice under the conditions of the 2-year mouse oncogenicity studies.

4. An Ames mutagenicity assay and a dominant-lethal study were negative for mutagenic effects.

Tolerances have previously been established for residues of metolachlor ranging from 0.02 ppm in meat, milk, poultry, and eggs to 30.0 ppm in peanut forage and hay. Based on the rat chronic feeding study with a NOEL of 300 ppm (15 mg/kg/day) for nononcogenic effects and using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.15 mg/kg/day. The theoretical maximal residue contribution (TMRC) for existing tolerances is 0.001068 mg/kg/day. The proposed use will contribute an additional 0.000098 mg/kg/day (a 9.6-percent increase). Published tolerances utilize 0.71 percent of the ADI; the current action will utilize an additional 0.07 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography with an electrolytic detector specific for nitrogen, is available for enforcement purposes. Analytical enforcement methods are currently available in the *Pesticide Analytical Manual* (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that cabbage is not considered an animal feed commodity, the tolerance established by amending 40 CFR 180.368 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, (PP 8E3637/P472). All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 28, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.368(a) is amended by adding and alphabetically inserting the entry for the raw agricultural commodity cabbage, to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Cabbage	1.0
* * * * *	

[FR Doc. 88-28457 Filed 12-13-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3464/P471; FRL-3489-6]

Pesticide Tolerance for Prometryn

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide prometryn in or on the raw agricultural commodity dill. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or in the commodity was requested in a petition submitted by the Interregional Research Project No. 4. (IR-4).

DATES: Comments, identified by the document control number [PP 7E3464/P471), must be received on or before January 13, 1989.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 7E3464 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide prometryn (2,4-bis(isopropylamino)-6-methylthio-*s*-triazine) in or on the raw agricultural commodity dill at 0.25 part per million (ppm). The petition was later amended to propose a tolerance of 0.3 ppm.

The petitioner proposed that this use of prometryn on dill be limited to use in California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. An acute oral study in rats with an LD50 of 5,233 milligrams (mg)/killogram (kg). A second acute oral study in rats with LD 50's for male and female rats at 1,802 and 2,076 mg/kg, respectively.

2. A chronic feeding study in the dog with a no-observed-effect level (NOEL) of 3.75 mg/kg day.

3. A rabbit teratology study with maternal and developmental NOELs of 12 mg/kg/day.

4. A three-generation reproduction study in rats with no indications of toxicity or reproductive or teratogenic effects observed under the conditions of the study. A second reproduction study is needed, however, since the existing study in rats does not meet guideline requirements.

5. A chronic feeding study in rats using dietary doses of 2.5, 12.5, and 62.5 mg/kg/day which demonstrated no systemic or oncogenic effects under the conditions of the study. The rat feeding study does not meet guideline requirements, and a repeat chronic feeding/oncogenicity study in rats is needed.

Data currently lacking include a chronic feeding study in the rat, oncogenicity studies in two species, a reproduction study, a teratology study in a second species, a general metabolism study, and a battery of mutagenicity studies.

Although there are important data deficiencies for prometryn, the proposed use on dill will not result in a significant increase in dietary exposure to this pesticide. The provisional acceptable daily intake (PADI), based on the 2-year dog feeding study with an NOEL of 3.75 mg/kg/day and using a 1,000-fold safety factor, is calculated to be 0.004 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.000180 mg/kg/day; the current action will result in a negligible increase in the TMRC (<0.6 percent). Published tolerances utilize 4.5 percent of the PADI; the current action will utilize an additional 0.0006 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available in the *Pesticide Analytical Method* (PAM), Vol. II, for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that dill is not considered an animal feed commodity, the tolerance established by amending 40 CFR 180.222 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingedients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3464/P471]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 22, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.222 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.222 Prometryn; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the herbicide prometryn (2,4-bis(isopropylamino-6-methylthio-*s*-triazine) in or on the following raw agricultural commodity:

Commodity	Parts per million
Dill	0.3

[FR Doc. 88-28456 Filed 12-13-88; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 87-24]

Foreign-To-Foreign Agreements; Exemption

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Maritime Commission discontinues this rulemaking proceeding. The basis for this action is that the Commission is without jurisdiction to regulate agreements among ocean carriers governing foreign-to-foreign transportation. Such agreements no longer will be accepted for filing pursuant to section 5 of the Shipping Act of 1984.

DATE: This action is effective December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Proceeding

The Federal Maritime Commission ("Commission" or "FMC") instituted this proceeding by Notice of Proposed Rulemaking published in the **Federal Register**. 52 FR 46501 (1987). The Commission therein proposed to amend its regulations to explicitly permit voluntary filing of carrier agreements governing ocean transportation wholly between foreign countries, "where the parties to the agreement deem it to have a direct, substantial and reasonably foreseeable effect on the commerce of the United States." *Id.* at 46505. This change would enable such "foreign-to-foreign" agreements, though not subject to the mandatory filing requirements of the Shipping Act of 1984 ("1984 Act"), to qualify for immunity from the U.S. antitrust laws.

The proposed rule also would exempt from the notice, waiting period and information requirements of the 1984 Act foreign-to-foreign agreements that are part of broader agreements covering contiguous U.S.-foreign trades. Such foreign-to-foreign agreements thus would be effective immediately upon filing.

Comments in general support of the proposed rule were filed by the Gulf-European Freight Association, the North Europe-U.S. Gulf Freight Association, the North Europe-U.S. Atlantic Conference and the U.S. Atlantic-North Europe Conference; the Pacific Coast European Conference and the North Europe-U.S. Pacific Freight Conference; Crowley Maritime Corporation; the Virginia Port Authority; the Transpacific Westbound Rate Agreement; Bermuda Container Line, Ltd.; the Port Authority of New York and New Jersey ("PANYNJ"); CAST (1983) Ltd. ("CAST") and Canada Maritime Limited ("CML"); and the Asia North America Eastbound Rate Agreement, The 8900 Lines, the Greece/United States Atlantic and Gulf Conference, the Mediterranean North Pacific Coast Freight Conference and the South Europe/U.S.A. Freight Conference ("ANERA et al.").

Comments in opposition to the proposed rule were filed by the Antitrust Division of the U.S. Department of Justice ("DOJ").

Background

Section 4(a) of the 1984 Act states that the statute applies to agreements to engage in any one of a catalogue of specified activities. 46 U.S.C. app. 1703(a). Section 5(a) requires that every agreement covered by section 4 must be filed with the Commission, but an exception is provided for "agreements related to transportation to be performed * * * between foreign countries * * *." *Id.* § 1704(a). Despite this exception, a limited number of agreements concerning foreign-to-foreign ocean transportation has been filed voluntarily with the Commission. Typically, these agreements are augmentations to existing FMC agreements covering a contiguous U.S.-foreign trade.[1]

The comments filed in response to the proposed rule by the carriers and ports confirm that such agreements are filed with the Commission, notwithstanding the dispensation provided by section 5(a), as a consequence of section 7(a)(3) of the 1984 Act.[2] That provision grants immunity from the antitrust laws to foreign-to-foreign transportation agreements, but withholds immunity from such agreements that have a "direct, substantial, and reasonably foreseeable effect on the commerce of the United States * * *." 46 U.S.C. app. 1706(a)(3). This phrase is a long-established test for determining U.S. antitrust subject-matter jurisdiction over anticompetitive activities that take place in foreign locations; if the effect of such activities manifests itself in U.S. commerce, the antitrust laws may be brought to bear regardless of where the acts took place or the nationality of the actor.[3] By filing their foreign-to-foreign agreements with the Commission voluntarily, the carriers are attempting to bring their concerted activities within the different immunity provided by section 7(a)(1) of the 1984 Act, which states that the antitrust laws do not apply to "any agreement that has been filed under section 5 of this Act and is effective * * *." *Id.* § 1706(a)(1).[4]

This practice puts at issue whether foreign-to-foreign agreements potentially ineligible for antitrust immunity under the standards of section 7(a)(3) may nevertheless obtain immunity through section 7(a)(1) if they are filed with the Commission, even though the Commission may not require that they be filed. This proceeding was intended to provide needed guidance to the industry and the Commission's staff by

[1] For example, a group of carriers providing service, pursuant to an effective agreement, at fixed rates between the U.S. Pacific Coast and Japan expand their services to include transportation between Vancouver and Japan, and file an amendment with the Commission stating that they will agree upon rates for that foreign-to-foreign service as well.

[2] *E.g.*, Comments of ANERA et al. at 4–8; Comments of CAST and CML at 1–3.

[3] *See United States v. Aluminum Co. of America*, 148 F.2d 416 (2d Cir. 1945). The standard was codified by the Foreign Trade Antitrust Improvements Act, 15 U.S.C. 6a (1982). DOJ also has indicated that, in certain situations, it will weigh considerations of international comity in determining whether to assert antitrust jurisdiction. *See U.S. Department of Justice, Antitrust Guidelines for International Operations*, 53 FR 21583, 21595–96 (1988), *amended*, 53 FR 22426 (1988). Obtaining *in personam* jurisdiction over the persons involved is a separate matter.

[4] *E.g.*, Comments of PANYNJ at 2–5.

providing a formal resolution of this question.

The Supplementary Information to the proposed rule examined possible grounds for Shipping Act jurisdiction over foreign-to-foreign agreements. The Commission noted that one of Congress' fundamental purposes in enacting the 1984 Act was to place severe limits on the application of the antitrust laws to ocean liner shipping, and that it appeared to be inconsistent with that purpose to permit any gaps in the antitrust immunities available under the new statute. The Commission further observed that section 5(a) does not prohibit filing on a voluntary basis and that *in personam* Shipping Act jurisdiction can be established without difficulty over a carrier serving a foreign-to-foreign trade if that carrier also serves a U.S. port. The Commission acknowledged that it is without power to require the tariff filing of rates established pursuant to foreign-to-foreign agreements, but noted case law holding that an agency's jurisdiction to immunize anticompetitive activity from the antitrust laws is not necessarily limited to the scope of its power to regulate rates. Finally, it was observed that accepting foreign-to-foreign agreements appeared to further the harmonization of U.S. laws with the laws and practices of foreign trading partners.

Under the proposed rule, foreign-to-foreign agreements that are filed as amendments to existing FMC agreements covering contiguous U.S.-foreign trades would be accepted and further would be exempted, pursuant to section 16 of the 1984 Act, 46 U.S.C. app. 1715, from the public notice, 45-day waiting period and information requirements otherwise imposed by section 6, *id.* section 1705. The Commission suggested that there appeared to be no need to delay the effectiveness of such filings in order to examine the question of jurisdiction because, where foreign-to-foreign operations are so closely proximate to and so immediately associated with U.S.-foreign operations, the foreign-to-foreign operations could be presumed to have the required "direct, substantial and reasonably foreseeable" effects on U.S. commerce. 52 FR at 46504.

The proposed exemption would not be available to other foreign-to-foreign agreements that do not adjoin a U.S.-foreign trade. However, such agreements still would be accepted for filing and they would be processed under the usual procedures. The Commission explained that the effect on U.S. commerce of such agreements is not likely to be readily apparent and that they "should therefore be reviewed on a case-by-case basis." 52 FR at 46504.[5]

Comments

A. Industry

In addition to supporting the theories suggested by the Commission with regard to its jurisdiction over foreign-to-foreign agreements, some of the comments filed by the carriers, carrier associations and ports urged amendments to the proposed regulations. CAST and CML took exception to a brief statement in the Notice indicating that the Commission might decline to accept jurisdiction over a particular non-contiguous agreement; they argued that the agency's powers are limited to rejecting under section 6(b), 46 U.S.C. app. 1705(b), an agreement that does not meet the content requirements of section 5, *id.* section 1704, or seeking to enjoin an agreement that threatens to harm competition in the manner specified by section 6(g), *id.* section 1705(g).

With regard to the Commission's proposal that foreign-to-foreign agreements may be filed "where the parties deem such an agreement to have" the requisite effects on commerce, CAST and CML expressed concern that compliance with this standard might estop the parties from thereafter asserting, as part of a defense against an antitrust suit, that their agreement in fact did *not* have such effects; they suggested that the language of the proposed regulation be amended to read "that where the parties believe that such an agreement may arguably have * * *." Comments of CAST and CML at 16.[6]

PANYNJ and CAST/CML opposed the proposed exemption for contiguous trade foreign-to-foreign agreements. They argued that the Commission should not permit agreements with putatively substantial effects on U.S. commerce to gain antitrust immunity without prior review of their impact on competition or compliance with the normative provisions of the 1984 Act. PANYNJ asserted that it competes with Montreal for cargo and that ocean carriers calling at both ports "could agree with Canadian carriers and others in the Canadian/European trade to maintain a fixed rate differential between New York/New Jersey and Montreal," to the former's detriment. Comments of PANYNJ at 9. Such an agreement, it was argued, should not be eligible for immediate effectiveness. PANYNJ concluded that the Commission had not made the showing required by section 16 of the 1984 Act that the proposed exemption will not be unjustly discriminatory, result in a substantial reduction in competition or be detrimental to commerce.

B. Department of Justice

DOJ opposed the proposed rule on the ground that it would be an unlawful extension of the Commission's jurisdiction and submitted detailed arguments in support of its position. Specific references to these arguments are provided in the discussion below. In particular, DOJ contended that carriers that are parties to a foreign-to-foreign agreement are not "ocean common carriers" within the Commission's jurisdiction for purposes of that agreement, even if they *are* within the Commission's jurisdiction for purposes of other operations that do take place within U.S. foreign commerce. DOJ also asserted that, had Congress wished carriers to be able to file agreements in foreign-to-foreign trades on a voluntary basis under the 1984 Act, it would have been as unequivocal on that subject as it was about the tariff and agreement filing provisions that are set forth in the statute. In that regard, DOJ cited longstanding case law holding that displacement of the antitrust laws, no matter how desirable as a matter of economic policy, must be done by express Congressional mandate and not by implication or inference.

Discussion

The issue of law raised by this rulemaking proceeding may be analyzed from three perspectives:

1. Can the section 7(a)(1) antitrust immunity available through section 5(a)'s mandatory filing requirement also be obtained through voluntary filing of an otherwise excepted agreement?

2. Did section 7(a)(3)'s preservation of antitrust jurisdiction over certain foreign-to-foreign agreements also create Shipping Act jurisdiction to immunize such agreements?

3. Is the fact that a carrier serves U.S ports and is thereby subject to FMC jurisdiction sufficient to permit the Commission to accept for filing that carrier's foreign-to-foreign agreements?

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[5] The proposed exemption also would not apply to a new agreement that included both foreign-to-foreign and U.S.-foreign transportation within its scope. Such an agreement would be processed according to the usual procedures because it would not be practical to segregate the strictly foreign-to-foreign aspects of the agreement for treatment under the exemption, while the rest of the agreement received normal processing, including the statutory 45-day waiting period.

[6] The same argument was made by Bermuda Container Line.

Based on the comments filed, particularly those of DOJ, and an extensive re-examination of the relevant legislative history of the 1984 Act and other materials, the Commission finds, for the reasons set forth below, that each of these interrelated questions must be answered in the negative and accordingly withdraws the proposed rule.

A. Early Developments: Creation of a Foreign-to-Foreign Exception and Elimination of a Voluntary Filing Option

The legislative reports that accompanied the 1984 Act specifically acknowledged the foundation laid by previous Congresses, particularly in the forging of a broad consensus on the need for clarified antitrust immunity and revised agreement filing procedures. *E.g.*, S. Rep. No. 3, 98th Cong., 1st Sess. 13–14 (1983). Thus, the early efforts to reform the Shipping Act, 1916 ("1916 Act"), are relevant to whether adoption of this proposed rule would be consistent with Congressional intent, particularly since, as set forth below, the status of foreign-to-foreign agreements was specifically considered during this period.

In July, 1979, Senator Inouye, the Chairman of the Merchant Marine Subcommittee of the Senate Commerce Committee, introduced a package of three bills that together constitute the progenitor of the 1984 Act. One of his proposals, the "Shipping Reform Act of 1979" (S. 1463), excluded foreign-to-foreign agreements from the jurisdiction of the Shipping Act, but provided a voluntary filing option for U.S. carriers:

> Agreements * * * in regard to transportation or transportation services between foreign countries or places that do not involve import or export of the transported goods into or out of the United States, shall not be subject to this Act; except that any common carrier by water in foreign commerce that is a citizen or resident of the United States may elect to submit any such agreement to which it is a party, or any modification or cancellation thereof, to the Commission for approval and when approved by the Commission such agreement, modification or cancellation whether or not subject to the antitrust laws of the United States shall be afforded all the exceptions from the antitrust laws of the United States that are afforded to waterborne foreign commerce under section 15 of this Act.

Ocean Shipping Act of 1979, Hearings before the Subcommittee on Merchant Marine and Tourism of the Senate Committee on Commerce, Science, and Transportation, 96th Cong., 1st Sess. 35–36 (1979) ("1979 Hearings"). Both aspects of this provision are significant because section 15 of the 1916 Act, 46 U.S.C. 814 (1982), did not explicitly exclude foreign-to-foreign agreements from its coverage, nor did it provide any guidance as to whether parties to such agreements could submit their arrangement voluntarily to the Commission to avoid potential antitrust liability.

On September 18, 1979, the Deputy Assistant Attorney General in charge of DOJ's Antitrust Division testified in support of the foreign-to-foreign exclusion but opposed the "voluntary submission" option:

> A second proposal that deserves attention is that part of S. 1463 that would revise Section 15 to exclude from its scope agreements to be performed entirely in a foreign country or involving transportation between foreign countries if such transportation does not relate to United States imports or exports. United States citizens and residents, however, would be given the option of filing such agreements for the purpose of securing antitrust immunity. Insofar as these provisions would redefine the scope of the FMC's jurisdiction and clarify any existing uncertainties, we believe them well justified. However, we see no reason to enact that part of this provision that would give carriers the option of filing agreements that are otherwise beyond the scope of the FMC's geographical jurisdiction solely for the purpose of obtaining antitrust immunity. Although antitrust immunity would be unnecessary for most such arrangements because they would also be beyond the jurisdictional reach of the antitrust laws, in a few situations the antitrust laws would apply in cases where the Shipping Act would not. For example, it has been held that although the FMC might lack jurisdiction over such conduct, the antitrust laws would prohibit United States-flag carriers from fixing rates for carrying United States government-financed cargo between foreign ports. See *Pacific Seafarers, Inc.* v. *Pacific Far East Lines, Inc.*, 404 F.2d 804 (D.C. Cir 1968). We see no cause to immunize this type of conduct from the antitrust laws.

1979 Hearings at 89 (statement of Donald L. Flexner).

In February, 1980, the Senate Commerce Committee staff released for further comments a draft revision of the 1916 Act, combining Senator Inouye's original package of bills. Foreign-to-foreign agreements were excepted from mandatory filing, the "voluntary submission" procedure remained, and the antitrust immunities provision specifically applied to both mandatory and voluntary filings. 1979 Hearings at 489–90, 498. However, on March 14, 1980, the Consultative Shipping Group ("CSG") of major European shipping nations and Japan submitted comments strongly supporting the exclusion of foreign-to-foreign agreements, but arguing that voluntary filing would undercut the exclusion:

> [The bill] in effect establishes the principle that the FMC has no jurisdiction over non-U.S. agreements. CSG Governments very much support this and consider that the Section would do a lot to remove sources of conflict between the United States and its CSG trading partners. The option for a U.S. party to file such an agreement destroys the whole rationale * * *.

Id. at 580.[7] On March 21, the Council of Europen and Japanese National Shipowners's Associations ("CENSA") submitted proposed amendments to the draft bill. CENSA's approach was similar to CSG's in the voluntary filing was deleted in favor of more extensive and specific antitrust exemptions. *Id.* at 640–41, 652.

On April 18, 1980, the Senate Commerce Committee reported out S. 2585, the final version of the February staff draft. S. Rep. No. 656, 96th Cong., 2d Sess. (1980). The exception of foreign-to-foreign agreements from mandatory filing was preserved. *Id.* at 22. However, "voluntary submission" was eliminated and was never revived during the subsequent work by the 97th and 98th Congresses that eventually produced the 1984 Act. The antitrust immunity provision of S. 2585 no longer extended to voluntary filings. *Id.* at 27.

Although the 1980 Senate Report did not address the removal of voluntary filing, it is logical to attribute that result to the opposition voiced, not only by DOJ, but also by interests that might have been expected to support voluntary filing in some form, *i.e.*, the CSG Governments and CENSA. Those groups instead wished the legislation to establish that foreign-to-foreign agreements were subject to neither the antitrust laws *nor* the Shipping Act. CSG in particular opposed voluntary filing because it feared an erosion of the new jurisdictional barrier between the Shipping Act and foreign-to-foreign agreements. Adoption now by the Commission of this proposed rule—which, in effect, would allow a carrier to expand unilaterally the ordinary scope of the FMC's jurisdiction—would contravene Congress's apparent decision to accommodate the concerns of DOJ, CSG and CENSA.[8]

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[7] The U.S. Department of State previously had expressed similar concerns. 1979 Hearings at 218.

[8] In *Notice of Inquiry Concerning Interpretation of Section 8(a) and Section 8(c) of the Shipping Act of 1984*, ——F.M.C.——, 24 S.R.R. 131 (1987), the Commission concluded that it was unable to resolve administratively whether it is lawful for an ocean common carrier to file voluntarily tariffs for commodities that are exempted from mandatory filing under the 1984 Act. Unlike voluntary agreement filing, there was a consistent FMC policy, dating to 1961, of permitting voluntary tariff filing, and carrier interests had pointed out areas in

Continued

B. Section 7(a)(3) and Shipping Act Jurisdiction

In January, 1981, at the start of the 97th Congress, Senator Inouye continued his reform effort by introducing S. 125, which was basically identical to the bill passed by the Senate in April, 1980. In August, 1981, Senators Gorton, Stennis, Kasten and Inouye introduced S. 1593 as a possible alternative to S. 125. Both bills continued to provide unqualified antitrust immunity for foreign-to-foreign agreements.

In September, 1981, Sea-Land testified before the Senate and urged that the antitrust immunities provision be expanded so as to apply clearly to a variety of foreign-to-foreign transactions:

> [The bill] states that the antitrust laws shall not apply to any agreement or activity that applies solely to transportation services between foreign countries. We strongly support the provision, but urge that the record make clear its specific applicability to the following:
>
> 1. Instances involving the relay or transshipment of foreign-to-foreign cargoes at U.S. ports.
>
> 2. Instances involving the movement of foreign-to-foreign cargoes across the U.S. in a landbridge operation.
>
> 3. Instances of moving cargoes between a contiguous nation and another foreign nation via the United States.
>
> 4. Instances involving the movement of all cargoes between foreign countries, including U.S. Government impelled cargoes.

Hearings on S. 1593 and S. 125 before the Subcommittee on Merchant Marine of the Senate Commerce on Commerce, Science and Transportation, 97th Cong., 1st Sess. 185 (1981) (statement of Peter J. Finnerty). In response to a question from Senator Gorton, Sea-Land indicated that, like CSG and CENSA, it believed that foreign-to-foreign activities should be outside the reach of the Shipping Act as well as the antitrust laws:

> *Question.* When you urge that antitrust immunity be clearly extended to the various examples of foreign-to-foreign commerce that pass through the U.S., do you suggest that these be or not be subject to filing of agreements and approval by the Commission?
>
> Answer. We do not believe these agreements should be filed with the Commission. Foreign-to-foreign commerce should neither be subject to the Shipping Act nor to the antitrust laws.
>
> *Id.* at 189.

Sea-Land's fourth category of activities that it wanted clearly immunized from the antitrust laws, *i.e.*, "the movement of all cargoes between foreign countries, including U.S. Government impelled cargoes," appears to have been calculated to reverse *Pacific Seafarers, Inc. v. Pacific Far East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1093 (1969). In *Pacific Seafarers, Inc. v. Atlantic & Gulf American-Flag Berth Operators*, 8 F.M.C. 461 (1965), the Commission had found no 1916 Act jurisdiction over an alleged conspiracy among American-flag shipping lines to destroy the complainant's business of carrying cargo financed by the U.S. Agency for International Development between Taiwan and South Vietnam. The Commission emphasized that the trade in question did not "involve as one terminus any port in a State, district, territory or possession of the United States." *Id.* at 465. Three years later, however, in separate antitrust litigation, the U.S. Court of Appeals for the District of Columbia Circuit found jurisdiction on the same facts under the Sherman Act, holding that, at least for antitrust purposes, "the sale of American-flag shipping services to foreigners is itself a form of United States foreign trade * * *." 404 F.2d at 813.[9]

In its opposition to the proposed rule in this proceeding, DOJ emphasized the Commission's 1965 *Pacific Seafarers* holding and attributed to Congress an intent to confirm that decision in enacting the 1984 Act. DOJ Comments at 4–5, 11. Although no explicit confirmation of that thesis appears in the legislative history, the 1968 antitrust decision of the Court of Appeals was brought to Congress' attention early and often, both by interests wishing explicitly to preserve the decision as a salutary example of the antitrust laws' application to foreign-to-foreign conduct outside the reach of the Shipping Act, *e.g.*, DOJ testimony in 1979 Hearings at 89 (quoted above), and, as Sea-Land's more indirect 1981 testimony shows, by interests wishing to remove such activities from the antitrust laws while keeping them also outside the Shipping Act.

On May 25, 1982, the Senate Commerce Committee reported out S. 1593. Section 5 of the bill described the agreements required to be filed and continued to except "agreements related to transportation to be performed within or between foreign countries." The antitrust immunity provision (section 8) was expanded slightly in its application to foreign-to-foreign agreements. Although there was no direct reference to *Pacific Seafarers* or the other types of foreign-to-foreign services described by Sea-Land, the prrovision now broadly included "any agreement or activity that relates solely to ocean or through transportation services within or between foreign countries whether or not via the United States." The Senate Committee's analysis of section 8 stated:

> By operation of section 8, this proposed Shipping Act is made the sole governing law *over the regulated ocean transportation activities* of common carriers, conferences, marine terminal operators, and shippers' councils *operating in the U.S. foreign commerce*. The intent is to resolve the conflicts between the Shipping Act and the antitrust laws in the maritime sector in favor of Shipping Act jurisdiction. Only the standards, remedies and penalties of this legislation will apply. *Carriers operating in the U.S. foreign commerce* will no longer face a dual risk of being regulated under both the Shipping Act and the antitrust laws for their conference activities.
>
> * * * * *
>
> In addition, transportation service within or between foreign countries, terminal services in foreign countries, as well as the activities of foreign shippers' councils are exempted from the antitrust laws. This is done in furtherance of the policy objective of the bill to harmonize U.S. shipping regulation more closely with that of our trading partners.

S. Rep. No. 414, 97th Cong., 2d Sess. 34 (1982) (emphases added.)

The Commission interprets this discussion as evidence of an understanding on the part of the Senate Committee that: (1) The primary antitrust immunity available under the Shipping Act, *i.e.*, that applicable to agreements required to be filed with the Commission under section 5, would govern carriers operating in the foreign commerce of the United States and thus subject to Commission regulation; (2) that a conceptually separate antitrust immunity also was desirable for certain foreign activities, including foreign-to-foreign carriage covered by section 5's exception from mandatory filing; and (3) this latter immunity was not a *quid* exchanged by carriers and other maritime entities for a regulation *quo*; on the contrary, it was an apparent continuation of Congress' efforts two years previous to address the concerns of DOJ, CSG and CENSA by removing the designated foreign activities from both the antitrust laws and the Shipping Act.

It should be noted at this juncture that some of the commentators in the instant rulemaking view their activities under foreign-to-foreign agreements as not subject to Commission regulation. In

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which business operations and shipper-carrier relationships would be disrupted by a change in this policy. Id. at 135.

[9] As the Commission pointed out in the Supplementary Information to the proposed rule, the Court of Appeals also expressed some uncertainty whether the Commission's 1916 Act decision had been correct. 404 F.2d at 810 n.16, 818–19.

supporting the proposed exemption for contiguous trade foreign agreements, ANERA *et al.* stated:

> Regulation of these agreements should be minimal because * * * these agreements will not be subject to the tariff-filing and most other requirements of the Act. Thus, the exemption should not affect the Commission's regulation of foreign-to-foreign agreements.

Comments of ANERA *et al.* at 8. DOJ argues in its opposition to the proposed rule that Congress meant to authorize the Commission to administer antitrust immunity only where the antitrust laws are replaced by regulatory oversight. DOJ Comments at 3–4, 15.

On June 16, 1982, the House Merchant Marine Committee reported out its version of the new Shipping Act. The bill contained provisions excluding foreign-to-foreign agreements from mandatory filing and granting them antitrust immunity, which were identical in all important respects to the Senate provision reported out three weeks earlier. The House Committee addressed certain foreign-to-foreign operations that do touch the United States and are not confined to foreign countries; it was the Committee's view that such operations nonetheless were not subject to regulation by the Commission:

> [The provision] would cover both landbridge and all-water services between foreign countries that transit or touch the United States. They ought not lose their antitrust exemption due to that contact. They are not subject to the 1916 Act today, and the risk of antitrust issues arising is currently present. U.S.-flag carriers ought not be inhibited from participating in such trades.

H.R. Rep. No. 611 (Part I), 97th Cong., 2d Sess. 37 (1982).

The 97th Congress ended before the revised Shipping Act could be enacted. However, the reform process was renewed immediately at the beginning of the 98th Congress, and the ensuing committee reports showed no change in the assumptions and understandings discussed above. On February 17, 1983, the Senate Commerce Committee reported out S. 504, the "Shipping Act of 1983." With respect to section 4 of the bill, entitled "Agreements Within Scope of Act," the Senate Report said:

> This is a jurisdictional section * * *. It describes those types of agreements that are to be subject to Commission jurisdiction. These activities and agreements are exempted from the antitrust laws by section 8.

S. Rep. No. 3, 98th Cong., 1st Sess. 21 (1983). With respect to section 8, "Exemption from Antitrust Laws," the Committee echoed its 1982 report:

> Section 8 extends antitrust immunity to agreements of ocean common carriers * * *, and to other activities regulated under provisions of the bill.
>
> * * * * *
>
> The intent of these provisions is to confer antitrust immunity on agreements and conduct properly submitted to the regulatory process of the act.

Id. at 29. There was no comment this time on section 8's separate immunity for foreign-to-foreign agreements, which continued to be excepted from mandatory filing.

On March 1, 1983, the Senate passed the new Shipping Act. On April 12, the House Merchant Marine Committee reported out H.R. 1878, and repeated almost verbatim from the 1982 report its statement that landbridge and all-water services between foreign countries "that transit or touch the United States" were not subject to the Shipping Act but nevertheless might fall within the reach of the antitrust laws, unless an immunity was provided. H.R. Rep. No. 53 (Part I), 98th Cong., 1st Sess. 33 (1983).

At this point, the relevant agreement filing and antitrust immunity provisions of the Senate and House bills, including the provisions excepting foreign-to-foreign agreements from mandatory filing while granting them unqualified immunity, were essentially unchanged from 1982. However, on July 1, 1983, the House Judiciary Committee reported out H.R. 1878 with some amendments reflecting its pro-antitrust point of view. The Committee in effect adopted the position first espoused by DOJ in 1979 that the *Pacific Seafarers* antitrust decision by the Court of Appeals should be preserved. Thus, the qualifying phrase was added to what became section 7(a)(3) of the 1984 Act, withholding immunity from foreign-to-foreign agreements that had certain effects on United States commerce. The Committee's intent was:

> * * * to ensure that although the antitrust laws generally will not apply to transportation services within or between foreign countries, they will apply if such activity has a "direct, substantial and reasonably foreseeable effect on the commerce of the United States." This language * * * assures that the antitrust laws will still apply in a factual setting comparable to that in *Pacific Seafarers, Inc. v. Pacific Far East Line* * * *. The Committee notes that because agreements involving transportation between two foreign countries need not be filed under this Act (section 4(a)), the only remedy available to a plaintiff injured in the context of *Pacific Seafarers* would likely be under the antitrust laws.

H.R. Rep. No. 53 (Part 2), 98th Cong, 1st Sess. 32–33 (1983).

On October 6, 1983, the House Merchant Marine and Judiciary Committee announced a compromise version of the legislation, which brought about the last relevant changes to the 1984 Act before it became law. Abandoning its previous efforts in support of unqualified antitrust immunity for foreign-to-foreign shipping operations of all types, the Merchant Marine Committee acquiesced to the revival of Pacific Seafarers antitrust jurisdiction:

> Consistent with the concerns set forth in the report of the Judiciary Committee, [section 7(a)(3)] leaves the antitrust laws in place for factual settings comparable to that in *Pacific Seafarers* * * *.

129 Cong. Rec. H8124, 8125 (daily ed. Oct. 6, 1983). In addition, the joint statement appears to indicate an understanding between the two Committees that only agreements *required* to be filed with the Commission are eligible for the separate immunity provided by section 7 (a) (1):

> The compromise * * * excludes from antitrust immunity agreements among common carriers to establish, operate, or maintain a marine terminal in the United States. Because no antitrust immunity would be conferred on such agreements, the compromise amendment also eliminates the requirement * * * that they be filed.

Id. While the Committees there were discussing a type of terminal agreement not involved in this proceeding, such agreements now are coupled with foreign-to-foreign agreements in section 5(a)'s exception to agreements that are required to be filed.

In sum, the legislative history provides no support for the proposition that, by preserving antitrust jurisdiction over foreign-to-foreign agreements with "direct, substantial and reasonably foreseeable" effects on U.S. commerce, Congress meant to expand simultaneously the reach of the Shipping Act to make available to parties to such agreements a way of immunizing themselves. On the contrary, both the House and the Senate were consistently aware that there were certain maritime activities that never had been regulated under the Shipping Act, but that nevertheless could be reached under the antitrust laws. The only question raised before Congress concerned the application of the antitrust laws to such activities, and there is no evidence of a suggestion from any quarter that the issue be resolved by trading antitrust jurisdiction for increased Shipping Act jurisdiction.

It also should be noted that incorporation of an "effects" jurisdiction test into the 1984 Act would have represented a fundamental change in established law. In administering section 15 of the 1916 Act, the

Commission several times rejected the argument that the applicability of the statute's filing requirements to agreements in U.S. foreign commerce should, like the antitrust laws, vary according to the commercial or competitive impact of such agreements. *Agreement No. 9955–1—A/S Billabong, et al.*, 18 F.M.C. 426, 460–62 (1975); *Investigation of Practices, Operations, Actions and Agreements—West Coast of Italy, Sicilian and Adriatic Ports/ North Atlantic Range Trade*, 10 F.M.C. 95, 112 (1966) ("[T]he Shipping Act itself specifically has extraterritorial application; it does not require demonstrable impact on our commerce."); *Unapproved Section 15 Agreements—Spanish/Portugese Trade*, 8 F.M.C. 596, 600–601 (1965) ("[I]n requiring the filing and approval of such agreements as a condition procedent to their lawfulness, Congress itself has determined that the agreements by their very nature have an 'effect' on our foreign commerce.") The jurisdictional reach of section 15, therefore, depended only on whether a particular agreement by its terms fell within one of the statute's categories. *Volkswagenwerk v. FMC*, 390 U.S. 261, 273–77 (1968). The precise nature and degree of an agreement's commercial impact was, in broad terms, relevant instead to the separate issue of approvability. *FMC v. Svenska Amerika Linien*, 390 U.S. 238 (1968); *Unapproved Section 15 Agreements—Spanish/Portugese Trade*, 8 F.M.C. at 601.

Despite its abolishment of pre-implementation approval, the 1984 Act preserves this distinction. Section 4, 46 U.S.C. app. 1703, continues to define the agreements subject to its jurisdiction by party and subject matter—in short, by an agreement's terminology. An agreement's actual commercial impact is now relevant, under section 6(g), to whether the Commission should seek an injunction against its implementation. If Congress had meant to create a deviation from this longstanding dichotomy, so as to allow FMC jurisdiction over foreign-to-foreign agreements to be determined by commercial effect, it could be expected to have spoken explicitly and precisely. Since it did not, it would be improper for the Commission to impute such an intent.

C. "Common Carrier" and Subject Matter Jurisdiction

As already indicated, any effort to offset the *Pacific Seafarers* amendment to section 7(a)(3) necessarily implicates the jurisdictional boundaries set out in section 4. According to section 4, the 1984 Act applies to particular concerted activities when those activities are engaged in by two or more "ocean common carriers." Section 3(6), 46 U.S.C. app. 1702(6), states in relevant part:

> "Common carrier" means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—
> * * * * * *
> Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country * * *.

DOJ contends that carrier parties to foreign-to-foreign agreements are not "common carriers" insofar as those operations are concerned, and that the Commission may not exercise jurisdiction over such agreements even though it may be able to establish *in personam* jurisdiction over the agreements' parties. It argues that the proposed rule, if adopted, would contravene *Austasia Intermodal Lines, Ltd. v. FMC*, 580 F.2d 642 (D.C. Cir. 1978) ("*ACE*"). Austasia Intermodal Lines, Ltd., d/b/a Austasia Container Express ("ACE"), offered through transportation from Detroit to Australia. The service consisted of truck transport from Detroit to Windsor, Ontario, rail transport across Canada to Vancouver, B.C., and ocean transport from Vancouver to Australia. After an investigation, the Commission ordered ACE to cease its service until it complied with the 1916 Act's tariff filing requirements. The Court of Appeals reversed, holding that ACE was not a common carrier within the 1916 Act.[10] The court stated:

> According to the statute, a common carrier by water in foreign commerce is one that transports people or cargo by water between the United States and a foreign country; thus, by clear implication, a United States port is required somewhere along the route.

46 U.S.C. 801 (1982). As DOJ points out, the 1984 Act added the requirement that the covered transportation must utilize "a vessel operating * * * between a port in the United States and a port in a foreign country."

> As stated earlier, * * * the definition clearly requires that a carrier make use of a United States port at some point on its own route or a through route in which it participates. Therefore, because ACE ship[s] by land rather than by water out of the United States and then transport[s] cargo solely between foreign ports, we do not believe that [it falls] within the statutory definition on which the Commission's power to require tariff filing is based.

Id. at 646.

In the fall of 1981, the Senate Commerce Committee had before it S. 125 and S. 1593, the two "alternative" reform bills. S. 125 sought to undo *ACE* by defining "common carrier by water in foreign commerce" to include any carrier engaged in export or import commerce "whether or not its service operates through or originates or terminates at ports of the United States or its territories or possessions." (Section 102(5)). S. 1593 retained the traditional definition from the 1916 Act.

Subsequently, it was agreed that the *ACE* issue should be taken up separately from the general revision of the Shipping Act. When the Commerce Committee reported out S. 1593 on May 25, 1982, it not only left *ACE* undisturbed, but drew the following additional distinctions:

> [The definition of "common carrier"] applies only to the extent the passengers or cargo transported are loaded or discharged at a U.S. port. Thus, a liner carrier that accepts U.S.-origin intermodal cargo (or, for that matter, Canadian-origin cargo) at Halifax and calls at Boston for further loading en route to Rotterdam would be a "common carrier" for purposes of the bill only with respect to the Boston-Rotterdam leg of its voyage.

S. Rep. No. 414, 97th Cong., 2d Sess. 26 (1982).

On the same day, hearings were held in the Senate on S. 2414, which would have defined "common carrier by water in foreign commerce" to include:

> * * * a common carrier engaged in the ocean transportation of property originating in or destined to a United States point by way of a port in a nation contiguous to the United States * * *.

Canadian Cargo Diversion, Hearing before the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science and Transportation on S. 2414, 97th Cong., 2d Sess. 3–4 (1982). The Commission, which was essentially neutral on the legislation, described its jurisdictional impact as follows:

> [T]he legislation does not, nor could it, extend the scope of the Shipping Act to carriers providing transportation which takes place wholly outside the United States. For example, a carrier providing transportation from a port or point in Canada or Mexico to Europe or Asia cannot be subject to U.S. regulations, even if the cargo originated in the United States. A carrier, in order to be subject to regulation, must undertake to transport the cargo within the United States.

Id. at 18 (statement of C. Jonathan Benner, General Counsel).

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[10] Section 1 of the 1916 Act defined a "common carrier by water in foreign commerce" as a common carrier * * * engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade * * *.

The *ACE* bill died in committee, with no report issued. Consequently, on February 17, 1983, when the revised Shipping Act was reported out again in the new Congress, with "common carrier" defined as it is now by the 1984 Act, the Senate Commerce Committee repeated its comments from 1982:

> This definition applies only to the extent the passengers or cargo transported are loaded or discharged at a U.S. port. Thus, a liner carrier that accepts U.S.-origin intermodal cargo (or, for that matter, Canadian-origin cargo) at Halifax and calls at Boston for further loading en route to Rotterdam would be a "common carrier" for purposes of the bill only with respect to the Boston-Rotterdam leg of its voyage.

S. Rep. No. 3, 98th Cong., 1st Sess. 19 (1983).

The importance of *ACE* to this proceeding lies in the fact that, unlike the antitrust laws, the Shipping Act is industry-specific: it regulates only particular activities engaged in by particular entities. *ACE* established that the breadth of the Commission's power to require tariff filing is ultimately coextensive with the statutory definition of "common carrier": only persons meeting that definition must comply with the Shipping Act's tariff provisions. 580 F.2d at 646. Similarly, the definition of "common carrier" in section 3(6) and the employment of that term in section 4 circumscribes the agreements over which the Commission may exercise subject matter jurisdiction. *Compare Atchison, Topeka and Santa Fe Railway Co. v. United States,* 597 F.2d 593 (7th Cir. 1979). The bill to undo *ACE* would have broadened the operative definition only to the extent necessary to reach carriers actually accepting or releasing cargo within the United States, and there seems to have been a general assumption in 1982 that the Shipping Act could not be amended to encompass "contiguous" operations confined to Canada or Mexico (or, *a fortiori,* operations between more distant foreign nations). In light of that legislative history and the definitional distinctions repeatedly drawn by the Senate between U.S.-foreign and foreign-to-foreign legs *of the same voyage,* we conclude that section 4's subject matter jurisdiction applies only when the activities listed therein are engaged in by two or more persons "holding [themselves] out to the general public to provide transportation by water of passengers or cargo," 46 U.S.C. app. 1702(6), and, further, only to the extent that the transportation covered by the particular agreement is "between the United States and a foreign country * * *." *Id.*

Thus, persons who enter into agreements governing, in whole or in part, transportation between foreign ports are not "common carriers" to the extent of such concerted activities,[11] and the activities themselves are not "agreements" within the meaning of section 4.[12] Given the Commission's earlier conclusions against the concepts of voluntary filing and Shipping Act jurisdiction implied from section 7(a)(3), we conclude finally that to the extent concerted activities in ocean trades between foreign nations have "direct, substantial and reasonably foreseeable" effects on U.S. commerce, they are within the jurisdiction of the antitrust laws pursuant to section 7(a)(3) and are not eligible for the antitrust immunity offered by sections 4, 5(a) and 7(a)(1).[13] The issue whether such activities should be made eligible for Shipping Act immunity, for the policy reasons described in the Supplementary Information to the proposed rule, must be resolved by Congress in the first instance. The Commission intends to include this issue in the report it is preparing pursuant to section 18 of the Act, 46 U.S.C. app. 1717, for submission to Congress in 1989.

Conclusion

The Commission concludes that it is without jurisdiction to regulate agreements among ocean carriers regarding foreign-to-foreign transportation. Such agreements no longer will be accepted for filing under section 5 of the 1984 Act.

Therefore, it is ordered, that the proposed rule is withdrawn and this proceeding is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-28754 Filed 12-13-88; 8:45 am]

BILLING CODE 6730-01-M

[11] The two Canadian commentators on the Commission's proposed rule, CAST and CML, regard themselves as presently removed from the Shipping Act:

> "Neither CAST nor CML presently provide transportation by water between a port in the United States and a port in a foreign country. In the future, however, either or both of these carriers could operate feeder services between one or more U.S. Great Lakes ports and, for example, Montreal for through shipment to and from Europe or provide line haul vessel calls at U.S. ports in connection with other trades in the foreign commerce of the United States. Thus either CAST or CML, or both, could become an 'ocean common carrier' under the Act." Comments of CAST and CML at 4.

[12] Under this analysis, section 5(a)'s exception for foreign-to-foreign agreements is, in theory, not strictly necessary.

[13] The precedents that lend support to FMC jurisdiction over some types of foreign-to-foreign transportation, *e.g., Trans-Pacific Freight Conference of Japan v. FMC,* 314 F.2d 928 (1963), precede both *ACE* and the repeated expressions of Congressional will in the legislative history of the 1984 Act that the new statute should be limited precisely to transportation between the United States and a foreign country. The Commission now is bound to treat an agreement that encompasses both U.S.-foreign and foreign-to-foreign carriage as separate agreements, with only the former subject to the Shipping Act. *Compare Trans-Pacific Freight Conference of Japan v. FMC,* 314 F.2d at 933–34 n.6; *Oranje Line v. Anchor Line Ltd.,* 5 F.M.B. 714, 727–29 (1959).

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte No. MC-19 (Sub-No. 39)]

Motor Carriers; Refund of Tariff Charges on Shipments With Less Than Total Loss or Destruction

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission proposes to revise its regulation at 49 CFR Part 1056 governing the practices of motor carriers of household goods to require the refunding of a pro rata portion of the freight charges to shippers on shipments with less than total loss or destruction in transit at the time corresponding loss and damage claims are processed. This proceeding was initiated in response to the results of a staff study by the Office of Compliance and Consumer Assistance that indicated movers were experiencing great difficulty in complying with the present rule at 49 CFR 1056.15(b) requiring them to deduct proportional freight charges at the time the household goods are delivered to the consumer. The staff study also indicated that, in regard to the movers included in the study, few refunds of such charges were made, either at delivery or later. Our proposal will eliminate the difficulties the moving industry has experienced in complying with the present rule while, at the same time, assuring that shippers will be refunded tariff charges for articles lost or destroyed in transit.

DATE: Comments are due on January 13, 1989.

ADDRESS: Send an original and 10 copies of comments referring Ex Parte No. MC-19 (Sub No. 39) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Heber P. Hardy (202) 275-7148, or John W. Fristoe, (202) 275-7844. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: The Commission's decision contains

additional information. To obtain a copy of the decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD Services at (202) 275–1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Energy and Environment

We preliminarily conclude that the proposed rules will not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility

We certify that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1056

Moving of household goods.

Decided: December 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

Title 49, Chapter X, Part 1056 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

1. The authority citation for Part 1056 would continue to read as follows:

Authority: 49 U.S.C. 10321, 11109, 11110, and 5 U.S.C. 553.

2. Section 1056.15(b) is proposed to be revised to read as follows:

§ 1056.15 Collection of freight charges on household goods shipments involving loss or destruction in transit.

* * * * *

(b) In the event that any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, a motor common carrier of household goods in interstate or foreign commerce shall, at the time it disposes of claims for loss, damage, or injury to the articles in the shipment as provided in Part 1005 of this subchapter, refund that portion of its published freight charges (including any charges for accessorial or terminal services) corresponding to that portion of the shipment which is lost or destroyed in transit. To calculate the charges applicable to the shipment as delivered, the carrier shall multiply the percentage corresponding to the portion of the shipment delivered by the total charges (including accessorial and terminal charges) applicable to the shipment tendered by the shipper. If the charges computed in the manner set forth above exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges shall apply. The provisions of this subsection shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, that proportion of any accessorial or terminal services rendered which corresponds to the proportion of the shipment not lost or destroyed in transit and any specific valuation charge that may be due.

The provisions of this subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper. Carriers shall determine, at their own expense, the proportion of the shipment not lost or destroyed in transit.

* * * * *

[FR Doc. 88–28724 Filed 12–13–88; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 53, No. 240
Wednesday, December 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Temporary Emergency Food Assistance Program; Announcement of Additional Commodities Available and Encouragement of Food Processing and Distribution by Eligible Recipient Agencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of additional commodities for donation under the Temporary Emergency Food Assistance Program and to soup kitchens and food banks as required by the Hunger Prevention Act of 1988. The Department is also soliciting applications from organizations capable of processing surplus agricultural commodities into end products suitable for distribution through the Temporary Emergency Food Assistance Program. The organizations must agree to process and package the commodities in household size containers and distribute the products at no cost to State agencies responsible for the administration of the Temporary Emergency Food Assistance Program.

EFFECTIVE DATE: December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, on telephone (703) 756–3660 or write to the address at the end of this notice.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and has been classified "nonmajor" because it meets none of the criteria in the Executive Order for classification as a major rule. The action will not have an annual effect on the economy of $100 million or more; it will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. The purpose of the action is to announce the availability of additional commodities for the Temporary Emergency Food Assistance Program and to solicit applications from agencies capable of processing surplus agricultural commodities into end products suitable for distribution through the Temporary Emergency Food Assistance Program.

Background and Need for Action

Availability of Commodities

Donations of commodities to needy households were initiated by President Reagan in 1981 as part of efforts to reduce huge stockpiles of government-owned commodities. These donations responded to concern over the costs to taxpayers of storing vast quantities of food, while at a time of high unemployment there were persons in need of food assistance. The Temporary Emergency Food Assistance Program was codified in the Temporary Emergency Food Assistance Act (TEFAA) of 1983 (7 U.S.C. 612c note). Foods made available for distribution under TEFAA were limited to amounts determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and domestic and foreign food assistance programs.

Since 1983, the supply of available commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. On October 6, 1988, the Food and Nutrition Service (FNS) published a notice (53 FR 39324) announcing the types and amounts of commodities acquired by the CCC under its price support activities to be made available for distribution through the Temporary Emergency Food Assistance Program during Fiscal Year 1989. The commodities announced were flour, cornmeal and butter. The Department also announced that rice, cheese, nonfat dry milk and honey could not be distributed because there were no surpluses of these commodities.

Since the publication of that notice, supplies of honey have increased, and USDA anticipates that distribution of honey will resume this spring.

Sections 213 and 214 of the TEFAA, as added by section 104 of the Hunger Prevention Act of 1988 (Pub. L. 100–435, enacted on September 19, 1988), require the Secretary to spend $120 million in Fiscal Year 1989 to purchase, process, and distribute commodities for household consumption in addition to those otherwise provided under the temporary emergency program. Further, section 110 of the Hunger Prevention Act requires the Secretary to spend an additional $40 million in Fiscal Year 1989 to purchase, process and distribute commodities for soup kitchens and food banks. The October 6 notice noted that types and quantities of commodities to be purchased under both programs were not known at that time. Since that time, the Secretary has determined that the following additional commodities will be purchased for distribution to households through the Temporary Emergency Food Assistance Program during Fiscal Year 1989: Peanut butter, canned beans, canned pork, raisins and dried egg mix. The Secretary has also determined that the following commodities will be purchased in institutional size packages for distribution to soup kitchens and food banks: Canned pork, canned luncheon meat, dry beans, green split peas, lentils, dehydrated potatoes, canned pears, canned grapefruit juice, canned orange juice and canned sweet potatoes. The amounts to be purchased will depend on the price USDA must pay. The Department intends to have these commodities available for distribution to States beginning in January.

Processing Agreements

Section 220 of the Hunger Prevention Act requires the Secretary to solicit applications from organizations interested in processing surplus commodities into end products suitable for distribution to households through the Temporary Emergency Food Assistance Program and distribute such

products free of charge to State agencies administering the program. To receive commodities for processing, the organization must be an "eligible recipient agency" as defined in section 201A of the TEFAA. An eligible recipient agency is a public or nonprofit organization which administers certain feeding programs enumerated in the body of section 201A. The Secretary, however, can only solicit applications to the extent that CCC inventory levels permit. Section 220 also requires the Secretary to approve or disapprove any applications not later than 60 days of receipt and, if disapproved, to inform the applicants of the reasons for disapproval.

The commodities available for further processing at this time are wheat, corn and butter. In order for organizations to receive commodities for processing they must enter into agreements with the Department. The primary provisions which the Department intends to incorporate in any agreement under this section are as follows:

1. The organization must enter into processing contracts with food processors to convert and package donated commodities into end products, such as flour, suitable for distribution to households through the Temporary Emergency Food Assistance Program.

2. Title to the donated food and their end products will pass to the approved organization upon delivery to the organization.

3. The Department will *not* pay any transportation, storage, handling, or other warehouse charges or any processing fees which may accrue after title to the commodities is transferred to the organization.

4. The organization's agreement with food processors must include, at a minimum, the following provisions:

(a) Processors will meet certain minimum yield factors;

(b) The end product will be packaged and labeled according to guidelines established by the Department;

(c) The processor will maintain accurate and complete records pertaining to the receipt, disposal and inventory of the donated food and their end products;

(d) The processor will maintain an effective quality control system for the duration of the contract; and

(e) The processors will permit the Secretary of Agriculture, the Comptroller General of the United States or any other duly authorized representative to inspect and inventory the donated food and end products, inspect and audit all records, including financial records, pertaining to the processing and distribution of the donated food.

5. Once the commodities are processed, the organization will donate the end products, free of charge, only to State agencies that have entered into an agreement with USDA for the distribution of the products to needy households under the Temporary Emergency Food Assistance Program.

6. The organization will be strictly liable to the Department for any improper distribution, damage or loss of the donated food and its end products prior to its acceptance by the State agency.

7. The organization will maintain complete and accurate records pertaining to the donated food and end products and will be required to retain all records for a period of three years.

8. The organization will permit the Secretary of Agriculture, the Comptroller General of the United States or any other duly recognized representative to inspect and inventory the donated food and end products, inspect and audit all records, including financial records, pertaining to the processing and distribution of the donated food.

Organizations interested in participating in this program should direct their applications to Ms. Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302 or telephone (703) 756–3660. Applications must include assurances that the applicant will process commodities received into end products suitable for distribution under the Temporary Emergency Food Assistance Program, will package such products for individual household use, and will distribute such products to State agencies responsible for administering the program at no cost to the State.

Anna Kondratas,

Administrator.

December 8, 1988.

[FR Doc. 88–28750 Filed 12–13–88; 8:45 am]

BILLING CODE 3410–30–M

Food Safety and Inspection Service

[Docket No. 86–020N]

Policy Change; Oversight of Custom Exempt Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of policy change.

SUMMARY: The Food Safety and Inspection Service (FSIS) is changing its policy regarding the oversight of red meat custom exempt establishments in designated States, i.e., establishments that only conduct red meat custom exempt activities and are not subject to the routine inspection requirements of the Federal Meat Inspection Act (FMIA), by discontinuing the current quarterly reviews of such establishments. Instead, FSIS will vary the frequency of reviews of such establishments and FSIS will intensify its review efforts on those custom exempt red meat establishments with a history of noncompliance with the custom exempt requirements of the FMIA, as well as the adulteration and misbranding provisions of the Act. FSIS is not, however, changing its review process of custom exempt operations which are conducted at federally inspected establishments.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Gonter, Assistant Deputy Administrator, Compliance Program ((202) 447–7745) or Dr. Gerald R. Snyder, Director, Federal-State Relations ((202) 447–6313) Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Background

Section 23 of the FMIA (21 U.S.C. 623) provides that certain specified slaughtering and preparation operations, referred to herein as custom exempt activities that are conducted at establishments that conduct such operations for commerce, are not subject to the routine inspection requirements of Title I of the FMIA, provided the specified slaughtering and preparation operations meet the requirements set forth in section 23 of the FMIA and the regulations promulgated thereunder. These custom exempt activities may comprise the total business of an establishment, in which case the establishment is not subject to the routine inspection requirements of the FMIA, or these custom exempt activities may comprise only a portion of the total business of an establishment that also conducts operations which are subject to the routine inspection requirements of the FMIA. However, although these custom exempt activities are not subject to the routine inspection requirements of the FMIA, they are subject to the adulteration and misbranding provisions of the FMIA.

In particular, section 23(a) of the FMIA provides that the following custom operations conducted at an establishment for commerce are not subject to the routine inspection

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requirements of the FMIA, if the establishment complies with the regulations promulgated under section 23(a) of the FMIA which provide, among other things, that custom-exempt activities must be conducted under sanitary conditions, that custom prepared product must be marked "Not For Sale", and that custom prepared product must be separated at all times from products prepared for sale:

1. The slaughtering by any person of animals of his own raising, and the preparation by him and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guest and employees;

2. The custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughter and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees; and

3. The custom preparation by any person, firm, or corporation of carcasses, parts thereof, meat or meat food products, derived from the slaughter by any person of cattle, sheep, swine, or goats of his own raising, or from game animals, delivered by the owner thereof for such custom preparation, and transportation in commerce of such custom prepared articles, exclusively for use in the household of such owner, by him and members of his household and his nonpaying guest and employees.

The custom exempt provisions of section 23(a) of the FMIA (21 U.S.C. 623(a)) also apply to custom exempt activities conducted at establishments that conduct their operations solely within a designated State. A designated State is a State designated for Federal inspection either because it does not have or is not effectively enforcing an inspection program which imposes requirements at least equal to those of the FMIA. In nondesignated States, i.e., States that operate their own inspection program, custom exempt activities conducted at establishments that operate solely within that State are governed by the laws of the nondesignated State. However, such States must provide for State inspection programs that are at least equal to the Federal inspection program.

FSIS conducted an indepth study of its custom exempt activities in red meat custom exempt establishments and federally inspected establishments that conduct red meat custom exempt activities and, in February 1986, issued a report titled "Oversight of Custom Exempt Activities." [1] The study was conductd to assess the effectiveness and uniformity of present procedures utilized in regard to red meat custom exempt activities and to develop options and recommendations for improving the oversight of red meat custom exempt activities. As a result of this study, the Agency has concluded that the current practice of conducting quarterly reviews of red meat custom exempt establishments, referred to in the study as custom exempt plants, is an inefficient use of Agency resources. With rapidly escalating inspection costs and severe budget constraints, FSIS is compelled to make the most efficient use possible of its limited resources, while at the same time continuing to protect the health and welfare of consumers.

The Agency believes that red meat custom exempt establishments should be reviewed on a risk basis. That is, Agency resources should be allocated in such a manner that they are utilized to focus more frequently upon those red meat custom exempt establishments that present the greatest possible amount of potential risk to consumers in regard to violating the adulteration, misbranding, or custom exempt provisions of the FMIA. Therefore, FSIS is changing its policy with respect to the review of red meat custom exempt establishments. The current practice of conducting quarterly reviews of all such custom exempt establishments will be discontinued. The Agency is not, however, changing its manner of review of custom exempt operations conducted in federally inspected establishments. FSIS will continue to conduct periodic reviews of red meat custom exempt operations being conducted at federally inspected establishments, that operate in commerce or within designated States. These reviews of custom exempt operation being conducted at federally inspected establishments are part of the usual review process of these official establishments.

FSIS will institute an oversight program that will provide for reviews to be scheduled on the basis of a risk assessment of each red meat custom exempt establishment. The frequency of the reviews will be based on the establishment's history of compliance with the custom exemption, adulteration and misbranding provisions of the FMIA, prior reviews, and other information which may be available to FSIS on the establishment's activities. Based on this information, red meat custom exempt establishments will be assigned one of four risk categories. The number of reviews of each plant will range from a minimum of once a year to the maximum necessary, depending on the risk category of the establishment. By using a risk-based assessment of red meat custom exempt establishments, the Agency will be able to conduct more frequent reviews of those establishments with a history of noncompliance with the requirements for custom exempt establishments under the FMIA, as well as the adulteration and misbranding provisions of the Act.

Under section 301 of the FMIA, the Secretary of Agriculture is authorized, whenever he determines that it would effectuate the purposes of the FMIA, to cooperate with the appropriate State agencies in developing and administering State meat inspection programs that have requirements that are at least equal to those of the Federal meat inspection program. Under such cooperative agreements, the Federal Government is authorized to contribute up to 50 percent of the estimated total cost of the State program. States that are approved to participate in such a cooperative program maintain a State meat inspection program and as part of this program conduct reviews of State plants that are exempt from inspection under the State laws and regulations. Such reviews are conducted in a manner that is at least "equal to" reviews conducted under the Federal inspection program.

States with their own meat inspection program will continue their review of red meat custom exempt establishments and red meat custom exempt operations under the existing cooperative agreements with the Department. However, as such States are required to operate a meat inspection program that has requirements that are at least equal to those in the Federal meat inspection program a revised plan for reviews of custom exempt establishments, incorporating a risk-based approach rather than a uniform frequency of inspection, should be provided in their State Performance Plan and be approved by the Agency.

California and Minnesota, which do not operate State inspection programs, and are therefore designated States, presently are conducting compliance reviews of custom exempt establishments in those States under a cooperative agreement with FSIS in

[1] A copy of the study is on display with the FSIS Hearing Clerk, Policy Office, Room 3171, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Upon request, a copy of the study will be provided free of charge.

accordance with the provisions of 7 U.S.C. 450. Under such a cooperative agreement, FSIS reimburses the States for the expenses of those reviews. These agreements will be revised to incorporate a risk-based approach to the reviews of red meat custom exempt establishments. FSIS desires to expand this concept into other States that can meet the requirements of 7 U.S.C. 450 for such agreements. FSIS encourages the Governors of any States who desire to enter into a cooperative agreement for conducting compliance reviews of red meat custom exempt establishments that distribute product solely within their borders to contact the appropriate FSIS regional office reviewing custom exempt establishments in their States.

Implementation of this alternate approach to determining the frequency of reviews of custom exempt establishments will not in any way relieve red meat custom exempt establishments of the responsibility to comply with currently applicable provisions of the FMIA and related regulations. The Agency intends to use all its available enforcement tools, where appropriate, to assure that custom exempt establishments and custom exempt operations conducted in federally inspected establishments comply with all of the applicable provisions of the FMIA. Such enforcement actions can include, under appropriate circumstances: The detention of animals and meat products; the retention of animals and meat products and their condemnations, the seizing and condemnation of animals and meat products pursuant to judicial procedure; the use of injunctions to, for example, prevent establishments from operating; the taking of criminal action against establishments, their operators and other persons responsibly connected to the establishment; and the loss of exempt status.

FSIS would also like to make it clear at this time that when custom exempt establishments that operate in commerce or within a designated State violate the provisions of section 23(a) of the FMIA, they lose their exempt status and can no longer produce product without inspection. Further, if a custom exempt operator knows that an animal or meat product is diseased or adulterated, he must, by law, refuse to prepare it.

Done at Washington, DC, on December 9, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-28716 Filed 12-13-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate or Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This noitice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86-A0003."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #86-00003, which was issued on July 11, 1986 (51 FR 26031, July 18, 1986). A name change by the Certificate holder from "International Shippers Association" to "First International Shippers Association" was announced January 21, 1988 (53 FR 1656).

Applicant: First International Shippers Association ("FISA"), 821 Second Avenue, Suite 1400, Seattle, Washington 98104, contact: Peter A. Friedmann, legal counsel, Telphone: 202/467-5900.

Application #: 86-A0003.

Date Deemed Submitted: December 6, 1988.

Summary of the Application

FISA seeks to amend its certificate to:

1. Add each of the following companies as a new "Member" of the certificate: AJC International, Inc., Atlanta, GA; Bayshore Seafoods, Inc., Bellingham, WA; Carriage House Foods, Lyden, WA; Clouston Foods Pacific, Ltd., Seattle, WA; Copper River Fishermen's Cooperative, Seattle, WA; Diamond Fruit Growers, Inc., Hood River, OR; Duckwall-Pooley Fruit Co., Odell, OR; Golden Alaska Seafoods, Seattle, WA; Home Harbor Seafoods, Inc., Seattle, WA; George F. Joseph, Yakima, WA; Keet Seafoods, Inc., Seattle, WA; Northwest Fresh, Inc., Wenatchee, WA; Odyssey Enterprises, Inc., Seattle, WA; Ore-Ida Foods, Inc., Boise, Idaho; Pacific Alaska Seafood, Inc., Seattle, WA; Peter Pan Seafoods, Inc., Seattle, WA; Prevor Marketing International, Hunts Point, Bronx, NY; San Juan Seafoods, Inc., Bellingham, WA; SPI-SEA FOODS, Seattle, WA; Stemilt Growers, Inc., Wenatchee, WA, Washington Fish & Oyster Co. of CA., San Francisco, CA; Wenoka Sales, Wenatchee, WA; and Windjammer Seafoods, Inc., Seattle, Washington.

Date: December 8, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-28756 Filed 12-13-88; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

[Docket No. 81144-8244]

National Voluntary Laboratory Accreditation Program; Publication of Directory Supplement

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces laboratory accreditation

ction taken during the third quarter of 1988.

FOR FURTHER INFORMATION CONTACT: John Donaldson, Manager, Laboratory Accreditation, ADMIN A527, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION: This supplement to the 1987–88 NVLAP Directory of Accredited Laboratories (NBSIR 88–3718) is published pursuant to section 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.68(b)).

The following table summarizes NVLAP accreditation actions for the period July 1, 1988, through September 30, 1988.

	TIM	CTS	CAR	STO	ACO	CPL	DOS	ECT	Total
Initial	1		1	1		1	3		7
Terminate	2	1	1				2	1	7
Suspend									
Balance	33	21	22	5	9	9	59	17	175

Laboratories awarded initial accreditations are:

CPL: Calcoast Analytical Labs., Berkeley, CA, Pat Fairley, 415–540–7837.

STO: Energy and Environmental Measurement Corp., Kent, WA, Glover Eddy Wadington, 602–479–2167.

CAR: Professional Testing Laboratory, Inc., Dalton, GA, D. Gregory Philips, 404–226–3283.

TIM: McGhan NuSil Corporation, Carpinteria, CA, Thomas P. Banigan, 805–684–8780.

DOS: Radiation Laboratory, Taiwan Power Company, Taiwan, Republic of China, Paul Y. Hwang, 02–638–1397.

DOS: Combustion Engineering, Inc., Windsor, CT, Stephen M. Sorensen, 203–285–5285.

DOS: Health Physics Northwest, Tigard, OR, Ross Mercer, 503–620–6617.

Laboratories whose accreditations were terminated are:

ECT: Continental Testing Laboratories, Fern Park, FL.

CTS: Philippine Geoanalytics, Quezon City, Philippines.

DOS: Gulf Nuclear, Inc., Webster, TX.

DOS: Arizona State University, Radiation Measurements Facility, Tempe, AZ.

TIM: The Celotex Corporation, Tracy Plant, Tracy, CA.

TIM: BASF Styropor Technical Center, Jamesburg, NJ.

CAR: Stratton Laboratories, Cartersville, GA.

TIM—Insulation
CTS—Construction Testing Services
CAR—Carpet
ACO—Acoustical Testing Services
STO—Stove
CPL—Commercial Products LAP (Paint, Paper, Seals and Sealants)
DOS—Dosimetry
ECT—Electromagnetic Compatibility and Telecommunications

Dated: December 8, 1988.

Raymond Kammer,

Acting Director.

[FR Doc. 88–28696 Filed 12–13–88; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 4, 1988 between the Governments of the United States and the People's Republic of China establishes limits for the 1989 agreement year. The limits for Categories 334, 335, 634, 635 and 847 are being reduced for carryforward used in 1988. The limits for Categories 330/630, 633, 643 and 870 are subject to change pending consultations with the Government of the People's Republic of China.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken in pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 4, 1988 between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile

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products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category (categories not subject to a group limit)	12-Month restraint limit
GROUP I	
200	528,344 kilograms.
218	9,454,928 square meters.
219	1,907,152 square meters.
226	8,659,861 square meters.
237	1,394,513 dozen.
239	2,359,361 kilograms.
300/301	3,254,525 kilograms.
313	35,612,941 square meters.
314	40,206,953 square meters.
315	143,638,948 square meters.
317/326	15,907,946 square meters of which not more than 3,043,504 square meters shall be in Category 326.
331	4,193,020 dozen pairs.
333	70,350 dozen.
334	241,263 dozen.
335	317,525 dozen.
336	133,900 dozen.
338/339	2,045,160 dozen of which not more than 1,552,500 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338-S/339-S[1].
340	734,514 dozen of which not more than 367,257 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts, in Category 340-Z[2].
341	575,680 dozen of which not more than 345,408 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341-Y[3].
342	227,550 dozen.
345	109,200 dozen.
347/348	2,127,980 dozen.
350	119,700 dozen.
351	388,500 dozen.
352	1,495,395 dozen.
359-C[4]	437,336 kilograms.
359-V[5]	696,128 kilograms.
360	6,009,999 numbers of which not more than 4,099,400 numbers shall be in Category 360-P[6].
361	3,328,560 numbers.
363	25,357,500 numbers.
369-D[7]	3,978,912 kilograms.
369-H[8]	3,959,635 kilograms.
369-L[9]	2,381,360 kilograms.
410	1,845,208 square meters of which not more than 1,479,132 square meters shall be of carded wool[10] and not more than 1,479,132 square meters shall be of combed wool[11].
433	21,715 dozen.
434	12,373 dozen.
435	22,725 dozen.
536	14,140 dozen.
438	24,745 dozen.
440	35,350 dozen of which not more than 20,200 dozen in men's shirts in Category 440pt.[12c].
442	39,390 dozen.
443	127,260 numbers.
444	189,193 numbers.
445/446	272,700 dozen.
447	73,472 dozen.
448	20,200 dozen.
607	2,569,601 kilograms.
611	4,392,177 square meters.
613	6,028,478 square meters.
614	9,473,323 square meters.
615	19,721,736 square meters.
617	13,779,379 square meters.
631	910,011 dozen pairs.
634	463,935 dozen.
635	484,620 dozen.
636	420,800 dozen.
638/639	2,142,000 dozen.
640	1,274,720 dozen.
641	1,095,120 dozen.
642	266,500 dozen.
645/646	740,050 dozen.
647	1,112,716 dozen.
648	1,071,309 dozen.
649	706,160 dozen.
650	92,997 dozen.
651	593,560 dozen.
652	2,024,880 dozen.
659-C[13]	335,545 kilograms.
659-H[14]	2,193,988 kilograms.
659-S[15]	500,383 kilograms.
669-P[16]	1,427,999 kilograms.
670-L[17]	12,265,138 kilograms.
831	395,544 dozen pairs.
833	21,425 dozen.
835	98,895 dozen.
840	384,707 dozen.
842	214,245 dozen.
845pt.[18]	2,158,800 dozen.
846pt.[19]	144,200 dozen.
847	993,988 dozen.
870	2,892,270 kilograms.
GROUP II	
330, 332, 349, 353, 354, 359-0[20], 431, 432, 439, 459, 630, 632, 633, 643, 644, 653, 654 and 659-0[21], as a group.	102, 325, 266 square meters equivalent.
SUBLEVELS UNDER GROUP II	
330/630	4,792,439 dozen.
633	37,513 dozen.
643	426,656 numbers.
GROUP III	
201, 220, 222-225, 227, 229, 362, 369-0[22], 400, 414, 464-469, 600, 603, 604-0[23], 606, 618-622, 624-627, 628, 629, 665, 666, 669-0[24] and 670-0[25], as a group.	275, 616, 104 square meters equivalent.
GROUP IV	
832, 834, 836-838, 839, 843, 844, 850-852, 858 and 859, as a group.	21,271,080 square meters equivalent.

[1] In Categories 338-S/339-S, only tariff numbers 6109.10.00.10, 6109.10.00.15, 6109.10.00.25, 6109.10.00.30, 6109.10.00.40, 6109.10.00.45, 6109.10.00.60 and 6109.10.00.65.

[2] In Category 340-Z, only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.50 and 6205.20.20.60.

[3] In Category 341-Y, only tariff numbers 6204.22.30.60, 6206.30.30.10 and 6206.30.30.30.

[4] In Category 359-C, only tariff numbers 6103.43.30.30, 6103.49.30.34, 6104.62.10.20, 6104.69.30.10, 6114.20.00.48, 6114.20.00.52, 6203.42.20.10, 6204.62.20.10, 6211.32.00.10 and 6211.43.00.10.

[5] In Category 359-V, only tariff numbers 6103.19.20.30, 6103.19.40.30, 6104.12.00.40, 6104.19.20.40, 6110.20.10.22, 6110.20.10.24, 6110.20.20.30, 6110.20.20.35, 6110.90.00.44, 6110.90.00.46, 6201.92.20.10, 6202.92.20.20, 6203.19.10.30, 6203.19.40.30, 6204.12.00.40, 6204.19.30.40, 6211.32.00.70 and 6211.42.00.70.

[6] In Category 360-P, only tariff numbers 6302.21.10.10, 6302.21.10.20, 6302.21.20.10, 6302.21.20.20, 6302.31.10.10, 6302.31.10.20, 6302.31.20.10, 6302.31.20.20.

[7] In Category 369-D, only tariff numbers 6302.60.00.10 and 6302.91.00.20.

[8] In Category 369-H, only tariff numbers 4202.22.40.20, 4202.22.45.00 and 4202.22.80.30.

[9] In Category 369-L, only tariff numbers 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00.

[10] In Category 410 (carded wool), only tariff numbers 5111.11.10.00, 5111.11.60.30, 5111.11.60.60, 5111.19.20.00, 5111.19.60.20, 5111.19.60.40, 5111.19.60.60, 5111.19.60.80, 5111.20.60.00, 5111.30.60.00, 5111.90.30.00, 5111.90.60.00, 5212.11.10.10, 5212.12.10.10, 5212.13.10.10, 5212.14.10.10, 5212.15.10.10, 5212.21.10.10, 5212.22.10.10, 5212.23.10.10, 5212.24.10.10, 5212.25.10.10, 5311.00.20.00, 5407.91.05.10, 5407.92.05.10, 5407.93.05.10, 5407.94.05.10, 5408.31.05.10, 5408.32.05.10, 5408.33.05.10, 5408.34.05.10, 5515.13.05.10, 5515.22.05.10, 5515.92.05.10, 5516.31.05.10, 5516.32.05.10, 5516.33.05.10, 5516.34.05.10 and 6301.20.00.20.

[11] In Category 410 (combed wool), only tariff numbers 5007.10.60.30, 5007.90.60.30, 5112.11.00.30, 5112.11.00.60, 5112.19.60.10, 5112.19.60.20, 5112.19.60.30, 5112.19.60.40, 5112.19.60.50, 5112.19.60.60, 5112.20.00.00, 5112.30.00.00, 5112.90.30.00, 5112.90.60.10, 5112.90.60.90, 5212.11.10.20, 5212.12.10.20, 5212.13.10.20, 5212.14.10.20, 5212.15.10.20, 5212.21.10.20, 5212.22.10.20, 5212.23.10.20, 5212.24.10.20, 5212.25.10.20, 5309.21.20.00, 5309.29.20.00, 5407.91.05.20, 5407.92.05.20, 5407.93.05.20, 5407.94.05.20, 5408.31.05.20, 5408.32.05.20, 5408.33.05.20, 5408.34.05.20, 5515.13.05.20, 5515.22.05.20, 5515.92.05.20, 5516.31.05.20, 5516.32.05.20, 5516.33.05.20 and 5516.34.05.20.

[12] In Category 449pt., only tariff numbers 6203.21.00.30, 6203.23.00.30, 6205.10.10.00, 6205.10.20.10, 6205.10.20.20, 6205.30.15.10, 6205.30.15.20, 6205.90.20.20, 6205.90.40.20 and 6211.31.00.30.

[13] In Category 659-C, only tariff numbers 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10.

[14] In Category 659-H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75.

[15] In Category 659-S, only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.20.

[16] In Category 660-P, only tariff numbers 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00.

[17] In Category 670-L, only tariff numbers 4202.12.80.30, 4202.12.80.70, 4202.92.30.20, 4202.92.30.30 and 4202.92.90.20.

[18] In Category 845pt., only tariff numbers 6103.29.20.74, 6104.29.20.72, 6110.90.00.24, 6110.90.00.42 and 6117.90.00.20.

[19] In Category 846pt., only tariff numbers 6103.29.20.68, 6104.29.20.68, 6110.90.00.20, 6110.90.00.38 and 6117.90.00.18.

[20] In Category 359-O, all tariff numbers except 6103.42.20.20, 6103.49.30.34, 6104.62.10.20, 6104.69.30.10, 6114.20.00.48, 6114.20.00.52, 6203.42.20.10, 6204.62.20.10, 6211.32.00.10 and 6211.42.00.10 in Category 359-C; and 6103.19.20.30, 6103.19.40.30, 6104.12.00.40, 6104.19.20.40, 6110.20.10.22, 6110.20.10.24, 6110.20.20.30, 6110.20.20.35, 6110.90.00.44, 6110.90.00.46, 6201.92.20.10, 6202.92.20.20, 6203.19.10.30, 6203.19.40.30, 6204.12.00.40, 6204.19.30.40, 6211.32.00.70 and 6211.42.00.70 in Category 359-V.

[21] In Category 659-O all tariff numbers except 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10 in Category 659-C; 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75 in Category 659-H; and 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.20 in Category 659-S.

[22] In Category 369-O, all tariff numbers except 6302.60.00.10 and 6302.91.00.20 in Category 369-D; 4202.22.40.20, 4202.22.45.00 and 4202.22.80.30 in Category 369-H; 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00 in Category 369-L; and 6307.10.20.10 in Category 369-S.

[23] In Category 604-O, all tariff numbers except 5509.32.00.00.

[24] In Category 669-O, all tariff numbers except 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00 in Category 669-P.

[25] In Category 670-O, all tariff numbers except 4202.22.40.30, 4202.22.80.50 and 4202.32.95.50.

Imports charged to these limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988, including the periods June 30, 1988 through December 31, 1988 (Categories 633, 643 and 870) and September 29 through December 31, 1988 (Categories 330/630), shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

You are directed to charge 5,000 dozen to Category 237 for overshipments of the previous unilateral restraint limit for Category 637. These charges are the result of an agreement in 1987 between the Governments of the United States and the People's Republic of China.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28759 Filed 12-13-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

December 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for certain cotton, wool and man-made fiber textile products in Group I are being adjusted for swing.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 15, 1988, the directive of December 30, 1987 is being amended further to adjust the limits for cotton, wool and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category:	*Adjusted 12-mo limit* [1]
218	11,550,000 square yards.
331	4,274,438 dozen pairs.
333	47,000 dozen.
336	136,500 dozen.
337	1,111,950 dozen.
338/339	2,074,800 dozen of which not more than 1,575,000 dozen shall be in Categories 338pt./339pt.[2]
340	668,000 dozen.
342	233,100 dozen.
345	110,250 dozen.
351	388,500 dozen.
352	1,502,550 dozen.
359-D [3]	1,333,500 pounds.
359-V [4]	1,446,548 pounds.
440	22,721 dozen.
443	132,300 numbers.
447	76,382 dozen.
607	5,342,857 pounds.
636	420,000dozen.
638/639	1,599,828 dozen.
637	206,210 dozen.
640	1,134,500 dozen.
642	273,000 dozen.
645/646	642,000 dozen.
647	1,123,415 dozen.
648	1,086,835 dozen.
650	94,987 dozen.
652	2,044,350 dozen.
659-H [5]	4,883,424 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Categories 338pt./339pt., only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970 and 384.3437 in Category 338pt.; and 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704, and 384.9517 in Category 339pt.

[3] In Category 359-D, only TSUSA number 384.5214.

[4] In Category 359-V, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[5] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28690 Filed 12-13-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Costa Rica have agreed to amend the current limit for Categories 340/640 to conform with the New Category System.

A copy of the current bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 53 FR 47745, published on December 16, 1988). Also see 53 FR 161, published on January 5, 1988.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 31, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 15, 1988, the directive of December 31, 1987 is amended to increase to 451,500 dozen [1] the current limit for Categories 340/640.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martellol,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28691 Filed 12-13-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bullentin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton, wool, and man-made fiber textile products are being adjusted, variously, for carryover, special shift, shift, and shift subtracted.

In addition, the Governments of the United States and Singapore, pursuant to a data investigation, have established an agreed level of trade for 1987 in man-made fiber textile products in Categories 645/646 of 100,693 dozen.

A description of the textile categories in terms of T.S.U.S.A. number is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the Unitd States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 16, 1988, the directive of December 24, 1987 is being amended further to adjust the current limits for cotton, wool and man-made fiber textile products in the following categories, as provided in the current bilateral textile agreement between the Governments of the United States and Singapore:

Category	Amended 12-month limit [1]
239	505,791 pounds.
331	344,740 dozen pairs.
335	157,774 dozen.
338/339	847,027 dozen of which not more than 508,549 dozen shall be in category 338.
340	595,322 dozen.
341	127,322 dozen.
342	94,374 dozen.
347/348	817,317 dozen of which not more than 506,105 dozen shall be in Category 347 and not more than 396,084 dozen shall be in category 348.
435	1,967 dozen.
634	216,084 dozen.
638	633,489 dozen.
639	3,171,819 dozen.
640	40,485 dozen.
641	170,011 dozen.
645/646	129,306 dozen.
648	1,464,126 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

Also you are directed to deduct 9,300 dozen pairs and 716 dozen for goods exported in 1987 from the charges made to the current limits for categories 331 and 335, respectively. These same amounts are to be charged to the 1987 limits for Categories 331 and 335.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-28758 Filed 12-13-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Enlistee Financial Statement; NAVCRUIT Form 1130/13; and OMB Control Number 0703-0020.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 33 minutes.

Frequency of Response: One-time.

Number of Respondents: 86,600.

Annual Burden Hours: 28,578.

Annual Responses: 86,600.

Needs and Uses: The Enlistee Financial Statement is used by Navy recruiters and by recruiting management personnel in assessing the Navy applicant's ability to meet his/her financial obligations on Navy pay.

Affected Public: Individuals or households.

Frequency: Continuing.

Respondent's Obligation: Voluntary; Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202)746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 8, 1988.

[FR Doc. 88-28751 Filed 12-13-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, applicable form, and Applicable OMB Control number: Custodianship Certificate to Support Claim on behalf of Minor Children of Deceased Members of the Air Force; AF Form 3116; and OMB Control Number 0701-0092.

Type of Request: Reinstatement.

Average burden hours/minutes per Response: 6 minutes.

Frequency of Response: On occasion.

Number of Respondents: 1,200.

Annual burden Hours: 120.

Annual Responses: 1,200

Needs and Uses: The Air Force uses AF Form 3116 to collect information from custodians of dependent minor children who are entitled to receive survivor annuity benefit funds when an Air Force retiree dies. The custodian certifies that he or she has care and custody of the child until the child reaches the age of majority. The Air Force needs this information to pay annuities to the proper guardians or custodians on behalf of minor dependent children of deceased Air Force retirees.

Affected public: Custodians of Minor Children of Deceased Air Force Retirees.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk officer: Dr. Timothy Sprehe.

Wrtten comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms: Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington,Virginia 22202-4302, telephone (202) 746-0933.

December 8, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-28752 Filed 12-13-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies; Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Army Subgroup on Low Observable Technologies scheduled for December 5-6, 1988 as published in the **Federal Register** (Vol. 53, No. 185, Page 37027, Friday, September 23, 1988, FR Doc 88-21799.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 8, 1988.

[FR Doc. 88-28753 Filed 12-13-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the sale of 84.74 grams of natural uranium from the U.S. Department of Energy to Gewerkschaft Brunhilde GmbH, Birkenfeld/Nahe, Federal Republic of Germany. Contract Number S-EU-051 has been assigned to this sale.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 8, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-28772 Filed 12-13-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Invitation for Public Views and Comments on the Conduct of the 1989 Clean Coal Technology Solicitation; Meeting

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of meetings to invite public views and comments on the conduct of the 1989 Clean Coal Technology solicitation, and to invite the public to participate in briefings by Department of Energy (DOE) officials on the Department's rules and procedures for awarding financial assistance.

Introduction

The third Clean Coal Technology (CCT) solicitation (to be issued by May 1, 1989) is related to the decision by President Reagan on March 18, 1987, to seek $2.5 billion to fund the demonstration of innovative clean coal technologies over a five-year period. President Reagan directed the projects be selected, to the extent possible, using the criteria recommended by the Special Envoys on Acid Rain, Drew Lewis of the United States, and William Davis of Canada. In January of 1986, the appointees issued the *Joint Report of the Special Envoys on Acid Rain*, also known as "the Lewis/Davis Report." The Special Envoys provided twelve recommendations, the first one of which was that the:

> U.S. government should implement a five-year, five-billion-dollar control technology commercial demonstration program. The federal government should provide half the funding * * * for projects which industry recommends, and for which industry is prepared to contribute the other half of the funding.

To advise DOE on the CCT Program, the President directed the Secretary of Energy to establish the Innovative Control Technology Advisory Panel (ICTAP). On June 9, 1987, the Secretary named the charter members of ICTAP. As of this writing, there are 39 panelists representing federal agencies, government representatives from a cross section of affected states, producers and users of coal, environmental groups, unions, Indian tribes, and the Government of Canada; the Chairman of ICTAP is Deputy Secretary of Energy Joseph F. Salgado.

On December 22, 1987, Pub. L. No. 100-202, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1988, and for Other Purposes," was signed into law. This Act, among other things, provided $575 million to conduct cost-shared innovative clean coal technology (ICCT) projects to demonstrate emerging clean coal technologies that are capable of retrofitting or repowering existing facilities. Pub. L. No. 100-202, in its reference to Pub. L. 99-190 of December 19, 1985, also specifically addressed the levels and forms of cost sharing that were applicable to proposed projects. On February 22, 1988, the Innovative CCT Program Opportunity Notice (PON) was issued in accordance with the requirements of that Act. Proposals were due by May 23, 1988, and on September 28, 1988, DOE announced the 16 proposals that were selected to proceed to award of cooperative agreements.

Public Law No. 100-446, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes" (the "Act"), enacted on September 27, 1988, provides, among other things, that $575 million be made available for additional CCT demonstration projects, and "That projects selected * * * shall be subject to all provisos contained under this head in Public Laws 99-190 and 100-202 as amended by this Act."

Furthermore, the accompanying Conference Report 100-862 (the "Report") stipulates that, "a request for proposals should be issued by May 1, 1989, with proposals due no later than 120 days after issuance of the request for proposals [by August 28, 1989], and that the Secretary of Energy should make project selections no later than 120 days after receipt of proposals [by December 26, 1989]."

Purpose of the Meetings

In general, the goal of the anticipated ICCT solicitation will be to implement the legislative guidance contained in Pub. L. No. 100-446 and the accompanying Conference Report, and to further implement the Administration's decision to provide funding of $2.5 billion for the demonstration of innovative clean coal technologies over a five-year period.

The CCT program will yield significant benefits to the United States, not only in terms of cleaner air and the increased use of coal, our most abundant energy resource, but also by:

- Addressing the concerns regarding global warming by significantly increasing the efficiency of power generation; in some cases, electricity may be produced with perhaps 10 to 30 percent less carbon dioxide emitted,
- Improving the reliability of electric power stations by developing modular technologies, such that a number of small units would work together, rather than depending on a single large installation. Similarly, new CCT technologies may offer superior "load following" capabilities, and repowering will provide environmental benefits while increasing plant capacity,
- Greatly enhancing U.S. technological leadership and international competitiveness,
- Benefitting both eastern and western states by making available more cost-effective, fuel-flexible, power and industrial systems capable of using the full spectrum of U.S. coals,
- Improving our position in international trade by providing advanced technology that would make American coal more attractive to foreign markets, and by reducing the cost of producing energy-intensive U.S. goods,
- Helping to ensure that the U.S. enters the 21st century with a broad array of sophisticated, cleaner, and more economical coal-based energy technologies, rather than being limited to the more costly, less effective, environmental control options available today, and
- Enhancing the long term energy security of the United States.

However, DOE is interested in exploring alternatives that may be available with regard to how the May 1, 1989, solicitation is structured. The purpose of the meetings is to provide a conduit from the public to DOE. Accordingly, DOE is issuing this Notice in order to invite the public to attend any one of several meetings, and to give interested persons an opportunity to present their views, comments, and recommendations with regard to the forthcoming solicition.

Nothing in this Notice should be considered as definite, final, or binding on DOE with regard to the nature and/or content of the solicitation. The public is further advised that DOE cannot reimburse those who attend the public meetings or otherwise submit views to DOE for any expenses that they may incur in responding to this notice.

Proposed Outline of the Anticipated Solicitation

To establish a framework for discussion and comment, it is useful to outline generally the structure of the anticipated CCT solicitation.

The solicitation will be consistent with the Report guidance, which provides, among other things, that, "projects selected * * * shall be subject to all provisos contained under this head in Public Laws 99–190 and 100–202 as amended by this Act." The Report notes also that, "the procurement * * * is subject to the cost-sharing provisions of the previous two procurements."

DOE anticipates that the solicitation will invite applications for financial assistance awards and, accordingly, will be governed by DOE's Financial Assistance Rules, 10 CFR Part 600 (the "Rules").

The Rules establish uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. (Both the 1986 PON and the 1988 PON specified that cooperative agreements would be awarded.)

Project sponsors would be required to share the costs of the projects, such that DOE would not finance more than 50 percent of the total project cost as of the date of award, and the solicitation may require, as was the case in the two previous PONs, that the cost sharing by the offeror be at least 50 percent in each of the project phases (in the past, design and permitting, construction and startup, and operation and disposition). Costs would be shared between DOE and the offeror on an "as expended," dollar-for-dollar, basis.

The solicitation may include Qualification Criteria, and provide that failure to meet any one, or more than one, of these criteria would result in rejection of the proposal and the cessation of its consideration for financial assistance. The Qualification Criteria stipulated in the previous PON were:

- The proposed demonstration project or facility (existing or new) must be located in the United States.
- The proposed demonstration project must be designed for and operated with coal(s). These coals must be from United States mines.
- The offeror must agree to provide a cost share of at least 50 percent of total project cost, with at least 50 percent in each of the three project phases.
- The proposer must have access to, and use of, the proposed site and any proposed alternate site(s) for the duration of the project.
- The proposed project team must be identified and firmly committed to fulfilling its proposed role in the project.
- The offeror agrees that, if selected, it will submit a "Repayment Plan" consistent with the requirements stated in the PON.

If the Qualification Criteria are met, a proposal would undergo preliminary evaluation, if such a phase is included in the solicitation. As noted above for the Qualification Criteria, failure to meet one or more of the Preliminary Evaluation requirements would result in rejection of the proposal and its elimination from further consideration for financial assistance. Preliminary Evaluation requirements were employed in the previous PON: Among other things, included were stipulations that the proposal must be consistent with the objectives of the PON; the proposal must contain sufficient technical, cost, and other information to enable Comprehensive Evaluation (discussed below); and, the proposal must be signed by a responsible official of the proposing organization authorized to bind the organization to the performance of the Cooperative Agreement in its entirety.

Once a determination is made that a proposal meets both (as may be applicable) the Qualification criteria and the Preliminary Evaluation requirements, it would then enter the Comprehensive Evaluation phase and be evaluated in accordance with the Criteria stated in the solicitation. The solicitation would state the different evaluation criteria, and describe the relative weights assigned to the Technical, Business and Management, and Cost aspects of the proposal. The solicitation also would provide guidance and instructions to prospective offerors on how to prepare and submit the proposal.

Evaluation criteria will be developed that are consistent with the guidance in the Act and the Report that selected projects shall be subject to all of the provisions (relevant to the solicitation) that were provided in Pub. L. No. 99–190, which governed the 1986 PON, and in Pub. L. No. 100–202, which governed the 1988 PON, as amended by the Act.

In developing the evaluation criteria, DOE will consider factors that would contribute to achieving the goals established by the Congress and by the Administration. Such considerations include reducing additional forms of pollution from coal combustion (that is, in addition to sulfur dioxide and oxides of nitrogen the "greenhouse gases" such as carbon dioxide). Other factors under consideration would be the potential for reducing the cost of producing additional electric power and the expanded utilization of U.S. coals. The public is invited to comment on these factors, and to suggest others that might be used to evaluate proposed CCT projects.

The final consideration with regard to the selection of a proposal is the application of the Program Policy Factors (PPF). These factors are used to identify the proposals that, in the aggregate, best will achieve the CCT program objectives.

Subjects of Particular Interest

DOE wishes to receive public views, comments, and recommendations on any and all aspects of the forthcoming anticipated CCT solicitation, that will assist DOE with the preparation of a solicitation that optimally balances the needs of the prospective offerors and the goals and objectives of the CCT Program.

DOE is particularly interested in suggestions that would lead to improved evaluation criteria, an increased number of proposed Western projects that respond to the solicitation, reduced cost of proposal preparation, and reduced time required for the negotiation of cooperative agreements.

Meetings, Locations, and Dates

There will be three public meetings, at the locations and dates listed below:

1. Radisson Hotel Denver, 1550 Court Place, Denver, Colorado 80202 (Tel. 303–893–3333), at 8:30 a.m., on Wednesday, January 18, 1989.
2. Harvey Hotel-DFW Airport, 4545 W. John Carpenter Freeway, Irving, Texas 75063 (Tel. 214–929–4500), at 8:30 a.m., on Thursday, February 2, 1989.
3. Radisson Hotel Atlanta, Courtland and International Boulevard, Atlanta, Georgia 30303 (Tel. 404–659–6500), at 8:30 a.m., on Thursday, February 16, 1989.

Format of the Meetings

All three of the meetings will follow the same format, as described below. Each meeting will commence with a brief plenary session that will include introductory remarks and program overviews by DOE officials. At about mid-morning, there will be a brief recess, after which there will be concurrent Discussion Workshops led by panels of DOE officials. There will not be any formal presentations or statements in the Workshops. Attendees will be asked to engage in informal, unstructured, discussions with the panelists on the subjects described earlier in this Notice, and on such other subjects as may be introduced by

members of the audience or by the panelists.

At the conclusions of the Workshops, attendees will meet in a closing plenary session. The discussions that ensued in the various Workshops, and the recommendations that resulted, will be reviewed and summarized. Each of the meetings will conclude with a presentation by DOE's Office of Procurement Operations on the rules and procedures applicable to the award and administration of financial assistance. The presentation will be followed by a question-and-answer period.

The meetings are expected to adjourn in the late afternoon.

Public Participation

Individuals may attend the meetings without notification in advance to DOE, and there is no registration fee or other charge for attendance. Attendees are responsible for making their own travel and lodging arrangements. DOE will not provide any meals or other refreshments at the meetings.

Written Comments

Written comments may be submitted by individuals who are not able to attend the public meetings, and also by persons who do attend one of the meetings and subsequently wish to provide written material to DOE. Written comments that include suggestions for the public meeting agendas (please indicate which of the three meetings is of particular interest to you) will be considered if they are received by December 30, 1988. Written comments with suggestions for the May 1, 1989, CCT solicitation will be considered if they are received by February 26, 1989. In all instances, written comments should be submitted in triplicate (if possible) to the address noted below:

Address for Comments

All written comments should be submitted to: Dr. C. Lowell Miller, Associate Deputy Assistant Secretary for Clean Coal, Fossil Energy, FE–22, U.S. Department of Energy, Washington, DC, 20585, (202) 586–7150.

Issued in Washington, DC, December 9, 1988.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–28773 Filed 12–13–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF89–58–000, et al.]

Megan-Racine Associates, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings.

Take notice that the following filings have been made with the Commission:

1. Megan-Racine Associates, Inc.

[Docket No. QF89–58–000]

December 6, 1988.

On November 22, 1988, Megan-Racine Associates, Inc. (Applicant), of 16401 Shagbark Place, Tampa, Florida 33618, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Canton, New York. The facility will consist of a combustion turbine generator, a heat recovery steam generator equipped with supplementary firing, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be sold to Kraft, Inc. for use in processing of milk into finished products. The electric power production capacity of the facility will be 49,000 KW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin April, 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER89–96–000]

December 7, 1988.

Take notice that on November 29, 1988, Southern California Edison Company (Edison) tendered for filing the Edison-Vernon CDWR Firm Transmission Service Agreement (Agreement) which has been executed by Edison and the City of Vernon, California (Vernon).

Under the Agreement, Edison agrees to make firm transmission service available to Vernon in 1989 and 1990 from Vincent Substation to Vernon's Point of Delivery during certain hours, for Vernon's CDWR capacity and associated energy. Edison will be providing firm transmission service for up to 62 megawatts of capacity and associated energy from CDWR during the months of January, February, March, April, November, and December and 98 megawatts of capacity and associated energy during the months of May through October during 1989 and 1990.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Comment date: December 27, 1988 in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp Doing Business as Pacific Power & Light Company

[Docket No. ES89–9–000

December 7, 1988.

Take notice that on November 30, 1988, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order: (1) Authorizing it to issue and sell, in one or more public offerings, prior to December 31, 1990, fixed or floating rate Debt in aggregate principal of not more than $450,000,000 or, if the Debt is issued at an original issue discount, such greater amount as shall result in an aggregate offering price of not more than $450,000,000 (or its equivalent amount in, or based upon, foreign currencies determined at the time of issue), (2) authorizing it to enter into a letter of credit arrangement with one or more banks or such other agreements as may be necessary or appropriate to provide additional credit support for the payment of the principal of, the interest on, and the premium (if any) on the Debt, (3) authorizing it to enter into one or more currency exchanges, and (4) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: December 28, 1988, In accordance with Standard standard Paragraph E at the end of this notice.

4. The Washington Water Power Company

[Docket No. ER89–92–000]

December 7, 1988.

Take notice that on November 25, 1988, The Washington Water Power Company (WWP) tendered for filing copies of a service schedule applicable to what WWP refers to as a Load Control Energy Exchange Agreement between WWP and The Montana Power Company (MPC). WWP states that WWP will provide MPC from time to time with up to 30 MW of load control service in response to a signal provided by MPC's automatic generation control equipment.

WWP requests that the requirements of prior notice be waived and the effective date be made May 3, 1988.

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which is the first day the load control services were provided to MPC.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER89–56–000]

December 7, 1988.

Take notice that on November 4, 1988, Puget Sound Power & Light Company (Puget) tendered for filing copies of the Sixth Amendment to an Exchange Agreement with the Washington Water Power Company (Washington) which provides for the exchange of steam-electric generation which, because of plant locations and load area locations, results in substantial savings in both transmission service cost and in transfer losses. The savings resulting therefrom are shared equally by Washington and Puget under the terms of the Exchange Agreement.

The Sixth Amendment shows the calculation of estimated costs and benefits for the 12-month period beginning January 1, 1988. It is estimated that the equal sharing of benefits under the Exchange Agreement will result in payments by Puget to Washington of $1,518,876 during this period.

Copies of the filing were served upon Washington.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Indianapolis Power & Light Company

[Docket No. ER89–62–000]

December 7, 1988.

Take notice November 10, 1988, Indianapolis Power & Light Company (IPL) tendered for filing Amendment No. 2 to the Agreement dated as of October 9, 1986 which sets forth the rates, charges, terms and conditions for wholesale electric service to Boone County Rural Electric Membership Corporation (Boone REMC) which is the only REMC IPL serves. Amendment No. 2 extends for an additional two year period the term of the existing Agreement which would otherwise terminate December 9, 1988.

The only customer affected is Boone REMC, which has executed said Amendment No. 2 and has concurred in this filing.

IPL states that copies of this filing were sent to Boone REMC and to the Indiana Utility Regulatory Commission.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Company

[Docket No. ER89–91–000]

December 7, 1988.

Take notice that on November 25, 1988, The Washington Water Power Company (WWP) tendered for filing copies of a service schedule applicable to what WWP refers to as a Transmission Service Agreement between WWP and The Montana Power Company (MPC). WWP states that WWP will provide MPC with firm transmission service from the WWP/MPC point of interconnection near the Burke 115 kV Switching Station to the WWP/Bonneville Power Administration (Bonneville) 230 kV point of interconnection at the Noxon Switchyard. MPC will in turn provide WWP with firm transmission service from the MPC/Bonneville 230 kV point of interconnection at the Garrison Substation to Burke.

WWP requests that the effective date be concurrent with the initial deliveries of power by MPC to the Los Angeles Department of Water and Power which is expected sometime in January or February 1989.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER89–97–000]

December 7, 1988.

Take notice that on November 29, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing an amendment, dated November 15, 1988, to a letter agreement, dated September 2, 1987, between SWEPCO and Empire District Electric Company (Empire). The Amendment provides for the continued sale by SWEPCO to Empire of capacity (without reserves) and associated energy beyond the original November 30, 1988 termination date.

SWEPCO requests an effective date of December 1, 1988 to assure that there is no break in service and, accordingly, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Empire and the Missouri Public Service Commission.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota)

[Docket No. ER89–99–000]

December 7, 1988.

Take notice that on December 1, 1988 Northern States Power Company (Minnesota) tendered for filing a request for conditional waiver of the Commission's fuel clause regulations. According to the Company, waiver is sought in order to obtain Commission approval, if needed, of the recovery through the fuel adjustment clause of certain payments made under a minimum take provision of a coal supply contract. The company states that its 1988 fuel costs include payments to be made to a coal supplier under a minimum take provision of a coal supply contract. The company believes that these amounts are properly recordable in account 151 and therefore properly recoverable through the fuel adjustment clause. Waiver is requested only in the event that the Commission ultimately determines that the payments should not be recorded in Account 151. The company requests an effective date of November 1, 1988, for this filing.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER89–95–000]

December 8, 1988.

Take notice that on November 28, 1988 Florida Power & Light Company tendered for filing in this docket what it describes as an initial rate schedule for service by it to Seminole Electric Cooperative, Inc. to provide capacity and scheduled incremental energy during the forced outage of Seminole Unit No. 1.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket Nos. ER87–44–005 and EL87–36–003]

December 8, 1988.

Take notice that on November 9, 1988, Wisconsin Public Service Corporation tendered for filing its refund report in the above dockets.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this docket.

12. Tapoco, Inc.

[Docket No. ER82–774–009]

December 8, 1988.

Take notice that on September 1, 1988, Tapoco, Inc. submitted a petition for

termination of rate condition imposed in Opinion No. 277. Tapoco, Inc. describes this condition as requiring it to subsidize the power supply costs of Nantahala Power and Light Company. Tapoco, Inc. states that it requests this relief as of November 3, 1987, the date that Duke Power Company filed its application for approval to acquire Nantahala Power and Light Company.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Colorado

[Docket No. ER88-539-001]

December 8, 1988.

Take notice that on November 15, 1988 Public Service Company of Colorado filed a notice of compliance with a Commission order of September 30, 1988 in this docket.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket Nos. ER87-44-003 and EL87-36-001]

December 8, 1988.

Take notice that on November 9, 1988, Wisconsin Public Service Corporation tendered for filing its refund report in the above dockets.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket Nos. ER87-44-004 and EL87-36-002]

December 8, 1988.

Take notice that on November 9, 1988, Wisconsin Public Service Corporation tendered for filing its refund report in the above dockets.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Gas & Electric Company

[Docket No. ER88-302-003]

December 8, 1988.

Take notice that on November 17, 1988, Pacific Gas & Electric Company (PGandE) tendered for filing its compliance filing in response to the Commission's order in this docket of October 20, 1988.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

17. Alabama Power Company

[Docket No. E-8851-005]

December 8, 1988.

Take notice that on October 11, 1988, Alabama Power Company submitted its letter of compliance in response to the Commission's order of September 23, 1988 in this docket.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

18. Tamal Suffolk North

[Docket No. QF88-464-000]

December 8, 1988.

On November 17, 1988, Tamal Suffolk North (Applicant), of Tamal Suffolk North, 80 E. Sir Francis Drake Blvd., Suite 2A, Larkspur, CA 94939 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 366 Sheep Pasture Road, Port Jefferson Station, New York, New York 11777. The facility will consist of a low Btu gas-fired steam generator and a steam turbine generator. The primary energy source will be biomass in the form of low Btu gas produced via gasification of wood waste. The electric power production capacity will be 14 megawatts. Natural gas and diesel oil will be used for startup and as pilot fuel.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph 4 at the end of this notice.

19. Dakota County, a Minnesota Political Subdivision

[Docket No. QF89-60-000]

December 8, 1988.

On November 23, 1988, Dakota County, a Minnesota political subdivision (Applicant), of Dakota County Government Center, 1560 West Highway 55, Hastings, Minnesota 55033 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Dakota County, Minnesota. The facility will coinsist of two steam generators and two turbine generators. The net electric power production capacity will be 20 megawatts. The primary energy source will be biomass in the form of municipal solid waste. There is no planned usage of natural gas, oil or coal in the facility. The facility is projected to begin operation in mid 1993.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

20. City of Chicago, Illinois a Municipal Corporation

[Docket No. QF89-61-000]

December 8, 1988

On November 25, 1988, City of Chicago, Illinois, a Municipal Corporation, Applicant of, 121 North LaSalle Street, Chicago Illinois 60602 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission s regulations. No determination has been made that the submittal constitutes a complete filing.

The 2 MW small power production facility will be located in Chicago Illinois. The facility consists of waterwall steam generators and steam turbine generators. The primary energy source is biomass in the form of municipal solid waste. Natural gas use for start-up and other purposes, will not exceed 1% of the total energy input of the facility during any calendar year.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

21. Total Petroleum, Inc.

[Docket No. QF89-52-000]

December 8, 1988

On November 18, 1988, Total Petroleum, Inc. (Applicant), of Bypass 142, P.O. Box 188, Ardmore, Oklahoma 73402, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ardmore, Oklahoma. The facility will consist of two combustion turbine generators, two heat recovery steam generators equipped for supplemental firing and one condensing steam turbine generator. The steam recovered from the generators will be used in Total Petroleum's refinery operations. The net electric power production capacity will be 40.44 megawatts. The primary energy source will be natural gas and refinery fuel gas.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

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Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28689 Filed 12-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 9, 1988.

Take notice that on December 1, 1988, National Fuel Gas Supply Corporation ("National") tendered for filing Substitute Seventeenth Revised Sheet No. 4 as part of its FERC Gas Tariff, First Revised Volume No. 1, proposed to become effective January 1, 1989.

National states the tariff sheet reflects a revision, pursuant to § 154.305(c)(4) of the Commission's Regulations, to the Current Adjustment included in National's first annual PGA filing. National states that the purpose of the filing is to update National's annual Purchased Gas Cost adjustments to reflect changes in the rates charged by its pipeline suppliers.

Further, National states that Substitute Seventeenth Revised Sheet No. 4 reflects an overall increase in rates of 15.84 cents per dekatherm above National's prior quarterly PGA filing, which went into effect October 1, 1988. The overall increase results from an increase in current purchased gas costs, a positive demand surcharge adjustment and a negative commodity surcharge adjustment.

National states that copies of this filing were served on National's jurisdictional customers and on the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions to intervene or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28785 Filed 12-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 9, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 2, 1988 tendered for filing certain revised tariff sheets as part of its FERC Gas Tariff.

Texas Eastern states that the tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment, and Section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1. This filing constitutes Texas Eastern's first annual PGA filing pursuant to Section 23 in accordance with the Commission's recently revised regulations governing PGA filings as promulgated by its Order No. 483, and also constitutes Texas Eastern's semiannual tracking of changes in electric power costs pursuant to Section 26. Finally, Sheets Nos. 50, 50A, 50B, 50C, and 50D reflect the deletion of Rate Schedule TS-1 as proposed in a separate tariff filing made concurrently with this filing.

Texas Eastern states that in compliance with § 154.305(a)(2) of the Commission's Regulations, a report containing detailed computations which clearly show the derivation of the current adjustment and a surcharge rate to be applied to Texas Eastern's effective rates is attached and enclosed in 9-track computer tape format as prescribed by FERC Form No. 542-PGA (Revised) for formal filing with the Commission.

Texas Eastern states that the rate changes proposed by this filing consist of:

(1) PGA increases of $.061/dth in the Demand-1 component of Texas Eastern's sales rates and $.2159/dth in the commodity component and a decrease of $.0386/dth in the Demand-2 component pursuant to Section 23 of Texas Eastern's tariff based upon Texas Eastern's best projection of cost of purchased gas for the period February 1, 1989 through April 30, 1989 as required by § 154.305(c) of the Commission's Regulations and a surcharge rate to amortize the current deferral subaccount balance in Account 191 as of September 30, 1988 over the 12-month period beginning on February 1, 1989 as required by § 154.305(d) of the Commission's Regulations.

(2) Changes in rates for sales and transportation services pursuant to Section 26 of Texas Eastern's tariff to reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1989 and to reflect the EPC surcharge which is designed to clear the balance in the Deferred EPC account as of October 31, 1989.

Texas Eastern states that underlying the calculations for rate changes proposed with respect to both Section 23, Purchased Gas Cost Adjustment and Section 26, EPC Adjustment, is the assumption that the Commission will approve and make effective as of or prior to February 1, 1989 Texas Eastern's Compliance Filing of October 26, 1988 in Docket No. RP85-117 *et al.* This assumption has a substantial impact on the rate changes proposed. As a result, should timely approval of such October 26, 1988 Compliance Filing not be forthcoming, Texas Eastern states that it will file pursuant to § 154.305(c)(4) to revise this annual PGA filing at least 30 days prior to February 1, 1989 to reflect the impact of the October 26 Compliance Filing not being effective during the time period covered by this filing.

Texas Eastern states that the Account 191 balance proposed to be amortized beginning February 1, 1989 includes an amount of $492,530 related to actual purchased gas costs for the period August 1988 through September 1988 incurred by Texas Eastern in excess by more than 3% of the computed projected purchased gas costs pursuant to § 154.306(e) of the Commission's Regulations. Since § 154.306 requires specific Commission approval for such amount to be recoverable through a

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PGA Surcharge, Texas Eastern has respectfuly requested the Commission to authorize the recovery by Texas Eastern of such amount (a mere three tenths of one percent above the threshold) on the grounds that Texas Eastern incurred such additional purchased gas costs for reasons beyond its control.

The proposed effective date of the above tariff sheets is February 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28786 Filed 12-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 9, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 2, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Tenth Revised Sheet No. 50
Ninth Revised Sheet No. 51

Texas Eastern states Sheet Nos. 50 and 51 are being filed pursuant to (1) Section 4.F of Texas Eastern's Rate Schedule SS-2 and Section 4.F of Texas Eastern's Rate Schedule SS-3 which provide for an automatic rate adjustment to flow through any changes in CNG Transmission Corporation's (CNG) Rate Schedule GSS rates which underline Texas Eastern's Rate Schedule SS-2 and SS-3 and (2) Section 25 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, to include in Texas Eastern's rates the GRI Funding Unit of 1.51 cents per MCF approved by the Commission in Opinion No. 320 issued on November 30, 1988 in Docket No. RP88-182.

Texas Eastern states that CNG filed on July 1, 1988 to increase the Rate Schedule GSS rates as a part of their general rate increase filing in Docket No. RP88-211-000. The proposed rate increase was suspended by Commission order dated August 1, 1988 in Docket No. RP88-211-000 until January 1, 1989. Pursuant to Rate Schedule SS-2 and SS-3 of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, any change in Consolidated's GSS rates are flowed through to Texas Eastern's SS-2 and SS-3 rates. Schedule A in the filing reflects the calculations involved in tracking the GSS rate changes through Texas Eastern's Rate Schedules SS-2 and SS-3. These rates reflect CNG's ACA charge of $0.0018 per dth which was approved by the Commission in an order dated September 30, 1988 in Docket No. TM89-1-22 to be effective October 1, 1988.

Texas Eastern states Schedule B in the filing shows the conversion of the GRI Funding Unit of 1.51 cents per Mcf to 1.46 cents per dry dekatherm (Texas Eastern's billing basis). The GRI charge of 1.46 cents per dekatherm is reflected on Sheets Nos. 50 and 51.

Texas Eastern states Section 4.F of its Rate Schedules SS-2 and SS-3 states that each change in Texas Eastern's rates to reflect changes in CNG's Rate Schedule GSS rates shall become effective without suspension. Texas Eastern respectfully requests that the Commission waive any of its rules and regulations necessary to permit this filing to become effective on January 1, 1989.

The proposed effective date of the above tariff sheets is January 1, 1989 and February 1, 1989, respectfully.

Texas Eastern states that it has before the Commission for approval, tariff sheets filed October 26, 1988 in Docket Nos. RP85-177-056, RP88-67-011, and CP88-136-001. In the event the tariff sheets filed October 26, 1988 are not approved or are altered in any way by the Commission's decision, Texas Eastern will refile the above listed tariff sheets to reflect the Commission's decision.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28787 Filed 12-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-177-058 and CP88-136-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 9, 1988

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 2, 1988 tendered for filing as part of its FERC Gas Tariff Fifth Revised Volume No. 1 and Original Volume No. 2, six copies of the following traffic sheets:

Fifth Revised Volume No. 1

Third Revised Sheet No. 1
Eleventh Revised Sheet No. 50
Eighth Revised Sheet No. 50A
Eighth Revised Sheet No. 50B
Eighth Revised Sheet No. 50C
Eighth Revised Sheet No. 50D
First Revised Sheet Nos. 366-368
Second Revised Sheet No. 439
Second Revised Sheet No. 442
Third Revised Sheet No. 461
Second Revised Sheet No. 462
Fifth Revised Sheet No. 463
Sixth Revised Sheet No. 464
Third Revised Sheet No. 474
Third Revised Sheet No. 600
First Revised Sheet No. 731
First Revised Sheet No. 732
First Revised Sheet No. 733
First Revised Sheet No. 734

Original Volume No. 2

Second Revised Sheet No. 984
Fourth Revised Sheet No. 985
Third Revised Sheet No. 1052

Texas Eastern states these tariff sheets are being filed to reflect the cancellation and withdrawal of Texas Eastern's Rate Schedule TS-1 as required by the Commission in its orders issued October 15, 1987 in Docket No. RP85-177-019, *et al.* and September 29, 1988 in Docket Nos. RP85-177-044 through-046 and CP88-136-000.

Texas Eastern states that pursuant to the Commission's order issued October 15, 1987 in Docket No. RP85-177-019, *et al.*, and September 29, 1988 in Docke

Nos. RP85–177–044 through -046 and CP88–136–000, Texas Eastern was ordered to terminate transportation service under Rate Schedule TS–1. Accordingly, Texas Eastern gave notice to Arkansas Louisiana Gas Company, Consumers Gas Company, Elizabethtown Gas Company, New Jersey Natural Gas Company, and Public Service Electric and Gas Company terminating all Service Agreements under Rate Schedule TS–1 as of February 1, 1989. Therefore, as of February 1, 1989 Texas Eastern will not have any effective Rate Schedule TS–1 Agreements, and under the terms of such Rate Schedule will not execute any such agreements in the future.

Texas Eastern states the tariff sheets proposed to be withdrawn are Original Sheet Nos. 366, 367 and 368 which tariff sheets set forth the TS–1 Rate Schedule. References to the Rate Schedule TS-1 rate on Sheet Nos. 985 (Rate Schedule X–116) an 1052 (Rate Schedule X–121) have been changed to reflect the applicable effective Rate Schedule IT–1 rate. The remaining tariff sheets proposed for filing herein are being filed soley to relect the appropriate deletion of references to Rate Schedule TS–1.

The proposed effective date of the above tariff sheets is February 1, 1989.

Texas Eastern states that it has before the Commission for approval, tariff sheets filed October 26, 1988 in Docket Nos. RP85–177–056, RP88–67–011, and CP88–136–001. In the event the tariff sheets filed October 26, 1988 are not approved or are altered in any way by the Commission's decision, Texas Eastern will refile the above listed tariff sheets to reflect the Commission's decision.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28788 Filed 12–13–88; 8:45am]

BILLING CODE 6717–01–M

[Docket No. TM89–2–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 9, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on December 1, 1983, Revised Third Substitute Revised Fifty-Second Revised Sheet No. 12, Third Substitute Fifty-Third Revised Sheet No. 12, and Second Substitute Fifth-Fourth Revised Sheet No. 12 to Second Revised Volume No. 1 of its FERC Gas Tariff. The purpose of this filing is to track, pursuant to Section 4 of Transco's LSS Rate Schedule and Section 26 of the General Terms and Conditions of Volume No. 1 of Transco's tariff, rate changes in storage and transportation services purchased from Texas Eastern Transmission Corporation (TETCO), National Fuel Gas Supply Corporation (National Fuel) and Consolidated Gas Supply Corporation (Con Gas) which are included in Transco's Rate Schedule S–2 and LSS.

Transco states that on Aug. 31, 1988, TETCO filed revised rates, to be effective September 1, 1988 to reflect a revision to its compliance filing of July 22, 1988 in Docket No. RP88–67. Included therein was an increase in TETCO's demand charge for service rendered under Rate Schedule X–28 which is utilized by Transco to render service to its customers under Rate Schedule S–2. Transco's tariff sheet proposed effective September 1, 1988 reflects the resulting rate incease in its Rate Schedule S–2 demand charges.

Transco states that it purchases transportation service under National Fuel's Rate Schedule X–42 and storage service under Con Gas' Rate Schedule GSS to provide service under Transco's Rate Schedule LSS. National Fuel's filing of August 31, 1988 in Docket Nos. TQ89–1–16 *et al.* and Con Gas' filing of August 30, 1988 in Docket No. RP88–217 *et al.* reflect a reduction in the Commission approved ACA charge effective October 1, 1988. Similarly, on September 2, 1988 TETCO filed in Docket No. TM89–1–17 revised Rate Schedule X–28 rates to reflect a reduction in the Commission approved ACA charge effective October 1, 1988. Transco's tariff sheet proposed effective October 1, 1988 reflects the revised ACA charges under its Rate Schedules LSS and S–2.

Transco states that in this filing is a revised tariff sheet proposed to be effective November 1, 1988 which incorporates the revised Rate Schedules LSS and S–2 rates filed herein into Transco's November 2, 1988 minimum bill compliance filing in Docket Nos. RP87–7–042 and RP86–48–002.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28789 Filed 12–13–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–43–000]

Valero Interstate Transmission Co.; Tariff Filing

December 9, 1988.

Take notice that on December 5, 1988, Valero Interstate Transmission Company ("Vitco") tendered for filing the following Tariff Sheets as part of its FERC Gas Tariff, Original Volume No. 2:

1st Revised Sheet No. 95
Original Sheet No. 95.1

Vitco states these tariff sheets establish a fixed take-or-pay charge designed to recover fifty percent (50%) of Vitco's take-or-pay buy-out and buy-down costs in accordance with the provisions of Order No. 500. The take-or-pay costs include (a) amounts actually paid by Vitco under settlements entered into prior to December 1, 1988 and (b) take-or-pay costs which Vitco reasonably expects to pay pursuant to settlement agreements entered into as of December 1, 1988, with payments to commence within nine months of this filing.

Vitco proposes to allocate the take-or-pay costs to the sole jurisdictional sales customer to whom the subject gas purchase contracts are dedicated, El Paso Natural Gas Company ("El Paso"). The total amount that Vitco seeks to recover from El Paso is $1,325,000, exclusive of interest.

Vitco states it is electing, pursuant to Order No. 500, to absorb fifty percent (50%) of its take-or-pay costs and collect fifty percent (50%) from El Paso through a fixed demand surcharge. If El Paso prefers to pay the charges over an extended period, not to exceed eighteen (18) months, Vitco is willing to so collect the costs along with interest computed in accordance with § 154.67 of the Commission's Regulations.

In the event El Paso or a state agency elects to contest the prudence of the subject costs, Vitco seeks the right to bill El Paso through a demand surcharge the *full* amount of the take-or-pay costs found to be prudently incurred. Vitco requests that all parties be required to elect whether or not to contest prudence within thirty (30) days from the effective date of the filing.

Vitco further requests that it be permitted to file after December 31, 1988 to collect, consistent with Order No. 500, take-or-pay costs which are subject to litigation, arbitration, or settlement as of December 31, 1988, or any later date the Commission may establish.

Vitco requests a proposed effective date for the proposed tariff sheets of January 5, 1989, and requests waiver of the general rate filing requirements of § 154.63 of the Commission's regulations.

Copies of the filing were served on El Paso and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Vitco's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-28790 Filed 12-13-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180795; FRL 3491-1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 11 States listed below. Five crisis exemptions were initiated, by the Arkansas State Plant Board, California Department of Food and Agriculture, and the Maryland, Montana, and Texas Departments of Agriculture. Three guarantine exemptions were granted to the California Department of Food and Agriculture, the Mississippi Department of Agriculture, and the New Jersey Department of Environmental Protection. These exemptions, issued during the months of September and October, are subject to application and time restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, or guarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS-767C), office of pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of Hydrogen cyanamide of table grapes to promote uniform bud-break; October 13, 1988, to January 31, 1989. A notice was published in the **Federal Register** of September 21, 1988 (53 FR 36635). This exemption was granted on the basis that there are no registered alternative pesticides which will promote uniform bud-break on table grapes. Based on information provided by the Applicant and comments in connection with the **Federal Register** notice, unfavorable weather will result in both yield and price decline producing economic losses if an effective pesticide is not made available. Residues of hydrogen cyanamide will not exceed 0.1 ppm in or on grapes. This residue level should not pose a threat to the public health. There has been progress toward registration (necessary toxicity studies have been initiated). Precautions on the label and in the authorizing mailgram are adequate to protect mixers, loaders, applicators, and endangered species. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of hydrogen cyanamide on table grapes to promote uniform bud-break; October 13, 1988, to February 15, 1989. A notice was published in the **Federal Register** of September 13, 1988 (53 FR 35372). This exemption was granted on the basis that there are no registered alternative pesticides which will promote uniform bud-break on table grapes. Based on information provided by the Applicant and comments in connection with the **Federal Register** notice, unfavorable weather will result in both yield and price decline producing economic losses if an effective pesticide is not made available. Residues of hydrogen cyanamide will not exceed 0.1 ppm in or on grapes. This residue level should not pose a threat to the public health. there has been progress toward registration (necessary toxicity studies have been initiated). Precautions on the label and in the authorizing mailgram are adequate to protect mixers, loaders applicators, and endangered species. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of fenamiphos on plums and prunes to control nematodes; September 19, 1988, to September 15, 1989. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of sodium chlorate on dry beans as a desiccant; September 26, 1988, to December 31, 1988. (Robert Forrest)

5. California Department of Food and Agriculture for the use of chlorothalonil on mushrooms to control *Verticillium fungicola*, dry bubble or brown spot disease; October 1, 1988, to September 30, 1989. (Gene Asbury)

6. Colorado Department of Agriculture for the use of chlorpyrifos on winter wheat to control Russian wheat aphid; October 6, 1988, to December 31, 1988. (Robert Forrest)

7. Florida Department of Agriculture for the use of anilazine on watercress to control Cercospora; September 1, 1988, to June 1, 1989. (Jim Tompkins)

8. Illinois Department of Agriculture for the use of thiabendazole on stored corn to control storage mold and fungi; September 19, 1988, to January 1, 1989. (Jim Tompkins)

9. Illinois Department of Argiculture for the use of permethrin of turnip and mustard greens to control cabbage worms and aphids; September 22, 1988, to January 1, 1989. (Libby Pemberton)

10. Michigan Department of Agriculture for the use of sodium chlorate on dry edible beans as a desiccant; September 22, 1988, to October 31, 1988. (Robert Forrest)

11. Mississippi Department of Agriculture and Commerce for the use of sodium chlorate on southern peas and lima beans as a dessicant; September 23, 1988, to November 1, 1988. (Robert Forrest)

12. Missouri Department of Agriculture for the use of thiabendazole on stored corn to control storage mold and fungi; September 19, 1988, to January 1, 1989. (Jim Tompkins)

13. New York Department of Environmental Conservation for the use of sulfur dioxide on table grapes to control decay and mold; October 3, 1988, to December 31, 1988. (Libby Pemberton)

14. Oregon Department of Agriculture for the use of carbofuran on peppermint to control strawberry root weevil larvae; September 8, 1988, to October 31, 1988. (Robert Forrest)

15. Texas Department of Agriculture for the use of bifenthrin on field, pop, and seed corn to control Banks grass mites and two-spotted spider mites; September 27, 1988, to December 31, 1988. (Gene Asbury)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on September 23, 1988, for the use of sodium chlorate on southern peas as a desiccant. This program has ended. (Robert Forrest)

2. California Department of Food and Agriculture on September 1, 1988, for the use of sethoxydim on dry beans to control watergrass. This program has ended. (Robert Forrest)

3. Maryland Department of Agriculture on September 23, 1988, for the aerial use of glyphosate on corn to control Johnsongrass. This program has ended. (Libby Pemberton)

4. Montana Department of Agriculture on October 3, 1988, for the use of chlorpyrifos on wheat to control Russian wheat aphids. This program has ended. (Robert Forrest)

5. Texas Department of Agriculture on October 10, 1988, for the use of sodium chlorate on pinto beans as a preharvest desiccant. This program has ended. (Robert Forrest)

Quarantine exemptions were granted to the:

1. California Department of Food and Agriculture for the use of methol on honey bee hives to control Acarine mites; September 7, 1988, to September 7, 1991. (Robert Forrest)

2. Mississippi Department of agriculture for the use of menthol on honey bee hives to control Acarine mites; September 5, 1988, to September 15, 1991. (Robert Forrest)

3. New Jersey Department of Environmental Protection for the use of menthol on honey bee hives to control tracheal mites; October 13, 1988, to October 13, 1991. (Robert Forrest)

Authority: 7 U.S.C. 136.

Dated: November 23, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-28644 Filed 12-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180794; FRL-3490-9]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the eight States and two crisis exemptions were initiated by the Florida Department of Agriculture and Consumer Service and the Texas Department of Agriculture. Also listed is a quarantine exemption granted to the United States Department of Agriculture, Department of Animal Plant Health Inspection Service. These exemptions, issued during the months of October 1987 through May 1988, were inadvertently omitted from the monthly notices, and are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the EPA contact persons listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the: Q02

1. California Department of Food and Agriculture for the use of prometryn on parsley to control cheeseweed, burning nettle, and shepherd's purse; October 5, 1987, to May 31, 1988. (Libby Pemberton)

2. California Department of Food and Agriculture for the use of metalaxyl on strawberries to control *Phytophora fragariae;* December 7, 1987, to April 30, 1988. (Donald Stubbs)

3. California Department of Food and Agriculture for the use of glyphosate in dates to control Bermudagrass; April 26, 1988, to December 1, 1988. (Donald Stubbs)

4. Indiana State Chemist and Seed Commission for the use of Harmony on wheat to control wild garlic; February 17, 1988, to April 30, 1988. (Robert Forrest)

5. Michigan Department of Agriculture for the use of clopyralid on sugarbeets to control Canada thistle and perennial sowthistle; May 17, 1988, to July 15, 1988. (Libby Pemberton)

6. Montana Department of Agriculture for the use of clopyralid on sugarbeets to control Canada thistle, cocklebur, and wild sunflowers; May 17, 1988, to July 30, 1988. (Libby Pemberton)

7. New Jersey Department of Environmental Protection for the use of metalaxyl on cranberries to control root rot; April 7, 1988, to December 31, 1988. (Robert Forrest)

8. Ohio Department of Agriculture for the use of Harmony on wheat to control wild garlic; February 23, 1988, to April 30, 1988. (Robert Forrest)

9. Pennsylvania Department of Agriculture for the use of Imazethapyr (Pursuit) on snap beans to control weeds; April 5, 1988, to September 30, 1988. (Robert Forrest)

10. Texas Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion and western flower thrips; March 1, 1988, to September 15, 1988. (Gene Asbury)

Crisis exemptions were initiated by the:

1. Florida Department of Agriculture and Consumer Services on January 8, 1988, for the use of benomyl on cabbage to control white mold (Sclerotinia sclerotiorum). This program has ended. (Don Stubbs)

2. Texas Department of Agriculture on April 8, 1988, for the use of ethyl parathion on rape of control aphids. This program has ended. (Robert Forrest)

A quarantine exemption was granted to the United States Department of Agriculture, Department of Animal Plant Health Inspection Service, for the use of quaternary compounds on field equipment to control witchweed seed in

North and South Carolina; February 4, 1988, to February 4, 1991. (Donald Stubbs)

Authority: 7 U.S.C. 136.

Dated: November 23, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-28643 Filed 12-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100058; FRL-3490-8]

Unisys Systems Support Group; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). UNISYS Systems Support Group (UNISYS) has a contract with EPA to operate and maintain a National Computer Center (NCC) located at the Research Triangle Park, North Carolina, a Washington Information Center (WIC) located at EPA headquarters in Washington, DC, and an integrated communications network to make the NCC mainframe processing capacity available to EPA locations throughout the United States. Some of the submitted information that has been placed on the NCC mainframe may have been claimed to be confidential business information (CBI) by submitters. Access to this information by EPA contractors is authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This action will serve to notify affected persons.

DATE: UNISYS employees at the WIC who are newly-involved with this information will be given access to it no sooner than December 21, 1988. Other UNISYS employees (at the NCC) continue to have access.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4460).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-01-6658, UNISYS manages components of a national EPA data processing and communications network at both the NCC and WIC.

The NCC is equipped with mainframe hardware and software to provide a major multiuser operating system environment as well as major data base management, data processing, computational, statistical, graphics, and related support and utility applications. NCC is also equipped with communications hardware and software necessary to make the NCC mainframe environment accessible within a national network from EPA locations throughout the United States.

The WIC is a high capacity node in the national network to provide services to the high concentration of EPA program activities located at headquarters in Washington, DC. These facilities are used by the Office of Pesticide Programs (OPP) and therefore some information submitted to EPA under FIFRA and the FFDCA resides within this system environment, and is therefore accessible to UNISYS employees who work at the NCC and the WIC. UNISYS employees who maintain and operate the NCC and WIC facilities have access to all data and software within the system environment. This access is incidental to their work, which involves loading and maintenance of all system and applications software, system performance tuning, data file backup services, diagnosis and remedy of system hardware and software failures, routing and distribution of printed system output, production of system utilization statistics, and implementation of EPA-directed security protocols within the system environment. While UNISYS employees have complete access to all data within the NCC/WIC environment, they are not in a position to know the actual significance of the data, nor do they use the data within its subject-matter context.

OPP has determined that placement of submitted information on the NCC network environment, and the resulting access by UNISYS to this information (relating to all pesticides covered by the OPP regulatory program) is necessary to the carrying out, by OPP, of regulatory responsibilities under FIFRA and FFDCA. Some of this information is entitled to confidential treatment.

In accordance with the requirements of 40 CFR 2.301(h)(2), UNISYS shall not use the information for any purpose other than the purpose(s) specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, UNISYS has submitted a security plan under which CBI within the national system environment will be secured—safe from unauthorized access or compromise. This security plan has been approved by EPA. No information will be provided to any employees of this contractor until the above requirements have been fully met with respect to those employees.

Dated: November 29, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-28645 Filed 12-13-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3491-3]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding Leggett & Platt, Inc., Carthage, MO

December 5, 1988.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Leggett & Platt, Inc., Carthage, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On November 30, 1988, EPA commenced the following Class II

proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2811, the following Complaint: In the Matter of Leggett & Platt, Inc., 1225 East Central, Carthage, Missouri; EPA Docket No. VII 89–W–0003.

The Complaint proposes a penalty of $125,000, for effluents discharged from the Leggett & Platt, Inc. processing plant to the City of Carthage Water and Electric Plant wastewater treatment facilities in excess of the Iron and Steel Point Source Categorical Pretreatment Standards at 40 CFR Part 420, 47 FR 23284, May 27, 1982, as amended.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Leggett & Platt, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

Date: November 30, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88–28732 Filed 12–13–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200193.

Title: Jacksonville Port Authority Terminal Agreement.

Parties: Jacksonville Port Authority (Authority) C.N. Lloyd Brasileiro (CNLB).

Synopsis: The agreement provides that the Authority will give CNLB incentive tariff discounts for wharfage and container and chassis receiving/delivery charges based on the number of vessel calls. The term of the agreement is for one year.

By Order of the Federal Maritime Commission.

Dated: December 9, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28755 Filed 12–13–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Metrocorp, Inc.; Application To Provide Armored Car and Courier Services

Metrocorp, Inc., East Moline, Illinois, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage *de novo* through Metro Armored Couriers, Inc., East Moline, Illinois, in the activity of providing armored car and courier services.

These proposed activities include: (i) Providing fully-insured transportation of cash, negotiable instruments, securities, and valuables; collecting currency and checks from commercial customers and nonbank financial institutions and transporting these collections to and depositing them with financial institutions; and delivering cash, negotiable instruments, securities, and valuables to commercial customers and nonbank financial institutions; (ii) providing related services, such as interbank transfers, coin wrapping, change delivery, mail delivery, payroll check cashing, and servicing of automatic teller machines; and (iii) providing incidental courier services as permitted under § 225.25(b)(10) of the Board's Regulation Y.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors,* 516 F.2d 1229, 1237 (D.C. Cir.1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board has not previously considered an application to engage in armored car and courier services. The Board has considered, however, on two occasions adding armored car services to the list of nonbanking activities that are closely related to banking. *See* 49 FR 9215 (1984); 36 FR 21897 (1971). On both occasions, the Board decided to take no action. *See* FR 39994; 38 FR 32126 (1973).

Applicant states that the proposed activity is so closely related to banking as to be a proper incident thereto on the basis of its belief that banks engage in activities that are functionally and operationally similar to those involved in the application, including the handling or transfer or currency and valuables.

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue

concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant maintains that permitting bank holding companies to engage in the proposed activities would be procompetitive and would enable holding companies to provide greater convenience and increased services to customers. In addition, Applicant believes that the proposal would not result in adverse effects.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Comments are requested on whether the proposed activity is "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on these questions must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 13, 1989.

Board of Governors of the Federal Reserve System, December 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–28685 Filed 12–13–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[ORD–059–N]

Medicare and Medicaid Programs; Health Care Financing Research and Demonstration; Availability of Funds for Cooperative Agreements and Grants, Medicare Catastrophic Coverage Act of 1988

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces the availability of HCFA funds for certain priority research and demonstration cooperative agreements and grants to conduct projects related to the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360). The closing date for receipt of applications in response to this solicitation is February 6, 1989.

This notice also postpones the closing date for receipt of applications for fiscal year 1989 in response to the general statement of funding priorities for research and demonstration grants and cooperative agreements announced in the **Federal Register** on September 10, 1987 (52 FR 34304). The new closing date will be announced in the **Federal Register** in the near future along with the statement of revised funding priorities for fiscal year 1989.

DATES: The closing date for submission of letters of intent is December 30, 1988; the closing date for submission of applications is February 6, 1989.

APPLICATION KITS: Standard application forms and related instructions are available from, and must be formally submitted to: Paul McKeown, Grants Officer, Health Care Financing Administration, Office of Budget and Administration, Room 364 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (301) 966–5157.

Mr. McKeown is also available to answer questions and to provide guidance concerning the completion of the application forms.

FOR FURTHER INFORMATION CONTACT: Michael Spodnik, Health Care Financing Administration, Office of Research and Demonstrations, Research and Demonstration Program Support Branch, 2–D–6 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (301) 966–6637.

SUPPLEMENTARY INFORMATION: This notice solicits cooperative agreement and grant applications for HCFA research and demonstration projects in certain priority areas resulting from the enactment of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360). That legislation mandates the development and implementation of a series of demonstration projects. It also mandates the implementation of research in certain specific areas, most notably in the long-term care and drug benefit areas. We are developing specific study plans for these research areas and expect to be announcing through the Commerce Business Daily our specific contract needs; however, we are encouraging the stimulation of research in these areas through this solicitation.

The application procedures, general policy considerations, criteria to be used in reviewing the applications, and selection criteria announced in the September 10, 1987 **Federal Register** notice (52 FR 34304) of general funding priorities will continue to apply to this solicitation. A copy of that notice is included in the package of application materials that can be obtained by contacting the HCFA Grants Officer. (See APPLICATIONS KITS section).

Potential applicants should be aware that we are requiring the submission by December 30, 1988, of a letter of intent from all organizations intending to submit an application in response to this solicitation. This letter is described in the September 10, 1987 notice.

The general notice of funding priorities for fiscal year 1989 research and demonstration grants and cooperative agreements is currently under development. We expect to publish that general solicitation in the **Federal Register** in the near future. Therefore, we have postponed the November 7, 1988 closing date previously announced in the **Federal Register** (52 FR 34304); the new closing date will be included in the general solicitation.

I. Medicare Catastrophic Coverage Act Studies

Public Law 100–360 provided for a new program of expanded benefits for Medicare beneficiaries. As a result of this legislation, a number of new research studies are required, particularly in the areas of long-term care and impact of the new catastrophic benefit program on cost, access, and utilization (particularly in the area of prescription drugs). We are encouraging through this cooperative agreement and grant solicitation the stimulation of research efforts in these areas. We are also interested in receiving applications to respond to the demonstration initiatives mandated by the legislation.

A. Research Studies

There are a number of important areas of study resulting from Pub. L. 100–360. These areas can be divided generally into two groups: Projects that will provide us information to make more informed decisions on program implementation and policy, and projects that will assist us in evaluating the impact of the new program of benefits. We are currently developing specific research study and evaluation plans for the long-term care, drug benefit, and general program evaluation areas; we expect to announce later this year through the Commerce Business Daily our specific contract needs in these areas.

In addition to specific contract needs, however, we are encouraging the stimulation of research in these areas by making available funds for grants and cooperative agreements designed to expand the current state of knowledge and information available in these areas. Areas where we are encouraging research include the following:

•Impact of the catastrophic benefit on beneficiary utilization of services (volume, composition and outcomes, beneficiary out-of-pocket expenditures, and program outlays). We are interested in the broad impact on utilization, both of institutional and noninstitutional care, covered and noncovered services. Areas of particular interest include changes in utilization of services resulting from new benefits, such as prescription drugs and mammography screening.

• The response of the private health insurance sector, especially how insurers have altered the supplementary benefit packages they market to the elderly, how retiree benefit packages have been affected, and the response of State regulations governing these private insurance products.

• The use of outpatient prescription drugs by Medicare beneficiaries (both before and after implementation of Pub. L. 100–360), including indications of medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used) and rates of patient stockpiling and wastage.

• In the long-term care area, we are interested in receiving applications addressing the following issues:

• The financial characteristics of Medicare beneficiaries who receive or need long-term care services, including whether such beneficiaries are eligible for Medicare, Medicaid, or other benefits for such services. The impact of the Catastrophic legislation on the use of long-term care services by program beneficiaries.

• How the financial and other characteristics of Medicare beneficiaries affect their utilization of institutional and noninstitutional long-term care services.

• How relatives of Medicare beneficiaries are affected financially and in other ways because the beneficiaries require or receive long-term care services.

• The magnitude of the nation's elderly population with various levels of disability and need for noninstitutional and institutional long-term care; projection of future long-term care needs for persons with various levels of disability.

• The quality of long-term care services (in community-based and custodial settings).

• How the provision of long-term care services may reduce expenditures for acute care services.

• The effectiveness of, and need for, State and Federal consumer protections that assure adequate access to and protect the rights of Medicare beneficiaries who are provided long-term care services (other than in a nursing facility). We are particularly interested in projects that examine innovative approaches for ensuring access to such care.

B. Demonstration Initiatives

Public Law 100–360 specifically mandated the establishment of several demonstration programs for which HCFA has responsibility. We are soliciting applications in response to three specific demonstration programs:

1. Benefits Counseling for Medicare and Medicaid Beneficiaries. Section 424 of the Medicare Catastrophic Coverage Act mandates a demonstration for the purpose of providing training and technical assistance to volunteers who would provide to elderly individuals receiving benefits under Medicare or Medicaid counseling with respect to eligibility for these benefits and assistance in preparing documentation to receive benefits. We are interested in receiving an application from a private or public nonprofit organization to conduct such a demonstration. Particular attention should be given to assessing the adequacy of the training, competency of the volunteers, and effectiveness of the counseling and assistance provided by the volunteers. Potential applicants should carefully review the legislative mandate for further information concerning reimbursement to volunteers for transportation and other expenses, the provision of technical materials and publications, and other matters.

2. Case Management for Beneficiaries with Catastrophic Illnesses. Section 425 of Pub. L. 100–360 mandates a series of demonstration projects (one of which is to be conducted through an agreement with a Medicare Utilization and Quality Control Peer Review Organization with a contract with HCFA under title XI of the Social Security Act) to test alternative approaches to case management for Medicare beneficiaries with catastrophic illnesses, particularly those with high costs of health care services. We are interested in receiving applications to conduct such demonstration projects. Applications should address, at a minimum:

• How claims history data can be used for cost-effective focusing of beneficiary case management services at early stages of onset of catastrophic illness;

• How case management services would be organized and delivered, such as frequency and types of interventions, qualifications of case managers, etc.;

• How payments for case management services would be determined and potential incentives for cost-effective case management services;

• Incentives to encourage targeted beneficiaries to voluntarily participate in case management programs; and

• Any special considerations for quality assurances, access, and beneficiary grievance and appeal rights.

Interested applicants are encouraged to request further information regarding the proposed scope and focus of these demonstrations from the HCFA project officer, Nancy Row ((301) 966–6499).

3. Reclassification of Hospital Chronic Ventilator Dependent Units as Rehabilitation Units. Section 429 of Pub. L. 100–360 mandates a demonstration program designed to examine the appropriateness of classifying hospital chronic ventilator-dependent units in hospitals as rehabilitation units. The demonstration should assess the financial impact of such a reclassification (hospitals' revenues before and after implementation of the reclassification, any resultant cost-shifting) and should use such variables as hospital size, occupancy rates, utilization of the units, rural and urban status, and teaching status. Interested applicants are encouraged to request further information regarding the proposed scope and focus of these demonstrations from the HCFA project officer, Tom Talbott (301) 966–6685).

II. Application Procedures, Eligible Organizations, General Policy Considerations, and Evaluation and Selection Criteria

All pertinent information concerning application procedures, eligibility of applicants, evaluation and selection criteria and process, amount and duration of funding including cost sharing, and information to be contained in letters of intent and applications is included in the September 10, 1987 **Federal Register** notice (52 FR 34304). A copy of this notice is included in the application materials which can be obtained from the HCFA Grants Officer.

III. Reporting and Recordkeeping Requirements

This notice contains no information collection requirements. Consequently, they need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(Sec. 1110, 1115(a), 1875, and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315(a), 139511, 1395rr(f); section 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395b–1 (note)); section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1); the Medicare Catastrophic Coverage Act of 1989 (Pub. L. 100–360)

(Catalog of Federal Domestic Assistance Programs No. 13,766 Health Financing Research, Demonstrations and Experiments)

Dated: November 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–28770 Filed 12–13–88; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Bodies scheduled to meet during the month of January 1989:

Name: National Advisory Council on Health Professions Education.

Date and Time: January 25 and 27, 1989, 9:00 a.m.

Place: Conference Room D and E, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 25, 9:00 a.m.-5:00 p.m.

Closed on January 27, 9:00 p.m.-5:00 pm

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the Director, Bureau of Health Professions, financial management legislative update, quality assurance, discussions of recommendations made by the Council on Graduate Medical Education and the National Commission on Nursing, and future agenda items. The meeting will be closed January 27, 1989, for the review of grant applications for Graduate Training in Family Medicine, Predoctoral Training in Family Medicine, Area Health Education Special Initiatives, and Training in Preventive Medicine. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should contact Mr. James. M. Hoeven, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6880.

Name: Advisory Council on Nurses Education.

Date and Time: January 25 and 27, 1989, 9:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 25, 9:00-12:00 p.m.

Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99–92). The Council also preforms final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on January 25, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/ Nurse Midwifery applications, and Special Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, Room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Name: Joint Meeting of the National Advisory Council on Health Professions Education and the Advisory Council on Nurses Education.

Date and Time: January 26, 1989, 9:00 a.m.

Place: Conference Room D and E, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The entire meeting is open.

Purpose: The Councils advise the Secretary concerning general regulations and policy matters arising in the administration of Titles VII and VIII of the Public Health Service Act. The Council also preform final reviews of grant applications for Federal assistance and make recommendations to the Secretary.

Agenda: The agenda for the meeting will include: (1) Discussions on quality assurance and quality of care; (2) student assistance; (3) geriatrics; (4) recruitment of minorities into the health professions; (5) HRSA AIDS activities.

Agenda Items are subject to change as priorities dictate.

Date: December 9, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–28746 Filed 12–13–88; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Family Violence Prevention and Services

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Notice of the availability of FY 1989 funds for State and Indian Tribal grants for family violence prevention and services.

SUMMARY: FY 1989 funds are now available for grants to States (including Territories and Insular Areas) and Indian Tribes and Tribal organizations to assist in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents. This notice sets forth the application process and requirements for these grants.

DATE: Applications must be received by January 30, 1989.

ADDRESS: Address applications to: Office of Human Development Services, Office of Policy, Planning and Legislation, Attn: William D. Riley, Room 312–F, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: William D. Riley, (202) 245–2892.

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SUPPLEMENTARY INFORMATION:

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 *et seq.*) is entitled the "Family Violence Prevention and Services Act" (the Act). It was first implemented in FY 1986 and was reauthorized by Congress in April 1988 by Pub. L. 100–294.

The purposes of this legislation are to assist States in their efforts to prevent family violence; provide immediate shelter and related assistance for victims of family violence and their dependents; and carry out coordination, research, training, technical assistance, documentation, and evaluation activities. The Secretary also may make demonstration grants directly to Indian Tribes and Tribal organizations to prevent family violence and provide immediate shelter and related assistance.

During FY 1988, 121 grants under the Act were made to States and Indian Tribes. Grants to the States are based on population, with a minimum of $50,000 specified in the Act. Grants ranged from $50,000 to $712,000. Grants to eligible Indian Tribes, depending upon tribal population were either $5,477 or $15,480, with the exception of the Navajo Nation which received $48,000.

Grantees are required to use not less than 60 percent of these funds for immediate shelter and related assistance (section 303(g)). States and Indian Tribes have met this requirement with the majority of the Tribes, and fifty-one of the States, exceeding the 60 percent requirement.

New activities supported by States during FY 1988 included the establishment of shelters in rural and underserved areas, the development of special programs for the children of victims of family violence, and the demonstration of models of services that address elderly abuse. Through the Department of Justice, the Department continued to support regionally-based training and technical assistance for State and local law enforcement personnel, and through the Administration for Children, Youth and Families, HHS, supported the operation of the National Clearinghouse on Family Violence.

B. Reporting Requirements

Program Reports

States and Indian Tribes are reminded that the annual program reports for FY 1987 funds are due December 30, 1988.

Fiscal Reports

A Financial Status Report, Standard Form 269 (SF–269), is due on an annual basis for each fiscal year award. An SF–269 must be submitted within 90 days after the end of the grant period. If an extension was granted for FY 1986 or FY 1987 funds, a provisional final SF–269 must be submitted 90 days after the end of the grant period. A final SF–269 must be submitted 90 days after the date of the extension. Thus, the SF–269 for FY 1987 funds for the period ending September 30, 1988 is due December 30, 1988.

C. Funding Period

States must obligate FY 1989 funds by September 30, 1990, and liquidate all obligations incurred under the award not later than December 30, 1990.

D. Funds Available

Public Law 100–426, the Approximately Act of FY 1989, made $8.219 million available to carry out all activities under the Act. (A total of $8.138 million was awarded in FY 1988.) On this amount, the Department will make $6.986 million (85 percent of total funds) available for grants to States (see section 310(b) of the Act). State allocations are listed at the end of this Notice and have been computed based on the forumla in section 304.

The Department also has set aside $600,000 for direct grants to Indian Tribes or Tribal organizations.

The remaining funds will be used to carry out the research, evaluation, coordination, training, clearinghouse, and documentation activities required by the Act.

E. Eligibility: States

"States" as defined in section 309(6) of the Act are eligible to apply for funds. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the remaining eligible entity previously a part of the Trust Territory of the Pacific Islands—the Republic of Palau. In the past, Guam and the Commonwealth of the Northern Mariana Islands have applied for family violence funds as a part of their Consolidated Grant under the Social Services Block Grant.

F. Eligibility: Indian Tribes and Tribal Organizations

In FY 1986, the first year of this program, Indian tribal eligibility was limited to those Federally recognized Tribes, as defined in section 309(2), that had an already established social services program as evidenced by receipt of "638" contracts for social services with the Bureau of Indian Affairs (BIA). One hundred twenty-six Indian Tribes and Tribal organizations were eligible based on this standard. Sixty-five Indian Tribes received grant awards.

In FY 1987 we expanded eligibility to include Indian Tribes and Tribal organizations who had received FY 1986 grants under the Indian Child Welfare Act from the BIA. Under this new eligibility standard, 171 Indian Tribes and tribal organizations were eligible. Seventy-four Indian Tribes were awarded family violence prevention grants in FY 1987. We considered further expansion of Indian tribal eligibility for FY 1988 grants, but, given the funds available, we limited Indian tribal eligibility to those Indian Tribes and Tribal organizations which received FY 1987 family violence grants.

For FY 1989 we again have decided to limit eligibility for this program to our FY 1987 grantees. Should additional funds become available, however, a supplemental announcement will be published. As in previous years, Indian Tribes may apply singly or as a consortium. A list of the eligible Indian Tribes and Tribal organizations is found at the end of this Notice.

Because section 304(a) specifies a minimum base amount for State allocations, we have set likewise a base amount for Indian Tribal allotments beginning in FY 1986, the first year of the program. We have found, over the last three years, that the establishment of such a minimum allocation, based on population, has facilitated our efforts to make a fair and equitable distribution of limited grant funds. Tribes which meet the application requirements and whose reservation and surrounding tribal trust lands population is less than 3,000 will receive a minimum of $3,000; Tribes which meet the application requirements and whose reservation and surrounding tribal trust lands population exceeds 3,000 will receive a minimum of $8,000, except for the Navajo Tribe which will receive a minimum of $24,000 because of its size. We have used these figures since the beginning of the program.

The Department will use the best available population figures from the Census Bureau. Where Census Bureau data are unavailable we will use figures from the BIA Indian Population and Labor Force Report. If not all eligible Tribes apply, the available funds will be divided proportionally among the Tribes which apply and meet the requirements.

G. Matching Requirements

States and Indian Tribes and Tribal organizations are not required to furnish matching funds, but sub-State grantees must meet the requirements in section 303(f) as follows:

In the first year (FY 1986), if the State gave a sub-State grantee $10,000, the required match was $3,500 or 35 percent of the funds received under this Act. If the same sub-State grantee received $10,000 in the second year (FY 1987), the required match was $5,500 or 55 percent of the funds received under this Act. In the third and subsequent years (FY 1988 and beyond), if the same sub-State grantee receives $10,000, the required match will be $6,500 or 65 percent of the funds received under the Act.

If a different sub-State grantee receives funds for the first or second time under the Act, then the match is computed at 35 or 55 percent, respectively. The required match, in any case, should not be computed against total project funds or any amount other than the amount of funds received by the sub-State grantee under this Act.

H. Change in the Law Regarding Funding of Sub-State Grantees

Public Law 100–294 recently amended the Act to delete the requirement in section 303(c) that an individual sub-State grantee could receive funds under the Act only for a three year period. Currently, sub-State grantees may receive grants in any fiscal year but may not receive a total of more than $150,000 in funds under the Act.

I. State Application Requirements

The application requirements for these grants do not go beyond the requirements in the statute. We have cited each requirement to the specific section of the law.

Please note the new assurance in paragraph (3)(e) below that limits the funds an entity may receive from the State in any one fiscal year to $50,000 and provides that no entity will receive more than a total of $150,000 under this Act (section 303(c)).

Please note also that in order to apply for these FY 1989 funds, a State must have or have under consideration a procedure for the eviction of an abusing spouse from shared residence. (See the assurance in paragraph (3)(1) below.)

The Secretary will approve any application that meets the requirements of the Act and this Notice and will not disapprove an application unless the State has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

All applications must meet the following requirements:

The State's application must be signed by the Chief Executive of the State or the Chief Program Official designated as responsible for the administration of the Act.

The application must contain the following information:

(1) The name of a State agency contact person, if different from the Chief Program Official designated as responsible for the administration of State programs and activities related to family violence carried out under the Act and for the coordination of related State programs (section 303(a)(2)(D).

(2) The procedures designed to involve knowledgeable individuals and interested organizations and assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (section 303(a)(2)(C)). (For example, knowledgeable individuals and interested organizations may include: State Advisory Committees on Family Violence, law enforcement officials, or Coalitions of Directors of Family Violence Shelters.)

(3) The applications also must obtain the following assurances:

(a) That funds under the Act will be distributed as demonstration grants to local public agencies and non-profit private organizations for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims and their dependents (section 303(a)(2)(A)).

(b) That not less than 60 percent of the funds distributed shall be used for immediate shelter and related assistance (section 303(g).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i).

(d) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit private organizations (particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents) and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims (section 303(a)(2)(B)(ii)).

(e) That no entity funded by the State will receive more than $50,000 in any one fiscal year, and no entity will receive more than a total of $150,000 under this Act (section 303(c)).

(f) That demonstration grants funded by the State will meet the matching requirements in section 303(f), i.e., 35 percent of the total funds provided under this title in the first year, 55 percent in the second year, and 65 percent in the third or subsequent year; that except in the case of a public entity, not less than 50 percent of the local matching share shall be raised from private sources; that the local share may be cash or in-kind; and that the local share may not include any Federal funds provided under any authority other than this title (section 303(f)).

(g) That demonstration grants funded by the State may not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(h) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(i) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(j) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(k) That all demonstration grants made by the State under the Act must prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(l) That the State has, or has under consideration, a procedure for the eviction of an abusing spouse from a shared residence (section 303(a)(2)(F)).

(m) That States will comply with Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 92.

J. Indian Tribe and Tribal Organization Application Requirements

The application requirements for these grants do not go beyond the requirements in the statute. We have cited each requirement to the specific section of the law.

The Secretary will approve any application that meets the requirements of the Act and this Notice and will not disapprove an application unless the Indian Tribe or Tribal organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

The application from the Indian Tribe or Tribal organization must be signed by the Chief Executive Officer of the Indian Tribe or Tribal organization and must contain the following information:

(1) The name of the organization or agency designated as responsible for the administration of this program (section 303(a)(D)), and the name of a contact person in the designated organization or agency.

(2) A copy of a resolution stating that the designated organization or agency has the authority to submit an application on behalf of the Indian individuals in the Tribe(s) (section 303(a)(2)(G)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(a)(2)(C)). (For example, knowledgeable individuals and interested organizations may include: Tribal officials involved in child abuse or family violence prevention, Tribal law enforcement officials, State Coalitions Against Domestic Violence, and Directors of Family Violence Shelters.)

(4) A brief description of how the Indian Tribe or Tribal organization plans to use the grant funds to prevent incidents of family violence and to provide immediate shelter and related assistance to victims of family violence and their dependents (section 303(a)(2)(G)).

(5) Each application also must contain the following assurances:

(a) That not less than 60 percent of the funds shall be used for immediate shelter and related assistance (section 303(g)).

(b) That no funds under the Act will be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(c) That no income eligibility standard will be applied to individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(d) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(e) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(f) That Indian grantees will comply with Departmental recordkeeping and reporting requirements and general grant administration requirements of 45 CFR Part 92.

K. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply. Federally recognized Indian Tribes are exempt from all provisions and requirements of E.O. 12372.

L. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this notice have been approved by the Office of Management and Budget under control number 0980–0175.

(Catalog of Federal Domestic Assistance number 13.671, Family Violence Prevention and Services)

Dated December 8, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

STATE ALLOCATION: FAMILY VIOLENCE PREVENTION AND SERVICES ACT

AK	Alaska	$50,000
AL	Alabama	108,013
AR	Arkansas	63,214
AS	American Samoa	10,273
AZ	Arizona	87,413
CA	California	719,071
CO	Colorado	87,066
CT	Connecticut	84,988
DC	District of Columbia	50,000
DE	Delaware	50,000
FL	Florida	311,143
GA	Georgia	162,673
GU	Guam	10,273
HI	Hawaii	50,000
IA	Iowa	75,080
ID	Idaho	50,000
IL	Illinois	307,891
IN	Indiana	146,656
KS	Kansas	65,586
KY	Kentucky	99,352
LA	Louisiana	119,953
MA	Massachusetts	155,424
MD	Maryland	118,940
ME	Maine	50,000
MI	Michigan	243,717
MN	Minnesota	112,304
MO	Missouri	135,010
MP	Northern Marianas Islands	10,273
MS	Mississippi	69,957
MT	Montana	50,000
NC	North Carolina	168,723
ND	North Dakota	50,000
NE	Nebraska	50,000
NH	New Hampshire	50,000
NJ	New Jersey	203,075
NM	New Mexico	50,000
NV	Nevada	50,000
NY	New York	473,630
OH	Ohio	286,544
OK	Oklahoma	88,079
OR	Oregon	71,902
PA	Pennsylvania	316,846
PR	Puerto Rico	87,253
PW	Palau	10,273
RI	Rhode Island	50,000
SC	South Carolina	89,971
SD	South Dakota	50,000
TN	Tennessee	128,001
TX	Texas	444,581
UT	Utah	50,000
VA	Virginia	145,225
VI	Virgin Islands	10,273
VT	Vermont	50,000
WA	Washington	118,940
WI	Wisconsin	127,522
WV	West Virginia	51,142
WY	Wyoming	50,000
Total FY 1989		6,986,150

Indian Tribal Eligibility

Below is the list of Indian Tribes which are eligible for fiscal year 1989 Family Violence Prevention and Services grants. Tribes are listed by BIA Area Office based on Census Bureau population data or, where that is not available, BIA data.

Tribes under 3,000 population.

Eastern Area Office

Miccosukee Tribe of Indians of Florida

Aberdeen Area Office

Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Devil's Lake Sioux Tribe of the Devil's Lake Sioux Reservation, North Dakota
Winnebago Reservation of Nebraska

Minneapolis Area Office

Grand Traverse Band of Ottawa and Chippewa Indians of Michigan
Menominee Indian Tribe of Wisconsin
Michigan Inter-Tribal Council on behalf of: Keweenah Bay Indian Community
Saginaw Chippewa Indian Tribe of Isabella Reservation, Michigan
Sault Saint Marie Tribe of Chippewa Indians of Michigan
Lac du Flambeau Reservation of Wisconsin
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Bad River Tribal Council, Wisconsin
Minnesota Chippewa:
Nett Lake Reservation (Bois Fort)
Fond du Lac Reservation
Grand Portage Reservation
Mille Lac Reservation

Anadarko Area Office

Apache Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Comanche Indian Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Four Tribes of Kansas
Kickapoo Tribe of Kansas
Otoe-Missouria Tribes Oklahoma

Billings Area Office

Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Fort Belknap Indian Tribe of Montana

Phoenix Area Office

Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Elko Band Council
Ft. McDermitt Paiute and Shoshone Tribes of the Ft. McDermitt Indian Reservation, Nevada
Ft. McDowell Mohave-Apache Indian Community, Arizona
Hualapai Tribe of the Hualapai Reservation, Arizona
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Reno-Sparks Indian Colony, Nevada
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Shoshone Paiute Tribes of the Duck Valley Reservation, Nevada
Havasupai Tribe of Arizona
Yavapai-Prescott Tribe, Arizona
Ute Indian Tribe of the Unitah and Ouray Reservation, Utah
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Washoe Tribe of Nevada and California

Albuquerque area office

Pueblo of Acoma, New Mexico
Pueblo of Isleta, New Mexico
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah

Portland area office

Confederated Tribes of the Warm Springs Reservation, Oregon
Confederated Tribes of the Grand Ronde Oregon
Nez Perce Tribe of Idaho
Nisqually Tribe of Washington
Upper Skagit Indian Tribes of Washington
Skokomish Tribe of Washington
Muckleshoot Tribe of Washington
Puyallup Tribe of Washington
Squaxin Island Tribe of Washington

Juneau area office

Ketchikan Indian Corporation, Alaska
United Crow Band, Alaska
Kodiak Native Association, Alaska
Northern Pacific Rim Association, Alaska

Sacremento area office

Big Lagoon Rancheria, California
Coastal Indian Community of the Resighina Rancheria
Trinidad Rancheria
La Jolla Indian Band of Mission Indians
Tribes over 3,000 population

Eastern area office

Eastern Band of Cherokee Indians of North Carolina
Mississippi Band of Choctaw Indians, Mississippi

Aberdeen area office

Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Standing Rock Sioux Tribe of the Standing Rock Reservation, North and South Dakota
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota

Billings area office

Shoshone-Arapahoe Tribes of Wyoming (Wind River Reservation)

Phoenix area office

Gila River Pima-Maricopa Indian Community of the Gila River Reservation, Arizona

Navajo area office

Navajo Tribe of Arizona, New Mexico and Utah

Albuquerque area office

Pueblo of Laguna, New Mexico

Portland area office

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Colville Reservation, Washington

Juneau area office

Association of Village Council Presidents, Alaska
Central Council of the Tlingit and Haida Indians of Alaska
Tanana Chiefs Conference, Alaska
Bristol Bay Native Association of Alaska
Fairbanks Native Association, Alaska

Muskogee area office

Cherokee Nation of Oklahoma
Choctaw Nation of Oklahoma
Muskogee Creek Nation of Oklahoma

Minneapolis area office

Minnesota Chippewa:
Leech Lake Reservation.

[FR Doc. 88-28718 Filed 12-13-88; 8:45 am]
BILLING CODE 4130-01-M

Public Health Service

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting of the National Commission on Orphan Diseases scheduled on January 8–10, 1989.

DATE: Date, time and place: Open Public Meeting, January 8, 1989, 2:00–6:00 p.m., January 9, 1989, 9:00 a.m.–5:00 p.m., January 10, 1989, 9:00 a.m.–12:00 noon; Open Public Session, January 9, 1989, 9:00–10:00 a.m.; Orleans Room, Omni Royal Orleans Hotel, Royal and St. Louis Streets, New Orleans, Louisiana, 70140. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the Open Public Session should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, 5600 Fishers Lane, Park Building, Room 1–20, Rockville, MD 20857, 301–443–6156.

Agenda: Open Public Session

Interested persons may present data, information or views, orally or in writing, on issues pending before the Commission or on any of the duties and responsibilities of the Commission on January 9 from 9:00 a.m. to 10 a.m. Those desiring to make oral presentations should notify the contact person before January 3, 1989 and submit a brief statement of the information they wish to present to the Commission. The request should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the open public session who does not request prior approval to speak may make an oral presentation at the conclusion of the session, if time permits, at the chairperson's discretion.

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Agenda: Open Commission Meeting

The Commission will review the draft report to Congress and adopt recommendations to be included in the report.

SUPPLEMENTARY INFORMATION: The Commission meeting will be conducted in accordance with the agenda published in this **Federal Register** notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items to be discussed in the open meeting may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information from the contact person. In addition, summary minutes of the meeting will be available upon request from the contact person.

This notice is issued under 10(a) (1) and (2) of the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I).

Dated: November 7, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–28719 Filed 12–13–88; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Revised Redelegations of Authorities for Disposition of Supplemental Security Income Overpayments

Section 1631(b) of the Social Security Act, as amended (the Act), provides the Secretary of Health and Human Services (the Secretary) with authority to approve or deny waiver of adjustment or recovery of those Supplemental Security Income (SSI) benefit payments made under the provisions of title XVI of the Act found to be incorrect. This applies to situations where the overpaid individual is without fault and recovery of the overpayment would defeat the purposes of title XVI, or would be against equity and good conscience, or would, because of the small amount involved, impede efficient or effective administration of title XVI. The Secretary has delegated his authority under section 1631(b) of the Act to the Commissioner of Social Security (the Commissioner), with authority to redelegate (38 FR 15648, dated June 14, 1973).

Under 31 U.S.C. 3711, the Secretary, or his designee, is authorized to compromise, suspend or terminate collection action on certain debts owed to the Department of Health and Human Services (HHS). To take such action, appropriate HHS regulations must be promulgated in accordance with standards provided in Joint Regulations of the Department of Justice (DOJ) and the General Accounting Office (4 CFR Parts 101–105). Such regulations for HHS are published in the Code of Federal Regulations at 45 CFR Part 30. The Secretary's authority is restricted to those debt claims which involve compromise, suspension or termination of collection action regarding amounts of $20,000 or less, exclusive of interest. In addition, the Secretary's authority does not apply to cases involving fraud, presentation of a false claim, misrepresentation on the part of the debtor or any other party having an interest in the claim, or conduct in violation of antitrust laws.

Claims which cannot be collected, suspended, compromised or terminated, or which amount to more than $20,000, exclusive of interest, are referred to DOJ for disposition. Cases involving fraud, false claims, misrepresentation, or violation of antitrust laws are also handled by DOJ.

The Secretary has delegated his authority under 31 U.S.C. 3711 to the Commissioner, with authority to redelegate (33 FR 5836 and 5843, dated April 16, 1968), insofar as that authority relates to the mission of the Social Security Administration (SSA).

The above authorities to approve or deny waiver of adjustment or recovery of SSI overpayments, and to compromise, suspend or terminate collection action on these overpayments, were redelegated by the Commissioner to other SSA positions on October 3, 1978. These redelegations were effective upon publication in the **Federal Register**, which occurred on October 16, 1978 (43 FR 47614–47615). Notice is hereby given that the Commissioner has approved revised redelegations of these authorities, as follows:

Authorities

1. Authority to approve or deny waiver of adjustment or recovery of incorrect SSI benefit payments, under section 1631(b) of the Act.

2. Authority to compromise, suspend or terminate collection action on debts owed to SSA as a result of SSI overpayments.

Delegates	Scope of Authority
a. Deputy Commissioner for Operations b. Deputy Commissioner for Programs c. Associate Commissioner and Deputy Associate Commissioner for Supplemental Security Income d. Regional Commissioners and Deputy Regional Commissioners e. Assistant Regional Commissioners and Deputy Assistant Regional Commissioners for Programs f. District Managers, Assistant District Managers, Branch Managers, Resident Representatives, Operations Supervisors, Claims Representatives and Field Representatives g. All positions in the direct line of management above the positions in item f. above	a.–g. The incumbents of these positions may exercise authorities 1. and 2. on SSI overpayment cases within the jurisdiction of their respective components, to the extent permitted by their particular functional responsibilities, as specified in their position descriptions, operating instructions or other pertinent issuances. –
h. Debt Management Specialists and Chiefs, Debt Management Branches, Program Service Centers i. All positions in the direct line of management above the positions specified in item h. above	h. and i. The incumbents of these positions may exercise authority 2. on SSI overpayment cases within the jurisdiction of their respective components, to the extent permitted by their functional responsibilities, as specified in their position descriptions, operating instructions or other pertinent issuances.

Conditions

(1) Further redelegations are not authorized.

(2) These redelegations do not apply to the handling of any debt claim where there is an indication of fraud, the presentation of a false claim, misrepresentation on the part of the debtor or any other party having an interest in the claim, or conduct in violation of antitrust laws. Such cases are handled by DOJ.

(3) Decisions to compromise, suspend or terminate collection efforts involving amounts of $20,000 or more, exclusive of interest, are made by DOJ.

(4) These redelegations must be exercised in accordance with all pertinent provisions of law, regulations, policies, procedures, operating instructions and other requirements.

The above revised redelegations are effective on the date that they are

published in the **Federal Register** and replace those previous redelegations approved by the Commissioner on October 3, 1978 and published in the **Federal Register** on October 16, 1978 (43 FR 47614–47615). I affirm and ratify any actions by the above delegates which may constitute the exercise of any of the subject authorities before the date that these revised redelegations are published in the **Federal Register**.

Dated: November 29, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88–28697 Filed 12–13–88; 8:45 am]

BILLING CODE 4190–11–M

Finding Regarding Foreign Social Insurance or Pension System; Tonga

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—Tonga.

Finding: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the Office of International Policy. Under that authority the Director of the Office of International Policy has approved a finding that Tonga, beginning August 1988, does not have a social insurance system of general application in effect which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that Tonga does not have in effect, beginning August 1988, a social insurance system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)).

This finding also affects the application of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4)(A) and (B)). That section provides that, subject to certain residency requirements of section 202(t)(11), section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under Social Security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of Tonga receiving benefits on the earnings records of individuals who have 40 quarters of coverage under Social Security or who have resided in the United States for a period or periods aggregating 10 years of more.

FOR FURTHER INFORMATION CONTACT: J. Joseph Rausch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3567.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security Survivors Insurance)

Dated: December 1, 1988.

Elizabeth K. Singleton,

Director, Office of International Policy.

[FR Doc. 88–28698 Filed 12–13–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Birch Creek Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a final environmental impact statement (FEIS) covering placer mining within the drainage of the Birch Creek National Wild River.

The drainage area is located approximately 70 miles notheast of Fairbanks, Alaska, and encompasses nearly 1.4 million acres of land. Much of the area is located within the Steese National Conservation Area.

Primarily, the issues addressed are the cumulative impacts of multiple mining operatons on the environment (particularly water quality), subsistence uses in and around the study area, and BLM permitting and monitoring procedures under the Alaska National Interest Lands Conservation Act.

Comments on the draft EIS have been considered in the preparation of this document. A proposed action and four alternatives present management options ranging from emphasis on enforcement of regulations under 43 CFR Part 3809 to a "no mining" alternative. The proposed action has been modified from the draft document to include enforcement of water quality standards of the Enviornmental Protection Agency and the State of Alaska, and to emphasize reclamation. The environmental consequences of all the alternatives are analyzed and presented.

DATE: The 30-day wait period for the FEIS will begin on the day that the Environmental Protection Agency publishes its Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Page Spencer, Project Manager, U.S. Bureau of Land Management, Alaska State Office, Section 918, 701 C Street, Box 13, Anchorage, AK 99513 or at (907) 271–3114.

Richard Dworsky,

Acting State Director.

[FR Doc. 88–28717 Filed 12–13–88; 8:45 am]

BILLING CODE 4310–JA–M

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[UT-040-09-4211-09-NRJI]

Environmental Impact Statement; Steep Creek WSA et al.

AGENCY: Bureau of Land Management, Interior.

ACTION: Draft EA on proposed improvements to the Boulder to Bulldrog (Burr Trail) Road.

SUMMARY: A draft environmental assessment on Garfield County's proposed upgrading of the Boulder to Bullfrog road (also known as the Burr Trail) is now available for public review and comment. The document, which was prepared by an independent contractor, discusses the impacts of the County's proposal, a No Action Alternative, and a National Scenic Roadway alternative. The impacts addressed would occur, at least in part, within the Steep Creek WSA, the Mount Pennel WSA, and the North Escalante Canyons/The Gulch ISA complex.

DATE: Interested persons may submit comments at the address listed below until January 17, 1989.

ADDRESS: To obtain a copy of the draft EA, request additional information, or submit comments, contact David Everett, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, UT 84720, or telephone (801) 586–2401.

December 5, 1988.

Ron Montagna,

Acting District Manager.

[FR Doc. 88–28705 Filed 12–13–88; 8:45 am]

BILLING CODE 4310–DQ–M

Supplemental Rules and Vehicle Route Designation; East Mojave National Scenic Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Adoption of supplemental rules and off-road vehicle designation decisions for the East Mojave National Scenic Area.

SUMMARY: The purpose of these supplementary rules is to provide for the protection of persons, property, and public lands and resources in the East Mojave National Scenic Area ("Scenic Area"). A Management Plan for the Scenic Area (approved in September, 1988) calls for the adoption of rules concerning firearm use and revises the designation of some vehicle routes in the Needles Resource Area. The Management Plan also puts limits on various activities so as to limit surface disturbance in the Scenic area and proposes the development of new recreational-interpretive facilities to provide for an expected four-fold increase in visitor use over the next ten years.

Firearm use

1. Adopt San Bernardino County Ordinance 22015 for Federal enforcement:

Except as otherwise provided by statute of the State of California, it shall be unlawful for any person to discharge a firearm in the East Mojave National Scenic Area within 150 yards of any building without having in his possession the written permission of the owner or tenant thereof, or within 150 yards of any tent, motorhome, house trailer, or other temporary incampment of persons without having in his immediate possession the written permission of the occupants or tenants thereof.

2. No shooting safety zones have been established at Piute Creek Area of Environmental Concern, Granite Mountains Research Natural Area and adjacent recreation sites, public lands within the boundary of the Providence Mountain State Recreation Area, and developed recreation sites as shown on Map 2–2 of the Final Management Plan, including Hole-in-the-Wall and Mid Hills campgrounds.

3. The use of firearms is prohibited within 50 yards of either side of the following roads:

a. Kelbaker Road,
b. Ivanpah/Lanfair Roads,
c. Cedar Canyon Road,
d. Cima Road,
e. Kelso-Cima Road,
f. Black Canyon Road,
g. Essex Road (north of I–40),
h. Mojave Road, and
i. Morningstar Mine Road.

Vehicle Route Designations

The majority of routes in the National Scenic Area are approved for use. However, some routes have been closed to all motorized vehicle use to protect sensitive resources. These routes are described in detail in the Final Management Plan with exceptions as noted in the Decision Record. Maps showing the general location of these routes are included in the Final Plan; more detailed maps are available for public review in the Needles Resource Area Office and the California Desert District Office in Riverside, California.

Additionally, notice is given that the vehicle route designation for the remainder of the Needles Resource Area which covers the eastern half of San Bernardino County, California are approved. A public review of existing routes and proposed designations was completed in 1985. One road outside the Scenic Area will be closed, and ten roads limited to permitted users only (primarily segments of off-road race courses). Maps are available for inspection at the locations given below under Further Information.

EFFECTIVE DATE: These rules and designations will be effective January 13, 1989, and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these decisions and rules will be implemented as areas/routes are signed and information made available to the public.

FOR FURTHER INFORMATION CONTACT: John Bailey, Scenic Area Manager, Bureau of Land Management, Needles Resource Area, 101 West Spike's Road, P.O. Box 888, Needles, California 92363, (619) 326–3896. Hours: 7:45 a.m. to 4:30 p.m., Monday through Friday.

Dave Mensing, Outdoor Recreation Planner, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 351–6402. Hours: 7:45 a.m. to 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1–6. These rules have been recommended and adopted through the development of a comprehensive management plan for the East Mojave National Scenic Area along with extensive review by the public and other governmental agencies. These rules will be posted at key entry points to the Scenic Area and described in literature to be made available to visitors to the region. The vehicle route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 *et. seq.*), EO 11644 (Use of Off-Road Vehicles on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977).

Any person who violates or fails to comply with the firearm restrictions or vehicle route designations as governed by 43 CFR Part 8341, is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Gerald E. Hillier,

District Manager.

[FR Doc. 88–28767 Filed 12–13–88; 8:45 am]

BILLING CODE 4310–40–M

[MT-930-09-4314-10; MTM 41840]

Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 229.87 acres of land for the Ear Mountain Administrative Site, known as Ear Mountain Guard Station, continue for an additional 20 years. The land is now being used as an administrative site by the Rocky Mountain Ranger District. The land will remain closed to surface entry and nonmetalliferous mining, but has been and will remain open to metalliferous mining and mineral leasing.

DATE: Comments should be received by March 14, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

The U.S. Forest Service proposes that the existing land withdrawal made by the Executive Orders of October 25, 1916, and November 1, 1911, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described land:

Principal Meridian

T. 24 N., R. 8 W.,
Sec. 4, lots 3, 4, SE¼NW¼, NE¼SW¼ (formerly described as N½NW¼, SE¼NW¼, NE¼SW¼), SW¼NW¼, and NW¼SW¼.

The area described contains 229.87 acres in Teton County.

The purpose of the withdrawal is to protect the Ear Mountain Guard Station.

The withdrawal segregates the land from operation of the public land laws generally and nonmetalliferous mining, but not from metalliferous mining or the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

James Binando,

Chief, Branch of Land Resources, Division of Lands and Renewable Resources.

December 6, 1988.

[FR Doc. 88–28701 Filed 12–13–88; 8:45 am]

BILLING CODE 4310–DN–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–409–410 (Final)]

Certain Light-Walled Rectangular Pipes and Tubes From Argentina and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–409–410 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina and Taiwan of light-walled rectangular pipes and tubes,[1] provided for in item 610.49 of the Tariff Schedules of the United States (subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determinations on or before January 30, 1989, and the Commission will make its final injury determinations by March 20, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207 as amended, 53 FR 33041 *et seq.* (August 29, 1988)), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–252–1172), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of light-walled rectangular pipes and tubes from Argentina and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on June 6, 1988, by the mechanical tubing subcommittee on the Committee on Pipe and Tube Imports and by the individual manufacturers of the product that are members of the subcommittee. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 28277, July 27, 1988).

Participation in the investigations.—Persons withing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their

[1] For purposes of these investigations, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch (4 millimeters). Light-walled rectangular pipes and tubes are currently reported for statistical purposes under item 610.4928 of the *Tariff Schedules of the United States annotated.*

representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3 as amended, 53 FR 33041 *et seq.* (August 29, 1988)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 *et seq.* (August 29, 1988)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on January 24, 1989, and a public version will be issued thereunder, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on February 8, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 31, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on February 3, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is Febuary 3, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. —All legal arguments, economic analysis, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.22). Posthearing must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 14, 1989. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 14, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary of the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 *et seq.* (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 21, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. The notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 7, 1988.

[FR Doc. 88-28776 Filed 12-13-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-391-399 (Final)]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-391-399 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the following countries of antifraction bearings (other than tapered roller bearings) and parts thereof, the foregoing whether finished or unfinished, provided for in items 680.30, 680.33, 680.37, 680.39, 681.04, 681.10, 681.39 and 692.32 [1] of the Tariff

[1] For purposes of these investigations, the subject bearings and parts thereof include the following articles, whether finished or unfinished: antifraction balls and rollers (TSUSA) items 680.3025, 680.3030, and 680.3040, and HTS subheadings 8482.91.00 and 8482.91.10); ball bearings with integral shafts and parts thereof (TSUSA) item 680.3300 and HTS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3740, 680.3708, 680.3712, 680.3717, 680.3118, 680.3722, 680.3727, and 680.3728, and HTS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, andd HTS subheadings 8482.30.00 and 8482.99.50); other roller bearing (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HTS subheadings 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, and 8482.99.70); ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HTS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items

Continued

Schedule of the United States (TSUS) (subheadings 8482.10.10, 8482.10.50, 8482.30.00, 8482.40.00, 8482.50.00, 8482.80.00 8482.91.00, 8482.91.10, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.90.20, 8483.90.30, 8483.90.70, 8485.90.00, 8708.50.50, 8708.60.50, and 8708.99.50 of the Harmonized Tariff Schedule of the United States (HTS)), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV):

Country	Investigation No.
Federal Republic of Germany	731-TA-391 (Final)
France	731-TA-392 (Final)
Italy	731-TA-393 (Final)
Japan	731-TA-394 (Final)
Romania	731-TA-395 (Final)
Singapore	731-TA-396 (Final)
Sweden	731-TA-397 (Final)
Thailand	731-TA-398 (Final)
United Kingdom	731-TA-399 (Final)

Commerce will make its final LTFV determinations on or before March 24, 1989 and the Commission will make its final injury determinations by May 8, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).[1]

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-252-1911), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202/252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on March 31, 1988 by the Torrington Company, Torrington, CT. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 18909, May 25, 1988).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry to appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), and document filed by a party to these investigations must be served on all other parties to these investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, (53 FR 33034, August 29, 1988)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record in March 13, 1989 and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on March 30, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 13, 1989. All persons desiring to appear at the hearing and make oral presentatives should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 21, 1989 at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 23, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR § 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR

681.1010 and 681.1030, and HTS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HTS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HTS subheading 8708.50.50, 8708.60.50, and 8708.99.50). Finished but unground or semiground balls are not included in the scope of these investigations.

[1] The schedule for the conduct of these investigations also applies to countervailing duty investigation Nos. 303-TA-19 and 20 (Final) (53 FR 40137, October 13, 1988).

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207.24) and must be submitted not later than the close of business on April 6, 1989. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of these investigations on or before April 6, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than April 10, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 7, 1988.

[FR Doc. 88-28775 Filed 12-13-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-283]

Certain Electronic Dart Games; Commission Decision Not To Review an Initial Determination Terminating Four Respondents on the Basis of Consent Orders and Settlement Agreements; Issuance of Consent Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) Order No. 6) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation as to respondents Hanover House Industries, Inc., SYNC, Adam York (the Hanover respondents) and Franklin Sports Industries (Franklin) on the basis of consent orders and settlement agreements.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1099.

SUPPLEMENTARY INFORMATION: On November 10, 1988, the presiding ALJ issued an ID granting the joint motions of complainant Arachnid, Inc. and the Hanover respondents (Motion No. 283-4) and of complainant and respondent Franklin (Motion No. 283-5) to terminate the investigation with respect to those respondents on the basis of consents orders and settlement agreements. No petitions for review of the ID or government or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33070 (Aug. 29, 1988).

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 6, 1988.

[FR Doc. 88-28774 Filed 12-13-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-19282]

X.O. Bunch, Jr.; Continuance in Control Exemption; Carolina Lowcountry Tours, Inc. and Santee Carriers, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: X.O. Bunch, Jr. has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for his continuance in control of Carolina Lowcountry Tours, Inc., (Carolina) and Santee Carriers, Inc. (Santee). Mr. Bunch is chairman of the board and controlling stockholder of Santee, a motor common and contract carrier and broker of property, in interstate or foreign commerce. Mr. Bunch is also the president and sole stockholder of Carolina, an intrastate passenger carrier. Carolina is presently seeking an initial grant of operating authority in No. MC-214205 which would allow it to operate as a motor common carrier of passengers, in charter and special operations, beginning and ending at points in South Carolina and extending to points in six States and the District of Columbia. Upon issuance of authority to Carolina, Mr. Bunch will control two regulated motor carriers (*i.e.* Carolina and Santee). Under 49 U.S.C. 11343(a)(5), the Commission's prior approval is required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Thus, this transaction is subject to our jurisdiction and can be carried out only under regulation or an exemption from regulation. Petitioner contends that examination and regulation of this transaction is not necessary to carry out the national transportation policy of 49 U.S.C. 10101. Petitioner asserts that the transaction is of limited scope because Santee's gross operating revenues are approximately $15 million while Carolina is an entity that currently has no interstate operating revenue. Should Carolina obtain the passenger authority it seeks, there will be no area of service overlap.

DATE: Comments must be received by January 13, 1989.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC-F-19282, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Frank B. Hand, Jr., 12000 Leesburg Pike, Herndon, VA 22070.

FOR FURTHER INFORMATION CONTACT: Andy Nosacek, (202) 275–1712. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: December 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28600 Filed 12–13–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–1 (Sub–No. 211)]

Chicago and North Western Transportation Co.; Abandonment Between Marshalltown (Powerville) and Cedar Falls Junction and Between Hicks and Dike In Marshall, Tama, Grundy and Blackhawk Counties, IA; Findings

The Commission has found that the public convenience and necessity permit Chicago North Western Transportation Company to abandon its 49.57 miles of track and 8.6 miles of side track and yard track between Marshalltown (Powerville) (milepost 277.73) and Cedar Falls Junction (milepost 317.5), including a spur between Hicks (milepost 38.1) and Dike (milepost 47.9) in Marshall, Tama, Grundy, and Blackhawk Counties, IA.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Comission also finds that: (1) A financially reponsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27

Decided: December 7, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary

[FR Doc. 88–28725 Filed 12–13–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–12 (Sub-No.123X)]

Southern Pacific Transportation Co.; Abandonment Exemption; La Fourche Parish, LA

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 0.9-mile line of railroad between milepost 9.0 and milepost 9.9 near Lockport in La Fourche Parish, LA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic on the line had been rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 7, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 19, 1988.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 28, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Lassko, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses enviornmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 13, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 9, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28726 Filed 12–13–88; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (198). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Chevron Chemical Co., et al. (Operating Industries, Inc. Site)

On accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and in accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on December 7, 1988, a proposed Partial Consent Decree in *United States v. Chevron Chemical Company, et al.*, was lodged with the United States District Court for the Central District of California. That action was brought pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for performance of certain remedial action at the Operating Industries, Inc. ("OII") landfill in Monterey Park, California, and for reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA") in responding to releases and threatened releases of hazardous substances at the OII site.

The Consent Decree settles claims against 115 companies that have entered into the settlement regarding the performance of certain interim remedial actions required at the OII site, known as "operable units," and regarding payment of the United States' past costs incurred up to June 1, 1988, of approximately $21.5 million. The Consent Decree requires certain defendants to undertake two operable units at the OII site: The Site Control and Monitoring operable unit, and the Leachate Management operable unit. Under the Site Control and Monitoring operable unit, defendants will maintain and improve systems that are in place at the landfill, including the leachate and gas collection systems, irrigation system, drainage system, maintenance of access roads and slope repair and erosion control. Defendants will also design and construct a leachate treatment plant at the site, and operate the plant to treat leachate emanating from the site. These defendants responsible for performing this work will also reimburse the United States $1.4 million for past costs.

A second group of settling parties will make cash payments, to resolve their liability regarding these two operable units and the United States' past costs incurred up to June 1, 1988. These cash payments include a "premium" over the amounts being paid by the defendants performing the work. This group of settling parties will pay a total of approximately $30.7 million, which shall be credited towards the United States' past response costs, EPA's costs for oversight of the defendants' work under this Consent Decree, and for the establishment of an escrow account to pay for additional years of performance of the two operable units, if necessary. Those parties that are making cash payments only will not be responsible for performance of any aspect of the work under this Consent Decree, if their payments are timely made.

As provided in section 122(d)(2)(B) of CERCLA and 28 CFR 50.7, the Department of Justice will receive comments from persons who are not named as parties to this action relating to the proposed Partial Consent Decree for a period of forty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Chevron Chemical Company, et al.*, D.J. Ref. 90-11-2-156.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney, 312 N. Spring Street, Los Angeles, California 90012, and at the Region IX office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed Partial Consent Decree may also be examined at the Environmental Protection Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Partial Consent Decree may be obtained by mail from the Environmental Protection Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Partial Consent Decree should be accompanied by a check in the amount of $10.80 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-28766 Filed 12-13-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Judgment; New York City, NY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on November 23, 1988, a proposed consent decree in *United States v. City of New York, and its Department of Sanitation*, Civil Action No. 88 Civ. 8357 (RO), was lodged with the United States District Court for the Southern District of New York. This consent decree settled a lawsuit filed on November 23, 1988, pursuant to sections 112 and 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7412 and 7413, and pursuant to 40 CFR Part 61, Subpart M, for injunctive relief and for the assessment of civil penalties against the City of New York and its Department of Sanitation ("DOS"). The complaint is based on, among other things, certain asbestos removal operations that were conducted by DAR Construction Company ("DAR"), a contractor hired by DOS, in August of 1986, at DOS' Bronx West 7 Garage, located at 215th Street in New York, New York. The complaint alleged that the asbestos removal operations by DAR constituted violations of sections 112 of the Act, 33 U.S.C. 7412, and the National Emission Standards for Hazardous Air Pollutants for asbestos codified at 40 CFR Part 61, Subpart M ("asbestos NESHAP").

Under the terms of the proposed consent decree, DOS is permanently enjoined from violating the Clean Air Act (the "Act"), 42 U.S.C. 7401-7642, and the asbestos NESHAP. DOS is also required to implement an "Asbestos Control Program," which includes among other things, that DOS conduct a survey of all its facilities for the presence of asbestos. The proposed consent decree provides that any contracts entered into by DOS for asbestos demolition or renovation are subject to review by an individual trained in asbestos abatement procedures. In addition, DOS is required to have a trained supervisor at the site of any asbestos demolition or renovation operations, who is responsible for insuring that the work is performed in accordance with the Act and the asbestos NESHAP. DOS is also required to notify the Environmental Protection Agency ("EPA"), regarding any planned renovations or demolitions subject to the requirements of the Act and the asbestos NESHAP at least twenty (20) days before any renovation or demolition is scheduled to begin, except in certain emergency situations.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. All comments should refer to *United States v. City of NEW York and its Department of Sanitation*, D.J. Ref. 90-5-2-1-1204.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region II

Contact: Joseph Siegal, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–4760

United States Attorney's Office

Contact: Gabriel W. Gorenstein, Assistant United States Attorney, Southern District of New York, One St. Andrews Plaza, New York, New York 10007, (212) 791–1979

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1250, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice. When requesting a copy of the proposed consent decree, please enclose a check for copying costs in the amount of $1.10 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–28704 Filed 12–13–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Polysar, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States of America v. Polysar Incorporated,* Civil Action No. C 87–1080A, was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States in this action sought injunctive relief and civil penalties pursuant to section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928, in connection with a polystyrene production facility owned by Polysar Incorporated ("Polysar") in Copley, Ohio.

The proposed consent decree would require Polysar to conduct an investigation at the company's Copley, Ohio polystyrene production facility to determine the nature and extent of contamination present in soil and groundwater at the site and to evaluate hydrogeologic conditions affecting the rate and extent of contaminant migration. In addition, the proposed decree would require Polysar to implement measures to take an inactive surface impoundment out of service, including the removal, treatment and disposal of impoundment liquids, sludges and contaminated subsoils, in accordance with a plan that has been approved by the United States Environmental Protection Agency ("U.S. EPA"). The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC and should refer to *United States of America v. Polysar Incorporated,* D.J. Ref. No. 90–7–1–371.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. The proposed Consent Decree package consists of a 17-page Consent Decree and 473 pages of Exhibits. You may request a copy of the Consent Decree with or without exhibits. Please specify in the letter of request whether or not exhibits are requested. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of $47.30 (ten cents (10¢) per page copying costs) payable to the "United States Treasurer." A request for a copy of the proposed Consent Decree without exhibits should be accompanied by a check in the amount of $1.70 payable to the "United States Treasurer."

Roger Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–28765 Filed 12–13–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 88–28]

Gordon M. Acker, D.M.D.; Grant of Application With Restrictions

On February 29, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Gordon M. Acker, D.M.D. (Respondent) of 2412 Route 71, Apt. 5H, Spring Lake Heights, New Jersey, proposing to deny his application for registration executed on January 29, 1988. The Order to Show Cause alleged that Respondent's registration is inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f).

By letter dated March 14, 1988, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Washington, DC on June 9, 1988.

On August 31, 1988, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. The Administrative Law Judge recommended that Respondent be issued a restricted registration in Schedules III, IV and V.

The Administrative Law Judge found that Respondent entered the University of Pennsylvania School of Dental Medicine in the fall of 1978. In Respondent's third year of dental school he accepted the invitation of a fellow classmate, David Ackerman, to go to a private club. He saw many of his classmates at the club and was offered cocaine. Respondent visited the club several times and eventually agreed to try cocaine. He continued to use cocaine which he obtained from Ackerman on several occasions before going to the club.

Respondent learned through his association with Ackerman that Ackerman and another classmate that resided in Respondent's apartment building, Kenneth Weidler, were packaging and selling cocaine from Weidler's apartment. Respondent visited the apartment and, on one occasion, agreed to take a small package, which he believed contained cocaine, to a Federal Express office for mailing. Respondent eventually agreed to keep small amounts of cocaine at his apartment and deliver the cocaine to other dental students. On at least three occasions in 1980, Respondent made out-of-town trips to deliver cocaine to Ackerman's request. He was paid expenses plus $200 for each trip.

Respondent also accompanied one of Ackerman's partners of Florida to purchase cocaine.

The Administrative Law Judge also found that in late 1980, Respondent determined that his studies were being affected by his cocaine use and he disassociated himself from Ackerman and Weidler. He did, however, admit to using cocaine on one occasion after that time. Respondent graduated from dental school in May 1981, and completed a one-year residency. He was then employed by various dental clinics until his arrest by the FBI in June 1985. This arrest followed his indictment for cocaine conspiracy along with Ackerman and Weidler.

Respondent cooperated with the investigators and, on August 5, 1985, he pled guilty to one count of conspiracy to possess with intent to distribute cocaine. He was sentenced to six months in a work release program, to be followed by four and one-half years probation. He was employed sporadically from the time of his arrest until March 1987, when he was fired by the dental clinic that employed him because his work was "not up to par."

In May 1986, Orders to Show Cause were issued by DEA to Respondent proposing to revoke his DEA registrations. A hearing was held in January 1987. The Administrative Law Judge recommended that Respondent's registrations be revoked based upon his felony convictions. The recommendation was adopted by the Administrator and the registrations were revoked effective April 27, 1987. A petition for review of this order was filed with the United States Court of Appeals for the District of Columbia Circuit. On January 17, 1988, the Court affirmed the Administrator's order. The Court did indicate in its order that, "it would be appropriate for the Administrator to give careful consideration to any application filed by respondent after a year had elapsed from the effective date of the revocation order." On January 29, 1988, the application that is the subject of this proceeding was submitted by Respondent.

The New Jersey State Board of Dentistry entered into a consent agreement with Respondent on April 4, 1986. The agreement provided for random urine screens for one year, practicing under the supervision of another dentist for one year, and that Respondent was not to prescribe or possess Schedule II or IIN controlled substances, except for his own use pursuant to a bona fide prescription from another practitioner for legitimate medical use. The Regents Review Committee of the State of New York placed Respondent's dental license in the State of New York on probation for five years on February 26, 1988.

Respondent submitted an application dated January 29, 1988, for DEA registration in Schedules II (typing underneath "Percodan only"), III, IIIN, IV and V. Respondent answered "yes" in response to the question on the application, "Are you currently authorized to prescribe, distribute, dispense, conduct research, or otherwise handle controlled substances in the schedules for which you are applying, under the laws of the State or jurisdiction in which you operate or propose to operate?" He was, in fact, not authorized at the time he submitted the application, nor is he currently authorized, to handle Schedule II controlled substances in New Jersey. During these proceedings, Respondent requested that his application with regard to Percodan be withdrawn. This request was granted by the Administrative Law Judge.

The Administrative Law Judge concluded that it is undisputed that Respondent has been convicted of a felony relating to controlled substances. This alone is sufficient basis to deny an application for registration. However, based upon the fact that Respondent's illegal activities occurred more than seven years ago, that he cooperated with authorities following his arrest, that he successfully served his sentence, that there is no evidence of misconduct by Respondent since his graduation from dental school, that he has practiced dentistry for several years, and that there is no evidence that he misused his DEA registration when he had one, the Administrative Law Judge recommended that Respondent's application for registration in Schedules III, IV and V be granted subject to restrictions. The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that there is sufficient evidence in the record to believe that Respondent, given the opportunity, will utilize a DEA registration in a responsible and professional manner.

The Administrator does impose the following restrictions upon the DEA registration in Schedules III, IV and V to be issued to Respondent:

1. Respondent's controlled substance handling authority shall be limited to writing or prescriptions only, and he shall not dispense, possess or store any controlled substance, except medically necessary for his own use, and which he has obtained pursuant to a written prescription from another licensed practitioner (unless the substance is legitimately obtainable without a prescription).

2. Respondent shall report to the Special Agent in Charge of the nearest DEA office, or his designee, any adverse results of urine tests administered pursuant to Respondent's Federal probation or New Jersey Board requirements.

3. Respondent shall not prescribe any controlled substances for his own use.

4. For at least two years from the date of the entry of a Final Order in this proceeding, every calendar quarter, Respondent shall submit a log of all prescriptions he has written during the previous quarter to the Special Agent in Charge of the nearest DEA office or his designee.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for DEA registration submitted by Gordon M. Acker, D.M.D., on January 29, 1988, be granted in Schedules III, IV, and V, subject to the restrictions enumerated above. This order is effective December 14, 1988.

Dated: December 8, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-28727 Filed 12-13-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-15]

Hyland Pharmacy; Revocation of Registration

On February 8, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Hyland Pharmacy (Respondent) of 3291 Highland Drive, Salt Lake City, Utah, proposing to revoke its DEA Certificate of Registration, AH8810764 and deny its pending application for renewal of that registration executed on November 3, 1986. The statutory predicate for the proposed action was that William Edmund Leatherwood, owner and manager of Respondent pharmacy, was convicted in the District Court of the Third Judicial District, State of Utah, on August 4, 1986, of five counts of obtaining controlled substances by fraud, felonies relating to controlled substances.

By letter dated February 19, 1988, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was

held in Salt Lake City, Utah on June 22, 1988.

On September 19, 1988, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that the Administrator not revoke Respondent pharmacy's DEA Certificate of Registration and that the pending application for renewal of that registration be granted. Government counsel filed exceptions to the Administrative Law Judge's opinion and recommended ruling, findings of fact and decision. Respondent's counsel did not file any response to the Government's exceptions.

On October 17, 1988, Judge Bittner transmitted the record of the proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and adopts, in part, the findings of fact recommended by the Administrative Law Judge, makes independent findings of his own, and rejects all other findings not included herein, as being unsupported by credible evidence. The Administrator also rejects the recommended decision of the Administrative Law Judge. Pursuant to 21 CFR 1316.67, the Administrator issues his final order in the matter based upon findings of fact and conclusions of law as set forth below.

The Administrative Law Judge found that William Edmund Leatherwood, R.Ph., is the sole owner of Respondent pharmacy in Salt Lake City, Utah. On May 23, 1986, an Investigator with the Division of Occupational Licensing of the State of Utah conducted a compliance investigation of Respondent pharmacy. During this routine inspection the Investigator found that one of the physicians listed on the daily logs as a prescriber of controlled substances was one who had his Utah controlled substance license suspended in November 1985. Further investigation revealed that there were several hundred prescriptions listed in the daily logs as being written by this physician after the date of the physician's suspension. The Investigator determined that these prescriptions were not available for review, and that they had not been authorized by the physician in question.

The Utah State Investigator returned to speak with Mr. Leatherwood again on June 2, 1986. At that time Mr. Leatherwood stated that he had only dispensed controlled substances to one customer without a prescription. The controlled substances he dispensed to that patient included Tylenol with Codeine #4 (Schedule III), Dalmane (Schedule IV), and Paxipam (Schedule IV). An audit of Respondent's prescription files on June 3 and 4, 1986, revealed that Mr. Leatherwood's statements to the Investigator were untrue. The Investigator determined that there were approximately 702 instances in which controlled substances were unlawfully dispensed to ten individuals during the period of June 1985 to June 1986, the only time period reviewed by the Investigator. Mr. Leatherwood realized over $4,000 in additional gross income as a result of his illegal drug sales during that one year.

During the year-long period covered by the investigation, Mr. Leatherwood unlawfully dispensed approximately eight ounces of Phenergan with codeine (Schedule V) on almost a daily basis in the name of Scott Alger, a 13-year-old boy. No physician had prescribed the dispensing of these drugs. Mr. Leatherwood covered these dispensing irregularities by writing false prescriptions which indicated that certain physicians had authorized them, when in fact they had not.

As a result of this investigation, on June 23, 1986, William Leatherwood entered a conditional plea to five counts of obtaining a controlled substance by fraud, a third degree felony, in the Third District Court in and for Salt Lake County, State of Utah.

On June 25, 1986, Mr. Leatherwood's licenses to practice pharmacy and dispense controlled substances in the State of Utah, and Respondent's controlled substance license were immediately suspended by the Department of Business Regulation, State of Utah, and the controlled substances in the pharmacy were, at that time, removed.

On August 4, 1986, Mr. Leatherwood entered a guilty plea to five third degree felony charges of obtaining controlled substances by fraud.

On June 25, 1986, the Utah Department of Business Regulation issued an Order, pursuant to a stipulation between the Department, Mr. Leatherwood and Respondent pharmacy which required that Mr. Leatherwood's licenses to practice pharmacy and to dispense controlled substances be suspended for two years as of June 25, 1986, and that Respondent's controlled substance license be suspended from June 25, 1986 through December 1, 1986. These licenses were to be placed on probation for five years following the period of suspension. In this stipulation, Mr. Leatherwood admitted that he repeatedly sold controlled substances to individuals without a valid prescription and that from June 1985 to June 1986, he repeatedly signed prescription forms for the pharmacy's files and falsely represented that a physician had authorized the prescriptions.

On August 11, 1987, the Third Judicial District Court, Salt Lake County, State of Utah, reduced the five felony charges to Class A misdemeanors and placed Mr. Leatherwood on unsupervised probation for one year.

On November 13, 1987, the Director of the Division of Occupational and Professional Licensing, Utah Department of Business Regulation, ordered the reinstatement of Mr. Leatherwood's license to practice pharmacy and license to dispense controlled substances. These licenses are now subject to a five year conditional probation.

The Administrator finds that although Respondent pharmacy is now currently authorized to handle controlled substances in the State of Utah, neither Respondent nor Mr. Leatherwood, its owner, have provided any evidence which would mitigate Mr. Leatherwood's past conduct and his convictions relating to controlled substances.

The Administrator of the Drug Enforcement Administration may revoke a DEA Certificate of Registration if he finds that the registrant has been convicted of a felony relating to controlled substances. Mr. Leatherwood, owner and operator of Respondent pharmacy, pled guilty and was convicted of five felony violations of the Utah Controlled Substances Act.

The Administrator has consistently held that where the owner, operator, major shareholder, managing pharmacist or key employee of a pharmacy has been convicted of a felony relating to controlled substances, the registration of the pharmacy may be revoked, suspended or denied on that basis. See: *White's Best Buy Drugs*, Docket No. 87–41, 53 FR 7251 (1988); *Unarex of Plymouth Road*, d/b/a *Motor City Prescription Center and Unarex of Dearborn*, d/b/a/ *Motor City Prescription Center*, Docket Nos. 84–1, and 84–2, 50 FR 8877 (1985); *Bourne Pharmacy, Inc.*, Docket No. 83–32, 49 FR 32816 (1984), and cases cited therein.

In addition to the conviction, Mr. Leatherwood's actions on behalf of the pharmacy would render the DEA registration of the pharmacy inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f), which is a ground for revocation of registration under 21 U.S.C. 824(a)(4). The Administrator of the Drug Enforcement Administration has revoked or denied DEA Certificates of Registration of pharmacies based upon conduct similar to that of Mr. Leatherwood. See: *Medicine Shoppe*,

Docket No. 85–47, 51 FR 13854 (1986); *Fourth Street Pharmacy,* Docket No. 86–42, 52 FR 32068 (1987), *aff'd, Fourth Street Pharmacy v. Drug Enforcement Administration,* 836 F.2d 1137 (8th Cir. 1988). Mr. Leatherwood exhibited a pattern of misconduct which was a flagrant abuse of a pharmacist's duty to dispense controlled substances only pursuant to the lawful order of a physician. 21 CFR 1306.04.

In her opinion, the Administrative Law Judge recommended that Respondent be permitted to retain its Federal controlled substance privileges despite its owner's history of wrongful handling activities. Her opinion is based, in part, upon her conclusion that "it does not appear that Mr. Leatherwood acted from criminal intent." To support this statement, Judge Bittner found that Mr. Leatherwood's unlawful dispensings were "motivated by a desire, however misguided, to accommodate his customers." The Administrator is not convinced that Mr. Leatherwood's intentions were totally directed towards "accommodating" his customers. The Administrative Law Judge failed to consider that the pharmacy collected income of over $4,000 from these illegal prescriptions. There is no doubt but that Mr. Leatherwood and his pharmacy benefitted financially from the transactions.

Mr. Leatherwood testified that he knew what he was doing was wrong when he did it. On June 2, 1986, he told the state Investigator that he had only dispensed controlled substances without authorization to one customer. It was not until later, when he was confronted with direct evidence of unauthorized dispensing to nine other customers that he admitted his unlawful activities. The Administrator finds that the evidence in the record does not support a conclusion that Mr. Leatherwood acted without criminal intent in unlawfully dispensing controlled substances, when he knew at the time that he was violating the law.

Mr. Leatherwood admitted that he dispensed controlled substances at least 700 times during a one year period from June 1985 to June 1986, pursuant to false prescriptions which he wrote. Mr. Leatherwood blatantly abused the pharmacy's registration. Although Mr. Leatherwood has indicated that he will not repeat his conduct, the Administrator finds nothing in the record to support this contention. An individual who owns and operates a pharmacy owes the public professional responsibility and integrity. Mr. Leatherwood has disregarded these responsibilities. This registrant's past violative history leads the Administrator to conclude that Respondent cannot be entrusted with the responsibilities of a DEA registration and that its continued registration would be contrary to the public interest. Therefore, the Administrator concludes that Respondent's registration must be revoked and that its pending application for renewal thereof must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH8810764, previously issued to Hyland Pharmacy d/b/a William Edmund Leatherwood, be, and it hereby is, revoked. He further orders that the pending application for renewal of said registration, executed on November 3, 1986, be, and it hereby is, denied.

This order is effective January 13, 1989.

Dated: December 8, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–28728 Filed 12–13–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Labor has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Final Interim Rule Relating to the Prohibited Transaction Exemption Procedures Under the Federal Employees' Retirement System Act; No Form; and No OMB Control Number.

Type of Request: Expedited Submission—approval date requested (December 27, 1988.)

Average Burden Hours/Minutes Per Response: 35 hours.

Frequency of Response: On occasion.

Number of Respondents: 3.

Annual Burden Hours: 105 hours.

Annual Responses: 3.

Needs and Uses: This final interim regulation describes the procedures for filing and processing applications for exemptions from the prohibited transaction provisions of The Federal Employees' Retirement System Act of 1986. The Secretary of Labor is authorized to grant exemptions from these restrictions and is required by law to establish a procedure to process such exemptions.

Affected Public: Business or other for profit.

Respondents Obligation: Mandatory.

Requests for Which Paperwork Reduction Act Approval Is Being Sought: (1) An application submitted under this procedure shall contain all of the information specified in paragraph (2) of this section if such application is for an exemption other than for a class of transactions or class of fiduciaries. If the application is for a class of transactions or class of fiduciaries, the application need contain only the information required under paragraphs (D) through (J), (N), and (O) of paragraph (2) of this section. If any of the information specified in paragraph (2) of this section cannot be furnished, an explanation of why it cannot be furnished shall be provided.

(2) Information to be submitted with application for exemption:

(A) The name and type of plan or plans;

(B) The Employer Identification Number (EIN);

(C) The estimated number of plan participants;

(D) A detailed description of the transaction and the fiduciary, or class thereof, for which an exemption is requested;

(E) The possible violation or violations of the prohibited transaction provisions for which exemptions are requested;

(F) Whether such transaction or transactions have been already entered into or are transactions which the parties intend to enter into if the exemption is granted;

(G) Whether the transaction or transactions are customary for the industry or class involved;

(H) The hardship or economic loss, if any, which would result to the person or persons on whose behalf the exemption is sought, to the plan, and to its participants and beneficiaries from denial of the application;

(I) At the option of the applicant, a draft setting forth the exemption proposed by the applicant;

(J) A statement explaining why such exemption would be:

(i) Administratively feasible;

(ii) In the interest of the plan or plans which would be affected if the exemption were granted and of their participants and beneficiaries; and

(iii) Protective of the rights of the participants and beneficiaries of the affected plan or plans;

(K) Whether, to the best knowledge of the applicant, the plan or trust base ever been found by the Secretary or by a court to have violated the provisions of 5 U.S.C. 8477(b) or (c);

(L) Whether, to the best knowledge of the applicant, any relief under 5 U.S.C. 8477(c)(3), section 408(a) of ERISA, or section 4975(c)(2) of the Code has been requested by, or provided to, the applicant 4975(c)(2) of the Code has been requested by, or provided to, the applicant or any of the parties on behalf of whom the exemption is sought and, if so, a description of such relief;

(M) Whether, to the best knowledge of the applicant, the applicant or any of the parties to the transaction sought to be exempted is currently, or has been within the last 5 years, a defendant in any lawsuit concerning such person's conduct as a fiduciary, party in interest, or disqualified person with respect to any plan;

(N) With respect to the notification of interested persons, the applicant shall include the following:

(i) A description of the interested persons to whom notice will be provided;

(ii) The manner by which such notice will be provided; and

(iii) The time period within which such notice will be given;

(O) A certification by the applicant that, to the best of the applicant's knowledge, the application is accurate and complete.

(3) *Conferences.* (A) The applicant shall indicate whether a conference is desired in the event the Secretary contemplates not granting the requested exemption. Any such conference shall be held in Washington, DC.

(B) If more than one applicant has requested an exemption with respect to the same or similar class of transactions, and the Secretary contemplates not granting the exemption, and if more than one applicant has requested a conference, such conferences will be scheduled, insofar as possible, as a joint conference with all such applicants present.

(C) An applicant is entitled to only one conference.

(D) In any case in which a hearing is held, an applicant shall not be entitled to a conference.

OMB Desk Officer: Ms. Diana Rowen.

Written comments and recommendations on the information collection should be sent to Ms. Diana Rowen at Office of Management and Budget, Desk Officer, Room 3001, New Executive Office Building, Washington, DC, 20503, telephone 202/385–6880 by December 27, 1988.

A copy of the information collection proposal may be obtained from Mr. Paul Larson, Director, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210, telephone number: 202/523–6331.

Signed at Washington, DC, this 12th day of December, 1988.

Marizetta Scott,

Acting Departmental Clearance Officer.

SF–83 Request for OMB Review—Pension and Welfare Benefits Administration, U.S. Department of Labor

Subject: Interim final rule regarding application procedures for exemption from prohibited transactions under FERSA.

Supporting Statement

1. Statutory Authority for Information Collection

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) establishing the Secretary of Labor's authority to grant a conditional or unconditional exemption of any fiduciary, disqualified person, or transaction from all or part of the prohibitions imposed by section 406(b) of ERISA. Section 406(b) of ERISA prohibits, unless exempted, a fiduciary's dealing with the assets of a plan in his or her own interest, acting on behalf of a party whose interests are adverse to the interests of the plan, its participants or beneficiaries, or receiving consideration for his own personal account from any party dealing with the plan in connection with a transaction involving the assets of the plan.

FERSA section 8477(c)(2) parallels ERISA section 406(b). Section 8477(c)(2)(A) prohibits a fiduciary with respect to the Fund from dealing with assets of the Fund in his or her own interests. Section 8477(c)(2)(B) prohibits fiduciaries with respect to the Fund from acting. In an individual or any other capacity, in any transaction involving the Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the fund or the interests of participants and beneficiaries. Section 8477(c)(2)(C) prohibits a fidicuary with respect to the Fund from receiving any consideration for his or her own personal account from any party dealing with sums credited to the Fund in connection with a transaction involving the assets of the Fund.

Section 8477(c)(3) of the Federal Employees' Retirement System Act of 1986 (FERSA) parallels ERISA section 408(a), authorizing the Secretary of Labor to grant administrative exemptions from the restrictions of section 8477(c)(2). Under section 111 of the FERSA Technical Corrections Act of 1986 (Pub. L. 99–556, October 27, 1986) the Department's existing exemption procedures (ERISA Proc. 75–1, 40 FR 18471) are made applicable to exemption applications under FERSA until the earlier of the date of publication of final regulations adopting an exemption procedure on December 31, 1988.

To date the Department has not published final regulations revising ERISA Proc. 75–1 to include an exemption application procedure under FERSA in addition to the procedure that already applies to applications under ERISA and the Internal Revenue Code. In order to comply with the Congressional mandate under FERSA to promulgate an exemption application procedure by December 31, 1988 the Department shall adopt, for applications for exemptions from transactions prohibited under FERSA section 8477(a)(2), this interim final rule which contains the procedures provided in ERISA Proc. 75–1 (modified only to the extent necessary to remove references or requirements not applicable to FERSA). This interim final rule shall expire upon the effective date of the final revised exemption application procedure.

2. Purpose of the Information Collection

In order for the Secretary of Labor to grant an exemption, an exemption must be determined to be: (1) Administratively feasible; (2) in the interest of the plan, as well as the interest of the plan's participants and beneficiaries; and (3) protective of the rights of participants and beneficiaries. In order for the Secretary to make such determination, applicants for administrative exemptions are required to provide sufficient information to enable the Department to find whether or not the statutory exemption criteria are satified. The notice to be supplied to interested parties is intended to afford interested persons opportunity to present views regarding the exemption application, as required by statute.

3. Use of Improved Information Technology

This is not applicable to the adoption of the requirements of these class exemptions.

4. Efforts To Identify Duplication

The interim final rule avoids duplication by adopting the procedures

provided in ERISA Proc. 75–1, modified only to the extent necessary to remove references or requirements not applicable to FERSA. It shall expire upon the effective date of the publication of a final revised exemption application procedure which applies to transaction prohibited under ERISA, FERSA or the Internal Revenue Code.

5. Similar Information

Since the information requested from each applicant pertains to the specific transaction for which the exemption is being requested, no similar information is collected or available from any State or Federal agencies, or other sources.

6. Small Businesses

Due to the size and nature of the Thrift Savings Fund, it is unlikely that the Fund will engage in transactions involving small businesses on a frequent basis. No provision has been included in the interim final rule to provide different substantive standards for small business. Since the Department has to make the same findings in every case, and the potential for abuse in any specific transaction is no less in situations involving small entities, it is neither possible nor appropriate to have different standards for small and large businesses.

7. Frequency of Information Collection

The information collection requirements relating to these exemption application procedures are only imposed when a Fund fiduciary chooses to engage in a transaction which necessitates the utilization of an exemption. The frequency of information collection therefore is not determined by a regular or predetermined period of time.

8. Special Circumstances

There are no special circumstance applicable within the meaning of 5 CFR 1320.6.

9. Consultations With Outside Agencies

No outside agencies were consulted in the development of this interim final regulation.

10. Confidentiality

Because the Secretary must make a determination on the record, no assurances of confidentiality can be provided to applicants for exemption. The right to review all information supplied by an applicant is an essential part of providing interested persons the opportunity to make informed comments on a proposed exemption.

11. Questions of a Sensitive Nature

No sensitive questions are asked of applicants for exemptions.

12. Annualized Cost to the Federal Government and Respondents

Cost to the government: The interim final rule will result in certain costs to the government. Notices of pending and granted exemptions are published in the **Federal Register**, resulting in publication and administrative costs to the Federal Government. The Department estimates that it will receive 3 FERSA exemption applications annually (see item 13 for a description of the basis for this estimate), resulting in aggregate costs to the government of $3,860, as described below.

Assuming conservatively that each application would result in a one and one-half page notice of pendency and a one page notice of grant, the total publication cost would be $3,060 (e.g., 7.5 total pages x $408 per page). The interm final rule will also result in a cost to the Federal government for filing, handling and storing the documents. FERSA notices would represent roughly 2 percent of the total exemption notices published by the Department in a year. PWBA has assigned one staff year to this administrative function for all exemption applications under FERSA, ERISA and the Internal Revenue Code, at a cost of $40,000 annually (including space, supplies, and overhead in addition to salary and benefits): Thus, the total administrative cost to the government of FERSA exemption applications is $800 (e.g., 2% x $40,000).

Cost to the applicants: The average costs to the applicant of applying for an exemption are relatively small when compared to the dollar amounts of the transactions for which exemptions are requested. The costs of this paperwork requirement under current proceduers, which effectively remain unchanged under the interim final rule, consists in the preparation of information submitted in an application for an exemption. The Department estimates that it will receive 3 exemption applications annually (see item 13 for a description of the basis for this estimate), resulting in aggregate one-time preparation costs—incurred only by applicants actually requesting exemptive relief—of $7,770, as described below.

Because of the amount of paperwork submitted, the Department estimates that on average roughly 25 hours of professional time (at $100.00/hour) and 10 hours of clerical time (at 9.00/hour) are required for the preparation of an exemption application. Thus, the total preparation cost per exemption application would be $2590 (e.g., 25 x $100 plus 10 x $9).

13. Annualized Information Collection Bfurden

To date the Department has received only 3 applications for exemptions from transactions prohibited under FERSA. It is anticipated that on occasion additional applications will be submitted; thus, based on past experience the Department conservatively estimates that 3 additional new applications will be submitted annually

Based upon its experience under ERISA exemption application procedures during the past decade, the Department estimates that on average a total of 35 burden hours would be required for the preparation of each FERSA exemption application, including 25 hours of professional time and 10 hours of clerical time. Thus, the aggregate burden attributable to exemption application procedures under FERSA is estimated to be 105 hours annually.

14. Reasons for Change in Burden

The change in burden is the result of a statutory enactment under FERSA (and subsequent technical corrections) which has created additional regulatory, oversight and enforcement authority and responsibilities in the Department of Labor.

This interim final regulation does not appear as a separate item in the FY 1989 PWBA Information Collection Budget because it was intended to be incorporated into a revision of the ERISA Exemption Procedures regulation (OMB No. 1210–0060). However, since PWBA is still considering possible amendments to the general exemption procedures regulation, it was necessary to publish a separate interim rule with respect to FERSA in order to comply with the statutory deadline for publication of a FERSA procedure.

15. Collection of Information for Statistical Use

This paperwork requirement is not a collection of information for statistical use; therefore, no statistical methods have been used.

[FR Doc. 28886 Filed 12–13–88; 8:45 am]

BILLING CODE 4510–29–M

Mine Safety and Health Administration

[Docket No. M-88-217-C]

Shannopin Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Shannopin Mining Company, Box 364, Bobtown, Pennsylvania 15315 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Shannopin Mine (I.D. No. 36-00907) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system would be installed along all belt conveyors, at each drive and at each tailpiece located in intake air courses. The low-level CO system would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts-per-million (ppm) above the established ambient level and an audible signal would sound at 15 ppm above the established ambient level. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system would initiate the fire alarm signals at an attended surface location. This responsible person would notify the working sections and other personnel who may be endangered, when the established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and deleting electrical malfunctions.

3. The CO monitoring system would be visually examined at least once each coal producing shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO at least monthly.

4. If at any time the CO monitoring system or any portion of the system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using hand-held CO detecting devices.

5. The details for the fire detection system including, but not limited to, type of monitor and specific sensor location would be included as a part of the Ventilation System and Methane and Dust Control Plan.

6. The permanent stopping separating the conveyor belt entries from the intake escapeway would be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

7. The petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 13, 1989. Copies of the petition are available for inspection at that address.

Dated: December 7, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28681 Filed 12-13-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-102)]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 47885, Notice Number 88-98, November 28, 1988.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: December 13, 1988, 8:30 a.m. to 5 p.m. and December 14, 1988, 8:30 a.m. to 3 p.m.

CHANGES IN THE MEETING: Date changed to January 24, 1989, 8:30 a.m. to 5 p.m. and January 25, 1989, 8:30 a.m. to 3 p.m.

CONTACT PERSON FOR MORE INFORMATION: Dr. William P. Raney, Office of Space Station, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

December 7, 1988.

[FR Doc. 88-28682 Filed 12-13-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dipose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before January 30, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency

records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, International Trade Administration (N1–151–88–6). Records created by the Office of International Trade and the Bureau of Foreign Commerce in administering the Point-4 Program (records relating to the direction and organization of the program are being preserved).

2. National Aeronautics and Space Administration (N1–255–87–2). Videotape and microfilm derived from the Lunar Orbiter project and containing still photographic images of individual scanning strips of the lunar surface (composite negatives have been designated for preservation).

3. Tennessee Valley Authority, Division of Reservoir Properties (N1–142–88–14). Material removed from the Division's correspondence files during archival processing because it lacks sufficient archival value to warrant permanent retention by the National Archives.

4. Department of the Treasury, Internal Revenue Service (N1–58–88–3). Additions and revisions to Records Control Schedule 206 for Service Centers.

5. United States Information Agency, Bureau of Educational and Cultural Affairs, Office of the Executive Director (N1–306–89–3). Working papers, chronological files and budget files.

6. United States Information Agency, Bureau of Educational and Cultural Affairs, Office of Arts America (N1–306–89–5). Working papers, chronological files, reference files, and facilitative records. Policy documentation is scheduled for permanent retention.

Dated: December 7, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 88–28762 Field 12–13–88; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before January 1, 1989.

ADDRESSES: Send comments to Ms. Ingrid Y. Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202–786–0239) and Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202 395 7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Y. Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0249) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entires are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Extension

Title: NEH/Reader's Digest Teacher Scholar Program for Elementary and Secondary School Teachers.
Form Number: 3136–0122.
Frequency of Collection: Annual.
Respondents: Individuals or households Academic scholars, teachers, administrators.
Use: The application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds.
Estimated Number of Respondents: 1,500.
Frequency of Response: 1.
Estimated Hours for Respondents to Provide Information: 4 per respondent.
Estimated Total Annual Reporting and Recording Burden: 6,530.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 88–28734 Filed 12–13–88; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment of Advisory Committee for Cross-Disciplinary Activities

The Assistant Director for Computer and Information Science and Engineering (CISE) has determined that the establishment of the Advisory Committee for Cross-Disciplinary Activities is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Cross-Disciplinary Activities.

Purpose: To provide regular advice, recommendations, and oversight to the Office of Cross-Disciplinary Activities in guiding its policy decisions with regard to the programs within its purview.

M. Rebecca Winkler,

Committee Management Officer.

December 9, 1988.

[FR Doc. 88–28713 Filed 12–13–88; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Renewals

The Advisory Committees listed below are being renewed until December 18, 1990.

The Assistant Director for Computer and Information Science and Engineering has determined that the renewal of these Committees is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration:

—Advisory Committee for Microelectronic Information Processing Systems
—Advisory Committee for Information, Robotics, and Intelligent Systems

M. Rebecca Winkler,

Committee Management Officer.

December 9, 1988.

[FR Doc. 88–28714 Filed 12–13–88; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Design, Manufacturing, and Computer-Integrated Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Design, Manufacturing, and Computer-Integrated Engineering (DMCE)
Date and Time: January 7–8, 1989; 1:30 p.m.–6:00 p.m., January 7; 9:00 a.m.–3:00 p.m., January 8
Place: University of California-Berkeley, Sibley Auditorium, Steven Bechtel Engineering Center, Berkeley, CA
Type of Meeting: Open
Contact Person: Dr. Ranga Komanduri, Acting Division Director, DMCE , Room 1107, National Science Foundation, Washington, DC 20550, Telephone: 202/357–7508
Summary Minutes: Dr. Komanduri
Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design, Manufacturing, and Computer-Integrated Engineering
Summarized Agenda: Discussions on issues, opportunities and future directions for the division in Design, Manufacturing, and Computer-Integrated Engineering; discussion of the DMCE budget for FY 89; discussion of budget issues with the NSF Assistant Director for Engineering, as well as other items.

December 9, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–28712 Filed 12–13–88; 8:45 am]

BILLING CODE 7555–01–M

Microelectronic Information Processing Systems Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Division of Microelectronic Information Processing Systems Advisory Committee
Date and Time: January 30, 1989, 8:30 a.m.–5:00 p.m.; January 31, 1989, 8:30 a.m.–3:00 p.m.
Place: National Science Foundation, 1800 G Street, NW., Washington, DC, Conference Room 540
Type of Meeting: Open
Contact Person: Stephanie Gorman, Administrative Officer, National Science Foundation, 202/357–7853
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To discuss the content of the Division's program goals and objectives and to advise on areas and priorities, new initiatives and other topics of interest to the Division.
Agenda: Overview of the Division since the last meeting. Continuation of strategic planning for initiatives.

Rebecca M. Winkler,

Committee Management Officer.

December 9, 1988.

[FR Doc. 88–28711 Filed 12–13–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) hold a meeting on December 21, 1988, Room P–422, 7920 Norfolk Avenue, Bethesda, MD. The Committee is meeting on an expedited basis in an attempt to be responsive to the Commission's request for ACNW comments by the end of December, 1988. The meeting will start at 8:30 a.m. on Wednesday, December 21 and continue until close of business at 5:00 p.m. The entire meeting will be open to public attendance and the following topics will be discussed:

Wednesday, December 21, 1988

• Proposed revisions of 10 CFR Part 20, "Standards For Protection Against Radiation."

Other topics which may be discussed as time permits include:

• Comments on Advanced Notice of Development of a Commission Policy on Exemptions From Regulatory Control for Certain Practices whose Public Health and Safety Impacts are Below Regulatory Concern and,

• Administrative matters such as future schedules, new members, consultants, and staffing matters.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date: December 8, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–28748 Filed 12–13–88; 8:45 am]

BILLING CODE 7590–01–M

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Justice

The Nuclear Regulatory Commission and the United States Department of Justice have entered into a Memorandum of Understanding to provide general procedures for the coordination of enforcement activities and exchange of information between the two agencies. The text of the Memorandum of Understanding is set out below.

Samuel J. Chilk,

Secretary of the Commission.

Dated at Rockville, Maryland, this 8th day of December, 1988.

Memorandum of Understanding Between the Nuclear Regulatory Commission And the Department of Justice

I. Purpose

The Nuclear Regulatory Commission (NRC) and the Department of Justice (DOJ) enter into this agreement (1) to provide for coordination of matters that could lead both to enforcement action by the NRC as well as criminal prosecution by DOJ, and (2) to facilitate the exchange of information relating to matters within their respective jurisdictions. This agreement does not affect the procedures and responsibilities set forth in the April 23, 1979 Memorandum of Understanding between the NRC and the Federal Bureau of Investigation regarding cooperation concerning threats, theft, or sabotage in the U.S. nuclear industry. Similarly, this agreement does not apply to those matters arising from internal investigations conducted by the NRC Office of Inspector and Auditor.

This Memorandum of Understanding is not intended to, does not, and may not be relied upon to, create any rights or benefits, substantive or procedural, enforceable at law by a party to litigation with the United States. Nor are any limitations hereby placed by on otherwise lawful litigative prerogatives of DOJ.

II. Background

Under federal statutes, the NRC has the responsibility to protect the radiological health and safety of the public, the public interest, the common defense and security, and the environment (hereinafter collectively referred to as public health and safety), from hazards that might arise from the material and facilities which it regulates. The enforcement program of the NRC is designed to fulfill these responsibilities by ensuring compliance with NRC requirements, obtaining prompt correction of violations and adverse conditions affecting safety, encouraging improvement of licensee performance, and deterring future violations. In contrast, criminal prosecutions for willful violations of NRC requirements are the responsibility of the DOJ. Such prosecutions provide an additional tool to assure compliance and to deter future violations. Therefore, it is useful and desirable for the NRC and the DOJ to coordinate to the maximum practicable extent their different responsibilities.

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to conduct such investigations as it may deem necessary or proper to assist it in determining whether enforcement or other regulatory action is required under the Act, or any regulations, licenses, or orders issued thereunder.

Enforcement actions within NRC authority include license revocations, suspensions and modifications, cease and desist orders, civil penalties, and notices of violation. The NRC has the authority to take such action as it deems necessary to protect the public health and safety, including the authority, when appropriate, the take immediate action.

The Department of Justice has the responsibility to determine whether to institute criminal prosecution for violations of all federal statutes, including the Atomic Energy Act of 1954, as amended. Such violations are typically developed and brought to the attention of DOJ by law enforcement or investigative agencies, such as the Federal Bureau of Investigation, the Postal Inspection Service, and the various Treasury enforcement agencies. Similarly, suspected criminal violations of the Atomic Energy Act, as amended, or Title 18 of the United States Code may be identified during the course of NRC investigations and referred to DOJ for prosecutive determination.

Thus, both the NRC and DOJ have authority and responsibility to investigate and take action for certain violations that may arise out of the same factual matters. Although each agency will carry out its statutory responsibilities independently, the agencies agree that the public health and safety would be enhanced by cooperation and timely consultation on proposed enforcement actions where both civil and criminal violations appear to exist, and by the timely exchange of information of mutual interest. As an exmaple, it may be appropriate in some cases for the NRC to stay its hand pending a criminal prosecution. Conversely, in other cases the public health and safety may require immediate NRC action that could impact a potential criminal prosecution. Both agencies recognize that these enforcement decisions are inherently matters of judgment for each agency to decide for itself, with due regard, however, for the views of the other.

III. Areas of Cooperation

A. DOJ Notification to NRC of Information Concerning Public Health and Safety

Should DOJ learn of or discover health or safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, DOJ shall communicate such information to the NRC as soon as practicable, unless such information is determined by DOJ to be grand jury material. *See* Rule 6(e) of the Federal Rules of Criminal Procedure.

Should DOJ, during grand jury proceedings, discover health or safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, which may warrant immediate regulatory action to protect the public health and safety, DOJ promptly will seek a court order, pursuant to the inherent authority of the court to supervise the grand jury, for disclosure of such information to the NRC for use in connection with its safety enforcement responsibilities.

B. NRC Notification to DOJ of Suspected Criminal Violations

If NRC learns of or develops information regarding suspected criminal violations on matters not within the regulatory jurisdiction of the NRC, the NRC will provide the information regarding such suspected criminal violations to the appropriate investigative agency having jurisdiction over the matter.

Should NRC learn of or develop information regarding any suspected criminal violations, including Atomic Energy Act violations, on matters within the regulatory jurisdiction of NRC, it will notify DOJ in the following manner. With respect to matters not involving special circumstances, as described below, the NRC's Director, Office of Investigations (OI), will formally refer the matter to DOJ for prosecutive determination if, on completion of its investigation, the Director, OI, has determined that sufficient evidence has been developed to support a reasonable suspicion that a criminal violation has occurred. Whenever any of the special circumstances listed below occurs, and the Director, OI, has a reasonable suspicion that a criminal violation has occurred, the Director of OI will promptly notify the DOJ of a matter involving such special circumstance(s), notwithstanding the fact that an investigation has not yet been completed by NRC. The special circumstances involve:

(1) A matter where death or serious bodily injury is involved;

(2) A matter under investigation which is likely to generate substantial national news media attention;

(3) A matter where there is evidence of ongoing activity designed to obstruct the investigation;

(4) A matter which may require extraordinary investigative measures which require legal assistance from DOJ.

When a matter arises in which the NRC concludes that regulatory action is necessary to protect the public health and safety, or that it is necessary to propose a civil penalty, and the Director, Office of Enforcement (OE), has been informed by the Director, OI, that there is a reasonable suspicion that a criminal violation has occurred, the Director of OE will promptly notify the DOJ of such matter, notwithstanding the fact that an investigation has not yet been completed by NRC. Any action by the NRC is to be coordinated with DOJ as prescribed in Section C. below.

Notification to DOJ will not normally result in cessation of the NRC investigation.

C. Procedure When NRC Regulatory Activities Run Parallel to or May Affect Future DOJ Activity

NRC regulatory activities with respect to matters that have been referred to DOJ for criminal prosecution, or to which the notification provisions of Section B. apply, shall be coordinated as follows:

1. If the NRC concludes at any time that it lacks reasonable assurance that activities authorized by a license are being conducted without endangering the health and safety of the public and the NRC concludes that immediate action is required to protect the public health, safety, or interest, it will proceed with such action as is necessary to abate the immediate problem. If time permits, the NRC shall notify DOJ of its proposed action prior to acting, but, in any event, shall notify DOJ of its action as soon as practicable. This paragraph shall apply only to those situations that do not allow sufficient time for reasonable consultation.

2. If the NRC concludes that regulatory action is necessary in the public interest, other than the actions described in paragraphs 1 and 3 herein, the NRC shall first consult with DOJ concerning its contemplated action. The NRC shall take into account the views and concerns of DOJ and proceed in a manner that accommodates such views and concerns to the fullest extent possible, consistent with the regulatory action required. Such cooperation at the staff level shall include the seeking of a stay, upon DOJ's request, of discovery and hearing rights during the regulatory proceeding for a reasonable period of time to accommodate the needs of a criminal investigation or prosecution, provided that DOJ supports such action with appropriate affidavits or testimony as requested by the presiding officer.

3. If the NRC concludes that it is necessary to propose a civil penalty, it shall notify DOJ of its contemplated action, and shall defer the initiation of such proceeding until DOJ either concludes its criminal investigation/prosecution or consents to the action, except that if a statute of limitations bar to a civil penalty proceeding is imminent, the NRC may initiate such proceeding after consultation with DOJ. In such event, the NRC staff shall accommodate the needs of DOJ by seeking a stay, upon DOJ's request and with DOJ support as described in paragraph 2 above, of discovery and hearing rights during the civil penalty proceeding for a reasonable period of time.

D. Time Frame for Notification in Matters Referred to DOJ

1. If, on completion of its investigation, the NRC concludes that civil enforcement action is appropriate, it will notify DOJ of its contemplated action normally within 45 days of its referral to DOJ.

2. DOJ will notify the NRC, normally within 60 days of the referral, of its preliminary decision as to whether a criminal investigation or prosecution is warranted.

E. NRC Assistance to DOJ

The NRC will make reasonable efforts, at DOJ's request, to provide informal assistance regarding applicable NRC requirements, technical issues, and factual circumstances. Such assistance should be requested directly from the Director, Office of Investigations, who will forward requests for technical assistance to the Deputy Executive Director for Regional Operations. A request that one or more NRC investigators be assigned to the DOJ investigation or that NRC technical experts be assigned to assist DOJ and the grand jury should be made in writing. Such requests must bear the signature of a United States Attorney or Deputy Assistant Attorney General, as appropriate. These requests will be considered by NRC on a case-by-case basis.

F. Exchange of Information Related to Civil or Criminal Enforcement

Following a DOJ decision not to prosecute a referred case, or at the conclusion of a criminal proceeding, DOJ will provide NRC, upon its request, information not protected from disclosure by Rule 6(e), Fed.R.Crim.P., relevant to the associated civil case. Similarly, NRC will provide information to DOJ, upon its request, on matters being considered by DOJ.

IV. Implementation

The DOJ official responsible for implementation of the notification responsibilities of this agreement is the Chief, General Litigation and Legal Advice Section, Criminal Division; the NRC official responsible for implementation of the notification responsibilities of this agreement with respect to information regarding suspected criminal violations is the Director, Office of Investigations; the NRC official responsible for the notification responsibilities of this agreement with respect to enforcement action is the Director, Office of Enforcement, or the Assistant General Counsel for Enforcement, as appropriate.

V. Effective Date

This agreement is effective when signed by both parties.

Lando W. Zech, Jr.

Chairman, U.S. Nuclear Regulatory Commission.

Date: October 31, 1988.

Edward S.G. Dennis,

Assistant Attorney General, Criminal Division, U.S. Department of Justice.

Date: November 23, 1988.

[FR Doc. 88-28747 Filed 12-13-88; 8:45 am]
BILLING CODE 7590-01-M

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Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 21, 1988 through December 2, 1988. The last biweekly notice was published on November 30, 1988 (53 FR 48823).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective,

notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this* **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: September 16, 1988 as supplemented November 18, 1988

Description of amendment requests: The proposed amendment would revise Technical Specifications (TS) contained in Appendix A of the Quad Cities Station Operating Licenses (DPR-29 and DPR-30). Changes to certain TS are necessary to support the implementation of a Hydrogen Water Chemistry (HWC) program which will improve reactor water chemistry and help reduce the potential for integranular stress corrosion cracking (IGSCC).

The licensee proposes to amend TS by changing the trip setpoint for the main steamline radiation monitor (MSLRM) from a value of seven times the normal full power background (NFPB) radiation level to fifteen times NFPB. NFPB is defined, for these purposes, as the radiation level at the MSLRM associated with normal full power conditions without the use of hydrogen water chemistry. A trip setpoint value of seven times NFPB was previously chosen to provide sufficient margin for avoiding spurious trips while still providing appropriate protection from a control rod drop accident (CRDA). With the use of HWC the normal background levels at the MSLRM may increase by as much a factor of five due to the increase in nitrogen-16 (N-16) which is attributable to chemical changes that occur in the reactor from hydrogen addition. Therefore, in order to maintain sufficient margin from spurious actuations, the licensee proposes to raise the trip setpoint value to fifteen times the NFPB levels which exist without HWC.

This change will facilitate the HWC program developed by the licensee to improve reactor water chemistry at the Quad Cities Nuclear Power Station. The purpose of the program is to reduce the effects from IGSCC of primary pressure boundary piping. The suppression of dissolved oxygen from the addition of hydrogen to the feedwater, coupled with high purity reactor coolant, has been shown to be effective in arresting pipe cracking and pipe crack growth due to IGSCC in susceptible stainless steel piping. Addition of hydrogen decreases the oxidizing power of the reactor water and reduces its aggressiveness toward primary coolant system materials.

The HWC system has been extensively analyzed by EPRI, previously approved for use by the NRC, and is in operation at a variety of stations including Dresden 2, Fitz Patrick, and Duane Arnold.

In addition to revising the MSLRM trip setpoint, the licensee has proposed changes to correct various editorial and typographical errors on associated TS pages.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Commonwealth Edison Company (CECo) evaluated the proposed amendment and concluded that a significant hazards consideration does not exist. Based upon the criteria of 10 CFR 50.92(c), it was determined that operation of the facility in accordance with the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the consequences of the design basis CRDA, which takes credit for the operation of the MSLRMs, are not adversely affected. No other previously analyzed accidents or malfunctions, as addressed in the Updated Final Safety Analysis Report (UFSAR), are involved.

The safety function of the MSLRMs is to close the MSIVs and shut down the reactor on high radiation levels in the event of a CRDA. The closure of the MSIVs mitigates the release of radioactive fission products to the environment.

The difference between the time required for the MSLRM to reach the current trip setpoint at seven times NFPB (0.7 R/hr) versus the new setpoint of fifteen times NFPB (1.5 R/hr) is approximately 1/4 second. The time period permitted for complete closure of

the MSIVs is five seconds TS 3.7/4.7.D.1). The increase in time-to-closure (due to the new setpoint), is less than 5 percent of the current time-to-closure. Consequently, even though the new setpoint is closer to the predicted main steamline radiation levels for the CRDA, the effect from the slightly longer MSLRM response time will have a negligible impact upon the total release and resultant dose to the public. Since the calculated dose from the CRDA is only 12 mrem, even a five percent increase would be insignificant when compared to 10 CFR 100 limits. The probability of a CRDA is not affected at all since the change in the trip setpoint of the MSLRM instrumentation, used to detect the occurrence of the CRDA, does not have an effect on those events which could lead to the accident.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because this modification only adjusts the trip setpoint on the MSLRM, no other station instruments or equipment are involved. The only design basis accident which takes credit for MSLRM is the CRDA, and the increased setpoint does not affect the ability of the MSLRM to perform its intended safety function. The MSLRMs operating detection range is not changed. Also, the increase MSLRM setpoint has no effect on the capability of the station to detect noble gas releases from the reactor core. Consequently, the capability to monitor for fuel failures is not affected by this change. The Steam Jet Air Ejector Off-Gas Radiation Monitor, which is more sensitive to fuel failures than the MSLRM, will still be capable of alerting the plant staff to the existence of the minor fuel failures which could be present below the proposed trip setpoint.

(3) Does not involve a significant reduction in the margin of safety because the new trip setpoint for MSLRMs does not reduce margin between the calculated dose rate from the accident and the trip setpoint. CRDA is the only accident which takes credit for the MSLRM trip setpoint. For the CRDA, calculated dose rate at the monitors is 8 R/hr. This calculated dose rate is approximately five times the proposed setpoint of 1.5 R/hr. As such, these monitors will maintain the capability to close the MSIVs, and scram the reactor, at less than 8 R/hr even if the setpoint shifts due to instrument drift. This change can offer significant benefits that enchance the margin of safety for plant operation by supporting a HWC program which substantially mitigates IGSCC of safety-related piping.

As for the associated editorial TS changes proposed by CECo, they are considered representative of example (i) in the Commissions' guidance (51 FR 7751) for examples of no significant hazards, which is defined as "a purely administrative change to TS; for example a change to achieve consistency throughout the Technical Specifications, correction of an error, or change in nomenclature."

Therefore the NRC staff proposes to determine that this amendment request does not involve significant hazards considerations based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC Guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, (CECo) Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment: November 16, 1988

Description of amendment request: The current Technical Specifications (TS) requirement for local leak rate testing of Main Steam Isolation Valves (MSIV) is once every 18 months. This amendment request proposes to change the surveillance testing frequency of TS 4.7.A.2.d.2 to "once per operating cycle...not to exceed 24 months." Such a change is deemed necessary to allow for extension in plant fuel cycles from 12 months to 18 months.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists. As stated in 10 CFR 50.92(c), a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not; (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Pursuant to 10 CFR 50.91(a) the licensee has provided an evaluation of their amendment application addressing these three standards.

CECo has evaluated the proposed Technical Specifications change and concluded that conducting local leak rate tests of MSIVs in accordance with the proposed change:

(1) Will not involve a significant increase in the probability or consequences of an accident previously evaluated because operability of MSIVs is not adversely affected. Surveillance testing is only one of several mechanisms for ensuring important equipment are capable and ready to perform their safety function. Intervals for surveillance testing are usually based upon regulatory guidance and/or requirements. Presuming proper scheduling, these intervals are purposefully designed not to impact upon power operations (i.e., surveillance intervals shouldn't necessitate a forced shutdown). Presently, all primary containment isolation valves except MSIVs, are prescribed by TS 4.7.2.d to be tested every 24 months. This is consistent with the regulatory requirements of 10 CFR 50 Appendix J, "Primary Reactor Containment Leakage Testing for Water Cooled Power Reactors". Revising the surveillance interval for MSIV local leak rate testing, as proposed by the amendment application, merely corrects the TS to conform with the original intent of the TS requirement - to ensure MSIV testing occurred at least every fuel cycle (i.e. every refueling outage since MSIVs can not be tested at power), but not to exceed Appendix J requirements.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated because performing local leak rate tests on the MSIVs at a maximum interval of 24 months does not alter their safety-related function. These valves will continue to be tested at regular intervals, similar to other primary containment isolation valves as specified in 10 CFR 50, Appendix J. The fundamental intent of requirement for 18 months surveillance intervals was to ensure MSIV testing would be conducted at least every fuel cycle and not exceed Appendix J. The revised TS requirements achieve exactly the same intent, but is designed to allow for today's fuel cycles that have grown from 12 to 18 months. In any respect, revised surveillance intervals (in of themselves) do not affect equipment function or operation.

(3) Will not involve a significant reduction in the marign of safety because no protective setpoint or operating parameters are being changed.

Therefore the NRC staff proposes to determine that this amendment request does not involve significant hazards considerations based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 29, 1988

Description of amendment request: This proposed amendment supersedes a similar proposed amendment submitted on November 17, 1987 which was previously noticed in the **Federal Register** on February 2, 1988 (53 FR 2896). Section 3.12 "Station Service Power" and Section 4.5 "Emergency Power System the TS Periodic Testing" will be revised and combined into a newly titled Section 3.12 "Electrical Power System". The proposed changes: (1) incorporate the degraded grid voltage protection requirements, (2) incorporate emergency diesel generator (EDG) recommendations contained in Generic Letter 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," (3) incorporate industry improvements, (4) changes the technical specification format to one similar to the W Standard - Format Technical Specifications (STS), and (5) incorporate requirements for battery discharge testing as required by the Systematic Evaluation Program (SEP) Topic VIII-3.A, Station Battery Test Requirements.

In addition CYAPCO has revised Section 4.2 "Operational Safety Item" which provides requirements for calibrating the level-one, level-two and level-three undervoltage instruments and performing channel functional tests. Also Table 4.2-1a "Emergency Bus Undervoltage Instrumentation" is being added to set forth the number of required channels, the applicable modes, the limiting condition for operation and the action requirements.

Basis for proposed no significant hazards consideration determination: CYAPCO has reviewed the proposed changes in accordance with 10 CFR 50.92 and has determined that they involve no significant hazards consideration. The licensee's basis for this conclusion is that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The conversion of existing technical specifications to the proposed technical specifications effectively adds many additional requirements to further assure A.C. electrical system reliability and availability. The additional assurance of reliability and availability will reduce the probability of a station blackout/total loss of A.C. power. Since no hardware modifications are associated with this proposed change, the design basis safety analysis is unaffected. Since the proposed changes provide greater assurance that the A.C. electrical systems will be available to the operators, there is no increase in probability or consequences of an accident previously analyzed.

The conversion of existing technical specifications to the proposed technical specifications effectively adds many new requirements to further assure D.C. source reliability and availability. No hardware modifications are associated with this proposed change, thus the design basis safety analysis is unaffected. Since the proposed changes provides greater assurance that the D.C. electrical systems will be available to the operators, there is no increase in probability or consequences of an accident previously analyzed.

The conversion of the existing Technical Specifications to the proposed Technical Specifications effectively adds many new requirements to further assure the onsite power distribution system reliability and availability. No hardware modifications are associated with this proposed change, thus the design basis safety analysis is unaffected. Since the proposed changes provide greater assurance that the onsite power distribution system will be available to the operators, there is no increase in probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes provide additional controls and restrictions over the A.C. electrical system already in service at the plant. The proposed changes to the technical specifications do not represent any hardware changes; they are descriptive in nature, affecting surveillance and testing checks only. System functions are not changed; therefore, there are no failure modes associated with these changes.

The proposed changes provide additional controls and restrictions over the D.C. electrical system already in service at the plant. The proposed changes do not represent any hardware changes; they are descriptive in nature, affecting limiting conditions of operations, surveillance, and checks only. System functions are not changed; therefore, there are no failure modes associated with these changes.

The proposed changes provide additional controls and restrictions over the onsite power distribution system already in service at the plant. The proposed changes do not represent any hardware changes; they are descriptive in nature, affecting limiting conditions of operations, surveillance, and checks only. System functions are not changed; therefore, there are no failure modes associated with these changes.

3. Involve a significant reduction in a margin of safety. The proposed changes will ensure the A.C. electrical system is maintained in an operable condition and will require appropriate corrective actions if not. On this bases, the margin of safety of any technical specification is not reduced.

Involve a significant reduction in a margin of safety. The proposed changes will ensure the D.C. electrical system is maintained in an operable condition and require appropriate corrective actions if not. On this bases, the margin of safety of any technical specification is not reduced.

Involve a significant reduction in a margin of safety. The proposed changes will ensure the onsite electrical power distribution system is maintained in an operable condition and require appropriate corrective actions if not. On this bases, the margin of safety of any technical specification is not reduced.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Additionally, the NRC has established guidance concerning the determination of whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments not likely to involve a significant hazards consideration. The proposed Technical Specifications conform to NRC example (ii) "A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, e.g. a more stringent surveillance requirement."

The staff has therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: November 7, 1988

Description of amendment request: The proposed changes identify which radiation monitors are required to be operable in Table 7.2-1, "Radioactive Liquid Effluent Monitoring Instrumentation" and Table 8.2-1, "Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirement." The proposed changes are for clarification of the Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes are intended for clarification only and in no way change the intent of the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created.

The proposed changes are purely editorial and have no effect on plant operation.

3. Involve a significant reduction in a margin of safety. The proposed changes clarify which radiation monitors are required to be operable and have no effect on the way the plant is operated. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

Furthermore, the proposed amendment fits example (i) of the types of amendments that are considered not likely to involve significant hazards considerations as published in the **Federal Register** on March 6, 1986 (51 FR 7751), in that it represents a purely administrative change to technical specifications, i.e., a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Based on the preceding discussion, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 29, 1988

Description of amendment request: The proposed amendment would correct a typographical error in the plant's Fire Protection Technical Specification Table 3.13-2, item 13. That item would be corrected to state that a Hose Station is at the 140 foot elevation instead of at a lower elevation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards consideration (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (i), "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The change in this case falls within the scope of the example. For this reason, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 23, 1988

Description of amendment request: The proposed amendment concerns the backup nitrogen system used to operate the power operated relief valves used to prevent overpressurization of the reactor coolant system. The proposed amendment would insert into the plant's Technical Specifications a requirement for demonstrating the operability of the backup nitrogen system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750).

One of these examples of actions involving no significant hazards considerations is example (ii) "a change that constitutes an additional restriction,..., e.g., a more stringent surveillance requirement."

Since the application for amendment involves a change encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: September 21, 1988.

Description of amendment request: This request would make a total of 14 administrative and editorial corrections to a total of 10 Big Rock Point Plant Technical Specification subsections. For example, the changes add the missing "s" to various plural nouns, capitalize words such as SHUTDOWN to follow Standard Technical Specification guidelines, and correct "picoammeters" to "power range monitor" to rectify an oversight from Amendment 91.

Basis for proposed no significant hazards consideration determination: The proposed changes are administrative and editorial in nature. They provide correction of editorial error, clarification of intent, and consistency. They do not involve modification of any existing equipment, systems, or components, changes of any administrative controls, or revisions of limitations on existing equipment.

In 51 FR 7751, the Commission cited examples of amendments that are considered not likely to involve significant hazards considerations. Example (i) is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Accordingly, the Commission proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Theodore Quay, Acting Director.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 29, 1988

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 4.3-8, Table Notation 1, and Table 4.3-9, Table Notation 2, by adding a footnote regarding the location of the alarm annunciators for radiation monitors EMF-57 and EMF-58. These alarms are located in the Monitor Tank Building (MTB) Control Room and on the MTB Remote Control Panel which is located in the Auxiliary Building. Also, the proposed amendments would correct a reference in Table 4.11-1 to EMF-58 which should read EMF-57.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10CFR 50.92(c)). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes would add a clarification to Tables 4.3-8 and 4.3-9 regarding the location of the alarm annunciators, and would correct a reference to a monitor. As such, these changes would not have any impact on the design or operation of the station and would not affect the previously evaluated accidents.

The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes requested would not introduce any new modes of operation and would not affect the design of the facility.

The proposed amendments would not involve a significant reduction in a margin of safety because the proposed changes would make the TS tables clearer. As such, these changes would aid the operators and may enhance the safety margin.

Based on the above considerations, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: September 3, 1987, as supplemented on February 27, September 9, and September 20, 1988.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. In addition, the Core Operating Limits Report has been included in the Definitions Section of the TS to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with TS 6.9.1. to 6.9.4. These TS require that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter (GL) 88-16, dated October 4, 1988, provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is consistent with this GL.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and proposes to determine that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in GL 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the

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Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and the addition of the referenced report for these limits does not create the possibility of a new or different kind of accident from those previously evaluated. They also don't involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits.

Consequently, the proposed change on the removal of the values of cycle-specific limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment alters neither the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the TS, they have been incorporated into the Core Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the preceding assessment, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: April 7, 1987, revised on November 1, 1988 (renotice)

Description of amendment request: The staff published a notice of proposed no-significant-hazards determination (52 FR 26585) on the April 7, 1987 submittal; the November 1, 1988 submittal totally replaces that submittal. The proposed amendment dated November 1, 1988, would revise condition 2.c(5) of operating license DPR-66, and would remove fire protection Technical Specifications 3/4.3.3.6 (fire detection instrumentation), 3/4.7.14.1 through 3/4.7.14.5 (fire suppression system), 3/4.7.15 (fire-rated assemblies), 6.2.2.f (fire brigade composition), 6.4.2 (training for the Emergency Squad), and 6.9.2.f and g (reports on fire detection and suppression equipment actuations). These requirements would be incorporated into the plant administrative procedures, the Updated Final Safety Analysis Report, or the Fire Protection Program.

NRC Generic Letters 86-10, dated April 24, 1986, and 88-12, dated August 2, 1988, provided guidance to licensees to request removal of the fire protection Technical Specifications. The licensee's proposed amendment is in response to these Generic Letters.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 86-10 for licensees requesting removal of fire protection Technical Specifications. The amendment would incorporate the NRC-approved Fire Protection Program, and the current technical specification (TS) requirements, into the plant administrative procedures and the Updated Final Safety Analysis Report (UFSAR). The use of a standard license condition on fire protection will ensure that the Fire Protection Program, including the systems, the administrative and technical controls, the organization, and the other plant features associated with fire protection will be on a consistent status with other plant features described in the UFSAR. Also, the provisions of 10 CFR 50.59 would then apply directly for changes the licensee desires to make in the Fire Protection Program.

The elimination of existing requirements from the Technical Specifications and incorporation of these into the UFSAR, the Fire Protection Program and administrative procedures do not involve station hardware changes, and do not diminish the present level of conservatism. Hence the answers to both questions (1) and (2) are negative. Furthermore, the safety limits assumed in the safety analyses are not expected to be affected by the proposed amendment since all assumptions would remain unchanged. Hence the answer to question (3) is also negative.

Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: November 18, 1988

Description of amendment request: The proposed amendment would provide the bundle Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and higher Linear Heat Generation Rate (LHGR) limits for the new fuel being added for the second reload. The new fuel being added is GE8X8EB which includes an increased LHGR limit of 14.4 kw/ft. The new GE8X8EB bundles are similar to other bundles currently in the River Bend Station core. The proposed amendment would revise Specification 3/4.2.1 to include new figures and revise Specification 3.2.4 to include the higher LHGR limit.

The proposed amendment would also revise two additional areas of the Technical Specifications (TS). Technical Specification Section 5, Design Features, Item 5.3.1 would be revised to generalize the fuel details to allow referencing future fuel designs included in the "General Electric Standard Application for Reactor Fuels" (GESTAR). Technical Specification Bases 3/4.2.1 would also be revised to reference Technical Specification 3.2.1 instead of referencing individual MAPLHGR curves.

In addition to the proposed changes, the request for amendment provided analysis which identified continued support of the Minimum Critical Power Ratio and shutdown margin limits. The analysis also indicates that the limiting transients identified in Cycle 2 remain the limiting transients for this cycle, Cycle 3. The licensee is implementing the GEXL-PLUS critical quality - boiling length correlation that was approved by the staff.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

Proposed MAPLHGR and LHGR Limit Changes

(1) 10 CFR 50.46 establishes the acceptance criteria for fuel and emergency core cooling systems (ECCS). The MAPLHGR limits are established to ensure the acceptance criteria are met. The LHGR limit is established to maintain fuel integrity. The fuel being used in this reload consists of two new General Electric (GE) bundle types which have an increased LHGR limit and varying gadolinia content. This results in MAPLHGR limits that vary axially (by lattice type) as well with fuel exposure. The MAPLHGR limits were calculated using NRC approved methods. Only the most limiting value of APLHGR for the most limiting lattice, as function of exposure, has been proposed for multiple lattice fuel designs, as discussed in the NRC evaluation of Amendment 19 of GESTAR, dated November 17, 1987. The proposed LHGR limit was previously approved generically by the NRC and meets the acceptance criteria described in GESTAR.

The new design fuel bundles being used in this reload are similar to bundles currently in the core and use additional water rods and gadolinia to improve power distribution and fuel use efficiency. Because the new fuel is of the same design, the proposed MAPLHGR and LHGR limits were calculated using approved methodology, the reliability of the fuel is the same, the proposed changes to the MAPLHGR and LHGR limits do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) MAPLHGR and LHGR limits are not the initiating event of any accident. No hardware changes or modifications are proposed with this amendment. As stated above, the proposed changes to the limits have been made in accordance with approved methods and continue to support the Safety Analysis Report. Therefore, the proposed changes to the MAPLHGR and LHGR limits do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The acceptance criteria of 10 CFR 50.46 establish the margins of safety for fuel and ECCS. Calculation for the MAPLHGR and LHGR limits were performed using NRC approved models and resulted in limits within the acceptance criteria. Therefore, the proposed changes to the MAPLHGR and LHGR limits do not involve a significant reduction in the margin of safety.

Proposed Design Feature Changes

(1) The proposed change to the description of the fuel assemblies in Section 5 of the TS will allow fuel designs, as approved by the NRC, to be added to future cycles. The description will be a generalization of the fuel design details. Only those fuel designs will be used which have been generically approved by the NRC and have been evaluated by Gulf States Utilities (GSU) for each cycle to show compliance with the original design and approved amendment assumptions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Section 5 of the TS, Design Features, are not the initiating event of any accidents. No hardware changes or modifications are proposed and, as discussed above, each new fuel design is reviewed by the NRC staff and evaluated by GSU for each cycle. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As discussed above, the calculations performed for the new fuel used NRC approved methods and yielding results within the acceptance criteria. Therefore, the proposed change to the design features does not involve a significant reduction in the margin of safety.

Proposed Bases Change

Currently Bases 3/4.2.1 references the individual MAPLHGR curves for Technical Specification 3.2.1. Each time a new type of fuel is used in a fuel cycle, the MAPLHGR curves change. Since the curves are referenced in the Bases, the Bases must be changed for each fuel cycle using a new type of fuel. To eliminate this, the proposed change to the Bases would reference Specification 3.2.1 rather than the individual MAPLHGR curves. This change only affects the Bases, does not make hardware changes or modifications and does not change surveillance requirements, limiting conditions for operation or the TS. Therefore, this administrative change (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 5, 1988

Description of amendment request: This proposed change request affects two parts of Facility Operating License NPF-62. The first change is to delete a license condition that is no longer applicable. License Condition 2.C.6 required a Senior Reactor Operator

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(SRO) with hot operating experience on each shift for a period of one year following fuel load or until attainment of 100% reactor power, whichever occurs later. Fuel load at Clinton Power Station was completed on October 21, 1986. 100% reactor power was reached on September 15, 1987. Both requirements of the license condition have been met; therefore, the licensees request that this license condition be deleted.

The second proposed change is to update License Condition 2.E. The Clinton security program has been revised since the issuance of the license. This particular license condition could be revised to remove out-of-date references and to prevent the need for future changes due to periodic revisions to the Security Plan.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kinds of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because this change is to delete a license condition for which the requirements have been fulfilled and to modify another license condition by removing out-of-date data. No previous accident analyses are affected.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because modification of License Condition 2.E merely removes out-of-date data and completion of the requirements of License Condition 2.C.6 indicates that the on-shift operators have now attained the desired amount of hot operating experience under the cognizance of experienced SROs to support safe operation of the facility. No new accident scenario has been created by the proposed change.

Basis for proposed no significant hazards consideration determination: The of safety because the changes to these two license conditions do not impact a margin of safety specifically assumed or required by any accident analysis. If hot operating experience is considered a margin of safety, fulfillment of the license condition (and therefore its deletion) indicates that the minimum margin of safety has been attained.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc. (the licensees), Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 5, 1988

Description of amendment request: This proposed amendment would incorporate the Startup Test Program data into the Clinton Power Station Technical Specifications. The licensees committed to providing this data within 90 days following the completion of the Startup Test Program.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the possibility or consequences of an accident previously evaluated because these changes are either:

(a) administrative (deleting extraneous or outdated information of an administrative nature), or

(b) required to provide the correct setpoints and limits determined to be appropriate for the as-built plant design and are consistent with the applicable safety analyses. They are based on the reviewed and approved test results from the Startup Test Program and have been incorporated into the appropriate plant design documents.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed values are consistent with plant design and/or are based on the operational performance of the as-built plant during the Startup Test Program. The values support a plant-specific design basis for Clinton, so their incorporation into the plant design documents and the CPS Technical Specifications does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety because the values proposed have been determined to be consistent with plant design and the corresponding accident analyses. In some cases, the proposed values are values established to support a margin of safety since such values had not been previously established. Therefore, the proposed changes do not constitute a reduction in a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

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NRC Project Director: Daniel R. Muller

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 5, 1988

Description of amendment request: This proposed amendment to the Clinton Power Station Technical Specifications would delete Note (h) attached to the Channel Check requirement for the Average Power Range Monitor (APRM) Flow-Biased Simulated Thermal Power-High scram function identified as Item 2.b on Table 4.3.1.1-1. On the basis of the licensees' discussions with GE and other utilities, it appears that the following concerns and/or events may have been considered when the note was originally incorporated in the Technical Specifications:

(1) Flow control valve fouling
(2) Jet pump beam cracking phenomenon
(3) Jet pump blockage
(4) Core fouling
(5) Instrumentation problem

The ACTION specified per the associated Limiting Condition for Operation (3.4.1.2) ensures that the plant will be placed in a safe condition if any of the phenomena discussed above occur. Therefore, the licensees believe that a requirement like Note (h) should not be included in the RPS instrumentation Technical Specification because the concerns described above do not require it in view of the requirements already contained in Specification 3/4.4.1.2 and in view of the other existing requirements specified for the APRMs.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
(2) Create the possibility of a new or different kinds of accident from any accident previously evaluated; or
(3) Involve a significant reduction in a margin of safety.

The proposed change to the CPS Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated (with respect to the fuel cladding safety limits) because the proposed change only removes a requirement determined to be redundant to existing requirements and/or have no meaningful value from a safety point of view. Deviations or trends away from established core-flow/drive-flow conditions (m-ratio) will be indicated by performance of the surveillance required under Specification 3/4.4.1.1.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because no new modes of operation or changes to plant design are involved. The scope of the proposed change is strictly limited to the deletion of the requirement specified by Note (h) which has been determined to involve no significant change to existing surveillances.

The proposed change does not involve a significant reduction in a margin of safety because the relationships (under Specification 3.2.2) used to establish the APRM Flow-Biased Simulated Thermal Power-High scram and Flow-Biased Neutron Flux-Upscale control rod block trip setpoints will remain unchanged. The APRM-indicated recirculation loop drive flows will continue to be appropriately checked to ensure that their established relationship to total core flow is preserved or accounted for under other Technical Specifications. All other Operability and surveillance requirements associated with the affected instrumentation remain unchanged.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 18, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Table 3.3.2-1 to add a note applicable to item 2.h. The note would provide additional information regarding the channel configuration for the Main Steam Line (MSL) Turbine Building Temperature - High trip channels which provide for automatic isolation of the main steam lines. This note would clarify the Operability requirements for the Main Steam Line Turbine Building Temperature channels thus eliminating any confusion regarding compliance with the Limiting Condition for Operation and the associated Actions. The intent of the existing Technical Specification would remain unchanged.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change is only a textual clarification to the operability requirements currently specified in the Technical Specifications for the Main Steam Line Turbine Building Temperature - High trip channels and does not impact the main steam line isolation trip function.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because the proposed change will not create any new modes of operation or new failure modes and does not impact plant design.

The proposed chance does not involve a significant reduction in a margin of safety since the change does not involve any changes to setpoints or limits associated with any margin of safety assumed or required by a safety analysis.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 18, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Table 3.3.7.5-1, "Accident Monitoring Instrumentation," which specifies Operability requirements for the Drywell/Containment Hydrogen and Oxygen Concentration Analyzers/Monitors and includes Action to be taken if one or more of the monitors are inoperable. Illinois Power Company proposes to revise the Action specified in Table

3.3.7.5-1 for the monitors such that the Action is consistent with the guidance provided in NRC Generic Letter 83-36. The Action that is currently specified in the CPS Technical Specifications for the monitors (Action "80") is applicable to a large number of the instruments listed in Table 3.3.7.5-1. This Action, however, is not recommended for "hydrogen concentration analyzer(s) and monitor(s)" by Generic Letter 83-36 issued November 1, 1983. Incorporation of the Action recommended for an inoperable hydrogen monitor(s) (designated as Action "82" in Generic Letter 83-36) will make the CPS Technical Specification consistent with that recommended by the Generic Letter.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

Although the proposed change would increase the allowed out-of-service time for the hydrogen/oxygen monitors, the proposed Technical Specification (Action statement) is consistent with the Specification recommended by Generic Letter 83-36 which was issued to provide guidance for the Technical Specifications considered appropriate for the accident monitoring instrumentation installed in response to NUREG-0737. The proposed change therefore should not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not involve any changes to plant design. The impact of the proposed change is limited only to the out-of-service time allowed for the hydrogen/oxygen monitors which perform only a monitoring function. The proposed change does not impact the operation of any other plant systems or components.

The proposed change does not involve a significant reduction in a margin of safety since the change does not involve any changes to setpoints or limits associated with any margin of safety assumed or required by a safety analysis.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

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NRC Project Director: Daniel R. Muller

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 18, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Section 4.1.3.3.b.1.b to change the setpoint requirements for the control rod scram accumulator low pressure alarm from 1520 +30, -0 psig to greater than or equal to 1520 psig. This change is proposed by the licensees because the upper limit imposed on the setpoint is viewed as an unnecessary restriction due to the fact that a setpoint of greater than or equal to 1520 psig is conservative. Any setpoint above the minimum setpoint of 1520 psig is conservative with respect to alarming upon a low pressure condition; therefore it is inappropriate to impose an upper limit in the Technical Specifications for the alarm setpoint. Removing the upper limit currently specified in the Technical Specifications is consistent with the recommendations prescribed in General Electric Service Information Letter No. 429.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the HCU accumulator pressure switch setpoints would be acceptable only if the as-found values were greater than or equal to the minimum value established from a safety standpoint. The proposed change is consistent with instrument characteristics and in accordance with vendor recommendations. The proposed change does not involve a change to the minimum required scram accumulator pressure itself. In addition, the pressure check required at least once per seven days by the current Technical Specification will not be affected by the proposed change and will continue to be performed as required.

Due to its limited scope, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The impact of the proposed change is limited only to its potential impact on accumulator operability and therefore scram capability. This impact is described above.

The proposed change does not involve a significant reduction in a margin of safety because the proposed change does not change the minimum acceptable accumulator pressure setpoint. Higher setpoints are conservative as there is no basis to impose an upper limit. The proposed change will not impact the minimum accumulator pressure required to ensure sufficient energy for a reactor scram under any reactor pressure conditions. The original basis for establishing a minimum accumulator pressure setpoint remains unchanged.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 18, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Table 4.11.2-1 to include several changes regarding Note "c." This note is attached to the monthly sampling and analysis requirements for the "Station HVAC Exhaust." The note imposes (in addition to the normal periodic monthly sampling and analysis) an additional requirement or trigger for performing sampling and analysis "following shutdown, startup, or a THERMAL POWER change exceeding 15% of RATED THERMAL POWER within a 1-hour period." The intent of the proposed revision is that this note should contain the provisional exclusion which effectively states that the additional requirement (of performing sampling and analysis following a plant shutdown, startup or a Thermal Power change exceeding 15% of Rated Thermal Power within a 1-hour period) is not applicable if Dose Equivalent I-131 concentration in the reactor coolant has not increased by more than a factor of three or the noble gas monitor shows that effluent activity has not increased by more than a factor of three.

The provisional exclusion is applicable to this note because the extra associated sampling and analysis requirements are triggered if conditions are such that fuel leaks or cladding failures may be suspected as associated with the iodine spiking phenomenon. Such occurrences, which may be indicated by an observed increase in the offgas activity level along with a determined increase in the Dose Equivalent I-131 concentration, would most likely be observed during a Thermal Power change or following a plant startup or shutdown. The extra sampling and analyses should not therefore be required if no significant increase in Dose Equivalent I-131 or offgas activity level has been indicated.

An additional change is proposed for Note "c" concerning the sampling and analysis for tritium. The licensees believe that the requirements of Note "c" are not applicable to tritium because significant increases in the level of tritium are not expected or associated with the iodine spiking phenomenon indicative of fuel leaks or cladding failures. Due to the current format of Table 4.11.2-1 in the Clinton Technical Specifications, it appears that the requirements of Note "c" include sampling and analysis for tritium. Thus, a change to Table 4.11.2-1 is proposed to separate Note "c" and Note "e." (Note "e" is applicable to tritium while Note "c" is not.)

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed exclusion to the particular testing (i.e., specially triggered isotopic analysis of the HVAC Common Stack effluent) is only allowed when conditions are such that the iodine spiking phenomenon is not indicated. The change to the table format (i.e., separating Notes "c" and "e") is an administrative change proposed to clarify existing requirements and does not change the intent of the Specification.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes introduce no changes to plant design or operation of the facility.

The proposed changes do not involve a significant reduction in a margin of safety because, as noted above, they are consistent with the intent of the Technical Specifications and yet eliminate unnecessary sampling and analyses which would otherwise appear to be required without the proposed changes. The proposed changes do not eliminate any testing that should be performed if a fuel problem (i.e., iodine spiking occurrence) is indicated. Eliminating unnecessary testing reduces the risks associated with human error, potentially reduces exposure to personnel, and allows efforts to be devoted to other areas of greater concern.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: March 5, 1987, October 11, 1988, and November 1, 1988.

Description of amendment request: In accordance with the requirement of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Yankee Nuclear Power Station to reflect recent changes to that regulation. The proposed amendments would modify paragraph 2.C(3) of Facility Operating License DPR-36 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on March 5, 1987, October 11, 1988 and November 1, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: R. Wessman

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 14, 1988

Description of amendment request: The licensee has proposed a change to Technical Specification 3.1.1.b(3)(b) to eliminate a contradiction between that Specification and Specification 3.1.1.e. Currently, Specification 3.1.1.b(3)(b) requires that, when reactor power is less than 20% and fewer than 12 control rods have been withdrawn, no control rods shall be moved without an operable rod worth minimizer. However, Specification 3.1.1.e requires that, when Technical Specifications 3.1.1.a through d are not met, (including an operable rod worth minimizer), the reactor shall be placed in hot shutdown within ten hours. Thus, the rod movement requirement of Specification 3.1.1.e is prohibited by the contradiction of Specification 3.1.1.(b)(3)(b).

In order to resolve this contradiction, the licensee has proposed to revise Specification 3.1.1.b(3)(b) to require that, if the rod worth minimizer fails prior to the complete withdrawal of the first twelve rods, the rods are to be inserted in reverse order from which they have been withdrawn. The revision would also require a second independent operator or engineer to verify that the operator at the controls is following the control rod program in reverse order.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

For the following reasons the proposed changes will not (1) involve a significant increase in the probability or consequences of an accident, (2) create the possibility of a new or different kind of an accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The purpose of the rod worth minimizer is to annunciate to the operator when an out-of-sequence rod has been selected and to block its motion. The revision to the limiting conditions for operation allows the operator to shut down the reactor by inserting control rods in such a manner that the control rod configuration will not deviate from the analyzed condition. Therefore, there will be no significant increase in the probability or consequences of a postulated control rod drop accident.

The proposed change requires no hardware modifications. The change to the limiting conditions for operation clarify operator action and provide greater assurance that no unanalyzed control rod configurations will exist. Therefore, the change does not create the possibility of a new or different kind of accident.

Safety margins are included in the safety analysis for the rod drop accident. Since the proposed change will not change the accident conditions, the change will not result in a significant reduction in the margin of safety.

Based upon the above considerations, the staff proposes to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: August 10, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications for Susquehanna Steam Electric Station (SSES) Unit 1 to permit extended operation during Cycle 4 with one recirculation loop out of service (SLO).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes are similar to the changes previously approved by the staff for the SSES Unit No. 2 Cycle 3 operation in Amendment No. 45, dated April 25, 1988.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its August 10, 1988 submittal.

The following three questions will be addressed for each of the proposed changes:

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reductions in a margin of safety?

° Specification 3.4.1.1.2, Recirculation Loops - Single Loop Operation

I. No. Specification a.3 is revised to provide the proper MAPLHGR (Maximum Average Planar Linear Heat Generation Rate) multiplier for ANF fuel. LOCA (Loss of Coolant Accident) analyses performed by ANF (XN-NF-80-125) indicate that the two loop MAPLHGR limits are applicable to SLO (Single Loop Operation) for ANF fuel, and therefore the multiplier has been set to 1.0. New Specification a.5 proposes new MCPR (Minimum Critical Power Ratio) limits for SLO based on the aforementioned transient analyses performed by ANF for events initiated for SLO conditions. These analyses show that the Safety Limit MCPR must be increased to a minimum of 1.40 for SLO. A 0.01 constant is added to the two loop Operating Limit MCPR for low power and low core flow conditions for Single Loop Operating Limit MCPR values greater than 1.40.

Editorial changes to remove unnecessary verbage and renumber these specifications have also been provided.

Based on the above analyses of the non-editorial changes to Specification 3.4.1.1.2, appropriate limits have been proposed to assure that operation with one recirculation loop out of service will not result in a significant increase in the probability or consequences of any accident previously evaluated. The editorial changes have no impact on previous analyses.

II. No. The revised MAPLHGR and MCPR limits have been developed based on approved LOCA and transient analysis methods and therefore will not create the potential for any new event.

III. No. The analyses for LOCA and other anticipated operational occurrences ensure that no significant reduction in safety margin has occurred based on their inputs, applied

conservatisms, and calculation methodologies as documented in this proposal. The editorial changes have no safety impact.

Based on the above considerations and the fact that similar changes were approved by the staff for SSES Unit No. 2 in Amendment No. 45, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 14, 1988

Description of amendment request: The proposed amendments would revise the Technical Specifications to remove a requirement for surveillance to show that the control room emergency outside air supply system (CREOASS) automatically switches to pressurization mode of operation upon a signal indicating outside intake air radiation - high signal.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its October 14, 1988 submittal.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Revising Specification 4.7.2.d.2 will not alter the surveillance testing performed on CREOASS. It will alter the acceptance criteria however to make it consistent with the intended design function of CREOASS as described in FSAR Subsections 6.5.1.2.1 and 9.4.1.2.4, and Regulatory Guide 1.95. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. CREOASS provides two separate functions for two specific scenarios i.e. high radiation and high chlorine. The proposed revision of Technical Specification 4.7.2.d.2 does not jeopardize either function since CREOASS will be tested consistent with its design function as described in the FSAR Subsections 6.5.1.2.1 and 9.4.1.2.4, General Design Criterion 19, and Regulatory Guide 1.95.

The proposed change does not involve a reduction in the margin of safety. CREOASS ensures that the control room will remain habitable during and following all design basis accident conditions, by limiting radiation exposure to personnel occupying the control room to 5 rem or less whole body and isolating the control room in the event of an accidental chlorine release.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 27, 1988 as supplemented November 9, 1988

Description of amendment request: The proposed amendment would change reactor protection system (RPS) surveillance test intervals (STIs), allowed outage times (AOTs), and incorporate some editorial changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its October 7, 1988 submittal as supplemented November 9, 1988.

The following three questions are addressed below for each of the proposed changes:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

2. Does the proposed change create the possibility of a new or different kind of accident previously evaluated?

3. Does the proposed change involve a significant reduction in a margin of safety?

° Changes to STIs and AOTs

1. No. The new AOTs and STIs have been justified generically in GE study NEDC-30851P-A, which is NRC-approved, and plant specifically in the [——] study MDE-79-0485. These changes can only affect the probability, not the consequences, of previous analyses. In that regard, the studies indicate, and PP&L has confirmed, that the probability of an ATWS event is almost insensitive to an RPS instrumentation failure. Therefore, given the resulting reductions in scrams and test-induced wearout of equipment, the net affect of these changes is to decrease core damage frequency.

2. No. The proposed changes do not result in any physical or functional changes to the RPS; therefore, they cannot create the possibility of any new event.

3. No. In this case, the only margin of safety affected by the proposed changes is related to their impact on their potential to increase the probability of previously analyzed events. This was analyzed in response to 1. above, and based on that answer, the net affect of the proposed changes is to increase the margin of safety.

° Editorial Changes to Specification 3.3.1 and Table 3.3.1-1

1. No. Editorial changes are proposed in several places in order to ensure proper interpretation of the Technical Specification requirements. Current footnote ° and Action a have been combined in order to delete the need for the footnote and thereby ensure that its provisions are complied with. The words "the Trip Function" have been changed to "a scram" because they are not used in the associated table and could therefore be considered to reflect a half-scram, which is obviously not the intent (a half-scram will ALWAYS occur from placing and RPS channel in the tripped condition). Finally, a table notation was enhanced to ensure proper compliance with the new AOTs. None of these changes have any relationship to the probability or consequences of an existing accident evaluation; they simply clarify existing requirements to ensure compliance with their intent.

2. No. See 1. above; editorial changes have no physical or functional impact on the RPS system.

3. No. Given the improvement in understanding the requirements of the subject

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Technical Specifications, margin of safety as measured by compliance with the requirements of Specification 3.3.1 is improved. No margin of safety that plays a role in any accident evaluation is impacted by these editorial improvements.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 9, 1988

Description of amendment request: The proposed amendments would change the Technical Specifications to delete reference to the Drywell Floor Drain Sump Flow Rate Monitoring System and clarify Technical Specification 3.4.3.1 action statement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its November 9, 1988 submittal.

The proposed change does not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary methods for accurately detecting small unidentified leakage within primary containment are unchanged by the deletion of the Flow Rate Monitoring System. (See FSAR Section 5.2.5.1.2.4) The Flow Rate Monitoring System was intended to provide a redundant backup to the Drywell Floor Drain Sump Level System for quantifying unidentified leakage flow rate. The capability to determine unidentified leakage flow rate within required accuracies is not affected by the deletion of the Flow Rate Monitoring System.

The revised action statement of Technical Specification 3.4.3.1 precludes a non-conservative interpretation of remedial measures to be taken under designated conditions.

Based on these conclusions, no significant change occurs to the probability or consequences of any previously analysed accident.

II. Create the possibility of a new or different kind of accident from any previously evaluated.

This change reflects the removal of a system which provides redundancy for unidentified leakage flow measurement. There is no requirement for the redundancy nor does its elimination affect the capability of quantifying leakage flow rate.

Changes to the action statement of Technical Specification 3.4.3.1 preclude a non-conservative interpretation of remedial measures to be taken under designated conditions.

III. Involve a significant reduction in a margin of safety.

The capability to accurately quantify unidentified leakage is not compromised by the deletion of the Flow Rate Monitoring System. The Flow Rate Monitoring System provided redundant backup to the Drywell Floor Drain Sump Level System. Deletion of the Flow Rate Monitoring System does not reduce any safety margin.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: November 1, 1988

Description of amendment request: The application for amendment requests changes to the Technical Specifications (TSs) to permit "forward" leak testing of five isolation valves and the valve packing.

Basis for proposed no significant hazards consideration determination: The design basis for the Primary Containment Isolation System allows the normal and emergency passage of fluids through the containment boundary. Isolation valves are installed at each penetration to prevent (or limit) the escape of fission products which would accumulate inside the containment during an accident. At least two barriers are required at each containment penetration. Generally, two valves are located between the containment atmosphere (or the reactor coolant system) and the outside atmosphere, to act as barriers, so that failure of any single valve would not prevent isolation of the containment penetration during an accident.

Various types of valves (i.e., gate, globe, etc.) are installed at Limerick Station for use as primary containment isolation valves. All of these valves require periodic testing for leak tightness. The methods used for periodic leak tightness testing are designated in 10 CFR Part 50, Appendix J as type A tests, type B tests and type C tests. The subject application concerns only type C testing of globe valves.

Type C testing is accomplished on individual valves and is sometimes accomplished in the "Reverse" direction, i.e., the test pressure is not from the containment direction, but is from outside the containment, directed toward the valve in the containment direction. "Forward" testing would refer to type C testing of valves from the same direction as that which the valve would be subjected to during an accident. Testing is accomplished on some valves in a manner, (or from a direction), which would not include the leakage through the valve packing, because the packing is opposite from the valve globe which effectively blocks the test pressure from the packing. In those cases where the valve is installed with the packing on the containment side of the valve, i.e., exposing the stem packing to possible containment pressures and creating a potential path for containment fluid leakage during an accident, the packing must be leak tested during type C testing.

Table 3.6.3-1 Part A of the Limerick TSs lists the primary containment isolation valves along with their function, the inboard and outboard isolation barriers, the maximum isolation time, if applicable, the isolation signal, if applicable, etc. If a particular globe valve in the Table is normally tested in the reverse direction, the reader is referred to "Note 5". "Note 5" states, "Inboard globe valve tested in the reverse direction." During the upcoming second refueling outage, which is scheduled to start January 13, 1989, Philadelphia Electric (PECo or licensee) proposes to modify certain containment penetrations whose inboard containment isolation valves have their stem packing exposed to containment atmosphere and proposes to revise testing methods in order that the stem packing be included during leak testing. The penetrations will be modified to allow periodic testing to include leakage through the valve(s) stem packing in accordance with 10 CFR Part 50, Appendix J. Modifications to these penetrations would allow "forward" testing to test valve packing leakage along with the leakage through the valve seat. For three valves, the

licensee proposes to install a new blocking valve and test tap between containment and the isolation valve so that gas pressure can be applied to these valves from the containment "forward" direction during type C testing. These block valves remain open except when they are being used during type C testing. The new blocking valves will be oriented such that their packings are included in the type C test boundary. For two other valves, a revised method of testing will be used which will allow "forward" testing, including leak testing of the valve's stem packing. For these two valves, a temporary test plug and test rig will be used for type C testing from inside the containment.

Once the above modifications are completed, reference to "Note 5" in Table 3.6.3-1 for these five valves will no longer be appropriate. The licensee's proposed change to the TSs is to delete reference to "Note 5" for these five valves in Table 3.6.3-1. No other TS changes are being proposed.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In the application dated November 1, 1988, the licensee provided an extensive and thorough discussion of the above three standards. The licensee has determined and the NRC staff agrees that:

(1) Operation of the plant under the proposed Technical Specifications after the addition of Blocking valves and test taps and/or revising the leakage testing methods, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment isolation system is evaluated in section 6.2.4.1 of the Final safety Analysis Report. The Final Safety Analysis Report evaluated the containment isolation system in eleven design areas:

a. The containment isolation system is designed to allow the normal or emergency passage of fluids through the containment boundary while preserving the ability of the boundary to prevent or limit the escape of radioactive materials that can result from postulated accidents.

* The addition of blocking valves and test taps will not affect the ability of the isolation system to limit or prevent the escape of radioactive materials that could result from postulated accidents.

b. The containment isolation system is designed to either automatically isolate fluid penetrations or provide the capability for remote manual isolation from the control room.

* Automatic and remote manual isolation would remain the same after the proposed modifications.

c. The arrangement of containment isolation valves for fluid systems that penetrate the primary containment conforms to General Design Criteria 54, 55, 56 and 57 to the greatest extent practicable.

* The isolation valves would continue to conform to General Design criteria 54, 55, 56 and 57 to the same degree as the original design, after the proposed modifications.

d. Fluid instrument lines that penetrate primary containment conform to the isolation criteria of Regulatory Guide 1.11 to the greatest extent practicable.

* No fluid instrument lines are affected by the proposed modifications.

e. Containment isolation provisions are designed to withstand the most severe natural phenomenon or site-related event (e.g., earthquake, tornado, hurricane, flood, or transportation accident) without impairing their functions.

* Stress and pipe support calculations have been reviewed to ensure that changes and additions satisfy the existing seismic design criteria.

f. The containment isolation system is designed with provisions for periodic operability and leak rate testing.

* The proposed modifications would allow more effective and accurate leak rate testing. Periodic operability and leak rate testing provisions on isolation valves will be enhanced by the proposed modifications and new testing methods.

g. Valve closure times are selected to minimize the release of containment atmosphere to the environs, to mitigate offsite radiological consequences, and to ensure that ECCS effectiveness is not degraded.

* Valve closure times would not be affected by the proposed modifications.

h. Design provisions are made to detect possible leakage from lines provided with remote manually controlled isolation valves.

* The leak detection provisions would not be affected by the proposed modifications.

i. Isolation valves, actuators, and controls are protected against loss of functional capability from missiles and impact accident environments.

* The proposed modifications has been evaluated for protection against loss of functional capability from missiles and impact accidents.

j. Redundancy and physical separation are provided in the electrical and mechanical design to ensure that no single failure in the containment isolation system can prevent the system from performing its intended function.

* No changes are proposed in the design of the electrical and mechanical redundancy and separation provisions for isolation valves.

k. The design of the control systems for automatic containment isolation valves is such that resetting the isolation signal does not result in the automatic reopening of containment isolation valves.

* The design for isolation valves will continue to maintain the containment isolation valves closed after resetting the isolation signal.

Based on the design areas discussed above, as previously evaluated in the Final Safety Analysis Report, and based on the determination that there would be no significant changes to these areas following the proposed modifications, operation of the plant under the proposed technical specifications after the addition of blocking valves and test taps and/or revising the test methods would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the plant under the proposed Technical Specifications after the addition of blocking valves and test taps and after revising the leakage test methods for valves 60-1057 and 60-1071, would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Chapter 15 of the Final Safety Analysis Report examined postulated accidents to determine their effect on the containment isolation system. The barrier performance sections (as explained in FSAR section 15.0.3.4) include analysis of anticipated operational occurrences (e.g., Loss of Electrical Load); off-design, abnormal transients; postulated accidents (e.g., sudden loss of a major component) and; hypothetical events such as an anticipated transient without scram. The proposed modifications would not adversely affect any of these analyses.

Adding block valves and test taps and/or revising the leakage test methods, would not change the evaluations made in the Final Safety Analysis Section 15, and therefore, the proposed changes would not increase the possibility of a new or different type accident from those previously evaluated.

(3) Operation of the plant under the proposed Technical Specifications after the addition of blocking valves and test taps and/or revising the leakage test methods, would not involve a significant reduction in a margin of safety.

The existing margin of safety for the containment isolation valves is based upon the assurance of operability, the isolation closure times of the valves and the leak tightness of these valves. This margin of safety is periodically confirmed by surveillance testing, which would continue on the same schedule following the valve modifications. Surveillance testing would continue, after making the proposed modifications, to verify that the isolation valves:

* Maintain leak tightness to a degree which provides an adequate margin of safety.

* Close after receipt of a closure signal in a time which would preclude escape of radioactive materials to the environs.

* Continue to remain operable, isolating the containment in the event of an accident and would continue to be periodically tested for continued operability.

Because of a new ability for better leakage testing of containment isolation valve stem packing, the proposed modifications would be more conservative in the event of challenges to the containment isolation system, because packing leakage if excessive, would be discovered and corrected. Based on continued testing of the containment isolation valves' operability, their closure times and their leak tightness, following modifications, the proposed changes would not involve a significant reduction in a margin of safety.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: May 24, 1988 and supplemented on November 7, 1988.

Description of amendments request: Technical Specification Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Test of Instrumentation Channels," specifies the test frequency for instrument channels. The proposed amendments would change the test frequency from bi-weekly to monthly for: Item 1, "Nuclear Power Range" instrument channels; Item 4, "Reactor Coolant Temperature" instrument channels; and Item 18, "Reactor Containment Pressure" instrument channels. In addition, the channel check for Item 18, "Reactor Containment Pressure," would be changed from daily to once per shift to conform with the recommendation of the Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed these criteria as follows:

The proposed change in channel check frequency for Item 18 from daily to once per shift is a conservative change and will not increase the probability or consequences of an accident previously evaluated. The other proposed changes would reduce the frequency of testing the channel logics from biweekly to monthly. These changes will make the nuclear power range, reactor coolant temperature, and containment pressure channel logic test frequencies consistent with the other channels which use similar components. Additionally, these changes will allow Point Beach Nuclear Plant, Units 1 and 2, to conform to industry standards as well as the Standard Technical Specifications for Westinghouse Pressurized Water Reactors. These channels have been very reliable. Based on the most severe drift rate experienced during biweekly testing, the channels should remain within Technical Specification setpoint limits between monthly testing. We, therefore, believe that these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated, and the first criterion is not violated.

Because these changes only modify the frequency of testing for these three instrument channels and introduce no new testing, a new or different accident from any previously evaluated accident cannot be created and, therefore, the second criterion is not violated.

Lastly, these changes do not involve a significant reduction in a margin of safety for the same reasons discussed for criterion one. The amended test frequencies will be consistent with (1) other plant instrumentation using the same relays and bistables, (2) industry testing frequencies, and (3) the Standard Technical Specifications.

The staff has reviewed the licensee's evaluation of the proposed amendment, and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the requested amendments do not involve significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: October 21, 1988 as supplemented November 22, 1988.

Description of amendment request: Replace the High Pressurizer Water Level trip with the High Main Coolant System Pressure trip in the plant Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the October 21, 1988 letter states the following:

This proposed change is requested in order to modify two descriptions within the Technical Specification, Section 2, Bases, to be consistent with present safety analysis, and to remove the operability requirement associated with the High Pressurizer Water Level instrument. As such, this proposed change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed. The modification of two descriptions within Technical Specification, Section 2, Bases, is an administrative change, and as such, would not involve a significant increase in the probability or consequences of an accident previously analyzed. Also, removing the requirement for operable High Pressurizer Water Level instrumentation would not involve a significant increase in the probability or consequences of an accident previously analyzed as the High Main Coolant System Pressure instrumentation will provide overpressurization protection for transient events.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The modification of two descriptions within Technical Specification, Section 2 Bases, is an administrative change, and as such, would not create the possibility of a new or different kind of accident from any previously analyzed. Also, removing the requirement for operable High Pressurizer Water Level instrumentation would not create the possibility of a new or different kind of accident as the High Main Coolant System Pressure instrumentation will provide

an equivalent level of protection against overpressurization for transient events.

(3) Involve a significant reduction in a margin of safety. The modification of two descriptions within Technical Specification, Section 2, Bases, is an administrative change, and as such, would not involve a significant reduction in a margin of safety. Additionally, the modification to the action statement of the High Pressurizer Water Level instrumentation would not involve a significant reduction in a margin of safety as the High Main Coolant System Pressure instrumentation will provide an equivalent level of protection against overpressurization for transient events.

The licensee also stated, in his submittal, that NRC previously approved methodology was used in the High Main Coolant System Pressure trip loss of load and control rod withdrawal safety analyses.

The results of the analyses demonstrate that the High Main Coolant System Pressure trip, in conjunction with the pressurizer safety relief valves, provides adequate protection against system overpressure. The Pressurizer High Water Level trip is completely redundant and not required to provide overpressure protection when the High Pressure trip is operable.

Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant consistent with the proposed Technical Specification will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion, the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendments: August 15, 1986 and October 29, 1986

Brief description of amendments: These amendments revise the Technical Specifications to require that availability of one unit's Essential Service Water pump while the other unit is operating.

Date of issuance: November 23, 1988

Effective date: November 23, 1988

Amendment Nos.: 24, 24

Facility Operating License Nos. NPF-37 and NPF-66. The amendments revised the Technical Specification.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33946). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: March 27 and November 24, 1987, and January 6, 1988

Brief description of amendment: The amendment modified paragraph 2.E. of the license to require compliance with the amended Physical Security Plan. The Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: November 21, 1988

Effective date: November 21, 1988

Amendment No.: 13

Facility Operating License No. NPF-68: Amendment revised the Operating License.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40988). The Commission's related evaluation of the amendment is contained in a letter to Georgia Power Company dated November 21, 1988 and a Safeguards Evaluation Report dated November 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: June 22, 1988

Brief description of amendment: The amendment deleted Figure 6.2-1, "Offsite Organization," and Figure 6.2-2, "Unit Organization," from the Technical Specifications and provided appropriate

changes to the administrative control requirements.

Date of issuance: November 28, 1988
Effective date: November 28, 1988
Amendment No.: 3
Facility Operating License No. NPF-76: Amendment revised the Technical Specification.
Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36670). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1988.
No significant hazards consideration comments received: No.
Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 4, 1988
Description of amendment request: The amendment removes details of the TMI-1 fire protection program from the Technical Specifications in accordance with Generic Letter No. 86-10 and revises License Condition 2.c.4. In addition, all pages of the Facility Operating License have been re-typed for appearance purposes including deletion of an obsolete footnote.
Date of Issuance: November 30, 1988
Effective date: November 30, 1988
Amendment No.: 146
Facility Operating License No. DPR-50: Amendment revised the Technical Specifications and a license condition.
Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15912). The Commission's related evaluation of this amendment is contained in a Safety Evaluated dated November 30, 1988
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: May 18, 1988
Description of amendment request: The proposed change will delete the requirement for the chlorine detection system.
Date of issuance: November 21, 1988
Effective date: November 21, 1988
Amendment No.: 12
Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40990). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: August 19, 1988
Brief description of amendment: The amendment revised the Duane Arnold Energy Center Technical Specifications to reflect new fuel loaded for Cycle 10 operation. The changes revised the Section 3.12 fuel thermal limits and the fuel cladding integrity limit of Section 1.1.A.
Date of issuance: November 22, 1988
Effective date: November 22, 1988
Amendment No.: 154
Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40990). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1988.
No significant hazards consideration comments received: No.
Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: September 2, 1988
Brief description of amendment: The amendment revised the DAEC Technical Specifications to reflect changes made to certain accident monitoring instrumentation as part of the licensee's Detailed Control Room Design Review Program.
Date of issuance: November 30, 1988
Effective date: November 30, 1988
Amendment No.: 155
Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40992). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1988.
No significant hazards consideration comments received: No.
Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: April 24, 1987
Brief description of amendment: Revised Attachment 3 to the Shoreham License regarding maintenance and surveillance for the TDI emergency diesel generators.
Date of issuance: November 30, 1988
Effective date: November 30, 1988
Amendment No.: 9
Facility Operating License No. NPF-36: This amendment revised the License.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24555). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1988
No significant hazards consideration comments received: No
Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dates of application for amendment: April 22, July 8, and August 12, 1988
Brief description of amendment: The amendment changes Technical Specification 3/4.1.3.3, "Control Rod Scram Accumulators," by adding action statements to provide alternate means for determining accumulator operability if the accumulator pressure and leakage alarm is inoperable.
Date of issuance: November 30, 1988
Effective date: November 30, 1988
Amendment No.: 50
Facility Operating License No. NPF-29: This amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36670). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1988
No significant hazards consideration comments received: No
Local Public Document Room location: Hinds Junior College,

McLendon Library, Raymond, Mississippi 39154

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: March 28, 1988

Brief description of amendment: Revises portions of Technical Specification 6.2 to make Table 6.2-1 consistent with the requirements of 10 CFR 50.54(m)(2)(i) and Specification 6.2.2.e and to clarify the staffing required during hot shutdown versus that required during cold shutdown and refueling.

Date of issuance: November 29, 1988

Effective date: November 29, 1988

Amendment No.: 102

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53FR39172). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: April 21, 1988

Brief description of amendment: This amendment revised Technical Specification Figures 3.5.1.M and 3.5.1.N to correct errors and to revise nomenclature used on these figures when they were previously revised in Amendment Number 123. The curves on these figures showing the values of maximum average planar linear heat generation rate (MAPLHGR) for the most limiting and the least limiting lattices were revised to agree with the printed values on the Figures which are correct and are unchanged, with one minor exception, by the amendment.

Date of issuance: November 22, 1988

Effective date: November 22, 1988

Amendment No.: 136

Facility Operating License No. DPR-44: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24513). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: August 24, 1988

Brief description of amendment: The amendment incorporates changes to Bases 3.2 and Tables 3.2-2 and 4.2-2 to reflect a dual time delay degraded voltage protection system which provides a longer actuation time delay under non-loss-of-coolant accident conditions.

Date of issuance: November 18, 1988

Effective date: November 18, 1988

Amendment No.: 120

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40999). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: July 20, 1987 as supplemented March 25 and April 13, 1988.

Brief description of amendment: The amendment revises the surveillance requirements for the safety injection system.

Date of issuance: November 18, 1988

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 114

Provisional Operating License No. DPR-13: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32211). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1988. The supplemental information did not alter the action noticed or affect the initial no significant hazards determination.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: August 3, 1988 (TS 250)

Brief description of amendment: The amendment adds leak/isolation temperature sensors to Table 3.2.A, "Primary Containment and Reactor Building Isolation Instrumentation" and Table 4.2.A, "Surveillance Requirements for Primary Containment and Reactor Building Isolation and Instrumentation."

Date of issuance: November 21, 1988

Effective date: November 21, and shall be implemented within 60 days

Amendment No.: 156

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39177). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: October 27, 1987 (TS 235)

Brief description of amendments: The amendment changes the Technical Specifications to reference the ASME Section XI Pump and Valve Program definition and to revise various surveillance test frequencies consistent with the specified ASME program. Existing monthly pump valve surveillance testing frequencies were based upon earlier editions of the ASME code which required once per month operability testing of some components. The ASME code of record referenced in the Browns Ferry Nuclear Plant pump and valve program, specifies an edition of the code which requires these components to be tested quarterly.

Date of issuance: November 22, 1988
Effective date: November 22, 1988, and shall be implemented within 60 days
Amendments Nos.: 158, 155, 130
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2325). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 22, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.
Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.
NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 24, 1988 (TS 241)
Brief description of amendments: These amendments change the water level reference point from top of active fuel to vessel zero in Technical Specification 1.1.C, "Reactor Vessel Water Level."
Date of issuance: November 28, 1988
Effective date: November 28, and shall be implemented within 60 days
Amendment Nos.: 160, 157, 131
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32296). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 28, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: September 21, 1988 (TS 88-18)
Brief description of amendment: The amendment modifies the Sequoyah Nuclear Plant, Unit 2 Technical Specifications (TS). The change revises surveillance requirement (SR) 4.6.5.1.b.2 to allow a one-time extension to the next refueling outage for weighing of ice. A footnote is added to the current requirement that SR 4.6.5.1.b.2 be performed at least once per 12 months. The footnote states that the SR will be performed no later than the Unit 2, Cycle 3 refueling outage or January 22, 1989, whichever comes first.
Date of issuance: November 28, 1988
Effective date: November 28, 1988
Amendment No.: 80
Facility Operating Licenses No. DPR-79: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 19,1988 (53 FR 41001). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 8th day of December, 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 88-28639 Filed 12-13-88; 8:45 am]
BILLING CODE 7590-01-D

[Docket No. 50-335-OLA; (ASLBP No. 88-560-01-LA)]

Florida Power & Light Co., (St. Lucie Plant, Unit No. 1); Hearing

December 6, 1988.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman, Glenn O. Bright, Dr. Richard F. Cole.

Please take notice that an evidentiary hearing on the issues remaining in this proceeding will begin at 9:00 A.M. on Tuesday, January 24 and continue through Thursday, January 26, 1988, in Jury Courtroom A. Martin County Courthouse, 100 East Ocean Blvd., Stuart, Florida.

The Board will hear Limited Appearance Statements pursuant to 10 CFR 2.715(a) (1988) from 4: 00 p.m. to 5:00 p.m. on January 24, 1988. Oral statements will be limited to five minutes each and may be supplemented or replaced by written statements sent to the Board at: Office of the Secretary, Attention: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For The Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 6th day of December, 1988.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 88-28749 Filed 12-13-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated November 11, 1988.

The proposed amendment would raise the allowable diesel generator load from 5250 KW to the design rating of 6000 KW. The loading is currently limited because the diesel generators have piston skirts that have a propensity to crack. The licensee proposes to change the piston skirts to a new design that does not have this problem, and thereby restore the diesel generators to their full power rating of 6000 KW.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the

Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 6th day of December 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Project Director, Project Directorate V, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–28742 Filed 12–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 122 to Facility Operating License No. DPR–3 issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications to accommodate the gradual change in the incore detection system from movable detectors to fixed detectors.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1988 (53 FR 15933). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 43298) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 4, 1988, and as supplemented October 11, 1988, (2) Amendment No. 122 to License No. DPR–3, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, Lower-Level, 2120 L Street, NW., Washington, DC and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 8th day of December 1988.

For the Nuclear Regulatory Commission.

Morton B. Fairtile,

Project Manager, Project Directorate I–3, Division of Reactor Projects, I/II.

[FR Doc. 88–28743 Filed 12–13–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24770]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 8, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 3, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc. (70–7487)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delware 19807, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

By prior Commission order in this matter, dated April 22, 1988 (HCAR No. 24627), Columbia was authorized to issue and sell through December 31, 1989, in one or more transactions, aggregating no more than $300 million principal amount, up to (i) $300 million principal amount of debentures maturing in thirty or fewer years, or (ii) $300 million principal amount of medium-term notes ("MTNs") maturing in ten or fewer years with redemption protection for a period of not longer than seven years. On November 23, 1988, Columbia sold $100 million principal amount of debentures maturing in twenty-five years.

In the original declaration, it was stated that the MTNs would have maturities ranging from nine months to ten years from date of issue. Since the original filing, Columbia asserts that the market for longer-term medium-term notes has expanded such that Columbia could issue MTNs with maturities up to thirty years. Columbia requests approval to extend the maturities on MTNs up to thirty years in order to achieve the benefits associated with MTNs, by allowing Columbia the flexibility to issue MTNs at any point along the yield curve.

MTN's generally do not contain sinking fund provisions. Since the principal amount of MTNs issued at any one time may be relatively small, it would not be practical to include a sinking fund. Additionally, Columbia asserts that the issuance of MTNs with various maturities would result in a repayment schedule similar to those of a traditional long-term debenture issue with a sinking fund. The terms of the proposed MTNs would not be in accordance with the requirement of the *Satement of Policy Regarding First Mortgage Bonds Subjects to the Public Utility Holding Company Act of 1935* (HCAR No. 13105, February 16, 1956) ("Policy") respecting sinking funds, therefore, Columbia requests authority to deviate from that Policy

Hawaiian Electric Industries, Inc., et al. (70–7587)

Hawaiian Electric Industries, Inc. ("HEI"), 900 Richards Street, Honolulu, Hawaii 96813, a Hawaii corporation and an exempt holding company pursuant to Rule 2 under the Act, and two of its electric utility subsidiary companies, Hawaiian Electric Company, Inc. ("HECO"), 900 Richards Street, Honolulu, Hawaii 96813, and Maui Electric Company, Limited ("MECO"), 210 Kamehameha Avenue, Kahului, Maui, Hawaii 96732, have filed an application pursuant to sections 9(a)(2) and 10 of the Act.

HEI owns all of the outstanding common stock of HECO, a Hawaii corporation and an operating electric utility company on the Island of Oahu. HECO has two wholly owned electric utility subsidiaries, Hawaii Electric Light Company, Inc. ("HELCO"), a Hawaii corporation which provides electric service to the Island of Hawaii, and MECO, which provides electric service to the Islands of Maui and Lanai. All of these islands are within the State of Hawaii.

Molokai Electric Company, Limited ("MOECO"), a Hawaii corporation, is a small, independent, electric utility company which provides electric service to the Island of Molokai in Hawaii. MECO proposes to acquire up to all of the outstanding common stock of MOECO in a transaction described as follows:

The initial form of the proposed transaction will be a cash tender offer by MECO for all of the outstanding shares of common stock of MOECO at a cash price of $60 per share. One of the conditions of such tender offer (which may be waived by MECO) will be that MECO acquire a number of shares of common stock of MOECO which, when added to the number of shares of common stock of MOECO presently indirectly owned by HEI (1,160 shares or 4.9%), will constitute not less than a majority of the issued and outstanding shares of common stock of MOECO.

To induce MECO to commence the tender offer, MOECO granted an option to MECO to purchase up to 24,000 shares of authorized and unissued common stock of MOECO at a cash price of $60 per share. Exercise of the option in full would result in MECO's owning a majority of the common stock of MOECO.

In addition to the foregoing, MECO will undertake to acquire all of the shares of common stock of MOECO not purchased through the proposed tender offer or through exercise of the option in a merger transaction. The merger transaction will be accomplished through the merger of a wholly owned subsidiary of MECO into MOECO with MOECO as the surviving corporation. MECO has organized a Hawaii corporation, New Meco, Inc. ("NEW MECO"), which would serve as the vehicle for the merger. MECO will provide NEW MECO with sufficient cash to carry out the merger. NEW MECO would then merge into MOECO and in this merger:

(a) Each outstanding share of common stock of MOECO would be exchanged for cash in the amount of 60¢ per share; and

(b) The common stock of NEW MECO would be converted into an equal

number of shares of common stock of MOECO.

As a result, the stockholders of MOECO would receive cash in the amount of $60 per share for their shares of common stock of MOECO and MECO would become the owner of all of the outstanding common stock of MOECO, the surviving corporation. Any stockholder of MOECO who dissents from the merger and perfects his dissenter's rights would be entitled to claim the fair market value of his MOECO shares in cash.

Within 180 days after the expiration of MECO's tender offer, MECO will transfer all of the shares of MOECO common stock then owned by it to HECO, together with all of the capital stock of NEW MECO if the merger transaction has not occurred prior to such transfer. Thereafter HECO will undertake to acquire all of the shares of common stock of MOECO not acquired from MECO through the merger of NEW MECO into MOECO, as described above. In addition, after such acquisition, HECO may cause a merger of MOECO into MECO in order to have MOECO become a division of MECO.

It is stated that the purpose of the acquisition is to provide the consumers of Molokai with a more stable and financially secure electric utility and to facilitate interconnection by underseas power cable of the Islands of Maui, Lanai, and Molokai by MECO.

HECO and its two subsidiaries are separate utilities engaged in the generation, purchase, transmission, distribution, and sale of electricity on the Islands of Oahu (HECO), Hawaii (HELCO), Maui (MECO), and Lanai (MECO). These four islands had an estimated population of 1,028,300 as of July 1987, about 95% of the population of the State of Hawaii. MOECO is an operating electric utility company engaged in the generation, purchase, transmission, distribution, and sale of electricity on the Island of Molokai. Pertinent data concerning the utility operations of the four companies for the nine-month period ended and at September 30, 1988, is summarized below:

	HECO	HELCO	MECO	MOECO
Net Utility Plant (as of 9/30/88)	$626,751	$140,222	$113,151	$10,898
Operating Revenues	$313,537	$48,626	$49,333	$3,933
Net Income (after preferred dividends paid)	$25,656	$4,857	$4,941	$61
Customers (as of 9/30/88)	243,160	45,521	39,092	2,626

It will be necessary for the Hawaii Public Utilities Commission ("PUC") to approve the proposed acquisition of common stock of MOECO by MECO, whether pursuant to the tender offer, the option, or a merger, and the issuance of authorized and unissued common stock of MOECO pursuant to the option. A joint application for the purpose of obtaining PUC approvals has been filed by MECO and MOECO with the PUC. HECO will also apply for PUC approval of the transfer of the MOECO common stock by MECO to HECO and for PUC approval of (A) the merger of NEW MECO into MOECO, in order to acquire all of the issued and outstanding common stock of MOECO, and (B) at a later time, the merger of MOECO into MECO. No other state commission and no federal commission, other than this Commis· has jurisdiction over the pro· nsaction.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28720 Filed 12-13-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2325]

North Carolina (And Contiguous Counties in the State of Virginia); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 2, 1988, I find that Currituck, Dare, Franklin, Halifax, Hyde, Nash, Northampton, Pamlico, and Wake Counties, in the State of North Carolina, constitute a disaster loan area due to damages from tornadoes and severe storms which occurred on November 28, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on February 2, 1989, and for economic injury until the close of business on September 5, 1989, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Boulevard, 14th Floor, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Beaufort, Bertie, Camden, Chatham, Craven, Durham, Edgecombe, Granville, Harnett, Hertford, Johnson, Martin, Tyrrell, Vance, Warren, Washington, and Wilson, in the State of North Carolina, and Brunswick, Greenville, and Southampton Counties, as well as the Cities of Chesapeake and Virginia Beach, in the State of Virginia, may be filed until the specified date at this location.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster is 232512 for physical damage and for economic injury the number is 667700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: December 6, 1988.

Win Allred,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-28739 Filed 12-13-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Washington County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on Murray Blvd. in Washington County Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301 Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, and the Washington County Department of Land Use and Transportation will prepare an environmental impact statement (EIS) on a proposal to improve Murray Blvd. in Washington County, Oregon. The proposed improvement would involve the reconstruction of the existing Murray Boulevard between Old Scholls Ferry Road and Allen Boulevard, a distance of about 2.6 miles.

Improvements to the roads are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; and (3) widening the existing two-lane highway to five lanes while also improving both vertical and horizontal curvatures.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. A series of public meetings will be held following the project's formal start up. In addition, a public hearing will be held. Public notices of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

The initial Technical Advisory Committee meeting will serve as the scoping meeting for the project.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on December 6, 1988.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 88-28706 Filed 12-13-88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Values For War Risk Insurance; Ship Value Determinations

AGENCY: Maritime Administration, DOT.

ACTION: Determination of ship values for war risk insurance, effective July 1, 1988.

SUMMARY: Pursuant to the procedure stated at 46 CFR 309.1, the required biannual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA–184, prescribed by 46 CFR Part 308. In accordance with Pub. L. 99–59, authority to issue such war risk insurance will expire on June 30, 1990.

The interim binders listed below shall be deemed to have been amended as of July 1, 1988, by inserting in the space provided thereof, or in substitution for any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the period July 1, 1988 to December 31, 1988 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the right, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 App. U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administration.

Dated: December 9, 1988.

Joel C. Richard,

Assistant Secretary.

FEDERAL REGISTER LIST OF SHIP VALUATIONS

Binder	Official	Vessel name	Valuation
3721	680897	1St Lt. Alex Bonnyman	(1)
3344	533270	Admiralty Bay	$9,000,000.00
3537	513704	Alison C.	1,500,000.00
2764	523846	America Sun	9,000,000.00
3360	577343	American Heritage	4,000,000.00
3641	519937	American Monarch	2,100,000.00
3648	612715	American Resolute	10,000,000.00
3639	518434	American Spitfire	2,100,000.00
3640	515976	American Titan	2,100,000.00
3642	517617	American Trojan	2,210,000.00
3654	648470	Amoco Columbia	5,100,000.00
3609	640014	Amoco Florida	9,590,000.00
3610	643069	Amoco Georgia	8,255,000.00
3607	644241	Amoco Richmond	5,100,000.00
3611	645759	Amoco South Carolina	9,400,000.00
3505	3233	Amoco Yorktown	5,500,000.00
3495	614544	Arco Alaska	29,000,000.00

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Binder
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FEDERAL REGISTER LIST OF SHIP VALUATIONS

Binder	Official	Vessel name	Valuation
3045	548424	Arco Anchorage	17,500,000.00
3518	623291	Arco California	29,000,000.00
3194	559400	Arco Fairbanks	17,500,000.00
3604	586633	Arco Independence	40,000,000.00
3142	556696	Arco Juneau	17,500,000.00
2900	536496	Arco Prudhoe Bay	9,000,000.00
2948	539313	Arco Sag River	9,000,000.00
3605	580245	Arco Spirit	40,000,000.00
3591	549197	Arco Texas	15,022,000.00
3469	601377	Argonaut	10,000,000.00
1716	292191	Ashley Lykes	2,055,000.00
3345	535357	Aspen	9,000,000.00
3608	646346	Atlanta Bay	5,100,000.00
3337	530141	Austral Rainbow	4,000,000.00
3510	3234	Baltimore Sea	5,500,000.00
3464	600128	Bay Ridge	30,000,000.00
3357	572359	Beaver State	4,000,000.00
3315	582451	Biehl Trader	3,900,000.00
3316	584627	Biehl Traveler	3,900,000.00
3628	633428	Blue Ridge	29,000,000.00
3511	3046	Brisbane Sea	4,830,000.00
3623	543461	CG–461	15,000.00
3624	543481	CG–481	15,000.00
3215	562416	Chelsea	3,500,000.00
3144	557503	Cherry Valley	3,500,000.00
3724	689194	Chesapeake Bay	27,500,000.00
3286	577738	Chestnut Hill	4,000,000.00
3394	588320	Chevron Arizona	8,200,000.00
2985	541563	Chevron California	9,000,000.00
3308	577358	Chevron Colorado	8,200,000.00
3372	584696	Chevron Louisiana	8,200,000.00
2992	542850	Chevron Mississippi	9,000,000.00
3309	566080	Chevron Oregon	8,200,000.00
3310	570709	Chevron Washington	8,200,000.00
3626	638709	Coast Range	29,000,000.00
3590	280243	Coho	3,000,000.00
3528	590414	Cornucopia	21,600,000.00
3104	553623	Coronado	3,500,000.00
3749	578746	Courier	6,500,000.00
3704	279938	Cove Leader	3,600,000.00
3702	644295	Cove Liberty	3,600,000.00
370	279438	Cove Trader	3,800,000.00
3722	671969	CPL Louis J. Hauge	(1)
3544	632750	Cygnus	11,000,000.00
3725	689193	Delaware Bay	27,500,000.00
2806	528567	Edgar M. Queeny	4,000,000.00
2086	500702	Elizabeth Lykes	1,750,000.00
3658	657540	Energy Independence	50,000,000.00
2593	282272	Exxon Baltimore	3,800,000.00
3056	524619	Exxon Baton Rouge	8,220,000.00
3683	658495	Exxon Baytown	80,075,000.00
3465	600478	Exxon Benicia	24,000,000.00
2595	283784	Exxon Boston	3,800,000.00
3668	658493	Exxon Charleston	70,000,000.00
3412	588443	Exxon Galveston	2,535,000.00
2601	297151	Exxon Houston	4,000,000.00
2603	275519	Exxon Jamestown	3,300,000.00
2610	276270	Exxon Lexington	3,300,000.00
3723	692967	Exxon Long Beach	110,000,000.00
2606	298216	Exxon New Orleans	4,000,000.00
3460	600477	Exxon North Slope	24,000,000.00
3057	526792	Exxon Philadelphia	8,220,000.00
3717	647470	Exxon Princeton	36,600,000.00
3058	523626	Exxon San Francisco	8,220,000.00
3716	692966	Exxon Valdez	110,000,000.00
2609	273896	Exxon Washington	3,300,000.00
3673	658494	Exxon Wilmington	70,715,000.00
3718	656742	Exxon Yorktown	36,600,000.00
3708	663105	Falcon Champion	16,200,000.00
3709	536850	Falcon Countess	5,500,000.00
3710	533611	Falcon Duchess	5,500,000.00
3712	658555	Falcon Leader	16,200,000.00
3713	538811	Falcon Princess	5,500,000.00
3540	514966	Freeport I	5,000,000.00
3541	516720	Freeport II	5,000,000.00
3538	292748	Gale B.	1,340,000.00
2421	513140	Genevieve Lykes	1,750,000.00
3346	526588	Glacier Bay	9,000,000.00
3729	561433	Golden Endeavor	4,000,000.00
2791	526972	Golden Gate	7,635,000.00

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FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel name	Valuation
3512	566090	Golden Monarch	4,000,000.00
3714	598731	Golden Phoenix	8,300,000.00
3739	650771	Great Lakes	7,485,000.00
3783	907989	Green Bay	20,000,000.00
3784	561453	Green Harbour	7,000,000.00
3780	562594	Green Island	7,000,000.00
3787	907990	Green Lake	20,000,000.00
3777	559623	Green Valley	7,000,000.00
3788	677648	Green Wave	8,000,000.00
3745	684689	Gus W. Darnell	(1)
2861	531048	IOS 3301 Martha R. Ingram	2,500,000.00
2935	538231	IOS 3302 Carol G. Ingram	2,500,000.00
3715	598729	Jade Phoenix	8,300,000.00
387	280564	Jams Lykes	2,000,000.00
1304	287103	Jean Lykes	2,000,000.00
3366	500799	Joe Sevier	325,000.00
389	282772	John Lykes	2,000,000.00
390	281326	Joseph Lykes	2,000,000.00
3491	621042	Kauai	43,075,000.00
598	266730	Keystoner	1,380,000.00
3287	579572	Kittanning	4,000,000.00
3746	684692	Lawrence H. Gianella	(1)
3622	550598	LB-726	15,000.00
3623	550599	LB-727	15,000.00
1352	287416	Leslie Lykes	2,000,000.00
2403	512187	Letitia Lykes	1,750,000.00
2062	299938	Louise Lykes	1,750,000.00
3546	632749	Lyra	11,000,000.00
3730	2774	M. P. Grace	2,000,000.00
3701	655330	Maj Stephen W. Pless	(1)
2763	524219	Manukai	13,500,000.00
2803	528400	Manulani	13,500,000.00
3492	618705	Maoi	650,000.00
2814	529399	Marine Chemist	4,500,000.00
2777	245851	Marine Duval	2,240,000.00
2133	246836	Marine Floridian	2,240,000.00
1513	289873	Marjorie Lykes	2,055,000.00
3539	299786	Martha B.	2,550,000.00
2109	246343	Maunalei	1,700,000.00
3740	650770	Michigan	4,540,000.00
3152	542026	Mobil Arctic	17,500,000.00
2442	286479	Mobil Meridian	3,800,000.00
3301	578288	Mormacsky	3,670,000.00
3302	569257	Mormacstar	3,670,000.00
3303	573,770	Mormacsun	3,670,000.00
1243	286650	Nancy Lykes	2,000,000.00
3656	628783	New York Sun	23,590,000.00
3508	5886	Ocean Voyager	5,500,000.00
2745	523341	OMI Champion	4,000,000.00
3470	522864	OMI Charger	4,000,000.00
3576	638899	OMI Dynachem	35,000,000.00
3577	642151	OMI Hudson	35,000,000.00
3471	520839	OMI Leader	4,000,000.00
2614	520728	OMI Wabash	4,000,000.00
2591	518738	OMI Willamette	4,000,000.00
2827	529795	Overseas Alaska	7,635,000.00
3672	514928	Overseas Alice	3,690,000.00
2862	530877	Overseas Arctic	7,635,000.00
3535	630050	Overseas Boston	18,500,000.00
3378	583412	Overseas Chicago	14,000,000 00
3409	590624	Overseas Harriette	5,400,000.00
3533	553137	Overseas Juneau	17,500,000.00
3406	590623	Overseas Marilyn	5,400,000.00
3377	287156	Overseas Natalie	3,775,000.00
3386	588001	Overseas New York	14,000,000.00
3383	586647	Overseas Ohio	14,000,000.00
3671	517186	Overseas Valdez	3,690,000.00
3480	518125	Overseas Vivian	3,690,000.00
3399	588955	Overseas Washington	14,000,000.00
3747	571049	Patriot	6,500,000.00
3742	684688	Paul Buck	(1)
3700	641084	PFC Eugene A. Obregon	(1)
3719	679513	PFC James Anderson, Jr.	(1)
3741	674269	PFC William B. Baugh	(1)
3655	638073	Philadelphia Sun	26,400,000.00
2501	517120	President Adams	4,000,000.00
2740	521866	President Cleveland	4,000,000.00
3690	673003	President Eisenhower	25,000,000.00
3689	674310	President F. D. Roosevelt	25,000,000.00
3483	530138	President Grant	10,000,000.00

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FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel name	Valuation
3726	530139	President Harrison	10,000,000.00
3485	530137	President Hoover	10,000,000.00
3030	544900	President Jefferson	6,000,000.00
3121	552109	President Johnson	6,000,000.00
1947	296779	President Kennedy	3,000,000.00
3677	651627	President Lincoln	25,000,000.00
3041	546725	President Madison	6,000,000.00
3678	655397	President Monroe	25,000,000.00
3120	552108	President Pierce	6,000,000.00
2398	511653	President Taft	3,200,000.00
2565	518517	President Taylor	4,000,000.00
3484	530140	President Tyler	10,000,000.00
3679	653424	President Washington	25,000,000.00
3705	634621	Pride of Texas	10,000,000.00
3396	570108	Prince William Sound	17,310,000.00
3720	684591	Pvt Harry Fisher	(1)
3748	573810	Ranger	6,500,000.00
3743	684681	Richard G. Mathiesen	(1)
3147	557033	Robert E. Lee	7,000,000.00
3750	577241	Rover	6,500,000.00
3779	519102	Rover	5,000,000.00
2162	502928	Ruth Lykes	1,750,000.00
3744	684690	Samuel L. Cobb	(1)
2918	535020	Sansinena II	9,000,000.00
3423	504015	Santa Adela	1,750,000.00
2752	502726	Santa Juana	1,750,000.00
3731	1876	Sasstown	1,850,000.00
3776	569153	Sea Cat	175,000.00
3786	588561	Sea Horse	175,000.00
3781	557400	Sea Lion	175,000.00
3782	530856	Sea Mule	175,000.00
3778	555604	Sea Ox	175,000.00
3785	565697	Sea Tiger	175,000.00
3453	594073	Sea-Land Adventure	6,800,000.00
3100	552818	Sea-Land Consumer	9,000,000.00
3488	604246	Sea-Land Defender	22,700,000.00
3513	604247	Sea-Land Developer	22,700,000.00
2868	532410	Sea-Land Economy	5,000,000.00
3534	606062	Sea-Land Endurance	22,700,000.00
3489	604248	Sea-Land Explorer	22,700,000.00
3514	604249	Sea-Land Express	22,700,000.00
3527	606065	Sea-Land Freedom	22,700,000.00
3516	606061	Sea-Land Independence	22,700,000.00
3529	606064	Sea-Land Innovator	22,700,000.00
3451	594374	Sea-Land Leader	6,800,000.00
3487	604245	Sea-Land Liberator	22,700,000.00
3526	606066	Sea-Land Mariner	22,700,000.00
3450	583980	Sea-Land Pacer	6,800,000.00
3486	604244	Sea-Land Patriot	22,700,000.00
3452	594375	Sea-Land Pioneer	6,800,000.00
3131	552819	Sea-Land Producer	9,000,000.00
2867	531478	Sea-Land Venture	5,000,000.00
3517	606068	Sea-Land Voyager	22,700,000.00
3699	641083	Sgt Matej Kocak	(1)
3627	641804	Sierra Madre	20,000,000.00
3707	653210	Spirit of Texas	10,000,000.00
3415	591709	SS Maui	35,000,000.00
3706	642934	Star of Texas	10,000,000.00
3148	557034	Stonewall Jackson	7,000,000.00
3413	584459	Stuyvesant	30,000,000.00
233	277623	Syosset	2,250,000.00
3606	640635	Tallahassee Bay	5,100,000.00
3507	3460	Texas City Sea	5,500,000.00
2927	283897	Texas Sun	3,800,000.00
3536	516158	Theresa F	1,500,000.00
405	283413	Thompson Lykes	2,000,000.00
3732	1778	Timbo	1,850,000.00
3657	275583	Topic Sun	2,870,000.00
3727	550200	Ultramar	6,000,000.00
3728	555148	Ultrasea	6,000,000.00
2270	505786	Valley Forge	3,530,000.00
3692	642492	Virginia Bay	9,590,000.00
3361	551001	WA-1-0001	15,000.00
3362	567451	WA-2-0451	15,000.00
3621	608713	WA-3-0576	20,000.00
3622	608714	WA-3-0577	20,000.00
411	282126	Zoella Lykes	2,000,000.00

[1] "Casualty" value as defined and determined by each individual MSC charter agreement.

[FR Doc. 88-28744 Filed 12-13-88; 8:45 am]

BILLING CODE 3910-81-M

VOL 53 ISS 240 DE 14 1988 UMI

National Highway Traffic Safety Administration

[Docket No. IP 88-04; Notice 1]

Chrysler Corp. Receipt of Petition for Determination of Inconsequential Noncompliance

Chrysler Corporation of Detroit, Michigan, has petitioned to be exempted from the notification and remedy requirement of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.100, Federal Motor Vehicle Safety Standard No. 100, "Controls and Displays," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 100 requires that motor vehicles under 10,000 pounds that do not have a narrow ring-type control for the horn, have a symbol which identifies the horn on the horn control. Chrysler Corporation produced 120,232 1988 Dodge Omni and Plymouth Horizon passenger cars from September 1987, through July 1988, without the horn identifying symbol. Chrysler supports its position of inconsequential noncompliance with the following:

- The location and operation of the horn on the subject vehicles has been unchanged since the 1984 Model Year, and the addition/deletion of the horn symbol in no way affects the proper functioning of the horn system.
- The location of the "horn" is not unique to the subject vehicles and is in a position presumed by most drivers. Similarly, activation of the horn is not uncommon and can be achieved at sereral locations on the steering wheel assembly—including the wheel's spokes and center.
- Because of the "familiar" location/activation of the horn, it is our evaluation that drivers who are unfamiliar with the operation of the subject vehicles would successfully activate the horn even in the absence of the horn symbol display.
- Chrysler is not aware of any owner complaints, field reports or allegations of hazardous circumstances for the subject or equivalent prior year models relating to horn location or identification.
- Should the owner of an affected vehicle express concern over the lack of horn identification, Chrysler will make arrangements to install a horn pad which does have the symbol specified in Table 1 of FMVSS No. 100.
- Upon discovery of the subject condition, Chrysler took immediate corrective action and initial 1989 Model Year vehicles were contained until correct horn pads were available for installation. All 1989 Model Year vehicles incorporate the horn symbol display.

Interested persons are invited to submit written data, views and arguments on the petition of the Chrysler Corporation described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below:

Comments closing date: January 13, 1988.

(Sec. 102, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 8, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-28695 Filed 12-13-88; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1989, P.L. 100-457, signed into law by President Reagan on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

Transit property	Grant number	Grant amount	Date obligated
Section 3 Grants:			
San Francisco Public Utilities Commission, San Francisco, CA	CA-03-0324	$18,411,750	Nov. 7, 1988.
City of Orlando, Orlando, FL	FL-03-0099	6,199,998	Do.
Suburban Bus Division of the Regional Transportation Authority, Chicago, IL	IL-03-0139	114,750	Nov. 1, 1988.
Suburban Bus Division of the Regional Transportation Authority, Chicago, IL	IL-03-0122	1,933,851	Nov. 21, 1988.
Bi-State Development Agency, St. Louis, MO	MO-03-0027	149,449,000	Oct. 25, 1988.
Milwaukee County, Milwaukee, WI	WI-03-0048	25,500,000	Nov. 7, 1988.
Section 9 grants:			
Regional Transportation Commission of Clark County, Las Vegas, NV	NV-90-X010	1,600,000	Nov. 4, 1988.
New York Metropolitan Transportation Authority, New York, NY	NY-90-X149	160,100,240	Oct. 20, 1988.

Issued On: December 9, 1988.

Alfred D. DelliBovi,

Administrator.

[FR Doc. 88-28783 Filed 12-13-88; 8:45 am]

BILLING CODE 4810-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 9, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0100.

Form Number: FFIEC 009 and 009A.

Type of Review: Extension.

Title: Country Exposure Report and Disclosure.

Description: Country Exposure Report and Disclosure require national banks to report quarterly their exposures in foreign countries and to disclose quarterly material exposures in foreign countries. This information is critical in determining and monitoring the soundness of national banks, state-chartered banks and the world banking system as a whole.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 360.

Estimated Burden Hours Per Response: 27 hours 30 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 39,600 hours.

Clearance Officer: John Ference, (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Review: Gary Waxman, (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-28761 Filed 12-13-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 240
Wednesday, December 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:47 a.m. on Thursday, December 8, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(9)(A)(i) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(A)(i) and (c)(9)(B)).

Dated: December 8, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-28791 Filed 12-12-88; 9:09 a.m.]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:14 a.m. on Friday, December 9, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 9, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-28792 Filed 12-12-88; 9:09 am]

BILLING CODE 6714-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, December 22, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints:
   a. (Docket Number 1474). Certain Straight Knife Cutting Machines
   b. Certain Concealed Cabinet Hinges and Mounting Plates (Docket Number 1475).
5. Inv. No. 731-TA-424 (P) (Martial Arts Uniforms from Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

December 8, 1988.

[FR Doc. 88-28781 Filed 12-9-88; 4:49 pm]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, December 29, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: .

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731-TA-425 (P) (Light Duty Integrated Hydostatic Transmissions and Subassemblies Thereof (with or without attached Axles) from Japan—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-28782 Filed 12-9-88; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting To Be Held With Less Than Seven Days Advance Notice

TIME AND DATE: 9:00 a.m., Wednesday, December 14, 1988.

PLACE: 1776 G Street, NW., Filene Board Room, 7th Floor, Washington, DC 20456.

STATUS: Open.

MATTER TO BE CONSIDERED:

1. Interim Final Rule: Parts 701 and 704, Public Unit and Nonmember accounts.

The Board voted unanimously that Agency business requires a meeting be held with less than the usual seven days advance notice.

The National Credit Union Administration notified interested parties by telephone of the time and place of the meeting as soon as the majority of the members of the Board voted to hold the meeting.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-28847 Filed 12-12-88; 12:50 p.m.]

BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, December 20, 1988.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first item is open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Ryan Air Service, Inc., Flight 103 Beech Aircraft Corporation 1900C, N401RA, Homer, Alaska, November 23, 1987.
2. Opinion and Order: Administrator v. Hart, Docket SE–7784; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

December 9, 1988.

[FR Doc. 88–28779 Filed 12–9–88 4:49 pm]

BILLING CODE 7533–01–M

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federal register

Wednesday
December 14, 1988

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources Portland Cement Plants; Amendments to Monitoring, Recordkeeping, and Reporting Requirements; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3085-5]

Standards of Performance for New Stationary Sources Portland Cement Plants; Amendments to Monitoring, Recordkeeping, and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Revisions to the monitoring, recordkeeping, and reporting requirements associated with the new source performance standards (NSPS) for portland cement plants were proposed in the **Federal Register** on September 10, 1985 (50 FR 36956). Such requirements are authorized by section 114 of the Clean Air Act, 42 U.S.C. 7414. This action promulgates final revisions to the requirements. The effect of this action is to require monitoring and associated recordkeeping and reporting of visible emissions from all kilns and clinker coolers that are subject to the NSPS, i.e., all kilns and clinker coolers that were constructed, modified, or reconstructed after August 17, 1971.

EFFECTIVE DATE: December 14, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated revisions may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Portland Cement Plants—Background Information for Promulgated Revisions to Standards," EPA–450/3–85–003b. The BID contains (1) a summary of all the public comments made on the proposed amendments and the Administrator's response to the comments and (2) a summary of the changes made to the amendments since proposal. There are no changes to the final environmental impact statement presented in the documentation for the original standards.

Docket. A docket, number A–84–08, containing information considered by EPA in development of the promulgated amendments, is available for public inspection between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Shirley Tabler, (919) 541–5256, concerning the regulatory decisions for the amendments and Mr. Kenneth R. Durkee, Industrial Studies Branch, (919) 541–5425, concerning technical aspects of the industry and control technologies. The address for both parties is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. The Promulgated Revisions

Under sections 111 and 114 of the Clean Air Act, new source performance standards (NSPS) and monitoring, recordkeeping, reporting, and testing requirements for portland cement plants were promulgated by EPA on December 23, 1971 (36 FR 24876), and revised on November 12, 1974 (39 FR 39872). The existing standards apply to any facility that manufactures portland cement by either the wet or dry process and that commenced construction, modification, or reconstruction after proposal on August 17, 1971 (36 FR 15704). These standards limit emissions of particulate matter from new, modified, or reconstructed kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage areas, clinker storage areas, finished product storage areas, conveyor transfer points, bagging operations, and bulk loading and unloading systems.

The existing standards limit particulate mass emissions from the kiln to 0.15 kilogram per megagram (kg/Mg) (0.30 pound [lb]/ton) of feed (dry basis) to the kiln; visible emissions are limited to 20 percent opacity. The existing standards also limit particulate mass emissions from the clinker cooler to 0.05 kg/Mg (0.10 lb/ton) of feed (dry basis) to the kiln; visible emissions are limited to less than 10 percent opacity. Visible emissions from all other affected facilities are limited to less than 10 percent opacity.

Section 111(b)(1)(B) of the Act requires review of the NSPS at least every 4 years and, if appropriate, revision of the standards. The principal purpose of such review and appropriate revisions is to ensure that the standards reflect a current assessment of best demonstrated technology (BDT). The first review of the standards was completed in 1979. No revisions to the standards were made as a result of that review (44 FR 60761).

In 1983, EPA undertook a second review of the standards of performance and the monitoring, recordkeeping, reporting, and testing requirements for portland cement plants. As a result of the second 4-year review, amendments to the monitoring, recordkeeping, and reporting requirements associated with the NSPS were proposed on September 10, 1985 (50 FR 36956). The basis and purpose of the amendments are stated in the notice of proposed rulemaking. Revisions and supplementary rationale arising as a result of comments on the proposal are presented in Part IV of this notice.

The amendments require that a continuous opacity monitoring system (COMS) be installed to monitor the opacity of visible emissions from control devices used on all kilns and clinker coolers that are subject to the NSPS, i.e., all kilns and clinker coolers that were constructed, modified, or reconstructed after August 17, 1971. When the affected kiln uses a bypass system that prevents all or a portion of the kiln exhaust gases from entering the main control device and the gases are ducted through a separate control device, a COMS is required on each bypass stack as well as on the main control device stack. The bypass system does not include emergency systems designed to duct gases directly to the atmosphere in the event of a malfunction of any device controlling kiln emissions. Each owner or operator that is required to install a COMS must install, calibrate, maintain and operate the COMS as required by 40 CFR 60.13 and must complete installation within 180 days of promulgation of the amendments. Excess emissions recorded by the COMS must be reported semiannually. For the purpose of reporting, periods of excess emissions are defined as all 6-minute periods during which the average opacity exceeds the applicable opacity standard. The reports of excess emissions must conform to the requirements of 40 CFR 60.7(c).

In cases where control of emissions from affected facilities (kilns and clinker coolers) is accomplished by a positive-pressure or negative-pressure fabric filter with multiple stacks or by an electrostatic precipitator (ESP) with multiple stacks, the requirement to install a COMS is waived. Multiple-stack control devices may offer some

economic and environmental advantages, and it would be very costly to require the installation of multiple COMS's in those cases. Instead, a certified observer may record the opacity of any visible emissions for at least three 6-minute periods once per day of operation according to EPA Method 9.

A single COMS may not measure accurately the opacity of visible emissions from a monovent. Therefore, where control is accomplished with a control device that exhausts gases through a monovent, monitoring must be performed using visible emission observations in accordance with Method 9.

If visible emissions are observed for a number of emission sites from a control device with multiple stacks, Method 9 observations will be recorded for the emission site with the highest opacity. The excess emissions recorded using EPA Method 9 must be reported semiannually. In addition, owners or operators of facilities (kilns) that use the Method 9 monitoring alternative must submit semiannual reports of the frequency, duration, and cause of any malfunction resulting in bypass or deenergization of any device controlling kiln emissions.

These monitoring, recordkeeping, and reporting requirements are being imposed for the purposes of (1) indicating when repairs, maintenance, or changes in operation of emission control devices or other equipment are necessary; (2) indicating when performance tests are necessary to determine whether sources are in compliance with the NSPS; and (3) gathering information that will aid in future development and revisions of the standards. These requirements do not affect the rules governing determination of compliance with the standards (40 CFR 60.11(a), 60.11(b)).

II. Environmental, Energy, and Economic Impacts

The environmental and energy impacts of the standards are not changed by the amendments and, thus, were not reassessed. The economic impacts and cost effectiveness of the standards were evaluated in order to ensure that the control technology required by the NSPS for portland cement plants is still reasonable.

As of December 1983, 45 companies operated 143 portland cement plants in the U.S. and Puerto Rico. Growth of the portland cement industry is closely tied with growth of the construction industry. Since the 1979 review of the NSPS, a total of 30 kilns and 20 clinker coolers have become subject to the NSPS; 31 plants have facilities other than the kiln and clinker cooler that have become subject to the NSPS. Permits have been issued for four entirely new plants in the U.S., two additional plants have submitted permit applications, at least three existing plants plan reconstruction or modification activities that would bring them under the standards, and four plants currently subject to the standards plan to add new facilities to the existing plant. Construction could begin on these projects in the next 3 years.

The cost effectiveness of the standards to reduce particulate matter from kilns is estimated to range from $43 to $52 per Mg ($39 to $47 per ton) of particulate matter removed for fabric filter control and from $35 to $45 per Mg ($32 to $40 per ton) for ESP control of typical facilities. The cost effectiveness of the standard for clinker coolers is estimated to range from $28 to $45 per Mg ($26 to $41 per ton) for fabric filter control of typical facilities. The cost effectiveness of the standards for other facilities (e.g., mills and storage/transfer facilities) controlled by fabric filters is estimated to range from $31 to $93 per Mg ($28 to $84 per ton). The cost effectiveness of EPS control of finish mills is estimated to be $175 per Mg ($155 per ton). Additional details on costs can be found in the BID for the proposed amendments.

The amendments to the monitoring, recordkeeping, and reporting requirements ensure that the environmental goals of the NSPS are met. The cost and economic impacts associated with the amendments were evaluated prior to proposal of the amendments (see 50 FR 36962) and have been reevaluated as a result of comments received after proposal. Based on information submitted by industry at EPA's request, the capital cost for a COMS has been revised and is expected to range from $32,000 to $40,000 in 1984 dollars. The resulting revised annualized cost is estimated to be $12,800. The requirement to install COMS's results in a maximum increase in annual control costs of 3.8 percent (0.6 percent higher than EPA's estimate at proposal). The annualized cost of visible emission observations submitted by industry was lower than the EPA's estimate at proposal ($8,700), which is less than 3 percent of annualized control costs.

III. Public Participation

Prior to proposal of the amendments of the monitoring, recordkeeping, and reporting provisions, interested parties were advised by public notice in the **Federal Register** on June 29, 1984 (49 FR 26807), of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the revisions recommended for proposal. This meeting was open to the public, and each attendee was given an opportunity to comment on the amendments recommended for proposal.

The proposed amendments were published in the **Federal Register** on September 10, 1985 (50 FR 36956). The preamble to the proposed amendments announced the availability of the BID (Portland Cement Plants—Background Information for Proposed Revisions to the Standards, EPA 450/3–85–003a), which described in detail the results of the second 4-year review of the NSPS. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed amendments, a public hearing was held on October 25, 1985, at Research Triangle Park, North Carolina. The hearing was open to the public, and each attendee was given an opportunity to comment on the proposed amendments. Four interested parties testified at the public hearing.

The public comment period was from September 10, 1985, to November 25, 1985. Eighteen comment letters were received. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made in the proposed amendments.

IV. Significant Comments and Changes to the Proposed Amendments

Comments on the proposed amendments were received from industry, State and local air pollution control agencies, and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, copies of which are available upon request. See the **ADDRESSES** section of this preamble. The comments and responses in the BID serve as the basis for the changes that have been made to the amendments between proposal and promulgation. The major comments and responses are summarized in this preamble.

In response to the public comments and as a result of reevaluation by EPA, several changes have been made to the amendments since proposal. The rationale for these changes is presented below in the responses to the public comments.

The COMS excess emission reporting frequency has been changed from quarterly to semiannually. Also, the

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separate requirement to submit semiannual reports on the frequency, duration, and cause of any episodes leading to bypass or deenergization of any device controlling kiln emissions has been deleted for sources using a COMS. The EPA has determined that this information can be obtained from the semiannual excess emission reports. However, those sources that do not install a COMS are required to submit semiannual reports on the frequency, duration, and cause of any incident leading to bypass or deenergization of the kiln control device.

The regulation has been revised to allow owners or operators of existing and new, multi-stack, positive- or negative-pressure fabric filters or multi-stack ESP's the option of performing daily observations of opacity in accordance with EPA's Method 9 in lieu of installing COMS's. The EPA has determined that multiple-stack control devices may have some economic and environmental advantages (such as permitting faster identification and resolution of problems within a compartment) compared to single-stack control devices. Therefore, EPA does not want to discourage the use of multiple-stack control devices by requiring installation of multiple COMS's. The regulation also has been revised to require visible emission observations in accordance with Method 9 rather than the use of a COMS for facilities that control emissions with a device that exhausts gases through a monovent. This requirement is being imposed because a COMS may not measure accurately the opacity of visible emissions from a movement.

Section 60.63(c) has been revised to clarify that where visible emissions are observed for a number of emission sites on either multiple-stack fabric filters or ESP's, Method 9 observations must be made for the emission site with the highest opacity.

For clarification, definitions of "bypass," "bypass stack," and "monovent" have been added to the amended regulation. The definition of bypass does not include emergency systems that exhaust gases directly to the atmosphere during a malfunction.

Most of the comment letters contained multiple comments, and the comments have been divided into several topics. The following areas are discussed below: Costs and Economic Impacts, Legal Considerations, Testing and Monitoring, and Reporting and Recordkeeping.

Costs And Economic Impacts

A. Costs of Continuous Opacity Monitoring Systems

Several commenters believe that EPA underestimated the capital and annualized costs of installing COMS's on control device stacks from kilns and clinker coolers at portland cement plants. The commenters believe that the costs presented by EPA are too low and do not include all components involved in the COMS installation. The commenters believe that:

1. The EPA has underestimated ancillary costs such as those for tools for calibration and repair. In addition, an estimate for COMS installation should include the following components: Engineering, the COM, a recorder, an alignment tool, materials, labor, certification, the cost associated with ensuring that access ladders comply with safety standards, and other contingencies;

2. The EPA did not consider the substantial costs of constructing access to and platforms on installation sites, and those costs, in many cases, could surpass hardware costs;

3. Costs for older plants may be substantially higher than those for new plants because of limited accessibility of stacks;

4. The estimate of 22 hours of labor for maintenance seems low and assumes few, if any, breakdowns; and

5. The annualized cost should reflect the higher cost of installation, as discussed above.

The commenters' estimates of capital and installation costs for a COMS ranged from greater than $50,000 to $1.5 million per COMS, and their estimates of annualized costs ranged from $12,500 to $125,000. The high estimate of annualized cost was based on an estimate provided to one company by an independent engineering firm and included a self-supporting stair tower around the existing stack and a new platform.

In response to these comments, EPA requested additional information from seven plants that have already installed COMS's, generally in response to State or local requirements. Five responses for six COMS installations were received (see entries in Docket Category IV–D). The information request sent to the respondents specifically asked for cost information on tools for calibration and repair, engineering, a recorder, certification, contingencies, etc. Table 1 presents a summary of the capital and annual COMS costs reported for the six installations. For comparison, all cost data were updated to 1984 dollars (Docket Item IV–B–4). The kilns at Plants C, D, and E are subject to the NSPS; Plants A and B are subject to State requirements only. At the plants surveyed, COMS's were installed on existing stacks for four of the kilns and were installed during construction for two of the kilns.

The cost for a COMS and associated equipment ranged from $18,000 to $27,000. Plant E reported a cost of $55,200, but this was for a combination opacity, SO_2, NO_x, and CO_2 monitor. The vendor of the $55,200 combination monitor reported that the cost for an opacity monitor alone at Plant E would be about $18,000 (Docket Item IV–E–60).

TABLE 1.—CONTINUOUS OPACITY MONITORING SYSTEM CAPITAL AND ANNUAL COSTS

[1984 dollars]

Plant	Plant A (retrofit/ non-NSPS)	Plant B (retrofit/ non-NSPS)	Plant C (retrofit/ NSPS)	Plant D (retrofit/ NSPS)	Plant E (new/ NSPS)	Plant D (new/ NSPS)	EPA estimate at proposal
Capital costs:							
COMS and equipment cost	19,128	27,274	18,488	21,782	[a] 55,179	21,632	22,000
Installation cost	36,340	[b] 8,648	13,150	10,055	[c] 657,856	10,055	9,500
Certification cost	1,500	[d] 0	5,142	NA	1,500	NA	
Total	56,968	[e] 35,922	36,780	[f] 31,837	[g] 714,535	[f] 31,687	31,500
Annual costs:							
Utilities and operating labor	2,028	2,260	[h] NA	885	680	885	4,514
Maintenance	500	4,503	1,450	[i] 2,213	4,600	429	1,047
Capital recovery	[j] 9,271	[k] 5,850	[j] 5,986	[j] 5,181	[j] 107,066	[j] 5,157	5,127

TABLE 1.—CONTINUOUS OPACITY MONITORING SYSTEM CAPITAL AND ANNUAL COSTS—Continued

[1984 dollars]

Plant	Plant A (retrofit/ non-NSPS)	Plant B (retrofit/ non-NSPS)	Plant C (retrofit/ NSPS)	Plant D (retrofit/ NSPS)	Plant E (new/ NSPS)	Plant D (new/ NSPS)	EPA estimate at proposal
Total	11,799	[a] 12,613	[b] 7,436	8,279	[a] 112,346	6,471	10,688

NA = not available.
[a] The cost reported by the plant is for a combination opacity, SO_2, NO_x, and CO_2 monitor. The vendor reports that the cost for the opacity monitor alone would be approximately $18,000 (1985 dollars).
[b] Cost underestimated because the entire cost of wiring and conduit could not be determined.
[c] The COMS was installed during construction and was included in the installation cost of the stack. Labor cost of $40,000 was included in the response, but it included building a 5 ft x 10 ft structure around the monitor.
[d] The COMS has not been certified, and there are no plans to have it certified.
[e] Total cost underestimated because installation cost was underestimated.
[f] This is the estimated cost in 1985 dollars for COMS installation on the clinker coolers based on Plant D experience installing COMS's on its kilns.
[g] Cost overestimated because this includes cost of installing the stack.
[h] Utilities and labor for the COMS alone could not be determined.
[i] There is no access or platform installed. A lift truck is used to reach the COM (21 feet above grade) for maintenance. This cost includes the amount the plant would have to spend to rent a high lift truck if it did not already have one.
[j] A capital recovery charge was calculated (16.275 percent of capital costs) to compare EPA and Plant B costs. Overhead was not included in Plant B costs.
[k] Total cost underestimated because utilities and labor cost could not be determined.

These monitor costs are consistent with EPA's previously estimated cost of $22,000.

At Plant A, which is not subject to the NSPS, a new platform and access had to be installed because the existing platform and access were not in a location suitable for COMS installation. The installation and certification cost of this COMS was $37,800. The largest cost components at this plant were a transformer and the labor to install the COMS, platform, and access. The costs at this plant are unusually high. However, if this kiln were subject to the NSPS, the platform and access would have been in a location suitable for stack testing and, thus, for COMS installation; therefore, the platform and access would not have required rebuilding. Also, if the kiln were subject to the NSPS, the proper voltage and amperage would have been available to perform EPA Method 5 during compliance testing. Thus, for these reasons, EPA believes that the COMS installation costs at this plant are not representative of the COMS installation costs for a plant subject to the NSPS. At Plant B, the existing platform and access were used, and the total installation cost was about $8,600.

At Plant C, the existing stack testing platform and access were used with modifications at a reported installation and certification cost of $18,300. At Plant D, the existing stack testing platform and access were used for one kiln, and the plant estimated the installation cost at $10,100 in 1985 dollars. The 1985 capital and installation costs provided for this facility were the plant's estimated and budgeted costs to install COMS's on its clinker coolers based on its experience and the costs of installing COMS's on its kilns. Thus, for Plants A, B, C, and D, COMS installation costs for existing kilns, including certification costs where available, ranged from $8,600 to $37,800. The EPA had estimated a total installation cost of $9,500 (including operator training and certification), which is at the lower end of the range of costs reported by the four facilities. The high estimate of $37,800 includes the costs for installation of a new platform and access and for a transformer. However, as discussed previously, the $37,800 estimated cost would not be typical for a plant subject to the NSPS, and, excluding this estimate, the COMS installation and certification costs range from $8,600 to $18,300.

Plant E provided cost information for a COMS installed on the kiln stack during construction of the kiln. Because only total construction costs were available, the plant was not able to determine the cost for installing only the COMS. The reported installation and certification cost of $659,400 includes the cost of the stack and $40,000 for purchase of the COMS. The cost of the COMS is overstated because it is for a combined opacity, SO_2, NO_x, and CO_2 monitor. The platform and access and the majority of the engineering and supervision activities would have been required for performance testing, and, thus, the associated costs are not directly attributable to the COMS. Therefore, it is not possible to make a comparison between this plant's installation cost and EPA's estimated installation cost.

One of the plants that installed a COMS on its existing kiln also installed a COMS on a new kiln during construction; and the plant estimated that the installation cost, $10,000, was about the same in both cases.

In conclusion, these responses show that capital and installation costs are site-specific and that the installation costs are generally higher than costs previously estimated by EPA. The total capital and installation costs of COMS's ranged from $31,700 to $57,000 compared to EPA's previous estimate of $31,500. However, for the reasons stated previously, it has been determined that the higher cost of $57,000 is not representative of COMS capital and installation costs at plants subject to the NSPS because the plant reporting that cost was not subject to the NSPS and had to install a new platform and access. Thus, in response to the survey, EPA has reevaluated its estimate of COMS capital and installation costs and has increased its estimate from $31,500 to a range of $32,000 to $40,000 (Docket Item IV-B-4). However, EPA does not believe that even the higher cost of $40,000 will result in an unreasonable burden on the plants.

The EPA does not consider it appropriate to include the cost of constructing an access and a platform because these items should have been installed to permit stack testing to determine compliance with the mass emission standard as required by 40 CFR 60.8, which states:

(e) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to such facility.

(2) Safe sampling platform(s).

(3) Safe access to sampling platform(s).

(4) Utilities for sampling and testing equipment.

Thus, the existing platform and access should be adequate as is or with only minor modifications to accept the installation of a COMS.

At Plants C and D, which are subject to the NSPS and which installed COMS's on the existing stacks, the

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existing platforms and accesses were used. Plant B, which is not subject to the NSPS, was also able to use the existing platform and access. At Plant C, the platform required slight modifications to widen the platform and strengthen the handrails; and the installation cost was $13,150. Plant A was the only plant responding to this survey that was unable to use the existing platform and access, and this plant is not subject to the NSPS. This plant did not have the platform and access in a suitable location for compliance testing and, thus, for COMS installation.

Certification costs reported were $1,500 at two plants and $5,500 at another plant. The EPA has included the cost of certification with an installation cost of $9,500. All the COMS's that were required to be certified passed the certification test on the first attempt. One plant was not required to certify its COMS. The $5,000 cost seems high, and further inquiry provided no information from this plant about the possible reason. However, the total capital cost at this plant was $36,800, which includes the certification cost; and this total is consistent with the capital cost range of $32,000 to $40,000 that represents EPA's revised estimate.

The EPA does not believe that COMS installation costs will be substantially higher for older plants with limited accessibility than for new plants because all plants subject to the NSPS should have installed and maintained an access for compliance stack testing. At one plant responding to the survey, the kiln was installed in 1963 and the COMS was installed in 1984; however, the COMS installation cost of $8,600 was comparable to the other cost estimates. At another plant, the platform was widened and the handrails were strengthened when the COMS was installed 3 years after construction of the kiln. The costs of these modifications and installation of the COMS totaled approximately $13,150, which is also comparable to the other cost estimates.

The annual costs for utilities, operating labor, maintenance, and capital charges reported by four plants ranged from $6,500 to $12,600, compared to EPA's previous estimate of $10,700. These figures include a capital recovery charge (16.3 percent of capital costs) that has been added to the annual costs reported by Plants A, C, and D to allow comparison with the costs reported by Plant B, which included capital recovery charges. The annual cost for Plant E was not included in the range because the capital recovery factor includes the cost of installing the stack; however, the other components of the annual costs for Plant E were within the range of costs reported by the other plants.

The respondents indicated that very little maintenance is required for the COMS's. The frequency of reported maintenance activities ranged from weekly to monthly and included checking the calibration and cleaning the lens and filter. The number of malfunctions/breakdowns of the COMS was also low and ranged from zero to three incidents per year. No estimates for maintenance labor hours were submitted, and the reported costs of maintenance ranged form $400 to $4,600 per year. The EPA had previously estimated the cost of maintenance at $1,000. Although some of the reported maintenance costs were higher than EPA's estimate, the reported utilities and operating costs were lower than those estimated by EPA. Overall, the total annual costs reported by industry are consistent with the EPA estimate. Because of EPA's decision to increase the estimated range of capital costs to $32,000 to $40,000, the annual cost estimate has been increased to reflect the capital recovery charge ($8,510) associated with the $40,000 capital cost. Thus, EPA estimates that the annual cost for COMS's would be approximately $12,800 (Docket Item IV–B–4). This results in a maximum increase in total annual control costs of 3.8 percent, which is still considered reasonable.

In most cases, only one COMS will be required per kiln. However, for kilns with a separate bypass stack, a COMS will be required on the bypass stack in addition to the main control device stack. No situations have been identified where more than two COMS's will be required per kiln as suggested by one of the commenters.

Of the 64 plants subject to the NSPS, 5 plants may be required to install 4 COMS's each, the most that any plant would be required to install. Assuming the estimated annual cost of $12,800 per COMS, the total annual cost at each of these five plants will be $51,200. Thus, the $45,000 to $65,000 mentioned by one of the commenters is likely to be incurred only by those five plants; costs for the remaining 59 plants will be substantially lower.

The Agency has reviewed the cost estimates provided by one commenter's independent engineering firm and has determined that the capital cost estimates of $125,000 to $130,000 for installation of a COMS are overstated. The EPA does not agree that it is necessary to build a new platform and staircase at this plant; in addition, the type of staircase costed is unnecessarily expensive for its intended purpose. The EPA has evaluated these costs and determined that if the costs of building the stairs and platforms and the associated engineering costs are excluded, the resulting capital cost is about $33,500 including installation, which is consistent with the range of costs ($32,000 to $40,000) estimated by EPA and is supported by responses from the plant survey discussed above.

B. Costs of Using Visible Emission Observers

Several commenters believe that the costs of performing visual observations are understated. They believe that EPA has underestimated the costs to train, certify, and employ qualified personnel; the number of personnel needed; and the time involved in making the required observations, particularly if there are a large number of multiple stacks to read.

The EPA has estimated that a company would need to train two employees to read visible emissions at a total cost of $2,969 including fees, mileage, per diem, hotel, and wages (Docket Item II–B–4). However, two plants surveyed by EPA reported that costs to train observers were $50 and $300. In addition, EPA believes that only one person at a time would be required to perform visible observations for a short period each day and that the remainder of the reader's work day would be used to perform other tasks. The EPA estimates the time required to take three 6-minute readings and reduce the data would be about 40 minutes per day at an annual cost of $6,821. The two plants responding to this question in the survey estimated 1 hour would be required, and one plant estimated an annual cost of $4,400. The EPA has concluded that its estimated cost of visual observations is still appropriate; in fact, the cost may be overstated. Therefore, EPA does not believe the requirement to read visible emissions using certified observers will result in an unreasonable burden on personnel, time, or financial resources.

It will not be necessary to read emissions from every single compartment of a multiple-stack control device. The regulation has been revised to require that visible emission observations be recorded only for the emission site with the highest opacity. Thus, in most cases, the time to perform observations should not exceed 40 to 60 minutes per day.

C. Economic Impact of the Amendments

Several commenters believe that the portland cement industry is

economically depressed and that it should not be required to incur further financial burden. The commenters stated that foreign competition, especially from Mexico, is severe and has caused at least one plant closure. The commenters also believe that the 3 percent increase in total annualized control costs estimated by EPA is not an adequate indicator of the economic impact on the industry and that product price increase and decrease in profits are better indicators of economic impact. One commenter estimated a price increase of $0.50 per ton as a result of the requirement to install COMS's. Another commenter estimated that compliance with the COMS requirement at his company would cost 2.8 percent of the company's 1984 profits because 19 COMS's will be required. The commenter estimates that total industry compliance capital costs will be $12.8 million.

The estimate in the proposal preamble of about a 3 percent increase in annualized control costs to which the commenters referred was obtained by comparing the estimated annual cost to operate a COMS to the annual cost of complying with the existing NSPS at a single affected facility. In this analysis, a worst-case cost was used, that is, installation of a COMS on a small clinker cooler (300,000 tons of clinker produced per year) controlled by a fabric filter was assumed. For this clinker cooker, the annualized cost to comply with the existing NSPS would be about $333,000. Based on EPA's estimate at proposal of the annualized COMS cost, which was $10,700, there was a 3.2 percent increase in annualized control cost. Using EPA's revised estimate of $12,800, the estimated compliance cost increase ranges from 0.6 percent for a large kiln (1,200,000 tons of clinker produced per year) controlled by a fabric filter (annualized control cost of $2,288,000) to 3.8 percent for a small clinker cooler controlled by a fabric filter (i.e., worst case). The amendments will not increase the cost of controlling facilities that are subject to the NSPS but are not required to install COMS's (i.e., the raw mill system, finish mill system, storage facilities, transfer points, and loading/unloading systems). Thus, in most cases, the effect of the COMS requirement will be a cost increase that is less than 3.8 percent of existing overall particulate control costs. For the few facilities that also must install a COMS on the bypass stack, the cost increase would double. However, the resulting impact is still reasonable.

The EPA agrees that comparing the cost of the monitor to the cost of the control device does not necessarily indicate the reasonableness of these costs. However, in this case, EPA believes that COMS costs that are in the range of 0.6 to 3.8 percent of the total particulate control system costs are not unreasonable, especially considering that no other means are available for effectively monitoring control system performance continuously and ensuring proper operation and maintenance.

The Agency used the annualized cost estimate of $12,800 and a product price of $56.78/Mg ($51.62/ton) (Docket Item IV–J–9) to assess the impact of the regulation on product price for a medium-size model plant [544,000 Mg/yr [600,000 tons/yr]) with a 76.3 percent clinker capacity utilization rate. This assessment ($12,800÷(544,000 Mg/yr 0.763)) resulted in an estimated product price increase of $0.03/Mg ($0.03/ton) for one COMS, which represents an increase of 0.05 percent ($0.03/Mg÷ $56.78/Mg) in the product price. The EPA has determined that for the 118 kilns, clinker coolers, and bypass stacks at the 64 plants subject to the NSPS, more than 29 COMS's have been installed, in most cases in response to State requirements. The remaining 89 units will require an average of less than 2 COMS's per facility. The product price impacts just stated could double for facilities that must install two COMS's; however, the impacts are still reasonable.

The 4-year review of this NSPS revealed that no plants closed as a result of the NSPS, and none are expected to close as a result of the requirement to install COMS's. Data from the Bureau of Mines and the Portland Cement Association (Docket Items IV–J–9 and IV–J–8) show that production is increasing currently in the U.S. after the decline experienced by the industry in the late 1970's and early 1980's. The EPA acknowledges that Mexican cement plants compete with U.S. plants located in areas near the Mexican border. However, the product price increase ($0.03/Mg [$0.03/ton]) estimated for one COMS at a medium-size model plant is negligible compared to the $18 per Mg ($20/ton) difference between U.S. and foreign prices and will not have a significant adverse impact on the industry.

The commenter who estimated the cost increase at $0.50 per ton provided no information on the basis of the estimate. However, EPA visited the commenter's facility in 1985 and observed that the facility has two kilns and two clinker coolers subject to the NSPS. There are also alkali bypasses on the kilns, but the exhaust gases from the separate control devices appear to be directed to the kiln control device stack. Thus, it is assumed that four COMS's are needed to comply with the proposed amendments at this facility. (As noted earlier, four is the greatest number of COMS's required by the amendments at any plant.) The EPA estimates the maximum capital cost of installing a COMS to be $40,000 with annualized costs of $12,800. Therefore, the maximum capital cost at the commenter's facility would be about $160,000, and the annualized costs would be about $51,200. The EPA was provided with annual production figures of 453,600 to 544,300 Mg (500,000 to 600,000 tons) for this plant. Thus, the product cost increase at this facility would be $0.11/Mg ($0.10 per ton) (assuming 453,600 Mg [500,000 tons] per year production). This increase is 0.19 percent of $56.78 ($51.62), the 1984 average price per Mg (ton) of cement and is considered a reasonable impact by the Agency. The increase would be even less if the higher rate of production provided by the commenter (544,300 Mg/yr [600,000 tons/yr]) were achieved.

The EPA has evaluated the case of the commenter who believes that a total of 19 COMS's will be needed in his company's 17 plants (Docket Item IV–J–8) and that these COMS's would result in capital costs of $1.5 million, which represents 2.8 percent of the company's 1984 profits. As a result of the analysis of the information obtained in the survey discussed above and the commenter's assumption that 19 COMS's are necessary, EPA estimates that this company would experience capital costs of $760,000 and annualized costs of $243,200. (This company submitted information in response to a section 114 request for costs of COMS installation at one of its plants; the capital cost at the facility presented was $36,900, and the annualized cost was $12,600. For 19 installations, the resulting capital costs would be $701,100 and the annualized costs would be $239,400; these costs are consistent with the EPA estimates presented above.) The annual production for the U.S. cement industry in 1984, according to the Bureau of Mines, was 74.4 million tons. If the commenter's company produces 11.9 percent of industry production, as estimated, this company would have produced 8,853,600 tons in 1984. This production level would result in a product cost increase of $0.03/Mg ($0.03/ton). Using the information provided by the commenter, this company's 1984 net profit is calculated to be $53.6 million ($1.5 million/2.8 percent). This estimate is corroborated

by Moody's Industrial Manual, which reports a 1984 profit of $53,436,000 for this company. Thus, based on the EPA cost estimates presented above, the annualized costs represent 0.5 percent of the annual profit, and the capital costs represent 1.4 percent of the annual profit. The Agency considers these impacts to be reasonable.

As stated previously, EPA has determined that there are 118 kilns, bypasses, and clinker coolers subject to the NSPS and that at least 29 of these units are equipped with COMS's. Thus, about 89 additional COMS's will be needed by the industry to comply with the proposed revisions. Using the estimated maximum capital cost per COMS of $40,000, the industry-wide capital costs are $3,560,000 (1984 dollars) for existing facilities, which is one-fourth to one-third the cost estimated by some commenters. The Agency believes that these costs and the impacts are reasonable.

Legal Considerations

Several commenters state that requiring installation of COMS's on existing facilities is illegal. These commenters believe that EPA has incorrectly interpreted the language and intent of the Clean Air Act as permitting such a requirement and that EPA is setting a dangerous precedent.

Three commenters believe that the statutory language of section 111 and the legislative history of the 1977 amendments to the Clean Air Act expressly state that all NSPS, including revisions, are effective only prospectively and not retroactively. The commenters cite the House of Representatives Conference Report on H.R. 6161: "Any revised requirement under section 111(b) would of course be effective only prospectively and would not apply to any source which actually commenced construction or modification before such revised standards became effective." Another commenter states that it is contrary to the intent of the Clean Air Act to use section 114 (inspections, monitoring, and entry) to adopt retroactively standards that circumvent the prospective applicability of section 111 (standards of performance for new stationary sources). The commenter contends that: (1) Only sources for which construction commenced or that are modified after the date of proposal of the revisions are subject to the amendments, which are effective at promulgation; (2) the prospective applicability of NSPS has been uniformly recognized by the Agency both in its promulgation of NSPS and its enforcement of them; and (3) although most of the recently promulgated NSPS have required some form of opacity monitoring, the Agency is not free to apply its new source regulations retroactively. The commenter cites cases where courts have recognized that NSPS are effective only prospectively.

One commenter states that the technology for reliably determining optical density and relating it to opacity was not demonstrated and not available in 1971. According to the commenter, EPA is now suggesting that it has the authority to require sources that have been in operation for many years to employ a technology that was not available when the sources were constructed.

The Administrator disagrees with these commenters. The authority for these requirements is not section 111 but section 114 of the Act, 42 U.S.C. 7414, which provides:

> (a) For the purpose (i) of developing or assisting in the development of * * * any standard of performance under Section 7411 of this title * * * [or] (ii) of determining whether any person is in violation of any such standard * * *
>
> (1) The Administrator may require any person who owns or operates *any emission source* * * * to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require * * * [emphasis added].

"[S]ection 114(a)(1) identifies a certain composite class of persons—those who own or operate emission sources or who are subject to any requirement of the Act—and authorizes the Administrator to require *any person* in that class to do any or all of the five things enumerated." *Ced's Inc. v. EPA*, 745 F.2d 1092, 1098 (7th Cir. 1984) (emphasis added). "[T]he agency is authorized to request the owner or operator * * * to supply the agency with whatever information it 'may reasonably require' to carry out its statutory responsibilities." *U.S. v. Tivian Laboratories, Inc.*, 589 F.2d 49, 53 (1st Cir. 1978).

There is no exemption in section 114 for sources that have already been constructed. Indeed, it is hard to imagine how any such exemption could be consistent with the broad purpose of section 114 to provide the Administrator with the information necessary to adopt and enforce standards under the Act.

The amendments require monitoring, recordkeeping, and reporting of emissions from kilns and clinker coolers that are subject to the NSPS. These requirements will ensure proper operation and maintenance of control equipment. The COMS's help to ensure effective enforcement of the standards because data from a COMS are used as an indicator of the compliance status of the source and may be used to identify the need for inspections, performance tests, or other enforcement activities. Thus, the proposed requirements, imposed for the purposes of determining whether persons are in violation of the NSPS and of developing future standards of performance, fall squarely within the grant of authority in section 114. The requirements do not change the standards of performance themselves.

Testing and Monitoring

One commenter, an air pollution control agency official, agrees with the Agency that 180 days after initial startup of a facility is sufficient time in which to conduct a performance test and states further that the 180-day limit is probably too long. However, two portland cement companies do not believe that 180 days is enough time for manufacturers to supply all the COMS's that will be required for the entire industry to comply with the regulation. These commenters requested that the 180-day period be verified. One commenter estimates that it would require up to 2 years for his company to prepare and approve capital budgets, engineer the installation, order the equipment, and install the total of 19 COMS's that would be required for all its plants.

Several COMS vendors and one consultant were contacted to determine if the 180-day requirement for installation of COMS's could be met (Docket Items IV–B–3, IV–E–11, 12, 13, and 14), and they agreed that 6 months is a reasonable time period. The primary factor affecting whether the 6-month deadline can be met is delivery time. Estimates of delivery time ranged from 1 week (a rush order) to 2 months, with an average estimated delivery time of 1 month. Time for placing the order ranged from 1 to 8 weeks depending on whether the facility orders directly from a catalog or requests vendors to submit bids, provide a list of references, or perform demonstrations. The COMS's are fairly standard in design and do not have to be custom-made, and it is not expected that companies will invest a substantial amount of time in ordering.

Installation is expected to require 1 to 2 weeks if the existing platform is used. If the platform (or other means of access) also requires modifications, up to 2 months could be needed for installation. However, the platform

could be modified before delivery of the COMS. Testing and certification are relatively simple procedures and would require approximately 1 week. Writing and submitting a report to the State agency or EPA regional office would take between 2 and 4 weeks. In the worst case, a period of 6 months would be required for a COMS to be on-line. In most cases, however, startup of a COMS will require only 3 to 4 months.

The vendors contacted also confirmed that they would be able to supply the projected number of COMS's that will be required for plants in this industry to comply with the regulation. Therefore, the Administrator believes that 180 days provides sufficient time to order, install, and test the COMS's required on affected facilities at portland cement plants.

Several commenters questioned that necessity and fairness of the requirement to retrofit COMS's on existing kilns and clinker coolers. The commenters claim that EPA has not demonstrated that COMS's improve operation and maintenance beyond that provided by existing equipment and current operating practices. The commenters gave the following reasons for their contention that COMS's are not necessary:

1. The EPA acknowledged that present standards are being met, and, therefore, neither monitoring nor visual observations are technically justified;

2. The EPA has not supported or documented the statement that COMS's or Method 9 observations will necessarily improve proper operation and maintenance of control equipment;

3. The COMS's do not prevent malfunctions and are not required for determining whether controls are functioning properly;

4. The COMS's in themselves do not reduce emissions, and EPA has not demonstrated that the magnitude of particulate emissions from portland cement plants warrants installations of COMS's;

5. Information from COMS's would be redundant because methods other than COMS's (e.g., monitoring of pressure drop, temperature, and electrical parameters; alarm mechanisms that identify system failures) are used for monitoring proper operation and maintenance of control equipment. In addition, in many plants, maintenance scheduling systems (MSS) are in use that include additional periodic monitoring of particulate matter control systems by maintenance personnel. In some cases, records of these maintenance scheduling system inspections are required under the operating permit; and

6. Portland cement plants are already subject to frequent monitoring by State and local agencies and by EPA, and sufficient reporting and inspection procedures are already in place to make the additional requirements unnecessary. Many States also conduct spot checks or annual on-site inspections or require annual compliance tests that include stack tests and Method 9 observations. Furthermore, plant personnel usually make daily (or more frequent) visual inspections.

The EPA disagrees with the commenters' assertion that COMS's are not necessary and responds to each point made by the commenters as follows:

1. The Agency agrees that the standards are being met as determined by the initial performance tests using Methods 5 and 9. However, compliance tests can demonstrate only that a source is meeting the applicable standards at the time the tests are conducted. Without continuous opacity monitoring via either a COMS or visual observation, neither the plant operator nor enforcement personnel can determine whether control equipment is properly operated and maintained on a continuous basis and whether there is reason to believe that the emission limits are being exceeded.

2. The Agency believes that the benefits of continuous monitoring in ensuring proper operation and maintenance are considerable. The effectiveness of COMS's in accomplishing this goal has long been recognized by the Agency. (See 49 FR 18076, April 26, 1984; 44 FR 33580, June 11, 1979; 36 FR 24876, December 23, 1971.) Furthermore, the need for COMS's for the portland cement industry has been recognized since the first 4-year review, and the use of COMS's was recommended in the **Federal Register** notice summarizing the results of that review (44 FR 60761, October 22, 1979). Such monitoring will alert the operator to the gradual deterioration in control device performance that may occur over time as the result of inadequate maintenance or improper operation, thus allowing the owner or operator to take the necessary action (either a change in operation or increased maintenance) to minimize the increase in emissions. Therefore, a COMS will result in improvements in the operation and maintenance of the control device.

3. The COMS's are not intended to prevent malfunctions; they are required to ensure that control equipment has not deteriorated over time and is being properly operated and maintained. This may aid in preventing malfunctions by alerting the operator to potential problems that could cause malfunctions.

4. It is not the purpose of COMS's in themselves to reduce emissions. In an EPA-sponsored study on operation and maintenance problems, the total annual excess emissions from cement kilns were approximately 35 Mg (38 tons) per kiln per year. The Agency has determined that COMS's represent an effective means for ensuring proper operation and maintenance of particulate matter control equipment, which should, in turn, reduce excess emissions. Thus, indirectly, emissions are reduced by the use of COMS's. The Agency has discovered no other means as effective as requiring the use of COMS's to ensure proper operation and maintenance of control equipment.

5. Monitoring of process or control device parameters may alert the operator to sudden and total failure of the control device; however, there is no evidence that these indicators are sensitive to the subtle and gradual deterioration of the control device that may occur over a period of time. In fact, one utility company has found that COMS's represent a feasible method of optimizing ESP performance (Docket Item IV–J–10). In contrast to stack testing, COMS's allow real-time observations of the effects of fuel changes and control system changes (e.g., excess air levels, precipitator voltage, and rapping) on process operation and control device performance.

Furthermore, the Agency has found that excess emissions at cement plants are caused primarily by improper control device operation and maintenance. Although the maintenance scheduling system may be used in some plants to ensure proper maintenance, the Agency believes that use of COMS's is the most effective means to ensure that the control equipment is properly operated. The Agency has no information to show whether visual observations are routinely performed at all cement plants; however, where use of a COMS is practicable, a COMS can provide continuous data. Therefore, the Agency believes that a COMS (where use is feasible) is the most effective means to ensure proper operation and maintenance. There are no data to show how monitoring of process parameters will ensure that pollution control equipment is properly operated and maintained on a continuous basis. For these reasons, the Agency has determined that COMS's are appropriate and necessary as indicators of proper control device operation and maintenance and that their use will

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significantly reduce the quantity of excess emissions from portland cement plants.

6. The commenter does not provide any information about the type and/or frequency of monitoring by State, local, and EPA personnel. However, the EPA does not consider inspections that are sporadic rather than continuous to be redundant with the monitoring requirements of the proposed amendments. Some plants are subject to annual walk-through inspections by the State, but few plants (if any) are subject to annual compliance stack testing. (See entries in Docket Category IV–E.) Annual and periodic inspections performed by State and local agencies are intended to determine compliance with the standards at the time of inspection and are not intended to ensure continuous proper operation and maintenance of particulate matter control equipment. About one-half of the kilns subject to the NSPS are already using COMS's. Excess emission reports submitted pursuant to State or local requirements can be copied and submitted to the Administrator to fulfill the NSPS reporting requirement if such reports satisfy EPA's information requirements.

Two commenters believe that all control devices, including negative-pressure fabric filters, with multiple stacks are environmentally superior to single stacks, but that the proposed regulation would provide a strong incentive to use single stacks in order to avoid installing multiple COMS's. If multiple-section fabric filters were vented to a single stack, an observer might require an hour to find the cause of a subtle change in plume opacity. With multiple stacks, a malfunctioning baghouse section is easily identifiable by virtue of its contrasting plume opacity relative to the opacity of the plumes of adjacent stacks, and that compartment can be taken off-line right away. One commenter also requests that owners or operators using ESP's with multiple stacks be afforded the alternative of using visible emission observations in lieu of in-stack monitoring, as is permitted for fabric filters with multiple stacks.

The EPA has reevaluated its position on multiple-stack fabric filters and ESP's. The Administrator agrees that multiple-stack control devices may offer some economic and environmental advantages, as described in the comment. Therefore, the Administrator does not want to discourage the use of multiple-stack control devices by requiring installation of multiple COMS's. Also, at the time of proposal, EPA was not aware that any portland cement plants use ESP's with multiple stacks. Because one plant is now known to use an ESP with multiple stacks, the Agency will allow the alternative of performing visible emission observations using a certified observer in lieu of installing COMS's. Thus, the regulation has been revised to allow owners or operators of exisitng and new multiple-stack, positive- or negative-pressure fabric filters or multiple-stack ESP's the option of performing Method 9 observations daily in lieu of installing COMS's.

The regulation also has been revised to clarify that, where visible emissions are observed at a number of emission sites on either multiple-stack fabric filters or ESP's, Method 9 observations must be made for the emission site with the highest opacity.

Reporting and Recordkeeping

Several commenters contend that recordkeeping of either opacity monitoring data or visual emission data is costly and that it is not needed because recordkeeping does not affect emissions. It was requested that EPA reconsider the recordkeeping requirements and withdraw them.

The Administrator has reevaluated the proposed recordkeeping and reporting requirements and has decided to withdraw the separate requirement for semiannual reports on the frequency, duration, and cause of any incident or malfunction leading to bypass or deenergization of the kiln control device for sources using a COMS. Section 60.7(c) of the General Provisions requires that excess emission reports include the frequency, duration, cause, and corrective action taken for periods of excess emissions that occur during malfunctions. Therefore, the Administrator had determined that excess emission reports would provide an accurate record of periods of bypass or deenergization. If such periods do not cause excess emissions, a report on the incidents is not necessary. However, those sources not equipped with opacity monitors will be required to submit semiannual reports on the frequency, duration, and cause of any incident or malfunction leading to bypass or deenergization of the kiln control device.

In addition to this change, the Administrator has reevaluated the required frequency of reporting COMS excess emission data. Under NSPS, reporting frequencies of data, other than direct compliance information, are reviewed on a case-by-case basis, and semiannual reporting of these data is required unless evidence is produced that supports more frequent reporting (50 FR 46467, November 8, 1985). Therefore, the regulation has been revised to require semiannual reporting of COMS excess emission data.

The Administrator has determined that the recordkeeping and reporting requirements associated with Method 9 observations and with the use of COMS's that are being promulgated by publication of this notice are essential for effective enforcement and will not impose an excessive burden on the industry. A maximum of 0.1 person per year at a cost of approximately $7,300 per affected facility (based on $30.45/h, which includes labor and overhead) will be necessary to comply with the recordkeeping and reporting requirements described herein (Docket Item IV–H–2). This cost estimate represents a worst case; it assumes that two excess emission periods will be recorded and reported annually for an affected facility. This case would not be typical.

V. Administrative Requirements

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added through the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated amendments to the NSPS and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (see Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A)).

The effective date of this revised regulation is December 14, 1988.

This revised regulation will be reviewed again in 4 years. The review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a), states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. The revisions to the portland cement NSPS do not change the mass or visible emission limits for any of the affected facilities. Today's revisions add

requirements for continuous opacity monitoring and for reporting of malfunctions during which the control device for the kiln is deenergized or bypassed. An abbreviated economic analysis was performed that indicated the maximum increase in compliance costs as a result of these revisions would be 3.8 percent. Because the cost of complying with the revision is small, the monitoring, recordkeeping, and reporting requirements have been determined to be insubstantial. Because the amendments are not substantial, no detailed economic impact assessment of the amendments has been prepared. An economic analysis of the standards was prepared during development of the original standards (36 FR 15704, August 17, 1971); the economic impacts of the revised standards are essentially the same as those described in that economic analysis.

Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0025.

Public reporting burden for this collection of information is estimated to average 332 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirement of a regulatory impact analysis (RIA). The Agency has determined that the amendments would result in none of the significant adverse economic effects set forth in section 1(b) of the Order as grounds for finding a regulation to be a "major rule." The amendments are not substantial. The Agency has, therefore, concluded that this action is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every rule unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. The reasons for this certification were explained in the preamble to the proposed rule (50 FR 36963, September 10, 1985), which concluded that the economic impact of this rule is not significant.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Portland cement plants.

Date: December 3, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.61, paragraphs (b), (c), and (d) are added to read as follows:

§ 60.61 Definitions.

* * * * *

(b) "Bypass" means any system that prevents all or a portion of the kiln or clinker cooler exhaust gases from entering the main control device and ducts the gases through a separate control device. This does not include emergency systems designed to duct exhaust gases directly to the atmosphere in the event of a malfunction of any control device controlling kiln or clinker cooler emissions.

(c) "Bypass stack" means the stack that vents exhaust gases to the atmosphere from the bypass control device.

(d) "Monovent" means an exhaust configuration of a building or emission control device (e.g., positive-pressure fabric filter) that extends the length of the structure and has a width very small in relation to its length (i.e., length to width ratio is typically greater than 5:1). The exhaust may be an open vent with or without a roof, louvered vents, or a combination of such features.

3. In § 60.63, paragraphs (b), (c), (d), and (e) are added to read as follows:

§ 60.63 Monitoring of operations and emissions.

* * * * *

(b) Except as provided in paragraph (c) of this section, each owner or operator of a kiln or clinker cooler that is subject to the provisions of this subpart shall install, calibrate, maintain, and operate in accordance with § 60.13 a continuous opacity monitoring system to measure the opacity of emissions discharged into the atmosphere from any kiln or clinker cooler. Except as provided in paragraph (c) of this section, a continuous opacity monitoring system shall be installed on each stack of any multiple stack device controlling emissions from any kiln or clinker cooler. If there is a separate bypass installed, each owner or operator of a kiln or clinker cooler shall also install, calibrate, maintain, and operate a continuous opacity monitoring system on each bypass stack in addition to the main control device stack. Each owner or operator of an affected kiln or clinker cooler for which the performance test required under § 60.8 has been completed on or prior to December 14, 1988, shall install the continuous opacity monitoring system within 180 days after December 14, 1988.

(c) Each owner or operator of a kiln or clinker cooler subject to the provisions of this subpart using a positive-pressure fabric filter with multiple stacks, or a negative-pressure fabric filter with multiple stacks, or an electrostatic precipitator with multiple stacks may, in lieu of installing the continuous opacity monitoring system required by § 60.63(b), monitor visible emissions at least once per day by using a certified visible emissions observer. If the control device exhausts gases through a monovent, visible emission observations in lieu of a continuous opacity monitoring system are required. These observations shall be taken in accordance with EPA Method 9. Visible emissions shall be observed during conditions representative of normal operation. Observations shall be recorded for at least three 6-minute periods each day. In the event that visible emissions are observed for a number of emission sites from the control device with multiple stacks, Method 9 observations shall be recorded for the emission site with the highest opacity. All records of visible emissions shall be maintained for a period of 2 years.

(d) For the purpose of reports under § 60.65, periods of excess emissions that

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shall be reported are defined as all 6-minute periods during which the average opacity exceeds that allowed by § 60.62(a)(2) or § 60.62(b)(2).

(e) The provisions of paragraphs (a), (b), and (c) of this section apply to kilns and clinker coolers for which construction, modification, or reconstruction commenced after August 17, 1971.

(Approved by the Office of Management and Budget under control number 2060–0025.)

4. In § 60.64, paragraph (a)(5) is added to read as follows:

§ 60.64 Test methods and procedures.

(a) * * *

(5) Method 9 and the procedures in § 60.11 for measuring the opacity of stack emissions.

* * * * *

5. Section 60.65 is added to read as follows:

§ 60.65 Recordkeeping and reporting requirements.

(a) Each owner or operator required to install a continuous opacity monitoring system under § 60.63(b) shall submit reports of excess emissions as defined in § 60.63(d). The content of these reports must comply with the requirements in § 60.7(c). Notwithstanding the provisions of § 60.7(c), such reports shall be submitted semiannually.

(b) Each owner or operator monitoring visible emissions under § 60.63(c) shall submit semiannual reports of observed excess emissions as defined in § 60.63(d).

(c) Each owner or operator of facilities subject to the provisions of § 60.63(c) shall submit semiannual reports of the malfunction information required to be recorded by § 60.7(b). These reports shall include the frequency, duration, and cause of any incident resulting in deenergization of any device controlling kiln emissions or in the venting of emissions directly to the atmosphere.

(d) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Clean Air Act, 42 U.S.C. 7411, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this section, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under control number 2060–0025.)

6. Section 60.66 is added to read as follows:

§ 60.66 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No restrictions.

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federal register

Wednesday
December 14, 1988

Part III

Department of the Interior

Bureau of Indian Affairs

Fiscal Year 1989 Indian Child Welfare Act Grant Program; Availability of Title II Funds; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year 1989 Indian Child Welfare Act Grant Program; Availability of Title II Funds

December 9, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of Title II funds.

SUMMARY: The Indian Child Welfare Act makes available grant funds from the Bureau of Indian Affairs, Department of the Interior, for the purpose of improving child welfare services to Indian children and families.

EFFECTIVE DATE: The closing date for receipt of applications for this program is February 17, 1989.

ADDRESSES: Bureau of Indian Affairs' area offices are listed in Part IV of this announcement. BIA/Division of Social Services, MS 310 SIB, Code 450, 1951 Constitution Ave., NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area office nearest to the applicant, or the Acting Chief, Division of Social Services, address given above: Telephone (202) 343–6434.

SUPPLEMENTARY INFORMATION: The Assistant Secretary-Indian Affairs is announcing procedures necessary to apply for grant funds under Title II of the Indian Child Welfare Act. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM8.

Applicants for projects of one year or three years duration may be submitted. Regulations published December 16, 1985, in the **Federal Register** (50 FR 51244) allow multi-year projects, in accordance with 25 CFR 23.37. Applicants who are proposing projects for a multi-year project must submit full applications on all program activities for the entire project period, that is for three years. This includes budget information. The budget period for each grant award will be for twelve (12) months. Funding after the first year of a multi-year project will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of funds, and compliance with appropriate program regulations.

It is important that all applicants carefully review requirements detailed in the announcement related to deadlines, indirect costs, and page limitations. If an application is not received by the close of business on February 17, 1989, the application will not be reviewed. If the applicant does not itemize indirect costs in its proposed budget a total of five points will automatically be deducted from Criteria V—"Fiscal Capabilities, Budget and Budget Justification, Part (b)." If an application is longer than the established page limitation, only the first forty pages of the application will be reviewed.

Authority: The Indian Child Welfare Act, Pub. L. 95–608 authorized the utilization of funds for grants to Indian tribes, organizations, and multi-service Indian centers.

Part I. General Information

A. Background

This announcement provides information on opportunities to apply for Indian Child Welfare Act (ICWA) grant funds for FY '89. The policies established by the Indian Child Welfare Act of 1978 (Pub. L. 95–608, 25 U.S.C. 1902, 25 U.S.C. 1931 and 1932) for which these grant funds may be used are:

1. To prevent separation of Indian children from their families when possible;

2. When separation is necessary, to reunite Indian children with their families as soon as possible;

3. When reunification is not possible, to find permanent families through permanent placement with extended families or through adoption; and

4. To carry out work with Indian children and their families in accordance with the preferences of the ICWA, following procedures and practices which reflect the unique values of Indian culture.

An applicant for an Indian Child Welfare Act Grant may submit only one grant application for this program during this application period (refer to 25 CFR 23.21(b)).

B. BIA Indian Child Welfare Grant Program Purpose

The purposes of Bureau of Indian Affairs' Indian Child Welfare grants as specifically stated in the law are:

1. The establishment and operation of Indian child and family service programs which promote the stability of Indian families, and

2. The provision of non-Federal matching shares for other Federal financial assistance programs which contribute to that same purpose.

These purposes are further defined in Pub. L. 95–608, sections 201 and 202; 25 U.S.C. 1931 and 1932; and 25 CFR 23.22.

The objective of every Indian child and family service program shall be to prevent the breakup of Indian families, and insure that the permanent removal of an Indian child from the custody of his/her parent or Indian custodian shall be a last resort.

C. Eligible Applicants

The governing body of any tribe or tribes, or any nonprofit off-reservation Indian organization or multi-service Indian center, may apply individually or as a consortium for a grant. No applicant may submit more than one application.

A consortium is created by an agreement or association between two or more eligible applicants.

Part II. Available Funds

The appropriation for this program in Fiscal Year 1989 is 8.7 million dollars. Grants will be awarded to individual tribes, organizations, or to consortia of tribes and organizations within the following categories:

(a) A maximum of up to $50,000 for eligible applicants with a total of service area population 2,500 or less;

(b) A maximum of up to $75,000 for eligible applicants with a total service area population greater than 2,500 but less than 5,000;

(c) A maximum of up to $100,000 for eligible applicants with a total service area population greater than 5,000 but less than 7,500;

(d) A maximum of up to $150,000 for eligible applicants with a total service area population greater than 7,500 but less than 15,000;

(e) A maximum of up to $300,000 for eligible applicants with a total service area population greater than 15,000.

Applicants in the State of Alaska will be allowed a 25 percent cost of living adjustment to the total maximum amount for which they may apply. Notwithstanding the above grant guidelines, consortia having a total service area population of 5,000 or less, may apply for a maximum grant of up to $100,000 because of the greater administrative costs associated with operating a small consortium. Consortia with service area populations greater than 5,000 must comply with the grant guidelines set above.

Service area population means the total number of Indians eligible for service under 25 CFR 23.2(d) (2) and/or (3) in the geographical area to which the tribe, or organization, or multi-service center can realistically provide the services proposed in the application. The service area population is used only to determine maximum grant allocations

that a tribe, multi-service center, or organization may be eligible to receive. These population figures must be based on identifiable statistical resources.

All costs associated with the administration of proposed projects shall be line itemized. This means indirect cost as well as all other administrative costs must be broken down by percentage and dollar amounts. All administrative costs will be carefully scrutinized in relation to proposed funds used for direct services. If the applicant does not itemize indirect costs in its proposed budget a total of five points will automatically be deducted from Criteria V—"Fiscal Capabilities, Budget and budget Justification, Part (b)."

In accordance with 25 CFR 23.25(a)(8), the reasonableness and relevance of the estimated costs for the project are considered in the rating of all project applications. Administrative costs are only allowable within the funding specified by the grant forumla, and limitations specified in this announcement.

Applicants will not be funded for more than their demonstrated need, as specifically addressed in 25 CFR 23.24 and 23.25. The statistical requirements established in these regulations, as well as the tribe's multi-service center's or organization's prior service record will be used in determining need. Examples of necessary data include the number of actual or estimated Indian family breakups, and the number of persons who will receive direct services from any portion of the proposed program, by program area.

In accordance with 25 CFR 23.27(C)(3), if an applicant has been a grantee during the preceding fiscal year and proposes to continue essentially the same service program, the applicant, at the time of application, must provide a satisfactory evaluation from the area office along with the other materials required in this subsection.

A satisfactory evaluation means at a minimum, the timely submission of all fiscal and programmatic reports, including utilization of the corrective analysis form when programmatic changes are necesary. At no time may any Indian tribe, organization, or multi-service center which is either an eligible individual applicant in accordance with 25 CFR 23.21 or a member of a consortium, receive Indian Child Welfare Act grant funds greater than a maximum grant of $300,000 through a direct grant or through subgranting procedures with approved applicants.

Part III. Application and Selection Criteria

A. Statutory Authority

The Indian Child Welfare Program from the Bureau of Indian Affairs is authorized by Title II of Pub. L. 95–608, the Indian Child Welfare Act (25 U.S.C. 1901 *et seq.*, 25 CFR Part 23). The appropriation for the grant program is $8.7 million. The Central Office will retain 10 percent of the total available funding, to assure funding for any applicant who may appeal a denial at the area office level. If these funds are not utilized for appeals, they will be redistributed to the area offices.

B. The Closing Date for Receipt of Applications

The closing date for receipt of all applications under this Program Announcement is February 17, 1989. Applications for Indian Child Welfare Act Grants must be received in the appropriate Bureau of Indian Affairs' Social Services Area/Agency Office, as specified in 25 CFR 23.28, on or before 4:15 p.m. or the applicable close of business for that office on the closing date of the application period. Post marks will not be considered as meeting the deadline for applications received after the application deadline. The names and addresses of Bureau Social Service Area Offices and staff are listed at the end of this announcement. Hand delivered applications are accepted during normal working hours Monday through Friday. Applications which do not meet this criteria are considered late applications and will not be considered in the current competition.

C. Program Priorities

Indian Child Welfare Act grants are for the purpose of:

1. Establishment and operation of Indian child and family service programs. In accordance with the policy in 25 CFR 23.2 to emphasize the design and funding of programs to promote the stability of Indian families, program priorities have been established to be utilized by area offices in the competitive review process when more than one application obtains the same competitive score. These priorities reemphasize the programmatic interest in maintaining the family and preventing out-of-home placements. Program priorities are listed below in descending order:

(a) Operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children.

(b) Family assistance (including homemaker and home counselors), day-care, after-school care, recreational activities, respite-care, and employment.

(c) A system for tribes or Indian organizations to license or otherwise regulate Indian foster and adoptive homes or the preparation and implementation of child welfare codes within their legal jurisdictional authority, or pursuant to a state-tribal and/or Indian organization agreement.

(d) Guidance, legal representation and advice to Indian families involved in tribal, state or federal child custody proceedings.

(e) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(f) Education and training of Indians (including tribal court judges and staff) in skills relating to child and family assistance and service programs.

(g) Subsidy programs under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs

(h) Home improvement programs

(i) Other programs designed to meet the purpose of the Act. Planning or feasibility grants may be undertaken for any one of the above listed program purposes. These applications will be ranked according to the priority of the program under consideration.

2. Providing non-Federal matching shares for other federal financial assistance programs as prescribed in 25 CFR 23.43. The order of priority of matching share grants will correlate with the purpose of the program receiving the match.

D. Content of the Application

The application shall be no longer than 40 pages, double spaced excluding the appendix. The table of contents and indices will not be counted toward the maximum length. It is recommended that the appendix be no longer than 20 pages Any application whose narrative exceeds 40 pages will not be reviewed past page 40. The application shall include standard form 424 and the following information:

1. Name and address of Indian tribal governing body(s) or Indian organization applying for a grant,

2. Descriptive name of project.

3. Grant funds requested.

4. The unduplicated client service population directly benefiting from the project,

5. Length of project.

6. Beginning date.

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7. Project budget categories or items,
8. Program narrative statement (including three-year plans if appropriate),
9. Certification or evidence of request by Indian tribe or board of Indian organization (covering the duration of the proposed project),
10. Evidence of substantial community support for the proposed program. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires,
11. Name and address of the bureau office to which an application is submitted,
12. Date application is submitted to the Bureau, and
13. Additional information pertaining to grant applications for funds to be used as matching shares.

Information included in the appendix should relate specifically to the application. The appendix may include, but is not limited to the following: Resolutions, support letters, position descriptions, fiscal management/accounting certification, operational monitoring system, non-profit status documentation.

E. Evaluation Criteria

The content of the application and the following factors are considered in the competitive review of these grant applications:

1. The degree to which an applicant demonstrates in the program narrative an understanding of the social service problems or issues impacting the client population which the applicant proposes to serve. (If an applicant identifies alcohol or drug abuse as a major problem or issue impacting Indian children and families, they must also clearly address current efforts to coordinate existing resources to attack this problem. This may include information on the development or contents of the Tribal Action Plan specified under section 4206 of the Omnibus Drug and Alcohol Abuse Act of 1986).

2. The degree to which and the methods by which the applicant intends to fulfill the purpose of the grant, specifically relating to goals and the objectives of the program to the issues and problems impacting the client population. (The proposed methods outlined in the application should have an established basis for operation, e.g., a tribal placement program requires tribally established licensing or placement standards on which to operate, or a program to assist the tribal court requires a tribal code and a tribal court with which to work, etc.)

3. Whether the applicant presents narrative, quantitative data and demographics of the client population to be served. Examples of such data include:

(a) The number of actual or estimated Indian child placements outside the home;

(b) The number of actual or estimated Indian family breakups; and

(c) The need for a directly related preventive program. (Refer to Part II for further explanation.)

4. The relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup.

(a) Cultural barriers;

(b) Discrimination against Indians;

(c) Inability of potential clientele to pay for services;

(d) Lack of programs which provide free service to indigent families;

(e) Technical barriers created by existing public or private programs;

(f) Availability of transportation to existing programs;

(g) Distance between the Indian community to be served under the proposal and nearest existing programs;

(h) Quality of service provided to Indian clientele; and

(i) Relevance of service provided to specific needs of Indian clientele.

5. The proper justification of the extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of family breakup, taking into consideration all the factors listed in paragraphs (1), (2), (3), and (4) of this section. Proper justification must be given for any duplication of services.

6. Evidence of substantial community support for the proposed program from the Indian community or communities to be served. Such support may be evidenced by:

(a) Letters of support from individuals and families to be served;

(b) Local Indian community representation in and control over the Indian entity requesting the grant;

(c) Letters from local social service or social service related agencies familiar with the applicant's past work experience;

7. The explanation of proposed facilities and of the structure of the tribal or Indian organization requesting grant funds, and the position description of any position to be funded with grant funds, identifying qualifications, responsibilities, and lines of supervision.

8. The reasonableness and relevance of the estimated costs of the proposed program or service.

An application shall not receive a preliminary approval unless a review of the application determines that it:

(a) Contains all the information required in "D Content of an Application".

(b) Receives a minimum score of 85 in a competitive review under the scoring process using the selection criteria established in regulation.

(c) If an applicant has been a grantee during the year immediately preceding the year for which an application is being made, and has made an application to continue essentially the same service program, satisfactory evaluation(s) from the area office review of the program must be provided in addition to the other materials required in this subsection.

Part IV. BIA Area Offices—BIA Area Offices; Area Social Workers

Aberdeen—Dean Krahulec, 115 4th Avenue, SE., SD 57401; 605/226–7351.

Albuquerque—Robert C. Carr, 615 1st Street, P.O. Box 26567, Albuquerque, NM 87125–6567; 505/766–3321.

Anadarko—Jerry Bridges, P.O. Box 368, Anadarko, OK 73005; 405/247–6673. Extension: 257.

Billings—Louise Reyes, 316 N. 26th Street, Billings, MT 59101; 406/657–6651.

Eastern—Evelyn Roanhorse, Division of Social Services, 1951 Constitution Avenue, NW., Code 1000, Washington, DC 20245; 703/235–3179.

Juneau—Jimmie Clemons, P.O. Box 3–8000, Juneau, AK 99802–1219; 907/586–7611.

Minneapolis—Rosalie V. Clark, 15 South Fifth Street, 10th Floor, Minneapolis, MN 55402; 612/347–3615.

Muskogee—Alice Allen, Old Federal Building, Muskogee, OK 74401; 918/687–2507.

Navajo—Nancy Evans, P.O. Box M, Window Rock, AZ 86515; 602/871–5151.

Phoenix—Elizabeth Black Owl, One North First Street, P.O. Box 10, Phoenix, AZ 85004; 602/241–2262.

Portland—Karen Grey Eyes, 1425 NE. Irving Street, P.O. Box 3785, Portland, OR 97298; 503/231–6783/6785.

Sacramento—Ben Chavarria, Community Service Officer, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825; 916/978–4691.

Donald F. Asbra,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–28757 Filed 12–13–88; 8:45 am]

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Wednesday
December 14, 1988

Part IV

Office of Management and Budget

Proposed Revisions to Circular No. A-87, "Cost Principles for State and Local Governments"; Extension of Comment Period; Notice

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OFFICE O
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OFFICE OF MANAGEMENT AND BUDGET

Proposed Revisions to Circular No. A-87, "Cost Principles for State and Local Governments"

AGENCY: Financial Management Division, Office of Management and Budget.

ACTION: Extension of comment period.

SUMMARY: This notice offers interested parties an extended period to comment on proposed revisions to OMB Circular No. A-87, "Cost Principles for State and Local Governments." Proposed revisions appeared in the October 14, 1988 **Federal Register** (53 FR 40352).

DATE: To be assured of consideration, comments on the proposed Circular must be in writing and must be received on or before January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, 202-395-3993.

Joseph R. Wright, Jr.,

Director.

[FR Doc. 88-28934 Filed 12-13-88; 11:57 am]

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The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

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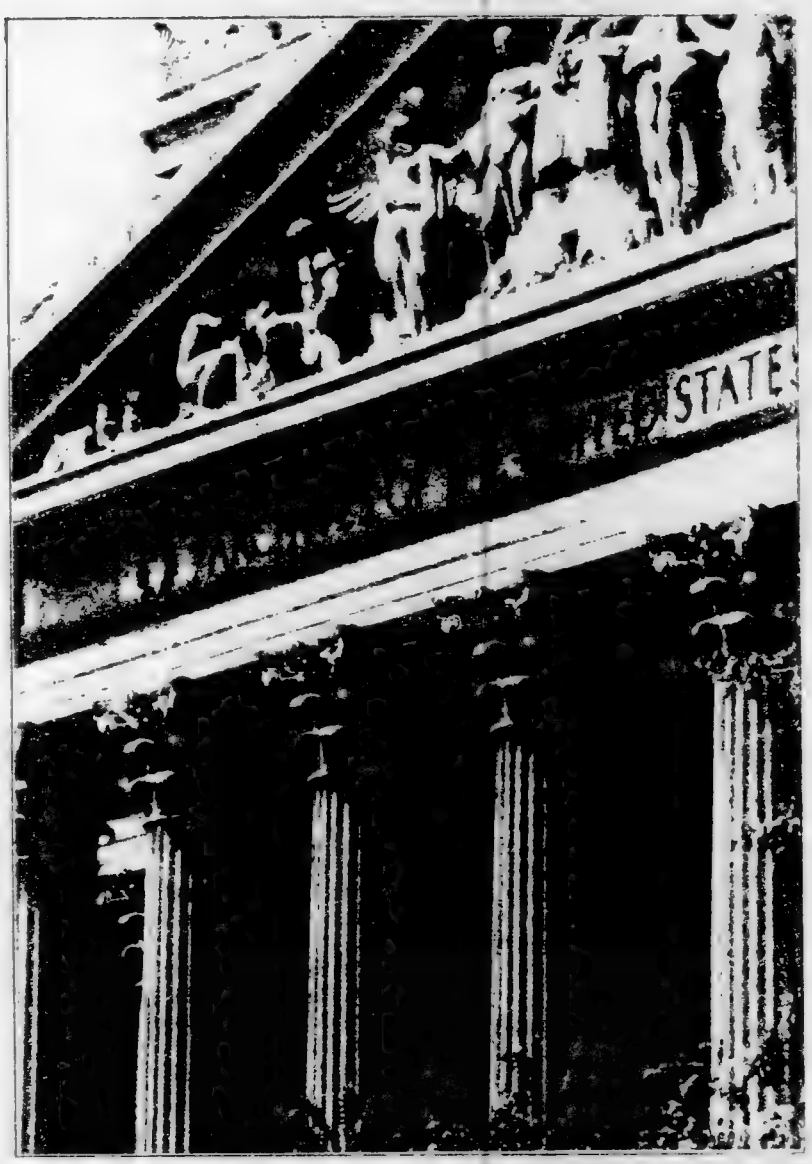

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WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 26, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

LOS ANGELES, CA

WHEN: January 12, at 9:00 a.m.
WHERE: Room 8544, Federal Building, 300 N. Los Angeles St., Los Angeles, CA
RESERVATIONS: Call the Federal Information Center. Los Angeles 213–894–3800

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Title 3—

The President

Memorandum of December 12, 1988

Memorandum for the Archivist of the United States

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to ascertain whether the printed enrollments of H.R. 4637, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461), H.R. 4776, the District of Columbia Appropriations Act, 1989 (Public Law 100–462), and H.R. 4781, the Department of Defense Appropriations Act, 1989 (Public Law 100–463), are correct printings of the hand enrollments, which were approved on October 1, 1988, and if so to make on my behalf the certifications required by Section 2(c) of H.J. Res. 665 (Public Law 100–454).

Attached are the printed enrollments of H.R. 4637, H.R. 4776, and H.R. 4781, which were received at the White House on December 1, 1988.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, December 12, 1988.

[FR Doc. 88–28996
Filed 12–13–88; 3:02 pm]
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Rules and Regulations

Federal Register
Vol. 53, No. 241
Thursday, December 15, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule retains 7 CFR Part 1d, which defines fruits, vegetables, and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. 99–603, 100 Stat. 3359 (hereinafter referred to as "the Act"). This final rule redetermines whether the commodity sod meets the definition of "other perishable commodities" promulgated at 7 CFR 1d.7, in light of the decision and remand of this issue to the Secretary of Agriculture from the United States District Court for the Northern District of Illinois in *Heriberto Morales, et al. v. Richard E. Lyng, et al.*, Civil Action No. 87–C–20522. This rule will assist the Immigration and Naturalization Service (INS) in determining the special agricultural workers to be admitted into the United States for temporary residence.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Al French, Coordinator of Agricultural Labor Affairs, Economic Analysis Staff, Room 227–E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250–1400; telephone (202) 447–4737.

SUPPLEMENTARY INFORMATION:

Background

Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." 8 U.S.C. 1160(h). This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing and harvesting will be considered "seasonal agricultural services" for purposes of the Act.

On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule defining the terms "fruits," "vegetables," and "other perishable commodities," as well as several other terms that were necessary to an understanding of the definition of "fruits," "vegetables," and "other perishable commodities."

In the final rule, USDA defined the term "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." 7 CFR 1d.5. The term "vegetables" is defined as "the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert." 7 CFR 1d.10. The term "other perishable commodities" is defined as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." 7 CFR 1d.7. "Critical and unpredictable labor demands" is defined to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR 1d.3. USDA explained that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances which create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987). An exclusive list of those commodities that were determined to be subject to critical and unpredictable labor demands was provided within the definition of "other perishable commodities," as well as a list of examples of commodities that were determined to be not subject to critical and unpredictable labor demands. 7 CFR 1d.7. Sod was listed as an example of a commodity that was not a fruit or vegetable and was determined to be not subject to critical and unpredictable labor demands. *Id.*

On October 21, 1988, at 53 FR 41339–41342, USDA requested public comment on a proposed rule that reexamined whether the commodity sod meets the definition of "other perishable commodities," in light of the remand of those issues to the Secretary of Agriculture from the United States District Court for the Northern District of Illinois in *Heriberto Morales, et al. v. Richard E. Lyng, et al.*, Civil Action No. 87–C–20522 (hereinafter referred to as "*Morales v. Lyng*"). The comment period closed November 7, 1988. USDA received 68 comments on the proposed rule during the comment period. The comments received are discussed below.

Comments

All of the comments received in response to the October 21, 1988, proposed rule urged the inclusion of sod as an "other perishable commodity." Generally, commenters stated that the planting, cultural practices, cultivation, growing and harvesting of sod, while mechanized to some degree, were seasonal, labor intensive activities and were subject to critical and unpredictable labor demands. Most commenters claimed that the planting, mowing, weeding, irrigation and harvesting of sod are labor intensive activities which are unpredictable as to timing, critical as to need, and require the hiring of extra laborers to perform the activities. Many commenters added soil preparation, picking up rocks, netting, selection of sod pieces, rolling and stacking, and scrap removal as additional seasonal activities which were subject to critical and unpredictable labor demands. No commenter described any field work which is performed by a regular employee complement.

In *Northwest Forest Workers Association v. Richard E. Lyng*, 688 F. Supp. 1 (D.D.C. 1988) (hereinafter referred to as "*NWFWA v. Lyng*"), the United States District Court for the District of Columbia upheld the USDA definition of "other perishable commodities" as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor

demands." *NWFWA v. Lyng*, 688 F. Supp. at 5–7. The court upheld also the USDA definition of "critical and unpredictable labor demands" to mean that the period during which field work was to be initiated cannot be predicted with any certainty within 60 days in advance of need. *Id.* USDA explained that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances which create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987). Thus, to meet the definition of "critical and unpredictable labor demands, the production of a commodity must be subject to a "critical" *and* "unpredictable" demand for a labor force on short notice. Because this rule must be applied by INS on a uniform basis to determine whether alien applicants may be admitted to the United States as special agricultural workers, this determination must be made on a commodity-by-commodity basis. Thus, USDA must examine the labor demands of each commodity on a national basis as a whole.

In the original final rule, USDA determined that sod production is not sufficiently "seasonal" within the meaning of the USDA definition. USDA defined "seasonal" as meaning "the employment pertains to or is of the kind performed exclusively at certain seasons or periods of the year." 7 CFR 1d.8. In the most recent proposed rule, USDA proposed to determine that sod production does not fall within the definition of "seasonal." 53 FR at 41340–41341 (October 21, 1988). USDA has determined that many operations with respect to sod production are performed generally on a year round basis and not "*exclusively* at certain seasons or periods of the year." However, upon review of the various operations with respect to sod production, USDA recognizes that certain other practices, at least in some areas, may be limited to certain seasons or periods of the year. Therefore, USDA has examined those operations which are limited, at least in some areas of the United States, to certain seasons of the year to determine whether such seasonal field work creates a critical and unpredictable labor demand for a labor force.

In determining whether a commodity meets the definition of critical and unpredictable labor demands, USDA must examine the degree to which the production of a commodity has been mechanized. There is a clear expression of congressional intent in the legislative history of the Act that the Special Agricultural Worker (SAW) program was to include as "other perishable commodities" crops which "must be harvested by hand, thereby requiring a large number of workers on short notice," and not "where mechanical harvesters can be used * * *." 131 Cong. Rec. S11322 (September 12, 1985) (statement of Sen. Wilson); *see also* 131 Cong. Rec. S11325 (September 12, 1985) (statement of Sen. Hatch); 131 Cong. Rec. S11334 (September 12, 1985) (statement of Sen. Gorton); 131 Cong. Rec. S11344 (September 12, 1985) (statement of Sen. Evans); 131 Cong. Rec. S11537 (September 16, 1985) (statement of Sen. Gorton); 131 Cong. Rec. S11606 (September 17, 1985) (statement of Sen. Wilson); 131 Cong. Rec. S11607 (September 17, 1985) (statement of Sen. Gorton); H.R. Rep. No. 99–682, 99th Cong., 2d Sess., Part 1, July 16, 1986, at p. 85. Mechanization affects labor demands in that the more mechanized the production of a particular crop is, the less critical and the more predictable the labor demands are. Highly mechanized crops do not generally experience a critical need for a labor force or short notice.

In *Texas Farm Bureau, et al. v. Richard E. Lyng, et al.*, Civil Action No. M–88–095–CA (E.D. Tex. Sept. 28, 1988) (hereinafter referred to as *"Taxas Farm Bureau v. Lyng"*), the United States District Court for the Eastern District of Texas upheld, *inter alia*, the USDA determination to exclude the commodity hay from the definition of "other perishable commodities" because its "labor requirements * * * have been largely met by the use of herbicides and mechanization." *Texas Farm Bureau v. Lyng*, slip op. at 14 (quoting 52 FR at 20374). As recognized by the court, USDA "considered a number of factors in determining whether a commodity had a critical labor demand. The factors included the nature and extent to which the field work activities utilized labor, the importance of the timing of these activities, [the] effect of a failure to perform these activities and the amount of labor needed." *Id.* at 15 (citations omitted). USDA determined that because hay was so largely mechanized, there is no real critical labor demands for large numbers of workers. *Id.* at 16. In addition, USDA determined that the timing of the harvest of hay is less critical than those commodities which would perish and become unmarketable altogether. *Id.* Thus, in that case the court approved of the USDA determination of the relationship between mechanization and criticality and predictability.

In the proposed rule USDA explained that it had determined that sod did not meet the definition of "other perishable commodities" because the production of sod is highly mechanized and does not involve critical and unpredictable labor demands. 53 FR 41339–41342 (October 21, 1988). USDA also determined that labor demands with respect to the production of sod are reasonably predictable more than 60 days in advance, and weather conditions do not create a critical need for additional labor significantly above the level than can be predicted months in advance. *Id.*

USDA found that many of the comments and sources are quite contradictory. For example, one sod commenter, a turfgrass science professor, stated "[t]he majority of sod operations use small walk-behind sodcutters, hand rolling or folding * * *." But another commenter wrote "[i]t is true that people no longer cut and hand roll sod * * *."

One commenter wrote "[netting] must be done without the use of tractors," while a published authority writes "[p]lastic netting can be installed by a [tractor] rig which rolls it out on tip of a seeded field." A number of commenters stated that netting must be pegged down by hand labor, while an authority writes "[i]f the netting is laid perpendicular to the irrigation laterals, the pipe can serve as the anchor. Except in high wind areas, wooden pegs are probably not needed." [Turfgrass Sod Production, U. of California, Publication 21451, Stephen T. Cockerham, Superintendent of Agricultural Operations for the University of California, Riverside, 1988, pg 36].

Although it is widely recognized that mowing is done by machines, many commenter stated that mowing is an "extremely labor intensive activity" and involves "high levels of hand labor." Several commenters claim that "we must go back and pick up rocks that are laying on the ground * * * by hand by [sic] laborers." On the other hand, a published authority writes "[a] stone picking machine may be used for stone and rock removal * * *."

Many commenters claimed that is impossible to predict the timing or the number of workers which would be needed for sod operations, while others stated in their original comments to the proposed rule published on April 22, 1987, "[b]ased on past experience, we can forecast our labor requirements both in terms of dates and number of workers." Some commenters claim "[s]od harvesting is where labor needs are most critical." However, a sod authority comments "[s]od producers

are not highly mechanized—just the cutting and stacking of sod * * *." One commenter stated "[i]n my previous letter of April 30, 1987, my statement regarding that 'labor requirements were predictable' was misconstrued. Based on today's letter, my labor demands are critical and unpredictable." Thus, not only were many of the comments inconsistent with published materials and expert opinions, many of the comments were inconsistent with the comments of other commenters and with comments received previously from some of the same commenters.

The comments indicate substantial confusion concerning whether sod production is highly mechanized as opposed to being a labor intensive operation requiring high degrees of manual labor. An official of one of the plaintiff sod producer organizations commented:

> [W]e must perform a variety of activities, all of which require us to hire labor on short notice. The specific activities include preparation of the soil by plowing, discing (sic), chiseling, leveling, rotovating, culti-packing, and harrowing. We are also involved in planting seed, applying fertilizer and harvesting * * *. During the course of the season our work force varied between 18 and 37 seasonal workers.

In 1987, this same commenter wrote:

> The sod industry has become quite mechanized over the past several years, but many operations such as irrigation, mowing, harvesting, chemical applications, etc. are still very hand labor intensive.

Many other commenters wrote:

> Turfgrass sod production is an extremely labor intensive activity. Mowing, irrigating, fertilizing, planting, spot checking for weeds and foreign grasses and harvesting involve high levels of hand labor.

According to another commenter:

> We then perform at least 14 tractor operations to get the crop planted. From planting until harvest begins 9 to 12 months later, we will perform at least 55 more tractor operations. The bulk of these is mowing. To market high quality turf, we must mow it 3 times per week in April, May, and June * * *. Sod harvesting is where labor needs are most critical.

These comments are typical of a large number of commenters which USDA believes confuse the relationship between mechanization and hand or manual labor, and labor intensiveness.

The following dictionary definitions are set out to clarify this confusion:

> Manual labor: worked or done by hand and not by machine. [Webster's Ninth New Collegiate Dictionary, Merriam Webster, Inc. 1986].
>
> Mechanize: to equip with machinery esp. to replace human or animal labor. [Webster's Ninth New Collegiate Dictionary, Merriam Webster, Inc. 1986].
>
> Mechanization: A term of very broad meaning, but essentially dealing with changes in the processes of production which result in the displacement of human labor or human skills by machine operations. [Robert's Dictionary of Industrial Relations, Revised Edition, The Bureau of National Affairs, 1971].

The "specific activities" cited by the commenters above, *e.g.*, plowing, disking, chiseling, leveling, rotovating, culti-packing, and harrowing, are all mechanized operations. The planting of seed and the applying of fertilizer in sod operations also are mechanized operations. The "very hand labor intensive operations" of mowing and chemical applications are also performed by machines. All of the foregoing are clearly mechanized operations and, by definition, are not manual labor. The irrigation and harvesting of sod are also largely mechanized operations, although USDA recognizes that, in addition to machine operations, the use of manual labor may be associated with irrigation and harvesting operations. USDA recognizes also that it is sometimes necessary to spot spray herbicides in sod production, but weed and disease control is accomplished largely by spraying machines.

One authority on sod production provided detailed comments to USDA, which was endorsed by a number of other authorities:

> While machines have been adapted to some of the operations on sod farms, sod production can not be described as a highly mechanized operation. The reason for this is the lack of sod producers' ability to accurately predict, 60 days in advance, what he will do and when he will need to do it, to produce his sod.

While USDA has determined that mechanization is a causal factor in creating predictability in terms of the number of workers needed and this determination was accpeted in *Texas Farm Bureau* v. *Lyng*, USDA is unable to discern how the inability to predict the timing and need for future activities in sod production is a causal factor in promoting mechanization, or the lack thereof.

This commenter stated further:

> As a result of partial mechanization, the unpredictability of seasonal activities has increased * * *. In fact, the use of the machine driven sod cutter * * * increases the hand labor complement because it can require more men be working to pick up the sod and stack it.

USDA is not persuaded that mechanization makes activities less predictable or increases the labor demands. Clearly the use of labor saving machinery, such as the machine driven sod cutter, results in a reduced, rather than an increased, demand for labor to perform a comparable amount of work.

A paper apparently prepared especially as a vehicle for responding to the proposed rule was subscribed to by some authorities in the sod field. Apparently, some of these authorities did not understand the context of the regulatory framework in which the issues were being considered. One authority who endorsed the paper stated:

> I don't agree with everything in * * * [the paper], but I do agree with the general tenor * * *. Compared to what it used to be, [sod] certainly is [mechanized]. Compared to tomatoes, celery, and other *mechanically* harvested, hand packed crops it isn't. The idea of any field crop being 'highly mechanized' is a delusion perpetuated by engineers and poorly informed casual observers." (Emphasis added).

Another authority who endorsed the paper cited in the above comment stated in his book:

> Today, machinery is used to perform almost all turfgrass maintenance practices. [Turfgrass Science and Management, Robert D. Emmons, Delmar Publishers, 1984.]

As explained above, Congress intended the SAW program to include as "other perishable commodities" crops which "must be harvested by hand, thereby requiring a large number of workers on short notice," and not "where mechanical harvesters can be used * * *." 131 Cong. Rec. S11322 (September 12, 1985) (statement of Sen. Wilson).

In summary, although many of the commenters asserted that the production of sod is not largely a mechanized operation, many other commenters stated that sod production is largely a mechanized operation. The published authorities agree with the latter, that sod production is largely mechanized. Thus, after thoroughly reviewing all of the comments and available authoritative sources, USDA concludes that sod production is largely a mechanized operation.

USDA recognizes that while some manual labor is utilized in sod production activities, on the basis of the labor requirements indicated in the comments, USDA has determined that there is not a critical and upredictable demand for a large number of manual laborers on short notice.

In reviewing the comments and other authoritative sources, USDA notes that while commenters cited the need for extra labor during the "high season," this season encompasses most of the year in all sod producing areas.

According to the American Sod Producers Association, the average sod farm of 125 to 199 acres requires 5 to 9 employees during the "high season," which is generally 9 months in the northern United States, and 3 to 5 employees during the "low season," which is generally 3 months. Other commenters that indicated the number of workers they require for sod production stated that they generally reduce their work force by half during the "low season." This pattern of employment does not indicate a critical and unpredictable demand for large numbers of workers. Rather, it indicates a reduction in employment during the "low season" and a return to the normal work complement during the "high season." USDA believes that the magnitude, labor intensity, criticality, and predictability of the employment pattern with respect to sod production do not constitute a critical, yet unpredictable demand for a large labor force on short notice. Despite this pattern of employment, many commenters argued that specific activities involved in sod production created critical and unpredictable labor demands.

The activities involved in planting of sod vary widely throughout the nation from re-establishment through rhizomes left in the soil following harvest to intensive land preparation and reseeding of a new crop. Similarly, the timing of planting varies widely. Some areas plant on a year round basis, some plant only in the spring and fall, some in the spring and early summer, some plant in the summer, and some utilize dormant planting in the winter. Many commenters contend that the timing of planting is critical and unpredictable while others stated that they are able to forecast with specificity the timing of planting, such as one commenter who stated that "[o]ur planting times are very short. We have about two weeks in late June and again about two weeks in late August, due to the very unpredictable weather conditions, to get our crops seeded." Some authorities find planting less critical and describe planting considerations in terms of it being "preferred" to plant during a certain season and that other times may be "less desirable."

USDA has determined that the planting of sod is not subject to critical and unpredictable labor demands because the planting of sod is largely mechanized. However, USDA recognizes that sod planting is part of an integrated process which may involve land preparation, planting, in some cases netting, and post-planting irrigation. While some manual labor may be needed to pick up roots and rocks in some cases where not done by machine, land preparation activities do not have critical or unpredictable timing and are primarily mechanized operations.

Several commenters described a need for manual laborers to apply and peg netting. USDA recognizes that if netting is used it should be applied a relatively short time after seeding. However, netting is not critical because it is elective and most growers do not use it. Moreover, the grower has the option of delaying his seeding if he is not prepared to install his netting. In addition, the netting operation does not require a labor force on short notice. One commenter stated that 7 workers could do 20 acres per day. This indicates that the netting operation may be accomplished with the normal work complement.

Although many commenters stated that mowing is an "extremely labor intensive activity" and involves "high levels of hand labor," USDA notes that the scientific literature indicates clearly that mowing is a mechanized activity and does not require a large labor force on short notice. For example, one researcher found "[t]he most common size mower reported was the 5 gang, ground driven unit; however, units from 3-gang to 9-gang were reported." While USDA notes that the frequency of mowing will vary depending on weather conditions, mowing is generally performed by machine operators who are part of the normal work complement of a sod farm, and does not require a large number of workers on short notice.

Many commenters stated that fertilizing was "an extremely labor intensive activity" which "involve[s] high levels of hand labor." However, published authorities indicate that the application of fertilizer is generally a mechanized operation. One authority states, for example:

> It is essential that the fertilization of sod be performed by machine or injection into an irrigation system in order to achieve uniform distribution. [Turfgrass: Science and Culture, James B. Beard (Michigan State University), Prentice-Hall, Inc., 1973, pg 450.]

Another authority states:

> The majority of fertilizer used on turfgrass is in a dry or granular form. It is distributed with either a drop or rotary spreader." [Turfgrass Science and Management, Robert D. Emmons, Delmar Publishers, 1984.]

USDA has determined that fertilization is a mechanized activity and does not require a large labor force on short notice.

Many commenters described weed control as subject to "extreme labor intensity" which "requires extensive hand labor." One commenter, who submitted a paper written as a comment, describes weed control as:

> Weed control in a sod field is a complicated and critical process * * *. Herbicides to control grass weeds are not readily available and are not completely effective. Grass weeds are generally controlled by intense and labor demanding practices * * *. Sod farmers * * * have to use hand laborers to manually apply non-selective herbicides on individual grass weeds in order to eliminate them.

Although some commenters indicated that they used hand labor to control weeds, another sod authority writes:

> Most weeds * * * can be eliminated by fumigating * * *. Relatively simple machines can inject the fumigants and lay the tarp in one operation. Forty eight hours later the tarp can be removed and seed can be planted.
> * * * * *
> Under normal conditions, the sod grower can expect a fumigation to be effective for 4 to 6 years, sometimes longer, before pest population builds to problem proportions. [Turfgrass Sod Production, U. of California, Publication 21451, Stephen T. Cockerham, Superintendent of Agricultural Operations for the University of California, Riverside, 1988, Pg 30, 31].

In addition, USDA has been informed by an agronomist with a state University Department of Agronomy that "[t]here is little or no hand weeding" in sod production. USDA believes that weeds are generally controlled by the use of herbicides applied with machines. Subsequent re-infestations of weed pests may be dealt with on an ongoing basis by the normal work complement. Even in the worst possible case, a sod farm operated under generally accepted management practices should not experience sudden weed infestations, immediately prior to harvest, of critical proportions. However, even this de minimis case would be unlikely to constitute a critical demand for a labor force on short notice.

Several commenters described the need to control insect pests and disease on an immediate basis. One commenter describes this situation as:

> A disease such as Pythium blight can destroy thousands of square meters of sod in less than 24 hours if not treated immediately. Disease control on a sod farm generally requires a highly mobile labor force to control turfgrass canopy humidity and soil moisture, such that the disease is suppressed and the need for chemical control is minimized. Last year alone, numerous cases of diseased sod *resulting from infrequent mowing* were reported to the University of Illinois. This is due to sod producer's inability to predict the

growth rate of grass and having too few seasonal laborers to meet the demand. (Emphasis added).

However, another sod expert has written:

For turfgrass disease to occur, there must be a virulent pathogen, susceptible turfgrass, and proper environmental conditions. Sod producers reported few incidents of turf diseases in 1978 and 1979. During the summer of 1980, an outbreak of gray leafspot was reported in St. Augustinegrass sod in south Alabama. Diseases did not appear to be a serious problem on most commercial turfgrass farms in the state. [Commercial Turfgrass Sod Production in Alabama, Alabama Agricultural Experiment Station, Auburn University, Gale A. Buchanan, Director, Bulletin 529, August 1981, pg 20].

USDA recognizes that insect infestations and the outbreak of disease may, in extreme circumstances, be critical. However, because such incidents are controlled by the application of chemicals by machine, they do not create a critical and unpredictable labor demand.

Several commenters stated that sod must be harvested at the optimum time and noted that various factors could cause delays in the field work performed by the sod industry. They argued that such delays created critical and unpredictable labor demands.

USDA has determined that each crop's optimum harvest period is of relatively long duration, thus militating against the creation of critical and unpredictable labor demands. The comments indicate that the harvesting period for sod is quite long, and that even if the harvest is delayed substantially, it nevertheless remains marketable at reduced quality. One commenter stated for example:

From the time of seeding, our sod takes a minimum of 9 months to prepare for sale, and if not sold within two years of seeding, is discounted in price and not classified by us as nursery sod.

While many commenters asserted that the harvesting of sod accounted for the greatest labor demand, one authority, while urging the inclusion of sod as an "other perishable commodity," stated that harvesting and stacking was the *only* mechanized activity in sod production. He contended that other machine operations such as "land preparation, seeding or sprigging, fertilization, and pest control" are labor intensive. Another authority found that:

[a]ll growers with more than 100 acres (in Alabama) used one or more tractor-mounted sod cutters. These machines cut, rolled, and palletized the sod in one operation.

Many commenters stated that because they were unable to forecast customer's orders from day to day, that the harvesting of sod is critical and unpredictable. One authority commented that:

[f]ew farms cut enough sod on a daily basis to be able to support a full crew of laborers needed for harvesting * * * [T]he rate of harvest can not be spread out over a season or over a single day in order to keep a full crew busy.

The comment of the manager of a 900 acre sod farm which operates eight months of the year was typical of such comments, but provided somewhat greater detail:

Due to * * * extreme fluctuation[s] in weather conditions, our labor needs are *very* unpredictable * * *. [Our] farm cannot predict with any certainty when field work is to be initiated 60 days in advance. We cannot even predict from one day to the next many times what our labor needs will be * * *. One day we might cut 100,000 or 200,000 square feet of sod and the next day or a few days none or very little at all * * *.

USDA notes that, assuming this farm harvests only half of its 900 acres each year, it would be necessary to harvest an average of 115,000 square feet per weekday. This suggests that the harvesting operation on this farm is largely a continuous operation. USDA also recalls that in 1987, this same commenter states:

Within reasonable limits, the seasonal nature of labor requirements are quite predictable. Based on past experience, we can forecast our labor requirements both in terms of dates and number of workers. These figures are predicated on sod harvesting requirements, nurturing [sic] of immature sod and preparation of new fields for future years' sod growth.

The manager of a 500 acre sod farm commented:

[T]o harvest sod, it takes a crew of four men about 8 hours/acre, or 32 man hours/acre * * *.

* * * * *

This year we employed about 35 total field laborers. Assuming that this grower harvests half of his 500 acres each year, his normal work complement could, if it were critical to do so, harvest the year's crop in 52 man days. It seems more likely that the limit of harvesting capacity in this case is the number of harvesting machines available rather than the amount of labor.

Three sod farmers who in 1987 commented "[b]ased on past experience, *we can forecast our labor requirements both in terms of dates and number of workers*" (emphasis added), stated in their comments in 1988:

I recall that in my past letter I stated that labor needs can be predicted in advance. This statement is true in the fact that we know we will need laborers from March through November of each year. *But the number of workers depends* upon the demand of the local market and also the weather conditions.

In addition, some of the commenters who stated in 1987 that they could forecast their labor needs, stated in their most recent comments:

The comment in my letter to Mr. Lyng of May 4, 1987, about being able to forecast our labor needs for sod just meant that we have a general idea of how many workers we're going to need for the season. Any grower who can't do that is in bad shape.

Others stated:

In my previous letter of April 30, 1987, my statement regarding that "labor requirements were predictable" was misconstrued. Based on today's letter, my labor demands are critical and unpredictable.

In *Morales v. Lyng* the court noted that similar conflicting statements could be reconciled:

In short, all of the comments could be reconciled in a plausible fashion and interpreted to mean that: general seasonal demands of extra laborers are predictable, but often within seasonal parameters, the demand for extra field workers is unpredictable.

Slip op. at 6. These comments indicate that sod producers can, within reasonable limits, predict how many workers they will need during the "high season" and the "low season." The particular tasks that these workers may perform each day may not be predictable, but the need for a certain number of workers at certain times of the year may be predicted with reasonable certainty.

A sod authority states that:

Sod harvesting, however, is done only as long as it takes to fill that days' orders. With mechanization, the speed of harvesting has been increased. This * * * makes the scheduling of sod harvesting unpredictable * * *. [T]he timing of sod harvesting is critical. It must be done quickly, and usually in the morning, late afternoon, or on a cloudy day * * *. It must be done when the soil moisture is about 0.3 bars matric potential. Excess water will retain the heat from respiration, due to microorganisms, and results in cumbersome sod handling. It can take less than an hour for a pallet of sod to perish if the producer is not carefully monitoring the sod before and during harvest.

This indicates that harvesting generally is completed in much less than a day, freeing those workers to perform other tasks.

One of the few authorities who has published a description of the labor requirements of sod production found:

Farms having more than 100 acres were of sufficient size to require several laborers

throughout the production process. Therefore, once these growers found a reliable employee, they generally offered full time employment at a reasonable wage to ensure employment. [Commercial Turfgrass-Sod Production in Alabama, Alabama Agricultural Experiment Station, Auburn University, Gale A. Buchanan, Director, Bulletin 529, August 1981, pg 30].

USDA believes that sod producers do not limit workers to specific tasks, rather, workers are utilized to perform various tasks. Because producers need reliable employees, producers generally hire such workers on a full time basis as part of their regular work complement. This suggests that producers do not rely on large numbers of temporary workers to perform tasks such as sod harvesting.

Some harvesting machines cut, roll, and palletize the sod in one operation, while others require two manual laborers as "stackers". USDA believes that the stackers are usually part of the regular employee complement. One authority describes a typical harvest operation:

> Throughout the morning, additional orders to be cut that day are taken to the sod harvest crew * * *. Harvest * * * seldom takes all day. When the stackers are finished with the harvest, they clean the harvester and take empty pallets to the harvest field for use the next day. Then they *return to the production crew* at their regular hourly rate of pay. (Emphasis added). [Turfgrass Sod Production, U. of California, Publication 21451, Stephen T. Cockerham, Superintendent of Agricultural Operations for the University of California, Riverside, 1986, pg 62].

USDA concludes that sod producers do not recruit an additional workforce each time an order is placed by a customer, particularly when the work must be done only in the morning or later afternoon. Instead, USDA believes sod producers make reasonably accurate forecasts, which can be made 60 days in advance of need, of the number of workers needed for a regular work complement adequate for their anticipated harvesting labor demands as well as other activities. This complement may be reduced during any historically slack period according to past experience. The members of the regular employee complement are not limited to certain specific jobs, but rotate among different jobs according to current need. Thus, for example, if not busy with the labor associated with harvesting activities, a worker could be engaged in weeding, picking up rocks, moving irrigation systems, etc. Conversely, workers normally engaged in other activities may be utilized for harvesting in the event of unusually heavy consumer demand.

Because sod is not harvested manually, the ability to accelerate harvesting activity is limited by the capacity of the equipment available. The number of workers required to harvest sod is limited by the number of machine sod cutters available. In the event the total orders exceed the capacity of the mechanical harvesters, there is no indication that sod growers revert to the practice of hand cutting sod. Thus, the availability of an additional labor force would be of no value, and the harvesting of sod does not create a critical and unpredictable labor demand.

Many commenters stated fluctuating consumer demand made it impossible to forecast harvest requirements even from one day to the next. USDA believes that this condition, rather than creating a demand for a labor force on short notice, requires sod producers to maintain the necessary equipment and regular employee complement sufficient to meet anticipated consumer demand. Otherwise, the sod industry would have to have a pool of unemployed laborers on constant standby ready to work on a day to day basis. USDA does not believe that sod products have operated in that manner in the past, nor is the SAW program, which is not remedial, intended to enable them to do so in the future.

For these reasons, USDA concludes that the harvesting of sod does not create critical and unpredictable labor demands.

Many commenters indicated that they had employed undocumented workers in the past and have come to rely on such workers for much of their labor needs. As indicated clearly in the legislative history of the Act, the SAW program is not remedial and was not intended to legalize all undocumented alien agricultural workers.

Many commenters cited the need for irrigation as an example of a condition which caused critical and unpredictable labor demands. An official of the American Sod Producers Association claimed that:

> It is my understanding that an entire sod field can be destroyed in hours or days from the point of seeding to harvest. Sod is extremely susceptible to the effects of too much or not enough rain and numerous varieties of weed, disease and insects. If the required field labor is not available to address these needs immediately, sod crops are lost.

USDA recognizes that many plants, including some sod, may drown or scald if inundated. However, such a criterion would be too broad to determine inclusion within the definition of seasonal agricultural services. USDA believes that if Congress had wanted such a universal criterion to be used they would have simply said that "all crops" should be included. Moreover, USDA believes that under generally accepted farm management practices, such a flooding condition should only occur under extreme conditions or in the case of inadequate drainage or water management on a farm. In either case, damage which may occur in a matter of hours is not likely to be significantly alleviated regardless of labor availability.

The need for irrigation is quite varied and more difficult to analyze. There are many different types of irrigation systems whose labor requirements are quite varied. Irrigation during the establishment phase of sod production is customary and USDA does not believe that a prudent farmer would plant seed or sprigs unless he was prepared to irrigate. However, as explained above, the timing of the planting is not critical. Thus, the irrigation of new plantings is neither critical nor unpredictable. The pre-harvest irrigation of sod is similarly predictable and the consequences of not doing so is not critical to the plants. If the grower is unable to perform the pre-harvest irrigation, he has the opportunity to delay his harvest schedule. In the arid regions of the nation irrigation is performed on a regular and ongoing basis. Thus, the need for irrigation, while it could become critical, is not unpredictable in much of the nation. In some areas, irrigation due to a lack of rain can be expected less than a year. USDA recognizes that in some parts of the nation an unpredictable need for irrigation could develop as a result of drought. Such a condition may be met by several types of irrigation systems which do not require an additional labor force, by the use of the regular work complement, and by the rearrangement of other work schedules to accommodate the need to irrigate. The ability to irrigate may not be limited by the labor supply but the equipment available. USDA notes that following the record drought of 1988, which Congress deemed a national emergency for agriculture, only four commenters noted a crop loss; one of one percent, two of five percent (one of whose losses were new seedlings), and one of 21 percent. One of these commenters expained that the drought forced him to layoff workers rather than create a need for an additional work force on short notice:

> [T]his summer lost 25 or 30 acres of sod because we couldn't irrigate enough. I couldn't afford to keep on the workers I let go just to do irrigating; there just wouldn't have been enough for them to do between moving

pipes * * *. I had to let the [4] part timers and two of the [9] full-timers go because of the drought. There just wasn't enough harvesting work to keep them. Even the crew I did keep I had to make work for * * *. The only reason I didn't let more of them go was because I was afraid I'd never be able to get them back.

The experience of this commenter suggests that even with the prospect of some crop loss, the need for irrigation may not always be economically justified when compared to wage costs. In such cases the need for labor cannot be reasonably held to be critical.

After carefully evaluating all of the above as well as all other comments received, USDA concludes that the irrigation requirements of the sod industry do not create a critical and unpredictable labor demand.

Some commenters stated that sod is highly perishable after harvest and must be installed within a few hours to two days of the time it is removed from the field. USDA recognizes this statement to be correct, however, the installation of harvested sod is not performed on agricultural lands and does not meet the definition of "field work".

Twenty-seven commenters asserted they would not have access to the H–2A Temporary Agriculture Worker program unless sod was considered tc be an "other perishable commodity." There is not connection betweeen the H–2A program and "perishable commodities". Moreover, sod producers can and do utilize the H–2A program to meet their labor needs.

After thorough review of labor demands with respect to sod field activities from planting through harvesting, the comments received, the authoritative sources contained in the administrative record, and the record of *Morales v. Lyng*, USDA has determined that sod field work is not subject to critical and unpredictable labor demands. Thus, USDA has determined that sod does not qualify for inclusion as an "other perishable commodity."

Regulatory Impact

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the Immigration and Naturalization Service (INS) will use this proposed rule to assist it in determining which special agricultural workers will be admitted into the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule reexamines whether sod meets the definition of "other perishable commodities" for purposes of clarifying the term "seasonal agricultural services" as it relates to sod. The rule does not contain any compliance or reporting requirements, or any timetables. The rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the rule, in and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502, *et seq.*) are inapplicable.

National Environmental Policy Act

This rule will not have an impact upon the environment.

Good Cause for Making Rule Effective Less Than 30 Days After Publication

In its October 6, 1988, order, the United States District Court for the Northern District of Illinois in *Morales v. Lyng*, ordered the Secretary to publish this final rule by November 28, 1988. On November 23, 1988, the court extended this deadline to December 15, 1988. On the basis of this order, good cause is found to make this rule effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, Part 1d—Rural Labor—Immigration Reform and Control Act of 1986—Definitions is retained as promulgated.

Done at Washington, DC, this 13th day of December, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–28948 Filed 12–14–88; 8:45 am]

BILLING CODE 3410–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 618 and 620

Organization; Personnel Administration; General Provisions; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts final regulations amendment 12 CFR Parts 611, 612, 618, and 620 which implement certain provisions of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100–233. The amendments to Parts 611 and 618 are conforming changes which implement the statutory amendments that eliminated the Farm Credit District boards. Other amendments to Part 611 add regulations regarding eligibility of candidates for bank and association director positions; standards for the director election process; mergers of System institutions; stockholder reconsideration of previously approved mergers; contents of disclosure statements in connection with stockholder votes on the transfers of Farm Credit Bank (FBC) authorities to Federal land bank associations (FLBAs); and other procedures and provisions for disclosure requirements relating to mergers and reorganizations. Finally, regulations are added to Part 620 regarding disclosure requirements for candidates for bank directors.

EFFECTIVE DATE: These regulations shall become effective after the expiration of 30 days from publication during which either or both Houses of the Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On February 16, 1988, the FCA Board published an Advance Notice of Proposed Rulemaking requesting public comments on the implementation of the new authorities for institutions to reorganize contained in the 1987 Act (53 FR 4416). On June 6, 1988, the FCA Board published for comment proposed regulations to implement 1987 Act provisions regarding the election of

directors and candidate disclosure statements; transfers of lending authorities from FCBs to FLBAs; special reconsideration of mergers that occurred between December 23, 1985, and January 6, 1988; merger and reorganization proposals required by the 1987 Act; and, the new or amended disclosure and procedural requirements related to merger and reorganization proposals for banks and associations (53 FR 20637).

Included among the proposed regulations was a regulation which implemented section 411 of the 1987 Act, which requires FLBAs and production credit associations (PCAs) that share substantially the same territory to submit merger proposals to their stockholders. The FCA Board, taking into consideration the comments received on that regulation, determined that in light of the statutory deadlines applicable to section 411 mergers, there was a compelling need to adopt the final regulation related to those authorities as quickly as possible, since any delay could impede compliance with the statutory deadlines. Accordingly, on October 5, 1988, the FCA Board adopted a final regulation, 12 CFR 611.1145, which implements the section 411 merger authorities (53 FR 39079).

The FCA received comments on the remainder of the regulations from the Farm Credit Corporation of America (FCCA) on behalf of its member institutions, the FCB and Bank for Cooperatives (BC) of Texas, the Springfield FCB and BC, a senator on behalf of the PCA and FLBA of the Fourth District, the South Atlantic PCA, the Association Coordination Committee of the Third Farm Credit District, and the North Coast FLBA and North Coast PCA. All of the comments were analyzed and considered before adoption of the final rule by the FCA Board. After the expiration of the comment period, FCA also received additional comments from 1 bank and more than 30 associations that were specifically directed at the appropriate requirements for the official names of associations that have both short-term and long-term lending authority. These associations are referred to in these regulations as Agricultural Credit Associations (ACAs).

A. Eligibility for Membership on Bank and Association Board and Subsequent Employment

Section 611.310(a) of the proposed regulations would provide that no person is eligible for membership on the board of directors of a bank or association who has been, within 1 year preceding the date the term of office begins, a salaried officer or employee of any Farm Credit institution. The FCCA commented that regulatory prohibitions against subsequent service are only appropriate when a person holds a position in which they are afforded the ability to subsequently secure the second position. Therefore, the FCCA recommended that the regulation include a 1-year prohibition against a senior officer of an institution becoming a director of such institution or a director of an institution from becoming an officer or employee of the same institution. In addition, the FCCA recommended that the regulation include a 1-year prohibition against a director of a bank becoming an officer of an affiliated association. The FCCA expressed the view that the regulation should not prohibit a person who has served as an officer or employee of an institution in one district from serving as a director of an institution in another district. The FCCA argued that it was not reasonable to presume that persons would conduct their activities for an institution in one district in a way that would be designed to promote their subsequent election to the board of directors of an institution in another district. The FCCA also stated that such subsequent election would be subject to numerous factors totally out of the control of an officer of an institution in a different district. Finally, the FCCA believed that there should be no regulatory prohibition, or waiting period, for any nonsenior officer who subsequently becomes a director of an institution.

The FCA Board disagrees with the position of the FCCA that there is no sound reason to apply regulatory prohibitions to all officers and employees of institutions and to apply the prohibition beyond district boundaries. The underlying policy in the regulation continues to reflect statutory requirements that previously applied to members of the board of directors of Farm Credit Districts. These requirements were contained in section 5.1 of the Act prior to its repeal by the 1987 Act. While this section was repealed in connection with the elimination of the district boards, there is no published legislative history indicating that Congress intended to refute the underlying policy bases for this prohibition. Taking into consideration these previous statutory requirements, the FCA Board determined that it would be in the best interests of all Farm Credit institutions and their stockholders to preserve these requirements in order to promote the highest standards of conduct for officers and directors of Farm Credit institutions. These restrictions are necessary to minimize the potential for not only real, but also apparent, conflicts of interest that can arise when an officer or employee of a Farm Credit institution seeks to become a director of an institution, or when a director of an institution seeks to become an officer or employee of such institution. The FCA Board also believes that retention of these prohibitions is especially important during this critical transitional period during which significant reorganizations are taking place within the System.

The FCA Board agrees with the recommendation of the FCCA that a director of an FCB should be prohibited from subsequently serving as an officer or director of an association with which the FCB has a discount or agent relationship. The FCA Board agrees that there could be a significant potential for abuse if a bank director were able to obtain a position as an officer or employee of an association over which such director could have exerted considerable influence as a bank director. Accordingly, the final regulation has been amended to include this requirement.

The FCCA recommended that § 611.310(a) be expanded to prohibit a director of a bank or association from subsequently serving as an officer of a service corporation. The FCCA believes that such a prohibition would be consistent with the prohibition against the directors of banks or associations from serving as officers of other banks or associations. This comment raises a broader question as to the appropriate regulatory limitations for membership on the boards of directors of service corporations, and specifically whether the prohibitions in § 611.310 should be applicable to officers, employees, and directors of service corporations and what, if any, exceptions should be provided. The FCA Board determined that it would not be appropriate to amend this regulation to expand its applicability to service corporations in the absence of additional public comments on the specific issues raised by the FCCA and the broader question suggested by the comment. The FCA Board will address this issue during its normal regulatory review process and will propose, for public comment, amendments to the regulations as appropriate.

The FCCA observed that while § 611.310 contains many of the provisions previously contained in section 5.1 of the Act, it does not include the previous statutory prohibition

against officers or employees of FCA serving as directors of banks. The FCA Board notes that these regulations do not include such provisions since there are other Federal statutes and regulations which have restrictions on post-employment activities governing all Federal employees, including employees of the FCA. These authorities include 18 U.S.C. 207, 5 U.S.C. Appendix, and 5 CFR Part 737. FCA implementing regulations are contained in 12 CFR Part 601. In addition, section 5.8 of the Act contains restrictions on the post-employment activities of members of the FCA Board. The FCA will in the course of its normal regulatory review process, determine whether modifications or additions to those regulations are necessary and appropriate.

The FCCA recommended that § 611.310 be amended to prohibit a convicted felon or person who is mentally incompetent from becoming a director of a bank or association. The FCCA also recommended that this section be amended to clarify items which were left unclear in the proposed regulation and in repealed section 5.1 of the Act. Specifically, the FCCA sought clarification of when a person "becomes" legally incompetent and when a person is "finally" convicted of a felony. In addition, the FCCA expressed a view that § 611.310 is inconsistent in part with the section 5.65(d)(1) of the Act. The FCCA observed that while § 611.310(b) prohibits a person convicted of a felony from continuing to serve as a director, section 5.65(d)(1) would permit a person convicted of a felony involving dishonesty or a breach of trust to serve as a bank director, with the prior written consent of the FCA. The FCCA stated that the FCA regulations must acknowledge the existence of a statutory exception to the intended general rule that no convicted felon serves as a bank director.

The FCA Board disagrees with the FCCA's interpretation of section 5.65 of the Act. Prior to the enactment of section 5.65 of the Act, section 5.1 of the Act expressly prohibited a person from serving on a district board if the person had been convicted of a felony or adjudged liable in fraud. This express prohibition, which applied only to members of a district board, would have prohibited a person from being elected to such position if that person had been previously convicted, or would have prohibited such a person from continuing to serve on a board if such board member had been subsequently convicted.

Section 5.65 was enacted by the 1987 Act in connection with the establishment of the Farm Credit System Insurance Corporation. This section provides that it is unlawful, except with the prior written consent of the FCA, for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any insured System bank. This section further provides that if any bank willfully violates that prohibition, such insured bank shall be subject to a penalty of not more than $100 per day during which time the violation occurs. Section 5.65 applies not only to directors of institutions but also to their officers and employees, and imposes a penalty, not on the offending official, but rather on the institution.

By the adoption of 12 CFR 611.310(b), the FCA Board has determined that it will not provide its consent to the service of any convicted felon on the board of directors of a bank or association and this prohibition will apply for any felony conviction, including those involving dishonesty or a breach of trust. The FCA Board believes that this regulatory provision, which is similar to the one previously contained in section 5.1 of the Act, must be continued to ensure the integrity of and public confidence in the operations of Farm Credit institutions.

As a technical matter, the FCA Board concurs with the suggestion of the FCCA that § 611.310(b) be amended to clarify that a convicted felon is ineligible to be elected to a board. In addition, the FCA Board agrees that the use of the term "finally" for convictions should be deleted, consistent with the terminology used in section 5.65 of the Act. This will eliminate any possible ambiguity as to whether a person may run for election or continue to serve as a director following a conviction but prior to the exhaustion of all appeals. Once a person has been convicted, § 611.310 would prohibit such person from being elected or continuing to serve as a director. Such person's eligibility could only be returned if the conviction were overturned and the person subsequently acquitted or the charges dropped. The FCA Board agrees that there is some lack of specificity as to when a person "becomes" legally incompetent but that lack of specificity is inherent in the fact that there are numerous ways in which legal incompetence can be determined under the various State laws. The FCA Board does not believe it is necessary to clarify this provision at this time in the absence of any specific problems involving its interpretation.

B. Impartiality in the Election of Directors

Section 611.320 requires each bank and association to adopt policies and procedures which assure that elections of broad members are conducted in an impartial manner. The FCCA commented that it was unfair to expose an institution to civil money penalties or other legal actions for unfair electoral processes occurring despite the institution's reasonable effort to assure impartiality. Accordingly, the FCCA recommended that this section be amended to only require institutions to adopt policies and procedures "necessary to provide reasonable assurance that elections of board members are conducted in an impartial manner." The FCA Board agrees that institutions cannot be held accountable if parties beyond the control of the institution engage in unfair electoral processes. However, this regulation addresses the requirement that the institution must have policies, procedures and controls in place that, if adhered to, will assure that elections are conducted in an impartial manner. To clarify this point, the final regulation has been amended to require institutions to adopt policies and procedures "that are designed to assure that" the elections of board members are conducted in an impartial manner. The FCA will review those policies and procedures in the course of its normal examination process to determine if the regulatory requirements have been met. If, in the course of an election, an institution fails to adhere to or implement its policies and procedures, the FCA will consider any appropriate actions.

The FCCA also inquired why paragraphs (b) and (c) of § 611.320 are applicable to all Farm Credit institutions, including service corporations, while paragraphs (a), (d) and (e) are only applicable to banks and associations. The FCCA commented that all these paragraphs should be applicable to all Farm Credit institutions. The FCA Board agrees with the FCCA comment and notes that this omission was a technical error in the proposed regulation. As noted by the FCCA, § 611.320 replaces provisions previously contained in § 612.2200, which was applicable to all Farm Credit institutions including service corporations. The final regulation has been amended accordingly.

C. Confidentiality in the Election of Directors

Section 611.330 requires banks and associations to adopt policies and

procedures that assure confidentiality in the election of board members and prohibits the use of signed or otherwise voter-identifying ballots or proxy ballots. The FCCA commented that the regulation should clarify what must be held confidential. The FCCA also pointed out that the language of the Act regarding confidentiality of voting applies only to "lending institutions of the Farm Credit System," and not other institutions.

The FCA Board agrees with the FCCA's comment that the regulation should clarify what types of information and materials generated in the election process must be kept confidential. To address this issue the final regulation has been amended to specify the required scope of policies and procedures designed to maintain the confidentiality of the election process.

The FCA Board concurs with the observation of the FCCA that section 4.20 of the Act only addresses the confidentiality requirement for "lending institutions." However, the FCA Board, in the exercise of its regulatory responsibility, determined that a similar confidentiality requirement should be applicable to all Farm Credit institutions, including FLBAs which are not direct lenders, and service corporations. The Board believes that the stockholders of all institutions, whether those institutions lend or not, are entitled to the same level of confidentiality in the exercise of their voting franchise.

The FCCA also expressed the view that § 611.330 should provide for the release of election related materials in the event that an election is contested. The FCA Board notes that § 611.330(d) authorizes the FCA to require an institution to release election related materials. The principal circumstance under which this requirement would be imposed would be in the event an unsuccessful candidate contested an election by notifying the FCA. In light of the FCCA comment, the final regulation has been amended to specifically note that election materials may be released for review in the event of a contested election.

The North Coast FLBA and North Coast PCA commented that the prohibition against signed proxy statements in paragraph (b) was not consistent with the provision of paragraph (c) which permits a stockholder to revoke a proxy prior to balloting at a stockholders' meeting. The FCA Board understands the difficulty that arises in reconciling the statutory prohibition against the use of signed ballots with the need for stockholders to be able to revoke proxies, and the need to identify stockholders in those situations where votes are weighed according to the stockholders equity ownership. Section 611.330 (b) and (c) set out procedures that will comply with the Act and still permit institutions to ascertain that votes are cast only by persons eligible to do so. To preserve a stockholder's right to withdraw a proxy vote, in accordance with section 611.330(c), the institution will have to retain all proxy ballots unopened until the stockholders who attend the annual meeting are given an opportunity to withdraw any proxy ballots that have been mailed.

D. Security in the Election of Directors

Section 611.340 requires banks and associations to adopt policies and procedures relating to the security of election-related material, and a required retention period for records, ballots, and other materials. The FCCA reiterated its comment made with respect to § 611.320 regarding the applicability of these requirements to all Farm Credit institutions, not just banks and associations. The FCA Board agrees with the comment of the FCCA for the reasons stated in response to the same comment regarding § 611.320, and the final regulation was amended to provide for its applicability to all Farm Credit institutions.

Section 611.340 requires each institution to adopt policies and procedures that assure the security of ballots, proxy ballots, and records in the election of board members. The FCCA commented that the scope of coverage of this provision may be too narrow and may not include other election-related material such as "envelopes marked as part of the voting process." While it is clearly the intent of this provision to include all election records and related materials, the FCA Board is concerned that, as evidenced by the FCCA comment, this provision could be read too narrowly. Accordingly, the final regulation has been amended to require that policies and procedures address the security of "all records and materials related to the election of board members, including, but not limited to, ballots, proxy ballots, and other related materials."

Section 611.340(c) requires institutions to safeguard ballots and proxy ballots prior to and subsequent to an election. In addition, this section requires election records to be retained until the end of the director's term of office. The FCCA commented that the retention period was excessive, and recommended that the retention period be reduced to 1 year. The FCA Board disagrees that the retention period should be reduced. The essential purpose of the retention period is to ensure that during any time a director is in office the institution or the FCA will have access to the election materials to resolve any questions that arise regarding the election of such director. The FCA Board also notes that the FCA used these procedures and this retention period when the FCA was responsible for conducting elections for district boards. While there is some recordkeeping and storage burden imposed, the FCA Board believes that this burden is minimal when compared with the benefits derived from having access to materials in the event of a challenge to procedures involved in the election of a board member.

Section 611.340(d) requires each institution to verify the validity of ballots before a public announcement is made of the election results. The FCCA inquired as to the scope of the verification requirement imposed in the regulation. The FCCA commented that verification should be a function of the tellers committee and that unless an election is challenged, no other party should be permitted to review the ballots. The FCCA also requested that the regulation be clarified to ensure that banks are not involved in association elections.

The FCA Board agrees that the only parties responsible for verifying the results of the election should be the tellers committee or a similar group, as provided for in the election procedures of the institution. To clarify this point, the final regulation has been amended to specifically require the institution to have election procedures which provide for the establishment of a tellers committee or other designated group of persons who are responsible for validating ballots and proxies and tabulating election results. The final regulation has also been reworded to clarify that each institution and its officers, directors, and employees are prohibited from making any public announcement regarding the results of an election before the tellers committee or other designated group has verified the results of the election. In response to the FCCA's final comment, the FCA Board notes that the regulation does not provide a basis for a bank to be involved in an association's election process and therefore no further amendment to the regulation is necessary.

E. General Statement on the Farm Credit System Organization

Part 611, Subpart D, contains only one section, § 611.400, which describes the organization of the Farm Credit

institutions in general terms. The proposed regulations would delete that section, which does not have any substantive effect, as part of a general reorganization of FCA regulations designed to eliminate duplicative, unnecessary, or redundant materials. The FCCA commented that § 611.400 should be retained since it provides a "more understandable and complete brief statement of the System's integral nature than any other single provision in the Act or regulations." The FCA Board does not agree with the need to retain this section or any other sections in the FCA regulations which serve no legitimate regulatory purpose. It is noted that there are various official and unofficial documents published by Farm Credit institutions and the FCA that contain general statements regarding the organization and operation of Farm Credit institutions. Those types of publications are informative and useful in providing the public with a general overview of the operations of Farm Credit institutions. The FCA Board believes there is no need to include those types of general provisions in the regulations since they have no substantive effect.

F. Transfers of Authorities From Banks to Associations

Sections 611.500–611.525 set forth the procedures and the approval and voting requirements for the transfer of certain authorities from FCBs to FLBAs under section 7.6 of the Act. The FCCA commented that most issues relating to transfers of lending authorities are common to sections 7.6 and 7.8 of the Act and section 411 of the 1987 Act and should be treated under a single comprehensive regulation. The North Coast expressed the contrary viewpoint, believing that the transfers of authorities under the various sections of the Act are dissimilar and should not be treated under the same regulation. The FCA Board continues to believe that these two types of asset transfers must be treated differently. The transfers and assumptions under section 7.6(a) of the Act are voluntary actions on the part of the stockholders of both the banks and associations that are parties to the transactions, while the transfers under section 7.8 of the Act and section 411 of the 1987 Act are required as the result of a merger between an FLBA and a PCA. Sections 611.500–611.525 prescribe the procedures to be followed and the disclosures required when transfers of lending authorities are voted on by stockholders in the absence of merger activity.

Both the FCCA and North Coast noted that the proposed regulation assumes that when lending authority is transferred from a bank to an association that assets will also be transferred. The FCA Board notes that neither the Act nor the proposed regulation mandates a transfer of assets in connection with a transfer of lending authority. The FCA Board believes that the decision to transfer assets at the time lending authority is transferred is a matter that should be negotiated between the banks and associations involved, taking into consideration their respective needs and operating capabilities. To eliminate any confusion on this point, § 611.515(b)(6) and § 611.520 (a) and (b) have been amended to clarify this issue.

The FCCA expressed the view that § 611.505 should incorporate standards for FCA review and approval of proposals to transfer lending authority. Similar comments were made by the FCCA in responding to the FCA Board's Advance Notice of Proposed Rulemaking. Rather than include evaluative criteria in the regulations, the FCA Board continues to believe that each transaction should be evaluated according to the specific circumstances presented. As discussed in greater detail in response to the same comment regarding § 611.1010, this position is consistent with procedures used for many years in approving other types of corporate reorganizations.

The FCCA noted that § 611.510 authorizes each institution's stockholders to vote on the proposed transfer of authority "in accordance with the institutions' bylaws." The FCCA commented that the regulations should specify that when an association votes as a stockholder of the bank, it casts a number of votes equal to the number of the association's stockholders. The FCCA pointed out that these are the requirements contained in sections 5.17(a)(2), 7.0, and 7.12(a)(3) of the Act. The proposed regulation was silent on the issue of whether or not weighted voting is used in these circumstances and did not specify the voting requirements for association stockholders. The FCA Board agrees that the statutory requirements applicable to such votes clearly provide for weighted voting by associations, and to avoid any ambiguity the FCA Board has amended the final regulation to expressly restate those statutory requirements.

The FCCA suggested that the regulations regarding the transfer of authorities from banks to associations should address the question of approval at the bank level of loans to association directors and of certain large loans based on a percentge of association capital. The FCA Board disagrees with the need for a new regulation to address this issue since 12 CFR 614.4470 currently specifies the approval requirements for director loans, employee loans, and certain large loans, and is applicable to all associations. The FCCA also suggested that the regulations should recognize the impact of transferred lending authority on the capital adequacy of the institutions involved. The FCA Board agrees that the effects of the proposed transaction on the capital adequacy of the institutions should be disclosed. The disclosure of such effects is provided for by the requirements of § 611.515(b) (3), (6), (10) and (12), and other regulations.

The FCA Board adopted two technical amendments recommended by the FCCA which provide for the adoption of resolutions "approving", rather than "proposing", the transfer of authorities, and require the bank and association to forward to the FCA a certified record of the stockholder vote rather than a certified copy of the adopted resolution.

The FCA Board disagrees with two other technical comments offered by the FCCA. The FCCA stated that regulations should require representations and warranties respecting the quality of any assets transferred to an FLBA. The FCA Board notes that the regulations do require the disclosure of the quality of any assets transferred but do not require any warranties regarding the quality of such assets. The extent and nature of warranties or representations, if any, regarding the quality of assets, must be agreed to by the parties in the plan of transfer. The FCA Board agrees that if warranties are given regarding the quality of assets, such warranties must be disclosed. Accordingly, § 611.520(b) was amended to include this requirement. The FCCA was also concerned that the regulation does not clearly establish that the board of directors of either the bank or the association could rescind the transfer under § 611.520. The FCA Board believes the context of the regulation in its entirety, and the specific language in question, make it clear that when either party rescinds its resolution of approval under the circumstances specified in the regulation the transfer will not be consummated. However, to eliminate any ambiguity regarding this point, the final regulation has been amended to specifically provide that the recision of a resolution by the bank or the association will void the transfer.

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G. General Authorities and Requirements Related to Bank Mergers, Consolidations and Charter Amendments

Section 611.1000 sets forth general requirements for the contents of bank charters and general authorities for obtaining amendments to charters. Section 611.1000(c) provides that the FCA may make changes to bank charters as may be necessary or expedient to implement the provisions of the Act. The FCCA commented that paragraph (c) should be revised to conform to the provisions of sections 1.3(b) and 3.0(a) of the Act, which provide that the authority of the FCA to amend charters may only be exercised in a manner "not inconsistent with the provisions of the Act."

It is noted that the specific statutory language which was advocated for inclusion by the FCCA has been deleted from the statute by the Agricultural Credit Technical Corrections Act of 1988, Pub. L. 100–399. However, the deletion of this statutory language does not affect the specific authorities of the FCA to amend bank charters which are contained elsewhere in the Act. For instance, section 5.17(a)(2) of the Act authorizes the FCA Board, after consultation with the boards of directors of the banks involved, to require two or more banks to merge if the FCA Board has determined that any one of such banks has failed to meet its outstanding obligations.

The FCA Board agrees that the FCA is only authorized to exercise functions provided for in the Act and is not empowered to take any action which is inconsistent with the Act. That limitation on FCA's powers is an implicit requirement in every section of the regulations governing FCA action and for that reason was not restated in the proposed regulation. However, in order to eliminate any concern regarding this matter the FCA Board amended the final regulation to include an appropriate limiting phrase in paragraph (c) to ensure that there is no misunderstanding regarding the authority of the FCA to amend charters of banks.

H. Bank Charter Amendment Procedures

Section 611.1010 sets forth the procedures to be followed in order for a bank to obtain amendments to its charter. Section 611.1010(a) lists the types of amendments that can be obtained to a charter of a bank. The FCCA commented that the regulation should include a fourth item providing for "any other change that is properly the subject of a bank charter." The FCA Board agrees with this comment and the final regulation has been amended accordingly.

Section 611.1010(b) requires a bank seeking a charter amendment to submit an appropriate resolution of its board of directors, together with supporting documentation, to the FCA for preliminary approval. The FCCA commented that, as a technical matter, some charter amendments are not subject to stockholder approval and therefore this section should be clarified to provide that the submission to the FCA shall be "for preliminary or final approval, as the case may be." The FCA Board agrees with the need for this technical change and the final regulation has been amended accordingly.

Section 611.1010(c) provides for FCA review and approval of requests for charter amendments. The FCCA commented that the regulation should specifically require the FCA to "expeditiously" review materials and provide for "prompt" notice of any reasons for disapproval. In addition, the FCCA recommended that this section set forth the standards used by the FCA in reviewing the proposal. The FCA Board concurs with the intent expressed in the first comment but does not believe a specific amendment to the regulation is necessary. The FCA makes every effort to process charter amendments and any other documents requiring FCA action as expeditiously as possible and in accordance with any applicable statutory deadline. With regard to the second comment, the FCA Board does not agree with the need for, and does not see any benefit to be derived from, attempting to set forth specific standards for the review and approval of charter amendment applications. As a general matter, the FCA is charged with the administration of the Act and with promoting the safe and sound operations of Farm Credit institutions. In addition, the Act empowers the FCA to exercise certain specific authorities relating to the operations of Farm Credit institutions. It would not be possible or practical for the FCA to try to delineate all of the considerations that are involved in reviewing applications for charter amendments. Any attempt to do so would only create the false impression that the list was exhaustive. Rather, the FCA provides clear guidance to institutions regarding the requirements for obtaining specific types of charter amendments through detailed regulations regarding the contents of required documents relating to such matters as mergers and territorial adjustments. For these reasons, the FCA Board believes that no change to the regulation is necessary or appropriate.

Section 611.1010(d) sets forth the requirements for stockholder approval of certain bank charter amendments. The FCCA made the same comment regarding voting requirements as was made with respect to § 611.510. For the same reasons set forth with regard to that section, the FCA Board agrees with the comment and has amended the final regulation accordingly.

I. Requirements for Merger or Consolidation of Banks

Section 611.1020 implements the provisions of sections 7.0 and 7.12 of the Act which provide for mergers and consolidations of banks. The FCCA stated that the regulation should be clarified "to provide for a section 7.12 merger of the Farm Credit Bank in one district with a merged Farm Credit Bank/bank for cooperatives in another district." The FCA Board disagrees with the need for the suggested change since § 611.1020(a) is merely an introductory provision which restates the statutory authorities under which bank mergers can occur and does not describe what types of mergers are authorized under the Act.

Section 611.1020(b) provides that banks proposing to merge or consolidate shall submit to the FCA the same documents that are required by 12 CFR 611.1122(a)–(e) and 611.1123, for mergers of associations. The FCCA stated that several of the requirements in the referenced sections applicable to associations would not apply to bank mergers, such as the requirement for FCB approval. To resolve the discrepancies, the FCCA recommended that the regulation be amended to require that the documents submitted in connection with the bank mergers shall be "substantially similar in format and content" to the documents itemized by regulations governing association mergers. The FCA Board agrees that there may be some provisions of the referenced sections relating to the bank review and approval of the association merger documents which are not applicable in the case of a bank merger. However, the documents submitted in connection with bank mergers must comply with the express requirements of those regulations rather than being "substantially similar" to the documents required by the regulations. The FCA Board notes that the ambiguity in the proposed regulations was caused by the inadvertent reference to § 611.1122(a)–(e), rather than § 611.1122(a) and (e). Accordingly, the FCA Board amended the final regulation to correct this

technical error, and in addition, to clarify that in reading those referenced sections, the term "bank" shall be substituted for the term "association."

Section 611.1020(d) sets forth the procedures for obtaining final approval of a bank merger and the required documents to be submitted to the FCA, including the requirement for submission of copies of the articles of association for the bank. The FCCA commented that the statutory provisions governing banks, unlike those governing associations, do not include references to articles of associations. The FCA Board agrees with the FCCA comment and has amended the final regulation to delete this requirement.

J. Board of Directors of an Agricultural Credit Bank

Section 611.1030 provides for the establishment of a board of directors of an agricultural credit bank (ACB), which is a bank formed by the consolidation of a Farm Credit Bank and a bank for cooperatives. The FCCA commented on the use of the term ACB and also made the same comment regarding the use of the term "agricultural credit association (ACA)." The FCCA assumed that the references to ACBs and ACAs were only generic references and did not require institutions to actually use those terms. Several other commenters expressed concern that the required use of a corporate name that did not permit immediate recognition of these entities as institutions of the Farm Credit System would negate much of prior years' public relations efforts to create name identification, as well as incur the cost of changing trademarks and other corporate identifications. The FCCA recommended that merged associations should have the option to use as their official name either "Farm Credit Services" together with an appropriate geographical designation, "Farm Credit Association" with an appropriate geographical designation, or some other appropriate name utilizing the word "association."

The FCCA correctly noted that the references to "agricultural credit association" and "agricultural credit bank" in these regulations, and in other regulations promulgated by the FCA to date, were used in order to ensure that one can identify the various regulatory requirements applicable to different institutions. It would be impossible to know whether a regulatory provision regarding, for instance, limitations on the terms of a loan, was applicable to PCAs, FLBAs or an association resulting from the merger of a PCA and FLBA unless the regulation used different names to identify which associations were subject to that provision.

Thus, these regulations do not, by their terms, establish any requirements for the official names of associations. However, during the comment period on these regulations, the FCA Board has been required to review, for preliminary approval, certain proposed mergers of PCAs and FLBAs. Several of these merger proposals provided that the resulting association would be referred to as a "Farm Credit Association." The FCA Board advised these associations that the name "Farm Credit Association" could not be used since the inevitable use of the acronym "FCA" would be confused with the name of the agency. Since the Board did not have the opportunity to develop a comprehensive proposal regarding the official names of institutions in light of the 1987 Amendments, the FCA Board advised the merging associations that, consistent with these proposed regulations, they should use the name "agricultural credit association." Now, based on a thorough evaluation of this issue and the many public comments it has received, the FCA Board has addressed the questions regarding official names of banks and associations in a comprehensive manner.

With the exception of the provisions of section 413 of the 1987 Act regarding the National Bank for Cooperatives, the 1987 Act and the Act do not expressly require any of the various types of banks and associations to use a specific name in its official title. However, prior to the 1987 Act, the Act referred to each of the different banks and associations by using specific names such as "production credit association," "Federal land bank association," and "bank for cooperatives." Based on these statutory references, the FCA, in granting charters to institutions, has required that the official names of institutions include the appropriate name used in the statute. Thus, for instance, associations chartered under Title II of the Act were required to use production credit association as part of their official name.

Until a few years ago, banks and associations transacted business using only their official names to identify themselves. Then, an effort was undertaken to develop a common identifying name that could be used by any bank or association which would identify the institution's affiliation with other Farm Credit institutions. The name selected for this purpose was "Farm Credit Services." That name eventually came into use to a greater or lesser extent among institutions throughout the country. The use of "Farm Credit Services" appears to have been particularly popular among associations operating under joint management because it enabled the two associations to be identified by a single name. FCA advised institutions that it did not object to an institution identifying itself through the use of this trade name, but that the use of the name in communications and official documents would have to be accompanied by the official name of the institution.

Enactment of the 1987 Act, particularly the provisions authorizing the merger of unlike banks or associations, has caused the FCA to reevaluate its policies regarding the official names of institutions. This reevaluation was especially necessary in light of the growing public acceptance of the term "Farm Credit Services." The Board has concluded that institutions should have the maximum degree of flexibility possible in proposing official names for their institution and should not have to use trade names that are more commonly accepted than their official names. At the same time, the official name of an institution should always be one that can be readily identified by the public as belonging to an institution affiliated with the System. In addition, there must be a simple way for the public and the FCA to be able to identify the name as belonging to one of the various types of institutions regulated by the FCA. For instance, one must be able to know whether a bank can lend to cooperatives, like a bank for cooperatives, or whether an association can only make short-term loans, like a PCA.

The FCA Board has determined that each of these concerns can be addressed through a policy regarding official names that combines the authority to use historically accepted names with the emerging acceptance of the term "farm credit," together with an appropriate use of acronyms. This policy contains the following elements. The FCA Board will issue charters for institutions which contain the statutorily sanctioned names "production credit association," "Federal land bank association," "bank for cooperatives" and "Farm Credit Bank." If an institution requests an official name that does not incorporate one of those terms, the official name must include the acronym for the appropriate term after the name. For instance, the Production Credit Association of North Central Jersey could request a change in its name to "Farm Credit Services of North Central Jersey, PCA." The Board will also issue charters for institutions that contain the

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name "agricultural credit bank," for a bank formed by the merger of an FCB and BC, the name "agricultural credit association," for an association formed by the merger of a PCA and FLBA, and the name "Federal land credit association" for an FLBA that has direct lending authority. If such an institution requests an official name that does not include the appropriate term, the name must be followed by the arconym "ACB," "ACA" or "FLCA." For instance, and FLBA that has acquired direct lending authority could use names such as "Farm Credit of Central City, FLCA," or "Federal Land Bank Association of Central City, FLCA."

As discussed above, the FCA Board has adopted this policy position at this time, which will be expressed in a formal policy statement, because of the numerous mergers and other reorganization proposals that are pending. The FCA has never promulgated specific regulations governing the names of institutions in the past since such matters have been addressed on an individual basis in connection with specific request for approvals. However, the Board is considering whether it would be beneficial to adopt comprehensive regulations in this matter which would provide general guidance to institutions. In the course of reviewing this matter, the Board will consider any views it receives from interested parties on the need for regulations regarding this topic.

K. Creation of New Associations

Section 611.1040 sets forth the requirements for the creation of new associations, including PCAs, FLBAs and ACAs. The FCCA commented that this section implies that ACA's do not have the authority to make long-term real estate loans and recommends that the regulation be amended accordingly.

Section 611.1040 merely identifies the procedural requirements necessary for obtaining charters for associations and is not an attempt to specify the various powers, duties, and authorities of those associations, which are matters addressed throughout other FCA regulations. For instance, the specific lending powers of associations, including ACAs, are addressed in a proposed regulation approved by the FCA Board on September 28, 1988 (53 FR 44438). However, to eliminate any ambiguity regarding the interpretation of § 611.1040, a technical amendment was adopted in the final regulation which deletes the reference to the authorities of ACAs.

L. Requirements for Mergers or Consolidations

The proposed regulation would amend § 611.1122(e) by requiring the inclusion of additional materials in the disclosure statement distributed to stockholders in connection with mergers. The FCCA questioned why 3-year financial projections should be mandatory, since it would be likely that there would be factors beyond the control of institutions that could have a material impact on those projections. The FCCA commented that if such projections are mandated, the agency should provide instructions regarding their preparation and, in addition, should provide a "safe harbor" rule which would protect an institution if the statement was prepared with a reasonable basis and was disclosed in good faith.

The FCA Board agrees with the FCCA comment and notes that the inclusion of 3-year financial projections in the disclosure statement distributed to stockholders was a technical error in the proposed regulation. The 3-year financial projections were not intended to be included under § 611.1122(e). They were intended to be supplemental material submitted to the affiliated banks and to the FCA as an aid in the approval of the merger proposal. The final regulation has been amended accordingly.

The FCA Board disagrees with the FCCA suggestion that the regulations governing the preparation of financial projections include a "safe harbor" rule to protect institutions in the event they may want to include this information in disclosure statements distributed to stockholders. As stated above, financial projections are required as additional material to be used by affiliated banks and the FCA to aid in the review and approval of merger proposals, not as disclosure documents to be distributed to stockholders. The FCA Board recognizes that other Federal regulators permit the inclusion of forward-looking financial information in stockholder disclosures, if prepared in accordance with rules governing their preparation and presentation. The Board is concerned that very little benefit, but much harm, could result from the inclusion of prospective financial statements in stockholder disclosures in such an unsettled and dynamically changing System environment as the current one, no matter how "reasonable" the assumptions or other basis used to prepare and present such projections. However, the Board believes the suggestion merits further study and will consider any comments or recommendations it receives on this subject during its normal regulatory review process and will propose amendments to the regulations as appropriate.

M. Merger or Consolidation Agreements

The proposed regulations included amendments to § 611.1123 regarding the content of association merger agreements. Section 611.1123(a)(9) requires merger and consolidation agreements to include the capitalization plan and capital structure of the new institution and a statement that such plan would comply with all FCA regulations and be approved by the stockholders of the institution. The FCCA commented that the regulation appears to contemplate that the institution's capitalization plan, i.e., the board and management strategy for complying with the capital regulations, must be included in the bylaws and submitted for stockholder approval. The FCCA asserted that this is contrary to the requirements of section 4.3A of the Act, which does not require capitalization plans be included as part of the bylaws. The FCCA stated that section 4.3A only requires that the bylaws will "enable the institution to meet the capital adequacy standards." The FCCA asserted that an institution's capitalization plan is a key element of its business strategy and that requiring the institution's stockholders to approve the plan would be "intolerable."

The FCA Board agrees with the FCCA's comment that the Act does not require the institution to include its capitalization plan in the institution's bylaws and amended the final regulation to delete this requirement. However, the bylaws must comply with capitalization bylaw regulations at 12 CFR 615.5220–5240. The final regulation continues to require that the merger agreement include the capitalization plan of the resulting entity. This requirement is necessary to ensure that the parties to a merger agree on the capitalization plan which will be used by the institution to achieve its minimum capital standards. The FCA Board believes that the stockholders of the institutions involved in a merger must be provided access to this information in connection with their review of the disclosure documents to determine their position with respect to the merger. This regulation does not in any way alter the prerogative of the board of the new institution to make adjustments to its capitalization plan as it deems appropriate.

Section 611.1122(g) of the proposed regulations sets forth the procedures necessary to ensure that stockholders

can exercise their right to reconsider a vote. The FCCA commented that this section would have the effect of enabling the FCA to independently determine on what date a merger would be effective, and that such authority is not consistent with the provisions of section 7.9(b)(5) of the Act. That section provides that if a petition for reconsideration is not filed within 30 days following the notification of the merger vote, the merger shall be effective in accordance with the date specified in the plan of merger. The FCA Board agrees that the proposed regulation was subject to the interpretation advanced by the FCCA. Since that was not the intent of the regulation, it has been amended to address the concern. The intent of the proposed regulation was to ensure that the stockholders would be afforded the opportunity to file motions for reconsideration and to enable the FCA to process the documents and grant the final approval after the expiration of the reconsideration period. The proposed regulation was not intended to imply that the FCA could establish any effective date for a merger. However, there are instances in which the necessary documentation is not provided to the FCA in time to permit a final approval before the proposed effective date. The regulation must provide for this situation by enabling the FCA to delay the effective date when necessary. The FCA Board has amended § 611.1122(g) and added a new paragraph (k) which address these issues by providing that the effective data of a merger or consolidation shall be a date which is not less than 50 days after the date of mailing of the notification of results of the stockholder vote. This 50-day period takes into consideration the statutory 30-day waiting period, a period of 5 days from the date the notification is mailed to provide for delivery, and 15 days for FCA's reviews of the documents. If no petition to reconsider the vote is filed within 35 days after the date of mailing of the notification to stockholders, the merger or consolidation shall be effective upon final approval by the FCA on the date specified in the merger agreement, or at such later date as may be required by the FCA to grant final approval. For the same reasons, the FCA Board has amended § 611.505 (d) and (e) to provide the same requirements with respect to the effective dates for transfers of lending authority between FCBs and FLBAs.

Section 611.1123(c) authorizes stockholders to file a petition to reconsider a vote and further provides that if such petition is approved by the FCA, a special stockholders meeting will be held to conduct the reconsideration vote. The FCCA sought a clarification of the extent of the "FCA's approval" of a stockholder petition and commented that such approval should be limited to determining whether the petition complies with statutory requirements. The FCA Board agrees that the FCA approval set forth in the proposed regulations is limited to determining whether the petition meets the requisite statutory standards and did not intend to expand such approval to other areas. In light of the FCCA comment, the FCA Board amended the final regulation to provide that FCA review of a stockholder petition is for the purpose of determining whether the petition complies with the requirements of section 7.9 of the Act.

Section 611.1123(c) provides that if a proposed merger is disapproved upon reconsideration by the majority of the stockholders of any one of the institutions that is a constituent to the merger, the merger shall not take place. The FCCA stated that this provision is inconsistent with section 7.9 of the Act. In support of its position, the FCCA stated that section 7.9(b)(4) of the Act provides that a majority of stockholders voting, in person or by written proxy, may disapprove a previously approved merger. The FCA Board notes that it was not intended that the proposed regulation establish a different standard than is specified in the statutes and has amended the final regulation to clarify this point.

The FCCA also commented that § 611.1123(c) purports to authorize all stockholders to vote on a reconsideration vote rather than limiting such voting to "stockholders eligible to vote." The FCA Board does not agree that this is a reasonable interpretation of the regulation. There are references to stockholder votes in numerous FCA regulations and in most instances the regulations do not repeat the words "stockholders eligible to vote." There is no need to continually restate this phrase because the Act and the bylaws of the institutions specify the voting eligibility requirements for stockholders. This section is not designed to, nor does it, confer eligibility to vote on stockholders who are not authorized to vote under the Act or the bylaws of the institutions.

The FCCA commented that the proposed regulations do not clarify what the effective date of a merger would be if a reconsideration vote were held and the merger were approved upon reconsideration. In response to this comment, the Board notes that since the parties proposing the merger are responsible for proposing a merger date, it is assumed that they would also be responsible for proposing a second effective date for the merger after a reconsideration vote. For this reason, this matter was not specifically addressed in the proposed regulation. However, in light of the FCCA comment, the Board determined that this matter should be specifically addressed in the regulation. Accordingly, the final regulations include a new § 611.1122(k) which provides that if a petition for reconsideration is timely filed, the constituent institutions shall agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. To ensure that the FCA has an opportunity to review the documents and grant final approval, the regulation further provides that such an effective date shall be not less than 15 days after the date of the reconsideration vote.

The FCCA commented that § 611.1123(c) does not clarify that only stockholders eligible to vote on a merger can be eligible to sign a reconsideration petition. The FCCA noted that the statute also does not clarify this point and requested that the FCA use its regulatory authority to address this concern. As discussed earlier, the FCA believes it is clear that when the statute and regulations refer generally to an event that requires stockholder approval, those statutory or regulatory authorities do not confer eligibility to vote on stockholders who are not otherwise eligible under the Act or the bylaws of the institution. Similarly, it would be incongruous to permit a stockholder to sign a petition for reconsideration if such stockholder were not eligible to vote on the merger or the reconsideration of the merger vote. However, the FCA Board believes that there may be some ambiguity regarding this question and has amended the final regulation to clarify that the petition must be signed by 15 percent of the stockholders who are eligible to vote of one or more of the constituent institutions.

N. Territorial Adjustments

Section 433 of the 1987 Act permits the stockholders of an FLBA or PCA whose chartered territory adjoins the territory of an FCB that the association is not affiliated with to petition the FCA to incorporate the petitioning association into the territory of the adjoining FCB. The FCA did not propose regulations governing this process because the statutory provisions are clear and the

FCA's existing regulation § 611.1124 adequately addresses the requirements for transfers of territory. Section 611.1124 sets forth the requirements and procedures to be followed in order for associations to modify charters for the purpose of tranferring territories to other associations. In its comments, the Farm Credit Bank of Texas (Texas FCB) agreed that the requirements of section 433 of the 1987 Act are clear, and that § 611.1124 provides guidance for voluntary reassignment of an association to an adjoining FCB. However, the Texas FCB suggested that the FCA should clarify the extent to which the individual requirements of § 611.1124 apply to section 433 reassignments, and recommended a number of clarifying amendments to § 611.1124.

The FCA Board agrees that not all of the provisions of § 611.1124 apply to section 433 reassignments. The FCA Board notes, however, that the opportunity for an association to petition for a section 433 reassignment is a temporary one that will end on January 6, 1989. In light of this abbreviated timeframe, the FCA has provided requesting associations with specific instructions which clarify the applicability of the § 611.1124 requirements to section 433 reassignments. The FCA took into consideration the recommendation of the Texas FCB and other parties in developing those instructions.

O. Special Reconsideration of Mergers

Sections 611.1190 and 611.1191 provide for the reconsideration of the voluntary mergers and consolidations of associations that occurred after December 23, 1985 and prior to January 6, 1988. The proposed regulations provide that a reconsideration can be initiated by a stockholder petition or by the adoption of a resolution by the existing association board of directors. Petitions can provide for either the withdrawal of one or more predecessor associations from the current association, or for the general reorganization of an existing association that was formed by the merger of three or more predecessor associations. Director resolutions can provide for the adoption of a general reorganization of the existing association.

Section 611.1192 establishes that petitions must be signed by at least 15 percent of the voting stockholders of the existing association who were stockholders of each of the predecessor associations that seek to withdraw, or by 5 percent of the total number of voting stockholders of the existing association if the petition seeks a general reorganization of the existing association that was formed by three or more predecessor associations. In their comments, the FCCA and South Atlantic PCA agreed that the board of directors should be authorized to adopt a resolution proposing a general reorganization, but expressed the view that no statutory basis exists for allowing 5 percent of the stockholders to seek a general reorganization of the existing association. The South Atlantic PCA went on to state its concern regarding the disruption to operations and added expense that would result from these special reconsideration petitions. The Fourth District PCA and FLBA commented that the 5 percent initiative was an arbitrary expansion of the specific criteria provided in the Act.

The FCA Board does not agree with the commenters that no basis exists for allowing 5 percent of the stockholders to seek a general reorganization of the existing association. The FCA has general rulemaking authority to ensure that the overall intent of the statute is given effect. Toward that end, the FCA Board has determined that it is appropriate to provide a mechanism by which the expression of a substantial interest among the stockholders of an existing association to reorganize their association can be realized. The FCA Board believes that if a substantial interest for reorganization exists among an existing association's stockholders, a petition of 5 percent of the total voting membership would give a more cost-effective and less disruptive mechanism for allowing the realization of that interest than by requiring the stockholders to file numerous petitions for the individual withdrawal of many associations from the merged associations. It is also noted that this 5 percent threshold only applies to an association formed by the merger of three or more associations. In those instances, the number of shareholders who have to sign such a petition would approximate the number of shareholders who have to sign a petition for the withdrawal of an association using the 15 percent requirement. The FCA Board also notes that a proposal to withdraw or reorganize, whether initiated by a 5 percent petition, a 15 percent petition, or the adoption of a resolution by the board of directors, can only be consummated if it is agreed to by a majority of the stockholders who would be served by the separating or reorganizing association.

Section 611.1192(c) requires each petition to describe the manner in which the existing association will be reorganized and the territory in which each proposed separate association would operate. The FCCA suggested that the regulation should more clearly indicate what flexibility there is for petitions to create a new territory that is different from the territory of a predecessor association. The FCA Board believes that the present language addresses this concern by placing no limits on the flexibility that a petitioning group of stockholders has in proposing the new territories for the associations that would result from a reorganization of the entire association. However, the Board agrees that the regulation should clarify that, consistent with the intent of section 7.9 of the Act, when an association withdraws from a merged association, it will have the same territory it had prior to the merger.

Section 611.1192(d) requires a special reconsideration petition to be certified and forwarded to the FCA within 5 working days of its receipt by the association. The South Atlantic PCA expressed the view that since § 611.1193 requires the petition to be accompanied by the stockholder information statement and other documentation, 5 days is not sufficient time to complete the process. The FCA Board agrees with this concern, which resulted from the requirement in § 611.1193 that the petition be accompanied by the disclosure materials at the time it is filed with the FCA. To address this matter, § 611.1193 has been amended to provide that the association shall have 60 days after the filing of the petition to submit the disclosure materials and other documentation to the FCA for approval. The Board made a conforming change to § 611.1195 relating to the date of the stockholder vote.

Section 611.1192(e) provides that no petition will be considered by the FCA if filed later than 1 year from the effective date of the regulations. The South Atlantic PCA has assumed that the non-statutory initiatives included in the regulations on special reconsideration would also be limited to the 1-year period. The assumption made by the South Atlantic PCA is correct—no petitions would be considered by the FCA Board under Subpart O after the 1-year period. The FCA Board notes, however, that Subpart O only refers to special reorganization petitions or resolutions related to mergers or consolidations that occurred after December 23, 1985 and before January 6, 1988, and that the opportunity for association boards of directors to submit reorganization proposals to the FCA for review and approval in anticipation of stockholder votes is

neither limited nor removed by § 611.1192(e).

Section 611.1194 sets forth the procedures for FCA review and approval regarding special reconsideration requests. The FCCA commented that the FCA should incorporate standards for FCA review and approval. Rather than include evaluative criteria in the regulations, the FCA Board continues to believe that each transaction should be evaluated according to the specific circumstances presented. For the reasons set forth in response to the same comment regarding § 611.1010, the FCA Board believes that no change to the regulation is necessary or appropriate. The FCCA also commented that the term "promptly" be inserted to appropriately clarify each phase of the notification process. The FCA Board agrees with the intent expressed by the FCCA, but does not believe that a specific amendment to the regulation is required. The FCA makes every effort to process requests for approval and any other documents requiring FCA action as expeditiously as possible and subject to applicable statutory requirements.

Section 611.1195 sets forth the requirements for stockholder votes related to special reconsideration petitions or resolutions. The Fourth District PCA and FLBA and the FCCA expressed the view that Congress imposed a more stringent voting requirement for special reconsideration votes, which would require that a majority of all of the stockholders eligible to vote must approve the reconsideration, not just a majority of the stockholders voting on the proposal. The FCCA based its view on the fact that the specific language of the Act regarding the voting requirements on special reconsideration is somewhat different from the language used elsewhere in the Act concerning other stockholder votes. The FCA Board agrees with this comment and has amended the final regulation accordingly.

Section 611.1197 of the proposed regulations provides that the notice of meeting to consider and act upon petitions must be accompanied by an information statement that shall be prepared by the existing association with the assistance of the petitioners, or at their discretion, by the petitioners. The Fourth District PCA and FLBA, the FCCA, and the South Atlantaic PCA commented that this section was unclear as to who would have the ultimate responsibility to prepare the notice and information statement. Each suggested that the existing association should have the responsibility or, at least, the right to finally review and approve the documents before their submission to the FCA. The South Atlantic PCA expressed the view that the costs associated with conducting a stockholder meeting, such as the preparation of notices and disclosure materials, should be borne by the petitioners.

The FCA Board agrees with the commenters that the regulations should clarify who has ultimate responsibility and accountability for the notice, information statement and plan of reorganization submitted to the FCA for approval. However, the FCA Board recognizes that potential conflicts could surface between the existing association and the petitioning stockholders since a withdrawal action initiated by petitioners may not be supported by the board of directors of the existing association. For this reason, the FCA Board believes that the rights and interests of both parties must be treated as fairly and equitably as possible, while permitting petitioning stockholders their right to reconsider association mergers completed between December 24, 1985 and January 5, 1988. Accordingly, the FCA Board has determined that the petitioning stockholders must select a proposed initial board of directors who will be responsible for signing the notice, information statement, and plan of reorganization submitted to the FCA for approval. Additionally, the existing association must provide whatever assistance the petitioners may request to develop the aforementioned documents and to assure completeness and accuracy. Section 611.1193(a), and § 611.1197 have been amended to incorporate these requirements.

Regarding the issue of who should pay the costs incurred in connection with a special reconsideration, the FCA Board believes that the stockholders of the resulting association(s) should bear these expenses in those circumstances where a reconsideration vote is approved. However, in those situations where the reconsideration is disapproved, the FCA Board believes that the expenses involved must be borne by the existing association. The Board understands that the enactment of section 7.9 was motivated in part by a concern that shareholders of some former associations may have been unduly influenced to approve a merger proposal during the affected time period and that those shareholders should be given an opportunity to fully reconsider their earlier votes. The FCA Board believes that the only way to give full effect to this right is for shareholders to be able to initiate a petitioning action without having to bear the expenses of the vote if the proposal to withdraw is defeated. The FCA Board also believes the existing association should view the payment of expenses noted above as the cost of doing business to retain the benefits it already enjoys. Additionally, the existing association will benefit materially if the predecessor association does not withdraw because it will have the opportunity to provide credit services to the borrowers of the predecessor association. Accordingly, § 611.1196 has been revised in its entirety to provide that, unless the parties to a reconsideration agree otherwise, the costs shall be borne by the existing association if the reconsideration is disapproved, or by the resulting association if the reconsideration is approved. In addition, a technical correction has been made in § 611.1193(b)(5) to include the provision relating to the notice of meeting that was previously contained in § 611.1196.

Section 611.1197 sets forth the requirements for an information statement to be prepared in conjunction with a special reconsideration petition. The FCCA suggested that the statement enumerating the advantages and disadvantages required by § 611.1197(b)(3) should address "anticipated" advantages and "potential" disadvantages. The FCCA also stated that the regulation should clarify whether each of the areas of advantages and disadvantages specified in the regulation must be addressed in the disclosure documents. The FCA Board agrees that the addition of descriptive modifiers such as "anticipated" and "potential" would enhance the understanding of the regulation's requirements and has amended the final regulation accordingly. In response to the FCCA's second comment, the FCA Board notes that the list of potential advantages and disadvantages was not intended to be exhaustive or mandatory, but only illustrative. The final regulation has been amended to clarify this point.

Section 611.1198 provides for the development of a plan of reorganization that shall accompany a petition for special reconsideration under Subpart O, and enumerates the requirements of the reorganization plan, including a provision for the distribution of assets and liabilities of the existing association and a description of the basis upon which the distribution is to be made. The FCCA and the South Atlantic PCA suggested that the regulation should be amended to provide more specific

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guidance concerning the manner in which assets and liabilities will be valued and distributed, and the manner in which the parties should negotiate areas of dispute. The Board disagrees with the need for regulations addressing these concerns. As with the case of a merger, valuation methods and allocations of assets are matters that must be agreed to by the parties to the transaction. However, unlike a regular merger proposal, the Act gives the stockholders of petitioning associations the right to reconsider past mergers. If the existing association and the petitioning stockholders are unable or unwilling to agree to the essential terms for the reconsideration, the FCA Board may be required to determine whether one of the parties is attempting to preclude the other from exercising its statutory rights. The FCA Board hopes that this situation does not arise and encourages all parties to cooperate in giving maximum effect to the intent of Congress.

P. Disclosure Statement Requirement for Bank Director Candidates

Section 620.30 establishes the requirements for the preparation and distribution of disclosure statements regarding candidates for election to the board of directors of a bank. The FCCA commented that this section should be amended to clarify that it applies only to directors elected by stockholders, and not to the outside director elected by the other members of the board. The FCA Board agrees that this point should be clarified and has amended the final regulation accordingly. However, the FCA Board would encourage the elected directors of an institution to obtain the same type of information specified in § 620.30 regarding candidates for the outside director(s) position to assist them in selecting the best possible candidate for that position.

Q. Contents of Disclosure Statements

Section 620.31 sets forth the requirements for the contents of disclosure statements submitted to stockholders in connection with the election of bank directors. The FCCA agreed with the intent of the proposed regulation to make the disclosure requirements for bank director candidates consistent with existing disclosure requirements for association director candidates. To achieve that end, the FCCA commented that proposed § 620.31(d) does not include a provision comparable to § 620.3(j)(3)(i)(C). The FCA Board notes that the proposed regulation is consistent with § 620.3(j) since that section was amended on February 5, 1988 to delete the provision referenced by the FCCA (53 FR 3334). The FCCA also commented that proposed § 620.31(e)(1) is not consistent with § 620.3(k)(1) because it does not require disclosure related to "any corporation or business association of which (the candidate) was a senior officer at or within 2 years before the time of such filing," which provision is contained in the comparable § 620.3(k)(1). This was an inadvertent omission from the proposed regulation, and the final regulation has been amended to include this provision. The FCCA also commented that the proviso in proposed § 620.31(d)(2), which exempts from certain disclosure requirements directors who resign or whose term of office expires, would not be applicable to the disclosure statements required by this section. The FCA Board agrees that the proviso would not be operative within the context of the disclosure requirement contained in this regulation, and the final regulation has been amended to delete this inoperative language.

List of Subjects in 12 CFR Parts 611, 612, 618, and 620

Accounting, Agriculture, Archives and records, Banks, banking, Conflict of interests, Insurance, Organizations and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, Parts 611, 612, 618 and 620 of Chapter VI, Title 12, of the Code of Federal Regulations are amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart A—[Removed and Reserved]

2. Part 611, Subpart A, consisting of § 611.100, is removed and reserved.

3. Part 611, Subpart C, consisting of §§ 611.310 through 611.340, is added to read as follows:

Subpart C—Election of Directors

Sec.

611.310 Eligibility for membership on bank and association boards and subsequent employment.
611.320 Impartiality in the election of directors.
611.330 Confidentiality in the election of directors.
611.340 Security in the election of directors.

Subpart C—Election of Directors

§ 611.310 Eligibility for membership on bank and association boards and subsequent employment.

(a) No person shall be eligible for membership on a bank or association board who is or has been, within 1 year preceding the date the term of office begins, a salaried officer or employee of any bank or association in the System.

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is convicted of a felony or held liable in damages for fraud.

(c) No bank director shall, within 1 year after the date when he or she ceases to be a member of the board, serve as a salaried officer or employee of such bank, or any association with which the bank has a discount of agent relationship.

(d) No director of an association shall, within 1 year after he or she ceases to be a member of the board, serve as a salaried officer or employee of such association.

§ 611.320 Impartiality in the election of directors.

(a) Each System institution shall adopt policies and procedures that are designed to assure that the elections of board members are conducted in an impartial manner.

(b) No employee or agent of a System institution shall take any part, directly or indirectly, in the nomination or election of members to the board of directors of a System institution, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such nominations, or elections. This paragraph shall not prohibit employees or agents from providing biographical and other similar information or engaging in other activities pursuant to policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution in which the employee or agent is a voting member.

(c) No property, facilities, or resources of any System institution shall be used by any candidate for nomination or election or by any other person for the benefit of any candidate for nomination or election, unless the same property,

facilities, or resources are simultaneously available and made known to be available for use by all declared candidates.

(d) No director, employee, or agent of a System institution shall, for the purpose of furthering the interests of any candidates for nomination or election, furnish or make use of records that are not made available for use by all declared candidates.

(e) No System institution shall distribute or mail either directly or at the expense of the institution, any campaign materials for director candidates. Institutions shall request biographical information from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

§ 611.330 Confidentiality in the election of directors.

(a) Each System institution shall adopt policies and procedures that assure that all information regarding how or whether individual stockholders have voted and all materials such as ballots, proxy ballots, election records, and other relevant documentation related to the votes of stockholders shall be held in strict confidence. Such information and materials shall not be disclosed to any person, except as required by the Farm Credit Administration in the event an election is contested, or otherwise.

(b) Except as provided in this paragraph, System institutions shall not use ballots or proxy ballots that must be signed by the stockholder or that contain an identifying character or mark that can be used to identify how an individual stockholder's vote is cast. Institutions may adopt procedures which require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. Institutions may also use signed proxy statements or eligibility certificates which will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope. Where the identity of the voting stockholders is necessary to determine the voting weight of ballots, the institution shall use a form of identity code on the ballot and shall require that the votes are tabulated by an independent party.

(c) When an institution receives a ballot by mail or at a meeting, the vote of such stockholder shall be final. When proxy voting is permitted, a stockholder voting by proxy may revoke the proxy prior to balloting at the stockholders meeting.

§ 611.340 Security in the election of directors.

(a) Each System institution shall adopt policies and procedures that assure the security of all records and materials related to the election of board members including, but not limited to, ballots, proxy ballots, and other related materials.

(b) Bank and association procedures shall assure that ballots and proxy ballots are provided only to stockholders who are eligible to vote.

(c) Ballots and proxy ballots shall be physically safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the banks and associations until disposal. Ballots, proxy ballots, and election records shall be retained until the end of the term of office of the director and promptly destroyed thereafter.

(d) The election procedures of each institution shall provide for the establishment of a tellers committee or other designated group of persons which shall be responsible for validating ballots and proxies and tabulating election results. An institution and its officers, directors and employees shall make no public announcement of the results of an election before the tellers committee or other designated persons have validated the results of the election.

§ 611.400 [Removed]

§ 611.1020 [Redesignated as § 611.400]

4. Part 611 is amended by revising the heading of subpart D, removing existing § 611.400, revising the heading of § 611.1020 of Subpart F and redesignating it as new § 611.400 of Subpart D to read as follows:

Subpart D—Rules for Compensation of Board Members

§ 611.400 Compensation of Bank Board members.

5. Part 611, Subpart E, consisting of §§ 611.500 through 611.525, is revised to read as follows:

Subpart E—Transfer of Authorities

Sec.

611.500 General.
611.501 Procedures.
611.505 Farm Credit Administration review.
611.510 Approval procedures.
611.515 Information statement.
611.520 Plan of transfer.
611.525 Stockholder reconsideration.

Subpart E—Transfer of Authorities

§ 611.500 General.

Each Farm Credit Bank or Agricultural Credit Bank is authorized, in accordance with § 7.6 of the Act, to transfer certain authorities to Federal land bank associations. The regulations in this subpart set forth the procedures and voting and approval requirements applicable to such transfers.

§ 611.501 Procedures.

(a) The boards of directors of a bank and an association which seek to transfer authorities may adopt appropriate resolutions approving such transfer and providing for the submission of such a proposal to their respective stockholders for a vote.

(b) The resolutions accompanied by the following information shall be submitted to the Farm Credit Administration for review and approval:

(1) Any proposed amendments to the charters of the institutions;

(2) A copy of the transfer plan as required under § 611.520 of this part;

(3) An information statement that complies with the requirements of § 611.515;

(4) The proposed bylaws of the bank and the association, as applicable; and

(5) Any additional information the boards of directors wish to submit in support of the request or that the Farm Credit Administration requests.

§ 611.505 Farm Credit Administration review.

(a) Upon receipt of the board of directors resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the bank and the association who shall promptly notify their respective boards of directors.

(c) Upon approval of the proposed transfer of authorities by the stockholders as provided in § 611.510, the secretary of the bank and the secretary of the association shall forward to the Farm Credit Administration a certified record of the results of the stockholder votes.

(d) Each institution shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. If no petition for reconsideration is filed with the Farm Credit Administration in accordance with § 611.525, the transfer shall be effective on the date specified in the transfer plan, or at such later date as may be required by the Farm Credit Administration to grant final approval. Notice of final approval shall be transmitted to the institutions involved.

(e) The effective date of a transfer shall be a date which is not less than 50

days after the notification of the results of the stockholder vote. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date shall not be not less than 15 days after the date of the reconsideration vote.

§ 611.510 Approval procedures.

(a) Upon receipt of approval of a resolution by the Farm Credit Administration, the bank and the association shall call a meeting of their voting stockholders. Each institution shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the institution's bylaws. The stockholders meeting of the bank and the association shall be held within 60 days of receipt of the approval from the Farm Credit Administration.

(b) The notice of meeting to consider and act upon the directors' resolution shall be accompanied by an information statement that complies with the requirements of § 611.515.

(c) The proposal shall be approved if agreed to by:

(1) A majority of the stockholders of the bank voting in person or by proxy, with each association entitled to cast a number of votes equal to the number of its voting stockholders;

(2) A majority of the stockholders of the association voting, in person or by proxy;

(3) the Farm Credit Administration.

§ 611.515 Information statement.

(a) The bank and association shall prepare an information statement which will inform stockholders about the provisions of the proposed transfer of authorities and the effect of the proposal on the bank and the association.

(b) The information statement for each institution involved shall contain the following materials as applicable to the institution:

(1) A statement either on the first page of the materials or on the notice of the stockholders meeting, in capital letters and boldface type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the plan under § 611.520 and the effect of the transaction on the institution, its stockholders, and the territory to be served.

(3) A statement enumerating the potential advantages and disadvantages of the proposed transfer including, but not limited to, changes in operating efficiencies, one-stop service, branch offices, local control, and financial condition.

(4) A summary of the provisions of the charter and bylaws following the transfer that differ materially from the charter or bylaws currently existing.

(5) A brief statement by the board of directors of the institution setting forth the board's opinion on the advisability of the transfer.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the bank or the association, as applicable, for the preceding 2 fiscal years.

(ii) If the transfer of authority includes any material transfer of assets, a balance sheet and income statement of the bank and the association showing its financial condition before the transfer of authority and a pro forma balance sheet and income statement for the bank or association, as applicable, showing its financial condition after the transfer. The statements shall meet the following conditions:

(A) Such financial statements shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the institution, and operating results since the end of the last fiscal year through the end of the most recent quarter of the institution.

(B) If the request is made within 90 days after the end of the fiscal year, the institution's financial statements shall be as of the most recent fiscal yearend.

(C) If the request is made within 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, describing any assets being transferred and including data relating to nonperforming loans and related assets, allowance for loan losses, and current year-to-date chargeoffs.

(F) The amount and nature of start-up costs estimated to be associated with the transfer.

(7) A description of the type and dollar amount of any financial assistance that has been provided to the bank or the association, as applicable, during the past year; the conditions on which the financial assistance was extended, the terms of repayment or retirement, if any; and, the liability for repayment of this assistance by the bank or the association if the transfer were approved.,

(8) A statement as to whether the bank or the association, as applicable, would require financial assistance during the first 3 years of operation, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation of the association's interest rate and fee programs, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of the bank or the association.

(12) A statement of any other material fact or circumstances that a stockholder would need in order to make an informed and responsible decision, or that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy, together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of transfer provided for in § 611.520 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a transfer under this subpart.

§ 611.520 Plan of transfer.

The transfer of authorities and assets, as appropriate, shall occur pursuant to a written plan which shall be agreed to by the bank and the association involved. The written plan shall include the following:

(a) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the bank and the association and the impact, if any, of the transfer on the value of that equity.

(b) If the plan provides for a transfer of assets, a description of the terms and conditions upon which such transfer will occur, including, but not limited to, any warranties or representations regarding the value of such assets.

(c) A description of how the association would obtain loan funds after the transfer.

(d) A statement on how the expenses connected with the transfer are to be borne by the affected parties.

(e) A statement of any conditions which must be satisfied prior to the effective date of the transfer, including but not limited to approval by stockholders and approval by the Farm Credit Administration.

(f) A statement that prior to the effective date of the transfer the board of directors of the bank or the association may rescind its resolution and void the transfer, with the concurrence of the Farm Credit Administration, on the basis that:

(1) The information disclosed to stockholders contained material errors or omissions;

(2) Material misrepresentations were made to stockholders regarding the impact of the transfer;

(3) Fraudulent activities were used to obtain the stockholders' approval; or,

(4) An event occurred between the time of the vote and the transfer that would have a significant adverse impact on the future viability of the association.

(g) A designation of those persons who have authority to carry out the plan of transfer, including the authority to execute any documents necessary to perfect title, on behalf of the bank and the association.

§ 611.525 Stockholder reconsideration.

(a) Stockholders have the right to reconsider the approval of the transfer provided that a petition signed by 15 percent of the stockholders of either institution involved in the transfer is filed with the Farm Credit Administration within 35 days after the date of mailing of the notification of the final results of the stockholder vote required under § 611.505(d) and such petition is approved by the Farm Credit Administration.

(b) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the transfer. If a majority of stockholders of any institution involved in the transfer votes against the transfer, the transfer is not approved.

6. Part 611, Subpart F, consisting of §§ 611.1000 through 611.1040, is revised to read as follows:

Subpart F—Bank Mergers, Consolidations and Charter Amendments

Sec.

611.1000 General authority.
611.1010 Bank charter amendment procedures.
611.1020 Requirements for mergers or consolidations of banks.
611.1030 Board of directors of an Agricultural Credit Bank.
611.1040 Creation of new associations.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

§ 611.1000 General authority.

(a) An amendment to a bank charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the bank, the location of its offices, or the territory served.

(b) The Farm Credit Administration may make changes in the charter of a bank as may be requested by that bank and approved by the Farm Credit Administration pursuant to § 611.1010 of this part.

(c) The Farm Credit Administration may, in accordance with the provisions of the Act, make changes in the charter of a bank as may be necessary or expedient to implement the provisions of the Act.

§ 611.1010 Bank charter amendment procedures.

(a) A bank may recommend a charter amendment to accomplish any of the following actions:

(1) A merger or consolidation with any other bank or banks operating under Title I or III of the Act;

(2) A transfer of territory with any other bank operating under the same title of the Act;

(3) A change to its name or location;

(4) Any other change that is properly the subject of a bank charter;

(b) Upon approval of an appropriate resolution by the bank board, the certified resolution, together with supporting documentation, shall be submitted to the Farm Credit Administration for preliminary or final approval, as the case may be.

(c) The Farm Credit Administration shall review the material submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate. If the request is for merger, consolidation, or transfer of territory, the approval of Farm Credit Administration will be preliminary only, with final approval subject to a vote of the bank's stockholders.

(d) Following receipt of the Farm Credit Administration's written preliminary approval, the proposal shall be submitted for approval to the voting stockholders of the bank. A proposal shall be approved if agreed to by a majority of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholder meeting with each association entitled to cast a number of votes equal to the number of the association's voting shareholders.

(e) Upon approval by the stockholders of the bank, the request for final approval and issuance of the appropriate charter or amendments to charter for the banks involved shall be submitted to the Farm Credit Administration.

§ 611.1020 Requirements for mergers or consolidations of banks.

(a) As authorized under sections 7.0 and 7.12 of the Act, a bank may merge or consolidate with one or more banks operating under the same or different titles of the Act.

(b) Where two or more banks plan to merge or consolidate, the banks shall jointly submit to the Farm Credit Administration the documents itemized in §§ 611.1122(a)(1)–(4), (6), (7), 611.1122(e), and 611.1123. In interpreting those sections, the word "bank" shall be read for the word "association."

(c) No bank director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to any stockholder of the bank in connection with a bank merger or consolidation.

(d) Upon approval of a proposed bank merger or consolidation by the stockholders of each constituent bank, the following documents shall be submitted from the constituent banks to the Farm Credit Administration for final approval and issuance of the appropriate charters or amendments to charter:

(1) A certified copy of the stockholders' resolution, on which the stockholders cast their votes, from each constituent bank;

(2) A certification of the stockholder vote from the corporate secretary of each bank or from an independent third party;

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(3) An Agreement of Merger or Consolidation duly executed by those authorized to sign on behalf of each constituent bank.

§ 611.1030 Board of directors of an Agricultural Credit Bank.

Each Agricultural Credit Bank formed by the consolidation of a Farm Credit Bank and a bank for cooperatives shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution. In electing such directors each association shall be entitled to cast a number of votes equal to the number of its voting stockholders.

§ 611.1040 Creation of new associations.

Any application for the issuance of a charter to a new production credit association or Federal land bank association shall meet the requirements of sections 2.0 or 2.10, respectively, of the Act. Any application for the issuance of a charter for an agricultural credit association shall meet the requirements of section 2.0 of the Act.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

7. Section 611.1122 is amended by redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7) and paragraphs (e)(11) through (e)(16) as paragraphs (e)(16) through (e)(21); adding new paragraphs (e)(11) through (e)(15); revising paragraph (g); and by adding new paragraphs (a)(5) and (k) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(a) * * *

(5) Two signed copies of the continuing or proposed Articles of Association;

* * * * *

(e) * * *

(11) A management discussion and analysis of the financial condition and results of operation for the past 2 fiscal years for each constituent institution. This requirement can be satisfied by including the materials contained in the management discussion and analysis of each institution's most recent annual report.

(12) A discussion of any material changes in financial condition of each constituent institution from the end of the last fiscal year to the date of the interim balance sheet provided.

(13) A discussion of any material changes in the results of operations of each constituent institution with respect to the most recent fiscal-year-to-date period for which an income statement is provided.

(14) A discussion of any change in the tax status of the new institution from those of the constituent institutions as a result of merger or consolidation. A statement on any adverse tax consequences to the stockholders of the institution as a result of the change in tax status.

(15) A statement on the proposed institution's relationship with an independent public accountant, including any change that may occur as a result of the merger or consolidation.

* * * * *

(g) Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the Farm Credit Administration. Each constituent association shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. If no petition is filed with the Farm Credit Administration to reconsider the vote, upon final approval by the FCA, the merger or consolidation shall be effective on the date specified in the merger agreement or at such later date as may be required by the Farm Credit Administration to grant final approval. Notice of final approval shall be transmitted to the associations and a copy provided to the affiliated bank.

* * * * *

(k) The effective date of a merger or consolidation shall be a date which is not less than 50 days after the date of mailing of the notification of the results of the stockholder vote. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of the stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date shall be not less than 15 days after the date of the reconsideration vote.

8. Section 611.1123 is amended by redesignating paragraph (a)(9) as paragraph (a)(11), adding new paragraphs (a)(9) and (a)(10), and by adding paragraph (c) to read as follows:

§ 611.1123 Merger or consolidation agreements.

(a) * * *

(9) The capitalization plan and capital structure for the new institution and a statement that the capitalization plan shall comply with applicable FCA regulations.

(10) Provision for the employee benefits plan, its subsequent continuation or adaptation by the board of directors of the proposed institution following the merger or consolidation.

* * * * *

(c) Stockholders have the right to reconsider the approval of the merger provided that a petition signed by 15 percent of the stockholders eligible to vote of one or more of the constituent institutions is filed with the Farm Credit Administration within 35 days after the date of mailing the notification of the final results of the stockholder vote required under § 611.1122(g). The Farm Credit Administration will review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition complies with the applicable requirements, a special stockholders meeting shall be called by the institution to reconsider the vote. If a majority of the stockholders voting, in person or by proxy, of any one of the constituent institutions that is a party to the merger vote against the merger, the merger shall not take place.

9. Subpart O, consisting of §§ 611.1190 through 611.1198, is added to read as follows:

Subpart O—Special Reconsideration of Mergers

Sec.

611.1190 General.
611.1191 Petitions and resolutions.
611.1192 Requirements for petitions.
611.1193 Filing date—additional materials.
611.1194 Farm Credit Administration review.
611.1195 Stockholder vote.
611.1196 Payment of expenses.
611.1197 Information statement.
611.1198 Plan of reorganization.

Subpart O—Special Reconsideration of Mergers

§ 611.1190 General.

The regulations in this Subpart O implement the provisions of the Agricultural Credit Act of 1987 relating to special reconsideration of voluntary mergers and consolidations that occurred after December 23, 1985 and prior to January 6, 1988. The regulations establish the procedures for petitions, disclosures, and stockholder votes for reconsideration of such mergers and consolidations and, if approved by stockholders, for the establishment of

separate associations. The regulations shall apply to any request to reorganize an association that was created by merger or consolidation and became effective during the period, December 24, 1985 to January 5, 1988. For the purposes of this part, the term "merger" includes a merger or consolidation. The regulations in this subpart are applicable only to those associations that were created by the merger of two or more associations after December 23, 1985 and before January 6, 1988.

§ 611.1191 Petitions and resolutions.

(a) The voting stockholders of an association who were stockholders of a predecessor association may seek to have the stockholders reconsider their association's participation in such merger by filing a petition for reconsideration with the Farm Credit Administration. The purpose of the petition shall be either:

(1) The withdrawal of one or more predecessor associations from the existing association; or

(2) The general reorganization into two or more separate associations of the existing association that was formed by the merger of three or more predecessor associations.

(b) The board of directors of an association may adopt a resolution proposing the general reorganization of the association into two or more separate associations and the submission of such proposal to the stockholders for a vote.

§ 611.1192 Requirements for petitions.

(a) In order for a petition to be acted upon, the petition must be signed by 15 percent or more of the voting stockholders of the existing association who were stockholders of each of the predecessor associations that seeks to withdraw from the existing association, or 5 percent of the total number of voting stockholders of the existing association if the petition seeks to reorganize the existing association that was formed by the merger of three or more associations.

(b) Each petition shall include the signature, printed name and the full address of each voting stockholder on the petition. If the petition proposes the withdrawal of one or more predecessor associations, the association shall certify that the signatures on the petition are the signatures of persons who were voting stockholders of such predecessor associations and that such persons continue to have their farming operations in the territory that was served by the predecessor association. If the petition proposes the reorganization of the entire association, the association shall certify that the signatures are from voting stockholders of the association.

(c) The petition shall describe the manner in which the existing association will be reorganized and the territory in which each proposed separate association would operate. In the case of a withdrawal of an association, the withdrawing association shall have the same chartered territory it had prior to the merger.

(d) The certification process shall be completed and the petition forwarded to the Farm Credit Administration within 5 working days of the date of its receipt by the association. The filing date of a petition or resolution shall be the date the petition or resolution is received by the FCA.

(e) No petition will be considered by the Farm Credit Administration if filed later than (*1 year after the effective date of this section*).

§ 611.1193 Filing date—additional materials.

(a) The persons who are designated as directors of the initial board(s) of directors of the resulting association(s) shall prepare the additional materials provided for in this section. The existing association shall provide such assistance to the initial board(s) as the initial board(s) shall reasonably request in the preparation of these additional materials. Not later than 60 days after the filing of a petition or resolution, the initial board(s) shall transmit the additional materials provided for in this section to the Farm Credit Administration.

(b) The additional materials submitted in connection with a petition or resolution shall include the following:

(1) The proposed charter for each of the separate associations and the proposed effective date of the withdrawal or reorganization;

(2) A statement of the reasons for the proposed reorganization of the existing association or the proposed withdrawal of one or more associations from the existing association;

(3) A copy of the reorganization plan as required under § 611.1198 of this part;

(4) An information statement that complies with the requirements of § 611.1197.

(5) A notice of meeting to act upon the petition or resolution.

(6) Any additional information that the petitioning stockholders or the board of directors wishes to submit in support of its request or that the Farm Credit Administration requests.

§ 611.1194 Farm Credit Administration Review.

(a) Upon receipt of the petition or resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the association who shall notify the board of directors and the stockholders of such denial.

(c) Upon approval of the proposed withdrawal or reorganization by the stockholders as provided for in § 611.1195, the secretary of the association shall forward to the Farm Credit Administration a certification of the stockholder vote and a signed copy of the Articles of Association.

(d) On receipt of the certification and Articles of Association as required in paragraph (c) of this section, the Farm Credit Administration shall issue charters or amended charters as are necessary to reflect the territory to be served by the resulting associations.

§ 611.1195 Stockholder vote.

(a) Upon approval of a petition or resolution by the Farm Credit Administration, the association shall call a meeting of its voting stockholders. The association shall notify each stockholder that a petition or resolution has been filed and that a meeting will be held in accordance with the association's bylaws. The stockholders meeting shall be scheduled for a date which is no later than 60 days after the date the Farm Credit Administration gives preliminary approval.

(b) In the case of a petition to withdraw from the existing association, ballots shall be sent to each stockholder of a existing association who would be a stockholder of one of a separate association. The petition, as it applies to each such separate association, shall be approved, by stockholders who vote in person or by proxy, if agreed to by a majority of the stockholders who would be served by the separate association.

(c) Approval of the resolution or petition to reorganize the entire association into two or more associations shall require the affirmative vote of a majority of the stockholders voting, in person or by proxy, of the existing association.

§ 611.1196 Payment of expenses.

(a) The expenses associated with the consideration of a petition or resolution will be borne as provided for in this section unless an agreement that

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otherwise designates how these expenses will be paid has been agreed to by the parties, in which case that agreeement will prevail.

(b) The expenses associated with the consideration of a petition or resolution to reorganize the existing association into two or more associations will be borne by the existing association.

(c) The expenses associated with the consideration to withdraw a predecessor association from the existing association will be borne as follows:

(1) If the petition is approved, the resulting association will pay the expenses associated with the petition and vote.

(2) If the petition is disapproved, the existing association will pay the expenses associated with the petition and vote.

§ 611.1197 Information statement.

(a) An information statement shall be prepared which discloses certain information regarding the existing association and (1) each association that is proposed to be withdrawn from the existing association, or (2) each association that would result from the total reorganization of the existing association.

(b) The information statement shall be certified as true, complete and accurate by the persons designated as directors of the initial boards(s) of directors of the resulting association(s) and shall contain the following materials:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the reorganization plan and the effect of the reorganization on each proposed association, their stockholders, and the territory to be served.

(3) A statement enumerating the anticipated advantages and potential disadvantages of the proposed reorganization which may include, but are not limited to, changes in operating efficiencies, one-stop service, branch offices, local control, financial condition, etc.

(4) A summary of the provisions of the charter and bylaws of the proposed association that differ materially from the charter or bylaws of the existing association.

(5) A brief statement by the board of directors of the existing association setting forth the board's opinion on the advisability of the separation or reorganization.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the existing association for the preceding 2 fiscal years.

(ii) A balance sheet and income statement of the existing association showing its financial condition before the separation or reorganization and the pro forma balance sheet and income statement of each proposed association showing its financial condition which meet the following conditions:

(A) The financial statements of the existing and each proposed association (collectively, "constituent financial statements") shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the existing association, and operating results since the end of the last fiscal year through the end of the most recent quarter of the existing association.

(B) If the request is made within 90 days after the end of the fiscal year, the constituent financial statements shall be based on the most recent fiscal yearend financial statements of the existing association.

(C) If the request is made within 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, including data relating to nonperforming loans and related assets, allowance for loan losses, and current year-to-date chargeoffs.

(7) A description of the type and dollar amount of any financial assistance that has been provided to the existing association during the past year; the conditions on which the financial assistance was extended; the terms of repayment or retirement, if any; and the liability for repayment of this assistance by the existing and proposed associations if the withdrawal or reorganization were approved.

(8) A statement as to whether the proposed association would require financial assistance during the first 3 years of its operation as a new association, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and to the proposed associations, and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation of each proposed association's interest rate and fee programs, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of each proposed association as of its effective date.

(12) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed and responsible decision, or that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy, together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of reorganization provided for in § 611.1198 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a reorganization under this subpart.

§ 611.1198 Plan of reorganization.

(a) The withdrawal of an association or other reorganization under this subpart shall occur pursuant to a written plan. There shall be a written plan of reorganization for each association to be withdrawn from an existing association or each association to be created by the complete reorganization of an existing association.

(b) A written plan shall include, but not be limited to, all of the following provisions:

(1) The proposed Articles of Association which shall contain the following:

(i) The proposed name and headquarters of the association.

(ii) The territory to be served by the association.

(iii) The purposes for which the association is being formed.

(iv) The powers and authorities to be exercised by the association in carrying out its functions under Title II of the Act.

(v) A statement which shall provide that the corporate existence of the association shall commence upon issuance of its charter by the Farm Credit Administration and shall continue until dissolved in accordance with the Act.

(vi) The signatures of those persons who choose to establish the association and a statement signed by each such person establishing eligibility to borrow from the association in which such person will become a stockholder.

(2) As an attachment to the Articles of Association, the proposed bylaws of the new association.

(3) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the existing association who would be served by the proposed association.

(4) A statement on the formula for the retirement and transfer of stock, participation certificates and equities held by stockholders of the existing association who would become stockholders of the proposed association, and the issuance of an equivalent amount of stock, participation certificates and equities by the proposed association to its stockholders.

(5) A provision for the distribution of assets and liabilities of the existing association and a description of the basis upon which the distribution is to be made to the proposed association.

(6) A statement on how the expenses connected with the reorganization are to be borne by the affected parties in accordance with § 611.1196.

(7) The names of the persons who will serve as the initial board of directors until the first annual meeting of stockholders following the reorganization. Any director of an existing association who is eligible to serve as a director of the proposed association may be designated as a member of the initial board of directors for a period not to exceed his or her current term, after which he or she must stand for reelection.

(8) A statement of any conditions which must be satisfied prior to the effective date of the proposed reorganization, including but not limited to, approval by stockholders and issuance of a charter by the Farm Credit Administration.

(9) A statement that prior to the effective date of the reorganization, the petitioning stockholders may withdraw their petition or the board of directors of the existing association may rescind its resolution, with the concurrence of the Farm Credit Administration, on the basis that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the reorganization;

(iii) Fraudulent activities were used to obtain the stockholders' approval; or,

(iv) An event occurred between the time of the vote and the reorganization that would have a significant adverse impact on the future viability of the proposed association.

(10) A designation of those persons who have authority to carry out the plan of reorganization, including the authority to execute any documents necessary to perfect title, on behalf of the proposed association.

PART 612—PERSONNEL ADMINISTRATION

10. The authority citation for Part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

Subpart B—Standards of Conduct for Directors, Officers and Employees

11. Section 612.2200 is removed and reserved.

§ 612.2200 [Removed and reserved]

PART 618—GENERAL PROVISIONS

12. The authority citation for Part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2182, 2200, 2211, 2218, 2243, 2244, 2252.

13. Subpart D consisting of § 618.8100, and Subpart E consisting of § 618.8160 are removed and reserved.

Subpart D—[Removed and reserved]

Subpart E—[Removed and reserved]

PART 620—DISCLOSURE TO SHAREHOLDERS

14. The authority citation for Part 620 is revised to read as follows:

Authority: Secs. 5.17, 5.19; 12 U.S.C. 2252, 2254; sec. 424 of Pub. L. 100-233.

15. Subpart D, consisting of §§ 620.30 through 620.32, is added to read as follows:

Subpart D—Bank Director Disclosure Requirements

Sec.

620.30 Disclosure statement for bank director candidates.
620.31 Contents of disclosure statements.
620.32 Prohibition against incomplete, inaccurate, or misleading disclosure.

Subpart D—Bank Director Disclosure Requirements

§ 620.30 Disclosure statement for bank director candidates.

Each bank shall adopt policies and procedures that assure that a disclosure statement is prepared by each candidate for election by the stockholders to the bank board. The banks shall provide a form providing for the information required and distribute or mail copies of completed and signed disclosure statements to stockholders with the election ballots. No person may be a candidate for bank director who does not make the disclosures required by this subpart.

§ 620.31 Contents of disclosure statements.

Disclosure statements shall include the following information:

(a) A statement of the institution's policies, if any, on loans to and transactions with directors of the bank.

(b) Candidate's name, residential address, business address if any, citizenship, business experience during the last 5 years including principal occupation and employment during the last 5 years, a list of any business entities on whose board of directors the candidate serves and state the principal business in which the entities are engaged, and any information pertinent to the creation of a nepotistic relationship upon election to the bank board.

(c) Transactions other than loans. The disclosure statement should describe briefly any transaction or series of transactions other than loans that occurred since the last annual meeting between the bank and the candidate, any member of the immediate family of such person, or any organization with which such person is affiliated, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic

payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(d) Loans to director candidates.

(1) To the extent applicable, state that the bank has had loans outstanding during the last full fiscal year-to-date to the candidate, his or her immediate family members, and any organizations with which such persons are affiliated that:

(i) Were made in the ordinary course of business;

(ii) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(2) To the extent applicable, state that no loan to a candidate, or to any organization affiliated with the candidate, or to any immediate family member who resides in the same household as the candidate or in whose loan or business operation the candidate has a material financial or legal interest, involved more than the normal risk of collectibility;

(3) If the conditions stated in paragraphs (d) (1) and (2) of this section do not apply to the loan(s) of the candidates or organizations specified therein with respect to such loans, state:

(i) The name of the candidate to whom the loan was made or to whose relative or affiliated organization the loan was made;

(ii) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year;

(iii) The nature of the loan(s);

(iv) The amount outstanding as of the latest practicable date;

(v) The reasons the loan does not comply with the criteria contained in this section;

(vi) If the loan does not comply with this section, the rate of interest payable on the loan and the repayment terms;

(vii) If the loan does not comply with this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectibility.

(e) Involvement in certain legal proceedings. The disclosure statement should describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of the candidate:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of the candidate, or any partnership in which the candidate was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which the candidate was a senior officer at or within 2 years before the time of such filing;

(2) The candidate was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) The candidate was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting the candidate from engaging in any type of business practice.

§ 620.32 Prohibition against incomplete, inaccurate, or misleading disclosure.

No employee or director or candidate for director of the bank shall make any disclosure to stockholders with respect to an election that is incomplete, inaccurate, or misleading. When any such person makes disclosure, that, in the judgment of the Farm Credit Administration is incomplete, inaccurate, or misleading, whether or not such disclosure is made pursuant to this subpart, the Farm Credit Administration may direct such institution or person to make such additional or corrective disclosure as is necessary to provide stockholders with full and fair disclosure.

Dated: December 8, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-28760 Filed 12-14-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co. providing for safe and effective use of a Type A medicated article containing monensin in manufacturing a Type C feed. The feed will be used as a supplement to the total ration to improve the feed efficiency of mature reproducing beef cows.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is sponsor of NADA 95-735. The NADA currently provides for use of a Type A medicated article containing 60 grams of monensin (as monensin sodium) per pound in manufacturing Type C medicated feeds for the following production claims: (1) Improved feed efficiency for feedlot cattle fed in confinement for slaughter (50 to 360 milligrams of monensin per head per day), and (2) increased rate of weight gain for pasture cattle—slaughter, stocker, feeder, and dairy and beef replacement heifers weighing more than 400 pounds (50 to 200 milligrams of monensin per head per day). The firm has filed a supplemental NADA providing for addition of a third production claim to the labeling of the Type A article. The supplement would permit manufacture of a Type C medicated feed (25 to 400 grams per ton) which when used to supplement (50 to 200 milligrams of monensin per head per day) the total ration of reproducing beef cows, will improve their feed efficiency.

The supplemental NADA is approved and 21 CFR 558.355 is amended by adding a new paragraph (f)(3)(vi) to reflect the approval. The basis for the approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch

(address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.355 is amended by adding a new paragraph (f)(3)(vi) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(vi) *Amount per ton.* Monensin, 25 to 400 grams.

(*a*) *Indications for use.* Improved feeding efficiency for mature reproducing beef cows receiving supplemental feed.

(*b*) *Limitations.* Thoroughly mix the appropriate amount of Type A medicated article or Type B medicated feed with grain and roughage to provide a supplemental feed having a final concentration of 25 to 400 grams of monensin per ton. The final concentration should be contained in a minimum of 1 pound of feed. Either hand-feed or mix into the total ration. Feed continuously at a rate of not less than 50 nor more than 200 milligrams per head per day. During the first 5 days of feeding, cattle should receive no more than 100 milligrams per head per day.

* * * * *

Dated: December 5, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88–28796; Filed 12–14–88; 8:45 am]

BILLING CODE 4160–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24906). Appendix B to the interim regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in December 1988.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8823 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate use in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") interim regulation on Payment of Premiums (53 FR 24906 (June 30, 1988)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Federal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the interim regulation containing a table setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter.

The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in December 1988. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects 29 CFR Part 2610

Employee Benefit Plans, Pension Insurance, and Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry to read as follows. The explanatory text is republished for the convenience of the reader and remains unchanged.

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APPENDIX B—INTEREST RATES FOR VALUING VESTED BENEFITS

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
• • • • •	
December 1988	7.22

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC, on this 13th day of December, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-28990 Filed 12-14-88; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2621

Limitation on Guaranteed Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the Limitation on Guaranteed Benefits regulation contains the maximum guaranteeable pension benefit that may be paid by the Pension Benefit Guaranty Corporation under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") to a plan participant in a covered single-employer pension plan that terminates in 1989. Section 4022(b)(3) of ERISA provides that the maximum benefit guaranteeable by the PBGC is based on the contribution and benefit base determined under section 230 of the Social Security Act. An increase in the contribution and benefit base increases the dollar amount of the maximum guaranteeable benefit. This amendment is needed to include the dollar amount of the increased maximum guaranteeable benefit for 1989 in the regulation.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") entitled Limitation on Guaranteed Benefits (29 CFR Part 2621) describes the limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"). One of the limitations, set forth in section 4022(b)(3) of ERISA, is a dollar ceiling on the amount of the monthly benefit that may be paid by the PBGC. Subparagraph (B) of section 4022(b)(3) provides that the amount of monthly benefit payable in the form of a life annuity beginning at age 65 shall not exceed

$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200].

In the Social Security Amendments of 1977, special increases were added to the contribution and benefit base. However, the amended Social Security Act specifically states that, for the purpose of section 4022(b)(3)(B) of ERISA, the contribution and benefit base for each year after 1976 will be the base that would have been determined for each year if the law in effect immediately before the amendment had remained in effect without change. 42 U.S.C. 430(d) (1982).

The PBGC has been notified by the Social Security Administration that the contribution and benefit base for 1989 that is to be used to calculate the PBGC maximum guaranteeable benefit is $35,700. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR 2621.3(a)(2) is: $750 multiplied by $35,700/$13,200. Thus, the maximum benefit guaranteeable by the PBGC in 1989 will be $2,028.41 per month in the form of a life annuity commencing at age 65. If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount will be the actuarial equivalent of $2,028.41 per month.

Appendix A to Part 2621 lists the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in each year from 1974 through 1988. This amendment updates Appendix A for plans that terminate in 1989.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and this amendment makes no change in its method of calculation but simply lists the 1989 maximum guaranteeable benefit amount for the public's knowledge, general notice of proposed rulemaking is not required. Moreover, because the 1989 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1989, and is not dependent on the issuance of this regulation, the PBGC finds that good cause exists for making this amendment effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2621

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2621 of Subchapter C, Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2621—LIMITATION ON GUARANTEED BENEFITS

1. The authority citation for Part 2621 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b.

2. Appendix A to Part 2621 is amended by adding a new entry in chronological order to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix A to Part 2621—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2621.3(a)(2) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
• • • • •	
1989	2,028.41

Issued at Washington, DC, this 8th day of December, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-28863 Filed 12-14-88; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of January 1989.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•		•		•		•		•			•		•			
January 1989	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 8th day of December 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-28862 Filed 12-15-88; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD8-88-17]

Anchorage Grounds; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard believes that due to the critical revetment work conducted by the Corps of Engineers and the subsequent loss of deep draft anchorage space in Upper Sunshine Anchorage, the enlargement of Lower Sunshine Anchorage and La Place Anchorage is needed to increase anchorage space. The Coast Guard is amending the anchorage regulations on the Lower Mississippi River by enlarging Lower Sunshine Anchorage upriver 0.1 mile and enlarging La Place Anchorage upriver 0.4 mile.

Extending the two anchorages will provide for much needed deep draft anchorage space and is in the best interest of navigation safety.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: LTJG J.D. Irino, Project Officer, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, Tel. (504) 589-4686.

SUPPLEMENTARY INFORMATION: On September 20, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 36470). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of these regulations are LTJG J.D. Irino, Project Officer, c/o Commander, Eighth Coast Guard District Aids to Navigation Branch, and CDR J.A. Unzicker, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments

This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110. A letter of no objection was received from the Bureau

of Mines of the Department of the Interior on the notice of proposed rulemaking. They commented that mineral resources would not be impacted by the proposed rule.

Economic Assessment and Certification

The changes to the regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This regulation will extend Lower Sunshine Anchorage and La Place Anchorage. The added length is not expected to have any significant effect on navigation, and, therefore, it is determined that the impact will be minimal.

Since the impact of this change is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 110.195(a) (21) and (25) are revised to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(21) *La Place Anchorage.* An area 0.7 mile in length along the left descending bank of the river, 600 feet wide, extending from mile 134.7 to mile 135.4 above Head of Passes.

* * * * *

(25) *Lower Sunshine Anchorage.* An area 1.0 mile in length along the left descending bank of the river, 800 feet wide, extending from mile 165.0 to mile 166.0 above Head of Passes.

* * * * *

Dated: December 5, 1988.

A.E. Henn,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 88–28858 Filed 12–14–88; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

Regulations Implementing the Presidential Records Act

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule implements the provisions of the Presidential Records Act of 1978 (Pub. L. No. 95–591, 92 Stat. 2523–27, as amended by Pub. L. No. 98–497, 98 Stat. 2287), codified at 44 U.S.C. 2201–07. As required by the Act, this rule contains:

1. Provisions for advance public notice and description of any Presidential records determined by the Archivist of the United States to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

2. Provisions for providing notice to a former President when materials to which access would otherwise be restricted are to be made available in accordance with 44 U.S.C. 2205(2) in response to judicial process, to an incumbent President, or to Congress.

3. Provisions for notice to the former President when disclosure of a document may adversely affect the former President's rights or privileges.

4. Provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies concerning materials which may be subject to 5 U.S.C. 552(b)(7).

This rule implements only the statutory scheme established by the Presidential Records Act, and does not establish policies or procedures governing the assertion of or response to any constitutionally based privileges that may be asserted by an incumbent or former President.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Gary L. Brooks or Christopher Runkel, Legal Services Staff, (202) 523–3618.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on October 12, 1988 (53 FR 39747). No comments were received on the proposed rule. Accordingly, the proposed rule is adopted without change in this final rule.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1270

Presidential records.

For the reasons set forth in the preamble, Chapter XII of Title 36 is amended by adding a new Part 1270 to Subchapter E to read as follows:

PART 1270—PRESIDENTIAL RECORDS

Subpart A—General Provisions

Sec.
1270.10 Scope of part.
1270.12 Application.
1270.14 Definitions.

Subpart B—Actions Taken on Behalf of Former Presidents

1270.20 Designation of person or persons to act for former President.
1270.22 When Archivist may act for former President.

Subpart C—Disposal of Presidential Records

1270.30 Disposal of Presidential Records by incumbent President.
1270.32 Disposal of Presidential Records in the custody of the Archivist.

Subpart D—Access to Presidential Records

1270.40 Identification of restricted records.
1270.42 Denial of access to public; right to appeal.
1270.44 Exceptions to restricted access.
1270.46 Notice of intent to disclose Presidential Records.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

1270.50 Consultation with law enforcement agencies.

Authority: The Presidential Records Act of 1978, Pub. L. 95–591, 92 Stat. 2523–27, as amended by the National Archives and Records Administration Act of 1984, Pub. L. 98–497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201–07).

Subpart A—General Provisions

§ 1270.10 Scope of part.

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95–591, 92 Stat. 2523–27, as amended by Pub. L. No. 98–497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201–07), by setting forth the policies and procedures governing preservation, protection, and

disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981. Nothing in these regulations is intended to govern procedures for assertion of, or response to, any constitutionally based privilege which may be available to an incumbent or former President.

§ 1270.12 Application.

(a) These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.

(b) Vice-Presidential records shall be subject to the provisions of this part in the same manner as Presidential records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, shall be the same as the President's duties and responsibilities with respect to Presidential records. The Archivist's authority with respect to Vice-Presidential records shall be the same as the Archivist's authority with respect to Presidential records, except that the Archivist may, when he determines it to be in the public interest, enter into an agreement with a non-Federal archival repository for the deposit of Vice-Presidential records.

§ 1270.14 Definitions.

For the purposes of this Part—

(a) The terms "documentary material", "Presidential records", "personal records", "Archivist", and "former President" have the meanings given them by 44 U.S.C. 2201 (1)–(5), respectively.

(b) The term "agency" has the meaning given it by 5 U.S.C. 551(1) (A)–(D) and 552(f).

(c) The term "Presidential archival depository" has the meaning given it by 44 U.S.C. 2101(1).

(d) The term "Vice-Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the Vice President, his immediate staff, or a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term "Presidential records."

(e) The term "filed" means the date something is received in the office of the official to whom it is addressed.

Subpart B—Actions Taken on Behalf of Former Presidents

§ 1270.20 Designation of person or persons to act for former President.

(a) A President or former President may designate some person or persons to exercise, upon death or disability of the President or former President, any or all of the discretion or authority granted to the President or former President by chapter 22 of Title 44, United States Code.

(b) When a President or former President designates a person or persons to act for him pursuant to paragraph (a) of this section, this designation shall be effective only if the Archivist has received notice of the designation before the President or former President dies or is disabled.

(c) The notice required by paragraph (b) of this section shall be in writing, and shall include the following information:

(1) Name(s) of the person or persons designated to act for the President or former President;

(2) The current addresses of the person or persons designated; and

(3) The records, identified with reasonable specificity, over which the designee(s) will exercise discretion or authority.

§ 1270.22 When Archivist may act for former President.

In those instances where a President has specified, in accordance with 44 U.S.C. 2204(a), restrictions on access to Presidential records, but has not made a designation under § 1270.20 of this subpart, the Archivist shall, upon the death or disability of a President or former President, exercise the discretion or authority granted to a President or former President by 44 U.S.C. 2204.

Subpart C—Disposal of Presidential Records

§ 1270.30 Disposal of Presidential records by incumbent President.

A President may, while in office, dispose of any Presidential records which in his opinion lack administrative, historical, informational, or evidentiary value if one of the following two sets of requirements is satisfied:

(a)(1) The President has obtained the written views of the Archivist concerning the proposed disposal; and

(2) The Archivist states in his written views to the President that he does not intend to request, with respect to the President's proposed disposal of Presidential records, the advice of the Committees on Rules and Administration and Governmental Affairs of the Senate, and the Committees on House Administration and Government Operations of the House of Representatives because he does not consider—

(i) The records proposed for disposal to be of special interest to the Congress; or

(ii) Consultation with the Congress concerning the proposed disposal to be in the public interest; or

(b)(1) The President has obtained the written views of the Archivist concerning the proposed disposal;

(2) The Archivist states in his written views either—

(i) That the records proposed for disposal may be of special interest to the Congress; or

(ii) That consultation with the Congress concerning the proposed disposal is in the public interest; and

(3) The President submits copies of the proposed disposal schedule to the Committees on Rules and Administration and Governmental Affairs of the Senate and the Committees on House Administration and Government Operations of the House of Representatives at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress *sine die*, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

§ 1270.32 Disposal of Presidential Records in the custody of the Archivist.

(a) The Archivist may dispose of Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

(b) When Presidential records are scheduled for disposal pursuant to paragraph (a) of this section, the Archivist shall publish a notice of this disposal in the **Federal Register** at least 60 days before the proposed disposal date.

(c) The notice required by paragraph (b) of this section, shall include the following:

(1) A reasonably specific description of the records scheduled for disposal; and

(2) A concise statement of the reason for disposal of the records.

(d) Publication in the **Federal Register** of the notice required by paragraph (b) of this section shall constitute a final agency action for purposes of review

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under chapter 7 of Title 5, United States Code (5 U.S.C. 701–06).

Subpart D—Access to Presidential Records

§ 1270.40 Identification of restricted records.

(a) If a President, prior to the conclusion of his term of office or last consecutive term of office, as the case may be, specifies durations, not to exceed 12 years, for which access to certain information contained in Presidential records shall be restricted, in accordance with 44 U.S.C. 2204, the Archivist or his designee shall identify the Presidential records affected, or any reasonably segregable portion thereof, in consultation with that President or his designated representative(s).

(b) The Archivist shall restrict public access to the information contained in those records identified as affected until—

(1) The date on which the former President waives the restriction on disclosure of the record or information contained within;

(2) The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted; or

(3) The Archivist has determined that the former President or an agent of the former President has placed in the public domain through publication a restricted record or a reasonably segregable portion thereof, if this date is earlier than either of the dates specified in paragraphs (b)(1) or (2) of this section.

§ 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter "the requester") because of a determination that the record or a reasonably segregable portion thereof was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the Assistant Archivist for Presidential Libraries (NL), Washington, DC 20408.

(b) Appeals shall be filed no later than 10 working days after the requester receives written notification that access to Presidential records has been denied.

(c) Appeals shall be in writing and shall set forth the reason(s) why the requester believes access to the records sought should be allowed. The requester shall identify the specific records sought.

(d) Upon receipt of an appeal, the Assistant Archivist for Presidential Libraries shall have 30 working days from the date an appeal is filed to consider the appeal and to respond in writing to the requester. The Assistant Archivist's response shall state whether or not the Presidential records requested are to be released and the basis for this determination. The decision of the Assistant Archivist to withhold release of Presidential records is final and not subject to judicial review.

§ 1270.44 Exceptions to restricted access.

(a) Notwithstanding any restrictions on access imposed pursuant to section 2204 or these regulations, and subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available in the following instances:

(1) Pursuant to subpoena or other judicial process properly issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the records sought contain information which is needed for the conduct of current business of his office and is not otherwise available;

(3) To either House of Congress, or, to the extent of matter within its jurisdiction, to a Congressional committee or subcommittee if the records sought contain information which is needed for the conduct of business within its jurisdiction and is not otherwise available.

(b) Requests by an incumbent President, a House of Congress, or a Congressional committee or subcommittee pursuant to paragraph (a) of this section shall be addressed to the Archivist. All requests shall be in writing and, where practicable, identify the records sought with reasonable specificity.

(c) Presidential records of a former President shall be available to the former President or his designated representative upon request.

§ 1270.46 Notice of intent to disclose Presidential records.

(a) The Archivist or his designee shall notify a former President or his designated representative(s) before any Presidential records of his Administration are disclosed.

(b)(1) The notice given by the Archivist or his designee shall:

(i) Be in writing;

(ii) Identify the particular records with reasonable specificity;

(iii) State the reason for the disclosure; and

(iv) Specify the date on which the record will be disclosed.

(2) In the case of records to be disclosed in accordance with § 1270.44, the notice shall also:

(i) Identify the requester and the nature of the request;

(ii) Specify whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category of restriction within which the record to be disclosed falls; and

(iii) Specify the date of the request.

(c) If, after receiving the notice required by paragraph (a) of this section, a former President raises rights or privileges which he believes should preclude the disclosure of a Presidential record, and the Archivist nevertheless determines that the record in question should be disclosed, in whole or in part, the Archivist shall notify the former President or his representative of this determination. The notice given by the Archivist or his designee shall:

(1) Be in writing;

(2) State the basis upon which the determination to disclose the record is made; and

(3) Specify the date on which the record will be disclosed.

(d) The Archivist shall not disclose any records covered by any notice required by paragraphs (a) or (c) of this section for at least 30 calendar days from receipt of the notice by the former President, unless a shorter time period is required by a demand for Presidential records under § 1270.44.

(e) Copies of all notices provided to former Presidents under this section shall be provided at the same time to the incumbent President.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

§ 1270.50 Consultation with law enforcement agencies.

(a) For the processing of Presidential records compiled for law enforcement purposes that may be subject to 5 U.S.C. 552(b)(7), the Archivist shall request specific guidance from the appropriate Federal agency on the proper treatment of a record if there is no general guidance applicable, if the record is particularly sensitive, or if the type of record or information is widespread throughout the files.

(b) When specific agency guidance is requested under paragraph (a) of this section, the Archivist shall notify the appropriate Federal agency of the decision regarding disclosure of the specific documents. Notice shall include the following:

(1) A description of the records in question;

(2) Statements that the records described contain information compiled for law enforcement purposes and may be subject to the exemption provided by 5 U.S.C. 552(b)(7) for records of this type; and,

(3) The name of a contact person at NARA.

(c) Agency guidance under this section is not binding on the Archivist. The final determination on whether Presidential records may be subject to the exemption in 5 U.S.C. 552(b)(7) is the Archivist's responsibilty.

Dated: December 2, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-28768 Filed 12-14-88; 8:45 am]

BILLING CODE 7515-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Residency Training in General Internal Medicine and General Pediatrics

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations revise the regulations governing the Grants for Residency Training in General Internal Medicine or General Pediatrics, authorized by section 784 of the Public Health Service Act (the Act), to conform the regulations with amendments made by the Omnibus Budget Reconciliation Act of 1981. These amendments added a provision for grants for projects to plan, develop, and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and to provide traineeships or fellowships to participants in such programs. In addition, these final regulations conform the existing regulations with amendments made by the Health Professions Training Assistance Act of 1985, and the Compact of Free Association Act of 1985, as well as other changes which are clarifying and ministerial in nature.

DATE: These regulations are effective December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Donald L. Weaver, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-6190.

SUPPLEMENTARY INFORMATION: On May 3, 1988, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (53 FR 15710), a Notice of Proposed Rulemaking (NPRM) to amend the existing regulations governing the Grants for Residency Training in General Internal Medicine and General Pediatrics, authorized by section 784 of the Public Health Service Act (the Act). The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, amended section 784 by expanding the authority to support projects to plan, develop, and operate a program for the training of physicians who plan to teach in a general internal medicine or general pediatrics training program and to provide for financial assistance in the form of traineeships and fellowships to physicians who are participants in any such program and who plan to teach in a general internal medicine or general pediatrics training program.

In accordance with this provision, the Department proposed to amend the existing regulations by including the following major revisions:

1. Adding the following terms to § 57.3102, entitled "*Definitions.*":

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibility.

"Trainee" means an allopathic or osteopathic general internist or general pediatrician participating in a faculty development training program supported by a grant under section 784 and receiving stipend support from such grant.

2. Adding to § 57.3105, entitled "*Project requirements.*", the following new project requirements for a faculty development program:

(a) Applicants would be required to have a curriculum which emphasizes improvement of teaching skills and techniques, uses both didactic and experimental teaching strategies, and directly applies to general internal medicine and/or general pediatrics.

(b) Training programs of 9 or more months duration would be required to include both a research and administrative component.

(c) Financial assistance to trainees would be required to be limited to a minimum of 3 months (full time) and a maximum of 24 months.

3. Adding to § 57.3106, entitled "*How will applications be evaluated?*", an additional review criterion for the evaluation of the faculty development program to assure that potential applicants have a training program which is consistent with the definition of a "practice of general internal medicine or general pediatrics", as defined under § 57.3102.

As part of a newly implemented policy, the Department recently revised § 57.3106 to remove all non-statutory funding priorities and included in the regulations only those funding priorities that are in the statute. In accordance with this policy, the Department will announce, and solicit public comment on, any special funding factors related to national needs in periodic notices in the **Federal Register**. Further, the removal of the funding priorities previously codified does not necessarily preclude the announcement of all or a part of the funding priorities in a forthcoming **Federal Register** notice.

In addition to the above changes, the NPRM included a number of technical and clarifying changes to conform the regulations with amendements made by Pub. L. 97-35, Pub. L. 99-129, the Health Professions Training Assistance Act of 1985, and Pub. L. 99-239, the Compact of Free Association Act of 1985.

The public comment period on the proposed regulations closed on July 5, 1988. The Department received no comments. Therefore, the amendments set out in the May 3, 1988, NPRM are adopted as proposed.

These final regulations also include an additional technical change to amend the existing regulations by adding the Form PHS application number and the OMB approval number for the application form and insructions in the footnote of § 57.3103, entitled "*Who is entitled to apply for a grant?*" Since this amendment is of a technical nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the

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Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act

The recordkeeping and reporting requirements in § 57.3104 and § 57.3111 for this grant program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (OMB Approval Number 0915–0060). Section 57.3105 does not require clearance and therefore, the approval number shown at the end of this section text is removed.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

(Catalog of Federal Domestic Assistance, No. 13.900, Grants for Faculty Development in General Internal Medicine and/or General Pediatrics)

Accordingly, 42 CFR Part 57, Subpart FF is amended as set forth below:

Dated: October 21, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: November 23, 1988.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The title of 42 CFR Part 57, Subpart FF is revised to read as follows:

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics

2. The authority citation for Subpart FF is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 784, Public Health Service Act, 90 Stat. 2315, as amended by 95 Stat. 922–923 and 99 Stat. 540 (42 U.S.C. 295g–4).

3. Section 57.3101 is revised to read as follows:

§ 57.3101 To what projects do these regulations apply?

The regulations of this subpart apply to grants to schools of medicine and osteopathy and pubic or private nonprofit hospitals and other public or private nonprofit entities under section 784 of the Public Health Service Act (42 U.S.C. 295g–4) to assist in meeting the cost of projects—

(a) To plan, develop and operate approved residency training programs in internal medicine and/or pediatrics which emphasize the training of residents for the practice of general internal medicine and/or general pediatrics;

(b) To provide financial assistance (in the form of traineeships and fellowships) to residents who are participants in this type of program, and who plan to practice general internal medicine and/or general pediatrics;

(c) To plan, develop and operate a program for the training of physicians who plan to teach in a general internal medicine and/or general pediatrics training program; and

(d) To provide financial assistance (in the form of traineeships or fellowships) to physicians who are participants in any such program and who plan to teach in a general internal medicine and/or general pediatrics training program.

4. Section 57.3102 is amended by adding the definitions for "faculty development program" and "trainee" in alphabetical order and by revising the definition for "school of medicine and osteopathy" and "State" to read as follows:

§ 57.3102 Definitions.

* * * * *

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibility.

* * * * *

"School of medicine and osteopathy" means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or to a degree of doctor of osteopathy and which is accredited as provided in section 701(5) of the Act.

* * * * *

The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Trainee" means an allopathic or osteopathic general internist or general pediatrician participating in a faculty development training program supported by a grant under section 784 and receiving stipend support for such grant.

5. Section 57.3103 is revised to read as follows:

§ 57.3103 Who is eligible to apply for a grant?

Any school of medicine or osteopathy, public or private nonprofit hospital or any other public or private nonprofit entity, located in a State, may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.[1]

6. Section 57.3104 is amended by revising paragraphs (a), (d), (e), and (h) and the parenthetical statement at the end of the section text. Paragraph (c) of this section is amended by removing "(j) and (l)" in the parenthical statement and inserting "(10) and (12)" in its place.

§ 57.3104 What activities must be addressed in an application?

* * * * *

(a) A proposal for a project to plan, develop, and operate an approved residency training or faculty development program in internal medicine and/or pediatrics—

(1) Which emphasizes the training of residents for the practice of general internal medicine and/or general pediatrics and faculty for teaching in such programs, and

(2) Which may provide financial assistance to residents and trainees who are participants in the programs and who plan to practice or teach in general internal medicine and/or general pediatrics.

* * * * *

(d) In programs other than faculty development, a description of the type and amount of training to be offered to residents in each year of each residency program in accordance with the requirements of § 57.3105 with special attention to the requirements of § 57.3105(a)(11).

(e) In programs other than faculty development, the number of residents to be enrolled in each program, at each level of training, for each year of the project period.

* * * * *

(h) If stipend support is requested by an applicant to provide a portion of the salary of residents enrolled in the program, documentation showing that income available from alternative sources, including income derived from the services of the residents in the program, will be insufficient to pay their salaries and that grant funds will not be

[1] Application and instructions (Form PHS 6025–1, OMB #0915–0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

used to supplant other available funds. Stipend support requested for trainees in the faculty development program must be paid in accordance with established Public Health Service postdoctoral stipend levels.

(Approved by the Office of Management and Budget under control number 0915-0060)

7. Section 57.3105 is amended by designating the introductory paragraph as paragraph (a); by redesignating paragraphs (a) through (n) as paragraphs (l) through (14); in newly redesignated paragraph (10) by redesignating paragraphs (1) through (5) as paragraphs (i) through (v); in newly redesignated paragraph (10)(v) by redesignating paragraphs (i) through (iii) as paragraphs (A) through (C); in newly redesignated paragraph (11) by redesignating paragraphs (1) through (3) as paragraphs (i) through (iii); in newly redesignated paragraph (13) by redesignating paragraphs (1) through (3) as paragraphs (i) through (iii); and in newly redesignated paragraph (13)(ii) by redesignating paragraphs (i) through (iii) as paragraphs (A) through (C); by adding a new paragraph (b); and by removing the parenthetical statement at the end of the section text. In § 57.3105, newly redesignated paragraph (a)(11) is amended by removing "(j)" and inserting "(a)(10)." Additionally, in § 57.3105, the phrase "general internal medicine or" is revised to read "general internal medicine and/or" in newly redesignated paragraphs (a)(3), (a)(5), (a)(6), (a)(10), (a)(10)(iii), (a)(10)(iv), (a)(10)(v)(A), (a)(12), and (a)(13)(ii)(C).

§ 57.3105 Project requirements.

* * * * *

(b) For each faculty development program, a project must:

(1) Have a project director who is employed by the grantee or training institution, has relevant training and experience, and has been approved by the Secretary to direct the project;

(2) Have an appropriate administrative and organizational plan and appropriate faculty, staff and facility resources to achieve the stated objectives;

(3) Have a curriculum which:

(i) Directly applies to general internal medicine and/or general pediatrics,

(ii) Emphasizes improvement of pedagogical skills and techniques for clinical teaching in classroom and ambulatory health care settings, and

(iii) Uses structured didactic and experiential teaching strategies.

(iv) With respect to training programs of 9 or more months duration, the curriculum must also include:

(A) A research component, with a research project to be completed by each trainee, and

(B) An administrative component which addresses the non-teaching roles and functions of faculty;

(4) Systematically evaluate the educational program, including trainees and faculty, the administration of the program, and the degree to which the program and educational objectives are met;

(5) Have as trainees only physicians who teach or plan teaching careers in general internal medicine and/or general pediatrics;

(6) To be eligible for stipend support from grant funds, a trainee must:

(i) Be a general internist or a general pediatrician,

(ii) Intend to teach in a general internal medicine and/or general pediatrics program on a full-time basis,

(iii) Be a full-time participant in the training project for at least 3 months, and

(iv) Receive less than full institutional salary during the period of Federal support of stipends; and

(7) Stipend support from grant funds may be no longer than 24 cumulative months for any trainee.

8. Section 57.3106 is amended by removing the period at the end of the sentence in paragraph (a)(4) and inserting a semicolon and the word "and"; by adding a new paragraph (a)(5); and by revising paragraph (b) to read as follows:

§ 57.3106 How will applications be evaluated?

(a) * * *

(5) For faculty development programs, the applicant must demonstrate the institution's commitment to general internal medicine and/or general pediatrics as defined under § 57.3102.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary shall give priority to applicants that demonstrate a commitment to general internal medicine and general pediatrics in their medical education training programs. However, should specific needs warrant, the Secretary will consider any other special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

9. Section 57.3107 is amended by removing paragraph (d), and by revising paragraph (c) to read as follows:

§ 57.3107 How long does grant support last?

* * * * *

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

10. Section 57.3109 is amended by adding a new paragraph (c) to read as follows:

§ 57.3109 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds provided and made available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts provided by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

11. Section 57.3111 is amended by adding the following parenthetical statement at the end of the section text to read as follows:

§ 57.3111 What other audit and inspection requirements apply to grantees?

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060)

[FR Doc. 88-28885 Filed 12-14-88; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6819]

List of Communities Eligible for the Sale of Flood Insurance, Delaware

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt

floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in last column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of FEMA has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Delaware.			
Bethany Beach, Town of	Sussex	105083	Nov. 18, 1988. suspension Withdrawn.
Blades, Town of	Sussex	100031	Do.
Clayton, Town of	Kent	100005	Do.
Little Creek, Town of	Kent	100015	Do.
Rehoboth Beach, City of	Sussex	105086	Do.
Slaughter Beach, Town of	Sussex	100050	Do.
Wyoming, Town of	Kent	100020	Do.

Issued: December 7, 1988.

Harold T. Duryee,

Administrator Federal Insurance Administration.

[FR Doc. 88–28836 Filed 12–14–88; 8:45 am]

BILLING CODE 6718–21–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 213, 215, 217, 219, 225, 227, 235, 237, 245, 252, 253, 270, and Appendix T

[Defense Acquisition Circular (DAC) 88–2]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final Rules and interim rules as indicated.

SUMMARY: Defense Acquisition Circular (DAC) 88–2 amends the DoD FAR Supplement (DFARS) with respect to contract reporting, information reporting to the Internal Revenue Service (IRS), contracting with contractors and subcontractors affected by the Intermediate-Range Nuclear Forces (INF) Treaty, Small Purchase Pricing Memorandum; Make-or-Buy Program, threshold for items and work included; field pricing support, options, contracting with small disadvantaged business concerns, small business set-asides, drug-free work force, excess and near-excess foreign currency, rights in technical data, progress payment rate change, advisory and assistance services; Government-Furnished mapping, charting and geodesy (MC&G) property; DD Form 1638, Report of Disposition of Contractor Inventory; revisions to Part 270, use of DD Form 1851. This DAC also includes a copy of a Memorandum of Understanding (MOU) between the Government of the French Republic and the Government of the United States.

EFFECTIVE DATE: December 1, 1988, unless otherwise noted in the

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement

made by Defense Acquisition Circulars 86–1 through 86–5. Amendments made by DACs 86–6 through 86–16 were published in the **Federal Register** at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

B. Public Comments

DAC 88–2, Items I, II, IV Through VII, IX, XI, XIV, XVI, and XVII

Public comments were not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures. However, comments from small entities concerning the affected DoD FAR Supplement coverage will be considered. Please cite DAR Case 88–610D.

DAC 88–2, Item III

An interim rule was published in the **Federal Register** on June 6, 1988 (53 FR 20631), and public comments were solicited. Comments are being considered in formulating a final rule.

DAC 88–2, Item VIII

An interim rule was published in the **Federal Register** on June 6, 1988 (53 FR 20626), and public comments were solicited. Comments were considered in formulating this final rule.

DAC 88–2, Item X

An interim rule was published in the **Federal Register** on September 28, 1988 (53 FR 37763), and public comments were solicited. Comments are being considered in formulating a final rule.

DAC 88–2, Item XII

An interim rule was published in the **Federal Register** on October 28, 1988 (53 FR 43698), and a correction was published on November 7, 1988 (53 FR 44975). Public comments were solicited and are being considered.

DAC 88–2, Item XIII

An interim rule was published in the **Federal Register** on September 14, 1988 (53 FR 35511), and public comments were solicited. Comments are being considered in formulating a final rule.

DAC 88–2, Item XV

A proposed rule was published in the **Federal Register** on May 16, 1988, and public comments were solicited. Comments were considered in formulating this final rule.

DAC 88–2, Item XVIII

This item is for informational purposes and does not contain revisions to the DFARS.

C. Regulatory Flexibility Act

DAC 88–2, Items I, II, IV Through VII, IX, XI, and XVI Through XVIII

Comments were not solicited with respect to these items. The Regulatory Flexibility Act does not apply.

DAC 88–2, Item III

An interim rule was published in the **Federal Register** on June 6, 1988 (53 FR 20631), and public comments were solicited. Comments are being considered in formulating a final rule.

DAC 88–2, Item VIII

An Initial Regulatory Flexibility Analysis in connection with the implementation of sections 1207 and 806 was previously furnished to the Chief Counsel for Advocacy of the U.S. Small Business Administration (SBA) on February 17, 1988, in accordance with 5 U.S.C. 603. A Final Regulatory Flexibility Analysis was deferred pending resolution of comments on the interim portion of the June rule. Upon completion, it will be furnished to the Chief Counsel for Advocacy of the U.S. SBA. Interested parties desiring to obtain a copy of the Final Regulatory Flexibility Analysis upon its completion should contact Mr. Charles W. Lloyd, Executive Secretary, DAR Council, at the address shown above.

DAC 88–2, Item X

An interim rule was published in the **Federal Register** on September 28, 1988 (53 FR 37763), and public comments were solicited. Comments are being considered in formulating a final rule.

DAC 88–2, Item XII

A revised Regulatory Flexibility Analysis is necessary and is being provided to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties may obtain a copy of the Analysis by submitting a written request to Mr. Charles W. Lloyd, at the address shown above.

DAC 88–2, Item XIII

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the progress payment rate for small businesses will be increased, the retainage rate on military construction contracts will be lowered, and the basis for a payment on architect-engineer contracts will be increased. An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA). A copy of the Initial Regulatory Flexibility Analysis may be obtained from Mr. Charles W. Lloyd, Executive Secretary, DAR Council, at the address shown above.

DAC 88–2, Item XIV

This rule does not constitute a significant revision to the DFARS within the meaning of FAR 1.501 and Pub. L. 98–577 because the rule does nothing more than implement OMB policy promulgated in 53 FR 768, January 12, 1988.

DAC 88–2, Item XV

A proposed rule was published in the **Federal Register** on May 16, 1988, and public comments were solicited. Comments were considered in formulating this final rule.

D. Paperwork Reduction Act

DAC 88–2, Items I Through XI, and XIII Through XVII

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

DAC 88–2, Item XII

This rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An information collection clearance request has been submitted to OMB pursuant to 5 CFR 1320.18. Public comments concerning that request will be invited by OMB through a subsequent Federal Register notice.

DAC 88–2, Item XVIII

The Paperwork Reduction Act does not apply because this item is for informational purposes.

List of Subjects in 48 CFR Parts 204, 213, 215, 217, 219, 225, 227, 235, 237, 245, 252, 253, 270, and Appendix T

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–2]

December 1, 1988.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense

Acquisition Circular is effective December 1, 1988.

Defense Acquisition Circular (DAC) 88–2 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Contract Reporting

This DAC contains revisions to DFARS Subpart 204.6 and DD Forms 350 and 1057. Most of the revisions pertain to the data elements that were previously added to Part E of the DD Form 350 for fiscal year 1988. Coverage regarding Distribution of Defense Subcontracts Placed Overseas, formerly at 204.670–4, has been restructured and relocated at 204.674. The clause at 252.204–7005 has also been restructured. With respect to awards of $25,000 and less, revisions have been made to be consistent with the data collected on the DD Form 350 and in the Federal Procurement Data System. This coverage was provided through Departmental channels by Departmental Letter No. 88–29, dated September 2, 1988, and was published as a final rule in the **Federal Register** on September 2, 1988 (53 FR 34090), with an effective date of October 1, 1988.

Item II—Information Reporting to the Internal Revenue Service (IRS)

26 U.S.C. 6041 and 6041A, in part, require payers, including the Federal Government, to report to the IRS certain payments made in the course of business. 26 U.S.C. 6050M requires heads of Federal Executive agencies to report certain contract information to the IRS. FAR coverage, developed to comply with these statutes, was published in the **Federal Register** in FAC 84–40 on October 26, 1988. DFARS 204.6 has been revised and a new Subpart 204.9 has been added to accommodate the FAR and IRS directives. The DFARS coverage was provided through Departmental channels by Departmental Letter No. 88–34, dated October 26, 1988, and was published as a final rule in the **Federal Register** on October 26, 1988, effective November 25, 1988.

Item III—Contracting With Contractors and Subcontractors Affected by the Intermediate-Range Nuclear Forces (INF) Treaty

DFARS 209.103 is revised to prohibit denial of contract or subcontract awards in excess of $25,000 to defense contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty solely or in part because of the presence of Soviet inspectors at the defense contractor's facility unless that decision is reviewed by the Senior Procurement Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisiton. A related clause is added at 252.209–7001. This coverage was provided through Departmental channels by Departmental Letter No. 88–14, dated May 31, 1988, was published as an interim rule in the **Federal Register** on June 6, 1988 (53 FR 20631), and is effective for contracts resulting from solicitations issued on or after June 3, 1988.

Item IV—Small Purchase Pricing Memorandum

The coverage at 213.106(c) and DD Form 1784 are deleted. The coverage, which required a contracting officer to complete a DD Form 1784 to support a conclusion that a fair and reasonable price had been negotiated, unnecessarily duplicates the detailed guidance already provided at FAR 13.106(c).

Item V—Make-or-Buy Programs, Threshold for Items and Work Included

DFARS 215.704 is revised to raise the threshold for inclusion of items or work efforts to make-or-buy programs from $500,000 to $1 million.

Item VI—Field Pricing Support

DFARS 215.805–5(c)(1)(S–70)(A) is revised to set forth clearly the process used when only an audit report is requested by the contracting officer.

Item VII—Options

DFARS 217.204(e) and 235.007(S–70) are added to advise contracting officers of the restrictions in 10 U.S.C. 2352 concerning the term of research and development contracts.

Item VIII—Contracting With Small Disadvantaged Business Concerns

Departmental Letter No. 88–15, dated May 31, 1988, and an interim rule published in the **Federal Register** on June 6, 1988 (53 FR 20626), provided coverage to implement section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180. The coverage revised the DFARS to eliminate the application of the evaluation preference to total small business set-asides. This DAC adopts as a final rule the interim rule published on June 6, 1988, with editorial changes to that rule.

Item IX—Small Business Set-Asides

DFARS 219.508 is revised to clarify the applicability of amendments made to sections 8 and 15 of the Small Business Act by section 921, Pub. L. 99–661. This revision requires that the clause at FAR 52.219–14, which is to be inserted in contracts where any portion of the requirements is to be set aside for small business will be used by DoD also where the set-aside is for small disadvantaged business.

Item X—Drug-Free Work Force

A new Subpart 223.75 is added to set forth DoD policy concerning use of illegal drugs by the American work force as it affects defense contracts, and to provide guidance for use of a contract clause in those acquisitions involving access to classified information or where the contracting officer determines that such a clause is necessary in the interest of national security, health or safety. This coverage was provided through Departmental channels by Departmental Letter No. 88–32, dated September 29, 1988, and was published as an interim rule in the **Federal Register** on September 28, 1988 (53 FR 37763), effective October 31, 1988.

Item XI—Excess and Near-Excess Foreign Currency

DFARS 225.7607 is deleted because the coverage appears in the FAR. DFARS 225.7601 is revised to remove reference to 225.7607 and to provide reference to the OMB Bulletin concerning Excess Foreign Currencies.

Item XII—Rights in Technical Data

DFARS Subpart 227.4 is revised in its entirety. Related clauses in 252.227 are also revised. This coverage was provided through Departmental channels by Departmental Letter No. 88–35, dated October 24, 1988, was published as an interim rule in the **Federal Register** on October 28, 1988 (53 FR 43698), and corrected on November 7, 1988 (53 FR 44975), effective October 31, 1988.

Item XIII—Progress Payment Rate Changes

DFARS Part 232 is revised to change progress payment rates on defense contracts to the levels currently provided in the FAR. This coverage was provided through Departmental channels by Departmental Letter No. 88–30, dated September 16, 1988, and was published as an interim rule in the **Federal Register** on September 14, 1988 (53 FR 35511), effective October 1, 1988.

Item XIV—Advisory and Assistance Services

The current coverage at DFARS Subpart 237.204, 237.205–70, and 235.270 is deleted since FAR 37.2 has been rewritten to implement OMB Circular

A–120, "Guidelines for the Use of Advisory and Assistance Services", dated January 12, 1988. DFARS 237.205 is revised to implement management controls required by DoDD 4205.2, DoD Contracted Advisory and Assistance Services (CAAS), and 237.206 is added to implement requirements of Chapter 131 of 10 U.S.C., section 2212.

Item XV—Government-Furnished Mapping, Charting and Geodesy (MC&G) Property

DFARS 245.3 is revised to ensure control of MC&G property in the possession of Government contractors during performance of a contract, and to provide that such property is properly disposed of at the end of the contract performance period. A related clause is added at 252.245–7000. This coverage was published as a proposed rule in the **Federal Register** on May 16, 1988 (53 FR 17233).

Item XVI—DD Form 1638, Report of Disposition of Contractor Inventory

DD Form 1638 is revised to make the form compatible with SF 1424, Inventory Disposal Report.

Item XVII—Revisions to Part 270, Use of DD Form 1851

Based on Federal regulatory requirements, DoD policy requires that before computer equipment can be acquired from commercial sources, it must be determined that the requirement cannot be filled through the Automation Equipment Reutilization Program at a greater savings to the Government. Defense Automation Resources Management Manual, DoD 7950.1–M, Chapter 2, Paragraph D, prescribes the use of DD Form 1851 to initiate excess equipment to satisfy known requirements.

The revision to DFARS 270.602 prescribes the use of DD Form 1851, in lieu of DD Form 1419, by DoD contractors for reporting computer equipment requirements to the Defense Automation Resources Information Center (DARIC). The DD Form 1851 replaces the DD Form 1419 for such reporting purposes, although the DD Form 1419 is still used for its orginally intended purpose by the Defense Industrial Plant Equipment Center (DIPEC) as a requisition document. The DD Form 1851 also replaces a previous and no longer authorized version of DD Form 1851 which was used by DoD Components for requirements reporting. The revised version of the DD Form 1851 was designed specifically for requirements reporting and is easier to use than the DD Form 1419, which is not readily adaptable for automated screening. Additionally, the DD Form 1851 does not require extensive authorizations/approvals, can accommodate multiple line items per submission, contains all necessary data elements, and is compatible with DARIC's automated data base.

Item XVIII—Memorandum of Understanding (MOU) Between the Government of the French Republic and the Government of the United States

This DAC contains an MOU between the Government of the French Republic and the Government of the United States.

Adoption of Amendments

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 204, 213, 215, 217, 219, 225, 227, 235, 237, 245, 252, 253, 270, and Appendix T continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. The final rule published on September 2, 1988 (53 FR 34090) is corrected as follows:

204.670–2 [Corrected]

3. On page 34091, section 204.670–2 is corrected in the definition for "Commercial and Government Entity (CAGE) Code", in paragraph (a) by removing the semi-colon after the word "manufacturer" and by adding before the word "or" the words "and published in the Commercial and Government Entity (CAGE) Handbook H4/H8;".

204.670–4 [Corrected]

4. On page 34092, section 204.670–4 is corrected by substituting in the first sentence the word "sections" in lieu of the word "section".

2204.671–3 [Corrected]

5. On page 34092, section 204.671–3 is corrected by adding in the first sentence of paragraph (d)(6) between the word "petroleum"; and the word "products" the words "and petroleum" and by substituting in the second sentence of paragraph (d)(7) between the word "These" and the word "shall" the word "transactions" in lieu of the word "translations".

2204.671–4 [Corrected]

6. On page 34093, section 204.671–4 is corrected by adding in the last sentence of paragraph (c) between the word "coding" and the word "items" the word "of"; and by substituting in the second sentence of paragraph (e) between the word "or" and the word "shall" the acronym "TCO" in lieu of the acronym "TOC"

204.671–5 [Corrected]

7. Beginning on page 34094, section 204.671–5 is corrected by substituting in paragraph (b), in the second sentence of paragraph (iii)(E) under Item B5B the reference in parentheses "253.303–70–DD–2051" in lieu of the reference "53.303–70–DD–2051"; by substituting in paragraph (b), in the first sentence of paragraph (i) under Item B6A between the word "the" and the word "and" the words "United States" in lieu of the abbreviation "U.S."; by adding in paragraph (b), in the fourth sentence of paragraph (i) under Item B6A between the acronym "FIPS" and the number "55–2" the abbreviation "PUB"; by substituting in paragraph (b), in the first sentence of paragraph (i) under Item B6B between the word "the" and the word "and" the words "United States" in lieu of the abbreviation "U.S."; by substituting in paragraph (b) in the title for Item B9, the word "Sale" in lieu of the word "Sales"; by substituting in paragraph (b), in the second sentence of paragraph (i) under Item B12A between the word "action" and the abbreviation "RDT&E" the word "for" in lieu of the word "or"; by substituting in paragraph (b), in paragraph (v) under Item B12B, the reference in parentheses "270" in lieu of the reference "70"; by substituting in paragraph (b), in the last sentence of the paragraph entitled "Code 4" in paragraph (ii) under Item B13 between the word "Codes" and the word "as" the words "A through G" in lieu of the abbreviation "A-G"; by substituting in paragraph (b) in the second sentence of the paragraph entitled "Code 5" in paragraph (ii) under Item B13 between the word "orders" and the word "against" the word "placed" in lieu of the word "place"; by substituting in paragraph (b), in the last sentence of the paragraph entitled "Code 5" in paragraph (ii) under Item B13 between the word "Codes" and the word "as" the words "A through G" in lieu of the abbreviation "A-G"; by substituting in the first sentence of paragraph (c)(4) between the number "7" and the word "Items" the word "complete" in lieu of the word "completer"; by placing in quotation marks in paragraph (c) in the first sentence of paragraph (i) of Code A under Item C4 between the word "as" and the word "if" the words "price competition"; by substituting in paragraph (c) at the end of the second sentence of paragraph (i) of Code A

under Item C4 the word "made" in lieu of the word "make"; by substituting in paragraph (c) in the title of Code E under Item C4 between the word "Catalog" and the word "Market" the word "or" in lieu of the word "of"; by changing in paragraph (c) in paragraph (iv) under Item C8 the reference in parentheses to read "206.270" in lieu of "206.207"; by adding in paragraph (c) in Code 1G under Item C9 between the word "if" and the word "action" the word "the"; by removing in paragraph (c) in Code A under Item C10 between the word "of" and the abbreviation "FAR" the word "the"; by removing in paragraph (c) in Code B under Item C10 between the word "of" and the abbreviation "FAR" the word "the"; by substituting in paragraph (c) in Code B under Item C10 the reference "22.6" in lieu of the reference "22.0"; by substituting in paragraph (c) in Code A under Item C12 between the word "the" and the word "at" the word "clauses" in lieu of the word "provisions"; by substituting in paragraph (c) under Item C13A between the word "end" and the word "as" the word "products" in lieu of the word "product"; by substituting in paragraph (d)(2) between the word "with" and the word "and" the reference "219.301–70" in lieu of the reference "FAR 19.301–70"; by substituting in paragraph (d) in the first sentence of Item D2 between the word "Item" and the word "is" the number "B13" in lieu of the number "B7"; by substituting in paragraph (d) between "Code Z" under Item D3 and Item D4A the title "Item D4, Preference Program" in lieu of the title "D4, Preference Program"; by adding in paragraph (d) in the first sentence of the introductory text of Item D4A between the word "in" and the number "D4C" the word "Item"; by adding in paragraph (d) in the last sentence of Code A under Item D4A between the word "in " and the number "D4C" and word "Item"; by substituting in paragraph (d) in Code C under Item D4A the reference "219.502–3(S–70)" in lieu of the reference "219.502–3(70)"; by adding in paragraph (d) in Code C under Item D4B between the word "to" and the word "as" the words "an SDB firm"; by substituting in paragraph (d) at the end of Code E under Item D4B the reference "219.502–3(S–70)" in lieu of the reference "219.502–3(70)"; by adding in paragraph (d) in Code B under Item D4D between the word "Labor" and the word "Area" the word "Surplus"; by substituting in paragraph (d) at the end of Code B under Item D4D the reference in parentheses "(220.7003)" in lieu of the reference "(FAR 20.7003)"; by substituting in paragraph (d) in the introductory text of Item D4E between the word "coded" and the word "or" the words "C through E" in lieu of the abbreviation "C–E"; by substituting in paragraph (d) in paragraph (i) of Item D4E between the word "coded" and the word "or" the words "C through E" in lieu of the abbreviation "C–3"; by substituting in paragraph (d) in paragraph (ii) of Item D4E between the word "coded" and the word "or" the words "1 through 4" in lieu of the abbreviation "1–4"; by substituting in paragraph (d) in paragraph (iii) of Item D4E between the word "or" and the word "enter" the words "B through G," in lieu of the abbreviation "B–G,"; by adding in paragraph (d) in the introductory text of Item D7 between the word "If" and the number "B13" the word "Item"; and in paragraph (e) between "Code N" under Item E1 and paragraph (f), the title is changed to read "Items E2 through E8" in lieu of the title "Item E2–E8".

204.672–1 [Corrected]

8. On page 34101, § 204.672–1 is corrected by removing the word "each" at the end of the first sentence.

204.672–5 [Corrected]

9. On page 34102, § 204.672–5 is corrected by substituting in pargraph (b) at the end of the first sentence of Line B3 the words " 'United States and Outlaying Areas' as defined in 204.672–4." in lieu of the words "U.S. and outlying areas as defined above."; by substituting in paragraph (b) at the end of the first sentence of Line B4 the words " 'United States and Outlying Areas' as defined in 204.672–4." in lieu of the words "U.S. and outlying areas as defined above."; by substituting in paragraph (b) at the end of the first sentence of Line B5 the words " 'United States and Outlying Areas' as defined in 204.672–4." in lieu of the words "U.S. and outlying areas as defined above." by substituting in paragraph (b) in the first sentence under line B6 between the word "listed" and the word "such" the words "in 204.672–4" in lieu of the word "above"; by substituting in paragraph (b) at the end of the first sentence of Line B6 the words " 'United States and Outlying Areas' as defined in 204.672–4." in lieu of the words "U.S. and outlying areas as defined above."; by substituting in paragraph (c) under Line C1C the words " 'United States and Outlying Areas.' " in lieu of the words "U.S. and outlying areas."; by substituting in paragraph (c)(iii) under Line C2C the words " 'United States and Outlying Areas.' " in lieu of the words "U.S. and outlying areas."; by substituting in paragraph (c)(iii) under Line C3C the words " 'United States and Outlying Areas.' " in lieu of the words "U.S. and outlying areas."; by substituting in paragraph (d) under Line D3 the words " 'United States and Outlying Areas.' " in lieu of the words "U.S. and outlying areas."; by substituting in paragraph (d) in the title for Line D4 between the word "Colleges" and the word "Universities" the word "and" in lieu of the word "or"; by substituting in paragraph (e) in the title for Line E1A between the word "Small" and the word "Set-Aside" the word "Purchase" in lieu of the word "Purchases"; and by substituting in paragraph (e) at the end of the sentence in Line E2B the reference "(see 219.502–3(S–70))" in lieu of the reference "(see 219.502–3(70))".

204.672–6 [Corrected]

10. On page 34104, § 204.672–6 is corrected by adding at the beginning of the first sentence the word "A" and changing the capital "M" to a lower-case "m" for the word "magnetic".

204.673 [Corrected]

11. On page 34104, §§ 204.673–1 through 204.673–4 are correctly added to read as follows:

204.673–1 Purpose.

The DD Form 1547 is the principal source document for maintaining a DoD-wide management information system on profit and fee statistics, as required under DoD Instruction 7730.27, "Reporting of Planned and Negotiated Contract Profit Rates" (see 215.970). The management information system is extensively used within the Office of the Secretary of Defense to serve a wide variety of purposes ranging from evaluating profit and fee policies to responding to information requests received from all branches of the Government, Congress, and the public.

204.673–2 Responsibilities.

The Heads of the Military Departments shall develop the necessary policies, procedures, and internal controls for implementing this reporting system. The contracting officer is responsible for properly preparing the DD Form 1547 and forwarding a copy of it to the designated office within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any errors detected by the system's auditing processes.

204.673–3 Applicability.

For the field contracting offices specified below, a copy of the completed DD Form 1547 shall be forwarded to the office designated for all contract actions

valued $500,000 or more where the contracting officer employed either the Weighted Guidelines Method (215.970), an alternate structured approach (215.971), or the Modified Weighted Guidelines Method (215.972). Offices located outside the United States, its possessions, and Puerto Rico are exempt from this reporting requirement.

(a) *Army.* Contracting officers from all field contracting offices shall forward completed DD Forms 1547 directly to the Office of the Assistant Secretary for Research, Development and Acquisition (SARD-KS), Washington, DC 20310-0600 or through intermediate office shown below:

(1) For Army Materiel Command field contracting offices, send through Army Materiel Command, ATTN: AMCPP-SC, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001; and

(2) For U.S. Army Corps of Engineers contracting offices, send through Office of the Chief of Engineers, HQDA (DAEN-PRP), Washington, DC 20314-1000.

(b) *Navy.* (1) Contracting officers from the contracting offices specified below and all subordinate field offices shall forward completed DD Forms 1547 to the office designated in paragraph (b)(2) of this section:

(i) Naval Air Systems Command;
(ii) Naval Sea Systems Command;
(iii) Space and Naval Warfare Systems Command;
(iv) Naval Facilities Engineering Command;
(v) Naval Supply Systems Command;
(vi) Office of Naval Research;
(vii) Headquarters, United States Marine Corps; and
(viii) Strategic Systems Project Office.

(2) Designated Office: Commander, Naval Supply Systems Command (SUP 024B), Washington, DC 20376.

(c) *Air Force.* (1) Contracting officers from all field contracting offices in the Air Force Systems Command and Air Force Logistics Command shall forward completed DD Forms 1547 to HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.

204.673-4 Procedures.

(a) All elements of the DD Form 1547 shall be completed by the contracting officer as instructed in 215.970-2, 215.971-3, and 215.972-2.

(b) Completed forms shall be sent to the designated office, as an unclassified document, within 30 days after contract award. Classified information shall not be entered into the management information system on profit. The designated office will perform the necessary audit tests to ensure that the information on the DD Form 1547 is accurate. Use of mechanized or automated systems is desirable.

(c) The designated offices shall transmit the DD Form 1547 information in the manner and format specified in DoD Instruction 7730.27.

(d) The reporting requirements of this part have been assigned RCS: P&L(Q) 1751.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

213.106 [Amended]

12. Section 213.106 is amended by removing paragraph (c).

PART 215—CONTRACTING BY NEGOTIATION

215.704 [Amended]

13. Section 215.704 is amended by substituting the dollar figure "$1 million" in lieu of the dollar figure "500,000".

14. Section 215.805-5 is amended by revising paragraph (c)(1)(S-70)(A), to read as follows:

215.805-5 Field pricing support.

* * * * *

(c)(1)(S-70) * * *

(A) The Plant Representative/Administrative Contracting Officer (Plant Rep/ACO) is the team manager for all contracting officer requests for field pricing support. The contracting officer shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Rep for the Services and the ACO for DCAS (DLA). An advance copy of the contracting officer's request shall also be sent to the cognizant audit activity. When only an audit report is requested by the contracting officer, the auditor shall treat the advance copy of the contracting officer's request as a signal to begin the audit work. When an audit is completed, the audit activity shall: (*1*) Send the original of the audit report to the Plant Rep/ACO, and (*2*) send an advance copy of the audit report to the contracting officer. To expedite the pricing review process, these requests shall be marked in bold letters on the mailing envelope "**FIELD PRICING REQUEST.**" On urgent requests, provide facsimile numbers in the requests to facilitate sending the complete report.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

15. Section 217.204 is added to Subpart 217.2, to read as follows:

217.204 Contracts.

(e) The approving authority for actions under FAR 17.204(e) is the Chief of the Contracting Office. This approval authority shall not be delegated.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

16. The interim rule published on June 6, 1988 at 53 FR 20626), and corrected on June 15, 1988 (53 FR 22426) and on June 16, 1988 (53 FR 22609), is adopted as final with the following changes:

17. Section 219.202-5 is amended by revising the first sentence of paragraph (b), by substituting in the first word of the title of the format following paragraph (b) the word "Percentage" in lieu of the word "Premium"; by substituting in Item 2 of the format following paragraph (b) the words "Modification number (if appropriate)" in lieu of the words "Action date"; by removing the text in Item 3 and Items 3 a. through d. and substituting in Item 3 the words "Award date ———."; and by removing paragraph (c), to read as follows:

219.202-5 Data collection and reporting requirements.

* * * * *

(b) The contracting officer shall insert the following format in the contract file for each award of a letter contract, a definitive contract superseding a letter contract, an initial definitive contract, orders under a BOA, and additional work under a new agreement (including options exercised at time of award) * * *.

18. Section 219.508 is amended by adding paragraph (e) to read as follows:

219.508 Solicitation provisions and contract clauses.

* * * * *

(e) The contracting officer shall insert the clause at FAR 52.219-14, Limitations on Subcontracting, in solicitations and contracts, except those awarded using small purchase procedures in FAR Part 13, for supplies, services, and construction, if any portion of the requirement is to be set aside for small business (including small disadvantaged business), or if the contract is to be awarded under FAR Subpart 19.8.

PART 225—FOREIGN ACQUISITION

225.7601 [Amended]

19. Section 225.7601 is amended by revising the last sentence of the definition "Excess Foreign Currency" to read: "Countries in which the United States owns excess foreign currency are

listed in the OMB Bulletin, 'Excess Foreign Currencies', published annually in accordance with OMB Circular A–20. This Bulletin is distributed through agency procedures."; and by revising the last sentence of the definition "Near-Excess Foreign Currency" to read: "Countries in which the United States owns near-excess foreign currency are listed in the OMB Bulletin, 'Excess Foreign Currencies', published annually in accordance with OMB Circular A–20. This Bulletin is distributed through agency procedures."

225.7607 [Removed]

20. Section 225.7607 is removed.

PART 227—PATENTS, DATA, AND COPYRIGHTS

21. The interim rule published on October 28, 1988 (53 FR 43698) and corrected on November 5, 1988 (53 FR 44975) is corrected as follows:

227.471 [Corrected]

22. On page 43700, § 227.471 is corrected by substituting in the last sentence of the introductory text of the definition entitled "Limited rights" between the word "such" and the word "if" the word "persons" in lieu of the word "person".

227.472–1 [Corrected]

23. On pages 43700 and 43701, § 227.472–1 is corrected by substituting at the beginning of the second sentence of paragraph (a) the word "Its" in lieu of the word "It"; and by adding in the third sentence of paragraph (a) between the word "source" and the word "supply" the word "of".

227.472–3 [Corrected]

24. On page 43701, § 227.472–3 is corrected by substituting in the second sentence of the introductory text, between the word "rights," and the word "rights," the word "limited" in lieu of the word "limiting"; by substituting at the beginning of paragraph (a)(1)(iv) the word "Manuals" in lieu of the word "Manual"; and by substituting in paragraph (a)(1)(iv) between the word "any" and the word "contract" the word "Government" in lieu of the word "Governmental".

227.475–2 [Corrected]

25. On page 43706, § 227.475–2 is corrected by substituting in the second sentence of paragraph (b) between the word "all" and the word "(other" the word "items" in lieu of the word "item"; and by substituting in the last sentence of paragraph (b) between the word "delivery" and the word "the" the word "of" in lieu of the word "or".

227.475–3 [Corrected]

26. On page 43706, § 227.475–3 is corrected by substituting at the end of the last sentence the reference "246.708" in lieu of the reference "246.703".

227.481–2 [Corrected]

27. On page 43708, § 227.481–2 is corrected by substituting in the last sentence of paragraph (b)(4) between the word "software" and the word "at" the word "developed" in lieu of the word "development".

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

28. Section 235.007 is amended by adding paragraph (S–70) following paragraph (g), to read as follows:

235.007 Solicitations.

* * * * *

(S–70) 10 U.S.C. 2352 provides that, subject to availability of funds, contracts for services or for the use of facilities for research or development, or both, may be for a term of not more than five years and may be extended for no more than five years.

PART 237—SERVICE CONTRACTING

237.204 [Amended]

29. Section 237.204 is amended by removing paragraph (S–70) and by redesignating the existing paragraph (S–71) as paragraph (S–70).

30. Section 237.205 is revised to read as follows:

237.205 Management controls.

DoD Directive 4205.2, DoD Contracted Advisory and Assistance Services, contains these procedures.

237.205–70 [Removed]

31. Section 237.205–70 is removed.

237.205–71 [Removed]

32. Section 237.205–71 is removed.

33. Section 237.206 is added to read as follows:

237.206 Requesting office responsibilities.

(b) Departments shall further ensure that when there is a need for the use of the type of services in FAR 37.203, the approval authority for actions greater than $50,000 is not below the SES manager or General or Flag Officer level, except when 0–6 personnel are filling such command or management positions or have subordinate SES personnel.

237.270 [Removed]

34. Section 237.270 is removed.

PART 245—GOVERNMENT PROPERTY

35. Section 245.301 is amended by adding between the definition "Industrial Plant Equipment" and the definition "Other Plant Equipment" the following definition to read as follows:

245.301 Definitions.

* * * * *

"Mapping, Charting and Geodesy (MC&G) Property", as used in this subpart, means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

* * * * *

36. Sections 245.310 and 245.310–1 are added to read as follows:

245.310 Providing mapping, charting and geodesy property.

(a) All Government-Furnished Mapping, Charting and Geodesy (MC&G) Property is under the control of the Director, Defense Mapping Agency (DMA). (See DoD Directive 5105.40.)

(b) The clause at 252.245–7000 provides that Government-Furnished MC&G Property shall not be duplicated, copied, or otherwise reproduced for purposes of other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the contracting officer shall contact HQ DMA (PP), Bldg. 56, U.S. Naval Observatory, Washington, DC 20305–3000, for disposition instructions and then direct the contractor to either destroy or return all DoD-furnished MC&G property not consumed in the performance of the contract. If the material is to be returned to the Government, the contracting officer shall specify the location and means of shipment.

245.310–1 Contract clause.

The contracting officer shall insert the clause at 252.245–7000, Government-Furnished Mapping, Charting and Geodesy Property, in solicitations and contracts when MC&G Property is to be furnished under the contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

37. The interim rule published on September 2, 1988 (53 FR 34090) is corrected as follows:

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252.204-7005 [Corrected]

38. On page 34104, section 252.204-7005 is amended by substituting in paragraph (a) of the clause at the end of the last sentence the reference "253.303-70-DD-2139." in lieu of the reference "53.303-70-DD-2139."

252.204-7007 [Corrected]

39. On page 34104, section 252.204-7007 is amended by substituting in the introductory paragraph the reference "204.670-3(b)(1)" in lieu of the reference "204.670-3(b)(f)".

40. The interim rule published on June 6, 1988 (53 FR 20626), and corrected on June 15, 1988 (53 FR 22426) and on June 16, 1988 (53 FR 22609), is adopted as final with the following changes:

252.219-7007 [Amended]

41. Section 252.219-7007 is amended by adding at the end of the title the word in parentheses "(Unrestricted)"; and by adding in the title of the clause between the word "CONCERNS" and the date the word in parentheses "(UNRESTRICED)".

42. The interim rule published on October 28, 1988 (53 FR 43698) and corrected on November 5, 1988 (53 FR 44975) is corrected as follows:

252.227-7013 [Corrected]

43. On page 43712, section 252.227-7013 is corrected by substituting in the clause in the unnumbered paragraph between paragraph (e)(4) and paragraph (f) the reference "252.227-7013" in lieu of the reference "252.227-7031"; and by substituting in the clause in paragraph (i)(1) the reference "227.472-1" in lieu of the reference "252.227-472-1".

252.227-7020 [Corrected]

44. On page 43714, section 252.227-7020 is corrected by substituting in the clause in the second sentence of paragraph (b) between the word "any" and the word "to" the word "claim" in lieu of the word "claims".

252.227-7022 [Corrected]

45. On page 43715, section 252.227-7022 is corrected by substituting in the clause in the first sentence between the word "designs," and the word "notes" the word "specifications" in lieu of the word "specification".

252.227-7028 [Corrected]

46. On page 43715, section 252.227-7028 is corrected by substituting in the clause in paragraph (a) between the word "contract" and the word "subcontract" the word "or" in lieu of the word "of".

252.227-7037 [Corrected]

47. On page 43717, section 252.227-7037 is corrected by substituting in the clause in the first sentence of paragraph (f)(2)(iv) between the word "final" and the word "by" the word "disposition" in lieu of the word "deposition".

48. Section 252.245-700 is added to read as follows:

252.245-7000 Government-furnished mapping, charting and geodesy property.

As prescribed in 245.310-1, insert the following clause:

GOVERNMENT-FURNISHED MAPPING, CHARTING AND GEODESY PROPERTY (NOV 1988)

(a) *Definition.* "Mapping, Charting and Geodesy (MC&G) Property", as used in this clause, means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications, and in simulated photographic, digital, or computerized formats.

(b) MC&G Property shall not be duplicated, or otherwise reproduced for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the Contractor, as directed by the Contracting Officer, shall either destroy or return to the Government all Government-Furnished MC&G Property not consumed in the performance of this contract.

(End of clause)

PART 253—FORMS

49. The list of forms following § 253.270 is amended by substituting the listing "253.303-70-DD-1851 DD Form 1851: Automation Equipment Requirement" in lieu of the listing "253.303-70-DD-1784 DD Form 1784: Small Purchase Pricing Memorandum".

PART 270—ACQUISITION OF COMPUTER RESOURCES

50. Section 270.602 is amended by revising the title of the section; by substituting in paragraph (a) between the word "Form" and the word "with" the designation "1851" in lieu of the designation "1419"; by revising paragraph (b); and by adding paragraphs (c) and (d) to read as follows:

270.602 Providing excess computer equipment to DoD contractors.

* * * * *

(b) The ACO shall forward the approved requirements to the Director, Defense Automation Resources Information Center (DARIC), ATTN: DARIC-R, Cameron Station, Alexandria, VA 22304-6100 in accordance with DoD 7950.1-M.

(c) The DARIC shall determine if excess computer equipment which has a potential to meet the requirement is available and the response shall be returned to the activity designated on the DD Form 1851.

(d) Acquisition of excess ADPE shall be in accordance with 245.302-72 and DoD 7950.1-M.

Appendix T to Chapter 2—[Amended]

51. Appendix T is amended by revising T-211, France Memorandum of Understanding, to read as follows:

T-211 France Memorandum of Understanding

Memorandum of Understanding Between the Government of the French Republic and the Government of the United States of America Concerning the Principles Governing Reciprocal Purchases of Defense Equipment

The Government of the United States of America and the Government of the French Republic hereinafter referred to as the Governments:

Noting that a previous agreement dated December 18, 1963 governs their cooperation in the field of research and development,

Noting that no agreement covers harmonization of mutual procurements, although specific compensation agreements bound them in the past,

Wishing to improve the present situation and to strengthen their military capability by a better organization of procurement of equipment meeting their defense needs, while taking into consideration cooperative activities undertaken between European nations within the I.E.P.G. and relationships between Europe and the United States in the field of armaments.

In order to achieve the above aims, the Governments have agreed on the following guidelines to ensure a balanced cooperation in defense equipment research, development, production, and purchasing and associated offset arrangements.

Article I—Principles Governing Reciprocal Defense Purchasing

1. Both Governments agree to achieve and maintain an equilibrium in their exchanges in terms of payments and technological levels to the maximum practicable extent consistent with their national policies.

2. The Governments will jointly determine the defense equipment to which the present MOU is applicable and the desirable level of the equilibrium.

3. Each Government will keep a record of defense equipment procurement from the other country either directly or through its defense industry.

4. Each Government will submit, as practicable, a periodic forecast of defense equipment that it may be able to undertake to procure from the other country or for which the other country may be able to compete. Each Government may propose to the other any particular item of equipment that could

meet the requirement of the other Government.

5. Both Governments will provide appropriate policy to guidance and administrative procedures within their respective defense procurement organizations to achieve and maintain the agreed upon equilibrium.

6. For the implementation of this MOU:

a. Offers will be evaluated without applying price differentials resulting from Buy National Laws (in the United States, the Buy American Act).

b. The Secretary of Defense or Minister of Defense shall, consistent with the law and policies of each country, attempt to obtain exemptions from all applicable customs duties or other restrictions which are designed to limit participation by industries of the other country.

c. It will be neccessary to take into consideration all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office, it being understood that offers will satisfy requirements for performance, quality, delivery and cost.

7. To facilitate production programs set up in implementation of this MOU, the Governments understand that subject to their established policies, procedures, regulations and subject to privately owned proprietary rights, each Government will, so far as it is able, without incurring obligations to others, arrange for release to the other and to its agents, or if necessary, to its defense industries, of information and technology necessary for the purpose of such facilitation, taking into account security regulations.

8. Arrangements and procedures will be established concerning follow-on logistic support for defense material transferred under this MOU. Both governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

9. The Governments, through their appropriate representatives, will consult concerning any problem which may inhibit the efficient operation of this arrangement. Such consultations will be conducted on the basis of Article II of this MOU.

Article II—Entry Into Force

1. Representatives of the two Governments will be appointed to determine in detail the implementation procedures of the MOU. Terms of reference will be proposed for an American-French Committee in charge of reciprocal purchases (including rules governing its work).

2. The Under Secretary of Defense for Research and Engineering in coordination with the Assistant Secretary of Defense (ISA), Assistant Secretary of Defense (MRA&L), the Director, Defense Security Assistance Agency and other appropriate Department of Defense Offices, will be responsible in the U.S. Government for the development of implementing procedures under this MOU and for the management of this MOU on a continuing basis.

3. The Director des Affaires Internationales, under the policy guidance of the Delegue General pour l'Armement, will be the responsible authority for the Government of the French Republic for any matter relating to the implementation procedures of this agreement.

Article III—Industry Participation

1. Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and classified information safeguarding.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

Article IV—Duration

1. This agreement will remain in effect for a ten-year period following its signature unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary to discontinue its participation under this MOU before the end of the ten-year period, any withdrawal intention must be notified to the other Government six months in advance of its effective date and would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and in the spirit of cooperation take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article V—Annexes

Annexes negotiated by the responsible services and approved by the appropriate Government authorities will be part of this agreement.

Article VI—Implementation

The present agreement, in both English and French, will come into effect at the date of signature by both Governments. It will not be disclosed to a third country unless otherwise mutually agreed.

Done in Paris, le 22 mai 1978.

Harold Brown,

For the Government of the United States.

Yvonne Bourges,

For the Government of France.

ANNEX I—IMPLEMENTING PROCEDURES

Implementing procedures to the Memorandum of Understanding between the Government of the United States of America and the Government of the French Republic concerning the principles of cooperation in the field of reciprocal purchases of Defense Equipment.

I. Introduction

On May 22, 1978, the Governments of the United States of America, represented by the Department of Defense (DoD) and the French Republic represented by the Ministry of Defense (MOD) signed a Memorandum of Understanding (MOU) concerning "The Principles Governing Reciprocal Purchases of Defense Equipment." The purpose of this Annex is to set forth the agreed implementing procedures for carrying out the MOU and to establish a Franco-American Committee for Defense Equipment (FACDE).

II. Major Principles

A. Both the DoD and MOD will consider for their defense requirements defense items *and services* developed and produced in the other country. It will be the responsibility of governments and/or industry representatives in each country to obtain information concerning the other country's requirements and prospective purchases and to respond to requests for proposals or offers in accordance with each other's prescribed procurement procedures and regulations. The responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning prospective purchases, necessary qualifications, and appropriate documentation. The responsible governmental purchasing agencies in each country will seek to inform themselves of the defense items and services which might be available from the other to meet specific requirements.

B. Offers will be evaluated without applying price differentials resulting from national laws. Consistent with the law and policies of each country, the Parties will attempt to obtain exemptions from all applicable duties or other restrictions which are designed to limit participation by industries of the other country.

C. Offers will satisfy requirements for cost, schedule, performance, quality, and continued logistics support.

D. In implementing the MOU, the DoD and the MOD will review and, where considered necessary, revise policies, procedures, and regulations to insure that they are consistent with the principles and objectives of this MOU.

E. With respect to Article I, paragraphs 2 and 4 of the MOU cited in paragraph I above, both countries agree that in general the principles of this MOU *will apply to defense purchases of both Governments on the broadest possible basis.* Some items *and services* will be excluded from consideration under this MOU in order to protect the defense mobilization base; because of legally imposed restrictions; or for other reasons to be discussed by the parties from time to time in meetings of the Franco-American Committee.

III. Action

Both countries will, on a reciprocal basis, and to the extent appropriate:

A. Ensure that activities responsible for requirements, research and development, and procurement are familiarized with the principles and objectives of this MOU.

B. Ensure appropriate dissemination of the basic principles of this MOU to the respective defense industries.

C. Assist industries in their respective countries to identify and advise the other government of their capabilities.

D. Review items *and services* as candidates to meet defense requirements. Identify requirements and prospective purchases soon enough to ensure adequate time for their respective industries to participate in the procurement process.

E. Ensure that those items *and services* excluded from consideration under this MOU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MOU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MOD and the DoD, and that such defense items and services be kept under review by the Committee established pursuant to paragraph IV below.

F. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

IV. Franco-American Committee for Defense Equipment (FACDE)

The FACDE will consider development, production, procurement, and logistics needs of each country and the likely areas of cooperation and will recommend appropriate measures to facilitate a maintenance of an equilibrium in their exchanges in terms of value and technological levels to the maximum practicable extent consistent with their national policies.

V. Counting Procedures

The purchases to be counted within the framework of the MOU will be identified jointly by DoD and MOD. In principle all defense items and services purchased by DoD and MOD from the other country will be counted within the framework of the MOU as long as such purchases meet the following criteria.

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

D. Purchases by a third country government from the governments of the United States or of France or from industries of the two countries as a direct result of effort of the other country.

E. Purchases resulting from common funded defense programs to which the United States and/or France are contributors, to be credited in proportion to each country's financial contribution to such programs and to work carried out in each country. The extent to which such purchases will be counted within the framework of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

Types of contracts to be included for purposes of counting will consist of at least the following:

1. Research and development
2. Pre-production
3. Production
4. "Off-the-shelf" procurement
5. License agreements and technical assistance
6. Installation (other than construction)
7. Repair, overhaul and modification
8. Services

Types of contracts to be excluded for purposes of counting will be decided by the FACDE.

Exceptions to the above guidelines will be permitted only as agreed between the Governments as represented by the FACDE.

The following procedures will be used in considering current balances and long term trends of purchases between the two countries:

A. Annual Balances will be calculated based on a January 31 to December 31 time period. Longer term calculations can be made for intervals beginning on the effective date of the agreement to closing dates to be determined.

B. Subject to review and possible refinement by the Committee as indicated in Article VI below, the balance of purchases will be calculated using a single US-French monetary exchange rate for a given period to be applied to purchases by both sides. The details for determining the exchange rate will be formulated by the Committee.

VI. Administration

A. The FACDE will meet as frequently as necessary, but not less than once a year, to implement the agreement. It is intended that the meetings will alternate between Washington and Paris. The FACDE will agree to the basis of, and keep under review, the current balance and long term trends of purchases between the two countries.

B. Each country will designate points of contact at the Ministry of Defense level and in each purchasing service and agency for the transaction of routine business. The points of contact shall be:

1. For the French Ministry of Defense, the Sous-Director des Affaires Internationales pour la Cooperation.

2. For the US Department of Defense, the Deputy Under Secretary of Defense (Acquisition Policy).

C. Quality assurance procedures outlined in Stanag 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Payment for services provided shall be made in accordance with the national laws and regulations of each country.

D. Audit of contracts will be accomplished in accordance with Annex 2 to the MOU.

VII. Security

A. To the extent that any items, plans, specifications or information furnished in the course of the implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

B. The provisions of the General Security of Information Agreement dated 7 September 1977 between the United States Government and the Government of France apply to activities under this MOU.

C. Information that has been provided by the MOD to the DoD in confidence, or produced by the DoD pursuant to a written joint arrangement with the MOD requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the MOD. To assist in providing the desired protection, the MOD will mark such information furnished to the DoD with a legend indicating that the information is of French Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

VIII. Procedure for Calculation of Exchanges Balance

A. Accounting Periods

The accounting period will be from January 1 to December 31 of each year.

B. Exchange Rate

A single exchange rate will be used to express the payment value for both parties. This rate will be calculated by averaging over the period the monthly means of average daily rates published in New York and Paris by the competent authorities. The exchange rate for the previous period will be submitted to the FACDE prior to the first meeting of each period.

C. Calculation of the Cumulated Balance of Exchanges

To calculate the cumulated exchange balance starting from the effective date of signature of the MOU, the following will be done:

1. Add to the cumulative balance of the preceding period the balance of the current period.

2. Valuate each country's balance in terms of its own currency.

An example of the cumulated balance calculation is shown in the appendix.

D. Balance Approval

To take into account the data obtained after the FACDE meeting it is agreed that the balance may be revised during the next FACDE meeting, at which date it will become definitive.

IX. Implementation

The present annex, English and French versions of which are equally authentic, will

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come into effect as of the date on which both parties have signed.

William J. Perry,

For the Government of the United States of America.

Date 18 Dec 80.

H. Martre,

For the Government of the French Republic.

Date 22 Dec 80.

[FR Doc. 88-28733 Filed 12-14-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination on the importation of Spanish Yellowfin Tuna.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, in consultation with the Department of State, finds that the Government of Spain has not submitted documentation required by the regulations governing the importation of yellowfin tuna from the eastern tropical Pacific Ocean. As a result, yellowfin tuna from Spain may not be imported into the United States.

DATES: The prohibition on importation of Spanish yellowfin tuna is effective December 14, 1988.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, Southwest Region, NMFS (514-213-6196).

SUPPLEMENTARY INFORMATION: In 1984 the Congress of the United States reauthorized the Marine Mammal Protection Act and amended the Act to require that nations, whose vessels fish with purse seines in the eastern tropical Pacific Ocean (ETP), must have a marine mammal protection program and fleet porpoise safety performance comparable to that of the United States. In the ETP, yellowfin tuna are commonly caught in association with porpoise, leading to incidental porpoise mortality in purse seine fishing operations.

On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the ETP. Under this rule, any nation which has purse seine vessels greater than 400 tons carrying capacity operating in the ETP, wishing to export yellowfin tuna to the United States must supply documentary evidence that the nation has adopted a regulatory program governing the incidental taking of marine mammals (porpoise) in the fishery which is comparable to the regulatory program of the United States. Each nation must also supply documentation on the incidental taking of marine mammals by its purse seine vessels for 1986 and 1987. Nations which had positive findings in effect on March 18, 1988 and which failed to submit the required documentation by August 17, 1988, were prohibited from exporting yellowfin tuna into the United States after October 15, 1988 (see 53 FR 39743, October 12, 1988).

Spain was not included among the nations whose yellowfin tuna was prohibited entry into the United States at that time because it was not clear under what nation's laws the single Spanish-flag vessel operates. The vessel is based in Ecuador but flies the flag of Spain. If the vessel is operating under the jurisdiction of the marine mammal laws of Ecuador under a formal declaration between Spain and Ecuador, the vessel is considered to be a vessel of Ecuador for the purposes of these regulations. Spain then would not need to submit the information required for ETP tuna purse seine fishing nations. The NMFS has inquired whether a formal agreement exists between the governments of Ecuador and Spain which would make the vessel subject to the marine mammal protection laws of Ecuador while purse seine fishing for tuna. Because no response has been forthcoming, the NMFS concludes that the vessel is operating under the laws of Spain. Therefore, Spain is subject to the requirements to demonstrate it has a marine mammal protection program that is comparable to that of the United States and to submit observer data on the marine mammal mortality performance in its tuna purse seine fishery.

This embargo of yellowfin tuna and yellowfin tuna products from Spain remains in effect until: (1) the Assistant Administrator determines that Spain has submitted the required information which demonstrates that their marine mammal program is comparable to that of the United States and that Spain's fleet meets the marine mammal mortality rate comparison test in effect at the time, (2) the governments of Ecuador and Spain by mutual agreement declare that the vessel is operating under the jurisdiction of Ecuador's marine mammal laws and regulations while fishing in the ETP, or (3) Spain meets the requirements as changed through future rulemaking.

Date: December 12, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-28802 Filed 12-14-88; 8:45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 241
Thursday, December 15, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-48]

Proposed Revision of Transition Area; Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Lake Charles, LA. The development of a new VOR RWY 33 standard instrument approach procedure to the Chennault Industrial Airpark, utilizing the Lake Charles Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR RWY 33 SIAP.

DATE: Comments must be received on or before January 25, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-48, Department of Transportation Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-48." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Lake Charles, LA. The development of a new VOR RWY 33 SIAP to the Chennault Industrial Airpark, utilizing the Lake Charles VORTAC, has necessitated this proposed revision. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing the new VOR RWY 33 SIAP. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAY, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.181 [Amended]

2. Section 71.181 is amended as follows:

Lake Charles, LA [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Lake Charles Municipal Airport (latitude 30°07'32"N., longitude 93°13'22"W.); and within an 8.5-mile radius of the

Chennault Industrial Airpark (latitude 30°12'37"N., longitude 93°08'35"W), and within 5.0 miles each side of the 335° radial of the Lake Charles VOR (latitude 30°08'29"N, longitude 93°06'20"W.), extending from the 8.5-mile radius area of the Chennault Industrial Airpark to 15 miles northwest of the Chennault Industrial Airpark.

Issued in Fort Worth, TX, on December 2, 1988.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 88-28840 Filed 12-14-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Revision of Valuation Regulations Governing Gas Sales Under Percentage-of-Proceeds Contracts

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Mangement Service (MMS) is proposing to amend its gas product valuation regulations to change the method of determining the value of gas sold under percentage-of-proceeds contracts. Since adoption of the final regulations, MMS has determined that little or no additional royalties are collected as a result of this provision. Also, MMS has experienced a significant increase in workload that is unnecessary for the valuation of gas sold under these contracts. Consequently, MMS is soliciting comments on a proposed alternative method which reduces lessee reporting requirements, produces the same revenue payments, and eliminates the unnecessary workload burden on MMS.

DATE: Comments should be submitted by January 17, 1989.

ADDRESS: written comments, suggestions, or objections regarding the proposed amendment should be mailed to: Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 or FTS 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule amendment are Susan Lupinski and Scott Ellis of the Royalty Valuation and Standards Division of the Royalty Management Program, MMS.

I. Background.

The subject of this proposed rulemaking is the manner in which gas production from Federal leases (including leases on the Outer Continental Shelf) and Indian Tribal and allotted leasses will be valued for royalty purposes where the lessee's contract for the sale of gas prior to processing provides for the sales value to be determined based upon a percentage of the purchaser's proceeds from selling the residue gas, liquids, and other gas plant products resulting from processing. The existence of these so called "percentage-of-proceeds" contracts is typically a direct result of oil well production where associated casinghead gas production occurs in sufficient volumes that venting or flaring of the gas is considered wasteful, or the volumes cannot be flared or vented due to environmental reasons. The volume of gas produced from any one lease is usually insufficient to justify the expense for each lessee to build a processing plant to handle its own lease production. Thus, a plant is built in a centralized location to handle the production from the various leases producing casinghead gas in the field or area.

The issue of whether to classify percentage-of-proceeds contracts as sales of unprocessed gas versus processed gas generated much controversy during the comment period prior to MMS's recent modifications to the product value regulations in 30 CFR Part 206 (53 FR 1230, January 15, 1988). Comments from industry generally recommended that MMS classify percentage-of-proceeds contracts under the unprocessed gas section. Industry commenters stated that classifying percentage-of-proceeds contracts as processed gas was unreasonable and unfair to the lessee and that the percentage-of-proceeds contracts were only the mechanism for arriving at wellhead value.

The MMS evaluated all the comments received but decided to retain percentage-of-proceeds contract valuation under the processed gas section. The MMS's main concern was that if the percentage-of-proceeds contracts were treated as unprocessed gas, limitations on processing allowances contained in the valuation regulations would be exceeded without review and approval by MMS. However, to address those instances where a lessee believed that its situation merited an exception to the limitations and requirements of the regulations, MMS adopted a provision at § 206.158(c)(3) allowing a lessee to apply for an exception to the processing allowance limitation.

Since the issuance of the revised gas valuation regulations, MMS has received many requests to (1) waive the valuation requirements under the processed gas section for percentage-of-proceeds contracts, (2) exceed the two-thirds processing allowance limitation, and (3) report royalties and allowances under alternate methods. The enormous burden placed on both payors and MMS to file new Payor Information Forms (Form MMS-4025) and Processing Allowance Forms (Form MMS-4109), and to convert from the previously used one-line entry on the Report of Sales and Royalty Remittance Form (Form MMS-2014) to multiple-line entries, was underestimated by MMS when considering whether or not to require valuation under the processed gas section. For example, the MMS received 2,000 Payor Information Forms from one company alone. Other companies have requested, and received approval of, the continued use of the one-line entry until their automated systems could be modified. Further, the burden on both payors to develop the supporting information and on MMS to process requests for allowances in excess of the two-thirds limit was also underestimated. In order to support a request for an allowance greater than two-thirds, payors had to demonstrate that the higher costs were actual, reasonable and necessary.

Based upon the experiences under the new regulations, MMS is now proposing to reconsider the valuation procedure for gas sold under percentage-of-proceeds contracts. Many percentage-of-proceeds contracts result in processing costs that exceed the two-thirds processing limitation. Due to the limited volumes from any given lease, and the fact that the costs of placing the gas in marketable condition are beyond what a lessee is ordinarily obligated to incur, MMS believes that most requests to exceed the two-thirds limit would be approved as the costs could be demonstrated by the lessee to have been actual, reasonable, and necessary. Given the prospect of approving the majority of the requests for exceptions, the proposal to allow gas sold under percentage-of-proceeds contracts to be valued as unprocessed gas should result in approximately the same revenues upon which royalty would be paid under the processed gas rules, but would eliminate a large amount of burdensome and unnecessary reporting, reviewing, and approval.

The proposed rule would only include arm's-length percent-of-proceeds contracts. As with other non-arm's-length contracts where the purchaser processes the gas, gas sold pursuant to a non-arm's-length percent-of-proceeds contract would be valued in accordance with § 206.153 of the regulations.

The MMS also believes that provisions already in place in the regulations that are applicable to the valuation of gas sold under arm's-length contracts will be a sufficient deterrent to lessees whose only objective was to circumvent the requirements and limitations of the regulations. The regulations generally provide that gas sold pursuant to an arm's-length contract will be valued for royalty purposes based on the lessee's gross proceeds. See 30 CFR 206.152(b). However, if MMS has reason to believe that revenues received under any percentage-of-proceeds contracts were unreasonably low owing to misconduct or breach of duty by the lessee to market production for the mutual benefit of the lessee and the lessor, or if gross proceeds received included a reduction in value for costs to place production in marketable condition (which are normally required to be performed at no cost to the lessor), MMS would not accept those gross proceeds for valuation purposes. See 30 CFR 206.152(b)(1)(iii) and 206.152(i) (53 FR 1274, 1275, January 15, 1988). Although MMS believes that these provisions will generally provide the necessary assurances that the valuation of this gas, as unprocessed gas, will not have results on royalties significantly different from the expected valuation under the processed gas section, including exceptions to allowance limitations, MMS is also proposing to modify § 206.152(h) to ensure that result. The MMS is proposing to modify § 206.152(h) by adding the requirement that the value for royalty purposes of the wet gas which is processed into liquids and residue gas and is disposed of under percentage-of-proceeds contracts shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of that gas.

It should be noted also for gas production from those Indian leases which require dual accounting for gas which is processed, this rule change would not affect the application of those lease provisions. See 30 CFR 206.155, 53 FR 1278 (January 15, 1988).

II. Proposed Amendments

For the reasons discussed in the above *Background* section, MMS is proposing to amend its regulations to clarify its intent and to provide for the valuation of gas under percentage-of-proceeds contracts to be under the provisions of § 206.152 rather than § 206.153.

The MMS proposes to amend § 206.152 by deleting the phrase "* * * or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, * * *" from the second sentence of paragraph (a)(1) and placing that phrase at the end of the first sentence of that paragraph. The MMS proposes to further amend § 206.152 by adding the following sentence to paragraph (h):

> Also, notwithstanding any other provision of this section, where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production for royalty purposes shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

The MMS proposes to amend § 206.153 by deleting the following phrases from the second sentence of paragraph (a)(1):

> * * * or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas (in which event these regulations will apply to determine value as if the person actually selling or disposing of the residue gas or gas plant products were the lessee of the Federal or Indian lease).

The public is invited to participate in this rulemaking action by submitting data, views, or arguments with respect to this notice. All comments must be received by 4 p.m. of the day specified in the **DATE** section at the address indicated in the **ADDRESS** section of this preamble.

III. Procedural Matters

Executive Order 12291

The Department of the Interior (Department) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to clarify the Department's intent concerning the valuation of gas sold under percentage-of-proceeds contracts under the Federal and Indian gas royalty valuation regulations that were issued on January 15, 1988 (53 FR 1230).

Regulatory Flexibility Act

Because this rule clarifies existing regulations, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1980

The proposed amendment does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal Action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subject in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resouces, Reporting and recordkeeping requirements.

Date: November 14, 1988.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Part 206 is proposed to be amended as follows:

TITLE 30—MINERAL RESOURCES

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 206.152 under Subpart D is amended by revising paragraph (a)(1) and paragraph (h) to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing (including all gas where the lessee's arm's-length contract

for the sale of that gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas). This section also applies to processed gas which must be valued prior to processing in accordance with § 206.155. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 206.153 shall apply instead of this section.

* * * * *

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart. Also, notwithstanding any other provision of this section, where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production for royalty purposes shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

* * * * *

3. Paragraph (a)(1) of § 206.153 under Subpart D is revised to read as follows:

§ 206.153 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.152 of this subpart. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right.

* * * * *

[FR Doc. 88-28883 Filed 12-14-88; 8:45 am]
BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Abandoned Mine Land Reclamation Plan; Opening of Public Comment Period and Opportunity for Public Hearing on Proposed Plan Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: On September 7, 1988, the Commonwealth of Pennsylvania submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Pennsylvania Plan). The amendment pertains to changes in the procedures for reclamation project ranking and selection. This notice sets forth the times and locations that the Pennsylvania Plan and the proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on January 17, 1989, to ensure consideration in the rulemaking process. If requested, a public hearing on the proposed amendment will be held at 9:00 a.m. on January 9, 1989. Requests to present testimony at the hearing must be received on or before 4:00 p.m. on December 30, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed to or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Pennsylvania Plan, the proposed amendment and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240,Telephone: (202) 343-5492.

Pennsylvania Department of Environmental Resources (DER), Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787-4686.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Pennsylvania Plan as submitted on November 3, 1980. Information regarding the general background on the Pennsylvania Plan, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33081-33083).

II. Discussion of Amendment

By letter dated September 7, 1988, (OSMRE Administrative Record No. PA 717), the Pennsylvania DER submitted to OSMRE a proposed amendment to revise the AMLR plan. The proposal would change the procedures for ranking and selecting construction sites. In the current Pennsylvania Plan, potential project sites are to be ranked according to a Ranking Point System which takes into consideration criteria such as priority, real estate status, reclamation benefits, and coordination with other governmental agencies. Proposed construction sites are selected based on the numerical score of the Ranking Point System plus other criteria such as technical feasibility, effect on remaining coal reserves, program objectives, and priority. The proposal would change the current ranking and selection program by eliminating the Ranking Point System and relying on the professional judgement of DER personnel. DER personnel will evaluate proposed construction sites within projects based upon program objectives, priority, technical feasibility, and any potential remining efforts. Proposed construction sites will be placed into one of five categories which are based on priority and status in the National Abandoned Mine Lands Inventory System. Within each category, the sites will be ranked by severity. Severity will be determined through DER personnel experience and expertise.

III. Public Comment Procedures

In accordance with 30 CFR 884.14 and 30 CFR 884.15, OSMRE is now seeking comments on whether the proposed amendment to the Pennsylvania Plan satisfies the applicable State reclamation plan approval criteria under 30 CFR Part 884. If approved, the amendment would become part of the Pennsylvania Plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m. on December 30, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 8, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88-28864 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3492-3; SC-012]

Approval and Promulgation of Implementation Plans South Carolina; Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve revisions to the South Carolina State Implementation Plan (SIP) which were submitted by the South Carolina Department of Health and Environmental Control (SCDHEC) on June 5, 1985. EPA is deferring action on the revisions to Regulation 62.1, Section II (Permit Requirements). The entire section has been reorganized affecting each of the parts in this section collectively including Part B (Operating Permit). EPA does not currently have regulations for evaluating operating permit programs and consequently does not recognize such operating permit programs as being part of a SIP. Since the revisions to this section affect each of the parts including Part B, EPA is deferring action on the entire Section II until such time that the operating permit program issue is decided. EPA at this time is not taking action on the revisions to Regulations 62.5, Standard No. 6 (Alternative Emission Limitation Options) since EPA is presently evaluating this regulation for agreement with the new Emissions Trading Policy (ETP) published on December 4, 1986 (51 FR 43814). The changes and additions to the regulatory and nonregulatory parts of the South Carolina plan involve: Requirements concerning prohibition of open burning; emissions from fuel-burning operations; emissions from process industries; requirements concerning air pollution episodes; control of fugitive particulate matter; requirements concerning the prevention of significant deterioration of air quality in South Carolina; and the requirements concerning source evaluation contained in Chapter 7 of the narrative portion of the SIP.

EPA is aware that certain types of open burning allowed by Regulation 62.2 (Prohibition of Open Burning) of the South Carolina Air Pollution Control Regulations is not allowed by Subtitle D (State or Regional Solid Waste Plans) of the Resource Conservation and Recovery Act (RCRA), and implementing EPA regulations at 40 CFR 257.3-7(a) (Air). However, EPA is approving the revisions to Regulation 62.2 submitted on June 5, 1985, under the Clean Air Act, since the Clean Air Act does not prohibit such burning. EPA has previously approved other parts of Regulation 62.2 under the Clean Air Act. These provisions may also conflict with Subtitle D of RCRA.

DATES: Comments must be received on or before January 17, 1989.

ADDRESSES: Written comments should be addressed to Stuart D. Perry of EPA Region IV (address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Stuart D. Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: On June 5, 1985, the South Carolina Department of Health and Environmental Control submitted to EPA for approval revisions to the South Carolina State Implementation Plan, and EPA is today proposing to approve a number of them.

These revisions were adopted by the South Carolina Board of Health and Environmental Control on December 20, 1984, and were forwarded to the State Legislature for approval. The revisions became State-effective on May 24, 1985. This submittal contained certification that adoption of the revisions had been preceded by adequate notice and public hearing. A discussion of these revisions now follows.

- Regulation 62.1, Section I (Definitions) was amended by revising the definition of "Acid Mist." The definition of "acid mist" was revised to agree with the definition of "acid mist" found in the EPA guideline document EPA-450/2-77-019, pages 1-4, paragraph 1.2. Acid mist is defined to be "mist of droplets of sulfuric or other acids. Sulfuric acid mist includes sulfur trioxide (SO_3) and sulfuric acid vapor as well as liquid mist."
- Regulation 62.1, Section II (Permit Requirements) was amended by reorganizing and adding to the existing regulation. The regulation is split into six parts. Part A stipulates requirements for construction permits. Part B stipulates requirements for operating

permits. The remaining parts pertain to permit applications, special permit conditions, permit exemptions, and permit inspections. The entire section has been reorganized affecting each of the parts in this section collectively including Part B (Operating Permit). EPA currently has no regulations or guidance which specify the requirements for an approvable operating permit program and consequently does not recognize such operating permit programs as part of a SIP. Since the revisions affect each of the parts in this section including Part B, EPA is deferring action on the entire Section II. EPA is developing operating permit regulations as a result of the Chemical Manufacturers Association (CMA) rulemaking pursuant to the out of court settlement. If and when EPA promulgates the operating permit regulations, EPA will take action to approve or disapprove the revisions to Section II at that time.

• Regulation 62.1, Section III (Emissions Inventory) was amended to state that an emissions inventory, defined as "a study or compilation of pollutant emissions," may be required of a plant at any time in order for the State to determine the compliance status of the plant regardless of existing conditions at the plant. Previous policy was that the State could request that an emission inventory be conducted for any plant at any time in the event that significant operational changes had taken place or other conditions existed at a plant that would require a new inventory. This statement removes any ambiguity as to when the State can request an emissions inventory.

• Regulation 62.2 (Prohibition of Open Burning) was amended to further clarify when open burning is allowed. The revisions to this regulation are minor in nature and serve to strengthen the regulation. The most significant revisions are now described. (1) Paragraph A has been revised by removing the phrase "or dwellings of four families or less" which further restricts the open burning of leaves, tree branches or yard trimming. This type of burning now is only allowed for materials originating on the premises of private residences. (2) Paragraph C has been revised to specify that fires used solely for human warmth are allowable. Since such fires would of necessity be very small, EPA believes they would have a neglible impact on the National Ambient Air Quality Standards (NAAQS). (3) Paragraph G.4 has been revised to state that "No heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any materials other than plant growth may be burned." Previously the paragraph provided that these materials could be burned if they did not produce smoke in excess of forty percent opacity. (4) Paragraph G.5 has been revised to state that open burning for the purpose of land clearing or right-of-way maintenance must be started between 9:00 a.m. and 3:00 p.m. Previously the paragraph stated the burning may be commenced between the hours of 9:00 a.m. and 3:00 p.m. (5) Paragraph G.6 has been revised to state that open burning for land clearing or right-of-way for maintenance will be burned in no more than two 30' x 30' piles at one time within a six-acre area. This further restricts the size of burning piles, which was formerly one pile 60' x 60' within a six-acre area. (6) Paragraph I was revised by replacing the phrase "rubbish and garbage" with "household trash" and by removing the phrase "or dwellings of four families or less." The opening provision now reads, "Open burning of household trash on the premises of and originating from private residences where services for the disposal of such materials are not available." This condition states when open burning is allowed. In addition a sentence has been added which states, "The location on such burning must be at least 500 feet away from any inhabited building."

EPA is aware that certain types of open burning allowed by Regulation 62.2 of the South Carolina Air Pollution Control Regulations is not allowed by Subtitle D of the Resource Conservation and Recovery Act, and implementing EPA regulations at 40 CFR 257.3–7(a) (Air). For instance, in Regulation 62.2 Paragraph I, South Carolina provides that open burning of household trash on the premises of and originating from private residences where services for the disposal of such materials are not available is allowed. However, in 40 CFR 257.3–7(a), open burning of residential, commercial, institutional or industrial solid waste is prohibited. Household trash fits this description. The types of open burning which are allowed is the infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land clearing debris, diseased trees, debris from emergency clean-up operations, and ordnance. EPA is proposing to approve the revisions to Regulation 62.2 submitted on June 5, 1985, pursuant to the Clean Air Act, since the Clean Air Act does not prohibit such burning.

• Regulation 62.3 (Air Pollution Expisodes) was amended by substituting the word "plant" for "facility" throughout this regulation. "Plant" is defined in Regulation 62.1, Section I as "except as otherwise provided, any stationary source or combination of stationary sources, which is located on one or more contiguous or adjacent properties and owned or operated by the same person(s) under common control." "Plant" is used consistently throughout the regulation. The same substitution was made in Regulation 62.6.

• Regulation 62.5, Standard No. 1 (Emissions From Fuel Burning Operations) was amended as follows: (1) Section IV, Part B (Reporting Requirements) was amended by changing its title to "Continuous Opacity Monitor Reporting Requirements." This part, originally one large paragraph, has also been broken into three subparts. The content of the subparts is the same as the original paragraph. One stipulation has been added by the State which will require all *quarterly* Continuous Opacity Monitor reports to be postmarked by the 30th day following the end of each calendar quarter. (2) Section V (Exemptions) was separated into two subparts of the original paragraph. (3) Section VII (Source Test Requirements) was amended to include a requirement that a source's compliance test shall be conducted while the source is operating at the expected maximum production rate or other production rate or operating conditions which would result in the highest emissions. This requirement has also been added to Regulation 62.5, Standard No. 4, Section X, Part A, and Regulation 62.5, Standard No. 5, Section I, Part E.

• Regulation 62.5, Standard No. 4 (Emissions from Process Industries) was amended to include a number of minor revisions. A sampling of the most significant changes are as follows: (1) The statement "Where Federal New Source Performance Standards apply, the more restrictive emission limits will be imposed" has been added to Standard No. 4 to clarify any ambiguity in applicability within this regulation. (2) The title of Section II is revised by adding the work "Kraft." This section is applicable to "Kraft Pulp and Paper Manufacturing Plants." (3) South Carolina has revised Section VII Part B (Non-enclosed Operations) by removing the option of a source to use oil treatment as a means to control dust generated from the premises of and the roadway controlled by the source. Section VII, Part B now states that "oil treatment is prohibited." (4) Section VIII, Part C (Case-by-Case Exceptions to Provisions of Part B) was amended to

state that case-by-case exceptions granted under this part are subject to EPA approval as State Implementation Plan revisions pursuant to section 111(d) of the Clean Air Act instead of section 110(a)(3)(A) as previously stated. This revision was necessary because total reduced sulfur (TRS) emissions, which are regulated by Section VIII, are covered in section 111(d) of the Clean Air Act instead of section 110(a)(3)(A). (5) Section VIII, Part I (Monitoring, Recordkeeping, and Reporting) was revised to agree with federal requirements. This section stated that a source shall have installed continuous emissions monitoring equipment within 18 months after promulgation of an approved TRS monitoring method by EPA or no later than the scheduled date for final compliance. A method has been promulgated by EPA, and the State is now changing this section to agree with the deadline of 18 months after promulgation, which was January 5, 1985.

• Regulation 62.5, Standard No. 6 (Alternative Emission Limitation Options) was revised to provide better clarity within the regulation. EPA is not taking action at this time on the revisions to this regulation since EPA is presently evaluating this regulation for agreement with the new Emissions Trading Policy (ETP) published on December 4, 1986 (51 FR 43814). These revisions will be acted upon in a separate notice.

• Regulation 62.5, Standard No. 7 (Prevention of Significant Deterioration) was amended to include some minor revisions to this regulation which are not considered to alter its meaning or intent. The changes to Section I (Definitions) are as follows: (1) Parts B(1)(a) and B(1)(b) are amended by adding the phrase "from the plant" to the sentences. The sentences states a "major modification" is "any physical change in or change in the method of operation of a major plant that: (a) Would cause, by itself, an emissions increase from the plant of any pollutant subject to regulation under the Federal Clean Air Act; (b) would result in a significant net emissions increase from the plant of any pollutant subject to regulation under the Federal Clean Air Act." (2) Part E, which is a definition of "plant," is revised by deleting the word "facility" from the definition. The definition of plant is "any building, structure, or installation which emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act." (3) Part F, is revised by removing the word "facility" to agree with the change made in Part E. Also, so that there is no ambiguity regarding applicability, the word plant has been added to the Part F definition. Part F is the definition of "Building, structure, plant, or installation" and is defined as follows:

> "All of the pollutant-emiting activities which belong to the same industrial grouping, are located on one or more continguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively.

(4) Part Q (definition of "secondary emissions") is amended by changing paragraph (2). This paragraph, which provides an example of "secondary emissions", is revised by removing the word "facility" and replacing it with the word "operation". The word "operation" best fits this statement and now reads as follows:

> Emissions from any offsite support operation which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major plant or major modification.

The minor revisions are acceptable and do not alter the intent of the regulation.

• Regulation 62.6 (Control of Fugitive Particulate Matter) was amended as follows: (1) Section I (Control of Fugitive Particulate Matter in Non-attainment Areas), paragraphs (a) and (b) were revised by replacing the word "plant" for the word "facility". (2) Section III (Control of Fugitive Particulate Matter Statewide) was amended by replacing the word "plant" for the word "facility" in paragraph (c), and paragraph (d) has been revised by adding the statement "Oil treatment is also prohibited" as a means to control fugitive particulate matter. The State is further clarifying its position on what are and are not acceptable methods for dust control. These changes do not alter the meaning or intent of this regulation.

• Chapter 7 (Source Evaluation), which is part of the narrative portion of the South Carolina State Implementation Plan, was revised to provide minor wording and/or text changes which are not considered to alter the meaning or intent of this chapter. A sampling of the most significant changes are as follows: (1) In Part A.3, the word "rated" is substituted for the word "actual" in the sentence. The sentence now reads "woodwaste (or combination woodwaste) boilers greater than $20x10^6$ BTU/hr rated input." (This sentence is part of a section which states how often a source shall be tested.) (2) Part B has been revised to provide that the owner or operator of any woodwaste boiler not equipped with a wet scrubber will be required to install, calibrate, operate, and maintain continuous emission monitoring equipment for the measurement of opacity if it has 60,000 lb/hr steam rated output and/or has been in non-compliance with any State regulation.

Proposed Action

EPA proposes to approve the regulation changes which were submitted on June 5, 1985, as detailed in this notice. EPA is also proposing to approve the revisions to Regulation 62.2 (Prohibition of Open Burning) under the Clean Air Act, since the Clean Air Act does not prohibit such open burning. EPA is deferring action on revisions to Regulation 62.1, Section II (Permit Requirements). The entire section has been reorganized affecting each of the parts in this section collectively including Part B (Operating Permit). EPA does not currently have regulations for evaluating operating permit programs and consequently does not recognize such operating permit programs as part of a SIP. Since the revisions to this section affect each of the parts including Part B, EPA is deferring action on the entire Section II until such time that the operating permit program issue is decided. Also, EPA will take action on Regulation 62.5, Standard No. 6 (Alternative Emission Limitation Options) in a separate notice.

The public is invited to participate in this rulemaking by submitting written comments on the proposal.

Under 5 U.S.C., section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 87090.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

BEST COPY AVAILABLE

Dated: November 24, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

Editorial Note: This document was received at the Office of the **Federal Register** December 12, 1988.

[FR Doc. 88-28845 Filed 12-14-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 61

[AD-FRL-3491-9]

National Emission Standards for Hazardous Air Pollutants: Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of the public comment period.

SUMMARY: On July 28, 1988, EPA proposed rulemaking under section 112 of the Clean Air Act for five source categories of benzene emissions. That proposal included four policy approaches for setting national emission standards for hazardous air pollutants (NESHAP), consistent with the court's decision on the vinyl chloride standard [*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987)] (hereafter referred to as *Vinyl Chloride*). The decisions that would result from the application of each of the policy approaches to the five benzene source categories were described, and alternative standards were proposed.

In response to requests from several commenters, the period for receiving written comments on the proposed standards is being reopened to provide an opportunity for rebuttal and additional comments on information previously submitted.

DATE: Comments must be postmarked on or before January 30, 1989.

ADDRESS: Comments should be sent (in duplicate if possible) to: Central Docket Section (LE-131), Attention (to the appropriate docket numbers), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The applicable dockets are: Docket No. OAQPS 79-3, Part I for comments on benzene health effects and general policy issues; Docket No. OAQPS 79-3, Part II for comments addressing maleic anhydride process vents; Docket No. A-79-49 for comments addressing regulation of ethylbenzene/styrene (EB/S) process vents; Docket No. A-80-14 for comments addressing the regulation of benzene storage vessels; Docket No. A-79-27 for comments addressing benzene equipment leaks; or Docket No. A-79-16 for comments addressing coke by-product recovery plants. Comments on general policy issues and benzene health effects need only be sent to Docket No. OAQPS 79-3, Part I and not to the other five dockets.

FOR FURTHER INFORMATION CONTACT: For general information or information specific to coke by-product recovery plants or benzene storage vessels, contact Ms. Gail Lacy at (919) 541-5261, Standards Development Branch, Emission Standards Division, Research Triangle Park, North Carolina 27711. For information specific to benzene equipment leaks, EB/S process vents, or maleic anhydride process vents, contact Dr. Janet Meyer at the above address, telephone number (919) 541-5254.

SUPPLEMENTARY INFORMATION: On December 8, 1987, the DC Circuit Court granted the EPA's motion for a voluntary remand of the benzene equipment leaks standard and the withdrawal of proposed standards for EB/S and maleic anhydride process vents and benzene storage vessels in light of the same court's recent *Vinyl Chloride* decision. The court ordered EPA to propose action on the above standards within 180 days, and to promulgate action within 360 days. The order was subsequently modified to extend the proposal date by 45 days, and the EPA's proposal was published on July 28, 1988 (53 FR 28946). On October 26, 1988, EPA filed a motion with the court to extend the date for final action in the benzene rulemaking to August 31, 1989. On November 23, 1988, the court granted the EPA's request. This extension will allow reopening of the public comment period and more thorough analyses of issues raised in the comments.

The comment period for the benzene NESHAP proposal (53 FR 28946, July 28, 1988) closed on October 3, 1988. The EPA received requests from two States, one city, one company, several environmental groups, and several individuals for extensions of the comment period. In addition, several commenters have informed EPA that they will be submitting additional information they believe should be considered in the rulemaking.

The over 200 comment letters that have been submitted address many aspects of the proposal. Numerous comments concern the important policy issues raised by *Vinyl Chloride* and, as a related matter, the types and levels of risk that EPA should be addressing under section 112. The EPA also received comments concerning many technical aspects of the data and assumptions underlying the EPA's risk assessment.

Based on its review of the comments received and the requests for an extension, EPA believes that this rulemaking would be significantly enhanced by reopening the comment period to provide an opportunity for rebuttal and other comments on the information previously submitted.

List of Subjects in 40 CFR Part 61

Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Date: December 9, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-28843 Filed 12-14-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL-3492-1]

Designation of Areas For Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a request from the state of Wisconsin to revise the attainment status designation for the Milwaukee carbon monoxide (CO) nonattainment area to attainment. The intent of this proposed notice is: (1) To discuss the results of USEPA's review of the State redesignation request, including the supporting data submitted by the State; and (2) to provide an opportunity for the public to comment. Under the Clean Air Act (CAA), a designation can be changed if sufficient data are available to warrant such a change.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 17, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air

Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the national ambient air quality standards (NAAQS) attainment status for all areas within each State. See 43 FR 9062 (March 3, 1978), and 43 FR 45993 (October 5, 1978). An area designation may be revised whenever sufficient data become available to warrant a redesignation.

Milwaukee's current CO nonattainment area is defined (40 CFR 81.350) to be bounded by:

North 75th Street and West Beckett Street on the east; West Perkins Avenue on the south; North 77th Street on the West; and West Hope Avenue and Marion Street on the North.

Redesignation Criteria for CO

The NAAQS for CO is considered to be violated when CO concentrations exceed 9 parts per million (ppm), for an 8-hour average, or 35 ppm for an 1-hour average, more than once per calendar year.

Specific criteria for CO redesignation reviews are given in the following USEPA policy memoranda:

1. June 12, 1979, Memorandum from Richard G. Rhoads, to Directors of Air and Hazardous Materials Divisions, Region I–X, Subject: "Section 107 Redesignation Criteria."
2. April 21, 1983, Memorandum from Sheldon Meyers, to Directors of Air Management Divisions, Subject: "Section 107 Designation Summary Policy."
3. December 23, 1983, Memorandum from G.T. Helms, to Chiefs of Air Programs Branches, Region I–X, Subject: "Section 107 Questions and Answers."
4. May 27, 1983, Memorandum from Richard G. Rhoads, to Gary L. O'Neal, Subject: "Summary of NAAQS Interpretation."

These documents are also in the record for this rulemaking action and are available for public review at the Region V Office. The general USEPA policy relevant to this CO redesignation request is summarized as follows:

1. Generally, the most recent 2 years (eight consecutive quarters) of quality assured, representative air quality data are to be considered. Data are considered on a site-by-site basis.
2. Evidence must be provided to show that a control strategy fully approved by USEPA has been implemented. This must be done to show that the observed air quality improvement is due in part to real, enforceable emission reductions, rather than to temporary changes in emissions or meteorology.
3. Supplemental data, such as air quality modelling data, emissions data, etc., should be used to determine whether or not the monitoring data characterize the worst-case air quality in the area.
4. An entire urban core area should be designated as nonattainment, if NAAQS violations or the potential for such violations exist in the area.
5. Concentrations for CO are to be considered in units of parts per million. Eight-hour concentrations are to be running averages.

Redesignation Request

On May 4, 1987, pursuant to section 107(d)(5) of the CAA, the Wisconsin Department of Natural Resources (WDNR) requested that the Milwaukee CO nonattainment area be redesignated to attainment. This redesignation request is based on CO monitoring data from the period of March 1985 through March 1987, which covers the most recent eight quarters of available CO monitoring data. No CO standard violations have been monitored in the Milwaukee CO area.

USEPA believes that the improvement in CO air quality in the nonattainment area is primarily due to CO emissions reductions resulting from implementation of the Federal Motor Vehicle Emissions Control Program (FMVECP) and the State's vehicle Inspection and Maintenance (I/M) program in the Milwaukee area.

The current Wisconsin CO SIP approved by USEPA predicted that attainment of the CO standard would occur at an emission rate of 173,838 tons per year in the Milwaukee area. The Milwaukee CO emissions have decreased from 257,903 tons per year in 1980, to 160,605 tons per year in 1985; and the State expects the Milwaukee CO emissions to decrease to 132,720 tons per year or lower by the end of 1987.

USEPA approved Wisconsin's 1982 CO State Implementation Plan on March 9, 1984, (49 FR 8920) and Wisconsin's I/M program on February 25, 1985 (50 FR 7593). Therefore, there is a fully approved CO plan in Milwaukee which has resulted in air quality improvements.

Conclusion

The recent air quality improvement can be attributed to reductions required by the SIP, FMVECP, and I/M, which have been implemented and will continue to be implemented. USEPA believes that an adequate explanation of air quality improvement in the Milwaukee CO area has been provided to support the State's request. Therefore, USEPA is proposing to redesignate the Milwaukee CO area to attainment for CO.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation.

After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation. Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: August 17, 1987.

Valdas V. Adamkus,

Regional Administrator.

NOTE: This document was received by the Office of the Federal Register December 12, 1988.

[FR Doc. 88–28844 Filed 12–14–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking by Land Rover UK

Limited (Land Rover), asking this agency to amend Standard No. 209, *Seat Belt Assemblies*. Standard No. 209 currently requires that all seat belt assemblies that meet the dynamic testing requirements to be permanently marked or labeled with information about the vehicles and seating positions in which it is appropriate to install the dynamically tested belt assembly. Dynamically tested belt assemblies are also exempted from the width, breaking strength, elongation, and assembly performance requirements of Standard No. 209. Land Rover expressed its opinion that the labeling requirements should apply to belt assemblies that meet the dynamic testing requirements *only* if those belts do not comply with all the requirements of Standard No. 209. According to Land Rover, belts that comply with all the requirements of Standard No. 209 are appropriate for use in any vehicle, so there is no reason to require special labeling on those belts.

The agency disagrees with this assertion. As NHTSA has explained in its recent notices on dynamic testing requirements for safety belts, the protection provided in a crash to vehicle occupants depends on both the performance of the belts themselves *and* on the structural characteristics and interior design of the vehicle. Because of this fact, dynamically tested belt systems that comply with all requirements of Standard No. 209 might not be appropriate for installation in all vehicles, since some vehicles may be designed for use only with a specific design or designs of dynamically tested belt systems. Requiring information about the vehicles and seating positions for which the belt is appropriate to be labeled on the belt itself minimizes the likelihood that dynamically tested belt systems will be installed in vehicles or seating positions for which those belts are not appropriate. Since the current labeling requirements for all dynamically tested safety belts serve to minimize the risk that needless injuries will result from improper applications of dynamically tested belts in particular vehicles or seating positions, Land Rover's petition to delete those labeling requirements for some dynamically tested safety belt is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM–12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4916).

SUPPLEMENTARY INFORMATION: On November 23, 1987, NHTSA published a final rule requiring light trucks and light multipurpose passenger vehicles equipped with manual lap/shoulder belts at the front outboard seating positions to comply with the injury reduction criteria of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), when tested in a 30 mile per hour barrier crash. As an adjunct to this new requirement, that rule also established a requirement that dynamically tested seat belt assemblies be labeled to show the vehicles and the seating positions in which the belt assembly can be installed. These labeling requirements for dynamically tested belt assemblies for light trucks and light multipurpose passenger vehicles were identical to those that had already been adopted for dynamically tested belt assemblies for passenger cars. In adopting the requirement for dynamically tested passenger car belt assemblies, NHTSA explained the reason for the requirement as follows:

> NHTSA believes that care must be taken to distinguish dynamically tested belt systems from other systems, since misapplication of a belt in a vehicle designed for use with a specific dynamically tested belt could pose a risk of injury. If there is a label on the belt itself, a person making the installation will be aware that the belt should be installed only in certain vehicles. 51 FR 9600, at 9604; March 21, 1986.

Land Rover asked NHTSA for an interpretation of the belt labeling requirements for dynamically tested belt assemblies for light trucks and light multipurpose passenger vehicles in a letter dated April 19, 1988. In this letter, Land Rover noted that S4.6(b) of Standard No. 209 provides that: "A seat belt assembly that meets [the dynamic testing requirements] of Standard No. 208 shall be permanently and legibly marked or labeled with the following statement: This dynamically-tested seat belt assembly is for use only in [insert specific seating position(s), e.g., "front right"] in [insert specific vehicle make(s) and model(s)]." Land Rover suggested that this labeling requirement was adopted primarily because of the provision in section S4.6.3 of Standard No. 208 that dynamically tested manual belt assemblies do "not have to meet the requirements of S4.2(a)–(c) and S4.4 of Standard No. 209."

Land Rover suggested that NHTSA intended to require dynamically tested belts to be labeled in accordance with S4.6(b) of Standard No. 209 *only* if the belts do not comply with *all* of the requirements of Standard No. 209. In these situations, Land Rover acknowledged that the labeling requirements help ensure that the belts will not be installed into inappropriate vehicles. However, Land Rover stated its belief that the labeling requirements in S4.6(b) of Standard No. 209 do *not* apply to dynamically-tested manual belts that also comply with all of the requirements of Standard No. 209. According to Land Rover, there is no reason to require labeling of belt assemblies that comply with all requirements of Standard No. 209, just because those belt assemblies also comply with the dynamic testing requirements when installed in a particular vehicle.

NHTSA responded to Land Rover's request for an interpretation of these requirements in an October 14, 1988 letter. In this letter, the agency explained that section S4.6(b) of Standard No. 209 provides that seat belt assemblies that *meet* the dynamic testing requirements in Standard No. 208 shall be marked or labeled with certain information. This section contains *no* exception for seat belt assemblies that meet the dynamic testing requirements *and* satisfy the performance requirements of Standard No. 209. The reason for not including any such exception was that the agency intended that *all* dynamically tested manual belts be marked or labeled with the information specified in S4.6(b).

The October 14, 1988 letter to Land Rover also explained in detail why the agency intended that *all* dynamically tested manual belts be marked or labeled with this information. The letter explained that NHTSA agrees with Land Rover's suggestion that a belt assembly that complies with all requirements of Standard No. 209 will provide very substantial protection to an occupant of any vehicle in a crash. However, the letter noted that the protection provided by safety belts to occupants of a particular vehicle depends on *more* than the performance of the belts themselves; it also depends on the structural characteristics and interior design of the vehicle. The dynamic testing requirements measure the performance of the safety belt/vehicle combination, while Standard No. 209 focuses on measuring the performance of the safety belts alone. For a more extensive discussion of this issue, *see* 52 FR 44899–44900; November 23, 1987.

The October 14, 1988 letter to Land Rover explained the need for labeling of all dynamically tested belts for light trucks and multipurpose passenger vehicles as follows. Even if Land Rover were to install dynamically tested belt systems that comply with all requirements of Standard No. 209 in all of its vehicles, those belt systems might not be appropriate for use in other light multipurpose passenger vehicles. This is particularly true if other light multipurpose passenger vehicles are

designed for use only with specific dynamically tested belt systems different from the Land Rover belt system. The chances of the Land Rover belt system being installed in a vehicle for which it would not be appropriate are minimized if there is a label on the belt system indicating that it should be installed only in specific seating positions in Land Rover models and any other vehicles for which the belt system is appropriate. Accordingly, the October 14, 1988 letter to Land Rover concluded that the belt labeling requirements in S4.6(b) of Standard No. 209 apply to *all* dynamically tested belts for use in light trucks and multipurpose passenger vehicles, regardless of whether those dynamically tested belts comply with all other requirements of Standard No. 209.

Land Rover requested that NHTSA treat its request for an interpretation as a petition for rulemaking if, as NHTSA did, the agency concluded that Land Rover's suggested interpretation was incorrect. NHTSA has conducted a technical review of the petition, in accordance with 49 CFR 552.6. After that review, the agency has concluded that the reasons set forth in past preambles are still valid and establish a safety need for requiring labeling of *all* dynamically tested manual belts. Because of this safety need, NHTSA has concluded that there is no reasonable possibility that a rule amending the belt labeling requirements in accordance with Land Rover's petition would be issued at the conclusion of the requested rulemaking proceeding. Therefore, Land Rover's petition is denied.

Authority: 15 U.S.C. 1392, 1407, and 1410a; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on December 12, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

FR Doc. 88–28858 Filed 12–14–88 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 53, No. 241
Thursday, December 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Bankruptcy Rules.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Advisory Commmittee on Bankruptcy Rules to consider proposed amendments to the Federal Bankruptcy Rules under the provisions of Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on January 19 and 20, 1989, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held in the robing room adjacent to the ceremonial courtroom in the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633–6021.

Dated: December 9, 1988.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 88–28850 Filed 12–14–88; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Committee on Rules of Practice And Procedure

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Committee on Rules of Practice and Procedure to consider proposed amendments to the Federal Rules of Appellate, Civil, Criminal and Bankruptcy Procedure and the Federal Rules of Evidence under the provisions of Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on January 19 and 20, 1989, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held in the ceremonial courtroom in the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633–6021.

Dated: December 9, 1988.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 88–28851 Filed 12–14–88; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 9, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• *Agricultural Marketing Service*

Regulating the Handling of Spearmint Oil Produced in the Far West, Marketing Order No. 985
Committee report forms
Recordkeeping; On occasion, Annually
Business or other for-profit; 2,425 responses; 249 hours; not applicable under section 3504(h)
Virginia M. Olson, (202) 447–5057

• *Agricultural Marketing Service*

Reporting requirements under the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products
FV–159, FV–356, FV–468
On occasion
State or local governments; Businesses or other for-profit; 13,062 responses; 670 hours; not applicable under section 3504(h)
Joe A. Fly, (202) 447–4693.

• *Human Nutrition Information Service*

Continuing Survey of Food Intakes by Individuals (CSFII) 1989–90
On occasion
Individuals or households; 8,750 responses; 8,750 hours; not applicable under section 3504(h)
Robert L. Rizek, (301) 436–8457

Reinstatement

• *Office of Finance and Management*

Debt Collection

On occasion
Individuals or households; Farms, Businesses or other for-profit; Federal agencies or employees, non-profit institutions, Small businesses or organizations; 2,000 responses; 2,000 hours; not applicable under section 3504(h)
Reynaldo Gonzalez, (202) 382–1168

Revision

- *Agricultural Marketing Service*

Potatoes Grown in Idaho and Malheur County, Oregon, Marketing Order No. 945
Recordkeeping; On occasion
Farms; Businesses or other for-profit; 53,499 responses; 571 hours; not applicable under section 3504(h)
Virginia M. Olson, (202) 447–5057

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 88–28835; Filed 12–14–88; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Forest Management Activities Associated With the Implementation of the Forest Plan in the Mill and Emigrant Drainages of the Absaroka Mountains; Livingston Ranger District, Park County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement to analyze and disclose the environmental impacts of forest management activities associated with the implementation of the Gallatin National Forest Plan, within the Mill and Emigrant drainages of the Absaroka Mountains, Livingston Ranger District, Park County, Montana. The agency invites written comments and suggestions on the proposed management activities. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware how they may participate and contribute to the final decision.

DATE: Comments concerning the proposed management activities must be received by January 6, 1989.

ADDRESS: Submit written comments and suggestions on the proposed management activities to Gordon Schofield, Acting District Ranger, Livingston Ranger District, Gallatin National Forest, Route 62, Box 3197, Livingston, Montana 59047.

FOR FURTHER INFORMATION CONTACT: Direct comments or questions about the proposed activities and the Environmental Impact Statement should be made to Rita E. Beard, Livingston Ranger District, Gallatin National Forest, Route 62, Box 3197, Livingston, Montana 59047.

SUPPLEMENTARY INFORMATION: The area under consideration covers approximately 110,000 acres. It can be described as including Mill and Emigrant Creeks, bounded by the hydrologic divides of these drainages and the forest boundary. Approximately 61,800 acres are within the Absaroka-Beartooth Wilderness. An additional 26,000 acres were identified as roadless by the Rare II process, and are within the North Absorka Roadless Area, 1–371, and Chico Peak Roadless Area, 1–547. There are approximately 2,600 acres of private land within the analysis area. The approximate legal description is as follows:

Sections 25, 26, 35, 36 Township 5 south (T5S), Range 10 east (R10E) Montana Prime Meridian (MPM)
Sections 28, 29, 30, 31, 32, 33, 34 T5S, R11E MPM
Sections 12, 13, 14, 23, 24, 25, 26, 35, 36 T6S, R8E MPM
Sections 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 T6S, R9E MPM
All Sections in T6S, R10E MPM
Sections 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33 T6S, R11E MPM
Sections 1, 2, 12 T7S, R8E MPM
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36 T7S, R9E MPM
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33 T7S, R10E MPM
Sections 4, 5, 6, 7, 8, 9, 17, 18, 19 T7S, R11E MPM
Sections 1, 2, 3, 4, 5, 12 T8S, R9E MPM
Sections 4, 5, 6, 7, 18 T8S, R10E MPM.

The USDA Forest Service proposes to implement activities prescribed by the Gallatin National Forest Plan, approved September 23, 1987.

The proposed activities include, wildlife habitat improvement, noxious weed control, livestock grazing, trail construction and reconstruction and timber management. Timber management activities could include timber sales, firewood gathering, road construction, insect and disease control, reforestation and thinning. Approximately 8,870 acres (8.1 percent of the analysis area), have been identified as suitable and available for timber management by the Gallatin National Forest Plan.

The Forest Service will consider a range of alternatives from deferring management activities for the planning period, considering activities other than timber sales and road construction, and implementing all activities prescribed by the Forest Plan during this planning period. The EIS will analyze the cumulative effects of past, current and projected activities on both private and National Forest lands for each alternative. It will also analyze the effects of the recent wildfires and snow-damaged timber on the proposed management activities.

Public participation is an important part of the analysis, commencing with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Indentifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin National Forest Plan.
4. Identifying alternatives.
5. Identifying potential environmental effects of any proposed action and alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies and task assignments.

Scoping has already been initiated through individual and public meetings beginning in the spring of 1986. Several issues have been identified, including: Concern over additional timber harvest in the area, road construction, visual quality, maintaining security for big game species, impact of forest management activities on moose, maintaining a diversity of age and size classes within timber lands, supplying local economies and mills with timber and management of down and damaged timber caused by snow storms in the spring of 1988. Public participation and comment is welcomed throughout the process. Other Federal and State agencies such as, the Montana Department of Fish, Wildlife and Parks will be invited to cooperate in development of the issues and alternatives and their input will be solicited as the analysis continues.

The draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public

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review in January of 1989. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft environmental impact statement will be 45 days from the date of the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in management of the Mill/Emigrant area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978) and that environmental objections that could have been raised at that draft stage may be waived if not raised until after completion of the final Environmental Impact Statement, *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final Environmental Impact Statement. The final EIS is scheduled to be completed by March 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

Gordon Schofield, Acting District Ranger, Livingston Ranger District, Gallatin National Forest is the responsible official.

Date: December 5, 1988.

Gordon Schofield,

Acting District Ranger, Livingston Ranger District, Gallatin National Forest.

[FR Doc. 88-28813 Filed 12-14-88; 8:45 am]

BILLING CODE 3410-11-M

Duncan And Sunflower Timber Sales; Tahoe National Forest, Placer County, CA; Intent To Prepare an Environmental Impact Statement; Correction

This document corrects the notice of intent to prepare an environmental impact statement that appeared at page 48569 in the **Federal Register** of Thursday, December 1, 1988. The action is necessary to correct a typographical error. That notice of intent incorrectly states that comments regarding this project should be received by January 15, 1988. That date is corrected as follows: January 15, 1989.

Date: December 9, 1988.

William P. Knispek,

Timber Management Officer.

[FR Doc. 88-28825; Filed 12-14-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Yocona-Spybuck Watershed, AR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Yocona-Spybuck Watershed, St. Francis and Lee Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan, State Conservationist, Soil Conservation Service, 5404 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone: (501) 378-5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Gene Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for flood prevention and watershed protection. Flood prevention measures include channel work on 6.83 miles of existing ditch. Accelerated technical and financial assistance for installing land treatment measures to control erosion will be provided. Land treatment measures include the no-tillage method of crop production, water disposal systems, and land use conversion.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Date: December 2, 1988.

Ronnie D. Murphy,

Acting State Conservationist.

[FR Doc. 88-28811 Filed 12-14-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Review on Certain Steel Wire Strand; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel wire strand used for prestressing concrete.

DATE: Comments must be submitted on or before December 27, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of

Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S.:

> * * * determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products * * *.

We have received a short-supply request for uncoated seven wire steel strand for prestressing concrete, meeting American Society of Testing Materials (ASTM) specification A 416, stress-relieved, Grade 270, measuring 0.5 inch in nominal diameter.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than December 27, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

December 5, 1988.

[FR Doc. 88–28882 Filed 12–14–88; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standard and Technology

[Docket No. 81015–8215]

Proposed Revision of Federal Information Processing Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce the proposed revision of Federal Information Processing Standard (FIPS PUB) 21–2, COBOL.

SUMMARY: A revision to Federal Information Processing Standards Publication, FIPS PUB 21–2, COBOL, which adopts ANSI X3.23–1985, is being proposed for Federal use. This revision will adopt the forthcoming addendum (X3.23A–198x) to American National Standard for COBOL which adds an Intrinsic Function facility to the language. The proposed addendum is upwardly compatible with the standard except for the reserved word FUNCTION.

Prior to the submission of this proposed revision to FIPS PUB 21–2 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the proposed addendum to ANSI X3.23–1985 from the Standards Processing Coordinator (ADP), Technology Building, Room B–64, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATE: Comments on this proposed revision must be received on or before March 15, 1989.

ADDRESS: Written comments concerning the adoption of this proposed revision as FIPS 21–3 should be sent to: National Institute of Standards and Technology, ATTN: Proposed Revision of FIPS 21–2, Technology Building, Room B–154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3277.

Date: December 9, 1988.

Raymond G. Kammer,

Acting Director.

FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION 21–3

Announcing the Standard for COBOL [proposed]

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. *Name of standard.* COBOL (FIPS PUB 21–3).

2. *Category of standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard Programming Language, COBOL, ANSI X3.23–1985 and X3.23A–198x, as amplified herein, as a Federal Information Processing Standard (FIPS). This revision supersedes FIPS PUB 21–2 and reflects the addition of an Intrinsic Function facility to the COBOL specifications. The American National Standards define the elements of the COBOL programming language and the rules for their use. The purpose of the standards is to promote portability of COBOL programs for use on a variety of data processing systems. The standards are used by implementors as the reference authority in developing processors and by users who need to know the precise syntactic and semantic rules of the standard language.

4. *Approving authority.* Secretary of Commerce.

5. *Maintenance agency.* Department of Commerce, National Institute of Standards and Technology (NIST).

6. *Cross index.* a. American National Standard Programming Language COBOL, ANSI X3.23–1985, ISO 1989–1985.

b. Addendum X3.23A–198x to American National Standard Programming Language COBOL, ANSI X3.23–1985.

7. *Related documents.*[1] a. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunication Standards.

b. Federal Information Processing Standards Publication 29, Interpretation

[1] Refers to most recent revision of FIPS PUBS.

Procedures for Federal Information Processing Standards for Software.

c. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training.

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

9. *Applicability.* a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS COBOL is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS COBOL is especially suited for applications that emphasize the manipulation of characters, records, files, and input/output (in contrast to those primarily concerned with scientific and numeric computations).

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report generation, database management, or text processing languages. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a COBOL source program, then the resulting program should conform to the conditions and specifications of FIPS COBOL.

f. When it is determined that a programming language that has been adopted as a FIPS is to be used for an application or program, a processor conforming to the FIPS programming language shall be used, if available. It is not intended that existing programs be rewritten solely for the purpose of conforming to a FIPS programming language. If a program is to be part of an existing application written in a programming language not conforming to a FIPS programming language, the language processor used for the existing application may be used for the new program.

10. *Specifications.* FIPS COBOL specifications are contained in American National Standard Programming Language COBOL, ANSI X3.23–1985 and ANSI X3.23A–198x.

ANSI X3.23–1985 and ANSI X3.23A–198x specify the form of a program written in COBOL, formats for data, and rules for program and data interpretation.

The standards do not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

In addition, the following requirements apply:

a. For purposes of FIPS COBOL, the modules defined in ANSI X3.23–1985 and ANSI X3.23A–198x are combined into three subsets and four optional modules. The three subsets are identified as Minimum, Intermediate, and High. The four optional modules are Report Writer, Communications, Debug, and Segmentation. These four optional modules may be associated with any of the subsets.

The high subset is composed of all language elements of the highest level of all required modules. The intermediate subset is composed of all language elements of level 1 of all required modules. The minimum subset is composed of all language elements of level 1 of the Nucleus, Sequential I–O, and Inter-Program Communication modules.

The following table reflects the composition of the required subsets and the relationship of the subsets and the optional modules. The numbers in the table refer to the level within a module as designated in ANSI X3.23–1985 and ANSI X3.23A–198x, and a dash denotes the corresponding module is omitted or may be omitted.

COBOL Subsets

Modules	Minimum	Intermediate	High
Required:			
Nucleus	1	1	2
Sequential I–O	1	1	2
Relative I–O	–	1	2

COBOL SUBSETS—Continued

Modules	Minimum	Intermediate	High
Indexed I–O	–	1	2
Inter-Program Communication	1	1	2
Sort-Merge	–	1	1
Source Text Manipulation	–	1	2
Intrinsic Function	–	–	1
Optional:			
Report Writer	–, or 1	–, or 1	–, or 1
Communication	–, 1, or 2	–, 1, or 2	–, 1, or 2
Debug	–, 1, or 2	–, 1, or 2	–, 1, or 2
Segmentation	–, 1, or 2,	–, 1, or 2	–, 1 or 2

b. A facility must be available in the processor for the user to optionally specify monitoring of the source program at compile time. The monitoring may be specified for a FIPS COBOL subset, for any of the optional modules, for all of the obsolete language elements included in the processor, or for a combination of a FIPS COBOL subset, optional modules, and all obsolete elements. The monitoring may be specified for any FIPS COBOL subset at or below the highest subset for which the processor is implemented and for a level of an optional module at or below the level of the optional module for which the processor is implemented. The monitoring is an analysis of the syntax used in the source program against the syntax included in the user selected FIPS COBOL subset and optional modules. Any syntax used in the source program that does not conform to that included in the user selected FIPS COBOL subset and optional modules will be diagnosed and identified to the user through a message on the source program listing. Any syntax for an obsolete language element included in the processor and used in the source program will also be diagnosed and identified through a message on the source program listing. The determination of the need to flag any given source program syntax in accordance with these requirements cannot be logically resolved until the syntactic correctness of the source program has been established. The message provided will identify:

—The clause, statement or header that directly contains the nonconforming or obsolete syntax. (For the purpose of this requirement the definitions of clause, statement and header contained in American National Standard Programming Language COBOL, ANSI X3.23–1985, Section III, Glossary, and the definition of syntax contained in American National Dictionary for Information Processing Systems, X3/TR–1–82, apply.)

—The source program line and an indication of the beginning location within the line of the clause, statement or header which contains the nonconforming of obsolete syntax.

—The syntax as "nonconforming standard" if the nonconforming syntax is included in the processor but is not within the user selected FIPS COBOL subset or optional modules except if monitoring is selected for the obsolete category then obsolete language elements are only flagged as "obsolete".

—The syntax as "nonconforming nonstandard" if the nonconforming syntax is a nonstandard extension included in the processor.

—The syntax as "obsolete" if the syntax identified is in the obsolete category within a FIPS COBOL subset or optional module included in the processor.

11. *Implementation.* The implementation of FIPS COBOL involves three areas of consideration: Acquisition of COBOL processors, interpretation of FIPS COBOL, and validation of COBOL processors.

11.1 *Acquisition of COBOL Processors.* This publication is effective June 15, 1989. COBOL processsors acquired for Federal use after this date should implement at least one of the required subsets of FIPS COBOL. If the functionality of one or more of the optional modules meets programmatic requirements, then those optional modules also should be acquired. Each optional module that is needed to meet programmatic requirements should be explicitly cited as a requirement in the order for the processor. Conformance to FIPS COBOL should be considered whether COBOL processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce COBOL processors conforming to the standard. The transition period begins on the effective date and continues for one (1) year thereafter. The following apply during the transition period:

a. The provisions of FIBS PUB 21–2 apply to processors ordered before the effective date but delivered subsequent to the effective date.

b. The provisions of this publication apply to orders placed after the effective date; however, a processor conforming to FIPS PUB 21–3, if available, may be acquired for use prior to the effective date. If a conforming processor is not available, a processor conforming to FIPS PUB 21–2 may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS COBOL.* NIST provides for the resolution of questions regarding FIPS COBOL specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS COBOL should be addressed to: National Institute of Standards and Technology, ATTN: COBOL Interpretation, Technology Building, Room B–154, Gaithersburg, MD 20899.

11.3 *Validation of COBOL Processors.* NIST provides a service for the purpose of validating the conformance to this standard of processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the Software Standards Validation Group, COBOL Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899 (301) 975–3247.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of

the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such eletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 21–3 (FIPS PUB 21–3), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 88–28837 Filed 12–14–88; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Preliminary Determination To Approve Amendment of the Alaska Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of preliminary approval of amendment.

Location: Aleutians East Coastal Resource Service Area, Alaska.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the Alaska Coastal Management Program (ACMP) to incorporate the Aleutians East Coastal Resource Service Area Coastal Management Program (AECMP). The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455 (g) and the regulations implementing the CZMA at 15 CFR 923.81. The AECMP creates a new coastal boundary for the ACMP in the region and establishes goals and policies for activities taking place in the Aleutians East Coastal Resource Service Area. The AECMP follows the guidelines and standards for local program development set in the ACMP and will be administered by the Coastal Resource Service Area and the State.

The Director, OCRM, has reviewed the amendment request and has made a preliminary determination that the ACMP will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environment. Therefore, approval of the proposed amendment does not require an environmental impact statement pursuant to the National Environmental Policy Act of 1969, as amended. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA) were distributed for public comment in June 1987 **Federal Register** Vol. 52, No. 118, p. 2331).

A Preliminary Determination to approve the AECMP was included with the EA in 1987; however, concerns over the AECMP boundary and Special Use Area designations were raised during the public comment period and the AECMP was not approved. The AECMP was resubmitted in October, 1988 based upon additional information and further justification, rather than major changes to either the enforceable policies or the coastal zone boundary. This new information addresses the concerns raised during public comment on the EA and, based on this latest submittal, the Director, OCRM, has issued a Preliminary Determination to approve the AECMP. The Director's Preliminary Determination of Approvability, as well as the latest submittal package, the FONSI, and the EA are available at the address below.

Comments on the Preliminary Determination to approve the Alaska amendment request should be made by January 27, 1989. Address comments to: James P. Burgess, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673–5158.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.)

Date: December 9, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88–28795 Filed 12–14–88; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Pakistan

December 12, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and Pakistan is available from the Textiles Divsion, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limits:

	12-month restraint limit
Category Group I:	
226/313	67,216,794 square meters.
315	46,416,519 square meters.
331	744,185 dozen pairs.
334	45,339 dozen.
335	55,985 dozen.
336	150,073 dozen.
338	3,022,507 dozen.
339	693,687 dozen.
340	160,578 dozen.
341	277,653 dozen.
342	91,592 dozen.
347/348	361,300 dozen.
351	45,796 dozen.
352	228,980 dozen.
363	28,113,750 numbers.
369-D [1]	1,038,636 kilograms of which not more than 389,488 kilograms shall be in piled dish towels—tariff number 6302.60.00.10.
369-R [2]	5,694,556 kilograms.
Category Group II:	
300, 301, 314, 317, 326, 330, 332, 333, 345, 349, 350, 353, 354, 359, 360–362, 369-S [3] and 369-O, [4] as a group.	64,594,183 square meters equivalent.
Sublevels within Group II:	
317	5,016,764 square meters.
350	25,000 dozen.
369-S	385,554 kilograms.
Group III:	
218	2,257,544 square meters.
219	3,762,573 square meters.
220	3,344,509 square meters.
229	306,481 kilograms.
237	65,000 dozen.
607	453,592 kilograms.
613/614	13,246,565 square meters.
615	14,092,091 square meters.
617	3,511,735 square meters.
631	505,620 dozen pairs.
634	41,946 dozen.
635	16,949 dozen.
636	89,888 dozen.
638/639	224,720 dozen.
640	81,226 dozen.
641	90,123 dozen.
647/648	477,565 dozen.
650/850	55,000 dozen.
659	68,039 kilograms.
666	1,133,981 kilograms.

[1] In Category 369–D, dish towels in tariff numbers 6302.60.00.10 and 6320.91.00.20.
[2] In Category 369–R, only tariff number 6307.10.20.20.
[3] In Category 369–S, only tariff number 6307.10.20.10.
[4] In Category 369–O, all tariff numbers except 6302.60.00.10 and 6302.91.00.20 (369–D); 6307.10.20.20 (369–R) and 6307.10.20.10 (369–S).

Imports charged to these category limits for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for such goods during that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral textile agreement between the Governments of the United States and Pakistan.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28871 Filed 12–14–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Romania

December 12, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commisisoner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Satus Reports posted on the bulletin boards of each Customs port or call (202) 343–6497. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, as amended, between the Governments of the United States and the Socialist Republic of Romania is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRECTION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

	12-month restraint limit
Category Level not in a group:	
604	1,488,917 Kilograms.
Group II:	
410, 414, 464–469, 611–629, 665–670, as a group.	10,033,528 square meters equivalent.
Sublevels within the Group II:	
410	167,225 square meters.
465	129,600 square meters.
618	1,672,225 square meters.
666	116,306 kilograms.
Group III:	
431–459, 630–659, as a group.	40,225,428 square meters equivalent.
Sublevels within Group III:	
433/434	6,169 dozen.
435	5,028 dozen.
442	8,026 dozen.
443	98,196 numbers.
444	32,021 numbers.
448	6,500 dozen.
459	34,019 dozen.
633	44,199 dozen.
634	53,687 dozen of which not more than 17,083 dozen shall be in non-knit coats in Category 634pt.[1] and not more than 36,604 dozen shall be in knit coats in Category 634pt.[2]
635	64,704 dozen.
638/639	363,256 dozen.
640	70,150 dozen.
641	44,850 dozen.
642	39,326 dozen.
643pt./644pt. (not knit) [3].	498,462 numbers.
643pt./644pt. (knit) [4].	24,996 numbers.
645/646	240,962 dozen.
647	80,737 dozen.
648	57,746 dozen.
659	101,768 kilograms.

[1] In Category 634pt. (non-knit), only tariff numbers 6201.13.40.15, 6201.13.40.20, 6201.13.40.30, 6201.13.40.40, 6201.19.00.30, 6201.93.20.10, 6201.93.30.00, 6201.93.35.10, 6201.93.35.20, 6201.99.00.30, 6203.23.00.50, 6230.29.20.10, 6210.20.10.20, 6210.40.10.20, 6211.20.15.15, 6211.20.20.30, and 6211.33.00.35.

[2] In Category 634pt. (knit), only tariff numbers 6101.30.10.00, 6101.20.20.10, 6101.30.20.20, 6101.90.00.30, 6103.23.00.36, 6103.29.10.10, 6112.12.00.10, 6112.19.10.10, 6112.20.10.10, 6112.20.10.30 and 6113.00.00.25.

[3] In Category 643pt./644pt., (non-knit) only tariff numbers 6203.12.20.10, 6203.12.20.20, 6203.19.30.00 and 6203.19.40.50 in Category 643pt.; 6204.13.20.10, 6204.13.20.20, 6204.19.20.00 and 6204.19.30.60 in Category 644 pt.

[4] In Category 643pt./644pt., (knit), only tariff numbers 6103.12.20.00, 61.03.19.15.00 and 6103.19.40.50 in Category 643pt.; and 6104.13.20.00, 6104.19.15.00 and 6104.19.20.60 in Category 644pt.

Imports charged to the category limits, except Category 439, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, as amended, between the Governments of the United States and the Socialist Republic of Romania.

The conversion factors for Categories 433/434 and 638/639 are 35.2 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry of consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile agreements.

[FR Doc. 88–28872 Filed 12–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 12, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended, establishes limits for the 1989 agreement year.

A copy of the current bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended, between the Governments of the United States and Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to

prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumtpion of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following levels of restraint:

Category	12-mo restraint limit
Group I:	
239	345,297 kilograms.
331	337,459 dozen pairs.
334	55,890 dozen.
335	168,120 dozen.
338/339	855,171 dozen of which not more than 499,770 dozen shall be in Category 338 and not more than 555,681 dozen shall be in Category 339.
340	598,492 dozen.
341	150,491 dozen.
342	92,610 dozen.
347/348	786,763 dozen of which not more than 491,727 dozen shall be in Category 347 and not more than 382,454 dozen shall be in Category 348.
435	6,262 dozen.
604	703,827 kilograms.
631	347,288 dozen pairs.
634	213,381 dozen.
635	218,360 dozen.
638	783,709 dozen.
639	2,920,484 dozen.
640	127,593 dozen.
641	208,118 dozen.
645/656	120,200 dozen.
647	426,400 dozen.
648	1,406,046 dozen.
Group II:	
200–229, 237, 300/301, 313–330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359–369, 400–434, 436, 438, 439, 440–444, 445/446, 447, 448, 459–469, 600–603, 606, 607, 611–630, 632, 636, 642–644, 649, 650, 659–S [1], 659–V [2], 659–O [3] and 665–670, as a group.	38,461,859 square meters equivalent.
Sublevels within Group II:	
200	251,996 kilograms.
201	259,196 kilograms.
218	1,672,255 square meters.
219	1,672,255 square meters.
220	1,672,255 square meters.
222	169,251 kilograms.
223	119,366 kilograms.
224	1,672,255 square meters.
225	1,672,255 square meters.
226	1,672,255 square meters.
227	1,672,255 square meters.
229	122,592 kilograms.
237	190,000 dozen.
300/301	197,214 kilograms.
313	1,672,255 square meters.
314	1,672,255 square meters.
315	1,672,255 square meters.
317	1,672,255 square meters.
326	1,672,255 square meters.
330	1,176,471 dozen.
332	434,783 dozen pairs.
333/633	41,500 dozen.
336	70,000 dozen.
345	54,348 dozen.
349	416,667 dozen.
350	39,216 dozen.
351/651	38,462 dozen.
352/652	148,148 dozen.
353/354/653/654.	48,426 dozen.
359	197,214 kilograms.
360	1,818,182 numbers.
361	322,581 numbers.
362	289,855 numbers.
363	4,000,000 numbers.
369	197,214 kilograms.
400	34,109 kilograms.
410	125,419 square meters.
414	45,359 kilograms.
431	71,429 dozen pairs.
432	53,571 dozen pairs.
433	4,167 dozen.
434	6,000 dozen.
436	3,049 dozen.
438	10,000 dozen.
439	20,012 kilograms.
440	6,250 dozen.
442	10,000 dozen.
443	33,336 numbers.
444	33,336 numbers.
445/446	20,000 dozen.
447	8,333 dozen.
448	8,333 dozen.
459	34,019 kilograms.
464	52,338 kilograms.
465	139,355 square meters.
469	34,019 kilograms.
600	259,196 kilograms.
603	266,819 kilograms.
606	83,228 kilograms.
607	259,196 kilograms.
611	1,672,255 square meters.
613	1,672,255 square meters.
614	1,672,255 square meters.
615	1,672,255 square meters.
617	1,672,255 square meters.
618	1,672,255 square meters.
619	1,672,255 square meters.
620	1,672,255 square meters.
621	116,306 kilograms.
622	1,672,255 square meters.
624	1,672,255 square meters.
625	1,672,255 square meters.
626	1,672,255 square meters.
627	1,672,255 square meters.
628	1,672,255 square meters.
629	1,672,255 square meters.
630	1,176,471 dozen.
632	434,783 dozen pairs.
636	140,000 dozen.
642	186,104 dozen.
643	444,444 numbers.
644	444,444 numbers.
649	416,667 dozen.
650	39,216 dozen.
659–S	145,150 kilograms.
659–V	145,150 kilograms.
659–O	145,150 kilograms.
655	1,858,061 square meters.
666	115,306 kilograms.
669	116,306 kilograms.
670	453,592 kilograms.

[1] In Category 659–2, only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10, 6211.12.10.20.

[2] In Category 659–V, only tariff numbers 6110.30.10.30, 6110.30.10.40, 6110.30.20.30, 6110.30.20.40, 6110.30.30.30, 6110.30.30.35, 6110.90.00.52, 6110.90.00.54, 6210.93.20.20, 6202.93.20.20, 6211.33.00.50 and 6211.43.00.80.

[3] In Category 659–O, all tariff numbers except 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10, 6211.12.10.20 in Category 659–S; and 6110.30.10.30, 6110.30.10.40, 6110.30.20.30, 6110.30.20.40, 6110.30.30.30, 6110.30.30.35, 6110.90.00.52, 6110.90.00.54, 6201.93.20.20, 6202.93.20.20, 6211.33.00.50 and 6211.43.00.80 in Category 659–V.

Imports charged to these category limits, except Category 439, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factor for Categories 352/652 is 11.3 square meters equivalent per dozen.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended, between the Governments of the United States and the Republic of Singapore.

In carrying out the above directions, the Commissioner of Customes should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28873 Filed 12–14–88; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 12, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port.

For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Ex. O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton, wool and man-made fiber textile products are being adjusted, variously, for shift added, shift subtracted, carryforward and unused carryforward.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with the Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 60, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 19, 1988, the directive of December 29, 1987 is being amended further to adjust the limits for cotton, wool and man-made fiber textile products in the following categories, under the provisions of the current bilateral textile agreement between the Governments of the United States and Thailand:

Category	Adjusted 12-mo. limit [1]
200	921,215 pounds.
226/613/614/615	17,838,016 square yards.
300	5,707,411 pounds.
301pt.[2]	5,693,260 pounds.
315	16,635,342 square yards.
604	1,002,674 pounds.
Group II:	
239, 330–354, 359, 630–654 and 659, as a group.	84,690,114 square yards equivalent.
Sublevel in Group II:	
341	152,521 dozen.
Group III:	
410, 414, 431–448 and 459, as a group.	1,677,420 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 301pt., not wholly cotton in TSUSA numbers 300.6025, 300.6027 and 300.6028.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–28874 Filed 12–14–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for the Tule River Basin Investigation, Tulare County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is to determine the feasibility of constructing additional facilities to control flooding along the Tule River and to provide additional water supply storage to meet other water resources needs of the area including irrigation, recreation, hydropower, and enhancement of fish and wildlife resources. Potential alternatives would help to alleviate flooding and provide additional water supplies to address other identified water related problems.

FOR FURTHER INFORMATION CONTACT: Suggestions and input from agencies, organizations and the general public are encouraged. Questions or comments about the proposed action and DEIS should be addressed to the District Engineer, U.S. Army Corps of Engineers, Sacramento District, (CESPK–PD–R), 650 Capitol Mall, Sacramento, California 95814–4794, or call Mr. Jeff Groska, at telephone (916) 551–1860. Responses specifically related to California Environmental Quality Act requirements of the EIR may be directed to Mr. Roger Robb of the Lower Tule River Irrigation District, P.O. Box 1388 Porterville, California 93258, (209) 686–4716.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The study will determine the feasibility of increasing flood protection and increasing irrigation storage space in the existing reservoir by modifying the spillway. The Corps of Engineers will prepare a report on its findings to be submitted to Congress.

2. Alternatives

Alternatives being considered are (a) no action plan and (b) the raising of the gross pool of Success Lake. Additional alternatives were considered but are not being studied in detail because they were found to not provide adequate flood protection, or are economically infeasible. They include the following: Indian Reservation Dam, North Fork Tule Dam, Middle Fork Tule Dam, South Fork Tule Dam, Springfield Dam, and Springfield Levees.

3. Scoping Process

a. The Corps completed a reconnaissance study in July 1987 which identified the acceptable alternatives to be carried into feasibility studies. Close coordination is being maintained with Federal, State, local sponsors, local agencies, environmental organizations, and concerned individuals. This is being accomplished through public meetings, public notices and inter-agency coordination. Through this Notice of Intent all segments of the affected public and agencies are invited to participate in the continuing planning process.

b. Significant issues that will be analyzed in depth in the EIS/EIR include: Displacement of people, land use, noise, air quality, endangered species, wildlife resources, fishery resources, cultural resources, riparian vegetation, flood protection, dam failure, water quality, recreation, and transportation.

c. The Lower Tule River Irrigation District is the local sponsor for the study and is providing 50 percent of the total study cost. Cost sharing partners to the study sponsor are: Tulare County, Kings County, and the State of California Department of Water Resources. The sponsor will participate with the Corps of Engineers in study management and plan formulation processes. Specific work items to be accomplished by the local interests include identification of environmental baseline conditions, identification of current land use, and assistance in the preparation of the Habitat Evaluation Procedure

evaluation of fish and wildlife impacts and enhancement potentials.

d. Significant review and consultation requirements to be conducted during the study include coordination with the U.S. Fish and Wildlife Service and California Department of Fish and Game under the Fish and Wildlife Coordination Act and Endangered Species Act, consultation with the State Historic Preservation Officer and Advisory Council on Historic Preservation under the National Historic Preservation Act, and coordination with the California Water Quality Control Board and Environmental Protection Agency on water quality issues under section 404 of the Clean Water Act. As this report will be a joint DEIS/EIR, coordination and review requirements both the National Environmental Policy Act and the California Environmental Quality Act will be completed.

4. Meeting Schedule

Additional public meetings for the specific purpose of scoping are not being considered. Scoping letters and prior public meetings during the reconnaissance study phase served to identify significant concerns and potential solutions. A July 1988 Notice of Initiation of Feasibility Study for flood control was mailed to interested agencies, organizations, and individuals. That notice and this Notice of Intent to Prepare a DEIS/EIR provide further opportunity for interested parties to provide input into the scope of the feasibility study and potential solutions.

5. Availability

The DEIS/EIR is scheduled to be available to the public in January 1990.

November 30, 1988.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-28814 Filed 12-14-88; 8:45 am]

BILLING CODE 3710-EZ-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.003Q]

Invitation; Applications for New Awards Under the Bilingual Education; State Educational Agency Program for Fiscal Year 1989

Purpose: Provides financial assistance to State educational agencies (SEAs) to collect, aggregate, analyze, and report data and information on each State's population of limited English proficient persons, and the educational services provided or available to those persons. The program further provides assistance for activities designed to improve the effectiveness of programs for limited English proficient persons in their States.

Deadline for Transmittal of Applications: February 6, 1989.

Deadline for Intergovernmental Review Comments: April 5, 1989.

Applications Available: December 20, 1988.

Available Funds: It is expected that approximately $5,975,000 will be available for this program for fiscal year 1989.

Project Period: 36 months.

Applicable Regulations: (a) The Bilingual Education: State Educational Agency Program (34 CFR Part 548), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79 and 80 (except for § 75.217 (b) through (d)—relating to review of applications).

For Applications or Information Contact: Luis A. Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5086, Mary E. Switzer Building), Washington, DC 20202-6641. Telephone: (202) 732-5707.

Program Authority: 20 U.S.C. 3302.

Dated: December 8, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88-28891 Filed 12-14-88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA NO. 84.184B]

Invitation; Applications for New Awards Under the Drug-Free Schools and Communities Program; Federal Activities Grants Program for Fiscal Year 1989

Purpose: To award grants to State educational agencies, local educational agencies, institutions of higher education and other nonprofit agencies, organizations and institutions to support drug and alcohol abuse education and prevention activities.

Deadline for Transmittal of Applications: January 23, 1989.

Applications Available: December 23, 1988.

Available Funds: $3,000,000.

Estimated Range of Awards: $100,000-$200,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 20.

Project Period: 12-18 Months.

Applicable Regulations: (a) The final regulations governing the Drug-Free Schools and Communities Program—Federal Activities Grants Program, 34 CFR Parts 764 adn 766, published in the **Federal Register** on July 30, 1987 (52 FR 28526), and (b) the Education Department General Administrative Regulations, 34 CFR Parts, 74, 75, and 77.

Absolute Priority: In accordance with 34 CFR § 66.4(b) and 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to projects that are designed for students in grades kindergarten through eight (K-8). The Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priorities

The Secretary invites applications that address one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(3), applications meeting these invitational priorities will not receive competitive or absolute preference over applications that do not meet one or more of these invitational priorities.

(1) Involve parent and school personnel in preventing drug and alcohol use by students though such activities as educating parents and school personnel about substance abuse and how it may be prevented, detected, and treated.

The Secretary is particularly interested in supporting projects that:

- Implement programs or workshops to educate parents about the impact of substance abuse on their children.
- Implement educational programs for students in grades K-8 that focus on preventing the use of "gateway drugs," i.e., tobacco and alcohol.

(2) Communicate to students the dangers of drug and alcohol use, including development of communication programs that effectively convey the dangers of drug and alcohol use to students.

The Secretary is particularly interested in supporting projects that:

- Integrate information on the harmful effects of alcohol and drugs throughout the regular curriculum in such subjects areas as health, science, physical education, and social studies.
- Disseminate information on the harmful effects of alcohol and drugs through such activities as student-generated theatrical presentations, literature, and other media as one part of a larger, comprehensive drug prevention program.

(3) Implement cooperative programs with local law-enforcement officials, judicial officials, community leaders, and government officials.

The Secretary is particularly interested in supporting projects that:

• Provide workshops involving law enforcement officials to educate parents, students and school personnel about such issues as improving discipline and security in the schools or on school premises as a means of preventing drug use.

Selection Criteria

The program regulations at § 766.20 authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 766.21 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distributed the additional points as follows:

Evaluation Plan

(§ 766.21(d)) Five (5) additional points will be added for a possible total of 15 points for this criterion.

Contribution to Improving the Quality of Drug and Alcohol Abuse Education and Prevention Activities

(§ 766.21(f) Ten (10) additional points will be added for a possible total of 35 points for this criterion.

For Applications or Information Contact: The Drug-Free Schools and Communities Staff, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2135, Washington, DC, 20202–6151. Telephone: (202) 732–4599.

Program Authority: 20 U.S.C. 3212.

Dated: December 8, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88–28890 Filed 12–14–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA NO: 84.184A]

Invitation; Applications for New Awards under the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education for Fiscal Year 1989

Purpose: To award grants to institutions of higher education for projects that provide preservice and inservice personnel training or curriculum demonstration in drug and alcohol abuse education and prevention for use in elementary and secondary schools.

Deadline For Transmittal of Applications: February 6, 1989.

Applications Available: December 23, 1988.

Available Funds: $13,900,000.

Estimated Range of Awards: $75,000—$250,000.

Estimated Average Size of Awards: $180,000.

Estimated Number of Awards: 77.

Project Period: 12- 24 months.

Applicable Regulations: (a) The final regulations governing the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, 34 CFR Parts 764 and 765, published in the **Federal Register** July 30, 1987 (52 FR 28526), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75 and 77.

Authorized Activities: In accordance with 45 CFR 75.3, the Secretary invites applications for projects that—

(a) Provide preservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(b) Provide inservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(c) Provide summer institutes and workshops to instruct teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(d) Carry out research and demonstration programs for teacher training and retraining in drug abuse education and prevention;

(e) Provide training for law enforcement officials, judicial officials, community leaders, parents, and government officials in drug abuse education and prevention; or

(f) Demonstrate model programs, coordinated with local elementary and secondary schools, for the development and implementation of quality drug abuse education curricula.

Absolute Priority: In accordance with 34 CFR 765.4 (d) and 34 CFR 75.105 (c) (3), for applications proposing to conduct activities (a) through (c), the Secretary will give absolute priority to applications that provide for coordinated and collaborative efforts with State educational agencies, local educational agencies, and the Regional Centers for Drug-Free Schools. The Secretary considers for funding applications proposing to conduct activities (a) through (c) only if they meet this absolute priority.

Selection Criteria: The program regulations at § 765.20 authorize the Secretary to distribute an additional 15 points among the criteria described in § 765.21 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Evaluation plan. (Section 765.21 (d)) Five (5) additional points will be added for a possible total of 15 points for this criterion; and

Contribution to improving the quality of drug and alcohol abuse education and prevention activities. (§ 754.21 (f)) Ten (10) additional points will be added for a possible total of 35 points for this criterion.

FOR APPLICATIONS OR INFORMATION CONTACT: The Drug-Free Schools and Communities Staff, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue S.W., Room 2135, Washington, DC 20202–6151. Telephone (202) 732–4599.

Program Authority: 20 U.S.C. 3211.

Dated: December 8, 1988.

Beryl Dorsett,

Assistant Secretary, for Elementary and Secondary Education.

[FR Doc. 88–2889 Filed 12–14–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact; SP–100 GES Test Site; Hanford Site, Richland, WA

Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (EA) for the proposed ground testing of a prototype SP–100 space nuclear reactor in a modified reactor containment building, Building 309, at the Department of Energy Hanford Site, near Richland, Washington (DOE/EA–0318). The proposal is part of an overall program to develop nuclear reactor power system technology for use in space. Based on the analyses in the EA, the DOE believes that the proposed action to modify Building 309 and conduct ground tests of the prototype reactor therein is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and, as such, proposes to issue a finding of no significant impact (FONSI). The proposed FONSI and the supporting EA are being made available for public review for a period of 30 days following

the date of this notice. Following completion of the public review period, DOE will make its final determination on whether to issue a FONSI or to prepare an environmental impact statement (EIS) for the proposed SP–100 ground test.

Copies of the EA Are Available From: John R. Hunter, Director, Operations Division, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, (509) 376–7471.

For Further Information About the Proposed Action Contact: Earl Wahlquist, Director, Office of Defense Energy Projects, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20545, (301) 353–3321.

For Further Information About the NEPA Process Contact: Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600.

Description of the Proposed Action

The Department of Energy (DOE), the National Aeronautics and Space Administration (NASA), and the Department of Defense (DOD) have entered into an agreement to jointly develop nuclear reactor power system technology for use in space. The purpose of the overall SP–100 program is to develop safe, compact, light-weight, durable, space reactor power system technology that can provide electrical power in the range of 10s to 100s of kilowatts for a broad class of emerging military and civil space missions in the mid-1990s and beyond. DOE has primary responsibility for developing and ground testing the nuclear reactor power system within the Ground Engineering System (GES) element of the program.

DOE is planning a ground test of the nuclear reactor portions of the power system at the DOE Hanford Site near Richland, Washington. DOE is proposing to modify an existing 70 megawatt-thermal (MWt) reactor containment building (the decommissioned Plutonium Recycle Test Reactor containment building—Building 309) for the test. The total program duration consisting of facility engineering, construction, testing, and decommissioning is expected to be 9 years. The test facility (Building 309) will be designed for 2 years of reactor operation; however, it is anticipated that actual reactor operations will be less than 2 years.

The SP–100 nuclear reactor as designed is a low pressure 2.5 MWt fast reactor, fueled with uranium nitride as the heat source and cooled by liquid lithium. The nuclear reactor portions of the power system proposed for testing in Building 309 include the SP–100 nuclear reactor, instrumentation and controls, the primary heat transport loop, and radiation shield subsystems.

The reactor is designed to be used with thermoelectric cells as the technology for converting thermal energy to electrical power. The power system will be designed to ensure safety of the general public and mission personnel during normal operations and in the event of low probability launch vehicle accidents, flight malfunctions, and inadvertent reentry.

A ground test of the assembled nuclear reactor power subsystem described above will be conducted at Hanford to confirm the ability of the nuclear reactor power system to meet design requirements. The ground test will verify performance, lifetime, reliability, and safety parameters of the generic nuclear reactor power system design. The data acquired during ground testing will assist in improving safety and performance in the design of future flight systems.

Following the test the reactor and associated hardware will be disposed of as low-level waste at Hanford. If possible, the enriched fuel materials will be recycled; if recycling is not possible, the fuel materials will be handled as transuranic waste, with ultimate disposal at the Waste Isolation Pilot Plant. Test facility systems external to the reactor and associated hardware will be put in a safe condition pending future use or ultimate decommissioning. Alternatives for the post-operation decontamination and decommissioning are under consideration. Once an alternative is proposed, the appropriate environmental reviews will be conducted.

Alternatives

Consideration of alternatives to the proposed action (i.e., nuclear reactor ground test at Hanford) included evaluation of alternative power system concepts, sites other than Hanford, evaluation of other potential locations at Hanford, and evaluation of the no-action alternative (i.e., no ground test of the SP–100 reactor).

Four power system concepts were evaluated during Phase I of the SP–100 Program. Design characteristics identified as part of the SP–100 system selection process included surety, performance, growth (to accommodate varying mission power requirements), survivability, cost/schedule, user interface, and operations. Evaluation objectives of the surety characteristic included health, safety, and environmental factors.

Four of the seven competing design characteristics (surety, survivability, user interface, and operations criteria) were found to be essentially nondiscriminators among the four system concepts. All four concepts were found to exceed the surety requirements with substantial margin. Therefore, although safety and environmental considerations were thoroughly considered throughout the system concept selection process, the final selection was driven by the design characteristics relating to performance, growth and cost/schedule.

Five DOE laboratory sites were considered for ground testing of the prototype SP–100 reactor system. The site evaluation process considered facilities and equipment, ability to obtain approval to operate, personnel and organizational effectiveness, integration with other site and program activities, and management commitment. The approval-to-operate criterion addressed site-specific environmental considerations. The evaluation concluded that environmental considerations were not governing in the selection of the site. The evaluation narrowed the choice for the final selection to two sites, and the Hanford site was selected as the preferred test site based on programmatic considerations.

Building 309 was one of ten potential facilities considered at Hanford for the GES test. These facilities were examined for suitability based on operational, safety, safeguards, and environmental characteristics. Building 309 was identified as the best Hanford facility for this purpose based on the existing containment building, the ease with which the facility could be upgraded to meet current environmental and safety standards, and the overall ability to support program objectives.

The no-action alternative would not provide for ground testing of the SP–100 prototype flight reactor and associated systems. Onsite environmental effects would not exist, but the program would develop a flight system with inadequate ground-based verification of operational and safety functions.

Description of Impacts

The SP–100 ground reactor test (maximum rating of 2.5 megawatt-thermal, low pressure coolant system) will be located at the Hanford Site in the existing containment building, Building 309, that was designed and built as a high pressure containment for the now decommissioned pressurized water cooled, 70 megawatt-thermal, Plutonium Recycle Test Reactor (PRTR).

Reacter heat will be rejected by dump heat exchangers that will transfer heat from the secondary sodium coolant to air.

The 309 Building consists of the PRTR welded steel containment vessel, three below-grade process cells (A, B, and C), and the services and utilities building. The containment vessel is surrounded by a thick, cylindrical, shielding wall that is in common with each of three process cells. The SP–100 Ground Engineering System (GES) nuclear reactor assembly and vacuum vessel will be located in Cell A. Auxiliary systems will be in Cells A, B, and C, as well as outside containment, and in the basement of the attached service building. Existing Hanford 300 Area utilities are adequate or require only minor upgrades or extensions. The estimated peak work force is less than 100 people, which is less than 1 percent of current site employment (about 12,000) and local area employment (about 75,000). No significant construction impacts will occur.

The SP–100 GES Test Program, when operational, will routinely release small quantities of gaseous radioactive tritium (hydrogen-3) and argon-41. The projected annual airborne release of argon-41 is 3.7 Curies; the projected release of tritium is 0.047 Curies. The maximum whole body dose commitment to the nearest resident from these releases is projected to be 0.00045 mrem. The 50-year whole body dose commitment for the population within 83 km (50 mi) was projected to be 0.0027 person-rem. The maximum individual whole body dose commitment is significantly smaller than the regulatory (40 CFR 61.92) limit of 25 mrem/yr whole body dose commitment and the annual dose from background radiation of 100 mrem. The SP–100 GES Test Site is being designed with state-of-the-art technology, and the design objectives are such that no employee is expected to receive a dose greater than 1000 mrem/yr in normally occupied zones and during anticipated maintenance. Actual radiation exposures will be considerably less than 1000 mrem/yr as a result of the test site program to maintain radiation exposures as low as reasonably achievable (ALARA).

The SP–100 GES test activities will result in thermal discharges to the atmosphere. Reactor heat (up to 2.5 megawatts-thermal) will be dissipated to the atmosphere using forced-air dump heat exchangers. In addition, air conditioning will be provided to remove heat from support areas. The potential effects of thermal discharges were analyzed by comparing the quantities to those discharged by Fast Flux Test Facility (FFTF), also located at Hanford, in the 400 Area. The FFTF rejects 160 times as much reactor heat as that projected for SP–100 test facilities. No significant environmental consequences beyond the immediate FFTF area were projected for the thermal discharges of FFTF; operational experience has confirmed no adverse effect. Based on this comparison, minimal effect is expected even in the immediate vicinity of the SP–100 test area.

The test activities will generate hazardous, radioactive, and mixed waste. The estimated annual radioactive solid waste volume is less than 1000 cubic feet, which is 7 percent of the total presently generated in the Hanford 300 Area. Minimal radioactive liquid waste will be generated (less than 300 gallons per year); it will be solidified and disposed of as low-level solid radioactive waste (included in the amount discussed above). No liquid waste will be disposed of to the soil. Disposal of low-level radioactive and mixed solid waste will be accomplished by burial in the Hansford 200 Area Burial Ground. The amount of low-level radioactive and mixed solid waste projected amounts to less than 1 percent of the total volume presently handled by the Hanford 200 Area Burial Ground.

Hazardous material use will consist primarily of liquid alkali metals for cooling media and solid beryllium oxide as a reactor reflector. The containment building (Building 309) will be designed to contain liquid metals and to minimize the effects of liquid metal leakage. In addition, commonly used hazardous materials, such as ethylene glycol, may be selected as the cooling medium in air conditioning systems but no normal release mechanism resulting in environmental impact was identified for this substance.

The SP–100 GES Test Facility will be designed to preclude routine particulate material releases to the environment. Further, for accidents, particulate material in the form of liquid metal aerosols which might result from a sodium or lithium fire will be precluded. Design features will be incorporated to limit leakage of alkali metal and to prevent fire if a leak did occur, thereby precluding the generation and release of particulate material. Analyses show that no risk to the general public will result from particulate material.

Further, the analyses of accidental radionuclide releases, including extreme cases, show that the facility will meet the siting and safety criteria established by DOE. Three extremely low probability accidents (10^{-6} to 10^{-8} probability) were chosen as bounding events for assessing environmental impact. One of these accidents is a sodium leak and fire from the secondary coolant system. For this accident, the calculated offsite (public) maximum individual whole body dose is 0.021 rem and the calculated onsite (worker) individual maximum whole body dose is 0.19 rem. The corresponding whole body population calculated dose commitment is 0.53 person-rem. A second accident was accidental tritium release from the tritium removal system. For this accident, the calculated offsite maximum individual whole body dose is 0.22 rem, and the calculated onsite individual whole body dose is 2 rem. The corresponding whole body population calculated dose commitment is 5.6 person-rems. The third accident was an irradiated fuel handling accident following extended operation and cooldown. For this accident, the calculated offsite maximum individual whole body dose is 0.00048 rem and the calculated onsite individual whole body dose is 0.0042 rem. The corresponding calculated whole body population dose commitment is 0.17 person-rem.

In addition, a severe (beyond design basis) accident was considered to permit evaluation of the consequences of an extremely improbable event. The system failures that were assumed to reach severe accident consequences include failure of the primary reactor coolant boundary with substantial loss of coolant, failure of emergency core cooling, failure of the core to maintain structural integrity, relocation of the core to provide a high energy recriticality, failure of the vacuum vessel, and a concurrent nonmechanistic failure of containment by malfuction of the heating and ventilation containment isolation exhaust valve.

If this severe accident were to occur, for the Hanford Site boundary individual, the maximum whole-body dose would be 0.75 rem. This amounts to a single exposure dose for that individual of 7.5 times that of the annual background dose of 100 mrem. The corresponding whole body population calculated dose commitment is less than 6 person-rem. Onsite (worker) whole-body doses would not exceed 3.4 rem. Actual doses would be expected to be lower because of operator response and onsite personnel evacuation.

These results show that no significant radiological impacts on public health and safety or on the environment would result from the testing of the SP–100 nuclear reactor assembly at the Hanford site.

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SP–100 Program

The SP–100 Program is laid out in three phases: (I) Technology assessment; (II) technology flight readiness; and (III) flight system production, qualification, and application.

Phase I, which ended in FY 1985, resulted in the selection of the uranium-nitride fueled, lithium-cooled reactor and thermoelectric power conversion concept for further development, and the selection of the proposed test site at Hanford.

Phase II was initiated in FY 1986 and consists of four functional SP–100 elements: (1) Ground Engineering System Development, (2) Advanced Aerospace Technology, (3) Civil Missions Analysis and Requirements Definition, and (4) Military Missions Analysis and Requirements Definition. Of these four functional elements, the first one is the subject of this EA and is the only element for which DOE has responsibility. This is managed within the DOE Office of Defense Energy Projects by the SP–100 GES Program Office.

Phase III may be initiated prior to the completion of Phase II activities, depending on mission decisions and funding levels. Initial planning for the first application of an SP–100 power system in space by other agencies may begin in 1989 for a proposed launch in 1996.

Potential mission applications for an SP–100 space reactor power system are many and diverse as a result of the flexibility and scalability in the system design. Missions that may employ the SP–100 power system include deep space probes, manned lunar and Mars bases, electrical propulsion for orbital transfer and interplanetary vehicles, space-based radar for surveillance, tracking and air/ocean traffic control, direct broadcasting, and global communications.

At this time, a specific mission has not been selected for the SP–100 nuclear reactor power system and flight system design and mission parameters are not available. However, it was appropriate to assess potential accident scenarios for reasonably foreseeable missions to provide insight into the possible environmental consequences of future space deployment of SP–100 reactors. Accordingly, DOE has performed a radiological risk assessment of these potential accident scenarios to ensure that the technology development efforts are directed towards reducing any potential impacts. When a specific mission is proposed by another Federal agency using the SP–100 nuclear reactor power system, potential environmental impacts of the specific mission will be evaluated further as part of the flight approval process by that Federal agency.

Three hypothetical mission scenarios representative of the range of missions for which the SP–100 is applicable were analyzed for potential accidents:

- Titan-launched high-orbit mission,
- Shuttle-launched nuclear electric propulsion (NEP) mission, and
- Shuttle-launched low-orbit mission.

The risk assessment was based on the analytical approach used for the safety analysis of past and current missions employing nuclear power sources.

Using assumed mission scenarios and the latest SP–100 design information, accident scenarios and associated probabilities were generated and potential radiological impacts were evaluated in terms of population doses. The results of the risk assessment for the three missions, expressed as statistically expected total population dose commitment, and the probabilities of population dose were 0.6 person-rem (probability 0.32), 0.5 person-rem (probability 0.01), and 3.0 person-rem (probability 0.0041) for the Titan launched high-orbit mission and the shuttle launched NEP and low-orbit missions, respectively. These doses represent the total dose that would be received by the total population that would potentially be exposed to radiation. The average individual would receive a dose that would be many thousands times smaller. Those individual doses, if detectable at all, would be much smaller than current regulatory standards for exposure of the general public to radiation.

Proposed Determination

Based on the information and analyses in the EA, the Department believes that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Thus, DOE proposes to issue a finding of no significant impact and, therefore, not require the preparation of an environmental impact statement. DOE will make a final determination following the 30-day public review period.

Issued at Washington, DC, November 22, 1988.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–28894 Filed 12–14–88; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office; Restricted Eligibility for Cooperative Agreement Award; Midwest Office of the Council of State Governments

AGENCY: Department of Energy.

ACTION: Notice of restricted eligibility for cooperative agreement award.

SUMMARY: The Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it is restricting eligibility for award of a cooperative agreement to the Midwest Office of the Council of State governments (MOCSG) in order to (1) coordinate and convene a standing committee consisting of regional state members to address transportation issues; (2) maintain and update a regional nuclear waste transportation reference document; (3) initiate, coordinate, evaluate and present regional analyses of transportation issues as necessary; (4) provide the DOE analyses of transportation initiatives originating in its member states; (5) distribute DOE program information to their membership; and (6) facilitate special forums.

FOR FURTHER INFORMATION CONTACT: Steven C. Kouba, RTTD, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972–2263.

SUPPLEMENTARY INFORMATION: Under the Nuclear Waste Policy Act (NWPA), the DOE is required to develop an integrated, publicly acceptable transportation network which will ensure the safe and efficient movement of civilian spent fuel and high-level waste between points of origin and destination. In order to accomplish this mandate, it is necessary that the DOE develop and maintain lasting institutional relationships with appropriate groups to provide technical analyses of and input into transportation issues as these issues are defined.

The MOCSG is an established, not-for-profit compact of state governments organized and convened to identify, address, and resolve economic, environmental, and transportation issues on a regional basis. The MOCSG cooperatively serves the states of North Dakota, South Dakota, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, and Ohio. Due to the MOCSG's unique institutional relationships with member state governments and their demonstrated ability to identify and assist in resolving issues relating to the

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NWPA by convening these members on a regular basis, the MOCSG has distinguished itself as an organization that can effectively provide the regional leadership necessary to address transportation issues in a multi-state forum.

Eligibility for the cooperative agreement award is being restricted to MOCSG because of its unique institutional and representational capabilities. This cooperative agreement will cover an approximate five year period beginning January, 1989 and will provide MOCSG with approximately $950,000, if all renewal options are exercised.

Issued in Chicago, Illinois, on December 8, 1988.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 88-28893 Filed 12-14-88; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to the National Association of Regulatory Utility Commissioners (NARUC)

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE28301 to NARUC to update the current "NARUC Least-Cost Utility Planning Handbook" and expand on the knowledge base developed by the NARUC in least-cost utility planning under the previous DOE Grant with the NARUC which will further regulatory and technological transfer of Least-Cost Utility Planning (LCUP).

Scope: This Grant will aid in providing funding for LCUP as follows: (1) Research and preparation to update the current *NARUC LCUP Handbook* and study financial incentives to encourage utility participation; (2) to coordinate regional technical assistance workshops for regulators and staff; (3) to coordinate the Second National Conference fo Regulators; and (4) to research, catalog, abstract and input LCUP planning documents.

The purpose of this project will be to bring about expansion and further transfer of information and data among consumers and their representatives to assist in achieving dependable energy service at rates that are reasonable, as well as assuring utility services to the consumer at the least cost for future generating capacity.

Eligibility: Based on receipt of an unsolicited application to continue and expand the statement of work of their previous grant which expires December 31, 1988, eligibility of this award is being limited to NARUC, a non-profit quasi-governmental organization whose mission is to serve the consumer interest by seeking to improve the quality and effectiveness of public regulation in America. NARUC's membership consists of governmental bodies from the fifty States, District of Columbia, Puerto Rico and the Virgin Islands, engaged in the regulation of energy utilities. NARUC has the exclusive domestic capability to perform this activity successfully based upon previous performance, technical expertise and the unique nature of the organization. There is no known other regulatory entity which is conducting or planning to conduct such activities.

The term of this grant shall be two years from the effective date of award. The estimated cost of this grant is $135,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA-453.2, 1000 Independence Avenue, SW., Washington, DC. 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 88-28897 Filed 12-14-88; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to the University of North Dakota

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application for Grant Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it intends to award based on an unsolicited action submitted by the University of North Dakota. The application is entitled "Performance Evaluation of a Novel Erosion-Resistant Pump Design".

Scope: The intended grant award is to assist the University of North Dakota Energy and Mineral Research Center, Grand Forks, North Dakota in conducting research for the "Performance Evaluation of a Novel Erosion-Resistant Pump Design".

The objective of the research proposed here is to compare the erosion rate of the Burly pump impeller with that of the most nearly similar pump of conventional design under controlled experimental conditions. The results, if positive, will substantiate the manufacturer's claims regarding the pump's durability and provide a quantitative prediction of the longer useful impeller life offered by this pump. A secondary objective is to observe, analyze, and simulate the internal hydrodynamics of this pump design to provide greater understanding of how its presumed advantages are attained. It is also possible that a study of this thoroughness may suggest further design improvements.

The project is anticipated to be of eleven months duration. The total estimated amount of the proposed cost is $39,944.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, *Attn:* Dona G. Sheehan, *Telephone:* AC 412/892-5918.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

FR Doc. 88-28898 Filed 12-14-88 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy, Coordinating Subcommittee on Petroleum Storage and Transportation Committee on Petroleum Storage and Transportation National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Monday, January 12, 1989, 1:00 p.m. Tuesday, January 13, 1989, 8:00 a.m.

Place: The Breakers, Flager Board Room, One South County Road, Palm Beach, Florida.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review Committee's request for further work on the draft volumes.

Tentative Agenda

—Opening remarks by the Chairman and Government Cochairman.
—Review the draft of the System Dynamics Volume of the report.

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage and Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisons will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 88–28896 Filed 12–14–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–72–NG]

B.C. Gas Inc., Application To Import Natural Gas From Canada and Export Natural Gas to Canada and Request for an Interim Emergency Export Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to import natural gas from and export natural gas to Canada and emergency order granting interim authority to export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 30, 1988, of an application filed by B.C. Gas Inc. (B.C. Gas) requesting authority beginning the date of first delivery until April 30, 1996, to import up to 2,164,122 Mcf of natural gas a year from Canada for injection into seasonal storage and authority to export this gas back to Canada after withdrawal from storage. Under the application, the gas would be imported from Westcoast Transmission Company Limited (Westcoast) at Sumas, Washington, and transported from the international border to Northwest Pipeline Corporation (Northwest) to Washington Water Power Company's (Water Power) storage facilities at Jackson Prairie, Washington. According to B.C. Gas' application, the gas would be imported for storage at Water Power's facilities during the non-heating season and exported back into Canada during the winter heating season for sale to B.C. Gas' customers. B.C. Gas states that none of the gas imported for storage would be sold in the U.S. B.C. Gas proposes to use existing facilities for the import/export of the gas if granted authority by the ERA.

Further, B.C. Gas requests that the ERA grant emergency interim authorization to export its existing stored gas to meet the peak requirements of B.C. Hydro's firm sales customers in Canada during the current winter heating months, until a final determination is made on its application. According to the application, the emergency authorization is necessary because Northwest has notified B.C. Gas that Northwest cannot return storage gas under the redelivery agreement between Northwest and Westcoast.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

By this notice, the ERA is establishing a 30-day comment period to provide all interested persons the opportunity to submit comments in response to B.C. Gas' long-term import/export arrangement. The ERA also gives notice at this time of its decision to issue on December 12, 1988, an emergency order granting B.C. Gas an export authorization of limited duration on which comments may be filed within the same 30-day public comment period.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 17, 1989.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: B.C. Gas, a Canadian corporation located in Burnaby, British Columbia, is a local gas distribution company engaged in the transmission, storage and distribution of gas within the Province of British Columbia. Currently, B.C. Gas stores up to 2,164,122 Mcf of gas annually on behalf of its provincial customer, B.C. Hydro, at Water Power's facilities in Jackson Prairie, Washington. Pursuant to existing contracts between Northwest and Water Power, Westcoast and B.C. Gas, B.C. Gas and Water Power, Westcoast and B.C. Hydro, and Westcoast and Northwest, Westcoast transports the gas to the Northwest interconnection near Sumas, Washington. Under the terms of the arrangement, Northwest would then transport the gas to Water Power for B.C. Hydro's account. The gas is injected at Water Power's storage facility during the period of May to September; during the October to April months up to 60,115 Mcf per day may be drawn off for redelivery by Northwest to Westcoast for B.C. Hydro's peak winter heating needs. Based on Northwest's and Westcoast's deferred exchange agreement, Northwest would be able to withdraw B.C. Hydro's gas from storage for its own system supply use, but would have to redeliver such volumes to Westcoast. Further, for any B.C. Hydro gas taken by Northwest for system supply use, Westcoast would retain equivalent volumes for B.C. Hydro's account from any gas volumes Northwest purchases from Westcoast.

According to B.C. Gas' application, the net effect of the proposed import and export will be no different from the previously authorized arrangements. No Canadian gas is proposed to be sold into United States markets or visa versa. B.C. Gas only wishes to continue using storage facilities in the United States to store gas which it purchases in Canada during off-peak periods for subsequent sale and use in Canada during peak periods. Lastly, since the volumes are imported for storage and not sold in the U.S. market, the ERA will not consider the competitiveness of the arrangement in making either an emergency or long-term evaluation of B.C. Gas' authorization request.

B.C. Gas has contractual rights to use the Jackson Prairie storage site until April 30, 1986. However, on September 30, 1988, Northwest notified Westcoast that it was invoking "force majeure" under their service agreement. Northwest seeks to terminate its deferred exchange agreement with Westcoast and its obligation to transport gas withdrawn from storage to

the international border. In view of the above considerations, the Administrator has determined that granting an emergency order to B.C. Gas is not inconsistent with the public interest. Therefore, while the ERA determines whether to approve B.C. Gas' long-term import/export authorization request, the ERA will grant the applicant interim emergency authority, to April 30, 1989, to export to B.C. Hydro gas already held in storage for the 1988–89 winter heating season. While noting that the ERA does not ordinarily act on a request for authorization until after the expiration of the **Federal Register** notice and public comment period, the Adminstrator emphasizes the need to allow B.C. Gas to serve its provincial customers' peak requirements during the ongoing heating season with the gas in storage with Water Power and the short-term nature of the authorization and the protection offered by this notice which invites public participation. This order may be superseded pending issuance of a final decision on the application.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an intrim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not appy in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., EST, January 17, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to the decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of B.C. Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., EST, Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 12, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–28895 Filed 12–14–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Application Filed With the Commission

November 8, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Reulatory Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 10631–000.

c. *Date Filed*: July 27, 1988.

d. *Applicant*: James River Hydro Project.

e. *Name of Project*: Twelfth Street Hydro Project.

f. *Location*: On the James River in the City of Richmond, Virginia.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403 (301) 268–8820.

i. *FERC Contract*: Mary Nowak, (202) 376–9634.

j. *Comment Date*: January 12, 1989.

k. *Description of Project*: The proposed project would consist of (1) an existing 1,760-foot-long diversion dam owned by the City of Richmond and Virginia Power Company; (2) a 92-acre reservoir having a negligible storage capacity; (3) an existing canal approximately 2,240 feet long, 12 feet deep, and 48 feet wide; (4) an existing concrete powerhouse containing six 1,960-kw horizontal tubular-type turbines for a total installed capacity of 11.5 MW; (5) a 120-foot-wide, 75-foot-wide, 15-foot-deep tailrace; (6) a proposed transmission line either 13.2 kV or 34.5kV; and (7) appurtenant facilities. The project would have an average annual generation of approximately 57 GWh. The applicant estimates that the studies under permit would be about $150,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit

Any qualified applicant desiring to file a competing application for a preliminary permit for a proposed

project must submit to the Commission, on or before the specified comment date for the particular application, the competing application or a notice of intent to file such an application (see 18 CFR 4.36 (1985)). Submitting a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments

The Commission invites Federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28875 Filed 12–14–88; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

November 8, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10667–000.

c. *Date Filed:* September 27, 1988.

d. *Applicant:* Youghiogheny Hydroelectric Authority.

e. *Name of Project:* Tionesta Dam Hydro Project.

f. *Location:* On the Tionesta Creek, in Forest County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. Robert D. Rizzo, D/R Hydro Company, 10 Duff Road, Suite 300, Pittsburgh, PA 15235, (412) 242–7900.

i. *FERC Contact:* Mary Nowak, (202) 376–9634.

j. *Comment Date:* January 12, 1989.

k. *Competing Application:* Project No. 10626. *Date Filed:* July 15, 1988.

l. *Description of Project:* The proposed project would utilize the existing U.S. Corps of Engineers' Tionesta dam and would consist of: (a) A proposed penstock approximately 250 feet long and 18 feet in diameter connected to an existing intake structure located about 1,000 feet from the dam; (b) a proposed powerhouse containing one new turbine generator having a total installed capacity of 6 megawatts; (c) a 100-foot-long by 50-foot-wide tailrace; (d) a proposed transmission line approximately 200 feet long; and (e) appurtenant facilites. The proposed project would have an average annual generation of approximately 20,000,000 kilowatthours. The applicant estimates that the studies under permit would be about $150,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

Standard Paragraphs

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and 9) and 4.36.

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A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motio to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments

The Commission invites Federal, state, or local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28876 Filed 12–14–88; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

November 9, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10669–000.

c. *Date Filed:* October 3, 1988.

d. *Applicant:* New York Irrigation District, Boise-Kuna Irrigation District, Wilder Irrigation District, Big Bend Irrigation District, Nampa and Meridian Irrigation District.

e. Name of Project: Twin Springs Irrigation Reservoir and Hydroelectric Project.

f. *Location:* At River Mile 94.3 on the Boise River partially within the Boise National Forest near Idaho City in Elmore County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. *Applicant Contact:* Mr. Carl Padour, 214 Broadway Avenue, Boise, ID 83702, (208) 344–1141.

i. *FERC Contract:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* January 16, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A 470-foot-high rockfill dam at elevation 3,860 MSL; (2) a reservoir which at maximum pool elevation of 3,850 feet would have a gross storage of 600,000 acre-feet and a surface area of 4,300 acres and at minimum pool elevation of 3,650 feet would have a gross storage of 110,000 acre-feet and a surface area of 1,100 acres; (3) a concrete-ogee-shaped 1,200-foot-long spillway; (4) a powerhouse containing four generating units two each having a rated capacity of 17,250 kW and two each having a rated capacity of 34,500 kW; and (5) a 36-mile-long transmission line. Applicant estimates the average annual energy production to be 317,000 MWh and the cost of the proposed studies to be $2,000,000.

l. *Purpose of Project:* The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

A5. Preliminary Permit

Any qualified applicant desiring to file a competing application for a preliminary permit for a proposed project must submit to the Commission, on or before the specified comment date for the particular application, the competing application or a notice of intent to file such an application (see 18 CFR 4.36 (1985)). Submitting a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent of submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a

study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "Comments," "Recommendations for Terms and Conditions," "Notice of Intent To File Competing Application," "Competing Applications," "Protest" or "Motion To Intervene," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments

The Commission invites Federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28877 Filed 12–14–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–332–000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89–332–000]

December 8, 1988.

Take notice that on December 5, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–332–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for ANR Gathering Company (ANR Gathering), a marketer, under the blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated September 22, 1988, under its Rate Schedule IT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for ANR Gathering from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". Tennessee states that it would receive the gas at existing points on its system located in Potter County, Pennsylvania, and that it would transport and redeliver the gas at interconnections with Pennsylvania Gas & Water Company at Uniondale and Auburn in Susquehanna, Pennsylvania.

Tennessee advises that service under § 284.233(a) commenced October 1, 1988, as reported in Docket No. ST89–368 (filed October 27, 1988). Tennessee further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89–296–000]

December 8, 1988.

Take notice that on November 28, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–296–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Texaco Producing Inc. (Texaco), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport up to 100 billion Btu of natural gas per day, plus overrun volumes, on an interruptible basis for Texaco. It is indicated that the receipt points would be in Oklahoma, Texas, New Mexico, Louisiana and offshore Louisiana, and that the delivery points would be in Oklahoma, Louisiana, New Mexico, Iowa, Kansas, and Illinois.

Natural states that this transportation commenced October 1, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations as reported in Docket No. ST89–937.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP89–336–000]

December 8, 1988.

Take notice that on December 5, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–336–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Conoco Inc. (Conoco), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 15,000 MMBtu equivalent of natural gas on a peak day for Conoco, 15,000 MMBtu equivalent on an average day and 5,475,000 MMBtu equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not

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require any construction of additional facilities. It is explained that the service commenced October 14, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–689.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Mississippi Valley Gas Company, Complainant, vs. Gulf Fuels, Inc. and ANR Pipeline Company, Respondents

[Docket No. CP89–252–000]

December 8, 1988.

Take notice that on November 21, 1988, Mississippi Valley Gas Company (Complainant), 711 West Capitol Street, Jackson, Mississippi 39203–2608, filed a complaint in Docket No. CP89–252–000 pursuant to § 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) against Gulf Fuels, Inc. and ANR Pipeline Company (Respondents) to prohibit them from engaging in Natural Gas Policy Act (NGPA) section 311 transportation. Complainant states that, because Gulf Fuels, a local gas broker, misrepresented to ANR that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA, the contract underlying ANR's purported NGPA section 311 transportation on behalf of Gulf Fuels should be declared void as a matter of law and no NGAP section 311 transportation service lawfully may be provided under that contract, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainant states that on August 30, 1988, Baxter Healthcare Corporation (Baxter), an MVG industrial customer which manufactures hospital and pharmaceutical equipment at a plant in Cleveland, Bolivar County, Mississippi, informed MVG that beginning October 1, 1988, it would meet its gas supply requirements from its own gas supply line. According to Complainant, following a September 8, 1988, inquiry by the Mississippi Public Service Commission (MPSC), the MPSC discovered that Baxter's gas supply requirements were being met by means of an NGPA transportation service rendered by ANR on behalf of Gulf Fuels pursuant to a March 21, 1988, transportation agreement. Complainant indicates that the March 21, 1988, contract contains a representation and warranty by Gulf Fuels that it is an intrastate pipeline company within the meaning of the NGPA.

Complainant asserts that Gulf Fuels does not appear to be an intrastate pipeline as defined in the NGPA, and as represented by Respondents. Complainant notes that affidavits of various officials of the MPSC indicate that Gulf Fuels (1) does not hold any certificate from the MPSC as an intrastate pipeline, (2) has no pending application for certification before the MPSC, and (3) has never been regulated or certificated in any manner by the MPSC. Complainant explains that on November 17, 1988, it filed a petition for a declaratory order (Docket No. U–5269) at the MPSC seeking an order determining the jurisdictional status of Gulf Fuels. In its petition Complainant states that it expects to show that if Gulf Fuels is an intrastate pipeline operating in Mississippi, that it is in violation of Mississippi law or in the alternative, if Gulf Fuels is not an intrastate pipeline, then it is obtaining interstate gas transmission service under the NGPA by means of a misrepresentation of fact.

Complainant asserts that Gulf Fuels is simply a local gas broker in Jackson, Mississippi and lacks the indicia of an intrastate pipeline performing transportation service in Mississippi to qualify it as an intrastate pipeline under the NGPA. Accordingly, Complainant seeks Commission action to rule that the agreement between ANR and Gulf Fuels dated March 21, 1988, is void at law, since no NGPA intrastate pipeline is involved in the transaction and therefore no NGPA section 311 transportation service may be accomplished pursuant to that contract.

Comment date: January 9, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89–340–000]

December 9, 1988.

Take notice that on December 5, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–340–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on a firm basis for Arkla Energy Marketing Company (AEM). United explains that the service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–855. United explains that the peak day quantity would be 103,000 MMBtu, the average daily quantity would be 103,000 MMBtu, and that the annual quantity would be 37,595,000 MMBtu. United explains that it would receive natural gas for AEM's account at existing interconnections in the states of Texas and Louisiana, and Offshore Louisiana. United States that it would redeliver the gas for AEM's account at existing or proposed interconnections in the state of Louisiana.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89–327–000]

December 9, 1988.

Take notice that on December 2, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–327–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Cornerstone Production Corporation, a marketer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated October 31, 1988, as amended November 3, 1988, it proposes to transport natural gas for Cornerstone Production Corporation from points of receipt located in offshore Louisiana, offshore Texas, and in the states of Louisiana, Texas, Mississippi, New Jersey, Massachusetts, Pennsylvania, West Virginia, New York, and Ohio. Applicant states that the points of delivery are located in the states of Massachusetts, Mississippi, Tennessee, West Virginia, Connecticut, Pennsylvania, and Alabama. It is stated that the ultimate points of delivery are located on the states of Tennessee, Connecticut, Massachusetts, and Alabama. It is stated further that no new facilities will be constructed to provide the transportation service.

The applicant states that the maximum daily quantity transported is 50,000 dekatherm (dt) equivalent of natural gas, an average day is 50,000 dt equivalent of natural gas, and the anual quantity is 18,250,000 dt equivalent of natural gas. It is further stated that service under § 284.223(a) commenced

November 5, 1988, as reported in Docket No. ST89–870 (filed November 23, 1988).

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP89–299–000]

December 9, 1988.

Take notice that on November 29, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89–299–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to Ohio Valley Gas Company (Ohio Valley), an existing jurisdictional sales customer under Panhandle's Rate Schedule G–1, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle states that the proposed abandoment would reduce the total annual quantity of gas delivered to Ohio Valley from 3,294,600 Mcf to 2,127,300 Mcf. Panhandle states that the term of its existing agreement with Ohio Valley expired October 31, 1988 and accordingly, Panhandle requests that authority for the partial abandonment to be effective November 1, 1988 for a term through October 31, 1990.

Panhandle states that the partial abandonment of sales service reflects the result of contract renegotiation between Panhandle and Ohio Valley that will allow Ohio Valley to realign its sales service contract demand to match its actual requirements.

Comment date: December 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP89–330–000]

December 9, 1988.

Take notice that on December 2, 1988, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–330–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CER 157.205) for authorization to abandon by reclaiming regulating, measuring and appurtenant facilities serving the Cloyce R. Sturdy Grain Company (Sturdy) in Osage County, Kansas, and the transportation of gas through said facilities, under its blanket authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Williams seeks authorization to abandon by reclaiming regulating, measuring and appurtenant facilities located in the Southeast (SE/4) of Section 1, Township 17 South, Range 15 East, Osage County, Kansas, installed to serve Sturdy's grain company and certificated in Docket No. CP70–166, 43 FPC 538 (1970).

It is alleged that by letter dated July 12, 1988, Sturdy has requested that Williams reclaim its facilities. It is averred that the total cost to reclaim these facilities is approximately $150 with an estimated salvage value of $0.00.

It is asserted that this proposal would not significantly affect a sensitive environmental area since the facilities to be reclaimed are all above ground.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP89–339–000]

December 9, 1988.

Take notice that on December 5, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–339–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to provide a transportation service for Chevron U.S.A., a producer, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 1, 1988, it proposes to transport up to 77,250 Mcf of natural gas per day on an interruptible basis. United proposes to transport the gas from an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana to any of nine specific redelivery points located in St. Landry, Ouachita, Rapides, and LaSalle Parishes, Louisiana.

United states that no new facilities would be required to implement the service. United further states that the maximum day, average day, annual volumes would be approximately 77,250 Mcf, 77,250 Mcf, and 28,196,250 Mcf, respectively. United indicates that it would charge the rates and abide by the terms and conditions provided by its Rate Schedule ITS.

United advises that service under § 284.223(a) of the Commission's Regulations commenced on November 4, 1988, as reported in Docket No. ST89–788.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–343–000]

December 9, 1988.

Take notice that on December 6, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–343–000, a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, for authorization to transport natural gas on behalf of Phillips Natural Gas Company (Phillips), a producer of natural gas, on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Phillips, through existing facilities, as follows:

100,000 MMBtu on a peak day
75,000 MMBtu on an average day
36,500,000 MMBtu on an annual basis

It is further stated that the requisite filings, under the 120 day automatic authorization provisions of § 284.223(a), have been made in Docket No. ST89–442.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89–338–000]

December 9, 1988.

Take notice that on December 5, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89–338–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP89–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Entrade Corporation (Entrade).

Tennessee explains that service commenced October 28, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–892370. Tennessee further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 150,000 dekatherms, and that the annual quantity would be 54,750,000 dekatherms. Tennessee explains that it would receive natural gas for the account of Entrade at points of receipt located Offshore Louisiana and in the states of Louisiana, Alabama, Mississippi and Texas. Tennessee states that the points of delivery and the ultimate points of delivery are located in the states of Mississippi, Alabama, and Tennessee.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Company

[Docket No. CP89–329–000]

December 9, 1988.

Take notice that on December 2, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–329–000, a request for permission and approval to abandon certain pipeline delivery facilities, pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216(b)), under Williams blanket certificate issued in Docket No. CP82–479–000 on September 30, 1982, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By its request, Williams proposes to abandon by dismantling and reclaiming certain regulating, measuring and related facilities (delivery point) used for the purpose of selling gas to the following customers:

(1) Delivery point located in section 31, Township 3 North, Range 16 East, Texas County, Oklahoma, installed to serve TELNS Broadcasting Company (TELNS).

(2) Delivery point located in section 16, Township 29 South, Range 4 East, Butler County, Kansas, installed to serve Douglas Alfalfa Plant (Douglas).

(3) Delivery point located in section 2, Township 30 South, Range 40 West, Stanton County, Kansas, installed to serve Barber Farms, Inc. (Barber).

(4) Delivery point located in section 11, Township 19 South, Range 10 West, Rice County, Kansas, installed to serve Prospect Oil and Gas Company (Prospect).

TELNS, Barber and Prospect have each requested that Williams reclaim its facilities, it is stated. Williams also states that it has been unsuccessful in its efforts to contact Douglas, as the alfalfa plant is dismantled.

It is indicated, that the total cost to reclaim the subject facilities will be $1,340, with an estimated salvage value of $175.

Comment date: January 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP89–281–000]

December 9, 1988.

Take notice that on November 23, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP89–281–000, a request pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon part of a sales service to Indiana Gas Company, Inc. (Indiana Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to section 284 of the Commission's Regulations, Panhandle and Indiana Gas have entered into a sales agreement which provides for a 15% reduction of Indiana Gas' contract demand (CD) level under Rate Schedule G–1, which was converted to firm transportation service effective November 1, 1988.

Specifically, Panhandle would abandon part of Indiana Gas' daily sales contract quantity, which would reduce the annualized CD total from 91,391,850 Mcf to 77,683,058 Mcf.

Panhandle explains that the firm transportation service would be provided for in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: December 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28879 Filed 12–14–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10531–001, Washington, Oregon, Idaho]

Asotin Hydro Co., Inc.; Surrender of Preliminary Permit

December 12, 1988.

Take notice that Asotin Hydro Company, Inc., Permittee for the Upper

Asotin Hydropower Project No. 10531, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10531 was issued May 16, 1988, and would have expired April 30, 1991. The project would have been located on the Snake River near Asotin, Washington, in Asotin County, Washington, Nez Perce County, Idaho, and Wallowa County, Oregon.

The Permittee filed the request on November 25, 1988, and the preliminary permit for Project No. 10531 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88–28878 Filed 12–14–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3492–51]

Contractor Indemnification Review Panel

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Contractor Indemnification Review Panel will meet at the EPA Headquarters Building, 401 M Street SW., Washington, DC, on December 16, 1988. The meeting will be held in Room SE363 from 9 a.m. to 12 noon. The Contractor Indemnification Review Panel was formed by the EPA to provide the Agency with outside expertise on pollution liability insurance issues. Panel membership is open to all interested persons. The Agency will use the Panel's input when it develops contractor indemnification guidance and regulations under CERCLA section 119. December 16 will be the final opportunity for Panel members to provide input to the Agency prior to the Agency's development of guidance on contractor indemnification.

FOR FURTHER INFORMATION CONTACT: Tom Gillis of the Environmental Protection Agency, Office of Waste Programs Enforcement (OS–510), Washington, DC 20460; telephone 202/382–4524.

Lloyd S. Guerci,

Director, CERCLA Enforcement Division.

[FR Doc. 88–28841; Filed 12–14–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL CROP INSURANCE CORPORATION

[Doc. No. 6435S]

Selection of the Federal Crop Insurance Commission

On Wednesday, November 2, 1988, the Federal Crop Insurance Corporation (FCIC) published a Notice in the **Federal Register** at 53 FR 44214, soliciting nominations for membership on the Federal Crop Insurance Commission.

The 25 member commission, authorized by the Federal Crop Insurance Commission Act (Pub. L. 100–546, October 28, 1988), is composed of 20 representatives of the agriculture and crop insurance industries, the Manager of FCIC, and 4 ex officio non-voting members from the House and Senate. Members of the commission serve without compensation.

Commission members representing the agriculture industry include three from the largest general farm organizations and seven growers. Insurance industry members include representatives from large and small insurance companies reinsured by FCIC, sales and service contractors selling federally underwritten crop insurance, and agent trade associations.

The commission is required by law to hold its first meeting within 30 days of its appointment, and to file reports to Congress on April 1 and July 1, 1989. The commission is also required to file monthly reports on its progress until its termination on December 31, 1990.

This notice serves to advise all interested parties that on November 25, 1988, in accordance with the provisions of the ACT, the Secretary of Agriculture appointed the following representatives of the agriculture and crop insurance industries to the commission:

Richard A. Bill
Willard D. Classen
Raymond L. Davis
James D. Deal
M.K. Felt
Robert E. Fulwider
Richard Garabedian
Richard C. Gibson
Thomas Giessel
Franklin T. Johnson
John C. Kintzle
John G. Laurie
Terrence O. Miller
Myrl D. Mitchell
Doyle D. Rahjes
Ernest L. Ross
Wayne A. Showers
Stanley L. Stephenson
Donald E. Suhr
George F. Vohs

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–28812 Filed 12–14–88; 8:45 am]

BILLING CODE 3410–08–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000093–048.

Title: North Europe-U.S. Pacific Freight Conference.

Parties:

Hapag-Lloyd AG
Compagnie Generale Maritime
P&O Containers (TFL) Limited
Incotrans BV
Sea-Land Service, Inc.

Synopsis: The proposed modifcation would permit common carriers serving the North Europe-U.S. West Coast trades to become Conference members on an associate membership basis. The parties have requested a shortened review period.

Agreement No.: 202–009831–010.

Title: New Zealand/U.S. Atlantic and Gulf Shipping Lines Rate Agreement.

Parties:

Columbus Line
Pacific America Container Express Line (PACE Line)

Synopsis: The proposed modification would permit the Conference to enter into loyalty contracts in accordance with the antitrust laws of the United States. It would also prohibit any party,

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either individually or jointly with any other carrier or carriers, from entering into an individual loyalty contract in the Agreement trade. It would further prohibit any party from taking independent action with respect to loyalty contracts.

Agreement No.: 202–010636–053
Title: U.S. Atlantic-North Europe Conference
Parties:
Atlantic Container Line, B.V.
Orient Overseas Container Line (UK) Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would delete the commencement date provision concerning the authority of the Conference with respect to loyalty contracts.

Agreement No.: 202–010637–036.
Title: North Europe-U.S. Atlantic Conference.
Parties:
Atlantic Container Line, B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Nedlloyd Lijnen, B.V.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)

Synopsis: The proposed modification would delete the commencement date provision concerning the authority of the Conference with respect to loyalty contracts.

Agreement No.: 226–010916–002.
Title: Global Equipment Management Agreement.
Parties:
The East Asiatic Co. Ltd. A/S
Johnson Line AB
Rederiaktiebolaget Transocean
Wilhelmsen Lines A/S
Barber Blue Sea (Wilhelmsen Lines A/S)
Barber West Africa Line (Wilhelmsen Lines A/S)
EAC–PNSL Service Ltd.
EAC Lines Trans Pacific Service Ltd.
EAC–West Africa Service
Johnson Scanstar
Global Equipment Manager
Johnson South America Lines AB
Portulloyd
Rosa Line
ScanCarriers (Wilhelmsen Lines A/S)
Streamline
Swedish Orient Line
Transatlantic-Southern Africa Services
Pacific Australia Direct Line
Willine (Wilhelmsen Lines A/S)

Synopsis: The proposed modification would substitute Rederiaktiebolaget Transocean for Rederiaktiebolaget Transatlantic, change the name Wilh. Wilhelmsen Limited A/S to Wilhilmsen Lines A/S and delete Pacific Australia Direct Line as a party to the agreement. It would also reflect Barber Blue Sea and ScanCarriers as a service of Wilhelmsen Lines A/S rather than as a joint service. The parties have requested a shortened review period.

Agreement No.: 203–011222.
Title: Barber Blue Sea/Leif Hoegh Discussion Agreement.
Parties:
Barber Blue Sea (Wilhelmsen Lines A/S)
Leif Hoegh & Co., A/S

Synopsis: The proposed agreement would authorize the parties to discuss and agree upon rates, charges, service contracts, and other matters in the table between U.S. and Canadian ports (and inland and coastal ports via such ports) and ports and points worldwide (excluding Japan). It would also permit the parties to charter space to or from one another, and to rationalize sailing. Adherence to any agreement reached by the parties would be voluntary.

Agreement No.: 203–011223.
Title: Transpacific Stabilization Agreement.
Parties:
American President Lines, Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The proposed agreement would permit the parties to create a capacity management program among the parties in connection with their existing waterborne operations in the trade from ports and points in the Far East to ports and points in North America.

By Order of the Federal Maritime Commission.

Dated: December 12, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–28799 Filed 12–14–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Coastal Cargo Co. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200060–005.
Title: Port of New Orleans Terminal Lease Agreement.
Parties:
Board of Commissioners of the Port of New Orleans
Coastal Cargo Company

Synopsis: The agreement, pursuant to the terms of the basic lease, provides for the cancellation of sections 51 through 60 of the leased premises at the Galvez Street Wharf, effective January 16, 1989.

Agreement No.: 224–200194.
Title: Maryland Port Administration Terminal Agreement.
Parties:
Maryland Port Administration (MPA)
Atlantic Venture, Inc. (AV)

Synopsis: The proposed agreement provides for a fifteen year term of pier use between MPA and AV. It provides that when either parties' pier terminal facility (facility) becomes temporarily unavailable for use, the facility owner/operator whose facility is temporarily unavailable may, subject to availability, utilize the other owner/operator's facility.

Agreement No.: 224–200196.
Title: Port Everglades Authority Terminal Lease Agreement.
Parties:
Port Everglades Authority (Port)
Florida Europe Cargo Service N.V. (FECS)

Synopsis: The agreement provides that the Port will lease to FECS approximately 3.36 acres of vacant property located in Broward County, Florida. The leased property shall be used only as a container terminal for the

storage of containers, cargo and related equipment which has arrived at Port Everglades by water, or is destined for export from Port Everglades. The lease shall be for a term of three years beginning December 1, 1988, and ending November 30, 1991.

By Order of the Federal Maritime Commission.

Dated: December 12, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-28881 Filed 12-14-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Provident Warehouse Co. et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200195.

Title: Port of Houston Authority Terminal Agreement.

Parties:

Port of Houston Authority (Port)
Provident Warehouse Company (Provident)

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.

Synopsis: The agreement provides that Provident will perform or have performed public marine terminal services, including freight handling and cargo loading/unloading, at the Port's wharves and transit sheds Number M-2. The term of the agreement expires December 31, 1990.

Dated: December 12, 1988.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-28880 Filed 12-14-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Independence Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Independence Corporation,* Detroit, Michigan; to engage *de novo* through its subsidiary, First Independence Courier Services, Detroit, Michigan, in providing courier services pursuant to § 225.25(b)(10) of the Board's Regulation Y. These activities will be conducted in the State of Michigan.

2. *Irwin Union Corporation,* Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Corporation, Columbus, Indiana, in consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y.

2. *Irwin Union Corporation,* Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Markets, Inc., Columbus, Indiana, in securities brokerage pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peoples National Bancshares of Checotah, Inc.,* Checotah, Oklahoma; to engage *de novo* through its subsidiary, Cantwell Insurance Agency, Inc., Checotah, Oklahoma, in insurance-agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the city of Checotah, Oklahoma, which has a population of less than 5,000. Comments on this application must be received by December 29, 1988.

Board of Governors of the Federal Reserve System, December 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28793 Filed 12-14-88; 8:45 am]

BILLING CODE 6210-01-M

Midconn Bancorp, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for

immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute an summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 5, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *MidConn Bancorp, Inc.*, Kensington, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of MidConn Bank Kensington, Connecticut.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Omega Financial Corporation*, State College, Pennsylvania; to acquire 9.99 percent of the voting shares of Mifflinburg Bancorp, Inc., Mifflinburg, Pennsylvania.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First of Searcy, Inc.*, Searcy, Arkansas; to acquire 24.15 percent of the voting shares of Baxter County Bancshares, Inc., Mountain Home, Arkansas, and thereby indirectly acquire People's Bank Corporation, Mountain Home, Arkansas, and its subsidiary, Peoples Bank & Trust Company, Mountain Home, Arkansas. In connection wtih this application, Baxter County Bancshares, Inc., has filed an application to become a bank holding company by acquiring 80 percent of the voting shares of Peoples Bank Corporation, Mountain Home, Arkansas, and thereby indirectly acquire Peoples Bank & Trust Company, Mountain Home, Arkansas.

Board of Governors of the Federal Reserve System, December 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28794 Filed 12-14-88; 8:45 am]

BILLING CODE: 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0394]

Generic Animal Drug and Patent Term Restoration Act; Letter Setting Forth Agency Policies; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a policy letter on the implementation of the Generic Animal Drug and Patent Term Restoration Act (the new law). The letter announces the agency policy in implementing certain aspects of the new law. The agency is soliciting comments on the letter and other aspects of implementing the new law.

DATE: Comments by February 13, 1989.

ADDRESSES: Written requests for copies of the letter to Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Staff in processing your requests.) Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Talbot, Office of New Animal Drug Evaluation (HFV-100), Center for Veterinary Medicine, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100-670, 102 Stat. 3971). The new law follows enactment of the Drug Price Competition and Patent Term Restoration Act of 1984, signed by the President on September 24, 1984 (Pub. L. 98-417). Title I of that act provided a system for abbreviated new human drug applications, and Title II of that act amended the U.S. patent laws to provide patent term extension for certain human drug products, including biologics, antibiotics, medical devices, food additives, and color additives.

The new law signed November 16, 1988, amends the Federal Food, Drug, and Cosmetic Act (the act) by extending the generic approval system to copies of new animal drugs that were approved after October 1962 and provides patent extension for certain animal drugs. Under the provision of the new law: (1) FDA must within 60 days of enactment publish a list of the animal drugs that the agency has approved for safety and effectiveness, and update the list every 30 days; (2) sponsors can obtain approvals for generic drugs without submission of safety and effectiveness data, provided they show that their drugs are bioequivalent to listed drugs and meet certain other requirements including assurance of human food safety; (3) sponsors of listed drugs may obtain certain exclusive marketing periods during which generic applications may not be submitted or approved, and patents for listed drugs may be extended; (4) pioneer sponsors must submit certain patent information, in some instances as early as 30 days after enactment of the new law, and generic sponsors must, when they submit applications, make certifications with respect to the patent status of the listed drugs; (5) generic sponsors may submit applications starting 60 days after the enactment date, but FDA cannot approve generic applications under the new law until January 1, 1991, and the agency is precluded from approving generic equivalents of drugs that are primarily manufactured using biotechnology; (6) FDA is required to promulgate implementing regulations for the generic approval and patent extension provisions of the new law but in the meantime is to follow the provision of the act, as amended, and existing regulations; and (7) the agency is required to approve or disapprove generic applications within 180 days unless the agency and the sponsor agree on a different period of time.

FDA has issued a letter concerning certain aspects of implementing the new law to the animal drug industry and to other interested persons. The letter discusses the list of approved drugs that the agency must publish, patent certifications that must be made by generic applicants, and submission of patent information and exclusivity claims by pioneer sponsors.

Until regulations are promulgated, the information in the letter (unless revoked or modified) may be relied upon with assurance of its acceptability to FDA. The letter, however, does not state legal requirements beyond those found in the statute and existing regulations, nor does the letter bind FDA should events occur prior to the issuance of a rule that require a change in FDA policy. Additional policy information concerning implementation of the new law and changes in FDA policy will be announced in future letters or notices.

Interested persons may, on or before February 13, 1989, submit to the Dockets Management Branch (address above)

written comments regarding information in the letter and implementation of the new law in general. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments and other information on this topic have been placed on file with the Dockets Management Branch and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Written requests for single copies of the letter should be sent to the Industry Information Staff (address above).

Dated: December 9, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-28797 Filed 12-12-88; 11:17 am]

BILLING CODE 4160-01-M

Technical Electronic Product Radiation Safety Standards Committee; Recharter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the rechartering of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: The new charter for this committee will extend to December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: December 8, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-28798 Filed 12-14-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register**, Vol. 48 No. 198 pp. 46434-46448, dated Wednesday, October 12, 1983) is amended to reflect organizational changes within the Office of the Associate Administrator for Operations for the Bureau of Program Operations. The Bureau's functional statement will remain unchanged. However, the Office of Financial Operations and the Division of Reports and Analysis will have new functional statements. Also, within the Division, there will be a new branch.

The specific changes to Part F. are described below:

- Section FP.20.A.4., the functional statement for the Office of Financial Operations is deleted and replaced by a new functional statement.
- Section FP.20.A.4.d., the functional statement for the Division of Reports and Analysis is deleted and replaced by a new functional statement. The Program Data Management Branch is added to the Division of Reports and Analysis.

The Office of Financial Operations Division of Reports and Analysis will keep the same administrative codes. The new functional statements are as follows:

4. Office of Financial Operations (FPA7).

Establishes the policies and procedures by which contractors and Regional Offices prepare and submit periodic budget estimates. In consultation with other HCFA and BPO components, develops and negotiates the national budget for Medicare contractors, including workload and funds estimates. Controls and manages the Medicare cash flow and related banking activities. Reviews periodic contractor expenditure reports to evaluate budget execution and determine the allowability of costs. Prepares analyses of Medicare expenditure trends and patterns. Reviews contractor performance in determining the correct amount of provider, physician, and supplier overpayments, and assists contractors in negotiations related to the acceptability of the technique for determining the amount of overpayment and the methods of recovery. Prepares cases when compromises are not appropriate and overpayments are uncollectable and assists the HCFA Claims Collection Officer in preparing such cases for disposition. Prepares manual instructions concerning the procedures for the recovery of provider cost report overpayments. Designs, implements, and maintains a Medicare/Medicaid overpayment tracking system. Directs the processing of all Medicare (Part A) beneficiary appeals and beneficiary overpayments. Plans, directs, and coordinates the processing of claims submitted for reconsideration and hearings. Reviews Office of Hearings and Appeals, Social Security Administration, decisions. Establishes procedures and guidelines to target the audit activities of Medicare contractors. Assures that audit funds are utilized to provide a high rate of return in program savings. Directs special audit projects. Compiles operational and performance data for recurring and special reports to reflect the status and trends in program operations effectiveness. Directs and coordinates the Bureau's program data management activities.

d. Division of Reports and Analysis (FPA78).

Designs and develops a system of reports that generates Medicare contractor data regarding program administration. Reviews contractors' reporting systems for consistency and the ability to transmit the required information and prepares the appropriate reporting changes. Prepares written interpretations and analyses of operating data to provide other Bureau components with information necessary in conducting performance evaluations. Develops the specifications for an automated operational data system for Medicare. Prepares recurring and special reports on the status and trends in program administration and operational effectiveness. Provides technical assistance to Regional Offices and contractors on reporting requirements. Directs the Bureau's program data management activities including: Developing BPO automation strategy based on long term needs and new initiatives; identifying needs, documenting requirements and coordinating design, development, and implementation activities with Bureau of Data Management and Strategy; and providing technical assistance to the Bureau components in mainframe and microcomputer applications.

Date: December 1, 1988.

William L. Roper,

Administrator.

[FR Doc. 88-28884 Filed 12-14-88; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Service Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Health Professions Education Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekends between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–400, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from: Mr. James M. Hoeven, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville Maryland 20857, Telephone (301) 443–6880.

Dated: December 12, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–28849 Filed 12–14–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Public Health Service; Academic Research Enhancement Award

The National Institutes of Health (NIH) is making a special effort to stimulate research in educational institutions that provide the baccalaureate training for a significant number of our nation's research scientists but that historically have not been major recipients of NIH support. Since Fiscal Year (FY) 1985, Congressional appropriations for the NIH have included funds for this initiative which NIH has implemented through the Academic Research Enhancement Award (AREA) Program. In FY 1985, the NIH made 75 awards, totalling $5 million. In FY 1986, 146 such grants were awarded, amounting to $9.57 million. In FY 1987, a total of 152 AREA grants were awarded from the Congressional appropriation of $10 million. In FY 1988, 173 awards were made, totalling approximately $11 million.

This award is designed to enhance the research environment of educational institutions that have not been traditional recipients of NIH research funds. The AREA funds are intended to support new research projects or expand ongoing research activities proposed by faculty members of these institutions in areas related to the health sciences. Applications for FY 1989 AREA grants are currently undergoing review for scientific merit. Since it is anticipated that additional funds will be available next year the NIH is inviting grant applications for the FY 1990 competition for AREA grants.

Eligibility requirements of the AREA Program include the following:

Applicant Institutions

- All domestic institutions offering baccalaureate or advanced degrees in the sciences related to health are eligible, except those that have received an NIH Biomedical Research Support Grant (BRSG) of $20,000 or more per year for four or more years during the period from FY 1982 through FY 1988.
- Health professional schools (e.g., schools of medicine, dentistry, nursing, osteopathy, pharmacy, veterinary medicine, public health, allied health, optometry, and podiatry) as well as organizationally discrete campuses of a university system are eligible if they meet the above criterion.
- Multiple applications proposing different research projects may be submitted by an applicant institution.

Applicant Principal Investigators

- Must not have active research grant support (including an AREA) from either NIH or the Alcohol, Drug Abuse and Mental Health Administration ADAMHA) at the applicant institution at the time of award of an AREA grant.
- May not submit a regular NIH or ADAMHA research grant application for essentially the same project as a pending AREA application.
- Are expected to conduct the majority of their research at their own institution, although limited access to special facilities or equipment at another institution is permitted.
- May not be awarded more than one AREA grant at a time nor be awarded a second AREA grant to continue the research initiated under the first AREA grant.

Those in doubt about eligibility should consult their institution's Office of Sponsored Research, or the Director, Special Programs and Initiatives, Office of Extramural Programs, (Building, 31, Room 1B54, NIH, Bethesda, MD 20892, 301/496-1968).

Funding decisions will be based on the proposed research project's scientific merit and relevance to NIH programs, and the institution's contribution to the undergraduate preparation of doctoral-level health professionals. Among projects of essentially equivalent scientific merit and program relevance, preference will be given to those submitted by institutions that have granted baccalaureate degrees to 25 or more individuals who, during the period 1978–1988, obtained academic or professional doctoral degrees in the health related sciences.

AREAs are awarded on a competitive basis. Applicants may request support for up to a total of $75,000 in direct costs (plus applicable indirect costs) for a period not to exceed 36 months. Although this award is non-renewable, it will enable qualified individual scientists within the eligible institutions to receive support for feasibility studies, pilot studies and other small-scale research projects preparatory to seeking more substantial funding from the regular NIH research grant programs.

Applications for this award will be accepted under the regular application submission procedures of the Division of Research Grants (DRG) of NIH. Grant applications must be prepared and submitted on Form PHS 398 (Rev. 9/86) Grant Application. An abbreviated format and simplified instructions will be provided for use in preparing these applications. The receipt date is June 22, 1989.

Those individuals and institutions meeting eligibility requirements and wishing to receive further information and/or application materials should write to: AREA, Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building—Room 449, Bethesda, Maryland 20892, (301) 496–7441.

(*Catalog of Federal Domestic Assistance* Program No. 13.390, Academic Research Enhancement Award (AREA), National Institutes of Health.)

Dated: December 7, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–28805 Filed 12–14–88; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Social Security Disability Program Demonstration Project United Cerebral Palsy Associations; Project Incentive

SUMMARY: The Commissioner of Social Security announces the following demonstration project to be conducted under the authority of section 1110(b) of the Social Security Act (the Act). Through its project entitled, "Project Incentive," the United Cerebral Palsy Associations, Inc. (UCPA), will demonstrate the effectiveness of using rehabilitation engineering in adapting worksites with assist devices in enhancing employment outcomes for Supplemental Security Income (SSI) recipients with physical disabilities due to cerebral palsy. Section 1615 of the Act

is waived to conduct this project, permitting direct referral of SSI recipients from the Social Security Administration (SSA), or State agencies that make disability determinations for SSA to UCPA. We are publishing this notice to comply with the Code of Federal Regulations, Title 20, Part 416, section 250(e), which requires such notification.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Morrison, Ph.D., Social Security Administration, Office of Disability, 2223 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (301) 965–0091.

Background Information

Section 1110(b) of the Act authorizes the Secretary to develop and conduct experimental, pilot, and demonstration projects to promote the objectives or improve the administration of the SSI program. These projects are intended to test the advantages of altering certain requirements, conditions, or limitations for recipients and test different administrative methods that apply to SSI applicants and recipients. This section also authorizes the Secretary to waive certain provisions of the Act as is necessary to conduct these experiments and demonstration projects.

Project Objectives

The objectives of this project are to:

- Create competitive job opportunities for persons with cerebral palsy and;
- Determine the effectiveness of adapting work sites with modifications and strategies through the use of rehabilitation engineering in enhancing the employment outcomes of the participants.

Description of the Demonstration Project

Survey information and group interviews have shown that many of SSA's disability recipients, including those suffering from cerebral palsy, would prefer to work if the conditions were favorable. Many individuals with cerebral palsy suffer from severe motor and/or mental disabilities which prevent their successful employment in customary work environments. Project Incentive will create a model program for employing such individuals by adapting worksites with individualized assist devices and strategies that allow them to perform work functions despite their limitations. UCPA will provide accommodations and place 50 to 60 SSI recipients by the end of the 2-year project. An additional 20 individuals will be similarly placed in a nongrant-funded replication site in year 2 of the project to further test the efficacy of the project.

The project is based on the cooperative efforts of several agencies and thus offers a combination of services. Local rehabilitation agencies, SSA district offices, and the grantee will identify potential participants in the Baltimore, Maryland, metropolitan area and the rural western Maryland area. In order to serve efficiently this broad catchment area, a demonstration site will be employed in each of these areas. Participants will be chosen with an emphasis on those individuals with one or more of the following characteristics:

- Job training that has not resulted in job placement;
- A history of repeated job terminations, particularly those related to performance capability/skills;
- A history of job-seeking activities that have not resulted in securing a job; and/or
- Documentation of motivation for remaining unemployed due to past disincentives (e.g., loss of medical benefits), either on the part of the client or his/her family.

UCPA will promote SSA's 1619 (a) and (b) work incentive program to encourage participation. Potential employers will be identified using existing central Maryland UCPA and State of Maryland Division of Vocational Rehabilitation business contacts and systematic review of advertised job openings in newspapers and civil service circulars. Individualized placement will occur following an intake process in which a participant's job history, job preferences, prior training, and job-related support needs are ascertained. Participant productivity will be measured before and after installation of the accommodations. Success of the project will be based on whether the accomplishments match the projected tasks and objectives; whether the effort required to effect the changes is cost-efficient; and whether the participants are satisfied with the project's activities and outcomes.

Statutory Provisions Waived

Section 1615 of the Act, which requires that SSA refer disabled persons directly to State vocational rehabilitation agencies, is waived for the purpose of conducting this project. This waiver authorizes SSA to refer SSI recipients directly to UCPA.

(Catalogue of Federal Domestic Assistance Program No. 13.812 Social Security Research and Demonstration)

Dated: November 29, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88–28804 Filed 12–14–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–09–4214–11; N–1885, N–1885A, N–2345A]

Classification Vacated; Correction, Nevada

December 7, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The purpose of this notice is to correct errors in two 1983 **Federal Register** notices.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702–784–5481.

SUPPLEMENTARY INFORMATION: The following corrections are hereby made to the listed **Federal Register** published documents:

On page 36213 of **Federal Register** document 83–21659 published on August 9, 1983, paragraph 3, line 2, remove "except that."

On page 34525 of **Federal Register** document 83–20604 published on July 29, 1983, first column, fourth line under T. 15 N., R. 19 E., add "SE¼."

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 88–28899 Filed 12–14–88; 8:45 am]

BILLING CODE 4310–HC–M

[CA–060–09–5101–09 XBCK, FES 8–52]

Final Supplemental Environmental Impact Statement Devers-Palo Verde No. 2 500 kV Transmission Line

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Final Supplemental Impact Statement concerning construction of 500 kV transmission line.

FOR FURTHER INFORMATON CONTACT: Gerald E. Hillier, District Manager,

California Desert District, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: The Southern California Edison Company (SCE) proposes to build a 500 kV transmission line from the Devers Substation near Palm Springs, California, to the vicinity of the Palo Verde Nuclear Generating Station about 40 miles west of Phoenix, Arizona. The Draft Supplemental Environmental Impact Statement described and evaluated four routing alternatives and the no-action alternative with respect to the transmission line. The SCE's proposed route, parallel to the existing Devers-Palo Verde No. 1500 kV Transmission Line, is the preferred alternative of the Bureau of Land Management.

A limited number of individual copies of the Final Environmental Impact Statement may be obtained from the above address.

Dated: November 29, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-28861 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-40-M

[C-47721]

Realty Action; Direct Sale of Public Lands in Teller County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action C-47721, Direct Sale of Public Lands in Teller County, Colorado.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701, 1713) at no less than the appraised fair market value:

Sixth Principal Meridian, Colorado

T.14S., R.70W.,
Sec. 25, M.S. 14357
6.89 acres
T.15S., R.70W.,
Sec. 3
Lots 76, 83, 85, 89, 93, 95, 100, 101, 102, 105 and 111
36.19 acres

The total acreage in this sale is 43.08 acres. The specific descriptions and acreages may change slightly upon approval of the final survey plat. These lands are hereby segregated from appropriation under the public land laws, including the mining laws, until patent issues or for a period of 270 days. The land will be offered by direct sale to Golden Cycle Land Corporation. Golden Cycle and any other interested parties will be notified of the sale price upon completion of the appraisal.

Any parcel not sold by direct sale will be reoffered for sale by competitive bidding to the general public beginning April 5, 1989 and the 1st and 3rd Wednesdays each month thereafter until sold or the sale is canceled.

A more detailed sales prospectus providing specific information on each sale parcel, including patent reservations and restrictions will be available upon request.

DATES: Comment period ends January 30, 1989.

FOR FURTHER INFORMATION: Contact the District Manager, Canon City District Office, 3170 East Main Street, P.O. Box 311, Canon City, Colorado 81212, (719) 275-0631. Comments will be evaluated by the District Manager, who may cancel or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become final.

Donnie R. Sparks,

District Manager.

[FR Doc. 88-28828 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Land Management; Montana

[MT-070-09-4050-91-47D; M-76985]

Realty Action: Exchange; Montana

AGENCY: Bureau of Land Management, Butte District, Interior.

ACTION: Exchange of public land in Madison County for private land in Beaverhead and Madison Counties.

SUMMARY: The following described land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 3 S., R. 9 W.,
Sec. 12, SW¼NE¼, W½SE¼, E½SE¼SW¼
Containing 140 acres of public land.
In exchange for these lands, the United States will acquire the following land owned by McCullough Ranches, Inc.

Principal Meridian, Montana

T. 3 S., R. 9 W.,
Sec. 14, W½SW½W¼, SW¼SW¼ NE¼SW¼SW¼, W½SE¼SW¼SW¼.
Sec. 23, E½W½NE¼NW¼NW¼, W½W½E½NW¼, W½W½NW¼, NE¼NW¼NW¼SW¼, W½W½W ½SW¼, E½SW¼SW¼SW¼.
Containing 125.625 acres.

DATES: On or before January 30, 1989 interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment/land report, is available for review at the Dillon Resource Area Office, Ibey Building, P.O. Box 1048, Dillon, Montana 59725.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of two years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. Both the surface and mineral estates will be exchanged on an equal value basis.

3. The lands will be exchanged subject to all valid, existing rights (e.g., rights-of-way, easements, and leases of record.)

4. The exchange must meet the requirements of 43 CFR 4110.4-2.

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated completion date is April, 1989. The public interest will be served by this exchange because it will enable the Bureau of Land Management to acquire riverfront lands with high public values and will increase management efficiency of public lands in the area.

December 6, 1988.

Paul E. Peek,

Acting District Manager.

[FR Doc. 88-28822 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-DN-M

[NM-030-09-4333-12]

Establishment of Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Las Cruces District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Rules of conduct and supplemental rules.

SUMMARY: The purpose of these supplementary rules is to provide for the protection of person, property, and public land and resources. More specifically, the purpose falls into the following categories.

a. Implementation of Management Plans—Certain prohibited activities have been recommended as supplemental rules for designated recreation sites and Special Recreation Management Areas (SRMAs). Some plan amendments and recommendations are not enforceable as published. In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of the supplemental rules section of 43 CFR, Subpart 8365, is the most appropriate way of implementing these recommendations. Rationale for these recommendations are presented in their entirety in the resource management plan or recreation management plan for the specific area.

b. Mitigation of User Conflict—Certain other supplementary rules are recommended because of specific user conflict problems in the field. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on a first come first serve basis. This will prevent a few persons from monopolizing the use of limited developed camping space. Prohibition of motorized vehicle freeplay (operation of any 2-wheel, 3-wheel, or 4-wheel motor vehicle for purposes other than accessing a campsite) is recommended to minimize the noise and nuisance factor that such activity represents in a developed recreation site.

c. Public Health and Safety—The erection and maintenance of unauthorized toilet structures on the public land could represent a major threat to public safety and health due to the concentration of human wastes. The erection and maintenance of toilet structures may be permitted by the authorized officer on a case-by-case basis and only when appropriate State and local permits have been obtained. It should be noted that all of the shooting restrictions recommended do not prohibit legitimate hunting activities except within ¼ mile of developed sites. Recreational shooters will be encouraged to use public land where such shooting restrictions do not apply and this use does not significantly conflict with other uses.

d. Complementary Rules—Some supplementary rules, such as parking or camping near water sources, are recommended to complement those of State and local agencies. Because these rules provide for the protection of persons and resources and in the interest and spirit of cooperation with the responsible agencies, these supplementary rules are deemed necessary.

The degree to which these rules will be enforced will not change normal patrol procedures. As always, violations will be handled by Rangers on a case-by-case basis.

Special Recreation Management Areas and Designated Recreation Sites

A Special Recreation Management Area (SRMA) is an area where special or more intensive types of recreation management are needed. There are two primary types of SRMAs: Those Congressionally recognized and those administratively recognized by the BLM.

A designated recreation site is a smaller area or an enclave of a SRMA where recreation is the principal management objective for which the Bureau manages, and facilities are provided. Development within designated recreation sites may vary from limited development for protection of the resource values and the safety of users to a site with definite developed facilities that meet the Land and Water Conservation Fund Act criteria for a fee collection site.

The following areas are considered designated recreation sites and SRMAs for the purpose of applying the rules of conduct contained in 43 CFR 8365.2:

1. Aguirre Spring (Recreation Site—Mimbres Resource Area).
2. La Cueva (Recreation Site—Mimbres Resource Area).
3. Three Rivers (Recreation Site—White Sands Resource Area).
4. Datil Well (Recreation Site—Socorro Resource Area).
5. Organ Mountains Recreation Lands (SRMA—Mimbres Resource Area).
6. Gila Lower Box (SRMA—Mimbres Resource Area).

In addition to the regulations contained in 43 CFR 8365.2, the following supplemental rules will be applied to the recreation sites and areas listed above.

1. Reserving camping space is prohibited. Camping space will be allocated on a first come first served basis.

2. Persons may group or occupy any specific location within designated campgrounds, designated recreation sites or on public land within SRMAs in the Las Cruces District, New Mexico for a period of not more than 7 days within any period of 28 consecutive days unless otherwise authorized. Exceptions which will be posted would include areas closed to camping and areas with specially designated camping stay limits. The 28-day period will begin when a camper initially occupies a specific location on public land. The 7-day limit may be reached either through a number of separate visits or through 7 days of continuous occupation during the 28-day period. After the 7th day of occupation, campers must move outside of a 25-mile radius of the previous location. Camping means the erection and use of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or use of a vehicle or trailer/camper for the apparent purpose of overnight ocupancy. Occupancy is defined as the taking or holding possession of a camp or residence on public land.

3. Motorized vehicle freeplay is prohibited within designated recreation sites. Motorized vehicles will be used for access to and from campsites only.

4. Cutting or gathering of green or dead wood is prohibited within the designated recreation sites and SRMAs. Open fires are restricted to fire rings provided within designated sites. Open fires along the Baylor Pass and Pine Tree Trails are restricted to the designated primitive campsites.

5. Equestrian use is prohibited at campgrounds and picnic areas unless facilities have specifically been provided for such use or unless otherwise authorized.

6. The discharge of firearms is prohibited within ¼-mile of designated recreation sites. Possession and use of fireworks are prohibited within designated recreation sites.

7. Aguirre Spring Campground use is limited to overnight campers after 10:00 p.m. The entrance gate will be closed at 10:00 p.m. during summer hours and at 8:00 p.m. during winter hours.

8. Within all designated recreation sites, quiet hours are in effect from 10:00 p.m. to 6:00 a.m.

9. Pets must be confined to leashes at all times within designated recreation sites and on designated trails.

10. The gate located in T. 23 S., R. 3 E., Section 2 on the Dripping Springs Road

will remain locked and all public access will be restricted for a period of not less than 6 months from the date of this notice. Authorized permittees are exempt from this closure. This closure is in accordance with the Memorandum of Understanding between the BLM and the Nature Conservancy to allow for an orderly transition of the A. B. Cox Estate property before public use is allowed within the area known as "The Cox Ranch."

11. The gate located in T. 23 S., R. 3 E., Section 12, on the road from the Cox Ranch headquarters to Dripping Springs will be locked to restrict vehicle access in upper Ice Canyon. Vehicle access will be futher restricted in this area by means of a locked gate along the powerline road in T. 23 S., R. 3 E., Section 11. The purpose of these closures is to protect significant historic and natural values. These closures will remain in effect indefinitely. Exceptions are authorized permittees and (for the road from the headquarters to Dripping Springs) handicapped or otherwise physically disabled persons who obtain prior authorization.

Other Public Land

In addition to the regulations contained in 43 CFR 8365.1–2, the following supplemental rules will be applied to all public land in the Las Cruces District, New Mexico.

1. Persons may camp on any specific location on public land outside SRMAs or designated recreation sites within the Las Cruces District, New Mexico for a period of not more than 14 days within any 28 consecutive days unless otherwise authorized. Exceptions which will be posted would include areas closed to camping and areas with specially designated camping stay limits. The 28-day period will begin when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation during the 28-day period. After the 14th day of occupation, campers must move outside of a 25-mile radius of the previous location. Camping means the erection and use of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, use of a vehicle or trailer/camper, or morring of a vessel for the apparent purpose of overnight occupancy. Occupancy is defined as the taking or holding possession of a camp or residence on public land.

2. It is prohibited to erect or maintain any semi-permanent or permanent toilet, shower, or other sanitary facilities or structures on public land without authorization.

3. It is unlawful to park any motor vehicle or to camp within 300 yards of any manmade water hole, water well, or watering tank used by wildlife or domestic stock, without authorization.

4. On public land where off-road vehicle use is permitted, all vehicles must be equipped with an approved spark arrester and muffler.

5. Use of fireworks is prohibited.

6. Public vehicular access will be restricted by means of a locked gate in T. 22 S., R. 1 e., Section 19 to protect significant natural values. This restriction will remain in effect indefinitely. Authorized permittees are exempt from this closure.

DATES: These rules will be in effect December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Dwayne Sykes, Outdoor Recreation Planner, Bureau of Land Management, Las Cruces District, 1800 Marquess, Las Cruces, NM 88005, (505) 525–8228 (FTS 571–8350).

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1–6. The authority for establishing closures and restrictions is contained in 43 CFR 8364.1. These rules and closures have been recommended and adopted through development of resource management plans and recreation management plans. These rules and closures will be available in each local office having jurisdiction over the lands, sites, or facilities affected.

H. James Fox,
District Manager.

[FR Doc. 88–28830 Filed 12–14–88; 8:45 am]
BILLING CODE 4310-FB-M

[CA–050–09–4410–10]

Intent To Prepare Resource Management Plan; Redding Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare Resource Management Plan.

SUMMARY: The Bureau of Land Management, Redding Resource Area, California, is preparing a Resource Management Plan (RMP) which will include an Environmental Impact Statement (EIS). The plan will guide and control future management actions on approximately 400,000 acres of public land and mineral resources in the Redding Resource Area. The Code of Federal Regulations, Title 43, Subpart 1600, will be followed for the planning effort. The public is invited to participate in the planning process, beginning January 1, 1989, with the identification of issues and planning criteria.

DATE: Comments relating to the identification of issues and planning criteria will be accepted until February 21, 1989.

ADDRESS: Send comments to BLM, Redding Resource Area, RMP Team, 355 Hemsted Drive, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Mark Morse, Area Manager, or Barron Bail, Chief of Lands and Resources, Redding Resource Area, (916) 246–5325.

SUPPLEMENTARY INFORMATION: The planning area will include the public land and Federal mineral ownership in all or parts of Shasta, Butte, Trinity, Siskiyou, and Tehama Counties. This encompasses approximately 240,000 acres of BLM administered surface and 400,000 acres of Federal minerals under Federal, State or Private surface in the five counties. Anticipated issues to be addressed during the development of the RMP include, but are not limited to the following: (1) Which commercial forest land should be managed on a sustained yield basis for wood products?; (2) What should be done to provide recreation opportunities, including access, while resolving conflicts between recreationists and between recreationists and other users of public land?; (3) Which land in the Redding Resource Area would be beneficial to BLM progress if acquired, and which land could be transferred to other than BLM administration or may require further study?; These preliminary issues are not final and may be further refined, dropped, or new issues added by direct input through active public participation. The RMP will be developed by an interdisciplinary team, using representation from the team leader, technical coordinator, realty specialists, wildlife and fisheries biologists, foresters, geologists, and outdoor recreation planner, an archaelogist, and additional technical support to be provided by other specialists as needed.

A comprehensive public participation plan has been prepared. It is intended to involve all interested or affected parties early and continuously throughout the planing process. An individual may protest approval of a Proposed Plan only with respect to those items submitted in writing to the District manager during the planning process. The plan emphasizes localized one-to-one contacts, media coverage, direct

mailings, and continual coordination with local, state and other Federal agencies. Meetings to determine the scope of the RMP, and to obtain input on issues and planning criteria will be held in Redding, at the Red Lion Inn at 7:00 p.m. on January 5, 1989; in Red Bluff, at the City Council chambers at 7:00 p.m. on January 10, 1989; in Chico, at the Holiday Inn, at 7:00 p.m. January 12, 1989; in Yreka, at the Community Center Theatre, at 7:00 p.m. on January 17, 1989; and in Weaverville, at Lowden Recreation Hall, at 7:00 p.m. on January 18, 1989.

Compete records of all phases of the planning process will be available for public review at the Redding Resource Area Office throughout development of the RMP. Draft and final documents will be published and distributed to the public.

John E. Borgic,

Acting Area Manager.

Date: December 5, 1988.

[FR Doc. 88-28829 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; (Group 955)]

Plat of Survey; California

December 6, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County

T. 29 S., R. 37 E.
T. 30 S., R. 37 E.

2. These plats:

(1) Representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the survey of the subdivision of sections 21, 22, 28, and 33, Township 29 South, Range 37 East, Mount Diablo Meridian, California, under Group No. 955 California, was accepted October 19, 1988.

(2) Representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the survey of the subdivisional lines, and the survey of the subdivision of section 4, Township 30 South, Range 37 East, Mount Diablo Meridian, California, Under Group No. 955 California, was accepted October 19, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-28815 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; (Group 969)]

Plat of Survey; California

December 6, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt, Meridian, Siskiyou County

T. 18 N., R. 7 E.

2. This plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 30, Township 18 North, Range 7 East, Humboldt Meridian, California under Group No. 969 California, was accepted October 28, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Klamath National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-28816 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; (Group 998)]

Plat of Survey; California

December 6, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County

T. 29 S., R. 40 E.

2. This plat representing the metes-and-bounds survey of Lot 4 in section 26, Township 29 South, Range 40 East, Mount Diablo Meridian, California under Group No. 998 California, was accepted October 28, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-28817 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; (Group 1003)]

Plat of Survey; California

December 6, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Eldorado County

T. 12 N., R. 18 E.
T. 13 N., R. 18 E.

2. This plat representing the dependent resurvey of a portion of the south boundary of Township 13 North, Range 18 East, a portion of the subdivisional lines, Township 12 North, Range 18 East, and the survey of the subdivision of section 2, and the metes-and-bounds survey of a portion of the westerly right-of-way of Pioneer Trail, Township 12 North, Range 18 East, Mount Diablo Meridian, California, under Group No. 1003 California, was accepted November 16, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

BEST COPY AVAILABLE

Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–28818 Filed 12–14–88; 8:45 am]

BILLING CODE 4310–46–M

[ID–942–09–4730–12]

Idaho: Filing of Plats of Survey

The plats of survey of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., December 1, 1988.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines; the subdivision of sections 26 and 35 and the survey of new meanders of the left bank of the South Fork of the Payette River in section 35, T. 9 N., R. 4 E., Boise Meridian, Idaho, Group No. 659, was accepted November 8, 1988.

The plat representing the dependent resurvey of a portion of the south and west boundaries, and subdivisional lines and the subdivision of certain sections, T. 7 S., R. 18 E., Boise Meridian, Idaho, Group No. 655, was accepted November 16, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

December 1, 1988.

[FR Doc. 88–28819 Filed 12–14–88; 8:45 am]

BILLING CODE 4310–66–M

[OR–943–09–4214–12; GP9–059; OR–3225]

Partial Termination of Classification for Multiple Use Management; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates a land classification for multiple use management as to 37.83 acres of public lands. This action also opens the lands to disposition by public sale only.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: 1. By order of Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on September 19, 1968 (33 FR 14182), the following described public lands were classified for multiple use management pursuant to the Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18):

Willamette Meridian

T. 16 S., R. 16 E.,
- Sec. 13, tract 37;
- Sec. 14, tract 40;
- Sec. 21, tracts 41 and 42;
- Sec. 24, tract 38;
- Sec. 25, tract 39;
- Sec. 26, tract 43;
- Sec. 35, tracts 46 and 47.

T. 16 S., R. 17 E.,
- Sec. 19, tract 37.

The areas described aggregate 37.83 acres in Crook County, Oregon.

2. Pursuant to 43 CFR 2461.5(C)(2), the classification as to the lands described in paragraph 1 is terminated upon publication of this notice in the **Federal Register.**

3. Upon publication of this notice in the **Federal Register,** the lands described in paragraph 1 are open to disposition by public sale only.

Charles W. Luscher,

State Director.

Dated: December 9, 1988.

[FR Doc. 88–28821 Filed 12–14–88; 8:45 am]

BILLING CODE 4310–33–M

[AZ–050–09–7122–14–X218; AZA–23555]

Arizona and California; Temporary Closure of Selected Public Lands in La Paz County, AZ, and San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of selected public lands in La Paz County, Arizona, and San Bernardino County, California, during the operation of the 1989 SCORE Parker 400 Off-Road Vehicle Race.

SUMMARY: The District Managers of the Yuma District, the California Desert District, and the Phoenix District jointly announce the temporary closure of selected public lands under their respective administration. This action is being taken to provide for public safety and prevent unnecessary environmental degradation during the official permitted running of the 1989 SCORE Parker 400 off-road vehicle race.

DATES: January 26, 1989, through January 29, 1989.

FOR FURTHER INFORMATION CONTACT: Merv Boyd, Concession Management Specialist, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602 855–8017; Phil Damon, Outdoor Recreation Planner, Needles Resource Area, P.O. Box 888, Needles, California 92363, 619 326–3897; or Mike Feeney, Natural Resource Specialist, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027, 602–863–6711.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure periods are as follows:

California Loop

1. The entire course is closed to public vehicle use from 6 a.m., Thursday, January 26, 1989, to 6 p.m., Sunday, January 29, 1989 (PST).

2. Between noon, Friday, January 27, 1989, and 3 p.m., Saturday, January 28, 1989 (PST), vehicles are prohibited within 1 mile of either side of existing roads making up the California Loop of the officially approved course. Access routes leading to the course are also closed. All closed routes will be posted throughout the closure period.

3. Spectator viewing is limited to four designated spectator areas located at:

a. Start/Finish area (approximately 5 miles east of Vidal Junction off State Route 62).

b. Vidal Junction (approximately 2 miles north of Vidal Junction adjacent to U.S. Highway 95).

c. Rice (approximately 18 miles west of Vidal Junction off State Route 62).

d. Thunder Alley (approximately 25 miles west of Vidal Junction off Cadiz Road).

Vehicle travel or parking outside these designated locations is prohibited. All vehicles operated within these four locations shall be legally registered for street and highway operation.

4. The previously used spectator viewing area located adjacent to U.S. Highway 95, aproximately 18 miles north of Vidal Junction, is open *only* to official pitting activity. No spectators will be allowed at this location.

5. Spectators and vehicle parking along U.S. Highway 95 is prohibited.

6. All vehicles operated within designated pit areas shall be legally registered for street and highway operation.

Arizona Loop

1. The portion of the course comprised of BLM roads and ways is closed to public vehicle use from 6 a.m., Thursday, January 26, 1989, to 6 p.m. Sunday, January 29, 1989 (MST).

2. Vehicles are prohibited from the following five Wilderness Study Areas:

a. AZ—050–12 (Gibraltar Mountain)
b. AZ—050–14A/B (Cactus Plain)
c. AZ—050–15A (Swansea)
d. AZ—050–17 (East Cactus Plain)

e. AZ—050–71 (Buckskin Mountains)

3. The entire area encompassed by the Arizona Loop and all areas within 1 mile outside the Arizona Loop are closed to vehicles unless otherwise posted. Access routes leading to the course are closed to vehicles. All closed routes will be posted throughout the closure period.

4. Spectator viewing is limited to two designated spectator areas located at:

a. Arizona Start/Finish area (along Shea Road east of Parker, Arizona).

b. Bouse Road (about 1½ miles north of Bouse, Arizona).

Camping is allowed only in the two designated spectator areas. Vehicle travel or parking outside these designated locations is prohibited. All vehicles operated within these two locations shall be legally registered for street and highway operation.

5. Spectators and vehicle parking along Bouse Road, Shea Road, and Swansea Road is prohibited except for the two designated spectator areas.

6. All vehicles operated within designated pit areas shall be legally registered for street and highway operation.

Signs and maps directing the public to the Arizona and California spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the States of Arizona and California, or the Counties of La Paz and San Bernardino. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 30 mph on all BLM roads and ways. This speed limit shall not apply to vehicles entered in the race during race day, Saturday, January 28, 1989.

Authority for closure of public lands is found in 43 CFR Part 8340, Subpart 8341; 43 CFR Part 8360, Subpart 8364.1, and 43 CFR Part 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

Herman Kast,

Yuma District Manager.

Date: November 21, 1988.

Gerald E. Hillier,

California Desert District Manager.

Date: November 29, 1988.

Henri Bisson,

Phoenix District Manager.

Date: December 9, 1988.

[FR Doc. 88–28823 Filed 12–14–88; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–8–4212–13; A–23306]

Realty Action; Exchange of Public Lands, Maricopa County, AZ; Correction

In notice document 88–27432, **Federal Register**, Vol. 53, No. 229, Tuesday, November 29, 1988, Notice page 48045, make the following correction:

1. On page 48045, first column, (AZ–020–8–4212–13; A–23306) should read (AZ–020–9–4212–13; A–23306A).

Henri R. Bisson,

District Manager.

Date: December 9, 1988.

[FR Doc. 88–28824 Filed 12–14–88; 8:45 am]

BILLING CODE 4310–32–M

[ID–050–08–4351–11]

Emergency Closure of Public Lands (Western Portion of the Shoshone BLM District, ID)

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately all public lands located in the western portion of the Shoshone BLM District are closed to off road motorized travel. The closed area is bounded and generally described as follows:

That portion of Idaho Department of Fish and Game Unit 45, West of the Bliss-Hill City Road to the Snake River, downstream to the confluence of King Hill Creek with the Snake River, up King Hill Creek to the Idaho Power Two pole power line, East along the powerline to White Arrow ponds on the Bliss-Hill City Road, the point of the beginning.

All public lands administered by the Bureau of Land Management within the above described area are closed to off road motorized vehicle use, from the date of the notice until April 1, 1989.

Exemptions from this closure for Federal, State, and local government personnel on official duty, emergency service personnel including medical, search and rescue, utility services, and all other licensed/permitted individuals may be approved by the authorized officer.

The described area is currently experiencing high concentrations of Mule Deer hunters during a late season muzzleloader hunt season. The hunting activity has encouraged off road motorized use which is opening tracks for excessive soil erosion during snowmelt or seasonal rains. The purpose of the closure is to protect the natural resources from excessive soil erosion caused by disturbances from off road vehicle use.

The authority for this closure is 43 CFR 8364.1. The closure will remain in effect until April 1, 1989.

DATE: Thursday, December 8, 1988.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION AND APPLICATION FOR EXCLUSION PERMITS CONTACT: Robert D. Cordell, Bennett Hills Resource Area Manager, P.O. Box 2–B, Shoshone, Idaho 83352, Telephone (208) 886–2206.

Jon H. Ideo,

District Manager

BILLING CODE 4310–GG–M

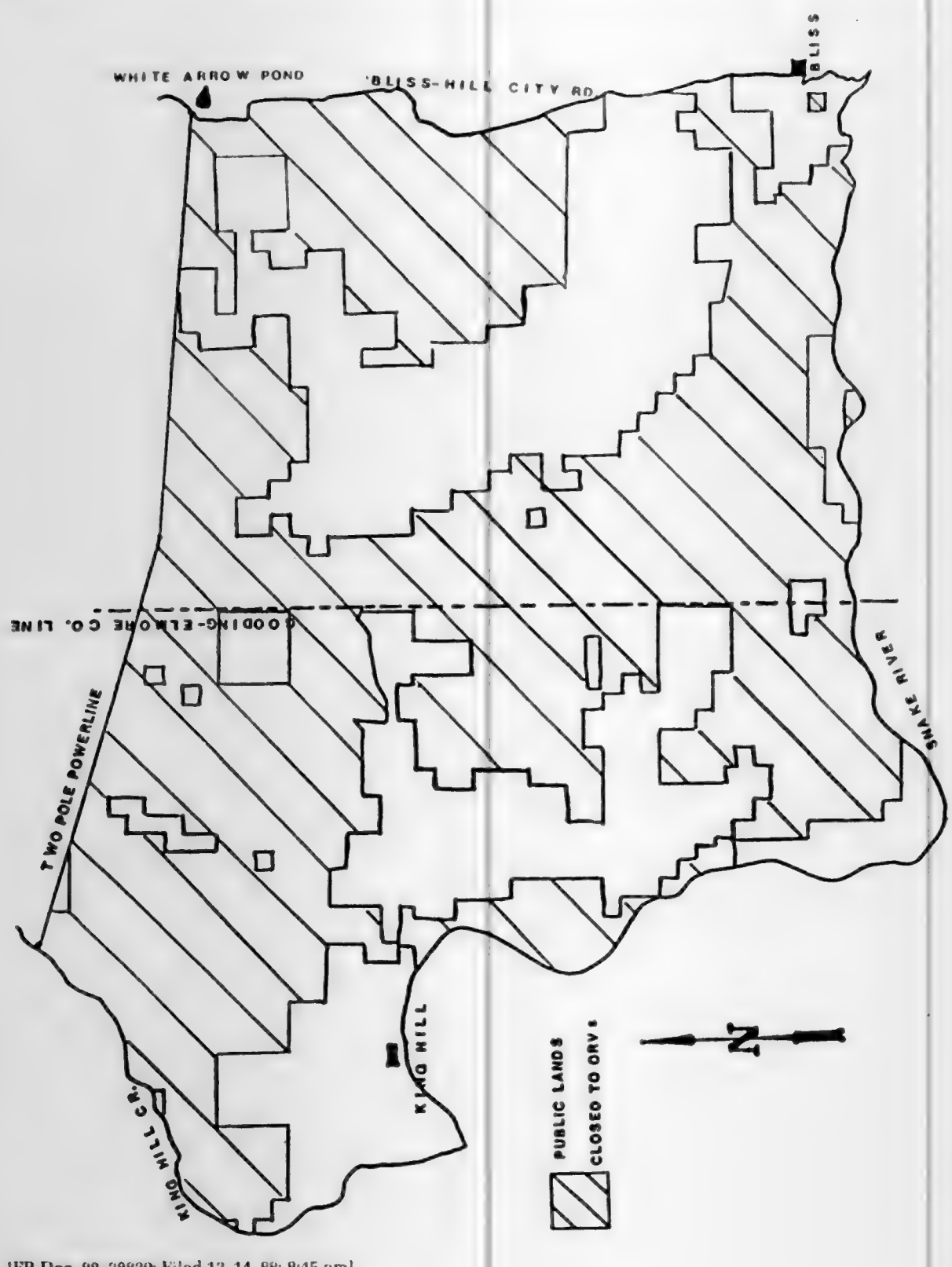

[FR Doc. 88-28820; Filed 12-14-88; 8:45 am]
BILLING CODE 4310-GG-C

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[(UT-040-09-4212-14); UTU-52855]

Realty Action; Sale of Public Lands in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: The following land has been found suitable for direct sale to John Miles under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the fair market value of $6,000:

Salt Lake Base and Meridian, Utah

T. 41 S., R. 14 W.
Sec. 12: Lot 30,
Containing 2.12 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomic to manage by a government agency. This determination was made because of its location and uses associated with it and adjacent private land.

DATES: The land will not be offered for sale until at least 60 days after the date of this notice. For a period of up to and including January 30, 1989, interested parties may submit comments to the District Manager, Cedar City District, at the address listed below. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESS: Detailed information concerning the sale is available at the Dixie Resource Area Office, 225 North Bluff, St. George, Utah 84770, (801) 673-4654. Written comments should be addressed to the District Manager, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

SUPPLEMENTARY INFORMATION: The sale will be subject to the following reservations to the United States:

1. All minerals in the land above described, with the right to prospect for, mine and remove the same under applicable law and such regulations as the Secretary of Interior may prescribe.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

Date: December 6, 1988.

Gordon Staker,

District Manager.

[FR Doc. 88-28809 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document; Union Texas Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3159, Block 384, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on December 7, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 8, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-28831 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Kellogg Unit Reformulation Study, Delta Division, Central Valley Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Notice of public hearing on planning report/draft environmental statement (PR/DES); INT-DES-88-56.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Reclamation has prepared a planning report/draft environmental statement (PR/DES) on the Kellogg Unit Reformulation Study of the Central Valley Project, California. The PR/DES (INT-DES-88-56) was made available to the public on December 1, 1988. A public hearing will be held to receive comments from interested organizations and individuals on the environmental impacts of the project.

DATE: The public hearing is scheduled for 7:30 p.m. on January 19, 1989, in Concord, California.

ADDRESSES: The hearing will be held at the following location: Contra Costa Water District Headquarters, 1331 Concord Avenue, Concord, California.

Addresses for Comments, Requests to Testify, and Further Information: Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP-720, Sacramento, CA 95825-1898; Telephone: (196) 978-4957.

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Johnson (Team Leader, Mid-Pacific Region), (916) 978-4975.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the hearing should contact the Bureau of Reclamation, Mid-Pacific Regional Office, at the above address, to announce their intention to participate. Requests for scheduled presentations will be accepted through 4 p.m. on January 14, 1989.

Oral comments at the hearing will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comment after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order, and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Mid-Pacific Regional Office at the above address by January 27, 1989, for inclusion in the hearing record.

Date: December 8, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 88-28800: Filed 12-14-88; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collecton Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Office, Washington, DC 20503, telephone (202) 395-7340.

Title: Abandoned Mine Reclamation Funds—30 CFR Part 872.

OMB Number: 1029-0054.

Abstract: Sections 401 and 402 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, provide for the creation of the Abandoned Mine Reclamation Fund and require the Secretary to make a determination regarding the use of these allocated State/Indian tribe funds which have not been expended in a three-year period. Part 872 establishes requirements for information collection to be used by the regulatory authority to determine whether delays in the use of allocated funds were due to unavoidable delays in program approval or are not necessary to carry out approved reclamation activities. These requirements serve as safeguards to protect States/Indian tribes against automatic or indiscriminate funds withdrawal.

Bureau Form Number: None.

Frequency: As required.

Description of Respondents: State and Indian tribes.

Annual Responses: One.

Annual Burden Hours: One.

Estimated Completion Time: One.

Bureau Clearance Office: Nancy Anna Baka (202) 343-5981.

Date: December 2, 1988.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 88-28900 Filed 12-14-88; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: December 8, 1988.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0506.

Type of Submission: Extension of Approved Collection.

Title: Information Collection Elements in the A.I.D. Consultant Registry Information System (ACRIS).

Purpose: A.I.D. procuring activities are required to establish bidders mailing lists "to assure access to sources and to obtain meaningful competition." (CFR 1-2.205). In compliance with this requirement, A.I.D.'s Office of Small and Disadvantaged Business Utilizations/Minority Resource Center has responsibility for "developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by A.I.D. procuring activities" (AIDPR 7-1.704-2(b)(4)). Respondents will have a submission burden of one response per year.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: December 8, 1988.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 88-28810 Filed 12-14-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Labor has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Adoption of Employee Retirement Income Security Act Class Exemptions for Purposes of the Federal Employees' Retirement System Act; No Form: and No OMB Control Number.

Type of Request: Expedited Submission—approval date requested (December 27, 1988).

Average Burden Hours/Minutes Per response: 1 hour.

Frequency of Response: On occasion.

Number of Respondents: 1.

Annual Burden Hours: 1 hour.

Annual Responses: 1.

Needs and Uses: This document adopts, for purposes of the prohibited transaction provisions of FERSA, certain prohibited transaction class exemptions granted pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974. Pursuant to section 408(a) of the Employee Retirement Income Security act of 1974. Pursuant to the adoption, the prohibited transaction restrictions of section 8477(c)(2) of

FERSA or the relevant subsections thereunder will not apply to certain transactions described in the Class Exemptions, provided that the conditions of the exemptions are satisfied.

Affected Public: Business or other for profit.

Respondents Obligation: Mandatory.

Requests for Which Paperwork Reduction Act Approval is Being Sought:

PTE 75–1 Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks (40 FR 50845, October 31, 1975)

II. Principal Transactions Exemption

(e) The plan maintains or causes to be maintained for a period of six years form the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) Such broker-dealer, reporting dealer, or bank shall not be subject to the civil penalty which may be assessed under section 502(i) of the act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (f) below; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(f) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan. For purposes of this exemption, the terms "broker-dealer," "reporting dealer" and "bank" shall include such persons and any affiliates thereof, and the term "affiliate" shall be defined in the same manner as that term is defined in 29 CFR 2510.3–21(e) and 26 CFR 54.4975–9(e).

III. Underwritings Exemption

(f) The plan maintains or causes to be maintained for a period of six years form the date of such transaction such records as are necessary to enable the persons described in paragraph (g) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(g) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan.

If such securities are purchased by the plan from a party in interest or disqualified person with respect to the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to the plan, the restrictions of section 406(a) of the Act shall apply to any fiduciary with respect to the plan and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall apply to such party in interest or disqualified person, unless the conditions for exemption of Part II of this notice (relating to certain principal transactions) are met.

IV. Market-Making Exemption

(e) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six year periods.

(f) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan.

V. Extension of Credit Exemption

(c) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (d) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) If such party in interest or disqualified person is not a fiduciary with respect to any assets of the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination as required by paragraph (d) below; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(d) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (c) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan.

PTE 78–19—Class Exemptions for Certain Transactions Involving Insurance Company Pooled Separate Accounts (43 FR 59915, Decemer 22, 1978)

Section III—General Conditions

(b) The insurance company maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the

insurance company, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in subsection 2 of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(ii) Any fiduciary of a plan who has authority to acquire or dispose of the interest of the plan in the separate account, or any duly authorized employee or representative of such fiduciary,

(iii) Any contributing employer to any plan which has an interest in the pooled separate account or any duly authorized employee or representative of that employer,

(iv) Any participant or beneficiary of any plan which has an interest in the pooled separate account or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraph (ii) through (iv) of this paragraph shall be authorized to examine an insurance company's trade secrets or commercial or financial information which is privileged or confidential.

PTE 80–51—Class Exemption for Certain Transactions Involving Bank Collective Investment Funds (45 FR 49709, July 25, 1980, as technically corrected at 45 FR 52949, August 8, 1980)

Section III. General Conditions

(b) The bank maintains for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's control, the records are lost or destroyed rior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in subsection 2 of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan who has authority to acquire or dispose of the interests of the plan in the collective investment fund, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan that has an interest in the collective investment fund or any duly authorized employee or representative of such employer,

(D) Any participant or beneficiary of any plan that has an interest in the collective investment fund, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph shall be authorized to examine a bank's trade secrets or commercial or financial information which is privileged or confidential.

PTE 82–63—Class Exemption To Permit Payment of Compensation to Plan Fiduciaries for the Provision of Securities Lending Services (47 FR 14804, April 6, 1982, as Technically Corrected at 47 FR 16437, April 16, 1982)

I. Transactions

(c) The compensation is reasonable and is paid in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of securities lending transactions;

(d) Except as otherwise provided in paragraph (f), the arrangement under which the compensation is paid: (1) Is subject to the prior written authorization of a plan fiduciary (the "authorizing fiduciary"), who is (other than in the case of a plan covering only employees of the lending fiduciary or affiliates of such fiduciary) independent of the lending fiduciary and of any affiliate thereof, and (2) may be terminated by the authorizing fiduciary within: (i) The time negotiated for such notice of termination by the plan and the lending fiduciary, or (ii) five business days, whichever is lesser, in either case without penalty to the plan;

(e) No such authorization is made or renewed unless the lending fiduciary shall have furnished the authorizing fiduciary with any reasonably available information which the lending fiduciary reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request; and

(f) (Special Rule for Commingled Investment Funds) In the case of a pooled separate account maintain by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency, the requirements of paragraph (d) of this exemption shall not apply: *Provided,* that

(1) The information described in paragraph (e) (including information with respect to any material change in the arrangement) shall be furnished by the lending fiduciary to the authorizing fiduciary described in paragraph (d) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary;

(2) In the event any such authorizing fiduciary submits a notice in writing to the lending fiduciary objecting to the implementation of, material change in, or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the account or fund subsequent to the implementation of the compensation arrangement and which has not authorized the arrangement in the manner described in paragraphs (f)(1) and (f)(2), the plan's investment in the account or fund shall be authorized in the manner described in paragraph (d)(1).

PTE 86–128—Class Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers (51 FR 41686, November 18, 1986, as Amended at 53 FR 8676, March 19, 1987)

Section III. Conditions

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction, which plan fiduciary is independent of the person engaging in the covered transaction.

(c) The autorization referred to in paragraph (b) of this section is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this section with instructions on the use of the form must be supplied to the authorizing fiduciary not less than annually. the instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice from the authorizing fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized person to engage in the covered transactions on behalf of the plan.

(d) Within three months before an authorization is made, the authorizing fiduciary is furnished with any reasonably available information that the person seeking authorization reasonably believes to be necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, the form for termination of authorization decribed in section III(c), a description of the person's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

(e) The person engaging in a covered transaction furnishes the authorizing fiduciary with either:

(1) A confirmation slip for each securities transaction underlying a covered transaction with ten business days of the securities transaction containing the information described in Rule 10b-10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b-10; or

(2) At least once every three months and not later than 45 days following the period to which it relates, a report disclosing:

(A) A compilation of the information that would be provided to the plan pursuant to subparagraph (e)(1) of this section during the three-month period covered by the report;

(B) The total of all securities transaction related charges incurred by the plan during such period in connection with such covered transactions; and

(C) The amount of the securities transaction-related charges retained by such person and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(f) The authorizing fiduciary is furnished with a summary of the information required under paragraph (e)(1) of this section at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized person and the amount of these charges paid to other persons for execution or other services.

(3) A description of the person's brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4)(i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this paragraph (f)(4)(i) will be met if the "annualized portfolio turnover ratio", calculated in the manner described in paragraph (f)(4)(ii), is contained in the summary.

(ii) The "annualized portfolio turnover ratio" shall be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized person had discretionary investment authority, or with respect to which such person rendered, or had any responsibility to render, investment advice (the "portfolio") at any time or times ("management period(s)") during the period covered by the report. First, the "portfolio turnover ratio" (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and end of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The "annualized portfolio turnover ratio" is then derived by multiplying the "portfolio turnover ratio" by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

Examples of the use of this formula are provided in section V of this exemption.

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where the authorized person has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this paragraph (f), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(g) If an agency cross transaction to which section IV(b) does not apply is involved, the following conditions must also be satisfied:

(1) The information required under section III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that with respect to agency cross transactions the person effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the persons engaging

in the transactions in connection with those transactions during the period.

Section IV: Exceptions From Conditions

(a) *Certain plans not covering employees.* Section III of this exemption does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts meeting the conditions of 29 CFR 2510.3–2(d), or plans, other than training programs, that cover no employees within the meaning of 29 CFR 2510.3–3.

(b) *Certain agency cross transactions.* Section III of this exemption does not apply in the case of an agency cross transaction, provided that the person affecting or executing the transaction:

(1) Does not render investment advice to any plan for a fee within the meaning of section 3(21)(A)(ii) of ERISA with respect to the transaction;

(2) is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, see 29 CFR 2510.3–21(d); and

(3) does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(d) *Special rules for pooled funds.* In the case of a person engaging in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Section III(b), (c) and (d) of this exemption do not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of a plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the person. The requirement that the authorizing fiduciary be independent of the person shall not apply in the case of a plan covering only employees of the person, if the requirements of section IV(d)(2)(A) and (B) are met.

(B) The authorizing fiduciary is furnished with any reasonably available information that the person engaging or proposing to engage in the covered transactions reasonably believes to be necessary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the person's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing fiduciary at any time.

(C) In the event an authorizing fiduciary submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(D) In the case of a plan whose assets are proposed to be invested in the pooled fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1)(B) and (C) of this section, the plan's investment in the pooled fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraphs (d)(1)(A).

OMB Desk Officer: Ms. Diana Rowen.

Written comments and recommendations on the information collection should be sent to Ms. Diana Rowen at Office of Management and Budget, Desk Officer, Room 3001, New Executive Office Building, Washington, DC., 20503, telephone 202/395–6880 by December 27, 1988.

A copy of the information collection proposal may be obtained from Mr. Paul Larson, Director, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210, telephone number: 202/523–6331.

Signed at Washington, DC, this 13th day of December 1988.

Marizetta Scott,

Acting Departmental Clearance Officer.

SF–83A Request for OMB Review—Pension and Welfare Benefits Administration, U.S. Department of Labor

Subject: The adoption of certain prohibited transaction class exemptions under section 408(a) of the Employee Retirement Income Security Act (ERISA) for purposes of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA).

Supporting Statement

1. Statutory Authority for Information Collection

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) establishes the Secretary of Labor's authority to grant a conditional or unconditional exemption of any fiduciary, disqualified person, or transaction from all or part of the prohibitions imposed by section 406(b) of ERISA. Section 406(b) of ERISA prohibits, unless exempted, a fiduciary's dealing with the assets of a plan in his or her own interest, acting on behalf of a party whose interests are adverse to the interests of the plan, its participants or beneficiaries, or receiving consideration for his or her own personal account from any party dealing with the plan in connection with a transaction involving the assets of the plan.

The Secretary has authority pursuant to ERISA section 408(a) to grant either individual or class exemptions. In order to grant a class exemption, the Secretary must determine that it is: (1) Administratively feasible; (2) in the interest of the plan, as well as the interest of the plan's participants and beneficiaries; and (3) protective of the rights of participants and beneficiaries.

Section 8477(c)(3)(E) of the Federal Employees' Retirement System Act of 1986 (FERSA) provides that the Secretary of Labor may determine that a class exemption granted under section 408(a) of ERISA shall, upon publication of a notice in the **Federal Register**, also constitute a class exemption for the purposes of section 8477(c)(2) of FERSA.

FERSA section 8477(c)(2) parallels ERISA section 406(b) in its application to the FERS Thrift Savings Fund (the Fund) established under FERSA. Section 8477(c)(2)(A) prohibits a fiduciary with respect to the Fund from dealing with the assets of the Fund in his or her own interests. Section 8477(c)(2)(B) prohibits fiduciaries with respect to the Fund from acting, in an individual or any other capacity, in any transaction involving the Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Fund or the interests of participants and beneficiaries. Section 8477(c)(2)(C) prohibits a fiduciary with respect to the Fund from receiving any consideration for his or her own personal account from any party dealing with sums credited to the Fund in connection with a transaction involving the assets of the Fund.

The following prohibited transaction class exemptions (PTEs) under ERISA

section 408(a) are being adopted for FERSA purposes:

- PTE 75–1—exempting certain classes of transactions involving employee benefit plans and certain broker dealers, reporting dealers, and banks;
- PTE 79–19—exempting certain transactions involving insurance company pooled separate accounts;
- PTE 80–26—exempting certain interest free loans to employee benefit plans;
- PTE 80–51—exempting certain transactions involving bank collective investment funds;
- PTE 82–63—exempting certain payments of compensation to plan fiduciaries for the provision of securities lending services; and
- PTE 86–128—exempting certain securities transactions involving employee benefit plans and broker-dealers.

The adoption of these exemptions would permit fiduciaries with respect to the Fund to engage in certain transactions that would otherwise be prohibited under section 8477(c)(2) of FERSA. The class exemptions will be adopted only to the same extent that they provide exemptive relief from the restrictions of sections 406(b) of ERISA, which are parallel to those of section 8477(c)(2) of FERSA. The Department is adopting these class exemptions on its own motion in accordance with the procedures set forth in section 3.01 of ERISA Procedure 75–1 (40 Fed. Reg. 18471, April 28, 1975).

2. Purpose of the Information Collection

The information collection requirements incorporated within certain of these class exemptions are intended to ensure that a class exemption is not abused, that the rights of participants and beneficiaries are protected, and that affected fiduciaries comply with a class exemption's conditions.

3. Use of Improved Information Technology

This is not applicable to the adoption of the requirements of these class exemptions.

4. Efforts to Identify Duplication

The information collection requirements contained in certain of these class exemptions are only triggered when plan fiduciaries elect to utilize that class exemptions; there are no annual reporting requirements under the exemptions.

Some of the information collection requirements contained in certain of the class exemptions resemble in limited respects information collection requirements under Rule 10b–10 of the Securities Act of 1984 (17 CFR 2240.10b–10). The supporting statement for individual class exemptions describe in detail the efforts taken to avoid duplication, and may be referred to for additional information.

5. Similar Information

Because this information is specific to the transaction for which an exemption is sought, there is no alternative source of similar information.

6. Small Businesses

Due to the size and nature of the FERS Thrift Savings Fund, it is unlikely that small businesses will act as asset managers or fiduciaries for the Fund. Nevertheless, it should be noted that each individual class exemption was drafted (for ERISA purposes) to minimize the impact on small businesses.

7. Frequency of Information Collection

The information collection requirements relating to these class exemptions are only imposed when a Fund fiduciary chooses to engage in a transaction which necessitates the utilization of a class exemption. The frequency is thus dependent on the occurrence of a particular transaction, rather than a predetermined time period (see item 13 for further discussion).

8. Special Circumstances

There are no special circumstances applicable within the meaning of 5 CFR 1320.6.

9. Consultations With Outside Agencies

The adoption of these class exemptions is in response to a request by Wells Fargo Bank, which serves as the (only) current qualified professional asset manager retained by the FERS Thrift Investment Board, pursuant to section 8438 of FERSA, with respect to the fixed income fund and the common stock index fund. In particular, Ms. Judith Nolte, Vice President and Senior Counsel, Legal Department, Wells Fargo Bank, N.A., 111 Sutter Street, San Francisco CA 94163, conferred with the Pension and Welfare Benefits Administration and provided the estimated frequency of transactions under these class exemptions upon which the Department's cost and burden hour estimates are based.

10. Confidentiality

No information is required to be sent to the government under the conditions of the class exemptions; therefore, this section is not applicable.

11. Questions of a Sensitive Nature

No sensitive questions are asked of fiduciaries utilizing the class exemptions.

12. Annualized Cost to the Federal Government

The information collection requirements contained in certain of these class exemptions will not result in costs to the government.

For reasons discussed in detail in item 13, the Department of Labor anticipates that the adoption of these class exemptions for FERSA purposes will not result (under prevailing circumstances) in any actual burden hours imposed on the public. Consequently, the Department does not anticipate that there will be any additional costs imposed on the public, unless there is a change in the current manner in which Thrift Savings Fund assets are invested.

13. Estimate of the Information Collection Burden

Under current circumstances, the adoption of these class exemptions for FERSA purposes will not result in any increased burden for the public, for the following reasons.

Presently, the FERS Thrift Investment Board has delegated investment authority to only one qualified plan asset manager: the Wells Fargo Bank, N.A. According to the bank's Vice President and Senior Legal Counsel, Wells Fargo's current practice is to invest these FERS assets in pooled investments funds, together with assets received from private pension plans for investment. Thus, while the addition of FERS assets to Wells Fargo's pooled investment funds may increase the size of any given investment transaction in which Wells Fargo engages, the total number of transactions engaged in by Wells Fargo would remain the same (according to counsel).

In the event that any of these pooled investment fund transactions necessitated that Wells Fargo utilize one of the class exemptions described, the information collection requirements under FERSA (if any) would be no greater than those under ERISA. Since Wells Fargo would already be subject to the same information collection under ERISA (by virtue of the participation of private pension plan assets in the pooled investment funds), no additional information would be necessary under FERSA.

Although the Department does not anticipate any change in circumstance for the immediate future, at some point it is possible—as a result of new investment practices that differ from

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those currently engaged in by Wells Fargo Bank (e.g., a second qualified plan asset manager is retained, or Wells Fargo establishes a separate investment fund for FERS assets that are not pooled with private pension plan assets)—that an increase in burden may occur. Therefore, the Department of Labor presumes that the adoption of these class exemptions for purposes of FERSA will result in a nominal burden increase of 1 burden hour annually, even though current practices would not give rise to any actual information collection burden.

14. Reason for Change in Burden

The change in burden is the result of a statutory enactment under FERSA (and subsequent technical corrections) which has created additional regulatory, oversight and enforcement authority and responsibilities in the Department of Labor.

This information collection burden does not appear as a separate item in the PWBA FY89 Information Collection Budget because the adoption of the class exemptions was only initiated in response to a public request.

15. Collection of Information for Statistical Use

This paperwork requirement is not a collection of information for statistical use; therefore, no statistical methods have been used.

[FR Doc. 88–28983 Filed 2–14–88; 8:45 am]
BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978. Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to the permit application by January 17, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States Citizens. The Agreed measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations established such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on June 21, 1988. The application received is as follows:

Applicant

William J.L. Sladen
P.O. Box 367
The Plains, VA 22171

Activity for Which Permit Requested

Take; Enter Site of Special Scientific Interest; Enter Specially Protected Area. The applicant requests permission to collect data on penguins (weights, sex, physiological condition) for a publication. He also requests permission to salvage dead specimens for educational purposes.

Location

Antarctic Peninsula Area

Dates

January–February 1989

Charles E. Myers,
Permit Office.

[FR Doc. 88–28832 Filed 12–14–88; 8:45 am]
BILLING CODE 7555–01–M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Evaluation of Presidential Young Investigators Program

Affected Public: Individuals.

Responses/Burden Hours: 2113 respondents; an average of 20 minutes each.

Abstract: In the last five fiscal years NSF has made 847 Presidential Young Investigator awards, a comparatively large five-year grants (with industry matching potential) made on the basis of nominations of "star" young faculty. NSF, OMB and Congress are interested in impact of the program on faculty retention, research productivity, academic-industry cooperation.

Dated: December 9, 1988.

Herman G. Fleming,
NSF Clearance Officer.

[FR Doc. 88–28860 Filed 12–14–88; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Mississippi Power and Light Co. et al.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 52 to Facility Operating License No. NPF–29, issued to Mississippi Power and Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Association, which revised the Technical Specifications for the operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amendment is effective as of the date of issuance.

The amendment changes the Technical Specifications by separating the 24-hour surveillance test of emergency diesel generators from the surveillance test simulating loss of offsite power in conjunction with an ECCS acutation signal.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 25, 1988 (53 FR 32487). No request for a hearing or petition for

leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated July 26, 1988, (2) Amendment No. 52 to License No. NPF-29, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154. A copy of items (2) and (3) may be obtained upon request, addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 6th day of December 1988.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28869 Filed 12-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power and Light Co. et al.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 53 to Facility Operating License No. NPF-29, issued to Mississippi Power and Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Association, which revised the Technical Specifications for the operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amendment is effective as of the date of issuance.

The amendment changes the Technical Specifications by separating the 24-hour surveillance test of emergency diesel generators from the surveillance test simulating loss of outside power in conjunction with an ECCS acutation signal.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 25, 1988 (53 FR 32487). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated July 1, 1988, (2) Amendment No. 53 to License No. NPF-29, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154. A copy of items (2) and (3) may be obtained upon request, addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 6th day of December 1988.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-28870 Filed 12-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would modify Technical Specification 1.1, "Fuel Storage". Technical Specification 1.1 describes and defines those aspects of fuel storage which relate to the prevention of criticality in the fuel storage facility. The proposed amendment changes specification D from "Spent fuel shipping casks shall not be lifted over the spent fuel storage pool", to "Spent fuel shipping casks shall not be lifted over the spent fuel storage pool until all irradiated fuel within 10 rows of the cask laydown area has cooled a minimum of 60 days."

The proposed action is in accordance with the licensee's application for amendment dated November 8, 1988.

The Need for the Proposed Action

The proposed change to TS is required in order to permit the lifting of spent fuel shipping casks over the spent fuel storage pool once the irradiated fuel within 10 rows of the cask laydown area has cooled a minimum of 60 days.

Environmental Impacts of the Proposed Action

The Commission has completed its initial evaluation of the proposed revision to the Technical Specifications. The results are summarized below:

1. Any lift of a spent fuel shipping cask at Maine Yankee will be performed in accordance with the heavy load handling guidelines specified in NUREG-0612, Section 5.1.1, thus assuring an extremely low drop probability.

2. If a drop were to occur, and the shipping cask were to fall into the spent fuel pool, a maximum pool leak rate of 5 gpm has been conservatively calculated. The Chemical Volume Control System (CVCS) has borated water make-up capabilities much greater than the postulated leak rate (i.e., 150 gpm to 200 gpm).

3. Radiological analyses (which demonstrate that doses would be well within 10 CFR, Part 100 limits, i.e., less than 25 percent of the Part 100 limits) have been performed. The analyses determined that the anticipated release from 100 fuel assemblies (i.e., the shadow area of the largest available shipping cask) would not exceed the prescribed limits providing the spent fuel had decayed for 60 days.

4. A bounding criticality analysis, assuming 4.1 weight percent U-235, pool water at 68 °F and a 2-D infinite array,

has demonstrated that K_{eff} is less than .95 even under conditions of a collapsed flux trap and optimum lattice pitch, provided credit is taken for the 1,720 ppm soluble boron. This analysis bounds consolidated fuel assemblies.

5. The travel path for the spent fuel shipping cask will not pass over any safety-related equipment.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential non-radiological impacts, the proposed change to the Technical Specification involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no significant non-radiological environmental impacts.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 8, 1988 (53 FR 49619). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station dated July 1972.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the amendment dated November 8, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Local Public Document Room, Wiscasset Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Dated at Rockville, Maryland, this 8th day of December, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28868; Filed 12–14–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–424]

Georgia Power Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–68, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee), for operation of the Vogtle Electric Generating Plant, Unit 1, located in Burke County, Georgia.

The licensee proposes to amend Technical Specifications (TS) Sections 4.8.1.1.2.a.4, 4.8.1.1.2.g.1, 4.8.1.1.2.h.5, and 4.8.1.1.2.h.7 which require that diesel generator voltage be within a specified range, 4160, +170, −410 volts, during surveillance testing. The proposed change would raise the minimum voltage for tests not requiring circuit breaker closure to ensure that the generator "ready-to-load" condition is met during surveillance.

The minimum voltage currently required by TS 4.8.1.1.2, based on worst-case loading of the diesel generators, is 3750 volts. Before a diesel generator can be loaded, however, a ready-to-load interlock must be satisfied. This interlock, internal to the diesel generator package, initiates diesel generator circuit breaker closure and acts as a signal from the diesel generator that it is ready to accept load. It has been set by the manufacturer at a voltage of 4025 volts.

The intent of these surveillance requirements is to ensure that a component will respond as required in an accident situation. The tests requiring measurement of diesel generator voltage with the breaker closed are acceptable as written, since the allowable voltage range was determined for loaded conditions. The tests which require voltage measurement with the breaker open need to be revised, because a reading between 3750 and 4025 volts, while meeting test acceptance criteria, would not satisfy the ready-to-load condition. The licensee is, therefore, proposing to raise the minimum allowable voltage in the TS for those tests not requiring breaker closure to 4025 volts (i.e., 4160 −135 volts). The licensee's application for amendment was dated December 6, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant TS in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of Vogtle, Unit 1, in accordance with these changes would not

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change would raise the minimum required voltage for diesel generator surveillance tests where the generator circuit breaker is open. The change would not affect the method in which testing will be performed. It would merely revise one of the acceptance criteria to a more conservative value. The change would not involve any physical alteration of the plant, setpoint change, or change to an operating parameter. Since the change would not affect plant equipment involved in the initiation or mitigation of previously evaluated accidents, the probability or consequences of such accidents would not be increased.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The change would not introduce any new equipment into the plant or require any

existing equipment to be operated in a different manner from which it was designed to operate. Since the change would not create a new failure mode, a new or different type of accident would not be possible.

(3) Involve a significant reduction in a margin of safety. The change would not affect safety limits or limiting safety system settings. Surveillance testing of the diesel generators would continue to satisfy the basis of Technical Specification 3/4.8.1. Raising the minimum required voltage for unloaded diesel generator surveillance would assure that the ready-to-load condition is satisfied during testing. The change would reduce the probability of diesel generator degradation going undetected, hence margins of safety would not be reduced.

The NRC staff believes that the proposed changes to the Technical Specifications meet the criteria specified in 10 CFR 50.92(c), and hence, proposes to determine that they involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920, Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By January 17, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no signficant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree

Street, NE., Atlanta, Georgia 30043, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 9th day of December 1988.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager Project Directorate II-3 Division of Reactor Projects I/II Office of the Nuclear Reactor Regulation.

[FR Doc. 88-28866 Filed 12-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 119 and 105 to Facility Operating Licenses Nos. DPR-58 and DPR-74, issued to the Indiana Michigan Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan. The amendments are effective as of the date of issuance.

These amendments revise the TSs to make them more consistent with NRC guidelines concerning obtaining milk samples for analysis. In addition, the TS bases change to be more consistent with the Westinghouse Standard TSs with regard to the thyroid dose release pathway for a child, and an editorial error is corrected by removing redundant < signs.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commissioner's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 14, 1988 (53 FR 26695). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on November 16, 1988, at 53 FR 46132.

For further details with respect to this action, see (1) the application for amendments dated February 1, 1988, (2) Amendment Nos. 119 and 105 to Licenses Nos. DPR-58 and DPR-74, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 6th day of December 1988.

For the Nuclear Regulatory Commission.

Wayne Scott,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-28867 Filed 12-14-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of SF 2800 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to extend an information collection from the public. SF 2800, Application for Death Benefits, under the Civil Service Retirement System, is completed by the survivor of an employee, former employee, or annuitant who believes he/she is eligible for death benefits. These are two types of death benefits: Survivor annuity benefits and lump sum payments. These benefits cannot be paid unless application for the benefits is made to the Office of Personnel Management. Annual use by these individuals is estimated at 57,000. The estimated average burden per respondent is 30 minutes for a total annual burden of 28,500 hours. For copies of this proposal, call Lawrence F. Dambrose on (202) 632-0199.

DATE: Comments on this proposal should be received on or before December 29, 1988.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Managment and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-28803 Filed 12-14-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16685; (812-7103)]

Structured Asset Funding Corporation; Application

December 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an amended order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Structured Asset Funding Corporation ("Depositor") (formerly E.F. Hutton Mortgage Capital Inc.) and certain trusts ("Trusts") created by the Depositor (collectively as "Applicant").

Relevant 1940 Act Section: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicant seeks an order amending an existing order (Investment Company Act Release No. 15694, April 21, 1987), and exempting the Depositor and certain Trusts that it may create from all provisions of the 1940 Act in connection with their issuance of collateralized mortgage obligations and sale of residual interests.

Filing Dates: The application was filed on August 8, 1988, amended on October 19, November 17 and December 8, and a letter was submitted on November 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 29, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 3131 One Main Place, Dallas, TX 75270.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Depositor is an indirect, wholly-owned, limited-purpose financing subsidiary of Shearson Lehman Hutton Inc., a Delaware corporation. The Depositor was organized for certain limited purposes, including issuing one or more series of collateralized mortgage, and serving as the depositor of existing or future Trusts which will issue one or more series of Bonds and sell the beneficial interests therein. The Depositor will also invest in certain mortgage certificates (the "Mortgage Certificates") which will be used to collateralize the Bonds.

2. The Mortgage Certificates will consist of (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). In addition to the Mortgage Certificates directly securing the Bonds, a series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related indenture.

3. In connection with the acquisition of E.F. Hutton Group Inc., the Applicant's former parent, by Shearson Lehman Hutton Inc. (formerly Shearson Lehman Brothers Inc.), the Applicant requests an order amending its prior order to (i) change its name and the identity of its parent, (ii) change the name of the variable rate Bonds to "Floating Interest Rate Short Tranche Securities" ("FIRSTS"), and (iii) change references in the limitations on future ownership of the Applicant's stock to Shearson Lehman Hutton Inc. or an affiliate of Shearson Lehman Hutton Inc.

4. Each Trust will be established under a separate deposit trust agreement (the "Deposit Trust Agreement") between the Depositor and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Applicant will issue one or more series of Bonds under the terms of a trust indenture (the "Indenture") between the Depositor (the Owner Trustee in the case of a Trust) and an independent trustee ("Trustee"), as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

5. In the case of each series of Bonds: (a) The Applicant will hold no substantial assets other than the Mortgage Certificates; (b) the Bonds will be secured by Mortgage Certificates having collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned to the Trustee and will be subject to the lien of the related Indenture.

6. In addition to the issuance and sale of the Bonds, Applicant intends to sell the residual interests representing rights to receive excess cash flows under the conditions listed below. The Applicant will own all excess cash flows not required to pay principal of and interest on the Bonds. However, the Applicant may sell the residual interests in the right to receive such excess cash flows. If Bonds are issued by the Depositor directly rather than through a Trust, the Indenture will provide that excess cash flows that are not used to pay amounts due on the Bonds will be paid directly by the Trustee, after payment of expenses under the Indenture, to holders of residual interest certificates authorized under the Indenture. Such certificates represent beneficial ownership of the excess cash flows. If Bonds are issued by a Trust, excess cash flows will be released from the lien of the Indenture and remitted, net of expenses of the Trust to the owners of the certificates of beneficial interest in the Trusts. (For a more complete description of the Bonds and the residual interests, see the application).

Applicant's Legal Conclusion

1. The requested order is necessary and appropriate in the public interest because: (a) The Applicant should not be deemed to be an entity to which the provisions of the 1940 Act were intended to be applied; (b) the Applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Applicant's activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; and (e) the residual interests will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

A. Conditions Relating to the Bonds

(1) Each series of Bonds will be registered under the Securities Act of 1933, as amended (the "1933 Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. The mortgage collateral directly securing the Bonds will be limited to the Mortgage Certificates.

(3) If new Mortgage Certificates are substituted, the substitute Mortgage Certificates will: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in paragraphs (2), and (5). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) Without the written consent of each Bondholder to be affected, neither the Applicant nor the holders of any residual interests in any series of Bonds will be able to impair or adversely affect the Mortgage Certificates securing such series (including, without limitation, selling the Mortgage Certificates while a series of Bonds remains outstanding).

(5) All Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds ("Collateral") will be held by a Trustee, or on behalf of a Trustee by an independent custodian. Neither the Trustee nor the custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Collateral pledged to the Trustee will be registered in the name of the Trustee or its nominee, and the Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

(6) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(7) So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

B. Conditions Relating to FIRSTS

(1) Each Class of FIRSTS will have a set maximum interest rate (an interest rate cap) which, in each case, may vary from period to period.

(2) At the time of the deposit of the Collateral securing a series of Bonds with the Trustee, as well as during the life of such series of Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds of such series, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate for each specified period on each class of FIRSTS.[1] Such Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds, except as permitted by the Indenture.

C. Conditions Relating to REMIC Election

(1) The election by the Applicant to treat the arrangement by which the Collateral secures a series of Bonds as a real estate mortgage investment conduit ("REMIC") will have no significant effect on the level of the expenses that would be incurred by the REMIC. In the event of such REMIC election, the Applicant will provide for the payments of administrative fees and expenses as set forth in the application in a manner satisfactory to the agency or agencies rating the Bonds. The Applicant will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which method described in the application to provide for the payment of such fees and expenses is selected.

D. Conditions Relating to the Sale of the Residual Interests

(1) Notwithstanding the sale of residual interests in excess cash flows, all of the Depositor's outstanding stock will continue to be owned by Shearson Lehman Hutton Inc. or an affiliate of Shearson Lehman Hutton Inc.

(2) Sales of the residual interests will be made only to a limited number, but in no event more than 100, of sophisticated institutional investors in transactions exempt from the registration requirements of the 1933 Act, pursuant to section 4(2) thereof. Such institutional investors may include, but are not limited to commercial and investment banks, mortgage lenders, savings and loan associations, employee benefit plans, insurance companies, real estate investment trusts, pension plans, mutual funds or other institutions that customarily engage in the purchase of mortgages and other types of mortgage collateral ("Eligible Institutions"). Each mutual fund purchasing a residual interest will be required to satisfy itself that any such purchase will comply with the provisions of section 12(d)(1) of the 1940 Act or any order of the Commission exempting such mutual fund from such provision in connection with any such purchase. Eligible Institutions will have such knowledge and experience in financial and business matters as to be capable of evaluating the risk and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests in mortgage-related securities. The subsequent transfer of the residual interests will also be limited to private placements to such Eligible Institutions. Each Eligible Institution (other than a firm engaged in investment banking, mortgage banking or commercial banking or dealing in mortgage-related securities through which such interests are sold to Eligible Institutions) will be required to represent that it is purchasing such residual interests for investment purposes only and that it will hold such residual interests in its own name and not as nominee for undisclosed investors. The Indenture related to the Bonds or the Deposit Trust Agreement, as applicable, relating to any Trust will further prohibit the transfer of any certificates for such residual interests if there would be more than 100 owners of such certificates at any time.

(3) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either (a) any custodian which may hold the Collateral on behalf of the Trustee or (b) any nationally recognized statistical rating agency rating the Bonds. Neither the Applicant nor the owners of the residual interests will be affiliated with the Trustee.

[1] In the case of a series of Bonds that contains a class or classes of FIRSTS, a number of mechanisms exist to ensure that the representations above will be valid notwithstanding subsequent potential increases in the interest rate applicable to the FIRSTS. Procedures that have been identified to date for achieving this result are described in the application. It is expected that other mechanisms may be identified in the future. The Applicant will promptly notify the SEC by letter of the use of such additional mechanisms, and shall give the SEC reasonable opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representations set forth in the application. No Bonds will be issued for which this is not the case.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28839 Filed 12-14-88; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Power Distributors Monthly Report to TVA.

Frequency of Use: Monthly.

Type of Affected Public: Businesses or other for-profit and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 721.

Estimated Number of Annual Responses: 1920.

Estimated Total Annual Burden Hours: 960.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: This monthly collection supplies TVA with financial information to assist in making timely management decisions on electric power rates, finances, and other long- and short-term plans.

John W. Thompson,

Vice President, Services, Senior Agency Official.

[FR Doc. 88-28833 Filed 12-14-88; 8:45 am]

BILLING CODE 8120-01-M

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission

Title of Information Collection: Proposed Survey (Pretest) of Residential Fuelwood Users in 13 Southeastern States.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 770.

Estimated Total Annual Burden Hours: 192.5.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: The Southeastern Regional Biomass Energy Program, managed under contract from the Department of Energy by the Tennessee Valley Authority's Resource Development Group, will use the information to develop a request for proposal to estimate total residential fuelwood consumption in the 13-state southeastern region.

John W. Thompson,

Vice President, Services, Senior Agency Official.

[FR Doc. 88-28807 Filed 12-14-88; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically be percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 88-10-14 set the currently effective two-month SFFL applicable through November 30, 1988.

In establishing the SFFL for the two-month period beginning December 1, 1988, we have projected nonfuel costs based on the year ended September 30, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 88-12-24 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.1771
Latin American	1.2335
Pacific	1.6155
Canada	1.2377

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366-2439 or Julien R. Schrenk (202) 366-2441.

By the Department of Transportation December 9, 1988.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-28834 Filed 12-14-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD-8-110]

Public Hearing Concerning the Pascagoula Railroad Bridge Across the Pascagoula River, Mile 1.5, at Pascagoula, MS

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, Eighth Coast Guard District, at Pascagoula, Mississippi. The purpose for the hearing is to provide an opportunity to all interested persons to present data, views and comments orally or in writing concerning the alteration of the railroad bridge across the Pascagoula River, mile 1.5, at Pascagoula, Mississippi.

DATE: February 16, 1989, commencing at 2:00 p.m., until all speakers in attendance wishing to comment have provided comments.

ADDRESS: The hearing will be held at the Jackson County Courthouse, Board of Supervisors Room, 3109 Canty Street, Pascagoula, Mississippi 39561.

FOR FURTHER INFORMATION CONTACT: Mr. Perry Haynes, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 10130–3396, (504) 589–2965.

SUPPLEMENTARY INFORMATION: Section 18 of Pub. L. 100–448 declared the bridge to be an unreasonable obstruction to be altered under the Truman-Hobbs Act. All interested parties shall have full opportunity to be heard and to present evidence as to what alterations are needed; giving due consideration to the necessities of free and unobstructed navigation, the necessities of land traffic and environmental concerns.

Any person who wishes may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Commander, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 10130–3396, (504) 589–2965, any time prior to the hearing, indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Eighth Coast Guard District, at the above address. Transcripts of the hearing will be made available for purchase upon request.

(33 U.S.C. 513; 33 CFR 116.20)

Dated: December 6, 1988.

Robert T. Nelson,

Real Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88–28857 Filed 12–14–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–107]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 5, 1989 at Coast Guard Base Galveston, 1 Ferry Road, Galveston, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to order.

2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.

3. Presentation of any additional new items for consideration to the Subcommittee.

4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander G. A. Bird, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6234.

Dated: December 5, 1988.

A.E. Henn,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 88–28853 Filed 12–14–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–108]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the nineteenth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 26, 1989 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to order.

2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.

3. Discussion of previous recommendations made by the Committee.

4. Presentation of any additional new items for consideration of the Committee.

5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander G.A. Bird, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6234.

Dated: December 5, 1988.

A.E. Henn,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 88–28852 Filed 12–14–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88-106]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 5, 1989 at Coast Guard Base Galveston, 1 Ferry Road, Galveston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander G.A. Bird, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6234.

Dated: December 5, 1988.

A.E. Henn,

Acting Captain, U.S. Coast Guard, Commander, 8th Coast Guard District.

[FR Doc. 88-28854 Filed 12-14-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-109]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; 5 U.S.C. App. I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, January 10, 1989, in the Ambassador Room of the Plimsoll Club of the World Trade Center, 2 Canal Street, New Orleans, LA at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Minutes of the 12 October 1988, meeting.
3. Report by the Coast Guard on items discussed from 12 October 1988, meeting.
4. New business.
5. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander, G.A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6234.

Dated: December 5, 1988.

A.E. Henn,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 88-28855 Filed 12-14-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 9, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed on the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0065.

Form Number: 4070, 4070PR, 4070-A, and 4070A-PR.

Type of Review: Extension.

Title: Employee's Report of Tips to Employer, Informe al Patrono de Propinas Recibidas por el Empleado; Employee's Daily Record of Tips, Registro Diario de Propinas Recibidas por el Empleado.

Description: Employees receiving at least $20 a month in tips must report the tips to their employers monthly for purposes of permitting employment taxes to be withheld. Forms 4070 and 4070PR (Puerto Rico only) are used for this purpose. Employees must maintain a daily record of tips received. Forms 4070-A and 4070A-PR (Puerto Rico only) are used for this purpose.

Estimated Number of Respondents: 525,000.

Estimated Burden Hours Per Response/Recordkeeping:

	4070	4070A	4070PR	4070A-PR
Recordkeeping	7 min	3 hours 23 min	7 min	3 hours 23 min
Learning about the law or the form	2 min	2 min	2 min	1 min
Preparing the form	8 min	69 min	8 min	56 min
Copying, assembling, and sending the form	10 min		10 min	

Frequency of Response: Monthly.

Estimated Total Recordkeeping/Reporting Burden: 31,497,000 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue

BEST COPY AVAILABLE

Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88–28846 Filed 12–14–88; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

Bureau of the Public Debt; Privacy Act of 1974; Computer Matching Program; Bureau of the Public Debt/Social Security Administration

AGENCY: Fiscal Service, Bureau of the Public Debt, Treasury.

ACTION: Notice of Matching Program—Department of the Treasury, Bureau of the Public Debt with Department of Health and Human Services, Social Security Administration.

SUMMARY: The Department of the Treasury, Bureau of the Public Debt, is providing notice of its plans to conduct a computer match of its records of ownership of United States Savings Bonds, Series E and EE, with Department of Health and Human Services, Social Security Administration, records of individuals who receive benefits under the Supplemental Security Income Program. This information is contained in systems of records subject to the provisions of the Privacy Act of 1974.

DATE: The match is expected to be completed early in 1989.

ADDRESS: Send any comments to Volney M. Taylor, Information Officer, Bureau of the Public Debt, E Street Building, Room 553, Washington, DC 20239–0001. Copies of all written comments will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Volney M. Taylor, Information Officer, (202) 376–4300.

SUPPLEMENTARY INFORMATION: The Social Security Administration (SSA) requires information for purposes of verifying eligibility for, and amount of, Supplemental Security Income benefits (SSI). The Bureau of the Public Debt (BPD) has agreed to provide information by acting as a matching agency for a computer match that will compare its savings bond registration records for United States Savings Bonds, Series E and EE, against SSA records of individuals who receive SSI benefits. The disclosure of data through the match will provide SSA with information necessary to verify the accuracy of eligibility factors for the SSI program. This match and any follow up matches will be conducted as further described in the "Report" below.

Set forth below is the information regarding the matching program, including the authority for the program, a description of the matching program, a description of the records to be matched, the projected start and ending dates of the matching program, the security safeguards to be used, and plans for disposition of the records, that is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget, (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: Bureau of the Public Debt With the Social Security Administration

a. *Authority:* Section 1631(f) of the Social Security Act (42 U.S.C. 1383(f)).

b. *Program Description:* Under this program, BPD will conduct the following match. SSA will provide BPD with magnetic tape from SSA's system of records on individuals receiving Supplemental Security Income Benefits (SSI). The tape will contain identifying data including Social Security number (SSN) for approximately 4.8 million individuals currently receiving benefits. The magnetic tape will be IBM compatible and will adhere to the characteristics and data format requirements agreed upon by both parties. Using the SSNs provided by SSA, BPD will match the data on the magnetic tape against BPD's registration data for United States Savings Bonds, Series E and EE (Treasury/BPD.002, United States Savings-Type Securities). For those social security numbers common to both tapes (hits), BPD will provide to SSA the following information: For each SSN that shows a bond registered to it, BPD will provide the denomination, serial number, issue date, and current redemption value of the bond.

The validity of the information will be verified by SSA by contacting the individual under whose SSN the bond is registered to confirm ownership. In the event that the individual disputes ownership, SSA will obtain a signed authorization from the individual to obtain additional information concerning the bond's registration.

c. *Description of the Records:* Each match under this program will compare the records within the BPD's savings bond records (Treasury/BPD.002, United States Savings-Type Securities (most recently published in 53 FR 6471, March 1, 1988)). Disclosure of information for purposes of this program is authorized by that system's routine use number 15 (published in 53 FR 1885, January 22, 1988).

d. *Projected Starting and Ending Dates:* The initial match will be a single one in fiscal year 1989 and is expected to be initiated before the end of 1988 and completed shortly thereafter. The agreement between SSA and BPD may be renewed each year and, if done, future matches will be conducted as described in this report.

e. *Security Safeguards:* (1) Access to the information will be restricted to only those authorized employees and officials who need it to perform their official duties in connection with the uses authorized under the agreement signed by BPD and SSA; (2) information exchanged between SSA and BPD will be stored by each agency in rooms with controlled access and which are locked when authorized personnel are not present; (3) the information will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the information, and in such a way that unauthorized persons cannot retrieve the information by means of a computer, remote terminal, or other means; and (4) all personnel who will have access to the information will be advised of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for noncompliance contained in the applicable Federal and State laws.

f. *Plans for Disposition of Records:* Magnetic tapes provided by SSA will be returned to SSA upon completion of the match. Information provided to SSA by BPD will only be for those items which match and will be used by SSA only for the purpose of determining eligibility for benefits as provided in the agreement and for no other purpose. BPD will retain one copy of the information provided to SSA as its record of disclosure as required by the Privacy Act of 1974, as amended. SSA will dispose of records provided to it as provided in its records disposition schedules for the SSI benefits program. The tapes provided shall remain the property of SSA and shall be returned when the match is completed. The BPD will retain one copy of the information

provided to SSA as its record of disclosure as required by the Privacy Act of 1974.

g. *Other Comments:* No changes will be made to an individual's eligibility for benefits or payments solely on the basis of a "hit." No changes will be made to an individual's eligibility for, or amount of benefits, without SSA first providing due process to the individual concerned.

Jill E. Kent,

Assistant Secretary of the Treasury (Management).

[FR Doc. 88-28848; Filed 12-14-88; 8:45 am]

BILLING CODE 4810-40-M

[Dept. Circ. 570, 1988 Rev., Supp. No. 5]

Surety Companies Acceptable on Federal Bonds: Integrity Mutual Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1988 Revision, on page 25066 to reflect this addition:

INTEGRITY MUTUAL INSURANCE COMPANY. Business Address: 526 West Wisconsin Avenue, Appleton, Wisconsin 54912-0539. Underwriting Limitation *b/*: *$583,000.* Surety Licenses *c/*: MN, WI. Incorporated in: Wisconsin.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: December 10, 1988.

[FR Doc. 88-28826 Filed 12-14-88; 8:45 am]

BILLING CODE 4810-35-M

Surety Company Application and Renewal Fees; Increase in Fees Imposed

The Department of the Treasury, Financial Management Service, will be increasing the fees imposed and collected as referred to in 31 CFR 223.22. This increase is to cover costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business.

The new fees are effective December 31, 1988, and are determined in accordance with the Office of Management and Budget Circular A-25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

Revenues collected in fiscal year 1988 fell short of covering actual costs due to an increase in full-time personnel. In addition, we have projected increased expenses for fiscal year 1989 to allow for continued computerization efforts.

The new rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$2,500.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$1,250.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$600.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$400.

Questions concerning this notice should be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 287-3921.

Dated: December 10, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller.

[FR Doc. 88-28827; Filed 12-14-88; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 241
Thursday, December 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 8, 1988.

TIME AND DATE: 10:00 a.m., Thursday, December 15, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Robert Simpson v. Kenta Energy & Roy Dan Jackson,* Docket No. KENT 83-155-M
(Issues include those on remand from the Court of Appeals.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow (202) 653-5629/(202) 566-2673 for TDD Relay.

[FR Doc. 88-2900 Filed 12-13-88; 3:36 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, December 21, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2900 Filed 12-13-88; 3:36 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on December 9, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, December 16, 1988.

CHANGES IN THE MEETING: Addition of the following open item(s) to the meeting:

Proposal regarding disclosure of Federal Reserve examination ratings to member banks and bank holding companies.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28945 Filed 12-13-88; 12:57 pm]

BILLING CODE 6210-01-M

POSTAL RATE COMMISSION

Amended Notice of Meeting

AGENCY HOLDING THE MEETING: Postal Rate Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Federal Register of December 13, 1988.

PREVIOUSLY ANNOUNCED DATE OF THE MEETING: December 14, 1988, 2:30 p.m.

CHANGE: Change time of meeting from 2:30 p.m. on December 14, 1988 to 10:00 a.m. on December 14, 1988.

Charles L. Clapp,

Secretary.

[FR Doc. 88-28907 Filed 12-13-88; 12:36 pm]

BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 53, No. 241
Thursday, December 15, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6938]

Proposed Flood Elevation Determinations; Alabama et al.

Correction

In proposed rule document 88-23561 beginning on page 40098 in the issue of Thursday, October 13, 1988, make the following corrections:

PART 67—[CORRECTED]

1. On page 40101, in the table, in the second column, under **NEW HAMPSHIRE**, the first line should read "**NEWFIELDS (TOWN), ROCKINGHAM COUNTY**".

2. On page 40103, in the same table, in the third column, in the 18th line from the bottom, "**Cranesville**" was misspelled and "borough" should read "Borough".

3. On page 40105, in the same table, in the first column, in the 20th line from the bottom, "**LONDONDERRY**" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining and Reclamation Enforcement

30 CFR Parts 780, 784, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

Correction

In rule document 88-24536 beginning on page 43584 in the issue of Thursday, October 27, 1988, make the following correction:

On page 43597, in the third column, the ninth line should read "See § § 816.84(b)(2)/817.84(b)(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

Correction

In rule document 88-27089 beginning on page 47526 in the issue of Wednesday, November 23, 1988, make the following correction:

§ 515.560 [Corrected]

On page 47527, in the third column, in § 515.560(d)(1), in the eighth line, "to" should read "in".

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of an Airport Radar Service Area; Colorado Springs, CO; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-52]

Establishment of an Airport Radar Service Area; Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at the City of Colorado Springs Municipal Airport, CO. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 u.t.c. February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, (Austin, TX) and January 19, 1985, (Columbus, OH) were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated the Austin and Columbus airports as ARSA's, as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far, the FAA has designated 125 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On January 11, 1988, the FAA proposed to designate ARSA's at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; City of Colorado Springs Municipal Airport, CO; Palm Springs Municipal Airport, CA; and Santa Barbara Municipal Airport, CA (53 FR 674). Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings on the establishment of the Colorado Springs, CO, ARSA. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D, dated January 4, 1988.

Discussion of Comments

Few comments were received concerning this rulemaking action. Original concerns expressed by the Department of Defense have been resolved and are encompassed in the final ARSA design.

The Meadow Lake Airport Association requested that the cutout around Meadow Lake Airport be extended from 2 to 2½ nautical miles. The FAA finds merit in this request and has extended the cutout by using visual landmarks which are more than 2½ miles from the airport reference point.

On commenter requested the floor of the 10-mile area be raised to 8,600 feet MSL to assist general aviation pilots in transitioning the Colorado Springs area. After careful study of the requested alteration, the FAA has decided to raise the floor of the 10-mile area north of highway 94 to 8,500 feet MSL, and the southern portion to 7,500 feet MSL. The FAA believes that the floor of the ARSA, as designed, represents the optimum configuration from an aviation safety perspective.

Other comments were received concerning the geographical design of the ARSA. Portions of the boundary of the Colorado Springs ARSA are depicted by visual landmarks as well as references to the geographical center of the airport.

Regulatory Evaluation Summary

The FAA has conducted a Regulatory Evaluation of this final rule to establish this additional ARSA site. The major findings of that evaluation are summarized below, and a copy of the detailed regulatory evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below. The FAA expects that the additional ARSA sites in this rule can be implemented without requiring additional controller personnel above currently authorized staffing levels, due to participation at these TRSA locations, which is already quite high. Moreover, the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, since controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, the FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries.

Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy most of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of each ARSA site, explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA. These meetings will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

The FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment, which will be offset somewhat by the descent.

The FAA recognizes that the potential exists for delay to develop at some locations following the establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. The FAA does not expect such delay to be appreciable. The FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those delays that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the increased efficiencies. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been designated more recently.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA in this rule. Aircraft operating to and from primary airports are already required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the new ARSA. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some new ARSA locations, special situations might exist where the establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed based and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight-training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the ARSA site in this rule.

b. Benefits

Most of the benefit that will result from ARSA's is nonquantifiable and attributable to simplification and standardization of ARSA configurations. This standardization should eliminate most of the confusion currently experienced by pilots operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the air traffic controllers will obtain greater flexibility in handling traffic within an ARSA, which will enable them to move traffic more efficiently than under the current TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, the FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, the FAA estimates that the national implementation of the ARSA program may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, due to the prevention of a minor, nonfatal accident between general aviation aircraft, to $300 million or more, due to the prevention of a midair collision involving a large air carrier aircraft and the numerous fatalities associated with such an incident. Establishment of an ARSA at the site in this final rule will

contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual ARSA sites.

The FAA expects any adjustment problems that may be experienced at the ARSA location established in this rule will be only temporary, and that once established, the ARSA will result in an overall improvement in efficiency in terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of this ARSA site will contribute to a reduction in near and actual midair collisions. For these reasons, the FAA expects that the establishment of this ARSA site will produce long term, ongoing benefits which will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This final rule will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that could be potentially affected by implementation of the ARSA program include fixed-base operators, flight schools, agricultural operators, and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside the ARSA core. The FAA intends to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites, to avoid any adverse impact on their operations and to simplify the coordination of ATC responsibilities between primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement, between ATC and the affected airports, establishing special procedures for operating to and from these airports. In this manner, the FAA expects to eliminate any adverse impact on the operations of small satellite airports that could result from the ARSA program. Similarly, the FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. The FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public-use airports in operation within the United States, no small entities of any type that use aircraft in the course of their business will be adversely impacted.

For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations adopted herein would not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Rule

This action designates an Airport Radar Service Areas (ARSA) at the City of Colorado Springs Municipal Airport, CO. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Colorado Springs, CO [New]

That airspace within a 5-mile radius of the City of Colorado Springs Municipal Airport (lat. 38° 48' 31" N., long. 104° 42' 35" W.)

extending upward from the surface to and including 10,200 feet MSL; and that airspace extending upward from 8,500 feet MSL to 10,200 feet MSL between the 5- and 10-mile radius beginning at a line drawn from the 270° bearing from the airport at 5 miles direct to the 333° at 10 miles clockwise to Colorado State Highway 94, excluding that airspace east of Meridian Road and north of Garret Road, and that airspace extending upward from 7,500 feet MSL to 10,200 feet MSL from Colorado State Highway 94 clockwise to a line drawn from the 188° bearing from the airport at 10 miles direct to the 197° bearing from the airport at 5 miles.

Issued in Washington, DC, on December 8, 1988.

William C. Davis,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-28838; Filed 12-14-88; 8:45 am]

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Part III

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1989; Solicitation of Applications; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1989; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program for fiscal year 1989.

The authority for this program is contained in section 2(c)(1) of the Act of August 4, 1965, Pub. L. 89–106, as amended (7 U.S.C. 450i(c)(1)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the programs discussed below. Proposals may be submitted by any land-grant college or university, research foundation established by a land-grant college or university, State agricultural experiment station, and any college or university having a demonstrable capacity in food and agricultural research. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The Administrative Provisions governing the Special Research Grants Program, 7 CFR Part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015. It should be noted that the weight allocated to the criteria for the evaluation of proposals has been changed by the recent amendment to 7 CFR 3400.15(a). The amended weighting system is applicable to the evaluation of proposals submitted in response to this solicitation.

Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of (1) animal health research and (2) aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. The following specific program areas and guidelines are thus provided as a base from which proposals may be developed:

Program Area

1.0 Animal Health Research

CSRS Contacts: Dr. Dyarl D. King; Telephone: (202) 447–6428, Dr. Howard S. Teague; Telephone: (202) 447–3847.

Funds will be awarded to support research seeking solutions to health problems of livestock and poultry and major aquaculture species. A total of $5,408,340 is available for this program area for fiscal year 1989. Up to $150,000 will be awarded for the support of any one project under this program area, except in Aquaculture where the limit on a single award will be $80,000. A proposal will not be awarded by more than one peer panel in the Animal Health program area.

Investigators and co-investigators who have received Special Research Grant awards in the Animal Health area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

The overall objective of this research is to develop and/or refine methodologies for suppression of animal losses due to infectious and noninfectious diseases and internal and external parasites of livestock, poultry and major aquaculture species.

Research should be directed toward: (1) Basic studies to clarify high-priority infectious and noninfectious diseases and parasites and their interactive effects on animal health; and (2) development of practical, implementable management systems for the producer to prevent or alleviate these significant causes of animal losses. Interdisciplinary research is encouraged or predisposing factors to animal disease including the effects of production environment. Studies to more clearly define the condition of the well-being of animals used in agricultural research is encouraged. Other studies to define the needs for proper animal care in Animal Health Research and Teaching will receive consideration for funding, especially in the Swine and Poultry areas. Research may include clarification of complex or unknown etiologies including nutritional, physiological, genetic, and environmental interactions; development of improved methods of detecting disease agents or antibodies in animals; animal products, tissues, etc.; clarification of disease pathogenesis; determination of methods of disease transmission including transmission by embryo transfer, artificial insemination and importation of animal products (such studies should mimic as closely as possible the conditions in practice of collection, preparation and use of embryos, semen or such products); development of improved methods of immunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative disease eradication methods so as to limit the use and dependence on biotoxic substances (such alternatives may include biologic methods, sterile male techniques, artificial pheromones, etc.); development of other disease prevention, control and eradication technology; and epidemiology and the evaluation of the economics of disease and disease prevention or control.

Emphasis on enteric diseases of Beef and Dairy Cattle, Swine, Chickens and Turkeys will receive special consideration, especially proposals which offer solutions to the *Salmonella enteritidis* and other Salmonella problems facing these industries.

The specific commodity areas, and their subcategories (not prioritized), in which projects will be funded are listed below. The commodity areas will be funded in the approximate percentages shown. Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

1.1 Beef Cattle (Approximately 41 Percent of Available Funds)

(1) Respiratory diseases.
(2) Reproductive diseases.
(3) Digestive and enteric dieseases (including Salmonellosis).
(4) Parasitic diseases.
(5) Metabolic diseases.

1.2 Dairy Cattle (Approximately 18 Percent of Available Funds)

(1) Mastitis.
(2) Reproductive diseases.
(3) Respiratory diseases.
(4) Digestive and enteric diseases (including Salmonellosis).
(5) Metabolic diseases.

1.3 Swine (Approximately 18 Percent of Available Funds)

(1) Enteric diseases (including Salmonellosis).
(2) Respiratory diseases.
(3) Reproductive diseases.
(4) Metabolic and musculoskeletal diseases.
(5) Parasitic diseases.

1.4 Poultry (Approximately 13 Percent of Available Funds)

(1) Respiratory diseases.
(2) Metabolic and immunologic diseases.
(3) Enteric diseases (Special emphasis on *Salmonella enteritidis* in Turkeys and Chickens).
(4) Skeletal diseases.

1.5 Sheep and Goats (Approximately 5 Percent of Available Funds)

(1) Musculoskeletal diseases.
(2) Respiratory diseases.
(3) Digestive and enteric diseases.
(4) Internal parasitic diseases.

1.6 Horses (Approximately 3 Percent of Available Funds)

(1) Respiratory diseases.
(2) Digestive and enteric diseases.
(3) Reproductive diseases.
(4) Musculoskeletal diseases.
(5) Parasitic diseases.

1.7 Aquaculture (Approximately 2 Percent of Available Funds)

(1) Infectious diseases.
(2) Parasitic diseases.

Program Area

2.0 Aquaculture Research

CSRS Contacts: Dr. Meryl Broussard; Telephone: (202) 475–5158, Dr. Howard S. Teague; Telephone: (202) 447–3847.

A total of $137,460 is available for this program area for fiscal year 1989. No more than $80,000 will be awarded for support of any one project under this program area. The objective of this research is to provide and improve upon the scientific and technical base needed by the aquaculture industry.

Because of the limited funds for this program area, only proposals focused on commercially important aquaculture species in the following *specific area of inquiry* will be considered:

How to Obtain Application Materials

2.1 Disease and parasite control

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing this program, 7 CFR Part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988), may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Suite 303, Aerospace Building, 901 D Street, SW., Washington, DC 20250–2200, Telephone: (202) 475–5048.

What to Submit

An original and nine copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.)

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 15 pages (single-spaced) exclusive of required forms, the summary of progress for any prior Animal Health Special Research grants, bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

All copies of a proposal must be mailed in one package. Also, please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. *Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted.* Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Special Research Grants Program, 7 CFR Part 3400.

Applicants should not submit the same research proposal twice in the same fiscal year to different research program area categories within the Animal Health and Aquaculture Special Research Grants program areas. Duplicate proposals will be returned without review.

Where and When to Submit Grant Applications

Each research grant application must be submitted by the date set forth below to: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Suite 303, Aerospace Building, 901 D Street SW., Washington, DC 20250–2200.

To be considered for funding during fiscal year 1989, *proposals must be postmarked by February 27, 1989,* for both the Animal Health Research and the Aquaculture Research Program areas.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Instructions

On Form CSRS–661 provided in the Grant Application Kit, the Special Research Grants Program should be indicated in Block 7, and the applicable program area and commodity area should be indicated in Block 8. *Select one program area only.* The number assigned to the commodity area must also be cited in Block 8. Example: (Animal Health, 1.5 Sheep and Goats). The final determination of the program area and commodity area will be made by agency staff members and/or the appropriate peer review panel. The code numbers assigned to commodity areas and specific areas of inquiry are listed below:

1.0 *Animal Health Research (use appropriate commodity area 1.1 through 1.7).*
1.1 *Beef Cattle.*
1.2 *Dairy Cattle.*
1.3 *Swine.*
1.4 *Poultry.*
1.5 *Sheep and Goats.*
1.6 *Horses.*
1.7 *Aquaculture.*
2.0 *Aquaculture Research.*
2.1 *Disease and Parasite Control.*

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-

related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 12th day of December 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–28888 Filed 12–14–88; 8:45 am]

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federal register

Thursday
December 15, 1988

Part IV

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Initial List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies; Notice

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Office of

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Initial List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories initially certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published monthly, updated to include laboratories which successfully complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is recertified as meeting the Guidelines' requirements.

FOR FURTHER INFORMATION CONTACT: Office of Workplace Initiatives, National Institute on Drug Abuse, Room 10a–53, 5600 Fishers Lane, Rockville, Maryland 20857

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines,"Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

Maryland Medical Laboratories, 1901 Sulpher Spring Road, Baltimore, MD 21227, 301–247–9100

International Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030 703–691–9100

ChemWest Analytical Laboratories, Inc., 600 West North Market Blvd., Sacramento, CA 95834, 916–923–0840

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–8263, 919–248–6494

Medtox Laboratories, Inc., 402 West County Road D, St. Paul, MN 55112, 612–636–7466

Nichols Institute, 7323 Engineer Road, San Diego, CA 92111, 619–278–5900

Med Arts/South Community Hospital, 1001 Southwest 44th Street, Oklahoma City, OK 73109, 405–636–7041

South Bend Medical Foundation, Inc., 530 North Lafayette Blvd., South Bend, IN 46601, 219–234–4176

International Toxicology Laboratories, 2201 W. Campbell Park Drive, Chicago, IL 60612, 312–633–3360.

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 88–29053 Filed 12–14–88; 12:06 pm]

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The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030)

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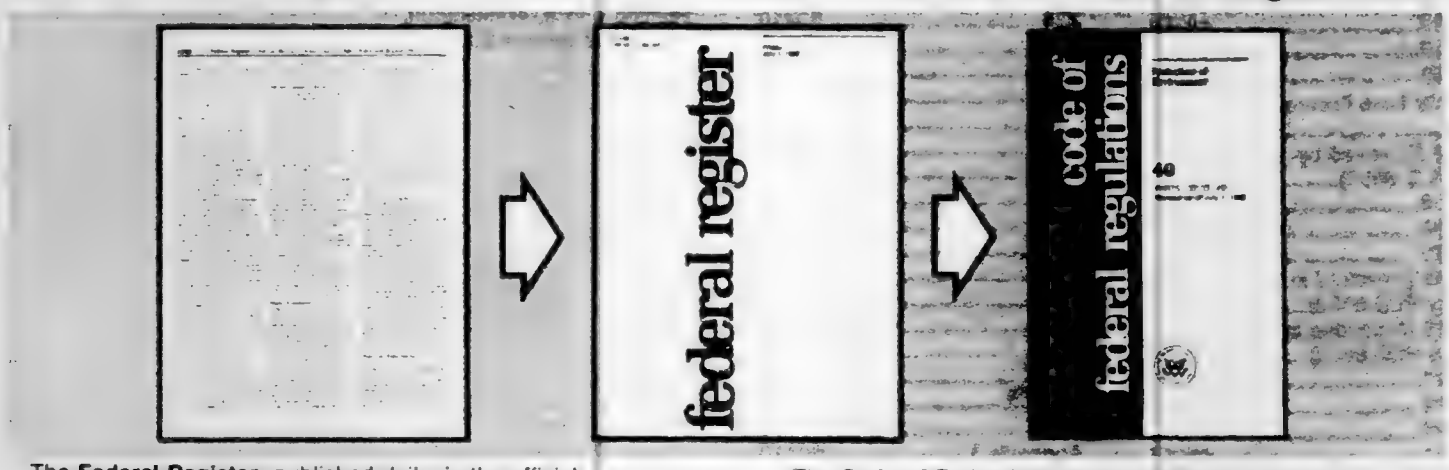

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 26, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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Rules and Regulations

Federal Register
Vol. 53, No. 242
Friday, December 16, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-137]

Citrus in Buffer Zones in Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Citrus Fruit regulations by permitting cultivation of nine additional citrus varieties in Japan's Unshu orange buffer zones. After studying recent scientific reports on citrus-canker resistance, we have concluded that the effectiveness of buffer zones planted with citrus varieties at least as canker-resistant as the Unshu orange will remain unchanged; we therefore see no reason to exclude those citrus varieties from Unshu orange buffer zones. This rule will affect the citrus supply and demand in Japan's domestic market. It will not affect the supply of or demand for Unshu oranges grown for export to the United States. We are also amending the regulations to specify certain requirements concerning buffer zones.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Imai, Senior Staff Officer, Biological Assessment Support Staff, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8891.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.28 (referred to below as the regulations) restrict the importation of fruits and peel capable of introducing certain citrus diseases, including citrus canker, into the United States. Varieties of species of the genus *Citrus* considered likely to spread any of these destructive diseases to U.S. citrus crops are not permitted to be imported into the United States from foreign areas where these diseases occur.

Unshu oranges, known to be resistant to citrus canker, are grown under a system of safeguards in special citrus canker-free areas in Japan, from which they have been imported into designated states since 1967. One measure critical to the success of the export program is the buffer zone isolating each Unshu orange export area from potential sources of citrus canker.

On June 15, 1988, we published in the **Federal Register** (53 FR 22330-22331, Docket Number 87-061), a document proposing to specify certain requirements concerning Japan's buffer zones to ensure that they are free of citrus canker. In the same document, we also proposed to allow cultivation in the buffer zones of nine citrus varieties with canker resistance equal to or greater than the Unshu orange's. Working independently, the authors of the scientific papers on which we base this rule arrived at identical conclusions about the high canker-resistance of the nine varieties of citrus: None of these citrus varieties will increase the exposure to citrus canker of Unshu oranges in the export areas. On the basis of the current scientific literature, including tests studied and approved by Plant Protection and Quarantine (PPQ), the nine citrus varieties will be allowed into the buffer zones that have been limited to Unshu oranges.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before August 15, 1988. We did not receive any comments. Based on the rationale set forth in the proposal, we are amending the regulations as proposed.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will allow additional varieties of citrus to be grown in buffer zones surrounding Unshu orange export areas. This will affect citrus supply and demand within Japan, but not within the United States. Because citrus grown in buffer zones cannot be imported into the United States, the volume of oranges imported from Japan will be unaffected by this regulatory change.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Effective Date

The Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication. This action is necessary to relieve unnecessary restrictions on the importation of Unshu oranges into the United States. The shipping season for this fruit begins in mid-October, and delays in making this rule effective could cause economic losses for some persons.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Citrus canker, Fruit, Imports, Plant diseases,

Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we are amending 7 CFR Part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.28, paragraph (b) introductory text and (b)(1) are revised to read as follows:

§ 319.28 Notice of quarantine.

* * * * *

(b) The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. *unshu,* Swingle [*Citrus unshiu* Marcovitch, Tanaka]), also known as Satsuma, grown in Japan and imported under permit into any area of the United States except for Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States: *Provided,* that each of the following safeguards is fully carried out:

(1) The Unshu oranges must be grown and packed in isolated, canker-free export areas established by the Japanese Plant Protection Service. Only Unshu orange trees may be grown in these areas, which must be kept free of all citrus other than the propagative material of Unshu oranges. The export areas must be inspected and found free of citrus canker and prohibited plant material by qualified plant pathologists of both Japan and the United States. The export areas must be surrounded by 400-meter-wide buffer zones. The buffer zones must be kept free of all citrus other than the following 10 varieties: Buntan Hirado (*Citrus grandis*); Buntan Vietnam (*C. grandis*); Hassaku (*C. hassaku*); Hyuganatsu (*C. tamurana*); Kinkan (*Fortunella* spp. non *Fortunella hindsii*); Kiyomi tangor (hybrid); Orange Hyuga (*C. tamurana*); Ponkan (*C. reticulata*); Unshu (*C.* unshiu Marcovitch, Tanaka [*Citrus reticulata* Blanco var. *unshu,* Swingle]); and Yuzu (*C. junos*). The buffer zones must be inspected and found free of citrus canker and prohibited plant material by qualified plant pathologists of both Japan and the United States.

* * * * *

Done in Washington, DC, this 13th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–29009 Filed 12–15–88; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 319

[Docket 88–155]

Importation of Apples, Peaches, and Citrus From Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Fruits and Vegetables regulations by removing Guaymas from the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches and tangerines may be imported without treatment for these pests. This action is necessary to prevent the introduction into the United States of injurious insects.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 677, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8248.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Section 319.56–2(h) of the regulations allows apples, grapefruit, oranges, peaches and tangerines to be imported from certain municipalities in Sonora, Mexico, without treatment for five fruit flies known to occur in Mexico (*Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua, and A. fraterculus*) if surveys show the municipality to be free of these insect pests.

In an interim rule effective July 20, 1988, and published in the **Federal Register** on July 26, 1988 (53 27955–27956, Docket Number 88–102), we removed Guaymas, Sonora, Mexico, from the list of municipalities in § 319.56–2(h). Comments on the interim rule were required to be postmarked or received on or before September 26, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action will prevent the importation of apples, grapefruit, oranges, peaches, and tangerines from Guaymas into the United States, unless they are treated for the five listed fruit flies. This change should have no effect on small entities since no commercial shipments of such fruit have been moving from Guaymas to the United States, and there are no planned commercial shipments of such fruit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 319.56–2(h) that was published at 53 FR 27955–27956 on July 26, 1988.

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, DC, this 12th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–29010 Filed 12–15–88; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 354

[Docket No. 88–186]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances in Ohio. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR Part 354 require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances between certain locations in Ohio. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan areas	
		Within	Outside

Add:

* * * * *

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Ohio.			
• • • • •			
Cincinnati	Washington Court House.		3
• • • • •			
Cleveland	Toledo		5
• • • • •			
Columbus	Toledo		6
Columbus	Washington Court House.		3
• • • • •			
Dayton	Washington Court House.		3
• • • • •			
Rickenbacker AFB.	Washington Court House.		3
• • • • •			
Toledo	Cleveland		5
• • • • •			

Done in Washington, DC, this 12th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-29011 Filed 12-15-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 679]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 679 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 16 through December 22, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 679 (§ 907.979) is effective for the period December 16 through December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administration Committee (Committee). The Committee met publicly on December 13, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a six to four vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is good for the larger sizes and weaker on the smaller sizes.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate policy of the Act. Interested persons were given an opportunity to submit information and views on the regulations at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.979 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 907.979 Navel Orange Regulation 679.

The quantity of navel oranges grown in California and Arizona which may be handled during the period December 16, 1988 through December 22, 1988, are established as follows:

(a) *District 1:* 1,692,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* 108,000 cartons;
(d) *District 4:* Unlimited cartons.

Dated: December 14, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-29093 Filed 12-15-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 644]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 644 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 261,192 cartons during the period December 18 through December 24, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 644 (§ 910.944) is effective for the period December 18 through December 24, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy of 1988–89. The Committee met publicly on December 13, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is beginning a seasonal decline.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available on which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of this Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.944 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.944 Lemon Regulation 644.

The quantity of lemons grown in California and Arizona which may be handled during the period December 18, 1988, through December 24, 1988, is established at 261,192 cartons.

Dated: December 14, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–29092 Filed 12–15–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–101–AD; Amdt. 39–6089]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which requires the inspection and, if necessary, repair and/or modification of certain areas of the main landing gear (MLG) wheel well pressure floor. This amendment is prompted by recent reports of cracking of the MLG wheel well pressure floor, that resulted in the loss of cabin pressure. Cracks in this area, if not detected and corrected, could lead to the loss of cabin pressurization.

EFFECTIVE DATE: January 20, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727 series airplanes, which requires the inspection and, if necessary, repair and/or modification of certain areas of the main landing gear (MLG) wheel well pressure floor, was published in the **Federal Register** on August 23, 1988 (53 FR 32080).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, on behalf of its affected member operators, suggested that the

inspection interval be expressed in "flight cycles," "cycles," or "landings," since the term "flights," as specified in the proposal, could be misinterpreted or misunderstood. This commenter also suggested that the phrase "after the effective date of the AD" be included when describing the proposed compliance period. The FAA concurs and the pertinent wording in paragraph A. of the final rule has been changed to specify "* * * 2,500 landings after the effective date of this AD." The FAA has determined that this change merely clarifies the intent of the AD; this change will not increase the economic burden on any operator nor will it increase the scope of the AD.

The ATA also requested that the proposed repetitive inspection interval for the inspections required by paragraph A. be increased from 4,000 to 5,000 cycles if the previous inspection was accomplished using eddy current techniques. This request is based on the assumption that, since a visual inspection every 4,000 cycles is considered safe, then the additional degree of assurance provided by an eddy current inspection (i.e., eddy current inspection should detect smaller cracks) should allow an additional amount of time between inspections.

The FAA concurs with this comment and has revised paragraph A. to extend the reinspection interval to 5,000 landings if the previous inspection was performed using eddy current techniques.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

There are approximately 1,753 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,000 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required inspection, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $80,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 727 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to all Model 727 series airplanes listed in Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of the main landing gear (MGL) wheel well pressure floor adjacent to body stations (BS) 880, 890, 930, and 940, accomplish the following:

A. Prior to the accumulation of 30,000 landings or within the next 2,500 landings after the effective date of this AD, whichever occurs later, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection for cracks in the pressure floor, in accordance with Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981. Repeat the inspection at intervals not to exceed 4,000 landings if the previous inspection was accomplished using a visual or dye penetrant method; or at intervals not to exceed 5,000 landings, if the previous inspection was accomplished using an HFEC method.

B. If cracks are detected that do not exceed the limits listed in Table II in Section III of Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, prior to further flight, repair in accordance with the interim repair described in paragraph C. of Section III, or the permanent repair described in paragraph D. of Section III of the service bulletin. The interim repair must be replaced within 600 landings after accomplishment with the permanent repair.

C. If cracks are found that exceed the limits listed in Table II, of Section III of Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, prior to further flight, accomplish the permanent repair described in paragraph D. of Section III of the service bulletin. A repair accomplished using blind fasteners must be reinspected for loose or missing fasteners within 2,000 landings after installation, and then at intervals not to exceed 2,000 landings until the blind fasteners are replaced with the fasteners specified in paragraph 4. of Section III of the service bulletin.

D. Incorporation of the repairs in accordance with paragraph B. or C., above, terminates the repetitive inspection requirements of paragraph A., above, for that area. Incorporation of the preventive modification in paragraph E. of Section III of Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981, terminates the repetitive inspection requirement of paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 20, 1989.

Issued in Seattle, Washington, on December 1, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-28901; Filed 12-15-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25751; Amdt. No. 1389]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by Reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on December 9, 1988

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

. . . Effective February 9, 1989

Montgomery, AL—Dannelly Field, ILS RWY 27, Amdt. 6
Cordova, AK—Cordova Mile 13, NDB–A, Orig.
Arcata-Eureka, CA—Arcata, VOR/DME RWY 2, Amdt. 7
Los Angeles, CA—Los Angeles Intl, NDB RWY 24R, Amdt. 12
Dover-Cheswold, DE—Delaware Airpark, VOR RWY 27, Amdt. 5

Fort Lauderdale, FL—Fort Lauderdale/ Hollywood Intl, ILS RWY 9L, Amdt. 13
West Palm Beach, FL—Palm Beach Intl, VOR RWY 13, Amdt. 1
Athens, GA—Athens/Ben Epps, VOR RWY 27, Amdt. 11
Baxley, GA—Baxley Muni, VOR/DME–A, Amdt. 3
Baxley, GA—Baxley Muni, RNAV RWY 8, Amdt. 3
Dublin, GA—W. H. "Bud" Barron, LOC RWY 1, Amdt. 1
Waynesboro, GA—Burke County, NDB RWY 8, Amdt. 2
Kahului, HI—Kahului, VOR/DME or TACAN–A, Amdt. 6, Cancelled
Greenwood/Wonder Lake, IL—Galt, VOR–A, Amdt. 8
Macomb, IL—Macomb Muni, VOR/DME–A, Amdt. 5
Macomb, IL—Macomb Muni, LOC RWY 26, Orig.
Macomb, IL—Macomb Muni, NDB RWY 26 Amdt. 9, Cancelled
Macomb, IL—Macomb Muni, NDB RWY 26, Orig.
Monticello, IL—Monticello Aviation Inc, VOR–A, Orig.
Boone, IA—Boone Muni, NDB RWY 14, Amdt. 8
Boone, IA—Boone Muni, NDB RWY 32, Amdt. 4
Boone, IA—Boone Muni, Copter NDB 225°, Amdt. 2
Sheldon, IA—Sheldon Muni, VOR RWY 33, Orig.
Sheldon, IA—Sheldon Muni, NDB RWY 33, Amdt. 5
Bangor, ME—Bangor Intl, VOR/DME RWY 33, Amdt. 5
Beverly, MA—Beverly Muni, VOR RWY 16, Amdt. 4
Beverly, MA—Beverly Muni, LOC RWY 16, Amdt. 5
Beverly, MA—Beverly Muni, NDB–A, Amdt. 12
Hyannis, MA—Barnstable Muni-Boardman/ Polando Field, VOR RWY 6, Amdt. 3
Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 4
New York, NY—John F. Kennedy Intl, ILS RWY 22R, Amdt. 7
Knoxville, TN—Knoxville Downtown Island, VOR/DME–B, Amdt. 5
Mesquite, TX—Phil L. Hudson Muni, LOC RWY 17, Orig.
Mesquite, TX—Phil L. Hudson Muni, NDB RWY 17, Amdt. 1
Cedar City, UT—Cedar City Muni, VOR RWY 20, Amdt. 4
Cedar City, UT—Cedar City Muni, NDB RWY 20, Orig.
Cedar City, UT—Cedar City Muni, ILS RWY 20, Amdt. 1
Franklin, VA—Franklin Muni-John Beverly Rose, VOR RWY 9, Amdt. 13
Fond du Lac, WI—Fond du Lac County, VOR/DME RWY 36, Amdt. 6
Fond du Lac, WI—Fond du Lac County, VOR/DME RWY 18, Amdt. 6
Fond du Lac, WI—Fond du Lac County, SDF RWY 36, Amdt. 6
Fond du Lac, WI—Fond du Lac County, NDB RWY 9, Amdt. 6
Green Bay, WI—Austin Straubel Field, VOR/ DME or TACAN RWY 36L, Amdt. 6
Green Bay, WI—Austin Straubel Field, ILS RWY 36L, Amdt. 5
Green Bay, WI—Austin Straubel Field, RADAR–1, Amdt. 7

. . . *Effective January 12, 1989*

Denver, CO—Front Range, NDB RWY 26 , Orig.
Denver, CO—Front Range, NDB RWY 26, Orig., Cancelled
Denver, CO—Front Range, ILS RWY 26 , Orig.
Denver, CO—Stapleton Intl, LOC RWY 18, Amdt. 3
Denver, CO—Stapleton Intl, ILS RWY 36, Amdt. 3
Carrollton, GA—West Georgia Regional, NDB RWY 34, Amdt. 1
Chicago/West Chicago/, IL—DuPage, VOR RWY 10, Amdt. 11,
Chicago/West Chicago/, IL—DuPage, ILS RWY 10, Amdt. 7
Belzoni, MS—Belzoni Muni, VOR/DME RWY 21, Amdt. 4, Cancelled
Lexington, NC—Lexington Muni, VOR/DME RWY 8, Amdt. 5
New Philadelphia, OH—Harry Clever Field, VOR/DME–B, Orig.
Enid, OK—Enid Woodring Muni, VOR RWY 17, Amdt. 9
Enid, OK—Enid Woodring Muni, VOR RWY 35, Amdt. 10
Enid, OK—Enid Woodring Muni, LOC RWY 35 , Amdt. 3, Cancelled
Enid, OK—Enid Woodring Muni, NDB RWY 35, Amdt. 3
Enid, OK—Enid Woodring Muni, ILS RWY 35, Orig.
Sheridan, WY—Sheridan County, ILS RWY 31, Amdt. 3

The FAA published an Amendment in Docket No. 25741, Amdt. No. 1388 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 231 page 48524; dated Thursday, December 1, 1988) under § 97.25 effective 12 January 1988, which is hereby amended as follows: Dodge City, KS—Dodge City Muni, LOC RWY 4, Orig. should read Dodge City, KS—Dodge City Muni, LOC RWY 4, Orig., *Cancelled.*

[FR Doc. 88–28902 Filed 12–15–88; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Pitman-Moore, Inc.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1415.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., has informed FDA of a change of address from Washington Crossing, NJ 08560, to Mundelein, IL 60060. The agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Pitman-Moore, Inc.," and in paragraph (c)(2) in the entry for "011716" by revising the sponsor address to read "Mundelein, IL 60060."

Dated: December 12, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88–28936 Filed 12–15–88; 8:45 am]
BILLING CODE 4160–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 510

Service of Process

AGENCY: United States Information Agency.
ACTION: Final rule.

SUMMARY: This rule, which creates procedures for the acceptance of legal process in claims or other lawsuits brought against the U.S. Information Agency, is hereby amended to make the language contained therein gender neutral. The rule provides that either the

General Counsel or other official designated by him/her must be served in order to effect valid process. The rule vests this authority in the General Counsel, since he/she is responsible for legal proceedings involving the agency.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: R. Wallace Stuart, Acting General Counsel, United States Information Agency, Room 700, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485–7976.

SUPPLEMENTARY INFORMATION: .

E.O. 12291—Federal Regulations

The United States Information Agency has determined that this is not a major rule for the purpose of E.O. 12291, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, the United States Information Agency has determined that notice and comment are necessary under 5 U.S.C. 553(b)(3)(A) since this final rule pertains to agency organization and procedure.

List of Subjects in 22 CFR Part 510

Administrative practice and procedure, Courts, Judicial documents.

22 CFR Part 510 is amended as set forth below:

PART 510—SERVICE OF PROCESS

1. The authority citation for Part 510 continues to read as follows:

Authority: 5 U.S.C. 552(a)(1)(A).

2. Section 510.1 is revised to read as follows:

§ 510.1 Service of process.

(a) The General Counsel of the United States Information Agency or any of his/her designees shall act as agent for the receipt of legal process against the United States Information Agency, as well as against employees of the agency to the extent that the process relates to the official functions of the employees.

(b) When accepting service of process for an employee in his/her official capacity, the General Counsel or his/her designee shall endorse on the server's return of process form, registered mail receipt, certified mail receipt, or express mail receipt: "Service accepted in official capacity only."

(c) Process shall be delivered to:

Mailing address: Office of the General Counsel, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547

Location: Office of the General Counsel, United States Information Agency, 301 Fourth Street SW., Room 700 Washington, DC 20547.

Dated: November 30, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88–28998 Filed 12–15–88; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R, Amdt. No. 17]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Reimbursement of Children's Hospitals and Neonatal Services Under the CHAMPUS DRG-Based Payment System

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8–R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

This final rule revises the comprehensive CHAMPUS regulation 6010.8–R (32 CFR Part 199), pertaining to payment for certain inpatient hospital services. It changes certain parts of the proposed amendment of rule which was published on June 3, 1988 (53 FR 20576), and it sets forth the terms under which children's hospitals and neonatal services will be reimbursed under the CHAMPUS DRG-based payment system.

These changes are necessary to bring children's hospitals and neonatal services under the CHAMPUS DRG-based payment system.

A previous final rule was published in the **Federal Register** on August 31, 1988 (53 FR 33461), but, as we stated in that final rule, these two areas were not included in it.

EFFECTIVE DATE: This final rule is effective on March 1, 1989, and applies to inpatient hospital admissions occurring on or after March 1, 1989.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361–4005.

To obtain copies of this document, see the "Address" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS fiscal intermediary.

SUPPLEMENTARY INFORMATION: On June 3, 1988, we published a proposed amendment of rule to modify the CHAMPUS DRG-based payment system. This proposed rule contained a number of changes to the CHAMPUS DRG-based payment system including reimbursing children's hospitals and neonatal services under the DRG system. We received a number of comments and substantial input from interested organizations including the National Association of Children's Hospitals and Related Institutions (NACHRI). We respond to those comments in Sections III and IV below.

I. Background

A. Prior Actions

In 1983, Congress called on DoD to establish a new method to pay hospitals for inpatient care under CHAMPUS, to be modeled after the recently established prospective payment system for the Medicare program. This was followed in 1986 by Congressional action giving CHAMPUS the practical ability to adopt a prospective payment method by linking hospital participation in Medicare with that in CHAMPUS.

On September 1, 1987, we published a final rule (52 FR 32992) to implement the CHAMPUS DRG-based payment system effective October 1, 1987. We deferred coverage of children's hospitals by the DRG system, noting that we intended to review this area "so that children's hospitals can be incorporated into our

DRG system in the future." We included neonatal services in our DRG-based payment system, but Pub. L. 100–202, the 1988 Department of Defense Appropriations Act, subsequently required that they be exempt during FY 1988 to allow further study.

In the proposed rule published on June 3, 1988, we proposed that both children's hospitals and neonatal services be paid under the DRG-based payment system, with several special adjustments. With this final rule, those proposals, with certain modifications, are being finalized.

B. Summary of Proposed Amendment to Rule

Following is a summary of the changes that we proposed to make to reimburse children's hospitals and neonatal services under the CHAMPUS DRG-based payment system.

1. Children's Hospitals

Payment to these hospitals would be made under the CHAMPUS DRG-based payment system, but, in recognition of the higher costs of care in these hospitals, a "children's hospital differential" would be developed which would be used to increase each DRG-based payment to children's hospitals so as to achieve roughly a revenue neutral impact for children's hospitals.

2. Neonatal Services

Payment for these services under the CHAMPUS DRG-based payment system would take into consideration newborns' birthweights and several other special factors as incorporated in the Children's DRGs (now known as Pediatric Modified DRGs or PM–DRGs) developed by NACHRI. This would apply to all neonatal services—whether provided in a children's hospital or a general hospital. We also invited comments regarding the possibility of modifying the outlier policy for these services.

3. Continued Exemption of Certain Pediatric Services

In both our proposed rule and our August 31 final rule we stated that discharges involving pediatric bone marrow transplants, children determined to be HIV seropositive, and pediatric cystic fibrosis will continue to be exempt from the CHAMPUS DRG-based payment system. This final rule does not affect these services, and they will continue to be exempt.

C. Public Comments

In Sections III and IV below we briefly summarize the provisions of the proposed amendment of rule and provide an analysis of the comments we received and our responses. We also provide a reference to each provision's designation in the proposed regulation.

II. Congressional Actions

At the time we published the August 31 final rule on the DRG-based payment system changes, it was unclear what the Congressional intent was with regard to CHAMPUS payment for children's hospitals and neonatal services. The House Appropriations Committee still intended to exempt these services for an additional year, while the Senate Appropriations Committee permitted, subject to certain conditions, the exemption to end. As a result, we postponed implementation of DRG-based reimbursement for these services and advised that we would publish a separate final rule for them. The FY 1989 Department of Defense Appropriations Act (Pub. L. 100–463) now provides clear statutory language which permits inclusion of children's hospitals and neonatal services in our DRG-based payment system, if certain conditions are met. The conditions, and our actions to comply with them, are enumerated below.

Children's Hospital Differential

A children's hospital differential adjustment is required for each discharge of a CHAMPUS patient from a children's hospital. This adjustment will ensure that had DRG-based payments "been in effect for fiscal year 1988 they would have resulted in estimated aggregate CHAMPUS payments to children's hospitals not less than estimated aggregate CHAMPUS payments to such hospitals for discharges occurring during that fiscal year under the regulations in effect during fiscal year 1988."

The procedures for using a "children's hospital differential" which we described in our June 3 proposed rule will accomplish just this result. This final rule provides for use of the differential.

Hospital-Specific Transition

A hospital-specific differential is to be used for any children's hospital with 50 or more CHAMPUS discharges in fiscal year 1988. This hospital-specific differential is to be used for a transitional period of three years. We will calculate these hospital-specific differentials using the same procedures used for calculating the national differential. Prior to the effective date of this rule, we will publish in the **Federal Register** a notice that sets forth the national differentials and identifies the higher volume hospitals that will receive hospital-specific differentials. Each high-volume hospital will be notified by mail of its hospital-specific differential. If a children's hospital believes that there is an error in its hospital-specific differential, or that it qualifies as a high-volume hospital but has not been included as a high-volume hospital, the hospital should contact the Office of Program Development in OCHAMPUS. Administrative corrections can be made based upon supporting documentation provided by the hospital.

Those children's hospitals which are not designated as high-volume hospitals will be reimbursed using the appropriate national children's hospital differential (large urban, other urban and rural). After three years, the hospital-specific differentials will be eliminated, and high volume children's hospitals will be reimbursed using the national children's hospital differentials. At that time the national differential will be recalculated to incorporate the previously-excluded high-volume children's hospitals.

Hold Harmless Provision

A hold harmless provision is required which provides for retrospective and prospective corrections.

The intent of this provision is to ensure that CHAMPUS payments to children's hospitals are not distorted because the initial amounts for neonates (other than normal newborns) uses birth weight information derived from a non-CHAMPUS database. Nevertheless, after we have collected sufficient CHAMPUS birth weight data, on a one-time basis, we will recalculate the national children's hospital differentials and the high-volume hospital-specific differentials using the CHAMPUS data and make necessary adjustments. The recalculation will also take into account the additional data we expect to have at that time dealing with such factors as medical education. The target date for the recalculation is one year after the effective date of this amendment. This timetable may be extended several months if necessary to compile an adequate amount of data. These adjustments will include corrections to the national and the hospital-specific differentials as well as payment adjustments to hospitals for all claims paid using the initial differentials. Depending on the results we find, these adjustments may be either additional payments or recoupments of overpayments.

Outlier Policies

The statute requires that outliers for children's hospitals and for neonatal services provided in all hospital settings

subject to DRG-based payment be reimbursed using "the thresholds in effect under CHAMPUS DRG regulations for fiscal year 1988" and the "higher marginal cost factors proposed at 53 FR 20580 (June 3, 1988)."

We previously published a final rule to implement this requirement, Vol. 53 FR 204, page 41331 (October 21, 1988). As a result, the long-stay outlier threshold will be calculated at the lesser of 1.94 standard deviations or 17 days from the DRG's geometric mean length-of-stay (LOS). The cost outlier threshold will be the greater of two times the DRG-based amount or $13,500. In addition, the marginal cost factor for cost outliers will be 80 percent (rather than 75 percent as used for other cost outliers). As for other outliers, we will give precedence to whichever outlier—day or cost—results in the greater payment.

The overall effect of these outlier changes will be to increase substantially the number of cases which qualify as outliers (compared to the outlier changes in our August 31 final rule which increased the threshold amounts). Based on our analysis, the number of cases qualifying as outliers will triple and the average actual payment amounts for long-stay and cost outliers will double.

Refined Neonatal DRGs

Payment for neonatal services will be based on refined neonatal DRGs "to account at a minimum for birthweight, surgery, and the presence of multiple, major, and other neonatal problems."

Use of the PM–DRGs, which we proposed in our June 3 proposed rule, and have decided to use, meets this requirement. The PM–DRGs which we intend to use were developed by NACHRI and are similar to those currently in use in the state of New York. There DRGs contain the factors required by the legislation and are specific to Major Diagnostic Category (MDC) 15, Newborns and Other Neonates with Conditions Originating in the Perinatal Period. There are thirty-four PM–DRGs which we will use and they will replace existing DRGs 385–390. Normal newborns will continue to be reimbursed under DRG 391.

Annual Update of Neonatal Classifications

If any subsequent changes are made by NACHRI to the classification features included in the neonatal DRGs used by CHAMPUS, the changes are to be incorporated into the CHAMPUS DRG-based payment system.

Interim Payments

The legislation requires that there be "a provision for making interim payments for cases that are especially lengthy or expensive."

Our August 31 final rule contained just such a provision (53 FR 33466), and it will apply equally to children's hospitals and to neonatal services.

Additional Uses of PM–DRGs

The legislation requires the Department to commit "to examine in the future possible further uses of Pediatric Modified DRGs."

We fully intend to continue to examine the expanded use of the PM–DRGs, both with regard to the use of additional classification factors such as mechanical ventilation for neonates as well as the use of PM–DRGs for pediatric cases other than neonatal cases. We welcome, at any time, suggestions and comments in this regard.

III. Children's Hospitals (Section 199.14(a)(1)(iii)(E)(4))

Children's hospitals will be subject to the CHAMPUS DRG-based payment system, but each DRG-based payment will be increased by a "children's hospital differential." This will avoid the revenue reductions experienced by other hospitals when CHAMPUS shifted from a system of paying billed charges to a prospective payment method.

Comment—Children's hospitals should be exempt for at least another year so that further analysis can occur.

Response—We don't think this is necessary. We initially deferred inclusion of children's hospitals for a year to allow OCHAMPUS time to study these changes. We have spent the past year analyzing the pertinent data and considering input from interested organizations. Additionally, the RAND Corporation, under a contract with the Department of Defense, has studied the inclusion of children's hospitals under the CHAMPUS DRG-based payment system. In light of this extensive study and the clear Congressional direction we now have, we believe further delay is not justified.

Comment—The children's hospital differential should be updated annually, with a CHAMPUS-specific factor, to reflect the potential increases in costs, due to inflation and to the adoption of new medical technologies for children under CHAMPUS.

Response—We do not think it is necessary or desirable to update either the national or the transitional hospital-specific differentials. They have been established only to recognize the existing difference between children's hospitals' charges and other hospitals' costs in treating patients grouped into similar DRGs. To a significant extent, increases in costs, due either to inflation or the adoption of new medical technologies, will be accounted for in the annual increase in the ASA's. Especially because we are applying no cost to charge ratio in calculating the differential, payment amounts are likely to stay significantly ahead of costs without the need for increases to the differential.

Comment—A differential should be established for pediatric units of university teaching hospitals, since these units also are involved in the treatment of more complicated pediatric cases, similar to children's hospitals.

Response—Our analysis indicates that this is not necessary. University teaching hospitals, including their pediatric units, have been reimbursed under the CHAMPUS DRG-based payment system since October 1987 and have not fared any worse than other hospitals. This may be due to the inclusion of both direct and indirect medical education payment adjustments.

Comment—CHAMPUS has provided no information concerning the value of the differential and very little detail concerning the methodology used to determine it. Reviewers need an impact analysis.

Response—The differential represents the difference between a specially calculated children's hospital adjusted standardized amount and the fiscal year 1988 CHAMPUS adjusted standardized amount. The distinguishing features of the specially calculated ASA are that it represents a fiscal year 1988 base period, applies no cost to charge ratio, includes direct medical education and captial costs and is not subject to an update factor. The key point is that the differential is calculated to produce a fiscal year 1988 revenue neutral impact.

Comment—CHAMPUS' proposal stops short of creating separate ASA's for individual hospitals. There are persuasive arguments for hospital-specific PPS rates.

Response—As we have stated in section II, we intend to use hospital-specific differentials for high volume children's hospitals during a three-year transition period.

Comment—How can the differential be calculated when the CHAMPUS database does not currently contain birthweight or duration of mechanical ventilation for neonates?

Response—It is correct that the CHAMPUS database does not currently

contain birthweight data. As we stated in the proposed rule and in section II of this preamble, we have used another representative database which was developed in consultation with NACHRI, as a proxy for the CHAMPUS database for this purpose. We believe this database is comparable to the experience of the CHAMPUS beneficiary population. We will also make any necessary "hold harmless" adjustments to ensure that hospitals are not harmed by our use of this database.

Comment—Outlier thresholds for children's hospitals should be lowered to take into account the fact that a major portion of their care involves extraordinarily long stay or high cost case.

Response—As we explained in section II of this preamble, we have modified the outlier policies for both children's hospitals and neonatal services.

Comment—How will children's hospitals be reimbursed for their capital and direct medical education expenses?

Response—Under the existing procedures, hospitals are reimbursed for their capital and direct medical education expenses by submitting a request for such payment once a year. The capital and direct medical education amounts to be included on the request are those reported on the hospital's Medicare cost report. We are aware that not all children's hospitals are Medicare providers, and few of them actually file a complete cost report. Therefore, it could be a very costly and time-consuming process to complete a Medicare cost report only to be reimbursed what will generally be relatively small amounts for CHAMPUS' share of capital and direct medical education costs.

In order to resolve this problem, we have included amounts for capital and direct medical education in the children's hospital differentials. We have done this by not subtracting the estimated value of these factors from the total charges reflected in the CHAMPUS claims database. If a children's hospital initiates a major capital project, it may request pass through payments like those received by other hosptials. Such request must be sent to OCHAMPUS and will have to be supported by a Medicare cost report or comparable documentation. For hospitals that prefer the pass through, we will make appropriate adjustments to their differential.

Comment—Will children's hospitals be paid for their indirect medical education costs as other hospitals are under the CHAMPUS DRG-based payment system?

Response—Yes, but not until the appropriate data are obtained from children's hospitals. The indirect medical education adjustment factor will then be applied to each payment to children's hospitals. The factors for children's hospitals will be calculated using the same formula as for other hospitals. The information needed for this formula on the number of interns and residents and hospital bed size is not currently available. Thus, it will be gathered from each children's hospital and calculated in connection with the "hold harmless" recalculation of the children's hospital differentials.

Comment—Will the special procedures for children's hospitals, i.e., use of the children's hospital differential, apply to a children's hospital which is not exempt from the Medicare PPS and is reimbursed under the CHAMPUS DRG-based payment system? Will such a hospital use the PM–DRGs?

Response—The special procedures will apply only to those hospitals which would otherwise be exempt from the Medicare DRG-based payment system. Thus, a hospital which would not be exempt from the Medicare PPS would continue to be reimbursed under the normal DRG-based payment procedures. For all hospitals, PM–DRGs will be used for payment for neonatal care.

IV. Neonatal Services (Sections 199.14 (a)(1)(i)(A) and 199.14(a)(1)(i)(B)(*1*)

Neonatal services (other than for normal newborns) will be reimbursed under the CHAMPUS DRG-based payment system using the PM–DRGs which distinguish neonate cases by birthweight. In addition, the outlier policy for neonates has previously been revised.

Although not part of our legislative mandate, we have, based on input we received, adopted another special provision for neonatal cases. That is to recognize the special circumstances often presented in neonatal intensive care cases of transfers from community hospitals to neonatal tertiary care facilities and then a transfer back to the community hospital. To recognize the intensity of the care provided by the facility providing neonatal tertiary care, we are amending § 199.14(a)(1)(i)(C)(*6*)(*iv*) to pay that facility 125 percent of the per diem rate usually paid to transferring hospitals in non-neonatal cases, up to the DRG amount. The 125 percent figure was derived based on an analysis by NACHRI of neonatal transfer cases in children's hospitals.

As a result of input we have had since publication of the proposed rule, we have developed certain procedures to ensure accurate processing of neonatal claims. We believe they should be mentioned here to ensure complete understanding of our DRG-based payment system as it applies to neonatal claims.

There are some instances in which the patient is greater than twenty-eight days old upon admission (in a very few cases approaching a year old), but which have a neonatal diagnosis, since the condition causing the admission originated in the perinatal period. Under the Grouper program we intend to use for neonatal services, a few of these cases will group into a PM–DRG, but others will not. In order to ensure that these cases are reimbursed, we have added PM–DRG 636 for those cases which do not group to another PM–DRG. PM–DRG 636 is defined as "Neonatal diagnosis, age 28 days." Any case which groups to this PM–DRG will be reviewed by the fiscal intermediary to ensure that the claim information is correct. If the information is correct, the claim will be paid under PM–DRG 636.

Any neonatal claim which does not have a birthweight or which has multiple, differing birthweights will be grouped to DRG 470 and will be denied. Birthweight information for neonates weighing less than 2500 grams should be added according to the applicable 1CD9–CM prematurity code (7640, 7641, 7642, 7649, 7650, or 7651) including the fifth digit.

Comment—A more refined classification system is needed to include *all* pediatric care.

Response—For the present, we have elected to use the PM–DRGs for neonates only because research indicated that, except for the neonatal PM–DRGs, the very modest improvement in the PM–DRG predictive power did not justify the significant increase and modifications of DRG categories they would require. We are, however, committed to reexamine possible further uses of PM–DRGs in the future.

Comment—These services should remain exempt for at least another year to allow further analysis.

Response—Again, we do not think this is necessary.

Comment—The classification system should recognize mechanical ventilation.

Response—There has been very little practical experience with use of mechanical ventilation as a variable in the PM–DRG system. New York, for example, uses just birthweight as we plan to do. However, we will continue to monitor and study the use of mechanical ventilation to determine if it should be

incorporated into our system at some time in the future.

Comment—Only CHAMPUS data should be used in establishing weights and rates. If substitute databases are used, they should be adequately described and justified.

Response—CHAMPUS data are being used to calculate the relative value of neonatal care overall. The other database we are using is simply to determine the relative contribution of each PM–DRG category within that neonatal group. We are confident that this database is comparable to the CHAMPUS database, but after we have collected sufficient CHAMPUS birthweight data, we will use the CHAMPUS database to verify and adjust the weights, if necessary.

Comment—Ease of access to the PM–DRG grouper program should be afforded to vendors and hospitals. A process similar to that used for the Medicare grouper should be used—i.e., a licensing agreement with Health Systems International, Inc. (HSI, Inc.).

Response—The PM–DRG grouper program we will use will be available to vendors and hospitals through HSI, Inc.

Comment—Do the RAND Corporation findings use CDRGs and PM–DRGs interchangeably? If not, which do they use?

Response—The RAND Corporation findings are based on use of the PM–DRGs grouper which replaced the CDRGs.

Comment—Will there be any special transfer policies for neonates?

Response—Yes, as discussed above, we have adopted a special transfer policy of paying the transferring hospital in neonatal cases 125% of the usually applicable per diem rate, up to the DRG amount.

Comment—Neonate outliers should be paid at 90%.

Response—We do not agree that neonate outliers should be paid at 90%, but we agree that some modification to the outlier policy is justified for neonate cases. Therefore, consistent with statutory requirements, we previously adopted the changes described in Section II.

Comment—Reviewers need a specific set of PM–DRGs.

Response—As noted previously, PM–DRG descriptions and weights will be published well in advance of the March 1 effective date.

Comment—Our understanding is that the documentation for PM–DRGs is available from a single private sofware vendor. Hospitals, other software vendors, and the public have no assurance that the vendor will make the PM–DRG details available on a reasonable or equitable basis.

Response—Just as for the previous grouper programs used by both Medicare and CHAMPUS, the new CHAMPUS grouper program, which incorporates the PM–DRG grouper, will be available through HSI, Inc. on the same basis as before.

V. Regulatory Procedures

A. E.O. 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in annual effect on the national economy of $100 million or more or produce other significant economic effects.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include many nonprofit and for-profit hospitals.

This final rule is not a major rule under Executive Order 12291. The changes set forth in this final rule, taken as a whole, will have an annual impact on the hospital industry of substantially less than $100 million. Nor will this rule significantly affect a substantial number of small entites. The provisions to include children's hospitals are specifically designed to be revenue neutral compared to CHAMPUS payments in FY 1988. The economic impact of the inclusion of neonatal services under the CHAMPUS DRG-based payment system on almost all individual hospitals is very little in view of the small percentage of hospital revenue provided by CHAMPUS and the small change in CHAMPUS payments represented by this final rule. Therefore, pursuant to the Regulatory Flexibility Act, it is certified that this proposed rule will not have a significant impact on small business.

B. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.14 is amended by revising paragraph (a)(1)(i)(B)(*1*); by revising paragraph (a)(1)(i)(C)(*6*)(*iv*); by removing paragraph (a)(1)(ii)(D)(*8*) and redesignating paragraph (a)(1)(ii)(D)(*9*) as paragraph (a)(1)(ii)(D)(*8*); by adding a new paragraph (a)(1)(iii)(E)(*4*); and by revising paragraph (a)(1)(iii)(G)(*3*) introductory text to read as follows:

§ 199.14 Basic program benefits.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(B) * * *

(*1*) The classification of a particular discharge shall be based on the patient's age, sex, principal diagnosis (that is, the diagnosis estasblished, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed and discharge status. In addition, for neonatal cases (other than normal newborns) the classification shall also account for birth weight, surgery and the presence of multiple, major and other neonatal problems, and shall incorporate annual updates to these classification features.

* * * * *

(C) * * *

(*6*) * * *

(*iv*) Payment to a hospital transferring an inpatient to another hospital. If a hospital subject to the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate (except that in neonatal cases, other than normal newborns, the hospital will be paid at 125 percent of that per diem rate), as determined under instructions issued by OCHAMPUS, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. However, if a discharge is classified into DRG No. 456 (Burns, transferred to another acute care facility) or DRG 601 (neonate, transferred less than or equal to 4 days old), the transferring hospital shall be paid in full.

* * * * *

(iii) * * *

(E) * * *

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(4) *Children's Hospital Differential.* With respect to claims from children's hospitals, the appropriate adjusted standardized amount shall also be adjusted by a children's hospital differential.

(*i*) *Qualifying children's hospitals.* Hospitals qualifying for the children's hospital differential are hospitals that are exempt from the Medicare Prospective Payment System, or, in the case of hospitals that do not participate in Medicare, that meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(*ii*) *Calculation of differential.* The differential shall be equal to the difference between a specially calculated children's hospital adjusted standardized amount and the adjusted standardized amount for fiscal year 1988. The specially calculated children's hospital adjusted standardized amount shall be calculated in the same manner as set forth in § 199.14(a)(1)(iii)(D), except that:

(*A*) The base period shall be fiscal year 1988 and shall represent total estimated charges for discharges that occured during fiscal year 1988.

(*B*) No cost to charge ratio shall be applied.

(*C*) Capital costs and direct medical education costs will be included in the calculation.

(*D*) The factor used to update the database for inflation to produce the fiscal year 1988 base period amount shall be the applicable Medicare inpatient hospital market base rate.

(*iii*) *Transition rule.* Until March 1, 1992, separate differentials shall be used for each higher volume children's hospital (individually) and for all other children's hospitals (in the aggregate). For this purpose, a higher volume hospital is a hospital that had 50 or more CHAMPUS discharges in fiscal year 1988.

(*iv*) *Hold harmless provision.* At such time as the weights initially assigned to neonatal DRGs are recalibrated based on a sufficient volume of CHAMPUS claims records, children's hospital differentials shall be recalculated and appropriate retrospective and prospective adjustments shall be made. To the extent practicable, the recalculation shall also include reestimated values of other factors (including but not limited to direct education and capital costs and indirect education factors) for which more accurate data became available.

(*v*) *No update for inflation.* The children's hospital differential, calculated (and later recalculated under the hold harmless provision) for the base period of fiscal year 1988, shall not be updated for subsequent fiscal years.

(*vi*) *Administrative corrections.* In connection with determinations pursuant to paragraph (a)(1)(iii)(E)(*4*)(*iii*) of this section, any children's hospital that believes OCHAMPUS erroneously failed to classify the hospital as a volume hospital or incorrectly calculated (in the case of a high volume hospital) the hospital's differential may obtain administrative corrections by submitting appropriate documentation to the Director, OCHAMPUS (or designee).

* * * * *

(G) * * *

(3) Information necessary for payment of capital and direct medical education costs. All hospitals subject to the CHAMPUS DRG-based payment system may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. In the case of children's hospitals that request reimbursement under this clause for capital and/or direct medical education costs, the hospital must submit appropriate base period cost information, as determined by the Director, OCHAMPUS (or designee). (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 12, 1988.

[FR Doc. 88-28859 Filed 12-15-88; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Increase in Rates Payable in the Educational Assistance Test Program

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 233-2668.

SUPPLEMENTARY INFORMATION: On pages 16884 and 16885 of the **Federal Register** of May 12, 1988, there was published a proposal to amend 38 CFR Part 21 to increase by 6 percent the rates of educational assistance provided under the Educational Assistance Test Program. Interested people were given 29 days to submit comments, suggestions or objections.

The Veterans Administration (VA) received one letter from a university official. He was concerned about the possible impact that the retroactive effective date of these amended regulations would have on the veteran-students receiving benefits.

The VA appreciates the official's concern, but has decided to provide a retroactive effective date for these regulations. The VA has made this decision because of its previous experience with the rate increases in this program. Due to the nature of the Federal regulatory process all previous amendments to these regulations which provided an increase in rates payable under this program have had retroactive effective dates. No college or university where eligible veterans were attending has ever reported to the VA that this has had a negative impact on its students.

Similarly, no veterans have ever reported a negative impact. If such reports are received in the future, the VA will consider them in determining whether amended regulations implementing future rate increases should have a retroactive effective date.

Consequently, these increases are effective October 1, 1987. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1987. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations make adjustments required by law, and because they affect only rates payable to individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 4, 1988.

Thomas K. Turnage,

Administrator.

Approved: November 16, 1988.

A. Lukeman,

Lieutenant General, USMC, Deputy Assistant Secretary (Military Manpower and Personnel Policy).

38 CFR Part 21, *Vocational Rehabilitation and Education,* is amended as follows:

PART 21—[AMENDED]

1. In § 21.5820, the introductory text of paragraph (b), paragraph (b)(1)(ii) (A), (B), and (C), and paragraphs (b)(2)(ii) (A), (B), and (C) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of education assistance.* The amount of educational assistance may not exceed $1,654 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $183.78 for a full-time student or by $91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.12 for a full-time student or by $3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by $.02 for a full-time student and decreased by $.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $183.78 for a full-time student or by $91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.12 for a full-time student or by $3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by $.02 for a full-time student and decreased by $.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

2. In § 21.5822, paragraphs (b)(1) (i) and (ii) and (b)(2) (i) and (ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $412 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $206 per month.

(Authority: 10 U.S.C. 2144)

* * * * *

(2) * * *

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $412 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $206 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144)

* * * * *

[FR Doc. 88-28909 Filed 12-15-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3485-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On August 3, 1988 (53 FR 29236 and 53 FR 29239), USEPA proposed to approve revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2) under USEPA's "parallel processing" procedures. The revisions consist of Indiana's SO_2 emission limits and plans for Floyd, Morgan, and Warrick Counties. USEPA's actions were based upon revision requests which were submitted by the State to satisfy the requirements of section 110 of the Clean Air Act (Act). USEPA, today, is approving Indiana's

emission limits and plans for all of these counties.

DATE: This final rulemaking becomes effective January 17, 1989.

ADDRESSES: Copies of the SIP revisions, comments, and support documentation are available at the following addresses for review: (It is recommended that you telephone Kent Wiley, at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

A copy of today's revisions is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kent Wiley, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6034.

SUPPLEMENTARY INFORMATION: On August 3, 1988, USEPA proposed to approve revisions to the Indiana SO_2 SIP, for Floyd, Morgan, and Warrick Counties. The SIP for these counties currently consists of the general provisions of Indiana's SO_2 rule, 325 IAC 7–1, which USEPA approved on January 19, 1988, 53 FR 1354. The revisions consist of (1) the site-specific SO_2 emission limits and other requirements in 326 IAC 7–1–16 (Floyd County, submitted March 23, 1988), 326 IAC 7–1–18 (Morgan County, submitted July 12, 1988), and 326 IAC 7–1–17 (Warrick County, submitted July 21, 1988);[1] and (2) the 6.0 lbs/MMBTU emission limit in 326 IAC 7–1–2, which is the emission limit applicable to all other sources not specifically listed in the county-specific rules (except for new sources subject to a federally enforceable new source review permits).

Background information for USEPA's rulemaking action is contained in the August 3, 1988, **Federal Register** notices and will not be repeated here. The specific emission limitations and plan requirements for these counties are also discussed in the August 3, 1988, notices.

USEPA today approves the emission limits and other requirements for sources in these counties and the overall SO_2 plans for these counties on the ground that they satisfy the requirements of section 110 of the Clean Air Act.

Response to Public Comments

Specific public comments and the corresponding responses of USEPA follow.

Floyd County

There were no comments submitted concerning Floyd County specifically.

Morgan County and Warrick County—Optional Limits

In the proposals for Morgan County and for Warrick County, USEPA specifically solicited comments concerning the need for additional advance notice, recordkeeping, and reporting requirements for certain sources to switch from one set of emission limits (Base Set) to another set of emission limits (Optional Set). Indianapolis Power and Light Company (IPL) questioned the need for advance notification for the Pritchard Station in Morgan County, given the current requirements in the State rule. The Indiana Department of Environmental Management (IDEM) commented that the time periods provided by its rules for both counties are sufficient for adequate enforcement. The State also pointed out that similar sets of variable emission limits in other counties of Indiana are in force and do not present enforcement problems.[2]

USEPA has reviewed the proposed revisions for Morgan and Warrick Counties, along with the existing SIP provisions, and has determined that they are sufficient for ascertaining the appropriate emission limits at a given time. USEPA is therefore approving the rules.[3]

Warrick County—Other Comments

Additional comments were received from the Amax Coal Company (Amax), the Aluminum Company of America (ALCOA), the Peabody Coal Company (Peabody), Southern Indiana Gas and Electric Company (SIGECO), IPL, and IDEM.

Amax objected to the Optional Set of emission limits for SIGECO. Amax claimed that it can supply coal to meet the 2.79 lbs./MMBTU Base Set of limits, but not the 2.0 lbs/MMBTU Optional limit. Amax, therefore, urged USEPA to delete the Optional Set of limits from the final rulemaking. SIGECO also objected to the Optional Set of emission limits due to the lack of compliance coal from its current suppliers.

Peabody also stated that the proposed limits will adversely affect its ability to supply compliance coal to ALCOA and SIGECO, but nevertheless urged USEPA to approve the limits to minimize these impacts.

USEPA proposed to accept the Base Set and the Optional Set of emission limits based on Indiana's demonstration that both of these sets of limits will provide for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS). Any comments on the economic impacts of the emission limitations should be raised at the State level. USEPA does not have the authority in this action to alter the State's submittal as Amax suggested.[4]

Further, the Optional Set of limits is only invoked if SIGECO and ALCOA jointly agree to it. Therefore, SIGECO (not USEPA) determines if and how SIGECO must meet the Optional limits. If SIGECO and ALCOA decide that they wish to invoke the Optional limits, then SIGECO may have to change its source of coal, at least in part, and/or use technology which would lessen emissions from the coal which is locally available.

SIGECO and IPL objected to the provision in the rule which, because of changing emission scenarios, may base compliance with the 30-day averaging provisions on emission scenarios with

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[1] The Warrick County SO_2 rule was proposed under USEPA's "parallel processing" procedures. The rule was subsequently promulgated by the State as proposed on November 7, 1988, and was submitted as promulgated on November 17, 1988.

[2] In Morgan County, the applicable emission limit is dependent upon whether Pritchard Unit 3 burns coal. 326 IAC 7–1–18(a) requires IPL to maintain a daily summary of the fuel type for Unit 3 in the quarterly reports required by federally approved 325 IAC 7–1–3(a). In addition the rule clarifies which set of limits applies for each day for both the stack test and 30-day average compliance methodologies. It will, therefore, enable State and Federal authorities to review available fuel records for Unit 3 on the day in which a stack test is to be conducted so that the applicable limit can be ascertained.

In Warrick County, the rule permits source discretion to vary emission limits, provided IDEM and USEPA are notified by certified mail at least 14 days in advance of any change. USEPA has concluded that this 14-day period provides sufficient time for notifying the two agencies, which can then determine which limits are in effect for enforcement purposes.

[3] As a general matter, EPA prefers fixed emission limits, rather than optional limits which increase the burden of states and EPA in assuring compliance. EPA has determined that the rules for Morgan and Warrick Counties are enforceable as required by the Act. This approval is based on the factual circumstances here, and should not be interpreted as obliging EPA to approve optional limits submitted by a state in other circumstances.

As always, EPA has the authority, on a case-specific basis, to use section 114 to establish additional monitoring, recordkeeping, and reporting requirements as necessary to assure compliance with these rules for Morgan and Warrick Counties.

[4] See *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984).

less than 30 days of data. See 326 IAC 7–1–17(a)(1)(D).[5]

USEPA recognizes that Indiana's averaging technique may result in less than 30 days worth of data in a given scenario. However, on January 19, 1988, USEPA (1) approved Indiana's compliance methodology on the basis that the stack test methodology protects the short-term SO_2 limits and (2) approved Indiana's 30-day averaging methodology as an additional compliance technique is over and above that which is required, i.e., a stack test, and thus is approvable under Section 116 of the Act.

Similarly, USEPA today is approving Indiana's methodology, as contained in its rule, for enforcing the 30-day averaging methodology for sources in Morgan and Warrick Counties when there is less than 30 days of data. USEPA believes that this approach is a reasonable way to enforce Indiana's fuel averaging provisions. USEPA also notes that the ability to switch between optional sets of emission limits also may be a temporary measure in Warrick County. This option will be eliminated under Indiana's rule if a single set of emission limits is ultimately decided upon by SIGECO (and ALCOA) prior to December 1, 1989.

IDEM also commented on various other issues. First, it pointed out certain typographical errors in the listed emission limits. The limits for ALCOA's Warrick plant should have read "6.0 lbs/Million British Thermal Units" (lbs/MMBTU) prior to December 31, 1989; 5.41 lbs/MMBTU beginning December 31, 1989, and until August 1, 1991; and 5.11 lbs/MMBTU beginning August 1, 1988, and afterward." Similar to the phased reduction required for the SIGECO Culley plant, ALCOA is to meet a 5.41 lbs/MMBTU interim limit in progress toward attainment and maintenance of the standards at 5.11 lbs./MMBTU. USEPA acknowledges these errors and is approving Indiana's rule as submitted.

Second, in the August 3, 1988, notices of proposed rulemaking (NPR), USEPA requested the State to provide formal notification, along with the supporting documentation, that ALCOA has erected fences around the property to restrict public access. IDEM provided a copy of a letter from ALCOA certifying the erection of the necessary fences, along with a map showing the location of the fences. IDEM also committed to continue to comply with USEPA's ambient air policy[6] in future actions for Warrick County, including the placement of receptors over bodies of water, such as the Ohio River. (ALCOA also stated in its comments that the fencing has been completed.)

Based on this information, USEPA considers this issue to be resolved (i.e., IDEM's exclusion of receptors from specific portions of ALCOA's property was proper) and accepts IDEM's commitment to comply with USEPA's ambient air policy in future actions for this county.

Third, USEPA in the NPR that the Optional Emission Limits may result in future changes in actual emissions which may affect the Prevention of Significant Deterioration (PSD) increments under Part C of the Act, and requested that IDEM identify how it will address increment consumption under these conditions. IDEM noted that because the SO_2 baseline date has not been triggered for Warrick County, an increment analysis within the county is not required at this time. An increment analysis in other counties (and if applicable, in the future, within Warrick County) would be performed as part of another interacting source's PSD application. In addition, IDEM claimed that the potential emission increases (based on the difference between the allowable emission levels) would not threaten the increments.

USEPA acknowledges that a definitive response is not possible at this time, given the unknown future status of the baseline date, the amount of available increment, and the change in ALCOA or SIGECO emissions. USEPA acknowledges IDEM's intent to address this issue when it is appropriate. At that time, calculations of increment consumption should be made on the difference between the (actual) source emissions included in the baseline concentration and the (actual) emissions after the source has switched to an Optional Emission Limit scenario. Prior to the switching, the calculations should be based on the actual baseline emissions and the emissions allowed under the Optional Emission Limit scenario. Thus, IDEM's increment estimate based strictly on allowable emissions is not meaningful.[7]

Conclusion

USEPA is approving Indiana's emission limits, other requirements, and overall plans for Floyd, Morgan, and Warrick, Counties, because they meet the requirements of section 110 of the Clean Air Act.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, and Sulfur oxides.

Dated: November 28, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, INDIANA

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.770 [Amended]

2. Section 52.770 is amended by removing and reserving paragraph (c)(67)(i)(H).

3. Section 52.770 is amended by adding new paragraph (c)(71) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(71) On March 23, 1988, Indiana submitted its SO_2 plan for Morgan County; on July 12, 1988, it submitted its SO_2 plan for Floyd County, and on November 17, 1988, it submitted its SO_2 plan for Warrick County. These plans consist of the provisions and requirements in 325 IAC 7–1 approved or reinstated for these counties at

[5] IPL does not own or operate any sources in Warrick County, but does own and operate plants in Marion County which also have alternate emission limit scenarios. IPL contends in its comments that it is thus affected by the compliance determination method in the Warrick County rule. USEPA disagrees, noting that IPL's Marion County sources are regulated by the requirements in 325 IAC 7–1–9, and by the State's applicable enforcement policy, as expressed in IDEM letters of February 1, 1988, and June 24, 1988. (See 53 FR 33810, September 1, 1988.)

[6] USEPA's ambient air policy is based on the definition of ambient air found at 40 CFR 50.1(e) and described in a December 19, 1978, letter from Douglas Costle, then USEPA Administrator, to Senator Jennings Randolph.

[7] IDEM also noted in its comments that two additional minor revisions to the Warrick County rule were under consideration. However, IDEM has subsequently informed USEPA that these modifications were not adopted by the Indiana Air Pollution Control Board.

Paragraph (c)(66), any SO_2 emission limits in 325 IAC 7–1–2 applicable in these counties (as incorporated by reference at (c)(66)(i))(A), and the site-specific SO_2 emission limits and other requirements in 326 IAC 7–1–16, (Floyd County), 326 IAC 7–1–18, (Morgan County), and 326 IAC 7–1–17 (Warrick County).

(i) *Incorporation by reference.* (A) 326 IAC 7–1–16, Floyd County Sulfur Dioxide Emission Limitations, as published in the March 1, 1988, *Indiana Register* (IR) at 11 IR 1737.

(B) 326 IAC 7–1–18, Morgan County Sulfur Dioxide Emission Limitations, as published on June 1, 1988, at 11 IR 3018.

(C) 326 IAC 7–1–17, Warrick County Sulfur Dioxide Emission Limitations, as promulgated by filing with the Secretary of State on November 7, 1988.

(D) 326 IAC 7–1–1, Applicability, as promulgated by filing with the Secretary of State on November 7, 1988.

[FR Doc. 88–27892 Filed 12–15–88; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[FRL–3492–6]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Montana, North Dakota and Wyoming; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: EPA is today providing notice that it granted delegation of authority to Montana on June 17, 1988, to enforce and implement the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) promulgated in 40 CFR Parts 60 and 61, respectively, as of July 1, 1987 (excluding 40 CFR Part 61, Subparts B, H, I, K, which pertain to radionuclides). This is a result of a request for delegation from the State of Montana on March 9, 1988.

EPA is today also providing notice that it granted delegation of authority to North Dakota on June 30, 1988, to implement and enforce (1) the NSPS for 40 CFR Part 60, Subparts Ka, LLL, KKK, VV, GGG, XX, OOO, and JJJ, and (2) the NESHAPs for 40 CFR Part 61, Subparts J and V. This is a result of a request for delegation from the State of North Dakota on January 26, 1988.

EPA is also today providing notice that it granted delegation of authority to Wyoming on September 30, 1988, to implement and enforce (1) the NSPS for 40 CFR Part 60, Subparts Na, AAa, LL, RR, VV, WW, XX, FFF, GGG, HHH, JJJ, KKK, LLL, OOO, and PPP, and (2) part of the NESHAP for asbestos (40 CFR Part 61, Subpart M), i.e., asbestos demolition, renovation and spraying operations, and waste disposal for demolition, renovation and spraying operations. This is a result of a request for delegation from the State of Wyoming on September 6, 1988.

EFFECTIVE DATES: June 17, 1988, for Montana.

June 30, 1988, for North Dakota.

September 30, 1988, for Wyoming.

ADDRESS: Copies of the revisions are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Environmental Protection Agency, Region VIII, Air Programs Branch, Suite 500, Denver, Colorado 80202–2405, (303) 293–1814, (FTS) 564–1814.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the states the authority to implement and enforce standards set forth in 40 CFR Part 60, NSPS, and 40 CFR Part 61, NESHAP.

Montana

On March 9, 1988, the State of Montana requested the authority to implement and enforce those NSPS and NESHAPs promulgated in 40 CFR Parts 60 and 61, respectively, effective through July 1, 1987. Pursuant to that request, on June 17, 1988, delegation was given with the following letter:

Honorable Ted Schwinden,
Governor of Montana, State Capitol, Helena, Montana 59620

Dear Governor Schwinden: This is in response to your submittal dated March 9, 1988. The submittal was a request for modifications to the Montana State Implementation Plan (SIP). The modifications consisted of revisions to the following Montana rules: Standards of Performance for New Stationary Sources (NSPS); National Emissions Standards for Hazardous Air Pollutants (NESHAPs); Air Quality Models, and Particulate Matter. This letter addresses only those revisions that pertain to the NSPS and NESHAPs. The air quality models and particulate matter regulations will be addressed through separate **Federal Register** actions.

On May 18, 1977, EPA delegated to the State of Montana the authority to implement and enforce those NSPS that had been promulgated by EPA as of January 26, 1976, and those NESHAPs that had been promulgated by EPA as of October 14, 1975. (See 42 FR 44573, September 6, 1977.) Additionally, on September 17, 1984 (49 FR 36368), EPA published in the **Federal Register** two tables updating the delegation status of NSPS and NESHAPs for states in Region VIII. The NSPS table indicated that the State of Montana had delegation for the following: 40 CFR Part 60, Subparts A, D, Da, E, F, G, H, I, J, K, Ka, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, GG, HH, MM, and PP. The NESHAPs table incorrectly showed that the State of Montana did not have delegation for any NESHAPs. (We will be correcting the NESHAPs table that currently appears in the Code of Federal Regulations in the near future.)

With regard to the March 9, 1988, submittal, EPA has reviewed the pertinent laws of the State of Montana and the rules and regulations thereof, and has determined that they provide an adequate and effective procedure for implementing and enforcing the NSPS and NESHAPs in the State of Montana. Therefore, pursuant to Sections 111(c) and 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR Parts 60 and 61, I hereby delegate our authority for the implementation and enforcement of the NSPS and NESHAPs to the State of Montana as follows:

1. Authority for all sources located in or to be located in the State of Montana which are subject to the NSPS and NESHAPs (except 40 CFR Part 61, Subparts B, H, I, K, which pertain to radionuclides) promulgated in 40 CFR Parts 60 and 61, respectively, as of July 1, 1987.

2. Not all authorities of NSPS and NESHAPs can be delegated to states under Sections 111(c) and 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS and NESHAPs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; (3) rulemaking to implement. To the best of our knowledge, the following are the authorities in 40 CFR Parts 60 and 61 that EPA cannot delegate to the State:

NSPS

40 CFR Part 60 Subpart	Section(s)
A	60.8 (b)(2) and (b)(3) and those sections throughout the standards that reference 60.8 (b)(2) and (b)(3), 60.11 (b) and (e).
Da	60.45a.
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b (e)(3)(iii) and (e)(3)(iv), 60.116b(f)(2)(iii).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3), 60.335(a)(ii).
VV	60.482–1(c)(2), 60.484.
WW	60.493(b)(2)(i)(A), 60.496(a)(1).
XX	60.502(e)(6).
GGG	60.592(c).
JJJ	60.623.
KKK	60.634.

NESHAPs

40 CFR Part 61 Subpart	Section(s)
A	61.02 (definition of "alternative method"); 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii).
E	61.53.(c)(4).
F	61.66.
J	61.112(c).
M	61.151(c)(2), 61.152(b)(3), 61.153(c), 61.154(b)(2), 61.156(d).
N	61.164 (a)(2) and (a)(3).
O	61.172 (b)(2)(ii)(B) and (b)(2)(iii)(C), 61.174 (a)(2) and (a)(3).
V	61 242-1(c)(2), 61.244.

3. Since the State of Montana has emission standards in ARM 16.8.1401 to .1419, for several source types in addition to the NSPS, which are a part of the SIP and federally enforceable, EPA requires that any source subject to the NSPS must also conform to the requirements of all other federally-enforceable air quality rules and meet the most stringent requirement when inconsistencies with other requirements exist. (This comment was made to the Department of Health on January 4, 1988.)

This delegation is based upon and is a continuation of the same conditions as those stated in our letter of May 18, 1977, except condition 6, relating to federal facilities. Condition 6 has been voided by the CAA Amendments of 1977. It is important to note that EPA retains concurrent enforcement authority as stated in condition 3 of our May 18, 1977, letter. (A copy of the May 18, 1977, letter was published in the **Federal Register** of September 6, 1977 (42 FR 44573), and is enclosed for your convenience.) In addition, information received by the State of Montana pursuant to 40 CFR 60.676(b), pertaining to Nonmetallic Mineral Processing Plants, should be copied to the Director of Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. A notice announcing this delegation will be published in the **Federal Register** in the near future.

Since this delegation is effective immediately, there is no need for the State to notify EPA of its acceptance. Unless we receive written notice from you of objections within ten days of the date of this letter, the State of Montana will be deemed to have accepted all of the terms of the delegation.

Sincerely,

James J. Scherer,

Regional Administrator.

North Dakota

On January 26, 1988, the State of North Dakota submitted revisions to its NSPS and NESHAP regulations. Such revisions included the addition of NSPS for the following source categories: Storage vessels for petroleum liquids constructed after May 18, 1978; on-shore natural gas processing plants (SO_2 emissions); on-shore natural gas processing plants (equipment leaks of Volatile Organic Compounds (VOC)); synthetic organic chemicals manufacturing industry (equipment leaks of VOC); petroleum refineries (equipment leaks of VOC); bulk gasoline terminals; nonmetallic mineral processing plants; and petroleum dry cleaners (40 CFR Part 60, Subparts Ka, LLL, KKK, VV, GGG, XX, OOO, and JJJ, respectively). Such revisions also included the addition of the following NESHAPs: Equipment leaks (fugitive emission sources) of benzene and equipment leaks (fugitive emission sources) (40 CFR Part 61, Subparts J and V, respectively). Pursuant to such submittal, on June 30, 1988, delegation was given with the following letter:

Honorable George A. Sinner,
Governor of North Dakota, State of North Dakota, Office of the Governor, Bismarck, North Dakota 58505

Dear Governor Sinner: This letter is in response to your submittal dated January 26, 1988. The submittal was a revision to the Implementation Plan for the Control of Air Pollution for the State of North Dakota and included the addition of and revision to several Air Pollution Control Rules and Regulations. This letter addresses only those additions that pertain to the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The remaining regulations are being addressed through separate **Federal Register** actions.

Subsequent to states adopting NSPS and NESHAPs regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NSPS and NESHAPs so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to North Dakota for implementation and enforcement of eight NSPS and two NESHAPs.

EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS and NESHAPs by the State of North Dakota. Therefore, pursuant to Section 111(c) and 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR Parts 60 and 61, EPA hereby delegates its authority for the implementation and enforcement of the NSPS and NESHAPs to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 FR Part 60. The categories of new stationary sources covered by this delegation are as follows: storage vessels for petroleum liquids constructed after May 18, 1978; on-shore natural gas processing plants (SO_2 emissions); on-shore natural gas processing plants (equipment leaks of Volatile Organic Compounds (VOC)); synthetic organic chemicals manufacturing industry (equipment leaks of VOC); petroleum refineries (equipment leaks of VOC); bulk gasoline terminals; nonmetallic mineral processing plants; and petroleum dry cleaners.

(B) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the emission standards for hazardous air pollutants promulgated in 40 CFR Part 61. The categories of hazardous air pollutants covered by this delegation are as follows: equipment leaks (fugitive emission sources) of benzene and equipment leaks (fugitive emission sources).

(C) Not all authorities of NSPS and NESHAPs can be delegated to states under Section 111(c) and 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections NSPS and NESHAPs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision-making to ensure national consistency; and (3) EPA rulemaking to implement. The following are the authorities in 40 CFR Parts 60 and 61 that EPA cannot delegate to the State:

(i) 40 CFR 60.114a [33-15-12-04(9)(e) in North Dakota's Regulations] pertains to an equivalency determination and rulemaking to implement in Storage Vessels of Petroleum Liquids constructed after May 18, 1978;

(ii) 40 CFR 60.634 [33-15-12-04(22)(e) in North Dakota's Regulations] pertains to an equivalency determination and rulemaking to implement in Equipment Leaks of VOC from Onshore Natural Gas Processing Plants;

(iii) 40 CFR 60.482-1(c)(2) and 60.484 [33-15-12-04(23)(c) (3) and (23) (o) in North Dakota's Regulations] pertains to equivalency determinations and a rulemaking to implement in Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry;

(iv) 40 CFR 60.592(c) [33-15-12-04(24)(c)(3) in North Dakota's Regulations] pertains to an equivalency determination in Equipment Leaks of VOC in Petroleum Refineries; and

(v) 40 CFR 60.623 [33-15-12-04(27)(d) in North Dakota's Regulations] pertains to an equivalency determination and rulemaking to implement in Petroleum Dry Cleaners.

(vi) 40 CFR 60.502(e)(6) [33-15-12-04(25)(c)(5)(f) in North Dakota's Regulations] pertains to an equivalency determination in Bulk Gasoline Terminals.

(vii) 40 CFR 61.112(c) [33-15-13-07(3)(c) in North Dakota's Regulations] pertains to an equivalency determination in Emission Standards for Equipment Leaks (fugitive emissions sources) of Benzene.

(viii) 40 CFR 61.242-1(c)(2) and 244 [33-15-13-08 (3)(a), (3)(b) and (5) in North Dakota's Regulations] pertains to equivalency determinations in Emission Standards for Equipment Leaks (fugitive emissions sources).

(D) As 40 CFR Parts 60 and 61 are updated by EPA, North Dakota must revise its rules and regulations accordingly.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 30, 1976, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It

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is also important to note that EPA retains concurrent enforcement authority as stated in condition 2 and if at any time there is a conflict between a State and Federal Regulation (40 CFR Parts 60 and 61), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 7 of our letter dated August 30, 1976. (A copy of the August 30, 1976 letter was published in the notices section of the **Federal Register** of October 13, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of North Dakota (41 FR 44859). Copies of the **Federal Register** are enclosed for your convenience.) In addition, information received by the State of North Dakota pursuant to 40 CFR 60.676(b), pertaining to Nonmetallic Mineral Processing Plants, should be copied to the Director of Emission Standards and Engineering Division (MD–13), U.S. EPA, Reasearch Triangle Park, North Carolina 27711.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation.

Sincerely,

James J. Scherer,

Regional Administrator.

Wyoming

On September 6, 1988, the State of Wyoming submitted revisions to its NSPS and NESHAPs regulations. Such submittal included the addition of the following NSPS source categories: Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983; steel plants—electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983; metallic mineral processing plants; pressure sensitive tape and label surface coating operations; equipment leaks of volatile organic chemicals (VOC) in the synthetic organic chemicals manufacturing industry; beverage can surface coating industry; bulk gasoline terminals; flexible vinyl and urethane coating and printing; equipment leaks of VOC in petroleum refineries; synthetic fiber production facilities; petroleum dry cleaners; equipment leaks of VOC from onshore natural gas processing plants; onshore natural gas processing—SO_2 emissions; nonmetallic mineral processing plants; and wool fiberglass insulation manufacturing plants (40 CFR Part 60, Subparts Na, AAa, LL, RR, VV, WW, XX, FFF, GGG, HHH, JJJ, KKK, LLL, OOO, and PPP); and part of the following NESHAP: Asbestos (40 CFR Part 61, Subpart M). Pursuant to such submittal, on September 30, 1988, delegation was given with the following letter:

Charles A. Collins, Administrator,
Air Quality Division, Governor of North Dakota, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002

Dear Mr. Collins:

On September 6, 1988, you requested approval on several revisions and additions to the Wyoming Air Quality Standards and Regulations (WAQSR) and State Implementation Plan (SIP). This letter addresses only those WAQSR that pertain to the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs), i.e. Section 22, NSPS, and Section 29, Emission Standards of Asbestos for Demolition, Renovation and Spraying Air Pollution Control Rules and Regulations. The remaining WAQSR (stack height, visibility and ambient air) are being addressed through separate **Federal Register** actions.

Subsequent to states adopting NSPS and NESHAPs regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NSPS and NESHAPs so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of fifteen NSPS and one NESHAP.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS and NESHAPs by the State of Wyoming. Therefore, pursuant to Section 111(c) and 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR Parts 60 and 61, EPA hereby delegates its authority for the implementation and enforcement of the NSPS and NESHAPs to the State of Wyoming as follows:

(A) Responsibility for all sources located, or to be located in the State of Wyoming subject to the standards of performance for new stationary sources promulgated in 40 FR Part 60. The categories of new stationary sources covered by this delegation are as follows: secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983 (Na); steel plants—electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983 (AAa); metallic mineral processing plants (LL); pressure sensitive tape and label surface coating operations (RR); equipment leaks of volatile organic chemicals (VOC) in the synthetic organic chemicals manufacturing industry (VV); beverage can surface coating industry (WW); bulk gasoline terminals (XX); flexible vinyl and urethane coating and printing (FFF); equipment leaks of VOC in petroleum refineries (GGG); synthetic fiber production facilities (HHH); petroleum dry cleaners (JJJ); equipment leaks of VOC from onshore natural gas processing plants (KKK); onshore natural gas processing—SO_2 emissions (LLL); nonmetallic mineral processing plants (OOO); and wool fiberglass insulation manufacturing plants (PPP).

(B) Responsibility for all sources located, or to be located, in the State of Wyoming subject to the emission standards for hazardous air pollutants promulgated in 40 CFR Part 61. The category of hazardous air pollutant sources covered by this delegation is as follows: Asbestos demolition, renovation and spraying, waste disposal for demolition, renovation and spraying operations. This delegation does *not* include the following category of sources: asbestos mills, roadways, manufacturing, fabricating, and insulating materials, waste disposal for manufacturing and fabricating operations, and inactive waste disposal for asbestos mills, manufacturing and fabricating operations. EPA will retain the authority to implement and enforce those categories of sources not delegated to the State.

It should be noted that WAQSR Section 29(a) only states applicability to (g) when in fact it should include (j) also. The State should correct this oversight with the next regulation update.

(C) Not all authorities of NSPS and NESHAPs can be delegated to states under Section 111(c) and 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS and NESHAPSs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; and (3) EPA rulemaking to implement. The following are the authorities in 40 CFR Parts 60 and 61 that EPA cannot delegate to the State:

(i) 40 CFR Parts 60.482–1(c)(2) and 60.484 pertain to equivalency determinations and a rulemaking to implement in Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry;

(ii) 40 CFR Parts 60.493(b)(2)(i)(A) and 496(a)(1) pertain to equivalency determinations in the Beverage Can Surface Coating Industry; and

(iii) 40 CFR Part 60.502(e)(6) pertains to an equivalency determination in Bulk Gasoline Terminals;

(iv) 40 CFR Part 60.592(c) pertains to an equivalency determination in Equipment Leaks of VOC in Petroleum Refineries;

(v) 40 CFR Part 60.623 pertains to an equivalency determination and rulemaking to implement in Petroleum Dry Cleaners;

(vi) 40 CFR Part 60.634 pertains to an equivalency determination and rulemaking to implement in Equipment Leaks of VOC from Onshore Natural Gas Processing Plants;

(vii) 40 CFR Parts 152(b)(3), 154(b)(2), and 156 (d) pertains to equivalency determinations in Asbestos.

(D) As 40 CFR Parts 60 and 61 are updated by EPA, Wyoming must revise its rules and regulations accordingly and in a timely manner or such delegation will be revoked.

In the review of the draft submittal, EPA brought to the State's attention (see April 19, 1988, letter to Charles Collins from Douglas Skie, EPA), amendments, revisions, additions, etc. pertaining to NSPS (i.e., General

Provisions, Testing Methods, Performance Specifications and previously delegated NSPS Subparts) that had been promulgated by EPA but had not yet been incorporated into WAQSR Section 22. The State has committed to consider and/or make the noted revisions and corrections in the "Response to the comments submitted by the EPA in the April 19, 1988, letter" which was included in Addendum 4 of the State's September 6, 1988 submittal. EPA is proceeding with this delegation on the grounds that the State has made such commitment. If the State does not revise and update its regulations in FY89 as it has committed, EPA will re-evaluate this delegation and past delegations.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal Regulation (40 CFR Parts 60 and 61), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our letter dated August 2, 1977. This is particularly important with regard to your General Provisions and Testing Methods, Appendix II. Comments EPA provided on these draft regulations indicated that they are not up-to-date. The State, however, has committed to update those regulations in its next regulation review in FY89.

In addition, whereas the original delegation letter pertaining only to NSPS, those conditions in the original delegation letter now apply to NESHAPs, as appropriate. (A copy of the August 2, 1977 letter was published in the notices section of the **Federal Register** of September 15, 1977 (42 FR 46386), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the **Federal Register** are enclosed for your convenience.)

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

Sincerely,

James J. Scherer,

Regional Administrator

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Aluminum reduction, Ammonium sulfate plants, Asphalt, Asphalt concrete plants, Asphalt processing and asphalt roofing manufacture, Basic oxygen process steelmaking, Brass, Bronze, Cement industry, Coal preparation plants, Copper, Copper smelters, Electric power plants, Electric utility steam generating units, Ferroalloy, Fossil fuel-fired steam generators, Gasoline, Glass, Glass products, Glass manufacturing, Grain, Grain elevators, Graphic arts, Incenerators, Incorporation by reference, Industrial-commercial-institutional steam generating units, Intergovernmental relations, Iron, Iron and steel plants, Lead, Lead smelters, Lead acid battery, Lime, Lime manufacturing, Magnetic tape industry, Metals, Metallic minerals, Nitric acid plants, Nonmetallic minerals, Paper and paper products industry, Petroleum, Petroleum refineries, Petroleum liquid storage vessels, Phosphate fertilizer industry, Primary copper smelters, Plastic parts for business machines coating, Primary zinc smelters, Primary lead smelters, Primary aluminum reduction, Pulp mills, Phosphate rock, Portland cement, Residential wood heaters, Rubber industry, Secondary lead smelters, Secondary brass and bronze ingot production, Sewage disposal, Sewage treatment, Steel, Sulfuric acid plants, Turbines, Waste treatment and disposal, Zinc, Zinc smelters, Tires, Surface coating, Industrial organic chemicals, Organic solvent cleaners, Fiberglass insulation, Synthetic fibers, Stationary gas turbines, Natural gas processing, Wool fiberglass, Metal furniture surface coaters, Automobile and light duty surface coaters, Metal coal surface coaters, Beverage can surface coaters, and Flexible vinyl and urethane coaters and printers.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Equipment leaks (fugitive emission sources), Inorganic arsenic, Hazardous materials, Mercury, Vinyl chloride.

Authority: 42 U.S.C. 7411 and 7412.

Date: December 2, 1988.

James J. Scherer,

Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

Subpart A—General Provisions

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411.

2. Section 60.4(c) is amended by revising the table to read as follows:

§ 60.4 Address

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
A General provisions	(*)	(*)	(*)	(*)	(*)	(*)
D Fossil fuel fired steam generators	(*)	(*)	(*)	(*)	(*)	(*)
Da Electric utility steam generators	(*)	(*)	(*)	(*)	(*)	(*)
Db Industrial-commercial institutional steam generators	(*)	(*)			(*)	
E Incinerator	(*)	(*)	(*)	(*)	(*)	(*)
F Portland cement plant	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric acid plants	(*)	(*)	(*)		(*)	(*)
H Sulfuric acid plant	(*)	(*)	(*)		(*)	(*)
I Asphalt concrete plants	(*)	(*)	(*)	(*)	(*)	(*)
J Petroleum refineries	(*)	(*)	(*)		(*)	(*)
K Petroleum storage vessels (6/11/73–5/19/78)	(*)	(*)	(*)	(*)	(*)	(*)
Ka Petroleum storage vessels (5/18/78–7/23/84)	(*)	(*)	(*)		(*)	(*)
Kb Petroleum storage vessels (after 7/23/84)		(*)			(*)	
L Secondary lead smelters	(*)	(*)			(*)	(*)
M Secondary brass & bronze production plants	(*)	(*)			(*)	(*)
N Primary emissions from basic oxygen process furnaces (after 6/11/73)	(*)	(*)			(*)	(*)
Na Secondary emissions from basic oxygen process furnaces (after 1/20/83)	(*)	(*)			(*)	(*)

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued

[(NSPS) for region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
O Sewage treatment plants	(*)	(*)	(*)	(*)	(*)	(*)
P Primary copper smelters	(*)	(*)			(*)	(*)
Q Primary zinc smelters	(*)	(*)			(*)	(*)
R Primary lead smelters	(*)	(*)			(*)	(*)
S Primary aluminum reduction plants	(*)	(*)			(*)	(*)
T Phosphate fertilizer industry: wet process phospheric plants	(*)	(*)	(*)		(*)	(*)
U Phosphate fertilizer industry: superphosphoric acid plants	(*)	(*)	(*)		(*)	(*)
V Phosphate fertilizer industry: diammonium phosphate plants	(*)	(*)	(*)		(*)	(*)
W Phosphate fertilizer industry: triple superphosphate plants	(*)	(*)	(*)		(*)	(*)
X Phosphate fertilizer industry: granular triple superphosphate storage facilities	(*)	(*)	(*)		(*)	(*)
Y Coal preparation plants	(*)	(*)	(*)	(*)	(*)	(*)
Z Ferroalloy production facilities	(*)	(*)			(*)	(*)
AA Steel plants: electric arc furnaces (10/21/74–8–17–83)	(*)	(*)			(*)	(*)
AAa Steel plants: electric arc furnaces and argon-oxygen decarburization vessels (after 8/7/83)		(*)			(*)	(*)
BB Kraft pulp mills	(*)	(*)			(*)	(*)
CC Glass manufacturing plants	(*)	(*)			(*)	(*)
DD Grain elevators	(*)	(*)	(*)	(*)	(*)	(*)
EE Surface coating of metal furniture	(*)	(*)			(*)	(*)
GG Stationary gas turbines	(*)	(*)	(*)	(*)	(*)	(*)
HH Lime manufacturing plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead-acid battery manufacturing plants	(*)	(*)			(*)	(*)
LL Metallic mineral processing plants	(*)	(*)		(*)	(*)	(*)
MM Automobile and light duty truck surface coating operations	(*)	(*)			(*)	(*)
NN Phosphate rock plants	(*)	(*)			(*)	(*)
PP Ammonium sulfate manufacturing	(*)	(*)			(*)	(*)
QQ Graphic arts industry: publication rotogravure printing	(*)	(*)			(*)	(*)
RR Pressure sensitive tape and label surface coating	(*)	(*)			(*)	(*)
SS Industrial surface coating: large appliances	(*)	(*)			(*)	(*)
TT Metal coil surface coating	(*)	(*)			(*)	(*)
UU Asphalt processing and asphalt roofing manufacture	(*)	(*)	—	—	(*)	(*)
VV Synthetic organic chemicals manufacturing: equipment leaks of VOC	(*)	(*)	(*)		(*)	(*)
WW Beverage can surface coating industry	(*)	(*)			(*)	(*)
XX Bulk gasoline terminals	(*)	(*)	(*)		(*)	(*)
AAA Residential wood heaters					(*)	
BBB Rubber tires					(*)	
FFF Flexible vinyl and urethane coating and printing	(*)	(*)			(*)	(*)
GGG Equipment leaks of VOC in petroleum refineries	(*)	(*)	(*)		(*)	(*)
HHH Synthetic fiber production	(*)	(*)			(*)	(*)
JJJ Petroleum dry cleaners	(*)	(*)	(*)		(*)	(*)
KKK Equipment leaks of VOC from onshore natural gas processing plants	(*)	(*)	(*)		(*)	(*)
LLL Onshore natural gas processing: SO_2 emissions	(*)	(*)	(*)		(*)	(*)
OOO Nonmetallic mineral processing plants	(*)	(*)	(*)	(*)	(*)	(*)
PPP Wool fiberglass insulation manufacturing plants	(*)	(*)			(*)	(*)
SSS Magnetic tape industry					(*)	
TTT Plastic parts for business machines coatings					(*)	

(*) Indicates delegation.

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

Subpart A—General Provisions

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7412.

2. Section 61.04(c) is amended by revising the table to read as follows:

§ 61.04 Address.

* * * * * * *

(c) * * *

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

[(NESHAPS) for Region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
A General Provisions	(*)	(*)	(*)	(*)	(*)	(*)
C Beryllium	(*)	(*)	(*)		(*)	
D Beryllium Rocket Motor Firing	(*)	(*)	(*)		(*)	
E Mercury	(*)	(*)	(*)		(*)	
F Vinyl Chloride	(*)	(*)	(*)		(*)	
J Equipment Leaks (Fugitive Emission Sources) of Benzene		(*)	(*)		(*)	
M Asbestos	(*)	(*)	(*)	(*)	(*)	(*)
N Inorganic Arsenic Emissions from Glass Manufacturing Plants		(*)			(*)	
O Inorganic Arsenic Emissions from Primary Copper Smelters		(*)			(*)	

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS—Continued

[(NESHAPS) for Region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities		(*)			(*)	
V Equipment Leaks (Fugitive Emission Sources)		(*)	(*)		(*)	

(*) Indicates delegation.
[1] Delegation for asbestos demolition, renovation and spraying operations, and waste disposal for demolition, renovation and spraying operations only

[FR Doc. 88-28958 Filed 12-15-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3492-7]

Florida; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final authorization on application of Florida for program revision.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed Florida's application and has reached a decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Florida to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for Florida shall be effective at 1:00 pm on January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, Telephone: (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes in EPA's regulations in 40 CFR Parts 260 through 266 and 124 and 270.

B. Florida

Florida initially received final authorization of its hazardous waste program on February 12, 1985 (50 FR 3908, January 29, 1985). On February 27, 1987, Florida submitted a final revision application for non-HSWA requirements promulgated through June 30, 1985. Florida received final authorization for these revisions on March 1, 1988 (53 FR 127, January 5, 1988). Florida was placed on a schedule of compliance to obtain program modifications for section 3006(f), Availability of Information (AOI) of the HSWA (52 FR 26013, July 10, 1987). Today, Florida is seeking approval of its program revisions for the following authorities through June 30, 1986, in accordance with 40 CFR 271.21(b)(4).

Federal requirement	State authority
Closure, Post-Closure and Financial Responsibility Requirements: Settlement Agreement 51 FR 16443-16459, May 2, 1986.	F.S. 403.704(16) F.S. 403.722. F.A.C. 17-30.020(1) F.A.C. 17-30.180(1)(2) F.A.C. 17-30.290(1)(a) and (4). F.A.C. 17-30.300
Listing of Spent Pickle Liquor (K062) 50 FR 19320 as amended at 51 FR 33612, May 28, 1986 and September 22, 1986	F.S. 403.704(16). F.S. 403.72(1). F.A.C. 17-30.030(1)
RCRA section 3006(f), Availability of Information 40 CFR Part 2, Subpart A, 5 U.S.C. 552.	F.S. 119.07. F.S. 119.011 F.S. 119.12 F.S. 120.68 F.A.C. 17-30.310.

EPA has reviewed Florida's application, and has made a final decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

EPA recognizes Florida's lack of a provision for waiver of fees for information in the public interest as specified at 40 CFR 2.120(d). A public hearing was scheduled for October 20, 1988. No requests to hold the hearing, or adverse public comments were received prior to the end of the public comment period on October 13, 1988. Therefore, the public hearing was cancelled by publishing legal notices in six major Florida newspapers prior to the scheduled date of the hearing. Two commenters expressed concern after the public hearing had been cancelled, that the wording of the **Federal Register** notice published September 15, 1988 (53 FR 35836) was not clear regarding the agency's option to cancel the hearing if no public interest was expressed. EPA apologizes to those inconvenienced, and will take steps to improve the wording of future public notices. One commenter expressed concern that Florida's fees for information, though minimal, could still prove to be an obstacle for some citizens or public interest groups; and that the Florida legislature should be aware of this possibility. However, the commenter did not express an objection to EPA's tentative determination to authorize Florida for the modifications in question. (For fuller discussion of Florida's information release provisions and fee structure, see 53 FR 35836 dated September 15, 1988). Consequently, EPA is hereby granting final authorization for the additional program modifications to Florida's Hazardous Waste Management Program.

Florida is not seeking authorization to operate on Indian lands.

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C. Decision

I conclude that Florida's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised. Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its program revision application and previously approved authorities. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This, rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 9, 1988.

Lee A. DeHihns,

Acting Regional Administrator.

[FR Doc. 88-28957 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation Rules and Regulations

September 12, 1988.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: These rules revise the existing rules for administration of the Reclamation Reform Act of 1982 (RRA). The existing rules have been revised to incorporate several amendments to the RRA that are contained in the Omnibus Budget Reconciliation Act of 1987 (1987 Budget Act), which was enacted on December 22, 1987. The amendments address audits for compliance with Reclamation law, water rates for land owned under extended recordable contracts, underpayments for irrigation water deliveries to landholdings, and treatment of revocable trusts.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Alonso Knapp; telephone (303) 236-4042.

SUPPLEMENTARY INFORMATION:

Background

The RRA, Title II, Pub. L. 97-293 (96 Stat. 1263), was signed into law by President Reagan on October 12, 1982. The Act modernized Reclamation law. Final rules and regulations implementing the RRA were published in the **Federal Register** on December 6, 1983. Those rules were revised on April 13, 1987, primarily to add provisions for implementing section 203(b) of the Act. That section mandated that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in a landholding in excess of 160 acres. On October 26, 1987, the rules were again revised. The purpose of this revision was to eliminate "gifted land" as a type of land transaction subject to the involuntary acquisition provisions of the rules.

Reclamation is now revising the rules to incorporate provisions implementing the new RRA amendments contained in the 1987 Budget Act. Proposed rules were published in the **Federal Register** on June 10, 1988. During the week of June 20, 1988, public hearings were held in San Francisco, California; Denver, Colorado; and Washington, DC. Two persons presented testimony at these hearings. In addition to the two parties represented by witnesses at the hearings, we also received written documents from seven other parties during the public comment period, which closed on July 11, 1988. All of the comments were reviewed and taken into consideration in preparing these final rules.

Summary of Revisions

Following is a summary of the RRA amendments in the 1987 Budget Act and changes that have been made to the rules:

Audits

The first amendment, section 224(g), mandates the Secretary of the Interior to conduct a thorough audit of compliance with Reclamation law by individuals and legal entities. The amendment requires the Secretary, at a minimum, to complete audits of landholdings and operations exceeding 960 acres within 3 years. The Secretary is also required to submit a report to Congress summarizing audit findings and actions that have been taken to correct instances of noncompliance.

Reclamation has initiated its audit efforts. However, since this amendment places no new requirements on landholders themselves, we have added no additional audit language to the rules. The existing provision, § 426.10(i), addresses audits and provides landholders with sufficient information regarding this topic. However, this section has been reworded to make it clear that the performance of audits is mandatory rather than discretionary on the part of Reclamation. In addition, in order to ensure that the Secretary has the information necessary to perform the required audits, § 426.10(a) has been revised to clarify that districts, prior law and new law recipients, and persons operating irrigation land under management arrangements or consulting agreements must provide information and records upon request by the Secretary.

Extended Recordable Contracts

The second amendment, section 224(h), clarifies that both prior law and new law recipients are required to pay the full-cost rate for water deliveries to land under an extended recordable contract. We have revised § 426.11(i)(4) of the rules accordingly. In addition, § 426.7(f) of the rules has been revised to reflect the fact that the full-cost interest rate applicable to prior law recipients for land under extended recordable contract is that set forth in section 202(3)(A) of the RRA and § 426.7(f)(1) of the April 13, 1987, rules. Consequently, the full-cost interest rate applying to prior law recipients with land under

extended recordable contract will be different from the interest rate applying to them for leased land.

Underpayments

We have added a new section to the rules to incorporate the third RRA amendment, section 224(i). This amendment provides that when the Secretary finds that any individual or legal entity has not paid the required amount for irrigation water delivered to a landholding, he shall collect the amount of any underpayment with interest accruing from the day the required payment was due until paid. This requirement of law is reflected in § 426.23 of the rules. The "Severability" provision, which is designated as § 426.23 in the April 13, 1987, rules, has been redesignated as § 426.24 in the revised rules.

Revocable Trusts

The last of the RRA amendments revises the trust section of the RRA, section 214, by adding a subsection providing that land in a revocable trust will be attributed to the grantor if (1) the trust is revocable at the discretion of the grantor or the trust revokes or terminates by its terms once a specific time period has expired and (2) revocation or termination results in title to the land reverting either directly or indirectly to the grantor. Reclamation has revised § 426.6(b)(4) and (d)(6) to incorporate this amendment.

Executive Order 12291

The Department of the Interior has determined that the revised rules do not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required and has not been prepared.

National Environmental Policy Act

A FONSI (finding of no significant impact) and a supplement to the April 1987 environmental assessment, which address the environmental impacts of the revised rules, have been prepared and are available for public review. Copies of these documents may be obtained upon request from Reclamation offices located in Boise, Idaho; Sacramento, California; Boulder City, Nevada; Salt Lake City, Utah; Billings, Montana; and Washington, DC.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1006–0005 and 1006–0006. Public reporting burden for this information is estimated to average 0.5 hours per response for the individual landholders' forms and 40 hours per response for the Certification and Reporting forms, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Carolyn Hipps, Chief, Publications and Records Management Branch, Bureau of Reclamation, Denver Federal Center, Denver, CO 80225, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Small Entity Flexibility Analysis

These rules will not have a significant economic effect on a substantial number of small entities. Only a small number of landholders farming land irrigated by Reclamation projects westwide will be affected by any provision of section 5302 of the 1987 Budget Act. Two of these provisions, the audit and underpayment provisions, are expected to result in little or no economic effect on landholders. The other two provisions, which address revocable trusts and extended recordable contracts, may impact a small number of landholders. However, such landholders will be able to mitigate the potential impacts by altering their trust agreements or, in the case of extended recordable contracts, by becoming subject to the discretionary provisions or selling the recordable contract land before the extended contract period actually matures.

Comments About the Proposed Rules

During the public comment period from June 10 to July 11, 1988, we received documents from nine different parties containing comments about the proposed revisions to the existing rules. Two of the parties submitting written comments also gave testimony at the public hearing in San Francisco on June 20, 1988. No witnesses were present to offer testimony during the hearings in Denver and Washington, DC.

Four of the nine documents received were from respondents residing in California, while two were from respondents in Arizona. The remaining three documents were from parties representing national or regional interests. In looking at the interest groups represented by the parties submitting documents, we found that four were submitted by water districts, two by farm operators, two by conservation/environmental groups, and one by a Federal agency.

We received thirty-one different types of comments directed toward the supplement to the EA and specific provisions in the rules. In some cases, more than one respondent made the same comment. Taking this into consideration, we received a total of 43 comments. For the most part, the comments were divided equally among all the provisions of the rules. No one provision received a disproportionate number of comments.

In addition to receiving comments addressing specific provisions in the rules, we also received several comments about the rules in general. One respondent felt that we did not allow enough time for the public to review the proposed rules before the hearings were held. Another respondent warned that farmers in the Central Arizona Project (CAP) will use groundwater instead of irrigation water if Reclamation adopts punitive rules. The respondent further stated that such action would adversely affect the districts' repayment capability and water conservation efforts. Several respondents urged Reclamation to take a strong stand against the ongoing lawsuit challenging the validity of the April 13, 1988, rules. In addition, Reclamation also received commendations from several respondents for (1) preparing rules that are fair and reasonable, (2) only making changes when absolutely required because of the 1987 Budget Act, and (3) making an effort to understand the concerns of the districts and water users.

Following is a summary of the significant comments received during the comment period, along with our response to each of them:

Section 426.6(b)(4)—Trusts

Comment 1: One respondent commented that it was not fair that Reclamation established an April 20, 1988, deadline for revising revocable trusts, since the rules were not out until June 10, 1988.

Response: In Conference Report 100–498, the conferees require the Secretary to provide landholders a grace period in which to restructure existing trusts to avoid payment of full cost as a result of the new trust amendment. However, the conferees also specifically limit this grace period to no more than 120 days from the date the law was enacted. Reclamation gave affected landholders the benefit of the full 120 days by establishing an April 20, 1988, deadline. In addition, districts were made aware

of the deadline in early March so that landholders would have enough time in which to take advantage of the grace period.

Comment 2: One commenter stated that the trust provision should not apply to Central Arizona Project (CAP) contractors because their contracts state that full-cost pricing will not apply to project water delivered on an interruptible basis. CAP deliveries will be considered interruptible until January 1989.

Response: Congress did not include any exemptions from the provisions contained in section 5302. Therefore, we have not addressed this issue in these rules. The issue of whether or not CAP contractors have a grace period before the ownership and full-cost pricing provisions of Reclamation law apply to them is addressed in a January 13, 1988, memorandum. In that memorandum, the Commissioner concluded that the distinction between interruptible and noninterruptible service is immaterial in determining whether the CAP lands served are required to be in conformance with all of the provisions of the RRA. There is no legal basis for suspending the requirements of the RRA on the grounds that the water deliveries are interruptible.

Comment 3: One respondent suggested that in order to be able to monitor any indirect relationships to the grantor, the rules should require identification of any trustors and all principals in any legal entity involved with a trust, not just the grantors and the persons (entities) to whom the trust land will revert upon revocation.

Response: This comment has not been accommodated. The certification and reporting forms are being revised to require landholders to identify revocable trust arrangements. All such arrangements will be thoroughly reviewed to determine the relationships, both direct and indirect, of all involved parties.

Comment 4: One respondent commented that in the case of grantors who maintain control over land as a trustee during the period of a revocable trust, the language of § 426.6(b)(4)(i), which grants fiduciary trustees a blanket exemption from the ownership and pricing limitations, contradicts § 426.6.6(b)(4)(iii), which provides that land held in certain revocable trusts shall be attributed to the grantor. The respondent suggested that Reclamation solve the problem by adding the following to the end of the first sentence in § 426.6(b)(4)(i):

provided further that the trustee is not the grantor of the land in the trust, subject to attribution to the grantor under subsection (b)(4)(iii).

Response: We agree with the respondent's comment and have revised the language as suggested, with a few minor modifications.

Comment 5: One commenter felt that the distinction between "grantor" and "trustor" sets up situations, such as in example 5 of the proposed rules, that appear ripe for potential abuse. The commenter suggested that, as is the case with grantors, trust land should be attributed to trustors who control and can benefit from a revocable trust.

Response: Reclamation has interpreted the revocable trust provision to mean that when an individual or entity (be it grantor or a trustor) places land in a trust but retains the right to regain the title to the land, either directly or indirectly, through trust revocation, such land is to be attributed to that individual or entity. We do not believe the law gives us the authority to attribute the land to a third party (be it a trustor or grantor) that will gain title to the land through trust revocation if that party did not place the land in the trust.

Comment 6: The last sentence of § 426.6(b)(4)(iii) presumes that the exact identity of the person to whom the trust *will* revert upon revocation is always known. However, what happens if title to the land *could* revert to the grantor only under certain circumstances?

Response: The new law specifies two types of circumstances under which land in a revocable trust must be attributed to the grantor. There are many other conceivable situations under which trusted land could revert to the grantor, but Congress did not address them.

In those cases where title to revocable trust land *could* revert to the grantor, but *only* under certain circumstances, the terms of the trust will be carefully reviewed to determine if the arrangement fully meets the conditions set forth in section 5302(b). Particular attention will be given to determining if the title reverts to the grantor at his own discretion. If such is the case, the land would be attributed to the grantor. However, if the title reverts to the grantor depending on circumstances not within his discretion, for example, depending on actions within the beneficiary's discretion, the land would then be attributed to the beneficiary. New language has not been added to the rules to specifically address this comment, because we think the conditions listed in the first sentence of § 426.6(b)(4)(iii) already adequately cover the situation posed by the respondent.

Comment 7: In addition to addressing full-cost situations resulting from proper attribution, one respondent thought that § 426.6(b)(4)(iv) should also address situations where such attribution causes the grantor to exceed his ownership entitlement. The respondent further stated that in such cases, retroactive charges and prospective cut-off in water deliveries are appropriate.

Response: Section 426.6(b)(4)(iv) was added to the rules in response to Congress' specific reference in the Conference Report to the full-cost situations that can result from the amendment requiring attribution to grantors. A similar provision was not added to address situations resulting in the grantor exceeding his ownership entitlement because Congress made no specific reference to such situations. Furthermore, we do not think it is appropriate to address such situations in the trust section of the rules, because many different sets of circumstances unrelated to revocable trusts can result in a landowner exceeding his ownership entitlement. Generally, all excess land is ineligible to receive irrigation water and retroactive charges would be imposed should water be delivered to such land despite its ineligibility.

Comment 8: One respondent stated that the new rules appear to create the potential for the beneficiary of a revocable trust to enjoy all the benefits of a lease without the arrangement being called a lease. The respondent suggested that the rules should make clear that revocable trusts are subject to § 426.7 just like any other situation equivalent to a lease.

Response: We have interpreted this comment to mean that the commenter believes the new rules create the potential for a beneficiary to use revocable trusts as a means to receive irrigation water at the contract rate on land in excess of his basic entitlement. The commenter seems to be suggesting that in revocable trust situations, the trust land should be attributed to the grantor (as the owner) and also to the beneficiary (as a lessee).

We have not accommodated this comment, because we do not believe we have the authority to attribute such trust land to both parties. The law specifically states that such land is to be attributed to one party; namely, the grantor.

Section 426.10(a)—Information Requirements

Forms

Comment 1: One commenter was concerned that the new language in this

section of the rules might mean that Reclamation is contemplating requiring certification from districts as well as from landowners and lessees. The commenter stated that he would be opposed to this move because it is not required by the RRA. He further stated that districts should not have the responsibility to verify the accuracy of data on landholders' forms.

Response: Section 426.10(a) was revised mainly for the purpose of clarifying the term "individuals" as that term was used in this section of the April 13, 1987, rules; it was not revised for the purpose of requiring districts to submit the same certification/reporting forms as do owners and lessees. Such a requirement would clearly be impossible due to the very different roles of these parties. However, pursuant to section 228 of the RRA, § 426.10(h) of the existing rules does require water districts to submit a yearly report summarizing landholders' certification/reporting forms. This requirement has been in effect since the RRA was enacted and is not a provision that is new to the acreage limitation rules.

Regarding districts' responsibility to verify information on landholders' forms, ultimately it is each landholder who is responsible for the information on his/her form. However, under their contracts with the United States, districts are responsible for providing Reclamation with necessary data and reports. We think it is reasonable as part of this requirement to require districts to report known discrepancies on landholder forms. Reclamation has the added responsibility of further investigating such discrepancies.

Comment 2: One respondent suggested that the reference in this paragraph to "§ 426.7(a)(1)" should be changed to "§ 426.7(a)."

Response: During our analysis of this comment, we realized that in contrast to the respondent's suggestion, our reference was not detailed enough. Our intent in the subject sentence was to refer specifically to management arrangements and consulting agreements. These items are discussed in only one place—subparagraph (a)(1)(i) of § 426.7. The intended meaning of the subject sentence would be changed if the citation were to include all of paragraph (a), or for that matter, all of subparagraph (a)(1). Therefore, the reference citation has been revised to be even more specific than it was in the proposed rules.

Comment 3: Two respondents questioned whether Reclamation has the legal authority to impose information requirements on any person or entity other than landowners and lessees. The respondents think that any information the Secretary needs regarding management or consulting agreements should be obtained from the landholders under penalty of perjury.

Response: Section 224(c) of the RRA provides the authority for Reclamation to impose information requirements on individuals and entities who are not landowners or lessees. In that section, the Secretary is directed to collect all data necessary to carry out the provisions of the law. Congress did not limit information collection efforts to owners and lessees.

Comment 4: One respondent supported the clarification made in this section, stating that the clarification assures that the Secretary has access to all the information necessary to conduct the audits required by law.

Response: No response necessary.

Comment 5: One commenter stated that the existing forms do not adequately identify operators—they only ask for the operator's name and address. The commenter also stated that it is inappropriate simply to notify water users that they *may* have to provide information about operators when requested on a case-by-case basis. Such an approach causes delays in the auditing process, places unnecessary burden on the Secretary to determine which documents to request, and risks the loss of information from years prior to the audit which may be needed to determine if underpayments are due.

The commenter also maintained that to be legally sufficient, the rules must make it clear that individuals and entities operating land under an agreement described in § 426.7(a)(1) are required to provide information about their operations on a regular basis. In addition, the commenter suggested that the rules should not limit information collection to just those operators described in § 426.7(a)(1). Rather, Reclamation should get information from all individuals and entities with other interests in the operations.

Response: The Solicitor's Office has determined that it is not legally necessary to require forms from all operators in order to satisfy the requirements of section 224(g) of the RRA. Despite the fact that we are not requiring all operators to submit forms, we have taken measures to ensure that we will have adequate information about all operations. The existing certification/reporting forms already require landowners and lessees to report whether or not they have hired a farm operator. In addition, the forms are being revised to require landholders to provide more detailed information about such operators. For example, under the proposed new forms, all landholders must list the telephone numbers, the services provided, and the acreage associated with each operator. We believe that such information from the forms, in combination with the information we can request directly from operators pursuant to § 426.10(a), will provide Reclamation with all the data needed to satisfy the requirements of section 224(g) of the law.

Comment 6: We received two comments suggesting that the forms need to be revised so that landowners with extended recordable contracts will know that they need to complete the "Application for Selection of Non-Full-Cost Land" form.

Response: The forms are being revised accordingly.

Audits

Comment 7: Several respondents stated that the preamble should be expanded to make it clear that, (1), as required by law, audits of smaller farms and operations (under 960) will also take place and (2) underpayment provisions also apply to these smaller farms.

Response: Reclamation plans to conduct audits of smaller farms and operations as well as of those that exceed 960 acres. The underpayment provision applies, as written in § 426.23 of the rules, to small and large farms alike.

Comment 8: Two respondents stated that Reclamation should set forth in the preamble and other public documents its intent to meet the statutory requirements to complete audits of each set of land managed in a single farming operation of over 960 acres, whether limited to single landholdings or extended over several landholdings operated together under farm management contracts and the like.

Response: As required by section 224(g), Reclamation plans to complete audits of entities and individuals whose landholdings or operations exceed 960 acres. In determining which operations to audit, we will look at the total holding of the operating entity.

Comment 9: One respondent pointed out that § 426.10(i) of the existing rules states that "The Secretary *may* conduct field audits, as necessary * * *," and suggested that "may" should be changed to "will" in order to be consistent with the directive in the 1987 amendments to the RRA.

Response: The final rules have been revised to reflect the respondent's suggestion.

Comment 10: We received comments from two persons suggesting that Reclamation establish audit procedures

wherein landholders would be (1) given notice that they had been selected for an audit and an opportunity to participate in the audit process, (2) given the opportunity to appeal decisions, (3) permitted to rely on prior decisions by Reclamation.

Response: We do not believe it is appropriate to establish specific audit procedures in the rules. Procedures have been and will continue to be developed through policy guidance rather than through the rulemaking process. The procedures will include appropriate opportunities for landholders to be involved in the audit process.

Section 426.11(i)(4)—Water Rates for Land Under Extended Recordable Contract

Comment 1: Two respondents felt that the following language would make clause (i) of the first paragraph in § 426.11(i)(4) easier to read and understand:

"for land under recordable contract owned by qualified and limited recipients, the non-full-cost rate was applicable until October 21, 1985, (January 10, 1986 in Westlands Water District) or until the extended contract period expired, whichever occurred first, and after October 21, 1985, (January 10, 1986 in Westlands Water District) water deliveries have been subject to the full-cost rate through the effective termination date of the extended recordable contract, * * *."

Response: This comment does not suggest a substantive change; therefore, it has not been accommodated.

Comment 2: Two persons stated that since the full-cost rate category status of land under extended recordable contract is not affected by the status of the lessee, the word "owned" should replace the word "held" in clauses (i) and (ii) of this section.

Response: This comment has been accommodated.

Comment 3: One commenter objected to the sentence in the preamble which states that prior to the 1987 amendments, section 205(c) of the RRA applied only to landholders subject to the discretionary provisions. The commenter believes that statement should be revised to make it clear that prior to the 1987 amendment, it was Reclamation's rules, not the law, that applied section 205(c) to only some landowners with extended recordable contracts.

Response: The Department disagrees with the commenter's legal view. It is the Department's legal view that the statute itself, not merely Reclamation's rules, limited the application of section 205(c) to landholders subject to the discretionary provisions.

Comment 4: One person commented that the proposal to charge prior law recipients the full-cost rate for land under extended recordable contracts is (1) unlawful because it interprets section 224(h) in a way that contradicts the expressed intention of Congress and applicable constitutional principles of statutory interpretation and (2) is unwise and unfair because it reverses established policies and principles.

Response: We disagree with the legal statement made in this comment.

Comment 5: Two respondents requested that the rules specifically state that a recordable contract on land designated as nonexcess and non-full cost is deemed terminated immediately upon receipt by Reclamation of an irrevocable election.

Response: While the rules do not specifically state when a recordable contract is deemed terminated, the rules as currently written, permit us to treat recordable contracts as stated by the commenter. Reclamation's policy on this matter can be summarized as follows: If a landowner elects to become subject to the discretionary provisions, the election is considered effective on a conditional basis as of the date Reclamation receives the election form. As of that date, the less than full-cost rate would apply to any land a landowner withdraws from an extended recordable contract and includes as part of his nonexcess land designation, unless the land becomes subject to full-cost pricing through leasing or the election is disapproved. If the election is disapproved, the landowner is held responsible for any full-cost charges that accumulated during the review period.

Comment 6: The following proposal was received from two respondents: Since it takes Reclamation a long time to complete excess land sale price approvals, the buyer and seller of excess land should be permitted to enter into a binding escrow, and Reclamation should treat this action as a disposition of excess land. Thereby, the full-cost rate to extended recordable contract land could be terminated prior to actual transfer of title. If necessary to protect the interests of the United States, this proposal could include a provision for payment of the full-cost differential into a trust fund for the duration of the escrow.

Response: This suggestion has not been accommodated because the law requires, without exception, that section 205(c) of the RRA be applied to all owners of land under extended recordable contract. Therefore, as long as title to such land remains with the seller, we do not have the authority to waive the full-cost requirements.

However, Reclamation has taken steps to satisfy the concerns raised by this commenter. First, we have reduced the time it takes to complete excess land appraisals by adding additional staff to process the appraisals and by instituting a multiple appraisal process. Second, we will permit owners of such land to sell the land before the appraisal process is completed without jeopardizing the land's eligibility to receive water, provided the buyer and seller enter into a reformation agreement. Under such an agreement, the seller and buyer agree to reform the sale price of the land should it exceed Reclamation's approved sale price. The interim water deliveries are made at the rate applicable to the buyer based on his status under the law.

Comment 7: One commenter felt that it is not fair that lessees of extended recordable contract land must pay the full-cost rate even though they are within their entitlements to receive subsidized water. The commenter suggested that the rules provide that if an existing grower is within the acreage limitations, he gets the subsidized water even if the landlord does not qualify.

Response: Reclamation's main responsibility in implementing section 224(h) of the RRA is to make sure that the full-cost rate is paid for water deliveries to land under extended recordable contract. Regarding the question of whether such charges are to be paid by the owner or the lessee, it is our policy that this is a matter among the landowner, lessee, and the district. Therefore, this comment has not been accommodated.

Section 426.23—Interest on Underpayments

Comment 1: We received the following related questions regarding the underpayment provision: What is a district's responsibility for collecting underpayments? For example, suppose a lessee leases land from a qualified recipient, and then without his or the district's knowing, the qualified recipient becomes a limited recipient. Is either the district or the lessee responsible for the underpayments? As another example, would a district be held liable for an underpayment that is discovered after a landowner has moved? Finally, if a district's payments are due semiannually (in June and January), will underpayments be calculated back to June even though the landholder subject to the underpayment did not take water until August?

Response: For the most part, the United States' repayment and water service contracts are with districts, not individuals. Under these contracts, it is

the district's responsibility to collect the proper water rate and comply with Federal law and regulations. Therefore, collection efforts will be directed to the districts. Districts, in turn, have recourse under State law against the party(s) responsible for any underpayments. It must also be remembered that a lessee has the responsibility to protect himself, through the terms of the lease, from situations that have the possibility of affecting him adversely. Regarding the date from which underpayments will be calculated, Reclamation is in the process of developing policy on how this aspect of the underpayment provision will be applied.

Comment 2: One respondent was concerned about the underpayment provision, stating that it has the potential of having catastrophic adverse economic impacts in CAP districts because of the extent of full-cost water service in this area.

Response: Since Congress granted no exemptions from the underpayment provision, it is Reclamation's responsibility to implement it in all districts. It should be remembered that the full-cost rates for CAP landholders were not increased as a result of the underpayment provision. They are the same now as they were before the legislation was enacted. In addition, the underpayment provision will affect only a limited number of landholders, since it applies to only those who did not pay the required rate for water deliveries. In those cases where the full-cost rates are prohibitive, landholders and districts will need to make a special effort to ensure that landholders are fully aware of their status under the RRA.

Comment 3: One respondent was opposed to collection efforts for underpayments associated with delivery of interruptible CAP water to excess land. The respondent stated that the district contracts provide that acreage limitation and full-cost pricing do not apply to interruptible water.

Response: In a January 13, 1988, memorandum, the Commissioner concluded that the distinction between interruptible and noninterruptible service is immaterial in determining whether the CAP lands served are required to be in conformance with all of the provisions of the RRA. There is no legal basis for suspending the requirements of the RRA on the grounds that the water deliveries are interruptible.

Comment 5: Two commenters suggested that Reclamation address the provisions of section 10166 of the 1987 Budget Act—the IRS provision on illegal Federal irrigation subsidies.

Response: The Internal Revenue Service (IRS) has the primary responsibility for implementing the subject provision. Therefore, we have not addressed that provision in these rules. Reclamation, however, has offered its assistance to the Commissioner of the IRS in coordinating implementation of the illegal subsidy provision.

Comment 6: We received one comment suggesting that a policy be established wherein the underpayment provision applies when landholders provide certification/reporting forms with incorrect information for the purpose of circumventing the law; however, it would not apply to landholders whose forms contain errors, provided the landholders are still within their entitlements.

Response: Erroneous completion of certification/reporting forms would fall within the scope of the underpayment provision only if it resulted in land receiving irrigation water at less than the required rate. As a general rule, this provision would not be invoked in those cases where a landholder makes a mistake on his forms but is still within his entitlement limitations after the form has been corrected.

Environmental Assessment, FONSI, Small Entity Flexibility

Comment 1: One respondent felt Reclamation's economic analyses need to address the economic impacts on the CAP. Since the full-cost rate in the CAP is $250 ac/ft, the respondent disagreed with Reclamation's conclusion that the proposed rules have no impact on a substantial number of small entities.

Response: For the most part, the rules do not create *new* full-cost situations for landholders in the CAP. The underpayment provision merely requires that landholders who received irrigation water at a rate less than that actually required by applicable laws and regulations must pay the required amount (plus interest) for that water. The extended recordable contract provision requires payment of the full-cost rate; however, there are no such contracts in the CAP. In addition, landowners were given a grace period in which to restructure any trust agreements so that they could avoid any full-cost charges that might result from implementation of the revocable trust provision.

Comment 2: Two commenters felt that the draft FONSI is based on an inadequate Environmental Assessment (EA) that contains no actual evaluation of the environmental effects of the proposed rules. They believe the new EA does not consider cumulative impacts of the new regulations in conjunction with the 1987 regulations and does not make a full evaluation of whether the regulations will affect natural resources.

Response: We disagree with the commenter. We believe the NEPA documentation is adequate.

List of Subjects in 43 CFR Part 426

Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 43 CFR Part 426 is amended as set forth below.

Dated: October 27, 1988.

C. Dale Duvall,

Commissioner, Bureau of Reclamation

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for Part 426 is revised to read as follows:

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, title II, 96 Stat. 1263, as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; and the Reclamation Act of 1902, as amended and supplemented 32 Stat. 388, (43 U.S.C. 371 et seq.).

2. Section 426.6 is amended by revising paragraphs (b)(4) and (d)(6) to read as follows:

§ 426.6 Ownership entitlement.

* * * * *

(b) * * *

(4) Trusts.

(i) An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitations imposed by title II nor the ownership provisions of prior law for land held in this capacity; provided, the trust agreement: is in writing and is approved by the Secretary, identifies the beneficiaries, describes the interests of the beneficiaries and in the case of revocable trusts, the trust agreement also identifies the grantor(s) of all lands held in the trust, identifies the person(s) or entity (entities) who may revoke the trust and to whom title to the lands held in the trust will be conveyed upon the revocation of the trust, and provided further that the trusted land is not attributable to a grantor acting as trustee pursuant to § 426.6(b)(4)(iii). The Secretary shall be notified of any changes in the above conditions.

(ii) In the case of irrevocable trusts and revocable trusts other than those described in (b)(4)(iii) of this section, the lands held in the trust will be attributed to the beneficiary or beneficiaries of the

trust according to the interest held in the trust by each beneficiary. The eligible acreage attributable to each beneficiary in trust land in combination with other land directly or indirectly owned by such beneficiary shall not exceed that beneficiary's ownership entitlement unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition provided in § 426.16.

(iii) In the case of revocable trusts which may be revoked at the discretion of the grantor(s) of the lands held in the trust and such revocation results in title to the trust lands reverting to the grantor(s) either directly or indirectly, or if the terms of the trust require that it be revoked or terminated upon the expiration of a specified period of time and such revocation or termination results in the title to the lands held in the trust reverting either directly or indirectly to the grantor(s), the lands held in that trust will be attributed to the grantor(s) of the lands. Therefore, in the case of such revocable trusts, the eligible acreage attributable to each grantor in trust land in combination with other land directly or indirectly owned by such grantor shall not exceed that grantor's ownership entitlement unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition process provided in § 426.16. However, a revocable trust in which a grantor retains the power to change the beneficiaries or to modify the terms of the trust, but does not provide that the title to trust property will revert to the grantor upon revocation or termination shall not result in an attribution to the grantor of the trust property.

(iv) If the attribution of trust property described in (b)(4)(iii) of this section results in the grantor of such property becoming subject to the payment of full cost for irrigation water delivered to lands within his landholding, such full cost will not apply to the grantor if the trust agreement was revised before April 20, 1988, to avoid or preclude the attribution of the trust property to the grantor. If such a trust agreement was not so revised by that date, the grantor must pay full cost for irrigation water delivered to that portion of the grantor's landholding that exceeds the non-full-cost entitlement, commencing December 23, 1987, until such trust agreement is so revised. The application of this rule may be illustrated by the following:

Example (1). Bank X is the trustee for five irrevocable trusts, each of which has more than one beneficiary. The irrevocable trusts contain 1,280, 960, 640, 800, and 400 acres, respectively. The land in the irrevocable trusts is in districts which have amended their contracts to conform to the discretionary provisions of Title II. Since the ownership and pricing limitations of title II do not apply to Bank X as trustee for the trusts and all beneficiaries who are qualified recipients are within their respective ownership entitlements, all 4,080 acres in the five irrevocable trusts are eligible to receive irrigation water at the contract rate. However, if a beneficiary owned directly or indirectly other irrigation land which, when combined with his beneficial interest in the subject irrevocable trusts, caused him to exceed the 960-acre ownership limitation, either that beneficiary or the trustee would be required to designate the nonexcess land for which irrigation water could be supplied, depending upon whether the land to be so designated is directly held by the beneficiary or the trust.

Example (2). Farmer X, a qualified recipient, provides in his will for the establishment of a trust and the conveyance of 640 acres of his land receiving irrigation water into that trust for his minor child upon his death. Farmer X designates his brother as trustee of that testamentary (irrevocable) trust. The land is located in a district which has amended its contract to come under the discretionary provisions of Title II. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer X dies, and the testamentary trust he has established is activated. The brother, as trustee, is entitled to receive irrigation water for the land in trust as well as the land he owns.

Note.—The land placed in the testamentary trust by Farmer X is counted against his ownership entitlement during his lifetime as long as the land remained in his ownership.

Example (3). Farmer X, a qualified recipient, owns 960 acres eligible to receive irrigation water in a district subject to the provisions of Title II. He decides to place 160 acres of his land in an irrevocable trust with his daughter as the life tenant. The 160 acres of trust land shall be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land shall be attributed to Farmer X or to the person upon whom she is dependent.

Example (4). ABC Corporation, a prior law recipient, establishes a revocable trust and places 160 acres of land receiving irrigation water in the trust for the benefit of J. Jones. Under the terms of the revocable trust, the trust will terminate and title to the 160 acres will revert back to ABC Corporation in 10 years. All 160 acres of the land in trust is attributed to the corporation with all stockholders attributed an indirect interest in proportion to their percent of stock held in the Corporation.

Example (5). As in Example (4) above, ABC Corporation establishes a trust for the benefit of J. Jones, which is revocable at the discretion of ABC Corporation, the trustor. But Corporation X, a fully independent legal entity, rather than Corporation ABC, contributes the 160 acres to the trust. In this example, the 160 acres is attributed to the beneficiary of the trust, J. Jones, since the criteria for attribution to the grantor (Corporation X) have not been met; namely, the 160 acres will revert in 10 years to the trustor (Corporation ABC), not the grantor, and the grantor does not have the power to revoke the trust.

Example (6). Farmer X, a qualified recipient, places 960 acres of land receiving irrigation water in a trust for his son. The trust agreement provides that the trust shall expire in 20 years, and ownership of the trust land shall be vested in Corporation Y, of which Farmer X is a part owner with 5 percent interest. Because title to 5 percent of the trust land will revert indirectly to Farmer X upon termination of the trust, 48 acres (960 x 5 percent) of the trust land is attributed to Farmer X. The remaining 912 acres of trust land is attributable to the beneficiaries of the trust. If Farmer X's interest in Corporation Y changes during the term of the trust, the amount of trust land attributed to Farmer X will change accordingly.

* * * * *

(d) * * *

(6) See § 426.6(b)(4).

* * * * *

3. Section 426.7 is amended by revising paragraph (f) to read as follows:

§ 426.7 Leasing and full-cost pricing.

* * * * *

(f) Interest rate calculations for full cost. In determining full cost, the interest rates to be used will be determined by the Secretary of the Treasury as follows:

(1) Interest rates applicable to (i) qualified recipients, (ii) limited recipients receiving water on or before October 1, 1981, and (iii) extended recordable contract land owned by prior law recipients after December 22, 1987.

(A) The interest rates for expenditures made on or before October 12, 1982, shall be the greater of 7½ percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year in which the expenditures were made by the United States.

(B) The interest rate for expenditures made after October 12, 1982, shall be the arithmetic average of (*1*) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year in which the expenditures are made and (*2*) the weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(2) Interest rates applicable to (i) limited recipients not receiving irrigation water on or before October 1, 1981, and (ii) prior law recipients, except for land owned under extended recordable contract after December 22, 1987. The interest rate shall be determined as of

the fiscal year preceding the fiscal year in which expenditures are made except that the interest rate for expenditures made before October 12, 1982, shall be determined as of October 12, 1982. The interest rate shall be based on the arithmetic average of (A) the computed average interest payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance and (B) the weighted average yield on all interest-bearing marketable issues sold by the Treasury.

Note: Prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the full-cost interest rate specified in paragraph (f)(1) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981.

4. Section 426.10 is amended by revising paragraphs (a) and (i) to read as follows:

§ 426.10 Information requirements.

(a) In general. Districts, qualified recipients, limited recipients, prior law recipients and natural persons or legal entities operating irrigation land under an agreement described in § 426 7(a)(1)(i) shall provide the Secretary upon request in a form suitable to the Secretary such records and information as the Secretary may deem reasonably necessary to implement Pub. L. 97–293 and Federal Reclamation law.

* * * * *

(i) *Auditing.* The Secretary will conduct field audits, as necessary, to ensure compliance with Reclamation law and these regulations.

* * * * *

5. Section 426.11 is amended by revising paragraph (i)(4) to read as follows:

§ 426.11 Excess land.

* * * * *

(i) * * *

(4) Water rates for land under extended recordable contracts. Land under recordable contract may continue to receive irrigation water deliveries at the non-full-cost rate for the original disposition period of the recordable contract. The rate for irrigation water deliveries to land under recordable contract during the extended contract period shall be determined as follows:

(i) For land under recordable contract owned by qualified and limited recipients, the non-full-cost rate shall apply until the date 18 months after the date the Secretary resumes the processing of excess land sales, or until the extended contract period expires, whichever occurs first, and after the date 18 months from the date the Secretary resumes the processing of excess lands sales, water deliveries shall be made at the full-cost rate through the effective termination date of the extended recordable contract.

(ii) For land under extended recordable contract owned by prior law recipients, water deliveries shall be made at the full-cost rate described in § 426.7(f)(1) commencing December 23, 1987, through the effective termination date of the extended recordable contract. The principles of this rule may be illustrated by the following:

Example (1). Landowner X entered into a recordable contract on June 27, 1972. The recordable contract provided for a 10-year disposition period which ended on June 27, 1982. However, Landowner X was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The district in which the land is located amended its contract to conform to the discretionary provisions on January 1, 1983. Since Landowner X had 5 years remaining on the original recordable contract when the moratorium was imposed, the contract will be extended for 5 years from the date the processing of the sale is resumed. The resumption date will be determined by the Secretary. Landowner X must pay the full-cost rate, however, for any irrigation water delivered to the land under extended recordable contract beginning 18 months from the date the moratorium is lifted.

Example (2). Landowner Y entered into a recordable contract with a 10-year disposition period on June 27, 1976. Landowner Y was prevented from selling the land by the Secretarial moratorium of June 27, 1977. At that time, 9 years remained in the disposition period of the recordable contract. The district in which the land is located amended its contract to conform with the discretionary provisions of title II on January 1, 1983. The Secretary resumes the processing of the excess land sale on May 21, 1984. The original disposition period of the recordable contact expires on June 27, 1986, which is more than 18 months after the Secretary resumed the processing of the excess land sale. Therefore, Landowner Y must pay the full-cost rate for water deliveries to that land beginning June 27, 1986, for the duration of the extended contract period. The extended contract period will expire on May 21, 1993, 9 years after the Secretary resumed the processing of the excess land sale.

Example (3). Landholder Z entered into a recordable contract on June 27, 1974. The recordable contract provided for a 10-year disposition period that ended on June 27, 1984. However, Landowner Z was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The Secretary resumed the processing of excess land sales on May 21, 1984. Landholder Z had 7 years remaining on his recordable contract when the moratorium was imposed; therefore, the contract will be extended for 7 years from May 21, 1984, or until May 21, 1991. Landholder Z's land is located in a district that remains subject to prior law, and Landholder Z has not made an irrevocable election to become subject to the discretionary provisions. Since Landholder Z is a prior law recipient and the land was under extended recordable contract prior to December 23, 1987, water deliveries to this land prior to December 23, 1987, were properly made at the contract rate. However, for all water deliveries taking place on or after December 23, 1987, Landholder Z must pay the full-cost rate, as described in § 426.7(f)(1), through the effective termination date of the extended recordable contract.

* * * * *

§ 426.23 [Redesignated as § 426.24]

§ 426.24 [Redesignated from § 426.23]

6. Section 426.23 is redesignated as § 426.24, and new § 426.23 is added to read as follows:

§ 426.23 Interest on underpayments.

When the Bureau finds that any individual or legal entity subject to Federal Reclamation law has not paid the required amount for irrigation water delivered to a landholding pursuant to Reclamation law, the Bureau will collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The due date is the date the required payment should have been paid by the district to the United States for water delivered to a landholding. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the period of underpayment.

[FR Doc. 88–28601 Filed 12–15–88; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–320; RM–6314]

Radio Broadcasting Services; Russellville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 266C1 for Channel 266C at Russellville, Kentucky, and modifies the license of Station WBVR(FM) to reflect the lower class channel, at the request of Target Communications of Kentucky, Inc., license of Station WBVR(FM), Russellville, Kentucky. Channel 266C1 can be used at the current transmitter site of Station WBVR(FM) at

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coordinates 36–50–40 and 86–55–11. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–320, adopted November 10, 1988, and released December 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Kentucky by removing Channel 266C and adding 266C1 at Russellville.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–28921 Filed 12–15–88; 8:45 am]

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DEPARTI

**Animal an
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9 CFR Pa

[Docket N

**Tempora
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AGENCY: A
Inspection

ACTION: P

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Proposed Rules

Federal Register
Vol. 53, No. 242
Friday, December 16, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-037]

Temporary Importation of Horses; Horses From Countries Affected With Contagious Equine Metritis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to allow horses from countries affected with contagious equine metritis (CEM) to be imported into the United States for no more than 60 days to compete in specified events, when specified requirements are met to prevent the horses from introducing CEM into the United States. We believe this action is warranted to allow those horses to be imported into the United States when this can be done without undue risk to livestock in the United States.

DATE: Consideration will be given only to comments postmarked on or before January 17, 1989.

ADDRESSES: Send an original and three copies of written comments to Regulatory Analysis and Development, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 86-037. Comments received may be inspected at USDA, Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Chester A. Gipson, SPMDS, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 govern the importation into the United States of specified animals and animal products, to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

Section 92.2(i) of the regulations authorizes the importation of certain horses into the United States from countries affected with CEM, when specific requirements to prevent the horses introducing CEM into the United States are met.

Sections 92.2(i)(2)(i) through (vii) provide criteria for importing certain specified horses from CEM-affected countries if certain recordkeeping, testing, and treatment procedures are met. In addition to the importations already permitted, members of the horse industry have requested that we permit horses to be brought into the United States for a maximum of 60 days, solely for competition, when certain criteria aremet. We believe that, under certain conditions, these horses can be imported from CEM-affected countries with the same degree of protection against the transmission of CEM that is provided by the current regulations.

Safeguards Against CEM Transmission

We are proposing to provide two primary safeguards against the horses' transmitting CEM while in the United States. First, a representative of the Animal and Plant Health Inspection Service (APHIS) would monitor the horses whenever they are not in transit in the United States. Second, we would require stringent measures to ensure that the horses are kept apart from other horses, except when being exercised or actually competing. Because CEM is a venereal disease transmitted by sexual contact, there is virtually no risk that a horse will transmit the disease through casual contact with other horses during exercise or competition.

Application for Import Permit

In addition to meeting the current requirements for an import permit, we are proposing that the owner or importer would have to supply the following information to us along with the application for the permit: (1) That the application is for a horse intended for importation into the United States for no more than 60 days to compete in specified events; (2) the names, dates, and locations of the events in which the horse will compete in the United States; (3) the names and locations of the premises on which the horse will be kept while in the United States, and the dates the horse will be kept on each premises; and (4) the methods and routes by which the horse will be transported while in the United States. This information, which we would include on the import permit, would allow the Administrator to monitor the location of the horse while it is in the United States and to confirm that the required isolation and handling procedures are met to ensure that the horse does not transmit CEM to any other horse while in this country.

We are proposing that while the horse would be at the premises at which it competes, it would have to be monitored by an APHIS representative, and, while in the United States, would not be permitted to have any other form of sexual contact with other horses. Also, in order to guard against manual transmission of CEM by an examiner, we are proposing that the horse would not be permitted to undergo any genital examinations while in the United States.

Additionally, we are proposing that the horse not be kept on any breeding premises and that it be kept in a stall separate from other horses, except when actually competing or being exercised. The stall in which the horse is kept would have to be separated from any other stalls containing horses, either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. It is proposed that the premises and stalls in which the horse would be kept while in the United States would have to be approved orally or in writing by an APHIS representative. If the approval is oral, it would be confirmed in writing, by the Administrator, as promptly as circumstances permit.

Further, we are proposing that while the horse is in transit, it would have to be moved either in an aircraft or a sealed van or trailer, and, except in situations where the horse's life is in danger, only an APHIS representative would be permitted to break the seal on a van or trailer used to move the horse. Additionaly, we are proposing that after transport of the horse anywhere in the

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United States, any vehicle in which the horse was transported would have to be cleaned and disinfected in the presence of an APHIS representative, according to the procedures for cleaning and disinfection specified in 9 CFR 71.7 through 71.12 of the current regulations. We are proposing that in most instances, the cleaning and disinfection would have to be done before the vehicle is moved from the place where the horse is unloaded. However, in cases where there are inadequate facilities or equipment for cleaning and disinfection at the place where the horse is unloaded, the Administrator would have the discretion of allowing the vehicle to be moved to another location for cleaning and disinfection, when the move would not pose a disease risk to other horses in the United States.

We are proposing that if the provisions of this proposed rule are not met, the Administrator would cancel the import permit that allows the importation of the horse into the United States and that allows the horse to stay in this country 60 days. If the cancellation is oral, the decision and the reason for cancellation of the permit would be confirmed in writing as promptly as circumstances allow. The owner or importer would be able to appeal the cancellation of the permit in writing to the Administrator within 10 days after receiving either oral or written notification of the cancellation, whichever is earlier. if the appeal is sent by mail, it would have to be postmarked within 10 days after the owner or importer receives the notification of cancellation. If there is a conflict as to any material fact, a hearing would be held to resolve the conflict. These provisions would satisfy due process requirements pertaining to the cancellation of an import permit.

We are proposing that except in those cases where an appeal is in process, any person whose import permit is cancelled would have to move his or her horse out of the United States within 10 days after receiving an oral or written notice of cancellation, whichever is earlier. Except when being exercised, the horse would have to be kept in a stall that is separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. The horse would not be permitted to enter any competition, from the date the owner or importer receives notice of the cancellation until the horse is removed from the United States, or until an appeal is resolved in favor of the owner or importer. We are proposing that until the horse is removed from the United States or until an appeal is resolved in favor of the owner or importer, the horse would have to be kept, at the expense of the owner or importer, either on the premises at which the horse is located when the notice of cancellation is received, or, if the horse is in transit when the notice of cancellation is received, on the premises at which it is next scheduled to compete according to the import permit. However, in cases where the owners of the premises do not permit the horse to stay on those premises, or when the Administrator determines that keeping the horse at the premises would pose a disease risk to other horses in the United States, the horse would have to be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator.

We believe that all of the above measures combined would ensure that no horse imported under the proposed provisions would pose a significant risk of transmitting CEM to horses in the United States.

Change in Itinerary

We are proposing that if the owner or importer wishes to change the horse's itinerary or the means by which the horse is transported from those specified in the import permit, the owner or importer would have to make the request for change in writing to the Administrator. The change in itinerary or means of transport would not be permitted without the written approval of the Administrator, who would have the discretion to grant the request for change when he or she determines that granting the request will not endanger other horses in the United States, and that sufficient APHIS personnel are available to provide the services requested by the owner or importer.

Trust Fund Agreement

We are also proposing to amend the regulations to require that a horse imported under the provisions of this document be maintained in the United States in accordance with a trust fund agreement executed by the horse's owner or importer. Under the trust fund agreement, the owner or importer would have to deposit with APHIS an amount equal to the estimated cost, including travel, salary, subsistence, administrative expenses, and incidental expenses, as determined by APHIS, for an APHIS representative (1) to inspect the premises at which the horse will compete; (2) to conduct the required monitoring of the horse at the premises at which it competes; and (3) to supervise cleaning and disinfecting the means of conveyance in which the horse travels while in the United States. The amounts to be deposited are explained below. If, while the horse is in the United States, we determine that the amount deposited would not fully cover services we are scheduled to provide during the remainder of the horse's stay, we would issue to the horse's owner or importer a bill for the difference. The horse's owner or importer would have to pay amounts billed within 14 days after receiving the bill. We are proposing that if the bill is not paid within that time, we would cease to perform the services provided for in this proposed rule, until the bill is paid. The Administrator would inform the owner or importer of the cessation of services orally or in writing. If the notice is oral, it would be confirmed in writing as soon as circumstances permit, along with the reasons for it. In such a case, the horse would have to be kept, at the expense of the owner or importer and until the bill is paid, either on the premises at which the horse is located when the notice of cessation of services is received, or, if the horse is in transit when the notice of cessation is received, on the premises at which it is next scheduled to compete according to the import permit. The horse would have to be kept in a stall that is separated from other stalls containing horses by either an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. In cases where the owners of the above premises do not permit the horse to stay on those premises, or when the Administrator determines that keeping the horse at the above premises would pose a disease risk to other horses in the United States, the horse would have to be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator. We are proposing that until the bill is paid, the horse would not be permitted to enter any competition. We believe it is necessary to require a trust fund agreement to help ensure that the government is reimbursed for services it provides. We are proposing that any amount deposited in excess of the cost to APHIS of providing the services required would be refunded to the owner or importer within 30 days after the horse is moved from the United States.

Cost of Government-Provided Services

We are also proposing to amend § 92.2 to include a list of the factors that we would consider when we determine the cost of services we would provide to the owner or importer of a horse that would be imported under the provisions of this proposed rule. If this proposed

amendment is adopted, the owners or importers would know what services they are paying for, and would be able to estimate the cost of those services.

We would consider various factors when determining the fee for government services provided to the owner or importer. One would be the number of hours it would take an APHIS representative to conduct the required inspection and monitoring at the premises where the horse competes. For services provided during regular business hours (8 a.m. to 4:30 p.m., Monday through Saturday, except holidays), the resulting number of hours would then be multiplied by the average salary, per hour, for an APHIS representative. For services provided outside regular business hours, we would apply the applicable rate for overtime, night differential, or Sunday or holiday pay, based on the average salary, per hour, for an APHIS representative.

We would also consider as a factor in determining the applicable fee the cost of travel between the premises at which the horse competes and the APHIS office or facility that is providing the services. In determining the cost of travel, we would consider the number of miles between the premises at which the horse competes and the APHIS office or facility, along with the government rate per mile for official automobile travel, if the APHIS representative would travel to the premises by automobile. If other travel, such as airline or train, would be more appropriate, we would consider the cost of that travel. We would also consider the number of trips that the APHIS representative would have to make between the APHIS office or facility and the premises, and the number of days, if any, that the APHIS representative would be in travel status providing services at the premises at which the horse competes. If the APHIS representative would be required to be in travel status, we would apply the applicable government per diem rate.

Another factor we would consider would be the cost of related administrative support services that we would have to provide to furnish services to the horse's owner or importer. These would also include such items as the calculation and issuance of bills, the processing of required personnel and other paperwork, and the processing of required travel vouchers, etc.

Section 92.17

Section 92.17 requires that horses imported from any part of the world be accompanied by a certificate stating the following: That during the 12 months immediately before their importation into the United States, the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM; that the horses have not been on a CEM-affected premises and have not been bred to a horse from a CEM-affected premises; and that the horses have had no contact with a CEM-affected horse or with a horse imported from CEM-affected countries. Horses that meet certain criteria, however, are exempted from the above requirements. These criteria are set forth in current §§ 92.2(i)(2) (i) through (vii). Because of a typographical error, however, horses meeting the criteria in § 92.2(i)(2)(vii) are not listed in § 92.17 as being exempt from the CEM requirements of that section. We are proposing to correct the typographical error to state that horses that meet the provisions of current § 92.2(i)(2)(vii) *are* exempt from the CEM requirements in § 92.17. Please note, however, that we are proposing to set forth the provisions for the temporary importation of horses from CEM countries in a new § 92.2(i)(2)(vii), and are, therefore, proposing to redesignate current § 92.2(i)(2)(vii) as § 92.2(i)(2)(viii). Therefore, the correction in §92.17 would actually refer to § 92.2(i)(2)(viii).

We are also proposing that horses imported under the provisions of proposed new § 92.2(i)(2)(vii) be exempt from the CEM requirements in § 92.17 that we discussed in the above paragraph. The horses would be exempt from those requirements because they appear to present no risk of introducing CEM into the United States.

Definitions

This proposed rule would add a definition of "Animal and Plant Health Inspection Service" and "APHIS representative."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The current regulations allow the importation of thoroughbred horses from specified CEM-affected countries, provided certain testing for CEM is done and provided specific requirements regarding the horses' histories are met. The current regulations also allow the importation of all other horses over 731 days of age from CDE-affected countries, provided specified testing and treatment requirements are met. We exect that the primary effect of this proposed rule would be to shorten the time necessary to prepare a horse for temporary importation by eliminating the testing and treatment requirements. This would enable foreign horses to stay in training longer and to compete in more events in their own country before being imported into the United States. The cost to owners or importers for our required inspection and supervision would be largely offset by expenses saved because the horses would not have to undergo the treatment and testing we currently require.

Further, we believe the impact on United States horse owners from increased foreign competition for prize monies would be insignificant. In most cases, the horses that would be imported under this proposed rule would otherwise have been imported under the current regulations. In those few cases where the increased competition would have some impact, we believe the impact would be largely offset by increased purses due to the participation of the foreign horses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that his action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), we have submitted the information collection provisions that are included in this proposed rule for approval to the Office of Management and Budget (OBM). Please send written comments concerning any information collection to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Submit a duplicate copy of your comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 wold continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.1 would be amended by adding a definition of "Animal and Plant Health Inspection Service" and "APHIS representative" to read as follows:

§ 92.1 Definitions

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

* * * * *

APHIS representative. A veteranarian or other individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

* * * * *

3. In § 92.2, paragraph (i)(2)(vii) would be redesignated as (i)(2)(viii), and a new paragraph (i)(2)(vii) would be added to read as follows:

§ 92. General prohibitions; exceptions.

* * * * *

(i) * * *

(2) * * *

(vii) Horses over 731 days of age imported into the United States for no more than 60 days to compete in specified events if the following conditions are met:

(A) The horse remains in the United States for no more than 60 days following the horse's release from the port of entry and, while in the United States, is moved according to the itinerary and methods of transport specified in the import permit provided for in § 92.4(a) of this part;

(B) While the horse is in the United States, the following conditions are met:

(*1*) Except when in transit, the horse is kept on a premises approved, orally or in writing, by an APHIS representative as being (*i*) not a breeding premises, and (*ii*) one that is or that contains a building in which the horse can be kept in a stall that is separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. If approval is oral, it will be confirmed in writing by the Administrator as soon as circumstances permit.

(*2*) While at the premises at which the horse competes, the horse is monitored by an APHIS representative to ensure that the provisions of paragraphs (i)(2)(vii)(B) (*1*), (*4*), and (*5*) of this section are met.

(*3*) While in transit, the horse is moved in either an aircraft or a sealed van or trailer; and, if the horse is moved in a sealed van or trailer, the seal is broken only by an APHIS representative at the horse's destination, except in situations where the horse's life is in danger;

(*4*) Except when actually competing or being exercised, the horse is kept in a stall that is separated from other stalls containing horses either by an empty stall, an open area, or a solid wall that is at least 8 feet high.

(*5*) The horse is not used for breeding purposes (including artificial insemination), does not have any other sexual contact with other horses, and does not undergo any genital examinations;

(*6*) After the horse is transported anywhere in the United States, any vehicle in which the horse is transported is cleaned and disinfected in the presence of an APHIS representative, according to the procedures specified in §§ 71.7 through 71.12 of this chapter, before any other horse is transported in the vehicle;

(*7*) the cleaning and disinfection specified in paragraph (i)(2)(vii)(B)(*6*) of this section is completed before the vehicle is moved from the place where the horse is unloaded (however, in those cases where the facilities or equipment for cleaning and disinfection are inadequate at the place where the horse is unloaded, the Administrator may allow the vehicle to be moved to another location for cleaning and disinfection, when the move will not pose a disease risk to other horses in the United States); and

(*8*) The owner or importer of the horse complies with any other provisions of this part applicable to him or her.

(C) All costs associated with the supervision and maintenace of the horse while in the United States will be borne by the horse's owner or importer in accordance with the provisions of paragraph (i)(2)(vii)(G) of this section.

(D) If the owner of importer wishes to change the horse's itinerary or the methods by which the horse is transported from that which he or she specified in the application for the import permit, the owner of importer must make the request for change in writing to the Administrator. Requests should be sent to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. The change in itinerary or method of transport may not be made without the written approval of the Administrator, who may grant the request for change when he or she determines that granting the request will not endanger other horses in the United States and that sufficient APHIS personnel are available to provide the services required by the owner or importer.

(E) The Administrator may cancel, orally or in writing, the import permit provided for under § 92.4 of this part, whenever the Administrator finds that the owner or importer of the horse has not complied with the provisions of paragraphs (i)(2)(vii) (A), (B), (C), or (D) of this section or any conditions imposed under those provisions. If the cancellation is oral, the Administrator will confirm in writing the decision and the reasons for the decision, as soon as circumstances permit. Any person whose import permit is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving oral or written notification of the cancellation, whichever is earlier. If the appeal is sent by mail, it must be postmarked within 10 days after the owner or importer receives oral or written notification of the cancellation, whichever is earlier. The appeal must include all of the facts and reasons upon which the person relies to show that the import permit was wrongfully cancelled. The administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the

hearing will be adopted by the Administrator.

(F) Except in those cases where an appeal is in process, any person whose import permit is cancelled must move the horse identifed in the import permit out of the United States within 10 days after receiving oral or written notification of cancellation, whichever is earlier. The horse is not permitted to enter competition, from the date the owner or importer receives the notice of cancellation until removal of the horse from the United States or until resolution of an appeal in favor of the owner or importer. Except when being exercised, the horse must be kept, at the expense of the owner or importer, in a stall either on the premises at which the horse is located when the notice of cancellation is received, or, of the horse is in transit when the notice of cancellation is received, on the premises at which it is next scheduled to compete according to the import permit. The stall in which the horse is kept must be separated form the other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. In cases where the owners of the above specified premises do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the above specified premises will pose a disease risk to horses in the United States, the horse must be kept, at the expense of the owner of importer, on an alternative premises approved by the Administrator.

(G) A horse imported under paragraph (i)(2)(vii) of this section must be maintained in the United States in accordance with a trust fund agreement executed by the horse's owner or importer. In accordance with the trust fund agreement for the importation of a horse under paragraph (i)(2)(vii) of this section, the horse's owner or importer must deposit with APHIS an amount equal to the estimated cost, including gravel, salary, subsistence, administrative expenses, and incidental expenses, as determined by APHIS, for an APHIS representative *(1)* to inspect the premises at which the horse will compete; *(2)* to conduct the monitoring required by paragraph (i)(2)(vii)(B)*(2)* of this section; and (3) to supervise the cleaning and disinfection required by paragarph (i)(2)(vii)(B)*(6)* of this section. The amounts will be determined as explained in paragraph (i)(2)(vii)(H) of this section. If, during the horse's stay in the United States, APHIS determines that the amount deposited will be insufficient to cover services APHIS is scheduled to provide during the remainder of the horse's stay, APHIS will issue to the horse's owner or importer a bill to restore the deposited amount to a level sufficient to cover the estimated cost to APHIS for the remainder of the horse's stay in the United States. The horse's owner or importer must pay the amount billed within 14 days after receiving the bill. If the bill is not paid within 14 days after its receipt, APHIS will cease to perform the services provides for in paragraph (i)(2)(vii)(B) of this section, until the bill is paid. The Administrator will inform the owner or importer of the cessation of services orally or in writing. If the notice of cessation is oral, the Administrator will confirm, in writing, the notice of cessation and the reason for the cessation of services as soon as circumstances permit. In such a case, the horse must be kept, at the expense of the owner or importer and until the bill is paid, in a stall either on the premises at which the horse is located when the notice of cessation of services is received, or, if the horse is in transit when the notice of cessation of services is received, on the premises at which it is next scheduled to compete according to the import permit. The stall in which the horse is kept must be separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. In cases where the owners of the above specified premises do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the above specified premises will pose a disease risk to other horses in the United States, the horse must be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator. Until the bill is paid, the horse is not permitted to enter competition. Any amount deposited in excess of the costs to APHIS to provide the required services will be refunded to the horse's owner or importer within 30 days after the horse is moved from the United States.

(H) The cost for APHIS to conduct the inspection and supervision required by paragraph (i)(2)(vii)(B) of this section is based on the following factors:

(1) Number of hourse needed for an APHIS representative to conduct the required inspection and monitoring;

(2) For services provided during regular business hours (8 a.m. to 4:30 p.m., Monday through Saturday, except holidays), the average salary, per hour, for an APHIS representative;

(3) For services provided outside regular business hours, the applicable rate for overtime, night differential, or Sunday or holiday pay, based on the average salary, per hour, for an APHIS representative;

(4) Number of miles from the premises at which the horse competes to the APHIS office or facility that is monitoring the activities;

(5) Government rate per mile for automobile travel or, if appropriate, cost of other means of transportation between the premises at which the horse competes and the APHIS office or facility;

(6) Number of trips between the premises at which the horse competes and the APHIS office or facility that APHIS representatives are required to make in order to conduct the required inspection and monitoring;

(7) Number of days the APHIS representative conducting the inspection and monitoring must be in "travel status;"

(8) Applicable government per diem rate; and

(9) Cost of related administrative support services.

* * * * *

4. In § 92.4, paragraph (a)(1) would be redesignated as paragraph (a)(1)(i), and a new paragraph (a)(1)(ii) would be added to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes;[1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(1) * * *

(ii) Horses intended for importation under § 92.2(i)(2)(vii) of this part must meet the permit requirements of paragraph (a)(1)(i) of this section.

Additionally, for horses intended for importation under § 92.2(i)(2)(vii) of this part, the horse's owner or importer must include the following information with the application for permit that is required by paragraph (a)(1)(i) of this section:

(A) That the application is being made for a horse that will remain in the United States for no more than 60 days;

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[1] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (Part 17, Title 50, Code of Federal Regulations) and the regulations issued by the U.S. Department of Health and Human Services (Subpart J–1 of Part 71, Title 42, Code of Federal Regulations) should be consulted.

(B) The names, dates, and locations of the events in which the horse will compete while in the United States;

(C) The names and locations of the premises on which the horse will be kept while in the United States, and the dates the horse will be kept on each premises; and

(D) The methods and routes by which the horse will be transported while in the United States.

* * * * *

§ 92.17 [Amended]

5. Section 92.17 would be amended by removing the phrase in the first sentence that currently reads "and, except as provided in § 92.2(i)(2) (i), (ii), (iii), (iv), (v), and (vi), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;" and adding in its place a phrase that reads "and, except as provided in § 92.2(i)(2) (i) through (viii), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;".

Done in Washington, DC, this 13th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-29012 Filed 12-15-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-158-AD]

Airworthiness Directives; Boeing Model 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 727 and 737 series airplanes, which would require modifications to include the use of Engine Pressure Ratio (EPR) information in the logic which enables the Takeoff Configuration Warning System (TOCWS). This proposal is prompted by the existence, in unmodified airplanes of these models, of a potential for the occurrence of nuisance takeoff warnings during taxi operations conducted with all engines operating, and with the flaps intentionally retracted. This has resulted in reports that to avoid nuisance warnings, flight crews have occassionally deactivated the TOCWS. This condition, if not corrected, deprives the flight crew of a valuable backup that helps to assure that takeoff is initiated with the airplane in a proper takeoff configuration.

DATES: Comments must be received no later than February 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-158-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Victor F. Sokoloski, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1937. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-158-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Takeoff Configuration Warning System (TOCWS) originally installed on many Boeing Model 727 and 737 series airplanes is enabled when a particular throttle lever, or levers, are advanced beyond a specific lever angle. Subsequent changes to the design to ensure that the TOCWS will function under conditions of engine intermix, reduced thrust takeoff, low ambient temperatures, etc., has resulted in establishing the lever angle settings such that the system is subject to nuisance activation when normal taxi operations are performed with all engines operating and with the flaps intentionally retracted. A modification to add the use of Engine Pressure Ratio (EPR) information in the logic which enables the TOCWS was developed by Boeing to decrease this sensitivity.

Taxiing with the flaps retracted is reported to be a common procedure for today's airlines. The potential for nuisance configuration warnings, the resulting crew distraction, the interference with normal cockpit and/or radio communications, and the corresponding lack of credibility accorded by pilots to the TOCWS due to such nuisance aural warnings, is significant. As a means to alleviate nuisance warnings due to taxiing while not in a takeoff configuration, it has been reported that pilots have resorted to deactivating circuit breakers. A recent accident involving a transport category airplane may have been caused by the airplane not being in a proper configuration for takeoff. The TOCWS circuit breaker was found to be unpowered. (The assurance of continued electrical power supply to the TOCWS will be the subject of a separate rulemaking action). Deactivation of the TOCWS deprives the flight crew of a valuable backup that helps to assure that takeoff is initiated with the airplane in a proper takeoff configuration.

The FAA has reviewed and approved Boeing Service Bulletins 727-31-29, 727-31-33, 727-31-35, and 727-31-36 (for Model 727 airplanes); and Boeing Service Bulletin 737-31-1033, Revision 1 (for Model 737 airplanes); which describe modification procedures necessary to add Engine Pressure Ratio (EPR) information to the logic that enables operation of the takeoff configuration warning systems installed

on certain Boeing Model 727 and 737 series airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modifications in accordance with the service bulletins previously mentioned. The FAA specifically invites operators and/or air crews to provide comments related to experiences of nuisance/false warnings, and the effect of those warnings.

There are approximately 1,197 Model 727 series airplanes and 479 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 819 Model 727 series airplanes of U.S. registry would be affected by this AD, that it would take approximately 78 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated to be $5,000 per airplane. It is estimated that 189 Model 737 series airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated to be $3,400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,655,760.

This Notice is one of several rulemaking actions being taken to improve takeoff warning system reliability and reduced nuisance warnings. Other related actions include an NPRM, Docket 88-NM-142-AD, issued November 23, 1988, which proposes to include a power continuity warning light; and AD 88-22-09, Amendment 39-6054 (53 FR 41313; October 21, 1988), which requires periodic takeoff warning system maintenance checks.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 or 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 and 737 series airplanes, not equipped with a system incorporating Engine Pressure Ratio logic for activation of the takeoff warning system. Compliance required within the next 18 months following the effective date of this AD, unless previously accomplished.

To prevent the occurrence of takeoff configuration nuisance warnings when taxi operations are conducted with the flaps intentionally retracted, accomplish the following:

A. Modify the logic which enables the Takeoff Configuration Warning Systems (TOCWS) installed on Boeing Model 727 series airplanes, in accordance with Boeing Service Bulletin 727-31-29, dated January 26, 1979; 727-31-33, dated November 26, 1980; 727-31-35, dated January 26, 1979; or 727-31-36 dated January 26, 1979, as appropriate.

B. Modify the logic which enable the TOCWS installed on Boeing Model 737 series airplanes, in accordance with Boeing Service Bulletin 737-31-1033, Revision 1, dated January 14, 1983.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-28903 Filed 12-15-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-117-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires inspection for fatigue cracks in certain forward cargo compartment body frames, and repair, if necessary. The existing AD also includes an optional modification which, if incorporated, would terminate the repetitive inspections. Subsequent reassessment has shown that repetitive inspections of the modified structure are required to maintain safety. Additional service experience also indicates that the area requiring inspections must be expanded, and the applicability of the AD must be increased to include later airplanes on which the original modification was incorporated in production. This action would supersede the existing AD to expand the applicability, expand the areas of inspection, and require continued inspections of modified frames to maintain safety. Failure to detect failed fuselage frames may result in sudden loss of cabin pressure and structural failure.

DATE: Comments must be received no later than February 10, 1989.

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ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-117-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-117-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On July 1, 1981, FAA issued AD 81-13-08, Amendment 39-4141 (46 FR 32228; June 22, 1981), to require inspection of certain forward cargo compartment frames for fatigue cracks, and repair, if necessary, and to provide instructions for terminating these inspections. That action was prompted by numerous reports of body frame cracks.

Since issuance of that AD, there have been reports of cracking on four airplanes in areas of the frame not currently required to be inspected by the AD. In addition, it has been determined that this area is structurally significant, and ongoing repetitive inspections are required after repair or modification to maintain the capability of the structure to carry limit load. Failure to detect failed fuselage frames could result in sudden loss of cabin pressure and structural failure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-53A1027, Revision 3, dated December 2, 1983, which expands the areas of inspection and the effectivity to include airplanes that had the original modification incorporated in production. In addition, the service bulletin recommends ongoing inspections for airplanes modified therein.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 81-13-08 to expand the applicability to include later airplanes on which the original modification was incorporated in production. While maintaining the inspection and repair requirements of the existing AD, the proposed AD would expand the areas of inspection and delete terminating action, in accordance with the service bulletin previously mentioned.

There are approximately 967 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 301 airplanes of U.S. registry would be affected by this AD, that it would take approximately 80 hours per airplane to accomplish the required actions, and that the average labor cost would be $40 per hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $963,200.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 81-13-08, Amendment 39-4114 (46 FR 32228; June 22, 1981), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Alert Service Bulleting 737-53A1027, Revision 3, dated December 2, 1983, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the forward lower cargo compartment frames, accomplish the following:

A. Except as provided by paragraph B., below, accomplish one of the following prior to the accumulation of 29,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later:

1. a. Unless previously accomplished within the last 200 landings, conduct a close external visual inspection of the fuselage skin for cracks in the region of the frames specified by Boeing Service Bulletin 737-53A1027, Revision 3, dated December 2, 1983. Reinspect at intervals not to exceed 300 landings until the frames are inspected in accordance with paragraph A.1.b., below. If crack are found, prior to further flight, repair fuselage skin in accordance with an FAA-approved method and visually inspect the fuselage frames specified by the aforementioned service bulletin for cracks.

Frames found cracked must be repaired prior to further flight, in accordance with the service bulletin.

b. Within 2,400 landings after the effective date of this AD and thereafter at intervals not to exceed 9,000 landings, conduct a visual inspection for cracks of the fuselage frames specificed in paragraph A.1.a., above. If cracks are found, repair fuselage frames, prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1027, Revision 3, dated December 2, 1983.

2. Unless previously accomplished within the last 1,900 landings, conduct an X-ray inspection for cracks of the fuselage frames specified in paragraph A.1.a., above, in accordance with procedures described in the Boeing Model 737 Nondestructive Test Manual D6–37239, Part 2, Subject 53–10–16. Reinspect at intervals not to exceed 2,000 landings. If cracks are found, repair fuselage frames prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1027, Revision 3, dated December 2, 1983.

3. Unless previously accomplished within the last 8,900 landings, perform an internal visal inspection for cracks of the fuselage frames specified in paragraph A.1.a., above. Reinspect at intervals not to exceed 9,000 landings. If cracks are found, repair fuselage frames prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1027, Revision, 3, dated December 2, 1983.

4. Unless previously accomplished within the last 8,900 landings, conduct a low frequency eddy current inspection for cracks of the fuselage frames specified in paragraph A.1.a., above, in accordance with procedures described in Boeing Model 737 Nondestructive Test Manual D6–37239, Part 6, Subject 53–10–01. Reinspect at intervals not to exceed 9,000 landings. If cracks are found, repair fuselage frames prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1027, Revision 3, dated December 2, 1983.

B. For those airplanes that have been modified in accordance with Part III of Boeing Alert Service Bulletin 737–53A1027, Revision 3, dated December 2, 1983, or the terminating modification described in AD 81–13–08: Prior to the accumulation of 15,600 landings after modification or within the next 1,000 landings after the effective date of this AD, whichever occurs later, perform the inspection described in paragraph A.3., above, and repeat thereafter at intervals not to exceed 15,600 landings. As an alternate to this repetitive inspection, the external inspection described in paragraph A.1.a., above, may be performed at intervals not to exceed 6,600 landings. If cracks are found, repair fuselage skins and frames prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1027, Revision 3, dated December 2, 1983, or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. These repairs do not constitute terminating action and are subject to the repetitive inspection requirements of this paragraph.

C. For the purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 PSI.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 5, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28904 Filed 12–15–88; 8:45 am]

BILLING CODE 4910–13–M

VETERANS ADMINISTRATION

38 CFR Part 3

Claims Based on Exposure to Ionizing Radiation and Herbicides Containing Dioxon, Correction

AGENCY: Veterans Administration.

ACTION: Correction to proposed rule.

SUMMARY: On pages 48551 through 48552 of the **Federal Register** of December 1, 1988, the Veterans Administration (VA) published a proposed rule to amend its adjudication regulations concerning diseases considered to be "radiogenic." In § 3.311b(a)(1) an error was inadvertently made which substituted the word "and" for the word "or." This notice corrects the error; the proper language of § 3.311(a)(1) is set forth below.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION:

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Dated: December 12, 1988.

C.G. Verenes,

Acting Chief, Directives Management Division.

PART 3—[AMENDED]

In 38 CFR Part 3, § 3.311b(a)(1) is proposed to be amended by revising the first sentence to read as follows:

§ 3.311b Claims based on exposure to ionizing radiation.

(a) * * *

(1) *Dose assessment.* In all claims in which it is established that a radiogenic disease, listed in paragraph (b)(2) of this section, first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in § 3.307 or § 3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. * * *

(Authority: 38 U.S.C. 210(c))

[FR Doc. 88–28911 Filed 12–15–88; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

Diseases Subject to Presumptive Service Connection, and Payment of the Special Allowance

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend two regulations to conform to recently enacted legislation. The chronic diseases subject to presumption of service connection are expanded to include lupus erythematosus, systemic. For certain prisoners of war (POWs), the diseases subject to presumption of service connection are expanded to include certain peripheral neuropathies, irritable bowel syndrome and peptic ulcer disease. For radiation-exposed veterans, presumptions of service connection are being established for certain cancers. In addition, the prohibition against payments under the Restored Entitlement Program for Survivors (REPS) is removed for those beneficiaries who, although lacking social security coverage, qualify for VA's benefit payments in lieu thereof under 38 U.S.C. 412(a). The intended

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effect of these changes is to expand eligibility for certain claimants in accordance with the law.

DATES: Comments must be received on or before January 17, 1989. Comments will be available for public inspection until January 25, 1989. These changes are proposed to be effective May 20, 1988, the date of enactment of Pub. L. 100–322, except that the provisions of 38 CFR 3.309(d) are proposed to be effective May 1, 1988, in accordance with Pub. L. 100–321.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The regulation citing diseases subject to presumption of service connection is being expanded to include "lupus erythematosus, systemic" among those listed in 38 CFR 3.309(a). This means that lupus erythematosus, systemic, will be presumed service-connected if it becomes manifest to a degree at least 10 percent disabling within a year following release from military service.

For POWs interned 30 days or more, we are proposing to add peripheral neuropathy (not directly related to infectious causes), irritable bowel syndrome and peptic ulcer disease to the diseases listed in 38 CFR 3.309(c). The newly added diseases will be presumed service connected if manifest to a degree at least 10 percent disabling any time following release from military service.

We are also proposing to add a new paragraph (d) to 38 CFR 3.309 to implement the recently enacted presumptions of service connection for specific diseases arising in veterans who participated in certain activities while on active duty that may have exposed them to some risk from ionizing radiation. Paragraph (d) is essentially a restatement of the provisions of section 2(a) of Pub. L. 100–321 including the definitions in paragraph (d)(4) of the terms "radiation-exposed veteran" and "radiation-risk activity". To further define the groups who participated in radiation-risk activities we are proposing to add definitions of the terms "atmospheric detonation," "onsite participation" and "occupation of Hiroshima or Nagasaki, Japan, by United States forces". Occupation forces are defined as including those military units that were officially assigned to perform the duties of occupation in and around the cities of Hiroshima and Nagasaki. Onsite participation is defined to include individuals such as decontamination personnel who were not actually onsite during the official operational period of a nuclear test, but who may have been otherwise exposed to ionizing radiation resulting from such tests. Atmospheric detonations are defined as including underwater detonations to prevent the inadvertent exclusion of some individuals based on a technicality.

In order to determine which American POWs in Japan had an opportunity for ionizing radiation exposure comparable to the occupation forces, we obtained information from the Defense Nuclear Agency (DNA) on the exposure received by the occupation forces at Hiroshima and Nagasaki. That information indication that calculations based on a "worst case" scenario yielded a dose of less than one rem and that the average dose for the occupation forces in either city was probably very close to zero.

In order to determine which POWs interned in Japan on or after August 6, 1945, may have received comparably low exposure doses, additional information was requested from DNA regarding initial neutron and gamma radiation from the detonations as well as information on fallout/rainout distances and patterns.

The information received indicated that the initial gamma and neutron radiation at the two POW camps closest to Hiroshima and Nagasaki were negligible. Also provided was a map depicting the fallout/rainout pattern from the first bomb as extending for about 75 miles to the northwest of Hiroshima and from the second bomb as extending for about 150 miles to the east of Nagasaki. The information indicated that no POW camps were directly in the fallout/rainout paths and the closest POW camp to the fallout/rainout path, the one at Kumamoto, Kyushu, would have received a dose of only 180 millirem on a worst case basis.

It is clear from the available information that the fallout/rainout path from neither bomb can be delineated with absolute accuracy. Likewise, it is impossible to plot the movement of POWs in and around both cities subsequent to the bombings with any degree of certainty. In order to insure that all POWs who may possibly have had a radiation exposure comparable to the occupation forces are included, we believe that all POWs interned within a 75 mile radius of Hiroshima or within a 150 mile radius of Nagasaki should be considered as having participated in a radiation-risk activity. Similarly, those POWs whose official post-internment duties satisfied the definition of "occupation of Hiroshima or Nagasaki, Japan, by United States forces" and those POWs who were repatriated through the port of Nagasaki will be considered to have participated in a radiation-risk activity.

The special allowance payable under REPS will be available to an additional category of beneficiary. The additional beneficiaries are those eligible for VA's service-connected death benefits based on death on active duty prior to August 13, 1981, or death due to service-connected disability acquired before that date, provided the beneficiary is also entitled under 38 U.S.C. 412(a). VA payments under section 412(a) are in lieu of social security benefits. They are available only to survivors not qualifying for social security solely because the deceased veteran, upon whose death claim was made, was not fully and currently insured for social security purposes at the time of death.

The Administrator hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. The reason for this certification is that these proposed regulations would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The VA finds that good cause exists for making the proposed regulations retroactively effective in accordance with the laws they implement. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of benefits to a veteran who is otherwise entitled to them.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 25, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, *Adjudication,* is proposed to be amended as follows:

PART 3—[AMENDED]

§ 3.309 [Amended]

1. In § 3.309(b), in the list of diseases, remove the word "Filiariasis" and add, in its place, the word "Filariasis".

2. In § 3.309, paragraphs (a) and (c) are amended by adding to the list of diseases contained in those paragraphs and paragraph (d) is added, to read as follows:

§ 3.309 Disease subject to presumptive service connection.

(a) * * *

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.

Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)

Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocartitis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic. * * *

* * * * * *

(c) * * *

Avitaminosis.
Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthiasis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Psychosis.
Any of the anxiety states.
Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.

Post-traumatic osteroarthritis.
Irritable bowel syndrome.
Peptic ulcer disease.
Peripheral neuropathy except where directly related to infectious causes.

(Authority: 38 U.S.C. 312)

(d) *Diseases specific to radiation-exposed veterans.* (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as defined in paragraph (d)(4) of this section to a degree of 10 percent or more within the presumptive period specified in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of § 3.307 of this part are also satisfied.

(2) The diseases referred to in paragraph (d)(1) of this section are the following:

(i) Leukemia (other than chronic lymphocytic leukemia).
(ii) Cancer of the thyroid.
(iii) Cancer of the breast.
(iv) Cancer of the pharynx.
(v) Cancer of the esophagus.
(vi) Cancer of the stomach.
(vii) Cancer of the small intestine.
(viii) Cancer of the pancreas.
(ix) Multiple myeloma.
(x) Lymphomas (except Hodgkin's disease).
(xi) Cancer of the bile ducts.
(xii) Cancer of the gall bladder.
(xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

(3) The presumptive period referred to in paragraph (d)(1) of this section is:

(i) In the case of leukemia (other than chronic lymphocytic leukemia), the 30-year period beginning on the last date on which the veteran participated in a radiation-risk activity.

(ii) In the case of any other disease listed in paragraph (d)(2) of this section, the 40-year period beginning on the last date on which the veteran participated in a radiation-risk activity.

(4) For purposes of this section:

(i) The term "radiation-exposed veteran" means a veteran who, while serving on active duty, participated in a radiation-risk activity.

(ii) The term "radiation-risk activity" means:

(A) Onsite participation in a test involving the atmospheric detonation of a nuclear device.

(B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(C) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) The term "atmospheric detonation" includes underwater nuclear detonations.

(iv) The term "onsite participation" means:

(A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.

(B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during nuclear test.

(C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951 through July 1, 1952, August 7, 1956 through August 7, 1957 or November 1, 1958 through April 30, 1959.

(D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.

(v) The term "operational period" means:

(A) For Operation *Trinity* the period July 16, 1945 through August 6, 1945.

(B) For Operation *Crossroads* the period July 1, 1946 through August 31, 1946.

(C) For Operation *Sandstone* the period April 15, 1948 through May 20, 1948.

(D) For Operation *Ranger* the period January 27, 1951 through February 6, 1951.

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(E) For Operation *Greenhouse* the period April 8, 1951 through June 20, 1951.

(F) For Operation *Buster-Jangle* the period October 22, 1951 through December 20, 1951.

(G) For Operation *Tumbler-Snapper* the period April 1, 1952 through June 20, 1952.

(H) For Operation *Ivy* the period November 1, 1952 through December 31, 1952.

(I) For Operation *Upshot-Knothole* the period March 17, 1953 through June 20, 1952.

(J) For Operation *Castle* the period March 1, 1954 through May 31, 1954.

(K) For Operation *Teapot* the period February 18, 1955 through June 10, 1955.

(L) For Operation *Wigwam* the period May 14, 1955 through May 15, 1955.

(M) For Operation *Redwing* the period May 5, 1956 through August 6, 1956.

(N) For Operation *Plumbbob* the period May 28, 1957 through October 22, 1957.

(O) For Operation *Hardtack I* the period April 28, 1958 through October 31, 1958.

(P) For Operation *Argus* the period August 27, 1958 through September 10, 1958.

(Q) For Operation *Hardtack II* the period September 19, 1958 through October 31, 1958.

(R) For Operation *Dominic I* the period April 25, 1962 through December 31, 1962.

(S) For Operation *Dominic II/ Plowshare* the period July 6, 1962 through August 15, 1962.

(vi) The term "occupation of Hiroshima or Nagasaki, Japan, by United States forces" means official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, Japan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946, were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or served immediately following internment in a capacity which satisfies the definition in paragraph (d)(4)(vi) of this section, or were repatriated through the port of Nagasaki.

(Authority: 38 U.S.C. 312)

3. In § 3.812, paragraph (c)(3) is removed and old paragraph (c)(4) is redesignated as new paragraph (c)(3) to read as follows:

§ 3.812 Special allowance payable under section 156 of Pub. L. 97-377.

* * * * *

(c) * * *

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The Philippine Scouts under section 14, Pub. L. 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

* * * * *

[FR Doc. 88-28928 Filed 12-15-88; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3493-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Fisher Guide, formerly Fisher Body Division of General Motors Corporation, Flint, Michigan, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned wastes, once they are disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until January 30, 1989. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by January 3, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-FGDP-FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and States Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m to 4:00 p.m, Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical

information concerning this notice, contact Scott Maid, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Fisher Guide's petitioned wastes on human health and the environment if the wastes are removed from RCRA Subtitle C control. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Fisher Guide is seeking a delisting for wastes managed on site, ground-water monitoring data collected from the area where the petitioned wastes are contained provide useful additional information in determining whether hazardous constituents have migrated to the underlying ground water. Ground-water monitoring data collected from Fisher Guide's monitoring wells help characterize the potential impact (if any) of the disposal of Fisher Guide's wastes on human health and the environment.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

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II. Disposition of Delisting Petition

A. General Motors/Fisher Guide, Flint, Michigan

1. Petition for Exclusion

Fisher Guide, formerly Fisher Body Division of General Motors Corporation, located in Flint, Michigan, is engaged in the Fabrication and Production of automotive hardware such as door hinges, seat belts, headliners, catalytic converter covers, and other interior and exterior parts. Fisher Guide petitioned the Agency to exclude its wastewater treatment sludges in its settling lagoon system and drying beds, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Fisher Guide petitioned to exclude its wastes because it does not believe that the wastes meet the criteria of the listing. Fisher Guide claims that its lagoon and drying bed sludges are not hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile form. Fisher Guide also believes that these wastes are not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See Section 222 of the Amendments, 42 USC 6921(f), and 40 CFR 260.22(d) (2)-(4). Today's proposal to deny this petition for delisting is the result of the Agency's evaluation of Fisher Guide's petition.

2. Background

On May 18, 1982, Fisher Guide initially petitioned the Agency to exclude its wastes. Fisher Guide than altered its manufacturing process in 1984. Additional information was provided after the facility changed its process. In support of its petition, Fisher Guide submitted (1) detailed descriptions of its manufacturing and treatment processes, including schematic diagrams; (2) results from total constituent and EP analyses of the wastes for the EP toxic metals, cyanide, and nickel; (3) analyses of the total oil and grease content of the wastes; (4) results from characteristics testing for ignitability, corrosivity, and reactivity; (5) a list of raw materials (and Material Safety Data Sheets for all tradename materials) used in the manufacturing processes; and (6) ground-water monitoring data for the petitioned units.

Fisher Guide fabricates and produces automotive hardware. The manufacturing processes currently contributing to Fisher Guide's wastewater treatment plant include zinc electroplating, steam cleaning, battery charging, parts finishing and washing, die casting and washing, heat treatment, powerhouse operations, and catalytic converter press area operations. Until 1984, chrome, copper, and nickle plating, phosphate coating, and painting processes discharged wastes to the wastewater treatment plant for treatment on a batch basis. Wastes presently generated at the facility are mixed and treated with acid and sodium matabisulfite to facilitate reduction of hexavalent chromium. Lime and polymers are added and the treated wastewater is discharged to a lagoon settling system (consisting of three lagoons) to precipitate metal hydroxides. Settled metal hydroxide sludge is removed approximately once a year by gravity flow to one of three sludge drying beds (western, middle, and eastern) for dewatering. The sludges contained in the lagoon system and the three drying beds are the subject of this petition.

For lagoons and drying beds such as Fisher Guide's, petitioners are normally requested to divide each unit into four quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples per lagoon or bed. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

Fisher Guide's original delisting petition included data on nine samples collected from the drying beds in 1981 and 1982. No information was provided concerning the sampling methodology used in 1981. In 1982, the three drying beds were divided in half and four core samples were collected in each half and composited into one sample, yielding a total of six samples. Fisher Guide considered those samples to be representative of the sludge on the drying beds at that time.

Fisher Guide changed its manufacturing processes in 1984 and submitted data for 44 composite sludge samples collected in August, 1984. Fisher Guide divided each lagoon and drying bed into 7,500 square foot sections. A composite sample of five random core samples was collected from each 7,500 square foot section of the lagoons and drying beds. Ten composite samples were collected from the primary lagoon, six from the secondary lagoon, and twelve from the final lagoon. Eight composite sample were collected from the western drying bed and four each from the middle and eastern beds. Fisher Guide claims that the 44 composite samples taken in August, 1984 are representative of variations in constituent concentrations based on the sample collection methodology which accounted for spatial concentration variation in the lagoons and drying beds. Also, the petitioner claims that the sampling effort accounted for any temporal variation because sludge accumulates in the lagoons for one year and has been accumulating on the drying deds for over 10 years.

The 1981 composite samples of the drying bed sludges were analyzed for extraction procedure (EP) leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals and cyanide. The 1982 composite samples of the drying bed sludges were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of cadmium, chromium, nickel, and cyanide and the extraction procedure (EP) leachate concentrations of the EP toxic metals, nickel, and cyanide. The 1982 composites of the drying bed sludges also were analyzed for the characteristics of ignitability, corrosivity, and reactivity.

The 1984 composite samples of the lagoon sludges and the drying bed sludges were analyzed for total constituent concentrations and the extraction procedure (EP) leachate concentrations of the EP toxic metals, nickel, and cyanide. The 1984 composites also were analyzed for oil and grease content and the characteristics of ignitability, corrosivity, and reactivity.

3. Agency Analysis

Fisher Guide used SW-846 Methods 7060 through 7760 to quantify the total

constituent concentrations of the EP toxic metals and nickel in the samples collected from the lagoons and drying beds. Method 9010 was used to quantify the total cyanide content of the samples. In addition to these methods, Method 1310 was used to determine the leachable concentrations of the inorganic constituents in the sludge samples. Total constituent and EP toxicity analyses of the 1984 lagoon sludges for the hazardous inorganic constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) LAGOON SLUDGES—1984 SAMPLES

Constituents	Total constituent analyses			EP leachate analyses		
	Prim. lagoon	Sec. lagoon	Final lagoon	Prim. lagoon	Sec. lagoon	Final lagoon
Arsenic	2.0	2.3	1.0	ND	ND	ND
Barium	140	80	120	2.4	2.2	2.4
Cadmium	[1] ND	[1] ND	[1] ND	0.03	0.02	0.02
Chromium	6,700	4,600	3,940	0.41	0.16	0.30
Lead	149	40	34	0.35	0.80	0.27
Mercury	[1] ND	[1] ND	[1] ND	[1] ND	0.002	[1] ND
Nickel	4,320	3,400	3,380	64	40	45
Selenium	[1] ND	5	[1] ND	[1] ND	[1] ND	[1] ND
Silver	[1] ND	[1] ND	[1] ND	0.02	[1] ND	0.01
Cyanide (total)	45	39	38	0.02	0.009	0.01

[1] *ND:* Not Detected. Denotes total concentations below the following detection limits: Cadmium and silver—2.0; mercury and selenium—0.5 ppm. Denotes leachable concentrations below the following detection limits. arsenic and selenium—0.005; mercury—0.001; and silver—0.01 ppm.

The detection limits in Table 1 (and Tables 2 and 3 that follow) represent the lowest concentrations quantifiable by Fisher Guide, when using the appropriate analytical methods to analyze the petitioned wastes. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Total constituent and EP toxicity analyses of the drying bed sludges for the hazardous inorganic constituents, as reported for 1982 and 1982 samples, revealed the maximum concentrations reported in Table 2. (The Agency's basis for evaluating the 1981 and 1982 samples is discussed in Section 4 of this notice.)

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) DRYING BED SLUDGES—1981 AND 1982 SAMPLES

Constituents	Total constituent analyses			EP leachate analyses		
	West	Middle	East	West	Middle	East
Arsenic	[1] NT	[1] NT	[1] NT	0.005	0.031	ND
Barium	[1] NT	[1] NT	[1] NT	1.5	1.4	1.7
Cadmium	2	2	2	0.06	0.04	0.05
Chromium	14,500	18,100	11,500	0.11	0.15	0.17
Lead	[1] NT	[1] NT	[1] NT	0.52	0.41	0.34
Mercury	[1] NT	[1] NT	[1] NT	[2] ND	[2] ND	[2] ND
Nickel	5,000	9,300	5,070	16.2	3.70	7.0
Selenium	[1] NT	[1] NT	[1] NT	[2] ND	0.006	[2] ND
Silver	[1] NT	[1] NT	[1] NT	0.03	0.02	0.02
Cyanide (total)	19	35	18.1	[2] ND	0.07	[2] ND

[1] *NT:* Not Tested.
[2] *ND:* Not Detected. Denotes leachable concentrations below the following detection limits: arsenic and selenium—0.005; mercury—0.001; and cyanide—0.02 ppm.

Total constitutent and EP toxicity analyses of the drying bed sludges for the hazardous inorganic constituents, as reported for 1984 samples, revealed the maximum concentrations reported in Table 3.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) DRYING BED SLUDGES—1984 SAMPLES

Constituents	Total constituent analyses			EP leachate analyses		
	West	Middle	East	West	Middle	East
Arsenic	1.6	1.5	2.9	ND	ND	ND
Barium	320	280	310	0.9	0.1	0.9
Cadmium	8	4	4	0.04	0.05	0.04
Chromium	15,300	19,700	20,000	0.20	0.11	0.19
Lead	120	170	180	0.41	0.34	0.40
Mercury	[1] ND	[1] ND	[1] ND	0.002	[1] ND	[1] ND
Nickel	7,350	10,000	11,000	28	23	18
Selenium	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND	[1] ND
Silver	4	2	6	0.03	0.02	0.02

TABLE 3.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) DRYING BED SLUDGES—1984 SAMPLES—Continued

Constituents	Total constituent analyses			EP leachate analyses		
	West	Middle	East	West	Middle	East
Cyanide (total)	66	38	38	[1] ND	[1] ND	[1] ND

[1] ND: Not Detected. Denotes total concentrations below the following detection limits: mercury and selenium—0.5 ppm. Denotes leachable concentrations below the following detection limits: arsenic and selenium—0.005; mercury—0.001; and cyanide—0.005 ppm.

Using Method 413.1 from "Methods for Chemical Analysis of Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020), Fisher Guide determined that oil and grease levels ranged between 0.03 and 5.40 percent in the lagoon sludges and 5.16 and 22 percent in the drying bed sludges. Petitioners are normally required to modify the EP procedure in accordance with the Oily Waste EP (OWEP) methodology if the oil and grease content of the waste exceeds one percent. Wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. See SW–846 Method 1330. Fisher Guide, however, provided standard EP data. The Agency did not require Fisher Guide to re-analyze its wastes using the OWEP methodology because there was sufficient basis to propose denial of the petition without this information.

Fisher Guide also provided test data indicating that the lagoon and drying bed sludges are neither ignitable, corrosive, nor reactive. See 40 CFR 261.21, 261.22, and 261.23, respectively.

Fisher Guide submitted a signed certification stating that (1) approximately 900 cubic yards of sludge are removed from the lagoons and dewatered on the drying beds per year, and (2) the drying beds presently contain sludges that have accumulated over the past 10 years (approximately 9,000 cubic yards). The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Fisher Guide's certified estimates of 900 and 9,000 cubic yards for the lagoon sludges and the drying bed sludges, respectively.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to deny Fisher Guide's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency however, conducts a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions, and may select facilities likely to be proposed for exclusion for spot-check sampling.

4. Agency Evaluation

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for evaluating delisting petitions. As a result, the Agency has evaluated the lagoon sludges using its VHS landfill model.[1] See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for a detailed description of the VHS model and its parameters. As explained below, the Agency feels that the VHS model, at this time, is adequate for this delisting petition. The Agency requests comments on the use of the VHS model as applied to the evaluation of Fisher Guide's wastes.

The primary difference expected between the VHS model (used for the petitioned waste) and a surface impoundment model is the consideration (in an impoundment model) of hydraulic head, sorption, retardation, and clogging. Hydraulic head is expected to cause higher compliance-point concentrations.[2] Sorption, retardation and clogging, on the other hand, are expected to result in lower concentrations of the contaminants.[3] To some extent, the mechanisms of sorption, retardation, and clogging will counteract hydraulic head. Until the ongoing development of the surface impoundment model is completed, it is difficult to predict what impact, if any, these competing mechanisms will have on the calculation of compliance-point concentrations. EPA feels that to delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in curtailing delisting petition processing. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool would predict different constituent concentrations and/or change EPA's conclusion.

Furthermore, EPA believes that the VHS model is currently adequate to assess the reasonable worst-case disposal scenario of the petitioned wastes because the VHS model is conservative in all of its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment. Consequently, the Agency believes that the application of the VHS model in evaluating Fisher Guide's lagoon sludges adequately protects human health.

Although Fisher Guide should have analyzed its wastes using the OWEP, the Agency believes that the modeling evaluation for Fisher Guide's petitioned wastes using EP data is valid, because OWEP concentrations are typically higher than EP leachate concentrations. A proposed denial decision based on standard EP data is conservative

[1] When the Agency believes that the surface impoundment model is sufficiently developed for delisting decision-making, it intends to describe the model's parameters and assumptions and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the **Federal Register**. Also, the appropriateness of the model's use for each specific petition will be considered.

[2] Hydraulic head tends to force leachate into the aquifer, displacing ground water, and resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point).

[3] Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentration of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

because OWEP data are a more stringent measure of constituent concentrations that may be mobilized from a waste.

In this case, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Fisher Guide's lagoon sludges. The Agency's evalution of the lagoon sludges, using the estimate waste volume of 900 cubic yards per year and the maximum reported EP leachate concentrations, generated the compliance-point concentrations shown in Table 4. The Agency did not evaluate the mobility of the remaining inorganic constitutents (*i.e.*, arsenic and selenium) from Fisher Guide's lagoon sludges because they were not detected in the EP extract using the appropriate analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 4—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) LAGOON SLUDGES—1984 SAMPLES

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Barium	0.14	1.0
Cadmium	0.002	0.01
Chromium	0.023	0.05
Lead	0.046	0.05
Mercury	0.0001	0.002
Nickel	3.66	0.5
Silver	0.001	0.05
Cyanide	0.001	0.7

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The Agency did not evaluate the mobility of arsenic, selenium, and cyanide from Fisher Guide's 1984 drying bed sludges because they were not detected in the EP extract using the appropriate analytical test methods (see Table 3). As stated previously, the Agency will not evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

The lagoon sludges (as shown in Table 4) exhibited nickel concentrations at the compliance point above the health-based level used in delisting decision-making. Leachable nickel levels in 26 of 28 lagoon sludge samples failed the VHS model evaluation. The lagoon sludges exhibited barium, cadmium, chromium, lead, mercury, and silver levels at the compliance point below the health-based levels used in delisting decision-making. In addition, cyanide levels at the compliance point do not exceed the health-based level of 0.7 ppm. Because the maximum reported concentration of total cyanide in the waste is 45 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The evaluation of the drying bed sludges, using the estimated waste volume of 900 cubic yards and the maximum reported EP leachate concentrations of the inorganic constituents reported for the 1981 and 1982 samples (except mercury), generated the compliance-point concentrations shown in Table 5. The sample collected in 1981 and 1982 are not representative of the wastes which have been generated since the 1984 process changes occurred. However, the drying bed sludge samples from that period have been evaluated by the Agency because they are represented in the ten years of accumulated sludge on the drying beds at the facility. The Agency did not evaluate the mobility of mercury from Fisher Guide's 1981 and 1982 drying bed sludges because it was not detected in the EP extract using the appropriate analytical test methods (see Table 2).

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) DRYING BEDS SLUDGES—1981 AND 1982 SAMPLES

Constituents	Compliance-Point Concentrations			Levels of Regulatory Concern [1]
	West	Middle	East	
Arsenic	0.0008	0.005	ND	0.05
Barium	0.24	0.22	0.27	1.0
Cadium	0.0095	0.006	0.008	0.01
Chromium	0.017	0.024	0.027	0.05
Lead	0.082	0.065	0.054	0.05
Nickel	2.57	0.58	1.11	0.5
Selenium	ND	0.0009	ND	0.01
Silver	0.005	0.003	0.003	0.05
Cyanide	ND	0.011	ND	0.7

ND: Not Detected (see Table 2 for detection limits).

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The evaluation of the drying bed sludges and the maximum reported EP leachate concentrations of the inorganic constituents reported for the 1984 samples (except arsenic, selenium, and cyanide) generated the compliance-point concentrations shown in Table 6.

TABLE 6.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) DRYING BED SLUDGES—1984 SAMPLES

Constituents	Compliance-point concentrations			Levels of regulatory concern [1]
	West	Middle	East	
Barium	0.14	0.16	0.14	1.0
Cadmium	0.006	0.008	0.006	0.01
Chromium	0.032	0.017	0.030	0.05
Lead	0.065	0.054	0.063	0.05
Mercury	0.0003	ND	ND	0.002
Nickel	4.44	3.64	2.85	0.5
Silver	0.005	0.003	0.003	0.05

ND: Not Detected (see Table 3 for detection limits)

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The 1981 and 1982 drying bed samples (as shown in Table 5) exhibited nickel and lead levels at the compliance point above their respective health-based levels. All six of the 1981 and 1982 drying bed sludge samples analyzed for leachable nickel failed the VHS model evaluation. Three of the nine 1981 and 1982 drying bed sludge samples analyzed for leachable lead failed the VHS model evaluation. The 1981 and 1982 drying bed samples exhibited arsenic, barium, cadmium, chromium, selenium, silver, and cyanide levels at the compliance point below their respective health-based levels. Because the maximum reported concentration of total cyanide in the 1981 and 1982 samples is 35 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm.

The 1984 drying bed samples (as shown in Table 6) exhibited nickel levels at the compliance point that exceed the health-based level for nickel. All of the 1984 drying bed samples failed the VHS model evaluation for nickel. Seven of the sixteen 1984 drying bed sludges also exhibited lead levels at the compliance point that exceeded the health-based level for lead. The 1984 drying bed samples exhibited barium, cadmium, chromium, mercury and silver

levels at the compliance point below their respective health-based levels. Because the maximum reported concentration of total cyanide in the 1984 samples is 66 mg/kg the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm.

The Agency also reviewed Fisher Guide's raw material list and material safety data sheets. The hazardous constituents (*e.g.*, those listed in 40 CFR Part 261, Appendix VIII) used at the facility include: 1,1,1-trichloroethane, formaldehyde, methylene chloride, epichlorohydrin, toluene, and methyl ethyl ketone. Because Fisher Guide did not indicate how the raw materials containing these constituents are segregated from process wastes, the Agency believes that these constituents could potentially be present in the petitioned wastes. The Agency typically would have required either testing of the wastes or mass balance calculations for these constituents; however, no further information for the above-named compounds is being requested by the Agency because the petition is being proposed for denial for other reasons.

The Agency also reviewed ground-water monitoring information submitted by Fisher Guide and obtained from the Michigan Department of Natural Resources (MDNR). The ground-water monitoring data for the sludge drying beds indicate that the petitioned wastes may have contributed to ground-water contamination. Total and hexavalent chromium concentrations reported for a filtered ground-water sample collected from well B–10 during Fisher Guide's Hydrogeological Investigation (Final Report, June 27, 1980) were 0.12 ppm, exceeding the health-based level for chromium (0.05 ppm). Monitoring well B–10 was installed to monitor Fisher Guide's sludge drying beds. Fisher Guide is currently implementing an "alternate" interim status detection monitoring program under which they are required to analyze ground-water samples for barium, chromium, copper, lead, nickel, and zinc in addition to the detection monitoring parameters required for interim status facilities under 40 CFR 265.92(d).

5. Conclusion

The Agency believes that Fisher Guide has not demonstrated that its petitioned wastes are not hazardous. The Agency believes that the composite samples collected from the lagoons and drying beds in support of Fisher Guide's petition adequately represent any constituent variations that may have occurred in the wastes petitioned for exclusion. The date provided by Fisher Guide indicate that the sludge contained in the lagoons and drying beds exhibits significant concentrations of leachable nickel. The drying beds also exhibit significant concentrations of leachable lead. The Agency proposes to deny Fisher Guide's petition for exclusion of its wastewater treatment sludges described in its petition as EPA Hazardous Waste No. F006 and contained in its settling lagoons and drying beds at its Flint, Michigan facility. These wastes should continue to be subject to regulation under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its wastes as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submitting and during review of the petition, this facility should have continued to handle its wastes as hazardous. The denial of the petition, if promulgated, means that the petitioner is to continue managing its wastes as hazardous in the manner in which it has been doing, economically, and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: December 5, 1988.

Jonathan Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88–28955 Filed 12–15–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–540, RM–6546]

Radio Broadcasting Services; Rapid City, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Tom-Tom Communications, Inc. proposing the substitution of Channel 281C1 for Channel 282C at Rapid City, South Dakota, and the modification of its construction permit accordingly. Channel 281C1 can be allotted to Rapid City in compliance with the Commission's minimum distance separation requirements with a site restriction of 6 kilometers (3.7 miles) southwest to accommodate petitioner's desired transmitter site. The coordinates

for this allotment are North Latitude 44–01–50 and West Longitude 103–15–34.

DATES: Comments must be filed on or before January 30, 1989, and reply comments on or before February 14, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael L. Glaser, Esq., Joseph P. Benkert, Esq., Gardner, Carton and Douglas, Republic Plaza, 370–17th Street, Suite 2200, Denver, Colorado 80202–3520 and 1001 Pennsylvania Avenue NW., Suite 750 N, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202–634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–540, adopted November 10, 1988, and released December 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–28922 Filed 12–15–88; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 53, No. 242
Friday, December 16, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-198]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: By this notice, we are advising the public that one permit application for release into the environment of a genetically engineered organism is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room G-185, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing in the United States (importing, moving interstate, or releasing into the environment), certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following permit application for release into the environment, which is being reviewed by the Agency:

Accession No	Date Received	Organism	Field Test Location
88-314-05	11-9-88	Genetically engineered insect-resistant tomato.	Florida.

Done at Washington, DC, this 12th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-29013 Filed 12-15-88; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Food and Nutrition Service (FNS) announces an exemption of an individual food from Appendix B, "Categories of Foods of Minimal Nutritional Value," of Part 210, National School Lunch Program, and Part 220, School Breakfast Program.

This notice serves to notify the public that a food manufacturer has petitioned FNS and it was determined, based on furnished data, that the individual food is not classified as a food of minimal nutritional value as defined in §§ 210.11(a)(2) and 220.2(i-1). The petitioner has been previously notified of this determination in writing and also that the USDA does not prohibit the sale of the individual product in a school food service area during breakfast or lunch period.

DATE: The effective date of this exemption is April 19, 1988, coinciding with the date company was notified.

FOR FURTHER INFORMATION CONTACT: Cynthia Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, Room 602, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 756-3556.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 and has been classified nonmajor because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this notice, Ms. Anna Kondratas, FNS Administrator, has certified that this notice will not have a significant economic impact on a substantial number of small entities.

These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.558 and 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notice published in 48 FR 29114, June 24, 1983).

No new reporting or recordkeeping requirements are included which require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

FNS prohibits the sale of foods of minimal nutritional value in the food service areas during the breakfast and lunch periods as published in 7 CFR 210.11(b) and 220.12(a). "Food of minimal nutritional value" means a food which provides less than five percent of the USRDA for each of eight specified nutrients per 100 calories and per serving. In the case of artificially sweetened foods, only the "per serving" measure applies. The eight nutrients to be assessed for this purpose are:

Protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium, and iron.

Pursuant to Appendix B of Part 210 and Part 220, any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value. A schedule to petitioners regarding submission deadlines is furnished in Part 210, Appendix B(b)(3), and Part 220, Appendix B. The petition must include a statement of the percent of USRDA for the eight nutrients listed in §§ 210.11(a)(2) and 220.2(i–1) that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value and will inform the petitioner in writing of such determination, and the public by notice in the **Federal Register**. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

The Department received an exemption petition dated April 1, 1988, providing all necessary petition components.

Both "per serving" and "per 100 calories" nutrient analysis data show that one of the eight nutrients (niacin) is greater than 5% of the USRDA. Hence, the product "Peanut Honey Butter Popcorn" as produced by "The Popcorn Explosion" is exempt from the "Candy Coated Popcorn Category" of "Foods of Minimal Nutritional Value" (7 CFR Part 210 Appendix B(a)(4)(vii) and Part 220 Appendix B(4)(g)). The USDA does not prohibit the sale of this product in a school food service area during breakfast or lunch period. However, State Agencies and School Food Authorities maintain the final right to restrict such sales.

In compliance with petitioning schedules, the company was notified in writing of this decision and this notice documents public announcement.

Although required by the regulations to publish this notice, the Department emphasizes that such notification is not to be construed as either approval or endorsement of any food product or manufacturer identified in this notice, nor as certification that such food product has significant nutritional value, nor in any way as guidance or encouragement to State Agencies and School Food Authorities concerning their possible purchase of any class or type of food product identified in this notice.

Authority: Secs. 4, 8, and 11 of the National School Lunch Act as amended (42 U.S.C. 1753, 1757, 1759(a)) and secs. 3 and 4(b) of the Child Nutrition Act as amended (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: December 13, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–28991 Filed 12–15–88; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Availability of the Record of Decision, Final Supplement to the FEIS, Pacific Northwest Regional Guide, Northern Spotted Owl Habitat Management Standards and Guidelines, Updated and Additional Research, Oregon, Washington

The Record of Decision for the Northern Spotted Owl Habitat Management Standards and Guidelines was signed by the Chief of the Forest Service on December 9, 1988. The Record of Decision documents the decision to select Alternative F, as described and discussed in the Final Supplement to the FEIS referenced above, as planning direction for habitat management to maintain population viability of spotted owls in the National Forests of Oregon and Washington. This decision amends the standards and guidelines in the Pacific Northwest Regional Guide and will be reviewed and revised as necessary within 5 years from the date of this decision. The decision takes effect immediately and will result in the establishment of spotted owl habitat areas ranging from 1,000 to 2,000 acres in size. These areas will serve to protect nesting owls as well as to provide "stepping stones" between larger areas already protected as owl habitats. On the Olympic National Forest, where special concerns about the viability of the owl population have been identified, these habitat areas may be as large as 3,000 acres each.

The establishment of these special areas will reduce the timber harvest on the National Forests in Oregon and Washington by about 180 million board feet per year.

This decision on the guidelines was based on the best information currently available, but changes can be made to reflect new information about the spotted owl. Research on the spotted owl will be continued by the Forest Service in cooperation with state and Federal agencies. This decision is subject to the administrative review process.

The selection of Alternative F was made with full consideration of the comments and concerns received.

A copy of the Record of Decision and FEIS may be obtained from Regional Forester (2600–1), Forest Service USDA, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208.

Dated: December 13, 1988.

Gary H. Elsner,

Assistant Director, Recreation Management.

[FR Doc. 88–28933 Filed 12–15–88; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Western Farmers Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of 69 kV transmission line in Beckham and Roger Mills Counties, Oklahoma.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of 69 kV transmission line utilizing wood H-frame support structures. Western Farmers Electric Cooperative (Western Farmers), of Anadarko, Oklahoma, has requested REA financing assistance for the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Western Farmers develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project. The project will allow Western Farmers to continue to meet its responsibilities to serve its member load at the Erick, Durham, Brantley and Moorewood substations in a reliable and economical manner.

The proposed 45 mile transmission line will connect the existing Durham Substation in Roger Mills County,

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Oklahoma, to the existing Erick Substation in Beckham County, Oklahoma. The 69 kV transmission line will require a new right-of-way 100 feet in width. To accommodate the new transmission line, the Durham Substation will need to be enlarged to provide space for capacitor banks and to move the deadend structure. The enlargement will require less than one acre of ground disturbance.

REA has concluded that the proposed project will have no significant impact on wetlands, prime framland, floodplains, threatened or endangered species or critical habitat, properties listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals.

Once the centerline for the line has been determined, Western Farmers will have the right-of-way surveyed for the presence of properties listed or eligible for listing on the National Register of Historic Places. Any such sites identified will be either avoided or have impacts to them mitigated to the satisfaction of REA and the Oklahoma State Historic Preservation Officer. Western Farmers will also consult with the U.S. Fish and Wildlife Service to determine the most effective mitigation measures for reducing the risk of whooping cranes striking the transmission line conductors. In addition, Western Farmers will construct the transmission line in a manner that meets or exceeds the guidelines established by the Raptor Research Foundation as set forth in the publication *Suggested Practices for Raptor Protection on Power Lines, The State of the Art, 1981.*

Floodplains, wetlands and prime farmland are located in the preferred line routing corridor. Where practicable, these areas will be spanned. Nevertheless, some transmission line support structures may be located within these areas. However, REA believes that transmission line structure placement will have no significant impact to these areas. No practical alternative routes that could avoid these areas were identified.

Western Farmers will take care to avoid unnecessary impacts to the environment by ensuring areas disturbed are reseeded to prevent erosion. When the project is in the vicinity of streams and other waterways or wetlands, Western Farmers will see that siltation is minimized by removing timber and brush only when absolutely necessary. The use of heavy equipment near these areas will be discouraged. Hand clearing and clearing by rubber tired machinery will be used to limit impact to soil stability near streams, waterways and wetlands. No dredge or fill operations will take place in these areas nor will herbicides be used.

Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegatation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Because of the rather isolated location of the Erick and Durham substations the only practicable alternative to the proposed tie line is an unacceptable no action alternative.

REA has determined that there is a demonstrated need for the project and constructing it within the preferred corridor will have no significant impact to the environment.

Therefore, REA has concluded that its approval to allow Western Farmers to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0270, 14th and Independence Avenue SW., Washington, DC 20250 or at the office of Western Farmers Electric Cooperative, P.O. Box 429, Anadarko, Oklahoma 73005.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, Western Farmers published notices in *The Elk City Daily News* and *The Cheyenne Star* which have a general circulation in both Beckham and Roger Mills Counties, Oklahoma. The notices appeared in the November 5, 1987, issues.

The notices described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Western Farmers or DEA.

Date: December 12, 1988

John H. Arnesen,

Assistant Administrator, Electric.

[FR Doc. 88-29014 Filed 12-15-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice; request for comments.

SUMMARY: This notice announces the Department's proposal to establish a new system of records under the Privacy Act. The system is entitled "COMMERCE/DEPT-21, Telephone Call Detail Records". This notice is submitted in accordance with the requirements of the Privacy Act, 5 U.S.C. 552a, and OMB Circular A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals".

EFFECTIVE DATE: The system of records will be effective February 14, 1989, unless Commerce receives comments which would result in a contrary determination.

ADDRESS: Please address comments to: Ms. Gerri LeBoo, Office of Management and Organization, Room 6628, Department of Commerce, Washington, DC 20230. Comments received will be available for public inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Gerri LeBoo, 202-377-3630.

SUPPLEMENTARY INFORMATION: The Commerce Department is establishing an activity whereby stringent controls will be utilized to manage telephone usage. The activity, which is coordinated by the General Services Administration, involves government-wide participation, and is identified as the Call Detail Program.

It is anticipated that personally-identifiable records may be generated in cases where abuse is suspected or confirmed. Thus, establishing a Privacy Act system of records is necessary in order to properly manage the records within the framework of the Act. The Office of Management and Budget, in its April 20, 1987 guidelines, 52 FR 12990, encouraged all Federal agencies to establish a system of records under the Privacy Act in instances of determining individual accountability for telephone calls. OMB urged that individual agency systems be established, rather than a global system, because of the variation in program operation and resulting records collection.

As instructed in OMB Circular A-130, Appendix I, the Department's Report has been filed with Congress and the Office of Management and Budget.

The new system, "COMMERCE/DEPT-21, Telephone Call Detail Records", will read as set forth below.

COMMERCE/DEPT-21

SYSTEM NAME:

COMMERCE/DEPT-21—Telephone Call Detail Records

SYSTEM LOCATIONS:

a. For employees of the Bureau of the Census: Office of the Associate Director for Management Services, Federal Building 3, Room 2027, Suitland, Maryland 20233.

b. For employees of the Bureau of Economic Analysis: Office of Administration, Room 1026A, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230.

c. For employees of the Economic Development Administration: Office of the Chief Counsel, Room 7001, U.S. Department of Commerce, Washington, DC 20230

d. For employees of the Bureau of Export Administration: Office of Administration, Room 4886, U.S. Department of Commerce, Washington, DC 20230.

e. For employees of Economic Affairs: Office of Administration, Economic Affairs, Room 4079, U.S. Department of Commerce, Washington, DC 20230.

f. For employees of the International Trade Administration: Director, Office of Organization and Management Support, International Trade Administration, Room 4102, U.S. Department of Commerce, Washington, DC 20230.

g. For employees of the Minority Business Development Agency: Director, Office of Administrative Management, Management Division, Minority Business Development Agency, Room 5087A, U.S. Department of Commerce, Washington, DC 20230.

h. For employees of the National Institute of Standards and Technology: Office of the Associate Director of Administration, Room A1105, National Institute of Standards and Technology, Gaithersburg, Maryland 20234.

i. For employees of the National Oceanic and Atmospheric Administration:

(1) Chief, Facilities and Logistics Division, National Capital Administrative Support Center, National Oceanic and Atmospheric Administration, Rockwall Building, Room 505, Rockville, Maryland 20852.

(2) Chief, Facilities and Logistics Division, Eastern Administrative Support Center, National Oceanic and Atmospheric Administration, Room 301, 253 Monticello Avenue, Norfolk, Virginia 23510.

(3) Chief, Facilities and Logistics Division, Central Administrative Support Center, National Oceanic and Atmospheric Administration, 601 East 12th Street, Kansas City, Missouri 64106.

(4) Chief, Facilities and Logistics Division, Mountain Administrative Support Center, National Oceanic and Atmospheric Administration, 325 Broadway, Room 4532, Boulder, Colorado 80303.

(5) Chief, Facilities and Logistics Division, Western Administrative Support Center, National Oceanic and Atmospheric Administration, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115–0070.

j. For employees of the National Technical Information Service: Office of Administrative Management, Room 209, Forbes Building, National Technical Information Service, Springfield, Virginia 22161.

k. For employees of the National Telecommunications & Information Administration: Office of the Chief Counsel, Room 4717, U.S. Department of Commerce, Washington, DC 20230.

l. For employees of the Office of the Secretary: Office of Federal Property Programs, Procurement and Administrative Services, Room 1032, U.S. Department of Commerce, Washington, DC 20230.

m. For employees of the Patent and Trademark Office: Office of the Solicitor, Room 5C15, Crystal Plaza 2, Patent and Trademark Office, Crystal City, Virginia 20231.

n. For employees of the United States Travel and Tourism Administration,: Office of Management and Administration, Room 1524, U.S. Travel & Tourism Administration, Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commerce employees and contractor personnel who make long distance calls, and individuals who receive telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of the agency telephones; records indicating assignment of telephone numbers to employees; records relating to location of telephones; records relating to unauthorized use of telephones and personnel or administrative actions related to telephone abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. 301; Pub. L. 97–258; Title 31 U.S.C. 1348; 44 U.S.C. 3101, 5 U.S.C. 552a; 41 CFR Part 201–38.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and data may be disclosed, as is necessary, (1) to Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) in the event that material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (6) to employees of the agency to determine their individual responsibility for telephone calls; (7) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter; (8) to a non-government company providing telecommunications consulting or contracting services to the Government; (9) to managers, supervisors and other personnel responsible for the management of telecommunications activities within the agency, to manage the operations and costs of telecommunications and to identify improper or unauthorized use of telecommunications resources; (10) to an employee of the Federal government, but only to the extent that the information relates specifically and solely to the specific employee.

DISCLOSURES TO CONSUMER REPORTING AGENCIES

Disclosures pursuant to 5 U.S.C. 552a(b)(12)

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN A SYSTEM

The Department's policy is that only those individuals with a need to know, pursuant to their official duties, shall have access to call detail records. Each individual with such access is responsible for controlling records in their possession in such a way that ensures privacy. Storage of such material is also the responsibility of the individual and must be done in such a way as to prevent unauthorized disclosure. Call detail records shall be maintained by Department personnel for a period of not more than two years. After that period, records on electronic media should be erased and those records on papers, microform or microfiche media destroyed through shredding or burning. Records requiring storage longer than two years (e.g., kept under court order, etc.) shall be maintained until appropriate releases are issued. At that time, such records may be disposed of in the methods described in this document.

STORAGE

Paper records in file folders, computer printouts, magnetic tape, word processor diskettes, microform media or other electronic media.

RETRIEVABILITY

Records may be retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number, or by location.

SAFEGUARDS

Paper records and backup diskettes are located in locked metal file cabinets; data on personal computer is password protected. Other machine readable records are stored on magnetic tape in a safe accessible only to security personnel.

RETENTION AND DISPOSAL

Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER AND ADDRESS

For Telecommunications Management Information System (TMIS): Chief, Telecommunications Management Division, Office of Information Resources Management, Room H6625, U.S. Department of Commerce, Washington, DC 20230. For records at location a.: Chief, Telecommunications Staff, Office of the Director, Bureau of the Census, Room 1553, FOB #3, Suitland, Maryland 20233.

For records at location b.: Director, Office of Administration, Bureau of Economic Analysis, Room 1026A, Department of Commerce, Washington, DC 20230.

For records at location c.: Deputy Assistant Secretary for Management Support, Economic Development Administration, Room 7019B, Washington, DC 20230.

For records at location d.: Director, Office of Administration, Bureau of Export Administration, Room 4886, Washington, DC 20230.

For records at location e.: Director, Office of Administration, Economic Affairs, Room 4079, Department of Commerce, Washington, DC 20230.

For records at location f.: Director, Office of Organization and Management Support, International Trade Administration, Room 4102, U.S. Department of Commerce, Washington, DC 20230.

For records at location g.: Associate Director, Office of Operations, Minority Business Development Agency, Room 6723, U.S. Department of Commerce, Washington, DC 20230.

For records at location h.: Chief, Computer Systems and Communications Division, National Institute of Standards and Technology, Technology Building, Room A 151(716), Gaithersburg, Maryland 20899.

For records at location i.: Chief, Organization and Directives Division, Office of Administration, National Oceanic and Atmospheric Administration, Room 716 WSC 5, U.S. Department of Commerce, Rockville, Maryland 20230.

For records at location j.: Chief, Facilities Management Division, National Technical Information Service, Room 1016, Forbes Building, Springfield, Virginia 22161.

For records at location k.: Director, Office of Policy Coordination and Management, National Telecommunications and Information Administration, Room 4890, Washington, DC 20230.

For records at location l.: Director, Office of Federal Property Program, U.S. Department of Commerce, Room 1032, Washington, DC 20230.

For records at location m.: Chief, Facilities Management Division, Office of General Services, Patent and Trademark Office, Room 802C, Crystal Park #1, Washington, DC 20231.

For records at location n.: Director, Office of Management and Administration, United States Travel and Tourism Administration, Room 1524, Washington, DC 20230.

NOTIFICATION PROCEDURES

Information may be obtained from the appropriate component as listed under System Manager(s). Requester should provide his or her name pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORDS ACCESS PROCEDURES

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES

The Department's rules for access, for contesting contents, and appealing initial determination by the individual concerned appear in 15 CFR Part 4b. Use above address.

Date: December 8, 1988.

Kay Bulow,

Assistant Secretary for Administration.

[FR Doc. 88-28950; Filed 12-15-88; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[OEE-3-88]

Export Privileges, Actions Affecting: Sharma, Rajeev, et al.

Order Temporarily Denying Export Privileges

In the matter of: Rajeev Sharma, individually and doing business as Libra Electronics, Inc. with addresses at 720 Plainfield Road, Suite 100, Willowbrook, Illinois 60521, and, 760 Oakwood Drive, Westmont, Illinois 60559, and, Sudershan Kakwani, individually and doing business as Libra Electronics, Inc., and, Libra Electronics Pty. Ltd., with addresses at, 12 Stanton Road, Seven Hills, N.S.W. 2147, Sydney, Australia, and, Unit 3, 15 Factory Street, North Parrammatta, N.S.W., Sydney, Australia, Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (15 CFR Parts 768 through 799) (the Regulations) [1] issued pursuant

[1] Effective October 1, 1988, the Regulations were redesignated as Parts 768 through 799 of Title 15 of

Continued

to the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985), and amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988)) (the Act), has asked the Assistant Secretary for Export Enforcement to issue an order temporary denying all United States export privileges to Rajeev Sharma, individually and doing business as Libra Electronics, Inc. (hereinafter collectively referred to as Sharma), and Sudershan Kakwani, individually and doing business as Libra Electronics, Inc. and Libra Electronics Pty. Ltd. (hereinafter collectively referred to as Kakwani).

As a result of OEE's investigation, which is still ongoing, OEE has reason to believe that Sharma and Libra Electronics have purchased, in the United States, U.S.-origin computer components for the purpose of exporting them to an affiliate in Australia (Kakwani), ostensibly for use in a computer board manufacturing or assembly process there.

Checks make at the Australian sites purportedly operated as manufacturing facilities by Kakwani, doing business as Libra, have revealed that at none of the sites in Libra engaged in the assembly or manufacture of computer-related wares. OEE has not yet been able to establish the whereabouts of the U.S.-origin commodities already exported by Sharma to Libra and Kakwani, supposedly for the "manufacturing process" in Australia. Moreover, OEE has been informed that neither Libra's Australian sales volume nor the domestic Australian market is large enough to support the volume of computer components which Libra is seeking approval to export from the United States to Australia in a currently pending export license application.

OEE believes that, viewed as a whole, the above-described events concerning Libra's, Sharma's and Kakwani's activities demonstrate that they are involved in a scheme to obtain controlled U.S.-origin commodities, ostensibly for export to Australia for some kind of assembly or manufacturing process. Inasmuch as the whereabouts of the goods already exported to Australia are unknown, and no active Libra assembly or manufacturing site in Australia has been located, OEE has reason to believe that once Kakwani receives the U.S.-origin computers from Sharma, the goods are reexported from Australia without the request authorizations.

Therefore, based on the showing made by the Department, I find that an order temporarily denying export privileges to Rajeev Sharma, individually and doing business as Libra Electronics, Inc., and Sudershan Kakwani, individually and doing business as Libra Electronics, Inc. and Libra Electronics Pty. Ltd., is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Libra, Sharma and Kakwani in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing based on the Department's showing that expedited action is required.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which Rajeev Sharma, individually and doing business as Libra Electronics, Inc., or Sudershan Kakwai, individually and doing business as Libra Electronics, Inc. and Libra Electronics Pty. Ltd., appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Rajeev Sharma, individually and doing business as Libra Electronics, Inc., and Sudershan Kakwani, individually and doing business as Libra Electronics, Inc. and Libra Electronics Pty. Ltd., their successor or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which either respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with either respondent or any related party, or whereby either respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for either respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States and subject to the Act and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, any of the respondents may, at any time, appeal this temporary denial order by

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the Code of Federal Regulations. 53 FR 37751 (September 28, 1988). The transfer merely changed the first number of each Part from a "3" to a "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR Parts 368–399 (1988).

filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 788.19(d) of the regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order and of Parts 787 and 788 of the Regulations shall be served on each respondent and this order shall be published in the **Federal Register**.

Date: December 12, 1988.

G. Philip Hughes,

Assistant Secretary for Export Enforcement.

[FR Doc. 88–28964 Filed 12–15–88; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–588–808]

Initiation of Antidumping Duty Investigation; Light Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of light duty integrated hyrostatic transmissions (HSTs) and subassemblies thereof, with or without attached axles, from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 6, 1989. If that determination is affirmative, we will make a preliminary determination on or before May 1, 1989.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–3464 or (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On November 22, 1988, we received a petition filed in proper form by Eaton Corporation on behalf of the domestic industry engaged in the production of light duty integrated HSTs. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of light duty integrated HSTs from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or oppostion to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

United States price was based on U.S. selling prices to original equipment manufacturers. Petitioner deducted distributor mark-up, Japanese inland freight, Japanese Customs process fee, cargo loading fee, ocean freight, marine insurance, U.S. Customs brokerage fees, U.S. import duties, and U.S. inland transportation.

Petitioner based foreign market value on a manufacturer's price to Japanese original equipment manufacturers. Deductions were made for foreign inland freight and foreign packaging, while U.S. packaging costs were added in.

Based on a comparison of United States price and foreign market value, petitioner alleges dumping margins ranging from 45 to 114 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on light duty integrated HSTs from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of light duty integrated HSTs from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by May 1, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the approrpiate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are light duty integrated hydrostatic transmissions and subassemblies thereof, with or without attached axles, provided for in items 660.85, 660.97, 666.00, and 666.10 of the *Tariff Schedules of the United States* (TSUS), and classifiable in subheadings 8412.29.80, 8412.90.90, 8413.60.00, 8413.81.00, 8432.90.00, 8433.90.10, 8433.90.50, 8484.90.00, and 8436.99.00 of the HTS. The subject articles, which have a maximum horsepower of twenty

or fewer, comprise the following: Parts and subassemblies if non-electric engines and motors not specially provided for (TSUS item 660.85 and HTS subheadings 8412.29.80 and 8412.90.90); pumps for liquids, liquid elevators, and parts thereof, the foregoing not specially provided for (TSUS items 660.97 and HTS subheadings 8413.60.00 and 8413.81.00); other parts, not specially provided for, of machinery for soil preparation and cultivation (TSUS item 660.00 and HTS subheadings 8432.90.00, 8433.90.50, 8434.90.00, and 8436.99.00); and parts of lawn mowers (TSUS item 666.10 and HTS subheading 8433.90.10).

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 6, 1989 whether there is a reasonable indication that imports of light duty integrated HSTs from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

December 12, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-29004 Filed 12-15-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Stainless Steel Wire Rod; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to various sizes and grades of stainless steel wire rod.

DATE: Comments must be submitted no later than December 27, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for the following types and sizes of annealed and pickled stainless steel wire rod: Type 302 HQ, cold-heading quality, with diameters of 0.0218 and 0.250 inch; Type 312 with a diameter of 0.250 inch; Type 410, cold-heading quality, with a diameter of 0.218 inch; Type 416 with diameters ranging from 0.218 to 0.687 inch; and Type 440A with a diameter of 0.218 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than December 27, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

December 9, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-29005 Filed 12-15-88; 8:45 am]

BILLING CODE 3510-DS-M

National Telecommunications and Information Administration

Comprehensive Report on Telecommunications and Information Industries and Policies

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice.

SUMMARY: NTIA has released a major study on the current and future state of telecommunications and information industries and policies. *NTIA Telecom 2000: Charting the Course for a New Century* analyzes 17 industry sectors and presents both international and domestic policy recommendations.

FOR FURTHER INFORMATION CONTACT: Teresa A. Lukach, Director, Office of Media Relations, NTIA, Department of Commerce, 14th and Constitution Avenue, NW., Room 4890, Washington, DC 20230; telephone 202/377-1800.

SUPPLEMENTARY INFORMATION: On October 4, 1988, the National Telecommunications and Information Administration (NTIA) released *NTIA Telecom 2000: Charting the Course for a New Century* (NTIA Special Publication No. 88-21), a 672-page report on the current and future state of the Nation's telecommunications industries and policies. It is the first comprehensive review of its kind in 20 years. *NTIA Telecom 2000* addresses key technological, commercial, demographic, and regulatory changes and trends, and recommends improvements in the organization of Government agencies that deal with communications and information policy.

In the two part report, NTIA analyses significant trends and developments in 17 separate industry sectors and presents both domestic and international policy recommendations.

In Part I, NTIA discusses: (1) Twenty years after the Rostow Report; (2) prespectives on the next twenty years; (3) telecommunications infrastructure and "Universal Information Service" in the Year 2000; (4) ensuring telecommunications and information services for rural America; (5) delivery of education, health care, and other critical services through telecommunications; (6) maintaining

America's strength in markets for telecommunications and information services; (7) privacy, information flows, and the protection of intellectual property in the Information Age; (8) television, cable television, and radio broadcasting in the Year 2000; and, (9) international and domestic policymaking in the Year 2000.

In Part II, NTIA examines the following industry sectors: (1) Local networks; (2) long distance networks; (3) fiber optics; (4) space communications and information systems; (5) land mobile radio services; (6) telecommunications network and customer premises equipment; (7) Federal Government use of telecommunications; (8) postal services; (9) information services; (10) electronic banking and financial services; (11) commercial broadcast television; (12) commerical radio broadcasting; (13) cable television; (14) public broadcasting; (15) film and video industries; (16) consumer electronics; and, (17) communications and informaion in rural America.

Copies are available for $20.00 at U.S. Government bookstores, or may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The stock number is 000–006–00658–1.

Dated: December 12, 1988.

Alfred C. Sikes,

Administrator.

[FR Doc. 88–28935 Filed 12–15–88; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Nepal

December 12, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: E.O. 11651 of March 3, 1972, as amended: sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 340 is being increased for swing and carryover. The limit for Category 341 is being reduced to account for the swing being applied to Category 340.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 48855, published on December 28, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald K. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1988.

Commissioner of Customs,

Department of Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton textile products, produced or manufactured in Nepal and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 20, 1988, the directive of December 21, 1987 is hereby amended to adjust the limits for cotton textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
340	236,630 dozen.
341	654,074 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of the Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553[a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation or Textile Agreements.

[FR Doc. 88–28965 Filed 12–15–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERE' HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 16, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 15, July 22, September 9, October 7, and October 14, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 26847, 27747, 35104, 39498 and 40252) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018). No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Candle, Illuminating

6260–00–840–5578

First Aid Kit, Eye Dressing

6545–00–853–6309

Cabinet, Storage

7125–00–693–4352

Service

Grounds Maintenance and Sprinkler System Maintenance

Buildings 1250, 1260, 1633, 2410, 2419, 2453, 2600, 2850, 3535 offsite, 3950, 5601, 6441, 6443, 8251, 8252, 8255, T–38, 1200 Parking Islands, 2500, 2665, 3535, 5600, 5602, 5603, 5604, 5605, 6445, 6447, 420, 6000, 7220, 2421, 5211, Desert Villa Complex
Edwards Air Force Base, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–28984 Filed 12–15–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Closed Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 5 through 6 January 1989 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

December 13, 1988

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 88–29006 Filed 12–15–88; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3493–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared November 20 Through December 2, 1988

Availability of EPA comments prepared November 28, 1988 through December 2, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DS–AFS–L65102–00, Rating E02, Wallowa Whitman National Forest, Land and Resource Management Plan, Additional Alternative, Implementation, Baker, Union, Wallowa, Grant, Malheur and Umatilla Counties, OR and Adams, Nez Perce and Idaho Counties, ID.

Summary: EPA's comments on the draft EIS remains outstanding. This document evaluates Alternative NC (No Charge) which is essentially a continuation of the Timber Management Plan developed in 1962. Alternative NC does not incorporate all the provisions of the National Forest Management Act of 1976 and would include the specific standards and guidelines for water quality protection. As such, EPA could not support the implementation of this alternative.

ERP No. D–AFS–L65129–AK, Rating EC2, 1989–94 Ketchikan Pulp Long Term Timber Sale Management Plan, Imoplementation, Tongass National Forest, Prince of Wales Island, AK.

Summary: EPA is concerned that pink salmon habitat conditions may be degraded from implementation of any of the action alternatives due to summer stream temperature increases. Additional information is needed concerning achievement of Alaska Water Quality Standards and a water quality/fishery monitoring program and feedback mechanism.

ERP No. D–BLM–K01006–CA, Rating LO, PLES I Geothermal Project, Geothermal Wellfield Development and Construction and Operation of a 10 MWe Powerplant, Approval, Bishop Resource Area, Mono County, CA.

Summary: EPA has no comments to offer on this document.

ERP No. D–BLM–L65127–AK, Rating EC2, Fort Wainwright Maneuver Area, Resource Managment Plan for Nonmilitary Uses, AK.

Summary: EPA is concerned that this document does not describe the cumulative effects of the military and other uses permitted by the various alternatives in the plans. In addition, the final EIS should describe all other plans (e.g., habitat management, forest management) that may affect or be affected by the military withdrawal, and how monitoring will be incorporated into the plans to assure that objectives are met.

ERP No. D–FHW–L40167–AK, Rating EC2, University Avenue Rehabilitation and Widening, College Road to Parks Highway, Funding, Fairbanks, North Star Borough, AK.

Summary: EPA requested that the affected wetland discussion be expanded and that the final EIS include a mitigation plan to offset wetland losses.

ERP No. D–FHW–L40168–AK, Rating LO, South Cushman Street Upgrading, Van Horn Road to Gaffney Road, Funding, Fairbanks, North Star Borough, AK.

Summary: EPA has no objections to the project as described in the draft EIS.

Final EISs

ERP No. F–FHW–C40120–NY, Lockport Expressway/I–990 Extension, North French Road to Millersport Highway/NY–263 To Transit Road, Funding, 404 Permit, Erie County, NY.

Summary: Although EPA strongly disagreed with the wetland delineation methodology used in the EIS, agreement was reached with the general conclusion drawn concerning the project's direct wetlands impacts. In addition, EPA has requested the opportunity to review highway runoff design plans when they become available.

Regulations

ERP No. R–CGD–A52165–00, 33 CFR Parts 151, 155, 158, and 46 CFR Part 25; Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78 (53 FR 43622).

Summary: EPA recommends that the Coast Guard not endorse or in any way encourage discharge of incinerator ash at sea in the current Annex V regulations because of the lack of information on the typical chemical makeup of the ash and because the ash may be subject to the requirements of the Resource Conservation and Recovery Act (RCRA). The regulations should note that port reception facilities for ash will be required to meet those

standards of waste handling specified in RCRA. EPA has also requested that the final rule include a schedule for implementation of planned amendments to the Act.

Dated: December 13, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-28992 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3493-3]

Availability of Environmental Impact Statements Filed December 5 Through 9, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

EIS No. 880403, LFinal, SFW, AK, Alaska National Wildlife Rufuges Native Owned Inholdings Acquisition in Exchange for Limited Oil and Gas Interest in the Coastal Plain of the Arctic National Wildlife Rufuge, AK, *Due:* January 17, 1989, *Contact:* Jonathan Andrew (907) 786-3437.

EIS No. 880404, Draft, CDB, NY, Steeplechase Amusement Park Development, Construction and Operation, UDAG, Brooklyn, Kings County, NY, *Due:* January 30, 1989, *Contact:* Carrett Thelander (212) 619-5000.

EIS No. 880405, Draft, SFW, SEV, PRO, National Wildlife Refuges Management Plan, Implementation, *Due:* March 6, 1989, *Contact:* Bruce Blanchard (202) 343-3891.

EIS No. 880406, FSuppl, DOI, LEG, ME, RI, CT, MA, NY, MS, VA, AL, NC, TX, SC, LA, GA, DE, FL, Undeveloped Coastal Barriers, Coastal Barrier Resources System Proposed Changes, Implementation, ME, MA, RI, CT, NY, MS, AL, DE, SC, TX, VA, GA, LA, NC and FL, *Due:* January 17, 1989, *Contact:* Bruce Blanchard (202) 343-3891.

EIS No. 880407, Final, AFS, MO, Mark Twain National Forest, Hardrock Mineral Leasing, Approval and Issuance of Leases, Oregon, Carter and Shannon Counties, MO, *Due:* January 17, 1988, *Contact:* Leon Kridelbauch (314) 364-4621. US Department of Agriculture, Forest Service and US Department of the Interior, Bureau of Land Management are Joint Lead Agencies on this project.

EIS No. 880408, FSuppl, BLM, AZ, CA, Devers-Palo Verde No. 2, 500 kV Transmission Line Project, Construction and Operation and Right-of-Way Grant, Additional Alternatives, Riverside County, CA and Yuma and Maricopa Counties, AZ, *Due:* January 17, 1989, *Contact:* Doug Romoli (714) 351-6428.

EIS No. 880409, Final, BLM, AK, Birch Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, Steese National Conservation Area, Yukon-Tanana, AK, *Due:* January 17, 1989, *Contact:* Michael J. Penfold (907) 271-3114.

EIS No. 880410, Final, COE, NY, NJ, Passaic River Basin Flood Control Plan, Implementation, Passaic, Bergen, Morris, Essex and Hudson Counties, NJ and Rockland and Orange Counties, NY *Due:* January 17, 1989, *Contact:* Robert A. Pietrowsky (212) 264-3567.

EIS No. 880411, Final, DOE, ID, WA, SC, Special Isotope Separation Production Plant Construction and Operation and the use of Atomic Vapor Laser Isotope Separation Technology, Site Selection and Implementation, Idaho National Engineering Laboratory near Idaho Falls, ID, Handford Site near Richland, WA and Savannah River Plant near Aiken, SC, *Due:* January 17, 1989, *Contact:* J. P. Hamric (208) 526-0306.

EIS No. 880412, Final, DOE, AZ, CO, IL, MI, NC, TN, TX, Superconducting Super Collider Construction and Operation, Site Selection, Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee and Texas, *Due:* January 17, 1989, *Contact:* Dr. Wilmot Hess (301) 353-6570.

Dated: December 13, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-28993 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3492-9]

Resource Conservation and Recovery Act Docket Information Center; Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and closing of RCRA Docket during the move.

SUMMARY: The Resource Conservation and Recovery Act Docket will move from LG-100 to M2427 of EPA Headquarters, 401 M Street, SW., Washington, DC 20460. The RCRA Docket will be closed December 27 through 30, 1988. Closing the Docket will facilitate the moving of the Docket's collection and ensure the integrity of the regulatory dockets. This move will allow the Docket to offer improved services to its patrons.

FOR FURTHER INFORMATION CONTACT: RCRA Docket Information Center (OS-305) 401 M Street SW., Washington, DC 20460 (202/475-9327).

Dated: December 5, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

[FR Doc. 88-28954 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3486-9]

Availability of Final Federal Facilities Compliance Strategy

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of the final EPA Federal Facilities Compliance Strategy.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of the final Federal Facilities Compliance Strategy signed by the EPA Administrator on November 8, 1988. This Strategy is the primary EPA policy and guidance document which outlines EPA's approach for undertaking compliance monitoring and enforcement actions at facilities or lands owned or operated by the Federal government. This document serves at the framework for all EPA media program (e.g., air, water, hazardous waste, etc.) to follow to ensure that Federal Facilities are fully integrated into all EPA program activities. The Strategy sets forth the enforcement response and dispute resolution procedures which EPA will follow when environmental violations occur at Federal facilities. It also outlines EPA's ongoing efforts to assist Federal agencies in achieving and maintaining high rates of compliance at their facilities.

EFFECTIVE DATE: November 8, 1988.

ADDRESSES: Single copies of this document are available only upon written request to the following: U.S. Environmental Protection Agency, Office of Federal Activities (A-104), Federal Facilities Compliance Program, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James R. Edward, Deputy Program Manager, Federal Facilities Compliance Program, Office of Federal Activities, U.S. EPA (A-104), 401 M Street, SW., Washington, DC 20460, Telephone (202) 475-8790.

SUPPLEMENTARY INFORMATION: Federal agencies are generally required to comply with Federal, State and local environmental laws and regulations in the same manner and degree as non-

Federal entities. To help ensure compliance, Presidential Executive Order 12088 was issued mandating Federal agency compliance with all environmental laws and requiring EPA to assist Federal agencies in achieving compliance at their facilities. In addition, each of the environmental statutes provides EPA the authority to take enforcement actions for violations at Federal facilities. This document sets forth EPA's strategy for reconciling its dual responsibilities to provide technical assistance under its Executive Order responsibilities and its statutory authorities to take enforcement actions violations at Federal facilities in appropriate circumstance.

This Strategy clarifies Federal agencies obligations to comply with environmental requirements the same as other regulated facilities and states EPA's commitment to use all its available enforcement mechanisms to ensure for Federal facility compliance. However, due to certain constitutional and statutory constraints, there are some differences in EPA's compliance and enforcement procedures for Federal facilities. This document outlines EPA's strategy for maximinizing use of its available enforcement activities at Federal facilities.

The Federal Facilities Compliance Strategy replaces the previous EPA program document entitled "Resolution of Compliance Problems at Federal Facilities" issued in January 1984 and it will continue to be referred to as the "Yellow Book."

Date: December 6, 1988.

Jennifer Joy Wilson,

Assistant Administrator for External Affairs.

[FR Doc. 88-28994 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59859; FRL-3493-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 89-36—December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacture on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-36

Manufacturer. Confidential.
Chemical. (G) Epoxy resin.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Date: December 12, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-28951 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59267; FRL-3493-6]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application(s) for exemption, provides a summary, and request comments on the appropriateness of granting this exemption.

DATE: Written comments by:

T 89-6—January 1, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59267]" and the specific TME number should be sent to: TSCA Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-6

Close of Review Period. January 15, 1989.
Importer. Confidential.
Chemical. (S) Resin.
Use Import. (G) Coating. Impor. range: 13,600 kg/yr.

Date: December 12, 1988.

Steven Newbury-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-28952 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3492-4]

State and Local Assistance for Underground Injection Control Program; Underground Water Source Protection

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has determined that $1 million of the total funds available in fiscal year 1989 for grants under section 1443(b) of the Safe Drinking Water Act should be allocated exclusively for

Class I well activity, Class II well activities, and Indian Tribe funding. The purpose of this notice is to inform the public of that decision and of the method used to allocate the $1 million among the States.

FOR FURTHER INFORMATION CONTACT: Francoise Brasier, U.S. Environmental Protection Agency, Office of Drinking Water, State Programs Division, Underground Injection Control Branch, WH–550E, 401 M Street SW., Washington, DC 20460: telephone 202–382–5530, (FTS) 382–5530.

SUPPLEMENTARY INFORMATION: The President's budget requested $9.5 million for the UIC State grants for fiscal year 1989. Congress appropriated $10.5 million. EPA will set aside 5 percent of the original $9.5 million request ($475,000) and 5 percent of the $1 million add-on ($50,000) for a total of $525,000 for programs on Indian lands. The Agency will allocate the remainder of the original budget request ($9,025,000) according to the existing grant formula based on State population, geographic area and injection practices for all classes of wells. The remainder of the add-on ($950,000) will be allocated in a different manner to reflect the need for additional resources to address high priority Class I well and Class II well activities. Specifically, EPA will allocate 25 percent or $237,500 for Class I wells and 75 percent or $712,500 for Class II wells.

The following table illustrates the allotment by State of the $1,000,000 add-on.

STATE ALLOTMENT OF ONE MILLION DOLLARS

State	Class I well allotment	Class II well allotment	Total State allotment
Connecticut	0	0	0
Maine	0	0	0
Massachusetts	0	0	0
New Hampshire	0	0	0
Rhode Island	0	0	0
Vermont	0	0	0
New Jersey	0	0	0
New York	400	14,400	14,800
Puerto Rico	0	0	0
Virgin Islands	0	0	0
District of Columbia	0	0	0
Delaware	0	0	0
Maryland	0	0	0
Pennsylvania	0	28,700	28,700
Virginia	0	0	0
West Virginia	0	3,200	3,200
Alabama	800	1,000	1,800
Florida	54,400	300	54,700
Georgia	0	0	0
Kentucky	800	24,000	24,800
Mississippi	3,400	7,300	10,700
North Carolina	1,700	0	1,700
South Carolina	0	0	0
Tennessee	3,000	0	3,000
Illinois	3,800	64,400	68,200
Indiana	10,200	14,600	24,800
Michigan	13,200	7,300	20,500
Minnesota	0	0	0
Ohio	7,200	17,500	24,700
Wisconsin	0	0	0
Arkansas	3,400	5,300	8,700
Louisiana	31,400	18,400	49,800
New Mexico	2,500	18,400	20,900
Oklahoma	8,100	91,600	99,700
Texas	65,400	233,600	299,000
Iowa	0	0	0
Kansas	19,500	65,800	85,300
Missouri	0	1,800	1,800
Nebraska	0	3,100	3,100
Colorado	1,700	4,400	6,100
Montana	0	5,900	5,900
North Dakota	1,300	2,700	4,000
South Dakota	0	200	200
Utah	0	2,900	2,900
Wyoming	3,000	26,000	29,000
Arizona	0	0	0
California	1,300	47,700	49,000
Hawaii	0	0	0
Nevada	0	100	100
American Samoa	0	0	0
Guam	0	0	0
Northern Mariana Islands	0	0	0
Trust Territories	0	0	0
Alaska	800	2,100	2,900
Idaho	0	0	0
Oregon	0	0	0
Washington	0	0	0
Total	237,300	712,700	950,000
Indian Land Programs			50,000
Total			1,000,000

Dated: November 30, 1988.

William A. Whittington,

Acting Assistant Administrator for Water.

[FR Doc. 88–28842 Filed 12–15–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Comments Invited on North Central and North East Texas Public Safety Plan

December 7, 1988.

The Commission has received the public safety radio communications plan for the North Central and North East Texas area (Region 40).

In accordance with the Commission's Report and Order in General Docket 87–112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of **Federal Register** publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 40 consists of the following Texas counties: Cooke, Grayson, Fannin, Lamar, Red River, Bowie, Wise, Denton, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Cass, Tarrant, Dallas, Palo Pinto, Parker, Rockwall, Kaufman, Rains, VanZandt, Wood, Smith, Camp, Upshur, Gregg, Marion, Harrison, Panola, Rusk, Cherokee, Anderson, Henderson, Navarro, Ellis, Johnson, Hood, Somervell, and Erath. (See Memorandum Opinion and Order, General Docket 87–112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 88–549, North Central and North East Texas Area—Region 40, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Fred Thomas, Office of Engineering and Technology, (202) 653–8112, or Marty Liebman, Private Radio Bureau, (202) 632–6497.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–28925 Filed 12–15–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket Nos. 88–514; File Nos. BTCCT–861126KE and BLCT–870316KH]

Applications for Consolidated Hearing Pan Pacific Television, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and City/ State	File No.	MM Docket No.
A. The Stockholders of PAN Pacific Television, Inc. (Transferors) and Silver King Broadcasting of Northern California (Transferee), Vallejo, CA.	BTCCT–861126KE	88–514
B. Pan Pacific Television, Inc., Vallejo, CA.	BLCT–870316KH	88–514

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a

consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicant(s)

1. Alien Control, A, B
2. Misrepresentation, A, B
3. Qualifications, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88-28924 Filed 12-15-88; 8:45 am]

BILLING CODE 6712-01-01-M

Applications Are Designed For Hearing; Shafer, Charles B., et al.

1. The Common Carrier Bureau, under delegated authority, has designated for hearing public land mobile service applications. The applications for transfer of control from Charles B. Shafer to Hazel-Tone Communications Inc. and change of facilities were granted in 1981. On appeal from that grant, the United States Court of Appeals for the District of Columbia Circuit affirmed in part and reversed and remanded in part the Commission's decision. In 1986 the Commission released an order on remand finding that neither the assignor nor the assignee had lacked condor with the Commission. On appeal the Commission requested and was granted a voluntary remand on August 28, 1987.

2. Substantial and material questions of fact have been raised against these applications which require resolution in a hearing. The questions concern a possible lack of candor and material misrepresentations to the Commission. For instance, during 1979 to 1980 a yellow pages advertisement for Shafer's paging service appeared in the Wilkes-Barre telephone directory. The order for this advertisement had been signed by John P. Gabriele, president of Hazel-Tone, on August 12, 1979. Gabriele contends that in signing the order he believed that he was only approving the copy and not signing a contract. Copies of the documents signed by Gabriele state, however, that it is a contract. This apparent inconsistency raises a substantial and material question of fact concerning whether Gabriele misrepresened material facts or lacked candor with the Commission. In turn, this raises the question of whether Gabriele is qualified to be or to remain a Commission licensee. Therefore, we are designating these matters for hearing on the issues specified below.

3. By public notice released on November 17, 1988 the Commission rescinded the grants of these applications. The Commission also granted special temporary authority to Hazel-Tone Communications, Inc. to continue to operate the facility until the resolution of this proceeding.

4. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the following applications have been designated for hearing:

Applicant	File No.
Charles B. Shafer, Assignor Hazel-Tone Communications, Inc., Assignee.	22584-CD-AL-79
Charles B. Shafer	20095-CD-P-80

5. Pursuant to section 309(e) of the Communications Act of 1934, these applications have been designated for hearing in a consolidated proceeding upon the folowing issues:

(1) To determine all the facts and circumstances surrounding the placing of the advertisement in the yellow pages directory.

(2) To determine all the facts and circumstances surrounding the use of Gabriele's transmitter by Shafer.

(3) To determine, on the basis of the evidence adduced above, whether Gabriele misrepresented material facts to the Commission or lacked candor.

(4) To determine, on the basis of evidence adduced above, whether Gabriele is qualified to be a Commission licensee.

(5) To determine on the basis of all the above whether a grant of the applications would be in the public interest, convenience and necessity.

6. Mobilefone of Northwestern Pennsylvania was also made a party to this proceeding.

7. A copy of the complete Hearing Designation Order in this proceeding (CC Docket No. 88-534) is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc. 2100 M St., NW., Washington, DC 20037 [Telephone No. (202) 857-3800].

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 88-28928 Filed 12-15-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-536; File Nos.: BPH-871008MC and BPED-871008MS]

Applications for Consolidated Hearing; Williamsburg County Broadcasting Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I

Applicant and City/ State	File No.	MM Docket No.
A. Williamsburg County Broadcasting Corp., Kingstree, SC.	BPH-871008MC	88-536
B. Augusta Radio Fellowship Institute d/b/a South Carolina Radio Fellowship, Kingstree, SC.	BPED-871008MS	

Issue Heading and Applicants

1. Site Availability, A
2. Financial, B
3. Misrepresentation, B
4. Comparative, A, B
5. Ultimate, A, B

II

Applicant and City/ State	File No.	MM Docket No.
A. Lynchburg Radio Limited Partnership, Lynchburg, VA.	BPH-870918MB	88-539
B. Roanoke Valley Cellular Telephone Company, Lynchburg, VA.	BPH-870918MK	
C. Lynchburg Radio Broadcasting, Lynchburg, VA.	BPH-870918MO	
D. Central Virginia Broadcasters, Lynchburg, VA.	BPH-870918MU	

Applicant and City/ State	File No.	MM Docket No.
E. Friendship Broadcasting Corporation, Lynchburg, VA.	BPH-870918NL	

Issue Heading and Applicants

1. Environmental, A, B, C, D
2. Alien Ownership, D
3. Financial, D
4. Comparative, All applicants
5. Ultimate, All applicants

III

Applicant and City/ State	File No.	MM Docket No.
A. James Philip Gray, Harrison, Ohio.	BPH-870330MB	88-535
B. Ohio Broadcast Limited Partnership, Harrison, Ohio.	BPH-870330MJ	
C. Queencity West Communications, Inc., Harrison, Ohio.	BPH-870330ML	
D. Thomas F. Nornhold d/b/a T.N. Communications, Harrison, Ohio.	BPH-870331KV	
E. Denny Workman d/b/a Harrison Communications, Harrison, Ohio.	BPH-870331NL	
F. Toya Jackson, d/b/ a Jackson Communications, Harrison, Ohio.	BPH-870331OA	
G. Vernon R. Baldwin and Billy W. Lanham d/b/a Tri-State Communications, Harrison, Ohio.	BPH-870331PD	
H. Danny M. Watson, Harrison, Ohio.	BPH-870407KJ	
I. Earnest L. James d/ b/a Broadstar Communications, Inc., Harrison, Ohio.	BPH-870408KD	

Issue Heading and Applicants

1. See Appendix, E
2. See Appendix, E
3. Financial, E
4. Comparative, ALL
5. Ultimate, ALL

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-28923 Filed 12-15-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Office of Training; Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: January 29 through 30, 1988.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time: January 29—10:30 a.m. to 5:00 p.m., January 30—8:30 a.m. to Agenda Completion.

Proposed Agenda: Old Business, New Business; Preparation of BOV Annual Report.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1123) on or before January 20, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 7, 1988.

Dave McLoughlin,

Director, Office of Training.

[FR Doc. 88-28942 Filed 12-15-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-1267]

Federal Savings and Loan Insurance Corporation; Insurance Premium

Date: December 7, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one quarter of one-eighth of one percent (one thirty-second of one percent) of the total amount of the accounts of the insured members of each insured institution determined as of September 30, 1988.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Principal Deputy Executive Director, FSLIC, (202) 254-2029; or Deborah Siegel, Attorney, Office of General Counsel (202) 377-6848, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *Provided* that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *Provided Further* that the amount of the additional premium for the calendar year 1988 may not exceed one-twelfth of

one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85–142, dated February 22, 1985, by Resolution No. 85–437, dated June 5, 1985, by Resolution No. 85–770, dated August 28, 1985, by Resolution No. 85–1142, dated December 9, 1985, by Resolution No. 86–213, dated March 6, 1986, by Resolution No. 86–582, dated June 10, 1986, by Resolution No. 86–941, dated September 2, 1986, by Resolution No. 86–1253, dated December 15, 1986, by Resolution No. 87–281 dated March 16, 1987, by Resolution No. 87–610 dated May 27, 1987, by Resolution No. 87–950 dated September 9, 1987, by Resolution No. 87–1254 dated December 14, 1987, by Resolution No. 88–256 dated April 7, 1988, by Resolution No. 88–537 dated June 29, 1988, and by Resolution No. 88–981 dated September 15, 1988, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh, as of September 30, 1987, for the twelfth, as of December 31, 1987, for the thirteenth, as of March 31, 1988, for the fourteenth, and as of June 30, 1988, for the fifteenth; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85–142, dated February 22, 1985, Resolution No. 85–437, dated June 5, 1985, Resolution No. 85–770, dated August 28, 1985, Resolution No. 85–1142, dated December 9, 1985, Resolution No. 86–213, dated March 6, 1986, Resolution No. 86–582, dated June 10, 1986, Resolution No. 86–941, dated September 2, 1986, Resolution No. 86–1253, dated December 15, 1986, Resolution No. 87–281, dated March 16, 1987, Resolution No. 87–610, dated May 27, 1987, Resolution No. 87–950, dated September 9, 1987, Resolution No. 87–1254, dated December 14, 1987, Resolution No. 88–256, dated April 7, 1988, Resolution No. 88–537, dated June 29, 1988, and Resolution No. 88–981, dated September 15, 1988, upon the Corporation's insurance reserves:

Now, Therefore, It Is Resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through the third quarter of 1988; and

Resolved Further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85–142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85–142, No. 85–437, No. 85–770, No. 85–1142, No. 86–213, No. 86–582, No. 86–941, No. 86–1253, No. 87–281, No. 87–610, No. 87–950, No. 87–1254, No. 88–256, No. 88–537, and No. 88–981 in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of the Corporation; and

Resolved Further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the fourth quarter of 1988, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of September 30, 1988; and

Resolved Further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about December 28, 1988; and

Resolved Further, That the Executive Director or the Principal Deputy Director of the FSLIC, or a designee of either of them, ("Director"), shall determine the amount of the additional premium due, including an offset of one quarter of twenty percent (five percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in section 404(e)(2) of the NHA, to be paid on or about December 28, 1988, by each insured institution, and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved Further, That the Director, on behalf of the Corporation , is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved Further, That the Secretary shall forward this Resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–28995 Filed 12–15–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

NCNB Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the publication has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such

as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation,* Charlotte, North Carolina; to engage *de novo* through its subsidiary, NCNB America Bank, Newark, Delaware, in making loans or other extensions of credit by means of credit cards, to any natural person or persons the proceeds of which are to be used primarily for personal, family or household purposes and to take security interests of any kind in property of any type to secure such loans or extensions of credit pursuant to § 225.25(b)(1)(ii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Shelton Enterprises, Inc.,* Shelton, Nebraska; to engage in community development pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28961 Filed 12-15-88; 8:45 am]

BILLING CODE 6210-01-M

Princeton Agency, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 6, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Princeton Agency, Inc.,* Princeton, Iowa; to merge with LeClaire Agency, Inc., LeClaire, Iowa, and thereby indirectly acquire LeClaire State Bank, LeClaire, Iowa.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Magna Group, Inc.,* Belleville, Illinois, and MCB Acquisition Company, Belleville, Illinois; to acquire 100 percent of the voting shares of New Holland Farmers Bank, New Holland, Illinois, and thereby indirectly acquire Magna Bank of Lincoln, N.A., Lincoln, Illinois. In connection with this application, MCB Acquisition Company has applied to become a bank holding company.

2. *West-Ark Bancshares, Inc.,* Clarksville, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Arkansas State Bank, Clarksville, Arkansas.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Citizens Investment Co., Inc.,* Glenville, Minnesota; to acquire 100 percent of the voting shares of Frost State Bank, Frost, Minnesota.

2. *Minnesota State Bancshares, Inc.,* St. Paul, Minnesota; to become a bank holding company by acquiring 87.1 percent of Class A common stock and 100 percent of the Class B common stock of Minnesota State Bancorporation, Inc., St. Paul, Minnesota, and Minnesota State Bank, St. Paul, Minnesota. Comments on this application must be received by December 30, 1988.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lawton Financial Corporation,* Lawton, Oklahoma; to acquire 100 percent of the voting shares of First Chattanooga Corporation, Chattanooga, Oklahoma, and thereby indirectly acquire The First Bank of Chattanooga, Chattanooga, Oklahoma.

Board of Governors of the Federal Reserve System, December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28962 Filed 12-15-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Vernon D. Smith

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Vernon D. Smith,* Fort Pierce, Florida; to acquire up to 25 percent of the voting shares of Riverside Banking Company, Fort Pierce, Florida, and thereby indirectly acquire Riverside National Bank of Florida, Fort Pierce, Florida.

Board of Governors of the Federal Reserve System, December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28963 Filed 12-15-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0240, General Services Administration Acquisition Regulation Subpart 525.2 Buy American Act—Construction Materials. The information required to be submitted with the offer is a description of the type, quantity, and cost of the foreign construction material proposed to be used under the contract.

AGENCY: Office of GSA Acquisition Policy Regulations (VP), GSA.

ADDRESSES: Send Comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 120; responses, 1 per year; average hours per response, 1; burden hours, 120.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad 202–566–1224.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Building Washington, DC 20405, or by telephoning 202–535–7691.

Dated: December 12, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88–28913 Filed 12–15–88; 8:45 am]

BILLING CODE 6820–61–M

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0228, Nondiscrimination in Federal Financial Assistance Programs. The information is needed to comply with 28 CFR 42.401 through 42.415 and 41 CFR 101–6.210–1 which require recipients of Federal financial assistance to distribute Federal surplus property in a nondiscriminatory manner.

AGENCY: Civil Rights Division (AKC), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

ANNUAL REPORTING BURDEN: Individuals responding, 55; responses, 1 per year; average hours per response, 16; burden hours, 880.

FOR FURTHER INFORMATION CONTACT: Thomas E. Henderson, 202–566–1368.

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Building, Washington, DC 20405, or by telephoning 202–535–7691.

Dated: December 12, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88–28914 Filed 12–15–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–89–1]

Fiscal Year 1989 Discretionary Funds Program; Availability of Funds and Request for Applications; Correction

December 14, 1988.

Correction is made to FR Doc. 88–28301 beginning at page 50164 of the issue for Tuesday, December 13, 1988.

The sub-agency heading appearing at the beginning of the document and on the cover page of the separate part should read as set forth above.

Joan R. McKinley-Shelton,

Alternate Liaison Officer.

[FR Doc. 88–29121 Filed 12–15–88; 9:26 am]

BILLING CODE 4130–01–M

Food and Drug Administration

[Docket No. 88M–0361]

Wesley-Jessen; Premarket Approval of W–J Sterile Unpreserved Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of W–J Sterile Unpreserved Saline Solution. The device is to be manufactured under an agreement with Applied Laboratories, Inc., Columbus, IN, which has authorized Wesley-Jessen to incorporate information contained in its approved premarket approval application for the Applied Laboratories Sterile Saline Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1988, of the approval of the application.

DATE: Petitions for administrative review by January 17, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On September 1, 1988, Wesley-Jessen, Chicago, IL 60610, submitted to CDRH an application for premarket approval of W–J Sterile Unpreserved Saline Solution. The device is a sterile physiological saline solution (0.9 percent salt in water) in a pressurized container with a nitrogen propellant and is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Applied Laboratories, Inc., Columbus, IN 47201, to incorporate information contained in its approved premarket approval application for the Applied Laboratories Sterile Saline Solution.

On September 30, 1988, CDRH approved the application by letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any

interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 17, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 8, 1988.

Walter E. Gundaker,

Director, Office of Compliance, Center for Devices and Radiological Health.

[FR Doc. 88–28937 Filed 12–15–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings

The following advisory committee meetings are announced:

Fertility and Maternal Health Drugs Advisory Committee

Date, Time, and Place

January 5, 1989, 9 a.m., and January 6, 1989, 8:30 a.m., Conference Rms. G and H, Parklawn Building, 5600 Fishers Lane, Rockville, MD.

Type of Meeting and Contact Person

Open public hearing, January 5, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, January 6, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General Function of the Committee

The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drug products for use in obstetrics, gynecology, and contraception.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 22, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

On January 5, 1989, the committee will discuss oral contraceptives and breast cancer, and on January 6, 1989, the bioequivalence of conjugated estrogen tablets.

Obstetrics-Gynecology Devices Panel

Date, Time, and Place

January 19, 1989, 9 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of Meeting and Contact Person

Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General Function of the Committee

The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 6, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will review, discuss, and make a recommendation on a proposed regulatory mechanism for market release of Doppler ultrasound instrumentation for fetal evaluation. The committee will review a draft guide that outlines the required preclinical and clinical testing for such devices.

Cardiovascular and Renal Drugs Advisory Committee

Date, Time, and Place

January 26 and 27, 1989, 9 a.m., National Institutes of Health, Clinical Center, Building 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of Meeting and Contact Person

Open public hearing, January 26, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, January 27, 1989, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane,

Rockville, MD 20857, 301–443–4730 or 419–259–6211.

General Function of the Committee

The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cardiovascular disorders and diseases and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 12, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss organic nitrates in the long-term therapy of angina and the incorporation of nitrate issues into guidelines for testing antianginal agents: Ethmaozine (morizine HC1), new drug application 19–753, Dupont Pharmaceutical, to be indicated for use in arrhythmia.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Room 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: December 9, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–28938 Filed 12–13–88; 1:03 pm]

BILLING CODE 4160–01–M

Health Care Financing Administration

[OIS–003–N]

General Notice of Quarterly Listing of Program Issuances

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, and statements of policy that were published during July, August and September 1988 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our issuances in the Federal Register every three months. The notice contains information for individuals and organizations to determine the subject matter of publications. It also tells where they may review the documents in their entirety and how subscriptions can be obtained.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin, (301) 966–5265 (For Issuance Information Only)

Matt Plonski, (301) 966–4662 (For Regulation Information Only)

Warren Calderone, (202) 245–0070 (Office of Prepaid Health Care Memoranda).

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 33 million Medicare beneficiaries. Administration of the program involves effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To effectively communicate interpretations of the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda and statements necessary to administer the program efficiently.

Section 4035(c) of OBRA '87 added a new section 1871(c)(1) to the Act that requires that we publish in the **Federal**

Register no less frequently than every three months a list of of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability. This is the third listing of issuance. (See 53 FR 21730, June 9, 1988 and 53 FR 36891), September 22, 1988 for our listing of materials issued from December 22, 1987, the effective date of OBRA '87, through June 30, 1988). As in prior notices, although regulations published in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements we are including regulations (proposed and final) published.

This continuation notice lists the manual instructions, program memoranda, and regulations published during July, August, and September 1988. In this listing of recently published items, we do not specifically identify interpretative and substantive rules. All substantive rules are included in regulations.

A. How to Use the Listing

This notice is organized so that a reader may review the subjects of all additional manual issuances, memoranda, or regulations published during this timeframe to determine whether any are of particular interest. To minimize repetition, we expect it to be read in concert with previously published notices. Most notably, those unfamiliar with the description of our manuals may wish to review Table I of our first and second notices (53 FR 21731 and 21732, and 53 FR 36892), and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21736 to 21737). We have divided this current listing into three tables.

Table I of this notice gives a brief description of an additional manual that HCFA publishes. Our manuals and memoranda are organized according to the user of the materials, e.g., Hospital Manual, Skilled Nursing Facility Manual, Intermediary Manual. The summaries in Table I allow the reader to determine whether routine issuances are of interest. As discussed below, it is possible for members of the public or organizations to subscribe to our manuals and routinely receive all issuances. Paragraph B of this Supplementary Information includes information necessary to enter a subscription.

Table II lists, for each of the appropriate manuals, a transmittal number unique to that instruction and a brief statement of its subject matter. The subject matter in a transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals. This table also includes Program Memoranda and Office of Prepaid Health Care memoranda.

Table III lists all Medicare and Medicaid regulations and general notices published in the **Federal Register** during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changes.

B. How to Obtain Listed Material

- *Manuals*

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783–3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161. Telephone (703) 487–4630.

In addition, individual manual transmittals listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell. Program memoranda are not available for sale. (See subsection C.)

- *Regulations and Notices*

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or may subscribe to the **Federal Register** by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783–3238. When ordering individual copies, it is necessary to cite either the date of publications or the volume number and page number.

C. How to Review Listed Material

Individuals or organizations that do not wish to purchase subscriptions or individual transmittals or are interested in Program Memoranda may review identified items at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the Federal Depository Libraries. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDL locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, the Program Memorandum on CORF Documentation Requirements use the Superintendent of Documents number HE 22.8/6–5 and the HCFA transmittal number A–88–13.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. We are providing information contact persons to answer general questions concerning these items. Individuals are expected to procure copies noted under section B or arrange to review them as noted in section C.

Questions concerning items in Tables I or II may be addresed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207; Telephone (301) 966–5265. Please do not use this contact to request copies of the listed items.

Questions concerning the regulations in Table III may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–4662.

Questions concerning the Office of Prepaid Health Care memoranda may be addressed to Warren Calderone, Policy Planning Liaison Staff, Office of Prepaid Health Care, 423–H Hubert H. Humphrey Building, 200 Independence

Avenue SW., Washington, DC 20210, Telephone (202) 245-0070.

Table I—Description of Manuals and Memoranda

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21731 and supplemented at 53 FR 36892. A transmittal was issued during the July-September quarter for the following manual not previously described.

Carrier Quality Assurance Handbook—(HCFA-Pub. 25)

The Carrier Quality Assurance Handbook is designed for use by the Medicare carriers. It contains the processing and systems instructions which govern the evaluation of the quality of their Part B claims adjudication.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY-SEPTEMBER 1988

Trans. No.	Manual/Subject/Publication Number
	Intermediary Manual, Part 1—Fiscal Administration (HCFA—Pub. 13-1)
117	o Schedule of Appeals. Schedule of Medicare Secondary Payer. Assessment of Documentation. Completing the Final Administrative Cost Proposal Use of Form HCFA-1523
	Intermediary Manual, Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13-2) (Superintendent of Documents No. HE 22.8/6-2)
361	o Assessment of Benefit Savings Attributable to Intermediary Medical Review Actitivies.
362	o The Contractor Performance Evaluation Program—FY 88. Process Claims Functional Criterion. Auditing Functional Criterion. Medical Review Functional Criterion. Financial Management Functional Criterion. Beneficiary and Provider Services Functional Criterion. Reporting Functional Criterion. Reimbursement Functional Criterion. Management of Change Functional Criterion.
	Intermediary Manual, Part 3—Claims Process (HCFA-Pub. 13-3) (Superintendent of Documents No. HE 22.8/6)
1390	o Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group Health Plans.
1391	o Comprehensive Outpatient Rehabilitation Facilities (CORFs) Services. Medical Review of Comprehensive Outpatient Rehabilitation Facility Claims.
1392	o Hospital Providers of Extended Care Services.
1393	o Provision of Services.
1394	o Hospital Inpatient Bills.
1395	o Billing Procedures Where Services Are Reimbursable Under Automobile Medical or No-Fault Insurance, or Any Liability Insurance. Billing Procedures for Hospitals on Prospective Payment When Medicare is Secondary Payer.
1396	o Immunosuppressive Drugs Furnished to Transplant Patients.
1397	o Provider Electronic Billing File and Record Formats.
1398	o Medical Review of Part B, Intermediary Outpatient Physical Therpy Bills.
1399	o Claims Processing Timeliness.
1400	o Claims Processing Timeliness.
1401	o PRO Reporting on Medical Review. Edits for PRO Report on Medical Review. Disclosure to Peer Review Organizations.
1402	o Provider Specific Data Record Layout and Description. Intermediary Responsibilities. Provider Specific File.
1403	o Immunosuppressive Drugs Furnished to Transplant Patients. Postpayment Audit.
1404	o Preparing the Reconsideration Determination.
1405	o Explanation of Part B Trailer Codes. Time Limitation for Filing Provider Claims. Notifying Carriers. Completing Form HCFA-1533.
1406	o Claims Processing Timeliness. Home Health Denial, Limitation of Liability and Appeal Paragraphs.
IM-88-5	o Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services.
IM-88-6	o New Part A Provisions Under Catastrophic Insurance.
IM-88-7	o Reuse of Bloodlines in ESRD Facilities.
IM-88-8	o Documenting Part A Reconsideration Requests. Documentation Sources. Development of Reconsiderations. Reopening and Revision of Determinations and Decisions on Claims. Budgetary Allocation and Workload Reporting.
	Intermediary Manual, Part 4—Audit Procedures (HCFA-Pub. 13-4) (Superintendent of Documents No. HE 22.8/6-4)
25	o Provider Reimbursement Profile
	Carriers Manual, Part 1—Fiscal Administration (HCFA-Pub. 14-1) (Superintendent of Documents No. HE 22.8/7-2)
111	o Appeals and Inquiries Data Schedule of Medicare Secondary Payer. Assessement of Development Completing the Final Administrative Cost Proposal Form HCFA-1524
	Carriers Manual, Part 2—Program Administration (HCFA-Pub. 14-2) (Superintendent of Documents No. HE 22.8/7-3)
106	o The Contractor Performance Evaluation Program—FY 88. Process Claims Functional Criterion. Financial Management Functional Criterion. Beneficiary and Provider Services Functional Criterion. Reporting Functional Criterion. Management of Change Functional Criterion.
	Carriers Manual, Part 3—Claims Process (HCFA-Pub. 14-3) (Superintendent of Documents No. HE 22.8/7)
1258	o Payment for Home Dialysis Supplies and Equipment. Notification of Beneficiaries Under Method II. Part B Sample Bill Summary Record.
1259	o Prohibition Against Billing For Unassigned Physician Services Which Are Determined To Be Not Reasonable and Necessary.
1260	o Limitation on Payment for Services to Individuals Entitled to Benefits Solely on the Basis of End Stage Renal Disease Who Are Covered by Employer Group Health Plans.
1261	o Disclosure of Program Materials.
1262	o Claims Where Beneficiary Has Elected Hospice Coverage.
1263	o Dentist. Dental Services. Dental Services and Exclusion. Change of Position Causes.
1264	o Claim Detail 1.
1265	o Disposition Codes, Disposition Code 40. Record Codes and Trailers.
1266	o Drugs and Biologicals. Monitoring Potential Violation of Laboratory Assignment.
1267	o Limitation of Liability. Limitation of Liability—Indemnification Procedures. Processing Initial Assigned Claims Under the Limitation of Liability Provision. Procedures for Applying the Limitation of Liability Provision. Determining Liability for Claims for Physicians and Supplier Services. Application of Deductible and Coinsurance to Limitation of Liability Determinations and Payment Records. Applicability of the Limitation of Liability Provision to Claims for Outpatient Physical Therapy Services Furnished by Clinics. Limitation of Liability Indemnification Procedures for Claims Filed Under Part B.
1268	o Transferring Requests for Medicare Payment.
1269	o PRO Review of Ambulatory Surgical Center Claims. Reports to PRO. Reports from PRO. Review. PRO/Carrier Data Exchange

BEST COPY AVAILABLE

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1988—Continued

Trans. No.	Manual/Subject/Publication Number
1270	o Determining Reasonable Charges for Services of Certified Nurse-Midwives.
1271	o Elements of a Review. Specialty Carrier Disposition of Claimant Hearing Requests. Issues Determined at the Hearing. Request for Hearing.
IM–88–4	o Determining Fee Schedule Reimbursement for the Services of Clinical Psychologists Furnished at a Community Mental Health Center. Reopening and Revision of Determinations and Decisions on Claims. Budgeting Allocation and Workload Reporting. Development of Appeals. How Issues May Arise. Summary of Conditions Under Which a Determination or Decision May Be Reopened.
Program Memorandum, Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)	
A–88–13	o CORF Documentation Requirements.
A–88–14	o Installation of New ASC Payment Rates in the ASC Pricer Program.
A–88–15	o Regional Home Health Intermediary/Audit Intermediary Data Exchange.
A–88–16	o Timely Processing of Hospice Bills.
A–88–17	o HCFA's Audit Expectations.
A–88–18	o Planning for Changes in ICD–9–CM Coding Effective October 1, 1988.
A–88–19	o Duggan v. Bowen.
A–88–20	o Clarification of Medicare DRG Assignment of Artificial Urinary Sphincters.
A–88–21	o Duggan v. Bowen.
Program Memorandum, Carriers (HCFA-Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)	
B–88–11	o Data on Carrier Anesthesia Practices.
B–88–12	o Ambulatory Surgical Center Facility Charge Payment Rate Update.
B–88–13	o "Q" Codes in the 1988 HCPCS Update Tape.
B–88–14	o Collection and Maintenance of Data for the Physician Identification Effort.
B–88–15	o Notice of New Interest Rate Applicable on Clean Claims.
B–88–16	o HCPCS Code 88342.
B–88–17	o Physician and Supplier Protections Under § 1842(1) and § 1879.
B–88–18	o HCPCS Codes 93784, 93786, 93788, and 93790.
Program Memorandum, Intermediaries/Carriers (HCFA-Pub. 60 A/B) (Superintendent of Documents No. HE 22.8/6–5)	
AB–88–7	o Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services—Exchange of Information.
AB–88–8	o Procedures to Reopen Claims as a Result of HCFA's Clarification of Policy in MSP Liability Situations.
AB–88–9	o Implementation of HCFA Decisions Regarding Definition of Employee for Purposes of MSP Disability Provisions.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1988—Continued

Trans. No.	Manual/Subject/Publication Number
AB–88–10	o Implementation of HCFA Decisions Regarding Definition of Employee for Purposes of MSP Disability Provisions.
AB–88–11	o Implementation of HCFA Decision Regarding Modification of the Definition of Employee for Purposes of MSP Disability.
State Operations Manual, Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)	
207	o HHA Supplemental Survey Mechanism for Quality of Care. Home Health Agency Home Visits.
208	o Interpretive Guidelines—Independent Laboratories.
209	o Termination Procedures—Immediate and Serious Threat to Patient Health and Safety (Medicare, Medicaid). Guidelines for Determining Immediate and Serious Threat to Patient Health and Safety.
210	o Ambulatory Surgical Centers—Citations and Description. Interpretive Guidelines Ambulatory Surgical Services.
211	o Interpretive Guidelines Ambulatory Surgical Services.
Regional Office Manual, Standards and Certification (HCFA-Pub. 23–4) (Superintendent of Documents No. HE 22.8/8–3)	
34	o Noncompliance With One or More Conditions of Participation or Coverage and the Deficiencies Pose an Immediate and Serious Threat to Patient Health and Safety.
Regional Office Manual, Peer Review Organization Manual (HCFA-Pub. 19) (Superintendent of Documents No. HE 22.8/8–15)	
22	o Address Correction for PROs to Send PNDDS Tapes.
23	o Hospital Issuance of Message to Beneficiaries. Monitoring Procedures. An Important Message From Medicare.
Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)	
544	o Post-Hospital Extended Care Services. Inpatient Hospital Services Certification and Recertification. Timing of Certifications and Recertifications.
545	o Notice to Beneficiary of PRO Review of Care. PRO Monitoring of Hospital Admission Notice to Beneficiaries.
546	o Bill Preparation Where Services Are Reimbursable Under Automobile Medical or No-Fault Insurance, or Any Liability Insurance. Bill Preparation for Hospitals on Prospective Payment When Medicare is Secondary Payer.
547	o Billing for Immunosuppressive Drugs Furnished to Transplant Patients.
548	o Provider Electronic Billing File and Record Formats.
549	o Claims Processing Timeliness.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1988—Continued

Trans. No.	Manual/Subject/Publication Number
550	o Billing for Part B, Outpatient Physical Therapy Services.
551	o Claims Processing Timeliness.
552	o Bill for Immunosuppressive Drugs Furnished to Transplant Patients.
IM–88–4	o Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services.
IM–88–5	Reuse of Bloodlines in ESRD Facilities.
IM–88–6	o Description of Part A Provisions Under Catastrophic Insurance.
Christian Science Sanatorium, Hospital Manual Supplement (HCFA-Pub. 32) (Superintendent of Documents No. HE 22.8/2–2)	
21	o Bill Preparation Where Services Are Reimbursable Under Automobile Medical or No-Fault Insurance, or Any Liability Insurance.
22	o Claims Processing Timeliness.
Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)	
210	o Special Rules for Services Furnished to ESRD Beneficiaries By Source Outside EGHP Prepaid Health Plan. Medical Services Furnished By Source Outside EGHP Prepaid Health Plan. Medicare as Secondary Payer for Disabled Individuals.
211	o Bill Preparation Where Services Are Reimbursable Under Automobile Medical or No-Fault Insurance, or Any Liability Insurance.
212	o Billing for Part B Outpatient, Physical Therapy Services.
213	o Claims Processing Timeliness.
214	o Postpayment Audit.
Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)	
268	o Hospital Providers of Extended Care Services.
269	o Bill Preparation Where Services Are Reimbursable Under Automobile Medical or No-Fault Insurance, or Any Liability Insurance.
270	o Billing For Part B, Outpatient Physical Therapy.
271	o Claims Processing Timeliness.
IM–88–3	o Description of Part A Provisions Under Catastrophic Insurance.
Rural Health Clinic Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)	
29	o Bill Preparation Where Services Are Reimbursable Under Automobile Medical or No-Fault Insurance, or Any Liability Insurance.
30	o Claims Processing Timeliness.
Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)	
35	o Reduction in Reimbursement Due to Pub. L. 99–177, Pub. L. 100–119, and Pub. L. 100–203.
36	o Claims Processing Timeliness.
IM–88–2	o Reuse of Bloodlines in ESRD Facilities

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)
19	o Claims Processing Timeliness.
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)
75	o Psychiatric Services Limitations.
76	o Billing for Comprehensive Outpatient Rehabilitation Facilities Services.
	Completion of Form HCFA-1450 for Billing CORF, Outpatient Physical Therapy, Occupational Therapy, or Speech Pathology Services.
77	o Provision of Services.
78	o Bill Preparation Where Services Are Reimbursable Under Automobile Medical or No-Fault Insurance, or Any Liability Insurance.
79	o Medical Review of Part B, Outpatient Physical Therapy Services.
80	o Claims Processing Timeliness.
	Coverage Issues Manual (HCFA-Pub. 6) (Superintendent of Documents No. HE 22.8/14)
27	o Home Blood Glucose Monitors.
28	o Magnetic Resonance Imaging.
29	o Anesthesia in Cardiac Pacemaker Surgery.
30	o Tracheostomy Speaking Valve.
31	o Cataract Surgery.
32	o Postural Drainage Procedures and Pulmonary Exercises.
	Inpatient Hospital Pain Rehabilitation Programs.
	Outpatient Hospital Pain Rehabilitation Programs.
33	o Assessing Patient's Suitability For Electrical Nerve Stimulation Therapy.
	Displacement Cardiography.
	Provider Reimbursement Manual, Part 1 (HCFA-Pub. 15-1) (Superintendent of Documents No. HE 22.8/4)
344	o Travel Expense.
345	o Adjustment for the Indirect Cost of Medical Education.
346	o Special Extension for Eye, and Eye and Ear, Specialty Hospitals.
347	o Reimbursement for Swing Beds.
348	o Definition.
	Determination and Payment of Allowable Physician Compensation Costs.
	Provider Recordkeeping Requirements.
	Effect of Billing Charges for Physician Services to a Provider.
	Independent Laboratory Services.
	Customary and Prevailing Charges for Physicians' Services in Provider Settings.
	Reasonable Compensation Equivalent.
	Adjustments to the RCE Limits.
	Changes in Compensation Agreements.
	Estimates of Full-Time Equivalency Annual Average Net Compensation Levels for 1983 and 1984.
	Geographic Area Classification for RCE Limits
	Provider Reimbursement Manual—Part II (HCFA-Pub. 15-IIA) (Superintendent of Documents No. HE 22.8/4)
8	o Reduction in Program Payment Under Sequestration
	Provider Reimbursement Manual—Part II (HCFA-Pub. 15-IIS) (Superintendent of Documents No. HE 22.8/4)
9	o Return on Equity Capital
	Carrier Quality Assurance Handbook (HCFA-Pub. 25) (Superintendent of Documents No. HE 22.8/C 23/982)
38	o Mailing Instructions.
	Quality Review Material Required.
	Payment.
	Incorrect Payment Reduction MSP, Purchased UDME or Interest Charges Claims—4J Error Code.
	Reduction Error Resolution and Coding.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED JULY–SEPTEMBER, 1988

Publication date/cite	42 CFR part	Regulation title
	Final Rules	
07/11/88 (53 FR 26067)	405	Medicare Program; Reasonable Charge Limitations.
07/28/88 (53 FR 28384)	424	Medicare Program; Indirect Part B Payment Procedure.
08/18/88 (53 FR 31334)	498	Medicaid Program; Appeals from Cancellation of Approval of Medicaid Long-Term Care Facilities.
09/19/88 (53 FR 36274)	405	Medicare Program; Alternative Sanctions for Suppliers of End-Stage Renal Disease (ESRD) Services.
09/21/88 (53 FR 36569)	400, 430 (45 CFR Part 201, 204, 205, 211, 212, 213, 282).	Medicaid Program; State Plans and Grants to States.
09/30/88 (53 FR 38476)	405, 412, 413, 489	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates.
	Proposed Rules	
07/05/88 (53 FR 25240)	412	Medicare Program; Effect of Appeals on the Hospital-Specific Portion of the Prospective Payment Rate (Corrects proposed rule published 06/13/88).
07/05/88 (53 FR 25240)	405, 482	Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care (Corrects proposed rule published 06/16/88).
07/14/88 (53 FR 26712)	405, 411, 489	Medicare as Secondary Payer and Medicare Recovery Against Third Parties (Corrects proposed rule published 06/15/88).
07/22/88 (53 FR 27718)	417	Medicare Program; Explanation of Enrollee Rights and Other Provisions Applicable to Health Maintenance Organizations and Competitive Medical Plans.
07/27/88 (53 FR 28236)	405	Medicare Program; Protocol for the Reuse of Dialysis Bloodlines.
08/05/88 (53 FR 29486)	405, 410, 489, 1003	Medicare Program; Prohibiting "Unbundling" of Hospital Outpatient Services.
08/05/88 (53 FR 29590)	74, 405, 416, 440, 482, 483, 488, 493	Medicare, Medicaid and CLIA Programs; Revision of the Clinical Laboratory Regulations for the Medicare, Medicaid, and Clinical Laboratories Improvement Act of 1967 Programs.
08/11/88 (53 FR 30317)	433	Medicaid Program; Medicaid Management Information System: Revised Definition of "Mechanized Claims Processing and Information Retrieval System" (Correction notice published 08/19/88 (53 FR 31801)).
08/22/88 (53 FR 31888)	405, 413	Medicare Program; Changes Concerning Suspension of Medicare Payments, Interest Rates Charged on Overpayments and Underpayments, and Determinations of Allowable Interest Expense.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED JULY-SEPTEMBER, 1988—Continued

Publication date/cite	42 CFR part	Regulation title
08/24/88 (53 FR 32252)	435, 436	Medicaid Program; What is Not Income.
08/25/88 (53 FR 32406)	434	Medicaid Program; Modification of Certain Requirements for Health Insuring Organizations.
09/21/88 (53 FR 36589)	405, 412, 413	Medicare Program; Changes in Payment Policy for Direct Graduate Medical Education Costs.
09/29/88 (53 FR 38032)	435, 436, 440	Medicaid Program; Eligibility of Aliens for Medicaid.
	Notices	
07/01/88 (53 FR 25014)		Medicare & Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting.
07/18/88 (53 FR 27083)		Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s).
07/21/88 (53 FR 27535)		Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates (Corrects notice published 05/27/88).
07/29/88 (53 FR 28700)		Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest from In-State Organizations.
08/18/88 (53 FR 31468)		Medicare Program; Update of Ambulatory Surgical Center Payment Rates.
09/08/88 (53 FR 34893)		Medicare Program; Withdrawal of Coverage of Single Photon Absorptiometry (Photodensitometry) and Continued Noncoverage of Dual Photon Absorptiometry.
09/09/88 (53 FR 35113)		Medicare Program; Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s).
09/12/88 (53 FR 35234)		Medicare Program; Utilization and Quality Control Peer Review Organizations.
09/13/88 (53 FR 35378)		Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1989.
09/20/88 (53 FR 36495)		Medicare Program; Data, Standards and Methodology Used to Establish Budgets for Fiscal Intermediaries and Carriers.
09/22/88 (53 FR 36890)		Medicare Program; Meeting of the Advisory Committee on Home Health Claims.
09/22/88 (53 FR 36891)		Quarterly Listing of Program Issuances.
09/29/88 (53 FR 38075)		Medicare Program; Establishment of Medicare Economic Index for 1989.
09/29/88 (53 FR 38076)		Medicare Program; Exclusion of Certain Food Allergy Tests and Treatments from Medicare Coverage.
09/30/88 (53 FR 38348)		Medicare Program; Monthly Actuarial Rates and Part B Premium Rates beginning January 1, 1989.
09/30/88 (53 FR 38357)		Medicare Program; Inpatient Hospital Deductible for 1989.

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No 13.774, Medicare-Supplement Medical Insurance Program)

Dated: December 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-28959 Filed 12-15-88; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; Computer Matching Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of a Matching Program—Federal Medicare Records (Medicare Physician Identification and Eligibility Records) and American Medical Association (AMA) Extract Data.

SUMMARY: We are issuing public notice of our intent to conduct matches of certain Federal Medicare records maintained by HCFA's carriers and physician Registry, and data maintained by the AMA.

A matching report is set forth below.

DATE: The proposed matches are scheduled to begin on January 1, 1989, and continue indefinitely.

DATES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Phillip Brown, Division of Operational Initiatives, Office of Program Administration, Room 367 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone 301-966-7158.

SUPPLEMENTARY INFORMATION: Medicare carriers currently identify physicians using their own systems of assigned numbers. These individualized systems allow for identification numbers (IDNs) ranging from 4 to 16 alphabetic and/or numeric characters. Some carriers assign separate IDNs to the same physician providing medical services in more than one locality, office or practice and lack the capability to cross reference the IDNs and related physician data. Other carriers maintain a single IDN or cross referenced IDNs for each physician practicing within the carrier's geographic area of responsibility. Since physicians can furnish medical services in, as well as bill for these services from, several locations or States which are in different carrier jurisdictions, the independent carrier arrangements enable such physicians who have been found to be ineligible for Medicare payments in one area, location or State to receive inappropriate or illegal payment in one or more other areas, locations or States.

In order to rectify the problems inherent in these individualized identification systems, HCFA, under Congressional mandate (Section 9202 of the Consolidated Omnibus Reconciliation Act of 1985, Pub. L. 99-272), created a uniform record system under national IDNs or Unique Physician Identification Numbers (UPINs). This national system or Registry of Medicare Physician Identification and Eligibility Records (MPIERs) will enable HCFA to more readily identify all physicians deemed ineligible for Medicare payments and maintain more comprehensive data on physician credentials.

To help assure the uniqueness of the majority of the UPIN assignments, HCFA's Registry plans to match carrier data to selected data extracted from the well established American Medical

Association (AMA) master data base. The AMA Data Extract will confirm the identity and credentials of each physician with a doctor of medicine degree. The AMA will provide the AMA Data Extract to the Registry under a subcontracting arrangement. The Registry-AMA subcontracting agreement also calls for the AMA to screen doctor of medicine data that the Registry could not match against the AMA extract data, against its more complete Masterfile for a match. The arrangement will not only provide confidence in the uniqueness of the UPINs assigned to doctors of medicine, it will also save HCFA the time and expense of developing its own data collection network that would provide the same level of confidence. Once a unique identity is confirmed and a UPIN is assigned, HCFA will use the carrier data to establish and maintain the related MPIER.

Set forth below is the information required by paragraph 5.f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate and the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget.

Dated: December 12, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Report of Computer Matching Program—Medicare Carrier Physician Records/American Medical Association Record Extracts

a. *Authority:* Section 9202(g) of Pub. L. 99–272.

b. *Purpose and Description:* Section 9202(g) mandates that "The Secretary of Health and Human Services shall establish a system,* * *, which provides for a *unique identifier* for each physician who furnishes services for which payment may be made under title XVIII of the Social Security Act." (Emphasis added.) By definition, unique physician identification requires as much assurance as possible that each physician being identified is not assigned more than one identification indicator and, conversely, that each identification indicator is not assigned to more than one physician. The matching of any or all of the potential Medicare physicians (encompassing the seven medical professions referred to in section 1861(r) of title XVIII of the Act) against reputable, reliable, established records of related professional societies or associations would help assure *unique* Medicare identification.

With concerns for the unique qualities of a Medicare identifier in mind, the Health Care Financing Administration (HCFA) entered into discussions with the American Medical Association (AMA) for an agreement to allow HCFA's Registry to use selected data (i.e., an extract) from the AMA's data base of medical doctors or M.D.s (the largest professional group of the seven medical professions referred to under Section 1861(r)). The extract will be used as a matching screen for assigning a Medicare Unique Physician Identification Number (UPIN) to those M.D.s participating in the Medicare program (i.e., only a M.D. with unquestionable matching data will be assigned a UPIN). The AMA will also screen carrier data that HCFA could not match with the AMA extract against its more complete Master File as part of the agreement.

The matching and reconciliation of Medicare carrier and AMA extract data elements will be conducted under subcontract by the HCFA established Registry. The AMA Data Extract File, and the AMA screening of unmatched carrier records against its Master File is contracted for under a subcontracting arrangement between the AMA and the Registry. The AMA Data Extract File will not become a part of the Registry's master Medicare Physician Identification and Eligibility Record (MPIER). Conversely, the Registry's data will not become a part of the AMA Master File. The sole purpose of the extract data and screening of the Master File will be to verify individual M.D. identification prior to issuance of a UPIN and establishment an individual MPIER.

The Registry will match:

(1) Data obtained from Medicare carriers of each M.D. "* * * who furnishes services for which payment may be made under title XVIII * * *" that has not been assigned a UPIN ; and,

(2) Data of bonifide, licensed M.D.s obtained from the extract of the AMA's master records.

The AMA will provide assistance to the Registry by matching:

(1) Carrier M.D. data that could not be matched by the Registry against the AMA Extract Data, obtained from the Registry; and,

(2) Data of bonafide, licensed M.D.s obtained from the AMA's complete Master File against carrier M.D. data.

The Registry will seek further assistance from the carriers to clarify any seemingly discrepant information to ensure the identity of each specific M.D. before assigning a UPIN and establishing a MPIER from the carrier submitted data. The Registry will report its activities, administrative costs, UPINs assigned and MPIERs established to HCFA.

c. *Personal Records to be Matched:* The Registry will match information from the AMA Data Extract with physician identification data submitted by HCFA's carriers in order to establish the MPIERs and issue physician UPINs. The AMA will match information from its Master File with unmatched physician identification data submitted by HCFA's Registry. (System No. 09–70–0525, 53 FR 21920; June 10, 1988.)

d. *Period of the Match:* Initial enrollment matching is expected to start on or about January 1, 1989. The ongoing, update matching will continue as long as the Registry-AMA subcontracting arrangement remains in force.

e. *Safeguards:* The subcontracted AMA extract data will remain the property of the AMA and be maintained separate from all HCFA Registry files and records. Conversely, the HCFA Registry unmatched M.D. data submitted to the AMA under the subcontract will remain the property of HCFA and be maintained separate from all AMA files and records. All records used in this match will be maintained under strict security. Access to the AMA extract will be restricted to only those Registry and HCFA personnel associated with the matching program and access to the HCFA's Registry data will be restricted to only those AMA personnel associated with the matching program on a "need to know" basis. Access to the HCFA Registry computer files and any printed information is restricted to only those HCFA, carrier, OIG, Registry and AMA personnel associated with Medicare physician records. Registry records will be kept in limited access rooms or locked file cabinets under the control of the Registry. All computer tapes will be protected by the use of passwords to prohibit unauthorized access. All computer files will be safeguarded in accordance with the provisions of the DHHS ADP Systems Manual, Part 6, "ADP Systems Security." The terms of the Registry contract and its subcontract with the AMA will preclude the Registry or the AMA from using, disclosing, copying, or retaining records associated with the matching program for the Registry's or the AMA's own use. The

contract and subcontract also will require that Registry and AMA personnel involved in the matching program be made explicitly aware of the obligation under the Privacy Act, Federal guidelines for computer matching programs, and DHHS rules and special safeguards related to each match performed.

f. *Retention and Disposition of Records:* Records used in the match to establish MPIERs will be maintained by the Registry. AMA data or tapes which become outdated or otherwise not necessary for the matching operation will be returned to the AMA for disposition. Registry data or tapes which become outdated or otherwise not necessary for the AMA matching operation will be disposed by the Registry. MPIERs of deceased M.D.s will be retained for ten years from the date of death and then destroyed/erased. All other Registry records will be maintained indefinitely.

[FR Doc. 88-28946 Filed 12-15-88; 8:45 am]
BILLING CODE 4120-03-M

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed new routine use for an existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is proposing to revise the system notice for its Medicare Physician Identification and Eligibility System (MPIES), HHS/HCFA/BPO No. 09-70-0525, to add a new routine use.

EFFECTIVE DATE: The proposed new routine use shall take effect without further notice January 17, 1989, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Phillip Brown, Division of Operational Initiatives, Office of Program Administration, Bureau of Program Operations, Health Care Financing Administration, Room 367 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-7158.

SUPPLEMENTARY INFORMATION: The notice for the Medicare Physician Identification and Eligibility System (MPIES), HHS/HCFA/BPO No. 09-70-0525, was most recently published at 53 FR 21920; June 10, 1988. The purpose of this system of records is to maintain unique identification of each physician requesting and/or receiving Medicare reimbursement. This system contains records of all physicians, as defined by section 1861(r) of Title XVIII of the Social Security Act, who request and/or receive Medicare reimbursement for their medical services. The records contain a unique physician identification number (UPIN) for each physician and information concerning a physician's date of birth, residence, medical education, and information on eligibility for Medicare reimbursement. The information contained in the records is obtained from data currently available in HCFA's carriers' systems. HCFA plans to establish a Registry to assign a UPIN to each physician who wishes to provide services under Medicare. The Registry will be responsible for maintaining physician data, as well as assigning the UPIN. To help ensure the identity of each physician with a medical doctor degree, HCFA's Registry will match carrier data to selected data extracted from the American Medical Association (AMA) Physician Masterfile. The AMA will provide the data to the Registry under a subcontracting arrangement.

We are proposing that the AMA be permitted, when requested by the Registry, to attempt to identify medical doctors by matching selected medical doctor information from the Registry's files against its more complete Physician Masterfile.

This attempted match would be necessary when the Registry's effort to identify a medical doctor, by matching carriers' physician records to extracted AMA data within the Registry, was unsuccessful. Data from these unmatched Registry MPIERS records would be communicated to the AMA. The AMA would conduct its matching operation against its Masterfile and, upon completion of its effort, return the MPIERS data to the Registry. The successful match of Registry data to the AMA Physician Masterfile would save HCFA time and money because it would eliminate the requirement of carriers to collect additional physician information for further matching attempts by the Registry. The agreement for a match of AMA Physician Masterfile data to data from the Registry was not consummated at the time the original system notice was published. However, HCFA has now published (see above) a notice of a matching program.

To comply with the technical requirements of the Privacy Act, we are proposing to establish the routine use below, adding to the current system notice.

(8) To the American Medical Association (AMA), for the purpose of attempting to identify medical doctors when the Registry is unable to establish identity after matching carrier-submitted data to the data extract provided by the AMA. The AMA would attempt to establish medical doctor identity by matching the Registry's MPIES data to data in the AMA Physician Masterfile.

The AMA agrees:

a. To use the Registry's MPIES data solely for an attempted match as described above;

b. To make no copies of the MPIES data it receives from the Registry, except for one back-up copy;

c. To return the MPIES data to the Registry upon completion of its matching operation, and erase back-up copies of the MPIES data;

d. To establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the records; and,

e. To sign a written statement attesting to its understanding of and willingness to abide by these provisions.

This new routine use is compatible with the purpose for which the information is collected. Addition of this new routine use can be accomplished with no reduction in physicians' privacy because HCFA will impose requirements on recipients who must agree in writing to protect the data from unauthorized access and form being disclosed in a form that permits identification of individuals.

This action does not require a report of altered system under 5 U.S.C. 552a(o). The complete system notice is printed below for the convenience of the reader.

Dated: December 12, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0525

SYSTEM NAME:

Medicare Physician Identification and Eligibility System (MPIES) HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration (HCFA) (Paper Media), 6325 Security Boulevard, Baltimore, Maryland 21207. (Contact system manager for location of

Magnetic Media computerized records.)
Medicare Carriers (See Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All physicians, as defined by section 1861(r) of Title XVIII of the Social Security Act who request and/or receive Medicare reimbursement for their medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains a unique physician identification number (UPIN) for each physician and information concerning a physician's birth, residence, medical education, and eligibility information for Medicare reimbursement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9202(g) of Pub. L. 89–272; 1832(a)(2) (B)(i) and (F); 1833(a)(1) (C) and (G); 1842(a)(1), (b)(3)(B)(ii), (b)(3)(D), (b)(7)(C), (b)(7)(D), (h)(1), (h)(4), (h)(5), and (j); 1861 (q), (r), (s)(1) and (aa)(1)(A); and 1862 of Title XVIII of the Social Security Act.

PURPOSE OF THE SYSTEM:

To maintain unique identification of each physician requesting and/or receiving Medicare reimbursement

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

(2) A congressional office from the record of an individual physician in response to an inquiry from the congressional office at the request of that individual physician.

(3) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(4) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(5) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) The Department of Health and Human Services (HHS), or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her official capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(6) The Department of Justice for investigation and prosecuting violations of the Social Security Act to which criminal penalities attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(8) To the American Medical Association (AMA), for the purpose of attempting to identify medical doctors when the Registry is unable to establish identity after matching carrier-submitted data to the data extract provided by the AMA. The AMA would attempt to establish medical doctor identity by matching the Registry's MPIES data to data in the AMA Physician Masterfile.

The AMA agrees:

a. to use the Registry's MPIES data solely for an attempted match as described above;

b. to make no copies of the MPIES data it receives from the Registry, except for one back-up copy;

c. to return the MPIES data to the Registry upon completion of its matching operation, and erase back-up copies of the MPIES data;

d. to establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the records; and,

e. to sign a written statement attesting to its understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved alphabetically by the physicians' name or by their UPIN.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with HHS *ADP Systems Manual*, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are retained indefinitely, except in the instance of a physician's death, in which case HCFA would retain such records for a 10 year period following the physician's death.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Room 300 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the

physician's name, date of birth, and medical school.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it; e.g., why it is inaccurate, irrelevant, incomplete or not current. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from carriers. Information in these records concerning physicians' eligibility for Medicare reimbursement is obtained either directly or through Medicare Regional Offices, contractors, and PROs; from the Department of Justice; State or local judicial systems; medical licensing and certification agencies or organizations; and medical societies and associations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a/ Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250–0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 86601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government, Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Sequros de Servicio de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico 00936–3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083–3615
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713

[FR Doc. 88–28947 Filed 12–15–88; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–88–890; FR–2601]

Delegation of Authority; Associate General Counsel for Litigation

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of authority to approve production or disclosure of HUD materials or information in 25 CFR Part 15, Subparts H and I.

SUMMARY: This delegation of authority designates the Associate General Counsel for Litigation as an additional official who may exercise the Secretary's authority to approve disclosure of HUD materials in response to subpoenas and other demands under 24 CFR Part 15, Subparts H and I, which became effective on May 20, 1987, 52 FR 12159.

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Carolyn B. Lieberman, Deputy General Counsel (Operations), Room 10216, (202) 755–7250, Department of Housing and Urban Development, 451 7th Street, SW. Washington, DC 20410. (This is not a toll-free number.)

The Delegations of Authority published on July 24, 1987 at 52 FR 27859 and on October 30, 1987 at 52 FR 41782 are amended by replacing paragraph 1 with the following:

1. The Under Secretary, the General Counsel and the Associate General Counsel for Litigation each is authorized (a) to approve the production or disclosure of HUD materials or information by HUD employees in response to subpoenas or demands of courts or other authorities, pursuant to regulations of the Department set forth in 24 CFR Part 15, Subpart H, and (b) to waive any policy or procedure prescribed by the regulations of the Department set forth in 24 CFR Part 15, Subpart I, concerning testimony of HUD employees in legal proceedings.

Authority: Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: December 7, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-29002 Filed 12-15-88; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-88-1905]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management, and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 2, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Price level adjusted mortgage insurance demonstration.

Office: Policy development and research.

Description of the Need for the Information and Its Proposed Use: This information will be disclosed to homeowners who apply for and receive a HUD-insured price level adjusted mortgage. HUD is authorized to insure up to 10 percent of the FHA mortgage originations under this demonstration. In addition to the lender disclosure requirements the PLAM demonstration will utilize existing FHA forms for insurance application.

Form Number: None.

Respondents: Individuals or households.

Frequency of Submission: Monthly semi-annually, annually, and other.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Initial disclosure	13,333		1		1		13,333
Change in monthy payments	34,668		12, 2, or 1		25		8,667
Status of accounts	6,667		1		25		1,667

Total Estimated Burden Hours: 23,667.

Status: New.

Contact: David Crowe, HUD, (202) 755-5421, John Allison, OMB, (202) 395-6880.

Date: December 2, 1988.

[FR Doc. 88-29015 Filed 12-15-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-702631

Applicant: Regional Director, U.S. Fish & Wildlife Service, Portland, Oregon

The applicant requests an amendment to his permit for take of endangered and threatened species to add the Stephens kangaroo rat, *Dipodomys stephensi*. Activities to be conducted include live trapping and release at the trap site, for purposes of delineating the currently occupied habitat of the species in Riverside County, California, as well as future recovery activities.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 403, 1375 K Street, NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority , P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: December 12, 1988

Marshall P. Jones,

Chief, U.S. Office of Management Authority.

[FR Doc. 88-28943 Filed 12-15-88 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Applications for Permits; Natural Science Center, Greensboro, NC

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

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PRT–733476

Applicant: Natural Science Center of Greensboro, Greensboro, NC

The applicant requests a permit to purchase in interstate commerce one female captive born jaguar (*Panthera onca*) from Henry Doorly Zoo, Omaha, Nebraska, for the purpose of educational display.

PRT–733473

Applicant: San Francisco Zoological Gardens, San Francisco, CA

The applicant requests a permit to reexport one captive-born female lion-tailed macaque (*Macaca silenus*) to the City of Belfast Zoological Gardens, Belfast, Northern Ireland, for the purpose of enhancement of propagation. This female had been originally imported from the Assiniboine Park Zoo, Winnipeg, Canada in 1986.

PRT–733600

Applicant: N. and Linda Fontenot, Houston, TX

The applicant requests a permit to purchase one pair of captive-hatched golden conures (*Aratinga guarouba*) from Ms. Lucretia Kennedy, Hollywood, Florida, for captive breeding purposes.

PRT–733313

Applicant: Tarzan Zerbini International Circus, Webb City, MO

The applicant requests a permit to purchase in interstate commerce and then export and re-import two female Asian elephants (*Elephas maximus*) previously imported from the wild. These elephants are to be exported and re-imported for the purpose of conservation education. In the future, the applicant will export and re-import these animals for the same purpose.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC. 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: December 6, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–28944 Filed 12–15–88; 8:45 am]

BILLING CODE 4310–AN–M

[FES 8–55]

Availability of Final Legislative Environmental Impact Statement; National Wildlife Refuges, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a final legislative Environmental Impact Statement on the proposed acquisition of selected inholdings on National Wildlife Refuges in Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Final Legislative Environmental Impact Statement on the Proposed Acquisition of Selected Inholdings on National Wildlife Refuges in Alaska (Statement) pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The draft document, which became available to the public on August 31, 1988, described five alternatives for acquiring refuge inholdings and the environmental consequences of implementing each alternative. The final Statement summarizes the draft Statement and includes only those changes necessary in the draft Statement, a discussion of major issues raised in public comments on the draft, and copies of all public comments received on the draft document. In this way, preparation of the final Statement differs from past procedures of reprinting revised versions of entire draft documents, but is in accordance with regulations for implementing the National Environmental Policy Act (40 Code of Federal Regulations 1502.19, 1503.4(c), and 1506.9).

Public hearings on the draft Statement were held in Washington, DC; Anchorage, Kodiak, Fairbanks, Bethel, Arctic Village, Kaktovik, and Galena, Alaska between September 20 and October 5, 1988. All oral testimony received at those hearings and written comments postmarked by October 24, 1988, were considered in preparing the final Statement.

The enclosed document, used with the draft Statement, constitutes the final environmental impact statement.

DATES: A Record of Decision will be issued no sooner than January 17, 1989.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: Copies of the final Statement will be sent to all agencies, persons and organizations who commented on the draft Statement and to those Federal and State agencies, regional and village Native corporations, local governments, and other organizations and individuals who were on the original mailing list or later requested a copy of the draft Statement. A limited number of copies are available upon request from Mr. Knauer.

Copies of the final Statement are also available for public review at the office of the Regional Director, at the above address, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Building, Room 2343, 18th and C Streets NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street NW., Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., P.O. Box 25486, Denver Federal Center, Denver, CO 80225.

Date: December 6, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88–28368 Filed 12–15–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CA–010–09–4212–13; CA 23666]

Realty Action; Amendment; Exchange of Public Lands and Private Lands in Calaveras and Mariposa Counties, CA

AGENCY: Bureau of Land Management (BLM) Interior.

SUMMARY: Amendment of notice of realty action published in Vol. 53, No. 218, Pages 45597 and 45598, November 10, 1988.

In addition to the reservations, terms, and conditions listed in the above notice, the Federal lands will be transferred (patented) subject to the valid existing rights of some or all of the following mining claims:

CAMC 41557, CAMC 41559–62, CAMC 99035–39, CAMC 100390, CAMC 114214–16,

CAMC 162682, CAMC 162707, CAMC 185140–41, CAMC 188632–33, CAMC 188637–40, CAMC 192942–43.

Date: December 9, 1988.

D.K. Swickard,

Area Manager.

[FR Doc. 88–28912 Filed 12–15–88; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

General Management Plan; Death Valley National Monument; Availability of Final Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement (FEIS) assessing the potential impacts of the proposed General Management Plan for Death Valley National Monument, Inyo and San Bernardino Counties, California and Nye County, Nevada.

The proposed Plan recommends the expansion of visitor opportunities to explore and understand the diverse features of the monument along with the provision of some additional facilities. Major emphasis is placed on improved information/orientation/interpretation services and improved reliability of roads to the monument's diverse natural and cultural features.

DATES: The 30-day no action period following the Environmental Protection Agency's notice of a availability of the final EIS will end on January 23, 1989.

ADDRESSES: Inquiries on the FEIS should be directed to: Superintendent, Death Valley National Monument, Death Valley, California 93328, telephone number (619) 786–2331.

Copies of the Plan and FEIS are available for inspection at the monument headquarters in Death Valley and in libraries located in the monument vicinity. Copies are also available at the following address: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, P.O. Box 36063 Golden Gate Avenue, Room 14033, San Francisco, California 94102.

Date: December 2, 1988.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 88–29003 Filed 12–15–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A

1. Parent Corporation and Address of Principal Office

Emerson Electric Co., 8000 W. Florissant Avenue, St. Louis, Missouri 63136.

2. Wholly-owned Subsidiaries Which Will Participate in the Operations

Name	Jurisdiction of Incorporation
Appleton Electric Company	Delaware.
Automatic Switch Company	Do.
Beckman Industrial Corporation	Do.
Branson International Plasma Corp.	California.
Branson Ultrasonics Corp.	Delaware.
Computer Power Systems Corp.	California.
Copeland Corporation	Delaware.
Copeland Electric Corp.	Do.
Day-Brite Lighting, Inc.	Do.
Emerson Electric Canada Limited	Canada.
Emerson Electric Puerto Rico, Inc.	Delaware.
Fusite Corporation	Ohio.
Liebert Corporation	Do.
Morse Industrial Corporation	Delaware.
Ridge Tool Company	Ohio.
Rosemount, Inc.	Minnesota.
Skil Corporation	Delaware.
Southwest Mobile Systems Corporation.	Do.
Sweco, Inc.	California.
Therm-O-Disc, Inc.	Ohio.
Van Gorp Corporation	Iowa.
Western Forge Corporation	Delaware.
Xomox Corporation	Ohio.

B

1. Parent Corporation

Lone Star Technologies, Inc., P.O. Box 35888, Dallas, Texas 75235.

2. Participating Subsidiaries

Texas and Northern Railway Company (Texas Incorporation), P.O. Box 38565, 10731 Rockwall Road, Dallas, Texas 75238–0565 (Rail Service).

T & N Lone Star Warehouse Company (Texas Incorporation), P.O. Box 38565, 10731 Rockwall Road, Dallas, Texas (Pipe Storage).

Extrusion Research Institute, Ltd. (Delaware Incorporation), Suite 1125, Frito-Lay Tower, P.O. Box 45310, Dallas, Texas 75235 (Pipe Manufacturer).

Conroe Pipe Company, Inc. (Delaware Incorporation), F.M. Box 659, Conroe, Texas 77305 (Pipe Manufacturer).

John Zink Company (Delaware Incorporation), P.O. Box 702220, Tulsa, Oklahoma 74170 (Supplier of Combustion and Environmental Systems).

Fort Collins Pipe Company (Delaware Incorporation), P.O. Box 2106, Fort Collins, Colorado 80522 (Pipe Manufacturer).

Tubular Innovations, Inc. (Delaware Incorporation), 6300 Forrest Park Road—1100 Frito-Lay Tower, P.O. Box 45105–245, Dallas, Texas 75235 (Distributors of Pipe).

Lone Star Steel Company (Delaware Incorporation), 2200 West Mockingbird Lane, P.O. Box 35888, Dallas, Texas 75235 (Pipe Manufacturer).

Hydro Sonic Systems, Inc. (Texas Incorporation), P.O. Box 702220, Tulsa, Oklahoma 74170 (Designs, Manufactures, and Installs Environmental Systems).

Texas and Western Finance Company (Delaware Incorporation), P.O. Box 300, Lone Star, Texas 75668 (Warehouse Storage for Skelp Steel).

Texas Specialty Flat Roll, Inc. (Delaware Incorporation), P.O. Box 298, Lone Star, Texas 75668 (Manufacturers of Skelp).

Lone Star Logistics, Inc. (Texas Incorporation), 10731 Rockwall Road, P.O. Box 38565, Dallas, Texas 75238–0565 (Maintenance and Transportation Service).

C

1. The parent corporation and principal office is Parts, Inc., 601 South Dudley, Memphis, Tennessee 38104.

2. Listed below are wholly owned subsidiaries which will participate in the operations:

Name of corporation	State of incorporation
Gallipolis Parts Warehouse, Inc., 210 Upper River Road, Gallipolis, OH 45631.	Ohio.
Gallipolis Parts Warehouse, Inc., DBA United Automotive Warehouse, Nitro, WV.	West Virginia.
Gallipolis Parts Warehouse, Inc., DBA Central Ohio Parts Warehouse, Columbus, OH.	Ohio.
Joseph Moidal Company, Inc., Pittsburgh, PA.	Pennsylvania.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28932 Filed 12–15–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31310]

West Point-Pepperell, Inc. and J. P. Stevens and Company, Inc., Control Exemption for Stevens Freight Service, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts West Point-Pepperell, Inc. (West Point) and J. P. Stevens and Co.,

Inc. (J. P. Stevens) from the requirements of 49 U.S.C. 11343 to acquire control of Stevens Freight Service, Inc. (Stevens Freight), which holds motor contract carrier authority. West Point currently controls the Chattahoochee Valley Railway Company and another motor carrier, West Point-Pepperell Transportation Company. The exemption is subject to employee protective conditions for the benefit of affected railroad employees.

DATE: This exemption is effective on December 23, 1988.

ADDRESSES: Send pleadings referring to Docket No. 31310 to: (1) Office of the Secretary, Case Control Branch Interstate Commerce Commission Washington, DC 20423.

(2) Petitioners' representative: Michael F. Morrone, Keller and Heckman 1150 17th Street, NW, Suite 1000 Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD service for the hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: December 7, 1988

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary

[FR Doc. 88–28982 Filed 12–15–88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 478]

Railroad Cost of Capital of 1988

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1988 cost of capital.

SUMMARY: The Commission is instituting a proceeding to determine the railroad industry's cost of capital rate for 1988. The decision solicits comments on: (1) The railroads' 1988 (i.e., current) cost of debt capital; (2) the railroads' 1988 (i.e., current) cost of preferred stock equity capital; (3) the railroads' 1988 cost of common stock equity capital; (4) the 1988 capital structure mix of the railroad industry on a market value basis. With respect to the cost of common equity capital, the decision seeks the use of Institutional Brokers Estimate System (IBES) data to estimate the growth rate component of the discounted cash flow methodology.

DATES: Notices of intent to participate are due December 27, 1988. Statements of railroads due February 10, 1989. Statements of other interested parties due March 10, 1989. Rebuttal statements by railroads due March 24, 1989.

ADDRESS: Send an original and 15 copies of statements and an original and 1 copy of the notice of intent to participate to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489, (TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423; or call (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: December 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–28931 Filed 12–15–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on November 7, 1988, disclosing changes in its membership within 90 days preceding that date. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The identities of the new members of CableLabs are set forth below:

American Television & Communication Corporation, 300 First Stamford Place, Stamford, CT 06902–6732
Avenue TV Cable Service, Inc., One Armstrong Place, Butler, PA 16001
Bismarck-Mandan Cable TV, 2164 Wisconsin Ave., NW., Washington, DC 20007
Bluffton Cablevision Ltd., Highway 46, Box 818, Bluffton, SC 29910
Cable America Coporation, 4350 E. Camelback Road, Suite 120F, Phoenix, AZ 85018
Cencom Cable Associates, 14522 South Outer Forty Rd., Suite 300, Chesterfield, MO 63017
Colony Communications, Inc., 169 Weybosset Street, Providence, RI 02901–0969
Consolidated Cable Properties, Inc., 225 Millburn Avenue, Millburn, NJ 07041
C–TEC Cable Systems, 120 Lake Street, Dallas, PA 18612
Guam Cable TV, 530 West O'Brien Drive, Agana, Guam 96910
Armstrong Utilities, Inc., Box CN, Ventura, CA 93002
Benchmark Communications, 318 E. Broadway, Bismarck, ND 58501
Cable TV Company, 217 East Ninth Street, Hazleton, PA 18201
Bresnan Communications Co., 709 Westchester Avenue, Suite 19, White Plains, NY 10604
Greater Media, Inc., 2 Kennedy Blvd., P.O. Box 859, East Brunswick, NJ 08816
Chambers Communications Corporation, 2225 Coburg Road, P.O. Box 7009, Eugene, OR 97401
Coaxial Communications, 3770 E. Livingston Avenue, Columbus, OH 43227
Cross Country Cable Inc., 67A Mountain Blvd. Ext., Warren, NJ 07080
Douglas Communications Corporation II, 1200 East Ridgewood Avenue, East Wing, Suite 3D, Ridgewood, NJ 07450
Harron Communications Corp., 1460 Russell Road, Paoli, PA 19301
Heritage Communications, 2195 Ingersoll Avenue, Des Moines, IA 50312
Higgins Lake Cable, Inc., 105 Kent Street, P.O. Box 190, Iron Mountain, MI 49801
Insight Communications Co., 126 East 56th Street, New York, NY 10022
Monmouth Cablevision Assoc., P.O. Box 58, Belmar, NJ 07719
Newhouse Broadcasting Co., P.O. Box 4872, 112 Northern Concourse, Syracuse, NY 13221
New World Stratovision, P.O. Box 1540, New Milford, CT 06776
Paragon Communications, 4582 S. Ulster St. Parkway, Suite 405, Denver, CO 80237

Prime Cable Corp., One American Center, 600 Congress Street, Suite 3000, Austin, TX 78701
Rock Associates, 5808 Lake Washington Blvd., Suite 400, Kirkland, WA 98033
Susquehanna Cable Company, 140 East Market Street, York, PA 17401
Karnack Corporation, P.O. Box 1764, San Marcos, TX 78667–1764
Hornell Television Service, Inc., 166 Main Street, Hornell, NY 14843
Jones Intercable Inc., 9697 East Mineral Avenue, Englewood, CO 80112
Multimedia Cablevision Inc., 701 E. Douglas Avenue, P.O. Box 3027, Wichita, KS 67201
Star Cablevision Group, Box 1167, 254 Winnebago Drive, Fond du Lac, WI 54935
Paradigm Communications, One Dock Street, Stamford, CT 06902
Post-Newsweek Cable, Inc., 2621 East Camelback Road, Suite 150, Phoenix, AZ 85016
Rifkin & Associates Inc., 360 South Monroe Street, Suite 600, Denver, CO 80209
Roger US Cablesystems Inc., Commercial Union Tower, P.O. Box 249, Toronto, Ontario M5K 1J5, Canada
Times Mirror Cable Television, 2381 Morse Avenue, Irvine, CA 92714–6233
Tele-Communications Inc., Regency Plaza One, Suite 600, 4643 S. Ulster Street, Denver, CO 80237
Valley Cable TV, P.O. Box 508, Fort Valley, GA 31030
Warner Cable Communications, Inc., 400 Metro Place North, Suite 500, Dublin, OH 43017
Westmarc, 2911 Turtle Creek, Suite 1300, Dallas, TX 75219
Tele-Media Corporation, Post Office Drawer A, 320 West College Ave., Pleasant Gap, PA 16823
Viacom Cable, P.O. Box 13, Pleasanton, CA 94566–0811
Western Communications Inc., P.O. Box 4610, Walnut Creek, CA 94596

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–28916 Filed 12–15–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 86–52]

Ciba-Geigy Corp. and MD Pharmaceutical, Inc.; 1986 Aggregate Production Quota, 1986 Individual Manufacturing Quotas, and 1986 Disposal Allocations for Methylphenidate

On October 1, 1985, the Drug Enforcement Administration (DEA) published a notice in the **Federal Register** (50 FR 40070 (1985)) proposing 1986 aggregate production quotas to be established by DEA under the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.* for Schedule I and Schedule II controlled substances, including methylphenidate. The proposed aggregate figure for methylphenidate was 1,295 kilograms (kg). Opportunity was provided to submit comments or objections.

In a letter dated October 29, 1985, MD Pharmaceutical, Inc. (MD) submitted comments and objections and requested a hearing in the matter of the proposed 1986 aggregate production quota for methylphenidate. In a letter dated October 30, 1985, Ciba-Geigy Corporation (Ciba-Geigy) did the same.

On December 19, 1985, DEA issued a letter to Ciba-Geigy establishing Ciba-Geigy's 1986 individual manufacturing quota at 609 kg and a disposal quota at 566 kg. On this same date, MD's individual manufacturing quota was established at 200 kg and its disposal quota at 133 kg.

In a notice published in the **Federal Register** on December 27, 1985 (50 FR 53025 (1985)), "the final initial" 1986 aggregate production quotas for all Schedule I and Schedule II substances, except for methylphenidate, were established. The **Federal Register** notice acknowledged that MD and Ciba-Geigy had filed comments and requests for a hearing on the 1986 aggregate production quota for methylphenidate. It stated that "* * * during the pendency of the consideration of the matter for hearing, a final initial aggregate production quota will be established for this interim period. This quota will be the amount which was initially proposed, and will be subject to revision upon further consideration and possible hearing." On January 27, 1986, Ciba-Geigy requested a hearing with respect to its individual manufacturing and disposal quotas.

By letter dated March 4, 1986, DEA increased Ciba-Geigy's 1986 individual manufacturing quota from 609 kg to 909 kg and by letter dated May 5, 19 86, Ciba-Geigy's individual manufacturing quota was revised from 909 kg to 1,468 kg and its disposal quota was increased from 566 kg to 1,192 kg. Neither letter referred to Ciba-Geigy's pending request for a hearing on its individual manufacturing and disposal quotas. The May 5 letter to Ciba-Geigy stated that the "increased amounts should not be produced until the revised 1986 aggregate production quota for methylphenidate is finalized." It further noted that "[t]here are no further plans for administrative review of this matter this year in the absence of a demonstrated medical emergency." In another letter dated May 5, 1986, to MD, DEA informed that company that its 1986 methylphenidate manufacturing quota had been revised to 522 kg and that its disposal quota, the amount that MD might actually distribute for the year, was now limited to 374 kg. This letter, like the letter to Ciba-Geigy, also stated that no further revision of 1986 methylphenidate quotas was planned in the absence of a demonstrated medical emergency.

On June 4, 1986, Ciba-Geigy submitted a renewed request for a hearing regarding its 1986 individual manufacturing and disposal quotas for methylphenidate as adjusted by DEA on May 5, 1986. (On June 4, 1986, Ciba-Geigy also filed in the U.S. Court of Appeals for the District of Columbia Circuit a petition for review of the May 5, 1986, decision of the Drug Enforcement Administration setting Ciba-Geigy's 1986 manufacturing quota and disposal quota for methylphenidate).

On July 7, 1986, a notice was published in the **Federal Register** (51 FR 24590 (1986)) setting forth the "proposed revised" 1986 aggregate production quotas for Schedule II substances including methylphenidate. The "proposed revised" figure for methylphenidate was 2,043 kg.

In a July 8, 1986, letter the Acting Deputy Administrator of the Drug Enforcement Administration requested the Administrative Law Judge to commence administrative proceedings on three issues:

(1) the adequacy of the 1986 methylphenidate manufacturing quota; (2) the amount of the quota to be allocated to each manufacturer of methylphenidate; and (3) the propriety of the disposal allocation

On July 28, 1986, MD Pharmaceutical requested a hearing on its 1986 individual manufacturing and disposal quotas for methylphenidate as established by DEA on May 5, 1986.

On August 4, 1986, in order to "ensure that all procedural requirements have been complied with," Ciba-Geigy filed a request for a hearing on the 1986 methylphenidate "proposed revised" aggregate production quota of 2,043 kg published in the **Federal Register** on July 8, 1986. In an August 8, 1986, letter to the judge, Agency counsel acknowledged that the requested hearing related to the adequacy of the 2,043 kg aggregate production quota published in the **Federal Register** on July 8, 1986, and not some earlier quota.

Formal notice of this proceeding was published in the **Federal Register** on August 22, 1986, at 51 FR 30163 (1986). A preliminary hearing session was held on October 1, 1986. The judge directed that the rulemaking, concerned with the

aggregate production quota, and the adjudication, concerned with the individual manufacturing and disposal quotas, would be conducted together. Direct examination testimony of all witnesses was prepared in written, narrative form, under oath, and copies were exchanged among counsel. Hearing sessions were scheduled for the cross-examination of those witnesses whom counsel desired to cross-examine. These sessions were held in Washington, DC, on December 10, 15–19, 22 and 23, 1986. Thereafter the parties submitted proposed findings and conclusions and briefs to the Administrative Law Judge. The last of these post-hearing submissions was filed on April 21, 1987.

In addition to the evidence formally presented by the parties, a number of comments were received from individuals and organizations. They were patients, legitimate users of methylphenidate, or the parents of patients, or organizations of such persons. Generally they all wrote to affirm the legitimate need for methylphenidate and/or to urge DEA to refrain from taking control actions which would hinder the ability of patients to obtain methylphenidate when and as needed for legitimate medical purposes. Some stated they had had problems obtaining methylphenidate in the past. All of these comments were considered both by the Administrative Law Judge and by the Administrator in reaching this decision. They have been made a part of the record in this case.

On December 3 and December 9, 1986, after the parties' final submission of written testimony and documentary evidence had been exchanged and just prior to commencement of the oral cross-examination hearing sessions, DEA increased Ciba-Geigy's and MD's disposal quotas. At the request of the judge, DEA prepared and submitted an exhibit which set forth the various quota allocations for methylphenidate as of December 10, 1986, as well as copies of relevant correspondence leading to these increases.

During the oral hearing sessions Agency counsel elicited from DEA witnesses additional direct examination testimony regarding the December 1986 disposal quota increases, and cross-examination was conducted concerning this additional testimony.

Neither the aggregate nor any individual manufacturing quota was revised in December. As of December 10, 1986, the aggregate production quota for methylphenidate was still 2,043 kg (as it had been since July 1986), and the individual manufacturing quotas for Ciba-Geigy and MD respectively were still 1,468 kg and 522 kg (as set in May). However, Ciba-Geigy's disposal quota was increased by 58 kg on December 3 and by an additional 162 kg on December 9 (to total 1,412 kg). MD's disposal quota was increased by 17 kg on December 3 and by an additional 37.3 kg on December 9 (to total 428.3 kg).

The parties and the Administrative Law Judge agreed that the issues to be decided in this proceeding were to be as follows:

1. Is the quantity 2,043 kg of anhydrous base of methylphenidate sufficient to provide in 1986 for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements and for the establishment and maintenance of reserve stocks?

2. Have appropriate amounts been allocated by DEA to each of the two manufacturers?

3. Is it lawful for DEA to set "disposal" quotas?

4. If lawful, are the disposal quotas set by DEA for each of the two manufacturers of methylphenidate for 1986 appropriate?

On October 28, 1987, the judge issued his opinion and recommendations regarding the 1986 quotas for methylphenidate. The judge recommended that 1986 aggregate production and individual manufacturing quotas for methylphenidate be recalculated so as to arrive at figures which would demonstrably have provided for the 1986 methylphenidate needs specified in 21 U.S.C. 826. The judge also found that the procedures used by DEA for setting quotas were inappropriate and insufficient and that the DEA staff should develop and use new procedures in performing the recalculations called for in his first ruling. In addition, the judge recommended that the DEA staff be ordered to make such adjustments in the presently applicable 1987 quotas for methylphenidate as may be required to bring the stocks of that substance to the levels at which they would have been had the 1986 quotas been computed in accordance with law. Finally the judge recommended that the Administrator rule that the setting of disposal quotas for methylphenidate for 1986 was unlawful and that any presently effective disposal quotas should be vacated. The basis for this recommendation was the judge's holding that the setting of such disposal quotas required a rulemaking proceeding pursuant to the Admninistrative Procedures Act, 5 U.S.C. *et seq.* On January 19 and January 20, 1988, respectively, counsel for DEA and counsel for MD Pharmaceutical, Inc. filed exceptions to the opinion and recommendations of the Administrative Law Judge.

On February 12, 1988, counsel for Ciba-Geigy Corp. filed a response to the exceptions of the DEA staff and MD Pharmaceutical. On April 29, 1988, the Administrative Law Judge certified and transmitted the record to the Administrator of DEA. The record included the opinion and recommendations of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, the exceptions filed by the parties, the response to those exceptions and motions filed by all counsel, all the exhibits and affidavits, and all of the transcripts of the hearing sessions.

The Administrator has carefully reviewed the entire record in this matter and hereby issues this final rule as prescribed by 21 CFR 1316.67, based upon the following findings and conclusions.

1. In 1955 the Food and Drug Administration approved Ciba-Geigy's new drug application (NDA) for Ritalin, Ciba-Geigy's brand name for methylphenidate. Ciba-Geigy has manufactured the produce under that name since that time. In 1982 FDA approved Ciba-Geigy's NDA for production of Ritalin S–R®, a sustained-release form of the drug. MD Pharmaceutical also manufactures methylphenidate, which it markets under the generic name, i.e., "methylphenidate." MD Pharmaceutical did not, at the time of the hearings in this proceeding, manufacture a sustained-release dosage form.

2. Retalin and generic methylphenidate are currently available in 5, 10, and 20 mg tablets. Ritalin S–R is available in 20 mg sustained-release tablets.

3. Methylphenidate is a central nervous system stimulant that is approved by FDA for the treatment of attention deficit disorder (ADD) and narcolepsy. FDA does not, however, "regulate the practice of medicine." Physicians can and do legally and appropriately prescribe a drug for conditions other than those for which it is approved by FDA.

4. Methylphenidate is a Schedule II controlled substance subject to the quota provisions of 21 U.S.C. 826.

5. ADD (officially named attention deficit disorder with hyperactivity (ADD/H) and sometimes simply called "hyperactivity") is a developmental disorder in which children find it difficult to sit still and pursue attentional tasks for many length of

time. ADD, which affects boys more than girls, is characterized in schools by frequent out-of-the-seat behavior in the classroom which is obviously disruptive for the other students. ADD children commonly are unable to complete academic assignments, have attention problems in the classroom, and often are unable to write legibly. Many such children physicially provoke others nearby and most lack appropriate social skills. ADD children are also frequently unmanageable at home, which can easily aggravate or create a variety of domestic problems.

6. ADD in children, while not necessarily a life-threatening disorder, is a very disturbing handicap which, if untreated, will affect the child for his entire live.

7. There are currently a number of major treatment methods for childhood ADD, of which methylphenidate medication has become the overwhelmingly most utilized approach. The others include the Feingold dietary treatment, Cylert® (pemoline) medication, Dexedrine® (dextroamphetamine) medication, and behavior modification/ cognitive therapy. None of these other treatment methods is as widely accepted as methylphenidate.

8. The use of methylphenidate in treating ADD in children usually brings about a rapid diminution of the child's difficulties. The children who derive benefit from methylphenidate have improved ability to sit and pay attention in class, they complete work, their grades go up, handwriting improves, visual motor coordination is better, and short-term memory is increased. In addition, the teacher-student relationship improves as does the relationship between parent and child.

9. While the prevalence of ADD has been fairly constant, the frequency of diagnosis and the use of medication to treat the disorder have increased dramatically as physicians, school nurses, and teachers have become increasingly sensitized to it. The percentage of children and adolescents diagnosed as suffering from ADD is approximately 5 to 6%, and the percentage of children in the United States receiving medication for hyperactivity has risen to approximately 2 to 4%. The most reliable estimates indicate that approximately 600,000 children and adolescents nationwide are currently being treated with methylphenidate for ADD.

10. Narcolepsy is an incapacitating, life-long sleep disorder which typically appears between the ages of 14 and 25, although onset may occur in children less than 10 years old. Narcolepsy virtually always appears before the age of 40. The symptoms of narcolepsy worsen over time. There are at least 250,000 Americans who have narcolepsy at the present time, according to the most reliable estimates.

11. Methylphenidate is approved by FDA as effective in the treatment of narcolepsy. Methylphenidate is more effective than either pemoline or dextroamphetamine for treating the sleepiness associated with narcolepsy. Methylphenidate improves alertness in virtually 100 percent of the cases.

12. Under the Controlled Substances Act and the regulations promulgated thereunder, DEA (under authority delegated to it by the Attorney General, 28 CFR 0.100) is required annually to establish an aggregate production quota for each basic class of controlled substance in Schedules I and II. These quotas limit the amount of the basic class of each substance in these schedules which may lawfully be produced in the Untied States during the year. These aggregate production quotas are required by law to be sufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States. They must also provide for lawful export requirements, if any, and for the establishment and maintenance of reserve stocks. (21 U.S.C. 826(a); 21 CFR 1303.11).

13. An aggregate production quota has been set for methylphenidate since it was placed in Schedule II in 1971.

14. DEA is also required to establish individual manufacturing quotas for each manufacturer of a Schedule I or II controlled substance. The individual manufacturing quota authorizes a particular individual, usually a pharmaceutical company, to manufacture a particular quantity of the drug during the next calendar year. These individual manufacturing quotas are subject to essentially the same considerations as those established by the CSA for determining aggregate quotas. (21 U.S.C. 826(c)). The total of the individual manufacturing quotas for any one basic class or substance cannot exceed the aggregate production quota set for that substance for the year in question.

15. In recent years, DEA has imposed additional restrictions on selected Schedule II drugs whereby a manufacturer of such a drug is allowed to sell or distribute only a specified portion of his individual manufacturing quota during the calendar year. These restrictions, called disposal quotas or disposal allocations, are not mentioned in the CSA or the regulations promulgated thereunder.

16. DEA does not have any written rationale explaining the need for disposal quotas. It has no written instructions or policy specifying the circumstances udner which a controlled substance will be subjected to disposal quotas or as to how disposal quotas are to be calculated.

17. There has never been a rulemaking proceeding conducted in order to provide for the establishment of disposal quotas or the manner in which they would be calculated.

18. The CSA and the regulations enacted thereunder require DEA to consider, when determining aggregate and individual manufacturing quotas for a drug, the estimated medical need for the drug in the United States during the year in question. (21 U.S.C. 826(a), (c); 21 CFR 1303.11(a), (b)). The statute also requires that the aggregate production quota and the individual manufacturing quotas provide for the establishment and maintenance of reserve stocks. The purpose of these requirements is to assure that sufficient quantities of the drug will be available for patients having a legitimate need for it.

19. The CSA requirement for a determination of legitimate medical need is based on the undisputed proposition that patients and pharmacies should be able to obtain sufficient quantities of methylphenidate, or of any Schedule II drug, to fill prescriptions. A therapeutic drug should be available to patients when they need it. To accomplish this a smooth flow of distribution is required.

20. If there were periods during the year where there were shortages and patients were not able, because of the quotas, to obtain sufficient methylphenidate to fill their prescriptions, then the quotas would not be providing for the legitimate medical need in the United States.

21. Reserve stocks at all levels of distribution are essential to ensure that adequate supplies will be continuously available. This is especially true given the multiple dosage forms in which methylphenidate is supplied. It is understandably difficult for manufacturers to predict with 100 percent accuracy exactly how much of each dosage form (5 mg, 10 mg, 20 mg, and 20 mg S–R tablets) will be prescribed by physicians throughout the nation in any given month or year.

22. Each year the FDA prepares an estimate of the following year's legitimate medical need in the Country for methylphenidate and all other Schedule II substances. These estimates are transmitted in a formal letter from the Commissioner of Food and Drugs to

the Administrator of DEA for use in setting quotas for the following year. These projections are required by the provisions of 42 U.S.C. 242(a).

To prepare these estimates FDA obtains data on past legitimate medical use of each of these substances from the National Prescription Audit (NPS), a pharmaceutical marketing research data base purchased by FDA from IMS America, Ltd. (IMS).

23. The IMS data capture only about 80 % of the total legitimate use of Schedule II drugs. This is because the National Prescription Audit does not include drugs sold to the military, used in hospitals, health maintenance organizations that do not contract out their prescription services, clinics affiliated with medical practices, sales by mail, and discount stores and supermarkets that sell prescription drugs. It would not include sales to Sleep Disorder Centers if those centers do not contract out their prescriptions. It also does not include drugs sold directly to local, state, or Federal governments, or drugs sold directly to doctors.

24. IMS data do not reflect the scientific needs for methylphenidate, such as the needs of an organization like the Midwest Research Institute which in the past has ordered sizeable amounts of methylphenidate from Ciba-Geigy for research. Because of these omissions, the NPA data can fairly be characterized as providing a relatively conservative picture of legitimate demand for methylphenidate in the Country.

25. DEA received FDA's estimates of 1986 legitimate medical needs for Schedule II drugs in May 1985. FDA's projection at that time of the legitimate medical need for methylphenidate in 1986 was 2,033 kg, a 17 % increase over its projection for 1985.

26. DEA accepted FDA's projection of a 17 % increase in legitimate medical need for 1986. DEA declined, however, to accept the baseline figure of 2,033 kg, utilized by FDA in arriving at the percentage figure of 17 % as being the total quantity needed.

27. The Drug Control Section in the Office of Diversion Control is responsible for the collection of data necessary for drug control, collection of data to satisfy United States treaty obligations, and the annual initial formulation and administration of quotas for Schedule I and II controlled substances.

28. Ciba-Geigy requested an individual methylphenidate manufacturing quota for 1986 of 1,859 kg. MD requested 600 kg. The 1986 aggregate quota figure for methylphenidate (proposed by DEA on October 1, 1985) was only 1,295 kg. This was approximately half of the manufacturers' combined request of 2,459 kg. It was lower even than the 1985 "established revised" aggregate quota of 1,361 kg, which was published that same day.

29. The "initial" 1986 individual manufacturing and disposal quotas granted Ciba-Geigy were low in comparison to its 1985 quotas. Its "initial" individual manufacturing and disposal quotas for 1986 (established December 19, 1985) were 609 kg and 566 kg respectively. By contrast, Ciba-Geigy's final individual maunfacturing and dispoal quotas for 1985 (established November 26, 1985) were 1,124 kg and 1,132 kg respectively.

30. MD's 1986 "initial" individual manufacturing and disposal quotas (200 kg and 133 kg respectively) also were significantly below both its requested manufacturing quota for that year of 600 kg, and its 1985 final quotas (251 kg manufacturing and 253 kg disposal).

31. Thereafter, Ciba-Geigy's and MD's quotas were increased—often by sizeable amounts—during the year. Ciba-Geigy's 1986 individual manufacturing quota of 609 kg (established December 19, 1985) was increased on March 4, 1986, to 909 kg (an increase of 50 %) and on May 5, 1986, to 1,468 kg (an increase of 141 % over the initial amount). Similarly, Ciba-Geigy's disposal quota, initially set at 566 kg on December 19, 1985, was increased to 1,192 kg on May 5, 1986. In December 1986 it was increased two more times: By 58 kg on December 3 and by 162 kg on December 9 for a total of 1,412 kg (an increase of 149 % over the initial amount). DEA also sharply increased the aggregate production quota in mid-year from its initial level of 1,295 kg (established on October 1, 1985) to 2,043 kg as of July 7, 1986 (a 58 % increase). This July increase was made more than a year after DEA received FDA's projection for 1986, and only a day before Ciba-Geigy's request for a hearing was granted.

32. MD's 200 kg individual manufacturing quota for 1986, set December 19, 1985, had been adjusted to 522 kg by December 9, 1986. Its disposal quota, also set on December 19, 1985, was revised five times; from 133 kg to 138 kg, then to 150 kg, and again to 374 kg. On December 3, 1986, it was increased to 391 kg and finally on December 9, 1986, to 428.3 kg.

33. It is vital for ADD patients and narcoleptics to have a continuous supply of methylphenidate, and not have periods of total unavailability during the year. The "piecemeal" nature of DEA's quota allocations, however, helped to create methylphenidate shortages during 1986, thus preventing a continuous supply of the drug.

34. The harshest impact of actual and threatened shortages falls on the patients who must take methylphenidate, not on the manufacturers to whom the quotas directly apply. Actual drug shortages, or even threatened ones, can seriously interfere with patients' lives and those of their families. Potential shortages encourage stockpiling by patients and their families as well as by wholesalers and retailers.

35. DEA's practice of giving small initial manufacturing quota allocations and then increasing these amounts throughout the year in small increments also contributed to manufacturing inefficiencies.

36. The baseline figures used in calculating the 1986 aggregate production, individual manufacturing, and disposal quotas for methylphenidate were the DEA-established 1985 disposal quota amounts. The first step in calculating the initial aggregate figure for 1986 was to add the two companies' 1985 disposal amounts together and the second step was to multiply this sum by 1.5 to provide for an inventory allowance

37. Disposal quotas are not an accurate measure of the legitimated need for methylphenidate.

38. FDA's projection of medical need for methylphenidate in 1985 was 1,731 kg. For 1986, FDA predicted legitimate medical need of 2,033 kg, an increase of 17% over FDA's 1985 projection. The calculations used by DEA to determine the final 1986 aggregate individual manufacturing and disposal quotas for methylphenidate utilized FDA's projection of a 17% increase in the legitimate medical need for methylphenidate over 1985, but did not use FDA's 1985 baseline projection of medical need of 1,731 kg. Instead of using FDA's projections of medical need as its baseline, DEA used the prior year's disposal quota figures as the baseline.

39. If the rate of increase projected by FDA is going to be used, it is appropriate to apply that rate of increase only to FDA's projection, which is the figure FDA uses in arriving at the rate of increase. Unless the correct base is used, there is no reasonable assurance that the change in the absolute amount has been made correctly.

40. In setting quotas, not only actual sales but also backorders must be taken into account if legitimate medical need is to be ascertained.

41. There were several separate instances of shortages of Ritalin/Ritalin S–R at Ciba-Geigy between 1984 and 1986. These shortages were due to three factors that singly, or in combination, have led to periods in which Ciba-Geigy was unable to fill orders for Ritalin. These factors are: (1) Inadequate, fluctuating individual manufacturing quotas; (2) low year-end reserves resulting from inadequate individual manufacturing quotas; and (3) overly restrictive disposal quotas. These factors have combined to create a cyclical effect; that is, a pattern of periods of adequate supplies followed abruptly by periods of short supply precipitated either by physical shortages due to inadequate manufacturing quotas or artificial shortages created by an inability to ship available supplies due to disposal quotas. The last of these recurrent shortages, which occurred in November–December 1986, resulted in DEA's increasing 1986 disposal quotas for methylphenidate on the eve of the cross-examination hearings in this case.

42. In late 1985, a 13 kg (anhydrous base) order for Ritalin active ingredient from Midwest Research Institute (MRI) was backordered by Ciba-Geigy. This legitimate request for methylphenidate to conduct toxicology tests for the U.S. Department of Health and Human Services had to be refused because Ciba-Geigy had no Ritalin active ingredient available to meet MRI's order. Even after DEA increased the amount of Ciba-Geigy's individual manufacturing quota by 64 kg on November 26, 1985, Ciba-Geigy could not fill this order because it had no active ingredient left and Ciba-Geigy could not manufacture a non-standard batch size of such a small amount.

43. In late 1985 Ciba-Geigy also was unable to fill orders from the Defense Logistics Agency, a division of the Department of Defense. The Defense Logistics Agency had an annual requirements contract with Ciba-Geigy for 1985. Ciba-Geigy could not completely fill the orders of the Agency, however, and the backordered goods were not shipped until 1986.

44. In addition to Ciba-Geigy's record of shortages at the manufacturing level, wholesalers, pharmacies, and patients and their families experiences severe problems. One of Ciba-Geigy's distribution centers kept a log of telephone inquiries about Ritalin shortages received from February 10, 1986, to May 30, 1986. A separate record of telephone calls received by Ciba-Geigy during March 1986 relating solely to Ritalin S-R inquiries by pharmacies was also kept. Ciba-Geigy also recieved numerous letters from individual parents, pharmacists, and doctors concerning the difficulty of obtaining Ritalin. DEA itself received numerous letters of this type. Most of these were written in May and April 1986.

45. There are a number of different dosage forms of methylphenidate, both as Ritalin and in its generic formulations. But not all dosage forms are equally efficacious for all patients. Doctors prescribe different forumations for different patients. So the fact that one or more formulations may have been available, while others were not, does not negate the reality of the problem for ultimate consumers.

46. In a study conducted for Ciba-Geigy by Market Measures, Inc. and reported in March 1986, out of a sample of 400 drug stores that carried either brand name or generic methylphenidate only 103 or 26% stocked generic methylphenidate. Even though only one quarter of the sampled stores stocked generic methylphenidate, they were found to be far more frequently out-of-stock than stores stocking the brand name (Ritalin). Of the stores that normally stocked Ritalin, 12.3% were out-of-stock of at least one strength on the date of the survey (February 27–28, 1986). Of the stores that normally stocked generic methylphenidate, 35.9% were out-of-stock of at least one strength, almost 3 times as many. In the case of Ritalin, the out-of-stock situation was constant among the various strengths: 11.6% in the 5 mg, 11.7% for the 10 mg, 11.4% for the 20 mg, and 13.5% for the "SR" (sustained release). In terms of out-of-stock situations from December 1, 1985, to the date of the survey (February 27–28, 1986), 14.0% of the stores that normally stocked Ritalin had been out-of-stock of at least one strength, compared to 36.9% of those stores normally stocking generic methylphenidate.

47. Inconstant availability of generic methylphenidate in pharmacies creates concern and confusion on the part of patients, who are unexpectedly forced to pay higher prices for the more reliably obtained brand name, and results in pharmacists being wary of carrying generic methylphenidate products, to the continued disadvantage of patients.

48. In October 1986, MD contacted its major customers, all of whom are wholesale distributors, to determine inventories at the end of each month during the year. Most customers queried reported no inventory in various strengths at the end of several monthly periods, and in many cases reported no inventory in consecutive monthly periods.

49. Most generic drug drugstore purchasers deal with regular sources of supply. In the case of a drug in short supply which is not a major product, failure to find the product available quickly will normally result in a "default" to the brand name.

50. In 1976, only five states permitted generic substitution; today all 50 states do. In the mid-1970's, due to the desire of public agencies to reduce the cost of medical care, interest in generic drugs substantially increased. Some states actually mandate the substitution of generic drugs when they are available unless the doctor directs otherwise, and some states are actually making it more difficult for doctors to do that. Data considered reliable throughout the drug industry show average generic market share of drugs where both brand name and generic are available to be between 40–55%.

51. Shortages of generic methylphenidate, which do not include a S–R version but which do include all other forms of Ritalin, were more serious in 1986 than shortages of the brand name product.

52. The use of previous year's sales as the basis of a subsequent year's quota limits DEA's ability to assess the proper generic share of the market and further precludes the generic manufacturer from demonstrating market share as it cannot manufacture and dispose of sufficient product to measure that share.

53. Substantial evidence in the record establishes that the market share of generic methylphenidate has been suppressed by the method used for setting 1986 individual production quotas and that ultimate consumers have thereby been disadvantaged.

54. The evidence in this record clearly shows that shortages did occur for both brand name and generic methylphenidate and that they were contributed to by the low quotas set by DEA. The shortages during the year were attributable more to the piecemeal method of setting quotas than to the size of the final aggregate production quota. Although the final aggregate production quota was much closer to that needed to fill the nation's needs than the original quota had been, it was still insufficient to allow for sufficient reserve stocks for either manufacturer.

55. Diversion of methylphenidate is a serious problem which DEA must take into account in setting quotas. However, the evidence of diversion of methylphenidate in 1986 does not support the need for as "lean a pipeline" as was created by the way the quotas were set in 1986.

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Discussion

The evidence produced before the Administrative Law Judge demonstrated that there was an increased medical need for methylphenidate in 1986 due to several factors. The primary factors were better diagnosis of ADD, more children in the relevant age group due to a "baby boom," and greater utilization of methylphenidate as the drug of choice in the treatment of ADD. The evidence also demonstrated serious shortages of methylphenidate at various times in 1986—especially spring and fall—and corresponding problems for persons attempting to fill prescriptions and for retailers attempting to keep it in stock. The shortages were demonstratably more severe for generic methylphenidate and the record shows that consumers often purchased the more expensive Ritalin because of the unavailability of the generic.

The evidence of abuse of methylphenidate, as contained in this record, does not justify keeping an overly "lean pipeline." *See Western Fher Laboratories v. Levi*, 529 F.2d 325 (1st Cir. 1976).

The evidence demonstrates that the setting of initially low quotas by DEA and then adjusting them upward late in the year contributed to the shortage problems experienced in 1986. This practice hampered the efficiency of the manufacturers and was especially unsuited to the relatively long production cycle of Ciba-Geigy.

The use of prior year sales and final inventory data is essential to prevent oversupply. However, the evidence reveals that DEA may have relied too heavily on the previous year's quota in setting the 1986 aggregate production quota. The initial 1986 aggregate production quota (1,295 kg) was substantially lower than the final aggregate production quota for 1985 (1,361 kg). This contributed both to the harmful delay in arriving at a realistic figure and to the final aggregate production quota which was too low. DEA relied upon the FDA's estimate of a 17% increase in medical need for methylphenidate in 1986 but it applied the 17% figure to sales figures which had been held down by the 1985 quota while ignoring the FDA's substantially higher base number. Moreover, the process ignored the fact that FDA's base number is based upon only approximately 80% of the total medical need and that it provides no allowance for inventory.

In the latter part of 1986, each of the manufacturers of methylphenidate faced a critical shortage which threatened to force them to stop shipping any product until the end of the year. That situation was alleviated somewhat by the two increases in the disposal quotas of each manufacturer which were granted by DEA in December of 1986. Those increased disposal quotas allowed the manufacturers to ship product but there was no corresponding increase in the aggregate production quotas. Therefore, the products shipped at the end of 1986 came from inventory. As a result the inventory, or *reserve stocks*, of brand name and generic methylphenidate were below their appropriate levels at the end of 1986 as a direct result of an aggregate production quota which was too low to meet the several needs described in 21 U.S.C. 826.

The necessity for quotas on Schedule II controlled substances causes some unavoidable interference with normal market forces. It is impossible to impose production quotas on manufacturers without having some effect on normal competitive forces. Therefore, recognition of the fact that lower priced generic methylphenidate has been denied to consumers who wish to purchase it, by the quotas, and the taking of remedial action to correct that, is warranted. Such remedial action can avoid disrupting the market and can avoid unfairness to the name brand manufacturer by operating in a marginal way. Therefore, the DEA staff should not attempt to immediately bring generic methylphenidate to a market share level which is equal to the average share of other generic drugs but rather should take definite but gradual steps each year in that direction. Factoring in the consumer frustration in obtaining lower priced generic methylphenidate, when setting individual production quotas, should continue for as long as the unfilled demand for the generic product persists.

Disposal quotas are not a proper exercise of DEA's authority without resort to the notice and comment procedures mandated for "rulemaking" by the Administrative Procedures Act. The reason that the setting of disposal quotas amounts to rulemaking is that it imposes specific constraints upon the manufacturers of methylphenidate. Because of the disposal allocation or "quota" the manufacturers cannot sell or distribute all of the product which they manufacture pursuant to their production quotas during the year. Although such limitations may, from time to time, be advisable in order to fully implement 21 U.S.C. 826, they do impose restrictions on the manufacturers. Therefore, the imposition of such disposal allocations constitutes the exercise of rulemaking authority and is improper unless done in accordance with the Administrative Procedures Act. *See* 5 U.S.C. 551(4), 5 U.S.C. 553; *see also, In re FIC Corporate Patterns Report Litigation*, 432 F. Supp. 291 (D.D.C. 1977). If DEA is to resume the use of disposal quotas it must publish and explain the need for such quotas and the method by which they will be set and provide an opportunity for interested persons to comment.

Order

Therefore, under the authority vested in the Attorney General by section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. 826) and redelegated to the Administrator of the Drug Enforcement Administration by § 0.100 as amended, Title 28 Code of Federal Regulations, the Administrator hereby orders that the DEA staff redetermine the 1986 aggregate production quota for methylphenidate so as to provide for the medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. It is further directed that pursuant to the agreement entered into by DEA with the parties to the 1986 hearing conducted before the Administrative Law Judge, any increase in the 1986 aggregate production quota or to any individual quota shall not be offset by a lowering of any relevant quota for the year in which the adjustment is made. Each manufacturer shall be permitted to manufacture the amount added to its respective individual production quota for 1986, during the 12 month period following the adjustment without regard to any other quota level. It is further ordered that the DEA staff redetermine the individual production quotas of the two manufacturers of methylphenidate for the year 1986. Such individual quotas shall be adjusted to a level which adds a sufficient quantity to eliminate the deficiency in reserve stocks which existed in each manufacturers' inventory at the close of 1986. Further, it is ordered that in recomputing the 1986 individual manufacturing quota and in setting future individual manufacturing quotas for methylphenidate, that the DEA staff consider the inability of consumers to obtain lower priced generic methylphenidate and the relatively low market share which generic methylphenidate has achieved compared to other generic drugs. It shall begin a remedial action to correct that situation by appropriate increases in the relative size of the quota consigned to generic methylphenidate. It is further ordered that the DEA staff desist from the use of disposal allocations or quotas

unless and until the need for such allocations and the method of computing them has been subjected to the rulemaking procedures of 5 U.S.C. 553(b).

Finally, the DEA staff is directed that in setting future aggregate and individual production quotas for methylphenidate before the start of each calendar year, if shall set levels which represent its best estimate of the nation's needs for the full upcoming year, utilizing the best and most reliable data and information available to it at the time.

Date: December 9, 1988.

John C. Lawn,

Administrator.

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Importation of Controlled Substances; Application; Norac Co., Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 28, 1988, Norac Company, Inc., 405 South Motor Avenue, P.O. Box F, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as an importer of Ibogaine (7260), a basic class of controlled substance in Schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 17, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-28941 Filed 12-15-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Upjohn Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 17, 1988, Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 17, 1989.

Dated: December 9, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-28940 Filed 12-15-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Labor Research Advisory Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with General Services Administration (GSA), I have determined that renewal of the Labor Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics regarding the statistical and analytical work of the Bureau of Labor Statistics, providing perspectives on these programs in relation to the needs of the labor unions and their members.

Council membership and participation in the Council and its committees are broadly representative of the union organizations of all sizes of membership, with national coverage which reflects the geographical, industrial, and occupational sectors of the economy.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed with GSA and the appropriate congressional committees.

Further information may be obtained from: Henry Lowenstern, Bureau of Labor Statistics, Department of Labor, GAO Building, 441 G Street NW., Washington, DC 20212, telephone: 202-523-1327.

Signed at Washington, DC, this 13th day of December 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-28966 Filed 12-15-88; 8:45 am]

BILLING CODE 4510-24-M

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to the requirements of Pub. L. 95-602, I hereby certify that the Consumer Price Index for All Urban Consumers rose 4.2 percent between October 1987 and October 1988 from a level of 115.3 (1982-84=100) in October 1987 to a level of 120.2 (1982-84=100) in October 1988. Signed at Washington, DC, on the 8th day of December 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-28967 Filed 12-15-88; 8:45 am]

BILLING CODE 4510-24-M

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Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee for the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 10, 1989, 9:30 a.m., Room S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose

To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(b)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavalle, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565. Signed at Washington, DC this 9th day of December 1988.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 88–28968 Filed 12–15–88; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 27, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (December 27, 1988).

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 21st day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petition No.	Articles produced
ABE Levine Knitting Mills, Inc. (Workers)	New York, NY	11/18/88	11/4/88	21,680	Ladies suits.
A.L. Abercrombie, Inc. (Company)	Witchita, KS	11/18/88	11/8/88	21,681	Oil and gas.
ARCO Oil and Gas Co. and Exploration Co. (Workers)	Plane, TX	11/18/88	11/10/88	21,682	Do.
ARCO Oil and Gas Co. (Workers)	Dallas, TX	11/18/88	11/12/88	21,683	Do.
ATCO Drilling (Company)	Aurora, CO	11/18/88	11/7/88	21,684	Do.
Do.	Mills, WY	11/18/88	11/11/88	21,685	Do.
Abercrombie, Inc. (Company)	Witchita, KS	11/18/88	11/8/88	21,686	Do.
Advance Consultants Corp. (Workers)	Midland, TX	11/18/88	11/2/88	21,687	Do.
Amenca Bank in Louisiana (Workers)	Morgan City, LA	11/18/88	10/28/88	21,688	Do.
American Standard (GMP)	Wauregan, CT	11/18/88	10/31/88	21,689	Vitreous china.
Atlas Wireline Services (Anchor Workers)	Gillette WY	11/18/88	10/28/88	21,690	Oil and gas.
Atlas Wireline Services, Division of Western Atland International	Anchorage, AK	11/18/88	11/18/88	21,691	Do.
B&G Roustabout Service (Workers)	Williston, ND	11/18/88	11/9/88	21,692	Do.
Baker Oil Treating (Company)	Smackover, AR	11/18/88	11/2/88	21,693	Do.
Ballard Enterpnses (Workers)	Houston, TX	11/18/88	10/26/88	21,694	Do.
Berge Exploration, Inc. (Company)	Wheatridge, CO	11/18/88	11/18/88	21,695	Do.
Butler and Johnson Drilling (Workers)	Shreveport, LA	11/18/88	11/7/88	21,696	Do.
C-2 Logging, Inc. (Company)	Shreveport, LA	11/18/88	10/7/88	21,697	Do.
C.E. Natco (Workers)	Williston, ND	11/18/88	11/1/88	21,698	Do.
C&F Offshore Services (Company)	Freeport, TX	11/18/88	11/5/88	21,699	Do.
Cameron Tool Corp. (Workers)	Lansing, MI	11/18/88	10/31/88	21,700	Auto dies.
Central Oil Field Supply Co. of Logan (Company)	Logan, OH	11/18/88	11/11/88	21,701	Oil and gas.
Charles E. Hynek, Inc. (Company)	Dallas, TX	11/18/88	11/2/88	21,702	Do.
Charlie Thomas Distributing, Co. (Company)	Houston, TX	11/18/88	10/27/88	21,703	Electronic products.
Church-Richter Energy Co. (Workers)	Denver, CO	11/18/88	10/19/88	21,704	Oil and gas.
Cimarron Rigs, Inc. (Workers)	Odessa, TX	11/18/88	10/22/88	21,705	Do.
Citation Oil and Gas Corp. (Company)	Houston, TX	11/18/88	11/1/88	21,706	Do.
Continental Products of Texas (Workers)	Winters, TX	11/18/88	9/7/88	21,707	Do.
Do.	Odessa, TX	11/18/88	9/7/88	21,708	Do.
Convest Energy Corp.	Houston, TX	11/18/88	10/14/88	21,709	Do.
Delta Hatcheries Inc. (Workers)	Lake City, FL	11/18/88	10/20/88	21,710	Chickens.
DeltaUS, Gulf Coast Drilling Div. (Workers)	Tyler, TX	11/18/88	10/28/88	21,711	Oil and gas.
Digicon Geophysical Corp. (Workers)	Houston, TX	11/18/88	10/6/88	21,712	Do.
Dixilyn-Field Drilling Co. (Workers)	Do.	11/18/88	11/3/88	21,713	Do.
Don Lankford Drilling Co. (Workers)	McLeansbora, IL	11/18/88	10/30/88	21,714	Do.
Dowell Schlumberger (Company)	Houston, TX	11/18/88	11/14/88	21,715	Do.
Energy Fuels Nuclear, Inc. (Company)	Fredonia, AZ	11/18/88	11/4/88	21,716	Refined uranium.
EDCO Drilling and Producing (workers)	Waynesberg, OH	11/18/88	11/1/88	21,717	Oil and gas.
ESSO Exploration, Inc. (Workers)	Houston, TX	11/18/88	11/4/88	21,718	Do.

APPENDIX—Continued

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petition No.	Articles produced
Flagstar, Inc. (Workers)	Olney, IL	11/18/88	11/10/88	21,719	Do.
Forwest Incorp. (Workers)	Grassy Butte, ND	11/18/88	11/1/88	21,720	Do
Front Royal Garmet (ILGW)	Front Royal, VA	11/18/88	11/3/88	21,721	Children's sportswear.
Guardian Inspection Services, Inc. (Workers)	Williston, ND	11/18/88	10/23/88	21,722	Oil and gas.
H.C. Price (Laborers')	Anchorage, AK	11/18/88	11/7/88	21,723	Do.
H & L Rental, Inc. (Workers)	Williston, ND	11/18/88	11/10/88	21,724	Do.
Hope Drilling Co., Inc. (Workers)	Santa Anna, TX	11/18/88	11/8/88	21,725	Do.
J.C. Suisberger Drilling (Workers)	Flora, IL	11/18/88	11/6/88	21,726	Do.
J.R. Drilling (Workers)	Mt Pleasant, MI	11/18/88	11/4/88	21,727	Do.
John Flynn and Sons, Inc. (Company)	Salem, MA	11/18/88	10/24/88	21,728	Finished sheepskin.
Key Well Services (Workers)	Indiana, PA	11/18/88	11/3/88	21,729	Oil and gas.
Kirkwood Oil and Gas (Company)	Casper, WY	11/18/88	10/31/88	21,730	Do.
Leshners Corp. (ACTWU)	Cincinnati, OH	11/18/88	11/9/88	21,731	Towels.
Lewis Casing Crews, Inc. (Workers)	Odessa, TX	11/18/88	11/3/88	21,732	Oil and gas.
Little Falls Footwear, Inc.	St. Johnsville, NY	11/18/88	10/13/88	21,733	Women's shoes
Marathon Oil Co. (Workers)	Lafayette, LA	11/18/88	10/29/88	21,734	Oil and gas.
Margo, Inc. (Workers)	College Station, TX	11/18/88	11/9/88	21,735	Do.
May Energy (Workers)	Oil City, PA	11/18/88	11/1/88	21,736	Do.
McCullough Co. (Workers)	Houston, TX	11/18/88	10/23/88	21,737	Do.
Morning Star Drilling, Inc. (Workers)	Abilene, TX	11/18/88	10/31/88	21,738	Do.
Myers Drilling Co. (Workers)	Midland, TX	11/18/88	10/31/88	21,739	Do.
Narrotex (D&F)	Passaic, NJ	11/18/88	11/4/88	21,740	Ribbons.
New Era Petroleum Consultants (Company)	Engelwood, CO	11/18/88	11/1/88	21,741	Oil and gas.
Norcon (Laborers')	Anchorage, AK	11/18/88	11/7/88	21,742	Do.
Nowsco Services (Big 3 Industries) (Workers)	Houston, TX	11/18/88	11/10/88	21,743	Do.
Oilfield Equipment (Company)	Corpus Christi, TX	11/18/88	11/6/88	21,744	Do.
Oilfield Safety, Inc. (Workers)	Williston, ND	11/18/88	11/7/88	21,745	Do.
Petro-Tech, Inc. (Workers)	Seneca, PA	11/18/88	11/8/88	21,746	Do.
Placid Oil Co. (Workers)	Jackson, MS	11/18/88	11/2/88	21,747	Do.
Pool Well Servicing Co. (Workers)	Denver City, KS	11/18/88	11/10/88	21,748	Do.
R.E. Williams Drilling Co., Inc. (Workers)	Memphis, TN	11/18/88	11/5/88	21,749	Do.
Rebel Geophysical, Inc. (Workers)	Denver, CO	11/18/88	11/7/88	21,750	Do.
Regis Drilling Co. (Workers)	Columbia, MS	11/18/88	9/16/88	21,751	Do.
Reliable Production Service, Inc. (Company)	Livonio, LA	11/18/88	10/28/88	21,752	Do.
Ryan Services, Inc. (Workers)	Eicampo, TX	11/18/88	10/17/88	21,753	Do.
S.W. Neilly Air Notching (Company)	Bradford, PA	11/18/88	11/1/88	21,754	Do.
Schlumberger Well, Services (Workers)	Mt. Pleasant, NJ	11/18/88	11/8/88	21,755	Do.
Schlumberger Well Services (Workers)	Bradford, PA	11/18/88	11/4/88	21,756	Do.
Sealy and Co., Inc. (Workers)	Breckenridge, TX	11/18/88	11/4/88	21,757	Do.
Seismograph Service Corp. (Workers)	Englewood, CO	11/18/88	11/1/88	21,758	Do.
Service Acid, Inc. (Workers)	Great Bend, KS	11/18/88	11/11/88	21,759	Do.
Service Acid, Inc. (Workers)	Colby, KS	11/18/88	11/11/88	21,760	Do.
Sherman Drilling (Workers)	Mineral City, OH	11/18/88	10/26/88	21,761	Do.
Sopac Exploration (Workers)	Drumright, OK	11/18/88	10/31/88	21,762	Do.
Spudder Service, Inc. (Company)	Norris City, IL	11/18/88	11/9/88	21763	Do.
Summit Oil Co. (Company)	Denver, CO	11/18/88	11/8/88	21,764	Do.
Tesoro Drilling Co. (Workers)	Laurel, MS	11/18/88	10/17/88	21,765	Do.
Transco Exploration Co. (Workers)	Denver, CO	11/18/88	11/2/88	21,766	Do.
Do.	Houston, TX	11/18/88	11/2/88	21,767	Do.
TRI-County Well Service (Workers)	Winfield, KS	11/18/88	10/31/88	21,768	Do.
TRI-County Well Service (Workers)	Midland, TX	11/18/88	11/14/88	21,769	Do.
Teleco Oilfield Services, Inc. (Company)	Broussard, LA	11/18/88	10/26/88	21,770	Do.
Zapata Gulf Marine (Workers)	Harvey, LA	11/18/88	10/22/88	21,771	Do.

[FR Doc. 88–29007 Filed 12–15–88; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–21,254]

Ashland Oil Co., Beattyville, KY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a petition received on October 11, 1988 and filed on behalf of workers at Ashland Oil Company, Beattyville, Kentucky. The workers produced crude oil.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 5th day of December, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28969 Filed 12–15–88; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–21,161]

Baggett Drilling Co., Eagle Pass, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 3, 1988 in response to a worker petition received on October 3, 1988 which was filed on behalf of workers at Baggett Drilling Company, Eagle Pass, Texas.

The investigation revealed that the subject firm was in operation for less than a year. Due to the short period of time that the company performed drilling operations, it is not possible to access the impact of imports on the subject firm's business. Consequently,

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further investigation in this case would serve no purpose; and the investigation has been terminated.

S gned at Washington, DC, this 2nd day of December, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28970 Filed 12–15–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,333].

Comet Drilling Co., Eunice, LA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 17, 1988 in response to a worker petition which was filed on behalf of workers at Comet Drilling Company, Eunice, Louisiana.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

An active certification covering the petitioning group of workers is currently in effect (TA–W–21,169). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington DC this 5th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28971 Filed 12–15–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,362].

JEM Petroleum Corp., Englewood, CO; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 3, 1988 in response to a worker petition which was filed on behalf of workers at JEM Petroleum Corporation, Englewood, Colorado.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from JEM Petroleum Corporation, Englewood, Colorado more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington DC this 7th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28972 Filed 12–15–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,454]

Meridian Oil, Inc., Billings, MT; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), an investigation was initiated on October 24, 1988 in response to a worker petition dated September 30, 1988 and filed on behalf of workers and former workers at Meridian Oil, Incorporated, Billings, Montana. The workers produce crude oil and natural gas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

No layoffs occurred at the Meridian Oil, Incorporated, Billings, Montana since September 30, 1987, one year prior to the date of the petition and the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28973 Filed 12–15–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,458]

Mobil Producing Texas and New Mexico, Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), an investigation was initiated on October 24, 1988 in response to a worker petition dated September 17, 1988 and filed on behalf of workers and former workers at Mobil Producing Texas and New Mexico, Houston, Texas. The workers produced crude oil and natural gas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

No layoffs occurred at the Mobil Producing Texas and New Mexico, Houston, Texas since September 17, 1987, one year prior to the date of the petition and the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–28974 Filed 12–15–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21, 295]

Panther Drilling, Inc., Dickinson, ND; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a worker petition which was filed on behalf of workers at Panther Drilling, Incorporated, Dickinson, North Dakota.

All workers of Panther Drilling, Incorporated, Dickinson, North Dakota were separated from the subject firm prior to the earliest impact date. In accordance with section 223(b) of the Omnibus Trade and Competitiveness Act of 1988, as amended by Pub. L. 100–418, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before October 1, 1985. All workers of Panther Drilling, Incorporated, Dickinson, North Dakota were terminated in May 1985. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of December, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-28975 Filed 12-15-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,297]

Petro Lewis Corp., Catarina, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 11, 1988 in response to a worker petition which was filed on October 11, 1988 on behalf of workers at Petro Lewis Corporation, Catarina, Texas. Workers were engaged in employment related to the production of crude oil and natural gas.

The retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from Petro Lewis Corporation more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 8th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-28976 Filed 12-15-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,308]

Rocky Mountain Geophysics, Inc., Denver, CO; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 13, 1988 in response to a worker petition which was filed on behalf of workers at Rocky Mountain Geophysics, Incorporated, Denver, Colorado.

All workers of Rocky Mountain Geophysics, Incorporated, Denver, Colorado were separated from the subject firm prior to the earliest impact date. In accordance with section 223(b) of the Omnibus Trade and Competitiveness Act of 1988, as amended by Pub. L. 100-418, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before October 1, 1985. All workers of Rocky Mountain Geophysics, Incorporated, Denver, Colorado were terminated at the end of February 1985. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-28977 Filed 12-15-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,540]

Transworld Drilling Co., Oklahoma City, OK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1988 in response to a worker petition which was filed on behalf of workers at Transworld Drilling Company, Oklahoma City, Oklahoma.

An active certification covering the petitioning group of workers remains in effect (TA-W-18,474D). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 6th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-28978 Filed 12-15-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest

in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey:
NJ88-2 (JAN. 8, 1988)—p. 615
Pennsylvania:
PA88-8 (JAN. 8, 1988)—p. 913
PA88-10 (JAN. 8, 1988)—p. 930
PA88-18 (JAN. 8, 1988)—pp. 966-968
PA88-19 (JAN. 8, 1988)—p. 975
PA88-23 (JAN. 8, 1988)—p. 1001
Rhode Island:
RI88-1 (JAN. 8, 1988)—p. 1018

Volume II

Illinois:
IL88-1 (JAN. 8, 1988)—p. 67
Kansas:
KS88-6 (JAN. 8, 1988)—p. 346

Volume III

California:
CA88-2 (JAN. 8, 1988)—p. 43
Utah:
UT88-3 (JAN. 8, 1988)—p. 348
Washington:
WA88-8 (JAN. 8, 1988)—p. 420

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 9th Day of December 1988.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88-28707 Filed 12-15-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-234-C]

Christian Energies, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Christian Energies, Inc., Route 1, Box 16, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-16448) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane montior be installed on electric tractors used to load coal at the face. The monitor is required to be kept operative and properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 17, 1989. Copies of the petition are available for inspection at that address.

Date: December 12, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28979; Filed 12-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-209-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.207 (pillar recovery) to its Baldwin Mine (I.D. No. 11-01008) located in Randolph County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that before mining is started in a pillar split or lift, at least two rows of breaker posts or equivalent support be installed as close to the initial intended breakline as practicable and across each opening leading into an area where full or partial pillar extraction has been completed.

2. As an alternate method, petitioner proposes to second mine as follows:

(a) Side cuts would be conducted in a perimeter pillar of rooms only;

(b) All room development would be done under a full roof bolting plan;

(c) When operating remote controlled equipment, the operator would remain out by the end of the boom under supported roof;

(d) Maximum width of side cuts would be twenty feet;

(e) A minimum five-foot fender would be left for support between each lift;

(f) Chain pillars would not be mined out;

(g) Only one method of second mining would be conducted in a set of rooms;

(h) Temporary supports would be installed before repair work commences, in the event of a machine breakdown in face;

(i) Each haulage crosscut would be curtained off and would be dangered out to prevent accidental approach to a second mined area, as soon as it is no longer needed for haulage;

(j) The mouth of the return room (cuts 1 through 16) would be physically barricaded and "KEEP OUT" signs would be posted; and

(k) A miner operator would be on the solid pillar side of the lift at all times.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 17, 1989. Copies of the petition are available for inspection at that address.

Date: December 8, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-28980; Filed 12-15-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[Docket No. NRTL-2-88]

Dash, Straus and Goodhue, Inc.; Application and Preliminary Finding for Recognition as Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of application for recognition as a Nationally Recognized Testing Laboratory, and preliminary finding.

SUMMARY: This notice announces the application of Dash, Straus and Goodhue, Inc., for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is February 14, 1989.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program at the above address, Telephone: (202) 523-7193.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Dash, Straus and Goodhue, Inc., has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35763), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the place of employment that will be affected by the application is as follows: Dash, Straus and Goodhue, Inc., Product Safety Division, 593 Massachusetts Avenue, Boxborough, Massachusetts 01719.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

Dash, Straus and Goodhue, Inc., (DS&G), states further that its staff includes degreed engineers well experienced in the field of electrical product safety including previous employment with Underwriters' Laboratories, Inc. (UL), private industry experience, and tenure as consultants to industry.

DS&G claims that it maintains a fully equipped laboratory to handle the testing requirements defined in the standards for the products which it seeks recognition to test, and that all of the test equipment is calibrated by an outside testing facility every six months.

The applicant also stresses that it has established formal documented testing procedures pertinent to the various standards to which testing is performed, and that these procedures have been reviewed and approved by various outside international product safety agencies for validity and thoroughness as a basis for their acceptance of the test data produced by the applicant's staff.

Additionally, according to Dash, Straus and Goodhue, Inc., it maintains a modern and secure facility for its testing and administrative requirements.

With respect to records and reports, the applicant asserts that it maintains discreet physical files containing business records, product documentation, test records, and results. DS&G claims that it also conducts a follow-up service including a means for implementation of control procedures for identifying the listed or labeled equipment, and on-site reviews of the submitter/client's manufacturing facilities and spot checking and verification of compliance of the "approved" products with the appropriate standards.

In addition, the applicant claims that it has a formalized complaint procedure for handling complaints and disputes of all interested parties, fairly and reasonably.

Background

Dash, Straus and Goodhue, Inc. was formed in 1980 initially for the purpose of undertaking tests to determine equipment compliance with Federal Communications Commission (FCC) regulations. In this effort, the Company succeeded business activities begun by Dash, Straus Associates in 1977.

The firm currently occupies over 7000 feet of facility and office space located in Boxborough, in North Central Massachusetts. The Company is listed by the Federal Communications Commission and accredited by the U.S. Department of Commerce, and the National Institute of Standards and Technology (NTIS), formerly the National Bureau of Standards, under the National Voluntary Accreditation Program (NVLAP).

The Product Safety Division of Dash, Straus and Goodhue, Inc. was formed in January 1986 for purposes of providing its client base with services designed to support its client's requirements for Underwriters' Laboratories, Inc. (UL), Canadian Standards Association (CSA), and Technicher Uberwachungs-Verein (TUV) electrical safety listing certification and licensing.

The applicant states that, particularly for products intended for use in the U.S. market, it employs the same specific test

methods and procedures established by each of the Regulatory Agencies as the basis for its work.

The applicant further states that it is an active member of the American National Standards Institute (ANSI), the Electronic Industries Association (EIA), and the National Fire Protection Association (NFPA).

The Product Safety Division, which is located at the Boxborough, Massachusetts address of the applicant, consists of 20 employees, as follows:

1—President
1—Vice President of Sales/Marketing
1—Vice President for Legal/Administrative
1—Vice President for Engineering
8—Clerical/Administrative
6—Engineers
2—Technicians

D&G has submitted copies of the job responsibilities and qualifications for all of the above noted positions.

The applicant has asserted that, as a NRTL, it will use only ANSI/UL standards (the nationally recognized standards) as the basis for its testing activity.

The scope of products that will be covered under the applicant's recognition will include electrical/electronic devices such as EDP equipment, office and business machines, communication systems and devices, non-invasive biomedical equipment, and power supplies.

The specific standards that Dash, Straus and Goodhue, Inc. states it will utilize in the course of its review, testing, and approval procedures are:

ANSI/UL #478—Information-Processing and Business Equipment
ANSI/UL #1459—Telephone Equipment
ANSI/UL #544—Electric Medical and Dental Equipment
ANSI/UL #1012—Power Supplies

All of the above standards are appropriate test standards within the meaning of 29 CFR 1910.7(c).

The applicant states that it is a privately held company jointly owned in equal shares by its three officers. Further, it operates an an independent testing laboratory and has no fiduciary relationship or association with its vendors, suppliers or clients except as a facility engaged to perform regulatory and compliance testing.

Preliminary Finding

Based upon all of the foregoing, and on the results of an on-site review of the applicant's testing facilities and administrative and technical practices, the Assistant Secretary has made a preliminary finding that Dash, Straus and Goodhue, Inc., can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements of a Nationally Recognized Testing Laboratory, listed in 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than Fedruary 14, 1989, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210. Copies of the DS&G application, the written staff recommendation and accompanying laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–88), are available for inspection and duplication at the Docket Office, Room N2634, Occupational Safety and Health Adminstration, U.S. Department of Labor, at the above address.

Signed at Washington, DC, this 12th day of December, 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–28981 Filed 12–15–88; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Pre-Screening I Film/Video Production) to the National Council on the Arts will be held on January 10–12, 1989, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–28997 Filed 12–15–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–499]

Houston Lighting and Power Co., et al.; South Texas Project, Unit 2; Environmental Assessment and Finding of No Significant Impact Concerning Exemption

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.33(k) and 10 CFR 50.75 to Houston Lighting and Power Company, et al., (the licensee) for the South Texas Project, Unit 2, located at the licensee's site in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

10 CFR 50.33(k)(1) states, "Each application shall state: For an application for an operating license for a production or utilization facility, information in the form of a report, as described in § 50.75 of this part, indicating how reasonable assurance will be provided that funds will be available to decommission the facility." 10 CFR 50.75 establishes requirements for indicating how reasonable assurance will be provided that funds will be available for decommissioning. By letter dated December 2, 1988, the licensee requested a temporary exemption from the requirements of 10 CFR 50.33(k) and 10 CFR 50.75 for South Texas Project, Unit 2. Each holder of an operating license is required to submit a decommissioning plan on or before July 26, 1990. The licensee proposes to submit the decommissioning plan for Unit 2 at the time it submits the decommissioning plan for Unit 1 for which it holds an operating license, that is by July 26, 1990.

Need for Proposed Action

The proposed exemption is needed because there has been insufficient time for the licensee to complete all of the actions necessary to submit its decommissioning plan as an operating license application document. The

licensee has performed a study of the cost of decommissioning and negotiations have been initiated with potential trustees of an external sinking fund. However, these negotiations have not yet been concluded.

Environmental Impact of the Proposed Action

The proposed exemption from 10 CFR 50.33(k)(1) and 50.75 will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant cumulative radiation exposure. Accordingly, the Commission concludes that the proposed exemption would result in no significant radiological environmental impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (NUREG–1171) for the South Texas Project, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepared an environmental impact statement for the proposed exemption.

Based upon the foregoing evironmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 2, 1988. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488, and at the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. The staff's evaluation of the request will be published in the Safety Evaluation Report, Supplement No. 6, and will be available for inspection at the locations listed above.

Dated at Rockville, Maryland, this 7th day of December, 1988.

For The Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate-IV Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–29085 Filed 12–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–499]

Houston Lighting and Power Co., et al., South Texas Project, Unit No. 2; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Exemption from a portion of the requirements of Appendix J of 10 CFR Part 50 to the Houston Lighting and Power Company, acting for itself and for the City of San Antonio [acting by and through the City Public Service board of San Antonio), Central Power and Light Company, and the City of Austin, Texas (the applicants). The Exemption would apply to the South Texas Project (STP) Unit 2 located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Action

Section III.D.2(b)(ii) of Appendix J, 10 CFR Part 50, states that "Air locks open during periods when containment integrity is not required by the plant Technical Specifications shall be tested at the end of such periods at not less than P_a." By letter dated January 15, 1986, the licensee requested that the South Texas Project Unit 2 Technical Specifications be written to instead require an overall air lock leak rate test at P_a (37.5 psig) to be performed only "Upon completion of maintenance which has been performed on the air lock that could affect the air lock sealing capability." Otherwise, if an air lock is opened during periods when containment integrity is not required and no such maintenance has been performed, a door seal leak rate test (a less time-consuming test) must be performed. This requested exemption is consistent with the staff's position on the acceptable testing frequency necessary to demonstrate air lock sealing capability intended in Appendix J. The staff's current position is shown in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG–0452, Rev. 4). Until Commission Rulemaking changes the current requirement in Appendix J, an exemption to the present regulation must be granted before the licensee can adopt the requested Technical Specification.

Need for Proposed Action

The proposed exemption is needed because, based on experience at various plants, the staff found that literal compliance with Section III.D.2(b)(ii) of Appendix J is not necessary to assure containment leaktightness. The requested exemption is consistent with the staff's technical position and has been granted to many plants. Literal compliance with the regulation would lead to increased costs and occupational exposure.

Environmental Impacts of the Proposed Action

The proposed exemption to 10 CFR Part 50, Appendix J, Section III.D.2(D)(ii) will assure air lock sealing capability and containment integrity; therefore, this exemption will not increase the probability of accidents and post-accident radiological releases, nor otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Actions

The principal alternative to the proposed actions would be to deny the requested exemptions. This would result in increased costs and occupational exposure.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (NUREG–1171) for STP, Units 1 and 2.

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Agencies and Persons Contacted

The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this Exemption for STP, Unit 2. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based on the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated January 15, 1986. This document, utilized in the NRC staff's technical evaluation of the exemption request, is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488, and at the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 7th day of December, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-29086 Filed 12-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion dates specified in Construction Permit Nos. CPPR-91 and CPPR-92 issued to Tennessee Valley Authority (applicant) for the Watts Bar Nuclear Plant, Units 1 and 2. The facility is located at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

Environmental assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR-91 to July 1, 1991 and the latest construction completion date of Construction Permit No. CPPR-92 to December 31, 1992. The proposed action is in response to the applicant's request dated June 29, 1988.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not yet fully completed. The applicant states that completion of Unit 1 will continue to be delayed pending review and implementation of several key issues/programs, such as the Vertical Slice Program and the Watts Bar Program Plan. These corrective action programs (CAPs) address the outstanding issues and the proposed plan for resolution. The implementation of these CAPs would confirm the design and construction adequacy of the Watts Bar plant. Resolution of these issues may require reinspection, analysis, and possible modifications to the facility prior to fuel load.

In addition, certain engineering and construction resources originally allocated for completion of work at Watts Bar have been diverted to the restart programs for Sequoyah and Browns Ferry Nuclear Power Plants.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in TVA's Final Environmental Statement (FES) issued on November 9, 1972 for the construction permit stage which covered construction of both units. The FES issued in December 1978 for the operating license stage addressed the environmental impacts of construction activities not addressed previously. These activities included: (1) Construction of the new transmission route for the Watts Bar—Volunteer 500 kV line, (2) construction of the settling pond for siltation control for construction runoff at a different location from that originally proposed in the Final Environmental Statement—Construction Permit (FES-CP), and (3) the relocation of the blowdown diffuser from the originally proposed site indicated in the FES-CP. The staff addressed the terrestrial and aquatic environmental impacts in the Final Environmental Statement—Operating Licenses (FES-OL) and concluded that the assessment presented in the FES-CP remains valid.

The construction of Unit 1 is essentially 100% complete and Unit 2 is approximately 75% complete, therefore, most of the construction impacts discussed in the FES have already occurred. Since this action would only extend the period of contruction as described in the FES, it does not involve any different impacts as described and analyzed in the original environmental impact statement. The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the applicant more time to complete construction in accordance with the previously approved construction permit. The activities related to the various CAPs will result in additional workforce, being primarily engineering and technical personnel rather than construction workforce. At the present time, this workforce is basically dedicated to the completion of Unit 1. This increase will be temporary and decline as the CAPs are completed and Unit 1 approches fuel loading (currently planned for December 1990). A large percentage of the additional workforce are contractors and consultants who do not live in the area and use only temporary quarters. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of worker's families and due to demands for services necessary to support permanent residents (for example, housing and schools).

Based on the foregoing, the NRC Staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction to the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural states. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for Watts Bar.

Agencies and Persons Contacted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated June 29, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Local Public Document Room, Chattanooga-Hamilton County Bicentennial Library, 10001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 5 day of December, 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-28985 Filed 12-15-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on January 10, 1989, Room P-114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 10, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review: (1) The proposed final version of 10 CFR Part 52, Early Site Permits, Standard Design Certification, and Combined Licenses for Nuclear Power Reactors, and (2) the progress of the Requirements Document for the EPRI ALWR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the intial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its conultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: December 8, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-28986 Filed 12-15-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Regional Programs; Meeting

The ACRS Subcommittee on Regional Programs will hold a meeting on January 5 and 6, 1989, at the NRC Region IV Office, 611 Ryan Plaza Drive, Arlington, TX.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 5, 1989—8:30 a.m. Until the Conclusion of Business and

Friday, January 6, 1989—8:30 a.m. Until the Conclusion of Business.

The Subcommittee will review the activities under the control of the NRC Region IV Office.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this view.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492-8558) between 7:15 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: December 12, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-28987 Filed 12-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-68, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee), for operation of the Vogtle

Electric Generating Plant, Unit I, located in Burke County, Georgia.

The licensee proposes to delete the Vogtle, Unit I Technical Specifications (TS) Section 3/4.3.3.7, Chlorine Detection Systems, and amend Section 3/4.3.2, Control Room Emergency Filtration System, and the relevant portions of Section 3/4.3.2, Engineered Safety Features Actuation System Instrumentation, and Bases 3/4.3, Instrumentation, to reflect the control room configuration for two-unit operation. This amendment request is necessitated by differences between the current Unit 1 limiting conditions for operation, action statements, and surveillance requirements, and those proposed for the combined Unit 1 and Unit 2.

The combined control room envelope will be served by four Control Room Emergency Filtration System (CREFS) trains. Two trains will be powered from Unit 1 and two powered from Unit 2. Each train has sufficient capacity to remove the combined control room heat load and pressurize the combined control room to 1/8 inch water gauge relative to adjacent areas. The bases of the combined Unit 1 and Unit 2 TS meet the same criteria as the current Unit 1 TS. That is, the system has been designed with sufficient head removal capability so that equipment qualification temperatures will not be exceeded and the control room will remain habitable during and following all credible accident conditions, as well as meet single failure criteria.

During normal plant operation the combined control room is to be served by a non-safety related HVAC system which draws in outside air makeup via either of two outside air (OSA) intakes. There is one intake associated with each unit. Each air intake is provided with two redundant radiation monitors that are powered by the associated unit. Upon detection of radiation in one OSA intake at or above the radiation monitor setpoint, each monitor will automatically initiate both of the associated unit's Control Room Isolation signals (CRI–A and CRI–B). Each CRI signal functions to start its associated CREFS and isolate the normal HVAC system. The lead/lag logic employed will permit only one DREFS to start. If high radiation is detected in both OSA intakes, all four CRI signals will be generated and two CREFSs will start. Upon receipt of a Safety Injection (SI) signal in a unit, the associated train's CRI signal will be generated. Just as for high radiation initiated CRI signals, if an SI–A and an SI–B initiate CRI signals, the lead/lag logic will permit only one CREFS to start.

The radiological consequences of the limiting LOCA have been analyzed by the licensee for the two-unit control room configuration. These analyses showed slight increases in control room doses; however, the total doses remained within the limits of 10 CFR Part 50, Appendix A, General Design Criterion 19. The NRC staff approved the revised control room doses in the safety evaluation for Amendment 11 to the Vogtle Unit 1 TS. The bases for the operability of the CREFS actuation instrumentation also remain applicable. These instruments provide redundant and diverse means for initiation of a CRI in response to credible accidents in either unit, as well as meet single failure criteria.

The licensee has elected to limit on-site chlorine gas storage to 20 lbs or less on a permanent basis, eliminating the need to consider an on-site chlorine release as a credible accident and permitting the deletion of TS Section 3/4.3.3.7 and the disabling of the circuitry for Control Room Isolation on a chlorine signal.

The limiting condition for operation and mode applicability for TS 3/4.3.2 have been revised to reflect that four CREFSs are required and that the specification is applicable when either unit is in Mode 1, 2, 3 or 4 or in Mode 5 or 6 during movement of irradiated fuel or movement of loads over irradiated fuel. That is, the specification is applicable at all times unless both units are shut down and no movement of irradiated fuel or movement of loads over irradiated fuel is occuring. This change was requested in the licensee's letter dated December 6, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant TS in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of Vogtle, Unit 1 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The changes would revise the limiting conditions for operation, action statements, and surveillance requirements for the Control Room Emergency Filtration System and associated instrumentation to reflect the two-unit control room configuration. The changes would include administrative modifications which delete obsolete footnotes and maintain consistent nomenclature. These changes would not affect equipment involved in the initiation of previously analyzed accidents, hence, the probability of such accidents would not be increased. The changes would, however, affect equipment involved in accident mitigation. The heat removal capability of the two-unit control room configuration is such that equipment qualification temperatures would not be exceeded and the control room would be habitable during and following a credible accident.

Since chlorine gas will no longer be stored on-site in quantities exceeding 20 lbs, the consequences of an on-site chlorine release need no longer be considered, permitting the deletion of the corresponding TS.

For the above reasons, the consequences of previously evaluated accidents would not be significantly increased.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The changes would not introduce any new equipment into the plant or require existing equipment to operate in a different manner from which it was designed to operate. The operating configurations which would be allowed by the proposed changes have been reviewed against postulated accident conditions, including single failures. This review demonstrated that control room habitability would be maintained consistent with the current TS requirements and that an unanalyzed failure mode would not be made possible by the changes. A new or different kind of accident would, therefore, not result.

(3) Involve a significant reduction in a margin of safety. The changes would not affect safety limits or limiting safety system settings. The bases of the current Unit 1 TS would be maintained for the two-unit control room configuration. The

current Unit 1 criteria for control room heat removal, pressurization, radiation protection, and safety injection actuation would be met, including single failure capability. The proposed surveillance requirements and allowed outage times would also be consistent with current Unit 1 requirements. Since the proposed changes would maintain the same level of protection as the current Unit 1 TS margins of safety would not be reduced.

The NRC staff believes that the proposed changes to the TS meet the criteria specified in 10 CFR 50.92(c) and, hence, proposes to determine that they involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By January 17, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intevene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designate by the Commisson or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commisson may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street NE., Atlanta, Georgia 30043, attorney for the licensee.

Nontimely filings of petitions for leave to intevene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request

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should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 9th day of December 1988.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–28988 Filed 12–15–88; 8:45am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co. et al.; [1] Issuance of Amendments to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 10 to Construction Permit No. CPPR–126 and Amendment No. 9 to Construction Permit No. CPPR–127 for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, to show a change in ownership interest.

By letter dated July 22, 1988, Texas Utilities Electric Company (TU Electric) requested amendment of Construction Permit Nos. CPPR–126 and CPPR–127 for the CPSES, Units 1 and 2, to reflect a transfer of 3.8% interest in CPSES ownership from Brazos Electric Power Cooperative, Inc. to TU Electric. These amendments will become effective as of the date of completion of the transfer of the ownership interest.

The issuance of these amendments to Construction Permit Nos. CPPR–126 and CPPR–127 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in Amendments No. 10 and No. 9. Prior public notice of Amendments No. 10 and No. 9 was not required, since the amendments do not involve a significant hazards consideration.

For further details with respect to this action see (1) the application for amendment, dated July 22, 1988, (2) Amendments No. 10 and No. 9 to Construction Permit Nos. CPPR–126 and CPPR–127, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room at the Somervell County Public Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043.

In addition, a copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Comanche Peak Project Division, Office of Special Projects.

Dated at Rockville, Maryland, this 8th day of December, 1988.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Special Projects.

[FR Doc. 88–28989 Filed 12–15–88; 8:45 am]

BILLING CODE 7590–01–M

[1] The current Construction Permit holders for the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company, Texas Municipal Power Agency, and Tex-La Electric Cooperative of Texas, Inc. Transfer of ownership from Texas Municipal Power Agency to Texas Utilities Electric Company was previously authorized by Amendments No. 9 and No. 8 to Construction Permits CPPR–126 and CPPR–127, respectively, on August 25, 1988 to take place in 10 installments as set forth in the Agreement attached to the application for Amendment dated March 4, 1988. At the completion thereof, Texas Municipal Power Agency is no longer an applicant or construction permit holder.

PENSION BENEFIT GUARANTY CORPORATION

Multiemployer Pension Plans; Study of the Need for Special Rules in Cases of Union-Mandated Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of study.

SUMMARY: The Pension Benefit Guaranty Corporation is conducting a study of the need for special rules in cases of union-mandated withdrawal from multiemployer pension plans, as required by section 412(a)(1)(B) of the Multiemployer Pension Plan Amendments Act of 1980. The effect of this notice is to advise multiemployer pension plan sponsors, employers, unions, and other interested persons of the pendency of the study and to solicit information and comment regarding union-mandataed withdrawals and the need for special rules in cases involving such withdrawals.

DATE: Comments must be received on or before February 14, 1989.

ADDRESSES: All written comments should be addressed to: Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100 at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 4201(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") imposes withdrawal liability on an employer that withdraws from a multiemployer pension plan in a complete or partial withdrawal. Under the general rule in section 4203(a) of ERISA, a complete withdrawal occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4203(b), however, a construction employer incurs a complete withdrawal from a construction industry plan only if the employer ceases to have an obligation to contribute under the plan, and either continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or resumes such work within five years after the contribution obligation ceases and does not renew the obligation at the time of the resumption. This special definition of complete withdrawal also applies in the entertainment industry under section 4203(c), except that the pertinent area is the jurisdiction of the plan rather than the jurisidiction of the collective bargaining agreement.

Under section 4205 of ERISA, there is a partial withdrawal if there is a 70 percent contribution decline in each of three consecutive plan years; or if the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements, but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or transfers such work; or if the employer permanently ceases to have an obligation to

contribute with respect to work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased. However, under section 4208(d)(1), a construction employer is liable for a partial withdrawal from a construction industry plan—

only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.

And under section 4208(d)(2), partial withdrawals in the entertainment industry do not give rise to withdrawal liability "except under the conditions and to the extent prescribed by the [Pension Benefit Guarantee Corporation ("PBGC")] by regulation." (No such regulations have been issued.)

Under ERISA section 4201(b), an employer's withdrawal liability to a plan is the employer's allocable share of the plan's unfunded vested benefits as calculated under section 4211, with certain adjustments. Section 4209 provides for reducing or eliminating *de minimis* assessments. For partial withdrawals, an adjustment is then made under section 4206. The liability is next reduced under section 4219(c)(1)(B), if necessary to keep the payment schedule from exceeding twenty years. And, finally, section 4225 may limit the liability where a withdrawal is attributable to the bona fide sale of all or substantially all of an employer's assets in an arm's-length transaction to an unrelated party, or to the liquidation or dissolution of an insolvent employer.

Additional special rules and exceptions are found in other provisions of ERISA. For example, a cessation of an employer's contribution obligation arising solely as the result of a sale of assets that meets the requirements of section 4204 of ERISA does not give rise to a withdrawal. Also, under section 4218, no withdrawal occurs solely because an employer ceases to exist by reason of certain changes in structure, if the change causes no interruption in employer contributions or obligations to contribute under the plan; or solely because the employer suspends contributions under a plan during a labor dispute involving its employees. And where a withdrawal results from the transfer of employees to a new multiemployer plan due to a certified change in collective bargaining representative, section 4235 requires the old plan to transfer liabilities and assets to the new plan and grants the employer a credit against its withdrawal liability based on the unfunded vested benefits transferred.

The Study

Section 412(a)(1)(B) of the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") (which added the withdrawal provisions to ERISA), directs the PBGC to conduct a study with respect to "the necessity of adopting special rules in cases of union-mandated withdrawal from multiemployer pension plan." In MPPAA section 412(a)(2), the PBGC is directed to report to Congress the results of the study and the PBGC's recommendations with respect thereto.

The PBGC is studying the need for special rules in cases of union-mandated withdrawal from multiemployer pension plans, as required by section 412(a)(1)(B) of MPPAA, and requests information and comment from the public that will be useful in the study. Specially, the PBGC requests information and comment on the following:

1. What kinds of union actions, if any, may mandate an employer's withdrawal from a multiemployer pension plan (that is, what does "union-mandated withdrawal" mean)?
2. Do union-mandated withdrawals occur? If so, how often and in what circumstances?
3. What are the effects of union-mandated withdrawals, and of the threat or possibility of such withdrawals? Do they, for example, deter employer participation in multiemployer pension plans?
4. What kinds of relief provisions or other special rules, if any, would be appropriate in cases involving union-mandated withdrawals?
5. What effect would relief provisions or other special rules have in cases involving union-mandated withdrawals, especially on plan participants and other (non-withdrawing) contributing employers?

Comments

All interested persons are invited to submit written information and comment on the issues listed above in this notice or on any other matters relating to the PBGC's study regarding union-mandated withdrawals and the need for special rules in cases involving such withdrawals. Comments should be submitted to the above address on or before February 14, 1989. All comments will be made a part of the record. Comments received will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 5th day of December 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-29008 Filed 12-16-88; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16687; (812-6971)]

First Mutual Fund, Inc., et al., Application December 9, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: First Mutual Fund, Incorporated (the "Fund"), and BIL, Trainer Wortham Inc. ("BIL" or the "Investment Adviser").

Relevant Sections of the 1940 Act: Applicants request exemption under section 6(c) from the provisions of section 15(a).

Summary of Application: Applicants seek an order to permit the Fund to compensate the Investment Adviser the lesser of its fees or the costs of providing advisory services under an investment advisory agreement ("Interim Agreement") approved by the Fund's Board of Directors (the "Board of Directors"), between the Fund and BIL from January 25, 1988, the date on which Trainer, Wortham & Company, Inc. ("Trainer Wortham") was merged into BIL Management, Incorporated ("BIL Mgt") (the "Assignment"), until June 28, 1988, the date the new investment advisory agreement was approved by shareholders of the Fund (the "Interim Period").

Filing Date: The application was filed on January 26, 1988, and amendments thereto on June 23, November 1, and December 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary: SEC, 450 5th Street, NW., Washington, DC 20549; the Fund and BIL: Martin E. Lybecker, Esquire, Ropes and Gray, 1001 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272–2811 or Branch Chief Karen Skidmore at (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. The Fund is registered under the 1940 Act as an open-end management investment company and through January 25, 1988, and prior to the Merger had Trainer Wortham as its investment adviser and distributor. Under the previous advisory agreement ("Old Advisory Agreement") between Trainer Wortham and the Fund, the advisory fees were 0.75% per annum of average daily net assets up to $20,000,000, and 0.50% per annum of average daily net assets if the daily net assets were in excess of $20,000,000. BIL, the successor company to Trainer Wortham after the Merger, is registered as an investment adviser under the Investment Advisers Act of 1940 and is a wholly-owned subsidiary of BIL Holding (International) AG, which, in turn, is a wholly-owned subsidiary controlled by the Bank in Liechtenstein, AG ("Bank").

2. The Bank, BIL, Trainer Wortham, and shareholders of Trainer Wortham entered into a merger agreement (the "Merger Agreement") on December 9, 1987. The Merger Agreement provided that Trainer Wortham would be merged with and into BIL Mgt, which would then change its name to BIL and be the surviving corporation. The merger ("Merger") was consummated on January 25, 1988.

3. The Merger was deemed to result in an assignment of the existing investment advisory agreement ("Old Advisory Agreement") of the Fund within the meaning of section 2(a)(4) of the 1940 Act, thus terminating the Old Advisory Agreement pursuant to its terms.

4. At a meeting held in person on January 19, 1988, the Board of Directors, including the members who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the 1940 Act, with the advice and assistance of independent counsel, unanimously (with one director absent) approved a new investment advisory agreement ("New Advisory Agreement") to be entered into between the Fund and BIL, and determined that it was in the best interests of the Fund and its shareholders to file the application as a necessary step in implementing the New Advisory Agreement during the Interim Period in a manner that would minimize the disruption of advisory services to the Fund.

5. At a meeting held on June 28, 1988, the Fund's shareholders approved the New Advisory Agreement.

6. Applicants believe that based on the cost allocation methodology described below, the Investment Adviser's cost of providing services during the Interim Period aggregated $35,216, and did not exceed the amounts payable to the Fund under the previous advisory agreement.

7. In determining the cost of providing advisory services to the Fund during the Interim Period, BIL multiplied its total advisory costs, including direct and indirect expenses, by the ratio that the Fund's assets bore to the total assets managed by BIL. Then the Investment Adviser calculated the amounts paid or placed in escrow by the Fund, and the costs allocable to the Fund, in order to derive an historical yearly ratio of allocable costs to advisory fees paid by the Fund. The costs-to-fees ratio for the six months ended June 30, 1988, and the ratio of the Interim Period were consistent with the historical relationship between the costs and the advisory fees earned under the Old Advisory Agreement.

8. BIL and the Fund may not rely on the requested order of the Commission prior to its issuance as authority for BIL to have served as investment adviser to the Fund.

Applicants' Legal Conclusions

1. Applicants believe that the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the following reasons:

(i) The Merger was deemed to cause an assignment, and hence the termination, of the Old Advisory Agreement; the Board of Directors was required by the circumstances to consider appropriate actions in the best interests of the Fund and its shareholders. The Board determined that continuation of the Old Advisory Agreement, distribution and operational arrangements was in the best interests of the Fund and its shareholders.

(ii) It was not possible for the Fund to obtain shareholder approval of a new advisory agreement in accordance with Section 15(a) of the 1940 Act prior to the Assignment. The Fund did not have sufficient advance notice of the proposed transaction. It was not possible for the Board to meet in person to consider the implications of the Merger to the Fund and to schedule and hold a meeting of shareholders prior to the Assignment. Holding a meeting of shareholders, which requires the preparation and clearance of proxy materials, as well as a sufficient solicitation period to obtain the requisite quorum was, under these circumstances, impossible to effect before the Assignment.

(iii) There was no diminution in the scope and quality of services provided to the Fund. Applicants state that the new advisory agreement has the same terms and conditions as the Old Advisory Agreement. Accordingly, the Fund received during the Interim Period the same investment advisory services, provided in the same manner and at the same fee levels, by essentially the same personnel as it received prior to the Assignment.

(iv) Applicants believe that the granting of the requested exemption would be within the spirit of Rule 15a-4 under the 1940 Act. The Commission's release proposing Rule 15a-4 suggests that where an assignment is foreseeable, the policy of the 1940 Act that shareholder approval be obtained prior to entering into an investment advisory relationship should not be thwarted by providing an exemption from section 15(a) of the 1940 Act because, in such a case, it would be reasonably practicable to obtain shareholder approval. Applicants submit that their situation is similar to other types of assignments that are unforeseeable. The rapid culmination of the Merger did not present an opportunity to secure prior approval of the New Advisory Agreement by shareholders of the Fund.

(v) Applicants submit that to deprive BIL, as successor to the business of Trainer Wortham, of its costs of providing investment advisory services for the Interim Period, for no reason other than the fact that the Merger resulted in an assignment of the Fund's Old Advisory Agreement, would be a harsh result and an unreasonable penalty to attach to the transaction.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreement implemented during the Interim Period, and approved by the shareholders of the Fund, had the same terms and conditions as the Old Advisory Agreement.

2. Investment advisory fees payable by the Fund during the Interim Period in accordance with the terms of the New

Advisory Agreement have been maintained in the account will be paid to BII only upon the Commission's issuance of the order requested by this application.

3. BIL will pay the costs of preparing and filing the application and the costs of holding the special meeting of the Fund shareholders necessitated by the Assignment, including the cost of proxy solicitations.

4. BIL will take all appropriate steps so that the scope and quality of advisory and other services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the Boards of Directors, including a majority of the Directors who are not "interested" persons, to the scope and quality of services previously provided.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28892 Filed 12-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16690; 811-2112]

IDS Investment Program; Application

December 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: IDS Investment Program ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant has requested an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on September 12, 1988 and amended on November 3, 1988.

Hearing of Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o IDS Financial Services, Inc., 80 South Eighth Street, Minneapolis, Minnesota 55440.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Minnesota business trust which registered as an investment company under the 1940 Act on or about September 11, 1970. Applicant's registration statement under the Securities Act of 1933 became effective on or about February 17, 1972.

2. Applicant is a unit investment trust which offered a variety of monthly investment programs designed for investors who desired to accumulate shares of IDS Growth Fund, Inc. All programs consisted of 150 equal monthly payments over twelve and one-half years (assuming all payments were made as scheduled).

3. On May 13, 1988, Applicant's unitholders were mailed a notice of Applicant's termination. On July 19, 1988, the Board of Directors of Investors Accumulation Plan, Inc., Applicant's sponsor, voted to approve the liquidation of Applicant.

4. At the close of business on July 13, 1988, Applicant had outstanding a total of 8,783,706.185 units, with a value of $17.923 per unit, and a total net asset value of $157,430,365.95. Only one class of securities was issued and outstanding, and all units were invested in shares of IDS Growth Fund, Inc. On July 14, 1988, a proportionate share of Applicant's assets in IDS Growth Fund, Inc. was distributed to each of Applicant's unitholders.

5. All expenses incurred in connection with the liquidation of Applicant will be borne by Investors Accumulation Plan, Inc, and no unitholder incurred or will incur any expense, directly or indirectly, as a result of the liquidation of Applicant and termination of the accumulation programs. Certain unitholders who were investing $300 or more per month and who had made less than 40 payments would have paid a lower average sales charge on the total units acquired if Applicant had not liquidated and those unitholders had continued to purchase units in accordance with the terms of the program. However, the calculation of an average sales charge ignores the time value of money. If the time value of money is considered, all unitholders are better off after the liquidation of the program than they would have been if Applicant had not terminated and the unitholders had continued to purchase units in accordance with the terms of the program because IDS Growth Fund, Inc. has offered to waive any sales charge for certain periods of time for investments made by former unitholders of Applicant.

6. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

7. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders, and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

8. Applicant has filed a Form N-SAR for each period for which such form was required, and will continue to file a Form N-SAR for each period or portion thereof through and including the period in which Applicant is deregistered.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29016 Filed 12-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16689; 811-1244]

Investors Accumulation Plan; Application December 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Investors Accumulation Plan ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

SUMMARY: Applicant has requested an order declaring that it has ceased to be an investment company.

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DATE: The application was filed on September 12, 1988 and amended on November 3, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certifcate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW, Washington, DC 20549. Applicant, c/o IDS Financial Services, Inc., 80 South Eighth Street, Minneapolis, Minnesota 55440 .

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Minnesota business trust which registered as an investment company under the 1940 Act on or about December 27, 1963. Applicant's registration statement under the Securities Act of 1933 became effective on or about September 15, 1965.

2. Applicant is a unit investment trust which offered a variety of monthly investment programs designed for investors who desire to accumulate shares of IDS Stock Fund, Inc. All programs consisted of 150 equal monthly payments over twelve and one-half years (assuming all payments were made as scheduled).

3. On May 13, 1988, Applicant's unitholders were mailed a notice of Applicant's termination. On July 19, 1988, the Board of Directors of Investors Accumulation Plan, Inc., Applicant's sponsor, voted to approve the liquidation of Applicant.

4. At the close of business on July 13, 1988, Applicant had outstanding a total of 3,655,743.81 units, with a value of $17.79 per unit, and a total net asset value of $65,035,671.19. Only one class of securities was issued and outstanding, and all units were invested in shares of IDS Stock Fund, Inc. On July 14, 1988, a proportionate share of Applicant's assets in IDS Stock Fund, Inc. was distributed to each of Applicant's unitholders.

5. All expenses incurred in connection with the liquidation of Applicant will be borne by Investors Accumulation Plan, Inc., and no unitholder incurred or will incur any expense, directly or indirectly, as a result of the liquidation of Applicant and termination of the accumulation programs. Because IDS Stock Fund, Inc. has offered to waive any sales charge for certain periods of time for investments made by former unitholders of Applicant, no unitholder would have paid a lower average sales charge on the total units acquired if the Applicant had not liquidated and such unitholder had continued to purchase units in accordance with the terms of the program.

6. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

7. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders, and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

8. Applicant has filed a Form N–SAR for each period for which such form was required, and will continue to file a Form N–SAR for each period or portion thereof through and including the period in which Applicant is deregistered.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29017 Filed 12–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16691; 812–6770]

Prudential-Bache Global Fund, Inc.; Application

December 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act")..

Applicants: Prudential-Bache Global Fund, Inc. (the "Global Fund") and Prudential-Bache Research Fund, Inc. (the "Research Fund").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the Act.

SUMMARY: Applicants seek a conditional order permitting them to acquire equity and convertible debt securities issued by foreign issuers who derived more than 15% of their gross revenue from their activities as a broker, dealer, underwriter or investment adviser in their most recent fiscal year ("foreign securities companies").

DATE: The application was filed on June 24, 1987, and amended on August 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o John E. Baumgardner, Jr., Sullivan and Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, (202) 272–3022 or H.R. Hallock, Jr., Special Counsel, (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the applicaiton; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Applicant is registered under the 1940 Act as a diversified, open-end management investment company.

2. The Global Fund's investment objective is to seek long-term growth of capital through investment in a diversified portfolio of securities

consisting primarily of equity and debt securities of non-U.S. issuers. The Manager of the Global Fund is Prudential Mutual Fund Management, Inc. The Research Fund's investment objective is to seek high total return consistent with reasonable risk by structuring its portfolio according to guidelines of Prudential-Bache Investment Management and by selecting specific securities based on the opinions of the Prudential-Bache Research Group and some outside sources. Portfolio securities may include common stock, securities convertible into common stock, and convertible preferred stock and debt securities. The Manager of the Research Fund is Prudential-Bache Securities Inc.

3. Applicants wish to make portfolio investments in equity and convertible debt securities of foreign securities companies (i) that are listed on certain major foreign stock exchanges, and (ii) that meet the other conditions of quality and liquidity set forth in the application and summarized below.

4. Applicants' proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of Rule 12d3–1 under the 1940 Act except subparagraph (b)(4) thereof, which provides that—* * * any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System.

Applicants' Legal Analysis and Conditions

1. Applicants will acquire only those equity securities issued by foreign securities companies (or that underlie the convertible debt of such companies) that are listed on certain major foreign stock exchanges which meet certain standards for depth and liquidity ("Qualified Foreign Exchanges"). An exchange would be deemed a Qualified Foreign Exchange (1) if it is listed in the application,[1] and (2) if, at the end of its most recent calendar year (or at an earlier date if information is not yet publicly available with respect to the end of the most recent calendar year), it meets the following minimum criteria:

(1) The exchange has listed equity shares of companies with a market value of at least 25 billion dollars;

(2) The exchange has a minimum of 150 companies with equity shares listed on the exchange;

(3) The exchange has had an average daily trading volume over the preceding six-month period of at least 25 million dollars;

(4) The exchange has had, in the previous year, a minimum turnover ratio of at least 20% of its total market capitalization.

Listing on a Qualified Foreign Exchange is the functional equivalent of listing on a U.S. national securities exchange and, accordingly, the securities so listed are fully comparable to "margin securities" for purposes of Rule 12d3–1 under the 1940 Act.

2. As a further condition to the relief requested and to assure the quality and liquidity of Applicants' investments, Applicants will acquire only those equity securities (or in the case of convertible debt, debt convertible into equity securities) of foreign securities companies which meet certain additional quality standards. These additional standards are collectively equal or superior to the standards applicable to an OTC margin stock. By limiting investments to equity securities listed on certain major foreign stock exchanges that in terms of quality and liquidity are comparable to the largest of the U.S. national securities exchanges, and by imposing certain additional quality standards on the securities themselves, the proposed conditions exceed the quality standards applicable to a "margin security".

3. Applicants will purchase only those equity securities of foreign securities companies (or debt convertible into such securities) that meet the quality standards outlined below:

(1) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(2) The stock has been publicly traded for at least six months;

(3) The issuer or a predecessor in interest has been in existence for at least three years;

(4) The issuer has at least $10 million of capital, surplus, and undivided profits;

(5) The issuer is required by exchange or governmental regulation publicly to file (i) reports of any important financial or structural corporate changes, (ii) semi-annual profit and loss statements, and (iii) annual reports of independently audited assets and liabilities, profits and losses, and changes in financial position;

(6) The issuer must have a minimum market capitalization of $20 million; and

(7) The equity securities must have (i) an average daily trading volume of at least 500 shares and (ii) an average daily trading volume equal in value to at least $25,000.

Applicants' Conclusions of Law

1. Rule 12d3–1 under the 1940 Act in effect limits an investment company's ability to invest in securities of foreign securities companies. This limitation results from the requirement in Rule 12d3–1 that an eligible security of a securities company be a "margin security". Applicants will comply with all requirements of Rule 12d3–1 except with respect to the "margin security" requirement. The conditions proposed in this application are as rigorous, and in certain respects more rigorous, than the standards applicable to a "margin security".

2. The primary concerns addressed by section 12(d)(3)—entrepreneurial risk of investing in securities-related businesses structured as partnerships and potential conflicts of interests between an investment company's shareholders and its investment adviser, underwriters or other brokers—are not relevant in Applicants' context. Applicants do not intend to purchase any general partnership interest in securities-related businesses. Since Applicants' own shares are sold by its investment advisors or affiliates, the concern that Applicants might purchase shares in a broker-dealer for selling the investment company's shares is not relevant.

3. The proposed conditions will assure that, in terms of breadth of market, availability of investment information, and character and permanence of the issuer, the securities in which Applicants propose to invest will be fully comparable, and in many respects superior in quality, to securities that fall within the definition of "margin securities". Further, the relief requested would allow them to invest in securities of foreign issuers that derive more than 15% of their revenue from securities-related activities. Many foreign issuers are integrated companies, engaged in both financial and non-financial services, or provide both securities-related and other financial services. Rule 12d3–1 was designed to give investment companies greater flexibility with respect to investments in securities-related businesses, that, absent exemptive relief, are prohibited under section 12(d)(3) of the Act. Since securities of foreign securities companies are generally not traded in the United States, they are not within the technical definition of a "margin security". Investment companies with international securities portfolios, therefore, are prevented from investing in securities issued by foreign companies engaged in securities-related activities. In many instances, these types of companies comprise a substantial portion of a country's financial sector because many foreign countries permit banks and other

[1] The following foreign exchanges are so listed: Australia, Association of Exchanges; Belgium, Brussels; Brazil, Rio de Janeiro and Sao Paulo; Canada, Toronto; France, Paris; Germany, Federation of Exchanges (limited to the Frankfurt and Duesseldorff Exchanges); Hong Kong; Italy, Milan; Japan Tokyo; Netherlands, Amsterdam; Spain; Sweden, Stockholm; Switzerland, Basel, Geneva, and Zurich; United Kingdom, London.

financial institutions to engage in securities-related activities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29018 Filed 12-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16688; (811-5292)]

Strong Precious Metals Fund, Inc.; Application

December 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Strong Precious Metals Fund, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

SUMMARY: Applicant seeks an order declaring that it has ceased to be an investment company.

DATE: The application was filed on December 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 100 Heritage Reserve, Menomonee Falls, WI 53051.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On August 19, 1987, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On August 19, 1987, Applicant also filed Form N-1A under the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant is a corporation incorporated under the law of the State of Wisconsin. Applicant does not have any assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-28960 Filed 12-15-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on International Intellectual Property; Copyright Panel; Meeting

The International Copyright Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Wednesday, January 11, 1989, in Room 1105 in the Department of State. The meeting will begin at 10:00 a.m. and will conclude by 1:00 p.m.

The meeting will be open to the general public. The following topics will be discussed:

1. Intellectual Property Accomplishments in the 100th Congress.
2. Discussion concerning the WIPO Committee of Experts for Legislation in the Field of Copyright, February 20-March 3, 1988.
3. Report on the Meeting of the WIPO Committee of Experts on Intellectual Property in Respect of Integrated Circuits, Fourth Session, November 7-22, 1988.
4. Report on the meeting of the WIPO Committee of Experts for the Preparation of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works, November 28 through December 2, 1988.
5. Final Report on United States Accession to the Berne Convention for the Protection of Literary and Artistic Works.

The public attending may, as time permits and subject to the instructions of the Chairperson, participate in the discussions or may submit their views in writing to the chairperson prior to, or at the meeting, for later consideration by the Committee.

Members of the public who plan to attend the meeting will be admitted up to the limits of the conference room's capacity. As access to the State Department is controlled, members of the general public who plan to attend the meeting must provide their name, affiliation, address and phone number to Ms. Bobbi Tinsley, Office of Business Practices, Department of State, telephone (202) 647-1825, prior to January 11, 1989. All attendees should use the *Main Entrance* (2201 C Street NW.) of the Department of State Building.

Date: December 6, 1988.

Harvey J. Winter,

Executive Secretary.

[FR Doc. 88-28919 Filed 12-15-88; 8:45 am]

BILLING CODE 4710-07-M

CM-8/1243

The U.S. Organization For The International Telegraph And Telephone Consultative Committee (CCITT) National Committee and Study Group A; Meeting

The Department of State announces that the National Committee and Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), will meet on January 18, 1989 in Room 1205, Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 9:30 a.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration. Study Group A deals with Telecommunication, Policy and Services.

The purpose of the meeting is to:

Report on and review the results of the IXth Plenary Assembly of CCITT held in Melbourne, Australia, November 14-25, 1988; report and review the results of the World Administrative

Telegraph and Telephone Conference, held in Melbourne, Australia, November 28 to December 8, 1988; review preparatory activities for the Plenipotentiary Conference of the CCITT, and to consider appropriate organization for the U.S. study group subcommittees for the 1989–1992 plenary period.

The purpose of the Study Group A meeting is to review the results of the Joint meeting of CCITT study groups I and XVIII to be held January 9 through 13, 1989 in Geneva, and to consider delayed Contributions for the first meeting of CCITT study group II, scheduled to be held February 21 to March 1, 1989 Geneva. Other business relevant to the activities of the National Committee of U.S. Study Group a may be considered as well.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available.

In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647 5220. All attendees must use the C entrance to the building.

Date: December 15, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 88–28917 Filed 12–15–88; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1244]

Shipping Coordinating Committee; Subcommittee on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Wednesday, January 4, 1989, in room 6103 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to prepare U.S. positions for the 35th session of the Subcommittee on Safety of Navigation of the International Maritime Organization, scheduled for January 23 through 27, 1989. Items of principal interest on the agenda are:

—Decisions of other IMO bodies.
—Routing of ships.
—Reconsideration of Rule 10(d) of the Collision Regulations.
—Infringement of safety zones around offshore structures.
—World-wide navigation system.
—Electronic chart display systems.
—Navigational aids and related equipment including:

1. Guidelines on the use of radar transponders on ships for safety purposes;
2. Coding scheme for radar beacons and transponders;
3. Unification of ARPA symbols; and
4. Revision of resolution A.223(VII)—Performance standards for radio direction-finding systems:

—Revision of resolution A.530(13).
—Officer of the navigational watch acting as the sole look-out.
—Ship reporting systems and reporting requirements.
—Work programme.
—Any other business.

Members of the general public may attend up to the seating capacity of the room.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSR–3), Washington, DC 20593–0001, Telephone: (202) 267–0416.

Dated: November 23, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88–28918 Filed 12–15–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–131, Airworthiness and Operational Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders

AGENCY: Federal Aviation Administration.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–131, Airworthiness and Operational Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders. This AC provides guidance for installation and approval of TCAS II systems and Mode S transponders on aircraft, and outlines acceptable methods of compliance with the applicable Federal Aviation Regulations.

DATE: Advisory Circular 20–131 was issued by the Action Director, Aircraft Certification Service, on October 3, 1988.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, M–443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on December 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28905 Filed 12–15–88; 8:45 am]

BILLING CODE 4910–13–M

Advisory Circular 25–1357–1, Circuit Protective Device Accessibility

AGENCY: Federal Aviation Administration.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.1357–1, Circuit Protective Device Accessibility. This AC describes acceptable means of compliance with the requirments of § 25.1357(d) of the Federal Aviation Regulations (FAR) with respect to the accessibility of circuit protective devices (CPD), such as circuit breakers or fuses.

DATE: Advisory Circular 25.1357–1 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, on September 20, 1988.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, M–443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on December 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–28906 Filed 12–15–88; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Waiver Petition Docket No. PB–88–7]

Train Air Brake Test Program; Burlington Northern Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is given that the Burlington Northern Railroad Company (BN) has requested a permanent waiver of certain provisions of the Federal Railroad Administration's (FRA's) Railroad Power Brake Regulations (49 CFR Part 232) in order to use trains with air

repeater units. Air repeater units (repeaters) are freight cars that have been equipped with a power source (usually a diesel engine), an air compressor, reservoir, and a special valve rack. The valve rack is designed for two purposes: (i) To provide control of the air supply to charge the rear brake pipe and (ii) to relay pneumatic signals from the engineer's brake equipment to the rear portion of the train to apply and release the train air brakes. On a conventional train, the brake pipe is charged from the hauling locomotive. When a repeater is placed in a train, only the brake pipe forward of the repeater is charged by the hauling locomotive; the brake pipe to the rear of the repeater is charged by the compressor in the repeater unit.

BN's specific request is for relief from the obligation to conduct a leakage test on the portion of the train to the rear of the repeater. See 49 CFR 232.12(b)(1), (d)(3), (e), (i)(2), (i)(3); 232.13(d)(1), (d)(2). Trains would operate on various subdivisions of the BN's Chicago, Twin Cities, Billings, Seattle, and Denver Regions.

In support of its application for relief, BN states that it is not possible to make a standard leakage test with a repeater in operation. In the past, in order to assure full compliance with the regulations, FRA has required that repeaters be isolated during train air brake tests by manually repositioning three valves at the valve rack, and then restoring them to their original position after the test is completed. BN regards this activity as too time consuming and as unnecessary.

In further support of its request, BN states that it has been experimenting with repeaters for several years and that safety and train operations are enhanced by their use, especially during very cold weather. BN contends that the improvement in brake pipe gradient provides for better train handling, and the benefits in time saved in charging trains for initial testing far exceed the benefits derived from a leakage test on the rear portion of the trains. For example, on June 3, 4, and 5, 1985, BN conducted tests of a 120-car train that included a repeater. These tests showed definite improvements in gradient, recharge times, release times, and application times as a result of employing a repeater.

FRA conducted a public hearing in Minneapolis, Minnesota, on Tuesday, August 5, 1986, concerning the use of repeater air equipment. Testimony was given by officers from the Burlington Northern Railroad, United Transportation Union, and the Brotherhood of Locomotive Engineers. The purpose of this hearing was to gather information that would assist FRA in making decisions relative to the extension or termination of the repeater air car conditional test waiver. On October 11, 1986, BN was granted a temporary conditional test waiver to operate trains containing repeaters. This test waiver was approved after reviewing data obtained through FRA field investigations, BN test data, and information provided by the air brake equipment manufacturers. It was determined that granting this test waiver would be consistent with railroad safety and should provide invaluable data concerning the feasibility of using repeaters on a more permanent basis.

The conditions of this waiver were as follows:

A. At least 50 percent of the test trains shall receive a separate leakage and gradient test on the portion of the train forward of the repeater must be isolated and a leakage and gradient test be performed on these trains for comparison purposes.

B. All mechanical and operating personnel involved with repeater equipment must be given training and be provided with a copy of BN instructions concerning repeater operations and maintenance, train brake test procedures, and procedures to be followed when a repeater unit fails;

C. All test trains must be provided with an end-of-train monitoring system (telemetry device); and

D. For each month of the test period, a written report shall be submitted to FRA providing detailed test results:

1. A list of repeater locomotives and cars by identification number;

2. A list of test trains operated each day during the month, including the number, symbol, initial terminal, and final destination of each train;

3. The results of the tests described in paragraph A of this Notice;

4. Any air brake problems found during train air brake testing of test trains;

5. Any air brake problems experienced en route;

6. Any train handling problem; and

7. All failures of repeaters including:

a. Identification number.

b. Reason for failure.

c. Action taken at time of failure.

In accordance with the provisions set forth in General Docket Number H–85–4, BN has provided data relative to repeater operations during the winter months of 1986, 1987 and 1988. From December 2, 1986, through February 13, 1987, BN operated repeaters in 143 test trains. During this period, the railroad experienced three train-handling problems whereby they were unable to release the air brakes on the rear portion of the train. This condition occurred because of the inability of the repeater's air compressor to provide adequate supply of air. This failure did not affect the ability to apply brakes. This situation has been corrected by regular testing of the air compressor capability by orifice and by adjustment of diesel engine revolutions per minute (RPM) as required.

During the same period, BN experienced one problem en route because the repeater was inadvertently placed in test mode. To alleviate this problem, BN equipped the repeaters with motion sensors which will electronically lock out the test equipment while the train is in motion. During this test period, BN also encountered transmission problems with 10 rebuilt repeaters. These were manufacturer's design problems and have been corrected. In addition, there were 10 instances of mechanical failures, which consisted of two frozen batteries, four inoperative alternators, one failed water cooling radiator, one broken water temperature switch and one failed air compressor.

The second test period ran from November 20, 1987 through February 15, 1988. During this period, BN conducted 44 in-service tests. There were no train handling problems and no equipment failures en route. The only problems experienced during the train air brake testing was an occasional single car that failed to apply or release its air brakes.

FRA field personnel monitored BN's test procedures for compliance with the conditions of the test waiver. They observed 32 train air brake tests and took exception in three instances. They observed two trains being tested whereby end-of-train telemetry devices were not provided as required by condition "C" of the test waiver; communication was by means of employee hand-held radios. On another occasion, a train was permitted to depart a terminal with excessive brake pipe leakage in the portion of the train ahead of the repeater.

BN has stated that, if it is granted a waiver, the repeaters would be operated in the following manner:

1. Repeaters would be used during cold weather operations only;

2. Trains will be tested for and will have 5 pounds per square inch (psi) or less brake pipe leakage and 15 psi or less brake pipe gradient in the portion ahead of the repeater;

3. Train will be tested for and will have 10 psi or less brake pipe gradient on the portion behind the repeater;

4. All trains utilizing a repeater will be provided with an operative telemetry display unit (RDU) in the cab of the lead hauling locomotive and an end-of-train device (EOT) on the rear of the last car in the portion ahead of the repeater and on the rear of the last car in the train.

FRA is now seeking information and comments of all interested parties on this waiver request. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if by February 1, 1989 the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA Waiver Petition Docket No. PB–88–7" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590.

Comments received by February 1, 1989 will be considered before final action is taken in this proceeding. All comments received will be available for examination by interested persons at any time during regular working hours in Room 8201, Nassif Building, 400 7th Street, SW., Washington, DC, 20590.

Issued in Washington, DC December 8, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–28920 Filed 12–15–88; 8:45 am]

BILLING CODE 4910–06–M

UNITED STATES INFORMATION AGENCY

Exchange Visitor Program; Skills List

AGENCY: United States Information Agency.

ACTION: Amendment to Exchange Visitor Skills List.

SUMMARY: The Exchange Visitor Skills List is amended to reflect changes in the country skills list for the People's Republic of China to include additional fields.

DATES: This amendment shall become effective January 17, 1989.

ADDRESS: Comments and requests for further information should be addressed to: Mary D. Hitt, Director, Office of Exchange Visitor Facilities Services Staff, USIA, Suite 714, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485–7964.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972, a list of fields of specialized knowledge or skill (referred to as the Exchange Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year home country physical residence requirement of section 212(e) of the Immigration and Nationality Act as provided in section 212(e) and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97–241) and Executive Orders Nos. 12048 (March 27, 1978) and 12388 (October 14, 1982) the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills List, as revised in 1978, to increase the designated fields of specialized knowledge of skills. The 1984 amendment gave notice of the addition of China and the deletion of Cambodia, Iran and Viet-Nam from the skills list as well as the indefinite suspension of Afghanistan. The Exchange Visitor Skills List, as amended in 1984, is used in conjunction with the two prior existing lists.

This Notice amends Public Notice No. 356–37, 37 FR 8099 April 25, 1972; Public Notice No. 591, 43 FR 5910, February 10, 1978; and Public Notice No. 49 FR 24194, June 12, 1984, 51 FR 34701, September 30, 1986, and 52 FR 8700, March 19, 1987.

Accordingly, the Exchange Visitor Skills List is further amended by modifying the Exchange Visitor Skills List for the People's Republic of China to read as follows:

Group (1) All fields listed in Part I.
Group (2) All fields listed in Part I.
Group (3) All fields listed in Part I.
Group (4) All fields listed in Part I.
Group (5) All fields listed in Part I.
Group (6) All fields listed in Part I.
Group (7) All fields listed in Part I.
Group (8) All fields listed in Part I.
Group (9) All fields listed in Part I.
Group (10) All fields listed in Part I.

Dated: December 7, 1988.

R. Wallace Stuart,

Acting General Counsel, United States Information Agency.

[FR Doc. 88–28999 Filed 12–15–88; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 17, 1989.

Dated: December 1, 1988.

By direction of the Administrator.

David N. Stone,

Executive Assistant, Office of Information Management and Statistics.

New Collection

1. Office of Program Analysis and Evaluation.
2. Vocational Rehabilitation Program Evaluation: Client Interview.
3. Not Applicable.
4. The VA must collect financial information from former program participants to assess the economic

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impact of the veterans who have received vocational training under it. A secondary focus of the survey is to access client satisfaction with the program.

5. One time.
6. Individuals or households.
7. 2,000 responses.
8. 2,000 hours.
9. Not applicable.

[FR Doc. 88–28927 Filed 12–15–88; 8:45 am]
BILLING CODE 8320–01–M

Per Diem Rates for Eligible Veterans in State Homes

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration (VA) is publishing the actual per diem rates for eligible veterans residing in State Veterans Homes as required by 38 CFR 17.166c. The Veterans' Benefits and Services Act of 1988 established new rates; the effect of the change will be to increase the rates.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Carolyn Babich (182B), Chief, State Home Per Diem Program, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3679.

SUPPLEMENTARY INFORMATION: At 38 CFR 17.166c it states that the VA will publish any change of actual per diem rates for eligible veterans residing in State Veterans Homes in the **Federal Register**. On May 20, 1988, the President signed Pub. L. 100–322, Veterans' Benefits and Services Act of 1988, which increased the per diem rates, effective January 1, 1988. The new per diem rates are set forth below.

Per Diem Rates for Eligible Veterans in State Veterans Homes

Domiciliary Care, $8.80.
Nursing Home Care, $20.35.
Hospital Care, $20.35.

Dated: November 30, 1988.

Thomas K. Turnage,
Administrator.

[FR Doc. 88–28908 Filed 12–15–88; 8:45 am]
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Sunshine Act Meetings

Federal Register
Vol. 53, No. 242
Friday, December 16, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 20, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Delegations of Authority

The Commission will consider issues related to Commission Delegations of Authority.

2. Voluntary Standards Policy: Final Amendments

The Commission will consider amendments to the Commission's regulations (16 CFR Parts 1031 and 1032) concerning staff participation in voluntary standard activities.

3. Petition PP 88-1, Medroxyprogesterone Acetate Tablets

The staff will brief the Commission on petition PP 88-1 from the Upjohn Co. requesting an exemption of medroxyprogesterone acetate tablets from the child-resistant packaging requirements for oral prescription drugs.

Closed to the Public

4. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

5. Enforcement Matter OS #3038

The staff will brief the Commission on enforcement matter OS #3038.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207 302-492-6800.

December 14, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88-29082 Filed 12-14-88; 2:01 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 12, 1988; 53 FR 49963.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 14, 1988, 10:00 p.m.

CHANGE IN THE MEETING: The following Project Numbers have been added to Item CAP-6 for the agenda December 14, 1988.

Item No., Docket No., and Company

CAP-6
Project No. 7022-000, Malta Irrigation District, *et al.*
Project No. 7099-000, City of Gillette, Wyoming
Project No. 3574-000, Continental Hydro Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 88-29051 Filed 12-14-88; 11:23 am]

BILLING CODE 6717-02-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 13, 1988.

TIME AND DATE: 10:00 a.m., Tuesday, December 20, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Emery Mining Corporation,* Docket Nos. WEST 87-130-R. (Issues include consideration of the Secretary of Labor's petition for interlocutory review.)
2. *Secretary of Labor and United Mine Workers of America* v. *Mid-Continent Resources, Inc. and American Mining Congress,* Docket No. WEST 87-88. (Issues include consideration of pending motions).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/ (202) 566-2673 for TDD Relay.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a) and 2706.160(d).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-29095 Filed 12-14-88; 3:47 pm]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 19, 1988.

An open meeting will be held on Monday, December 19, 1988, at 10:00 a.m. A closed meeting will be held on Tuesday, December 20, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open metting scheduled for Monday, December 19, 1988, at 10:00 a.m., will be:

1. Consideration of a petition to modify certain interpretations published in the codification of financial Reporting Policies regarding accountants' independence when there are certain business relationships between accountants and their audit clients. For further information, please contact John Riley at (202) 272-2130.
2. Consideration of an application of Delta Government Options Corp. for registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272-2775.
3. Consideration of whether to issue for comment a release proposing Rule 15c2-10 under the Securities Exchange Act of 1934 to govern the operation of proprietary trading systems that are operated as facilities of national securities exchanges or associations and a conforming amendment to Rule 3a12-7 under the Securities Exchange Act of 1934. For further information, please contact Gordon K. Fuller at (202) 272-2414 or Eugene Lopez at (202) 727-2828.
4. Consideration of the recommendation with respect to the request of RMJ Securities Corporation ("RMJ Securities") and its subsidiary RMJ Options Trading Corporation, that the staff issue a no-action letter with respect to the non-registration of RMJ Securities' option trading system as a national securities exchange under Sections 3(a)(1) and 6 of the Securities Exchange Act

of 1934. For further information, please contact Gordon K. Fuller at (202) 272–2414

5. Consideration of whether to propose for comment amendments to its net capital rule. Under the proposal, Rule 15c3–1 under the Securities Exchange Act of 1934 will be amended to make the rule applicable to all specialists, except certain market makers, on national securities exchanges and to allow specialists one day in which to meet the haircuts required by the rule. For further information, please contact Michael A. Macchiaroli at (202) 272–2904 or Jerry W. Carpenter at (202) 272–3128.

6. Consideration of whether to publish two releases relating to Regulation D, the limited offering exemptions from the registration requirements of the Securities Act of 1933. The first release would add certain government sponsored employee benefit plans to the definition of "accredited investor". The second release would request public comment on a number of proposals designed to provide for a substantial and good faith compliance standard with the terms, conditions and requirements of Regulation D. For further information, contact Richard K. Wulff or William E. Toomey at (202) 272–2644.

The subject matter of the closed meeting scheduled for Tuesday, December 20 1988, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–2300.

Shirley E. Hollis,

Assistant Secretary.

December 13, 1988

[FR Doc. 88–29074 Filed 12–14–88; 2:57 am]

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Corrections

Federal Register
Vol. 53, No. 242
Friday, December 16, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area; Key West Harbor at the U.S. Naval Air Station

Correction

In proposed rule document 88-26902 beginning on page 47226 in the issue of Tuesday, November 22, 1988, make the following correction:

§ 334.610 [Corrected]

On page 47228, in the first column, in § 334.610(b)(1)(ii), in the 11th line, "of" should read "or".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53110; FRL-3473-6]

Premanufacture Notices; Monthly Status Report for September 1988

Correction

In notice document 88-25937 beginning on page 47910 in the issue of Monday, November 28, 1988, make the following correction:

On page 47910, in the second page-column, in the first table-column, the fourth line from the bottom, reading "P 88-1975" should be removed.

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federal register

Friday
December 16, 1988

Part II

Department of the Interior

Office of the Secretary

Coastal Barrier Resources Act; Availability of the Supplemental Legislative Environmental Impact Statement and Report and Recommendations to Congress on the Coastal Barrier Resources System; Notice

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

Coastal Barrier Resources Act; Availability of the Supplemental Legislative Environmental Impact Statement and Report and Recommendations to Congress on the Coastal Barrier Resources System

AGENCY: Department of the Interiors.

ACTION: Notice of availability.

SUMMARY: Under the provisions of section 10 of the Coastal Barrier Resources Act of 1982 (Act) (16 U.S.C. 3509), the Secretary of the Interior is required to prepare and submit to the appropriate Committees of the House of Representatives and the Senate a report regarding the Coastal Barrier Resources System (System). The report must include: Recommendations for the conservation of fish, wildlife, and other natural resources of the System; recommendations for additions to or deletions from the System; and recommendations for modifications to the boundaries of System units established by the Act.

In 1983 the Secretary of the Interior established a Coastal Barriers Study Group and instructed it to develop an inventory of undeveloped coastal barriers and to review management alternatives that foster conservation of the System's natural resources. The draft inventory maps were made available for public comment on March 4, 1985 (50 FR 8689), and the draft conservation alternatives on May 1, 1985 (50 FR 18576). The public comment period closed on September 30, 1985. Based on the comments received, the Assistant Secretary for Fish and Wildlife and Parks developed draft recommendations for conservation alternatives and additions to and deletions from the system which were made available for public comment on March 25, 1987 (52 FR 9618). The comment period closed on June 23, 1987. In addition, a draft Supplemental Legislative Environmental Impact Statement (LEIS) on the proposed recommendations was made available for public comment on February 1, 1988 (53 FR 2792). The comment period on the LEIS closed on March 17, 1988. All comments received on the various documents have been considered in the final supplemental LEIS.

This notice announces the availability of the final supplemental LEIS and the report containing the recommendations of the Assistant Secretary for Fish and Wildlife and Parks. The report will become final upon formal transmittal to Congress.

FOR FURTHER INFORMATION CONTACT: Mr. Frank McGilvrey, Coastal Barriers Coordinator, Room 403, Hamilton Building, Department of the Interior, Washington, DC 20240, (202) 343–1095.

SUPPLEMENTARY INFORMATION: On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (Act) into law (16 U.S.C. 3509). The Act establishes the Coastal Barrier Resources System (System) as referred to and adopted by Congress and prohibits all new Federal expenditures and financial assistance within the System except as provided under the Act. The provisions of the Act became effective immediately except the statutory ban on new Federal flood insurance within units of the System, which went into effect on October 1, 1983.

Section 10 of the Act requires the Secretary of the Interior to submit a report on the System to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works in the Senate. The report is required to contain two essential elements: (1) Recommendations for conservation of the fish, wildlife, and other natural resources of the System through an evaluation and comparison of management alternatives available to Federal, State, and local governments and the private sector; and (2) recommendations for additions to or deletions from the System, and for modifications to the boundaries of existing units in the System. In addition, the report must contain a summary of the public comments received and an analysis of the impact of general revenue sharing grants on undeveloped coastal barriers. The Secretary was required to consult with the Governors of the affected States regarding the proposed recommendations, and to include the Governors' comments in the report.

Over 2,300 comments concerning the inventory and draft management alternatives were received during the 1985 public comment period. After careful consideration of the comments from the public, affected Governors, Federal, State and local agencies, and Congress, and review of the requirements and objectives of the Act, the Assistant Secretary for Fish and Wildlife and Parks submitted his proposed recommendations for public comment. Over 6,150 comments were received during the 1987 comment period. The Assistant Secretary for Fish and Wildlife and Parks has made the following recommendations, which will become final upon formal transmittal of the report, recommendations, and LEIS to Congress:

- Add undeveloped, unprotected coastal barriers along the Atlantic and Gulf coastlines which have not been previously considered and rejected by Congress, including the Florida Keys, Puerto Rico, and the Virgin Islands to the System; but exempt U.S. Highway 1 in the Florida Keys for safety reasons.
- Add all associated aquatic habitat to existing and recommended new units of the System.
- Exclude all existing Federal navigation channels by reference.
- Add secondary barriers within large embayments to the System.
- Exclude "otherwise protected" areas, but add all privately owned property within these areas to the System.
- Add "otherwise protected" areas to the System if they are made available for development that is inconsistent with the Act's purposes.
- Delete military and Coast Guard lands, but add these and other Federal lands to the System if they are declared excess properties and are made available for development inconsistent with the purposes of the Act.
- Adjust boundaries of existing units to delete areas fully developed in 1982 with more than one insurable structure per 5 acres; and add those coastal barrier areas which are undeveloped and not previously considered by Congress.
- Continue the Federal policy to employ the user fee concept in the acquisition of undeveloped coastal barriers, as appropriate.
- Require each Federal agency to self-certify that they have complied with the provisions of the Act and submit notice of that certification to Congress annually.
- Require a Federal study in consultation with the States to develop additional options to address Federal subsidies on all coastal barrier areas, both developed and undeveloped, for consideration by Congress.

It is important to note that the Department of the Interior is required to make recommendations to Congress, but there will be no modifications to the System or the Act unless Congress takes action. The Congress will decide whether to accept, reject, or modify the recommendations.

The report and recommendations to Congress have been prepared in 28 separate volumes as follows:

Executive Summary—A summary of the report and general recommendations.

Volume 1—A detailed report and general recommendations on conservation alternatives.
Appendix A—An analysis of the shoreline change and wetland loss in the System.
Appendix B—A summary report of coastal barriers of the Great Lakes.
Appendix C—A summary report of coastal barriers of Hawaii and American Samoa.
Appendix D—A summary report of coastal barriers of the Pacific Coast.

The report and recommendations for each Atlantic and Gulf Coast State are as follows:

Volume 2—Maine
Volume 3—Massachusetts
Volume 4—Rhode Island
Volume 5—Connecticut
Volume 6—New York
Volume 7—New Jersey
Volume 8—Delaware
Volume 9—Maryland
Volume 10—Virginia
Volume 11—North Carolina
Volume 12—South Carolina
Volume 13—Georgia
Volume 14—Florida (East Coast)
Volume 15—Florida (West Coast)
Volume 16—Alabama
Volume 17—Mississippi
Volume 18—Louisiana
Volume 19—Texas (North Coast)
Volume 20—Texas (South Coast)
Volume 21—Puerto Rico
Volume 22—Virgin Islands

Individual volumes are available upon request. The original maps may be inspected at 1375 "K" Street, NW., Room 414, Washington, DC Call (202) 343–1095 to arrange an appointment.

Date: December 9, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

FR Doc. 88–28806 Filed 12–15–88; 8:45 am]

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Part III

International Development Cooperation Agency

Agency for International Development

48 CFR Part 701 etc.
Miscellaneous Amendments to Acquisition Regulations; Final Rule

VOL 53 ISS 242 DE 16 1988 UMI

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 702, 728, 731, 733, 736, 742, 752, 753, and Appendices to Ch. 7

[AIDAR Notice 89–1]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The A.I.D. Acquisition Regulation (AIDAR) is being amended to correct various typographical errors, update cross-references, improve the presentation and clarity of some material, and comply with new legislative requirements. All of the changes are considered administrative and editorial.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, Room 1600I, SA–14, Agency for International Development, Washington, DC 20523. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: The changes being made by this Notice are not considered significant rules subject to FAR 1.301 or Subpart 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85–7. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 701, 702, 728, 731, 733, 736, 742, 752, 753, and Appendices to Chapter 7

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 701, 702, 728, 731, 733, 736, 742, 752, 753, and Appendices to Chapter 7 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

2. Section 701.105 is revised to read as follows:

701.105 OMB approval under the Paperwork Reduction Act.

(a) The following information collection and recordkeeping requirements established by A.I.D. have been approved by OMB, and assigned an OMB control number and approval/expiration dates as specified below:

AIDAR segment	OMB Control Number	Expiration date	Burden hours per report
733.7003(c)	0412–0520	12/31/88	40
737.270(e)	0412–0520	04/30/90	.5
752.209–70	0412–0520	04/30/90	[illegible]
752.219–8	0412–0520	04/30/90	1
752.245–70	0412–0520	04/30/90	.5
752.245–71	0412–0520	04/30/90	.5
752.7001(a)	0412–0520	04/30/90	[illegible]
752.7001(b)	0412–0520	04/30/90	.5
752.7002(a)	0412–0520	04/30/90	1.5
752.7002(b)	0412–0520	04/30/90	2
752.7003	0412–0520	04/30/90	8
752.7004	0412–0520	04/30/90	1
752.7016	0412–0520	04/30/90	1
752.7020	0412–0520	04/30/90	2
752.7027(a)	0412–0520	04/30/90	2.5
752.7027(b)	0412–0520	04/30/90	2.5

(b) Public reporting burden for these collections of information is estimated as shown in paragraph (a) above, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to the Agency for International Development, Washington, DC 20523, Attention: M/SER/PPE, Room 1600I, SA–14, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523.

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

702.170–13 [Amended]

3. Paragraph (c)(4) of section 702.170–13, *Procurement Executive,* is amended by removing the reference to "30.201–2", replacing it with "30.201–5".

PART 728—BONDS AND INSURANCE

Subpart 728.3—Insurance

728.302 [Removed]

4. Section 728.302, *Notice of cancellation or change,* is removed.

5. Section 728.305, *Overseas worker's compensation and war-hazard insurance,* is redesignated as section 728.305–70 and the heading is revised to read as follows:

728.305–70 Overseas worker's compensation and war-hazard insurance—waivers and A.I.D. insurance coverage.

6. Section 728.307–2 is revised to read as follows:

728.307–2 Liability.

(c) *Automobile liability.* In order to ensure that private automobiles used by contractor employees stationed overseas under an A.I.D. contract are properly insured, A.I.D. has established minimum required coverages as a supplement to the FAR clause at 52.228–7. This supplemental coverage is specified in AIDAR 752.228–7, and is to be used in all A.I.D.-direct contracts involving performance overseas.

7. A new section 728.309 is added to read as follows:

728.309 Contract clause for worker's compensation insurance.

(a) Because of the volume of projects performed overseas resulting in contracts which require worker's compensation insurance, A.I.D. has contracted with an insurance carrier to provide the required insurance for all A.I.D. contractors. It is therefore necessary to supplement the FAR clause at 52.228–3 with the additional coverage specified in AIDAR 752.228–3. The coverage specified in AIDAR 752.228–3 shall be used in addition to the coverage specified in FAR 52.228–3 in all A.I.D.-direct contracts involving performance overseas.

8. A new section 728.313 is added to read as follows:

728.313 Contract clauses for insurance of transportation or transportation-related services.

(a) A.I.D. is required by law to include language in all its direct contracts and subcontracts ensuring that all U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate under the contract. A.I.D. has therefore established a supplementary preface to the clause at FAR 52.228–9. This supplementary preface is set forth in AIDAR 752.228–9, and is required for use in any A.I.D.-

direct contract where marine insurance is necessary or appropriate.

728.370 [Removed]

9. Section 728.370, Contract clause, is removed.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.2—Contracts With Commercial Organizations

10. Section 731.205–6 is amended by revising paragraphs (a)(2) and (a)(3)(i) to read as follows:

731.205–6 Compensation for personal services.

(a) * * *

(2) Direct compensation of personnel is reimbursable in accordance with FAR 31.205–6, AIDAR 731.205–6, and the contractor's established policies and procedures. The contractor's policies, procedures and practices shall be the same as used in its other contracts with the U.S. Government, and shall have been accepted by the U.S. Government agency assigned primary audit responsibility for the contractor. Such policies, procedures and practices shall be preserved and made available as part of the contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract.

(3) * * * (i) Contractor employees serving overseas under a contract, who do not qualify for a U.S. tax exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), are eligible to receive a salary supplement (overseas recruitment incentive). The overseas recruitment incentive (ORI) shall not exceed a maximum of ten percent of the base salary per individual for the period of eligible services. This supplement, if offered by the contractor, shall be paid at the end of an employee's tour of duty overseas. The contractor shall take all reasonable and prudent steps to ensure that any employee who is paid an ORI has not claimed or received the section 911 exemption.

* * * * *

Subpart 731.3—Contracts With Educational Institutions

11. Section 731.371 is amended by revising paragraph (c)(1) to read as follows:

731.371 Compensation for personal services.

* * * * *

(c) * * * (1) Contractor employees serving overseas under a contract, who do not qualify for a U.S. tax exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), are eligible to receive a salary supplement (overseas recruitment incentive). The overseas recruitment incentive (ORI) shall not exceed a maximum of ten percent of the base salary per individual for the period of eligible services. This supplement, if offered by the contractor, shall be paid at the end of an employee's tour of duty overseas. The contractor shall take all reasonable and prudent steps to ensure that any employee who is paid an ORI has not claimed or received the section 911 exemption.

* * * * *

Subpart 731.7—Contracts With Nonprofit Organizations

12. Section 731.772 is amended by revising paragraph (c)(1) to read as follows:

731.772 Compensation for personal services.

* * * * *

(c) * * * (1) Contractor employees serving overseas under a contract, who do not qualify for a U.S. tax exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), are eligible to receive a salary supplement (overseas recruitment incentive). The overseas recruitment incentive (ORI) shall not exceed a maximum of ten percent of the base salary per individual for the period of eligible services. This supplement, if offered by the contractor, shall be paid at the end of an employee's tour of duty overseas. The contractor shall take all reasonable and prudent steps to ensure that any employee who is paid an ORI has not claimed or received the section 911 exemption.

* * * * *

PART 733—PROTESTS, DISPUTES AND APPEALS

Subpart 733.70—A.I.D. Procedures

733.7002 [Amended]

13. Section 733.7002, Definitions, is amended by:

(a) Removing paragraph (b), the definition of *Head of the Contracting Activity;*

(b) Redesignating paragraphs (c) and (d) as (b) and (c) respectively; and

(c) In the redesignated paragraphs (b) and (c), removing the references to "HCA", replacing them with "Contracting Officer".

14. Paragraph (d) of section 733.7003, *Filing of protest;* paragraph (b) of section 733.7004, *Time for filing;* paragraphs (a) and (b) of section 733.7005, *Notice of protest;* paragraphs (a) introductory text and (b) of section 733.7007, *Withholding of award and suspension of contract performance;* and paragraphs (a) and (b) of section 733.7008, *Time for and notification of the decision on the protest* are all amended by removing the references to "HCA", replacing them with "Contracting Officer".

PART 736—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

Subpart 736.6—Architect—Engineer Services

736.603 [Amended]

15. Section 736.603, *Collecting data on and appraising firms' qualifications,* is amended by removing the reference to "subpart 705.001", replacing it with "section 705.002".

PART 742—CONTRACT ADMINISTRATION

Subpart 742.7—Indirect Cost Rates

16. Section 742.770, *Negotiated Indirect Cost Rate Agreement,* is amended by removing the parenthetical phrase "(From AID 1420–47, as set forth in subsection 753.270–1)," from the first sentence of the section.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

752.228–70 [Removed]

17. Section 752.228–70, *Insurance—Worker's Compensation, Private Automobiles, Marine and Air Cargo,* is removed.

18. A new section 752.228–3 is added as follows:

752.228–3 Worker's Compensation Insurance (Defense Base Act).

As prescribed in 728.309, the following supplemental coverage is to be added to the clause specified in FAR 52.228–3 by the A.I.D. contracting officer.

The Contractor agrees to procure Defense Base Act (DBA) insurance coverage requirements pursuant to a contract between A.I.D. and its insurance carrier unless: The Contractor has a DBA self insurance program approved by the Department of Labor; has an approved retrospective rating agreement for DBA; or has entered into a long term agreement for DBA coverage with an

underwriter or agent prior to November 14, 1977. However, if it would be economical to cancel the long-term coverage and pay short-term rates, the Contractor is required to do so.

If the Contractor secures a waiver of DBA coverage for its employees who are not citizens of the United States, residents of, or hired in the United States, or if A.I.D. has secured such a waiver, the Contractor agrees to comply with the conditions of such waiver.

The Contractor further agrees to insert in all subcontracts hereunder to which the DBA is applicable, a clause similar to this clause, including this sentence, imposing on all subcontractors a like requirement to provide overseas workmen's compensation insurance coverage and obtain DBA coverage under the A.I.D. requirements contract.

19. A new section 752.228–7 is added as follows:

752.228–7 Insurance—Liability to Third Persons.

As prescribed in 728.307–2(b), the following paragraph is to be added to the clause specified in FAR 52.228–7 as either paragraph (h) (if FAR 52.228–7 *Alternate I* is not used) or (i) (if FAR 52.228–7 Alternate I is used):

( ) *Insurance on private automobiles.* If the Contractor or any of its employees or their dependents transport or cause to be transported (whether or not at contract expense) privately owned automobiles to the Cooperating Country, or they or any of them purchase an automobile within the Cooperating Country, the Contractor agrees to make certain that all such automobiles during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages or such other minimum coverages as may be set by the Mission Director, payable in United States dollars or its equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; property damage, $5,000. The premium costs for such insurance shall not be a reimbursable cost under this contract. Copies of such insurance policies shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract.

20. A new 752.228–9 is added as follows:

752.228–9 Cargo Insurance.

As prescribed in 728.313(a), the following preface is to be used preceding the text of the clause at FAR 52.228–9:

Preface: To the extent that marine insurance is necessary or appropriate under this contract, the contractor shall ensure that U.S. marine insurance companies are offered a fair opportunity to bid for such insurance. This requirement shall be included in all subcontracts under this contract.

Subpart 752.70—Texts of A.I.D. Contract Clauses

21. The contract clause in section 752.7001, *Biographical Data*, is amended by changing the clause date and by revising paragraph (a) of the clause to read as follows:

752.7001 Biographical data.

* * * * *

Biographical Data (Dec. 1988)

(a) The Contractor agrees to furnish to the Contracting Officer on AID Form 1420–17, "Contractor Employee Biographical Data Sheet", biographical information on the following individuals to be employed in the performance of the contract: (1) All individuals to be sent outside of the United States, (2) any employees designated as "key personnel". Biographical data in the form usually maintained by the Contractor on the other individuals employed under the contract shall be available for review by A.I.D. at the Contractor's headquarters. A supply of AID Form 1420–17 will be provided with this contract. The Contractor may reproduce additional copies as necessary.

* * * * *

22. Section 752.7014 is revised as follows:

752.7014 Notice of Changes in Travel Regulations.

The following clause is for use in cost-reimbursement contracts involving work overseas.

Notice of Changes in Travel Regulations (Dec. 1988)

(a) Changes in travel, differential, and allowance regulations shall be effective on the beginning of the contractor's next pay period following the effective date of the change as published in the Standardized Regulations (Government Civilians, Foreign Areas).

(b) The Standardized Regulations (Government Civilians Foreign Areas) is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

23. The contract clause in section 752.7028, *Differentials and Allowances*, is amended by changing the clause date and revising the parenthical introduction to the clause to read as follows:

752.7028 Differential and Allowances.

* * * * *

Differentials and Allowances (Dec. 1988)

(This clause does not apply to TCN or CCN employees. TCN and CCN employees are not eligible for differentials and allowances, unless specifically authorized by the cognizant Assistant Administrator or Mission Director. A copy of such authorization shall be retained and made available as part of the contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract).

24. The contract clause in paragraph (b), *Alternate 71*, of section 752.7031, *Leave and Holidays*, is amended by revising the clause date and paragraph (d) of the contract clause to read as follows:

752.7031 Leave and Holidays.

* * * * *

(b) * * *

Leave and Holidays (Dec. 1988)

* * * * *

(d) *Leave Records.* The contractor's leave records shall be preserved and made available as part of the contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract.

* * * * *

752.7031 [Amended]

25. The contract clause in paragraph (c), *Alternate 72*, of section 752.7031, *Leave and Holidays*, is amended by changing the clause date from "(APR 1984)" to "(DEC 1988)", and by removing the reference to "paragraphs (a) (1) and (2) of this section" appearing in paragraph (b)(3) of the contract clause, replacing it with "paragraphs (b) (1) and (2) of this clause".

26. Part 753 is revised to read as follows:

PART 753—FORMS

Subpart 753.1—General

753.107 Obtaining forms.

Subpart 753.2—Prescription of Forms

753.270 Prescription of AID Forms.

Subpart 753.3—Illustrations of Forms

753.300 Scope of Subpart.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR 1979 Comp., p. 435.

Subpart 753.1—General

753.107 Obtaining forms.

Copies of any AID Form referenced in the AIDAIR may be obtained from the Agency for International Development, Washington, DC 20523, Attention: SER/MO/CPM/M, Distribution, Room B–929 N.S., or from the congnizant Contracting Officer.

Subpart 753.2—Prescription of Forms

752.270 Prescription of AID forms.

The requirements for use of AID forms are contained in Parts 701 through 752

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where the subject matter applicable to the form is addressed.

Subpart 753.3—Illustration of Forms

753.300 Scope of subpart.

AID forms are not illustrated in the AIDAR. Copies of any AID form prescribed in the AIDAR may be obtained as provided in 753.107.

Appendices to Chapter 7

Appendix B—[Removed and Reserved]

27. Appendix B is removed and reserved.

Appendix D—Direct A.I.D. Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad

28. In Appendix D to Chapter 7, subparagraph (b)(5) of paragraph 6, *Negotiating a Personal Services Contract*, is amended to remove the word "investiagtion" replacing it with "investigation".

29. The heading to "35. Section 13. FAR Clauses" is revised and the list of FAR Clauses contained in Section 13. FAR Clauses is amended by adding a new entry to read as follows:

Section 13. FAR Clauses

* * * * *

14. Anti-Kickback Procedures 52.203–7.

* * * * *

Appendix J—Direct A.I.D. Contracts With Cooperating Country Nationals and With Third Country Nationals for Personal Services Abroad

30. In Appendix J to Chapter 7, subparagraph (a)(3)(ii) of General Provision 11, *Travel and Transportation Expenses*, appearing under Section 13—*General Provisions—Contract With Third Country National for Personal Services*, is amended to remove the word "unacccoompanied" replacing it with "unaccompanied".

Date: December 8, 1988.

John F. Owens,

Procurement Executive.

[FR Doc. 88–28808 Filed 12–15–88; 8:45 am]

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Part IV

Department of Agriculture

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1989; Revisions to the Solicitation of Applications for the Competitive Research Grants Program; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1989; Revisions to the Solicitation of Applications for the Competitive Research Grants Program

Notice is hereby given that the submission date for proposals under the Depletion of Stratospheric Ozone as Related to Crop Productivity program area, that is included in the Notice of the Competitive Research Grants Program for Fiscal Year 1989; Solicitation of Applications for the Competitive Research Grants Program, found at 53 FR 40194–40199 (October 13, 1988) is extended. *Proposals submitted under the Depletion of Stratospheric Ozone as Related to Crop Productivity program area now must be postmarked by April 10, 1989,* and received in time to permit adequate peer panel review. The submission date is being extended to allow USDA and the scientific community time to further examine this area of research which has been included in the Competitive Research Grants Program for the first time. It is possible that this program area may be revised to further specifically identify subareas, but the overall scope of the program area will remain unchanged. If such revisions are made, they will be announced in a subsequent notice in time for proper consideration by potential applicants. All other submission dates remain the same as announced on October 13, 1988.

In addition, to assure consistency in the evaluation process, proposals submitted under this program area will now be reviewed by a single peer panel instead of by panels which will review proposals submitted under other plant science areas of the Competitive Research Grants Program as originally announced. If necessary, further information may be obtained by contacting Machi Dilworth, Associate Program Manager, at (202) 475–5042.

Done at Washington, DC, this 12th day of December 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–28949 Filed 12–15–88; 8:45 am]

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federal register

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Part V

The President

Proclamation 5923—To Implement the United States-Canada Free-Trade Agreement

Federal Register
Vol 53, No. 242
Friday, December 16, 1988

Presidential Documents

Title 3—

The President

Proclamation 5923 of December 14, 1988

To Implement the United States-Canada Free-Trade Agreement

By the President of the United States of America

A Proclamation

1. On January 2, 1988, I entered into the United States-Canada Free-Trade Agreement (the Agreement). The Agreement and certain letters exchanged between the Governments of Canada and the United States were approved by the Congress, in section 101(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Implementation Act) (Pub. L. 100–449, 102 Stat. 1851).

2. Section 201(a) of the Implementation Act authorizes the President to proclaim such modifications or continuance of existing duties, such continuance of existing duty-free or excise treatment, and such additional duties, as the President determines are necessary or appropriate to carry out Article 401 of the Agreement (including the schedule of duty reductions with respect to goods originating in the territory of Canada set forth in Annexes 401.2 and 401.7).

3. Section 202 of the Implementation Act provides for certain rules of origin. I have determined that it is necessary to include in the Harmonized Tariff Schedule of the United States (HTS) the rules of origin set forth in section 202 (including the "Annex Rules," as that term is defined in section 202(d)). Further, pursuant to section 202(e) of the Implementation Act, in order to conform the definition of Canadian articles of original motor-vehicle equipment for purposes of the Automotive Products Trade Act of 1965 (19 U.S.C. 2001 *et seq.*) with the rules set forth in Annex 301.2 of the Agreement, I have determined that it is necessary to modify the pertinent definition set forth in general note 3(c)(iii) of the HTS.

4. Pursuant to sections 503 and 504(c) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2463 and 2464(c)), I have determined that certain preferential tariff treatment previously afforded for purposes of the Generalized System of Preferences (GSP) should be continued in the HTS subheadings established by Annex II to this Proclamation.

5. Pursuant to section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466), the rate of duty imposed on equipments, or any part thereof, including boats, purchased for, or the repair parts or the materials to be used, or the expenses of repairs made in a foreign country upon a U.S.-documented vessel at its first arrival in any port of the United States is 50 percent ad valorem. Such duty does not apply to the cost of repair parts, materials, or expenses of repairs in a foreign country upon a U.S. civil aircraft, as defined in general note 3(c)(iv) to the HTS. I have determined that it is necessary or appropriate to provide for the staged reductions in the rate of duty on such equipments, or any part thereof, originating in the territory of Canada and the expenses of repairs made in the territory of Canada upon U.S.-documented vessels (except such civil aircraft), as set forth in Annex 401.2 of the Agreement.

6. Section 1204(b) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3004(b)) confers authority upon the President to proclaim such modifications to the HTS as are necessary or appropriate to implement the applicable provisions of Executive actions taken after January 1, 1988 and before January 1, 1989.

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7. Section 604 of the Trade Act (19 U.S.C. 2483) confers authority upon the President to embody in the HTS the substance of relevant provisions of that Act, of other Acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including but not limited to sections 201 and 202 of the Implementation Act, section 1204 of the 1988 Act, and section 604 of the Trade Act, do proclaim that:

(1) In order to specify the symbol pertaining to preferential duty treatment for goods originating in the territory of Canada, general note 3(c)(i)(A) to the HTS is modified by inserting, immediately after the line reading "Agreement on Trade in Civil Aircraft . . . . C", a new line reading "United States-Canada Free-Trade Agreement . . . . . CA".

(2) In order to implement the duty treatment provided by the Agreement and to set forth rules for determining the country of origin of goods imported into the customs territory of the United States for purposes of the Agreement and of the Automotive Products Trade Act, general note 3 to the HTS is modified as set forth in Annex I to this Proclamation.

(3) In order to provide preferential duty treatment to particular goods originating in the territory of Canada, the HTS is modified as set forth in Annex II to this Proclamation.

(4) In order to provide duty-free entry to particular goods originating in the territory of Canada, the column entitled "Rates of Duty 1-Special" for each of the HTS subheadings enumerated in Annex III to this Proclamation is modified as set forth in such Annex.

(5) In order to provide staged reductions in duties for particular goods originating in the territory of Canada the rate column entitled "Rates of Duty 1-Special" for each of the HTS subheadings enumerated in Annex IV to this Proclamation is modified—

(a) by inserting in such column for each such subheading the rate of duty specified for such subheading in the first dated Annex column under the heading "Rates of Duty, effective with respect to goods originating in the territory of Canada and entered on or after—", followed by the symbol "CA" in parentheses, and

(b) effective on the date specified for the second dated Annex column under such heading and on each of the subsequent dated Annex columns, by deleting from each such subheading the "Canada" rates of duty in the HTS column entitled "Rates of Duty 1-Special" in effect on the date before the respective dates provided therein, and by inserting in lieu thereof the rates of duty specified in the next Annex column as effective on or after the respective date indicated for such column.

(6) In order to implement staged reductions in the rate of duty otherwise applicable under section 466 of the Tariff Act of 1930 to the equipments, or any part thereof, including boats, originating in the territory of Canada and the expenses of repairs made in the territory of Canada upon U.S.-documented vessels (other than civil aircraft, as defined in general note 3(c)(iv) of the HTS), such equipments, parts (including boats), and expenses of repairs shall be subject to duty at a rate of 45 percent ad valorem, effective with respect to any U.S.-documented vessel arriving in any port of the United States on or after January 1, 1989. Effective with respect to any U.S.-documented vessel (other than civil aircraft) arriving in any port of the United States on or after January 1 in each of the following years, the rate of duty set forth opposite the appropriate year shall be assessed on such equipments, parts, and repairs:

1990—40% ad valorem
1991—35% ad valorem
1992—30% ad valorem

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1993—25% ad valorem
1994—20% ad valorem
1995—15% ad valorem
1996—10% ad valorem
1997—5% ad valorem
1998 and thereafter—Free

(7) All previously issued Proclamations and Executive orders are superseded to the extent inconsistent with this Proclamation.

(8)(a) The amendments made by paragraph (5)(b) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates indicated for the respective Annex columns.

(b) Except as provided in paragraph (a), this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989, or, if the Agreement does not enter into force on January 1, 1989, on or after such later date as the Agreement enters into force.

(c) If the date of entry into force is later than January 1, 1989, the United States Trade Representative shall publish notice of that later date in the **Federal Register**. All other references to January 1, 1989 in this Proclamation and its annexes shall then be deemed to be that later date of entry into force.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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ANNEX I

MODIFICATIONS TO GENERAL NOTE 3(C) TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

General note 3(c) to the Harmonized Tariff Schedule of the United States is modified as set forth below:

1. Subdivision (iii)(A)(1) is modified by striking out everything after "article which" and by inserting in lieu thereof "originates in Canada, as defined in subdivision (c)(vii) of this note."; and subdivision (iii)(A)(2) is modified by inserting after "component" the phrase "originating in Canada, as defined in subdivision (c)(vii) of this note, and".

2. The following new subdivision (vii) is inserted in appropriate sequence:

"(vii) United States-Canada Free-Trade Agreement Implementation Act of 1988.

(A) Goods originating in the territory of Canada that are described in Annex 401.2(B) of the United States-Canada Free-Trade Agreement, entered into on January 2, 1988, are subject to duty as provided herein. Goods originating in the territory of Canada, as defined in subdivision (c)(vii)(B) of this note, that are imported into the customs territory of the United States and that are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "CA" in parentheses are eligible for the tariff treatment set forth in the "Special" subcolumn, in accordance with section 201 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

(B) For the purposes of subdivision (c)(vii) of this note, goods imported into the customs territory of the United States are eligible for treatment as "goods originating in the territory of Canada" only if--

(1) they are goods wholly obtained or produced in the territory of Canada and/or the United States, or

(2) they have been transformed in the territory of Canada and/or the United States, so as to be subject--

(I) to a change in tariff classification in Canada as described in the rules of subdivision (c)(vii)(R) of this note, or

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(II) to such other requirements subdivision (c)(vii)(R) of this note may provide when no change in tariff classification occurs, and they meet the other conditions set out in subdivisions (c)(vii)(F), (G), (H), (I), (J) and (R) of this note.

(C Goods shall not be considered to originate in the territory of Canada pursuant to subdivision (c)(vii)(B)(2) merely by virtue of having undergone--

(1) simple packaging or, except as expressly provided by the rules of subdivision (c)(vii)(R) of this note, combining operations,

(2) mere dilution with water or another substance that does not materially alter the characteristics of the goods, or

(3) any process or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of subdivision (c)(vii) of this note.

(D) Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be treated as having the same origin as that equipment, machinery, apparatus, or vehicle if the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

(E) Goods exported from the territory of Canada originate in the territory of Canada only if the goods meet the applicable requirements of subdivisions (c)(vii)(B), (C) and (D) of this note and are shipped to the territory of the United States without having entered the commerce of any third country and the goods, if shipped through the territory of a third country, do not undergo any operations other than unloading, reloading, or any operation necessary to transport them to the territory of the United States or to preserve them in good condition, and the documents related to the exportation and shipment of the goods from the territory of Canada show the territory of the United States as their final destination.

(F) Whenever the processing or assembly of goods in the territory of Canada and/or the United States results in one of the changes in tariff classification in Canada described by the rules set forth in subdivision (c)(vii)(R) of this note, such goods shall be considered to have been transformed in the territory of Canada and shall be treated as goods originating in the territory of Canada, provided that such processing or assembly occurs entirely within the territory of Canada and/or the United States and that such goods have not subsequently undergone any processing or assembly outside of Canada or the United States that improves the goods in condition or advances them in value.

(G) Whenever the assembly of goods in the territory of Canada fails to result in a change of tariff classification because--

(1) the goods were imported into the territory of Canada in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a), or

(2) the tariff subheading for the goods provides for both the goods themselves and their parts,

such goods shall not be treated as goods originating in the territory of Canada.

(H) Notwithstanding subdivision (c)(vii)(G), goods described in that paragraph shall be considered to have been transformed in the territory of Canada and be treated as goods originating in the territory of Canada if--

(1) the value of materials originating in the territory of Canada and/or the United States that are used or consumed in the production of the goods plus the direct cost of assembling the goods in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States, and

(2) the goods have not subsequent to assembly undergone processing or further assembly in a third country and they meet the requirements of subdivision (c)(vii)(E) of this note.

(I) The provisions of subdivision (c)(vii)(H) of this note shall not apply to goods of chapters 61 through 63.

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(J) In making the determination required by subdivision (c)(vii)(H)(1) of this note and in making the same or a similar determination when required by the rules of subdivision (c)(vii)(R) of this note, where materials originating in the territory of Canada and/or the United States and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of Canada, the value of materials originating in the territory of Canada and/or the United States shall be treated as such only to the extent that it is directly attributable to the goods under consideration.

(K) In applying the rules set forth in subdivision (c)(vii) of this note, a specific rule shall take precedence over a more general rule.

(L) As used in subdivision (c)(vii)(B) of this note, the phrase "goods wholly obtained or produced in the territory Canada and/or the United States" means--

(1) mineral goods extracted in the territory of Canada and/or the United States,

(2) goods harvested in the territory of Canada and/or the United States,

(3) live animals born and raised in the territory of Canada and/or the United States,

(4) fish, shellfish and other marine life taken from the sea by vessels registered or recorded with Canada and flying its flag,

(5) goods produced on board factory ships from the marine life referred to in subparagraph (4) provided such factory ships are registered or recorded with Canada and fly its flag,

(6) goods taken by Canada or a Canadian national or enterprise from the seabed or beneath the seabed outside territorial waters, provided that Canada has rights to exploit such seabed,

(7) goods taken from space provided they are obtained by Canada or a Canadian national or enterprise and not processed in a third country,

(8) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of Canada and/or the United States, and are fit only for the recovery of raw materials, and

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(9) goods produced in the territory of Canada and/or the United States exclusively from goods referred to in subparagraphs (1) to (8), inclusive, or from their derivatives, at any stage of production.

(M) As used in subdivisions (c)(vii)(H) and (R) of this note, the phrase "value of materials originating in the territory of Canada and/or the United States" means the aggregate of:

(1) the price paid by the producer of exported goods for materials originating in the territory of Canada and/or the United States or for materials imported from a third country used or consumed in the production of such originating materials, and

(2) when not included in that price, the following costs related thereto--

(I) freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in subparagraph (1) to the location of the producer,

(II) duties, taxes and brokerage fees on such materials paid in the territory of Canada and/or the United States,

(III) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct, and

(IV) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade.

(N) As used in subdivision (c)(vii)(H) and (R) of this note, the phrase "value of the goods when exported to the territory of the United States" means the aggregate of--

(1) the price paid by the producer for all materials, whether or not the materials originate in Canada and/or the United States, and, when not included in the price paid for the materials, the following costs related thereto--

(I) freight, insurance, packing and all other costs incurred in transporting all materials to the location of the producer,

(II) duties, taxes and brokerage fees on all materials paid in the territory of Canada and/or the United States,

(III) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct, and

(IV) the value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade, and

(2) the direct cost of processing or the direct cost of assembling the goods.

(O) As used in subdivisions (c)(vii)(H), (N) and (R) of this note, the phrase "direct cost of processing or direct cost of assembling" means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including--

(1) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors,

(2) the cost of inspecting and testing the goods,

(3) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of Canada and/or the United States,

(4) development, design, and engineering costs,

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(5) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods, and

(6) royalty, licensing, or other like payments for the right to the goods, but not including--

(I) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services and insurance,

(II) brokerage charges relating to the importation and exportation of goods,

(III) costs for telephone, mail and other means of communication,

(IV) packing costs for exporting the goods,

(V) royalty payments related to a licensing agreement to distribute or sell the goods,

(VI) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used by personnel charged with administrative functions, or

(VII) profit on the goods.

(P) For the purposes of subdivision (c)(vii) of this note, the term "materials" means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods.

(Q) For the purposes of subdivision (c)(vii) of this note, the term "territory" means--

(1) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources, and

(2) with respect to the United States,

(I) the customs territory of the United States,

(II) the foreign trade zones located in the United States and the Commonwealth of Puerto Rico, and

(III) any area beyond the territorial seas of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

(R) Change in Tariff Classification Rules.

(1) Section I: Chapters 1 through 5.

A change from one chapter to another; no changes within chapters.

(2) Section II: Chapters 6 through 14.

(aa) A change from one chapter to another; no changes within chapters except that agricultural and horticultural goods grown in the territory of Canada shall be treated as originating in the territory of Canada even if grown from seed or bulbs imported from a third country.

(bb) A change to subheadings 0901.12 through 0901.40 from any other subheadings, including another subheading within that group.

(3) Section III: Chapter 15.

(aa) A change to chapter 15 from any other chapter.

(bb) A change to any of the following subheadings from any other subheading: 1507.90, 1508.90, 1511.90, 1512.19, 1512.29, 1513.19, 1513.29, 1514.90, 1515.19, 1515.29.

(cc) A change to heading 1516 from any other heading.

(dd) A change to heading 1517 from any other heading.

(ee) A change to headings 1519 through 1520 from any other heading outside that group.

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(ff) A change to subheading 1519.19 from any other subheading.

(gg) A change to subheading 1519.20 from any other subheading.

(hh) A change to subheading 1520.90 from any other subheading.

(4) Section IV: Chapters 16 through 24.

(aa) A change from one chapter to another, except for goods of chapter 20 subject to rule (ee).

(bb) A change to heading 1704 from any other heading.

(cc) A change to heading 1806 from any other heading.

(dd) A change to subheading 1806.31 or 1806.90 from any other subheading.

(ee) Fruit, nut, and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine, or in natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.

(ff) A change to subheading 2009.90 from any other subheading; provided, that neither a single juice ingredient, nor juice ingredients from a single third country, constitutes in single-strength form more than 60 percent by volume of the product.

(gg) A change to headings 2203 through 2209 from any other heading outside that group.

(hh) A change to heading 2309 from any other heading.

(ii) A change to headings 2402 through 2403 (except subheading 2403.91) from any other heading outside that group.

(5) Section V: Chapters 25 through 27.

(aa) A change from one chapter to another.

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(bb) A change to headings 2710 through 2715 from any other heading outside that group.

(cc) A change to heading 2716 from any other heading.

(6) Section VI: Chapters 28 through 38.

(aa) A change to chapters 28 through 38 from any chapter outside that group.

(bb) A change to any subheading of chapters 28 through 38 from any other subheading within those chapters; provided, except for the other rules in this section, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(cc) A change to a heading of chapter 30 from any other heading, including other headings within that chapter, except a change to heading 3004 from heading 3003.

(dd) A change to chapter 31 from any other chapter.

(ee) A change to headings 3208 through 3215 from any other heading outside that group.

(ff) A change to chapter 33 from any other chapter.

(gg) A change to heading 3304 through 3307 from any heading outside that group.

(hh) A change to a heading of chapter 34 from any other heading, including another heading within that chapter.

(ii) A change to subheadings 3402.20 through 3402.90 from any other subheading outside that group.

(jj) A change to a heading of chapter 35 from any other heading, including another heading within that chapter.

(kk) A change to a heading of chapter 36 from any other heading, including another heading within that chapter.

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(11) A change to chapter 37 from any other chapter.

(mm) A change to heading 3704 from any other heading.

(nn) A change to headings 3705 through 3706 from any other heading outside that group.

(oo) A change to heading 3808 from any other heading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States, or, in the case of goods which contain more than one active ingredient, not less than 70 percent of the value of the goods when exported to the territory of the United States. Any materials that are eligible for duty-free treatment in both Canada and the United States on a most-favored-nation basis, or any materials imported into the territory of either Canada or the United States which, if imported into the territory of the United States, would be free of duty under a trade agreement that is not subject to a competitive need limitation, shall be treated as materials originating in the territory of Canada and/or the United States.

(7) Section VII: Chapters 39 through 40.

(aa) A change to any heading of chapter 39 from any other heading, including another heading within that chapter; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(bb) A change to chapter 40 from any other chapter.

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(cc) A change to any heading of chapter 40 from any other heading within that chapter; provided, except for the rules listed below in this section, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(dd) A change to headings 4007 through 4008 from any other heading outside that group.

(ee) A change to headings 4009 through 4017 from any other heading outside that group.

(ff) A change to subheading 4012.10 from any other subheading.

(8) Section VIII: Chapters 41 through 43.

(aa) A change from one chapter to another.

(bb) A change to headings 4104 through 4111 from any other heading outside that group.

(cc) A change to heading 4302 from any other heading.

(dd) A change to headings 4303 through 4304 from any other heading outside that group.

(9) Section IX: Chapters 44 through 46.

(aa) A change from one chapter to another.

(bb) A change between headings in chapter 44.

(cc) A change to any of the following subheadings from any other subheading: 4412.11.50, 4412.12.50, 4412.19.50, 4412.29.50, or 4412.99.90.

(dd) A change to headings 4503 through 4504 from any other heading outside that group.

(ee) A change to heading 4602 from any other heading.

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(10) Section X: Chapters 47 through 49.

(aa) A change from one chapter to another.

(bb) A change to heading 4808 through 4809 from any other heading outside that group.

(cc) A change to headings 4814 through 4823 from any other heading outside that group except a change from heading 4809 to heading 4816.

(11) Section XI: Chapters 50 through 63.

(aa) A change to headings 5004 through 5006 from any heading outside that group.

(bb) A change to heading 5007 from any other heading.

(cc) A change to headings 5106 through 5113 from any heading outside that group.

(dd) A change to headings 5204 through 5212 from any heading outside that group.

(ee) A change to headings 5306 through 5311 from any heading outside that group.

(ff) A change to any heading of chapter 54 from any other chapter.

(gg) A change to headings 5501 through 5507 from any other chapter.

(hh) A change to headings 5508 through 5516 from any heading outside that group.

(ii) A change to any heading of chapter 56 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5306 through 5311, or headings of chapters 54 and 55.

(jj) A change to any heading of chapter 57 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5306 through 5309, 5311, any heading of chapter 54, or 5508 through 5516.

(kk) A change to any heading of chapter 58 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5306 through 5311, or headings of chapters 54 and 55.

(ll) A change to any heading of chapter 59 from any heading outside that chapter other than headings 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407, 5408, or 5512 through 5516.

(mm) A change to any heading of chapter 60 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5309 through 5311, or headings of chapters 54 and 55.

(nn) A change to any heading of chapter 61 from any heading outside that chapter other than headings 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407, 5408, 5512 through 5516, or 6001 through 6002; provided, that goods are both cut (or knit to shape) and sewn or otherwise assembled in the territory of Canada and/or the United States.

(oo) A change to any heading of chapter 62 from any heading outside that chapter other than headings 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407, 5408, 5512 through 5516, or 6001 through 6002; provided, that goods are both cut and sewn in the territory of Canada and/or the United States.

(pp) A change to any heading of chapter 63 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5306 through 5311, or headings of Chapters 54 and 55; provided, that goods are both cut and sewn in the territory of Canada and/or the United States.

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(qq) Notwithstanding rules (nn) and (oo), apparel goods provided for in chapters 61 and 62 that are both cut and sewn in the territory of Canada and/or the United States from fabric produced or obtained in a third country, and that meet other applicable conditions for preferred tariff treatment under subdivision (c)(vii) of this note, shall be subject to the rate of duty provided in the "Special" subcolumn for goods that originate in Canada, in the annual quantities set forth below, and shall, above those quantities for the remainder of the annual period, be subject to duty at the rates provided for in the "General" subcolumn of column 1:

Non-wool apparel	41,805,000 square meters
Wool apparel	5,016,600 square meters

(rr) Notwithstanding rules (dd), (ee), (ff), (hh), (kk), (mm) and (pp), non-wool fabric and non-wool made-up textile articles provided for in chapters 52 through 55, 58, 60 and 63 that are woven or knitted in Canada from yarn produced or obtained in a third country, and that meet other applicable conditions for preferred tariff treatment under subdivision (c)(vii) of this note, shall be subject to the rate of duty provided in the "Special" subcolumn for goods that originate in Canada, in the annual quantity of 25,083,000 square meters for the period commencing on January 1, 1989, and ending on December 31, 1992, and shall, above this quantity for the remainder of the annual period, be subject to duty at the rates provided for in the "General" subcolumn of column 1.

(12) Section XII: Chapters 64 through 67.

(aa) A change from one chapter to another.

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(bb) A change to subheadings 6401.10 through 6406.10 from any other subheading outside that group; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(cc) A change to headings 6503 through 6507 from any other heading outside that group.

(dd) A change to headings 6601 through 6602 from any other heading outside that group; provided that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(ee) Within heading 6701, goods fabricated from feathers (such as fans, feather dusters, and feather apparel) in which feathers are the material or component that gives the fabricated goods their essential character shall be treated as good of the country in which fabrication occurred.

(ff) A change to heading 6702 from any other heading.

(gg) A change to heading 6704 from any other heading.

(13) Section XIII: Chapters 68 through 70.

(aa) A change from one chapter to another.

(bb) A change to subheading 6812.20 from any other subheading.

(cc) A change to subheading 6812.30 through 6812.40 from any other subheading outside that group.

(dd) A change to subheading 6812.50 from any other subheading.

(14)

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(ee) A change to subheadings 6812.60 through 6812.90 from any other subheading outside that group.

(ff) A change to heading 6813 from any other heading.

(gg) A change to headings 7003 through 7006 from any other heading outside that group.

(hh) A change to headings 7007 through 7020 from any other heading outside that group.

(ii) A change to subheading 7019.20 from any other heading.

(14) Section XIV: Chapter 71.

(aa) A change from one chapter to another.

(bb) A change to headings 7113 through 7118 from any other heading outside that group, except that pearls, temporarily or permanently strung but without the addition of clasps or other ornamental features of precious metals or stones, shall be treated as a good of the country in which the pearls were obtained.

(15) Section XV: Chapters 72 through 83.

(aa) A change from one chapter to another; provided, that goods subject to rules (ii) or (vv) meet the conditions set forth therein.

(bb) A change to headings 7206 through 7207 from any other heading outside that group.

(cc) A change to headings 7208 through 7216 from any other heading outside that group.

(dd) A change to heading 7217 from any other heading except headings 7213 through 7215.

(ee) A change to headings 7218 through 7222 from any other heading outside that group.

(ff) A change to heading 7223 from any other heading except headings 7221 and 7222.

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(gg) A change to headings 7224 through 7228 from any other heading outside that group.

(hh) A change to heading 7229 from any other heading except headings 7227 and 7228.

(ii) A change to heading 7308 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections of heading 7216--

drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination,

adding attachments or weldments for composite construction,

adding of attachments for handling purposes,

adding weldments, connectors, or attachments to H-sections or I-sections; provided, that the maximum cross-sectional dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-section or I-sections,

painting, galvanizing, or otherwise coating, or

adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable as a column.

(jj) A change to headings 7309 through 7326 from any other heading outside that group.

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(kk) A change to headings 7403 through 7408 from any other heading of chapter 74 outside that group; provided, with the exception of a change to subheading 7408.19, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(ll) A change to heading 7409 from any other heading.

(mm) A change to headings 7410 through 7419 from any other heading outside that group; provided, that with respect to a change to heading 7413, the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of goods when exported to the territory of the United States.

(nn) A change to heading 7505 from any other heading.

(oo) A change to heading 7506 from any other heading.

(pp) A change to subheading 7506.20.50 from any other subheading.

(qq) A change to headings 7507 through 7508 from any other heading outside that group.

(rr) A change to headings 7604 through 7606 from any other heading outside that group.

(ss) A change to heading 7607 from any other heading.

(tt) A change to headings 7608 through 7609 from any other heading outside that group.

(uu) A change to headings 7610 through 7616 from any other heading outside that group.

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(vv) A change to headings 7801 or 7901 from headings of other chapters; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(ww) A change to headings 7803 through 7806 from any other heading, including another heading within that group; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(xx) A change to headings 7904 through 7907 from any other heading, including another heading within that group; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(yy) A change to headings 8003 through 8004 from any other heading outside that group.

(zz) A change to headings 8005 through 8007 from any other heading outside that group.

(ab) A change to any of the following subheadings from any other subheading: 8101.92, 8101.99, 8102.92, 8102.99, 8103.90, 8104.90, 8105.90, 8108.90, 8109.90.

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(cd) A change to subheading 8107.90 from any other subheading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(ef) A change to subheading 8111.00.60 from any other subheading.

(16) Section XVI: Chapters 84 through 85.

(aa) A change from one chapter to another, other than a change to heading 8544.

(bb) A change from one heading (other than a parts heading) to another heading, other than heading 8528 or 8529.

(cc) A change to heading 8407 from any other heading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(dd) A change to heading 8528 or 8529 from any other heading, a change from a parts heading to a heading other than a parts heading, or a change from a parts subheading to a subheading other than a parts subheading; provided, with the exception of a change to subheading 8471.92, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(ee) A change to subheadings 8471.20 through 8471.91 from any subheadings outside that group.

(ff) A change to subheadings 8516.10 through 8516.79 from subheading 8516.80.

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(gg) A change to heading 8524 from any other heading.

(hh) A change to heading 8544 from any other heading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(17) Section XVII: Chapters 86 through 89.

(aa) A change from one chapter to another.

(bb) A change to any heading of this section (other than a heading within the groups 8701 through 8705 or 8901 through 8905) from another heading other than a parts heading.

(cc) A change to any heading of this section from a parts heading; or within any heading, a change to any subheading from a parts subheading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(dd) A change to headings 8701 through 8705 from any other heading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(ee) A change to headings 8901 through 8905 from any other headings; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

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(18) Section XVIII: Chapters 90 through 92.

(aa) A change from one chapter to another.

(bb) A change to any heading of this section from a parts heading, or to any subheading from a parts subheading; provided, with the exception of a change to heading 9009, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(cc) A change to any heading within the group 9005 through 9032 from any other heading (including another heading within that group), except that a change from a parts heading shall be subject to rule (bb) of this section.

(dd) Notwithstanding rule (bb), goods subject to classification within headings 9101 through 9107 shall be treated as goods of the country in which the movement subject to classification under headings 9108 through 9110 was produced.

(ee) A change to headings 9108 through 9113 from any other heading, including another heading within that group; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(19) Section XIX: Chapter 93.

(aa) A change to this chapter from any other chapter.

(bb) A change to any heading of this section from a parts heading, or to any subheading from a parts subheading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(20) Section XX: Chapters 94 through 96.

(aa) A change from one chapter to another, except a change to subheading 9404.90 from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516.

(bb) A change to any heading of this section from a parts heading, or to any subheading from a parts subheading; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(cc) A change to a subheading within the group 9608.10 through 9608.39 from a subheading within the group 9608.91 through 9608.99; provided, that the value of materials originating in the territory of Canada and/or the United States plus the direct cost of processing performed in the territory of Canada and/or the United States constitute not less than 50 percent of the value of the goods when exported to the territory of the United States.

(dd) A change to subheading 9614.20 from subheading 9614.10.

(21) Section XXI: Chapter 97.

A change to this chapter from any other chapter."

ANNEX II

MODIFICATIONS TO THE NOMENCLATURE OF
THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Notes:

1. Bracketed matter is included to assist in the understanding of the proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

1. Subheading 0210.90.00 is superseded by:

[0210	:Meat . . .:]	:	:	:
"0210.90	: Other, including edible flours and meals of meat or meat offal:	:	:	:
0210 90.20	: Meat of poultry of heading 0105.....	: 5%	: Free (A,E*, IL) 4.5% (CA)	:20%
0210.90.40	: Other.....	: 5%	: Free (A,CA, E*,IL)	:20%"

2. The following new subheading is inserted in numerical order in chapter 7:

[0710	:Vegetables . . .:]	:	:	:
[0710.80	: Other . . .:]	:	:	:
	: [Other:]	:	:	:
	: [Not reduced in size:]	:	:	:
"0710.80.65	: Brussels sprouts.....	: 25%	: Free (A*, E,IL) 11.2% (CA)	:50%"

Conforming change: General note 3(c)(ii)(D) is modified by inserting in numerical order "0710.80.65 Mexico"

3. Subheading 0710.80.80 is superseded by:

[0710	:Vegetables . . .:]	:	:	:
[0710.80	: Other . . .:]	:	:	:
	: [Other:]	:	:	:
	: "Reduced in size:	:	:	:
0710.80.85	: Brussels sprouts.....	: 17.5%	: Free (E,IL) 6.3% (CA)	: 35%
0710.80.95	: Other.....	: 17.5%	: Free (E,IL) 15.7% (CA)	: 35%"

4. Additional U.S. note 4 to chapter 9 is modified by deleting the final period and inserting in lieu thereof ", except that such goods originating in the territory of Canada shall enter free of duty."

5. Additional U.S. note 1 to chapter 11 is modified by deleting the final parenthesis and period and adding in lieu thereof the following:

"; in the case of goods originating in the territory of Canada, 18%).".

On or after January 1 of the following years, the rate of duty in such note applicable to goods originating in the territory of Canada shall be modified as follows:

1990	1991	1992	1993	1994	1995	1996	1997	1998
16%	14%	12%	10%	8%	6%	4%	2%	Free

6. Subheading 2309.90.90 is superseded by:

[2309	:Preparations . . .:]				
[2309.90	: Other:]				
	: [Other:]				
	: "Other:				
2309.90.60	: Animal feeds containing egg.....	3%	Free (E,IL) 2.7% (CA)	20%	
2309.90.90	: Other.....	3%	Free (CA,E, IL)	20%"	

7. Subheading 4104.29.60 is superseded by:

[4104	:Leather . . .:]				
	: [Other . . .:]				
[4104.29	: Other:]				
	: "Other:				
4104.29.50	: Upper leather; sole leather.....	5%	Free (A*, E,IL) 4% (CA)	25%	
4104.29.90	: Other.....	5%	Free (A*, CA,E,IL)	25%"	

Conforming change: General note 3(c)(ii)(D) is modified by deleting "4104.29.60 Argentina" and by inserting in lieu thereof "4104.29.50 Argentina" and "4104.29.90 Argentina"

8. The following new subheading is inserted in numerical order in chapter 41:

[4104	:Leather . . .:]				
	: [Other . . .:]				
[4104.31	: Full . . .:]				
	: [Other:]				
"4104.31.50	: Upper leather; sole leather.....	5%	Free (A*, E,IL) 4% (CA)	25%"	

Conforming change: General note 3(c)(ii)(D) is modified by inserting in numerical order "4104.31.50 Argentina"

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9. The following new subheading is inserted in numerical order in chapter 41:

[4104	:Leather . . .:]				
	: [Other . . .:]				
[4104.39	: Other:] :				
	: [Other:]				
"4104.39.50	: Upper leather; sole leather.....	5%	Free (A*, E,IL) 4% (CA)	25%"	

Conforming change: General note 3(c)(ii)(D) is modified by inserting in numerical order "4104.39.50 Argentina"

10. Additional U.S. note 1 to chapter 58 is modified to read as follows:

"1. The rates of duty applicable to subheadings 5810.91, 5810.92 and 5810.99 are: column 1 (General), 8.4%, but in the case of embroidery in the piece not less than the rate which would apply to such product if not embroidered; column 1 (Special), for goods originating in the territory of Canada, 7.5%, but in the case of embroidery in the piece not less than the rate which would apply to such product if not embroidered; and column 2, 90%, but in the case of embroidery in the piece not less than the rate which would apply to such product if not embroidered."

On or after January 1 of the following years, the rate in such note applicable to goods originating in the territory of Canada shall be modified as follows:

1990	1991	1992	1993	1994	1995	1996	1997	1998
6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free

11. Subheading 7321.11.50 is superseded by:

[7321	:Stoves . . .:]				
	: [Cooking . . .:]				
[7321.11	: For gas . . .:]				
	: "Other:				
"7321.11.30	: Stoves or ranges.....	4.2%	Free (A,CA, E,IL)	45%	
7321.11.60	: Other.....	4.2%	Free (A,E, IL) 3.7% (CA)	45%"	

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12. Subheading 7321.90.00 is superseded by:

[7321	:Stoves . . .:]			
"7321.90	: Parts:			
7321.90.30	: Of articles in subheading 7321.11.30.....	4.2%	Free (A, CA,E,IL)	45%
7321.90.60	: Other.....	4.2%	Free (A, E,IL) 3.7% (CA)	45%"

13. The following new subheading is inserted in numerical order in chapter 84:

[8422	:Dishwashing . . .:]			
[8422.90	: Parts:]			
"8422.90.05	: Of dishwashing machines.....	3.6%	Free (A,E, IL) 3.2% (CA)	35%"

14. The following new subheading is inserted in numerical order in chapter 84:

[8424	:Mechanical . . .:]			
[8424.90	: Parts:]			
"8424.90.05	: Of fire extinguishers.....	3.7%	Free (A,B, E,IL) 3.3% (CA)	35%"

15. The following new subheading is inserted in numerical order in chapter 84:

[8472	:Other . . .:]			
[8472.90	: Other:]			
"8472.90.20	: Automatic banknote dispensers and other coin or currency handling machines.....	3.7%	Free (A,CA, E,IL)	35%"

16. Subheading 8473.40.00 is superseded by:

[8473	:Parts...:]			
"8473.40	: Parts and accessories of the machines of heading 8472:			
8473.40.20	: Of the automatic banknote dispensers and other coin or currency handling machines of subheading 8472.90.20.....	3.9%	Free (A*, CA,E,IL)	35%
8473.40.40	: Other.....	3.9%	Free (A*, E,IL) 3.1% (CA)	35%"

Conforming change: General note 3(c)(ii)(D) is modified by striking out "8473.40.00 Mexico" and by inserting in lieu thereof "8473.40.20 Mexico" and "8473.40.40 Mexico"

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17. Subheadings 8479.89.30 through 8479.89.90, inclusive, are superseded by:

[8479	:Machines . . .:]			
	: [Other . . .:]			
[8479.89	: Other:]			
	: [Electromechanical . . .:]			
"8479.89.10	: Air humidifiers or dehumidifiers.....	4.2%	Free (A, C,E,IL) 3.7% (CA)	40%
8479.89.20	: Floor polishers.....	3.4%	Free (A,E, IL) 2.7% (CA)	35%
8479.89.30	: Vacuum cleaners.....	3.4%	Free (A,E, IL) 3% (CA)	35%
8479.89.60	: Other.....	4.2%	Free (A, C,E,IL) 3.3% (CA)	40%
8479.89.70	: Carpet sweepers.....	3.7%	Free (A*, E,IL) 3.3% (CA)	35%
8479.89.90	: Other.....	3.7%	Free (A*, B,C,E,IL) 2.9% (CA)	35%"

Conforming changes:
General note 3(c)(ii)(D) is modified by inserting in numerical order--

"8479.89.70 Brazil;
Mexico"

Additional U.S. Note 1 to chapter 84 is modified by deleting "8479.89.40, 8479.89.80 and 8479.90.00" and by inserting in lieu thereof "8479.89.10, 8479.89.60, 8479.89.90, 8479.90.40 and 8479.90.80"

18. Subheading 8479.90.00 is superseded by:

[8479	:Machines . . .:]			
"8479.90	: Parts:			
8479.90.40	: Of articles of subheading 8479.89.10, 8479.89.30 or 8479.89.70.....	3.7%	Free (A*, C,E,IL) 3.3% (CA)	35%
8479.90.80	: Other.....	3.7%	Free (A*, B,C,E,IL) 2.9% (CA)	35%"

Conforming changes: General note 3(c)(ii)(D) is modified by striking out "8479.90.00 Brazil" and by inserting "8479.90.40 Brazil" and "8479.90.80 Brazil" in lieu thereof

19. Subheading 8509.90.20 is superseded by:

[8509	Electromechanical . . .:			
[8509.90	Parts:]			
"8509.90.20	Parts of vacuum cleaners.....	3.4%	Free (A*,E, IL)	35%
			3% (CA)	
8509.90.30	Parts of floor polishers.....	3.4%	Free (A*,E, IL)	35%"
			2.7% (CA)	

Conforming changes: General note 3(c)(ii)(D) is modified by inserting "8509.90.30 Mexico".

20. Subheading 8517.30.10 is superseded by:

[8517	Electrical . . .:]			
[8517.30	Telephonic . . .:]			
	"Telephonic switching apparatus (including private branch exchange and key system switching apparatus):			
8517.30.15	Central office switching apparatus.....	8.5%	Free (A,E, IL)	35%
			5.6% (CA)	
8517.30.20	Private branch exchange switching apparatus.....	8.5%	Free (A,CA, E,IL)	35%
8517.30.25	Electronic key telephone systems.....	8.5%	Free (A,E, IL)	35%
			6.8% (CA)	
8517.30.30	Other.....	8.5%	Free (A,E, IL)	35%"
			6.8% (CA)	

21. Subheadings 8517.40.40 and 8517.40.80 are superseded by:

[8517	Electrical . . .:]			
[8517.40	Other . . .:]			
"8517.40.10	Modems, of a kind used with data processing machines of heading 8471.....	4.7%	Free (A,CA, E,IL)	35%
	Other:			
8517.40.50	Telephonic.....	8.5%	Free (A,B, E,IL)	35%
			6.8% (CA)	
8517.40.70	Telegraphic.....	4.7%	Free (A,E, IL)	35%"
			3.7% (CA)	

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22. Subheadings 8517.90.20 and 8517.90.30 are superseded by:

[8517	:Electrical . . .:]			
[8517.90	: Parts:]			
	: [Of telephonic apparatus:]			
	: "Of telephonic switching apparatus:			
8517.90.05	: Of the switching apparatus of subheading 8517.30.15..	8.5%	Free (A,E, IL) 5.6% (CA)	35%
8517.90.10	: Of the switching apparatus of subheading 8517.30.20..	8.5%	Free (A,CA, E,IL)	35%
8517.90.15	: Other.....	8.5%	Free (A,E, IL) 6.8% (CA)	35%
8517.90.30	: Of telephone sets.....	8.5%	Free (A,B, CA,E,IL)	35%
8517.90.35	: Of other terminal apparatus..	8.5%	Free (A, E,IL) 6.8% (CA)	35%"

23. The following new subheading is inserted in numerical order in chapter 85:

[8517	:Electrical...:]			
[8517.90	: Parts:]			
	: [Of telegraphic apparatus:]			
"8517.90.55	: Of articles of subheading 8517.40.10.....	4.7%	Free (A,CA, E,IL)	35%

24. Subheading 8706.00.20 is superseded by:

[8706.00	:Chassis . . .:]			
"8706.00.15	: For the vehicles of heading 8703...	2.5%	Free (CA, E,IL)	10%
8706.00.25	: For the vehicles of heading 8705...	2.5%	Free (E, IL) 2.2% (CA)	10%"

25. Additional U.S. note 2 to chapter 97 is modified to read as follows:

"2. Whenever an article is entered for sale under heading 9706, and thereafter determined to be not over 100 years of age, a duty of 6.6 percent ad valorem for articles subject to column 1-general treatment, a duty of 5.2 percent ad valorem for goods originating in the territory of Canada, or a duty of 25 percent ad valorem for articles subject to column 2 treatment shall be assessed thereon in addition to any other duty or penalty imposed on such article under the tariff schedule."

On or after January 1 of the following years, the rate specified in this note for goods originating in the territory of Canada shall be modified as follows:

1990	1991	1992	1993
3.9%	2.6%	1.3%	Free

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26 (a). Subheading 9802.00.40 is superseded by:

	[Articles . . .]			
	"Articles exported for repairs or alterations:			
9802.00.40	Repairs or alterations made pursuant to a warranty.....	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter)	Free (B,C, CA)	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter)
9802.00.50	Other.....	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter)	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter) (B,C,CA)	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter)"

Conforming change: U.S. note 3 to subchapter II of chapter 98 is modified by deleting "9802.00.40 and 9802.00.60" and substituting in lieu thereof "9802.00.40 through 9802.00.60, inclusive"

(b). The rates of duty in the "Special" subcolumn of rates of duty column 1 for subheadings 9802.00.60 and 9802.00.80, as inserted by Annex IV of this proclamation, are modified by inserting at the end thereof the special tariff treatment designators "B" and "C" in alphabetical sequence.

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27. Subchapter II to chapter 99 is modified by inserting at the end of the U.S. notes the following new note:

"8. Notwithstanding the effective period specified in the last column for each of the subheadings of this subchapter enumerated herein, in the case of goods originating in the territory of Canada and eligible for duty-free entry under any such subheading, the rate of duty of "free" shall continue to apply until the rate of duty applicable to goods originating in the territory of Canada in the referenced subheading or subheadings has been reduced to "free":

9902.26.22	9902.29.94
9902.29.05	9902.29.95
9902.29.08	9902.29.96
9902.29.09	9902.29.98
9902.29.20	9902.29.99
9902.29.27	9902.30.00
9902.29.34	9902.30.01
9902.29.56	9902.30.03
9902.29.70	9902.30.04
9902.29.78	9902.30.05
9902.29.81	9902.30.06
9902.29.82	9902.38.10
9902.29.83	9902.40.08
9902.29.85	9902.71.04
9902.29.89	9902.84.42
9902.29.90	9902.84.48
9902.29.91	9902.84.49
9902.29.92	9902.84.50
9902.29.93	

On and after December 31, 1998, this note shall be deleted from the tariff schedule and shall cease to apply to any article entered after that date."

28. Chapter 99 is further modified by inserting the following new provisions in numerical sequence:

"9902.29.12	2-Methyl-4-chlorophenol (provided for in subheading 2908.10.50).....	No change	No change (E,IL) Free (CA)	No change	On or before 12/31/93
9902.29.50	Doxorubicin hydrochloride (provided for subheading 2941.90.50, 3003.20 or 3004.20).....	No change	No change (A,E,IL) Free (CA)	No change	On or before 12/31/98
9902.38.12	Mixtures of potassium 1-(p-chlorophenyl-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate ("fenridazon-potassium") and formulation adjuvants (provided for in subheading 3808.30.10)...	No change	No change (A,E,IL) Free (CA)	No change	On or before 12/31/93

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9902.81.05 Unwrought alloys of cobalt containing, by weight, 76 percent or more but less than 99 percent cobalt (provided for in subheading 8105.10.30).....	No change	No change (E,IL) Free (CA)	No change	On or before 12/31/93"

29. Subheading 9902.62.10 is modified by adding "(E*,IL)" after "No change" in the "Special" subcolumn of column 1 and modifying the effective period column to read:

"On or before 12/31/90, except that in the case of goods originating in the territory of Canada the effective period is on or before 12/31/98"

30. Chapter 99 is further modified by adding a new subchapter at the end thereof, as follows:

"SUBCHAPTER V

TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO THE UNITED STATES-CANADA FREE TRADE AGREEMENT

U.S. Notes

1. On or after January 1 of the following years, the percentage set forth in the "Special" subcolumn of rate of duty column 1 for subheading 9905.00.00 which is applicable to goods originating in the territory of Canada shall be modified as follows:

1990	1991	1992
60 percent	40 percent	20 percent

2. On and after January 1, 1993, the then-existing rate of duty set forth in the "Special" subcolumn of rate of duty column 1 for subheading 9905.00.00 which is applicable to goods originating in the territory of Canada shall be deleted and "Free" inserted in lieu thereof.

3. On and after December 31, 1998, this subchapter shall be deleted from the tariff schedule and shall cease to apply to any article entered after that date.

9905.00.00	Equipment provided for in the following subheadings intended for use in the repair or maintenance of motor vehicles of heading 8702, 8703, or 8704 (excluding electric trolley buses and three-wheeled vehicles) or of automobile truck tractors principally designed for the transportation of persons or goods:				
	3917.21	7415.32	8536.41		
	3917.23	7415.39	8536.49		
	3917.29	7416.00	8536.50		
	3917.31	7419.91	8536.69		
	3917.32	7419.99	8536.90		
	3917.39	7508.00	8539.10		
	3917.40	7614.90	8539.21		
	3921.12	7616.10	8539.29		

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:3923.50	7616.90	8544.20	:	:	:	
:3926.30	8007.00	8544.30	:	:	:	
:3926.90	8301.20	8544.41	:	:	:	
:4009.10	8302.10	8545.20	:	:	:	
:4009.20	8302.30	8546.90	:	:	:	
:4009.30	8308.90	8548.00	:	:	:	
:4010.10	8310.00	8708.10	:	:	:	
:4016.91	8407.32	8708.21	:	:	:	
:4016.93	8407.33	8708.29	:	:	:	
:4016.99	8407.34	8708.31	:	:	:	
:4017.00	8409.91	8708.39	:	:	:	
:6813.10	8415.81	8708.40	:	:	:	
:6813.90	8415.90	8708.50	:	:	:	
:7006.00	8424.10	8708.60	:	:	:	
:7007.11	8482.10	8708.70	:	:	:	
:7007.21	8482.20	8708.80	:	:	:	
:7009.10	8483.10	8708.91	:	:	:	
:7009.91	8501.20	8708.92	:	:	:	
:7009.92	8501.31	8708.93	:	:	:	
:7307.91	8504.31	8708.94	:	:	:	
:7307.92	8507.10	8708.99	:	:	:	
:7307.99	8507.20	9025.19	:	:	:	
:7312.90	8507.30	9025.90	:	:	:	
:7318.11	8507.90	9026.10	:	:	:	
:7318.12	8511.10	9026.20	:	:	:	
:7318.14	8511.20	9026.80	:	:	:	
:7318.15	8511.30	9026.90	:	:	:	
:7318.16	8511.40	9029.20	:	:	:	
:7318.19	8511.50	9029.90	:	:	:	
:7318.21	8511.80	9030.39	:	:	:	
:7318.23	8511.90	9030.40	:	:	:	
:7318.24	8512.30	9030.81	:	:	:	
:7318.29	8512.40	9030.89	:	:	:	
:7320.10	8512.90	9030.90	:	:	:	
:7320.20	8516.10	9031.80	:	:	:	
:7320.90	8516.90	9031.90	:	:	:	
:7325.99	8518.21	9032.10	:	:	:	
:7326.19	8519.91	9032.20	:	:	:	
:7326.90	8520.31	9032.81	:	:	:	
:7412.20	8522.90	9032.89	:	:	:	
:7413.00	8529.90	9032.90	:	:	:	
:7415.21	8536.10	9033.00	:	:	:	
:7415.29	8536.20	9606.10	:	:	:	
:7415.31	8536.30	9606.22	..... :No change	:80 per-	:No change"	
:			:	:cent of	:	
:			:	:the	:	
:			:	:column 1-	:	
:			:	:general	:	
:			:	:rate of	:	
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:			:	:heading	:	
:			:	:(CA)	:	

ANNEX III

GOODS ORIGINATING IN THE TERRITORY OF CANADA
ELIGIBLE FOR DUTY-FREE ENTRY UNDER
THE UNITED STATES-CANADA FREE TRADE AGREEMENT
EFFECTIVE AS OF JANUARY 1, 1989

(a) For each of the HTS subheadings enumerated below, the rate of duty of "Free" followed by the symbol "CA" in parentheses is inserted in the column entitled "Rates of Duty 1-Special" for such a subheading:

9801.00.70	9813.00.05	9813.00.30	9813.00.50	9813.00.70	9902.29.50
9801.00.80	9813.00.10	9813.00.35	9813.00.55	9813.00.75	9902.38.12
9804.00.60	9813.00.15	9813.00.40	9813.00.60	9814.00.50	9902.81.05
9812.00.20	9813.00.20	9813.00.45	9813.00.65	9902.29.12	9903.87.00
9812.00.40	9813.00.25				

(b) For each of the HTS subheadings enumerated below, the symbol "CA" is inserted in the parentheses appearing immediately after the rate of duty of "Free" in the column entitled "Rates of Duty 1-Special":

0101.20.20	0813.10.00	2102.10.00	2530.20.20	4108.00.00	7202.11.50
0106.00.10	0813.40.20	2102.20.20	2530.40.00	4109.00.30	7202.19.10
0106.00.30	0813.40.40	2102.20.60	2603.00.00	4109.00.40	7202.19.50
0208.10.00	0814.00.90	2208.30.30	2611.00.00	4109.00.70	7202.21.10
0210.11.00	0904.20.60	2208.30.60	2616.10.00	4111.00.00	7202.21.50
0210.12.00	1006.20.20	2208.40.00	2619.00.30	4301.60.30	7202.21.75
0210.19.00	1008.20.00	2302.50.00	2620.19.30	4302.11.00	7202.21.90
0210.20.00	1008.90.00	2303.10.00	2620.19.60	4302.12.00	7202.30.00
0210.90.40	1207.91.00	2305.00.00	2620.30.00	4302.13.00	7202.41.00
0302.22.00	1209.21.00	2306.30.00	2620.90.20	4302.19.15	7202.49.10
0302.23.00	1209.22.20	2306.50.00	2713.12.00	4302.19.30	7202.49.50
0302.29.00	1209.24.00	2306.60.00	2918.12.00	4302.19.45	7202.50.00
0302.65.00	1209.25.00	2306.90.00	2918.13.10	4302.19.60	7202.99.50
0302.69.40	1210.10.00	2308.10.00	2918.13.20	4302.19.75	7321.11.30
0303.32.00	1210.20.00	2308.90.60	2918.13.30	4302.20.30	7321.90.30
0303.33.00	1211.90.60	2309.90.30	2924.29.13	4302.20.60	7601.10.30
0303.39.00	1214.10.00	2309.90.90	2935.00.30	4302.20.90	7601.20.30
0303.75.00	1302.19.40	2504.10.10	3601.00.00	4302.30.00	7601.20.60
0303.77.00	1302.31.00	2507.00.00	3907.91.10	4303.10.00	7606.11.30
0303.79.40	1401.90.20	2508.10.00	4104.10.40	4303.90.00	7802.00.00
0305.10.40	1403.90.40	2508.20.00	4104.10.60	4401.30.20	7902.00.00
0305.30.40	1502.00.00	2508.30.00	4104.10.80	4501.90.40	8408.10.00
0305.49.20	1504.10.40	2508.40.00	4104.29.30	4502.00.00	8408.20.20
0305.51.00	1504.20.40	2508.60.00	4104.29.90	4503.10.20	8408.20.90
0305.59.20	1504.20.60	2509.00.20	4104.31.20	4503.10.30	8408.90.90
0305.59.40	1504.30.00	2511.10.10	4104.31.40	4503.10.40	8409.99.92
0305.63.20	1509.10.20	2511.10.50	4104.31.60	4503.10.60	8409.99.99
0305.63.40	1509.90.20	2511.20.00	4104.31.80	4503.90.20	8410.11.00
0305.69.20	1510.00.40	2513.19.00	4104.39.20	4504.10.10	8410.12.00
0305.69.60	1520.10.00	2513.29.00	4104.39.40	4504.10.45	8410.13.00
0307.60.00	1520.90.00	2514.00.00	4104.39.60	4504.10.47	8410.90.00
0502.10.00	1601.00.20	2515.11.00	4104.39.80	4902.90.10	8419.31.00
0505.10.00	1601.00.40	2515.12.10	4105.11.00	4905.10.00	8421.39.00
0505.90.00	1601.00.60	2515.12.20	4105.12.00	4908.10.00	8441.20.00
0509.00.00	1602.49.10	2515.20.00	4105.19.00	6506.92.00	8441.30.00
0511.99.40	1602.49.20	2516.12.00	4105.20.30	6802.23.00	8441.40.00
0602.91.00	1602.49.60	2516.22.00	4105.20.60	6802.93.00	8441.80.00
0802.50.20	1602.50.05	2516.90.00	4106.12.00	7010.10.00	8448.51.10
0802.50.40	1602.50.09	2517.20.00	4106.19.00	7013.10.10	8448.51.20
0802.90.20	1602.50.10	2517.30.00	4106.20.30	7013.10.50	8448.51.30
0802.90.25	1602.50.20	2518.20.00	4106.20.60	7101.21.00	8448.51.50
0802.90.80	1602.50.60	2518.30.00	4107.10.00	7101.22.00	8452.30.00
0802.90.90	1604.12.40	2519.90.10	4107.21.00	7103.99.10	8469.10.00
0803.00.40	1604.16.10	2519.90.20	4107.29.30	7104.90.10	8470.10.00
0804.30.40	1604.16.30	2520.20.00	4107.29.60	7105.90.00	8470.21.00
0804.30.60	1604.16.40	2523.21.00	4107.90.30	7201.40.00	8470.29.00
0805.30.40	1803.20.00	2529.22.00	4107.90.60	7202.11.10	8470.30.00

8470.40
8471.10
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8473.21
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8476.11
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8542.80
8607.21
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8711.10
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8470.40.00
8471.10.00
8471.20.00
8471.91.00
8471.92.10
8471.92.40
8471.92.65
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8704.31.00
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8802.11.00
8802.12.00
8802.20.00
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8802.50.90
8805.10.00
9022.21.00
9022.29.80
9302.00.00
9506.11.20
9506.11.40
9506.11.60
9506.12.40
9506.12.80
9506.19.40
9506.19.80
9506.70.40
9506.70.60
9507.20.40
9507.20.80

ANNEX IV

STAGED REDUCTIONS IN RATES OF DUTY FOR
GOODS ORIGINATING IN THE TERRITORY OF CANADA

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0101.20.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0102.90.40	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0104.20.00	$1.20/head	90¢/head	60¢/head	30¢/head	Free	Free	Free	Free	Free	Free
0105.11.00	1.8¢ each	1.6¢ each	1.4¢ each	1.2¢ each	1¢ each	0.8¢ each	0.6¢ each	0.4¢ each	0.2¢ each	Free
0105.19.00	1.8¢ each	1.6¢ each	1.4¢ each	1.2¢ each	1¢ each	0.8¢ each	0.6¢ each	0.4¢ each	0.2¢ each	Free
0105.91.00	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0105.99.00	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0201.10.00	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0201.20.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
0201.20.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0201.20.60	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0201.30.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
0201.30.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0201.30.60	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0202.10.00	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0202.20.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
0202.20.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0202.20.60	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0202.30.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
0202.30.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0202.30.60	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0203.12.10	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0203.19.20	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0203.22.10	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0203.29.20	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0204.10.00	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
0204.21.00	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0204.22.20	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
0204.22.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0204.23.20	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
0204.23.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0204.30.00	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
0204.41.00	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0204.42.20	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
0204.42.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0204.43.20	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
0204.43.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0207.10.20	16.8¢/kg	14.9¢/kg	13¢/kg	11.2¢/kg	9.3¢/kg	7.4¢/kg	5.6¢/kg	3.7¢/kg	1.8¢/kg	Free
0207.10.40	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
0207.21.00	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
0207.22.20	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
0207.22.40	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
0207.23.00	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
0207.31.00	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
0207.39.00	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
0207.41.00	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
0207.42.00	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
0207.43.00	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
0207.50.00	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
0208.90.30	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free	Free	Free	Free	Free	Free
0208.90.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0209.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
0210.90.20	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
0302.61.00	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0302.69.10	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
0302.70.20	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
0303.71.00	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0303.80.20	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
0304.10.20	3.3¢/kg	2.4¢/kg	1.6¢/kg	0.8¢/kg	Free	Free	Free	Free	Free	Free
0304.20.40	3.3¢/kg	2.4¢/kg	1.6¢/kg	0.8¢/kg	Free	Free	Free	Free	Free	Free
0304.90.90	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
0305.20.20	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
0305.30.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
0305.41.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
0305.61.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
0305.69.40	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
0305.69.50	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
0306.14.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0306.24.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0401.10.00	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0401.20.20	0.4¢/liter	0.4¢/liter	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	Free	Free
0401.20.40	1.5¢/liter	1.3¢/liter	1.1¢/liter	1¢/liter	0.8¢/liter	0.6¢/liter	0.5¢/liter	0.3¢/liter	0.1¢/liter	Free
0401.30.10	2.8¢/liter	2.5¢/liter	2.2¢/liter	1.9¢/liter	1.6¢/liter	1.2¢/liter	0.9¢/liter	0.6¢/liter	0.3¢/liter	Free
0401.30.30	13.5¢/liter	12¢/liter	10.5¢/liter	9¢/liter	7.5¢/liter	6¢/liter	4.5¢/liter	3¢/liter	1.5¢/liter	Free
0401.30.40	11¢/kg	9.8¢/kg	8.6¢/kg	7.3¢/kg	6.1¢/kg	4.9¢/kg	3.6¢/kg	2.4¢/kg	1.2¢/kg	Free
0402.10.00	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0402.21.20	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0402.21.40	6.1¢/kg	5.4¢/kg	4.7¢/kg	4¢/kg	3.4¢/kg	2.7¢/kg	2¢/kg	1.3¢/kg	0.6¢/kg	Free
0402.21.60	12.3¢/kg	10.9¢/kg	9.5¢/kg	8.2¢/kg	6.8¢/kg	5.4¢/kg	4.1¢/kg	2.7¢/kg	1.3¢/kg	Free
0402.29.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0402.91.20	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0402.91.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0402.99.20	3.5¢/kg	3.1¢/kg	2.7¢/kg	2.3¢/kg	1.9¢/kg	1.5¢/kg	1.1¢/kg	0.7¢/kg	0.3¢/kg	Free
0402.99.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0402.99.60	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0403.10.00	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0403.90.10	2.8¢/liter	2.5¢/liter	2.2¢/liter	1.9¢/liter	1.6¢/liter	1.2¢/liter	0.9¢/liter	0.6¢/liter	0.3¢/liter	Free
0403.90.15	13.5¢/liter	12¢/liter	10.5¢/liter	9¢/liter	7.5¢/liter	6¢/liter	4.5¢/liter	3¢/liter	1.5¢/liter	Free
0403.90.20	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free
0403.90.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0403.90.50	6.1¢/kg	5.4¢/kg	4.7¢/kg	4¢/kg	3.4¢/kg	2.7¢/kg	2¢/kg	1.3¢/kg	0.6¢/kg	Free
0403.90.60	12.3¢/kg	10.9¢/kg	9.5¢/kg	8.2¢/kg	6.8¢/kg	5.4¢/kg	4.1¢/kg	2.7¢/kg	1.3¢/kg	Free
0403.90.70	11¢/kg	9.8¢/kg	8.6¢/kg	7.3¢/kg	6.1¢/kg	4.9¢/kg	3.6¢/kg	2.4¢/kg	1.2¢/kg	Free
0403.90.75	27.8¢/kg	24.7¢/kg	21.6¢/kg	18.5¢/kg	15.4¢/kg	12.3¢/kg	9.2¢/kg	6.1¢/kg	3¢/kg	Free
0403.90.80	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0404.10.20	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free
0404.10.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0404.90.05	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0404.90.10	0.3¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
0404.90.20	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0404.90.40	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
0404.90.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0405.00.70	11¢/kg	9.8¢/kg	8.6¢/kg	7.3¢/kg	6.1¢/kg	4.9¢/kg	3.6¢/kg	2.4¢/kg	1.2¢/kg	Free
0405.00.75	27.8¢/kg	24.7¢/kg	21.6¢/kg	18.5¢/kg	15.4¢/kg	12.3¢/kg	9.2¢/kg	6.1¢/kg	3¢/kg	Free
0405.00.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0406.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0406.20.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0406.20.20	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0406.20.30	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
0406.20.35	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0406.20.40	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.20.50	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.20.55	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.20.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0406.30.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0406.30.20	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
0406.30.30	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0406.30.40	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.30.50	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
0406.30.55	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.30.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0406.40.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
0406.40.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0406.40.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.40.80	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0406.90.05	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
0406.90.10	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
0406.90.15	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.90.20	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
0406.90.25	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0406.90.30	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0406.90.35	17.1%	15.2%	13.3%	11.4%	9.5%	7.6%	5.7%	3.8%	1.9%	Free
0406.90.40	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.90.45	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
0406.90.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0406.90.65	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0406.90.70	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0406.90.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0407.00.00	3.1¢/doz.	2.8¢/doz.	2.4¢/doz.	2.1¢/doz.	1.7¢/doz.	1.4¢/doz.	1¢/doz.	0.7¢/doz.	0.3¢/doz.	Free
0408.11.00	53.5¢/kg	47.6¢/kg	41.6¢/kg	35.7¢/kg	29.7¢/kg	23.8¢/kg	17.8¢/kg	11.9¢/kg	5.9¢/kg	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0408.19.00	10.8¢/kg	9.6¢/kg	8.4¢/kg	7.2¢/kg	6¢/kg	4.8¢/kg	3.6¢/kg	2.4¢/kg	1.2¢/kg	Free
0408.91.00	53.5¢/kg	47.6¢/kg	41.6¢/kg	35.7¢/kg	29.7¢/kg	23.8¢/kg	17.8¢/kg	11.9¢/kg	5.9¢/kg	Free
0408.99.00	10.8¢/kg	9.6¢/kg	8.4¢/kg	7.2¢/kg	6¢/kg	4.8¢/kg	3.6¢/kg	2.4¢/kg	1.2¢/kg	Free
0409.00.00	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0410.00.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
0501.00.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
0510.00.20	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
0601.10.15	$1.26/1000	$1.12/1000	98¢/1000	84¢/1000	70¢/1000	56¢/1000	42¢/1000	28¢/1000	14¢/1000	Free
0601.10.30	54¢/1000	48¢/1000	42¢/1000	36¢/1000	30¢/1000	24¢/1000	18¢/1000	12¢/1000	6¢/1000	Free
0601.10.45	78.3¢/1000	69.6¢/1000	60.9¢/1000	52.2¢/1000	43.5¢/1000	34.8¢/1000	26.1¢/1000	17.4¢/1000	8.7¢/1000	Free
0601.10.60	$1.89/1000	$1.68/1000	$1.47/1000	$1.26/1000	$1.05/1000	84¢/1000	63¢/1000	42¢/1000	21¢/1000	Free
0601.10.75	27¢/1000	24¢/1000	21¢/1000	18¢/1000	15¢/1000	12¢/1000	9¢/1000	6¢/1000	3¢/1000	Free
0601.10.85	$2.025/1000	$1.80/1000	$1.575/1000	$1.35/1000	$1.125/1000	90¢/1000	67.5¢/1000	45¢/1000	22.5¢/1000	Free
0601.10.90	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
0601.20.10	54¢/1000	48¢/1000	42¢/1000	36¢/1000	30¢/1000	24¢/1000	18¢/1000	12¢/1000	6¢/1000	Free
0601.20.90	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
0602.10.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0602.30.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
0602.99.30	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
0602.99.40	4.9%	4.6%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
0602.99.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
0602.99.90	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0603.10.30	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
0603.10.60	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
0603.10.70	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
0603.10.80	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
0603.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
0604.99.60	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
0701.10.00	0.6¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0701.90.00	0.6¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0702.00.20	4.1¢/kg	3.6¢/kg	3.2¢/kg	2.7¢/kg	2.3¢/kg	1.8¢/kg	1.3¢/kg	0.9¢/kg	0.4¢/kg	Free
0702.00.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0702.00.60	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0703.10.20	1.1¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0703.10.30	1.3¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.1¢/kg	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0703.10.40	3.5¢/kg	3.1¢/kg	2.7¢/kg	2.3¢/kg	1.9¢/kg	1.5¢/kg	1.1¢/kg	0.7¢/kg	0.3¢/kg	Free
0703.20.00	1.5¢/kg	1.3¢/kg	1.1¢/kg	1¢/kg	0.8¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
0703.90.00	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0704.10.20	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
0704.10.40	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
0704.10.60	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0704.20.00	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
0704.90.20	1¢/kg	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0704.90.40	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0705.11.20	0.7¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0705.11.40	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0705.19.20	0.7¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0705.19.40	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0705.21.00	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free
0705.29.00	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free
0706.10.05	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0706.10.10	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0706.10.20	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0706.90.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
0706.90.30	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
0706.90.40	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
0707.00.20	4.4¢/kg	3.9¢/kg	3.4¢/kg	2.9¢/kg	2.4¢/kg	1.9¢/kg	1.4¢/kg	0.9¢/kg	0.4¢/kg	Free
0707.00.40	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free
0707.00.50	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free
0707.00.60	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0708.10.20	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0708.10.40	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0708.20.10	4.6¢/kg	4.1¢/kg	3.6¢/kg	3.1¢/kg	2.6¢/kg	2¢/kg	1.5¢/kg	1¢/kg	0.5¢/kg	Free
0708.20.90	6.9¢/kg	6.1¢/kg	5.3¢/kg	4.6¢/kg	3.8¢/kg	3¢/kg	2.3¢/kg	1.5¢/kg	0.7¢/kg	Free
0708.90.05	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0708.90.15	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
0708.90.30	1.6¢/kg	1.4¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
0708.90.40	6.9¢/kg	6.1¢/kg	5.3¢/kg	4.6¢/kg	3.8¢/kg	3¢/kg	2.3¢/kg	1.5¢/kg	0.7¢/kg	Free
0709.10.00	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0709.20.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0709.20.90	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0709.30.20	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0709.30.40	2.1¢/kg	1.9¢/kg	1.6¢/kg	1.4¢/kg	1.2¢/kg	0.9¢/kg	0.7¢/kg	0.4¢/kg	0.2¢/kg	Free
0709.40.20	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0709.40.40	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
0709.40.60	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0709.51.00	9.9¢/kg + 22.5%	8.8¢/kg + 20%	7.7¢/kg + 17.5%	6.6¢/kg + 15%	5.5¢/kg + 12.5%	4.4¢/kg + 10%	3.3¢/kg + 7.5%	2.2¢/kg + 5%	1.1¢/kg + 2.5%	Free
0709.60.00	4.9¢/kg	4.4¢/kg	3.8¢/kg	3.3¢/kg	2.7¢/kg	2.2¢/kg	1.6¢/kg	1.1¢/kg	0.5¢/kg	Free
0709.70.00	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0709.90.05	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0709.90.10	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
0709.90.13	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0709.90.16	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0709.90.20	2.1¢/kg	1.9¢/kg	1.6¢/kg	1.4¢/kg	1.2¢/kg	0.9¢/kg	0.7¢/kg	0.4¢/kg	0.2¢/kg	Free
0709.90.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0709.90.35	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
0709.90.40	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0710.10.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.21.20	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0710.21.40	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0710.22.10	4.6¢/kg	4.1¢/kg	3.6¢/kg	3.1¢/kg	2.6¢/kg	2¢/kg	1.5¢/kg	1¢/kg	0.5¢/kg	Free
0710.22.30	6.9¢/kg	6.1¢/kg	5.3¢/kg	4.6¢/kg	3.8¢/kg	3¢/kg	2.3¢/kg	1.5¢/kg	0.7¢/kg	Free
0710.22.40	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.29.05	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0710.29.15	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
0710.29.30	1.6¢/kg	1.4¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
0710.29.40	6.9¢/kg	6.1¢/kg	5.3¢/kg	4.6¢/kg	3.8¢/kg	3¢/kg	2.3¢/kg	1.5¢/kg	0.7¢/kg	Free
0710.30.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.40.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.80.20	6.3¢/kg + 9%	5.6¢/kg + 8%	4.9¢/kg + 7%	4.2¢/kg + 6%	3.5¢/kg + 5%	2.8¢/kg + 4%	2.1¢/kg + 3%	1.4¢/kg + 2%	0.7¢/kg + 1%	Free
0710.80.40	4.1¢/kg	3.6¢/kg	3.2¢/kg	2.7¢/kg	2.3¢/kg	1.8¢/kg	1.3¢/kg	0.9¢/kg	0.4¢/kg	Free
0710.80.45	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0710.80.50	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0710.80.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0710.80.65	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0710.80.70	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0710.80.85	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
0710.80.95	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.90.10	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.90.90	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0711.10.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
0711.20.15	*3.3¢/kg	*2.9¢/kg	*2.5¢/kg	*2.2¢/kg	*1.8¢/kg	*1.4¢/kg	*1.1¢/kg	*0.7¢/kg	*0.3¢/kg	Free
0711.20.25	*6.6¢/kg	*5.9¢/kg	*5.1¢/kg	*4.4¢/kg	*3.7¢/kg	*2.9¢/kg	*2.2¢/kg	*1.4¢/kg	*0.7¢/kg	Free
0711.20.40	*9.7¢/kg	*8.6¢/kg	*7.5¢/kg	*6.4¢/kg	*5.4¢/kg	*4.3¢/kg	*3.2¢/kg	*2.1¢/kg	*1¢/kg	Free
0711.30.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
0711.40.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
0711.90.40	6.3¢/kg on drained weight + 9%	5.6¢/kg on drained weight + 8%	4.9¢/kg on drained weight + 7%	4.2¢/kg on drained weight + 6%	3.5¢/kg on drained weight + 5%	2.8¢/kg on drained weight + 4%	2.1¢/kg on drained weight + 3%	1.4¢/kg on drained weight + 2%	0.7¢/kg on drained weight + 1%	Free
0711.90.60	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
0712.10.00	2.6¢/kg	2.3¢/kg	2¢/kg	1.7¢/kg	1.4¢/kg	1.1¢/kg	0.8¢/kg	0.5¢/kg	0.2¢/kg	Free
0712.20.20	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
0712.20.40	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0712.30.10	2.6¢/kg + 3.6%	2.3¢/kg + 3.2%	2¢/kg + 2.8%	1.7¢/kg + 2.4%	1.4¢/kg + 2%	1.1¢/kg + 1.6%	0.8¢/kg + 1.2%	0.5¢/kg + 0.8%	0.2¢/kg + 0.4%	Free
0712.30.20	2.6¢/kg + 3.6%	2.3¢/kg + 3.2%	2¢/kg + 2.8%	1.7¢/kg + 2.4%	1.4¢/kg + 2%	1.1¢/kg + 1.6%	0.8¢/kg + 1.2%	0.5¢/kg + 0.8%	0.2¢/kg + 0.4%	Free
0712.90.10	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
0712.90.15	6.9¢/kg	4.4¢/kg	3.8¢/kg	3.3¢/kg	2.7¢/kg	2.2¢/kg	1.6¢/kg	1.1¢/kg	0.5¢/kg	Free
0712.90.20	4.9¢/kg	4.4¢/kg	3.8¢/kg	3.3¢/kg	2.7¢/kg	2.2¢/kg	1.6¢/kg	1.1¢/kg	0.5¢/kg	Free
0712.90.40	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
0712.90.65	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
0712.90.70	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0712.90.75	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
0712.90.80	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
0713.10.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.10.40	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0713.20.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.20.20	2.7¢/kg	2.4¢/kg	2.1¢/kg	1.8¢/kg	1.5¢/kg	1.2¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free

*On drained weight

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0713.31.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.31.40	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0713.32.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.32.20	2.3¢/kg	2¢/kg	1.8¢/kg	1.5¢/kg	1.3¢/kg	1¢/kg	0.7¢/kg	0.5¢/kg	0.2¢/kg	Free
0713.33.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.33.20	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0713.33.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.39.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.39.20	1.5¢/kg	1.3¢/kg	1.1¢/kg	1¢/kg	0.8¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
0713.39.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.40.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.40.20	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free
0713.50.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.50.20	2.3¢/kg	2¢/kg	1.8¢/kg	1.5¢/kg	1.3¢/kg	1¢/kg	0.7¢/kg	0.5¢/kg	0.2¢/kg	Free
0713.90.10	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0713.90.60	1.5¢/kg	1.3¢/kg	1.1¢/kg	1¢/kg	0.8¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
0713.90.80	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0714.10.00	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0714.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0714.90.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
0714.90.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
0714.90.40	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
0714.90.60	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
0802.11.00	9.6¢/kg	7.2¢/kg	4.8¢/kg	2.4¢/kg	Free	Free	Free	Free	Free	Free
0802.12.00	33.7¢/kg	30¢/kg	26.2¢/kg	22.5¢/kg	18.7¢/kg	15¢/kg	11.2¢/kg	7.5¢/kg	3.7¢/kg	Free
0802.21.00	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free	Free	Free	Free	Free	Free
0802.22.00	15.8¢/kg	14¢/kg	12.3¢/kg	10.5¢/kg	8.8¢/kg	7¢/kg	5.2¢/kg	3.5¢/kg	1.7¢/kg	Free
0802.31.00	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free	Free	Free	Free	Free	Free
0802.32.00	29.7¢/kg	26.4¢/kg	23.1¢/kg	19.8¢/kg	16.5¢/kg	13.2¢/kg	9.9¢/kg	6.6¢/kg	3.3¢/kg	Free
0802.90.10	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free	Free	Free	Free	Free	Free
0802.90.15	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
0804.10.20	13.2¢/kg	9.9¢/kg	6.6¢/kg	3.3¢/kg	Free	Free	Free	Free	Free	Free
0804.10.40	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0804.10.60	3.5¢/kg	2.6¢/kg	1.7¢/kg	0.8¢/kg	Free	Free	Free	Free	Free	Free
0804.10.80	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
0804.20.40	7.9¢/kg	5.9¢/kg	3.9¢/kg	1.9¢/kg	Free	Free	Free	Free	Free	Free
0804.20.60	6.1¢/kg	4.6¢/kg	3¢/kg	1.5¢/kg	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0804.20.80	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
0804.30.20	0.5¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
0804.40.00	11.8¢/kg	10.5¢/kg	9.2¢/kg	7.9¢/kg	6.6¢/kg	5.2¢/kg	3.9¢/kg	2.6¢/kg	1.3¢/kg	Free
0804.50.40	7.4¢/kg	6.6¢/kg	5.7¢/kg	4.9¢/kg	4.1¢/kg	3.3¢/kg	2.4¢/kg	1.6¢/kg	0.8¢/kg	Free
0804.50.60	7.4¢/kg	6.6¢/kg	5.7¢/kg	4.9¢/kg	4.1¢/kg	3.3¢/kg	2.4¢/kg	1.6¢/kg	0.8¢/kg	Free
0804.50.80	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
0805.10.00	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0805.20.00	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0805.30.20	2.2¢/kg	1.6¢/kg	1.1¢/kg	0.5¢/kg	Free	Free	Free	Free	Free	Free
0805.40.40	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0805.40.60	1.4¢/kg	1¢/kg	0.7¢/kg	0.3¢/kg	Free	Free	Free	Free	Free	Free
0805.40.80	2.3¢/kg	1.7¢/kg	1.1¢/kg	0.5¢/kg	Free	Free	Free	Free	Free	Free
0805.90.00	0.7%	0.5%	0.3%	0.1%	Free	Free	Free	Free	Free	Free
0806.10.20	$1.269/$m^3$	$1.128/$m^3$	98.7¢/m^3	84.6¢/m^3	70.5¢/m^3	56.4¢/m^3	42.3¢/m^3	28.2¢/m^3	14.1¢/m^3	Free
0806.10.60	$1.908/$m^3$	$1.696/$m^3$	$1.484/$m^3$	$1.272/$m^3$	$1.06/$m^3$	84.8¢/m^3	63.6¢/m^3	42.4¢/m^3	21.2¢/m^3	Free
0806.20.10	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
0806.20.20	3.5¢/kg	2.6¢/kg	1.7¢/kg	0.8¢/kg	Free	Free	Free	Free	Free	Free
0806.20.90	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free	Free	Free	Free	Free	Free
0807.10.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0807.10.20	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
0807.10.30	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0807.10.40	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
0807.10.50	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
0807.10.60	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
0807.10.70	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
0807.10.80	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
0807.20.00	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
0808.20.40	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0809.10.00	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
0809.30.20	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
0809.40.40	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
0810.10.20	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
0810.10.40	1.5¢/kg	1.3¢/kg	1.1¢/kg	1¢/kg	0.8¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
0810.20.10	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0810.90.40	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0811.10.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
0811.20.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
0811.20.40	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
0811.90.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0811.90.22	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
0811.90.25	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
0811.90.35	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
0811.90.40	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0811.90.50	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
0811.90.55	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0811.90.60	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
0812.10.00	18.8¢/kg	16.7¢/kg	14.6¢/kg	12.5¢/kg	10.4¢/kg	8.3¢/kg	6.2¢/kg	4.1¢/kg	2¢/kg	Free
0812.20.00	1.5¢/kg	1.3¢/kg	1.1¢/kg	1¢/kg	0.8¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
0812.90.10	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0812.90.20	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0812.90.30	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0812.90.40	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
0812.90.90	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
0813.20.10	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
0813.20.20	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0813.30.00	1.4¢/kg	1.3¢/kg	1.1¢/kg	0.9¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.1¢/kg	Free
0813.40.10	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
0813.40.15	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free	Free	Free	Free	Free	Free
0813.40.30	10.5¢/kg	7.9¢/kg	5.2¢/kg	2.6¢/kg	Free	Free	Free	Free	Free	Free
0813.40.80	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
0813.40.90	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
0813.50.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0901.40.00	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
0904.20.20	2.7¢/kg	2.4¢/kg	2.1¢/kg	1.8¢/kg	1.5¢/kg	1.2¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
0904.20.40	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free	Free	Free	Free	Free	Free
0904.20.70	10¢/kg	8.9¢/kg	7.8¢/kg	6.7¢/kg	5.6¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
0908.20.20	14.8¢/kg	13.2¢/kg	11.5¢/kg	9.9¢/kg	8.2¢/kg	6.6¢/kg	4.9¢/kg	3.3¢/kg	1.6¢/kg	Free
0910.10.40	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
0910.40.30	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0910.40.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0910.91.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
0910.99.40	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
0910.99.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
1001.10.00	0.6¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1001.90.10	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
1001.90.20	0.6¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1003.00.20	0.2¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
1003.00.40	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
1005.90.20	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
1005.90.60	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1006.10.00	2.5¢/kg	2.2¢/kg	1.9¢/kg	1.6¢/kg	1.4¢/kg	1.1¢/kg	0.8¢/kg	0.5¢/kg	0.2¢/kg	Free
1006.20.40	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
1006.30.10	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
1006.30.90	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
1006.40.00	0.5¢/kg	0.4¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
1007.00.00	0.7¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1008.30.00	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free	Free
1101.00.00	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1102.10.00	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
1102.20.00	0.5¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
1102.30.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
1102.90.40	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
1103.11.00	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1103.12.00	1.6¢/kg	1.4¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
1103.13.00	0.5¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
1103.14.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
1103.19.00	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
1104.11.00	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
1104.12.00	1.6¢/kg	1.4¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free
1104.19.00	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1104.21.00	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
1104.22.00	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
1104.23.00	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1104.29.00	5.3%	4.7%	4.1%	3.5%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
1104.30.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1105.10.00	2.3¢/kg	2¢/kg	1.8¢/kg	1.5¢/kg	1.3¢/kg	1¢/kg	0.7¢/kg	0.5¢/kg	0.2¢/kg	Free
1105.20.00	2.6¢/kg	2.3¢/kg	2¢/kg	1.7¢/kg	1.4¢/kg	1.1¢/kg	0.8¢/kg	0.5¢/kg	0.2¢/kg	Free
1106.10.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
1106.30.20	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
1106.30.40	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
1107.10.00	0.5¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
1107.20.00	0.5¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
1108.11.00	1¢/kg	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1108.12.00	1¢/kg	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1108.13.00	0.7¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1108.20.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
1109.00.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
1109.00.90	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
1202.10.00	8.4¢/kg	7.4¢/kg	6.5¢/kg	5.6¢/kg	4.6¢/kg	3.7¢/kg	2.8¢/kg	1.8¢/kg	0.9¢/kg	Free
1202.20.00	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free
1204.00.00	0.7¢/kg	0.6¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1205.00.00	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1207.20.00	0.5¢/kg	0.4¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
1208.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
1208.90.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
1209.30.00	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
1209.91.10	11.8¢/kg	10.5¢/kg	9.2¢/kg	7.9¢/kg	6.6¢/kg	5.2¢/kg	3.9¢/kg	2.6¢/kg	1.3¢/kg	Free
1209.91.50	1.3¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.1¢/kg	Free
1209.91.80	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
1209.99.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
1211.90.40	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
1212.30.00	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
1212.91.00	79.3¢/t	70.5¢/t	61.7¢/t	52.9¢/t	44.1¢/t	35.2¢/t	26.4¢/t	17.6¢/t	8.8¢/t	Free
1212.92.00	$2.484/t	$2.208/t	$1.932/t	$1.656/t	$1.38/t	$1.104/t	82.8¢/t	55.2¢/t	27.6¢/t	Free
1301.90.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1302.12.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
1302.13.00	$1.782/kg	$1.584/kg	$1.386/kg	$1.188/kg	99¢/kg	79.2¢/kg	59.4¢/kg	39.6¢/kg	19.8¢/kg	Free
1302.20.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1302.39.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1401.20.40	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1401.90.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1402.91.00	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
1403.10.00	$8.80/t	$6.60/t	$4.40/t	$2.20/t	Free	Free	Free	Free	Free	Free
1501.00.00	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Fr e
1503.00.00	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
1505.10.00	2.3¢/kg	1.7¢/kg	1.1¢/kg	0.5¢/kg	Free	Free	Free	Free	Free	Free
1505.90.00	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
1506.00.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1507.10.00	20.2%	18%	15.7%	13.5%	11.2%	9%	6.7%	4.5%	2.2%	Free
1507.90.20	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
1507.90.40	20.2%	18%	15.7%	13.5%	11.2%	9%	6.7%	4.5%	2.2%	Free
1508.10.00	7¢/kg	5.2¢/kg	3.5¢/kg	1.7¢/kg	Free	Free	Free	Free	Free	Free
1508.90.00	7.9¢/kg	7¢/kg	6.1¢/kg	5.2¢/kg	4.4¢/kg	3.5¢/kg	2.6¢/kg	1.7¢/kg	0.8¢/kg	Free
1509.10.40	2.7¢/kg	2¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
1509.90.40	2.7¢/kg	2¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
1510.00.60	2.7¢/kg	2¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
1512.11.00	1.6¢/kg + 3.2%	1.2¢/kg + 2.4%	0.8¢/kg + 1.6%	0.4¢/kg + 0.8%	Free	Free	Free	Free	Free	Free
1512.19.00	1.8¢/kg + 3.6%	1.6¢/kg + 3.2%	1.4¢/kg + 2.8%	1.2¢/kg + 2.4%	1¢/kg + 2%	0.8¢/kg + 1.6%	0.6¢/kg + 1.2%	0.4¢/kg + 0.8%	0.2¢/kg + 0.4%	Free
1512.21.00	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free
1512.29.00	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free
1514.10.90	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
1514.90.50	1.3¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.1¢/kg	Free
1514.90.90	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
1515.11.00	7.9¢/kg	5.9¢/kg	3.9¢/kg	1.9¢/kg	Free	Free	Free	Free	Free	Free
1515.19.00	8.9¢/kg	7.9¢/kg	6.9¢/kg	5.9¢/kg	4.9¢/kg	3.9¢/kg	2.9¢/kg	1.9¢/kg	0.9¢/kg	Free
1515.21.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
1515.29.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
1515.30.00	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
1515.50.00	1.2¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free	Free	Free	Free	Free	Free
1515.60.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1515.90.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1516.10.00	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
1516.20.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
1516.20.90	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
1517.10.00	13.8¢/kg	12.3¢/kg	10.7¢/kg	9.2¢/kg	7.7¢/kg	6.1¢/kg	4.6¢/kg	3¢/kg	1.5¢/kg	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1517.90.10	20.2%	18%	15.7%	13.5%	11.2%	9%	6.7%	4.5%	2.2%	Free
1517.90.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1517.90.40	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
1518.00.20	8.9¢/kg	7.9¢/kg	6.9¢/kg	5.9¢/kg	4.9¢/kg	3.9¢/kg	2.9¢/kg	1.9¢/kg	0.9¢/kg	Free
1518.00.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1519.11.00	2.9¢/kg + 5.4%	2.6¢/kg + 4.8%	2.3¢/kg + 4.2%	1.9¢/kg + 3.6%	1.6¢/kg + 3%	1.3¢/kg + 2.4%	0.9¢/kg + 1.8%	0.6¢/kg + 1.2%	0.3¢/kg + 0.6%	Free
1519.12.00	2.9¢/kg + 4.5%	2.6¢/kg + 4%	2.3¢/kg + 3.5%	1.9¢/kg + 3%	1.6¢/kg + 2.5%	1.3¢/kg + 2%	0.9¢/kg + 1.5%	0.6¢/kg + 1%	0.3¢/kg + 0.5%	Free
1519.13.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1519.19.20	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1519.19.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1519.20.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1519.30.20	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
1519.30.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1519.30.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
1521.90.20	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
1522.00.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1602.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
1602.20.20	6.1¢/kg	4.6¢/kg	3¢/kg	1.5¢/kg	Free	Free	Free	Free	Free	Free
1602.20.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1602.31.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1602.39.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1602.41.10	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
1602.41.20	5.2¢/kg	3.9¢/kg	2.6¢/kg	1.3¢/kg	Free	Free	Free	Free	Free	Free
1602.41.90	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
1602.42.20	5.2¢/kg	3.9¢/kg	2.6¢/kg	1.3¢/kg	Free	Free	Free	Free	Free	Free
1602.42.40	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
1602.49.40	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
1602.49.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1602.90.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1602.90.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1602.90.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1603.00.10	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
1604.11.20	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
1604.11.40	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
1604.12.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1604.13.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
1604.13.20	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
1604.13.30	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
1604.13.40	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
1604.13.45	5.6%	5%	4.3%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
1604.13.50	5.6%	5%	4.3%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
1604.14.10	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
1604.14.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1604.14.30	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
1604.14.40	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1604.14.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1604.14.70	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
1604.14.80	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1604.15.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
1604.19.10	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
1604.19.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
1604.19.25	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
1604.19.30	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
1604.19.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1604.19.50	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
1604.19.80	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
1604.20.05	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1604.20.15	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
1604.20.25	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1604.20.30	0.7%	0.6%	0.5%	0.4%	0.4%	0.3%	0.2%	0.1%	Free	Free
1604.20.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1604.20.50	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
1604.20.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1604.30.20	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
1604.30.30	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
1605.10.05	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1605.10.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
1605.10.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1605.20.05	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1605.30.05	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1605.40.05	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1605.90.05	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1605.90.06	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
1605.90.10	11.2%	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
1605.90.20	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
1605.90.50	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
1605.90.55	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
1701.11.00	1.3145¢/kg less 0.018601¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.849468¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg	1.0224¢/kg less 0.014467¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.660697¢/kg	0.8763¢/kg less 0.012400¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.566312¢/kg	0.7303¢/kg less 0.010334¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.471927¢/kg	0.5842¢/kg less 0.008267¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.377541¢/kg	0.4381¢/kg less 0.006200¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.283156¢/kg	0.2991¢/kg less 0.004133¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.188770¢/kg	0.1460¢/kg less 0.002066¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.094385¢/kg	Free
1701.12.00	1.3145¢/kg less 0.018601¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.849468¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg	1.0224¢/kg less 0.014467¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.660697¢/kg	0.8763¢/kg less 0.012400¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.566312¢/kg	0.7303¢/kg less 0.010334¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.471927¢/kg	0.5842¢/kg less 0.008267¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.377541¢/kg	0.4381¢/kg less 0.006200¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.283156¢/kg	0.2991¢/kg less 0.004133¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.188770¢/kg	0.1460¢/kg less 0.002066¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.094385¢/kg	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1701.91.20	1.3145¢/kg less 0.018601¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.849468¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg	1.0224¢/kg less 0.014467¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.660697¢/kg	0.8763¢/kg less 0.012400¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.566312¢/kg	0.7303¢/kg less 0.010334¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.471927¢/kg	0.5842¢/kg less 0.008267¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.377541¢/kg	0.4381¢/kg less 0.006200¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.283156¢/kg	0.2991¢/kg less 0.004133¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.188770¢/kg	0.1460¢/kg less 0.002066¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.094385¢/kg	Free
1701.91.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1701.99.00	1.3145¢/kg less 0.018601¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.849468¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg	1.0224¢/kg less 0.014467¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.660697¢/kg	0.8763¢/kg less 0.012400¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.566312¢/kg	0.7303¢/kg less 0.010334¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.471927¢/kg	0.5842¢/kg less 0.008267¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.377541¢/kg	0.4381¢/kg less 0.006200¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.283156¢/kg	0.2991¢/kg less 0.004133¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.188770¢/kg	0.1460¢/kg less 0.002066¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.094385¢/kg	Free
1702.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1702.20.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1702.30.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1702.30.40	3.1¢/kg	2.8¢/kg	2.4¢/kg	2.1¢/kg	1.7¢/kg	1.4¢/kg	1¢/kg	0.7¢/kg	0.3¢/kg	Free
1702.40.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1702.50.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
1702.60.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1702.90.30	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Free
1702.90.35	0.6¢/liter	0.6¢/liter	0.5¢/liter	0.4¢/liter	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free	Free
1702.90.40	0.6¢/liter	0.6¢/liter	0.5¢/liter	0.4¢/liter	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free	Free
1702.90.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1703.10.30	0.6¢/liter	0.6¢/liter	0.5¢/liter	0.4¢/liter	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free	Free
1703.10.50	0.023¢/kg of total sugars	0.020¢/kg of total sugars	0.018¢/kg of total sugars	0.015¢/kg of total sugars	0.013¢/kg of total sugars	0.010¢/kg of total sugars	0.007¢/kg of total sugars	0.005¢/kg of total sugars	0.002¢/kg of total sugars	Free
1703.90.30	0.6¢/liter	0.6¢/liter	0.5¢/liter	0.4¢/liter	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free	Free
1703.90.50	0.023¢/kg of total sugars	0.020¢/kg of total sugars	0.018¢/kg of total sugars	0.015¢/kg of total sugars	0.013¢/kg of total sugars	0.010¢/kg of total sugars	0.007¢/kg of total sugars	0.005¢/kg of total sugars	0.002¢/kg of total sugars	Free
1704.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1704.90.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
1704.90.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
1704.90.40	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
1704.90.60	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
1805.00.00	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
1806.10.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1806.10.40	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Dutiable on total sugars at the rate applicable under heading 1701	Free
1806.20.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1806.20.60	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
1806.20.70	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1806.20.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1806.31.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
1806.32.20	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
1806.32.40	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
1806.90.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
1901.10.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
1901.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1901.90.10	4.5¢/liter	4¢/liter	3.5¢/liter	3¢/liter	2.5¢/liter	2¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
1901.90.20	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
1901.90.30	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
1901.90.40	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
1901.90.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1901.90.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1902.11.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1902.19.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1902.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1902.30.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1902.40.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
1903.00.40	1¢/kg	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
1904.10.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
1904.90.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
1905.90.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2001.10.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
2001.20.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
2001.90.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
2001.90.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
2001.90.25	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
2001.90.30	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
2001.90.35	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
2001.90.40	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
2001.90.42	6.9¢/kg	6.1¢/kg	5.3¢/kg	4.6¢/kg	3.8¢/kg	3¢/kg	2.3¢/kg	1.5¢/kg	0.7¢/kg	Free
2001.90.45	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
2001.90.50	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
2001.90.60	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2002.10.00	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
2002.90.00	12.2%	10.8%	9.5%	8.1%	6.8%	5.4%	4%	2.7%	1.3%	Free
2003.10.00	6.3¢/kg on drained weight + 9%	5.6¢/kg on drained weight + 8%	4.9¢/kg on drained weight + 7%	4.2¢/kg on drained weight + 6%	3.5¢/kg on drained weight + 5%	2.8¢/kg on drained weight + 4%	2.1¢/kg on drained weight + 3%	1.4¢/kg on drained weight + 2%	0.7¢/kg on drained weight + 1%	Free
2004.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2004.90.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
2004.90.80	2.9¢/kg on entire contents of container	2.6¢/kg on entire contents of container	2.3¢/kg on entire contents of container	1.9¢/kg on entire contents of container	1.6¢/kg on entire contents of container	1.3¢/kg on entire contents of container	0.9¢/kg on entire contents of container	0.6¢/kg on entire contents of container	0.3¢/kg on entire contents of container	Free
2004.90.90	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2005.10.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2005.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2005.30.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
2005.51.20	2.9¢/kg on entire contents of container	2.6¢/kg on entire contents of container	2.3¢/kg on entire contents of container	1.9¢/kg on entire contents of container	1.6¢/kg on entire contents of container	1.3¢/kg on entire contents of container	0.9¢/kg on entire contents of container	0.6¢/kg on entire contents of container	0.3¢/kg on entire contents of container	Free
2005.51.40	2.9¢/kg on entire contents of container	2.6¢/kg on entire contents of container	2.3¢/kg on entire contents of container	1.9¢/kg on entire contents of container	1.6¢/kg on entire contents of container	1.3¢/kg on entire contents of container	0.9¢/kg on entire contents of container	0.6¢/kg on entire contents of container	0.3¢/kg on entire contents of container	Free
2005.59.00	2.9¢/kg on entire contents of container	2.6¢/kg on entire contents of container	2.3¢/kg on entire contents of container	1.9¢/kg on entire contents of container	1.6¢/kg on entire contents of container	1.3¢/kg on entire contents of container	0.9¢/kg on entire contents of container	0.6¢/kg on entire contents of container	0.3¢/kg on entire contents of container	Free
2005.60.00	*15.7%	*14%	*12.2%	*10.5%	*8.7%	*7%	*5.2%	*3.5%	*1.7%	Free
2005.70.11	*4.8¢/kg	*4.3¢/kg	*3.7¢/kg	*3.2¢/kg	*2.7¢/kg	*2.1¢/kg	*1.6¢/kg	*1¢/kg	*0.5¢/kg	Free
2005.70.13	3.3¢/kg	2.9¢/kg	2.5¢/kg	2.2¢/kg	1.8¢/kg	1.4¢/kg	1.1¢/kg	0.7¢/kg	0.3¢/kg	Free
2005.70.15	*6.6¢/kg	*5.9¢/kg	*5.1¢/kg	*4.4¢/kg	*3.7¢/kg	*2.9¢/kg	*2.2¢/kg	*1.4¢/kg	*0.7¢/kg	Free
2005.70.21	*4.8¢/kg	*4.3¢/kg	*3.7¢/kg	*3.2¢/kg	*2.7¢/kg	*2.1¢/kg	*1.6¢/kg	*1¢/kg	*0.5¢/kg	Free
2005.70.22	*9.7¢/kg	*8.6¢/kg	*7.5¢/kg	*6.4¢/kg	*5.4¢/kg	*4.3¢/kg	*3.2¢/kg	*2.1¢/kg	*1¢/kg	Free
2005.70.25	*9.7¢/kg	*8.6¢/kg	*7.5¢/kg	*6.4¢/kg	*5.4¢/kg	*4.3¢/kg	*3.2¢/kg	*2.1¢/kg	*1¢/kg	Free
2005.70.50	*10.4¢/kg	*9.2¢/kg	*8.1¢/kg	*6.9¢/kg	*5.8¢/kg	*4.6¢/kg	*3.4¢/kg	*2.3¢/kg	*1.1¢/kg	Free
2005.70.60	10.7¢/kg	9.5¢/kg	8.3¢/kg	7.1¢/kg	5.9¢/kg	4.7¢/kg	3.5¢/kg	2.3¢/kg	1.1¢/kg	Free
2005.70.70	*10.4¢/kg	*9.2¢/kg	*8.1¢/kg	*6.9¢/kg	*5.8¢/kg	*4.6¢/kg	*3.4¢/kg	*2.3¢/kg	*1.1¢/kg	Free
2005.70.75	*4.5¢/kg	*4¢/kg	*3.5¢/kg	*3¢/kg	*2.5¢/kg	*2¢/kg	*1.5¢/kg	*1¢/kg	*0.5¢/kg	Free
2005.70.81	*4.9¢/kg	*4.4¢/kg	*3.8¢/kg	*3.3¢/kg	*2.7¢/kg	*2.2¢/kg	*1.6¢/kg	*1.1¢/kg	*0.5¢/kg	Free
2005.70.83	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
2005.80.00	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
2005.90.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free

*On drained weight

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2005.90.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2005.90.50	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
2005.90.55	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2005.90.80	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2005.90.85	1.5¢/kg on entire contents of container	1.3¢/kg on entire contents of container	1.1¢/kg on entire contents of container	1¢/kg on entire contents of container	0.8¢/kg on entire contents of container	0.6¢/kg on entire contents of container	0.5¢/kg on entire contents of container	0.3¢/kg on entire contents of container	0.1¢/kg on entire contents of container	Free
2005.90.90	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2006.00.20	13.8¢/kg + 9%	12.3¢/kg + 8%	10.7¢/kg + 7%	9.2¢/kg + 6%	7.7¢/kg + 5%	6.1¢/kg + 4%	4.6¢/kg + 3%	3¢/kg + 2%	1.5¢/kg + 1%	Free
2006.00.30	4.8%	4.3%	3.7%	3.2%	2.7%	2.1%	1.6%	1%	0.5%	Free
2006.00.40	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
2006.00.50	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
2006.00.60	6.7¢/kg	6¢/kg	5.2¢/kg	4.5¢/kg	3.7¢/kg	3¢/kg	2.2¢/kg	1.5¢/kg	0.7¢/kg	Free
2006.00.70	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2006.00.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
2007.10.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
2007.91.10	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2007.91.40	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
2007.91.90	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2007.99.05	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2007.99.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
2007.99.15	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2007.99.20	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
2007.99.25	13.8¢/kg + 9%	12.3¢/kg + 8%	10.7¢/kg + 7%	9.2¢/kg + 6%	7.7¢/kg + 5%	6.1¢/kg + 4%	4.6¢/kg + 3%	3¢/kg + 2%	1.5¢/kg + 1%	Free
2007.99.35	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
2007.99.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
2007.99.45	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2007.99.48	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
2007.99.50	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
2007.99.55	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2007.99.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
2007.99.65	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
2007.99.70	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2007.99.75	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2008.11.00	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2008.19.15	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
2008.19.20	15.8¢/kg	14¢/kg	12.3¢/kg	10.5¢/kg	8.8¢/kg	7¢/kg	5.2¢/kg	3.5¢/kg	1.7¢/kg	Free
2008.19.25	19.8¢/kg	17.6¢/kg	15.4¢/kg	13.2¢/kg	11¢/kg	8.8¢/kg	6.6¢/kg	4.4¢/kg	2.2¢/kg	Free
2008.19.30	1.8¢/kg	1.6¢/kg	1.4¢/kg	1.2¢/kg	1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
2008.19.40	36.7¢/kg	32.6¢/kg	28.5¢/kg	24.4¢/kg	20.4¢/kg	16.3¢/kg	12.2¢/kg	8.1¢/kg	4¢/kg	Free
2008.19.50	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2008.19.85	25.2%	22.4%	19.6%	16.8%	14%	11.2%	8.4%	5.6%	2.8%	Free
2008.19.90	25.2%	22.4%	19.6%	16.8%	14%	11.2%	8.4%	5.6%	2.8%	Free
2008.20.00	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
2008.30.10	2.7¢/kg	2.4¢/kg	2.1¢/kg	1.8¢/kg	1.5¢/kg	1.2¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
2008.30.20	5.9¢/kg	5.2¢/kg	4.6¢/kg	3.9¢/kg	3.3¢/kg	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free
2008.30.30	15.8¢/kg	14¢/kg	12.3¢/kg	10.5¢/kg	8.8¢/kg	7¢/kg	5.2¢/kg	3.5¢/kg	1.7¢/kg	Free
2008.30.35	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.30.37	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
2008.30.40	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
2008.30.54	0.3¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
2008.30.55	1.9¢/kg	1.7¢/kg	1.5¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free
2008.30.60	1.1¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
2008.30.65	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.30.70	1.1¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
2008.30.80	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free
2008.30.85	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.30.95	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.40.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
2008.50.20	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
2008.50.40	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
2008.60.00	13.8¢/kg + 9%	12.3¢/kg + 8%	10.7¢/kg + 7%	9.2¢/kg + 6%	7.7¢/kg + 5%	6.1¢/kg + 4%	4.6¢/kg + 3%	3¢/kg + 2%	1.5¢/kg + 1%	Free
2008.70.00	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
2008.80.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
2008.91.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
2008.92.10	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2008.92.90	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.99.05	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
2008.99.10	11.8¢/kg	10.5¢/kg	9.2¢/kg	7.9¢/kg	6.6¢/kg	5.2¢/kg	3.9¢/kg	2.6¢/kg	1.3¢/kg	Free
2008.99.13	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2008.99.15	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2008.99.18	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
2008.99.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2008.99.23	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
2008.99.25	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
2008.99.28	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
2008.99.29	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2008.99.35	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
2008.99.40	2.9¢/kg	2.6¢/kg	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
2008.99.42	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
2008.99.45	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.99.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
2008.99.60	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.99.61	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
2008.99.63	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
2008.99.65	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2008.99.80	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
2008.99.90	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2009.11.00	8.3¢/liter	7.4¢/liter	6.4¢/liter	5.5¢/liter	4.6¢/liter	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2009.19.20	4.7¢/liter	4.2¢/liter	3.7¢/liter	3.1¢/liter	2.6¢/liter	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2009.19.40	8.3¢/liter	7.4¢/liter	6.4¢/liter	5.5¢/liter	4.6¢/liter	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2009.20.20	4.7¢/liter	4.2¢/liter	3.7¢/liter	3.1¢/liter	2.6¢/liter	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2009.20.40	8.3¢/liter	7.4¢/liter	6.4¢/liter	5.5¢/liter	4.6¢/liter	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2009.30.10	2.4¢/kg	2.2¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	1.1¢/kg	0.8¢/kg	0.5¢/kg	0.2¢/kg	Free
2009.30.20	2.3¢/liter	2¢/liter	1.8¢/liter	1.5¢/liter	1.3¢/liter	1¢/liter	0.7¢/liter	0.5¢/liter	0.2¢/liter	Free
2009.30.40	4.7¢/liter	4.2¢/liter	3.7¢/liter	3.1¢/liter	2.6¢/liter	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2009.30.60	8.3¢/liter	7.4¢/liter	6.4¢/liter	5.5¢/liter	4.6¢/liter	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2009.40.20	4.7¢/liter	4.2¢/liter	3.7¢/liter	3.1¢/liter	2.6¢/liter	2.1¢/liter	1.5¢/liter	1¢/liter	0.5¢/liter	Free
2009.40.40	1.1¢/liter	1¢/liter	0.9¢/liter	0.7¢/liter	0.6¢/liter	0.5¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free
2009.50.00	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free	Free
2009.60.00	5.9¢/liter	5.2¢/liter	4.6¢/liter	3.9¢/liter	3.3¢/liter	2.6¢/liter	1.9¢/liter	1.3¢/liter	0.6¢/liter	Free
2009.80.40	0.9¢/liter	0.8¢/liter	0.7¢/liter	0.6¢/liter	0.5¢/liter	0.4¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free
2009.80.60	0.7¢/liter	0.6¢/liter	0.5¢/liter	0.4¢/liter	0.4¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free	Free
2009.80.80	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free	Free
2009.90.20	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2009.90.40	8.3¢/liter	7.4¢/liter	6.4¢/liter	5.5¢/liter	4.6¢/liter	3.7¢/liter	2.7¢/liter	1.8¢/liter	0.9¢/liter	Free
2101.10.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2101.20.40	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2101.30.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
2103.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2103.20.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
2103.20.40	12.2%	10.8%	9.5%	8.1%	6.8%	5.4%	4%	2.7%	1.3%	Free
2103.30.40	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
2103.90.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
2103.90.60	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
2104.10.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
2104.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2105.00.00	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
2106.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2106.90.05	2.6¢/kg	2.3¢/kg	2¢/kg	1.7¢/kg	1.4¢/kg	1.1¢/kg	0.8¢/kg	0.5¢/kg	0.2¢/kg	Free
2106.90.10	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Free
2106.90.15	13.8¢/kg	12.3¢/kg	10.7¢/kg	9.2¢/kg	7.7¢/kg	6.1¢/kg	4.6¢/kg	3¢/kg	1.5¢/kg	Free
2106.90.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
2106.90.40	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
2106.90.50	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2106.90.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
2201.10.00	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free
2202.10.00	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free	Free
2202.90.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
2202.90.20	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2202.90.90	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free	Free
2203.00.00	1.4¢/liter	1.2¢/liter	1.1¢/liter	0.9¢/liter	0.8¢/liter	0.6¢/liter	0.4¢/liter	0.3¢/liter	0.1¢/liter	Free
2204.10.00	27.8¢/liter	24.7¢/liter	21.6¢/liter	18.5¢/liter	15.4¢/liter	12.3¢/liter	9.2¢/liter	6.1¢/liter	3¢/liter	Free
2204.21.20	27.8¢/liter	24.7¢/liter	21.6¢/liter	18.5¢/liter	15.4¢/liter	12.3¢/liter	9.2¢/liter	6.1¢/liter	3¢/liter	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2204.21.40	8.9¢/liter	7.9¢/liter	6.9¢/liter	5.9¢/liter	4.9¢/liter	3.9¢/liter	2.9¢/liter	1.9¢/liter	0.9¢/liter	Free
2204.21.60	7.4¢/liter	6.6¢/liter	5.8¢/liter	4.9¢/liter	4.1¢/liter	3.3¢/liter	2.4¢/liter	1.6¢/liter	0.8¢/liter	Free
2204.21.80	23.7¢/liter	21.1¢/liter	18.4¢/liter	15.8¢/liter	13.2¢/liter	10.5¢/liter	7.9¢/liter	5.2¢/liter	2.6¢/liter	Free
2204.29.20	8.9¢/liter	7.9¢/liter	6.9¢/liter	5.9¢/liter	4.9¢/liter	3.9¢/liter	2.9¢/liter	1.9¢/liter	0.9¢/liter	Free
2204.29.40	23.7¢/liter	21.1¢/liter	18.4¢/liter	15.8¢/liter	13.2¢/liter	10.5¢/liter	7.9¢/liter	5.2¢/liter	2.6¢/liter	Free
2204.29.60	14.8¢/liter	13.2¢/liter	11.5¢/liter	9.9¢/liter	8.2¢/liter	6.6¢/liter	4.9¢/liter	3.3¢/liter	1.6¢/liter	Free
2204.29.80	23.7¢/liter	21.1¢/liter	18.4¢/liter	15.8¢/liter	13.2¢/liter	10.5¢/liter	7.9¢/liter	5.2¢/liter	2.6¢/liter	Free
2204.30.00	6.2¢/liter + 44.1¢/pf. liter	5.5¢/liter + 39.2¢/pf. liter	4.8¢/liter + 34.3¢/pf. liter	4.1¢/liter + 29.4¢/pf. liter	3.4¢/liter + 24.5¢/pf. liter	2.7¢/liter + 19.6¢/pf. liter	2¢/liter + 14.7¢/pf. liter	1.3¢/liter + 9.8¢/pf. liter	0.6¢/liter + 4.9¢/pf. liter	Free
2205.10.30	4.9¢/liter	4.4¢/liter	3.8¢/liter	3.3¢/liter	2.7¢/liter	2.2¢/liter	1.6¢/liter	1.1¢/liter	0.5¢/liter	Free
2205.10.60	5.9¢/liter	5.2¢/liter	4.6¢/liter	3.9¢/liter	3.3¢/liter	2.6¢/liter	1.9¢/liter	1.3¢/liter	0.6¢/liter	Free
2205.90.20	4.9¢/liter	4.4¢/liter	3.8¢/liter	3.3¢/liter	2.7¢/liter	2.2¢/liter	1.6¢/liter	1.1¢/liter	0.5¢/liter	Free
2205.90.40	7.6¢/liter	6.8¢/liter	5.9¢/liter	5.1¢/liter	4.2¢/liter	3.4¢/liter	2.5¢/liter	1.7¢/liter	0.8¢/liter	Free
2205.90.60	5.9¢/liter	5.2¢/liter	4.6¢/liter	3.9¢/liter	3.3¢/liter	2.6¢/liter	1.9¢/liter	1.3¢/liter	0.6¢/liter	Free
2206.00.15	0.3¢/liter	0.3¢/liter	0.2¢/liter	0.2¢/liter	0.2¢/liter	0.1¢/liter	0.1¢/liter	Free	Free	Free
2206.00.30	6.2¢/liter + 44.1¢/pf. liter on ethyl alcohol content	5.5¢/liter + 39.2¢/pf. liter on ethyl alcohol content	4.8¢/liter + 34.3¢/pf. liter on ethyl alcohol content	4.1¢/liter + 29.4¢/pf. liter on ethyl alcohol content	3.4¢/liter + 24.5¢/pf. liter on ethyl alcohol content	2.7¢/liter + 19.6¢/pf. liter on ethyl alcohol content	2¢/liter + 14.7¢/pf. liter on ethyl alcohol content	1.3¢/liter + 9.8¢/pf. liter on ethyl alcohol content	0.6¢/liter + 4.9¢/pf. liter on ethyl alcohol content	Free
2206.00.45	5.9¢/liter	5.2¢/liter	4.6¢/liter	3.9¢/liter	3.3¢/liter	2.6¢/liter	1.9¢/liter	1.3¢/liter	0.6¢/liter	Free
2206.00.60	27.8¢/liter	24.7¢/liter	21.6¢/liter	18.5¢/liter	15.4¢/liter	12.3¢/liter	9.2¢/liter	6.1¢/liter	3¢/liter	Free
2206.00.90	5.9¢/liter	5.2¢/liter	4.6¢/liter	3.9¢/liter	3.3¢/liter	2.6¢/liter	1.9¢/liter	1.3¢/liter	0.6¢/liter	Free
2207.10.30	26.6¢/pf. liter	23.6¢/pf. liter	20.7¢/pf. liter	17.7¢/pf. liter	14.8¢/pf. liter	11.8¢/pf. liter	8.8¢/pf. liter	5.9¢/pf. liter	2.9¢/pf. liter	Free
2207.10.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2207.20.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2208.10.30	5.9¢/kg + 2.7%	5.2¢/kg + 2.4%	4.6¢/kg + 2.1%	3.9¢/kg + 1.8%	3.3¢/kg + 1.5%	2.6¢/kg + 1.2%	1.9¢/kg + 0.9%	1.3¢/kg + 0.6%	0.6¢/kg + 0.3%	Free
2208.10.60	11.8¢/kg + 2.7%	10.5¢/kg + 2.4%	9.2¢/kg + 2.1%	7.9¢/kg + 1.8%	6.6¢/kg + 1.5%	5.2¢/kg + 1.2%	3.9¢/kg + 0.9%	2.6¢/kg + 0.6%	1.3¢/kg + 0.3%	Free
2208.10.90	23.8¢/kg + 2.7%	21.2¢/kg + 2.4%	18.5¢/kg + 2.1%	15.9¢/kg + 1.8%	13.2¢/kg + 1.5%	10.6¢/kg + 1.2%	7.9¢/kg + 0.9%	5.3¢/kg + 0.6%	2.6¢/kg + 0.3%	Free
2208.20.10	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.20.20	80.8¢/pf. liter	71.8¢/pf. liter	62.8¢/pf. liter	53.8¢/pf. liter	44.9¢/pf. liter	35.9¢/pf. liter	26.9¢/pf. liter	17.9¢/pf. liter	8.9¢/pf. liter	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2208.20.30	29.7¢/pf. liter	26.4¢/pf. liter	23.1¢/pf. liter	19.8¢/pf. liter	16.5¢/pf. liter	13.2¢/pf. liter	9.9¢/pf. liter	6.6¢/pf. liter	3.3¢/pf. liter	Free
2208.20.40	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.20.50	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.20.60	9.5¢/pf. liter	8.4¢/pf. liter	7.4¢/pf. liter	6.3¢/pf. liter	5.3¢/pf. liter	4.2¢/pf. liter	3.1¢/pf. liter	2.1¢/pf. liter	1¢/pf. liter	Free
2208.50.00	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.01	9.9¢/pf. liter	8.8¢/pf. liter	7.7¢/pf. liter	6.6¢/pf. liter	5.5¢/pf. liter	4.4¢/pf. liter	3.3¢/pf. liter	2.2¢/pf. liter	1.1¢/pf. liter	Free
2208.90.05	9¢/pf. liter	8¢/pf. liter	7¢/pf. liter	6¢/pf. liter	5¢/pf. liter	4¢/pf. liter	3¢/pf. liter	2¢/pf. liter	1¢/pf. liter	Free
2208.90.10	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.12	29.7¢/pf. liter	26.4¢/pf. liter	23.1¢/pf. liter	19.8¢/pf. liter	16.5¢/pf. liter	13.2¢/pf. liter	9.9¢/pf. liter	6.6¢/pf. liter	3.3¢/pf. liter	Free
2208.90.14	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.15	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.20	80.8¢/pf. liter	71.8¢/pf. liter	62.8¢/pf. liter	53.8¢/pf. liter	44.9¢/pf. liter	35.9¢/pf. liter	26.9¢/pf. liter	17.9¢/pf. liter	8.9¢/pf. liter	Free
2208.90.25	29.7¢/pf. liter	26.4¢/pf. liter	23.1¢/pf. liter	19.8¢/pf. liter	16.5¢/pf. liter	13.2¢/pf. liter	9.9¢/pf. liter	6.6¢/pf. liter	3.3¢/pf. liter	Free
2208.90.30	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.35	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.40	9.5¢/pf. liter	8.4¢/pf. liter	7.4¢/pf. liter	6.3¢/pf. liter	5.3¢/pf. liter	4.2¢/pf. liter	3.1¢/pf. liter	2.1¢/pf. liter	1¢/pf. liter	Free
2208.90.45	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.50	54¢/pf. liter	48¢/pf. liter	42¢/pf. liter	36¢/pf. liter	30¢/pf. liter	24¢/pf. liter	18¢/pf. liter	12¢/pf. liter	6¢/pf. liter	Free
2208.90.55	29.7¢/pf. liter	26.4¢/pf. liter	23.1¢/pf. liter	19.8¢/pf. liter	16.5¢/pf. liter	13.2¢/pf. liter	9.9¢/pf. liter	6.6¢/pf. liter	3.3¢/pf. liter	Free
2208.90.60	60.8¢/pf. liter	54¢/pf. liter	47.3¢/pf. liter	40.5¢/pf. liter	33.8¢/pf. liter	27¢/pf. liter	20.2¢/pf. liter	13.5¢/pf. liter	6.7¢/pf. liter	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2208.90.65	11.8¢/pf. liter	10.5¢/pf. liter	9.2¢/pf. liter	7.9¢/pf. liter	6.6¢/pf. liter	5.2¢/pf. liter	3.9¢/pf. liter	2.6¢/pf. liter	1.3¢/pf. liter	Free
2208.90.70	29.7¢/pf. liter	26.4¢/pf. liter	23.1¢/pf. liter	19.8¢/pf. liter	16.5¢/pf. liter	13.2¢/pf. liter	9.9¢/pf. liter	6.6¢/pf. liter	3.3¢/pf. liter	Free
2208.90.71	$1.368/pf. liter	$1.216/pf. liter	$1.064/pf. liter	91.2¢/pf. liter	76¢/pf. liter	60.8¢/pf. liter	45.6¢/pf. liter	30.4¢/pf. liter	15.2¢/pf. liter	Free
2208.90.72	60.8¢/pf. liter	54¢/pf. liter	47.3¢/pf. liter	40.5¢/pf. liter	33.8¢/pf. liter	27¢/pf. liter	20.2¢/pf. liter	13.5¢/pf. liter	6.7¢/pf. liter	Free
2208.90.75	60.8¢/pf. liter	54¢/pf. liter	47.3¢/pf. liter	40.5¢/pf. liter	33.8¢/pf. liter	27¢/pf. liter	20.2¢/pf. liter	13.5¢/pf. liter	6.7¢/pf. liter	Free
2208.90.80	29.7¢/pf. liter	26.4¢/pf. liter	23.1¢/pf. liter	19.8¢/pf. liter	16.5¢/pf. liter	13.2¢/pf. liter	9.9¢/pf. liter	6.6¢/pf. liter	3.3¢/pf. liter	Free
2209.00.00	0.7¢/pf. liter	0.6¢/pf. liter	0.5¢/pf. liter	0.4¢/pf. liter	0.4¢/pf. liter	0.3¢/pf. liter	0.2¢/pf. liter	0.1¢/pf. liter	Free	Free
2304.00.00	0.5¢/kg	0.4¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2306.10.00	0.5¢/kg	0.4¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2306.20.00	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free	Free
2306.40.00	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free
2309.90.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2401.10.20	71.4¢/kg	63.5¢/kg	55.5¢/kg	47.6¢/kg	39.7¢/kg	31.7¢/kg	23.8¢/kg	15.8¢/kg	7.9¢/kg	Free
2401.10.40	22.8¢/kg	20.3¢/kg	17.7¢/kg	15.2¢/kg	12.7¢/kg	10.1¢/kg	7.6¢/kg	5¢/kg	2.5¢/kg	Free
2401.10.60	25.2¢/kg	22.4¢/kg	19.6¢/kg	16.8¢/kg	14¢/kg	11.2¢/kg	8.4¢/kg	5.6¢/kg	2.8¢/kg	Free
2401.10.80	31.9¢/kg + 39.5¢/kg on wrapper tobacco content	28.4¢/kg + 35.1¢/kg on wrapper tobacco content	24.8¢/kg + 30.7¢/kg on wrapper tobacco content	21.3¢/kg + 26.3¢/kg on wrapper tobacco content	17.7¢/kg + 21.9¢/kg on wrapper tobacco content	14.2¢/kg + 17.5¢/kg on wrapper tobacco content	10.6¢/kg + 13.1¢/kg on wrapper tobacco content	7.1¢/kg + 8.7¢/kg on wrapper tobacco content	3.5¢/kg + 4.3¢/kg on wrapper tobacco content	Free
2401.20.05	$5.805/kg	$5.16/kg	$4.515/kg	$3.87/kg	$3.225/kg	$2.58/kg	$1.935/kg	$1.29/kg	64.5¢/kg	Free
2401.20.20	$1.233/kg + $1.836/kg on filler tobacco content	$1.096/kg + $1.632/kg on filler tobacco content	95.9¢/kg + $1.428/kg on filler tobacco content	82.2¢/kg + $1.224/kg on filler tobacco content	68.5¢/kg + $1.02/kg on filler tobacco content	54.8¢/kg + 81.6¢/kg on filler tobacco content	41.1¢/kg + 61.2¢/kg on filler tobacco content	27.4¢/kg + 40.8¢/kg on filler tobacco content	13.7¢/kg + 20.4¢/kg on filler tobacco content	Free
2401.20.40	39.6¢/kg + 83.6¢/kg on wrapper tobacco content	35.2¢/kg + 74.3¢/kg on wrapper tobacco content	30.8¢/kg + 65¢/kg on wrapper tobacco content	26.4¢/kg + 55.7¢/kg on wrapper tobacco content	22¢/kg + 46.4¢/kg on wrapper tobacco content	17.6¢/kg + 37.1¢/kg on wrapper tobacco content	13.2¢/kg + 27.8¢/kg on wrapper tobacco content	8.8¢/kg + 18.5¢/kg on wrapper tobacco content	4.4¢/kg + 9.2¢/kg on wrapper tobacco content	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2401.20.60	31.9¢/kg	28.4¢/kg	24.8¢/kg	21.3¢/kg	17.7¢/kg	14.2¢/kg	10.6¢/kg	7.1¢/kg	3.5¢/kg	Free
2401.20.80	39.6¢/kg	35.2¢/kg	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2401.30.60	$1.089/kg	96.8¢/kg	84.7¢/kg	72.6¢/kg	60.5¢/kg	48.4¢/kg	36.3¢/kg	24.2¢/kg	12.1¢/kg	Free
2401.30.90	31.9¢/kg	28.4¢/kg	24.8¢/kg	21.3¢/kg	17.7¢/kg	14.2¢/kg	10.6¢/kg	7.1¢/kg	3.5¢/kg	Free
2402.10.30	$3.789/kg + 9.4%	$3.368/kg + 8.4%	$2.947/kg + 7.3%	$2.526/kg + 6.3%	$2.105/kg + 5.2%	$1.684/kg + 4.2%	$1.263/kg + 3.1%	84.2¢/kg + 2.1%	42.1¢/kg + 1%	Free
2402.10.60	$1.134/kg + 2.7%	$1.008/kg + 2.4%	88.2¢/kg + 2.1%	75.6¢/kg + 1.8%	63¢/kg + 1.5%	50.4¢/kg + 1.2%	37.8¢/kg + 0.9%	25.2¢/kg + 0.6%	12.6¢/kg + 0.3%	Free
2402.10.80	$1.134/kg + 2.7%	$1.008/kg + 2.4%	88.2¢/kg + 2.1%	75.6¢/kg + 1.8%	63¢/kg + 1.5%	50.4¢/kg + 1.2%	37.8¢/kg + 0.9%	25.2¢/kg + 0.6%	12.6¢/kg + 0.3%	Free
2402.20.10	83.3¢/kg + 1.8%	74¢/kg + 1.6%	64.8¢/kg + 1.4%	55.5¢/kg + 1.2%	46.3¢/kg + 1%	37¢/kg + 0.8%	27.7¢/kg + 0.6%	18.5¢/kg + 0.4%	9.2¢/kg + 0.2%	Free
2402.20.80	$2.106/kg + 4.5%	$1.872/kg + 4%	$1.638/kg + 3.5%	$1.404/kg + 3%	$1.17/kg + 2.5%	93.6¢/kg + 2%	70.2¢/kg + 1.5%	46.8¢/kg + 1%	23.4¢/kg + 0.5%	Free
2402.20.90	$2.106/kg + 4.5%	$1.872/kg + 4%	$1.638/kg + 3.5%	$1.404/kg + 3%	$1.17/kg + 2.5%	93.6¢/kg + 2%	70.2¢/kg + 1.5%	46.8¢/kg + 1%	23.4¢/kg + 0.5%	Free
2402.90.00	$2.106/kg + 4.5%	$1.872/kg + 4%	$1.638/kg + 3.5%	$1.404/kg + 3%	$1.17/kg + 2.5%	93.6¢/kg + 2%	70.2¢/kg + 1.5%	46.8¢/kg + 1%	23.4¢/kg + 0.5%	Free
2403.10.00	34.7¢/kg	30.8¢/kg	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.91.20	$1.233/kg	$1.096/kg	95.9¢/kg	82.2¢/kg	68.5¢/kg	54.8¢/kg	41.1¢/kg	27.4¢/kg	13.7¢/kg	Free
2403.91.40	39.6¢/kg	35.2¢/kg	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2403.99.00	34.7¢/kg	30.8¢/kg	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2525.20.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
2526.10.00	0.03¢/kg	0.02¢/kg	0.01¢/kg	Free	Free	Free	Free	Free	Free	Free
2526.20.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
2529.21.00	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2607.00.00	1.5¢/kg on lead content	1.3¢/kg on lead content	1.1¢/kg on lead content	1¢/kg on lead content	0.8¢/kg on lead content	0.6¢/kg on lead content	0.5¢/kg on lead content	0.3¢/kg on lead content	0.1¢/kg on lead content	Free
2608.00.00	1.5¢/kg on lead content	1.3¢/kg on lead content	1.1¢/kg on lead content	1¢/kg on lead content	0.8¢/kg on lead content	0.6¢/kg on lead content	0.5¢/kg on lead content	0.3¢/kg on lead content	0.1¢/kg on lead content	Free
2613.10.00	11.8¢/kg on molybdenum content + 1.7%	10.5¢/kg on molybdenum content + 1.5%	9.2¢/kg on molybdenum content + 1.3%	7.9¢/kg on molybdenum content + 1.1%	6.6¢/kg on molybdenum content + 0.9%	5.2¢/kg on molybdenum content + 0.7%	3.9¢/kg on molybdenum content + 0.5%	2.6¢/kg on molybdenum content + 0.3%	1.3¢/kg on molybdenum content + 0.1%	Free
2613.90.00	15.8¢/kg on molybdenum content	11.8¢/kg on molybdenum content	7.9¢/kg on molybdenum content	3.9¢/kg on molybdenum content	Free	Free	Free	Free	Free	Free
2614.00.30	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2616.90.00	1.3¢/kg on lead content	1¢/kg on lead content	0.6¢/kg on lead content	0.3¢/kg on lead content	Free	Free	Free	Free	Free	Free
2620.11.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
2620.20.00	0.5¢/kg on copper content + 0.5¢/kg on lead content	0.4¢/kg on copper content + 0.4¢/kg on lead content	0.2¢/kg on copper content + 0.2¢/kg on lead content	0.1¢/kg on copper content + 0.1¢/kg on lead content	Free	Free	Free	Free	Free	Free
2620.90.90	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2707.60.00	2.3¢/kg + 10%	1.7¢/kg + 7.5%	1.1¢/kg + 5%	0.5¢/kg + 2.5%	Free	Free	Free	Free	Free	Free
2707.99.30	0.8¢/kg + 2.9%	0.6¢/kg + 2.2%	0.4¢/kg + 1.4%	0.2¢/kg + 0.7%	Free	Free	Free	Free	Free	Free
2707.99.40	1.4¢/kg + 4.8%	1¢/kg + 3.6%	0.7¢/kg + 2.4%	0.3¢/kg + 1.2%	Free	Free	Free	Free	Free	Free
2709.00.10	4.2¢/bbl	3.1¢/bbl	2.1¢/bbl	1¢/bbl	Free	Free	Free	Free	Free	Free
2709.00.20	8.4¢/bbl	6.3¢/bbl	4.2¢/bbl	2.1¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.05	4.2¢/bbl	3.1¢/bbl	2.1¢/bbl	1¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.10	8.4¢/bbl	6.3¢/bbl	4.2¢/bbl	2.1¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.15	42¢/bbl	31.5¢/bbl	21¢/bbl	10.5¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.18	42¢/bbl	31.5¢/bbl	21¢/bbl	10.5¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.20	8.4¢/bbl	6.3¢/bbl	4.2¢/bbl	2.1¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.25	8.4¢/bbl	6.3¢/bbl	4.2¢/bbl	2.1¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.30	67.2¢/bbl	50.4¢/bbl	33.6¢/bbl	16.8¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.35	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2710.00.40	1¢/kg + 4.5%	0.7¢/kg + 3.4%	0.5¢/kg + 2.2%	0.2¢/kg + 1.1%	Free	Free	Free	Free	Free	Free
2710.00.45	8.4¢/bbl	6.3¢/bbl	4.2¢/bbl	2.1¢/bbl	Free	Free	Free	Free	Free	Free
2710.00.60	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2801.30.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2801.30.20	3.5¢/kg	2.6¢/kg	1.7¢/kg	0.8¢/kg	Free	Free	Free	Free	Free	Free
2804.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2804.21.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2804.29.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2804.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2804.40.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2804.61.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2804.69.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2804.69.50	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
2805.11.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
2805.19.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2805.21.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2805.22.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2805.30.00	56.4¢/kg	42.3¢/kg	28.2¢/kg	14.1¢/kg	Free	Free	Free	Free	Free	Free
2805.40.00	11.2¢/kg	8.4¢/kg	5.6¢/kg	2.8¢/kg	Free	Free	Free	Free	Free	Free
2806.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2810.00.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2811.19.10	2.4¢/kg	1.8¢/kg	1.2¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
2811.19.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2811.21.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2811.22.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2811.23.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2811.29.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2812.10.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2812.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2813.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2813.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2815.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2816.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2816.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2816.30.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
2818.10.20	0.5¢/kg	0.4¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2819.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2819.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2820.10.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
2820.90.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
2821.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2821.20.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2822.00.00	2¢/kg	1.5¢/kg	1¢/kg	0.5¢/kg	Free	Free	Free	Free	Free	Free
2823.00.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
2824.10.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
2824.20.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
2824.90.10	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2824.90.50	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2825.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2825.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2825.30.00	12.8%	9.6%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2825.50.10	3.4%	2.5%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
2825.50.20	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2825.50.30	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
2825.60.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2825.70.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2825.90.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2825.90.15	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2825.90.20	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2825.90.30	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2825.90.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2826.11.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2826.11.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2826.19.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
2826.20.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2826.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2827.10.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
2827.31.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2827.33.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2827.34.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2827.35.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2827.36.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2827.37.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2827.38.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2827.39.10	12.8%	9.6%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2827.39.20	10.5¢/kg + 3.2%	7.9¢/kg + 2.4%	5.2¢/kg + 1.6%	2.6¢/kg + 0.8%	Free	Free	Free	Free	Free	Free
2827.39.30	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2827.39.40	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2827.39.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2827.41.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
2827.49.10	12.8%	9.6%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2827.49.50	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2827.51.10	5.2¢/kg	3.9¢/kg	2.6¢/kg	1.3¢/kg	Free	Free	Free	Free	Free	Free
2827.51.20	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
2827.59.05	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2827.59.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2827.59.50	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2827.60.20	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
2827.60.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2828.10.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
2828.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2829.19.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
2829.90.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2829.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2830.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2830.20.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
2830.30.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2830.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2831.10.00	14%	10.5%	7%	3.5%	Free	Free	Free	Free	Free	Free
2831.90.00	14%	10.5%	7%	3.5%	Free	Free	Free	Free	Free	Free
2832.10.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2832.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2832.30.10	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2832.30.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2833.11.50	26¢/t	19.5¢/t	13¢/t	6.5¢/t	Free	Free	Free	Free	Free	Free
2833.21.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2833.23.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2833.24.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2833.25.00	1.1%	0.8%	0.5%	0.2%	Free	Free	Free	Free	Free	Free
2833.26.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2833.27.00	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free	Free
2833.29.10	1.1%	0.8%	0.5%	0.2%	Free	Free	Free	Free	Free	Free
2833.29.30	12.8%	9.6%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2833.29.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2833.30.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2833.40.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2833.40.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2833.40.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2834.10.10	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2834.10.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2834.22.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2834.29.20	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2834.29.50	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2835.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2835.21.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
2835.22.00	1.2%	1.1%	0.9%	0.8%	0.7%	0.5%	0.4%	0.2%	0.1%	Free
2835.23.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
2835.24.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2835.29.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
2835.31.00	1.2%	1.1%	0.9%	0.8%	0.7%	0.5%	0.4%	0.2%	0.1%	Free
2835.39.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
2835.39.50	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
2836.10.00	1.3%	1%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2836.20.00	1%	0.9%	0.8%	0.7%	0.6%	0.4%	0.3%	0.2%	0.1%	Free
2836.40.10	1.5%	1.1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
2836.40.20	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2836.60.00	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2836.70.00	0.4%	0.3%	0.2%	0.1%	Free	Free	Free	Free	Free	Free
2836.91.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2836.92.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2836.93.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2836.99.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2836.99.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2837.20.10	2.6¢/kg	1.9¢/kg	1.3¢/kg	0.6¢/kg	Free	Free	Free	Free	Free	Free
2837.20.50	1.3%	1%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2838.00.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2839.11.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
2839.19.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
2839.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2839.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2840.11.00	0.05¢/kg	0.04¢/kg	0.02¢/kg	0.01¢/kg	Free	Free	Free	Free	Free	Free
2840.19.00	0.05¢/kg	0.04¢/kg	0.02¢/kg	0.01¢/kg	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2840.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2840.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2841.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2841.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2841.30.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
2841.40.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2841.50.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2841.60.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2841.70.10	3.4%	2.5%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
2841.70.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2841.80.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2841.90.10	8.9%	6.7%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2841.90.20	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2841.90.30	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2841.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2842.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2842.90.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
2843.10.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2843.21.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2843.29.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2843.30.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2843.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2844.10.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2844.10.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2844.30.10	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2844.30.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2846.10.00	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2846.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2847.00.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2848.10.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
2849.10.00	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
2849.20.20	0.5¢/kg	0.4¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2849.90.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2849.90.20	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2849.90.30	8.4%	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2849.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2850.00.07	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2850.00.10	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2850.00.20	12.8%	9.6%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2850.00.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2851.00.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
2901.10.20	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2901.10.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2901.24.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2901.24.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2901.29.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2901.29.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2902.11.00	1.6¢/kg + 10%	1.2¢/kg + 7.5%	0.8¢/kg + 5%	0.4¢/kg + 2.5%	Free	Free	Free	Free	Free	Free
2902.19.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2902.50.00	5.9%	4.4%	2.9%	1.4%	Free	Free	Free	Free	Free	Free
2902.60.00	0.8¢/kg + 13.8%	0.6¢/kg + 10.3%	0.4¢/kg + 6.9%	0.2¢/kg + 3.4%	Free	Free	Free	Free	Free	Free
2902.90.30	0.8¢/kg + 13.8%	0.6¢/kg + 10.3%	0.4¢/kg + 6.9%	0.2¢/kg + 3.4%	Free	Free	Free	Free	Free	Free
2902.90.50	8.3%	6.2%	4.1%	2%	Free	Free	Free	Free	Free	Free
2903.11.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2903.12.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2903.13.00	12.7%	9.5%	6.3%	3.1%	Free	Free	Free	Free	Free	Free
2903.14.00	1.8%	1.3%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
2903.15.00	1¢/kg + 2.4%	0.7¢/kg + 1.8%	0.5¢/kg + 1.2%	0.2¢/kg + 0.6%	Free	Free	Free	Free	Free	Free
2903.16.00	1.6¢/kg + 3.6%	1.2¢/kg + 2.7%	0.8¢/kg + 1.8%	0.4¢/kg + 0.9%	Free	Free	Free	Free	Free	Free
2903.19.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2903.19.50	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free
2903.21.00	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
2903.22.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2903.23.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
2903.29.00	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2903.30.05	1.2¢/kg + 2.8%	0.9¢/kg + 2.1%	0.6¢/kg + 1.4%	0.3¢/kg + 0.7%	Free	Free	Free	Free	Free	Free
2903.30.15	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2903.30.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2903.40.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2903.51.00	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2903.59.05	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2903.59.10	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2903.59.15	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2903.59.20	2.9¢/kg + 13.4%	2.2¢/kg + 10%	1.4¢/kg + 6.7%	0.7¢/kg + 3.3%	Free	Free	Free	Free	Free	Free
2903.59.30	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free
2903.59.40	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2903.59.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2903.61.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2903.61.20	12.1%	9.1%	6%	3%	Free	Free	Free	Free	Free	Free
2903.61.30	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2903.62.00	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2903.69.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2903.69.20	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2903.69.25	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2903.69.30	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2903.69.50	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2904.10.10	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2904.10.15	2.9¢/kg + 10%	2.2¢/kg + 7.5%	1.4¢/kg + 5%	0.7¢/kg + 2.5%	Free	Free	Free	Free	Free	Free
2904.10.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2904.10.30	2.9¢/kg + 12.7%	2.2¢/kg + 9.5%	1.4¢/kg + 6.3%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2904.10.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2904.20.10	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2904.20.15	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2904.20.30	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2904.20.35	2.3¢/kg + 10%	1.7¢/kg + 7.5%	1.1¢/kg + 5%	0.5¢/kg + 2.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2904.20.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2904.20.45	2.9¢/kg + 12.7%	2.2¢/kg + 9.5%	1.4¢/kg + 6.3%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2904.20.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2904.90.10	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2904.90.20	8.6%	6.4%	4.3%	2.1%	Free	Free	Free	Free	Free	Free
2904.90.30	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2904.90.35	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
2904.90.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2904.90.45	2.9¢/kg + 12.7%	2.2¢/kg + 9.5%	1.4¢/kg + 6.3%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2904.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.11.20	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free
2905.12.00	11.2%	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
2905.13.00	7%	5.2%	3.5%	1.7%	Free	Free	Free	Free	Free	Free
2905.14.00	7%	5.2%	3.5%	1.7%	Free	Free	Free	Free	Free	Free
2905.15.00	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2905.16.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.17.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2905.19.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.21.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
2905.22.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2905.22.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.22.50	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2905.29.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.31.00	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
2905.32.00	9.2%	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
2905.39.10	9.2%	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
2905.39.20	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2905.39.50	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2905.41.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.42.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.43.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2905.44.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2905.49.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2905.49.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2905.49.50	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2905.50.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
2905.50.50	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2906.11.00	30¢/kg	22.5¢/kg	15¢/kg	7.5¢/kg	Free	Free	Free	Free	Free	Free
2906.12.00	2.9¢/kg + 13.4%	2.2¢/kg + 10%	1.4¢/kg + 6.7%	0.7¢/kg + 3.3%	Free	Free	Free	Free	Free	Free
2906.13.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2906.13.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2906.14.00	5.1%	3.8%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
2906.19.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2906.21.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2906.29.10	13%	9.7%	6.5%	3.2%	Free	Free	Free	Free	Free	Free
2906.29.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2906.29.50	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.11.00	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.12.00	0.8¢/kg + 2.9%	0.6¢/kg + 2.2%	0.4¢/kg + 1.4%	0.2¢/kg + 0.7%	Free	Free	Free	Free	Free	Free
2907.13.00	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2907.15.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2907.15.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2907.19.10	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.19.20	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2907.19.40	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2907.19.50	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.21.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.22.10	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2907.22.50	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.23.00	2.9¢/kg + 10.9%	2.2¢/kg + 8.2%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
2907.29.10	1%	0.7%	0.5%	0.2%	Free	Free	Free	Free	Free	Free
2907.29.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.29.50	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2907.30.00	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2908.10.10	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2908.10.20	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2908.10.25	1.2¢/kg + 15.5%	0.9¢/kg + 11.6%	0.6¢/kg + 7.7%	0.3¢/kg + 3.8%	Free	Free	Free	Free	Free	Free
2908.10.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2908.10.50	1.2¢/kg + 15.5%	0.9¢/kg + 11.6%	0.6¢/kg + 7.7%	0.3¢/kg + 3.8%	Free	Free	Free	Free	Free	Free
2908.20.10	5.1%	3.8%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
2908.20.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2908.20.50	1.2¢/kg + 15.5%	0.9¢/kg + 11.6%	0.6¢/kg + 7.7%	0.3¢/kg + 3.8%	Free	Free	Free	Free	Free	Free
2908.90.10	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2908.90.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2908.90.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2908.90.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2908.90.50	1.2¢/kg + 15.5%	0.9¢/kg + 11.6%	0.6¢/kg + 7.7%	0.3¢/kg + 3.8%	Free	Free	Free	Free	Free	Free
2909.11.00	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
2909.19.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
2909.19.50	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2909.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2909.30.05	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2909.30.07	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2909.30.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2909.30.20	8.3%	6.2%	4.1%	2%	Free	Free	Free	Free	Free	Free
2909.30.30	10.4%	7.8%	5.2%	2.6%	Free	Free	Free	Free	Free	Free
2909.30.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2909.30.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2909.41.00	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2909.42.00	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2909.43.00	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2909.44.00	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2909.49.05	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2909.49.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2909.49.15	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2909.49.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2909.49.50	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2909.50.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2909.50.20	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2909.50.40	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2909.50.45	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2909.50.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2909.60.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2909.60.20	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2909.60.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2910.10.00	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2910.20.00	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
2910.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2910.90.10	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
2910.90.20	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2910.90.50	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2911.00.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
2912.11.00	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2912.12.00	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2912.13.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2912.19.10	5.1%	3.8%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
2912.19.20	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2912.19.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2912.19.40	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2912.19.50	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
2912.21.00	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2912.29.10	6.7%	5%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
2912.29.50	9.1%	6.8%	4.5%	2.2%	Free	Free	Free	Free	Free	Free
2912.30.10	8.4%	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
2912.30.20	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2912.30.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2912.41.00	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2912.42.00	13%	9.7%	6.5%	3.2%	Free	Free	Free	Free	Free	Free
2912.49.10	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2912.49.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2912.49.50	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2912.50.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2912.60.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2913.00.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2913.00.50	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
2914.11.10	0.1¢/kg + 14.9%	0.1¢/kg + 11.2%	7.4%	3.7%	Free	Free	Free	Free	Free	Free
2914.12.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2914.13.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2914.19.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2914.21.20	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
2914.22.10	1.9¢/kg + 10%	1.4¢/kg + 7.5%	0.9¢/kg + 5%	0.4¢/kg + 2.5%	Free	Free	Free	Free	Free	Free
2914.22.20	4.7%	3.5%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2914.23.00	5.1%	3.8%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
2914.29.10	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2914.29.50	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2914.30.00	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2914.41.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2914.49.10	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2914.49.50	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2914.50.20	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2914.50.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2914.61.00	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2914.69.10	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2914.69.20	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2914.69.50	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2914.70.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2914.70.20	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2914.70.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2915.11.00	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2915.12.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
2915.13.10	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2915.13.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2915.21.00	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
2915.22.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2915.23.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2915.24.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2915.29.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
2915.31.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2915.32.00	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
2915 33.00	12.7%	9.5%	6.3%	3.1%	Free	Free	Free	Free	Free	Free
2915.34.00	12.7%	9.5%	6.3%	3.1%	Free	Free	Free	Free	Free	Free
2915.35.00	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2915.39.10	18.8%	14.1%	9.4%	4.7%	Free	Free	Free	Free	Free	Free
2915.39.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2915.39.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2915.39.35	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2915.39.40	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free
2915.39.45	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2915.39.47	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2915.39.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2915.40.10	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
2915.40.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2915.40.30	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2915.40.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2915.50.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2915.50.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2915.50.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2915.60.10	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2915.60.50	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
2915.70.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2915.90.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2915.90.15	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2915.90.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2915.90.50	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
2916.11.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2916.12.10	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2916.12.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2916.13.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2916.14.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2916.15.10	3.9¢/kg + 4%	2.9¢/kg + 3%	1.9¢/kg + 2%	0.9¢/kg + 1%	Free	Free	Free	Free	Free	Free
2916.15.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
2916.19.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2916.19.20	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2916.19.30	1.9¢/kg + 4%	1.4¢/kg + 3%	0.9¢/kg + 2%	0.4¢/kg + 1%	Free	Free	Free	Free	Free	Free
2916.19.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2916.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2916.31.10	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2916.31.20	11.7%	8.8%	5.8%	2.9%	Free	Free	Free	Free	Free	Free
2916.31.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2916.31.50	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2916.32.10	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2916.32.20	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2916.33.10	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2916.33.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2916.33.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2916.33.50	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2916.39.10	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2916.39.15	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2916.39.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2916.39.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2916.39.50	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2917.11.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2917.12.10	0.1¢/kg + 15.8%	0.1¢/kg + 11.8%	7.9%	3.9%	Free	Free	Free	Free	Free	Free
2917.12.20	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2917.12.50	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2917.13.00	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2917.14.10	1.7¢/kg + 12.4%	1.3¢/kg + 9.3%	0.8¢/kg + 6.2%	0.4¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2917.14.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2917.19.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2917.19.15	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2917.19.17	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2917.19.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2917.19.25	2.9¢/kg + 13.4%	2.2¢/kg + 10%	1.4¢/kg + 6.7%	0.7¢/kg + 3.3%	Free	Free	Free	Free	Free	Free
2917.19.30	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2917.19.40	2.9¢/kg + 10%	2.2¢/kg + 7.5%	1.4¢/kg + 5%	0.7¢/kg + 2.5%	Free	Free	Free	Free	Free	Free
2917.19.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2917.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2917.31.00	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2917.32.00	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2917.33.00	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2917.34.00	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2917.35.00	2.3¢/kg + 7.7%	2¢/kg + 6.8%	1.8¢/kg + 6%	1.5¢/kg + 5.1%	1.3¢/kg + 4.3%	1¢/kg + 3.4%	0.7¢/kg + 2.5%	0.5¢/kg + 1.7%	0.2¢/kg + 0.8%	Free
2917.36.00	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2917.37.00	2.3¢/kg + 10.4%	1.7¢/kg + 7.8%	1.1¢/kg + 5.2%	0.5¢/kg + 2.6%	Free	Free	Free	Free	Free	Free
2917.39.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2917.39.15	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2917.39.17	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2917.39.20	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2917.39.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2917.39.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2918.11.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2918.11.50	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
2918.13.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
2918.14.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2918.15.10	6.7%	5%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
2918.15.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2918.16.10	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2918.16.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2918.17.10	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2918.17.50	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2918.19.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2918.19.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2918.19.30	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2918.19.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2918.21.10	6.9%	5.2%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2918.21.50	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2918.22.10	8.1%	6.1%	4%	2%	Free	Free	Free	Free	Free	Free
2918.22.50	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2918.23.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2918.23.20	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2918.23.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2918.23.50	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2918.29.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2918.29.20	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2918.29.22	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2918.29.30	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
2918.29.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2918.29.50	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2918.30.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2918.30.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2918.30.30	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2918.30.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2918.90.05	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2918.90.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2918.90.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2918.90.30	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2918.90.35	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2918.90.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2918.90.45	2.9¢/kg + 14.3%	2.2¢/kg + 10.7%	1.4¢/kg + 7.1%	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2918.90.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2919.00.10	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2919.00.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2919.00.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2920.10.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2920.10.20	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2920.10.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2920.90.10	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2920.90.20	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2920.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2921.11.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
2921.12.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
2921.19.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
2921.19.50	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
2921.21.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2921.22.05	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2921.22.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2921.22.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2921.29.00	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2921.30.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.30.20	2.9¢/kg + 13.4%	2.2¢/kg + 10%	1.4¢/kg + 6.7%	0.7¢/kg + 3.3%	Free	Free	Free	Free	Free	Free
2921.30.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2921.41.10	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
2921.41.20	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.42.10	9.9%	7.4%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
2921.42.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2921.42.25	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2921.42.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.42.50	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.43.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2921.43.15	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.43.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.43.50	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.44.10	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2921.44.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2921.44.50	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.45.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2921.45.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2921.45.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.45.50	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.49.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2921.49.20	13.2%	9.9%	6.6%	3.3%	Free	Free	Free	Free	Free	Free
2921.49.30	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2921.49.35	13.2%	9.9%	6.6%	3.3%	Free	Free	Free	Free	Free	Free
2921.49.40	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2921.49.45	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.49.50	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.51.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2921.51.20	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2921.51.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.51.50	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.59.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2921.59.20	8.4%	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
2921.59.30	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2921.59.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2921.59.50	1.9¢/kg + 15%	1.4¢/kg + 11.2%	0.9¢/kg + 7.5%	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2922.11.00	9%	6.7%	4.5%	2.2%	Free	Free	Free	Free	Free	Free
2922.12.00	9%	6.7%	4.5%	2.2%	Free	Free	Free	Free	Free	Free
2922.13.00	9%	6.7%	4.5%	2.2%	Free	Free	Free	Free	Free	Free
2922.19.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2922.19.12	10.7%	8%	5.3%	2.6%	Free	Free	Free	Free	Free	Free
2922.19.15	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
2922.19.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2922.19.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2922.19.40	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2922.19.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2922.21.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2922.21.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2922.21.50	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2922.22.10	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2922.22.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2922.22.50	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2922.29.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2922.29.15	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2922.29.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2922.29.23	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2922.29.25	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2922.29.27	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2922.29.29	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2922.29.35	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2922.29.50	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2922.30.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2922.30.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2922.30.30	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2922.30.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2922.41.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2922.42.10	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
2922.42.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2922.49.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2922.49.20	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2922.49.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2922.49.35	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2922.49.40	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2922.49.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2922.50.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2922.50.13	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2922.50.15	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2922.50.17	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2922.50.19	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2922.50.25	6.9%	5.2%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2922.50.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2922.50.40	2.9¢/kg + 12.4%	2.2¢/kg + 9.3%	1.4¢/kg + 6.2%	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2922.50.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2923.10.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
2923.20.00	1.9¢/kg + 4%	1.7¢/kg + 3.6%	1.5¢/kg + 3.1%	1.3¢/kg + 2.7%	1.1¢/kg + 2.2%	0.8¢/kg + 1.8%	0.6¢/kg + 1.3%	0.4¢/kg + 0.9%	0.2¢/kg + 0.4%	Free
2923.90.00	4.9%	3.7%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2924.10.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
2924.10.50	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
2924.21.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2924.21.15	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2924.21.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2924.21.30	2.9¢/kg + 14.4%	2.2¢/kg + 10.8%	1.4¢/kg + 7.2%	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2924.21.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2924.29.05	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
2924.29.07	9.5%	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2924.29.09	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2924.29.11	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2924.29.14	11.2%	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
2924.29.15	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2924.29.19	10.3%	7.7%	5.1%	2.5%	Free	Free	Free	Free	Free	Free
2924.29.25	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2924.29.35	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2924.29.39	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2924.29.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2924.29.45	2.9¢/kg + 14.4%	2.2¢/kg + 10.8%	1.4¢/kg + 7.2%	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2924.29.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2925.11.00	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2925.19.10	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2925.19.20	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
2925.19.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2925.20.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2925.20.20	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2925.20.30	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
2925.20.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2926.10.00	9.2%	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
2926.90.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2926.90.21	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2926.90.23	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2926.90.25	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2926.90.27	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2926.90.35	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2926.90.40	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2927.00.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2927.00.15	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2927.00.20	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2927.00.30	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2927.00.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2927.00.50	15.9%	11.9%	7.9%	3.9%	Free	Free	Free	Free	Free	Free
2928.00.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2928.00.20	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2928.00.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2928.00.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2929.10.10	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2929.10.15	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
2929.10.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2929.10.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2929.10.50	2.3¢/kg + 12.9%	1.7¢/kg + 9.7%	1.1¢/kg + 6.4%	0.5¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2929.90.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2929.90.20	2.3¢/kg + 12.9%	1.7¢/kg + 9.7%	1.1¢/kg + 6.4%	0.5¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2929.90.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2930.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2930.20.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2930.20.20	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2930.20.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2930.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2930.40.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2930.90.10	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2930.90.20	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2930.90.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2930.90.40	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2930.90.45	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2930.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2931.00.10	2.9¢/kg + 10%	2.2¢/kg + 7.5%	1.4¢/kg + 5%	0.7¢/kg + 2.5%	Free	Free	Free	Free	Free	Free
2931.00.15	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2931.00.22	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2931.00.25	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2931.00.27	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2931.00.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2931.00.40	14.1%	10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
2931.00.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2932.11.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2932.13.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2932.19.10	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2932.19.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2932.21.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
2932.29.10	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2932.29.20	5.9%	4.4%	2.9%	1.4%	Free	Free	Free	Free	Free	Free
2932.29.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2932.29.40	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2932.29.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2932.90.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2932.90.20	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2932.90.30	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
2932.90.35	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2932.90.37	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2932.90.39	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2932.90.41	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2932.90.45	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2932.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.11.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2933.19.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2933.19.25	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.19.30	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2933.19.35	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2933.19.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.19.42	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.19.45	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.19.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2933.21.00	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2933.29.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2933.29.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2933.29.30	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.29.40	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.29.45	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.29.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2933.39.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2933.39.21	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2933.39.23	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2933.39.25	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.39.27	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2933.39.30	13.2%	9.9%	6.6%	3.3%	Free	Free	Free	Free	Free	Free
2933.39.35	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2933.39.47	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.39.50	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.40.10	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
2933.40.15	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2933.40.20	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2933.40.25	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2933.40.30	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2933.40.45	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2933.40.50	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.51.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
2933.51.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.59.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.59.15	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2933.59.18	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2933.59.20	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
2933.59.23	7.3%	5.5%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2933.59.25	7.3%	5.5%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
2933.59.26	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2933.59.27	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2933.59.28	13.2%	9.9%	6.6%	3.3%	Free	Free	Free	Free	Free	Free
2933.59.29	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2933.59.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.59.35	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.59.40	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.59.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2933.61.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.69.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.71.00	2.6¢/kg + 8%	1.9¢/kg + 6%	1.3¢/kg + 4%	0.6¢/kg + 2%	Free	Free	Free	Free	Free	Free
2933.79.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.79.15	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.79.20	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2933.79.30	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
2933.79.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2933.90.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2933.90.15	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2933.90.18	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2933.90.20	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.90.25	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2933.90.26	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2933.90.27	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2933.90.28	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2933.90.29	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2933.90.30	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2933.90.31	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2933.90.32	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2933.90.33	13.2%	9.9%	6.6%	3.3%	Free	Free	Free	Free	Free	Free
2933.90.34	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2933.90.35	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
2933.90.36	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2933.90.37	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.90.39	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.90.40	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.90.47	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
2933.90.48	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2933.90.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2934.10.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2934.10.20	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2934.10.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2934.20.10	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
2934.20.15	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2934.20.20	0.7¢/kg + 10%	0.5¢/kg + 7.5%	0.3¢/kg + 5%	0.1¢/kg + 2.5%	Free	Free	Free	Free	Free	Free
2934.20.30	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2934.20.35	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2934.20.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2934.20.50	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2934.30.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2934.30.20	13.2%	9.9%	6.6%	3.3%	Free	Free	Free	Free	Free	Free
2934.30.30	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2934.30.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2934.30.50	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2934.90.05	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2934.90.06	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2934.90.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2934.90.12	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
2934.90.14	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2934.90.16	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2934.90.18	8.5%	6.4%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
2934.90.20	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2934.90.25	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2934.90.40	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2934.90.45	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2934.90.47	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2934.90.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2935.00.05	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2935.00.10	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2935.00.15	5.9%	4.4%	2.9%	1.4%	Free	Free	Free	Free	Free	Free
2935.00.20	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
2935.00.31	8.6%	6.4%	4.3%	2.1%	Free	Free	Free	Free	Free	Free
2935.00.33	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
2935.00.35	9.2%	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
2935.00.37	9.2%	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
2935.00.39	8.6%	6.4%	4.3%	2.1%	Free	Free	Free	Free	Free	Free
2935.00.43	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2935.00.45	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2935.00.47	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2935.00.50	2.9¢/kg + 14.4%	2.2¢/kg + 10.8%	1.4¢/kg + 7.2%	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2936.10.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
2936.21.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2936.22.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2936.23.00	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2936.24.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2936.25.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2936.26.00	12.9%	9.7%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2936.27.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2936.28.00	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
2936.29.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2936.29.15	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2936.29.20	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2936.29.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2936.90.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2937.10.00	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
2937.21.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2937.22.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2937.29.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
2937.91.00	1.6%	1.4%	1.2%	1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
2937.92.10	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2937.92.20	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2937.92.30	6.9%	5.2%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2937.99.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2937.99.50	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
2938.10.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
2938.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2939.10.10	9.2%	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
2939.10.20	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
2939.10.50	2.8¢/g	2.1¢/g	1.4¢/g	0.7¢/g	Free	Free	Free	Free	Free	Free
2939.30.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
2939.40.10	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
2939.40.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2939.50.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2939.60.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2939.70.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2939.90.10	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
2939.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2940.00.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2941.10.10	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2941.10.20	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2941.10.30	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
2941.10.50	5.9%	4.4%	2.9%	1.4%	Free	Free	Free	Free	Free	Free
2941.20.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2941.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2941.40.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2941.50.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2941.90.10	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
2941.90.30	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2941.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2942.00.05	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
2942.00.10	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2942.00.20	12.8%	9.6%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2942.00.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3001.10.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
3001.20.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
3002.90.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
3003.10.00	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
3003.20.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
3003.31.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
3003.39.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
3003.39.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3003.40.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
3003.90.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3004.10.10	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
3004.10.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
3004.20.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
3004.31.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
3004.32.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3004.39.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
3004.40.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
3004.50.10	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
3004.50.20	14.5%	12.9%	11.3%	9.7%	8.1%	6.4%	4.8%	3.2%	1.6%	Free
3004.50.30	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
3004.50.40	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
3004.50.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3004.90.30	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
3004.90.60	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
3005.10.10	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
3005.10.50	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
3005.90.10	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3005.90.50	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
3006.10.00	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
3006.30.50	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
3006.40.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3006.50.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3006.60.00	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
3201.90.10	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
3201.90.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3202.10.10	11.4%	8.5%	5.7%	2.8%	Free	Free	Free	Free	Free	Free
3202.10.50	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
3202.90.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3203.00.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3204.11.10	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
3204.11.15	11.3%	8.5%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
3204.11.20	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.11.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.12.10	11.3%	8.5%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
3204.12.20	7.3%	5.5%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
3204.12.30	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
3204.12.40	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.12.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.13.10	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
3204.13.20	11.3%	8.5%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
3204.13.25	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.13.30	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.13.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.14.10	11.3%	8.5%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
3204.14.20	7.6%	5.7%	3.8%	1.9%	Free	Free	Free	Free	Free	Free
3204.14.25	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.14.30	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.14.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.15.10	2.6¢/kg + 11.5%	1.9¢/kg + 8.6%	1.3¢/kg + 5.7%	0.6¢/kg + 2.8%	Free	Free	Free	Free	Free	Free
3204.15.20	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.15.30	6.7%	5%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
3204.15.35	11.3%	8.5%	5.6%	2.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3204.15.40	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.15.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.16.10	11.3%	8.5%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
3204.16.20	6.6%	4.9%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
3204.16.30	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.16.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.17.10	6.6%	4.9%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
3204.17.20	14%	10.5%	7%	3.5%	Free	Free	Free	Free	Free	Free
3204.17.30	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.17.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.19.11	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
3204.19.15	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.19.19	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.19.30	2.6¢/kg + 11.2%	1.9¢/kg + 8.4%	1.3¢/kg + 5.6%	0.6¢/kg + 2.8%	Free	Free	Free	Free	Free	Free
3204.19.35	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3204.19.40	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3204.19.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.20.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3204.20.50	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
3204.90.00	4.7%	3.5%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3205.00.10	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
3205.00.50	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
3206.10.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3206.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3206.30.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3206.41.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
3206.42.00	1.7%	1.3%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
3206.43.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3206.49.10	4.7%	3.5%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3206.49.20	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
3206.49.30	1%	0.7%	0.5%	0.2%	Free	Free	Free	Free	Free	Free
3206.49.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3206.50.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3207.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3207.20.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3207.30.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3207.40.10	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3207.40.50	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
3208.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3208.20.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3208.90.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3209.10.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3209.90.00	4.7%	3.5%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3210.00.00	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
3211.00.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3212.10.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
3212.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3213.10.00	5.2% on the entire set	3.9% on the entire set	2.6% on the entire set	1.3% on the entire set	Free	Free	Free	Free	Free	Free
3213.90.00	0.4¢/piece + 2.2%	0.3¢/piece + 1.6%	0.2¢/piece + 1.1%	0.1¢/piece + 0.5%	Free	Free	Free	Free	Free	Free
3214.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3214.90.50	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
3215.11.00	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
3215.19.00	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
3215.90.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3215.90.50	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
3301.12.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3301.13.00	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
3301.19.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3301.24.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
3301.29.10	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
3301.29.20	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
3301.30.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3302.10.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3302.10.20	5.9¢/kg + 2.7%	5.2¢/kg + 2.4%	4.6¢/kg + 2.1%	3.9¢/kg + 1.8%	3.3¢/kg + 1.5%	2.6¢/kg + 1.2%	1.9¢/kg + 0.9%	1.3¢/kg + 0.6%	0.6¢/kg + 0.3%	Free
3302.10.30	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
3302.90.10	9.9¢/kg + 3.6%	8.8¢/kg + 3.2%	7.7¢/kg + 2.8%	6.6¢/kg + 2.4%	5.5¢/kg + 2%	4.4¢/kg + 1.6%	3.3¢/kg + 1.2%	2.2¢/kg + 0.8%	1.1¢/kg + 0.4%	Free
3302.90.20	9.9¢/kg + 4.2%	8.8¢/kg + 3.7%	7.7¢/kg + 3.2%	6.6¢/kg + 2.8%	5.5¢/kg + 2.3%	4.4¢/kg + 1.8%	3.3¢/kg + 1.4%	2.2¢/kg + 0.9%	1.1¢/kg + 0.4%	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3303.00.20	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
3303.00.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
3304.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3304.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3304.30.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3304.91.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3304.99.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3305.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3305.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3305.30.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3305.90.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3306.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3306.90.00	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
3307.10.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3307.10.20	9.9¢/kg + 4%	8.8¢/kg + 3.6%	7.7¢/kg + 3.1%	6.6¢/kg + 2.7%	5.5¢/kg + 2.2%	4.4¢/kg + 1.8%	3.3¢/kg + 1.3%	2.2¢/kg + 0.9%	1.1¢/kg + 0.4%	Free
3307.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3307.30.10	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3307.30.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3307.41.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
3307.49.00	9.9¢/kg + 3.6%	8.8¢/kg + 3.2%	7.7¢/kg + 2.8%	6.6¢/kg + 2.4%	5.5¢/kg + 2%	4.4¢/kg + 1.6%	3.3¢/kg + 1.2%	2.2¢/kg + 0.8%	1.1¢/kg + 0.4%	Free
3307.90.00	4.8%	4.3%	3.7%	3.2%	2.7%	2.1%	1.6%	1%	0.5%	Free
3401.11.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3401.11.50	0.7¢/kg + 2.4%	0.5¢/kg + 1.8%	0.3¢/kg + 1.2%	0.1¢/kg + 0.6%	Free	Free	Free	Free	Free	Free
3401.19.00	0.7¢/kg + 2.3%	0.5¢/kg + 1.7%	0.3¢/kg + 1.1%	0.1¢/kg + 0.5%	Free	Free	Free	Free	Free	Free
3401.20.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
3402.11.10	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
3402.11.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3402.12.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
3402.12.50	4.1%	3.1%	2%	1%	Free	Free	Free	Free	Free	Free
3402.13.10	5.8%	4.3%	2.9%	1.4%	Free	Free	Free	Free	Free	Free
3402.13.20	1.7¢/kg + 3.6%	1.3¢/kg + 2.7%	0.8¢/kg + 1.8%	0.4¢/kg + 0.9%	Free	Free	Free	Free	Free	Free
3402.13.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3402.19.10	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
3402.19.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3402.20.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
3402.90.10	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
3402.90.30	6.1%	4.6%	3%	1.5%	Free	Free	Free	Free	Free	Free
3402.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3403.11.20	0.4¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free	Free	Free	Free	Free	Free
3403.11.40	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3403.11.50	1.1%	0.8%	0.5%	0.2%	Free	Free	Free	Free	Free	Free
3403.19.10	0.4¢/liter	0.3¢/liter	0.2¢/liter	0.1¢/liter	Free	Free	Free	Free	Free	Free
3403.19.50	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3403.91.10	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3403.91.50	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
3403.99.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
3404.20.00	9.8%	7.3%	4.9%	2.4%	Free	Free	Free	Free	Free	Free
3404.90.10	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
3405.10.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
3405.20.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
3405.30.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
3405.40.00	0.7¢/kg + 2.3%	0.5¢/kg + 1.7%	0.3¢/kg + 1.1%	0.1¢/kg + 0.5%	Free	Free	Free	Free	Free	Free
3405.90.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
3406.00.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3407.00.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3501.10.10	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free	Free
3501.90.20	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
3501.90.50	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free	Free
3502.10.10	53.5¢/kg	47.6¢/kg	41.6¢/kg	35.7¢/kg	29.7¢/kg	23.8¢/kg	17.8¢/kg	11.9¢/kg	5.9¢/kg	Free
3502.10.50	10.8¢/kg	9.6¢/kg	8.4¢/kg	7.2¢/kg	6¢/kg	4.8¢/kg	3.6¢/kg	2.4¢/kg	1.2¢/kg	Free
3503.00.10	1.4¢/kg + 1.9%	1¢/kg + 1.4%	0.7¢/kg + 0.9%	0.3¢/kg + 0.4%	Free	Free	Free	Free	Free	Free
3503.00.20	1.4¢/kg + 4%	1¢/kg + 3%	0.7¢/kg + 2%	0.3¢/kg + 1%	Free	Free	Free	Free	Free	Free
3503.00.50	3.5¢/kg + 4.8%	2.6¢/kg + 3.6%	1.7¢/kg + 2.4%	0.8¢/kg + 1.2%	Free	Free	Free	Free	Free	Free
3504.00.10	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3504.00.50	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3505.10.00	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
3505.20.00	2¢/kg + 2.8%	1.5¢/kg + 2.1%	1¢/kg + 1.4%	0.5¢/kg + 0.7%	Free	Free	Free	Free	Free	Free
3506.10.10	3.5¢/kg + 4.8%	2.6¢/kg + 3.6%	1.7¢/kg + 2.4%	0.8¢/kg + 1.2%	Free	Free	Free	Free	Free	Free
3506.10.50	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
3506.91.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
3506.99.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
3507.90.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3603.00.30	94.4¢/1000 m	70.8¢/1000 m	47.2¢/1000 m	23.6¢/1000 m	Free	Free	Free	Free	Free	Free
3603.00.60	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3603.00.90	0.1¢ each	Free	Free	Free	Free	Free	Free	Free	Free	Free
3604.10.00	8.8¢/kg, including the weight of all coverings, packing material and wrappings	6.6¢/kg, including the weight of all coverings, packing material and wrappings	4.4¢/kg, including the weight of all coverings, packing material and wrappings	2.2¢/kg, including the weight of all coverings, packing material and wrappings	Free	Free	Free	Free	Free	Free
3604.90.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
3606.90.30	38.8¢/kg + 2%	29.1¢/kg + 1.5%	19.4¢/kg + 1%	9.7¢/kg + 0.5%	Free	Free	Free	Free	Free	Free
3606.90.60	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3701.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3701.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3701.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3701.91.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3701.99.30	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
3701.99.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.31.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.32.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.39.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.41.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.42.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.43.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3702.44.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.51.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.52.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.53.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.54.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.91.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.92.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.93.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3702.95.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3703.10.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3703.10.60	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
3703.20.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3703.20.60	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
3703.90.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3703.90.60	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
3706.10.30	0.5¢/m	0.3¢/m	0.2¢/m	0.1¢/m	Free	Free	Free	Free	Free	Free
3707.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3707.90.30	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
3707.90.60	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
3801.10.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3801.30.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
3801.90.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
3802.10.00	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
3802.90.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3802.90.20	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
3802.90.50	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
3804.00.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3805.10.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3805.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3806.10.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3806.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3806.30.00	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3806.90.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3807.00.00	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
3808.10.10	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3808.10.20	1.4¢/kg + 7.7%	1¢/kg + 5.8%	0.7¢/kg + 3.8%	0.3¢/kg + 1.9%	Free	Free	Free	Free	Free	Free
3808.10.30	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.10.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.20.10	1.4¢/kg + 7.7%	1¢/kg + 5.8%	0.7¢/kg + 3.8%	0.3¢/kg + 1.9%	Free	Free	Free	Free	Free	Free
3808.20.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3808.20.30	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.20.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.30.10	1.4¢/kg + 7.7%	1¢/kg + 5.8%	0.7¢/kg + 3.8%	0.3¢/kg + 1.9%	Free	Free	Free	Free	Free	Free
3808.30.20	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.30.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.40.10	1.4¢/kg + 7.7%	1¢/kg + 5.8%	0.7¢/kg + 3.8%	0.3¢/kg + 1.9%	Free	Free	Free	Free	Free	Free
3808.40.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.90.10	1.4¢/kg + 7.7%	1¢/kg + 5.8%	0.7¢/kg + 3.8%	0.3¢/kg + 1.9%	Free	Free	Free	Free	Free	Free
3808.90.20	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3808.90.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3809.10.00	3.5¢/kg + 4.8%	2.6¢/kg + 3.6%	1.7¢/kg + 2.4%	0.8¢/kg + 1.2%	Free	Free	Free	Free	Free	Free
3809.91.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3809.92.10	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
3809.92.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3809.99.10	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
3809.99.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3810.10.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3810.90.10	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3810.90.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3811.11.10	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
3811.11.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3811.19.00	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3811.21.00	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
3811.29.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3811.90.00	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3812.10.10	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3812.10.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3812.20.10	0.1¢/kg + 14.1%	0.1¢/kg + 10.6%	7%	3.5%	Free	Free	Free	Free	Free	Free
3812.20.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3812.30.10	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3812.30.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3813.00.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3814.00.10	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3814.00.20	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3814.00.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3815.90.10	5.9%	4.4%	2.9%	1.4%	Free	Free	Free	Free	Free	Free
3815.90.20	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
3815.90.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3816.00.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3817.10.00	0.8¢/kg + 13.8%	0.6¢/kg + 10.3%	0.4¢/kg + 6.9%	0.2¢/kg + 3.4%	Free	Free	Free	Free	Free	Free
3817.20.00	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3819.00.00	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3820.00.00	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
3821.00.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3822.00.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3823.10.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3823.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3823.30.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3823.40.10	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3823.40.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3823.60.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3823.90.19	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3823.90.22	2.9¢/kg + 12.9%	2.2¢/kg + 9.7%	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
3823.90.29	2.9¢/kg + 10.8%	2.2¢/kg + 8.1%	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3823.90.31	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
3823.90.32	14%	10.5%	7%	3.5%	Free	Free	Free	Free	Free	Free
3823.90.33	10.5¢/kg + 3.2%	7.9¢/kg + 2.4%	5.2¢/kg + 1.6%	2.6¢/kg + 0.8%	Free	Free	Free	Free	Free	Free
3823.90.34	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
3823.90.35	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3823.90.36	5.9%	4.4%	2.9%	1.4%	Free	Free	Free	Free	Free	Free
3823.90.40	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
3823.90.45	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
3823.90.46	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free
3823.90.47	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
3823.90.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
3901.10.00	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
3901.20.00	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
3901.30.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
3901.90.50	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3902.10.00	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
3902.20.50	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3902.30.00	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3902.90.00	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3903.11.00	0.7¢/kg + 7.3%	0.5¢/kg + 5.5%	0.3¢/kg + 3.6%	0.1¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
3903.19.00	0.7¢/kg + 7.3%	0.5¢/kg + 5.5%	0.3¢/kg + 3.6%	0.1¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
3903.20.00	0.8¢/kg + 7.2%	0.6¢/kg + 5.4%	0.4¢/kg + 3.6%	0.2¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
3903.30.00	0.5¢/kg + 7.5%	0.4¢/kg + 5.6%	0.2¢/kg + 3.7%	0.1¢/kg + 1.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3903.90.10	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
3903.90.50	0.7¢/kg + 7.3%	0.5¢/kg + 5.5%	0.3¢/kg + 3.6%	0.1¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
3904.10.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3904.21.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3904.22.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
3904.30.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
3904.40.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
3904.50.00	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3904.61.00	1.2¢/kg + 4.5%	0.9¢/kg + 3.4%	0.6¢/kg + 2.2%	0.3¢/kg + 1.1%	Free	Free	Free	Free	Free	Free
3904.69.50	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3904.90.50	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3905.11.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3905.19.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3905.20.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3905.90.10	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3905.90.50	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
3906.10.00	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
3906.90.20	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
3906.90.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3907.10.00	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3907.20.00	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3907.30.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3907.40.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3907.50.00	2.4¢/kg + 7.2%	1.8¢/kg + 5.4%	1.2¢/kg + 3.6%	0.6¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
3907.60.00	2.4¢/kg + 7.2%	1.8¢/kg + 5.4%	1.2¢/kg + 3.6%	0.6¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
3907.91.50	0.7¢/kg + 7.2%	0.5¢/kg + 5.4%	0.3¢/kg + 3.6%	0.1¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
3907.99.00	2.4¢/kg + 7.2%	1.8¢/kg + 5.4%	1.2¢/kg + 3.6%	0.6¢/kg + 1.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3908.10.00	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
3908.90.00	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3909.10.00	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
3909.20.00	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
3909.30.00	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
3909.40.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
3909.50.20	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
3909.50.50	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
3910.00.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
3911.10.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3911.90.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
3911.90.30	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3911.90.50	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3912.11.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
3912.12.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
3912.20.00	4.1%	3.1%	2%	1%	Free	Free	Free	Free	Free	Free
3912.31.00	5.1%	3.8%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
3912.39.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3912.90.00	4.1%	3.1%	2%	1%	Free	Free	Free	Free	Free	Free
3913.10.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
3913.90.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
3913.90.50	1.7¢/kg + 6.1%	1.3¢/kg + 4.6%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
3914.00.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
3916.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3916.20.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3916.90.10	16.8¢/kg	14.9¢/kg	13¢/kg	11.2¢/kg	9.3¢/kg	7.4¢/kg	5.6¢/kg	3.7¢/kg	1.8¢/kg	Free
3916.90.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3916.90.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
3916.90.50	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3917.10.10	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
3917.10.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3917.21.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3917.22.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3917.23.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3917.29.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3917.31.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3917.32.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3917.33.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3917.39.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3917.40.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3918.10.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3918.10.20	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3918.10.31	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3918.10.32	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
3918.10.40	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3918.10.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3918.90.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3918.90.20	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
3918.90.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3918.90.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3919.10.10	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
3919.10.20	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3919.90.10	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
3919.90.50	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3920.10.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.20.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.30.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3920.41.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3920.42.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3920.42.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.51.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3920.51.50	16.8¢/kg	14.9¢/kg	13¢/kg	11.2¢/kg	9.3¢/kg	7.4¢/kg	5.6¢/kg	3.7¢/kg	1.8¢/kg	Free
3920.59.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3920.59.50	16.8¢/kg	14.9¢/kg	13¢/kg	11.2¢/kg	9.3¢/kg	7.4¢/kg	5.6¢/kg	3.7¢/kg	1.8¢/kg	Free
3920.61.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3920.62.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.63.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.63.20	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3920.69.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3920.71.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
3920.72.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3920.73.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
3920.79.10	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
3920.79.50	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
3920.91.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.92.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.93.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3920.94.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3920.99.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3920.99.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3920.99.50	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
3921.11.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3921.12.11	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3921.12.15	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
3921.12.19	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3921.12.50	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
3921.13.11	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3921.13.15	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
3921.13.19	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3921.13.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3921.14.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
3921.19.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
3921.90.11	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3921.90.15	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
3921.90.19	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3921.90.21	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
3921.90.25	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
3921.90.29	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
3921.90.40	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3921.90.50	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
3922.10.00	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
3922.20.00	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
3922.90.00	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
3923.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3923.21.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3923.29.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3923.30.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3923.40.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3923.50.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3923.90.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3924.10.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
3924.10.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
3924.10.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3924.10.50	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
3924.90.10	3%	2.6%	2.3%	2%	1.6%	1.3%	1%	0.6%	0.3%	Free
3924.90.20	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
3924.90.50	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
3925.10.00	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
3925.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3925.30.10	3%	2.6%	2.3%	2%	1.6%	1.3%	1%	0.6%	0.3%	Free
3925.30.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3925.90.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3926.10.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3926.20.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
3926.20.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
3926.20.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3926.20.40	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
3926.20.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
3926.30.10	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
3926.30.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3926.40.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3926.90.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
3926.90.15	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
3926.90.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3926.90.25	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
3926.90.30	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3926.90.33	7.3%	6.5%	5.7%	4.9%	4.1%	3.2%	2.4%	1.6%	0.8%	Free
3926.90.35	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
3926.90.40	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
3926.90.45	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
3926.90.50	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
3926.90.55	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
3926.90.56	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
3926.90.57	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
3926.90.59	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
3926.90.60	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3926.90.65	9¢/gross	8¢/gross	7¢/gross	6¢/gross	5¢/gross	4¢/gross	3¢/gross	2¢/gross	1¢/gross	Free
3926.90.70	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3926.90.75	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
3926.90.77	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
3926.90.83	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3926.90.85	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
3926.90.87	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
3926.90.90	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4006.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
4006.90.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4006.90.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4007.00.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4008.11.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4008.11.50	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
4008.19.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4008.19.50	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
4008.21.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
4008.29.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
4009.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4009.20.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4009.30.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4009.40.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4009.50.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4010.10.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4010.10.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4010.91.11	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4010.91.15	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
4010.91.19	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4010.91.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4010.99.11	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4010.99.15	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
4010.99.19	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4010.99.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4011.10.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4011.20.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4011.40.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4011.50.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4011.91.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4011.99.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4012.10.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4012.20.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4012.90.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4012.90.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4013.10.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
4013.20.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
4013.90.50	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
4014.10.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4014.90.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4014.90.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4015.11.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
4015.19.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
4015.19.50	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4015.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4016.10.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4016.91.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4016.92.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4016.93.00	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
4016.94.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4016.95.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4016.99.03	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4016.99.05	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
4016.99.10	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
4016.99.15	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4016.99.20	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
4016.99.25	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4016.99.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4017.00.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4104.10.20	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
4104.21.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4104.22.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4104.29.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4104.31.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4104.39.50	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4201.00.30	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4201.00.60	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4202.11.00	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4202.12.20	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.12.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
4202.12.60	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
4202.12.80	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.19.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
4202.21.30	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4202.21.60	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
4202.21.90	7.2%	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free	Free
4202.22.15	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.22.35	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
4202.22.40	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
4202.22.45	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
4202.22.60	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
4202.22.70	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.22.80	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.29.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
4202.31.30	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
4202.31.60	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4202.32.10	10.8¢/kg + 4.1%	9.6¢/kg + 3.6%	8.4¢/kg + 3.2%	7.2¢/kg + 2.7%	6¢/kg + 2.3%	4.8¢/kg + 1.8%	3.6¢/kg + 1.3%	2.4¢/kg + 0.9%	1.2¢/kg + 0.4%	Free
4202.32.20	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.32.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
4202.32.80	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4202.32.85	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.32.95	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.39.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
4202.91.00	5.4%	4%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
4202.92.15	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
4202.92.20	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
4202.92.30	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.92.45	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.92.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4202.92.60	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
4202.92.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
4202.99.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
4203.10.20	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
4203.10.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
4203.21.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4203.21.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
4203.21.55	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
4203.21.60	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
4203.21.80	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
4203.29.05	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.29.08	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.29.15	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.29.18	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.29.20	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.29.30	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.29.40	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.29.50	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
4203.30.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4203.40.30	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
4204.00.30	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
4205.00.40	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
4205.00.60	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
4206.10.30	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
4206.10.90	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
4206.90.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4304.00.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
4405.00.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4409.10.20	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4409.10.40	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
4409.10.50	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
4409.10.60	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4409.10.65	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
4409.20.50	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
4409.20.65	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
4411.11.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4411.19.20	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4411.19.40	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
4411.21.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4411.29.20	2.6¢/kg + 2%	2.3¢/kg + 1.8%	2¢/kg + 1.6%	1.7¢/kg + 1.3%	1.4¢/kg + 1.1%	1.1¢/kg + 0.9%	0.8¢/kg + 0.6%	0.5¢/kg + 0.4%	0.2¢/kg + 0.2%	Free
4411.29.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4411.29.90	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
4412.11.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.11.20	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4412.11.50	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4412.12.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.12.15	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4412.12.20	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4412.12.50	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4412.19.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4412.19.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4412.19.50	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
4412.21.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.29.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.29.30	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4412.29.40	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4412.29.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.91.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.99.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4412.99.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4412.99.50	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
4412.99.90	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
4413.00.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
4414.00.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
4415.10.90	16.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
4415.20.80	16.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
4416.00.30	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
4416.00.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4417.00.60	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
4417.00.80	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
4418.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4418.20.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
4418.30.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4418.40.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4418.90.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4419.00.40	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
4419.00.80	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4420.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4420.90.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
4420.90.40	6%	5.3%	4.6%	4%	3.3%	2.6%	2%	1.3%	0.6%	Free
4420.90.60	1.9¢/kg + 2.6%	1.7¢/kg + 2.3%	1.5¢/kg + 2%	1.3¢/kg + 1.7%	1.1¢/kg + 1.4%	0.8¢/kg + 1.1%	0.6¢/kg + 0.8%	0.4¢/kg + 0.5%	0.2¢/kg + 0.2%	Free
4420.90.80	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4421.10.80	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4421.90.10	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
4421.90.20	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
4421.90.30	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
4421.90.40	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
4421.90.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
4421.90.60	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
4421.90.80	9¢/gross	8¢/gross	7¢/gross	6¢/gross	5¢/gross	4¢/gross	3¢/gross	2¢/gross	1¢/gross	Free
4421.90.85	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
4421.90.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
4503.90.60	12.2%	9.1%	6.1%	3%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4504.10.50	12.2%	9.1%	6.1%	3%	Free	Free	Free	Free	Free	Free
4504.90.20	12.2%	9.1%	6.1%	3%	Free	Free	Free	Free	Free	Free
4504.90.40	12.2%	9.1%	6.1%	3%	Free	Free	Free	Free	Free	Free
4601.10.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4601.20.20	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4601.20.40	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
4601.20.60	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
4601.20.80	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4601.20.90	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
4601.91.20	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
4601.91.40	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4601.99.00	2.6%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
4602.10.05	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4602.10.11	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
4602.10.12	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
4602.10.13	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
4602.10.19	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
4602.10.21	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
4602.10.22	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
4602.10.23	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free
4602.10.25	14.4%	10.8%	7.2%	3.6%	Free	Free	Free	Free	Free	Free
4602.10.29	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4602.10.40	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
4602.10.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4602.90.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4802.10.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4802.30.20	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4802.30.40	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
4802.51.10	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4802.51.40	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
4802.52.10	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4802.52.15	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4802.52.20	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
4802.52.40	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
4802.53.10	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4802.53.15	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4802.53.20	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
4802.53.90	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
4802.60.10	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4802.60.20	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
4803.00.20	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
4804.31.10	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
4804.31.20	3.4%	2.5%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
4804.31.60	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4804.39.20	3.4%	2.5%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
4804.39.60	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4804.41.40	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4804.49.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4804.59.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4805.10.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4805.30.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4805.40.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4805.60.20	3.4%	2.5%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
4805.60.50	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
4805.60.90	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4805.70.20	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
4805.80.20	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
4807.91.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
4807.99.20	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
4808.10.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4808.90.20	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
4808.90.40	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
4808.90.60	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4809.10.20	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
4809.20.20	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
4809.90.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
4809.90.40	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
4809.90.80	1.5%	1.1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
4810.11.20	0.7%	0.5%	0.3%	0.1%	Free	Free	Free	Free	Free	Free
4810.11.30	1.3%	1%	0.6%	0.3%	Free	Free	Free	Free	Free	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4810.11.90	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4810.12.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4810.21.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4810.29.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4810.39.40	1.5%	1.1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
4810.91.40	1.5%	1.1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
4810.99.00	1.5%	1.1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
4811.21.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
4811.31.40	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4811.39.20	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
4811.40.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
4811.90.10	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
4811.90.20	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
4811.90.40	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
4811.90.80	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
4812.00.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
4813.10.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
4813.20.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
4813.90.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
4815.00.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
4816.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4816.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4816.30.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4816.90.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
4817.10.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4817.20.20	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
4817.20.40	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4817.30.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4818.10.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4818.20.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4818.30.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4818.40.40	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4818.50.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
4818.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4819.10.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4819.20.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
4819.30.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4819.40.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4819.50.20	3.4%	2.5%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
4819.50.30	3.5¢/kg	2.6¢/kg	1.7¢/kg	0.8¢/kg	Free	Free	Free	Free	Free	Free
4819.50.40	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4819.60.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4820.10.20	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4820.30.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4820.40.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4820.50.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4820.90.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4821.10.20	7¢/kg	5.2¢/kg	3.5¢/kg	1.7¢/kg	Free	Free	Free	Free	Free	Free
4821.10.40	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4821.90.20	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
4821.90.40	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4822.10.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
4822.90.00	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
4823.11.00	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
4823.19.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4823.20.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
4823.20.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
4823.30.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
4823.40.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4823.51.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4823.59.20	0.7%	0.5%	0.3%	0.1%	Free	Free	Free	Free	Free	Free
4823.59.40	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4823.60.00	3.4%	2.5%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
4823.90.20	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4823.90.40	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
4823.90.50	13.6%	10.2%	6.8%	3.4%	Free	Free	Free	Free	Free	Free
4823.90.60	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
4823.90.65	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
4823.90.70	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
4823.90.80	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
4823.90.85	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
4908.90.00	12.3¢/kg	9.2¢/kg	6.1¢/kg	3¢/kg	Free	Free	Free	Free	Free	Free
4909.00.20	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4909.00.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
4910.00.40	3.5¢/kg	2.6¢/kg	1.7¢/kg	0.8¢/kg	Free	Free	Free	Free	Free	Free
4910.00.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4911.91.20	10.5¢/kg	7.9¢/kg	5.2¢/kg	2.6¢/kg	Free	Free	Free	Free	Free	Free
4911.91.40	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4911.99.60	0.3%	0.2%	0.1%	Free	Free	Free	Free	Free	Free	Free
4911.99.80	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
5003.90.00	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
5004.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5005.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5006.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5007.10.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5007.10.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5007.20.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5007.90.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5007.90.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5101.11.10	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free
5101.11.20	4.9¢/clean kg	4.4¢/clean kg	3.8¢/clean kg	3.3¢/clean kg	2.7¢/clean kg	2.2¢/clean kg	1.6¢/clean kg	1.1¢/clean kg	0.5¢/clean kg	Free
5101.11.40	5.9¢/clean kg	5.2¢/clean kg	4.6¢/clean kg	3.9¢/clean kg	3.3¢/clean kg	2.6¢/clean kg	1.9¢/clean kg	1.3¢/clean kg	0.6¢/clean kg	Free
5101.11.50	19.8¢/clean kg	17.6¢/clean kg	15.4¢/clean kg	13.2¢/clean kg	11¢/clean kg	8.8¢/clean kg	6.6¢/clean kg	4.4¢/clean kg	2.2¢/clean kg	Free
5101.11.60	19.8¢/clean kg	17.6¢/clean kg	15.4¢/clean kg	13.2¢/clean kg	11¢/clean kg	8.8¢/clean kg	6.6¢/clean kg	4.4¢/clean kg	2.2¢/clean kg	Free
5101.19.10	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free
5101.19.20	4.9¢/clean kg	4.4¢/clean kg	3.8¢/clean kg	3.3¢/clean kg	2.7¢/clean kg	2.2¢/clean kg	1.6¢/clean kg	1.1¢/clean kg	0.5¢/clean kg	Free
5101.19.40	5.9¢/clean kg	5.2¢/clean kg	4.6¢/clean kg	3.9¢/clean kg	3.3¢/clean kg	2.6¢/clean kg	1.9¢/clean kg	1.3¢/clean kg	0.6¢/clean kg	Free
5101.19.50	19.8¢/clean kg	17.6¢/clean kg	15.4¢/clean kg	13.2¢/clean kg	11¢/clean kg	8.8¢/clean kg	6.6¢/clean kg	4.4¢/clean kg	2.2¢/clean kg	Free
5101.19.60	19.8¢/clean kg	17.6¢/clean kg	15.4¢/clean kg	13.2¢/clean kg	11¢/clean kg	8.8¢/clean kg	6.6¢/clean kg	4.4¢/clean kg	2.2¢/clean kg	Free
5101.21.10	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5101.21.15	5.9¢/clean kg	5.2¢/clean kg	4.6¢/clean kg	3.9¢/clean kg	3.3¢/clean kg	2.6¢/clean kg	1.9¢/clean kg	1.3¢/clean kg	0.6¢/clean kg	Free
5101.21.30	7.9¢/clean kg	7¢/clean kg	6.1¢/clean kg	5.2¢/clean kg	4.4¢/clean kg	3.5¢/clean kg	2.6¢/clean kg	1.7¢/clean kg	0.8¢/clean kg	Free
5101.21.35	21.8¢/clean kg	19.4¢/clean kg	17¢/clean kg	14.5¢/clean kg	12.1¢/clean kg	9.7¢/clean kg	7.2¢/clean kg	4.8¢/clean kg	2.4¢/clean kg	Free
5101.21.40	21.8¢/clean kg	19.4¢/clean kg	17¢/clean kg	14.5¢/clean kg	12.1¢/clean kg	9.7¢/clean kg	7.2¢/clean kg	4.8¢/clean kg	2.4¢/clean kg	Free
5101.21.60	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free
5101.29.10	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free, under bond	Free
5101.29.15	5.9¢/clean kg	5.2¢/clean kg	4.6¢/clean kg	3.9¢/clean kg	3.3¢/clean kg	2.6¢/clean kg	1.9¢/clean kg	1.3¢/clean kg	0.6¢/clean kg	Free
5101.29.30	7.9¢/clean kg	7¢/clean kg	6.1¢/clean kg	5.2¢/clean kg	4.4¢/clean kg	3.5¢/clean kg	2.6¢/clean kg	1.7¢/clean kg	0.8¢/clean kg	Free
5101.29.35	21.8¢/clean kg	19.4¢/clean kg	17¢/clean kg	14.5¢/clean kg	12.1¢/clean kg	9.7¢/clean kg	7.2¢/clean kg	4.8¢/clean kg	2.4¢/clean kg	Free
5101.29.40	21.8¢/clean kg	19.4¢/clean kg	17¢/clean kg	14.5¢/clean kg	12.1¢/clean kg	9.7¢/clean kg	7.2¢/clean kg	4.8¢/clean kg	2.4¢/clean kg	Free
5101.29.60	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free
5101.30.10	7.9¢/kg	7¢/kg	6.1¢/kg	5.2¢/kg	4.4¢/kg	3.5¢/kg	2.6¢/kg	1.7¢/kg	0.8¢/kg	Free
5101.30.15	9.9¢/kg	8.8¢/kg	7.7¢/kg	6.6¢/kg	5.5¢/kg	4.4¢/kg	3.3¢/kg	2.2¢/kg	1.1¢/kg	Free
5101.30.30	25.8¢/kg	22.9¢/kg	20¢/kg	17.2¢/kg	14.3¢/kg	11.4¢/kg	8.6¢/kg	5.7¢/kg	2.8¢/kg	Free
5101.30.40	25.8¢/kg	22.9¢/kg	20¢/kg	17.2¢/kg	14.3¢/kg	11.4¢/kg	8.6¢/kg	5.7¢/kg	2.8¢/kg	Free
5101.30.60	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free
5102.10.20	9.9¢/clean kg	8.8¢/clean kg	7.7¢/clean kg	6.6¢/clean kg	5.5¢/clean kg	4.4¢/clean kg	3.3¢/clean kg	2.2¢/clean kg	1.1¢/clean kg	Free
5102.10.40	7.2¢/clean kg	6.4¢/clean kg	5.6¢/clean kg	4.8¢/clean kg	4¢/clean kg	3.2¢/clean kg	2.4¢/clean kg	1.6¢/clean kg	0.8¢/clean kg	Free
5102.10.60	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
5102.10.90	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free
5103.10.00	3.6¢/kg	3.2¢/kg	2.8¢/kg	2.4¢/kg	2¢/kg	1.6¢/kg	1.2¢/kg	0.8¢/kg	0.4¢/kg	Free
5103.20.00	3.6¢/kg	3.2¢/kg	2.8¢/kg	2.4¢/kg	2¢/kg	1.6¢/kg	1.2¢/kg	0.8¢/kg	0.4¢/kg	Free
5103.30.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5104.00.00	4.9¢/kg	4.4¢/kg	3.8¢/kg	3.3¢/kg	2.7¢/kg	2.2¢/kg	1.6¢/kg	1.1¢/kg	0.5¢/kg	Free
5105.10.00	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5105.21.00	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free
5105.29.00	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free
5105.30.00	6.9¢/kg + 5.6%	6.1¢/kg + 5%	5.3¢/kg + 4.3%	4.6¢/kg + 3.7%	3.8¢/kg + 3.1%	3¢/kg + 2.5%	2.3¢/kg + 1.8%	1.5¢/kg + 1.2%	0.7¢/kg + 0.6%	Free
5105.40.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
5106.10.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5106.20.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5107.10.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5107.20.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5108.10.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5108.10.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5108.20.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5108.20.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5109.10.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5109.10.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5109.90.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5109.90.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5110.00.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
5111.11.10	15.8¢/kg + 11.2%	14¢/kg + 10%	12.3¢/kg + 8.7%	10.5¢/kg + 7.5%	8.8¢/kg + 6.2%	7¢/kg + 5%	5.2¢/kg + 3.7%	3.5¢/kg + 2.5%	1.7¢/kg + 1.2%	Free
5111.11.60	32.4%	28.8%	25.2%	21.6%	18%	14.4%	10.8%	7.2%	3.6%	Free
5111.19.10	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5111.19.20	15.8¢/kg + 11.2%	14¢/kg + 10%	12.3¢/kg + 8.7%	10.5¢/kg + 7.5%	8.8¢/kg + 6.2%	7¢/kg + 5%	5.2¢/kg + 3.7%	3.5¢/kg + 2.5%	1.7¢/kg + 1.2%	Free
5111.19.60	32.4%	28.8%	25.2%	21.6%	18%	14.4%	10.8%	7.2%	3.6%	Free
5111.20.05	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5111.20.60	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5111.30.05	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5111.30.60	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5111.90.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5111.90.60	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5112.11.00	32.4%	28.8%	25.2%	21.6%	18%	14.4%	10.8%	7.2%	3.6%	Free
5112.19.10	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5112.19.60	32.4%	28.8%	25.2%	21.6%	18%	14.4%	10.8%	7.2%	3.6%	Free
5112.20.00	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5112.30.00	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5112.90.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5112.90.60	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5113.00.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5201.00.20	3.9¢/kg	3.5¢/kg	3¢/kg	2.6¢/kg	2.2¢/kg	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free
5201.00.50	1.3¢/kg	1.2¢/kg	1¢/kg	0.9¢/kg	0.7¢/kg	0.6¢/kg	0.4¢/kg	0.3¢/kg	0.1¢/kg	Free
5202.91.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5203.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5204.11.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5204.19.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5204.20.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5205.11.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
5205.11.20	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5205.12.10	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
5205.12.20	6.5%	5.8%	5.1%	4.3%	3.6%	2.9%	2.1%	1.4%	0.7%	Free
5205.13.10	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5205.13.20	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
5205.14.10	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5205.14.20	8.9%	7.9%	6.9%	5.9%	4.9%	3.9%	2.9%	1.9%	0.9%	Free
5205.15.10	8.9%	7.9%	6.9%	5.9%	4.9%	3.9%	2.9%	1.9%	0.9%	Free
5205.15.20	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5205.21.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5205.22.00	6.5%	5.8%	5.1%	4.3%	3.6%	2.9%	2.1%	1.4%	0.7%	Free
5205.23.00	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
5205.24.00	8.9%	7.9%	6.9%	5.9%	4.9%	3.9%	2.9%	1.9%	0.9%	Free
5205.25.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5205.31.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5205.32.00	6.5%	5.8%	5.1%	4.3%	3.6%	2.9%	2.1%	1.4%	0.7%	Free
5205.33.00	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
5205.34.00	8.9%	7.9%	6.9%	5.9%	4.9%	3.9%	2.9%	1.9%	0.9%	Free
5205.35.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5205.41.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5205.42.00	6.5%	5.8%	5.1%	4.3%	3.6%	2.9%	2.1%	1.4%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5205.43.00	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
5205.44.00	8.9%	7.9%	6.9%	5.9%	4.9%	3.9%	2.9%	1.9%	0.9%	Free
5205.45.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5206.11.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.12.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.13.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.14.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.15.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.21.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.22.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.23.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.24.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.25.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.31.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.32.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.33.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.34.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.35.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.41.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.42.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.43.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.44.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5206.45.00	9.7%	8.6%	7.5%	6.4%	5.4%	4.3%	3.2%	2.1%	1%	Free
5207.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5207.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5208.11.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5208.11.40	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5208.11.60	6.9¢/kg + 17.2%	6.1¢/kg + 15.3%	5.3¢/kg + 13.4%	4.6¢/kg + 11.5%	3.8¢/kg + 9.6%	3¢/kg + 7.6%	2.3¢/kg + 5.7%	1.5¢/kg + 3.8%	0.7¢/kg + 1.9%	Free
5208.11.80	11%	9.8%	8.6%	7.3%	6.1%	4.9%	3.6%	2.4%	1.2%	Free
5208.12.40	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5208.12.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5208.12.80	11%	9.8%	8.6%	7.3%	6.1%	4.9%	3.6%	2.4%	1.2%	Free
5208.13.00	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5208.19.20	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5208.19.40	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5208.19.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5208.19.80	11%	9.8%	8.6%	7.3%	6.1%	4.9%	3.6%	2.4%	1.2%	Free
5208.21.20	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
5208.21.40	9.1%	8.1%	7.1%	6.1%	5.1%	4%	3%	2%	1%	Free
5208.21.60	12.1%	10.8%	9.4%	8.1%	6.7%	5.4%	4%	2.7%	1.3%	Free
5208.22.40	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
5208.22.60	9.1%	8.1%	7.1%	6.1%	5.1%	4%	3%	2%	1%	Free
5208.22.80	12.1%	10.8%	9.4%	8.1%	6.7%	5.4%	4%	2.7%	1.3%	Free
5208.23.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5208.29.20	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5208.29.40	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
5208.29.60	9.1%	8.1%	7.1%	6.1%	5.1%	4%	3%	2%	1%	Free
5208.29.80	12.1%	10.8%	9.4%	8.1%	6.7%	5.4%	4%	2.7%	1.3%	Free
5208.31.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5208.31.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.31.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.31.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.32.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5208.32.30	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.32.40	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.32.50	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.33.00	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
5208.39.20	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
5208.39.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.39.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.39.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.41.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5208.41.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.41.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.41.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.42.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5208.42.30	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.42.40	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.42.50	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.43.00	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5208.49.20	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
5208.49.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.49.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.49.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.51.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5208.51.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.51.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.51.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.52.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5208.52.30	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.52.40	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.52.50	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5208.53.00	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
5208.59.20	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
5208.59.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5208.59.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5208.59.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5209.11.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5209.12.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5209.19.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5209.21.00	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5209.22.00	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5209.29.00	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5209.31.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5209.31.60	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.32.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.39.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.41.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5209.41.60	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.42.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.43.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.49.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.51.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5209.51.60	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5209.52.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5209.59.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5210.11.40	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
5210.11.60	9.1%	8.1%	7.1%	6.1%	5.1%	4%	3%	2%	1%	Free
5210.11.80	12.1%	10.8%	9.4%	8.1%	6.7%	5.4%	4%	2.7%	1.3%	Free
5210.12.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5210.19.20	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5210.19.40	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
5210.19.60	9.1%	8.1%	7.1%	6.1%	5.1%	4%	3%	2%	1%	Free
5210.19.80	12.1%	10.8%	9.4%	8.1%	6.7%	5.4%	4%	2.7%	1.3%	Free
5210.21.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5210.21.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5210.21.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5210.22.00	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
5210.29.20	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
5210.29.40	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
5210.29.60	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
5210.29.80	13.2%	11.7%	10.2%	8.8%	7.3%	5.8%	4.4%	2.9%	1.4%	Free
5210.31.40	9.3%	8.3%	7.2%	6.2%	5.2%	4.1%	3.1%	2%	1%	Free
5210.31.60	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
5210.31.80	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
5210.32.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5210.39.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5210.39.40	9.3%	8.3%	7.2%	6.2%	5.2%	4.1%	3.1%	2%	1%	Free
5210.39.60	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
5210.39.80	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
5210.41.40	9.3%	8.3%	7.2%	6.2%	5.2%	4.1%	3.1%	2%	1%	Free
5210.41.60	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
5210.41.80	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
5210.42.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5210.49.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5210.49.40	9.3%	8.3%	7.2%	6.2%	5.2%	4.1%	3.1%	2%	1%	Free
5210.49.60	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
5210.49.80	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
5210.51.40	9.3%	8.3%	7.2%	6.2%	5.2%	4.1%	3.1%	2%	1%	Free
5210.51.60	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5210.51.80	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
5210.52.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5210.59.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5210.59.40	9.3%	8.3%	7.2%	6.2%	5.2%	4.1%	3.1%	2%	1%	Free
5210.59.60	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
5210.59.80	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
5211.11.00	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5211.12.00	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5211.19.00	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5211.21.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5211.22.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5211.29.00	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5211.31.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.32.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.39.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.41.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.42.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.43.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.49.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.51.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.52.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5211.59.00	8.7%	7.7%	6.7%	5.8%	4.8%	3.8%	2.9%	1.9%	0.9%	Free
5212.11.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.11.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.12.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.12.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.13.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.13.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.14.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.14.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.15.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.15.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.21.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.21.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.22.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5212.22.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.23.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.23.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.24.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.24.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5212.25.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5212.25.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5301.21.00	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
5301.29.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5306.10.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5306.20.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
5307.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5307.20.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
5308.20.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5308.30.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5308.90.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
5309.11.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5309.19.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5309.21.20	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
5309.21.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5309.21.40	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5309.29.20	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
5309.29.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5309.29.40	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5310.90.00	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
5311.00.20	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
5311.00.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5311.00.40	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5311.00.60	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5401.10.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5401.20.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5402.10.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.10.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5402.20.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.20.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5402.31.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.31.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5402.32.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.32.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5402.33.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.33.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5402.39.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.39.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5402.41.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.42.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.43.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.49.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.51.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.52.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.59.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5402.61.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5402.62.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5402.69.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5403.10.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5403.10.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5403.20.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5403.20.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5403.31.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5403.32.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5403.33.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5403.39.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5403.41.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5403.42.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5403.49.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5404.10.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5404.10.20	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5404.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5405.00.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5405.00.60	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5406.10.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5406.20.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5407.10.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.20.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.30.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
5407.30.90	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5407.41.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.42.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.43.10	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.43.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.44.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.51.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.52.05	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.52.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.53.10	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.53.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.54.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.60.05	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.60.10	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.60.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.71.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.72.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.73.10	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.73.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.74.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.81.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.82.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.83.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.84.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.91.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5407.91.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5407.91.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.92.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5407.92.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5407.92.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.93.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5407.93.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5407.93.15	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.93.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5407.94.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5407.94.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5407.94.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.10.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.21.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.22.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.23.10	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5408.23.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.24.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.31.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5408.31.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5408.31.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.32.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5408.32.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5408.32.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5408.32.90	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5408.33.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5408.33.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5408.33.15	21.8¢/kg + 20.2%	19.4¢/kg + 18%	17¢/kg + 15.7%	14.5¢/kg + 13.5%	12.1¢/kg + 11.2%	9.7¢/kg + 9%	7.2¢/kg + 6.7%	4.8¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5408.33.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5408.33.90	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5408.34.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5408.34.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5408.34.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5408.34.90	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5501.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5501.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5501.30.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5501.90.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5502.00.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5503.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5503.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5503.30.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5503.40.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5503.90.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5504.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5504.90.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5505.10.00	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
5505.20.00	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
5506.10.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5506.20.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5506.30.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5506.90.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5507.00.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5508.10.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5508.20.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5509.11.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5509.12.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5509.21.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5509.22.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5509.31.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5509.32.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5509.41.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5509.42.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5509.51.30	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5509.51.60	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5509.52.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.53.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.59.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.61.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.62.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.69.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5509.69.40	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5509.69.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.91.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.92.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5509.99.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5509.99.40	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5509.99.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5510.11.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5510.12.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5510.20.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5510.30.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5510.90.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5510.90.40	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5510.90.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5511.10.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5511.20.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5511.30.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
5512.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5512.19.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5512.21.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5512.29.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5512.91.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5512.99.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.12.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.13.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.19.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.21.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.22.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5513.23.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.29.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.31.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.32.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.33.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.39.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.41.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.42.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.43.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5513.49.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.12.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.13.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.19.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.21.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.22.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.23.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.29.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.31.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.32.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.33.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.39.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.41.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.42.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.43.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5514.49.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5515.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5515.12.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5515.13.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5515.13.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5515.19.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5515.21.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5515.22.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5515.22.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5515.29.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5515.91.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5515.92.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5515.92.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5515.99.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.12.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.13.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.14.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.21.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.22.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.23.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.24.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.31.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5516.31.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5516.32.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5516.32.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5516.33.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5516.33.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5516.34.05	43.6¢/kg + 34.2%	38.8¢/kg + 30.4%	33.9¢/kg + 26.6%	29.1¢/kg + 22.8%	24.2¢/kg + 19%	19.4¢/kg + 15.2%	14.5¢/kg + 11.4%	9.7¢/kg + 7.6%	4.8¢/kg + 3.8%	Free
5516.34.10	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
5516.41.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.42.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.43.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.44.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.91.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.92.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.93.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5516.94.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5601.10.10	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5601.10.20	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
5601.21.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5601.22.00	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5601.29.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5601.30.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5602.10.10	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5602.10.90	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
5602.21.00	59.4¢/kg + 9%	52.8¢/kg + 8%	46.2¢/kg + 7%	39.6¢/kg + 6%	33¢/kg + 5%	26.4¢/kg + 4%	19.8¢/kg + 3%	13.2¢/kg + 2%	6.6¢/kg + 1%	Free
5602.29.00	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
5602.90.30	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5602.90.60	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
5602.90.90	59.4¢/kg + 9%	52.8¢/kg + 8%	46.2¢/kg + 7%	39.6¢/kg + 6%	33¢/kg + 5%	26.4¢/kg + 4%	19.8¢/kg + 3%	13.2¢/kg + 2%	6.6¢/kg + 1%	Free
5603.00.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
5603.00.30	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5603.00.90	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
5604.10.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5604.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5604.90.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5605.00.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5606.00.00	10.3%	9.2%	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
5607.10.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
5607.29.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5607.30.20	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
5607.41.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5607.41.30	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5607.49.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5607.49.15	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5607.49.25	24.8¢/kg + 13.5%	22¢/kg + 12%	19.3¢/kg + 10.5%	16.5¢/kg + 9%	13.8¢/kg + 7.5%	11¢/kg + 6%	8.2¢/kg + 4.5%	5.5¢/kg + 3%	2.7¢/kg + 1.5%	Free
5607.49.30	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5607.50.20	24.8¢/kg + 13.5%	22¢/kg + 12%	19.3¢/kg + 10.5%	16.5¢/kg + 9%	13.8¢/kg + 7.5%	11¢/kg + 6%	8.2¢/kg + 4.5%	5.5¢/kg + 3%	2.7¢/kg + 1.5%	Free
5607.50.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5607.90.20	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5608.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5608.19.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5608.19.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5608.90.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5608.90.20	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5608.90.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5609.00.10	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5609.00.20	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
5609.00.30	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5609.00.40	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5701.10.13	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
5701.10.16	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
5701.10.20	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5701.90.10	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5701.90.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5702.10.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5702.10.90	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5702.20.10	19.3¢/m^2	17.2¢/m^2	15¢/m^2	12.9¢/m^2	10.7¢/m^2	8.6¢/m^2	6.4¢/m^2	4.3¢/m^2	2.1¢/m^2	Free
5702.31.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5702.31.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5702.32.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5702.32.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5702.39.10	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
5702.39.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5702.41.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5702.41.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5702.42.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5702.42.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5702.49.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5702.49.15	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
5702.49.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5702.51.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5702.51.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5702.52.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5702.59.10	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5702.59.20	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5702.91.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5702.91.30	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
5702.91.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5702.92.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5702.99.10	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
5702.99.20	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5703.10.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5703.20.10	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5703.20.20	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
5703.30.00	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
5703.90.00	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
5704.10.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5704.90.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5705.00.20	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5801.10.00	4.8%	4.3%	3.7%	3.2%	2.7%	2.1%	1.6%	1%	0.5%	Free
5801.21.00	20.7%	18.4%	16.1%	13.8%	11.5%	9.2%	6.9%	4.6%	2.3%	Free
5801.22.00	20.7%	18.4%	16.1%	13.8%	11.5%	9.2%	6.9%	4.6%	2.3%	Free
5801.23.00	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
5801.24.00	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
5801.25.00	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
5801.26.00	11.3%	10%	8.8%	7.5%	6.3%	5%	3.7%	2.5%	1.2%	Free
5801.31.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
5801.32.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
5801.33.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
5801.34.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
5801.35.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
5801.36.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
5801.90.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5801.90.20	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5802.11.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5802.19.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
5802.20.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
5802.30.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5803.10.00	10.1%	9%	7.9%	6.7%	5.6%	4.5%	3.3%	2.2%	1.1%	Free
5803.90.10	29.7%	26.4%	23.1%	19.8%	16.5%	13.2%	9.9%	6.6%	3.3%	Free
5803.90.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5803.90.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5803.90.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5804.10.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
5804.21.00	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5804.29.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5804.30.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
5805.00.20	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
5805.00.25	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
5805.00.30	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5805.00.40	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5806.10.10	8%	7.1%	6.2%	5.3%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
5806.10.20	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
5806.10.30	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
5806.20.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5806.31.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
5806.32.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5806.32.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
5806.39.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
5806.39.20	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
5806.39.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
5806.40.00	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5807.10.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5807.10.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5807.90.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
5807.90.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5808.10.20	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
5808.10.30	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
5808.90.00	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5809.00.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5810.10.00	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5810.91.00	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	Free
5810.92.00	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	Free
5810.99.00	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	See additional U.S. note 1	Free
5811.00.10	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5811.00.20	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
5811.00.30	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5811.00.40	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
5901.10.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5901.10.20	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
5901.90.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5901.90.40	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
5902.10.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5902.20.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5902.90.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5903.10.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5903.10.15	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
5903.10.18	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5903.10.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5903.10.25	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
5903.10.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5903.20.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5903.20.15	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
5903.20.18	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5903.20.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5903.20.25	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
5903.20.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5903.90.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5903.90.15	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
5903.90.18	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5903.90.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5903.90.25	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
5903.90.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5904.10.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5904.91.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5904.92.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5905.00.90	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
5906.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5906.91.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5906.91.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5906.91.25	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
5906.91.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5906.99.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
5906.99.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
5906.99.25	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
5906.99.30	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
5907.00.10	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5907.00.90	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5908.00.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
5909.00.10	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
5909.00.20	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5910.00.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5910.00.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5911.10.10	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
5911.10.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
5911.20.10	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5911.20.30	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
5911.31.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
5911.32.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
5911.40.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
5911.90.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6001.10.20	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
6001.10.60	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
6001.21.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
6001.22.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
6001.29.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6001.91.00	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6001.92.00	17.5%	15.6%	13.6%	11.7%	9.7%	7.8%	5.8%	3.9%	1.9%	Free
6001.99.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6002.10.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6002.10.80	8.3%	7.4%	6.5%	5.5%	4.6%	3.7%	2.7%	1.8%	0.9%	Free
6002.20.10	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
6002.20.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6002.20.60	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
6002.20.90	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6002.30.20	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6002.30.90	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6002.41.00	17.1%	15.2%	13.3%	11.4%	9.5%	7.6%	5.7%	3.8%	1.9%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6002.42.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6002.43.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6002.49.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6002.91.00	17.1%	15.2%	13.3%	11.4%	9.5%	7.6%	5.7%	3.8%	1.9%	Free
6002.92.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6002.93.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6002.99.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6101.10.00	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6101.20.00	15.2%	13.5%	11.8%	10.1%	8.4%	6.7%	5%	3.3%	1.6%	Free
6101.30.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6101.30.15	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6101.30.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6101.90.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6102.10.00	61.4¢/kg + 18%	54.6¢/kg + 16%	47.8¢/kg + 14%	40.9¢/kg + 12%	34.1¢/kg + 10%	27.3¢/kg + 8%	20.4¢/kg + 6%	13.6¢/kg + 4%	6.8¢/kg + 2%	Free
6102.20.00	15.2%	13.5%	11.8%	10.1%	8.4%	6.7%	5%	3.3%	1.6%	Free
6102.30.05	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6102.30.10	61.4¢/kg + 18%	54.6¢/kg + 16%	47.8¢/kg + 14%	40.9¢/kg + 12%	34.1¢/kg + 10%	27.3¢/kg + 8%	20.4¢/kg + 6%	13.6¢/kg + 4%	6.8¢/kg + 2%	Free
6102.30.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6102.90.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6103.11.00	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6103.12.10	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6103.12.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6103.19.10	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6103.19.15	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6103.19.20	16.8%	14.9%	13%	11.2%	9.3%	7.4%	5.6%	3.7%	1.8%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6103.19.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6103.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.22.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.23.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.29.10	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6103.31.00	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6103.32.00	15.2%	13.5%	11.8%	10.1%	8.4%	6.7%	5%	3.3%	1.6%	Free
6103.33.10	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6103.33.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6103.39.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6103.39.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6103.41.10	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6103.41.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6103.42.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6103.42.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
6103.43.10	69.4¢/kg + 18%	61.7¢/kg + 16%	54¢/kg + 14%	46.3¢/kg + 12%	38.6¢/kg + 10%	30.8¢/kg + 8%	23.1¢/kg + 6%	15.4¢/kg + 4%	7.7¢/kg + 2%	Free
6103.43.15	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6103.43.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6103.49.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6103.49.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6103.49.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6104.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.12.00	16.9%	15%	13.1%	11.2%	9.4%	7.5%	5.6%	3.7%	1.8%	Free
6104.13.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.13.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6104.19.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.19.15	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6104.19.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6104.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6104.22.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.23.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.29.10	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.31.00	61.4¢/kg + 18%	54.6¢/kg + 16%	47.8¢/kg + 14%	40.9¢/kg + 12%	34.1¢/kg + 10%	27.3¢/kg + 8%	20.4¢/kg + 6%	13.6¢/kg + 4%	6.8¢/kg + 2%	Free
6104.32.00	15.2%	13.5%	11.8%	10.1%	8.4%	6.7%	5%	3.3%	1.6%	Free
6104.33.10	61.4¢/kg + 18%	54.6¢/kg + 16%	47.8¢/kg + 14%	40.9¢/kg + 12%	34.1¢/kg + 10%	27.3¢/kg + 8%	20.4¢/kg + 6%	13.6¢/kg + 4%	6.8¢/kg + 2%	Free
6104.33.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6104.39.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6104.39.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6104.41.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.42.00	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
6104.43.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.43.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.44.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.44.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.49.00	5.6%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6104.51.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.52.00	7.9%	7%	6.1%	5.2%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
6104.53.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.53.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.59.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.59.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6104.61.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.62.10	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
6104.62.20	15%	13.3%	11.6%	10%	8.3%	6.6%	5%	3.3%	1.6%	Free
6104.63.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.63.15	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.63.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6104.69.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6104.69.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6104.69.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6105.10.00	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6105.20.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6105.20.20	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6105.90.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6105.90.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6106.10.00	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6106.20.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6106.20.20	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6106.90.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6106.90.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6106.90.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6107.11.00	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
6107.12.00	16.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6107.19.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6107.21.00	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6107.22.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6107.29.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6107.29.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6107.91.00	8.3%	7.4%	6.5%	5.5%	4.6%	3.7%	2.7%	1.8%	0.9%	Free
6107.92.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6107.99.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6107.99.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6108.11.00	14.5%	12.9%	11.3%	9.7%	8.1%	6.4%	4.8%	3.2%	1.6%	Free
6108.19.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6108.21.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6108.22.00	14.9%	13.2%	11.6%	9.9%	8.3%	6.6%	4.9%	3.3%	1.6%	Free
6108.29.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6108.31.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6108.32.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6108.39.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6108.39.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
6108.91.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6108.92.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6108.99.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6108.99.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
6109.10.00	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6109.90.10	30.6%	27.2%	23.8%	20.4%	17%	13.6%	10.2%	6.8%	3.4%	Free
6109.90.15	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6109.90.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6110.10.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6110.10.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6110.20.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6110.20.20	18.6%	16.5%	14.4%	12.4%	10.3%	8.2%	6.2%	4.1%	2%	Free
6110.30.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6110.30.15	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6110.30.20	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
6110.30.30	30.7%	27.3%	23.9%	20.5%	17.1%	13.6%	10.2%	6.8%	3.4%	Free
6110.90.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6111.10.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6111.20.10	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6111.20.20	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6111.20.30	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6111.20.40	10.9%	9.7%	8.5%	7.3%	6.1%	4.8%	3.6%	2.4%	1.2%	Free
6111.20.50	15%	13.3%	11.6%	10%	8.3%	6.6%	5%	3.3%	1.6%	Free
6111.20.60	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
6111.30.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6111.30.20	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6111.30.30	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6111.30.40	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6111.30.50	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6111.90.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6111.90.20	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6111.90.30	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6111.90.40	31.1%	27.6%	24.2%	20.7%	17.3%	13.8%	10.3%	6.9%	3.4%	Free
6111.90.50	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6111.90.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6112.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6112.12.00	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6112.19.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6112.19.20	20.7%	18.4%	16.1%	13.8%	11.5%	9.2%	6.9%	4.6%	2.3%	Free
6112.20.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6112.20.20	14.8%	13.2%	11.5%	9.9%	8.2%	6.6%	4.9%	3.3%	1.6%	Free
6112.31.00	24.8%	22%	19.3%	16.5%	13.8%	11%	8.2%	5.5%	2.7%	Free
6112.39.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6112.41.00	23.8%	21.2%	18.5%	15.9%	13.2%	10.6%	7.9%	5.3%	2.6%	Free
6112.49.00	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6113.00.00	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6114.10.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6114.20.00	10.3%	9.2%	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
6114.30.10	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
6114.30.20	30.8%	27.4%	24%	20.5%	17.1%	13.7%	10.2%	6.8%	3.4%	Free
6114.30.30	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
6114.90.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6115.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6115.12.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6115.19.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6115.20.00	16.4%	14.6%	12.8%	10.9%	9.1%	7.3%	5.4%	3.6%	1.8%	Free
6115.91.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6115.92.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6115.92.20	12.9%	11.5%	10%	8.6%	7.2%	5.7%	4.3%	2.8%	1.4%	Free
6115.93.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6115.93.20	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
6115.99.14	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6115.99.18	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
6115.99.20	9.4%	8.4%	7.3%	6.3%	5.2%	4.2%	3.1%	2.1%	1%	Free
6116.10.10	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6116.10.15	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
6116.10.25	17.8%	15.8%	13.8%	11.8%	9.9%	7.9%	5.9%	3.9%	1.9%	Free
6116.10.35	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6116.10.45	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6116.91.00	29.7¢/kg + 6.6%	26.4¢/kg + 5.9%	23.1¢/kg + 5.1%	19.8¢/kg + 4.4%	16.5¢/kg + 3.7%	13.2¢/kg + 2.9%	9.9¢/kg + 2.2%	6.6¢/kg + 1.4%	3.3¢/kg + 0.7%	Free
6116.92.10	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6116.92.20	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
6116.92.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6116.93.10	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6116.93.15	29.7¢/kg + 6.6%	26.4¢/kg + 5.9%	23.1¢/kg + 5.1%	19.8¢/kg + 4.4%	16.5¢/kg + 3.7%	13.2¢/kg + 2.9%	9.9¢/kg + 2.2%	6.6¢/kg + 1.4%	3.3¢/kg + 0.7%	Free
6116.93.20	17.8%	15.8%	13.8%	11.8%	9.9%	7.9%	5.9%	3.9%	1.9%	Free
6116.99.30	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6116.99.60	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6116.99.90	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
6117.10.10	9.1%	8.1%	7.1%	6.1%	5.1%	4%	3%	2%	1%	Free
6117.10.20	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6117.10.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6117.10.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6117.20.00	7.3%	6.5%	5.7%	4.9%	4.1%	3.2%	2.4%	1.6%	0.8%	Free
6117.80.00	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
6117.90.00	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6201.11.00	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6201.12.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6201.12.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6201.13.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6201.13.30	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6201.13.40	26.5%	23.6%	20.6%	17.7%	14.7%	11.8%	8.8%	5.9%	2.9%	Free
6201.19.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6201.91.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6201.91.20	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6201.92.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6201.92.15	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6201.92.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6201.93.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6201.93.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6201.93.25	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6201.93.30	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6201.93.35	26.5%	23.6%	20.6%	17.7%	14.7%	11.8%	8.8%	5.9%	2.9%	Free
6201.99.00	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
6202.11.00	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6202.12.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6202.12.20	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6202.13.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6202.13.30	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6202.13.40	26.5%	23.6%	20.6%	17.7%	14.7%	11.8%	8.8%	5.9%	2.9%	Free
6202.19.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6202.91.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6202.91.20	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6202.92.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6202.92.15	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6202.92.20	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6202.93.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6202.93.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6202.93.40	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6202.93.45	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6202.93.50	26.5%	23.6%	20.6%	17.7%	14.7%	11.8%	8.8%	5.9%	2.9%	Free
6202.99.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6203.11.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6203.11.20	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6203.12.10	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6203.12.20	26.1%	23.2%	20.3%	17.4%	14.5%	11.6%	8.7%	5.8%	2.9%	Free
6203.19.10	14.8%	13.2%	11.5%	9.9%	8.2%	6.6%	4.9%	3.3%	1.6%	Free
6203.19.20	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6203.19.30	26.1%	23.2%	20.3%	17.4%	14.5%	11.6%	8.7%	5.8%	2.9%	Free
6203.19.40	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6203.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6203.22.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6203.22.30	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6203.23.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6203.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6203.29.30	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6203.31.00	19.8%	17.6%	15.4%	13.2%	11%	8.8%	6.6%	4.4%	2.2%	Free
6203.32.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6203.32.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6203.33.10	19.8%	17.6%	15.4%	13.2%	11%	8.8%	6.6%	4.4%	2.2%	Free
6203.33.20	26.1%	23.2%	20.3%	17.4%	14.5%	11.6%	8.7%	5.8%	2.9%	Free
6203.39.10	19.8%	17.6%	15.4%	13.2%	11%	8.8%	6.6%	4.4%	2.2%	Free
6203.39.20	26.1%	23.2%	20.3%	17.4%	14.5%	11.6%	8.7%	5.8%	2.9%	Free
6203.39.40	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
6203.41.10	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6203.41.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6203.42.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6203.42.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
6203.42.40	15.9%	14.1%	12.3%	10.6%	8.8%	7%	5.3%	3.5%	1.7%	Free
6203.43.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6203.43.15	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6203.43.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6203.43.25	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6203.43.30	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6203.43.35	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6203.43.40	26.7%	23.7%	20.7%	17.8%	14.8%	11.8%	8.9%	5.9%	2.9%	Free
6203.49.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6203.49.15	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6203.49.20	26.7%	23.7%	20.7%	17.8%	14.8%	11.8%	8.9%	5.9%	2.9%	Free
6203.49.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6204.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.12.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.13.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.13.20	33.7¢/kg + 24.7%	30¢/kg + 22%	26.2¢/kg + 19.2%	22.5¢/kg + 16.5%	18.7¢/kg + 13.7%	15¢/kg + 11%	11.2¢/kg + 8.2%	7.5¢/kg + 5.5%	3.7¢/kg + 2.7%	Free
6204.19.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.19.20	33.7¢/kg + 24.7%	30¢/kg + 22%	26.2¢/kg + 19.2%	22.5¢/kg + 16.5%	18.7¢/kg + 13.7%	15¢/kg + 11%	11.2¢/kg + 8.2%	7.5¢/kg + 5.5%	3.7¢/kg + 2.7%	Free
6204.19.30	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
6204.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.22.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6204.22.30	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6204.23.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.29.40	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.31.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.31.20	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6204.32.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6204.32.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6204.33.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.33.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6204.33.40	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6204.33.50	26.1%	23.2%	20.3%	17.4%	14.5%	11.6%	8.7%	5.8%	2.9%	Free
6204.39.20	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6204.39.30	26.1%	23.2%	20.3%	17.4%	14.5%	11.6%	8.7%	5.8%	2.9%	Free
6204.39.40	6%	5.3%	4.6%	4%	3.3%	2.6%	2%	1.3%	0.6%	Free
6204.41.10	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6204.41.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.42.10	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
6204.42.20	5.3%	4.7%	4.1%	3.5%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
6204.42.30	11.3%	10%	8.8%	7.5%	6.3%	5%	3.7%	2.5%	1.2%	Free
6204.43.10	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6204.43.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.43.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.43.40	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.44.20	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6204.44.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.44.40	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.49.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.51.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.52.10	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6204.52.20	7.8%	6.9%	6%	5.2%	4.3%	3.4%	2.6%	1.7%	0.8%	Free
6204.53.10	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6204.53.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.53.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.59.10	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6204.59.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.59.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.59.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6204.61.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.62.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6204.62.20	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6204.62.30	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.62.40	15.9%	14.1%	12.3%	10.6%	8.8%	7%	5.3%	3.5%	1.7%	Free
6204.63.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6204.63.12	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6204.63.15	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.63.20	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6204.63.25	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.63.30	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6204.63.35	27.3%	24.3%	21.2%	18.2%	15.2%	12.1%	9.1%	6%	3%	Free
6204.69.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6204.69.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6204.69.25	27.3%	24.3%	21.2%	18.2%	15.2%	12.1%	9.1%	6%	3%	Free
6204.69.30	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.69.90	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6205.10.10	8.8%	7.8%	6.8%	5.8%	4.9%	3.9%	2.9%	1.9%	0.9%	Free
6205.10.20	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6205.20.10	8.3%	7.4%	6.5%	5.5%	4.6%	3.7%	2.7%	1.8%	0.9%	Free
6205.20.20	18.9%	16.8%	14.7%	12.6%	10.5%	8.4%	6.3%	4.2%	2.1%	Free
6205.30.10	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6205.30.15	47.6¢/kg + 18.9%	42.3¢/kg + 16.8%	37¢/kg + 14.7%	31.7¢/kg + 12.6%	26.4¢/kg + 10.5%	21.1¢/kg + 8.4%	15.8¢/kg + 6.3%	10.5¢/kg + 4.2%	5.2¢/kg + 2.1%	Free
6205.30.20	27.8¢/kg + 24.7%	24.7¢/kg + 22%	21.6¢/kg + 19.2%	18.5¢/kg + 16.5%	15.4¢/kg + 13.7%	12.3¢/kg + 11%	9.2¢/kg + 8.2%	6.1¢/kg + 5.5%	3¢/kg + 2.7%	Free
6205.90.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6205.90.40	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6206.10.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6206.20.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6206.20.20	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6206.20.30	74.4¢/kg + 18.9%	66.1¢/kg + 16.8%	57.8¢/kg + 14.7%	49.6¢/kg + 12.6%	41.3¢/kg + 10.5%	33¢/kg + 8.4%	24.8¢/kg + 6.3%	16.5¢/kg + 4.2%	8.2¢/kg + 2.1%	Free
6206.30.10	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
6206.30.20	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
6206.30.30	14.7%	13.1%	11.4%	9.8%	8.2%	6.5%	4.9%	3.2%	1.6%	Free
6206.40.10	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6206.40.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6206.40.25	74.4¢/kg + 18.9%	66.1¢/kg + 16.8%	57.8¢/kg + 14.7%	49.6¢/kg + 12.6%	41.3¢/kg + 10.5%	33¢/kg + 8.4%	24.8¢/kg + 6.3%	16.5¢/kg + 4.2%	8.2¢/kg + 2.1%	Free
6206.40.30	25.7%	22.8%	20%	17.1%	14.3%	11.4%	8.5%	5.7%	2.8%	Free
6206.90.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6207.11.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
6207.19.00	10%	8.9%	7.8%	6.7%	5.6%	4.4%	3.3%	2.2%	1.1%	Free
6207.21.00	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6207.22.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6207.29.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6207.91.10	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6207.91.30	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6207.92.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6207.92.40	10%	8.9%	7.8%	6.7%	5.6%	4.4%	3.3%	2.2%	1.1%	Free
6207.99.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6207.99.40	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
6207.99.60	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6208.11.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6208.19.20	10.7%	9.5%	8.3%	7.1%	5.9%	4.7%	3.5%	2.3%	1.1%	Free
6208.19.40	8.3%	7.4%	6.5%	5.5%	4.6%	3.7%	2.7%	1.8%	0.9%	Free
6208.21.00	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6208.22.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6208.29.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6208.91.10	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6208.91.30	10.7%	9.5%	8.3%	7.1%	5.9%	4.7%	3.5%	2.3%	1.1%	Free
6208.92.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6208.99.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6208.99.60	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6208.99.80	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6209.10.00	41.6¢/kg + 18.9%	37¢/kg + 16.8%	32.4¢/kg + 14.7%	27.7¢/kg + 12.6%	23.1¢/kg + 10.5%	18.5¢/kg + 8.4%	13.8¢/kg + 6.3%	9.2¢/kg + 4.2%	4.6¢/kg + 2.1%	Free
6209.20.10	11.3%	10%	8.8%	7.5%	6.3%	5%	3.7%	2.5%	1.2%	Free
6209.20.20	14.8%	13.2%	11.5%	9.9%	8.2%	6.6%	4.9%	3.3%	1.6%	Free
6209.20.30	15.9%	14.1%	12.3%	10.6%	8.8%	7%	5.3%	3.5%	1.7%	Free
6209.20.50	8.9%	7.9%	6.9%	5.9%	4.9%	3.9%	2.9%	1.9%	0.9%	Free
6209.30.10	25.7%	22.8%	20%	17.1%	14.3%	11.4%	8.5%	5.7%	2.8%	Free
6209.30.20	27.3%	24.3%	21.2%	18.2%	15.2%	12.1%	9.1%	6%	3%	Free
6209.30.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6209.90.10	25.7%	22.8%	20%	17.1%	14.3%	11.4%	8.5%	5.7%	2.8%	Free
6209.90.20	27.3%	24.3%	21.2%	18.2%	15.2%	12.1%	9.1%	6%	3%	Free
6209.90.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6209.90.40	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6210.10.20	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
6210.10.40	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6210.20.10	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6210.20.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6210.30.10	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6210.30.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6210.40.10	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6210.40.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6210.50.10	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6210.50.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6211.11.10	26.6%	23.6%	20.7%	17.7%	14.8%	11.8%	8.8%	5.9%	2.9%	Free
6211.11.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6211.12.10	21.1%	18.8%	16.4%	14.1%	11.7%	9.4%	7%	4.7%	2.3%	Free
6211.12.30	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6211.20.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6211.20.15	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6211.20.20	26.5%	23.6%	20.6%	17.7%	14.7%	11.8%	8.8%	5.9%	2.9%	Free
6211.20.30	26.9%	23.9%	20.9%	17.9%	14.9%	11.9%	8.9%	5.9%	2.9%	Free
6211.20.40	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6211.20.50	26.8%	23.8%	20.8%	17.8%	14.9%	11.9%	8.9%	5.9%	2.9%	Free
6211.20.60	27.3%	24.3%	21.2%	18.2%	15.2%	12.1%	9.1%	6%	3%	Free
6211.20.70	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6211.31.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6211.32.00	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
6211.33.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6211.39.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
6211.41.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6211.42.00	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
6211.43.00	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6211.49.00	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
6212.10.10	28.8%	25.6%	22.4%	19.2%	16%	12.8%	9.6%	6.4%	3.2%	Free
6212.10.20	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
6212.20.00	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
6212.30.00	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
6212.90.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6213.10.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6213.10.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6213.20.10	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6213.20.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6213.90.10	10.3%	9.2%	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
6213.90.20	9.6%	8.5%	7.4%	6.4%	5.3%	4.2%	3.2%	2.1%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6214.10.10	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
6214.10.20	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
6214.20.00	11.9%	10.6%	9.3%	7.9%	6.6%	5.3%	3.9%	2.6%	1.3%	Free
6214.30.00	9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
6214.40.00	9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
6214.90.00	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
6215.10.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6215.20.00	23.8¢/kg + 12.1%	21.2¢/kg + 10.8%	18.5¢/kg + 9.4%	15.9¢/kg + 8.1%	13.2¢/kg + 6.7%	10.6¢/kg + 5.4%	7.9¢/kg + 4%	5.3¢/kg + 2.7%	2.6¢/kg + 1.3%	Free
6215.90.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6216.00.10	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6216.00.15	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
6216.00.20	19.8¢/kg + 9.9%	17.6¢/kg + 8.8%	15.4¢/kg + 7.7%	13.2¢/kg + 6.6%	11¢/kg + 5.5%	8.8¢/kg + 4.4%	6.6¢/kg + 3.3%	4.4¢/kg + 2.2%	2.2¢/kg + 1.1%	Free
6216.00.25	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6216.00.30	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6216.00.34	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6216.00.38	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
6216.00.44	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6216.00.48	19.8¢/kg + 9.9%	17.6¢/kg + 8.8%	15.4¢/kg + 7.7%	13.2¢/kg + 6.6%	11¢/kg + 5.5%	8.8¢/kg + 4.4%	6.6¢/kg + 3.3%	4.4¢/kg + 2.2%	2.2¢/kg + 1.1%	Free
6216.00.50	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
6216.00.60	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
6217.10.00	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
6217.90.00	13.9%	12.4%	10.8%	9.3%	7.7%	6.2%	4.6%	3.1%	1.5%	Free
6301.10.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6301.20.00	3.9¢/kg + 13.5%	3.5¢/kg + 12%	3¢/kg + 10.5%	2.6¢/kg + 9%	2.2¢/kg + 7.5%	1.7¢/kg + 6%	1.3¢/kg + 4.5%	0.8¢/kg + 3%	0.4¢/kg + 1.5%	Free
6301.30.00	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6301.40.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6301.90.00	12.8%	11.4%	10%	8.5%	7.1%	5.7%	4.2%	2.8%	1.4%	Free
6302.10.00	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6302.21.10	21.4%	19%	16.6%	14.2%	11.9%	9.5%	7.1%	4.7%	2.3%	Free
6302.21.20	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6302.22.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6302.22.20	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6302.29.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6302.31.10	21.4%	19%	16.6%	14.2%	11.9%	9.5%	7.1%	4.7%	2.3%	Free
6302.31.20	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
6302.32.10	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6302.32.20	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6302.39.00	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
6302.40.10	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6302.40.20	6.9%	6.1%	5.3%	4.6%	3.8%	3%	2.3%	1.5%	0.7%	Free
6302.51.10	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
6302.51.20	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6302.51.30	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6302.51.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6302.52.10	9.1%	8.1%	7.1%	6.1%	5.1%	4%	3%	2%	1%	Free
6302.52.20	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
6302.53.00	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6302.59.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6302.60.00	9.2%	8.2%	7.2%	6.1%	5.1%	4.1%	3%	2%	1%	Free
6302.91.00	9.4%	8.4%	7.3%	6.3%	5.2%	4.2%	3.1%	2.1%	1%	Free
6302.92.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
6302.93.10	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6302.93.20	10.1%	9%	7.9%	6.7%	5.6%	4.5%	3.3%	2.2%	1.1%	Free
6302.99.10	4.8%	4.3%	3.7%	3.2%	2.7%	2.1%	1.6%	1%	0.5%	Free
6302.99.20	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6303.11.00	10.5%	9.3%	8.1%	7%	5.8%	4.6%	3.5%	2.3%	1.1%	Free
6303.12.00	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6303.19.00	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6303.91.00	10.5%	9.3%	8.1%	7%	5.8%	4.6%	3.5%	2.3%	1.1%	Free
6303.92.00	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6303.99.00	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6304.11.10	12.2%	10.8%	9.5%	8.1%	6.8%	5.4%	4%	2.7%	1.3%	Free
6304.11.20	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6304.11.30	10.5%	9.3%	8.1%	7%	5.8%	4.6%	3.5%	2.3%	1.1%	Free
6304.19.05	12.2%	10.8%	9.5%	8.1%	6.8%	5.4%	4%	2.7%	1.3%	Free
6304.19.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6304.19.15	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6304.19.20	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6304.19.30	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
6304.91.00	10.3%	9.2%	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
6304.92.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6304.93.00	9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
6304.99.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6304.99.15	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6304.99.20	11.5%	10.2%	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6304.99.40	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6304.99.60	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
6305.20.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6305.31.00	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6305.39.00	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
6305.90.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6306.11.00	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
6306.12.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6306.19.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
6306.21.00	14.4%	12.8%	11.2%	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
6306.22.10	4.1%	3.7%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
6306.22.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6306.29.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
6306.31.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
6306.39.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
6306.41.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
6306.49.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
6306.91.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6306.99.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6307.10.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6307.10.20	9.4%	8.4%	7.3%	6.3%	5.2%	4.2%	3.1%	2.1%	1%	Free
6307.20.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6307.90.30	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6307.90.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6307.90.50	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
6307.90.60	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
6307.90.70	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6307.90.75	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6307.90.85	10.4%	9.2%	8.1%	6.9%	5.8%	4.6%	3.4%	2.3%	1.1%	Free
6307.90.90	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6308.00.00	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
6309.00.00	1.6%	1.4%	1.2%	1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
6310.10.10	5.5¢/kg	4.9¢/kg	4.3¢/kg	3.7¢/kg	3.1¢/kg	2.4¢/kg	1.8¢/kg	1.2¢/kg	0.6¢/kg	Free
6310.90.10	5.5¢/kg	4.9¢/kg	4.3¢/kg	3.7¢/kg	3.1¢/kg	2.4¢/kg	1.8¢/kg	1.2¢/kg	0.6¢/kg	Free
6401.10.00	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6401.91.00	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6401.92.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6401.92.60	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6401.92.90	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6401.99.30	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
6401.99.60	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6401.99.80	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6401.99.90	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6402.11.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6402.19.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6402.19.30	43.2%	38.4%	33.6%	28.8%	24%	19.2%	14.4%	9.6%	4.8%	Free
6402.19.50	81¢/pr. + 33.7%	72¢/pr. + 30%	63¢/pr. + 26.2%	54¢/pr. + 22.5%	45¢/pr. + 18.7%	36¢/pr. + 15%	27¢/pr. + 11.2%	18¢/pr. + 7.5%	9¢/pr. + 3.7%	Free
6402.19.70	81¢/pr. + 18%	72¢/pr. + 16%	63¢/pr. + 14%	54¢/pr. + 12%	45¢/pr. + 10%	36¢/pr. + 8%	27¢/pr. + 6%	18¢/pr. + 4%	9¢/pr. + 2%	Free
6402.19.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6402.20.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
6402.30.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6402.30.50	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6402.30.60	43.2%	38.4%	33.6%	28.8%	24%	19.2%	14.4%	9.6%	4.8%	Free
6402.30.70	81¢/pr. + 33.7%	72¢/pr. + 30%	63¢/pr. + 26.2%	54¢/pr. + 22.5%	45¢/pr. + 18.7%	36¢/pr. + 15%	27¢/pr. + 11.2%	18¢/pr. + 7.5%	9¢/pr. + 3.7%	Free
6402.30.80	81¢/pr. + 18%	72¢/pr. + 16%	63¢/pr. + 14%	54¢/pr. + 12%	45¢/pr. + 10%	36¢/pr. + 8%	27¢/pr. + 6%	18¢/pr. + 4%	9¢/pr. + 2%	Free
6402.30.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6402.91.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6402.91.50	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6402.91.60	43.2%	38.4%	33.6%	28.8%	24%	19.2%	14.4%	9.6%	4.8%	Free
6402.91.70	81¢/pr. + 33.7%	72¢/pr. + 30%	63¢/pr. + 26.2%	54¢/pr. + 22.5%	45¢/pr. + 18.7%	36¢/pr. + 15%	27¢/pr. + 11.2%	18¢/pr. + 7.5%	9¢/pr. + 3.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6402.91.80	81¢/pr. + 18%	72¢/pr. + 16%	63¢/pr. + 14%	54¢/pr. + 12%	45¢/pr. + 10%	36¢/pr. + 8%	27¢/pr. + 6%	18¢/pr. + 4%	9¢/pr. + 2%	Free
6402.91.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6402.99.05	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6402.99.10	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
6402.99.15	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6402.99.20	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6402.99.30	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6402.99.60	43.2%	38.4%	33.6%	28.8%	24%	19.2%	14.4%	9.6%	4.8%	Free
6402.99.70	81¢/pr. + 33.7%	72¢/pr. + 30%	63¢/pr. + 26.2%	54¢/pr. + 22.5%	45¢/pr. + 18.7%	36¢/pr. + 15%	27¢/pr. + 11.2%	18¢/pr. + 7.5%	9¢/pr. + 3.7%	Free
6402.99.80	81¢/pr. + 18%	72¢/pr. + 16%	63¢/pr. + 14%	54¢/pr. + 12%	45¢/pr. + 10%	36¢/pr. + 8%	27¢/pr. + 6%	18¢/pr. + 4%	9¢/pr. + 2%	Free
6402.99.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6403.11.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6403.19.15	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6403.19.45	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6403.19.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6403.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6403.30.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6403.40.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6403.40.60	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6403.51.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6403.51.60	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6403.51.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6403.59.15	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
6403.59.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6403.59.60	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6403.59.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6403.91.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6403.91.60	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6403.91.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6403.99.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6403.99.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6403.99.60	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6403.99.75	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
6403.99.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6404.11.20	9.4%	8.4%	7.3%	6.3%	5.2%	4.2%	3.1%	2.1%	1%	Free
6404.11.40	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6404.11.50	43.2%	38.4%	33.6%	28.8%	24%	19.2%	14.4%	9.6%	4.8%	Free
6404.11.60	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6404.11.70	81¢/pr. + 33.7%	72¢/pr. + 30%	63¢/pr. + 26.2%	54¢/pr. + 22.5%	45¢/pr. + 18.7%	36¢/pr. + 15%	27¢/pr. + 11.2%	18¢/pr. + 7.5%	9¢/pr. + 3.7%	Free
6404.11.80	81¢/pr. + 18%	72¢/pr. + 16%	63¢/pr. + 14%	54¢/pr. + 12%	45¢/pr. + 10%	36¢/pr. + 8%	27¢/pr. + 6%	18¢/pr. + 4%	9¢/pr. + 2%	Free
6404.11.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6404.19.15	9.4%	8.4%	7.3%	6.3%	5.2%	4.2%	3.1%	2.1%	1%	Free
6404.19.20	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6404.19.25	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6404.19.30	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
6404.19.35	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6404.19.40	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6404.19.50	43.2%	38.4%	33.6%	28.8%	24%	19.2%	14.4%	9.6%	4.8%	Free
6404.19.60	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6404.19.70	81¢/pr. + 33.7%	72¢/pr. + 30%	63¢/pr. + 26.2%	54¢/pr. + 22.5%	45¢/pr. + 18.7%	36¢/pr. + 15%	27¢/pr. + 11.2%	18¢/pr. + 7.5%	9¢/pr. + 3.7%	Free
6404.19.80	81¢/pr. + 18%	72¢/pr. + 16%	63¢/pr. + 14%	54¢/pr. + 12%	45¢/pr. + 10%	36¢/pr. + 8%	27¢/pr. + 6%	18¢/pr. + 4%	9¢/pr. + 2%	Free
6404.19.90	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6404.20.20	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
6404.20.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6404.20.60	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6405.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6405.20.30	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6405.20.60	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
6405.20.90	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
6405.90.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6405.90.90	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
6406.10.05	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6406.10.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6406.10.20	9.4%	8.4%	7.3%	6.3%	5.2%	4.2%	3.1%	2.1%	1%	Free
6406.10.25	43.2%	38.4%	33.6%	28.8%	24%	19.2%	14.4%	9.6%	4.8%	Free
6406.10.30	81¢/pr. + 33.7%	72¢/pr. + 30%	63¢/pr. + 26.2%	54¢/pr. + 22.5%	45¢/pr. + 18.7%	36¢/pr. + 15%	27¢/pr. + 11.2%	18¢/pr. + 7.5%	9¢/pr. + 3.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6406.10.35	81¢/pr. + 18%	72¢/pr. + 16%	63¢/pr. + 14%	54¢/pr. + 12%	45¢/pr. + 10%	36¢/pr. + 8%	27¢/pr. + 6%	18¢/pr. + 4%	9¢/pr. + 2%	Free
6406.10.40	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6406.10.45	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
6406.10.50	33.7%	30%	26.2%	22.5%	18.7%	15%	11.2%	7.5%	3.7%	Free
6406.10.60	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
6406.10.65	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
6406.10.75	10%	8.9%	7.8%	6.7%	5.6%	4.4%	3.3%	2.2%	1.1%	Free
6406.10.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6406.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
6406.91.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6406.99.15	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
6406.99.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
6406.99.60	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
6406.99.90	13.7%	12.2%	10.7%	9.1%	7.6%	6.1%	4.5%	3%	1.5%	Free
6501.00.30	99¢/doz. + 1.4%	88¢/doz. + 1.2%	77¢/doz. + 1.1%	66¢/doz. + 0.9%	55¢/doz. + 0.8%	44¢/doz. + 0.6%	33¢/doz. + 0.4%	22¢/doz. + 0.3%	11¢/doz. + 0.1%	Free
6501.00.60	$1.728/doz. + 2.5%	$1.536/doz. + 2.2%	$1.344/doz. + 1.9%	$1.152/doz. + 1.6%	96¢/doz. + 1.4%	76.8¢/doz. + 1.1%	57.6¢/doz. + 0.8%	38.4¢/doz. + 0.5%	19.2¢/doz. + 0.2%	Free
6501.00.90	9.9¢/kg + 9.9%	8.8¢/kg + 8.8%	7.7¢/kg + 7.7%	6.6¢/kg + 6.6%	5.5¢/kg + 5.5%	4.4¢/kg + 4.4%	3.3¢/kg + 3.3%	2.2¢/kg + 2.2%	1.1¢/kg + 1.1%	Free
6502.00.20	30.6¢/doz. + 3%	27.2¢/doz. + 2.7%	23.8¢/doz. + 2.3%	20.4¢/doz. + 2%	17¢/doz. + 1.7%	13.6¢/doz. + 1.3%	10.2¢/doz. + 1%	6.8¢/doz. + 0.6%	3.4¢/doz. + 0.3%	Free
6502.00.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
6502.00.60	2.1¢/doz. + 1.8%	1.9¢/doz. + 1.6%	1.6¢/doz. + 1.4%	1.4¢/doz. + 1.2%	1.2¢/doz. + 1%	0.9¢/doz. + 0.8%	0.7¢/doz. + 0.6%	0.4¢/doz. + 0.4%	0.2¢/doz. + 0.2%	Free
6502.00.90	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6503.00.30	99¢/doz. + 1.4%	88¢/doz. + 1.2%	77¢/doz. + 1.1%	66¢/doz. + 0.9%	55¢/doz. + 0.8%	44¢/doz. + 0.6%	33¢/doz. + 0.4%	22¢/doz. + 0.3%	11¢/doz. + 0.1%	Free
6503.00.60	$1.728/doz. + 2.5%	$1.536/doz. + 2.2%	$1.344/doz. + 1.9%	$1.152/doz. + 1.6%	96¢/doz. + 1.4%	76.8¢/doz. + 1.1%	57.6¢/doz. + 0.8%	38.4¢/doz. + 0.5%	19.2¢/doz. + 0.2%	Free
6503.00.90	12.8¢/kg + 6% + 1.8¢/article	11.4¢/kg + 5.3% + 1.6¢/article	10¢/kg + 4.6% + 1.4¢/article	8.5¢/kg + 4% + 1.2¢/article	7.1¢/kg + 3.3% + 1¢/article	5.7¢/kg + 2.6% + 0.8¢/article	4.2¢/kg + 2% + 0.6¢/article	2.8¢/kg + 1.3% + 0.4¢/article	1.4¢/kg + 0.6% + 0.2¢/article	Free
6504.00.30	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
6504.00.60	91.8¢/doz. + 4.5%	81.6¢/doz. + 4%	71.4¢/doz. + 3.5%	61.2¢/doz. + 3%	51¢/doz. + 2.5%	40.8¢/doz. + 2%	30.6¢/doz. + 1.5%	20.4¢/doz. + 1%	10.2¢/doz. + 0.5%	Free
6504.00.90	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6505.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
6505.90.15	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
6505.90.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6505.90.25	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6505.90.30	45.6¢/kg + 13.8%	40.5¢/kg + 12.3%	35.4¢/kg + 10.7%	30.4¢/kg + 9.2%	25.3¢/kg + 7.7%	20.2¢/kg + 6.1%	15.2¢/kg + 4.6%	10.1¢/kg + 3%	5¢/kg + 1.5%	Free
6505.90.40	29.7¢/kg + 7.5%	26.4¢/kg + 6.7%	23.1¢/kg + 5.8%	19.8¢/kg + 5%	16.5¢/kg + 4.2%	13.2¢/kg + 3.3%	9.9¢/kg + 2.5%	6.6¢/kg + 1.6%	3.3¢/kg + 0.8%	Free
6505.90.50	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6505.90.60	35.7¢/kg + 12.6%	31.7¢/kg + 11.2%	27.7¢/kg + 9.8%	23.8¢/kg + 8.4%	19.8¢/kg + 7%	15.8¢/kg + 5.6%	11.9¢/kg + 4.2%	7.9¢/kg + 2.8%	3.9¢/kg + 1.4%	Free
6505.90.70	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6505.90.80	19.8¢/kg + 7.2%	17.6¢/kg + 6.4%	15.4¢/kg + 5.6%	13.2¢/kg + 4.8%	11¢/kg + 4%	8.8¢/kg + 3.2%	6.6¢/kg + 2.4%	4.4¢/kg + 1.6%	2.2¢/kg + 0.8%	Free
6505.90.90	19.8¢/kg + 7.2%	17.6¢/kg + 6.4%	15.4¢/kg + 5.6%	13.2¢/kg + 4.8%	11¢/kg + 4%	8.8¢/kg + 3.2%	6.6¢/kg + 2.4%	4.4¢/kg + 1.6%	2.2¢/kg + 0.8%	Free
6506.10.30	7.9¢/kg + 3%	7¢/kg + 2.7%	6.1¢/kg + 2.3%	5.2¢/kg + 2%	4.4¢/kg + 1.7%	3.5¢/kg + 1.3%	2.6¢/kg + 1%	1.7¢/kg + 0.6%	0.8¢/kg + 0.3%	Free
6506.10.60	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
6506.91.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
6506.99.00	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
6507.00.00	1.1%	1%	0.9%	0.7%	0.6%	0.5%	0.3%	0.2%	0.1%	Free
6601.10.00	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
6601.91.00	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
6601.99.00	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
6602.00.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
6603.10.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
6603.20.30	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
6603.20.90	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
6603.90.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
6701.00.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6702.10.20	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
6702.10.40	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
6702.90.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6702.90.40	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6702.90.60	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6703.00.30	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
6703.00.60	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
6704.11.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
6704.19.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
6704.20.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
6704.90.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
6801.00.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
6802.10.00	5.5%	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
6802.21.10	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
6802.21.50	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
6802.22.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
6802.29.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
6802.91.05	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
6802.91.15	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
6802.91.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
6802.91.25	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
6802.91.30	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
6802.92.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
6802.99.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
6803.00.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
6803.00.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
6804.21.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6804.22.10	8.9¢/kg + 3.5%	7.9¢/kg + 3.1%	6.9¢/kg + 2.7%	5.9¢/kg + 2.3%	4.9¢/kg + 1.9%	3.9¢/kg + 1.5%	2.9¢/kg + 1.1%	1.9¢/kg + 0.7%	0.9¢/kg + 0.3%	Free
6804.22.40	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
6804.22.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6805.10.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
6805.20.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
6805.30.10	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
6806.10.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6806.20.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6806.90.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6807.10.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6807.90.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
6809.11.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
6809.19.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6809.90.00	3.8%	3.4%	3%	2.5%	2.1%	1.7%	1.2%	0.8%	0.4%	Free
6810.11.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6810.19.10	16.8%	12.6%	8.4%	4.2%	Free	Free	Free	Free	Free	Free
6810.19.50	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6810.20.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6810.91.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6810.99.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6811.30.00	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free	Free
6812.50.10	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
6812.50.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
6814.10.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
6814.90.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
6815.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6815.91.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6815.99.40	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
6901.00.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6902.10.50	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6902.20.50	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6902.90.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6903.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6903.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6903.90.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
6904.90.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6905.10.00	10.8%	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
6905.90.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6906.00.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
6907.10.00	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6907.90.00	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6908.10.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6908.10.20	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
6908.10.50	17.1%	15.2%	13.3%	11.4%	9.5%	7.6%	5.7%	3.8%	1.9%	Free
6908.90.00	17.1%	15.2%	13.3%	11.4%	9.5%	7.6%	5.7%	3.8%	1.9%	Free
6909.11.20	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
6909.11.40	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6909.19.10	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
6909.19.50	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6909.90.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6910.10.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6910.90.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
6911.10.10	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
6911.10.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6911.10.35	23.4%	20.8%	18.2%	15.6%	13%	10.4%	7.8%	5.2%	2.6%	Free
6911.10.39	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6911.10.41	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6911.10.45	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
6911.10.49	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
6911.10.50	23.4%	20.8%	18.2%	15.6%	13%	10.4%	7.8%	5.2%	2.6%	Free
6911.90.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6912.00.10	1.2%	1.1%	0.9%	0.8%	0.7%	0.5%	0.4%	0.2%	0.1%	Free
6912.00.20	31.5%	28%	24.5%	21%	17.5%	14%	10.5%	7%	3.5%	Free
6912.00.35	10.3%	9.2%	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
6912.00.39	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
6912.00.41	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
6912.00.44	12.1%	10.8%	9.4%	8.1%	6.7%	5.4%	4%	2.7%	1.3%	Free
6912.00.47	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
6912.00.49	10.3%	9.2%	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
6912.00.50	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6913.10.10	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
6913.10.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
6913.10.50	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6913.90.10	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
6913.90.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
6913.90.30	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
6913.90.50	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6914.10.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
6914.90.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7001.00.10	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
7001.00.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7002.10.10	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
7002.10.20	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7002.20.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7002.20.50	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
7002.31.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7002.32.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
7002.39.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
7003.11.00	1.4%	1%	0.7%	0.3%	Free	Free	Free	Free	Free	Free
7003.19.00	1.3%	1%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
7003.20.00	1.3%	1%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
7003.30.00	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
7004.10.10	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
7004.10.20	1¢/kg + 1.6%	0.7¢/kg + 1.2%	0.5¢/kg + 0.8%	0.2¢/kg + 0.4%	Free	Free	Free	Free	Free	Free
7004.10.50	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
7004.90.05	1.2¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free	Free	Free	Free	Free	Free
7004.90.10	1.6¢/kg	1.2¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
7004.90.15	1.7¢/kg	1.3¢/kg	0.8¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free
7004.90.20	2¢/kg	1.5¢/kg	1¢/kg	0.5¢/kg	Free	Free	Free	Free	Free	Free
7004.90.25	0.7¢/kg	0.5¢/kg	0.3¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
7004.90.30	0.8¢/kg	0.6¢/kg	0.4¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
7004.90.40	1¢/kg	0.7¢/kg	0.5¢/kg	0.2¢/kg	Free	Free	Free	Free	Free	Free
7004.90.50	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
7005.10.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
7005.21.10	12.8¢/m^2 + 0.3%	9.6¢/m^2 + 0.2%	6.4¢/m^2 + 0.1%	3.2¢/m^2	Free	Free	Free	Free	Free	Free
7005.21.20	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
7005.29.05	16.6¢/m^2	12.4¢/m^2	8.3¢/m^2	4.1¢/m^2	Free	Free	Free	Free	Free	Free
7005.29.15	12.8¢/m^2	9.6¢/m^2	6.4¢/m^2	3.2¢/m^2	Free	Free	Free	Free	Free	Free
7005.29.25	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7005.30.00	25.8¢/m^2	19.3¢/m^2	12.9¢/m^2	6.4¢/m^2	Free	Free	Free	Free	Free	Free
7006.00.10	7.9%	7%	6.1%	5.2%	4.4%	3.5%	2.6%	1.7%	0.8%	Free
7006.00.20	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7006.00.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7007.11.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7007.19.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7007.21.10	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7007.21.50	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7007.29.00	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7008.00.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
7009.10.00	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
7009.91.10	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
7009.91.50	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7009.92.10	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
7009.92.50	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7010.90.20	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
7010.90.30	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7011.10.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7011.10.50	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7011.20.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7011.90.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7012.00.00	3.2¢ each + 6.4%	2.4¢ each + 4.8%	1.6¢ each + 3.2%	0.8¢ each + 1.6%	Free	Free	Free	Free	Free	Free
7013.21.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
7013.21.20	11.2%	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
7013.21.30	8.4%	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
7013.21.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7013.29.05	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
7013.29.10	34.2%	30.4%	26.6%	22.8%	19%	15.2%	11.4%	7.6%	3.8%	Free
7013.29.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
7013.29.30	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
7013.29.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7013.29.50	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
7013.29.60	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7013.31.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
7013.31.20	11.2%	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
7013.31.30	8.4%	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
7013.31.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7013.32.10	10%	7.5%	5%	2.5%	Free	Free	Free	Free	Free	Free
7013.32.20	24%	18%	12%	6%	Free	Free	Free	Free	Free	Free
7013.32.30	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
7013.32.40	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
7013.39.10	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
7013.39.20	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7013.39.30	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
7013.39.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7013.39.50	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
7013.39.60	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7013.91.10	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
7013.91.20	11.2%	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
7013.91.30	8.4%	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
7013.91.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7013.99.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
7013.99.20	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
7013.99.30	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
7013.99.35	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
7013.99.40	34.2%	30.4%	26.6%	22.8%	19%	15.2%	11.4%	7.6%	3.8%	Free
7013.99.50	27%	24%	21%	18%	15%	12%	9%	6%	3%	Free
7013.99.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
7013.99.70	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7013.99.80	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
7013.99.90	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7014.00.10	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
7014.00.20	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
7014.00.30	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7014.00.50	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7015.10.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7015.90.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7015.90.20	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7015.90.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7016.10.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
7016.90.10	9.6%	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free	Free
7016.90.50	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
7017.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7017.20.00	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
7017.90.00	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
7018.10.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7018.10.20	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
7018.10.50	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7018.20.00	15.7%	14%	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
7018.90.10	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
7018.90.50	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
7019.10.10	6.6%	5.9%	5.1%	4.4%	3.7%	2.9%	2.2%	1.4%	0.7%	Free
7019.10.20	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7019.10.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7019.10.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7019.10.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7019.20.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7019.20.20	7.4%	6.6%	5.8%	4.9%	4.1%	3.3%	2.4%	1.6%	0.8%	Free
7019.20.50	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
7019.31.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7019.32.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7019.39.10	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7019.39.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7019.90.10	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
7019.90.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7020.00.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
7102.21.30	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
7103.10.40	16.8%	12.6%	8.4%	4.2%	Free	Free	Free	Free	Free	Free
7103.99.50	16.8%	12.6%	8.4%	4.2%	Free	Free	Free	Free	Free	Free
7104.10.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7104.20.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7104.90.50	10.2%	7.6%	5.1%	2.5%	Free	Free	Free	Free	Free	Free
7106.91.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7106.92.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7107.00.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7108.12.50	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
7108.13.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
7108.13.50	6.5%	4.9%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
7109.00.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
7111.00.00	16%	12%	8%	4%	Free	Free	Free	Free	Free	Free
7113.11.10	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
7113.11.20	22%	16.5%	11%	5.5%	Free	Free	Free	Free	Free	Free
7113.11.50	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7113.19.10	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
7113.19.21	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.19.25	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.19.29	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.19.30	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.19.50	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.20.10	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
7113.20.21	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.20.25	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.20.29	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.20.30	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7113.20.50	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7114.11.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7114.11.20	4.3%	3.2%	2.1%	1%	Free	Free	Free	Free	Free	Free
7114.11.30	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7114.11.40	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
7114.11.45	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7114.11.50	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7114.11.60	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7114.11.70	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7114.19.00	6.3%	4.7%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
7114.20.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7115.10.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7115.90.10	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
7115.90.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7115.90.50	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
7116.10.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7116.10.15	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
7116.10.20	8.8%	6.6%	4.4%	2.2%	Free	Free	Free	Free	Free	Free
7116.20.10	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7116.20.20	16.8%	12.6%	8.4%	4.2%	Free	Free	Free	Free	Free	Free
7116.20.50	5.3%	4%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7117.11.00	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
7117.19.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7117.19.20	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7117.19.30	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7117.19.50	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
7117.90.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7117.90.30	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7117.90.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7117.90.50	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
7202.70.00	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7202.80.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7202.91.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7202.92.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
7202.93.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
7202.99.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
7205.10.00	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
7205.21.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7206.10.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7206.90.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7207.11.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7207.12.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7207.19.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7207.20.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7208.11.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.12.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.13.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.13.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.14.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.14.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.21.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.21.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.22.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.22.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.23.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.23.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.24.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.24.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.31.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7208.32.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.33.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.33.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.34.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.34.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.35.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.35.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.41.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.42.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.43.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.44.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.45.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.11.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.12.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.13.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.14.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.21.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.22.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.23.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.24.10	3.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7209.24.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.31.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.32.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.33.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.34.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.41.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.42.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.43.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.44.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7210.11.00	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
7210.12.00	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
7210.20.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7210.31.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7210.39.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.41.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.49.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.50.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7210.60.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.70.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7210.70.60	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.90.10	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.90.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7210.90.90	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7211.11.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.12.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.19.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.19.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7211.21.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.22.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.29.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.29.30	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.29.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.29.70	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7211.30.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.30.30	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7211.30.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.41.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.41.30	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.41.50	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7211.41.70	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.49.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.49.30	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7211.49.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7212.10.00	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
7212.21.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7212.29.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7212.30.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7212.30.30	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7212.30.50	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7212.40.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7212.40.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7212.50.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7212.60.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7213.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7213.20.00	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.31.30	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.31.60	2%	1.8%	1.6%	1.3%	1.1%	0.9%	0.6%	0.4%	0.2%	Free
7213.39.00	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.41.30	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.41.60	2%	1.8%	1.6%	1.3%	1.1%	0.9%	0.6%	0.4%	0.2%	Free
7213.49.00	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.50.00	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7214.10.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7214.30.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.40.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.50.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.60.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7215.10.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7215.20.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7215.30.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7215.40.00	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7215.90.10	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7215.90.30	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7215.90.50	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7216.10.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7216.21.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7216.22.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7216.31.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7216.32.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7216.33.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7216.40.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7216.50.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7216.60.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7216.90.00	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7217.11.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7217.11.20	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7217.11.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7217.11.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.11.70	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.11.90	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7217.12.10	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.12.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.12.50	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.12.70	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
7217.13.10	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.13.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.13.50	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.13.70	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
7217.19.10	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7217.19.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.21.10	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7217.21.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.21.50	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7217.22.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.22.50	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.23.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.23.50	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.29.10	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7217.29.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.31.10	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7217.31.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.31.50	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7217.32.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.32.50	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.33.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.33.50	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7217.39.10	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7217.39.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7218.10.00	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7218.90.00	*4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7219.11.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.12.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.13.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.14.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.21.00	*8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7219.22.00	*8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7219.23.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.24.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.31.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.32.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.33.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.34.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.35.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7219.90.00	*5.3%	4.7%	4.1%	3.5%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7220.11.00	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7220.12.10	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7220.12.50	*10.4%	9.2%	8.1%	6.9%	5.8%	4.6%	3.4%	2.3%	1.1%	Free
7220.20.10	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7220.20.60	*10.4%	9.2%	8.1%	6.9%	5.8%	4.6%	3.4%	2.3%	1.1%	Free
7220.20.70	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7220.20.80	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7220.20.90	*7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7220.90.00	*5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7221.00.00	*4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7222.10.00	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7222.20.00	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7222.30.00	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7222.40.30	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
7222.40.60	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7223.00.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
7223.00.50	2.9%	2.6%	2.3%	1.9%	1.6%	1.3%	0.9%	0.6%	0.3%	Free
7223.00.90	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7224.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7224.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7225.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7225.20.00	*9.4%	8.4%	7.3%	6.3%	5.2%	4.2%	3.1%	2.1%	1%	Free
7225.30.10	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7225.30.30	*3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7225.30.50	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7225.30.70	*8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
7225.40.10	8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7225.40.30	*3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7225.40.50	*8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7225.40.70	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
7225.50.10	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7225.50.60	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7225.50.70	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7225.50.80	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7225.90.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7226.10.10	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7226.10.50	*6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
7226.20.00	*11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
7226.91.10	*8.6%	7.6%	6.7%	5.7%	4.8%	3.8%	2.8%	1.9%	0.9%	Free
7226.91.30	*10.4%	9.2%	8.1%	6.9%	5.8%	4.6%	3.4%	2.3%	1.1%	Free
7226.91.50	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7226.91.70	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
7226.91.80	*5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7226.92.10	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7226.92.30	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7226.92.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7226.92.70	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7226.92.80	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7226.99.00	*5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7227.10.00	*4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7227.20.00	*4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7227.90.10	*1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
7227.90.20	*3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7227.90.60	*4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7228.10.00	*10.3%	9.2%	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
7228.20.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7228.20.50	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7228.30.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7228.30.60	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7228.30.80	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7228.40.00	*5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7228.50.10	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7228.50.50	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7228.60.10	*9.5%	8.4%	7.4%	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7228.60.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7228.60.80	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7228.70.30	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
7228.70.60	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7228.80.00	*5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7229.10.00	*9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7229.20.00	*8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
7229.90.10	*5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7229.90.50	*8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
7229.90.90	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7301.10.00	0.7%	0.6%	0.5%	0.4%	0.4%	0.3%	0.2%	0.1%	Free	Free
7301.20.10	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
7301.20.50	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7302.10.10	0.2%	0.2%	0.2%	0.1%	0.1%	0.1%	Free	Free	Free	Free
7302.10.50	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
7302.20.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7302.30.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free

*Effective October 1, 1989

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7302.40.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7302.90.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7303.00.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7304.10.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.10.50	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.20.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7304.20.20	0.4%	0.4%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7304.20.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7304.20.40	2.9%	2.6%	2.3%	1.9%	1.6%	1.3%	0.9%	0.6%	0.3%	Free
7304.20.50	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.20.60	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.20.70	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.20.80	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.31.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7304.31.60	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.39.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.41.00	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
7304.49.00	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
7304.51.10	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
7304.51.50	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.59.10	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
7304.59.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.59.60	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
7304.59.80	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.90.10	0.4%	0.4%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7304.90.30	2.9%	2.6%	2.3%	1.9%	1.6%	1.3%	0.9%	0.6%	0.3%	Free
7304.90.50	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.90.70	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7305.11.10	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7305.11.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7305.12.10	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7305.12.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7305.19.10	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7305.19.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7305.20.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7305.20.40	0.4%	0.4%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7305.20.60	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7305.20.80	2.9%	2.6%	2.3%	1.9%	1.6%	1.3%	0.9%	0.6%	0.3%	Free
7305.31.20	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
7305.31.40	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7305.31.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7305.39.10	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7305.39.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7305.90.10	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7305.90.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7306.10.10	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7306.10.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7306.20.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7306.20.20	0.4%	0.4%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7306.20.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7306.20.40	2.9%	2.6%	2.3%	1.9%	1.6%	1.3%	0.9%	0.6%	0.3%	Free
7306.20.60	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7306.20.80	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7306.30.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7306.30.30	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
7306.30.50	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7306.40.10	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
7306.40.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7306.50.10	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7306.50.30	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
7306.50.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7306.60.10	0.4%	0.4%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7306.60.30	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7306.60.50	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7306.60.70	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7306.90.10	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7306.90.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7307.11.00	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7307.19.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.19.90	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7307.21.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7307.21.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.22.10	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.22.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.23.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.29.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.91.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7307.91.30	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7307.91.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.92.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.92.90	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.93.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.93.60	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.93.90	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7307.99.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7307.99.30	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7307.99.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7308.10.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7308.20.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7308.30.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7308.30.50	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7308.40.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7308.90.30	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
7308.90.60	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7308.90.90	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7309.00.00	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
7311.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7312.10.05	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7312.10.10	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7312.10.20	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7312.10.30	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7312.10.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7312.10.60	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7312.10.70	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7312.10.80	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7312.10.90	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7312.90.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7314.11.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7314.11.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7314.11.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7314.11.90	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
7314.19.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7314.20.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7314.30.10	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
7314.30.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7314.41.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
7314.42.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
7314.49.30	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7314.49.60	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7314.50.00	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
7315.11.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7315.12.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7315.19.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7315.20.10	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7315.82.10	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7315.82.50	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7315.89.10	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7315.89.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7315.90.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7316.00.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7317.00.10	1.2%	1.1%	0.9%	0.8%	0.7%	0.5%	0.4%	0.2%	0.1%	Free
7317.00.30	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7317.00.55	0.4%	0.4%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7317.00.65	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7317.00.75	2%	1.8%	1.6%	1.3%	1.1%	0.9%	0.6%	0.4%	0.2%	Free
7318.11.00	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
7318.12.00	11.2%	10%	8.7%	7.5%	6.2%	5%	3.7%	2.5%	1.2%	Free
7318.13.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7318.14.10	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7318.14.50	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7318.15.20	0.6%	0.5%	0.4%	0.4%	0.3%	0.2%	0.2%	0.1%	Free	Free
7318.15.40	0.9¢/kg	0.8¢/kg	0.7¢/kg	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free
7318.15.50	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7318.15.60	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7318.15.80	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
7318.16.00	0.1%	0.1%	0.1%	0.1%	0.1%	Free	Free	Free	Free	Free
7318.19.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7318.21.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7318.23.00	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
7318.24.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7318.29.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7319.20.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
7319.30.10	7.3%	6.5%	5.7%	4.9%	4.1%	3.2%	2.4%	1.6%	0.8%	Free
7319.30.50	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7319.90.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7320.10.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7320.20.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7320.20.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7320.90.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
7320.90.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7321.11.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7321.11.60	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7321.12.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7321.13.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7321.81.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7321.81.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7321.82.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7321.82.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7321.83.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7321.90.60	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7322.11.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7322.19.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7322.90.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7323.10.00	1.9¢/kg + 2.2%	1.7¢/kg + 2%	1.5¢/kg + 1.7%	1.3¢/kg + 1.5%	1.1¢/kg + 1.2%	0.8¢/kg + 1%	0.6¢/kg + 0.7%	0.4¢/kg + 0.5%	0.2¢/kg + 0.2%	Free
7323.91.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7323.92.00	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
7323.93.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7323.94.00	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
7323.99.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7323.99.30	7.3%	6.5%	5.7%	4.9%	4.1%	3.2%	2.4%	1.6%	0.8%	Free
7323.99.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7323.99.70	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7323.99.90	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7324.10.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7324.21.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7324.29.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7324.90.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7325.91.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7325.99.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7325.99.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7326.11.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
7326.19.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7326.20.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7326.90.10	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7326.90.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
7326.90.60	7.7%	6.8%	6%	5.1%	4.3%	3.4%	2.5%	1.7%	0.8%	Free
7326.90.90	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7401.10.00	0.5¢/kg on the copper content + 0.5¢/kg on the lead content	0.4¢/kg on the copper content + 0.4¢/kg on the lead content	0.2¢/kg on the copper content + 0.2¢/kg on the lead content	0.1¢/kg on the copper content + 0.1¢/kg on the lead content	Free	Free	Free	Free	Free	Free
7401.20.00	1.3% on the value of the copper content	1% on the value of the copper content	0.6% on the value of the copper content	0.3% on the value of the copper content	Free	Free	Free	Free	Free	Free
7402.00.00	0.8% on the value of the copper content	0.6% on the value of the copper content	0.4% on the value of the copper content	0.2% on the value of the copper content	Free	Free	Free	Free	Free	Free
7403.11.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
7403.12.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7403.13.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
7403.19.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
7403.21.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
7403.22.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
7403.23.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
7403.29.00	0.8%	0.6%	0.4%	0.2%	Free	Free	Free	Free	Free	Free
7405.00.10	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
7405.00.60	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
7406.10.00	4.8%	4.3%	3.7%	3.2%	2.7%	2.1%	1.6%	1%	0.5%	Free
7406.20.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7407.10.10	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7407.10.50	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
7407.21.10	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7407.21.50	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
7407.21.70	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7407.21.90	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
7407.22.10	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7407.22.50	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7407.29.10	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7407.29.50	1.4%	1.2%	1.1%	0.9%	0.8%	0.6%	0.4%	0.3%	0.1%	Free
7408.11.30	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
7408.11.60	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7408.19.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7408.21.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7408.22.10	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7408.22.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7408.29.10	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7408.29.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7409.11.10	6%	5.3%	4.6%	4%	3.3%	2.6%	2%	1.3%	0.6%	Free
7409.11.50	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
7409.19.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7409.19.50	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
7409.19.90	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7409.21.00	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7409.29.00	1.7%	1.5%	1.3%	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7409.31.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7409.31.50	1.5%	1.3%	1.1%	1%	0.8%	0.6%	0.5%	0.3%	0.1%	Free
7409.31.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7409.39.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7409.39.50	1.5%	1.3%	1.1%	1%	0.8%	0.6%	0.5%	0.3%	0.1%	Free
7409.39.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7409.40.00	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7409.90.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7409.90.50	1.5%	1.3%	1.1%	1%	0.8%	0.6%	0.5%	0.3%	0.1%	Free
7409.90.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7410.11.00	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
7410.12.00	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free
7410.21.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7410.21.60	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7410.22.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7411.10.10	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7411.10.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7411.21.10	1.2%	1.1%	0.9%	0.8%	0.7%	0.5%	0.4%	0.2%	0.1%	Free
7411.21.50	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7411.22.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7411.29.10	1.2%	1.1%	0.9%	0.8%	0.7%	0.5%	0.4%	0.2%	0.1%	Free
7411.29.50	4%	3.6%	3.1%	2.7%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7412.10.00	10%	8.9%	7.8%	6.7%	5.6%	4.4%	3.3%	2.2%	1.1%	Free
7412.20.00	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7413.00.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7413.00.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7413.00.90	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7414.10.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
7414.10.90	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7414.90.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7415.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7415.21.00	5.3%	4.7%	4.1%	3.5%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7415.29.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7415.31.00	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7415.32.10	1.2%	1.1%	0.9%	0.8%	0.7%	0.5%	0.4%	0.2%	0.1%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7415.32.50	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7415.32.90	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7415.39.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7416.00.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7417.00.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7418.10.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7418.10.20	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
7418.10.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7418.20.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
7418.20.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7419.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7419.91.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7419.99.15	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
7419.99.30	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
7419.99.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7505.11.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7505.11.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7505.11.50	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7505.12.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7505.12.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7505.12.50	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7505.21.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7505.21.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7505.22.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7505.22.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7506.10.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7506.10.30	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7506.10.50	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7506.20.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
7506.20.30	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7506.20.50	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7507.11.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
7507.12.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
7507.20.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
7508.00.10	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7508.00.50	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7603.10.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7603.20.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
7604.10.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
7604.10.30	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
7604.10.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
7604.21.00	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
7604.29.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
7604.29.30	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
7604.29.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
7605.11.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
7605.19.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
7605.21.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
7605.29.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
7606.11.60	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free
7606.12.30	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
7606.12.60	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
7606.91.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7606.91.60	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
7606.92.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7606.92.60	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7607.11.30	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
7607.11.60	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7607.11.90	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7607.19.10	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7607.19.30	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7607.19.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
7607.20.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
7608.10.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7608.20.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
7609.00.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7610.10.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7610.90.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7611.00.00	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
7612.10.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free

MTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7612.90.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7613.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7614.10.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7614.10.50	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7614.90.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7614.90.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7615.10.10	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7615.10.30	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7615.10.50	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7615.10.70	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
7615.10.90	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7615.20.00	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7616.10.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7616.10.30	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7616.10.50	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7616.10.70	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7616.10.90	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7616.90.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7801.10.00	2.7% on the value of the lead content	2.4% on the value of the lead content	2.1% on the value of the lead content	1.8% on the value of the lead content	1.5% on the value of the lead content	1.2% on the value of the lead content	0.9% on the value of the lead content	0.6% on the value of the lead content	0.3% on the value of the lead content	Free
7801.91.00	2.7% on the value of the lead content	2.4% on the value of the lead content	2.1% on the value of the lead content	1.8% on the value of the lead content	1.5% on the value of the lead content	1.2% on the value of the lead content	0.9% on the value of the lead content	0.6% on the value of the lead content	0.3% on the value of the lead content	Free
7801.99.30	3.1% on the value of the lead content	2.8% on the value of the lead content	2.4% on the value of the lead content	2.1% on the value of the lead content	1.7% on the value of the lead content	1.4% on the value of the lead content	1% on the value of the lead content	0.7% on the value of the lead content	0.3% on the value of the lead content	Free
7801.99.90	2.7% on the value of the lead content	2.4% on the value of the lead content	2.1% on the value of the lead content	1.8% on the value of the lead content	1.5% on the value of the lead content	1.2% on the value of the lead content	0.9% on the value of the lead content	0.6% on the value of the lead content	0.3% on the value of the lead content	Free
7803.00.00	1%	0.9%	0.8%	0.7%	0.6%	0.4%	0.3%	0.2%	0.1%	Free
7804.11.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
7804.19.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7804.20.00	10.1%	9%	7.8%	6.7%	5.6%	4.5%	3.3%	2.2%	1.1%	Free
7805.00.00	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
7806.00.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7901.11.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7901.12.10	17.1%	15.2%	13.3%	11.4%	9.5%	7.6%	5.7%	3.8%	1.9%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
7901.12.50	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7901.20.00	17.1%	15.2%	13.3%	11.4%	9.5%	7.6%	5.7%	3.8%	1.9%	Free
7903.10.00	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
7903.90.30	0.6¢/kg	0.5¢/kg	0.4¢/kg	0.4¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
7903.90.60	8.5%	7.6%	6.6%	5.7%	4.7%	3.8%	2.8%	1.9%	0.9%	Free
7904.00.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7905.00.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7906.00.00	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
7907.10.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7907.90.30	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7907.90.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8003.00.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8004.00.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8005.10.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8005.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8006.00.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8007.00.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8007.00.50	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8101.10.00	8.4%	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
8101.91.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8101.91.50	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8101.92.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8101.93.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8101.99.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8102.10.00	11.1¢/kg on molybdenum content + 1.5%	8.3¢/kg on molybdenum content + 1.1%	5.5¢/kg on molybdenum content + 0.7%	2.7¢/kg on molybdenum content + 0.3%	Free	Free	Free	Free	Free	Free
8102.91.10	11.1¢/kg on molybdenum content + 1.5%	8.3¢/kg on molybdenum content + 1.1%	5.5¢/kg on molybdenum content + 0.7%	2.7¢/kg on molybdenum content + 0.3%	Free	Free	Free	Free	Free	Free
8102.92.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8102.93.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8102.99.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8103.10.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8103.90.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8104.11.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
8104.19.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8104.30.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8104.90.00	13.3¢/kg on magnesium content + 3.1%	11.8¢/kg on magnesium content + 2.8%	10.3¢/kg on magnesium content + 2.4%	8.8¢/kg on magnesium content + 2.1%	7.4¢/kg on magnesium content + 1.7%	5.9¢/kg on magnesium content + 1.4%	4.4¢/kg on magnesium content + 1%	2.9¢/kg on magnesium content + 0.7%	1.4¢/kg on magnesium content + 0.3%	Free
8105.10.30	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8105.90.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8107.90.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8108.10.50	12%	9%	6%	3%	Free	Free	Free	Free	Free	Free
8108.90.30	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
8108.90.60	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
8109.10.60	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8109.90.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8111.00.45	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
8111.00.60	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
8112.11.60	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8112.19.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8112.20.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8112.30.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8112.30.90	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8112.40.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8112.91.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8112.91.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8112.91.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8112.91.60	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8112.99.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8113.00.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8201.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8201.20.00	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8201.30.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8201.40.60	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
8201.50.00	0.9¢ each + 2.5%	0.8¢ each + 2.2%	0.7¢ each + 1.9%	0.6¢ each + 1.6%	0.5¢ each + 1.4%	0.4¢ each + 1.1%	0.3¢ each + 0.8%	0.2¢ each + 0.5%	0.1¢ each + 0.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8201.60.00	0.9¢ each + 2.5%	0.8¢ each + 2.2%	0.7¢ each + 1.9%	0.6¢ each + 1.6%	0.5¢ each + 1.4%	0.4¢ each + 1.1%	0.3¢ each + 0.8%	0.2¢ each + 0.5%	0.1¢ each + 0.2%	Free
8201.90.30	1.8¢ each + 4.5%	1.6¢ each + 4%	1.4¢ each + 3.5%	1.2¢ each + 3%	1¢ each + 2.5%	0.8¢ each + 2%	0.6¢ each + 1.5%	0.4¢ each + 1%	0.2¢ each + 0.5%	Free
8202.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8202.31.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8202.32.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8202.40.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8202.40.60	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8202.91.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8202.91.60	6.4¢/gross	4.8¢/gross	3.2¢/gross	1.6¢/gross	Free	Free	Free	Free	Free	Free
8203.10.30	8.1¢/doz.	7.2¢/doz.	6.3¢/doz.	5.4¢/doz.	4.5¢/doz.	3.6¢/doz.	2.7¢/doz.	1.8¢/doz.	0.9¢/doz.	Free
8203.10.60	10.8¢/doz.	9.6¢/doz.	8.4¢/doz.	7.2¢/doz.	6¢/doz.	4.8¢/doz.	3.6¢/doz.	2.4¢/doz.	1.2¢/doz.	Free
8203.10.90	6.3¢/doz.	5.6¢/doz.	4.9¢/doz.	4.2¢/doz.	3.5¢/doz.	2.8¢/doz.	2.1¢/doz.	1.4¢/doz.	0.7¢/doz.	Free
8203.20.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
8203.20.40	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
8203.20.60	10.8¢/doz. + 4.9%	9.6¢/doz. + 4.4%	8.4¢/doz. + 3.8%	7.2¢/doz. + 3.3%	6¢/doz. + 2.7%	4.8¢/doz. + 2.2%	3.6¢/doz. + 1.6%	2.4¢/doz. + 1.1%	1.2¢/doz. + 0.5%	Free
8203.20.80	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8203.30.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8203.40.30	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8203.40.60	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8204.11.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
8204.12.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
8204.20.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
8205.10.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
8205.20.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
8205.20.60	1.6%	1.4%	1.2%	1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
8205.30.30	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
8205.30.60	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
8205.40.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
8205.51.15	0.6¢ each + 3.6%	0.5¢ each + 3.2%	0.4¢ each + 2.8%	0.4¢ each + 2.4%	0.3¢ each + 2%	0.2¢ each + 1.6%	0.2¢ each + 1.2%	0.1¢ each + 0.8%	0.4%	Free
8205.51.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8205.51.45	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8205.51.60	1.9¢/kg + 4.5%	1.7¢/kg + 4%	1.5¢/kg + 3.5%	1.3¢/kg + 3%	1.1¢/kg + 2.5%	0.8¢/kg + 2%	0.6¢/kg + 1.5%	0.4¢/kg + 1%	0.2¢/kg + 0.5%	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8205.51.75	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8205.59.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
8205.59.30	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
8205.59.45	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8205.59.55	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8205.59.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8205.59.70	1.9¢/kg + 4.5%	1.7¢/kg + 4%	1.5¢/kg + 3.5%	1.3¢/kg + 3%	1.1¢/kg + 2.5%	0.8¢/kg + 2%	0.6¢/kg + 1.5%	0.4¢/kg + 1%	0.2¢/kg + 0.5%	Free
8205.59.80	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8205.60.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8205.70.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8205.80.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
8205.90.00	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	Free
8206.00.00	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	Free
8207.11.00	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.12.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.12.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8207.20.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8207.30.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.30.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8207.40.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.40.60	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8207.50.20	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8207.50.40	6.7%	5%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
8207.50.60	4.9%	3.7%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8207.50.80	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8207.60.00	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.70.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.70.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8207.80.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.80.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8207.90.15	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8207.90.30	5.7%	4.3%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8207.90.45	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8207.90.60	4.9%	3.7%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8207.90.75	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8208.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8208.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8208.30.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8208.40.30	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8208.90.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8209.00.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8210.00.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8211.10.00	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	Free
8211.91.10	0.5¢ each + 4.2%	0.4¢ each + 3.7%	0.4¢ each + 3.2%	0.3¢ each + 2.8%	0.3¢ each + 2.3%	0.2¢ each + 1.8%	0.1¢ each + 1.4%	0.1¢ each + 0.9%	0.4%	Free
8211.91.20	0.9¢ each + 15.7%	0.8¢ each + 14%	0.7¢ each + 12.2%	0.6¢ each + 10.5%	0.5¢ each + 8.7%	0.4¢ each + 7%	0.3¢ each + 5.2%	0.2¢ each + 3.5%	0.1¢ each + 1.7%	Free
8211.91.25	0.4¢ each + 7.6%	0.4¢ each + 6.8%	0.3¢ each + 5.9%	0.3¢ each + 5.1%	0.2¢ each + 4.2%	0.2¢ each + 3.4%	0.1¢ each + 2.5%	0.1¢ each + 1.7%	0.8%	Free
8211.91.30	0.9¢ each + 11.2%	0.8¢ each + 10%	0.7¢ each + 8.7%	0.6¢ each + 7.5%	0.5¢ each + 6.2%	0.4¢ each + 5%	0.3¢ each + 3.7%	0.2¢ each + 2.5%	0.1¢ each + 1.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8211.91.40	0.4¢ each + 5.4%	0.4¢ each + 4.8%	0.3¢ each + 4.2%	0.3¢ each + 3.6%	0.2¢ each + 3%	0.2¢ each + 2.4%	0.1¢ each + 1.8%	0.1¢ each + 1.2%	0.6%	Free
8211.91.50	0.9¢ each + 5.1%	0.8¢ each + 4.5%	0.7¢ each + 3.9%	0.6¢ each + 3.4%	0.5¢ each + 2.8%	0.4¢ each + 2.2%	0.3¢ each + 1.7%	0.2¢ each + 1.1%	0.1¢ each + 0.5%	Free
8211.91.60	0.3¢ each + 5.4%	0.3¢ each + 4.8%	0.2¢ each + 4.2%	0.2¢ each + 3.6%	0.2¢ each + 3%	0.1¢ each + 2.4%	0.1¢ each + 1.8%	1.2%	0.6%	Free
8211.92.20	0.9¢ each + 5.1%	0.8¢ each + 4.5%	0.7¢ each + 3.9%	0.6¢ each + 3.4%	0.5¢ each + 2.8%	0.4¢ each + 2.2%	0.3¢ each + 1.7%	0.2¢ each + 1.1%	0.1¢ each + 0.5%	Free
8211.92.40	0.9¢ each + 4.1%	0.8¢ each + 3.6%	0.7¢ each + 3.2%	0.6¢ each + 2.7%	0.5¢ each + 2.3%	0.4¢ each + 1.8%	0.3¢ each + 1.3%	0.2¢ each + 0.9%	0.1¢ each + 0.4%	Free
8211.92.60	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
8211.92.80	0.3¢ each + 5.4%	0.3¢ each + 4.8%	0.2¢ each + 4.2%	0.2¢ each + 3.6%	0.2¢ each + 3%	0.1¢ each + 2.4%	0.1¢ each + 1.8%	1.2%	0.6%	Free
8211.93.00	2.3¢ each + 4.1%	2¢ each + 3.6%	1.8¢ each + 3.2%	1.5¢ each + 2.7%	1.3¢ each + 2.3%	1¢ each + 1.8%	0.7¢ each + 1.3%	0.5¢ each + 0.9%	0.2¢ each + 0.4%	Free
8211.94.10	0.1¢ each + 2.5%	0.1¢ each + 2.2%	0.1¢ each + 1.9%	0.1¢ each + 1.6%	0.1¢ each + 1.4%	1.1%	0.8%	0.5%	0.2%	Free
8211.94.50	0.9¢ each + 4.8%	0.8¢ each + 4.3%	0.7¢ each + 3.7%	0.6¢ each + 3.2%	0.5¢ each + 2.7%	0.4¢ each + 2.1%	0.3¢ each + 1.6%	0.2¢ each + 1%	0.1¢ each + 0.5%	Free
8212.10.00	0.3¢ each + 0.9%	0.3¢ each + 0.8%	0.2¢ each + 0.7%	0.2¢ each + 0.6%	0.2¢ each + 0.5%	0.1¢ each + 0.4%	0.1¢ each + 0.3%	0.2%	0.1%	Free
8212.20.00	1.6%	1.4%	1.2%	1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
8212.90.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8213.00.30	1.8¢ each + 4.5%	1.6¢ each + 4%	1.4¢ each + 3.5%	1.2¢ each + 3%	1¢ each + 2.5%	0.8¢ each + 2%	0.6¢ each + 1.5%	0.4¢ each + 1%	0.2¢ each + 0.5%	Free
8213.00.60	9¢ each + 9%	8¢ each + 8%	7¢ each + 7%	6¢ each + 6%	5¢ each + 5%	4¢ each + 4%	3¢ each + 3%	2¢ each + 2%	1¢ each + 1%	Free
8213.00.90	9¢ each + 9%	8¢ each + 8%	7¢ each + 7%	6¢ each + 6%	5¢ each + 5%	4¢ each + 4%	3¢ each + 3%	2¢ each + 2%	1¢ each + 1%	Free
8214.10.00	0.3¢ each + 5.4%	0.3¢ each + 4.8%	0.2¢ each + 4.2%	0.2¢ each + 3.6%	0.2¢ each + 3%	0.1¢ each + 2.4%	0.1¢ each + 1.8%	1.2%	0.6%	Free
8214.20.30	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
8214.20.60	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8214.20.90	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
8214.90.30	0.9¢ each + 4.4%	0.8¢ each + 3.9%	0.7¢ each + 3.4%	0.6¢ each + 2.9%	0.5¢ each + 2.4%	0.4¢ each + 1.9%	0.3¢ each + 1.4%	0.2¢ each + 0.9%	0.1¢ each + 0.4%	Free
8214.90.60	0.3¢ each + 5.4%	0.3¢ each + 4.8%	0.2¢ each + 4.2%	0.2¢ each + 3.6%	0.2¢ each + 3%	0.1¢ each + 2.4%	0.1¢ each + 1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8214.90.90	1.8¢ each + 4.1%	1.6¢ each + 3.6%	1.4¢ each + 3.2%	1.2¢ each + 2.7%	1¢ each + 2.3%	0.8¢ each + 1.8%	0.6¢ each + 1.3%	0.4¢ each + 0.9%	0.2¢ each + 0.4%	Free
8215.10.00	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	Free
8215.20.00	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	The rate of duty applicable to that article in the set subject to the highest rate of duty	Free
8215.91.30	0.2¢ each + 3.6%	0.2¢ each + 3.2%	0.2¢ each + 2.8%	0.1¢ each + 2.4%	0.1¢ each + 2%	0.1¢ each + 1.6%	1.2%	0.8%	0.4%	Free
8215.91.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8215.91.90	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8215.99.01	0.9¢ each + 15.7%	0.8¢ each + 14%	0.7¢ each + 12.2%	0.6¢ each + 10.5%	0.5¢ each + 8.7%	0.4¢ each + 7%	0.3¢ each + 5.2%	0.2¢ each + 3.5%	0.1¢ each + 1.7%	Free
8215.99.05	0.4¢ each + 7.6%	0.4¢ each + 6.8%	0.3¢ each + 5.9%	0.3¢ each + 5.1%	0.2¢ each + 4.2%	0.2¢ each + 3.4%	0.1¢ each + 2.5%	0.1¢ each + 1.7%	0.8%	Free
8215.99.10	0.9¢ each + 11.2%	0.8¢ each + 10%	0.7¢ each + 8.7%	0.6¢ each + 7.5%	0.5¢ each + 6.2%	0.4¢ each + 5%	0.3¢ each + 3.7%	0.2¢ each + 2.5%	0.1¢ each + 1.2%	Free
8215.99.15	0.4¢ each + 5.4%	0.4¢ each + 4.8%	0.3¢ each + 4.2%	0.3¢ each + 3.6%	0.2¢ each + 3%	0.2¢ each + 2.4%	0.1¢ each + 1.8%	0.1¢ each + 1.2%	0.6%	Free
8215.99.20	0.4¢ each + 2.8%	0.4¢ each + 2.5%	0.3¢ each + 2.2%	0.3¢ each + 1.9%	0.2¢ each + 1.6%	0.2¢ each + 1.2%	0.1¢ each + 0.9%	0.1¢ each + 0.6%	0.3%	Free
8215.99.22	0.2¢ each + 2.8%	0.2¢ each + 2.5%	0.2¢ each + 2.2%	0.1¢ each + 1.9%	0.1¢ each + 1.6%	0.1¢ each + 1.2%	0.9%	0.6%	0.3%	Free
8215.99.24	0.2¢ each + 4%	0.2¢ each + 3.6%	0.2¢ each + 3.1%	0.1¢ each + 2.7%	0.1¢ each + 2.2%	0.1¢ each + 1.8%	1.3%	0.9%	0.4%	Free
8215.99.26	0.2¢ each + 4%	0.2¢ each + 3.6%	0.2¢ each + 3.1%	0.1¢ each + 2.7%	0.1¢ each + 2.2%	0.1¢ each + 1.8%	1.3%	0.9%	0.4%	Free
8215.99.30	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8215.99.35	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
8215.99.40	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
8215.99.45	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
8215.99.50	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8301.10.20	2%	1.8%	1.6%	1.3%	1.1%	0.9%	0.6%	0.4%	0.2%	Free
8301.10.40	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8301.10.50	4.1%	3.6%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
8301.10.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8301.10.80	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8301.10.90	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8301.20.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8301.30.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8301.40.30	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
8301.40.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8301.50.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
8301.60.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8301.70.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8302.10.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8302.10.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8302.10.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8302.20.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8302.30.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8302.30.60	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8302.41.30	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8302.41.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8302.41.90	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8302.42.30	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8302.42.60	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8302.49.20	6.7%	6%	5.2%	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
8302.49.40	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8302.49.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8302.49.80	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8302.50.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8302.60.30	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8302.60.90	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8303.00.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8304.00.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8305.10.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8305.20.00	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
8305.90.30	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8305.90.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8306.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8306.21.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8306.29.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8306.30.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8307.10.30	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8307.10.60	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8307.90.30	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8307.90.60	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8308.10.00	1.9¢/kg + 5.2%	1.7¢/kg + 4.6%	1.5¢/kg + 4%	1.3¢/kg + 3.4%	1.1¢/kg + 2.9%	0.8¢/kg + 2.3%	0.6¢/kg + 1.7%	0.4¢/kg + 1.1%	0.2¢/kg + 0.5%	Free
8308.20.30	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.2¢/kg	0.2¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
8308.20.60	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
8308.90.30	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
8308.90.60	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8308.90.90	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8309.10.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8309.90.00	4.6%	4.1%	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
8310.00.00	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8311.30.30	0.9¢/kg on lead content	0.8¢/kg on lead content	0.7¢/kg on lead content	0.6¢/kg on lead content	0.5¢/kg on lead content	0.4¢/kg on lead content	0.3¢/kg on lead content	0.2¢/kg on lead content	0.1¢/kg on lead content	Free
8401.10.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8401.20.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8401.30.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8401.40.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8402.11.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8402.12.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8402.19.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8402.20.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8402.90.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8403.10.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8403.90.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8404.10.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8404.20.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8404.90.00	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
8405.10.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8405.90.00	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8406.11.10	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
8406.11.90	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8406.19.10	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
8406.19.90	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8406.90.10	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
8406.90.90	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8407.32.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8407.33.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8407.34.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8409.91.91	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8409.91.92	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8409.91.99	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8409.99.91	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8411.11.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.11.80	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.12.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.12.80	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.21.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.21.80	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.22.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.22.80	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.81.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.81.80	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.82.40	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.82.80	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8411.91.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8411.99.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8412.10.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8412.21.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8412.29.40	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8412.29.80	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8412.31.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8412.39.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8412.80.10	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8412.80.90	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8412.90.10	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8412.90.90	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8413.11.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.19.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.30.10	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8413.30.90	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.40.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.50.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.60.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.70.20	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.81.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.82.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.91.10	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8413.91.90	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8413.92.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8414.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8414.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8414.30.40	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8414.30.80	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8414.40.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8414.51.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
8414.59.80	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8414.60.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
8414.80.10	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8414.80.20	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8414.80.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8414.90.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8414.90.20	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8414.90.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8415.10.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8415.81.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8415.82.00	1.7%	1.3%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8415.83.00	1.7%	1.3%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8415.90.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8416.10.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8416.20.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8416.30.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8416.90.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8417.10.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8417.20.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8417.80.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8417.90.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8418.10.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.21.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.22.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8418.29.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.30.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.40.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.50.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.61.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.69.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.91.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8418.99.00	2.6%	2.3%	2%	1.7%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8419.11.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8419.19.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8419.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.32.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.32.50	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8419.39.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.40.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.50.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.60.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.81.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8419.81.90	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8419.89.10	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8419.89.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.90.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8419.90.20	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8419.90.30	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8419.90.90	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8420.10.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8420.10.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8420.91.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8420.91.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8420.99.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8420.99.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8421.11.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8421.12.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8421.19.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8421.21.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8421.22.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8421.23.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8421.29.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8421.31.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8421.91.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8421.99.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8422.11.00	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
8422.19.00	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
8422.20.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8422.30.10	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8422.30.90	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8422.40.10	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8422.40.90	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8422.90.05	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
8422.90.10	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8422.90.20	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8422.90.90	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8423.10.00	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
8423.20.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8423.30.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8423.81.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8423.82.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8423.89.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8423.90.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8424.10.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8424.20.10	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8424.20.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8424.30.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8424.81.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8424.89.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8424.90.05	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8424.90.10	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8424.90.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8425.11.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8425.19.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8425.20.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8425.31.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8425.39.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8425.41.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8425.42.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8425.49.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.11.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.12.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.19.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.20.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.30.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.41.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.49.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.91.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8426.99.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.10.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.20.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.31.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.32.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8428.33.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.39.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.40.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.50.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.60.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8428.90.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8429.11.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8429.19.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8429.20.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8429.30.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8429.40.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8429.51.10	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8429.51.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8429.52.10	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8429.52.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8429.59.10	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8429.59.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.10.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.20.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
8430.31.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.39.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.41.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.49.40	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8430.49.80	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.50.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.61.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.62.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8430.69.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8431.10.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8431.31.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8431.39.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8431.41.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8431.42.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8431.43.40	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8431.43.80	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8431.49.10	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8431.49.90	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8433.11.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8433.19.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8433.90.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8435.10.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8435.90.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8437.10.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8437.80.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8437.90.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8438.10.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8438.20.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8438.40.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8438.50.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8438.60.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8438.80.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8438.90.90	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8439.30.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8439.91.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8439.99.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8440.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8440.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8441.10.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8441.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8442.50.90	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
8443.11.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.12.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.19.10	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.19.50	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.19.90	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8443.21.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.29.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.30.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.40.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.50.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8443.50.50	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.60.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8443.90.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8443.90.50	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8444.00.00	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8445.11.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8445.12.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8445.13.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8445.19.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8445.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8445.30.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8445.40.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8445.90.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8446.10.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8446.21.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8446.29.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8446.30.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8447.11.10	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8447.11.90	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8447.12.10	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8447.12.90	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8447.20.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8447.20.60	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8447.90.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8447.90.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8447.90.90	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8448.11.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.19.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.20.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.20.50	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8448.31.00	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
8448.32.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8448.33.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8448.39.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8448.39.50	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8448.39.90	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.41.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.42.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.49.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.59.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8448.59.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8449.00.10	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8449.00.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8450.11.00	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8450.12.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8450.19.00	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8450.20.00	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8450.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8451.10.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8451.21.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8451.29.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8451.30.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8451.40.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8451.50.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8451.80.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
8451.90.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8452.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8452.21.90	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8452.29.90	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8452.40.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8452.90.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8453.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8453.80.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8453.90.50	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8455.10.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8455.21.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8455.22.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8455.30.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8455.90.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8456.10.10	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8456.10.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8456.20.10	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8456.20.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8456.30.10	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8456.30.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8456.90.10	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8456.90.50	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8457.10.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8457.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8457.30.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8458.11.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8458.19.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8458.91.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8458.91.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8458.99.10	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8458.99.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8459.10.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.21.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.29.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.31.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.39.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.40.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.51.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.59.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.61.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.69.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8459.70.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.11.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.19.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.21.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.29.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.31.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.39.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.40.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8460.90.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8461.10.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8461.20.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8461.30.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8461.40.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
8461.40.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8461.50.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8461.90.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.10.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.21.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.29.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.31.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.39.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.41.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.49.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.91.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8462.99.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8463.10.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8463.20.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8463.30.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8463.90.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8464.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8464.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8464.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8465.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8465.91.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8465.92.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8465.93.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8465.94.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8465.95.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8465.96.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8465.99.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8466.10.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8466.20.10	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
8466.20.90	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8466.30.10	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8466.30.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8466.30.50	7.6%	5.7%	3.8%	1.9%	Free	Free	Free	Free	Free	Free
8466.91.50	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8466.92.50	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8466.93.50	4.6%	3.4%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
8466.93.70	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8466.94.50	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8467.11.10	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8467.11.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8467.19.10	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8467.19.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8467.81.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8467.89.10	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8467.89.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8467.91.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8467.92.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8467.99.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8468.10.00	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8468.20.10	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8468.80.10	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8468.90.10	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8470.90.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8472.10.00	2.6%	1.9%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8472.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8472.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8472.90.40	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
8472.90.80	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8473.10.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8473.40.40	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8474.10.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8474.20.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8474.31.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8474.32.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8474.39.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8474.80.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8474.90.00	2.3%	1.7%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
8475.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8475.20.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8475.90.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8475.90.90	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.10.60	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.20.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.30.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.40.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.51.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.59.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.80.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8477.90.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8478.10.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8478.90.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8479.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8479.20.00	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8479.30.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8479.40.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8479.81.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8479.82.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8479.89.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8479.89.20	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8479.89.30	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8479.89.60	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8479.89.70	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8479.89.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8479.90.40	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8479.90.80	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8480.10.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8480.20.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8480.30.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8480.41.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8480.49.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8480.50.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8480.60.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8480.71.90	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8480.79.90	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8481.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8481.20.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8481.30.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8481.30.20	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
8481.30.90	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8481.40.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8481.80.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8481.80.30	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
8481.80.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8481.80.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8481.90.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8481.90.30	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
8481.90.50	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8481.90.90	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8482.10.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8482.10.50	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
8482.20.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8482.30.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8482.40.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8482.50.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8482.80.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8482.91.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8482.99.10	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
8482.99.30	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8482.99.50	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8482.99.70	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8483.10.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8483.10.30	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8483.10.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8483.20.40	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.20.80	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.30.40	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8483.30.80	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.40.10	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8483.40.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8483.40.70	40¢ each + 6.1%	30¢ each + 4.6%	20¢ each + 3%	10¢ each + 1.5%	Free	Free	Free	Free	Free	Free
8483.40.80	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.40.90	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8483.50.40	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.50.80	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.60.40	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.60.80	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.90.10	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.90.20	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.90.30	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.90.50	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8483.90.70	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8483.90.80	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8484.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8484.90.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8485.10.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8485.90.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8501.10.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8501.10.40	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
8501.10.60	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8501.20.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8501.20.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.20.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.20.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8501.31.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8501.31.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.31.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.31.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8501.31.80	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8501.32.20	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8501.32.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8501.33.30	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8501.33.40	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8501.33.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8501.34.30	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8501.34.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8501.40.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8501.40.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.40.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.40.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8501.51.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8501.51.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.51.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8501.51.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8501.52.40	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8501.53.60	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8501.53.80	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8501.61.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8501.62.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8501.63.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8501.64.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8502.11.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8502.12.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8502.13.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8502.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8502.30.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8502.40.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8503.00.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8503.00.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8503.00.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8504.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8504.21.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8504.22.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8504.23.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8504.31.20	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8504.31.40	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
8504.31.60	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8504.32.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8504.33.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8504.34.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8504.40.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8504.50.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8504.90.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8505.11.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8505.19.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8505.20.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8505.30.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8505.90.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8505.90.80	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8506.11.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8506.12.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8506.13.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8506.19.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8506.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8506.90.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8507.10.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8507.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8507.30.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8507.40.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8507.80.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8507.90.40	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8507.90.80	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8508.10.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8508.20.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8508.80.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8508.90.00	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8509.10.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8509.20.00	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8509.30.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8509.40.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8509.80.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8509.90.20	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8509.90.30	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
8509.90.40	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8510.10.00	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8510.20.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8510.90.10	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
8510.90.20	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
8510.90.30	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8511.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.20.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.30.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.40.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.50.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.80.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.80.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8511.80.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.90.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8511.90.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8511.90.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8512.10.20	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
8512.10.40	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
8512.20.40	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
8512.30.00	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
8512.40.20	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8512.40.40	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8512.90.20	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
8512.90.40	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
8512.90.70	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8512.90.90	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8513.10.20	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
8513.10.40	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
8513.90.20	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free
8513.90.40	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
8514.10.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8514.20.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8514.30.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8514.40.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8514.90.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8515.11.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
8515.19.00	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8515.21.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8515.29.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8515.31.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8515.39.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8515.80.00	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8515.90.20	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8515.90.40	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
8516.10.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8516.21.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8516.29.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8516.31.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8516.32.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8516.33.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8516.40.20	1.7%	1.3%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
8516.40.40	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8516.50.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8516.60.60	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8516.71.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
8516.72.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8516.79.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8516.80.40	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8516.80.80	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8516.90.40	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8516.90.60	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8517.20.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8517.30.15	5.6%	2.8%	Free	Free	Free	Free	Free	Free	Free	Free
8517.30.25	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8517.30.30	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8517.30.50	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8517.40.50	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8517.40.70	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8517.81.00	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8517.82.00	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8517.90.05	5.6%	2.8%	Free	Free	Free	Free	Free	Free	Free	Free
8517.90.15	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8517.90.35	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8517.90.40	6.8%	5.1%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
8517.90.60	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8517.90.70	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8517.90.80	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8518.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8518.21.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8518.22.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8518.29.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8518.30.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8518.40.10	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
8518.40.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8518.50.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8518.90.10	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
8518.90.30	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8519.10.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8519.21.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8519.29.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8519.31.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8519.39.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8519.40.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8519.91.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8519.99.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8520.10.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8520.20.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8520.31.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8520.39.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8520.90.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8521.10.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8521.90.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8522.10.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8522.90.40	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8522.90.60	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8522.90.90	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8523.11.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8523.12.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8523.13.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8523.20.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8523.90.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8524.10.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8524.21.30	8.7¢/m^2 of recording surface	7.7¢/m^2 of recording surface	6.7¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	3.8¢/m^2 of recording surface	2.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	0.9¢/m^2 of recording surface	Free
8524.22.10	0.5¢/lin m	0.5¢/lin m	0.4¢/lin m	0.3¢/lin m	0.3¢/lin m	0.2¢/lin m	0.1¢/lin m	0.1¢/lin m	Free	Free
8524.22.20	8.7¢/m^2 of recording surface	7.7¢/m^2 of recording surface	6.7¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	3.8¢/m^2 of recording surface	2.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	0.9¢/m^2 of recording surface	Free
8524.23.10	0.5¢/lin m	0.5¢/lin m	0.4¢/lin m	0.3¢/lin m	0.3¢/lin m	0.2¢/lin m	0.1¢/lin m	0.1¢/lin m	Free	Free
8524.23.20	8.7¢/m^2 of recording surface	7.7¢/m^2 of recording surface	6.7¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	3.8¢/m^2 of recording surface	2.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	0.9¢/m^2 of recording surface	Free
8524.90.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8524.90.40	8.7¢/m^2 of recording surface	7.7¢/m^2 of recording surface	6.7¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	3.8¢/m^2 of recording surface	2.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	0.9¢/m^2 of recording surface	Free
8525.10.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8525.10.60	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.10.80	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.20.05	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.20.15	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.20.20	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8525.20.30	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.20.50	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.20.60	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.30.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8526.10.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8526.91.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8526.92.00	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8527.11.11	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8527.11.20	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8527.11.40	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8527.11.60	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8527.19.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8527.21.10	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8527.21.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8527.29.00	6.4%	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
8527.31.05	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8527.31.40	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8527.31.50	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8527.31.60	3.5%	2.6%	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8527.32.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8527.39.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8527.90.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8527.90.80	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8528.10.40	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8528.10.80	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8528.20.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8529.10.20	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8529.10.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8529.10.60	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8529.90.10	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8529.90.15	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8529.90.20	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8529.90.30	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8529.90.35	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8529.90.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8529.90.45	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8529.90.50	4.7%	3.5%	2.3%	1.1%	Free	Free	Free	Free	Free	Free
8530.10.00	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free
8530.80.00	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free
8530.90.00	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free
8531.10.00	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free
8531.20.00	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free
8531.80.00	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8531.90.00	2.1%	1.6%	1%	0.5%	Free	Free	Free	Free	Free	Free
8532.10.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.21.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.22.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.23.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.24.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.25.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.29.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.30.00	8%	6%	4%	2%	Free	Free	Free	Free	Free	Free
8532.90.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8533.10.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8533.21.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8533.29.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8533.31.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8533.39.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8533.40.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8533.90.00	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8534.00.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
8535.10.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8535.21.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8535.29.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8535.30.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8535.40.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8535.90.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.10.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.30.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.41.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.49.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.50.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.61.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.69.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8536.90.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8537.10.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
8537.20.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8538.10.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
8538.90.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8539.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8539.21.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8539.22.40	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8539.22.80	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8539.29.10	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8539.29.20	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
8539.29.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8539.31.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8539.39.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8539.40.40	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8539.40.80	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8539.90.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8540.11.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
8540.12.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
8540.12.80	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
8540.20.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8540.20.40	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8540.30.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8540.41.40	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8540.42.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8540.49.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8540.81.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8540.89.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8540.91.20	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8540.91.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8540.99.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8541.60.00	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8543.10.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8543.20.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8543.30.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8543.80.40	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8543.80.60	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8543.80.70	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8543.80.90	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8543.90.40	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8543.90.80	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8544.11.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.19.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8544.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.30.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
8544.41.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.49.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.51.40	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.51.80	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.59.20	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.59.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8544.60.20	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.60.40	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8544.60.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8544.70.00	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
8545.11.00	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8545.19.20	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8545.19.40	3.9%	2.9%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
8545.20.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8545.90.20	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
8545.90.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8546.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8546.20.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8546.90.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8547.10.40	3.1%	2.8%	2.4%	2.1%	1.7%	1.4%	1%	0.7%	0.3%	Free
8547.10.80	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8547.20.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8547.90.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
8548.00.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8601.10.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8601.20.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8602.10.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
8602.90.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8603.10.00	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
8603.90.00	5%	3.7%	2.5%	1.2%	Free	Free	Free	Free	Free	Free
8604.00.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8605.00.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
8606.10.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
8606.20.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
8606.30.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
8606.91.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
8606.92.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
8606.99.00	16.2%	14.4%	12.6%	10.8%	9%	7.2%	5.4%	3.6%	1.8%	Free
8607.11.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8607.12.00	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8607.19.10	0.4%	0.3%	0.2%	0.1%	Free	Free	Free	Free	Free	Free
8607.19.30	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8607.19.90	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8607.30.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8607.30.50	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8607.91.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8607.99.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8607.99.50	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8608.00.00	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
8701.30.50	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8701.90.50	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8705.10.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8705.40.00	2.9%	2.2%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
8705.90.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8706.00.25	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
8706.00.50	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8707.10.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
8707.90.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8708.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.21.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.29.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.31.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.39.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8708.40.10	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.40.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.40.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.50.30	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8708.50.50	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
8708.50.80	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
8708.60.30	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8708.60.50	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
8708.60.80	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
8708.70.30	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8708.70.80	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.80.50	2.3%	2%	1.8%	1.5%	1.3%	1%	0.7%	0.5%	0.2%	Free
8708.91.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.92.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.93.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.94.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8708.99.20	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
8708.99.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8712.00.10	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
8712.00.20	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
8712.00.30	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
8712.00.40	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
8712.00.50	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8713.10.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8713.90.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
8714.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
8714.91.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
8714.91.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.91.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.92.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.92.50	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.93.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.93.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.93.30	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.93.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
8714.93.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.94.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.94.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.94.25	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.94.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.94.50	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.95.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.96.10	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.96.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.96.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8714.99.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.99.50	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8714.99.90	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
8715.00.00	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
8716.10.00	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
8716.20.00	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
8716.31.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8716.39.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8716.40.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8716.80.50	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
8716.90.30	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
8716.90.50	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
8804.00.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
8903.10.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
8903.91.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
8903.92.00	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
8903.99.15	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
8903.99.20	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
8903.99.90	1.3%	1.2%	1%	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
8905.90.10	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
8906.00.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
8907.10.00	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8907.90.00	3%	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
9001.10.00	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9001.20.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9001.30.00	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9001.40.00	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9001.50.00	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9001.90.40	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9001.90.50	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9001.90.60	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9001.90.80	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9001.90.90	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9002.11.40	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9002.11.80	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9002.19.00	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9002.20.40	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9002.20.80	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9002.90.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9002.90.40	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9002.90.70	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9002.90.90	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9003.11.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9003.19.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9003.90.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9004.10.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9004.90.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9005.80.40	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9005.80.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9005.90.00	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	Free
9006.10.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.20.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.30.00	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9006.40.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9006.40.60	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9006.40.90	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.51.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.52.10	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9006.52.30	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9006.52.50	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9006.52.60	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9006.52.90	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.53.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.59.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9006.59.60	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9006.59.90	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.61.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9006.62.00	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9006.69.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9006.91.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9006.99.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9007.11.00	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9007.19.00	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9007.21.40	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
9007.21.80	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9007.29.40	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
9007.29.80	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9007.91.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9007.91.80	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9007.92.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9008.10.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9008.20.40	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9008.20.80	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9008.30.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9008.40.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9008.90.40	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9008.90.80	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9009.11.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9009.12.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9009.21.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9009.22.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9009.30.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9009.90.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9010.10.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9010.20.10	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
9010.20.20	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9010.20.30	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9010.20.40	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9010.20.50	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9010.20.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9010.30.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9010.90.40	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9010.90.80	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9011.10.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9011.10.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9011.20.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9011.20.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9011.80.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9011.90.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9012.10.00	3.9%	3.5%	3%	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
9012.90.00	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
9013.10.10	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
9013.10.30	1.9%	1.7%	1.5%	1.3%	1.1%	0.8%	0.6%	0.4%	0.2%	Free
9013.10.40	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9013.20.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9013.80.20	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9013.80.40	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9013.80.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9013.90.20	18%	16%	14%	12%	10%	8%	6%	4%	2%	Free
9013.90.40	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9014.10.10	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9014.10.60	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9014.10.70	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9014.10.90	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9014.20.20	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9014.20.40	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9014.20.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9014.80.10	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9014.80.20	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9014.80.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9014.90.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9014.90.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9015.10.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9015.10.80	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9015.20.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9015.20.80	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9015.30.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9015.30.80	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9015.40.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9015.40.80	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
9015.80.20	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9015.80.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9015.80.80	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9015.90.00	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	Free
9016.00.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9016.00.40	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9016.00.60	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9017.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9017.20.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9017.20.80	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9017.30.40	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9017.30.80	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9017.80.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9017.90.00	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	Free
9018.11.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9018.19.40	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9018.19.80	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9018.20.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9018.31.00	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9018.32.00	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
9018.39.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9018.41.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9018.49.40	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
9018.49.80	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9018.50.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9018.90.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9018.90.20	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9018.90.30	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9018.90.40	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9018.90.50	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9018.90.60	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9018.90.70	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9018.90.80	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9019.10.20	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9019.10.40	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9019.10.60	7.1%	6.3%	5.5%	4.7%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9019.20.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9020.00.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9020.00.90	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9021.11.00	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9021.19.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9021.19.80	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9021.21.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9021.21.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9021.29.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9021.29.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9021.30.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9021.40.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9021.50.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9021.90.40	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9021.90.80	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9022.11.00	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
9022.19.00	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
9022.29.40	2.4%	2.1%	1.8%	1.6%	1.3%	1%	0.8%	0.5%	0.2%	Free
9022.30.00	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
9022.90.20	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
9022.90.40	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
9022.90.60	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
9022.90.80	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9024.10.00	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9024.80.00	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9024.90.00	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9025.11.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
9025.11.40	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9025.19.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9025.20.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9025.20.80	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
9025.80.10	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9025.80.20	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9025.80.30	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9025.80.40	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9025.80.50	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9025.90.00	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	The rate applicable to the article of which it is a part or accessory	Free

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HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9026.10.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9026.10.40	44.1¢ each + 6.8%	39.2¢ each + 6%	34.3¢ each + 5.3%	29.4¢ each + 4.5%	24.5¢ each + 3.8%	19.6¢ each + 3%	14.7¢ each + 2.2%	9.8¢ each + 1.5%	4.9¢ each + 0.7%	Free
9026.10.60	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9026.20.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9026.20.80	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9026.80.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9026.80.40	44.1¢ each + 6.8%	39.2¢ each + 6%	34.3¢ each + 5.3%	29.4¢ each + 4.5%	24.5¢ each + 3.8%	19.6¢ each + 3%	14.7¢ each + 2.2%	9.8¢ each + 1.5%	4.9¢ each + 0.7%	Free
9026.80.60	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9026.90.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9026.90.40	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9026.90.60	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9027.10.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.10.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9027.10.60	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
9027.20.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.20.80	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
9027.30.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.30.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9027.40.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9027.50.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.50.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9027.80.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.80.80	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
9027.90.20	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
9027.90.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.90.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9027.90.80	5.5%	4.9%	4.3%	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
9028.10.00	40.5¢ each + 6.3%	36¢ each + 5.6%	31.5¢ each + 4.9%	27¢ each + 4.2%	22.5¢ each + 3.5%	18¢ each + 2.8%	13.5¢ each + 2.1%	9¢ each + 1.4%	4.5¢ each + 0.7%	Free
9028.20.00	40.5¢ each + 6.3%	36¢ each + 5.6%	31.5¢ each + 4.9%	27¢ each + 4.2%	22.5¢ each + 3.5%	18¢ each + 2.8%	13.5¢ each + 2.1%	9¢ each + 1.4%	4.5¢ each + 0.7%	Free
9028.30.00	40.5¢ each + 3.9%	36¢ each + 3.5%	31.5¢ each + 3%	27¢ each + 2.6%	22.5¢ each + 2.2%	18¢ each + 1.7%	13.5¢ each + 1.3%	9¢ each + 0.8%	4.5¢ each + 0.4%	Free
9028.90.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9029.10.40	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9029.20.20	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
9029.20.60	40.5¢ each + 6.3%	36¢ each + 5.6%	31.5¢ each + 4.9%	27¢ each + 4.2%	22.5¢ each + 3.5%	18¢ each + 2.8%	13.5¢ each + 2.1%	9¢ each + 1.4%	4.5¢ each + 0.7%	Free
9029.90.20	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
9029.90.40	15.3%	13.6%	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
9029.90.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9030.10.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9030.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9030.31.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9030.39.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9030.40.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9030.81.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9030.89.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9030.90.40	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9030.90.80	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9031.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9031.20.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9031.30.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9031.40.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9031.80.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9031.90.20	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9031.90.40	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9031.90.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9032.10.00	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9032.20.00	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9032.81.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9032.89.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9032.89.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9032.89.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9032.90.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9032.90.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9032.90.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9033.00.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9101.11.40	45.9¢ each + 5.6% on the case and strap, band or bracelet + 4.7% on the battery	40.8¢ each + 5% on the case and strap, band or bracelet + 4.2% on the battery	35.7¢ each + 4.3% on the case and strap, band or bracelet + 3.7% on the battery	30.6¢ each + 3.7% on the case and strap, band or bracelet + 3.1% on the battery	25.5¢ each + 3.1% on the case and strap, band or bracelet + 2.6% on the battery	20.4¢ each + 2.5% on the case and strap, band or bracelet + 2.1% on the battery	15.3¢ each + 1.8% on the case and strap, band or bracelet + 1.5% on the battery	10.2¢ each + 1.2% on the case and strap, band or bracelet + 1% on the battery	5.1¢ each + 0.6% on the case and strap, band or bracelet + 0.5% on the battery	Free
9101.11.80	78.3¢ each + 5.6% on the case and strap, band or bracelet + 4.7% on the battery	69.6¢ each + 5% on the case and strap, band or bracelet + 4.2% on the battery	60.9¢ each + 4.3% on the case and strap, band or bracelet + 3.7% on the battery	52.2¢ each + 3.7% on the case and strap, band or bracelet + 3.1% on the battery	43.5¢ each + 3.1% on the case and strap, band or bracelet + 2.6% on the battery	34.8¢ each + 2.5% on the case and strap, band or bracelet + 2.1% on the battery	26.1¢ each + 1.8% on the case and strap, band or bracelet + 1.5% on the battery	17.4¢ each + 1.2% on the case and strap, band or bracelet + 1% on the battery	8.7¢ each + 0.6% on the case and strap, band or bracelet + 0.5% on the battery	Free
9101.12.00	3.5% on the movement, case, and strap, band or bracelet + 4.7% on the battery	3.1% on the movement, case, and strap, band or bracelet + 4.2% on the battery	2.7% on the movement, case, and strap, band or bracelet + 3.7% on the battery	2.3% on the movement, case, and strap, band or bracelet + 3.1% on the battery	1.9% on the movement, case, and strap, band or bracelet + 2.6% on the battery	1.5% on the movement, case, and strap, band or bracelet + 2.1% on the battery	1.1% on the movement, case, and strap, band or bracelet + 1.5% on the battery	0.7% on the movement, case, and strap, band or bracelet + 1% on the battery	0.3% on the movement, case, and strap, band or bracelet + 0.5% on the battery	Free
9101.19.40	45.9¢ each + 5.6% on the case and strap, band or bracelet + 4.7% on the battery	40.8¢ each + 5% on the case and strap, band or bracelet + 4.2% on the battery	35.7¢ each + 4.3% on the case and strap, band or bracelet + 3.7% on the battery	30.6¢ each + 3.7% on the case and strap, band or bracelet + 3.1% on the battery	25.5¢ each + 3.1% on the case and strap, band or bracelet + 2.6% on the battery	20.4¢ each + 2.5% on the case and strap, band or bracelet + 2.1% on the battery	15.3¢ each + 1.8% on the case and strap, band or bracelet + 1.5% on the battery	10.2¢ each + 1.2% on the case and strap, band or bracelet + 1% on the battery	5.1¢ each + 0.6% on the case and strap, band or bracelet + 0.5% on the battery	Free
9101.19.80	78.3¢ each + 5.6% on the case and strap, band or bracelet + 4.7% on the battery	69.6¢ each + 5% on the case and strap, band or bracelet + 4.2% on the battery	60.9¢ each + 4.3% on the case and strap, band or bracelet + 3.7% on the battery	52.2¢ each + 3.7% on the case and strap, band or bracelet + 3.1% on the battery	43.5¢ each + 3.1% on the case and strap, band or bracelet + 2.6% on the battery	34.8¢ each + 2.5% on the case and strap, band or bracelet + 2.1% on the battery	26.1¢ each + 1.8% on the case and strap, band or bracelet + 1.5% on the battery	17.4¢ each + 1.2% on the case and strap, band or bracelet + 1% on the battery	8.7¢ each + 0.6% on the case and strap, band or bracelet + 0.5% on the battery	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9101.21.40	$2.07 each + 5.6% on the case and strap, band or bracelet	$1.84 each + 5% on the case and strap, band or bracelet	$1.61 each + 4.3% on the case and strap, band or bracelet	$1.38 each + 3.7% on the case and strap, band or bracelet	$1.15 each + 3.1% on the case and strap, band or bracelet	92¢ each + 2.5% on the case and strap, band or bracelet	69¢ each + 1.8% on the case and strap, band or bracelet	46¢ each + 1.2% on the case and strap, band or bracelet	23¢ each + 0.6% on the case and strap, band or bracelet	Free
9101.21.80	$2.07 each + 5.6% on the case and strap, band or bracelet	$1.84 each + 5% on the case and strap, band or bracelet	$1.61 each + 4.3% on the case and strap, band or bracelet	$1.38 each + 3.7% on the case and strap, band or bracelet	$1.15 each + 3.1% on the case and strap, band or bracelet	92¢ each + 2.5% on the case and strap, band or bracelet	69¢ each + 1.8% on the case and strap, band or bracelet	46¢ each + 1.2% on the case and strap, band or bracelet	23¢ each + 0.6% on the case and strap, band or bracelet	Free
9101.29.10	45.9¢ each + 5.6% on the case and strap, band or bracelet	40.8¢ each + 5% on the case and strap, band or bracelet	35.7¢ each + 4.3% on the case and strap, band or bracelet	30.6¢ each + 3.7% on the case and strap, band or bracelet	25.5¢ each + 3.1% on the case and strap, band or bracelet	20.4¢ each + 2.5% on the case and strap, band or bracelet	15.3¢ each + 1.8% on the case and strap, band or bracelet	10.2¢ each + 1.2% on the case and strap, band or bracelet	5.1¢ each + 0.6% on the case and strap, band or bracelet	Free
9101.29.20	78.3¢ each + 5.6% on the case and strap, band or bracelet	69.6¢ each + 5% on the case and strap, band or bracelet	60.9¢ each + 4.3% on the case and strap, band or bracelet	52.2¢ each + 3.7% on the case and strap, band or bracelet	43.5¢ each + 3.1% on the case and strap, band or bracelet	34.8¢ each + 2.5% on the case and strap, band or bracelet	26.1¢ each + 1.8% on the case and strap, band or bracelet	17.4¢ each + 1.2% on the case and strap, band or bracelet	8.7¢ each + 0.6% on the case and strap, band or bracelet	Free
9101.29.30	$2.565 each + 5.6% on the case and strap, band or bracelet	$2.28 each + 5% on the case and strap, band or bracelet	$1.995 each + 4.3% on the case and strap, band or bracelet	$1.71 each + 3.7% on the case and strap, band or bracelet	$1.425 each + 3.1% on the case and strap, band or bracelet	$1.14 each + 2.5% on the case and strap, band or bracelet	85.5¢ each + 1.8% on the case and strap, band or bracelet	57¢ each + 1.2% on the case and strap, band or bracelet	28.5¢ each + 0.6% on the case and strap, band or bracelet	Free
9101.29.40	$2.16 each + 5.6% on the case and strap, band or bracelet	$1.92 each + 5% on the case and strap, band or bracelet	$1.68 each + 4.3% on the case and strap, band or bracelet	$1.44 each + 3.7% on the case and strap, band or bracelet	$1.20 each + 3.1% on the case and strap, band or bracelet	96¢ each + 2.5% on the case and strap, band or bracelet	72¢ each + 1.8% on the case and strap, band or bracelet	48¢ each + 1.2% on the case and strap, band or bracelet	24¢ each + 0.6% on the case and strap, band or bracelet	Free
9101.29.50	$1.143 each + 5.6% on the case and strap, band or bracelet	$1.016 each + 5% on the case and strap, band or bracelet	88.9¢ each + 4.3% on the case and strap, band or bracelet	76.2¢ each + 3.7% on the case and strap, band or bracelet	63.5¢ each + 3.1% on the case and strap, band or bracelet	50.8¢ each + 2.5% on the case and strap, band or bracelet	38.1¢ each + 1.8% on the case and strap, band or bracelet	25.4¢ each + 1.2% on the case and strap, band or bracelet	12.7¢ each + 0.6% on the case and strap, band or bracelet	Free
9101.29.60	$2.07 each + 5.6% on the case and strap, band or bracelet	$1.84 each + 5% on the case and strap, band or bracelet	$1.61 each + 4.3% on the case and strap, band or bracelet	$1.38 each + 3.7% on the case and strap, band or bracelet	$1.15 each + 3.1% on the case and strap, band or bracelet	92¢ each + 2.5% on the case and strap, band or bracelet	69¢ each + 1.8% on the case and strap, band or bracelet	46¢ each + 1.2% on the case and strap, band or bracelet	23¢ each + 0.6% on the case and strap, band or bracelet	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9101.91.20	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9101.91.40	45.9¢ each + 5.4% on the case + 4.7% on the battery	40.8¢ each + 4.8% on the case + 4.2% on the battery	35.7¢ each + 4.2% on the case + 3.7% on the battery	30.6¢ each + 3.6% on the case + 3.1% on the battery	25.5¢ each + 3% on the case + 2.6% on the battery	20.4¢ each + 2.4% on the case + 2.1% on the battery	15.3¢ each + 1.8% on the case + 1.5% on the battery	10.2¢ each + 1.2% on the case + 1% on the battery	5.1¢ each + 0.6% on the case + 0.5% on the battery	Free
9101.91.80	78.3¢ each + 5.4% on the case + 4.7% on the battery	69.6¢ each + 4.8% on the case + 4.2% on the battery	60.9¢ each + 4.2% on the case + 3.7% on the battery	52.2¢ each + 3.6% on the case + 3.1% on the battery	43.5¢ each + 3% on the case + 2.6% on the battery	34.8¢ each + 2.4% on the case + 2.1% on the battery	26.1¢ each + 1.8% on the case + 1.5% on the battery	17.4¢ each + 1.2% on the case + 1% on the battery	8.7¢ each + 0.6% on the case + 0.5% on the battery	Free
9101.99.20	45.9¢ each + 5.4% on the case	40.8¢ each + 4.8% on the case	35.7¢ each + 4.2% on the case	30.6¢ each + 3.6% on the case	25.5¢ each + 3% on the case	20.4¢ each + 2.4% on the case	15.3¢ each + 1.8% on the case	10.2¢ each + 1.2% on the case	5.1¢ each + 0.6% on the case	Free
9101.99.40	$1.755 each + 5.4% on the case	$1.56 each + 4.8% on the case	$1.365 each + 4.2% on the case	$1.17 each + 3.6% on the case	97.5¢ each + 3% on the case	78¢ each + 2.4% on the case	58.5¢ each + 1.8% on the case	39¢ each + 1.2% on the case	19.5¢ each + 0.6% on the case	Free
9101.99.60	$1.143 each + 5.4% on the case	$1.016 each + 4.8% on the case	88.9¢ each + 4.2% on the case	76.2¢ each + 3.6% on the case	63.5¢ each + 3% on the case	50.8¢ each + 2.4% on the case	38.1¢ each + 1.8% on the case	25.4¢ each + 1.2% on the case	12.7¢ each + 0.6% on the case	Free
9101.99.80	$2.07 each + 5.4% on the case	$1.84 each + 4.8% on the case	$1.61 each + 4.2% on the case	$1.38 each + 3.6% on the case	$1.15 each + 3% on the case	92¢ each + 2.4% on the case	69¢ each + 1.8% on the case	46¢ each + 1.2% on the case	23¢ each + 0.6% on the case	Free
9102.11.10	39.6¢ each + 5.4% on the case + 12.6% on the strap, band or bracelet + 4.7% on the battery	35.2¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet + 4.2% on the battery	30.8¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet + 3.7% on the battery	26.4¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet + 3.1% on the battery	22¢ each + 3% on the case + 7% on the strap, band or bracelet + 2.6% on the battery	17.6¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet + 2.1% on the battery	13.2¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet + 1.5% on the battery	8.8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet + 1% on the battery	4.4¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet + 0.5% on the battery	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9102.11.25	36¢ each + 7.6% on the case + 12.6% on the strap, band or bracelet + 4.7% on the battery	32¢ each + 6.8% on the case + 11.2% on the strap, band or bracelet + 4.2% on the battery	28¢ each + 5.9% on the case + 9.8% on the strap, band or bracelet + 3.7% on the battery	24¢ each + 5.1% on the case + 8.4% on the strap, band or bracelet + 3.1% on the battery	20¢ each + 4.2% on the case + 7% on the strap, band or bracelet + 2.6% on the battery	16¢ each + 3.4% on the case + 5.6% on the strap, band or bracelet + 2.1% on the battery	12¢ each + 2.5% on the case + 4.2% on the strap, band or bracelet + 1.5% on the battery	8¢ each + 1.7% on the case + 2.8% on the strap, band or bracelet + 1% on the battery	4¢ each + 0.8% on the case + 1.4% on the strap, band or bracelet + 0.5% on the battery	Free
9102.11.30	39.6¢ each + 5.4% on the case + 2.5% on the strap, band or bracelet + 4.7% on the battery	35.2¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet + 4.2% on the battery	30.8¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet + 3.7% on the battery	26.4¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet + 3.1% on the battery	22¢ each + 3% on the case + 1.4% on the strap, band or bracelet + 2.6% on the battery	17.6¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet + 2.1% on the battery	13.2¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet + 1.5% on the battery	8.8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet + 1% on the battery	4.4¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet + 0.5% on the battery	Free
9102.11.45	36¢ each + 7.6% on the case + 2.5% on the strap, band or bracelet + 4.7% on the battery	32¢ each + 6.8% on the case + 2.2% on the strap, band or bracelet + 4.2% on the battery	28¢ each + 5.9% on the case + 1.9% on the strap, band or bracelet + 3.7% on the battery	24¢ each + 5.1% on the case + 1.6% on the strap, band or bracelet + 3.1% on the battery	20¢ each + 4.2% on the case + 1.4% on the strap, band or bracelet + 2.6% on the battery	16¢ each + 3.4% on the case + 1.1% on the strap, band or bracelet + 2.1% on the battery	12¢ each + 2.5% on the case + 0.8% on the strap, band or bracelet + 1.5% on the battery	8¢ each + 1.7% on the case + 0.5% on the strap, band or bracelet + 1% on the battery	4¢ each + 0.8% on the case + 0.2% on the strap, band or bracelet + 0.5% on the battery	Free
9102.11.50	72¢ each + 5.4% on the case + 12.6% on the strap, band or bracelet + 4.7% on the battery	64¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet + 4.2% on the battery	56¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet + 3.7% on the battery	48¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet + 3.1% on the battery	40¢ each + 3% on the case + 7% on the strap, band or bracelet + 2.6% on the battery	32¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet + 2.1% on the battery	24¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet + 1.5% on the battery	16¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet + 1% on the battery	8¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet + 0.5% on the battery	Free
9102.11.65	68.4¢ each + 7.6% on the case + 12.6% on the strap, band or bracelet + 4.7% on the battery	60.8¢ each + 6.8% on the case + 11.2% on the strap, band or bracelet + 4.2% on the battery	53.2¢ each + 5.9% on the case + 9.8% on the strap, band or bracelet + 3.7% on the battery	45.6¢ each + 5.1% on the case + 8.4% on the strap, band or bracelet + 3.1% on the battery	38¢ each + 4.2% on the case + 7% on the strap, band or bracelet + 2.6% on the battery	30.4¢ each + 3.4% on the case + 5.6% on the strap, band or bracelet + 2.1% on the battery	22.8¢ each + 2.5% on the case + 4.2% on the strap, band or bracelet + 1.5% on the battery	15.2¢ each + 1.7% on the case + 2.8% on the strap, band or bracelet + 1% on the battery	7.6¢ each + 0.8% on the case + 1.4% on the strap, band or bracelet + 0.5% on the battery	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9102.11.70	72¢ each + 5.4% on the case + 2.5% on the strap, band or bracelet + 4.7% on the battery	64¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet + 4.2% on the battery	56¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet + 3.7% on the battery	48¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet + 3.1% on the battery	40¢ each + 3% on the case + 1.4% on the strap, band or bracelet + 2.6% on the battery	32¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet + 2.1% on the battery	24¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet + 1.5% on the battery	16¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet + 1% on the battery	8¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet + 0.5% on the battery	Free
9102.11.95	68.4¢ each + 7.6% on the case + 2.5% on the strap, band or bracelet + 4.7% on the battery	60.8¢ each + 6.8% on the case + 2.2% on the strap, band or bracelet + 4.2% on the battery	53.2¢ each + 5.9% on the case + 1.9% on the strap, band or bracelet + 3.7% on the battery	45.6¢ each + 5.1% on the case + 1.6% on the strap, band or bracelet + 3.1% on the battery	38¢ each + 4.2% on the case + 1.4% on the strap, band or bracelet + 2.6% on the battery	30.4¢ each + 3.4% on the case + 1.1% on the strap, band or bracelet + 2.1% on the battery	22.8¢ each + 2.5% on the case + 0.8% on the strap, band or bracelet + 1.5% on the battery	15.2¢ each + 1.7% on the case + 0.5% on the strap, band or bracelet + 1% on the battery	7.6¢ each + 0.8% on the case + 0.2% on the strap, band or bracelet + 0.5% on the battery	Free
9102.12.00	3.5% on the movement, case and strap, band or bracelet + 4.7% on the battery	3.1% on the movement, case and strap, band or bracelet + 4.2% on the battery	2.7% on the movement, case and strap, band or bracelet + 3.7% on the battery	2.3% on the movement, case and strap, band or bracelet + 3.1% on the battery	1.9% on the movement, case and strap, band or bracelet + 2.6% on the battery	1.5% on the movement, case and strap, band or bracelet + 2.1% on the battery	1.1% on the movement, case and strap, band or bracelet + 1.5% on the battery	0.7% on the movement, case and strap, band or bracelet + 1% on the battery	0.3% on the movement, case and strap, band or bracelet + 0.5% on the battery	Free
9102.19.20	36¢ each + 5.4% on the case + 12.6% on the strap, band or bracelet + 4.7% on the battery	32¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet + 4.2% on the battery	28¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet + 3.7% on the battery	24¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet + 3.1% on the battery	20¢ each + 3% on the case + 7% on the strap, band or bracelet + 2.6% on the battery	16¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet + 2.1% on the battery	12¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet + 1.5% on the battery	8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet + 1% on the battery	4¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet + 0.5% on the battery	Free
9102.19.40	36¢ each + 5.4% on the case + 2.5% on the strap, band or bracelet + 4.7% on the battery	32¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet + 4.2% on the battery	28¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet + 3.7% on the battery	24¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet + 3.1% on the battery	20¢ each + 3% on the case + 1.4% on the strap, band or bracelet + 2.6% on the battery	16¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet + 2.1% on the battery	12¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet + 1.5% on the battery	8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet + 1% on the battery	4¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet + 0.5% on the battery	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9102.19.60	68.4¢ each + 5.4% on the case + 12.6% on the strap, band or bracelet + 4.7% on the battery	60.8¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet + 4.2% on the battery	53.2¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet + 3.7% on the battery	45.6¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet + 3.1% on the battery	38¢ each + 3% on the case + 7% on the strap, band or bracelet + 2.6% on the battery	30.4¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet + 2.1% on the battery	22.8¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet + 1.5% on the battery	15.2¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet + 1% on the battery	7.6¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet + 0.5% on the battery	Free
9102.19.80	68.4¢ each + 5.4% on the case + 2.5% on the strap, band or bracelet + 4.7% on the battery	60.8¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet + 4.2% on the battery	53.2¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet + 3.7% on the battery	45.6¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet + 3.1% on the battery	38¢ each + 3% on the case + 1.4% on the strap, band or bracelet + 2.6% on the battery	30.4¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet + 2.1% on the battery	22.8¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet + 1.5% on the battery	15.2¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet + 1% on the battery	7.6¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet + 0.5% on the battery	Free
9102.21.10	67.5¢ each + 5.4% on the case + 12.6% on the strap, band or bracelet	60¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet	52.5¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet	45¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet	37.5¢ each + 3% on the case + 7% on the strap, band or bracelet	30¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	22.5¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	15¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	7.5¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free
9102.21.25	67.5¢ each + 5.4% on the case + 2.5% on the strap, band or bracelet	60¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet	52.5¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet	45¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet	37.5¢ each + 3% on the case + 1.4% on the strap, band or bracelet	30¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	22.5¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	15¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	7.5¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.21.30	$1.971 each + 5.4% on the case + 12.6% on the strap, band or bracelet	$1.752 each + 4.8% on the case + 11.2% on the strap, band or bracelet	$1.533 each + 4.2% on the case + 9.8% on the strap, band or bracelet	$1.314 each + 3.6% on the case + 8.4% on the strap, band or bracelet	$1.095 each + 3% on the case + 7% on the strap, band or bracelet	87.6¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	65.7¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	43.8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	21.9¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9102.21.50	$1.971 each + 5.4% on the case + 2.5% on the strap, band or bracelet	$1.752 each + 4.8% on the case + 2.2% on the strap, band or bracelet	$1.533 each + 4.2% on the case + 1.9% on the strap, band or bracelet	$1.314 each + 3.6% on the case + 1.6% on the strap, band or bracelet	$1.095 each + 3% on the case + 1.4% on the strap, band or bracelet	87.6¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	65.7¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	43.8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	21.9¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.21.70	$1.971 each + 5.4% on the case + 12.6% on the strap, band or bracelet	$1.752 each + 4.8% on the case + 11.2% on the strap, band or bracelet	$1.533 each + 4.2% on the case + 9.8% on the strap, band or bracelet	$1.314 each + 3.6% on the case + 8.4% on the strap, band or bracelet	$1.095 each + 3% on the case + 7% on the strap, band or bracelet	87.6¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	65.7¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	43.8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	21.9¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free
9102.21.90	$1.971 each + 5.4% on the case + 2.5% on the strap, band or bracelet	$1.752 each + 4.8% on the case + 2.2% on the strap, band or bracelet	$1.533 each + 4.2% on the case + 1.9% on the strap, band or bracelet	$1.314 each + 3.6% on the case + 1.6% on the strap, band or bracelet	$1.095 each + 3% on the case + 1.4% on the strap, band or bracelet	87.6¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	65.7¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	43.8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	21.9¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.29.05	36¢ each + 5.4% on the case + 12.6% on the strap, band or bracelet	32¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet	28¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet	24¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet	20¢ each + 3% on the case + 7% on the strap, band or bracelet	16¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	12¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	4¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free
9102.29.10	36¢ each + 5.4% on the case + 2.5% on the strap, band or bracelet	32¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet	28¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet	24¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet	20¢ each + 3% on the case + 1.4% on the strap, band or bracelet	16¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	12¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	4¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.29.15	68.4¢ each + 5.4% on the case + 12.6% on the strap, band or bracelet	60.8¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet	53.2¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet	45.6¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet	38¢ each + 3% on the case + 7% on the strap, band or bracelet	30.4¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	22.8¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	15.2¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	7.6¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free
9102.29.20	68.4¢ each + 5.4% on the case + 2.5% on the strap, band or bracelet	60.8¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet	53.2¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet	45.6¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet	38¢ each + 3% on the case + 1.4% on the strap, band or bracelet	30.4¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	22.8¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	15.2¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	7.6¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9102.29.25	$2.466 each + 5.4% on the case + 12.6% on the strap, band or bracelet	$2.192 each + 4.8% on the case + 11.2% on the strap, band or bracelet	$1.918 each + 4.2% on the case + 9.8% on the strap, band or bracelet	$1.644 each + 3.6% on the case + 8.4% on the strap, band or bracelet	$1.37 each + 3% on the case + 7% on the strap, band or bracelet	$1.096 each + 2.4% on the case + 5.6% on the strap, band or bracelet	82.2¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	54.8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	27.4¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free
9102.29.30	$2.466 each + 5.4% on the case + 2.5% on the strap, band or bracelet	$2.192 each + 4.8% on the case + 2.2% on the strap, band or bracelet	$1.918 each + 4.2% on the case + 1.9% on the strap, band or bracelet	$1.644 each + 3.6% on the case + 1.6% on the strap, band or bracelet	$1.37 each + 3% on the case + 1.4% on the strap, band or bracelet	$1.096 each + 2.4% on the case + 1.1% on the strap, band or bracelet	82.2¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	54.8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	27.4¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.29.35	$2.061 each + 5.4% on the case + 12.6% on the strap, band or bracelet	$1.832 each + 4.8% on the case + 11.2% on the strap, band or bracelet	$1.603 each + 4.2% on the case + 9.8% on the strap, band or bracelet	$1.374 each + 3.6% on the case + 8.4% on the strap, band or bracelet	$1.145 each + 3% on the case + 7% on the strap, band or bracelet	91.6¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	68.7¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	45.8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	22.9¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free
9102.29.40	$2.061 each + 5.4% on the case + 2.5% on the strap, band or bracelet	$1.832 each + 4.8% on the case + 2.2% on the strap, band or bracelet	$1.603 each + 4.2% on the case + 1.9% on the strap, band or bracelet	$1.374 each + 3.6% on the case + 1.6% on the strap, band or bracelet	$1.145 each + 3% on the case + 1.4% on the strap, band or bracelet	91.6¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	68.7¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	45.8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	22.9¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.29.45	$1.044 each + 5.4% on the case + 12.6% on the strap, band or bracelet	92.8¢ each + 4.8% on the case + 11.2% on the strap, band or bracelet	81.2¢ each + 4.2% on the case + 9.8% on the strap, band or bracelet	69.6¢ each + 3.6% on the case + 8.4% on the strap, band or bracelet	58¢ each + 3% on the case + 7% on the strap, band or bracelet	46.4¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	34.8¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	23.2¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	11.6¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free
9102.29.50	$1.044 each + 5.4% on the case + 2.5% on the strap, band or bracelet	92.8¢ each + 4.8% on the case + 2.2% on the strap, band or bracelet	81.2¢ each + 4.2% on the case + 1.9% on the strap, band or bracelet	69.6¢ each + 3.6% on the case + 1.6% on the strap, band or bracelet	58¢ each + 3% on the case + 1.4% on the strap, band or bracelet	46.4¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	34.8¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	23.2¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	11.6¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.29.55	$1.971 each + 5.4% on the case + 12.6% on the strap, band or bracelet	$1.752 each + 4.8% on the case + 11.2% on the strap, band or bracelet	$1.533 each + 4.2% on the case + 9.8% on the strap, band or bracelet	$1.314 each + 3.6% on the case + 8.4% on the strap, band or bracelet	$1.095 each + 3% on the case + 7% on the strap, band or bracelet	87.6¢ each + 2.4% on the case + 5.6% on the strap, band or bracelet	65.7¢ each + 1.8% on the case + 4.2% on the strap, band or bracelet	43.8¢ each + 1.2% on the case + 2.8% on the strap, band or bracelet	21.9¢ each + 0.6% on the case + 1.4% on the strap, band or bracelet	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9102.29.60	$1.971 each + 5.4% on the case + 2.5% on the strap, band or bracelet	$1.752 each + 4.8% on the case + 2.2% on the strap, band or bracelet	$1.533 each + 4.2% on the case + 1.9% on the strap, band or bracelet	$1.314 each + 3.6% on the case + 1.6% on the strap, band or bracelet	$1.095 each + 3% on the case + 1.4% on the strap, band or bracelet	87.6¢ each + 2.4% on the case + 1.1% on the strap, band or bracelet	65.7¢ each + 1.8% on the case + 0.8% on the strap, band or bracelet	43.8¢ each + 1.2% on the case + 0.5% on the strap, band or bracelet	21.9¢ each + 0.6% on the case + 0.2% on the strap, band or bracelet	Free
9102.91.20	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9102.91.40	36¢ each + 5.4% on the case + 4.7% on the battery	32¢ each + 4.8% on the case + 4.2% on the battery	28¢ each + 4.2% on the case + 3.7% on the battery	24¢ each + 3.6% on the case + 3.1% on the battery	20¢ each + 3% on the case + 2.6% on the battery	16¢ each + 2.4% on the case + 2.1% on the battery	12¢ each + 1.8% on the case + 1.5% on the battery	8¢ each + 1.2% on the case + 1% on the battery	4¢ each + 0.6% on the case + 0.5% on the battery	Free
9102.91.80	68.4¢ each + 5.4% on the case + 4.7% on the battery	60.8¢ each + 4.8% on the case + 4.2% on the battery	53.2¢ each + 4.2% on the case + 3.7% on the battery	45.6¢ each + 3.6% on the case + 3.1% on the battery	38¢ each + 3% on the case + 2.6% on the battery	30.4¢ each + 2.4% on the case + 2.1% on the battery	22.8¢ each + 1.8% on the case + 1.5% on the battery	15.2¢ each + 1.2% on the case + 1% on the battery	7.6¢ each + 0.6% on the case + 0.5% on the battery	Free
9102.99.20	36¢ each + 5.4% on the case	32¢ each + 4.8% on the case	28¢ each + 4.2% on the case	24¢ each + 3.6% on the case	20¢ each + 3% on the case	16¢ each + 2.4% on the case	12¢ each + 1.8% on the case	8¢ each + 1.2% on the case	4¢ each + 0.6% on the case	Free
9102.99.40	$1.656 each + 5.4% on the case	$1.472 each + 4.8% on the case	$1.288 each + 4.2% on the case	$1.104 each + 3.6% on the case	92¢ each + 3% on the case	73.6¢ each + 2.4% on the case	55.2¢ each + 1.8% on the case	36.8¢ each + 1.2% on the case	18.4¢ each + 0.6% on the case	Free
9102.99.60	$1.044 each + 5.4% on the case	92.8¢ each + 4.8% on the case	81.2¢ each + 4.2% on the case	69.6¢ each + 3.6% on the case	58¢ each + 3% on the case	46.4¢ each + 2.4% on the case	34.8¢ each + 1.8% on the case	23.2¢ each + 1.2% on the case	11.6¢ each + 0.6% on the case	Free
9102.99.80	$1.971 each + 5.4% on the case	$1.752 each + 4.8% on the case	$1.533 each + 4.2% on the case	$1.314 each + 3.6% on the case	$1.095 each + 3% on the case	87.6¢ each + 2.4% on the case	65.7¢ each + 1.8% on the case	43.8¢ each + 1.2% on the case	21.9¢ each + 0.6% on the case	Free
9103.10.20	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9103.10.40	32.4¢ each + 6.2% on the case + 4.7% on the battery	28.8¢ each + 5.5% on the case + 4.2% on the battery	25.2¢ each + 4.8% on the case + 3.7% on the battery	21.6¢ each + 4.1% on the case + 3.1% on the battery	18¢ each + 3.4% on the case + 2.6% on the battery	14.4¢ each + 2.7% on the case + 2.1% on the battery	10.8¢ each + 2% on the case + 1.5% on the battery	7.2¢ each + 1.3% on the case + 1% on the battery	3.6¢ each + 0.6% on the case + 0.5% on the battery	Free
9103.10.80	64.8¢ each + 6.2% on the case + 4.7% on the battery	57.6¢ each + 5.5% on the case + 4.2% on the battery	50.4¢ each + 4.8% on the case + 3.7% on the battery	43.2¢ each + 4.1% on the case + 3.1% on the battery	36¢ each + 3.4% on the case + 2.6% on the battery	28.8¢ each + 2.7% on the case + 2.1% on the battery	21.6¢ each + 2% on the case + 1.5% on the battery	14.4¢ each + 1.3% on the case + 1% on the battery	7.2¢ each + 0.6% on the case + 0.5% on the battery	Free
9103.90.00	32.4¢ each + 6.2% on the case	28.8¢ each + 5.5% on the case	25.2¢ each + 4.8% on the case	21.6¢ each + 4.1% on the case	18¢ each + 3.4% on the case	14.4¢ each + 2.7% on the case	10.8¢ each + 2% on the case	7.2¢ each + 1.3% on the case	3.6¢ each + 0.6% on the case	Free
9104.00.05	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9104.00.10	27¢ each + 5.7% on the movement and case + 4.7% on the battery	24¢ each + 5.1% on the movement and case + 4.2% on the battery.	21¢ each + 4.4% on the movement and case + 3.7% on the battery	18¢ each + 3.8% on the movement and case + 3.1% on the battery	15¢ each + 3.2% on the movement and case + 2.6% on the battery	12¢ each + 2.5% on the movement and case + 2.1% on the battery	9¢ each + 1.9% on the movement and case + 1.5% on the battery	6¢ each + 1.2% on the movement and case + 1% on the battery	3¢ each + 0.6% on the movement and case + 0.5% on the battery	Free
9104.00.20	27¢ each + 5.7%	24¢ each + 5.1%	21¢ each + 4.4%	18¢ each + 3.8%	15¢ each + 3.2%	12¢ each + 2.5%	9¢ each + 1.9%	6¢ each + 1.2%	3¢ each + 0.6%	Free
9104.00.25	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9104.00.30	40.5¢ each + 5.7% on the movement and case + 4.7% on the battery	36¢ each + 5.1% on the movement and case + 4.2% on the battery	31.5¢ each + 4.4% on the movement and case + 3.7% on the battery	27¢ each + 3.8% on the movement and case + 3.1% on the battery	22.5¢ each + 3.2% on the movement and case + 2.6% on the battery	18¢ each + 2.5% on the movement and case + 2.1% on the battery	13.5¢ each + 1.9% on the movement and case + 1.5% on the battery	9¢ each + 1.2% on the movement and case + 1% on the battery	4.5¢ each + 0.6% on the movement and case + 0.5% on the battery	Free
9104.00.40	40.5¢ each + 5.7%	36¢ each + 5.1%	31.5¢ each + 4.4%	27¢ each + 3.8%	22.5¢ each + 3.2%	18¢ each + 2.5%	13.5¢ each + 1.9%	9¢ each + 1.2%	4.5¢ each + 0.6%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9104.00.45	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9104.00.50	27¢ each + 6.2% on the case + 4.7% on the battery	24¢ each + 5.5% on the case + 4.2% on the battery	21¢ each + 4.8% on the case + 3.7% on the battery	18¢ each + 4.1% on the case + 3.1% on the battery	15¢ each + 3.4% on the case + 2.6% on the battery	12¢ each + 2.7% on the case + 2.1% on the battery	9¢ each + 2% on the case + 1.5% on the battery	6¢ each + 1.3% on the case + 1% on the battery	3¢ each + 0.6% on the case + 0.5% on the battery	Free
9104.00.60	27¢ each + 6.2% on the case	24¢ each + 5.5% on the case	21¢ each + 4.8% on the case	18¢ each + 4.1% on the case	15¢ each + 3.4% on the case	12¢ each + 2.7% on the case	9¢ each + 2% on the case	6¢ each + 1.3% on the case	3¢ each + 0.6% on the case	Free
9105.11.40	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9105.11.80	27¢ each + 6.2% on the case + 4.7% on the battery	24¢ each + 5.5% on the case + 4.2% on the battery	21¢ each + 4.8% on the case + 3.7% on the battery	18¢ each + 4.1% on the case + 3.1% on the battery	15¢ each + 3.4% on the case + 2.6% on the battery	12¢ each + 2.7% on the case + 2.1% on the battery	9¢ each + 2% on the case + 1.5% on the battery	6¢ each + 1.3% on the case + 1% on the battery	3¢ each + 0.6% on the case + 0.5% on the battery	Free
9105.19.10	27¢ each + 6.2% on the case	24¢ each + 5.5% on the case	21¢ each + 4.8% on the case	18¢ each + 4.1% on the case	15¢ each + 3.4% on the case	12¢ each + 2.7% on the case	9¢ each + 2% on the case	6¢ each + 1.3% on the case	3¢ each + 0.6% on the case	Free
9105.19.20	54¢ each + 6.2% on the case	48¢ each + 5.5% on the case	42¢ each + 4.8% on the case	36¢ each + 4.1% on the case	30¢ each + 3.4% on the case	24¢ each + 2.7% on the case	18¢ each + 2% on the case	12¢ each + 1.3% on the case	6¢ each + 0.6% on the case	Free
9105.19.30	76.5¢ each + 4.9¢/jewel over 7 + 6.6% on the case	68¢ each + 4.4¢/jewel over 7 + 5.9% on the case	59.5¢ each + 3.8¢/jewel over 7 + 5.1% on the case	51¢ each + 3.3¢/jewel over 7 + 4.4% on the case	42.5¢ each + 2.7¢/jewel over 7 + 3.7% on the case	34¢ each + 2.2¢/jewel over 7 + 2.9% on the case	25.5¢ each + 1.6¢/jewel over 7 + 2.2% on the case	17¢ each + 1.1¢/jewel over 7 + 1.4% on the case	8.5¢ each + 0.5¢/jewel over 7 + 0.7% on the case	Free
9105.19.40	13.5¢ each + 5.7%	12¢ each + 5.1%	10.5¢ each + 4.4%	9¢ each + 3.8%	7.5¢ each + 3.2%	6¢ each + 2.5%	4.5¢ each + 1.9%	3¢ each + 1.2%	1.5¢ each + 0.6%	Free
9105.19.50	40.5¢ each + 5.7%	36¢ each + 5.1%	31.5¢ each + 4.4%	27¢ each + 3.8%	22.5¢ each + 3.2%	18¢ each + 2.5%	13.5¢ each + 1.9%	9¢ each + 1.2%	4.5¢ each + 0.6%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9105.21.40	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9105.21.80	27¢ each + 6.2% on the case + 4.7% on the battery	24¢ each + 5.5% on the case + 4.2% on the battery	21¢ each + 4.8% on the case + 3.7% on the battery	18¢ each + 4.1% on the case + 3.1% on the battery	15¢ each + 3.4% on the case + 2.6% on the battery	12¢ each + 2.7% on the case + 2.1% on the battery	9¢ each + 2% on the case + 1.5% on the battery	6¢ each + 1.3% on the case + 1% on the battery	3¢ each + 0.6% on the case + 0.5% on the battery	Free
9105.29.10	27¢ each + 6.2% on the case	24¢ each + 5.5% on the case	21¢ each + 4.8% on the case	18¢ each + 4.1% on the case	15¢ each + 3.4% on the case	12¢ each + 2.7% on the case	9¢ each + 2% on the case	6¢ each + 1.3% on the case	3¢ each + 0.6% on the case	Free
9105.29.20	54¢ each + 6.2% on the case	48¢ each + 5.5% on the case	42¢ each + 4.8% on the case	36¢ each + 4.1% on the case	30¢ each + 3.4% on the case	24¢ each + 2.7% on the case	18¢ each + 2% on the case	12¢ each + 1.3% on the case	6¢ each + 0.6% on the case	Free
9105.29.30	76.5¢ each + 4.9¢/jewel over 7 + 6.6% on the case	68¢ each + 4.4¢/jewel over 7 + 5.9% on the case	59.5¢ each + 3.8¢/jewel over 7 + 5.1% on the case	51¢ each + 3.3¢/jewel over 7 + 4.4% on the case	42.5¢ each + 2.7¢/jewel over 7 + 3.7% on the case	34¢ each + 2.2¢/jewel over 7 + 2.9% on the case	25.5¢ each + 1.6¢/jewel over 7 + 2.2% on the case	17¢ each + 1.1¢/jewel over 7 + 1.4% on the case	8.5¢ each + 0.5¢/jewel over 7 + 0.7% on the case	Free
9105.29.40	13.5¢ each + 5.7%	12¢ each + 5.1%	10.5¢ each + 4.4%	9¢ each + 3.8%	7.5¢ each + 3.2%	6¢ each + 2.5%	4.5¢ each + 1.9%	3¢ each + 1.2%	1.5¢ each + 0.6%	Free
9105.29.50	40.5¢ each + 5.7%	36¢ each + 5.1%	31.5¢ each + 4.4%	27¢ each + 3.8%	22.5¢ each + 3.2%	18¢ each + 2.5%	13.5¢ each + 1.9%	9¢ each + 1.2%	4.5¢ each + 0.6%	Free
9105.91.40	3.5% on the movement and case + 4.7% on the battery	3.1% on the movement and case + 4.2% on the battery	2.7% on the movement and case + 3.7% on the battery	2.3% on the movement and case + 3.1% on the battery	1.9% on the movement and case + 2.6% on the battery	1.5% on the movement and case + 2.1% on the battery	1.1% on the movement and case + 1.5% on the battery	0.7% on the movement and case + 1% on the battery	0.3% on the movement and case + 0.5% on the battery	Free
9105.91.80	27¢ each + 6.2% on the case + 4.7% on the battery	24¢ each + 5.5% on the case + 4.2% on the battery	21¢ each + 4.8% on the case + 3.7% on the battery	18¢ each + 4.1% on the case + 3.1% on the battery	15¢ each + 3.4% on the case + 2.6% on the battery	12¢ each + 2.7% on the case + 2.1% on the battery	9¢ each + 2% on the case + 1.5% on the battery	6¢ each + 1.3% on the case + 1% on the battery	3¢ each + 0.6% on the case + 0.5% on the battery	Free
9105.99.10	30.6¢ each + 4.5% + 1.8¢/jewel	27.2¢ each + 4% + 1.6¢/jewel	23.8¢ each + 3.5% + 1.4¢/jewel	20.4¢ each + 3% + 1.2¢/jewel	17¢ each + 2.5% + 1¢/jewel	13.6¢ each + 2% + 0.8¢/jewel	10.2¢ each + 1.5% + 0.6¢/jewel	6.8¢ each + 1% + 0.4¢/jewel	3.4¢ each + 0.5% + 0.2¢/jewel	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9105.99.20	27¢ each + 6.2% on the case	24¢ each + 5.5% on the case	21¢ each + 4.8% on the case	18¢ each + 4.1% on the case	15¢ each + 3.4% on the case	12¢ each + 2.7% on the case	9¢ each + 2% on the case	6¢ each + 1.3% on the case	3¢ each + 0.6% on the case	Free
9105.99.30	54¢ each + 6.2% on the case	48¢ each + 5.5% on the case	42¢ each + 4.8% on the case	36¢ each + 4.1% on the case	30¢ each + 3.4% on the case	24¢ each + 2.7% on the case	18¢ each + 2% on the case	12¢ each + 1.3% on the case	6¢ each + 0.6% on the case	Free
9105.99.40	76.5¢ each + 4.9¢/jewel over 7 + 6.6% on the case	68¢ each + 4.4¢/jewel over 7 + 5.9% on the case	59.5¢ each + 3.8¢/jewel over 7 + 5.1% on the case	51¢ each + 3.3¢/jewel over 7 + 4.4% on the case	42.5¢ each + 2.7¢/jewel over 7 + 3.7% on the case	34¢ each + 2.2¢/jewel over 7 + 2.9% on the case	25.5¢ each + 1.6¢/jewel over 7 + 2.2% on the case	17¢ each + 1.1¢/jewel over 7 + 1.4% on the case	8.5¢ each + 0.5¢/jewel over 7 + 0.7% on the case	Free
9105.99.50	13.5¢ each + 5.7%	12¢ each + 5.1%	10.5¢ each + 4.4%	9¢ each + 3.8%	7.5¢ each + 3.2%	6¢ each + 2.5%	4.5¢ each + 1.9%	3¢ each + 1.2%	1.5¢ each + 0.6%	Free
9105.99.60	40.5¢ each + 5.7%	36¢ each + 5.1%	31.5¢ each + 4.4%	27¢ each + 3.8%	22.5¢ each + 3.2%	18¢ each + 2.5%	13.5¢ each + 1.9%	9¢ each + 1.2%	4.5¢ each + 0.6%	Free
9106.10.00	40.5¢ each + 6.3% + 2.2¢/jewel	36¢ each + 5.6% + 2¢/jewel	31.5¢ each + 4.9% + 1.7¢/jewel	27¢ each + 4.2% + 1.5¢/jewel	22.5¢ each + 3.5% + 1.2¢/jewel	18¢ each + 2.8% + 1¢/jewel	13.5¢ each + 2.1% + 0.7¢/jewel	9¢ each + 1.4% + 0.5¢/jewel	4.5¢ each + 0.7% + 0.2¢/jewel	Free
9106.20.00	40.5¢ each + 6.3% + 2.2¢/jewel	36¢ each + 5.6% + 2¢/jewel	31.5¢ each + 4.9% + 1.7¢/jewel	27¢ each + 4.2% + 1.5¢/jewel	22.5¢ each + 3.5% + 1.2¢/jewel	18¢ each + 2.8% + 1¢/jewel	13.5¢ each + 2.1% + 0.7¢/jewel	9¢ each + 1.4% + 0.5¢/jewel	4.5¢ each + 0.7% + 0.2¢/jewel	Free
9106.90.40	40.5¢ each + 6.3% + 2.2¢/jewel	36¢ each + 5.6% + 2¢/jewel	31.5¢ each + 4.9% + 1.7¢/jewel	27¢ each + 4.2% + 1.5¢/jewel	22.5¢ each + 3.5% + 1.2¢/jewel	18¢ each + 2.8% + 1¢/jewel	13.5¢ each + 2.1% + 0.7¢/jewel	9¢ each + 1.4% + 0.5¢/jewel	4.5¢ each + 0.7% + 0.2¢/jewel	Free
9106.90.80	40.5¢ each + 6.3% + 2.2¢/jewel	36¢ each + 5.6% + 2¢/jewel	31.5¢ each + 4.9% + 1.7¢/jewel	27¢ each + 4.2% + 1.5¢/jewel	22.5¢ each + 3.5% + 1.2¢/jewel	18¢ each + 2.8% + 1¢/jewel	13.5¢ each + 2.1% + 0.7¢/jewel	9¢ each + 1.4% + 0.5¢/jewel	4.5¢ each + 0.7% + 0.2¢/jewel	Free
9107.00.40	13.5¢ each + 3.6% + 2.2¢/jewel	12¢ each + 3.2% + 2¢/jewel	10.5¢ each + 2.8% + 1.7¢/jewel	9¢ each + 2.4% + 1.5¢/jewel	7.5¢ each + 2% + 1.2¢/jewel	6¢ each + 1.6% + 1¢/jewel	4.5¢ each + 1.2% + 0.7¢/jewel	3¢ each + 0.8% + 0.5¢/jewel	1.5¢ each + 0.4% + 0.2¢/jewel	Free
9107.00.80	40.5¢ each + 5.7% + 2.2¢/jewel	36¢ each + 5.1% + 2¢/jewel	31.5¢ each + 4.4% + 1.7¢/jewel	27¢ each + 3.8% + 1.5¢/jewel	22.5¢ each + 3.2% + 1.2¢/jewel	18¢ each + 2.5% + 1¢/jewel	13.5¢ each + 1.9% + 0.7¢/jewel	9¢ each + 1.2% + 0.5¢/jewel	4.5¢ each + 0.6% + 0.2¢/jewel	Free
9108.11.40	32.4¢ each + 4.7% on the battery	28.8¢ each + 4.2% on the battery	25.2¢ each + 3.7% on the battery	21.6¢ each + 3.1% on the battery	18¢ each + 2.6% on the battery	14.4¢ each + 2.1% on the battery	10.8¢ each + 1.5% on the battery	7.2¢ each + 1% on the battery	3.6¢ each + 0.5% on the battery	Free
9108.11.80	64.8¢ each + 4.7% on the battery	57.6¢ each + 4.2% on the battery	50.4¢ each + 3.7% on the battery	43.2¢ each + 3.1% on the battery	36¢ each + 2.6% on the battery	28.8¢ each + 2.1% on the battery	21.6¢ each + 1.5% on the battery	14.4¢ each + 1% on the battery	7.2¢ each + 0.5% on the battery	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9108.12.00	3.5% on the movement + 4.7% on the battery	3.1% on the movement + 4.2% on the battery	2.7% on the movement + 3.7% on the battery	2.3% on the movement + 3.1% on the battery	1.9% on the movement + 2.6% on the battery	1.5% on the movement + 2.1% on the battery	1.1% on the movement + 1.5% on the battery	0.7% on the movement + 1% on the battery	0.3% on the movement + 0.5% on the battery	Free
9108.19.40	32.4¢ each + 4.7% on the battery	28.8¢ each + 4.2% on the battery	25.2¢ each + 3.7% on the battery	21.6¢ each + 3.1% on the battery	18¢ each + 2.6% on the battery	14.4¢ each + 2.1% on the battery	10.8¢ each + 1.5% on the battery	7.2¢ each + 1% on the battery	3.6¢ each + 0.5% on the battery	Free
9108.19.80	64.8¢ each + 4.7% on the battery	57.6¢ each + 4.2% on the battery	50.4¢ each + 3.7% on the battery	43.2¢ each + 3.1% on the battery	36¢ each + 2.6% on the battery	28.8¢ each + 2.1% on the battery	21.6¢ each + 1.5% on the battery	14.4¢ each + 1% on the battery	7.2¢ each + 0.5% on the battery	Free
9108.20.40	$1.935 each	$1.72 each	$1.505 each	$1.29 each	$1.075 each	86¢ each	64.5¢ each	43¢ each	21.5¢ each	Free
9108.20.80	$1.935 each	$1.72 each	$1.505 each	$1.29 each	$1.075 each	86¢ each	64.5¢ each	43¢ each	21.5¢ each	Free
9108.91.10	32.4¢ each	28.8¢ each	25.2¢ each	21.6¢ each	18¢ each	14.4¢ each	10.8¢ each	7.2¢ each	3.6¢ each	Free
9108.91.20	64.8¢ each	57.6¢ each	50.4¢ each	43.2¢ each	36¢ each	28.8¢ each	21.6¢ each	14.4¢ each	7.2¢ each	Free
9108.91.30	$2.43 each	$2.16 each	$1.89 each	$1.62 each	$1.35 each	$1.08 each	81¢ each	54¢ each	27¢ each	Free
9108.91.40	$2.025 each	$1.80 each	$1.575 each	$1.35 each	$1.125 each	90¢ each	67.5¢ each	45¢ each	22.5¢ each	Free
9108.91.50	$1.008 each	89.6¢ each	78.4¢ each	67.2¢ each	56¢ each	44.8¢ each	33.6¢ each	22.4¢ each	11.2¢ each	Free
9108.91.60	$1.935 each	$1.72 each	$1.505 each	$1.29 each	$1.075 each	86¢ each	64.5¢ each	43¢ each	21.5¢ each	Free
9108.99.20	32.4¢ each	28.8¢ each	25.2¢ each	21.6¢ each	18¢ each	14.4¢ each	10.8¢ each	7.2¢ each	3.6¢ each	Free
9108.99.40	$1.62 each	$1.44 each	$1.26 each	$1.08 each	90¢ each	72¢ each	54¢ each	36¢ each	18¢ each	Free
9108.99.60	$1.008 each	89.6¢ each	78.4¢ each	67.2¢ each	56¢ each	44.8¢ each	33.6¢ each	22.4¢ each	11.2¢ each	Free
9108.99.80	$1.935 each	$1.72 each	$1.505 each	$1.29 each	$1.075 each	86¢ each	64.5¢ each	43¢ each	21.5¢ each	Free
9109.11.10	3.5% on the movement + 4.7% on the battery	3.1% on the movement + 4.2% on the battery	2.7% on the movement + 3.7% on the battery	2.3% on the movement + 3.1% on the battery	1.9% on the movement + 2.6% on the battery	1.5% on the movement + 2.1% on the battery	1.1% on the movement + 1.5% on the battery	0.7% on the movement + 1% on the battery	0.3% on the movement + 0.5% on the battery	Free
9109.11.20	27¢ each + 4.7% on the battery	24¢ each + 4.2% on the battery	21¢ each + 3.7% on the battery	18¢ each + 3.1% on the battery	15¢ each + 2.6% on the battery	12¢ each + 2.1% on the battery	9¢ each + 1.5% on the battery	6¢ each + 1% on the battery	3¢ each + 0.5% on the battery	Free
9109.11.40	13.5¢ each + 5.7% on the movement + 4.7% on the battery	12¢ each + 5.1% on the movement + 4.2% on the battery	10.5¢ each + 4.4% on the movement + 3.7% on the battery	9¢ each + 3.8% on the movement + 3.1% on the battery	7.5¢ each + 3.2% on the movement + 2.6% on the battery	6¢ each + 2.5% on the movement + 2.1% on the battery	4.5¢ each + 1.9% on the movement + 1.5% on the battery	3¢ each + 1.2% on the movement + 1% on the battery	1.5¢ each + 0.6% on the movement + 0.5% on the battery	Free
9109.11.60	40.5¢ each + 5.7% on the movement + 4.7% on the battery	36¢ each + 5.1% on the movement + 4.2% on the battery	31.5¢ each + 4.4% on the movement + 3.7% on the battery	27¢ each + 3.8% on the movement + 3.1% on the battery	22.5¢ each + 3.2% on the movement + 2.6% on the battery	18¢ each + 2.5% on the movement + 2.1% on the battery	13.5¢ each + 1.9% on the movement + 1.5% on the battery	9¢ each + 1.2% on the movement + 1% on the battery	4.5¢ each + 0.6% on the movement + 0.5% on the battery	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9109.19.10	3.5% on the movement + 4.7% on the battery	3.1% on the movement + 4.2% on the battery	2.7% on the movement + 3.7% on the battery	2.3% on the movement + 3.1% on the battery	1.9% on the movement + 2.6% on the battery	1.5% on the movement + 2.1% on the battery	1.1% on the movement + 1.5% on the battery	0.7% on the movement + 1% on the battery	0.3% on the movement + 0.5% on the battery	Free
9109.19.20	27¢ each + 4.7% on the battery	24¢ each + 4.2% on the battery	21¢ each + 3.7% on the battery	18¢ each + 3.1% on the battery	15¢ each + 2.6% on the battery	12¢ each + 2.1% on the battery	9¢ each + 1.5% on the battery	6¢ each + 1% on the battery	3¢ each + 0.5% on the battery	Free
9109.19.40	13.5¢ each + 5.7% on the movement + 4.7% on the battery	12¢ each + 5.1% on the movement + 4.2% on the battery	10.5¢ each + 4.4% on the movement + 3.7% on the battery	9¢ each + 3.8% on the movement + 3.1% on the battery	7.5¢ each + 3.2% on the movement + 2.6% on the battery	6¢ each + 2.5% on the movement + 2.1% on the battery	4.5¢ each + 1.9% on the movement + 1.5% on the battery	3¢ each + 1.2% on the movement + 1% on the battery	1.5¢ each + 0.6% on the movement + 0.5% on the battery	Free
9109.19.60	40.5¢ each + 5.7% on the movement + 4.7% on the battery	36¢ each + 5.1% on the movement + 4.2% on the battery	31.5¢ each + 4.4% on the movement + 3.7% on the battery	27¢ each + 3.8% on the movement + 3.1% on the battery	22.5¢ each + 3.2% on the movement + 2.6% on the battery	18¢ each + 2.5% on the movement + 2.1% on the battery	13.5¢ each + 1.9% on the movement + 1.5% on the battery	9¢ each + 1.2% on the movement + 1% on the battery	4.5¢ each + 0.6% on the movement + 0.5% on the battery	Free
9109.90.20	27¢ each	24¢ each	21¢ each	18¢ each	15¢ each	12¢ each	9¢ each	6¢ each	3¢ each	Free
9109.90.40	13.5¢ each + 5.7%	12¢ each + 5.1%	10.5¢ each + 4.4%	9¢ each + 3.8%	7.5¢ each + 3.2%	6¢ each + 2.5%	4.5¢ each + 1.9%	3¢ each + 1.2%	1.5¢ each + 0.6%	Free
9109.90.60	40.5¢ each + 5.7%	36¢ each + 5.1%	31.5¢ each + 4.4%	27¢ each + 3.8%	22.5¢ each + 3.2%	18¢ each + 2.5%	13.5¢ each + 1.9%	9¢ each + 1.2%	4.5¢ each + 0.6%	Free
9110.11.00	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	Free
9110.12.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9110.19.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9110.90.20	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	The rate applicable to the complete, assembled movement	Free
9110.90.40	5.7% + 2.2¢/jewel + 0.2¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	5.1% + 2¢/jewel + 0.2¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	4.4% + 1.7¢/jewel + 0.2¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	3.8% + 1.5¢/jewel + 0.1¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	3.2% + 1.2¢/jewel + 0.1¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	2.5% + 1¢/jewel + 0.1¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	1.9% + 0.7¢/jewel, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	1.2% + 0.5¢/jewel, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	0.6% + 0.2¢/jewel, but if consisting in part of plate or a set of plates the total duty shall not exceed the duty for the complete movement	Free
9110.90.60	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
9111.10.00	13.5¢ each + 5.4%	12¢ each + 4.8%	10.5¢ each + 4.2%	9¢ each + 3.6%	7.5¢ each + 3%	6¢ each + 2.4%	4.5¢ each + 1.8%	3¢ each + 1.2%	1.5¢ each + 0.6%	Free
9111.20.20	7.2¢ each + 5.4%	6.4¢ each + 4.8%	5.6¢ each + 4.2%	4.8¢ each + 3.6%	4¢ each + 3%	3.2¢ each + 2.4%	2.4¢ each + 1.8%	1.6¢ each + 1.2%	0.8¢ each + 0.6%	Free
9111.20.40	3.6¢ each + 7.6%	3.2¢ each + 6.8%	2.8¢ each + 5.9%	2.4¢ each + 5.1%	2¢ each + 4.2%	1.6¢ each + 3.4%	1.2¢ each + 2.5%	0.8¢ each + 1.7%	0.4¢ each + 0.8%	Free
9111.80.00	3.6¢ each + 7.6%	3.2¢ each + 6.8%	2.8¢ each + 5.9%	2.4¢ each + 5.1%	2¢ each + 4.2%	1.6¢ each + 3.4%	1.2¢ each + 2.5%	0.8¢ each + 1.7%	0.4¢ each + 0.8%	Free
9111.90.40	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9111.90.50	1.8¢ each + 7.6%	1.6¢ each + 6.8%	1.4¢ each + 5.9%	1.2¢ each + 5.1%	1¢ each + 4.2%	0.8¢ each + 3.4%	0.6¢ each + 2.5%	0.4¢ each + 1.7%	0.2¢ each + 0.8%	Free
9111.90.70	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9112.10.00	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
9112.80.00	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
9112.90.00	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
9113.10.00	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
9113.20.20	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9113.20.40	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
9113.20.60	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9113.20.90	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9113.90.40	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9113.90.80	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
9114.10.40	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9114.10.80	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
9114.30.40	0.4¢ each + 8.1%	0.4¢ each + 7.2%	0.3¢ each + 6.3%	0.3¢ each + 5.4%	0.2¢ each + 4.5%	0.2¢ each + 3.6%	0.1¢ each + 2.7%	0.1¢ each + 1.8%	0.9%	Free
9114.30.80	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9114.40.20	16.2¢ each	14.4¢ each	12.6¢ each	10.8¢ each	9¢ each	7.2¢ each	5.4¢ each	3.6¢ each	1.8¢ each	Free
9114.40.40	13.5¢ each	12¢ each	10.5¢ each	9¢ each	7.5¢ each	6¢ each	4.5¢ each	3¢ each	1.5¢ each	Free
9114.40.60	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9114.40.80	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
9114.90.15	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9114.90.30	5.7% + 2.2¢/jewel + 0.2¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	5.1% + 2¢/jewel + 0.2¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	4.4% + 1.7¢/jewel + 0.2¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	3.8% + 1.5¢/jewel + 0.1¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	3.2% + 1.2¢/jewel + 0.1¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	2.5% + 1¢/jewel + 0.1¢ for each other piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	1.9% + 0.7¢/jewel, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	1.2% + 0.5¢/jewel, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	0.6% + 0.2¢/jewel, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement	Free
9114.90.40	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9114.90.50	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
9201.10.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9201.20.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9201.90.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9202.10.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9202.90.20	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9202.90.40	11.7%	10.4%	9.1%	7.8%	6.5%	5.2%	3.9%	2.6%	1.3%	Free
9202.90.60	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9203.00.80	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9204.10.40	3.7%	2.8%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
9204.10.80	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
9204.20.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9205.10.00	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9205.90.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9205.90.60	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9206.00.20	3.8%	2.8%	1.9%	0.9%	Free	Free	Free	Free	Free	Free
9206.00.60	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
9206.00.80	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9207.10.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9207.90.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9208.10.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
9208.90.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9209.10.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9209.20.00	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
9209.30.00	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9209.91.40	9¢/1,000 pins + 3.1%	8¢/1,000 pins + 2.8%	7¢/1,000 pins + 2.4%	6¢/1,000 pins + 2.1%	5¢/1,000 pins + 1.7%	4¢/1,000 pins + 1.4%	3¢/1,000 pins + 1%	2¢/1,000 pins + 0.7%	1¢/1,000 pins + 0.3%	Free
9209.91.80	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9209.92.20	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9209.92.40	9¢/1,000 pins + 3.1%	8¢/1,000 pins + 2.8%	7¢/1,000 pins + 2.4%	6¢/1,000 pins + 2.1%	5¢/1,000 pins + 1.7%	4¢/1,000 pins + 1.4%	3¢/1,000 pins + 1%	2¢/1,000 pins + 0.7%	1¢/1,000 pins + 0.3%	Free
9209.92.60	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9209.92.80	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9209.93.80	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9209.94.40	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9209.94.80	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9209.99.10	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9209.99.40	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9209.99.60	2.8%	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
9209.99.80	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

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	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9301.00.30	4.2% on the value of the rifle + 18% on the value of the telescopic sight, if any	3.7% on the value of the rifle + 16% on the value of the telescopic sight, if any	3.2% on the value of the rifle + 14% on the value of the telescopic sight, if any	2.8% on the value of the rifle + 12% on the value of the telescopic sight, if any	2.3% on the value of the rifle + 10% on the value of the telescopic sight, if any	1.8% on the value of the rifle + 8% on the value of the telescopic sight, if any	1.4% on the value of the rifle + 6% on the value of the telescopic sight, if any	0.9% on the value of the rifle + 4% on the value of the telescopic sight, if any	0.4% on the value of the rifle + 2% on the value of the telescopic sight, if any	Free
9301.00.60	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9301.00.90	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9303.20.00	4%	3%	2%	1%	Free	Free	Free	Free	Free	Free
9303.30.40	6% on the value of the rifle + 16% on the value of the telescopic sight, if any	4.5% on the value of the rifle + 12% on the value of the telescopic sight, if any	3% on the value of the rifle + 8% on the value of the telescopic sight, if any	1.5% on the value of the rifle + 4% on the value of the telescopic sight, if any	Free	Free	Free	Free	Free	Free
9303.30.80	3.7% on the value of the rifle + 16% on the value of the telescopic sight, if any	2.8% on the value of the rifle + 12% on the value of the telescopic sight, if any	1.8% on the value of the rifle + 8% on the value of the telescopic sight, if any	0.9% on the value of the rifle + 4% on the value of the telescopic sight, if any	Free	Free	Free	Free	Free	Free
9303.90.40	6.7%	5%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
9303.90.80	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
9304.00.20	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
9304.00.40	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
9304.00.60	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
9305.10.20	6.7%	5%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
9305.10.40	6.7%	5%	3.3%	1.6%	Free	Free	Free	Free	Free	Free
9305.10.80	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
9305.21.80	1.8%	1.3%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9305.29.10	2.2%	1.6%	1.1%	0.5%	Free	Free	Free	Free	Free	Free
9305.29.20	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9305.29.40	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
9305.29.50	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9305.90.10	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
9305.90.20	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9305.90.30	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
9305.90.40	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
9305.90.50	6.2%	4.6%	3.1%	1.5%	Free	Free	Free	Free	Free	Free
9305.90.60	4.5%	3.4%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
9306.10.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9306.21.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9306.29.00	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
9306.30.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9306.30.80	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
9306.90.00	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
9307.00.00	3.6%	2.7%	1.8%	0.9%	Free	Free	Free	Free	Free	Free
9401.10.40	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9401.10.80	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9401.20.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
9401.30.40	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9401.30.80	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9401.40.00	2.5%	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
9401.50.00	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
9401.61.20	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
9401.61.40	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9401.61.60	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
9401.69.20	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
9401.69.40	2.7%	2%	1.3%	0.6%	Free	Free	Free	Free	Free	Free
9401.69.60	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9401.69.80	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
9401.71.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9401.79.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9401.80.20	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
9401.80.40	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9401.80.60	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9401.90.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
9401.90.15	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
9401.90.25	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9401.90.35	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9401.90.40	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9401.90.50	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9402.10.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
9402.90.00	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9403.10.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9403.20.00	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9403.30.40	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
9403.30.80	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
9403.40.40	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
9403.40.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
9403.40.90	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
9403.50.40	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
9403.50.60	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
9403.50.90	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
9403.60.40	5.2%	3.9%	2.6%	1.3%	Free	Free	Free	Free	Free	Free
9403.60.80	2%	1.5%	1%	0.5%	Free	Free	Free	Free	Free	Free
9403.70.40	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
9403.70.80	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9403.80.30	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
9403.80.60	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9403.90.10	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
9403.90.25	6%	4.5%	3%	1.5%	Free	Free	Free	Free	Free	Free
9403.90.40	4.8%	3.6%	2.4%	1.2%	Free	Free	Free	Free	Free	Free
9403.90.50	1.9%	1.4%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9403.90.60	5.6%	4.2%	2.8%	1.4%	Free	Free	Free	Free	Free	Free
9403.90.70	4.2%	3.1%	2.1%	1%	Free	Free	Free	Free	Free	Free
9403.90.80	3.2%	2.4%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9404.10.00	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9404.21.00	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
9404.29.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
9404.29.90	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
9404.30.40	4.2%	3.7%	3.2%	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
9404.30.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9404.90.10	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9404.90.20	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
9404.90.80	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9404.90.90	13%	11.6%	10.1%	8.7%	7.2%	5.8%	4.3%	2.9%	1.4%	Free
9405.10.40	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9405.10.60	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
9405.10.80	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9405.20.40	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9405.20.60	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
9405.20.80	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9405.30.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9405.40.40	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9405.40.60	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
9405.40.80	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9405.50.20	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9405.50.30	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9405.50.40	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
9405.60.20	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9405.60.40	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
9405.60.60	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9405.91.20	12.6%	11.2%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
9405.91.40	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
9405.91.60	5.8%	5.2%	4.5%	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
9405.92.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9405.99.20	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9405.99.40	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
9406.00.40	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9406.00.80	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9501.00.40	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
9501.00.60	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9502.10.20	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
9502.10.40	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
9502.10.60	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
9502.10.80	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
9502.91.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9502.99.10	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9502.99.20	5.7%	5.1%	4.4%	3.8%	3.2%	2.5%	1.9%	1.2%	0.6%	Free
9502.99.30	10.8%	9.6%	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
9503.10.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.20.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.30.40	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
9503.30.80	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.41.10	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.41.20	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.41.30	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.49.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.50.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.60.00	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.70.60	5.4%	4.8%	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
9503.70.80	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.80.20	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.80.40	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.80.60	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.80.80	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.90.20	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.90.50	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.90.60	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9503.90.70	6.1%	5.4%	4.7%	4%	3.4%	2.7%	2%	1.3%	0.6%	Free
9504.10.00	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
9504.20.20	7.3%	6.5%	5.7%	4.9%	4.1%	3.2%	2.4%	1.6%	0.8%	Free
9504.20.60	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9504.20.80	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9504.30.00	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9504.40.00	0.7¢/pack + 0.7%	0.6¢/pack + 0.6%	0.5¢/pack + 0.5%	0.4¢/pack + 0.4%	0.4¢/pack + 0.4%	0.3¢/pack + 0.3%	0.2¢/pack + 0.2%	0.1¢/pack + 0.1%	Free	Free
9504.90.40	3.1%	2.3%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
9504.90.60	4.1%	3.7%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
9504.90.90	4.1%	3.7%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
9505.10.10	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9505.10.15	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9505.10.25	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9505.10.30	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9505.10.40	7.5%	6.7%	5.8%	5%	4.2%	3.3%	2.5%	1.6%	0.8%	Free
9505.10.50	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9505.90.20	5.2%	4.6%	4%	3.4%	2.9%	2.3%	1.7%	1.1%	0.5%	Free
9505.90.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9505.90.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9506.21.40	1.2%	0.9%	0.6%	0.3%	Free	Free	Free	Free	Free	Free
9506.21.80	3.3%	2.5%	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9506.29.00	4.1%	3.7%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
9506.31.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9506.32.00	2.1%	1.9%	1.6%	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
9506.39.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9506.40.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9506.51.20	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9506.51.40	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9506.51.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9506.59.40	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9506.59.80	4.1%	3.7%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
9506.61.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9506.62.80	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9506.69.20	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9506.69.40	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9506.69.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9506.91.00	4.1%	3.7%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
9506.99.05	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9506.99.08	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9506.99.12	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
9506.99.15	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9506.99.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9506.99.30	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9506.99.45	4.9%	4.4%	3.8%	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
9506.99.50	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9506.99.55	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9506.99.60	4.1%	3.7%	3.2%	2.7%	2.3%	1.8%	1.3%	0.9%	0.4%	Free
9507.10.00	6.8%	6%	5.3%	4.5%	3.8%	3%	2.2%	1.5%	0.7%	Free
9507.30.20	8.2%	7.3%	6.4%	5.5%	4.6%	3.6%	2.7%	1.8%	0.9%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9507.30.40	27¢ each	24¢ each	21¢ each	18¢ each	15¢ each	12¢ each	9¢ each	6¢ each	3¢ each	Free
9507.30.60	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9507.30.80	4.8%	4.3%	3.7%	3.2%	2.7%	2.1%	1.6%	1%	0.5%	Free
9507.90.20	4.8%	4.3%	3.7%	3.2%	2.7%	2.1%	1.6%	1%	0.5%	Free
9507.90.40	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9507.90.60	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9507.90.70	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9507.90.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9508.00.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9601.10.00	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9601.90.20	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9601.90.40	1.8%	1.6%	1.4%	1.2%	1%	0.8%	0.6%	0.4%	0.2%	Free
9601.90.80	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9602.00.10	3.7%	3.3%	2.9%	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
9602.00.40	2.2%	2%	1.7%	1.5%	1.2%	1%	0.7%	0.5%	0.2%	Free
9602.00.50	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9603.10.10	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9603.10.20	10.8¢ each	9.6¢ each	8.4¢ each	7.2¢ each	6¢ each	4.8¢ each	3.6¢ each	2.4¢ each	1.2¢ each	Free
9603.10.30	28.8%	25.6%	22.4%	19.2%	16%	12.8%	9.6%	6.4%	3.2%	Free
9603.10.40	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9603.10.50	28.8¢ each	25.6¢ each	22.4¢ each	19.2¢ each	16¢ each	12.8¢ each	9.6¢ each	6.4¢ each	3.2¢ each	Free
9603.10.60	28.8%	25.6%	22.4%	19.2%	16%	12.8%	9.6%	6.4%	3.2%	Free
9603.10.70	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9603.21.00	0.1¢ each + 3%	0.1¢ each + 2.7%	0.1¢ each + 2.3%	0.1¢ each + 2%	0.1¢ each + 1.7%	1.3%	1%	0.6%	0.3%	Free
9603.29.40	0.1¢ each + 6.3%	0.1¢ each + 5.6%	0.1¢ each + 4.9%	0.1¢ each + 4.2%	0.1¢ each + 3.5%	2.8%	2.1%	1.4%	0.7%	Free
9603.29.80	0.2¢ each + 3.2%	0.2¢ each + 2.8%	0.2¢ each + 2.5%	0.1¢ each + 2.1%	0.1¢ each + 1.8%	0.1¢ each + 1.4%	1%	0.7%	0.3%	Free
9603.30.20	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9603.30.40	0.2¢ each	0.2¢ each	0.2¢ each	0.1¢ each	0.1¢ each	0.1¢ each	Free	Free	Free	Free
9603.30.60	2.7%	2.4%	2.1%	1.8%	1.5%	1.2%	0.9%	0.6%	0.3%	Free
9603.40.20	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9603.40.40	3.6%	3.2%	2.8%	2.4%	2%	1.6%	1.2%	0.8%	0.4%	Free
9603.50.00	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9603.90.40	2.5%	2.2%	1.9%	1.6%	1.4%	1.1%	0.8%	0.5%	0.2%	Free
9603.90.80	5%	4.4%	3.9%	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9604.00.00	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9605.00.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9606.10.40	6.2%	5.5%	4.8%	4.1%	3.4%	2.7%	2%	1.3%	0.6%	Free
9606.10.80	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9606.21.20	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9606.21.40	0.3¢/line/ gross + 5.7%	0.3¢/line/ gross + 5.1%	0.2¢/line/ gross + 4.4%	0.2¢/line/ gross + 3.8%	0.2¢/line/ gross + 3.2%	0.1¢/line/ gross + 2.5%	0.1¢/line/ gross + 1.9%	1.2%	0.6%	Free
9606.21.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9606.22.00	3.2%	2.8%	2.5%	2.1%	1.8%	1.4%	1%	0.7%	0.3%	Free
9606.29.20	0.3¢/line/ gross + 5.7%	0.3¢/line/ gross + 5.1%	0.2¢/line/ gross + 4.4%	0.2¢/line/ gross + 3.8%	0.2¢/line/ gross + 3.2%	0.1¢/line/ gross + 2.5%	0.1¢/line/ gross + 1.9%	1.2%	0.6%	Free
9606.29.40	0.3¢/line/ gross + 4.5%	0.2¢/line/ gross + 4%	0.2¢/line/ gross + 3.5%	0.2¢/line/ gross + 3%	0.1¢/line/ gross + 2.5%	0.1¢/line/ gross + 2%	0.1¢/line/ gross + 1.5%	1%	0.5%	Free
9606.29.60	5.1%	4.5%	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
9606.30.80	10.2%	9.1%	7.9%	6.8%	5.7%	4.5%	3.4%	2.2%	1.1%	Free
9607.11.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
9607.19.00	13.5%	12%	10.5%	9%	7.5%	6%	4.5%	3%	1.5%	Free
9607.20.00	20.7%	18.4%	16.1%	13.8%	11.5%	9.2%	6.9%	4.6%	2.3%	Free
9608.10.00	0.7¢ each + 4.8%	0.6¢ each + 4.3%	0.5¢ each + 3.7%	0.4¢ each + 3.2%	0.4¢ each + 2.7%	0.3¢ each + 2.1%	0.2¢ each + 1.6%	0.1¢ each + 1%	0.5%	Free
9608.20.00	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9608.31.00	0.7¢ each + 4.8%	0.6¢ each + 4.3%	0.5¢ each + 3.7%	0.4¢ each + 3.2%	0.4¢ each + 2.7%	0.3¢ each + 2.1%	0.2¢ each + 1.6%	0.1¢ each + 1%	0.5%	Free
9608.39.00	0.7¢ each + 4.8%	0.6¢ each + 4.3%	0.5¢ each + 3.7%	0.4¢ each + 3.2%	0.4¢ each + 2.7%	0.3¢ each + 2.1%	0.2¢ each + 1.6%	0.1¢ each + 1%	0.5%	Free
9608.40.40	5.9%	5.2%	4.6%	3.9%	3.3%	2.6%	1.9%	1.3%	0.6%	Free
9608.40.80	3%	2.7%	2.3%	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
9608.50.00	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	The rate applicable to each article in the absence of this subheading	Free
9608.60.00	0.7¢ each + 4.8%	0.6¢ each + 4.3%	0.5¢ each + 3.7%	0.4¢ each + 3.2%	0.4¢ each + 2.7%	0.3¢ each + 2.1%	0.2¢ each + 1.6%	0.1¢ each + 1%	0.5%	Free
9608.99.20	0.7¢ each + 4.8%	0.6¢ each + 4.3%	0.5¢ each + 3.7%	0.4¢ each + 3.2%	0.4¢ each + 2.7%	0.3¢ each + 2.1%	0.2¢ each + 1.6%	0.1¢ each + 1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9608.99.30	36¢/thousand + 6.3%	32¢/thousand + 5.6%	28¢/thousand + 4.9%	24¢/thousand + 4.2%	20¢/thousand + 3.5%	16¢/thousand + 2.8%	12¢/thousand + 2.1%	8¢/thousand + 1.4%	4¢/thousand + 0.7%	Free
9608.99.40	0.8¢ each + 5.4%	0.7¢ each + 4.8%	0.6¢ each + 4.2%	0.5¢ each + 3.6%	0.4¢ each + 3%	0.3¢ each + 2.4%	0.2¢ each + 1.8%	0.1¢ each + 1.2%	0.6%	Free
9608.99.60	3.4%	3%	2.6%	2.2%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9609.10.00	12.6¢/gross + 3.8%	11.2¢/gross + 3.4%	9.8¢/gross + 3%	8.4¢/gross + 2.5%	7¢/gross + 2.1%	5.6¢/gross + 1.7%	4.2¢/gross + 1.2%	2.8¢/gross + 0.8%	1.4¢/gross + 0.4%	Free
9609.20.40	0.4¢/gross	0.4¢/gross	0.3¢/gross	0.3¢/gross	0.2¢/gross	0.2¢/gross	0.1¢/gross	0.1¢/gross	Free	Free
9609.90.80	4.9¢/gross + 3%	4.4¢/gross + 2.7%	3.8¢/gross + 2.3%	3.3¢/gross + 2%	2.7¢/gross + 1.7%	2.2¢/gross + 1.3%	1.6¢/gross + 1%	1.1¢/gross + 0.6%	0.5¢/gross + 0.3%	Free
9610.00.00	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9611.00.00	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9612.10.10	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9612.10.90	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9612.20.00	6.3%	5.6%	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
9613.10.00	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9613.20.00	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9613.30.00	4.3%	3.8%	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9613.80.20	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9613.80.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9613.80.60	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9613.80.80	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9613.90.40	3.5%	3.1%	2.7%	2.3%	1.9%	1.5%	1.1%	0.7%	0.3%	Free
9613.90.80	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free
9614.20.40	0.4¢ each + 3.6%	0.4¢ each + 3.2%	0.3¢ each + 2.8%	0.3¢ each + 2.4%	0.2¢ each + 2%	0.2¢ each + 1.6%	0.1¢ each + 1.2%	0.1¢ each + 0.8%	0.4%	Free
9614.20.60	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9614.20.80	0.4¢ each + 5.7%	0.4¢ each + 5.1%	0.3¢ each + 4.4%	0.3¢ each + 3.8%	0.2¢ each + 3.2%	0.2¢ each + 2.5%	0.1¢ each + 1.9%	0.1¢ each + 1.2%	0.6%	Free
9614.90.40	6.4%	5.7%	5%	4.3%	3.6%	2.8%	2.1%	1.4%	0.7%	Free
9614.90.80	0.4¢ each + 2.7%	0.4¢ each + 2.4%	0.3¢ each + 2.1%	0.3¢ each + 1.8%	0.2¢ each + 1.5%	0.2¢ each + 1.2%	0.1¢ each + 0.9%	0.1¢ each + 0.6%	0.3%	Free
9615.11.10	12.9¢/gross + 1.8%	11.5¢/gross + 1.6%	10¢/gross + 1.4%	8.6¢/gross + 1.2%	7.2¢/gross + 1%	5.7¢/gross + 0.8%	4.3¢/gross + 0.6%	2.8¢/gross + 0.4%	1.4¢/gross + 0.2%	Free
9615.11.20	7%	6.2%	5.4%	4.6%	3.9%	3.1%	2.3%	1.5%	0.7%	Free
9615.11.30	25.9¢/gross + 4.1%	23¢/gross + 3.6%	20.1¢/gross + 3.2%	17.2¢/gross + 2.7%	14.4¢/gross + 2.3%	11.5¢/gross + 1.8%	8.6¢/gross + 1.3%	5.7¢/gross + 0.9%	2.8¢/gross + 0.4%	Free
9615.11.40	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9615.11.50	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9615.19.20	12.9¢/gross + 1.8%	11.5¢/gross + 1.6%	10¢/gross + 1.4%	8.6¢/gross + 1.2%	7.2¢/gross + 1%	5.7¢/gross + 0.8%	4.3¢/gross + 0.6%	2.8¢/gross + 0.4%	1.4¢/gross + 0.2%	Free
9615.19.40	25.9¢/gross + 4.1%	23¢/gross + 3.6%	20.1¢/gross + 3.2%	17.2¢/gross + 2.7%	14.4¢/gross + 2.3%	11.5¢/gross + 1.8%	8.6¢/gross + 1.3%	5.7¢/gross + 0.9%	2.8¢/gross + 0.4%	Free
9615.19.60	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9615.90.20	7.2%	6.4%	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
9615.90.30	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
9615.90.40	4.7%	4.2%	3.7%	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
9615.90.60	9.9%	8.8%	7.7%	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
9616.10.00	3.3%	2.9%	2.5%	2.2%	1.8%	1.4%	1.1%	0.7%	0.3%	Free
9616.20.00	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free
9617.00.10	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9617.00.30	7.8%	6.9%	6%	5.2%	4.3%	3.4%	2.6%	1.7%	0.8%	Free
9617.00.40	7.8%	6.9%	6%	5.2%	4.3%	3.4%	2.6%	1.7%	0.8%	Free
9617.00.60	8.1%	7.2%	6.3%	5.4%	4.5%	3.6%	2.7%	1.8%	0.9%	Free
9618.00.00	5.6%	5%	4.4%	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
9802.00.60	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter)

HTS Subheading as modified by Annex II	Rates of duty, effective with respect to goods originating in the territory of Canada and entered on or after--									
	January 1, 1989	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
9802.00.80	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)
9816.00.20	9 percent of the fair retail value	8 percent of the fair retail value	7 percent of the fair retail value	6 percent of the fair retail value	5 percent of the fair retail value	4 percent of the fair retail value	3 percent of the fair retail value	2 percent of the fair retail value	1 percent of the fair retail value	Free
9816.00.40	4.5 percent of the fair retail value	4 percent of the fair retail value	3.5 percent of the fair retail value	3 percent of the fair retail value	2.5 percent of the fair retail value	2 percent of the fair retail value	1.5 percent of the fair retail value	1 percent of the fair retail value	0.5 percent of the fair retail value	Free
9901.00.50[1]	14.2¢/liter	12.6¢/liter	11¢/liter	9.5¢/liter	7.9¢/liter	6.3¢/liter	4.7¢/liter	3.1¢/liter	1.5¢/liter	Free
9902.62.10	4.4%	3.3%	2.2%	1.1%	Free	Free	Free	Free	Free	Free
9903.28.01	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free

[1] The additional duty provided for in subheading 9901.00.50 will terminate with respect to goods originating in the territory of Canada pursuant to general note 3(c)(vii) of the HTS at any time during the staging period that the additional duty is terminated with respect to products of any other country subject to such additional duty on October 4, 1987.

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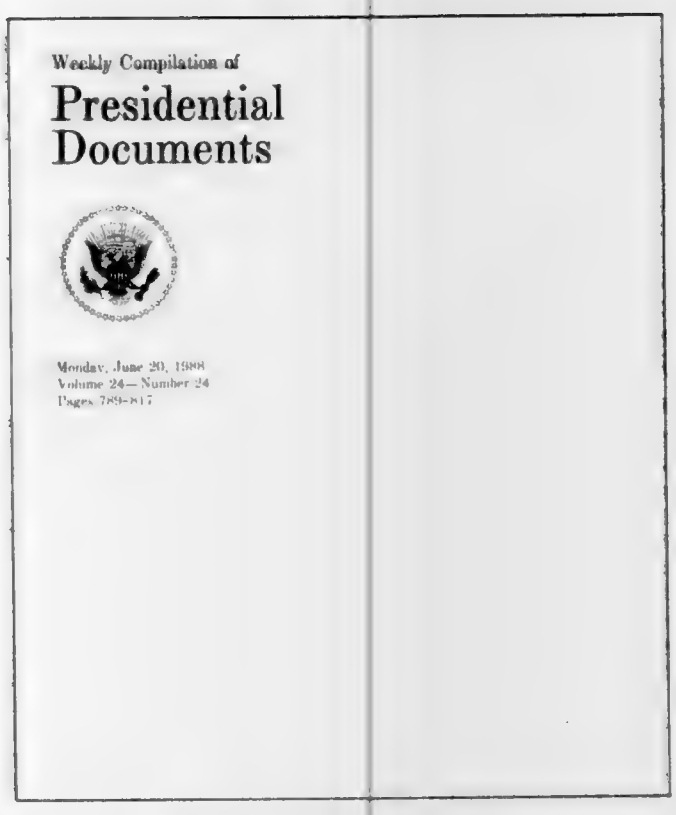

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Presidential Documents

Title 3—

The President

Executive Order 12659 of December 15, 1988

Delegation of Authority Regarding the Naval Petroleum and Oil Shale Reserves

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3 and sections 7427 and 7428 of title 10 of the United States Code, and in order to meet the goals and requirements of the Naval Petroleum and Oil Shale Reserves, it is hereby ordered as follows:

Section 1. The functions vested in the President by sections 7427 and 7428 of title 10 of the United States Code are delegated to the Secretary of Energy.

Sec. 2. On or before June 30, 1991, the Secretary of Energy shall prepare and submit to the President a comprehensive report of the agreements and programs executed under the authority granted under this Order. The authority delegated herein expires after October 1, 1991.

Ronald Reagan

THE WHITE HOUSE,
December 15, 1988.

[FR Doc. 88-29206
Filed 12-16-88; 10:15 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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Monday, December 19, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Part 81

Freedom of Information; Records

AGENCY: General Accounting Office.
ACTION: Final rule.

SUMMARY: This rule revises GAO's regulations regarding the public disclosure of GAO records. Fees have been raised to reflect current costs. Minor editorial changes clarify and correct. Hours of the public reading room, Office of the General Counsel, have been updated to reflect current practice. The exemption pertaining to law enforcement records and the fee waiver standard have been revised to bring these sections into accord with the spirit of the Freedom of Information Reform Act of 1986, Pub. L. 99–570.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Nola Casieri, Office of Policy, United States General Accounting Office, 441 G Street NW., Room 6800, Washington, DC 20548, 202/275–1970.

SUPPLEMENTARY INFORMATION: GAO is revising Part 81 to bring the law enforcement and fee waiver standard into accord with the spirit of the Freedom of Information Reform Act of 1986, Pub. L. 99–570. Fees have been raised to reflect current costs. Minor editorial changes clarify and correct.

The following is a section-by-section description of the revisions to the regulations.

Section 81.6(g) is revised to change the description of the records included within the exemption from "investigatory files" to "records and information."

Section 81.7(b)(3) (i) and (ii) are revised to increase the fees charged for both clerical and professional personnel.

Section 81.7(e) is revised to incorporate the requirement that a waiver or reduction of fees is to be granted only if the release of the requested records is in the public interest and not primarily in the commercial interest of the requester.

Sections 81.6(j) and 81.7(c) are reprinted to correct spelling errors.

Section 81.8 is revised to change the hours of operation to 8:30 a.m. to 5:00 p.m. Due to organizational and title changes, the reference to the Chief, Legal Information and References Services, is deleted.

List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Freedom of Information, Records.

For the reasons set out in the preamble Title 4, Part 81 of the Code of Federal Regulations is amended as follows:

PART 81—PUBLIC AVAILABLILITY OF GENERAL ACCOUNTING OFFICE RECORDS

1. The authority citation for Part 81 continues to read as follows:

Authority: 31 U.S.C. 711.

2. Section 81.6 is amended by revising paragraphs (c), (g), and (j) to read as follows:

§ 81.6 Records which may be exempt from disclosure.

* * * * *

(c) Records related solely to the internal personnel rules and practices of an agency. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of an agency function. Examples within the purview of this exemption are guidelines, and procedures for auditors, investigators, or examiners.

* * * * *

(g) Records and information compiled for law enforcement purposes.

* * * * *

(j) Inter-agency or intra-agency memoranda, letters or other materials that are part of the deliberative process. For example, this exemption includes internal communications such as GAO or other agency draft reports, and those portions of internal drafts, memoranda and workpapers containing opinions, recommendations, advice or evaluative remarks of GAO employees. This exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency function.

* * * * *

3. Section 81.7 is amended by revising paragraphs (b)(3) and (e) to read as follows:

§ 81.7 Fees and charges.

* * * * *

(b) * * *

(3) Search for records by Office personnel.

(i) Clerical personnel—$10 an hour.

(ii) Professional personnel—$20 an hour.

* * * * *

(e) Fees established by this section may be waived or reduced upon a determination by the Director, OP, that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commerical interest of the requester. Persons seeking such waiver or reduction of fees may be required to submit a statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations pursuant to this subsection are solely within the discretion of GAO.

4. Section 81.8 is revised as follows:

§ 81.8 Public reading facility.

A public reading facility shall be maintained by the General Accounting Office at 441 G Street NW., Washington, DC. The facility, under the control of the Office of the General Counsel, shall be open to the public from 8:30 a.m. to 5:00 pm. except Saturdays, Sundays, and holidays.

Charles A. Bowsher,
Comptroller General of the United States.

[FR Doc. 88–29022 Filed 12–16–88; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Whole Dry Peas

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Final Rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising the United States Standards for Whole Dry Peas to make the current rounding procedures for percentages consistent with rounding performed by calculators, computer applications and other FGIS standards.

EFFECTIVE DATE: January 14, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Final Action

On August 15, 1988 (53 FR 30685), FGIS proposed to revise Subpart F—United States Standards for Whole Dry Peas, of the Part 68 regulations (7 CFR Part 68) to change the current rounding procedures for percentages. The current rounding procedures for percentages provides that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g. 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.54 is reported as 0.5; when figures that are even are followed by the figure 5, the even figure is retained; and when a figure is odd and followed by the figure 5 the figure is rounded to the next higher even figure, e.g., 0.45 is reported as 0.4, 0.35 is reported as 0.4.

The proposed rounding rules simply stated provided that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next higher figure, e.g., report 0.35 as 0.4, 6.46 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.34 as 8.3. This procedure is consistent with rounding performed by calculators and in computer applications. It is also a more generally accepted mathematical rounding procedure and would facilitate the understanding and usage of the standards.

This final rule also revises the heading of Part 68 (7 CFR Part 68) for clarity, as proposed.

Interested parties were invited to participate in the rulemaking process by submitting written comments on the proposed rule. During the comment period one supporting comment from an academe was the only comment received.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Whole dry peas.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

Subpart F—United States Standards for Whole Dry Peas

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. The heading for Part 68 is revised to read as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

3. Section 68.405 Percentages, is revised to read as follows:

§ 68.405 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g. report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3, and 1.22 as 1.2.

(b) *Recording.* All percentages shall be stated in whole and tenth percent to the nearest tenth percent.

Date: November 29, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–29030 Filed 12–16–88; 8:45 am]

BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV–88–131]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Establishment of Identifying Marks and Terms and Conditions of Use in Connection With Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule which authorized handlers of Texas oranges and grapefruit to use two additional identifying marks, "Texas Choice" and "Texas Fancy," utilized by the Texas Valley Citrus Committee (committee) in promotional and advertising projects. Use of identifying marks by handlers is voluntary, but if these marks are used the fruit must meet certain minimum quality requirements. This action is designed to assist in the development and expansion of markets for Texas oranges and grapefruit.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No.

906, as amended [7 CFR Part 906], regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order and approximately 2,500 orange and grapefruit producers in Texas. The number of handlers has been changed to 78 from 22 and the number of producers to 2,500 from 3,000 in this final rule, from that in the interim final rule, reflecting analysis of pertinent statistical data. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

An interim final rule amending §§ 906.137 and 906.340 was issued October 12, 1988, and published in the **Federal Register** [53 FR 40397, October 17, 1988]. The interim final rule provided that interested persons could file comments through November 16, 1988. No comments were received.

Currently, § 906.137 allows handlers to use the identifying marks "Texasweet" and "Sweeter by Nature" under certain conditions in connection with committee promotional and advertising projects undertaken to increase shipments of Texas oranges and grapefruit. Paragraph (a)(1) of § 906.137 allows handlers to affix these marks severally or jointly to containers of grapefruit or to individual grapefruit comprising a lot only if the grapefruit grades at least U.S. No. 1. Paragraph (a)(2) of that section prescribes specifications for oranges. Handlers can only affix these marks on containers of oranges or to individual oranges if the oranges grade at least U.S. Combination, with not less than 60 percent, by count, of the oranges in each container grading at least U.S. No. 1 and the remainder, U.S. No. 2. Section 906.137 is established pursuant to § 906.37 of the order.

The interim final rule revised paragraph (a) of § 906.137 to establish a new identification mark "Texas Choice" for oranges and grapefruit and the mark "Texas Fancy" for grapefruit, to be used by handlers in connection with committee promotional and advertising projects. The use of these marks is limited to high quality, attractive looking fruit. This is intended to enhance the image of Texas oranges and grapefruit, and to augment the committee's promotional and advertising efforts to expand sales of Texas citrus. This action is based on a unanimous recommendation of the committee, which works with the Department in administering the marketing order.

The identifying mark "Texas Choice" established for oranges may only be affixed to containers of oranges or to individual oranges comprising a lot, if the oranges at least meet U.S. No. 2 requirements, and the oranges possess more yellow surface color than specified for U.S. No. 2 grade fruit. Also, the yellow or orange color must predominate over the green color on at least 75 percent (instead of the currently prescribed two-thirds for U.S. No. 2) of the fruit surface in the aggregate which is not discolored.

The use of "Texas Choice" for grapefruit is limited to U.S. No. 2 or better fruit, but less color discoloration is allowed than is allowed for U.S. No. 2. To use the identifying mark "Texas Choice", no more than 60 percent of the surface may be affected by discoloration. Under U.S. No. 2 specifications, not more than two-thirds of the surface of the grapefruit in the aggregate may be affected by discoloration. "Texas Fancy" is authorized for containers of grapefruit or individual grapefruit if the fruit meets U.S. No. 1 or better grade requirements, with less color discoloration than allowed for U.S. No. 1. Also, only 40 percent of the surface may be affected by discoloration instead of the current maximum of 50 percent for U.S. No. 1.

The terms relating to the U.S. grades have the same meaning as those specified in the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) [7 CFR 51.620 through 51.653] and in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona) [7 CFR 51.680 through 51.714].

The interim final rule also made a conforming change in paragraph (a)(3) of § 906.340 so that handlers do not have to affix container grade markings if the handlers properly utilize the identifying marks "Texas Choice" and "Texas Fancy" pursuant to § 906.137. The committee indicated that the use of grade markings like "U.S. No. 2", together with the identifying marks "Texas Choice" or "Texas Fancy", would cause confusion in the marketplace. In addition, an obsolete proviso currently in paragraph (a)(3) was deleted.

The industry is gradually recovering from the devastating freezes of the early 1980's. Total Texas orange production increased 61 percent from 38,000 tons (875,000 boxes) in 1986–87 to 61,000 tons (1,430,000 boxes) in 1987–88. Based on production trends since the 1983 freeze, it is expected that production for the 1988–89 season will show a relatively large increase over the previous season due to an increase in yields and bearing acreage. Shipments of fresh Texas oranges increased by 34 percent from 33,363 tons (785,000 boxes) in 1986–87 to 44,800 tons (1,054,000 boxes) in 1987–88. Total Texas grapefruit production increased by 97 percent from 77,000 tons (1,925,000 boxes) in 1986–87 to 152,000 tons (3,800,000 boxes) in 1987–88. The positive trend in production since the 1984–85 season is expected to continue into the 1988–89 season. Fresh shipments increased by 57 percent, from 62,000 tons in 1986–87 to 97,160 tons in 1987–88.

As supplies return to normal, strong efforts will be needed by the Texas citrus industry to regain its markets. The use of these new identifying marks in conjunction with the committee's efforts to promote and expand markets is designed to improve the image of Texas oranges and grapefruit in the marketplace and help regain markets.

Therefore, the Department's view is that the changes implemented by the interim final rule should be finalized and that the impact of this action will be beneficial to producers and handlers because it continues to provide handlers additional marketing flexibility by allowing them to conduct their marketing operations more closely in line with the committee's promotion and advertising activities. This should result in the more successful use of the

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committee's promotion funds and help handlers sell more fruit.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the final rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers of Texas oranges and grapefruit are aware of this action, which is based on a unanimous recommendation of the committee made at a public meeting, and they are prepared to continue operating in accordance with the requirements; (2) this use of these identifying marks is voluntary, not mandatory; (3) the shipment of the 1988–89 season Texas orange and grapefruit crops is currently underway; (4) handlers should be able to continue to utilize the additional marketing tools provided by the interim final rule; (5) the interim final rule provided a 30-day comment period, and no comments were received; and (6) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas grapefruit, oranges.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 906 is taken:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending §§ 906.137 and 906.340, which was published in the **Federal Register** [53 FR 40398, October 17, 1988], is adopted as a final rule without change.

[**Note:** This section will appear in the Code of Federal Regulations]

Dated: December 14, 1988.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–29112 Filed 12–16–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1004

[DA–89–004]

Milk in the Middle Atlantic Marketing Area; Order Terminating Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rules.

SUMMARY: This action terminates the advertising and promotion program of the Middle Atlantic milk marketing order. Termination of the program was requested by the individual members of the Pennmarva Dairymen's Federation, Inc., an organization of cooperative associations representing more than 90 percent of the dairy farmers who are producers under the order. Since a majority of the producers on the market request the removal of the advertising and promotion provisions from the order, the program should be terminated.

EFFECTIVE DATE: Effective February 1, 1989—Amendments to § 1004.61(b) (3) and (7) with respect to milk marketing on and after January 1, 1989. Effective March 31, 1989—Remove §§ 1004.105, 1004.106 and 1004.110 through 1004.122 and the centerheading preceding them.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Divison, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311.

SUPPLEMENTARY INFORMATION:

Determinations

It is hereby determined that termination of the advertising and promotion program of the Middle Atlantic order is favored by a majority of the producers engaged in the production of milk for sale in the marketing area in the representative period, determined to be September 1988, and that such producers produced more than 50 percent of the milk produced for sale in the Middle Atlantic marketing area during such representative period.

It is also determined that notice of proposed rulemaking and public procedure thereon is impractical and unnecessary. Section 608c(16)(B) of the Agricultural Marketing Agreement Act of 1937, as amended, requires that if a majority of the producers engaged in the production of milk for sale in the marketing area in a representative period determined by the Secretary favor termination of an order and such producers produced more than 50 percent of the milk produced for sale in the marketing area during the representative period, such order shall be terminated. Section 608c(5)(I) of the Act authorizing advertising and promotion provisions in Federal milk orders also provides that the order provisions of the advertising and promotion program may be terminated separately from the other terms of the order regulating the handling of milk whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in section 603c(16)(B).

Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby ordered that the funding provisions of the advertising and promotion program of the Middle Atlantic order (in § 1004.61(b) (3) and (7), the sentence "Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e).") be terminated February 1, 1989, with respect to milk marketed on and after January 1, 1989. The remaining provisions of the advertising and promotion program (§§ 1004.105, 1004.106, and 1004.110 through 1004.122 and the centerheading preceding them) are hereby terminated effective March 31, 1989.

List of Subjects in 7 CFR Part 1004

Milk marketing order, Milk, Dairy products.

Therefore, 7 CFR Part 1004 is amended as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.61 [Amended]

2. In § 1004.61, paragraphs (b) (3) and (7) are amended by removing the sentence which reads, "Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e)."

§§ 1004.105, 1004.106 and 1004.110 through 1004.122 [Removed]

3. Sections 1004.105, 1004.106 and 1004.110 through 1004.122 and the centerheading preceding them are removed.

Signed at Washington, DC, on: December 9, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-29110 Filed 12-16-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1135

[DA-89-003]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends portions of the Southwestern Idaho-Eastern Oregon Federal milk order for the months of December 1988 through May 1989. The suspended provisions relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association that represents a majority of the producers supplying the market to prevent uneconomic movements of milk.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued November 15, 1988; published November 21, 1988 (53 FR 46875).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 21, 1988 (53 FR 46875) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. no comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of December 1988 through May 1989 the following provisions of the order to not tend to effectuate the declared policy of the Act:

In § 1135.13, paragraphs (f) (3), (4), (5) and (6).

Statement of Consideration

This action removes for the months of December 1988 through May 1989 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The provisions suspended provide that a cooperative association may divert up to 80 percent of its total member milk received at all pool plants or diverted therefrom during any month. Similarly, the operator of a pool plant may divert up to 80 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during any month.

Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested the suspension. DCA indicated that operation of the 80-percent diversion limit would mean that over 2,000,000 pounds of milk must be unloaded and re-loaded each month at the Meridian, Idaho, pool supply plant to be transferred to nonpool manufacturing plants. According to the cooperative such unnecessary handling would be undertaken for the sole purpose of meeting the delivery requirements of the order. The cooperative stated that such unnecessary unloading and re-loading would take employees' time and require additional cleaning of lines and tanks.

Western Dairymen Cooperative, Inc., (WDCI) filed comments supporting the requested suspension. WDCI stated that the suspension would greatly reduce hauling costs, as well as reducing the cost of operating the supply plant.

For the first nine months of 1988, daily receipts of producer milk pooled under the Southwestern Idaho-Eastern Oregon order have increased nearly 28 percent over the same period of the previous year. At the same time, producer milk used in Class I has increased less than 6 percent.

Given the marked increase in the volume of producer milk pooled under the order, the requested suspension will allow the pooling of producers who stand ready to supply the fluid milk requirements of the marketing area to be handled without undue expense. There is no indication that the suspension would encourage association with the order of the milk of producers who are not bona fide suppliers of the bottling needs of the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that without extensive unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the following provisions in § 1135.13 of the Southwestern Idaho-Eastern Oregon order are hereby suspended for the months of December 1988 through May 1989:

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for 7 CFR Part 1135 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674

§ 1135.13 [Suspended in Part]

2. In § 1135.13, paragraphs (f) (3), (4), (5) and (6) are suspended.

Signed at Washington, DC, on: December 14, 1988.

Robert Melland,

Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-29111 Filed 12-16-88; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Nonmember and Public Unit Accounts

AGENCY: National Credit Union Administration.

ACTION: Interim Final Rule.

SUMMARY: This amendment adds a new provision to Part 701 limiting the amount of public unit and nonmember accounts that may be maintained by Federal credit unions to 20 percent of total shares. To the extent that federally-insured state-chartered credit unions are authorized to accept such accounts, a new amendment to Part 741 would provide the same limitation. Exceptions to the limitation may be obtained from the appropriate NCUA Regional Director when warranted.

The NCUA has determined that the accumulation of large amounts of public unit and nonmember funds, amounts far in excess of that needed to provide services to a credit union's members, results in an unsafe and unsound condition, poses substantial risks to the credit union system and the National Credit Union Share Insurance Fund, and has already cause significant losses to both the Fund and credit unions.

In addition, although no specific language is included in this document, the NCUA Board is considering a proposal to require any federally-insured credit union that accepts nonmember accounts to obtain an annual CPA audit and disclose the audit to its nonmember accountholders. The Board requests comments on this issue as well as the interim final amendment.

DATES: Effective December 19, 1988. Comments must be received on or before February 20, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or James J. Engel, Deputy General Counsel, at the above address or telephone: (202) 682-9640 (Mr. Riley) or 682-9630 (Mr. Engel).

SUPPLEMENTARY INFORMATION:

Scope

The limitation contained in this amendment applies to all Federal credit unions that accept accounts of public units and nonmembers, including nonmember credit unions. Generally, public unit accounts will be nonmember accounts. (For purposes of this discussion the term "account" means a share, share certificate, or share draft account.) It also applies to those Federal credit unions that, having been designated low-income credit unions by NCUA, maintain accounts for other nonmembers in addition to credit union and public unit accounts. To the extent any federally-insured state-chartered credit unit is authorized to accept public unit and nonmember accounts, the limitation is applicable to them as well.

Although corporate credit unions are subject to the 20% limitation, due to the fact that the majority of their accounts are from member credit unions, this amendment should have little effect on their operations.

Federally-insured credit unions are also authorized to act as depositories and fiscal agents of the U.S. Treasury and maintain special accounts on its behalf. *See* 12 U.S.C. 1767 and 1789a; 12 CFR 701.37-1 and 701.37-2. This amendment does not apply to or affect those accounts.

Background

All Federal credit unions are authorized to accept and maintain certain types of nonmember accounts. Section 101(5) of the Federal Credit Union Act ("the Act"), 12 U.S.C. 1752(5), defines "member account" to include, *inter alia*, the accounts of nonmember credit unions and the accounts of nonmember units of Federal, state, or local governments and the political subdivisions of such units. The term also includes—*but only* in the case of a credit union that serves predominantly low-income members *and* that has received a low-income designation from NCUA—accounts of any nonmember. The terms "predominantly" and "low-income members" are defined in Part 700 of NCUA's regulations. Thus, NCUA designated "low-income" Federal credit unions can accept accounts from any nonmember, whereas other Federal credit unions can only accept nonmember accounts from other credit unions or public units.

Discussion

It is important to realize that the authority to accept nonmember accounts does not include the authority to provide credit union services to nonmembers. The funds maintained in nonmember accounts are to be used only for the purpose of serving the credit union's membership. Nonmember accounts are not designed to merely expand a credit union's share base or to simply provide another investment medium for large accountholders. They are to be used to fund the basic purpose of credit unions: *promoting thrift and creating a source of credit for the members*, whether in the form of loanable funds or through increased earnings on investments that in turn are paid out to members in the form of dividends.

The NCUA's concern with nonmember accounts stems from the fact that such accounts tend to represent large sums of money, often in excess of the $100,000 insurance limit, invested by both public units and institutional investors. In most credit unions, it is only the public unit accounts that come into play. In low-income credit unions, however, both public units and institutional investors can establish accounts. These large accounts have traditionally been sensitive to interest rate fluctuations. In order to keep these accounts, some credit unions have had to pay higher than market dividend rates. Large influxes of funds into credit unions cause asset/liability management problems that are often not within management's expertise to control. In some cases, the total amount of such accounts is far in excess of the amount necessary to meet the legitimate needs of members and is used to fund high risk loans—often to insiders—and questionable investments. As in the problem case credit unions identified below, we have seen management aggressively pursuing these types of accounts.

These practices have a direct bottom line effect on all federally-insured credit unions. Money from the National Credit Union Share Insurance Fund ("Fund") that would otherwise be used to build Fund equity or pay dividends to credit unions on their 1% Fund deposit is used to cover losses sustained due to liquidations and mergers. The credit union system also suffers when large accountholders, primarily public units, sustain losses on accounts in excess of the insurance limit. The public units suffer the monetary loss; credit unions suffer from a loss in confidence. The investment managers of these public units don't make distinctions between credit unions. Their future investments will go to a different market.

Past experience—problem cases.

Franklin Community FCU—Losses to the Fund may exceed $40 million. We extimate that accountholders will lose between $2.5 and $3 million because of amounts in excess of the $100,000 insurance limit.

Zionic FCU—Cost the Fund $4.5 million to liquidate. Nonmember accounts totalled $18 million as compared to $250,000 in member accounts.

American Free Enterprise FCU—Merged with another credit union at a cost of $898,000.

New American FCU—Liquidated at a cost of $3.1 million.

United Methodist FCU—Liquidated at a cost, to date, of $2.3 million.

Financial Services CU—Cost to liquidate in excess of $1 million.

Center Place Savings CU—A purchase and asssumption cost the Fund $150,000.

While the total of the above losses may, at first glance, appear to be within acceptable limits when considering the overall size of the Fund and the insured credit union system, it is not. These are losses resulting solely from the utilization of a legitimate authority in an unsafe and unsound manner for purpose beyond the authority's design and intent. Credit unions expect their Fund to be used to cover legitimate insurance risks, e.g., losses caused by economic conditions. They should find losses such as those caused by mismanagement and misuse of authority, particularly when it places the system in a bad light, to be intolerable. The Fund has a statutory duty to protect members, but it also has responsibility to the credit unions it insures to take steps to reduce losses when there are means within its control. This amendment is such a step.

The purpose of the 20% limitation contained in this amendment is to control the amount of these nonmember funds that flow into credit unions. For the most part, there should be no real affect on the majority of credit unions. The amendment recognizes that a credit union may have the ability to manage funds in excess of that proposed and may have a legitimate need for exceeding the limit. Some military credit unions, for example, act as the local base depository and may exceed the 20% cap in performing that function. A credit union can seek an exemption from the appropriate NCUA Regional Director. It will have to provide an explanation of a need for the exemption and provide the Region with a copy of its loan and investment policies.

In selecting the 20% figure, NCUA looked to past practice. From May 1975, through April 1982, Federal credit unions were permitted to accept up to a total of 20% of assets in public unit accounts; no more than 5% from any one public unit. The NCUA Board proposed expanding the limits in November 1981. The issue generated only eight comments, all in favor of the proposal but none of them indicating that the limits then in effect were burdensome or otherwise causing any problems for credit unions. The Board decided to eliminate the limits altogether but cautioned, "* * * volatile share capital such as public unit funds should be balanced with short-term assets in which the credit union earns a positive return." 47 FR 17979 (April 27, 1981).

Although the 20% limit in this amendment is based on shares as opposed to total assets, the Agency does not believe that this represents a material difference. The previous asset-based limitation imposed no hardship on credit unions. Individual situations will be addressed by the Regional Directors upon application of the affected credit unions.

Effective Date; Interim Rule; Comment Period

Although this amendment is being issued as an interim final rule and is effective immediately, the NCUA Board encourages credit unions to submit comments. Comments may be submitted on or before February 20, 1989.

The Board finds it necessary and appropriate to act quickly in this matter in order to limit further losses and reduce additional risk. Such losses affect all federally-insured credit unions due to their interest in the Fund and the need to maintain confidence in the system. Any delay in the effective date of this rule is contrary to the best interests of federally-insured credit unions. It is expected, however, that this rule will have no restraining effect on the operations of the vast majority of credit unions. Those credit unions that currently exceed the 20% limit need only notify their NCUA Regional Director and then, within 60 days, either request an exemption or provide a statement that they are in compliance.

State Regulators

As previously mentioned, this interim amendment applies to those federally-insured state chartered credit unions that accept public unit and nonmember accounts. Therefore, during the 60 day comment period, the Board intends to work with the State credit union regulators to obtain their guidance regarding their participation in the administration of the rule. The NCUA Board specifically requests their comments and recommendations on this rule and on the proposal set forth below.

Request for Comments

The NCUA Board is also requesting comments on a related issue currently being considered. The issue is whether or not all federally-insured credit unions that accept nonmember accounts should be required to obtain annual CPA audits and disclose the audits to the nonmember accountholders. In choosing to accept such accounts, a credit union opens itself as an investment medium to a broader constituency and may be assuming an obligation beyond that owed to its members. Such a requirement not only benefits the nonmember accountholders but also, and more importantly, it will, in the long run, benefit the entire credit union system.

As previously mentioned, the largest nonmember accounts are rate sensitive. Frequently, those nonmembers do not analyze the institutions into which they place their funds as long as it is federally insured and is paying the highest available rate. Although this may be their own shortcoming, when they suffer losses they tend to look to other industries or markets for fund placement. This removes those credit unions that can adequately manage these funds, and may well need them to meet their own member's needs, from being considered as a viable investment option. Disintermediation occurs and the credit union system is the loser.

If credit unions wish to compete for these funds, they must be willing to accept additional responsibilities. The fact that CPA audits are required and available can only help to bolster confidence in what credit unions already know is a sound system.

While any new requirement is viewed with skepticism and as additional paperwork, the acceptance of nonmember accounts is not mandatory. Only those credit unions that opt to deal with such accounts would be affected. Many credit unions already utilize CPA audits. Designated low-income credit unions, those that might view the requirement as burdensome since they are more likely to rely on nonmember accounts than do other types of credit unions, will benefit the most. It is their reliance that subjects them to the closest scrutiny. Fiduciaries of public units and charitable or community development groups will have more confidence in providing funds to these credit unions when independent audits are available.

Comments on this proposal must be received on or before February 20, 1989.

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Regulatory Procedures

Regulatory Flexibility Act

This interim final rule imposes a limitation on the amount of funds that a federally-insured credit union may accept in the form of public unit and nonmember accounts. However, the rule also provides a method for obtaining an exemption from the limitation upon a showing of need and ability to manage the funds in these accounts. For that reason, the NCUA Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required pursuant to 5 U.S.C. 605(b).

Paperwork Reduction Act

This interim final rule contains one paperwork requirement: any credit union requesting an exemption from the 20% limitation must submit an explanation of the need to raise the limit and must provide copies of its lending and investment policies. This requirement will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments on this rule should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20530, ATTN: Jerry Waxman.

Executive Order 12612

The NCUA Board has considered the fact that this interim final rule will affect federally-insured state-chartered credit unions (FISCU's) that accept public unit and nonmember accounts. It does not impose any additional costs or burdens on the states, nor does it affect the states' ability to discharge traditional state government functions. The benefits provided and protection afforded by the NCUSIF is the same for FISCU's as it is for Federal credit unions. It is protection afforded through a Federal system and the responsibility for administering that system lies with the NCUA Board. All federally-insured credit unions, whether Federal or state chartered, will be subject to the same requirement. To the extent that the practices of all credit unions are the same, i.e., acceptance of public unit and nonmember accounts, and have the same effect on their insuring fund, those practices must be subject to the same requirements. The acts and practices subject to this interim final rule have implications for the entire federally-insured credit union system and its insurer and are not unique to only one type of charter.

List of Subjects

12 CFR Part 701

Credit unions, Public units, Nonmember accounts.

12 CFR Part 741

Credit unions, Public units, Nonmember accounts.

By the National Credit Union Administration Board on December 14, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789.

2. By adding a new § 701.32 to read as follows:

§ 701.32 Payments on shares by public units and nonmembers.

(a) A federal credit union may, to the extent permitted under section 107(6) of the Act, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in § 745.1) and nonmembers, including nonmember credit unions.

(b) Unless a greater amount has been approved by the Regional Director, the maximum amount of all such accounts shall not, at any given time, exceed 20% of the total shares of the Federal credit union. A Federal credit union seeking an exemption from the 20% limit must present, at a minimum, an explanation of the need to raise the limit and copies of its lending and investment policies.

(c) The limitations herein do not apply to accounts maintained in accordance with §§ 701.37–1 (Treasury Tax and Loan accounts) and 701.37–2 (Treasury Depository or Financial Agent accounts.)

PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for Part 741 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, and 1789.

§§ 741.5 through 741.10 [Redesignated as § 741.6 through 741.11]

4. By redesignating §§ 741.5 through 741.10 as §§ 741.6 through 741.11.

5. By adding a new § 741.5 to read as follows:

§ 741.5 Maximum public unit and nonmember accounts.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act, must adhere to the requirements of § 701.32 regarding public unit and nonmember accounts, provided it has the authority to accept such accounts.

[FR Doc. 88–29079 Filed 12–16–88; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ASW–2; Amdt. 39–6058]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206L and 206L–1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the installation of more reliable fuel system flow switches and the relocation of the in-line fuel filters on Bell Model 206L and 206L–1 helicopters. The AD is needed to prevent failures in the fuel system which could result in an engine flameout and subsequent loss of the helicopter.

DATE: *Effective Date:* January 18, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 18, 1989.

Compliance: Required within the next 250 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable Alert Service Bulletin, No. 206L–88–52, dated June 10, 1988, may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support, or may be examined at the Regional Rules Docket, Office of the Regional Counsel, FAA Southwest Region, 4400 Blue Mound Road, Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW–170, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5177.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the installation of more reliable fuel system flow switches and the relocation of the in-line fuel filters on Bell Model 206L and 206L–1 helicopters was published on May 25, 1988, in the **Federal Register** (53 FR 18854).

The proposal was prompted by reports of certain part number fuel system flow switches installed on Bell Model 206L and 206L–1 helicopters malfunctioning due to small particulate matter which is typically found in the fuel system. The malfunctions, in some cases, were found to have caused failures in the fuel system which subsequently resulted in engine flameout. Consequently, the proposal called for the installation of more reliable fuel system flow switches and the relocation of the in-line fuel filters on the Bell Model 206L and 206L–1 helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation only involves 200 helicopters, and the approximate cost to each helicopter is $2,200 which would result in a total cost of $440,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to Model 206L helicopters, S/N's 45001 through 45153 and S/N's 46601 through 46617, and to Bell Model 206L–1 helicopters, S/N's 45154 through 45840, certificated in any category, with fuel system flow switches, P/N's 206–063–635–001, 206–064–601–001, –003, –101, or –103 installed. (Airworthiness Docket No. 88–ASW–2).

Compliance is required as indicated, unless already accomplished.

To prevent a possible fuel system failure due to the malfunction of the fuel system flow switches which could result in an engine flameout and subsequent loss of the helicopter accomplish the following:

(a) Within the next 250 hours' time in service after the effective date of this AD, remove and replace the fuel system flow switches, P/N's 206–063–635–001, 206–064,601–001, –003, –101, or –103, whichever is installed, with fuel system flow switch retrofit kit, P/N 206–703–004–101 and relocate the in-line fuel filters, P/N 206–063–693–001, in accordance with Bell Helicopter Textron, Inc., Alert Service Bulletin No. 206L–88–52, dated June 10, 1988.

(b) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193–0170.

The procedure shall be done in accordance with Bell Helicopter Textron, Inc., Alert Service Bulletin No. 206L–88–52, dated June 10, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective January 18, 1989.

Issued in Fort Worth, Texas, on October 21, 1988.

L.B. Andriesen,

Manager, Rotocraft Directorate, Aircraft Certification Service.

[FR Doc. 88–29070 Filed 12–16–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 88–ACE–10]

Establishment of Jet Route J–233; Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J–233 located in the vicinity of Waterloo, IA. This route will bypass the arrival/departure routes in the Chicago terminal area. This action improves the traffic flow in the Chicago area, aids flight planning and reduces delays.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On October 31, 1988, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish Jet Route J–233 located in the vicinity of Waterloo, IA (53 FR 43898). The route establishes a routing to/from Minneapolis, MN, through the Chicago area that will provide a safe, orderly and expeditious flow of traffic. This action saves fuel, aids flight planning, and controller coordination. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes new Jet Route J–233 located in the vicinity of Waterloo, IA. The route establishes a routing to/from Minneapolis, MN, through the Chicago area that will provide a safe, orderly and expeditious flow of traffic. This action saves fuel, aids flight planning, and controller coordination.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is note a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–233 [New]

From Waterloo, IA; INT Waterloo 184° and St. Louis, MO, 318° radials; to St. Louis.

Issued in Washington, DC, on December 13, 1988.

Harold W. Becker,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–29071 Filed 12–16–88; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

Reports; General Provisions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has amended § 15.03(a), 17 CFR 150.3(a) (1987), of its regulations which affects reports filed by contract markets, futures commission merchants ("FCMs"), foreign brokers and traders ("large-trader data"). A Commission review of the reporting levels set forth in § 15.03(a) of the regulations indicates that the reporting levels in futures traded on feeder cattle, long-term (6½–10 year) U.S. Treasury notes, cocoa and crude oil can be raised from their current levels and that the reporting levels in futures traded on copper, the New York Stock Exchange Composite Index and the Value Line Average Index should be lowered from the current levels.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC, Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION: While the Commission has determined that this final rule does not affect the existing paperwork burden previously approved by OMB the public reporting burden for this collection of information is estimated to average .1492 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038–0009), Washington, DC 20503.

Reporting levels are set in commodities to ensure that the Commission receives adequate information to carry out its market surveillance programs that include detection and prevention of market congestion and price manipulation and enforcement of speculative limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, used of the markets by foreign participants and other matters of public and/or Congressional concern.

Generally, Parts 17 and 18 of the regulations require reports from members of contract markets, FCMs or foreign brokers and traders, respectively, when a trader holds a "reportable position," *i.e.*, any open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations. See, § 15.00(b), 17 CFR 15.00(b) (1988).

Members of contract markets, FCMs and foreign brokers who carry accounts in which there are "reportable positions" of traders are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a Form 103 showing positions and transactions in the commodity specified in the call.

The Commission reviews information concerning trading volume, open interest and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage is adequate for effective market surveillance. In cases where coverage appears more than required, the Commission may propose to raise reporting levels as part of its ongoing effort to reduce the reporting burden. In other cases, where the current reporting level appears too high for adequate coverage, the Commission may proposed to lower the reporting level.

On the basis of its most recent review of reporting levels, the Commission proposed to change the reporting levels in certain commodities as follows: [1] in Feeder Cattle, and increase from 25 contracts to 50 contracts; in Long-term Treasury Notes, an increased from 200 contracts to 300 contracts; in Cocoa, an increase from 25 to 50 contracts; in Crude Oil, an increase from 200 to 250 contracts; in copper, a decrease from 200 contracts to 100 contracts; in the Value Line Average Index and in the New York Stock Exchange Index, a decrease from 100 contracts to 50 contracts.

Two futures exchanges commented on the Commission's proposal. The Coffee, Sugar and Cocoa Exchange supported the Commission's efforts to reduce reporting burden on industry members and stated that the 50-contract level for futures traded on cocoa would be adequate for Market Surveillance. The New York Mercantile Exchange (NYMEX), however, opposed the Commission's proposal to raise reporting level in crude oil futures from 200 contracts to 250 contracts.

[1] See 53 FR 39103 (October 5, 1988).

NYMEX rules stipulate that reporting levels set by the exchange for its own reporting system are adjusted in tandem with changes in the Commission's reporting levels unless the President of the exchange determines otherwise.[2] The exchange stated that the current 200 contract level for crude oil futures was an appropriate level to support the exchange's surveillance activities, in particular for financial surveillance, and to monitor the delivery process. In view of this, NYMEX indicated that it would exercise its discretion to maintain the 200 contract level in crude oil futures for its reporting system if the Commission adopted as final the proposed amendments to Rule 15.03. NYMEX further opined that adoption of the proposed amendments by the Commission may require persons to complete duel sets of records for reporting.

Commodity exchanges which maintain futures large trader systems similar to the Commission's sometimes exercise independent discretion in setting reporting levels that appear tailored to their individual market surveillance programs. Certain exchanges also use their large-trader reports for other purposes, such as financial surveillance. At present, one exchange has set reporting levels in certain markets lower than the Commission's levels, while another exchange has set some reporting levels higher than the Commission's. Exchanges' individual determinations to collect more, or in some cases fewer, reports than the Commission appears reasonable in light of differences in the characteristics of some contract markets and different purposes underlying the data collection efforts. Moreover, FCMs and firms which are members of these exchanges have not expressed any compelling reasons to require that exchange and Commission reporting levels be set at the same levels in all cases. Given these current practices, the Commission believes that when it has identified circumstances such as those that exist in crude oil futures, where the Commission can accomplish its purposes with fewer reports from the industry, it is obliged to raise the reporting level. In view of this, the Commission has determined to adopt its rule amendments as proposed.

The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[3] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders, futures commission merchants and other similar entities such as foreign brokers and foreign traders. The Commission has defined "small entities" as used by the Commission in evaluating the impact of its rule in accordance with the RFA. 47 FR 18618 through 18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and futures commission merchants are not considered to be small entities for purposes of the RFA. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. Nonetheless, the Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operations. No comments were received concerning this matter.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission previously submitted rules associated with this information collection requirement to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on September 14, 1988 and assigned OMB control number 3038–0009 to the collection. The Commission has determined that this final rule does not affect the burden approved by OMB at that time. The OMB approved burden is as follows:

Average burden hours per response	.1492
Number of Respondents	4,133
Frequency of response	[1]

[1] Daily and weekly.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038–0009), Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 15

Brokers and large traders, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for Part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6, 6a (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C 552. and 552(b), unless otherwise noted.

4. Section 15.03 is revised to read as follows:

§ 15.03 Quantities fixed for reporting.

The quantities for the purpose of reports filed with Parts 17 and 18 of this chapter are as follows:

Commodity	Quantity
Wheat (bushels)	500,000
Corn (bushels)	500,000
Soybeans (bushels)	500,000
Oats (bushels)	300,000
Cotton (bales)	5,000
Soybean oil (contracts)	150
Soybean meal (contracts)	150
Live cattle (contracts)	100
Feeder cattle (contracts)	50
Hogs (contracts)	50
Sugar No. 11 (contracts)	200
Sugar No. 14 (contracts)	100
Cocoa (contracts)	50
Copper (contracts)	100
Gold (contracts)	200
Silver bullion (contracts)	150
Platinum (contracts)	50
No. 2 Heating oil (contracts)	150
Crude oil (contracts)	250
Unleaded gasoline (contracts)	100
Long-term U.S. Treasury bonds (contracts)	500
GNMA (contracts)	100
Three-month (13-week) U.S. Treasury bills (contracts)	100
Long-term U.S. Treasury notes (contracts)	300
Three-month Eurodollar time deposit rates (contracts)	400
Foreign currencies (contracts)	200
Standard and Poor's 500 stock price index (contracts)	300
New York Stock Exchange composite index (contracts)	50
Amex Major Market Index—maxi (contracts)	50
Municipal bonds (contracts)	50
Value Line Average Index (contracts)	50
All other commodities (contracts)	25

Issued in Washington, DC on December 13, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–29091 Filed 12–16–88; 8:45 am]

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[2] NYMEX Rule 9.34(B).

[3] 5 U.S.C. 601 et. seq.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM87-34-000; Order No. 500-F]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanism

Issued December 13, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Statement of Policy; Order Extending Date for Filing Final Tariff Sheets under Alternative Passthrough Mechanism.

SUMMARY: In Order No. 500 (52 FR 30,334 (Aug. 14, 1987)), the Federal Energy Regulatory Commission (Commission) set a deadline of December 31, 1988, for the filing of tariff sheets to recover take-or-pay buyout and buydown costs under the alternative passthrough mechanism described in that order. In this order, the Commission is extending the deadline to March 31, 1989. The Commission believes the short extension is necessary and reasonable to permit pipelines and producers to bring their settlement negotiations to an orderly conclusion.

DATES: This order is effective December 9, 1988. (5 U.S.C. 553(d)(2) (1982)). An extension of time for filing tariff sheets is granted to and including March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Richard O. Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Phone: (202) 357-8274.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanism

In Order No. 500, 52 FR 30,334 (Aug. 14, 1987), the Commission set a deadline of December 31, 1988, for the filing of final tariff sheets including all take-or-pay buyout and buydown costs eligible for recovery under the alternative passthrough mechanism described therein. Several pipelines in various rate case dockets, as well as the Interstate Natural Gas Association of America (INGAA), have requested extensions of the December 31, 1988 deadline.

The pipelines assert that an extension is necessary to provide them a reasonable opportunity to complete negotiations with natural gas producers and to prevent forced settlements detrimental to themselves and consumers.

The Natural Gas Supply Association, an organization of producers, supports an extension of the deadline date. Amoco Production Company, United Distribution Companies, and, jointly, the Process Gas Consumers Group, the American Iron and Steel Institute, and the Association of Businesses Advocating Tariff Equity have filed opposing the extension on the ground that an extension would delay the prompt resolution of the take-or-pay problem to the detriment of the entire industry.

While the Commission continues to believe that the take-or-pay deterrent to competitive natural gas markets must be eliminated as quickly as possible, the Commission has concluded that, on balance, a short extension of the deadline date is necessary and reasonable to permit pipelines and producers to bring to an orderly conclusion their settlement negotiations. The Commission does not believe that such an extension will prejudice the interests of any segment of the industry. Accordingly, the Commission will extend the deadline date to March 31, 1989.

In addition, for contracts that are in litigation on March 31, 1989, the Commission will permit a pipeline to file by that date to include in its tariffs language permitting the pipeline to pursue the litigation to its natural end (of judgment and final appeal or settlement) and then to file to recover eligible costs resulting from these contracts under the equitable sharing mechanism.[1] The eligible costs do not include punitive damages or penalties.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 792-825r (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); National Environmental Policy Act of 1969, 16 U.S.C. 4321-4370a (1982).

§ 2.104 [Amended]

2. In § 2.104, paragraph (c)(1), the words "December 31, 1988" are removed and the words "March 31, 1989" are inserted in their place.

[FR Doc. 88-29035 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[1] In other words, a pipeline must file by March 31, 1989 tariff language to be eligible to use this provision. *See* El Paso Natural Gas Co., 43 FERC ¶ 61,576 (1988) and Trunkline Gas Co., 44 FERC ¶ 61,407 (1988).

18 CFR Part 284

[Docket Nos. RM88-14-001 and RM88-15-000; Order No. 509]

Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf

Issued December 9, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334 (1982). In addition, the Commission also revises its interpretative rule on section 5 of the OCSLA (Interpretation of section 5 of the Outer Continental Shelf Lands Act, Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC Reports ¶ 61,006 (Apr. 1, 1988). The final rule provides every jurisdictional interstate natural gas pipeline that transports gas on or across the Outer Continental Shelf (OCS) with a blanket certificate authorizing and requiring nondiscriminatory transportation of national gas on behalf of others, and requires every OCS pipeline to file tariffs to implement that blanket certificate authorization. The service performed under the blanket certificate includes both firm and interruptible transportation service and OCS pipelines must, pursuant to the blanket certificate and section 5 of the OCSLA, provide open and nondiscriminatory access for both owner and nonowner shippers. The final rule requires all OCS pipelines to file new rates, but maintains their current rates in effect until the new rates (and, at the same time, the blanket certificates) become effective.

EFFECTIVE DATE: This rule will become effective February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1] In addition, the Commission also revises its interpretative rule on section 5 of the OCSLA.[2] The final rule provides every jurisdictional interstate natural gas pipeline that transports gas on or across the Outer Continental Shelf (OCS) with a blanket certificate authorizing and requiring nondiscriminatory transportation of natural gas on behalf of others, and requires every OCS pipeline to file tariffs to implement that blanket certificate authorization. The service performed under the blanket certificate includes both firm and interruptible transportation service and OCS pipelines must, pursuant to the blanket certificate and section 5 of the OCSLA, provide open and nondiscriminatory access for both owner and nonowner shippers. The final rule requires all OCS pipelines to file new rates, but maintains their current rates in effect until new rates (and, at the same time, the blanket certificates) become effective.

II. Background

On April 1, 1988, the Commission issued two orders concerning the OCSLA. The first order (Order No. 491) contained the Commission's interpretation of section 5 of the OCSLA.[3] The second order was a notice of proposed rulemaking (NOPR) that proposed regulations to implement section 5 of the OCSLA.[4]

Section 5(e) of the OCSLA authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf (OCS) for pipelines to transport oil, natural gas, sulphur, or other minerals prescribed by the Secretary. Section 5(e) also gives the Commission certain responsibilities on the OCS by providing that every right-of-way on the OCS be granted:

> upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas, produced from submerged lands or Outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.[5]

In addition, section 5(f)(1) of the OCSLA provides that every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the OCS of oil or natural gas must require that the pipeline be operated in accordance with certain competitive principles. Section 5(f)(1) provides that:

> Except as provided in paragraph (2) every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the Outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:
>
> (A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.
>
> (B) Upon the specific request of one or more owner or non-owner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of

[1] 43 U.S.C. 1334 (1982).

[2] Interpretation of Section 5 of the Outer Continental Shelf Lands Act (OCSLA), Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC Reports ¶ 61,006 (Apr. 1, 1988).

[3] *Id.*

[4] Regulations under Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 53 FR 14923 (Apr. 26, 1988), IV FERC Stats. & Regs. ¶ 32,459 (Apr. 1, 1988).

[5] 43 U.S.C. 1334(e) (1982).

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authority is approved or issued after the date of enactment of this subparagraph. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

Section 5(f)(1) was added to the OCSLA in 1978 as part of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA).[6] The Conference Report on the OCSLAA states that:

> The agreed-to subsection (f) provides for open and non-discriminatory access to apply to all pipelines and is a reaffirmation and strengthening of subsection 5(e) which provides for the transport or purchase of all OCS oil and gas "without discrimination".[7]

Section 5(f)(1)(A) provides that an OCS pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers. This requirement is in addition to the express condition in section 5(e) of the OCSLA that OCS pipelines must transport or purchase OCS gas "without discrimination."

Section 5(f)(1)(B) of the OCSLA provides, under very narrow circumstances, for the expansion of pipeline capacity on the OCS upon the specific request of one or more owner or nonowner shippers. Before the Commission can order an expansion of throughput capacity the requesting shipper must agree to be responsible for bearing a proportionate share of the costs and risks related to the expansion and the Commission must, after a full hearing with due notice to the interested parties, find that the expansion is within technological limits and economic feasibility. Moreover, the last sentence of section 5(f)(1)(B) exempts the vast majority of OCS pipelines from the requirement by providing that the subparagraph does not apply to any grant of authority in the Gulf of Mexico or the Santa Barbara Channel.

Section 5(f)(2) of the OCSLA gives the Commission the authority to exempt a pipeline or class of pipelines from any of the requirements in section 5(f)(1) if the pipeline feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated or otherwise processed. Section 5(f)(3) requires the Secretary of Energy and the Commission to consult with, and give due consideration to the views of, the Attorney General on specific conditions to be included in permit, license, easement, right-of-way, or grant of authority in order to ensure that the pipelines operate in accordance with the competitive principles in section 5(f)(1). In preparing such views, the Attorney General is also required to consult with the Federal Trade Commission. Finally, section 5(f)(4) of the OCSLA provides that nothing in subsection (f) shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines operating on the OCS.

In Order No. 491 the Commission indicated that the statutory requirements of the OCSLA were similar to the statutory requirements of the Natural Gas Act (NGA) and concluded that the condition of nondiscriminatory access (open access) placed on the transportation program established in Order Nos. 436 and 500 [8] satisfied, in substantial measure, the nondiscriminatory access requirements in sections 5(e) and 5(f)(1)(A) of the OCSLA.[9] However, in Order No. 491 the Commission viewed the enactment of the specific open access requirement in section 5(f)(1)(A) to require something more than the open access conditions established in Order Nos. 436 and 500 under the Natural Gas Act (NGA).[10] Consequently, the Commission proposed to implement sections 5(e) and 5(f)(1)(A) of the OCSLA by requiring OCS pipelines to offer transportation to all who seek it on a pro rata basis.

On the same day the Commission issued Order No. 491, it also issued the NOPR that proposed regulations to implement its interpretation of sections 5(e) and 5(f) of the OCSLA.[11] The NOPR proposed to require that all jurisdictional interstate natural gas pipelines transporting gas on or across the OCS obtain a blanket certificate under Part 284 of the Commission's regulations authorizing the transportation of natural gas on behalf of others on an open and nondiscriminatory basis. The transportation service was to include firm and interruptible transportation on behalf of owner and nonowner shippers of OCS gas. The Commission also proposed to grant an OCS pipeline a temporary blanket certificate pending the pipeline's application for a permanent blanket certificate. In addition, the Commission proposed regulations that would allow OCS pipelines to establish interim rates for transportation services pending the issuance of the permanent blanket certificate.

The Commission received 13 requests for rehearing of Order No. 491.[12] On June 1, 1988, the Commission issued an order which granted the rehearing requests solely for the purpose of further consideration.[13] The Commission indicated that it would address the issues raised in the rehearing requests on Order No. 491 when it reviewed the comments received on the NOPR.

The Commission received comments from 41 commenters on the NOPR. Commenters included several pipeline companies, producers, distributors, trade associations and industrial end users, as well as the U.S. Departments of Justice, Energy and the Interior.[14] In addition, Indicated Producers filed supplemental comments on Order No. 491 when they filed their comments on the NOPR. Two commenters filed reply comments in response to Indicated Producers' supplemental comments.[15] The Commission has considered all of these comments in issuing the final rule.

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[6] Pub. L. No. 95–372, 92 Stat. 632 (Sept. 18, 1978).

[7] H.R. Conf. Rep. No. 1474, 95th Cong., 2d Sess. 37, *reprinted in* 1978 U.S. Code Cong. & Admin. News 1674, 1686

[8] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 (1985), *modified*, Order No. 436–A, 50 FR 52217 (Dec. 23, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,675 (1985), *modified further*, Order No. 436–B, 51 FR 6398 (Feb. 24, 1986), III FERC Stats. & Regs. ¶ 30,688, *reh'g denied*, Order No. 436–C, 34 FERC ¶ 61,404, *reh'g denied*, Order No. 436–D, 34 FERC ¶ 61,405, *reconsideration denied*, Order No. 436–E, 34 FERC ¶ 61,403 (1986), *vacated and remanded sub nom.* Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987). On August 7, 1987, the Commission issued Order No. 500, which promulgated interim regulations in response to the Court's remand. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500, 52 FR 30334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶ 30,761, *extension granted*, Order No. 500–A, 52 FR 39507 (Oct. 22, 1987), III FERC Stats. & Regs. ¶ 30,770, *modified*, Order No. 500–B, 52 FR 39630 (Oct. 23, 1987), III FERC Stats. & Regs. ¶ 30,772, *modified further*, Order No. 500–C, 52 FR 48986 (Dec. 29, 1987), III FERC Stats. & Regs. ¶ 30,786, and Order No. 500–D, 53 FR 8439 (Mar. 15, 1988), III FERC Stats. & Regs. ¶ 30,800 (Mar. 8, 1988) *reh'g denied*, Order No. 500–E, 43 FERC ¶ 61,234 (May 6, 1988).

[9] Order No. 491 slip op. at 14, 43 FERC at 61,031 (Apr. 1, 1988).

[10] 15 U.S.C. 717–717w (1982).

[11] *See supra* note 4.

[12] ANR Pipeline Co.; Black Marlin Pipeline Co.; Enron Interstate Pipelines; High Island Offshore System and Interstate Natural Gas Association of America; Natural Gas Pipeline Company of America; Northern Illinois Gas Co.; Producer Associations; Stingray Pipeline Co. and Trunkline Gas Co.; Tarpon Transmission Co.; Tennessee Gas Pipeline Co.; Texas Eastern Transmission Corp.; Transcontinental Gas Pipe Line Corp.; and United Gas Pipe Line Co. and Sea Robin Pipeline Co.

[13] 53 FR 20835 (June 7, 1988).

[14] See Appendix A for a list of the commenters.

[15] *See* Joint Response of High Island Offshore System and Interstate Natural Gas Association, and Response of Texas Eastern Transmission Corporation to Indicated Producers supplemental comments.

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III. Discussion

A. Public Reporting Burden

Except for the specific information collection burdens discussed below, this rule does not change existing Commission regulations governing interstate pipelines that provide transportation services under Part 284, Subpart G of the Commission's regulations. The rule does, however, extend the requirements of Part 284, Subpart G to a new set of interstate pipelines (*i.e.*, OCS pipelines) in the sense that every OCS pipeline is issued a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations. In addition, every OCS pipeline must have a transportation rate schedule on file that conforms to § 284.7 and to § 284.8(d) for firm service and to § 284.9(d) for interruptible service. These requirements are necessary for the Commission to implement sections (5)(e) and (5)(f) of the OCSLA.

The information collection burden of filing appropriate rates schedules is estimated to be 240 hours per response. The frequency of response is one response per year for the first year, and less frequently thereafter. The number of respondents is estimated to be 43.[16] All respondents will be interstate natural gas pipelines that hold a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Mike Miller (202) 357–9205); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission).

B. Pro Rata Allocation of Capacity

Virtually all of the comments received by the Commission concern the Commission's proposal to implement section 5 of the OCSLA by requiring pro rata allocation of capacity on the OCS. In general, pro rata allocation of capacity is favored by producers and is opposed by pipelines and distributors. Most of the commenters who oppose pro rata allocation of capacity have two central arguments. First, they assert that mandatory pro rata allocation of capacity would make all OCS pipelines common carriers and that the legislative history of the OCSLA conclusively demonstrates that Congress did not intend that OCS pipelines be common carriers. Second, commenters specified several technical and operational problems in imposing a mandatory pro rata allocation scheme on all OCS pipelines.

The Commission believes that it has the legal authority under the OCSLA to require pro rata allocation of capacity. However, the commenters have identified many significant technical and operational problems associated with generically requiring pro rata allocation for all OCS pipelines. A generic pro rata allocation scheme could result in pro rata reductions of committed capacity that would disrupt a variety of existing transportation arrangements. Many of these arrangements are of long standing; various producers, pipelines, and ultimate customers rely on them. The Commission, as a matter of policy, is reluctant to disrupt ongoing transportation arrangements. Rather, our purpose is to remove impediments to access.

Accordingly, based on the record before us, the Commission has concluded that it can and should implement the nondiscriminatory access mandate in section 5 of the OCSLA without generically imposing, by rule, a pro rata allocation scheme on all OCS pipelines. We believe that it may well be possible to remedy the problems of access on the OCS through less sweeping regulatory actions, as discussed below. If, however, access problems on the OCS continue to exist as OCS pipelines implement the requirements of this rule, the Commission will not hesitate to consider pro rata allocation of capacity on a case-specific basis, taking into account the specific factual context in which such problems arise.

C. OSCLA Open Access Requirements

In this final rule, the Commission implements sections 5(e) and 5(f) of the OSCLA by issuing to every OCS pipeline an NGA section 7 blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations.[17] Moreover, the Commission is requiring, pursuant to section 5 of the NGA, every OCS pipeline to file tariffs implementing their blanket certificates. The OCS pipelines to whom blanket certificates are issued by this order, and who are required to file implementing tariffs, are listed in Appendix B.[18]

Under the NGA and Order Nos. 436 and 500, onshore pipelines are not required to become "open access" transporters of gas. If, however, an onshore pipeline performs self-implementing transportation service under section 311 of the Natural Gas Policy Act (NGPA) or blanket certificate service under section 7 of the NGA, it must offer such service on a nondiscriminatory basis. Under Order Nos. 436 and 500, the option of offering self-implementing transportation service under NGPA section 311 or blanket certificate service under NGA section 7 is voluntary with the pipeline.

In contrast, section 5(f)(1)(A) of the OCSLA contains a specific statutory mandate that all pipelines that transport gas on or across the OCS must provide open and nondiscriminatory access to both owner and nonowner shippers. This requirement is in addition to the requirement in section 5(e) of the OCSLA that OCS pipelines must transport or purchase OCS gas "without discrimination."[19] While the

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[16] Some off-shore systems are not certificated as single entities but are jointly owned by several pipelines, each with their own certificates. Consequently, some pipeline companies that own discrete portions of several offshore systems have been counted more than once in computing the total number of likely respondents. *See infra* note 26 and accompanying text; *see also* Appendix B and OCS pipel ne systems numbered 22–28.

[17] Subpart G of Part 284 was adopted in Order Nos. 436 and 500. Order Nos. 436 and 500 established a blanket certificate and abandonment program which permits interstate pipelines to obtain a one-time certificate of public convenience and necessity that authorizes certain transportation of natural gas in interstate commerce and permission and approval to abandon such service, which would otherwise require separate certificate or abandonment authority in each instance. Under the authorizations issued herein, OCS pipelines are authorized to transport natural gas and abandon certain service on a self-implementing basis without further authorization by the Commission. *See* 18 CFR 284.223(a) (1988). For other service, which may potentially require more scrutiny and opportunity for public participation, this authorization is subject to the notice procedure specified in § 157.205 of the Commission's regulations. *See* 18 CFR 284.223(b). Persons having a potential interest in such transactions are on notice to monitor the **Federal Register**. Once a deadline established under § 157.205(d) passes without a protest being filed, the proposed activity is authorized under this order without further action by the Commission.

[18] The Commission recognizes that a number of the OCS pipelines listed in Appendix B already hold Part 284, Subpart G blanket certificates. Such certificates are nevertheless issued to those pipelines by this final rule because, *inter alia*, of the additional certificate and abandonment authority (with respect to reallocation of firm capacity) conferred in the blanket certificates issued to OCS pipelines.

[19] Aside from arguing pro rata allocation, the commenters do not focus on what the open access requirement in section 5(f)(1)(A) of the OCSLA added to the preexisting requirement in section 5(e) of the OCSLA to transport gas without discrimination. Several commenters alleged various infirmities with respect to the Commission's

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Commission has decided against generically imposing pro rata allocation of capacity on OCS pipelines, it cannot implement section 5 of the OCSLA as if the adoption of section 5(f)(1)(A) in 1978 added nothing to the general nondiscrimination provision in section 5(e).

As stated in both Order No. 491 and the NOPR, the Commission believes the condition of nondiscriminatory access placed on the transportation program established in Order No. 436 and 500 satisfies, in large measure, the open access requirement in section 5(f)(1)(A) of the OCSLA. However, unlike onshore pipelines, OCS pipelines cannot voluntarily choose to not participate in the open access program; Congress, through the OCSLA, has made open access a prerequisite to doing business on the OCS. Consequently, the Commission implements the open access mandate of the OCSLA by finding, pursuant to section 7 of the NGA, that the public convenience and necessity require issuing every OCS pipeline a blanket transportation certificate under Subpart G of Part 284 of its regulations, and by issuing such certificates.

Accordingly, § 157.20(a) of the Commission's regulations will not be applied to OCS pipelines. Section 157.20(a) contains conditions regarding the acceptance of certificates by interstate pipelines. An opportunity for OCS pipelines to decline to accept blanket transportation certificates would be inconsistent with the open access provision in section 5(f)(1)(A) of the OCSLA and would defeat the purpose of the final rule. The certificates are effective on the date upon which their implementing rates become effective (discussed below), and can be abandoned only after explicit Commission approval is sought and is granted under section 7(b) of the NGA.

As a general rule, the Commission's policy is not to issue new individual transportation certificates if the transportation in question can be performed under the blanket certificate. In most cases, the authority conferred by the blanket certificate makes certificates for individual transactions unnecessary.[20] The Commission also emphasizes that this rule does not modify or revoke any existing certificates of public convenience and necessity that were issued prior to the effective date of this rule; such certificates remain in effect, and service under them cannot be abandoned except pursuant to the terms of those certificates, pursuant to applicable Commission regulations, or pursuant to specific applications for abandonement.[21]

In addition to issuing every OCS pipeline a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations, the Commission is requiring all OCS pipelines to take the following steps in order to implement an OCS open access program. First, all OCS pipelines are required to conduct an open season for firm transportation capacity with respect to (1) presently uncommitted firm capacity, if any, and (2) firm capacity that existing shippers may be willing to relinquish (to the extent that another shipper is willing to assume the obligations of firm service). Second, OCS pipelines who do not currently hold blanket certificates must also conduct an open season for interruptible capacity. Finally, thereafter, all OCS pipelines must provide a mechanism through which existing shippers can voluntarily relinquish all or a part of their firm transportation capacity rights if present or potential shippers want to use that capacity. Each of these requirements is discussed more fully below.

1. Open Season For Firm Transportation

An OCS pipeline must conduct an open season to facilitate the voluntary reallocation of firm transportation capacity. The only firm capacity that is subject to the open season is uncommitted firm capacity and voluntarily relinquished firm capacity. Prior to conducting its open season, the pipeline must poll its existing firm shippers to determine whether any existing shipper wants to voluntarily relinquish all or part of its firm capacity entitlements. If any existing firm shipper voluntarily requests that part or all of its firm capacity be reallocated, or if an OCS pipeline has any uncommitted firm capacity, then the OCS pipeline must invite existing and potential shippers to submit requests for the available firm capacity.

The open season for firm capacity must be commenced no later than March 1, 1989. The pipeline must provide reasonable notice of the open season and the open season must be for a time period of no less than 10 days and no more than 30 days. If the requests for firm capacity exceed the firm capacity available for reallocation, the OCS pipeline will allocate to each requesting shipper a pro rata share of the available capacity. If the available firm capacity exceeds the request and if part of the available firm capacity is capacity that one or more existing shippers wants to relinquish, each shipper wanting to relinquish firm capacity will be allowed to satisfy the requests on a pro rata basis. In other words, the only portion of an existing firm shipper's capacity that will be released is that portion for which another shipper is prepared to take on the obligations of the firm service agreement.

The Commission recognizes that some OCS pipelines may be configured in such a manner that problems may arise if firm capacity is reallocated exactly according to the particular requests of the shippers concerned without regard to the particular points of entry and exit of their respective quantities of gas. Therefore, in making all of the above determinations, the OCS pipeline shall take into account the capacity available at particular receipt and delivery points specified by the requesting and relinquishing shippers. There is no requirement under this rule for the OCS pipeline to disrupt ongoing transportation for existing shippers using firm capacity.

Finally, in the event that an OCS pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that capacity to shippers requesting capacity before it reallocates the capacity of shippers who seek to relinquish capacity.

2. Open Season for Interruptible Transportation

Concurrent with the open season for firm capacity (and if it does not currently hold a blanket certificate), an OCS pipeline must conduct an open season for interruptible capacity. Prior to conducting its open season, the pipeline may poll its existing interruptible shippers to determine their existing interruptible transportation requirements. The pipeline must provide for reasonable notice of the open season, and the open season must be for a time period of no less than 10 days

implementation of the language in section 5(e) of the OCSLA. In addition, several commenters made arguments with respect to section 5(f)(1)(B) of the OCSLA, which deals with expansion of pipeline capacity (*e.g.*, that Congress could not have intended pro rata allocation of existing capacity because it created a section for expansion of offshore capacity, or that the exemption in section 5(f)(1)(B) for pipelines in the Gulf of Mexico and the Santa Barbara Channel demonstrates that Congress did not intend to make OCS pipelines common carriers).

[20] *See* Tennessee Gas Transmission Co., 43 FERC ¶ 61,042 (1988), *reh'g denied*, 44 FERC ¶ 61,094 (1988).

[21] The one exception is the provision for abandonment of firm service pursuant to the reallocation of firm service discussed below, when existing shippers voluntarily agree to relinquish capacity to new shippers who desire it. *See* discussion, *infra*, in sections III.C.1 and III.C.3 of this preamble.

and no more than 30 days. We omit the requirement of an interruptible open season for OCS pipelines that currently hold blanket certificates because such pipelines are already providing nondiscriminatory interruptible transportation.

After the open season has been conducted, the OCS pipeline may allocate interruptible capacity using any nondiscriminatory means that is acceptable for on-shore blanket certificate transportation. In making that allocation, the OCS pipeline must give priority to interruptible transportation authorized under existing [22] individual certificates (provided that the transportation rates paid by the shippers receiving such service are no lower than the rates paid or to be paid by other interruptible shippers),[23] so as to avoid disrupting on-going certificated service.[24] The mechanism for allocating and scheduling capacity would be specified in the pipeline's tariffs, in the same manner as all other Part 284 blanket transportation certificates.[25]

3. Voluntary Reallocation of Firm Transportation Capacity

At any time after an OCS pipeline has conducted the open season for firm transportation capacity, if a potential firm shipper requests firm transportation service from the OCS pipeline, or if an existing firm shipper requests additional firm capacity, the pipeline must, within 10 days, provide the shipper with a list of all persons who hold firm capacity rights on the pipeline and the capacity they hold. The requesting shipper may then contact the existing shippers to ascertain whether any of them want to relinquish any firm capacity. If a requesting shipper finds an existing shipper who is willing to relinquish some portion of its firm capacity, the OCS pipeline must implement that reallocation.[26]

The blanket certificates issued to OCS pipelines under this rule provide both the authority under section 7(b) of the NGA to abandon service to the existing firm shipper and the certificate authority under section 7(c) of the NGA to provide service for the new firm shipper.[27] Thus, an OCS blanket transportation certificate differs from a typical Part 284 blanket certificate in that it contains additional abandonment authority. Typically, Part 284 blanket certificates provide abandonment authority only for those services that are performed under the blanket certificate itself. This means that pipelines must still seek individual abandonment authority for services authorized prior to the issuance of the blanket certificate. However, with respect to the voluntary reallocation of firm capacity, the Commission is providing OCS pipelines with the authority to abandon services not performed under the blanket certificate. Therefore, if an existing shipper wishes to relinquish a portion of its firm capacity rights as part of a reallocation of capacity to another shipper, the blanket certificate provides the OCS pipeline with the authority to abandon that service even though the service was performed under an individual certificate.

After an OCS pipeline has conducted the open seasons discussed above and has established a mechanism for the ongoing, voluntary reallocation of firm capacity, it may allocate interruptible transportation capacity pursuant to the same Part 284 requirements as apply on-shore. With respect to firm capacity, an OCS pipeline is required to reallocate firm capacity to shippers who desire it, but only to the extent that existing shippers desire to relinquish such capacity. Shippers who wish to relinquish firm capacity have a right to do so, to the extent that other shippers or potential shippers want to obtain that capacity. As noted above, the blanket certificates provide full certificate and abandonment authority to implement such reallocations of firm service without need for further case-specific Commission approval.

While the final rule does not mandate pro rata allocation, OCS pipelines may adopt a pro rata allocation scheme in their tariffs for either firm or interruptible transportation, or both, if they so desire. Any such pro rata allocation scheme must be consistent with the standards and considerations set forth in the OCSLA (*e.g.*, with respect to conservation). Absent such a tariff provision, the final rule adopted herein does not require any firm shipper to relinquish any firm capacity.

In this regard, the OCS pipeline must specify in its transportation rate schedule what method it will use to reallocate firm capacity in the future, after the open season for firm capacity has been concluded. Any nondiscriminatory method may be used. For example, the OCS pipeline may wish to maintain a list of shippers requesting firm capacity, and reallocate firm capacity on a first-come, first-served basis as it becomes available. Or, an OCS pipeline may prefer to reallocate such capacity on a pro rata basis, if and when two or more shippers seek to obtain such capacity at the time that it becomes available.

OCS pipelines are defined as all interstate natural gas pipelines that hold NGA section 7(c) certificates that authorize the construction and operation of facilities on the OCS. Defining an OCS pipeline in this manner assures that this rule will apply to all NGA jurisdictional pipelines that operate on the OCS. If the existing certificate that triggers the application of this rule is held by more than one pipeline company, each pipeline company is provided with a Part 284 blanket transportation certificate.

In this regard, we note that some OCS pipelines are structured in such a manner that several interstate pipelines own undivided shares of the OCS pipeline. In those instances, the blanket certificate is issued to the OCS pipeline, and the open season and reallocation schemes would be conducted by the OCS pipeline itself, as a single entity with a single open season conducted in its own name. On the other hand, some OCS pipelines are structured in such a

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[22] Certificates that are in effect on the date that the final rule becomes effective.

[23] Existing interruptible shippers who are paying a lower rate must be afforded an opportunity to continue receiving service by agreeing to pay a matching rate.

[24] The Commission perceives no justification for disparities in the rates paid for interruptible transportation service (even if, as discussed below, there may be a historical justification for such disparity in rates for firm service). Hence, the Commission perceives no justification for according priority of interruptible capacity allocation for ongoing interruptible service unless that service is being performed at rates no lower than the rates paid by other interruptible shippers.

[25] *See, e.g., Colorado Interstate Gas Company*, 42 FERC ¶ 61,380 at 62,124–62,125 (1988); *Northern Border Pipeline Company*, 39 FERC ¶ 61,104 at 61,346, 61,349–61,350 (1987); *Natural Gas Pipeline Company of America*, 39 FERC ¶ 61,153, at 61,595 (1987); and Order No. 436–A, FERC Stats. & Regs. [Regulations Preambles 1982–1985] at 31,685–686. As with the allocation of interruptible capacity, an OCS pipeline may use any curtailment scheme that is acceptable for Part 284 blanket transportation service.

[26] The OCS pipeline itself should be indifferent to the substitution because its total contract demand will remain unchanged. Again, if the OCS pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that uncommitted capacity to the shipper or shippers who desire such capacity before it reallocates the firm capacity of existing shippers. Presumably, such assignment of the OCS pipeline's own uncommitted firm capacity would occur as soon as a new shipper inquired about obtaining new capacity, and before it had occasion to contact existing shippers. Indeed, the blanket certificate itself requires the OCS pipeline to provide transportation on a nondiscriminatory basis to all who request it to the full extent of its available capacity (including firm capacity).

[27] In this regard, we note that both the abandonment of the old firm service obligation and the certificate authority for the new firm service obligation are "permanent", *i.e.*, for an unlimited term. The firm capacity could, of course, be reallocated again in a future transaction pursuant to the regulations. But the relinquishing shipper retains no claim on the capacity, nor does he have any continuing obligations to the pipeline.

manner that the interstate pipeline owners of the OCS pipeline own, control and utilize defined finite portions of the OCS pipeline's capacity. In those instances, separate blanket certificates are issued to each individual interstate pipeline owner of the OCS pipeline, and each of those interstate pipeline owners of the OCS pipeline may wish to conduct separate open seasons (and subsequent reallocations) with respect to that portion of the OCS pipeline's capacity that each owner controls and utilizes.[28]

D. Rate Requirements

Under this final rule, all OCS pipelines are subject to Subpart G of Part 284 of the Commission's regulations. This means OCS pipelines are also subject to Subpart A of Part 284.[29] Under Subpart A, a pipeline must have rates that comply with §§ 284.7, 284.8(d) and 284.9(d) of the Commission's regulations.

If an OCS pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service, new § 284.305(b) requires the pipeline to file conforming rate schedules by March 1, 1989, to be effective no later than April 1, 1989. The Commission recognizes, however, that it may wish to suspend those rates for more than a nominal period. If the Commission does not permit those rates to become effective on or before April 1, 1989, the OCS pipeline is required to use its existing rates until the Commission permits the § 284.305(b) rates to become effective. In that event, the blanket certificate would become effective on the date on which the § 284.305(b) rates would be have gone into effect if they had not been suspended.

Every OCS pipeline filing rates under § 284.305(b) is required to file rates supported by an annual cost and revenue study. An OCS pipeline does not have to file a cost and revenue study if it has a pending rate proceeding under § 154.63, 154.38 or 154.303(e) of the Commission's regulations.[30] If the OCS pipeline has a pending rate proceeding, the pipeline may use the base period data from the pending proceeding, so long as the base period ends within 12 months from the date the rates were filed under § 284.305(b).

In its comments, ANR Pipeline Company (ANR) argues that to require transportation rates that conform to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service is illegal because the requirement sets aside existing, approved transportation rates without a hearing or the necessary findings under the NGA. We disagree. As discussed above, in order to implement the open and nondiscriminatory access requirement of the OCSLA the Commission is requiring that all OCS pipelines have a Part 284, Subpart G blanket certificate. All Part 284, Subpart G blanket certificates must be implemented by rates that conform to the general conditions and the rate designs authorized in Subpart A of Part 284.

In addition, as discussed in the NOPR, the rate provisions of this rule are established in accordance with section 5 of the NGA. Section 5 of the NGA requires that if, after a hearing, the Commission finds a rate unjust and unreasonable it shall determine the just and reasonable rate. For the reasons discussed above, the Commission finds that if an OCS pipeline's current rates do not conform to the requirements of §§ 284.7, 284.8(d) and 284.9(d) of the Commission's regulations as well as the regulations in new § 284.305, such rates are unjust and unreasonable. This finding is based, first, on our determination herein that Part 284, Subpart G blanket certificates are required to satisfy the equal access requirements of the OCSLA; and, secondly, on our determinations in Order Nos. 436 and 500 that rates inconsistent with §§ 284.7, 284.8(d) and 284.9(d) are unjust and unreasonable in the context of transportation performed pursuant to such blanket certificates. As discussed in the NOPR, the notice and comment procedures of this rulemaking satisfy the hearing requirement in section 5 of the NGA.[31]

The Commission also finds that it is unduly discriminatory to subject existing shippers on OCS pipelines to a different transportation rate than the rate charged to new shippers on the same pipeline. Such a circumstance could arise in the context of the voluntary reallocation requirements of this rule if the firm transportation rights relinquished by an existing shipper were authorized under a presently existing individual certificate. The new shipper would be subject to Part 284 rates while existing shippers would be subject to Part 154 rates.[32] In order to remedy this inconsistency in rate treatment for comparable service, the rule adopted herein requires that once an OCS pipeline has filed rates that conform to Part 284 of the Commission's regulations and the Commission has made those rates effective, these rates will apply to *all* transportation service performed by the OCS pipeline.[33] The Commission is establishing this requirement under section 5 of the NGA.

The OCSLA obligates OCS pipelines to transport natural gas on an open and nondiscriminatory basis. The blanket certificates issued by this rule are the means the Commission has chosen to implement that requirement and authorize OCS pipelines to provide new open-access transportation service for OCS shippers. Thus, any transportation rate charged by an OCS pipeline that does not reflect this new service will result in different rate treatment for similarly situated customers. Such discriminatory rates are unjust and unreasonable under section 5 of the NGA. This finding with respect to the existing rates of an OCS pipeline becomes effective at the time an OCS pipeline provides the new transportation service required by this rule.

However, the Commission has recognized that individually tailored certificate authority and rate treatment may well be appropriate as a basis for determining the term for depreciation of facilities or for allocating their costs to particular beneficiaries of transportation through such facilities.[34] The Commission recognizes that such factors may pertain to OCS pipelines as well, particularly with respect to historical aspects of the financing, construction and initial operation of certain OCS pipelines. The Commission's purpose is to synchronize the transportation rates of an OCS pipeline under circumstances in which there is no valid basis for charging different rates to similarly situated customers. An OCS pipeline will, however, be permitted to use its current transportation rates for transportation services performed pursuant to existing individually issued certificates if the OCS pipeline demonstrates that such rates are

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[28] *See* Appendix B, which lists in parenthesis the individual interstate pipeline owners of certain OCS pipelines.

[29] *See* 18 CFR 284.221(c), which provides that any blanket certificate issued under Subpart G is subject to the conditions of Subpart A of Part 284.

[30] *See* new 18 CFR 284.305(c) (1988).

[31] *See* Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985), *cert. denied*, 1065 S. Ct. 1969 (1986).

[32] This example assumes that the existing shippers do not relinquish all their firm transportation rights.

[33] *See* new 18 CFR 284.305(e) (1988).

[34] *See, e.g.*, Tennessee Gas Pipeline Company, 40 FERC ¶ 61,088 (1987); Tennessee Gas Pipeline Company, 41 FERC ¶ 61,375 (1987); *cf.* Transcontinental Gas Pipe Line Corporation, 40 FERC ¶ 61,185 (1987); Transcontinental Gas Pipe Line Corporation, 41 FERC ¶ 61,031 (1987), *reh'g denied*, 42 FERC ¶ 61,279 (1988).

necessary and the maintenance of different rates would not be unduly discriminatory. Under these circumstances, the current rates are just and reasonable.

OCS pipelines who want to continue to charge their current rates for existing individually certificated service should refile those rates, and the justification for them, at the same time that they file their Part 284 rates to implement the service to be provided under the blanket certificates issued herein. The current rates for service under existing individual certificates will remain in effect until they are superseded. This procedure will enable OCS pipelines to continue to provide transportation under their existing cetificates, pursuant to their current rates, without interruption, from the date of issuance of this rule until such time as the current rates have been superseded. In the event that an OCS pipeline refiles its current rates, the current rates will remain in effect (for transportation authorized under existing individual certificates) until such time as the Commission has determined the justness and reasonableness of those rates on a case specific basis.

In this regard, the final rule deletes the provision in the NOPR for interim rates. Interim rates are unnecessary because: (1) The blanket certificates issued herein do not become effective until the date on which Part 284 rates to implement those certificates have become effective (or would have become effective if they had not been suspended); and (2) the current rates for existing individually certificated service remain in effect without interruption until the date on which they are superseded by the effectiveness of new rates for that service.

E. Comment Analysis

The overwhelming percentage of the comments filed in this rulemaking center on the effects of generically requiring pro rata allocation of capacity for all OCS pipelines. By not requiring pro rata allocation of capacity, the Commission has responded to, or rendered moot, the vast majority of the comments it received. While OCS pipelines are free to establish a pro rata scheme in their tariffs, subject to the Commission's right to determine proportionate amounts under section 5(e) of the OCSLA, they are not required to do so. OCS pipelines may allocate capacity using any means that the Commission has determined to be acceptable on-shore.

As noted above, the Commission may well require pro rata allocation of capacity on a case-specific basis if and when such regulatory action is necessary and appropriate. However, in light of our determination not to mandate pro rata allocation in the final rule adopted herein, we will not address in this order the extensive comments on the Commission's legal authority to do so. Such analysis would serve no useful purpose in the context of the final rule adopted herein, and would be premature in the context of any future actions the Commission may take. Resolution of these legal issues is best deferred to a future proceeding, involving a specific proposal (if one occurs) to impose a pro rata allocation scheme on a specific pipeline, when the legal issues are framed in the context of a factual record on the nature of the problems identified and the remedies proposed to cure those problems.

1. On-shore/Off-shore Allocation Schemes

Commenters raised several questions concerning how an off-shore pro rata allocation scheme would operate if on-shore capacity was allocated using a first-come, first-served method. As noted above, the Commission is not requiring pro rata allocation to capacity; this eliminates the issues raised regarding the interface between on-shore and off-shore allocation methods.[35]

To the extent that this rule requires open seasons for firm and interruptible transportation on the OCS, these open seasons may result in an allocation of capacity that is different from the allocation of capacity of an on-shore pipeline that connects with the OCS pipeline. However, this is no different from the situation of shippers who must arrange to move gas through several on-shore pipelines; there is no guarantee that sufficient capacity will be available on each pipeline. Off-shore shippers, like on-shore shippers, are responsible for making their own arrangements to obtain transportation capacity from the wellhead to the burner tip. Furthermore, the Commission has not approved tariffs that tie the availability of upstream pipeline capacity to transportation on a downstream system.

2. OCSLA Jurisdiction

Commenters also questioned the extent of the Commission's jurisdiction under the OCSLA. As the Commission stated in the NOPR, the OCS does not include lands covered by nontidal waters within the boundaries of each of the respective states and lands covered by tidal waters up to three miles off the coast line of each state.[36] The Commission also noted in its interpretation of the OCSLA, that it was only implementing the OCSLA with respect to jurisdictional pipelines under the NGA. The Commission believes that allowing OCS pipelines to allocate capacity using any method that is acceptable on-shore will reduce the chance for jurisdictional problems to arise that can frustrate the Commission's implementation of the OCSLA. If problems do arise with respect to either the movement of OCS gas (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted.

3. Definition of an OCS Pipeline

In the NOPR, the Commission proposed to define an OCS pipeline to include facilities from any point on the OCS to the first delivery point on-shore where alternate transportation is, or could be, available.[37]

Several commenters are concerned about the proposed definition.[38] For example, Tennessee Gas Pipeline Company (Tennessee) contends that the proposed definition could result in an unwarranted extension of pro rata transportation well into the on-shore facilities of a pipeline that owns OCS facilities. National Fuel Gas Supply Corporation (National) and Sun Exploration and Production Company (Sun) read the proposed definition as potentially embracing all the on-shore facilities of a pipeline that owns both on-shore and off-shore facilities. This is not the Commission's intent and it has amended the definition of an OCS pipeline in this final rule.

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[35] In this regard, with respect to a single pipeline that extends from the OCS to numerous points on-shore, we note that the final rule adopted herein does not apply to the on-shore portion of the pipeline (*i.e.*, the portion of an off-shore pipeline that extends beyond the on-shore interconnection, as defined in § 284.302(b)).

[36] Section 2(a) of the OCSLA defines the Outer Continental Shelf to mean "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1301(a) (1982); *See also* 43 U.S.C. 1301(a) (1982), which defines the term "lands beneath navigable waters."

[37] *See* proposed § 284.302(b), IV FERC Stats. & Regs. ¶ 32,459 at 32,210.

[38] *See, e.g.*, comments of Tennessee Gas Pipeline Company on the NOPR at 16–17; joint comments of Stingray Pipeline Company and Trunkline Gas Company at 9–10; comments of ANR at 5; comments of Texas Gas Transmission Corporation on the NOPR at 6, 21–22; comments of National Fuel Gas Supply Corportion at 6; comments of Sun Exploration and Production Company at 4–5; comments of Indicated Producers at 34–36; and comments of Pelto Oil Company at 10–11.

New § 284.302(b) defines "OCS pipeline" in such a manner as to include within its scope all of the OCS pipeline's facilities that are used or necessary to transport OCS gas from the OCS to the first point of interconnection on the shoreward side of the OCS. The first point of interconnection may be with a gas conditioning or processing plant, another pipeline,[39] a distributor, or an end user. In other words, "OCS pipeline" is defined to include all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA, and that are used or necessary to transport OCS gas off of the OCS to the first point of interconnection with some other entity that receives the gas from the OCS pipeline.[40]

This definition is necessary to ensure that the gas will be transported on an open access basis, not only across the OCS *per se*, but from the OCS to at least some point off the OCS where the gas is capable of exiting from the OCS pipeline. Any narrower definition would nullify the rule (and the OCSLA open access provisions it is designed to implement), because the fundamental purpose of both the OCSLA and this rule is to ensure open access transportation of OCS gas to someplace other than another part of the OCS.

It follows from this definition that the requirements of the rule adopted herein do *not* apply to the facilities of jurisdictional interstate pipelines beyond the first point of interconnection after the pipeline leaves the OCS. Thus, a single interstate pipeline may well have some jurisdictional facilities that fall within the scope of this rule and other jurisdictional facilities that do not.

We recognize that the first point of interconnection may have insufficient capacity to receive all of the gas transported by the OCS pipeline on the OCS. Indeed, the capacity at interconnection points may vary on a seasonal basis. This, however, is the same problem that can occur at the interconnection points of two on-shore pipelines. We do not construe the OCSLA as mandating open access transportation to any and all destinations on-shore (however distant they may be from the OCS); rather, we construe the OCSLA to require only open access transportation to at least some point on-shore.

[39] Such other pipeline may be either jurisdictional or non-jurisdictional (including, *e.g.*, a Hinshaw pipeline or an intrastate pipeline).

[40] Appendix B identifies the shoreward terminus of all currently certificated OCS pipelines.

4. Consultation with and Consideration of the Views of the Attorney General

To ensure that OCS pipelines comply with the competitive principles in sections 5(f)(1) and 5(f)(3) of the OCSLA requires the Commission (and the Secretary of Energy) to consult with the Attorney General on the specific conditions to be included in any permit, license, easement, right-of-way or grant of authority on the OCS.[41] Section 5(f)(3) also requires that the Attorney General consult with the Federal Trade Commission (FTC) in preparing his views.

The Commission requested the views of both the Secretary of Energy and the Attorney General on its interpretative rule (Order No. 491) and the NOPR. The Commission also sent copies of Order No. 491 and the NOPR to the Secretary of the Interior and the FTC.[42] The Secretary of Energy and the Attorney General responded to the request and the Commission has considered their comments in issuing this final rule. The approach taken by the Commission in this final rule is fully consistent with the views of both the Secretary of Energy and the Attorney General. The Secretary of Energy states that:

> While the OCSLA certainly permits the adoption of a reasonable "pro-rata" allocation system, we see no requirement in the statute for any particular form of capacity allocation. In fact, the conference report indicates a reasonable allocation system should consider a variety of things, including conservation, prevention of waste, and competition. There is no mandatory system prescribed, however, to achieve these objectives. (Citations omitted.) As a policy matter, allocation by the market place is preferable to a regulatorily imposed rationing scheme.

The Attorney General's comments are to the same effect:

> The Department supports the FERC's proposal to require OCS pipelines to obtain blanket certificates with an open access requirement.
>
> The open access requirement will ensure nondiscriminatory access as required by the OCSLA, 43 U.S.C. 1334(f)(1)(A), and the blanket certificate, which will enable the pipelines to provide transportation without having to obtain the FERC's approval for individual transactions, will give offshore gas producers flexible access to transportation to onshore purchasers.
>
> * * * * *
>
> While the FERC's authority to determine what "proportionate amounts" of gas must be transported is broad enough to allow the FERC to require proration, it does not necessarily mean that proration is required by section 5(e) in all cases. To the contrary, the debate on section 5(f), which was added in 1978, indicates that both proration and first-come, first-served were considered to be possible means of allocation under the statute. *See, e.g.*, 123 Cong. Rec. S. 23,257 (July 15, 1977) (statements of Sen. McClure and Sen. Johnston). The Department thus believes the FERC's authority is broad enough to require proration of capacity on OCS pipelines, but such an allocation system is not compelled by the statute.

The Attorney General maintains that the Commission may consider various capacity allocation methods, including the first-come, first-served method used by many on-shore pipelines. The Attorney General believes that the Commission should take into account both the costs of shutting in OCS gas production and the costs of altering contracts between OCS pipelines and current shippers. In addition, the Attorney General states that the Commission may find that proration is necessary to ensure the transportation of casinghead gas that is produced along with oil. The Attorney General concludes that "the Department believes that in most cases blanket certification and the first-come, first-served allocation method currently used by other open access pipelines (or other efficient methods of allocation that may be developed for open access pipelines in the future) will adequately fulfill the requirements of the OCSLA."

The final rule adopted by the Commission herein is fully consistent with the suggestions of the Attorney General and the Secretary of Energy. The Commission is providing every OCS pipeline with a Part 284 blanket certificate and is allowing any allocation scheme that is acceptable for open access transportation on-shore to be used on the OCS. In addition, the Commission agrees with the Secretary of Energy and the Attorney General that it has the authority to require prorationing under the OCSLA, and the Commission is reserving its right to do so on a case-specific basis.

5. Requests for Rehearing of the Interpretative Rule

In this order, upon consideration of the requests for rehearing of Order No. 491, the Commission has revised its interpretation of section 5 of the OCSLA.

[41] 43 U.S.C. 1334(f)(3) (1982).

[42] The Commission received responses to its request from the Secretary of Energy, the Attorney General and the Secretary of the Interior. The Commission also received a copy of the letter the FTC sent to the Attorney General. Copies of all these letters are attached as Appendix C of this rule. Appendix C is not being published in the **Federal Register**, but is contained in copies of the order available through the Commission Public Reference Room (Room 1000).

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The Commission noted in Order No. 491 that section 5(e) of the OCSLA requires OCS pipelines to transport gas "without discrimination" and that section 5(f)(1)(A) requires OCS pipelines to "provide open and nondiscriminatory access" to both owner and nonowner shippers of OCS gas. The Commission stated that the conditions of nondiscriminatory access in the transportation program established in Order Nos. 436 and 500 satisfy the nondiscriminatory access requirements in both sections 5(e) and 5(f)(1)(A) of the OCSLA. As discussed above, the Commission reaffirms that determination here.

In Order No. 491, however, the Commission went beyond this interpretation by also interpreting the statutory language in section 5(e) of the OCSLA to require generic pro rata allocation of capacity by all OCS pipelines. Several commenters objected to Order No. 491 on the basis that section 5(e) of the OCSLA does not mandate any particular proportionate allocation of capacity, such as a pro rata allocation. In addition, several commenters argued that the Commission failed to consider the hearing requirement in section 5(e) and that any determination of "proportionate amounts" must take into account the statutory goals of conservation and the prevention of waste.[43]

In proposing a general requirement of pro rata allocation, the Commission also stated in both Order No. 491 and the NOPR that the first-come, first-served method of allocating capacity was not sufficient to implement the OCSLA's open access requirement. Several commenters questioned how a pro rata scheme on the OCS would be reconciled with first-come, first-served allocation onshore.

These concerns have all been rendered moot. The final rule does not require pro rata allocation of capacity and allows OCS pipelines to allocate capacity using any nondiscriminatory means that is acceptable for on-shore blanket certificate transportation, including first-come, first-served allocation. Also, by deferring determinations of pro rata allocation to case-specific inquiries (if and when such inquiries are warranted), the Commission will be able to take into account the statutory goals of conservation and the prevention of waste within the context of a particular set of facts analyzed in a hearing under section 5(e) of the OCSLA. As noted above, discussion of the Commission's legal authority to impose pro rata allocation of capacity on a case-specific basis would be premature in the context of the rule adopted herein, because the rule itself does not impose such allocation. Nevertheless, to the extent that the Commission's discussion and determinations herein are inconsistent with the interpretation of the OCSLA set forth in Order No. 491, the interpretative rule issued therein is revised accordingly, to be consistent with this order.

6. Response to Specific Comments

In issuing this final rule, the Commission has adopted a number of commenters' suggestions. For example, Tennessee Gas Pipeline Company (Tennessee) maintains that any capacity constraints on the OCS, if they exist, do not necessitate pro rata transportation. Tennessee than states that

> assuming *arguendo* that the Commission has the power to require transportation it should consider mandatory open-access transportation by OCS pipelines on a first-come, first-serve basis or other procedure that *preserves the rights of existing customers.*
>
> Once OCS pipelines are open for first-come, first-serve transportation, there should be ample space available to transport gas from all connectable sources without any special pro rata transportation requirements for the OCS.[44]

The Commission's final rule is consistent with Tennessee's suggestions.

Peoples Gas Light Coke Company and North Shore Gas Company (Peoples Gas) support the Commission's efforts to ensure open and nondiscriminatory access to all persons requesting offshore transportation.[45] However, Peoples Gas opposes a generic requirement of pro rata allocation because it would jeopardize the reliability of existing firm pipeline sales service. Under a generic pro rata scheme, pipelines could lose portions of their OCS supply at any time, which could lead to curtailments of existing pipeline customers. Peoples Gas also maintains that despite having to curtail its customers, a purchasing pipeline could become subject to increased take-or-pay liability for failing to take OCS supplies that could be reduced under a general pro rata scheme. In addition, Peoples Gas alleges that as a result of such a scheme local distribution companies (LDCs) would not be able to rely on OCS gas to serve their peak day needs.

Peoples Gas recommends that the Commission not require pro rata allocation for firm capacity, but adopt instead provisions under which existing customers are periodically polled for the purpose of identifying unused capacity. Peoples Gas suggests that customers with unutilized capacity could be offered contract demand reductions and could voluntarily give up capacity to accommodate new firm service. The Commission agrees with Peoples Gas and has adopted a similar approach.

Enron suggests that nondiscriminatory self-implementing transportation on OCS facilities can be achieved through a more narrowly drawn alternative than one proposed in the NOPR. Enron submits that any final rule,

> could instead require OCS pipelines to apply for a blanket transportation certificate under proposed Subpart K itself which would be applicable only to the OCS pipeline's OCS facilities as defined in Subpart K. A pipeline holding a Subpart K blanket transportation certificate could be made subject to the relevant provisions of Subpart A with regard to open, nondiscriminatory firm and interruptible transportation and unbundled rates on the pipeline's OCS facilities only.[46]

While Enron goes on to suggest that the contract demand conversion provisions of Part 284, Subpart A are not relevant to OCS transportation and that a pipeline's acceptance of the blanket certificate should remain a voluntary choice, the Commission's final rule adopts a central element of Enron's suggestion, *i.e.*, that the Commission could require every OCS pipeline to obtain a blanket transportation certificate that applies only to the pipeline's OCS facilities.

Enron also suggests that currently contracted-for and utilized capacity on OCS facilities be left undisturbed and that the Commission could provide for a pro rata allocation scheme for: (1) Currently available, unutilized capacity on existing OCS facilities; (2) released capacity which becomes available in the future on existing OCS facilities; (3) new capacity on existing OCS facilities that becomes available through system expansion; and (4) newly constructed

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[43] Section 5(e) of the OCSLA provides, pertinent part: Rights-of-way through submerged lands of the Outer Continental Shelf, whether or not such lands are included in a lease maintained or issues pursuant to this Act, may be granted by the Secretary * * * upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from the submerged lands or Outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

[44] *See* Comments of Tennessee on the NOPR at 9–10.

[45] *See* comments of Peoples Gas on the NOPR at 30.

[46] *See* comments of Enron on the NOPR at 28.

OCS facilities. The final rule is consistent with Enron's suggestions in that contracted-for capacity on the OCS is left undisturbed. In addition, the required open seasons and the voluntary reallocation provisions of the rule provide for allocation of currently available capacity and of capacity released in the future.

The Indicated Producers recommend that the Commission generically grant blanket certificates for the transportation of OCS gas without requiring pipeline-specific certificate applications and approvals.[47] The Indicated Producers urge the Commission to

> grant OCS pipelines whatever blanket transportation authority they need to fulfill their obligations under the OCSLA on a generic basis in this rulemaking. The Commissioin may issue blanket transportation authority under section 7 of the Natural Gas Act in a generic rulemaking proceeding.[48]

The Joint Producers make a similar recommendation that the Commission grant uniform blanket certificates for the transportation of OCS gas without case-by-case application requirements.[49] The Commission has adopted these suggestions in the final rule.

Indiana Public Service Company (Northern Indiana) indicates that its primary concern with Order No. 491 and the NOPR is the generic pro rata allocation requirement for firm and interruptible transportation service. With regard to the requirement that OCS pipelines provide open access transportation under blanket certificates, Northern Indiana states,

> Northern Indiana does not oppose this remedy, and, in fact, considers this an appropriate and measured response to the problem, so long as it is imposed in the same manner on the OCS as onshore. The availability of open access transportation would ensure that uncontracted for capacity would be available on a firm basis and that unused firm capacity could be used for interruptible transportation on a first-come, first-served basis.[50]

Northern Indiana concludes,

> Because of the problems attendant with the Commission's pro rata allocation plan, it should limit its rulemaking to requiring OCS pipelines to obtain blanket certificates. That act alone should be sufficient to prevent the shutting-in of OCS supplies. To the extent that solution ultimately proves inadequate, the Commission can then seek to impose further remedies which are within its legal authority under section 5 of the Outer Continental Shelf Lands Act.[51]

The Commission has adopted Northern Indiana's suggested approach in this final rule.

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia) suggest that a mechanism be employed whereby existing capacity holders are given an opportunity to reduce their capacity entitlements (together with pregranted abandonment authority) before capacity is prorationed.[52] The Commission has adopted Columbia's suggestions. The final rule does not mandate pro rata allocation; provides for the voluntary reallocation of firm capacity by existing shippers if there is another shipper that desires that capacity; and provides that the blanket certificates issued by the rule include the abandonment authority necessary to implement reallocation of firm capacity among shippers.

Texas Eastern Transmission Corporation (Texas Eastern) suggests that the Commission clarify that the blanket certificates only apply to service performed through OCS facilities.[53] The Commission agrees with Texas Eastern and has done so.[54]

a. *Certificate issues.* Texas Eastern contends that the requirement in the NOPR that an OCS pipeline must have a blanket transportation certificate under Part 284, Subpart G is beyond the scope of the Commission's authority under the NGA. ANR Pipeline Company (ANR) argues that the Commission is illegally, retroactively conditioning existing certificates that authorize the construction and operation of facilities on the OCS to require a blanket transportation certificate. For the reasons discussed above, the Commission disagrees. The Commission has determined that, in order to implement the nondiscriminatory access requirement of section 5 of the OCSLA, OCS pipelines must hold blanket transportation certificates. The Commission is implementing that OCSLA mandate through issuance of blanket certificates under the NGA.

Numerous commenters objected to the Commission's determination to prohibit OCS pipelines from applying for and receiving individual certificates under section 7(c) of the NGA.[55] Tennessee contends that the constantly changing terms and conditions of service under a blanket certificate provide no substitute for the security of long-term service under section 7(c) of the NGA. Enron Interstate Pipelines (Enron) assert that prohibiting an OCS pipeline from applying for an individual section 7(c) certificate for any transaction that could be performed under the Subpart G blanket certificate will result in interstate pipelines' being unwilling to invest in the construction or expansion of OCS facilities. Enron states that pipelines historically have entered into long-term firm transportation arrangements under section 7(c) to guarantee an opportunity to earn a return on the pipeline's investment in OCS facilities. Enron maintains that blanket transportation service without regard to the term of service requested means that an OCS pipeline cannot be assured of the revenues to justify its investment in OCS facilities.

As adopted, the final rule does not prohibit applications for individual certificates, especially for the construction and operation of new facilities.[56] We also note that the final rule does not require a generic pro rata allocation scheme. Thus, the final rule does not preclude or inhibit present or future long term contracts for firm capacity. With respect to applications for certificate authority to construct and operate new pipeline facilities on the OCS, applicants may propose whatever financial and operational arrangements they wish; such applications will be considered on their merits, on a case-by-case basis, recognizing that whatever certificate authority is issued will necessarily involve the blanket certificate adopted by this rule.

Enron also contends that the individual section 7(c) application process was envisioned by the drafters of the OCSLA amendments. Section 603 of the OCSLAA[57] directed the

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[47] *See* comments of Indicated Producers on the NOPR at 12–17.

[48] *Id.* at 3.

[49] *See* comments of Joint Producers on the NOPR at 6, 9–17.

[50] *See* comments of Northern Indiana at 4.

[51] *Id.* at 2. *See also* comments of Petrochemical Energy Group on the NOPR at 2.

[52] *See* Comments of Columbia on the NOPR at 9.

[53] *See* comments of Texas Eastern on the NOPR at 21.

[54] *See* new 18 CFR 284.303.

[55] *See, e.g.*, comments of Stingray on the NOPR at 8; comments of Tennessee Gas Pipeline Company at 21–22; comments of Texas Eastern Transmission Corporation at 22–23; and comments of Enron Interstate Pipelines at 34–35.

[56] If applicants seek individual certificates for OCS transportation based on a particular rate treatment they allege to be more appropriate under the peculiar circumstances of the transportation proposed to be performed, the Commission will consider the applications on a case-by-case basis in the same manner as the Commission has done for on-shore service proposed by blanket certificate holders. *See, e.g.*, Overthrust Pipeline Company, 44 FERC ¶ 61,077 (1988); Trailblazer Pipeline Company, 39 FERC ¶ 61,103 (1987), *reh'g denied and certificate vacated*, 43 FERC ¶ 61,103 (1988); and Northern Border Pipeline Company, 39 FERC 61,104 (1987). *See also supra* note 33 and accompanying text.

[57] *Supra* note 6 and accompanying text.

Commission to promulgate a statement of general policy concerning the transportation of natural gas owned by an LDC from an OCS lease to the service area of the LDC. The purpose of section 603 is to encourage interstate transportation of OCS gas "produced from a lease * * * owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company." [58] Enron views section 603 of the OCSLA as evidence that the OCSLA amendments could not have intended that a blanket certificate would be the only way to achieve nondiscriminatory transportation.

In 1980, the Commission issued Order No. 92,[59] which implemented section 603 of the OCSLAA. By that order, the Commission stated its policy regarding access to OCS pipelines by LDCs holding OCS leases.[60] The policy established a framework for pipelines to acquire transportation authorization. Although the blanket transportation certificates issued to OCS pipelines by this rule were not in existence at the time the Commission issued Order No. 92, the goals of that order and OCSLAA section 603 are furthered by the requirements of this rule in that the open access requirements of the blanket certificates issued under the rule will afford distributors significant opportunities to obtain transportation of their gas.

Natural Gas Pipeline Company (Natural) requests clarification on the following points. First, would an on-shore pipeline that already has a Subpart G blanket certificate and that has OCS facilities be required to file for another Subpart G blanket certificate? Second, would a pipeline with both on-shore and off-shore facilities be able to file for a Subpart G blanket certificate that is only applicable off-shore? As discussed above, the Commission's final rule issues Subpart G blanket certificates to all OCS pipelines, including pipelines that currently hold blanket certificates (because the certificates issued herein contain abandonment authority, and open season and reallocation provisions, not contained in the other Part 284, Subpart G blanket certificates). The blanket certificates issued by this rule only apply to a pipeline's facilities on the OCS (to the first interconnection point off the OCS).

Natural asks whether this policy (of according separate treatment of OCS facilities) is inconsistent with previous Commission holdings, citing *Natural Gas Pipeline Company of America-Texoma.*[61] In that order, Natural asked the Commission for a waiver of Order No. 436 so that it could provide transportation services under Order No. 436 on a discrete segment of its system without subjecting the rest of its system to the requirements of Order No. 436. The Commission denied Natural's petition, stating that in issuing Order No. 436 it had contemplated that pipelines would file blanket certificate applications for their entire systems. The Commission's OCSLA Policy is not inconsistent with its prior holding. If a pipeline holds a Part 284 blanket certificate issued pursuant to an application, that authorization applies to its entire system, including any OCS facilities that the pipeline may have. The blanket certificates issued by this rule, however, only govern pipeline facilities on the OCS, and are mandated by the OCSLA. The OCSLA mandate does not apply on-shore.

The Interstate Natural Gas Association of America (INGAA) alleges that by limiting the right of pipelines to choose whether to apply for certificate authority (and once having received such authority, whether to accept it) the Commission violates section 5(f)(4) of the OCSLA.[62] Section 5(f) (4) states that "[n]othing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf." While the Commission is eliminating, for OCS pipelines, the choice that interstate pipelines have on-shore whether to accept a blanket certificate, such a provision does not limit the authority of the United States under the NGA or any other provision of law.

b. *Rate issues.* Texas Gas Transmission Corporation (Texas Gas) states that it includes all offshore capital costs and operation and maintenance expenses in its systemwide rate base and cost of service and, therefore, these costs are considered in the design of system transportation rates.[63] Texas Gas points out that others (HIOS, ANR, etc.) segment these costs and develop separate rates based on each segment. Texas Gas questions whether there will be "mini rate cases" for each transportation segment and wonders whether it will be required to remove costs from its systemwide rate structure and develop separate rates. The Commission believes that these questions are best addressed on a case-by-case basis in the context of specific facts. The Commission will make these determinations based on the supporting data for the OCS pipeline's proposed rates.

Tarpon Transmission Company (Tarpon) indicates that the requirement that a pipeline submit an annual cost and revenue study is not explicitly limited to those pipelines filling new rate schedules under new § 284.305(b).[64] The Commission agrees with Tarpon that this limitation was intended and therefore the Commission adopts Tarpon's suggested language change. New § 284.305(c) requires the study only if a rate schedule is required to be filed by § 284.305(b).

c. *CD conversion requirements.* Enron contends that subjecting OCS pipelines to Subpart A of Part 284 makes an OCS pipeline's entire system, not just the pipeline's OCS facilities, subject to open access under Order No. 500.[65] In addition, Enron states that under § 284.10 of the Commission's regulations, any interstate pipeline that accepts a Subpart G blanket transportation certificate is deemed to have a agreed to offer its firm sales customers the option to convert their firm sales entitlements under any eligible firm sales service agreement to an equal amount of firm transportation service. Enron argues that the Commission has continually justified the contract demand (CD) conversion provisions of § 284.10 based on the voluntary nature of the Order Nos. 436 and 500 transportation program. Enron concludes that ownership of an OCS facility by an interstate pipeline would negate the fundamental characteristic of the Order Nos. 436 and 500 (*i.e.*, that the program is voluntary) and therefore would negate the Commission's justification for the CD conversion provision.

As discussed above, the blanket transportation certificates issued by this rule only apply to an OCS pipeline's OCS facilities (to the first point of interconnection off the OCS). The CD conversion provisions of § 284.10 apply to OCS pipelines in the same manner as they apply to pipelines on-shore. The

[58] 43 U.S.C. 1862(a) (1982).

[59] Statement of Policy on Distributor Access to Outer Continental Shelf Gas, Order No. 92, 45 FR 49247 (July 24, 1980); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,173 (July 15, 1988).

[60] *See* 18 CFR Part 284, Subpart H (1988).

[61] 35 FERC ¶ 61,260 (1986).

[62] *See* comments of INGAA on the NOPR at 5.

[63] *See* comments of Texas Gas at 24.

[64] *See* comments of Tarpon on the NOPR at 4 and 5.

[65] *See* comments of Enron on the NOPR at 5 and 24–28.

purpose of those provisions, as explained in Order No. 436, is to ensure that firm sales customers have equal access to transportation capacity.[66] We construe such access to be part of the OCSLA mandate implemented herein. Thus, OCS pipelines are required to comply with § 284.10. That requirement, however, extends only to the OCS portion of a pipeline. If a pipeline operates only on the OCS, then § 284.10 clearly applies. If a pipeline operates facilities both off-shore and on-shore, and if the only Part 284, Subpart G certificate it holds is the one issued by this rule,[67] then § 284.10 applies only with respect to sales of gas that occur off-shore, and not to sales of gas on-shore; in other words, § 284.10 would not apply to sales from the on-shore facilities.

As a practical matter, only one OCS pipeline, Sea Robin Pipeline Co., makes sales of gas from off-shore facilities. (While there are other pipelines who have OCS facilities and who also sell gas, those pipelines also have facilities on-shore, and all of the sales are made on-shore; as explained above, such sales fall outside the scope of the rule adopted herein.) Sea Robin recently accepted a Part 284 blanket certificate. Thus, the issue of the relationship between voluntary acceptance of a blanket certificate and CD conversion rights is effectively moot.

d. *Definitions.* National Fuel Gas Supply Corporation (National) and Sun Exploration and Production Company (Sun) read the definition of an OCS pipeline proposed in the NOPR as potentially embracing all the on-shore facilities of a pipeline that owns both on-shore and off-shore facilities. This is not the Commission's intent and, as discussed above, it has amended the definition of an OCS pipeline in this final rule.

The Indicated Producers ask the Commission to include in its definition of an OCS pipeline all transmission facilities downstream from any point on the OCS to the on-shore point where a shipper has access to facilities that are subject to Order No. 436. The Indicated Producers also request that the definition include the first point on-shore where transportation is genuinely available.[68] The Commission declines to adopt the Indicated Producers' suggestions because they could result in the open access provisions of this rule extending far beyond the first interconnection point off the OCS.

Pelto Oil Company (Pelto) asks the Commission to clarify the phrase "in the vicinity" of the pipeline used in section 5(e) of the OCSLA.[69] That matter, however, is beyond the scope of this rulemaking, and is best addressed on a case-specific basis if and when the question arises.

e. *Scope of OCSLA jurisdiction.* Some producers express concern that the Commission's rule will apply to nonjurisdictional facilities under the NGA. For example, McMoran Oil & Gas Company (McMoran) and Ensearch Exploration, Inc. (Ensearch) both express concern over gathering facilities on the OCS.[70] McMoran is concerned that an OCS pipeline's control of nonjurisdictional gathering facilities could be used to block access to its jurisdictional facilities and thereby evade the open access mandate of the OCSLA. McMoran believes that the enforcement of the open access requirements of the OCSLA should not turn on the classification of a particular segment of an OCS pipeline's transportation system. McMoran wants the Commission to reaffirm that the obligation to provide open access transportation is not limited to jurisdictional facilities but extends to nonjurisdictional gathering lines that operate as an integral part of the OCS pipeline's system.

Ensearch requests that, if the Commission extends the obligation to provide open access transportation to nonjurisdictional gathering lines operated as an integral part of an OCS pipeline's system, the Commission not apply the same open access requirements through a rulemaking to producer-operated gathering facilities. Ensearch believes that application of the open access requirement to producer-operated gathering facilities is best handled on a case-by-case basis.[71]

The Commission stated in Order No. 491 that its interpretation of the OCSLA only extended to interstate natural gas pipelines subject to the NGA; the same is true of this final rule. The Commission agrees with McMoran that all pipelines on the OCS have a duty to provide open and nondiscriminatory access to transportation services. If the Commission receives complaints regarding gathering facilities it will, on a case-specific basis, use its ancillary authority, its authority under sections 4 and 5 of the NGA,[72] and its authority under section 5 of the OCSLA, as appropriate under the circumstances presented.

f. *Order No. 500 crediting mechanism.* Several producer groups urge the Commission not to apply the Order No. 500 take-or-pay crediting mechanism to open access transportation of OCS gas.[73] The Joint Producers state that by requiring OCS pipelines to provide transportation service under a Part 284 blanket certificate the Commission, at least implicitly, proposes to require producers to offer Order No. 500 take-or-pay credits to the OCS pipelines in order to obtain open access transportation rights under section 5 of the OCSLA.[74] The Joint Producers allege that such a requirement is inconsistent with sections 5(e) and 5(f) of the OCSLA because it would force producers to give the OCS pipelines significant economic concessions to obtain their statutorily-mandated OCSLA transportation rights. The Joint Producers note that the Commission, in Order No. 500–C, recognized the unique production requirements for casinghead gas and took steps to prevent the reduction of casinghead production (*i.e.*, the Commission refused to extend take-or-pay credits to include casinghead gas). The Joint Producers maintain that similar action is justified for all natural gas produced on the OCS.[75]

McMoran Oil & Gas Company (McMoran) states that the blanket certificate would be subject to the conditions of Subpart A of Part 284, and that § 284.8(f) and § 284.9(f) authorize pipelines to condition eligibility for

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[66] *See* Order No. 436, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665, 31,496–31,497 and 31,518–31,533 (1985) and Order No. 436–A, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,675, 31,640–31,642, 31,657 and 31,661–31,669 (1985).

[67] If a pipeline has both on-shore and off-shore facilities, and holds a Part 284, Subpart G certificate pursuant to an application for one, then § 284.10 clearly applies to its entire system.

[68] *See* comments of the Indicated Producers at 35.

[69] *See* comments of Pelto at 10.

[70] *See* comments of McMoran on the NOPR at 3, 15–17; and comments of Ensearch on the NOPR at 1–6. In addition, Apache Corporation expresses concern that the Commission may change its policy with respect to gathering lines under the NGA; *see* comments of Apache on the NOPR at 6–7. The Commission's policy with respect to gathering under the NGA is beyond the scope of this rule.

[71] *See* comments of Ensearch on the NOPR at 6.

[72] *See, e.g.*, Northern Natural Gas Company, Division of Enron Corp., 43 FERC ¶ 61,473 (1988) and 44 FERC ¶ 61,384 (1988).

[73] *See* comments of the Indicated Producers on the NOPR at 24–33; comments of the Joint Producers on the NOPR at 35–37; comments on McMoran Oil & Gas Company on the NOPR at 4–15; comments of Pelto Oil Company at 7–9; and comments of Natural Gas Supply Association at 5–7.

[74] The crediting mechanism is discussed in Order No. 500, III FERC Stats. & Regs. ¶ 30,761 at 30,779–30,792 (1987). The crediting mechanism was modified in Order No. 500–B, III FERC Stats. & Regs. ¶ 30,772.

[75] Several other commenters discussed the appropriateness of a priority for casinghead gas in any allocation scheme. *See, e.g.*, comments of Sun Exploration and Production Company (Sun) at 4 and comments of the Joint Producers at 3, 21–27.

transportation service on the producer's offering the pipeline credits against its take-or-pay liability to the producer. McMoran also states that the Order No. 500 crediting mechanism was established in response to the remand by the U.S. Court of Appeals in *Associated Gas Distributors v. FERC, supra*, and that in Order No. 436 the Commission was acting in the context of a voluntary regulatory program adopted pursuant to the Commission's discretionary authority under the NGA and the NGPA. McMoran asserts that open access transportation under the OCSLA is different in that it is mandated by statute and that shippers' rights to open access transportation exist independently of any Commission interpretation of the Act.

The Indicated Producers contend that the Order No. 500 crediting mechanism would result in conditional access to OCSLA section 5 transportation. The Indicated Producers assert that there is no statutory basis for such a condition and that Congress never intended for open access transportation on the OCS to be conditioned on a producer's willingness to relinquish certain rights. In addition, the Indicated Producers argue that application of the Order No. 500 crediting mechanism would conflict with the open and nondiscriminatory access condition contained in pipeline right-of-way permits issued by the Department of the Interior. The Indicated Producers allege that to allow OCS pipelines to refuse transportation service to producers unwilling to offer take-or-pay credits would violate the right-of-way permits.

Natural Gas Supply Association (NGSA) agrees with the Indicated Producers and states that if the Order No. 500 crediting mechanism was applied under the OCSLA, it would violate the anti-discrimination provisions in sections 5(e) and 5(f) and would create an irreconcilable conflict with the terms and conditions in the right-of-way permits and easements issued to OCS pipelines by the Department of the Interior.

In Order Nos. 436 and 500, the Commission fully considered both casinghead gas and the producer crediting mechanism. Furthermore, blanket certificates issued under those orders already apply to off-shore gas to the extent that the certificate holder has off-shore pipeline facilities. We perceive no reason to reconsider here the carefully balanced mechanisms adopted in those orders. Thus, casinghead gas will be treated in the same manner under the rule adopted herein as it is treated in the regulations adopted by Order Nos. 436 and 500, for the reasons stated in those orders.[76] There is no priority of capacity allocation for casinghead gas off-shore, just as there is no priority of capacity for such gas on-shore. The treatment of casinghead gas for crediting purposes, as set forth in Order No. 500, continues to apply. In the event that application of those rules raises an issue of potential damage to off-shore wells, the Commission will consider the matter on a case-by-case basis, in the context of the specific facts alleged, pursuant to the standards set forth in section 5 of the OCSLA.

g. *Rationale for rules.* Several commenters assert that the Commission's rationale for implementing the OCSLA was flawed.[77] These commenters contend that the complaints the Commission received about access to available capacity on the OCS were directed to the Commission's policy against capacity brokering on the OCS and that the Commission's proposed rule in Docket No. RM88–13–000 is the appropriate forum in which to address these complaints. We need not discuss here whether those complaints might be appropriately considered in Docket No. RM88–13–000. The Commission has the authority to adopt regulations to implement the OCSLA, and for the reasons discussed above it has determined that there is a need to do so by adopting the final rule.

IV. Environmental Review

This rule proposes regulations to implement the Commission's responsibilities under section 5 of the OCSLA. The Commission is providing interstate pipelines operating on the OCS with blanket certificates under section 7(c) of the NGA. These certificates involve the transportation of gas and do not authorize the construction of any facilities. The Commission has already determined that actions involving the transportation of natural gas under NGA section 7(c) are not actions that have significant environmental effect.[78] The Commission, therefore, is not preparing an environmental impact statement for this rule.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (PFA) [79] requires a rule to contain an analysis of the impact the rulemaking would have on small entities.[80] The RFA is intended to ensure careful and informed agency consideration of the rules that significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to, or burdens on, small entities. This rule applies to jurisdictional natural gas companies whose services or facilities are regulated under NGA or the NGPA. Most of these companies are too large to fall within RFA's definition of a small entity and therefore this rule will not have a "significant economic impact on a substantial number of small entities."

The rule may have a significant impact on those entities who are not providing transportation services on the OCS but who are either producing or shipping OCS gas. Even if these entities may be considered small entities under the RFA, the impact the rule would have would be a beneficial one. Producers or shippers of OCS gas would be given better access to transportation service on the OCS. The Commission does not believe the term "significant economic impact on a substantial number of small entities" as used in the RFA was intended to include regulations that have a beneficial, rather than a negative, impact on small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (PFA) [81] and the Office of Management and Budget's (OMB) regulations [82] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this final rule will be submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to comply with its statutory responsibilities under sections 5(e) and 5(f) of the OCSLA. Under section 5(e) of the OCSLA, the Commission has the responsibility to ensure that oil and gas pipelines transport and purchase gas produced on the OCS in such proportionate amounts as the Commission determines to be reasonable. Section 5(f) of the OCSLA requires OCS pipelines to provide open and nondiscriminatory access to both owner and nonowner shippers. In order

[76] *See, e.g.*, Order No. 500–C, III FERC Stats. & Regs. ¶ 30,786 at 30,957–30,958 (1987).

[77] *See, e.g.*, Comments of the High Island Offshore System on the NOPR at 5–7; comments of Texas Gas Transmission Corporation at 15–19; comments of Apache Corporation at 3–4; and comments of Union Carbide Corporation at 10–12.

[78] See 18 CFR 380.4(a)(2) *as added by* Order No. 486, 53 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (1987).

[79] 5 U.S.C. 601–612 (1982).

[80] 5 U.S.C. 603 (1982).

[81] 44 U.S.C. 3501–3520 (1982).

[82] 5 CFR 1320–13 (1988).

to implement sections 5(e) and 5(f) of the OCSLA, the Commission is issuing every OCS pipeline a blanket transportation certificate under Part 284, Subpart G of its regulations. In addition, OCS pipelines must have a transportation rate schedule on file that conforms to § 284.7, and to § 284.8(d) for firm service and to § 284.9(b) for interruptible service.

The information collection burden imposed on an OCS pipeline of filing an appropriate rate schedule is estimated to be 240 hours per response. The frequency of response is estimated to be one per year for the first year; thereafter, filing are discretionary on the part of the pipeline. The number of likely respondents is 43.[83] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 [Attention: Mike Miller, Office of Information Resources Management (202) 357–9205]. Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulation Commission).

VII. Effective Date

This rule will become effective February 17, 1989.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recording requirements.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1987 AND RELATED AUTHORITIES

1. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356 (1982) as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

[83] *See supra* note 16 and accompanying text.

2. In Part 284, a new Subpart K consisting of §§ 284.301 through 284. 306 is added to read as follows:

Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others

Sec.
284.301 Applicability.
284.302 Definitions.
284.303 OCS blanket certificates.
284.304 Allocation of firm and interruptible capacity on the OCS.
284.305 Transportation rates.

Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others

§ 284.301 Applicability.

This subpart implements section 5 of the Outer Continental Shelf Land Act (OCSLA) and applies to any jurisdictional interstate natural gas pipeline that holds a certificate under section 7 of the Natural Gas Act (NGA) authorizing the construction and operation of facilities on the Outer Continental Shelf (OCS).

§ 284.302 Definitions.

For the purposes of this subpart, the term:

(a) "Outer Continental Shelf" (OCS) has the same meaning as found in section 2(a) of the OCSLA (43 U.S.C. 1331(a)); and

(b) "OCS pipeline" means an interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS, and includes all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA to the full extent that such facilities are used or necessary to transport natural gas from the OCS to the first point of interconnection on the shoreward side of the OCS where it delivers natural gas to either:

(1) A natural gas conditioning or processing facility, or

(2) Another pipeline, or

(3) A distributor or end user of natural gas.

§ 284.303 OCS blanket certificates.

(a) Every OCS pipeline (as that term is defined in § 284.302(b)) is issued a blanket certificate authorizing the transportation of natural gas on or across the OCS on behalf of others under Subpart G of this Part. This certificate becomes effective on the date that the OCS pipeline's rates under § 284.305 become effective. However, if the Commission does not permit rates filed pursuant to § 284.305(b) to become effective on or before April 1, 1989, the certificate becomes effective on the date on which the rates filed pursuant to § 284.305(b) would have gone into effect if they had not been suspended.

(b) OCS pipelines must provide open and nondiscriminatory access to the transportation service provided under paragraph (a) of this section.

(c) The certificate issued under paragraph (a) of this section provides an OCS pipeline with the authorization to:

(1) Transport natural gas under section 7(c) of the NGA,

(2) Abandon transportation services that are performed under the blanket certificate, and

(3) Abandon firm transportation services to implement a reallocation of firm capacity under §§ 284.304(a) and 284.304(c) of this part.

(d) The certificate and abandonment authority conferred by this section is conditioned upon the OCS pipeline's compliance with § 157.20(e) of this chapter.

(e) A blanket certificate issued under this section does not authorize the construction of new facilities on the OCS.

§ 284.304 Allocation of firm and interruptible capacity on the OCS.

(a) *Open season for firm transportation.* Not later than March 1, 1989, all OCS pipeline must poll all of their existing firm shippers to ascertain whether any of them want to relinquish any or all of their firm transportation capacity.

(1) If an OCS pipeline has either uncommitted firm transportation capacity or firm transportation capacity that an existing shipper wants to relinquish, it must afford all existing and potential shippers an opportunity to request the available firm capacity.

(2) The OCS pipeline must provide reasonable notice of the open season.

(3) The open season can be for no less than 10 days and no more than 30 days.

(4)(i) If the requests for firm capacity exceed the firm capacity that is available, the OCS pipeline must allocate to each requesting shipper a pro rata share of the available firm capacity.

(ii) If the available firm capacity exceeds the requests for such capacity, and if the available firm capacity includes capacity that one or more existing shippers wants to relinquish, each shipper relinquishing capacity must be allowed to satisfy the requests for firm capacity on a pro rata basis. To the extent that the OCS pipeline itself has uncommitted firm capacity available, it may assign that

uncommitted capacity to the new shipper(s) before reallocating the capacity of existing shippers.

(iii) In reallocating firm capacity under paragraph (a)(4)(i) or (a)(4)(ii) of this section, the OCS pipeline must take into account the capacity available at the particular receipt and delivery points specified by both the shippers requesting firm capacity and the shippers voluntarily relinquishing firm capacity.

(b) *Open season for interruptible capacity.* (1) No later than March 1, 1989, all OCS pipelines must commence an open season for interruptible transportation.

(2) The OCS pipeline must provide reasonable notice of the open season.

(3) The open season can be for no less than 10 days and no more than 30 days.

(4) The requirements of paragraph (b) of this section do not apply to any OCS pipeline that has accepted a blanket transportation certificate under Subpart G of this part prior to February 17, 1989.

(5) In establishing an initial priority for interruptible transportation, OCS pipelines shall give priority to transportation currently (as of February 17, 1989) authorized under existing individual certificates (provided that such transportation will be performed at transportation rates no lower than the transportation rates paid or to be paid by other interruptible shippers).

(c) *Voluntary reallocation of firm capacity.* (1) If an OCS pipeline receives a request for firm transportation at any time after it has conducted the open season described in paragraph (a) of this section, it must, within 10 days of receiving the request, provide the requesting shipper with a list of all firm shippers under contract with the pipeline.

(2) If the requesting shipper finds an existing firm shipper that wants to voluntarily relinquish all or a portion of its firm capacity, the OCS pipeline must reallocate that firm capacity. In the event that more than one shipper wants to acquire that firm capacity, the reallocation may be conducted on either a first-come, first-served basis, a pro rata basis, or any other nondiscriminatory method that is consistent with the OCS pipeline's transportation rate schedule on file with the Commission. If the OCS pipeline has uncommitted firm capacity available, it may assign part or all of that capacity before reallocating the capacity of existing shippers.

(3) The blanket certificate issued under § 284.303(a) provides an OCS pipeline with the authority under section 7(b) of the NGA to abandon service with respect to the shipper voluntarily relinquishing firm capacity, even if the service was authorized prior to the issuance of the blanket certificate under § 284.303(a).

§ 284.305 Transportation rates.

(a) Except to the extent explicitly authorized by the Commission on a case-by-case basis pursuant to § 284.305(d)(2), the transportation rate for transportation of gas on the OCS by an OCS pipeline must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7, and to either § 284.8(d) for firm service or to § 284.9(d) for interruptible service.

(b) If an OCS pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service, the OCS pipeline must file conforming rate schedules by March 1, 1989, to be effective no later than April 1, 1989. The OCS pipeline must use it current rates until the Commission permits the rates filed pursuant to this paragraph to become effective.

(c) The rate schedules filed by a pipeline under paragraph (b) of this section must be supported by an annual cost and revenue study in the form required by § 154.303(e) of this chapter. If a pipeline has a pending rate proceeding under § 154.63, 154.38 or 154.303(e) of this chapter, it does not have to submit an annual cost and revenue study and may use the base period data from the proceeding so long as the base period ended within 12 months of the filing of the rates required in paragraph (b) of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, the rates filed under paragraph (b) of this section apply to all transportation services offered by an OCS pipeline.

(2) With respect to transportation performed pursuant to certificates other than Part 284 blanket transportation certificates, an OCS pipeline may restate its current rates for those transactions if it demonstrates to the Commission that such rates are not unjust, unreasonable, or unduly discriminatory. If an OCS pipeline wants to use its current rates for transportation, it should refile those rates by March 1, 1989, to be effective no later than April 1, 1989.

(e) By March 1, 1989, to be effective no later than April 1, 1989, all OCS pipelines must file tariff provisions setting forth the method by which firm transportation capacity will be reallocated under § 284.304(c) in the event that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish.

(f) All rates for transportation on or across the OCS that are in effect prior to February 17, 1989 remain in effect until the date upon which the rates filed pursuant to §§ 284.305 (b) and/or (d) (whichever supersede the existing rates) become effective.

Appendix A—List of Commenters

Note.—This appendix will not be published in the Code of Federal Regulations.

1. American Gas Association
2. Amoco Production Company, *et al.*
3. ANR Pipeline Company
4. Apache Corporation
5. Arco Oil & Gas Company
6. Associated Gas Distributors
7. Chemical Manufacturers Association, *et al.*
8. Citizens Energy Corporation *et al.*
9. Columbia Gas Transmission Corporation, *et al.*
10. Consolidated Gas Transmission Corporation
11. Elizabethtown Gas Company
12. Enron Interstate Pipelines
13. Ensearch Exploration, Inc.
14. Fertilizer Institute
15. High Island Offshore System
16. Indiana Public Service Company
17. Indicated Producers
18. Interstate Natural Gas Association of America
19. McMoran Oil & Gas Company
20. Meridian Oil, Inc.
21. National Fuel Gas Supply Corporation
22. National Steel Corporation
23. Natural Gas Pipeline Company of America
24. Natural Gas Supply Association
25. Northern Illinois Gas Company
26. Pacific Offshore Pipeline Company, *et al.*
27. Pelto Oil Company
28. Meridian Oil, Inc.
29. Peoples Gas Light and Coke Company & North Shore Gas Company
30. Petrochemical Energy Corporation
31. Producer Associations, *et al.*
32. Southern Natural Gas Company
33. Stingray Pipeline Company *et al.*
34. Sun Exploration and Production Company
35. Tarpon Gas Marketing Ltd., *et al.*
36. Tennessee Gas Pipeline Company
37. Texas Eastern Transmission Corporation
38. Texas Gas Transmission Corporation
39. Transcontinental Gas Pipe Line Corporation
40. Union Carbide Corporation
41. United Gas Pipe Line Company & Sea Robin Pipe Line Company

Appendix B—OCS Pipelines to Whom Part 284 Blanket Transportation Certificates are Issued by this Order

Note: This appendix will not be published in the Code of Federal Regulations.

OCS Pipeline and Shoreward Terminus

1. Blue Dolphin Pipeline Co.
   Onshore terminus at Dow Chemical Co., Freeport, Texas
2. Columbia Gulf Transmission Co.
   Offshore termini of numerous segments, Offshore, Louisiana. *See also* Nos. 23, 25 and 27, below

3. Sabine Pipe Line Co.
   Offshore termini at West Cameron 547 South Addition, West Cameron 529 South Addition, and South Timbalier 147, Offshore, Louisiana
4. Seagull Interstate Corp.
   Offshore termini at Galveston 213 and Matagorda 526, Offshore, Texas
5. Superior Offshore Pipeline Co.
   Offshore terminus at Lowry Gas Plant, Cameron Parish, Louisiana
6. Tarpon Transmission Co.
   Offshore terminus at Shipshoal 274, Offshore, Louisiana
7. Sea Robin Pipeline Co.
   Onshore terminus at Erath, Louisiana
8. Stingray Pipeline Co.
   Offshore terminus at West Cameron 148, Offshore, Louisiana
9. Texas Sea Rim Pipe Line, Inc.
   Onshore terminus at Texas Sea Rim Sabine Pass, Separation Plant, Jefferson County, Texas
10. Bayou Interstate Pipeline System
   Offshore terminus at West Cameron 289, Offshore, Louisiana
11. Black Marlin Pipeline Co.
   Onshore terminus at Union Carbide plant, Texas City, Texas
12. Chandeleur Pipe Line Co.
   Onshore terminus at Pascagoula, Mississippi
13. Florida Gas Transmission Co. (FGT)
   Interconnection with FGT Kain Lateral, Matagorda County, Texas. *See also* Nos. 24, 26, and 28, below
14. Freeport Interstate Pipeline Co.
   Onshore terminus at interconnection with Freeport Intrastate Pipeline on Grand Isle, Jefferson Parish, Louisiana
15. Gasdel Pipeline System, Inc. (Gasdel)
   Offshore termini of 11 small offshore pipelines, Offshore, Louisiana and Texas. *See also* No. 22, below
16. High Island Offshore System
   Offshore terminus at interconnection with UTOS, West Cameron 167, Offshore, Louisiana
17. Pacific Interstate Offshore Co.
   Onshore terminus at metering station at interconnection with Pacific Lighting Service Co. pipeline, Ventura County, California
18. Pacific Offshore Pipeline Co.
   Onshore terminus at gas treating plant, Santa Barbara County, California
19. Pelican Interstate Gas System
   Onshore terminus at Mobil plant, Cameron Parish, Louisiana
20. Point Arguello Natural Gas Line Co.
   Onshore terminus at Chevron Hermosa plant, Santa Barbara County, California
21. U-T Offshore System (UTOS)
   Onshore terminus at Johnson's Bayou/ Cameron Meadows plant complex, Cameron Parish, Louisiana
22. Padre Island Pipeline System (Transcontinental Gas Pipe Line Co. [Transco]; and Gasdel) [1]
   Onshore terminus at dehydration plant near interconnection with Transco's main line, Brooks County, Texas
23. Central Texas Gathering System (Transco; Northern Natural Gas Co. [Northern]; Southern Natural Gas Co. [Southern]; ANR Pipeline Co. [ANR]; Columbia Gulf Transmission Co. [Columbia Gulf]; and Tennessee Gas Pipeline Co. [Tennessee]) [1]
   Onshore terminus at Markham plant, Matagorda County, Texas
24. Matagorda Offshore Pipeline System (Northern; Southern; and FGT) [1]
   Onshore terminus at liquid separation facility and interconnection with Houston Power and Light Co. pipeline, Tivoli, Refugio County, Texas
25. East Cameron 23 Lateral (Columbia Gulf; and Southern) [1]
   Onshore terminus at Amoco South Pecan Lake plant, Cameron Parish, Louisiana
26. Sabine Pass Lateral (Tennessee; and FGT) [1]
   Onshore terminus at Johnson's Bayou, Cameron Parish, Louisiana
27. Blue Water System (Tennessee; and Columbia Gulf) [1]
   Onshore termini at Pecan Island plant, Vermilion Parish, Louisiana (West leg), and Tenneco Oil Cocodrie plant, Terrebonne Parish, Louisiana (East leg)
28. Southern Pass Cognac Line (Southern; Northern; FGT; ANR; and Transco) [1]
   Onshore terminus at interconnection with Southern's Romere Pass pipeline, Plaquemines Parish, Louisiana

[1] The blanket certificates are issued to the individual interstate pipeline owners listed in parentheses.

Trabandt, Commissioner, *Concurring*

I concur in this Final Rule with several observations and reservations for further review on rehearing.

Background

In my concurring opinion to the Notice of Proposed Rulemaking (NOPR) in this docket, I expressed serious concern that, among other things, the proposed rule was not an effective solution to the real world problem at that time of some shut-in OCS gas resulting from Commission decisions in certain Order No. 436 blanket certificate cases, as documented in correspondence from the Natural Gas Supply Association (NGSA) and Interstate Natural Gas Association of America (INGAA) attached to my concurring opinion. The NGSA and INGAA letters focused on the problem then occurring on joint venture pipelines such as HIOS, U-TOS, Stingray, Trailblazer, Tarpon and others, and was commonly referred to as "third party transportation." According to the letters, the so-called third party transportation problem occurred when a pipeline participating in one of those joint venture pipelines sought to utilize its unused firm capacity in the joint venture pipeline to transport gas for third parties, but was prevented from doing so by the Commission because the activity would be inconsistent with then-current Commission policy prohibiting the brokering of capacity under Part 284 blanket certificate authority.

The prohibited third party transportation would have provided a means for producers to get gas to market that otherwise might, and, in some cases involving Sun and Chevron, for example, already was, shut-in for lack of other available transportation, because the demand for system supply of the interstate pipeline had declined dramatically. Such third party transportation also would provide pipelines with a means to transport released gas for take-or-pay credits and would provide customer access to additional supplies, thus maximizing the efficient use of the joint venture pipelines and reducing transportation costs on a per Mcf basis. Consequently, NGSA and INGAA urged the Commission to act immediately and simply to permit interstate pipelines to allocate capacity controlled on joint venture pipelines to shippers under existing 7(c) certificates and applicable contracts. My tentative conclusion was that the NOPR would not solve immediately or effectively that problem.

Conversely, there did not appear to be any documented real world problem for which the proposed rule was necessary or appropriate as a solution. The NOPR referred briefly and rather obliquely to the shutting-in of gas discussed above (which was the direct result of the Commission action to prohibit generally third party transportation in the Order No. 436 cases) and cited a 1985 request for an OCS rulemaking by the Chemical Manufacturers Association. That petition preceded the issuance of Order No. 436 and the emergence of non-discriminatory open access transportation under Part No. 284 and resulting blanket certificates. Rather than that stated, obscure justification and rationale, there was a strong undercurrent that the real motivation for the Order No. 436/500 blanket certificate approach in the OCS NOPR last spring was the desire to use the OCS problem/issue as a "target of opportunity" or excuse to impose on a mandatory basis the blanket certificate requirement, using the OCSLA as a springboard to reach that result. This attempt occurred at a time when interstate pipelines were still strongly resisting blanket certificates, rather than as a completely good faith effort by the Commission to solve the real world, "third party transportation" capacity reallocation problem.

Mandatory imposition of blanket certificates on the OCS would be a precedent of sorts and would demonstrate the disposition of the Commission to impose blanket certificates under any other nondiscriminatory theory. Also, there was the distinct suggestion that the solution to that real world problem was being held "hostage" as the pretext for such mandatory imposition of the blanket certificates on the OCS. The motivation for the NOPR last March is not the issue at this point, but I would hope that the Commission today will give all due consideration to what is the policy direction and regulatory objective for this Final Rule.

More generally, as I understand the current state of affairs on the OCS today, there is virtually no significant transportation access problem and there is no current threat of shut-in gas. In short, gas is moving as necessary from the OCS ashore without any substantial difficulty under the existing arrangements. Also, eight of the OCS

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pipelines already have blanket certificates and almost all the interstate pipelines with firm capacity allocations on the joint venture pipelines have blanket certificates. Therefore, the current mix of transportation services under blanket certificates and section 7(c) certificates appears to be adequate, even if not optimal under a uniform OCS-wide blanket certificate program.

At the same time, there is some continued enthusiasm on the part of producers and shippers for moving carefully toward a more uniform, non-discriminatory access program, provided that there is no interruption of existing transportation arrangements. That is of considerable importance to many producers, because a large majority of OCS gas purchase contracts have been renegotiated as part of take-or-pay settlements. Interstate pipelines obtained more market responsive prices and take-or-pay relief in exchange for resolution of Order No. 500 credit mechanism requirements, more assured transportation access and services for producers, in addition to other features of the settlements. This Final Rule should not be allowed to have the effect of disrupting those settlement transportation arrangements, denying producers the benefits of the transportation and crediting benefits, or precipitating the necessity of a new round of "conditioned access" negotiations. I am not persuaded that the Final Rule would satisfy that test.

After review of the public comments and requests for rehearing filed in these dockets, and the current state of affairs on the OCS today, I am not completely persuaded that there is a satisfactory rationale and justification to support mandatory imposition of an Order No. 436/500 blanket certificate on all OCS pipelines. I also continue to believe that there is serious potential for uncertainty and disruption with regard to OCS pipeline services, as well as an endless line of clarification and waiver requests, under the Final Rule as adopted. Consequently, I have identified two options: one substantive and one procedural, for our further consideration in these dockets.

Substantive Option

As I discussed above, I believe the threshold issue in this rulemaking is the nature of the problem we are trying to solve and the resulting regulatory objective. There is absolutely no doubt that the problem or "crisis" which spurred the initial action in these dockets was the shut-in of OCS gas resulting directly from the Commission's rejection in Order No. 436 cases of requests to authorize downstream onshore pipelines holding firm capacity on upstream OCS pipelines to reallocate capacity. A more detailed explanation is set forth in my concurring opinion to the NOPR and the attached letters from NGSA and INGAA.

The Natural Gas Pipeline of America Order No. 436 case is a primary example of the problem. There the Commission rejected proposals for reallocation authority because of concerns related to capacity brokering and the capacity brokering NOPR then under discussion. Some pipelines, such as Natural, claimed authority for reallocation under their separate certificate authority and proceeded to reallocate despite the rejection of specific authority in the Order No. 436 case. The Commission did not challenge such legal claims, or the associated reallocations, which have apparently proceeded apace since last spring. To that extent, there is a serious question today if, in fact, there is a remaining reallocation problem in the real world that needs to be fixed. In any event, I believe it is quite clear in the record of comments on the NOPR and rehearing petitions for the interpretive rule that mandatory imposition of Order No. 436/500 blanket certificates is not justified to address the initial reallocation problem. The Final Rule totally ignores this threshold issue, largely because there is no persuasive response. (See page 60 of the Slip Opinion.)

If, however, the Commission is persuaded that action must be taken to address the reallocation problem at this point in time, there is a much more narrow and focused approach of providing authority for reallocation of firm capacity on OCS pipelines. A simplified and streamlined mechanism will accomplish that regulatory objective without all of the potential legal, policy and operational problems of the mandatory blanket approach.

Chairman Hesse has already agreed in the *Texas Eastern* Order No. 436 case in September to develop quickly just such a mechanism for nondiscriminatory reallocation onshore of firm capacity on an upstream pipeline held by a downstream pipeline. Her commitment is memorialized in the text of that case, and the Commission made clear its intention to grant such authority, while we develop experience in the generic capacity brokering area with an experiment (possibly United's proposal). Here, the reallocation mechanism need only provide for nondiscriminatory reallocation of firm capacity on an upstream OCS pipeline voluntarily relinquished by a downstream onshore pipeline.

For example, the Commission could simply authorize, but not mandate, OCS pipelines to conduct an open season for any excess and voluntarily-relinquished firm capacity on a one time or periodic basis, with a first-come first-serve mechanism for any subsequent reallocation. The rates for firm transportation services would be those established under existing tariffs approved by the Commission. There would be no need to modify, interfere with, or abrogate any existing arrangements. There also would be no need to address interruptible transportation, which is not the problem in any event.

The Order No. 436/500 blanket certificate program would remain voluntary for OCS pipelines under current regulations and the Commission would process OCS pipeline applications for an Order No. 436/500 blanket certificates under current practice in individual certificate and rate cases. There would be no need for any complicated transitional/grandfather mechanism and there would be absolutely zero possibility of disruption of OCS operations or transactions at any time.

Procedural Option

I supported the proposal for delayed effectiveness of the Final Rule, as adopted in the current form, to avoid regulatory-induced disruption during the winter hearing season. Nevertheless, the substantive features of the Final Rule have been adopted and the rehearing process does not generally provide the best vehicle for wholesale reconsideration of a major rule. Also, rehearings can be delayed for extended periods of time with little or no practical recourse for the Full Commission, such that the Final Rule could be in effect and implemented without any prior modifications on rehearing, irrespective of the persuasiveness of the rehearing petitions. As a practical matter, the scheduling of rehearing orders remains a prerogative of the Chairman. Consequently, it is most prudent and responsible that a Final Rule be "our best shot", as it were, at a rule which conceivably will be effective for some extended period; *e.g.*, Order No. 500 Interim Rule.

Given the concerns expressed by Members of the Commission about the potential disruption on the OCS caused by the rule, and also the decidedly fundamental change from the proposed rule (*e.g.*, immediate mandatory imposition of blanket certificates on OCS pipelines), it would be quite appropriate to renotice the NOPR with the new proposal for a short 30-day comment period. Comments could be received early next year, and we could make a final decision to be effective in the same general April/May time frame after the winter heating season. The renoticed NOPR could also seek comment on the substantive option described above for purposes of comparison. In any event, the Final Rule next year resulting from a renoticed NOPR would be "our best shot" at solving the real world problem(s), which ostensibly precipitated this exercise in the first instance, on a "fail-sale" basis.

The Final Rule

The majority has decided to proceed with the Final Rule in this order, but also to provide sufficient opportunity to get rehearing comments and act on them before the Rule is implemented. Members of the Commission also stated their intention to ensure that there is no interruption of existing transportation services on the OCS, no disruption of current transportation arrangements, and no shut-in of OCS gas. I am reluctantly prepared to concur in that result, but with several concerns about the Final Rule.

First, I seriously doubt whether the Commission will have adequate time to consider rehearing petitions and adopt an order on rehearing prior to the effective date of the rule (February 1, 1989) or the deadline for tariff filings and open season activities (March 1, 1989), and possibly even the latest effective date for tariffs and latest date for service to begin (April 1, 1989). Assuming that an order on rehearing could be developed and scheduled at the earliest possible date, which is subject to the prerogative of the Chairman and beyond the control of the Full Commission, it probably is simply unrealistic to expect action on rehearing by mid-February. Consequently, if reviewing parties conclude that the Commission should adopt

the substantive or procedural option, or amend significantly the Final Rule before implementation, a delay in effectiveness and implementation would be necessary and appropriate. Thus, parties filing rehearing petitions may want to request a further delay in the current schedule to prevent premature implementation of this Rule.

The open season for interruptible transportation potentially may create significant problems (Slip Opinion at page 18 of the preamble text and page 69 of the regulatory text (§ 284.304(b)). First, the OCS pipeline is granted complete discretion to use "any non-discriminatory means that is acceptable for onshore blanket certificate transportation" to allocate interruptible capacity (page 18). That could include, among other options, the lottery method approved for the PGT pipeline. In my judgment, the Commission should not allow that discretion, because it is virtually guaranteed to disrupt existing transportation arrangements.

Second, the Commission does not provide unconstrained grandfather treatment for existing interrruptible transportation arrangements under section 7(c) authorizations. That is a significant and unprecedented departure from Order No. 436 and past practice in the voluntary blanket certificate program. Rather, the Final Rule requires the OCS pipeline to give a priority only where there is interruptible transportation that satisfies two criterion. First, the interruptible transportation must be affirmatively authorized under an existing certificate effective on February 1, 1989. Second, the interruptible transportation shippers must pay transportation rates for such service which are "no lower than the rates paid or to be paid by other interruptible shippers." (parenthetical proviso at page 19 and in § 284.304(b) at page 69).

There is no explanation defining what "other interruptible shippers" must be compared, as between shippers on a single pipeline versus all shippers on the OCS. There also is no explanation of what "rates paid or to be paid" must be considered and how they would be identified. Additionally, this is the first time under the Part 284 program that the Commission has sanctioned the consideration of *price* as a factor in the initial allocation of capacity for non-discriminatory access.

The Commission, by comparison, has approved a form of "bump" rule, whereby a shipper *already having capacity allocated to it* can be bumped if it has a discounted rate, another shipper is willing to pay a higher rate up to the maximum, and the original shipper within five days fails to agree to pay that higher rate. (*See*, e.g. *Natural Gas Pipeline of America*, 39 FERC ¶ 61,153 at 61,595 (1987).) But, prior to this order, the Commission has wisely refused to allow price to be the determining factor. Here, the clearly ambiguous proviso will create a *de facto* conditioned access capability in the OCS pipeline, will probably frustrate any orderly and systematic grandfather treatment of existing interruptible transportation arrangements of various types, and undoubtedly will create a precedent for allocation determined largely or solely by price, such as the auctioning proposal.

The rationale for adoption of this disruptive and potentially punitive proviso provided in Footnote 24, at page 19, falls of its own weight in the face of these countervailing considerations. In my judgment, there is every justification for an unconstrained priority for pre-existing interruptible transportation arrangements, independent of the prevailing rates or subsequent rate requirements. The interruptible transportation open season should have been modeled on the open season for firm transportation (see p. 16 *et seq.*), without any introduction of the unprecedented and unjustified price factor. The analytical bottom line is that the Commission, with the price proviso, has gutted the grandfather protection for existing interruptible transportation as a practical matter.

I also am concerned that the process and procedures for contemporaneous consideration of all the March 1 rate filings by all OCS pipelines for new Part 284 rates or, in the alternative, their existing rates with a justification for waiver of the Part 284 requirements, will create for the Commission, pipelines, and shippers an administrative nightmare. In addition the massive number of filings also will complicate the open season for interruptible transportation under the price proviso discussed above. Certainly, the Commission will be confronted with an OCS tidal wave of Part 284 rates, terms and conditions. Further, I believe thought should be given to the process and procedures for these filings from the perspective of an orderly and non-disruptive transition to blanket certificate operations.

The Commission rejected a number of modifications to the proposed rule requested by producer commenters. Several of these modifications, in my judgment, should have been adopted. First, the Order No. 500 crediting mechanism should not be applied to open access transportation of OCS pipelines for the reasons stated in the producer comments. I find particularly persuasive arguments setting forth the distinction between OCS transportation under the OCSLA and the voluntary transportation program under Order No. 500. (See discussion at page 57 *et seq.*) I agree that applying the crediting mechanism creates conditioned access in violation of the OCSLA, particularly as the Commission has just interpreted that law in these dockets.

Second, the Commission also should have provided a separate priority in some fashion for casinghead gas as sought by several producer commenters. (See discussion at page 57 *et seq.*) According to the comments, casinghead gas constitutes about eleven percent of total OCS gas production in the Gulf of Mexico. The Final Rule, at page 60, concludes that the Commission will consider on a case-by-case basis any issues of potential damage to off-shore wells that may be raised by these rules. In light of the difficulties already obvious in the open season for interruptible transportation, the case-by-case approach in all likelihood will be too little and too late to prevent such potential damage. The better and more responsible approach is to recognize now the particular sensitivity of the OCS wells and to provide an affirmative priority for casinghead gas. The Commission should not provide the *de facto* conditioned access result and case-by-case hollow gesture adopted in the Final Rule.

Next, the Final Rule, at page 34 and at page 67 (section 284.302(b)) addresses the issue raised by producer commenters about the shoreward delivery interconnection. The specific concern about a potential bottleneck control problem remains unresolved, since the new definition addresses physical interconnection, but not assured regulatory access to transportation services. Notwithstanding the legal technicalities of OCSLA jurisdiction proferred as an apologetic excuse by the Commission for not addressing assured regulatory access, the Commission has created a legal conundrum of some consequence. If Congress can be deemed to have enacted the requirement for open access transportation on the OCS with such forcefulness in the 1978 Amendments to justify mandatory imposition of Part 284 blanket certificates under the Natural Gas Act on unwilling OCS pipelines, how perforce could Congress not have intended that the Commission use its NGA authority to ensure that the OCS gas could be delivered to a customer for sale beyond the first shoreward bottleneck controlled by a pipeline unwilling to provide voluntarily the necessary transportation service, assuming capacity is available.

The Commission confronted an analogous problem in Order No. 451 with regard to natural gas released under the Good Faith Negotiation procedures for sale to a new customer and concluded, correctly in my judgment, that assured transportation as provided there was an absolutely essential feature. I fail to see why the Commission could not fashion a similar provision for OCS gas using its NGA authorities in response to the Congressional mandate in the 1978 amendments. Put another way, if that mandate is legally satisfactory to justify mandatory imposition of Part 284 blanket certificates, it also should suffice for assured onshore delivery of OCSA gas transported ashore under those blanket certificates.

The Final Rule, at page 20, indicates that generally the Commission will no longer issue section 7(c) certificates to authorize transportation services that otherwise could be performed under the blanket certificates imposed here on OCS pipelines. That portion of the Rule would codify the more general practice for processing of section 7(c) applications, which has evolved over the past year in the voluntary Part 284 program. At the same time, however, the Commission staff apparently has refused to process new section 7(c) applications for OCS gas since the issuance of the NOPR in these dockets. As a result, there are pending today a limited number of such applications which are deemed critical by various producers to provide needed transportation ashore for OCS gas. This inaction results in possibly shutting-in the gas while the implementation of the Final Rule is awaited. The Commission should issue at least limited-term certificates for the transport of that gas during this winter and the pendency of operational blanket

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certificates. There is no justification for further delay.

Some producer commenters recommended that the Commission adopt special balancing and penalty provisions that would better reflect the technical and operational situation on the OCS pipelines, rather than those approved for onshore pipelines. The Final Rule does not address this recommendation directly, but does indicate more generally in several places that the terms and conditions approved in other onshore blanket certificates will be acceptable under the mandatory OCS blanket certificates. The Commission should consider these concerns and recommendations with regard to balancing and penalties, in order to ensure that the mandatory blanket certificates have terms and conditions which are not discriminatory nor unfair to offshore producers.

The Final Rule, at page 23, provides that, where interstate pipeline owners of the OCS pipeline own, control and utilize defined finite portions of the OCS pipelines capacity, separate blanket certificates are issued to each individual interstate pipeline owner. And, each of those interstate owners may conduct separate open seasons and subsequent reallocations for that portion of the OCS pipeline. I am concerned about the impact of separate rates, terms, conditions, and allocation methodologies on portions of a single OCS pipeline, in terms of operations, balancing, penalties, accounting and non-discriminatory access. Such OCS pipelines, and shippers on them, should carefully consider the practical ramifications of such separate, but potentially different, blanket certificates on the same pipeline. For example, should there be a requirement for uniformity, in whole or in part as to certain aspects, as between separate blanket certificates on the same OCS pipeline?

Finally the rate requirements of the Final Rule are established in accordance with section 5 of the NGA and impose an obligation that the rates for all new *and* existing transportation services must conform to the requirements of Part 284, effective at the time an OCS pipeline provides the new transportation service required by this rule. (Pages 25 and 26.) This general requirement is subject to an exception where an individual OCS pipeline can demonstrate that its current transportation rates are necessary, because of the historical factors associated with project financing and other features, and the maintenance of different rates would not be unduly discriminatory. These rate requirements, and the implementation process for them, could potentially present the Commission and interested parties with a complicated and difficult administrative process across the spectrum of OCS pipelines required on March 1, 1989, to make tariff filings for the mandatory blanket certificates. Also, I am not persuaded that the Commission should mandate Part 248 rates on all existing transportation services, subject to the stated case-by-case exception. Interested parties should consider carefully the impact of the Part 284 rates, in terms of both pricing and access impact, and particularly with regard to the interruptible transportation price factor in the mandatory open season for existing interruptible transportation.

Conclusion

I am convinced that the substantive option described above will solve any real world OCS problem that may remain today, independent of any gamesmanship associated more generally with broader acceptance of Order No. 436/500 blanket certificates by interstate pipelines, onshore or on the OCS. The procedural option described above would provide a quick opportunity to get additional and current comments on the fundamentally changed proposal in the draft order and also would provide some needed calibration today of the rationale and justification for any action, as well as the substantive option. If, in the end, this turns out to be an exercise largely intended to establish a precedent for mandatory imposition of blanket certificates on interstate pipelines or to simply impose blanket certificates under the rubric of the OCSLA, rather than solve an OCS problem after all, I only hope the Commission Members will acknowledge that result. Finally, if the Commission decides to proceed with implementing the Final Rule, I would recommend strongly that the order be reviewed further and modified as discussed above to minimize the potential confusion and disruption resulting from the wholesale OCS-wide imposition of blanket certificates effective on a date certain *and* the processing at the same time of all resulting OCS pipeline rate cases.

I look forward to discussion of these recommendations, the procedural option, and the substantive option during the rehearing process.

For these reasons, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88-29034 Filed 12-16-88; 8:45 am]

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18 CFR Part 385

[Docket No. RM87-24-001; Order No. 502-A]

Procedures for the Assessment of Civil Penalties; Order on Rehearing

Issued: December 13, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on Rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 502, a final rule establishing procedures for the assessment of civil penalties under section 31 of the Federal Power Act. (53 FR 32,035, Aug. 23, 1988.) Four petitions for rehearing were filed in this rulemaking docket. Applicants have failed to raise any new material issues of fact.

EFFECTIVE DATE: This order is effective December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested person an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electric bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Order on Rehearing

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 502, a final rule establishing procedures for the assessment of civil penalties under section 31 of the Federal Power Act (Act), enacted by section 12 of the Electric Consumers Protection Act of 1986 (ECPA).[1]

The Commission issued Order No. 502 on August 17, 1988.[2] Four petitions for rehearing of Order No. 502 were filed, on September 15 and 16, 1988.[3] For the

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[1] Pub. L. No. 99-495, 100 Stat. 1243 (1986) (codified at 16 U.S.C. 823(b) (1982)).

[2] 53 FR 32,035 (Aug. 23, 1988), III FERC Stats. & Regs. ¶ 30,828 (Aug. 17, 1988).

[3] Joint Request for Rehearing of Edison Electric Institute, National Hydropower Association, American Public Power Association, American Paper Institute and National Rural Electric Cooperative Association (EEI); Georgia Power Company (Georgia Power); Orange and Rockland Utilities, Inc. (Orange & Rockland); and Upper Peninsula Power Company (Upper Peninsula).

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reasons discussed below, the Commission denies rehearing of Order No. 502.

Scope of the Rule

Order No. 502 concluded that the civil penalty provisions of section 31, which literally apply to "licensees, permittees, and exemptees," likewise apply to those who operate as licensees or exemptees without bothering to obtain the necessary authority from the Commission. The Commission emphasized that a contrary interpretation would impute to Congress the irrational intent of favoring those who completely disregard the law over those who are at least in partial compliance. It would mean that a project owner who went through the process of obtaining a license but violated the terms and conditions of the license or a Commission rule or order would be subject to civil penalties, but one who operated in exactly the same way without a license (or with an expired or revoked license) would be immune from civil penalties even if the project endangered public health, safety or the environment.

The Commission found that the statutory language does not compel such a result and, indeed, that the legislative history shows Congress was concerned about unlicensed operations, expected the Commission to assure compliance with the licensing structure, and gave it enhanced authority, in the form of civil penalty powers, to enforce the law.

All four applicants for rehearing argue that section 31 of the Federal Power Act authorizes civil penalties only against holders of a license, permit or exemption. They maintain that Order No. 502 ignores the plain meaning of section 31(c) and misinterprets the legislative history. [4] They contend that Congress specified the class of entities against whom penalties are available under section 31(c) and that Congress' use of broader language elsewhere in the Federal Power Act and in other civil penalty legislation compels a narrower reading of section 31(c).[5]

While the commenters focus on the use of the phrase "licensees, permittees, and exemptees" in section 31(c), they ignore language in the enforcement provision indicating that those words should be construed broadly. Apart from the duty to "monitor and investigate compliance with each license and permit," section 31(a) provides separately that "[t]he Commission shall conduct such investigations as may be necessary and proper in accordance with this Act." This responsibility is broad, encompassing the "Act" as a whole and, fairly read, extends to investigations not only of licensed but unlicensed jurisdictional operations as well.

Given the broad authority to investigate, the Commission's authority to issue compliance orders cannot reasonably be restricted to enforcing only the terms of particular licenses, permits or exemptions that have already been issued. Under section 31(a), "[a]fter notice and opportunity for public hearing," the Commission may issue such orders as necessary to require compliance with the "terms and conditions of licenses and permits issued under this Part and with the terms and conditions of exemptions granted from any requirement of this Part." This language is broad and logically encompasses actions necessary to require compliance not only with particular existing licenses but with the licensing structure that is at the heart of the Act and through which the Commission exercises its regulatory responsibilities to protect public health, safety and the environment.

Section 31(c) provides for the civil penalty remedy against those who violate or fail to comply with Commission orders under subsection (a). Given the broad language of section 31(a), however, section 31(c) cannot be read narrowly as petitioners claim, but must be understood as encompassing Commission orders intended to bring unlicensed operators into compliance.[6]

Moreover, the language of section 31(c) itself provides further indication that the words "licensee, permittee, or exemptee" were not meant to be construed narrowly and literally.

While section 31(c) mentions civil penalties against a licensee, permittee or exemptee, it instructs the Commission in determining the amount of any penalty to consider remedial "efforts of the licensee" but fails to mention remedial efforts by exemptees or permittees. Since there is no rational basis for considering remedial efforts by the one but not by the others, Congress plainly intended no distinctions between them. No commenter has suggested the Commission should follow the literal language and therefore recognize remedial efforts by licensees but not by exemptees and permittees. Congress was using the word "licensee" in a broad and not a literal sense to include all jurisdictional operators. Similarly, the phrase "licensee, permittee or exemptee" may be read to encompass anyone engaged in conduct requiring a license or exemption.

At the very least, the language of sections 31(a) and 31(c), read together, reveals an ambiguity about the intent of Congress that justifies recourse to legislative history as an aid to construction. The Commission therefore has the latitude and the responsibility to look behind the words of section 31 to determine and implement the intent of Congress. Moreover, the commenters' arguments about "plain meaning" ignore the Supreme Court's pronouncement in *American Trucking* and other judicial decisions cited by Order No. 502.[7] As *American Trucking* holds, where the literal words of a statute lead to "absurd or futile" results, the courts look "beyond the words to the purpose of the act," and even when the language does not "produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole,'" the courts follow "the purpose rather than the literal words."[8] When aid to construction of the meaning of statutory words is available "there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" [9]

This approach is likewise reflected in *Commodity Futures Trading Commission v. Savage*, where the U.S. Court of Appeals ruled that certain trading violations under the Commodity Exchange Act, applicable by statute to persons "registered under this Act," also covered trading advisors who should have registered but had failed to do so. "It would be anomalous, indeed," said the Court, "if an advisor could escape the fiduciary duties of [the statute] by avoiding required registration." [10]

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[4] *See, e.g.*, EEI Orange & Rockland and Upper Peninsula.

[5] *See, e.g.* EEI and Orange & Rockland.

[6] The legislative history confirms that Congress intended the civil penalty remedy to be available for any problem covered by subsection (a) of section 31. According to the House Committee, civil penalties could be applied "for failure or refusal to comply with a subsection (a) order or any matter referenced in subsection (a) or for violations of such matters or orders." H.R. Rep. No. 99–507; 99th Congress, 2nd Sess. at 40.

[7] U.S. v. American Trucking Associations, Inc. *et al.*, 310 U.S. 534 (1940); Commodity Futures Trading Commission v. Savage, 611 F.2d 270 (9th Cir. 1980).

[8] American Trucking at 543. *See also* Trans Alaska Pipeline Rate Cases, 436 U.S. 631, 643 (1978), where the Court said: This Court, in interpreting the words of a statute, has "some 'scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning would lead to absurd results * * * or would thwart the obvious purpose of the statute' . . . [b]ut it is otherwise 'where no such consequences would follow and where * * * it appears to be consonant with the purposes of the act * * *'" (citations omitted)

[9] American Trucking, 310 U.S. at 543–545.

[10] Commodity Futures Trading Commission v. Savage at 281–282. At the time of the alleged trading

Continued

Likewise, the Commission believes it would be anomalous if the operator of a jurisdictional project could escape civil penalties even in the most egregious circumstances by avoiding required licensing.

Petitioners' reading leads to the result that while the Commission's authority to investigate is broad, its authority to enforce its investigations is narrow. This reading of the statute leads to absurd results and is contrary to the legislative history. As order No. 502 found, the legislative history of section 31 indicates that Congress intended civil penalties to apply not only to holders of licenses or exemptions but also to those who are required to have a license but have failed to secure one. The civil penalties section originated in the House. When the divergent views of the House and Senate were reconciled in conference, the resulting conference report had no specific discussion of civil penalties. Rather, that conference report addressed "the principal differences between the Senate bill, the House amendment and the substitute agreement." [11] Consequently, the House Committee Report is the most authoritative legislative history as to the civil penalties provisions. The House Committee explained that the purpose of the enforcement section was to buttress and improve the Commission's capability in dealing with certain concerns. The very first concern highlighted by the House Committee Report was the problem of unlicensed hydroelectric projects, a problem the Committee described by quoting from certain testimony by Edward G. Horn, chief ecologist for the New York State Department of Environmental Conservation.

EEI argues the Commission misconstrued the legislative history. On the basis of a single reference to "grandfathered" projects near the end of a 20-line quotation that otherwise deals exclusively with unlicensed operations, EEI claims Mr. Horn's testimony was really a plea not for more enforcement remedies against unlicensed projects but for an amendment of the Act to require licenses for grandfathered projects. EEI's contention is inaccurate and also beside the point. Mr. Horn's full testimony [12] on this issue indicates he was concerned both about unlicensed projects and grandfathered projects and recommended additional enforcement powers for the Commission to deal with unlicensed operations as well as new legislation to subject grandfathered projects to Commission regulation. In terms of the legislative history of section 31, however, what is significant is not Mr. Horn's testimony, per se, but the point the Committee was making by quoting from it. The Committee italicized the portion of the quote it found most significant as follows:

> *At the present time, numerous hydroelectric stations throughout the country, particularly in the Northeast, are being operated without licenses or exemptions from licensing.* [13]

It is obvious that the Committee was using the Horn quotation to explain its concern about unlicensed jurisdictional projects, not grandfathered projects which require no license. Congress was not proposing to change the status of grandfathered projects and can hardly have intended a lawful activity to be the focus of greater enforcement effort.

EEI next argues that when the House Committee said it expected the Commission "to locate projects that are being operated without legal authority and to enforce the law" [14] it was merely exhorting the Commission to use its preexisting powers to seek compliance with the Act. Order No. 502 reads the language to imply that the new enforcement authority (*i.e.*, civil penalties) could be used to bring unlicensed jurisdictional projects into compliance. EEI's contrary contention ignores the context of the Committee's statement.

The Committee first quoted a number of concerns about enforcement that had been mentioned by Mr. Horn in his testimony (including the problem of unlicensed projects), and then concluded:

> *These concerns* * * * indicate that FERC enforcement efforts need buttressing and improvement. *That is the purpose of this section.* [15]

Therefore, the Committee clearly contemplated that the new enforcement tools of section 31 of the Act would be used to improve the Commission's enforcement efforts in dealing with the concerns that had already been identified, including the problem of unlicensed operations.

Finally, EEI advances policy arguments against imposing civil penalties on unlicensed operators. It argues that the failure to seek Commission authority may result from a good faith disagreement over difficult jurisdictional issues, and that the threat of civil penalties may unfairly prompt unlicensed operators to submit to Commission jurisdiction despite having serious doubts about that jurisdiction.

The Commission is not persuaded by EEI's policy arguments. There may indeed be circumstances in which it will be inappropriate to impose civil penalties on unlicensed operators just as there will be situations when it may be unfair to impose penalties in connection with violations by holders of a license, permit or exemption. However, the fact that civil penalties may sometimes be inappropriate is not a valid argument for exempting unlicensed operators from civil penalties in all circumstances—even, for example, where a jurisdictional determination has been made by the Commission and the project is harmful to public health, safety or the environment. This rule does not purport to decide the precise circumstances in which civil penalties will be imposed or the amount of those penalties. Such determinations will be made by the Commission in particular factual contexts and on the basis of numerous considerations, including the broad factors listed in § 385.1505 of the Commission's regulations.[16] The Commission retains ample discretion to assure fair treatment while also meeting its responsibility to protect public health, safety and the environment.

Moreover, the argument that civil penalties should never apply to unlicensed operators because their failure to seek a license may result from a disagreement with the Commission on intricate questions of jurisdiction ignores the fact that disputes about difficult legal or factual issues are hardly unqiue to unlicensed operators.[17] Allegations that a license holder has violated the terms or conditions of its license or a Commission rule or order

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violations, the Commodity Act made it unlawful for a trading advisor "registered under this Act" to employ various fraudulent devices. Subsequently, the phrase "registered under this Act" was removed from the statute to make clear that persons required to register but failing to do so were covered. Savage argued that because he was not registered at the time of the alleged violations and because Congress had not yet changed the law, the provision did not apply to him. The court acknowledged that the subsequent deletion of the troublesome phrase might suggest that a gap existed prior to the amendment. It concluded, however, that the statute should always have been interpreted to apply to persons *required* to register and that the amendment merely clarified that interpretation.

[11] H. Rep. No. 99–934, 99th Cong., 2nd Sess. at 21.

[12] Hearings before the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce on H.R. 44, H.R. 1615, H.R. 1959, and H.R. 2605, 99th Cong., 1st Sess., 85–102 (1985) (statement of Edward G. Horn, New York State Department of Environmental Conservation).

[13] H.R. Rep. No. 99–507, 99th Cong., 2nd Sess. at 39 (1986) (emphasis in original).

[14] *Supra* note 12.

[15] *Supra* note 13 (emphasis added).

[16] 18 CFR 385.1505 (1988).

[17] Also, violations of other Commissions orders may be committed by unlicensed operators who do not dispute jurisdiction and may indeed be in the process of applying for a license.

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may also give rise to difficult legal and factual questions and to assertions by the licensee that it simply has a good faith disagreement with the Commission or its staff. The Commission's experience with civil penalties under the Natural Gas Policy Act of 1978 indicates that arguments of this kind are frequently made by natural gas companies as well. Such arguments, however, do not support blanket immunity from civil penalties. A civil penalty will not be imposed until after a final determination by the Commission that the project in question is jurisdictional [18] and is being operated without legal authority, but may be assessed back to the effective date of ECPA. Unlicensed operators are provided with ample procedural opportunities to challenge any element of the alleged violation including the issue of jurisdiction.

EEI's concern that the threat of civil penalties may persuade an unlicensed operator to submit to Commission jurisdiction is really a general objection to civil penalties as a remedy, especially where, as here, Congress has fixed a maximum penalty for each day the violation continues.[19] The classic purpose of civil penalties is to encourage compliance with the law. It is therefore not surprising that civil penalties do give the Commission greater enforcement authority which should encourage greater compliance both by license holders and by those who operate as licensees. This is what Congress intended. As the Commission observed in Order No. 502, because "the stakes are now higher," persons should be more inclined to request a jurisdictional determination from the Commission before embarking on the construction or operation of a hydropower project that may be jurisdictional.

Similarly, the Commission rejects EEI's argument that while civil penalties may be imposed for violations of any rule or regulation under Part I of the Act, violations of the terms or conditions of licensees, permits and exemptions under Part I or violations of a compliance order, section 31 bars the Commission from assessing penalties for violations of Part I itself. We do not accept the artificial distinction EEI attempts to draw between the statute and regulations and licenses under the statute of orders designed to assure compliance with the statute. Violations of Part I of the Act are already embraced in the other actions specified as subjecting persons to civil penalties, and Commission rules, regulations and compliance orders cover not only the holders of a license but those who are required to have a license. In other words, any person who violates a rule or regulation issued under Part I, who violates the terms and conditions of a license, permit or exemption under Part I, or who violates an order requiring compliance with Part I, is violating Part I. The artificial character of EEI's argument is underscored by the fact that the Commission can at any time formally incorporate the statutory standards into its own regulations. Whether or not civil penalties are available as a remedy does not turn on such arid formalism.

Assessment of Civil Penalties From ECPA's Enactment Date

EEI and Georgia Power contend that the Commission should revise the civil penalties rule so that it applies only to prospective violations. They claim that they should not face penalties under a new set of rules for violations that may have occurred before the rule issued. They argue that although ECPA provided a framework within which civil penalties would be assessed, many aspects of the civil penalties rule could not be foreseen based on a reading of ECPA, and that, therefore, retroactive application of the civil penalties rule would be unjust.

ECPA provides the Commission the authority to assess civil penalties as a means to enforce the Act. Project owners were on notice from the enactment of ECPA that they might be subject to civil penalties for violations of the Act. The Commission's regulations simply established the procedures for assessing these civil penalties. The Commission explained in its notice of proposed rulemaking (NOPR) in this docket that section 31(c) is silent as to whether Congress intended to give the Commission authority to assess a civil penalty for violations of the Act occurring prior to the enactment of ECPA.[20] The Commission, therefore, proposed in § 385.1503 to apply the civil penalty provisions of section 31 of the Act prospectively, and declared that the rules would apply to conduct occurring only on or after enactment of ECPA, even if that conduct began before that date.

It is disingenuous for those subject to the requirements of the Act to claim that prior to adoption of our regulations here, they had no notice that violations of the Act could subject them to assessment of civil penalties. ECPA clearly places violators of the Act at risk for assessment of civil penalties, and those operating under the Act should have known upon its enactment that as of that date they ran the risk of being assessed civil penalties for improper conduct. Accordingly, we affirm that licensees, permittees, or exemptees are subject to assessment of civil penalties for improper conduct occurring on or after the date of enactment of ECPA. Regarding projects that should have a license or exemption but do not, civil penalties will be assessed in these situations after issuance of an order establishing Commission jurisdiction, but the liability for civil penalties will extend to improper conduct occurring on or after the date of enactment of ECPA.

Section 31(a) Compliance Order Procedures

Section 31 of the Act has four subsections. Subsection (a) affirms the Commission's authority to monitor and investigate compliance with licenses, permits and exemptions issued for hydroelectric projects. This subsection also provides the Commission authority to issue compliance orders which, if violated, provide the basis for enforcement action under subsections (b) or (c). Subsection (b) states the conditions under which the Commission may issue an order revoking a license or exemption. Subsection (c) sets forth the persons subject to a civil penalty, the conduct which may subject those persons to a civil penalty, and factors which the Commission will take into account in determining the amount of the proposed penalty. Subsection (c) also provides that no civil penalty will be assessed where revocation is ordered. Subsection (d) establishes alternative civil penalty assessment procedures.

EEI argues that the Commission should provide guidelines and procedural protections for the issuance of compliance orders pursuant to section 31(a) of the Act. It is concerned

[18] For the purposes of discussion in this order, "jurisdictional" means required to be licensed pursuant to section 23(b)(1) of the FPA, 16 U.S.C. 817(1). *See* Cooley v. FERC, 843 F.2d 1464 (D.C. Cir. 1988).

[19] Georgia Power also argues that the Commission should not assess civil penalties until there has been a final, nonappealable determination that a project is subject to the Act. Order No. 502 already concluded that the Commission would not stay its penalty orders on a generic basis, but would exercise its administrative discretion on a case-by-case basis. Order No. 502 also stated, at p. 31,221, that "the mere filing of an appeal does not free any person from liability for engaging in unlawful conduct that is subject to civil penalty."

[20] *See* Procedures for the Assessment of Civil Penalties under section 31 of the Federal Power Act, Notice of Proposed Rulemaking, 52 FR 29,216 (Aug. 6, 1987), FERC Stats. & Regs. [Proposed Regulations 1982–1987] ¶ 32,450 (Aug. 3, 1987).

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particularly with those situations where the owner or an unlicensed project is faced with the assessment of civil penalties for not having a license, and the question of whether penalties should be assessed is one of Commission jurisdiction over the project. EEI requests the Commission to identify: (1) the factors or circumstances that may lead the Commission to issue a compliance order; (2) the Commission staff member or members with authority to issue the orders; and (3) the procedural protections that will be afforded project owners before any order is issued.

Additionally, EEI argues that if a compliance order must issue, it should be under sufficient guidelines, and with sufficient procedural protections, to ensure that the project owner gets a fair result. According to EEI, at a minimum project owners must be notified of an impending compliance order and given an opportunity to respond in writing. The Commission should also provide that it will consider the project owner's response before issuing a compliance order and that it will base its decision on the entire public record before it, including the owner's response. Upper Peninsula argues further that section 31 of the Act and its legislative history require a formal evidentiary hearing prior to issuance of a compliance order pursuant to section 31(a) of the Act.

It is unnecessary to establish regulations for issuing compliance orders pursuant to section 31(a).[21] Presently, the Office of Hydropower Licensing (OHL) initiates a compliance order proceeding by sending the project owner a letter indicating that the owner may be subject to action pursuant to section 31 of the Act. The letter identifies the problems the project owner must address and indicates that the owner must respond within a specified period of time. The owner then has the opportunity to respond to the letter in writing, setting forth reasons why the proposed action, including assertion of Commission jurisdiction over a project, should not be taken. The Director of OHL then either terminates the action or issues a compliance order pursuant to § 375.314 of the Commission's regulations. An owner's failure to comply with the compliance order will subject the owner to civil penalties under Subpart O of Part 385 of the Commission's regulations. The Commission believes these procedures will give project owners ample notice and opportunities to respond in writing prior to triggering the procedures for assessment of civil penalties.[22]

Consideration of Additional Factors

EEI argues that the Commission should revise the list of factors in § 385.1505 that it will consider when determining the amount of a proposed penalty to: (1) exclude consideration of a project owner's history of past violations, (2) exclude consideration of unknowing violations and (3) indicate that the economic benefits factor will only be considered if a project owner knowingly engaged in a violation with the goal of economic gain. EEI argues further that, at the very least, the Commission should consider only those past violations that occurred on the project owner's watch at the project in question and relevant to the violation in question. EEI contends that to consider alleged violations at projects other than the one under consideration would unfairly prejudice multiple project owners, for whom the risk of past violations is higher in proportion to the number and size of their projects.

The Commission assesses civil penalties based on a careful weighing of the seriousness of the violation and any mitigating factors that may be present. The Commission explained in Order No. 502 that in considering the nature of a present violation it will take into account the violator's compliance history. An increased penalty is necessary for a repeat violator in order to encourage compliance and to protect the environment and provide greater public safety. In contrast, a first time violator should not be penalized as severely as a repeat violator.

Next, the Commission will not adopt by generic regulation a knowing violation standard that Congress did not impose. There is no statutory requirement that a violation be a knowing one before being subject to civil penalties.

The Commission is sensitive to the fact that its enforcement actions must be fair as well as effective. Whether a violation is knowing will therefore be an important consideration in the individual proceedings that will determine what civil penalties, if any, are applied in specific factual circumstances. However, in the absence of more extensive experience with civil penalties, the Commission is not prepared to adopt on its own as a universal requirement a particular legal standard that carries with it an extensive judicial gloss and has the potential to encourage prolonged disputes that a concern for fairness may not require.

By the Commission. Commissioner Trabandt dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

Trabandt, Commissioner, *Dissenting*

The majority has largely ignored the legal arguments I presented in my August 17, 1988 dissent in this proceeding as well as several persuasive legal and policy concerns contained in the petitions for rehearing, and for this reason I must again dissent.

The first six pages in my August 17th dissent discuss *current* standards of statutory construction. "Plain meaning" principles of statutory construction were also discussed in the joint petition for rehearing filed by the Edison Electric Institute, the National Hydropower Association, the American Paper Institute, and the National Rural Electric Cooperative Association (EEI Petition) at pages 7–10, as well as in the petition for rehearing filed by Orange & Rockland (O&R) at pages 6–12. Both petitions highlight the conclusion contained in my dissent that recent case law establishes current standards for statutory interpretation.

However, the majority insists on *U.S. v. American Trucking Ass'n, Inc.*, 310 U.S. 534, 543 (1940) as dispositive precedent for statutory interpretation (slip op. at 5–7) and ignores the 48 years of Supreme Court cases since *American Trucking* which have sharpened the focus on the plain meaning of the statute, in order to fulfill what the majority has determined to be one of the "purposes" of the Electric Consumers

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[21] *See* Regulations Delegating Authority, 53 FR 16,058 at (May 5, 1988); III FERC Stats. & Regs. ¶ 30,814 at 31,119 (1988), where the Commission stated:

> The Commission is delegating to the Director [of Hydropower Licensing] the authority to require a licensee or an applicant to take actions necessary to comply with the Commission's dam safety regulations or actions that are otherwise necessary to protect human life, health, property, or the environment. This delegation would make enforcement action by the Commission more rapid and effective. (citations omitted)

Specifically, § 375.314(h) of the Commission's regulations authorizes the Director to:

> For any unlicensed or unexempted hydropower project, take the following actions.
>
> (1) Conduct investigations to ascertain the Commission's jurisdiction,
>
> (2) Make preliminary jurisdictional determinations, and
>
> (3) If a project has been preliminarily determined to require a license, issue notification of the Commission's jurisdiction; require the filing of a license application; and require that actions necessary to comply with Part 12 of this chapter or otherwise protect human life, health, property, or the environment are taken.

[22] Georgia Power complains that certain self-reporting requirements regarding license violations recently imposed in a Commission compliance letter to it are inconsistent with the notice and hearing requirements in section 31(a), with language in the preamble to the Commission's final rule and with section 6 of the Federal Power Act, which requires agreement of the licensee prior to any alteration of the license. Georgia Power mischaracterizes the letter as one requiring compliance. In fact, the letter represents only a contact with Georgia Power regarding violations of the terms of a project license that had no adverse consequences and about which no further action was deemed necessary.

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Protection Act of 1986 (ECPA). In so doing, the majority is usurping the role of Congress. As O&R pointed out in its Petition at page 22, the Supreme Court cautioned that the "broad purposes" of legislation must not be invoked at the expense of the actual terms of the statute. In *Board of Governors of Federal Reserve System v. Dimension Financial Corporation*, 474 U.S. 361 (1986), the Court reasoned:

Application of 'broad purposes' of legislation at the expense of specific provisions ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action. Congress may be unanimous in its intent to stamp out some vague social or economic evil; however, because its Members may differ sharply on the means for effectuating that intent, the final language of the legislation may reflect hard fought compromises. Invocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself takes no account of processes of compromise and, in the end, prevents the effectuation of congressional intent. *Id.* at 373. *See also* EEI Petition at page 15 and cases cited therein.

In addition to the legal flaws contained in the majority's order, there are factual ones as well. As discussed in my August 17th dissent (slip op. at 8–11) and in EEI's Petition (at 7–9), the majority misuses the Congressional testimony of Edward G. Horn, chief ecologist for New York State Department of Environmental Conservation, which was contained in the House Report on ECPA. As EEI's Petition points out, all of Mr. Horn's concerns apply equally to lawfully unlicensed projects and unlawfully unlicensed projects. In the instant order, the majority once again distorts the legislative history by using Mr. Horn's remarks for the proposition that Congress intended section 31(c) penalties to apply to unlicensed owners. Moreover, delving into the legislative history at the expense of the plain words of the statute treads dangerous ground as the D.C. Circuit Court recently opined in *Abourezk v. Reagan*, 785 F.2d 1043 (D.C. Cir. 1986):

[W]e think it plainly wrong as a general matter * * * to regard committee reports as drafted more meticulously and as reflecting the congressional will more accurately than the statutory text itself. Committee reports, we remind, do not embody the law. Congress, as Judge Scalia recently noted, votes on the statutory words, not on different expressions packaged in committee reports. *Hirschey v. FERC*, 777 F.2d 1, 7–8 & n.1 (D.C. Cir. 1985) (Scalia, J., concurring).

EEI's Petition also highlights other administrative civil penalty statutes and pointed out that these enactments including section 31(c), are similar in form and, because they address the same subject matter—administrative enforcement by civil penalty—should be read together to ascertain the meaning of any one (EEI Petition at 10–15). Examples cited are section 234(a) of the Atomic Energy Act of 1954, and section 11901 of the Interstate Commerce Act as extensively amended in 1978. EEI argues that there is no reason to suggest that Congress meant anything other than what it said in section 31(c) inasmuch as Congress has in other enactments taken care precisely to delimit the scope of civil penalty liabilities in terms of the entities against which penalties may be assessed. The instant rehearing order fails to address this important point.

I do not wish to diminish the genuine concern with which my colleagues view the unlicensed projects issue, though in my view at least this should not concern us as much as my colleagues seem to think. However, notwithstanding our disagreement on the gravity of the problem, it is important to note that the Commission for many years has had procedures in place to effectively deal with unlicensed projects without the use of civil penalties, another fact the majority completely ignores.

For example, in the so-called *Androscoggin* decision, *Public Service Co. of New Hampshire*, 27 F.P.C. 830 (1962), the Commission identified three principal factors to be taken into account when considering cases involving the unlicensed project issue: (1) to the extent feasible, it is the burden of a sound licensing policy to minimize the inequity of an unlicensed project owner reaping a windfall from a delay in filing for a required license; (2) the Commission's past failure, for want of funds or manpower, to enforce general compliance and the large number of projects that had operated without a license since 1935 indicated the need for a discriminating approach in order to effectively address the unlicensed project issue; and (3) in regard to termination date of a license, it was reasonable to shorten the license term to take account of significant 1943 decisions holding navigable a stream usable for log transport, and thus giving notice of the perils of further unlicensed operation to the owner of a project in such a stream. So the Commission fixed December 3, 1993—fifty years after that 1943 notice—as the termination date of the Androscoggin license.

Moreover, several years after *Androscoggin*, the D.C. Circuit Court enhanced the Commission's ability to deal effectively with the unlicensed project issue by citing with approval the *Androscoggin* decision and by expressly holding that the Commission has statutory authority to assign an effective date for licenses issued to a project owner earlier than the date of issuance of license when the project involved was one constructed or maintained without a license in violation of law. *See Niagara Mohawk Power Corporation v. FPC*, 379 F.2d 153 (D.C. Cir. 1967). This procedure could include in appropriate cases the assessment of substantial back payments of annual charges. In addition, if unlawful construction of projects is the majority's concern, the Commission has ample authority to enjoin such violation of the Act under section 314(a) of the Federal Power Act of which the Commission's enforcement staff has availed itself in recent years. Clearly, the Commission is not defenseless and instead has developed a formidable arsenal of procedural weaponry to encourage unlicensed project owners to file for licenses if required by law.

In any event, the 1986 amendments to the Federal Power Act made by the Electric Consumers Protection Act (ECPA) *do not* in any substantive way address unlicensed hydroelectric operation. Indeed, the House Report which is so enthusiastically embraced as justification for the majority's decision, refers to unlicensed operation as an "alleged problem." The House Committee Report *does not* recommend or even suggest that the Commission must or should apply civil penalties to unlicensed hydroelectric projects. Instead the House Report merely opines that it expects the Commission to locate projects that are being operated without legal authority and to enforce the law, and directs the Commission to make a "report to the Committee within six months about this *alleged problem*." (Emphasis added.) It is hard to fathom that Congress would have prescribed such a punitive measure without some specific discussion as to why it is necessary, particularly in light of the House Committee's request to obtain further information in the form of a Commission Report on the "alleged problem." I for one have never seen the report, and in any event, if Staff did send such a report, Congress has not seen fit to act or acknowledge a need for the Commission to act.

At the November 16, 1988, Commission Meeting, all of my colleagues agreed that the imposition of civil penalties of $10,000 a day with possibly retroactive effect to October 16, 1986, the date ECPA became law, is an extraordinary measure with serious due process implications. Yet, without any hard evidence that extraordinary measures are needed, the majority has adopted a flawed interpretation of section 31 of the FPA that will have the effect of chilling efforts to legitimately offer counter arguments to Commission determinations of jurisdiction. I submit that such an effect is clearly not in the public interest.

This persuades me that the more rational approach is to continue with the procedures already in place for dealing with unlicensed projects which have been effectively implemented for many years. By staying this course, we will be able to perform our responsibilities and, at the same time, abandon the strained interpretation of section 31 that will unnecessarily and illegally permit the Commission to use civil penalties as a cudgel to coerce unlicensed projects to accept Commission determinations of jurisdiction.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88–29108 Filed 12–16–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committees

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its advisory committee regulations to provide that, when a member of the uniformed services, including a member of the Commissioned Corps of the Public Health Service, is appointed to serve on an advisory committee, he or she is not appointed as a special Government employee. Rather, the person's advisory committee duties would be regarded as part of the person's assigned functions as a member of the Commissioned Corps or other service.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: With some exceptions, existing regulations provide that persons selected to serve on FDA's advisory committees are appointed as special Government employees. In staffing its advisory committees, FDA sometimes wishes to select appropriately qualified persons who are members of the uniformed services, including the Commissioned Corps of the Public Health Service. However, an obstacle to this course of action is that members of the uniformed services may not hold dual Government appointments. Accordingly, FDA is amending its regulations to provide that, when members of the Commissioned Corp or other uniformed services serve on FDA's advisory committees, they do so as part of their assigned functions in the Federal Government or the Commissioned Corps or other service, without appointment as special Government employees.

Because this rule relates to agency management and personnel, it is exempt from the usual requirements of notice, public procedure, and delayed effective date. (See 5 U.S.C. 553(a)(2).)

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: 5 U.S.C. 5332 note; 15 U.S.C. 1451 et seq.; 21 U.S.C. 41 et. seq.; 141 et seq., 321–371, 467f(b), 679(b), 821, 1031 et seq.; 42 U.S.C. 201 et seq.; 257a; 21 CFR 5.10.

2. Section 14.80 is amended by revising paragraphs (a)(2) and (b)(l)(ii) to read as follows:

§ 14.80 Qualification for members of standing policy and technical advisory committees.

(a) * * *

(2) Are subject to the conflict of interest laws and regulations either as special Government employees or as members of the uniformed services, including the Commissioned Corps of the Public Health Service (the Commissioner has determined that, because members representing particular interests, e.g., a representative of labor, industry, consumers, or agriculture, are included on advisory committees specifically for the purpose of representing these interests, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services which the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services); and

* * * * *

(b) * * *

(l) * * *

(ii) Except for members of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), are subject to the conflict of interest laws and regulations either as special Government employees or as members of the uniformed services, including the Commissioned Corps of the Public Health Service.

* * * * *

3. Section 14.95 is amended by revising paragraph (a) to read as follows:

§ 14.95 Compensation of advisory committee members.

(a) (1) Except as provided in paragraphs (a) (2) and (3) of this section, all voting advisory committee members shall, and nonvoting members may, be appointed as special Government employees and receive a consultant fee and be reimbursed for travel expenses, including per diem in lieu of subsistence, unless such compensation and reimbursement are waived.

(2) Members of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) are not appointed as special Government employees. Any member of TEPRSSC who is not a Federal employee or member of the uniformed services, including the Commissioned Corps of the Public Health Service, shall receive a consultant fee and be reimbursed for travel expenses, including per diem in lieu of subsistence, unless such compensation and reimbursement are waived.

(3) Voting and nonvoting advisory committee members who are members of the uniformed services, including the Commissioned Corps of the Public Health Service, provide service on Food and Drug Administration advisory committees as part of their assigned functions, are not appointed as special government employees, but are reimbursed by the Food and Drug Administration for travel expenses.

* * * * *

Dated: December 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–29029 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 14

Advisory Committees; Establishment and Termination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of the Dental Products Panel and the termination of the Dental Devices Panel. This document revises the agency's list of standing advisory committees to show these actions.

EFFECTIVE DATE: December 19, 1988.

Authority for the Panel will remain in effect until amended or terminated by the Commissioner of Food and Drugs.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 and 21 CFR 14.40(b)), FDA announces the establishment of the Dental Products Panel (the Panel). The Panel will review and evaluate available data concerning the safety and effectiveness of dental devices currently in use and advise the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification of these devices into one of three regulatory categories: Class I (general controls), class II (performance standards), or class III (premarket approval); recommend the assignment of a priority for the application of

regulatory requirements for devices classified in the standards or premarket approval category, advise on any possible risks to health associated with the use of devices; advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; review classification as appropriate; recommend exemptions to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advise on the necessity to ban a device; and respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Panel also will function at times as an over-the-counter (OTC) drug advisory panel. As such, the Panel will review and evaluate data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use and the adequacy of their labeling, and will advise the Commissioner on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The Panel will evaluate data and make recommendations concerning the approval of new drug products for human use and whether various prescription drug products should be changed to OTC status.

Because this is a technical amendment to Part 14, the Commissioner finds under 21 CFR 10.40(c), (d), and (e) that notice, public procedure, and delayed effective date are unnecessary and contrary to the public interest.

Concurrently with the establishment of this Panel, the Commissioner terminated the Dental Devices Panel.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: 5 U.S.C. 5332 note; 15 U.S.C. 1451 et seq.; 21 U.S.C. 41 et. seq.; 141 et seq., 321–371, 467f(b), 679(b), 821, 1031 et seq.; 42 U.S.C. 201 et seq.; 257a; 21 CFR 5.10.

2. Section 14.100 is amended by revising paragraph (d)(1)(iv) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(d) * * *

(1) * * *

(iv) *Dental Products Panel.* (*a*) Established March 5, 1988.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. Reviews and evaluates data concerning the safety and effectiveness of over-the-counter (OTC) drug products for human use and makes appropriate recommendations to the Commissioner.

* * * * *

Dated: December 13, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–29049 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 176

[Docket No. 85F–0427]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the copolymer of acrylic acid and 2-acrylamido-2-Methylpropanesulfonic acid, including its ammonium/alkali metal mixed salts, as a scale inhibitor in the manufacture of paper and paperboard intended for use in contact with food. This action responds to a petition filed by Calgon Corp.

DATES: Effective December 19, 1988; written objections and requests for a hearing by January 18, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 17, 1985 (50 FR 42095), FDA announced that a petition (FAP 5B3886) had been filed by Calgon Corp., Pittsburgh, PA 15230, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of the copolymer of acrylic acid and 2-acrylamido-2-methylpropanesulfonic acid as a scale inhibitor in the manufacture of paper and paperboard in contact with food. Subsequently, in a notice published in the **Federal Register** of August 19, 1986 (51 FR 29612), FDA announced that the filing of the petition by Calgon Corp. had been amended to include the use of ammonium/alkali metal mixed salts of the copolymer in addition to the acid form of the copolymer.

FDA has reviewed the safety of both the additive and the starting materials used to manufacture the additive as well as the byproducts associated with the manufacturing process. Although the additive itself has not been found to cause cancer, it has been found to contain minute amounts of unreacted acrylonitrile monomer (a carcinogenic reactant used in the manufacture of the additive). Residual amounts of reactants and manufacturing aids, such as acrylonitrile monomer, are commonly found as contaminants in chemical products including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of

containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

The agency calculated the estimated daily intake of the copolymer of acrylic acid and 2-acrylamido-2-methyl-propanesulfonic acid, including its ammonium/alkali metal mixed salts, based on several factors, including the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles. The agency estimated the daily intake of the additive to be less than 15 micrograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing in this case. However, the agency has reviewed available data from acute toxicity studies on the additive. No adverse effects were reported in these studies.

Because the additive, which may contain acrylonitrile monomer, has not been shown to cause cancer, the anticancer clause does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (49 FR 13018; April 2, 1984). The risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Acrylonitrile Monomer

Based on the fraction of the daily diet that may be in contact with surfaces containing the copolymer of acrylic acid and 2-acrylamido-2-methyl-propanesulfonic acid, including its ammonium/alkali metal mixed salts, and on the level of acrylonitrile monomer that may be present in the additive, FDA estimated the hypothetical worst case exposure to acrylonitrile monomer from this use of the additive as a scale inhibitor in the manufacture of paper and paperboard to be 15 nanograms per person per day (Ref. 3). The agency used data from two carcinogenicity studies on acrylonitrile monomer fed to rats to estimate the upper bound limit of lifetime human risk from this chemical stemming from the proposed use of the additive (Ref. 4). The results of the bioassays on acrylonitrile monomer showed that the material was carcinogenic for rats under the conditions of the studies. The test material caused significantly increased incidence of carcinogenic tumors at many tissue sites.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on acrylonitrile monomer. The committee further concluded that an estimate of the upper bound level of human risk from potential exposure to acrylonitrile monomer stemming from the proposed use of the additive could be calculated from the bioassays.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiments to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of 15 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to acrylonitrile monomer from the use of the subject additive is 3×10^{-8} or less than 3 in one hundred million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to this impurity is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to acrylonitrile monomer that might result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of acrylonitrile monomer that may be present in the additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which acrylonitrile monomer may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than an extremely low level, and (2) the upper bound limit of lifetime risk from exposure to acrylonitrile monomer, even under worst

case assumptions, is very low, less than 3 in 100 million.

C. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and effective, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs," in "Food Safety: Where Are We?", Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," Eds., F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated October 24, 1986, from Regulatory Food Chemistry Branch to Indirect Additive Branch, "Acrylonitrile (AN) monomer, exposure estimate."

4. Memorandum of Conference dated November 24, 1981, of the Cancer Assessment Committee, "Acrylonitrile Risk Assessment."

5. Memorandum dated October 30, 1986, from Additive Evaluation Branch to Indirect Additive Branch, "Acrylic acid/2-acrylamido-2-methyl propane sulfonic acid (60:40) as scale inhibitor. [176.170]"

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before January 18, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulations to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry in the table to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	

List of substances	Limitations
Acrylic acid copolymer with 2-acrylamido-2-methylpropane-sulfonic acid (CAS Reg. No. 40623–75–4) and/or its ammonium/alkali metal mixed salts. The copolymer is produced by polymerization of acrylic acid and 2-acrylamido-2-methylpropane-sulfonic acid in a weight ratio of 60/40, such that a 28 percent by weight aqueous solution of the polymer has a viscosity of 75–150 centipoises at 25 °C as determined by LV-series Brookfield viscometer (or equivalent) using a No. 2 spindle at 60 r.p.m.	For use only as a scale inhibitor prior to the sheet-forming operation in the manufacture of paper and paperboard and used at a level not to exceed 1.0 kilogram (2.2 pounds) of copolymer per 907 kilograms (1 ton) of dry paper and paperboard fibers.
* * * * *	

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Dated: December 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–29045 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

24 CFR Part 4100

Organization and Channeling of Functions

AGENCY: Neighborhood Reinvestment Corporation.

ACTION: Final rule.

SUMMARY: Pursuant to the Freedom of Information Act (FOIA), the Corporation may impose search and duplication fees in response to FOIA requests. This final rule amends the Corporation's rules on fees and fee waivers so that (1) the fees will reflect more accurately the Corporation's direct (actual) costs of providing the services and (2) the fees will conform with the Freedom of Information Act of 1986.

DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Nance Frazier, Director of Communications, Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005, telephone (202) 376–3224.

SUPPLEMENTARY INFORMATION:

A. Background

The Corporation's existing Freedom of Information Act fee regulations appear at 24 CFR 4100.4(d). They provide in essence, that fees will be charged for

FOIA services at a rate of $10.00 per hour for searching and $.10 per page for copying. The regulations also provide that such fees may be waived or reduced when the Executive Director determines such a waiver or reduction "is in the public interest because furnishing the information can be considered as primarily benefiting the general public." When the charge will total less than $3.00, the fee may be waived.

The Corporation now wishes to amend its FOIA fee regulations pursuant to the Freedom of Information Reform Act.

B. Discussion

The Corporation received one public comment on its proposed FOIA fee amendments. This comment, from The Reporters Committee for Freedom of the Press, raised four issues.

First, the commentator questioned the appropriateness of the definition of "news" contained in § 4100.4(d)(1)(iii) of the proposed regulations, suggesting that it would require the Corporation to determine what information is "about current events" or is "of current interest to the public." This was not the intention of the Corporation and it therefore amends the definition of representative of the news media to refer to any person actively gathering "information for an entity that is organized and operated to publish or broadcast news to the public" and deletes the definition of "news" from the regulation.

Second, the commentator objected to the factors that may be considered by the Corporation when reviewing requests for fee waivers or reduction of fees outlined in § 4100.4(d)(8) of the proposed regulations, commenting that these factors reflect the guidance of the Department of Justice and are in conflict with the legislative history of the Reform Act. In this instance, the Corporation believes that the factors listed are not necessary and therefore deletes them.

Third, the commentator objected to the provision permitting the Corporation to require advance payment of estimated charges in certain situations, suggesting that this will interfere with the Corporation's prompt provision of information and the media's timely dissemination of information. In response, the Corporation has further limited the instances in which an advance payment may be required.

Finally, in response to the commentator's objection to the proposed duplication charge of $.30 per page for paper photocopies of existing paper records, the Corporation has reviewed its direct cost calculations and amends § 4100.4(d)(9)(iv)(A) to reflect a new figure of $.10 per page.

List of Subjects in 24 CFR Part 4100

Organization and channeling of functions, Freedom of Information.

Carol J. McCabe,

Secretary.

The Neighborhood Reinvestment Corporation hereby amends Part 4100, Chapter 25 of Title 24, Code of Federal Regulations, as set forth below:

PART 4100—ORGANIZATION AND CHANNELING OF FUNCTIONS

1. The authority citation for Part 4100 is revised to read as follows:

Authority: Title VI, Pub. L. 95–557, 92 Stat. 2115 (42 U.S.C. 8101 *et seq.*); as amended by sec. 315, Pub. L. 96–399, 94 Stat. 1645; sec. 710, Pub. L. 97–320, 96 Stat. 1544; and sec. 520, Pub. L. 100–242, 101 Stat. 1815.

§ 4100.4 Inquiries.

2. In § 4100.4, paragraph (a) is amended to change the Corporation's address from "1850 K Street NW., Suite 400, Washington, DC 20006" to "1325 G Street NW., Suite 800, Washington, DC 20005".

3. In § 4100.4, paragraph (c)(1) is amended to remove the last sentence.

4. In § 4100.4, paragraph (d) is revised to read as follows:

(d) *Fees for providing copies for records.* Fees shall be assessed pursuant to the Freedom of Information Act (5 U.S.C. 552) in order to recover the full allowable direct costs of providing copies of records. For purposes of this section, the term "direct costs" means those expenditures which the Corporation actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a Freedom of Information Act ("FOIA") request. Direct costs include, for example, the salaries of the employees performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The term "review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to exise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. A schedule based on these principles is set forth in paragraph (d)(9) of this section.

(1) *Categories of requesters.* Fees will be assessed according to the category of the requester. There are four categories:

(i) *Commercial use requesters.* For purposes of this section, the term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the Corporation shall seek additional clarification before assigning the request to a specific category.

(ii) *Educational and noncommercial scientific institution requesters.* For purposes of this section, the term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis, as that term is used in paragraph (d)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is made as authorized by and under the auspices of a qualifying institution, and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requesters who are representatives of the news media.* For purposes of this section, the term

"representative of the news media" refers to any person actively gathering information for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look at the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester must meet the criteria above, and his or her request must not be made for a commerical use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(iv) *All other requesters.*

(2) *Limitations on fees to be charged*— (i) *Commercial use requesters.* Commercial use requesters shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at paragraph (d)(9) of this section. Commercial use requesters are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational and noncommercial scientific institution requesters.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for search or review.

(iii) *Requesters who are representatives of the news media.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for research or review.

(iv) *All other requesters.* Requesters who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(v) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(vi) *Additional Copies.* The Corporation will normally furnish only one copy of any record. The allowance of 100 free pages of duplication under paragraphs (d)(2) (ii), (iii), and (iv) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each such additional copy.

(3) *Charges for unsuccessful search.* Where applicable under paragraph (d)(2) of this section search fees may be assessed for time spent searching, even if the Corporation fails to locate the records or if records located are determined to be exempt from disclosure.

(4) *Notice of anticipated fees in excess of $25.00.* Unless the person making the request states in his or her initial request that he or she will pay all costs regardless of amount, the Corporation will notify him or her as soon as possible if there is reason to believe that the cost for obtaining access to and/or copies of such records will exceed $25. If such notice is given, the time limitations contained in the Freedom of Information Act shall not commence until the person making the intitial request agrees in writing to pay such cost.

(5) *Advance Payments.* The Communications Director is authorized to require an advance payment of an amount up to the full estimated charges whenever he or she determines that:

(i) The allowable charges that a requester may be required to pay are likely to exceed $250 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or

(ii) A requester has previously failed to pay a fee charged in a timely manner.

If such a payment is required, the time limitations contained in the Freedom of Information Act shall not commence until payment is made.

(6) *Charging Interest.* The Corporation will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Receipt of the fee by the Corporation, even if not processed, will stay the accrual of interest. Interest is not chargeable for unpaid advance payments under paragraph (d)(5) of this section.

(7) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation may aggregate any such requests and charge accordingly.

(8) *Waiver or reduction of fee.* The Corporation will furnish documents without charge or at a reduced charge when it is determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commercial interest of the requester. In making a request for a waiver or reduction of fees, a requester should include a clear statement of his or her interest in the requested documents: The proposed use for the documents and whether the requester will derive income or other benefit from such use; and a statement of how the public will benefit from such use. Determinations concerning waiver or reduction of fees shall be made by the Executive Director, or his or her designee.

(9) *Schedule of fees.* Fees for searching for, reviewing, duplicating, and providing records and information of the Corporation under this section will be assessed in accordance with the following schedule:

(i) *Manual search.* For each quarter hour or fraction thereof: $3.37.

(ii) *Computer search.* For each quarter hour or fraction thereof: $3.37.

(iii) *Review.* For each quarter hour or fraction thereof: $4.87.

(iv) *Duplication.*

(A) For a paper photocopy of an existing paper record, $.10 per page.

(B) For duplication of records other than existing paper records (such as computer-stored information, audio or video tapes, microfiche or microfilm), the fee shall equal the actual direct cost of production and duplication of the records or information in a form that is reasonably usable by the requester.

(10) *Processing Costs.* The Communications Director will waive payment in instances in which the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

[FR Doc. 88—29031 Filed 12–16–88; 8:45 am]

BILLING CODE 7570–01–M

VETERANS ADMINISTRATION

38 CFR Part 4

Addition of Metric Measurements to the Table of Ratings of Central Visual Acuity Impairment

AGENCY: Veterans Administration.

ACTION: Technical amendment.

SUMMARY: On October 2, 1978, the Veterans Administration (VA) published a final rule in the **Federal Register** on pages 45348 through 45362. Part of the rule added metric measurements to the Table for Ratings of Central Visual Acuity Impairment. In Table V, the VA neglected to include the percentage "30" in the block in which vision measured as 20/70 (6/21) in each eye intersects. That error is hereby corrected.

EFFECTIVE DATE: September 22, 1978.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3005.

SUPPLEMENTARY INFORMATION:

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

38 CFR Part 4 is amended as set forth below:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

§ 4.84a [Amended]

2. Table V of § 4.84a is amended by adding the percentage "30" in the block in which vision measured as 20/70 (6/21) in each eye intersects.

Dated: December 12, 1988.

C.G. Verenes,

Acting Chief, Directives Management Division.

[FR Doc. 88–28910 Filed 12–16–88; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 21

Extension of Independent Living Services Program

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: These final amendments change vocational rehabilitation regulations governing the provision of programs of independent living services. The Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986 extended the period during which programs of independent living services may be furnished eligible veterans under the vocational rehabilitation program through September 30, 1989. The final regulatory amendments implement the changes contained in the law and make other related changes designed to improve administration of these services.

EFFECTIVE DATES: These amendments are effective October 28, 1986, except for the changes contained in §§ 21.162(c) and 21.294(b). Those changes are effective December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2886.

SUPPLEMENTARY INFORMATION: At pages 9125 through 9128 of the **Federal Register** of March 21, 1988, the Veterans Administration (VA) published proposed regulations implementing provisions of the Omnibus Veterans' Improvement and Health Care Authorization Act of 1986 and to make related changes in rules governing the program of independent living services. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. We received one comment. The commenter suggested that the program could be improved if the law (38 U.S.C. 1520) was amended to allow utilization of for-profit facilities to provide the entire program of independent living services to veterans the VA had determined to be in need of such a program.

Under the law, programs of independent living services may only be furnished by public or private not-for-profit agencies. The commenter indicated he realized that his suggestion was probably beyond the scope of suggestions which could be considered, but he wished to draw attention to the issue. The commenter is correct in his assumption that recommendations for changes in these statutory provisions cannot be made within the context of considering suggestions or objections to these regulations. Several editorial and technical changes were made to the text. Neither of the changes made are of such a nature as to significantly amend the substance of the original proposal and republication of the final regulations for comment is not necessary. Therefore, these rules are adopted.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These final regulatory amendments are retroactively effective, except for §§ 21.162(c) and 21.294(b), which are effective upon the date of publication. These are interpretative rules which, with the exception of §§ 21.162(c) and 21.294(b), implement certain provisions of Pub. L. 99–576. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The final amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy. The final regulatory amendments which enable the VA to utilize private, for-profit agencies to provide independent living services as a part of a vocational rehabilitation program will only affect the few agencies providing these services and will not have any significant effect on small businesses. Other changes only concern the eligibility and participation of individual veterans in this program.

The Administrator certifies that these final amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these final rules are therefore exempt from the initial and final regulatory analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Number is 64.116.

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List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan program, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 25, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.35, paragraphs (f)(2), (h), (i)(1)(i), and the authority citation following paragraph (i) are revised to read as follows:

§ 21.35 Definitions.

* * * * *

(f) * * *

(2) A program of independent living services and assistance (see paragraph (d) of this section) for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible; or

(Authority: 38 U.S.C. 1501(6); Pub. L. 99–576)

* * * * *

(h) *Vocational goal.* (1) The term "vocational goal" means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests;

(2) The term "achievement of a vocational goal is reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances does not prevent the veteran from successfully pursuing a vocational rehabilitation program and becoming gainfully employed in an occupation consistent with the veteran's abilities, aptitudes, and interests;

(3) The term "achievement of a vocational goal is not currently reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances at the time of the determination:

(i) Prevent the veteran from successfully achieving a vocational goal at that time; or

(ii) Are expected to worsen within the period needed to achieve a vocational goal and which would, therefore, make achievement not reasonably feasible.

(Authority: 38 U.S.C. 1501(8), 1501(9)(A)(i), Pub. L. 99–576)

(i) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible, such services include:

* * * * *

(Authority: 38 U.S.C. 1501(9); Pub. L. 99–576)

2. In § 21.45 paragraph (a) and the authority citation for the section are revised to read as follows:

§ 21.45 Extension beyond basic period of eligibility for a program of independent living services.

* * * * *

(a) The veteran's medical condition (service and non-service-connected disabilities) is so severe that achievement of a vocational goal is not currently reasonably feasible, or

* * * * *

(Authority: 38 U.S.C. 1503(d); Pub. L. (99–576)

3. In § 21.50 paragraph (b)(5) and the authority citation which follows paragraph (b)(9) are revised to read as follows:

§ 21.50 Initial evaluation.

* * * * *

(b) * * *

(5) Determine as expeditiously as possible, without extended evaluation, whether achievement of a vocational goal is currently reasonably feasible.

* * * * *

(9) * * *

(Authority: 38 U.S.C. 220, 1506(d), 1516; Pub. L. 99–576)

* * * * *

4. In § 21.53 paragraphs (e) and (f) are revised to read as follows:

§ 21.53 Reasonable feasibility of achieving a vocational goal.

* * * * *

(e) *Criteria for reasonable feasibility not met.* (1) When the VA finds that the provisions of paragraph (d) of this section are not met, but the VA has not determined that achievement of a vocational goal is not currently reasonably feasible, the VA shall provide the rehabilitation services contained in § 21.35(i)(1)(i) of this Part as appropriate;

(2) A finding that achievement of a vocational goal is not currently reasonably feasible without providing the services contained in § 21.35(i)(1)(i) of this Part requires:

(i) Consultation with the Vocational Rehabilitation Panel; and

(ii) Compelling evidence which establishes that achievement of a vocational goal is not currently reasonably feasible beyond any reasonable doubt.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99–576)

(f) *Responsible staff.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division shall determine whether achievement of a vocational goal is:

(1) Reasonably feasible; or

(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99–576)

5. In § 21.57 paragraphs (a) and (c) are revised to read as follows:

§ 21.57 Extended evaluation.

(a) *Purpose.* The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.

(Authority: 38 U.S.C. 1506(c), Pub. L. 99–576)

* * * * *

(c) *Determination.* The determination of the current reasonable feasibility of a vocational goal will be made at the earliest time possible during an extended evaluation, but no later than the end of the period of evaluation or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor.

(1) When a vocational goal is currently reasonably feasible, an Individualized Written Rehabilitation Plan (IWRP) will be developed as indicated in § 21.84 of this Part.

(2) When a vocational goal is not currently reasonably feasible, information developed in the evaluation will be the basis for recommendations and referral to the Vocational Rehabilitation Panel. The panel will consider the case under provisions of § 21.62(b) of this Part.

(Authority: 38 U.S.C. 1506(d), Pub. L. 99–576)

6. In § 21.62 paragraph (b)(3) and the authority citation following it are revised to read as follows:

§ 21.62 Duties of the Vocational Rehabilitation Panel.

* * * * *

(b) * * *

(3) *Rehabilitation not currently reasonably feasible.* The panel will review each finding by VR&C staff that a rehabilitation program is not currently reasonably feasible, if the panel has not previously participated in consideration of the case. This includes:

(i) A finding that vocational rehabilitation is not currently reasonably feasible; or

(ii) A finding that a program of independent living services is not currently reasonably feasible because:

(A) The veteran's level of independence cannot be measurably improved; or

(B) Such a program is medically contraindicated at this time.

(Authority: 38 U.S.C. 1506(a), Pub. L. 99–576)

* * * * *

7. In § 21.70 paragraph (b)(1)(i) and the authority citation at the end of paragraph (b) are revised to read as follows:

§ 21.70 Vocational rehabilitation.

* * * * *

(b) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible such needed services include:

* * * * *

(Authority: 38 U.S.C. 1501(9); Pub. L. 99–576)

* * * * *

8. In § 21.74 paragraphs (a), (c)(2), (c)(3) and the authority citation at the end of paragraph (c) are revised to read as follows:

§ 21.74 Extended evaluation.

(a) *General.* An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is currently reasonably feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in § 21.57(b) of this part.

(Authority: 38 U.S.C. 1506(a); Pub. L. 99–576)

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is a reasonable certainty that the current feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain technical assistance from the Vocational Rehabilitation Panel in each veteran's case before granting an extension of a period of extended evaluation.

(3) An extension beyond a total period of 18 months for additional periods of up to 6 months each may only be approved by the counseling psychologist if there is a substantial certainty that a determination of current feasibility may be made within this extended period. The concurrence of the Director, Vocational Rehabilitation and Education Service is also required for this extension.

(Authority: 38 U.S.C. 1505(a), 1506(b); Pub. L. 99–576)

9. Section 21.86 is revised to read as follows:

§ 21.86 Individualized extended evaluation plan.

(a) *Purpose.* The purpose of an IEEP is to identify the services needed for the VA to determine the veteran's current ability to achieve a vocational goal when this cannot reasonably be determined during the initial evaluation.

(Authority: 38 U.S.C. 1507; Pub. L. 99–576)

(b) *Elements of the plan.* An IEEP shall include the same elements as an IWRP except that:

(1) The long range goal shall be to determine achievement of a vocational goal is currently reasonably feasible;

(2) The intermediate objectives relate to problems of questions which must be resolved for the VA to determine the current reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1507(a); Pub. L. 99–576)

10. In § 21.90 paragraph (a) is revised to read as follows:

§ 21.90 Individualized independent living plan.

(a) *Purpose.* The purpose of the IILP is to identify the steps through which a veteran, whose disabilities are so severe that a vocational goal is not currently reasonably feasible, can become more independent in daily living within the family and community.

(Authority: 38 U.S.C. 1509; Pub. L. 99–576)

* * * * *

11. In § 21.160 paragraphs (c)(2) and (c)(4) and the authority citation following paragraph (c) are revised to read as follows:

§ 21.160 Independent living services.

* * * * *

(c) * * *

(2) As part of an extended evaluation to determine the current reasonable feasibility of achieving a vocational goal;

* * * * *

(4) As a program of rehabilitation services for eligible veterans for whom achievement of a vocational goal is not currently reasonably feasible. This program of rehabilitation services may be furnished to help the veteran:

(i) Function more independently in the family and community without the assistance of others or a reduced level of the assistance of others;

(ii) Become reasonably feasible for a vocational rehabilitation program; or

(iii) Become reasonably feasible for extended evaluation.

(Authority: 38 U.S.C. 1504(a)(15); Pub. L. 99–576)

* * * * *

12. In § 21.162, paragraph (b)(1) is removed and paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) are redesignated paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) respectively; paragraph (a), the heading and introductory text of paragraph (b), paragraphs (b)(2), and paragraph (c) are revised to read as follows:

§ 21.162 Participation in a program of independent living services.

(a) *Approval of a program of independent living services.* A program of independent living services and assistance is approved when:

(1) The VA determines that achievement of a vocational goal is not currently reasonably feasible;

(2) The VA determines that the veteran's independence in daily living can be improved, and the gains made can reasonably be expected to continue following completion of the program;

(3) All steps required by §§ 21.90 and 21.92 of this Part for the development and preparation of an Individualized Independent Living Plan (IILP) have been completed; and

(4) The Vocational Rehabilitation and Counseling Officer concurs in the IILP.

(Authority: 38 U.S.C. 1509, 1520, Pub. L. 99–576)

(b) *Special considerations affecting the Director, Vocational Rehabilitation and Education Service.* The Director, Vocational Rehabilitation and Education Service, shall consider the following factors in administering the program of independent living services:

* * * * *

(2) To the maximum extent feasible, a substantial portion of veterans provided with programs of independent living services and assistance shall be receiving long-term care in VA medical centers and nursing homes;

* * * * *

(c) *Limitations.* (1) A program of independent living services and assistance may not be approved after September 30, 1989. Programs authorized prior to that date may be continued until completion or other termination;

(2) Any contract for services initiated before September 30, 1989, may be continued in effect for the purpose of providing necessary services and assistance;

(3) The limitations on provision of independent living services by for-profit agencies and facilities to veterans for whom such services constitute the

whole of a program are not applicable to veterans being provided independent living services as a part of a rehabilitation program during periods identified in § 21.160 (c)(1), (c)(2), and (c)(3) of this Part. For-profit agencies and facilities may be used to provide specific independent living services as a part of a rehabilitation program during the periods described above under the following conditions:

(i) Necessary services are not reasonably available through public or private nonprofit agencies; and

(ii) The facility meets the criteria contained in § 21.294(c) of this Part.

(Authority: 38 U.S.C. 1504(a)(15), Pub. L. 99-576)

13. In § 21.294 paragraph (b)(2) is revised and paragraph (b)(3) is added to read as follows:

§ 21.294 Selecting the training or rehabilitation facility.

* * * * *

(b) * * *

(2) The VA will only utilize public and nonprofit agencies to furnish independent living services, when such services constitute the whole of a rehabilitation program. These facilities must be:

(i) VA medical centers which provide independent living services;

(ii) Facilities which meet standards established by the State rehabilitation agency for rehabilitation facilities or for providers of independent living services; or

(iii) Facilities which are neither approved nor disapproved by the State rehabilitation agency, but are determined by the VA to be able to provide necessary services in an individual veteran's case.

(3) The VA may utilize for-profit facilities and agencies to provide specific independent living services as a part of a rehabilitation program under the conditions specified in § 21.162(c) of this part. These agencies and facilities must meet the standards established by local, state (including the State rehabilitation agency), and federal agencies which are applicable to for-profit facilities and agencies offering independent living services.

(Authority: 38 U.S.C. 1515, 1520(a), Pub. L. 99-576)

* * * * *

[FR Doc. 88-28930 Filed 12-16-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3494-6]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Visibility Protection; Long-Term Strategy and Implementation Control Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the general plan provisions and long-term strategy for visibility in a revision to the Louisiana State Implementation Plan (SIP). This action is a result of rulemaking on November 24, 1987 (52 FR 45132), in which EPA disapproved SIPs of States which failed to comply with the provisions of 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). Additional details are discussed in the proposed rulemaking on March 12, 1987 (52 FR 7802).

The Governor of Louisiana submitted a SIP Revision for Protection of Visibility on October 26, 1987. Supplemental information was submitted on June 16, 1988. Review of the SIP revision indicated that Louisiana has met the criteria of 40 CFR 51.302 and 51.306. Consequently, this notice also revokes the November 24, 1987, Federally promulgated plan for Louisiana.

DATES: This action will become effective on February 17, 1989, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Tom Diggs, Chief (6T-AN), SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, 625 North 4th Street, Baton Rouge, Louisiana 70804.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Air Programs Branch, SIP/NSR Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 655-7214 or (FTS) 255-7214. Reference Docket File Number LA-87-2.

SUPPLEMENTARY INFORMATION:

Background

A. Regulatory Requirements and Litigation Challenges

Section 169A of the Clean Air Act, 42 U.S.C. 7491, sets as a national goal "* * * the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Section 169A requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wildernesses, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400 through 81.437. Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* In broad outline, the visibility regulations require 36 States listed in § 51.300(b) to (1) coordinate SIP development with the appropriate Federal land managers (FLMs), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" identified by the end of 1985 by the FLMs as critical to the visitor's enjoyment of the Class I areas. The regulations required the States to submit to EPA their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the Court stayed the litigation pending EPA action

on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under Section 110 of the Act to promulgate visibility SIPs.

B. Settlement Agreement

A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to promulgate Federal Implementation Plans (FIPs) for visibility in States where SIPs are deficient with respect to the 1980 visibility regulations. Specifically, the first part of the agreement required EPA to propose and promulgate FIPs which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States on October 23, 1984, at 49 FR 42670. Louisiana submitted its Part I Plan on October 4, 1985, and EPA approved it on June 10, 1986, at 51 FR 20967.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIPs to remedy any deficiencies on a specified schedule.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined the SIPs of 32 States were deficient with respect to the remaining visibility provisions.

A revised settlement agreement required EPA to propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and long-term strategies and allowed EPA to defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal land managers (FLMs) have certified to EPA. As currently revised, the agreement allows EPA until August 31, 1989, to propose remedies for existing impairment in certain of the affected areas. See 53 FR 35956 (September 15, 1988).

On March 12, 1987, at 52 FR 7802, EPA proposed to disapprove the SIPs of 32 States (including Louisiana) for failing to meet the general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306. There, EPA proposed that control strategies to remedy existing impairment were unnecessary in the SIPs for 28 States (including Louisiana) and deferred a decision on the necessity of best available retrofit technology (BART) in four States (Arizona, Maine, Minnesota, and Utah).

The States were given the opportunity to avoid Federal promulgation of the FIPs if they submitted revisions to EPA by August 31, 1987. Three States (Georgia, Florida, and Kentucky) met this deadline. Several States (including Louisiana) submitted draft or final SIPs after the August 31 date. The settlement agreement required EPA to promulgate FIPs for States which failed to meet the submittal deadline. Therefore, on November 24, 1987, at 52 FR 45132, EPA promulgated FIPs for 29 States (including Louisiana) to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306.

C. Today's Action

On October 26, 1987, the Governor of Louisiana submitted a Part II SIP Revision for Protection of Visibility to meet the visibility general plan requirements and long-term strategies. Supplemental clarifying information was submitted on June 16, 1988. The SIP revision is entitled "Louisiana State Implementation Plan Revision: Protection of Visibility: Proposed Part II Long Term Strategy, October 26, 1987." EPA has reviewed the State's submittal and developed an evaluation report.[1] The report concludes that the Louisiana SIP revision meets all of the requirements for a Part II Visibility Protection Plan as outlined in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. Today's action approves the Louisiana SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. Today's action also revokes the FIP promulgated for Louisiana on November 24, 1987, at 52 FR 45132.

Louisiana has only one mandatory Class I area which is the Breton National Wildlife Refuge. The refuge consists of a chain of small islands and surrounding water stretching from near the mouth of the Mississippi River to the Mississippi Coast near the City of Gulfport, Mississippi. No other Class I areas currently exist in the State. The SIP commits the State to visibility protection consistent with the Clean Air Act to be afforded within the refuge area boundary. The SIP is to be reviewed every three years and revised as necessary.

[1] Evaluation Report for the Louisiana Part II Visibility Protection Plan in Mandatory Class I Federal Areas, July 1988.

Requirements

A. General Plan Requirements

The visibility regulations provide general plan requirements for the visibility SIPs. Section 51.302 sets specific State (and EPA in lieu of States) and FLM coordination requirements which must occur when developing a SIP. The general plan requirements of § 51.302(c) require that the SIPs include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal;

2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources;

3. Provisions to protect integral vistas identified pursuant to § 51.304;

4. Provisions to address any existing impairment certified by the FLM; and

5. A long-term (10–15 years) strategy for making reasonable progress toward the national goal.

(See 52 FR 7803 and 52 FR 45133 for further discussion on the general plan requirements and the process for developing control strategies to remedy existing impairment.)

The regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources.

B. Long-Term Strategy

The regulations require that the long-term strategy be a 10 to 15-year plan for making reasonable progress toward the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLMs have declared at least 6 months before plan submission. A long-term strategy must be developed which covers each Class I area within the State and each Class I area in another State that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The long-term strategy and SIP must provide for the review of the impact of new sources (see § 51.307). The State must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and
6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The State must commit to periodic review of the SIP on a schedule not less frequent than every 3 years. A periodic report must be developed in consultation with the FLMs and must contain the following:

1. Progress achieved in remedying existing impairment;
2. The ability of the long-term strategy to achieve reasonable progress toward the national goal;
3. Any change in visibility conditions since the last report or since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;
5. The progress achieved in implementing BART and meeting other schedules laid out in the long-term strategy;
6. The impact of any exemption granted under § 51.303; and
7. The need for BART to remedy existing impairment in an integral vista declared since plan approval.

C. Integral Vistas

Where the FLM has adopted an integral vista under § 51.304, the regulations require the State to (1) analyze for BART any facility where impairment in an integral vista has been reasonably attributed to that facility, (2) consider any integral vistas established 12 months prior to SIP submittal in its long-term strategy, and (3) coordinate with the FLMs on any permit application under the Prevention of Significant Deterioration (PSD) program where the proposed facility or modification may affect visibility in an integral vista. The FLM identified only one integral vista, and that one is located in Maine (see 46 FR 22707). Therefore, EPA proposed to disapprove only the State of Maine's SIP for failing to provide for the protection of these vistas. Thus, the visibility protection plan requirements for integral vistas (§§ 51.302 through 51.307) are applicable only for Maine.

D. Federal Remedy

On November 24, 1987, at 52 FR 45132, EPA disapproved the SIPs of 29 States (including Louisiana) for failing to comply with the provisions in EPA's existing regulations for visibility protection in mandatory Class I Federal areas dealing with impairment which can be reasonably attributed to a source. EPA also incorporated Federal implementation plans into the SIPs of these States to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306. These actions were proposed on March 12, 1987, at 52 FR 7802 and are in accordance with the settlement agreement with the EDF.

State Submittal

A. General Plan Requirements/FLM Coordination

Under Section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within a Class I area. The FLM must maintain these areas consistent with congressional land use goals. The visibility regulations (40 CFR 51.302) allow the FLM the opportunity to identify visibility impairment and to recommend elements for inclusion in the long-term strategy.

The State of Louisiana has met the visibility general plan requirements of § 51.302. The State has accorded the FLM opportunities to participate and comment on its visibility SIP revision. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program.

The Louisiana Part II Visibility Protection Plan incorporated into the SIP revision the following: (1) A determination that there is no existing visibility impairment that is reasonably attributable to specific sources; (2) a discussion of the SIP elements and how each element of the plan relates to the national goal; and (3) a long-term (10–15 years) strategy. Since no existing reasonably attributable impairment has been identified, all elements of the plan are intended to prevent future impairment of visibility. If existing reasonably attributable impairment is later identified, the State will revise its plan to remedy the impairment. Currently, there are no integral vistas in Louisiana.

B. Long-Term Strategy

The Louisiana visibility long-term strategy section included the following: (1) coordination with the FLM; (2) consideration of the six required factors for a long-term strategy; (3) a provision for the review of the impact of new sources; and (4) provisions for periodic review (i.e., every 3 years) of the plan, which review must include consultation with the Federal land manager and a report to the public and to EPA on progress toward the national goal.

C. EPA Evaluation Summary

These provisions meet EPA criteria and EPA is approving this phase of the plan. EPA has reviewed the State's submittal and developed an evaluation report. The report shows that the Louisiana SIP revision meets all of the requirements for a Part II Visibility Protection Plan as specified in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy).

Final Action

By this notice, EPA is approving the Louisiana SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. (One should reference the March 12, 1987, notice for additional information.) The SIP commits to a 3 year periodic review and making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. This SIP revision remedies the deficiencies for all the remaining visibility requirements of Subpart P (i.e., §§ 51.302 and 51.306) as identified in the November 24, 1987 (52 FR 45132), Federally promulgated plan. Consequently, this notice also revokes that Federal promulgation for Louisiana.

EPA has reviewed these revisions to the Louisiana SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Date: December 13, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart T, is amended as follows:

PART 52—[AMENDED]

Subpart T—Louisiana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(47) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(47) Part II of the Visibility Protection Plan was submitted by the Governor on October 26, 1987.

(i) Incorporation by reference.

(A) Revision entitled, "Louisiana State Implementation Plan Revision: Protection of Visibility: Proposed Part II Long-Term Strategy, October 26, 1987". This submittal includes a visibility long-term strategy and general plan provisions as approved and adopted by the Secretary of the Louisiana Department of Environmental Quality on October 26, 1987.

(B) Letter dated October 26, 1987, from Secretary of Louisiana Department of Environmental Quality (LDEQ), to the Governor approving the SIP revision.

(ii) Additional material.

(A) Letter dated June 16, 1988, from Administrator, Air Quality Division, LDEQ, to Chief, SIP/New Source Section (6T–AN), EPA Region 6, committing to make its three-year periodic review report available to the public as well as to EPA.

§ 52.989 [Removed]

3. Section 52.989, Visibility protection, is removed.

[FR Doc. 88–29054 Filed 12–16–88; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 385 and 386

[FHWA Docket No. MC–123]

RIN 2125–AB46

Safety Fitness Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: Section 215 of the Motor Carrier Safety Act of 1984 directs the Secretary of Transportation, in cooperation with the Interstate Commerce Commission (ICC), to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers. The FHWA is reissuing the Safety Fitness Procedures Rule, Part 385. The FHWA is also making a minor amendment to Part 386 (§ 386.72) to clarify existing procedures in the context of this rule. The provisions of this part are applicable to motor carriers conducting operations in interstate or foreign commerce which are subject to the Federal Motor Carrier Safety Regulations. The purpose of this rule is to establish procedures to assign motor carriers safety ratings of "satisfactory," "conditional," or "unsatisfactory."

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Office of Motor Carrier Safety Field Operations, (202) 366–2698, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829) (the Act) was enacted on October 30, 1984. Section 215 of the Act provides that the Secretary of Transportation, in cooperation with the ICC, shall by rule, after notice and opportunity for comment, establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers. In response to this mandate, FHWA is adopting regulations applicable to motor carriers conducting operations in interstate or foreign commerce which are subject to the Federal Motor Carrier Safety Regulations.

On June 25, 1986, the FHWA issued a notice of proposed rulemaking (NPRM) (51 FR 23088, Docket No. MC–123; Notice No. 86–6) to request comments regarding the proposed changes. All comments to the docket were to be received on or before August 11, 1986. The comment period was extended to September 12, 1986, in response to a petition from the American Trucking Associations, Inc. (ATA).

Summary of Notice of Proposed Rulemaking

The NPRM established proposed procedures for determining the safety rating of a motor carrier through an on-site visit at the motor carrier's principal place of business. The rating would be based on the findings of a safety compliance review with respect to the carrier's safety procedures and operating results. Consideration would also be given to the carrier's past compliance record including improvement or lack thereof over previous safety audits, its accident record, and violations of state-related statutes or regulations. Safety ratings are assigned on a case-by-case basis.

The NPRM proposed that all unrated motor carriers file a one-time questionnaire with the FHWA. Motor carriers would be classified according to principal cargo transported and assigned a priority basis for receiving the questionnaire. The information collected from the questionnaire would be used to update the motor carrier census and to assist in prioritizing carriers for personal contact by FHWA safety specialists. New entrants into the motor carrier industry would be required to file the questionnaire for the purpose of registering with the FHWA and supplying information for updating the motor carrier census and prioritizing carriers for on-site contacts.

Comments were requested regarding the use of a motor carrier's identification number, which is assigned to the carrier

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by FHWA when its identity is entered into the Computerized Management Information System.

The NPRM proposed that a motor carrier that has received an unsatisfactory safety rating could not operate until it has taken action to correct the deficiencies that resulted in such rating.

Further, the proposed rule stated that any motor carrier may petition the FHWA for a review of its safety rating.

Finally, the NPRM contained a penalty provision for failure to make timely filing of the questionnaire, for furnishing misleading information, or for making false statements upon the questionnaire.

Following a review and evaluation of the comments, several proposals in the NPRM were modified, or deleted and replaced.

Final Rule Summary

Section 215 of the Motor Carrier Safety Act of 1984 (the Act) directs the Secretary of Transportation, in cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional motor carrier operating authority.

The rule establishes a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings. These assigned ratings are either "satisfactory," "conditional," or "unsatisfactory." The rule establishes a "safety fitness standard" which the FHWA shall use as its satisfactory benchmark for assigning safety ratings. All previously assigned safety ratings will remain in effect unless changed in accordance with this rule.

In addition, the rule establishes the "safety rating" procedures. The safety ratings are used to assign motor carriers to three new national safety programs that have been developed by FHWA. These programs are the "Educational and Technical Assistance Program," "Selective Compliance and Enforcement Program," and "Commercial Accident Prevention and Evaluation Program." These programs were developed to: (1) Ensure that motor carriers are meeting the safety fitness standard; (2) provide an enforcement framework to systematically deal with problem carriers including "imminently hazardous" carrier operations that require immediate action by the motor carrier to eliminate serious hazards to the motoring public; (3) identify safety countermeasures relevant to specific causes of accidents; and finally, (4) measure the effectiveness of FHWA's activities and the safety regulations in reducing commerical motor vehicle accidents.

The rule requires all unrated motor carriers conducting operations in interstate or foreign commerce to file a one-time Motor Carrier Identification Report, Form MCS–150. A new motor carrier shall file a Form MCS–150 within 90 days after beginning operations. The purpose of this report is to identify previously unknown carriers, to update the motor carrier census, to require the carrier to certify that it is familiar with the Federal Motor Carrier Safety Regulations and, to assist FHWA in prioritizing motor carriers for safety review contacts.

Finally, the rule provides for safety ratings being made available to the public upon request; to the ICC for consideration of operating authority applications and self insurance; to the Department of Defense in the selection of carriers to transport hazardous materials; to shippers for carrier selection purposes; and to insurance companies to assist in risk determinations.

The following paragraphs discuss:

1. Issues raised in the NPRM
2. FHWA policy considerations regarding new national programs, sanctions, and Safetynet
3. Section-by-section review of the final rule
4. Regulatory impact
5. Economic impact pursuant to the Regulatory Flexibility Act
6. List of subjects in 49 CFR Part 385.

I. Issues Raised in NPRM

A total of 31 responses were received regarding the NPRM published in the June 1986 **Federal Register**, the majority of which were from associations and councils collectively representing several thousand motor carriers of various types. Twenty-two of the respondents expressed support for the NPRM with various modifications from the proposed procedures. Three respondents were opposed to the concept of safety fitness determinations for motor carriers. The remainder of the respondents did not indicate a preference. Discussions follow with respect to the primary issues.

A. Questionnaire

The NPRM proposed that all unrated motor carriers be required to file a questionnaire which would furnish certain historical data on the carrier's operations for the past 3 calendar years. This historical data would include the average number of drivers used, the average number of power units used having a gross vehicle weight rating in excess of 10,000 pounds, the total annual commercial motor vehicle miles, the number of reportable accidents, the number of incidents involving hazardous materials releases required to be reported to the Department of Transportation (DOT). Also included on the questionnaire would be the number of state and local driver traffic violations, the number of times drivers or vehicles were placed out-of-service by Federal, state, or local officials, and pertinent financial responsibility information.

The majority of the comments supported the use of a questionnaire for the collection of historical data on a motor carrier's operation. They believed that most motor carriers could provide the information requested in the questionnaire with accuracy and without excessive burden since this information is already retained for a variety of industry reasons or is required by regulations issued by other governmental agencies.

Several opponents questioned the credibility of self-reported accident and violation data. Some comments pointed out that even if amnesty were granted for failure to report accidents to the FHWA, the same motivation for failing to report the information initially would still exist. It was argued by some that many motor carriers do not retain certain information requested in the proposed questionnaire and it would be burdensome to summarize the data that is available to respond to the questionnaire.

Specific comments of the Petroleum Marketers Association of America, representing 11,000 members, expressed concern that providing "operational data" for 3 preceding years would be an especially burdensome task and would require considerable preparation time.

Finally, the Private Carrier Conference, Inc., stated that the proposed questionnaire will be burdensome to private motor carriers in that those carriers will have to essentially reconstruct their past 3 years of trucking operations. It was noted that, in the past, private motor carriers have not been required to maintain records necessary to answer some of the questions. For instance, unlike for-hire motor carriers, private motor carriers need not report cargo classifications to the Interstate Commerce Commission or to state agencies.

In summary, while there is general support for obtaining historical motor carrier data, comments regarding the contents and use of the questionnaire have caused the FHWA to reevaluate

the merits of the use and contents of the questionnaire.

Therefore, FHWA has eliminated a number of data items and reduced the number of years for which data must be reported from three years to one year. The FHWA believes that the streamlined data set will provide safety information important for the FHWA and for motor carriers. The new form, known as the Motor Carrier Identification Report, Form MCS–150, requires minimum data that will (1) identify previously unknown motor carriers operating in interstate or foreign commerce, (2) update the motor carrier census, (3) require the motor carrier to certify that it is familiar with the Federal Motor Carrier Safety Regulations, and (4) assist the FHWA in prioritizing motor carriers for safety reviews. The Form MCS–150 will replace Form MCS–137, Description of Motor Carrier Operations.

The Motor Carrier Identification Report consists of three parts: (1) Part A: *Filing Entity*—name of motor carrier and trade name, if any; principal office address; telephone number; and ICC MC number, if any; (2) Part B: *Operating Information*—cargo check list; transportation of hazardous materials inquiry; average number of power vehicles and drivers used for the past 12 months; and total vehicle miles traveled; and (3) Part C: *Certification Statement.* By signing and dating the document, the representative of the filing entity certifies that the information given is true and correct, and that he/she is familiar with the Federal Motor Carrier Safety Regulations.

The Motor Carrier Identification Report will be designated Form MCS–150, and will be available from all regional and division motor carrier safety offices nationwide and from the Office of Motor Carrier Information Management and Analysis, Washington, D.C. New motor carriers are required to file the Motor Carrier Identification Report within 90 days after beginning operations. All unrated motor carriers currently conducting operations in interstate or foreign commerce are required to file a one-time Motor Carrier Identification Report within 90 days after the effective date of this rule. This provision does not apply to a motor carrier that has received a safety rating from the FHWA, since similar information on rated carriers is already a matter of record in the FHWA Management Information System. Completed forms are to be filed with the Federal Highway Administration, Office of Motor Carriers, Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590. A motor carrier needs to file the Motor Carrier Identification Report only once.

B. Due Process Provision

Another issue raised by some commenters, was that they believed the NPRM did not provide adequate due process safeguards for a motor carrier assigned an unsatisfactory safety rating, because the NPRM automatically prohibited the carrier from operating in interstate or foreign commerce until it has taken, and certified to the FHWA that it has taken remedial action. Thirteen respondents, including the larger motor carrier associations and councils, were adamant in their recommendations that an appropriate due process procedure be written into the final rule. The proposed provision that a motor carrier receiving an unsatisfactory safety rating is automatically prohibited from further operations was deleted from the final rule. Any order issued by the FHWA for a motor carrier to cease all or part of its operations will be processed under the provisions of 49 CFR Part 386, Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, and other applicable regulations.

C. Cease Operations and Certifications

Another issue of major concern generated by the NPRM was whether the FHWA had exceeded its statutory authority by including in the "unsatisfactory" safety rating a provision that a motor carrier must cease operations in interstate or foreign commerce until it has certified that corrective action has been taken. Some respondents contended that this proposal improperly exceeds the power granted to the Secretary by Congress at 49 U.S.C. 521(b)(5)(A). This section gives the Secretary authority to order an employer to cease all or part of its operations for violations that pose an imminent hazard.

The FHWA agrees that all or part of a motor carrier's operations may only be shutdown by the Secretary when such operation poses an imminent hazard. The automatic shutdown provision for an "unsatisfactory" safety rating, contained in the NPRM in § 385.3, is thus not included in the final rule.

A motor carrier receiving a "conditional" or "unsatisfactory" rating will be required to certify to the FHWA, within 30 days, that corrective action has been taken to meet the safety fitness standard. Failure to make the required certification, or filing a false certification, will subject a motor carrier to civil or criminal prosecution.

A motor carrier with an unsatisfactory safety rating is considered to have a high risk for accidents and the FHWA will make strong efforts to reduce that risk. The carrier is given a list of items requiring corrective action and is required to certify within 30 days that corrective actions have been taken. A motor carrier certification is a statement by the carrier stating whether all corrective actions identified by the FHWA have been taken. The carrier will be placed in the Selective Compliance and Enforcement Program, under which problem areas will be identified and discussed with carrier management, and suggestions made for procedures to help achieve compliance with applicable regulations. A carrier failing to complete corrective actions and to make the required certification will be subject to formal enforcement action resulting in monetary fine or other sanctions.

It is the FHWA intention that an unsatisfactory or conditional safety rating will be a temporary condition. A carrier will either take corrective actions or will be subject to increasingly severe enforcement actions and sanctions that can result in the carrier being required to cease all or part of its commercial motor carrier operations.

D. Reason for Adverse Rating and Corrective Action To Be Taken

Twelve respondents stated that a motor carrier receiving an adverse rating should be summarily advised of the reasons for such a rating. Several further advised that this information must be provided by the individual who assigns the safety rating.

A copy of the safety or compliance review, containing a summary of the deficiencies and violations discovered, is given to the motor carrier upon conclusion of the examination. The Final Rule provides that the motor carrier will later be advised by letter of its safety rating and of those areas of noncompliance that were considered in the assignment of the safety rating.

In response to consideration of the merits of this recommendation, the notice (letter) advising a motor carrier of its safety rating will set forth those parts of the Federal Motor Carrier Safety Regulations (FMCSR's) or Hazardous Materials Regulations (HMR) of which the carrier was found to be in violation. Corrective actions with respect to violations and deficiencies and continued compliance with applicable regulations are a prerequisite to obtaining a "satisfactory" safety rating.

E. Unique Identification Number

The NPRM mentioned the feasibility of the use of a unique identification number to identify a motor carrier, and the comments varied according to the respondent's type of motor carrier operation. The use of a unique identification number was addressed as part of a final rule issued on May 19, 1988 (53 FR 18042) to revise 49 CFR Part 390, Federal Motor Carrier Safety Regulations. Under this rule a motor carrier must mark its vehicles with the name or trade name of the motor carrier, its address (city and State), and the identification number issued by the FHWA preceded by the letters USDOT.

II. Policy Considerations

The mission of the FHWA Office of Motor Carriers is to reduce commercial vehicle accidents and the related societal costs. The FHWA has established an enhanced framework within which it may carry out this mission. The safety rating procedure and its relationship with new national motor carrier safety programs is an integral part of the motor carrier safety effort.

It shall be the policy of the FHWA to monitor and inspect periodically new and "satisfactory" rated motor carriers operating in interstate and foreign commerce to ensure that motor carriers are meeting the safety fitness standard, minimize the inherent risks in the transportation of passengers and property by heavy commercial vehicles; and reduce highway accidents resulting in fatalities, injuries, and property damage.

Further, motor carriers that do not meet the safety fitness standards shall be placed in remedial programs designed to identify safety problems and assist motor carriers in meeting the safety fitness standard. When the compliance by a motor carrier rated less than satisfactory fails to improve, the FHWA will take appropriate action to eliminate the safety hazard including, but not limited to, initiating civil and criminal enforcement actions with progressively higher monetary fines, where appropriate.

The ATA succinctly commented that the "rating program should be remedial first and punitive second." This statement generally reflects FHWA policy. This policy is addressed through a number of measures, activities, and sanctions included in the Educational and Technical Assistance (ETA), the Selective Compliance and Enforcement (SCE), and the Commercial Accident Prevention and Evaluation (CAPE) Programs.

A. National Motor Carrier Safety Program

The primary purpose of the National Motor Carrier Safety Program and the mission of the Office of Motor Carriers is to help reduce death, injury, and economic loss due to all types of commercial motor vehicle accidents. Therefore, the FHWA has, among other things, developed new programs to enhance its motor carrier safety efforts.

Specifically, three new national safety programs have been developed: (1) to ensure that motor carriers are meeting the safety fitness standard; (2) to provide an enforcement framework to systematically deal with problem carriers; and finally, (3) to measure and improve the effectiveness of FHWA's activities and the safety regulations in reducing commercial motor vehicle accidents. The new safety programs and the "safety rating" relationship are described in the following paragraphs.

(1) *Educational and Technical Assistance Program.* A primary tool of the Educational and Technical Assistance Program is an on-site assessment, called a safety review, to determine whether a motor carrier has adequate safety management controls in place to meet the safety fitness standard.

During the initial contact with a motor carrier at the carrier's principal place of business, a motor carrier safety specialist will determine whether the company is meeting the safety fitness standard. The safety specialist will identify safety problem areas and offer educational and technical assistance to the company for correcting the identified safety problems. The safety specialist may suggest methods and procedures for improving safety management controls and operations; offer recommendations to achieve compliance with applicable regulations; discuss positive accident prevention activities that have been effective for similar carrier operations; and, where appropriate, furnish an information packet to the carrier to enhance regulatory compliance and improve motor carrier safety.

A motor carrier assigned a "satisfactory" safety rating is entered into the Educational and Technical Assistance Program and continues to receive selected safety information from the Office of Motor Carriers. Additionally, carriers rated "satisfactory" will be monitored through a national motor carrier safety data system that compiles state enforcement data and will be contacted or visited periodically to ensure that these carriers are continuing to meet the safety fitness standard.

The technical and educational assistance provided by the FHWA to individual motor carriers, the continual monitoring of actual motor carrier safety records through Safetynet, and informational safety contacts (i.e., perodic news releases, technological transfer, informational updates, and newly identified safety countermeasures) should help improve the safety posture of the motor carrier industry.

(2) *Selective Compliance and Enforcement Program.* A carrier with inadequate safety management controls, that is in noncompliance with the safety regulations, and/or is experiencing a significant number of highway accidents is placed in the Selective Compliance and Enforcement Program.

Carriers placed in the Selective Compliance and Enforcement Program will be sorted by types of operations posing the greatest risks to highway safety and scheduled for contact accordingly. The contact will be through a compliance review, which consists of an on-site investigation of a motor carrier's operations. This investigation could cover factors such as drivers' hours of service, driver qualifications, commercial license requirements; vehicle inspection, maintenance and repair; financial responsibility; and accident and other business records to determine whether a motor carrier meets the safety fitness standard.

The findings of a compliance review may result in the following: (1) If the carrier's rating is upgraded to "satisfactory" and its preventable accident rate is at or below the average determined by valid statistical sampling methods, it is removed from the Selective Compliance and Enforcement Program and placed in the Educational and Technical Assistance Program for continued monitoring, (2) If the carrier's rating is upgraded to "satisfactory" but its preventable accident rate is high, it is placed in the Commercial Accident Prevention and Evaluation Program, (3) If the carrier continues to be "unsatisfactory," or is rated "conditional" following a compliance review, the carrier remains in the Selective Compliance and Enforcement Program until the motor carrier meets the safety fitness standard.

The motor carrier will be encouraged to contact the safety specialist to discuss any safety issues and problems that have prevented the motor carrier from meeting the safety fitness standard. These carriers are subject to another safety review after sufficient time has elapsed to allow the carriers to initiate safety countermeasures to meet the

safety fitness standard. If the motor carrier is meeting the safety fitness standard, the follow-up compliance review may be used to upgrade a "conditional" safety fitness rating to "satisfactory."

Examples of Selective Compliance and Enforcement Program actions include, but are not limited to, the following:

- Initiating additional educational and technical assistance.
- Requiring the carrier to develop a safety plan and implement safety management controls to meet the safety fitness standard.
- Initiating combined Federal and state compliance and enforcement activities with state counterparts participating in the Federal Motor Carrier Safety Assistance Program (MCSAP).
- Intervening for safety reasons in ICC actions pertaining to operational authority.
- Disqualifying all or some of the drivers used by a motor carrier.
- Issuing a written order to cease certain operations.
- Initiating successive civil or criminal actions with increasingly higher fines for continued noncompliance.

(3) *Commercial Accident Prevention and Evaluation Program.* Carriers that meet the safety fitness standard, but still have too many preventable accidents, are put into the Commercial Accident Prevention and Evaluation Program.

The purpose of the Commercial Accident Prevention and Evaluation Program contact is to analyze preventable accident data specific to the individual carrier, identify safety problem areas, and initiate countermeasures to reduce the risks of preventable accidents.

To help in this activity, the FHWA Motor Carrier Safety Management Information System will provide preventable accident profiles for the individual company and aggregate national/regional/state accident information for analysis and comparisons. The FHWA motor carrier safety specialist will ask the carrier to verify and analyze the accident statistics from its own accident records and work with the motor carrier to develop and initiate specific countermeasures to reduce the risks of recurring accidents.

The Commercial Accident Prevention and Evaluation Program contacts are not structured, but are situational depending on the problem areas unique to the individual carriers. Successful countermeasures related to specific types of preventable accidents will be documented and passed on to other carriers and the industry through other Commercial Accident Prevention and Evaluation Program contacts and the Educational and Technical Assistance Program.

Finally, another mechanism for accident prevention is the special accident and hazardous materials incident investigations conducted by FHWA on a selected basis to identify "cause and effect" accident patterns.

B. Sanctions

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832, 49 U.S.C. app. 2501 et seq.) prescribes a wide range of penalties to which a motor carrier or employee may be subject. These include a provision that the Attorney General, upon request of the Department of Transportation, may bring an action in an appropriate United States District Court for equitable relief to redress violations of the safety regulations. The district court may grant such relief as is necessary or appropriate, including mandatory or prohibitive relief, interim equitable relief, and punitive damages.

The Motor Carrier Safety Act of 1984 provides authority to require safety records and provides sanctions for the willful failure to prepare, use, and retain such records that can be audited by state and Federal authorities. The Act also provides criminal and civil penalties for certain substantial vehicle and equipment violations where a carrier or driver is operating a vehicle knowing the defects existed, and therefore choosing to disregard public safety.

Further, there is a middle range of violations between those of recordkeeping noncompliance and willful negligence. Examples of these types of violations are those in which a carrier or driver simply fails to maintain equipment or disregards hours-of-service limitations because it is inconvenient or because it is profitable not to comply. These types of violations are not isolated human errors, but rather patterns of equipment violations or operating conduct that any responsible business entity could detect and correct if it wanted to meet its full safety responsibility to the public. The Act provides for sanctions for those "serious patterns of safety violations" that individually may not have a high probability of causing an immediate accident, but collectively could lead to accidents.

The Act provides for a civil penalty of up to $500 for a recordkeeping violation. Each day of a violation constitutes a separate offense. However, the total civil penalty assessed a violator for all recordkeeping offenses relating to a single violation cannot exceed $2,500. If a serious pattern of safety violations, other than recordkeeping violations, exists or has occurred, a civil penalty of up to $1,000 for each violation may be assessed, to a maximum of $10,000 for each such pattern of violations. If a substantial health or safety violation exists or has occurred which could reasonably lead to or has resulted in serious personal injury or death, a civil penalty of up to $10,000 may be assessed for each violation. No civil penalty, except recordkeeping penalties, may be assessed against an employee unless it is determined that the employee's action constituted gross negligence or reckless disregard for safety, in which case the civil penalty may not exceed a total of $1,000 for each violation. A conviction of driving a commercial motor vehicle while under the influence of drugs or intoxicating beverages is an example of the latter category.

Provision is also made for criminal penalties for employers and employees operating a commercial motor vehicle who knowingly and willfully violate the safety regulations. Penalties for an employer are a fine of up to $25,000 and/or imprisonment not to exceed one year. An employee is subject to a fine not to exceed $2,500 if while operating a commerical motor vehicle the employee's activities led or could have led to serious injury or death.

Finally, the purpose of these criminal and civil penalties is to induce further compliance and effect a positive change in motor carrier safety management behavior. In assessing civil penalties, or, when appropriate, in recommending criminal penalties, the Federal Highway Administration's Office of Motor Carriers intends to aggressively pursue these penalties to the fullest. At the same time, the office of Motor Carriers will take into account the nature, circumstances, extent, and gravity of the violations; also considered will be the degree of culpability, history of prior offenses, ability to pay, the effect on the ability of the violator to continue to do business, and such other matters as justice and public safety may require. The structured programs discussed in Section "A" will provide the FHWA with the means to make more effective use of authorized sanctions, and improve the rationale for resorting to this type of enforcement. However, sanctions will be applied when appropriate, even for carriers whose overall safety rating is or has been satisfactory.

Title 49 CFR 386.72(b), which was added on June 1, 1987 (52 FR 20587),

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implements the procedure as to motor carrier safety imminent hazards. This section gives the Associate Administrator for Motor Carriers, or his or her delegate, authority to order a vehicle or employee out of service or order an employer to cease all or part of the employer's commercial motor vehicle opeations. In this context, "imminent hazard" means any condition of the carrier's commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately. Section 386.72(b) is being amended to make it clear that immediate compliance is required.

FHWA's existing authority to place vehicles (§ 396.9) and drivers (§ 395.13) out-of-service on the highway remains unchanged.

C. Safetynet

In order to support the three programs previously described, the FHWA has established an information exchange system called Safetynet.

Safetynet is an automated system of microcomputers and programs that collects safety information from states participating in the Motor Carrier Safety Assistance Program (MCSAP). It will integrate the state vehicle inspection systems with the Federal databases which contain inspection, accident, and safety audit information. There will be a full interchange of data between the states and the Federal computer systems.

Safetynet will support the mission of the FHWA's Office of Motor Carriers by identifying problem carriers through uniform data collected on a nationwide basis by all participating states. The performance of problem carriers will be tracked and follow-up actions initiated.

When Safetynet is fully developed as a system, the motor carrier safety profile will contain information from the following sources:

- Roadside driver and vehicle inspections,
- Safety and compliance reviews,
- Vehicle accident information, and
- Enforcement information, sanctions, etc.

Safetynet will enhance decisionmaking and assist FHWA in tracking and monitoring carriers in the National Education and Technical Assistance, Commercial Accident Prevention and Evaluation, and Selective Compliance and Enforcement Programs. The information system will help target carriers for safety and compliance reviews, determine which carriers require further review, or indicate other appropriate action.

III. Section-by-Section Discussion

Section 385.1 Purpose and Scope

A purpose and scope section specifies that this rule establishes procedures to determine the safety fitness of and assign safety ratings to all motor carriers subject to the jurisdiction of the FHWA, including applicants to the ICC for motor carrier operating authority.

Section 385.3 Definitions

The definition section defines the meaning of three safety ratings: "Satisfactory," "conditional," and "unsatisfactory." Unrated is not considered a safety rating. Additional definitions define the two types of reviews conducted at a motor carrier's principal place of business which will result in the assignment of a safety rating or a change in a safety rating. The two types of examinations are "compliance" and "safety" reviews. Definitions have also been included for the terms "applicable safety regulations or requirements," "preventable accident," and "safety management controls."

Section 385.5 Safety Fintness Standard

The safety fitness standard was developed as a satisfactory benchmark against which a motor carrier may measure its safety posture. Also, FHWA in determining the safety fitness of a motor carrier, shall use the safety fitness standard for assigning safety ratings.

Section 385.7 Factors to be Considered

This section discusses the factors considered in determining the safety fitness of a motor carrier and assigning a safety rating. The factors considered indicate whether or not a motor carrier has adequate safety management controls in place to ensure compliance with applicable regulatory standards, and whether these controls are functioning effectively. The safety and compliance reviews are the primary tools for gathering information for the assessment of a carrier's safety fitness. The factors considered include the following:

- Adequacy of safety management controls.
- Frequency and severity of regulatory violations.
- Frequency and severity of driver/vehicle roadside inspection regulatory violations.
- Number of out-of-service driver/vehicle violations.
- Increase or decrease in identical regulatory violations discovered in safety and compliance reviews.
- Frequency of accidents, hazardous materials incidents, reportable accident rate per million miles, reportable preventable accident rate per million miles and whether these accident and incident indicators have improved or deteriorated over time.
- Violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety when compatible with Federal rules, regulations, standards, and orders.

The number of violations and vehicle accidents will be weighted to reflect the size of the carrier's operations before assigning a safety rating.

Section 385.9 Determination of a Safety Rating

The determination of safety fitness and the assignment of safety ratings will be made by FHWA following the assessment of the rating factors prescribed in § 385.7. The safety fitness determination involves comparing the current safety fitness posture to the safety fitness standard and assigning a safety rating which best describes the current safety fitness posture of the evaluated motor carrier.

Section 385.11 Notification of Safety Ratings

The section for notification of safety ratings stipulates that the FHWA shall notify a motor carrier in writing of the safety rating assigned.

Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken to improve the carrier's overall safety performance.

Section 385.13 Motor Carrier Certification

A motor carrier receiving a safety rating of less than satisfactory (adverse rating) will be advised of those specific items for which immediate corrective action must be taken.

A motor carrier receiving a rating of "conditional" or "unsatisfactory" shall certify to the FHWA, within 30 days after receipt of the safety rating, that corrective action has been taken on all items requiring corrective action.

While a motor carrier has 30 days to certify to FHWA that corrective action has been taken, the FHWA is *not* establishing for a motor carrier a 30 day grace period or 30 days of relief from full compliance with applicable Federal safety and hazardous materials regulations. Failure to certify or falsely certifying under this section, moreover, will subject a carrier to additional penalties under 49 U.S.C. 522(b).

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A motor carrier receiving a conditional or unsatisfactory safety rating will be entered into the Selective Compliance and Enforcement Program, which is one of the national motor carrier safety programs designed to assist the carrier in meeting the safety fitness standard. These carriers will be scheduled for follow-up compliance reviews as appropriate to determine if the safety rating should be changed to satisfactory or if other educational, remedial or punitive measures are necessary.

Finally, a carrier may be required to furnish additional documentation to substantiate any certification, or a carrier may be visited for an on-site review to verify that corrective actions were taken and to determine if the carrier meets the safety fitness standard.

Section 385.15 Review of a Safety Rating

The opportunity to submit a formal petition for review of a safety rating is provided for nonroutine cases such as those where the carrier disputes the findings of an on-site safety or compliance review underlying the rating. The section pertaining to review of safety ratings establishes the procedure for filing a petition for such review and indicates the basis for consideration of a change in a safety rating.

Section 385.17 Request for a Change in a Safety Rating

This section establishes the procedure for a motor carrier to request a change in a safety rating where there are no disputes and the basis for the change of the rating is evidence that corrective action has been taken and that operations are currently being conducted pursuant to the safety fitness standard.

Section 385.19 Safety Fitness Information

The safety rating assigned to a motor carrier is considered to be a factor that affects highway safety and, therefore, will be made available to the public upon request.

The FHWA when considering requests for safety fitness information, will make available information regarding the specific rating classification of a motor carrier. These rating classifications are: "unsatisfactory," "conditional," and "satisfactory," and are defined in 49 CFR 385.3, Definitions. Further, when reporting on unrated carriers, FHWA will distinguish between those carriers which have or have not filed Form MCS–150.

The FHWA believes that making safety ratings public will have a positive economic impact on the industry and enhance highway safety. Given a choice, a shipper will prefer using a company that meets the safety fitness standard since the shipper's economic well-being depends upon moving the product safely and efficiently through the transportation system. Insurance companies may also evaluate this information and through setting premiums that consider this rating, provide an economic incentive to help maintain safety. Safety ratings will be made available to the Interstate Commerce Commission and the Department of Defense by remote computer terminals to further enhance motor carrier safety.

Written or oral requests for safety ratings must identify the motor carrier by name, principal office address, and, if known, the docket number assigned by the Interstate Commerce Commission.

Written requests must be addressed to the Office of Motor Carrier Information Management and Analysis, HIA–1, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

Oral requests will be given an oral response by telephone. The FHWA will make available, through the communications media, a telephone number for interested persons who wish to obtain the safety rating of a motor carrier.

Section 385.21 Motor Carrier Identification Report

This section requires all unrated motor carriers to file a one-time short Motor Carrier Identification Report designated Form MCS–150. The purpose of the report is to identify previously unknown motor carriers operating in interstate or foreign commerce, to update the motor carrier census, to require the carrier to certify that it is familiar with the Federal Motor Carrier Safety Regulations, and to assist FHWA in prioritizing motor carriers for safety review contacts. A motor carrier that has received written notification of a safety rating by FHWA is not required to file the Motor Carrier Identification Report.

The ICC Register is published each working day, Monday through Friday, except for legal holidays. It contains a daily summary of motor carrier applications, decisions, and notices issued by the ICC. A copy of the ICC Register is furnished to the FHWA. The FHWA monitors this Register and, when an unrated motor carrier makes application to the ICC for motor carrier operating authority, the FHWA will attempt to contact the applicant personally for the purpose of initiating a safety fitness review. However, it is the carrier's responsibility to obtain and file the Form MCS–150. FHWA will attempt to conduct an on-site review and assign the carrier a safety rating prior to the date the ICC issues a final decision on the motor carrier's application for permanent operating authority. Such a safety rating will be available to the ICC by remote computer terminals. The rated entity will be advised of its safety rating in writing.

Section 385.23 Failure to Report

All unrated motor carriers currently conducting operations in interstate or foreign commerce are required to file a one-time Motor Carrier Identification Report within 90 days after the effective date of this rule. A motor carrier beginning operations after the effective date of this rule is required to file the form within 90 days after beginning operations. Failing to report, making false statements, or furnishing misleading information shall subject the motor carrier to civil or criminal penalties.

IV. Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, this rulemaking action has been placed on DOT's Regulatory Program for significant rulemaking. It is anticipated that the direct cost of this rulemaking to the individual applicant will be minimal since it imposes little regulatory obligation upon the motor carrier. The benefits provided by this rule would be a decrease in accidents and consequently a decrease in economic and societal costs. The economic and safety impacts of this rule are further discussed and analyzed in a Regulatory Evaluation and Regulatory Flexibility Analysis which has been prepared and is available for inspection in the public docket and may be obtained from the FHWA at the address provided under the heading "For Further Information Contact."

V. Regulatory Flexibility Act/Paper Reduction

With regard to the assessment of the impact this rule will have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96–354), the reasons for, objectives, and legal basis of this action have been previously explained in this notice. In consideration of the potential benefits, the FHWA hereby certifies that this action will not

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have a significant economic impact on a substantial number of small entities.

The collection of information requirements contained in this rule are being submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Federalism Assessment

This final regulation revises Part 385 of the FMCSRs and addresses the issue of safety fitness procedures as it pertains to motor carriers of property and passengers engaged in interstate or foreign commerce. Nothing in this document directly preempts any State law or regulation. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of Executive Order 12612 and it is determined that there is no federalism impact.

List of Subjects

49 CFR Part 385

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure.

(Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety).

Issued on December 12, 1988.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter IIII as follows:

1. Part 385 is revised to read as follows:

PART 385—SAFETY FITNESS PROCEDURES

Sec.

385.1 Purpose and scope.
385.3 Definitions.
385.5 Safety fitness standard.
385.7 Factors to be considered in determining a safety rating.
385.9 Determination of a safety rating.
385.11 Notification of a safety rating.
385.13 Motor carrier certification.
385.15 Review of a safety rating.
385.17 Request for a change in a safety rating.
385.19 Safety fitness information.
385.21 Motor carrier identification report.
385.23 Failure to report.
Appendix—Form MCS–150, Motor Carrier Identification Report

Authority: 49 U.S.C. app. 2512; 49 U.S.C. 104, 504, 521(b)(5)(A), and 3102; 49 CFR 1.48.

§ 385.1 Purpose and scope.

(a) This part establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, and to take remedial action when required.

(b) The provisions of this part apply to all motor carriers subject to the jurisdiction of the FHWA.

§ 385.3 Definitions.

Applicable safety regulations or requirements means 49 CFR Subtitle B, Chapter III, Subchapter B—Federal Motor Carrier Safety Regulations; and 49 CFR Subtitle B, Chapter I, Subchapter C—Hazardous Materials Regulations.

Preventable accident on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

Reviews. For the purposes of this part:

(1) *Compliance review* means an on-site investigation of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, and other safety and business records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted to review a motor carrier's operation in response to a request to change a safety rating, to investigate a complaint, or to investigate the operations of an unsatisfactory or conditionally rated motor carrier identified by a safety review, or as part of a routine periodic inspection of a carrier that has been rated satisfactory. The compliance review may result in the initiation of an enforcement action.

(2) *Safety review* means an on-site assessment to determine if a motor carrier has adequate safety management controls in place and functioning to meet the safety fitness standard. The safety review includes a review of selected carrier records and operations. It is used to gather information for assigning ratings to unrated carriers and may also be used to change safety ratings. The safety review will not ordinarily result in the institution of an enforcement action, but may if circumstances warrant.

(3) *Safety management controls* means the systems, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations, to ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

Safety ratings: (1) *Satisfactory safety rating* means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in § 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in § 385.5(a) through (h).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5(a) through (h).

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FHWA.

§ 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Commercial driver's license standard violations (Part 383),

(b) Inadequate levels of financial responsibility (Part 387),

(c) The use of unqualified drivers (Part 391),

(d) Improper use and driving of motor vehicles (Part 392),

(e) Unsafe vehicles operating on the highways (Part 393),

(f) Nonreporting of accidents (Part 394),

(g) The use of fatigued drivers (Part 395),

(h) Inadequate inspection, repair, and maintenance of vehicles (Part 396),

(i) Transportation of hazardous materials, driving and parking rule violations (Part 397),

(j) Violation of hazardous materials regulations (Parts 170 through 177), and

(k) Motor vehicle accidents and hazardous materials incidents.

§ 385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections.

(d) Number and frequency of out-of-service driver/vehicle violations.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) Frequency of accidents; hazardous materials incidents; reportable accident rate per million miles; reportable preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

(g) The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards, and orders.

§ 385.9 Determination of a safety rating.

Following a safety or compliance review of a motor carrier operation, the FHWA, using the factors prescribed in § 385.7, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

§ 385.11 Notification of a safety rating.

(a) Following a safety or compliance review, the FHWA shall determine the safety fitness of a motor carrier and notify the motor carrier in writing of the assigned safety rating.

(b) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

§ 385.13 Motor carrier certification.

(a) Upon notification of a conditional or unsatisfactory safety rating, a motor carrier shall certify to the FHWA, within 30 days, whether all corrective actions identified by FHWA have been taken.

(b) Certification required by this section must be made to the Regional Director, Office of Motor Carrier Safety, as listed at 49 CFR 390.40, for the FHWA region in which the carrier maintains its principal place of business for safety.

(c) Failure to certify or falsely certifying under this section will be considered a reporting violation under 49 U.S.C. 522(b).

§ 385.15 Review of a safety rating.

(a) A petition for review of a safety rating, where there are factual disputes, must list all factual issues disputed and be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition for a change in its assigned safety rating.

(b) The petition must be submitted to the Director, Office of Motor Carrier Safety Field Operations, within 90 days of the date of notification of the assignment, or change, of a safety rating.

(c) Following the review of a petition, the Director, Office of Motor Carrier Safety Field Operations, may request the motor carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide information in response to any reasonable or lawful request, or failure to attend the conference may result in dismissal of the petition.

(d) The Director, Office of Motor Carrier Safety Field Operations, shall notify the motor carrier in writing of a decision on a petition for review of a safety rating.

§ 385.17 Request for a change in a safety rating.

(a) A request for a change in a safety rating, where there are no disputes, and when the basis for the change is evidence that corrective action has been taken and that operations are currently being conducted pursuant to the safety fitness standard specified in § 385.5, shall be directed in writing to the Regional Director of Motor Carrier Safety for the FHWA Region in which the motor carrier maintains its principal place of business. The Regional Office addresses are listed in 49 CFR 390.40.

(b) Appropriate Federal Highway Administration personnel will contact the motor carrier relative to scheduling a compliance review.

§ 385.19 Safety fitness information.

(a) Ratings will be made available to the Interstate Commerce Commission and the Department of Defense telephonically or by remote computer terminals.

(b) The safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FHWA with the motor carrier name, principal office address, and, if known, the ICC assigned docket number, if any.

(c) Requests shall be addressed to the Office of Motor Carrier Information Management and Analysis, HIA–1, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(d) Oral requests by telephone will be given an oral response.

§ 385.21 Motor carrier identification report.

(a) All motor carriers currently conducting operations in interstate or foreign commerce shall file a Motor Carrier Identification Report, Form MCS–150, within 90 days after the effective date of this rule. Exception: The provisions of this section do not apply to a motor carrier that has received written notification of a safety rating from the FHWA.

(b) All motor carriers beginning operation after the effective date of this rule shall file the Motor Carrier Identification Report, Form MCS–150, within 90 days after beginning operations.

(c) The Motor Carrier Identification Report, Form MCS–150, is available from all FHWA region and division motor carrier safety offices nationwide and from FHWA Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(d) The completed Motor Carrier Identification Report, Form MCS–150, shall be filed with the FHWA, Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

§ 385.23 Failure to report.

Failure by a motor carrier to file a

Motor Carrier Identification Report, Form MCS–150, pursuant to the provisions of § 385.23, or furnishing misleading information or making false statements upon the MCS–150 shall subject the offender to the penalties prescribed in Title 49, United States Code, 522(b).

Appendix—Form MCS–150; Motor Carrier Identification Report

Federal Highway Administration, Office of Motor Carriers, Information Management and Analysis, HIA–10, 400 Seventh Street, SW., Washington, DC 20590

Motor Carrier Identification Report

Pursuant to 49 U.S.C. 504 (1982 & Supp. III 1985), and the regulations codified in 49 CFR Part 385, a motor carrier conducting operations in interstate or foreign commerce shall file a one-time Motor Carrier Identification Report, Form MCS–150, within 90 days after the effective date of this rule. A new motor carrier shall file a Form MCS–150 within 90 days after beginning operations. This provision does not apply to a motor carrier that has received written notification of a safety rating from the Federal Highway Administration. The completed MCS–150 shall be filed with the Federal Highway Administration, at the above address.

A. Motor Carrier Identification

Legal Motor Carrier Name _____
Trade Name (if any) _____
Headquarters Address _____
(Physical address, *not* mailing address)

_____
(Number and Street/Route No.)

_____
City State Zip Code
Headquarters Telephone Number (include area code) _____
Interstate Commerce Commission Docket Number (if any) MC– _____

B. Operating Information

1. Circle letter of alphabet preceding each type of cargo you transport.

A. General freight
B. Household goods
C. Metal: sheets, coils, rolls
D. Motor vehicles
E. Driveaway/towaway
F. Logs, poles, beams, lumber
G. Building materials
H. Mobile homes
I. Machinery, large objects
J. Fresh produce
K. Liquids or gases
L. Intermodal containers
M. Passengers
N. Oil-field equipment
O. Livestock
P. Grain, feed, hay
Q. Coal/coke
R. Meat
S. New furniture/fixtures
T. U.S. mail
U. Chemicals
V. Commodities in dry bulk
W. Refrigerated food
X. Beverages
Y. Paper products
Z. Other _____

2. Do you transport hazardous materials in quantities that require placarding? _____ (Yes) _____ (No)

3. Average number of power vehicles operated per month during past 12* months _____

4. Average number of drivers used per month during past 12* months _____

5. Number of vehicle miles traveled during past 12* months _____

* If the information above represents a period of less than 12 months, state the number of months _____

C. Certification Statement

(to be completed by authorized official)

I, _____
(please print name),
certify I am familiar with the Federal Motor Carrier Safety Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct and complete.

Signature _____
Title _____
Date _____

PART 386—[AMENDED]

2. The authority citation for Part 386 continues to read as follows:

Authority: Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); Motor Carrier Safety Act of 1984, Pub. L. 98–554, 98 Stat. 2829 (49 U.S.C. 2501 *et seq.*); recodification of Title 49, United States Code, Transportation, Pub. L. 97–449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); Hazardous Materials Transportation Act, Pub. L. 93–633, 88 Stat. 2156 (49 U.S.C. 1801 *et seq.*); Bus Regulatory Reform Act of 1982, Pub. L. 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note); Motor Carrier Act of 1980, Pub. L. 96–296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

3. In § 386.72, paragraph (b)(2) is revised to read as follows:

§ 386.72 Imminent hazard.

* * * * *

(b) * * *

(2) Upon the issuance of an order under paragraph (b)(1) of this section, the motor carrier employer or driver employee shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554, except that such review shall occur not later than 10 days after issuance of such order, as provided by section 213(b) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 521(b)(5)).

[FR Doc. 88–29019; Filed 12–16–88; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 70617–7148]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of allowable surf clam fishing time.

SUMMARY: NOAA issues this notice to establish allowable fishing time at 36 hours for each quarter of 1989 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility and predictability to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATE: January 1 through December 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, 508–281–3600 ext. 252.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Mid-Atlantic Fishery Management Council (Council), to exercise his authority under 50 CFR 652.22(a)(3) to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to his/her best advantage. That program was continued for the remainder of 1987 and into 1988 with some modifications required to facilitate enforcement.

For 1988, the Regional Director initially allocated 36 hours of fishing time for each quarter (52 FR 49019, December 29, 1987). Based upon the catch rates for the year, it was necessary to increase the number of trips from six to eight for the last quarter, giving a total number of 26 trips for the year (53 FR 36462, September 20, 1988). The Council at its November 1988 meeting requested public comment on the flexible scheduling of the past two years versus the fixed scheduling alternative enacted previously. Commenters present at the meeting stated that the flexible scheduling

allowed greater flexibility and safety and they requested that no changes be made.

Based on an analysis of 1988 quarterly fishing effort, projected trends for the upcoming quarter and comments from industry, the Regional Director has decided to again allocate 36 hours of fishing time for each quarter of 1989. That time must be scheduled in the form of six fishing trips of six hours duration each. Adjustments to the number of trips to insure the attainment of the quarterly quota will be made to the quarter immediately following when more complete catch information is available.

The fishing trips must be scheduled with 10 days advance written notice to the Surf Clam Coordinator, NMFS, 2 State Fish Pier, Gloucester, Massachusetts 01930. If this publication appears too late to allow such notice for those wishing to schedule trips during the first week of the first quarter, trips for that week only can be scheduled by calling (508) 281–3600 ext. 252.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–29120 Filed 12–16–88; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 243
Monday, December 19, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Ch. III

[Docket No. 88-200]

Varroa Mite Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce a meeting of the Varroa Mite Negotiated Rulemaking Advisory Committee.

DATES: January 5 and 6, 1989, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Federal Mediation and Conciliation Service, Room 201, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Helene Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436–8682.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to convene members of the Varroa Mite Negotiated Rulemaking Advisory Committee to reach consensus on terms of a proposed rule to prevent the interstate spread of the Varroa mite.

The meeting will be open to the public. Public participation will be limited to written statements. Anyone who wants to file a written statement with the Committee about meeting topics may do so either at the time of the meeting or before the meeting, by sending the statement to Helene Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 14th day of December, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–29113 Filed 12–16–88; 8:45 am]
BILLING CODE 3410–34–M

Farmers Home Administration

7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Community Facilities loan and grant servicing regulations. This action is being taken to clarify the regulation. The intended effect is to provide more comprehensive and straightforward guidance to FmHA staff and recipients of assistance relating to the servicing of the affected loans.

DATE: Comments must be received on or before January 18, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from one-half to 1 hour per response, with an average of 52 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paparwork Reduction Project (OMB# 0575–0103), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: T.W. Davis, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382–9586 or Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6314, Washington, DC 20250, telephone: (202) 382–1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. It has been determined that this action will not have a significant economic inpact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal reporting requirements. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay, to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background: This action is primarily to change regulations concerning the servicing of unauthorized assistance in the form of interest subsidies for which a recipient is not eligible and to provide for recovery of the unauthorized assistance. The alternatives are to do nothing or to proceed with revision of the regulation. FmHA believes that rewriting the regulation while incorporating the changes will result in the most efficient conduct of internal Agency administrative activities and provision of service to the public.

The primary changes include the following:

1. When the recipient of a loan should have been charged a higher interest rate than that in the debt instrument which resulted in the receipt of unauthorized subsidy benefits, the interest rate will be adjusted to the appropriate rate in effect for which the recipient was eligible at the time of loan approval or closing whichever is lower.

2. A concerted effort will be made to collect any unauthorized subsidy benefits received by the recipient.

3. Corrective actions will be taken upon advice of the Regional Attorney of the Office of General Counsel.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs-Housing and community development, Loan programs-Housing and community development, Reporting and recordkeeping requirements, Rural areas, Rent subsidies, Subsidies.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

2. Section 1951.711 is amended by revising paragraph (b)(3) to read as follows:

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(b) * * *

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph. The recipient will be given the option to submit a written request that the interest rate be adjusted to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing. (See Exhibit C of this subpart for interest rates (available in any FmHA office)). FmHA servicing officials will make a concerted effort to collect all unauthorized subsidy benefits from the recipient and will contact the Office of General Counsel in each case for advice in accomplishing corrective actions.

* * * * *

Dated: November 21, 1988.

Vance L. Clark, *Administrator, Farmers Home Administration.*

[FR Doc. 88–29052 Filed 12–16–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–88–15]

Petition for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

Petitions for Rulemaking

Docket No.: 25505.

Petitioner: Flight Attendant Services, Inc.

Regulations Affected: 14 CFR Parts 121 and 135.

Description of Petition: The petition, if granted, would add new sections to the Federal Aviation Regulations to require Part 121 and 135 certificate holders to carry on each passenger-carrying aircraft, in easy readible view of each passenger, the "Passenger Awareness Check (PAC)" adhesively displayed in direct view of each passenger.

Petitioner's Reason for the Rule: The petitioner asserts that the purpose of this petition is to enable passengers to be consciously aware of the emergency procedures mentioned in the preflight demonstration and to be responsible for their own safety in the event an authorized crewmember is unavailable to assist them in the event of an emergency.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 17, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

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Issued is Washington, DC, on December 13, 1988.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

[FR Doc. 88-29072 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASO-23]

Proposed Revision of Transition Area; Alabaster, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Alabaster, AL, transition area by adding an arrival area extension. The extension would provide airspace protection for aircraft executing a new Nondirectional Radio Beacon (NDB) Runway 33 Standard Instrument Approach Procedure (SIAP) being developed for the Shelby County Airport. Also, this action would correct the geographic position coordinates for the Bessemer Airport.

DATE: Comments must be received on or before January 29, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-23, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Alabaster, AL, transition area. An arrival area extension is required to provide airspace protection for aircraft executing a NDB RWY 33 SIAP being developed for the Shelby County Airport. Also, this action will correct the geographic position coordinates for the Bessemer Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Alabaster, AL [Amended]

By deleting the existing description and substituting the following: "That airspace extending upward from 700' above the surface within a 7-mile radius of Shelby County Airport (Lat. 33°10'41" N, Long. 86°47'01" W.); within 3.5 miles each side of the 168° bearing of the Calera RBN (Lat. 33°07'06" N., Long. 86°46'02" W.), extending from the 7-mile radius area to a point 11 miles south of the RBN; within a 6.5-mile radius of Bessemer Airport (Lat. 33°18'46" N., Long. 86°55'32" W.); excluding that portion which coincides with the Birmingham, AL, transition area."

Issued in East Point, Georgia, on December 9, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-29069 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASO-21]

Proposed Revision to Transition Area; Lake City, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Lake City, South Carolina transition area. The Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) originally proposed based on the 192° bearing from the Evans Radio Beacon (RBN) was never developed. A new NDB SIAP has been developed predicated on the 288° bearing of the Evans RBN. This amendment would delete the arrival area extension along the 192° bearing and add a new extension on either side of the 288° bearing of the Evans RBN. This action is necessary to afford airspace protection for aircraft executing the new SIAP.

DATE: Comments must be received on or before January 23, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 88–ASO–21, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Melvin Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASO–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Lake City, South Carolina transition area by deleting an existing arrival area extension and adding a new extension to provide airspace protection for aircraft executing a new SIAP. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lake City, South Carolina [Amended]

By removing the existing description and adding the following: "That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Lake City Municipal C J Evans Field Airport (lat. 33°51'14" N., long. 79°46'08" W.); within 3 miles each side of the 283° bearing from the Evans RBN (lat. 33°51'21" N., long. 79°45'58" W.), extending from the 6.5-mile radius area to 8.5 miles west of the RBN; excluding that portion which coincides with the Kingstree, S.C., Transition Area."

Issued in East Point, Georgia, on December 9, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–29068 Filed 12–16–88; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 86; FRL–3493–8]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces that the Environmental Protection Agency is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone. This revision was prepared by the New York State Department of Environmental Conservation pursuant to a SIP commitment to implement appropriate actions in order to reduce statewide

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ozone levels as required under section 110 and Part D of the Clean Air Act. Today's notice proposes to incorporate into the New York SIP a revised regulation, Part 230, "Gasoline Dispensing Sites and Transport Vehicles," which will reduce volatile organic compound emissions due to motor vehicular refueling at certain gasoline stations in the New York City metropolitan area.

DATES: Comments must be received by January 18, 1989.

ADDRESSES: All comments should be addressed to: William J. Muzynski, P.E., Acting Regional Administrator, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278. New York State Department of Environmental Conservation Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

In its most recent comprehensive State Implementation Plan (SIP) revision for ozone, which was submitted to the Environmental Protection Agency (EPA) on February 2, 1984 and approved by EPA on June 17, 1985 (50 FR 25173), New York State committed to adopt regulations, where required, for source categories covered by EPA's Control Techniques Guidelines (CTGs) and to make various regulatory revisions to provide additional volatile organic compound (VOC) emission reductions. In April 1985, New York adopted revisions to the State regulations contained in its SIP. These revisions to Title 6 of the New York Code of Rules and Regulations (NYCRR) promulgated a new Part 230, entitled "Gasoline Dispensing Sites and Transport Vehicles." Part 230 required gasoline stations in the New York City metropolitan area (NYCMA, comprised of New York City and Nassau, Suffolk, Westchester and Rockland Counties) whose annual throughput exceeds 120,000 gallons to install Stage I vapor control systems to collect the fugitive gasoline vapors which are emitted when the station's gasoline storage tanks are refilled. EPA's proposed approval of this regulation appeared in the **Federal Register** on June 13, 1986 (51 FR 21577).

The State Submittals

On July 9, 1987 and April 7, 1988, New York State submitted to EPA adopted revisions to Part 230, effective June 26, 1987 and March 3, 1988, respectively. These revisions, which are the subject of today's notice, add to Part 230 requirements for the control of gasoline vapors resulting from the refueling of vehicle fuel tanks at gasoline service stations. Because emissions due to the bulk loading and unloading of gasoline are controlled at every point during its shipment (i.e., from storage and loading facilities to the tank truck, and from the tank truck to the service station storage tank), the control of the emissions due to the refueling of vehicles at gasoline service stations is the next logical step.

When vehicle fuel tanks are refilled, the air inside the tank is displaced and forced out into the atmosphere. This air is heavily saturated with VOCs and, therefore, contributes to the ozone problem. The control systems required under Part 230, known as Stage II controls, are those certified by the New York State Department of Environmental Conservation (NYSDEC) as being able to capture at least 90 percent of this vapor laden air before it enters the atmosphere. Part 230 also initiates a certification program to collect data to be used in determining which facilities are subject to the requirements of Stage II and/or Stage I. Under this certification program, all existing service stations will be required to apply for and obtain a State Certificate to Operate. Similarly, all new or modified gasoline stations will be required to apply for and obtain a State Permit to Construct.

The additional adopted revisions to Part 230, which were submitted to EPA on April 7, 1988, expressly move the compliance dates of Part 230 forward by nine months from the dates contained in the July 9, 1987 submittal. These expedited compliance dates are required in order for the State to comply with the decision issued by the U.S. District Court, Southern District of New York, in the case of the *Natural Resources Defense Council et al. v. NYSDEC et al.* Therefore, existing service stations with an annual throughput of gasoline exceeding 500,000 gallons must install State II controls and be in compliance by July 1, 1988; stations with an annual throughput between 250,000 and 500,000 gallons would have until July 1, 1989 to comply. Stage II controls are not required for existing service stations with an annual throughput of gasoline less than 250,000 gallons, or at service stations in New York City with storage tanks installed before January 1, 1970 and which have a capacity of less than 2,000 gallons. However, all service stations constructed or "substantially modified" (as defined in the State's rule) and located in the NYCMA, regardless of their annual throughput of gasoline, which be subject to both Stage I and Stage II controls.

Findings

EPA finds that the adoption of Stage II controls in Part 230 meets New York's SIP commitment. The design of the State II program submitted by the State is substantially equivalent to the program committed to in the SIP, both in nature and emission reductions. The VOC reductions associated with this regulation were necessary for the State to demonstrate attainment of the ozone standard. EPA notes, however, that there could be some confusion with respect to the availability of records showing the quantity of gasoline delivered to the site. Specifically, the State should clearly require that the records of all gasoline deliveries should be kept at the service station, so that they are readily available at the time of an inspection. In addition, wherever possible the State should use a uniform beginning date for the twelve-month period of recordkeeping when determining the applicability of Part 230 to service stations.

Part 230 contains a variance provision which permits the Commissioner of the NYSDEC to accept alternative controls when a facility is unable to comply because of economic or technical infeasibility. In this regard, it should be noted that EPA cannot recognize any variance or alternate requirement until it is submitted by the State for approval as a SIP revision.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

Conclusion

EPA is today proposing to find that the revisions to Part 230 of the NYCRR adequately fulfills the SIP commitment made by the State.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the

requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated May 19, 1988.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 88–29056 Filed 12–16–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[FRL–3492–8]

Ocean Dumping; Proposed Site Designation; Gulf of Mexico; Pensacola, FL

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a new Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico offshore Pensacola, Florida, i.e., the Pensacola (offshore) ODMDS, as an EPA-approved ocean disposal site for the disposal of dredged material. This proposed action is necessary to provide an acceptable ODMDS option for anticipated future disposal of restricted suitable dredged material.

The Pensacola (offshore) ODMDS is located outside of Florida State waters and is restricted to disposal of predominantly fine-grained dredged material from the greater Pensacola, Florida, area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS located closer to shore. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size of >0.125 millimeters (mm) and a composition of <10% fines.

Review comments on the Final Environmental Impact Statement (FEIS) for this proposed action are not addressed in this Proposed Rule but will be addressed in the subsequent Final Rule. Comments on this Proposed Rule will also be addressed in the Final Rule.

DATE: Comments must be received on or before January 18, 1989.

ADDRESSES: Send comments to: Frank M. Redmond, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC 20460.

EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Reginald G. Rogers, 404/347–2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed site is in Region IV and the designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) indicate that ocean disposal sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 [January 11, 1977]). Interested persons may participate in this Proposed Rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

B. Environmental Impact Statement Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 [May 7, 1974]). EPA, in cooperation with the U.S. Army Corps of Engineers (COE) and the U.S. Navy, has prepared a Draft Environmental Impact Statement (DEIS) and FEIS entitled "Designation of a New Ocean Dredged Material Disposal Site, Pensacola, Florida." This Proposed Rule and the pending Final Rule are procedural follow-ups to the EIS. This Proposed Rule includes excerpts from the EIS. The EIS may be used as reference, especially for literature citations, which are not cited herein.

The proposed action discussed in the EIS is the designation of a new ODMDS offshore Pensacola, Florida. The purpose of this proposed action is to designate, on a permanent basis, a new environmentally-acceptable ODMDS as an ocean option for the disposal of restricted suitable dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The COE and EPA evaluate all dredged material disposal projects in accordance with the EPA criteria given in the Ocean Dumping Regulations (40 CFR Parts 220–229), the COE regulations (33 CFR 209.120 and 209.145), and any applicable State requirements governing consistency with the State's Coastal Zone Management Program (the Pensacola (offshore) ODMDS is located outside Florida State waters). The COE also issues permits to all applicants for transport of dredged material intended for disposal after compliance with the same regulations is determined. The COE also undergoes a public review process for its own disposal actions. EPA has the right to disapprove any ocean disposal project if it believes that all provisions of MPRSA and the associated implementing regulations have not been met. Although State permits may be required for dredging activities, they would not be needed at the Pensacola (offshore) ODMDS since the disposal site is located outside Florida State waters.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on January 29, 1988 (53 FR 2640 [January 29, 1988]).

On June 10, 1988, the Notice of Availability of the DEIS for public review and comment was published in the **Federal Register** (53 FR 21914 [June 10, 1988]). The public comment period on the DEIS closed July 25, 1988. Distribution of the DEIS resulted in

some mailing returns; attempts were made to redistribute such returns.

The Notice of Availability of the FEIS for public review and comment was published in the **Federal Register** on September 23, 1988 (53 FR 37044 [September 23, 1988]). The public comment period was to close on October 24, 1988, but was extended by EPA to November 14, 1988 (see announcement in the **Federal Register** in 53 FR 44658 [November 4, 1988]). The FEIS addressed the comments received on the DEIS. Distribution of the FEIS also resulted in some mailing returns; attempts were again made to redistribute such returns. Also, replacement pages for Appendix B in the FEIS were distributed to the FEIS mailing list addressees at the end of the original FEIS review period (original review period was extended to allow some review time for Appendix B replacement pages). Review comments received by EPA on the FEIS by the close of the extended review period will be addressed in the Final Rule, which will be published subsequent to issuance of this Proposed Rule. Comments received by EPA include technical comments by Florida State University concerning the original Appendix B relative to currents off of Pensacola, Florida; by the Minerals Management Service of the Department of the Interior; by the Sports Fishing Institute; and by the State of Florida. Any review comments on this Proposed Rule will also be addressed in the pending Final Rule.

The EIS discusses the need for the designation of the Pensacola (offshore) ODMDS. EPA is proposing the designation of the new ODMDS off Pensacola, Florida, to accommodate the Navy's anticipated disposal needs for predominantly fine-grained dredged material that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS (that site is restricted to disposal of suitable sandy dredged material). The U.S. Navy has proposed to establish a new homeport at Pensacola for the aircraft carrier *USS Kitty Hawk* and one naval reserve patrol craft. The *USS Lexington*, currently based at Pensacola, will be moved to Corpus Christi, Texas as part of the overall Gulf Coast Strategic Homeport Project. The proposed project will require deepening of the existing channel to the Naval Air Station (NAS) at Pensacola. Approximately 4.1 million cubic yards (mcy) of new work dredged material from the turning basin and channel is initially proposed for disposal in the new ODMDS.

In the future, the ODMDS could also be used for disposal of maintenance material dredged from the Navy's channel, the Pensacola Harbor Ship Channel or private dredging projects, provided the material meets the criteria specified in MPRSA. Additional Section 103 permit review would be required prior to the use of the new ODMDS for any dredged material other than the initial 4.1 mcy proposed for disposal. Additional dredged material testing and NEPA documentation may also be required. Only material that meets the Ocean Dumping Criteria and is not suitable for beach nourishment would be placed in the site.

The EIS also examines ocean disposal site alternatives to the proposed action. Three alternative sites (Sites "A", "B" and "C") located in the mid-Continental Shelf area were initially selected for study. All three sites were located within an economically and operationally feasible radius (20 miles) from Pensacola Pass. The sites chosen for detailed investigation, Sites "B" and "C", covered approximately 19 square miles each. This area was considered large enough that an ODMDS could be located within the area.

Alternative Site "A" is located within Florida State waters, as defined by the State of Florida (10.36 statute miles). Alternative Site "A" is a four mile area located approximately 13 statute miles southwest of Pensacola Pass in depths of 60 to 70 feet. During the initial evaluations, this site was eliminated because it had no apparent environmental advantages, would be more expensive to use than either of the two other alternative sites because it was farther from Pensacola Pass, and was adjacent to Alabama State waters which would complicate the coordination process.

Alternative Site "B" is also located within Florida State waters, as defined by Florida. The northern side of the site is approximately seven statute miles southeast of Pensacola Pass. Depths in the area range from 60 to 87 feet and the bottom is generally classified as compacted sand. This site was not selected because one permitted and two existing artificial reefs were located within the site and one existing and one proposed reef were located east of the site (i.e., downstream of the predominant current direction).

Alternative Site "C", the preferred site, is located seaward of State waters, as defined by Florida, with the exception of a small portion of the northwest corner. The northern side of Site "C" is approximately 11 statute miles south of Pensacola Pass. Depths in the area range from 60 to 95 feet and the bottom is generally classified as compacted sand and shell hash.

The proposed action is the final designation of a new ODMDS for Pensacola located within the preferred alternative Site "C". This ODMDS is located entirely outside of State waters. A numerical dispersion model (Disposal From An Instantaneous Dump: DIFID model), available at the U.S. Army Engineer Waterways Experiment Station, was used to simulate the disposed material as it descends through the water column and spreads over the ocean bottom under varying hydrodynamic conditions. The results of all the model simulations indicated that 100% of the sand and silt/clay clumps fell to the bottom within less than 100 seconds of the beginning of the disposal operation. In addition, the simulations indicated that this material fell directly beneath the barge, regardless of the input data, describing the oceanographic conditions of the site. The actual deposits of each of these solids fractions were different in that the sand tended to cover a large area of bottom at a lesser thickness than did the silt-clay clumps. The non-cohesive silts and clays did not behave in a similar fashion with a large percentage of these particles remaining suspended in the water column after disposal. Depending upon the ambient conditions, these particles can be transported from the dump location as a turbidity plume. The area affected by the plume varies greatly, depending primarily upon the type of material disposed. The area with suspended solids concentrations of more than 10 parts per million (ppm) would cover approximately 300 acres, 90 minutes after discharge, under worst-case conditions, i.e., 95% silt-clay. Since approximately 93% of the 4.1 mcy to be disposed can be classified as sand or silt/clay clumps, a management plan was devised to utilize this material to form a submerged containment (a horseshoe-shaped berm) into which the non-cohesive material would then be disposed. The model results, the management plan, and the comments received on the DEIS were used to define the actual coordinates of the area to be designated as the ODMDS. For additional details on the model and the management plan, see Appendices H and I of the FEIS, respectively.

C. Coastal Zone Management and Endangered Species Coordination

EPA has concluded that the proposed designation of the Pensacola (offshore)

ODMDS is consistent with the Florida Coastal Zone Management Program to the maximium extent practicable as required by Section 307 of the Coastal Zone Management Act. EPA has included its coastal zone consistency determination as Appendix I in the FEIS. Review comments on EPA's consistency determination will be addressed in the Final Rule.

D. Endangered Species Coordination

Pursuant to Section 7 of the Endangered Species Act, coordination with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) was conducted regarding this site designation relative to adverse effects to any endangered species under NMFS and FWS jurisdiction. By letter to the U.S. Navy dated February 18, 1987 (see FEIS, pg. 7–6), the FWS concurred in the Navy's determination that the Navy's Pensacola Homeport Project would have no adverse effect on Federally-listed threatened or endangered species under FWS jurisdiction in the Pensacola area. Additional concurrence from FWS specifically relating to the proposed designation of an ODMDS offshore Pensacola, Florida was requested by EPA in a letter dated September 13, 1988, and concurrence was received by letter dated October 4, 1988. Also, the NMFS reaffirmed concurrence in the COE's determination that this site designation would have no adverse effects on threatened or endangered species under their jurisdication by letter dated December 14, 1987 (see FEIS, pg. 7–5). Verification that this concurrence is relevant to the proposed designation and is still valid was obtained by EPA during a telephone conversation on September 1, 1988, with Dr. Terry Henwood, Fisheries Biologist, of the NMFS Southeast Regional Office in St. Petersburg, Florida.

E. Proposed Site Designation

The proposed Pensacola (offshore) ODMDS is located approximately 11 statute miles south of Pensacola Pass and occupies an area of approximately six square statute miles. Water depths range from approximately 65 to 80 feet. The Pensacola (offshore) ODMDS proposed for final designation is located entirely outside of Florida State waters and is defined by the following coordinates:

30°08'50" N.,	87°19'30" W.;
30°08'50" N.,	87°16'30" W.;
30°07'05" N.,	87°16'30" W.;
30°07'05" N.,	87°19'30" W.

F. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR Part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations by the disposal from causing significant impacts outside the disposal site, to permit effective monitoring to detect any perturbations from the disposal, and to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, EPA will take appropriate measures to mitigate the impact or terminate disposal at the site. The proposed site conforms to the five general criteria except for the preference for historically-used sites and sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting a site off the Continental Shelf instead of the site in this proposed action. Also, in this case, the site that has been historically used in the area had already been permanently designated by EPA as the Pensacola (nearshore) ODMDS and is restricted to disposal of suitable sandy dredged material as defined earlier. A new ODMDS at Pensacola was therefore selected. This new Pensacola (offshore) ODMDS, which is being proposed for permanent designation herein, will complement the existing Pensacola (nearshore) ODMDS since it may be used for disposal of suitable fine-grained dredged material as defined earlier.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. EPA established these 11 criteria to constitute an environmental assessment of the impact of the site for disposal. The characteristics of the proposed site are reviewed below in terms of these 11 criteria.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]

The boundary coordinates of the site are given above. The Pensacola (offshore) site is approximately 11 statute miles form the nearest beach and encompasses an area of approximately six square statute miles. Water depths at the site range from approximately 65 to 80 feet. Bottom topography in the site is relatively flat and geneally slopes to the southeast. The sand sheet in the immediate vicinity thins to the east with limstone karst topography becoming more predominant in this area. This site has been located on sandy bottom to avoid corals and other invertebrates that occur on rocky outcroppings at depts of 80 feet and more.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)]

The site is located 11 statute miles from Pensacola Pass, an area which is valuable in the maintenance of both adult and juvenile living resources. A large number of species are estuarine dependent during spawning and nursery cycles. Barrier island passes and vegetated shallow estuaries, such as Pensacola Bay, are important in the life cycle of these estuarine-dependent species for spawning, feeding, and migration. Since the site as 11 statute miles from Pensacola Pass, migratory passage through the pass will not be affected. The distance from important nursery and feeding areas is even greater since these areas are located within the estuary. In addition, the site is not located near any known major breeding or spawning areas.

3. Location in Relation to Beaches and Other Amenity Areas [40 CFR 228.6(a)(3)]

Pensacola area amenities will not be affected, based on the location of these amenities in relation to the disposal site and the dominant current patterns. Beach and shore-related amenities of Santa Rosa Island, Perdido Key, Gulf Islands National Seashore, Fort Pickens, and the Fort Pickens Aquatic Preserve are located approximately eight to 11 statute miles north of the site and perpendicular to the direction of net current transport.

The disposal site is approximately two miles west of the nearest known artificial reef (Escambia County #7) and three miles west of a permitted reef site. Two sites being considered for proposal as artficial reef sites are located within the ODMDS and two sites are located east and southeast of the eastern boundary of the site. Since the predominant currents are towards the west, the use of the ODMDS would not impact the known or permitted reef sites or those proposed for establishment that are outside the ODMDS. The proposed

reef locations within the site would be impacted by designation and use of the ODMDS. This impact is not considered significant since these are only two of over twenty proposed reef locations in the vicinity of the ODMDS.

In addition, there are other areas within this general region which would be suitable for establishment of artificial reefs. In addition, proposed site management and monitoring plans have been developed to control impacts outside the boundaries of the site. The proposed site management and monitoring plans are presented in Appendices G and I of the FEIS, respectively. Site management is also discussed in Section G of this Proposed Rule.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any [40 CFR 228.6(a)(4)]

The initial 4.1 mcy of material that is to be disposed at the ODMDS will be the result of construction of the U.S. Navy's Pensacola Homeport Project at Pensacola. This dredged material will be predominantly fine-grained sand, silt, and clay material that is not suitable for beach nourishment or disposal at the existing Pensacola (nearshore) ODMDS. This material will be transported to the site and discharged by hopper dredge, hopper barge, or dump scow. In the future, additional fine-grained material may also be disposed at the ODMDS, but this is not known at this time. Both Federal and non-Federal applicants may use the site if relevant regulations are satisfied.

Materials may not be approved for ocean disposal unless the criteria in the Ocean Dumping Regulations, 40 CFR Part 227, have been met. Bioassays of the material to be initially disposed indicate no significant adverse effects to marine organisms. although slight heavy metal enrichment of chromium, mercury, and zinc exists, the levels are not high enough to initiate the capping of the disposed dredged material with clean sand or to prevent the proposed designation of this ODMDS.

5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

The location and water depth of the ODMDS will not pose any special problems for surveillance or monitoring. Surveillance of the site could be conducted by either aircraft or surface vessels. Periodic environmental monitoring will commence upon site designation and will continue as long as the site remains active. General monitoring objectives for the site include bathymetric measurements to identify shoaling or mounding areas, sediment mapping to determine distribution of disposal material at the ODMDS, water quality sampling and analysis, and bottom sampling and analysis to identify sediment and invertebrate characteristics. EPA is authorized to make appropriate steps to mitigate the impact or terminate disposal at the site, should significant adverse environment impacts be found during monitoring periods.

Site monitoring and management plans for the Pensacola (offshore) ODMDS are proposed in Appendices G and I, respectively, of the FEIS and in the "Site Management" section (G) of this Proposed rule. Some modifications of these proposed plans are possible based on site use and greater understanding of the site. Substantive modifications would be coordinated with appropriate Federal and State aencies. In general, the existence, magnitude, and implementation of management and monitoring plans for this site are dependent upon funding, monitoring data results, and coordination between EPA, the U.S. Navy, the COE, and the State of Florida.

6. Dispersal, Horizontal Transportation and Vertical Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)]

Current within the disposal site are longshore and wind driven with speeds of 30 centimeters per second (cm/sec) or less, 70% of the time (measued maximum of 62 cm/sec). It is unlikely that the suspended sediments will be transported onshore from these currents since the site is 11 statute miles offshore in the Gulf and the dominant net transport is to the west, parallel to the coast. These currents are basically wind and storm driven.

The material to be disposed on site will primarily be fine-grained material that will be more easily eroded and transported than the existing ambient sediments. Current velocities of 20 cm/sec will erode clay-sized particles and are expected 65% of the time over the disposal site. It is also expected that over time the clays and fine-grained sediments will become scattered by these currents and that the site will be fortified by sand and shell. Over time, the site should become consolidated and more difficult to erode. However, as indicated earlier, dredged material disposed at the ODMDS will be somewhat contained due to the proposed construction of a horseshoe-shaped berm at the site (see Appendix I of FEIS).

The disposal site is located approximately 11 statute miles offshore and covers an area of about six square miles. It is expected that disposal operations at this site will have a negligible impact on the circulation and mixing of the Shelf waters due to the relatively small area of coverage when compared to the Continental Shelf near Pensacola.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)]

Since the Pensacola (offshore) ODMDS is a new (as opposed to an interim) site, there have been no known previous discharges of dredged material at this site. The EPA-designated Pensacola (nearshore) disposal site is the closest ODMDS in the area. Disposal at the nearshore site is limited to sandy material containing less than ten percent silt-clays. No long term or irreversible effects of disposal at this site have been reported.

Effects of disposal operations include temporarily increased turbidity, localized mounding, possible release of trace metals and/or chemicals, and the smothering of some benthic organisms. These impacts are not considered significant.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)]

Commercial shipping, commercial and recreational fishing, recreational activities, and some scientific investigations occur throughout the nearshore region. Hopper dredges, tugs and scows must operate in shipping lanes when dredging and traveling to and from the disposal site; however, intermittent use of a site should not impede commerical shipping traffic within the shipping channels. Hazards to navigation are lessened by use of the U.S. Coast Guard's Area Vessel Traffic System, extra caution and awareness by the captains of hopper dredges, and the Corps of Engineers Navigation Bulletins to mariners with dredging schedules.

A section of the ODMDS overlaps a portion of a shipping safety fairway. Actual disposal at the ODMDS within the fairway is projected. However, by letter to EPA dated September 6, 1988, the Commander of the New Orleans District Coast Guard has stated that "I find no reason to object to the establishment of "Site C" and encroaching on the fairway as long as a

minimum navigable water depth of 65 feet is maintained." (The proposed ODMDS is located within Site "C", the alternative area studied.) The safety fairway is located in the deepest (eastern) portion of the ODMDS, which ranges to a maximum depth of approximately 80 feet. A minimum water depth of 65 feet will be maintained.

Commercial and recreational fishing occurs, but it is not geographically limited to the vicinity of the proposed site. However, the disposal site represents only a small portion of the total fishing area available. Offshore Pensacola, commercial and sportfishing operations for finfish center primarily around hard bottom, artificial reef, and wreck areas. The proposed Pensacola (offshore) ODMDS has a sandy bottom; therefore, disposal activities should not interfere with these finfish fishing activities in the area. However, the predominantly sandy bottom area associated with the ODMDS do support shrimp. Local commercial fishing for shrimp is mainly targeted toward pink and rock shrimp. Little or no recreational fishing for these species exists in the area.

Other recreational activities in the nearshore region include boating and scuba diving. With the possible exception of wrecks inshore, the areas near the site do not have unique features that would attract visitors. Intermittent use of the site for disposal operations should not interfere with occasional recreational use of the areas.

Mineral resources would not be significantly affected since there are no active or inactive oil or gas leases within six miles of the ODMDS. Most oil and gas leasing has occurred in the Destin Dome area to the east of the ODMDS. Designation and use of an ODMDS and mineral exploration are considered compatible uses; therefore, potential future use of the ODMDS for these activities should not be in conflict. Although the EIS indicated that mineral extraction is also considered a compatible use, on-site extraction would realistically be difficult. Potential extraction in adjacent areas or even potential on-site extraction of oil and gas from adjacent areas (directional drilling) would be possible, however.

No mineral extraction, desalination projects, or fish and shellfish culture occur in the vicinity of the proposed site. Intermittent use of the site should not interfere with scientific investigations which may be conducted in the area, nor should dredged material disposal substantively interfere with any other legitimate uses of the ocean.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)]

The baseline surveys that were conducted during 1986–87 show that the water quality and environmental characteristics of the disposal site are typical of the northern Gulf of Mexico. Circulation and mixing of the water column within the disposal site directly affect water quality (e.g., dissolved nutrients, trace metals, dissolved oxygen, pH, and suspended sediments). These currents are wind and storm driven and run parallel to the coast.

More than 900 species of diatoms and 400 species of dinoflagellates are found in the Gulf of Mexico. Diatoms are the major component of phytoplankton except during periods of red tide or in silica-depleted waters when dinoflagellates become more abundant. In nearshore waters, copepods dominate the zooplankton populations. Typically, plankton populations are most abundant during spring and summer.

Fish, shrimp, and squid dominate the nekton community and are typical of the species found in the Gulf of Mexico. Several of the species reported are both recreationally and commercially important, although the dominant fish at the site, cusk eels, are not. The fish that are both recreationally and commercially important consist primarily of snapper, grouper, and amberjacks. These fish are mainly found in areas of hard bottom or artificial reefs, neither of which exist at the disposal site. Pink and rock shrimp are the most dominant crustaceans with pink shrimp increasing in abundance during the fall.

The benthic community of the proposed site is dominated by polychaetes, comprising over 50% of the individuals collected, and a few mollusks and arthropods. The organisms present are typical of sand or sand/shell hash bottoms. The abundance, diversity, and distribution of benthic organisms is directly related to the sediment texture.

Sediments were analyzed for heavy metals, PCBs, pesticides and nutrients, and were found to be either below minimum detection levels or in very low concentrations.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(1)]

It is expected that some change in the benthic species composition will occur due to the disposal of finer-grained dredged material at the site.

No evidence exists to suggest that the species occurring from recolonization would be considered nuisance species. Fecal coliform bacteria may be entrained in the dredged material but establishment of bacterial colonies is not expected due to ambient salinities at the site.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance [40 CFR 228.6(a)(11)]

No historically important cultural or natural features exist within the vicinity of the site.

G. Site Management

Site management of the Pensacola (offshore) ODMDS is the responsibility of EPA and the COE. The COE issues permits to all applicants for ocean disposal and undergoes a public review process for its own disposal actions; however, EPA assumes overall responsibility for site management.

Currently a Memorandum of Understanding (MOU) between the COE/South Atlantic Division and EPA/Region IV is being developed and is to establish a monitoring framework for ODMDSs in the Region IV area, which is to lead toward site-specific monitoring plans for individual ODMDSs. In the case of the Pensacola (offshore) ODMDS, a proposed site-specific monitoring plan and a proposed site management plan are already developed and presented in Appendices G and I, respectively, of the FEIS. Since specifics of these proposed plans are not presented herein, the FEIS should be consulted for such specifics. Plan concepts presented in the FEIS include an electronic verification system or visual surveillance that will report actual disposal information, sediment mapping to determine distribution of disposal material at the ODMDS, construction of a horseshoe-shaped berm within the ODMDS to help contain disposal material, bathymetric measurements to assess mounding of disposal material, water quality sampling and analysis of various parameters, and benthic sampling and analysis of sediments and benthos.

Some modifications of the proposed plans presented in the FEIS are possible as greater understanding of the site develops. Substantive modifications would be coordinated with appropriate Federal and State agencies. For example, revisions may be required based on monitoring data results and comparison of those data to the DIFID dispersion model. Techniques may also vary or be upgraded. These plans are furthermore dependent on funding, which is via an annual budget and is

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therefore undermined for each following year. In general, the existence, magnitude, and implementation of the management and monitoring plans for this site are dependent upon funding, monitoring data results, and coordination between EPA, the U.S. Navy, the COE, and the State of Florida. Nevertheless, EPA believes that site plans are needed and that the plans in the FEIS are reasonable proposals for the Pensacola (offshore) ODMDS.

If evidence of significant adverse environmental effects outside the Pensacola (offshore) ODMDS boundaries is discovered, EPA will take appropriate measures to mitigate the impact or terminate disposal at the site. Conversely, if monitoring results exhibit no significant impact outside the ODMDS boundaries, monitoring may be discontinued or less frequent.

Related to site monitoring, EPA plans to test for tributyltin (TBT) in sediment samples from dredged material from Pensacola Harbor that would be projected for disposal at the ODMDS.

H. Proposed Action

The designation of the proposed Pensacola (offshore) ODMDS as an EPA-approved disposal site for suitable dredged material is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV. The EIS provides information indicating that the proposed ODMDS may appropriately be designated for use. Interested persons may participate in this Proposed Rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

It should be emphasized that if an ocean disposal site is designated by EPA, such a site designation does not constitute EPA's approval of dredging projects or actual disposal of dredged material at the site. Before ocean disposal of dredged material at the site may commence, EPA and the COE must also evaluate the proposed dumping in accordance with the criteria in section 227 of the Ocean Dumping Regulations. In any case, EPA has the right to disapprove the actual disposal, if it determines that environmental concerns under the Act have not been met.

The Pensacola (offshore) ODMDS is not restricted to disposal use by Federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to disposal of predominantly fine-grained dredged material from the greater Pensacola, Florida area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size of >0.125 mm and a composition of <10% fines.

I. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed action will not resut in an annual effect on the economy of $100 million or more, or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Proposed Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 9, 1988.

Lee A. DeHihns III,

Acting Regional Administrator.

In consideration of the foregoing, Part 228 of Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Part 228 is proposed to be amended by adding to § 228.12 paragraph (b)(72) a Ocean Dredged Material Disposal Site for Region IV as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(72) Pensacola, Florida: Ocean Dredged Material Disposal Site—Region IV.

Location:

30°08'50" N.,	87°19'30" W.;
30°08'50" N.,	87°16'30" W.;
30°07'05" N.,	87°16'30" W.;
30°07'05" N.,	87°19'30" W.

Size: Approximately 6 square statute miles.

Depth: Ranges from approximately 65 to 80 feet.

Primary Use: Dredged Material.

Period of Use: Continuing Use.

Restriction: Disposal is restricted to predominantly fine-grained dredged material from the greater Pensacola, Florida area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size >0.125 mm and a composition of <10% fines.

[FR Doc. 88-28956 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1609

Fee-Generating Cases

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule.

SUMMARY: This proposed regulation would amend Part 1609 of the Legal Services Corporation's ("Corporation" or "LSC") regulations, 45 CFR Part 1609, governing fee-generating cases to require that the sum of all attorneys' fees received by a recipient be credited towards the recipient's LSC annual grant. Also, the requirements for a recipient to find that other adequate representation is not available in a fee-generating case would be amended to require use of local bar referral services whenever available.

Section 1007(b)(1) of the Legal Services Corporation Act of 1974, as amended, 42 U.S.C. 2996(f)(b)(1) provides that no funds made available by the Corporation may be used with respect to any fee-generating case except in accordance with guidelines promulgated by the Corporation. The provision contemplates that recipients would concentrate their resources on matters where representation of an eligible client is not otherwise available from the private bar. Contingent fee cases and cases in which a fee shifting provision is available are often attractice to private bar members. The proposed changes are intended to reinforce LSC's objective that such cases should be proffered to the private bar first.

Moreover, because any fees obtained constitute incidental benefits of the litigation, by definition, the proposed rule would treat such receipts as a windfall which would be credited towards the grant funds to be paid to the grantee during the following quarter.

DATE: Comments may be submitted on or before January 18, 1989.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy B. Shea, General Counsel, Office of the General Counsel, (202) 863–1823.

SUPPLEMENTARY INFORMATION:

Section 1609.1

Section 1609.1 is proposed to be amended in order to make clear that the restrictions apply to subrecipients as well as to recipients.

Section 1609.2

Section 1609.2 is proposed to be amended to state specifically that actions brought under a contract or a statute providing for the shifting of fees are considered fee-generating cases. Referring such cases to the local referral service will give private attorneys the opportunity to undertake representation in the matters.

Section 1609.3

Section 1609.3 is proposed to be amended by adding "or any non-public funds" to the existing provision that a recipient shall not use "funds received from the Corporation" for fee-generating cases. This revision would make clear that prohibitions of this regulation on the acceptance of fee-generating cases apply to private non-LSC funds as well as Corporation funds. Because representation in fee-generating cases is prohibited by both section 1007(b)(1) of the Act and 45 CFR Part 1610, the change would render LSC regulations consistent.

The section is also proposed to be amended to include a presumption that all attorneys' fees are for representation in cases undertaken using LSC funds or non-public funds, unless proven otherwise. This presumption is reasonable because the recipients are in a better position than the Corporation to establish and maintain the requisite recordkeeping, and also because the vast majority of recipients receive most of their funding from the Corporation and private sources. In addition, this presumption would relieve recipients of having to maintain documentation of cost allocation for each case and would also result in administrative convenience for recipients and the Corporation.

Section 1609.4

Section 1609.4 is proposed to be amended in order to state that a recipient may not undertake representation in a fee-generating case unless other adequate representation is unavailable and the recipient's executive director, pursuant to policies adopted by the recipient's governing body, has approved the undertaking.

Currently, § 1609.4(a)(1) deems other adequate representation to be unavailable when a case has been rejected by the local lawyer referral service *or* by two private attorneys. This amendment would eliminate the either/or proposition by requiring that recipients first attempt to refer fee-generating cases to a local lawyer referral service. Only in the event that a local lawyer referral service does not exist in the recipient's service area should referral be made to at least two private attorneys who have experience relevant to the case. The Corporation believes that recipients should first use a lawyer referral service, if one exists, in order the reinforce impartiality in the referral of potential fee-generating cases to private attorneys. Referral services, which are operated by local bars in nearly every jurisdiction, normally keep up-to-date lists of attorneys and their specialties and are likely to be successful in matching eligible clients in fee-generating cases with attorneys willing to represent them. These changes would reinforce the policy that recipients devote their resources to matters in which representation is not available by the private bar.

Further, recipients would be required to maintain documentation of the attempted referrals in the case file. Maintaining documentation of attempted referrals is not expected to be a burden.

Section 1609.4(b) is proposed to be amended in order to delete the exemption from referral for cases in which recovery of damages may be ancillary and not the principal object of an action for equitable or other non-pecuniary relief. Because numerous statutes permit payment of attorney's fees for prevailing parties in suits for equitable or non-pecuniary relief, see, for example, 28 U.S.C. 2412 (Equal Access to Justice); 5 U.S.C. 552 (Freedom of Information Act); 42 U.S.C. 1988 (Civil Rights); 29 U.S.C. 216 (Fair Labor Standards Act); and 15 U.S.C. 2073 (Consumer Product Safety Act), private attorneys are often willing to represent clients in such matters with the expectation of being awarded fees after prevailing in the case. The change would merely require that such cases first be proffered to the private bar through a referral service. This change would not place any disproportionate burden on recipients, as referrals to a lawyer referral service or to two private attorneys are simply accomplished.

Section 1609.4 is also proposed for revision to require a recipient's director to give prior written approval pursuant to the policies adopted by the recipient's governing body before a fee-generating case could be undertaken even after the requisite rejection by the referral service or private attorneys.

Because recipients generally should not be representing clients in fee-generating cases, any exceptions to this rule should be undertaken only after review and specific approval by the director in accordance with policies adopted by the recipient's governing body. The proposed revision sets forth criteria a governing body should establish for deciding whether or not representation in a fee-generating case should be undertaken. As with any decision on case acceptance, a recipient must consider each case to determine if it falls within the recipient's priorities and allocation of resources.

Section 1609.5

A new § 1609.5(c) is proposed in order to confirm the Corporation's position on the acceptance of attorney's fees in cases seeking retroactive benefits under Titles II and XVI of the Social Security Act. Although recipients may under section 1609.4 accept these cases without first attempting a referral to a private attorney, a recipient may not accept a fee for such representation when the fee is deducted from an award of subsistence benefits. This has been the Corporation's longstanding position, based on the 1977 amendments to the LSC Act, wherein representation in benefit cases by recipients without prior attempted referral was specifically approved. P.L. 95–222; 42 U.S.C. 2996f(b). However, Congress clearly intended that recipients not deduct attorneys' fees from the client's retroactive benefit award. S. Rep. 95–172, 95th Cong., 1st Sess., 15–16; *reprinted in* 123 CONG. REC. 33027 (daily ed. October 10, 1977) (Statement of Sen. Nelson).

Section 1609.6

The proposed changes to § 1609.6 would require each recipient to file a quarterly report as to the amount of attorneys' fees received by the recipient. The recipient would also show on the

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report any attorneys' fees received by a subrecipient in cases funded by the recipient as well as fees for co-counseling. This amount would then be credited towards the recipient's LSC funding for the next quarter and would be deducted by the Corporation from the recipient's subsequent monthly funding checks. The Corporation has ample authority in making decisons concerning the funding of recipients to consider the availability of other resources. *See e.g., National Clearinghouse v. Legal Services Corp.*, 674 F. Supp. 37 (D.D.C. 1987), *aff'd* C.A. 88–7027 (D.C. Cir. filed Oct. 21, 1988) (*per curiam*).

The Corporation wishes to maintain its established policy of encouraging recipients to seek attorneys' fees in appropriate cases. The policy is based, in part, on congressional recognition that attorneys' fees awards further the purpose of encouraging private enforcement of important public policies by enabling injured parties to obtain counsel. Under the proposed change, programs arguably may have less incentive to pursue cases that may result in an attorneys' fees award; however, program priorities and case acceptance practices should be based foremost on individual client needs rather than on the potential benefit to the program in the form of attorneys' fees. Recipients should not use the likelihood or probability of a fee award as a consideration in their selection of cases.

The Corporation also believes that this change in policy would not discourage recipients from filing actions under statutes providing attorneys' fees to prevailing parties. Recipients, of course, would continue to receive support from the Corporation, regardless of any potential fee award under these statutes.

Sums credited to recipients would free up funds previously appropriated for basic field grants. Given a line item funding formula such as provided in section 605 of Public Law 100–459, 102 Stat. 2223, such sums would be allocated to field programs as supplemental grants for that year, granting the largest share of funds to programs with the lowest funding per person. Thus, this change would promote general equalization of funding. If recipients continue to receive attorneys' fees as they have in the past, the Corporation should be able to supplement the grants of the lower per capita funded programs by a total of approximately $6 million a year, which represents two percent of the total amount granted by the Corporation to basic field programs.

List of Subjects in 45 CFR 1609

Legal services.

For reasons set out above, 45 CFR 1609 is proposed to be amended as follows:

PART 1609—FEE GENERATING CASES

1. The authority citration for Part 1609 continues to read as follows:

Authority: Sec. 1007(b)(1) Legal Services Act of 1974, as amended (42 U.S.C. 2996f(b)(1)).

2. Section 1609.1 is revised to read as follows:

§ 1609.1 Purpose.

This part is designed to insure that recipients and subrecipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

3. Section 1609.2 is revised to read as follows:

§ 1609.2 Definition.

"Fee-generating case" means any case or matter which, if undertaken on behalf of an eligibile client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party. Any action brought on behalf of a client under a contract or statute with a fee-shifting provision is considered a fee-generating case.

4. Section 1609.3 is revised to read as follows:

§ 1609.3 Prohibition.

No recipient shall use funds received from the Corporation or any non-public funds to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. It shall be presumed that all cases undertaken by a recipient are undertaken using LSC or non-public funds. A recipient may rebut this presumption with contemporaneous documentation showing that a case was otherwise funded. All recipients shall establish procedures for the referral of fee-generating cases.

5. Section 1609.4 is revised to read as follows:

§ 1609.4 Authorized representation in a fee-generating case.

(a) Recipients are authorized to provide representation in fee-generating cases if other adequate representation is determined to be unavailable and the executive director has approved the undertaking of the case in writing pursuant to written policies adopted by the recipient's governing body.

(b) Other adequate representation is deemed to be unavailable when:

(1) The recipient has determined that free referral is not possible because:

(i) The case has been rejected by the local lawyer referral service or, if there is no lawyer referral service operating in the recipient's service area, by two attorneys in private practice who have experience in the subject matter of the case. The recipient shall maintain contemporaneous documentation of the requisite rejections in the case file;

(ii) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee. The recipient shall maintain contemporaneous documentation of such refusal in the case file; or

(iii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(2) Inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(3) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(4) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401, et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381, et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled.

(c) The governing body of a recipient shall adopt written policies to guide the director of the recipient in determining whether to approve action in such cases which will require the director to:

(1) Verify that other adequate representation is unavailable as required by § 1609.4;

(2) Determine how the case conforms with the recipient's priorities in resource allocation; and

(3) Document the executive director's consideration of the above listed factors and maintain such documentation and written approval in the case file.

6. Section 1609.5 is amended by adding paragraph (c) and the introductory text is republished to read as follows:

§ 1609.5 Acceptance of fees.

A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if:

* * * * *

(c) The fee is not deducted from the award to the client in connection with any claim for statutory benefits permitted by Section 1007(b)(1) of the Act and § 1609.4(d) of these regulations.

7. Section 1609.6 is revised to read as follows:

§ 1609.6 Accounting for attorneys' fees.

Any recipient who has been awarded fees shall submit a quarterly report due April 15, July 15, October 15, and January 31 of each year on a form approved by the Corporation, which shall state all attorneys' fees received by the recipient during the previous quarter. The quarterly report shall also include all attorneys' fees received by a subrecipient in all cases funded by the recipient. All such sums received by a recipient after the effective date of this rule shall be credited towards the recipient's LSC grant for the succeeding quarter and the sums shall be deducted from the recipient's monthly funding checks.

8. Section 1609.8 paragraph (c) is revised and the intoductory text is republished to read as follows:

§ 1609.8 Applicability.

Nothing in this part shall prevent a recipient from:

* * * * *

(c) Acting as co-counsel with a private attorney when the case meets standards set forth in § 1609.4, and accepting part of any fees that may result from a shared case when the requirements of §§ 1609.5 and 1609.6 are met.

Timothy B. Shea,

General Counsel.

[FR Doc. 88-29142 Filed 12-16-88; 8:45 am]

BILLING CODE 7050-01-M

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Notices

Federal Register
Vol. 53, No. 243
Monday, December 19, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 400]

Resolution and Order Approving the Application of the Puget Sound Foreign-Trade Zone Association for a Special-Purpose Subzone for Tacoma Boatbuilding Co. in Tacoma, WA

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Puget Sound Foreign-Trade Zone Association, grantee of Foreign-Trade Zone 86, filed with the Foreign-Trade Zones Board (the Board) on January 27, 1988, requesting special-purpose subzone status for the shipyard of Tacoma Boatbuilding Company in Tacoma, Washington, within the Tacoma Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) any steel mill products including steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated under merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Tacoma Boatbuilding Company shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone for the Tacoma Boatbuilding Company Shipyard in Tacoma, Washington

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Puget Sound Foreign-Trade Zone Association, grantee of Foreign-Trade Zone No. 86, has made application (filed January 27, 1988, FTZ Docket 7–88, 53 FR 3907) in due and proper form to the Board for authority to establish a special-purpose subzone at the shipyard of Tacoma Boatbuilding Company in Tacoma, Washington;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is subject to the conditions stated in the resolution accompanying this action;

Now, Therefore, in accordance with application filed January 27, 1988, the Board hereby authorizes the establishment of a subzone at the shipyard of Tacoma Boatbuilding Company, designated on the records of the Board as Foreign-Trade Subzone No. 86A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, including the requirement that foreign basic steel mill products shall be subject to Customs duties prior to admission into the subzone if the same item is then being produced by a domestic mill, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zone Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 6th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce For Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–29114 Filed 12–16–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

NASA et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–200. *Applicant:* NASA, Lyndon B. Johnson Space Center, Houston, TX 77058. *Instrument:* Electron Microscope, Model JEM–2000 EX/DP/DP. *Manufacturer:* JEOL Ltd., Japan *Intended use:* See notice at 53 FR 22684, June 17, 1988. *Instrument ordered:* September 16, 1987.

Docket Number: 88–202. *Applicant:* University of Kentucky, Lexington, KY 40506–0091. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Hitachi Scientific, Japan. *Intended use:* See notice at 53 FR 22684, June 17, 1988. *Instrument ordered:* December 23, 1987.

Docket Number: 88–204. *Applicant:* University of Kentucky, Lexington, KY 40506–0099. *Instrument:* Electron Microscope, Model H–7000–2T. *Manufacturer:* Hitachi Scientific, Japan. *Intended use:* See notice at 53 FR 22684, June 17, 1988. *Instrument ordered:* December 23, 1987.

Docket Number: 88–210. *Applicant:* McCrone Research Institute, Chicago, IL 60616. *Instrument:* Electron Microscope, Model JEM–1200 EX/SEG/DP/DP. *Manufacturer:* JOEL, Ltd., Japan. *Intended use:* See notice at 53 FR 22685, June 17, 1988. *Instrument ordered:* March 31, 1988.

Docket Number: 88–214. *Applicant:* University of Virginia, Charlottesville, VA 22901. *Instrument:* Electron Microscope, Model JEM–4000EX/THGZ with accessories. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* See notice at 53 FR 22685, June 17, 1988. *Instrument ordered:* March 1, 1988.

Docket Number: 88–219. *Applicant:* Children's Hospital of Los Angeles, Los Angeles, CA 90027. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended use:* See notice at 53 FR 23780, June 24, 1988. *Instrument ordered:* April 7, 1988.

Docket Number: 88–221. *Applicant:* St. Christopher's Hospital for Children, Philadelphia, PA 19133. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* See notice at 53 FR 23781, June 24, 1988. *Application received by Commissioner of Customs:* May 24, 1988.

Docket Number: 88–223. *Applicant:* University of Delaware, Newark, DE 19716. *Instrument:* Electron Microscope, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* See notice at 53 FR 30083, August 10, 1988. *Instrument ordered:* April 5, 1988.

Docket Number: 88–224. *Applicant:* Beth Israel Hospital, Boston, MA 02215. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended use:* See notice at 53 FR 30084, August 10, 1988. *Instrument ordered:* March 16, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–29115 Filed 12–16–88; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Workshop on Implementation of Markings for Toy, Look-Alike and Imitation Firearms; Public Meeting

AGENY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announced a workshop to discuss implementation issues related to a new law concerning the marking of toy, look-alike, and imitation firearms. The new law, section 4 of the Federal Energy Management Improvement Act, (Pub. L. 100–615), provides that "it shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce".

DATE AND TIME: The workshop will be held on February 9, 1989, starting at 10:00 a.m.

ADDRESS: The workshop will be held in the Green Auditorium, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Stanley Warshaw, Associate Director, Industry and Standards, Room A600, Administration Building, Gaithersburg, Maryland 20899, telephone number (301) 975–4000.

SUPPLEMENTARY INFORMATION: Section 4 of the Federal Energy Management Improvement Act, (Pub. L. 100–615), provides that "it shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it", a "blaze orange plug inserted in the barrel" or such other marking as may be approved by the Secretary of Commerce. Section 4 also permits the Secretary of Commerce to waive this requirement for any imitation firearm that will be used only in the theatrical, movie or television industry.

The workshop will be utilized to develop the specifics of the marking and the exceptions or alternative requirements, if any, that might need to be prescribed for such toy, look-alike, or firearms as water pistols, air soft guns firing nonmetallic projectiles, and so on. The use of existing voluntary standards such as ANSI Z53.1, entitled *Safety Color Code for Marking Physical Hazards*, will also be considered.

Date: December 13, 1988.

Raymond G. Kammer,

Acting Director.

[FR Doc. 88–29089 Filed 12–16–88; 8:45 am]

BILLING CODE 3510–13–M

National Conference on Weights and Measures; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Interim Meetings of the National Conference on Weights and Measures will be held January 9 through January 13, 1989, at the National Institute of Standards and Technology, Gaithersburg, Maryland. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meetings of the conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting),

brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subject that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATE: The meeting will be held January 9–13, 1989.

Location of Meeting: The National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Executive Secretary, National Conference on Weights and Measures, P.O. Box 3137, Gaithersburg, Maryland 20878. Telephone: (301) 975–4009.

Date: December 14, 1988.

Raymond G. Kammer,

Acting Director.

[FR Doc. 88–29090 Filed 12–16–88; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

December 13, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and the Republic of Korea is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limits:

	12-mo restraint limit
Category Group I:	
200, 201, 218–220, 222–229, 300–326, 360–363, 369–0,[1] 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669 and 670–0,[2] as a group.	383,750,352 square meters equivalent.
Sublevels within Group I:	
200	350,653 kilograms.
201	1,364,071 kilograms.
218	10,670,739 square meters.
219	7,304,194 square meters.
220	3,897,066 square meters.
229–F [3]	332,447 kilograms.
300/301	2,513,347 kilograms.
313	44,495,314 square meters.
314	22,302,246 square meters.
315	20,281,657 square meters.
317/326	14,865,039 square meters.
363	1,785,791 numbers.
410	3,934,756 square meters.
604	290,019 kilograms.
611	2,084,302 square meters.
613/614	6,605,678 square meters.
617	4,883,835 square meters.
619/620	85,414,409 square meters.
624	8,094,904 square meters.
625–629	10,879,016 square meters.
669–C [4]	1,023,053 kilograms.
669–P [5]	1,841,099 kilograms.
669–T [6]	3,633,552 kilograms.
Group II:	
237, 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group.	572,138,329 square meters equivalent.
Sublevels within Group II:	
237	69,998 dozen.
331	528,738 dozen pairs.
333/334	100,000 dozen.
335	105,000 dozen.
336	46,389 dozen.
338/339	803,661 dozen.
340	450,000 dozen of which not more than 150,000 dozen shall be in Category 340–Y.[7]
341	190,592 dozen.
342	78,371 dozen.
345	94,779 dozen.
347/348	352,661 dozen.
350	13,492 dozen.
351	118,611 dozen.
352	144,234 dozen.
353/354/653/654.	233,081 dozen.
359–H [8]	2,077,827 kilograms.
433/434	17,370 dozen of which not more than 13,262 dozen shall be in Category 433 and not more than 6,802 dozen shall be in Category 434.
435	31,917 dozen.
436	13,511 dozen.
438	64,071 dozen.
440	214,447 dozen.
442	45,660 dozen.
443	322,056 numbers.
444	49,753 numbers.
445/446	52,465 dozen.

	12-mo restraint limit
447	84,880 dozen.
448	32,122 dozen.
459-W [9]	86,892 kilograms.
631	243,536 dozen pairs.
632	1,848,887 dozen pairs.
633/634/635	1,314,880 dozen of which not more than 150,000 dozen shall be in Category 633, not more than 803,000 dozen shall be in Category 634 and not more than 559,000 dozen shall be in Category 635.
636	231,938 dozen.
638/639	5,645,601 dozen.
640-D [10]	3,445,125 dozen of which not more than 1,313,033 dozen shall be in Category 640-DY.[11]
640-O [12]	2,524,524 dozen of which not more than 2,171,554 dozen shall be in Category 640-OY.[13]
641	992,898 dozen of which not more than 37,730 dozen shall be in Category 641-Y.[14]
642	84,342 dozen.
643	741,486 numbers.
644	1,113,298 numbers.
645/646	3,419,369 dozen.
647/648	1,203,135 dozen.
649	539,254 dozen.
650	19,742 dozen.
659-C [15]	213,947 kilograms.
659-H [16]	1,156,353 kilograms.
659-S [17]	145,197 kilograms.
Group III:	
831-844 and 847-859, as a group.	18,048,753 square meters equivalent.
Sublevels within Group III:	
835	27,407 dozen.
836	76,242 dozen.
840	116,734 dozen.
Group IV:	
845	2,315,056 dozen.
846	810,701 dozen.
Group VI:	
369-L [18] and 670-L/870, [19] as a group.	57,943,626 square meters equivalent.
Sublevels within Group VI:	
369-L	244,235 kilograms.
670-L/870	16,106,039 kilograms of which not more than 13,449,014 kilograms shall be in Category 670-L.

[1] In Category 369-0, all tariff numbers except 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00.
[2] In Category 670-0, all tariff numbers except 4202.12.80.30, 4202.12.80.70, 4202.92.30.20, 4202.92.30.30 and 4202.92.90.20.
[3] In Category 229-F, only tariff numbers 5608.11.00.00, 5608.19.10.10 and 5608.19.10.20.
[4] In Category 669-C, only tariff numbers 5607.49.30.00 and 5607.50.40.00.
[5] In Category 669-P, only tariff numbers 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00.
[6] In Category 669-T, only tariff numbers 6306.12.00.00, 6306.19.00.10 and 6306.22.90.00.
[7] In Category 340-Y, only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.46, 6205.20.20.50 and 6205.20.20.60.
[8] In Category 359-H, only tariff numbers 6505.90.15.30 and 6505.90.20.60.
[9] In Category 459-W, only tariff number 6505.90.40.60.
[10] In Category 640-D, only tariff numbers 6205.30.20.10, 6205.30.20.20, 6205.30.20.30, 6205.30 20.40, 6205.90.20.30 and 6205.90.40.30.
[11] In Category 640-DY, only tariff numbers 6205.30.20.10 and 6205.30.20.20.
[12] In Category 640-0, only tariff numbers 6203.23.00.80, 6203.29.20.50, 6205.30.10.00, 6205.30.20.50, 6205.30.20 60, 6205.30.20.70, 6205.30.20.80 and 6211.33.00.40.
[13] In Category 640-OY, only tariff numbers 6205.30.20.50 and 6205.30.20.60.
[14] In Category 641-Y, only tariff numbers 6204.23.00.50, 6204.29.20.30, 6206.40.30.10 and 6206.40.30.25.
[15] In Category 659-C, only tariff numbers 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10.
[16] In Category 659-H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75.
[17] In Category 659-S, only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.20.
[18] In Category 369-L, only tariff numbers 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00.
[19] In Category 670-L, only tariff numbers 4202.12.80.30, 4202.12.80 70, 4202.92.30.20, 4202.92.30.30 and 4202.92.90.20.

Imports charged to these cateogory limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1988 levels are subject to adjustment according to the provisions of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

The conversion factors are listed below:

Category	Conversion factor
333/334	33.0
433/434	35.2
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29088 Filed 12-16-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1989 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated as eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: January 27, 1989.

Applications available: December 27, 1988.

Eligibility information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent undergraduate student (FTE) in comparison with the average E&G expenditure per FTE student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Institutions Program regulations.

Enrollment of Needy Students: Under 34 CFR 607.3, an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; *or* (2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To quality under this criterion, an applicant's Pell grant percentage must be *more than* the threshold for its category provided on the table in this notice.

E&G Expenditures Per FTE Student: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If

the applicant's average E&G expenditure for 1986–87 is *less than* the threshold for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expanded by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE for the 1986–87 base year.

	Median Pell Grant percentage	1986–87 average E&G per FTE student
2-year public institutions	20.38	$4,443
2-year non-profit private institutions	26.21	5,069
4-year public institutions	21.04	8,376
4-year non-profit private institutions	21.73	9,905

Waiver Information: Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waivers of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4(c) and (d) respectively.

For the purpose of § 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1986–87 were students from low-income families, "low-income" is defined as an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sized families.

For the purposes of this waiver provision, low-income families are identified according to the following:

Size of family [1]	Gross annual family income must be less than [2]
1	$8,040
2	10,860
3	13,680
4	16,500
5	19,320
6	22,140
7	24,960
8	27,780

[1] For all families with more than 8 members, add $2,820 for each additional member.

[2] Add 15 percent for Hawaii and 25 percent for Alaska to the figures in Family Income Column.

Source: U.S. Department of Health and Human Services as published in the **Federal Register** of February 11, 1986, 51, No. 28, pages 5105–5106.

In reference to the waiver option specified in section 607.3 (b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by contacting: National Technical Information Services, Document Sales, 5505 Port Royal Road, Springfield, Virginia 22161, or call (703) 487–4650. Title: METROPOLITAN STATISTICAL AREAS, 1986 #PR86–139742.

Applicable Regulations: Regulations applicable to the eligibility process include: (a) the Strengthening Institutions Program, 34 CFR Part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR Part 628; and (c) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78.

For Applications or Information Contact: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB#3, Washington, DC 20202–5335, Telephone: (202) 732–3314.

Program Authority: 20 U.S.C. 1057 and 1065a.

Dated: December 14, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29119 Filed 12–16–88; 8:45 am]

BILLING CODE 4000-01-M

Meeting; National Assessment Governing Board

AGENCY: National Assessment Governing Board.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of a subgroup of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 5, 1989.

ADDRESS: The Westin Hotel-O'Hare, 6100 River Road, Rosemont, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of the Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Room 602C, Washington, DC 20208, Telephone: (202) 357–6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); 20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting for each age and grade tested, and establishing standards and procedures for interstate and national comparison.

A subgroup of the National Assessment Governing Board will meet in Rosemont, Illinois on January 5, 1989 from 9 a.m. to 5 p.m. The proposed agenda includes the identification of National Assessment of Educational Progress (NAEP) policy issues that the full Board must consider and on which the Board's advice or decisions are needed in early 1989. The meeting of the subgroup will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–163; 5 U.S.C. Appendix 2). A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Until a permanent office site for the Board has been established, this summary is available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 55 New Jersey Avenue NW., Room 600, Washington, DC from 8:30 a.m. to 5 p.m.

Dated: December 14, 1988.

Patricia Hines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–29066; Filed 12–16–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-578-000, et al.]

Pacific Gas & Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Pacific Gas & Electric Company

[Docket No. ER88-578-000]

December 9, 1988.

Take notice that on October 24, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing in this docket as a supplement to its earlier filing in this docket a Letter Agreement between PG&E and the City of Santa Clara clarifying the FERC filing rights and obligations of both parties.

Comment date: December 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Electric & Gas Company

[Docket No. ES89-10-000]

December 12, 1988.

Take notice that on December 2, 1988, South Carolina Electric and Gas Company filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $160,000,000 of short-term unsecured promissory notes in the form of bank loans and commercial paper, on or before December 31, 1990, with a final maturity date no later than December 31, 1991.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power & Light Company et al.

[Docket No. ER89-102-000]

December 12, 1988.

Take notice that on December 2, 1988, Central Power and Light Company and West Texas Utilities Company submitted for filing a revised ERCOT Interpool Transmission Service Tariff, and Public Service Company of Oklahoma and Southwestern Electric Power Company submitted for filing a revised SPP Interpool Transmission Service Tariff. The filing companies states that the purpose of the filing is to delete provisions from the currently effective Interpool Transmission Service Tariffs which require the reservation of 15% of the initial nominal capacity of the North Tie ("Reserve Capacity") and the solicitation from "Qualified Utilities" of reservations of the use of this North Tie Reserve Capacity. The filing companies request an effective date of January 31, 1989.

The filing companies state that copies of the filing have been served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and all parties to Docket No. EL79-8-002. Copies of the filing are also available for inspection in the general offices of each of the filing companies.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Washington Water Power Company

[Docket No. ER89-100-000]

December 12, 1988.

Take notice that on December 1, 1988, Washington Water Power Company tendered for filing a Transmission Wheeling Tariff, Schedule 62. The filing company states that the tariff is related to transmission wheeling service for borderline customer loads provided only to the Bonneville Power Administration under a currently existing General Transfer Agreement and that the tariff reflects changes in the company's cost to provide this service.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER88-75-002]

December 12, 1988.

Take notice that on December 1, 1988, Northern States Power Company submitted for filing its refund report in compliance with the Commission's order of November 4, 1988 in this docket.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER89-98-000]

December 12, 1988.

Take notice that on November 30, 1988, Central Vermont Public Service Corporation (Central Vermont) tendered for filing as an initial rate schedule a Purchase Agreement between the New England Power Company and Central Vermont for the sale of a portion of the Central Vermont entitlement in the capacity and net electrical output of the Vermont Yankee Nuclear Power to New England Power Company.

According to Central Vermont, copies of the filing were served upon the respective jurisdictional state regulatory agencies of the parties to the agreement. Central Vermont further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas & Electric Company

[Docket No. ER89-104-000]

December 12, 1988.

Take notice that on December 2, 1988, Louisville Gas & Electric Company ("Louisville") tendered for filing an amendment to the interconnection agreement between itself and Wabash Valley Power Association, Inc.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER89-106-000]

December 12, 1988.

Take notice that on December 5, 1988, Duke Power Company ("Duke") tendered for filing with the Commission a new Service Schedule J-1987 to the Interchange Agreement between Duke and Carolina Power & Light Company ("CP&L") dated June 1, 1961, as amended ("Interchange Agreement"). Duke states that the Interchange Agreement is on file with the Commission and has been designated Duke Rate Schedule FERC No. 10.

Duke states further that under the terms of Service Schedule J, CP&L will buy 400 MW of capacity on a firm basis for the period from January 1, 1992 to December 31, 1997. The proposed agreement provides for a monthly capacity rate equal to $7.00 per kilowatt per month which will be escalated from 1986 to 1992 dollars prior to the commencement of service in 1992. CP&L has the right to purchase energy from 0 MWh to 400 MWh on any hour. The rate generally applicable to the supply of energy under Service Schedule J will equal Duke's out-of-pocket cost of supplying such energy. Duke further states that copies of the filing were mailed to CP&L, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Mississippi Power Company

[Docket No. ER89-101-000]

December 12, 1988.

Take notice that on December 2, 1988, Mississippi Power Company (MPC) tendered for filing what it describes as an initial Transmission Service Agreement executed between Alabama

Electric Cooperative (AEC) and MPC. The agreement provides for transmission service for the account of AEC for a period of three years commencing January 1, 1989.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Electric Company

[Docket No. ER89-107-000]

December 12, 1988.

Take notice that on December 2, 1988, Commonwealth Electric Company ("Commonwealth") tendered for filing a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that the change in rate has been computed according to the provisions of section 6(b) of its Rate Schedule FERC No. 6. Commonwealth states that the proposed change would supersede the 23 KV Wheeling Rate in effect during calendar 1987. Commonwealth states that it is requesting waiver of the Commission's notice requirements to allow the tendered rate change to become effective as of January 1, 1988 and that it has served copies of its filing upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER89-103-000]

December 12, 1988.

Take notice that on December 2, 1988, Wisconsin Public Service Corporation (WPSC) tendered for filing a supplement to its Service Agreement No. 4 for "Partial Requirements Service" between the City of Marshfield, Wisconsin and Wisconsin Public Service Company. WPSC states that the supplement will revise the contract demand quantities in accordance with Exhibit 1 of the Service Agreement. WPSC states that copies of the filing were served upon the City of Marshfield, Wisconsin and the City of Manitowoc, Wisconsin.

Comment date: December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29036 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3817-000, et al.]

Sun Exploration and Production Co., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

December 15, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 30, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3817-000, D, 11-16-88	Sun Exploration and Production Company, P.O. Box 2880 Dallas, TX 75221-2880.	Dorchester Gas Producing Company, Gyman-Hugoton Field, Texas County, Oklahoma.	(1)
G-3894-035, D, 11-17-88	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, Payton Field, Ward County, Texas.	(2)
G-4307-002, D, 11-17-88	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252-2511.	Panhandle Eastern Pipe Line Company, Keyes Field, Cimarron County, Oklahoma.	(3)
G-4579-059, B, 11-14-88	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102	Colorado Interstate Gas Company, Morton County, Kansas.	(4)
G-4579-060, D, 11-25-88	OXY USA Inc	Northern Natural Gas Company, Morton County, Kansas.	(5)
G-5065-001, D, 11-16-88	Tenneco Oil Company	Mobil Oil Corporation, Kansas-Hugoton Field, Grant and Haskell Counties, Kansas.	(6)
G-6178-000, D, 11-7-88	Mobile Exploration and Producing North America Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046-0957.	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	(7)
G-6296-001, D, 11-29-88	Tenneco Oil Company	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(8)
G-13939-000, D, 11-22-88	do	Colorado Interstate Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(9)

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No. and date filed	Applicant	Purchaser and location	Description
G-16030-000, D, 11-21-88	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	Panhandle Eastern Pipe Line Company, Forgan Field, Beaver County, Oklahoma.	(10)
G-17777-000, D, 11-7-88	Mobil Oil Corporation	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	(7)
G-18142-003, D, 11-15-88	Sun Exploration and Production Company	Transwestern Pipeline Company, Various Fields, Texas and Beaver Counties, Oklahoma.	(12)
CI61-12-000, D, 11-18-88	Chevron U.S.A. Inc.	Panhandle Eastern Pipe Line Company, Forgan Field, Beaver County, Oklahoma.	(10)
CI61-1123-002, B, 11-14-88	OXY USA Inc	Colorado Interstate Gas Company, Sec. 25-33S-42W, Morton County, Kansas.	(13)
CI63-1302-000, D, 11-18-88	Tenneco Oil Company	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	(14)
CI64-26-029, 11-25-88	Chevron U.S.A. Inc.	Texas Eastern Transmission Corporation, Locations in Monroe and Attala Counties, Mississippi, Nueces County, Texas, and Ouachita Parish, Louisiana.	(15)
CI67-270-002, D, 11-18-88	do	ANR Pipeline Company, Laverne Field, Beaver County, Oklahoma.	(10)
CI69-756-001, D, 11-21-88	do	Northwest Pipeline Corporation, Big Piney Area Field, Sublette County, Wyoming.	(16)
CI79-394-002, B, 11-17-88	Tenneco Oil Company	Northern Natural Gas Company, Division of Enron Corp., Domby & Lorena Fields, Beaver County, Oklahoma.	(17)
CI79-436-001, D, 11-15-88	do	Phillips 66 Natural Gas Company, Texas-Hugoton Field, Hansford County, TX.	(18)
CI88-191-001, E, 12-1-88	Enron Oil & Gas Company, P.O. Box 1188, Houston, TX 77251.	Northern Natural Gas Company, Division of Enron Corp., Various onshore properties.	(19)
CI88-603-000 (CI75-319), D, 9-6-88.	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Texas Gas Transmission Corporation, Eugene Island Block 217 (OCS-G-0978), Offshore Louisiana.	(20)
CI88-604-000 (CI75-614), D, 9-6-88.	Texaco Inc., P.O. Box 52332, Houston, TX 77052	CNG Transmission Corporation, Eugene Island Block 205, Field (OCS-G-0806), Offshore Louisiana.	(20)
CI89-65-000 (CI63-1183), D, 11-14-88.	Tenneco Oil Company	Arkla Energy Resources, a division of Arkla, Inc., O'Keene W. Field, Blaine County, Oklahoma.	(21)
CI89-71-000 (CI79-376), D, 11-15-88.	do	Northern Natural Gas Company, Clancy #1-15, Tyrone Field, Texas County, Oklahoma.	(22)
CI89-72-000 (CI79-375), D, 11-15-88.	do	Northern Natural Gas Company, Pedigo #1-16, Tyrone Field, Texas County, Oklahoma.	(22)
CI89-73-000 (CI65-140), D, 11-16-88.	Conoco, Inc., P.O. Box 2197, Houston, TX 77252	Williston Basin Interstate Pipeline Company, Howard Ranch Unit, Fremont County, Wyoming.	(23)
CI89-74-000 (CI68-1201), B, 11-16-88.	Tenneco Oil Company	Arkansas Louisiana Gas Company, Ames SE Field, Major County, Oklahoma.	(24)
CI89-75-000 (CI78-1064), D, 11-16-88.	do	Arkla Energy Resources, a division of Arkla, Inc., Caspiana Field, Caddo & Bossier Parishes, Louisiana.	(25)
CI89-76-000 (CI64-1029), B, 11-16-88.	do	Arkla Energy Resources, a division of Arkla, Inc., Haynesville Field, Claiborne Parish, Louisiana.	(26)
CI89-77-000 (CI64-1029), D, 11-16-88.	do	Arkla Energy Resources, a division of Arkla, Inc., Simsboro Field, Lincoln Parish, Louisiana.	(27)
CI89-78-000 (CI61-1361), D, 11-17-88.	do	Panhandle Eastern Pipe Line Company, Carthage Field, Texas County, Oklahoma.	(28)
CI89-79-000 (G-5069-000), D, 11-17-88.	do	Northern Natural Gas Company, Division of Enron Corp., Kansas-Hugoton Field, Haskell County, Kansas.	(8)
CI89-80-000 (CI75-528), D, 11-17-88.	do	El Paso Natural Gas Company, Dublin Ellenburger Field, Lea County, New Mexico.	(30)
CI89-81-000 (CI69-1168), D, 11-17-88.	do	El Paso Natural Gas Company, Langlie Mattix Field, Lea County, New Mexico.	(30)
CI89-82-000 (CI78-1200), D, 11-17-88.	do	El Paso Natural Gas Company, Undesignated Strawn (Culebra Bluff S.) Field, Eddy County, New Mexico.	(31)
CI89-83-000 (CI69-1169), D, 11-17-88.	do	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(30)
CI89-84-000 (CI77-780), D, 11-18-88.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Williston Basin Interstate Pipeline Company, Pavillion Field, Freemont County, Wyoming.	(2)
CI89-85-000 (CI64-1481), D, 11-18-88.	do	Williams Natural Gas Company, Groendycke Field, Barber County, Kansas.	(2)
CI89-87-000 (CI64-1013), B, 11-18-88.	Tenneco Oil Company	Panhandle Eastern Pipe Line Company, Southeast Light Field, Beaver County, Oklahoma.	(32)
CI89-88-000 (CI79-386), B, 11-18-88.	do	Northern Natural Gas Company, Division of Enron Corp., Lovedale NW Field, Harper County, Oklahoma.	(33)
CI89-89-000 (CI79-436), D, 11-18-88.	do	Phillips 66 Natural Gas Company, Texas-Hugoton Field, Sherman County, Texas.	(34)
CI89-90-000 (CI)-381), D, 11-18-88.	do	Panhandle Eastern Pipe Line Company, Midway Field, Baca County, Colorado.	(35)
CI89-91-000 (G-6297—, D, 11-18-88.	do	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(36)
CI89-92-000 (CI67-1702), D, 11-18-88.	do	Transwestern Pipeline Company, Gatesby Field, Ellis County, Oklahoma.	(16)
CI89-93-000 (G-6669), D, 11-18-88.	do	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(37)
CI89-94-000 (CI75-291), B, 11-18-88.	do	Natural Gas Pipeline Company of America, Grayburg-Jackson Field, Eddy County, New Mexico.	(38)

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-95-000 B, 11-17-88	Samedan Oil Corporation, P.O. Box 909, Ardmore, Oklahoma 73402.	Transcontinental Gas Pipe Line Corporation, Dilworth Field, McMullen County, Texas.	[39]
CI89-96-000 (G-15238), D, 11-21-88.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046-0957.	United Gas Pipe Line Company, Blocker Unit No. 1, Harrison County, Texas.	[40]
CI89-97-000 (G-12001), D, 11-21-88.	Mobil Oil Exploration & Producing Southeast Inc.	Arkla Energy Resources, a division of Arkla, Inc., North Ruston Field, Lincoln Parish, Louisana.	[41]
CI89-98-000 (G-16147), D, 11-21-88.	Mobil Producing Texas & New Mexico Inc.	Trunkline Gas Company, Franks Field, Galveston County, Texas.	[42]
CI89-99-000 (G-9490), F, 11-21-88.	Texaco Producing Inc.	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	[43]
CI89-100-000 (CI67-1631-000), D, 11-22-88.	Tenneco Oil Company	Natural Gas Pipeline Company of America, Erick Field, Beckham County, Oklahoma.	[44]
CI89-101-000 (CI61-810), B, 11-22-88.	....do	Tennesee Gas Pipeline Company, Trull Field, Matagorda County, Texas.	[45]
CI89-105-000 (CI62-607), D, 11-23-88.	Chevron U.S.A. Inc.	Natural Gas Pipeline Company of America, Escobas Field, Zapata County, Texas.	[46]
CI89-106-000 (CI70-995), B, 11-25-88.	Mobil Oil Corporation Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Transwestern Pipeline Company, Guyman Field, Cimarron County, Oklahoma.	[47]
CI89-108-000 F, 11-25-88	Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150.	CNG Transmission Corporation, Eugene Island Block 196, Field, Offshore Louisiana.	[48]
CI89-109-000 (CI68-621), B, 11-28-88.	Tenneco Oil Company	Tennessee Gas Pipeline Company, Deckers Prairie Field, Montgomery County, Texas.	[49]
CI89-111-000 (CI79-385), D, 11-29-88.	....do	Panhandle Eastern Pipe Line Company, Reiss #1-A, Carthage Field, Texas County, Oklahoma.	[18]
CI89-113-000 (CI68-128), D, 11-29-88.	....do	El Paso Natural Gas Company, Leonard Brothers, *et al.*, Jalmat Field, Lea County, New Mexico.	[30]
CI89-114-000 (CI64-987), D, 11-29-88.	....do	Phillips 66 Natural Gas Company, W.T. Ford, Fuhrman-Mascho Field, Andrews County, Texas.	[50]
CI89-145-000 (G-6914), E, 12-1-88.	Columbia Natural Resources, Inc., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas Transmission Corporation, Marsh Fork and Clear Fork Districts, Raleigh County, West Virginia.	[51]

[1] Applicant assigned certain interests to Dorchester Hugoton, Ltd., effective August 1, 1988.
[2] Applicant assigned certain acreage to Hondo Oil and Gas Company, effective January 1, 1987.
[3] Applicant states that the Hanke Hanes # well was plugged and abandoned. Applicant assigned certain interests to Maple Properties Corporation, OXY USA, Inc., and Mesa Operating Limited Partnership, effective December 1, 1987. By assignment executed December 5, 1986, Applicant assigned certain interests to Crouch Petroleum Company, effective November 1, 1986.
[4] Applicant states that leases reverted to the U.S. Government, effective September 30, 1987, and May 11, 1987.
[5] Applicant states that certain leases have reverted.
[6] By assignment executed January 20, 1987, Applicant assigned its interest in certain acreage to Mobil Oil Corporation, effective November 1, 1986.
[7] By assignment dated November 9, 1987, Applicant assigned its interest in certain acreage to Morrison-Austin, effective November 1, 1987.
[8] By assignment executed September 28, 1970, Applicant assigned certain acreage to H. M. Bettis, W. T. Boyle, Norman D. Stovall, Jr., Spencer B. Street and Turnco, Inc., effective October 1, 1970. By assignment executed March 27, 1985, Applicant assigned certain acreage to Wood, McShane & Thams, effective December 1, 1984. By assignment executed January 29, 1988, Applicant assigned certain interests to Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1987.
[9] Applicant assigned its interests in certain acreage to Mesa Operating Limited Partnership, Phillips Petroleum Company, PNG Operating Company, and Foran Oil Company, effective December 1, 1986.
[10] By assignment dated September, 30, 1988, Applicant assigned its interests in certain acreage to Mesa Operating Limited Partnership, effective October 1, 1988.
[11] Not used.
[12] Applicant assigned certain interests to Kenneth W. Cory, effective October 1, 1988.
[13] Applicant states that the leases reverted to the U.S. Government, effective July 30, 1987.
[14] By respective assignments effective December 31, 1986, January 1, 1987, and March 1, 1988, Applicant assigned its interests in certain acreage to Prentice, Napier & Green Inc., Vanguard Oil & Gas Inc. and Red Eagle Exploration Company.
[15] Applicant is filing to add four new delivery points.
[16] By assignment dated September 23, 1988, Applicant assigned its interests in certain acreage to Lang & Holt Energy Company, effective October 1, 1988.
[17] Applicant states that the Foster # was plugged and abandoned on November 10, 1978. Applicant assigned its interests in certain acreage to Spess Oil Company, effective November 1, 1986.
[18] Applicant assigned certain acreage to Maple Properties Corporation by assignment, effective December 1, 1987.
[19] Effective December 31, 1987, Enron Producing Company was merged into Applicant.
[20] By assignment dated June 9, 1988, Applicant assigned its interests in certain acreage to Alliance Operating Corporation, effective May 1, 1988.
[21] By assignment executed March 30, 1987, Applicant assigned certain interests to Vanguard Oil & Gas, Inc., effective January 1, 1987. By assignments executed October 14, 1986, Applicant assigned certain interests to TE-RAY Energy, Inc., Security National Bank & Trust Company, Trustees of J.R. Perkins Trust "B", Elizabeth Perkins and F. L. Parham, effective September 1, 1986. By assignment executed November 6, 1986, Applicant assigned certain interests to TE-RAY Energy, Inc.
[22] By assignment executed July 11, 1986, Applicant assigned certain interests to Frank Collins, effective June 1, 1986.
[23] By assignment dated February 24, 1987, Applicant assigned its interests in certain acreage to Natural Gas Processing Co., effective December 29, 1986.
[24] Applicant states that the well was plugged and abandoned September 24, 1982.
[25] Applicant assigned certain acreage to Cohort Energy Company, effective April 1, 1988.
[26] Applicant states that the Crump Unit has been plugged. By assignment executed January 30, 1962, Applicant assigned its interests in certain interest in the Morgan Unit to W. T. McElwee.
[27] Applicant assigned certain acreage to Murphy Oil USA, Inc., effective November 1, 1986.
[28] Applicant assigned certain interests to Maple Properties Corporation and Anadarko Petroleum Corporation, effective December 1, 1987, and June 13, 1988, respectively.
[29] Not used.
[30] By assignment executed January 29, 1988, Applicant assigned certain interests to Prudential-bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1987.
[31] By assignment executed December 17, 1987, Applicant assigned its interests in certain acreage to Amoco Production Company, effective December 1, 1987.
[32] Applicant states that certain leases expired in November 1961 and the lease rights were surrendered to the landowner. By assignment executed February 22, 1960, Tennessee Gas Transmission Company assigned its interest in certain acreage to Petroleum, Inc., d/b/a/ Petroleum, Inc. of Kansas. By assignment executed June 1, 1962, Applicant assigned its interests in the remaining acreage to S. L. Reeves.
[33] Applicant states that the well was plugged and abandoned December 24, 1982.
[34] Applicant assigned certain interests to Mesa Operating Limited Partnership, effective June 1, 1986, and December 1, 1987, Applicant assigned certain interests to Maple Properties Corporation, effective December 1, 1987.
[35] By assignment executed January 28, 1986, certain acreage was assigned to Curtis Clark, d/b/a Clark Exploration Company effective February 1, 1986.
[36] By assignment executed September 28, 1970, Applicant assigned its interests in certain acreage to H. M. Bettis, W. T. Boyle, Norman D. Stovall, Jr., Spencer B. Street, and Turnco, Inc., effective October 1, 1970.
[37] Applicant assigned certain interests to DP Corporation and Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1985, and December 1, 1987, respectively.

[38] Applicant states that certain acreage is non-productive. Applicant assigned its interest in the remaining acreage to G & R Rich Properties, Inc., and Marbob Energy Corporation, effective October 1, 1984, and March 1, 1987, respectively.
[39] Applicant states that the reserves in the J. C. Dilworth Well No. 1 have been depleted and it was plugged and abandoned on June 16, 1988.
[40] Applicant assigned certain acreage to Faulconer Energy-Joint Venture 1988, effective August 1, 1988.
[41] Applicant assigned certain acreage to Trinity Operating Company, Inc., effective July 1, 1987.
[42] Applicant assigned certain acreage to Hef-Lin Energy Corporation, effective December 1, 1987.
[43] Effective December 1, 1987, Applicant acquired certain interests from Union Pacific Resources Company.
[44] By assignments executed March 26, 1984, Applicant assigned certain interests to Jack Speed. Applicant assigned certain interests to Natural Gas Pipeline Company of America, effective January 1, 1981.
[45] Applicant states that the acreage ceased to produce and that Applicant has sold the surface/subsurface equipment to Texas Independent Petroleum Inc., effective August 1, 1987.
[46] By assignment dated August 29, 1984, Applicant assigned its interests in certain acreage to Pennzoil Producing Company, effective July 31, 1984.
[47] Applicant states that the only well under this contract was plugged and abandoned on December 12, 1980.
[48] Effective June 1, 1988, Applicant acquired certain interests from Texaco Producing Inc. and Alliance Operating Corporation.
[49] Applicant states that the leases ceased to produce, the last well was plugged and abandoned on December 21, 1971, and the leases were subsequently surrendered to the original landowner.
[50] By assignment executed February 8, 1988, Applicant assigned certain interests to Maralo Inc., effective December 31, 1987. By assignment executed January 29, 1988, Applicant assigned certain interests to Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1987.
[51] Effective September 26, 1988, Applicant acquired certain interests from Big Marsh Oil Company.

A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession

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[Docket Nos. CP89-352-000, et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

December 12, 1988.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP89-352-000]

Take notice that on December 7, 1988, United Gas Pipe Line Company, (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-352-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Intercon Gas, Inc. (Intercon), a marketer, under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 4, 1988, under its Rate Schedule ITS, it proposes to transport up to 51,500 MMBtu per day equivalent of natural gas for Intercon. United states that it would receive the gas at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and that it would transport and redeliver the gas at an interconnection with Columbia Gulf Transmission Company near Barron, Rapides Parish, Louisiana.

United advises that service under § 284.223(a) commenced October 11, 1988, as reported in Docket No. ST89-773 (filed on November 17, 1988). United further advises that it would transport 51-500 MMBtu on an average day and 18,797,500 MMBtu annually.

Comment date: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP89-342-000]

Take notice that on December 6, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-342-000, a prior notice request pursuant to §§ 157.205 and 284-223 of the Commission's Regulations for authorization to transport natural gas for PSI, Inc. (PSI), a marketer of natural gas, under the certificate issued in Docket No. CP86-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 150,000 MMBtu of natural gas per day, pursuant to an October 8, 1988, agreement between Northern and PSI. Northern would provide the service to PSI under the provisions of its Rate Schedule IT-1, it is indicated. Northern further states that the average and annual quantities would be 112,500 MMBtu and 54,750,000 MMBtu, respectively. Northern indicates that service commenced pursuant to § 284.223(a) of the Commission's Regulations as reported in Docket No. ST89-440.

Comment date: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-346-000]

Take notice that on December 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, filed in Docket No. CP89-346-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Texaco, Inc. (Texaco), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 51,500 MMBtu of natural gas per day for Texaco, a producer of natural gas, from various receipt points located in Texas to various delivery points also located in Texas. United anticipates transporting an annual volume of 18,797,500.

United states that the transportation of natural gas for Texaco commenced October 14, 1988, as reported in Docket No. ST89-828-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89-337-000]

Take notice that on December 5, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, 42301, filed in docket No. CP89-337-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Clinton Gas Marketing, Inc. (Clinton) under Texas Gas blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 90,000 MMBtu of natural gas equivalent on behalf of Clinton pursuant to a gas transportation agreement dated October 11, 1988, between Texas Gas and Clinton. Texas Gas would receive the gas at various existing points of receipt

on its system in Texas and Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in Ohio.

Texas Gas further states that the estimated average daily and annual quantities would be 30,000 MMBtu and 32,850,000 MMBtu, respectively. Service under § 284.223(a) commenced on October 15, 1988, as reported in Docket No. ST89–687, it is stated.

Comment date: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89–347–000]

Take notice that on December 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–347–000 a request pursuant to §§ 157.205 and 283.228 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Seagull Marketing Services (Seagull), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas from numerous points of receipt located in Mississippi, Louisiana, Texas and Alabama to numerous points of delivery located in Louisiana, Texas, Mississippi, Alabama and Florida.

United further states that the maximum daily, average and annual quantities that it would transport for Seagull would be 515,000 MMBtu equivalent, 515,000 MMBtu equivalent and 187,975,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–829, filed with the Commission on November 21, 1988, it reported that transportation service for Seagull began on October 21, 1988, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89–345–000]

Take notice that on December 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–345–000 a request pursuant to §§ 157.205 and 284–223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas from a point of receipt located in West Cameron Block 487, offshore Louisiana to a point of delivery located in West Cameron Block 505.

United further states that the maximum daily, aveage and annual quantities that it would transport for Texaco would be 10,300 MMBtu equivalent, 10,300 MMBtu equivalent and 3,759,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–775, filed with the Commission on November 17, 1988, it reported that transportation service for Texaco began on November 5, 1988, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corporation

Docket No. CP89–344–000

Take notice that on December 6, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–344–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service on behalf of PSI, Inc., a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to an agreement dated October 1, 1988, under Rate Schedule IT–1 it proposes to transport up to 25,000 MMBtu per day of natural gas for PSI, Inc. from various receipt points to various delivery points. The receipt and delivery points are listed in Appendix A of the transportation agreement which provides for this service, and is on file with the Commission and open to public inspection. Northern proposes to transport 25,000 MMBtu on a peak day, 18,750 MMBtu on an average day and 9,125,000 MMBtu on an annual basis.

Northern indicates that the transportation of natural gas for PSI, Inc. commenced on October 1, 1988, as reported in Docket No. CP89–375–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission Regulations and the blanket certificate issued to Northern in Dockert No. CP86–435–000.

Northern further states that construction of facilities will not be required to provide the service proposed herein.

Northern also states that there is no agency relationship under which a local distribution company or affiliate of PSI, Inc. will receive natural gas on behalf of PSI, Inc.

Comment date: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29037 Filed 12–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–267–000]

Atlantic Richfield Co.; et al.; Application for a Presidential Permit for the Construction, Operation, Maintenance, and Connection at the United States/Canada International Boundary, of Facilities for Importation of Natural Gas

December 13, 1988.

Take notice that on November 22, 1988, Atlantic Richfield Company (ARCO), 1601 Bryn, Room 46–072, Dallas, Texas 75201 and Intalco Aluminum Corporation (Intalco), 400 South El Camino Real, San Matea, California 94402, (pursuant to section 3 of the Natural Gas Act (NGA), 15 U.S.C.

717(b); §§ 153.1 *et seq.* and 153.10 *et seq.* of the Commission's Regulations, 18 CFR 153.1 and 153.10; Executive Order No. 10485, as amended by Executive Order No. 12038; and Delegation Order No. 0204–112 of the Secretary of Energy. ARCO and Intalco as owners of all the undivided interests of the "Ferndale Pipeline System," jointly seek authorization from the FERC for a Presidential Permit for the point of entry for the importation of natural gas and the authority to construct, operate, maintain and connect a natural gas pipeline from manufacturing facilities operated by ARCO and Intalco near Ferndale, Washington to Canadian pipeline facilities at the Canadian border. Individually, each company has filed for authority from the Economic Regulatory Administration (ERA) to import natural gas from Canada to transport over the Ferndale Pipeline System, for their own use.

The Ferndale Pipeline System will consist of approximately 29 miles of 16 inch diameter pipe, extending from an interconnection with Westcoast Energy, Inc. (Westcoast) at the Canadian border near Sumas, Washington, to the ARCO refinery and the Intalco smelter near Ferndale, Washington. Westcoast will construct and operate tap, pipe and meter facilities in Canada. It is stated the design capacity of the pipeline will be approximately 105 MMcf/d with an estimated cost of 11 million dollars. The Ferndale Pipeline System will transport gas only to facilities owned or operated by ARCO or Intalco and there will be no offer made to provide any service to the public on the proposed system. Each company will be entitled to a specific percentage of daily pipeline capacity and capital costs will be apportioned on the basis of these percentages. Between themselves, however, applicants will own 100 percent of the pipeline system. The construction and operation of the proposed pipeline system will not be financed by third parties, but will be financed by international funds.

ARCO and Intalco both state that they are interested in expanding their usage of natural gas in the future and that the pipeline proposed, is structured to serve all their forcible natural gas needs.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10 and 157.102(b)(2)). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29038 Filed 12–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–184–006]

El Paso Natural Gas Co.; Filing

Issued December 12, 1988.

Take notice that on December 2, 1988, El Paso Natural Gas Company (El Paso) filed First Revised Sheet No. 100–B to its FERC Gas Tariff, First Revised Volume No. 1 that reflect corrections to its First Revised Sheet N. 100–B filed December 1, 1988.

El Paso states that First Revised Sheet No. 100–B filed on December 1, 1988 reflected incorrect Order No. 500 surcharges and requests that the tariff sheet filed on December 2, 1988, be substituted for the sheets included in the December 1, 1988 filing.

El Paso requests an effective date of December 1,1988. El Paso states that copies of this filing have been served upon all parties receiving a copy of its December 1, 1988 filings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29039 Filed 12–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2608 Massachusetts]

James River Corp.; Intent to File an Application for a New License

December 13, 1988.

Take notice that on August 15, 1988, James River Corporation, Premoid Division, the existing licensee for the West Springfield, MA Hydroelectric Project No. 2608, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808 as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2608 was issued effective May 1, 1965, and will expire December 31, 1993.

The project is located on the Westfield River in Hampden County, Massachusetts. The principal works of the West Springfield Project include an 18-foot-high, 450-foot-long timber crib dam; a reservoir of 20 acres at pool elevation 92.85 feet m.s.l.; a 2,500-foot-long power canal; a powerhouse with an installed capacity of 1,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Front Street, West Springfield, MA 01089, Attn: Mr. David J. Garwood, telephone (413) 736–4554.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29040 Filed 12–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC88–8–002]

Kentucky West Virginia Gas Co.; Amended Curtailment Plan

December 12, 1988.

Take notice that on November 30, 1988, Kentucky West Virginia Gas Company (Kentucky West), P.O. Box 1388, Ashland, Kentucky 41105, filed in Docket No. TC88–8–002, the following

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revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 54K
Original Sheet No. 54L
Original Sheet No. 54M

Kentuckly West states that the tariff sheets filed herein contain its interim system-wide pro rata gas supply curtailment plan and are being filed in compliance with ordering Paragraph (D) of the Commission's Order issued October 31, 1988, in Docket Nos. TC88–8–000 and TC88–8–001.

Kentucky West has requested that the Commission authorize the tendered tariff sheet to become effective December 1, 1988. Kentucky West further requests waiver of the Commission's Regulations to permit the December 1, 1988 effective date.

Kentucky West states that copies of this filing have been served on all parties to this proceeding and on each of Kentucky West's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1988, to file with the Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29041 Filed 12–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–1–40–000]

Raton Gas Transmission Co.; Filing

Issued December 12, 1988.

Take notice that on December 2, 1988, Raton Gas Transmission Company (Raton) filed Eleventh Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1.

Raton states that this filing is its first Quarterly PGA filing and reflects a Demand reduction by supplier of $0.01 per MCF and a Commodity increase of 4.98 cents per MCF to track supplier, Colorado Interstate Gas Company, current filing to be effective January 1, 1989.

Raton states that a copy of this filing has been mailed to its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29042 Filed 12–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–41–000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

Issued December 12, 1988.

Take notice that on December 2, 1988, Southern Natural Gas Company ("Southern") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective January 1, 1989:

Second Revised Sheet No. 33
Third Revised Sheet No. 34
Third Revised Sheet No. 35
Third Revised Sheet No. 36
First Revised Sheet No. 36A

Southern states that the purpose of the filing is to revise those Sections to Southern's General Terms and Conditions to its gas sales tariff which set forth the procedures by which Southern measures gas for its customers. Southern states that it is currently in the process of installing electronic flow computers at various meter stations on its system to replace the existing chart measurement equipment. For this reason, Southern has revised sections 4 and 5 of the General Terms and Conditions to its Tariff to incorporate measurement by electronic flow computation.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29043 Filed 12–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR82–114–013]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Issued December 12, 1988.

Take notice that on December 5, 1988, Williams Natural Gas Company (WNG) tendered for filing revised tariff sheets to its FERC Gas Tariff.

WNG submits that the sheets are filed in compliance with the Commission's order of November 4, 1988 in this docket. WNG proposes that the tariff changes ordered by the Commission which are not related to thermal billing be made effective on January 1, 1989 and that the thermal billing changes be made effective on June 1, 1989.

WNG states that copies of the filing were mailed to all of WNG's jurisdictional customers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 of 385.214). All such motions or protest should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29044 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-589-007, RP86-104-009, RP87-30-016]

Colorado Interstate Gas Co.; Compliance of Filing

December 13, 1988.

Take note that on November 16, 1988, Colorado Interstate Gas Company "(CIG") submitted for filing the following tariff sheets of its Second Revised Volume No. 1-A Transportation Tariff in compliance with the Commission's November 1, 1988 order in these dockets:

Substitute Original Sheet No. 26
Substitute Original Sheet No. 27

CIG states that these sheets comply with the requirement that CIG modify its "open access" tariff.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before December 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commision and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29101 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-1-000]

Barbara T. Fasken, Individually and as Independent Executrix of the Estate of David Fasken, deceased; Petition for Adjustment

December 14, 1988.

On November 17, 1988, Barbara T. Fasken, (Petitioner) filed with the Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). The petition seeks to establish entitlement to NGPA section 108 stripper well prices collected for sales of gas from four wells operated by Petitioner located in the North Indian Basin Field, Eddy County, New Mexico, *i.e.*, the Indian Hills Unit Com. "A" No. 6 Well, the Skelly Federal Com. No. 1 Well, the Shell Federal Com. No. 1 Well, and the Ross Federal Com. No. 1 Well. The purchaser of the gas is Natural Gas Pipeline Company of America.

Petitioner states that the four wells have all been previously qualified as NGPA section 108 stripper wells. The request for relief relates to various periods from 1983 to 1988 during which their production exceeded the maximum quantities prescribed for stripper wells. Petitioner argues that it is entitled to stripper well prices collected during these periods [1] because the excess production was the result of recognized enhanced recovery techniques which qualified such production for stripper well prices under NGPA section 108(b)(1). Petitioner further asserts that the cost and revenue data submitted in support of the petition demonstrate that the denial of adjustment relief would result in out-of-pocket losses, inequity, and hardship.

On January 28, 1988, Petitioner filed with the Bureau of Land Management, Department of Interior (BLM), a petition for continuance of collection of the above stripper well prices for all the wells on the basis of use of enhanced recovery techniques, as provided for in § 271.805(e) of the Commission's regulations. BLM granted the petition, but effective only prospectively from its filing date. The determination is subject to Commission review.

Petitioner requests adjustment or waiver of the requirements of § 271.805(f) of the regulations which provide that a petition for enhanced recovery status must be filed within 150 days of the last day of the 90-day period of increased production in order for stripper well collections to continue without interruption, subject to refund. Petitioner states that the delay in filing the January 28, 1988 request was the result of management problems, compounded by the death of her husband, David Fasken in 1982. She states she was a newcomer to the oil and gas business with no direct control or real involvement in her husband's business at the time the enhanced recovery filings should have been made and that she made the filings within three weeks of learning of the error.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 30 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29102 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[1] Petitioner collected 108 prices during these periods, but has refunded to Natural, over protest, a sum of money which she states constitutes the disputed portion of such collections.

[Docket Nos. RP88-165-001 and TQ88-2-4-001]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 14, 1988.

Take notice that on December 7, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Second Substitute Eighth Substitute Twenty-First Revised Sheet No. 7 in its FERC Gas Traffic, First Revised Volume No. 1 containing changes in rates for its wholesale jurisdictional services for effectiveness on July 1, 1988.

According to Granite State, the proposed rates on Second Substitute Eighth Substitute Twenty-First Revised Sheet No. 7 would be effective for a 35 day rate period from July 1 through August 4, 1988 and would avoid back billing its customers, Bay State Gas Company (Bay State) and Northern Utilties Inc. (Northern Utilities) for substantial amounts. It is stated that Granite State earlier filed a purchased gas cost adjustment for effectiveness on July 1, 1988 and that, as a result of letter orders of the Director of Pipeline and Producer Regulation, the filing was revised in a compliance filing submitted July 27, 1988, which was accepted October 28, 1988. Granite State further states that the projected gas costs for the period beginning July 1 that were reflected in the rates in the revised tariff sheet in the compliance filing were higher than the gas costs embedded in the rates initially filed for effectiveness on that date. It is stated that the purpose of the instant filing is to reverse the effect of the Current Adjustment stated in the rates for July 1, 1988 effectiveness

on the tariff sheet included in the compliance filing. According to Granite State this proposal will avoid the need for back billing Bay State $74,348.48 and Northern Utilities $27,410.06 for the 35 day rate period from July 1, 1988 through August 4, 1988. Granite State further states that acceptance of its proposal will have no effect on later filed purchased gas cost adjustments.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1988. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29103 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-4-002 and TM89-2-4-001]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 14, 1988.

Take notice that on December 8, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Substitute Thirteenth Substitute Twenty-First Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for its jurisdictional wholesale services for effectiveness on January 1, 1989. In the same filing, Granite State tendered Substitue Sixteenth Revised Sheet No. 8 and Substitute Seventeenth Revised Sheet No. 8 containing changes in rates for a storage service under its Rate Schedule GSS in its FERC Gas Tariff for effectiveness on October 1, 1988 and January 1, 1989.

According To Granite State, on November 8, 1988, if filed its first annual purchased gas cost adjustment under the revised regulations prescribed in Order Nos. 483 and 483-A. Granite State further states that the instant filing corrects an error in the Rate Schedule CD-1 rates and revises the data pertinent to the assessment of past performance included in the prior filing. The result of the revised data concerning the assessment of past performance shows that actual purchase costs exceeded 103 percent of projected gas costs for sales to Bay State Gas Company for the month of June, 1988, according to Granite State.

Granite State further states that the revised tariff sheets applicable to its Rate Schedule GSS service are submitted to track correctly the relevant charges in CNG Transmission Corporation's Rate Schedule GSS charges, effective October 1, 1988 and January 1, 1989.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, Inc. and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 835 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1988. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29104 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-012]

Natural Gas Pipeline Co. of America; Compliance Filing

December 14, 1988.

Take notice that on December 7, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute First Revised Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective December 1, 1988.

Natural states that the filing is made in compliance with the Commission's Order Accepting and Suspending Tariff Sheets Subject to Refund and Subject to Conditions and Establishing a Hearing issued on November 30, 1988 under Docket No. RP88-94-010 (Order). The Order required that Natural submit revised tariff sheets which separate the interest calculations for Natural's initial and subsequent filings to recover take-or-pay buyout and buydown and contract reformation costs (transition costs) under an Order No. 500 mechanism. By Order, Natural will not be permitted to recover interest on the transition costs related to the subsequent filing which were accrued prior to the effective date of the tariff sheets designed to recover those costs.

Natural states its compliance filing includes revised tariff sheets and workpapers which reflect removal of the interest on the transition costs included in the subsequent filing related to the period prior to December 1, 1988. Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective December 1, 1988.

A copy of the filing was mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP88-94-000.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before December 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29105 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-22-000]

Natural Gas Pipeline Co. of America; Petition to Reopen and Vacate Final Well Determinations

December 14, 1988.

On November 28, 1988, Natural Gas Pipeline Company of America (Natural)

filed a petition requesting the Commission to reopen and vacate determinations that three wells operated by Barbara Fasken or her predecessors in interest (Fasken) qualify as stripper wells under section 108 of the Natural Gas Policy Act of 1978. The determinations, obtained by David Fasken, deceased husband of Barbara Fasken, are on the following wells located in North Indian Basin Field, Eddy County, New Mexico:

Well name	FERC control No.	Date of original well determination filing
Ross Federal Com. No. 1 Well.	JD84-28150	02/01/84
Shell Federal Com. No. 1 Well.	JD82-56680	05/19/82
Indian Hills Com. No. 6 Well.	JD84-23775	12/08/83

Natural is the purchaser of gas produced from these wells.

Natural alleges that in the applications for the section 108 determinations Fasken (1) understated average production per production day by counting as production days days when the wells were voluntarily shut-in by Fasken, (2) understated production of the wells for periods of around one year prior to filing the applications by omitting to report some volumes, and by allocating production for the Ross, Shell, or Indian Hills wells to other wells, and (3) represented that enhanced recovery techniques had not been previously used on the wells, when compressors had previously been used for that purpose.

Section 275.205(a) provides for reopening well determinations where in making such determination the Commission or the jurisdictional agency relied on any untrue statement of material fact or where a necessary statement of material fact was omitted. Natural states that the Ross, Shell, and Indian Hills wells would not have qualified as stripper wells but for the alleged misrepresentations and omissions in the applications. Natural asserts that as purchaser of the gas from these wells, it has been aggrieved and adversely affected by the determinations because Fasken was not entitled to receive the stripper well price for the gas from these wells.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of Natural's petition are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29106 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3949-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OBM) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air And Radiation

Title: National Residential Radon Survey Pretest. (EPA ICR # 1396.) New collection.

Abstract: A survey of 60 residences is being conducted to pretest the questionnaire which will be used in the National Residential Radon Survey. Residents of private homes, as well as apartment dwellers, will be asked questions regarding building characteristics, occupancy patterns, and smoking habits. The response is voluntary and the results of the pretest will be used to evaluate potential problems with the questionnaire and the proper placement of radon measurement devices.

Burden Statement: The estimated public burden for this collection of information is 1 hour per response.

Respondents: Home owners and apartment dwellers.

Estimated No. of Respondents: 60.

Estimated Total Burden on Respondents: 60 hours.

Frequency of Collections: One time only.

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382-2740).

Public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, must be received by, or prior to, February 1, 1989. Send comments to:

Sandy Farmer, U.S Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460,

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses To Agency PRA Clearance Requests

EPA ICR # 1484; Gray Iron Foundry Waste Management Information; was approved 11/23/88; OMR # 2050-0091; expires 4/30/89.

EPA ICR # 1050; Standards of Performance For New Stationary Source—Storage Vessels For Petroleum Liquids; was approved 11/17/88; OMB # 2060-0121; expires 11/30/88.

EPA ICR # 1136; NSPS For Petroleum Refinery Wastewater Systems—Reporting and Recordkeeping; was approved 11/17/88; OMB # 2060-172; expires 11/30/91.

EPA ICR # 1189; Information Requirements For Facilities Petitioning For Hazardous Waste Delisting; was approved 11/23/88; OMB # 2050-0053; expires 10/31/91.

EPA ICR # 0827; Construction Grants Program Information; was approved 11/15/88; OBM # 2040-0027; expires 11/30/91.

EPA ICR # 1061; Standard Of Performance For The Phosphate Fertilizer Industry (NSPS Subparts T, U, V, W, X); was approved 11/17/88; OMB # 2060-0037; expires 11/30/91.

EPA ICR # 1446; Manifesting And Notification Of PCB Wastes; was disapproved 11/18/88.

Date: December 8, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88-29058 Filed 12-16-88; 8:45 am]

BILLING CODE [illegible]

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[FRL-3494-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Notice of Supplemental Registration of a Distributor (EPA ICR # 0278); OMB # 2070-0044). This is a renewal of a previously approved collection.

Abstract: Any person who wishes to distribute a Federally registered pesticide product must notify EPA by submitting a "Notice of Supplemental Registration of a Distributor," as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This notice must be jointly prepared by the distributor and the registrant of the product.

Burden Statement: The average burden for each respondent who must submit a notification to EPA for supplemental registration of a pesticide product is estimated to be 15 minutes. This includes time for reviewing the instructions, recording the required information on the EPA-designated reporting form, as well as maintaining proper records.

Respondents: Any person may participate in this program by submitting a completed "Notice of Supplemental Registration of a Distributor" (Form 8570-5) to the Agency. Respondents are expected to be persons and/or business facilities in Standard Industrial Classification (SIC) codes 286-287.

Estimated No. of Respondents: 13,000 annually.

Estimated Total Annual Burden on Respondents: 3,250 hours.

Frequency of Collection: Once per event.

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382-2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-233), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses To Agency PRA Clearance Requests

EPA ICR # 1233; Asbestos School Hazard Abatement Act, Grant and Loan Program; was approved 11/14/88; OMB # 2070-0062; expires 11/30/91.

EPA ICR #1486; Intergrated Air Cancer Project Survey; was approved 11/10/88; OMB # 2080-0036; expires 8/30/89.

Dated: December 8, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88-29059 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3494-5; EPA Project Number SE 86-01-A]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Mojave Cogeneration Co., L.P. (Formerly U.S. Borax & Chemical Corp.)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 6, 1988, the Environmental Protection Agency approved an 18-month extension of a PSD permit issued on February 20, 1987 under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 45 MW (gross) gas turbine combined-cycle cogeneration facility to be located at the existing U.S. Borax Refinery in Boron, California. The permit is subject to certain conditions, including allowable emission rates as follows:

Pollutant	Emission limit (lbs/hr, 3-hour average)	
	Gas-firing	Oil-firing
NO_x, the more stringent of.	18 (or 10 ppm @ 15% O_2, dry).	74 (or 40 ppm @ 15% O_2, dry).
SO_2	0	102 (or 24 ppm @ 15% O_2, dry).
CO	23	30.
PM	12	17.5.
HC	1.5	3.0.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of steam or water injection and a Selective Catalytic Reduction (SCR) system on the gas turbine for the control of NO_x emissions.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed on or before February 17, 1989.

Date: December 12, 1988.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 88-29061 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FIFRA Docket Nos. 631, et al.; FRL-3494-2]

Pesticides Products Containing Sodium Fluoroacetate (Compound 1080)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of objections and request for hearing.

Notice is hereby given, pursuant to § 164.8 of the Rules of Practice, 40 CFR 164.8 promulgated under the Federal Insecticides, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.*, that certain registrants have filed objections to and have requested a hearing on the Administrator's notice of intent to cancel the registrations for pesticides products containing sodium fluoroacetate published in the **Federal Register** on October 12, 1988, 53 FR 39792. These proceedings have been consolidated for hearing by order of the Chief Administrative Law Judge dated November 16, 1988.

For information concerning the issues involved and other details of these proceedings, interested persons are referred to the dockets of these

proceedings on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A–110); Room 3708, Waterside Mall, 401 M Street, SW., Washington, DC 20460. (202–382–4865).

Dated: December 9, 1988.

Thomas B. Yost,

Administrative Law Judge.

[FR Doc. 88–29060 Filed 12–16–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3494–1]

Candidates for Regulatory Negotiation

This notice announces that the Environmental Protection Agency is seeking additional regulatory negotiation candidates. Regulatory negotiation is a supplemental approach to developing proposed rules that brings affected parties, including the Agency, together to see if they can reach consensus on how to address the environmental issues. EPA is committed to using any consensus reached—if within its statutory authority—as the basis of its proposed rulemaking.

Readers are invited to suggest EPA regulations which are in the pre-proposal stage as candidates for regulatory negotiation. In preparing their suggestions, readers should refer to section A of this notice which describes how to select rules most likely to be amenable to negotiation. If possible, please include a reference to the relevant statute and, if the rule is listed in the October EPA Regulatory Agenda (53 FR 42492 October 24, 1988), please list the SAR number as reference. Please send suggestions within 30 days of the date of this notice to: Chris Kirtz, Regulatory Negotiation Project, U.S. Environmental Protection Agency, 401 M Street SW., PM–223, Washington, DC 20460, (202) 382–7565.

EPA will evaluate each suggestion carefully and will advise the nominator regarding our assessment of the item's suitability for negotiation or development via some other consensual processes.

A. Criteria for Selecting a Rule for Negotiation

EPA is open to nomination of rules at the pre-proposal state of rulemaking involving any environmental statute administered by EPA. In evaluating possible rules to suggest to EPA, you may find it helpful to ask the following questions. If you can answer yes to these questions, then the rule may be appropriate for regulatory negotiation.

1. Can the interested parties resolve the issues without compromising fundamental questions of value or principle?

2. Are the parties and interest sectors affected by the rule easily identifiable, reasonably limited in number, and potentially interested in good faith negotiations to resolve differences?

3. Are the issues to be discussed reasonably limited in number, and is the data base sufficient to support informed discussion?

B. Negotiated Rulemaking Proceedings

Regulatory negotiations bring together a balanced mix of parties and interests to negotiate a rule that is at the pre-proposal stage. The goal of each negotiation is to reach a consensus on which to base a Notice of Proposed Rulemaking (NPRM). Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

A senior official selected by the EPA office responsible for developing the rule acts as chief negotiator for EPA. Individuals representing definable interests in the regulated community, business and public interest sectors, state and local officials, and other affected stakeholders, negotiate on behalf of their constituencies. A neutral facilitator chairs the negotiations, keeps the process moving smoothly, and assists in resolving disputes.

C. EPA's Regulatory Negotiation Project

EPA established the Regulatory Negotiation Project in 1983 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations which could be implemented in a less adversarial setting. Since that time, the Agency has conducted seven regulatory negotiations:

- Nonconformance Penalties under section 206(g) of the Clean Air Act, as amended. Final rule: August 30, 1985.
- Emergency Pesticide Exemptions under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Final rule: January 15, 1986.
- Farmworker Protection Standards for Agricultural Pesticides. Proposed rule: July 8, 1988.
- Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986 (AHERA). Final rule: October 30, 1987.
- New Source Performance Standards for Woodburning Stoves under section 111 of the Clean Air Act. Final rule: February 26, 1988.
- Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984. Final rule: July 26, 1988.
- RCRA Minor Permit Modifications under the Resource Conservation and Recovery Act. Final rule: September 28, 1988.

In December 1986, the Program Evaluation Division of EPA's Office of Policy Planning and Evaluation, completed an assessment of the seven regulatory negotiations. The study confirmed that negotiation is especially appropriate in situations which involve the resolution of a limited number of related issues, none of which involve fundamental questions of value or extremely controversial national policy. The study further concluded that:

- Negotiated rulemaking can produce rules that are more pragmatic, and may produce better environmental results while still meeting statutory requirements.

Negotiated rules are also more likely to be acceptable to both the affected industries, the public interest sector and state and local governments involved in developing them.

- Negotiation may also result in earlier implementation of a rule by reducing the time it takes to proceed from proposed to final rulemaking.

EPA believes that the benefits to all parties of regulatory negotiation are substantial and is committed to continued use of regulatory negotiation and other consensus-based processes for rulemaking when appropriate.

D. Additional Information

Additional information on EPA's Regulatory Negotiation Project is available upon request: Regulatory Negotiation Project Descriptor, and Program Evaluation Division's Analysis of the Regulatory Negotiation Project. Copies may be obtained from: Chris Kirtz, Director, Regulatory Negotiation Project, U.S. Environmental Protection Agency, 401 M Street SW., PM–223, Washington, DC 20460 (202) 382–7565.

Thomas E. Kelly,

Office of Standards and Regulations.

[FR Doc. 88–29057 Filed 12–16–88; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Cancelling Charter of Mammoth Cave Production Credit Association

AGENCY: Farm Credit Administration.

ACTION: Notice.

On November 28,1988, the Acting Chairman of the Farm Credit Administration Board executed a Final Order barring claims against the Farm Credit Bank of Louisville (FCB) as successor to the Federal Intermediate Credit Bank of Louisville (FICB), arising out of the liquidation of Mammoth Cave Production Credit Association; discharging the FCB; and cancelling the charter of the Mammoth Cave Production Credit Association. The text of the Final Order is set forth below:

Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Cancelling Charter of Mammoth Cave Production Credit Association

Whereas, on August 9, 1983, the Board of Directors of the Mammoth Cave Production Credit Association (MCPCA) adopted a resolution placing MCPCA in voluntary liquidation, and a Liquidation Plan (the Plan) outlining the manner in which the liquidation was to proceed, which was approved by the Farm Credit Administration on August 18, 1983;

Whereas, pursuant to the Plan, Jack M. Gay was appointed Liquidating Agent by the FICB on August 9, 1983, and on January 1, 1984, Jeff Ivey was appointed successor Liquidating Agent of MCPCA, serving in such capacity until his resignation on October 16, 1987, and on October 20, 1987, Pamela J. Fratini was appointed successor Liquidating Agent;

Whereas, all assets of MCPCA have been disposed of in accordance with the Plan;

Whereas, MCPCA has been audited and examined, and the accounts fo MCPCA for the period August 9, 1983, through the date of this Order have been approved;

Whereas, in accordance with the Plan, all claims filed by creditors and holders of equities, except the claims of MCPCA allocated surplus holders, have been paid or provided for, including, without limitation, certain administrative expenses which the Farm Credit Bank of Louisville (as successor to the Federal Intermediate Credit Bank of Louisville) has paid; and

Whereas, all claims filed by creditors and holders of equities, including, without limitation, the claims of MCPCA allocated surplus holders, shall forever be discharged;

Now, therefore, it is hereby ordered that:

1. All claims of creditors, stockholders, and holders of participation certificates and other equities, and of any other persons and/or entities, against Mammoth Cave Production Credit Association, or, to the extent arising out of the actions of the Federal Intermediate Credit Bank of Louisville or its successor, the Farm Credit Bank of Louisville, in carrying out the Liquidation Plan of Mammoth Cave Production Credit Association, as approved by the Farm Credit Administration on August 18, 1983, against the Federal Intermediate Credit Bank of Louisville, the Farm Credit Bank of Louisville and the Liquidating Agents, are hereby forever discharged, and the commencement of any action, the employment of any process, or any other act to collect, recover or offset any such claims are hereby forever barred.

2. The accounts of the Mammoth Cave Production Credit Association for the period August 9, 1983, through the date of this Order are hereby approved.

3. The Farm Credit Bank of Louisville is hereby finally discharged and released from all responsibility or liability to the Farm Credit Administration or any other person or entity arising out of, related to, or in any manner connected with the administration and liquidation of Mammoth Cave Production Credit Association during the period August 9, 1983 through the date of this Order. The discharge and release of the Liquidating Agents by the Farm Credit Bank of Louisville is hereby approved.

4. The charter of Mammoth Cave Production Credit Association is hereby cancelled.

Signed November 28, 1988.
Farm Credit Administration Board.
Marvin Duncan,
Acting Chairman.

Dated: December 13, 1988.
Farm Credit Administration.
David A. Hill,
Secretary, Farm Credit Administration Board.
[FR Doc. 88–29020 Filed 12–16–88; 8:45 am]
BILLING CODE 6705–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection.

Title: Open Learning Fire Service Program (OLFSP) Course Evaluation.

Abstract: The Open Learning Fire Service Program (OLFSP) Course Evaluation form will be used in the National Fire Academy's independent study baccalaureate degree program. The form will be used to assess the effectiveness of the course materials, instructor interaction and program administration. The introduction/demographic information will be used in developing an overall needs assessment.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 660.

Number of Respondents: 2,000.

Estimated Averge Burden Hours Per Response: .33.

Frequency of Response: Quarterly; Semi-annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: December 12, 1988.
Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 88–29064 Filed 12–16–88; 8:45 am]
BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 224–200197.

Title: Virginia International Terminals Terminal Agreement.

Parties: Virginia International Terminals (VIT) Atlantic Container Line (ACL).

Synopsis: The agreement provides for a terminal use agreement whereby ACL guarantees movement of 300,000 tons during each year of a 3 year period through VIT's Portsmouth Marine Terminal and VIT in turn grants to ACL wharfage and crane rental charges different from those contained in Terminal Operators Conference of Hampton Roads Terminal Tariff No. 2, as amended.

By Order of the Federal Maritime Commission.

Dated: December 14, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–29050 Filed 12–16–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N–0425]

Drug Export; Haemophilus B Conjugate Vaccine

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Connaught Laboratories, Inc., has filed an application requesting approval for the export of the biological product Haemophilus b Conjugate Vaccine to Iceland.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Connaught Laboratories, Inc., Route 611, P.O. Box 187, Swiftwater, PA 18370, has filed an application requesting approval for the export of the biological product Haemophilus b Conjugate Vaccine, to Iceland. The Haemophilus b Conjugate Vaccine will be administered to children attaining the ages of 3, 4, and 6 months as a prophylaxis against serious systemic bacterial diseases, such as bacterial meningitis, sepsis, and epiglottitis. The application was received and filed in the Center for Biologics Evaluation and Research on November 22, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 29, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: November 30, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88–29028 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0368]

Abbott Laboratories; Premarket Approval of Abbott ER–EIA Monoclonal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Abbott Park, IL, for premarket approval under the Medical Device Amendments of 1976, of the Abbott ER–EIA Monoclonal. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 17, 1988, of the approval of the application.

DATE: Petitions for administrative review by January 18, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: On March 23, 1987, Abbott Laboratories, Abbott Park, IL 60064, submitted to CDRH an application for premarket approval of the Abbott ER–EIA Monoclonal. The device is an estrogen receptor (ER) immunological test system as an aid in the management of breast cancer patients. It is an in vitro device for the quantitative measurement of estrogen receptor (ER) in tissue cytosol to be used as an aid in assessing the likelihood of response to hormonal therapy and in the management of breast cancer patients.

On August 15, 1988, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 17, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should

BEST COPY AVAILABLE

be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ–440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of the review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time or before January 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 12, 1988.

Walter E. Gundaker,

Director, Office of Compliance, Center for Devices and Radiological Health.

[FR Doc. 88–29048 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0384]

IOPTEX Research, Inc.; Premarket Approval of Model UV304–01 (ULTRA C–LOOP) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOPTEX Research, Inc., Azusa, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model UV304–01 (Ultra C-Loop) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 17, 1988, of the approval of the application.

DATE: Petitions for administrative review by January 18, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8261.

SUPPLEMENTARY INFORMATION: On January 5, 1988, IOPTEX Research Inc., Azusa, CA 91702–1375, submitted to CDRH an application for premarket approval of the Model UV304–01 (Ultra C-Loop) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens. The device is intended to be used for primary implantation for the visual correction of aphakia in patients 60 years of age and older where a cataractous lens has been removed by extracapsular cataract extraction methods. It is intended for placement in either the ciliary sulcus or capsular bag. The device is available in a range of powers from 5 diopters (D) through 33 D in 0.5 D increments.

On June 20, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 17, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the hearing of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under

authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 12, 1988.

Walter E. Gundaker,

Director, Office of Compliance, Center for Devices and Radiological Health.

[FR Doc. 88-29047 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0364]

Howmedica, Inc.; Premarket Approval of P.C.A.™ Total Knee System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Howmedica, Inc., Rutherford, NJ, for premarket approval under the Medical Device Amendments of 1976, of the P.C.A.™ Total Knee System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1988, of the approval of the application.

DATE: Petitions for administrative review by January 18, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review of the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On August 13, 1985, Howmedica, Inc., Rutherford, NJ 07070, submitted to CDRH an application for premarket approval of the P.C.A.™ Total Knee System. The device is indicated for noncemented use in skeletally mature individuals undergoing primary surgery for rehabilitating knees damaged as a result of osteoarthritis and rheumatoid arthritis. Regulatory review of safety and effectiveness data for the cemented use of the P.C.A.™ Total Knee System is not required at this time, because use of the device with bone cement has been found to be substantially equivalent to a generic type of device marketed in interstate commerce prior to May 28, 1976 (see CFR 888.3560).

On January 22, 1988, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 12, 1988.

Walter E. Gundaker,

Director, Office of Compliance, Center for Devices and Radiological Health.

FR Doc. 88-29046 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0272]

Criteria for Determining the Regulatory Status of Food and Food Ingredients Produced by New Technologies; Announcement of Closed Meetings; Announcement of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the ad hoc Expert Panel on Criteria for determining the Regulatory Status of Foods and Food Ingredients Produced by New Technologies (the Expert Panel), which was formed by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB) under a contract with FDA, will hold several closed meetings and an open meeting. The purpose of the open meeting is to obtain scientific data and information for use in FASEB's study of which scientific concepts and considerations are most appropriately used to determine the regulatory status of foods and food ingredients produced by new technologies.

DATES: The Expert Panel will hold closed meetings on Monday, January 30 and Tuesday, January 31, 1989; an open meeting on Monday, March 6, 1989; and closed meetings on Tuesday, March 7, and Wednesday, March 8, 1989, and on Monday, April 17 and Tuesday, April 18, 1989. All meetings will begin at 9 a.m. Written requests should be received by January 17, 1989. Those persons who will be unable to attend the open meeting but who wish to make a written presentation to the Expert Panel should submit such written presentations to the Dockets Management Branch (address below) by March 6, 1989.

ADDRESSES: Written requests to make oral presentations at the open meeting should be sent to the Dockets Management Branch (HFA-305), Food

and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. The open meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be held in the Federation Board Room, FASEB (same address).

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher,
Life Sciences Research Office,
Federation of American Societies for Experimental Biology,
9650 Rockville Pike,
Bethesda, MD 20814,
301–530–7030,
or
James H. Maryanski,
Center for Food Safety and Applied Nutrition (HFF–300),
Food and Drug Administration,
200 C St. SW.,
Washington, DC 20204,
202–426–8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 30, 1988 (53 FR 33182), FDA announced that FASEB, under its contract with FDA (223–88–2124), is conducting a study, by means of the Expert Panel, of which concepts and considerations are most appropriately used to determine the regulatory status of foods and food ingredients produced by new technologies. (For complete information about this study, see 53 FR 33182.) The notice advised that an open meeting of the Expert Panel would be announced in the **Federal Register**. The open meeting will be held on Monday, March 6, 1989, in the Chen Auditorium, Lee Bldg., FASEB (address above), to receive the public's views on the issues involved in this study. The Expert Panel will also meet at the same location in closed meetings on January 30 and 31, 1989; March 7 and 8, 1989; and April 17 and 18, 1989. A list of the members of the Expert Panel is available from the Dockets Management Branch and FASEB.

The Expert Panel meetings are being announced as required by 21 CFR 14.15(b)(1).

Dated: December 13, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–29023 Filed 12–14–88; 1:57 pm]

BILLING CODE 4160–01–M

[Docket No. 88N–0401]

Emerging Food Safety and Quality Issues for the Next Decade; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting; Announcement of Closed Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office, is undertaking a review and evaluation of topics and issues in food safety and food quality that FDA should consider as important scientific concerns emerging in the next decade. The study will result in a scientific report that addresses and documents the identified topics and issues. FASEB is inviting the submission of scientific data and information bearing on this topic. FASEB is also providing an opportunity for public comment at an open meeting.

DATES: The open meeting will be held on Thursday, January 12, 1989. Closed meetings will be held on Wednesday, January 11 and Friday, January 13, 1989, and Wednesday, Thursday, and Friday, March 29 through 31, 1989. All meetings will begin at 9 a.m. Written requests to make oral presentations at the open meeting must be received by December 27, 1988. Written comments, scientific data, and information may be submitted at any time, however they should be submitted as soon as possible.

ADDRESSES: Written requests to make oral presentations at the open meeting and scientific data and information should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data, information, or written views should be submitted to each office. The open meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be held in the Federal Board Room, FASEB (same address).

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 96750 Rockville Pike, Bethesda, MD 20814, 301–530–7030,
or
C. William Cooper, Center for Food Safety and Applied Nutrition (HFF–3), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0265.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of food and cosmetics.

FDA is announcing that it has asked FASEB, as a task under this contract, to provide FDA's Center for Food Safety and Applied Nutrition (CFSAN) with a report that: (1) Describes, evaluates, and documents topics and issues in food safety and food quality of potential concern to FDA that are expected to emerge in the next decade; (2) considers public input; and (3) recommends priorities of the anticipated issues for FDA program planning for the next decade. In response, FASEB asked its Life Sciences Research Office to appoint an ad hoc expert panel (the Expert Panel) to study this matter. The Expert Panel will report its findings to FASEB through the Life Sciences Research Office. FASEB will then evaluate these findings and submit its own report to FDA.

CFSAN has a mandate to promote and to protect the public health and has responsibility to assure a safe and wholesome food supply. Under the Federal Food, Drug, and Cosmetic Act as amended, related statutes, and Federal regulations promulgated under these laws, the agency performs various functions to carry out its mandate, including establishing regulations, providing premarket approval of food additives, establishing and conducting inspections, and performing analyses of foods. In addition, CFSAN conducts research on aspects of food safety and food quality and maintains an active training and education program on issues dealing with food safety.

In addition, CFSAN must stay abreast of the many changes brought about by advances in food and food-related technology. These changes not only affect the manner in which FDA utilizes its regulatory authority but also raise important consumer questions involving product labeling and the provision of meaningful dietary and nutritional guidance. FDA obtains and utilizes counsel from a variety of sources to identify and categorize the important issues that will affect the agency's food safety responsibilities in the remaining years of this century.

The Expert Panel will be asked to identify and discuss the concerns and issues for the future that are raised by several topics, including: (1) Implementation of the *Surgeon General's Report on Nutrition and Health;* (2) microbial safety of foods; (3) monitoring the food supply; and (4) public education about food quality and safety. The Expert Panel will also be asked to consider the roles of FDA including its use of appropriate regulatory tools of other portions of the Executive Branch; of Congress; of the private sector; and of counsumers in meeting future challenges.

The Expert Panel of scientists and science administrators who have expertise in the fields of microbiology, nutrition, toxicology, food science, and risk assessment will be assembled by the Life Sciences Research Office. Insofar as possible, the Expert Panel will represent academia, industry, consumers, professional associations, and government. Discussions by the Expert Panel will provide the basis for a report that provides CFSAN with information on issues that the food science community considers to be of primary importance in the next 10 years. A list of members of the Expert Panel is available from the Dockets Management Branch or FASEB (addresses above).

In accordance with 21 CFR 14.15(b)(1), notice is given that the Expert Panel will hold an open meeting on January 12, 1989, during which an opportunity will be provided for the public to present oral views on important issues in food safety and quality that are likely to emerge in the next decade. The Expert Panel will meet in closed executive session on January 11 and 13, 1989, and on March 29 through 31, 1989. Pursuant to the provisions of its contract with FDA, FASEB will provide the agency with a report on the issues involving food safety and food quality that the scientific community believes will be of primary importance in upcoming years. The report of the study will provide a basis for decisions on the approaches that CFSAN will consider in addressing these issues. The report will help the agency in its efforts to assure the highest degree of safety and quality for the American food supply

Dated: December 13, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-29024 Filed 12-14-88; 1:57 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0402]

Guidelines for Assessing and Managing Iron Deficiency and Anemia in Women of Childbearing Age; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting; Announcement of Closed Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office, is about to begin a study to develop guidelines for FDA. The agency intends to make these guidelines available to health care providers. The purpose of the guidelines is to: (1) Help in identifying impaired iron status and anemia in women, (2) help in determining the most appropriate methods of assessment, and (3) help in selecting approaches to management of anemia in these women. FASEB is inviting the submission of scientific data, information, and views bearing on this topic. FASEB will provide an opportunity for public oral presentations at an open meeting.

DATES: The Life Sciences Research Office's ad hoc expert panel (the Expert Panel) open meeting will be held on Wednesday, January 11, 1989. Requests to make oral presentations at the open meeting must be in writing and received by January 5, 1989. The Expert Panel will also meet in closed executive sessions on Tuesday, January 10, 1989, and on Monday, March 13 and Tuesday, March 14, 1989. All meetings will begin at 9 a.m. Written presentations of scientific data, information, and views may be submitted at any time but should be submitted as soon as possible.

ADDRESSES: Written requests to make oral presentations at the open meeting and scientific data, information, and views should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data, information, and views should be submitted to each office. The open meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be in the Federation Board Room, FASEB (same address).

FOR FURTHER INFORMATION CONTACT:
Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030,
or
Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0087.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of food and cosmetics.

FDA intends to provide guidelines to health care providers for use in identifying: (1) Women of childbearing ages with impaired iron status and anemia, (2) the most appropriate methods of assessment, and (3) approaches to management of anemia in these individuals. FDA is announcing that it has asked FASEB, as a task under the contract, to determine the scientific community's views on the matters involved in developing these guidelines. In response, FASEB asked its Life Sciences Research Office to appoint the Expert Panel to study this matter. The Expert Panel will report its findings to FASEB through the Life Sciences Research Office. FASEB will then evaluate these findings and submit its own report to FDA.

Anemia in women of childbearing age (defined as postpuberty to menopause; 14 to 44 years of age) may result from many causes including iron deficiency, and various chronic diseases. Definitive diagnosis of iron-deficiency anemia requires distinguishing among the various causes of anemia. Specifically, identification of inadequate iron nutriture as a cause of anemia requires the determination of the status of iron stores. Iron deficiency may result from inadequate intake or absorption of iron, high menstrual blood losses, the demands of pregnancy, and other factors leading to blood loss. It is important to establish the cause (or causes) of anemia to select appropriate therapy and to avoid unnecessary intervention and possible harmful effects of ingestion of large amounts of iron-rich foods or dietary supplements by women whose iron stores are adequate. For these reasons, FDA needs guidance on the state of scientific knowledge in regard to the diagnosis and therapeutic management of iron

deficiency and anemia in women of childbearing ages.

FDA requires specific guidance in order to supply health care providers with current information on diagnosis and management of iron deficiency and other causes of anemia. Such guidance should include criteria useful in identifying individuals at risk, diagnostic techniques for assessing iron status, appropriate tests for distinguishing among major causes of anemia, and recommended strategies for management of various conditions associated with impaired iron status, including recommended frequency for monitoring during therapy, duration of therapy, and indications for discontinuing therapy.

In accordance with 21 CFR 14.15(b)(1), notice is given that the Expert Panel will hold an open meeting on Wednesday, January 11, 1989, to provide an opportunity for the public to present oral views on the issues discussed above. A list of members of the Expert Panel is available from the Dockets Management Branch and FASEB.

This notice invites submission of information on scientific concepts and considerations that can be used to devise criteria to determine the most appropriate recommendations for identification and intervention in iron deficiency and anemia in women of childbearing ages. Two copies of any scientific data, information, or written views should be submitted as soon as possible to both the Dockets Management Branch and the life Sciences Research Office (addresses above). Requests to make oral presentations at the open meeting should be in writing and submitted to the same addresses by January 5, 1989. Pursuant to its contract with FDA, FASEB will provide the agency with a scientific report on these issues concerning iron deficiency and anemia in women of childbearing ages.

Dated: December 13, 1988.

John M. Taylor.

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-29025 Filed 12-14-88; 1:57 pm]

BILLING CODE 9160-01-M

[Docket No. 88N-0406]

Outside Scientific Expertise in Nutrition Objectives for the year 2000; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting; Announcement of Closed Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office, is: (1) Undertaking a review and evaluation of a draft set of National Nutrition Objectives for the Year 2000, (2) inviting submission of scientific data and information bearing on this topic, (3) providing an opportunity for presentation of written and oral information and data at an open meeting of the ad hoc expert panel (the Expert Panel) on National Nutrition Objectives for the Year 2000, and (4) providing notice of closed meetings of the Expert Panel. FASEB is inviting submission of scientific data and information bearing on this topic.

DATES: The open meeting of the Expert Panel on National Nutrition Objectives for the Year 2000 will be on Thursday, January 5, 1989. The closed meetings will be held on Wednesday, January 4 and Friday, January 6, 1989. All meetings will begin at 9 a.m. For written comments, information, and data to be considered by the Expert Panel at the open meeting, they must be submitted by December 30, 1988. Written requests to make oral presentations at the open meeting must be received by December 30, 1988.

ADDRESSES: Written requests to make oral presentations at the open meeting and scientific data and information to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data and information should be submitted to each office. The open meeting will be in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be in the Federation Board Room, FASEB (same address).

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030,

or

Marilyn G. Stephenson, Center for Food Safety and Applied Nutrition (HFF-208), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of food and cosmetics.

The U.S. Public Health Service (PHS) has established a process for the development of "National Health Objectives for the Year 2000." The PHS schedule calls for the preparation of draft reports, on or before February 1, 1989, on each of 21 priority areas that have been revised by outside expert panels and by the PHS Steering Committee for the Year 2000. Representatives of PHS, FDA, and the National Institutes of Health (NIH) will participate in the development of the National Health Objectives, including the Nutrition Objectives. FDA's Center for Food Safety and Applied Nutrition (CFSAN) and NIH cochair the "Interagency Work Group for the Year 2000: Nutrition Objectives" (the Work Group).

The Work Group was organized on August 26, 1988, with representatives from 10 agencies. The 10 agencies in the Work Group have drafted preliminary nutrition objectives, and several publications are available on the status of implementation and effectiveness of the 1990 Health Objectives. All of these documents are available from either of the contact persons above. FDA is announcing that it has asked FASEB, as a task under this contract, to provide jointly to FDA and NIH a report that: (1) Summarizes the review and evaluation of background materials, (2) considers public input; (3) evaluates a draft of the objectives prepared by the Work Group; and (4) makes recommendations for consideration in regard to nutrition objectives for the year 2000. In response, FASEB asked its Life Sciences Research Office to appoint the Expert Panel to study this matter. The Expert Panel will report its findings to FASEB through its Life Sciences Research Office. FASEB will then evaluate these findings and submit its own report to FDA and NIH.

FASEB will convene the Expert Panel to undertake review and evaluation of the draft objectives and other materials prepared by the Work Group. The Expert Panel will consist of nine eminent scientists selected for their expertise in nutrition, clinical nutrition, public health, pediatrics, and medicine. The viewpoints represented among the Expert Panel members will include not only those of the scientific disciplines listed but also those of academia, consumers, industry, and scientific organizations in the broadly defined field of nutrition. A list of members of

the Expert Panel is available from the Dockets Management Branch and FASEB.

In accordance with 21 CFR 14.15(b)(1), notice is given that the Expert Panel will hold an open public meeting during which an opportunity will be provided for the public to present written and oral views, scientific data, and information on the draft National Nutrition Objectives for the Year 2000. The meeting will be held on January 5, 1989, in the Chen Auditorium, Lee Bldg., FASEB (address above).

This notice invites submission of information, data, and views on the draft National Nutrition Objectives for the Year 2000 that should be considered for inclusion in the PHS National Health Objectives for the Year 2000. Two copies of any scientific data or information should be submitted to both the Dockets Management Branch and the Life Sciences Research Office (addresses above). This information may be submitted at any time, but it must be received by December 30, 1988, if it is to be considered by the Expert Panel.

This notice also invites public participation at the open meeting. Written requests to make oral presentations should be sent to the addresses above and received by December 30, 1988.

The Expert Panel will meet in executive session on January 4, 1989, to review the submitted information and data in preparation for the open meeting. The Expert Panel will also meet in executive session on January 6, 1989, to consider all of the information received at the open meeting. Both meetings will be held in the Federation Board Room, FASEB (address above). These meetings are being announced as required by 21 CFR 14.15(b)(1).

Dated: December 13, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-29026 Filed 12-14-88; 1:57 pm]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Pediatric Acquired Immune Deficiency Syndrome (AIDS) Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA) announces that Fiscal Year (FY) 1989 funds are now available for grants to fund projects demonstrating strategies and innovative models for intervention in pediatric AIDS and coordination of services for children, youth, and women of childbearing age with Human Immunodeficiency Virus (HIV) infestion, AIDS or other related conditions, or those at risk for developing infection and its consequences. Funds appropriated by Pub. L. 100-436 will be used for this purpose.

DATE: The deadline for receipt of applications is February 22, 1989. Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Branch at the address below on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Grant applications received after the deadline date will be returned.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from: John J. Hutchings, M.D., Division of Services for Children with Special Health Needs, BMCHRD, Parklawn Building, Room 6-05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2170.

Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from: Ms. Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 11A-18, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1440. The original and two (2) copies of the applications must be submitted to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Through November 8, 1988, 77,994 cases of AIDS have been reported to the Centers for Disease Control (CDC). Of these, 1,230 have been infants and children 0-12 years of age and 313 have been adolescents 13-19 years of age. Approximately one-half of the known cases in this pediatric population have died. The Public Health Service (PHS) predicts an increase in pediatric AIDS by 1991, to 3,000 cases.

The cost of providing a full range of services in the pediatric population with AIDS is high, largely reflecting hospital costs with the higher inpatient hospital rates for children and the long periods of hospitalization these children experience. Cost reduction can be made through the use of comprehensive ambulatory and community-based services, which these demonstration projects should provide.

The Pediatric AIDS projects are designed to further the coordination of services for children, youth, and women of childbearing age with HIV infection, AIDS or related conditions, or those at risk for developing infection and its consequences. This coordination is to be accomplished through enhancement of current pediatric AIDS activities developed by the Office of Maternal and Child Health, including those activities supported by Title V of the Social Security Act or through the existing Pediatric AIDS Health Care Demonstration Projects supported in FY 1988 under Public Law 100-202, and other departmental AIDS activities, particularly the HRSA Service Demonstration Grants.

Purpose

It is generally recognized that there is a need for development of strategies and innovative models for managing pediatric patients with AIDS, which emphasize service delivery in outpatient and community settings and reduce the amount of time spent in hospital settings. Two categories of projects will be funded in FY 1989 which are intended to accomplish these purposes and also are expected to provide solutions to a broad range of critical problems arising from the AIDS crisis.

The first category, Pediatric Health Care Demonstration Projects, which were also funded in FY 1988 should: (1) Demonstrate effective ways to prevent infection, especially through the reduction of perinatal transmission; (2) develop community-based, family-centered, coordinated services for infected infants, children and youth; and (3) develop programs to reduce the spread of HIV infection to vulnerable populations of young people. The Pediatric Health Care Demonstration Projects should serve as models for other communities and should identify the range of resources needed to provide appropriate, humane, and effective care to pediatric AIDS patients. They are designed to build on existing resources or networks in impacted communities for reaching and providing health care and supportive services to women and children most at risk. These projects will

focus on local capacity-building, making maximum use of all available public and private resources.

The second category of projects are intended to focus on National Issues of High Priority in Pediatric AIDS which are of critical importance to children with AIDS and their families, especially in the areas of prevention and early detection and service provision. Proposed issues include but are not limited to: developing community plans to respond to issues arising from HIV infection in adolescents and youths, including those living at home, those in institutions, and those who are homeless; the development of a curriculum for training volunteers who work with families where there are HIV infected children; the preservation of maternal and child rights of privacy, confidentiality, and informed consent; the recommendations from the Surgeon General's Workshop on Children With HIV Infection and Their Families that dealt with health information issues and the role of the media; and a survey of the services of Comprehensive Hemophilia Centers to HIV infected children who do not have hemophilia. The intent is to identify and to deal with issues which interfere with and prevent AIDS patients and their families from receiving the services they require.

Availability of Funds

Approximately $2.25 million is available for the following two categories of new projects in FY 1989:

(1) *Pediatric AIDS Health Care Demonstration Projects.* A total of $1.5 million is available to be expended by grantees during project periods lasting from 1 to 3 years. It is anticipated that three to five such new grants will be made, depending on demonstrated need.

(2) *National Issues of High Priority in Pediatric AIDS.* A total of $750,000 is available for small grants lasting from 1 to 2 years. It is anticipated that four to six such grants will be made.

Collaboration/Coordination with Other AIDS Programs

Pediatric AIDS grantees supported by HRSA will be expected to coordinate their projects with other Federal, State, and local programs concerned with AIDS including, but not limited to: (1) HRSA AIDS Service Demonstration Grants; (2) CDC AIDS activities; (3) Community Health Centers and Migrant Health Centers; (4) Medicaid; (5) Title V programs: Maternal and Child Health Services Block Grants, Maternal and Child Health Hemophilia Services Projects, and other relevant SPRANS grants under Title V; (6) the education and outreach programs of the National Institute on Drug Abuse, especially those concerned with IV drug users, their sexual partners, and prostitutes; (7) HRSA Education and Training Centers Grants; (8) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development; (9) the clinical drug trials or other relevant research conducted by other institutes of the National Institutes of Health; and, (10) discretionary grants by the Office of Human Development Services to demonstrate innovative approaches to providing child welfare services for infants with AIDS.

To the maximum extent possible, HRSA's Pediatric AIDS Health Care Demonstration Program grantees also will be expected to work closely with community-based AIDS service organizations, local AIDS service activities supported by the Robert Wood Johnson Foundation, the National Hemophilia Foundation, or other foundations and organizations with AIDS activities.

Eligible Applicants

Public and private entities, nonprofit and for-profit, are eligible to apply for these grant awards. Eligible entities include public or private hospitals, university medical centers, State or local health departments, or consortia of health care and community organizations.

Review and Evaluation Criteria

Grant applications will be reviewed and rated by an objective review committee. The first category, Pediatric AIDS Demonstration projects, will be judged according to demonstration of need for services and to the applicant's ability to demonstrate the most effective ways of organizing services and providing treatment and support to children and women of childbearing age with HIV infection, AIDS or AIDS-related conditions or those at risk for developing infection and its sequelae. Applicants will be expected to demonstrate how proposed programs will be integrated with other AIDS service programs and indicate how the proposed services will augment existing activities. The second category, National Issues of High Priority in Pediatric AIDS, will be reviewed to assess the importance of the issue selected, the applicant's understanding of the state of the knowledge about the issue, and the applicant's capacity to perform the activities proposed. More detailed information on the review and evaluation criteria may be found in the grant application kit.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, subpart Q. The five separate sets of cost principals prescribed for grant recipients are: (1) 45 CFR Part 92 for State and local governments; (2) OMB Circular A–21 for institutions of higher education; (3) 45 CFR Part 74, Appendix E for hospitals; (4) OMB Circular A–122 for nonprofit organizations; and (5) 48 CFR Chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J—Monitoring and Reporting of Program Performance.

Executive Order 12372

The Pediatric AIDS Health Care Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal program. The application packages to be made available under this notice (Form PHS 5161–1 with revised facesheet HHS Form 424 approved under OMB 0348–0006) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Each applicant should promptly contact his/her State's single point of contact (SPOC) and follow instructions prior to the submission of an application. The SPOC has 60 days after the application deadline to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration program is 13.153.

Date: November 14, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88–29027 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–15–M

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–15–0056, "National Vaccine Injury Compensation Program, HHS/HRSA/BHPr." We are also proposing routine uses for this new system.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on December 8, 1988. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, PHS will publish a notice to that effect in the **Federal Register**. The routine uses will be effective 30 days after the date of publication unless PHS received comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, Health Resources and Services Administration, Room 14A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3780.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5794.

The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration (HRSA) proposes to establish a new system of records: 09–15–0056, "National Vaccine Injury Compensation Program, HHS/HRSA/BHPr." This proposed system of records will consist of petitions served on the Secretary, HHS, regarding payment of compensation under the National Vaccine Injury Compensation Program, which include medical records and other related documentation. The Secretary has placed the responsibility for implementing this program in HRSA's Bureau of Health Professions (BHPr).

The purpose of these records is to: (1) Determine eligibility of petitioners to receive compensation under the National Vaccine Injury Compensation Program; (2) compensate successful petitioners in the amount determined by the court; and (3) evaluate vaccine safety.

BHPr/HRSA is establishing stringent safeguards consistent with the sensitivity of the records. These include: Maintaining a current list of authorized users; handcarrying files from office to office in sealed envelopes; transmitting records to consultants by registered mail; escorting visitors into areas where records are maintained; utilizing passwords and data set name controls for computer access; and securing areas where records are stored.

HRSA will permit disclosure of the records to third parties pursuant to a routine use as follows: The first routine use permits disclosure to a congressional office, to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. The second routine use allows disclosure to the Department of Justice or a court, in the event of litigation instigated by the record subject. The third routine use allows Public Health Service consultants to evaluate medical records submitted to the Department. The fourth routine use allows disclosure of records to the Special Master of the U.S. Claims Court for adjudication of the compensation claim. The fifth routine use allows for **Federal Register** publication of the notice of receipt of petitioner's claim, as required by the National Childhood Vaccine Injury Act.

Individuals will be required to supply Social Security numbers in order to receive compensation payments. However, HRSA will not use Social Security numbers in this system to make any determination concerning rights, benefits, or privileges of the individuals.

This system notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Date: December 9, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–15–0056

SYSTEM NAME:

National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Room 4–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing claims (petitioners) under the National Vaccine Injury Compensation Program (NVICP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Petition for compensation, including petitioner's name and name of person vaccinated if different from petitioner, Social Security Number and all relevant medical records, (including autopsy reports, if any), appropriate assessments, evaluations, prognoses, and such other records and documents as are reasonably necessary for the determination of eligibility for and the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 300aa–11 and Executive Order 9397 regarding the use of Social Security Number.

PURPOSE(S):

1. To determine eligibility of petitioners to receive compensation under the National Vaccine Injury Compensation Program.

2. To compensate successful petitioners in the amount determined by the court.

3. To evaluate vaccine safety through research programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the written request of the individual.

2. In the event of litigation where the defendent is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose

such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA will contract with expert medical consultants for the purpose of obtaining advice on petitioner's eligibility for compensation. Relevant records may be disclosed to such consultants. The consultants shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA.

4. HRSA will release the petitioner's complete medical file and may release consultants' report to the Department of Justice and the Special Master of the U.S. Claims Court for adjudication of the compensation claim.

5. HRSA will disclose for publication in the **Federal Register** the petitioner's name, court docket number, petitioner's city and State, and name of person vaccinated, if not the petitioner, as required by the National Childhood Vaccine Injury Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and disks.

RETRIEVABILITY:

(1) Docket number assigned by the U.S. Claims Court, (2) petitioner and/or name of person vaccinated, and (3) Social Security Number.

SAFEGUARDS:

1. Authorized Users: Access is limited to the System Manager and authorized BHPr/HRSA personnel responsible for administering the program. BHPr/HRSA will maintain a current list of authorized users.

2. Physical Safeguards: All files are kept in standard locking file cabinets during non-work hours; and disk packs and computer equipment are kept in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24-hour basis in secured areas. Security guards perform random checks on the physical security of the record storage area.

3. Procedural Safeguards: BHPr/HRSA is establishing stringent safeguards in line with the sensitivity of the records. These include: Handcarrying files from office to office in sealed envelopes, transmitting records to consultants by registered mail; escorting visitors into areas where records are maintained; utilizing passwords for computer access; securing areas where records are stored. A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

RETENTION AND DISPOSAL:

The records shall be disposed of by shredding three years after the termination of all administrative and judicial proceedings, as determined by a final adjudication. Upon written notification to the Government, the petitioner shall have the right to reclaim the original medical records submitted to the Government, after the final adjudication.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Health Professions, HRSA, Room 4–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager at the above address.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as a driver's license, passport, voter registration card, or union card. Identification paper with current photograpsh are preferred but not required. Additional identifcation may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: To determine if a record exists about you, write to the System Manager. The request must contain the name and address of the individual, assigned court docket number (if known), and a written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual under false pretenses is a criminal offense subject to a $5,000 fine. Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Individual may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the appropriate offical at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Petitioner, petitioner's legal representative, health care consultants, and other interested persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–29109 Filed 12–16–88; 8:45 am]
BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise three notices describing systems of records maintained by the U.S. Geological Survey. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The three notices being revised, which are published in their entirety below, are:

1. Personal Property Accountability Records—Interior, USGS–7 (previously published on October 2, 1986; 51 FR 35299).

2. Security—Interior, USGS–11 (previously published on October 2, 1986; 51 FR 35299).

3. Personnel Investigations Records—Interior, USGS–23 (previously published on February 16, 1988; 53 FR 4468).

The notice describing personal property accountability records (USGS–7) is being amended to add compatible routine use disclosures to other Federal agencies and consumer reporting

agencies to facilitate the collection of debts owed to the Federal government.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on proposed new routine uses. Therefore, written comments on the proposed routine uses can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before January 18, 1989, will be considered. The notices shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: December 9, 1988.

INTERIOR/USGS–7

SYSTEM NAME:

Personal Property Accountability Records—Interior, USGS–7.

SYSTEM LOCATION:

(1) Property Management Branch, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 210, Reston, VA 22092.

(2) Administrative offices in all or substantially all field locations. (For a listing of specific locations, contact the System Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Geological Survey employees who are accountable for bureau-owned controlled property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of assignment of an internal identification number and acknowledgement of receipt by employees. Records of transfers to other accountable employees. Inventory records containing employee social security numbers and duty stations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Maintain control over bureau-owned controlled property; (b) maintain up-to-date inventory of the property and to record accountability for the property. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (6) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset and to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are both manual and computerized.

RETRIEVABILITY:

By employee social security number.

SAFEGUARDS:

Access by authorized employees only.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 307–10.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property Management Branch, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 210, Reston, VA 22092.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual employees.

INTERIOR/USGS–11

SYSTEM NAME:

Security—Interior, USGS–11.

SYSTEM LOCATION:

Office of the Chief Geologist, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, VA 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Geologic Division employees who have been granted security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of security clearance for Division personnel; contains name, title, organization, office location, social security number, place and date of birth, and type of security clearance of person being granted access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10501.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to keep current records on security clearances in the Geologic Division. Disclosure outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or

anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual systems maintained in locked files. Automated system maintained in dBase III file.

RETRIEVABILITY:

Indexed by individual name.

SAFEGUARDS:

Maintained with security meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau of Records Disposition Schedule, RCS/Item 306–16.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, VA 22092.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/USGS–23

SYSTEM NAME:

Personnel Investigations Records—Interior, USGS–23.

SYSTEM LOCATION:

Security Office, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 150, Reston, VA 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current Geological Survey employees who (a) are granted access to classified information; (b) are filling sensitive positions not requiring access to classified information; (c) are being considered either for access to classified information or for filling sensitive positions not requiring access to classified information; and (d) are found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

2. Former Geological Survey employees who (a) were granted access to classified information; (b) were filling sensitive positions not requiring access to classified information, and (c) were found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with or from law enforcement agencies, employers, and educational institutions attended; foreign affiliations which may affect his or her loyalty to the United States; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: (1) To designated officials, officers, and employees of the USGS, DOI, OPM, DOE, CIA, FBI, and all other agencies and departments of the Federal Government who in the performance of their duties have an interest in the individual for employment purposes, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States Government; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All investigative records are maintained in file folders stored in Class 5 security containers having manipulation resistant combination locks.

RETRIEVABILITY:

All records are indexed by surname in alphabetical order.

SAFEGUARDS:

The card index for this system of records is contained in a metal cabinet with a secure key locking device; the key is secured in a Class 5 security container. All containers and cabinets are further secured in a windowless

room having one doorway which is secured by a key locking device. Both the key locking devices and combinations to the Class 5 security containers are under stringent security controls.

RETENTION AND DISPOSAL:

(a) OPM background investigative files supporting secret-sensitive decompartmented information and top secret-infrequent access to sensitive compartmented information are retained until the awarded security clearance or employment is terminated. All other OPM investigative files are routinely destroyed within 90 days after receipt or upon completion of the adjudication action, whichever occurs last. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15b.

(b) All information, supplementing the above OPM investigative files, originated by the Geological Survey, is retained for two years following termination of awarded security clearance or employment, whichever occurs first, and is then destroyed. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15a.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer/Alternate Security Officer, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 150, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Written inquiries to the System Manager are required and must include the following information in order to positively identify the individual whose records are requested: (1) Full name, (2) date of birth, (3) place of birth, (4) any available information regarding the type of record requested. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual can obtain information on the procedures for gaining access to and contesting the records from the above System Manager. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Same as above. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the following categories of sources: (1) Applications and other personnel and security forms furnished by the individual, (2) Results of investigations and other material furnished by Federal agencies.

[FR Doc. 88–29096 Filed 12–16–88; 8:45 am]
BILLING CODE 4310–31–M

Fish and Wildlife Service

Availability of the Draft Environmental Assessment Proposed Bond Swamp National Wildlife Refuge, Bibb and Twiggs Counties, Georgia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment for the Proposed Bond Swamp National Wildlife Refuge.

SUMMARY: This Notice advised the public that the Draft Environmental Assessment for the Proposed Bond Swamp National Wildlife Refuge is available for public review, effective November 22, 1988. The U.S. Fish and Wildlife Service (Service) proposes to protect and enhance approximately 6500 acres of forested wetland habitat in Bibb and Twiggs Counties, Georgia. The environmental assessment evaluates the value and significance of resources on the area in regard to potential acquisition by the Service as an addition to the National Wildlife Refuge System and to analyze other alternative uses of the area.

DATES: The assessment is presently available to the public as of November 22, 1988. Written comments must be received no later than January 6, 1989, to be considered.

ADDRESSES: Requests for copies of the assessment and other questions should be addressed to: Mr. Ronnie Shell, Refuge Manager, Piedmont National Wildlife Refuge, U.S. Fish and Wildlife Service, Round Oak, Georgia 31038: telephone commercial (912) 984–5441.

Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1200, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The objectives for which the area would be managed are to preserve and protect a diverse, threatened wetland ecosystem and its associated values; to preserve, protect, reestablish, and manage for endangered and threatened wildlife species; to manage for migratory birds with emphasis on providing optimum habitat for wintering waterfowl and enhancing nesting and brood habitat for wood ducks; to manage for native wildlife species and their associated habitats; and to provide opportunities for comparable public educational, interpretational, and recreational, opportunities associated with wildlife and their habitats.

Five alternatives for protection of the area are discussed in the assessment, and include No Action; Acquisition by U.S. Fish and Wildlife Service (preferred alternative); Acquisition by Another Government Agency; Acquisition by Conservation Oriented Group or Individual; and Acquisition by Conservation Easement by the U.S. Fish and Wildlife Service.

James W. Pulliam, Jr.,
Regional Director.
November 21, 1988
[FR Doc. 88–29062 Filed 12–14–88; 1:25 pm]
BILLING CODE 4310–55–M

Availability of the Draft Environmental Assessment for the Purchase of Lands for the Establishment of Lake Ophelia National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment for the purchase of lands for the establishment of Lake Ophelia National Wildlife Refuge.

SUMMARY: This notice advises the public that the Draft Environmental Assessment for the Purchase of Lands for the Establishment of Lake Ophelia National Wildlife Refuge is available for public review, effective November 23, 1988. Lake Ophelia National Wildlife Refuge is being proposed to preserve 38,000 acres of wintering habitat for mallards, pintails and wood ducks, and production habitat for wood ducks to help meet the habitat goals presented in the North American Waterfowl Management Plan.

The environmental assessment evaluates the value and significance of resources on the area in regard to potential acquisition by the Service as an addition to the National Wildlife Refuge System and to analyze other alternative uses of the area.

DATES: The assessment is presently available to the public as of November 23, 1988. Written comments must be received no later than January 6, 1989, to be considered.

ADDRESSES: Requests for copies of the assessment and other questions should be addressed to: Charles R. Danner, Chief, Project Development Branch, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1240, Atlanta, Georgia 30303.

Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1200, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The Service proposes to provide protection and management for wintering waterfowl on approximately 30,000 acres of wetland and associated habitats in the vicinity of Lake Ophelia, Avoyelles Parish, Louisiana. The area would also provide habitat for resident furbearers, alligators, and other wildlife. Secondary compatible uses would possibly include public outdoor activities such as hunting, fishing, research, environmental education, and other wildlife-oriented recreation.

Three alternatives for protection and management of the area are discussed in the assessment, and include No Action; Service Acquisition (preferred alternative); and Acquisition and Management by Others.

Establishment of the refuge and proper management will provide excellent wintering waterfowl habitat and a needed waterfowl refuge in the Lower Mississippi River Valley.

James W. Pulliam, Jr.,

Regional Director.

November 23, 1988.

[FR Doc. 88-29063 Filed 12-14-88; 1:26 pm]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 279X)]

CSX Transportation, Inc.; Abandonment Exemption for Railroad Lines in Florence and Lee Counties, SC

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line between milepost AK-304.38, at Timmonsville, Florence County, SC, and milepost AK-313.43, at Lynchburg, Lee County, SC, a distance of 9.05 miles.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user or rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate agency has been notified in writing at least 20 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 18, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2], and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 29, 1988.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.29 must be filed by January 9, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 24, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 13, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

FR Doc. 88-29170 Filed 12-16-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 275X)]

CSX Transportation, Inc.; Abandonment Exemption for Railroad Lines in Orangeburg County, SC, et al.

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 37.19-mile line of railroad between milepost AK-380.27 at Orangeburg to milepost AK-396.36 at Denmark and milepost AK-397.9 at Denmark to milepost AK-419.0 at Donora, located in Orangeburg, Bamberg, and Barnwell Counties, SC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 18, 1989 (unless stayed pending reconsideration). Petitions to stay that

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 29, 1988.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 9, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 24, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 13, 1988

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29169 Filed 12–16–88; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental isues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Diamond Reo Truck, Inc.; Lodging of Stipulation and Agreement To Compromise and Settle Environmental Claims

In accordance with Departmental policy, notice is herby given that on December 12, 1988, a proposed Stipulation and Agreement to Compromise and Settle Environmental Claims in The Matter of: Diamond Reo Trucks, Inc., Civil Action No. 74–1778–B–5, was lodged with the United States Bankruptcy Court for the Western District of Michigan. The proposed Stipulation and Agreement to Compromise and Settle Environmental Claims concerns the resolution of environmental claims of the United States Environmental Protection Agency against the Debtor, Trustee, and Estate of Diamond Reo Trucks, Inc. ("Diamond Reo"), for response costs incurred and to be incurred by the United States at the Liquid Disposal, Inc. site, located in Shelby Township, Michigan. The proposed Stipulation and Agreement to Compromise and Settle Environmental Claims requires Diamond Reo to pay the United States $300,000 as a priority claim in its bankruptcy, in exchange for a covenant by the United States not to sue Diamond Reo for any civil claims for a release for any and all civil liability to the United States, other than any claim for natural resources damages, for response costs and injunctive relief pursuant to sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, regarding the Liquid Disposal, Inc. site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to In the Matter of: Diamond Reo Trucks, Inc. D.J. Ref. 90–11–3–404.

The proposed Stipulation and Agreement to Compromise and Settle Environmental Claims may be examined at the office of the United States Attorney for the Western District of Michigan, 399 Federal Building, Grand Rapids, Michigan 49503, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Ill. 60604. Copies of the Stipulation and Agreement to Compromise and Settle Environmental Claims may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Stipulation and Agreement to Compromise and Settle Environmental Claims may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88–29097 Filed 12–16–88; 8:45 am]

BILLING CODE 4410–01–M

Landfill, Inc.; Lodging a Complaint and Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 21, 1988 a proposed Complaint and partial Consent Decree in *United States* v. *Landfill, Inc.*, Civil Action No. 88–Z–1714, was lodged with the United States District Court for the District of Colorado.

The Complaint filed by the United States was brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to compel the cleanup of the Marshall/Boulder Landfill near Marshall, Colorado, and the reimbursement of the United States for its response costs associated with the site. The defendants include Landfill, Inc., The City of Boulder, Cowdrey Corporation, and several individuals who own portions of the site. These defendants are referred to herein as the "Settling Defendants." There are four additional defendants, three corporations which allegedly disposed of hazardous substances at the site, and an individual who was an officer, director, and shareholder of one of the corporations.

The Consent Decree, lodged with the Complaint, provides for the Settling Defendants to design and undertake remedial action chosen by the United States Environmental Protection Agency ("EPA"), and described in EPA's Record of Decision ("ROD") entered September 26, 1986. The remedy selected by EPA in its ROD consists of: Fencing, regrading, and revegetating the Site to restrict access and minimize infiltration;

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collecting contaminated ground water by a series of drains partially surrounding the site to eliminate the off-site transport of contaminants via alluvial ground water; treating the ground water by air stripping with off-gas carbon adsorption to reduce concentrations of volatile organics in the ground water to the most conservative of the applicable or relevant and appropriate standards and criteria (and to prevent the escape of volatile organics into the atmosphere); and monitoring to assess the ground water and surface water to assess the effectiveness of the selected remedial alternative. In addition, the Decree provides that the defendants shall reimburse the United States $200,000. The United States has spent approximately $750,000 to date at the site.

The Consent Decree provides for stipulated penalties against the defendants if a schedule attached to the Scope of Work for the cleanup is not met. The Consent Decree also includes covenant-not-to-sue provisions and reservations of rights.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Landfill, Inc.*, DOJ Ref. No. 90–11–2–195. The proposed Complaint and Consent Decree may be examined at the office of the United States Attorney, District of Colorado, Suite 1200, Federal Building, 1961 Stout Street, Denver, Colorado, 80294. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. Copying costs are $.10 per page, and the Consent Decree is 48 pages long, so a request for a copy of the Consent Decree must be accompanied with a check or money order made out to the Treasurer of the United States for $4.80.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–29099 Filed 12–16–88; 8:45 am]

BILLING CODE 4410–01–M

Virgin Islands Housing Authority; Lodging of Consent Decree

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Virgin Islands Housing Authority*, Civil Action No. 86–112, was lodged with the United States District Court for the District of the Virgin Islands on December 12, 1988. The proposed Consent Decree provides for the completion of cistern cleaning and repairs and other capital improvements to the Virgin Islands Housing Authority's public water systems, adherence to prescribed operation, maintenance, and water quality monitoring procedures, and the payment of a civil penalty for alleged past violations of the Safe Drinking Water Act, 42 U.S.C. 300f *et. seq.*, and the National Interim Primary Drinking Water regulations, 40 CFR Part 141.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Virgin Islands Housing Authority*, D.J. Ref. No. 90–5–1–1–2550.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of the Virgin Islands, St. Thomas, United States Virgin Islands 00801; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $3.00, payable to the Treasurer of the United States, to cover the costs of reproduction.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–29098 Filed 12–16–88; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ECONOMIC COMMISSION

Meeting

AGENCY: National Economic Commission.

ACTION: Notice of Commission meeting.

SUMMARY: The National Economic Commission ("the commission") will hold meetings on January 4, January 5, January 10 and January 11, 1989. The commission was established by Section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, enacted December 22, 1987.

Date, Time and Place: January 4, 1989, 11:00 a.m.–5:30 p.m., Room 562, Dirksen Senate Office Building, Washington, DC; January 5, 1989, 9:00 a.m.–5:30 p.m., Room 562, Dirksen Senate Office Building, Washington, D.C.; January 10, 1989, 10:00 a.m.–6:00 p.m., Room 562, Dirksen Senate Office Building, Washington, DC; January 11, 1989, 9:00 a.m.–4:30 p.m., Room 562, Dirksen Senate Office Building, Washington, D.C.

Agenda: January 4, 1989: Economic assumptions and review of budget options. January 5, 1989: Alternative baselines and treatment of social security. January 10, 1989: Fiscal policy and deficit targets. January 11, 1989: Components of deficit reduction package.

Closed Meeting: The January 4 meeting will be closed to the public. The January 5 meeting will be open to the public from 9:00 a.m. to 11:00 a.m., and closed to the public from 11:00 a.m.–5:30 p.m. The January 10 meeting will be open to the public from 10:00 a.m. to 12 noon, and closed from noon to 6:00 p.m. The January 11 meeting will be closed to the public. All closed meetings will be closed in order to avoid disclosure of information the premature disclosure of which would be likely to significantly frustrate the implementation of the Commission's mandate within section 552b(c)(9), United States Code.

FOR ADDITIONAL INFORMATION CONTACT: Jim Hildreth at 425–8986, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88–29117 Filed 12–16–88; 8:45 am]

BILLING CODE 6820–45–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* January 9, 1989.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Museums and Historical Organizations, submitted to the Office of General Programs, for projects beginning after July 1, 1989.

2. *Date:* January 12–13, 1989.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Museums and Historical organizations, submitted to the Office of General Programs, for projects beginning after July 1, 1989.

3. *Date:* January 24–25, 1989.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Museums and Historical organizations, submitted to the Office of General Programs, for projects beginning after July 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 88–29065 Filed 12–16–88; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Co.; H.B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23, issued to Carolina Power & Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to certain reactor parameters applicable to the reactor coolant loop resistance temperature detector (RTD) system and to support the elimination of the RTD bypass system.

The proposed action is in accordance with the licensee's application for amendment dated July 26, 1988, as supplemented by letters dated August 26 and November 1, 1988.

The Need for the Proposed Action

The proposed change to the TS is required to provide the licensee with the correct values of parameters applicable to the reactor coolant loop resistance temperature detector system. The proposed change would support the elimination of the RTD bypass system and reduce the occupational radiation exposure due to maintenance of the bypass system.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS with regard to environmental impacts. The proposed revision to the TS involves correcting certain parameters as applicable to the RTD system, and the application of these corrected values would have no radiological environment impacts. These corrected values would also support the elimination of the RTD bypass system. The elimination of the bypass system would not result in any environmental impacts which exceed those evaluated in the Final Environmental Statement related to the operation of the facility and would result in savings in occupational radiation exposure associated with the maintenance of the bypass system (approximately 0.1 person-rem/year). Accordingly, the Commission concludes that this proposed action would not result in significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves the use of systems located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in errors in instrument setpoints.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the H. B. Robinson Steam Electric Plant, Unit No. 2, dated April 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude

that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 26, 1988, as supplemented on August 26, and November 1, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 12th day of December 1988.

For the Nuclear Regulatory Commission.

Ronnie H. Lo,

Acting Project Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–29087 Filed 12–16–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on January 11, 1989, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Wednesday, January 11, 1989—8:30 a.m. until 12:45 p.m.

The Subcommittee will discuss the design of air systems, problems experienced by utilities with these systems, Industry activities to improve the performance of such systems, and the proposed resolution of Generic Issue 43, "Air Systems Reliability."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492–9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: December 12, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–29083 Filed 12–16–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on January 11, 1989, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, January 11, 1989–1:30 p.m. until the conclusion of business

The Subcommittee will discuss Air Operated Valve Testing and Operating Experience (including Solenoid Air Control Valves) and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpido Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: December 12, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–29084 Filed 12–16–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension

Rule 12g3–2, SEC File No. 270–104
Rule 13e–1, SEC File No. 270–55

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted Rule 12g3–2 and Rule 13e–1 for approval of an extension of clearance.

Rule 12g3–2 is an exemption for certain foreign securities affecting 1800 filers at an estimated one burden hour per response.

Rule 13e–1 addresses issuer repurchases in a third party tender offer situation. Currently, there are 20 responses annually at an estimated 13 burden hours per response. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the

estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235–119 and 3235–0305), Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

December 9, 1988.

[FR Doc. 88–29078 Filed 12–16–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 12, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Sterling Chemicals, Inc.
Common Stock, $.10 Par Value (File No. 7–4075)
Cypress Semiconductor Corporation
Common Stock, $.01 Par Value (File No. 7–4076)
Bank of New York Co., Inc.
Common Stock, $7.50 Par Value (File No. 7–4077)
Lands End, Inc.
Common Stock, $.01 Par Value (File No. 7–4078)
Midway Airlines, Inc.
Common Stock, $.01 Par Value (File No. 7–4079)
Hasbro, Inc.
8% Convertible Preferred Stock (File No. 7–4080)
ICH Corporation
$1.75 Convertible Exchange Preferred Stock (File No. 7–4081)
Arrow Electronics, Inc.
Depository Convertible Exchange Preference Shares (File No. 7–4082)
Lomas & Nettleton Mortgage Investors
Warrants expiring March 1, 1990 (File No. 7–4083)
Advanced Micro Devices, Inc.
Depository Convertible Exchange Preference Shares (File No. 7–4084)
Arkla, Inc.
$3.00 Convertible Exchange Preferred Stock, Series A (File No. 7–4085)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 3, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29076 Filed 12–16–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 12, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

British Steel Plc
1st Interim American Depositary Receipts (File No. 7–4086)
Magma Copper Co.
Class B Common Stock (File No. 7–4087)
Universal Foods Corporation
Common Stock, $0.10 Par Value (File No. 7–4088)
Viacom Inc.
$3.875 Exchangeable Preferred Stock (File No. 7–4089)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 3, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29077 Filed 12–16–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16972]

Application and Opportunity for Hearing; Northwest Airlines, Inc.

December 12, 1988.

Notice is hereby given that Northwest Airlines, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under two indentures between the Company and the Bank, one of which is to be dated as of January 1, 1989 (the "January Indenture") and one of which is dated as of December 1, 1988 (the "December Indenture"), both of which have been submitted for qualification under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of such Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest, or resign. Subsection (1) of such section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the December Indenture, the Company will issue up to $100,000,000 aggregate principal amount of its Equipment Trust Certificates, (the "December Certificates"), Series A (the "December Series"). Pursuant to the January Indenture, the Company will

issue up to $100,000,000 aggregate principal amount of its Equipment Trust Certificates, (the "January Certificates"), Series B (the "January Series"). The December Series will be issued under the December Indenture between the Bank, The First National Bank of Boston, as owner trustee related to such Series and the Company, in the principal amount of up to $100,000,000. The January Series will be issued under the January Indenture between the Bank, The First National Bank of Boston, as owner trustee related to such Series and the Company, in the principal amount of up to $100,000,000. The December and January Certificates will be registered under the Securities Act of 1933 (the "1933 Act") and the Indentures will be qualified under the Act.

(2) There is no default under any of the Indentures.

(3) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property and neither Indenture will provide for cross-collateralization or cross-defaults.

(4) Such differences as exist among the Indentures referred to herein and the respective obligations or the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The Company waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-18972, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than January 6, 1988, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29075 Filed 12-16-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-48]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 13, 1988.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25036
Petitioner: Florida Express
Regulations Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought: To extend Exemption No. 4750 that allows petitioner to use certain original equipment manufacturers to perform maintenance, preventive maintenance, and alteration outside the United States on its BAC 1-11 aircraft or on the engines and components for such aircraft. Exemption No. 4750 expired on October 31, 1988.

Docket No.: 25585
Petitioner: Gerald A. McGinnis
Regulations Affected: 14 CFR 91.42(a)(1)
Description of Relief Sought/ Disposition: To allow flight instruction for hire to take place using designated home-built amphibious seaplanes. Denial, December 6, 1988, Exemption No. 5000

Docket No.: 054CE
Petitioner: Air Tractor Incorporated
Regulations Affected: 14 CFR 23.49(b)(1)
Description of Relief Sought/ Disposition: To allow certification of the Air Tractor Model AT-503 and AT-802 airplane with stall speeds (V_{so}) greater than the 61 knots requirement. Grant, November 28, 1988, Exemption No. 4980.

[FR Doc. 88-29073 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of

Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes January 4, 1989.

Address Comments To: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
4242-X	U.S. Department of Defense, Falls Church, VA.	4242
5206-X	Amos L. Dolby Company, Corsica, PA.	5206
5206-X	Austin Powder Company, Cleveland, OH.	5206
5206-X	El Dorado Chemical Company, St. Louis, MO.	5206
5600-X	Ozark-Mahoning Company, Tulsa, OK.	5600
5600-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	5600
6443-X	Montana Sulphur & Chemical Company, Billings, MT.	6443
6752-X	Pennwalt Corporation, King of Prussia, PA.	6752
6773-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	6773
7052-X	Ocean Technology, Inc., Burbank, CA.	7052
7060-X	Federal Express Corporation, Memphis, TN.	7060
7076-X	LaMotte Chemical Products Company, Chestertown, MD (See Footnote 1).	7076
7495-X	Ethyl Corporation, Baton Rouge, LA.	7495
7834-X	U.S. Department of Defense, Falls Church, VA.	7834
7835-X	Big Three Industries, Inc., Houston, TX.	7835
8086-X	U.S. Department of Defense, Falls Church, VA.	8086
8086-X	Boeing Aerospace Company, Seattle, WA.	8086
8178-X	National Aeronautics and Space Administration, Washington, DC.	8178
8450-X	LTV Missiles and Electronics Group, Dallas, TX (See Footnote 2).	8450
8451-X	Martin Electronics, Inc., Perry, FL.	8451
8451-X	Battelle Columbus Division, Columbus, OH.	8451
8536-X	Pennwalt Corporation, Lucidol Division, Buffalo, NY.	8536
8554-X	ECONEX Incorporated, Wheaton, IL.	8554
8554-X	ECONEXPRESS Incorporated, Wheaton, IL.	8554
8554-X	Amos L. Dolby Co., Corsica, PA.	8554
8555-X	Morton Thiokol, Inc., Brigham City, UT.	8555
8865-X	Carleton Technologies, Inc., East Aurora, NY (See Footnote 3).	8865
8904-X	Keith Huber, Inc., Gulfport, MS.	8904
8910-X	Canbar Inc., Waterloo, Ont., Canada.	8910
8930-X	General Aviation, Inc., Greeneville, TN.	8930
8938-X	Cryogenic Services, Inc., Canton, GA.	8938
8955-X	Western Atlas International, Inc., Houston, TX.	8955
8968-X	Degussa Corporation, Ridgefield Park, NJ.	8968
9024-X	SLEMI, Paris, France	9024
9024-X	Arbel-Fauvet-Rail, St Laurent Blangy, France.	9024
9138-X	National Aeronautics and Space Administration, Washington, DC.	9138
9265-X	Guinn Flying Service, Houston, TX.	9265
9308-X	Pennwalt Corporation, Buffalo, NY.	9308
9319-X	W. R. Grace & Company, Dearborn Division, Lake Zurich, IL.	9319
9377-X	Atlas Power Company, Dallas, TX.	9377
9381-X	Pasco Zinc Corporation, Torrance, CA.	9381
9430-X	ENPAC Corporation, Jacksonville, FL.	9340
9433-X	Aldrich Chemical Company, Inc., Milwaukee, WI.	9433
9507-X	Air Products and Chemicals, Inc., Allentown, PA.	9507
9577-X	Altus Corporation, San Jose, CA (See Footnote 4).	9577
9580-X	McDonnell Douglas Corporation, St. Louis, MO.	9580
9658-X	Fluoroware, Inc., Chaska, MN.	9658
9685-X	Certified Tank Manufacturing, Inc., Compton, CA.	9685
9686-X	Fluoroware, Inc., Chaska, MN.	9686
9705-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9705
9744-X	Akzo Chemicals, Inc., Chicago, IL (See Footnote 5).	9744
9785-X	Polish Ocean Lines, 81-310 Gdynia, Poland.	9785
9804-X	Rotational Molding Inc., Gardena, CA (See Footnote 6).	9804
9828-X	Mobay Corporation, Kansas City, MO (See Footnote 7).	9828

(1) Amend to allow shipment of oxidizers and the quantity per each vial or bottle to 250 ml or 250 grams.

(2) To authorize 2 inch diameter sight hold in side boards of container and use of steel strapping to hold lids in place.

(3) To authorize gas reservoirs to be refilled a maximum of 5 times and to authorize refilling of the packaging.

(4) To authorize shipment of a new battery set in a 30-gallon non-DOT spec. steel drum.

(5) To increase the net weight authorized per package from 31.5 pounds to 32 pounds.

(6) To allow use of average wall thickness and retesting at a maximum 5 psig.

(7) To authorize shipment of azinphos methyl mixtures, solid, classed as Poison B contained in DOT specification 12B fiberboard boxes without being contained in PVA packets

Application No.	Applicant	Parties to exemption
6250-P	McDonnell Douglas Corporation, St. Louis, MO.	6250
6418-P	Trical, Inc., Hollister, CA	6418
7052-P	TDW Pipeline Surveys, Tulsa, OK.	7052
7052-P	R-Con International, Salt Lake City, UT (See Footnote 1).	7052
7607-P	Department of Health Services, Sacramento, CA.	7607
8009-P	Horizon Energy Resources, Inc., Orlando, FL.	8009
8214-P	Toyota Motor Corporation, Torrance, CA.	8214
8451-P	Olin Corporation, Winchester Division, East Alton, IL.	8451

BEST COPY AVAILABLE

Application No.	Applicant	Parties to exemption
8526-P	Monkem Co., Inc., Joplin, MO.	8526
8526-P	Fore Way Express, Inc., Wausau, WI.	8526
8627-P	Champion Chemicals, Inc., Houston, TX.	8627
8723-P	Explosives Experts, Inc., Sparks, MD.	8723
9549-P	Shaped Charge Specialist, Inc., Mansfield, TX.	9549
9617-P	Alamo Explosives Company, Inc., Houston, TX.	9617
9694-P	C-I-L Inc., Forest Products Division, Montreal, Quebec, Canada.	9694
9785-P	Lykes Bros. Steamship Co., Inc., New Orleans, LA.	9785
9902-P	Purusar Corp., Sunnyvale, CA.	9902
9916-P	Petrolite Corporation, St. Louis, MO.	9916
9934-P	Advance Research Chemicals, Inc., Catoosa, OK.	9934
9953-P	Monroe Trucking, Inc., West Monroe, LA.	9953
9953-P	Fore Way Express, Inc., Wausau, WI.	9953
9953-P	Monkem Company, Inc., Joplin, MO.	9953

(f) Authorizes shipment of reserve-activated lithium/thionyl chloride IRSS battery modules packaged in DOT Specification 19A wooden boxes.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 12, 1988.

J. Suxanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-29080 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-10-M

Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes January 19, 1989.

Address Comments To: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10082-N	SternAir, Inc., Dallas, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b) Part 107 Appendix B, Subpart B.	To authorize transport of certain class A, B and C explosives that are forbidden for carriage by air or are in quantities greater than authorized for transport by air. (Mode 4).
10084-N	Composite Engineering Co., Corona, CA.	49 CFR Part 173 Subparts D, F and H as applicable.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks manufactured from fiberglass reinforced plastic similar to the DOT Specifications MC312 and 307 cargo tanks for transportation of those materials authorized for transport in DOT Spec MC312 and 307 cargo tanks. (Mode 1).
10086-N	Breed Automotive Corp., Boonton Township, NJ.	49 CFR 172.101, 173.88(g), 173.94(a)	To authorize shipment of an Airbag Module, Explosive Power Device, classed as a class B explosive as a flammable solid packaged in a DOT spec. 12B carton with styrofoam modules inserted to restrict movement with a gross weight not to exceed 35 pounds. (Modes 1, 2, 3, 4).
10087-N	HLA Engineers, Inc., Dallas, TX	49 CFR 173.124(a)(6)	To authorize shipment of Ethylene oxide classed as a flammable liquid in a 6076 gallon stainless steel DOT Spec 51 portable tank insulated by a 4" polyurethane foam and a 20 gauge stainless steel jacket. (Modes 1, 2, 3).
10088-N	Hedwin Corp., Baltimore, MD	49 CFR 178.211-2(b), Part 173 Subparts D and F.	To authorize manufacture, marking and sale of non-DOT fiberboard containers similar to DOT Spec 12P containers for packaging those corrosive liquids for which a DOT 12P/2U container is authorized and flammable liquids with a flash point above 20 degrees F. (Mode 1).
10090-N	Clawson Tank Co., Clarkson, MI	49 CFR Part 173 Subparts D and F	To authorize manufacturing marking, and sale of a rotationally molded, reusable polyethylene tank within a wire frame enclosure for transport of certain Flammable liquids, Corrosive materials and Oxidizers. (Modes 1, 2).
10091-N	Allergan Optical, Irvine, CA	49 CFR 173.1200(a)(8)(ii)(e)	To authorize shipment of a buffered, normal saline pressurized with nitrogen gas which is nontoxic, nonflammable and nonhydrocarbon as an aerosol Consummer Commodity, ORM-D, in plastic containers which have been waterbath tested at 100 degree F. (Modes 1, 2, 3, 4, 5).
10092-N	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.91(a)(2)	To authorize shipment of an Illuminating projectile, Class B explosive with projectiles set in a pallet base with a support cover held in place by strapping. (Modes 1, 3).
10093-N	Olin Chemicals, Stamford, CT	49 CFR 173.182(b)(6)(ii)	To authorize shipment of Sodium nitrate in a polypropylene bag made of 9 denier polypropylene fibers spun continuously to form a sheet weighing at least 3.5 ounces per sq. yd with an inner liner of 4 mil thick polyethylene. (Modes 1, 2, 3).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10094–N	Columbia Nitrogen Corp., Augusta, GA.	49 CFR 173.154(a)(17)	To authorize shipment of Ammonium Nitrate Solution (containing not less than 15% water) classed as an oxidizer in DOT Specification 111A100W1 tank cars equipped with insulation and interior tank lined with plasite 9570. (Mode 2).
10095–N	Moli Energy Limited, Burnaby, B.C., Canada.	49 CFR 173.206, 175.3, 175.85, Part 107 Appendix B.	To authorize shipment of certain Lithium batteries and cells packed in strong inner fiberboard containers containing a maximum of 125 grams of lithium in one inner container with no cell containing more than 0.85 grams of lithium. (Mode 5).
10096–N	Alby Klorat AB, S–774 00 Avesta, Sweden.	49 CFR 173.163	To authorize shipment of Potassium chlorate classed as an oxidizer packed in 4-ply paper bags with a plastic lining, 50 bags of 25 kg each, on a wooden pallet, shrink wrapped in plastic. (Modes 1, 2, 3).
10097–N	Hercules Inc., Magna, UT	49 CFR 173.88(e)(2)(ii), 173.92(a)(1), 173.92(b).	To authorize shipment of Rocket motors, Class B explosive in a propulsive state. (Mode 1).

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 13, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88–29081 Filed 12–16–88; 8:45 am]

BILLING CODE 4910–10–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Masterworks of Ming and Qing Painting from the Forbidden City" (see list [1]), imported from abroad for the temporary exhibition without profit withing the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii, beginning on or about January 7, 1989 to on or about February 12, 1989, the High Museum of Art, Atlanta, Georgia, beginning on or about February 28, 1989 to on or about April 2, 1989, the Cleveland Museum of Art, Cleveland, Ohio, beginning on or about April 15, 1989 to or on or about May 21, 1989, the Minneapolis Institute of Arts, Minneapolis, Minnesota, beginning on or about June 3, 1989 to on or about July 9, 1989, and the Metropolitan Museum of Art, New York, New York, beginning on or about September 16, 1989 to or about October 29, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: December 14, 1988.

R. Wallace Stuart,

Acting General Counsel

[FR Doc. 88–29122 Filed 12–16–88; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485–8827, and the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 243
Monday, December 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, December 13, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), the Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the application of Pioneer Financial, A Cooperative Bank, an operating non-FDIC-insured cooperative bank located at 46 Pleasant Street, Malden, Massachusetts, for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), and (c)(9)(B)).

Dated: December 14, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-29199 Filed 12-15-88; 4:47 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 53, No. 243
Monday, December 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1785

Cushion of Credit Account Computations and Procedures

Correction

In proposed rule document 88-27384 beginning on page 48651 in the issue of Friday, December 2, 1988, make the following correction:

§ 1785.66 [Corrected]

On page 48651, in the third column, in § 1785.66, remove the asterisks after the last line of text.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88G-0318]

Gattefosse, S.A.; Filing of Petition for Affirmation of Gras Status

Correction

In notice document 88-24289 appearing on page 41241 in the issue of Thursday, October 20, 1988, make the following corrections:

On page 41241, in the third column, under **SUPPLEMENTARY INFORMATION**, in the third and fourth lines, "21 ULS.C. 348(b)(5)" should read "21 U.S.C. 348(b)(5)", and in the sixth line "231 CFR 170.35" should read "21 CFR 170.35".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-39 (Sub-No. 12)]

St. Louis Southwestern Railway Co.; Abandonment In Smith and Cherokee Counties, TX; Findings

Correction

In notice document 88-28468 appearing on page 49937 in the issue of Monday, December 12, 1988, make the following correction:

In the first column, in the document headings, the docket number should read as it appears above.

BILLING CODE 1505-01-D

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Monday
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Part II

International Development Cooperation Agency

Agency for International Development

22 CFR Part 210

Foreign Donations of Agricultural Commodities (416b Program); Proposed Rule

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

22 CFR Part 210

[AID Regulation 10]

Foreign Donations of Agricultural Commodities [416(b) Program]

AGENCY: Agency for International Development (A.I.D.).

ACTION: Proposed rule.

SUMMARY: This proposed rule indicates how the regulations at 22 CFR Part 210 would be revised to implement the amendments to section 416(b) of the Agricultural Act of 1949 contained in the Food Security Act of 1985, Pub. L. 99–198, in the Agricultural Aid and Trade Missions Act, Pub. L. 100–202, Dec. 22, 1987, and in other legislation, and to make other necessary changes.

DATE: Comments on these proposed rules must be received on or before February 17, 1989.

ADDRESS: Comments should be submitted to: Ms. Jessie C. Vogler, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (703) 875–4438.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Rosa, Actg. Chief, Project Coordination Division, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (703) 875–4706.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under A.I.D.'s required procedures. It has been determined that these program provisions will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since A.I.D. is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. It has been determined that the provisions of 5 U.S.C. 553 do not apply to this rule since the subject matter of the rule involves foreign affairs functions of the United States and a matter relating to grants.

Comments are requested within 60 days after publication and the proposed rule will be reviewed in order that a final document discussing comments received and any desirable amendments may be published in the Federal Register. The final document will be made effective upon publication in the Federal Register.

Background

Section 416 of the Agricultural Act of 1959 (the "Act") was amended by the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253) to authorize the foreign donation of dairy products acquired by the Commodity Credit Corporation (hereinafter "CCC") through its price support program. In order to coordinate resources efficiently in carrying out the section 416 Foreign Donation Program, CCC and the Agency for International Development (hereinafter "A.I.D.") entered into a Memorandum of Understanding on August 9, 1983, which established A.I.D. as the agent for CCC in the operation of certain aspects of the section 416 program. Pursuant to this Memorandum of Understanding, A.I.D. promulgated the regulation set out at 22 CFR Part 210 governing the program. (49 FR 22024, May 24, 1984). The regulation provides that CCC and A.I.D. shall enter into agreements with Cooperating Sponsors (as defined in the regulation) for the donation of agricultural commodities. Such agreements shall include a description of the programs that the Cooperating Sponsor shall undertake with respect to the donated commodities (hereinafter "Plan of Operations").

The Agricultural Programs Adjustment Act of 1984 (Pub. L. 98–258) amended section 416 of the Act to expand the authority of CCC to donate agricultural commodities for assistance abroad. The amendments placed the authority for the foreign donation program in new subsection (b) of section 416, authorized the foreign donation of wheat acquired by CCC under its price support operations in addition to dairy products, authorized the donations for carrying out assistance under Title II of the Agricultural Trade Development and Assistance Act of 1954 ("Pub. L. 480"), and authorized sale or barter of donated commodities as approved by the Secretary of Agriculture.

Public Law 99–83 further added rice as an eligible commodity for foreign donation.

The Food Security Act of 1985 (Pub. L. 99–198) extensively revised section 416(b) of the Act by, among other things, expanding the categories of agricultural commodities which are eligible for donation and expanding the provisions regarding the sale or barter of commodities donated to cooperating sponsors.

In view of these amendments CCC and A.I.D. executed a revised Memorandum of Understanding on August 13, 1987 to reflect the new provisions of section 416(b) of the Act.

Further changes to section 416(b) were made pursuant to amendments to the Agricultural Aid and Trade Mission Act in 1988.

Summary of New Provisions

This proposed rule incorporates the following major changes:

(1) Eligible Commodities

Section 416(b)(2) of the Act now states that the Secretary of Agriculture (hereinafter "Secretary") may provide dairy products, wheat, rice, feed grains and oilseeds acquired by CCC through its price support operations and such other edible agricultural commodities as are acquired by the Secretary or CCC in the normal course of operations.

This proposed rule amends the regulations to authorize the donation of the expanded categories of eligible commodities.

(2) Bellmon Determination

Section 416(b)(3)(B) of the Act provides that the requirements of section 401(b) of Pub. L. 480 shall apply with respect to commodities furnished under section 416(b). Section 401(b) of Pub. L. 480 (popularly known as "the Bellmon Determination"), provides that no agricultural commodity may be made available except upon a determination by the Secretary that (1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent spoilage or waste and (2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country.

A Bellmon Determination will be made prior to the signing of any section 416(b) Foreign Donation Program Agreement. This proposed rule provides that section 416(b) Foreign Donation Program Agreements are subject to suspension or termination where changed circumstances indicate that the original Bellmon Determination is no longer valid.

(3) Usual Marketing Requirements

Section 416(b)(3)(C) of the Act states that the Secretary shall take reasonable precautions to ensure (1) that commodities furnished will not displace

or interfere with sales that might otherwise be made, and (2) that sales or barter of the donated commodities will not unduly disrupt world prices of agricultural commodities nor normal patterns of commercial trade with friendly countries.

This proposed rule amends the regulation to implement the section 416(b)(3)(C) requirements. Where the Cooperating Sponsor is a foreign government, the regulation continues the present provision that the U.S. Government may require the foreign government to assure the commercial purchases of a stated usual marketing requirement for the donated commodity. The amended regulation adds a prohibition against re-exporting the donated commodity, as well as other related commodities, as defined in the section 416(b) Foreign Donation Program Agreement. This export prohibition applies both to direct donation programs and to sales or barter of the donated commodities. Therefore, when a foreign government's Plan of Operation includes a program of monetization, that government will be required to take reasonable precautions to prevent the re-export of the donated commodities after sale.

It is not feasible to impose any export limitation provision in an agreement with a Cooperating Sponsor other than a foreign government. These trade considerations will be reviewed prior to signing an agreement with a foreign government, and an agreement will only be signed if it is determined that the furnishing of commodities will not be likely to have the adverse effects on world trade.

(4) Sales and Barter

Section 416(b)(7) authorizes the Secretary to approve the sale and barter of the donated commodities and products thereof in the following situations: (1) Sales or barter that are incidental to the donation of the commodities or products; (2) sales or barter to finance the distribution, handling and processing costs of the donated commodities or products in the importing country or in a country through which such commodities or products must be transshipped, or other activities in the importing country that are consistent with providing food assistance to needy people; (3) sales or barter to cover certain costs borne by CCC including, among others, packaging, enrichment, presevation and fortification in the United States; (4) when the Cooperating Sponsor is an intergovernmental organization, sales or barter of donated commodities consistent with the Cooperating Sponsor's normal programming procedures in the distribution of commodities; and (5) sales of commodities and products furnished to nonprofit and voluntary agencies, or cooperatives, as Cooperating Sponsor, to transport, store, distribute or otherwise enhance the effectiveness of the use of commodities and products donated, and to implement income generations for community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities.

Section 416(b)(7) further provides that no portion of the proceeds or services realized from sales or barter may be used to meet operating or overhead expenses, except as provided above in relation to intergovernmental organizations, and except for personnel and administrative costs incurred by local cooperatives.

This proposed rule modifies the regulation to explicitly authorize sales and barter under the above described circumstances.

The rule further provides that approval of sale or barter proposals will be made on a case-by-case basis. In reviewing the Cooperating Sponsor's Plan of Operations, special emphasis will be placed upon (i) the intended uses of local currency proceeds generated from the sale (or the goods and services received from barter), (ii) the ability of the Cooperating Sponsor to use effectively and to account for such proceeds, goods or services, and (iii) the risk of displacing commercial sales and imports, among other things.

The provisions of this proposed rule which relate to sales and barter are intended to balance the need to control against abuses, with the need to protect the Cooperating Sponsor from overly intensive procedural, reporting or recordkeeping requirements. Accordingly, this proposed rule provides certain minimal safeguards which apply to all section 416(b) Foreign Donation Program Agreements, but also provides sufficient discretion to require greater safeguards where past experience with the recipient country or the current conditions in the recipient country indicate the need.

(5) Use of Foreign Currency Proceeds or Services

Section 416(b)(8)(B) provides that the Secretary shall be responsible for regulations governing the use of foreign currency proceeds which will provide reasonable safeguards to prevent abuses in the conduct of sales and barter activities.

This proposed rule therefore amends the regulation to require that a Cooperating Sponsor must state in its Plan of Operations the anticipated sales price or value to be received in any sale or barter of the donated commodities, or, if the price or value of services cannot be estimated the rule requires the Cooperating Sponsor to provide sufficient procedural protections to assure that a fair price is obtained. The rule also requires the Cooperating Sponsor to create a special account for maintenance of the proceeds and that the Plan of Operations identify the uses of the proceeds.

If, pursuant to an approved Plan of Operations, the Cooperating Sponsor intends to sell or barter the donated commodities to any other public or private entity, the Cooperating Sponsor must enter into a written agreement governing the sale or barter of the donated commodities. Copies of the executed agreements shall be provided to the USAID or Diplomatic Post.

In light of the authority to allow sales and barters of commodities, the proposed rule amends the regulation governing voluntary contributions from recipients in order to clarify what would be permissible as a voluntary contribution as opposed to a sale, and what the obligations will be of Cooperating Sponsors who accept voluntary contributions in exchange for commodities.

(6) Reporting and Record Keeping Requirements

Section 416(b)(9)(A) of the Act requires Cooperating Sponsors which receive commodities and products approved for sale or barter to report to the Secretary with respect to several items. Items reported must include (1) the quantity of commodities furnished for sale or barter, (2) the amount of funds or the value of services generated in foreign currency and U.S. dollars, and (3) the uses of the proceeds or services; and (4) the amount of foreign currency proceeds used and the percentage of the quantity of all commodities and products donated and such use represented.

This proposed rule amends the regulation to incorporate these reporting requirements. The rule also amends the recordkeeping requirements in the regulation to expand their coverage to include all documents relating to the sale or barter of donated commodities, and to the programs financed with the foreign currency proceeds. These changes allow for monitoring the recipients' compliance with the section 416(b) Foreign Donation Program Agreement.

(7) Preference For U.S. Flag Vessels

Section 1142 of the Food Security Act of 1985 amended the cargo preference provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1101 *et seq.*), requiring an increase in the minimum percentage of section 416(b) cargo that must be shipped aboard U.S. flag vessels. This percentage is now 75%.

(8) Appendix

Appendix I provides a sample section 416(b) Foreign Donation Program Agreement.

(9) Time of Payment of Ocean Transportation

Problems have arisen over the deadline set out in the regulation for the reimbursement of ocean transportation costs. The regulation is amended to clarify that the date shall be 30 days from the date that the Director of Pub. L. 480 Operations Division, FAS/USDA, Washington, DC 20250, receives the proper documentation. Cooperating Sponsors, as defined in the regulation, are encouraged to contact the Chief, Project Coordination Division, Office of Food For Peace (FFP/PCD), Agency for International Development for information and assistance in preparing proposals and thereby expedite consideration of the proposals. Telephone: [703] 875–4706.

List of Subjects in 22 CFR Part 210

Agricultural commodities, Exports, Foreign aid, Foreign relations.

Accordingly, Part 210 of Title 22 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 210—FOREIGN DONATION OF AGRICULTURAL COMMODITIES (SECTION 416(b) FOREIGN DONATION PROGRAM)

Sec.

210.1 General purpose and scope.
210.2 Definitions.
210.3 Eligibility requirements for organizations to participate.
210.4 Section 416(b) Foreign Donation Program Agreement.
210.5 Availability of commodities.
210.6 Obligations of the Cooperating Sponsor.
210.7 Processing, repackaging and labeling of commodities in a foreign country.
210.8 Arrangements for entry and handling in foreign country.
210.9 Disposition of commodities unfit for authorized use.
210.10 Liability for loss, damage or improper distribution of commodities—claims and procedures.
210.11 Records and reporting requirements of cooperating sponsor.
210.12 Additional responsibilities of cooperating sponsor.
210.13 Termination of program.
210.14 Waiver and amendment authority.
210.15 OMB control number assigned pursuant to the Paperwork Reduction Act.
Appendix I—Section 416(b) Foreign Donation Program Agreement.

Authority: Section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)).

§ 210.1 General purpose and scope.

(a) *Terms and conditions.* Pursuant to section 416(b) of the Agricultural Act of 1949, as amended [section 416(b)], this Part 210 contains the terms and conditions governing the donation of eligible agricultural commodities for carrying out programs of assistance in developing countries and friendly countries, under Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended [Pub. L. 480], through friendly foreign governments and private or public agencies, including cooperatives and intergovernmental organizations. However, these regulations do not apply to the World Food Program or the United Nations Relief and Work Agency except as may be specifically provided.

(b) *Legislation.* Section 416(b) generally provides that the Secretary of Agriculture may furnish, for carrying out certain programs of assistance in developing countries and friendly countries, eligible agricultural commodities acquired by the Secretary or the Commodity Credit Corporation [CCC]. CCC may pay the processing, packaging, transporting, handling and other charges, including certain costs of overseas delivery in connection with furnishing such commodities; and may pay processing and domestic handling costs in the form of eligible commodities.

(c) These regulations are promulgated by the Agency for International Development [A.I.D.] pursuant to a Memorandum of Understanding between A.I.D. and CCC establishing A.I.D. as agent for CCC in the operation of certain aspects of the section 416(b) Foreign Donation Program allocating responsibilities for administering the section 416(b) Foreign Donation Program.

§ 210.2 Definitions.

(a) "A.I.D." means the Agency for International Development including, when applicable, each USAID Mission overseas. "AID/W" means the office of A.I.D. located in Washington, DC.

(b) "Agricultural Commodities" or "Commodities" means agricultural commodities or products acquired by the Secretary of Agriculture or by the CCC and designated by the Secretary of Agriculture as available for disposition under the section 416(b) Foreign Donation Program.

(c) "Barter" means to exchange agricultural commodities for services or goods.

(d) "CCC" means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

(e) "Cooperating Sponsor" means a foreign government, a public or non-profit private humanitarian organization, an intergovernmental organization, a cooperative, the American Red Cross, or other agency which has been approved by A.I.D. for participation in a section 416(b) Foreign Donation Program.

(f) "Cooperative" means a non-profit organization, engaged in the production or marketing of agricultural commodities.

(g) "Diplomatic Post" means an office of the Department of State located in a foreign country, and may include an Embassy, Legation, or Consular office.

(h) "Duty Free" means exempt from all customs duties, tolls, taxes or governmental impositions levied on the act of importation.

(i) "Local Currency Proceeds" or "Proceeds" means the net local currency generated from the sale of donated agricultural commodities, after deducting appropriate costs the cooperating sponsor pays in getting the food ready for sale and getting it to where it can be sold, or, where appropriate, generated from the voluntary contribution of nominal monetary amount for donated agricultural commodities.

(j) "Humanitarian organization' means an organization that has the purpose of carrying out activities designed to provide assistance benefiting needy people.

(k) "Non-profit" means that the residue of income over operating expenses accruing in any activity, project, or program is used solely for the operation of such activity, project or program.

(l) "Ocean transportation" or "ocean freight" includes the transportation of commodities, and freight payments thereon, under an intermodal through bill of lading.

(m) "Private organization" means a non-governmental organization that receives private funding.

(n) "Recipients" means persons who are in need of food assistance because

of their economic or nutritional condition or who are otherwise eligible to receive commodities for their own use in accordance with the terms and conditions of the Foreign Donation Program Agreement.

(o) "Sale" means the exchange of donated agricultural commodities for local currency.

(p) "USAID Mission" means an office of A.I.D. located in a foreign country, and includes a USAID Representative, USAID Affairs Officer or a Section of the Embassy handling A.I.D. matters in a foreign country.

(q) "USDA" means the U.S. Department of Agriculture.

§ 210.3 Eligibility requirements for organizations to participate.

(a) To be eligible to participate as a Cooperating Sponsor in the section 416(b) Foreign Donation Program, an entity must be within the definition of "Cooperating Sponsor" in § 210.2(e).

(b) All non-profit private humanitarian organizations that have received dairy products for foreign distribution from CCC under the authority of section 416 prior to the issuance of this regulation are eligible to continue to participate in the section 416(b) Foreign Donation Program.

(c) All organizations registered with A.I.D. under A.I.D. Regulation 3, 22 CFR Part 203 ("Registration of Agencies for Voluntary Foreign Aid") are eligible to participate in the section 416(b) Foreign Donation Program.

(d)(1) Organizations eligible to be registered under paragraph (c) of this section which are not so registered, and which are not eligible under paragraph (b) of this section, may apply for registration by contacting the Registration Officer, Office of Private and Voluntary Cooperation (FVA/PVC), Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523.

(2) In exceptional circumstances, one or more of the provisions in the Conditions of Registration contained in A.I.D. Regulation 3, 22 CFR Part 203 may be waived by the Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance [FVA], of A.I.D., on the recommendation of the Office of Food for Peace following the registration review by the Office of Private and Voluntary Cooperation (FVA/PVC).

(e)(1) Certain categories of organizations engaged exclusively in religious activities, and private foundations, which do not meet Condition No. 1 of A.I.D. Regulation 3, 22 CFR Part 203, will not be registered but may, in exceptional circumstances, apply to become Cooperating Sponsors in the section 416(b) Foreign Donation Program, following the review described in paragraph (e)(2) of this section.

(2) The Office of Food for Peace will conduct a review of applications described in paragraph (e)(1) of this section, and of applications put forward outside the context of registration, and forward recommendations to the Assistant Administrator, FVA Bureau, A.I.D., for a decision regarding participation.

(f) Cooperating Sponsors must submit to A.I.D. a program plan of operations for approval. For details see § 210.6(a) herein.

§ 210.4 Section 416(b) Foreign Donation Program Agreement.

(a) The Cooperating Sponsor will enter into a written agreement with A.I.D. and CCC by signing a section 416(b) Foreign Donation Program Agreement which will incorporate by reference the terms and conditions set forth in this part (A.I.D. Regulation 10) and the approved Program Plan of Operation.

(b) Appendix I of this Regulation is a Sample Format of the section 416(b) Foreign Donation Program Agreement. This format will be modified when deemed appropriate by the U.S. Government, as in the case of monetization or emergency programs.

§ 210.5 Availability of commodities.

(a) Commodities will be available for distribution and use in accordance with the provisions of the section 416(b) Foreign Donation Program Agreement. Unless provided otherwise in the section 416(b) Foreign Donation Program Agreement, the quality of agricultural commodities donated by CCC and the packaging of the agricultural commodities will be in accordance with agricultural commodity and packaging specifications determined by CCC and set forth in the section 416(b) Foreign Donation Program Agreement.

(b) Unless the section 416(b) Foreign Donation Program Agreement provides otherwise, title to all bulk commodities shall pass at the time and place of delivery free on board (FOB) vessel at U.S. port, and title to all other commodities shall pass at the time and place of delivery free along side (FAS) vessel at U.S. port, or in the case of intermodal shipments, at the intermodal delivery point.

(c)(1) The CCC will pay processing, packaging, transporting, handling, and other charges incurred in making commodities available to Cooperating Sponsors as agreed upon in the section 416(b) Foreign Donation Program Agreement.

(c)(2) All costs and expenses incurred subsequent to the transfer of title to Cooperating Sponsors shall be borne by them except that, when specifically provided in the section 416(b) Foreign Donation Program Agreement, or upon the determination by CCC that it is in the best interest of the program to do so, CCC may pay or make reimbursement for transportation from U.S. ports to designated ports or points of entry abroad, and in the case of urgent and extraordinary relief requirements, transportation costs from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs.

(d) Shipment of commodities and the payment of ocean freight shall be made in accordance with the following procedures:

(1) When the Cooperating Sponsor agrees to pay ocean transportation costs and to perform freight forwarding and booking functions:

(i) The Kansas City Commodity Office (KCCO) ASCS/USDA will furnish the Cooperating Sponsor with a Notice of Commodity Availability (form CCC–512) which will name the receiving country, commodity quantity, and date available at U.S. port. The Cooperating Sponsor will arrange ocean transportation and freight forwarding in accordance with the instructions of CCC regarding the quantity of commodities to be shipped on U.S. flag vessels. Non-Vessel Operating Common Carriers (NVOCC) may not be employed to carry U.S.-flag shipments. Approval of ocean transportation arrangements shall be obtained from KCCO/ASCS/USDA, P.O. Box 419205, Kansas City, MO 64141–0205. Telephone: (816) 926–6658.

(ii) The Cooperating Sponsor will complete form CCC–512 indicating the name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port, and will sign and return the completed form to KCCO/ASCS/USDA, P.O. Box 419205, Kansas City, MO 64141–0205, with a copy of Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, DC 20250. KCC/ASCS/USDA will then issue instructions to have the commodity shipped f.a.s. vessel, or f.o.b. vessel, U.S. port or intermodal delivery point for consignment to the Cooperating Sponsor as specified in the form CCC–512.

Unless provided otherwise in the section 416(b) Foreign Donation Program Agreement, U.S. ports will be selected

on the basis of the lowest landed cost to CCC, except where mutually agreeable to both the Cooperating Sponsor and KCCO/ASCS/USDA.

(2) When CCC agrees to pay ocean transportation costs and the Cooperating Sponsor agrees to perform freight forwarding and booking functions:

(i) KCCO/ASCS/USDA will furnish the Cooperating Sponsor with a form CCC–512 which will name the receiving country, commodity, quantity and date available at U.S. port. The Cooperating Sponsor will then arrange ocean transportation and freight forwarding in accordance with the instructions of CCC regarding the quantity of commodities to be shipped on U.S.-flag vessels. Non-Vessel Operating Common Carriers (NVOCC) may not be employed to carry U.S.-flag shipments. Approval of ocean transportation arrangements shall be obtained from KCCO/ASCS/USDA, P.O. Box 419205, Kansas City, MO 64141–0205, Telephone (816) 926–6658.

(ii) The Cooperating Sponsor will complete the form CCC–512 indicating ocean freight rate as stated in the Federal Maritime Commission [FMC] tariff [with tariff identification], name of steamship company, name of vessel, flag of vessel, and estimated time of arrival at U.S. port, and will sign and return the completed form CCC–512 to KCCO/ASCS/USDA, with a copy to Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, DC 20250. KCCO/ASCS/USDA will then issue instructions to have the commodity shipped f.a.s. vessel or f.o.b. U.S. port, or intermodal delivery port for consignment to Cooperating Sponsor as specified in the CCC–512. Unless provided for otherwise in the section 416(b) Foreign Donation Program Agreement, U.S. ports will be selected on the basis of lowest landed cost to CCC, except where mutually agreeable to the Cooperating Sponsor and KCCO/ASCS/USDA.

(iii) CCC will pay the Cooperating Sponsor or the ocean carrier, as may be agreed upon, for ocean transportation costs within 30 days of receipt by the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, Washington, DC 20250, of the following documentation: (A) One copy of completed form CCC–512 [as indicated above]; (B) three copies of freighted onboard bill of lading signed by originating carrier or intermodal through bill of lading; (C) two copies of booking note or charter party covering ocean transportation of subject cargo; (D) request for payment, indicating amount due and certification that payment has been made to ocean carrier or request for direct payment to ocean carrier.

(3) When CCC issues instructions to Cooperating Sponsors regarding freight forwarding and booking ocean transportation, CCC will comply with the provisions of the Merchant Marine Act, 1936, as amended, regarding the minimum cargo to be shipped aboard U.S.-flag vessels, and will endeavor to meet tonnage requirements on an overall program basis for the 12-month compliance period.

§ 210.6 Obligations of the Cooperating Sponsor.

(a) Plan of Operations. Each Cooperating Sponsor shall submit to A.I.D. or the Diplomatic Post a description of the programs it is sponsoring or proposes to sponsor. This description will, when approved by A.I.D. and CCC, provide the basic information for preparation of the section 416(b) Foreign Donation Program Agreement and will be incorporated by reference into such an agreement. Within the overall objectives of the approved program, elements of the program may be changed by written agreement of authorized representatives of the Cooperating Sponsor, A.I.D., and CCC. In case of conflict between the Agreement and the approved Plan of Operations, the Agreement will prevail. The Plan of Operations should specify clearly how the proposed program is to be conducted. In addition to any other requirements of law or regulation, the Plan of Operations will include the following information:

(1) A description of program goals and criteria for measuring progress toward reaching the goals.

(2) A geographic, economic, medical or other appropriate description of the recipient target group that is sufficient to readily determine recipient eligibility to receive section 416(b) commodities and to assure that such commodities will not displace commercial sales in the recipient country.

(3) Statements as to what public recognition and container markings will be employed in the distribution of the commodities.

(4) A logistics plan that demonstrates the adequacy of port, transportation, and storage/warehousing facilities to handle the flow of commodities to recipients without undue risk of spoilage or waste.

(5) Sufficient information concerning the plan of distribution and the recipient target group so that a determination can be made as to whether the proposed food distribution would result in a substantial disincentive to domestic food production.

(6) Statements detailing the support of the government of the host country acquiring the commodity or any other support for the proposed program.

(7) Kind and quantity of agricultural commodities requested and delivery schedule.

(8) Describe any reprocessing or repackaging that will occur in the country, giving location and name of firm that will perform the reprocessing or packaging.

(9) Explain how costs of administration, storage, transportation, processing, repackaging, special labels, issuance of information materials, etc., will be financed.

(10) Describe other contributions such as financial, human resources, other food commodities, etc., including the source, estimate of the amount and role the contributions will play in the program.

(11) Explanation of the methods of educating recipients on the source of agricultural commodities, program requirements, and preparation and use of agricultural commodities, particularly steps to be taken to assure that there will be no harmful unintended effects from the distribution of the agricultural commodities. Therefore, examples of educational materials for the field or guidelines should be presented which include food handling precautions, such as refrigeration, to prevent contamination and spoilage of, for instance, cheese and butter products; immediate preparation of foods before eating; discarding of leftovers if no refrigeration is available; and information about proper use and preparation of non-fat dry milk [NFDM] in its dry and reconstituted form where NFDM is distributed. Specifically, in child feeding programs where NFDM is distributed in bulk directly to families, projects at a minimum should include education on (i) promotion of exclusive breast feeding for 4–6 months and continuation of breast feeding after solid foods are introduced, (ii) use of NFDM as a protein supplement, (iii) the importance of combining NFDM with energy rich foods, e.g. oil, fats, porridges, stews, etc., (iv) precautions to be taken to prevent contamination of foods prepared with NFDM, and (v) precautions to be taken when NFDM is reconstituted as a milk drink, when there is evidence that it may be used this way.

(12) Description of the method to be used to supervise, monitor and account for the distribution, sale or barter of the agricultural commodities to assure that they are distributed to the intended recipients or sold or bartered as

intended, and any proceeds used as intended.

(13) Information to show approval of host government to import the donated agricultural commodity duty free.

(14) A detailed description of any intended sales or barter by the Cooperating Sponsor of agricultural commodities requested under the section 416(b) Foreign Donation Program. Information to be supplied will include:

(i) Quantity and type of commodities to be sold or bartered and anticipated purchasers or barter parties.

(ii) The amount of local currencies anticipated to be generated from the sale, or the value of the goods or services anticipated to be generated from the barter, of the donated agricultural commodities; except that, where such an amount or value cannot be estimated, the Cooperating Sponsor will describe the method to be used to ensure that a fair return of cash, goods or services will be received for the commodities.

(iii) All generated local currencies should be deposited into an interest bearing account for control and monitoring. The accrued interest will be added to the principal and disbursed for approved projects or activities.

(iv) The specific uses of local currency proceeds and a timetable for their expenditure.

(v) The method of accounting for the receipt, deposit and disbursement of local currency proceeds, which must include a separate special account.

(vi) A description of the goods or services for which donated agricultural commodities are intended to be bartered; and a method for ensuring that such goods or services are received.

(vii) Information concerning the extent to which any sale or barter of the donated agricultural commodities would displace normal commercial imports or displace or interfere with local production, or any sales that might otherwise be made.

(b) *Other Requirements.* (1) The terms and conditions of the section 416(b) Foreign Donation Program Agreement and of this regulation, except as otherwise specifically provided, are deemed to be accepted by the Cooperating Sponsor in submitting the Plan of Operations.

(2) The Cooperating Sponsor agrees to use the agricultural commodities only in accordance with the section 416(b) Foreign Donation Program Agreement and this regulation.

(3) The donation of agricultural commodities by CCC and the payment by CCC of any costs specified in the section 416(b) Foreign Donation Program Agreement is made with the understanding that the Cooperating Sponsor will carry out its obligations as provided in the Agreement and this part. The Cooperating Sponsor shall be liable to CCC for any of the following actions: (i) failure to export the commodities from the U.S., (ii) re-entry of the commodities into the U.S., (iii) any use of the commodities, or of the local currency generated from their sale, or of services generated through their barter that is inconsistent with the section 416(b) Foreign Donation Program Agreement.

For any such failure, the Cooperating Sponsor shall reimburse CCC for all costs paid by CCC in making the agricultural commodities available to the Cooperating Sponsor, including the acquisition cost to CCC. However, the Cooperating Sponsor shall not be liable to CCC with respect to any commodity which, before or after export from the U.S., is lost or damaged, destroyed or deteriorated to the extent that the commodity cannot be used for the purposes described in the section 416(b) Foreign Donation Program Agreement unless such loss or damage was due to the fault or negligence of the Cooperating Sponsor.

(4) Cooperating Sponsors shall distribute agricultural commodities only to eligible recipients. Distribution shall be made without regard to nationality, race, color, sex, or religious or political beliefs of recipients.

(5) Funds derived from voluntary contributions by recipients may be used by Cooperating Sponsors for payment of program costs. Contributions must not be required from a recipient as a condition for participation in a program and the amount of such contributions must not exceed a minor portion of the market value of the commodity or product. Program costs are such costs as transportation, storage, handling, insect and rodent control, rebagging of damaged or infested commodities, and other program expenses specifically authorized by A.I.D. to carry out the program for which the commodities were furnished. The agreement may require Cooperating Sponsors who collect voluntary contributions to comply with some or all of the reporting requirements which apply to sales of donated commodities, where the nature of the program and the total amount of fees to be collected justify this requirement.

(6) Sales or barters. (i) Foreign donations of agricultural commodities under section 416(b) are intended primarily as food aid. However, with CCC approval, some or all of the commodities donated may be sold or bartered when such sale or barter is incidental to the donation of agricultural commodities, e.g. the sale of damaged commodities. Any other sale or barter must be pursuant to an approved Plan of Operations. Such plans will be approved by CCC and A.I.D. on a case-by-case basis for the following purposes only:

(A) To finance the distribution, handling or processing costs of the donated commodities in the importing country, or in a country through which the commodities must be transshipped; or

(B) Where the sale or barter is to finance other activities in the importing country that are consistent with providing food assistance to needy people; or

(C) In the case of Cooperating Sponsors which are intergovernmental organizations, for sales or barter that are consistent with their normal programming procedures in the distribution of commodities; or

(D) In the case of Cooperating Sponsors which are nonprofit and voluntary agencies, or cooperatives, for sales that are to finance the transportation, storage, distribution or otherwise enhance the effectiveness of the use of the donated commodities, and to implement income generating community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities.

(ii) The agricultural commodities may be sold or bartered only in the importing country, unless otherwise approved, or unless incidental to donation per § 210.6(b)(6)(i) above.

(iii) No part of the proceeds or services realized from sales or barters may be used for operating and overhead expenses (except as may be permitted for intergovernmental organizations under § 210.6(b)(6)(i)(C) above, or for personnel and administrative costs of local cooperatives).

(iv) Cooperating Sponsors which sell or barter commodities must enter into a written agreement with the other party. A copy of the executed agreement must be provided to the USAID or Diplomatic Post concerned.

(v) Cooperating Sponsors do not need to monitor, manage, report on or account for the distribution or use of commodities after all sales proceeds have been fully deposited in an account established by the cooperating sponsor and title to the commodities has passed to buyers or other third parties pursuant to a sale under a monetization program. However, the sales proceeds and the uses thereof must be monitored,

managed, reported and accounted for as provided in § 210.11 and other relevant sections of this Regulation.

(vi) It is not mandatory that commodities approved for monetization be imported and sold free of all duties and taxes, but nongovernmental cooperating sponsors may negotiate agreements with the host government permitting the tax-free import and sale of such commodities. Even where the cooperating sponsor negotiates tax-exempt status, the prices at which the cooperating sponsor sells the commodities to the purchaser should reflect prices that would be obtained in a commercial transaction, i.e., the prices would include the cost of duties and taxes. Thus, the amounts normally paid for duties and taxes would accrue for the benefit of the cooperating sponsor's approved program.

(7) Use of funds. Funds accruing from recipient contributions or any other program income or monetization proceeds may be used for payment of indigenous or third country personnel employed by Cooperating Sponsor or recipient agencies in support of the section 416(b) programs and for other costs allowable under the approved program (provided, that no portion of the proceeds or services realized from sales or barter of commodities subject to this Regulation may be used to meet operating and overhead expenses, except for personnel and administrative costs of local cooperatives, and except by intergovernmental agencies or organizations, as consistent with their normal programming procedures in the distribution of commodities). However, such funds may not be used to acquire, develop, construct, alter or upgrade land, buildings or other real property improvements or structures that are either (i) owned or managed by a church or other organization engaged exclusively in religious activity, or (ii) used in whole or in part for sectarian purposes.

The Cooperating Sponsor shall use commercially reasonable procurement practices in purchasing goods or services with monetization proceeds, funds derived from the program or funds provided by the U.S. Government, and shall employ procedures that prevent fraud, self-dealing, conflicts of interest or noncompetitive procurement. Each voluntary agency (including cooperatives) agrees to use monetization proceeds, program income and funds provided by the U.S. Government only for costs such as would be allowable under Office of Management and Budget (OMB) Circular No. A–122, "Cost Principles for Nonprofit Organizations, available at the Office of Administration, OMB, Publications Unit, Room G–236, New Executive Office Building, Washington, DC 20503. Title to real and personal property acquired with monetization proceeds, program income or funds provided by the U.S. Government shall be vested in the cooperating sponsor, but the cooperating sponsor shall dispose of such property as directed by the USAID Mission or the Diplomatic Post in the event the program terminates or is transferred to another entity. Records and documents regarding procurements using monetization proceeds, program income or funds provided by the U.S. Government shall be maintained and made available for inspection as required in § 210.11 below.

(8) In the case of a section 416(b) Foreign Donation Program Agreement with a foreign government, the foreign government will be asked to provide data showing commercial and non-commercial imports of the types of agricultural commodities requested, for the past five years, by country of origin. Such an agreement with a foreign government may include a usual marketing requirement, and a prohibition on the re-export of donated commodities as well as of other related commodities specified in the agreement.

(9) Shipment of commodities may be suspended at any time upon a determination by CCC:

(i) That storage facilities are not adequate to prevent spoilage or waste or are not available at the time of export of the commodity, or

(ii) That distribution of the commodity in the recipient country will result in a substantial disincentive to, or interference with, domestic production or marketing in the recipient country.

(10) In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be arranged by the Cooperating Sponsor unless otherwise provided in the section 416(b) Foreign Donation Program Agreement.

(11) If a Cooperating Sponsor books cargo for ocean transportation and is unable to have a vessel at U.S. port of export for loading in accordance with the agreed shipping schedule and CCC thereby incurs additional expenses, the Cooperating Sponsor shall reimburse CCC for such expenses if CCC determines that the expenses were incurred as a result of the fault or negligence of the Cooperating Sponsor.

§ 210.7 Processing, repackaging and labeling of commodities in a foreign country.

(a) Cooperating Sponsors may arrange for the processing of donated commodities into different end-products and for packaging or repackaging prior to distribution. When commercial facilities are used for processing, packaging or repackaging, Cooperating Sponsors shall enter into written agreements for such services. Copies of the executed agreements shall be provided to the USAID or Diplomatic Post in the country of distribution. A portion of the donated commodities may be sold or bartered to defray costs of processing, packaging or repackaging but only if authorized in an approved Plan of Operations.

(b) If prior to distribution the Cooperating Sponsor arranges for packaging or repackaging donated agricultural commodities the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled in the language of the country in which the commodities are to be distributed with the following information:

(1) Name of Commodity.

(2) Furnished by the people of the United States of America.

(3) Not to be sold or exchanged. Emblems or other identification of cooperating sponsors may also be added.

(4) If the donated commodities are to be sold or bartered pursuant to an approved Plan of Operations after reprocessing, packaging or repackaging, paragraphs (b)(2) and (b)(3) of this section, will not apply.

§ 210.8 Arrangements for entry and handling in foreign country.

(a) Except for commodities which are to be monetized (see § 210.6(b)(vi) above), agricultural commodities shall be admitted duty free and exempt from all taxes.

(b) Cooperating Sponsors shall make all necessary arrangements for receiving the donated commodities and for prompt entry and transit in the foreign country, and will be responsible for storage and maintenance from time of delivery at port of entry or point of entry abroad. The Cooperating Sponsor will be responsible for maintaining the commodities in such manner as to assure that they remain in good condition until their distribution, sale or barter.

(c) If the packages of agricultural commodities are discharged from vessel in a damaged condition, and are repackaged to ensure that the

commodities arrive at the distribution point in wholesome condition, CCC will only reimburse Cooperating Sponsors who are nonprofit private humanitarian organizations for approved expenses incurred for such repackaging. No prior approval is required for such expenses equaling $500 or less. If such expense is estimated to exceed $500, the authority to repackage and incur such expense must be approved by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived in writing by the USAID or Diplomatic Post.

§ 210.9 Disposition of commodities unfit for authorized use.

Damaged commodities are to be disposed of in accordance with § 211.8 of A.I.D. Regulation 11, 22 CFR Part 211. Such a disposition should be reported to the Chief, Claims and Collections Division, KCMO/ASCS/USDA, P.O. Box 205, Kansas City, Missouri 64141.

§ 210.10 Liability for loss, damage or improper distribution of commodities—claims and procedures.

(a) Notwithstanding transfer of title to the Cooperating Sponsor, CCC shall have the right to file, pursue, and retain the proceeds of collections from claims arising from ocean transportation cargo loss and damage, including loss and damage occurring between the time of transfer of title and loading aboard a vessel. CCC assumes general average contributions in all valid general average incidents which may arise from the movement of commodity to the destination port. CCC shall receive and retain all allowances in general average. The Cooperating Sponsor shall promptly notify CCC of any situation involving the loss, damage or deterioration of the commodity and of any salvage services or declaration of general average. CCC will reimburse the Cooperating Sponsor for any salvage costs and related costs arising from salvage services. All cargo loss documents shall be forwarded to: Chief, Claims and Collections Division, KCMO/ASCS/USDA, P.O. Box 419205, Kansas City, Missouri 64141–0205. The Cooperating Sponsor shall promptly furnish such office any assignment of rights which may be requested. Where the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from any claims related to ocean freight charged.

(b) The Cooperating Sponsor shall promptly provide written notice to A.I.D. or the Diplomatic Post of the circumstances pertaining to any loss, damage or misuse of commodities occurring within the recipient country or intermediate country. Proceeds from any resultant claim actions shall be forwarded to USAID Missions and/or Diplomatic Posts for deposit with the U.S. Disbursing Officer, American Embassy, preferably, in U.S. dollars with instructions to credit the deposit to CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401.

(c) Unless the instructions issued by CCC referred to in paragraph (a) of this section provide otherwise for certain designated Cooperating Sponsors, the Claims and Collections Division, KCMO/ASCS/USDA will arrange for the services of an independent cargo surveyor to survey the discharge of section 416(b) commodities at the foreign discharge port.

(d) Cooperating Sponsors shall send copies of all reports and documents pertaining to the discharge of commodities to Chief, Claims and Collections Division, KCMO/ASCS/USDA, P.O. Box 419205, Kansas City, Missouri 64141–0205.

(e) CCC will reimburse Cooperating Sponsors for the costs incurred by them in obtaining the services of an independent surveyor to conduct examinations of the cargo and render its report.

(f) Claims arising prior to loading of the agricultural commodities on ocean vessels, and claims against ocean carriers, will be handled according to procedures established by CCC. Claims arising after discharge will be handled according to procedures established by A.I.D. for handling inland Pub. L. 480, Title II claims (A.I.D. Regulation 11, § 211.9, and Chapter 8 of A.I.D. Handbook 9).

(g) When payment is to be made for commodities misused, lost or damaged, the value shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred, or, in case it is not feasible to determine such market price, the f.o.b. or f.a.s. commercial export price, of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the U.S. Government in making delivery to the Cooperating Sponsor. When the value is determined on a cost basis, the Cooperating Sponsor may add to the value any provable costs it has incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the U.S. Government. With respect to claims other than ocean carrier loss and/or damage claims, the value of misused, lost or damaged commodities may be determined on some other justifiable basis, at the request of the Cooperating Sponsor and/or upon the recommendation of the USAID or Diplomatic Post.

§ 210.11 Records and reporting requirements of cooperating sponsor.

(a) The Cooperating Sponsor shall maintain records and documents for a period of three years from the close of the U.S. fiscal year to which they pertain, or longer, upon request by A.I.D. for cause, such as in the case of litigation on a claim or audit concerning such records and documents, in a manner which will accurately reflect all transactions pertaining to the receipt, transportation, storage and distribution of the commodities, and pertaining to the receipt and disbursement of any currency generated from sale or other distribution of any goods, or to services generated from barter of the commodities. In the case of sale or barter this requirement shall not be deemed to include the distribution of the commodities after such sale or barter.

(b) The Cooperating Sponsor shall cooperate with and give reasonable assistance to U.S. Government representatives to enable them at any reasonable time to examine any activities and transactions of the Cooperating Sponsor pertaining to the receipt, processing, repackaging, distribution or use of the commodities, and pertaining to the receipt and use of any local currency proceeds or goods and services generated from the sale or barter of the commodities.

(c) The Cooperating Sponsor shall submit a semi-annual report to the Chief, Projects and Coordination Division, Office of Food for Peace, FVA Bureau, A.I.D., Washington, DC, 20523, U.S.A., and a copy to the Chief, Food For Development Division, USAID Mission, c/o American Embassy containing the information required, below, by this subsection. The first report must be submitted by the date specified in the section 416(b) Foreign Donation Program Agreement and is to cover the full period since the date of that agreement. Reports thereafter should cover each subsequent six-month period in which commodities received are being distributed by the Cooperating Sponsor, or local currency proceeds are being held or disbursed. The reports must contain the following data as applicable:

(1) Receipts of agricultural commodity including the name of each vessel, discharge port(s), and date discharge was completed;

(2) Quantity of agricultural commodities sold, amount of proceeds generated from the sale and barter of the agricultural commodity, amount or value of goods or services bartered, and proceeds deposited into the special account during the reporting period;

(3) An accounting for and report on the use of any local currency proceeds generated from the sale of commodities, or goods and services.

(4) An accounting for and report on the use of all local currency generated from the sale of containers and from recipient contributions, or any other program income.

(5) Estimated commodity inventory at the end of the reporting period;

(6) Quantity of commodity on order and in transit at the end of the reporting period;

(7) Status of claims for commodity losses, both resolved and unresolved, during the reporting period;

(8) Quantity of commodity damaged or declared unfit during the reporting period;

(9) Knowledge of any disincentive to local production and marketing, or disruption of U.S. or other international commerical sales.

§ 210.12 Additional responsibilities of cooperating sponsor.

(a) The Cooperating Sponsor shall, within thirty (30) days after export, furnish evidence of export of the agricultural commodities to the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, DC 20250. If export is by water or air, two copies of the onboard carrier bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service shall be furnished. The evidence of export must show the kind and quantity of agricultural commodities exported, the date of export and the destination country.

(b) The Cooperating Sponsor warrants that it has not employed any person to solicit or secure the section 416(b) Foreign Donation Program Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee and that no consideration or payment has been made or will be made. Breach of this warranty shall give the U.S. Government the right to annul the section 416(b) Foreign Donation Program Agreement.

§ 210.13 Termination of program.

All or any part of the assistance provided under the section 416(b) Foreign Donation Program Agreement, including commodities in transit, may be suspended or terminated by CCC, if:

(a) The Cooperating Sponsor fails to comply with the provisions of its agreement or this part, or

(b) It is recommended by A.I.D. that the continuation of such assistance is no longer necessary or desirable.

CCC suspension and debarment regulations will apply to any such suspension or termination of program assistance. A.I.D. may temporarily suspend assistance in extraordinary circumstances where such suspension is necessary to maintain the integrity of the section 416(b) Foreign Donation Program. If it is determined that any commodity authorized to be supplied under the section 416(b) Foreign Donation Program Agreement is no longer available for section 416(b) Foreign Donation programs, such authorization shall terminate with respect to any commodities which, as of the date of such determination have not been delivered f.o.b. or f.a.s. vessel, provided every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

§ 210.14 Waiver and amendment authority.

(a) The Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance, A.I.D., with the approval of CCC, may waive, withdraw, or amend at any time, any or all of the provisions of this part if such provision is not statutory and it is determined to be in the best interest of the U.S. Government to do so.

(b) A section 416(b) Foreign Donation Program Agreement may be amended by written agreement of A.I.D., CCC and the Cooperating Sponsor.

§ 210.15 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements in Part 210 have been approved by the Office of Management and Budget under control number 0412–0517.

Appendix I—Section 416(b) Foreign Donation Program Agreement Country

United States Government—Agricultural Commodity Foreign Donation Program Agreement (section 416(b))

In order to effect the distribution of agricultural commodities for the assistance of persons outside the United States, the Agency for International Development (A.I.D.), the Commodity Credit Corporation (CCC), and the (Cooperating Sponsor) agree as follows:

1. CCC agrees to donate to the Cooperating Sponsor agricultural commodities of the kind and amounts specified in section 2 of this agreement pursuant to the authority of section 416(b) of the Agricultural Act of 1949, as amended. CCC shall deliver such commodities in accordance with the delivery schedule specified in section 2.

2. Agricultural commodities to be donated to the Cooperating Sponsor are as follows:

Commodity	Quantity pounds/ metric tons	Requested delivery month to U.S. port [1]	Foreign port destination

[1] Point where title transfers if other than U.S. port.

Note.—The Cooperating Sponsor will promptly inform CCC of any desired change in the above delivery schedule by notifying the Chief, Export Operations Branch, Agricultural Stabilization and Conservation Service/USDA, Kansas City, Missouri, 64141–0205, telephone (816) 926–6658, and CCC will endeavor to coordinate a mutually acceptable revised delivery schedule. CCC is not required to deliver commodities later than the delivery dates specified above unless a revised delivery schedule is agreed upon.

3. The payment of all costs associated with the processing, packaging, transporting, handling and other charges incurred in the distribution of the agricultural commodities will be apportioned as follows:

A. CCC agrees to donate the commodities without charge and to pay the following costs: (These costs will be determined during the negotiation of program approval.)

B. The Cooperating Sponsor agrees to pay the following costs: (These costs are determined during the negotiation of program approval).

4. The Cooperating Sponsor agrees to use the agricultural commodities only in accordance with this Agreement and the approved program.

5. The terms and conditions set forth in A.I.D. Regulation 10 and the approved Plan of Operations are incorporated into and made a part of this agreement.

Agency for International Development

By _____

Title: Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance (or as delegated)

Date: _____

Commodity Credit Corporation

By _____

Title: General Sales Manager, FAS and Vice President, Commodity Credit Corporation (or as delegated)

Date: _____

Request and Acceptance

The assistance described in this Agreement is requested and the terms and conditions of this Agreement and of A.I.D. Regulation 10, except as otherwise specifically provided herein, are accepted.

Cooperating Sponsor

By: _____

Title:

Date: _____

Dated: September 6, 1988.

Jay F. Morris,

Acting Administrator.

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Part III

International Development Cooperation Agency

Aid for International Development

22 CFR Part 211

Transfer of Food Commodities for Use in Disaster Relief, Economic Development and Other Assistance; Proposed Rule

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 211

[A.I.D. Reg 11]

Transfer of Food Commodities for Use in Disaster Relief, Economic Development and Other Assistance

AGENCY: Agency for International Develolpment (A.I.D.), IDCA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Regulation at 22 CFR Part 211 Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance, to conform the Regulation to amendments made to Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), by legislation including Pub. L. 96–53, August 14, 1979; the Food Security act of 1985, Pub. L. 99–198, dated December 23, 1987; Pub. L. 100–202 (Continuing Appropriations), December 22, 1987; and would make other necessary changes.

DATE: Comments on these proposed rules must be received on or before February 17, 1989.

ADDRESS: Comments should be submitted to: Ms Jessie C. Vogler, Office of Food for Peace, Bureau of Food for Peace and Voluntary Assistance, Agency for International Development, Washington DC 20523. Telephone: (703) 875–4438.

FOR FURTHER INFORMATION CONTACT: Ms Donna Rosa, Actg. Chief, Project Coordination Division, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (702) 875–4706.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under A.I.D.'s required procedures. It has been determined that these program provisions will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since A.I.D. is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. It has been determined that the provisions of 5 U.S.C. 553 do not apply to this rule since the subject matter of the rule involves foreign affairs functions of the United States and a matter relating to grants.

Comments are requested within 60 days after publication and the proposed rule will be reviewed in order that a final document discussing any comments received and any desirable amendments may be published in the **Federal Register**. The final document will be made effective upon publication in the **Federal Register**.

The proposed revisions listed below are intended to update A.I.D. Regulation 11 to incorporate new legislation, Agency programming and policy changes and to make other changes of a clarifying nature concerning Pub. L. 480, Title II activities. The principal changes in the Regulation are as follows:

1. The statutory excerpts in § 211.1(b) subsections (2) through (12) have been revised to conform them to changes in Pub. L. 480.

2. Section 211.2—Definitions. This section has been revised for clarification and to include additional Title II programming terms.

3. Section 211.3(c) has been added which outlines steps necessary to commence a program.

4. Section 221.4(d) has been revised to reflect the transfer from USDA to A.I.D. of the responsibility for booking Pub. L. 480, Title II government-to-government cargo.

5. Section 221.5 has been revised to include an outline for the Title II plan of operations, to provide that foreign currencies generated from any partial or full sales or barter of commodities by a non-profit voluntary agency or cooperative are to be used to transport, store, distribute, or otherwise enhance the effectiveness of the commodities, or to implement income generating community development, health, nutrition, cooperative development, agricultural programs or other developmental activities. Section 211.5(c) has been revised: To clarify the cooperating sponsor's responsibility for conducting internal reviews; to require that a systematic method be used to assure timely resolutions to implement findings and recommendations. Section 211.5(i) "Use of Funds" has been revised to clarify the proper use of funds generated under the Title II program including use for costs allowable under OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations." Section 211.5(j) is a new item which requires an annual report on funds generated and their use. Section 211.5 (o) and (p) are new sections concerning monetization programs and trilateral exchange programs.

6. Section 211.7(b) has been revised to clarify the cooperating sponsor's responsibility with respect to duty, taxes and consular invoices.

7. Section 211.7(e)(1) has been revised to clarify the limitations on reimbursement of repackaging costs.

8. Section 211.9(c)(1)(v) is a new subparagraph concerning contracting by CCC for the survey of cargo on shipments furnished under Transfer Authorizations; § 211.9(c)(2), "Claims against Ocean Carriers," has been revised to reflect the transfer from USDA to A.I.D. the responsibility for booking all Pub. L. 480, Title II Government-to-Government cargoes. Section 211.9(e)(2) is revised to clarify that individual inland claims should not be artificially subdivided. Section 211.9(e) (3) and (4) have been added to clarify cooperating sponsors' responsibility concerning inland claims. In § 211.9(g) "Handling Claims Proceeds," the following has been added "With respect to monetized proceeds and program income, amounts recovered shall be deposited in the special account used for such funds and may thereafter be used for purposes of the approved program."

9. Section 211.10(a) has been revised to add the following to the last sentence * * * "or longer upon request by A.I.D. for cause such as in the case of litigation of a claim or audit concerning such periods. The cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D."

10. Other grammatical or minor revisions have been made for clarification purposes.

List of Subjects in 22 CFR Part 211

Agriculture, Foreign aid, Foreign relations.

Because of the substantial revisions proposed, the proposed A.I.D. Regulation 11, as revised, is printed below in its entirety.

It is proposed to revise 22 CFR Part 211 to read as follows:

PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT, AND OTHER ASSISTANCE

Sec.

211.1 General purpose and scope.
211.2 Definitions.
211.3 Cooperating sponsor agreements.
211.4 Availability of commodities; shipment.
211.5 Obligations of cooperating sponsor.
211.6 Processing, repackaging, and labeling commodities.
211.7 Arrangements for entry and handling in foreign country.

Sec.
211.8 Disposition of commodities unfit for authorized use.
211.9 Liability for loss, damage or improper distribution of commodities.
211.10 Records and reporting requirements of cooperating sponsor.
211.11 Termination of program.
211.12 Waiver and amendment authority.

Appendix I to Part 211—Legislation

Authority: Secs. 105, 201, 202, 203, and 207, Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1705, 1721, 1722, 1723, and 1726a; 68 Stat. 454, as amended.

§ 211.1 General purpose and scope.

(a)(1) *Terms and conditions.* This Part 211, also known as A.I.D. Regulation 11, prescribes the terms and conditions governing the transfer of agricultural commodities to foreign governments, to private or public agencies, including nonprofit voluntary agencies, cooperatives, and to intergovernmental organizations (except the World Food Program (WFP) and United Nations Relief and Works Agency (UNRWA)) pursuant to Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480, 83rd Congress, as amended ("Pub. L. 480")). (For the WFP and UNRWA, see A.I.D. Handbook 9).

(2) *Organization.* This Regulation starts by quoting pertinent legislation in force as of the date of issuance of this Regulation, and goes on to provide information on Title II programs, and the rules under which they are conducted. The material is organized in the sequence in which events take place in the program; starting with how programs are commenced; continuing with responsibilities and authorities pertinent to the course of a program (on such matters as disposals, claims, and records and reporting); and going on to program termination, and some administrative matters.

(b) *Legislation.* See Appendix I to the Regulation. The legislation implemented by the Regulation in this part (as of the date of issuance of this part) includes sections of the Agricultural Trade Development Assistance Act of 1954, as amended (Pub. L. 480) as follows: Sections 2(3), 201, 202, 203, 204, 206, 207, 208, 401, 402, and 404.

§ 211.2 Definitions.

(a) "A.I.D." means the Agency for International Development or any successor agency, including, when applicable, each USAID. "USAID" means an office of A.I.D. located in a foreign country. "A.I.D./W" means the Office of A.I.D. located in Washington, D.C.

(b) "Annual Estimate of Requirements (AER)" (Form A.I.D. 1550–3, Exhibit E, A.I.D. Handbook 9) is a statistical update of the Operational Plan which is signed by the cooperating sponsor requesting commodities under Title II estimating the quantities required.

(c) "CCC" means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

(d)(1) "Cooperating sponsor" means an entity, within or without the United States, governmental or not, such as the foreign government, the American Red Cross, the Intergovernmental organization, the U.S. nonprofit voluntary agency or the cooperative registered with and approved by the Agency for International Development, which enters into an agreement with the U.S. Government for the use of agricultural commodities of funds (including local currencies), and which is directly responsible under the agreement for administration and implementation of the agreement, including reporting on programs involving the use of the commodities or funds made available to meet the requirements of eligible recipients. The term includes foreign nonprofit voluntary agencies registered with and approved by the Agency for International Development, which may be utilized to provide assistance following a determination of unavailability of a U.S. registered nonprofit voluntary agency to provide the assistance.

(2) "Governmental Cooperating Sponsor" means a cooperating sponsor which is a foreign government.

(3) "Non-Governmental Cooperating Sponsor" means a cooperating sponsor which is a non-profit voluntary agency, a cooperative, the American Red Cross, or other private or public agency; an intergovernmental organization is also treated as a nongovernmental cooperating sponsor in this part (Regulation 11) unless the text or context indicates otherwise.

(4) Note: Governmental Cooperating Sponsors are treated here as a group separate from other cooperating sponsors since their circumstances are different in such matters as, e.g., rules governing shipping; and in certain other aspects of agreements.

(e) "Diplomatic Posts" means the offices of the Department of State located in foreign countries, and may include Embassies, Legations, and Consular offices.

(f) "Disaster relief organizations" means organizations which are authorized by A.I.D./W, USAID, or by a Diplomatic Post to assist disaster victims.

(g) "Disaster victims" means persons who, because of flood, drought, fire, earthquake, other natural or manmade disasters, or extraordinary relief requirements, are in need of food, feed, or fiber assistance.

(h) "Duty free" means exempt from all customs duties, duties, tolls, taxes or governmental impositions levied on the act of importation.

(i) "f.o.b./f.a.s." stands for "free on board/free along side." Bulk shipments are normally loaded f.o.b.; all other shipments, f.a.s.; and title there are transferred.

(j) "Food for Peace Program Agreement" constitutes the agreement between the cooperating sponsor(s) and the U.S. Government. The Food for Peace Program Agreement may be specific, listing the kinds and quantities of commodities to be supplied, program objectives, criteria for eligibility of recipients, plan for distribution of commodities, and other specific program provisions in addition to the provisions set forth in this part; or it will state that the cooperating sponsor will comply with this part and such other terms and conditions as set forth in other A.I.D. programming documents.

(k) "General Average" means the proportional sharing of a loss or extraordinary expense incurred to protect the whole cargo.

(l) "Institutions" means nonpenal, public or nonprofit private establishments that operated for charitable or welfare purposes where needy persons reside and receive meals including, but not limited to, homes for the aged, mentally and physically handicapped, refugee camps, and leprosy asylums.

(m) "Intergovernmental organizations" means agencies sponsored and supported by the United Nations organization or by two or more nations, one of which is the United States of America.

(n) "Maternal-child feeding, primary school and other child feeding programs":

(1) Maternal and preschool feeding programs means programs conducted for women of child bearing age, with emphasis on pregnant and lactating women, for mothers with preschool children, and for children below the usual enrollment age for the primary grade at public schools.

(2) School feeding programs refers to programs conducted for the benefit of children enrolled in primary schools.

(3) Other child feeding programs refers to programs designed to reach

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preschool or primary school age, needy children in child care centers, orphanages, institutions, nurseries, kindergartens and similar activities.

(o) "Nonprofit" means that the residue of income over operating expenses accruing in any activity, project, or program is sued solely for the operation of such activity, project, or program.

(p) "Plan of Operation" is a plan submitted by the potential cooperating sponsor describing the proposed use of commodity and/or monetized proceeds of sale thereof.

(q) "Primary School" means a public or nonprofit facility, or an activity within such facility, which has as its primary purpose the education of children at education levels which are generally comparable to those of elementary schools in the United States.

(r) "Program Income" means gross income earned from activities supported under the approved program.

(s) "Recipient agencies" means schools, institutions, welfare agencies, disaster relief organizations, and public or private agencies whose food distribution functions are sponsored by the cooperating sponsor and who receive commodities for distribution to eligible recipients. A cooperating sponsor may be a recipient agency.

(t) "Recipients" means persons who are in need of food assistance because of their economic or nutritional condition or who are otherwise eligible to receive commodities for their own use in accordance with the terms and conditions of the Food for Peace Program Agreement.

(u) "Registered Nonprofit Voluntary Agency" means a nonprofit voluntary agency or cooperative registered with, and approved by A.I.D. The term includes foreign as well as U.S. registered nonprofit voluntary agencies. Under Pub. L. 480, section 202(a), a foreign registered nonprofit voluntary agency may be utilized if no U.S. registered nonprofit voluntary agency is available. As to registration, see 22 CFR Part 203, A.I.D. Regulation 3, "Registration of Agencies for Voluntary Foreign Aid."

(v) "Refugees" means persons who fled or were forced to leave their country of nationality or residence and are living in a country other than that of which they hold or have held citizenship or in a part of their country of nationality or residence other than that which they normally consider their residence, and become eligible recipients.

(w) "Transfer Authorization" or "TA" means the document signed by the cooperating sponsor and A.I.D. which describes commodities and the program they will be used in, incorporates A.I.D. Regulation 11, and authorizes CCC to ship the commodities.

(x) "USDA" means the U.S. Department of Agriculture.

(y) "Voluntary Agency" means the American Red Cross and any U.S. or foreign voluntary nonprofit agency or cooperative registered with, and approved by, the Agency for International Development.

(z) "Welfare agencies" means public or nonprofit private agencies that provide care, including food assistance, to needy persons who are not residents of institutions.

§ 211.3 Cooperating sponsor agreements.

(a) *Food for Peace Program Agreement.* The cooperating sponsor shall enter into a written agreement with A.I.D. by signing a Food for Peace Program Agreement which shall incorporate by reference or otherwise the terms and conditions set forth in this part (A.I.D. Regulation 11).

(b) *Individual Country Food for Peace Program Agreement.* Voluntary agencies, including cooperatives, or intergovernmental organizations shall, in addition to the Food for Peace Program Agreement, enter into a separate written Food for Peace Agreement with the foreign government of each cooperating country. This agreement shall incorporate by reference or otherwise the terms and conditions set forth in this part (A.I.D. Regulation 11) and shall be approved by A.I.D. prior to being executed. This agreement also shall provide that the cooperating country shall indemnify the cooperating sponsor, irrespective of the fault or liability of any person other than employees of the cooperating sponsor, for the value of commodities lost, damaged or misused while in the possession of the cooperating country, or any of its state or local governments, or any public or quasi-private instrumentalities thereof. This agreement should acknowledge that the commodities have been donated by the United States for the benefit of the people in the cooperating country and state that the cooperating country will pay the United States, upon the request of A.I.D. or the Diplomatic Post, for the value of any commodities lost, damaged or misused while in the possession of the cooperating country (irrespective of the fault or liability of any person other than employees of the cooperating sponsor). Where such written agreement is not feasible or practicable, the USAID or Diplomatic Post shall assure A.I.D./W, in writing, that the program can be effectively implemented in compliance with this part without such an agreement.

(c) *Commencement of a Program*—(1) *Requests for Programs.* A program may be requested by any cooperating sponsor, including nonprofit voluntary agencies, cooperatives, foreign governments, and international organizations. (In cases of emergencies, A.I.D., the Secretary of State, or the President may initiate an offer.)

(2) *Approval of Programs.* Although A.I.D. is vested with most functions of administering Title II (derived from Executive Order 12220, June 27, 1980, 45 FR 44245), other agencies, in particular the Department of Agriculture, play key roles. Agreement between the agencies, and approval of Title II programs, is reached in the Development Coordination Committee Food Aid Subcommittee and its Working Group.

(3) *Format for Approval of Programs.* There are two basic patterns of decision employed in granting approval to a request for Title II assistance:

(i) *Format for Approving Regular Programs.* The cooperating sponsor submits to A.I.D. a plan of operations (see § 211.5), describing the program proposed. The plan of operations provides the basic information for preparation or amendment of a Food for Peace Program Agreement (see definition and § 211.3(a) above), and often an Individual Country Food for Peace Program Agreement (see definition) between the cooperating sponsor and the country concerned (these Agreements will include by reference this Regulation 11). Also, there will be submitted to A.I.D. an Annual Estimate of Requirements or A.E.R. along with the program plan of operations (see definition), estimating the quantities of commodities required for each program proposed. Upon approval by the Working Group of the DCC Food Aid Subcommittee, A.I.D.'s signature on the A.E.R., completes this decision process.

(ii) *Format for Approving Individual Programs.* The other basic pattern of decision making on these programs results in Transfer Authorization ("TA"; see definition). The TA is used for all government-to-government programs, and for non-governmental cooperating sponsor programs which do not fit within the Program Agreement/AER framework. The TA will include by reference Regulation 11.

(iii) *Timing of Decision.* Under Pub. L. 480, section 208(a), within 45 days of its submission to A.I.D./W, a decision must be made on a proposal submitted by a nonprofit voluntary agency or cooperative, concurred in by the

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appropriate United States Government field mission. The decision shall detail the reasons for approval or denied, and if denied, conditions to be met for approval.

§ 211.4 Availability of commodities; shipment.

(a) *Shipment, distribution and use of commodities.* Commodities shall be available for shipment, distribution and use in accordance with the provisions of the Food for Peace Program Agreement or Transfer Authorization and this part.

(b) *Transfer of title and delivery.* (1) Unless the Food for Peace Program Agreement or Transfer Authorization provides otherwise, title to the commodity shall pass to the cooperating sponsor at the time and place of delivery f.o.b. or f.a.s. vessel at the U.S. port, except that in the case of nongovernmental cooperating sponsors title may pass at the discretion of USDA at other points in the United States.

(2) Nongovernmental cooperating sponsors shall make the necessary arrangements to accept commodities at the points of delivery designated by the USDA.

(c) *Processing, handling, transportation and other costs.* (1) The United States will pay processing, handling, transportation, and other incidental costs incurred in making commodities available to cooperating sponsors free on board (f.o.b.) or free along side (f.a.s.) vessel at U.S. ports, or free at inland destinations in the United States, except as otherwise provided in this paragraph (c).

(2) Nongovernmental cooperating sponsors shall reimburse the United States for expenses incurred at their request and for their accommodation which are in excess of those which the United States would have otherwise incurred in making delivery—

(i) At the lowest combination inland and ocean transportation costs to the United States as determined by the United States or

(ii) In sizes and types of packages announced as available.

(3) All costs and expenses incurred subsequent to the transfer of title in the United States to cooperating sponsors except as otherwise provided herein shall be borne by them. Upon the determination that it is in the interests of the program to do so, the United States may pay or make reimbursement for ocean transportation costs from U.S. ports to the designated ports of entry abroad; or to designated points of entry abroad in the case—

(i) Of landlocked countries,

(ii) Where ports cannot be used effectively because of natural or other disturbances,

(iii) Where carriers to a specific country are unavailable, or

(iv) Where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports.

(d) *Transportation authorization.* A transportation authorization will be issued to cover the ocean freight paid directly by the United States. When A.I.D. contracts for ocean carriage, disbursement to the carriers shall be made by A.I.D. upon presentation of Standard Form 1034 and three copies of 1034A (Public Voucher for purchases and services other than personal), together with three copies of the related onboard ocean bill of lading, one copy of which must contain the following certification signed by an authorized representative of the steamship company:

> I certify that this document is a true and correct copy of the original onboard ocean bill of lading under which the goods herein described were located on the above-named vessel and that the original and all other copies thereof have been clearly marked as not to be certified for billing.

(Name of steamship co.)
By
(Authorized representative)

Such voucher should be submitted to: Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523. Except for duty, taxes and other costs exempted in § 211.7 (a) and (b) of this part, cooperating sponsors booking their own vessels will be reimbursed as provided in A.I.D. Regulation 2 (Part 202 of this chapter) for ocean freight authorized by the United States upon presentation to A.I.D./W or to a U.S. bank holding and A.I.D. Letter of Commitment) of proof of payment to the ocean carrier. A.I.D. will only reimburse voluntary agencies or cooperatives up to a maximum of 2½ percent commission paid to their freight forwarders as a result of booking Pub. L. 480, Title II cargo. Proof of commissions paid must be submitted with requests for reimbursements.

(e) *Shipping instructions*—(1) Shipments booked by A.I.D. Requests for shipment of commodities shall originate with the cooperating sponsor and shall be submitted to USAID or Diplomatic Post for clearance and transmittal to A.I.D./W. A.I.D./W shall, through cables, airgrams or letters to USAID or Diplomatic Posts, provide cooperating sponsors (and where applicable voluntary agency headquarters) with names of vessels, expected times of arrival (ETAs), and other pertinent information on shipments booked by A.I.D. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail, or by the fastest means available, by the freight forwarder representing A.I.D. to USDA, to USAID or Diplomatic Posts (and where applicable to USAID Controller, voluntary agency headquarters, and voluntary agency field representative), and to the consignee in sufficient time to advise of the arrival of the shipment.

(2) *Shipments booked by non-governmental cooperating sponsor.* Requests for shipment of commodities shall originate with the cooperating sponsor and shall be cleared by the USAID or Diplomatic Post before transmittal to the cooperating sponsor's headquarters for concurrence and issuance. USAID or Diplomatic Post shall promptly clear such requests for shipment of commodities or, if there is reason for delay disapproval, advise the cooperating sponsor and A.I.D./W within seven (7) days of receipt of requests for shipment. After the cooperating sponsor headquarters concurs in the request and issues the order, the original will be sent promptly to A.I.D./W–FFP who forwards it to USDA/ASCS for procurement action with a copy to the USAID or Diplomatic Posts. Headquarters of cooperating sponsors which book their own shipments shall provide their representatives and the USAID or Diplomatic Posts with the names of vessels, expected times of arrival (ETAs) and other pertinent information on shipments booked. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail or by the fastest means available by the freight forwarder, representing the cooperating sponsors to USDA, the USAID or Diplomatic Post (and where applicable to USAID Controller voluntary agencies' representatives), and to the consignee in the country of destination in sufficient time to advise of the arrival of the shipment. However, voluntary agencies will also forward cable advice of actual exportation to their program directors in countries within the Caribbean area which are supplied by vessels having a rapid and short run from U.S. port to destination.

(f) *Tolerances.* Delivery by the United States to the cooperating sponsor at point of transfer of title within a tolerance of 5 percent (2 percent in the case of quantities over 10,000 metric tons) plus or minus, of the quantity ordered for shipment shall be regarded as completion of delivery. There shall be no tolerance with respect to the ocean carrier's responsibility to deliver the

entire cargo shipped and the United States assumes no obligation for failure by an ocean carrier to complete delivery to port of discharge.

§ 211.5 Obligations of cooperating sponsor.

(a) *Plan of operations.* Each cooperating sponsor shall submit to the USAID or Diplomatic Post for their approval, upon which it is submitted for approval of A.I.D./W, within such times and on the forms prescribed by A.I.D./W, a description of the programs it is sponsoring or proposes to sponsor. This plan of operations will be made a part of the Food For Peace Program Agreement after approval by A.I.D. Within the overall objectives of the approved program, elements of the plan of operations may be changed by written agreement of the authorized representatives of the cooperating sponsor, on the one hand, and A.I.D. and CCC, within their respective areas of responsibility, on the other, without formal amendment of the agreement. In case of conflict between the text of the agreement and the approved plan of operations the text of the agreement prevails. This plan of operations will also provide the basic information for preparation of Individual Country Food for Peace Program Agreements developed and renewed annually (or in other period designated) with the cooperating sponsors' counterpart organization and host government where necessary. In addition to any other requirement of law or regulation, the plan for operations will include the following information:

(1) A description of program goals and criteria for measuring progress toward reaching the goals. Each program should be designed to achieve measurable objectives within a specific period of time.

(2) Program Description:

(i) Problem statement: What are the characteristics, extent and severity of problems that the program will address?

(ii) Specification of objectives: Clear concise statement of specific objectives for each program and criteria for measuring progress towards reaching objectives. If there are several objectives, indicate priorities.

(iii) Description of the target population by program, including economic/nutrition related characteristic, that is sufficient to permit a determination of recipient eligibility for Title II commodities. Description of the educational and employment characteristics of the target group, as may be relevant to program objectives. The rationale for selection of the target group. The rationale for selection of geographical areas where programs will be carried out. Calculation of coverage: Percent of total target population reached.

(iv) Description of intervention including: (A) Ration composition: Description of rations, rationale for size and composition, assessment of effectiveness (dilution, sharing, acceptance).

(B) Complementary program components and inputs: Identification of existing or potential complementary program components, i.e., education, growth monitoring, training, etc., that are necessary to achieve program impact, including determination of financial costs and sources of funding.

(C) Monetization of commodities: Describe to whom the food will be sold; the sales price (which shall not be less than the value of the food commodities f.a.s. or f.o.b.), and arrangements for deposit of the monetization proceeds in a segregated, interest bearing account, pending use of the proceeds plus interest for the program.

(D) Intervention strategy: Describe how the food, monetization proceeds, and other program components will address problems.

(v) Linkages with other development activities, such as health or agricultural extension services: Describe specific areas of collaboration relative to program purposes.

(vi) Monitoring and Evaluation: Evaluation plan, including description of information to be collected for purposes of assessing program operations and impact. Description of monitoring system for collection, analysis and utilization of information. Plans for evaluation, as well as plans for conducting internal reviews (§ 211.5(c)).

(vii) Title II programs assume that U.S.G. support will be limited in time. The plan of operation should cover a multi-year time frame, normally three to five years. Such a period should allow enough time for a program to become fully operational and to permit evaluation of its effectiveness, including specific measurement of progress in achieving the stated program goals. Plans for and considerations involved in phasing-out U.S.G. support, and any phasing-over to non-U.S.G. support, should be discussed.

(3) Details of host government, cooperating sponsor and other non-U.S.G. support for the proposed program, with specific budgetary information on how these funds are to be used (e.g. complementary inputs, transport, administration). Where relevant, discussion of arrangements which will be made covering voluntary contributions.

(4) Statement as to how the requirements for public recognition, container markings, and use of funds set forth in § 211.5 (g), (h) and (i) below, and in § 211.6 (a) and (b) below will be met.

(5) A logistics plan that demonstrates the adequacy and availability in a recipient country of port facilities, transportation and storage facilities to handle the flow of commodities to recipients to prevent spoilage or waste. A further affirmation must be made at the time of exportation of the commodity.

(6) Sufficient information concerning the plan of distribution and the target group of recipients so that a determination can be made as to whether the proposed food distribution would result in substantial disincentive to domestic food production.

(7) Description of the method to be used to supervise, monitor, and account for the distribution or sale of commodities and the use of monetized proceeds and other program income.

(8) Information to show approval of foreign government to import the donated commodities duty free.

(9) A Plan of Operations is required for all regular i.e., non-emergency Title II nongovernmental cooperating sponsor programs as part of their submission along with the Annual Estimate of Requirements (AER), to the USAID and/or Diplomatic Post and AID/W. When new multi-year plans of operation are required, they should be prepared and submitted in advance of the year in which they are to begin, in order to permit adequate time for substantive review and approval. In any event, nongovernmental cooperating sponsor plans of operations should be submitted to A.I.D./W no later than the Mission Action Plan covering the following fiscal year's program. Once a plan of operation has been approved, only an updating will be required on an annual basis, unless there has been a significant change from the approved plan program directives, methodology, design or magnitudes. Updates should be submitted each year for review with the AERs.

(10) Plans of Operations for Emergency Programs. The response to emergency situations using Title II resources does not usually permit the same degree of detail and certainty of analysis that is expected in planning Title II non-emergency programs. However, plans of operations are required for all nongovernmental cooperating sponsors emergency programs, along with the AER. A plan of operation for an emergency program must cover the same basic elements, set

forth above, as for a non-emergency program. Thus, all of the above basic issues set forth in the plan of operations format must be addressed when proposing Title II emergency programs as well as regular non-emergency programs.

(11) USAID Mission and/or Diplomatic Posts are expected to comment on the substance and adequacy of the nongovernmental cooperating sponsor plans of operations when submitted to A.I.D./W along with a program request and to address the plan's relationship to and consistency with the Mission's Country Development Strategy.

(12) Cooperating sponsors agree not to deviate from the program as described in the Plan of Operations and other program documents approved by A.I.D., without the prior written approval of A.I.D.

(13) Emergency Assistance Proposals. Any cooperating sponsor (governmental or nongovernmental) may initiate an emergency assistance proposal under Pub. L. 480, Title II. Requests are received by USAID Missions or Diplomatic Posts and reviewed and approved before forwarding to AID/W with appropriate recommendations.

(i) Non-governmental emergency requests can be cabled by the Mission for AID/W review based on information provided and using procedures established for regular programs per § 211.5(a)(2) above; AER and Plan of Operation.

(ii) A foreign government (government-to-government or international organization other than World Food Program) emergency request normally requires more Mission involvement in program design and management.

However, as in the case of non-governmental programs, the approval will be based on a cabled program summary based on the program plan outlined in § 211.5(a)(2) above. On approval, A.I.D./W will prepare a Transfer Authorization (TA) to be signed by the recipient government specifying terms of the program and reporting requirements. USAIDs will find additional guidance in preparing government-to-government or international organizations emergency requests in Chapter 9, and Exhibit A of A.I.D. Handbook 9. The TA serves as the Food for Peace Agreement between the U.S. Government and the cooperating sponsor, serves as the project authorization document, and serves as the authority for the CCC to ship commodities. (Under Pub. L. 480, section 208(c), not later than 15 days after receipt of a call forward from a field mission for commodities, the order shall be transmitted to the CCC.)

(14) Local Currency Projects (Sections 204, 206 and 207). A.I.D./W–FFP and USAIDs will find additional guidance for preparing, approving, implementing and administering these projects in Chapters 6 and 11 of AID Handbook 9.

(b) *Program supervision.* Cooperating sponsors shall provide adequate supervisory personnel for the efficient operation of the program, including personnel to plan, organize, implement, control, and evaluate programs involving distribution of commodities or use of generated funds, and in accordance with A.I.D. guidelines, to make internal reviews including warehouse inspections, physical inventories, and end-use checks of food or funds. Maximum use of volunteer personnel shall be encouraged, but U.S. cooperating sponsors shall be represented by a U.S. citizen, resident in the country of distribution or other nearby country approved by A.I.D./W, who is appointed by and responsible to the cooperating sponsor for distribution of commodities or use of funds in accordance with the provisions of this part. Intergovernmental organizations, foreign cooperating sponsors and the American Red Cross shall be represented by a person appointed by and responsible to these organizations for the supervision and control of the program in the country of distribution in accordance with the provisions of this part.

(c) *Internal Reviews*—(1) *By Nongovernmental cooperating sponsors.* These cooperating sponsors shall perform or arrange to have performed internal reviews on a schedule mutually agreed to, in writing, between USAIDs or the Diplomatic Post and the cooperating sponsor. These should be scheduled at least once a year for multi-year projects and sent to Washington before submitting future commodity requests. Such reviews shall be made by individuals who are sufficiently independent of those who authorize the distribution of Title II commodities, to produce unbiased opinions, conclusions or judgments, in writing. These reviews are to ascertain the effectiveness or management systems and procedures to meet the terms and conditions of this Regulation and the program agreement. The internal review will represent a complete review of the Title II program(s) and the system used should contain a systematic method to assure timely and appropriate resolutions of review findings and recommendations. Copies of these internal reviews must be promptly submitted to AID/W–FFP/PCD, USAID Missions and/or Diplomatic Posts as required in § 211.10(b)(4).

(2) *By Other Cooperating Sponsors.* In the case of programs administered by cooperating governments and by intergovernmental organizations, responsibility for conducting internal audit examinations shall be determined by AID/W on a case by case basis. For records and reporting requirements for emergency programs see § 211.10.

(d) *Commodity requirements; Annual Estimate of Requirements (AER).* Each cooperating sponsor shall submit to the USAID or Diplomatic Post, within such times and on the form (usually the AER) prescribed by A.I.D./W, estimates of requirements showing the quantities of commodities required for each program proposed. Requirements shall be summarized for all programs in the country on a form prescribed by A.I.D./W.

(e) *Determination of eligibility of recipients.* Cooperating sponsors shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities are eligible in accordance with the terms and conditions of the Food for Peace Program Agreement and this part (Regulation 11). Cooperating sponsors shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute commodities are eligible. Commodities shall be distributed free of charge except as provided in paragraph (i) of this section or § 211.5(o), below, or as otherwise authorized by A.I.D./W, but in no case will recipients be excluded from receiving commodities because of inability to make contributions to cooperating sponsor programs.

(f) *No discrimination.* Cooperating sponsors shall distribute commodities to and conduct operations (with food or generated funds) only with eligible recipient agencies and eligible recipients without regard to nationality, race, color, sex, or religious or political beliefs, and shall impose similar conditions upon distribution by recipient agencies.

(g) *Public recognition.* To the maximum extent practicable, and with the cooperation of the host government adequate public recognition shall be given in the press, by radio, and other media that the commodities have been furnished by the people of the United States. At distribution and feeding centers the cooperating sponsor shall, to the extent feasible, display banners, posters, or similar media which shall contain information similar to that prescribed for containers in § 211.6(c).

Recipients' individual identification cards shall, insofar as practicable, be imprinted to contain such information.

(h) *Containers*—(1) *Markings.* Unless otherwise specified in the Food for Peace Program Agreement, when commodities are packaged for shipment from the United States, bags and other containers shall be marked with the CCC contract number or other identification, the A.I.D. emblem and the following information stated in English and, as far as practicable, in the language of the country receiving the commodity:

(i) Name of commodity.

(ii) Furnished by the people of the United States of America.

(iii) Not to be sold or exchanged (where applicable). Emblems or other identification of nongovernmental cooperating sponsors may also be added.

(2) *Disposal of containers.* Cooperating sponsors may dispose of containers, other than containers provided by carriers, in which commodities are received in countries having approved Title II programs, by sale or exchange, or may distribute the containers free of charge to eligible food or fiber recipients for their personal use. If the containers are to be used commercially, the cooperating sponsors must arrange for the removal or obliteration of or cross out the U.S. Government markings from the containers prior to such use.

(i) *Use of funds.* In addition to funds accruing to cooperating sponsors from the sale of containers, funds may also be available from contributions made in maternal, preschool, school and other child feeding programs where voluntary contributions by the recipients will be encouraged on the basis of ability to pay. Funds from these or from any other source under the program shall be used for payment of program costs such as transportation, storage (including the improvement of storage facilities and the construction of warehouses), handling, insect and rodent control, rebagging of damaged or infested commodities, and other expenses specifically authorized by A.I.D. Actual and reasonable out-of-pocket expenses including third party costs incurred in effecting any sale of containers may be deducted from the sales proceeds. Such funds may also be used for payment of indigenous and/or third country personnel employed by cooperating sponsor or recipient agencies in support of Title II programs and for other costs allowable under the approved program. Specifically, foreign currencies generated from any partial or full sales or barter of commodities by a nonprofit voluntary agency or cooperative may be used to transport, store, distribute, and otherwise enhance the effectiveness of the use of commodities and the products thereof donated under Title II; and to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities agreed upon between such agency or cooperative and A.I.D. However, such funds may not be used to acquire, develop, construct, alter or upgrade land, buildings or other real property improvements or structures that are either

(1) Owned or managed by a church or other organizations engaged exclusively in religious activity, or

(2) Used in whole or in part for sectarian purposes.

Cooperating sponsors shall follow their own requirements relating to bid guarantees, performance bonds and payments bonds where program income is used to finance construction or facility improvements, and no more than $100,000 of program income may be used for such purposes unless A.I.D. determines that the U.S. Government's interest is adequately protected by such requirements. The cooperating sponsor shall use commercially reasonable procurement practices in purchasing goods or services with monetization proceeds, funds derived from the program or funds provided by the U.S. Government, and shall employ procedures that prevent fraud, self-dealing, conflicts of interest or noncompetitive procurement. Each voluntary agency including cooperative agrees to use monetization proceeds, program income and funds provided by the U.S. Government only for such costs as would be allowable under the Office of Management and Budget (OMB) Circular No. A-122, "Cost Principles for Nonprofit Organizations," available at the Office of Administration, OMB, Publications Unit, Room G-236, New Executive Office Building, Washington, DC 20503. Title to real and personal property acquired with monetization proceeds, program income or funds provided by the U.S. Government shall be vested in the cooperating sponsor, but the cooperating sponsor shall dispose of such property as directed by the USAID Mission or the Diplomatic Post in the event the program terminates or is transferred to another entity. Records and documents regarding procurement using monetization proceeds, program income or funds provided by the U.S. Government shall be maintained and made available for inspection as required in § 211.10 below.

(j) *Report on Funds.* The cooperating sponsor headquarters shall annually provide A.I.D./W-Office of Food for Peace a report on the receipt and disbursement of all funds. This report should include the source of the funds, by country, and how the funds were used. The cooperating sponsor shall maintain at its headquarters the records supporting the annual report. The annual report should be submitted to A.I.D./W-Office of Food for Peace by December 31 of each calendar year for the fiscal year ended September 30 of that calendar year.

(k) *No displacement of sales.* Except in the case of emergency or disaster situations, the donation of commodities furnished for these programs shall not result in increased availability for export by the foreign country of the same or like commodities and shall not interfere with or displace sales in the recipient country which might otherwise take place. A country may be exempt from this proviso if circumstances warrant. Missions should seek AID/W guidance on this matter.

(l) *Commodities borrowed or exchanged for programs.* After the date of the program approval by A.I.D./W, but before arrival at the distribution point of the commodities authorized herein, the cooperating sponsor may, with prior approval of the USAID or Diplomatic Post, borrow the same or similar commodities from local sources to meet program requirements provided that:

(1) Such of the commodities borrowed as are used in accordance with the terms of the applicable Food for Peace Program Agreement will be replaced with commodities authorized herein on an equivalent value basis at the time and place that the exchange takes place as determined by mutual agreement between the cooperating sponsor and USAID or Diplomatic Post, except that at the request of the cooperating sponsor, the USAID or Diplomatic Post may determine that such replacement may be made on some other justifiable basis;

(2) Packaged commodities which are borrowed shall be appropriately identified in the language of the country of distribution as having been furnished by the people of the United States; and

(3) Suitable publicity shall be given to the exchange of commodities as provided in paragraph (g) of this section and containers for borrowed commodities shall be marked to the extent practicable in accordance with § 211.6(c).

(m) *Commodity transfer between programs.* After the date of program

approval by A.I.D./W, but before distribution of the commodities authorized herein by the recipient agency, the USAID or the Diplomatic Post, or the cooperating sponsor with prior approval of the USAID or Diplomatic Post, may transfer commodities between approved Title II programs to meet emergency disaster requirements or to improve efficiency of operation; for example, to meet temporary shortages due to delays in ocean transportation, or provide for rapid distribution of stocks in danger of deterioration. Transfers may also be made to disaster organizations for use in meeting exceptional circumstances. Commodity transfers shall be made at no cost to the U.S. Government and with the concurrence of the cooperating sponsor or disaster organization concerned. The USAID or the Diplomatic Post may, however, provide funds to pay the costs of transfers to meet extraordinary relief requirements, in which case A.I.D./W shall be advised promptly of the details of the transfer. Commodities transferred as described above shall not be replaced by the U.S. Government unless A.I.D./W authorizes such replacement.

(n) *Disposal of excessive stock of commodities.* If commodities are on hand which cannot be utilized in accordance with the applicable Food for Peace Program Agreement, the cooperating sponsor shall promptly advise USAID or the Diplomatic Post of the quantities, location, and condition of such commodities, and where possible shall propose an alternate use of the excess stocks; USAID or Diplomatic Post shall determine the most appropriate use of the excess stocks, and with prior A.I.D./W concurrence, shall issue instructions for disposition. Transportation costs and other charges attributable to transferring commodities from one program to another within the country shall be the responsibility of the cooperating sponsor, except that in case of disaster or emergency, A.I.D./W may authorize the use of disaster or emergency funds to pay for the costs of such transfers. (As to unfit commodity disposal, see § 211.8 below.)

(o) *Monetization programs.* For programs in which the sale of commodities is authorized by A.I.D., § 211.5 (e) and (f) herein are not applicable to the extent they prohibit or restrict the sale or distribution to end users of the commodities approved for monetization, and §§ 211.5(h) and 211.6(c) herein are not applicable to the extent they require the marking or labeling of the containers of such commodities. Cooperating sponsors do not need to monitor, manage, report on or account for the distribution or use of commodities after all sales proceeds have been fully deposited in an account established by the cooperating sponsor and title to the commodities has passed to buyers or other third parties pursuant to a sale under a monetization program. However, the sales proceeds and the uses thereof must be monitored, managed, reported and accounted for as provided in §§ 211.5(i), 211.5(j), 211.10 and other relevant sections of this Regulation. It is not mandatory that commodities approved for monetization be imported and sold free of all duties and taxes, but nongovernmental cooperating sponsors may negotiate agreements with the host government permitting the tax-free import and sale of such commodities. Even where the cooperating sponsor negotiates tax-exempt status, the prices at which the cooperating sponsor sells the commodities to the purchaser should reflect prices that would be obtained in a commercial transaction, i.e., the prices would include the cost of duties and taxes. Thus, the amounts normally paid for duties and taxes would accrue for the benefit of the cooperating sponsor's approved program.

(p) *Trilateral exchange programs.* The restrictions herein regarding the distribution, use or labeling of commodities shall not apply to commodities furnished by the CCC in exchange for other commodities received from third parties ("exchanged commodities") to be distributed in a recipient country under a trilateral exchange program. Except as the U.S. Government and the cooperating sponsor may otherwise agree in writing, title to the exchanged commodities will pass to the cooperating sponsor upon delivery to and acceptance by the cooperating sponsor at the point of delivery specified in the program documents. After title passes to the cooperating sponsor the exchanged commodities shall be deemed "commodities" covered by this Regulation with respect to all post-delivery obligations of the cooperating sponsor contained in this Regulation, including obligations regarding labeling, distribution, monitoring, reporting, accounting and use of commodities.

§ 211.6 Processing, repackaging, and labeling commodities.

(a) *Commercial processing and repackaging.* Cooperating sponsors or their designees may arrange for processing commodities into different end products and for packaging or repackaging commodities prior to distribution. When commercial facilities are used for processing, packaging or repackaging, cooperating sponsors or their designees shall enter into written agreements for such services. Except in the case of commodities and/or containers provided to foreign governments for sale under section 206 of Pub. L. 480, the agreements must have the prior approval of the USAID or Diplomatic Post in the country of distribution. Except as A.I.D./W otherwise agrees, the executed agreements shall provide as a minimum that:

(1) No part of the commodities delivered to the processing, packaging, or repackaging company shall be used to defray processing, packaging, repackaging, or other costs, except as provided in paragraph (a)(2) of this section, immediately below.

(2) When the milling of grain is authorized in the cooperating country, the U.S. will not pay any part of the processing costs, directly or indirectly, except that with the prior approval of A.I.D./W, the value of the offal may be used to offset such part of the processing costs as it may cover.

(3) The party providing such services shall:

(i) Fully account to the cooperating sponsor for all commodities delivered to the processor's possession and shall maintain adequate records and submit periodic reports pertaining to the performance of the agreement;

(ii) Be liable for the value of all commodities not accounted for as provided in § 211.9(g);

(iii) Return or dispose of the containers in which the commodity is received from the cooperating sponsor according to instructions from the cooperating sponsor; and

(iv) Plainly label carton, sacks, or other containers containing the end product in accordance with paragraph (c) of this section, below.

(b) *Use of cooperating sponsor facilities.* When cooperating sponsors utilize their own facilities to process, package, or repackage commodities into different end products, and when such products are distributed for consumption off the premises of the cooperating sponsor, the cooperating sponsor shall plainly label the containers as provided in paragraph (c) of this section, and banners, posters, or similar media which shall contain information similar to that prescribed in paragraph (c) of this section, shall be displayed at the distribution center. Recipients' individual identification cards shall to the maximum extent practicable be imprinted to contain such information.

(c) *Labeling.* If prior to distribution the cooperating sponsor arranges for packaging or repackaging donated commodities, the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled with the A.I.D. emblem, in the language of the country in which the commodities are to be distributed, with the following information:

(1) Name of commodity;

(2) Furnished by the people of the United States of America; and

(3) Not to be sold or exchanged (where applicable). Emblems or other identification of nongovernmental cooperating sponsors may also be added.

(d) Where commodity containers are not used. When the usual practice in a country is not to enclose the end product in a container, wrapper, sack, etc., the cooperating sponsor shall, to the extent practicable, display banners, posters, or other media, and imprint on individual recipient identification cards information similar to that prescribed in paragraph (c) of this section.

§ 211.7 Arrangements for entry and handling in foreign country.

(a) *Costs at discharge ports.* Except as otherwise agreed upon by A.I.D./W and provided in the applicable shipping contract or in paragraphs (d) and (e) of this section, the cooperating sponsor shall be responsible for all costs, other than those assessed by the delivering carrier either in accordance with its applicable tariff for delivery to the discharge port or in accordance with the applicable charter or booking contract. The cooperating sponsor shall be responsible for all costs for:

(1) Distributing the commodity as provided in the Food for Peace Program Agreement to end users,

(2) For demurrage, detention, and overtime, and

(3) For obtaining independent discharge survey reports as provided in § 211.9.

The cooperating sponsor shall also be responsible for wharfage, taxes, dues, and port charges assessed and collected by local authorities from the consignee, and for lighterage (when not a custom of the port), and lightening costs when assessed as a charge separate from the freight rate.

(b) *Duty, taxes, and consular invoices.* Except for commodities which are to be monetized (sold) under an approved Plan of Operation (see § 211.5(o) above), commodities shall be admitted duty free and exempt from all taxes. Consular invoices shall not be required unless specific provision is made in the Food for Peace Program Agreement. If required, they shall be issued without cost to the cooperating sponsor or to the Government of the United States. The cooperating sponsor shall be responsible for ensuring prompt entry and transit in the foreign country(ies) and for obtaining all necessary import permits, licenses or other appropriate approvals for entry and transit, including phytosanitary, health and inspection certificates.

(c) *Storage facilities and transportation in foreign countries.* Cooperating sponsors shall make all necessary arrangements for receiving the commodities and assume full responsibility for storage and maintenance of commodities from time of delivery at port of entry abroad or, when authorized, at other designated points of entry abroad agreed upon between the cooperating sponsor and A.I.D. Before recommending approval of a program to A.I.D./W, USAID or Diplomatic Post shall obtain from the cooperating sponsor, assurance that provision has been made for internal transportation, and for storage and handling which are adequate by local commercial standards. The cooperating sponsor shall be responsible for the maintenance of commodities in such manner as to assure distribution of the commodities in good condition to recipient agencies or eligible recipients.

(d) *Inland transportation in intermediate countries.* In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be arranged by the cooperating sponsor unless otherwise provided in the Food for Peace Program Agreement or other program document. Nongovernmental cooperating sponsors shall handle claims arising from loss or damage in the intermediate country, in accordance with § 211.9(e). Other cooperating sponsors shall assign any rights that they may have to any claims that arise in the intermediate country to USAID which shall pursue and retain the proceeds of such claims.

(e)(1) *Authorization for Reimbursement of Costs.* If, because of packaging damage, it is determined by a nongovernmental cooperating sponsor that commodities must be repackaged to ensure that the commodities arrive at the distribution point in a wholesome condition, the nongovernmental cooperating sponsor may incur expenses for such repackaging up to $500.00 and such costs will be reimbursed to the nongovernmental cooperating sponsor by CCC. If costs will exceed $500.00, the authority to repackage and incur the costs must be approved by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived, in writing, by the USAID or Diplomatic Post. For losses in transit, the $500.00 limitation shall apply to all commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. For other losses, the $500.00 limitation shall apply to each loss situation, e.g., if 700 bags are damaged in a warehouse due to an earthquake, the $500.00 limitation applies to the total cost of repackaging the 700 bags. Shipments are not to be artificially divided into multiple units, in search of multiple $500 limitations.

(2) *Method of Reimbursement.*—(i) *Repackaging Required Because of Damage Occurring Prior to or During Discharge from the Ocean Carrier.* Costs of such reconstitution or repackaging should be included, as a separate item in claims filed against the ocean carrier (see § 211.9(c)). Full reimbursement of such costs up to $500.00 will be made by CCC, Kansas City Management Office, upon receipt of invoices or other documents to support such costs. For amounts expended in excess of $500.00, reimbursement will be made upon receipt of supporting invoices or other documents establishing the costs of repackaging and showing the prior approval of the USAID or Diplomatic Post to incur the costs (unless approval waived, see § 211.7(e)(1)).

(ii) *Repackaging Required Because of Damage Caused After Discharge of the Cargo from the Ocean Carrier.* Costs of such repackaging will be reimbursed to the agency or organization by CCC (USDA–ASCS Financial Management Division, 14th & Independence Avenue, Washington, DC 20250) upon receipt of documentation as set forth in § 211.7(e)(2) of this chapter.

§ 211.8 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to cooperating sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to the cooperating sponsor (other than a nongovernmental cooperating sponsor, which shall arrange for such inspection) at discharge port or point of entry overseas, the USAID or Diplomatic Post shall immediately arrange for inspection by a public health official or other competent authority. If the commodity is determined to be unfit for human consumption, the USAID or Diplomatic Post shall dispose of it in accordance with the priority set forth in paragraph

(b) of this section. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by USAID or the Diplomatic Post from the sales proceeds, from CCC Account No. 20 FT 401 or from special Title II, Pub. L. 480 Agricultural Commodity Account. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer American Embassy, for the credit of CCC Account No. 20 FT 401.

(b) *After delivery to cooperating sponsor.* If after arrival in a foreign country it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Food for Peace Program Agreement, the cooperating sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by USAID or the Diplomatic Post. If no competent local authority is available, the USAID or Diplomatic Post may determine whether the commodities are unfit for human consumption, and if so may direct disposal in accordance with paragraphs (b)(1) through (4) of this section, below. The cooperating sponsor shall arrange for the recovery for authorized use of that part designated during the inspection as suitable for program use. If, after inspection, the commodity (or any part thereof) is determined to be unfit for authorized use the cooperating sponsor shall notify USAID or the Diplomatic Post of the circumstances pertaining to the loss or damage as prescribed in § 211.9(f). With the concurrence of USAID or the Diplomatic Post, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(1) By transfer to an approved Food for Peace Program for use as livestock feed. A.I.D./W shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(2) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated, removed or crossed out;

(3) By donation to a governmental or charitable organization for use as animal feed or for other nonfood use; and

(4) If the commodity is unfit for any use or if disposal in accordance with paragraph (b) (1), (2), or (3) of this section, immediately above, is not possible, the commodity shall be destroyed under the observation of a representative of USAID or Diplomatic Post, if practicable, in such manner as to prevent its use for any purpose. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by the cooperating sponsor unless it is determined by the USAID or the Diplomatic Post that the damage could not have been prevented by the proper exercise of the cooperating sponsor's responsibility under the terms of the Food for Peace Program Agreement. Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sales proceeds and, except for monetization programs, the net proceeds shall be deposited with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20 FT 401. In monetization programs, net proceeds shall be deposited in the special account used for such funds for purposes of the approved program. The cooperating sponsor shall promptly furnish USAID or the Diplomatic Post a written report of all circumstances relating to the loss and damage. The report or supplemental report shall include a certification by a public health official or other competent authority of the exact quantity of the damaged commodity disposed of because it was determined to be unfit for human consumption.

§ 211.9 Liability for loss, damage or improper distribution of commodities.

(a) *Fault of cooperating sponsor prior to loading on ocean vessel.* If a nongovernmental cooperating sponsor books cargo for ocean transportation and is unable to have a vessel at the U.S. port of export for loading in accordance with the agreed shipping schedule, the nongovernmental cooperating sponsor shall immediately notify the USDA. The USDA will determine whether the commodity shall be:

(1) Moved to another available outlet;

(2) Stored at the port for delivery to the nongovernmental cooperating sponsor when a vessel is available for loading; or

(3) Disposed of as the USDA may deem proper.

When additional expenses are incurred by CCC as a result of a failure of the voluntary agency or intergovernmental organization, or their agent, to meet the agreed shipping schedule, or to make necessary arrangements to accept commodities at the points of delivery designated by CCC, and it is determined by CCC that the expenses were incurred because of the fault or negligence of the nongovernmental cooperating sponsor, the cooperating sponsor shall reimburse CCC for such expenses or take such action as directed by CCC.

(b) *Fault of others prior to loading on ocean vessel.* Upon the happening of any event creating any rights against a warehouseman, carrier, or other person for the loss of or damage to a commodity occurring between the time title is transferred to a non-governmental cooperating sponsor and the time the commodity is loaded on board vessel at designated port of export, the non-governmental cooperating sponsor shall immediately notify CCC and promptly assign to CCC any rights to claims which may accrue to them as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate and prosecute, and retain the proceeds of all claims for such loss or damage.

(c) *Ocean carrier loss and damage—*

(1) *Survey and outturn reports.* (i) Cooperating sponsors shall arrange for an independent cargo surveyor to attend the discharge of the cargo and to count or weigh the cargo and examine its condition, unless USAID or the Diplomatic Post determines that such examination is not feasible, or if CCC has made other provisions for such examinations and reports. The surveyor shall prepare a report of its findings showing the quantity and condition of the commodities discharged. The report shall also show the probable cause of any damage noted, and set forth the time and place when the examination was made. If practicable, the examination of the cargo shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties. Customs receipts, port authority reports, shortlanding certificates, cargo boat notes, stevedore's tallies, etc., where applicable, shall be obtained and furnished with the report of the surveyor. The cooperating sponsor shall obtain a certification by public health official or similar competent authority as to—

(A) The condition of the commodity in any case where a damaged commodity appears to be unfit for its intended use; and

(B) A certificate of disposition in the event the commodity is determined to be unfit for its intended use.

Such certificates shall be obtained as soon as possible after discharge of the cargo. In any case where the cooperating sponsor can provide a narrative chronology or other commentary to assist in the adjudication of ocean transportation claims, such information should be forwarded. Cooperating sponsors shall prepare such a statement in any case where the loss

is estimated to be in excess of $5,000.00. All documentation shall be in English or supported by an English translation and shall be forwarded as set forth in paragraph (c) (1) (iii) and (iv) of this section, below. The cooperating sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the cooperating sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the cooperating sponsor shall provide the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. In the case of bulk grain shipments, the cooperating sponsor shall obtain the services of an independent surveyor to—

(A) Observe the discharge of the cargo,

(B) Report on discharging techniques and furnish information as to whether cargo was carefully discharged in accordance with the customs of the port,

(C) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence,

(D) Advise on the quality of sweepings,

(E) Obtain copies of port and/or vessel records, if possible, showing quantity discharged,

(F) Provide immediate notification to cooperating sponsor if additional services are necessary to protect cargo interests or if surveyor has reason to believe that the correct quantity was not discharged.

The cooperating sponsor, in the case of damage to bulk grain shipments, shall obtain and provide the same documentation regarding quality of cargo as set forth in § 211.8(a) of this part and paragraph (c)(1)(i) of this section, above. In the case of shipments arriving in container vans, cooperating sponsors shall require the independent surveyor to list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying the contents as soon as possible after opening.

(iii) Cooperating Sponsors shall send copies to USDA of all reports and documents pertaining to the discharge of commodities.

(iv) CCC will reimburse the nongovernmental cooperating sponsor for the costs incurred by them in obtaining the services of an independent surveyor to conduct examinations of the cargo and render the report set forth above. Reimbursement by CCC will be made upon receipt by CCC of the survey report and the surveyor's invoice or other documents that establish the survey cost. However, CCC will not reimburse a nongovernmental cooperating sponsor for the costs of only a delivery survey, in the absence of a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless such deviation from the documentation requirements of this part, § 211.9(c)(1), is justified to the satisfaction of CCC.

(v) CCC will normally contract for the survey of cargo on shipments furnished under Transfer Authorizations. Survey contracts will normally be let on a competitive bid basis. However, if a USAID or Diplomatic Post desires that CCC limit its consideration to only certain selected surveyors, the USAID or Diplomatic Post shall furnish A.I.D./W a list of eligible surveyors for forwarding to CCC. Surveyors may be omitted from the list, for instance, based on foreign relations considerations, conflicts of interest, and/or lack of demonstrated capability to properly carry out surveying responsibilities as set forth in the requirements of CCC. A.I.D./W will furnish CCC's surveying requirements to a USAID or Diplomatic Post upon request. If CCC is unable to find a surveyor at a port to which a shipment has been consigned, CCC may request A.I.D./W to contact the USAID or Diplomatic Post to arrange for a survey. The surveyor's bill for such services shall be submitted to the USAID or Diplomatic Post for review. After the billing has been approved, the USAID or Diplomatic Post may either pay the bill or forward the bill to A.I.D./W for transmittal to CCC for payment. If the USAID or Diplomatic Post pays the bill, A.I.D./W shall be advised of the amount paid and CCC will reimburse the USAID or Diplomatic Post.

(2) *Claims against ocean carriers.* (i) Whether or not title to the commodities has been transferred from CCC to the cooperating sponsor, if A.I.D. or its agents or representatives contracted for the ocean transportation, CCC shall have the right to initiate and prosecute, and retain the proceeds of, all claims against ocean carriers for cargo loss and damage arising out of shipments of commodities transferred or delivered by the CCC hereunder.

(ii)(A) Unless otherwise provided in the Food for Peace Program Agreement or other program document, nongovernmental cooperating sponsors shall file notice of any cargo loss and damage with the carrier immediately upon discovery of any such loss and damage and shall promptly initiate claims against the ocean carriers for cargo loss and damage and shall take all necessary action to obtain restitution for losses within any applicable periods of limitations and shall transmit to CCC copies of all such claims. However, the nongovernmental cooperating sponsor need not file a claim when the cargo loss is not in excess of $25, or in any case when the loss is in excess of $25, but not in excess of $100 and it is determined by the nongovernmental cooperating sponsor that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental cooperating sponsor shall transmit to CCC copies of all claims filed with the ocean carriers for cargo loss and damage, as well as information and/or documentation on shipments when no claim is to be filed. When General Average (see definition) has been declared, no action will be taken by the nongovernmental cooperating sponsor to file or collect claims for loss or damage to commodities. (See paragraph (c)(2)(iii) of this section, below.)

(B) *Determination of value.* When payment is made for commodities misused, lost or damaged, the value shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred, or, in case it is not feasible to obtain or determine such market price, the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the Government of the United States in making delivery to the cooperating sponsor. When the value is determined on a cost basis, the nongovernmental cooperating sponsors may add to the value any provable costs they have incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss and/or damage claims, at the request of the cooperating sponsor and/or upon the recommendation of the USAID or Diplomatic Post, A.I.D./W may determine that such value may be determined on some other justifiable basis. When replacement is made, the value of commodities misused, lost or damaged, shall be their value at the time and place the misuse, loss, or damage

occurred and the value of the replacement commodities shall be their value at the time and place replacement is made.

(C) Amounts collected by nongovernmental cooperating sponsors on claims against ocean carriers not in excess of $100 may be retained by the nongovernmental cooperating sponsor. On claims involving loss or damage having a value in excess of $100 the nongovernmental cooperating sponsors may retain from collections received by them, the larger of—

(1) The amount of $100 plus 10 percent of the difference between $100 and the total amount collected on the claim, up to a maximum of $350, or

(2) Actual administrative expenses incurred in collection of the claim; provided retention of such expenses is approved by CCC.

Collection costs shall not be deemed to include attorneys fees, fees of collection agencies, and the like. In no event will collection costs in excess of the amount collected on the claim be paid by CCC. The nongovernmental cooperating sponsors may also retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling, packing, and insurance costs, which the nongovernmental cooperating sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(D) The nongovernmental cooperating sponsor may redetermine claims on the basis of additional documentation or information, not considered when the claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by CCC is not required regardless of amount. However copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(E) The nongovernmental cooperating sponsor may negotiate compromise settlements of claims regardless of the amount thereof, except that proposed compromise settlements of claims having a value in excess of $5,000 shall not be accepted until such action has been approved in writing, by CCC. When a claim is compromised, the nongovernmental cooperating sponsor may retain from the amount collected, the amounts authorized in paragraph (c)(2)(ii)(c) of this section, above, and in addition, an amount representing such percentage of the special charges described in paragraph (c)(2)(ii)(c) of this section as the compromised amount is to the full amount of the claim. When a claim is not in excess of $600, the nongovernmental cooperating sponsor may terminate collection activity on the claim according to the standards set forth in 4 CFR 104.3. Approval of such termination by CCC is not required but the nongovernmental cooperating sponsor shall notify CCC when collection activity on a claim is terminated.

(F) All amounts collected in excess of the amounts authorized herein to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by the nongovernmental cooperating sponsor from the proceeds of claims filed against ocean carriers, the word "claim" shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. If a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the liable party or parties, the rights of the nongovernmental cooperating sponsor to the claim shall be assigned to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Nongovernmental cooperating sponsors shall promptly assign their claim rights to CCC upon request. In the event CCC effects collection or other settlement of the claim after the rights of the nongovernmental cooperating sponsor to the claim have been assigned CCC, CCC shall, except as shown below, pay to the nongovernmental cooperating sponsor the amount the agency or organization would have been entitled to retain had they collected the same amount. However, the additional 10 percent on amounts collected in excess of $100 will be payable only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is deemed to be commensurate with the extra efforts exerted in further documenting claims. Further, if CCC determines that the documentation requirements of § 211.9(c)(1), above, have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC reserves the right to deny payment of all allowances to the nongovernmental cooperating sponsor.

(G) When nongovernmental cooperating sponsors fail to file claims, or permit claims to become time-barred, or fail to provide for the right of CCC to assert such claims, as provided in this § 211.9, and it is determined by CCC that such failure was due to the fault or negligence of the nongovernmental cooperating sponsor, the agency or organization shall be liable to the United States for the cost and freight (C&F) value of the commodities lost to the program.

(iii) If a cargo loss has been incurred on a nongovernmenal cooperating sponsor shipment, and general average has been declared, the nongovernmental cooperating sponsor shall furnish to the Chief Claims and Collections Division, Kansas City ASCS Management Office, P.O. Box 205, Kansas City, Missouri, ZIP 64141, with a duplicate copy to A.I.D./W-PDC/FFP/POD, 2201 C Street, NW., Washington, DC 20523—

(A) Copies of booking confirmations and the applicable on-board bill(s) of lading,

(B) The related outturn or survey report(s),

(C) Evidence showing the amount of ocean transportation charges paid to the carrier(s), and

(D) An assignment to CCC of the cooperating sponsor's right to the claim(s) for such loss.

(d) *Fault of cooperating sponsor in country of distribution.* If the cooperating sponsor improperly distributes or permits a commodity or proceeds from the sale thereof or program income to be used for a purpose not permitted under the Food for Peace Program Agreement, other program documents or this part, or causes loss or damage to a commodity through any act or omission or fails to provide proper storage, care, and handling, the cooperating sponsor shall pay to the United States the value of the commodities, proceeds or program income, lost, damaged, or misused (or may, with prior USAID approval, replace such commodities with similar commodities of equal value), unless it is determined by A.I.D. that such improper distribution or use, or such loss or damage, could not have been prevented by proper exercise of the cooperating sponsor's responsibility under the terms of the agreement. Normal commercial practices in the country of distribution shall be considered in determining whether there was a proper exercise of the cooperating sponsor's responsibility. Payment by the cooperating sponsor shall be made in accordance with paragraph (g) of this section.

(e) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey and/or outturn reports to determine ocean carrier loss and damage, the cooperating

sponsor shall, in the case of land-locked countries, arrange for an independent survey at the point of entry into the recipient country and to make a report as set forth in § 211.9(c)(1), above. CCC will reimburse the cooperating sponsor for the costs of survey as set forth in § 211.9(c)(1)(iv).

(2) Upon the happening of any event creating any rights against a warehouseman, carrier or other person for the loss of, damage to, or misuse of any commodity or for the loss or misuse of monetized proceeds or program income, the cooperating sponsor shall make every reasonable effort to pursue collection of claims against the liable party or parties for the value of the commodity lost, damaged, or misused or the value of the monetized proceeds or program income and furnish a copy of the claim and related documents to USAID or Diplomatic Post. Cooperating sponsors who fail to file or pursue such claims shall be liable to A.I.D. for the value of the commodities or monetized proceeds or program income lost, damaged, or misused: Provided, however, That the cooperating sponsor may elect not to file a claim if the loss is less than $300 and such action is not detrimental to the program. Cooperating sponsors may retain $100 of any amount collected on an individual claim. In addition, cooperating sponsors may, with the written approval of the USAID or Diplomatic Post, retain special costs such as legal fees that they have incurred in the collection of a claim. Any proposed settlement for less than the full amount of the claim must be approved by the USAID or Diplomatic Post prior to acceptance. When the cooperating sponsor has exhausted all reasonable attempts to collect a claim, it shall request the USAID or Diplomatic Post to provide further instructions.

(3) Claims Resulting on Shipments of Commodities from Port of Entry Enroute to Point of Destination in Landlocked Countries. These claims should be filed by the cooperating sponsor based on losses from an entire shipment as an individual claim (i.e. based on an ocean freight Bill of Lading or independent survey report conducted at the time the commodity is offloaded at port of entry), assuming that the claim covers a contract with one carrier, and that the shipment has not been artificially broken down. The individual claim may not be artificially broken down by the cooperating sponsor in order to enlarge the amount that the cooperating sponsor may retain.

(4) Reasonable attempts to collect the claim shall not be less than follow-up of initial billings with three progressively stronger demands at not more than 30-day intervals. If these efforts fail to elicit a satisfactory response, legal action in the judicial system of the cooperating country should be pursued unless liability of the third party is not provable, the cost of pursuing the claim would exceed the amount of the claim or the A.I.D. Mission or Diplomatic Post otherwise approves a request from the cooperating sponsor that it should not take further action on the claim. A cooperating sponsor's decision that liability is not provable or the cost of legal action would exceed the amount of the claim must be supported by the opinion of competent counsel and must be submitted to the USAID Mission or Diplomatic Post for review and approval.

(5) If the A.I.D. Mission or Diplomatic Post approves a cooperating sponsor's decision not to take further action on the claim, the cooperating sponsor shall assign the claim to A.I.D. upon request, and shall provide to A.I.D. all documentation relating to the claim. The rights of the cooperating sponsor to the claim shall be assigned to A.I.D. in sufficient time to permit the filing of legal action, if A.I.D. chooses to do so, prior to the expiration of any period of limitation applicable to the claim under the laws of the cooperating country.

(6) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the cooperating sponsor and the cooperating country may agree to settle disputed claims by an appropriate administrative procedure and/or arbitration. This alternative may be established in the Individual Country Food for Peace Program Agreement required under § 211.3(b), or by a separate formal understanding and must be submitted to the USAID Mission or Diplomatic Post for review and approval. Resolution of disputed claims by any administrative procedure or arbitration agreed to by the cooperating sponsor and the cooperating country should be final and binding on the parties.

In the event it is necessary for the USAID Mission or Diplomatic Post to take an assignment of a claim or claims from a cooperating sponsor, the A.I.D. Mission or Diplomatic Post shall consult with A.I.D./Washington regarding the appropriate action to take on the assigned claim or claims.

(f) *Reporting losses to USAID or Diplomatic Post.* The cooperating sponsor shall promptly notify USAID or the Diplomatic Post, in writing, of the circumstances pertaining to any loss, damage, or misuse occurring within the country of distribution or intermediate country and shall include information as to the name of the responsible party; kind and quantities of commodities; size and type of containers; the time and place of misuse, loss or damage, the current location of the commodity; and the Food for Peace Program Agreement number, the CCC contract numbers, if known, or if unknown, other identifying numbers printed on the commodity containers, the action taken by the cooperating sponsor with respect to recovery or disposal; and the estimated value of the commodity. If any of the above information is not available, an explanation of its unavailability shall be made by the cooperating sponsor. Similar information should also be reported regarding any loss or misuse of monetized proceeds or program income.

(g) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in currency in which freight is paid, or a pro rata share of each) and shall be remitted (less amounts authorized to be retained) by nongovernmental cooperating sponsors to CCC. Claims against nongovernmental cooperating sponsors shall be paid to CCC or A.I.D./W in U.S. dollars. With respect to commodities lost, damaged or misused, amounts paid by other cooperating sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably, in U.S. dollars with instructions to credit the deposit to CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401. With respect to monetized proceeds and program income, amounts recovered may be deposited in the special account used for such funds and may thereafter be used for purposes of the approved program.

(h) *General average.* CCC shall—

(1) Be responsible for settling general average and marine salvage claims,

(2) Retain the authority to make or authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted, and receive and retain any monetary proceeds resulting from such disposition,

(3) In the event of a declaration of general average, initiate and prosecute, and retain all proceeds of, cargo loss and damage claims against ocean carriers, and

(4) Receive and retain any allowance in general average.

CCC will pay any general average or marine salvage claims determined to be due.

§ 211.10 Records and reporting requirements of cooperating sponsor.

(a) *Records.* Cooperating sponsors shall maintain records and documents in a manner which will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale, inspection and use of commodities. This shall include a periodic summary report and records of receipt and disbursement of any funds accruing from the sale of commodities and the operation of the program. Such records shall be retained for a period of 3 years from the close of the U.S. fiscal year to which they pertain, or longer, upon request by A.I.D. for cause, such as in the case of litigating a claim or audit concerning such records. The cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D.

(b) *Reports.* Cooperating sponsors shall submit reports to the USAID or Diplomatic Post and to A.I.D./W, not less than annually relating to progress and problems in the implementation of the program, and inspection or evaluation reports, as required by A.I.D./W or as agreed upon between USAID or Diplomatic Post and the cooperating sponsor and approved by A.I.D./W. The following is a list of the principal types of reports that are to be submitted:

(1) Periodic summary reports showing receipt, distribution, and inventory of commodities and proposed schedules of shipments or call forwards.

(2) In the case of Title II sales monetization agreements in accordance with section 206 or section 207 of the Act, the cooperating sponsor, whether governmental or nongovernmental, is directly responsible for reporting on programs involving the use of funds for purposes specified in the agreement.

(3) Reports relating to progress and problems in the implementation of the program, and inspection reports, as may be required from time to time by A.I.D./W or as may be agreed upon between the USAID or Diplomatic Post and the cooperating sponsor and approved by A.I.D./W.

(4) Reports of all comprehensive internal reviews prepared in accordance with § 211.5(c), above, shall be submitted to the USAID or Diplomatic Post for review as soon as completed and in sufficient detail to enable the USAID or Diplomatic Post to assess and to make recommendations as to the ability of the cooperating sponsors to effectively plan, manage, control and evaluate the Food for Peace programs under their administration.

(5) Emergency Programs. At the time that an emergency program under Pub. L. 480, Title II is initiated, whether on a governmental or nongovernmental basis, the Mission should:

(i) Make a determination regarding the ability of the cooperating sponsor to perform the record-keeping required by this § 211.10 and

(ii) In those instances in which those specific record-keeping requirements cannot be followed, due to emergency circumstances, specify exactly which essential information will be recorded in order to account fully for Title II commodities.

(6) Reports accounting for the generation and use of program income.

(c) *Inspection and audit.* Cooperating sponsors shall cooperate with and give reasonable assistance to U.S. Government representatives to enable them at any reasonable time to examine activities and records of the cooperating sponsors, processors, or others, pertaining to the receipt, storage, distribution, processing, repackaging, sale and use of commodities by recipients; to inspect commodities in storage, or the facilities used in the handling or storage of commodities; to inspect and audit records, including financial records and reports pertaining to storage, transportation, processing, repackaging, distribution, sale and use of commodities; the deposit of and use of any Title II generated local currencies; to review the overall effectiveness of the program as it relates to the objectives set forth in the Food for Peace Program Agreement; and to examine or audit the procedure and methods used in carrying out the requirements of this part (Regulation 11). Inspections and audits of Title II emergency programs will take into account the circumstances under which such programs are carried out.

§ 211.11 Termination of program.

All or any part of the assistance provided under the program, including commodities in transit, may be terminated or suspended by A.I.D. at its discretion if the cooperating sponsor fails to comply with the provisions of the Food for Peace Program Agreement, this part, or if it is determined by A.I.D. that the continuation of such assistance is no longer necessary or desirable. Under such circumstances title to commodities which have been transferred to the cooperating sponsor, or Title II generated funds, shall at the written request of USAID, the Diplomatic Post, or A.I.D./W, be transferred to the U.S. Government by the cooperating sponsor. Any excess commodities on hand at the time the program is terminated shall be disposed of in accordance with § 211.5(l) or as otherwise instructed by USAID or the Diplomatic Post. If it is determined that any commodity to be supplied under the Food for Peace Program Agreement is no longer available for Food for Peace programs, such authorization shall terminate with respect to any commodities which, as of the date of such determination have not been delivered f.o.b. or f.a.s. vessel, provided every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

§ 211.12 Waiver and amendment authority.

The Assistant Administrator for Food for Peace and Voluntary Assistance, may waive, withdraw, or amend, at any time, any or all of the provisions of this Part 211 (Regulation 11) if such provision is not statutory and it is determined to be in the best interest of the U.S. Government to do so. Any cooperating sponsor which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto may at the discretion of A.I.D. be suspended or disqualified from further participation in any distribution program.

Reinstatement may be made at the option of A.I.D.

Disqualification shall not prevent A.I.D. from taking other action through other available means when considered necessary.

Appendix I to Part 211—Legislation

The Agricultural Trade Development Assistance Act of 1954, as amended (Public Law 480) implemented by the Regulation in this part (as of the date of issuance of this part) includes legislation pertaining to Pub. L. 480, Title II activities as follows:

Title II Legislation

(1) Section 2(3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides that in furnishing food aid, the President shall:

"relate United States food assistance to efforts by aid-receiving countries to increase their own agricultural production, with emphasis on development of small, family farm agriculture, and improve their facilities for transportation, storage, and distribution of food commodities."

(2) Section 201 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) The President is authorized to determine requirements and furnish agricultural commodities on behalf of the people of the United States of America, to

meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing areas, and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. The Commodity Credit Corporation shall make available to the President such agricultural commodities determined to be available under section 401 as he may request.

(b) The minimum quantity of agricultural commodities distributed under this title for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, shall be 1,900,000 metric tons, of which not less than 1,425,000 metric tons for nonemergency programs shall be distributed through nonprofit voluntary agencies, cooperatives, and the World Food Program; unless the President determines and reports to the Congress, together with his reasons, that such quantity cannot be used effectively to carry out the purposes of this title.

(c)(1) Except as provided in paragraph (2), in distributing agricultural commodities under this title, the President shall:

(A) consider

(i) the nutritional assistance to recipients and benefits to the United States that would result from distributing such commodities in the form of processed and protein-fortified products, including processed milk, plant protein products, and fruit, nut, and vegetable products;

(ii) the nutritional needs of the proposed recipients of the commodities;

(iii) the cost effectiveness of providing such commodities, for purposes of selecting commodities for distribution under nonemergency programs; and

(iv) the purposes of this title; and

(B) ensure that at least 75 percent of the quantity of agricultural commodities required to be distributed each fiscal year under subsection (b) for nonemergency programs be in the form of processed or fortified products or bagged commodities.

(2) The president may waive the requirement under paragraph (1)(B) or make available a smaller percentage of fortified or processed food than required under paragraph (1)(B) during any fiscal year in which the President determines that the requirements of the programs established under this title will not be best served by the distribution of fortified or processed food in the amounts required under paragraph (1)(B)."

(3) Section 202 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) The President may furnish commodities for the purposes set forth in section 201 through such friendly governments and such agencies, private or public, including intergovernmental organizations such as the world food program and other multilateral organizations in such manner and upon such terms and conditions as he deems appropriate. The President shall, to the extent practicable, utilize nonprofit voluntary agencies or cooperatives registered with, and approved by the Agency for International Development. If no United States nonprofit voluntary agency or cooperative registered with and approved by the Agency for International Development is available, the President may utilize a foreign nonprofit voluntary agency or cooperative which is registered with and approved by the Agency for International Development. Insofar as practicable, all commodities furnished hereunder shall be clearly identified by appropriate markings on each package or container in the language of the locality where they are distributed as being furnished by the people of the United States of America. Except in the case of emergency, the President shall take reasonable precaution to assure that commodities furnished hereunder will not displace or interfere with sales which might otherwise be made.

(b)(1) Assistance to needy persons under this title shall be directed, insofar as practicable, toward community and other self activities designed to alleviate the causes of need for such assistance.

(2) In order to assure that food commodities made available under this title are used effectively and in the areas of greatest need, entities through which such commodities are distributed shall be encouraged to work with indigenous institutions and employ indigenous workers, to the extent feasible, to assess nutritional and other needs of beneficiary groups, help these groups design and carry out mutually acceptable projects, recommend ways of making food assistance available that are most appropriate for each local setting, supervise food distribution, and regularly evaluate the effectiveness of each project.

(3) In distributing food commodities under this title, priority shall be given, to the extent feasible, to those who are suffering from malnutrition by using means such as (A) giving priority within food programs for preschool children to malnourished children, and (B) giving priority to poorest regions of countries.

(4) In the case of commodities distributed under this title by nonprofit voluntary agencies, consideration shall be given to nutritional and development objectives as established by those agencies in light of their assessment of the needs of the people assisted.

(c)(1) In agreements with nonprofit voluntary agencies and cooperatives for nonemergency assistance under this title, the President is encouraged, if requested by the nonprofit voluntary agency or cooperative, to approve multiyear agreements to make agricultural commodities available for distribution by that agency or cooperative. Such agreement shall be subject to the availability each fiscal year of the necessary appropriations and agricultural commodities.

(2) Paragraph (1) does not apply to an agreement which the President determines should be limited to a single year because of the past performance of the nonprofit voluntary agency or cooperative or because the agreement involves a new program of assistance.

(3) In carrying out a multiyear agreement pursuant to this subsection, a nonprofit voluntary agency or cooperative shall not be required to obtain annual approval from the United States Government in order to continue its assistance program pursuant to the agreement, unless exceptional and unforeseen circumstances have occurred which the President determines require such approval."

(4) Section 203 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"The Commodity Credit Corporation may, in addition to the cost of acquisition, pay with respect to commodities made available under this title costs for packaging, enrichment, preservation, and fortification; processing, transportation, handling, and other incidental costs up to the time of their delivery free on board vessels in United States ports; ocean freight charges from United States ports to designated ports of entry abroad; transportation from United States ports to designated points of entry abroad in the case (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disturbances, (3) where carriers to a specific country are unavailable, or (4) where a substantial savings in cost or time can be effected by utilization of points of entry other than ports; in the case of commodities for urgent and extraordinary relief requirements, including pre-positioned commodities, transportation costs from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs; and charges for general average contributions arising out of the ocean transport of commodities transferred pursuant thereto."

(5) Section 204 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"Programs of assistance shall not be undertaken under this title during any fiscal year which call for an appropriation of more than $1,000,000,000 to reimburse the Commodity Credit Corporation for all costs incurred in connection with such programs (including the Corporation's investment in commodities made available) plus any amount by which programs of assistance undertaken under this title in the preceding fiscal year have called or will call for appropriations to reimburse the Commodity Credit Corporation in amounts less than were authorized for such purpose during such preceding year. The President may waive the limitation in the preceding sentence if the President determines that such waiver is necessary to undertake programs of assistance to meet urgent humanitarian needs. In addition to other funds available for such purposes under any other act, funds made available under this title may be used in an amount not exceeding $7,500,000 annually to purchase foreign currencies accruing under title I of this Act in order to meet costs (except the personnel and administrative costs of cooperating sponsors, distributing agencies, and recipient agencies, and the costs of construction or maintenance of any church owned or operated edifice or any other edifices to be used for sectarian purposes) designed to assure that commodities made available under this title are used to carry out effectively the purposes

for which such commodities are made available or to promote community and other self-help activities designed to alleviate the causes of the need for such assistance: Provided, however, that such funds shall be used only to supplement and not substitute for funds normally available for such purposes from other non-United States Government sources."

(6) Section 206 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) Except to meet famine or other urgent or extraordinary relief requirements, or for nonemergency programs conducted by nonprofit voluntary agencies or cooperatives, no assistance under this title shall be provided under an agreement permitting generation of foreign currency proceeds unless (1) the country receiving the assistance is undertaking self-help measures in accordance with Section 1709 of this title [Section 109 of this Act], (2) the specific uses to which the foreign currencies are to be put are set forth in a written agreement between the United States and the recipient country, and (3) such agreement provides that the currencies will be used for (A) alleviating the causes of the need for the assistance in accordance with the purposes and policies specified in Section 2151a of Title 22 [Section 103 of the Foreign Assistance Act of 1961], (B) programs and projects to increase the effectiveness of food distribution and increase the availability of food commodities provided under this title to the neediest individuals in recipient countries, or (C) health programs and projects, including immunization of children. The President shall include information on currencies used in accordance with this section in the reports required under Section 1736(b) of this title [Section 408 of this Act] and Section 2417 of Title 22 [Section 634 of the Foreign Assistance Act of 1961].

(b) Not later than February 15, 1988, and annually thereafter, the President shall report to Congress on sales and barter, and use of foreign currency proceeds, under this section and Section 207 during the preceding fiscal year. Such report shall include information on—(1) the quantity of commodities furnished for such sale or barter; (2) the amount of funds (including dollar equivalents for foreign currencies) and value of services generated from such sales and barter in the preceding fiscal year; (3) how such funds and services were used; (4) the amount of foreign currency proceeds that were used under agreements under this section and section 207 in the preceding fiscal year, and the percentage of the quantity of all commodities and products furnished under this section and section 207 in such fiscal year such use represented; (5) the President's best estimate of the amount of foreign currency proceeds that will be used under agreements under this section and section 207, in the then current fiscal year and the next following fiscal year (if all requests for such use are agreed to), and the percentage that such estimated use represents of the quantity of all commodities and products that the President estimates will be furnished under this section and section 207 in each such fiscal year; (6) the effectiveness of such sales, barter, and use during the preceding fiscal year in facilitating the distribution of commodities and products under this section and section 207; (7) the extent to which such sales, barter, or uses—(A) displace or interfere with commercial sales of United States agricultural commodities and products that otherwise would be made; (B) affect usual marketings of the United States; (C) disrupt world prices of agricultural commodities or normal patterns of trade with friendly countries; or (D) discourage local production and marketing of agricultural commodities in the countries in which commodities and products are distributed under this title; and (8) the President's recommendations, if any, for changes to improve the conduct of sales, barter, or use activities under this section and Section 207."

(7) Section 207 of the Agricultural Trade Development and Assistance Act of 1954, as amended provides as follows:

"(a) A nonprofit voluntary agency or cooperative requesting a nonemergency food assistance agreement under this title shall include in such request a description of the intended uses of any foreign currency proceeds that would be generated with the commodities provided under the agreement. (b) Such agreements shall provide, in the aggregate for each fiscal year, for the use of foreign currency proceeds under this subsection in an amount that is not less than 10 percent of the aggregate value of the commodities distributed under nonemergency programs under this title for such fiscal year. (c) Foreign currencies generated from any partial or full sales or barter of commodities by a nonprofit voluntary agency or cooperative shall be used—(1) to transport, store, distribute, and otherwise enhance the effectiveness of the use of commodities and the products thereof donated under this title; and (2) to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities."

(8) Section 208 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"Periods for Review and Comment.

(a) Response. If a proposal to make agricultural commodities available under this title is submitted by a nonprofit voluntary agency or cooperative with the concurrence of the appropriate United States Government field mission or if a proposal to make agricultural commodities available to a nonprofit voluntary agency or cooperative is submitted by the United States Government field mission, a decision on the proposal shall be provided within 45 days after receipt by the Agency for International Development Office in Washington, DC. The response shall detail the reasons for approval or denial of the proposal. If the proposal is denied, the response shall specify the conditions that would need to be met for the proposal to be approved.

(b) Notice and Comment. Not later than 30 days before the issuance of a final guideline to carry out this title, the President shall—(1) provide notice of the proposed guideline to nonprofit voluntary agencies and cooperatives that participate in programs under this title, and other interested persons, that the proposed guideline is available for review and comment; (2) make the proposed guideline available, on request, to the agencies, cooperatives and others; and (3) take any comments received into consideration before the issuance of the final guideline.

(c) Deadline for Submission of Commodity Orders. Not later than 15 days after receipt of a call forward from a field mission for commodities or products that meets the requirements of this title, the order for the purchase or the supply, from inventory, of such commodities or products shall be transmitted to the Commodity Credit Corporation."

(9) Section 401 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) After consulting with other agencies of the Government affected and within policies laid down by the President for implementing this Act, and after taking into account productive capacity, domestic requirements, farm and consumer price levels, commercial exports and adequate carryover, the Secretary of Agriculture shall determine the agricultural commodities and quantities thereof available for disposition under this Act, and the commodities and quantities thereof which may be included in the negotiations with each country. No commodity shall be available for disposition under this Act if such disposition would reduce the domestic supply of such commodity below that needed to meet domestic requirements, adequate carryover, and anticipated exports for dollars as determined by the Secretary of Agriculture at the time of exportation of such commodity, unless the Secretary of Agriculture determines that some part of the supply thereof should be used to carry out urgent humanitarian purposes of this Act.

(b) No agricultural commodity may be financed or otherwise made available under the authority of this Act except upon determination by the Secretary of Agriculture that (1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity, and (2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country."

(10) Section 402 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides, in part as follows:

"The term 'agricultural commodity' as used in this Act shall include any agricultural commodity produced in the United States (including fish, without regard to whether such fish are harvested in acquaculture operations), or product thereof produced in the United States: Provided, however, That the term 'agricultural commodity' shall not include alcoholic beverages, and for the purposes of title II of this Act, tobacco or products thereof."

(11) Section 404 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

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(a) The programs of assistance conducted under this Act, and the types and quantities of agricultural commodities to be made available, shall be directed in the national interest toward the attainment of humanitarian and developmental objectives as well as the development and expansion of United States and recipient country agricultural commodity markets. To the maximum extent possible, either the commodities themselves shall be used to improve the economic and nutritional status of the poor through effective and sustainable programs, or any proceeds generated from the sales of agricultural commodities shall be used to promote policies and programs that benefit the poor.

(b) Country assessments shall be carried out whenever necessary in order to determine the types and quantities of agricultural commodities needed, the conditions under which commodities should be provided and distributed, the relationship between United States food assistance and other development resources, the development plans of that country, the most suitable timing for commodity deliveries, the rate at which food assistance levels can be effectively used to meet nutritional and developmental needs, and the country's potential as a new or expanded market for both United States agricultural commodities and recipient country foodstuffs."

(12) Section 405 of the Agricultural Trade and Development Assistance Act of 1954, as amended, provides as follows:

"The authority and funds provided by this Act shall be utilized in a manner that will assist friendly countries that are determined to help themselves toward a greater degree of self-reliance in providing enough food to meet the needs of their people and in resolving their problems relative to population growth."

Dated: September 2, 1988.

Alan Woods,

Administrator, Agency for International Development.

[FR Doc. 88-28700 Filed 12-16-88; 8:45 am]

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Monday
December 19, 1988

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 130

Sulfiting Agents in Standardized Foods; Labeling Requirements; Proposed Rule

21 CFR Parts 182 and 184

Sulfiting Agents; Affirmation of GRAS Status; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 130

[Docket No. 84N-0103]

Sulfiting Agents in Standardized Foods; Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation that will require that when sulfiting agents have a functional effect in a standardized food or when they are present in a standardized food at a detectable level, their presence must be declared on the label of that food. The proposed regulation states that a detectable level of sulfites is 10 parts per million (ppm) or more. It also sets forth the circumstances under which FDA proposes to find that a standardized food that contains indirectly added sulfiting agents conforms to the applicable standard even though no provision for sulfites is made in that standard. Published elsewhere in this issue of the **Federal Register** is a proposed rule affirming, with specific limitations, that certain uses of sulfiting agents are generally recognized as safe. With FDA's previous rulemakings concerning sulfiting agents and the two proposed rules published in this issue of the **Federal Register**, the agency believes that it has addressed the most significant sources of concern about the use of sulfites in food in ways that will minimize the potential for allergic-type responses.

DATE: Comments by February 17, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION:

I. Background

A. Labeling of Sulfites in Nonstandardized Foods

Recent scientific developments have shown that sulfiting agents (sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite) in food can cause allergic-type responses in a significant minority of the population. Responses have been reported that have ranged from mild discomfort to life-threatening episodes. It is essential, therefore, that sulfite-sensitive individuals be protected from unexpected exposure to these ingredients.

Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2) requires that all of the ingredients in a nonstandardized food be declared on the label of that food by their common or usual names unless FDA has exempted the ingredients from that requirements. FDA has established such an exemption in 21 CFR 101.100(a)(3) for "incidental additives" that are present in foods at insignificant levels and that do not have any technical or functional effect in the foods. In the absence of specific guidance from FDA, sulfites generally have been treated by manufacturers as incidental additives whose presence did not have to be declared on labels except when they were directly added to a food for a technical effect.

As a result of evidence that sulfites can cause allergic-type responses, however, FDA decided that consumers should be advised when these ingredients are present in foods. In the **Federal Register** of July 9, 1986 (51 FR 25012), the agency adopted 21 CFR 101.100(a)(4), which states that sulfiting agents will be considered to be present in foods in insignificant amounts only if no detectable amount of sulfite is present in the finished food. Section 101.100(a)(4) states that a detectable amount of a sulfiting agent is 10 ppm or more. This regulation became effective on January 9, 1987. It requires that the presence of detectable amounts of sulfiting agents be declared on the labels of all foods that are subject to the requirements of 21 U.S.C. 343(i). When a sulfiting agent is added directly to a nonstandardized food, it must be declared on the label by its common or usual name. In the preamble to the final rule, however, FDA stated that where sulfiting agents are added indirectly to the food and do not have a technical or functional effect on the food, the collective term "sulfiting agents" may be declared on the label rather than the common or usual name of the specific sulfiting agents. (See paragraph 14 under "Other Comments" (51 FR 25012 at 25015).) The regulation left open the question of the treatment of sulfites on the labels of many standardized foods.

B. Labeling Sulfites in Standardized Foods

A food that is represented to be or purports to be a standardized food is misbranded under section 403(g) of the act (21 U.S.C. 343(g)) unless (1) it conforms to the relevant definition and standard, and (2) its label bears the common or usual names of optional ingredients (other than spices, flavoring, and coloring) required to be listed by the standard.

1. Standardized Foods Subject to Optional Ingredient Listing Requirement

In recent years, FDA has amended many of its regulations for standardized foods to make all ingredients optional. This change has meant that the common or usual names of each of the ingredients must be declared on the label in accordance with the provisions of 21 CFR Part 101. As a result, components of these ingredients, such as sulfiting agents, must be declared on the labels of foods unless the components qualify for the incidental additive ingredient labeling exemption of § 101.100(a)(3) (21 CFR 101.100(a)(3)). Under § 101.100(a)(4)) (21 CFR 101.100(a)(4)), however, detectable amounts of sulfiting agents cannot qualify for this exemption.

2. Standardized Foods Not Subject to Ingredient Listing Requirements

FDA has not amended all of its regulations for standardized foods in this manner. The unamended regulations have no provisions addressing the need for label declaration of sulfiting agents. Some standards allow sulfiting agents to be present but do not require the listing of these ingredients on the label. For example, the standards for glucose sirup (21 CFR 168.120) and dried glucose sirup (21 CFR 168.121) permit the presence of 40 milligrams per kilogram (40 parts per million) or less of sulfur dioxide, but these standards have no sulfur dioxide listing requirement. Other standards do not directly provide for the presence of sulfiting agents, but sulfiting agents may be present in the food as components of permitted ingredients.

This situation is of concern to FDA because if the presence of the sulfiting agents is not declared on the label of a food, a sulfite-sensitive individual could be misled into believing that he or she can eat that food without risk.

3. Standardized Foods in Which Sulfiting Agents Are Components of Ingredients

Under 21 CFR 130.8(a), a food does not conform to a definition and standard of identity if it contains an ingredient for which no provision is made in such standard, "unless such ingredient is an incidental additive introduced at a nonfunctional and insignificant level as

a result of its deliberate and purposeful addition to another ingredient permitted by the terms of the applicable standard and the presence of such incidental additive in unstandardized foods has been exempted from label declaration as provided in § 101.100 of this chapter."

Sulfiting agents are frequently used in foods that are intended to become ingredients of standardized foods. Before the adoption of 21 CFR 101.100(a)(4), many firms that produced standardized foods with sulfite-treated ingredients assumed that if the sulfiting agents had no effect in the finished food, and if the sulfites were used in the ingredient in accordance with current good manufacturing practice, the sulfiting agents were incidental additives. These firms also concluded that under 21 CFR 130.8(a), the finished foods complied with the relevant food standards, despite the fact that there was no provision for the sulfiting agents in the standard.

In adopting 21 CFR 101.100(a)(4), FDA took the position that sulfiting agents in amounts of 10 ppm or more were significant. As a result, there are a number of foods that technically do not conform to the relevant standards of identity because these foods contain sulfiting agents that are not provided for in the standards and that are not incidental additives.

FDA recognizes that it could declare such foods to be misbranded until they are reformulated, or until the standards are amended to provide for the presence of sulfites. However, the agency has concluded that such action would make little sense. It would mean a significant disruption in the food supply for a violation that would not have any health significance if the presence of the sulfiting agents were declared on the label of the food.

II. Requirement To Declare Presence of Sulfites in Standardized Foods

A. The Proposed Action

To ensure that consumers can determine at point of sale whether any food, standardized or nonstandardized, contains added sulfites, FDA is proposing to amend its regulations to require that the presence of sulfiting agents be declared on the label of all standardized foods that contain an amount of these ingredients that has a functional effect in the food or that is detectable. (If the sulfiting agents have a technical effect in the food, their use must, of course, be consistent with the standard of identity, or the food would be adulterated under 21 U.S.C. 343(g)(1)).

Proposed § 130.9(a) states that any standardized food that contains a sulfiting agent that has a functional effect or that is present at a level of 10 ppm or more in the finished food [1] is misbranded unless the presence of the sulfiting agent is declared on the label. This provision will require that the presence of the sulfiting agent be declared even if the relevant standard does not require the listing of optional ingredients, and even if the sulfiting agent has been indirectly incorporated into the food as, for example, a component of an optional or required ingredient or as a processing aid. Failure to declare the presence of the sulfiting agent will render the food misbranded.

B. Legal Basis

FDA believes that this proposal is fully consistent with the act. Under section 403(a) of the act (21 U.S.C. 343(a)), a food is misbranded if its labeling is false or misleading in any respect. Under section 201(n) (21 U.S.C. 321(n)), the extent to which labeling fails to reveal facts material with respect to the consequences of use of an article shall be taken into account in determining whether the labeling of that article is misleading. Because, as stated above, sulfiting agents can cause allergic-type responses of unpredictable severity, the presence of a detectable amount of sulfites (as defined by 21 CFR 101.100(a)(4) as 10 ppm or more sulfites) in a food is a material fact. Therefore, the absence on the label of a food of the material fact that the food contains sulfiting agents renders that label misleading and the food misbranded under sections 403(a) and 201(n) of the act.

C. Means of Compliance

FDA recognizes that the labels of many standardized foods do not bear an ingredient list. Only those foods whose standard of identity requires the listing of optional ingredients will bear such a list.

Should the agency adopt this proposal, it will consider the regulation to be satisfied if the presence of the sulfiting agent is declared prominently on the label. Four situations seem likely:

If there is no ingredient list on the label, and the sulfites are directly added to the food, a statement such as "This food contains (common or usual name of sulfiting agent)" should be placed on the label.

If the sulfiting agent is directly incorporated in the food as a preservative, under section 403(k) of the act (21 U.S.C. 343(k)), the declaration of the presence of the sulfiting agent must be accompanied by an appropriate statement of this fact (e.g., "With (common or usual name of sulfiting agent), a preservative;" "Contains _____, a preservative;" or "to retard spoilage").

If the sulfiting agent is indirectly incorporated in a standardized food whose standard requires the listing of all ingredients in accordance with Part 101, the presence of the sulfiting agents is declared on the label in accordance with 21 CFR 101.4 (a) and (b)(2). However, FDA will not take action against these foods if the sulfites are listed in parentheses following the name of the food of which they are a component, for example, "_____ (with added (common or usual name of sulfiting agent))."

If the sulfiting agents are indirectly incorporated in a standardized food whose standard does not require the listing of all ingredients, the presence of the sulfiting agents is declared prominently on the label. A statement such as "An ingredient in this food contains added (common or usual name of sulfiting agent)" or "Contains _____ with added (common or usual name of sulfiting agent)" may be utilized.

In the preamble to the final rule that published in the **Federal Register** of July 9, 1986 (51 FR 25012), requiring that the presence of detectable amounts of sulfiting agents be declared on the labeling of nonstandardized foods, the agency discussed flexibility concerning the declaration of sulfiting agents. (See paragraph 14 under "Other Comments" (51 FR 25012 at 25015.) FDA announced that, with respect to sulfiting agents that are directly added to, or that have a technical effect in, food, the name of the specific sulfiting agent that is added must be declared on the label. However, the agency agreed that some flexibility is warranted in the declaration of sulfiting agents that are indirectly added to a food and that have no technical or functional effect in the food. An

[1] The term "finished food" refers to the food as it is packaged and sold. The term also refers to food sold to be further processed, mixed, or repackaged, unless there is a written agreement between the shipper and the receiver of the food (in accordance with the provisions of 21 CFR 101.100(d)) that contains the information necessary for appropriate labeling of the food. However, the term "finished food" does not refer to the food as it will ultimately be consumed. Thus, dehydrated finished foods must declare the presence of sulfiting agents without consideration of further rehydration treatment before consumption. Also, the term "finished food" does not refer to portions of the food that are inedible or invariably discarded (e.g., shells from shellfish and crustaceans and packing mediums for products such as cooked lobster meat in brine). Such portions will be excluded from sulfite analyses. Where packing mediums may be used for other home recipes (e.g., canned clam medium in dips) however, the packing medium will not be excluded from sulfite analysis.

indirectly added sulfite is present in a food as a component of an ingredient in the food, as a processing aid, or as a migrant from food packaging. The purpose of declaring sulfiting agents that are indirectly added and that have no technical or functional effect is to provide information to the consumer who wishes to avoid foods that contain sulfites. The agency stated that it will consider amending the regulations in which collective terms permitted in ingredient declarations are listed (21 CFR 101.4(b)) to include a collective term for the sulfiting agents. However, pending promulgation of a provision in § 101.4(b), the agency will not take legal action against standardized foods that declare sulfiting agents as follows: (1) when sulfiting agents remain in a food in a significant amount but no longer have a technical or functional effect, they may be declared by the term "sulfiting agents;" and (2) when a food contains a sulfiting agent that has a technical or functional effect in the food and that is declared in the list of ingredients by its common or usual name, any nonfunctional sulfiting agents present in the food need not be declared separately in the list of ingredients. However, FDA emphasizes that this flexibility applies only if the sulfite is indirectly added and does not perform a technical or functional effect in the food.

The agency also advises that there is no requirement for quantitative declaration of sulfites. The only information that is required to be included in the label is the name of the sulfiting agent, or, in the circumstances explained in the preceding paragraph, the term "sulfiting agents."

The agency specifically solicits comments as to whether consumers are aware of the common or usual names of the specific sulfiting agents, particularly sulfur dioxide, and whether consumers understand that if they are sulfite-sensitive, they should avoid foods containing any of these sulfiting agents. FDA also solicits comments as to whether the agency should include in any final rule a requirement that where the specific sulfiting agent is declared on the label by its common or usual name, this common or usual name must be followed by the term "a sulfiting agent." For example: "contains sulfur dioxide (a sulfiting agent)."

III. Compliance With Standard of Identity

FDA is also acting to remove the uncertainty about the status of standardized foods to which sulfites are indirectly added at levels that have no technical effect. The agency is proposing in § 130.9(b) to find that standardized foods that contain sulfites that would have been considered to be incidental additives before the adoption of § 101.100(a)(4) are not misbranded under 21 U.S.C. 343(g)(2) so long as:

(1) The sulfiting agents in the finished standardized food are nonfunctional;

(2) The sulfiting agents have indirectly become components of the standardized food as a result of a use that is in accordance with current good manufacturing practice; and

(3) The presence of the sulfiting agents in the standardized food is declared on the label. Such declaration should be made in accordance with the principles outlined above.

FDA considers this proposed finding to be fully consistent with the act. Under section 306 of the act (21 U.S.C. 336), FDA has discretion not to take action against minor violations of the act if it finds that the public interest will be adequately served by a suitable notice or warning. The failure of a food to comply with the applicable standard of identity because it contains nonfunctional levels of sulfiting agents is a minor violation so long as the public, particularly sulfite-sensitive individuals, are made aware of the presence of sulfiting agents in the food by an appropriate label statement. Such a statement provides adequate notice to sulfite-sensitive individuals of the risks that they face if they consume the food product.

IV. Effective Date

Consistent with its action in adopting the final rule requiring that the presence of detectable amounts of sulfiting agents be declared on the labels of nonstandardized foods (21 CFR 101.100(a)(4)), FDA proposes that this regulation to establish similar requirements for standardized foods become effective 6 months after publication of the final rule rather than on the next uniform effective date for compliance with new food labeling requirements that is periodically announced. Thus, the agency proposes that by 6 months after the date of publication of any final regulation, all finished foods in which a sulfiting agent has a technical or functional effect, or in which there is a detectable amount of a sulfiting agent, that are initially introduced or initially delivered for introduction into interstate commerce must bear labeling that declares the presence of the sulfiting agent. The agency recognizes that this proposed regulation would require some manufacturers who do not declare sulfites on the labels of their products to revise their labels. Nonetheless, FDA is proposing the 6-month effective date because information about the presence of sulfiting agents is not merely informative but is necessary to protect the health of sensitive individuals. On the basis of its experience, the agency believes that 6 months is an adequate amount of time for manufacturers to change their labeling. The agency urges manufacturers and distributors of standardized foods, however, to declare sulfiting agents on their labels as soon as possible.

Consistent with the agency's response to a similar 6-month effective date for the labeling requirements for nonstandardized foods (see paragraph 16 under "Other Comments" (51 FR 25012 at 25016)), this proposed labeling regulation has as its basis a serious health concern. Although FDA is sympathetic to the problems processors may encounter with a 6-month effective date, the agency cannot ignore the potential hazard to sulfite-sensitive consumers. The labeling requirement in this proposed regulation will apply to foods that are initially introduced into interstate commerce after the effective date of any final rule. If it adopts this regulation, the agency will not take action against foods that are in interstate commerce on the effective date of the final rule.

The agency, however, specifically solicits comments on the appropriateness of the proposed 6-month effective date.

V. Economic Impact

In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has considered the effect that this proposed rule would have on small entities including large and small businesses and has determined that the proposed labeling requirements will not result in a significant impact on a substantial number of small entities. Furthermore, in accordance with Executive Order 12291, the agency has analyzed the economic effects of this regulation and has determined that the rule, if promulgated, will not be a major rule as defined by that Order.

A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (address above).

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1980

Section 130.9 of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VIII. Submission of Comments

Interested persons may, on or before February 17, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In addition to requesting comments concerning the proposal in its entirety, the agency solicits specific comments concerning consumer awareness of the common or usual names of sulfiting agents, particularly sulfur dioxide; consumer understanding of the need of sulfite-sensitive individuals to avoid foods containing any of these sulfiting agents; whether FDA should include in any final rule a requirement that where the specific sulfiting agent is declared on the label be its common or usual name, this common or usual name must be followed by the term "a sulfiting agent;" and the appropriateness of the proposed 6-month effective date.

List of Subjects in 21 CFR Part 130

Food additives, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 130 be amended as follows:

PART 130—FOOD STANDARDS: GENERAL

1. The authority citation for 21 CFR Part 130 is revised to read as follows:

Authority: Secs. 201(n) and (s), 306, 401, 403, 701, 52 Stat. 1041 as amended, 72 Stat. 1784 as amended, 52 Stat. 1045–1046, 1047–1048 as amended, 1055–1056 as amended (21 U.S.C. 321(n) and (s), 336, 341, 343, 371); 21 CFR 5.11.

2. New § 130.9 is added to Subpart A to read as follows:

§ 130.9 Sulfites in standardized food.

(a) Any standardized food that contains a sulfiting agent or combination of sulfiting agents that is functional and provided for in the applicable standard or that is present in the finished food at a detectable level is misbranded unless the presence of the sulfiting agent or agents is declared on the label of the food. A detectable amount of sulfiting agent is 10 parts per million or more of the sulfite in the finished food. The level of sulfite in the finished food will be determined using sections 20.123 through 20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th ED. (1984), which is incorporated by reference in accordance with 5 U.S.C. 552(a), and the refinements of the "Total Sulfurous Acid" procedure in the "Monier-Williams Procedure (with Modifications) for Sulfites in Foods," which is Appendix A to Part 101 of this chapter. A copy of sections 20.123 through 20.125 of the "Official Methods of Analysis of the Association of Official Analytical Chemists" is available from the Association of Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(b) Any standardized food that, as a result of actions that are consistent with current good manufacturing practice, contains an indirectly added sulfiting agent that has no functional effect in the food and that would, in the absence of § 101.100(a)(4) of this chapter, be considered to be an incidental additive for purposes of § 130.8, conforms to the applicable definition and standard of identity if the presence of the sulfiting agent is declared on the label of the food.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary for Health and Human Services.

Dated: August 22, 1988.

[FR Doc. 88–29032 Filed 12–16–88; 8:45 am]

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21 CFR Parts 182 and 184

[Docket No. 81N–0314]

Sulfiting Agents; Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm, with specific limitations, that certain uses of sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite (collectively known as "sulfiting agents" or "sulfites") are generally recognized as safe (GRAS). This action is based upon FDA's review of all available information on sulfiting agents including new information on sulfiting agents received in response to a proposal to affirm the GRAS status of sulfiting agents published in the **Federal Register** of July 9, 1982 (47 FR 29956); the January 31, 1985, final report of the Federation of American Societies for Experimental Biology (FASEB) on the Reexamination of the GRAS Status of Sulfiting Agents; the hearing conducted by the Advisory Committee on Hypersensitivity to Food Constituents; recently published reports in the medical literature; and other relevant information.

DATE: Comments by February 17, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

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I. Background/Regulatory History

A. Select Committee Review and 1982 Proposal

In the **Federal Register** of July 9, 1982 (47 FR 29956) (Ref. 1), FDA proposed to affirm, with specific limitations, the GRAS status of the use of sulfur dioxide, sodium bisulfite, and sodium and potassium metabisulfite. The document also proposed to delete sodium sulfite and potassium bisulfite from the list of substances whose use is GRAS because the agency believed that use of these substances had been discontinued except for the known food additive use, under 21 CFR 173.310, of sodium sulfite as a boiler water additive.

The agency based its 1982 proposal on a report on the health aspects of the use of sulfiting agents as food ingredients (Ref. 2) issued by the Select Committee on GRAS Substances (the Select Committee) of FASEB in 1976, during the agency's review of the safety of GRAS substances (Ref. 3). That report presented an analysis of human exposure and toxicological date on sulfiting agents and was based partly on a review of available scientific literature from 1920 through 1972 (Ref. 4). The report stated that it was reasonable to conclude that the daily intake of sulfur dioxide from sulfited foods consumed in the United States did not exceed 2 milligrams per kilogram of body weight for adults and probably was not more than 0.2 milligram per kilogram for the great majority of the population.

The 1976 report surveyed all the available toxicological data on sulfites, including data on metabolism, acute and chronic oral toxicity, other long-term studies, teratology, carcinogenicity, and mutagenicity. On the basis of this review, the Select Committee concluded that:

> There is no evidencde in the available information on potassium bisulfite, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, sodium sulfite and sulfur dioxide that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard.

In the 1982 proposal, the agency stated that it had undertaken its own evaluation of all available information on sulfiting agents. It supplemented the Select Committee's exposure data on sulfites with more recent data obtained by the National Academy of Science/National Research Council (NAS/NRC) in 1977 (Ref. 5).

The agency tentatively concluded in the 1982 proposal that, based upon the available safety data, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, and sulfur dioxide should be affirmed as GRAS with specific limitations. The agency proposed not to affirm potassium bisulfite and sodium sulfite as GRAS because it did not possess any evidence of food use for potassium bisulfite nor sufficient information relating to the uses of sodium sulfite as a GRAS food ingredient. Therefore, the agency could not establish limitations on the use of these two sulfiting agents.

The comment period for the 1982 proposal closed on September 7, 1982. In the **Federal Register** of November 2, 1982 (47 FR 49666), FDA extended the comment period to December 7, 1982, in response to two requests for extensions. Since the extended comment period closed, the agency has continued to receive comments regarding sulfiting agents.

The agency has received a large number of comments from consumers, Congressional representatives on behalf of consumers, health professionals, consumer groups, and State government officials that reported the possibility that some susceptible individuals may experience allergic-type responses after consuming food treated with sulfiting agents. (The agency is using the term "allergic-type responses" to describe the range of symptoms that individuals have suffered after eating certain sulfite-treated foods. These symptoms resemble the symptoms of a response to an allergen. The scientific community, however, is unsure at this time about the actual mechanism by which a response is elicited by the sulfite ingredient.) These responses have ranged from mild discomfort to life-threatening episodes.

On October 28, 1982, the agency received a citizen petition regarding the use of sulfiting agents in food and drugs. This petition addressed the problems of exposure of sensitive individuals to sulfites in foods and drugs. It expressed concern about the possibility that unsuspecting sulfite-sensitive individuals might have a severe response after eating foods or taking medications that contain sulfiting agents. The petition urged the agency to take certain regulatory steps to restrict the use of sulfites in food and drugs.

B. Health Concerns and FASEB Review

The new information that the agency received in response to its 1982 proposal raised public health concerns for two reasons. First, this information raised the possibility of severe and unpredictable allergic-type responses in a significant subgroup of the U.S. population. Second, it revealed that the number of uses and the levels of use of sulfiting agents had significantly increased in the U.S. food supply since the survey relied upon by the Select Committee was taken. This new information prompted the agency to ask FASEB to reexamine the GRAS status of the use of sulfiting agents.

FASEB established an ad hoc Review Panel on the Reexamination of GRAS Status of Sulfiting Agents (the Panel). On July 9, 1984 (49 FR 27994), FDA announced the formation of the Panel. The agency asked FASEB to have the Panel address the following question:

> In view of the currently available information relevant to the use and safety of sulfiting agents, which of the five types of conclusions for the appraisal of GRAS substances that were developed by the Select Committee now applies to the use of sulfiting agents? The conclusion which is reached should be supported by the discussions of the rationale behind the conclusion.

The Panel evaluated recent scientific publications and new information and data submitted to FDA in response to its 1982 proposal. The Panel supplemented this information with additional

materials that it acquired independently. The Panel conducted an open meeting on November 29, 1984, at which individuals and organizations presented their views on sulfite-related issues. On January 31, 1985, the Panel issued its final report (Ref. 6).

In that report, the Panel concluded that for the majority of the population, "there is no evidence in the available information * * * that demonstrates or suggests reasonable grounds to suspect a hazard." The Panel further concluded, however, that for the fraction of the public that is sulfite sensitive, "there is evidence in the available information * * * that demonstrates or suggests reasonable grounds to suspect a hazard of unpredictable severity to such individuals when they are exposed to sulfiting agents in some foods at levels that are now current and in the manner now practiced." (Ref. 6, p. 60.)

An analysis of consumer complaints compiled by FDA and made available to the Panel indicated that the majority of incidents involving allergic-type responses to sulfites in food could be attributed to sulfited fruits and vegetables that are intended to be served raw or sold raw to consumers or are presented to consumers as fresh and to certain sulfited potatoes and potato products. Thus, the Panel determined that, although most uses of sulfites on food appear to present no safety concerns for most people, certain uses of these ingredients, particularly on popular unlabled food items often consumed in food-service establishments, could present a significant risk for some sulfite-sensitive individuals.

C. FDA's Response

Based on the Panel's findings and on its own review of the available evidence, FDA took several actions to minimize the risk to health from the use of sulfiting agents. The agency's first action was to move to provide indivdiuals who know that they are sulfite-sensitive with the information that they need to avoid certain processed foods that contain sulfites. In the **Federal Register** of April 3, 1985 (50 FR 13306), FDA proposed to clarify the circumstances in which sulfiting agents could be considered to be incidental additives under 21 CFR 101.100(a)(3) (Ref. 7). That rulemaking was published as a final rule in the **Federal Register** of July 9, 1986 (51 FR 25012) (Ref. 8).

Under § 101.100(a)(3), substances that are present in a food at insignificant levels and that do not have any functional effect in that food are incidental additives and thus are exempt from being declared in the list of ingredients. In the July 9, 1986, final rule, FDA added § 101.100(a)(4), which provides that added sulfiting agents are present in food in an insignificant amount only if no detectable amount of these substances is present in the finished food. The regulation defines a detectable amount of a sulfiting agent as 10 parts per million (ppm) or more of the sulfite in the finished food when analyzed under the modified Monier-Williams procedure, which is set forth in Appendix A to Part 101. As a result of this rulemaking, sulfiting agents must be listed on the labels of nonstandardized foods when they are present at detectable but nonfunctional levels in the foods.

Sulfiting agents present at functional levels in nonstandardized foods have always been required to be declared in ingredient lists because these ingredients have never been exempted from Part 101 labeling requirements. In addition, sulfiting agents present as optional ingredients in standardized foods whose standards require the listing of optional ingredients in accordance with Part 101 have also always been required to be declared.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposal to clarify the circumstances in which the presence of sulfiting agents in other standardized foods must be declared on the label. That notice proposes that sulfiting agents be listed on the label of these foods whenever they have a functional effect in these foods, or when they remain in the finished food at detectable levels. The agency believes, after a preliminary review, that the presence of the sulfiting agents should be declared in these circumstances because sections 201(n) and 403(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n) and 343(a)) provide that labeling is misleading if it fails to reveal facts material with respect to the consequences of use of the article. The presence of sulfiting agents may create a hazard of unpredictable severity for individuals sensitive to these ingredients and is consequently a material fact. Thus, the agency's preliminary view is that the failure to declare the presence of a detectable amount of a sulfiting agent would render the label misleading.

The proposal also addresses the circumstances in which foods that fail to conform to the relevant standards of identity because they contain sulfiting agents that had been considered to be incidental additives under 21 CFR 130.8 before the adoption of 21 CFR 101.100(a)(4) will be considered to be misbranded under 21 U.S.C. 343(g). The agency's preliminary view is to not consider such foods to be misbranded if the presence of the sulfiting agents is declared on the label.

In addition to clarifying how foods that contain sulfiting agents must be labeled, the agency published a proposal in the **Federal Register** of August 14, 1985 (50 FR 32830), that announced its preliminary conclusion that the use of sulfiting agents on fruits and vegetables intended to be served raw or sold raw to consumers cannot be considered GRAS (Ref. 9a). Subsequently the agency published in the **Federal Register** of July 9, 1986 (51 FR 25021), a final rule confirming its preliminary conclusion and amending the regulations to except the use of sulfiting agents on fruits and vegetables intended to be served raw or sold raw to consumers from the uses of these substances that are GRAS (Ref. 9b). FDA took this action to address the sources of sulfite exposure that the agency found were associated with the greatest number of allergic-type responses.

In addition, the agency proposed in the **Federal Register** of December 10, 1987 (52 FR 46968), to revoke the GRAS status of the use of sulfites on "fresh" potatoes served or sold unpackaged and unlabeled to consumers (Ref. 10). In that proposal, the agency also asked for information about the other uses of sulfites on potatoes. That proposal is intended to control another major source of sulfite exposure that has been associated with severe allergic-type responses in sulfite-sensitive persons.

With those rulemakings, the agency believes that it has addressed the most significant sources of concern about the use of sulfites on food and, thus, has adequately responded to the concerns raised by the Panel. The primary purpose of the present rulemaking, therefore, is to announce the agency's tentative determination that the remaining uses of sulfiting agents, except those uses on meats and on foods that are significant sources of thiamine, are GRAS.

II. Uses of Sulfiting Agents on Food Products

A. Technical Effects

Sulfiting agents have numerous uses in food. They have been used for centuries in food processing as sanitizing (disinfection) agents for food containers and fermentation equipment. They have been used as preservatives to reduce or to prevent microbial spoilage of food; as selective inhibitors of undesirable microorganisms by the fermentation industries; and as antioxidants and inhibitors of enzyme-

catalyzed oxidative discoloration and nonenzymatic browning during the preparation, storage, and distribution of many foods. They also are used as dough conditioners, bleaching agents, processing aids, and pH control and stabilizing agents (Ref. 11). To accomplish these purposes, sulfiting agents are added directly to certain fresh foods or are added under controlled conditions during processing of some foods.

B. Currently Regulated Uses and Use Levels of Sulfites

Existing regulations state that the use of potasium bisulfite (21 CFR 182.3616), potasium metabisulfite (21 CFR 182.3637), sodium bisulfite (21 CFR 182.3739), sodium metabisulfite (21 CFR 182.3766), sodium sulfite (21 CFR 182.3798), and sulfur dioxide (21 CFR 182.3862) is GRAS, except when they are used in meats or foods recognized as a source of thiamine (vitamin B_1), or on fruits or vegetables intended to be served raw or sold raw to consumers or to be presented to consumers as fresh. Other sections that refer to the use of sulfiting agents are as follows: caramel (21 CFR 73.85(a)(2)(iii)); dextrose monohydrate (21 CFR 168.111(b)(2)); glucose sirup (21 CFR 168.120(b)(2)); food starch-modified (21 CFR 172.892(b)); boiler water additives (21 CFR 173.310(c)); cellophane (21 CFR 177.1200(c)); and water-insoluble hydroxyethyl cellulose film (21 CFR 177.1400). The Bureau of Alcohol, Tobacco and Firearms (BATF) lists sulfites as materials authorized for treatment of wine (27 CFR 240.1051).

The listings for dextrose monohydrate, glucose sirup, and food starch-modified limit residual sulfur dioxide concentrations in these products to not more than 20, 40, and 500 ppm, respectively. The Food Chemicals Codex (3d Ed.) specifications place an upper limit of 80 ppm residual sulfure dioxide in modified food starches (Ref. 12).

The agency did not set specific limits for levels of use of sulfiting agents in the current GRAS regulations (21 CFR Part 182). Rather, the regulations on these ingredients in Part 182 invoke the concept of "good manufacturing practice" (defined in § 182.1), which restricts the quantity of a substance that can be added to food to a level that does not exceed that reasonably required to accomplish the intended technical effect.

It is important to note that the level of sulfiting agent added to a particular food (the "treatment level") may differ considerably from the level of sulfiting agent remaining on that food at the time processing is complete (the "residual level"). The residual levels of sulfites in finished foods are generally lower than the amount of sulfites added during processing because during processing, sulfites can combine with other food components, may be liberated as sulfur dioxide, or may be oxidized to sulfate. Although good manufacturing practice based on treatment levels may be more convenient for food processors, limits on residual levels of sulfites in finished foods are better suited for public health protection. For that reason, the agency is basing the regulations of this rulemaking on residual levels of sulfites measured as sulfur dioxide equivalents found in the finished food product. (A sulfur dioxide equivalent is defined as that proportion of the weight of a sulfiting agent that can dissociate into sulfur dioxide. It provides a uniform and scientifically consistent means by which the sulfite content of foods can be reported.)

C. Prior Sanctions for the Use of Sulfites on Foods

Section 201(s)(4) of the act (21 U.S.C. 321(s)(4)) exempts from the definition of a food additive "any substance used in accordance with a sanction or approval granted" under the act, the Meat Inspection Act, or the Poultry Products Inspection Act before the enactment of the Food Additives Amendment of 1958. This type of sanction or approval is generally referred to as a "prior sanction." Neither the act nor its legislative history defines the term "prior sanction." However, FDA has adopted a regulation (21 CFR 170.3(l)) that defines this term as "an explicit approval granted with respect to use of a substance in food prior to September 6, 1958 * * *" under any of the three statutes listed above. Another FDA regulation (21 CFR 181.5(a)) states that a prior sanction "shall exist only for a specific use(s) of a substance in food, i.e., the level(s), condition(s), product(s), etc., for which there was explicit approval * * *."

The "explicit approval" required to establish a prior sanction may be either formal or informal. In the event that a formal approval, such as a food standard regulation promulgated under the act before 1958, does not exist, the agency recognizes that correspondence issued by authorized agency officials can constitute an informal prior sanction.

FDA has tentatively acknowledged "prior sanctions" for a number of specific uses of sulfiting agents in food. In the 1982 proposal, the agency noted several prior sanctions that allow the use of sodium sulfite and sulfur dioxide at levels of 200 to 300 ppm in molasses, dried fruits, and foods that are not good sources of vitamin B_1 (thiamine). In that proposal, the agency also stated that sodium bisulfite solution is prior-sanctioned for use as a dip to prevent darkening of fresh-peeled, uncooked potatoes, and that sodium bisulfite is also prior-sanctioned as a dip to control the incidence of black spot on shrimp (Ref. 1). For uses of sulfites different from those proposed as GRAS in the 1982 proposal, the agency requested any person intending to rely on a prior sanction to submit proof of its existence.

On November 13, 1985, the Grocery Manufacturers of America (GMA) submitted to the agency a report entitled "Documentation of Explicit Prior Sanctions for the Specific Use of Sulfites as Preservatives in Food and for Other Particular Food Uses" (the GMA Report) (Ref. 56). This report states that a prior sanction exists for the use of sulfites as preservatives in food, except in meat and in foods that are good sources of vitamin B_1, and thus that such use is exempt from regulation under the food additive provisions of the act.

The GMA report also claims that "[p]articular prior sanctions also exist for the use of sulfites in a number of specific food categories." The GMA report states that FDA sanctioned the use of sulfites as preservatives in dehydrated potato products, beverages, citrus fruit products, dehydrated fruits and vegetables, fresh fruits and vegetables, soft drinks, and other foods. The report states also that FDA sanctioned the use of sodium bisulfite and sodium sulfite to prevent the discoloration of, and to preserve, precut peeled potatoes. The report states that other prior sanctions exist for particular uses of sulfites in cherries, bakery products, beer and malt beverages, corn products, dough, gelatin, molasses, mushrooms, onion and garlic products, coconut, pickles and pickled vegetables, sauerkraut and horseradish, shrimp, syrups, wine, and wine vinegar.

Although GMA has claimed that there is a prior sanction for the use of sulfites on fresh fruits and vegetables, in an earlier rulemaking (51 FR 25021) the agency determined that this use of sulfiting agents may render the food injurious to health and thus adulterated under section 402(a)(1) of the act. Therefore, the agency has revoked the prior sanction for this use. GMA's claims with respect to prior sanctions for the use of sulfites on certain types of potatoes and potato products are under consideration in another rulemaking (52 FR 46968).

Many of the other prior sanctions claimed by GMA are for uses of sulfites

that FDA is proposing to affirm as GRAS in this document. For these uses, FDA is establishing specific limitations on the amount of residual sulfite that may be present in finished foods. In some cases, the limitations proposed in this document are less stringent (that is, permit a higher level of sulfites in certain finished foods) than those that GMA asserts are prior sanctioned. In these cases, the agency believes that there is no reason to acknowledge the prior sanctions that do exist by separate regulation. In a few cases, the limitations stated in this rulemaking are more stringent than those under the claimed prior sanctions in the GMA report, consistent with current good manufacturing practices and the range of levels reported now in use for various food products. Also, certain of the prior sanctions that GMA listed in its report are for uses of sulfites in food categories that were not considered or catalogued by the Panel because of the absence of data on the particular use. The agency discusses the status of these claimed prior sanctions in Section VII.B. of this preamble.

In addition to GMA's report, the agency has received two citizen petitions requesting that the agency recognize prior sanctions for the use of sulfites in maraschino cherries and glacé fruit and in beer and other malt beverages. The former petition (FAP 6CP3941), submitted by the Maraschino Cherry and Glacé Fruit Processors Association, was filed on May 16, 1986. The latter petition (FAP 6CP3960), submitted by the Beer Institute, was filed on July 30, 1986. The agency will respond to these two petitions in Section VII.B. below.

III. Summary of the Panel's Report on All Uses of Sulfites

On January 31, 1985, the Panel released its final report entitled "The Reexamination of the GRAS Status of Sulfiting Agents" (Ref. 6). That report provides the most recent, complete, and authoritative compilation of scientific information available about the use of sulfiting agents on food. It contains a thorough review of estimated levels of human exposure to sulfiting agents from a variety of food categories. It also contains a review of biological information relevant to sulfite exposure, including data from toxicological studies as well as clinical data relating to hypersensitivity reactions in humans. The report provides conclusions with respect to the GRAS status of the use of sulfiting agents in food. Those conclusions form a basis for FDA's tentative GRAS determinations in this document.

A. Exposure of Humans to Sulfiting Agents Used in Food

To estimate the per capita daily food intake of sulfites in the United States, the Panel used three basic types of information: (1) The amount of the ingredient present in various components of a diet at the time of consumption; (2) the kinds of foods in the daily diet and the frequency with which each is consumed; and (3) the average portion size for the various foods consumed. To obtain this information the Panel used data from the following sources: (1) "The 1977 Survey of Industry on the Use of Food Additives" by the National Research Council (Ref. 5); (2) information provided to FDA by the food industry in response to FDA's proposed rule in 1982 on the GRAS status of sulfites (Ref. 1); (3) the 1977–1978 National Food Consumption Survey of the U.S. Department of Agriculture (USDA) (Refs. 13, 14, and 15); (4) Agricultural Statistics (Ref. 16) and other USDA statistical publications (Refs. 17 and 18); and (5) "U.S. Imports for Consumption and General Imports" (Ref. 19). The Panel also gathered information from manufacturers and users of sulfiting agents.

From these sources the Panel created a table containing the following information: (1) Added and residual levels of sulfiting agents in processed foods; (2) estimated levels of sulfites in finished foods; (3) human intake of specific foods or categories of food; and (4) estimated per capita daily intake of sulfites (Ref. 6, Table 1). The table contains estimates of the daily intake of sulfites (measured as sulfur dioxide equivalents), in milligrams per person per day, from the following food categories for which data were available: baked goods and baking mixes, grain products, coffee and tea, condiments, dairy analogs, fish and seafood, fresh fruit, dried fruit, fruit juices, frozen fruit, canned fruit, fresh vegetables, canned vegetables, dried vegetables, frozen vegetables, vegetable juices, sugar, sweet sauces, jams and jellies, gravies and sauces, nonalcoholic beverages, alcoholic beverages, soups, gelatin, snack foods, protein isolates, and nut products.

The Panel noted several characteristics and problems in interpreting the exposure data in the table. The Panel pointed out that there is no relationship, necessarily, between "added" and "residual" levels of sulfites for a given food, because companies frequently reported values for either one or the other sulfite level but not both. The Panel also acknowledged that sulfites may be used in foods not included in the table. The Panel noted that it had contacted experts in food science and technology in USDA, in universities, and in industry and industry associations and had also consulted the literature to resolve uncertainties in the data of the table.

The Panel reported, after considering the whole body of exposure data available to it, as well as the associated uncertainties in those data, that the total per capita daily intake of sulfites from food is about 6 milligrams, as measured in "sulfur dioxide equivalents." The Panel stated that beer provides an additional 0.4 milligram per capita per day. It found some uncertainty with regard to the sulfite intake from wine. Based on the national food consumption survey intake data (Ref. 6, p. 28), the Panel found that wine provides an additional 0.8 milligrams per capita per day, but that it provides 3.7 milligrams per capita per day if one relies on the total quantity of wine distributed. Thus, the Panel found that it was reasonable to conclude that the mean daily intake of sulfur dioxide equivalents from food, wine, and beer does not exceed 10 milligrams (0.17 milligram per kilogram body weight for a 60-kilogram person).

For those individuals who consume wine or beer or both regularly, the Panel noted that there would be an additional 30 milligrams of sulfur dioxide equivalents for each 200 milliliters of wine and 10 milligrams for each liter of beer consumed. In comparison, the Codex Alimentarius Commission estimated in 1975 that heavy consumers of foods and beverages containing high levels of sulfites (99th percentile consumption) might have a daily intake of 177 milligrams sulfur dioxide equivalents (Ref. 6).

After consideration of all the data, the Panel concluded that the 99th percentile intake, including regular consumption of wine and beer, probably does not exceed 180 milligrams of sulfur dioxide equivalents per day (3 milligrams per kilogram body weight per day).

Thus, in summary, the Panel concluded that the mean daily intake of sulfites does not exceed 0.17 milligram per kilogram of body weight per day, and the 99th percentile intake does not exceed 3 milligrams per kilogram of body weight per day.

B. Biological Studies

The Panel reviewed in detail studies completed since the original 1976 evaluation of the GRAS status of sulfites conducted by the Select Committee. The information the Panel reviewed included studies on the metabolism and

metabolic effects of sulfites, short-term and long-term toxicity studies, teratogenicity studies, and mutagenicity and carcinogenicity studies. The Panel also reviewed clinical data and other information on sulfite sensitivity reactions that may occur when asthmatics or other sulfite-sensitive individuals ingest foods or beverages containing sulfites, inhale sulfur dioxide, or are given medications containing sulfites. That review of sulfite-sensitivity reactions was referenced in the agency's previous rulemakings concerning the use of sulfites on fresh fruits and vegetables and on "fresh" potatoes (Refs. 9 and 10). For that reason it will not be repeated here but is incorporated by reference (see, e.g., 50 FR 32830; 51 FR 25021; and 52 FR 46968).

1. Metabolism of Sulfites

Based on information it reviewed on the metabolism of sulfites, the Panel found that virtually all consumed sulfite is metabolized by sulfite oxidase in the mitochondria of various organs and tissues at a rate that is probably diffusion limited. The Panel stated that:

> The amount of endogenous sulfite is several orders of magnitude greater than that normally obtained from exogenous sources. Except for the few individuals identified as having congenital sulfite oxidase deficiency, it would appear that most individuals have sufficient enzyme to metabolize both endogenous and exogenous sulfite. Whether sulfite oxidase-deficient patients are sulfite sensitive as well remains to be established.

The Panel stated that "there is sufficient information in the current literature to conclude that some individuals, or a select subpopulation with a congenital deficiency of sulfite oxidase activity, would metabolize sulfite more slowly and may be subject to adverse effects from sulfite at the current level of intake." The Panel concluded, however, that there is "no reason to presume that individuals with the usual levels of sulfite oxidase activity and adequate nutritional status should develop adverse health effects from consumption of sulfite in foods at the levels currently used."

2. Toxicity Studies on Sulfites

The Panel was unable to locate any animal feeding studies on the acute oral toxicity of sulfiting agents published after 1976. Acute exposure seems to be a factor in sensitivity reactions associated with ingestion of foods or beverages containing sulfiting agents, but sensitivity reactions appear to be separate and distinct from other manifestations of acute oral toxicity. Feron and Wensvoort (Ref. 20) and Til et al. (Refs. 21 and 22) reported gastric lesions in several chronic feeding studies published before 1976. In one study by Beems et al. (Ref. 23), the types of gastric lesions induced by feeding sodium metabisulfite to Wistar Random rats were examined by enzyme histochemistry and light and electron microscopy. Animals were fed thiamine-supplemented diets containing 0, 4, and 6 percent sodium metabisulfite for 4, 7, 14, 21, or 28 days in a time-sequence study. Fundic mucosa of the rats fed sodium metabisulfite contained scattered hyperplastic glands lined with enlarged hyperactive gastric chief cells containing large numbers of pepsinogen granules but no fat, glycogen, or mucus. Findings from the time-sequence study suggested that preexisting chief cells were transformed to hyperactive chief cells having proliferative capabilities.

Gunnison et al. examined the subchronic toxicity of sulfite in female rats with low levels of sulfite oxidase activity that had been induced by their being fed low molybdenum diets, which contained tungstate, for 9 weeks (Ref. 24). Beginning on day 21, drinking water for two groups of animals also included 25 or 50 millimolar of sulfite (SO_3^{2-}). This treatment resulted in levels of hepatic sulfite oxidase activity 1 percent of that in untreated rats and 10 percent of that in normal humans. The authors reported that the general health of the rats appeared normal, and that the differences in weight gains and organ weights of pregnant and nonpregnant animals were not correlated with exogenous sulfite levels. Nonpregnant animals given sulfite did not develop anemia, and hematologic measurements in pregnant animals showed changes normally associated with pregnancy. Erythrocyte glutathione concentrations and prothrombin times were not affected, and hepatic thiamine concentrations were not significantly reduced by administration of sulfite to rats with low levels of sulfite oxidase activity. S-sulfonate concentrations in aorta pinna, and plasma were elevated in animals with low levels of sulfite oxidase activity. Administration of sulfite produced additional increments in S-sulfonate levels in aorta. Trends appeared similar, but data were incomplete for pinna and plasma concentrations of S-sulfonates.

With regard to short- and long-term toxicity studies, the Panel concurred with the conclusion of the Select Committee (Ref. 2) concerning the "no-observed-adverse-effect level" of sulfiting agents for chronic toxic effects. The Select Committee concluded that the level of sulfite that produces no observed toxic effects varies from about 30 to 100 milligrams of sulfur dioxide per kilogram of body weight per day, depending on the species and experimental conditions.

The Panel stated that it had not found any new data that was inconsistent with the data considered earlier by the Select Committee. Moreover, the Panel stated that it is evident from examination of experimental protocols that the no-observed-adverse-chronic-effect level is probably nearer the upper portion of the range (100 milligrams sulfur dioxide) than the lower portion of the range (30 milligrams sulfur dioxide).

3. Teratogenicity Studies on Sulfites

Dulak et al. studied the reproductive performance of female Wistar-derived rats that had induced sulfite oxidase deficiency and that were exposed to 25 or 50 millimolar sulfite (160 or 280 milligrams per kilogram of body weight per day) as sodium metabisulfite in drinking water from 3 weeks before mating until day 20 of gestation (Ref. 25). No treatment-related trends in reproductive performance or malformations were reported after animals having deficient or normal levels of sulfite oxidase activity were exposed to sulfite.

In a study by Murray et al., inhalation of sulfur dioxide in filtered room air for 7 hours per day by CF–1 mice (25 ppm on days 6 through 15 of gestation) and New Zealand rabbits (70 ppm on days 6 through 18 of gestation) resulted in no evidence of maternal toxicity except for decreased food consumption by both species during the first few days of exposure (Ref. 26). An increase in minor skeletal variants in both species was associated with maternal exposure to sulfur dioxide, but no teratogenic effects were observed in either species (Ref. 26).

It was the opinion of the Panel that the available data, including the studies considered by the 1976 Select Committee, do not provide evidence that sulfiting agents have teratogenic effects.

4. Mutagenicity and Carcinogenicity Studies on Sulfites

The Panel noted that Shapiro has reported that bisulfite (10 millimolar; pH not specified) induced mutations in *Staphylococcus aureus*, and that bisulfite (5 millimolar) induced mutations at pH 3.6 but not pH 5.5 in *Saccharomyces cerevisiae* (Ref. 27). Mallon and Rossman reported that bisulfite (0.1 molar) did not cause mutations in *Escherichia coli* (Ref. 28). Khoudokormoff and Gist-Brocades reported in 1978 that, in a *Bacillus subtilis* test system, concentrations of sulfur dioxide similar to those found in

wines (150 ppm, pH 3.0 to 6.5) did not elicit any mutagenic activity (Ref. 29). Also Chang et al. have reported that, in a *B. subtilis* test system, higher concentrations of a sodium sulfite-bisulfite mixture (0.1 molar to 0.5 molar; pH 7) showed mutagenic effects, whereas a lower concentration of this mixture (0.05 molar; pH 7) caused no mutagenic activity. Cells treated with adducts of sodium bisulfite and cytidine monophosphate or uridine monophosphate showed mutagenic effects at concentrations of 0.25 molar and 0.5 molar (Ref. 30).

DiPaolo et al. have reported that transformation of Syrian hamster embryo cells treated with 1, 5, or 10 millimolar bisulfite for 24 hours at neutral pH was increased in a dose-dependent fashion (Ref. 31a). These authors suggested, however, that this transformation might not occur by a mutagenic mechanism because bisulfite in combination with ultraviolet irradiation did not synergistically increase transformation. Further work by Doniger et al. in this system indicated that bisulfite caused no detectable deoxyribonucleic acid (DNA) damage and may have decreased the rate of DNA replication per cell by blocking operation of part of the functioning replicons (Ref. 31b). MacRae and Stich reported that in Chinese hamster ovary cells, dose- and time-dependent inductions of sister chromatid exchange were seen following exposure to 0.03 millimolar to 7.3 millimolar concentrations of bisulfite for 2 or 24 hours (Ref. 32).

In contrast, Mallon and Rossman have demonstrated that Chinese hamster cells exposed for 15 minutes to 10 and 20 millimolar bisulfite exhibited no mutations to ouabain resistance (Ref. 28). Likewise, exposure for 15 minutes to 10 millimolar bisulfite produced no mutations to 6-thioguanine resistance. Long-term exposure of Chinese hamster V79 cells (exposed continually and recultured for 8 weeks in a complete growth medium containing 5 millimolar bisulfite) also failed to induce ouabain resistant mutations (Ref. 28). According to Schneider and Calkins, cultures of lymphocytes from human peripheral blood exhibited chromosomal abnormalities (clumping) and decreases in DNA synthesis, cell growth, and mitotic indices after a single exposure to 100 milliliters of 5.7 ppm sulfur dioxide in air on day 0 or day 1 of incubation but not on day 2 or day 3 (Ref. 33).

While chromosomal aberrations have been observed in response to sulfites in in vitro systems, mutagenic effects have not been reported in intact animals exposed to sulfur dioxide or sulfites. Generoso et al. have reported the dominant-lethal mutations were not increased in 10- to 12-week-old (C3H x 101) F_1 female mice given one intraperitoneal injection of 550 milligrams per kilogram of sodium bisulfite and mated with untreated (101 x C3H) F_1 males within 4.5 days of treatment (Ref. 34). In the same study, neither heritable translocations nor dominant-lethal mutations were detected when (101 x C3H) F_1 male mice were mated with (C3H x C57BL) F_1 females after intraperitoneal injections of 400 milligrams per kilogram of sodium bisulfite 20 times during a 26-day period or of 300 milligrams per kilogram 38 times during a 54-day period.

Jagiello et al. reported that chromosomal aberrations were not found in oocytes of female Camm mice given one intravenous injection of 1.0, 2.5, or 5.0 milligrams sodium sulfite although structural damage was reported during meiosis when cultures of Camm mouse oocytes were treated with sodium sulfite (Ref. 35). Renner and Wever have reported that no cytogenetic effects (measured by sister chromatid exchange, chromosomal aberration, and micronucleus tests) were induced in bone marrow cells of either Chinese hamsters or NMRI mice (made sulfite oxidase-deficient by feeding a low molybdenum diet plus administration of sodium tungstate in drinking water) in response to subcutaneous or intraperitoneal injection or oral administration of sodium metabisulfite solution (Ref. 36). However, the authors noted that the control animals tolerated higher doses of sulfite than those made sulfite oxidase-deficient (Ref. 36).

According to Tanaka et al., male and female ICR/JCL mice administered 1 and 2 percent potassium metabisulfite in drinking water for 24 months had no increased incidence of tumors over control animals, suggesting that potassium metabisulfite is not carcinogenic in mice (Ref. 37). Peacock and Spence have reported that exposure to sulfur dioxide by inhalation was associated with an increase in lung tumors, but the increase was not statistically significant (Ref. 38). According to Laskin et al., inhalation of sulfur dioxide in combination with benz(a)pyrene resulted in an increased incidence of tumors in rats over exposure to either substance alone. Rats exposed only to sulfur dioxide had no tumors at the end of the experimental period (Ref. 39).

Gunnison et al. reported an unexpected finding of mammary adenocarcinomas after 9 weeks of treatment in 4 of 149 female rats (2 pregnant, 2 nonpregnant) with low activity of sulfite oxidase induced by a low molybdenum diet containing tungstate. No tumors were found in rats with normal levels of sulfite oxidase activity. The difference was not statistically significant (Ref. 24).

Two Swedish studies examined the effects of sulfur dioxide on the peripheral blood cells of workers that were exposed to this substance. Nordenson et al. observed an increase in chromosomal aberrations (mostly gaps and chromatid-type breaks) in 7 of 19 workers who were exposed to other inhalants as well in a sulfite pulp factory (Ref. 40). However, Sorsa et al. observed that peripheral blood lymphocytes of eight workers whose individual mean daily exposure to sulfur dioxide in an aluminum foundry was estimated to be 1.0 ± 0.85 ppm had no greater incidence of chromosomal aberrations or sister chromatid exchange than eight age-control subjects (Ref. 41). Average daily sulfur dioxide exposures in the aluminum foundry were estimated to range from 0.2 to 3.0 ppm., and mean employment time for the exposed workers was 19.5 years (Ref. 41).

The Panel noted that possible synergistic effects of sulfur dioxide and sulfites with other compounds have been examined in an effort to determine whether sulfiting agents might act as comutagens or cocarcinogens. Mallon and Rossman reported that mutation frequency was approximately doubled in ultraviolet-irradiated Chinese hamster cells exposed to 10 millimolar bisulfite either during or after irradiation exposure, and tryptophan revertants were increased by more than eightfold in ultraviolet-treated *E. coli* cells exposed to 75 millimolar bisulfite (Ref. 28). Hayatsu and Kitajo reported that treatment of bacteriophage-*lambda* with bisulfite-amine mixtures (1 molar bisulfite plus 1 molar semicarbazide, hydrazine, methoxyamine, or hydroxylamine) produced increases in clear mutation (plaque-forming activity) over treatment with bisulfite alone (Ref. 42). Khoudokormoff and Gist-Brocades reported that combination of bisulfite (150 ppm) with nitrite (100, 200, or 400 ppm) produced a weak mutagenic effect after 2 weeks in *B. subtilis* (Ref 29). Suwa et al. reported that mutagenic effects of coffee on *Samonella typhimurium* strains TA 100 and TA 98 without S9 mix were completely inhibited by addition of 300 ppm sulfiting agents (sulfite, bisulfite, or metabisulfite), and phage-inducing

activity of coffee (prophage-*lambda* induction test) was suppresed by 300 ppm sulfite ion (Ref. 43). Sodium sulfite was also noted by Calle and Sullivan to be a weak inhibitor of mutagenic effects induced by benz(a)pyrene in *S. typhimurium* strain TA 98 (Ref. 44). Borek reported that bisulfite concentrations relevant to use in foods (0.5, 2.5, and 5.0 micrograms per milliliter), as well as a higher concentration of 100 milligrams per milliliter, inhibited transformation of C_3H 10T 1/2 cells by x-rays and benz(a)pyrene. Pretreatment of hamster embryo cells with 100 ppm bisulfite inhibited transformation by x-rays (Refs. 45 and 46).

With respect to the mutagenicity or carcinogenicity potential of sulfites, the Panel concluded, upon consideration of the new studies, as well as the data available to the Select Committee in 1976, that sulfites are mutagenic to several microorganisms and may produce chromosome damage to mammalian cells in vitro. Sulfites, however, also inhibit mutagenic effects of some known mutagens and carcinogens. The Panel concluded that sulfites are not carcinogenic or mutagenic in vivo to rats and mice.

C. Conclusions and Recommendations of the Panel

In summary, the Panel concluded that sulfiting agents are not teratogenic, mutagenic, or carcinogenic in laboratory animals. The Panel found no new metabolic or toxicological data in its review of sulfiting agents that suggest a need to change the no-observed-adverse-effect level for sulfites and stated that an examination of exposure and consumption data indicates that the level of consumption of sulfites from foods and beverages is about the same as that estimated by the Select Committee in 1976.

The Panel further compared the no-observed-adverse-effect level from chronic toxicity studies to the likely upper limit levels of human intake (found by the Panel to range from a mean of less than 0.17 milligram per kilogram of body weight per day to a 99th percentile value of less than 3 milligrams per kilogram of body weight per day). The Panel compared these intake levels to the no-observed-adverse-effect levels based on animal toxicity data (estimated to range from 30 milligrams to 100 milligrams sulfur dioxide equivalents per kilogram of body weight per day). The Panel determined that the margin between the amount of sulfur dioxide equivalents ingested by high intake consumers and the lowest estimated no-observed-adverse-effect level is about tenfold (30 milligrams per kilogram of body weight per day divided by 3 milligrams per kilogram of body weight per day). The Panel concluded that the margin between the mean per capita daily intake and the lowest no-observed-adverse-effect level is about 180-fold (30 milligrams per kilogram of body weight per day divided by 0.17 milligram per kilogram of body weight per day). The Panel noted that "consideration of the significance of this difference should recognize the difficulties in estimating with confidence the components which are the basis of the calculated safety margin." (Ref. 6.)

The Panel found that none of the five traditional conclusion statements (Ref. 3) considered by the Select Committee on GRAS Substances for its 1976 report is appropriate for sulfites. The Panel's conclusion statement for sulfites contains two parts. The Panel first concluded that:

> For the majority of the population, there is no evidence in the available information on potassium bisulfite, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, sodium sulfite, and sulfur dioxide that demonstrates or suggests reasonable grounds to suspect a hazard to the public when these substances are used at levels that are now current and in the manner now practices. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard.

Second, the Panel concluded that:

> For the fraction of the public that is sulfite sensitive, there is evidence in the available information on potassium bisulfite, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, sodium sulfite, and sulfur dioxide that demonstrates or suggests reasonable grounds to suspect a hazard of unpredictable severity to such individuals when they are exposed to sulfiting agents in some foods at levels that are now current and in the manner now practiced.

IV. FDA's Evaluation of the Panel's Report

FDA has undertaken its own evaluation of the data that formed the basis for the Panel's report. The agency has evaluated the report's human exposure estimates, estimates of highest no-observed-adverse-effect level for sulfites, its estimates of safety margins (ratios of no-observed-adverse-effect levels to human exposure values) for the use of sulfites in human food, and the Panel's overall conclusions.

A. Exposure Estimates

The Panel determined that the mean human intake of sulfites from food does not exceed 0.17 milligram per kilogram of body weight per day (sulfur dioxide equivalents), and that intake from a hypothetical meal high in sulfited foods, which includes consumption of wine and beer, does not exceed 3 milligrams per kilogram of body weight per day (sulfur dioxide equivalents). The agency has reviewed the data and the Panel's estimates and has estimated that the mean level of chronic intake of sulfiting agents does not exceed 0.3 milligram per kilogram of body weight per day (sulfur dioxide equivalents), a figure slightly higher than the Panel's estimate.

The agency also used data from the Panel's report and from the National Food Consumption Survey "Foods Commonly Eaten by Individuals" (Ref. 13), combined with typical sulfur dioxide equivalent residues, to compute an acute 99th percentile intake of sulfites based on a single eating occasion of highly sulfited foods. The agency did not include exposure to sulfites from their use on fresh fruits and vegetables in this computation (or in its computation of mean chronic intake). Based on its computation, FDA would not expect this 99th percentile intake of sulfites to exceed approximately 5 milligrams per kilogram body weight per day.

Even though the information bases available to the agency and to the Panel were virtually the same, the agency's estimates are somewhat different from the Panel's because the agency used some different assumptions in its calculations. The agency's estimates differed from those of the Panel in two ways: (1) use of market share factors, and (2) selection of typical sulfur dioxide equivalent residue levels.

Market share factors are estimated percentages of the foods in each of the dietary food categories listed in 21 CFR 170.3(n) that may contain the additive. Such market share factors are applied to adjust intake estimates to reflect actual usage of an ingredient based on economic and technological considerations. For example, current information indicates that sulfite-treated flour is useful in only certain types of products within the dietary food category "Baked Good," such as pie crusts, crackers, and cookies. Consequently, FDA adjusted its estimate of exposure to sulfites from this food category to reflect this fact. The agency found, however, that the Panel did not apply market share factors in reaching its exposure estimates.

The agency also selected a different typical sulfur dioxide equivalent residue level for certain food uses than did the Panel. In reviewing the available information, the agency determined that the Panel sometimes used a sulfur

dioxide equivalent residue value that was derived from an opinion expressed by food industry representatives. The agency, however, gave the greatest weight to sulfur dioxide equivalent residue values that were derived from actual analyses of food and consideration of whether the analyzed samples were representative. Information gathered for the Panel's review aided the agency in refining its estimates of sulfite intake. However, the new result of these different procedures was different estimates of sulfur dioxide equivalent intake between the Panel and the agency.

The exposure estimates provided by the Panel and reevaluated by the agency, i.e., the mean intake levels and the intake level of the hypothetical high consumer of sulfited foods including the consumption of wine and beer, include within their range the 90th percentile intake level, the level that the agency has traditionally used in the safety evaluation of numerous food ingredients. In fact, the Panel, which examined 1977 data on sulfites from the National Academy of Sciences (NAS) (Ref. 5), estimated the 90th percentile intake, including the consumption of wine and beer, to be 43 milligrams per day (0.72 milligram per kilogram per day). The Panel estimated the mean intake level for a consumer, including the consumption of wine and beer, to be 19 milligrams per day (0.32 milligram per kilogram per day) (Ref. 6, p. 25). Therefore, the 90th percentile intake can be expected to exceed the mean intake by approximately a factor of 2.3 (0.72 as compared to 0.32 milligram per kilogram per day).

B. Estimates of Highers No-Observed-Adverse-Effect Levels for Sulfites

The Panel estimated that the no-observed-adverse-effect level for sulfites ranged from 30 milligrams per kilogram of body weight per day (sulfur dioxide equivalent) to 100 milligrams per kilogram of body weight per day (sulfur dioxide equivalent) and was probably closer to the value of 100 milligrams per kilogram of body weight per day (Ref. 6, pp. 42 and 58).

The agency has reviewed the available data and the Panel's conclusions on the toxicology of sulfiting agents. In its review, the agency found no data that would cause it to disagree with the Panel that the no-observed-adverse-effect level for sulfites is in the range of 30 to 100 milligrams per kilogram of body weight per day (sulfur dioxide equivalents).

C. Safety Margin for Sulfites

The agency normally establishes the safety of new food additives by applying a safety factor to the no-observed-adverse-effect level for the ingredient. Traditionally, the agency has determined the maximum acceptable daily human intake of the food additive (in units of milligrams per kilogram of body weight per day) by multiplying the no-observed-adverse-effect level from chronic animal experimentation data by the safety factor of $\frac{1}{100}$ as provided in the agency's regulations for food additives in 21 CFR 170.22. For any food ingredient that is currently in use, one may compute the current safety margin by determining the ratio of the no-observed-adverse-effect level from chronic animal experimentation data (in milligrams per kilogram of body weight per day) to the chronic estimated daily human intake of the ingredient (in milligrams per kilogram of body weight per day).

Using the lowest (most conservative) of the no-observed-adverse-effect level values (30 milligrams per kilogram of body weight per day), the agency calculates that the safety margin is approximately 100 for the estimated chronic mean intake of sulfites (30 milligrams per kilogram of body weight per day) divided by (0.3 milligram per kilogram of body weight per day). This margin is consistent with the safety factor that the agency, in most circumstances, applies to new food additives.

The agency also notes that acute sulfite intake that results from infrequent ingestion of meals containing a number of highly sulfited foods is not representative of the food intake patterns that lead to the development of chronic conditions, and it is not valid to compare such intakes to the no-observed-adverse-effect level obtained from a chronic feeding study to derive a safety margin. The concerns presented by such extreme eating patterns are not related to chronic toxic effects but rather have a bearing on acute sulfite-sensitivity reactions. As noted above, the adverse health consequences of acute high intake of sulfites in humans have been characterized in clinical studies, and the agency has addressed the public health concerns arising from such acute intakes in separate rulemakings.

For a new food additive for which there is not yet an approval, the agency traditionally has used a 90th percentile chronic exposure estimate to calculate the safety margin. A 90th percentile exposure value was not calculated for sulfiting agents from the most recent data. For the purposes of this discussion, however, the agency has calculated a 90th percentile value. Using the National Academy of Sciences data discussed above, the agency has calculated the 90th percentile to be at least two times greater than the mean. Multiplying the mean by two yields as estimated value of 36 milligrams per day (0.6 milligram per kilogram per day) sulfites for the daily intake of sulfites at the 90th percentile.

The agency believes, based on its review of the toxicity data on sulfites, that the true no-observed-adverse-effect level is approximately 100 milligrams per kilogram per day, consistent with the findings of the Panel (Ref. 6, pp. 42 and 58). Based on these considerations, the agency calculates a safety factor of 170 (100 milligrams per kilogram per day divided by 0.6 milligram per kilogram per day) for the calculated 90th percentile intake value, and a safety factor of 340 for the chronic intake. Therefore, the agency believes that an adequate margin of safety does exist between the no-observed-adverse-effect level for sulfites and chronic mean intake and estimated 90th percentile intake of individuals.

D. The Panel's Conclusion

The agency had reviewed the Panel's two-part conclusion. The first part of the conclusion was directed at the GRAS status of most uses of sulfites and was concerned with exposure of the vast majority of consumers. The second part was directed at that subpopulation of consumers that are sensitive to sulfites, especially when the sulfites are used on certain categories of foods.

The agency has already responded to the latter conclusion in the final rule on the use of sulfiting agents on fresh fruits and vegetables and in the proposal on potatoes (Refs. 9 and 10). With respect to the GRAS status of the overall use of sulfites on food (the first element of the Panel's conclusion), the Panel concluded that, except for certain exposures of the subpopulation of individuals sensitive to sulfites, the use of these ingredients on food in GRAS.

On the basis of its review of all available information, the agency has not found any reasons to disagree with the Panel's conclusions.

V. The Advisory Committee on Hypersensitivity to Food Constituents

In the **Federal Register** of April 16, 1984 (49 FR 15021), FDA announced that the Secretary of the Department of Health and Human Services established an ad hoc Advisory Committee on Hypersensitivity to Sulfiting Agents in

Foods (later renamed the Advisory Committee on Hypersensitivity to Food Constituents) to function under FDA's Center for Food Safety and Applied Nutrition. The Committee reviewed and evaluated available information and data relevant to the allergic-type responses in humans that are associated with food ingredients, including sulfiting agents, for the purpose of making appropriate recommendations to the Commissioner of Food and Drugs.

The Committee met on December 12 and 13, 1985, to review specifically the available information on the use of sulfiting agents in food. The Committee generally supported FDA's proposal to rescind the GRAS status of the use of sulfites on fresh fruits and vegetables (Ref. 9a), and encouraged FDA to include "fresh potatoes" in this section (Ref. 47).

VI. Comments

Even though the extended comment period closed on December 7, 1982, the agency has continued to receive comments regarding sulfiting agents. The agency has received comments from consumers, consumer groups, Congressional representatives on behalf of consumers, health professionals and scientists, Federal, State, and local government officials, the food industry, and industry trade associations.

Many comments received since 1982 pertained to alleged adverse effects experienced by consumers who consumed foods, particularly fresh fruits and vegetables and potatoes or potato products, that were treated with sulfites. Among the comments received from consumers, approximatley 38 percent were reports of alleged adverse reactions to sulfiting agents in food. Other consumer comments recommended various courses of action: Roughly 27 percent urged the agency to ban sulfites from all use in foods. About 1.5 percent suggested a ban on certain uses of sulfites in certain foods, and a similar proportion (about 1.5 percent) requested that limits be placed on the use of sulfites in food. Over 15 percent of the comments received from consumers advocated the use of labeling on foods containing sulfiting agents, and a similar proportion (about 15 percent) expressed a general concern about the use of sulfites in food.

FDA has responded to comments that relate to adverse reactions by sulfite-sensitive persons, or to the use of sulfites on fresh fruits and vegetables and on potatoes or potato products, in previously published **Federal Register** documents (Refs. 9 and 10). In this document, the agency will respond only to those comments that pertain to the overall GRAS status of sulfites in food and to the GRAS status of those uses of sulfites that have not already been addressed by the agency.

On October 28, 1982, the agency received a citizen petition regarding sulfiting agents in food and drugs. (The petitioner supplemented the petition on March 15, 1983, August 17, 1983, and July 25, 1986.) The agency's response to those aspects of the citizen petition that relate to the use of sulfites on food is presented in section VI.B. below.

A. General Comments

Two comments from industry sources supported the 1982 proposal as written. The remaining comments from industry presented information in support of modifications in the proposal. Most industry comments requested GRAS affirmation for uses of sulfiting agents, including uses of sodium sulfite that were previously unreported and that were consequently not considered by the Select Committee. Many comments also requested modifications with regard to some of the reported uses, including higher or lower sulfite treatment levels in foods, additional technical effects, use of residual sulfur dioxide levels instead of treatment levels, or deletion of all use limitations. Some comments presented information that, according to the comments, demonstrated that any one of several sulfiting agents could be used to accomplish the same technical effect in a food product. These comments requested that the agency permit the interchangeable use of two or more of the sulfiting agents.

A number of comments reported information on the use levels or residual levels of various sulfiting agents in foods. Some provided data and information on sulfite sensitivity reactions. FDA gave a number of the comments to the Panel for consideration at the Panel's request.

1. Potassium Bisulfite and Sodium Sulfite

Numerous comments from industry and industry trade associations, in response to the July 9, 1982, proposal, requested that FDA not deny GRAS status to the use of potassium bisulfite and sodium sulfite. In the 1982 proposal, the agency said that it did not have any evidence of food use of potassium bisulfite, and that it did not have sufficient information relating to the food use of sodium sulfite to establish limitations on the use of this ingredient. FDA stated that as a result, it could not affirm these ingredients as GRAS. Instead, FDA proposed to remove these ingredients from the list of substances that are GRAS.

The comments described current uses of these two sulfiting agents in a variety of food products, demonstrating that they are, in fact, being used by industry. The agency considers that these comments have provided sufficient evidence of the use of sodium sulfite and potassium bisulfite to warrant affirming that the use of these ingredients is GRAS.

2. Interchangeable Use of Sulfiting Agents

A number of comments expressed the opinion that several sulfiting agents ought to be fully interchangeable. In particular, the comments noted the desirability of allowing food processors to substitute potassium salts of the sulfiting agents for sodium salts to reduce the sodium content of processed foods and thus to contribute to a reduction in the level of sodium consumption in the United States.

The agency has found no evidence that the six sulfiting agents that are the subject of this rulemaking are not fully interchangeable. In fact, interchangeability could offer manufacturers and food processors greater flexibility in formulating foods and could facilitate the substitution of potassium salts for sodium salts where feasible. Therefore, the agency is providing for the interchangeability of all sulfiting agents in this rulemaking by setting forth in the regulations maximum permitted residual levels of sulfites in food in terms of sulfur dioxide equivalents rather than in terms of any specific sulfiting agent.

As noted above, sulfur dioxide equivalents are a measure of the proportion of the sulfiting agent that can chemically dissociate into sulfur dioxide. Different sulfiting agents possess different percentages of sulfur dioxide per unit weight. The use of sulfur dioxide equivalents to measure the maximum permitted residual levels of sulfites in food correctly focuses on that portion of the sulfiting agent that is of biological significance, the sulfur dioxide, and not the parent chemical. As long as sulfur dioxide equivalents are used to measure the sulfite content of foods, sulfiting agents may be used interchangeably.

3. Claimed Inconsistencies in Proposal

One comment pointed out that the limitations on the use of sulfiting agents in the 1982 proposal were inconsistent. As an example, the comment cited the fact that the limitations on the use of two different sulfiting agents differed by

a factor of 100 in the same food categories. The comment stated that such an inconsistency would present problems for industry because it creates ambiguity.

The agency believes that this concern has been eliminated because the agency is permitting the sulfiting agents to be used interchangeably. This approach was explained in the response to the previous comment.

4. Levels of Use

A number of comments from segments of the food industry addressed specific use levels or residual levels of sulfiting agents in specific food products. Some comments argued for different treatment levels from certain sulfiting agents than those that the agency had specified in the July 1982 proposal. Some comments requested that limitations on sulfites be stated in terms of residual levels on the finished food product rather than in terms of treatment levels.

The agency believes that the most reasonable way to define limitations on sulfite use in food is to use the levels of sulfites on finished food products measured as sulfur dioxide equivalents. (A "finished food" is the product as manufactured.) The amount of sulfite present on a particular food at the time that it is consumed may differ from the amount remaining on that food just after processing. The latter amount of sulfite may, in turn, differ from the amount actually used to treat the unprocessed food. Such differences reflect the fact that a significant amount of applied sulfites can be lost from foods during processing, storage, distribution, or home preparation. These losses can result from either physical processes, such as volatilization, or chemical processes, which involve chemical reactions with food constituents. Because levels of sulfites in finished foods may differ considerably (and unpredictably) from treatment levels, and because finished foods are those most readily available to the agency for determining compliance, FDA has tentatively concluded that it does not make sense to base the specific limitations on the level of sulfites in the food at the time it is treated or at the time it is consumed.

The agency concludes that setting specific limitations on the level of residual sulfur dioxide equivalents in the finished food will most effectively ensure the safety of treated foods and will also allow compliance with the limitations to be more accurately verified. This approach is also the approach used in the recent rulemaking concerning the labeling of food products that contain sulfiting agents (Refs. 7 and 8).

5. Home Use of Sulfites

One comment submitted that sulfiting agents are currently being sold directly to the general public for use in home drying, freezing, and canning of fruits and vegetables. The comment expressed concern about the potential effects of sulfite regulations on the selling of sodium metabisulfite as an accessory to the home food dehydration equipment manufactured by the company that submitted the comment.

The agency notes that the direct marketing of sulfiting agents for home use was not reviewed or evaluated by the Select Committee or by the Panel. Thus, the agency believes that there is currently no basis for affirming the GRAS status of the home use of sulfiting agents for drying, freezing, canning fruits and vegetables, or for other uses, such as home winemaking. In fact, such uses of sulfites may present hazards to consumers who are sulfite sensitive. Sulfiting agents sold for home use might lack adequate directions for use or may by misused by the consumer. Thus, the possibility exists that sulfite-sensitive individuals may be unwittingly exposed to excessive levels of sulfites on food produced at home. Therefore, the agency cannot affirm the GRAS status of these uses of sulfiting agents.

The ad hoc Advisory Committee on Hypersensitivity to Food Constituents considered the use of sulfiting agents in home drying of foods during its December 12, 1985, meeting (Ref. 47, p. 368). At that time, the Advisory Committee voted unanimously to recommend "the banning of the sale of sulfites and formulated sulfite products for use as fruit and vegetable fresheners and potato whiteners at the retail and consumer level" (Ref. 47, p. 363). Given this recommendation, and given that the use of sulfites in home dehydration equipment and other home uses was not reviewed by the Panel, the agency tentatively concludes that there is insufficient information to affirm these uses of sulfites as GRAS, and solicits further comments and information on such uses.

6. Identification of Sulfur Dioxide and Sodium Metabisulfite

One comment requested that the agency adopt the specifications for sulfur dioxide in the 3d edition of the Food Chemicals Codex. Another comment requested that the agency adopt the Chemical Abstracts Service (CAS) registry number that is used by the Environmental Protection Agency for sodium metabisulfite.

The agency agrees that the specifications for sulfur dioxide, as with almost all direct food additives, should be those stated in the 3d edition of the Food Chemicals Codex. The present rulemaking reflects that fact. In addition, the agency has verified the latest CAS registry numbers for all sulfiting agents that are the subject of this rulemaking and is incorporating those numbers in the proposed GRAS affirmation regulation.

Furthermore, the agency is also proposing to adopt the specifications listed in the Food Chemicals Codex, 3d Ed., for potassium metabisulfite, sodium bisulfite, sodium metabisulfite, and sodium sulfite. However, no food-grade specifications exist for potassium bisulfite. The agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for this ingredient. When acceptable specifications are developed, the agency will incorporate them into § 184.1861, should FDA decide to adopt this regulation. Until specifications are developed, FDA has determined that the public health will be adequately protected if potassium bisulfite complies with the description in the proposed regulation and is of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

7. Description of Sodium Bisulfite

One comment submitted data to establish that the chemical description provided in the July 9, 1982, proposal for sodium bisulfite does not adequately describe the ingredient of commerce. This comment noted that sodium bisulfite is not available commercially in a pure dry powder form and exists only as an aqueous solution.

FDA is aware that the articles of commerce called "anhydrous sodium bisulfite" and "anhydrous potassium bisulfite" are, in reality, mixtures of the salts sodium bisulfite and sodium metabisulfite and of the salts potassium bisulfite and potassium metabisulfite, respectively. When added to water, these mixtures produce aqueous solutions of sodium bisulfite and of potassium bisulfite, respectively. Therefore, FDA is revising the description of both sodium and potassium bisulfite in this rulemaking to reflect the fact that certain of the articles of commerce that are subject to this rulemaking are mixtures of bisulfite and metabisulfite salts.

8. Wine Institute Comment

BATF has forwarded to FDA a comment and data on sulfites that it received from the Wine Institute. The

Wine Institute had originally submitted these data to BATF in a December 23, 1985, comment to BATF Notice No. 566 (Ref. 48), which proposed mandatory sulfite labeling for alcoholic beverages that contain sulfites. The Wine Institute comment stated that the Monier-Williams method for measuring the sulfur dioxide content of sulfite-treated foods is inaccurate because it makes no distinction between "free" and "bound" sulfites. (The Monier-Williams method is the analytical method adopted, with modifications, by the agency for detecting sulfite levels in food (Ref. 8).) The comment asserted that "bound" sulfites are not the cause of any perceived adverse reactions to sulfites in individuals. Therefore, the comment argued that measurement of the sulfite content of a food by the Monier-Williams method may produce an inaccurate measure of the risk to individuals from sulfites in that food. The Wine Institute included with its comment the results of a study of sulfite-sensitive individuals challenged with wine to which known quantities of "bound" sulfites had been added. The purpose of the study was to determine the extent to which "bound" sulfites in wine may cause significant adverse reactions in sulfite-sensitive individuals.

FDA has reviewed this comment and the data submitted with it. These data do not present sufficient evidence to justify a change in the agency's belief that both types of sulfites may be potential sources of risk for sulfite-sensitive persons. As noted in the preamble to the final rule on labeling requirements for sulfiting agents (51 FR 25012), the agency has also received data indicating that bound sulfites may contribute to adverse reactions in humans. The agency believes that the available data do not resolve the question of whether "bound," as opposed to "free," sulfites in food can be responsible for adverse reactions in sulfite-sensitive individuals. Until more conclusive data become available, the agency cannot distinguish between "bound" and "free" sulfites in food and will continue to rely on the modified Monier-Williams analytical method for the quantitative detection of total sulfites.

FDA selected this method because it measures the free sulfite plus a reproducible portion of the bound sulfites, such as the carbonyl addition products, in the food. While it may be preferable to have a method that would measure, in absolute terms, the free sulfite and each of the other sulfite-derived substances in a food, FDA has determined that no such method exists, and that it is unlikely that one will be developed in the near future. Therefore, FDA has selected the Monier-Williams method, which for years has been the standard against which the accuracy of newer procedures has been judged, as the basic method that it will use for enforcement of the sulfite labeling rule.

The agency recognizes that the Monier-Williams method (Ref. 49) was not originally intended to measure sulfite levels as low as 10 ppm. However, FDA has made some procedural changes in the method that, without changing the method's chemical principles, improve its accuracy and reproducibility and thus make it suitable for use at 10 ppm. These changes, as well as other technical aspects of the analytical methodology, are discussed in detail in "A Report on the Monier-Williams Method for Sulfites in Food" (Monier-Williams Report), prepared by FDA (Ref. 50). A copy of this report is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. The modified procedure is described in "Monier-Williams Procedure (with Modifications) for Sulfites in Food" (November 1985) and is also on file in the Dockets Management Branch (Ref. 51). The method is also cited as the official regulatory method for sulfite determination (Ref. 8).

B. Citizen Petition

On October 28, 1982, the agency received a citizen petition signed by three consumers, a physician, a scientist, and representatives of the Center for Science in the Public Interest (CSPI), Washington, DC. The petitioners requested that FDA "amend certain food standards and rescind certain food additive regulations, prior sanctions, and advisory opinions that permit the use of sulfiting agents above 350 micrograms per serving." The petitioners also requested that FDA "require warning labels on those products in which sulfiting agents must be used in greater amounts in order to perform essential public health functions."

The petitioners also requested that FDA ban the use of sulfiting agents in drugs designed for the treatment of asthma and either ban their use in over-the-counter and prescription drugs or require a warning label on those drugs in which sulfiting agents were used to perform essential public health functions.

In supplements to the citizen petition that were submitted on March 15, 1983, and August 17, 1983, the petitioners requested that FDA ban the use of sulfiting agents on salad bars, withdraw the prior sanction permitting the use of sodium bisulfite on potatoes, and institute appropriate enforcement action against certain misbranded products labeled for use on vegetable salads or dehydrated fruits and vegetables. The petitioners submitted data to support their claim that vegetable salads and potatoes are significant sources of thiamine, and that products instructing users to apply sulfiting agents to these foods are misbranded. The petitioners suggested that FDA issue an appropriate regulatory letter to all manufacturers of such products.

The petitioners stated that FDA had failed to present any evidence to justify the use of a fifteenfold margin of safety with regard to sulfiting agents. They asked that FDA ensure the existence of a hundredfold safety margin, citing in support of their request the fact that current usage levels posed a significant problem to many consumers, and that interspecies variations in in vivo sulfite oxidase levels have been documented.

The petitioners stated that FDA, in its July 9, 1982, proposal, had not reviewed all of the available scientific data on sulfiting agents. The petitioners submitted references to various published articles, abstracts, and letters concerning adverse reactions to sulfites. In addition, the petition contained information about, and references to, mutagenic in vitro tests and cocarcinogenicity studies of the sulfiting agents.

The petitioners contended that safe alternatives to sulfiting agents, such as ascorbic or citric acid, are available and should be used if necessary. They expressed their belief that proper handling and storage conditions could also, in some instances, obviate the need for sulfiting agents.

On July 25, 1986, the petitioners sent a supplementary comment to Department of Health and Human Services Secretary Bowen emphasizing that 60 percent of the reported sulfite reactions classified by FDA as "serious" involved foods other than fresh fruits and vegetables. The petitioners urged the agency to immediately decide the safety of all remaining uses of sulfites.

FDA has already responded to aspects of the petition in the rulemakings on sulfite labeling (Refs. 7 and 8) and on the use of sulfiting agents on fresh fruits and vegetables (Ref. 9), on potatoes (Ref. 10), and on drugs (51 FR 43900). Thus, for the purposes of this rulemaking, the agency believes that it need not respond to those aspects of the petition. Here, the agency is responding to the remaining parts of this petition and its supplements.

FDA has tentatively decided to deny the petitioners' request that the agency prohibit the use of sulfiting agents on foods at levels of more than 350 micrograms per serving. FDA agrees with the conclusions of the Panel and believes that the uses of sulfiting agents, except for those that have already been addressed because of concern for allergic-type responses in sulfite-sensitive individuals, are GRAS.

FDA reviewed all the scientific references and medical reports cited in the petition and also made them available to the Panel. Furthermore, the agency conducted its own update of the scientific literature on sulfiting agents from 1975 to the present and evaluated the pertinent references on sulfites that it found. The agency also forwarded these data to the Panel for use in its reexamination of sulfites. Thus, both the agency and the Panel have had access to all the relevant data available on sulfites. On the basis of these data, the Panel concluded, and the agency concurs, that certain uses of sulfiting agents on food can no longer be considered to be GRAS, while other uses can still be considered to be GRAS.

The agency has acted to protect sulfite-sensitive individuals in the population from the greatest sources of risk from inadvertent exposure to sulfites, namely, their use on fresh fruits and vegetables and on "fresh" potatoes. However, FDA believes that the totality of data reviewed by the Panel and by the agency confirms the GRAS status, with specific limitations, of most of the remaining uses of sulfites that are not limited by regulation. The agency believes that the petitioners have not provided any data that would justify a tentative conclusion different than the one the agency has reached—that these remaining uses of sulfiting agents are GRAS.

In response to the July 25, 1986, submission from the petitioners, the agency notes that the most recent data on allergic-type responses allegedly caused by sulfiting agents show that over 48 percent of the serious responses are attributable to the use of sulfites on fresh fruits and vegetables. Another 13 percent were allegedly caused by their use on potatoes, which FDA addressed in a recent proposal (52 FR 46968) (Ref. 10). The remaining 39 percent are allegedly attributable to sulfite use in a variety of other foods, most of which are now subject to sulfite labeling regulations (51 FR 25012) (Ref. 8). For these latter uses, the comments of the two groups of experts with whom FDA has consulted (Refs. 2 and 6) indicate that there continues to be a consensus that these uses are GRAS, so long as the sulfites are used in accordance with appropriate limitations, and their presence is properly declared on the label.

The agency believes that any remaining risks to sulfite-sensitive individuals are largely controlled by the sulfite labeling of food. The agency has traditionally relied on ingredient labeling of food as the best means of ensuring that a subpopulation of sensitive individuals will be able to avoid certain food ingredients that are of no safety concern to the general population. (See, for example, Refs. 52 a through c.) If sulfite-sensitive individuals pay attention to labeling, they will be aware when they are in settings in which foods are not ordinarily labeled, such as in restaurants, that certain foods are likely to contain sulfites.

The agency's policy on the labeling of foods that contain sulfites makes clear that when a sulfiting agent is present in a detectable amount in a finished food, regardless of whether the sulfiting agent has been directly added or indirectly added in one or more of the ingredients of the food, it is present in that food at a significant level and must be declared on the label. The July 9, 1986, labeling rule defines a detectable amount of sulfiting agent to be 10 ppm sulfur dioxide equivalents in the finished food product. Because of this rule, persons who know that they are sensitive to sulfites can be more selective in the types of packaged foods that they purchase. By reading the labels on foods, they will be able to avoid the potential hazard of an allergic-type response to sulfites in packaged foods.

Use of the 10 ppm level is a more practicable and enforceable way of determining the sulfite content of food for compliance purposes than is the petitioners' 350 micrograms per serving suggestion. The 10 ppm level does not depend on the weight of a "serving" of a particular food, a quantity that is known to vary greatly from person to person and from food to food. In addition, 10 ppm, as measured in the food, is the lowest level of sulfites in food that can be routinely measured using current analytical methodology (such as the improved Monier-Williams method) (Ref. 8).

The agency stresses that, for consumers who wish to avoid sulfites, existing regulations require that the labeling of most foods that contain these ingredients identify their presence by listing them in the list of ingredients. The agency notes that under existing regulations (21 CFR 101.100(a)(2)) even foods that are presented in unpackaged form in bulk to consumers, such as bulk dried fruit or sulfited bulk shrimp in food stores, must also be appropriately labeled for sulfite content. Such a requirement is consistent with 21 CFR 101.22(e), which requires that bulk foods offered for sale unpackaged must be appropriately labeled. The required information may be displayed to the purchaser on either: (1) the labeling of the bulk container plainly in view; or (2) a counter sign, card, or other appropriate device bearing information that the food being offered for sale contains sulfiting agents. Because it believes that this requirement is a central condition of GRAS status for the use of sulfiting agents, the agency is emphasizing the current requirements regarding labeling of bulk foods by incorporating language similar to that in §§ 101.22(e), 101.100(a)(2), and in paragraph (c)(2) of proposed § 184.1861 as a specific limitation on the use of sulfites. For the same reason, the agency is including language concerning the listing of sulfites on labels for packaged food in paragraph (c)(3) of proposed § 184.1861.

In relation to the petitioners' concerns about safety margins for sulfites, the agency has tentatively concluded that an adequate margin of safety exists between the highest no-observed-adverse-effect level for sulfites from toxicological tests and chronic intake levels of individuals. As discussed above, the Panel has demonstrated, and the agents has confirmed, that a safety margin of at least 100 for estimated chronic intake of sulfites is likely to exist. (This margin of 100 is the same as the traditional hundredfold safety factor chosen for the safe use of any new food additive based entirely on long-term animal test results with no previous experience of use in the food supply.)

The agency believes that it is not appropriate to calculate a safety margin for a food ingredient by comparing no-observed-adverse-effect levels from chronic animal feeding studies with highly exaggerated, acute levels of intake of the ingredient that may occur when a consumer ingests an occasional hypothetical meal containing large amounts of the ingredient. Such exaggerated exposures are not likely to be part of a chronic dietary pattern and are likely to be of concern only to certain sulfite-sensitive individuals. To protect such individual, FDA has, as noted above, undertaken separate rulemakings. These actions have served to reduce the unexpected exposures to sulfites via the foods that have caused

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the greatest concern for the public health.

Thus, the agency believes that the current safety margin, based on chronic exposure to sulfites in foods that are the subject of the present rulemaking, is adequate and is consistent with the continued GRAS status of those uses of sulfiting agents that the petitioner had requested that FDA ban.

VII. Conclusions

A. Specific Limitations on Residual Sulfite Levels

The agency has reviewed all of the available relevant data and information concerning the uses of sulfiting agents in food. It tentatively concludes that certain uses of sulfiting agents in food are GRAS with specific limitations.

The Panel's first conclusion about the safety of sulfiting agents, with which the agency concurs, states that "* * * it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard." This portion of the Panel's conclusions is analogous to the second of the five usual evaluation statements that the Select Committee has traditionally used in evaluating substances in the GRAS review (Refs. 2 and 3).

The agency's usual action in response to this type of conclusion is to affirm the substance as GRAS but to impose specific limitations on the conditions under which the substance may be added to foods. Thus, in the accompanying regulations, the agency is specifying the food categories on which sulfites may be used, the maximum levels of residual sulfites on finished food products in each category, and the condition that the use of sulfites be declared on the label of the finished food.

1. Food Categories and Maximum Levels as Specific Limitations

In general, the food categories included in the table of limitations in proposed § 184.1861(c) derive from the agency's examination of reported uses of sulfites compiled from the following sources: the 1982 proposal and comments on it received by FDA; the 1977 NAS survey on the use of food additives; and the Panel's report (Refs. 1, 5, and 6, respectively). To determine the appropriate limitations, the agency examined available data on sulfite residue levels in each relevant finished food product. The agency then specified a level for each limitation that represents the maximum level of sulfites for each use consistent with: (1) current good manufacturing practice (CGMP) and (2) the range of levels that have been reported for given food products.

Establishing a specific limitation, of course, does not mean that food processors necessarily ought to use the maximum allowed amounts in their particular applications. Although most of the specific limitations set forth in proposed § 184.1861(c) encompass the range of reported use levels of sulfites under CGMP for each food category, food processors should use no more sulfite than is necessary to accomplish the intended technical effect. The agency solicits comments from all interested parties on the appropriateness of any of the specific limitations on sulfite residue levels set forth in the proposed regulation.

The following examples are representative of the agency's reasoning for establishing certain sulfur dioxide equivalent levels for the various food categories in proposed § 184.1861(c).

To establish limitations for sulfites in wine, the agency has relied primarily on BATF Notice Number 543 (49 FR 37527) (Ref. 53). In that notice, BATF proposed that all wines having a total sugar content of 5 or more grams per 100 milliliters may contain up to 275 ppm of sulfites expressed as sulfur dioxide equivalents.

For tea, the agency is aware from previously submitted data that some exceedingly high levels of sulfites (residue levels of over 1,000 ppm) have been reported in certain tea and tea products. Most comments regarding the use of sulfites in tea, however, reported considerably lower levels, not exceeding 90 ppm. The agency believes, based on the evidence available to it, that a limitation of 90 ppm on tea is appropriate.

For fried fruit, the agency is aware that levels of sulfite use vary greatly. The agency is aware of reports of levels of sulfites added to apricots ranging from 2,000 to 3,500 ppm and residual levels of sulfites in apricots ranging from 1,000 to 1,750 ppm (Ref. 6, p. 14). The agency believes, on the basis of information received from the industry, that an overall level of 2,000 ppm for dried fruits is adequate, even for uses such as in dried apricots, because this level reflects what the agency believes has traditionally been the highest use level of sulfites in dried fruit (Refs. 5 and 6). In fact, the United Nations Food and Agriculture Organization and the World Health Organization Joint FAO/WHO Food Standards Programme, under the Codex Alimentarius Commission, prescribed a level of 2,000 ppm for dried apricots (Ref. 54). Other uses of sulfiting agents in the production of dried fruit, for example in the production of raisins, require sulfite residues of less than 2,000 ppm (Refs. 5 and 6).

The agency is including dehydrated, canned, and frozen potatoes in § 184.1861(c) even though in the rulemaking on sulfites and potatoes, the agency is inquiring about the safety of these uses. These actions are not inconsistent because in § 184.1861(c), the agency is proposing to establish specific limitations that restrict the GRAS affirmation of these uses to those situations in which the sulfites are used at the appropriate levels, and in which the presence of the sulfites is declared on the label of the food. In the other rulemaking (52 FR 46968), FDA is inquiring about the use of sulfites in or on canned, dehydrated, or frozen potatoes when the food is intended to be served or sold unpackaged and unlabeled to consumers.

2. Labeling as a Specific Limitation

Under section 409(c)(1) of the act (21 U.S.C. 348(c)(1)), FDA is authorized, in approving the use of a food additive, to list the conditions under which the additive may be safely used. These conditions may include any labeling requirements that the agency deems necessary to assure the safe use of the additive.

Similarly, under 21 CFR 184.1(b)(2), in affirming a substance as GRAS, FDA is authorized to set forth, by means of specific limitations, the particular conditions, including labeling, under which there is general recognition among qualified experts that use of the substance is safe. After careful review of the evidence on the use of sulfiting agents, FDA has tentatively concluded that the use of these ingredients is GRAS only (except in the restaurant-type setting) when the conditions of their use includes a declaration on the label or labeling of the presence of the sulfiting agents in the food.

The agency believes that package labeling, the banning of the use of sulfiting agents on fresh fruits and vegetables, and the action that FDA is proposing with regard to "fresh" potatoes (52 FR 46968) will remedy the conditions that have produced most of the allergic-type reactions to sulfites in restaurant settings. Thus, the agency believes that there is no basis to find that unlabeled use of products containing sulfites in restaurant settings is not GRAS. However, FDA invites comments on this issue.

The basis for FDA's tentative conclusion is provided by the data that have been discussed in this document. FDA has received numerous reports of sulfite-sensitive individuals who have

suffered allergic-type reactions because they ate foods that they did not realize were sulfited. The best way to prevent reactions of this type is to advise the consumer of the presence of the sulfites. If such information is provided in the label or labeling, sulfite-sensitive individuals will be able to avoid foods that contain these ingredients.

In recognition of the importance of such information, FDA is proposing to establish as a specific limitation in § 184.1861(c) that for the use of sulfiting agents in foods in bulk containers or in packaged foods to be GRAS, the presence of these ingredients must be declared on the label or labeling of those foods. As noted earlier, the requirement concerning the ingredient labeling of bulk foods is not a new requirement. The inclusion of this requirement in § 184.1861(c) simply emphasizes an existing requirement (see 21 CFR 101.22(e) and 101.100(a)(2)).

If the agency adopts the specific limitations that it has proposed, sulfites must be used in accordance with these limitations, or their addition to food will be considered by FDA to constitute the use of an unapproved food additive (see 21 CFR 184.1(b)(2)).

B. Claims of Prior Sanctions

The agency has received several submissions claiming that sulfites were used in specific foods in accordance with a sanction or approval granted before September 6, 1958, and that those uses are "prior sanctioned." The submissions include the GMA report, the citizen petition for the recognition of a prior sanction for the use of sulfites in maraschino cherries and glacé fruits from the Maraschino Cherry and Glacé Fruit Processors Association, and the citizen petition for the recognition of a prior sanction for the use of sulfites in beer and other malt beverages from the Beer Institute.

The agency has reviewed these submissions and has the following responses:

1. Claims for Glacé Fruit and Maraschino Cherries

The petition for maraschino cherries and glacé fruit (FAP 6CP3941) presented arguments that these products are covered by both an explicit and a general prior sanction. The petition stated that sulfur dioxide has been used to produce maraschino cherries since 1923. In addition, the petition cited numerous actions that it claimed evidenced that this use had been sanctioned by the government. In 1934, USDA promulgated a grade standard for "sulfured cherries", which were defined as cherries prepared in a solution of sulfur dioxide. In 1938, an FDA letter acknowledged that sulfites could be used to prepare brine cherries. No specific limits were listed. In 1942, FDA issued a standard of identity for fruit cocktail that permitted the inclusion of maraschino cherries. In 1943, FDA expressly approved the use of sulfur dioxide and sulfurous acid in preserving citrus foods. In a number of other letters before 1958, FDA officials acknowledged that sulfites could be used in processing cherries and other fruits. No specific limitations were listed for any of these processes.

Because no specific limits were listed in any of the correspondence submitted in the petition, the agency concludes that this use of sulfiting agents was consistent with current good manufacturing practices. A 1941 document submitted with the petition stated that residual levels of sulfites in the finished product was usually in the range of 15 to 20 ppm, and that an absolute maximum would be 50 ppm in the finished cherry (FAP 6CP3941, p. 124). Additionally, a 1983 letter submitted with the petition described a survey in which analysis of 39 samples of maraschino cherries showed that 29 samples contained less than 10 ppm sulfur dioxide. Nine samples contained sulfur dioxide levels ranging from 61 to 141 ppm, and one sample contained 203 ppm sulfur dioxide (FAP 6CP3941, p. 93). Also, this letter stated that the State of Pennsylvania has a regulation prohibiting more than 150 ppm sulfur dioxide in maraschino cherries (FAP 6CP3941, p. 92).

FDA has reviewed this petition and tentatively accepts that the use of sulfiting agents on maraschino cherries and glacé fruit is covered by a prior sanction. However, consistent with its tentative determination that this use is GRAS, the agency will include this use in § 184.1861 with specific limitations.

The petitioners for maraschino cherries provided evidence that the typical residual level of sulfites in maraschino cherries is approximately 50 ppm in the finished product. This level is lower than the level of 150 ppm reported to NAS in the 1977 Survey of Industry on the Use of Food Additives (Ref. 5). The level reported to NAS reflects a plausible upper limit to a range of possible uses, depending upon the needs of the food processor. The agency is proposing that this level of 150 ppm sulfur dioxide equivalents in finished maraschino cherries be the maximum residual level allowed in that food because that level encompasses a range of food-processing practices that are consistent with current good manufacturing practice for sulfiting maraschino cherries and glacé fruits. Because the level of 150 ppm sulfur dioxide equivalent exceeds the typical level claimed as a prior-sanctioned use in the citizen petition, the agency believes that it would serve no useful purpose to amend 21 CFR Part 181 to document a prior-sanctioned use at a lower level. The agency therefore tentatively rejects the petitioner's request to amend 21 CFR Part 181 to include a prior sanction for the use of sulfites in maraschino cherries or glacé fruits.

2. Claims for Beer

The petition from the Beer Institute (FAP 6CP3960) contained copies of several letters and memoranda from FDA dated before 1958 that gave explicit approval for the use of sulfiting agents in beer. In several of these documents a residual maximum limit of 25 ppm was stated.

The agency has reviewed this submission and tentatively concludes that the use of sulfites in beer is covered by a prior sanction. The agency also finds that there is an appropriate basis to conclude that this use is GRAS. Moreover, the reviews by two expert groups (Refs. 2 and 6) indicate that a consensus continues to exist that the use of sulfites in beer is GRAS. Therefore, FDA has tentatively decided not to amend 21 CFR Part 181 to reflect a prior sanction for the use of sulfites in beer. Instead, FDA is listing this use in the proposed GRAS affirmation regulation.

Based on information obtained from the brewing industry and from BATF, FDA believes that a specific limitation of 25 ppm sulfur dioxide equivalents in beer adequately represents current good manufacturing practice for virtually all commercially brewed beers. It is true that some recent data from a BATF survey of beers indicate that most beers contain no more than 15 ppm sulfur dioxide equivalents (Ref. 55). However, in view of the apparent prior sanction for the use of sulfites in beer at 25 ppm sulfur dioxide equivalents, the agency has tentatively concluded that it would not be appropriate to adopt the 15 ppm level. The agency welcomes comments and data from interested parties concerning appropriate levels of sulfur dioxide equivalents in beer.

3. The GMA Report

The agency has also reviewed the report from GMA that provides documentation of specific claimed prior sanctions for the use of sulfites in food.

GMA's argument in support of a general prior sanction for the use of

sulfites in foods is based essentially on the following:

(1) In 1908, FDA issued Food Inspection Decision (FID) 89, which authorized the use of sulfites in foods in ordinary quantities to achieve their functional effect.

(2) In 1940, in a letter to industry, FDA stated that it was still being guided by FID 89 with respect to food uses of sulfites.

(3) In correspondence before 1958, FDA sanctioned the use of sulfites in foods. In some of these letters, FDA expressed limitations on the use of sulfites in food. These limitations were generally that: (i) Sulfites could not be used in foods that were good sources of vitamin B_1; (ii) sulfites could not be used in standardized foods where the standard did not provide for the use of sulfites; and (iii) sulfites could not be used in meat, because they concealed damage or inferiority.

(4) In correspondence before 1958, FDA also explicitly sanctioned specific uses of sulfites in specific categories of food, including dehydrated potato products; precut peeled potatoes; bakery products; beer and malt beverage; "beverages" in general; cherries; citrus foods; coconut; corn products; dehydrated fruits and vegetables; fresh fruits and vegetables; gelatin; molasses; mushrooms; onion and garlic products; pickles and pickled vegetables; sauerkraut and horseradish; shrimp; soft drinks; syrups; and wine and wine vinegar, and as a dough conditioner.

The agency recognizes that the use of sulfites in many foods predates 1958, and that the use of one or more of the sulfiting agents in many food categories may be the subject of a prior sanction. The agency has become aware, however, that certain uses of sulfites in some foods (for example, in fresh fruits and vegetables) may render the food injurious to health and cause the food to be adulterated under section 402(a)(1) of the act (Refs. 9a and 9b). Because some uses have been found to be unsafe under section 402(a)(1) of the act, a general prior sanction, as might be implied from some FDA correspondence before 1958, is not consistent with the safe use of these ingredients (see 21 CFR 181.5(c)). Therefore, FDA is proposing herein to revoke any such general prior sanction.

Having tentatively concluded that any general prior sanction that may have existed should revoked, the agency turns to specific prior sanction claims made by GMA. The agency will address each claim on a case-by-case basis. Moreover, FDA requests that any other claims of prior sanctions for specific uses of sulfites in food be brought to its attention as comments on this proposal. The agency will consider these claimed prior sanctions based on the available evidence.

The agency compared the uses and limitations that it has tentatively concluded can be affirmed as GRAS to the uses and levels that GMA has claimed are prior-sanctioned. FDA is proposing to affirm as GRAS, at use levels equal to or greater than those in the GMA report, many of the uses of sulfites that are the subject of GMA's claims. These uses include the use of sulfites on bakery products, beer and malt beveages, certain cherries, citrus foods, coconut, corn products, most dehydrated fruits and vegetables, gelatin, molasses, onion and garlic products, shrimp, syrups, and wine vinegar and the use of sulfites as a dough conditioner. For these uses, the agency believes that there is no need to determine whether there is a prior sanction and no reason to promulgate separate, redundant regulations under 21 CFR Part 181.

GMA also presented evidence for the use before 1958 of sulfites in "beverages" and "soft drinks." In 1940, FDA issued a letter that stated that sulfur dioxide could be used in beverages at a level of up to a "few hundred parts per million." Additionally, in other publications and letters dated before 1958, FDA stated that sulfites may be used with no specific limits in carbonated beverages and beverages. In 1963, FDA proposed a standard of identity for soda water that permitted the use of sulfites as optional ingredients. This standard was codified in 1966 (21 CFR 31.1(b)(10)). This standard was revised in 1975 (40 FR 26267; June 23, 1975). Since that revision, the soda water standard (now 21 CFR 165.175) does not specifically list sulfites but provides for the optional use of any safe and suitable ingredient.

The agency has reviewed this evidence and acknowledges that a prior sanction exists for the use of sulfites in soft drinks. However, FDA has no information that U.S. soft drink manufacturers intentionally add sulfites to such beverages. Therefore, the agency is taking no action on this prior sanction at the present time. Instead, the agency solicits comments from interested parties concerning this use of sulfiting agents. The agency is particularly interested in the amounts of sulfites used. Based on the information that is submitted, the agency will decide if this use should be GRAS or codified in 21 CFR Part 181.

The GMA report lists as prior sanctioned the use of sulfites in maraschino cherries at 300 ppm. GMA has not presented evidence of explicit approval of such use by the agency (see 21 CFR 181.5(a)). Rather, it has inferred a sanction based on an industry-prepared memorandum of a meeting with an FDA official. The agency tentatively concludes that this evidence does not provide an adequate basis on which to establish a prior sanction.

The citizen petition from the Maraschino Cherry and Glace Fruit Processors Association provides more extensive and direct documentation of FDA's historical approach to industry practices regarding the production of maraschino cherries. That petition, as stated above, claims that the usual residual sulfite level in maraschino cherries is approximately 50 ppm in the finished product. The limitation for maraschino cherries that FDA is proposing in § 184.1861 is 150 ppm and encompasses the likely range of sulfite levels under current good manufacturing practice for such cherries.

Neither the Panel report nor the 1977 NAS survey reveals any use of sulfites in dairy products. Additionally, there appear to be no data to indicate that sulfites are currently being used on any dairy products. However, in its report, GMA claims that before 1958, the agency permitted use of sulfites in cheese and other dairy products. GMA cites a 1947 letter from FDA to a major producer of cheese products regarding the use of sulfur dioxide in food, an FDA file note in 1957 that stated "sodium metabisulfite entirely safe, cheese," and a letter to the Ohio State Department of Agriculture in which FDA stated that "sodium bisulfite is not considered to be directly harmful in such amounts as are generally used in foods."

The agency has reviewed this evidence. Nowhere in the two letters did the agency state that the use of sulfites is safe for use in dairy products. The agency is of the opinion that these letters were nothing more than responses to general letters of inquiry relating to sulfites. As such, these letters do not constitute a prior sanction.

With regards to the statement in the FDA file note, the agency does not believe that this file note can be construed as the type of "sanction or approval" that would provide the basis for the finding of a prior sanction because it does not represent an explicit statement of agency approval. Therefore, FDA tentatively concludes that there is no basis for finding a prior sanction for the use of sulfites in dairy products.

In support for its claim of a prior sanction for the use of sulfites in pickles and pickled vegetables, GMA cited a 1938 letter from FDA to industry that

stated in part: "* * * relative to the use of sulphur dioxide as a preservative for pickles and similar products, our law enforcement activities have not included technological investigations along such lines." A 1953 letter from FDA to industry sanctioned the use of sulfites in pickled vegetables at no more "than 300 parts per million in the finished article" (Ref. 56). The vegetables to be pickled were not specified.

In a 1945 letter from FDA to industry, the use of sulfur dioxide in horseradish and sauerkraut was addressed. Also, in a 1953 letter from FDA, the agency stated: "We are not in a position to object to the use of sulphur dioxide in small quantities in sauerkraut, provided its presence is declared on the labeling as a preservative." In both of these letters the agency cautioned that FDA discourages the use of preservatives in the manufacture of any food product when current good manufacturing practices would eliminate the need for the use of such ingredients.

The agency acknowledges that a prior sanction exists for the use of sulfites in pickled vegetables on the basis of the 1953 letters and the 1945 letter cited above. However, the agency finds that the 1938 letter cited above does not constitute an appropriate basis for a prior sanction for the use of sulfites in pickled vegetables because the agency was not sanctioning this use in this letter, and because this letter was issued before the effective date of the act.

However, rather than promulgate a prior-sanctioned regulation for the use of sulfites in pickled vegetables, the agency is proposing to codify this use as GRAS in 21 CFR Part 184 in accordance with 21 CFR 184.1(b)(2). Also, the agency is proposing to affirm this use as GRAS at a level lower than the 300 ppm sanctioned in a 1953 letter from FDA because the agency finds that the 300 ppm level of sulfites no longer reflects current good manufacturing practice.

The Panel, using data from the 1977 NAS survey of industry on the use of food additives, reported levels of sulfite addition of 30 ppm to pickles and relishes. The 1977 NAS survey data are the only recent data available on the use of sulfites on such foods. When the agency sanctioned a level of no more than 300 ppm sulfites in the finished article, it was approving a level that reflected then-current good manufacturing practice. However, as manufacturing conditions have improved, the CGMP level for sulfites has decreased steadily. Because present day industry practices result in much lower residual levels of sulfites (30 ppm) than the claimed prior-sanctioned level of 300 ppm, the agency believes that in spite of the evidence supplied by GMA for a prior sanction, the level consistent with GRAS status for this use of sulfites should be set at 30 ppm. Although the agency is proposing to establish a specific limitation of 30 ppm for the use of sulfites on pickles and relishes (including horseradish and pickled vegetables such as sauerkraut), it will consider new data from industry on current good manufacturing practices and other data and information to determine on a case-by-case basis appropriate levels applicable to such uses of sulfiting agents if such data are submitted.

The GMA report cites levels of up to 350 ppm of sulfites in wine as a prior-sanctioned use. The agency tentatively concludes that the evidence supplied in the GMA report does not demonstrate that a prior sanction exists for this use. Three exhibits supplied by GMA contain references to the Alcohol Tax Unit regulations (27 CFR 4.22(b)(1)) of the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury. These references are insufficient to serve as a basis for a prior sanction because section 201(s)(4) of the act says that the use for which a prior sanction is claimed must be "in accordance with a sanction or approval * * * pursuant to this Act, the Poultry Products Inspection Act * * * or the Meat Inspection Act * * *." Treasury Department statutes are not included. The only reference to 350 ppm of sulfites in wine by FDA is contained in an agency document dated September 12, 1938, before the current act became effective on June 25, 1939. Thus, the agency document does not constitute a sanction under section 201(s)(4). Therefore, the agency is tentatively denying GMA's assertion that a valid prior sanction exists for the use of sulfites in wine at 350 ppm.

In the present rulemaking, as explained above, the agency is proposing to set a specific limitation of 275 ppm on sulfites in wine. This level is the same as that proposed by BATF in Notice 543 (49 FR 37527) (Ref. 53). BATF is currently receiving comments on its proposal and is compiling data on the actual levels of sulfites in many brands of commercially available wines. Most of the levels reported thus far are at or below the level of 275 ppm. Thus, the agency tentatively concludes that 275 ppm for sulfites in wine is the appropriate level. The agency will, however, consider industry data on current good manufacturing practices and other data and information to determine levels applicable to such use of sulfiting agents.

VIII. Requests for Comments

Interested persons may, on or before February 17, 1989, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. In addition to requesting comments concerning the proposal in its entirety, the agency also solicits comments on the economic impact of the proposed action.

IX. References

The following references have been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Sulfiting Agents; Proposed Affirmation of GRAS Status with Specific Limitations; Removal from GRAS Status as Direct Human Food Ingredient," 47 FR 29956, July 9, 1982.

2. Select Committee on GRAS Substances, "Evaluation of Health Aspects of Sulfiting Agents as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, prepared under FDA contract 223–75–2004, 1976.

3. Select Committee on GRAS Substances, "Insights on Food Safety Evaluation," Life Sciences Research Office, Federation of American Societies for Experimental Biology, prepared under FDA contract 223–81–2394, December 1982, and references cited therein.

4. The Franklin Institute Research Laboratories, Philadelphia, PA, "Monograph on Sulfiting Agents," submitted under Department of Health, Education, and Welfare contract number FDA 72–101, 1972.

5. National Academy of Sciences/National Research Council, "The 1977 Survey of Industry on the Use of Food Additives," prepared under FDA contract 223–77–2025, 1979.

6. Select Committee on GRAS Substances, "The Reexamination of the GRAS Status of Sulfiting Agents," Life Sciences Research Office, Federation of American Societies for Experimental Biology, prepared under FDA contract 223–83–2020, January 28, 1985.

7. "Food Labeling; Proposed Rule Concerning Sulfiting Agents," 50 FR 13306, April 3, 1985.

8. "Food Labeling; Declaration of Sulfiting Agents," 51 FR 25012, July 9, 1986.

9a. "Sulfiting Agents; Proposal to Revoke GRAS Status for Use on Fruits and Vegetables Intended to be Served or Sold Raw to Consumers," 50 FR 32830, August 14, 1985.

9b. "Sulfiting Agents; Revocation of GRAS Status for Use on Fruits and Vegetables

Intended to be Served or Sold Raw to Consumers," 51 FR 25021, July 9, 1986.

10. "Sulfiting Agents; Proposal to Revoke GRAS Status for Use on Potatoes Served or Sold Unpackaged and Unlabeled to Consumers," 52 FR 46968, December 10, 1987.

11. Taylor, S.L., and R.K. Bush, "Sulfites, A Technical and Scientific Review," prepared for International Food Additives Council, Atlanta, 75 pp., 1983.

12. Food Chemicals Codex (3d Ed.), National Academy of Sciences/National Research Council, Washington, DC, 1981. Also see the 1st and 2d Supplements, 1983 and 1986, respectively.

13. Pao, E.M., et al., "Foods Commonly Eaten by Individuals: Amount per Day and per Eating Occasion," Home Economics Research Report No. 44, 431 pp., 1982.

14. U.S. Department of Agriculture, "Food Consumption: Households in the United States, Seasons and Year 1977–78," Nationwide Food Consumption Survey 1977–78, Report No. H–6, 309 pp., 1983.

15. U.S. Department of Agriculture, "Food Intakes: Individuals in 48 States, Year 1977–78," Nationwide Food Consumption Survey 1977–78, Report No. I–1, 617 pp., 1983.

16. U.S. Department of Agriculture, "Agricultural Statistics," 1983.

17. U.S. Department of Agriculture, "Fruit," Economic Research Service, TFS–231, 1984.

18. U.S. Department of Agriculture, "Dairy Situation," Economic Research Service, ERS DS–394, 1984.

19. U.S. Department of Commerce, "U.S. Imports for Consumption and General Imports," FT246/Annual 1983, Bureau of Census, 1984.

20. Feron, V. J., and P. Wensvoort, "Gastric Lesions in Rats After the Feeding of Sulphite," *Pathologia Europaea (London)*, 7:103–111, 1972.

21. Til, H. P., V. J. Feron, and A. P. De Groot, "The Toxicity of Sulphite. I. Long-term Feeding and Multigeneration Studies in Rats," *Food and Cosmetics Toxicology*, 10:291–310, 1972.

22. Til, H. P., V. J. Feron, and A. P. De Groot, "The Toxicity of Sulphite. II. Short- and Long-term Feeding Studies in Pigs," *Food and Cosmetics Toxicology*, 10:463–473, 1972.

23. Beems, R. B., et al., "Nature and Histogenesis of Sulphite-induced Gastric Lesions in Rats," *Experimental and Molecular Pathology*, 36:316–325, 1982.

24. Gunnison, A. F., et al., "A Sulphite-Oxidase-Deficient Rat Model: Subchronic Toxicology," *Food and Cosmetics Toxicology*, 19:221–232, 1981.

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26. Murray, F. J., et al., "Embryotoxicity of Inhaled Sulfur Dioxide and Carbon Monoxide in Mice and Rabbits," *Journal of Environmental Sciences*, 13:233–250, 1979.

27. Shapiro, R., "Genetic Effects of Bisulfite: Implications for Environmental Protection," *Basic Life Sciences*, 23:3554, 1983.

28. Mallon, R. G., and T. G. Rossman, "Bisulfite (Sulfur Dioxide) is a Comutagen in *E. coli* and in Chinese Hamster Cells," *Mutation Research*, 88:125–133, 1981.

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30. Chang, H. W., K. C. Chung, and W. P. Choi, "Studies on the Reaction Between Sodium Bisulfite and Pyrimidine Nucleotides and Mutagenicity of the Reaction Products," *Yongnam Taekakkyo Chonyonmul Huahak Yonguso Yoago*, 4:59–77, 1977.

31a. DiPaolo, J. A., A. J. DeMarinis, J. Doniger, "Transformation of Syrian Hamster Embryo Cells by Sodium Bisulfite," *Cancer Letter*, 12:203–208, 1981.

31b. Doniger, J., R. O'Neill, and J. A. DiPaolo, "Neoplastic Transformation of Syrian Hamster Embryo Cells by Bisulfite is Accompanied with a Decrease in the Number of Functioning Replicons," *Carcinogenesis*, 3:27–32, 1982.

32. MacRae, W. D., and H. F. Stich, "Induction of Sister Chromatid Exchanges in Chinese Hamster Cells by the Reducing Agents Bisulfite and Ascorbic Acid," *Toxicology*, 13:167–174, 1979.

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36. Renner, H. W., and J. Wever, "Attempts to Induce Cytogenetic Effects with Sulphite in Sulphite Oxidase-Deficient Chinese Hamsters and Mice," *Food and Cosmetics Toxicology*, 21:123–127, 1983.

37. Tanaka, T., et al., "Carcinogenicity Test of Potassium Metabisulfite in Mice," *Ecotoxicology and Environmental Safety*, 3:451–453, 1979.

38. Peacock, P. R., and J. B. Spence, "Incidence of Lung Tumours in LX Mice Exposed to (1) Free Radicals; (2) SO_2," *British Journal of Cancer*, 21:606–618, 1967.

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42. Hayatsu, H., and A. Kitajo, "Cooperations of Bisulfite and Nitrogenous Compounds in Mutagenesis," *Developmental Toxicology and Environmental Science*, 2:285–292, 1977.

43. Suwa, Y., et al., "Sulfite Suppresses the Mutagenic Property of Coffee," *Mutation Research*, 102:383–391, 1982.

44. Calle, L. M., and P. D. Sullivan, "Screening of Antioxidants and Other Compounds for Antimutagenic Properties Towards Beno[*alpha*]Pyrene-induced Mutagenicity in Strain TA98 of *Salmonella typhimurium*," *Mutation Research*, 101:99–114, 1982.

45. Borek, C., Columbia University, New York, Letter plus attachments, dated September 11, 1984, to S. A. Anderson, Federation of American Societies for Experimental Biology, Bethesda, MD.

46. Borek, C., Columbia University, New York, Letter, dated October 31, 1984, to S. A. Anderson, Federation of American Societies for Experimental Biology, Bethesda MD.

47. Transcripts of presentations and meeting minutes of the December 21 and 13, 1985, meetings of the Ad Hoc Advisory Committee on Hypersensitivity to Food Constitutents.

48. Labeling of Sulfites in Alcoholic Beverages; BATF Notice No. 566; 51 FR 34706, September 30, 1986.

49. "Total Sulfurous Acid," *in* "Official Methods of Analysis of the Association of Official Analytical Chemists," (14th Ed.), sections 20.123–20.125, 1984.

50. "A Report on the Monier-Williams Method for Sulfites in Food," FDA.

51. "Monier-Williams Procedure (with Modifications) for Sulfites in Food," November 1985.

52a. "FD&C Yellow No. 5; Labeling in Food and Drugs for Human Use and Restriction on Use in Certain Human Drugs," 42 FR 6835, February 4, 1977.

52b. "FD&C Yellow No. 5; Labeling in Food and Drugs for Human Use," 44 FR 37212, June 26, 1979.

52c. "FD&C Yellow No. 5: Removal of Stay," 50 FR 35774, September 4, 1985.

53. BATF Notice No. 543, 49 FR 37527, September 24, 1984.

54. "Codex Standards for Processed Fruits and Vegetables and Edible Fungi. Codex Standard 130–1981," Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Volume II, 1st Ed.

55. Beer data from BATF, letter plus attachments, M. J. Breen, BATF to S. Gukins, Rosemont, PA, October 17, 1986.

56. Report to the Grocery Manufacturers Association on "Documentation of Explicit Prior Sanctions for the Specific Use of Sulfites as Preservatives in Food and for Other Particular Food Uses," letter dated December 2, 1985, from Sherwin Gardner, Grocery Manufacturers Association to Dockets Management Branch.

X. Economic Impact

FDA has examined the potential economic consequences of this GRAS affirmation regulation in accordance with the Regulatory Flexibility Act and has determined that this regulation will permit most current known uses of sulfiting agents at current use levels. (These uses do not include the use of sulfiting agents on fresh fruits and vegetables intended to be served raw or sold raw to consumers and on "fresh" potatoes served or sold unpackaged and unlabeled to consumers. FDA has considered the economic impact of not

affirming these as GRAS in those rulemakings.)

There may arise a cost to some firms whose products do not meet the specific limitations for sulfites. FDA has received information that some products, especially certain dried fruits, may in some cases be produced with residual sulfite levels in excess of the levels proposed in this document. Although FDA does not have an estimate of the cost that may be associated with reducing these residual sulfite levels, it is aware that dried fruits and other affected products produced according to current good manufacturing practices consistently show residual sulfite levels, well within the ranges proposed in this document. In the absence of any data indicating otherwise, the agency concludes that all manufacturers are capable of producing these products with residual sulfite levels within the levels specified in this proposal, and that any additional costs will be minimal.

In addition, there are a few uses that the agency cannot affirm as GRAS because the agency was unaware of these uses until recently, and, consequently, they were not reviewed or evaluated by either the FASEB Select Committee or the FASEB Ad Hoc Review Panel. These uses include the use of sulfiting agents in home dehydrators and winemaking kits, certain beverages, soft drinks, and dairy products. Although the agency cannot affirm the GRAS status of the use of sulfites in these products based on available information, it is requesting further information regarding these uses. The economic consequences of the agency's decisions regarding the GRAS status of these uses will be evaluated in the final rule.

This proposed regulation will also make clear that as a condition for the GRAS status of the use of sulfites in foods that are presented in unpackaged form in bulk to consumers, the presence of sulfites in those foods must be declared in the labeling or by other appropriate device as required by existing regulations (21 CFR 101.22(e) and 101.100(a)(2)). The most recent U.S. Department of Agriculture estimate indicates that there are approximately 240,000 food stores in the United States. Only a portion of these retail food outlets sell sulfited, unpackaged, bulk food to consumers and would, therefore, be affected by this labeling requirement.

In addition, the labeling may be in the form of a counter sign or card which should pose minimal incremental cost to affected retail food outlets.

In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has considered the effect that this proposed rule, if promulgated, will have on small businesses and has concluded that the regulation will result in a minimal impact on any one firm. Therefore, the agency certifies that no significant impact on a substantial number of entities will be caused by this action.

Furthermore, in accordance with Executive Order 12291, the agency has analyzed the potential economic effects of this regulation and has determined that the rule, if promulgated, is not a major rule as defined by that Order.

The agency, however, solicits comments on the economic impact of the proposed action.

XI. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an invironmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§§ 182.3616, 182.3637, 182.3739, 182.3766, 182.3798 and 182.3862 [Removed]

2. Part 182 is amended by removing § 182.3616 *Potassium bisulfite,* § 182.3637 *Potassium metabisulfite,* § 182.3739 *Sodium bisulfite,* § 182.3766 *Sodium metabisulfite,* § 182.3798 *Sodium sulfite,* and § 182.3862 *Sulfur dioxide* from Subpart D.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

4. New § 184.1861 is added to Subpart B to read as follows:

§ 184.1861 Sulfiting agents.

(a) Sulfiting agents are sulfur dioxide (SO_2, CAS Reg. No. 7446–09–5), sodium sulfite (Na_2SO_3, CAS Reg. No. 7757–83–7), sodium metabisulfite ($Na_2S_2O_5$, CAS Reg. No. 7681–03–7), anhydrous sodium bisulfite (which is a mixture of sodium bisulfite ($NaHSO_3$ (CAS Reg. No. 7631–90–5)) and $Na_2S_2O_5$.), potassium metabisulfite ($K_2S_2O_5$, CAS Reg. No. 16731–55–8), and anhydrous potassium bisulfite (which is a mixture of potassium bisulfite ($KHSO_3$ (CAS Reg. No. 7773–03–7)) and $K_2S_2O_5$.).

(b) Sulfur dioxide, sodium sulfite, sodium metabisulfite, anhydrous sodium bisulfite, and anhydrous potassium metabisulfite meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 316, 303, 289, 279, and 247, respectively, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or are available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC. FDA is developing food-grade specifications for anhydrous potassium bisulfite in cooperation with the Food Chemicals Codex Committee of the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(2), the ingredients are used as antimicrobial agents, antioxidants, and bleaching agents to treat food only within the following specific limitations:

(1) The ingredients may be used only in the following food categories at the following maximum residual sulfur dioxide equivalent levels:

Category of food	Maximum residual sulfur dioxide equivalent level [1]
Baked goods, § 170.3(n)(1) of this chapter	30 ppm.
Beer, § 170.3(n)(2) of this chapter.	25 ppm.
Wine, § 170.3(n)(2) of this chapter.	275 ppm.
Tea, § 170.3(n)(7) of this chapter.	90 ppm.
Condiments and relishes, § 170.3(n)(8) of this chapter.	30 ppm.
Vinegar, § 170.3(n)(8) and (26) of this chapter.	75 ppm.
Dairy product analogs, § 170.3(n)(10) of this chapter.	200 ppm.
Processed seafood products, other than dried or frozen, § 170.3(n)(13) of this chapter.	25 ppm.

Category of food	Maximum residual sulfur dioxide equivalent level [1]
Dried fish, § 170.3(n)(13) of this chapter.	200 ppm.
Shrimp, fresh and frozen, § 170.3(n)(15) of this chapter.	100 ppm.
Lobster, frozen, § 170.3(n)(15) of this chapter.	100 ppm.
Gelatin, § 170.3(n)(22) of this chapter.	40 ppm.
Grain products, § 170.3(n)(23) of this chapter.	200 ppm.
Gravies and sauces, § 170.3(n)(24) of this chapter.	75 ppm.
Jams and jellies, § 170.3(n)(28) of this chapter.	30 ppm.
Nut products, § 170.3(n)(32) of this chapter.	25 ppm.
Plant protein isolates, § 170.3(n)(33) of this chapter.	110 ppm.
Dried fruit, § 170.3(n)(35) of this chapter.	2,000 ppm.
Fruit juices, § 170.3(n)(35) of this chapter.	1,000 ppm in concentrates. 300 ppm in regular strength juices.
Glacé fruit, § 170.3(n)(35) of this chapter.	150 ppm.
Maraschino cherries, § 170.3(n)(35) of this chapter.	150 ppm.
Dehydrated vegetables § 170.3(n)(36) of this chapter.	200 ppm.
Dehydrated potatoes, § 170.3(n)(36) of this chapter.	500 ppm.
Vegetables, canned, § 170.3(n)(36) of this chapter.	30 ppm.
Frozen potatoes, § 170.3(n)(36) of this chapter.	50 ppm.
Vegetable juice, § 170.3(n)(36) of this chapter.	100 ppm.
Filled crackers, § 170.3(n)(37) of this chapter.	75 ppm.
Soup mixes, § 170.3(n)(40) of this chapter.	20 ppm in dry mix.
Sugar, § 170.3(n)(41) of this chapter.	20 ppm.
Sweet sauces and syrups, § 170.3(n)(43) of this chapter.	60 ppm.
Molasses, § 170.3(n)(43) of this chapter.	300 ppm.

[1] Residues in the finished food products are to be determined by sections 20.123 through 20.125 "Total Sulfurous Acid," in the "Association of Official Analytical Chemists," 14th Ed. (1984), which is incorporated by reference in accordance with 5 U.S.C 552(a), and the refinements of the "Total Sulfurous Acid" procedure in "Monier-Williams Procedure (with Modifications) for Sulfites in Food," November 1985. This procedure is Appendix A to Part 101 of this chapter.

(2) For sulfited foods that are received in bulk containers and not in package form, including all foods for which a definition and standard of identity have been prescribed by regulation, the use of sulfite in such foods shall be declared to the purchaser either (i) in the labeling of the bulk container plainly in view or (ii) in a counter sign, card, or other appropriate device bearing the information that the product has been treated with sulfites.

(3) For sulfited foods in packaged form, including all foods for which a definition and standard of identity have been prescribed by regulation, the use of sulfite in such food shall be declared on the label.

(d) The ingredients are not generally recognized as safe for use: (1) in meats; (2) in food recognized as a source of vitamin B_1; and (3) on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: August 22, 1988.

[FR Doc. 88-29033 Filed 12-16-88; 8:45 am]

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federal register

Monday
December 19, 1988

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Standards Governing the Noise Certification of Aircraft; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. 23340; Amdt. 36-15]

Standards Governing the Noise Certification of Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In the May 6, 1988, issue of the **Federal Register** (53 FR 16359), the FAA published a final rule which revised certain provisions of the regulations prescribing requirements for aircraft noise certification. The final rule omitted part of the technical specifications to be adopted in the amendment to Part 36.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Albersheim (202) 267-3560.

SUPPLEMENTARY INFORMATION:

Background

Since its adoption in November 1969, FAR, Part 36, serves as the basis for certificating aircraft to prescribed noise standards and it includes precise instructions concerning the acquisition, processing, and documentation of noise data from aircraft. Part 36 has been amended several times to reflect changes in aircraft design and technology and the ability to measure aircraft noise levels more precisely. The most recent amendment to Part 36 published in the **Federal Register** (53 FR 16359) revised the definition of acoustical change for turbojets, weight limits for certification, and technical specifications noise measurement equipment. As stated in the final rule (53 FR 16363), the FAA agreed to adopt the International Civil Aviation Organization (ICAO) standard for microphone specifications to avoid any disparity between U.S. and ICAO specifications. In issuing the amendment to Part 36, part of the revised microphone technical specification was inadvertently omitted and must now be included in Part 36 to make it consistent with ICAO. The omission is corrected by this notice.

Dated: December 14, 1988.

Donald P. Byrne,

Deputy Assistant Chief Counsel, Regulations and Enforcement Division, Office of the Chief Counsel.

The following correction is made in Amendment No. 36-15, Standards Governing the Noise Certification of Aircraft; Appendix A—Aircraft Noise Measurement Under § 36.101, Section A36.3—Measurement of aircraft noise received on the ground, published in the **Federal Register** on May 6, 1988 (53 FR 16359).

1. In Appendix A, paragraph (c)(2) of section A36.3 on page 16367, column 2, is correctly amended by revising paragraphs (i) and (ii), by redesignating paragraphs (iii) and (iv) as (iv) and (v), and by adding a new paragraph (iii) to read as follows:

* * * * *

(c) * * *

(2) The microphone must be a pressure sensitive capacitive type, or its approved equivalent, such as free field type with incidence corrector.

(i) After an adequate "warm-up" period, at least as long as that specified by the equipment manufacturer, the system output for constant acoustical input shall change by not more than 0.3 dB within any one hour nor by more than 0.4 dB within 5 hours.

(ii) The variation of microphone and preamplifier system sensitivity within an angle of ±30 degrees of grazing (60–120 degrees from the normal to the diaphragm) must not exceed the following values:

Frequency (HZ)	Change in sensitivity (dB)
45 to 1,120	1.0
1,120 to 2,240	1.5
2,240 to 4,500	2.5
4,500 to 7,100	4.0
7,100 to 11,200	5.0

With the wind screen in place, the variation in sensitivity in the plane of the diaphragm of the microphone system shall not exceed 1.0 dB over the frequency range 45 to 11,200 Hz.

(iii) The free-field frequency response of the microphone system at the reference incidence direction shall lie within an envelope having the following values:

Frequency (HZ)	Change in Tolerance (dB)
45 to 4,500	±1.0
4,500 to 5,600	±1.5
5,600 to 7,100	+1.5 to −2.0
7,100 to 9,000	+1.5 to −3.0
9,000 to 11,200	+2.0 to −4.0

Note: The requirements of this paragraph may be determined by a pressure response calibration (which may be obtained from an electrostatic calibrator in combination with manufacturer provided corrections) or an anechoic free-field facility.

(iv) * * *

(v) * * *

2. **Note:** Paragraphs (d)(2), (d)(5), (d)(6), and (e)(7) are revised as described on page 16367.

[FR Doc. 88-29067 Filed 12-16-88; 8:45 am]

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

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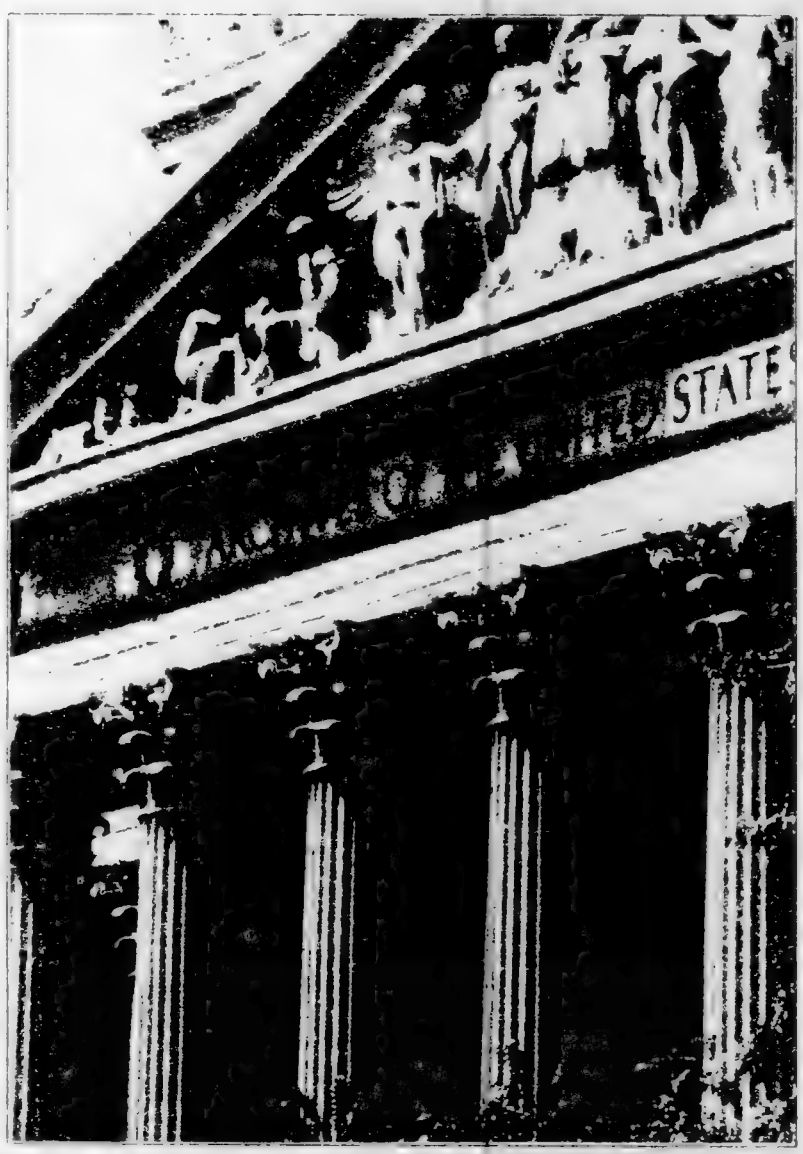

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Rules and Regulations

Federal Register
Vol. 53, No. 244
Tuesday, December 20, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Allocations of Sugar Import Quotas; Other Specified Countries or Areas

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts, with a slight change, the interim rule that modified the allocation provisions governing sugar import quotas for those countries or areas which are designated as "Other Specified Countries and Areas" (more commonly known as the "basket category"). The change converts the maximum quota allocated to each country in the basket category from short tons to metric tons. Each such country will now receive an annual quota equal to its pro rata share of the percentage quota for the basket category, or 7,258 metric tons, raw value, whichever is greater.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: This rule involves a foreign affairs function of the United States. Accordingly, the provisions of 5 U.S.C. 553 do not apply and no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule has been reviewed under Department of Agriculture procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since the rule does not have any of the effects specified in those documents.

Presidential Proclamation No. 4941 of May 5, 1982 (47 FR 19661) established a country-by-country quota system for the importation of sugar into the United States. Under the import quota allocation provisions established by the Proclamation, each country was allocated a specific percentage of the quota if that percentage was .7 percent or greater. A specified percentage of the total quota amount was allocated to a group of countries designated as "Other Specified Countries and Areas" (more commonly known as the "basket category"). The total quota allocated to the basket category was pooled and each country competed on a first-come-first-serve basis for the entire allocation.

Proclamation No. 4941 further provided that notwithstanding the allocation provisions set forth in the Proclamation, the Secretary of Agriculture may, after consultation with the U.S. Trade Representative, the Department of State, and the Department of the Treasury, issue regulations modifying the allocation provisions governing "Other Specified Countries and Areas" if the Secretary determines that such modifications are appropriate to provide such countries and areas reasonable access to the United States sugar market.

The Secretary issued such regulations to provide that each country in the basket category would have a specific annual quota equal to its pro rata share of the quota allocated to the basket category, or a fixed amount, whichever was greater (7 CFR 6.90 through 6.93). These regulations were last amended by an interim rule published on July 27, 1988 (53 FR 28180) to increase that fixed amount to 8,000 short tons, raw value.

No comments were received in connection with that interim rule. This final rule adopts that interim rule with a change to reflect that the quota is now expressed in metric tons rather than short tons.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Foreign trade, Imports, Quotas, Sugar.

Accordingly, the interim rule amending 7 CFR Part 6 Subpart-Sugar Import Quotas published at 53 FR 28180 on July 27, 1988, is adopted as a final rule with the following change:

PART 6—[AMENDED]

1. The authority citation for Part 6, Subpart-Sugar Import Quotas, is revised to read as follows:

Authority: Section 201, Trade Expansion Act of 1962 (19 U.S.C. 1821); Presidential Proclamation 4941, May 5, 1982 (47 FR 19661); additional U.S. notes 2 and 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202; 19 U.S.C. 3004).

2. Section 6.91(a)(2) is revised to read as follows:

§ 6.91 Allocation of individual import quotas.

(a) * *

(2) 7,258 metric tons, raw value.

* * * * *

Signed at Washington, D.C. on December 15, 1988.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 88–29152 Filed 12–15–88; 4:31 pm]
BILLING CODE 3410–10–M

Agricultural Marketing Service

7 CFR Part 1210

[WRPA Docket No. 1; FV–88–063]

Procedures for the Conduct of Referenda In Connection With the Watermelon Research and Promotion Plan and for Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Such Plan

AGENCY: Agricultural Marketing Service (USDA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Watermelon Research and Promotion Act [7 U.S.C. 4901–4916] authorizes a program of research and promotion to be developed through the promulgation of a plan. The Administrator recently recommended that a plan be issued. The Secretary's decision is being published in the **Federal Register** concurrently with this interim final rule. To become effective, however, the plan must be approved by watermelon producers and first handlers in a referendum. This rule specifies procedures for the conduct of the initial referendum to determine if producers and handlers favor implementation of the plan. These procedures would also apply to any subsequent referenda to amend, continue, or terminate the proposed plan should it be implemented. This rule also contains rules of practice governing proceedings on petitions to

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modify or to be exempted from the proposed plan.

DATES: This interim final rule is effective December 20, 1988. Comments must be received by January 4, 1989.

ADDRESSES: Comments should be sent to: Docket Clerk, U.S. Department of Agriculture, P.O. Box 96456, Room 2085–South, Washington, DC 20090–6456. A copy of comments received will be made available for public inspection at the office of the Docket Clerk during regular business hours. Comments concerning the information and paperwork requirements of these subparts should be sent to Lisa Grove, Office of Information and Regulatory Affairs, Room 3228, Office of Management and Budget, Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Arthur L. Pease, Marketing Order Administration Branch, P.O. Box 96456, Room 2525–South, Washington, DC 20090–6456; telephone (202) 475–3915.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated a "non-major" rule under criteria contained therein.

This action has also been reviewed under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*]. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

This rule establishes procedures for the conduct of a referendum to determine whether the proposed Watermelon Research and Promotion Plan should be issued. It permits all eligible producers and handlers of watermelon to vote. Participation in the referendum is voluntary. Votes may be cast in person at county offices of the Extension Service. These procedures would also apply to any subsequent referenda to amend, suspend, or terminate the plan, or any provision thereof, should the proposed plan be implemented.

This rule also establishes rules of practice governing proceedings on petitions to modify, or be exempted from, the proposed Watermelon Research and Promotion Plan. Such petitions may be made by any person subject to the plan and must be based on the belief that the plan, or a provision of the plan, or any obligation imposed in connection with the plan, is not in accordance with law.

The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The Watermelon Research and Promotion Act [Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 7 U.S.C. 4901–4916] authorizes the development of nationally coordinated programs of market research and promotion designed to improve the position of watermelons in the marketplace. A public hearing was held on the proposed research and promotion plan in February 1987. Based on the record of the hearing, a recommended decision was issued on March 18, 1988, and published in the **Federal Register** on March 24, 1988 [53 FR 9637]. The period for filing written exceptions to the recommended decision ended May 23, 1988. The Secretary's decision is being published in the **Federal Register** concurrently with this action. The Act requires that a referendum be held to determine whether affected producers and handlers favor the proposed plan.

This rule establishes procedures to be followed by the Department in conducting referenda to determine whether producers and first handlers favor issuance of the proposed Watermelon Research and Promotion Plan. In addition, referenda may be conducted by the Secretary at any time, or at the request of the proposed National Watermelon Promotion Board or 10 percent or more of producers and handlers to determine if producers and handlers favor termination or suspension of the plan. The provisions include sections on definitions, voting, instructions for referendum agents and subagents, ballots, the referendum report and the confidentiality of information.

Persons voting in the referendum would certify their eligibility to vote, and would designate their status as either a watermelon producer or handler. Producers would certify the amount of watermelon acreage they harvested during the representative period of January 1, 1988 through December 31, 1988. Only producers of five or more acres of watermelons during this representative period would be eligible to vote in the referendum. Both producers and handlers would record the hundredweight volume of watermelons they produced or handled during the representative period. These figures would be used to determine the results of the voting based on volume of watermelons produced and handled by those voting.

The vote of a person who both produces and handles watermelons would be counted as a producer vote if that person handles 50 percent or less of that person's own production during the representative period. If the person handles more than 50 percent of that person's own production during the representative period, then that person's vote should be counted as a handler vote. This determination is consistent with testimony provided at the public hearing regarding the Board member nomination process.

In addition, this rule contains rules for proceedings on petitions to modify or be exempted from the proposed plan. Section 1650 of the Act provides that any person subject to the Act may file a written petition with the Secretary stating that the plan or any provision of the plan is not in accordance with law. The person may request a modification of the plan or an exemption from certain provisions or obligations of the plan. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information and paperwork requirements contained in these subparts have been submitted to OMB for review. It is estimated that a total of as many as 7,000 watermelon producers and handlers would be eligible to vote in the referendum, and that it would take an average of 15 minutes for each producer and handler to complete the ballot questions. Comments concerning these requirements should be directed to Lisa Grove, Office of Information and Regulatory Affairs, Room 3228, Office of Management and Budget, Washington, DC 20503.

The rules of practice governing procedures for the conduct of referenda and the Secretary's decision and referendum order should be issued in advance of the referendum period which is scheduled to begin on February 6, 1989. Such prompt issuance of these actions is necessary because watermelon producers and handlers need to be informed, in advance of the referendum, of the procedures to be used in the referendum and of the terms of the proposed plan. Copies of the Secretary's decision, an order to accomplish the referendum, ballots and referendum instructions need to be printed and mailed in advance of the voting period. In addition, rules of practice governing proceedings on petitions to modify or to be exempted from the plan should be in place if the plan is approved. Therefore, pursuant to

5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. Also, a 15 day comment period is deemed adequate.

For the reasons set forth in the preamble, Part 1210 is established as follows:

Note.—These sections will not appear in the Code of Federal Regulations.

List of Subjects in 7 CFR Part 1210

Watermelon, Agricultural research, Agricultural promotion, Market development.

1. 7 CFR Part 1210, consisting of the subpart—Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan [§§ 1210.200–1210.207], and the Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Such Plan [§§ 1210.250–1210.252], is added to read as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

Subpart—Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan

Sec.

1210.200 General.
1210.201 Definitions.
1210.202 Voting.
1210.203 Instructions.
1210.204 Subagents.
1210.205 Ballots.
1210.206 Referendum report.
1210.207 Confidential information.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Watermelon Research and Promotion Plan

1210.250 Words in the singular form.
1210.251 Definitions.
1210.252 Institution of proceeding.

Authority: 7 U.S.C. 4901–4916.

Subpart—Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan

§ 1210.200 General.

Referenda to determine whether producers and handlers favor issuance, suspension or termination of a Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

§ 1210.201 Definitions.

(a) "Act" means the Watermelon Research and Promotion Act, Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986 (7 U.S.C. 4901–4916).

(b) "Secretary" means the Secretary of Agriculture, or any officer or employee of the Department of Agriculture to whom authority has been delegated or may be delegated, to act in the Secretary's stead.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may be delegated to act in the Administrator's stead.

(d) "Plan" means any plan or any amendment of a plan which may be issued pursuant to the Act;

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 1653 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative or other entity. For the purposes of this definition, the term "partnership" includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing and handling of watermelons for market and the authority to transfer title to the watermelons so produced.

(h) "Producer" means any person, defined as a producer in the plan, who is engaged in the growing of five or more acres of watermelons during a representative period and either:

(1) Owns and farms land, resulting in ownership, by said producer, of the watermelons produced thereon;

(2) Rents and farms land, resulting in ownership, by said producer, of all or a portion of the watermelons produced thereon; or

(3) Owns land which said producer does not farm and, as rental for such land, obtains the ownership of a portion of the watermelons produced thereon.

Ownership of, or leasehold interest in, land and the acquisition, in any manner other than set forth in this subpart, of legal title to the watermelons grown on said land, shall not be deemed to result in such owners or lessees becoming producers. Persons who produce watermelons for non-food uses are not "producers" for the purposes of this subpart.

(i) "Handler" means any person, defined as a handler in the plan, who is engaged in the handling of watermelons during the representative period as the first person peforming a handling function, and either: (1) takes title or possession of watermelons from a producer and directs the grading, packing, transporting and selling of the watermelons in the current of commerce; (2) purchases watermelons wholesale from producers and sells to the retail trade at auction markets or farmers' markets: *Provided,* That harvest crews and common carriers who collect and transport watermelons from the field to a handler, and brokers or commission agents who arrange the sale of but do not take title or possession of watermelon, are not first handlers.

§ 1210.202 Voting.

(a) Each person who is a producer or handler as defined in this subpart, at the time of the referendum and who also was a producer or handler during the representative period, shall be entitled to only one vote in the referendum: *Provided,* That each producer is a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership; and *Provided further,* That the vote of a person who both produces and handles watermelons will be counted as a producer vote if that person handles 50 percent or less of that person's own production during the representative period, and that the vote of a person who both produces and handles watermelons will be counted as a handler vote if that person handles more than 50 percent of that person's own production during the representative period.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer or handler, or an administrator, executor or trustee of a producing or handling entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that that individual is an officer or employee of the producer or handler, or an administrator, executor, or trustee of a producing or handling

entity and that that individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each producer or handler shall be entitled to cast only one ballot in the referendum.

§ 1210.203 Instructions.

The referendum agents shall cause a referendum to be conducted, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions and designate subagents, not inconsistent with the provisions hereof, to govern the procedure to be followed by referendum agents. Such agents shall:

(a) Determine the time of commencement and termination of the period of the referendum.

(b) Determine procedures for casting ballots at county offices of the Extension Service.

(c) Give reasonable advance notice of referendum dates.

(d) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the persons voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The acreage and volume in hundredweight of watermelons produced by the voting producer during the representative period, and

(3) The volume of watermelons handled by the voting handler during the representative period.

(e) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and submit the following:

(1) All ballots received by agents and subagents, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by the referendum agents during the referendum period;

(2) A list of all ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and report thereon, including a statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1210.204 Subagents.

The referendum agents may appoint, as subagent, any person or persons deemed necessary or desirable to assist the agents in performing the agents' functions. Each person so appointed may be authorized by said agents to perform, in accordance with the requirements herein set forth, any or all of the following functions.

(a) Give reasonable advance notice of the referendum by:

(1) Utilizing, without advertising expense, available media or public information sources (including, but not limited to, press and radio facilities serving the production area) to announce the dates of the referendum, the address of the county office of Extension Service used as the polling place, and the times such office will be open for voting, as well as the methods of voting, the eligibility requirements for voting, and other pertinent information regarding the referendum.

(2) Such other means as said subagents may deem advisable.

(b) Preside as poll officer at the county Extension Service office when ballots are cast.

(c) Make available to producers and handlers the instructions on voting, the appropriate ballot and certification forms, and, except in the case of a referendum on suspension or termination of a plan, a summary of the terms and conditions of the plan: *Provided,* That no person who claims to be eligible to vote shall be refused a ballot.

(d) Collect the completed ballots and provide for appropriate custody of such ballots.

(e) Provide for the delivery of completed ballots to the referendum agents.

§ 1210.205 Ballots.

The referendum agents and subagents shall accept all ballots cast; but should any one of them deem that a ballot should be challenged for any reason, said agent shall write on said ballot a statement to the effect that such ballot was challenged, by whom challenged, the reasons for the challenge, the results of any investigations made with respect to the challenge, and the disposition of the challenge. Invalid ballots shall not be counted.

§ 1210.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1201.207 Confidential information.

All ballots cast, the information contained on each ballot (whether or not relating to the identity of any person who voted or the manner in which any person voted), and all other information furnished to, compiled by, or in possession of, referendum agents and subagents shall be treated as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Watermelon Research and Promotion Plan

§ 1210.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1210.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) "Act" means the Watermelon Research and Promotion Act, Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986 [7 U.S.C. 4019–4916];

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom authority has been delegated or may be delegated, to act in the Secretary's stead;

(c) "Administrative law judge" or "judge" means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(d) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department of Agriculture to whom authority has been delegated or may be delegated, to act in the Administrator's stead;

(e) "Plan" means any plan or any amendment of a plan which may be issued pursuant to the Act;

(f) "Person" means any individual, partnership, corporation, association, or other entity subject to a plan or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under a plan.

(g) "Proceeding" means a proceeding before the Secretary arising under section 1650(a) of the Act;

(h) "Hearing" means that part of the proceedings which involves the submission of evidence;

(i) "Party" includes the Department of Agriculture;

(j) "Hearing clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.;

(k) "Decision" means the judge's report to the Secretary and includes the judge's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof, (2) order, and (3) rulings on findings, conclusions and plans submitted by the parties; and

(l) "Petition" includes an amended petition.

§ 1210.252 Institution of proceeding.

(a) Filing and service petitions. Any person subject to a plan desiring to complain that any plan or any provision of any such plan or any obligation imposed in connection with the plan is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) Contents of petitions. A petition shall contain:

(1) The correct name, address and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the plan, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement on the grounds on which the terms or provisions of the plan, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) A motion to dismiss a petition—Filing, contents, and responses to a petition. If the Administrator is of the opinion that the petition, any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) Further proceedings. Further proceedings on petitions to modify or to be exempted from the plan shall be governed by paragraph (c)(2) of § 900.52 through § 900.71 of the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However, each reference to "marketing order" in the title shall mean "plan."

Dated: December 15, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-29203 Filed 12-16-88; 11:59 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: Section 346.23 of the FDIC Rules and Regulations specifies that country exposures by insured branches of foreign banks operating as such on November 19, 1984, must be within prescribed limits. The current deadline for compliance, December 31, 1988, is being extended by the Board of Directors until a date 30 days subsequent to notice that compliance is required.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, Division of Bank Supervision, (202) 898-6850, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC previously twice extended the deadline for compliance with provisions concerning allowable exposures to foreign countries (§ 346.23 of the current FDIC Rules and Regulations), with the deadline for compliance now being year end 1988. The extensions of time were enacted in anticipation of the adoption by that date of a final regulation amending Part 346. A proposed regulation was published on October 20, 1988 (53 FR 41180), but a final regulation will not be completed by year end. Consequently, the FDIC will not require compliance until after 30 days prior notice that compliance will be required is given.

In accordance with 5 U.S.C. 553, the FDIC has found that prior notice and a delayed effective date with respect to this amendment are unnecessary, since the amendment delays the imposition of requirements that are already imposed by existing regulation. Since the amendment only provides for an extension of the deadline for compliance with certain portions of the regulation and imposes no burden upon banks or the public, it is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 346

Bank deposit insurance, Foreign banks, banking; Banks, banking; Reporting and recordkeeping requirements.

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In consideration of the foregoing, the FDIC hereby amends Part 346 of title 12 of the Code of Federal Regulations as follows:

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3108.

2. Part 346 is amended by revising the third sentence of § 346.23 to read as follows:

§ 346.23 Country exposure concentrations.

* * * Insured branches operating as such on November 19, 1984, will be required to reduce any existing excess exposure, including commitments; thirty days prior notice will be given before compliance is required.

* * * * *

By Order of the Board of Directors. Dated at Washington, DC, this 13th day of December, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-29205 Filed 12-19-88; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-152-AD; Amdt. 39-6093]

Airworthiness Directives; Honeywell Attitude and Heading Reference System AH-600, as Installed in, but Not Limited to, de Havilland Model DHC-8, British Aerospace Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR 42-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Honeywell Attitude and Heading Reference Systems (AHRS), which requires installation of a modified strapdown attitude heading and reference unit (AHRU) in the pilot's attitude and heading system. This amendment is prompted by a report that an electrical overvoltage in the airplane electrical system caused both the pilot's and copilot's AHRU's to cut off attitude and heading information to the Electronic Flight Instrument System (EFIS). This condition, if not corrected, could result in loss of attitude and heading displays for both pilots.

DATES: Effective January 9, 1989.

ADDRESSES: The applicable service information may be obtained from Honeywell, Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, 5353 West Bell Road, Glendale, Arizona 85308. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM-133L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: There has been a report of a dual, simultaneous loss of Honeywell AH-600 strapdown Attitude Heading Reference System primary attitude and heading instrument displays at both the pilot and copilot instrument panels. During landing approach, the primary attitude and heading displays on both sides of the instrument panel went invalid, with "ATT FAIL" and "HDG FAIL" flagged, at the same time. The pilot landed using only the standby instruments. Reliable airplane attitude and heading information is essential for safe operation of the airplane.

The attitude and heading display loss has been determined to have been caused by a momentary electrical system overvoltage which caused both AHRU's to sense false gyro speed and to trip "off"; consequently, the EFIS display of attitude and heading ceased functioning. This caused both the pilot's and copilot's primary attitude and heading displays to go invalid.

A design change correcting this problem is incorporated in AHRU's Serial Numbers 0278 and subsequent. A modification, "Mod F," has been developed which corrects AHRU's Part Numbers 7003360-931, -932, -933, -934, -935, and -936 (Serial Numbers 0100-0277) that are in service.

The FAA has reviewed and approved Honeywell Service Bulletin 7003360-34-32, dated August 2, 1988, which describes modification of circuit card assemblies to prevent false gyro speed failure flag indications during abnormal DC power surges.

Since this situation is likely to exist or develop on other airplanes with certain Honeywell AH-600 strapdown AHRU's installed, this AD requires installation of an attitude and heading reference unit in the pilot's AHRS which has Mod Level "F" incorporated, or modification of the AHRU in accordance with the Honeywell service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Honeywell, Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, (Sperry Corporation): Applies to the Honeywell AH–600 strapdown Attitude and Heading Reference Unit (AHRU), Part Numbers 7003360–931, –932, –933, –934, –935, or –936, with Serial Numbers 0100 through 0277.

Note.—These systems are known to be installed in, but not limited to, the following airplanes: de Havilland Model DHC–8, British Aerospace Model BAe 125–800, Cessna Model 650, and Aerospatiale Model ATR42–300 series airplanes.

Compliance is required as indicated, unless previously accomplished.

To eliminate the possibility of the primary attitude and heading displays on both sides of the instrument panel failing simultaneously, accomplish the following:

A. Within 10 calendar days after the effective date of this AD, inspect airplanes with the Honeywell AH–600 AHRU installed to determine the part number, serial number, and Mod Level of the strapdown AHRU installed in the pilot's (Number 1) AHRU. Prior to further flight, after inspection, remove all AHRU Part Numbers 7003360–931, –932, –933, –934, –935, and –936, with the Serial Number 0100 through 0277, without Mod Level "F," from service in the pilot's (Number 1) AHRS. Install the same part number with Mod Level "F" incorporated, or modify the AHRU in accordance with Honeywell, Inc., Service Bulletin 7003360–34–32, dated August 2, 1988.

Note.—Serial numbers on the strapdown AHRU are eight digit numbers; the first four are a date code and the last four are the individual unit identifier. Serial numbers referred to in this AD are the last four numbers of the serial number.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—This request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes during daylight hours in visual meteorological conditions to a base in order to comply with requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Honeywell, Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, 5353 West Bell Road, Glendale, Arizona 85308. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective January 9, 1989.

Issued in Seattle, Washington, on December 9, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–29149 Filed 12–19–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–118–AD; Amdt. 39–6094]

Airworthiness Directives: Aerospatiale Model ATR–42–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR–42–300 series airplanes, which requires modification of the engine and propeller control cables by adding a sealing sheath and protective sleeve, and installation of a deflector on the engine aft upper cowling below the zone ventilation air inlet. This amendment is prompted by reports of accumulation of water in the engine and propeller control cables causing corrosion and/or the formation of ice in the cables. This condition, if not corrected, could lead to malfunction of the engine and propeller controls.

DATE: Effective February 3, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to Model ATR–42–300 series airplanes, which requires modification of the engine and propeller control cables by adding a sealing sheath and protective sleeve, and installation of a deflector on the engine aft upper cowling below the zone ventilation air inlet, was published in the **Federal Register** on September 20, 1988 (53 FR 36466).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $25,200.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($720). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42–300 series airplanes, as listed in Aerospatiale Service Bulletins ATR42–76–0002, Revision 1, dated May 16, 1988, and ATR42–54–0008, Revision 1, dated March 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent malfunction of the engine and propeller controls, accomplish the following:

A. Within 60 days after the effective date of this AD, modify engine and propeller push-pull control cables on left and right engines by adding a sealing sheath and protective sleeve, in accordance with Aerospatiale Service Bulletin ATR42–76–0002, Revision 1, dated May 16, 1988.

Note: Aerospatiale Service Bulletin ATR42–76–0002, dated May 16, 1988, references Teleflex Syneravia Service Bulletin Number TFX 76.076 for the accomplishment instructions for modification of the engine and propeller push pull control cables.

B. Within 60 days after the effective date of this AD, install a deflector on the engine aft upper cowling below the zone ventilation air inlet on the left and right engines, in accordance with Aerospatiale Service Bulletin ATR42–54–0008, Revision 1, dated March 25, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 3, 1989.

Issued in Seattle, Washington, on December 9, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–29150 Filed 12–19–88; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C–3238]

American Stores Company et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order allows, among other things, American Stores Company, a Dublin, CA. corporation, to acquire Lucky Stores, Inc. Respondent is required to divest between 31 and 37 grocery stores in California and also required to obtain FTC approval before making certain grocery store acquisitions.

DATE: Complaint and Order issued August 31, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum, FTC/S–3302, Washington, DC 20580, (202) 326–2629.

SUPPLEMENTARY INFORMATION: On Thursday, June 2, 1988, there was published in the **Federal Register,** 53 FR 20127, a proposed consent agreement with analysis In the Matter of American Stores Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication.

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 88–29143 Filed 12–19–88; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[Docket C–3239]

Robert E. Harvey, M.D., P.A., d/b/a Victoria Allergy and Asthma Clinic, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a group of Victoria, TX, allergists from impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center or other health facility in order to restrict competition from physicians who are not allergists. Respondents are also prohibited from boycotting the manufacturers that produce allergy testing devices used by physicians who are not allergy specialists.

DATE: Complaint and Order issued August 26, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Erika R. Wodinsky, FTC, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 995–5220.

SUPPLEMENTARY INFORMATION: On Wednesday, May 11, 1988, there was published in the **Federal Register,** (53 FR 16727, a proposed consent agreement with analysis In the Matter of Robert E. Harvey, M.D., P.A., d/b/a Victoria Allergy and Asthma Clinic, Robert E. Harvey, M.D. and Gullapali K. Rao, as individuals, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Boycotting Seller-Suppliers: § 13.302 Boycotting seller-suppliers. Subpart—Coercing And Intimidating: § 13.345 Competitors; § 13.360 Distributors of competitors; § 13.375 Suppliers of competitors. Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533–50 Maintain means of communication; §13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Allergists, Physicians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 88–29144 Filed 12–19–88; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Disability Benefit Programs; Status of Rules

AGENCY: Social Security Administration, HHS.

ACTION: Notice of status of the rules for considering vocational factors in evaluating Social Security disability claims (Medical-Vocational Rules).

SUMMARY: In the preamble to the final regulations on the "Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered," published November 28, 1978 at 43 FR 55349, we stated that we planned to monitor the performance and validity of the medical-vocational rules. This notice announces the results of our monitoring of the performance of the medical-vocational rules and an update as to their current validity.

FOR FURTHER INFORMATION CONTACT: Jack Wesolowski, Social Security Administration, 3–D–6 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235; (301) 965–9142.

SUPPLEMENTARY INFORMATION: In the preamble to the final regulations on the "Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered," published November 28, 1978 at 43 FR 55349, we stated on page 55357 that "* * * we plan to monitor the disability program to make sure there are no unforeseen effects. Quality control findings, which were noted during the evolution of the policy system, will be a part of the monitoring effort." It was further stated on page 55361 that "While we do not anticipate any major changes of job incidence or other occupational data, if later analyses indicate that any rules should be restructured, the public will be notified." The purpose of this notice is to address both statements, providing the public with a review of the performance of the medical-vocational rules and an update as to their current validity.

Two distinct sources provided the bulk of the public comments on the medical-vocational rules (20 CFR Chapter III, Part 404, Subpart P, Appendix 2). Claimant advocacy groups feared that the medical-vocational rules were intended to "deliberalize" the disability program at the expense of disabled persons in order to save trust fund moneys. At the other extreme, there was also a concern generated by newspaper articles which pictured the medical-vocational rules as a "liberalization" intended to pay benefits to nondisabled persons, thus improperly depleting the trust funds.

We have closely monitored the application of the medical-vocational rules since they became effective on February 26, 1979. Quality assurance data, gathered continuously from all regions of the country, have been compared with data which preceded publication of the medical-vocational rules and have shown no change in overall allowance/denial rates of disability claims where the medical-vocational rules are applicable. This supports our position that the medical-vocational rules have been reflective of longstanding adjudicative policies and would not have significant impact on the adjudicative outcomes. We will continue to monitor the application of the medical-vocational rules.

When the medical-vocational rules were published, the third edition of the "Dictionary of Occupational Titles" (DOT) (1965–66) and its companion volumes were the chief occupational reference sources of the disability program. It was these sources that identified, at the various functional levels, the unskilled occupations which comprise the administratively noticed occupational base for decisions made under the medical-vocational rules. (More frequently published references, such as "County Business Patterns," which is published annually, have been used especially to support and document job incidence). The fourth edition of the DOT (1977–81), its companion volumes, and supplements (1982 and 1986) have replaced the third edition.

Some observers have referred to the changing economy and questioned the reality of a policy system that relies on an occupational reference source which is revised relatively infrequently. However, when we analyzed the fourth edition of the DOT in detail and compared it with the third edition, we found that while the numbers of individually identifiable occupations showed some variance, the *range* of work (of which the medical-vocational rules take administrative notice) continued to represent more occupations than would be required to represent significant numbers. We have received no significant data or other evidence to indicate that the unskilled occupational base as described in the text of the medical-vocational rules has changed substantially, and, therefore, have nothing to justify restructuring the medical-vocational rules on this basis. Nevertheless, it will continue to be our policy to analyze occupational data as they become available. As part of this ongoing process, the public will be notified biennially of the results of these reviews and the continued validity of the medical-vocational rules.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802, Social Security-Disability Insurance; and 13.807, Supplemental Security Income)

Dated: December 9, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88–29148 Filed 12–19–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Large Harbor Tugs

AGENCY: Department of the Navy, DOD

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ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that Large Harbor Tugs YTB–781, YTB–785, YTB–812, YTB–826, and YTB–835 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that Large Harbor Tugs YTB–781, YTB–785, YTB–812, YTB–826, and YTB–835 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; Annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light; and Annex I, section 3(b), pertaining to the placement of the sidelights, without interfering with their special functions as naval vessels. YTB–781, YTB–785, YTB–812, YTB–826, and YTB–835 are tugs of special construction and functions. They perform towing services for naval vessels. The masts of these tugs are hinged and are lowered only when actually engaged in towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task lights mounted on this mast, cannot be displayed. During such operations only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Three of § 706.2 is amended by adding the following vessels:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
YTB–781	YTB–781				2.56	13.41		
YTB–785	YTB–785				2.94	14.02		
YTB–812	YTB–812				3.03	14.02		
YTB–826	YTB–826				2.82	14.32		
YTB–835	YTB–835				3.00	14.02		

3. Paragraph 14, Table Four of § 706.2 is amended by adding the following vessels:

* * * * *

14. * * *

Vessel No.	Distance in meters of [illegible] masthead light below minimum required height, Annex I, § 2(a)(i)
YTB–781	3.66
YTB–785	4.47
YTB–812	4.04
YTB–826	3.89
YTB–835	4.04

Date: December 6, 1988.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 88–29183 Filed 12–19–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–88–10]

Drawbridge Operation Regulations; Petaluma River, Petaluma, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of City of Petaluma, the Coast Guard is changing the regulations governing the operation of the drawbridge; "D" Street Bridge, across the Petaluma River, mile 13.7, at Petaluma, California, by requiring that four hours advance notice of opening be given from 6 a.m. to 6 p.m. and 24 hours advance notice be given from 6 p.m. to 6 a.m. The bridge currently opens upon four hour advance notice at all times. This change is being made because the percentage of nighttime openings is decreasing and the City is seeking to reduce operating costs. This action will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Sharol Taylor, Bridge Administrator, Eleventh Coast Guard District at (415) 437–3514.

SUPPLEMENTARY INFORMATION: On September 2, 1988, the Coast Guard

published a notice of proposed rulemaking in the **Federal Register** (53 FR 34129) concerning this amendment. The Commander, Eleventh Coast Guard District, also published the proposal as a Public Notice dated August 26, 1988, which gave interested persons until October 17, 1988 to submit comments. In reviewing this regulation the Coast Guard noticed that they had omitted one category of vessels that need emergency openings, vessels in distress. That category of vessels has been included in the final regulation.

Drafting Information

The drafters of this notice are Sharol E. Taylor, project officer, and Lieutenant Commander J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

Two comments were received in response to the Public Notice. One mariner was opposed to the change stating that even the existing four hour notice was too long, but provided no other information. The other comment, from a recreational user, was in agreement with the 24 hour notice requirement for the hours from 6 p.m. to 6 a.m., but wanted openings upon demand on weekends from 6 a.m. to 6 p.m. Since this would be more costly than the existing regulation, it would not meet the objectives of the City of Petaluma. The bridge has been operated on advance notice since 1957.

Economic Assessment and Certification

These regulations are considered to be non-major under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The Coast Guard received no comments documenting adverse effects on businesses. Since the economic impact is minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.187(b) is revised to read as follows:

§ 117.187 Petaluma River.

* * * * *

(b) The draw of the Petaluma highway bridge at "D" Street, mile 13.7 at Petaluma, shall open on signal if at least four hours notice is given for openings from 6 a.m. to 6 p.m., and if at least 24 hours notice is given for openings from 6 p.m. to 6 a.m. The draw shall open as soon as possible for vessels in distress and vessels, including commercial vessels, engaged in rescue or emergency salvage operations.

* * * * *

Dated: December 2, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88–29172 Filed 12–19–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796, 797, and 798

Toxic Substances Control Act Test Guidelines

CFR Correction

Beginning at 50 FR 39252, September 27, 1985, the Environmental Protection Agency published regulations which added Part 796, Chemical Fate Testing Guidelines, Part 797, Environmental Effects Testing Guidelines, and Part 798, Health Effects Testing Guidelines, to Title 40 of the Code of Federal Regulations (CFR). In the July 1, 1986, and July 1, 1987, revisions of Title 40 CFR (Part 700 to End) portions of the text of Parts 796, 797, and 798 were published incorrectly.

1. In the July 1, 1987, revision of Title 40 CFR (Part 700 to End), the following section of Part 796 is corrected.

§ 796.3140 [Corrected]

The word "are" is removed in the fourth line of paragraph (b)(2)(i)(C).

2. In the July 1, 1987, revision of Title 40 CFR (Part 700 to End), the following section of Part 797 is corrected.

§ 797.1560 [Corrected]

The reference "(b)(6)" is revised to read "(f)(4)" in the last line of paragraph (d)(1)(i).

3. In the July 1, 1987, revision of Title 40 CFR (Part 700 to End), the following sections of Part 798 are corrected.

§ 798.1150 [Corrected]

The word "Feed" is revised to read "Food" in the first and second lines of paragraph (f)(8).

§ 798.1175 [Corrected]

The word "feed" is revised to read "food" in the third line of paragraph (f)(6)(ii) and in the second line of paragraph (f)(6)(iii).

§ 798.2250 [Corrected]

The word "Feed" is revised to read "Food" in the second line of paragraph (e)(9)(v) and in the first line of paragraph (f)(3)(ii)(D).

§ 798.2450 [Corrected]

The word "Feed" is revised to read "Food" in the second line of paragraph (d)(10)(v) and in the first line of paragraph (e)(3)(iv)(D).

The words "and or" are revised to read "or" in the last line of paragraph (d)(11)(ii)(B).

§ 798.2650 [Corrected]

The word "feed" is revised to read "food" in the second and fourth lines of paragraph (e)(8)(v) and the word "Feed" is revised to read "Food" in the first line of paragraph (f)(3)(ii)(D).

The word "or" is revised to read "of" in the third line of paragraph (e)(11)(iv).

§ 798.2675 [Corrected]

The word "feed" is revised to read "food" in the second line of paragraph (e)(8)(v) and the word "Feed" is revised to read "Food" in the first line of paragraph (f)(3)(ii)(D).

The words "and or" are revised to read "or" in the last line of paragraph (e)(9)(ii)(B).

§ 798.3260 [Corrected]

The word "Feed" is revised to read "Food" in the first line of paragraphs (b)(6)(iii)(C) and (c)(3)(i)(B)(*4*) and the word "feed" is revised to read "food" in the second and third lines of paragraph (b)(7)(vi).

§ 798.3300 [Corrected]

The word "Feed" is revised to read "Food" in the first line of paragraphs (b)(6)(iii)(C) and (c)(3)(i)(B)(*4*) and the word "feed" is revised to read "food" in the second and third lines of paragraph (b)(7)(v).

§ 798.3320 [Corrected]

The word "Feed" is revised to read "Food" in the first line of paragraphs (b)(6)(iii)(C) and (c)(3)(i)(B)(*4*) and the word "feed" is revised to read "food" in the second and third lines of paragraph (b)(7)(v).

The word "to" is removed from the fifth line of paragraph (b)(6)(iii).

§ 798.4350 [Corrected]

The word "Feed" is revised to read "Food" in the first line of paragraph (f)(3)(iii)(E).

§ 798.5200 [Corrected]

The abbreviation "EPPT" is revised to read "EPA's" in the seventh line of paragraph (g)(1).

§ 798.7100 [Corrected]

The words "more than one" are revised to read "several" in the eighth line of paragraph (c)(1)(i).

The words "no-observed-effect-level" are revised to read "no-effect-level" in the second line of paragraph (c)(2)(ii).

The word "and" is revised to read "or" in the last line of paragraph (c)(2)(iv).

"90 percent" is revised to read "95 percent" in the fourth line of paragraph (c)(3) and in the 11th line of paragraph (c)(5)(iii).

The abbreviation "e.g." is revised to read "i.e." in the 10th line of paragraph (c)(5)(iii) and in the fourth line of paragraph (c)(5)(iv)(A).

"1.5," is inserted after the word "hours," in the fourth line of paragraph (c)(5)(iv)(A).

In the last line of paragraph (c)(5)(iv)(A) after the words "this study." add the following sentence: "In the dog, quantities of label in urine and feces should be measured at appropriate intervals (i.e., every 6 hours for the first 48 hours after dosing and every 12 hours for the remaining 5 days) throughout the study for all animals."

In paragraph (c)(5)(iv)(B), insert the word "bone," before the word "brain" in the fifth line and insert the word "spleen," after the word "muscle," in the sixth line.

The words "those employed may" are revised to read "the rat and dog" in the 19th and 20th lines of paragraph (e).

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
COLORADO	
Cherry Hills Village (city), Arapahoe County (FEMA Docket No. 6923)	
Quincy Gulch:	
Confluence of Blackmer Gulch	*5411
Approximately 30 feet upstream of Bellaire Street	*5454
Approximately 40 feet downstream of Dahlia Avenue	*5495
Maps are available for inspection at the Office of the Community Development Coordinator, City Hall, 2450 E. Quincy Avenue, Cherry Hills Village, Colorado.	
Columbine Valley (town), Arapahoe County (FEMA Docket No. 6923)	
South Platte River:	
Approximately 250 feet upstream of West Bowles Avenue	None
Approximately 1,200 feet downstream of the confluence with Lee Gulch	None
Approximately 1,900 feet downstream of Jackass Road	None
Maps are available for review at the Town Hall, 17A Fairway Lane, Littleton, Colorado.	
DeBeque (town), Mesa County (FEMA Docket No. 6927)	
Roan Creek:	
Approximately 1,200 feet downstream of County Road 44	*4909
Approximately 20 feet upstream of County Road 44	*4913
Approximately 1,360 feet upstream of County Road 44	*4918
Maps are available for review at Town Hall, 343 Minter Street, DeBeque Colorado.	
Englewood (city), Arapahoe County (FEMA Docket No. 6923)	
South Platte River:	
At Dartmouth Avenue	*5267
Approximately 420 feet downstream of West Hampden Avenue	*5267
Approximately 100 feet upstream of West Union Avenue	None
Approximately 2,120 feet upstream of West Union Avenue	None
Maps are available for review at the Engineering Services Department, 3400 South Elati Street, Englewood, Colorado.	
Glendale (city), Arapahoe County (FEMA Docket No. 6923)	
Cherry Creek:	
At Colorado Avenue	*5336

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 650 feet upstream of South Cherry Road	^5349
Maps are available for inspection at Engineering Department, City Hall, 950 South Birch, Glendale, Colorado.	
Sheridan (city), Arapahoe County (FEMA Docket No. 6923)	
South Platte River:	
Approximately 420 feet downstream of West Hampden Avenue	^5269
At the confluence of Bear Creek	^5272
Approximately 1,340 feet downstream of West Oxford Avenue	^5273
At West Union Avenue	None
Maps are available for review at the Building Department, 4101 South Federal Boulevard, Sheridan, Colorado.	
FLORIDA	
Atlantic Beach (city), Duval County (FEMA Docket No. 6837)	
Sherman Creek Canal:	
Just downstream of Unnamed Road	^8
Just upstream of Plaza Street	^9
Atlantic Ocean:	
About 350 feet east of intersection of Beach Avenue and 6th Street	^15
About 500 feet east of intersection of Beach Avenue and Atlantic Boulevard	^21
Intracoastal Waterway:	
About 2800 feet west of intersection of Main Street and Levy Road	^8
About 1300 feet west of intersection of Main Street and Levy Road	^6
Maps available for inspection at the City Building, Atlantic Beach, Florida.	
Brevard County (unincorporated areas) (FEMA Docket No. 6932)	
St. John's River:	
About 11.1 miles downstream of the county boundary	^11
At county boundary	^24
Kid Creek:	
Just downstream of U.S. Route 1	^5
About 0.63 mile upstream of William Avenue	^14
North Prong Creek:	
At mouth	^6
Just upstream of Wildon Road	^9
South Prong Creek: Within community	^6
Goat Creek:	
At mouth	^5
About 0.65 mile upstream of Leghorn Road	^24
Crane Creek Diversion from St. John's River: Within community	^21
Eau Gallie River:	
About 900 feet upstream of Eau Gallie Boulevard	^7
About 2200 feet upstream of Wickam Road	^22
Mosquito Lagoon:	
At the intersection of Haulover Canal and State Road 3	^5
Along shoreline	^7
Atlantic Ocean:	
About 200 feet north of the intersection of Northwest Drive and Northeast Drive	^9
About 350 feet east of the intersection of Orange Street and State Road A1A	^16
Banana River:	
At the intersection of 14th Street and Palmer Court	^2
Along shoreline, about 2000 feet west of the intersection of Hangar Road and NASA Parkway East	^7
Indian River:	
Just northeast of the intersection of State Road 5 and Pineda Expressway	^3
About 2000 feet northwest of the intersection of Country Road and Flounder Creek Road	^8
Newfound Harbor:	
About 600 feet west of the intersection of Eastwood Drive and Newfound Harbor Drive	^3
Just west of the intersection of Acorn Street and Angel Avenue	
Maps available for inspection at the Planning and Development Services Department, 2575 North Courtney Parkway, Merritt Island, Florida.	
Cape Canaveral (city), Brevard County (FEMA Docket No. 6932)	
Atlantic Ocean:	
Just east of the intersection of Washington Avenue and Ridgewood Avenue	^9
About 650 feet east of the intersection of Polk Avenue and Ridgewood Avenue	^14
Banana River:	
Along Justamere Drive about 850 feet west of the intersection of Justamere Drive and North Atlantic Avenue	^3
Along shoreline about 1100 feet west of the intersection of Center Street and North Atlantic Avenue	^5
Maps available for inspection at the City Hall, Cape Canaveral, Florida.	
Cape Canaveral Port Authority, Brevard County (FEMA Docket No. 6932)	
Atlantic Ocean/Canaveral Barge Canal:	
At State Road 401	^7
About 3600 feet east of the intersection of South Jetty Drive and Herring Street	^14
Banana River:	
Just north of the intersection of Grouper Road and Cape Road	^3
Just north of the Cape Canaveral South gate entrance	^6
Maps available for inspection at the Cape Canaveral Port Authority Station Director's Office, 200 George King Boulevard, Cape Canaveral, Florida.	
Cocoa (city), Brevard County (FEMA Docket No. 6932)	
Indian River:	
About 175 feet west of the intersection of Indian River Drive and MacFarland Drive	^4
Just east of the intersection of Mulberry Street and Indian River Drive	^6
Maps available for inspection at the City Hall, 603 Brevard Avenue, Cocoa, Florida.	
Cocoa Beach (city), Brevard County (FEMA Docket No. 6932)	
Banana River:	
Just west of the intersection of Palm Avenue and Olive Street	^2
Just west of the west end of Sarasota Lane	^5
Atlantic Ocean:	
Just east of the intersection of Ocean Beach Boulevard and Gadsen Lane	^11
About 400 feet east of the intersection of Atlantic Boulevard and 2nd Street North	^16
Maps available for inspection at the City Hall, Cocoa Beach, Florida.	
Indialantic (town), Brevard County (FEMA Docket No. 6932)	
Indian River:	
About 300 feet west of the intersection of Michigan Avenue and Riverside Drive	^5
About 350 feet west of the intersection of Palmetto Place and South Riverside Drive	^7
Atlantic Ocean:	
About 300 feet east of the intersection of 2nd Avenue and State Road A1A	^11
About 150 feet east of the intersection of Wave Crest Street and 11th Avenue	^15
Maps available for inspection at the Town Hall, 216 5th Avenue, Indialantic, Florida.	
Indian Harbour Beach (city), Brevard County, (FEMA Docket No. 6932)	
Banana River: Along shoreline	^3
Indian River: Along shoreline	^4
Atlantic Ocean:	
About 250 feet east of the intersection of State Road A1A and Atlantic Boulevard	^11
About 400 feet east of the intersection of State Road A1A and Ocean Dunes Drive	^15
Maps available for inspection at the City Hall, 2055 South Patrick Drive, Indian Harbour Beach, Florida.	
Jacksonville Beach (city), Duval County (FEMA Docket No. 6837)	
Atlantic Ocean:	
About 250 feet east of intersection of Tenth Avenue North and 1st Street North	^14
About 500 feet east of intersection of 37th Avenue South and Duval Drive	^20
Intracoastal Waterway:	
About 300 feet west of intersection of Seabreeze Avenue and Evans Drive	^5
About 0.9 mile west of intersection of Seabreeze Avenue and Evans Drive	^8
Maps available for inspection at the City Hall, 11 North 3rd Street, Jacksonville Beach, Florida.	
Malabar (town), Brevard County (FEMA Docket No. 6932)	
Turkey Creek Channel B:	
About 700 feet upstream of mouth	^14
About 1.34 miles upstream of mouth	^18
Turkey Creek Channel C:	
Just upstream of mouth	^14
About 1.1 miles upstream of mouth	^19
Turkey Creek Channel G:	
At mouth	^14
About .58 mile upstream of mouth	^19
Turkey Creek Channel D:	
At mouth	^14
About .68 mile upstream of mouth	^17
Goat Creek:	
At mouth	^5
About 2000 feet upstream of Unnamed Road	^11
Indian River:	
About 200 feet east of intersection of Rocky Point Road and State Road 5	^6
Just east of intersection of South Rocky Point Drive and Rocky Point Road	^7
Maps available for inspection at the Town Hall, Malabar, Florida.	
Melbourne (city), Brevard County (FEMA Docket No. 6932)	
St. Johns River: Within community	^20
Eau Gallie River:	
At mouth	^4
Just downstream of Wickham Road	^14
Crane Creek:	
About 700 feet downstream of U.S. Route 1	^5
Just upstream of Evans Road	^21
Crane Creek Channel A:	
At mouth	^12
About 0.4 mile upstream of Airport Road	^22
Crane Creek Channel B:	
At mouth	^6
About 1800 feet upstream of South Fairway Drive	^16
Indian River:	
About 400 feet east of the intersection of Jouret Street and Pineapple Avenue	^3
Just east of the intersection of Jernigan Avenue and Riverview Drive	^7
Atlantic Ocean:	
About 300 feet east of the intersection of Paradise Boulevard and State Road A1A	^11
Along shoreline	^15
Maps available for inspection at the City Hall, 900 East Strawbridge Avenue, Melbourne, Florida.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Melbourne Beach (town), Brevard County (FEMA Docket No. 6932)	
Atlantic Ocean:	
Along Ocean Avenue about 175 feet east of intersection with Atlantic Street	*13
About 300 feet east of the intersection of Atlantic Street and Ocean Avenue	*15
Indian River:	
Just west of the intersection of South Riverside Drive and 1st Avenue	*6
Along shoreline about 100 feet west of intersection of A Avenue and South Riverside Drive	*7
Maps available for inspection at the Town Hall, 507 Ocean Avenue, Melbourne Beach, Florida.	
Melbourne Village (town), Brevard County (FEMA Docket No. 6932)	
Crane Creek Diversion from St. John's River:	
About 400 feet upstream of Wickham Road	*21
About 2400 feet upstream of Dayton Boulevard	*22
Maps available for inspection at the Town Hall 535 Hammock Road, Melbourne Village, Florida.	
Neptune Beach (city), Duval County (FEMA Docket No. 6937)	
Atlantic Ocean:	
About 400 feet east of intersection of Seagate Avenue and 1st Street	*14
About 500 feet east of intersection of Oak Street and 1st Street	*21
Intracoastal Waterway:	
About 500 feet south of intersection of Kings Road and Indian Woods Drive	*5
About 900 feet west of intersection of Kings Road and Indian Woods Drive	*6
Maps available for inspection at the City Hall, 116 First Street, Neptune Beach, Florida.	
Palm Bay (city), Brevard County (FEMA Docket No. 6932)	
St. John's River: Within community	*21
Turkey Creek:	
Just upstream of U.S. Route 1	*5
About 0.67 mile upstream of Port Malabar Boulevard	*14
Turkey Creek Channel A:	
At mouth	*9
About 2100 feet upstream of Knetch Road	*19
Turkey Creek Channel B: Within community	*14
Turkey Creek Channel C: Within community	*14
Turkey Creek Channel C-76:	
At mouth	*14
About 1350 feet upstream of Charles Boulevard	*29
Turkey Creek Channel D:	
Just upstream of mouth	*14
Just upstream of Oaklyn Street	*17
Indian River:	
Just east of the intersection of Herndon Circle and Anglers Drive	*6
Just east of the intersection of Apollo II Boulevard and Harbor Boulevard	*7
Maps available for inspection at the City Hall, 2145 Palm Bay Road, NE., Palm Bay, Florida.	
Palm Shores (town), Brevard County (FEMA Docket No. 6932)	
Indian River:	
Along shoreline	*5
Maps available for inspection at the Mayor's Home, 5275 North Harbor Boulevard, Palm Shores, Florida.	
Rockledge (city), Brevard County (FEMA Docket No. 6932)	
St. John's River: Within community	*18
Indian River:	
Along Old Dixie Highway about 0.61 mile south of the intersection of Florida Avenue	*4
Just east of the intersection of Bougainvilla Drive and Rockledge Drive	*6
Maps available for inspection at the City Hall, Rockledge, Florida.	
Satellite Beach (city), Brevard County (FEMA Docket No. 6932)	
Atlantic Ocean:	
About 200 feet east of the intersection of Ocean Spray Avenue and Sheppard Boulevard	*11
About 400 feet east of the intersection of Ocean Spray Avenue and Sheppard Boulevard	*15
Indian River: Within community	*3
Maps available for inspection at the City Hall, 510 Cinnamon Drive, Satellite Beach, Florida.	
Titusville (city), Brevard County (FEMA Docket No. 6932)	
Shallow Flooding (due to ponding from rainfall):	
At the intersection of Cherrywood Lane and Hickory Hill Boulevard	*20
At the intersection of Crescent Drive and Melody Lane	*22
Indian River:	
Just east of the intersection of Coquina Avenue and State Road 5	*3
Just east of the intersection of Main Street and Indian River Avenue	*5
Maps available for inspection at the City Hall, Titusville, Florida.	
Umatilla (city), Lake County (FEMA Docket No. 6927)	
Lake Palm: Entire shoreline	*80
Lake Geneva: Entire shoreline	*75
Lake Ella: Entire shoreline	*71
Lake Mary: Entire shoreline	*71
Lake Enola: Entire shoreline	*71
Lake Umatilla: Entire shoreline	*70
Cresent Lake: Entire shoreline	*70
East Lake: Entire shoreline	*80
Lake Pearl: Entire shoreline	*80
Lake Owen: Entire shoreline	*70
Muscle Lake: Entire shoreline	*70
Lake Yale: Entire shoreline	*61
Maps available for inspection at the City Hall, Umatilla, Florida.	
West Melbourne (city), Brevard County (FEMA Docket No. 6932)	
St. John's River: Within community	*20
Crane Creek Diversion from St. John's River:	
Just upstream of John Rodes Boulevard	*21
Just downstream of Evans Road	*22
Crane Creek:	
Just upstream of Dairy Road	*19
About 2700 feet upsteam of Dairy Road	*20
Maps available for inspection at the City Hall, 2285 Minton Road, West Melbourne, Florida.	
GEORGIA	
Blacksheer (city), Pierce County (FEMA Docket No. 6937)	
Alabaha River:	
About 2.0 miles downstream of CSX railroad	*78
About 0.1 miles upstream of U.S. Route 82	*84
Maps available for inspection at the City Hall, Blacksheer, Georgia.	
Pierce County (unincorporated areas) (FEMA Docket No. 6932)	
Alabaha River:	
About 0.8 mile upstream of mouth	*65
Just downstream of U.S. Route 82	*84
Satilla River:	
Just upstream of State Route 121	*71
At county boundary	*96
Maps available for inspection at the County Clerk's Office, County Courthouse, Blackshear, Georgia.	
IDAHO	
McCall (city), Valley County (FEMA Docket No. 6927)	
North Fork Payette River:	
Approximately 1,450 feet downstream of West Lake Street/State Highway 55	*4,981
Approximately 880 feet downstream of West Lake Street/State Highway 55	*4,984
Maps available for inspection at City Hall, 212 Park Street, McCall Idaho.	
INDIANA	
Johnson County (unincorporated areas) (FEMA Docket No. 6927)	
West Fork White River:	
About 2,500 feet downstream of county boundary	*647
Just downstream of county boundary	*661
Pleasant Run Creek:	
Just upstream of County Line Road	*678
About 1,500 feet upstream of State Route 135	*725
Honey Creek:	
At mouth	*657
Just downstream of 700 North Road	*774
Turkey Pen Creek:	
At mouth	*679
About 1,400 feet upstream of 800 North Road	*730
Messersmith Creek:	
At mouth	*664
About 2.4 miles upstream of 500 West Road	*699
Auburn Branch:	
At mouth	*718
Just downstream of Illinois Central Gulf Railroad	*731
Driftwood River:	
At county boundary	*658
At confluence of Big Blue River	*660
Sugar Creek:	
At mouth	*660
About 1.32 miles upstream of Conrail	*686
Maps available for inspection at the Office of Planning and Zoning, Courthouse Annex, 86 West Court, Franklin, Indiana.	
IOWA	
Clayton (city), Clayton County (FEMA Docket No. 6932)	
Mississippi River:	
At downstream corporate limits	*625
At upstream corporate limits	*626
Maps available for inspection at the City Hall, R.R. #2, Garnavillo, Iowa.	
Independence (city), Buchanan County (FEMA Docket No. 6932)	
Wapsipinicon River:	
About 1.1 miles downstream of Third Avenue S.E.	*900
About 1,900 feet upstream of Illinois Central Railroad	*911
Malone Creek:	
At mouth	*901
About 1.1 miles upstream from Third Street N.E.	*932
Maps available for inspection at the City Hall, 331 First Street, East, Independence, Iowa.	
KENTUCKY	
Nicholasville (city), Jessamine County (FEMA Docket No. 6932)	
Town Fork:	
About 4,900 feet downstream of John C. Watts Drive	*879
Just downstream of John C. Watts Drive	*898
Just upstream of John C. Watts Drive	*904

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Norfolk Southern Building	*941
Just upstream of Norfolk Southern Building	*947
About 3,680 feet upstream of John's Avenue	*970
Maps available for inspection at the City Hall, 517 North Main Street, Nicholasville, Kentucky.	
MAINE	
Wayne (town), Kennebec County (FEMA Docket No. 6927)	
Wilson Pond: Entire shoreline within community	*245
Dexter Pond: Entire shoreline within community	*246
Berry Pond: Entire shoreline within community	*246
Androscoggin Lake: Entire shoreline within community	*286
Pocasset Lake: Entire shoreline within community	*289
Pickerel Pond: Entire shoreline within community	*289
Lovejoy Pond: Entire shoreline within community	*305
Maps available for inspection at the Selectman's Office, Wayne, Maine.	
MICHIGAN	
Nottawa (township), St. Joseph County (FEMA Docket No. 6927)	
St. Joseph River: Within community	*829
Prairie River:	
Just upstream of Findley Road	*831
Just downstream of Fillmore Road	*832
Maps available for inspection at the Township Hall, 112 South Clark, Centreville, Michigan.	
MINNESOTA	
Bigfork (city), Itasca County (FEMA Docket No. 6932)	
Big Fork River:	
About 1.31 miles downstream of the confluence of Rice River	*1305
About 0.78 mile upstream from Cedar Street	*1307
Rice River:	
At mouth	*1306
About 800 feet upstream of Cemetery Road	*1306
Maps available for inspection at the City Hall, Bigfork, Minnesota.	
Isanti (city), Isanti County (FEMA Docket No. 6932)	
Rum River:	
About 2450 feet downstream of the confluence of Spirit Brook	*911
About 900 feet upstream of Wagon Road	*911
Spirit Brook:	
At mouth	*911
Just downstream of Whiskey Road	*911
About 800 feet upstream of Fifth Avenue	*923
Park Brook:	
At mouth	*923
Just downstream of Wagon Road	*927
Just upstream of Wagon Road	*932
About 1400 feet upstream of Third Avenue	*935
Maps available for inspection at the City Hall, Isanti, Minnesota.	
MISSOURI	
Dunklin County (unincorporated areas) (FEMA Docket No. 6932)	
Ditch No. 1:	
Approximately 0.5 mile downstream of U.S. Route 62	*280
Approximately 0.9 mile upstream of Broadwater Road	*283
Ditch No. 1 Tributary A:	
At downstream County boundary	*283
Approximately 50 feet upstream of St. Louis—Southwestern Railroad	*288
Ditch No. 1 Tributary B:	
At downstream County boundary	*284
Approximately 25 feet upstream of St. Louis—Southwestern Railroad	*289
Ditch No. 14:	
Approximately 1.1 miles downstream of Route J	*287
Approximately 0.3 mile upstream of Bernard Road	*298
Shipley Slough:	
Approximately 0.4 mile downstream of St. Louis—San Francisco Railroad	*261
At Ely Street	*261
Kinnemore Slough Ditch:	
Approximately 765 feet downstream of State Route 25	*245
Approximately 0.8 mile upstream of St. Louis—Southwestern Railroad	*246
Honey Cypress Creek:	
Approximately 1.27 miled downstream of State Route 164	*242
Approximately 3.1 miles upstream of St. Louis—Southwestern Roalroad	*246
Maps available for inspection at the Dunklin County Courthouse, Kennett, Missouri.	
NORTH CAROLINA	
Hoke County (unincorporated areas) (FEMA Docket No. 6927)	
Raft Swamp:	
About 2,750 feet downstream of SR 1105	*194
About 3,300 feet upstream of State Road 211	*206
Puppy Creek:	
At mouth	*147
About 1.5 miles upstream of U.S. Route 401	*205
Rockfish Creek:	
At county boundary	*123
About 1,950 feet upstream of confluence of Mill Creek	*206
Maps available for inspection at the County Courthouse, Raeford, North Carolina.	
NORTH DAKOTA	
Killdeer (city), Dunn County (FEMA Docket No. 6927)	
Spring Creek:	
Approximately 1,500 feet downstream of Section Line Road	*2226
Backwater along Gumbo Creek, approximately 700 feet upstream of Section Line Road	*2226
At the Burlington Northern Railroad	*2231
Approximately 3,460 feet downstream of State Highway 22	*2241
Approximately 1,800 feet upstream of State Highway 22	*2247
Approximately 6,000 feet upstream of State Highway 22	*2255
Maps available for inspection at City Hall, Railroad Street, Killdeer, North Dakota.	
OHIO	
Fairfield County (unincorporated areas) (FEMA Docket No. 6932)	
Hocking River:	
About 1,000 feet downstream of Chessie System	*763
Just upstream of Campground Road	*839
About 1.9 miles upstream of Campground Road	*877
Hocking River Diversion:	
Confluence with the Hocking River	*770
About 1.0 mile upstream of the confluence with the Hocking River	*776
South Fork Licking River:	
About 8,000 feet downstream of State Route 360	*884
About 2,900 feet upstream of State Route 360	*891
Walnut Creek:	
Just upstream of County Route 6	*782
Just downstream of Conrail	*784
Just upstream of U.S. Route 33	*789
About 1,500 feet upstream of State Route 256	*870
Little Walnut Creek:	
Confluence with Walnut Creek	*802
About 2,000 feet upstream of State Route 188	*891
Poplar Creek:	
Confluence with Walnut Creek	*803
Just downstream of Basil Western Road	*832
Just upstream of Basil Western Road	*837
About 2,400 feet upstream of Poplar Creek Road	*952
Pawpaw Creek:	
About 4000 feet downstream of confluence of Pawpaw Creek Tributary	*869
About 2300 feet upstream of confluence of Pawpaw Creek Tributary	*872
Pawpaw Creek Tributary:	
Confluence with Pawpaw Creek	*869
About 1500 feet upstream of confluence with Pawpaw Creek	*870
Rush Creek:	
About 1.4 miles downstream of Hansley Road	*770
About 1.2 miles upstream of Swartz Mill Road	*774
Just upstream of Manetta Road	*798
About 1300 feet upstream of Conrail	*808
Little Rush Creek:	
About 400 feet downstream of Conrail	*769
About 1.1 miles upstream of State Route 664	*902
Tributary A:	
Confluence with Rush Creek	*772
About 1600 feet upstream of Carpenter Road	*819
Tributary B:	
Confluence with Rush Creek	*773
Just downstream of Paradise Road	*791
Baltimore Tributary:	
Just upstream of Conrail	*852
Just downstream of Roley Road	*869
Raccoon Run:	
Just upstream of State Route 664	*793
Just downstream of Schwilk Road	*837
Just upstream of Conrail, about 100 feet upstream of Schwilk Road	*842
Just downstream of State Route 37	*848
Turkey Run:	
About 5600 feet downstream of Bethel Road	*788
About 2600 feet upstream of Bethel Road	*800
Tributary H:	
Confluence with Little Rush Creek	*867
Just downstream of Lake Road	*901
Tributary I:	
Confluence with Raccoon Run	*798
Just downstream of State Route 37	*826
Hunters Run:	
Just upstream of U.S. Route 22 at City of Lancaster corporate limits	*834
Just downstream of Crumley Road	*879
Just upstream of Crumley Road	*885
About 400 feet upstream of a Private Drive which is an extension of Whiley Road	*926
Pleasant Run:	
Confluence with Hocking River	*790
About 1300 feet upstream of Beatty Road	*918
Pleasant Run Lateral: Confluence with Pleasant Run just downstream of Duffy Road	*829
Ewing Run:	
About 4400 feet downstream of Rainbow Drive	*873
About 1600 feet upstream of confluence of Ewing Run Lateral	*917
Fetters Run:	
About 1.5 miles downstream of State Route 37	*835
About 3400 feet upstream of Rainbow Drive	*907
Ohio Canal:	
Just upstream of Chessie System	*832
Just upstream of confluence of Lateral A	*842
Lateral A:	
Confluence with Ohio Canal	*842
About 200 feet upstream of Farm Lane	*884
Lateral B:	
Confluence with Ohio Canal	*841
Just downstream of Upper Hocking Watershed Structure #6	*842
Just upstream of Upper Hocking Watershed Structure #6	*849
Just downstream of Coonpath Road	*853
Lateral C:	
Confluence with Ohio Canal	*834
About 6100 feet upstream of U.S. Route 33	*862
Lateral D:	
About 2000 feet downstream of Wilson Road	*848
About 1400 feet upstream of Farm Lane	*882
Blue Valley Lateral:	
Confluence with Hocking River	*772
About 4500 feet upstream of Farm Lane	*798
Blacktick Creek:	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At county boundary	*796
About 1800 feet upstream of Interstate 70	*836
Maps available for inspection at the County Regional Planning Commission, County Courthouse, Lancaster, Ohio.	
Lancaster (city), Fairfield County (FEMA Docket No. 6932)	
Hocking River:	
About 1500 feet downstream of Sugar Grove Road	*807
Just upstream of Collins Road	*836
Pleasant Run:	
Just upstream of Duffy Road	*819
Just downstream of Marietta Road	*842
Baldwin Run:	
At mouth	*812
At confluence of Fetters Run	*822
Ewing Run:	
At confluence with Baldwin Run	*822
About 2400 feet upstream of Rainbow Drive	*913
Fetters Run:	
At mouth	*822
About 875 feet upstream of Granville Pike	*876
Tarhe Run:	
At mouth	*818
About 1700 feet upstream of abandoned railroad bridge	*847
Hunters Run:	
At mouth	*821
Just downstream of Lincoln Avenue	*834
Lateral A:	
At mouth	*823
About 1300 feet upstream of Hawthorne Drive	*869
Lateral B:	
At mouth	*824
Just downstream of West Fair Avenue	*831
Just upstream of West Fair Avenue	*836
Just downstream of Private Drive	*844
Just upstream of Private Drive	*849
About 1500 feet upstream of Hoffman Drive	*862
Raccoon Run:	
Just upstream of Conrail	*843
Just downstream of Marietta Road	*848
Lateral D:	
At mouth	*831
About 1.5 miles upstream of West Fair Avenue	*866
Maps available for inspection at the Municipal Building, 104 East Main Street, Lancaster, Ohio.	
Shelby (city), Richland County (FEMA Docket No. 6927)	
Black Fork Mohican River:	
Just downstream of CSX railroad	*1075
Just upstream of the confluence of West Branch	*1095
Tuby Run:	
At mouth	*1088
Just downstream of Conrail	*1091
Just upstream of Conrail	*1098
Just downstream of Vernon Road	*1104
Seltzer Park Creek:	
At mouth	*1089
Just downstream of Private Drive	*1115
Just upstream of Private Drive	*1122
About 400 feet upstream of Mansfield Avenue	*1124
West Branch Bear Run:	
About 2080 feet upstream of State Street	*1093
About 0.79 mile upstream of State Street	*1102
Hartman Bargahaser Ditch:	
At mouth	*1079
About 1350 feet upstream of West Smiley Avenue	*1097
West Branch:	
At mouth	*1094
About 1250 feet upstream of South Gamble Street	*1097
Maps available for inspection at the City Hall, 23 West Main Street, Shelby, Ohio.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OKLAHOMA	
Lone Grove (city), Carter County (FEMA Docket No. 6927)	
Taliaferro Creek:	
Approximately 1.6 miles downstream of Myall Road	*834
At U.S. Route 70	*898
Taliaferro Creek Tributary A:	
At confluence with Taliaferro Creek	*870
Approximately 0.2 miles upstream of Kelly Lane	*886
Wolf Creek:	
At confluence with Cottonwood Creek	*824
At Newport Road	*892
Maps available for inspection at the City Hall, Highway 70 East, Lone Grove, Oklahoma.	
OREGON	
Mitchell (city), Wheeler County (FEMA Docket No. 6932)	
Bridge Creek:	
Approximately 400 feet downstream of U.S. Route 26 (at western corporate limits)	*2710
Approximately 200 feet downstream of the west side crossing Old Highway (Business Loop Road)	*2755
Approximately 90 feet downstream of east side crossing of Old Highway (Business Loop Road)	*2801
At confluence with Keyes Creek	*2833
Approximately 1,900 feet upstream of the confluence with Keyes Creek (at southeastern corporate limits)	*2882
Keys Creek:	
At confluence with Bridge Creek	*2833
Approximately 120 feet upstream of Prairie Road	*2845
Approximately 520 feet upstream of Prairie Road (at eastern corporate limits)	*2861
Maps are available for review at City Hall, Mitchell, Oregon.	
PENNSYLVANIA	
Adams (Township), Butler County (FEMA Docket No. 6932)	
Breakneck Creek:	
At downstream corporate limits	*959
At Township Route 391	*1,021
At upstream corporate limits	*1,057
Maps available for inspection at the Township Building, 75 Hutchman Road, Mars, Pennsylvania.	
Callery (Borough), Butler County (FEMA Docket No. 6932)	
Breakneck Creek:	
At downstream corporate limits	*959
At upstream corporate limits	*969
Maps available for inspection at the Borough Office, Main Street, Callery, Pennsylvania.	
Clifford (Township), Susquehanna County (FEMA Docket No. 6932)	
East Branch Tunkhannock Creek:	
Approximately 80 feet downstream of downstream corporate limits	*990
Approximately 1 mile upstream from confluence with Dundaff Creek	*1,082
Dundaff Creek:	
Confluence with East Branch Tunkhannock Creek	*1,052
Upstream corporate limits	*1,100
Maps available for inspection at the residence of Mary T. Lewis, Clifford Township Secretary, Box 339, Clifford, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Franklin (Township), Beaver County (FEMA Docket No. 6927)	
Connoquenessing Creek:	
Approximately 2.7 miles downstream from State Route 65	*852
At Fombell Road	*850
At upstream corporate limits	*899
Maps available for inspection at the Township Building, R.D. 1, Box 141, Fombell, Pennsylvania.	
Greensboro (Borough), Greene County (FEMA Docket No. 6927)	
Monongahela River:	
Approximately 766 feet downstream of the downstream corporate limits	*799
At the upstream corporate limits	*800
Maps available for inspection at the Borough Building, Greensboro, Pennsylvania.	
Greenwood (Township), Columbia County (FEMA Docket No. 6932)	
Little Fishing Creek:	
At downstream corporate limits	*580
Approximately 950 feet downstream of L.R. 19054	*655
Approximately 0.3 miles upstream of State Route 42	*712
Green Creek:	
At confluence of Little Green Creek	*623
Approximately 350 feet upstream of T-599	*673
Maps available for inspection at the Greenwood Township Building, right off Pennsylvania Route 254, Millville, Pennsylvania.	
Lathrop (Township), Susquehanna County (FEMA Docket No. 6932)	
Martins Creek:	
Approximately 200 feet downstream from the downstream corporate limits	*762
Approximately 300 feet upstream from T-377	*804
At upstream corporate limits	*889
Maps available for inspection at the R.D. 1, c/o James Pratt, Box 158A, Hop Bottom, Pennsylvania.	
Lenox (Township), Susquehanna County (FEMA Docket No. 6932)	
East Branch Tunkhannock Creek:	
Approximately 0.7 mile upstream of Interstate Route 81	*964
Upstream corporate limits	*991
Maps available for inspection at Box 36, c/o Edward Pietriyk, Lenoxville, Pennsylvania.	
Marion (Township), Beaver County (FEMA Docket No. 6927)	
Connoquenessing Creek:	
At downstream corporate limits	*870
At upstream side of CONRAIL bridge	*892
At upstream corporate limits	*900
Maps available for inspection at the Township Secretary's residence, R.D. 2, New Brighton, Pennsylvania.	
Mill Creek (Borough), Huntingdon County (FEMA Docket No. 6927)	
Juniata River:	
Downstream corporate limits	*596
Upstream corporate limits	*599
Maps available for inspection at the Borough Building, Valley Street, Mill Creek, Pennsylvania.	
Miller (Township), Huntingdon County (FEMA Docket No. 6927)	
Standing Stone Creek:	
Approximately 450 feet downstream L.R. 31112	*684

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.64 mile downstream from L.R. 31056	*699
Maps available for inspection at the Huntingdon Township Secretary Patricia MacNeil's Home, L.R. 31042, Huntingdon, Pennsylvania.	
Minersville (Borough), Schuylkill County (FEMA Docket No. 6927)	
West Branch Schuylkill River:	
Approximately 1,155 feet downstream of Sunbury Street	*695
Approximately 1,000 feet upstream of Conrail Railroad Bridge	*702
Maps available for inspection at the Municipal Building, #2 E. Sunbury Street, Minersville, Pennsylvania.	
New Milford (township), Susquehanna County (FEMA Docket No. 6932)	
Salt Lick Creek:	
Downstream corporate limits	*990
0.4 mile upstream of L.R. 57062	*1,276
Maps available for inspection at the Township Building, New Milford, Pennsylvania.	
New Sewickley (township), Beaver County (FEMA Docket No. 6927)	
Brush Creek:	
Just upstream of the Pennsylvania Turnpike	*924
At upstream corporate limits	*973
Maps available for inspection at the Township Building, R.D. 1, Box 12, Miller Road, Rochester, Pennsylvania.	
Oneida (township), Huntingdon County (FEMA Docket No. 6927)	
Standing Stone Creek:	
Approximately 430 feet downstream of downstream crossing of State Route 26	*629
Approximately 0.35 mile upstream of downstream crossing of State Route 26	*631
At the confluence of Chilcoat Run	*645
Approximately 0.2 mile upstream of upstream crossing of State Route 26	*647
Murray Run:	
Approximately 0.11 mile downstream of State Route 26	*680
At upstream corporate limits	*691
Chilcoat Run:	
At confluence of Standing Stone Creek	*645
Approximately 50 feet upstream of L.R. 31048	*654
Maps available for inspection at the Township Municipal Building, 115 Stone Creek Road, Huntingdon, Pennsylvania.	
Orwigsburg (borough), Schuylkill County (FEMA Docket No. 6927)	
Mahanmon Creek:	
At downstream corporate limits	*535
Upstream side of State Route 443	*580
Approximately 1,650 feet upstream of State Route 443	*600
Maps available for inspection at the Municipal Building, 209 N. Warren Street, Orwigsburg, Pennsylvania.	
Pine (township), Columbia County (FEMA Docket No. 6932)	
Little Fishing Creek:	
At downstream corporate limits	*632
Approximately 1,500 feet upstream of State Highway 42	*712
Maps available for inspection at Mr. Roger Gordner's residence, beside the Township Building, on Township Road #750, Millville, Pennsylvania.	
Spruce Creek (township), Huntingdon County (FEMA Docket No. 6927)	
Juniata River:	
Approximately 1,800 feet downstream of the confluence with Spruce Creek	*761
Approximately 2,250 feet upstream of State Route 45	*769
Spruce Creek:	
At confluence with Juniata River	*765
Approximately 0.6 mile upstream of T-602	*827
Maps available for inspection at the Township Secretary's House, R.D. #1, Box 97, Tyrone, Pennsylvania.	
Union (township), Huntingdon County (FEMA Docket No. 6927)	
Juniata River:	
Approximately 0.6 mile downstream of abandoned bridge	*587
Approximately 0.4 mile upstream of CONRAIL	*591
Upstream of State Route 829	*601
Maps available for inspection at Township Secretary Robert Fisher's home, Township Road #424 (off Hill Street), Union, Pennsylvania.	
Warriors Mark (Township), Huntingdon County (FEMA Docket No. 6927)	
Warriors Mark Run:	
Approximately 3,580 feet downstream of Burkett Road	*1,031
Approximately 270 feet upstream of State Route 550	*1,096
Little Juniata River:	
At downstream corporate limits	*814
At downstream side of Legislative Route 07030	*856
Maps available for inspection at the Warriors Mark Township Building (behind Larry Smith's house), Warriors Mark, Pennsylvania.	
SOUTH CAROLINA	
City of Barnwell, Barnwell County (FEMA Docket No. 6927)	
Salkehatchie River:	
About 700 feet downstream of CSX railroad	*165
About 2,000 feet upstream of CSX railroad	*168
Turkey Creek:	
About 1.3 miles downstream of Clinton Street	*154
Just downstream of Bryan Street	*168
Just upstream of Bryan Street	*178
About 0.9 mile upstream of Wellington Drive	*178
Jordan Branch:	
About 0.52 mile downstream of Main Street (State Route 70)	*198
About 0.3 mile upstream of Main Street (State Route 70)	*217
Maps available for inspection at the City Hall, Barnwell, South Carolina.	
Georgetown (city), Georgetown County (FEMA Docket No. 6932)	
Whites Creek:	
About 0.9 mile downstream of CSX railroad	*9
About 2600 feet upstream of Highmarket Street	*11
Whites Creek Tributary: Within community	*10
Winyah Bay/Sampit River:	
Along Whites Creek from corporate limits to CSX railroad	*9
Winyah Bay:	
At intersection of U.S. Route 17 and Martin Street	*9
At intersection of Front Street and Meeting Street	*9
Along shoreline south of Sampit River	*14
Maps available for inspection at the City Hall, 120 North Fraser Street, Georgetown, South Carolina.	
Georgetown County (Unincorporated Areas) (FEMA Docket No. 6932).	
Allston Creek Tributary No. 1:	
Just upstream of U.S. Business Route 17	*11
About 1.0 mile upstream of U.S. Route 17	*25
Allston Creek Tributary No. 2:	
Just upstream of U.S. Business Route 17	*11
About 1,400 feet upstream of Lee Street	*21
Atlantic Ocean:	
About 3.7 mile upstream along the Santee River from the confluence of the South Santee River	*8
At Georgetown County/Horry County boundary along coastline	*23
Bells Swamp:	
At mouth	*17
Just upstream of State Route 249	*39
Bells Swamp Tributary:	
At mouth	*17
Just upstream of State Route 126	*31
Black River:	
Just upstream of U.S. Route 701	*8
Just downstream of State Route 51	*12
Boser Swamp:	
At mouth	*20
Just downstream of State Route 35	*22
Cansan Branch:	
At mouth	*9
Just downstream of State Route 318	*20
Chapel Creek:	
Just upstream of State Route 52	*8
About 2,000 feet upstream of U.S. Route 701	*22
Chapel Creek Tributary No. 1:	
At mouth	*9
About 2,200 feet upstream of Woodlands Road	*11
Chapel Creek Tributary No. 2:	
At mouth	*8
Just downstream of State Route 160	*19
Chapel Creek Tributary No. 3:	
At mouth	*9
Just downstream of State Route 160	*20
Chapel Creek Tributary No. 4:	
At mouth	*9
About 1,000 feet upstream of State Route 160	*15
Chapel Creek Tributary No. 5:	
At mouth	*13
About 900 feet upstream of State Route 160	*16
Cypress Creek:	
At mouth	*8
About 1.1 miles upstream of U.S. Route 701	*12
Cypress Creek Tributary No. 1:	
At mouth	*8
About 2,400 feet upstream of confluence of Cypress Creek Tributary No. 2	*18
Cypress Creek Tributary No. 2:	
At mouth	*9
About 750 feet upstream of State Route 820	*13
Personage Creek Tributary:	
Just upstream of U.S. Business Route 17	*11
Just upstream of U.S Route 17	*19
Pennyroyal Creek:	
At mouth	*9
Just downstream of Pennyroyal Road	*9
Port Creek:	
Just upstream of State Route 36	*16
At confluence of Boser Swamp	*20
Ports Creek:	
At mouth	*9
Just downstream of U.S. Route 17A	*9
Pennyroyal Swamp:	
At confluence of Boser Swamp	*20
Just 2.9 miles upstream of confluence of Boser Swamp	*34
Port Creek Tributary:	
At mouth	*17
About 1.33 miles upstream of mouth	*40
Sampit River:	
At mouth	*14
Just downstream of U.S. Route 17A	*9
St. Paul Branch:	
At mouth	*8
Just downstream of U.S. Route 701	*20
St. Pauls Branch Tributary No. 1:	
At mouth	*8

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of dam (about 1,400 feet upstream of mouth)	*8
Just upstream of dam (about 1,400 upstream of mouth)	*13
About 3,200 feet upstream of dam (about 1,400 feet upstream of mouth)	*17
St. Pauls Branch Tributary No. 2:	
At mouth	*8
Just downstream of State Route 269	*12
Turkey Creek:	
At mouth	*9
Just downstream of Pennyroyal Road	*9
Whites Creek:	
At mouth	*9
Just downstream of old railroad grade	*17
Whites Creek Tributary No. 1:	
At mouth	*9
About 1,800 feet upstream of mouth	*13
Whites Creek Tributary No. 2:	
At mouth	*9
About 2,550 feet upstream of mouth	*12
Whites Creek Tributary No. 3:	
At mouth	*9
About 0.95 mile upstream of mouth	*18
Whites Creek Tributary No. 4:	
At mouth	*9
About 1,750 feet upstream of U.S. Route 17A	*17
Whites Creek Tributary No. 5:	
At mouth	*10
About 1,850 feet upstream of mouth	*18
Whites Creek Tributary No. 6:	
At mouth	*11
About 1.42 miles upstream of mouth	*18
Whites Creek Tributary No. 7:	
At mouth	*17
About 2,500 feet upstream of mouth	*18
Winyah Bay Tributary:	
Just upstream of Belle Isle Lake Concrete Weir	*10
Just downstream of South Island Road	*12
Maps available for inspection at the Building Department, County Courthouses, Georgetown, South Carolina.	
Lake View (town), Dillon County (FEMA Docket No. 6927)	
Bear Swamp Creek:	
About 1,030 feet downstream of 1st Avenue	*75
About 300 feet upstream of 4th Avenue	*82
Maps available for inspection at the Town Hall, Lake View, South Carolina.	
Pawleys Island (town), Georgetown County (FEMA Docket No. 6932)	
Atlantic Ocean:	
At the intersection of Myrtle Avenue and Third Street	*14
About 800 feet north and 1,200 feet east of the intersection of the North Causeway and Myrtle Avenue	*21
Maps available for inspection at the Pawleys Island Visitor's Center, North Causeway, Pawleys Island, South Carolina.	
TENNESSEE	
Copperhill (city), Polk County (FEMA Docket No. 6932)	
Ocoee River:	
About 0.65 mile downstream of Fightingtown Creek	*1,453
About 0.62 mile upstream of Fightingtown Creek	*1,460
Fightingtown Creek: Within community	*1,458
Maps available for inspection at the City Hall, Copperhill, Tennessee.	
TEXAS	
Plainview (city), Hale County (FEMA Docket No. 6932)	
Running Water Draw:	
At downstream corporate limits	*3,346
At upstream corporate limits	*3,378
Tributary A:	
Approximately 1,850 feet downstream of upstream corporate limits	*3,378
At upstream corporate limits	*3,381
Tributary to Running Water Draw:	
At confluence with Running Water Draw	*3,364
Approximately 1,850 feet upstream of corporate limits at Playa C	*3,380
Playa F2: Entire area within corporate limits	*3,366
Maps available for inspection at the Municipal Building, 901 Broadway, Plainview, Texas.	
Wellington (city), Collingsworth County (FEMA Docket No. 6932)	
Wellington Tributary No. 1:	
Approximately 200 feet upstream of Houston Street	*2,034
Approximately 1,200 feet upstream of Houston Street	*2,037
Maps available for inspection at the City Hall, Wellington, Texas.	
VIRGINIA	
Culpeper (town), Culpeper County (FEMA Docket No. 6927)	
Mountain Run:	
Approximately 2,000 feet downstream of Southern Railway	*349
At U.S. Route 522 (Evans Street)	*358
At upstream corporate limits at Lake Pelham Dam	*366
Maps available for inspection at the Town Engineer's Office, 118 West Davis Street, Culpeper, Virginia.	
Madison County (unincorporated areas) (FEMA Docket No. 6932)	
Hughes River:	
At State Route 231	*622
Approximately 1,580 feet downstream of State Route 681	*770
Approximately 1,580 feet upstream of State Route 681	*808
Rose River:	
At confluence with Robinson River	*602
Approximately 1.1 miles upstream of confluence with Robinson River	*675
Approximately 1.8 miles upstream of confluence with Robinson River	*750
Approximately 2.7 miles upstream of confluence with Robinson River	*825
Approximately 3.4 miles upstream of confluence with Robinson River	*900
Approximately 3.9 miles upstream of confluence with Robinson River	*975
Approximately 4.2 miles upstream of confluence with Robinson River	*1,050
Approximately 4.4 miles upstream of confluence with Robinson River	*1,077
Robinson River (Lower Reach):	
At USGS gage 01666500	*310
Approximately 1.8 miles upstream of USGA gage 01666500	*317
Robinson River (Upper Reach):	
Approximately 0.6 mile downstream of State Route 231	*482
Approximately 1.6 miles upstream of State Route 231	*555
Approximately 0.8 mile upstream of State Route 670	*630
Approximately 150 feet upstream of State Route 643	*690
Approximately 5.5 miles upstream of State Route 231	*770
Approximately 6.4 miles upstream of State Route 231	*845
Approximately 2,100 feet downstream of State Route 600	*920
Approximately 1,300 feet upstream of State Route 600	*995
Approximately 0.8 mile upstream of State Route 600	*1,070
Approximately 1.0 mile upstream of State Route 600	*1,127
Maps available for inspection at the County Administrator's Office, County Courthouse, Madison, Virginia.	
Richmond County (unincorporated areas) (FEMA Docket No. 6927)	
Rappahannock River: Entire shoreline within community	*7
Maps available for inspection at the Clerk's Office Record Room, County Office Building, Second Floor, 100 Court Street, Warsaw, Virginia.	
WEST VIRGINIA	
City of Paden (city), Tyler and Wetzel Counties (FEMA Docket No. 6927)	
Ohio River:	
At downstream corporate limits	*634
At upstream corporate limits	*635
Maps available for inspection at the City Hall, Paden City, West Virginia.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
COLORADO	
Arapahoe County (unincorporated areas) (FEMA Docket No. 6923)	
First Creek:	
At Interstate 70	*5503
Approximately 4,000 feet downstream of Smith Road	*5540
Approximately 100 feet downstream of Smith Road	*5559
Murphy Creek:	
Approximately 3,100 feet downstream of Bump Road	*5663
Approximately 2,850 feet upstream of East Quincy Avenue	*5799
Approximately 3,500 feet downstream of Smokey Hill Road	*5967
Piney Creek:	
At Liverpool Street	*5814
Approximately 1,500 feet downstream of the confluence with Sampson Gulch	*5889
At Arapahoe/Elbert County Line	*5989
Cottonwood Creek:	
Approximately 70 feet Creek downstream of East Dry Creek Road	*5723
At County Line Road	*5786
Little Dry Creek:	
Approximately 800 feet downstream of South Forest Street	*5520
Approximately 50 feet downstream of South Kramena Way	*5563
Willow Creek:	
At South Holly Street	*5538
At Homestead Parkway and Monaio Street	*5618
At County Line Road	*5708

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Spring Creek:	
At confluence with Willow Creek	*5608
Approximately 425 feet downstream of East Mineral Avenue	*5635
At County Line Road	*5716
Lone Tree Creek:	
Approximately 3,700 feet downstream of Arapahoe Road	*5627
Approximately 3,600 feet downstream of County Airport Runway	*5728
Approximately 200 feet upstream of County Airport Runway	*5837
Greenwood Gulch:	
At Orchard Road	*5539
At South Quebec Street	*5608
Goldsmith Gulch:	
Just upstream of South Dayton Street	*5672
At East Arapahoe Road	*5789
Goldsmith Gulch West Tributary:	
Approximately 640 feet downstream of East Fair Avenue	*5558
At East Peakview Avenue	*5732
Big Dry Creek Tributary A:	
At confluence with Big Dry Creek	*5548
Approximately 100 feet downstream of East Jamison Avenue	*5610
At South University Boulevard	*5661
Lee Gulch:	
Approximately 700 feet upstream of East Mineral Avenue	*5575
At County Line Road	*5663
Cherry Creek:	
Approximately 1,380 feet downstream of East Iliff Avenue	*5420
Approximately 1,975 feet upstream of East Iliff Avenue	*5434
At Arapahoe/Denver County Line	*5454
Approximately 200 feet downstream of confluence with Piney Creek	*5620
At confluence with Happy Canyon Creek	*5680
Dutch Creek:	
Just downstream of South Platte Canyon Road	*5380
At Arapahoe/Jefferson County Line	*5398
SJCD 6100	
Approximately 100 feet downstream of Nevada Ditch	*5380
At Arapahoe/Jefferson County Line	*5426
SJCD 6200	
Approximately 100 feet upstream of City of Littleton Corporate Limit	*5380
Approximately 25 feet downstream of City of Littleton Corporate Limit	*5382
At Arapahoe/Jefferson County Line	*5418
South Platte River:	
Approximately 100 feet upstream of West Bowles Avenue	None
Approximately 700 feet downstream of the confluence with SJCD 6100	None
Approximately 780 feet upstream of the confluence with SJCD 6100	None
Just downstream of State Route 470	*5365

Maps are available for inspection at the Arapahoe County Planning Department, County Administration Building, 5334 S. Prince Street, Littleton, Colorado.

Greenwood Village (city), Arapahoe County (FEMA Docket No. 6923)

Prentice Gulch:	
At South Holly Street	*5517
Approximately 1,200 feet upstream of South Holly Street	*5519
Greenwood Gulch:	
Just upstream of South Quebec Street	*5609
Approximately 1,150 feet upstream of South Syracuse Street	*5666

Maps are available for inspection at Engineering Department, City Hall, 6060 South Quebec Street, Greenwood Village, Colorado.

Issued: December 14, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-29155 Filed 12-19-88; 8:45 am]

BILLING CODE 6718-21-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 522, 552 and 553

[APD 2800.12 CHGE 59]

General Service Administration Acquisition Regulation; Implement FAC 84-34

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, (APD 2800.12), is amended to revise section 501.105 to delete certain OMB control numbers relating to data collections that have been incorporated in the Federal Acquisition Regulation (FAR) and to change the section reference of GSA Form 618-D assigned OMB Control No. 1215-0149; to revise Part 522 to supplement the FAR by identifying the individuals in GSA who are responsible for making determinations regarding liquidated damages, to add text to identify the individuals responsible for requesting extensions of the period for application of wage determinations, to provide for the use of GSA Form 618-A, Transmittal of Contract Award, to inform contractors of their obligations under the labor standards clauses, to provide for submission of GSA Form 618-D, "Statement to be Submitted When Work is to be Performed Personally" (by contractors or subcontractors), to require reports to be submitted to the Department of Labor to be reviewed by the contracting director regarding contractor's compliance with the labor standards requirements, and to make other related changes; to revise Part 552 to delete sections 552.222-70 through 552.222-80 from the text and the clause matrixes; to revise Part 553 to delete reference to: GSA Form 2428, "Request for Authorization of Additional Classification(s), Rate(s), and Fringe Benefit(s)" which has been replaced by the Standard Form 1444, "Request for Authorization of Additional Classification and Rate" and GSAR Form 3017, "Labor Standards Interview," which has been replaced by Standard Form 1445, "Labor Standards Interview," and to illustrate revised GSA Form 3505, "Labor Standards (Construction Contract)." The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4916.

SUPPLEMENTARY INFORMATION: .

Background

This rule was not published in the **Federal Register** for public comment because it merely implemented the FAR FAC 84-34 which had already undergone the public comment process.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule simply amends the GSAR as necessary to conform with the FAR as amended by FAC 84-34 by providing GSA contracting activities with internal operating procedures. Therefore, no regulatory flexibility analysis has been prepared. The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB Control Number 1215-0149 (GSA Form 618-D). Information collection requirements for Standard Forms 1444 and 1445, imposed by the FAR, have been assigned OMB Control Number 9000-0089.

List of Subjects in 48 CFR Parts 501, 522, 552, and 553.

Government procurement.

PART 501—[AMENDED]

1. The authority citation for 48 CFR Parts 501, 522, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 501.105 is amended by revising the GSAR segments and OMB control numbers to read as follows:

§ 501.105 OMB Approval under the Paperwork Reduction Act.

* * * * *

GSAR segments	OMB control No.
* * * * *	
522.403(a)	1215-0140 [Removed]
	1215-0141 [Removed]
	1215-0017 [Removed]
	1215-0149 [Removed]

GSAR segments	OMB control No.
522.405–3(a)	1215–0140 [Removed]
522.406–6	1215–0149
522.222–70	1215–0140 [Removed]
	1215–0141 [Removed]
522.222–73	1215–0140 [Removed]
	1215–0017 [Removed]
	1215–0149 [Removed]
GSA–2428	1215–0140 [Removed]
GSA–3017	1215–0017 [Removed]

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. The table of contents for Part 522 is amended by removing section 522.303 and revising Subpart 522.4 to read as follows:

Subpart 522.3—Contract Work Hours and Safety Standards Act

Sec.
522.302 Liquidated damages and overtime pay.

Subpart 522.4—Labor Standards for Contracts Involving Construction

Sec.
522.404 Davis-Bacon wage determinations.
522.404–6 Modifications of wage determinations.
522.406 Administration and enforcement.
522.406–1 Policy.
522.406–6 Payrolls and statements.
522.406–7 Compliance checking.
522.406–8 Investigations.
522.406–9 Withholding from or suspension of contract payments.
522.406–11 Contract terminations.
522.406–13 Semiannual enforcement reports.
522.407 Contract clauses.

4. Section 522.302 is revised to read as follows:

522.302 Liquidated damages and overtime pay.

(a) The Administrator has designated the Heads of Central Office Services to make determinations under FAR 22.302(c).

(b) Upon a final administrative determination regarding the assessment of liquidated damages, the contracting officer notifies the appropriate Finance Office of the decision and provides necessary instructions regarding the disposition of funds withheld or the collection of funds. If funds were withheld from contract payments to satisfy the claim for liquidated damages pending a final administrative determination, the appropriate Finance Office shall be instructed to immediately release any funds in excess of the amount specified in the final administrative determination to the contractor. If funds were not withheld or if the amount of liquidated damages assessed exceeds that amount withheld, the contracting officer initiates collection action by withholding funds from payments due on the instant contract or by issuing a demand for payment. When the contractor has other Government contracts the demand letter should indicate the Government's intent to exercise its right of offset if payment is not made. The contracting officer provides the appropriate Finance Office with a copy of the demand for payment and requests that the Finance Office initiate collection action under 41 CFR Part 105–55, Collection of Claims owed the United States, if payment is not made in accordance with the demand letter.

5. Subpart 522.4 is revised to read as follows:

522.404 Davis-Bacon Act wage determinations.

522.404–6 Modifications of wage determinations.

Contracting directors may request extensions of the 90 day period for application of a general wage determination. See FAR 22.404–6(b)(6).

522.406 Administration and enforcement.

522.406–1 Policy.

The GSA Form 618–A, Transmittal of Contract Award, may be used to inform contractors of their obligations under the labor standards clauses of the contract.

522.406–6 Payrolls and statements.

Prime contractors and subcontractors who personally perform work are required to submit, instead of weekly payrolls and statements of compliance with respect to payment of wages, a statement clearly showing (a) their contractual relationship, (b) the scope and dates of work performed, (c) that they received no wages, and (d) that no mechanics or laborers were employed in the prosecution of the work. GSA Form 618–D, Statement to be Submitted When Work is Performed Personally, should be used to furnish this information.

522.406–7 Compliance checking.

Compliance checks must be made as frequently as necessary and before final payment is made. Compliance checking is essential to the success of the labor standards enforcement program.

522.406–8 Investigations.

(a) When compliance checks indicate such action is warranted, the contracting officer shall request the Regional Inspector General for Investigations to conduct an investigation of a contractor's compliance with the labor standards requirements.

(b) The contracting director shall review and process the contracting officer's report under FAR 22.406–8(d).

522.406–9 Withholding from or suspension of contract payments.

Upon final administrative determination regarding the assessment of liquidated damages, the contracting officer shall follow the procedures in 522.302(b).

522.406–11 Contract terminations.

Contracting officers shall submit reports under FAR 22.406–11.

522.406–13 Semiannual enforcement reports.

Contracting activities shall submit semiannual enforcement reports to the Office of Procurement (PP), Public Buildings Service, for consolidation and submission to the Department of Labor. The report should be submitted within 15 calendar days after the end of the reporting period.

522.407 Contract clauses.

(a) The contracting officer shall supplement the clauses in FAR 22.407(a) with the clause at 552.222–81, Applicable Minimum Hourly Rates of Wages.

(b) In construction contracts with state or political subdivisions, the contracting officer shall insert the clause at 552.222–82, Preface for Labor Standards—State or Political Subdivision Contracts, as a preface to the clauses prescribed in FAR 22.407(a).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. The table of contents for Part 552 is amended by removing sections 552.222–70 through 552.222–80 to read as follows:

Sec.
552.222–70 [Removed]
552.222–71 [Removed]
552.222–72 [Removed]
552.222–73 [Removed]
552.222–74 [Removed]
552.222–75 [Removed]
552.222–76 [Removed]
552.222–77 [Removed]
552.222–78 [Removed]
552.222–79 [Removed]
552.222–80 [Removed]

552.222–70 through 552.222–80 [Removed]

7. Sections 552.222–70 through 552.222–80 are removed.

8. Section 552.222–81 is revised to read as follows:

552.222–81 Applicable minimum hourly rates of wages.

As prescribed in 552.407(a), insert the following clause:

Applicable Minimum Hourly Rates of Wages (Oct. 1988)

(a) The wage determination decision of the Secretary of Labor in this contract specifies the minimum hourly rates of wages which shall be paid to laborers and mechanics employed or working upon the site of the work. These rates have been determined by the Secretary of Labor under the Davis-Bacon Act, as amended, to be the prevailing rates for the corresponding classes of laborers and mechanics employed on contracts of a similar character in the locality where this work is to be performed. THESE MINIMUM HOURLY RATES OF WAGES SHALL APPLY ONLY IF THE CONTRACT IS OVER $2,000.

(b) While the wage rates given in the decision are the minimum rates required to be paid during the life of the contract, it is the responsibility of offerors to inform themselves as to local labor conditions such as the prevailing wage rates, the length of work day and work week, overtime compensation, fringe benefit payments, available labor supply, and prospective changes or adjustments of wage rates. The Contractor shall abide by and conform to all applicable laws, Executive Orders, and rules, regulations and orders of the Secretary of Labor. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed in the contract wage determination decision.

(c) The wage determination decision of the Secretary of Labor in the contract is solely for the purpose of setting forth the minimum hourly wage rates required to be paid during the life of the contract and is not to be accepted as a guarantee, warranty or representation as to the wage rates indicated.

(End of Clause)

PART 553—FORMS

9. The table of contents for Part 553 is amended by removing sections 553.370–2428 and 553.370–3017 to read as follows:

Sec.

* * * * *

553.370–2428 [Removed]

* * * * *

553.370–3017 [Removed]

* * * * *

10. Section 553.173 is amended by revising paragraph (c) to remove references to GSA Forms 2428 and 3017.

Subpart 533.3—Illustration of Forms

553.173 Responsibility for the maintenance of forms.

(c) * * *

GSA form no.	Responsible office
* * * * *	
2428	P [Removed]
* * * * *	
3017	P [Removed]
* * * * *	

11. Section 553.270–1 is revised to read as follows:

553.270–1 Representations and certifications.

(a) GSA Form 3503, Representations and Certifications, may be used as a part of all solicitations and contracts, except contracts for utilities and leases of real property. The form may also be used for small purchases when Standard Form 33, Solicitation, Offer, and Award, or Standard Form 1442, Solicitation, Offer, and Award, is used.

(b) GSA Form 3518, Representations and Certifications (Acquisition of Leasehold Interests in Real Property), is used as a part of solicitations for leases of real property.

12. Section 553.270–3 is amended by revising paragraph (c) to read as follows:

553.270–3 Contract clauses.

* * * * *

(c) GSA Form 3505, Labor Standards (Construction Contract), is for use in contracts subject to the Davis-Bacon and related Acts. Because the clauses on this form must be included in solicitations/contracts in full text, the form may not be incorporated by reference.

* * * * *

Note.—GSA forms and matrixes mentioned in this rule are illustrated in and made a part of the regulation. However, they are not illustrated in the **Federal Register** or the Code of Federal Regulations. Individual copies may be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations, (VP), 18th & F Streets NW., Washington, DC 20405.

Dated: December 8, 1988.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–28915 Filed 12–19–88; 8:45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 244
Tuesday, December 20, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV-88-1, AMS-FV-88-063]

Watermelon Research and Promotion Plan; Secretary's Decision and Referendum Order on Proposed Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes a national research and promotion plan designed to improve the position of watermelons in the marketplace through coordinated programs of research and promotion. Watermelon producers of five or more acres and handlers who are the first to handle watermelons from producers will be given the opportunity to vote in a referendum on the proposed plan. The proposed plan would establish as national board composed of 28 watermelon producers and handlers elected by their peers and one member representing the general public. The assessment rate would not exceed two cents per hundredweight for producers and two cents per hundredweight for handlers. Producers and handlers may receive a refund of assessments paid.

DATE: The referendum shall be conducted from February 6–21, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur L. Pease, Marketing Order Administration Branch, Room 2531-South, P.O. Box 96456, Washington, DC, 20090–6456; telephone (202) 475–3915.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include the following. The Notice of Hearing was published in the February 4, 1987, issue of the **Federal Register** [52 FR 3588]. A seven day Extension of Time for Receipt of Post Hearing Briefs was requested by proponents, granted on April 17, 1987, and published in the **Federal Register** on April 21, 1987 [52 FR 13086]. A Recommended Decision and Opportunity to File Written Exceptions was published in the March 24, 1988, issue of the **Federal Register** [53 FR 9637].

The recommended decision provided an opportunity to file written exceptions to the proposed plan. Eleven exceptions were received. Three favored the proposed plan as written in the recommended decision, seven expressed opposition to certain provisions in the proposed plan, and one was not in favor of the proposed plan. Exceptions favoring the proposed plan were submitted by Harmon Lawson, Secretary-Treasurer of the Georgia Watermelon Association; Robert Nash, President of the Georgia Farm Bureau Federation, and Buddy Leger, a Georgia producer and handler. Exceptions supporting the plan were general in nature and therefore are not discussed. The seven exceptions opposing certain provisions in the proposed plan were received from interested persons in South Carolina including Honorable Carroll A. Campbell, Jr., Governor of South Carolina; D. Leslie Tindal, Commissioner of Agriculture for South Carolina; Joe Bates, Chairman of the South Carolina Watermelon Board, and Lynn Youmans, President of the South Carolina Watermelon Association; Gerald Funderburk, a handler, and three producers from Allendale, South Carolina, Glen Kinard, Bill Oswald, and Duncan Smith. Mike Monroe, an Indiana producer, opposed the proposed plan. Each exception opposing provisions of the plan is discussed below.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the U.S. Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This decision is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (plan) [7 CFR Part 1200]. Any plan that may result from this proceeding would be effective pursuant to the provisions of the Watermelon Research and Promotion Act, hereafter referred to as the "Act" [Pub. L. 99–198, 99th Congress, effective January 1, 1986, 7 U.S.C. 4901–4916].

The proposed plan was formulated on the record of a public hearing conducted in Las Vegas, Nevada, on February 18 and 19, 1987, and Atlanta, Georgia, on February 24 and 25, 1987.

The proposed plan would authorize, with the approval of the Secretary, the collection of equal assessments on producers and handlers of watermelons. Handlers would be responsible for collecting and submitting assessments and for maintaining appropriate records. Refunds of collected assessments could be obtained by producers and handlers who do not support the plan. Assessment funds would be used to promote watermelons through a variety of market research and product promotion programs. These programs would be developed and administered by a national level Watermelon Research and Promotion Board. Daily administration of the plan would be carried out by a staff directly responsible to the Board. All administrative rules and regulations, as well as research and promotion programs developed by the Board, must be submitted to the Secretary of Agriculture for approval.

In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the RFA. The purpose of the RFA is to fit regulatory action to the scale of business subject to such action, in order that small businesses will not be unduly or disproportionately burdened. Research and promotion programs, and their rules and regulations, are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

The record indicates that most handlers regulated under this program would meet the Small Business Administration (SBA) definition of small agricultural service firms [13 CFR 121.2]. Small agricultural service firms are defined as those having annual gross receipts for the last three years of less than $3,500,000. There may be as many as 300 such handlers of watermelons who would be subject to regulation under this plan. Small agricultural producers are defined by the SBA as having revenues for the last three years of less than $500,000. Hearing evidence indicates that watermelons are produced on almost 12,000 farms in the

United States. Many farms produce less than five acres of watermelons, and thus would not be affected by the proposed plan. The industry also includes a few large farms in excess of 400 acres.

Record evidence shows the majority of watermelons are produced for fresh market sales. Proponents of the proposed plan testified that the watermelon industry is in serious trouble because of an apparent decrease in demand for watermelons. Record exhibits indicate a significant and steady decline in per capita consumption of watermelons between 1960 and 1981. Consumption fell 30 percent, from 17.2 pounds to 12.3 pounds per capita, during this period. No testimony was provided that would explain the decline in per capita consumption. However, the record indicates that under the proposed plan, the issue would be studied, possible causes identified and corrective programs initiated.

While consumption declined during the 1960's and 1970's, total value of the crop increased by 400 percent. Most of this increase in value reflected inflationary changes rather than rises in real dollar income. In constant dollars the crop value increased only 15 percent in the 21 year period. Comparable values of vegetables and melons, fresh fruit market prices, and the consumer price index for all foods increased over 300 percent during the same period.

The proposed plan would assess both producers and handlers at equal rates, not to exceed two cents per hundredweight on watermelons produced and two cents per hundredweight on watermelons handled. Testimony at the hearing indicates a unanimous agreement by those testifying that this amount would be relatively insignificant and should not impose a financial burden on large or small producers and handlers. The two cents per hundredweight assessment rate would represent less than one percent of producer income and less than one percent of handler income based on a seasonal average selling price of $6 per hundredweight. The benefits of the proposed program are expected to exceed the costs. Producers and handlers who do not agree with the program may request a refund of assessments paid.

While the proposed plan imposes certain recordkeeping and reporting requirements on handlers, information required to be reported under the plan could be compiled from records currently maintained by the handlers. Such recordkeeping and reporting requirements are minimal and should not impose an undue burden on handlers. In addition, the plan provides for referenda to determine if watermelon producers and handlers favor termination or suspension of the plan or any provisions thereof. Also, referenda will be conducted to determine whether the issuance of the proposed plan is approved or favored by producers and handlers. In compliance with the Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35] and § 3504(h) of that Act, the information collection and recordkeeping requirements contained in this decision and referendum order, as well as the referendum ballot, have been submitted to OMB for approval. These requirements will not become effective prior to OMB approval. These requirements have been evaluated against the potential benefits of the proposal. Any added burden resulting from increased recordkeeping would not be significant when compared to benefits that should accrue to such businesses.

Based on comparable research and promotion programs, it has been estimated that it takes an average of 15 minutes to complete required forms. Approximately 300 handlers could be affected by the reporting and recordkeeping requirements of the proposed plan. As many as 7,000 producers and handlers could be affected by the voluntary referendum balloting.

Findings, Conclusions, and Rulings on Exceptions

Discussions and rulings, including the discussions of the material issues, findings and general findings of the recommended decision set forth in the March 24, 1988, issue of the **Federal Register** [53 FR 9637] are hereby approved and adopted subject to the following modifications and corrections.

Based upon an exception received from Indiana producer Mike Monroe, the findings and conclusions of material issue number 3(d) of the recommended decision, specifically concerning the producers' ability to pay the assessment, are amended by adding the following paragraph to material issue 3(d) after paragraph 4 to read as follows:

In his exception to the Recommended Decision, Indiana producer Mike Monroe opposes the proposed plan because he feels the producer pays for the production of watermelons and should not have to also pay for promotion. Monroe contends that a two cent assessment may, in some years, be 10 percent of the amount producers receive for their watermelons. This exception is not supported by testimony provided at the hearing. On the contrary, evidence indicates that the maximum two cents per hundredweight is less than one percent of the national average selling price for watermelons received by producers. Refunds are available to producers who feel they would be financially burdened by the collected assessment. Thus, the exception is denied.

Based upon an exception received from Messrs. Bates and Youmans, the findings and conclusions of material issue number 3(d) of the recommended decision, specifically concerning the collection of assessments by handlers, are amended by adding the following two paragraphs after the sixth paragraph of material issue 3(d) to read as follows:

In their jointly submitted exception to the recommended decision, Messrs. Bates and Youmans raise the question of who will actually be paying the four cents per hundredweight assessment (two cents on the producer and two cents on the handler). They state that their past experience has been that any additional expenses incurred by handlers is indirectly passed back to producers. They ask how producers know this will not happen with assessments on watermelons.

Under the plan, a handler is required to collect the producer's assessment and submit it, along with the handler's own assessment, to the Board. The scope and extent to which handlers would pass back assessments to producers, or whether any or all of handler assessments would be passed forward in the marketing chain, is not clear. The Act and the proposed plan provide that handlers may collect producer assessments from the producers or deduct the assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The record indicates that the producer's assessment would in most instances be deducted from the purchase price of the watermelons and would be recorded on the sales slip provided to the producer. While most producers tend to use the same handler season after season, the record indicates that there is competition among handlers for producers' watermelons. Thus, a producer would be able to sell watermelons to alternative handlers if that producer wishes to do so for any reason. For these reasons, the exception is denied.

Based upon exceptions received from Commissioner Tindal and Messrs. Bates, Youmans, Kinard, Oswald and Smith, the findings and conclusions in material

issue number 3(d) of the recommended decision, specifically concerning the assessment which would be placed on those persons who both produce and handle watermelons, are amended by adding the following six paragraphs after the seventh paragraph of material issue 3(d) to read as follows:

In their exceptions to the recommended decision, Commissioner Tindal and Messrs. Bates, Youmans, Kinard, Oswald and Smith oppose § 1210.341(a) of the proposed plan because that section places a double assessment on producers covered under the plan who also handle their own watermelon production. The exceptions contend that a double assessment would place an undue burden on small producers who choose to, or must out of necessity, market their own production through roadside stands and farmers' markets.

According to testimony received at the hearing, producers who operate roadside stands or sell directly to consumers in farmers' markets usually deal in small truck loads of 50 to 100 watermelons at a time and are usually producers of less than five acres of watermelons. The proposed plan would not apply to such small producers and therefore they would not be required to pay any assessments under the plan.

A field of watermelons usually matures at one time and must be marketed shortly thereafter. Five or more acres of watermelons would be a volume considerably larger than a producer could normally sell at a roadside stand or directly to consumers in a farmers' market. Further, watermelon producers of five or more acres who choose to, or must, market all or a portion of their own watermelons in this manner may request and receive a refund of assessments.

It is more likely that a watermelon producer of five or more acres would sell the harvested crop to a sales agent in a farmers' market or auction market. In such a case, the sales agent in the market would assume handler responsibilities and pay the handler's assessment on the watermelons so marketed. Thus, producers who sell their watermelons to such agents would pay only the producers' share of the assessment.

The Bates and Youmans exception also recommends redefining the term handler so that a handler is one who handles and places into commerce watermelons other than his own production. This proposed change in definition would exclude those who both produce and handle watermelons from being considered handlers. Section 1647(g)(4) of the Act states that if a person performs both producing and handling functions, both assessments shall be paid by such person. Therefore, these exceptions are denied for the reasons set forth herein.

Based upon exceptions received from Commissioner Tindal and Messrs. Bates, Youmans, Funderburk and from Governor Campbell, the findings and conclusions of material issue number 3(d) of the recommended decision, specifically concerning the authority of the Board to designate other organizations to collect assessments and charge a fee for such service, are amended by striking the original paragraphs 14 and 15 of material issue 3(d) and inserting the following eight paragraphs in place of paragraphs 14 and 15 to read as follows:

In their exceptions to the recommended decision, Commissioner Tindal and Messrs. Bates, Youmans and Funderburk suggest that the Board should have the authority to designate other organizations to serve as collection agents which would assist in the collection of assessments. The issue was raised at the hearing and in a brief filed by representatives of the watermelon industry in South Carolina. The change as proposed would have allowed a watermelon marketing board, authorized by State statute, to retain 50 percent of assessments collected in the State as a collection fee, with the funds to be used in conducting the State's own watermelon promotion programs. The finding in the recommended decision denied the change as proposed for such collection of assessments.

Messrs. Bates, Youmans and Smith also express concern in their exceptions that watermelon producers in South Carolina would pay both the national assessment and the South Carolina State assessment if the proposed plan went into effect. Under their proposal South Carolina producers and handlers would be assessed the same amount as producers and handlers in other States (a total of four cents per hundredweight) and could continue to operate their own State marketing order program using half of the collected assessments in a revenue-sharing arrangement.

In their exception, Messrs. Bates and Youmans refer to two other national research and promotion programs asserting that they contain assessment-sharing provisions with State entities. The programs referred to are under the Beef Promotion and Research Order issued pursuant to the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901, *et seq.*] and under the Pork Promotion, Research and Consumer Information Act of 1985 [7 U.S.C. 4801, *et seq.*] The beef statute authorizes credits of up to 50 cents per head of cattle or equivalent thereof to be applied to assessments of producers participating in a program of an established, qualified State beef council and the pork statute authorizes, in part, distribution of funds from assessments to certain State associations. However, the Watermelon Research and Promotion Act does not contain any such provisions.

In his exception to the recommended decision, South Carolina Governor Campbell raises the related issue of Federalism when he states that State programs should not suffer at the expense of a national program. This idea is supported by Messrs. Bates and Youmans in their jointly submitted exception. We have reviewed this proposed action in view of the provision of the executive order on Federalism, Executive Order 12612 (52 FR 41686) and determined that the proposed plan does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This proposed action is consistent with the principles and provision of Executive Order 12612. Implementation of a national plan does not foreclose States from adopting an appropriate State program for watermelons.

It should be noted that individual producers and handlers would be able, under § 1210.343 of the proposed plan, to request and receive refunds of assessments paid to the national Board. The Act provides that refunds may be made only to individual producers and handlers. Refunds cannot be made to handlers on behalf of producers, or to organizations that represent groups of producers or handlers. The South Carolina State assessment is also refundable, according to the exception submitted by Messrs. Bates and Youmans.

Messrs. Bates and Youmans' exception further suggests a change in the original South Carolina amendment presented at the hearing so that it would apply not only to South Carolina but to any State that institutes a watermelon board authorized by State statute. This suggestion was also raised at the hearing and in a brief filed after the hearing. The record indicates that, given the incentives of receiving half the national Board's assessments, several States would establish such programs. If this happened, the Board could lose up to 50 percent of its projected assessment income and would possibly not be able to conduct the research and promotion responsibilities contemplated under the Act. Thus, the proposed amendment, to provide at least a 50 percent collection fee to State marketing orders, is

inconsistent with effectuation of the purposes of the Act.

However, the issue of whether the Board may be authorized to permit other organizations to collect assessments on its behalf has been further examined. Section 1210.341(e) of the proposed plan contained in the Notice of Hearing permitted such collecting organizations. In removing that section from the proposed plan, the recommended decision noted that the Act provided for collection of assessments by the Board. Record evidence indicates that it would be beneficial to the Board if the Board could designate other agencies to assist in the collection of assessments. The Act does permit the plan to contain terms and conditions incidental to and not inconsistent with the terms and conditions in the Act and that are necessary to effectuate the other provisions of the plan. While the recommended change in the South Carolina amendment in its entirety would not be consistent with the Act, authorizing the Board to permit other organizations, whether State, local or otherwise, to collect assessments on its behalf, subject to the approval of the Secretary, would be consistent with the terms and conditions of the Act. Accordingly, a new paragraph § 1210.341(i) is included in the proposed plan permitting the Board, subject to approval of the Secretary, to enter into agreements authorizing other organizations to collect assessments on its behalf. Any agreements would be subject to the requirement of the Act, the plan and all applicable rules and regulations under the Act and the plan. The fee, or reimbursement, for collection services charged by the collecting organization should be reasonable and based upon the services rendered. Under that criteria, a 50 percent collection fee as proposed in the South Carolina amendment could not be approved.

Accordingly, the exceptions are denied to the extent to which they are inconsistent with the findings and conclusions contained herein.

Based upon exceptions received from Governor Campbell, Commissioner Tindal and Messrs. Bates, Youmans, Funderburk, Kinard and Oswald, the findings and conclusions of material issue number 3(i) of the recommended decision, specifically concerning the referendum procedures is expanded to include an explanation of how votes will be tabulated in the initial referendum that will be held to determine whether the proposed plan is favored by the industry and to include in the proposed provisions of the plan regarding tabulation of votes in referenda concerning termination or suspension of the plan or provisions thereof, to clarify the procedures concerning voting by each State in multi-state nominations and to include provisions in the proposed plan regarding the eligibility of producers and handlers concerning nomination and membership on the Board. The following nine paragraphs are added to material issue 3(i) after paragraph 4 to read as follows:

In their exceptions to the recommended decision, Governor Campbell, Commissioner Tindal, and Messrs. Bates, Youmans, Funderburk, Kinard and Oswald further suggest that separate referenda for producers and handlers should be held. They contend that the votes of producers and the votes of handlers should be counted separately so that it will be known just how each group feels about the proposed plan. Governor Campbell, Commissioner Tindal and Messrs. Bates, Youmans, Oswald and Funderburk suggest that the plan should be enacted only if ratified by both producers and handlers.

Section 1653 of the Act provides that votes in the initial referendum, or in subsequent referenda regarding amendments to the plan, would be tabulated two ways. The proposed plan, or subsequent amendments, would be approved if either one of the two ballot tabulation methods received a favorable vote. The proposed plan, or subsequent amendments, would be passed under the first tabulation method if the combined votes of at least two-thirds of all producers and handlers voting in the referendum are favorable. The proposed plan, or subsequent amendments, would be passed by the second tabulation method if votes representing at least two-thirds of the total volume of watermelons produced and handled by those voting in the referendum are favorable, as long as a majority of producers and a majority of handlers represented in the referendum vote in favor of the plan. The second tabulation method is very similar to the counting procedure recommended in the exceptions discussed above. If the proposal passes by the first method, the plan would become effective regardless of the outcome of the second tabulation method.

Persons voting in a referendum concerning formulating or amending a plan would certify their eligibility to vote and designate their status as either a watermelon producer or handler. Producers would certify the amount of watermelons acreage they harvested during the representative period of January 1, 1988, through December 31, 1988. Only producers of five or more acres of watermelons during this representative period would be eligible to vote in the referendum. Both producers and handlers would record the hundredweight volume of watermelons they produced or handled during the representative period. These figures would be used to determine the results of the second tabulation method based on volume of watermelons produced and handled by those voting.

The vote of a person who both produces and handles watermelons would be counted as a producer vote if that person handles 50 percent or less of that person's own production during the representative period. If the person handles more than 50 percent of that person's own production during the representative period, then that person's vote should be counted as a handler vote. This determination is consistent with testimony provided at the public hearing regarding the Board member nomination process. The record indicates that for purposes of the nomination process, producers should properly be considered producers until they handle more than 50 percent of the watermelons they produce. The record testimony also indicates that there is concern that persons who are handlers should be represented by handlers and that persons who are producers should be represented by producers. The Department finds that a 50 percent benchmark, as described above, is an equitable standard through which the interests of both handlers and producers may be best served.

For the reasons set forth herein, a change is made to paragraph 1230.363(b) of the proposed plan so as to make the tabulation of votes in a termination or suspension referendum consistent with that conducted in a referendum for formulation of or amendment to a plan.

In addition, paragraph 1210.321(d)(3) of the proposed plan as published in the recommended decision has been expanded to clarify that delegations from each State in a multi-State nominations' convention should have one vote for each producer position and one vote for each handler position from that district on the Board.

For the reasons set forth herein and for purposes of consistency, the same criteria for producer and handler voting that would apply to referenda should also apply to membership on the National Watermelon Promotion Board and to participation in the nominations process for producer and handler representatives on the Board. Thus, producers who handle 50 percent or less

of their own production should be considered producers for purposes of taking part in the Board nominations process and for serving on the Board. Producers who handle more than 50 percent of their own production should be considered as handlers for purposes of taking part in the Board nominations process and for serving on the Board.

Accordingly, the Department proposes adopting the 50 percent criteria for eligibility to participate in the Board member nominations process and for membership on the Board. Therefore paragraphs 1210.321(c) and 1210.321(d)(1) of the proposed plan have ben revised to clarify when producers or handlers are eligible to participate in the Board member nomination process and serve on the Board as producers and when they are eligible to participate in the nomination process and serve on the Board as handlers.

To the extent that the exceptions are inconsistent with the findings and conclusions herein, they are denied.

The findings and conclusions of material issue number 3(i) of the Recommended Decision specifically concerning miscellaneous changes for clarity are amended by striking paragraph 6 of material issue 3(i) and inserting the following paragraph in place thereof to read as follows:

Miscellaneous changes are made for clarity to the index and the headings and to § 1210.308 of the proposed plan.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

General Findings

Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The proposed plan, and all of its terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act;

(2) The proposed plan regulates the handling of watermelons in the contiguous 48 States in the same manner as, and is applicable only to persons in the respective classes of commerical or industrial activity specified in, a proposed plan upon which a hearing has been held;

(3) The handling of watermelons in the contiguous 48 States, as defined in the plan, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(4) The proposed plan is applicable only to persons involved in the production of and first handling of watermelons, as specified in the Act.

It is hereby ordered, that this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted for the Watermelon Research and Promotion Plan in accordance with the procedure for the conduct of referenda [7 CFR Part 1210.200] as published elsewhere in today's **Federal Register** to determine whether the issuance of the proposed plan is approved or favored by the producers and handlers, as defined in the plan, who during the representative period were engaged in the production or first handling of watermelons within the contiguous 48 States. The representative period is hereby determined to be the calendar year January 1, 1988 through December 31, 1988. The referendum ballot shall provide only for the approval or disapproval of the plan.

The Agents of the Secretary to conduct the referendum are hereby designated to be Arthur L. Pease and Richard Mathews, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456. The referendum shall be conducted from February 6–21, 1989.

List of Subjects in 7 CFR Part 1210

Watermelons, Agricultural research, Agricultural promotion, Market development.

Final Plan

The following plan shall be the detailed means by which the foregoing conclusions may be carried out:

On and after the effective date hereof, Chapter XI of Title 7 shall be amended by adding a subpart to Part 1210.

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for Part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. The subpart—Watermelon Research and Promotion Plan, consisting at §§ 1210.301 through 1210.367, is proposed to be added as follows:

Subpart—Watermelon Research and Promotion Plan

Definitions

Sec.

1210.301 Secretary.
1210.302 Act.
1210.303 Plan.
1210.304 Board.
1210.305 Watermelon.
1210.306 Producer.
1210.307 Handle.
1210.308 Handler.
1210.309 Person.
1210.310 Fiscal period and marketing year.
1210.311 Programs and projects.
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National Watermelon Promotion Board

1210.320 Establishment and membership.
1210.321 Nominations and selection.
1210.322 Term of office.
1210.323 Acceptance.
1210.324 Vacancies.
1210.325 Procedure.
1210.326 Compensation and reimbursement.
1210.327 Powers.
1210.328 Duties.

Research and Promotion

1210.330 Policy and objective.
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Expenses and Assessments

1210.340 Budget and expenses.
1210.341 Assessments.
1210.342 Exemption from assessment.
1210.343 Producer and handler refunds.
1210.344 Operating reserve.

Reports, Books, and Records

1210.350 Reports.
1210.351 Books and records.
1210.352 Confidential treatment.

Miscellaneous

1210.360 Right of the Secretary.
1210.361 Personal liability.
1210.362 Influencing governmental action.
1210.363 Suspension or termination.
1210.364 Proceedings after termination.
1210.365 Effect of termination or amendment.
1210.366 Separability.
1210.367 Patents, copyrights, inventions, and publications.

Subpart—Watermelon Research and Promotion Plan

Definitions

§ 1210.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1210.302 Act.

"Act" means the Watermelon Research and Promotion Act of 1985,

(Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 99 Stat. 1622).

§ 1210.303 Plan.

"Plan" means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

"Board" means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

"Watermelon" means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus popularly referred to as watermelon grown by producers in the 48 contiguous States of the United States.

§ 1210.306 Producer.

"Producer" means any person engaged in the growing of five acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

§ 1210.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to handler for grading, sizing or processing.

§ 1210.308 Handler.

"Handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of this subpart, the term "handler" means the "first" person who performs the handling functions.

§ 1210.309 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

"Fiscal period" and "marketing year" mean the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

"Programs" and "projects" mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

"Promotion" means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

National Watermelon Promotion Board

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board". The Board shall be composed of producers and handlers and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The public representative shall be nominated by the producer and handler Board members in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set fourth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.
District #2—North Florida including all areas north of State Highway 50.
District #3—The States of Alabama and Georgia.
District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.
District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.
District #6—The State of Texas.
District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for initial Board members whose nomination process should be conducted by the Secretary, the Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States by district entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, and district conventions if any.

(b) Nominations for positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(c) All producers and handlers within the district may participate in the convention: *Provided,* That producers who handle 50 percent or less of their own production may vote for producer members only, and producers who handle more than 50 percent of their own production may vote for handler members only; and *Provided further,* That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(d) The district convention shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There shall be two individuals nominated for each vacant position. Each nominee shall meet the qualifications set forth in the call: *Provided,* That producers who handle 50 percent or less of their own production may be nominated for producer positions only, and producers who handle more than more than 50 percent of their own production may be nominated for handler positions only; and *Provided further,* That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(2) No State in Districts 3, 4, 5 and 7 as currently constituted shall have more than three representatives concurrently on the Board.

(3) Each State represented at the district convention shall have one vote for each producer position and one vote for each handler position from the District on the Board, which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports: *Provided,* That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years, except that the members of the initial Board shall serve terms as follows: the four producers and four handlers from district 1 (south Florida) and district 6 (Texas), and the public member shall serve one-year initial terms; four producers and four handlers from district 2 (north Florida) and district 3 (Georgia and Alabama) shall serve two-year initial terms; and the remaining six producers and six handlers from districts 4, 5 and 7 shall serve three-year initial terms.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count toward the initial "term of office". In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms: *Provided,* That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nomination list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) Fifteen Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication: *Provided,* That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public and make available to producers and handlers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer or handler;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers and handlers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

Research and Promotion

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelons;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

Expenses and Assessments

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion

of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and all watermelons first handled for consumption as human food. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions, both assesments shall be paid by such person.

(b) Assessment rates shall be fixed by the Secretary in accordance with § 1647(f), of the Act: *Provided,* That the maximum assessment shall not exceed two cents per hundredweight for producers and two cents per hundredweight for handlers. No assessments shall be levied on watermelons grown by producers of less than five acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(e) There shall be a late payment charge imposed on any handler who fails to remit to the Board the total amount for which any such handler is liable on or before the payment due date established by the Board under paragraph (d) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(f) There shall also be imposed on any handler subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(g) The Board is hereby authorized to accept advance payment of assessments by handlers that shall be credited toward any amount for which the handlers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(h) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(i) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

§ 1210.342 Exemption from assessment.

The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

§ 1210.343 Producer and handler refunds.

Any producer or handler against whose watermelons an assessment is made and collected under this Plan and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this Plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer or handler paid the assessment for which refund is sought. Any such demand shall be made personally by such producer or handler on a form which the producer or handler shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer or handler at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefore.

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

Reports, Books, and Records

§ 1210.350 Reports.

Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(a) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(b) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(c) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(d) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

§ 1210.351 Books and records.

Each handler subject to this Plan shall maintain, and during normal business hours make available, for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the quest, of the

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Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the Board, except as required by law, shall be considered willful misconduct.

Miscellaneous

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing government action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided in this subpart.

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the watermelon producers and handlers to determine if watermelon producers and handlers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers and handlers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in production or handling of watermelons and who produced or handled more than 50 percent of the volume of watermelons produced or handled by those producers and handlers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a producer vote if that person handles 50 percent or less of that person's own production during a representative period, and will be counted as a handler vote if that person handles more than 50 percent of that person's own production during a representative period. Any such referendum shall be conducted at county extension offices.

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and handlers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder, or (b) Release or extinguish any violation of this Plan or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Signed at Washington, DC on December 15, 1988.

Robert B. Melland,

Deputy Assistant Secretary of Agriculture, Marketing & Inspection Services.

[FR Doc. 88-29204 Filed 12-16-88; 11:59 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345-165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522

AGENCY: Rural Electrification Administration, U.S. Department of Agriculture.

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ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications by issuing revised REA Bulletin 345–165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522, to keep it abreast of the fast changing technology of electronic telephone central office equipment. The specification will include new developments considered advantageous to REA borrowers and their subscribers. All manufacturers of digital central office equipment and eventually all the REA telephone borrowers and their consulting engineers will be impacted.

DATE: Public comments must be received by REA no later than January 19, 1989.

ADDRESS: Submit written comments to William W. Kelly, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

Copies of the document are available upon request from the address indicated above. Interested persons are invited to submit comments on this action. Written comments must be sent to the address stated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dean A. Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, telephone (202) 382–8671. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing revised REA Bulletin 345–165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522. This incorporation by reference was approved by the Director of the Federal Register on December 30, 1983.

This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or recordkeeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851 "Rural Telephone Loans and Loan Guarantees" and 10.852 "Rural Telephone Banks Loans".

For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to revise Bulletin 345–165 the REA General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522.

The REA specification needs to be revised periodically to incorporate technical changes which are considered advantages to the REA telephone borrowers and their subscribers. This revision will permit the borrowers to purchase equipment with built-in revenue producing features rather than having to purchase expensive adds-ons to their central office equipment at a later date. It will also improve the quality of the central office equipment, thereby reducing maintenance cost to the borrowers and their subscribers.

Major central office manufacturers presently have the ability to support the significant changes contained in this revision of the REA specification. Therefore, there should be little impact on them in complying with the new requirements.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR Part 1772 by issuing a revised Bulletin 345–165.

PART 1772—[AMENDED]

1. The authority cited for Part 1772 is revised to read as follows, and all authorities following the sections are removed.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1772.97 is amended by revising the entry for Bulletin 345–165 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * *

345–165—Form 522—REA General Specification for Digital, Stored Program Controlled Central Office Equipment.

* * * * *

Dated: December 13, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88–29147 Filed 12–19–88; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Financial Protection Requirements and Indemnity Agreements; Miscellaneous Amendments Necessitated by Changes in the Price-Anderson Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to conform to changes made to the Price-Anderson Act by "The Price-Anderson Amendments Act of 1988," which was enacted on August 20, 1988. The Commission is also proposing to amend its regulations to increase the level of the primary layer of financial protection required of certain

indemnified licensees. The provisions of section 170 of the Atomic Energy Act of 1954, as amended, require production and utilization facility licensees to have and maintain financial protection to cover public liability claims. Therefore, the Commission is proposing to amend its regulations to coincide, as statutorily required, with the increase in the level of the primary layer of insurance provided by private nuclear liability insurance pools. This proposed change would provide additional insurance to pay public liability claims arising out of a nuclear incident.

DATES: The comment period expires January 4, 1989. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments on or before this date.

ADDRESSES: Mail comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays. Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Policy Development and Financial Evaluation Section, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, Telephone: (301) 492–1289.

SUPPLEMENTARY INFORMATION: On August 20, 1988, "The Price-Anderson Amendments Act of 1988" was enacted as Pub. L. 100–408. This legislation modifies and extends for 15 years (to August 1, 2002) the Price-Anderson Act. This notice proposes to amend certain provisions of 10 CFR Part 140 to conform to changes made by Pub. L. 100–408.

Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) requires production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident or precautionary evacuation. Section 170 also requires the Nuclear Regulatory Commission to indemnify the licensee and other persons indemnified, up to the statutory limitation on liability, against public liability claims in excess of the amount of financial protection required. Subsection 170b. of the Act requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Primary financial protection may be in the form of private insurance, private contractual indemnities, self-insurance or other proof of financial responsibility, or combination of such measures.

The insurers who provide the nuclear liability insurance, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), have advised the Commission that the maximum amount of primary nuclear energy liability insurance available has been increased from $160 million to $200 million. Pursuant to the provisions of subsection 170b. of the Act, the amount of primary financial protection required for facilities having a rated capacity of 100,000 electrical kilowatts or more is proposed to be increased to $200 million.

Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget approval number 3150–0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule. These amendments are required to conform NRC regulations to statutory directives and do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13, and 140.13a are issued under sec. 161b., 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and 8140.6 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 140.11 paragraph (a)(4) is revised to read as follows. The introductory text of (a) is republished for the convenience of the reader.

§ 140.11 Amounts of financial protection for certain reactors.

(a) Each license is required to have and maintain financial protection:

* * * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and a rated capacity of 100,000 electrical kilowatts or more: Provided, however, That under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $63,000,000 with respect to any nuclear incident and no more than $10,000,000 within one calendar year shall be charged.

3. In § 140.13a, paragraph (a) is revised to read as follows:

§ 140.13a Amount of financial protection required for plutonium processing and fuel fabrication plants.

(a) Each holder of a license issued pursuant to Part 70 of this chapter to

possess and use plutonium at a plutonium processsing and fuel fabrication plant is required to have and maintain financial protection in the form specified in § 140.14 in the amount of $200,000,000. Proof of financial protection shall be filed with the Commission in the manner in § 140.15 prior to issuance of the license under Part 70 of this chapter.

* * * * *

4. Section 140.92, Appendix B, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraph 4(c), introductory text of paragraph 8, and paragraphs 8(b) and 8(c) are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.92 Appendix B—Form of indemnity agreement with licensees furnishing insurance policies as proof of financial protection.

* * * * *

Article I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public Liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to any common occurrence,

(a) If the sum of limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $155,000,000 the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

* * * * *

Article III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

* * * * *

Article VIII

* * * * *

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 a and b of the Attachment annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $83,000,000 with respect to any single nuclear incident nor exceed $10,000,000 within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

5. Section 140.93, Appendix C, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraph 4(c) and 8 are revised.

c. Article III, paragraphs 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.93, Appendix C—Form of indemnity agreement with licensees furnishing proof of financial protection in the form of licensee's resources.

* * * * *

Article I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a

nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b), if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. of the Act in which agreement the nuclear incident is defined as a "common occurrence".

* * * * *

Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

* * * * *

Article VIII

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1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges). Provided, however, that under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $63,000,000 with respect to any single nuclear incident nor exceed $10,000,000 within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

6. Section 140.94, Appendix D, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 4(c) and 6 are revised.

§ 140.94 Appendix D—Form of indemnity agreement with Federal agencies.

* * * * *

Article I

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1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

6. With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. of the Act in which agreement the nuclear incident is defined as "common occurrence."

* * * * *

7. Section 140.95, Appendix E, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraph 2(c) is revised.

c. Article III, paragraph 4(b) is revised.

§ 140.95 Appendix E—Form of indemnity agreement with nonprofit educational institutions.

* * * * *

Article I

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1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1)

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claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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2. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

* * * * *

8. Section 140.107, Appendix G, amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, introductory text of paragraph 6 and paragraphs 6(a), 6(b), and 6(c) are revised.

c. Article III, paragraph 4(b) is revised.

§ 140.107 Appendix G—Form of indemnity agreement with licensees processing plutonium for use in plutonium processing and fuel fabrication plants and furnishing insurance policies as proof of financial protection.

* * * * *

Article I

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1. "Byproduct material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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6. With respect to any common occurrence,

(a) If the sum of the limit of liability of any Nuclear Energy Liability Property Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association exceeds $155,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability-Property Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

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Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

* * * * *

9. Section 140.108, Appendix H, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraph 6 is revised.

c. Article III, paragraph 4(b) is revised.

§ 140.108 Appendix H—Form of indemnity agreement with licensees possessing plutonium for use in plutonium processing and fuel fabrication plants and furnishing proof of financial protection in the form of the licensee's resources.

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Article I

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1. "Byproduct material," "person," "source material," "special nuclear material," "precautionary evacuation," and

"extraordinary nuclear occurrence" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

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Article II

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6. With respect to any common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

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Article III

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4.* * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

* * * * *

Dated at Rockville, MD, this 15th of December 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-29184 Filed 12-19-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-88-35]

Drawbridge Operation Regulations; Clearwater Pass, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Clearwater, Florida, the Coast Guard is changing the regulations governing the Clearwater Pass (SR 699) drawbridge between Sand Key and Clearwater Beach by adding one hour to the existing regulated period. This proposal is being made because of an increase in highway traffic on weekends and holidays.

DATE: Comments must be received on or before February 3, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor of the Brickell Plaza Federal Building, 909 SE 1st Avenue, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney at (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ian L. MacCartney, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The draw presently opens on signal, except that from 12 noon to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw opens at 15 minute intervals. The City of Clearwater has requested openings at 20 minute intervals from 11 a.m. to 6 p.m. Saturdays, Sundays and Federal holidays. Traffic study data for a recent 14 day period shows an approximate 20% increase in vehicular traffic since the last study in 1984. A review of the most recent 12 months of bridge logs shows that there has been a 20% reduction in the number of openings. As a result of the 15 minute regulations placed into effect in 1985, an average of five boats now wait for each opening during the regulated period. Reduction in openings to 20 minute intervals would further increase the number of vessels waiting for an opening, which would create potentially unsafe vessel congestion near the bridge. The holding area, especially east of the bridge, are very restricted due to shallow waters, with prevailing winds and tidal currents which would create difficulty for a larger number of accumulated vessels to maintian position in the channel.

The Coast Guard feels, therefore, that the proposed change to openings at 20 minute intervals is not warranted. However, there has been a slight shift in peak traffic periods. This shift can be accommodated by adding the proposed additional hour to the existing regulated period and still provide for the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal exempts tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

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List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Part 117 is proposed to be amended by revising § 117.277(b) to read as follows:

§ 117.277 Clearwater Pass.

* * * * *

(b) From 11 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

Dated: December 5, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88–29174 Filed 12–19–88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 244
Tuesday, December 20, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Quota Period and Import Quotas for Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes a sugar import quota period of January 1, 1989 through December 31, 1989 and an import quota of 1,061,279 metric tons, raw value, for such period.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941 of May 5, 1982, (47 FR 19661) amended headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States to establish a system of import quotas for foreign sugar coming into the United States. Under the terms of headnote 3, the Secretary of Agriculture established an annual sugar import quota period of October 1-September 30 beginning October 1, 1982. (47 FR 34812) Effective January 1, 1989, headnote 3 becomes additional U.S. note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), in accordance with section 1204 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

Presidential Proclamation No. 4941 also permits the Secretary of Agriculture, after consultations with the U.S. Trade Representative and the Department of State, to establish quota periods for other than quarterly periods, if he determines that such periods are appropriate to give due consideration in the United States sugar market to the interests of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. This notice announces the Secretary of Agriculture's determinations, after the appropriate consultations, that the sugar import quota period shall begin on January 1, 1989 and terminate on December 31, 1989 and that the import quota for such period shall be 1,061,279 metric tons, raw value.

Notice

Notice is hereby given that, in accordance with the requirements of additional U.S. note 3 to Chapter 17 of the HTS (note 3), I have determined that up to 1,061,279 metric tons, raw value, of sugar described in items 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40, and 2106.90.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period January 1, 1989 through December 31, 1989. Of the 1,061,279 metric tons, raw value, 1,815 metric tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of note 3 and 6,464 metric tons, raw value, are reserved as a quota adjustment amount allocated in accordance with paragraph (c)(v) of note 3.

I have also determined that this quota amount (1,061,279 metric tons, raw value) and quota period give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a)(i) of note 3 is modified to read as follows:

3. (a)(i) The total amount of sugars, syrups and molasses described in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40, and 2106.90.10, the products of all foreign countries, entered, or withdrawn from warehouse for consumption, during the period January 1, 1989 through December 31, 1989 shall not exceed in the aggregate 1,061,279 metric tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this note (the total base quota amount) shall be 1,053,000 metric tons, raw value; 1,815 metric tons, raw value, may only be used for the importation of "specialty sugars" as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this note; and the remaining 6,464 metric tons, raw value, may only be imported for the purposes specified in paragraph (c)(v) of this note (the quota adjustment amount.)

Signed at Washington, DC on December 15, 1988.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 88–29153 Filed 12–19–88; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–021]

Cell-Site Transceivers and Related Subassemblies From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 28, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Kokusai Electric, and the period January 1, 1987 through December 31, 1987. The review indicates no shipments during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Room B–099, 14th Street & Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 28424) the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and subassemblies from Japan (50 FR 307, January 3, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* ("HTS") and all merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of this HTS is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

The products covered in this review are shipments of cell-site transceivers and related subassemblies currently classifiable under TSUSA item numbers 685.28100 and 685.2820 and HTS item numbers 8525.20.15, 8525.20.20, and 8525.20.30.

The review covers one manufacturer/exporter of this merchandise to the United States, Kokusai Electric Co., Ltd. ("Kokusai"), and the period January 1, 1987 through December 31, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results of review and tentative determination to revoke in part. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results, and we determine that the following margin exists for the period January 1, 1987 through December 31, 1987:

Manufacturer/Exporter	Margin
Kokusai	*0.08

*No shipments during the period; margin from last review in which there were shipments.

As provided for by section 751(a)(1) of the Tariff Act, since the margin for Kokusai is 0.08 percent and, therefore, *de minimis* for cash deposit purposes, the Department will not require a cash deposit of estimated antidumping duties for Kokusai. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1987 and who is unrelated to Kokusai, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of Japanese cell-site transceivers and related subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: December 9, 1988.

[FR Doc. 88–29180 Filed 12–19–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–008]

Revised Final Results of Administrative Review of Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Revised Final Results of Administrative Review of Antidumping Duty Order Pursuant to Court Remand.

Summary of Remand Results

As a result of a remand from the United States Court of International Trade, the Department of Commerce has granted Far East Machinery Co., Ltd., a duty drawback adjustment to U.S. price. Accordingly, we have revised the final results of the first administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan (51 FR 43946, December 5, 1986) for the period October 1, 1983, through April 30, 1984, to reflect a margin for Far East Machinery Co., Ltd., of 12.30 percent. We will direct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43946) the final results of its first administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan (49 FR 19369, May 7, 1984). The review covered the period October 1, 1983, through April 30, 1984. The results of the review were challenged in the United Stated Court of International Trade ("the Court") by Far East Machinery Co., Ltd. ("FEMCO"), a producer.

In its final results of administrative review, the Department had denied a duty drawback adjustment to U.S. price for FEMCO. The duty drawback adjustment was denied on the grounds that FEMCO failed to substantiate its claim that it had imported and paid duties on a sufficient quantity of appropriate steel coil to have produced the merchandise exported to the U.S. and on which it received a rebate from the authorities in Taiwan. The Court remanded the issue to the Department. Upon reconsideration of the evidence on the record, the Department affirmed that FEMCO had in fact provided such evidence. Therefore, in its revised final results of administrative review, the Department has granted FEMCO an adjustment to U.S. price for duty drawback. This adjustment was limited to the amount of import duties paid on appropriate coil imports with an adjustment to account for an estimated

loss rate experienced in producing the subject merchandise.

Remand Results

As a result of this remand, and the granting of an adjustment to U.S. price for duty drawback for FEMCO, the Department has revised its final results of the first administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan for the period October 1, 1983, to April 30, 1984, from 41.22 percent to 12.30 percent for FEMCO. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries from FEMCO. Individual differences between United States price and foreign market value may vary from the weighted-average margin of 12.30 percent. The Department will issue appraisement instructions directly to Customs.

Date: December 13, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-29181 Filed 12-19-88; 8:45 am]

BILLING CODE 3501-DS-M

[A-484-801]

Postponement of Final Antidumping Duty Determination; Electrolytic Manganese Dioxide From Greece

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 21, 1988, we received a request from counsel for the respondent, Tosoh Hellas A.I.C. from Greece, that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d (a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of electrolytic manganese dioxide from Greece have been made at less than fair value until not later than February 22, 1989.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Holly Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2923 or 377-4733.

SUPPLEMENTARY INFORMATION: On June 27, 1988, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of electrolytic manganese dioxide from Greece are being, or are likely to be sold at less that fair value (53 FR 24114). We published our preliminary affirmative determination on November 14, 1988 (53 FR 45793). This notice stated that we would issue a final determination on or before January 23, 1989. On November 21, 1988, counsel for the respondent, Tosoh Hellas A.I.C. of Greece, requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than February 22, 1989.

In the preliminary determination we stated that a public hearing would be held, if requested. A public hearing has now been requested and has been scheduled for January 17, 1989 at the United States Department of Commerce, Room 1414, 14th Street and Constitution Avenue NW., Washington, DC. It will follow the hearing concerning electrolytic manganese dioxide from Ireland to be held at 9:30 a.m. in the same room. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary by January 9, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due, or if a hearing is held, within seven days after the hearing transcript is available.

This notice is published pursuant to section 735(d) of the Act.

Date: December 13, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-29177 Filed 12-19-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-419-801]

Postponement of Final Antidumping Duty Determination; Electrolytic Manganese Dioxide From Ireland

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 29, 1988, we received a request from counsel for the petitioners, Chemetals and Kerr-McGee, that the final determination be postponed as provided for in section 735(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(B)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of electrolytic manganese dioxide from Ireland have been made at less than fair value until not later than February 22, 1989.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Holly Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2923 or 377-4733.

SUPPLEMENTARY INFORMATION: On June 27, 1988, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of electrolytic manganese dioxide from Ireland are being, or are likely to be sold at less than fair value (53 FR 24115). We published our preliminary negative determination on November 14, 1988 (53 FR 45795). This notice stated that we would issue a final determination on or before January 23, 1989. On November 29, 1988, counsel for the petitioners, Chemetals and Kerr-McGee, requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(B) of the Act. If the petitioners

properly request an extension after a negative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than February 22, 1989.

In the preliminary determination we stated that a public hearing would be held, if requested. A public hearing has now been requested and has been scheduled for January 17, 1989 at 9:30 a.m. at the United States Department of Commerce, Room 1414, 14th Street and Constitution Avenue NW., Washington, DC. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary by January 9, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due, or if a hearing is held, within seven days after the hearing transcript is available.

This notice is published pursuant to section 735(d) of the Act.

Date: December 13, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–29178 Filed 12–19–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–806]

Postponement of Final Antidumping Duty Determination; Electrolytic Manganese Dioxide From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 21, 1988, we received a request from counsel for the respondent, Tosoh Corporation from Japan, that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of electrolytic manganese dioxide from Japan have been made at less than fair value until not later than February 22, 1989.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–0145 or 377–2923.

SUPPLEMENTARY INFORMATION: On June 27, 1988, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of electrolytic manganese dioxide from Japan are being, or are likely to be sold at less than fair value (53 FR 24116). We published our preliminary affirmative determination on November 14, 1988 (53 FR 45796). This notice stated that we would issue a final determination on or before January 23, 1989. On November 21, 1988, counsel for the respondent, Tosoh Corporation of Japan, requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than February 22, 1989.

In the preliminary determination we stated that a public hearing would be held, if requested, within 10 days of the date of publication of that notice. The Department has not received within that time a request for a hearing. All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due.

This notice is published pursuant to section 735(d) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–29179 Filed 12–19–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–801]

Postponement of Preliminary Antidumping Duty Determination; Steel Wheels From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

SUMMARY: This notice informs the public that we have received a request from petitioner in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of steel wheels from Brazil have occurred at less than fair value until not later than February 24, 1989.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Anne D'Alauro, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–5255 or (202) 377–2923.

SUPPLEMENTARY INFORMATION: On August 24, 1989 (53 FR 32267) we published a notice of initiation of an antidumping duty investigation to determine whether steel wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by January 5, 1989.

As detailed in the notice, the petition alleged that imports of steel wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value.

On December 12, 1988 petitioner, Kelsey-Hayes Company, requested that the Department extend the period for the preliminary determination until not later than 210 days after receipt of the petition in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determination in this case is hereby extended. We intend to issue a preliminary determination not later than February 24, 1989.

This notice is published pursuant to section 733(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–29176 Filed 12–19–88; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

December 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for wool textile products in Categories 445/446 is being increased for carryforward. In addition, the limit for man-made fiber textile products in Category 611 is being increased by application of swing, reducing the limit for Category 613 to account for the swing being applied.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 55, published on January 4, 1988; and 53 FR 25525, published on July 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 15, 1988, the directive of December 30, 1987 is amended further to adjust the limits for wool and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12-month limit [1]
445/446	297,000 dozen.
611	5,355,000 square yards.
613	6,745,000 square yards.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–29187 Filed 12–19–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Systems Command (AFSC) Industrial Modernization Incentive Program (IMIP) Conractor Demonstration; No applicable form; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 15 minutes.

Frequency of Response: On occasion.

Number of Respondents: 500.

Annual Burden House: 125.

Annual Responses: 500.

Needs and Uses: The Air Force needs the information to be collected by this questionnaire to measure the effectiveness of its end-of-contract demonstrations as a means to accomplish technology transfer among Air Force contractors. The Air Force will use the data collected to document and track technology transfer and to fine tune end-of-contract demonstrations to better match the interests of contractor attendees.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1203, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1988.

[FR Doc. 88–29190 Filed 12–19–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement

assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before January 19, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration and the Federal Energy Regulatory Commission.
2. EIA-714, EIA-714(1) (FERC portion).
3. 1905-0161 and 1902-0140 (FERC portion).
4. Annual Electric Power System Report.
5. Revision.
6. Annually.
7. Mandatory.
8. State and local governments, Businesses or other for profit, Federal agencies or employees, and Non-profit institutions.
9. 300 respondents annually.
10. 300 responses annually.
11. The estimated average hours per response for each of the respondents is 101 burden hours.
12. The estimated total reporting hours are 30,300. Burden hours will be reduced from the previously approved version of this form by 9,600 hours. The number of respondents has decreased, data elements have been deleted, and the allowance of the submission of system maps result in this reduction.
13. EIA-714 gathers basic descriptive operation information regarding electric energy production, energy transfers, loads and maps and diagrams of facilities on a system basis. Responses are used in evaluation of utility operations related to hydroelectric license approvals, proposed mergers, proposed interconnections, and wholesale rate investigations. Respondents are major electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a); and Sec. 4(a), 304, 309, and 311 of the Federal Power Act, (16 U.S.C. 791a-825r).

Issued in Washington, DC, December 14, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-29200 Filed 12-19-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-620-000, et al.]

Connecticut Light & Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Connecticut Light & Power Company

[Docket No. ER88-620-000]

December 12, 1988.

Take notice that on November 10, 1988, Connecticut Light & Power Company submitted for filing in this docket certain supplemental information regarding its filing in this docket. The information consists of provisions of the agreement between Connecticut Light & Power Company and Montaup Electric Company.

Comment date: December 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Power & Light Company

[Docket No. ER89-108-000]

December 13, 1988.

Take notice that on December 6, 1988, Pacific Power & Light Company (Pacific) tendered for filing a Power Sales Agreement between Pacific Power & Light Company and Puget Sound Power & Light Company (Puget), dated October 27, 1988. Pacific requests that a waiver of prior notice requirements be granted to allow the rate schedule to become effective November 1, 1988. Pacific states that copies of the filing have been supplied to the Washington Utilities and Transportation Commission, the Oregon Public Utilities Commission, and Puget.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of the notice.

3. Northern States Power Company

[Docket No. ER88-574-000]

December 13, 1988.

Take notice that on December 5, 1988, Northern States Power Company tendered for filing certain information regarding its filing in this docket.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER88-606-000]

December 13, 1988.

Take notice that on November 28, 1988, Southern California Edison Company tendered for filing in this docket an amendment to its filing in this docket in response to a deficiency letter from the Commission dated September 27, 1988.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Northern States Power Company

[Docket No. ER88-347-000]

December 13, 1988.

Take notice that on November 30, 1988, Northern States Power Company tendered for filing certain additional information to supplement its original filing in this matter.

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp doing business as PacifiCorp Power & Light Company

[Docket No. ES89-11-000]

December 13, 1988.

Take notice that on December 6, 1988, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory

Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1) authorizing it to issue and sell, prior to December 31, 1990, its fixed or floating rate No. Par Serial Preferred Stock with an aggregate preference on involuntary liquidation of not more than $100,000,000 and (2) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Power Company

[Docket No. ER88-576-000]

December 14, 1988.

Take notice that on November 22, 1988, in accordance with an October 20, 1988 letter from the Commission's Division of Electric Power Application Review, Ohio Power Company (OPCO) tendered for filing an amendment to its original filing, clarifying its justification and supplying additionally cost data as further support for its transmission service agreement with American Municipal Power-Ohio, Inc. (AMPO), which agreement was submitted for filing under cover of a letter dated August 22, 1988.

OPCO further states that a copy of the traditional cost support for its August 22, 1988 filing has been provided to the American Municipal Power-Ohio, Inc., the Public Utility Commission of Ohio and the Commission Staff.

Comment date: December 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER89-76-000]

December 14, 1988.

Take notice that on November 22, 1988, Arizona Public Service Company (APS) tendered for filing a Letter Agreement between APS and Maricopa County Municipal Water Conservation and Drainage District Number One (MCM). This agreement provides for continuation of existing supplemental power, wheeling, administrative and "banking" services being rendered by APS for MCM for an extended interim period ending April 30, 1989 or upon execution of more comprehensive agreements, whichever date occurs first. Such services are currently provided to MCM under APS FERC Rate Schedule No. 157.

APS, with concurrence of MCM requests waiver of 18 CFR 35.11 and 35.3 so that the Agreement will become effective on January 1, 1989.

No change in any terms or conditions from those currently effective for these services is proposed.

Copies of this filing have been served upon the Arizona Corporation Commission and MCM.

Comment date: December 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Ogden Martin Systems of Fairfax

[Docket No. ER89-105-000]

December 14, 1988.

Take notice that on December 5, 1988, Ogden Martin Systems of Fairfax, Inc. (Ogden Fairfax) tendered for filing with the Federal Energy Regulatory Commission its initial rate schedule and supporting documentation. The rate schedule consists of a unit power agreement between Ogden Fairfax and Virginia Electric and Power Company (Virginia Power). The unit power agreement provides for the sale of the capacity and corresponding energy of a new resource recovery and electric generating facility to be constructed in Lorton, Virginia and owned by Ogden Fairfax.

Ogden Fairfax has requested a waiver of notice requirements to permit filing of the rate schedule more than 120 days prior to its proposed effective date and a petition for waiver of the Commission's regulations inappropriate to qualifying small power producers including cost of service data. Copies of the filing were served upon Virginia Power and the Virginia State Corporation Commission.

Comment date: December 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Tenaska III Texas Partners

[Docket No. QF88-295-002]

December 14, 1988.

On November 28, 1988, Tenaska III Texas Partners (Applicant), of 407 North 117 Street, Omaha, Nebraska 68154, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Lamar County, Texas. The facility will consist of two combustion turbine generators, two waste heat recovery steam generators, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used by Campbell Soup (Texas) Inc. for food processing. The maximum net electric power production capacity will be 250 megawatts. The primary energy source will be natural gas. Construction of the facility was scheduled to commence September 1988.

By order issued June 1, 1988, the Commission granted certification of the facility as a cogeneration facility (43 FERC ¶ 62,247).

The recertification is requested due to a change in the ownership of the facility from Tenaska III, Inc. to Tenaska III Texas Partners.

Tenaska III Partners is a general partnership consisting of the following general partners: Tenaska III Partners LTD., H.S. Power I, Inc., TTP, Inc., Diamond Paris Cogen, Inc., Texas Paris Cogen, Inc., Empeco, Inc., and Tenaska III, Inc. Empeco, Inc., a wholly owned subsidiary of Continental Energy Services, Inc., which is a wholly owned subsidiary of The Montana Power Co., an electric utility, has an ownership interest in the facility. TTP, Inc., a wholly owned subsidiary of Midwest Capital Group, Inc., which is a wholly owned subsidiary of Midwest Energy Co., an electric utility holding company, also has an ownership interest in facility. However, the applicant states that such utility ownership interest does not exceed 50%.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29182 Filed 12-19-88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30293; FRL-3495-3]

Certain Companies; Applications to Register Pesticide Products; Griffin Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by January 19, 1989.

ADDRESS: By mail submit comments identified by the document control number [OPP-30293] and the registration/file numbers to:

Public Docket and Freedom of Information Section, Field Operations Programs (TS-757C), Attn: PM 17, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to:

Environmental Protection Agency, Rm. 246, CM#2, Attn: PM 17, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Hutton, PM 17, Rm. 207, CM#2, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Product

1. File Symbol: 1812-GGN. Applicant: Griffin Corporation, PO Box 1847, Valdosta, GA 31601. Product name: Raid Ant Controller II. Insecticide. Active ingredient: *N*-ethyl perfluorooctanesulfonamide 0.5%. Proposed classification/Use: General. For indoor use on ants. (PM 17)

2. File Symbol: 1812-GEO. Applicant: Griffin Corporation. Product name: Raid Roach Controller II. Insecticide. Active ingredient: *N*-ethyl perfluorooctanesulfonamide 1.00%. Proposed classification/Use: General. For the control of roaches indoors. (PM 17)

3. File Symbol: 1812-GET. Applicant: Griffin Corporation. Product name: GX-071 Technical. Insecticide. Active ingredient: *N*-ethyl perfluorooctanesulfonamide 98.5%. Proposed classification/Use: General. For formulating use indoors. (PM 17)

4. File Symbol: 524-UNR. Applicant: Monsanto Chemical Co., 800 No. Lindbergh Blvd., St. Louis, MO 63167. Product name: Tricalcium Phosphate. Insecticide. Active ingredient: Calcium hydroxyapatite 94.4%. Proposed classification/Use: General. For the control of cockroaches, ants, flies, ticks, and fleas in food handling establishments and other uses indoors. (PM 17)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: December 6, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-29159 Filed 12-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44521; FRL-3495-1]

TSCA Chemcial Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on meta-cresol (CAS No. 108-39-4), submitted pursuant to a final test rule, and 3,4-dichlorobenzotrifluoride (DCBTF; (CAS No. 328-84-7), submitted pursuant to a consent order, under the TOXIC Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for meta-cresol was submitted by the Chemical Manufacturers Association pursuant to a test rule for cresols at 40 CFR 799.1250. It was received by EPA on November 28, 1988. The submission describes a mutagenicity test on meta-cresol in the *in vitro* transformation of BALB/C-3T3 cells assay in the presence of a rat liver cell activation system. Mutagenicity testing is required by this test rule.

Cresols are used as wire enamel solvents, automotive cleaners, and organic intermediates in manufacturing phenolic resins and phosphate esters. Additional uses of either individual isomers or mixtures are: In the production of several herbicides and disinfectants; as cleaning compounds,

degreasers and antioxidants; and in ore flotation.

Test data for DCBTF was submitted by Occidental Chemical Corporation pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on December 6, 1988. The submission describes the trout early life stage study with rainbow trout. Environmental effects testing is required by this test rule.

DCBTF is used as an herbicide intermediate.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to their completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44521). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 13, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88–29160 Filed 12–19–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140110; FRL–3495–4]

Access to Confidential Business Information by American Scientific International, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, American Scientific International, Incorporated, (ASI) of McLean, VA, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.306(j), EPA has determined that ASI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully work specified under the contract. ASI personnel will be given access to information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

Under contract no. 68–D9005, contractor ASI, 6888 Elm Street, McLean, VA will assist the Office of Toxic Substances by providing typing, editing, proofreading, photocopying, and graphic support for all phases of operations pertaining to TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ASI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

ASI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: December 11, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–29158 Filed 12–19–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51722; FRL–3495–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of eight such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89–115, February 19, 1989.
P 89–129, January 22, 1989.
P 89–130, 89–131, 89–132, 89–133, February 26, 1989.
P 89–134, 89–135, February 27, 1989.

Written comments by:

P 89–115, January 20, 1989.
P 89–129, December 23, 1989.
P 89–130, 89–131, 89–132, 89–133, January 27, 1989.
P 89–134, 89–135, January 28, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51722]" and the specific PMN number should be sent to:

Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460 (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–115

Manufacturer. Werner G. Smith, Inc.

Chemical. (G) Mixed dibasic acid esters of mono and dihydric alcohols; mixed esters of mono and dihydric alcohols.

Use/Production. (S) Metal working lubricant. Prod. range: 2,000–300,000 kg/yr.

P 89–129

Manufacturer. Confidential.

Chemical. (G) Organo silane.

Use/Production. (G) Coating for plastic films. Prod. range: Confidential.

P 89–130

Importer. (DNP (America), Inc.

Chemical. (G) Indophenol derivative.

Use/Import. (S) Dye for heat transfer recording material. Import range: 50–200 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat). Acute dermal toxicity: LD50 >2 g/kg species (Rat). Eye irritation: None species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89–131

Importer. DNP (America), Inc.

Chemical. (G) Indophenol derivative.
Use/Import. (S) Dye for heat transfer recording material. Import range: 50–200 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 > 2 g/kg species(Rat). Eye irritation: None species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: Negative.

P 89–132

Importer. DNP (America), Inc.
Chemical. (G) Indophenol derivative.
Use/Import. (S) Dye for heat transfer recording material. Import range: 50–200 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 > 2 g/kg species(Rat). Eye irritation: None species(Rabbit). Skin irritation: Negligible species(Rabbit). Mutagenicity: Negative.

P 89–133

Manufacturer. Confidential.
Chemical. (G) Modified hydrocarbon polymer.
Use/Production. (G) Minor additive for the binder used in publication gravure printing inks. Prod. range: Confidential.

P 89–134

Manufacturer. Novo Biochemical Industries, Inc.
Microorganism: (G)*Aspergillus oryzae* was modified using recombinant DNA techniques to contain an intergeneric lipase gene. Fragments of intergeneric vectors were also introduced into this strain.
Use/Production: This microorganism will be used for the biosynthesis of an enzyme: triacylglycerol lipase. Production range: Confidential.
Test Data: Pathogenicity study by intravenous administration to mice showed no pathogenic potential in the 21 day test. Survival tests in soil showed a poorer viability than the host strain and the Southern blot studies show the lipase gene is stable on *Aspergillus oryzae.* Tests showed decreased sporulation proficiency in the modified strain relative to the host strain.
Exposure: Workers in laboratory and production areas.
Environmental release/Disposal: During production, live cells are maintained in closed vessels. At the end of the production cycle, the cells are inactivated. Disposal of cell waste: Solid waste is used as a fertilizer on company property, liquid waste is collected in two aerated storage lagoons on company property to be used to irrigate crops on company property, and air emissions are ozone treated and discharged to the atmosphere through the fermenter exhaust stack.

P 89–135

Manufacturer. Tennant Company.
Chemical. (G) Urethane resin.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Date: December 13, 1988.

Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–29161 Filed 12–19–88; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: On November 23, 1988, the President declared the State of Arkansas eligible for Federal disaster assistance due to severe storms and tornadoes (FEMA–DR–817). This notice advises the public of two minor procedural changes FEMA is implementing on a test basis.
In this disaster relief operation, a field test of registering applications for assistance program by telephone will be conducted. These telephone registration procedures will be implemented in place of the usual Disaster Application Centers. Outreach efforts will continue and the disaster assistance registration telephone number will be widely publicized to ensure that all those eligible for assistance who wish to apply may do so.
Under the test, applicants will not be required to obtain a formal decision on a loan application from the Small Business Administration if the applicant would not qualify for a loan based on the income information provided to FEMA during the registration process. The normal procedure, typically performed in the Disaster Application Centers, consists of SBA representatives issuing loan declines if registrants meet certain income criteria. In the test, FEMA will review the income information given by the registrants and, if they would not qualify for the loan, transfer the application directly to the Individual and Family Grant program staff. Individual and family grants made by the State on the basis of Federally sponsored loan qualification information are not subject to recovery by the State, i.e., FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State is responsible for its 25 percent share of those grants. This suspension applies only to the FEMA–DR–817 declaration in Arkansas.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3662.

Date: December 12, 1988.

Grant C. Peterson,
Associate Director, State and Local Programs and Support.

[FR Doc. 88–29154 Filed 12–19–88; 8:45 am]
BILLING CODE 6718–02–M

FEDERAL HOME LOAN BANK BOARD

[No. 88–1289]

Prices for Federal Home Loan Bank Services

Date: December 12, 1988.

AGENCY: Federal Home Loan Bank Board.
ACTION: Notice of prices for Federal Home Loan Bank Services.

SUMMARY: The Office of District Banks and the Office of Policy And Economic Research of the Federal Home Loan Bank Board ("Board") are publishing, pursuant to delegated authority, the prices charged by the Federal Home Loan Banks ("FHLBanks") for (1) processing and settlement of items ("negotiable order of withdrawal or NOW") and; (2) demand deposit accounting ("DDA") and other services offered to member institutions.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell (202) 377–7865, or William J. Carey, (202) 377–6656, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1431(e)) authorizes the Federal Home Loan Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Federal Home

Loan Banks to charge fees for services authorized in that section, which fees are "to be determined and regulated by the Board consistent with the principles set forth in section 11A(c) of the Federal Reserve Act." Board regulations at 12 CFR 534.6 require that the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research (or their designees) review, approve and publish these fees at least annually. The fees for 1988 will be published at this time, but compliance for 1988 will be determined in 1989 when data for the entire year is available. The regulations require the FHLBanks to follow four basic pricing principles as follows:

(1) Services must be priced explicitly.

(2) Services must be available to member and nonmember depository institutions on an equal basis.

(3) Over the long run, fees must cover direct and indirect costs and must also cover an imputed cost that includes taxes paid and the return on capital that would have been provided if the services had been furnished by a private firm.

(4) Interest on float must be charged at the Federal Funds rate. In 1980, the Board developed a methodology to determine compliance with these four principles, which is based on discounted cash flows from the NOW and DDA services. Since the FHLBanks had very few assets employed in the provision of these services and only projections of future income from NOW services, the methodology adopted at that time was appropriate. Compliance with the pricing principles focused on a five-year time span to recover all direct and indirect costs of these services.

At the end of 1985, the FHLBanks completed five years of NOW processing services. Both NOW services and DDA type services are mature activities with an asset base and normal income flows. In recognition of this evolution, the Board developed an up-to-date methodology substantially similar to that adopted by the Federal Reserve Board to monitor pricing of these services.

The following section summarizes the adopted methodology, which will continue to ensure that FHLBank NOW and DDA services are not priced in a manner that would provide unfair competition to private firms.

Methodology

Two major issues arise in determining appropriate pricing methodology. First, competitor firms must be identified. Second, adjustment must be made for the taxes and return on capital that prices of competitor firms must cover. This adjustment is sometimes referred to as a Private Sector Adjustment Factor ("PSAF").

The methodology was developed based on bank holding companies as competitor firms. Although firms in other industries could be chosen as competitors, commercial banks are generally the most frequent competitors in item processing and related services. Similarly, the Federal Reserve Bank also has chosen bank holding companies as competitors for development of adjustments for taxes and the imputed cost of capital.

Adjustment for Taxes and Return on Capital

In order to compare competitor data to the FHLBanks, several broad assumptions were established as follows:

(A) NOW and DDA services may be combined under the Board's pricing approval methodology.

(B) Compliance with NOW/DDA pricing guidelines is on an individual FHLBank basis.

(C) One set of bank holding company data will be applied to FHLBanks, rather than applying regional competitor data to regional FHLBanks.

(D) Federal Home Loan Bank data, which is required for the NOW/DDA pricing methodology, may be determined on an individual FHLBank basis as follows: (1) NOW/DDA prices; (2) earnings on balances generated from item processing; (3) direct and indirect costs; and (4) assets employed in NOW/DDA services.

Based on the previous assumptions, appropriate bank holding company data and FHLBank data can be incorporated into the pricing methodology. The pricing methodology is as follows:

(A) Federal Home Loan Bank NOW/DDA costs are adjusted (increased) for the cost of financing the assets (primarily plant and equipment) employed in the provision of NOW/DDA services.

(B) NOW/DDA costs are increased for sales taxes that would have been paid if subject to such tax.

(C) NOW/DDA costs are adjusted for the cost of float at the Federal Funds rate.

(D) Imputed income taxes are applied to pre-tax NOW/DDA income using a three-year average from bank holding company data (36.16% rate).

(E) The after tax rate of return on capital from NOW/DDA services is compared to the after tax return on capital of bank holding companies (13.59% rate).

These adjustment factors ensure that the NOW/DDA services are priced in a competitive manner. Also, the factors are similar to the adjustments made by the Federal Reserve Board and represent a conservative approach consistent with the intent of Congress that pricing encourage competition and efficiency in the provision of these services.

In accordance with these principles, the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research have reviewed the 1988 prices for Federal Home Loan Bank services which are published herewith. In early 1988, compliance with the pricing principles was tested based upon projected levels of service for each FHLBank. Final compliance and approval for 1988 will be determined in early 1989 when data for the entire year is available. At that time, 1989 prices will be published and preliminary compliance tests for 1989 will be performed so that the Board's monitoring of the pricing policy is continuous. The services and their prices which are published herewith are divided into two categories: (1) NOW Services involved in the processing and settlement of items drawn on or issued by member institutions ("Schedule A"); and (2) services relating to demand deposit accounts and other services maintained by member institutions with the FHLBanks ("Schedule B").

The services described in the attached schedules are not identical for any two FHLBanks, as each FHLBank's program is tailored to meet the needs of the member institutions in the FHLBank's district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the Board continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a FHLBank be specifically priced. This policy permits the FHLBanks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district.

The directors of the Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board hereby give notice of the following fee schedules for Federal Home Loan Bank services:

Schedule A: Item Processing and Settlement Services (1988 NOW Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

[Services not provided]

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1988 NOW SERVICES)

Services	Fee
Standard Intercept (per item)	$.050
Standard Intercept-Delayed Check (per item)	.035
Check Safekeeping (a combined minimum monthly charge of $250 applicable):	
First 50,000 items/month (per item)	.025
50,001 plus items/month (per item)	.010
Check Bulkfiling (a combined minimum monthly charge of $250 applicable):	.030
First 50,000 items/month (per item)	.030
50,001 plus items/month (per item)	.015
Statement Rendering:	
Bulk Filing items:	
First 10,000 statements/months (per statement)	.30
10,001 plus statements/month (per statement)	.15
Check Safekeeping items (per statement)	.05
Return Items (per item)	3.25
Return Items without entry (per item)	6.00
Late Return Premium	.25
FRB Large Dollar Notification	4.25
Photocopies (per copy)	2.50
Original Item Retrieval (per item)	4.00
Datafax High Dollar Items—Front only (per item)	1.50
Datafax High Dollar Items—Both Sides (per item)	2.00
Counter Item Filming (per item)	.03
Counter Item Sorting (per item)	.03
Notices or Advertising Inserts (per insert)	.01
Monthly History Microfiche (per 100,000 items)	8.00
Monthly History Microfiche-Additional Copies (per fiche card)	1.00
Cycle Changes (per cycle)	25.00
Cycle Exception Maintenance (per mo. per account)	.50
Data Center Conversions (per conversion)	500.00

DISTRICT 3—FEDERAL HOME LOAN BANK OF PITTSBURGH (1988 NOW SERVICES)

Services	Fee
Inclearing:	
Items per month	
First 25,000 (per item)	$0.0360
25,001–58,500 (per item)	.0335
58,501–91,500 (per item)	.0310
91,501–125,000 (per item)	.0285
125,001–158,500 (per item)	.0260
158,501–191,500 (per item)	.0235
Over 191,501 plus (per item)	.0210
Backroom:	
Truncated	
Items per month	
0–25,000 (per item)	.0370
25,001–58,500 (per item)	.0355
58,501–91,500 (per item)	.0340
91,501–125,000 (per item)	.0325
125,001–158,500 (per item)	.0310
158,501–191,500 (per item)	.0295
191,501–plus (per item)	.0280
Non-truncated	
Items per month	
0–25,000 (per item)	.0470
25,001–58,500 (per item)	.0455
58,501–91,500 (per item)	.0440
91,501–125,500 (per item)	.0425
125,001–158,500 (per item)	.0410
158,501–191,500 (per item)	.0395
191,501–plus (per item)	.0380
Modified Backroom	
Reduce non-truncated or truncated prices by (per item)	.01
Over-the-Counter Checks (per item)	.15
Return Call (per item)	.75
Late Return Call (per item)	.66
Items Over $2,500 Returned to FRB (per item)	4.25
Check Copies (per copy)	3.00
Telephone/FAX Check Copy (per copy)	3.75
Check Retrieval (per item)	1.50
Statement Envelopes—Actual Cost	
Small Standardized (per envelope)	.05
Small Customized (per envelope)	.07
Large (per envelope)	.46
Mid-cycle statement rendering:	
Purged Statement (per item—minimum charge of $2.50)	.50
Non-purged Statement (per statement)	2.50
Minimum Charge (per month)	200.00

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1988 NOW SERVICES)

NOW account services	Fee
Daily delivery (items per month):	
1st 50,000 (per item)	$.040
Over 50,000 (per item)	.035

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1988 NOW SERVICES)—Continued

NOW account services	Fee
Bulk filing (items per month):	
1st 50,000 (per item)	.045
2nd 50,000 (per item)	.040
3rd 50,000 (per item)	.030
Over 150,000 (per item)	.025
Statement matching (items per month):	
1st 50,000 (per item)	.070
2nd 50,000 (per item)	.065
3rd 50,000 (per item)	.055
Over 150,000 (per item)	.050
Special statements (IRA, savings, etc.) (per statement)	.020
Multiple Statement Inserts (per statement)	[1].010
No Mail Statements (per statement)	.050
Truncation:	
1st 50,000 (per item)	.030
2nd 50,000 (per item)	.025
3rd 50,000 (per item)	.020
Over 150,000 (per item)	.015
Return items (per item)	3.00
Large dollar return items (per item)	4.00
Delayed return items (per item)	4.00
Facsimile:	
Large dollar (per item)	1.50
On request (per item)	2.00
Bookkeeping and acc't no. (per item)	2.50
Over-the-counter items (per item)	.035
Photocopies (per item)	2.50
Without entry items (per item)	4.50
Finesort (Check No.)—special accounts (per item)	.02
Prime rejects ($0.25 per item over 2% reject rate)	.25
Special Services:	
Custom coding (for mergers, branch acquisitions and sales, etc.) (per hour)	100.00
Special research requests:	
Pull original truncation item from file (per item)	3.00
Research request for 12 or more items ($30 per hour per person plus per item)	1.00
Special Handling (if required by 2 or more account number formats resulting from mergers, conversions branch acquisitions, etc; *charging will begin three months after effective date if still required*) (per month)	500.00

[1] One insert free with a charge of one cent for each insert over one per statement.

NOTES.—The minimum monthly billing for service options is $100.00.

Prices for all options include data transmission to on-line or in-house processors.

Actual item delivery expense will be charged to the institution as incurred, including postage under "Statement Matching" above.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1988 NOW SERVICES)

Items/Month	Service				
	Daily return unsorted	Daily return sorted	Truncation	Bulk filing w/out stuffing	Bulk filing with stuffing
0 to 50,000	$0.0060	$0.0350	$0.0350	$0.0375	$0.0575
50,001 to 100,000	.0050	.0250	.0250	.0260	.0560
100,001 to 150,000	.0040	.0150	.0150	.0175	.0500
150,001 to 200,000	.0040	.0090	.0090	.0115	.0450
200,001 and over	.0040	.0075	.0075	.0100	.0440

Special services	Fee
Check retrieval or inspection of original item	$1.50
Photocopy	1.00
Advertising insertion (per item)	.02
Posted "on-us":	
a. With FHLB encoding (per item)	.03
b. Without FHLB encoding (per item)	.01
Statement stuffing for truncated statement (per statement)	.01
Additional sorting upon request:	
a. Fine sorting (per item)	.005
b. Cycle sorting (per item)	.005
Large dollar return notification (per item)	2.00
Return items processed by bank:	
First 1,000	2.00
All others	1.00
Qualifications requirements of EFAA	(1)
Return item clearing fee	(2)
Return items processed by NOW user:	
Qualifications requirements of EFAA	.50
Return item clearing fee	(2)
Special processing requests	(3)
Multiple service discount on basic service, FHLBank check deposit or lockbox service user (the following percentage off basic service fees:)	5.00

[1] No charge.
[2] To be determined.
[3] Cost basis.

District 6.—Federal Home Loan Bank of Indianapolis (1988 NOW Services)

Items per/month	Transaction Service: Safekeeping	Turnaround (daily or cycled)	Complete
0 to 5,000	$0.045	$0.053	$0.077
5,001 to 10,000	.037	.048	.075
10,001 to 15,000	.036	.044	.073
15,001 to 25,000	.031	.037	.072
25,001 to 50,000	.030	.033	.070
50,001 to 75,000	.026	.030	.066
75,001 to 100,000	.023	.027	.065
100,001 to 125,000	.021	.024	.064
125,001 to 150,000	.019	.022	.063
150,001 to 175,000	.017	.020	.062
175,001 and up	.014	.016	.059

Ancillary service	Fee
Settlement only (per month) (plus $2.00/journal entry	$100.00
Minimum processing fee for total NOW services (per month)	40.00
Over-the-counter items and microfilm (per item)	.035
No MICR/OTC—Indiana	.50
No MICR/OTC—Michigan	.75
Photocopies and facsimilies	2.00
Encoding errors	2.75
Certified checks	1.00
Late returns	.25
Invalid returns	.50
Large dollar signature verification	.50
Return items—Indiana	1.75
Invalid accounts	.50
Return items—Michigan	2.25

District 7.—Federal Home Loan Bank of Chicago (1988 NOW Services)

Items per month	Item processing: Daily returns	24-hour delay	Bulk file	Truncation
0 to 50,000	$0.026	$0.025	$0.024	$0.021
50,001 to 100,000	.025	.024	.023	.020
100,001 to 200,000	.024	.023	.022	.019
200,001 to 300,000	.023	.022	.021	.018
300,001 to 400,000	.022	.021	.020	.017
400,001 to 500,000	.021	.020	.019	.016
500,001 to 750,000	.020	.019	.018	.015
750,001 to 1,000,000	.019	.018	.017	.014

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1988 NOW Services)—Continued

Items per month	Item processing: Daily returns	24-hour delay	Bulk file	Truncation
1,000,001, to 1,250,000	.018	.017	.016	.013
1,250,001 to 1,500,000	.017	.016	.015	.012
1,500,001 and over	.016	.015	.014	.011

Ancillary service	Fee
Counter items (per item)	$0.01
Return items:	
0 to 100 items	4.00
101 to 500 items	3.50
501 to 1,000 items	3.00
1,001 to 2,500 items	2.50
2,501 or more items	2.00
Statement preparation (per item)	.025
Photocopies (per item)	3.00
Facsimile of items (per page)	2.00
Cash letter facsimile (per page)	2.00
Special sorts (per item)	.0075
Monthly recap Cper item)	.0025
Data transmission (per item):	
0 to 10,000 items ($10 month minimum)	.004
10,001 to 50,000 items ($50 month minimum)	.004
50,001 to 100,000 items (no minimum)	.003
100,001 or more items (no minimum)	.002
NOW settlement only (per month)	200.00
NOW Minimum Monthly Charge (per month)	200.00

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1988 NOW SERVICES)

Item processing monthly volume level	Item processing: Basic fee (truncated)	Daily cycle [1,2]	Cycle monthly [2]	Return items: Monthly volume level	Return items: Fee
1 to 25,000	$0.021	$0.017	$0.20	1 to 2,000	$2.50
25,001 to 50,000	.017	.013	.016	2,001 to 3,000	2.00
50,001 to 75,000	.015	.011	.014	3,001 to 4,000	1.50
75,001 to 175,000	.013	.009	.012	4,001 to 7,500	1.00
175,001 to 400,000	.012	.008	.011	7,501 to 10,000	.75
400,001 to 750,000	.010	.007	.010	10,001 and over	.50
750,001 to 1,100,000	.009	.006	.009		
1,100,001 to 1,500,000	.008	.005	.008		
1,500,001 to 4,000,000	.006	.004	.007		
4,000,001 to 6,500,000 [3]	.0058	.004	.007		
6,500,001 to 9,000,000 [3]	.0054	.003	.006		
9,000,001 and over [3]	.0052	.003	.006		

[1] 15 percent surcharge for same day daily return.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.
[3] Volume levels above 4 million are priced on a decremental basis.

OTHER ITEM PROCESSING SERVICES FEES

Posting file (per item)	$0.0005
Reject re-entry (per reject)	.04
Stop payments (per stop)	5.00
Large dollar notification (per notification)	3.00
Photocopies/Microfilm copies (per copy)	2.75
Counter items with microfilm (per item)	.04
Counter items without micr encoding(per item)	.10
Original item return (per item)	2.75
Certified checks (per item)	.50
Signature verification (per page)	1.00
Fascimile transmission (per transmission)	1.50
Telephone advice on missing account No. (per item)	.50
Telephone check inquiry (per inquiry)	1.00
Daily settlement reporting (per month)	25.00
Microfiche—Monthly reports (per month)	25.00
Microfilm (per item)	.01
Research/audit (per hour)	20.00

Minimum charge of $250 per month will apply for total NOW servics.

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1988 NOW SERVICES)

Service		
Basic service-items/month	Daily	Truncated
Tier 1: 0 to 50,000	$0.0325	$0.0275
Tier 2: 50,001 to 100,000	.0300	.0250
Tier 3: 100,001 to 150,000	.0250	.0200
Tier 4: 150,001 to 200,000	.0200	.0150
Tier 5: 200,001 to 500,000	.0150	.0100
Tier 6: 500,001 to 1,000,000	.0100	.0075
Tier 7: 1,000,000 and over	.0080	.0050

RETURN ITEMS

Items/month	
Tier 1: 1 to 500	$3.00
Tier 2: 501 to 1,000	2.00
Tier 3: 1,000 and over	1.50

Note.—Does not include Federal Reserve Bank surcharges which are passed through to our customers.

Other services	Fee
Commercial item (each)	$0.0200
Counter items (Integration)	.0325
Counter items (capture/microfilm only)	.0100
Photocopies	.50
Original check retrieval (per check)	1.50
Large dollar notification	4.25
Statement preparation:	
Statements (each)	.065
Items (each MICR document)	.008
Inserts	.01
Statement separators	.01

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1988 NOW SERVICES)

Service	
Return items per month	Fee per item
NOW processing fees:	
1 to 50	$2.50
51 to 2,500	1.00
2,501 to 4,000	.75
4,001 to 6,000	.50
6,001 to 8,000	.25
8,001 to 12,000	.20
12,001 and over	.15

Items per month	Truncated	Cycled
1 to 10,000 (per item)	$0.020	$0.035
10,001 to 25,000 (per item)	.018	.034
25,001 to 50,000 (per item)	.015	.031
50,001 to 100,000 (per item)	.013	.026
100,001 to 250,000 (per item)	.011	.020
250,001 to 500,000 (per item)	.010	.015
501,001 to 750,000 (per item)	.009	.013
750,001 to 1,000,000 (per item)	.008	.011
1,000,001 and over (per item)	.007	.010

Other services	Fee
Minimum Monthly Processing Fee	$500.00
Settlement—(w/FHLB processing)	(1)
Settlement Only (per month)	100.00
Item retrieval (Photocopy.—per item)	2.00
Mass photocopy requests:	
Per hour	12.00

Other services	Fee
Per item	.015
Over-The-Counter Items (Microfilmed and Filed-per item)	.03
Large Item Return Notification (per item over $2500)	3.00

[1] No charge.

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1988 NOW Services)

NOW service	Volume price based on total items per month						
	0 to 250,000	250,001 to 750,000	750,001 to 1,000,000	1,000,001 to 1,500,000	1,500,001 to 2,000,000	2,000,001 to 2,500,000	Over 2.5 million
Basic capture service (Min. charge $500/mo.):							
Capture/finesort/microfilm	$0.042	$0.037	$0.032	$0.026	$0.024	$0.022	$0.021
Return item processing	2.00	1.75	1.50	1.25	1.25	1.25	1.25
Comprehensive NOW Service (Min. charge $750/mo.):							
Capture/file/microfilm/finesort	.42	.037	.032	.026	.024	.022	.021
Statement preparation (truncated)	.15	.14	.13	.13	.13	.13	.13
Statement preparation (standard)	.35	.30	.28	.28	.28	.28	.28
Return item processing	2.00	1.75	1.50	1.25	1.25	1.25	1.25
Over-the-counter items	.045	.045	.045	.045	.045	.045	.045
Statement inserts	.03	.03	.0275	.025	.025	.025	.025

Miscellaneous services	Fee
Late return item transmission—after 2:00 p.m. (per item)	$0.25
Second request on previously reconciled adjustment (per occurrence)	10.00
Truncated item retrieval (per item)	3.00
Generic envelopes (each)	.025
Reconciliation of member books—special research (per hour)	25.00
Microfilm—second copy of film daily (per month)	75.00
Special request copy (per copy)	5.00
Same day microfiche:	
2 copies with hardcopy processed item listing and exceeded dollar report (per month)	75.00
Hardcopy exceeded dollar report only (per month)	65.00
Additional microfiche (per copy)	1.00
Special fine sort (per item)	.04
Photocopies (per copy)	2.50
Non-standard statement inserts (per insert)	.05
MICR line alterations (per item)	4.00
DDA account maintenance fee:	
Regular DDA account (per month)	10.00
Zero balance account (per month)	25.00
Supplementary service fees: Thirty day advance notice is required on all branch sales, branch mergers, branch acquisitions or service bureau changes.	
Custom Programming:	
1. Breakout of items by routing transit number and/or branch number (incl. listing)	2,000.00
2. Breakout and capture of items (Processed items list/microfilm/commingled with other items for service bureau)	3,000.00
3. Breakout, capture, and separate tape produced, including above items	4,500.00
4. Selective account programming (maximum 50 accounts) in addition to regular programming requirements	1,500.00
5. One-half of the original programming fee will be assessed in the event of a cancellation notice given less than 7 days in advance of effective date.	
Statement handling:	
Set-up fee/branch outsort of items	250.00
Standard statement rendition (close-out statements) (each)	.50
Non-standard statement rendition:	
First 90 days (each)	.75
After 90 days (each)	1.00

Note:—Other services and prices available upon request.

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1988 NOW SERVICES)

Service item	Fee
Base per item fees:	
Truncation service (per item)	$0.025
Non-Truncation service (per item)	.030
Combined service	([1])
Cumulative Volume Credits:	
25,001 to 50,000 items per month (per item)	.0025
50,001 to 75,000 items per month (per item)	.0025
75,001 to 100,000 items per month (per item)	.0025
100,001 to 200,000 items per month (per item)	.0025
200,001 to 400,000 items per month (per item)	.0050
400,001 to 600,000 items per month (per item)	.0050
600,001 or more items per month (per item)	.0025
Large dollar signature verifications (each)	.75

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1988 NOW SERVICES)—Continued

Service item	Fee
Return item handling:	
NSFs, account closed, etc. (each)	.80
Regulation J, large dollar returns	([2])
Photocopy requests (NOW User) (each)	1.00
Research requests (NOW User) (each)	1.00
Photocopy requests (Non-User) (each)	5.00
Research requests (Non-User) (each)	5.00
Special fine sorts (per item)	.01
Statement services:	
Burst or fold only for statements (per statement)	.005
(Minimum of $30.00 per month)	
With checks inserted (per item)	.02
Without checks (per statement)	.06
Advertising inserts	([2])
Miscellaneous and out-of-pocket expenses: Courier, Postage, etc	([3])

[1] Per above charge for each service.
[2] No charge.
[3] As required.

Note.—Additional discount may be arranged for contractual commitments. Prices may vary in some circumstances. For additional information, contact the Correspondent Services Marketing Department.

Schedule B: Demand Deposit and Other Services (1988 DDA Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

Services	Fee
Account maintenance (per account, per month)	$7.50
Checks and items paid (per item)	.15
Mail deposits (per item)	.20
Federal Reserve settlement (per item) [1]	.60
Internal transfers and zero balance transfers	([2])
Other transfers (per transfer)	.10
Domestic wire transfers:	
In (per wire)	4.50
Out (per wire)	7.00
Telephone advices	([2])
International wire transfers	([3])
Special statements (per statement)	2.50
Stop payment orders (per item)	9.50
Automated reconcilement:	
Paper issues input (per issue)	.065
Magnetic tape issues input (per issue)	.035
Automated reconcilement service charge (per account, per cutoff)	5.00
Paid only reconcilement, daily advices, monthly Reports, audit confirmations, voided items input, Zero-balance transfer and fine sort of items	([2])
Look-up and Photocopies of Checks (per item)	2.50
Truncation (per item)	.01
Depository transfer checks (DTC's) (per item)	.20

[1] Federal Reserve Settlements include ACH, Series E-Bond Redemption, Cash Letter Settlements (Inclearings and Outclearings), Regulation D Reserve Pass-Throughs, Treasury Tax and Loan Settlements.
[2] No charge.
[3] Fee varies based on current international rates and cable remittance fees.

Notes.—
All prices are subject to change.
All collected IDEAL WAY deposits earn immediate interest paid in hard dollars monthly via credit to the member's account at month end. Interest rates are set daily.
Fees for services are paid in hard dollars monthly via a debt to the member's account.
No compensations balance requirements.
No reserve requirements.

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1988 DDA SERVICES)

DEPOSIT SERVICES

	Unencoded	Encoded
Items deposited:		
First 100,000 items/month	$0.070	$0.050
100,001 to 300,000 items/month	.065	.045
300,001 plus items/month	.060	.040

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DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1988 DDA SERVICES)—Continued

DEPOSIT SERVICES

	Unencoded	Encoded
Early delivery discount (weekdays):		
5:30 p.m. deadline	.015	.010
7:00 p.m. deadline	.005	.005

Service	Fee
Saturday premium (per item)	$0.01
Cash letter deposit (per deposit)	.50
Return item (per item)	1.25
Return item (unendorsed) (per item)	8.75
Domestic collections (per item)	15.00
Foreign collection (per item)	8.00
Bond collection (minimum)	40.00
Return coupons (per return)	6.50
Unendorsed return coupons (per return)	15.00
Security coupon collection (per envelope)	3.50
Photocopies (per copy)	5.00
Savings bond redemption (per transmittal)	3.00
Reject repairs (encoded only per item)	.10
LOCKBOX SERVICE	
Remittance processing:	
First 50,000 items/month (per item)	.150
50,001 plus items/month (per item)	.100
Check deposit (per check)	.050
Return item (per check)	1.250
Exception item (per item)	.120
Photocopies (per copy)	5.000
Set-up fees:	
Coupon formats (per format)	250.00
Data center programming (per data center)	250.00
Daily reports microfiche (per item)	.001
Daily reports microfiche—additional copies per month (per set)	15.00

Note.—A minimum monthly service charge of $300 applies to the remittance processing.

Service	Fee
COIN AND CURRENCY SERVICE	
Shipments	(1)
Cash order [2] (per order)	$10.00
Cash return (per return)	10.00
Rolled coin (per roll)	.065
Deposits:	
Currency verification (per $1,000)	1.00
Coin verification (loose coin) (per bag)	1.00
Coin verification (rolled coin) (per bag)	10.00

[1] Price varies by location.
[2] Cash orders must be placed and funded one day prior to delivery.

Service	Fee
DISBURSEMENT SERVICES	
Checks and money orders:	
First 10,000 items/month (per item)	$0.24
10,001 to 25,000 (per item)	.17
25,001 plus items/month (per item)	.13
Zero reconcilement premium:	
Issuance reported via magnetic tape (per item)	.03
Issuance reported via paper (per item)	.05
FUNDS TRANSFER	
Wires in (per wire)	2.00
Wires out (per wire)	8.00
SAFEKEEPING SERVICES	
Maintenance:	
Less than 25 securities (per month)	33.00
More than 25 securities (per month)	75.00
Per item charge:	
Physical securities (per month)	5.00
Book entries (per month)	2.50
Purchases and sales (per transaction)	30.00
Maturities (per transaction)	10.00

Service	Fee
Coupons (per transaction)	4.00
MISCELLANEOUS CORRESPONDENT SERVICES	
Depository transfer checks (per check)	$3.00
Savings bond redemption (per transmittal)	3.00
Savings bond sales (per transmittal)	1.50
Federal recurring payments (per transaction)	3.00
Automated clearing house transactions (per transaction)	3.00
Treasury tax and loan accounts (per transaction)	3.00
Electronic daily advice reporting (EDAR) consolidated balance reporting transaction detail	[1]
Settlement only (per service) (per month)	250.00
Paper items (per item)	1.50

[1] Fees for special services will be negotiated based on the number of transactions. Fees are subject to change based on Federal Reserve announcements.

District 3.—Federal Home Loan Bank of Pittsburgh (1988 DDA Services)

Service	Fee
Desposit processing service:	
Deposit ticket entry (per entry)	$0.25
Deposit transfer voucher (per entry)	1.75
Mail deposit ticket entry (per entry)	2.25
Deposit item transit:	
Items per month:	
0 to 25,000 (per item)	.0325
25,001 to 58,500 (per item)	.0319
58,501 to 91,500 (per item)	.0314
91,501 to 125,000 (per item)	.0308
125,001 to 158,500 (per item)	.0303
158,501 to 191,500 (per item)	.0297
191,500 and over (per item)	.0292
Deposit item encoding:	
Items per month:	
0 to 25,000 (per item)	.0275
25,001 to 58,500 (per item)	.0270
58,501 to 91,500 (per item)	.0265
91,501 to 125,000 (per item)	.0260
125,001 to 158,500 (per item)	.0255
158,501 to 191,500 (per item)	.0250
191,501 and over (per item)	.0245
Deposit item return (per item)	1.50
Deposit item photocopy (per item)	3.00
Deposit pickup (per pickup)	6.25
Check and money order clearing service:	
Clearing item processing (per item)	.11
Clearing item reconciliation copy processing:	
By manual input (per item)	.06
By magnetic tape input (per item)	.03
Clearing item fine sorting for return with bank statements (per item)	.06
Stop payment orders (per entry)	9.75
Imprinting checks and money orders	[1]
Standard earnings checks (per item)	.05
Electronic wire transfer of funds:	
Outgoing Wires:	
Receiving Bank On-line (Federal Reserve) (per transfer)	6.00
Receiving Bank Off-line (Federal Reserve) (per transfer)	9.25
Incoming Wires (per transfer)	3.50
ACH Debit/Credit (per item)	.05
Lockbox service:	
Lockbox Item Processing (per item)	.11
Deposit Item Processing (per item)	[2]
Deposit Ticket Entry (per entry)	.25
Transportation (per month) (per institution)	20.00
Account Maintenance (per acct./month)	8.00
Account overdraft penalty	[3]
Collection service:	
Foreign items:	
West (per item, plus drawee bank charges)	10.00
East (per item, plus drawee bank charges)	5.00
Bonds (East Only) (per bond)	10.25
Bond Coupons:	
West (per envelope)	3.25
East (per envelope)	3.25
EASTERN COIN AND CURRENCY SERVICE	
Requisition:	
Currency (per strap)	.25
Coin:	
Per bag	.95
Per box	2.50

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1988 DDA SERVICES)—Continued

Service	Fee
Deposit:	
Currency/Food Coupons (per $1,000 or part thereof)	.70
Coin (per bag)	1.75
Transportation:	
Zone 1 (per stop)	18.50
Zone 2 (per stop)	25.50
WESTERN COIN AND CURRENCY SERVICE	
Requisition:	
Currency (per $1,000 or part thereof)	.25
Coin (per box)	1.50
Deposit:	
Currency (per $1,000 or part thereof)	.70
Coin:	
Unsorted (per $1,000 or part thereof)	7.50
Sorted (per $1,000 or part thereof)	1.25
Food Coupons:	
Unsorted (per $1,000 or part thereof)	3.00
Sorted (per $1,000 or part thereof)	1.75
Transportation:	
Western Pennsylvania (per stop)	11.85
West Virginia:	
Zone 1 (per stop)	29.50
Zone 2 (per stop)	35.20
SAFEKEEPING AND INVESTMENT SERVICE	
Trade executed (per transaction)	10.00
Receipt of security:	
Physical form (per transaction)	14.00
DTC (per transaction)	9.00
Book entry (per transaction)	8.00
Delivery of security:	
Physical form (per transaction)	14.00
DTC (per transaction)	9.00
Book entry (per transaction)	8.00
Redemption at maturity:	
Physical form (per transaction)	14.00
DTC (per transaction)	9.00
Book entry (per transaction)	8.00
Income collection:	
Physical form (per collection, per issue)	4.00
DTC (per collection, per issue)	4.00
Book entry (per collection, per issue)	2.00
Safekeeping account maintenance (per month)	10.00
Switch account/pledge:	
Physical form (per transaction)	12.00
Book entry (per transaction)	6.00
Retail-repo custodial service (per month)	30.00
SAFEKEEPING CHARGE FOR ADVANCE COLLATERAL	
Assignment	(4)
Physical delivery	(5)

[1] Direct cost pass-through from supplier.
[2] Refer to DPS—Deposit Item Transit fees.
[3] Greater of $75 or the interest on the amount of the overdraft calculated at a daily interest rate that is equal to the highest advance rate plus 3 percent.
[4] Greater of $2.00 per million or $10.00 per month.
[5] Greater of $4.00 per million or $10.00 per month.

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1988 DDA SERVICES)

Demand deposit service	Fee
Checks paid [1] (per item):	
Monthly statement:	
Items finesorted into check number orders (per item)	$0.12
Items truncated (per item)	.06
Photocopies (demand items/statements/advices) (per item)	2.50
Stop payment (per item)	8.00
Range stop payments (per item returned)	8.00
Without entry items (per item)	4.50

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DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1988 DDA SERVICES)—Continued

Demand deposit service	Fee
Deposit transfer checks (DTC) (per item)	4.00
Wire transfers:	
In (per item)	[2] 3.00
Out (per item)	[2] 4.00
Phone advice (per wire)	2.50
Interbank transfer (per transfer)	2.50
Account reconciliation service:	
Full reconciliation-magnetic tape ($25.00 min./mo) (per issue)	.0325
Full reconciliation-paper issue ($25.00 min./mo.):	
Encoded amounts (per issue)	.0475
Unencoded amounts (per issue)	.07
Partial reconciliation ($15.00 min./mo.) (per paid item)	.03
Range reconciliation ($15.00 min./mo.) (per paid item)	.03
DDA paid tape ($15.00/tape plus)	.03
Deposit processing service:	
Unencoded checks (per item)	[2].06
Encoded checks (per item)	[2].04
Foreign checks (per item)	5.00
Bond coupons (per envelope)	3.50
Deposited checks returned (per entry)	1.00
Automated clearinghouse (ACH) Service:	
Originating—$15.00 per tape plus (per item)	.07
Receiving—$100.00 settlement per month plus (per item)	.05
Settlement only services:	
Automated clearinghouse (ACH) (per month)	100.00
Currency and coin (per month)	100.00
Deposit of items at Fed (per month)	100.00
NOW (per month)	100.00
Multiple settlement services discount:	
2 services (10%)	180.00
3 services (15%)	255.00
4 services (20%)	320.00
Other settlement services:	
Treasury tax and loan (TT&L) (per entry)	3.50
Savings bonds (per entry)	3.50
Noncash collections (per entry)	3.50
Currency and coin service (per order)	3.50
Audit confirmations (per request)	10.00

[1] The Checks paid charge includes at no additional charge: monthly account maintenance, internal transfers, and special statement drops.
[2] Federal Reserve charges are reflected in these prices. Any changes in Federal Reserve prices may result in adjustments to these prices.

Notes.—
Overdrafts incur a penalty calculated at 4 percent over the current short-term variable advance rate, with a minimum charge of $50.00 per occurence.
Check printing costs are charged directly to the institution.
Special research requests of 12 or more items will be charged at $30 per manhour plus $1 per item.
Magnetic tapes sent to members and not returned to the Bank within 90 days will be billed at $12.00 per tape.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1988 DDA SERVICES)

Demand deposit account services	Per item charge
Paid items	$0.085
Magnetic tape reconciliation	.045
Advice reconciliation	.500
Fine sorting	.01
Check and money order truncation	[1]
Stop payments	6.00
Wire transfer-in	2.00
Wire transfer-in—Telephone confirmation	3.00
Wire transfer-out	5.00
Charges	.15
Credits	.15
Photocopies	1.00
Large dollar return notification	2.00
Settlement agent with Federal Reserve:	
ACH (per active month)	100.00
Treasury tax and loan (per active month)	100.00
Bond activity (per active month)	100.00
Currency and coin (per active month)	100.00
Check desposits (per active month)	200.00

[1] No charge.

Note.—IFTS Interest—Members' daily collected funds in excess of their compensating balance automatically earn IFTS interest.

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Alternative Disbursement Service

Settlement day option	Per item charge
MONEY ORDERS/DIVIDEND CHECKS	
1-Day	$0.03
2-Day	0.07
Tuesday weekly	0.13

Official Checks

Per item charge	Settlement day option	Earnings incentive[2]	
		Under 10,000 checks/month	10,000 plus checks/month
1-day guaranteed	$0.01	1.5 days	2.5 days.
1-day variable	0.01	75 percent of float balance	95 percent of float balance.
2-day guaranteed	0.03	0.25 day	0.50 day.
2-day variable	0.03	50 percent of float balance	60 percent of float balance.

[2] The earnings incentive is a monthly interest payment credited directly to the member's demand account. The interest rate is 10 basis points above the average 91-day Treasury bill rate.

Special Transfer Account

Settlement day option	Per item charge	Earnings incentive
If checks are needed to transfer member's balances to other demand accounts or to satisfy internal bookkeeping requirements, the following alternatve disbursement option is provided:		
2-day	$0.10	0

Note.—Members can pay the above DDA services fees explicitly or implicitly through a compensating balance.

Check Deposit Service

Cincinnati Operations Center	Fee	
	Unencoded	Encoded
Cincinnati City	$0.0275	$0.015
Cincinnati RCPC (Special)	.0275	.015
U. S. Treasury	.0275	.015
Cincinnati RCPC	.0475	.035
Columbus City/RCPC	.0475	.035
Louisville City/RCPC	.0475	.035
Other FRB (1-day)	.0825	.070
Other FRB (2-day)	.0925	.080

Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,001 to 200,000.
15.0 percent	200,001+0

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored items:	
Returned to Association (per item)	2.00
Automatically Redeposited	([3])
Non-cash collection service—Minimum:	
Non-cash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5,00
U.S. Treasury and Gov't Agency coupons	([4])
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	([5]).50

[3] Check deposit per item fee.

[4] No charge.
[5] $0.25 per "Cash Letter" when depositing over 100,000 items per month.

Check Deposit Service

Cleveland Operations Center	Fee	
	Unencoded	Encoded
Cleveland City/RCPC (Special)	$0.0275	$0.015
U.S. Treasury	.0275	.015
Cleveland City	.0425	.030
Cleveland RCPC	.0475	.035
Columbus City/RCPC	.0475	.035
Other FRB	.0625	.070

Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5%	100,001-200,000.
15.0%	200,001+.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored items:	
Returned to association (per item)	2.00
Automatically redeposited	([6])
Noncash collection service—Minimum:	
Noncash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
U.S. Treasury and Gov't Agency coupons	([7])
Depository transfer checks (DTC) (per item)	5.00
Cash Letter Fee (per letter)	([8]).50

[6] Check deposit per item fee.
[7] No charge.
[8] $0.25 per "Cash Letter" when depositing over 100,000 items per month.

Check Deposit Service

Nashville Operations Center	Fee	
	Unencoded	Encoded
Nashville City	0.0375	$0.025
Nashville RCPC	.0475	.035
U.S. Treasury	.0275	.015
Nashville NOW On-Us	.0275	.015
DDA On-Us	.0275	.015
Louisville RCPC [9]	.0675	.055
Other FRB	.0775	.065

[9] Louisville RCPC items deposited within a mixed cash letter by 7:00 p.m. Monday-Thursday.

Discounts	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,001 to 200,000.
15.0 percent	200,001+.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored items:	
Returned to Association (per item)	2.00
Automatically Redeposited	([10])
Noncash collection service—Minimum:	
Noncash item (per item)	5.00

	Per item charge
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
U.S. Treasury and Gov't Agency Coupons	[11]
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	[12] .50

[10] Check deposit per item fee.
[11] No charge.
[12] $.25 per "Cash Letter" when depositing over 100,000 items per month.

Currency and coin service	Fee
MEMBERS IN KENTUCKY AND OHIO	
Preparation charge:	
Currency for Members in Northern Ohio (per order)	$9.50
Currency for Member in Kentucky and Southern Ohio (per order)	8.75
Wrapped coin (per box)	2.00
Deposits of coin and currency:	
Strapped currency (per strapped deposit)	5.00
Currency (per mixed or unfilled straps)	6.00
Coin-loose (same denomination) (per bag)	2.00
Coin-loose (mixed denomination) (per bag)	4.00
Coin-wrapped (same denomination) (per bag)	4.00
Coin-wrapped (mixed denomination) (per bag)	8.00
MEMBERS IN NASHVILLE AND MEMPHIS FEDERAL RESERVE TERRITORIES	
Preparation charge:	
Currency and/or loose coin (per order)	3.00
Wrapped coin for members in the Nashville FRT (per roll)	.0375
Pick-up of Currency and Coin (per occurence)	1.00

Note.—For transportation charge, please contact the Bank for specific fee relative to the member's area. ATM fit money for Northern Ohio is available at a slightly higher fee.

Safekeeping service	Fee
Receive or deliver (per transaction):	
Book entry	$15.00
Physical	35.00
Redemption (per transaction):	
Book entry	15.00
Physical	30.00
Interest coupons (per transaction)	4.00
Pledges (per transaction):	
Book Entry	15.00
Physical	25.00
Account Maintenance (per month)	20.00
Safekeeping account maintenance (per month)	25.00
Retail repurchase account maintenance (per month)	15.00
Contemporaneous reserve settlement (per month)	50.00
LOCKBOX SERVICES	
OCR standard item fee	$0.15
Includes:	
Courier pickup at lockbox	
Microfilming of check and document	
Transmission to service bureau	
Management reports	
Check deposit fee (encoding & clearing)	
Certain exception handling	
ADDITIONAL SERVICES	
Lockbox rental	[13]
Photocopies (per copy)	1.00
Hot file update (add or delete) (per update)	.50
Hot file update (magnetic tape) (per tape)	10.00
Courier/postage	[15]
Dishonored check item:	
a. Returned to association (per item)	2.00
b. Automatically redeposited (per item)	[14]
Reject or unmatched item	[15]
Other desired services	[16]

[13] Actual outgoing.
[14] The per item check processing fee for the member's region.
[15] No fee.
[16] Cost basis.

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DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1988 DDA SERVICES)

Cash management service	Paid check charge	Advices	
		Paper	Tape
Monthly Transaction Volume:			
First 3,750	$0.13	$0.05	$0.025
Next 9,000	.11	.04	.02
Next 12,250	.09	.04	.02
Next 25,000	.08	.03	.015
All over 50,000	.07	.02	.01
Stop Payments (per stop), $6.00	Photocopies (per copy), $2.00		
Maintenance Fee (per month), 25.00	Fine Sort Numeric Sequence (per item), 016		

Collected Balances will earn at an interest rate that approximates the 91 day Treasury Bill rate

Other services	Michigan	Indiana
Transit Item Deposit Service		
Pre-encoded—		
Government PMO's, NOW Intercept	$0.014	
City Items	.022	$0.022
RCPC Items	.022	.022
Other District Items	.053	.055
Unencoded—		
City Items	.093	.083
RCPC Items	.093	.083
O.D. Items	.093	.083
Transit Encoding Adjustment	1.00	.03
Return Items	1.00	1.25
Coupons (per envelope)	3.20	5.25
Courier Service Fees		
(Per location, per day, per pick-up)	(1)	(2)
Indiana-Marion County		5.00
Collections	5.00	5.00
Food Stamp Adjustment Fee	2.50	
Foreign Items	30	
Foreign Item Adjustment Fee	.75	
Lockbox Services:		
Per Deposit Item Received	.263	.263
Truncation Deposit Items	.0283	.0283
Coin and Currency Program:		
Metropolitan areas of Indianapolis and Detroit—Per delivery by armored truck service	25.00	28.00
Outside Metropolitan areas—		
Fees vary depending upon the distances involved Rolled Coin (per roll)	.035	.035
	Fee	
Wire Transfer Services:		
In (per transfer) Domestic	2.00	
Out (per transfer) Domestic	4.00	
International Wires	17.00	
Depository Transfer Checks: (per check)	2.00	
Automated Clearinghouse (ACH) Service:		
Per Tape	7.00	
Per Item (Originator)	.02	
Settlement Only	50.00	
Listing (paper)	7.00	
MACHA	(3)	
Treasury Tax and Loan Settlement Service.		
Per Transaction	2.00	
Charge Card Transaction		
Per Transaction	1.50	

[1] Michigan courier fees vary with location and time of pick-up.
[2] Indiana courier fees, outside of Marion County, vary depending upon distance.
[3] The higher of $2.00 or actual costs.

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1988 DDA SERVICES)

Services	Fee		
Monthly volume	Non-truncated accounts		Truncated accounts
A. *Demand Accounts*:			
Items Processed:			
0 to 7,500	$0.110		$0.090
7,501 to 10,000	.100		.080
10,001 to 12,500	.090		.070
12,501 to 15,000	.080		.060
15,001 to 25,000	.075		.055
25,001 and over	.070		.050
Alternative Demand Disbursement Service:			
800 Series—Next Day Remittance		(1)	
900 Series—Three Day Remittance (per item issued)		$0.050	
Ancillary Services Fees:			
Special Sorts (per item)		.0075	
Recons:			
Non-Encoded Items (per item)		.055	
Encoded Items (per item)		.020	
Magnetic Tape Items (per item)		.020	
Stop Payments (per stop placed)		7.00	
Photocopies (per item)		3.00	
Account Maintenance (per account per month)		10.00	
Additional Statements (per statement)		5.00	
Request for Money Order Forms		(2)	
Postage/Courier		(2)	
ACH Services		(2)	
Dial-A-Statement:			
Per month or		25.00	
Per year or		250.00	
Per statement		1.00	
B. *Deposit Processing*:			
Checks Deposit Drawn on:			
Federal Home Loan Bank of Chicago			
FHLB Intercept Customers			
Postal Money Orders		.015	
U.S. Treasury Check		.015	
City of Chicago Financial Institutions:			
0–10,000		.030	
10,001–25,000		.028	
25,001 and over		.026	
Non-Federal Reserve Chicago RCPC (clearinghouse items):			
0–10,000		.036	
10,001–25,000		.034	
25,001 and over		.032	
Chicago RCPC Financial Institutions (Routing Numbers 0711, 0712, 0719, 2711, 2712, 2719):			
0–10,000		.048	
10,001–25,000		.046	
25,001 and over		.044	
Transit Items—Other Federal Reserve District Financial Institutions:			
0–10,000		.075	
10,001–25,000		.073	
25,001 and over		.071	
Selected High Dollar Endpoints		.035	
Ancillary Service Fees:			
Check Encoding (per item)		.035	
Return Items:			
Re-Deposits		(3)	
Charge Backs (per item)		1.00	
Noncash Collection Items:			
Coupons (per envelope)		2.50	
Foreign Items		(4)	
Food Stamps Deposited (per item)		.02	
Coin and Currency Orders (per order/per branch)		2.00	
Visa/Mastercard Deposits (per envelope)		2.00	

Minneapolis Region

	Encoded Items		Non-encoded Items
City and Local	$0.0275		$0.0500
Regional RCPC	.0450		.0675
Regional Premium	.0575		.0800
County	.0525		.0750
Transit	.0875		.1100

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1988 DDA SERVICES)—Continued

Services	Fee		
Monthly volume	Non-truncated accounts		Truncated accounts
St. Louis Region			
	Encoded items		Non-encoded items
City and Local	0.0345		$0.0570
Regional RCPC	.0375		.0600
Regional Premium	.0425		.0650
County	.0400		.0625
Transit	.0745		.0970
C. *Money Transfers*:			
Wire Transfers:			
In		$3.00	
Repetitive Wires		4.00	
Out		5.00	
Telephone Advice		2.00	
Quick Deposit Drafts		4.00	
D. *Safekeeping*:			
Receipt or Delivery:			
Book Entry Item		30.00	
Physical Item		40.00	
Coupon Collection		5.00	
Collection at Maturity		([5])	
Annual Maintenance (billed quarterly):			
Par Amount Under $5		150.00	
Par Amount $5 million or Over (per million)		([5])	
Monthly Reports		([5])	
Registration Fees		([5])	
Transfer to or from Pledge Status		60.00	
Maintenance of Collateral for FHLB Advances:			
Place Note and Mortgage in Vault:			
Deliver with listing only		1.00	
Deliver with listing and computer tape		.75	
Remove Note and Mortgage from Vault		.75	
Annual Maintenance Charge (per quarter)		.30	

[1] No charge.
[2] Actual cost.
[3] No charge.
[4] Actual cost.
[5] No charge.
[6] Actual cost.

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1988 DDA SERVICES)

DDA Service Activity	Fee
Account Maintenance	$6.00
Account Reconciliation	6.00
Check Printing Costs	([1])
Drafts Paid:	
Truncated	.045
Non-Truncated	.055
Controlled Disbursement	.060
Stop Payments	7.00
Ledger Credits	.30
Ledger Debits	.20
Bankwires in:	
Without Phone Advice	2.50
With Phone Advice	3.50
Bankwires Out:	
Without Phone Advice	4.00
With Phone Advice	6.00
Special Cut-off Statements	3.00
Account Reconciliation Tape Issues	.02
Issue Encoding	.045
Pre-encoded Issues	.030
ACH Transactions:	
Fed Charges	([1])
Settlement Charges	.050

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1988 DDA SERVICES)—Continued

DDA Service Activity	Fee
Miscellaneous Charges/Special Processing	(1)
Coupons Deposited (per envelope)	3.00
Collections:	
Foreign Checks	3.00
Domestic Checks	3.00
Proof of deposit service	
Entry Fee for all items	.003
Re-enter Rejects	.04
Encoding Fee (Des Moines, Minneapolis & St. Louis)	.0225
Encoding Fee (Kansas City)	.025
Data Transmission (per transmission)	1.50
Fine Sort "on-us" items	.005
Printed Reports—Standard (per report)	1.00
plus (per page)	.05
Optional	(2)
plus (per page)	.05
Minimum monthly billing	40.00
Facsimile Transaction (per transmission)	1.50
Account Transaction Info. (per call)	1.00
Miscellaneous Charges/Special Processing	(3)
Food Stamps Deposited (Des Moines, Kansas City, and St. Louis)	.02
Food Stamps Deposited (Minneapolis)	.04

	Minneapolis	Des Moines	St. Louis	Kansas City
Deposited Item Charges:				
Local	$0.020	$0.025	$0.027	$0.019
Regional	.0375	.035	.030	.....
Regional Premium	.050	.04	.035	.....
Country	.045	.....	.0325	.029
Out of State	.080	.0525	.067	.079
Regional Items FRB Select	.....	.....	.....	.067

DEPOSIT PROCESSING FEE SCHEDULE

	Encoded	Unencoded
Check Clearing Fees:		
a. Des Moines Center		
Local	$0.025	$0.0475
Regional	.035	.0575
Regional—Premium	.040	.0625
Transit	.0525	.075
b. Minneapolis Center		
Local	.020	.0425
Regional	.0375	.060
Regional—Premium	.050	.0725
Country	.045	.0675
Transit	.080	.1025
c. St. Louis Center		
Local	.027	.0495
Regional	.030	.0525
Regional—Premium	.035	.0575
Country	.0325	.055
Transit	.067	.0895

	Fee
Other fees at the Des Moines, Minneapolis, and St. Louis Regional Processing Centers:	
Return Items	$0.75
Food Coupons—Des Moines or St. Louis	.02
Food Coupons—Minneapolis	.04
Large Dollar Notification (Reg. J) (per item)	3.00
Return Items—Special Handling:	
Subtotal by office	1.50
Individual Entries (per entry)	.50
Telephone Notification Less Than $2,500 (per item)	.60
Balance/Availability Reporting (per month)	30.00
Endpoint Analysis (per day)	20.00
Non-Processable Items (Pre-Encoded) (per item)	.15
Photocopies (per copy)	2.75

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	Fee
Research (per hour)	20.00
Currency/Coin Orders—St. Louis	4.00
Currency/Coin Orders—Des Moines or Minneapolis	2.00
Foreign Currency Deposits (per deposit)	5.00
Foreign Currency Orders (per order)	2.50
Per Cash Deposit (Credit Tickets):	
Standard Packaging	.50
Non-Standard Packaging	10.00
Special Cash Orders/Deposits	(*)
Federal Reserve Bank Settlement Entries (per entry)	.50
Package Sort:	
Local	0.018
Regional	.023
Country	.027
Transit	.063

Deposit Processing Fee Schedule—Kansas City Center

	Less than 20,000	20,001–50,000	50,001–100,000	100,001–200,000	Greater than 200,001
Deposit Item Charges:					
Local Items—1010, 3010, 0000, Select 2865, 3012	$0.019	$0.019	$0.017	$0.017	$0.017
Country Items 1011, 1012, 1019, 0865, 2865 Select 2815, 2810	.029	.029	.028	.028	.028
Regional Items—Other FRB Select	.067	.055	.055	.052	.047
Transit Items—Other FRB	.079	.075	.069	.067	.063
Special Package Sort of Transit Items Only ($2.00 per package plus)	.085	.085	.085	.079	.079
Encoding Charge	.025	.025	.0225	.0225	.020
Return Items	.075	.075	.075	.065	.065
Food Coupons	.0225	.0225	.0225	.0225	.0225

Statement Rendering Service	Fee
Statement Per Month—Non-Truncated:	
First 5,000	$0.18
Next 5,000	.165
Over 10,000	.15
Statement Per Month—Truncated	.05
Statement Inserts	.005
Surcharge for One Cycle Per Month (percentage)	10
Fine sort counter items for statement insertion	.005
Sort counter items without MICR	.02
Note: Associations that have changed Data Processors and have more than one MICR account number corresponding to one statement account number are subject to additional fees.	
Lockbox Service	
1. Basic Service (5):	
Mortgage	.12–.20
Consumer	.09–.13
Retail-Commercial	.07–.15
Wholesale-Commercial	.15–.45
Credit Card	.07–.11
Data Capture and Transit	.015–.030
2. Item Preparation Charge; Data Entry	.05
3. Microfilm Remittances and/or Checks	.01
4. Credit/Posting Adjustment Advise	.25
5. Photocopies:	
Recurring	.05
On Request	.25
6. Telecopies:	
Recurring	.85
On Request	1.50
7. Microfilm Copies	2.75
8. Payment Discount	.25
9. Telephone Inquiry or Notification	1.00
10. Foreign Item Processing:	
U.S. Dollars	.75
Foreign Currency	3.50
11. Process Cash Payment	1.00
12. Wire Transfer of Funds	6.50
13. Daily Float Summary (monthly charge)	50.00
14. Courier/Postage	(6)
15. Storage (Envelopes and remittance material retained unsorted for 14 days and destroyed)	(7)
16. Minimum Monthly Billing (excluding actual charges)	175.00
17. New Account Set-up (8)	50.00–500.00
18. Special Services	(9)

Statement Rendering Service	Fee
Automated Clearing House ("ACH") and Electronic Funds Transfer ("EFT") Services	
ACH Pass-Through (Receiving):	
1. Pick up ACH tape from local FRB and transmit/deliver to data processor (per tape)	$1.00
(Plus per item)	.01
2. Process multiple tapes from FRB and transmit/deliver one consolidated tape to data processor (per tape)	1.00
(Plus per item)	.01
3. Receive properly formatted ACH transmission from data processor and deliver to local FRB (per tape)	1.00
(Plus per item)	.01
4. Produce system output tape (without processing any input) (per tape)	1.00
ACH Origination File:	
Receive properly formatted ACH data entry tape from data processor for entry into Federal Reserve ACH system (per tape)	5.00
(Plus per item)	.05
Reformat ACH File for Transmission:	
Receive ACH tape from local FRB or data processor and reformat for data transmission (i.e., change blocking function) (per tape—additional charge)	1.50
ACH File Creation:	
Receive unformatted source data from financial institution or data processor, create ACH file and enter into Federal Reserve ACH system. (Includes data conversion; i.e., keypunching) (per tape)	5.00
(Plus per item)	.10
Surcharges For Next-Day Settlement:	
(Credits & debits originated) (per item)	.06
Warehouse entries for future settlement (per item)	.0025
Telephone advice (per day)	2.00
Messenger/delivery	([10])
Miscellaneous	([10])
Visa/Mastercard Processing Service	
Monthly Settlement (Merchant Program, Cardholder Program, or both)	55.00
Sales Drafts and Cash Advance Tickets Deposited	.01
Adjustments, Returns, Corrections, Income Distributions (All Entries)	.50
Note: Fees will be charged through the members' account analysis.	

[1] Actual cost.
[2] At a quoted rate.
[3] Actual cost.
[4] Standard order fee plus actual charges.
[5] Open envelope; screen per instructions; and verify payee, signature and amount. Record date on check, remittance, envelope or correspondence as requested. Balance checks to remittances and post credits to account specified. A specific fee is negotiated in the ranges shown above depending upon the number and degree of difficulty of task requirements of individual members.
[6] Actual cost.
[7] Beyond 14 days price negotiated.
[8] A one time charge.
[9] Price negotiated.
[10] Actual/negotiated rate.

District 9.—Federal Home Loan Bank of Dallas (1988 DDA Services)

Demand Deposit Account Service	Fee
Checks/money orders paid:	
Checks cycled (per item)	$.15
Checks truncated (per item)	$.13
Reconciliation of check/money order:	
Magnetic tape (per item)	.02
MICR (per item)	.07
Fine sort (per item)	.006
Credits/adjustments (per item)	([1])
Wire transfer:	
In	2.00
Out	4.00
Stop payments (per item)	2.50
Exception item return (per item)	2.50
Depository transfer checks (per item)	4.00
Photocopy (per item)	4.00
Account maintenance (for accounts with more than 1,000 transactions per month) (per association)	25.00
Voids	([1])
Credits/adjustments	([1])
Account activity reporting	([2])
Checks/money order forms (above standard check)	([3])
Paid items mailed to association	([3])
Overdrafts (per daily occurrence and interest at special variable advance rate plus 3%)	50.00

[1] No charge.
[2] Toll free by telephone.
[3] Actual costs.

Deposit Processing Fees

Item Processing Centers

	Dallas Texas (except S.E.), N. Louisiana, New Mexico	New Orleans, S. Louisiana, S. Mississippi	Little Rock, Arkansas, N. Mississippi	VIA Memphis FED	Houston, Southeast Texas
Deposit items:					
Postal money orders, U.S. Treasury checks (per item)	$0.022	$0.025	$0.025	$0.03	$0.025
Local items (per item)	.022	.025	.025	.03	.025
RCPC items (per item)	.026	.025	.035	.03	.040
Other Fed items (per item)	.065	.060	.0625	.07	.065
Encoding charge (per item)	.025	.025	.020	.025	.025
Returned items (per item)	1.50	1.50	1.50	1.50	1.50
Cash letter fee (per item)				1.75	
Non-cash collection services:					
Security coupons (per envelop)	2.75	2.50	2.50	2.50	2.50
Food stamps and coupons (per deposit)	1.50	1.50	1.50	1.50	1.50
Foreign items (per item)	6.50	6.50	2.50	2.50	6.50
All others (Drafts, etc.) (per item)	2.75	2.50	2.50	2.50	2.75

Coin and Currency Services Fees

Preparation and Handling Fees [4]:	
Delivery ($5.00 minimum):	
Coin (per roll)	$.10
Currency (per strap)	.50
Container:	
Dallas, Houston, or San Antonio City	.50
All others, Texas, N. Louisiana and New Mexico	.32
Deposit [4] ($5.00 minimum):	
Coin (per bag)	.75
Currency (per strap)	.65
Emergency orders (additional per hour)	75.00
Security charge (per $1000 delivered or deposited)	.18
Transportation Charges (quoted per roundtrip for delivery, deposit, or both):	
Dallas, El Paso, Houston or San Antonio delivery (per shipment)	15.00
All other in Texas ($12.00 per stop or $22.00 per single) (plus per mile between Federal reserve city and delivery point)	.15
Little Rock Center deliveries	[5]
Arkansas or Northrn Mississippi deliveries	[5]
New Orleans city delivery (one-way) (per shipment)	15.00
All other in Louisiana (per round trip from New Orleans based on Louisiana tariffs)	40.00–75.00
Southern Mississippi	[5]
Registered mail	[5]
Delay of armored carrier (per fifteen (15) minute interval or fraction thereof)	18.00

[4] Customers in Northern Louisiana should call for quote.
[5] Call FHLBank for price quote.
[6] Actual postage cost.

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1988 DDA SERVICES)

DDA service	Fee
Demand deposit accounting:	
Full service demand plus accounting (includes Automatic Branch control reconciliation, reporting of full account activity) (per item)	
Cycle	$0.15
Truncated	.12
Basic demand plus accounting (standard summary statement, must be able to process magnetic tapes) (per item)	
Cycle	.11
Truncated	.08
Large item return notification ($2,500 and over) (per item)	3.00
Treasury:	
Wire transfers:	
Incoming (per item)	$2.00
Outgoing (per item)	4.00
Pass-through reserves (per month)	25.00
Lockbox processing	
Items per month	Fee per item
1 to 50,000	$0.15
50,001 to 80,000	.145
80,001 to 120,000	.14

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1988 DDA SERVICES)—Continued

DDA service	Fee
120,001 to 160,000	.135
160,001 to over	.13
Monthly processing fee	100.00
Photocopy retrieval (per item)	2.00
Stop payment processing	(1)
Exception item review/processing (each)	.07
Safekeeping charges:	
Interest payment fees:	
Interest payments other than mortgage-backed principal and interest payments	(2)
Mortgage-backed principal and interest monthly payments (per advice)	2.50
Safekeeping account maintenance fee (per month)	(3)
Segregation and pledge activity fees:	
Segregation Account Maintenance (per association-per month)	(3)
Joint custody, pledges to third party, pledges to the FHLB as collateral for advances, other pledges and segregation (per receipt and release per security)	10.00
Transaction fees:	
Federal reserve book-entry eligible securites including treasuries, agencies, FNMA, FHLMC mortgage-backed certificates (per receipt and redemption)	2.50
MBSCC depository Eligible GNMA mortgage-backed certificates (per receipt and redemption)	10.00
Physical securities; DTC eligible securities and book-entry New York Federal Reserve eligible securities (per receipt and redemption)	40.00

	Kansas City	Oklahoma City	Topeka	Omaha	Wichita	Denver
	Enc/Unenc	Enc/Unenc	Enc/Unenc	Enc/Unenc	Enc/Unenc	Enc/Unenc
Processing fees:						
Local	$0.025/.05	$0.025/.038	$0.02/.033	$0.025/.038	$0.2/.04	$0.015/.033
RCPC	.035/.06	.038/.051	.039/.052	.038/.051	.025/.045	.023/.041
Country	.035/.06	.038/.051	.039/.052	.038/.051	.025/.045	.029/.047
Transit	.085/.11	.067/.08	.067/.08	.067/.08	.075/.095	.067/.085

Returns (per item)	$0.80
Collections (per item plus subsequent handling fees)	2.50
Coin and currency (per phone call)	2.50
Courier and armored car costs	(4)
Research & mass photocopy requests ($12.00 per hour per item)	.15
Statement matching:	
Truncated statement	.05
Cycled statement (per check up to 50 checks plus .01 per check thereafter)	.15
Insert	.01

[1] Negotiable.
[2] No charge.
[3] A monthly charge of 1/12 of 1/100 of 1% of par balance of the first $300 million of portfolios. A monthly charge of 1/12 of 1/200 of 1% on the balance over $300 million. Fee is calculated on the month-end par balance of each account. The fee is charged on the last day of the month.
[4] Actual cost.
NOTES: FHLBank provides postage at cost and associations will provide latex envelopes. FHLBank provides deposit tickets at no charge and has no reserve requirements for DDA account balances

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1988 DDA SERVICES)

Depository services	Fee
Deposit processing services:	
Depository service charges (minimum charge)	$300.00
Deposit processing:	
5:30 p.m. Deposit deadline:	
Encoded items deposited [1]	
Mixed (per item)	.105
Group sort (per item)	.15
Encoding fee (per item)	.02
8:30 p.m. Deposit deadline:	
Encoded items deposited:	
Twelve district (per item)	.05
Out of region (per item)	.085

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1988 DDA SERVICES)—Continued

Depository services	Fee
Encoding fee (per item)	.015
10:30 p.m. Deposit deadline:	
Encoded items deposited:	
Twelve district (per item)	.05
Out of region (per item)	.085
Encoding fee (per item	0.02
Other charges:	
Deposit ticket (per ticket)	1.10
Commercial deposits (per ticket)	1.10
Returned items (per item)	1.10
End-Point deposit analyses reports (per month)	30.00
Monthly account maintenance (per account)	15.00
Collection services:	
Clean collection (per item)	7.50
Documentary collection (per item)	15.00
Savings bonds (per transmittal)	7.50
Coupon collection (per envelope)	15.00
Foregin drafts [2]	
Foreign collection (per item)	20.00
Canadian cash letter (per item)	1.00
Returned items (per item)	7.50
Food coupons (per item)	.15

[1] A mixed presentment is defined as a cash letter for which 33 percent of the total number of items repreeents end points other than the five direct send banks. If desired, the nondirect send portion of the group can be presented on a separate cash letter for processing against a more favorably priced deadline (i.e., 8:30). This definition of "mixed" presentment will cause the deposits of two institutions to be reclassified to the higher priced "group" presentment for the 5:30 deadline.
[2] All Canadian items over $500 and all non-Canadian foreign items must be submitted as a foreign collection.

Services	Fee
Coin and currency services:	
Furnished ($3.00 per order, plus):	
Currency (per $1,000)	$0.85
Coin (per roll)	.07
Deposited ($1.50 per deposit plus):	
Currency (loose, per $1,000)	.90
Coin ordered (per roll)	.09
Other charges:	
Late cash order (per order)	$25.00
Adjustments over $5.00 (per adjustment)	5.00
Coordination of transportation (per branch)	12.00
Basic account services:	
Monthly account maintenance:	
Regular accounts (per account)	15.00
Zero balance accounts (per account)	30.00
Checks paid (per item)	0.115
Checks deposited (per item)	1.00
Items returned (per item)	1.00
Stop payments (per item)	7.50
Daily statements	[1]
Out-of-cycle	5.00
Photocopies (per copy)	3.00
ACH debits/credits (per settlement transaction)	0.25
Incoming wires (per wire)	7.00
Photocopies (per wire)	3.00
Outgoing wires (per wire)	10.00
Immediate advice (per wire)	10.00
Book transfers (per transaction)	6.00
Service wire (per wire)	5.00
Passthrough reserve services (per month)	100.00
Overdraft charges (minimum charge)	[2]
Special research (per hour)	30.00
Account reconcilement services:	
Full reconciliation	
Monthly account maintenance standard (per account)	50.00
Non-standard (per account	75.00
Checks paid (per item)	0.115
Truncated checks (per item)	0.065
Issue input method:	
MICR (per item)	0.115
Tape (per item)	0.055
Transmission input (per transmission)	5.00
Partial reconciliation:	
Monthly account maintenane (per account)	30.00
Checks paid (per item)	0.115
Truncated checks (per item)	0.065
Miscellaneous services:	
Fine sort (per item)	0.03

Services	Fee
Microfilm (per roll)	10.00
Magnetic tape output (paid checks) (per tape, plus)	25.00
(Per item)	.02
Data transmission (per transmission, plus)	5.00
(Per item)	0.025
Stop payment (per item)	7.50
Range stops, less than 50 (per consecutive range)	25.00
Range stops, greater than 50 (per consecutive range)	50.00
Microfiche reports (per fiche)	3.00
Audit list of issues (per list)	1.00
Mortgage safekeeping services:	
FHLB collateral:	
Deposits (per loan)	3.00
Withdrawals (per loan)	4.00
Reviews (per loan)	3.50
Local collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	2.25
Reviews (per loan)	2.50
State collateral:	
Deposits (per loan)	2.25
withdrawals (per loan)	2.25
Reviews (per loan)	2.50
Other collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	2.25
Reviews (per loan)	2.50
Free:	
Deposits (per loan)	2.00
Withdrawals (per loan)	2.00
Reviews (per loan)	2.50
Custody fees:	
FHLB (per month per loan)	.30
Local (per month per loan)	.20
State (per month per loan)	.20
Other (per month per loan)	.15
Free (per month per loan)	.15
Account reconcilement (per quarter for local agency)	150.00
Minimum transaction fee	50.00
Other services	[3]
Book entry:	
Deposits (per transaction)	15.00
Withdrawals (per transaction)	15.00
Maturities (per transaction)	15.00
Definitive (Physical):	
Deposits (per transaction)	50.00
Withdrawals (per transaction)	50.00
Maturities (per transaction)	50.00
Pledging of securities:	
FHLB book entry:	
Deposits (per transaction)	30.00
Withdrawals (per transaction)	30.00
FHLB definitive:	
Deposits (per transaction)	30.00
Withdrawals (per transaction)	30.00
Local book entry:	
Deposits (per transaction)	27.50
Withdrawals (per transaction)	27.50
Local definitive:	
Deposits (per transaction)	27.50
Withdrawals (per transaction)	27.50
State and repo book entry:	
Deposits (per transaction)	25.00
Withdrawals (per transaction)	25.00
State and repo definitive:	
Deposits (per transaction)	25.00
Withdrawals (per transaction)	25.00
Other pledged book entry:	
Deposits (per transaction)	40.00
Withdrawals (per transaction)	25.00
Other pledged definitive:	
Deposits (per transaction)	40.00
Withdrawals (per transaction)	25.00
Custody fees:	
Book entry (per month per issue)	40.00
Definitive (per month per issue)	25.00
Registration of certificates	[4]
Special handling	[4]
Local report filing (per quarter)	150.00

Services	Fee
Lockbox services:	
Coupon processing:	
Coupons (per item)	.18
Exception coupon (per item)	.23
Non-processable documents	.23
Check processing on the next day (per check)	.05
Check processing on the same day (per check)	.085
Return item processing:	
Redeposit (per item)	1.00
Return (per item)	1.00
Account processing (per month)	15.00

[1] No charge.
[2] Bank's Overnight Cash Needs Rate plus 2% (rate published by Bank's Credit Services Department).
[3] At cost.
[4] At cost plus 20%.

District 12.—Federal Home Loan Bank of Seattle (1988 DDA Services)

Service	Fee
Official checks, money orders and cashier's checks:	
Monthly account maintenance (per account)	$7.00
Accounting funding:	
ACH cash concentration service (per transfer)	1.00
Wire transfers:	
One in and one out each day	(1)
Additional incoming wires (per wire)	2.00
Additional outgoing wires (per wire)	3.00
International wires (per wire)	22.50
Customer wires (per wire)	3.00
Mail-in deposits (per deposit)	.25
Inter-bank account transfers	(1)
Paid items:	
CheckOne account (per item)	.0775
CheckOne-plus account ($25.00 per tape, plus) (per item)	.0775
MasterOne account, mag tape input (per item)	.085
MasterOne account, check copy input (per item)	.105
Substandard MICR item manual posting (per item)	.25
Stop payments:	
Prior to 2:30 pm PST deadline (per stop)	5.00
After 2:30 pm PST deadline (per stop)	7.00
Photocopy/research requests (per item)	1.00
Monthly account reconciliation (per account)	4.50
Microfiche statements (per account)	2.50
Large dollar verifications:	
$100,000 endorsement verification	(1)
$100,000 signature verification	(1)
Miscellaneous and out of pocket expenses	(2)
Securities safekeeping fee schedule:	
Monthly account maintenance (per account)	15.00
Monthly custody:	
Book entry (per security)	1.00
Physical securities, including MBSCC (per security)	2.25
Eurodollar (per security per $1,000 of value)	.05
Receipt/delivery/redemption:	
Book entry (per security)	10.50
Physical securities, including MBSCC (per security)	22.00
Eurodollar (per security)	45.00
Account switch:	
Book-entry, between regular safekeeping accounts (per switch)	10.50
Book entry, between regular safekeeping account and a collateral account (per switch)	15.00
Physical, including MBSCC securities, between regular safekeeping accounts (per switch)	22.00
Physical, including MBSCC securities, between regular safekeeping account and a collateral account (per switch)	25.00
Eurodollar, between safekeeping accounts (per switch)	40.00
Eurodollar, between safekeeping and collateral accounts (per switch)	45.00
Income collection:	
Principal and interest payments (P&I) (per pool)	6.50
Other income collections (per security)	2.00
Corporate reorganizations (per reorganization)	50.00
Audit verifications (per request)	8.00
Audit verifications (per request)	8.00
Miscellaneous and out-of-pocket expenses shipping, registration, etc	(2)
Pledged Securities (collateral) services fee schedule:	
Monthly account maintenance (per account)	30.00

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1988 DDA SERVICES)—Continued

Service	Fee
Monthly custody:	
Book entry (per security)	1.75
Physical, including MBSCC securities (per security)	2.75
Eurodollar (per security per $1,000 of value)	.05
Receipt/delivery/redemption	
Book entry (per security)	15.00
Physical, including MBSCC securities (per security)	25.00
Eurodollar (per security)	50.00
Account switch:	
Book-entry, between a collateral account and a regular safekeeping account (per switch)	15.00
Book-entry, between a collateral accounts (per switch)	18.00
Definitive, between a collateral account and a regular safekeeping account (per switch)	25.00
Definitive, between a collateral accounts (per switch)	28.00
Eurodollar, between collateral and safekeeping accounts (per switch)	45.00
Eurodollar, between collateral accounts (per switch)	50.00
Income collection:	
Principal and interest payments (P&I) (per pool)	6.00
Other income collections (per security)	2.00
Corporate reorganizations (per reorganization)	50.00
Audit verifications (per request)	8.00
Miscellaneous and out-of-pocket expenses shipping, registration, etc	(4)
Settlement services fee schedule:	
ACH settlement (per entry)	.25
Contemporaneous reserve settlement (per month)	45.00
NOW account settlement (per month)	165.00
Federal reserve settlement (per month)	165.00
Mortgage custody services:	
GNMA pools schedule of fees:	
Mortgage file review (per file)	2.50
Additions to file (per file)	2.50
Withdrawals of file (per file)	3.00
Recertification (per file with a $25 minimum per pool)	1.00
Annual file maintenance (per file with a $150 annual minimum)	1.00
Audit or review of file (per file)	2.50
Miscellaneous and out-of-pocket expenses: postage, courier, etc.	(5)

[1] No charge.
[2] As required.
[3] As required
[4] As required
[5] As required.

Note.—Prices may vary in some circumstances. For additional information, contact the Correspondent Services Marketing Department.

NOTES:

(1) The above fees assume:
—use of standard GNMA Custodial Agreement.
—all files received are in good order.
—no additional duties are to be performed by FHLB outside of those listed above.
(2) All out-of-pocket expenses, such as postage and courier fees, are charged on a cost pass-thru basis.
(3) The above fees do not apply to the custody of mortgages pledged as collateral to the FHLB of advances under the "Advances Agreement, Pledge Agreement and Security Agreement".
(4) Individual quotes will be given on all private placements. Prices may vary in some circumstances.
(5) For additional information, contact the Correspondent Services Marketing Department.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-29116 Filed 12-19-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Bank Maryland Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 9, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank Maryland Corp.*, Towson, Maryland; to acquire 100 percent of the voting shares of Bank of Maryland—Carroll County, in organization, Westminster, Maryland, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Alabama National Bancorporation*, Shoal Greek, Alabama; to acquire 98.14

percent of the voting shares of Bank of Alabama, Fultondale, Alabama.

2. *FBT Bancshares, Inc.*, Fayetteville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank & Trust Company, Fayetteville, Georgia.

3. *First Commercial Bancshares, Inc.*, Jasper, Alabama; to acquire 100 percent of the voting shares of Sterling Bank, Montgomery, Alabama, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chandlerville Bancshares*, Chandlerville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank of Chandlerville, Chandlerville, Illinois.

2. *Marshall & Ilsely Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of M & I Greater Waukesha Bank, Pewaukee, Wisconsin, a *de novo* bank.

Board of Governors of the Federal Reserve System, December 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29127 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks, Inc.; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent and To Engage in Full-Service Brokerage for Institutional and Retail Customers

Barnett Banks, Inc., Jacksonville, Florida ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through Barnett Brokerage Service, Inc., West Palm Beach, Florida ("Company"), in the activities of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1–4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to engage through Company in the offering of securities brokerage services and investment advisory services to retail and institutional customers. The Board has previously approved the provision of these services in *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988). *See also Signet Banking Corporation*, 75 Federal Reserve Bulletin (Order dated November 28, 1988).

In addition, Applicant has applied to underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)), and to provide investment or financial advice as permitted by § 225.25(b)(4) of Regulation Y (12 CFR 225.25(b)(4)).

Company would conduct the proposed activities on a nationwide basis. Company is currently authorized under section 4(c)(8) of the BHC Act to provide discount securities brokerage services.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *First Chicago Corporation*, 74 Federal Reserve Bulletin 706 (1988). However, Applicant has requested one modification of the limitations set forth in previous Board Orders. Applicant has committed that all underwriting activities of Company will be conducted in offices separate from those of its affiliated banks, but requests that Company be permitted to retain its securities brokerages offices currently located in the offices of Applicant's banking affiliates. Applicant states that these offices are clearly identified, distinct and separate from the banks' functional areas.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Barnett Bank of Jacksonville, N.A., Jacksonville, Florida, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of Atlanta.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 14, 1989.

Board of Governors of the Federal Reserve System December 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29135 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in action on notices are set forth in paragraph 7 of the act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comment must be received not later than January 3, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Frederick M. Haynes*, Englewood, Colorado; Herbert H. Maruyama, Lakewood, Colorado; and Richard W. Newman, Englewood, Colorado; to each acquire and additional 13.25 percent of the voting shares of Frontier Bancorporation of Denver, Inc., Denver, Colorado, and thereby indirectly acquire Frontier Bank of Denver, Denver, Colorado.

BEST COPY AVAILABLE

VOL 53 ISS 244 DE 20 1988 UMI

Board of Governors of the Federal Reserve System, December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29132 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Albert D. Johnson* and Vernon L. Johnson; to acquire collectively 33.3 percent of the voting shares of Walhalla Bank Holding Company, Walhalla, North Dakota, and thereby indirectly acquire Walhalla State Bank, and Langdon Bank Holding Company, Langdon, North Dakota, and thereby indirectly acquire First State Bank of Langdon, Langdon, North Dakota.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Carl Skarphol*, Souris, North Dakota; to acquire 3.89 percent of the voting shares of State Bank of Bottineau Holding Company, Bottineau, North Dakota, and thereby indirectly acquire State Bank of Bottineau, Bottineau, North Dakota.

Board of Governors of the Federal Reserve System, December 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29133 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

FINACORP, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 4, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Finacorp, Inc.*, Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Naples, Naples, Florida, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group*, Peoria, Illinois; to acquire through PMI Acquisition Corporation, 100 percent of the voting shares of Peoples Mid-Illinois Corporation, Bloomington, Illinois, and thereby indirectly acquire Peoples Bank Bloomington, Illinois. In connection with this application, PMI Acquisition Corporation, Peoria, Illinois, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Mid-Illinois Corporation, Bloomington, Illinois, and thereby indirectly acquire Peoples Bank, Bloomington, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to acquire 100 percent of the voting shares of The First National Bank of Harrisburg, Harrisburg, Illinois.

2. *Old National Bancorp*, Evansville, Indiana; to acquire 100 percent of the voting shares of Morganfield National Service Corp., Morganfield, Kentucky, and thereby indirectly acquire the Morganfield National Bank, Morganfield, Kentucky.

Board of Governors of the Federal Reserve System, December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29129 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

First Bank System, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than January 9, 1989.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System,* Minneapolis, Minnesota; to expand the activities of its subsidiary, FBS Credit Services, Inc., to acquire and manage classified and low quality assets from its subsidiary banks located in Colorado pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope is to be expanded to include Colorado.

Board of Governors of the Federal Reserve System, December 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29128 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

First National Bancshares of Winfield, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 30, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Bancshares of Winfield, Inc.,* Winfield, Kansas; to acquire Oxford Insurance Agency, Inc., Oxford, Kansas, and thereby engage in insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in an area approximated by a circle with a 10-mile radius around Oxford, Kansas, a community served by Applicant's recently acquired subsidiary bank, Oxford Bank, Oxford, Kansas.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Moore Financial Group Incorporated,* Boise, Idaho; to acquire the trust assets of Tracy Collins Bank & Trust Company, Salt Lake City, Utah, through its nonbank subsidiary, Moore Trust Company, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, December 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29208 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-10-M

Fleet/Norstar Financial Group, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.,* Providence, Rhode Island; to engage *de novo* through its subsidiary, Fleet/Norstar Asset Management Corporation, Providence, Rhode Island, in the operation of a collection agency pursuant to § 225.25(b)(23); making, acquiring or servicing loans and other extensions of credit pursuant to § 225.25(b)(1); and equipment leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *WCN Bancorp,* Inc., Wisconsin Rapids, Wisconsin; to engage *de novo* through its subsidiary, Wood Trust Company, Wisconsin Rapids, Wisconsin, in performing trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 1988

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29130 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of

the Board's Regulation Y (12 CFR § 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficieny, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106.

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island, to acquire Fleet Real Estate Funding Corp., Columbus, South Carolina, and thereby engage in mortgage and commercial finance activities pursuant to § 225.25(b)(1)(iii) and (b)(1)(iv); the sale of credit life insurance in connection with mortgage loans pursuant to § 225.25(b)(8)(i); and real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29131 Filed 12-19-88; 8:45 am]
BILLING CODE 6210-01-M

KeyCorp, et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) for the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *KeyCorp*, Albany, New York; Key Atlantic Bancorp, Albany, New York; and Key Bancshares of New York Inc., Albany, New York; to engage *de novo* through their subsidiary, Key Bank Life Insurance, Ltd., Phoenix, Arizona, in underwriting, as reinsurer of credit accident and health insurance directly related to extensions of credit by their subsidiaries pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

2. *The Long-Term Credit Bank of Japan*, Tokyo, Japan; to engage *de novo* through its subsidiary, Greenwich Capital Markets, Inc., Greenwich, Connecticut, in (1) underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in pursuant to § 225.25(b)(16); (2) engaging in repurchase and reverse repurchase transactions on bank-eligible securities, collateralized borrowing and lending of bank-eligible securities and providing custodial, accounting and record keeping and ancillary services; (3) providing portfolio investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies on a nonfee basis in connection with and as an incident to the proposed bank-eligible securities activities pursuant to § 225.25(b)(4); acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash markets for its own account; and providing investment advice as a futures commission merchant with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to above pursuant to § 225.25(b)(19); and engaging in futures, forward and options contracts on bank-eligible securities for hedging purposes pursuant to Board Order (74 Fed. Res. Bull. 573 (1988). These activities will be conducted on a worldwide basis.

3. *Swiss Bank Corporation*, Basle, Switzerland; to engage *de novo* through its subsidiary, SBC Government Securities, Inc., in underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in pursuant to § 225.25(b)(16); (2) providing investment advice in respect of such obligations pursuant to § 225.25(b)(4); (3) engaging in repurchase and reverse repurchase transactions in such obligations, collateralized borrowing and lending of such obligations, clearing and settling bank-eligible securities transactions and providing custodial,

accounting and record keeping and ancillary services pursuant to §§ 225.25(b)(3) and 225.25(b)(15) of the Board's Regulation Y. *Comments on this application must be received by January 4, 1989.*

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Dai-Ichi Kangyo Bank*, Tokyo, Japan; to engage *de novo* through its subsidiary, DKB Securities Corporation, New York, New York, in securities brokerage and underwriting and dealing in obligations of the United States, general obligations of states and political subdivisions and any other obligations which state member banks may be authorized to underwrite and deal pursuant to § 225.25(b)(15) and (b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29134 Filed 12-19-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112888 AND 120988

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
International Shipholding Corporation; C. S. Walsh; Waterman Industries Corporation	89-0301	11/28/88
Welsh, Carson, Anderson & Stowe IV; FPL Group, Inc.; CBR Information Group, Inc	89-0375	11/28/88
PepsiCo, Inc.; Donald R. Watson; Pepsi-Cola Bottling Company of Wilmington, Inc	89-0310	11/29/88
PepsiCo, Inc.; Carl B. Brown; Pepsi-Cola Bottling Company of Wilmington, Inc	89-0328	11/29/88
Tele-Communications, Inc.; American Cable TV Invester; American Cable TV Investors	89-0280	11/30/88
First Financial Management Corporation; Appalachian Computer Services, Inc.; Appalachian Computer Services, Inc	89-0285	11/30/88
Lennox International Inc.; Maytag Corporation; Magic Chef Air Conditioning Division of Maytag	89-0304	11/30/88
Hubert Perrodo; Carless PLC: Carless PLC	89-0307	11/30/88
Silgan Corporation; The Greyhound Corporation; The Dial Corporation-Ft. Madison Can Co. Division	89-0360	11/30/88
Premark International, Inc.; Howard C. Tibbals; Tibbals Flooring Co	89-0380	11/30/88
Jerry Minsky; Douglas Wolf; BWAC Sub Two, Inc.; BWAC Sub Six, Inc., BWAC Sub 7 Inc	89-0427	11/30/88
Omak Wood Products Holding Corp.; Sir James M. Goldsmith; Cavenham Forest Industries, Inc	89-0441	11/30/88
Metropolitan Life Insurance Company; First Boston, Inc.; BMG Holdings Inc	89-0448	11/30/88
Haden MacLellan Holdings Plc; Williams Holdings PLC; Williams Holdings PLC	89-0323	12/01/88
SSI Associates, L. P., c/o Kohlberg Kravis Roberts; Corporate Property Investors; Corporate Property Investors	89-0384	12/01/88
SSI Associates, L. P.; Realty and Equipment Corporation; Realty and Equipment Corporation	89-0385	12/01/88
Lohja Corporation; Southdown, Inc.; Florida Mining and Materials Concrete Corp	89-0386	12/01/88
Frontenac Venture V Limited Partnership; Meshulaem Riklis; Home Fashions, Inc	89-0391	12/01/88
Cookson Group plc; Leach & Garner Company; Leach & Garner Company-Mill Division	89-0411	12/01/88
Cookson Group plc; Stern/Leach Company; Stern/Leach Company (joint venture)	89-0412	12/01/88
Leach & Garner Company; Stern/Leach Company; Stern/Leach Company (joint venture)	89-0414	12/01/88
John W. Kluge; Stanadyne Holdings Corp.; Stanadyne, Inc	89-0438	12/01/88
Heco, Inc.; Harvey E. Kroiz; Triangle Building Supplies & Lumber Co	89-0313	12/02/88
Heco, Inc.; Harvey E. Kroiz; Triangle Building Supplies & Lumber Co	89-0314	12/02/88
Super Valu Stores, Inc.; Red Owl Holdings, Inc.; Red Owl Stores, Inc., ROSBismarck, Inc., ROS Brookings	89-0161	12/05/88
Seagull Energy Corporation; Houston Oil Trust; Houston Oil Trust	89-0361	12/05/88
Pearl H. Hack; Metex Corporation; Metex Corporation	89-0366	12/05/88
Douglas A. Kass; H. H. Robertson Company; H. H. Robertson Company	89-0377	12/05/88
Kuwait Petroleum Corporation; Mesa Limited Partnership; Mesa Limited Partnership	89-0389	12/05/88
China National Chemicals Import and Export Corporation; The Coastal Corporation; Pacific Refining Company	89-0403	12/05/88
American Exploration Company; Enron Corp.; Enron Oil & Gas Company	89-0415	12/05/88
KELP-1987 Limited Partnership; Harold S. Wenal; Valley Associates, Ltd	89-0431	12/05/88
Pacificorp; Enron Corp.; Enron Oil & Gas Company	89-0432	12/05/88
The General Electric Company, p.l.c.; Maatschappij van Berkel's Patent N.V.; Maatschappij van Berkel's Patent N.V	89-0437	12/05/88
United Technologies Corporation; Parker Electronics, Inc.; Parker Electronics, Inc	89-0439	12/05/88
Amoco Corporation; Sun Exploration and Production Company; Sun Operating Limited Partnership	89-0440	12/05/88
Swire Pacific Ltd.; J. Christopher Burch; The Eagle's Eye, Inc., Eagle's Eye, Ltd	89-0455	12/05/88
California State Automobile Association; Automobile Club Insurance Company; Automobile Club Insurance Company	89-0461	12/05/88
American Automobile Association; Automobile Club Insurance Company; Automobile Club Insurance Company	89-0465	12/05/88
Pechiney; Nelson Peltz and Peter May; Triangle Industries, Inc	89-0466	12/05/88
Pechiney; Avery Inc.; Avery Inc	89-0469	12/05/88
Nelson Bunker Hunt Trust Estate; Prosper Energy Corporation; Prosper Energy Corporation	89-0475	12/05/88
William Herbert Hunt Trust Estate; Prosper Energy Corporation; Prosper Energy Corporation	89-0476	12/05/88
Lamar Hunt Trust Estate; Prosper Energy Corporation; Prosper Energy Corporation	89-0477	12/05/88
Pechiney; Nelson Peltz and Peter May; Triangle Industries, Inc	89-0478	12/05/88
Welsh, Carson, Anderson & Stowe IV; FPL Group Inc.; CBR Info. Group, Inc. & CBR Info. Services, Inc	89-0484	12/05/88
Public Service Enterprise Group Incorporated; TOTAL Compagnie Francaise des Petroles; Total Petroleum, Inc	89-0485	12/05/88
General Motors Corporation; VideoStar Connections, Inc.; VideoStar Connections, Inc	89-0491	12/05/88
UtiliCorp United Inc.; Air Products and Chemicals, Inc.; Stockton CoGen (II), Inc	89-0497	12/05/88
JWP Inc.; John Fitzsimmons; Data Systems Computer Centre, Inc	89-0500	12/05/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112888 AND 120988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Bausch & Lomb Incorporated; Dental Research Corporation; Dental Research Corporation	89-0502	12/05/88
Broadway Financial Corporation; Seth M. Glickenhaus; Glickenhaus & Co.-New Jersey Limited Partnership	89-0510	12/05/88
Spear, Leeds & Kellogg; Merrill Lynch & Co., Inc.; Wagner Stott Clearing Corp	89-0513	12/05/88
IC Industries, Inc.; Kentco Limited; Orval Kent Food Company, Inc	89-0525	12/05/88
Swire Pacific Ltd.; Robert L. Burch; The Eagle's Eye, Inc. and Eagle's Eye Ltd	89-0527	12/05/88
The Prudential Insurance Company of America; Robert W. Murphy; Lender's Service, Inc. and Lender's Service Title	89-0550	12/05/88
The Prudential Insurance Company of America; George S. Stipetich; Lender's Service, Inc. and Lender's Service Title	89-0551	12/05/88
Imperial Chemical Industries PLC; Warner B. Thiele; Thiele-Engdahl, Inc	89-0263	12/06/88
B/S Investments; Harsco Corporation; Harsco's Astro Division titanium business	89-0398	12/06/88
Alco Standard Corporation; Hendrickson Family Trust; Copy-Line, Inc	89-0433	12/06/88
Exxon Corporation; Texaco Inc.; Texaco Producing Inc	89-0501	12/06/88
Federal Express Corporation; UAL Corporation; United Air Lines, Inc	89-0512	12/06/88
Alain Merieux; McDonnell Douglas Corporation; Vitek Systems, Inc	89-0306	12/07/88
Pacific Gas and Electric Company; TransCanada PipeLines Limited; Wessely Energy Company and Wessely Exploration Company	89-0308	12/07/88
VIAG Aktiengesellschaft; ESM, Inc.; ESM, Inc	89-0340	12/07/88
B/S Investments; Formica Corporation; Formica Corporation	89-0344	12/07/88
Unilever N.V. and Unilever PLC; Beazer PLC; Thiem Corporation	89-0345	12/07/88
Brierley Investments Limited; Penn Virginia Corporation; Penn Virginia Corporation	89-0359	12/07/88
Masco Industries, Inc.; Superior Manufacturing & Instrument Corp.; Superior Manufacturing & Instrument Corp	89-0380	12/07/88
Pentair, Inc.; FC Holdings, Inc.; FC Holdings, Inc	89-0424	12/07/88
Jannock Limited; Mr. John Lane; Potomac Graphic Industries, Inc	89-0471	12/07/88
Fine Homes International, L.P.; Moran, Stahl & Boyer, Inc.; Moran, Stahl & Boyer, Inc	89-0495	12/07/88
Metropolitan Life Insurance Co.; The G.S. Blodgett Co., Inc.; The G.S. Blodgett Co., Inc	89-0450	12/08/88
Western Mining Corporation Holdings Limited; Texaco Inc.; Texaco Producing Inc	89-0544	12/08/88
Danzas AG; Northern Air Freight, Inc.; Northern Air Freight, Inc	89-0560	12/08/88
H.C. Prange Company; B.A.T. Industries p.l.c.; Thimbles Specialty Stores, GRF, Inc., Fieldridge, Inc	89-0330	12/09/88
Exxon Corporation; Sun Exploration and Production Company; Sun Operating Limited Partnership	89-0434	12/09/88
Cliffs Drilling Company; Tenneco Inc.; Marlin Drilling Co., Inc	89-0459	12/09/88
T&N plc; Stanadyne Holdings Corp.; Stanadyne Holdings Corp	89-0496	12/09/88
Imperial Chemical Industries PLC; Newco; Newco	89-0509	12/09/88
William Street Acquisition Corporation; British & Commonwealth Holdings PLC; William Street Holdings, Inc	89-0522	12/09/88
Chemical Banking Corporation; Gourmet Bakers, Inc.; Gourmet Bakers, Inc	89-0528	12/09/88
Chemical Banking Corporation; Metroplex Long Island Corporation; Metroplex Long Island Corporation	89-0529	12/09/88
Nelson Peltz & Peter May; Avery, Inc.; Avery, Inc	89-0538	12/09/88
Mr. Peter W. May; Avery, Inc.; Avery, Inc	89-0539	12/09/88
Sumitomo Heavy Industries, Inc.; FMC Corporation; Link-Belt Construction Equipment Company	89-0542	12/09/88
Chrysler Corporation; Richard L. Duchossois; Transportation Corporation of America	89-0545	12/09/88
Martin D. Gruss; Baxter International Inc.; Baxter's NDM Division	89-0552	12/09/88
Armco Inc.; Southwestern Ohio Steel, Inc.; Southwestern Ohio Steel, Inc	89-0555	12/09/88
New York City District Council Carpenters Pension Fund; American Telephone and Telegraph Co.; AT&T Technologies, Inc	89-0556	12/09/88
The Dunn & Bradstreet Corporation; Sales Technologies, Inc.; Sales Technologies, Inc	89-0585	12/09/88
Ashland Coal, Inc.; Coal-Mac, Inc.; Coal-Mac, Inc	89-0567	12/09/88
Southwestern Bell Corporation Master Pension Trust; H. F. Ahmanson & Company; H. F. Ahmanson & Company	89-0582	12/09/88
Cabot Corporation; Weldon C. Doran, Jr.; Doran & Associates, Inc	89-0583	12/09/88
Sheet Metal Workers' National Pension Fund; ACMAT Corporation; ACMAT Corporation	89-0586	12/09/88
Pennzoil Company; Mobil Corporation; Mobil Corporation	89-0589	12/09/88
Triton Energy Corporation; Estate of Howard R. Hughes, Jr.; Hughes Aviation Services, L.P. and of	89-0592	12/09/88
Associated Electric Cooperative, Inc.; Union Pacific Corporation; Nemo Coal, Inc	89-0599	12/09/88
Otsuka Pharmaceutical Co., Ltd.; Pharmavite Corporation; Pharmavite Corporation	89-0602	12/09/88
Nestle S.A.; Edgar B. Stern, Jr. and Pauline S. Stern; Royal Stanford Hotel Company	89-0604	12/09/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 29145 Filed 12-19-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Special Project Grants-Maternal and Child Health Services; Federal Set-Aside Program

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), that Fiscal Year (FY) 1989 funds are available for grants for the following activities: Special Maternal and Child Health (MCH) projects of regional and national significance (SPRANS) which contribute to the health of mothers, children, and children with special health needs; MCH research; training in MCH; genetic disease testing, counseling and information services; and hemophilia diagnostic and treatment centers. Awards will be made under the program authority of section 502(a) of the Social Security Act (42 U.S.C. 702(a)), which is known as the MCH Federal set-aside program. HRSA, through this notice, invites potential applicants to request application packages for the particular grant category in which they are interested and then to submit their application for funding consideration. Approximately $25 million is available to support new

and competing renewal projects under the MCH Federal set-aside program.

Funds were appropriated for this purpose by Pub. L. 100–436.

DATE: Deadlines for receipt of applications differ for the several categories of grants; these deadlines are as follows:

(1) Research:
  (a) Cycle One: March 1, 1989
  (b) Cycle Two: August 1, 1989
(2) Training:
  (a) Long term training: March 29, 1989
  (b) Continuing education: July 5, 1989
(3) Genetic disease testing, counseling and information: May 17, 1989;
(4) National hemophilia resource center: March 22, 1989; Public and private non-profit organizations may submit applications for a cooperative agreement to serve as a national resource to hemophilia treatment centers, patients and families.
(5) Special MCH improvement projects of regional and national significance (i.e., those which test or demonstrate the effectiveness of a given approach or technique) relevant to MCH care in three areas:
  (a) Children with special health care needs: March 14, 1989;
  (b) Maternal and infant health: April 3, 1989;
  (c) Child and adolescent health: March 21, 1989.

To receive consideration, applications must be sent to the Grants Management Officer at the address below, and must be received by the close of business on the dates indicated. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications received after the deadline date will be returned.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the Director, Office of Maternal and Child Health, BMCHRD, HRSA, Room 9–11, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Requests for grant application materials should be made in writing to the Grants Management Officer, Office of Support, BMCHRD, Room 11A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland. Requests should specify the grant category or categories for which an application is requested so that the appropriate materials may be provided. Applicants for research projects will use Form PHS 398, approved by the Office of Management and Budget (OMB) under control number 0925–0001. Applicants for training projects will use Form PHS 6025–1, approved by OMB under control number 0915–0060. Applicants for all other projects will use application Form PHS 5161–1 with revised facesheet DHHS Form 424, approved by OMB under control number 0348–0006.

SUPPLEMENTARY INFORMATION: Under section 502(a) of the Social Security Act, between 10 and 15 percent of the funds appropriated for Title V of the Act in each fiscal year are to be retained by the Secretary for the award of grants for the purposes specified above. Historically, the Secretary has set aside the full 15 percent each year. Support for projects covered by this announcement will come from these funds. Consistent with the statutory purpose of improving maternal and child health, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which, in the Department's view, best promote improvements in maternal and child health care (for example, applications which enhance efforts to reduce the unacceptably high rates of infant mortality, which increase the availability of and access to services for handicapped and chronically ill children and young adults, and which enhance the health and development of adolescents).

Eligible Applicants

The statute at section 502(a)(2) provides that training grants may be made only to public or nonprofit private institutions of higher learning and that research grants may be made only to public or nonprofit private agencies and organizations engaged in research in maternal and child health or programs for children with special health care needs. Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants for genetic disease testing, counseling and information; hemophilia diagnostic and treatment centers; and SPRANS.

The regulation implementing the Federal set-aside program was published in the March 5, 1986 issue of the **Federal Register** at 51 FR 7726 (42 CFR Part 51a).

Review Criteria

Applications for grants will be reviewed and evaluated according to:

1. The quality of the project plan or methodology.
2. Documentation of the need for the training and technical assistance.
3. The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefited, served or trained.
4. The extent to which the project will contribute to service system improvement for children and adolescents with special health needs and their families, including children with physical and/or mental disabilities, children with chronic illnesses, children with serious emotional distrubances, and children at risk for developing these or related disabilities as a result of homelessness or exposure to AIDS infection.
5. Extent to which project will serve all regions of the country including urban and rural settings and any special circumstances associated with providing training in various areas.
6. The effectiveness of procedures to collect the cost of care and services from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payment for any service (including diagnostic, preventive and treatment services).

7. The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants and other block grants made to the appropriate State(s).

8. The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs. The OMB Catalog of Federal Domestic Assistance number is 13.110.

Date: December 14, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-29188 Filed 12-19-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Georgia Offshore Minerals Assessment

AGENCY: Minerals Management Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this Request for Comments (Request) is to obtain data and information and to solicit public comment on an assessment of mineral resources located in Federal waters offshore Georgia.

DATES: Written comments must be hand-delivered or postmarked on or before March 20, 1989.

ADDRESSES: Respondents are requested to submit all comments, opinions, data, and information to Dr. William McLemore, State Geologist, Georgia Geologic Survey, 19 Martin Luther King, Jr. Drive, SW., Atlanta, Georgia 30334. A copy of the assessment entitled *Georgia Offshore Minerals Assessment* may be obtained from Dr. McLemore at the above address or requested by telephoning (404) 656-3214.

FOR FURTHER INFORMATION CONTACT: Mr. Don Hill, Office of Strategic and International Minerals, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Telephone (703) 285-2220.

SUPPLEMENTARY INFORMATION: The comments, opinions, data and informational submittals received from all sources will be reviewed and analyzed by the Federal/State of Georgia Task Force supervising the assessment.

Background Information

Subsequent to a formal exchange of letters between Governor Joe Frank Harris and Secretary of the Interior Donald P. Hodel in mid 1986, a joint cooperative agreement was signed establishing a Federal/State of Georgia Task Force. The Task Force was directed to study deposits of potential mineral resources, including heavy mineral placers and phosphorites located in Federal waters off the coast of Georgia.

In April 1987, the Task Force developed a proposal to assess potentially economic mineral resources from the Outer Continental Shelf (OCS) offshore Georgia. A contract to conduct an assessment of mineral resources was awarded by the Department of Natural Resources, State of Georgia, in August 1987.

In August 1988, the contractor, Zellars-Williams Company, division of Jacobs Engineering Group Inc., presented its findings and conclusions to the Task Force in a single volume entitled *Georgia Offshore Minerals Assessment* (GOMA). After review, analysis, and discussion of the assessment by the Task Force at meetings held in Atlanta, Georgia, on September 15, 1988 it was agreed to solicit comment from firms, organizations, public groups, and any individuals who may wish to comment on the GOMA and on potential marine minerals development offshore Georgia.

It is noted that during the present phase of data gathering there is no State or Federal action to lease, or offer for public lease sale, any nonenergy marine minerals in any offshore area contiguous to Georgia. Further, there are no present plans to prepare any Environmental Impact Statement or other environmental evalaution on this area. The current Request comprises only data gathering and solicitation of comment related to the assessment.

As cited in the GOMA, that study and current data gathering tasks are being conducted in order to assist the State of Georgia and the Department of the Interior in reaching an informed decision regarding whether to proceed with other activities related to mining marine minerals on the OCS. (43 U.S.C. 1331 *et seq.*)

Guidelines

Comments, opinions, data, and any supporting information are requested.

General

1. Are there any other sources of data or information—published or unpublished—related to potential mineral resources offshore Georgia overlooked in this assessment (see GOMA section 2.2)?

2. Please express your opinion regarding the usefulness of the results of this preliminary resource assessment given the cited limitations of the data.

3. Please provide opinions regarding the assessment conclusions about the location of possible phosphate and heavy mineral deposits and the selection of specific study areas for determining the economic feasibility of development.

Specific

1. Please express your opinion on the market evaluation used in the GOMA.

2. Please express your opinion on the current United States phosphate and/or heavy mineral supply, and your opinion on current phosphate and/or heavy mineral supplies imported into the United States and the effect of these imports on the United States economy. Also, please provide your opinion on demand for phosphate and/or heavy minerals within the United States both now and within the coming 5- to 10-year period.

3. In the GOMA, certain economic assumptions were made concerning the future feasibility of mining offshore phosphate and heavy mineral deposits. Please express your opinion on the GOMA assumptions used regarding operating factors, development design criteria and economic conditions if one were to assume that sufficient mineral resources exist for a substantial reserve offshore. If you believe these assumptions are unrealistic or too optimistic, please give your opinion on future 5- and 10-year phosphate rock and heavy mineral prices, estimated date(s) for startup of operations, and necessary rates of return that would be required.

4. The GOMA stated that one assumption necessary for the analysis was that the sand and clay wastes generated from the mining and beneficiation of the phosphate and heavy minerals could be disposed of at sea, or alternatively at a landsite. Please express your opinion on the technological, economic, and environmental feasibility of both ocean and landsite disposal of sand and clay wastes after mining and beneficiation.

5. Please provide information on the rates of return industry would be using to assess the economic potential of

ventures such as described in this study for phosphates or heavy mineral production. Describe the expected rates of return for a project ("hurdle rates") which firms would require to justify proceeding with offshore minerals development as described in this assessment; and under what conditions these hurdle rates could change.

6. Please provide any additional information which you feel should be taken into account by the Task Force, including (but not limited to):

a. Current and projected phosphate and/or heavy mineral resource market data;

b. Current and projected technology available for phosphate and/or heavy mineral extraction, either offshore or onshore;

c. Specific geological, environmental, biological, and/or socioeconomic conditions which may affect (either positively or adversely) marine mineral extraction offshore Georgia; and

d. The financial analysis methodology used in the GOMA to evaluate the development potential; and the selected sensitivity analyses.

Future

1. Provide any suggestions for future study and work in this area of offshore hard minerals development.

2. Provide descriptions of institutional constraints or barriers which may serve to prevent the development of offshore minerals in this area.

Date: December 13, 1988.

Thomas Gernhofer,

Acting Director, Minerals Management Service.

[FR Doc. 88-29201 Filed 12-19-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 10, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 4, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Lowndes County

Williamson, James Spullock, House, AL 31, Sandy Ridge, 88003123

CONNECTICUT

Hartford County

Andrews, Luman, House (Colonial Houses of Southington TR), 469 Andrews St., Southington, 88003095

Barnes, Selah, House (Colonial Houses of Southington TR), 282 Prospect St., Southington, 88003114

Barnes—Frost House (Colonial Houses of Southington TR), 1177 Marion Ave., Southington, 88003109

Bradley, Icabod, House (Colonial Houses of Southington TR), 537 Shuttle Meadow Rd., Southington, 88003115

Clark, Avery, House (Colonial Houses of Southington TR), 1460 Meriden Ave., Southington, 88003110

Cowles, Capt. Josiah, House (Colonial Houses of Southington TR), 184 Marion Ave., Southington, 88003102

Evans, Ebenezer, House (Colonial Houses of Southington TR), 17 Long Bottom Rd., Southington, 88003101

Grannis, Stephen, House (Colonial Houses of Southington TR), 1193 West St., Southington, 88003119

Hart, Timothy, House (Colonial Houses of Southington TR), 521 Flanders Rd., Southington, 88003100

House at 1010 Shuttle Meadow Rd. (Colonial Houses of Southington TR), 1010 Shuttle Meadow Rd., Southington, 88003116

House at 590 West St. (Colonial Houses of Southington TR), 590 West St., Southington, 88003118

Porter, Dr. J., House (Colonial Houses of Southington TR), 391 Belleview Ave., Southington, 88003096

Root, Jonathan, House (Colonial Houses of Southington TR), 140-142 N. Main St., Southington, 88003113

Skelton, Dr. Henry, House (Colonial Houses of Southington TR), 889 S. Main St., Southington, 88003117

Wightman, Rev. John, House (Colonial Houses of Southington TR), 1024 Mount Vernon Rd., Southington, 88003111

Wightman, Valentine, House (Colonial Houses of Southington TR), 1112 Mount Vernon Rd., Southington, 88003112

Woodruff House (Colonial Houses of Southington TR), 377 Berlin St., Southington, 88003097

Woodruff, Ezekiel, House (Colonial Houses of Southington TR), 1152 East St., Southington, 88003099

Woodruff, Jothan, House (Colonial Houses of Southington TR), 137-139 Woodruff St., Southington, 88003120

Woodruff, Urbana, House (Colonial Houses of Southington TR), 1096 East St., Southington, 88003098

New London County

American Thermos Bottle Company Laurel Hill Plant, 11 Thermos Ave., Norwich, 88003091

KANSAS

Ford County

Immaculate Heart of Mary Catholic Church, SE of Spearville, Windthorst, 88003087

MASSACHUSETTS

Berkshire County

North Egremont Historic District, Roughly bounded by Shun Toll Rd., Rt. 71, Hillsdale Rd., and Mill Rd., Egremont, 88003128

Bristol County

Northbound and Southbound Stations, 1 and 3 Mill St., Attleboro, 88003128

Norfolk County

McIntosh Corner Historic District, Roughly Great Plain and Central Aves., NeedhaM, 88003127

MINNESOTA

Chisago County

Archeological Site No. 21CH23, Address Restricted, Taylors Falls vicinity, 88003129

Lake County

Tettegouche Camp Historic District, Off County Hwy. 4, Silver Bay vicinity 88003084

St. Louis County

Archeological Site No. 21SL73, Address Restricted, International Falls vicinity, 88003130

Sibley County

Church of St. Thomas, County Hwys. 8 and 9, Henderson vicinity, 88003085

Stearns County

Minnesota Home School for Girls Historic District, Off MN 302, Sauk Centre, 88003090

Wabasha County

Bear Valley Grange Hall, Co. Hwy. 3, Zumbro Falls vicinity, 88003089

Swedish Evangelical Lutheran Church, Bridge St., Milville, 88003086

MISSISSIPPI

Warren County

Main Street Historic District (Boundary Increase), Roughly bounded by Adams St., Main St., Cherry St., and First East St., Vicksburg, 88003088

OHIO

Auglaize County

Napakoneta Commercial Historic District, Roughly bounded by Auglaize, Park, Main, and Blackhoof Sts., Wapakoneta, 88003131

VERMONT

Addison County

Monkton Borough Baptist Church, Town Hwy. 1, Monkton, 88003121

[FR Doc. 88-29198 Filed 12-19-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31373]

CSX Transportation, Inc., Renewal of Lease Exemption, Strouds Creek and Muddlety Railroad Co.

CSX Transportation, Inc. (CSXT) has leased and operated the properties of Strouds Creek and Muddlety Railroad Company (Strouds Creek) consisting of 20.58 miles of railroad line from Allingdale to Summersville, WV, by virtue of a 1943 lease, and amended in 1973. The lease is due to expire on March 31, 1989. The parties have agreed to renew and extend the lease for an additional term of 15 years to commence April 1, 1989.

This notice is filed under 49 CFR 1180.2(d)(4), which exempts renewal of leases and any other matters where the Commission has previously authorized the transactions and only an extension in time is involved. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption any employees affected by the lease transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Dated: December 14, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29168 Filed 12-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 31X)]

Central of Georgia Railroad Co.; Abandonment Exemption Between Krannert Junction and Lyerly, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 15.2-mile line of railroad between milepost C-382.0 at Krannert Junction, GA, and milepost C-397.2 at Lyerly, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 20, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve enviornmmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 13, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 27, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 13, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29165 Filed 12-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 30X)]

Central of Georgia Railroad Co.; Abandonment Exemption Between Covington and Porterdale, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its E-80.7 at Covington, GA and milepost E-83.5, at Porterdale, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 20, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this decision.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164(1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FedRed 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] A stay will be routinely issued by the Commission in those proceedings where an

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 10, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commerce Place, Norfolk, VA.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 26, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 13, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29166 Filed 12–19–88; 8:45 am]

BILLING CODE 7035–01–M

informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB–43 (Sub-No. 150X)]

Illinois Central Railroad Co.; Abandonment Exemption In Franklin and Williamson Counties, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 7.88-mile line of railroad between Christopher, IL (milepost 82.00) and the Franklin-Williamson County, IL line (milepost 89.88), along with approximately 8.5 miles of side track (mine lead), located in Franklin and Williamson Counties, IL.

Applicant has certified that: (1) No local overhead traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 21, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 11, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John H. Doeringer, 20180 Governors Highway, Olympia Fields, IL 60461.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addreses environmental or energy impacts, if any, resulting from this abandonment. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 27, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 13, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29167 Filed 12–19–88; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE (DOJ)

Information Collection(s) Under Review

December 15, 1988.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the

information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) 1988 Probation Data Survey and 1988 Parole Data Survey.
(2) CJ–7 (Parole), CJ–8 (Probation); Bureau of Justice Statistics, Department of Justice.
(3) Annually.
(4) State or local governments, Federal agencies or employees. Summary data on the probation and parole populations are collected from State, local and Federal agencies and are used by officials, administrators, and researchers to evaluate current conditions and trends nationwide.
(5) 328 respondents at 1.3 hours per response.
(6) 424 estimated annual burden hours.
(7) Not applicable under section 3504(h).

New Collections

(1) Judicial Recommendations Against Deportation; Controlled Substance Violations.
(2) None; Immigration and Naturalization Service (INS), Department of Justice.
(3) On occasion.
(4) Individuals or households. Receipt of a judicial recommendation against deportation (JRAD) aids the INS in ascertaining if an alien is deportable. When a JRAD is granted, the crime may not be used as a basis for deportation. Affected will be aliens convicted of crimes involving moral turpitude making motions per 8 U.S.C. 1251(b)(2).
(5) 3,000 respondents at .25 hours per response.
(6) 750 estimated annual public burden hours.
(7) Not applicable under section 3504(h).

(1) National Judicial Reporting Program, Felony Sentence Report.
(2) NJRP–1; Bureau of Justice Statistics (BJS), Department of Justice.
(3) Biennially.
(4) State or local governments. Used to conduct a continuing survey to enumerate and describe sentences of adult felons in general jurisdiction courts. Respondents are personnel in state and local general jurisdiction courts selected for the sample.
(5) 165,000 respondents at .02 hours each.
(6) 3,690 estimated annual public burden hours.
(7) Not applicable under section 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application for advance permission to return to unrelinquished domicile.
(2) I–191; Immigration and Naturalization Service, Department of Justice.
(3) On occasion.
(4) Individuals or households. Information is used by INS to determine whether applicant is eligible for status under section 212(c) of the Immigration and Nationality Act.
(5) 300 respondents at .25 hours each.
(6) 75 estimated annual public burden hours.
(7) Not applicable under section 3504(h).

(1) Application for waiver of passport and/or visa.
(2) I–193; Immigration and Naturalization Service, Department of Justice.
(3) On occasion.
(4) Individuals or households. Information is needed to determine whether an applicant is eligible for entry into the United States under 8 CFR 212.1(g) and 211.1(b)(3).
(5) 25,000 respondents at .166 hours each.
(6) 4,150 estimated annual burden hours.
(7) Not applicable under section 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–29175 Filed 12–19–88; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Omaha Public Power District (the licensee) for the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from certain requirements of Section III.0 of Appendix R to 10 CFR Part 50, which relate to the provision for the oil collection system for the reactor coolant pumps (RCPs). The exemption is technical since the licensee must demonstrate that the oil collection configuration meets the specific requirements of section III.0 or that an alternative configuration can be justified by an acceptable analysis.

The Need for Proposed Action

The proposed exemption is needed because the existing oil collection system at the plant described in the licensee's exemption request was not designed to hold the oil inventory from all four of the reactor coolant pumps.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a sufficient degree of fire protection such that there is no increase in the risk of fire at Fort Calhoun Station. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area, as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of the Fort Calhoun Unit 1", dated August 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 28, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the W. Dale Clark Library, 215 South 15th Street, Omaha, NE 68102.

Dated at Rockville, Maryland, this 13th day of December 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–29186 Filed 12–19–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Company; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Facility Operating License No. NPF–47, issued to Gulf States Utilities Company (the licensee), which revised the Technical Specifications for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to reduce the minimum water coverage above a spent fuel assembly in the storage pool and above an irradiated control rod during spent fuel and irradiated control rod handling. The reduced minimum water coverage for irradiated control rods also permits placing these rods on hangers provided for their storage in the fuel building pool.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on August 25, 1988 (53 FR 32484) and a correction was published in the **Federal Register** on October 24, 1988 (53 FR 41634). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see: (1) The application for amendment dated August 12, 1988; (2) Amendment No. 32 to Facility Operating License No. NPF–47; and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555; at Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 13th day of December, 1988.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Project Manager, Project Director—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–29185 Filed 12–19–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Metropolitan Statistical Areas

AGENCY: Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ACTION: Notice of intent to revise the standards used to define metropolitan statistical areas.

SUMMARY: Metropolitan Statistical Areas (MSAs) are defined for statistical purposes by OMB, following specific standards, under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504). MSAs are used by Federal agencies for collecting, tabulating, and publishing data by geographic areas. The last major revision of the MSA standards was issued in 1980. The standards now need review for possible updating. Revised standards will be issued before April 1, 1990.

DATE: This notice explains the MSA standards revision process and requests proposals for specific changes in the standards. The existing MSA standards, published in this notice, are the basis for the proposed revisions for the 1990s. In evaluating the proposed MSA standards emphasis will be given to the need for continuity and consistency of statistical series.

DATES: Comments must be received on or before February 21, 1989.

ADDRESS: Comments should be submitted to the Statistical Policy Office, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3228, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maria E. Gonzalez, Statistical Policy Office, Office of Information and Regulatory Affairs, New Executive

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Office Building, Room 3228, Office of Management and Budget, Washington, DC 20503, (202) 395–7313.

SUPPLEMENTARY INFORMATION:

Part I. Background

The present MSA standards were published in the **Federal Register** on January 3, 1980, after two rounds of review and public comment. After the 1980 census data became available the MSA definitions were updated, with revised definitions issued in June 1983. The MSA standards will be updated before the 1990 census; the next redefinition of MSA boundaries will be issued after the 1990 census data become available.

Shortly before the 1950 census, a decision was made to define a set of "standard metropolitan areas" (SMAs) for presenting Federal statistics. The Bureau of the Budget (later named the Office of Management and Budget) was assigned to task of defining the SMAs, acting with the advice of an interagency committee.

From their inception, the official SMAs (renamed standard metropolitan statistical areas (SMSAs) in 1959, and metropolitan statistical areas (MSAs) in 1983), were defined according to specific published standards. Changes in the official standards have been announced at the time of each census since 1950. Similarly, OMB intends to issue revised MSA standards before the 1990 census.

Part II. The Current Standards

The present MSA standards are published in Part IX of this Notice. However, section 9 and section 15 incorporate certain specific steps that previously appeared in the Procedures supplement to the standards. Federal agencies and the public are asked to review these standards and comment on any aspect they would like to change within 60 days of publication of this Notice.

Part III. Purpose and Scope of Review

The MSA standards are reviewed and revised every 10 years to reflect the evolving distribution of metropolitan population in the country as documented in the decennial census. The review and revision of the MSA standards are the responsibility of the Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, which has developed this classification with the advice of the interagency Federal Committee on Metropolitan Statistical Areas. Committee members include the following agencies: Office of Management and Budget, Bureau of the Census (Commerce), Bureau of Economic Analysis (Commerce), Bureau of Labor Statistics (Labor), Economic Research Service (USDA), Department of Housing and Urban Development, Health Care Financing Administration (HHS), National Center for Health Statistics (HHS), Federal Highway Administration (DOT), Federal Communications Commission, Equal Employment Opportunity Commission, and Federal Reserve Board.

Any proposals for revisions received within 60 days of issuance of this Notice will be reviewed by the interagency Federal Committee on MSAs. This Committee will make recommendations to OMB on the standards. Final decisions on the MSA standards will be made by OMB and will be published in the **Federal Register** before April 1, 1990.

Part IV. Guidelines for Reviewing Proposed Changes in the Standards

The Federal Committee on Metropolitan Statistical Areas will review all proposed changes in the standards. The evaluation of the standards will emphasize maintaining the historical consistency of the metropolitan area concept as presented in the standards over the past 40 years.

The central counties of each metropolitan statistical area are generally identified by using the boundaries of Census Bureau-defined urbanized areas. To qualify outlying counties as parts of a metropolitan statistical area, the standards include a number of specific thresholds of percentage commuting to the central counties, population density, percentage urban, and similar measures. These thresholds will be reviewed to ensure that qualifying counties are metropolitan in character.

Central cities of MSAs are also identified based on statistical measures, and their names are then used in determining the title for the MSA. The specific measures used will be reviewed to ensure they are appropriate.

A metropolitan statistical area of more than 1 million population is eligible to be designated a consolidated metropolitan statistical area (CMSA) if at least two primary metropolitan statistical areas (PMSAs) qualify. A PMSA is defined using certain statistical thresholds, and local opinion, as expressed through the congressional delegation for the area, must strongly support its recognition. The statistical thresholds will be reviewed to ensure that they are appropriate for defining PMSAs. The standards include guidance on titling CMSAs and PMSAs; local opinion is a factor in making the final titling decision for these areas.

Part V. Uses of Metropolitan Statistical Area Data

All agencies that collect and publish data for MSAs should use the most recent definitions established by OMB.

OMB establishes and maintains the definitions of metropolitan statistical areas solely for statistical purposes. In periodically reviewing and revising the MSA definitions, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions, nor will OMB modify the definitions to meet the requirements of any nonstatistical program.

Therefore, if an agency uses the MSA definitions in a nonstatistical program, it is the agency's responsibility to ensure that the definitions are appropriate for such use. In cases where an agency is publishing for comment a proposed regulation that would use the MSA definitions for nonstatistical purpose, the agency should seek public comment on the proposed use of the MSA definitions. Agencies that use the MSA definitions in a nonstatistical program are urged to consider appropriate modifications of the MSA definitions, exclusively for the purposes of that program. However, all such modifications should be clearly identified to avoid confusion with the OMB standard statistical definitions of Metropolitan Statistical Areas.

Part VI. Proposals

Proposals for changes in the standards made by either private organizations or government agencies must be in writing and should include the following:

(1) Specific details about the variables to be used and how they should be used in defining MSAs.

(2) As complete as possible a discussion of how the proposed change is expected to affect the existing definitions of MSAs.

(3) Data proposed for use in the standards should be available for all counties of the United States from a governmental source. The frequency of release and accuracy of the data should be discussed.

Part VII. Time Schedule

All proposed amendments to the standards used to define MSAs should be submitted to the Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, as soon as possible, but no later than 60 days from the issuance of this Notice. The revised standards will become effective by April 1, 1990.

Part VIII. Public Review Procedure

The standards used at present to define MSAs are given in Part IX. OMB requests comments on any section of the standards, but is particularly interested in comments on:

- Section 8A(2)
- Section 9B
- Section 9C
- Appendix definition of "Percentages, Densities, and Ratios"

The proposed revised standards for the MSA definitions in the 1990s will be published in the **Federal Register** for review and comment prior to final action by the Office of Management and Budget. Those making proposals will be notified directly of actions taken by the Federal Committee on MSAs; others will be advised through the **Federal Register.**

Part IX. Official Standards Followed in Establishing Metropolitan Statistical Areas (Federal Register, January 3, 1980, pp. 959–963)

Basic Standards

Sections 1 through 8 apply to all States exept the six New England States. They also apply to Puerto Rico.[1]

Section 1. Populations Size Requirements for Qualification

A. Each metropolitan statistical area must include a city which, with contiguous, densely settled territory, constitutes a Census Bureau-defined urbanized area with at least 50,000 population.[2]

B. If a metropolitan statistical area's largest city has less than 50,000 population, the area must have a total population of at least 100,000.[3]

Section 2. Central Counties

A county is designated as a central county of the metropolitan statistical area if:

A. At least 50 percent of its population lives in the urbanized area that resulted in qualification under Section 1A; *or*

B. At least 2,500 of its population lives in a central city of the metropolitan statistical area.[4]

[1] Those provisions of Sections 1 through 8 which are applicable to New England are specified in the standards relating to New England (sections 12 through 16).

[2] A metropolitan statistical area designated according to standards in effect at the time of designation will not be disqualified on the basis of lacking an urbanized area of at least 50,000 population.

[3] A metropolitan statistical area designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking a total population of at least 100,000.

[4] See Section 4 for the standards for identifying central cities.

Section 3. Outlying Counties

A. An outlying county is included in a metropolitan statistical area if any one of the four following conditions is met:

(1) At least 50 percent of the employed workers residing in the county commute to the central county(ies) and the population density of the county is at least 25 per square mile.

(2) From 40 to 50 percent of the employed workers commute to the central county(ies), and the population density is at least 35 persons per square mile.

(3) From 25 to 40 percent of the employed workers commute to the central county(ies), the population density is at least 35 persons per square mile, and one of the following conditions also exists:

(a) Population density is at least 50 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) At least 10 percent, or at least 5,000, of the population lives in the urbanized area that resulted in qualification under Section 1A.

(4) From 15 to 25 percent of the employed workers commute to the central county(ies),[5] the population density is at least 50 persons per square mile, and any two of the following conditions also exist:

(a) Population density is at least 60 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) Population growth between the last two decennial censuses is at least 20 percent;

(d) At least 10 percent, or at least 5,000, of the population lives in the urbanized area that resulted in qualification under Section 1A.

B. If a county qualifies on the basis of commuting to the central county(ies) of two different metropolitan statistical areas, it is assigned to the area to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion about the most appropriate assignment will be considered.

Section 4. Central Cities

Recognized as the central city(ies) of the metropolitan statistical area are:

[5] Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the county who live in the central county(ies) is equal to at least 15 percent of the number of employed workers living in the county; *or*

(b) The sum of the number of workers commuting to and from the central county(ies) is equal to at least 20 percent of the number of employed workers living in the county.

A. The city with the largest population in the metropolitan statistical area.

B. Each additional city with a population of at least 250,000 or with at least 100,000 persons working within its limits.

C. Each additional city with a population of at least 25,000, an employment/residence ratio of at least 0.75, and outcommuting of less than 60 percent of its resident employed workers.

D. Each city of 15,000 to 25,000 population which is at least one-third as large as the largest central city, has an employment/residence ratio of at least 0.75, and has outcommuting of less than 60 percent of its resident employed workers.

Section 5. Consolidating Adjacent Metropolitan Statistical Areas

Two adjacent metropolitan statistical areas defined by Sections 1 through 4 are consolidated as a single metropolitan statistical area provided all of the following conditions are met:

A. The commuting interchange between the two metropolitan statistical areas is equal to:

(1) At least 15 percent of the employed workers residing in the smaller metropolitan statistical area, *or*

(2) At least 10 percent of the employed workers residing in the smaller metropolitan statistical area, *and*

(a) The urbanized area of a central city of one metropolitan statistical area is contiguous with the urbanized area of a central city of the other metropolitan statistical area, *or*

(b) A central city in one metropolitan statistical area is included in the same urbanized area of a central city in the other metropolitan statistical area.

B. At least 60 percent of the population of each metropolitan statistical area is urban.

C. The total population is at least 1 million.

Section 6. Combining Adjacent Metropolitan Statistical Areas

Two adjacent metropolitan statistical areas defined by Sections 1 through 4 and not included in a consolidation by Section 5 will be combined as a single metropolitan statistical area if:

A. Their largest central cities are within 25 miles of one another, or their urbanized areas are contiguous; *and*

B. There is definite evidence that the two areas are closely integrated with each other economically and socially; *and*

C. Local opinion in both areas supports the combination.

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Section 7. Levels

A. Each metropolitan statistical area defined by Sections 1 through 6 is categorized in one of the following levels based on total population:

Level A—Metropolitan statistical areas of 1 million or more.

Level B—Metropolitan statistical areas of 250,000 to 1 million.

Level C—Metropolitan statistical areas of 100,000 to 250,000.

Level D—Metropolitan statistical areas of less than 100,000.

B. Areas assigned to Levels B, C, or D are designated as metropolitan statistical areas. Areas assigned to Level A are not finally designated or titled until they have been reviewed under Sections 9 and 10.

Section 8. Titles of Metropolitan Statistical Areas

A. The title of a metropolitan statistical area assigned to Level B, C, and D includes the name of the largest central city, and up to two additional names:

(1) The name of each additional city with a population of at least 250,000 or with at least 100,000 persons working within its limits;

(2) The names of the additional cities qualified as central cities by Section 4, provided each is at least one-third as large as the largest central city;

(3) The name of the largest city of any separate area that qualified as a metropolitan statistical area under Sections 1 through 4, but was combined by Section 6 with the area being titled.

B. An area title that includes the names of more than one city begins with the name of the largest city and lists the other cities in order of their population according to the most recent national census.[6]

C. In addition to city names, the title contains the name of each State in which the metropolitan statistical area is located.

Standards for Primary and Consolidated Metropolitan Statistical Areas

Sections 9 through 11 apply to Level A metropolitan statistical areas outside New England.

Section 9. Qualifications as a Primary Metropolitan Statistical Area

Within a Level A metropolitan statistical area:

A. Any county or group of countries that was recognized as a separate metropolitan statistical area on January 1, 1980, will be recognized as a primary metropolitan statistical area, unless local opinion does not support its continued separate recognition for statistical purposes.

B. Any additional county for which local opinion strongly supports separate recognition will be considered for identification as a primary metropolitan statistical area, provided a county is included which has:

(1) At least 100,000 population;

(2) At least 60 percent of its population urban; *and*

(3) Less than 35 percent of its resident workers working outside the county.

C. A pair of contiguous counties for which local opinion strongly supports separate recognition also will be considered for identification as a primary metropolitan statistical area, provided:

(1) Each county meets requirements (1) and (2) of Section 9B, and has less than 50 percent of its resident workers working outside the county;

(2) The two counties have a commuting interchange of at least 20 percent; *and*

(3) The pair of counties has less than 35 percent of its resident workers working outside the pair. (*Note*: A pair of counties may comprise three or more counties, and may include a county that also could qualify as a primary metropolitan statistical area under Section 9B.)

D. Each county in the interim Level A MSA, not included within a central core under Sections 9A through C, is assigned to the contiguous PMSA to whose central core commuting is greatest, provided this commuting is:

(1) At least 15 percent of the county's resident workers;

(2) At least 5 percentage points higher than the commuting flow to any other PMSA that exceeds 15 percent; *and*

(3) Larger than the flow to the county containing the Level A MSA's largest city.

E. If a county has qualifying commuting ties to two or more PMSA central cores and the relevant values are within 5 percentage points of each other, local opinion is considered before the county is assigned to any PMSA.

F. The interim PMSA definitions resulting from these procedures (including possible alternative definitions where appropriate) are submitted to local opinion. Final definitions of PMSAs are made based on these standards, and a review of local opinion.

G. If any primary metropolitan statistical area or areas have been recognized under Sections 9A through F, the balance of the Level A metropolitan statistical area is also recognized as a primary metropolitan statistical area.[7]

Section 10. Levels and Titles of Primary Metropolitan Statistical Areas

A. Primary metropolitan statistical areas are categorized in one of four levels according to total population, following the standards of Section 7A.

B. Primary metropolitan statistical areas area titled in either of two ways:

(1) Using the names of up to three cities in the primary metropolitan statistical area that have qualified as central cities of the Level A metropolitan statistical area under Section 4, following the standards of Section 8 for selection and sequencing; *or*

(2) Using the names of up to three counties in the primary metropolitan statistical area, sequenced in order from largest to smallest population.

C. Local opinion on the most appropriate title will be considered.

Section 11. Designation and Titles of Consolidated Metropolitan Statistical Areas

A. Each Level A metropolitan statistical area in which primary metropolitan statistical areas have been defined by Section 9 is designated a consolidated metropolitan statistical area. A Level A metropolitan statistical area in which no primary metropolitan statistical areas have been defined is designated a metropolitan statistical area, and is titled according to Section 8.

B. Consolidated metropolitan statistical areas are titled according to the following guidelines. Local opinion is always sought before determining the title of a consolidated metropolitan statistical area.

(1) The title of each area includes up to three names, the first of which is always the name of the largest central city in the area. A change in the first-named city in the title will not be made until both its population and the number of persons working within its limits are exceeded by those of another city in the consolidated area.

(2) The preferred basis for determining the two remaining names is:

(a) The first city (or county) name that appears in the title of the remaining

[6] If a city qualifies as a central city under Section 4, and is included in an existing metropolitan statistical area title, it will not be resequenced in or displaced from that title until both its population and the number of persons working within its limits are exceeded by those of another city qualifying for the area title.

[7] If Section 9C would result in the balance of the Level A metropolitan statistical area including a noncontiguous county, this county will be added to the contiguous primary metropolitan statistical area to which it has the greatest commuting.

primary metropolitan statistical area with the largest total population; *and*

(b) The first city (or county) name that appears in the title of the primary metropolitan statistical area with the next largest total population.

(3) A regional designation may be substituted for the second and/or third names in the title if there is strong local support and the proposed designation is unambiguous and suitable for inclusion in a national standard.

Standards for New England

In the six New England States, the cities and towns are administratively more important than the counties, and a wide range of data is complied locally for these entities. Therefore, the cities and towns are the units used to define metropolitan statistical areas in these States. The New England standards are based primarily on population density and commuting. Sections 12 and 13 constitute the basic standards for New England metropolitan statistical areas. As a basis for measuring commuting, a central core is first defined for each New England urbanized area, corresponding to the central counties that are identified in the States outside New England.

Section 12. New England Central Cores

A central core is determined in each New England urbanized area through the definition of two zones.

A. Zone A comprises:

(1) The largest city in the urbanized area.

(2) Each other place in the urbanized area or in a contiguous urbanized area that qualifies as a central city under Section 4, provided at least 15 percent of its resident employed workers work in the largest city in the urbanized area.[8]

(3) Each other city or town at least 50 percent of whose population lives in the urbanized area or a contiguous urbanized area, provided at least 15 percent of its resident employed workers work in the largest city in the urbanized area plus any additional central cities qualified by Section 12A(2).[8]

B. Zone B comprises each city or town which:

(1) Has at least 50 percent of its population living in the urbanized area or in a contiguous urbanized area; *and*

(2) Has at least 15 percent of its resident employed workers working in Zone A.

C. The central core comprises Zone A, Zone B, and any city or town that is physically surrounded by Zones A or B, except that cities or towns that are not contiguous with the main portion of the central core are not included.

D. If a city or town qualified under Sections 12A through C for more than one central core, it is assigned to the core to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment will also be considered.

Section 13. Outlying Cities and Towns

A. A city or town contiguous to a central core as defined by section 12 is included in its metropolitan statistical area if:

(1) It has a population density of at least 60 persons per square mile and at least 30 percent of its resident employed workers work in the central core; *or*

(2) It has a population density of at least 100 persons per square mile and at least 15 percent of the employed workers living in the city or town work in the central core.[9]

B. If a city or town has the qualifying amount of commuting to two different central cores, it is assigned to the metropolitan statistical area to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment will also be considered.

C. If a city or town has the qualifying level of commuting to a central core, but has greater commuting to a nonmetropolitan city or town, it will not be assigned to any metropolitan statistical area unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment will also be considered.

Section 14. Applicability of Basic Standards to New England Metropolitan Statistical Areas

A. An area defined by Sections 12 and 13 qualifies as a metropolitan statistical area provided it contains a city of at least 50,000 population or has a total population of at least 75,000.[10]

B. The area's central cities are determined according to the standards of Section 4.

C. Two adjacent New England metropolitan statistical areas are consolidated as a single metropolitan statistical area provided the conditions of Section 5 are met. Section 6 is not applied in New England.

D. Each New England metropolitan statistical area defined by Sections 14A through C is categorized in one of the four levels specified in Section 7A. Areas assigned to Levels B, C, or D are designated as metropolitan statistical areas. Areas assigned to Level A are not finally designated until they have been reviewed under Section 15 and 16.

E. New England metropolitan statistical areas are titled according to the standards of Section 8.

Section 15. Qualification as a Primary Metropolitan Statistical Area

Within a Level A metropolitan statistical area in New England.

A. Any group of cities and towns that was recognized as a separate metropolitan statistical area on January 1, 1980, will be recognized as a primary metropolitan statistical area, unless local opinion does not support its continued separate recognition for statistical purposes.

B. Any additional group of cities and/or towns for which local opinion strongly supports separate recognition will be considered for identification as a primary metropolitan statistical area, provided:

(1) The total population of the group is at least 75,000;

(2) It includes at least one city with a population of 15,000 or more, an employment/residence ratio of at least 0.75, and outcommuting of less than 60 percent of its resident employed workers;

(3) It contains a core of communities, each of which has at least 50 percent of its population living in the urbanized area, and which together have less than 40 percent of their resident workers commuting to jobs outside the core; *and*

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[8] Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the subject city or town who live in the specified city or area is equal to at least 15 percent of the employed workers living in the subject city or town; *or*

(b) The sum of the number of workers commuting to and from the specified city or area is equal to at least 20 percent of the employed workers living in the subject city or town.

[9] Also accepted as meeting this commuting requirment are:

(a) The number of persons working in the city or town who live in the central core is equal to at least 15 percent of the employed workers living in the city or town; *or*

(b) The sum of the number of workers commuting to and from the central core is equal to at least 20 percent of the employed workers living in the city or town.

[10] A New England metropolitan statistical area designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking a total population of at least 75,000.

(4) Each community in the core also must have

(a) At least 5 percent of its resident workers working in the component core city identified in Section 15B(2), or at least 10 percent working in the component core city or in places already qualified for this core; this percentage also must be greater than that to any other core or to the largest city of the Level A MSA; *and*

(b) At least 20 percent commuting interchange with the component core city together with other cities and towns already qualified for the core; this interchange also must be greater than with any other core or with the largest city of the Level A MSA.

C. Contiguous component central cores may be merged as a single core provided:

(1) Section 15B would qualify the component core city of one core for inclusion in the other core; *and*

(2) There is substantial local support for treating the two as a single core.

D. Each city or town in the interim Level A MSA not included in a core under Section 15A through C is assigned to the contiguous PMSA to whose core its commuting is greatest, provided

(1) This commuting is at least 15 percent of the place's resident workers; *and*

(2) The commuting interchange with the core is greater than with the Level A MSA's largest city.

E. If a city or town has qualifying commuting ties to two or more cores and the relevant values are within 5 percentage points of each other, local opinion is considered before the place is assigned to any PMSA.

F. The interim PMSA definitions resulting from these procedures (including possible alternative definitions, where appropriate) are submitted to local opinion. Final definitions of PMSAs are made based on these standards, and a review of local opinion.

G. If any primary metropolitan statistical area of areas have been recognized under Section 15A through F, the balance of the Level A metropolitan statistical area is also recognized as a primary metropolitan statistical area.[11]

Section 16. Levels and Titles of New England Primary and Consolidated Areas

A. New England primary metropolitan statistical areas are categorized in one of four levels according to total population, following Section 7A.

B. New England primary metropolitan statistical areas are titled using the names of up to three cities in the primary area that have qualified as central cities under Section 4, following the standards of Section 8 for selection and sequencing.

C. Each Level A metropolitan statistical area in New England in which primary metropolitan statistical areas have been defined by Section 15 is designated a consolidated metropolitan statistical area. Titles of New England consolidated metropolitan statistical areas are determined following the standards of Section 11. A Level A metropolitan statistical area in which no primary metropolitan statistical areas have been defined is designated a metropolitan statistical area, and is titled according to the rules of Section 8.

Appendix—General Procedures and Definitions

This appendix specifies certain important guidelines regarding the data and procedures used in implementing the standards. It also gives definitions for "city," "urbanized area," and other key terms.

General Procedures

Percentages, Densities, and Ratios

These are computed to the nearest one-hundredth (two decimals), and comparisons between them are made on that basis.

Populations

In general, the population data required by the standards are taken from the most recent national census. However, in certain exceptional situations either (1) the results of a special census taken by the Bureau of the Census, or (2) a population estimate published by the Bureau of the Census and accepted for use in the distribution of Federal benefits may be used to meet the requirements of the standards.

Local Opinion

Where local opinion is called for in the standards, for example as an aid in determining primary or consolidated metropolitan statistical areas titles or in assigning counties or places that qualify for two different areas, it is always obtained through the appropriate congressional delegation. After a decision has been made on a particular matter, local opinion on the same question will not be requested again until after the next national census.

Review of Cutoffs and Values

The Federal Committee on Metropolitan Statistical Areas has developed the official standards and determined their various statistical cuttoffs and values on the basis of an extensive examination of the current data for individual counties and cities. If data from 1980 or a subsequent national census show that shifts in national commuting patterns or other long-term trends have seriously altered the makeup of the group defined by a value now specified in the standards, the Federal Committee will review this value and determine whether any changes should be made before the standards are implemented.

Definitions of Key Terms

City—The term "city" includes:

(a) Any place incorporated under the laws of its State as a city, village, borough (except in Alaska), or town (except in the New England States, New York, and Wisconsin). These comprise the category of "incorporated places" recognized in census publications.

(b) In Hawaii, any place recognized as a census designated place by the Bureau of the Census in consultation with the State government; in Puerto Rico, any place recognized as a *zona urbana* or *aldea* by the Bureau of the Census in consultation with the Commonwealth government. (Hawaii and Puerto Rico do not have legally defined cities corresponding to those of most States.)

(c) Any township in Michigan, New Jerey, or Pennsylvania, and any town in the New England States, New York, or Wisconsin, that is recognized by the Bureau of the Census as a census designated place. Under Census guidelines, such as town or township must not contain any part of a dependent incorporated place and must have a population density of at least 1,000 persons per square mile over essentially all its territory.

Urbanized Area—An area defined by the Bureau of the Census according to specific criteria, designed to include the entire densely settled area around each large city. An urbanized area must have a total population of at least 50,000. The urbanized area criteria define a boundary based primarily on a population density of at least 1,000 persons per square mile, but also include some less densely settled areas within corporate limits, and such areas as industrial parks, railroad yards, golf courses, and so forth, if they are adjacent to dense urban development.

Contiguous Urbanized Areas—They are those urbanized areas with a

[11] If Section 15G results in the balance of the Level A metropolitan statistical area including a noncontiguous city or town, this place will be added to the contiguous primary metropolitan statistical area to which it has the greatest commuting.

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common boundary of at least 1 mile on land or following a waterway crossed by a bridge.

Urban—The Bureau of the Census classifies as urban:

(a) The population living in urbanized areas; plus

(b) The population in other incorporated or census designated places of at least 2,500 population at the most recent national census.

County—For purposes of the standards, the term "county" includes county equivalents, such as parishes in Louisiana and boroughs and census areas (formerly census divisions) in Alaska. Certain States contain cities that are independent of any county; such independent cities in Georgia, Maryland, Missouri, and Nevada are treated as county equivalents for purposes of the standards.

In Virginia, where most places of more than 15,000 are independent, the standards usually regard each such city as included in the county from which it was originally formed, or primarily formed. In certain exceptional cases, the city itself is treated as a county equivalent, as follows:

(a) An independent city that has absorbed its parent county (Chesapeake, Hampton, Newport News, Suffolk, Virginia Beach);

(b) An independent city associated with an urbanized area other than the one with which its parent county is primarily associated (for example, Colonial Heights); and

(c) An independent city that is contiguous with a county in addition to its parent county, if including it with its parent county would result including it in a metropolitan statistical area with which it would otherwise not be included.

A county included in a metropolitan statistical area is either a *central* (Section 2), or an *outlying* (Section 3) county. An outlying county must be contiguous with a central county or with an outlying county that has already qualified for inclusion.

Employment/Residence Ratio—This ratio is computed by dividing the number of persons working in the city by the number of resident workers with place of work reported. (Both these data items are taken from the most recent national census.) For example, a city with an equal number of jobs and working residents has an employment/residence ratio of 1.00.

Outcommuting—The number (or percent) or workers living in a specified area, such as a city or a county, whose place of work is located outside that area.

Commuting Interchange—The commuting interchange between two areas is the sum of the number of workers who live in either of the areas but work in the other.

Jay Plager,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 88-29164 Filed 12-19-88; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26355; File No. SR-Amex-88-10, Amendment No. 3]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Relating to Equity Index Participations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is amending its proposed rule change relating to Equity Index Participations based on the S&P 500 Index and the Major Market Index to provide specific procedures under proposed Rule 912F relating to physical delivery facilitators.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex has proposed specific rules applicable to two Equity Index Participation ("EIP") securities based on the Major Market Index ("MMI") and the S&P 500 Index. (See Securities Exchange Act Release No. 25664, May 5, 1988; Securities Exchange Act Release No. 25942, July 25, 1988 (Amendment No. 1); Securities Exchange Act Release No. 26243, November 2, 1988 (Amendment No. 2)).

In Amendment No. 2, the Amex proposed rules that would permit EIP holders to receive physical delivery of shares of the component stocks of the S&P 500 or MMI upon exercise of a specified minimum number of EIPs. Pursuant to proposed Rule 912F, an Exchange-designated "physical delivery facilitator", who may be the specialist for a specific class of EIPs, would assume responsibility for making physical delivery of shares to EIP holders if the number of delivery units for which holders have requested physical delivery exceeds the number of units made available by persons with short positions.

The Exchange is amending its filing to supplement the description of facilitator activities in Amendment No. 2 to add specific procedures to be followed by the facilitator in the event that he is required to make physical delivery under Rule 912F. The procedures clarify that the facilitator can deliver to holders only shares purchased at the opening on Exercise Friday. Thus, the procedures specify that, in making physical delivery under Rule 912F, following reporting by the Exchange of an imbalance in the number of delivery units for which holders have requested delivery over units offered by short positions, the facilitator will enter market orders in each component stock for execution at the opening on Exercise Friday sufficient to satisfy the imbalance. The facilitator will deliver such shares in accordance with rules of the Exchange and the Options Clearing Corporation.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)5 in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the

mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by January 10, 1989.

For the Commission by the Divison of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 13, 1988.

Exhibit A—Procedures for Physical Delivery of EIP Units Upon Exercise

1. The Exchange will announce with regard to the S&P 500 Index and the Major Market Index ("MMI") the number of shares of each component stock required to be delivered in satisfaction of an exercise of the delivery privilege, after the close of the market on the Exchange business day preceding the third Friday of March, June, September, and December ("Exercise Friday"). The number of shares of each stock to be delivered will be rounded down to the nearest whole share.

2. S&P 500 component stocks requiring delivery of fewer than ten shares will be settled for cash. Partial shares of S&P 500 or MMI stocks remaining after rounding down of shares also will be settled for cash. In addition, any stock, including those which would require delivery of less than 10 shares, failing to open on Exercise Friday will be settled for cash. The prices of all such shares to be settled for cash will be determined in the same manner as the prices used for determining the liquidating index value of EIPs that are exercised for cash.

3. After the close on the business day preceding Exercise Friday and prior to the opening of trading on Exercise Friday, the Options Clearing Corporation ("OCC") will notify the Exchange of the number of EIP delivery units for which EIP holders have submitted notice of exercise of the delivery privilege in accordance with rules of the OCC and the Exchange, and the number of delivery units offered for physical delivery by persons having short EIP positions and who have provided timely notice of the desire to make physical delivery, if assigned.

If the number of EIP delivery units offered for physical delivery by persons having short positions is less than the number of delivery units for which holders have requested physical delivery, the Exchange shall cause to be publicly reported, at or prior to 9:00 A.M. on Exercise Friday, the amount of any such imbalance.

4. To the extent of any imbalance of delivery units for which physical delivery has been requested by EIP holders over units offered for delivery, the facilitator shall enter market orders in each component stock, for execution at the opening on Exercise Friday, sufficient to satisfy imbalances, and shall make delivery of such shares in accordance with OCC and Exchange Rules.

[FR Doc. 88-29193 Filed 12-19-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26357; File No. SR-BSE-88-4]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Market Circuit Breaker Proposal

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that, on November 21, 1988, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds the following new rule that will be effective for a pilot period ending on October 31, 1989.[1] The text of the rule change is as follows:

Trading Halts Due to Extraordinary Market Volatility

If the Dow Jones Industrial Average SM [2] reaches a value 250 or more points below its closing value on the previous trading day, trading in stocks shall halt on the Exchange and may not reopen for one hour. If, on the same day, the average subsequently reaches a value 400 or more points below that closing value, trading in stocks shall halt on the Exchange and may not reopen for two hours.

* * * *Supplementary Material:*

.10 The restrictions in this Rule shall apply whenever the Dow Jones

[1] The BSE originally stated that the rule would not become effective until all other U.S. stock and options exchanges, the National Association of Securities Dealers, and U.S. futures exchanges that trade futures contracts on stock indexes and options on such futures contracts adopted corresponding rules. The BSE subsequently amended its filing to eliminate this contingency. The BSE also originally proposed that its rule be effective for a one-year pilot period. The BSE subsequently amended its filing to provide for a pilot period ending on October 31, 1989 in order to be consistent with the effectiveness of similar circuit breaker rules of other self-regulatory organizations (*See, e.g.*, the rules approved in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637). Letter from Joseph P. Carmichael, Vice President, BSE, to Mary Revell, Attorney, Commission, dated November 23, 1988.

[2] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

Industrial Average reaches the trigger values notwithstanding the fact that, at any given time, the calculation of the value of the average may be based on the prices of less than all of the stocks included in the average.

.20 The reopening of trading following a trading halt under this Rule shall be conducted pursuant to procedures adopted by the Exchange.

.30 If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of trading for a day, trading in stocks shall halt for the remainder of the day; *provided, however,* that if the 250-point trigger is reached between one hour and one-half hour before the scheduled closing, or the 400-point trigger is reached between two hours and one hour before the scheduled closings, the Exchange may use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

.40 Nothing in this Rule should be construed to limit the ability of the Exchange to otherwise halt or suspend the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Over the last year, the securities markets have experienced unprecedented volatility. This volatility has been the subject of a number of market studies and reports.[3]

The most recent of these reports was the Interim Report ("Report") of the Working Group on Financial Markets ("Working Group") issued by the Under Secretary for Finance of the Department of the Treasury and the Chairman of the Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System in May, 1988. In its Report, the Working Group recommends "coordinated trading halts and reopenings for large, rapid market declines that threaten to create panic conditions." The Working Group specifically recommended that all U.S. markets for equity and equity-related products—stocks, individual stock options, stock index options, futures and options on futures—halt trading for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's closing level and for two hours if the DJIA declines 400 points from the previous day's close.

In light of the Working Group Report, as well as in keeping with its continued desire to decrease market volatility and increase investor confidence in the stock market, the BSE has adopted a Rule that will provide for temporary halts in the trading of all stocks on the Exchange when the DJIA reaches the trigger values discussed in the Working Group's Report. The BSE asserts that the halts will promote stability in the stock market by allowing market participants time to reestablish an equilibrium between buying and selling interest and will help ensure that all market participants have a reasonable opportunity to become aware of and respond to significant market price movements.

In order to coordinate the Rule's effectiveness with the effective dates of other exchanges' corresponding rules, this Rule is proposed for a pilot period ending on October 31, 1989. During this time the Exchange will analyze its experience with the proposed Rule and will determine in conjunction with the Commission and other market places whether to continue the pilot beyond the pilot period.

Statutory Basis—The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission grant accelerated effectiveness to the proposed rule change pursuant to section 19(b)(2) of the Act.[4] The Exchange's request is based on its desire to have the proposed rule change take effect concurrently with similar rule changes adopted by the New York Stock Exchange and other self-regulatory organizations. The Commission finds that the proposed rule change filed by the BSE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[5] and the rules and regulations thereunder. The proposal will permit the Exchange to coordinate with the other securities self-regulatory organizations and futures exchanges in providing a mechanism to address periods of extreme downward volatility in the stock market. The Commission finds good cause for approving the BSE proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**. The proposal is substantially identical to the NYSE circuit breaker proposal contained in File No. SR–NYSE–88–23 that was published for the full thirty-day period and was approved by the Commission in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637. In light of the absence of any adverse comments on the NYSE's filing and the Commission's view of the benefits that may accrue from adoption of coordinated circuit breakers that respond to stock market volatility and that may increase investor confidence in the markets, the Commission believes a good cause finding is justified.

[3] *See, e.g.*, "The October Market Break—A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission," February 1988.

[4] Letter from Joseph P. Carmichael, Vice President, BSE, to Mary Revell, Attorney, Commission, dated November 23, 1988.

[5] 15 U.S.C. 78f (1982).

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 10, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved for a pilot period ending October 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: December 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29194 Filed 12-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26356; File No. SR-CBOE-88-16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Underlying Treasury Securities Options

On September 20, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, a proposed rule change to amend CBOE Rules 21.7 and 21.8 to extend the initial trading period for treasury securities beyond 15 months in certain circumstances and to provide for a .5 point strike price integral in treasury security options.

The proposed rule change was notified in Securities Exchange Act Release No. 26227 (October 28, 1988), 53 FR 44543 (November 3, 1988). No comments were received on the proposed rule change.

Currently, in order to limit underlying treasury securities for specific coupon options to the most recently issued and actively traded issues, the CBOE ordinarily approves such underlying securities for a period of no more than 15 months, and options series opened thereafter will relate to more recently issued treasury securities. Pursuant to this system the Exchange may extend approval of an underlying security only if such underlying security is reopened by the Treasury. Moreover, pursuant to current Exchange rules the strike price of each series of treasury security options is set at a one point integral. Further, therse may be up to five expiration months for these treasury security options, but none further out than nine months.

The proposed rule change will revise the current system for extending approval of underlying treasury securities such that the CBOE may extend approval of an underlying treasury security beyond the original 15 month period for issues which have a reasonably active secondary market. In addition, the proposed rule change will change the 1 point strike price integral to a half-point strike price integral. The proposed rule change also will provide: (1) The Exchange the opportunity to list more than one treasury security that has not been recently issued; (2) for sequential rather than consecutive monthly expirations; and (3) for five expiration months, none further out than fifteen rather than nine months.

The CBOE states that the proposed modifications to Rule 21.7 (regarding extension of underlying treasury securities approval and multiple listing of treasury securities not recently issued) are designed to conform the Exchange's treasury security option contracts to the standards and current practices of the industry. The CBOE also states that the proposed modification to Rule 21.8(b) (providing for sequential monthly expirations and five expiration months, none further out than fifteen months) is intended to standardize the language of that rule so that it conforms to language contained elsewhere in the rules regarding sequential monthly expirations and other Exchange treasury security option expirations. In addition, the CBOE notes that the move from a one point strike price integral to a half-point strike price integral is designed to provide investors with exchange-listed contracts similar to those traded in the over-the-counter ("OTC") market. The Exchange suggests that such a move in the strike price integral will not result in a proliferation of strike prices because the Exchange intends to drop series in which no open interest exists, thus limiting the number of series outstanding.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. More specifically, the Commission believes that the move from a one point strike price integral to a half-point strike price integral will ensure the continuous availability of a strike price close to the money. In this regard, the Commission believes that by providing investors with exchange-listed contracts similar to those traded in the OTC market, the half-point strike will help provide additional depth and liquidity to certain treasury options by increasing institutional and individual investor participation in the trading of those options. In addition, the Commission believes that modifying the rule concerning strike prices so as to conform with existing exchange policy and trading practices regarding such strikes should ameliorate any possible investor confusion. To the extent that the amendment could increase the number of treasury options series, the CBOE has committed to remove from listing the series with no open interest. The Commission believes that the CBOE should undertake this pruning on a consistent basis so that the reduced strike prices do not result in undue series proliferation.

The Commission believes further that because the purpose of Interpretation and Policy .02 to CBOE Rule 21.7 is to limit underlying treasury securities for specific coupon options to the most actively traded issues it is logical to allow the Exchange to extend approval of underlying treasury securities where a reasonably active secondary market exists for such securities. The Commission also believes that that portion of the rule change amending Interpretation and Policy .02 to CBOE Rule 21.7 should be approved because the amendment simply conforms the Exchange's treasury security option

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[6] 15 U.S.C. 78s(b)(2) (1982).
[7] 17 CFR 200.30-3(a)(12) (1988).
[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b-4 (1988).

contracts to the standards and current practices of the industry.

Finally, the Commission believes that those portions of the rule change modifying Rule 21.8(b) to provide for sequential monthly expirations and five expiration months, none further out that fifteen months, should be approved because the modifications simply conform the language of that Rule to language contained elsewhere in the Rules regarding sequential monthly expirations and other Exchange treasury security option expirations. [3]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: December 13, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29195 Filed 12-19-88; 8:45 am]

BILLING CODE 8010-01-M

[3] *See, e.g.*, CBOE Rule 21.9(a).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-26351; File No. SR-PSE-88-05]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Appearance of Witnesses and the Production of Documentary Materials at PSE Disciplinary Hearings

On September 26, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PSE Rule XX, Section 4 to provide PSE disciplinary hearing panels, complainants, and respondents with the power to compel members or persons associated with a member to testify or provide documentary materials at Exchange disciplinary proceedings.

The proposed rule change was noticed in Securities Exchange Act Release No. 26157 (October 5, 1988) 53 FR 40152 (October 13, 1988). No comments were received on the proposed rule change.

The PSE states that the proposed rule change is designed to assure that members and persons associated with members cooperate with one another and with the Exchange in PSE disciplinary hearings with respect to possible violations of Exchange rules. In addition, the PSE notes that the proposed rule change will enhance the Hearing Panel's fact finding responsibilities in regards to adjudicating disciplinary hearings.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[3] More specifically, by making noncompliance with a hearing panel request for documents or testimony a violation of PSE Rules, PSE members will comply fully with PSE hearing panel requests for information. The Commission believes that PSE hearing panels must have the ability to obtain such information so that the panel has access to all relevant facts necessary for the hearing panel to act on a fully informed basis when making decisions concerning the disciplining of members. At the same time, the Commission believes the proposal is not inconsistent with the Exchange's maintenance of a fair disciplinary process for its members. The Commission notes that all existing due process safeguards relating to PSE disciplinary procedures remain in place. Finally, the Commission previously has approved rules of other exchanges that give their disciplinary committees the express power to compel the production of documentary evidence and witnesses.[4]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: December 13, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29196 Filed 12-19-88; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] 15 U.S.C. 78f (1982).

[4] *See, e.g.*, CBOE Rule 17.2(b).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-26354; File No. SR-PHLX-88-33]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Temporary Approval to Proposed Rule Change; Automated Options Market System

On October 3, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to expand and extend the Exchange's Automated Options Market ("AUTOM") system pilot program through June 30, 1989.

The proposed rule change was noticed in Securities Exchange Act Release No. 26193 (October 18, 1988), 53 FR 43088 (October 25, 1988). No comments were received on the proposal.

AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the PHLX options trading floor, with electronic confirmation of order executions. Because all orders received through AUTOM are exposed to the specialist's limit order book, the trading crowd, and to at least one registered options trader ("ROT"),[3] the Exchange believes best execution of AUTOM orders is assured.

All orders entered into the system are executed manually by the specialist, who, upon execution of the order, enters the relevant trade information (*e.g.*, the number of contracts executed, the price, and the identity of the contra-broker(s)) into the system. An execution report then is sent automatically to the firm that placed the order.

In its rule filing seeking implementation of the AUTOM system, the PHLX noted that the AUTOM system, including hardware as well as software, is completely separate from and independent of the hardware and software for PHLX's Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system for routing and executing stock orders. The Exchange stated that because the systems are independent, one system cannot have an adverse impact on the other during volume surges in terms of volume handling capabilities or queuing.[4]

In Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390, the Commission approved implementation of the AUTOM system on a 90-day pilot basis. The Commission approved the Exchange's request that the pilot include up to 12 equity options,

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 C.F.R. 240.19b-4 (1988).

[3] PHLX Rule 1063(a) requires an Options Floor Broker to ascertain that at least one ROT is present at the trading post prior to representing an order for execution.

[4] Letter from Michael A. Finnegan, Senior Vice President, PHLX, to Howard L. Kramer, Assistant Director, Commission, dated March 22, 1988.

up to five order entry firms, and up to six specialist units. During the pilot phase, only market orders of five or fewer contracts in the near-term expiration month were made eligible for delivery through the system for manual execution. At the same time, the Commission granted the PHLX authority to terminate the program prior to the 90th day and to extend the pilot beyond the 90th day upon notice and approval of the Commission.

In Securities Exchange Act Release No. 25868 (June 30, 1988), 53 FR 25563, the Commission approved a six-month extension of the pilot period, as well as the expansion of the pilot to include an additional 25 equity options, bringing to 37 the total number of equity options eligible for execution through the AUTOM system. The Commission also granted the PHLX authority to terminate the program prior to the end of the six-month pilot extension and to extend the pilot beyond this period upon due notice and approval of the Commission.

The Exchange now proposes to modify the existing 37-options pilot to make all pilots options' strikes and expiration months eligible to be handled by AUTOM and to increase the eligible order size for AUTOM to 10 contracts. The Exchange believes that this modification will make AUTOM more competitive vis-a-vis similar systems currently being operated by other options exchanges. In all other respects, the Exchange commits to operating the pilot as represented in its prior rule filings. The PHLX also requests an extension of the modified AUTOM pilot until June 30, 1989 in order to assess adequately the impact of these modifications on the pilot.

To date, the Exchange has received insignificant order flow through AUTOM.[5] The Exchange asserts that expanding and extending the AUTOM pilot will enable it to gain additional trading experience before making a final determination as to permanent approval of the AUTOM system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[6] and section 11A[7] and the rules and regulations thereunder. The Commission continues to believe that the development and implementation of AUTOM will provide for more efficient handling and reporting of orders in PHLX equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission also believes that the AUTOM system, by offering increased order routing efficiencies, should benefit public customers and PHLX member firms and customers.

Expanding the existing 37 options AUTOM pilot to make all pilot options' strikes and expiration months eligible to be handled by AUTOM and to increase the eligible order size for AUTOM to 10 contracts and extending the pilot period for six months (*i.e.*, through June 30, 1989) should enable the Exchange to better assess the effectiveness of the AUTOM system. The PHLX believes that the AUTOM system will be able to handle the increased volume that should accompany expansion of the pilot to 37 equity options.[8] As noted above, the AUTOM system is completely independent from the Exchange's PACE system. Therefore, neither AUTOM nor the PACE system should impact on the other during periods of high volume. Moreover, as noted in the original order approving implementation of the AUTOM pilot,[9] the PHLX asserts that the AUTOM system has significant excess order handling and disc capacity.[10]

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved for a pilot period ending June 30, 1989.[12]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: December 13, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29197 Filed 12-19-88; 8:45 am]

BILLING CODE 8010-01-M

[5] In this regard, the Exchange does not foresee any significant taxing of the Exchange's computer systems if the Commission approves the expansion of the pilot as proposed herein. Letter from Michael A. Finnegan, Senior Vice President, PHLX, to Howard L. Kramer, Assistant Director, Division of Market Regulation, Commission, dated November 30, 1988. In all other respects, the Exchange stands by its representations conveyed in letters to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, from Michael A. Finnegan, Senior Vice President, PHLX, dated March 22 and 30, 1988.

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78k-1 (1982).

[8] Letter from Michael A. Finnegan, Senior Vice President, PHLX, to Howard L. Kramer, Assistant Director, Division of market Regulation, Commission, dated November 30, 1988.

[9] 53 FR 11390-91.

[10] In particular, the PHLX informed the Commission that the AUTOM system's order handling and disc capacity was five times the estimated daily order flow for the original pilot, and that the AUTOM system capacity could be increased up to five times that capacity if needed. *See* letter from Michael A. Finnegan, Senior Vice President, PHLX, to Howard L. Kramer, Assistant Director, Division of market Regulation, Commission, dated March 30, 1988. Based on the Exchange's experience to date under the pilot program, the Commission believes that increasing the number of strikes and expiration months eligible to be handled by AUTOM and increasing the eligible order size should not impact adversely the ability of AUTOM to handle the necessary volume levels.

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] The Commission expects that at the conclusion of the additional six-month pilot period, the PHLX will be able to evaluate the pilot and submit a rule change for final approval with any appropriate modifications, or that the PHLX will submit a rule change extending the pilot beyond the six-month period. The PHLX is authorized to terminate the program prior to the end of the six-month period upon due notice and approval by the Commission.

[13] 17 CFR 200.30-3(a)(12) (1988).

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 9, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 45990.

Date Filed: December 6, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 1989.

Description: Application of Bradley Air Service Limited d/b/a First Air, pursuant to Section 402 of the Act and Subpart of the Regulations requests a foreign air carrier permit authorizing it to provide scheduled foreign air transportation of persons, property, and mail between Ottawa, Ontario, and Boston, Massachusetts.

Docket No.: 4600.

Date Filed: December 8, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 5, 1989.

Description: Application of Air China International Corporation, d/b/a Air China, pursuant to Section 402 of the

Act and Subpart Q of the Regulations applies for transfer and amendment of the foreign air carrier permit to add authority to serve Route 2, as set forth in the Protocol dated August 19, 1982 to the Civil Air Transport Agreement signed by the Government of the United States of America and the Government of the People's Republic of China on September 17, 1980.

Docket No.: 46004.

Date Filed: December 9, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 6, 1989.

Description: Application of Sector Airlines Inc./Lignes Aeriennes Sector Inc., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing it to operate nonscheduled all-cargo services between the coterminal points Montreal, P.Q. (to be served through Mirabel Airport) and Quebec City, P.Q., on the the one hand, and Burlington, Vermont, on the other hand. In addition, Sector requests authority to operate charter services (a) between all points in the U.S. and points not in either the U.S. or Canada subject to Part 212 of DOT's Economic Regulations.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-29171 Filed 12-19-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATE: The meeting will be held from January 24, at 9 a.m., through January 26, 1989, at 5 p.m.

ADDRESS: The meeting will be held at the Embassy Suites Hotel, San Diego-La Jolla, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Paul H. Strybing, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from January 24, at 9 a.m., through January 26, 1989, at 5 p.m., at the Embassy Suites Hotel, San Diego-La Jolla, CA. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the persons listed above not later than January 19, 1989. The next quarterly meeting of the FAA ATPAC is planned to be held from April 17 through April 21, 1989, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on December 14, 1988.

Paul H. Strybing,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 88-29151 Filed 12-19-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 15, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0089.

Form Number: ATF F 5100.24 (1637).

Type of Review: Extension.

Title: Application for a Basic Permit Under the Federal Alcohol Administration Act.

Description: ATF F 5100.24 (1637) is an application for a basic permit for beverage distilled spirits plants and bonded wineries. The issuance of basic permits to distillers, and wine producers is required by the Federal Alcohol Administration Act. The permit identifies persons entitled to engage in operations and the location and extent of operations.

Respondents: Businesses and other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 450 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-29191 Filed 12-19-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 14, 1988.

The Department of Treasury has submitted the following public information collection requirment(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and

Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0216.
Form Number: ATF F 5120.17 (702).
Type of Review: Extension.
Title: Monthly Report of Wine Cellar Operations.
Description: This report is used to monitor winery operations to insure the collection of wine tax revenues. It further issures that wine is produced in accordance with the rules established in law and regulations. ATF F 5120.17 provides the raw data for ATF's Monthly Statistical Release on Wine, which is used by both ATF and other federal agencies as well as regulated industry for trend analysis and planning.
Respondents: Businesses and other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,367.
Estimated Burden Hours Per Response: 1 hour 6 minutes.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 18,044 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–29140 Filed 12–19–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 4, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0025
Form Number: 851
Type of Review: Revision
Title: Affiliations Schedule
Description: Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to the Form 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.
Estimated Number of Respondents: 4,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 11 hours 58 minutes
Learning about the law or the form, 24 minutes
Preparing and sending the form to IRS, 37 minutes
Estimated Total Recordkeeping/ Reporting Burden: 51,880 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–29141 Filed 12–19–88; 8:45 am]
BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Pub. L. 92–463, the Veterans Administration gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 "M" Street NW., Washington, DC, January 10 through January 13, 1989. The session on January 10, 1989, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on January 11, 12, and 13, 1989, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the January 10 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 11–13, 1989, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b(c)(6), and (c)(9)(B) and the determination of the Administrator of Veterans Affairs Under Sections 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Jon Peters, Program Manager, Rehabilitation Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, (Phone: 202–233–5177) at least five days before the meeting.

Dated: December 8, 1988.

By direction of the Administrator:

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 88–29124 Filed 12–19–88; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 244
Thursday, December 20, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Monday, December 19, 1988, 2:00 p.m.

PLACE: 1776 G Street, NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759–8414.

MATTERS TO BE CONSIDERED:

Closed Minutes of the November 29, 1988 Board of Directors' Meeting
Closed President's Report
Closed Financial Report-Quarterly Update
Closed 1989 Corporate Plan
Closed Selected Compensation and Benefit Issues

Date sent to Federal Register: December 15, 1988.

Maud Mater,

Secretary.

[FR Doc. 88–29246 Filed 12–16–88; 12:33 pm]

BILLING CODE 6720–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 19, 26, 1988, January 2, and 9, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 19

Monday, December 19

10:00 a.m.
Briefing on Peer Review and Interim Use of NUREG–1150 (Public Meeting)

Tuesday, December 20

10:00 a.m.
Briefing on Current Status of Possible Use of Substandard Components in Nuclear Power Plants (Public Meeting)
2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)

Wednesday, December 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Proposed Commission Policy Statement on the Professional Conduct of Nuclear Power Plant Operators
b. Petition for Leave to Intervene in the Comanche Peak Operating License and Construction Permit Amendment Proceedings (Tentative)
2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Week of December 26—Tentative

There are no commission meetings scheduled for the week of December 26.

Week of January 2—Tentative

Thursday, January 5

2:00 p.m.
Briefing on Regulatory Responsibilities and Schedules for the HLW Repository Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, January 6

10:00 a.m.
Briefing on Staff Actions to Reduce Testing at Power (Public Meeting)

Week of January 9—Tentative

Thursday, January 12

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (301)— 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Jack Guttmann,

Office of the Secretary.

December 15, 1988.

[FR Doc. 88–29272 Filed 12–16–88; 3:26 pm]

BILLING CODE 7590–01–M

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federal register

Tuesday
December 20, 1988

Part II

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Availability of Toxicological Profiles; Notice

VOL 53 ISS 244 DE 20 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR-7]

Availability of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR); Public Health Service (PHS); Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the expected availability of the second 25 draft toxicological profiles, prepared by ATSDR, for review and comment.

The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance previously included on the first priority list of 100 chemicals. The list identified the first 100 chemicals which both Agencies determined are posing the most significant potential threat to human health. This list was published in the **Federal Register** on April 17, 1987 (52 FR 12866).

Availability

The following draft toxicological profiles are expected to be publicly available on or about December 20, 1988.

Profile	CAS Number
1,1-Dichloroethene	75–35–4
Alpha-, beta-, gamma-, and delta-Hexachlorocyclohexane	319–84–6, 58–89–9, 319–85–7, 319–86–8
Chloroethane	75–00–3
Isophorone	78–59–1
Toluene	108–88–3
2,4- and 2,6-Dinitrotoluene	121–14–2, 606–20–2
1,2-Dichloroethane	107–06–2
p,p'-DDT, DDE, DDD	72–55–9, 50–29–3, 72–54–8
N-nitrosodi-*n*-propylamine	621–64–7
1,1,2,2-Tetrachloroethane	79–34–5
1,2-Dichloropropane	78–87–5
Carbon tetrachloride	56–23–5
Zinc	7440–66–6
Selenium	7782–49–2
Chlordane	57–74–9
Phenol	108–95–2
Benzidine	92–87–5
3,3'-Dichlorobenzidine	91–94–1
Pentachlorophenol	87–86–5
Mercury	7439–97–6
1,1,2-Trichloroethane	79–00–5
N-nitrosodimethylamine	62–75–9
Bromodichloromethane	75–27–4
Bis(2-chloroethyl)ether	111–44–4
Bis(chloromethyl)ether	542–88–1

A 90-day public comment period will be provided for each profile, starting from the actual release date. The close of the comment period for each draft profile will be indicated on the front of each profile.

Requests for draft toxicological profiles should be sent to Mr. Edward J. Skowronski, Assistant Branch Chief, Research Analysis Branch, Agency for Toxic Substances and Disease Registry, Chamblee 28 South, 1600 Clifton Road, Atlanta, GA 30333.

Specify the profiles you wish to receive. One copy of each profile requested will be forwarded free of charge, as they become available. In the case of extended delays, requestors will be notified.

Send one copy of all comments and five copies of all supporting documents to Mr. Skowronski at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Trailer 11, 4770 Buford Highway NE, Chamblee, GA, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–7.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund, 42 U.S.C. 9601 et seq.).

Section 110 of SARA amends section 104(i) of CERCLA by establishing requirements for the preparation of: (1) Lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

In compliance with section 104(i)(2)(A) of CERCLA, ATSDR and EPA published on April 17, 1987 (52 FR 12866) the first priority list of 100 hazardous substances. This priority list of 100 was further broken down into four groups of 25 chemicals. The first group of 25 was the subject of the development of the first set of toxicological profiles. Section 104(i)(3) of CERCLA spells out the content of these profiles and the timetable by which they must be developed. Profiles on at least 25 substances on the first priority list were to be completed within one year of the enactment of SARA (by October 17, 1987). The remaining seventy-five are to be completed at a rate of at least twenty-five per year with the total 100 completed within four years after the enactment of the SARA amendments. Revision and republication is mandated as necessary but no less often than once every three years.

Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

The toxicological profiles are to be provided to the States and made available to the public. The profiles are to be prepared in accordance with the guidelines developed by ATSDR and EPA.

This current notice announces the projected availability of the second 25 draft toxicological profiles. The documents have undergone extensive internal review and have been subjected to scientific and technical peer review by outside experts. We are now announcing their availability and encouraging public participation and comment on the further development of these profiles.

Although we are reasonably confident that the key studies for each of the 25 substances were considered during the profile development process, this **Federal Register** notice solicits any significant studies, including unpublished data, which may aid in the revision of the draft profiles.

II. Levels of Significant Human Exposure

Setting specific levels of significant human exposure presented a unique set

of problems. The significance of a specific level of a hazardous substance depends on the context in which that level is evaluated. For example, a low level that may be insignificant with respect to causing acute, immediately debilitating symptoms may be highly significant with respect to causing gradual, chronic effects over a longer term. Since these profiles are intended for use by a diverse group of people who have different situations in which to interpret the significance of specific levels, it was considered appropriate at this time to describe the range of exposures over which effects may occur (where data are available) and to allow the user to make determinations as to which type of effect is significant to any particular instance. A format for graphically displaying the levels of significant human exposure has been developed and is used in the profiles to present the ranges over which effects may be observed.

We encourage public comment and recommendations on this specific issue.

Dated: December 13, 1988.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

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Part III

Department of Agriculture
Department of the Interior

Recommendations of the Fire Management Policy Review Team; Notice of Availability and Public Meetings

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DEPARTMENT OF AGRICULTURE

DEPARTMENT OF THE INTERIOR

Recommendations of the Fire Management Policy Review Team

AGENCIES: United States Forest Service, Agriculture, National Park Service, Interior, United States Fish & Wildlife Service, Interior, Bureau of Land Management, Interior, Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of final report and proposed recommendations of the Fire Management Policy Review Team concerning Federal fire management policy for national parks and Federally designated wilderness areas. Notice of public meetings.

SUMMARY: On September 28, 1988 the Secretaries of the Department of Agriculture and the Department of the Interior appointed the interagency Fire Management Policy Review Team to investigate and recommend modifications to agencies' current fire management policies for national parks and federally designated wilderness areas. The Team's complete report and recommendations are herewith published for public review and comment and concurrent agency review. The compiled record will be used by agencies in modifying their fire management policies. Public meetings will be conducted in Washington, DC and several additional communities. The schedule of the location, date and time will be announced through placement in the **Federal Register**.

DATES: Written comments will be accepted until February 21, 1989. Public meetings will be scheduled through announcement in the **Federal Register**.

ADDRESS: Comments should be directed to: Chief, Forest Service–USDA, P.O. Box 96090, Washington, DC 20090–6090; or Director, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Copies are available from: Director, Public Affairs Office, Forest Service–USDA, P.O. Box 96090, Washington, DC 20090–6090; or Chief, Office of Public Affairs, National Park Service, P.O. Box 37127, Main Interior Building–Mail Stop 3043, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office, Forest Service–USDA, P.O. Box 96090, Washington, DC 20090–6090, phone (202) 447–3760; or Ranger Activities Division, National Park Service, P.O. Box 37127, Main Interior Building–Mail Stop 3310, Washington, DC 20013–7127, phone (202) 343–4874.

Peter C. Myers,
Deputy Secretary, Department of Agriculture.
Earl E. Gjelde,
Under Secretary, Department of the Interior.

SUPPLEMENTARY INFORMATION:

Report of the Fire Management Policy Review Team

December 14, 1988.

Memorandum for:

Secretary of Agriculture
Secretary of the Interior

Through:

Deputy Secretary, Department of Agriculture, Peter C. Myers
Under Secretary, Department of the Interior, Earl E. Gjelde

From: Fire Management Policy Review Team

Re: Report concerning Fire Management Policy for National Parks and Wilderness

As requested, we are submitting the enclosed report of the Fire Management Policy Review Team appointed by you on September 28, 1988.

The team was established to review current U.S. Department of Agriculture and U.S. Department of the Interior policies on fire management in light of the extreme fire situation experienced in the Greater Yellowstone Area during the summer of 1988. The team conducted a thorough review of fire policies for national parks and wilderness areas. Much useful information was obtained during consultations with various elected officials, private citizens, representaties from academia, concessioners and outfitters, environmental groups, businesses, and other knowledgeable parties.

Our recommendations include a number of significant changes in fire policy and its application to national parks and wilderness areas. While recognizing the important role of fire in natural ecosystems, we believe that these suggested improvements in fire management policy will reduce the risk of repeating the experience of this past summer.

We further recommend that the enclosed report be reviewed by the individual land management agencies concurrently with the public review. This concurrent review will ensure that approved policy changes can be implemented prior to the 1989 fire season.

We would be remiss if we did not recognize the contributions of our staff directors, John Chamber and David Behler, and many others who made it possible to complete this report in a short period. In particular, John Gerard of the National Fire Protection Association, Paul Cunningham, Executive Director of the Western Governors Assocation, Dr. Robert Lee of the University of Washington, and Dr. Ron Wakimoto of the University of Montana were helpful in facilitating the supply of information about fire management policies and their applications from outside organizations and academia.

We thank you for the opportunity to serve in this important endeavor and hope that our efforts will lead to improved fire management policies and programs and increased public support for them.

Charles Philpot,
Co-Chair, Special Assistant to the Deputy Secretary, Department of Agriculture.
Brad Leonard,
Co-Chair, Deputy Director, Office of Program Analysis, Department of the Interior.
Gary E. Cargill,
Regional Forester, Rocky Mountain Region, U.S. Forest Service.
Blaine L. Cornell,
Forest Supervisor, Stanislaus National Forest, U.S. Forest Service.
Boyd Evison,
Regional Director, Alaska Region, National Park Service.
Thomas F. Follrath,
Deputy Division Chief, Division of Wildlife Refuges, U.S. Fish and Wildlife Service.
Dean E. Stepanek,
Assistant Director for Lands and Renewable Resources, Bureau of Land Management.
Charles W. Tandy,
BIA Director, Boise Interagency Fire Center, Bureau of Indian Affairs.
Bruce M. Kilgore,
Regional Chief Scientist, Western Region, National Park Service.
Harry F. Layman,
Chairman of the Fire Committee, National Association of State Foresters.

Report on Fire Management Policy

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Summary

The Fire Management Policy Review Team was established on September 28th to review national policies and their application for fire management in national parks and wilderness and to recommend actions to address the problems experienced during the 1988 fire season. The Team report is due December 15th, with a minimum of a 60 day public review and comment period to follow. The goal is to have improved fire management policies and plans in effect by the end of May 1989.

The Fire Management Policy Review Team finds that:

- The objectives of policies governing prescribed natural fire programs in national parks and wildernesses are sound, but the policies themselves need to be refined, strengthened, and reaffirmed. These policies permit fires to burn under predetermined conditions.
- Many current fire management plans do not meet current policies; the prescriptions in them are inadequate; and decision-making needs to be tightened.
- There are risks inherent in trying to manage fire, but they can be reduced by careful planning and preparation. Use of planned burning and other efforts to reduce hazard fuels near high value structures and to create fire breaks along boundaries help to reduce risks from both prescribed natural fires and wildfires.
- The ecological effects of prescribed natural fire support resource objectives in parks and wilderness, but in some cases the social and economic effects may be unacceptable. Prescribed natural fires may affect permitted uses of parks and wilderness, such as recreation, and impact outside areas through such phenomena as smoke and steam sedimentation.
- Dissemination of information before and during prescribed natural fires needs to be improved. There needs to be greater public participation in the development of fire management plans.
- Internal management processes, such as training more personnel, developing uniform terminology, and utilizing similar budget structures, would significantly improve fire management.
- Claims were heard that some managers support "naturalness" above all else, allowing fires to burn outside of prescription requirements without appropriate suppression actions.

The Team recommends that:

- Prescribed natural fire policies in the agencies be reaffirmed and strengthened.
- Fire management plans be reviewed to assure that current policy requirements are met and expanded to include interagency planning, stronger prescriptions, and additional decision criteria.
- Line officers certify daily that adequate resources are available to ensure that prescribed fires will remain within prescription, given reasonably foreseeable weather conditions and fire behavior.
- Agencies develop regional and national contingency plans to constrain prescribed fires under extreme conditions.
- Agencies consider opportunities to use planned ignitions to complement prescribed natural fire programs and to reduce hazard fuels.
- Agencies utilize the National Environmental Policy Act requirements in fire management planning to increase opportunities for public involvement and coordination with state and local government.
- Agencies provide more and better training to assure an adequate supply of knowledgeable personnel for fire management programs.
- Agencies review funding methods for prescribed fire programs and fire suppression to improve interagency program effectiveness.
- Additional research and analysis relating to weather, fire behavior, fire history, fire information integration, and other topics be carried out so that future fire management programs can be carried out more effectively and with less risk.
- Allegations of misuse of policy be promptly investigated and acted upon as may be appropriate.

Report of the Fire Management Policy Review Team

December 14, 1988

Background

The 1988 fire season was severe in many parts of the western United States. Near record acreages were burned over, and more than one-half billion dollars were expended on suppression efforts. Additional resources will be required for rehabilitation and other follow-up needs.

Although the western United States experienced wildland fires exceeding recent history, the extraordinary fire situation in 1988 in the Greater Yellowstone Area was the focal point for public concern and agency criticism. Yellowstone National Park enjoys a special place in the hearts of Americans and, indeed, people worldwide. Vivid accounts of the Yellowstone fires appeared daily on television and in the newspapers from July through September. Visitor use was interrupted; smoke episodes disturbed local communities; and some summer businesses were hurt. A total of 249 separate fires were counted during the summer in the Greater Yellowstone Area, burning over a million acres. Twenty-eight of the 249 fires began as prescribed natural fires as permitted under current Department of the Interior (USDI) and Department of Agriculture (USDA) policy. Controversy arose over the adequacy of fire suppression. We have to ask ourselves:

- Is the policy allowing fire to play its natural ecological role in parks and wilderness under certain conditions flawed or inappropriate? What are the alternatives, and what are their effects?
- Should more of the fires have been declared wildfires and suppressed earlier, particularly given the drought? Should early suppression action have been more vigorous?
- Are surrounding communities being put at risks unacceptable to them by natural prescribed fire programs or from policies that restrict fire suppression tactics? Or do prescribed burns and prescribed natural fires result in an appreciable net reduction in risks?
- Are offsite effects, such as smoke and air and water pollution, acceptable, and are they adequately assessed in planning for these programs? How do they compare to offsite effects to that which would occur without such programs?
- Is the public aware of the ramifications of current policy and alternatives, such as immediate suppression of all fires or letting all fires burn unchecked?
- Did Federal and State agencies spend too much money on suppressing the fires? Would they have spent less if prescribed natural fire programs had not been implemented or if there had been better public understanding of and support for natural fires?
- Are agencies perceived as incompetent when large, numerous fires occur that partially result from natural prescribed fire programs or from policies that restrict fire suppression tactics?
- To what extent has a long-term credibility and communication problem been created between the public and agencies, and, if so, how can it be corrected?
- Is the large array of successful fire management programs across the nation now at risk?

Activity in the Greater Yellowstone Area in 1988 has triggered public debate and professional concern about current fire policies in Federal land management agencies nationwide. Wildland fire

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management is a high risk activity. There are many areas of the United States where similar wildland fire disasters could occur. This risk is increasing in many areas due to the combination of fuel accumulation and the continuing developing of private and commercial interests in flammable, wildland settings. Therefore, it is timely to take a nationl look at current wildland fire policies, their application, and implementation plans to ensure that the risks and costs to society are acceptable, in light of the alternatives.

Establishment of National Fire Management Policy Review Team

The Secretaries of Interior and Agriculture established a Fire Management Policy Review Team on September 28, 1988. This multi-agency team, co-chaired by Interior and Agriculture representatives, was assigned the task of reviewing the current national park and wilderness fire management policies and action plans of all agencies within both Departments and recommending changes needed to address the problems experienced during the 1988 fire season. The Team met regularly with representatives of the National Fire Protection Assocation, the Western Governors Association, and the academic community. The Team was also directed to consult with representatives of knowledgeable organizations and individuals to arrive at proposed changes. The Team report is due on December 15, 1988. A public comment phase will then begin with publication of the Team's report in the **Federal Register**. Revised policy and application requirements will be implemented prior to the 1989 western fire season.

The goals of the Fire Management Policy Review Team are:

- To identify issues and concerns which arose during the 1988 fire season related to fire management policy and its application;
- To gather information from a cross-section of knowledgeable parties about current fire policy and its application;
- To develop recommendations for appropriate changes in fire policy and improvements in application; and
- To identify areas of needed additional study and analyses.

The Team began with the premise that its charter did not include detailed evaluation of the overall management direction for national parks and wildernesses and therefore focussed just on fire management policies. For example, wilderness areas and, to a more varied degree, national parks have been designated as special areas where "natural" processes can occur in perpetuity with minimum influence of human activities. This basis direction, arising from the National Park Service Organic Act of 1916 and the Wilderness Act of 1964, is usually interpreted to allow natural disturbances, such as insect infestations, disease, blowdowns, and fire, to occur without human intervention. Examining other policies that define and guide "natural" processes was not part of the Team's assignment.

Concerns And Views

As stated in the Team's charter, "the objective of the review process is to determine the appropriate fire policies for national parks and wilderness which addresses the concerns expressed by citizens and public officials about the management of fires on these lands as a result of the Yellowstone fire situation."

To gather information about those concerns, individual members of the team, assisted by representatives of the National Fire Protection Association, the Western Governors Association, and the academic community, met with or called a number of knowledgeable persons, including governors, local government officials, concessioners and outfitters, individuals with businesses in nearby communities, organizations with an interest in parks and wildernesses, academicians, and others. The Team also reviewed letters, summaries of correspondence, and many newspaper and journal articles related to fire management policy.

The concerns can be summarized as follows:

- Definition of prescribed fire conditions and limitations was inadequate.
- There was little opportunity for citizen participation in the development of fire management plans.
- The interdependence of park/wilderness and nearby communities was ignored in the implementation of fire management programs.
- Adequate communication and information before and during fires, whether wildfires or prescribed, was lacking.
- There appeared to be waste in the application of fire management policies, in natural resources that might have been utilized rather than burned, in the on- and off-site effects of fire on available recreation sites, wildlife habitat and forage, soil erosion, and damage to watershed, and in the costs of firefighting.
- An inadequate number of planned prescribed fires have been conducted to reduce the amount of hazard fuels.
- There were unnecessary interagency conflicts.
- Authority for action in fire management needed to remain with line officials in the field, not centralized in Washington.

There are also concerns with strongly held conflicting views. The three principal areas are:

- The definition of "naturalness" and its application in driving fire management policy;
- The extent to which planned prescribed burning (fires set by management) is used in reduction of hazard fuel in the Northern Rockies; and
- Whether the fires in 1988 were allowed to burn more extensively than they should have before suppression actions were taken.

Not all comments were critical of Federal efforts to manage fire:

- The role of fire in managing vegetation and wildlife habitat was noted by many.
- The bravery and competence of fire suppression personnel were frequently extolled.
- Examples were mentioned of individual and agency actions to inform the public, to protect life and property, and to minimize disruptions during and after the fires.
- There are many positive effects from prescribed natural fires. Overreaction to the events of 1988 should not be used to justify severe curtailment of their use.

Policy Options

Fire management policy options range from immediate control of all fires to allowing all wildland fires to burn. The team considered the full range following its discussion with interested parties and agency personnel.

The great majority of comment from knowledgeable people indicated support for the careful use of prescribed burns and prescribed natural fires, in accordance with publicly reviewed management plans. There was also general agreement that such policy must be executed in ways that give the fullest possible assurance that human lives and property or special resources will not be lost or seriously impaired.

Federal Fire Policies

Traditionally, the fire policies of Federal land management agencies were to control all wildland fires as promptly as possible. When initial attack failed in controlling a fire the first day, personnel and equipment were organized to control the fire by 10:00 a.m. the succeeding day.

Current fire management policies among the Federal agencies reflect similar evolutions and are similar in scope and intent. Fire management programs and activities are conducted in support of land and resource management plans and objectives. Two kinds of wildland fires are recognized: prescribed fires and wildfires. Prescribed fires may be ignited, or allowed to burn, under specified conditions to achieve established management objectives. Any other fire is considered a wildfire, and appropriate suppression action is taken on all wildfires. Suppression strategies considered in determining the appropriate action range from prompt control, minimizing acreage burned, to more indirect suppression action to contain or confine wildfires when these alternatives are less costly than control in terms of suppression cost, damage from fire, and other adverse impacts.

These policies as applied to parks and wildernesses, implemented in 1968–85, allow for the prescribed use of fire, either by natural or human-caused, in support of land management objectives. The suppression of all wildfires is required, using economically efficient and environmentally compatible methods. All prescribed fires require pre-planning and decision criteria addressing expected fire behavior and effects.

Prescribed fires may be used to achieve agency land or resource management objectives defined in fire management plans. The following considerations are to be addressed in such plans: management objectives for the area, historic fire occurrence, natural role of fire, proposed degree of suppression, expected fire behavior, acceptable suppression techniques, adequate buffer zones, smoke management, and effects on adjacent land owners.

Prescribed fires are to be conducted only when the following conditions are met:

- They are conducted by qualified personnel under written prescriptions (prescribed fire plan).
- They are monitored to assure they remain within prescription.

Prescribed fires that exceed the limits of an approved fire plan will be reclassified as a wildfire. Once classified as a wildfire, the fire will be suppressed and will not be returned to prescribed fire status.

The important implications of these policies for parks and wilderness areas are:

- It allows managers to restore and maintain the natural role of fire on land when the land management objective is to perpetuate natural processes and values.
- Fire can be used as an important management tool to reduce fuel accumulation, control fire hazard around developments and along boundaries, and to meet other management needs.
- All fires are treated as wildfires, subject to appropriate suppression action, unless a plan is in place that describes the conditions under which prescribed fire will be allowed to burn. Both natural and management-caused ignitions are allowed.
- A prescribed fire must be declared a wildfire when it exceeds prescribed conditions.
- There is flexibility for fire management plans to address the unique characteristics and objectives of specific parks and wildernesses.

Fire management plans for national parks and wilderness areas are subject to National Environmental Policy Act (NEPA) compliance.

History And Experience With Natural Fire Programs

Following prescribed burning experience in the Everglades in the 1950's, the National Park Service began to change its fire suppression and prescribed burning policies in 1968 to accept a more natural role of fire in park ecosystems. Lightning-caused fires were allowed to burn under specified conditions in Sequoia-Kings Canyon National Parks that year, followed by a similar program in another 7 parks between 1968 and 1972. In the decade that followed, another 26 parks began some parts of the prescribed fire program (Appendix, Table 1).

The purpose for this policy change was to restore fire to a more natural ecological role. "Naturalness" is defined as those dynamic processes and components which would likely exist today, and go on functioning, if technological humankind had not altered them. (For those concerned about "exclusion of man from nature," the term "wildness' may be more satisfactory; but it is not likely to displace the word "naturalness" in the common vernacular.)

No ecosystem today is totally unaltered by technological humankind. However, extensive areas in which the achievement and maintenance of naturalness is a basic purpose are increasingly important to humankind. These areas are found primarily in national parks and wildernesses. They serve as invaluable scientific benchmarks; and the uniqueness imparted by their natural qualities is irreplaceable as a source of human inspiration and enjoyment. Those natural qualities differ in each area. They are compromised by the effects of necessary and appropriate provisions for enjoyment of parks, the impacts of other uses under legislative mandates governing non-park wilderness and by potential adverse impacts outside of unit boundaries. Each unit in its management plan describes how it will attain the objective of naturalness.

In those parks and wildernesses where fire has been a historic component of the environment, it is critical to management objectives to continue that influence. An attempt to exclude fire from these lands leads to major unnatural changes in vegetation and wildlife from that which would occur without fire suppression, as well as creating fuel accumulation that can lead to uncontrollable, sometimes very damaging, wildfire. Current fire management policy allows for inclusion of naturally occurring fire on these lands, to the extent possible, as well as the use of prescribed burns to bring these areas back into a more natural condition of fire hazard and occurrence, and to reduce the risk of damage from fire to improvements within these areas and to improvements and resources on adjacent lands.

Lightning fires are permitted to burn in designated zones within 46 areas managed by the National Park Service. Nearly 58 million acres of national parks are classified natural fire zones, including 50 million acres in Alaska alone. A total of 58 national park areas use human-ignited prescribed burns to simulate the role of natural fire in certain ecosystems.

The USDA Forest Service also began allowing lightning-caused fires to play a more natural role in wilderness in 1972, when exceptions to the policy of suppressing all fires were approved by the Chief. By 1976, policy exceptions allowing lightning-caused fires to burn under carefully prescribed conditions had been put into effect in parts of the Selway-Bitterroot, Gila, and Teton wildernesses of Idaho, New Mexico and Wyoming.

In 1978, authority to approve wilderness fire management plans was delegated to Regional Foresters as part of a revised policy that called for "fire management programs" as contrasted with previous "fire control programs." This revision—which is current policy—provided for "well-planned and executed fire protection and fire use programs that are cost effective and responsive to land and resource management goals and objectives".

Forest Service wilderness fire management policy was again revised in 1985, following public review and comment, clarifying wilderness fire management objectives and the use of prescribed fire within wilderness. Forest Service ignited prescribed fires were authorized when necessary to meet the objectives of (1) allowing lighting fires to play their natural role to the extent possible and (2) reducing the risk of wildfire within wilderness to life and property, and to life, property, and resources outside of wilderness to an acceptable level.

The Bureau of Land Management uses prescribed fire extensively to meet resource and fire management objectives. However, the use is almost exclusively through planned ignitions. Prescribed natural fire is generally not used due to the predominance of fuel types having a high rate of spread (i.e. grass and brush) commonly found on Bureau-administered lands. Those few fire management plans that identify prescribed natural fire as a management strategy do so for lands located adjacent to wilderness managed by other agencies. The operational plans for these prescribed natural fire areas were developed through coordinated fire planning efforts with the adjacent federal wilderness management agency.

The Bureau of Land Management issued its first policy for the management of lands designated as wilderness study areas in 1979. This policy, which addressed fire management practices, was revised in 1987. Fire management policy for designated wilderness areas was issued in 1981.

The Fish and Wildlife Service manages seventy designated wilderness areas containing approximately 19 million acres; 97 percent of this acreage is in refuges located in Alaska. Prescribed natural fires are accommodated on these refuge wilderness areas through provisions in the Alaska Fire Plans in which Federal, state, Alaska Native Corporations, and general publics have participated. The experience of the period 1982–1988 demonstrates that prescribed natural fires occurring within these wilderness areas can be managed to meet the objectives of these coordinated plans.

Although the Bureau of Indian Affairs has only one Federally designated wilderness area, several tribes have designated areas within their reservations as tribal wilderness. Management of these tribal wilderness areas are based on tribally developed or approved plan and, in most instances, follow closely that outlined in the Wilderness Act of 1964. Lightning-caused fires occurring within these designated areas may be allowed to burn provided they meet *all* requirements and constraints outlined in the area specific fire management plans. In addition, the use of planned prescribed fire to reduce natural fuel buildup has been widely practiced since the early 1940's. Records indicate that only one lightning-caused fire has occurred within the single Federally designated wilderness area on Indian lands, burning an area of approximately 350 acres. No attempt has been made, to date, to separate data on fires occurring on tribally designated wilderness areas from other fires occurring within reservation boundaries.

Results in National Parks:

Since the beginning of these programs in 1968 until 1987, more than 1600 lightning-caused fires have been permitted to burn more than 320,000 acres of national park land. Only one serious problem had developed—the Ouzel Fire on the Rocky Mountain National Park which threatened the adjacent community of Allens Park, Colorado. At the same time, more than 1400 prescribed burns were ignited by the park staff in 46 national park areas that covered more than 325,000 acres.

The burns were designed mainly to manage vegetation by simulating the natural role of fire in reducing fuel accumulations in order to modify plant succession and to help maintain ecosystem processes. Some of the benchmark fire management programs in national parks are those found in Sequoia-Kings Canyon and Yosemite National Parks in the Sierra Nevada, the Everglades National Park in Florida and Yellowstone and Grand Teton National Parks in the Rockies.

Results in National Forest wilderness:

Since 1972 when the USDA Forest Service began permitting lightning caused fires to play a more natural role in wilderness, 503 prescribed natural fires have burned nearly 210,000 acres within wilderness areas in the Northern and Intermountain Regions, the Forest Service Regions having the most active prescribed natural fire management programs. Of these fires, 23 became wildfires burning an additional 544,000 acres (14 of these escaped prescribed natural fires occurred in 1988). Four prescribed fires, burning 4,424 acres, have been ignited by the Forest Service in three different wilderness areas since management ignitions were permitted in 1985. (Appendix, Table 2 and 3.)

Findings

After review of policies, guidelines, fire management plans, draft fire reviews of the 1988 Greater Yellowstone fires, and information obtained from written and oral communication with both Federal personnel and knowledgeable citizens, the Team has determined the following:

1. The prescribed natural fire policy in Federal agencies was designed to allow fires to play a more natural role in national parks and wilderness areas. There have been many notable successes in application of this policy. However, in some cases this policy has been interpreted to allow managers to manage prescribed natural fires with essentially no prescriptions.

- Restoration and maintenance of naturalness and natural processes are used as primary objectives of wilderness and national park prescribed fire programs. Exclusive focus on these objectives can lead to inadequate consideration for the positive and negative impacts of fire on uses such as recreation, wildlife habitat, grazing, and water quality.
- Current fire policy or guidelines are subject to abuse in that plans are developed and implemented that don't meet the literal requirements of policy.
- Some park and wilderness managers are reluctant to define size limits and specific prescriptions limiting prescribed natural fires.
- Misuses of the prescribed natural fire program could eliminate the program itself—and lose the benefits that derive from it.

2. The Team heard from agency employees who would welcome an expansion of policy to allow for fires to burn free of prescriptions and without being declared wildfires as long as such fires are not expected to cross administrative boundaries of a park or wilderness or endanger human life and property.

3. Although there are many outstanding examples of fire management plans in all agencies, the team found that some plans do not meet current agency or departmental policy and contain inadequate prescriptions.

- Some plans do not include the required set of prescription criteria for prescribed natural fire programs.
- Some plans do not adequately address suppression resource availability, values at risk outside of parks and wilderness, and the number of fires that can be managed at one time.
- Plans do not address cumulative effects of drought and other potentially important considerations.

4. Some fire management prescriptions do not place adequate limits on fire management decisions.

- Some prescribed fires that were ultimately declared wildfires were

interpreted to be within prescription until they reached an arbitrary limitation of a boundary of a park or wilderness boundary.

- Insufficient attention has been given to values at risk, both inside and outside parks and wilderness boundaries.
- There was insufficent consideration of the cumulative risks associated with multiple fires, large fires, or fires with especially active perimeters.
- Insufficent attention was given to the potential cost and damage associated with a prescribed fire later becoming a wildfire requiring suppression action.

5. Beyond being brought up to current standards, fire management programs would be strengthened by a combination of improved decision criteria in plans, additional fire expertise, and more direct line officer involvement.

- Critial decision points (e.g. decision trees) are often not identified in plans.
- Lack of resident fire expertise in some locations is critical.
- Lack of coordination of policy application for prescribed natural fire programs among and within agencies results in disparate treatment of fires and inconsistent decisions.
- Documentation of decisions is often lacking and does not demonstrate the involvement of some agency line officers.
- Some fire management plans do not include the latest technology.
- Plans are not complete in terms of indicators of long-term drought and impact on shared suppression resources.
- Variations in planning and decision processes result in decisions that appear illogical, create political and public concern for competence of the agencies, and render decisions to limit fire size ineffective.
- Prescribed natural fire programs do not adequately consider the impact on other interagency programs and resources.

6. The severity of the 1988 fire season in some areas of the West (the most severe on record in the Greater Yellowstone Area) revealed the risks inherent in managing wildland fires. These risks can include high fire suppression costs as well as unacceptable social, environmental and economic impacts, and natural resource losses.

7. Prescribed fire using planned ignitions (prescribed burning) complements the use of, and reduces the risk from, prescribed natural fires to achieve management objectives. However, there are factors constraining the use of planned ignitions in some areas.

- Planned ignitions have been used successfully in some national parks and wilderness to meet management objectives, reduce hazard fuel build-up, and establish fuel breaks.
- Planned ignitions have not been used in some cases due to the perceived risks from the results of high intensity crowning fires. Also, up-front budgetary costs have limited the use of planned ignitions. Planned ignitions have rarely been used in wilderness.
- Some people strongly support planned ignitions as a substitute for prescribed natural fires; others believe strongly that appropriate objectives cannot be achieved without prescribed natural fire.

8. The reduction of hazard fuels around structural developments, parks/wilderness boundaries, and private inholdings enhances the ability to protect these values at risk and reduces costs of wildfire suppression and prescribed natural fire.

9. Agency personnel development and training programs are not maintaining the number of personnel and levels of knowledge required to ensure proper and consistent application of policies and procedures.

- There is an inadequate number of professional managers in field locations with an understanding of fire management and fire management policies and practices.
- Some line officers are not requiring adherence to standards contained in fire management plans.
- Inconsistent application of required processes, such as the Escaped Fire Situation Analysis, leads to poor decisions.
- Some incident management teams, fire professionals, and line officers lack knowledge of suppression tactics necessary under extreme conditions.
- Consideration of suppression costs and potential damage related to fire suppression alternatives and decisions is not adequately documented in Escaped Fire Situation Analyses.
- Some agency fires staffs are not able to maintain expertise in fire management because of infrequent fire occurrences at their location and lack of career mobility or opportunity to gain experience in other locations.

10. The environmental effects of prescribed natural fire within wilderness and park boundaries are usually consistent with natural resource objectives for these lands. However, in some cases the social and economic impacts outside these boundaries may be unacceptable due to smoke, threats to public safety, reduced tourism, loss of income and jobs, and reduced water quality.

11. Inconsistent dissemination of information, inadequate public participation, and a perception of failure to consider some social, environmental, and economic impacts on local businesses and communities are strong issues with the public and political leaders.

- There is a great diversity of views within and outside agencies regarding the basis and the primary objectives of natural fire programs.
- Adequate public involvement may not have occurred in the development of some prescribed natural fire management plans.
- The primary message communicated by agencies continued to be the biological value of prescribed natural fire to vegetation and wildlife even after the fires had been declared to be wildfires.
- There was a lack of uniform, consistent, adequate information on the location of the fires, planned fire management actions, and their implications for the public in terms of road closures, smoke, and other effects on local populations and visitors.

12. Budget structure and funding in the Departments of Agriculture and Interior create the following effects:

- The level of expertise and professionalism needed for the broad spectrum of fire management and use program may not be available to support management objectives in all agencies.
- Dissimilarities between the two departments in the ways in which programs are funded and differences in agencies' terminology inhibit the ability to cooperate and coordinate in prescribed fire program on mutual boundaries.
- These also cause disparate treatment of naturally occurring fires in determining whether they are designated as prescribed fires or wildfires. Forest Service and Bureau of Land Management policies require that prescribed fires be managed with appropriated funds from the benefiting program. The National Park Service manages prescribed natural fires with emergency funds.
- Hazard fuel reduction programs have not been adequately funded in some cases.
- Very limited appropriated funds are allocated to develop expertise and apply prescribed fire in parks and wildernesses.
- There is an inadequate number of professionals in Federal agencies in fire management programs. Fire management planning and application is a collateral duty at some major parks.

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• Agency budgets for presuppression activities have declined in real dollars in recent years.

• National Park Service is completing an analysis of normal fire year operations, FIREPRO III, in order to define essential minimum wildland fire program needs.

13. Lack of clear definition and inconsistent implementation of "light hand on the land" suppression tactics raise serious questions over the management of fires in 1988.

• The public, employees, and cooperators became confused by mixed messages about the intensity of suppression efforts and the objectives to be achieved.

• Incident commanders received unclear direction about the use of certain suppression tactics, which were sometimes in conflict with the selected suppression alternative.

14. Research and analysis are needed to provide tools for management of fire management programs.

• Normal climatic patterns are ordinarily used for projections, yet prolonged drought periods may result in changes in weather patterns that have an abnormal effect on fires and cause an inability to project fire behavior accurately.

• There is little agreement on whether management objectives can be achieved through planned ignitions when they result in high intensity crown fire.

• Analyses of fire history, occurrence, size, and effects are insufficient for many areas.

• Reliable methods for long-term weather prediction do not exist.

• There are a number of issues concerning the natural fire regime and fire management in subalpine ecosystems vegetated predominantly by lodgepole pine. These include such topics as whether fire behavior and effects from the 1988 fires were as predicted from pre-1988 research and modelling, whether prescribed burning in these ecosystems can be implemented to establish mosaics that would inhibit large scale, uncontrollable fires, and whether conservatiion of biotic diversity on a shorter scale (less than 300 to 400 years) is feasible and/or desirable.

15. The Team heard claims that some managers with philosophies advocating naturalness above all else intentionally allow fires to burn outside of prescriptions and do not take the appropriate suppression actions required on a wildlife—allegations that these fires are allowed to burn freely as long as the fire is not expected to leave the boundary of a park or wilderness. These allegations were not supported by anything in the draft fire reviews received to date. The team did not have the mandate to investigate and verify or disprove the allegations.

Recommendations

The Team recommends that the Secretaries of Agriculture and the Interior implement the following policy and direction:

1. Existing USDI and USDA fire management policies governing wilderness and parks must be strengthened and reaffirmed to limit their application to legitimate prescribed fire programs. Clarification is needed to prevent inappropriate use of fundamentally sound policies.

2. The agencies reaffirm their policies that fires are either prescribed fires or wildfires. The agencies reject as impractical and unprofessional the practice that fires can be allowed to burn free of prescriptions or appropriate suppression action.

3. USDA and USDI agencies will review fire management plans for parks and wilderness for compliance with current policy, direction, and the additional requirements recommended by this report. No prescribed natural fires are to be allowed until fire management plans meet these standards.

4. Current fire management plans must be strengthened by:

a. Developing joint agency fire management plans, agreements, or addendums to existing plans for those areas where fires could cross administrative boundaries. These will include agreement on processes and criteria to be used to make decisions on prescribed vs. wildfire and suppression strategies and tactics.

b. Including a comprehensive set of criteria which will be used in deciding whether or not to allow natural ignitions to burn as prescribed fires. In addition to those criteria currently required and commonly used, the following factors will be considered:

(1) Energy release component.

(2) 1000-hour fuel or duff moisture content.

(3) Appropriate consideration of the national and regional fire situation, including the numbers of fires and amount of available resources to suppress them.

(4) Limits on numbers of fires burning in the planning unit at one time.

(5) Limits on projected length of active perimeter and acreage burned.

(6) Indicators of cumulative drought effects on fire behavior.

(7) Potential impacts upon visitors, users, and local communities, both on and off site.

c. Clearly describing the decision process and factors to be addressed before a fire is declared a prescribed natural fire.

d. Including criteria to be used in declaring a prescribed fire a wildfire. There must be interagency agreement on these factors in areas where fire may move across administrative boundaries and shared suppression resources may be required.

e. Clearly identifying areas that need protection from fire, such as developments within or adjacent to wilderness and park boundaries. Fire management plans should also include actions that are to be taken, such as hazard fuel reduction or installing fuel breaks, to protect such developments or areas.

f. Clearly stating the management objectives being addressed by the prescribed natural fire program.

g. Clearly describing the process to be used to ensure adequate public involvement and coordination with local governments.

5. Agencies will develop regional and national contingency plans and procedures and provide the appropriate program monitoring and direction, including curtailment of prescribed fire activities when necessary.

6. The responsible line officer or designee shall certify in writing daily that adequate resources are available to ensure that each prescribed natural fire will remain within prescription, given reasonably foreseeable weather conditions and fire behavior. If the fire exceeds or threatens to exceed prescription and cannot be kept within or returned to prescription with available forces and funds, it shall be declared a wildfire and appropriate suppression action initiated.

7. Agencies must re-evaluate the opportunities to use prescribed burning (by planned ignitions) to achieve management objectives and to complement prescribed natural fire programs. Additionally, hazard fuels must be reduced to protect selected areas, particularly developments within and adjacent to boundaries, from prescribed natural fire and high wildfire risk. Fuels will be treated along park and wilderness boundaries or internally where there are high values at risk.

8. Prescribed fire program management will be improved by establishing properly staffed regional as well as unit level prescribed fire program management organizations.

a. Agencies will ensure the availability of qualified staff and knowledgeable line officers for

developing, implementing, and managing prescribed fire programs.

b. National Park Service regional offices will establish a full-time regional fire coordinator to develop and oversee park programs in accordance with FIREPRO III, where appropriate.

c. Agencies will implement the concept of highly trained, well-equipped and mobile tactical teams to provide on-the-ground monitoring and management of national park and wilderness fires.

d. Agencies will ensure the strengthened policy is understood and implemented by all appropriate personnel.

e. Agency managers will assure that personnel develop a thorough understanding of the management objectives for the lands they are managing.

f. The National Park Service is to complete an analysis of normal fire year operations, FIREPRO III, in order to define essential minimum wildland fire program needs and to take action to meet those needs.

9. Additional interagency emphasis will be given to addressing opportunities for improving fire management programs.

a. The National Wildfire Coordinating Group (NWCG) charter should be expanded specifically to include prescribed fire program coordination.

b. The NWCG should take the lead in developing common terminology for prescribed burning programs and describing wildfire suppression alternatives.

c. Agencies will develop joint criteria for selecting appropriate suppression tactics in wilderness and parks. Preplanning should include these tactics.

d. Agencies will improve the understanding and acceptance of using appropriate suppression tactics that meet fire management objectives and minimize the adverse impact on wilderness values and park resources.

10. Agencies will ensure that the NEPA process is followed for fire management plans. Agencies will increase opportunities for public involvement and coordination with state and local government when revising or developing fire management plans.

11. Interpretation and public information before and during fires will be improved.

a. Agencies will ensure that timely, accurate, and consistent information is provided for the public on the purpose, presence, and status of prescribed natural fires, as well as impacts on the community due to closed roads, trails, smoke, back country restrictions, and other effects.

b. Interpretive and fire status messages are for different purposes, and agencies should strive to keep them separate and distinct.

c. Agencies will develop a common terminology for prescribed natural fire programs.

12. USDI and USDA will review the methods of funding prescribed fire and fire protection programs with the objective of improving interagency program effectiveness. Planning and presuppression activities should be financed by program funds rather than through emergency fund transfers and supplementals.

13. There is a need for additional research related to fire management programs.

a. USDI and USDA will develop coordinated research programs utilizing the unique capabilities of both organizations.

b. The feasibility of prescribed burning forests using stand replacement fire will be investigated and tested by implementing an appropriate interagency field research program.

c. Research will be increased to improve the ability to predict severe fire behavior, conduct long-term weather forecasting, and identify past abnormal events.

d. Efforts will be undertaken to develop and implement an expert system that integrates a wide array of fuel, topographic, weather, climatological, fire behavior, and other information and readily displays such information in an interactive mode for the user at a computer terminal. This expert system would help to assure that important variables are not overlooked as decisions are made regarding long duration fires.

e. Efforts will also be undertaken to develop comprehensive data bases for park and wilderness resources and provide for state of the art analyses and display as well as an efficient, continuous monitoring system to insure timely update of information.

f. Development of additional emission factors for wildland fuels and better methods for projecting air quality impacts of prescribed and wildfires are needed, since smoke and air pollution are major considerations in deciding when to terminate prescribed natural fires and in scheduling prescribed burns.

14. The agencies will cooperate fully in determining whether allegations of misuse of policy are true and take measures to ensure that any such practices not occur in the future.

Issues Needing Further Analyses

Following are fire management policy issues that would require more time than the team had available to work out suitable solutions. Resolution of these issues is not critical to fire management readiness for the 1989 fire season, but they should be pursued during the further evolution and improvement of Federal fire management policy and application. They are:

1. Validation of the relationship between current fire management information system components (i.e., drought index, energy release component, 1000 hour fuel moisture, etc.) with actual fire occurrence, severity and size is needed.

2. Development of compatible interagency fire planning methods.

3. Determination of the effect of budgetary constraints and funding sources on fire management programs.

4. Determination of the current and future effects of residential and commercial development on the ability to design and implement prescribed fire programs, including examination of the interrelationship between fire management plans and local planning and zoning functions.

5. Inventory of forest types and locations subject to infrequent but intense large fires, their historic occurrence in terms of drought cycles, and definition of policies to be applied in each case relative to desired results to be achieved.

6. Examination of the adequacy and consistency of application of current fire suppression and prescribed fire cost analysis and risk assessment procedures.

7. Development of interagency guidelines for "light hand on the land" suppression tactics by the National Wildfire Coordinating Group.

8. Development of a better understanding of agency objectives as they relate to fire planning standards and decision criteria.

9. Reexamination as to whether human-caused fires (not ignited by management) should be managed as prescribed natural fires in certain well-defined circumstances.

10. Additional studies of fire history, occurrence, and size in parks and wildernesses.

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Appendix—Historical Data of Prescribed Fire Programs of the USFS and NPS.

TABLE 1. PRESCRIBED FIRE OCCURRENCE, THE NATIONAL PARKS SERVICE 1968–87

[Data obtained from NPS Wildland Fire Management Computer System, 1988]

	Prescribed fire				
	Area size (acres)	Lightning ignitions		Human ignitions	
		Number	Acres	Number	Acres
NPS units by region					
Alaska Region					
Bering Land Bridge	2,784,960	6	452		
Denali	6,028,091	23	44,110		
Gates of the Arctic	8,472,517	23	8,560		
Noatak	6,574,481	13	28,961		
Wrangell-St. Elias	13,188,325	7	134		
Yukon-Charley Rivers	2,523,509	13	44,778		
Mid-Atlantic Region					
Delaware Water Gap	66,637			2	11
Midwest Region					
Fort Larned	718			20	572
George Washington Carver	210			14	66
Herbert Hoover	187			7	50
Homestead	195			20	327
Indiana Dunes	13,815			8	333
Isle Royale	571,790	6	1		
Ozark	80,788			69	889
Pipestone	282			25	708
Scotts Bluff	2,997			8	1,871
National Capital Region					
George Washington Memorial Parkway	7,131			2	1
Rock Creek	1,754			5	1
North Atlantic Region					
Cape Cod	43,556			8	3
Pacific Northwest Region					
Crater Lake	183,224	44	682	21	5,402
John Day Fossil Beds	14,014			3	15
North Cascades	504,781	58	231		
Olympic	921,935	3	179		
San Juan Island	1,752			3	1
Whitman Mission	98			6	105
Parks and monuments by region					
Rocky Mountain Region					
Badlands	243,302			5	4,543
Dinosaur	211,142	193	4,176	2	1,441
Fort Laramie	833			4	165
Glacier	1,013,572	4	2		
Grand Teton	310,521	32	7,759		
Rocky Mountain	265,200	6	1,051		
Wind Cave	28,292	5	309	26	7,630
Yellowstone	2,219,785	152	34,140		
Zion	146,598	24	335	5	37
Southeast Region					
Big Cypress	570,000	37	9,829	168	68,253
Biscayne	173,039			4	17
Blue Ridge Parkway	85,993			3	4
Cape Hatteras	30,319			7	99
Chickamauga and Chattanooga	8,103			5	2
Cumberland Island	36,415			8	216
Everglades*	1,398,938	337	128,255	245	185,337
Shiloh	3,848			3	11
Southwest Region					
Arkansas Post	389			9	52
Bandelier	32,737	5	34	21	311
Big Bend	735,416	28	462	8	24
Big Thicket	85,774	4	40	33	6,225
Buffalo	94,219			13	285
Carlsbad Caverns	46,755	14	3,063	7	80
Fort Union	721			2	2
Jean Lafitte	20,000			2	77
Lake Meredith	44,978			10	160
Lyndon B. Johnson	1,571			4	109
Sunset Crater	3,040	2	1		
Wupatki	35,253	2	4		
Western Region					
Golden Gate	73,117			8	17
Grand Canyon	1,218,375	81	3,723	19	3,148
Joshua Tree	559,954	4	20	3	12
Lassen Volcanic	106,372	18	9		
Lava Beds	46,560	3	32	4	461
Pinnacles	16,265	8	1,993	86	7,861
Point Reyes	71,046	12	653	57	2,504

Parks and monuments by region					
Redwood	110,178	2	2	6	135
Saguaro	83,574	36	42	3	105
Santa Monica Mountains	150,000			3	105
Sequoia and Kings Canyon	863,683	384	32,516	48	8,247
Whiskeytown	42,503			8	99
Yosemite	761,170	333	34,998	75	26,802
Totals		1,921	391,538	1,131	334,931

* Research begun in 1951.

TABLE 2. FOREST SERVICE WILDERNESS FIRE MANAGEMENT PROGRAM HISTORY AND ACCOMPLISHMENTS (REGIONS 1 AND 4)

[The following information is provided for wilderness areas in Regions 1 and 4. These two regions have the most active wilderness prescribed fire program in the Forest Service.]

	Wilderness fire management history, 1972–88					
	# Prescribed natural fires	Acres burned	# That became wildfires	Acres burned	# Wildfires suppressed	Acres burned
R–1	378	160,583	9	324,126	1,402	291,967
R–4	135	49,035	14	219,813	616	550,685
Total	503	209,618	23	543,939	2,018	842,652

TABLE 3. FOREST SERVICE IGNITED PRESCRIBED FIRES IN WILDERNESS

	Year	# fires	Acres burned
Region 3			
Chiricahua Wilderness	1988	1	606
Region 8			
Bradwell Bay Wilderness	1988	2	3,000
Region 9			
Hercules Glades Wilderness	1987	1	818
Total—all regions	4		4,424

Note: Some prescribed burning was done in the LaVentana Wilderness in California prior to 1985 as authorized through legislation establishing this wilderness.

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Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1988.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of December 1, 1988, of 14 deferrals contained in the first two special messages of FY 1989. There have been no rescissions proposed. These messages were transmitted to the Congress on September 30, and November 29, 1988.

Rescissions (Table A and Attachment A)

As of December 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of December 1, 1988, $8,686.6 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Register** as listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988

Vol. 53, FR p. 49530, Wednesday, December 7, 1988

Joseph R. Wright, Jr.,

Director.

BILLING CODE 3110–01–M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

****

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	8,942.5
Routine Executive releases through December 1, 1988 (OMB/Agency releases of $262.0 million and cumulative adjustments of $6.0)	-255.9
Overturned by the Congress.....	0
Currently before the Congress.....	8,686.6

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of December 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1989

As of December 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 12-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D89-11	4,122,750		11-29-88					4,122,750
Economic support fund	D89-01	592,760		09-30-88					2,390,810
	D89-01A		2,054,000	11-29-88	255,950				457,000
Military assistance	D89-12	457,000		11-29-88					
International military education and training	D89-13	37,400		11-29-88					37,400
Agency for International Development									
International disaster assistance	D89-14	18,125		11-29-88					18,125
Special Assistance for Central America									
Promotion of stability and security in Central America	D89-2	1,000		09-30-88					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D89-3	144,649		09-30-88					144,649
Cooperative work	D89-4	335,263		09-30-88					335,263
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D89-5	1,212		09-30-88					1,212
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					2,800

Attachment B - Status of Deferrals - Fiscal Year 1989

As of December 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 12-1-88
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration Limitation on administrative expenses (construction)	D89-7	6,745		09-30-88					6,745
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund	D89-8	90,000		09-30-88					90,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive	D89-9	26,135		09-30-88					53,135
	D89-9A		27,000	11-29-88	6,001			6,001	
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund)	D89-10	823,608		09-30-88					1,025,692
	D89-10A		202,084	11-29-88					
TOTAL, DEFERRALS		6,659,446	2,283,084		261,951	0		6,001	8,686,581

[FR Doc. 88-29192 Filed 12-19-88; 8:45 am]

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federal register

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December 20, 1988

Part V

The President

Executive Order 12660—National Microgravity Research Board

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Presidential Documents

Title 3—

The President

Executive Order 12660 of December 16, 1988

National Microgravity Research Board

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in the pursuance of assuring and coordinating a broader range of opportunities for research in microgravity conditions, I hereby order as follows:

Section 1. *Establishment.* (a) There is hereby established the National Microgravity Research Board (hereinafter, "the Board").

(b) The Board shall be composed of the following members, or their designees:

(1) the Administrator of the National Aeronautics and Space Administration, who shall serve as Chairman;

(2) the Secretary of State;

(3) the Secretary of Defense;

(4) the Secretary of Commerce;

(5) the Secretary of Health and Human Services;

(6) the Secretary of Transportation;

(7) the Secretary of Energy;

(8) the Director of the National Science Foundation; and

(9) the Secretary or Director of other agencies, and officials of the Executive Office of the President, as the President may from time to time designate.

(c) The Board shall report to the President through the Economic Policy Council as necessary.

Sec. 2. *Functions.* (a) The Board will consult with academia and private industry and other Federal agencies as appropriate in carrying out its functions.

(b) In furtherance of its responsibilities, the Board shall:

(1) stimulate research in microgravity environments and the application thereof to commercial uses;

(2) advise Federal agencies on microgravity research priorities and opportunities;

(3) develop policy recommendations relating to the conduct and nature of microgravity research, including types of research; government, industry, and academic cooperation; and increased access to space, including a potential launch voucher program for microgravity research purposes; and

(4) provide advice on coordinating the microgravity programs of Federal agencies by:

(i) reviewing agency plans for microgravity research and recommending priorities for the use of federally owned or leased space on microgravity facilities;

(ii) ensuring that agencies establish merit review processes for evaluating microgravity research proposals;

(iii) promoting transfer of federally funded microgravity research in furtherance of Executive Order No. 12591; and

(iv) providing oversight of Federal agency participation in international microgravity research programs.

(c) The Board shall meet as requested by the President, the Chairman, or the membership.

Sec. 3. *Board Termination Date.* Unless extended by the President, the Board shall terminate 5 years after the date of this Order.

Ronald Reagan

THE WHITE HOUSE,
December 16, 1988.

[FR Doc. 88-29316
Filed 12-19-88; 10:56 am]
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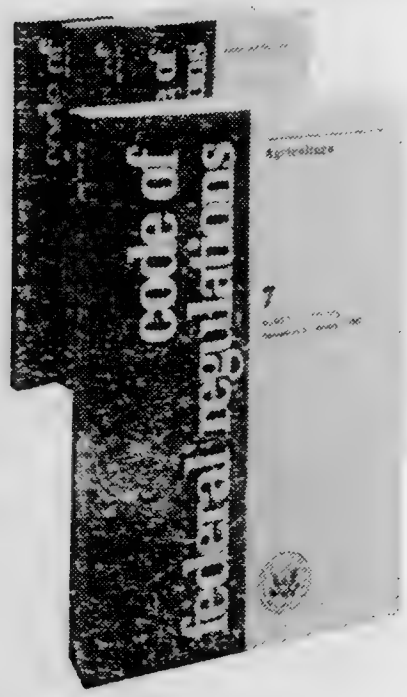

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Presidential Documents

Title 3—

The President

Memorandum of December 19, 1988

Renewal of Trade Agreement With the People's Republic of China—Finding and Determination Under Subsection 405(b)(1) of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 405 of the Trade Act of 1974 (19 U.S.C. 2435), I find that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the People's Republic of China. I further determine that actual or foreseeable reductions in United States tariffs and non-tariff barriers to trade resulting from multilateral negotiations have been satisfactorily reciprocated by the People's Republic of China.

This finding and determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, December 19, 1988.

[FR Doc. 88-29404
Filed 12-19-88; 4:26 pm]
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Rules and Regulations

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Government Use of Commercial Recruiting Firms and Nonprofit Employment Services

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations permitting agencies to use commercial recruiting firms and nonprofit employment services to locate candidates for Federal civil service positions. Candidates identified in this way must then be considered for Federal employment through regular civil service procedures, which include veterans preference where applicable. The effect of this regulation will be to give Federal agencies a recruiting flexibility used by the private sector.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen Russell, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The regulations authorizing agency use of commercial recruiting firms and nonprofit employment services give agencies an additional recruiting tool and also set the conditions necessary to protect merit principles. OPM will closely monitor the new authority, and within three years of use, will evaluate it for further continuation.

Proposed regulations were published on August 23, 1988 (53 FR 32053). 14 Federal agencies, 3 unions and associations, 3 veterans groups, and 15 private sector firms and organizations, and a conference of State agencies submitted comments for which the key points are summarized below.

I. General

A union contended that OPM has no authority to issue these regulations. The legal authorities upon which the regulations are based are cited in this **Federal Register** issuance. The union also asserted OPM has no authority to delegate to agencies the authority to set contract requirements. OPM is not delegating such authority but is permitting agencies to use outside recruiting sources in a manner which assures the protection of merit principles.

An association commented that the regulations would permit an agency to contract with more than one commercial recruiting firm, thus significantly increasing recruitment costs. The association, along with a union, suggested that upgrading salary and benefit levels for shortage jobs might be a better recruitment strategy. The association, along with an organization representing executive search consultants, also suggested OPM develop guidelines to assure use of reputable firms and the best service for the fees paid. Each agency will weigh the costs and benefits of using the new authority, which is intended to supplement, not supplant, other efforts to foster a quality workforce. Agencies are required by the contracting process to examine the qualifications of prospective contractors.

A consultant suggested that recruiting firms receive fair compensation and immediate payment, invoiced weekly; a private sector firm suggested that the fees paid by Federal agencies be competitive with private industry. These are matters to be decided through the contracting process.

An agency asked that the regulations clarify the appeal rights of individuals found unqualified by the outside firm or service. Depending on the alleged prohibited action, appeal rights in various laws may apply. There is no need for these regulations to cover provisions already in law. Additionally, applicants have the opportunity to apply directly to the Government since agencies using outside firms must also continue their own recruiting efforts.

A union suggested Federal agencies would be liable if an applicant brought an EEO suit against the commercial recruiting firm. Since there are numerous statutes and judicial decisions defining and interpreting Federal equal employment opportunity law, any further delineation or definition in these regulations is unnecessary.

A union claimed that OPM had incorrectly stated that the proposal was not a major rule under Executive Order 12291 of February 17, 1981. We determined the regulations do not constitute a major rule because there will be no adverse effects on United States-based enterprises; there will not be a major increase in costs for individual industries or Federal agencies, and there will not be an annual effect on the economy of $100 million or more. Federal agencies are permitted to use commercial recruiting firms to provide candidates for vacancies only when the Government's own recruiting effort, including use of State Employment Service offices, has not been successful. Because of budgetary concerns, Federal agencies will generally be willing to pay placement fees only when key jobs are involved. Assuming an average placement fee of $20,000, Federal agencies would have to hire 5,000 candidates referred from commercial recruiting firms in order to reach the $100 million figure. However, in FY 87, there were approximately 1,600 new hires at grades GS–14 and above, the level at which agencies are likely to seek help. We conclude, therefore, that Federal agencies are unlikely to expend $100 million annually on the use of commercial recruiting firms to recruit candidates.

II. Section 300.401 Definitions

In response to an agency comment, we clarified that commerical firms and nonprofit employment services covered by this regulation provide candidates for specific vacancies rather than lists of names in broad categories, for example, graduates in certain academic disciplines. Another agency asked whether a contract was required to cover the kind of recruiting assistance agencies have traditionally received from nonprofit groups and organizations at no charge to the Federal agency or to the applicant. These regulations do not cover such arrangements, e.g., when an agency sends a vacancy announcement to a veterans organization which then publicizes the vacancy among its members.

We did not, as suggested by a private sector firm, distinguish between firms

operating on a retainer or a contingency fee basis. Individual agencies will decide which kind of firm best suits their needs.

In response to an agency suggestion, the final regulations indicate Federal agencies may contract for recruiting assistance with State and local governments.

III. Section 300.402 Coverage

A union questioned the appropriateness of using commerical firms to screen candidates for excepted civil service appointments which do not require impartial testing procedures. Nothing in current law or regulation prohibits Federal agencies from using commerical recruiting firms or nonprofit employment services for the excepted service. These new regulations set conditions which apply to the use of outside recruiting assistance for certain excepted appointments. Many excepted appointments are career-type for which agencies seek the best qualified candidates available. Agencies should, therefore, have the opportunity to use outside recruiting assistance under the terms of these regulations.

IV. Section 300.403 Use of Commercial Recruiting Firms and Nonprofit Employment Services

We have changed the title to this section to make clear that the provisions cover both commercial recruiting firms and nonprofit employment services.

A veterans group suggested that OPM approve each agency use of outside recruitment services. We believe this would be unduly restrictive, but the regulations set criteria for the use of such firms. The final regulations spell out more clearly when an agency may use a commerical recruiting firm and/or a nonprofit employment service. Use is permitted when the agency determines that:

—The firm or nonprofit service is likely to provide well-qualified candidates who would otherwise not be available, e.g., as an affirmative employment technique to locate minorities and/or women for consideration for positions in occupations where these groups are underrepresented, or

—Well-qualified candidates are in short supply, e.g., when a direct hire authority or a special salary rate is in effect for the position or the agency's own recruiting efforts (for the same or a similar position) have not located a sufficient number of well-qualified candidates.

The agency must also continue its own recruiting and, prior to using outside recruiting assistance, must provide a vacancy notice to the appropriate State Employment Service offices, as suggested by two veterans organizations, a Federal agency, and an organization representing State employment security agencies. We will provide any needed clarification on the posting requirement in the Federal Personnel Manual.

A union suggested that the use of commerical firms should be limited to instances where the firm is likely to provide candidates for a specific position who would otherwise not be available. The final regulations make clear agencies may use outside recruiting assistance to provide candidates for consideration for vacancies.

V. Section 300.404 Use of Fee-charging Firms

An agency and an association representing commerical recruiting firms suggested the regulations be revised to permit agencies to contract with firms who accept fees from applicants for private sector referrals so long as no fees are charged for referrals for Federal jobs. The final regulations do not prohibit an agency from contracting with firms which charge fees but require the firm to refer to Federal agencies only those candidates from whom no fees have been accepted. For example, if a firm charges fees to applicants for placement in private sector clerical jobs but does not charge applicant fees for executive placement, a Federal agency could contract with the firm for filling executive, but not clerical, positions. Federal agencies will have to determine that the practices and procedures of potential firms will assure compliance with this requirement. Firms which charge applicant fees should be carefully scrutinized to make sure an agency's use of such firms would not create the impression on the part of applicants or the public that fees had been charged for referral to Federal agencies.

Two private sector firms asked that we make clear that firms selling Federal job vacancy lists are not excluded by these regulations. Instructions in the Federal Personnel Manual will cover this point.

An agency suggested candidates selected for appointment (after referral by a commerical recruiting firm) be required to certify they did not pay fees prohibited by these regulations. We have not adopted this suggestion, but individual agencies may impose such a requirement at their discretion. We note that the Appointment Affidavits (Standard Form 61), Part C, contains the affidavit on purchase and sale of office that 5 U.S.C. 3332 requires officers to complete. (See Federal Personnel Manual Supplement 296–33, Subchapter 5.)

A union commented that the regulations should also prohibit the use of professionally sponsored nonprofit employment firms which charge member registration fees. For some time, Federal Personnel Manual policy has permitted agencies to use nonprofit employment services sponsored by professional organizations. These organizations typically charge a registration fee which covers a wide variety of services and which is assessed regardless of whether an individual is placed or even referred through the organization's employment service. Since there have been no problems with this arrangement to date, we see no reason why the new policy should not continue it.

VI. Section 300.405 Requirement for Contract

A union commented that the proposed regulations side-stepped the requirement in Office of Management and Budget (OMB) Circular A–76 for agencies to conduct a cost comparison before contracting out work to the private sector. That circular requires a cost comparison when the Government seeks to *replace* its employees with more cost-effective services from the private sector. There will be no replacing of Government employees under these part 300 regulations. Instead, the regulations authorize an agency—after determining the Government's own efforts have been unsuccessful—to *expand* its capability by seeking services from the private sector.

A union questioned the legality and ethics of an agency contract with a nonprofit employment service sponsored by a partisan political organization. The final regulations prohibit such an arrangement. Further, to assure adherence to the merit system principles (one of which requires treatment of applicants without regard to political affiliation), contracts under these regulations must contain a provision requiring recruiting firms and nonprofit employment services to recruit and refer applicants in accordance with applicable merit principles.

In response to an agency suggestion and a question on the use of blanket purchasing, this section now includes a reference to the Federal Acquisition Regulations (FAR). This means agencies may use contract types and procedures stipulated in the FAR to acquire contractor services.

We deleted the requirement that the contract contain a written request for the recruitment services (as required by 18 U.S.C. 211) and clarified in paragraph (a) of the section that the contract itself satisfies the written request for services.

An agency suggested § 300.405 unnecessarily required certain terms in the contract between the agency and the commerical recruiting firm. The agency correctly pointed out that contracts under these regulations are subject to the merit principles in Title 5 of the U.S. Code, laws and regulations on equal employment opportunity, and the general procurement laws and acquisition regulations. We have, therefore, included in the list of required contract provisions only those which specifically relate to the new authority.

Along similar lines, a private sector firm suggested the regulations refer to the use of certified minority business enterprises whenever possible. There is no need for these regulations to repeat procedures already in place under general contracting procedures.

Another private sector firm suggested the contract specify the time frame the Federal agency needs to evaluate the qualifications of applicants presented by the commercial recruiting firm. This is a matter to be determined in the contracting process.

Another private sector firm suggested this section clearly state that agencies may enter into a contract with a commercial recruiting firm for the filling of more than one position over a period of time. We believe the regulations, as written, give agencies the flexibility to contract for the filling of individual vacancies or several vacancies during a fixed period.

A private sector firm recommended a simplified contract for small business to use. The procurement laws and regulations already provide for streamlined competitive procedures under certain circumstances.

VII. Section 300.406 Agency Responsibilities

Two veterans groups observed that the regulations are silent on the obligation of recruiting firms to give preference to veterans. Since the application of veterans preference is part of the rating and appointment process rather than the recruitment process, commercial recruiting firms and nonprofit employment services have no role to play in this area; these entities merely refer to the Federal agency the names of potential candidates who meet the agency-set requirements. Once presented with the referrals, the Federal agency or the Office of Personnel Management will apply veterans preference when candidates are ranked for employment eligibility. Further, in response to comments from two veterans groups, we made clear that all appointments must provide for veterans preference, where applicable. Since individuals recruited by commercial firms or nonprofit employment agencies must be appointed through regular civil service procedures (see § 300.406(a), there regulations do not conflict with statutory appointing requirements, as suggested by a veterans group.

An agency asked how OPM intended agencies to carry out the responsibility under this section to publicize the fact that applicants may apply directly to the Government and need not apply through a commercial recruiting firm or a nonprofit employment service. An agency's continued recruiting efforts required under § 300.403(c) will satisfy this requirement.

A union and an organization representing executive search consultants commented that the proposed regulations did not address whether recruiting firms or nonprofit employment services were permitted to conduct initial testing or interviews or whether they were limited to basic prescreening functions. Outside firms and services are not authorized to perform functions which are inherently Governmental in nature and, therefore, may determine only whether the candidate appears to meet the basic qualifications requirements set out in the contract. The ultimate decision on an individual's qualifications will be made by OPM or the agency (under delegated authority) in accordance with all applicable requirements and procedures. Further clarification on what functions can be contracted will be provided in the Federal Personnel Manual.

The union also suggested that paragraph (b)(2) of this section should be reworded to state that no advantage or preferential treatment will be given to candidates referred from a commercial recruiting firm or nonprofit employment service. The regulation as written requires the same treatment for candidates referred from various sources. Any further clarification needed will be made through the Federal Personnel Manual.

A private sector firm suggested selection officials be prohibited from knowing which candidates had applied through regular procedures and which had been referred by a commercial firm. We do not believe this is a matter for OPM regulation.

VII. Section 300.407 Documentation

A union and an agency recommended this section include detailed information on the content or reports agencies must submit to OPM. We believe the Federal Personnel Manual is the appropriate place in which to include the content of these reports.

VIII. Section 300.308 Corrective Action

In response to an agency comment, we modified § 300.407(c) of the proposal—and set it out as a new section § 300.408—to make clear that corrective action taken by OPM would be against an agency, not a contractor. Any corrective action against a contractor would be taken by the agency involved under the terms of the contract.

We did not adopt a suggestion from a veterans group to make mandatory the ordering of corrective action by OPM because the decision whether to order corrective action, as well as the nature of the action, will depend on the circumstances involved in each case.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the authority will be used under limited circumstances, e.g., when a Federal agency has been unable to fill a position through Government recruiting procedures.

List of Subjects in 5 CFR Part 300

Administrative practice and procedures, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 is revised as set forth below.

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204; E.O. 11478, 3 CFR 1966–1970 Comp., page 803. § 300.104 also issued under 5 U.S.C. 7701 *et seq.*

Section 300.301 also issued under 5 U.S.C. 3324.

Sections 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Section 300.603 also issued under 5 U.S.C. 1104.

2. Subpart D is added to read as follows:

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

Sec.

300.401 Definitions.
300.402 Coverage.
300.403 When commercial recruiting firms and nonprofit employment services may be used.
300.404 Use of fee-charging firms.
300.405 Requirement for contract.
300.406 Agency responsibilities.
300.407 Documentation.
300.408 Corrective action.

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

§ 300.401 Definitions.

For purposes of this subpart:

(a) A "commercial recruiting firm" is a profit-making entity which, by contract, supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

(b) A "nonprofit employment service" is one legally established as nonprofit under State law. It may be operated, for example, by professional societies, organizations of college graduates, social agencies, or a State or local government. Federal agencies may not, however, use a nonprofit employment service sponsored by a partisan political organization. By contract, a nonprofit employment service supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

§ 300.402 Coverage.

These regulations apply to filling positions in the competitive service; positions in the excepted service under Schedules A, B, and C, or filled by noncareer executive assignment; and positions in the Senior Executive Service.

§ 300.403 When commercial recruiting firms and nonprofit employment services may be used.

An agency may use a commercial recruiting firm and/or a nonprofit employment service in recruiting for vacancies when:

(a) The agency head or designee determines that such use is likely to provide well-qualified candidates who would otherwise not be available or that well-qualified candidates are in short supply;

(b) The agency has provided vacancy notices to appropriate State Employment Service and OPM offices; and

(c) The agency continues its own recruiting efforts.

§ 300.404 Use of fee-charging firms.

(a) Federal agencies are prohibited from using commercial recruiting firms and nonprofit employment services which charge fees to individuals referred to Federal positions. Federal agencies may not consider a candidate referred by a commercial recruiting firm or nonprofit employment service if the individual has paid or is expected to pay any fee to the firm or service.

(b) The prohibition in paragraph (a) of this section does not apply to registration fees paid by individuals to nonprofit employment services operated by professional organizations when the registration fee is imposed regardless of whether the registrant is referred for employment or placed.

§ 300.405 Requirement for contract.

(a) A written contract awarded in accordance with procedures stipulated in the Federal Acquisition Regulations is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. The contract will satisfy the "written request" required by 18 U.S.C. 211. That statute prohibits the acceptance of payment for aiding an individual to obtain Federal employment *except* when an employment agency renders services pursuant to the written request of an executive department or agency.

(b) The contract must include the qualifications requirements for the position(s) to be filled and also provide that the firm or service will:

(1) Screen candidates only against the basic qualifications requirements for the position(s) specified by the Federal agency in the contract and refer to the agency all candidates who appear to meet those requirements;

(2) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part;

(3) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency; and

(4) Recruit and refer candidates in accordance with applicable merit principles and equal opportunity laws.

§ 300.406 Agency responsibilities.

(a) The purpose of a commercial recruiting firm or nonprofit employment service is to serve as an additional source of applicants. Once recruited, applicants must be evaluated and appointed through regular civil service employment procedures.

(1) For a competitive service position, an individual must be appointed in accordance with the terms of applicable competitive service procedures.

(2) For an excepted service position, an individual must be appointed in accordance with the terms of the applicable appointing authority and the requirements set out in Part 302 of this chapter.

(3) For a Senior Executive Service position filled by career appointment, an individual must be appointed in accordance with the competitive process described in 5 U.S.C. 3393.

(b) In order to use commercial recruiting firms or nonprofit employment services, agencies are required to:

(1) Make known that applicants may apply directly to the Government and thus need not apply through the commercial recruiting firm or nonprofit employment service;

(2) Give the same consideration to candidates who have applied directly and candidates referred from the commercial recruiting firm or nonprofit employment service; and

(3) Follow all requirements for appointment, including veterans preference, where applicable.

§ 300.407 Documentation.

(a) Agencies are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not resulted in the violation of merit system principles or the commission of any prohibited personnel practice.

(b) In order for OPM to evaluate the authority granted under this subpart, agencies must submit reports in accordance with its instructions. Reports will be required on at least an annual basis and, as a minimum, will provide information on the kinds of jobs for which recruiting firms were used, the costs to the agency, and the results in terms of candidates referred and selected. Reports will also provide comparative data to show the effect of using a recruiting firm on the agency's ability to locate well-qualified candidates. Specific reporting instructions will be provided through the Federal Personnel Manual.

§ 300.408 Corrective action.

Upon evidence of failure to comply with these regulations, OPM may, pursuant to its authority, order the agency to take appropriate corrective action.

[FR Doc. 88-29241 Filed 12-20-88; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1633

Standards of Conduct

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (the Board) is publishing in Part 1633 final regulations governing employee responsibilities and conduct. These regulations are being issued pursuant to Executive Order 11222 of May 8, 1965, as amended, and the Ethics in Government Act of 1978, as amended.

EFFECTIVE DATE: Final rule effective December 21, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523-6367, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board was established by Pub. L. No. 99-335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401-8479), as amended by Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986; Pub. L. 99-556, the Federal Employees' Retirement System Technical Corrections Act of 1986; Pub. L. 100-20, 100-43 and 100-202; and Pub. L. 100-238, the Federal Employees' Retirement System Technical Corrections Act of 1988, to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600-1699. The Board's regulations published in Subparts A and B of this Part 1633 govern the standards of honesty, integrity, impartiality, and conduct of government employees and special government employees who are employed by the Board. Subpart C covers Board Members.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only persons who work for the Board as government employees, special government employees, and as Board Members.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board, as a new agency, has begun operations and it is necessary for these standards of conduct to be in place for the direction and guidance of its personnel.

List of Subjects in 5 CFR Part 1633

Conflicts of interest, Ethical conduct, Financial disclosure, Government employees, Political activities.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1633 to Chapter VI to read as follows:

PART 1633—STANDARDS OF CONDUCT

Subpart A—Regular Employees

General Provisions

Sec.

1633.1 Purpose.
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1633.3 Policy.
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1633.7 The General Counsel.
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1633.20 General.
1633.21 Summary of provisions of criminal code.

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1633.31 Political activity.
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1633.34 Gifts or gratuities from foreign governments.
1633.35 Outside financial interests.
1633.36 Using official designation.
1633.37 Outside employment and other outside activities.
1633.38 Teaching, writing, lecturing, and speechmaking.
1633.39 Gambling, betting, and lotteries.
1633.40 Use of intoxicants.
1633.41 Indebtedness.
1633.42 Lending or borrowing money.
1633.43 Use of Federal property.
1633.44 Care of documents.
1633.45 Use of Government cars.
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Authority: 5 U.S.C. 8474; 5 U.S.C. App. 4.

Subpart A—Regular Employees

General Provisions

§ 1633.1 Purpose.

This part describes the standards of conduct required of all employees, special employees, and Board Members of the Federal Retirement Thrift Investment Board. The regulations in this Part implement Office of Personnel Management regulations at 5 CFR Parts 735 and 737. The standards of conduct in this part are not to be considered all-inclusive and may be supplemented to meet specific needs. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Board does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

§ 1633.2 Scope.

This part covers three general types of employment situations as follows:

(a) Subpart A of this Part sets the general policy and defines rules of conduct and procedures for all regular employees excluding Board Members.

(b) Subpart B of this Part applies to special Government employees, primarily advisers and consultants, excluding Board Members.

(c) Subpart C of this Part applies to Board Members.

§ 1633.3 Policy.

(a) Executive Order 11222 of May 8, 1965, 18 U.S.C. 201 note, states the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of Government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

(b) Personnel of the Federal Retirement Thrift Investment Board are expected to adhere to the above stated principles and to standards of behavior that will reflect credit on the Government. The Board's position is that of having confidence in its employees and of taking a positive and reasonable approach to the matter of maintaining the high standards of conduct necessary in the transaction of Board activities. A violation of the laws or the rules or regulations on conduct in this Part may subject the employee to discipline, or advice regarding other remedial action, in accordance with the gravity of the violation.

(c) Disciplinary action may be in addition to any penalty prescribed by law. Such action may be taken only after consideration of any explanation offered by the employee.

(d)(1) In addition to disciplinary action, remedial action may include, but is not limited to:

(a) Recusal,

(b) Divestiture, resignation, or reassignment,

(c) A Qualified Trust established in consultation with the Office of Government Ethics, pursuant to Subpart D of 5 CFR Part 734.

(2) An employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives a waiver pursuant to 18 U.S.C 208(b).

(e) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

§ 1633.4 Definitions.

In this part:

(a) "Board" means the Federal Retirement Thrift Investment Board.

(b) "Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(c) "Regular employee" or "employee" means an employee of the Board, but does not include a special Government employee or Board Member.

(d) "Special Government employee" means an employee of the Board who is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not more than 130 days during any period of 365 consecutive days.

(e) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 1633.5 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this Part is described below in §§ 1633.6 to 1633.10 of this Part.

§ 1633.6 Executive Director.

The Executive Director's responsibilities are to (a) issue policy and basic standards of conduct applicable to all Board employees, (b) periodically review the basic standards and initially and periodically review those additional standards issued by the Board, (c) set requirements to ensure that supervisors and employees are aware of the standards of conduct, of their responsibilities in maintaining and adhering to those standards, and of the fact that disciplinary action will be taken in cases of failure to maintain or adhere to them; and (d) establish procedures for furnishing advice to employees on the application of standards of conduct.

§ 1633.7 The General Counsel.

The General Counsel has general oversight responsibility for the administration of the standards of conduct program of the Board.

§ 1633.8 The Ethics Officer.

The Board's Ethics Officer has responsibility for the day to day operation of the standards of conduct program of the Board and is the "designated agency ethics official" under Part 734 of title 5 of the Code of Federal Regulations. The Board's Ethics Officer is the Assistant General Counsel for Administration. The Deputy Ethics Officer shall assist the Board's Ethics Officer and shall act in the latter's absence.

§ 1633.9 Supervisor.

It is the responsibility of each supervisor to:

(a) Know and adhere to the standards of conduct,

(b) Ensure that the employees under his or her supervision know and adhere to the standards of conduct,

(c) Assist employees under his or her supervision, when necessary, to obtain advice on the application of the standards of conduct; and

(d) Take or recommend disciplinary action when appropriate in cases where the employees under his or her supervision violate the standards or the principles upon which they are based.

§ 1633.10 Employees.

Each employee of the Board is required to:

(a) Know the standards of conduct and their application in his or her case,

(b) Seek information from his or her supervisor in case of doubt or misunderstanding on the application of the standards of conduct,

(c) Adhere to the standards of conduct, and

(d) Be aware of the consequences of violation of the laws, rules and regulations regarding conduct.

Conflicts of Interest

§ 1633.20 General.

The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is actual or only apparent. The rules of the Board concerning conflicts of interest appear in §§ 1633.33–1633.38.

§ 1633.21 Summary of provisions of criminal code.

The following is a brief summary of the provisions of the criminal conflict of interest statutes at Title 18 of the United States Code that define the conflicts of interest subject to fines and imprisonment. It should be noted that in some situations, different restrictions may apply to special Government employees than to regular employees, as discussed in more detail in Subpart B of this Part.

(a) 18 U.S.C. 203. Section 203 prohibits an employee from receiving, agreeing to receive, or asking for (directly or indirectly) any compensation for services, otherwise than as provided by law for the proper discharge of official duties, rendered by the employee or another in relation to any matter in which the United States is a party or has a direct and substantial interest before any department or agency.

(b) 18 U.S.C. 205. Section 205 prohibits an employee from (1) acting as an agent or attorney in prosecuting any claim against the United States or receiving any share of or interest in such claim for assistance in its prosecution, or (2) acting as agent or attorney for anyone before any department or agency in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Sections 203 and 205 do not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his parents, spouse, or child, or for any estate for which he is serving as guardian or other fiduciary, with certain exceptions set forth in that section. Section 205 does not prevent an employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceeding in connection with such proceeding.

(c) 18 U.S.C. 207(a). Section 207(a) prohibits a former employee, after his employment has ceased, from knowingly acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States has a direct and substantial interest and in which he participated personally and substantially as an employee for the lifetime of this matter.

(d) 18 U.S.C. 207(b). Section 207(b)(i) prohibits any such former Government employee within two years after the termination of his employment or the termination of his responsibility in a particular area (if the two events do not occur simultaneously) from appearing personally before any court, department, or agency as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party directly and substantially interested and which was under his official responsibility within 1 year prior to the termination of such responsibility. Section 207(b)(ii) prevents a former employee who occupied a position designated as a Senior Employee (a position which involves significant decisionmaking or supervisory responsibility) for a period of two years after his or her employment has ceased from appearing personally on behalf of another person before a court, department or agency of the United States or the District of Columbia in any matter that was pending under his official responsibility within a one year period prior to the termination of such responsibility or as to which he or she participated personally and substantially as an officer or employee. Section 207(c) prevents a former employee, who served more than sixty days in a given calendar year, and who occupied a position designated as a Senior Employee within one year after such employment has ceased, from acting as agent or attorney for anyone in any appearance or in any written communication before the agency in which he served as an officer or employee in connection with any proceeding pending before such agency. It should be noted that a consultant or adviser usually does not have "official responsibility."

(e) 18 U.S.C. 208. Section 208 prohibits any employee from participating personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, including general rulemaking, in which, to his knowledge, he, his spouse, minor child, partner, or organization in which he is serving as officer, director, trustee, partner or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment or has a financial interest. An employee may be exonerated from the provisions of this section if he makes full disclosure of the financial interest to the official responsible for his appointment and receives in advance a written determination by that official that the interest is not so substantial as to be likely to affect the integrity of his service.

(f) 18 U.S.C. 209. Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of his salary as compensation for his services as an employee from any source other than the Government. This section does not apply to a special Government employee, and does not prevent participation in any bona fide pension, retirement, profit sharing, or other welfare or benefit plan maintained by a former employer. This section also does not prohibit payment or acceptance of certain contributions, awards, or

expenses in connection with Government employee training programs or attendance at meetings authorized under 5 U.S.C. 4111.

Rules of Conduct

§ 1633.30 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this Part, which might result in, or create the appearance of:

(a) Using public office for private gain,

(b) Giving preferential treatment to any person,

(c) Impeding Government efficiency or economy,

(d) Losing complete independence or impartiality,

(e) Making a Government decision outside official channels, or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1633.31 Political activity.

Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns (Hatch Act, 5 U.S.C. 7324). Political activity in some local elections is permissible; but before employees engage in such activity, they should familiarize themselves with statutory provisions and the Office of Personnel Management's regulations on this subject (5 U.S.C. 7324–7327 and 5 CFR Part 733). It is unlawful for employees to solicit, receive, or to be concerned with political assessments, subscriptions, or contributions for any political purpose whatever from other employees. (18 U.S.C. 602, 603, 606, 607.) Employees may make voluntary contributions to a regularly constituted political organization for its general expenditures subject to the limitations set forth in 18 U.S.C. 608.

§ 1633.32 Gifts or gratuities from Government employees.

Employees of the Federal Government are prohibited from soliciting contributions from other employees or from making a donation for gifts or presents to persons in superior official positions. Neither may such superiors receive any gift or present offered to them from employees in the Government receiving less salary then themselves (5 U.S.C. 7351). A voluntary gift of nominal value or a donation in a nominal amount may be made for gifts upon retirement or resignation or for expressing condolences in cases of illness or death. Solicitations for such gifts should be limited to employees in the immediate office of the employee concerned and a few close associates with whom he or she has worked. Gifts to recipients should not be in cash, except that small amounts (e.g. under $10) remaining after the purchase of a gift may be included with the gift. Within the foregoing limitations, a cash gift may be made to an employee, with the approval of his/her supervisor, to assist in a catastrophic illness or disaster, provided that these voluntary gifts are limited to co-workers of approximately equal status to the recipient employee, and to his immediate supervisors.

§ 1633.33 Gifts or gratuities from outside sources.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Board;

(2) Conducts operations or activities that are regulated by the Board; or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) General exceptions to the rule in paragraph (a) of this section are as follows unless otherwise precluded by the Board:

(1) Acceptance of gifts, entertainment, and food is acceptable when the circumstances make it clear that obvious family or personal relationships (such as those between the parents, children or spouse of the employee and the employee) rather than the business of the person concerned are the motivating factors.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions is permitted when such action occurs in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour when an employee may properly be in attendance.

(3) Acceptance of food and refreshments at widely-attended functions is permitted to the extent that:

(i) It is in the Board's interest that the employee attend the event;

(ii) Consideration is given to the timing of the event, the reason for the event, and the individual or entity sponsoring the event in order to ensure that attendance will not create an appearance of impropriety;

(iii) The event is a widely-attended gathering of mutual interest to the government and private sector such as a reception, seminar, conference or training session;

(iv) The food and refreshments offered in conjunction with this event are not excessive;

(v) Approval to attend the event is obtained from the Executive Director (or his designee) after consultation with the Board's Ethics Officer.

(4) Employees may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, except where prohibited by law.

(5) Employees may accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) The receipt of payment or reimbursement, by outside sources, for the expenses of travel and subsistence for activities related to Government employment is permited only in accordance with § 1633.38(c) (2) and (3) of this Part.

§ 1633.34 Gifts or gratuities from foreign governments.

The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

§ 1633.35 Outside financial interests.

An employee shall not participate on a private basis, directly or indirectly, in any financial transaction as a result of, or primarily relying on, confidential information obtained through his employment with the Board. An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities.

§ 1633.36 Using official designation.

Employees shall not permit their official position, status, or designation to be used in a manner that is intended to further, or gives the appearance of furthering, the private business interests of the user or any other private interest. See also § 1633.30(a).

§ 1633.37 Outside employment and other outside activities.

(a) No employee shall engage in any outside employment or other outside activity, with or without compensation, which would be incompatible with Government employment because it (a) would impair the employee's mental or physical capacity and thereby interfere with his or her efficient performance of

Government duties, (b) might bring discredit on or cause unfavorable and justifiable criticism of the Government, or (c) might otherwise result in a conflict of interest, or an appearance of conflict of interest, with official duties and responsibilities; nor may an employee accept a fee, compensation or a gift or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interest. Before engaging in outside employment or in an outside activity, employees shall submit a written request for approval, through any intermediate supervisors, to the appropriate Office Director or, in the case of persons assigned to the General Counsel's Office, to the General Counsel. The written request shall identify the organization, duties, hours of work, and remuneration pertaining to the outside employment or activity. Other restrictions on misuse of Government property, Government title, and official information are found at §§ 1633.36, 1633.43, and 1633.46.

(b) Employees shall not solicit financial aid from or sell tickets to persons outside the Federal Government for the benefit of any organization or association comprised of Board employees. No publication of any such organization shall contain any commercial advertising, and the costs of such publications must be wholly paid by the organization or association. Employee organizations and associations may, however, accept financial aid for convention purposes from boards of trade, chambers of commerce, convention bureaus, and other such organizations which hold conventions.

§ 1633.38 Teaching, writing, lecturing, and speechmaking.

(a) Employees may teach, write, lecture, or deliver speeches providing such action is not prohibited by law, Executive Order 11222, 5 CFR Part 735, or the regulations in this Part. The requirements prescribed in § 1633.37 of this Part also apply to engagements to teach, write, lecture, or deliver speeches; however, see paragraph (c)(1) below. An employee shall not, either with or without compensation, engage in teaching, writing, lecturing, or speechmaking (including teaching, writing, lecturing, or speechmaking, for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) that depends on information obtained as a result of Government employment, except when the information has been made available on request, or when the Ethics Officer gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

(b) A formal speech, a lecture, or an article relating to Board business shall, prior to its release to the public, be submitted to the Executive Director (or to the person designated by the Executive Director).

(c)(1) Determinations by the Executive Director. If the subject matter of any teaching, writing, lecturing, or speechmaking activity is devoted specifically to the responsibilities, programs, or activities of the Board or draws upon official data or ideas which have not been made public, the Executive Director (or designee), after the requestor consults with the Ethics Officer, will determine whether the activity may be undertaken, and if so, whether as official duty or in a private capacity. In determining whether the activity is an official duty or private undertaking, the Executive Director will consider, among other factors, whether the activity will be performed during official hours, whether Government time or facilities will be utilized, whether the official title of the employee will be used, whether the employee will be perceived as conveying agency policy, and whether the activity would justify the expenditure of public funds.

(2) Activities undertaken as an official duty. If the activity is undertaken as an official duty, all expenses will be borne by the Board and the employee may not accept any honorarium or other compensation or permit payment of his or her expenses. However, under 5 U.S.C. 4111 and 5 CFR 410.701–410.706, an employee on official duty may accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary of the Treasury to be tax exempt, as described in 26 U.S.C. 501(c)(3), if no Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Board policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities.

(3) Activities undertaken in a private capacity. (i) The Board discourages employees from receiving honoraria or other compensation for teaching, writing, lecturing, or speechmaking on matters relating to Board business, even though the activity is not performed as an official duty. An employee may not receive any such compensation unless, before engaging in the activity, a written request is submitted to and approved by the Executive Director (or designee), after the requestor consults with the Ethics Officer. The request should set forth the facts relating to the amount of compensation, its reasonableness (taking into account the amount of compensation paid to others under similar circumstances), and reasons why its acceptance would be consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the employee's official duties and responsibilities.

(ii) Pursuant to paragraph (3)(i) above, employees may accept payment for travel, lodging, and subsistence expenses actually incurred from the person or group sponsoring an activity which was determined not to be an official duty, if the payment is reasonable in amount and is otherwise consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee.

(4) Reporting requirements. All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs of activities of the Board or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the Executive Director stating the amounts paid and by whom, unless this information was previously provided to that official. In addition, the employee may be required by the Executive Director to furnish other relevant information concerning these payments.

(5) Other restrictions. (i) Under 46 Comp. Gen. 689 (1967), no reimbursement or donation may be made to the Board to cover the expenses of travel and subsistence of an employee on official business, unless specifically authorized by law.

(ii) Under 2 U.S.C. 441i, appointed officials are prohibited from receiving honorariums of more than $2,000 for any appearance, speech, or article, and from receiving honorariums aggregating more than $25,000 in any calendar year.

(e) Board employees are prohibited from official attendance at segregated meetings. They should not participate in conferences or speak before audiences where any racial group has been segregated or excluded from the meeting, any of the facilities, the conferences, or from membership in the group.

§ 1633.39 Gambling, betting and lotteries.

While on Government-owned or leased property or while on duty for the Government, an employee shall not participate in any form of gambling, betting, lotteries, or the sending of chain letters, even if such activities are in support of a worthy cause.

§ 1633.40 Use of intoxicants.

Employees must refrain from using intoxicants habitually to excess or in any way which adversely affects their work performance (5 U.S.C. 7352).

§ 1633.41 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. A "just financial obligation," as used in this section, means one acknowledged by the employee; reduced to judgment by a court; or, in the case of taxes, a final administrative determination confirmed by notice of a tax lien issued by a governmental agency, Federal, State, or local. "In a proper and timely manner," as used in this section, means in a manner which the Board determines does not under the circumstances, reflect adversely on the Board as his employer. In the event of dispute between an employeee and an alleged creditor, this section does not require the Board to determine the validity or amount of the disputed debt.

§ 1633.42 Lending or borrowing money.

Employees shall neither directly nor indirectly, lend to or borrow from other employees substantial sums of money. In negotiating loans from authorized sources, such as credit unions, welfare associations, commercial or private banking institutions, etc., if the transaction involves the signature of one or more endorsers or comakers, the borrower must not in any instance solicit, or permit to be affixed to any instrument as endorser or comaker, the signature of any Board employee who is under his or her supervision.

§ 1633.43 Use of Federal property.

Employees may not directly or indirectly use or allow the use of Federal property of any kind for other than officially approved activities. They also have a positive responsibility to protect and conserve all Federal property, including equipment and supplies, which is entrusted or issued to them.

§ 1633.44 Care of documents.

The care of Government documents is a Federal requirement which is regulated by legislation. All records and documents in the custody of employees are in their custody for official purposes only. It is unlawful to remove or conceal, alter, mutilate, obliterate, or destroy records or documents or to remove or attempt to remove them from official custody with the intent of performing any of the above actions (18 U.S.C. 2071). Employees must not remove records and documents from official files without approval from proper authority. Working papers, copies of reports and other official records and documents shall be promptly disposed of when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements.

§ 1633.45 Use of Government cars.

Employees are prohibited from using Government cars for other than official purposes. Use of such cars for transportation of employees between their domiciles and places of employment can only be justified where affirmatively authorized by statute, as in 31 U.S.C. 1343 and 1344.

§ 1633.46 Disclosure of information to the public.

Employees may not disclose official information which has not been made available to the general public without either appropriate general or specific authority.

§ 1633.47 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to reasonable need. See 41 CFR Part 201–38. Employees who receive personal mail at their office will advise addressors to stop sending such mail to the Board's address.

§ 1633.48 Soliciting, selling, and canvassing.

Except when authorized by the Board, and except as provided by § 1633.33 of this Part, employees are prohibited from soliciting, from making collections, from canvassing for the sale of any article, or from distributing literature or advertising matter in any space occupied by the Board.

§ 1633.49 Influencing legislation or petitioning Congress.

Employees are prohibited from using Government time, money, or property (as, for example, through sending telegrams or letters) to influence a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling through proper channels of matters relating to legislation affecting the Board (18 U.S.C. 1913), or to the rights of employees in their private capacities to petition Members of Congress either individually or collectively or to furnish information to any committee or member of either House of Congress (5 U.S.C. 7102).

§ 1633.50 Civil Service examination processes.

Appointment and future advancement in the Federal career service are based on the important principle of individual merit and qualifications. The selection and merit competitive processes are protected by the Civil Service statutory provisions, 5 U.S.C. Chapter 33, and the Office of Personnel Management (OPM) regulations. Employees shall not, either directly or indirectly:

(a) Intentionally make a false statement or practice any deception or fraud in examination or appointment;

(b) Induce persons to withdraw from competition for competitive service positions;

(c) Engage in any improper activity with respect to the taking of Civil Service examinations and examination ratings; or

(d) Obstruct the right of any person to take examinations according to OPM rules and regulations. See 18 U.S.C. 1917 and 5 CFR 735.210(j).

§ 1633.51 Falsification of official records.

Employees shall avoid making false, misleading, or ambiguous statements, deliberately or willfully, whether verbal or written, in connection with any matter of official interest. Some of these matters of official interest are: transactions with the public, other Federal agencies or fellow employees; application forms and other forms which serve as a basis for appointment, reassignment, promotion or other personnel actions; vouchers; leave records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with the employee's duties; and report of any moneys or securities received, held or paid to, for or on behalf of the United States. See 18 U.S.C. 1001 and 5 CFR 735.210(k).

§ 1633.52 Miscellaneous statutory provisions.

The attention of every employee is directed to the statutes relating to conduct listed below:

(a) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643) and (3) embezzlement of the money or property of another person in the

possession of an employee by reason of his employment (18 U.S.C. 654).

(b) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(c) Section 8477 of Title 5, U.S.C. which describes fiduciary responsibilities, liability, and penalties.

(d) Chapter 11 of Title 18, U.S.C. relating to bribery, graft, and conflicts of interest as appropriate to the employees concerned.

(e) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(f) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(g) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(h) The prohibitions against the employment of a member of a Communist organization (50 U.S.C. 784).

(i) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(j) The prohibition against Federal employment of any person convicted of a felony in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. 7313).

(k) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees whose compensation is equal to or greater than that for GS–16, or executive assistants or secretaries to any of the foregoing) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of compensation or other benefits such as a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from, a private foundation.

(l) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

§ 1633.53 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the government.

§ 1633.54 Insurrection.

Employees may be disqualified for employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

§ 1633.55 Strikes.

Employees shall not strike against the Government (5 U.S.C. 7311).

§ 1633.56 Purchase of Government property.

Employees are prohibited from either directly or indirectly, bidding or purchasing at any sale of Government property under the direction of or incident to the functions of the Board. Government property under the control of the Board shall not be sold to a Government employee, either directly or indirectly, unless a properly authorized representative of the office disposing of the property has determined that the sale is in the best interest of the Government. Before purchasing any Government property from any agency of the Government, either directly or indirectly, employees of the Board shall make known to the disposing agency that they are such employees and shall be governed by the disposing agency's rules relating to sales to Government employees.

Statement of Employment and Financial Interests

§ 1633.70 Employees required to submit confidential statements.

Except as provided in § 1633.72, statements of employment and financial interests will be filed by the following employees:

(a) Those classified at GS/GM–13–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Regulating or auditing private or other non-Federal enterprise; or

(3) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(b) All other positions classified at GS/GM–13–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority. The Executive Director has determined that all such positions have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, executive order, 5 CFR Part 735, and this Part.

(c) Those classified below GS–13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which otherwise meet the criteria in paragraphs (b) and (c) of this section, but only when the inclusion of the positions in an appendix to this Part has been specifically justified by the Executive Director in writing to the Office of Personnel Management as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict of interest situation.

§ 1633.71 Employee's complaint on filing requirement.

An employee shall have, in conformity with the grievance procedures prescribed by the Board, an opportunity for review of a complaint that his or her position has been improperly determined to be one requiring the submission of a statement of employment and financial interests.

§ 1633.72 Exceptions.

(a) Employees in positions that meet the criteria in paragraph (b) of § 1633.70 may be excluded from the reporting requirement when the Executive Director determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote; or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent, or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required when the employee is required to file a report pursuant to 5 CFR Part 734.

§ 1633.73 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by the Office of Personnel Management (OPM). Such Board forms shall not include questions that go beyond, or are in greater detail than, those included in OPM formats without the approval of OPM.

§ 1633.74 Time and place for submission of employees' statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the Ethics Officer not later than:

(a) Thirty days after the effective date of the regulations in this Part if employed on or before that effective date; or

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(b) Thirty days after entrance on duty.

§ 1633.75 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of May 15 each year, except when OPM authorizes a different date. Complete updated statements will be filed annually; reporting a negative or "no change" statement is not allowed. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict of interest provisions of 18 U.S.C. 208, or Subpart B of 5 CFR Part 735 or this part.

§ 1633.76 Interests of employees' relatives.

For purposes of completing the statements of employment and financial interests, the interests of a spouse and dependent children are to be considered interests of the employee.

§ 1633.77 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his or her behalf, unless the trust is a Qualified Trust meeting the requirements of Subpart D of 5 CFR Part 734. If the trust is a Qualified Trust pursuant to Subpart D of 5 CFR Part 734, then those regulations control as to what information must be submitted by the trustee.

§ 1633.78 Information excluded.

The regulations in this Part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purposes of the regulations in this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 1633.79 Review of statements.

(a) Board employees will file their statements with the Board's Ethics Officer for his review. The Ethics Officer will, in turn, submit the statements to the supervisor of each submitting employee. The supervisor shall sign and date the statement and indicate that he or she has reviewed such statement. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees. If information from the statements submitted or from other sources indicates a conflict of interest or an apparent conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. The Ethics Officer shall report all cases to the Executive Director for decision. The Ethics Officer will file with the Executive Director his statement, which will be reviewed by the Executive Director or his designee.

(b) The Ethics Officer will review the statement of the Executive Director and shall advise the Executive Director of any conflict or appearance of conflict or of any failure to report. If the Executive Director fails to cooperate in the resolution of the conflict or appearance of conflict or continues to fail to file a report after being notified of the failure, the Ethics Officer will report the matter to the Director, Office of Government Ethics.

§ 1633.80 Confidentiality of employees' statements.

Statements of employment and financial interests, and supplementary statements covered by §§ 1633.70–1633.79 are confidential except as to appropriate reviewing officials. Employees reviewing statements in connection with their official duties are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part. Information from a statement may not be disclosed except as OPM or the Board may determine for good cause shown.

§ 1633.81 Employees required to submit public statements.

All personnel paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code and all persons paid at a level of the Senior Executive Service set by the President in accordance with Subchapter VIII of Chapter 53 of Title 5, United States Code, must file a statement of financial interests in accordance with section 202 of the Ethics in Government Act of 1978, as amended, and Part 734 of Title 5 of the Code of Federal Regulations. These statements are available to the public.

§ 1633.82 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees under the regulations in this Part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in the matter in which the employee's or the other person's participation is prohibited by law, order, or regulation.

§ 1633.83 Advisory service.

(a) An employee may obtain advice and guidance on questions of conflict of interest covered by these regulations from the Ethics Officer.

(b) If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of an employee, he or she shall bring this to the attention of the employee. If the employee fails to cooperate in the resolution of the conflict, or the appearance of a conflict, the Ethics Officer shall bring the matter to the attention of the Executive Director. If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest on the part of the Executive Director, he or she shall bring this to the attention of the Executive Director. If the Executive Director fails to cooperate in the resolution of the conflict, or the appearance of a conflict, the Ethics Officer will report the matter to the attention of the Director, Office of Government Ethics.

Subpart B—Preventing Conflicts of Interest on the Part of Special Government Employees of the Board

General Provisions

§ 1633.200 Purpose.

This subpart implements the provisions of Executive Orders 11222 and 12565 dated May 8, 1965, relating to special Government employees of the Board.

§ 1633.201 Scope.

This subpart relates basically to special Government employees who are consultants and advisers, including experts. Submission of financial statements by special Government

employees other than advisers, consultants, and experts is waived except where statements would otherwise be required under § 1633.70; nevertheless, such special Government employees are subject to the substantive standards of conduct of this Subpart B. Employees who are employed for more than 130 days are treated as regular employees and are subject to the provisions of Subpart A of this Part.

§ 1633.202 Policy.

It is the Board's policy in issuing the instructions in this Part to adhere rigidly to the policy that every citizen is entitled to have complete confidence in the integrity of his Government and that each individual officer, employee, or adviser of the Government must help to earn and must honor that trust by the individual's own integrity and conduct in all official actions.

General Rules of Conduct Applicable to Special Government Employees

§ 1633.203 Applicability of Subpart A of this Part.

In addition to complying with §§ 1633.204–1633.209, special Government employees shall familiarize themselves with the rules of conduct contained in Subpart A of this Part so they can be guided by the principles contained in those rules insofar as their employment with the Board is concerned.

§ 1633.204 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 1633.205 Use of inside information.

A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. "Inside information" as used in this section means information obtained under Government authority which has not become part of the body of public information.

§ 1633.206 Teaching, lecturing, and writing.

Special Government employees may teach, lecture, or write providing such action is not prohibited by law, Executive Order 11222, or the regulations in this Part. However, a special Government employee shall not, either with or without compensation, engage in teaching, lecturing, or writing that depends upon information obtained as a result of his employment with the Board, except when that information has been made available to the general public or will be made available on request, or when the official to whom he or she reports receives written authorization from the Executive Director for the use of non-public information on the basis that the use is in the public interest.

§ 1633.207 Coercion.

A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he or she has family, business or financial ties.

§ 1633.208 Gifts, entertainment, and favors.

A special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor, personally or for another person, particularly one with whom the employee has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Board.

§ 1633.209 Miscellaneous statutory provisions.

The statutory provisions relating to Board employees referred to in §§ 1633.31, 1633.32, 1633.34, 1633.40, 1633.44, 1633.45, 1633.48, 1633.51, 1633.52, 1633.53, and 1633.55 apply to special Government employees when serving in their official capacities with the Board.

Conflict of Interest Statutes

§ 1633.210 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special Government employees are less stringent than those which affect regular employees, i.e., those who are appointed for more than 130 days a year. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the same two sections impose only the following major resutrictions upon a special Government employee:

(1) The employee may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which the employee has at any time participated personally and substantially in the course of Government employment.

(2) The employee may not, except in the discharge of official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if the employee has served the agency no more than 60 days during the past 365. The employee is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when the employee does not serve the Government as well as on the days when the employee does.

(c) The rules to be followed by the Board to determine the duration of employment of special Government employees and other temporary employees in order to ascertain the application of these statutes are set forth in the Federal Personnel Manual.

(d) An employee who undertakes service with the Board and another department or agency shall inform each of the arrangements with the other.

(e) There may be situations where a consultant or adviser has a responsible position with a regular employer which requires personal participation in contract negotiations with the Board. In this situation, the consultant or adviser should participate in the negotiations for the employer only with the knowledge of a responsible Board official, i.e., the full-time official to whom the consultant or adviser reports. Prior to permitting such participation, the responsible Board official shall obtain the approval in writing of the Executive Director. See also paragraph (f)(1) of this section.

(f) Section 205 of title 18 of the United States Code, contains two exemptive provisions, which apply under § 203 as well.

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(1) The first of these deals with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from performance of work under a grant or contract for which the employee would otherwise be disqualified because of participation in the matter for the Government or it is pending in an agency the employee has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or section 205 of Title 18 of the United States Code, to allow a special Government employee to represent before such department or agency the regular employer or another person or organization in the performance of work under a grant or contract, if the national interest so requires. A written certification by the head of a department or agency concerned with the grant or contract to exempt the employee must be submitted for publication in the **Federal Register**. Where the Board is the agency concerned with the grant or contract, such written certification will be forwarded, through the General Counsel, to the Executive Director for the latter's signature. The exemption will not take effect until the certification is published in the **Federal Register**.

(2) The other exemptive provision requiring action permits a special Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate for whom or which the employee serves as a fiduciary, but only with the approval of the official responsible for appointments to his or her position, and only if the matter involved is neither one in which the employee has participated personally or substantially nor one under the employee's official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. For the Board, the "official responsible for appointments" for these purposes will be the Executive Director.

§ 1633.211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18 of the United States Code applies to individuals who have left Government service, including former special Government employees. Section 207(a) prevents a former employee or special Government employee from representing another person in connection with certain matters in which the employee participated personally and substantially on behalf of the Government. The matters are those particular matters involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207(b)(i) prevents a former employee or special Government employee, for a period of two years after employment has ceased, or responsibility in a particular area has ceased (if the two do not occur simultaneously) from appearing personally on behalf of another person in such matters before a court, department, or agency of the United States or the District of Columbia if the matters were within the area of his official responsibility at any time during the last year of Government service. Section 207(b)(ii) prevents a former employee who occupied a position designated as a Senior Employee (a position which involves significant decision making or supervisory responsibility) for a period of two years after his or her employment has ceased from appearing personally on behalf of another person before a court, department or agency of the United States or the District of Columbia in any matter that was pending under his official responsibility within a one year period prior to the termination of such responsibility or as to which he or she participated personally and substantially as an officer or employee. Section 207(c) prevents a former employee, who served more than sixty days in a given calendar year, and who occupied a position designated as a Senior Employee within one year after such employment has ceased, from acting as agent or attorney for anyone in any appearance or in any written communication before the agency in which he served as an officer or employee in connection with any proceeding pending before such agency. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) For the purposes of section 207 of Title 18 of the United States Code, the employment of a special Government employee ceases on the day the employee's appointment expires or is otherwise terminated, as distinguished from the day on which he or she last performs service. Accordingly, the appointment of an adviser or consultant should be terminated promptly as soon as it is determined that the services are no longer required. (See Appendix C of Chapter 735 of the Federal Personnel Manual.)

§ 1633.212 Applicability of 18 U.S.C. 208.

(a) Section 208 of Title 18 of the United States Code, bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents an employee or special Government employee from participating as such in a particular matter in which, to his or her knowledge, the employee's spouse, minor child, partner, or a profit or nonprofit enterprise with which the employee is connected has a financial interest. However, section 208(b)(1) permits such an employee's agency to grant an ad hoc exemption if the interest is not so substantial as to affect the integrity of the services to be rendered. Insignificant interests may also be waived by a general rule or regulation (18 U.S.C. 208(b)(2)).

(b) The matters in which special Government employees are disqualified by section 208 of Title 18 of the United States Code are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205, and 207 of Title 18, of the United States Code. Section 208, therefore, undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also when the financial interests involved are minimal in value.

(c) Exemptions under section 208 of Title 18, of the United States Code may be made by general rule or regulation by the Executive Director.

Consultants and Advisers

§ 1633.220 Advice on rules of conduct and conflict of interest statutes.

If a special Government employee who is a consultant or adviser has doubt as to the ethics of any conduct falling within the standards of conduct and conflict of interest statutes, the employee should confer with the Ethics Officer of the Board.

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§ 1633.221 Responsibility of the individual special Government employee.

Each person appointed as a special Government employee with the Board is responsible for:

(a) Becoming familiar with the contents of this part and the applicability of the conflict of interest statutes in the employee's particular case.

(b) Seeking advice and assistance in interpreting the laws and instructions in case of questions concerning them.

(c) Being alert to the possibility of conflicts of interest.

(d) Furnishing the Board with information concerning financial interests and keeping this information current.

Procedures To Be Followed Within the Board

§ 1633.230 Information and assistance to special Government employees and their supervisors.

Each special Government employee and each supervisor of a special Government employee will be given a copy of this part and will be required to become familiar with the conflict of interest laws and the provisions of the instructions applicable to him or her. If a special Government employee or prospective special Government employee or a supervisor desires assistance in interpreting the instructions or laws, the employee will be referred to the Ethics Officer.

§ 1633.231 Disclosure of financial interests.

(a) In order to carry out its responsibility to avoid the use of the services of special Government employees in situations in which violations of the conflict of interest laws or of the regulations in this part may occur, prior to initial employment and each reappointment thereafter, each special Government employee who is a consultant or adviser will be required to supply a statement of all other employment and the financial interests of the special Government employee which the Executive Director determines are relevant in the light of the duties the employee is to perform, including, but not limited to, the name of companies in which he or she has a significant financial interest, and the nature of such financial interest. Each statement of financial interests will be forwarded to the Board's Ethics Officer along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The Board's Ethics Officer will review the statement of employment and financial interests in relationship to the duties to be performed and initially determine whether a conflict of interest exists. Accordingly, such statements must be kept current during the period the special Government employee is on the Government rolls. In any event, special Government employees who are employed intermittently for more than one calendar year shall file the statement as of May 15 of each year of such employment.

§ 1633.232 Service with other Federal agencies.

If a special Government employee is serving in other Federal agencies, he or she will be required to inform the Board and each of the agencies of his or her arrangements with the others so that appropriate administrative measures may be effected. Information on service with other Federal agencies will be submitted along with the statement of employment and financial interests and must be kept current while employed with the Board.

§ 1633.233 Resolution of cases involving a conflict or apparent conflict of interest.

When a situation arises which indicates a conflict of interest or apparent conflict of interest and the matter is not resolved, information about the situation will be reported by the Ethics Officer to the Executive Director. In any such situation, the special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 1633.234 Disciplinary and other remedial action.

A violation of the regulations in this part may be cause for appropriate disciplinary action, which may be in addition to any penalty prescribed by law, or other remedial action. In addition to disciplinary action, remedial action may include, but is not limited to:

(a) Recusal,

(b) Divestiture, resignation, or reassignment,

(c) A Qualified Trust established pursuant to Subpart D of 5 CFR Part 734. A special Government employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives an advance written waiver pursuant to 18 U.S.C. 208(b).

§ 1633.235 Legal interpretation.

Whenever the Ethics Officer believes that a substantial legal question is raised by the employment of a particular special Government employee as a consultant or adviser, the Ethics Officer will consult with the Office of Government Ethics and the General Counsel, Office of Personnel Management, and will refer cases of potential criminal violations to the Department of Justice, Criminal Division, Office of Public Integrity, in order to ensure a consistent and authoritative interpretation of the law.

§ 1633.236 Safeguard of information.

Statements of employment and financial interests, and supplementary statements shall be held in confidence. Employees responsible for maintaining or reviewing the statements shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information from a statement may not be disclosed except as OPM or the Executive Director may determine for good cause shown.

Subpart C—Members of the Federal Retirement Thrift Investment Board

§ 1633.250 Purpose.

This subpart implements the provisions of Executive Orders 11222 and 12565 for Board Members.

Standards of Conduct

§ 1633.251 General.

(a) General Principles. A Board Member shall avoid any action, whether or not specifically prohibited by these standards of conduct, which might result in or create the appearance of:

(1) Giving preferential treatment to any person;

(2) Impeding Board efficiency or economy;

(3) Losing complete independence or impartiality;

(4) Making a Board decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Federal Retirement Thrift Investment Board.

(b) No Board Member shall use his or her position with the Board to coerce, or give the appearance of coercing, a person to provide financial benefit to him or herself or another person.

(c) No Member shall directly or indirectly use, appear or use, or allow the use of, his or her official position or information obtained as a result of his or her position to further any private interest, whether his or her own or that of another person.

(d) The conduct expected and required of a Member will often depend on the particular facts of each instance. Although detailed regulations that will cover every situation cannot practically be prescribed, the following rules provide guidance and illustrate the manner in which the general principles should be applied.

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§ 1633.252 Conflicts of interest—financial.

(a) General principles. No Member may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his or her duties and responsibilities to the Federal Retirement Thrift Investment Board. For purposes of this code, a Member's interests include those of his or her spouse, his or her minor child or children, and other individuals related to the Member by blood who are residents of the Member's household.

(b) No Member shall enter into any contract with the Federal Retirement Thrift Investment Board or otherwise have an interest in any contract with the Federal Retirement Thrift Investment Board unless there has been a prior determination by the Ethics Officer that the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists. No such determination is required, however, if:

(1) The interest results solely from the Member's ownership of publicly-traded securities of a corporation or the Member's service as a fiduciary of a trust or estate that owns such publicly traded securities; and

(2) Neither the contract, nor a transaction of which it is a part, requires action by the Board.

(c) No Member shall engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, confidential information obtained as a result of his or her position as Board Member.

(d) No Member shall sell or lease property to the Federal Retirement Thrift Investment Board.

(e) No Member shall recommend or suggest the employment of any private person offering services as a consultant, agent, attorney, expeditor or the like for the purpose of assisting a private party in any negotiations, transactions or other business with the Federal Retirement Thrift Investment Board.

(f) Section 203 of title 18, United States Code, prohibits any Member from soliciting or accepting any fee or other compensation for services rendered by him or herself or another person in representing any person other than the United States before any executive department, agency, court martial, officer or commission in relation to any proceeding or other particular matter involving a specific party or parties in which a Member has participated personally and substantially during his or her term.

(g) Section 208(a) of Title 18, United States Code, prohibits participation by any Member in any decision or other matter in which, to the Member's knowledge, he or she, any entity of which he or she is an employee, director, partner, or other fiduciary, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. Although this statute applies even though the interest is minimal, section 208(b) permits the application of section 208(a) to be waived, if it is properly determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which may be expected from a Member. Under Executive Order 11222, Part V, the waiver decision is made by the Chairman of the Board with respect to Members and is made by the President with respect to the Chairman of the Board.

§ 1633.253 Conflicts of interest—employment.

(a) General principles. No Member shall accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest.

(b) No Member shall engage in any activity for compensation, or accept any outside employment, or receive any salary or other thing of monetary value which is, directly or indirectly, a form of compensation from a private source for his or her services to the Federal Retirement Thrift Investment Board.

(c) Section 205 of Title 18, United States Code, prohibits any Member, as a special Government employee, from acting as agent or attorney in representing a private party before any department, agency, court, court-martial, officer, or commission in connection with any claim, proceeding or other particular matter involving a specific party or parties in which a Member has participated personally and substantially during his or her term.

(d) No Member shall use his or her official title, position, or authority in the endorsement or advertisement of a commercial product or service.

(e) Within the limitations imposed by this section, a Member may engage in teaching, lecturing, and writing. He or she shall not, however, receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance whose subject matter is devoted substantially to the responsibilities, programs, or operations of the Federal Retirement Thrift Investment Board, or which draws substantially on official data or ideas which have not become part of the body of public information.

(f) This section shall not apply if the Member has been granted a waiver under § 1633.252.

§ 1633.254 Conflicts of interest—gifts, entertainment, and favors.

(a) A Member, even though a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor, personally or for another person, particularly one with whom the employee has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Board.

(b) The Constitution prohibits persons holding Federal office, such as Board Members, from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

Ethical Conduct Advisory Services and Post-Employment Activities

§ 1633.255 Advisory service.

(a) A Member may obtain advice and guidance on questions of conflicts on interest covered by this code from the Ethics Officer.

(b) If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of a Member, he or she shall bring this to the attention of the Member. If the matter is not resolved, the Ethics Officer will report the matter to the Director, Office of Government Ethics.

§ 1633.256 Post-employment activities.

Members of the Federal Retirement Thrift Investment Board are subject to the restrictions on the post-employment activities of special Government employees imposed by section 207 (a) and (b)(i) of Title 18, United States Code. These post-employment restrictions are set out in the Standards of Conduct for Board employees at §§ 1633.21 and 1633.211 of this title.

Statement of Employment and Financial Interests

§ 1633.257 Financial disclosure.

(a) Statement required. All members must annually file a financial disclosure

statement (SF 278) with the Ethics Officer pursuant to the Ethics in Government Act unless:

(1) The Member is beginning his or her first year of service on the Board, reasonably expects to work less than 60 days in the calendar year, and obtains a determination from the Director of the Office of Government Ethics to that effect; or

(2) The Member has completed one year of service on the Board and did not work more than 60 days in the preceding calendar year.

(b) Loss of exemption. Any Member who claimed an exemption from filing a financial disclosure report pursuant to paragraph (a) (1) and (2) of this section and who works more than 60 days in the affected calendar year must file the statement within 15 days of the date on which the Member works his or her 61st day.

(c) Reviewing statements. (1) Financial disclosure statements filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the Ethics Officer who shall either approve the statement, or make an initial determination that a conflict or appearance thereof exists. If the Ethics Officer determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Member of his determination.

(2) If the Ethics Officer considers that additional information is needed to complete the statement or to allow an adequate review to be conducted, he or she shall request the reporting Member to furnish that information by a specified date.

(3) Whenever the Ethics Officer has reasonable cause to believe that a Member refuses to file a statement or refuses to report required information, he or she will report the matter to the Director, Office of Government Ethics.

(d) Custody of and public access to statements.

(1) Retention of statements. Each statement filed with the Ethics Officer shall be retained by him or her for a period of six years. After the six-year period, the statement shall be destroyed unless needed in connection with an investigation then pending.

(2) The financial disclosure statements filed by Members shall be available to the public.

[FR Doc. 88–29202, Filed 12–20–88; 8:45 am]
BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice Governing Proceedings Under the Packers and Stockyards Act; Rules Applicable to Rate Proceedings

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This action establishes procedures for handling rate proceedings under the Packers and Stockyards Act (7 U.S.C. 181, *et seq.*). These new sections, along with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 CFR Part 1, Subpart H, will be applicable to rate proceedings. Adoption of these rules of practice will provide procedures for conducting rate proceedings, thereby avoiding the necessity for motions adopting special rules of practice for rate proceedings on a case-by-case basis.

EFFECTIVE DATE: January 23, 1989. There is no such proceeding pending at this time and, if any such proceeding is instituted prior to the effective date of these rules, it will be handled in accordance with these rules.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6951.

SUPPLEMENTARY INFORMATION: In October 1976 the Act was amended to reduce the Department's review of rates and charges at posted stockyards and it did not seem likely that rate proceedings would continue to be needed. Thus, the Rules of Practice Governing Rate Proceedings were revoked on December 14, 1979 (44 FR 72575). However, changing industry practices make it apparent that occasional rate proceedings will be required. Since the revocation, formal rate proceedings have been initiated and it has been necessary to adopt special rules of practice for these cases.

Adoption of these rules of practice will provide procedures for conducting rate proceedings, thereby avoiding the necessity for motions adopting special rules of practice for rate proceedings on a case-by-case basis.

Notice of proposed rulemaking and public participation are not required by law for these rules on the basis that they constitute "rules of agency . . . procedures, or practice" under 5 U.S.C. 553(b)(A).

Executive Order

Regulatory impact analysis is not required for this amendment because it has been determined not to be a "major" rule as defined by section 1(b) of E.O. 12291. It will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices for consumers, individual industries, Government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This amendment has been determined not to have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

No information collection requirements are affected by these rules of practice.

List of Subjects in 9 CFR Part 202

Administrative practices and procedures, rate proceedings, reparation proceedings.

Accordingly 9 CFR Part 202 is amended as set forth below.

Done at Washington, DC, this 16th day of December 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

1. The table of contents of Part 202 is amended by adding the following immediately after the heading:

Rules of Practice Applicable to Rate Proceedings

Sec.
202.1 Applicability of other rules.
202.2 Definitions.
202.3 Institution of proceedings.
202.4 Answer and reply.
202.5 Hearing.
202.6 Taking no position on the merits.
202.7 Modification or vacation of final order.

2. The authority citation of Part 202 is revised to read as follows:

Authority: 7 U.S.C. 228(a), 7 CFR 2.17(e), 2.56.

3. Part 202 is amended by adding a center heading and §§ 202.1 through 202.7.

Rules of Practice Applicable to Rate Proceedings

§ 202.1 Applicability of other rules.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 CFR Part 1, Subpart H, are applicable to all rate proceedings under Sections 304, 305, 306, 307 and 310 of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 205, 206, 207, 208 and 211, except insofar as those Rules are in conflict with any provision herein.

202.2 Definitions.

As used in these rules:

(a) "Rate proceeding" means a proceeding involving the determination and prescription of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or a proceeding involving any rule, regulation or practice affecting any such rate or charge; and

(b) "Administrator" means the Administrator of the Packers and Stockyards Administration (P&SA), or any officer or employee of P&SA to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Administrator.

§ 202.3 Institution of proceedings.

(a) *Informal complaint.* Any interested person desiring to complain of the lawfulness of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or rule, regulation or practice affecting any such rate or charge, may file an informal complaint with the Administrator.

(b) *Investigation.* If there appears to be any reasonable ground for doing so, the Administrator will investigate the matter complained of. If the Administrator reasonably believes that there are not sufficient facts to form the basis for further proceeding, the matter may be dropped. If it is dropped, the person filing the informal complaint will be informed.

(c) *Status of person filing.* A person filing an informal complaint will be a party to a rate proceeding if the Administrator files such person's informal complaint as a formal complaint, or if the Judge permits such person to intervene upon written application.

(d) *Formal complaint.* A rate proceeding may be instituted only upon filing of a formal complaint by the Administrator. A formal complaint may be filed on the initiative of the Administrator, or on the basis of an informal complaint, or by filing the informal complaint as a formal complaint. A formal complaint filed by the Administrator, or a summary thereof, will be published in the **Federal Register**, together with notice of the time by which, and the place where, any interested person may file a written request to be heard.

§ 202.4 Answer and reply.

Respondent is not required to file an answer. If an answer is filed, complainant is not required to file a reply.

§ 202.5 Hearing.

The hearing will be oral unless all parties waive oral hearing. It will be written if not oral. Notice of the date, time and place of oral hearing, or of the date and place for filing of written submissions in a written hearing, will be served on the Administrator and the respondent, and on such other persons as have requested in writing to be heard.

§ 202.6 Taking no position on the merits.

The proceeding may be instituted by filing of the informal complaint as a formal complaint, and the Administrator may take no position on the merits of the case.

§ 202.7 Modification or vacation of final order.

(a) *Informal petition.* Any interested person may file an informal petition to modify or vacate a final order at any time. Any such petition must be filed with the Administrator, be based on matters arising after the issuance of the final order, and set forth such matters, and the reasons or conditions relied on, with such particularity as is practicable. Any such informal petition will be handled as otherwise provided for an informal complaint.

(b) *Formal motion.* A final order may be modified or vacated at any time only upon filing of a formal motion by the Administrator. Such a motion may be filed on the initiative of the Administrator, on the basis of an informal petition, or by filing of an informal petition as a formal motion.

(c) *Publication.* If the modification or vacation sought would involve an increase of a rate or charge lawfully prescribed by the Secretary, or involve a rate or charge in addition to what is specified in the final order, or involve a regulation or practice so affecting such a rate or charge, the formal motion, or a summary thereof, will be published in the **Federal Register**, together with notice of the place, and the time by which, any interested person may file a written request to be heard.

(d) *Proceedings.* Proceedings upon such a formal motion will be as otherwise provided for a formal complaint.

[FR Doc. 88-29215 Filed 12-20-88; 8:45 am]
BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 60969-7158]

Financial Assistance Requirements; Project Modification

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 309.26—"*Project Modification.*" This rule provides standards and states that EDA will not allow project modification which would constitute a change of scope.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published an interim rule for project modification on October 20, 1986 (51 FR 37175) and allowed interested persons 60 days to comment. No comments were received. EDA is adopting as a final rule, 13 CFR Part 309, "*General Requirements for Financial Assistance*", § 309.26 "*Project Modification.*"

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

PART 309—[AMENDED]

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702), as amended, the interim regulation amending 13 CFR Part 309 which was published October 20, 1988 (51 FR 37175) is adopted as final without changes.

Date: December 9, 1988.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 88-29229 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-24-M

13 CFR Part 314

[Docket No. 40333-7161]

Property Management Standards; Real Property

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 314.5—*"Mortgages" without change.* This rule provides that funds obtained from loans secured by mortgages on property which has been financed by an EDA grant shall be provided only to the grantee for use on the project which is being mortgaged, or for working capital purposes relating to that project. This is consistent with and clarifies EDA regulations concerning waiver of the prohibition against placing mortgages on property improved by an EDA grant.

EFFECTIVE DATE: May 30, 1984.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street, between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published this interim rule regarding mortgage waivers on May 20, 1984 (49 FR 22463) and allowed interested persons 60 days to comment. No comments were received.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 314

Economic development, Grant programs—economic development, Government property management, Public works grants.

PART 314—[AMENDED]

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended), the interim regulation amending 13 CFR Part 314 which was published May 30, 1984 (49 FR 22463) is adopted as final without changes.

Date: December 9, 1988.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 88-29230 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 316

49 CFR Part 89

[OST Docket No. 45431; Amdt 316-1; Amdt 89-1]

Collection of Claims Owed the United States

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

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SUMMARY: This rule revises 49 CFR Part 89, Implementation of Federal Claims Collection Act of 1966, by adding procedures that implement the Debt Collection Act of 1982 for the Department of Transportation (DOT). This rule provides DOT with formal procedures for the collection of claims owed the United States arising from activities under the jurisdiction of the Department. No comments were received.

EFFECTIVE DATE: This rule is effective January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590, (202) 366–9161.

SUPPLEMENTARY INFORMATION: Congress adopted the Debt Collection Act of 1982 to increase the Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts. The Act applies to debts owed the Department of Transportation. The Department has previously implemented the Debt Collection Act with regard to those functions previously performed by the Civil Aeronautics Board, see 14 CFR Part 316. The Department now will apply the debt collection procedures under 14 CFR Part 316 (50 FR 2428, January 16, 1985) to the entire Department. Also, a new provision is being added under which debts over 90 days delinquent may be turned over to professional debt collection contractors. The use of debt collection agencys is specifically provided for under section 13 (b) of the Debt Collection Act which added section 3(f) to the Federal Claims Collection Act (see 31 U.S.C. 3718).

The former CAB debt collection rules, 14 CFR Part 316, will be removed. They will be consolidated with existing DOT rules in 49 CFR Part 89. Subject to the qualifications stated in § 89.3 this rule applies to all claims under the Federal Claims Collection Act which are owed the Department. DOT operating elements, may, however, use different procedures for the collection of fines and penalties to the extent that such different procedures are allowed by applicable laws and regulations.

The provisions on interest, late payment penalties and collection charges and on collection by administrative offset will not apply to debts which other United States government agencies, state governments, or units of general local government owe the Department (see 31 U.S.C. 3701(c)) (however other statutory or common law may provide such authority). Neither will they apply to recovery of debts owed by current or former employees of the United States governed by 5 U.S.C. 5514. However they will apply to the debts of former employees not receiving the types of pay listed in that section.

DOT will, whenever feasible, collect claims by means of administrative offset against obligations of the United States to the debtor. DOT can refer claims to the Internal Revenue Service for collection by a reduction of tax refunds.

The notice of proposed rulemaking on the collection of claims owed the United States, 53 FR 4180, did not result in any comments.

Regulatory Process Matters

This regulation is classified as a "non-major" regulation under Executive Order 12291. This regulation has been evaluated under the Department of Transportation's Regulatory Policies and Procedures; the regulation is not significant under those procedures and its economic impact is expected to be so minimal that a regulatory evaluation is not warranted.

Regulatory Flexibility Act Determination

It has been certified that this regulation would not have a significant impact on a substantial number of small entities. The economic impact of the rule is expected to be minimal. In this regard, measures would be triggered only by a failure to pay debts owed the United States and, therefore, are avoidable, This Department has no reason to believe that small entities, in particular, would be seriously affected by this rule Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321, *et. seq.*) because it is not a major Federal action significantly affecting the quality of the human environment.

Federalism

The Department has determined that this rule does not involve sufficient Federalism impacts to warrant the preparation of a Federalism assessment.

List of Subjects

14 CFR Part 316

Claims, Penalties, Reporting and Recordkeeping Requirements.

49 CFR Part 89

Administrative practice and procedure, Claims Collection.

Accordingly, the Department of Transportation amends 14 CFR Chapter 11 and 49 CFR Subtitle A as set forth below:

PART 316—[REMOVED]

1. 14 CFR Part 316 is removed.

2. 49 CFR Part 89 is revised to read as follows:

PART 89—IMPLEMENTATION OF THE FEDERAL CLAIMS COLLECTION ACT

Subpart A—General

Sec.

89.1 Purpose.
89.3 Applicability.
89.5 Delegations of authority.
89.7 Exceptions to delegated authority.
89.9 Redelegation.
89.11 Standards for exercise of delegated authority.
89.13 Documentary evidence of compromise.
89.15 Regulations, reports, and supporting documentation.

Subpart B—Collection of Claims Section

89.21 Administrative collection.
89.23 Interest, late payment penalties, and collection charges.
89.25 Collection by administrative offset.
89.27 Referral for litigation.
89.29 Disclosure to commercial credit bureaus and consumer reporting agencies.
89.31 Use of professional debt collection agencies.
89.33 Collection of claims by reduction of tax refunds.

Authority. Pub. L. 89–508, July 19, 1966, 80 Stat. 308 (31 U.S.C. 3701, 3711; Pub. L. 97–365, secs. 3, 10, 11, 13(b), Oct. 25, 1982, 96 Stat. 1749, 1754, 1755, 1757 (31 U.S.C. 3701–3720A); Pub. L. 98–167, Nov. 29, 1983, 97 Stat. 1104 (31 U.S.C. 3718); Pub. L. 99–578, Oct. 28, 1986, 100 Stat. 3305 (31 U.S.C. 3718).

Subpart A—General

§ 89.1 Purpose.

This part implements the Federal Claims Collection Act of 1966, 31 U.S.C. 3701–3720 A, as amended primarily by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) and the Debt Collection Amendments of 1986 (Pub. L. 99–578, 100 Stat. 3305). It supplements the Federal Claims Collection Standards (FCCS), 4 CFR Parts 101–105, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2). Pursuant to the Federal Claims Collection Act, as amended, and the FCCS, this part sets forth procedures by which the Department of Transportation (DOT) and its operating elements (see 49 CFR 1.3) through designated officials:

(a) Collect claims owed to the United States arising from activities under its jurisdiction;

(b) Determine and collect interest and other charges on those claims;

(c) Compromise claims; and

(d) Refer unpaid claims for litigation.

§ 89.3 Applicability.

(a) The part applies to collection of all claims due the United States under the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Debt Collection Amendments of 1986 (Pub. L. 99–578), arising from activities under the jurisdiction of DOT including amounts due the United States from fees, overpayments, fines, civil penalties, loans, damages, interest, and other sources.

(b) This part does not apply to collection, settlement or compromise of debts owed the United States pursuant to authority other than Title 31, Chapter 37, Subchapter II: for example, application of this part to the enforcement of contracts under 46 U.S.C. 1117, delegated to the DOT Maritime Administration, is not required.

(c) Section 89.23 (interest, late payment penalties, and collection charges) and § 89.25 (collection by administrative offset) of this part do not apply to debts which other United States government agencies or state governments or units of general local government owe the Department (see 31 U.S.C. 3701(c)); however, other statutory or common law may provide legal authority. Neither does the proposed rule apply to recovery of debts owed by current or former employees of the United States governed by 5 U.S.C. 5514.

(d) Claims arising out of contracts that contain specific provisions relating to claims are governed by those specific provisions to the extent that those provisions comply with existing law and with 4 CFR Chapter II.

(e) As used in this part, the terms debt and claims are interchangeable and have the meaning defined in 4 CFR 101.2(a). A debtor's liability arising out of a particular incident or adjudication exclusive of interest, administrative costs, and late payment penalties, is a single claim.

(f) Except as provided in paragraphs (b), (c) and (d) of this section the provisions of this part shall apply to the collection of all debts and claims owed to any DOT operating element. A claim arising from the assessment of civil penalty or fine is not subject to the procedures of this subpart until the claim has been reduced to a liquidated debt by a signed settlement agreement, a court order or judgment, or a final administrative determination.

§ 89.5 Delegations of authority.

The functions, powers, and duties of the Secretary of Transportation to attempt collection of claims, to compromise claims of the United States not exceeding $20,000 and to suspend and terminate action to collect such claims are delegated to:

(a) The Assistant Secretary for Administration with respect to claims arising out of the activities of, or referred to, the Office of the Secretary; and

(b) The heads of other DOT operating elements with respect to claims arising out of the activities of, or referred to, their organizations.

§ 89.7 Exceptions to delegated authority.

The authority delegated under § 89.5 does not apply to any claim:

(a) As to which there is an indication of (1) fraud; (2) the presentation of a false claim; or (3) misrepresentation on the part of the debtor or any other party having an interest in the claim;

(b) Based on tax statutes; or

(c) Arising from an exception made by the General Accounting Office in the account of an accountable officer.

§ 89.9 Redelegation.

Each officer to whom authority is delegated under § 89.5 may redelegate and authorize successive redelegations of the authority within the organization under his or her jurisdiction.

§ 89.11 Standards for exercise of delegated authority.

The authority delegated under § 89.5 shall be exercised in accordance with the standards for the collection and compromise of claims and for the suspension and termination of action to collect claims promulgated by the United States General Accounting Office and the United States Department of Justice, and published at 4 CFR Chapter II, as those standards may be amended.

§ 89.13 Documentary evidence of compromise.

A compromise of any claim is not final or binding on the United States unless it is in writing, signed by an officer or employee authorized to compromise that claim.

§ 89.15 Regulations, reports, and supporting documentation.

(a) Each officer to whom authority is delegated under § 89.5 may promulgate regulations for the exercise of that authority within his or her organization. These regulations shall be revised, as necessary, to conform to any amendments to this part.

(b) Each officer to whom authority is delegated under § 89.5 shall furnish the following information to the Assistant Secretary for Administration:

(1) A copy of each redelegation of that authority.

(2) A semiannual report listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtors, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken.

(3) A copy of any implementing regulations governing the exercise of the authority delegated under § 89.5, and any amendments to those regulations.

(c) Each officer or employee to whom the Secretary's authority has been delegated or redelegated, before exercising such authority, shall acquire sufficient documentation to demonstrate that the action taken is in the best interests of the United States. This documentation will be retained with and treated as part of the file concerning the debt.

(d) The failure of any officer or employee to comply with this section does not limit or impair his or her exercise of authority.

Subpart B—Collection of Claims

§ 89.21 Administrative collection.

Except as provided differently by the DOT operating elements pursuant to § 89.3:

(a) DOT shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary.

(b) The initial written demand for payment (and the notice of offset under § 89.25) shall inform the debtor of:

(1) The basis for the indebtedness and the debtor's right to obtain review (see § 89.21(f) for details on review).

(2) The amount of the claim;

(3) That domestic and overseas payment in excess of ten thousand dollars or more shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the demand letter; payments originating in foreign countries shall be made by wire transfer to the extent practicable.

(4) The delinquency date, or the date by which payment is to be made (30 days from the date of mailing or hand delivery of the initial demand letter);

(5) The standard for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date [see § 89.23 for details regarding interest, collection charges, and late payment penalty charges];

(6) Where a notice of offset is concerned, the right to make voluntary payment before collection by offset begins (see § 89.25).

(7) The possible reporting of the claim to commercial credit bureaus and consumer reporting agencies; however a notice of offset should not include this warning.

(8) The possibility that DOT will forward the claim to a collection agency, the General Accounting Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; however a notice of offset should not include this warning.

(c) If the debtor fails to respond to the demands for payment by the due date specified in the notice, the Department may take further action under this part or the FCCS under 4 CFR Parts 101 through 105, pursuant to 31 U.S.C. 3701–3720A. These actions may include reports to commercial credit bureaus, consumer reporting agencies, contracts with commercial collection agencies, revocation of licenses, or the use of administrative offset, as authorized in 31 U.S.C. 3701–3720A.

(d) DOT may collect by administrative offset, (see § 89.25, Collection by administrative offset), if the debtor:

(1) Has not made payment by the payment due date;

(2) Has not requested a review of the claim within the agency as set out in paragraph (f) of this section; or

(3) Has not made an arrangement for payment by the payment due date;

(e) Except for information that may properly be withheld under 49 CFR Part 7, the debtor may inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the copying and inspection of the records shall be borne by the debtor. (Payment of cost is governed by 49 CFR Part 7, Subpart I.) The debtor shall give reasonable notice in advance to the agency of the date on which it intends to inspect and copy the records involved;

(f)(1) Except for debts established by settlement agreement, court order or judgment, or final administrative decision, the debtor may request review of the validity or amount of a claim. To do so, the debtor shall make a request in writing for review of the claim prior to it becoming delinquent. (*See* 4 CFR 101.2 for definition of when a debt is considered delinquent.) The debtor's written response shall state the basis for the dispute, and provide all factual information, documents, citation to authority, argument and any other matters to be considered. If only part of the claim is disputed, the undisputed portion shall be paid by the delinquency date stated in the initial demand. During the period that the claim is being reviewed, the amount of the debt is owed, but the accrual of interest and accrual of time to delinquency may be suspended on the disputed portion of the debt.

(2) Review of claims shall be based upon the written record unless an oral hearing is required by 4 CFR 102.3(c). Upon completion of review, within 30 days whenever feasible, the Department shall advise the debtor whether the debt has been found to be valid in any amount, or that collection will be terminated. If the claim is found to be valid in any amount, the accrual of interest and time to delinquency shall commence 15 days after mailing of the notification of the review results. The notification of the review may also include notice of a specific collection action to be undertaken if payment is not received.

(g) The debtor may offer to make a written agreement to pay the amount of the claim. The acceptance of such an agreement is discretionary with DOT. If the debtor requests an installment payment arrangement because a lump sum payment would create a financial hardship, DOT may agree to a written installment payment schedule with the debtor (see 4 CFR 102.11(a)). The debtor shall execute a confess-judgment note which specifies all of the terms of the arrangement and includes a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest shall be provided in the note (see § 89.23). The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation, which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Evidence of these facts shall be maintained in DOT's file on the debtor in accordance with the practice of the DOT operating element.

§ 89.23 Interest, late payment penalties, and collection charges.

(a) DOT shall charge interest on an outstanding debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and 4 CFR 102.13(c), unless DOT determines that a higher rate is necessary to protect the interests of the United States. DOT shall charge a late payment penalty at a rate of six percent a year on any portion of a debt that is more than 90 days past due. DOT shall also assess administrative charges to cover additional cost incurred in processing and handling the debt beyond the payment due date. The imposition of interest, collection charges, and late payment penalty charges shall be made in accordance with 31 U.S.C. 3717, 4 CFR 102.13 (see § 89.3(c) regarding payment of such charges by Federal, state and local government agencies).

(b) Interest on debt shall begin to accrue on the date on which the debtor is mailed or delivered notice of the debt and the interest requirements or, in the case of advance billings, on the calendar day following the specified due date of the debt, provided the advance billing gives notice of the interest requirements for late payment. Interest on the debt shall continue to accrue until payment is received. Interest shall be calculated only on the principal of the debt (simple interest). The rate of interest assessed shall be the rate in effect on the date from which interest begins to accrue, and will remain fixed for the duration of the indebtedness. The rate of interest assessed will generally be the Treasury Current Value of Funds Rate.

(c) The Department shall waive interest on debt that is paid within 30 calendar days after the date on which interest began to accrue.

(d) Collection charges on debt shall be computed to cover the cost of processing and handling the delinquent debt. It shall be either the actual cost to process the particular delinquent debt to which it is applied, or operating elements may set the amount of such monthly charge by cost analysis establishing the average of actual additional costs incurred by the operating element in processing similar debts. Collection charges may also include the expense of obtaining credit reports and of using a professional debt collection contractor.

(e) DOT may waive interest, collection charges, or late payment penalty charges if it finds that:

(1) The debtor would be eligible for compromise under standards set forth in 4 CFR 103.2 with regard to the amount of the debt;

(2) Collection of interest, administrative charges, or penalties will jeopardize collection of the principal of the debt; or

(3) It is otherwise in the best interests of the United States, including the situation in which an offset or installment payment agreement is in effect.

§ 89.25 Collection by administrative offset.

(a) Whenever feasible, after a debtor fails to pay a claim, request a review of a claim, or make an arrangement for payment following a demand made in accordance with § 89.21, DOT shall collect claims under this part by means of administrative offset against obligations of the United States to the debtor pursuant to 31 U.S.C. 3716 and 4 CFR 102.3. Salary offset against present or former employees of the United States is not governed by this Part (see 49 CFR Part 92).

(b) The Department shall notify the debtor in writing in conformance with 31 U.S.C. 3716 and the FCCS of its intent to collect the debt by offset, unless the debtor pays the debt in full, including all interest, administrative charges, and penalties, or executes an agreement to pay the debt by installment at terms acceptable to DOT.

(c) In making collection by administrative offset under 31 U.S.C. 3716, DOT must do so in accordance with the requirements set forth in § 89.21(b)(1–6). (See also procedures for recovery of debts to the United States by salary offset, 49 CFR Part 92.)

§ 89.27 Referral for litigation.

Claims that are not settled or for which collection action is not compromised, suspended or terminated under 4 CFR Parts 103 and 104 or collected by collection agencies shall be referred to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR Part 105.

§ 89.29 Disclosure to commercial credit bureaus and consumer reporting agencies.

(a) Data on all delinquent commercial and consumer debts may be reported to commercial credit bureaus and consumer reporting agencies (see 31 U.S.C. 3701(a)(3)). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be by separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(f) and the Federal Claims Collection Standards.

(b) The information that may be disclosed is the debtor's name, address, social security number or taxpayer identification number, and any other information to establish the identify and location of the individual, the amount of the claim, status and history of the claim, and the program under which the claim arose.

§ 89.31 Use of professional debt collection agencies.

Debts over 90 days delinquent (see § 89.21(b)(4)) may be turned over to professional debt collection agencies except for those debts owed by State and local governments, other Federal agencies, current employees, and other debts prohibited by statute from being turned over to commercial collection agencies.

§ 89.33 Collection of claims by reduction of tax refunds.

Pursuant to 31 U.S.C. 3720A and regulations issued thereunder and in accordance with 26 CFR 301.6402, the Department may refer claims to the Internal Revenue Service for collection by reduction of tax refunds owed to the debtor by the United States.

Issued in Washington, DC, on this 14th day of December, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88–29240 Filed 12–20–88; 8:45 am]

BILLING CODE 4910–62–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C–3241]

Certain Sioux Falls Obstetricians, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, certain physicians practicing in the Sioux Falls, SD area, from continuing to act in combination to interfere with the operation of the University of South Dakota School of Medicine, obstetrical/gynecological (OB/GYN) program, and from further restricting competition for the provision of OB/GYN care in the Sioux Falls area.

DATE: Complaint and order issued October 11, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Paul J. Nolan, FTC/S–3115, Washington, DC 20580. (202) 326–2770.

SUPPLEMENTARY INFORMATION: On Wednesday, July 20, 1988, there was published in the **Federal Register**, 53 FR 27357, a proposed consent agreement with analysis In the Matter of Thomas L. Looby, M.D./Certain Sioux Falls Obstetricians, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—*Boycotting Seller-Suppliers:* § 13.302 *Boycotting seller-suppliers.* Subpart—*Coercing And Intimidating:* § 13.345 *Competitors;* § 13.355 *Customers or prospective customers of competitors;* § 13.367 *Members.* Subpart—*Combining Or Conspiring:* § 13.384 *Combining or conspiring;* § 13.385 *To boycott seller-suppliers;* § 13.470 *To restrain and monopolize trade;* § 13.497 *To terminate or threaten to terminate contracts, dealings, franchises, etc.* Subpart—*Corrective Actions And/Or Requirements:* § 13.533 *Corrective actions and/or requirements;* § 13.533–20 *Disclosures;* § 13.533–50 *Maintain means of communication;* § 13.533–60 *Release of general, specific, or contractual constrictions, requirements, or restraints.*

List of Subjects in 16 CFR Part 13

Gynecologists, Obstetricians, Physicians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 88–29243 Filed 12–20–88; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

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16 CFR Part 13

[Docket No. 9198]

MidCon Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's consent order issued on Feb. 6, 1986 (51 FR 8485), by removing a requirement that the company divest its interests in the Acadian Gas Pipeline System.

DATES: Consent order issued February 6, 1986. Modifying order issued August 31, 1988.

FOR FURTHER INFORMATION CONTACT: David C. Dickey, FTC/S–3302, Washington, DC 20580. (202) 326–2618.

SUPPLEMENTARY INFORMATION: In the Matter of MidCon Corporation, et al. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 51 FR 8485, remain unchanged.

List of Subjects in 16 CFR Part 13

Natural gas, Pipelines, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Federal Trade Commission Order Modifying Order Issued February 6, 1986

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the matter of MidCon Corporation, a corporation, and United Energy Resources, Inc., a corporation, Docket No. 9198.

On July 8, 1988, MidCon Corporation ("MidCon") filed a Request To Reopen Proceeding and Modify Order ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, asking that the Commission reopen and modify the consent order in Docket No. 9198 ("Order"). The Order requires MidGon, among other things, to divest its interest in five natural gas pipelines ("Schedule A Properties") in the area between Baton Rouge and New Orleans, Louisiana ("Baton Rouge-New Orleans Corridor" or "Corridor").

In its Request, MidCon asks that the Commission reopen the Order and set aside the requirement that MidCon divest the Schedule A Properties. MidCon asserts that the sale of the common stock of United Gas Pipeline Company ("United") and UER Marketing Company ("UER Marketing") to LaSalle Energy Corporation ("LaSalle") on June 30, 1987, together with Commission adoption of two additional order provisions that MidCon proposes relating to agreements between MidCon and LaSalle, will accomplish the remedial purposes of the Order in Docket No. 9198. MidCon submits that "these circumstances (*i.e.*, the sale to LaSalle and the proposed order provisions) constitute changed conditions of fact sufficient to warrant reopening this proceeding to modify the Order" to set aside the divestiture requirement. MidCon also claims that the sale to LaSalle, together with the order modifications proposed by MidCon, satisfy the public interest concerns that led the Commission to issue the Order in this matter and that "it would be inequitable" in the circumstances to require MidCon to divest the Schedule A Properties.

Background

On February 6, 1986, the Commission issued the Order in this matter, requiring MidCon to divest the Schedule A Properties within one year from the date the Order became final. The purpose of the divestiture was to remedy the lessening of competition and increase in concentration in the transportation and sale of natural gas in the Baton Rouge-New Orleans Corridor that the Commission believed would result from MidCon's acquisition of United Energy Resources, Inc. ("UER"), as alleged in Count Two of the Commission's complaint. The Order became final on February 26, 1986. MidCon has not divested the Schedule A Properties.[1]

On June 30, 1987, MidCon's subsidiary, UER, sold the common stock of United and UER Marketing to LaSalle, a newly formed corporation. In partial payment of the purchase price, UER accepted a promissory note from LaSalle. The note provides that MidCon will acquire an equity interest in LaSalle in the event that LaSalle fails to meet its payment obligations. In addition to its note indebtedness to MidCon, LaSalle assumed substantial potential liabilities arising from the contract obligations of United.

MidCon and LaSalle also entered into a Master Agreement on Transportation ("Transportation Agreement"), in which MidCon guaranteed certain revenues to LaSalle for a period of years and LaSalle agreed to transport gas for MidCon on the United pipeline system. To ensure that LaSalle would not grant more favorable terms to other shippers than to MidCon, MidCon and LaSalle agreed to a "most-favored-nation" provision that prevents LaSalle from charging a higher price to MidCon than to other shippers for reasonably comparable shipments.

On July 23, 1987, MidCon filed a request to reopen the proceeding and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties. The Commission denied the request on December 11, 1987. The Commission stated that the substantial and continuing financial and contractual commitments between MidCon and LaSalle would reduce the parties' incentives and ability to compete in the corridor, that MidCon had failed to establish that LaSalle would be an independent, viable competitor in the Corridor and that MidCon had failed to establish that the sale of United to LaSalle would achieve the remedial purposes of the Order. *See* Letter to Priscilla Mims, Esq., MidCon Corporation (December 11, 1987) ("MidCon Letter") (unpublished).

In its Request filed on July 8, 1988, MidCon again asks that the Commission reopen and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties. As in its earlier request, MidCon asserts that the sale of United to LaSalle eliminates the horizontal overlap between United and the Schedule A Properties in the relevant market. In addition, MidCon asks that the Commission modify the Order to require MidCon to divest absolutely within nine months from the date of acquisition, subject to the prior approval of the Commission, any LaSalle stock that MidCon may acquire pursuant to the terms of the promissory note. MidCon also asks that the Commission modify the Order to prohibit MidCon from invoking the "most-favored-nation" clause of the Transportation Agreement in the Corridor. Finally, MidCon has supplied information that it claims attests to the financial viability of LaSalle. MidCon asserts that under these circumstances the sale of United to LaSalle restores United as a viable competitor in the

[1] On February 25, 1987, MidCon requested an extension of time to accomplish divestiture under the Order. On April 28, 1987, MidCon supplemented its request for an extension of time, disclosing the proposed sale of the United assets to LaSalle and asserting that the proposed sale would accomplish the remedial purposes of the Order. The Commission denied the request for an extension, noting that the appropriate procedure for proposing a divestiture different from that required by an order is by a request to reopen and modify the order so that the Commission may consider whether the alternative divestiture is sufficient to accomplish the remedial purposes of the order and thereby obviate the need for the remedy provided in the order. Letter to Priscilla Mims, Esq., MidCon Corporation (June 26, 1987) (unpublished).

Corridor and accomplishes the remedial purposes of the Order.

Standards for Reopening a Final Order

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified in the petitioner "makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part." A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *See Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986) (unpublished). The burden is on the petitioner to make the satisfactory showing of changed conditions required by the statute. This burden is not a light one, in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification.

Section 5(b) also provides that the Commission may modify an order when the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. In such a case, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. Once such a need has been shown, the Commission will weigh the reasons favoring the modification requested against any reasons not to to make the modification. *See Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 (unpublished); *see also Chevron Corp.*, Docket No. C–3147, 105 F.T.C. 228 (1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for the order). The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.

The Public Interest Warrants Modification of the Order

The Commission has determined that it is in the public interest to reopen and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties.[2] The sale of United to LaSalle, together with the additional order provisions proposed by MidCon to address the Commission's concerns that MidCon and LaSalle would not compete aggressively in the Corridor and that LaSalle would not be an independent, viable competitor in the Corridor, appear to be sufficient to remedy the lessening of competition and increase in concentration alleged in Count Two of the complaint. Divestiture of the Schedule A Properties as required by the Order would result in MidCon's exit from the relevant market, which is no longer necessary in light of MidCon's proposed additions to the Order and the additional information regarding LaSalle's viability.

The Commission was concerned that MidCon could acquire an interest in United as a result of MidCon's retained security interest under the promissory note. Such an interest would be inconsistent with the remedial purpose of the Order to eliminate the horizontal overlap and to reestablish the assets divested by MidCon as an independent competitive entity. A new order provision proposed by MidCon would require MidCon to divest, within nine months from the date of acquisition and subject to the prior approval of the Commission, any stock of LaSalle that it may acquire by operation of the promissory note or any other security interest. The proposed provision would prevent the possibility that MidCon could control or influence LaSalle in the event that MidCon contains LaSalle stock pursuant to the security interest.

The Commission was concerned that LaSalle's incentives to compete aggressively with MidCon for transportation of natural gas might be deterred by the requirement of the Transportation Agreement that LaSalle transport natural gas for MidCon on the same terms that LaSalle offers to any third parties. A new order provision proposed by MidCon would preclude MidCon's use of the "most-favored-nation" clause of the Transportation Agreement in the Corridor and thereby reduce the potential deterrent effect of the Transportation Agreement on competition. As modified, the Transportation Agreement would no longer provide a disincentive for LaSalle to compete aggressively with MidCon in the Corridor.[3]

The Commission also was concerned that the financial viability of LaSalle had not been demonstrated by MidCon, particularly in view of LaSalle's assumption of United's substantial potential liabilities and LaSalle's undertaking considerable debt obligations to finance the acquisition of United, including the promissory note to MidCon. MidCon has submitted financial statements of LaSalle, showing that LaSalle has operated United successfully during the past year. LaSalle has had positive operating revenue and has been able to meet its debt obligations following the acquisition of the United assets. In addition, the changes in the Transportation Agreement that eliminate possible disincentives for LaSalle to compete in the Corridor may enhance LaSalle's ability to compete and, therefore, its viability.

Conclusion

For the reasons described above, the Commission has determined to reopen and modify the Order to set aside the requirement that MidCon divest the Schedule A Properties. Therefore, the Order will be modified to set aside the requirement that MidCon divest the Schedule A Properties and to incorporate the other changes set forth below.[4]

Accordingly, *it is ordered* that this matter be reopened and that the Commission's order in Docket No. 9198, issued on February 6, 1986, be modified, as of the date of service of this Order, as follows:

1. The term "LaSalle stock" shall be substituted in every case for the term "Schedule A Properties" or "Properties" in Paragraphs III through VII.

2. The term "9-month" shall be substituted in every case for the term

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[2] MidCon has not made a satisfactory showing of changed conditions of fact that require reopening of the Order. Because of the continuing connections between MidCon and LaSalle and the issues relating to LaSalle's viability, the sale of United does not achieve the remedy ordered by the Commission. *See* MidCon Letter at 3–5.

[3] In addition, MidCon and LaSalle have amended the Transportation Agreement to limit the operation of the "most-favored-nation" clause outside the Corridor. MidCon has represented that the amendment, § 7.8 of the Transportation Agreement, becomes effective if the Order is modified as requested by MidCon. In granting MidCon's request to modify the Order, the Commission has relied on this representation by MidCon.

[4] Occidental Petroleum Corporation acquired MidCon on April 1, 1986. Occidental has agreed to be bound as MidCon's parent by the terms of the Order in Docket No. 9198. Letter from Samuel Wolfson, *Esq.*, Assistant General Counsel, Occidental Petroleum Corp., to Elliot Feinberg, Assistant Director, Bureau of Competition, Federal Trade Commission (July 5, 1988).

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"12-month" in Paragraphs III through VII.

3. Paragraph I shall be modified by replacing Paragraph I.(c) with the following:

(c) "MidCon" means MidCon Corp., its parent, subsidiaries, divisions, groups and affiliates controlled by MidCon and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

4. Paragraph I shall be modified to add the following:

(g) "LaSalle" means LaSalle Energy Corp., its subsidiaries, divisions, groups and affiliates controlled by LaSalle and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

5. Paragraph I shall be modified to add the following:

(h) "Transportation Agreement" means the Master Agreement on Transportation executed between MidCon and LaSalle on June 30, 1987.

6. Paragraph II shall be modified by replacing Paragraph II.(A) with the following:

(A) In the event MidCon, as a result of the operation of any promissory note, mortgage, bona fide lien, deed or trust or other form of security interest, executed in connection with the sale of United Gas Pipeline Company and UER Marketing Company to LaSalle, acquires, directly or indirectly, any LaSalle stock, MidCon shall, within ten (10) days, notify the Commission in writing and shall divest the acquired stock, absolutely and in good faith, in accordance with Paragraphs II through VII of this Order within nine (9) months of the acquisition.

7. Paragraph II shall be modified by replacing Paragraph II.(B) with the following:

(B) Divestiture of the LaSalle stock shall be made only to an acquirer or acquirers and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of the LaSalle stock is to ensure the continuation of the assets, interests and pipelines as ongoing, viable enterprises engaged in the same business in which they are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in Count Two of the Commission's complaint.

8. A new Paragraph VIII shall be added:

It Is Further Ordered that MidCon cease and desist from taking any action to implement or otherwise enforce Section 3.5 (regarding rates for comparable natural gas transportation services) of the Transportation Agreement with respect to the shipment or transportation of any natural gas by LaSalle to any delivery point within the New Orleans-Baton Rouge Corridor.

9. Paragraph III shall be modified by replacing Paragraph III.(C) with the following:

(C) MidCon through its ownership of LaSalle stock shall not take any action to impair the viability of LaSalle's business.

10. Paragraph IV shall be modified by replacing Paragraph IV with the following:

It Is Further Ordered that, within sixty (60) days after giving the Commission notice required by Paragraph II of this Order and every sixty (60) days thereafter until MidCon has fully complied with the provisions of Paragraphs II and III of this Order, MidCon shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. MidCon shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in Paragraph II of this Order, including the identity of all parties contacted. MidCon also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

11. Paragraph V shall be modified to include the following sentence at the end of the first paragraph:

The provisions of this Paragraph shall not apply to the acquisition by MidCon of any LaSalle stock through the operation of any promissory note, mortgage, bona fide lien, deed or trust or other form of security interest executed in connection with the sale of United Gas Pipeline Company and UER Marketing Company to LaSalle.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Chairman Daniel Oliver, MidCon Corporation, Docket No. 9198

In September 1985 the Commission issued the complaint in this matter, challenging MidCon's acquisition of the United Gas Pipeline Company ("United").[1] Count II of the complaint alleged that the acquisition might substantially lessen competition in the transmission of natural gas in the area between Baton Rouge and New Orleans (the "Corridor"). In February 1986 the Commission settled Count II by accepting a consent order which permitted MidCon to retain the United pipeline assets in the Corridor, but required MidCon to divest other natural gas pipeline interests in the same market (the "Acadian Partnership" interests).[2]

In June 1987 MidCon sold United to LaSalle Energy Corporation. As a result, MidCon and United are once again competitors in the Corridor. MidCon subsequently filed a petition to modify the consent order to permit it to retain its Acadian Partnership interests. The Commission denied the petition in December of last year. I dissented from that decision because, in my view, MidCon's sale of United effectively eliminated any competitive problems that its earlier acquisition of United might have created.

The Commission staff and MidCon have now been able to negotiate additional modifications that have led a majority of the Commission to agree to delege the divestiture requirement. Although I do not believe that those additional modifications are necessary, I support the Commission decision to relieve MidCon of any additional divestiture obligations.

[FR Doc. 88-29242 Filed 12-20-88; 8:45 am]

BILLING CODE 6750-01-M

[1] *MidCon Corp.*, 107 F.T.C. 48 (1986) (consent order). The complaint actually addressed the acquisition of United Energy Resources ("UER"), but the acquisition of United—the pipeline subsidiary of UER—was the gravamen of Count II of the complaint. *Id.* at 52–54.

[2] *Id.* at 56. Count I of the complaint is currently in administrative litigation.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

[T.D. 89-1]

Customs Regulations Amendments To Conform With Harmonized System of Tariff Classification

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: Classification of imported merchandise for rate of duty and statistical purposes is now determined by reference to the Tariff Schedules of the United States (TSUS). The U.S. intends to replace the TSUS effective

January 1, 1989, by acceding to the International Convention on the Harmonized Commodity Description and Coding System (HS). The new U.S. tariff based on the HS will be known as the Harmonized Tariff Schedule of the United States (HTSUS). The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport documentation. To implement the HS, this document amends the Customs Regulations on an interim basis by removing all references to the TSUS and, in their stead, by inserting the appropriate HTSUS reference. Comments are solicited regarding the correctness of the HTSUS references being inserted, as well as any other changes that may be necessitated by the U.S. acceding to the HS.

DATES: The interim regulations become effective on January 1, 1989. Comments must be received on or before February 21, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, DC 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Hubbard L. Volenick, International Nomenclature Staff (202–566–8530).

SUPPLEMENTARY INFORMATION:

Background

The Harmonized System (HS) is the culmination of a 10-year effort by the member states of the Customs Cooperation Council (CCC), particularly the U.S. and its major trading partners, to develop a single modern structure for product classification which can be used for customs, tariff, trade statistics, and transport documentation purposes. Based on the present Customs Cooperation Council Nomenclature (CCCN), the HS is a more detailed classification scheme reflecting changes in technology, trade patterns and user requirements.

In August 1981 the President requested the U.S. International Trade Commission to initiate an investigation for the purpose of preparing a conversion of the Tariff Schedules of the U.S. (TSUS), the current reference source for determining the classification of imported merchandise, into the structure of the HS. The conversion provides numerical coding beyond the 6-digits of the international system, taking into account U.S. tariff and statistical requirements. Thus, each tariff provision is coded in 8-digits and the tariff reporting number in 10-digits.

This conversion, submitted to the President on June 30, 1983, was reviewed and revised by the Trade Policy Staff Committee, Office of U.S. Trade Representative, and republished as TPSC 84–76 on September 30, 1984. A further, more comprehensive, revision published in October 1986 was the basic working document employed in the GATT Article XXVIII negotiations aimed at U.S. adoption of the HS.

The HS Convention was opened for signature July 1, 1983, and thus far has been acceded to by 42 countries and the European Economic Community. The U.S. will deposit the instrument of accession to the Convention in 1988. The U.S. tariff based on the HS will be known as the Harmonized Tariff Schedule of the United States (HTSUS), as provided by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418.

Purpose of Harmonized System

The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport documentation. Its use is expected to increase uniformity and predictability of trade data, and promote standardization of trade and transport documentation. Implementation of the HS will impact not only all areas of trade, *i.e.*, imports, exports, transportation of goods, and trade statistics, but all aspects of Customs operations, including classification and appraisement of merchandise, selection for and examination of merchandise data entry into the Automated Commercial System (ACS), and the pre-release and release of goods. Brokers and importers will experience significant changes to their entry procedures.

Purpose of Document

To implement the HS, the Customs Regulations (19 CFR Chapter I), are being amended by removing all references to the TSUS, and, in their stead, inserting the appropriate HTSUS reference. In addition, due to an ongoing change in regulations style, footnotes to some parts are being omitted with references, where appropriate, being incorporated into the body of the section.

Comments

Before adopting the interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs. Customs is particularly interested in receiving comments regarding the correctness of HTSUS references being inserted, as well as any other changes that may be necessitated by the U.S. acceding to the HS. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory analysis has been prepared.

Paperwork Reduction Act

Sections of the regulations being amended or revised contain collections of information, subject to the Paperwork Reduction Act.

The regulation in § 134.22(b) is being revised without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this section has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515–0163.

Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for U.S. Customs Service.

The collection of information in this regulation is in § 134.22(b), pertaining to country of origin marking on imported containers and holders. This information is required by statute, 19 U.S.C. 304, to inform the public of the origin of certain imported containers and holders and is part of the general requirement that all imported goods be legibly marked showing the country of origin. The

primary potential user of the collected information is the ultimate consumer of the imported goods. The U.S. Customs Service enforces the law through its regulation, but it has no use for and makes no regular record of the information found in the marking. The likely respondents are business or other for-profit institutions and small businesses or organizations.

The reporting burden associated with this information collection is 15 seconds per response.

Estimated average annual burden hours per respondent is 10 minutes.

Estimated number of respondents: 10,000.

The information collection requirements contained in §§ 141.89, 151.63, and 151.82 of the Customs Regulations have been previously reviewed and approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

Drafting Information

The principal author of this document was John G. Black, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR, Chapter I

Customs Duties and Inspection; Harmonized Tariff Schedule of the United States, Imports.

Amendments to the Regulations

Parts 4, 7, 10, 11, 12, 18, 19, 24, 54, 101, 103, 111, 113, 114, 122, 123, 127, 132, 134, 141, 142, 143, 144, 145, 146, 147, 148, 151, 152, 158, 159, 171, 177, and 191, Customs Regulations (19 CFR Parts 4, 7, 10, 11, 12, 18, 19, 24, 54, 101, 103, 111, 113, 114, 122, 123, 127, 132, 134, 141, 142, 143, 144, 145, 146, 147, 148, 151, 152, 158, 159, 171, 177, 191), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3.

§ 4.94 [Amended]

2. Section 4.94(d) is amended by removing the last sentence of the form and by adding, in its place, "See Chapter 89, Additional U.S. Note 1, HTSUS, and subheadings 8903.10, 8903.91, 8903.92, 8903.99.10, 8903.99.20, and 8903.99.90, HTSUS."

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for Part 7 is revised to read as follows:

Authority: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 7.8 [Amended]

2. Section 7.8 is amended by removing the words "General Headnote 3(a), Tariff Schedules of the United States" in the first sentence of both paragraph (a) and paragraph (b) and by adding, in their place, the words "General Note 3(a)(iv), HTSUS."

PART 10—ARTICLES CONDITIONALLY FREE SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624. Secs. 10.11 through 10.24 also issued under sec. 502, 46 Stat. 731, as amended, 77A Stat. 14, 19 U.S.C. 1202 (General Note 10, Harmonized Tariff Schedule of the United States), 1502. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 10.1 [Amended]

2. Section 10.1 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 800.00 and item 805.00, Tariff Schedules of the United States" in the introductory paragraph and adding, in their place, "subheading 9801.00.10 and subheading 9802.00.20, Harmonized Tariff Schedule of the United States (HTSUS)."

(b) Paragraph (b) is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" and adding, in their place, "Chapter 98, Subchapter I, HTSUS."

(c) Paragraph (d) is amended by removing the words "item 800.00 or item 805.00 Tariff Schedules of the United States, and the related headnotes" and adding, in their place, the words "subheadings 9801.00.10 or 9802.00.20, HTSUS; and related section and additional U.S. notes."

(d) Paragraph (e) is revised to read as follows:

(e) No evidence relative to the conditions of subheading 9801.00.10, HTSUS, shall be required in the case of articles the product of the U.S. in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty unless such articles would be dutiable if not products of the U.S. under General Rule of Interpretation 5, HTSUS.

(e) Paragraph (f) is amended by removing the words "item 805.00," and adding, in their place, the words "subheading 9802.00.20, HTSUS".

(f) Paragraph (g) is amended by removing the words "item 800.00, Tariff Schedules of the United States" and adding, in their place, the words "subheading 9801.00.10, HTSUS".

(g) Paragraph (h) is amended by removing the words "item 800.00, Tariff Schedules of the United States" from subparagraph (1) and adding, in their place, the words "subheading 9801.00.10, HTSUS"; by removing the words "item 804.20, Tariff Schedules of the United States" from subparagraph (1)(iv) and adding, in their place, the words "subheading 9801.00.80, HTSUS"; by removing the words "item 800.00", from subparagraph (5)(i), and by adding, in their place, the words "subheading 9801.00.10"; by removing the words "item 800.00, Tariff Schedules of the United States", from subparagraph (j)(2), and by adding, in their place, the words "subheading 9801.00.10, HTSUS".

§ 10.3 [Amended]

3. Section 10.3 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The chart in paragraph (b) is revised to read as follows:

Article	Duty assessment
Drums, metal (when not exempted from duty in accordance with sec. 10.3(c))	24 cents each.
Hosiery, nylon	45 cents per dozen.
Lead compound, tetraethyl	$0.003 per kilogram.
Lithopone	$0.00065 per kilogram.
Oxide, zinc	$0.0029 per kilogram.
Piece goods, cotton:	
Bleached	$0.03199 per square meter.

Article	Duty assessment
Dyed	$0.03454 per square meter.
Printed	$0.03226 per square meter.
Piece goods, nylon: Dyed	$0.29086 per square meter.
Piece goods, rayon:	
Printed	$0.04867 per square meter.
Other than printed (white, piece dyed or yarn dyed)	$0.06478 per square meter.
Tallow, refined, inedible	$0.003 per kilogram.

(c) Paragraph (c) is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" from subparagraph (1), and by adding, in their place, the words "Chapter 98, Subchapter 1, HTSUS"; by removing the words "item 804.10 and 804.20, Tariff Schedules of the United States", and the words "items 804.10 or 804.20", from subparagraph (3), and by adding, in their place, the words "9801.00.70 or 9801.00.80, HTSUS"; by removing footnote 3 from subparagraph (4).

(d) Paragraph (f) is amended by removing the words "item 804.20, Tariff Schedules of the United States," and by adding, in their place, the words "subheading 9801.00.80, HTSUS".

4. Section 10.5(h) is revised to read as follows:

§ 10.5 Shooks and staves; cloth boards; district director's account.

* * * * *

(h) A record of cloth boards of domestic manufacture exported to be wrapped with foreign textiles shall be kept by the district director in a similar manner as for shooks and staves. Cloth boards of domestic manufacture are conditionally free of duty under Chapter 98, subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS). If such boards are advanced in value or improved in condition while aboard, free entry shall be denied on importation.

§ 10.8 [Amended]

5. Section 10.8 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 806.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.40, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (e) is amended by removing the words "item 806.20" and by adding, in their place, the words "subheading 9802.00.40, HTSUS" and by removing the reference to footnote 1 and footnote 1 to the chart; and by adding in the third column of the chart after the word "alterations", the phrase "(see Chapter 98, Subchapter 2, HTSUS)".

(c) Paragraphs (i) and (j) are amended by removing the words "item 806.20 and related headnotes" and by adding, in their place, the words "subheading 9802.00.40, HTSUS, and related section and additional U.S. notes."

(d) Paragraphs (k) and (l) are amended by removing the words "item 806.20, TSUS" and "item 806.20," and by adding, in their place, the words "subchapter 9802.00.40, HTSUS".

§ 10.8a [Amended]

6. Section 10.8a is amended by removing the words "item 801.10, Tariff Schedules of the United States" from paragraphs (a), (b) and (c) and by adding, in their place, the words "subheading 9801.00.25, Harmonized Tariff Schedule of the United States". Section 10.8a is further amended by removing the word "headnotes" from paragraph (c) and by adding, in its place, the words "section and additional U.S. notes".

§ 10.9 [Amended]

7. Section 10.9 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 806.30" and adding, in their place, the words "subheading 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (e) is amended by removing the words "item 806.30" and by adding, in their place, the words "subheading 9802.00.60, HTSUS" and by removing the reference to footnote 1 and footnote 1 to the chart and by adding, in the third column of the chart, after the word "processing", the words "(see Chapter 98, Subchapter II, HTSUS)".

(c) Paragraph (g) is amended by removing the words "item 806.30 and related headnotes" and by adding, in their place, the words "subheading 9802.00.60, HTSUS, and related section and additional U.S. notes."

(d) Paragraph (h) is amended by removing the words "item 806.30, Tariff Schedules of the United States, and related headnotes" and by adding, in their place, the words "subheading 9802.00.60, HTSUS, and related section and additional U.S. notes."

(e) Paragraph (i) is amended by removing the words "item 806.30, TSUS" and adding, in their place, "subheading 9802.00.60, HTSUS".

(f) Paragraph (j) is amended by removing the words "item 806.30" and by adding, in their place, the words "subheading 9802.00.60, HTSUS".

§ 10.11 [Amended]

8. Section 10.11 is amended by removing the words "item 807.00, Tariff Schedules of the United States" wherever they appear and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

§ 10.12 [Amended]

9. Section 10.12 is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

10. Section 10.13 is amended as follows:

(a) The section heading is revised as follows:

§ 10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) The paragraph is amended by removing the words "Item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)," and by removing the words "Tariff Schedules of the United States" and by adding, in their place, the word "HTSUS".

§ 10.14 [Amended]

11. Section 10.14 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 807.00, Tariff Schedules of the United States" and adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 807.00, Tariff Schedules of the United States" from Example 3 and by adding, in their place, the words "subheading 9802.00.80, HTSUS".

§ 10.15 [Amended]

12. Section 10.15(d) and the Example are amended by removing the words "item 864.05, Tariff Schedules of the

United States" and by adding, in their place, the words "subheading 9813.00.05, HTSUS".

§ 10.16 [Amended]

13. Section 10.16 is amended as follows:

(a) Paragraph (c) is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

(b) Paragraph (f) is amended by removing the words "General Headnote 6, Tariff Schedules of the United States" and by adding, in their place, the words "General Rule of Interpretation 5, HTSUS".

§ 10.18 [Amended]

14. Section 10.18 is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.24 [Amended]

15. Section 10.24 is amended as follows:

(a) The introductory text of paragraph (a) is amended by removing the words "item 807.00, Tariff Schedules of the United States", and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The form appearing in paragraph (a)(1) is amended by removing the words "Headnote 3, part 1B, Schedule 8, Tariff Schedules of the United States", from footnote 1 and by adding, in their place, the words "U.S. Note 4 to Subchapter II of Chapter 98, Harmonized Tariff Schedule of the United States".

(c) The form appearing in paragraph (a)(1) is further amended by removing the words "item 807.00, Tariff Schedules of the United States," and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States".

(d) The form in paragraph (a)(2) is amended by removing the words "headnotes of the Tariff Schedules of the United States" and by adding, in their place, the words "legal notes to the Harmonized Tariff Schedule of the United States."

(e) Paragraph (d) is amended by removing the words "item 807.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, HTSUS".

(f) Paragraph (e) is amended by removing the words "item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), and related headnotes" and by adding, in their place, the words "subheading 9802.00.80, HTSUS, and related legal notes".

§ 10.31 [Amended]

16. Section 10.31 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States (TSUS)," and by adding, in their place, the words "Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing footnote 34.

(b) Paragraph (a)(2) is amended by removing the words "item 864.05, TSUS", and by adding, in their place, the words "subheading 9813.00.05, HTSUS".

(c) Paragraph (a)(3)(i) is amended by removing the words "TSUS item" and by adding, in their place, the words "HTSUS subheading".

(d) Paragraph (b) is amended by removing the words "item 864.35, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.35, HTSUS"

(e) Paragraph (e) is amended by removing the words "item 864.05 of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.05, HTSUS", and by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

(f) Paragraph (f) is amended by removing the words "item 864.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.20, HTSUS"; by removing the words "item 864.25" and by adding, in their place, the words "subheading 9813.00.25, HTSUS"; by removing the words "item 864.50" and by adding, in their place, the words "subheading 9813.00.50, HTSUS"; by removing the words "item 864.05, 864.20, or 864.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS"; by removing the words "item of Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "subheading of Chapter 98, Subchapter XIII, HTSUS".

(g) Paragraph (g) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

§ 10.34 [Amended]

17. Section 10.34 is amended by removing the words "item 864.70, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.70, Harmonized Tariff Schedule of the United States".

§ 10.35 [Amended]

18. Section 10.35 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 864.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.10, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 864.10 or 864.25" and by adding, in their place, the words "subheading 9813.00.10 or 9813.00.25, HTSUS".

§ 10.36 [Amended]

19. Section 10.36 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 864.20 or item 864.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9813.00.20 or 9813.00.50, Harmonized Tariff Schedule of the United States, (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 864.65, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.65, HTSUS" and by removing the words "items in Schedule 8, Part 5c, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings in chapter 98, subchapter XIII, HTSUS".

(c) The concluding text is amended by removing the words "item 864.20 or item 864.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.20 or subheading 9813.00.50, HTSUS".

20. Section 10.36a is amended as follows:

(a) Paragraph (a) is revised to read as follows:

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (as defined in paragraph (a) of § 10.8) may be entered on the operator's baggage declaration, in lieu of formal entry and examination, and may be passed under subheading 9813.00.05, Harmonized Tariff Schedule

of the United States (HTSUS), at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered. The bond, prescribed by § 10.31(f), filed to support entry under this section shall be without surety or cash deposit except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS, at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

* * * * *

(b) Paragraph (d) is amended by removing the words "item 864.05, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.05, HTSUS".

§ 10.37 [Amended]

21. Section 10.37 is amended by removing the words "schedule 8, part 5, subpart C, Tariff Schedules of the United States" and by adding, in their place, the words "chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States".

§ 10.38 [Amended]

22. Section 10.38 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 5c, subpart C, Tariff Schedules of the United States" and by adding, in their place, the words "chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (g) is amended by removing the words "item 864.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.20, HTSUS" and by removing the words "item 864.50" and by adding, in their place, the words, "subheading 9813.00.50, HTSUS".

§ 10.39 [Amended]

23. Section 10.39 is amended as follows:

(a) Paragraph (a) is amended by removing the words "Schedule 8, Part 5c, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States, (HTSUS)" and by removing the words "item 864.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9813.00.30, HTSUS".

(b) Paragraph (d)(1) and (d)(3) are amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, subchapter XIII, HTSUS".

(c) Paragraphs (e) and (f) are amended by removing the words "Schedule 8, Part 5C" and by adding, in their place, the words "Chapter 98, subchapter XIII".

§ 10.40 [Amended]

24. Section 10.40(b) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words" "Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States".

25. The title "International Traffic" that appears immediately before § 10.41, is amended by removing footnote 37.

§ 10.41a [Amended]

26. Section 10.41a is amended by removing footnote 38a.

§ 10.41b [Amended]

27. Section 10.41b is amended as follows:

(a) Paragraph (b) is amended by removing the word "item 800.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, Harmonized Tariff Schedule of the United States" and by removing the number "800.00" in paragraphs (b)(1) and (b)(3), and by adding, in its place, the numbers "9801.00.10".

(b) Paragraph (c)(1) introductory text is amended by removing the words "item 808.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9803.00.50, HTSUS".

(c) Paragraphs (c)(1)(i) and (c)(1)(iv) are amended by removing the number "808.00" and by adding, in its place, the number "9803.00.50".

(d) Paragraph (c)(2) introductory text is amended by removing the words "40,000 pounds" and adding, in their place, the words "18,120 kilograms" and by removing the words "item 808.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9803.00.50, HTSUS".

§ 10.43 [Amended]

28. Section 10.43 is amended by removing the words "items 850.10, 850.40, 850.70, 851.10, 851.20, 851.30, 851.40, 851.50, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9810.00.05, 9810.00.15, 9810.00.25, 9810.00.30, 9810.00.40, 9810.00.45, 9810.00.50, 9810.00.55, Harmonize l Tariff Schedule of the United States".

§ 10.46 [Amended]

29. Section 10.46 is amended by removing the words "items 830.00 and 831.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9808.00.10 and 9808.00.20" and by removing footnote 41.

§ 10.47 [Amended]

30. Section 10.47 is amended by removing the words "item 807.27, Tariff Schedules of the United States" and by adding, in its place, the words "subheading 4705.00.00, Harmonized Tariff Schedule of the United States" and by removing footnote 42.

§ 10.48 [Amended]

31. Section 10.48 is amended as follows:

(a) Paragraph (a) is amended by removing the words "items 765.10, 765.15, 765.20, 765.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9701.90.00, 9702.00.00, and 9703.00.00, Harmonized Tariff Schedule of the United States (HTSUS)", and by removing footnote 43.

(b) Paragraph (e) is amended by removing the words "item 765.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9701.90.00, HTSUS".

§ 10.49 [Amended]

32. Section 10.49 is amended as follows:

(a) Paragraph (a) is amended by removing the words "Schedule 8, Part 5B, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS)"; by removing footnote 44, and by removing the words "Schedule 8, Part 5B" and by adding, in their place, the words "Chapter 98, Subchapter XII".

(b) Paragraph (c) is amended by removing the words "item 862.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9812.00.20, HTSUS".

(c) Paragraph (d) is amended by removing the words "Schedule 8, Part 5B" and by adding, in their place, the words "Chapter 98, Subchapter XII".

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§ 10.52 [Amended]

33. Section 10.52 is amended by removing the words "item 850.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9810.00.10, Harmonized Tariff Schedule of the United States".

§ 10.53 [Amended]

34. Section 10.53 is amended as follows:

(a) Paragraphs (a) and (c) are amended by removing the words "item 766.20 or 766.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9705.00.00 or 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraphs (b), (d) and (f) are amended by removing the words "items 766.20 and 766.25, Tariff Schedules of the United States" wherever they appear and by adding, in their place, the words "subheadings 9705.00.00 and 9706.00.00, HTSUS".

(c) Paragraph (c) is further amended by adding the following new sentences at the end of the paragraph: "Furniture as used in this section of the regulations is defined as 'movable articles of convenience or decoration for use in furnishing a house, apartment, place of business or accommodation'. This definition embraces most articles claimed to be free of duty as antiques."

(d) Paragraphs (f) and (g) are amended by removing the words "item 766.30, Tariff Schedules of the United States" and by adding, in their place, the words "additional U.S. Note 2, Chapter 96, HTSUS".

§ 10.54 [Amended]

35. Section 10.54 is amended by removing the words "item 364.05, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 5805.00.10, Harmonized Tariff Schedule of the United States", and is further amended by removing the words "$20 per square foot" and by adding, in their place, the words "$215 per square meter".

§ 10.56 [Amended]

36. Section 10.56(a) is amended by removing the words "item 176.28, 176.32, 176.44, 176.45, 176.49, or 176.54, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.20, 1512.19.20, 1513.29.00, 1514.90.10, 1514.90.50, 1515.50.00, Harmonized Tariff Schedule of the United States".

§ 10.57 [Amended]

37. Section 10.57 is amended by removing the words "item 137.20, Tariff Schedules of the United States, or as seed corn or maize under item 130.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 0701.10.00, as seed corn (maize) under subheading 1005.10., HTSUS".

§ 10.58 [Amended]

38. Section 10.58(a) is amended by removing the words "item 357.25, Tariff Schedules of the United States"; by adding, in their place, the words "subheading 5911.20.20, Harmonized Tariff Schedule of the United States"; and by removing the phrases "4 inches" and "3 inches" and by adding, in their place, "10.16 centimeters" and "7.62 centimeters", respectively.

§ 10.59 [Amended]

39. Section 10.59 is amended as follows:

(a) Footnote 56 referred to in the section heading is removed.

(b) Paragraph (c) is amended by removing the words "general headnote 6, Tariff Schedules of the United States" and by adding, in their place, the words "General Rule of Interpretation 5".

(c) Paragraph (e) is amended by removing the reference to footnote 57 and by adding the text of the footnote at the end of paragraph.

(d) Paragraph (f) is amended by removing footnote 57a.

§ 10.63 [Amended]

40. Section 10.63 is amended by removing footnote 58.

§ 10.65 [Amended]

41. Section 10.65 (a) and (c)(2) are amended by removing footnote 59 and the reference to footnote 60, and by adding the text of footnote 60 at the end of paragraph (c)(2).

§ 10.66 [Amended]

42. Section 10.66 (a) and (c) are amended by removing the words "item 802.20 or item 802.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.67 [Amended]

43. Section 10.67 is amended as follows:

(a) Paragraphs (a) and (c) are amended by removing the words "item 802.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Footnote 63 to § 10.67 is removed.

§ 10.70 [Amended]

44. Section 10.70 (a) is amended by removing the words "item 100.01, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 0101.11.00, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.71 [Amended]

45. Section 10.71 (e) is amended by removing the words "item 100.01, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 0101.11.00, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 10.74 [Amended]

46. Section 10.74 is amended by removing the words "item 100.03, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.90, Harmonized Tariff Schedule of the United States".

§ 10.75 [Amended]

47. Section 10.75 is amended by removing the words "item 852.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9810.00.70, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202)"; and by removing the words "item 852.20" and by adding, in their place, the words "subheading 9810.00.70, HTSUS".

§ 10.76 [Amended]

48. Section 10.76 is amended as follows:

(a) Paragraphs (a) and (b) are amended by removing the words "item 100.05, Tariff Schedules of the United States," and by adding, in their place, the words "subheading 9817.70, Harmonized Tariff Schedule of the United States (HTSUS),".

(b) Paragraph (a) is further amended by removing the reference to footnote 70.

§ 10.77 [Removed and Reserved]

49. Part 10 is amended to removing § 10.77 and marking it "reserved" and by removing footnote 71 to § 10.77.

§ 10.78 [Amended]

50. Section 10.78 is amended as follows:

(a) Paragraph (b) is amended by removing the words "schedule 1, Part 15A, Tariff Schedules of the United States" and by adding, in their place, the words "Subchapter XV of Chapter 98, Harmonized Tariff Schedule of the United States".

(b) The section is further amended by removing footnote 72.

51. Section 10.80 is revised to read as follows (footnote 74 is consequently removed):

§ 10.80 Remission of duty; withdrawal; bond.

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish in the shores of the navigable waters of the U.S., whether such fish are taken by licensed or unlicensed vessels, and upon proof that the sale has been used for either of such purposes, the duties on the same shall be remitted. (Section 313(e), Tariff Act of 1930, 19 U.S.C. 1313(e)). Imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on Customs Form 7506. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of proof of proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be issued on Customs Form 7506.

§ 10.84 [Amended]

52. Section 10.84 is amended as follows:

(a) Paragraphs (a) and (b)(4) are amended by removing the words "General Headnote 3(d), Tariff Schedules of the United States" and by adding, in their place, the words "General Note 3(c)(iii)(A)(1), Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (c) is amended by removing the words "Schedule 6, Part 6, Subpart B, Headnote 2(a), Tariff Schedules of the United States" and by adding, in their place, the words "General Note 3(c)(iii)(A)(2)".

(c) Paragraph (d) is amended by removing the words "Schedule 6, Part 6, Subpart B, Headnote 2(d)(ii)" and by adding, in their place, the words "General Note 3(c)(iii)(B).".

§ 10.90 [Amended]

53. Section 10.90(a) is amended by removing the words "item 724.30, Tariff Schedules of the United States" and by adding in their place, the words "subheading 8524.20, HTSUS".

§§ 10.91 through 10.97 [Removed and Reserved]

54. Part 10 is further amended by removing the heading "Wools and Hair of the Camel for Use in Manufacturing Floor Coverings and Other Articles" that precedes § 10.91 and by removing §§ 10.91, 10.92, 10.93, 10.94, 10.95, 10.96, 10.97, and by marking them "Reserved."

§ 10.98 [Amended]

55. Section 10.98 is amended as follows:

(a) By removing the words "item 602.25, Tariff Schedules of the United States," from paragraph (a) and by adding, in their place, the words "subheading 2603.00.00, Harmonized Tariff Schedule of the United States".

(b) By removing footnote 89 from paragraph (a).

§ 10.99 [Amended]

56. Section 10.99 is amended as follows:

(a) Footnote 90, referred to in the section heading, is removed.

(b) The introductory text of paragraph (a) is amended by removing the words "item 427.88, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 2207.10.60, Harmonized Tariff Schedule of the United States".

(c) Paragraph (a) is further amended by removing footnotes 91 and 92.

§ 10.100 [Amended]

57. Section 10.100 is amended by removing the words "item 830.00, 831.00, 832.00, 833.00, 834.00, 835.00, 836.00, or other items in the Tariff Schedules of the United States" and by adding, in their place, "subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States".

§ 10.102 [Amended]

58. Section 10.102 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 830.00, 831.00, 832.00, 833.00, 834.00, 835.00, 836.00, or other items in the Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 832.00, 833.00, or 834.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS".

(b) The introductory text of paragraph (b) is amended by removing the words "item 832.00, 833.00, or 834.00, Tariff Schedules of the U.S." and by adding, in their place, the words "subheadings 9808.00.30, 9808.00.40, or 9808.00.50, HTSUS".

(c) Paragraph (b)(1) is amended by removing the words "*item 832.00, TSUS*" from the section heading and by adding, in their place, the words "subheading 9808.00.30, HTSUS" and by removing the words "item 832.00, Tariff Schedules of the United States" from the text and by adding, in their place, the words "subheading 9808.00.30, HTSUS".

(d) Paragraph (b)(2) is amended by removing the words "*item 833.00, TSUS.*" from the section heading and the words "Pursuant to item 833.00, Tariff Schedules of the United States" from the text and by adding, in their place, the words "*subheading 9808.00.40, HTSUS.* Pursuant to subheading 9808.00.40, HTSUS".

(e) Paragraph (b)(3) is amended by removing the words "*item 834.00, TSUS*", from the section heading and by adding, in their place, the words "*subheading 9808.00.50, HTSUS*" and by removing the words "item 834.00, Tariff Schedules of the United States" from the text and by adding, in their place, the words "subheading 9808.00.50, HTSUS".

(f) Paragraphs (c) and (d) are amended by removing the words "item 832.00, 833.00, or 834.00 of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS".

§ 10.103 [Amended]

59. Section 10.103 is amended as follows:

(a) Paragraph (a) and number 3 on the certification form are amended by removing the words "item 800.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 800.00 and other articles claimed to be free under item 832.00, 833.00, or 834.00 of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10 and other articles claimed to be free under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS".

10.104 [Amended]

60. Section 10.104 is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States

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(19 U.S.C. 1202)" and by adding, in their place, the words "Chapter 98, Subchapter XIII, Heading 9813, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

§ 10.107 [Amended]

61. The introductory text to § 10.107(a) is amended by removing footnote 99.

§ 10.108 [Amended]

62. Section 10.108 is amended by removing the words "item 801.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.20, Harmonized Tariff Schedule of the United States".

§ 10.121 [Amended]

63. Section 10.121 is amended as follows:

(a) Paragraphs (a) and (b) are amended by removing the words "item 870.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS)", and by removing the words "item 870.30" and by adding, in their place, the words "subheading 9817.00.40, HTSUS".

(b) Paragraph (a) is further amended by removing the words "headnote 1, Part 6, schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "U.S. Note 1, Subchapter XVII, Chapter 98, HTSUS".

§ 10.132 [Removed and Reserved]

64. Part 10 is amended by removing § 10.132 and by marking it "Reserved."

10.133 [Amended]

65. Section 10.133 is amended by removing the words "item of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

§ 10.134 [Amended]

66. Section 10.134 is amended by removing the words "item number" and by adding, in their place, the word "subheading"; by removing the words "Tariff Schedules of the United States" where they first appear and by adding, in their place, the words "Harmonized Tariff Schedule of the United States (HTSUS)"; by removing the words "Tariff Schedules of the United States" where they next appear and by adding, in their place, the word "HTSUS", and by removing the word "schedules" wherever it appears and by adding, in its place, the word "HTSUS".

§ 10.139 [Amended]

67. Section 10.139 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

(b) Paragraph (b) is amended by removing the number "10.128" and by adding, in its place, the number "10.138".

§ 10.172 [Amended]

68. Section 10.172 is amended by removing the words "Tariff Schedules of the United States Annotated item number" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

§ 10.179 [Amended]

69. The introductory text of § 10.179 (a) is amended by removing the words "Schedule 4, Part 10, Headnote 4(a), Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 27, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States".

§ 10.180 [Amended]

70. Section 10.180 is amended by removing the words "item 107.61, Tariff Schedules of the United States (TSUS)" and by adding, in their place, the words "subheadings 0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 107.61, TSUS" and by adding, in their place, "subheadings 0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20, HTSUS".

§ 10.181 [Amended]

71. Section 10.181 is amended by removing the words "Tariff Schedules of the United States" in paragraph (a) and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 10.182 [Removed and Reserved]

72. Part 10 is further amended by removing § 10.182 and the preceding center heading and by marking it "reserved."

§ 10.183 [Amended]

73. Section 10.183 is amended as follows:

(a) Paragraph (b) is amended by removing the words "headnote 3, subpart C, part 6, schedule 6, Tariff Schedules of the United States" and by adding, in their place, the words "General Note 3(c)(iv), Harmonized Tariff Schedule of the United States (HTSUS)."

(b) Paragraph (c)(1) is amended by removing the words "subpart C, part 6, schedule 6, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 88, HTSUS".

(c) Paragraph (c)(2) is amended by removing the words "headnote 3, subpart C, part 6, schedule 6, Tariff Schedules of the United States" and adding, in their place, the words "General Note 3(c)(iv), HTSUS".

(d) Paragraph (d)(2) is amended by removing from the form the words "TSUS item number" and by adding, in their place, the words "HTSUS subheading number"; by removing the words "item number" and by adding, in their place, the words "subheading number" and by removing "subpart C, part 6, schedule 6, TSUS" and by adding, in their place, the words "Chapter 88, HTSUS".

§ 10.191 [Amended]

74. Section 10.191 is amended as follows:

(a) Paragraph (b)(2)(iv) is amended by removing the words "Part 10, Schedule 4, Tariff Schedules of the United States (TSUS)" and by adding, in their place, the words "Chapter 27, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b)(2)(v) is amended by removing the word "TSUS" and by adding, in its place, the word "HTSUS".

(c) Paragraph (b)(2)(vi) is amended by removing the words "item 155.20 or item 155.30, TSUS" and by adding, in their place, the words "subheadings 1701.11.00 and 1701.12.00, HTSUS" and by removing the words "Headnote 4, Schedule A [should read "Subpart"], Part 10, Schedule 1, TSUS" and by adding, in their place, the words "Additional U.S. Note 4, Chapter 17, HTSUS".

(d) Paragraph (b)(2)(vii) is amended by removing the words "Subpart A, Part 2, Appendix, TSUS" and by adding in their place the words "the subheadings of Subchapter III, from the beginning through 9903.85.21, Chapter 99, HTSUS".

§ 10.192 [Amended]

75. Section 10.192 is amended by removing the words " 'C' as a prefix to the TSUS item" and by adding, in their place, the words " 'E' as a prefix to the HTSUS subheading".

PART 11—PACKING AND STAMPING; MARKING

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, except as otherwised noted.

§ 11.3 [Amended]

2. Section 11.3 is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Subchapter IV, Chapter 98, Harmonized Tariff Schedule of the United States".

§ 11.6 [Amended]

3. Section 11.6 is amended by removing footnote 3.

§ 11.9 [Amended]

4. Section 11.9 (a) and (b) are amended by removing the words "schedule 7, part 2E, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "headnote 4 of that subpart" and by adding, in their place, the words "Additional U.S. Note 4, Chapter 91".

5. Section 11.13(a) is revised to read as follows:

§ 11.13 False designation of origin and false descriptions; false marking of articles of gold or silver.

(a) Articles which bear, or the containers which bear, false designations of origin, or false descriptions or representations, including words or other symbols tending falsely to describe or represent the articles, are prohibited importation under 15 U.S.C. 294, 295, 296, 1124, 1125 or 48 U.S.C. 1405q, and shall be detained.

* * * * *

6. Part 11 is further amended by removing footnote 14 to § 11.13.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted. Sections 12.105 through 12.109 also issued under 19 U.S.C. 2094. Sections 12.110 through 12.117 also issued under § 17(e), Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972; Pub. L. 92–516 (7 U.S.C. 1360(e)). Sections 12.118 through 12.127 also issued under § 13, 90 Stat. 2034 (15 U.S.C. 2621).

§ 12.7 [Amended]

2. Section 12.7(b) is amended by removing footnote 6.

§ 12.8 [Amended]

3. Section 12.8(a) is amended by removing the references to footnote 7; by adding the text of footnote 7 between the first and second sentences; and by removing footnote 8.

§ 12.16 [Amended]

4. Section 12.16(a) is amended by removing footnote 9.

§ 12.17 [Amended]

5. Section 12.17 is amended by removing footnote 10.

§ 12.24 [Amended]

6. Section 12.24(a) is amended by removing footnote 11.

§ 12.26 [Amended]

7. Section 12.26 (b) and (d) are amended by removing footnotes 13, 13a, and 13b.

8. Section 12.27 is revised to read as follows:

§ 12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.

Customs officers shall perform all duties required of them under statutory provisions that prohibit or restrict the importation or exportation of wild animals or birds, or the dead bodies thereof, or the eggs of such birds, killed, captured, taken, transported, etc., contrary to law. Such laws and statutory provisions include 18 U.S.C. 43, 44, 3054, 3112.

§ 12.29 [Amended]

9. Section 12.29 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 1, part 15D, headnote 2, Tariff Schedules of the United States"; by adding, in their place, the words "Chapter 5, Additional U.S. Note 1"; by removing footnote 16; and by removing the words "said headnote 2" and by adding, in their place, the words "Additional U.S. Note 1 to Chapter 5, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing footnote 16; by removing the words "schedule 1, part 15D, headnote 2, Tariff Schedules of the United States" and by adding, in their place, the words "Additional U.S. Note 1, Chapter 5, HTSUS".

(c) Paragraph (c) is amended by removing footnotes 16a and 16b.

(d) Paragraph (d) is amended by removing the words "schedule 1, part 4E, headnote 1, Tariff Schedules of the United States, 17" and by adding, in their place, the words "Chapter 4, additional U.S. Note 2" and by removing the footnote 17.

10. Section 12.30 is revised to read as follows:

§ 12.30 Whaling.

The importation and exportation of whales or whale products taken or processed in violation of the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946 (Publication No. 3383, Department of State, Whaling Convention), or of the Whaling Convention Act of 1949 (16 U.S.C. 916–916(1)), or of any regulation issued under the Act (50 CFR Part 351) is unlawful. Customs officers and employees shall perform all functions required of them by the above-mentioned convention, law and regulation.

§ 12.31 [Amended]

11. Section 12.31 is amended by removing footnote 18.

§ 12.32 [Amended]

12. Section 12.32 is amended by removing footnote 19.

§ 12.33 [Amended]

13. Section 12.33 is amended by removing footnote 20.

§ 12.34 [Amended]

14. Section 12.34 is amended by removing footnote 21.

§ 12.36 [Amended]

15. Section 12.36 is amended by removing footnote 23.

§ 12.37 [Amended]

16. Section 12.37 is amended by removing footnote 24.

§ 12.38 [Amended]

17. Section 12.38 is amended by removing footnote 25.

§ 12.42 [Amended]

18. Section 12.42 is amended by removing footnote 29.

§ 12.45 [Amended]

19. Section 12.45 is amended by removing footnote 30.

§ 12.48 [Amended]

20. Section 12.48 is amended by removing footnote 31.

§ 12.60 [Amended]

21. Section 12.60 is amended by removing footnotes 36 and 37.

§ 12.61 [Amended]

22. Section 12.61 is amended by removing footnotes 38, 39, and 40.

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§ 12.62 [Amended]

23. Section 12.62 is amended by removing footnote 41.

§ 12.130 [Amended]

24. Section 12.130 is amended as follows:

(a) The introductory text to paragraph (a) is revised to read as follows:

(a) *General.* Textile or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise which is subject to the provisions of the International Arrangement Regarding Trade in Textiles (The Multi-Fiber Arrangement).

(b) Paragraph (c) is amended by removing the words "Headnote 2, Part 1, Schedule 8, TSUS," wherever they appear and adding, in their place, the words "Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States,".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 18.1 [Amended]

2. Section 18.1 (a) and (b) are amended by removing footnotes 1 and 2, and by adding in (b), following the date "1936," the words "(19 U.S.C. 1551, 1551a)".

§ 18.3 [Amended]

3. Section 18.3 is amended by removing the footnote 3.

§ 18.4a [Amended]

4. Section 18.4a is amended by removing footnotes 3a, 3b, and 3c.

§ 18.10 [Amended]

5. Section 18.10 is amended by removing footnote 4, and by adding a new sentence immediately following the words "Virgin Islands (U.S.)", as follows:

Before shipping merchandise in bond to another port for the purpose of warehousing or rewarehousing, the shipper should ascertain whether warehouse facilities are available at the intended port of destination.

§ 18.11 [Amended]

6. Section 18.11, paragraphs (a), (c), and (e), are amended by removing footnotes 5, 6, and 7.

§ 18.20 [Amended]

7. Section 18.20 is amended by removing footnote 8.

8. The heading immediately preceding § 18.25 is amended by removing footnote 10.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE

1. The authority citation for Part 19 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 19.1 [Amended]

2. Section 19.1 is amended by removing footnotes 1, 2, 3, 4, 5, and 6.

§ 19.11 [Amended]

3. Section 19.11 is amended by removing footnotes 14 and 15.

§ 19.13 [Amended]

4. Section 19.13(a) and (d) are amended by removing footnotes 16 and 17.

§ 19.15 [Amended]

5. Section 19.15(a) and (f) are amended by removing footnotes 18 and 19.

§ 19.17 [Amended]

6. Section 19.17(a) is amended by removing footnote 22 and by removing the words "Schedule 6, Part 1 or 2, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, 71, 72, and 73, Harmonized Tariff Schedule of the United States".

§ 19.18 [Amended]

7. Section 19.18(a) is amended by removing the words "Schedule 6, Part 1, headnote 4(b), Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States."

§ 19.19 [Amended]

8. Section 19.19 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 6, part 1, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States".

(b) Paragraph (b) is amended by removing footnote 23.

§ 19.23 [Amended]

9. Section 19.23 is amended by removing footnote 24.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 31 U.S.C. 9701, General Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

§ 24.16 [Amended]

2. Section 24.16 is amended as follows:

(a) The section is amended by removing the footnotes number 3, 4, 5, and 5a.

(b) Paragraph (b) is amended and by adding a new last sentence as follows: "For example: At a port where the regular hours of business have been fixed at 8 a.m. to 5 p.m. for the inside force and 7 a.m. to 4 p.m. for the outside force, a clerk whose regular working hours are 8 a.m. to 5 p.m. is not entitled to reimbursable extra compensation if assigned to inspectional work from 7 a.m. to 8 a.m. on a week day, since he works within the regular hours for the service to which he is assigned."

§ 24.17 [Amended]

3. Section 24.17(a)(8) is amended by removing the footnote 5aa; and by adding a new sentence at the end of paragraph (a)(8), as follows: "A customs officer so assigned is not acting as a customs warehouse officer, since the services have no connection with a customs bonded warehouse."

§ 24.36 [Amended]

4. Section 24.36 is amended as follows:

(a) The heading to § 24.36 is amended by removing footnote 6.

(b) Paragraph (d) is amended by removing footnote 7.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for Part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States (HTSUS), (sec. 101, 76 Stat. 72; Subheadings 9817.00.80 and 9817.00.90, HTSUS; Section XV, Note 5, HTSUS.

§ 54.5 [Amended]

2. Section 54.5 is amended as follows:

(a) The introductory text of paragraph (a) is amended by removing the words "in chief value of metal" and by adding, in their place, the words "predominating by weight of metal".

(b) The introductory text of paragraph (a) is further amended by removing the words "item 870.50, 870.55, and 870.60, Tariff Schedules of the United States (TSUS)" and by adding in their place, the words "subheadings 9817.00.80 and 9817.00.90, Harmonized Tariff Schedule of the United States (HTSUS)".

(c) Paragraphs (a)(1–3) are revised to read as follows:

(a) * * *

(1) Articles of lead, zinc, or tungsten;

(2) Metal-bearing materials provided for in Chapter 26, HTSUS; or

(3) Unwrought metal provided for in Section XV, HTSUS."

§ 54.6 [Amended]

3. Section 54.6 is amended as follows:

(a) The introductory text is amended by removing the words "in chief value" and by adding, in their place, the words "predominating by weight".

(b) Paragraph (a) is amended by removing footnote 1.

(c) Paragraph (d) is amended by removing the words "items 870.50, 870.55 or 870.60, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9817.00.80 or 9817.00.90, HTSUS."

(d) Concluding text is added to read as follows: As used in this section, the phrase "in connection with the entry" means any time before liquidation of the entry or within the period during which a reliquidation may be completed (§ 113.43(c)). Therefore, a claim for free entry under subheading 9817.00.80 or 9817.00.90, HTSUS, supported by a statement of intent may be filed at any time before liquidation of the entry or within the period during which a valid reliquidation may be completed."

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

PART 103—AVAILABILITY OF INFORMATION

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 19 U.S.C. 66, 1624, 31 U.S.C. 483a.

§ 103.11 [Amended]

2. Section 103.11 is amended as follows:

(a) Paragraph (b)(2)(i) is amended by adding the words "and the Harmonized Tariff Schedule of the United States" immediately following the words "Tariff Schedules of the United States".

(b) Paragraph (b)(2)(xii) is amended by adding the words "and Chapter 98, Subchapter XIII, HTSUS" immediately following the words "Tariff Schedules of the United States".

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624, 1641.

§ 111.11 [Amended]

2. Section 111.11 (d) is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 is revised to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1624.

§ 113.66 [Amended]

2. Section 113.66 is amended as follows:

(a) The introductory text to paragraph (b) is amended by removing the words "Items 800.00 or 808.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, or 9803.00.50 Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 800.00 or 808.00, TSUS" and by adding, in their place, the words "subheading 9801.00.10 or 9803.00.50, HTSUS".

(b) Paragraph (b)(1) is amended by removing the words "item 800.00, TSUS" and by adding, in their place, the words "subheading 9801.00.10, HTSUS".

(c) Paragraph (b)(2) is amended by removing the words "item 808.00, TSUS" and by adding, in their place, the words "subheading 9803.00.50, HTSUS".

PART 114—CARNETS

1. The authority citation to Part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644; 49 U.S.C. 1474, App. 1509.

§ 122.48 [Amended]

2. Section 122.48(d) is amended by removing the words, "Schedule 8, Tariff Schedules of the United States" in the second sentence and by adding, in their place, "Chapter 98, HTSUS".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

The general authority citation for Part 123 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The general authority citation for Part 127 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624.

§ 127.33 [Amended]

2. Section 127.33 is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XV, Harmonized Tariff Schedule of the United States".

PART 132—QUOTAS

1. The authority citation for Part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), and 1624.

§ 132.6 [Amended]

2. Section 132.6 is amended by removing the words "General Headnote 3(e), Tariff Schedules of the United States, as amended" and by adding, in their place, the words "General Note 3(c), Harmonized Tariff Schedule of the United States".

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.0 [Amended]

2. Section 134.0 is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 134.22 [Amended]

3. Section 134.22, paragraph (b) is revised as follows:

(b) *Containers or holders treated as imported articles.* Containers or holders for imported merchandise which are subject to treatment as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents.

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§ 134.23 [Amended]

4. Section 134.23 is amended as follows:

(a) Paragraph (a) is amended by removing the words "headnote 6(b)(ii), Tariff Schedules of the United States" and by adding, in their place, the words "General Rule of Interpretation 5(b), Harmonized Tariff Schedule of the United States".

(b) Paragraph (b) is amended by removing the words "within the purview of headnote 6(b)(iii), Tariff Schedules of the United States" and by adding, in their place, the words "which give the whole importation its essential character, as described in General Rule of Interpretation 5(a)".

§ 134.24 [Amended]

5. Section 134.24(b) is amended by removing the words "general headnote 6(a), Tariff Schedules of the United States" and by adding, in their place, the words "the Harmonized Tariff Schedule of the United States".

§ 134.33 [Amended]

6. The list in § 134.33 is amended as follows:

(a) The entry "Articles classifiable under items 850.40, 850.70, 851.30, and 853.30, Tariff Schedules of the United States" is removed and the words "Articles classified under subheadings 9810.00.15, 9810.00.25, 9810.00.40 and 9810.00.45, Harmonized Tariff Schedule of the United States" are added in their place.

(b) The entry "Rails, joint bars, and tie plates covered by item 610.20 through 610.26, Tariff Schedules of the United States" is removed and the words "Rails, joint bars, and tie plates covered by subheadings 7302.90.00, Harmonized Tariff Schedule of the United States" are added in their place.

(c) The entry "Stamps, postage and revenue, and other articles covered in item 247.40, Tariff Schedules of the United States" is removed and the words "Stamps, postage and revenue, and other articles covered in subheadings 9704.00.00 and 4807.00.00, Harmonized Tariff Schedule of the United States" are added in their place.

§ 134.43 [Amended]

7. Section 134.43(a), is revised to read as follows:

(a) *Marking previously required by certain provisions of the Tariff Act of 1930.* Articles of a class or kind listed below shall be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets: knives, forks, steels, cleavers, clippers, shears, scissors, safety razors, blades for safety razors, surgical instruments, pliers, pincers, nippers and hinged hand tools for holding and splicing wire, vacuum containers, and parts of the above articles.

8. Section 134.43(b) is amended by removing the words "schedule 7, part 2, subpart E, headnotes 4 and 5 of the Tariff Schedules of the United States" and by adding in their place the words "Chapter 91, Additional U.S. Note 4".

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 141.4 [Amended]

2. Section 141.4 is amended as follows:

(a) Paragraph (a) is revised to read as follows:

(a) The exemptions listed in General Note 5 to the Harmonized Tariff Schedule of the United States (HTSUS); and.

(b) Paragraph (b) is revised to read to follows:

(b) Vessels (not including vessels classified in heading 8903 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note.

(c) A new paragraph is added, designated paragraph "c" as follows:

(c) Articles specifically exempted by law or regulations from the requirement for entry. (19 U.S.C. 1498.)

§ 141.53 [Amended]

3. Section 141.53(c) is amended by removing the words "schedule 8, part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States".

§ 141.61 [Amended]

4. Section 141.61 is amended as follows:

(a) Paragraph (e)(1)(i)(A) is amended by removing the words "General Statistical Headnotes, Tariff Schedules of the United States Annotated ("TSUSA")" and by adding, in their place, the words "General Statistical Notes, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (e)(1)(i)(B) (1) is amended by removing the words "Headnotes, Tariff Schedules of the United States Annotated (TSUSA)" and by adding, in their place, the words "Notes, HTSUS".

(c) Paragraph (e)(1)(ii)(A) is amended by removing the words "Annex 8, TSUSA" and by adding, in their place, the words "Annex B, HTSUS".

(d) Paragraph (e)(1)(ii)(C) is amended by removing the word "TSUSA" and by adding in its place "HTSUS".

(e) The introductory text to paragraph (e)(2) is amended by removing the words "(xiv), (xv), and (xvi) General Statistical Headnote 1(a), TSUSA" and by adding, in their place, the words "General Statistical Note 1(a)(xiv)(xvii), HTSUS".

(f) Paragraph (e)(3) is amended by removing the words "subparagraph (v), General Statistical Headnote 1(b), TSUSA" and by adding, in their place, the words "General Statistical Note 1(b)(V), HTSUS".

(g) Paragraph (e)(5) is amended by removing the words "General Statistical Headnotes, TSUSA" and by adding, in their place, the words "General Statistical Note, HTSUS".

§ 141.82 [Amended]

5. Section 141.82, paragraph (d), is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated)" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94; and Chapter 99, Subchapters III and IV. Harmonized Tariff Schedule of the United States".

§ 141.83 [Amended]

6. Section 141.83, paragraph (d)(5), is amended by removing the words "item 806.20 or 806.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9802.00.40 and 9802.00.60, Harmonized Tariff Schedule of the United States".

7. Section 141.89, paragraphs (a) and (b) are revised to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

(a) Invoices for the following classes of merchandise, classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), shell set forth the additional information specified: [75–42, 75–239, 78–53, 83–251, 84–149.]

Aluminum and alloys of aluminum classifiable under subheadings 7601.10.60, 7601.20.60, 7601.20.90, or 7602.00.00, HTSUS (T.D. 53092, 55977, 56143)—Statement of the percentages by weight of any metallic element contained in the article.

Articles manufactured of textile materials. Coated or laminated with

plastics or rubber, classifiable in Chapter(s) 39, 40, and 42—Include a description indicating whether the fabric is coated or laminated on both sides, on the exterior surface or on the interior surface.

Bags manufactured of plastic sheeting and not of a reinforced or laminated construction, classified in Chapter 39 or in heading 4202—Indicate the gauge of the plastic sheeting.

Ball or roller bearings classifiable under subheading 8482.10.50 through 8482.80.00, HTSUS (T.D. 68–306)—(1) Type of bearing (i.e. whether a ball or roller bearing); (2) If a roller bearing, whether a spherical, tapered, cylindrical, needled or other type; (3) Whether a combination bearing (i.e. a bearing containing both ball and roller bearings, etc.); and (4) If a ball bearing (not including ball bearing with integral shafts or parts of ball bearings), whether or not radial, the following: (a) outside diameter of each bearing; and (b) whether or not a radial bearing (the definition of radial bearing is, for Customs purposes, an antifriction bearing primarily designed to support a load perpendicular to shaft axis).

Beads (T.D. 50088, 55977)—(1) The length of the string, if strung; (2) The size of the beads expressed in millimeters; (3) The material of which the beads are composed, i.e. ivory, glass, imitation pearl, etc.

Bed linen and Bedspreads—Statement as to whether or not the article contains any embroidery, lace, braid, edging, trimming, piping or applique work.

Chemicals—Furnish the use and Chemical Abstracts Service number of chemical compounds classified in Chapters 27, 28 and 29, HTSUS.

Colors, dyes, stains and related products provided for under heading 3204, HTSUS—The following information is required: (1) Invoice name of product; (2) Trade name of product; (3) Identity and percent by weight of each component; (4) Color Index number (if none, so state); (5) Color Index generic name (if none so state); (6) Chemical Abstracts Service number of the active ingredient; (7) Class of merchandise (state whether acid type dye, basic dye, disperse dye, fluorescent brightener, soluble dye, vat dye, toner or other (describe); (8) Material to which applied (name the material for which the color, dye, or toner is primarily designed).

Copper (T.D. 45878, 50158, 55977) articles classifiable under the provisions of Chapter 74, HTSUS—A statement of the weight of articles of copper, and a statement of percentage of copper content and all other elements—by weight—to articles classifiable according to copper content.

Copper ores and concentrates (T.D. 45878, 50158, 55977) classifiable in heading 2603, and subheadings 2620.19.60, 2620.20.00, 2620.30.00, and heading 7401—Statement of the percentages by weight of the copper content and any other metallic elements.

Cotton fabrics classifiable under the following HTSUS headings: 5208, 5209, 5210, 5211, and 5212—(1) Marks on shipping packages; (2) Numbers on shipping packages; (3) Customer's call number, if any; (4) Exact width of the merchandise; (5) Detailed description of the merchandise; trade name, if any; whether bleached, unbleached, printed, composed of yarns of different color, or dyed; if composed of cotton and other materials, state the percentage of each component material by weight; (6) Number of single threads per square centimeter (All ply yarns must be counted in accordance with the number of single threads contained in the yarn; to illustrate: a cloth containing 100 two-ply yarns in one square centimeter must be reported as 200 single threads); (7) Exact weight per square meter in grams; (8) Average yarn number use this formula:

$$\frac{100 \times \text{(Total Single Yarns Per Square Centimeter)}}{\text{(Number of Grams Per Square Meter)}}$$

(9) Yarn size or sizes in the warp; (10) Yarn size or sizes in the filling; (11) Specify whether the yarns are combed or carded; (12) Number of colors or kinds (different yarn sizes or materials) in the filling; (13) Specify whether the fabric is napped or not napped; and (14) Specify the type of weave, for example, plain, twill, sateen, oxford, etc., and (15) Specify the type of machine on which woven: if with Jacquard (Jacq), if with Swivel (Swiv), if with Lappet (Lpt.), if with Dobby (Dobby).

Cotton raw See § 151.82 of this chapter for additional information required on invoices.

Cotton waste (T.D. 5044)—(1) The name by which the cotton waste is known, such as "cotton card strips"; "cotton comber waste"; "cotton lap waste"; "cotton sliver waste"; "cotton roving waste"; "cotton fly waste"; etc.; (2) Whether the length of the cotton staple forming any cotton card strips covered by the invoice were made is less than 3.016 centimeters (1 3/16 inches) or is 3.016 centimeters (1 3/16 inches) or more.

Earthenware or crockeryware composed of a nonvitrified absorbent body (including white granite and semiporcelain earthenware and cream-colored ware, stoneware, and terra cotta, but not including common brown, gray, red, or yellow earthenware), embossed or plain; common salt-glazed stoneware; stoneware or earthenware crucibles; Rockingham earthenware; china, porcelain, or other vitrified wares, composed of a vitrified nonabsorbent body which, when broken, shows a vitrified, vitreous, semi-vitrified, or semivitreous fracture; and bisque or parian ware (T.D. 53236)—(1) If in sets, the kinds of articles in each set in the shipment and the quantity of each kind of article in each set in the shipment; (2) The exact maximum diameter, expressed in centimeters, of each size of all plates in the shipment; (3) The unit value for each style and size of plate, cup, saucer, or other separate piece in the shipment.

Fish or fish livers (T.D. 50725, 49640, 55977) imported in airtight containers classifiable under Chapter 3, HTSUS—(1) Statement whether the articles contain an oil, fat, or grease which has had a separate existence as an oil, fat, or grease, (2) The name and quantity of any such oil, fat, or grease.

Footwear, classifiable in headings 6401 through 6405 of the HTSUS—

1. Manufacturer's style number.
2. Importer's style and/or stock number.
3. Percent by area of external surface area of upper (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

4. Percent by area of external Surface area of outersole (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

You may skip this section if you choose to answer *all* questions A through Z below.

I. If 3(a) is larger than any other percent in 3 and if 4(a) is larger than any other percent in 4, answer questions F, G, L, M, O, Q, R, S, and X.

II. If 3(a) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions F, G, L, M, N, O, Q, S and X.

III. If 3(a) plus 3(b) is larger than any single percent in 3 and if 4(d), 4(e) or 4(f) is larger than any other percent in 4, stop.

IV. If 3(c) is larger than any other percent in 3 and if 4(a) or 4(b) is larger than any other percent in 4, stop.

V. If 3(c) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions B, E, F, G, H, J, K, L, M, N, O, P, T and W.

VI. If 3(d) is larger than any other percent in 3 and if 4(a) plus 4(b) is larger than any single percent in 4, answer questions C and D.

VII. If 3(d) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions A, C, J, K, M, N, P and T.

VIII. If 3(d) is larger than any other percent in 3 and if 4(d) is larger than any other percent in 4, answer questions U, Y and Z.

IX. If the article is made of paper, answer questions V and Z.

If the article does not meet any of conditions I through IX above, answer all questions A through Z, below.

A Percent of external surface area of upper (including leather reinforcements and accessories) Which is leather _____%
B Percent by area of external surface area of upper (*including* all reinforcements and accessories). Which is rubber and/or plastics _____%
C Percent by weight of rubber and/or plastics is _____%
D Percent by weight of textile materials plus rubber and/or plastics is _____%
E Is it waterproof?
F Does it have a protective metal toe cap?
G Will it cover the wearer's ankle bone?
H Will it cover the wearer's knee cap?
I [Reserved.]
J Is it designed to protect against water, oil, grease, or chemicals, or cold or inclement weather?
K Is it a slip-on?
L Is it a downhill or cross-country skiboot?
M Is it serious sports footwear other than skiboots? (Chapter 64 subheading note defines sports footwear.)
N Is it a tennis, basketball, gym, or training shoe or the like?
O Is it made on a base or platform of wood?
P Does it have open toes or open heels?
Q Is it made by the (lipped insole) welt construction?
R Is it made by the turned construction?
S Is it worn exclusively by men, boys or youths?
T Is it made by an exclusively adhesive construction?
U Are the fibers of the upper, by weight, predominately vegetable fibers?
V Is it disposable, i.e., intended for one-time use?
W Is it a "Zori"?
X Is the leather in the upper pigskin?
Y Are the sole and upper made of woolfelt?
Z Is there a line of demarcation between the outer sole and upper?

The information requested above may be furnished on CF 5523 or other appropriate format by the exporter, manufacturer or shipper.

Also, the following information must be furnished by the importer or his authorized agent if classification is claimed under one of the subheadings below:

If subheading 6401.99.80, 6402.19.10, 6402.30.30, 6402.91.40, 6402.99.15, 6402.99.30, 6406.11.40, 6404.11.60, 6404.19.35, 6404.19.40, or 6404.19.60 is claimed:

Does the shoe have a foxing or foxing-like band? If so, state its materials(s).

Does the sole overlap the upper other than just at the front of the toe and/or at the back of the heel?

Definitions for some of the terms used in questions A to Z above: For the purpose of this section, the following terms have the approximate definitions below. If either a more complete definition or a decision as to its application to a particular article is needed, the maker or importer of record (or the agent of either) should contact Customs prior to entry of the article.

a. In an *exclusively adhesive construction*, all of the piece(s) of the bottom would separate from the upper or from each other if all adhesives, cements, and glues were dissolved. It includes shoes in which the pieces of the upper are stitched to each other, but not to any part of the bottom. Examples include:

1. Vulcanized construction footwear;

2. Simultaneous molded construction footwear;

3. Molded footwear in which the upper and the bottom are one piece of molded rubber or plastic, and

4. Footwear in which staples, rivets, stitching, or any of the methods above are either primary or just extra or auxiliary, even through adhesive is a major part of the reason to bottom will not separate from the upper.

b. *Composition leather* is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

c. *Leather* is the tanned skin of any animal from which the fur or hair has been removed. Tanned skins coated or laminated with rubber and/or plastics are "leather" only if the leather gives the material its essentail character.

d. A *line of demarcation* exists if one can indicate where the sole ends and the upper begins. For example, knit booties do not nrmally have a line of demarcation.

e. *Men's, boys' and youths'* sizes cover footwear of American youths sizes 11½ and larger for males, and do not include footwear commonly worn by both sexes. If more than 4% of the shoes sold in a given size will be worn by females, that size is "commonly worn by both sexes."

f. Footwear is designed to *protect* against water, oil or cold or inclement weather only if it is substantially more of a protection against those item than the usual shoes of that type. For example, leather oxfords will clearly keep one's feet warmer and drier than going barefoot, but they are not a protection in this sense. On the other hand the snow-jobber is the protective version of the nonprotective jogging shoe.

g. *Rubber and/or plastics* includes any textile material visibly coated (or covered) externally with one or both of those materials.

h. *Slip-on* includes:

1. A boot which must be pulled on.

2. Footwear with elastic cores which must be stretched to get it on, but not bootwear having a separate piece of elasticized fabric which forms a full circle around the foot or ankle.

i. *Sports footwear* includes only:

(1) Footwear which is designed for a sporting activity and has, or has provision for, the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;

(2) Skating boots (without skates attached), ski boots and cross-country

ski footwear, wrestling boots, boxing boots and cycling shoes.

j. *Tennis shoes, basketball shoes, gym shoes, training shoes and the like* covers athletic footwear other than sports footwear, whether or not principally used for such athletic games or purposes.

k. *Textile materials* are made from cotton, other vegetable fibers, wool, hair, silk or man-made fibers. Note: Cork, wood carboard and leather are not textile materials.

l. In *turned* construction, the upper is stitched to the leather sole wrong side out and the shoe is then turned right side out.

m. *Vegetable fibers* include cotton, flax and ramie, but do not include either rayon or plaiting materials such as rattan or wood strips.

n. *Waterproof footwear* includes footwear designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

o. *Welt footwear* means footwear constructed with a welt, which extends around the edge of the outer sole, and in which the welt and shoe upper are sewed to a lip on the surface of the insole, and the outer sole is sewed or cemented to the welt.

p. A *zori* has an upper consisting only of straps or thongs of molded rubber or plastic. This upper is assembled to a foamed rubber or plastic sole by means of plugs.

Fur products and furs (T.D. 53064)—(1) Name or names (as set forth in the Fur Products Name Guide (16 CFR 301.0) of the animal or animals that produced the fur, and such qualifying statements as may be required pursuant to § 7(c) of the Fur Products Labeling Act (15 U.S.C. 69e(c)); (2) A statement that the fur product contains or is composed of used fur, when such is the fact; (3) A statement that fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) A statement that the fur product is composed wholly or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) Name and address of the manufacturer of the fur product; (6) Name of the country of origin of the furs or those contained in the fur product.

Glassware and other glass products (T.D. 53079, 55977)—Classifiable under Heading 7013 HTSUS—Statement of the separate value of each component article in the set.

Gloves—State if the merchandise has a plastics or a rubber exterior. (See Chapter 59, Note 2(a)(3)).

Grain or grain and screenings (T.D. 51284)—Statement on Customs invoices for cultivated grain or grain and screenings that no screenings are included with the grain, or, if there are screenings included, the percentage of the shipment which consists of screenings commingled with the principal grain.

Handkerchiefs—(1) State the exact dimensions (length and width) of the merchandise; (2) If of cotton indicate whether the handkerchief is hemmed and whether it contains lace or embroidery.

Hats or headgear—(1) If classifiable under subheading 6502.00.40 or 6502.00.60, HTSUS—Statement as to whether or not the article has been bleached or colored; (2) If classifiable under subheadings 6502.00.20 through 6502.00.60 or 6504.00.30 through 6504.00.90, HTSUS—Statement as to whether or not the article is sewed or not sewed, exclusive of any ornamentation or trimming.

Hosiery—(1) Indicate whether a single yarn measures less than 67 decitex. (2) Indicate whether the hosiery is full length, knee length, or less than knee length. (3) Indicate whether it contains lace or net.

Iron or steel classifiable in Chapter 72 or headings 7301 to 7307, HTSUS (T.D. 53092, 55977)—Statement of the percentages by weight or carbon and any metallic elements contained in the articles, in the form of a mill analysis or mill test certificate.

Iron oxide (T.D. 49989, 50107)—For iron oxide to which a reduced rate of duty is applicable, a statement of the method of preparation of the oxide, together with the patent number, if any.

Machines, equipment and apparatus—Chapters 84 and 85, HTSUS—A statement as to the use or method of operation of each type of machine.

Machine parts (T.D. 51616)—Statement specifying the kind of machine for which the parts are intended, or if this is not known to the shipper, the kinds of machines for which the parts are suitable.

Machine tools: (1) Headings 8456 through 8462—machine tools covered by these headings equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC must state so; (2) Headings 8456 through 8463—machine tools covered by these headings if used or rebuilt must state so; (3) Subheading 8456.30.10—EDM: (Electical Discharge Machines) if a Traveling Wire (Wire Cut) type must state so. Wire EDM's use a copper or brass wire for the electrode; (4) Subheading 8457.10.0010 through 8457.10.0050—Machining Centers. Must state whether or not they have an ATC (Automatic Tool Changer). Vertical spindle maching centers with an ATC must also indicate the Y-travel; (5) Subheading 8458.11.0030 through 8458.11.0090—horizontal lathes: numerically controlled. Must indicate the rated HP (or KW rating) of the main spindle motor. Use the continuous rather than the 30 minute rating.

Madeira embroideries (T.D. 49988)—(1) With respect to the materials used, furnish: (a) country of production; (b) width of the material in the piece; (c) name of the manufacturer; (d) kind of material, indicating manufacturer's quality number; (e) landed cost of the material used in each item; (f) date of the order; (g) date of the invoice; (h) invoice unit value in the currency of the purchase; (i) discount from purchase price allowed, if any; (2) With respect to the finished embroidered articles, furnish: (a) manufacturers's name, design number, and quality number; (b) importer's design number, if any; (c) finished size; (d) number of embroidery points per unit of quantity; (e) total for overhead and profit added in arriving at the price or value of the merchandise covered by the invoice.

Motion-picture films—(1) Statement of footage, title, and subject matter of each film; (2) Declaration of shipper, cameraman, or other person with knowledge of the facts identifying the films with the invoice and stating that the basic films were to the best of his knowledge and belief exposed abroad and returned for use as newsreel; (3) Declaration of importer that he believes the films entered by him are the ones covered by the preceding declaration and that the films are intended for use as newsreel.

Paper classifiable in Chapter 48—Invoices covering paper shall contain the following information, or will be accompanied by specification sheets containing such information:

(1) Weight of paper in grams per square meter; (2) Thickness, in micrometers (microns); (3) If imported in rectangular sheets, length and width of sheets, in cm; (4) if imported in strips, or rolls, the width, in cm. In the case of rolls, the diameter of rolls in cm; (5) Whether the paper is coated or impregnated, and with what materials; (6) Weight of coating, in grams per square meter; (7) Percentage by weight of the total fiber content consisting of wood fibers obtained by a mechanical process, chemical sulfate or soda process, chemical sulfite process, or semi-chemical process, as appropriate; (8) Commercial designation, as "Writing", "Cover", "Drawing", "Bristol", "Newsprint", etc.; (9) Ash

content; (10) Color; (11) Glaze, or finish; (12) Mullen bursting strength, and Mullen index; (13) Stretch factor, in machine direction and in cross direction; (14) Tear and tensile readings; in machine direction, in cross direction, and in machine direction plus cross direction; (15) Identification of fibers as "hardwood" where appropriate; (16) Crush resistance; (17) Brightness; (18) Smoothness; (19) If bleached, whether bleached uniformly throughout the mass; (20) Whether embossed, perforated, creped or crinkled.

Plastic plates, sheets, film, foil and strip of headings 3920 and 3921—(1) Statement as to whether the plastic is cellular or noncellular; (2) Specification of the type of plastic; (3) Indication of whether or not flexible and whether combined with textile or other material.

Printed matter classifiable in Chapter 49—Printed matter entered in the following headings shall have, on or with the invoices covering such matter, the following information: (1) *Heading 4901*—(a) Whether the books are: dictionaries, encyclopedias, textbooks, bound newspapers or journals or periodicals, directories, bibles or other prayer books, technical, scientific or professional books, art or pictorial books, or "other" books; (b) if "other" books, whether hardbound or paperbound; (c) if "other" books, paperbound, other than "rack size": number of pages (excluding covers). (2) *Heading 4902*—(a) Whether the journal or periodical appears at least four times a week. If the journal or periodical appears other than at least four times a week, whether it is a newspaper supplement printed by a gravure process, is it a newspaper, business or professional journal or periodical, or other than these; (3) *Heading 4904*—Whether the printed or manuscript music is sheet music, not bound (except by stapling or folding); (4) *Heading 4905*—(a) Whether globes or not; (b) if not globes, whether in book form or not; (c) in any case, whether or not in relief; (5) *Heading 4908*—Whether or not vitrifiable; (6) *Heading 4904*—Whether post cards, greeting cards, or other; (7) *Heading 4910*—(a) Whether or not printed on paper by a lithographic process; (b) if printed on paper by a lithographic process, the thickness of the paper, in mm; (8) *Subheading 4911.91*—(a) Whether or not printed over 20 years at time of importation; (b) if printed not over 20 years at time of importation, whether suitable for use in the production of articles of heading 4901; (c) if not printed over 20 years at time of importation, and not suitable for use in the production of articles of heading 4901, whether the merchandise is lithographs on paper or paperboard; (d) if lithographs on paper or paperboard, under the terms of the immediately preceding description, thickness of the paper or paperboard, and whether or not posters; (e) in any case, whether or not posters; (f) in any case, whether or not photographic negatives or positives on transparent bases; (g) *Subheading 4911.99*—If not carnets, or parts thereof, in English or French, whether or not printed on paper in whole or in part by a lithographic process.

Pulp classifiable in Chapter 47—(1) Invoices covering chemical woodpulp, dissolving grades, in *Heading 4702* shall state the insoluble fraction (as a percentage) after 1 hour in a caustic soda solution containing 18% sodium hydroxide (NaOH) at 20 °C; (2) *Subheading 4702.00.0020*—Pulp entered under this subheading shall in addition contain on or with the invoice the ash content as a percentage to the third decimal point, by weight.

Refrigeration equipment (1) Refrigerator-freezers classifiable under subheading 8418.10.00 and (2) refrigerators classifiable under subheading 8418.21.00—(a) Statement as to whether they are compression or absorption type; (b) Statement of their refrigerated volume in liters. (3) Freezers classifiable under subheading 8418.30.00 and 8418.40.00—Statement as to whether they are chest or upright type. (4) Liquid chilling refrigerating units classifiable under subheadings 8418.69.0045 through 8418.69.0060—Statement as to whether they are centrifugal open-type, centrifugal hermetic-type, absorption-type or reciprocating type.

Rolling mills—Subheadings 8455.30.0005 through 8455.30.0085. Rolls for rolling mills: Indicate the composition of the roll—gray iron, cast steel or other—and the weight of each roll.

Rubber products of Chapter 40—(1) Statement as to whether combined with textile or other material; (2) Statement whether the rubber is cellular or noncellular, unvulcanized or vulcanized, and if vulcanized, whether hard rubber or other than hard rubber.

Screenings or scalpings of grains or seeds (T.D. 51096)—(1) Whether the commodity is the product of a screening process; (2) If so, whether any cultivated grains have been added to such commodity; (3) If any such grains have been added, the kind and percentage of each.

Textile fiber products (T.D. 55095)—(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product; (2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product; (3) The name, or other identification issued and registered by the Federal Trade Commission, of the manufacturer of the product or one or more persons subject to § 3 of the Textile Fiber Products Identification Act (15 U.S.C. 70a) with respect to such product; (4) The name of the country where processed or manufactured. *See also* "Wearing Apparel" below.

Tires and tubes for tires, of rubber or plastics—(1) Specify the kind of vehicle for which the tire is intended, i.e. airplane, bicycle, passenger car, on-the-highway light or heavy truck or bus, motorcycle; (2) If designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in Chapter 84 or in subheading 8716.80.10, designate whether the tire is new, recapped, or used; pneumatic or solid; (3) Indicate whether the tube is designed for tires provided for in subheading 4011.91.10, 4011.99.10, 4012.10.20, or 4012.20.20.

Tobacco (including tobacco in its natural state) (T.D. 44854, 45871)—(1) Specify in detail the character of the tobacco in each bale by giving (a) country and province of origin, (b) year of production, (c) grade or grades in each bale, (d) number of carrots or pounds of each grade if more than one grade is packed in a bale, (e) the time when, place where, and person from whom purchased, (f) price paid or to be paid for each bale or package, or price for the vega or lot if purchased in bulk, or if obtained otherwise than by purchase, state the actual market value per bale; (2) If an invoice covers or includes bales of tobacco which are part of a vega or lot purchased in bulk, the invoice must contain or be accompanied by a full description of the vega or lot purchased; or if such description has been furnished with a previous importation, the date and identity of such shipment; (3) Packages or bales containing only filler leaf shall be invoiced as filler; when containing filler and wrapper but not more than 35 percent of wrapper, they shall be invoiced as mixed; and when containing more than 35 percent of wrapper, they shall be invoiced as wrapper.

Watches and watch movements classifiable in Chapter 91 of the

HTSUS—For all commercial shipments of such articles, there shall be required to be shown on the invoice, or on a separate sheet attached to and constituting a part of the invoice, such information as will reflect with respect to each group, type, or model, the following:

(A) For watches, a thorough description of the composition of the watch cases, the bracelets, bands or straps; the commercial description (ebauche caliber number, ligne size and number of jewels) of the movements contained in the watches; and the type of battery (manufacturer's name and reference number), if the watch is battery-operated;

(B) For watch movements, the commercial description (ebauche caliber number, ligne size and number of jewels). If battery-operated, the type of battery (manufacturer's name and reference number);

(C) The name of the manufacturer of the exported watch movements and the name of the country in which the movements were manufactured.

Wearing apparel—(1) All invoices for textile wearing apparel should indicate a component material breakdown in percentages by weight for all component fibers present in the entire garment, as well as separate breakdowns of the fibers in the (outer) shell (exclusive of linings, cuffs, waistbands, collars and other trimmings) and in the lining. (2) For garments which are constructed of more than one component or material (combinations of knit and not knit fabric or combinations of knit and/or not knit fabric with leather, fur, plastic including vinyl, etc.), the invoice must show a fiber breakdown in percentages by weight for each separate textile material in the garment and a breakdown in percentages by weight for each nontextile material for the entire garment; (3) For woven garments—Indicate whether the fabric is yarn dyed and whether there are "two or more colors in the warp and/or filling"; (4) For all-white T-shirts and singlets—Indicate whether or not the garment contains pockets, trim, or embroidery; (5) For mufflers—State the exact dimensions (length and width) of the merchandise.

Wood products—(1) Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm (lumber), classifiable under Chapter 44, heading 4407, HTSUS, and wood continuously shaped along any of its edges or faces, whether or not planed, sanded or finger-jointed: Coniferous: Subheading 4409.10.90 and Nonconiferous: Subheading 4409.20.90, HTSUS, and dutiable on the basis of cubic meters—

Quantity in cubic meters (m) before dressing; (2) Fiberboard of wood or other ligneous materials whether or not bonded with resins or other organic substances, under Chapter 44, Heading 4411, HTSUS, and classifiable according to its density—Density in grams per cubic centimeter (cm); (3) Plywood consisting solely of sheets of wood, classifiable under Chapter 44, Subheading 4412.11, 4412.12, and 4412.19, HTSUS, and classifiable according to the thickness of the wood sheets—Thickness of each ply in millimeter (mm).

Wool and hair—See § 151.62 of this chapter for additional information required on invoices.

Wool products, except carpets, rugs, mats, and upholsteries, and wool products made more than 20 years before importation (T.D. 50388, 51019)—(1) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (a) wool; (b) reprocessed wool; (c) reused wool; (d) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (e) the aggregate of all other fibers; (2) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; and (3) the name of the manufacturer of the wool product, except when such product consists of mixed wastes, residues, and similar merchandise obtained from several suppliers or unknown sources.

Woven fabric of man-made fibers in headings 5407, 5408, 5512, 5513, 5514, 5515, 5516—

(1) State the exact width of the fabric;

(2) Provide a detailed description of the merchandise, (trade name, if any);

(3) Indicate whether bleached, unbleached, dyed, of yarns of different colors and/or printed;

(4) If composed of more than one material, list percentage by weight in each;

(5) Identify the man-made fibers as artificial or synthetic, filament or staple, and state whether the yarns are high tenacity. Specify the number of turns per meter in each yarn;

(6) Specify yarn sizes in warp and filling;

(7) Specify how the fabric is woven (plain weave, twill, sateen, dobby, jacquard, swivel, lappet, etc.);

(8) Indicate the number of single threads per square centimeter in both warp and filling;

(9) Supply the weight per square meter in grams;

(10) Provide the average yarn number using this formula:

$$\frac{100 \times \text{number of single threads per square centimeter}}{\text{(number of grams per square meter)}};$$

(11) For spun yarns, specify whether combed or carded.

(12) For filament yarns, specify whether textured or not textured.

Yarns—(1) All yarn invoices should show: (a) Fiber content by weight; (b) whether single or plied; (c) whether or not put up for retail sale (*See* Section XI, Note 4, HTSUS); (d) whether or not intended for use as sewing thread;

(2) If chief weight of silk—show whether spun or filament;

(3) If chief weight of cotton—show:

(a) Whether combed or uncombed

(b) Metric number (mn)

(c) Whether bleached and/or mercerized;

(4) If chief weight of man-made fiber—show:

(a) Whether filament, or spun, or a combination of filament and spun

(b) If a combination of filament and spun—give percentage of filament and spun by weight.

(5) If chief weight of filament man-made fiber—show:

(a) Whether high tenacity (See Section XI, note 6 HTSUS).

(b) Whether monofilament, multifilament or strip

(c) Whether texturized

(d) Yarn number in decitex

(e) Number of turns per meter

(f) For monofilaments—show cross sectional dimension in millimeters

(g) For strips—show the width of the strip in millimeters (measure in folded or twisted condition if so imported).

(b) *Special Summary Steel Invoice* (1) A Special Summary Steel Invoice (Customs Form 5520) shall be filed in duplicate at the time of filing the entry

summary for each shipment determined by the District Director to have an aggregate purchase price of $10,000 or over or, if from a contiguous country, of $5,000 or over (including all expenses incident to placing the merchandise in condition packed ready for shipment to the United States), and containing any of the articles of steel listed in paragraph (b)(2) of this section. In addition to the information required by § 141.86, the Special Summary Steel Invoice shall set forth the following: (T.D.'s 78–53, 79–79, 79–221, 81–291.)

(A) The date of agreement on the final sales price for the shipment.

(B) A description of, and the additional price charged for, extras, other than width and length, with extras described in terms understood in the U.S. market.

(C) American Iron and Steel Institute (AISI) category.

(D) The base price for each steel category on which the total sales price was based.

(E) The name of the producer, the importer, and the price paid by the first unrelated purchaser in the United States, if that price is available at the time of filing the entry summary. One or more continuation sheets may be used to supply this information, if necessary. (T.D. 79–221.)

(2) The following articles of steel, listed by AISI category and product name, are subject to the special invoice requirements of § 141.89(b)(1):

(1) Ingots, blooms, billets, slabs, etc.
(2) Wire rods.
(3) Structural shapes, plain 76 mm and over.
(4) Sheet piling.
(5) Plates.
(6) Rail and track accessories.
(7) Wheels and axles.
(8) Concrete reinforcing bars.
(9) Bar shapes under 76 mm.
(10) Bars, hot rolled, carbon.
(11) Bars, hot rolled, alloy.
(12) Bars, cold finished.
(13) Hollow drill steel.
(14) Welded pipe and tubing.
(15) Other pipe and tubing.
(16) Round and shaped wire.
(17) Flat wire.
(18) Bale ties.
(19) Galvanized wire fencing.
(20) Wire nails.
(21) Barbed wire.
(22) Black plate.
(23) Tin plate.
(24) Terne plate.
(25) Sheets, hot rolled.
(26) Sheets, cold rolled.
(27) Sheets, coated including galvanized.
(28) Sheets, coated, alloy.
(29) Sheets, hot rolled.
(30) Strip, cold rolled.
(31) Strip, hot and cold rolled-alloy.
(32) Sheets, other, electric coated.
(38) Fabricated structurals.
(43) Wire rope.
(44) Wire strand.
(51) Rigid conduit.

Note.—Although not in sequence with existing numbers in § 141.89(b)(2), the numbers listed are those assigned to these articles by the American Iron and Steel Institute. [TD 87–43.]

§ 141.90 [Amended]

8. Section 141.90, paragraph (b), is amended by removing the words "item number of the Tariff Schedules of the United States" and by adding, in their place, the words "subheading of the Harmonized Tariff Schedule of the United States".

§ 141.113 [Amended]

9. Section 141.113 is amended as follows:

(a) Paragraph (a)(5) is amended by removing the words "Schedule 7, part 2E, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 91, Additional U.S. Note 4, United States Tariff Schedule (HTSUS)".

(b) Paragraph (g) is amended by removing the words "Schedule 8, part 5C, Tariff Schedules of the United States" in each place that they appear and by adding, in their place, the words "Chapter 98, Subchapter XII, HTSUS".

PART 142—ENTRY PROCESS

§ 142.17 [Amended]

3. Section 142.17, paragraph (b)(5), is amended by removing the words "Tariff Schedules of the United States item number" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States subheading number, to the eight-digit level".

§ 142.17a [Amended]

4. Section 142.17a(a)(2) is amended by removing the words "Tariff Schedules of the United States Annotated statistical reporting number" and by adding in their place the words "Harmonized Tariff Schedule of the United States Annotated subheading to the ten-digit level".

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.21 [Amended]

2. Section 143.21 is amended as follows:

(a) Paragraph (a) is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix to the Tariff Schedules of the United States Annotated" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS".

(b) Paragraph (c) is amended by removing the words "in items from Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated;" and by adding, in their place, the words "under subheadings from Sections VII, VIII, XI, and XII; or in Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS".

(c) Paragraph (d) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, HTSUS".

(d) Paragraph (f) is amended by removing the words "item 806.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.40, HTSUS".

(e) Paragraph (h) is amended by removing the words "item 270.25, 273.10, 273.35, 765.03, 850.10 or 851.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, HTSUS".

(f) Paragraph (h) is further amended by removing the words "item 850.10 or 851.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9810.00.05 and 9810.00.30, HTSUS".

§ 143.23 [Amended]

3. Section 143.23, paragraph (d), is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and

772.35; and Parts 2 and 3 of the Appendix the Tariff Schedules of the United States Annotated" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94; and Chapter 99, Subchapter III and IV, Harmonized Tariff Schedule of the United States".

§ 143.25 [Amended]

4. Section 143.25 is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 143.29 [Amended]

5. Section 143.29, paragraph (b), is amended by removing the words "Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202)" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for Part 144 is revised to read as follows:

Authority: 9 U.S.C. 66, 1484, 1557, 1559, 1624.

§ 144.15 [Amended]

2. In § 144.15, paragraph (a)(2), is amended by removing the words "item 804.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.80, Harmonized Tariff Schedule of the United States".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised as follows:

Authority— 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1624.

§ 145.12 [Amended]

2. Section 145.12, paragraph (e)(1), is amended by removing the words "item 869.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9816.00.40, Harmonized Tariff Schedule of the United States".

§ 145.34 [Amended]

3. Section 145.34, paragraph (a), is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States".

§ 145.35 [Amended]

4. Section 145.35, is amended by removing the words "item 800.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.10, Harmonized Tariff Schedule of the United States".

§ 145.36 [Amended]

5. Section 145.36 is amended by removing the words "items 270.25, 273.10, 273,35, 765.03, 850.10, or 851.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, Harmonized Tariff Schedule of the United States (HTSUS" and by removing the words "item 850.10 or 851.10" and by adding, in their place, the words "subheading 9810.00.05 or 9101.30, HTSUS".

§ 145.37 [Amended]

6. Section 145.37(b) is amended by removing the words "item 270.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 4903.00.00, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 830.00" and by adding, in their place, the words "subheading 9808.00.10, HTSUS".

§ 145.43 [Amended]

7. Section 145.43 is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States".

PART 146—FOREIGN TRADE ZONES

1. The authority citation for Part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a—81u, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1623, 1624. Section 146.5 also issued under 31 U.S.C. 9701.

§ 146.1 [Amended]

2. Section 146.1, paragraph (b)(5), is amended by removing the worlds "General Headnote 2, Tariff Schedules of the United States" and by adding, in their place, the words "General Note 2, Harmonized Tariff Schedule of the United States".

§ 146.67 [Amended]

3. Section 146.67, paragraph (e), is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States".

§ 146.70 [Amended]

4. Section 146.70, paragraph (b), is amended by removing the words "Schedule 8, Part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States".

PART 147—TRADE FAIRS

1. The authority citation for Part 147 is revised to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624, 1751–1756, unless otherwise noted.

§ 147.2 [Amended]

2. Section 147.2 is amended as follows:

(a) Paragraph (a)(2) is amended by removing the words "Schedule 8, Part 5B, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "Schedule 8, Part 5C, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter XIII, HTSUS".

§ 147.45 [Amended]

3. Section 147.45 is amended by removing the words "item 804.10, if aircraft, or item 804.20, if not aircraft, unless excluded by headnote 1(c), Subpart A, Part 1, Schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9801.00.70, if aircraft, or subheading 9801.00.80, if not aircraft, unless excluded by U.S. Note 1(c), Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 is revised to read as follows:

Authority: 19 U.S.C 66, 1496, 1624. The provisions of this part, except for Subpart C, are also issued under General Note 9, Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

§ 148.2 [Amended]

2. Section 148.2, paragraph (b), is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.5 [Amended]

3. Section 148.5 is amended by removing the words "item 810.20 or 813.10, Tariff Schedules of the United States" and by adding, in their place, the

words "subheadings 9804.00.10, or 9804.00.45, Harmonized Tariff Schedule of the United States".

§ 148.6 [Amended]

4. Section 148.6 paragraph (a), is amended by removing from the first sentence the words "items 810.20, 812.10, 812.30, or 313.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.10, 9804.00.20, 9804.00.25, 9804.00.35 or 9804.00.45, Harmonized Tariff Schedule of the United States (HTSUS)"; and by removing from the second sentence the words "item 810.20 for tools of trade taken abroad or unless item 813.10 for personal and household effects taken abroad"; and by removing from the third sentence the words "item 810.20 or item 813.10" and by adding in the second and third sentences, in their place, the words "subheadings 9804.00.10 or 9804.00.45".

§ 148.8 [Amended]

5. Section 148.8 is amended as follows:

(a) The introductory text is amended by removing the words "items 812.10, 812.20, 812.25, 812.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.20, 9804.00.25, 9804.00.30, 9804.00.35, Harmonized Tariff Schedule of the United States".

(b) Paragraph (a) is amended by removing the words "item 812.25" and by adding, in their place, the words "subheading 9804.00.30".

§ 148.13 [Amended]

6. Section 148.13 is amended as follows:

(a) Paragraph (c)(1) is amended by removing the words "item 810.20, Tariff Schedules of the United States (19 U.S.C. 1202), for tools of trade taken abroad, or under item 813.10, for personal and household effects taken abroad" and by adding in their place the words "subheading 9804.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), for tools of trade taken abroad, or under subheading, 9804.00.45, HTSUS, for personal or household effects taken abroad."

(b) Paragraph (c)(2) is amended by removing the words "item 812.10, Tariff Schedule of the United States (19 U.S.C. 1202), for wearing apparel and other similar personal effects; item 812.20, for tobacco products and alcoholic beverages; item 812.25, for articles to be disposed of as bona fide gifts; or item 812.40, for articles accompanying a person in transit to a place outside U.S. Customs territory" and by adding, in their place, the words "subheading 9804.00.20, HTSUS (19 U.S.C. 1202), for wearing apparel and other similar personal effects; subheading 9804.00.25, HTSUS, for tobacco products and alcoholic beverages; subheading 9804.00.30, HTSUS, for articles to be disposed of as bona fide gifts; or subheading 9804.00.40, HTSUS, for articles accompanying a person in transit to a place outside U.S. customs territory."

(c) Paragraph (c)(3) is revised to read as follows:

(c) * * *

(3) Books, libraries, furniture, and similar household effects entitled to free entry under subheading 9804.00.05, HTSUS.

§ 148.23 [Amended]

7. Section 148.23 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(2) is revised as follows:

(a) * * *

(2) Work of art classifiable under subheadings 9701.10.00 or 9701.90.00, HTSUS.

(c) Paragraph (a)(3) is revised as follows:

(a) * * *

(3) Works of art classifiable under subheadings 9702.00.00 or 9703.00.00, HTSUS, upon compliance with § 10.48 of this chapter.

(d) Paragraph (a)(4) is removed.

(e) Paragraph (c) is amended by removing the words "Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated" and by adding in their place the words "Sections VII, VIII, XI, and XII; Chapter 94, and Chapter 99, Subchapter III and IV, HTSUS".

(f) Paragraph (c)(2) is amended by removing the words "Schedule 3; Part 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix to the Tariff Schedules of the United States Annotated" and by adding, in their place, the words "Sections VII, VIII, XI, and XII; Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS".

§ 148.26 [Amended]

8. Section 148.26(b) is amended by removing the second sentence, beginning with the words "Alcoholic beverages found * * *", in its entirety.

§ 148.31 [Amended]

9. Section 148.31 is amended by removing the words "item 813.10 and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.45, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.33 [Amended]

10. Section 148.33 (a) is amended by removing the words "item 813.30 and 813.31 and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.65 and 9804.00.70, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.37 [Amended]

11. Section 148.37(b) is amended by removing the words "item 813.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.75, Harmonized Tariff Schedule of the United States."

§ 148.39 [Amended]

12. Section 148.39 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 813.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.60, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 813.25, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9804.00.60, HTSUS".

§ 148.41 [Amended]

13. Section 148.41 is amended by removing the words "item 812.40, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.40 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.42 [Amended]

14. Section 148.42(a) is amended by removing the words "item 812.10, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.20, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.43 [Amended]

15. Section 148.43(a) is amended by removing the words "item 812.20, and

schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.25 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 148.44 [Amended]

16. Section 148.44(a) is amended by removing the words "item 812.25, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.30 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.45 [Amended]

17. Section 148.45 is amended by removing the words "item 812.30, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.35 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 148.46 [Amended]

18. Section 148.46(a) by removing the words "schedule 8, part 2A, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, U.S. Note 1, HTSUS"

§ 148.51 [Amended]

19. Section 148.51 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "item 812.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.39, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(2) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, HTSUS".

§ 148.52 [Amended]

20. Section 148.52(a) is amended by removing the words "item 810.10, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.05, Harmonized Tariff Schedule of the United States".

§ 148.53 [Amended]

21. Section 148.53 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 2, headnote 1, and item 811.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.15, Harmonized Tariff Schedule of the United States (HTSUS)"; by removing the words "item 810.20" and by adding, in their place, the words "subheading 9804.00.10"; and by removing the words "item 811.10" and by adding, in their place, the words "subheading 9804.00.15".

(b) Paragraph (b) is amended by removing the words "item 810.20, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.10, HTSUS".

§ 148.54 [Amended]

22. Section 148.54(a) is amended by removing the words "item 815.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.85 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States."

§ 148.63 [Amended]

23. In § 148.63, the introductory text to paragraph (a) is amended by removing the words "item 814.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.80, Harmonized Tariff Schedule of the United States (HTSUS)".

§ 148.64 [Amended]

24. Section 148.64 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 812.25 or 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9804.00.30 or 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)"; and by removing the words "item 814.00, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9804.00.80, HTSUS".

(b) Paragraph (b)(2) is amended by removing the words "item 814.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.80, HTSUS"; and by adding, following the words, "Alcoholic perfumery not in excess of 150 milliliters", the words "(Subheading 9805.00.50, HTSUS (19 U.S.C. 1202, 1321)). [TD 80–179.]"

§ 148.65 [Amended]

25. Section 148.65(a) is amended by removing the words "schedule 8, Part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.66 [Amended]

26. Section 148.66 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b)(2) is amended by removing the words "item 812.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9808.00.40, HTSUS".

(c) Paragraph (c) is amended by removing the words "item 812.25, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.30, HTSUS".

§ 148.71 [Amended]

27. Section 148.71 introductory text is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.73 [Amended]

28. Section 148.73(b) is amended by removing the words "schedule 8, part 2A, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States".

§ 148.74 [Amended]

29. Section 148.74 is amended as follows:

(a) The introductory text to paragraph (a) is amended by removing the words "item 817.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805 00.50, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The introductory text to paragraph (b) is revised as follows:

(b) The term "personal effects" as used in subheading 9805.00.50, HTSUS is not confined to that class of articles described in subheading 9804.00.20, HTSUS, nor is any period of use, such as prescribed by subheading 9804.00.05, HTSUS, applicable to household effects entered under subheading 9805.00.50, HTSUS. The privilege of free entry under subheading 9805.00.50, HTSUS does not apply to:.

(c) Paragraph (b)(1) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS

(d) Paragraph (c) is revised to read as follows:

(c) *Limitation on alcoholic beverages and tobacco products.* A total of not more than 4 liters of alcoholic beverages and not more than 100 cigars shall be accorded free entry under subheading 9805.00.50, HTSUS, subject to the conditions that:

(1) These articles accompany the person making the claim for free entry upon his arrival in the U.S.;

(2) Not more than 1 liter of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions;

(3) Such individual has not concurrently claimed exemption as a returning resident under subheading 9804.00.65 and 9804.00.70, HTSUS; and

(4) Such person, if other than one in the service of the U.S., shall have attained the age of 21.

(e) The introductory text to paragraph (d) is amended by removing the words "item 817.00" and by adding in their place the words "subheading 9805.00.50, HTSUS,".

§ 148.75 [Amended]

30. Section 148.75 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

(c) Paragraph (c) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

§ 148.77 [Amended]

31. Section 148.77 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States" and by removing the words "item 817.00, Tariff Schedules of the United States" and the words "item 817.00" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

(b) Paragraph (b)(1) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, HTSUS".

(c) The form in paragraph (b)(2) is amended by removing the words "item 817.00, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9805.00.50, Harmonized Tariff Schedule of the United States".

(d) Paragraph (c)(1) is amended by removing the words "item 817.00" and by adding, in their place, the words "subheading 9805.00.50".

§ 148.82 [Amended]

32. Section 148.82 is amended as follows:

(a) Paragraph (b)(1) is amended by removing the words "item 820.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.05, Harmonized Tariff Schedule of the United States (HTSUS),",

(b) Paragraph (b)(2) is amended by removing the words "item 820.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.05, Harmonized Tariff Schedule of the United States (HTSUS)".

(c) Paragraph (b)(4) is amended by removing the words "item 820.50, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.25, HTSUS".

(d) Paragraph (b)(5) is amended by removing the words "item 820.60, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.30, HTSUS".

§ 148.85 [Amended]

33. Section 148.85 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 822.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.40, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 822.30, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.50, HTSUS".

(c) Paragraph (c) is amended by removing the words "item 822.40, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.55, HTSUS".

§ 148.86 [Amended]

34. Section 148.86 is amended by removing the words "item 841.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9809.00.20, Harmonized Tariff Schedule of the United States".

§ 148.87 [Amended]

35. Section 148.87 (a) is amended by removing the words "item 820.30, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.15, Harmonized Tariff Schedule of the United States".

§ 148.88 [Amended]

36. Section 148.88(c) is amended by removing the words "item 822.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.55, Harmonized Tariff Schedule of the United States".

§ 148.90 [Amended]

37. Section 148.90 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "item 820.40, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9806.00.20, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(2) is amended by removing the words "item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.45, HTSUS".

(c) Paragraph (a)(3) is amended by removing the words "item 841.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9809.00.30, HTSUS".

(d) Paragraph (c) is amended by removing the words "item 820.40, 822.20, or 841.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheadings 9806.00.20, 9806.00.45 and 9809.00.30, HTSUS".

(e) Paragraph (d)(1)(i) is amended by removing the words "item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.45, HTSUS".

(f) Paragraph (d)(3) is amended by removing the words "item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9806.00.45, HTSUS".

(g) Paragraph (e) is amended by removing the words "item 820.40, 822.20, or 841.20, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheadings 9806.00.20, 9806.00.45, 9809.00.30, HTSUS".

§ 148.101 [Amended]

38. Section 148.101 is amended by removing the words "item 869.00 or

869.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States".

§ 148.105 [Amended]

39. Section 148.105(a) is amended by removing the words "item 869.00 or 869.10, Tariff Schedules of the United States" and by adding, in their place, the words "subheadings 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States".

§ 148.111 [Amended]

40. Section 148.111 is amended as follows:

(a) Paragraph (a) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 869.10 of the Tariff Schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

§ 148.113 [Amended]

41. Section 148.113(a)(1) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

§ 148.115 [Amended]

42. Section 148.115 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "item 813.31, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) The introductory text to paragraph (a)(2) is amended by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

(c) Paragraph (a)(2)(iv) is amended by removing the words "item 869.10" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

(d) Paragraph (d) is amended by removing the words "item 813.31 of the Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place the words "subheading 9804.00.70, HTSUS" and by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

(e) Paragraph (e) is amended by removing the words "item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "subheading 9804.00.70, HTSUS" and by removing the words "item 869.10 of the tariff schedules" and by adding, in their place, the words "subheading 9816.00.40, HTSUS".

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for Part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 9 and 10, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499. Subpart D also issued under additional U.S. Notes to Chapter 28, HTSUS; 19 U.S.C. 1202. Subpart E also issued under Additional U.S. Note 2(f) to Chapter 51, HTSUS. Subpart F also issued under Additional U.S. Notes to Chapter 52, HTSUS; 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 151.13 [Amended]

2. Section 151.13 is amended as follows:

(a) By changing the title "Director, Technical Services Division" to read "Director, Office of Laboratories and Scientific Services", wherever it appears.

(b) By revising paragraph (a) to read as follows:

(a) *Acceptance of reports.* Provided that the commercial gauger or laboratory has complied with the appropriate provisions of the Customs Regulations, and in the absence of clear evidence that District Director should not do so, the District Director shall accept the reports as described in the following paragraphs.

(1) Customs shall accept, from Customs-approved commercial gaugers, gauging reports of the net landed quantity of the products described below, except that in the case of crude petroleum of Heading 2709, the gross quantity may be accepted; see § 151.47. Reports shall be given in the appropriate Harmonized Tariff Schedule units of quantity, e.g., liters, barrels, and kilograms.

HTSUS	Product	Unit of quantity
1501 through 1515.	Animal and vegetable oils.	—Kilogram
2707.10 through 2707.30 and 2902.20 through 2902.44.	Benzene, toluene, and xylene.	—Liter
2709	Crude petroleum	—Barrel
2710 (various sub-headings).	Such as fuel oil, motor fuel, kerosene, naptha, and lubricating oils.	—Barrel
Chapter 29 (various).	Organic compounds in bulk and in liquid form.	—Kilogram, liter, etc.

(2) Customs shall accept, from Customs-accredited commercial laboratories, laboratory analysis reports giving the characteristics of the products described below when determined according to the analysis methods indicated. In cases where neither a published commercial method such as an ASTM procedure nor an Official Customs Laboratory Method (OCLM) is indicated, the commercial laboratory shall use a method of analysis which has been approved for use in Customs-related transactions by the Director, Office of Laboratories and Scientific Services. OCLM's and approved methods will be made available to the public under the Freedom of Information Act (5 U.S.C. 552) and 19 CFR, Part 103. Methods published by organizations such as ASTM, API, TAPPI, ICUMSA, and similar organizations, are not available from Customs.

HTSUS	Product	Characteristic (analysis method)
1701	Sugar (sucrose, raw sugar).	—Polarization of sugar in sugar degrees (ICUMSA method entitled "Polarization of Raw Sugar").
1703	Molasses	—Percent soluble nonsugar solids. —Percent total sugars. —Weight per gallon in air at 60 °F.

HTSUS	Product	Characteristic (analysis method)
2707.10 through 2707.30 and 2902.20 through 2902.44.	Benzene, toluene and xylene.	—Distillation characteristics (ASTM D 86).
		—Xylene isomer content (ASTM D 2306 or equivalent).
		—Percent composition by weight (ASTM D 2360, D 3797, D 3798, D 4492 or equivalents).
2709	Crude petroleum	—Water by distillation (ASTM D 4006).
		—Sediment and water (ASTM D 96).
		—API gravity (ASTM D 287).
		—Sediment by extraction (ASTM D 473).
2710 (various subheadings).	Such as, fuel oil, motor fuel, kerosene, naptha, and lubricating oils.	—Distillation characteristics (ASTM D 86).
		—Water by distillation (ASTM D 95).
		—Sediment and water (ASTM D 96).
		—API gravity (ASTM D 287).
		—Reid vapor pressure (ASTM D 323).
		—Saybolt universal viscosity (ASTM D 445 and D 2161).
		—Sediment by extraction (ASTM D 473).
		—Percent by weight sulfur (ASTM D 1266, ASTM D 2622, or ASTM D 3120).
		—Percent by weight lead (ASTM D 2547, ASTM D 2599, or ASTM D 3341).
		—Antiknock index (ASTM D 2699 (RON) and ASTM D 2700 (MON); see ASTM D 439).
Chapter 29 (various subheadings).	Organic compounds in bulk and in liquid form.	—Identity using HTSUS descriptions or common or IUPAC nomenclature.
		—Composition, giving percent by weight of each component. (Various methods published by ASTM, API, AOAC, USP, and similar organizations, may be used for identity and composition, e.g., ASTM D 2593 for butadiene, D 2192 for aldehydes, ketones, and similar substances. Approved methods involving gas or liquid chromatography, infrared spectroscopy, mass spectrometry, nuclear magnetic resonance spectrometry, and various "wet" chemical procedures and physical tests, e.g., refractive index, and melting point, may also be used.)
4801	Standard newsprint.	—Weight per area (grammage) in g/m^2 (TAPPI T 410).
		—Thickness in mm (TAPPI T 411).
		—Ash (TAPPI T 413).
		—Sizing by water transudation via ground glass method (TAPPI T 432).
		—Bekk smoothness (TAPPI T 479).

§ 151.14 [Amended]

3. Section 151.14 is amended by removing the table and by adding, in its place, the following table:

Analysis method	Characteristic	Difference between customs value and commercial laboratory's value
ASTM D 96	Sediment & water.	0.11 percent.
ICUMSA	Polarization	0.4 sugar degree.
ICUMSA or AOAC.	Total sugars	2.0 percent total.

§ 151.21 [Amended]

4. Section 151.21 is amended as follows:

(a) The introductory text is amended by removing the words "schedule 1, part 10, Tariff Schedules of the United States" and by adding, in their place, the words "the provisions of Chapters 17 and 18, Harmonized Tariff Schedule of the United States".

(b) Paragraph (a) is revised to read as follows:

(a) *Degree.* "Degree" or "sugar degree" means an International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. This test discloses the percentage of sucrose contained in the sugar.

§ 151.22 [Amended]

5. Section 151.22 is amended by adding the words and punctuation after the words "raw sugar" as follows: ", as defined in Subheading Note 1 to Chapter 17, Harmonized Tariff Schedule of the United States,".

§ 151.28 [Amended]

6. Section 151.28(a) is amended by removing the words "United States Gallons per inch" and by adding, in their place, the words "liters per centimeter".

§ 151.41 [Amended]

7. Section 151.41 is amended by removing the words "United States gallons" and by adding, in their place, the word "barrels" and by adding a new sentence after the word "unladen.", as follows: "The term 'barrels' is defined in Chapter 27, Additional U.S. Note 7, Harmonized Tariff Schedule of the United States."

§ 151.42 [Amended]

8. Section 151.42(b) is amended by removing the words "public gauger" or "public gaugers" wherever they appear and by adding, in their place, the words "commercial gauger" or "commercial gaugers".

§ 151.44 [Amended]

9. Section 151.44(a) is amended by removing the word "gallon" and by adding, in its place, the word "barrel" and by removing the words "United States gallons per inch or fraction of an inch" and by adding, in their place, the words "barrels per centimeter or tenth of a centimeter."

10. Section 151.46 is revised to read as follows:

§ 151.46 Allowance for excessive water and sediment.

Application for an allowance in duties for all detectable water and sediment in imported petroleum and petroleum products shall be made on Customs Form 4315. The application shall be filed with the district director within 10 days of the district director's receipt of the

gauging report or within 10 days of Customs acceptance of the entry's invoice gauge. If the district director is satisfied that the application for an allowance in duties is acceptable, he shall liquidate the entry accordingly.

§ 151.47 [Amended]

11. Section 151.47 is amended by removing the words and punctuation ", which shall be determined in accordance with §§ 151.46 and 158.13 of this chapter".

§ 151.51 [Amended]

12. Section 151.51 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 6, part 1, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b) is amended by removing the words "item 601.66, Tariff Schedules of the United States (19 U.S.C. 1202), as containing less than 1 percent of metals dutiable under item 602.10, 602.20, 602.28, or 602.30, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "heading 2617, HTSUS, as containing less than 1 percent of metals dutiable under headings 2603, 2607, and 2608, HTSUS".

§ 151.55 [Amended]

13. Section 151.55 is amended by removing the words "schedule 6, part 1, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States".

§ 151.61 [Amended]

14. Section 151.61 is amended as follows:

(a) Paragraph (a) is revised to read as follows:

"(a) *Clean kg.* 'Clean kg' means kilograms of clean yield as defined in paragraph (b) of this section."

(b) Paragraph (b) is amended by adding, following the heading "*Clean yield.*", the words, "Except for the purposes of carbonized fibers,".

(c) The section is amended by redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding new paragraph (c) to read as follows:

"(c) For the purposes of carbonized fibers, the term clean yield means the condition as entered."

15. The introductory text of § 151.62 is amended by removing the words "pound under schedule 3, part 1C, Tariff Schedules of the United States" and by adding, in their place, the words "kilogram under Chapter 51, Harmonized Tariff Schedule of the United States".

16. Section 151.63 is revised to read as follows:

§ 151.63 Information on entry summary.

Each entry summary covering wool or hair subject to duty at a rate per clean kilogram under Chapter 51, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show as to each lot of wool or hair covered thereby, in addition to other information required, the total estimated or actual net weight of the wool or hair in its condition as imported, its total estimated clean yield in kilograms, and the estimated percentage clean yield. (19 U.S.C. 1484.)

§ 151.64 [Amended]

17. Section 151.64(b) is amended by removing the word "pound" and adding, in its place, the word "kilogram".

§ 151.65 [Amended]

18. Section 151.65 is amended by removing the word "pound" and by adding, in its place, the word "kilogram".

§ 151.68 [Amended]

19. Section 151.68 is amended by removing the word "pound" from paragraphs (a) and (b) and by adding, in its place, the word "kilogram".

§ 151.76 [Amended]

20. Section 151.76(a) is amended by removing the word "pound" and by adding, in its place, the word "kilogram" and by removing the words "schedule 3, part 1C, headnote 2, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 51, Additional U.S. Note 2, Harmonized Tariff Schedule of the United States".

§ 151.81 [Amended]

21. Section 151.81 is amended by removing the word "inch" and by adding in its place the word "millimeter".

22. Section 151.82 is revised to read as follows:

§ 151.82 Information on invoices.

Invoices of cotton provided for in subheading 5201.00.10, 5201.00.20, 5201.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other required information:

(a) One of the following statements regarding each lot of cotton covered by the invoice:

(1) This is harsh or rough cotton under 19.05 millimeters in staple length;

(2) The staple length of this cotton is under 28.58 millimeters. (This statement is not to be used if paragraph (a)(1) of this section is applicable);

(3) The staple length of this cotton is 28.58 millimeters or more and under 34.93 millimeters;

(4) This cotton is harsh or rough cotton (other than cotton of perished staple, and cotton pickings), white in color, and has a staple length of 29.37 millimeters or more and under 44.45 millimeters;

(5) The staple length of this cotton is 34.93 millimeters or more and under 42.86 millimeters; or

(6) The staple length of this cotton is 42.86 millimeters or more.

(b) The name of the country of origin and, if practicable, the name of the province or other subdivision of the country of origin in which the cotton was grown.

(c) The variety of the cotton, such as Karnak, Gisha, Pima, Tanguis, etc.

§ 151.91 [Amended]

23. Section 151.91 is amended by removing the words "schedule 1, part 12A, headnote 3, Tariff Schedules of the United States" and by adding in their place the words "the Additional U.S. Notes to Chapter 20, Harmonized Tariff Schedule of the United States (HTSUS)" and by removing the words "headnote 4 of part 12A" and by adding in their place the words "Additional U.S. Note 2, Chapter 20, HTSUS"

Subpart H—[Removed and Reserved]

24. Subpart H is removed and marked "Reserved."

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The authority citation for Part 152 is revised to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624. Subpart B is also issued under 19 U.S.C. 1315. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 152.1 [Amended]

2. Section 152.1(d) is amended by removing the words "Schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "Section XXII, Harmonized Tariff Schedule of the United States".

§ 152.11 [Amended]

3. Section 152.11 is amended by removing the words "Tariff Schedules of the United States" in the heading and in the text and by adding, in both places, the words "Harmonized Tariff Schedule of the United States".

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§ 152.13 [Amended]

4. Section 152.13 is amended as follows:

(a) Paragraph (b)(1) is amended by removing the words "general headnote 7(a) Tariff Schedules of the United States" and by adding, in their place, the words "General Note 5, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (b)(2) is amended by removing the words "general headnote 7 (b), (c), or (d), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5 (b), (c), or (d), HTSUS".

(c) The introductory text to paragraph (c) is amended by removing the words "general headnote 7 (a)(iii), (b), (c), or (d), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5 (a)(iii), (b), (c), or (d), HTSUS".

(d) Paragraph (c)(1) is amended by removing the words "general headnote 7(a)(iii), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5(a)(iii), HTSUS".

(e) Paragraph (c)(2) is amended by removing the words "general headnote 7 (b), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5(b), HTSUS".

(f) Paragraph (c)(3) is amended by removing the words "general headnote 7(c) or (d), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5 (c) or (d), HTSUS".

(g) Paragraph (d) is amended by removing the words "general headnote 7(a)(iii) or for performing the segregation specified in general headnote 7(b), Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "General Note 5(a)(iii) or for performing the segregation specified in General Note 5(b), Harmonized Tariff Schedule of the United States".

§ 152.101 [Amended]

5. Section 152.101(a) is amended by removing the words "item 700.60, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 6401.10.00, Harmonized Tariff Schedule of the United States".

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

1. The authority citation for Part 158 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624. Subpart C also issued under 19 U.S.C. 1563, unless otherwise noted.

§ 158.12 [Amended]

2. Section 158.12(a) is amended by removing the words "schedule 6, part 2, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "Chapter 72, Additional U.S. Note 3, Harmonized Tariff Schedule of the United States".

§ 158.13 [Amended]

3. Sections 158.13, paragraph (b) is amended by adding at the end of paragraph (b) the citation "(19 U.S.C. 1507)", and paragraph (c) and the authority citation following it are removed.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for Part 159 is revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 372. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 159.4 [Amended]

2. Section 159.4 is amended as follows:

(a) Paragraph (a) is amended by removing the words "schedule 1, part 12, Tariff Schedules of the United States" and by adding in their place the words "headings 2207 and 2208, Harmonized Tariff Schedule of the United States (HTSUS),"; and by removing the words "items 167.20 and 167.90, Tariff Schedules of the United States (19 U.S.C. 1202) and distilled spirits provided for in schedule 1, part 12, Tariff Schedules of the United States" and by adding in their place the words "subheadings 2206.00.30 and 2206.00.90, HTSUS, and distilled spirits provided for in headings 2207 and 2208".

(b) The introductory text to paragraph (b) is amended by removing the words "schedule 1, part 12, Tariff Schedules of the United States" and by adding, in their place, the words "headings 2207 and 2208".

§ 159.7 [Amended]

3. Section 159.7 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "schedule 1, part 12, Tariff Schedules of the United States" and by adding, in their place, the words "headings 2207 and 2208, Harmonized Tariff Schedule of the United States (HTSUS)".

(b) Paragraph (a)(4) is amended by removing the words "clean pound under schedule 3, part 1, subpart C, Tariff Schedules of the United States (19 U.S.C. 1202)" and by adding, in their place, the words "clean kilogram under Chapter 51, HTSUS."

§ 159.22 [Amended]

4. Section 159.22, paragraph (c) is amended by converting the weights associated with the scheduled tares to their metric equivalents as follows:

* * * * *

Apple boxes. 2.984 kilograms per box. This schedule tare includes the paper wrappers, if any, on the apples.

China clay in so-called half-ton casks: 26.856 kilograms per cask.

* * * * *

Fresh tomatoes: 113 grams per 100 paper wrappings.

Lemons and oranges: 283 grams per box and 142 grams per half box for paper wrappings, and actual tare for outer containers.

* * * * *

Pimientos in tins imported from Spain: The following schedule drained weight shall be used as the Customs dutiable weight in the liquidation of entries, the difference between the weight of the new contents of pimientos in tins and such drained weight being the allowance made in liquidation for tare for water:

Size can	Drained weight
3 kilo	13.6 kilograms-case of 6 tins.
794 grams	16.7 kilograms-case of 24 tins.
425 grams	8.0 kilograms-case of 24 tins.
198 grams	3.9 kilograms-case of 24 tins.
113 grams	2.4 kilograms-case of 24 tins.

Tobacco, leaf not stemmed: 5.9 kilograms per bale: Sumatra: actual tare for outside coverings, plus 1.9 kilograms for the inside matting and, if a certificate is attached to the invoice certifying that the bales contain paper wrapping and specifying whether light or heavy paper has been used, either 113 grams or 227 grams for the paper wrapping according to the thickness of paper used.

§ 159.43 [Amended]

5. Section 159.43 is amended by removing the words "Schedule 2, part 4, headnote 4, Tariff Schedules of the United States" and by adding, in their place, the words "additional U.S. Note 1 to Section X, Harmonized Tariff Schedule of the United States".

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for Part 171 is revised to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

Appendix A—[Amended]

2. Appendix A to Part 171 is amended as follows:

(a) Part II. (Violations Involving Absolutely or Conditionally Free Articles) is amended by removing the words "Schedules 1–7, Tariff Schedules of the United States (TSUS)" and by adding in their place the words "Chapters 1–97, Harmonized Tariff Schedule of the United States (HTSUS)"; and by removing the words "Schedule 8, TSUS" and by adding, in their place, the words "Chapter 98, HTSUS".

(b) The text of Part II, 1., a., is amended by removing the words "Schedule 8, TSUS" and by adding, in their place, the words "Chapter 98, HTSUS".

(c) Part III, 4., is amended by removing the words "Schedule 1–7, TSUS" and by adding, in their place, the words "Chapters 1–97, HTSUS"; and by removing the words "Schedule 8, TSUS" and by adding, in their place, the words "Chapter 98, HTSUS".

Appendix B—[Amended]

3. Appendix B, section H(1)(c), to Part 171 is amended by removing the words "item 807, Tariff Schedules of the United States" and by adding, in their place, the words "subheading 9802.00.80, Harmonized Tariff Schedule of the United States."

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624.

§ 177.1 [Amended]

2. Section 177.1(d)(5) is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 177.2 [Amended]

3. Section 177.2(b)([2)(ii)(A) is amended by removing the words "Tariff Schedules of the United States" and by adding, in their place, the words "Harmonized Tariff Schedule of the United States".

§ 177.9 [Amended]

4. Section 177.9(b)(2) is amended by removing the words "Tariff Schedules of the United States" and by adding, in its place, the words "Harmonized Tariff Schedule of the United States".

PART 191—DRAWBACK

1. The authority citation for Part 191 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedule of the United States), 1313, 1624. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

§ 191.133 [Amended]

2. Section 191.133(b) is revised to read as follows:

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers. [T.D. 84–213].

Michael H. Lane,
Acting Commissioner of Customs.

Approved: October 19, 1988.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 88–28041 Filed 12–15–88; 9:57 am]
BILLING CODE 4820–02–M

19 CFR Part 122

[T.D. 89–2]

Customs Regulations Amendment Designating Tamiami Airport, Miami, FL, for Private Aircraft Reporting

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Tamiami Airport, Miami, Florida, to the list of designated airports at which private aircraft arriving in the U.S. from the southern portion of the Western Hemisphere via the U.S./Mexican border, or via the Atlantic, Pacific or Gulf of Mexico coasts must land for Customs inspection. This addition is being made to help relieve the congestion at the seven other designated airports in south Florida, a condition which makes it difficult to effectively conduct the Customs private airport enforcement program.

The amendment was originally proposed as an amendment to 19 CFR Part 6, and comments were solicited from the public on the proposal. In the interval between the publication of the proposal and this announcement, Customs has deleted Part 6 and redesignated the subject matter of that part as a new Part 122. (T.D. 88–12 (53 FR 9285)). This action required redesignation of the proposed action as an amendment to Part 122 rather than Part 6, but it does not affect its substance in any manner.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Inspection and Control (202–566–5607).

SUPPLEMENTARY INFORMATION: Customs efforts to combat the problem of drug smuggling by air resulted in the amendment of the Customs Regulations, in 1975, by adding a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S./Mexican border must provide a notice of intended arrival with Customs (T.D. 75–201; 40 FR 33203). The section further provides that these private aircraft must land at any one of the designated airports near the U.S./Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

Customs has amended § 6.14 several times since it was initially issued in 1975, as part of the continuing effort to fight the national epidemic of illegal drugs. Amendments have included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83–192; 48 FR 41381), expanding the coverage by modifying the definition of private aircraft (T.D. 84–236; 49 FR 46885); extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S. Virgin Islands, increasing from 15 minutes to one hour the miminum time required for notice to be given prior to penetrating U.S. Airspace, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86–72; 51 FR 11004); and removing San Diego International Airport (Lindberg Field) from the list of designated airports in § 6.14 because Lindberg Field's distance from the U.S./Mexican border was permitting smugglers to operate in the area (T.D. 86–146; 51 FR 27836.

For a variety of reasons, the airspace over southern Florida has become increasingly congested in recent years. With this heavy volume of traffic, the workload at the seven airports in the area which have already been designated for private aircraft reporting has greatly increased. This places undue burdens on both the Customs inspectors

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and the members of the public. In order to provide some relief from the congested situations at these other airports, Customs proposed adding Tamiami Airport, Miami, Florida to the list of designated airports. The airports which are already on the list are: Fort Lauderdale Executive Airport and Fort Lauderdale-Hollywood International Airport, in Fort Lauderdale; St. Lucie County Airport, in Fort Pierce; Key West International Airport, in Key West; Miami International Airport and Opa-Locka Airport, in Miami, and Palm Beach International Airport, in West Palm Beach.

Analysis of Comments

In announcing the proposed addition of Tamiami Airport to the list of designated airports, Customs invited members of the public to comment on the proposal. Three comments on the proposed addition of Tamiami Airport to the list of designated airports were received during the comment period. All three comments strongly supported the proposal. After reviewing the comments, Customs has concluded that the addition of Tamiami Airport would indeed improve the efficiency of the private aircraft enforcement program and reduce the congestion at the already existing airports in the southern Florida area. As a result, the addition, as proposed, should be adopted as a final rule.

Redesignation of Part 6 as Part 122

During the interval between the publication of the proposal and this action, the Customs Service has amended the underlying Air Commerce Regulations. As part of the general revision of the Customs Regulations, by T.D. 88–12, published in the **Federal Register** on March 22, 1988 (53 FR 9285), the air commerce regulations formerly in Part 6, Customs Regulations (19 CFR Part 6), were deleted and revised air commerce regulations were set forth in Part 122 in a new format. Accordingly, in order to conform to the amended Regulations, the designation of the proposed regulation has been changed from § 6.14 to § 122.24(b). This redesignation does not affect the substantive content of the regulation in any way.

Executive Order 12291

These amendments do not constitute a "major rule" as defined by § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to this amendment because the rule will not have a significant economic impact on a substantial number of small entities

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports.

Amendment To The Regulations

Part 122, Customs Regulations (19 CFR Part 122), is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122, Customs Regulations (19 CFR Part 122), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, 49 U.S.C. 1509.

§ 122.24 [Amended]

2. Section 122.24(b), Customs Regulations (19 CFR 122.24(b)), is amended by inserting, in the appropriate alphabetical order, "Miami, Fl." in the column headed "Location", and, on the same line, "Tamiami airport" in the column headed "Name".

Approved: November 28, 1988.

William von Raab,

Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88–29268 Filed 12–20–88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 88N–0085]

Aspartame; Food Chemicals Codex

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to adopt the Food Chemicals Codex (FCC) specifications for aspartame. This action is based on the agency's practice of adopting FCC specifications for food ingredients if FCC has developed acceptable specifications. This action will amend 21 CFR 172.804(b) by removing the extant specifications and by adding the FCC specifications for aspartame

DATES: Effective December 21, 1988; written objections and requests for a hearing by January 23, 1989. The Office of the **Federal Register** approved the incorporation by reference of certain publications in 21 CFR 172.804(b), effective December 21, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 21, 1988 (53 FR 13134), the agency proposed to adopt the FCC specifications for aspartame. The agency did not receive any comments to the proposal. Therefore, the agency is now issuing a final order to remove the current specifications from 21 CFR 172.804(b) and add the requirement that the additive meet FCC specifications for aspartame.

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (April 21, 1988; 53 FR 13134). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by revising paragraph (b) to read as follows:

§ 172.804 Aspartame.

* * * * *

(b) The additive meets the specifications of the "Food Chemicals Codex," 3d Ed. (1981) pp. 28–29 and First Supplement p. 5, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

* * * * *

Dated: December 6, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–29123 Filed 12–20–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Paste and Liquid

AGENCY: Food and Drug Administration

ACTION: Final rule

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Merck Sharp & Dohme Research Laboratories. The NADA's provide for an additional use of Eqvalan® (ivermectin) paste and liquid for treating and controlling certain parasites in horses and for deletion of a caution statement.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065–0914, has filed supplements to NADA's 134–314 for Eqvalan® (ivermectin) paste and 140–439 for Eqvalan® liquid. The supplements provide for an additional use of the products for the control and treatment of third- and fourth-stage larvae as well as adults of *Parascaris equorum* in horses and removal of the caution statement concerning use in horses under 4 months of age. The supplements are approved and the regulations in 21 CFR 520.1192(c)(1)(ii) and (iii) and 520.1195(c)(2) and (3) are amended to reflect the approvals. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520–ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1192 [Amended]

2. Section 520.1192 *Ivermectin paste* is amended in paragraph (c)(1)(ii) by removing the phrase "ascarids (adult) (*Parascaris equorum*)" and replacing it with" ascarids (third- and fourth-stage larvae and adults) (*Parascaris equorum*)" and in paragraph (c)(1)(iii) by removing the statements "Safety has not been demonstrated in horses under 4 months old. Do not administer to foals of this age class."

§ 520.1195 [Amended]

3. Section 520.1195 *Ivermectin liquid* is amended in paragraph (c)(2) by removing the phrase "ascarids (adult) (*Parascaris equorum*)" and replacing it with "ascarids (third- and fourth-stage larvae and adults) (*Parascaris equorum*)" and in paragraph (c)(3) by removing the statements "Safety has not been demonstrated in horses under 4 months old. Do not administer to foals of this age class."

Dated: December 13, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–29214 Filed 12–20–88; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL–UST–3; 3494–9]

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors in the financial responsibility requirements and state program approval objective for underground storage tanks containing petroleum which appeared in the **Federal Register** on October 26, 1988 (53 FR 43322).

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: On October 26, 1988, EPA promulgated financial responsibility requirements and, for the purposes of state program approval, a federal technical objective applicable to owners and operators of underground storage tanks containing petroleum. The final rule (53 FR 43322) contained errors which are corrected by this notice.

Dated: November 28, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following corrections are made in FRL–UST–3; 3419–3, Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective published in the **Federal Register** on October 26, 1988 (53 FR 43322).

§ 280.100 [Amended]

1. In § 280.100(c), in the last sentence, on page 43378, first column, line 55, change "petition" to "petitioner".

§ 280.103 [Amended]

2. In § 280.103(b)(1) introductory text, on page 43379, first column, line one, insert ", or trust agreement," after "The standby trust agreement".

3. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, line 15, delete "[" before "Whereas".

4. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, line 26, insert". The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement." after "the underground storage tank".

5. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, lines 26–28, delete "(This paragraph is only applicable to the standby trust agreement.)];" after "the underground storage tank".

6. In § 280.103(b)(1), in the trust agreement, on page 43379, first column, line 38, delete "[" before "Whereas".

7. In § 280.103(b)(1), in the trust agreement, on page 43380, third column, line 26, insert ", or trust agreement." after "The standby trust agreement."

§ 280.37 [Amended]

8. In § 280.37(b), on page 43383, second column, line 11, change "18 months" to "21 months".

[FR Doc. 88–29162 Filed 12–20–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6820]

Suspension of Community Eligibility; Connecticut et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES:

The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001 through 4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978. E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Connecticut	Salisbury, town of Litchfield County	090052	Oct. 3, 1974, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp..	Jan. 5, 1989	Jan. 5, 1989.
Maine	Rockland, city of Knox County	230076	Oct. 31, 1975, Emerg.; Jan. 5, 1989, Reg. Jan. 5, 1989, Susp.	...do...	Do.
Do	Skowhegan, town of Somerset County	230128	Apr. 14, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region III					
Pennsylvania	Matamoras, borough of, Pike County	420758	Oct. 28, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Do	Pleasant, township of, Warren County	422548	Feb. 27, 1976, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Virginia	Bland County, unincorporated areas	510017	July 29, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region IV					
Kentucky	Whitely County, Whitley County	210226	July 9, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Do	Williamsburg, city of, Whitely County	210228	Mar. 6, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region V					
Illinois	Aurora, city of, Kane and Dupage Counties	170320	Apr. 9, 1973, Emerg.; June 15, 1979, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Indiana	DeKalb County, unincorporated areas	180044	Nov. 8, 1976, Emerg.; Jan. 5, 1979, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Do	Marshall County, unincorporated areas	180443	June 14, 1979, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do
Do	Roseland, town of, St. Joseph County	185179	May 5, 1972, Emerg., May 4, 1973, Reg.; Jan 5. 1989. Susp.	.. do	Do.
Wisconsin	Gilman, village of, Taylor County	550433	Aug. 5, 1975, Emerg.; Jan 5, 1989, Reg.; Jan 5. 1989. Susp	...do	Do

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI					
New Mexico	Taos County, unincorporated areas	350078	Sept. 25, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region VII					
Missouri	Howard County, unincorporated areas	290162	July 25, 1984, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region X					
Washington	Moses Lake, city of, Grant County	530053	Oct. 15, 1974, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.	...do...	Do.
Region III					
Virginia	Middlesex County, unincorporated areas	510098	Oct. 18, 1974, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	Jan. 18, 1989	Jan. 18, 1989.
Region V					
Michigan	Grant, township of, Cheboygan County	260610	June 2, 1977, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Do	Saint Louis, city of, Gratiot County	260085	July 31, 1975, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Region VI					
Texas	Burleson County, unincorporated areas	481169	July 6, 1987, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Region VII					
Missouri	Anniston, city of, Mississippi County	290229	May 11, 1977, Emerg.; Jan. 4, 1985, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Do	Charleston, city of, Mississippi County	290231	June 5, 1975, Emerg.; Jan. 4, 1985, Reg.; Jan. 18, 1989, Susp.	...do...	Do
Do	Mississippi County, unincorporated areas	290781	Apr. 14, 1975, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.	...do...	Do.
Do	Wilson City, village of, Mississippi County	290235	Feb. 5, 1975, Emerg.; Aug. 19, 1985, Reg.; Jan. 18, 1989, Susp.	...do...	Do

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension

Issued December 16, 1988
Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 88-29244 Filed 12-20-88; 8:45 am]
BILLING CODE 6718-21-M

DEPARTMENT OF ENERGY

48 CFR Part 927

Acquisition Regulation, Patents, Data and Copyrights

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Energy Acquisition Regulation (DEAR) as it relates to Patents, Data and Copyrights. The revisions amend the DEAR to provide that requests for waiver of Government patent rights to inventions and discoveries under contracts or subcontracts of the Naval Nuclear Propulsion Program or nuclear weapons programs or other atomic energy defense activities of the Department of Energy (DOE) be decided within 150 days after the date of submission of a "complete request" for waiver. This amendment specifies the elements of a "complete request" for such a waiver.

EFFECTIVE DATE: This rule will be effective January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents (GC-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4792. Robert M. Webb, Procurement and Assistance Management Office of Policy, (MA-421), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202)-586-8264.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

The purpose of this rulemaking is to adopt, as a final rule, the proposed amendments to 48 CFR Part 927 implementing section 3135 of Pub. L. 100-180, which provide that a decision on a complete request for waiver of Government patent rights to inventions and discoveries under contracts or subcontracts of the Naval Nuclear Propulsion Program or nuclear weapons programs or other atomic energy defense activities of DOE be made within 150 days after receipt thereof. This amendment specifies the elements of a "complete request" for such a waiver.

The proposed rule on this matter was published August 5, 1988 (53 FR 29494), and provided an opportunity for a public hearing, and a public comment period which ended September 23, 1988. No requests to speak at a public hearing were received, and the hearing was cancelled. (53 FR 35281, September 12, 1988.) No public comments were received. This final rule consists of the proposed rule with insignificant or clarifying editorial changes. Of these changes, the only one which should be discussed is the distillation of proposed section 927.370 (e) (1) and (2) into a single paragraph. The new section 927.370 (e)(1) restates the proposed provisions much more succinctly and eliminates any unintended implications that DOE requires submission of proprietary information on the details of commercialization budgets.

This rule amends Part 927 by adding a section 927.370 entitled "Waiver of title to certain sensitive inventions."

II. Procedural Requirements

A. Review Under Executive Order 12291

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule," as defined by section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule. DOE has determined that the proposed rule does not meet the E.O. 12291 definition of a major rule as one likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Pursuant to section 3(c)(3) of E.O. 12291 this rule was submitted to the Director of OMB for a ten-day review. The Director has concluded his review under that Executive Order.

B. Review Under Regulatory Flexibility Act

This amended rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. This amendment concerns policy and procedures for patent waivers affecting entities that are generally not small businesses since there is separate statutory authority (35 U.S.C. 202) governing disposition of invention rights of Government contractors that are small businesses. The amended rule imposes no significant burdens or impact on small entities. Therefore, DOE certifies that the amendment will not have significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

The information collection and reporting requirements contained herein were approved by OMB and assigned Control No. 1910-0800.

D. Review Under National Environmental Policy Act

DOE has determined that the amendment is not a major Federal action with significant environmental impact and does not affect the quality of the environment. Consequently, the amendment does not require preparation of an Environmental Assessment or Environmental Impact Statement under National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et.seq.* (1982).

E. Federalism

Executive Order (EO) 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and States, or the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The principal impact of today's regulation will be more efficient processing of waivers of government patent rights to private entities. The regulation will not have any effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 48 CFR Part 927

Inventions, patents and waivers.

In consideration of the foregoing, Part 927 of Title 48 of the Code of Federal Regulations is amended, as set forth below.

Issued in Washington, D.C. December 15, 1988.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The citation of authority for Part 927 is revised as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152, (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C. 7261a.)

2. Section 927.370 is added as follows:

§ 927.370 Waiver of title to certain sensitive inventions.

(a) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a) (ii) or (iv) of title 35, United States Code, or pursuant to section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy, and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(b) In making a decision under this Section, the Secretary or his designee shall:

(1) Apply the stated general objectives for patent waivers under sec. 92.300(a) of this subpart;

(2) Take into account the specific considerations applicable to advance waivers and identified invention waivers, respectively, under sec. 927.300(a) of this subpart;

(3) Consider whether national security will be compromised;

(4) Consider whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(5) Consider whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(6) Consider whether waiving such rights will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(c) A decision under this section shall be made within 150 days after the date on which a complete request for waiver, as described by paragraph (d) of this section, has been submitted to the Patent Counsel by the contractor.

(d) In addition to the requirements for content which apply generally to all waiver requests under sec. 927.300(a) of this subpart, a requestor must include a full and detailed statement of facts, to the extent known by or available to the requestor, directed to the considerations set forth in paragraphs (b)(3) through (6) of this section, as applicable. To be considered complete, a waiver request must contain sufficient information, in addition to the content requirements under sec. 927.300(a) of this subpart, to allow the Secretary or his designee to make a decision under this section. Such information shall include, at a minimum, for advance waiver requests:

(1) An identification of all of the petitioner's contractual arrangements involving the Government (including contracts, subcontracts, grants, or other arrangements) in which the technology involved in the contract was developed or used and any other funding of the technology by the Government, whether direct or indirect, involving any other party, of which the petitioner is aware;

(2) A description of the petitioner's past, current, and future private investment in and development of the technology which is the subject of the contract. This includes expenditures not reimbursed by the Government on research and development which will directly benefit the work to be performed under the instant contract, the amount and percentage of contract costs to be shared by the petitioner, the out-of-pocket costs of facilities or equipment to be made available by the petitioner for performance of the contract work which are not charged directly or indirectly to the Government under contract, and the contractor's plans and intentions to further develop and commercialize the technology at private expense;

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effect of granting the waiver.

(4) Identification of whether the contract pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the subject matter of the contract, whether inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(5) Identification of all DOE and DOD programs and projects in the same general technology as the contract for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(e) For identified invention requests, such requests shall include at a minimum:

(1) A brief description of the intentions of the petitioner (or its present or intended licensee) to commercialize the invention. This description should include: (i) estimated expenditures, (ii) anticipated steps, (iii) the associated time periods to bring the invention to commercialization, and (iv) a statement that petitioner (or its present or intended licensee) has the capability to carry out its stated intentions.

(2) A description of any continuing Government funding of the development of the invention (including investigation of materials or processes for use therewith), from whatever Government source, whether direct or indirect, and, to the extent known by the petitioner, any anticipated future Government funding to further develop the invention.

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effects of granting the waiver.

(4) A statement that petitioner will reimburse the Department of Energy for any and all costs and fees incurred by the Department in the preparation and prosecution of the patent applications covering the invention that is the subject of the waiver petition.

(5) Where applicable, a statement of reasons why the petition was not timely filed in accordance with the applicable patent rights clause of the contract, or why a request for an extension of time to file the petition was not filed in a timely manner.

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(6) Identification of whether the invention pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended, (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the invention inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(7) Identification of all DOE and DOD programs and projects in the same general technology as the invention for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(8) A statement of whether a classification review of the invention disclosure, any resulting patent application(s), and/or any reports and other documents disclosing a substantial portion of the invention has been made, together with any determinations on the existence of classified or sensitive information in either the invention disclosure, the patent application(s), or reports or other documents disclosing a substantial portion of the invention; and

(9) Identification of any and all proposals, work for others activities, or other arrangements submitted by the petitioner, DOE, or a third party, of which petitioner is aware, which may involve further funding of the work on the invention at either the contractor facility where the invention arose or another facility owned by the Government.

(f) Patent Counsel will notify the petitioner promptly if the waiver request is found not to be a complete request and, in that event, will provide the petitioner with a reasonable period, not to exceed 60 days, to correct any such incompleteness. If petitioner does not respond within the allotted time period, the waiver request will be considered to be withdrawn. If petitioner responds within the allotted time period, but the submittal is still deemed incomplete or insufficient, the waiver request may be denied.

(g) For waiver requests as described in this section, waiver decisions shall be made within 150 days after the date on which a complete request for waiver of such rights, as specified herein, has been submitted by the petitioner to the DOE Patent Counsel. If the original waiver request does not result in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date of receipt of the waiver petition. If the original waiver request results in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date on which supplementary information is received by Patent Counsel sufficient to make the waiver request complete. For advance waiver requests, if petitioner is not notified that the request is incomplete, the 150-day period for decision commences on the date of receipt of the petition, or on the date on which negotiation of contract terms is completed, whichever is later.

(h) Failure of DOE to make a patent waiver decision within the prescribed 150-day period shall in no way be construed as a grant of the waiver.

[FR Doc. 88-29295 Filed 12-20-88; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 92

[OST Docket No. 45432; Amdt. 92-1]

Recovering Debts to the United States by Salary Offset

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: In the February 12, 1988, **Federal Register** (53 FR 4170) the Department of Transportation (DOT) issued a final rule (49 CFR Part 92), with a request for comments. This rule established procedures enabling DOT to offset a debt against the Federal pay of a current or former Federal employee who is indebted to the United States under a program administered by DOT. DOT is amending 49 CFR Part 92 by revising § 92.9 (Exceptions to notice, hearings, written response, and final decision). The amendment reflects a change requested by the Office of Personnel Management which is to eliminate a general exception for notice, hearing, written response and final decision in administrative adjustments apart from those associated with Federal benefits programs.

EFFECTIVE DATE: This rule was effective March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, (202) 366-9161, Department of Transportation, Office of the General Counsel, 400 7th Street SW., Room 10102, Washington, DC 20590 or Rolf O. Wold, (202) 366-9874, Department of Transportation, Office of Financial Management, 400 7th Street SW., Room 9114, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Regulatory Process Matters

This regulation is classified as a "non-major" regulation under Executive Order 12291. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures; the regulation is not significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted. This regulation does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) because it is not a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 49 CFR Part 92

Administrative practice and procedure, Debt collection, Government employees.

PART 92—RECOVERING DEBTS TO THE UNITED STATES BY SALARY OFFSET

Authority: 5 U.S.C. 5514, as amended; 5 CFR Part 550, Subpart K; 4 CFR Parts 101-105.

49 CFR Part 92 is amended by revising § 92.9(a) to read as follows:

§ 92.9 [Amended]

* * * * *

(a) *Exceptions.* The procedural requirements of 5 U.S.C. 5514 do not apply to recovery by way of retroactive deductions for administrative adjustments associated with the Federal benefits program. In such cases the content of the notification to employees is stated in § 92.9(b).

* * * * *

Issued at Washington, DC this 14th day of December, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88-29239 Filed 12-20-88; 8:45 am]
BILLING CODE 4910-62-M

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of bag limit reductions.

SUMMARY: The Secretary of Commerce (Secretary) reduces to zero the bag limits in the exclusive economic zone (EEZ) for king mackerel from the Gulf of Mexico migratory group. The Secretary has determined that the recreational allocation for the Gulf migratory group of king mackerel will be reached on December 16, 1988. This reduction of the bag limits is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Reduction of the bag limits is effective at 12:01 a.m., local time, December 17, 1988 until 12:00 p.m. (midnight), local time, June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Regulations effective July 1, 1988, implemented catch limits recommended by the Councils for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1988, through June 30, 1989). Those regulations set the recreational allocation for Gulf migratory group king mackerel at 2.31 million pounds (53 FR 25611, July 8, 1988). The Gulf migratory group of king mackerel extends from the Mexico/United States border to, (1) November 1 through March 31, a line extending directly east from the Volusia/Flagler County, Florida, boundary (29°25'N. latitude) to the outer boundary of the EEZ, and (2) from April 1 through October 31, a line extending directly west from the Monroe/Collier County, Florida, boundary (25°48'N. latitude) to the outer limit of the EEZ.

Under § 642.22(b), after consulting with the Councils, the Secretary is required to reduce to zero the bag limits for a king mackerel migratory group when the appropriate recreational allocation for that group is reached, or is projected to be reached, and when that group is overfished, by publishing a notice in the **Federal Register**. The Secretary, based on current catch statistics, has determined that the recreational allocation of 2.31 million pounds for the Gulf migratory group of king mackerel will be reached on December 16, 1988. He also finds, based upon the most recent stock assessment, that the Gulf migratory group king mackerel resource remains overfished. Further, he has consulted with the Councils and they agree with this finding and concur in this action. Hence, the bag limits for king mackerel from the Gulf migratory group are reduced to zero effective 12:01 a.m., December 17, 1988, through the end of the current fishing year. During this period, king mackerel from the Gulf migratory group caught in the EEZ in the recreational fishery or by any person fishing under the bag limit must be returned immediately to the sea with a minimum of harm.

Other Matters

This action is required by 50 CFR 642.22(b) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: December 16, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-29297 Filed 12-16-88; 4:35 pm]

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Proposed Rules

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA): Second Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 8, 1988 (53 FR 21550), the NRC published for public comment a proposed rule to make its transportation regulations in 10 CFR Part 71 compatible with those of the International Atomic Energy Agency (IAEA) as contained in IAEA Safety Series No. 6, Regulations for the Safe Transport of Radioactive Material, 1985 Edition. This rulemaking action, combined with a parallel action by the Department of Transportation (DOT), would make United States regulations for the safe transportation of radioactive material internationally compatible. Because it is important that the public have the opportunity to review and comment on the DOT and NRC proposed rules concurrently, NRC set its initial public comment period to expire on October 6, 1988, expecting the DOT rule to be available for publication by the end of June 1988. Availability of the DOT proposed rule was delayed to early October 1988. To achieve its goal of having some portion of the public comment period common for both rules, the NRC extended the comment period for an additional two months, to December 6, 1988. Now that the expected time for publication of the DOT proposed rule has been delayed to mid-February 1989, NRC has decided to extent its comment period to March 6, 1989. This extension is being held to 3 months to give NRC the opportunity to judge the need for more public comment time as we approach the DOT's expected publication date.

DATES: The comment period has been extended and now expires March 6, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. Examine comments received at the NRC Public Document Room, 2120 L Street, NW., lower level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301–492–3784).

Dated at Rockville, Maryland, this 14th day of December, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–29273 Filed 12–20–88; 8:45 am]
BILLING CODE 7590–01–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 213

Proposed Rules Governing Trade Remedy Assistance

AGENCY: International Trade Commission.

ACTION: Proposed rules and request for comments.

SUMMARY: The Commission is proposing to revise Part 213 of the Commission's Rules of Practice and Procedure. Part 213 sets forth the rules governing trade remedy assistance provided by the Commission through the Trade Remedy Assistance Office.

These proposed revisions to Part 213 will conform the rules to the changes made in section 339 of the Tariff Act of 1930 (19 U.S.C. 1339) by section 1614 of the Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"). The amendments provide, in particular, that an office to be known as the Trade Remedy Assistance Office ("Office") is established in the Commission; that the Office shall provide advice and assistance concerning remedies and procedures under the trade laws identified in section 339 of the Tariff Act of 1930; and that the Office, in coordination with other agencies administering trade laws, shall provide technical assistance to eligible small businesses up through administrative review or appeals to the administering agency.

DATE: Comments on the proposed rules will be considered if received by February 6, 1989.

ADDRESS: Comments concerning the proposed amended rules should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., U.S. International Trade Commission, telephone (202) 252–1580. Hearing impaired individuals may obtain further information on this matter by contacting the Commission's TDD terminal at (202) 252–1810.

SUPPLEMENTARY INFORMATION: Section 335 of the tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. The Commission has determined that the proposed revisions do not constitute a major rule for the purposes of Executive Order 12291 because they do not fall within the categories described in section 1(b) of that Excutive Order. The Commission has also determined that since the proposed revisions merely implement the amendments required by the Omnibus Trade Act, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply.

Explanation of Proposed Revisions to 19 CFR Part 213

Section 213.1

Section 213.1 is amended to refer to the new statutory provisions in the Omnibus Trade Act, to identify the Trade Remedy Assistance Office, to expressly incorporate the statutory requirement of assisting and advising interested parties concerning remedies and procedures under the trade laws listed in § 213.2(b) of this Part, and to indicate that the Trade Remedy

Assistance Office, in coordination with the other agencies responsible for administering those trade laws, shall provide technical assistance to eligible small businesses up through administrative review or appeals to the administering agency.

Section 213.2

Existing § 213.2 has been deleted as duplicative and unnecessary in view of the requirements for assistance set forth in existing § 213.4, renumbered as § 213.3.

Section 213.3

Section 213.3 is renumbered § 213.2. Section 213.3(a) is renumbered § 213.2(a) and amended to reflect the replacement of the "Trade Remedy Assistance Center" by the "Trade Remedy Assistance Office," to include and to correct the Office's address which appears in existing § 213.4, to expressly incorporate the new statutory requirement of advising and assisting interested parties concerning remedies and procedures, to provide that technical assistance to eligible small businesses is to be coordinated with the other agencies responsible for administering the trade laws listed in § 213.2(b), and to extend the provision of technical assistance up through administrative review or appeals to the administering agency. Under prior law and the existing rule, the Trade Remedy Assistance Center only provided technical assistance to eligible small buisnesses with respect to certain laws administered by the Commission, which the existing rule refers to as "Trade Remedy Laws."

Section 213.3(b) is renumbered § 213.2(b) and amended to replace the words "Trade Remedy Laws" with the term "Trade Laws," which appears in section 339 of the Tariff Act of 1930, and to list each of the trade laws specified in the statute since the Office is now required to provide technical assistance to eligible small businesses regarding all of these laws. Prior to passage of the Omnibus Trade Act, the Trade Remedy Assistance Center was responsible for providing technical assistance only with regard to those trade remedy laws administered by the Commission. Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption) is also included in the list of trade laws in § 213.2(b); section 406, which is administered by the Commission, provides for relief similar to that which may be obtained under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and is included in the list of "Trade Remedy Laws" appearing in existing section 213.3(b).

A new § 213.2(c) is added to define the term "administering agency" as used in these proposed rules and to identify the agency or agencies responsible for administering each of the trade laws listed in § 213.2(b).

Existing § 213.3(c) is renumbered § 213.2(d) and has been revised to reflect amendments to section 339 of the Tariff Act of 1930. Specifically, language has been added to indicate that technical assistance is available up through administrative review or appeals to the administering agency. Under the prior law and the existing rule, such assistance was limited to the period "up to the date of the filing of a petition or complaint at the Commission." Language has also been added to make clear that technical assistance, which includes informal legal advice and assistance, does not include legal representation of an eligible small business or advocacy on its behalf, and that receipt of such assistance does not ensure that the recipient will prevail in any trade remedy proceeding. *See* H.R. Rep. No. 40, 100th Cong., 1st Sess. 172–173 (1987). Language also has been added to this section to indicate that, as had been the practice of the Trade Remedy Assistance Center, the staff of the Office may consult with other Commission personnel when providing technical assistance.

Existing § 213.3(d) is renumbered § 213.2(e), but is not substantively changed from existing § 213.3(d). Existing § 213.3(e) is renumbered § 213.2(f), but is not substantively changed from existing § 213.3(e).

Section 213.4

Section 213.4 is renumbered § 213.3. Section 213.4(a) is renumbered § 213.3(a), retitled more appropriately "Application for Technical Assistance from Small Businesses," and amended to delete the Office's address and to add language that an application for assistance is available from the Office. Otherwise this section is substantively the same as existing § 213.4(a). Section 213.4(b) is renumbered § 213.3(b) and retitled more appropriately "Application for Technical Assistance from Business Concerns, Joint Applicants, Trade Associations and Unions," but is otherwise substantively unchanged from existing § 213.4(b). Section 213.4(c) is renumbered § 213.3(c), retitled more appropriately "Determination of Eligibility and Notification of Determination," and amended to specifically recite that the Office will make a determination of eligibility. Section 213.4(d) is renumbered § 213.3(d), but is not substantively changed from existing § 213.4(d).

Section 213..5

Section 213.5 is renumbered § 213.4 and amended to add the requirement that an applicant that has received technical assistance from the Office must disclose that fact in any petition, application or complaint filed with any agency which administers the trade law under which remedies or benefits are sought. In the existing rule, such disclosure was only required for petitions or complaints filed with the Commission. This change is consistent with the requirement in section 1614 of the Omnibus Trade Act that the Office shall now provide technical assistance regarding all the trade laws.

Section 213.6

Section 213.6 is renumbered § 213.5, but is not substantively changed from existing § 213.6.

Section 213.7

Section 213.7 is renumbered § 213.6, but is not substantively changed from existing § 213.7.

Appendix A

The application form in Appendix A has been revised to include acknowledgements by the applicant regarding trechnical assistance available from the Trade Remedy Assistance Office. The revised form includes acknowledgements that technical assistance is provided as required by section 339 of the Tariff Act of 1930 and Part 213 of the Commission's Rules, that Trade Remedy Assistance Office personnel and other Commission personnel that work with the Office to provide trade remedy assistance will not serve as legal representatives of the applicant or a substitute for private counsel, and that the receipt of assistance does not ensure that the recipient will prevail in any trade remedy proceeding. Language has also been added to advise applicants that they should contact the Trade Remedy Assistance Office before signing the form if they have questions relating to the certification or acknowledgements.

List of Subjects

19 CFR Part 213

Administrative practice and procedure, trade remedy assistance.

The Part 213 rules are revised as follows:

PART 213—TRADE REMEDY ASSISTANCE

Sec.

213.1 Purpose and applicability of part.
213.2 Definitions.

Sec.
213.3 Determination of small business eligibility.
213.4 Disclosure of receipt of technical assistance.
213.5 Access to Commission resources.
213.6 Information concerning assistance.

Appendix A—Application for Technical Assistance from the Trade Remedy Assistance Office of the U.S. International Trade Commission.

Authority: Sec. 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by sec. 221, Trade and Tariff Act of 1984 (Pub. L. 98–573, approved Oct. 30, 1984; 98 Stat. 2989), and as amended by sec. 1614, Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, approved Aug. 23, 1988; 102 Stat. 110); sec. 335, Tariff Act of 1930 (72 Stat. 680; 19 U.S.C. 1335).

§ 213.1 Purpose and applicability of part.

Section 339 of the Tariff Act of 1930, as amended, establishes in the Commission an office known as the Trade Remedy Assistance Office and directs the Commission to provide general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under the trade laws. In coordination with other agencies administering the trade laws, the Trade Remedy Assistance Office also shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and complaints, and to seek to obtain the remedies and benefits available under the trade laws up through administrative review or appeals to the administering agency. The rules in this Part reflect the establishment of the Trade Remedy Assistance Office, describe its function, and govern small business eligibility for technical assistance and procedures for obtaining such assistance. Members of the public seeking general information from the Trade Remedy Assistance Office are not subject to the application procedures set forth in this Part.

§ 213.2 Definitions.

(a) *Office.* The Trade Remedy Assistance Office shall be referred to as the Office. The Office provides general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under those trade laws. In coordination with other agencies responsible for administering the trade laws listed in § 213.2(b), the Office also provides technical assistance to eligible small businesses to enable them to prepare and file petitions and complaints, and to seek to obtain the remedies and benefits available under the trade laws up through administrative review or appeals to the administering agency. The Office's address is Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(b) *Trade Laws.* The trade laws (with respect to which general information and technical assistance is available) are defined as: (1) Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition); (2) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms); (3) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies); (4) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties); (5) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); (6) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade); and (7) section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption).

(c) *Administering Agency.* Administering agency refers to the agency or agencies responsible for administering a particular trade law. The trade laws relating to injury caused by import competition, unfair practices in import trade and market disruption are administered by the Commission. The trade laws relating to countervailing and antidumping duties are jointly administered by the Commission and the Department of Commerce. The trade laws relating to adjustment assistance for firms and safeguarding national security are administered by the Department of Commerce. The trade law relating to adjustment assistance for workers is administered by the Department of Labor. The trade law relating to relief from foreign import restrictions and export subsidies is administered by the United States Trade Representative.

(d) *Technical Assistance.* Technical assistance is informal advice and assistance, including informal legal advice and assistance, to enable eligible small businesses to determine the appropriateness of pursing particular trade remedies, to prepare petitions and complaints (other than those which are frivolous in the opinion of the agency) and to seek to obtain the remedies and benefits available under the trade laws identified in § 213.2(b). Technical assistance is available to eligible small businesses at any time up through administrative review or appeals to the administering agency regarding proceedings under the trade laws listed in § 213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf, and receipt of such assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant.* An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity which applies for technical assistance under this Part.

(f) *Eligible Small Business.* An eligible small business is an applicant that the Office has determined to be entitled to technical assistance in accordance with the SBA size standards and the procedures set forth in this Part.

(g) *SBA Size Standards.* SBA size standards are the small business size standards of the Small Business Administration set forth in 13 CFR 121.2. The SBA size standards categorize business concerns according to the Standard Industrial Classification ("SIC") code of the Bureau of the Census and base the size determination upon the number of employees or annual receipts of the business concern in the appropriate SIC category.

§ 213.3 Determination of small business eligibility.

(a) *Application for Technical Assistance from Small Businesses.* An applicant for technical assistance must qualify under the SBA size standards as an eligible small business. In order to apply, an applicant must certify to the Commision that it meets the appropriate SBA size standards. An application for technical assistance is available from the Office. The application, which is reproduced in Appendix A of this Part, must be signed under oath by an office or principal of the applicant. The completed application should be submitted to the Office at the address set forth in § 213.2(a).

(b) *Application for Technical Assistance from Business Concerns, Joint Applicants, Trade Associations and Unions.* A business concern applying for technical assistance must certify that it is independently owned

and operated. If several business concerns jointly or simultaneously from the same industry apply for technical assistance, each business concern must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, an officer of the trade association must certify that eighty (80) percent of the trade association's members meet the appropriate size standard(s). If a union applies for technical assistance, an officer of the union must certify that the union has less than ten thousand (10,000) members within the industry for which trade relief is being sought.

(c) *Determination of Eligibility and Notification of Determination.* The Office shall determine whether the applicant is eligible for technical assistance and notify the applicant of the determination within ten (10) days of receipt of a properly completed application. Pursuant to 19 U.S.C. 1339(c)(1), the determination of eligibility is not reviewable by any other agency or by any court.

(d) *Notification to Administering Agencies.* When an applicant seeks technical assistance on matters involving the trade laws, and the Office determines that the applicant is eligible for technical assistance, the Office shall: (1) promptly notify the appropriate administering agency or agencies of the Office's determination that the applicant is eligible to receive technical assistance; and (2) consult with that administering agency or agencies as to the provision of technical assistance to that applicant.

§ 213.4 Disclosure of receipt of technical assistance.

An applicant which has received technical assistance from the Office must state that it has received technical assistance from the Trade Remedy Assistance Office in any resulting petition, complaint or application which is filed with the Commission or any other agency which administers the trade law under which remedies or benefits are sought.

§ 213.5 Access to Commission resources.

Commission resources, in addition to the Office's resources, are available to an eligible small business to the same extent as those resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to an eligible small business.

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Appendix A—Application for Technical Assistance from the Trade Remedy Assistance Office of the U.S. International Trade Commission

Certification of Applicant

The undersigned certifies that applicant (Name of business entity) _____ (hereinafter referred to as "applicant") is independently owned and operated and qualifies as a small business under the Small Business Size Standards set forth in 13 CFR 121.2. The undersigned further certifies that:

(1) The Standard Industrial Classification ("SIC") code for applicant's line of business is (4-digit SIC code) _____; and

(2) Applicant employs "Number of employees) [1] _____; or, if a service industry,

(3) Applicant has (Annual receipts in dollars) [2] _____ in annual receipts.

Acknowledgements

The applicant acknowledges that it has received copies of section 339 of the Tariff Act, as amended, 19 U.S.C. 1339, and Part 213 of the U.S. International Trade Commission's Rules concerning trade remedy assistance. The statute and rules provide for the provision of technical assistance, which includes informal legal advice, to eligible persons seeking remedies and benefits under certain trade remedy laws. The personnel of the Trade Remedy Assistance Office, and other Commission personnel that work with the Office, provide such technical assistance in their official capacity as required by section 339 of the Tariff Act and Part 13 of the Commission's Rules. These personnel will not serve as legal representatives of the applicant or a substitute for private counsel, and the receipt of technical assistance from the Trade Remedy Assistance Office does not ensure that the recipient will prevail in any trade remedy proceeding.

If the applicant has any questions relating to the certification or acknowledgements required by this form, it should contact the Trade Remedy Assistance Office before signing this form. Of course, the applicant may also wish to consult with private counsel to discuss these and other related matters.

_____

(Date)

_____

(Signature of Authorized Official)

_____

(Name and Title of Authorized Official)

_____

_____

_____

(Address and Phone Number)

Sworn to before me this _____ day of _____, 19____.

_____

(Notary Public)

My commission expires on

_____

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 14, 1988.

[FR Doc. 88-29290 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[1] "Number of Employees" is defined in 13 CFR 121.2(b).

[2] "Annual Receipts" is defined in 13 CFR 121.2(c).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 270

[Docket No. 80860-8160]

Fish and Seafood Promotion

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement the Fish and Seafood Promotion Act of 1986 (FSPA), as it pertains to seafood marketing councils for one or more species of fish or fish products. This action describes the conditions under which the councils may be established and operated. This rule is intended to implement the Act and provide a vehicle to strengthen the competitiveness of the United States fishing industry in the domestic and international marketplace; encourage development and utilization of all species of fish available for harvest by the United States fishing industry; encourage the utilization of domestically-produced fish through enhancement of markets, promotion and public relations; help the United States fishing industry develop methods to improve product quality and efficiency

in the marketplace; develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and inform and educate the public about the nutritional value of fish in the diet.

DATES: Public comments must be received on or before February 21, 1989.

ADDRESSES: Comments on the proposed rule should be addressed to Thomas J. Billy, Acting Director, Office of Trade and Industry Services, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the information requirements in this proposed rule should be addressed both to NMFS, as above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley V. Smith, Office of Trade and Industry Services, 301–427–2358.

SUPPLEMENTARY INFORMATION: The Fish and Seafood Promotion Act of 1986 (FSPA), enacted November 14, 1986, authorizes a National Fish and Seafood Promotional Council and seafood marketing councils for one or more species of fish or fish products. The National Council has been established. It is authorized by the Act to fund referenda to establish seafood marketing councils, coordinate their activities, and enter into agreements with one or more of them.

Seafood marketing councils established under the Act will be funded through self-assessment by segments of the industry represented on the council. The councils will be established through (1) application of particular sector(s) of industry to the Secretary of Commerce (Secretary) for a council; (2) favorable review of the application by the Secretary, and (3) passage of a referendum conducted by the Secretary among sector participants on the proposed charter. Appointment of members to the seafood marketing councils will be made by the Secretary from lists of nominees supplied by the industry. The councils will submit annual plans and budgets for species-specific marketing and promotion, including consumer education, research, and other activities of the councils. The councils may also develop quality standards for the fish or fish products being promoted.

Interested persons should read the Act along with this document. In a few cases, portions of the Act are repeated for contextual clarity, particularly with regard to the application and review process.

Classification

The Under Secretary, NOAA, reviewed this rule in accordance with Executive Order 12291 and determined that it is not a "major rule" requiring a regulatory impact analysis. This determination was made because this action is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the proposed rule will not have a direct regulatory impact on the general public, industry, or small business since it only establishes procedures and requirements for preparing an application for a council charter and for conducting activities necessary to establish and operate species-specific seafood marketing councils. The rule itself does not require industry action and does not impose significant direct costs on small entities. Therefore, a regulatory flexibility analysis has not been prepared. If individuals do decide to take action under the Act, it would be done on a voluntary basis and any costs for consulting with members of the industry on the application would likely be minor. It is unlikely that the costs would be so great as to affect a firm's financial condition, cash flow position, liquidity position, or its ability to remain in the industry.

Individual councils, once established, may have an impact on small entities, but this cannot be determined prior to receipt of an application for a proposed charter with ranges of assessments based on volume, income, etc., of sector participants to be involved in a council. Specifically, the imposition of assessments on certain members of the industry could have an effect on a firm's financial situation. Any other costs or requirements which would impose a cost on industry would also have to be considered and analyzed. Since these parameters will vary with each application, a determination of impact will be made on a case-by-case basis as applications for council charters are received. Prior to conducting a referendum on a proposed charter, the charter will be published in the **Federal Register** with opportunity for comment. This notice would act as a proposed rule and would trigger the Regulatory Flexibility Act requirements.

This proposed rule contains several different information requirements subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. The general public may respond to the information requirements in § 270.3 of the proposed rule. The estimated reporting time for this collection is 320 hours, with an average of 320 hours per response. All other information requirements in the proposed rule are imposed on the councils, once they are established. The estimated reporting time for these information requirements vary from 1 to 160 hours per response, with an average reporting time of 6.9 hours per response. These estimated reporting times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this information collection and estimate of reporting time, including suggestions for reductions, should be sent to both NMFS and OMB (see **ADDRESSES** section).

This rule does not have the potential for a significant effect on the environment and is therefore exempt from the preparation of either an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 270

Administrative practice and procedure, Fish, Marketing and seafood.

For the reasons set out in the preamble, Title 50 CFR Chapter II is amended as follows:

1. Subchapter H consisting of Parts 280, 281, and 285; Subchapter I consisting of Part 290, and Subchapter J consisting of Part 296 are redesignated as Subchapter I, J, and K, respectively.

2. A new Subchapter H, consisting at this time of Part 270, is added to read as follows:

Subchapter H—Fish and Seafood Promotion

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

Sec.

270.1 Scope.
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270.16 Petition of objection.
270.17 Refunds.
270.18 Dissolution of councils.

Authority: 16 U.S.C. 4001–4017.

§ 270.1 Scope.

This part describes matters pertaining to the establishment, representation, organization, practices, and procedures of seafood marketing councils.

§ 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Act:

Act means the Fish and Seafood Promotion Act of 1986 (Pub. L. 99–659) and any subsequent amendments.

Council means a seafood marketing council for one or more species of fish and fish products of that species established under section 210 of the Act.

Fiscal year means any 12-month period as shall be recommended by a council and approved by the Secretary.

Harvester means any individual who is in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

Importer means any person in the business of importing fish or fish products from another country, into the United States and its territories, as defined by the Act for commercial purposes or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or other commercial purposes in the United States.

Marketer means any person who is in the business of selling fish or fish products in the wholesale, export, retail or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

Marketing and promotion means any activity aimed at encouraging the consumption of fish or fish products and for expanding or maintaining commercial markets for fish or fish products.

National Council means the National Fish and Seafood Promotional Council established under section 205 of the Act.

Processor means any person who is in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or export markets.

Secretary means the Secretary of Commerce, or the Secretary's designee.

Sector Participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals which possess common characteristic(s) distinguishing them from other similar groups.

§ 270.3 Submission of application

(a) The Secretary will by order establish a species-specific seafood marketing council upon passage of a referendum conducted by the Secretary under the terms specified in § 270.5 of this part if the application for such council meets the criteria as set forth in this section, and is consistent with the provisions of the Act and any other applicable law.

(b) The application may be filed with the Secretary by persons who meet the minimum requirements for sector participants as described in the proposed charter.

(c) The application consists of three parts:

(1) The proposed charter under which the council will operate;

(2) The petition (or requesting document); and

(3) The list of eligible referendum participants.

(d) *Content of application*—(1) *Text of proposed charter*—A proposed charter must contain, at a minimum, the following information:

(i) The name of the council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the council;

(iii) A description of the species of fish and fish products including the scientific and common name(s), for which the council will implement marketing and promotion plans under the Act. The American Fisheries Society's *List of Common and Scientific Names of Fishes from the United States and Canada* or where available, an appropriate volume of its *List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada* (latest edition) will be used as the authority for all scientific and common names. For species or products of non-U.S. origin, the American Fisheries Society's *Annotated List of Selected Fishes of the World* (scheduled for publication in 1988) will be used as the authority for the scientific and common names.

(iv) A description of the geographic area (State(s)) within the United States covered by this council;

(v) The identification of each sector within the geographic area as defined in the proposed charter and the number and terms of representatives for each sector that will be voting members on the council. The number of council members should be manageable, while ensuring equitable geographic representation. The term for members is three years. Initially, to ensure continuity, half of the members' terms will be two years and half will be three years. Reappointments are permissible.

(vi) The identification of those sectors as defined in § 270.3(d)(1)(v) of this part, but which must include harvesters, receivers, and if subject to assessment, importers, eligible to vote in a referendum to establish a council;

(vii) A threshold level for each sector participant described under § 270.3(d)(1)(v) of this part specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates under section 213 of the Act;

(ix) The proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a council on receivers or importers during operation of the council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds, including interest earned, to sector participants subject to assessment who request the same in accordance with time limits specified in the Act;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairperson of the council; and

(xvii) A provision that members of the council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the council.

(2) *Petition (requesting document).* The petition is a document submitted by the applicants to the Secretary requesting that the council be established. To the extent practicable, the petition will include the signatures or corporate certifications, as the case may be, of no less than three sector participants representing each sector identified in accordance with § 270.3 (d)(1)(v) of this part and who, according to the best available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled by each such sector during that period. The petition also must include a statement that, if established, sufficient resources will be available to the council for initial administrative expenditures pending collection of assessments.

(3) *List of referendum participants.* A list identifying, to the extent practicable, by address of place(s) of business, those sectors participants that are considered by the applicants to meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter. The business addresses for each sector participant should include addresses for all of his/her businesses in all locations covered by the geographic area of the council. If more than one address is submitted, a primary address should be designated. This will provide the Secretary with a basis for planning the nomination and council appointment process to ensure that all geographic areas are represented on the council in accordance with the Act.

(4) *Where to submit applications.* Applicants must submit one signed original and two copies of the completed application to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Silver Spring, MD 20910. Applications must not be bound in any manner.

§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a council, the Secretary will render a final determination on the acceptability of the application. To make this decision, the Secretary will do the following:

(a) Determine if the application is complete and complies with all of the requirements set out in § 270.3(d) of this part and complies with all provisions of the Act and other applicable laws.

(b) Verify, to the extent practicable, if the list of sector participants, submitted by the applicants, meets the requirements for eligibility to participate in the referendum to establish the council. The Secretary will use various sources to verify eligibility of sector participants to participate in referenda. Therefore, additional information may be required from the applicants or proposed participants in order to carry out this responsibility. The Secretary is authorized under the Act to request such information as necessary. The verification process may result in the Secretary adding or deleting names of sector participants.

(c) If any negative determination is made regarding a proposed charter, the Secretary will advise in writing the sector participants who submitted the application of the reasons for such determination. A corrected application may be submitted thereafter to the Secretary for approval.

§ 270.5 Conduct of referendum.

(a) The Secretary will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security such as a cashier's check to cover costs of the referendum. The Secretary will initially pay all costs of a referendum to establish a council. Within two years after a council is established, the council must reimburse the Secretary for the total actual costs from assessments collected by the council. If a referendum fails to result in establishment of a council, the Secretary will immediatley recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of Government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum. Costs associated with each referendum may vary according to the number of sector participants and locations, and whether a public meeting is requested.

(b) No less than thirty (30) days prior to holding a referendum, the Secretary will—

(1) Publish (by such means that will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter, and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting. Additional names may be added to the list of eligible sector participants until the time of the referendum based on additional information received.

§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such "participant" and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) *Favorable vote to establish council.* The Secretary will by order establish the council, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled by that sector during such period. The Secretary will publish the results of the referendum in the **Federal Register** and local media of the geographic area of the new council.

(b) *Unfavorable vote to establish council.* If a referendum fails to pass, the Secretary will notify the applicants immediately and recover costs of conducting the referendum according to § 270.5(a) of this part. The Secretary will also publish a notice in the **Federal**

Register and in local media of the geographic area of the proposed council of the failure of the referendum to result in the establishment of a council.

§ 270.8 Nomination of council members.

Within 30 days after a council is established, the Secretary will solicit nominations for council members from the sectors represented on the council in accordance with the approved charter. If the harvesters and receivers represented on the council are engaged in business in two or more States, but within the geographic boundary of the council, the nominations made under this section must, to the extent practicable, result in equitable representation for those States. Nominees must be knowledgeable and experienced with regard to the activities of, and be or have been actively engaged in the business of, the sector which such person will represent on the council. Therefore, a resume will be required for each nominee.

§ 270.9 Removal of a council member.

Any person appointed under this Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the council by the Secretary if two-thirds of the members of the council recommend action. All requests from a council to the Secretary for removal of a council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Notice of council meetings.

The council must give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend the meetings.

§ 270.11 Books, records and reports.

The council must maintain books and records, prepare and submit to the Secretary semi-annually a progress report on implementation of the marketing and promotion plan and a financial report with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be conducted by an independent public accountant and submitted to the Secretary at the end of each fiscal year. The books and records of the council must be maintained for a minimum of three years.

§ 270.12 Update of sector participant data.

The council must submit to the Secretary at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.13 Quality standards.

Each council may—

(a) Develop and submit to the Secretary for approval, or upon the request of a council the Secretary will develop, quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under § 270.13(a) of this part may be adopted by a council by a majority of its members following a referendum conducted by the council among sector participants of the concerned sector(s). In order for a quality standard to be brought before council members for adoption, the majority of the sector participants of the concerned sector(s) must vote for the standard. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled by that sector during such period.

(c) The council must submit a plan to conduct the referendum on the quality standards to the Secretary for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

(1) Date(s) for conducting the referendum;

(2) Method [by mail or in person);

(3) Copy of the proposed notification to sector participants informing them of the referendum;

(4) List of sector participants eligible to vote;

(5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Dates(s) and location of ballot counting.

(d) An official observer appointed by the Secretary may be present at the ballot counting and any other phases of the referendum process, and may take whatever steps as the Secretary deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must at least meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with existing approved Department of Commerce (National Oceanic and Atmospheric Administration) standards for fish and fish products.

(g) No quality standard adopted by a council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the National Seafood Inspection Program (NSIP) and the product has been inspected or is under an NSIP approved inspection program.

(h) The intent of quality standards may not be to discriminate against importers who are not members of the council.

(i) Quality standards may not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subsection also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the council must develop and file with the Secretary an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product.

(l) The Secretary will establish by regulation procedures for the use of an official identification filed with the Secretary under § 270.13(k) of this part.

§ 270.14 Deposit of funds.

All funds collected or received by a council under this section must be deposited in a appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The council may, however, pending disbursement of these funds,

invest in risk free, short-term, interest-bearing instruments.

(1) *Risk-free.* All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than $100,000 to assure both principal and interest are fully insured. Accounts must be insured by FDIC or FSLIC.

(2) *Short-term.* Generally, all investments should be for a relatively short period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) *Collateralization.* Investments exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable as collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve bank. Otherwise another depository must hold the collateral.

§ 270.15 Notice of assessment.

(a) The council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The date the assessment is due and payable, which shall not be earlier than 30 days from the date of the notice;

(4) The form(s) of payment; and

(5) To who and where the payment must be made.

(6) The notice will advice such person of his or her right to seek review of the assessment by filing a written petition of objection with the Secretary of Commerce at any time during the time period to which the assessment (or the marketing and promotion plan) applies, including the right to request a hearing on the petition. The notice will state that the petition must be filed in accordance with the procedures in § 270.16 of this part.

(7) The notice will also advise such persons of his or her right to a refund of the assessment as provided in § 270.17 of this part. The notice will state that refunds may only be requested for a period covering 90 days or more from the date the assessment is collected and the council will make the refund within 60 days from the date of the demand.

(b) Persons subject to assessment must pay the assessment on the date due, whether or not they have demanded a refund or filed a petition of objection with the Secretary under § 270.16 of this part.

§ 270.16 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under § 270.15 of this part may seek review of the assessment by filing a written petition with the Secretary. Petitions of objection may be filed only upon one or more of the following grounds:

(1) The assessment;

(2) The marketing and promotion plan on which the assessment was based; or

(3) Any obligation imposed on the petitioner under the plan, is not in accordance with law.

Filing a petition does not relieve the petitioner of the obligation to pay the assessment when it is due. A petition may only be filed during the time period to which the assessment, or the marketing and promotion plan, applies.

(b) *Contents of petition.* A petition must be addressed to the Secretary, U.S. Department of Commerce, Washington, DC, 20230, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to council.* The Secretary will promptly furnish the appropriate council with a copy of the petition.

(d) *Opportunity for informal hearing.* (1) Any person filing a petition may request and informal hearing on the petition. The hearing request must be submitted with the petition.

(2) If a request for a hearing is timely filed, or if the Secretary determines that a hearing is advisable, the Secretary will so notify the petitioner and the council. The petitioner, the council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. The Secretary may consolidate two or more hearing requests into a single proceeding.

(3) Final Decision. Following the hearing, or if no hearing is requested, as soon as practicable, the Secretary will decide the matter and serve written notice of the decision on the petitioner and the council. The Secretary's decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency.

§ 270.17 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and will promptly receive from the council a refund of such assessment, including interest earned. A demand for refund must be made in accordance with procedures in the approved charter and within such time, as will be prescribed by the council and approved by the Secretary. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the council, that sector participant may no longer participate in a referendum or other business of the council during the remainder of the assessment rate period. However, if assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the council.

§ 270.18 Dissolution of councils.

If the referendum conducted under section 216 of the Act results in the termination of the council, the council will be dissolved only in accordance with such terms and conditions as approved by the Secretary to ensure that all remaining affairs of the council are concluded on an orderly basis.

Date: December 8, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-29249 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-23-M

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Notices

Federal Register
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Wednesday, December 21, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Finding of No Significant Impact; Choccolocco Creek Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Choccolocco Creek Watershed, Calhoun, Clay, Cleburne and Talladega Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821–8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control, municipal and industrial water supply and watershed protection. The planned works of improvement included fifteen floodwater retarding dams, 52.5 miles of channel work and accelerated technical assistance for land treatment. Ten floodwater retarding structures and 2.1 miles of channel work have been completed. A supplement has been prepared to delete five dams (sites 4, 8, 10, 12 and 18) and 50.4 miles of channel work form the plan. In lieu of the deleted dams and channel work, thirty miles of clearing, snagging and limited sediment removal have been included in the supplemented plan.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: December 14, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88–29207 Filed 12–20–88; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Motor Freight Transportation and Warehousing Survey; Determination

In accordance with Title 13, United States Code, sections 131, 182, 224, and 225, we have determined the Census Bureau needs to collect data covering annual operating revenues and expenses for the for-hire trucking and warehousing industries to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar motor freight transportation and warehousing surveys conducted since 1985.

The Census Bureau will require a selected sample of trucking and warehousing firms in the United States (with payroll size determining the probability of selection) to report in the 1988 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenues and expenses for these industries.

We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

We have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 15, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88–29247 Filed 12–20–88; 8:45 am]

BILLING CODE 3510–07–M

Annual Survey of Retail Sales and Inventories; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, I have determined that various government agencies need the 1988 annual trade data to provide a sound statistical basis for the formation of policy and that these data also serve a variety of public and business needs. This annual survey is a continuation of similar surveys that we have conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases of merchandise, accounts receivable balances, and year-end inventories for 1987 and 1988. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1988 Annual Retail Trade statistics on the specified subjects.

We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. Copies of the forms are available upon written request to the Director, Bureau of the Census, Washington, DC 20233.

We have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 15, 1988.

John G. Keane,

Director, Bureau of the Census

[FR Doc. 88-29248 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket Nos. 8112-01, 8112-02, 8112-03, 8112-04]

Actions Affecting Export Privileges: Man Chung Tong et al.

Summary

Pursuant to the November 16, 1988 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed in principle part by me, Man Chung Tong individually and doing business as Stillwell Development Company, Ltd., Scientific Data Systems, Ltd., and Equipment Rental Company, Ltd. (hereinafter Respondents) all with an address of Flat 2B, Cheers Court, 15 Dianthus Road, Yan Yat Cheuen, Kowloon, Hong Kong, is, and the Respondents are collectively, denied for a period of 20 years all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations.

Discussion

Although I find that the ALJ has correctly decided the instant case, one technical modification and one comment are in order. The technical modification is one to impart clarity to the Order. One page 17 of the ALJ's Order he states that "Such denial of export privileges shall extend to matters which are subject to the Act and Regulations." For reason of clarity, the denial should "extend only to those commodities and technical data which are subject to the Act and Regulations."

The comment pertains to the ALJ's footnote 10. In that footnote the ALJ opines that the instant case is somehow stale, should have been adjudicated with a prior, related case, and that the failure to consolidate somehow relates to an alleged desire on the part of the Department to exaggerate the number of cases it prosecutes. This *dicta* of the ALJ has absolutely nothing to do with his jurisdiction regarding export control violation cases. If anything the *dicta* relates to an obvious bias the ALJ has with respect to the provisions of the Export Administration Act and the Regulations. Although it is always desirable that cases be adjudicated as quickly as possible, so long as a case is brought within the period provided by the applicable statute of limitations (as was the instant case) neither the ALJ nor the Respondent should be heard to complain. If the ALJ is of the personal opinion that the statute of limitations is wrong, he should petition the legislature to change the same. So too, there is no legal premise requiring consolidation of this case with a prior, related one. Finally, the suggestion that the separation of related cases is an effort to exaggerate the number of cases prosecuted by the Department is a direct and unjustified insult to Departmental counsel. Violations of the Export Administration Act and the Regulation are not treated as piecework. The ALJ would be well advised to restrict his comments to matters appropriately within his jurisdiction.

Order

On November 16, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, subject to the technical modification below and my rejection of the *dicta* in footnote 10, I affirm the Decision and Order of the ALJ. The modification the the ALJ's Decision and Order is as follows: on page 17, the last sentence of paragraph II should read, "Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and Regulations."

This constitutes final agency action in this matter.

Date: December 16, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order on Default

Preliminary statement

Appearance for Respondent: Man Chung Tong (pro se), Flat 2B, Cheers Court, 15 Dianthus Road, Yan Yat Cheuen, Kowloon, Hong Kong.

Appearance for Agency: Anthony Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th and Constitution Avenue NW., Washington, DC 20030.

On May 16, 1988, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a Charging Letter to Man Chung Tong, individually and doing business as Stillwell Development Company, Ltd., Scientific Data Systems, Ltd., and Equipment Rental Company, Ltd. (Respondent), alleging that the Respondent violated the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420), as amended, (the Act), and the Export Administration Regulations (the Regulations) promulgated thereunder.[1] The Charging Letter alleged that the Respondent committed one violation of former § 387.3, eleven violations of former § 387.4 and eleven violations of former § 387.6, for a total of twenty three violations of the Regulations.

On August 17, 1988, three months after the data of the Charging Letter, the undersigned Administrative Law Judge directed Agency Counsel to make a default submission, pursuant to § 388.8 of the Regulations, for failure of the Respondent to answer the Charging Letter.

DEFAULT (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

In accordance with this section, Agency Counsel filed a Motion for Default Judgment, with supporting documentary evidence, on September 16, 1988. A copy of the Motion was also sent to the Respondent and on September 27, 1988 the undersigned issued an Order to Show Cause why a default order should not be entered was sent to the Respondent. No response to the order or answer to the Charging Letter has been filed.

On April 5, 1984, Respondent and William T. Newkirk were charged in a Grand Jury Indictment, entered in the United States District Court for the

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[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120, (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (Aug. 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37781, September 28, 1988).

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Central District of California, with seventeen counts of conspiring to knowingly export electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export licenses from the Department of Commerce, and with knowingly submitting false statements to the Department (Agency Exh. 2). On or about June 21, 1984, the Respondent pled guilty to one count of conspiracy and one count of illegal export (Agency Exh. 3). On or about August 20, 1984, the Respondent failed to appear for sentencing and is currently a fugitive.[2]

On February 15, 1984, the Respondent was also charged in a Grand Jury Indictment in the Western District of Washington. The Indictment alleged multiple violations of the Act. A Superseding Indictment was subsequently filed on May 9, 1984 (Agency Exh. 27). On July 24, 1984, the Respondent pled guilty to Count II of the Superseding Indictment. On or about September 7, 1984, the Respondent again failed to appear for sentencing.[3]

Facts

The Respondent is alleged to have conspired with William T. Newkirk to bring about acts that violated the Act and the Regulations. The Charging Letter alleges that Respondent placed orders with Newkirk for U.S.-origin electronic equipment wanted by the Respondent's customers in the People's Republic of China and elsewhere. Newkirk purchased the equipment from U.S. manufacturers, took delivery of it, and exported the equipment to Respondent in Hong Kong, either directly from the United States or indirectly through Mexico, knowing that he did not have the requisite export authorization from the Agency. Newkirk effected these exports by knowingly submitting false statements to the Agency on the export documents. After the equipment arrived in Hong Kong, the Respondent resold it to his customers.

The Respondent has admitted that he conspired with Newkirk in this manner by pleading guilty to Count I of the Indictment (Agency Exh. 2, 3). Respondent thus committed one violation of § 387.3 of the Regulations, by conspiring and acting in concert with Newkirk to bring about the following overt acts.

On or about October 14, 1982, Newkirk unlawfully exported a computer system from the United States through Mexico to the Respondent in Hong Kong without obtaining from the Agency the validated export license that Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations. Newkirk obtained the goods by representing to the manufacturer that he had a customer in Mexico, and by preparing a false invoice showing such a sale. Respondent has admitted these facts by pleading guilty to Count I of the Indictment (Agency Exh. 2, 3).

Newkirk exported this computer equipment in furtherance of the conspiracy, therefore these acts are attributable to the Respondent. Therefore Respondent violated § 387.6 of the Regulations for exporting the equipment in violation of § 387.2 of the Regulations.

In pleading guilty to Count I of the Indictment, Respondent admitted that he knew or had reason to know that an export license was required to lawfully ship the computer to Hong Kong and that one had not been obtained. Accordingly, Respondent committed one violation of § 387.4 of the Regulations in that he received the computer in Hong Kong knowing or having reason to know that it had been shipped without an export license and that a violation of the Regulations had thus occurred.

On November 17, 1982, Respondent, doing business as Stillwell Development Company, Ltd., submitted Purchase Order No. ST00051 to Newkirk for the purchase of two spectrum analyzers with options (Agency Exh. 5). On or about November 22, 1982, Newkirk submitted an export license application (A659962) to the Agency to export these spectrum analyzers to Respondent's company, Stillwell Development, in Hong Kong (Agency Exh. 6). On or about January 17, 1983, while the license application was still pending,[4] Newkirk exported two spectrum analyzers from the United States to the Respondent in Hong Kong, without obtaining from the Agency the validated export license Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations (Agency Exh. 7). On the Shipper's Export Declaration (SED) filed in connection with this shipment, Newkirk falsely stated that the shipment was authorized under "G–DEST" (Agency Exh. 8).

Newkirk exported these spectrum analyzers contrary to the terms of the Regulations because he exported them without the export license required by § 372.1(b) of the Regulations. This export was made in furtherance of the conspiracy. Thus, Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed one violation of § 387.6 of the Regulations.

Because Newkirk applied for an individual validated license, he knew or had reason to know that an export license was required to lawfully ship the computer to Hong Kong and that one had not been obtained. Newkirk knew or had reason to know that a violation occurred when he forwarded the computer to Respondent without the required validated export license. This export was made in furtherance of the conspiracy. As a co-conspirator, Newkirk's acts are attributable to the Respondent. Thus, in connection with this export, Respondent committed one violation of § 387.4 of the Regulations.

On or about November 11, 1982, Respondent, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SDS037 to Newkirk for electronic computer equipment (Agency Exh. 10). On or about November 16, 1982, Newkirk submitted two export license applications (A659118 and A6959955) to the Agency to export that electronic computer equipment to Respondent's company, Scientific Data, in Hong Kong (Agency Exh. 11). While these license applications were still pending,[5] on or about February 26, 1983, Newkirk exported the electronic computer equipment from the United States to Respondent in Hong Kong, without obtaining the validated export license Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations (Agency Exh. 12). On the SED filed in connection with the shipment, Newkirk again stated that the shipment was authorized under "G–DEST".

Newkirk exported the computer equipment contrary to the terms of the Regulations because he exported it without the export license required by § 372.1(b) of the Regulations. The export was made in furtherance of the conspiracy. Newkirk's actions are therefore attributable to the Respondent. In connection with this export, the Respondent committed one violation of § 387.6 of the Regulations.

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[2] On or about August 21, 1984, William T. Newkirk pled guilty to five of the seventeen counts and was sentenced to two years' imprisonment and fined $50,000 (Agency Exh. 4).

[3] The Charging Letters issued to Newkirk and Respondent by the Agency allege the same violations as the counts to which Newkirk and Respondent pled guilty. Newkirk's guilty plea supports the Agency's version of events (Agency Exh. 4). Newkirk was charged in a separate administrative civil penalty proceeding and was found to have violated the Act and the Regulations (ALJ Decision, July 28, 1988, Order of Under Secretary, August 26, 1988).

[4] This license application was denied by the Agency on May 26, 1983 (Agency Exh. 9).

[5] The license applications were denied by the Agency on May 19, 1983 (Agency Exh. 13).

Because Newkirk applied for individual validated licenses, he knew or had reason to know that an export license was required to lawfully ship the computer equipment to Hong Kong and that it had not been obtained. Accordingly, Newkirk knew or had reason to know that a violation occurred when he forwarded the computer to Respondent without the required validated export license. This export was made in furtherance of the conspiracy. As a co-conspirator, Newkirk's actions are attributable to the Respondent. Accordingly, Respondent violated § 387.4 of the Regulations.

On or about December 13, 1982, Respondent, doing business as Equipment Rental Company, Ltd., submitted Purchase Order No. ER001 to Newkirk for electronic equipment, including oscilloscopes and spectrum analyzers (Agency Exh. 14). On or about January 3, 1983, Newkirk submitted two export license applications (A669213 and A669214) to the Agency to export this equipment to Respondent's company, Equipment Rental, in Hong Kong (Agency Exh. 15). While these license applications were still pending,[6] Newkirk exported the equipment in two shipments from the United States to Hong Kong on or about April 9, 1983 and on or about June 4, 1983, without obtaining from the Agency the validated export licenses Newkirk and Respondent knew or had reason to know were required by § 372.1(b) of the Regulations (Agency Exh. 16, 17) Newkirk effected these exports by stating on the SED's that accompanied each shipment that these shipments were authorized by validated export license A663561, an export license unrelated to these exports (Agency Exh. 18).

In these two separate shipments, Newkirk exported the electronic equipment contrary to the terms of the Regulations because he exported it without the export licenses required by § 372.1(b) of the Regulations. The two exports were made in furtherance of the conspiracy, thus Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed two violations of § 387.6 of the Regulations, one for each unauthorized export.

In addition, because Newkirk applied for validated export licenses, he knew that export licenses were required to lawfully ship the electronic equipment to Hong Kong and they had not been obtained. Newkirk knew or had reason to know that a violation occurred when he forwarded the electronic equipment to Tong without the required validated export licenses. These exports were made in furtherance of the conspiracy, thus Newkirk's acts are attributable to the Respondent. Accordingly, Respondent committed two violations of § 387.4 of the Regulations.

On February 4, 1983, Respondent, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SD063 to Newkirk for electronic equipment, including cathode ray oscilloscopes (Agency Exh. 20). On or about February 14, 1983, Newkirk submitted an export license application (A677421) to the Agency to export that electronic equipment to Respondent's company, Scientific Data Systems, in Hong Kong (Agency Exh. 21).[7] While the application was still pending, and after it was denied by the Agency, Newkirk exported the equipment in four shipments, on May 7, May 28, June 25 and July 3, 1983, from the United States to the Respondent in Hong Kong, (Agency Exh. 22–25), wihtout obtaining from the Agency the validated export licenses Newkirk and Respondent knew or had reason to know were required by § 372.1(b) of the Regulations. Newkirk effected these exports by falsely stating on the SED filed in connection with each shipment that validated export license application number A663561 authorized the shipments.[8]

In these four shipments Newkirk exported the electronic equipment contrary to the terms of the Regulations because he exported each shipment without the export licenses required by § 372.1(b) of the Regulations. Each export was made in furtherance of the conspiracy, thus Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed four violations of § 387.6 of the Regulations.

Because Newkirk applied for individual validated licenses he knew or had reason to know that export licenses were required to lawfully ship the electronic equipment to Hong Kong and that they had not been obtained. Accordingly, Newkirk knew or had reason to know that a violation occurred when he forwarded the electronic equipment to Respondent without the required validated licenses. These exports were made in furtherance of the conspiracy and as a co-conspirator Newkirk's acts are attributable to the Respondent. In connection with these exports, Respondent committed four violations of § 387.4 of the Regulations.

On or about October 7, 1982, Newkirk submitted a validated export license application (A648884) to the Agency to ship twenty cathode ray oscilloscopes to a customer in Mexico. On or about June 22, 1983, Newkirk exported from the United States through Mexico to Respondent in Hong Kong two oscilloscopes and two plug-in units on the false representation that export license A648884 authorized the export.[9] The export was made without obtaining the validated export license from the Agency which Newkirk and Respondent knew or had reason to know was required by § 372.1(b) of the Regulations. Respondent has admitted these facts by pleading guilty to Count I of the indictment (Agency Exh. 2).

Newkirk exported the oscilloscopes and plug-in units contrary to the terms of the Regulations because he exported them without the export license required by § 372.1(b) of the regulations. The export was made in furtherance of the conspiracy, thus, Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed one violation of § 387.6 of the Regulations.

Because Newkirk applied for an individual validated license, he clearly knew that an export license was required to lawfully ship the computer to Hong Kong and that one had not been obtained. Newkirk knew or had reason to know that a violation occurred when he forwarded the computer to Respondent without the required validated export license. Moreover, this export was made in furtherance of the conspiracy. As a co-conspirator, Newkirk's acts are attributable to Respondent. Accordingly, Respondent committed one violation of § 387.4 of the Regulations.

On or about August 16, 1983, in a shipment unrelated to the conspiracy, Respondent exported four U.S.-origin cathode ray tubes from the United States through Canada to Hong Kong, without obtaining from the Agency the validated export licenses which Respondent knew or had reason to know were required by § 372.1(b) of the Regulations. Respondent admitted these facts by pleading guilty to Count II of the Superceding Indictment (Agency Exh. 28).

Respondent exported the cathode ray tubes contrary to the terms of the Regulations because he exported them without the export license required by § 372.1(b) of the Regulations.

[6] License application numbers A669213 and A669214 were denied by the Agency on July 29, 1983 (Agency Exh. 19).

[7] License application A677421 was denied by the Agency on May 19, 1983 (Agency Exh. 21).

[8] License application number A663561 does not cover the equipment shipped in these exports (Agency Exh. 26).

[9] License application A648884 related to a different export to Mexico.

Respondent, thus, committed one violation of § 387.6 of the Regulations.

In pleading guilty to Court II of the Superceding Indictment, Respondent admitted that he knew or had reason to know that an export license was required and he exported the cathode ray tubes to Hong Kong from the United States without obtaining that license. Thus, Respondent committed one violation of § 387.4 of the Regulation in that, by exporting the cathode ray tubes to Hong Kong, without the required license, Respondent transported them knowing or having reason to know that a violation of Regulations had occurred.

Conclusion

The exhibits and representations by Agency Counsel and the Respondent, as well as his co-conspirator's guilty pleas fully support the charges made by the Agency in the May 16, 1988 Charging Letter, which alleged that the Respondent knowingly exported electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export licenses from the Agency and knowingly submitted false statements to the Agency.[10] By doing so, the Respondent committed the charged violations of former §§ 387.4, 387.5 and 387.6 of the Regulations.

The pattern of conduct demonstrated by the violations shows a deliberate and willful intent to violate United States export laws and regulations. I find that an Order denying export privileges for 20 years from the date that a final order is entered in this proceeding is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Act and the Regulations.

Order

I. For a period of 20 years from the date of the final Agency action, Respondent.

Man Chung Tong, individually and doing business as Stillwell Development Company, Ltd., Scientific Data Systems, Ltd., Equipment Rental Company, Ltd., Flat 2B, Cheers Court, 15 Dianthus Road, Yan Yat Cheuen, Kowloon, Hong Kong.

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation.

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly.

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Date: November 16, 1988.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985).

[FR Doc. 88-29267 Filed 12-20-88; 8:45 am]
BILLING CODE 3510-DT-M

[10] The Charging Letter in this proceeding was issued almost three months after that directed to William T. Newkirk, et al., Docket No. 81-8104, 81-8105. The Secretarial action in that matter is dated August 26, 1988 and was published at 53 FR 3,3833 (Sept. 1, 1988). There is no explanation for the separation of these two related cases. The two referenced indictments were in 1983 and 1984. From those and other exhibits it appears that the facts were known and evidence gathered over four years ago. I continue to lament the stale status of too many of these proceedings and now add a concern for the exaggeration of the numbers of the few cases presented for adjudication.

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application #88-00015.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Ferrous Scrap Export Association. This notice

summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15, CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determinaion may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct:

Export Trade.

1. Products

Carbon steel and iron scrap (currently identified at U.S. Department of Commerce Schedule B numbers 607.0180 through 607.0846 (to be identified at Schedule B numbers 7204.10 and 7204.30 through 7204.50)) ("ferrous scrap").

2. Export Trade Facilitation Services (as they relate to the export of Products)

Consulting, management, international market research, marketing and trade promotion, sales of goods and services, insurance, legal assistance, inspection services, quality surveys, draft surveys, packing, transportation, wharfing and handling, steamship agency services, trade documentation, freight forwarding, storage, foreign exchange, taking title to goods and customs clearance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. FSEA and/or one or more of its Members may:

a. Engage in joint negotiation, joint offering, or other joint selling arrangements for the sale of ferrous scrap in Export Markets and allocate sales resulting from such arrangements among the Members;

b. Establish and operate jointly owned subsidiaries or other joint ventures, owned exclusively by Members, to purchase, process and export ferrous scrap to Export Markets and to provide Export Trade Facilitation Service to Members;

c. Establish export prices and terms for the sale of ferrous scrap in Export Markets, and allocate export markets and/or customers among themselves;

d. Jointly refuse to quote prices for ferrous scrap, or to market or sell ferrous scrap, in Export Markets;

e. On a country-by-country basis for the Export Markets, jointly establish and/or negotiate with purchasers regarding specifications for grades of ferrous scrap to be sold in each country;

f. Jointly negotiate for and purchase ferrous scrap or raw materials for ferrous scrap for export from either Members or non-Member Suppliers for resale in Export Markets;

g. Jointly provide and/or jointly negotiate with Suppliers for Export Trade Facilitation Services;

h. Jointly establish, or arrange to have FSEA, one or more of its Members, or Suppliers to act as, exclusive or non-exclusive Export Intermediaries in Export Markets. Any such exclusive Export Intermediary may agree not to represent any other Supplier of ferrous scrap in the relevant country or market, and Members may agree that they will not export independently, either directly or through any other Export Intermediary or other party;

i. Agree that they will export for sale in one or more Export Markets only directly, through other Members, and/or through designated Export Intermediaries;

j. Cooperate in responding to attempted boycotts, refusals to deal, or other unfair trade practices by buyers of ferrous scrap in Export Markets against any Member, including cooperation in seeking relief before the U.S. Departments of Commerce or Justice, the Federal Trade Commission, the Office of the United States Trade Representative, and/or the courts in the United States and/or the courts and administrative agencies of other countries;

k. Meet and exchange information on any of the above subjects, as well as on market strategies and economic and business conditions in Export Markets; on export prices, terms, quality, quantity, source and delivery dates of ferrous scrap available from Members or non-Members for export; on U.S. and foreign legislation and regulations affecting the sale of ferrous scrap in Export Markets; and on FSEA's organization, governance, financial condition, and membership; and

l. Agree that any information obtained pursuant to the Certificate from another Member shall not be provided to any other Supplier of ferrous scrap.

2. FSEA and its Members may prescribe the following conditions with respect to voting rights, membership in, and withdrawal and expulsion from, FSEA:

a. Voting need not be on a one-member/one-vote basis. Initial voting rights shall be: Camden Iron & Metal, Inc., LMC Metals, Michael Schiavone & Sons, Inc., Schiavone-Bonomo Corp., Schnitzer Steel Products Co., Southern Scrap Material Co., Ltd., and Witte-Chase Corporation shall have one vote each; Hugo Neu & Sons, Inc. and Proler International Corp. shall have one vote jointly to be voted by Hugo Neu & Sons, Inc.; Naporano Iron & Metal Co. and NIMCO Shredding Co. shall have one vote jointly to be voted by Naporano Iron & Metal Co. Thereafter, any change in voting rights, shall be conducted under the voting rules then in effect.

b. Additional parties may be admitted to membership upon receiving:

(1) An affirmative vote of two-thirds of FSEA's existing members, and

(2) Unanimous approval of those members conducting export operations from the same Customs Clearance district as the proposed new member. In the event that no member has export operations in the same Customs Clearnace district as the proposed new member. In the event that no member has export operations in the same Customs Clearance district as the proposed new member, unanimous approval must be obtained from those members operating from the adjacent Customs Clearance districts.

Inclusion of each new member under the Certificate shall be subject to the successful application to the Secretary of Commerce to amend the Certificate to

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add the proposed new member as a Member.

c. In the event of a change in the control of a member, such member may continue as a member of FSEA only upon receiving the affirmative votes of two-thirds of the other members. This paragraph shall not apply to a family-controlled company in the case of a change in ownership within the family.

d. Any member may be expelled, without cause or notice, by a majority vote of the other members.

e. Any member may withdraw from membership in FSEA by giving thirty (30) days' written notice to the remainiung members. However, the withdrawing member shall remain responsible for commitments made by such member and by FSEA on behalf of such member prior to the effective date of such member's withdrawal.

Members (within the meaning of § 325.2(1) of the Regulations)

Camden Iron & Metal Inc.; Hugo Neu & Sons, Inc.; LMC Meals; Michael Schiavone & Sons, Inc.; Naporano Iron & Metal Co.; NIMCO Shredding Co.; Proler International Corp.; Schiavone-Bonomo Corp.; Schnitzer Steel Products Co.; Southern Scrap Material Co., Ltd.; and Witte-Chase Corporation.

Definitions

For purposes of the Certificate:

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker for the sale of goods or services to Export Markets, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services;

2. "Supplier" means a person who produces, provides, or sells ferrous scrap and/or Export Trade Facilitation Services, whether a Member or non-Member; and

3. "Member" means a person who has membership in FSEA.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: December 16, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-29279 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Preliminary Approval of the Proposed Amendment To Incorporate the 1988 Beach Management Act into the South Carolina Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of preliminary approval of amendment.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the South Carolina Coastal Council to amend the South Carolina Coastal Management Program (SCCMP) by incorporating the South Carolina Beach Management Act which became law in June 1988. The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and the regulations implementing the CZMA at 15 CFR 923.81. The Beach Management Act enlarges the beach/dune critical area, establishes a setback line based on erosion of the shoreline, places strict limits on what may be constructed seaward of that line, requires long-range comprehensive shorefront management plans at the State and local level, and requires disclosure statements regarding erosion conditions in all contracts of sale and deeds of transfer of affected properties.

The Director, OCRM, has reviewed the amendment request and has made the preliminary determination that, if the amendment is approved, the SCCMP will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met. The Director has also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the human environment. Therefore, this action does not require an environmental impact statement pursuant to the National Environmental Policy Act of 1969, as amended.

Copies of the Finding of No Significant Impact, including the supporting Environmental Assessment, and the Preliminary Findings of Approvability can be obtained from the address below. Comments on these documents should be made by January 17, 1989. Address comments to: Mr. William Millhouser, Regional Manager, South Atlantic and Gulf Regions, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673-5138.

(Federal Domestic Assistance Catalogue 11.419 Coastal Zone Management Program Administration.

[FR Doc. 88-29363 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-08-M

National Telecommunications and Information Administration

[Docket No. 81257-8257]

Inquiry on Production Standards for High Definition Television (HDTV)

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: In 1985 the United States Government decided to support the NHK HDTV production standard in an effort to achieve a single, worldwide standard. Due to the opposition of a number of other governments, however, it is unlikely that a single, worldwide HDTV production standard will be agreed to. In addition, other production standards are now under development and certain questions have been raised concerning the technical feasibility of a single standard. In light of these changed circumstances, NTIA seeks comments on these developments and whether the U.S. Government should continue to support a production standard or standards.

DATES: Interested persons are invited to submit comments on this Notice of Inquiry to: Office of the Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, Room H4717, 14th and Constitution Avenue, NW., Washington, DC 20230. Comments are due at the above address by 5:00 p.m. on March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard M. Firestone, Chief Counsel, National Telecommunications and Information Administration, Department of Commerce, Room H4717, 14th & Constitution Avenue, NW., Washington, DC 20230; (202) 377-1816.

SUPPLEMENTARY INFORMATION: High Definition Television or HDTV is a generic term referring to a new generation of video receivers and production equipment that will provide superior picture clarity as compared to that currently available. HDTV

technology yields video images comparable in quality to images produced using 35 millimeter film and, as such, offers substantial potential for improved efficiency and flexibility in the production and distribution of all types of programming.

The potential for video images to serve as a substitute for film has long been recognized, but until recently, video technology had not been considered an acceptable substitute production medium. Laboratories throughout the world have sought to address this issue, but it was the laboratories of NHK, the Japanese Broadcasting Corporation, that first successfully developed a system. The NHK system uses 1125 lines per frame, 60 fields per second, 2:1 interlaced scanning and a 16 to 9 aspect ratio.

The current television technology used in the United States, known as NTSC, was originally developed by the National Television System Committee for monochrome (black-and-white) transmission around 1940, and has been subsequently enhanced to include color and stereo sound.

In May 1986 the Plenary Assembly of the International Radio Consultative Committee (CCIR)—the organ of the International Telecommunication Union responsible for recommending voluntary technical standards for radiocommunications—met in Dubrovnik, Yugoslavia. Among the things considered at the Plenary Assembly was a recommendation by the Government of Japan to adopt the NHK production standard for HDTV as a worldwide standard.

The U.S. Government supported the adoption of the NHK system as the worldwide HDTV production standard at the Dubrovnik Plenary. A primary reason for taking this position was the desire of the United States to have a single, worldwide production standard. It was hoped that a worldwide HDTV standard, like the internationally accepted 35 millimeter standard for film production, could be established so that there would be compatibility of systems between nations which would ease the transfer of HDTV programming. The Plenary Assembly did not reach agreement on the recommendation, however, and instead agreed to study the matter further and to reconsider the issue at its next plenary session, scheduled for 1990.

Since the Dubrovnik Plenary, it has become evident that a single, worldwide HDTV production standard will not be agreed upon. First, the governments of Western Europe have rejected the NHK system and have sponsored the development of a different system for Europe through the EUREKA 95 Project. While still in the development stage, this system has been demonstrated and appears viable.

Second, other production standards have been proposed recently, including one developed in the United States. At the time that the United States agreed to support the NHK standard, it was the only HDTV production standard that had been proposed.

Finally, questions have been raised about the technical compatibility of HDTV production standards with the electric power supply available in various countries. This concern is based in the cycle rates of the production equipment and the power supply in the locales where production is undertaken. Apparently, when 60 cycle production equipment is used to film with lighting running off a 50 cycle power source, it produces a strobing effect on the video image being recorded. The same should also hold true for any 50 cycle camera shooting in a 60 cycle electric power environment. Attempts can be made to address this problem by rewiring a particular locale to provide a power source with a compatible cycle rate and, conceivably, there could be a software or hardware solution. Until clarified, however, it would seem that this might present an unacceptable limit on the universal acceptance of any one system as a worldwide production standard.

In light of the economic significance of this issue and the upcoming CCIR Plenary meeting, scheduled for May 1990, NTIA seeks information on the significance of these changes and what the U.S. Government position should be on the adoption of an HDTV production standard or standards. Specifically, NTIA seeks comments on the implications of multiple video production standards, the merits of other HDTV production standards under development, whether the U.S. Government should continue to support a production standard or standards, the criteria that should be used in deciding to support a production standard, the relationship between the production standard and the transmission standard for HDTV, and the relationship between production standards and the equipment producers attempting to serve end user markets.

NTIA seeks public comment on these questions and any other information which would assist the Department of Commerce in assessing the United States Government position on this issue for the 1990 meeting of the CCIR. Comments should be submitted to: Office of the Chief Counsel, National Telecommunications and Information Administration, Room H4717, 14th and Constitution Avenue, NW., Washington, DC 20230, by March 1, 1989.

Date: December 16, 1988.

Alfred C. Sikes,

Assistant Secretary for Communications and Information.

[FR Doc. 88-29219 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 16, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and Macau is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisons of the bilateral agreement, but are designed to assist only in the

implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1988.

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textile done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effectd by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	Twelve-month restraint limit
200–239, 300–369, 400–469, 600–670 and 800–899, as a group.	76,510,312 square meters equivalent.
Group I	
200–239, 300–369, 600–670 and 800–899, as a group.	73,673,165 square meters equivalent.
Sublevels within Group I	
237	61,000 dozen.
331/831	300,000 dozen pairs.
333/334/335/833/834/835.	155,789 dozen of which not more than 82,063 dozen shall be in Categories 333/335/833/835.
336/836	23,000 dozen.
338	200,553 dozen.
339	840,048 dozen.
340	189,824 dozen.
341	122,433 dozen.
342	39,326 dozen.
345	33,867 dozen.
347/348/847	474,705 dozen.
350/850	18,000 dozen.
351/851	27,000 dozen.
359/859	137,892 kilograms.
631	200,000 dozen pairs.
633/634/635	329,897 dozen.
636	15,453 dozen.
638/639/838	1,027,305 dozen.
640	73,042 dozen.
641/840	125,540 dozen.
642/842	73,140 dozen.
645/646	171,217 dozen.
647/648	345,399 dozen.
649	145,833 dozen.
652,852	160,000 dozen.
659	89,762 kilograms.
670	340,194 kilograms.
845/846	202,005 dozen.
Group II	
400–469, as a group	1,377,743 square meters equivalent.
Sublevels within Group II	
434	1,852 dozen.
442	5,556 dozen.
445/446	74,276 dozen.

Imports charged to these category limits, except categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Macau.

The conversion factors are listed below:

Category	Conversion factor
333/334/335/833/834/835	34.2
333/335,833/835	34.2
359/859	8.5
633/634/635	34.5
638/639,838	12.9
641/840	12.1
652/852	13.4

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementaion of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–29275 Filed 12–20–88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

December 16, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: Under the terms of a Memorandum of Understanding dated October 17, 1988, the Governments of the United States and the Republic of Uruguay agreed to establish a limit for wool textile products is Category 410. A formal exchange of diplomatic notes will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Memorandum of Understanding of October 17, 1988 between the Governments of the United States and the Republic of Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of wool apparel products in Category 410, produced or manufactured in Uruguay and exported during the seventeen-month period which begins on February 1, 1989 and extends through June 30, 1990, in excess of the following limit:

Category	Seventeen-month limit
410	3,731,218 square meters of which not more than 2,132,125 square meters shall be in Category 410–A (carded) [1] and not more than 3,435,090 square meters shall be in Category 410–B (combed) [2].

[1] In Category 410–A, only tariff numbers 5111.11.10.00, 5111.11.60.30, 5111.11.60.60, 5111.19.20.00, 5111.19.60.20, 5111.19.60.40, 5111.19.60.60, 5111.19.60 80, 5111.20.60.00, 5111.30.60.00, 5111.90.30.00, 5111.90.60.00, 5212.11.10.10, 5212.12.10.10, 5212.13.10.10, 5212.14.10.10, 5212.15.10.10, 5212.21.10.10, 5212.22.10.10, 5212.23.10.10, 5212.24.10.10, 5212.25.10.10, 5311.00.20.00, 5407.91.05.10, 5407.92.05.10, 5407.93.05.10, 5407.94.05.10, 5408.31.05.10, 5408.32.05.10, 5408.33.05.10, 5408.34.05.10, 5515.13.05.10, 5515.22.05.10, 5515.92.05.10, 5516.31 05.10, 5516.32.05.10, 5516.33.05.10, 5516.34.05.10 and 6301.20.00.20.

[2] In Category 410–B, only tariff numbers 5007.10.60.30, 5007.90.60.30, 5112.11.00.30, 5112.11.00.60, 5112.19 60.10, 5112.19 60.20, 5112.19.60.30, 5112.19.60 40, 5112.19.60.50, 5112.19.60.60, 5112.20.00.00, 5112.30.00.00, 5112.90 80.00, 5112.90.60.10, 5112.90.60 90, 5212.11.10.20, 5212.12.10.20, 5212.13.10.20, 5212.14.10.20, 5212.15.10.20, 5212.21.10.20, 5212.22 10.20, 5212.23.10.20, 5212.24.10.20, 5212.25.10.20, 5309.21 20.00, 5309.29.20.00, 5407.91.05.20, 5407 92.05.20, 5407.93.05.20, 5407.94 05.20, 5408 31.05.20, 5408.32.05.20, 5408.33.05.20, 5408.34.05.20, 5515.13.05.20, 5515.22.05.20, 5515.92.05.20, 5516.31.05.20, 5516.32.05.20, 5516.33.05.20 and 5516.34.05.20

Imports charged to the category limit for the period February 1, 1988 through January 31, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–29276 Filed 12–20–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

December 16, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner on Customs establishing a limit.

EFFECTIVE DATE: January 1, 1989.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 3715.

SUPPLEMENTARY INFORMATION: Under the terms of a Memorandum of Understanding dated October 17, 1988, the Governments of the United States and the Republic of Uruguay agreed to establish a limit for cotton textile products in Category 334. A formal exchange of diplomatic notes will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding of October 17, 1988 between the Governments of the United States and the Republic of Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton apparel products in Category 334, produced or manufactured in Uruguay and exported during the six-month period which begins on January 1, 1989 and extends through June 30, 1989, in excess of 41,250 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–29277 Filed 12–20–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 16, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

December 16, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1989, and extending through December 31, 1989, in excess of the following limits:

Category	12-Mo. restraint limit
340/640	404,954 dozen.
341/641	264,046 dozen.
433	7,978 dozen.
434	8,846 dozen.
435	39,023 dozen.
442	10,967 dozen.
443/643	305,112 numbers of which not more than 104,052 numbers shall be in Category 443.
444	92,064 numbers.
447/448	48,908 dozen of which not more than 29,137 dozen shall be in Category 447 and not more than 29,137 dozen shall be in Category 448.
604-A [1]	305,794 kilograms.
645/646	123,596 dozen.
666	968,347 kilograms.

[1] In Category 604-A, only tariff number 5509.32.00.00.

Imports charged to these category limits for the period January 1, 1988, through December 31, 1988, shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to provisions of the bilateral agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29278 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 5 January 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1988.

[FR Doc. 88-29252 Filed 12-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Advisory Committee Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on January 12-13, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1988.

[FR Doc. 88-29253 Filed 12-20-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 14, 1988.

The USAF Scientific Advisory Board Ad Hoc Committe on Science and Technology (S&T) Roadmaps Review will meet on January 10, 1989 from 8:00 a.m. to 5:30 p.m. at the Pentagon, Washington, DC 20330-5430.

The purpose of this meeting is to brief the Assistant Secretary of the Air Force for Acquisition on the Committee's review of the roadmaps for the programs in the Air Force S&T base. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof,

and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29237 Filed 12–20–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

December 14, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Munitions Effectiveness will meet on January 17–18, 1989 from 8:00 a.m. to 5:00 p.m. at the Armament Division, Eglin AFB, FL 32542. This meeting was previously announced for 8–10 Nov. 88 and is rescheduled from those dates.

The purposes of this meeting are to assess the changes in the threat over the past ten years and to study how to take full advantage of potential technology improvements in the development and manufacturing of munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29238 Filed 12–20–88; 8:45 am]

BILLING CODE 3910–01–M

Privacy Act of 1974; New Record Systems

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of two new systems of records subject to the Privacy Act.

SUMMARY: The Air Force is adding two new record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice January 23, 1989, unless the Air Force receives comments which results in a contrary determination.

ADDRESS: Send any comments to Ms. Linda G. Adams, SAF/AADA, The Pentagon, Washington, D.C., telephone: 202–694–3431, AUTOVON: 224–3431.

SUPPLEMENTARY INFORMATION: The Air Force published systems of records notices subject to the Privacy Act of 1974 in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985

FR Doc. 85–14122 (50 FR 24672) June 12, 1985

FR Doc. 85–15062 (50 FR 25737) June 21, 1985

FR Doc. 85–26775 (50 FR 46477) November 8, 1985

FR Doc. 85–29261 (50 FR 50337) December 10, 1985

FR Doc. 86–2527 (51 FR 4531) February 5, 1986

FR Doc. 86–4546 (51 FR 7371) March 3, 1986

FR Doc. 86–10044 (51 FR 16735) May 6, 1986

FR Doc. 86–11696 (51 FR 18927) May 23, 1986

FR Doc. 86–25787 (51 FR 41382) November 14, 1986

FR Doc. 86–25788 (51 FR 41402) November 14, 1986

FR Doc. 86–27635 (51 FR 44332) December 9, 1986

FR Doc. 87–8139 (52 FR 11845) April 13, 1987

FR Doc. 88–14507 (53 FR 24354) June 28, 1988

FR Doc. 88–26193 (53 FR 45800) November 14, 1988

FR Doc. 88–28603 (53 FR 50072) December 13, 1988

The Air Force submitted new system reports, as required by 5 U.S.C. 552a(0) of the Privacy Act on December 2, 1988, pursuant to paragraph 4b of Appendix to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1988.

F060 AF B

System name: F060 AF B—Contractor Flight Operations.

System location: All Army, Navy, Air Force and Defense Logistics Agency activities who approve contractor aircraft flight and ground operations procedures or utilize contractor personnel who operate aircraft for the government.

Categories of individuals covered by the system: All contractor personnel who operate aircraft for the Army, Navy, Air Force, or Defense Logistic Agency for which the government assumes some risk of loss or damage. It covers both flight crewmember and noncrewmember personnel designated by a contractor to conduct flights, perform functions while the Aircraft is in flight, or perform ground operations in support of such flights.

Categories of records in the system: Name; SSN; home address and telephone number; DOB security clearance data; education; military service data; flight qualification, proficiency, training, and experience records; standardization and evaluation data; safety and mishap records; medical and physiological data; and, similar data.

Authority for maintaining the system: 10 U.S.C. 8013, 44 U.S.C. 3101, and joint regulation AFR 55–22/AR 95–20/NAVAIRINST 3710. 1C/DLAR 8210.1 and Executive Order 9397.

Purpose(s): Used to monitor and manage individual contractor flight and ground personnel records.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Records from this system may be used for any of the blanket routine uses published by the Air Force.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the systems:

Storage: Maintained in file folders, notebooks, computers and computer output products.

Retrievability: Filed by name or SSN.

Safeguards: Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their actual duties who are properly screened and cleared for need to know. Records are stored in locked cabinets, and rooms are controlled by personnel screening and computer software.

Retention and disposal: Records are maintained in the system until contract termination, at which time they will be destroyed if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force: HQ AFSC/TEO, Andrews AFB DC 20334–5000. Army: DALO–AV, Washington, DC 20330–0505. Navy: NAVAIRSYSCOM (Air 119), Washington, DC 20361. DLA: HQ DLA–DQSO–S, 805 Walker Street, Marietta GA 30060–2789.

NOTIFICATION PROCEDURE:

Request from individuals should be addressed to the system manager or the system location where the flight certification is recorded. Individuals will be asked to provide name, social security number, or both, to facilitate access.

RECORD ACCESS PROCEDURES:

Written requests should be notarized and addressed to the system manager or

to the system location where the flight certification is recorded. For personal visists, the individual may be asked to show a valid identification card, a driver's license, or some similar proof of identity.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager and are published in Air Force Regulation 12–35 (32 CFR 806b).

RECORD SOURCE CATEGORIES:

Information is provided by the individual or from training, evaluation, and examination records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F110 JA E

SYSTEM NAME:

F110 JA E—Air Force Reserve Judge Advocate Personal Data

SYSTEM LOCATION:

Headquarters United States Air Force, Office of the Judge Advocate General, Washington, DC 20330; at the office of the staff judge advocate at major commands and subordinate units, down to and including Air Force installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve Judge Advocates (JAGs).

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and professional background information pertaining to individual JAGs.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 USC 8013, Secretary of the Air Force.

PURPOSE(S):

To verify training completion dates and personal and professional data used to prepare the JAG's Officer Effectiveness Report.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by persons responsible for servicing the record system in performance of their official duties.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters United States Air Force, Washington, D.C. 20330–5120.

NOTIFICATION PROCEDURE:

Request from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are located in Air Force Regulation 12–35 (32 CFR 806b).

RECORD SOURCE CATEGORIES:

Information supplied by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–29254 Filed 12–20–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

[Docket Nos. CP89–373–000, et al.]

Federal Energy Regulatory Commission

Questar Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

December 14, 1988.

[Docket No. CP89–373–000]

Take notice that on December 12, 1988, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89–373–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ampolex (Texas) Inc. (Ampolex), under the blanket certificate issued in Docket No. CP88–650–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar Pipeline states that pursuant to a transportation agreement dated November 17, 1988, under its Rate Schedule T–2, it proposes to transport up to 600 MMBtu per day equivalent of natural gas for Ampolex from the Dove Creek Plant Outlet to an interconnection with Northwest Pipeline Corporation, both delivery points being located in Dolores County, Colorado.

Questar Pipeline further states that the average daily and annual quantities would be equivalent to 600 MMBtu and 219,000 MMBtu, respectively. Service commenced December 4, 1988, under the provisions of § 284.223(a) as reported in Docket No. ST89–1223 (filed December 12, 1988).

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of the notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP89–390–000]

December 14, 1988.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–390–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 24, 1988, under its Rate Schedule IT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for PSI from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". Tennessee states that it would receive the gas at an existing point on its system located in the State of Louisiana, and that it would transport and redeliver the gas to various delivery points off Tennessee's system interconnecting with National Fuel Gas

Supply, located in the states of New York and Pennsylvania. Tennessee states that deliveries would also be made to storage facilities located at Hamburg, Erie County, New York, and at Hebron, Potter County, Pennsylvania.

Tennessee advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1079 (filed December 1, 1988). Tennessee further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP89-384-000]

December 14, 1988.

Take notice that on December 12, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-384-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Cabot Energy Marketing Company (Cabot), a marketer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated July 19, 1988, under its Rate Schedule ITS, it proposes to transport for Cabot up to 50,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at various existing points in Texas and New Mexico and that it would transport and redeliver the gas at a Cabot Pipeline Corporation interconnection in Lea County, New Mexico. Natural advises that the gas ultimately would be consumed in the states of Texas, New Mexico, and California.

Natural advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89-1239 (filed on December 12, 1988). Natural further advises that it would transport 5,000 MMBtu on an average day and 1,825,000 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89-383-000]

December 15, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-383-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total Minatome) under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes, pursuant to a gas transportation agreement dated October 10, 1988, to transport on a peak day up to 50,000 MMBtu per day equivalent of natural gas for Total Minatome, with an estimated average daily quantity of 10,000 MMBtu equivalent of natural gas. Texas Gas states that, on an annual basis, it could transport up to 18,250,000 MMBtu equivalent of natural gas. It is stated that the ultimate consumer of the gas is Providence Gas Company. It is stated further that transportation service for Total Minatome commenced October 19, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-751. Texas Gas states that the transportation service is being rendered through the use of Texas Gas' existing facilities.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89-355-000]

December 15, 1988.

Take notice that on December 8, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-355-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Western Massachusetts Electric Company (Western Mass), an end-user, under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant proposes, pursuant to a transportation agreement dated October 20, 1988, to transport natural gas for Western Mass from points of receipt located in offshore Louisiana and the States of Louisiana, Texas, New York and New Jersey. Applicant states that the various locations of the ultimate delivery points for the gas are the States of Connecticut, Massachusetts, New Hampshire, New Jersey and Pennsylvania. The Applicant states further that the maximum daily quantity is 250,000 dekatherms (dt) equivalent of natural gas and the annual quantity is 30,000,000 dt equivalent of natural gas. Applicant states that service under § 284.223(a) commenced October 25, 1988, as reported in Docket No. ST89-810 (filed November 18, 1988).

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89-376-000]

December 15, 1988.

Take notice that on December 12, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-376-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Conoco, Inc. (Conoco), a shipper and marketer of natural gas and Agent for E.I. du Pont de Nemours & Company, Inc. (du Pont) pursuant to a transportation agreement dated October 12, 1988. Trunkline explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-0924. Trunkline further explains that the peak day quantity would be 1,500 dekatherms, the average daily quantity would be 500 dekatherms, and that the annual quantity would be 182,500 dekatherms. Trunkline explains that it would receive natural gas for Conoco's account at various existing points of receipt on its system. Trunkline states that it would transport and redeliver the natural gas to Northern Indiana Public Service Company in Marshall, Pulaski, Elkhart, and Jasper Counties, Indiana.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-349-000]

December 15, 1988.

Take notice that on December 7, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-349-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations to transport natural gas on behalf of Tejas Power Corporation, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pursuant to a Transportation Service Agreement dated October 11, 1988, Northern proposes to transport up to 20,000 MMBtu per day for Tejas Power Corporation, through existing facilities. Construction of facilities will not be required to provide the proposed service.

Nothern states that service commenced on October 11, 1988, under the 120-day automatic authorization provisions of § 284.223(a), as reported in Docket No. ST89-372.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP89-375-000]

December 15, 1988.

Take notice that on December 12, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-375-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for American Central Gas Marketing Company (American Central), a marketer, pursuant to a transportation agreement dated September 14, 1988. Trunkline explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-925. Trunkline further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 20,000 dekatherms, and that the annual quantity would be 7,300,000 dekatherms. Trunkline explains that it would receive natural gas for American Central's account at points of receipt in Illinois, Tennesseee, Louisiana, Texas, and offshore Louisiana. Trunkline states that it would transport and redeliver the natural gas to Consumers Power Company in Elkhart, Indiana.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-379-000]

December 15, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-379-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total Minatome), under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 200,000 MMBtu of natural gas for Total Minatome, with an estimated average daily quantity of 40,000 MMBtu. On an annual basis, Texas Gas could transport up to 73,000,000 MMBtu. The ultimate consumer of the gas has been identified by Total Minatome as Wisconsin Natural Gas Company.

Transportation service for Total Minatome commenced October 19, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-743.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Trunkline Gas Company

[Docket No. CP89-374-000]

December 15, 1988.

Take notice that on December 12, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-374-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act [18 CFR 157.205 and 284.223) for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a marketer, pursuant to Trunkline's blanket certificate issued in Docket No. CP86-586-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authority to transport up to 30,000 dt equivalent of natural gas per day on an interruptible basis on behalf of Transtate pursuant to a transportation agreement dated August 25, 1988, between Trunkline and Transtate. Trunkline states that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system in Illinois, Offshore Louisiana, onshore Louisiana, and Texas and to redeliver the gas less fuel and unaccounted for line loss, to Northern Indiana Public Service Company in Marshall, Pulaski, Elkhart, and Jasper Counties in Indiana.

Trunkline indicates it would provide the service for a primary term of one month from the date of initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least 30 days prior notice to the other. Trunkline states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 30,000 dt equivalent of natural gas, 30,000 dt equivalent of natural gas, 10,950,000 dt equivalent of natural gas, respectively. Trunkline states it commenced a 120-day transportation service for Transtate on November 1, 1988, as reported in Docket No. ST89-940. It is also indicated that Trunkline would use existing facilities to implement the service.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89-391-000]

December 15, 1988.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89-391-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act for

Reliance Gas Marketing Company (Reliance), all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Reliance, a marketer. Tennessee explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1070. Tennessee further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 50,000 dekatherms, and the annual quantity would be 18,250,000 dekatherms. Tennessee explains that it would receive natural gas for Reliance's account at various points in offshore Louisiana and the states of Louisiana, Alabama, Mississippi, and Texas. Tennessee further explains that, it would redeliver natural gas for Reliance's account to CNG Transmission Company at: (1) Broadrun-Cornwell, Kanawha County, West Virginia, (2) Harrison Potter County, Pennsylvania, and (3) Ellisburg, Potter County, Pennsylvania, and also to Delta Natural Gas Company in Madison County, Kentucky. Tennessee states that the ultimate delivery points of the gas are located in Kentucky, West Virginia, and Pennsylvania.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Company

[Docket No. CP89–388–000]

December 15, 1988.

Take notice that on December 12, 1988, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–388–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kansas Power & Light Company (KPL), under its blanket authorization issued in Docket No. CP89–388–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for KPL, a local distribution company, pursuant to an FTS transportation service agreement dated November 1, 1988 (Reference No. TR–A0022). The term of the transportation agreement is from the date of execution and shall continue in full force and effect until January 1, 1993 and shall be considered as renewed and extended beyond such original term for additional periods of one year each unless either party gives the other written notice at least ninety days prior to the expiration date of the original or any succeeding or extended term of its intention to terminate the service agreement on that date. Williams proposes to transport on a peak day up to 16,490 MMBtu per day; on an average day up to 16,490 MMBtu; and on an annual basis 6,018,850 MMBtu of natural gas for KPL. It is stated that KPL would pay Williams for all service rendered under the transportation agreement in accordance with Williams' Rate Schedule FTS, and/or any other applicable or superseding rate schedule(s) as filed with the FERC. Williams would receive the volumes from various receipt points in Kansas, Oklahoma, Texas and Wyoming for transportation to various delivery points on Williams' pipeline system located in Kansas.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST89–1102–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89–393–000]

December 15, 1988.

Take notice that on December 13, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–393–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ford Motor Company—Lorain Assembly Plant (Ford Motor-Lorain), under the blanket certificate issued in Docket No. CP89–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 6, 1988, under its Rate Schedule T, it proposes to transport up to 6,000 MMBtu per day equivalent of natural gas for Ford Motor-Lorain from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C", which transportation service involves interconnections between Texas Gas and various transporters.

Texas Gas advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89–768. Texas Gas further advises that it would transport 5,000 MMBtu on an average day and 2,190,000 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Texas Gas Transmission Corporation

[Docket No. CP89–397–000]

December 15, 1988.

Take notice that on December 13, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–397–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ford Motor Company—Norfolk Assembly Plant (Ford Motor-Norfolk), under the blanket certificate issued in Docket No. CP89–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 6, 1988, under its Rate Schedule T, it proposes to transport up to 6,000 MMBtu per day equivalent of natural gas for Ford Motor-Norfolk from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C," which transportation service involves interconnections between Texas Gas and various transporters.

Texas Gas advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89–769. Texas Gas further advises that it would transport 2,000 MMBtu on an average day and 2,190,000 MMBtu annually.

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of the notice.

15. Texas Gas Transmission Corporation

[Docket No. CP89–395–000]

December 15, 1988.

Take notice that on December 13, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 filed in Docket No. CP89–395–000 a request pursuant to § 157.205 of the Commission's Regulations under the

Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ford Motor Company-Sandusky Plastics Plant (Ford Motor-Sandusky), under the blanket certificate issued in Docket No CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 5, 1988, under its Rate Schedule T, it proposes to transport up to 2,500 MMBtu per day equivalent of natural gas for Ford Motor-Sandusky from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C," which transportation service involves interconnections between Texas Gas and various transporters.

Texas Gas advises that service under § 284.223(a) commenced October 21, 1988, as reported in Docket No. ST89–766. Texas Gas further advises that it would transport 2,300 MMBtu on an average day and 912,500 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Williams Natural Gas Company

[Docket No. CP89–399–000]

December 16, 1988.

Take notice that on December 13, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–399–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Conoco, Inc. (Conoco), a producer, under the blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on a firm basis for Conoco up to 500 MMBtu of natural gas on a peak day, approximately 200 MMBtu on an average day, and 182,500 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Oklahoma and Texas to various delivery points on Williams' system in Kansas. Williams explains that service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1103–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP89–370–000]

December 16, 1988.

Take notice that on December 9, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–370–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to provide interruptible transportation service on behalf of Santa Fe International Corp., a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that, pursuant to an interruptible gas transportation agreement dated October 12, 1988, it proposes to transport a maximum daily quantity of 25,750 MMBtu of natural gas from a single point of receipt located in Vermilion Parish Louisiana to nine (9) points of delivery located in Quachita, LaSalle, Rapides and St. Landry Parishes Louisiana. The average daily quantity transported is expected to equal the maximum daily quantity transported and based thereon, the annual transportation volume is expected to be 9,398,750 MMBtu. United states that the service commenced November 10, 1988, as reported in Docket No. ST89–938–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Texas Gas Transmission Corporation

[Docket No. CP89–381–000]

December 16, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–381–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total Minatome) under the blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 25,000 MMBtu of natural gas for Total Minatome, with an estimated average daily quantity of 20,000 MMBtu. On an annual basis, Texas Gas could transport up to 9,125,000 MMBtu. The ultimate consumer of the gas has been identified by Total Minatome as Louisville Gas and Electric Company.

Transportation service for Total Minatome commenced October 21, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–749–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Williams Natural Gas Company

[Docket No. CP89–401–000]

December 16, 1988.

Take notice that on December 13, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–401–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Associated Natural Gas, Inc. (Associated), a marketer, under the blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on a firm basis for Associated up to 300 MMBtu of natural gas on a peak day, approximately 300 MMBtu on an average day, and 109,500 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Colorado, Kansas, Oklahoma and Wyoming to various delivery points on Williams' system in Kansas. Williams explains that service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–961–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–357–000]

December 16, 1988.

Take notice that on December 8, 1988, Northern Natural Gas Company Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–357–000 a request pursuant to § 284.223 (18 CFR 284.223) of the

Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Texaco, Inc. (Texaco) under Northern's blanket transportation certificate authorization which was issued by Commission order on December 22, 1986 in Docket No. CP86-435-000, 37 FERC 61,268 (1986), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 60,000 MMBtu of natural gas equivalent per day on behalf of Texaco pursuant to a transportation agreement dated November 1, 1988. Northern would receive the gas at various points in the state of Texas, and redeliver the gas at various points in Texas.

Northern states further that average day and annual deliveries would be 45,000 MMBtu and 21,900,000 MMBtu, respectively. The interruptible transportation commenced on November 1, 1988, pursuant to § 284.223(c) of the Commission's regulations as reported in Docket No. ST89-1143-000 on December 5, 1988.

Comment date: January 30, 1988, in accordance with Standard Paragraph G at the end of the notice.

21. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-394-000]

December 19, 1988.

Take notice that on November 11, 1988, Transcontinental Gas Pipe Line Corporation (Transco) Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-394-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kogas, Inc. (Kogas), under its blanket authorization issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco would perform the proposed interruptible transportation service for Kogas, pursuant to an interruptible transportation service agreement dated November 1, 1988. The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending December 1, 1988, and shall continue thereafter unless cancelled by thirty days prior notice by either party. Transco proposes to transport on a peak day up to 583,000 Dekatherms (dt) per day; on an average day 30,000 dt; and on an annual basis 10,950,000 dt of natural gas for Kogas. Transco further states that consistent with its Rate Schedule IT, Transco may agree to accept for transportation additional quantities of gas. Transco proposes to receive the subject gas at High Island Block A-283, Offshore Texas and deliver the gas at an existing point of interconnection between Transco and Tennessee Gas Pipeline Company at Cameron Parish, Louisiana. Transco avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Transco commenced such self-implementing service on November 11, 1988, as reported in Docket No. ST89-1114-000.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Texas Gas Transmission Corporation

[Docket No. CP89-380-000]

December 19, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-380-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Total Minatome Corporation (Total Minatome), with Louisville Gas and Electric Company identified as the ultimate consumer of the gas, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 100,000 MMBtu equivalent of natural gas on a peak day for Total Minatome's account, 70,000 MMBtu equivalent on an average day and 36,500,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Total Minatome's account at various existing receipt points on Texas Gas' system offshores Louisiana and that Texas Gas would deliver equivalent volumes for Total Minatome's account at an existing interconnection between Texas Gas and Bluewater Pipeline System offshore Louisiana. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 21, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-748.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Texas Gas Transmission Corporation

[Docket No. CP89-382-000]

December 19, 1988.

Take notice that on December 12, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-380-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Total Minatome Corporation (Total Minatome), with Louisville Gas and Electric Company identified as the ultimate consumer of the gas, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 25,000 MMBtu equivalent of natural gas on a peak day for Total Minatome 3,000 MMBtu equivalent on an average day and 9,125,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Total Minatome's account at an existing receipt point on Texas Gas' system in the West Cameron area, offshores Louisiana and that Texas Gas would deliver equivalent volumes for Total Minatome's account at an existing interconnection between Texas Gas and Texas Eastern Transmission Corporation, also in the West Cameron area, offshore Louisiana. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 20, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-750.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest if filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29280 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-354-000, et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certification Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-354-000]

December 12, 1988.

Take notice that on December 8, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-354-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Energy Marketing Services, Inc. (Energy Marketing), a marketer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 14, 1988, as amended November 18, 1988, under its Rate Schedule IT, it proposes to transport up to 5,000 dekatherms (dt) per day equivalent of natural gas for Energy Marketing from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A." Tennessee states that it would receive the gas at existing points on its system located in the State of Louisiana, and that it would transport and redeliver the gas to various delivery points off Tennessee's system, said points being in West Virginia, Pennsylvania, and Ohio.

Tennessee advises that service under § 284.223(a) commenced October 28, 1988, as reported in Docket No. ST89-868 (filed November 23, 1988). Tennessee further advises that it would transport 5,000 dt on a average day and 1,825,000 dt annually.

Comment dated: January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP84-718-002]

December 13, 1988.

Take notice that on November 16, 1988, El Paso Natural Gas Company (Petitioner), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP84-718-002 a petition to amend the order issued October 11, 1985, in Docket No. CP84-718-000 pursuant to section 7(c) of the Natural Gas Act to authorize the use of certain existing facilities as additional receipt points under the gas transportation agreement dated September 7, 1984, as amended, between Petitioner and Cabot Gas Supply Corporation (Cabot), successor-in interest to Westar Transmission Company, as well as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the October 11, 1985, order authorized it to receive gas at two points from Cabot in Winkler and Yoakum Counties, Texas and deliver, by displacement, equivalent volumes to Cabot at various delivery points along Petitioner's Dumas-Plains pipeline in Texas.

Petitioner asserts that Cabot has acquired additional volumes of gas in New Mexico, Oklahoma, and Texas and has requested Petitioner to add additional receipt points under the existing transportation agreement to make this gas available to Cabot and to provide Cabot with greater operational flexibility.

Petitioner states that the proposed additional receipt points would be located in Lea County, New Mexico; Roger Mills and Washita Counties, Oklahoma; and Reeves, Gray, Moore, Pecos, Ward, Yoakum and Winkler Counties, Texas. Petitioner further states that the proposed receipt points would use existing facilities and that no additional facilities would be required.

Petitioner states that for mainline transportation it would charge Cabot its "Mainline Transportation Charge—Texas" rates, for any gathering and/or dehydration it would charge Cabot its "Production Area Charge—Field Gathering" and/or "Production Area Charge—Dehydration Only" rate and for back haul transportation it would charge Cabot its "Back Haul Charge—Texas" rate, as such rates are set forth in Sheet No. 1-D.2 of Petitioner's FERC Gas Tariff, Third Revised Volume No. 2.

Comment dated: January 13, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP89-341-000]

December 13, 1988.

Take notice that on December 6, 1988, Midwestern Gas Transmission Company (Midwestern) 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-341-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 400,000 Dt per day of natural gas on an interruptible basis for Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it would receive gas at the United States-Canadian border at Emerson, Manitoba and redeliver gas to Tennessee at the points specified in the Gas Transportation Agreement, all of which involves service on Midwestern's northern system.

Midwestern states that Tennessee would pay a rate equal to the rate set forth in Midwestern's Rate Schedule IT-2 and that Tennessee would deliver quantities of gas at Emerson, Manitoba on each day for Midwestern's fuel and use requirements associated with the transportation.

Midwestern states in Tennessee will need to obtain necessary authorizations to import gas from Canada and the Canadian suppliers will need to obtain the necessary authorizations to export gas from Canada.

Further, Midwestern states that the proposed transportation service would benefit Tennessee by enabling it to meet existing market requirements and anticipated growth plus the service would provide Tennessee access to alternate sources of gas supplies to meet its requirements.

Comment date: January 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89-312-000]

December 13, 1988.

Take notice that on November 30, 1988, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-312-000 an application pursuant to section 7(b) of the Natural Gas Act for

permission and approval to abandon natural gas sales service, under Rate Schedules ODL–1, DS–1, and I–1 to be effective October 31, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states it is presently authorized to render firm gas sales service to its customers under Rate Schedules ODL–1 and DS–1 totaling 12,327,095 therms per day. Northwest also states that it offered all its customers the opportunity, pursuant to § 284.10(c)(3)(ii) of the Commission's Regulations, to convert an unlimited portion of firm sales contract demand to firm transportation service. A majority of Northwest's customers elected to convert a substantial portion of their firm purchase obligations. The new levels of purchases are shown in the following listing:

Firm Sales Service Obligations Upon Approval of Pending Abandonments [1]

Customer name	Contract Demand (therms/day)
Rate Schedule ODL–1:	
Cascade Natural Gas	616,000
CP National	70,000
Greeley Gas	53,225
Intermountain Gas	1,000
Northwest Natural	60,000
Southwest Gas	200,000
Washington Natural Gas	1,500,000
Washington Water Power	600,000
Total ODL–1	3,100,225
Rate Schedule DS–1:	
City of Buckley, Wa.	24,685
City of Ellensburg, Wa.	45,000
City of Enumclaw, Wa	25,715
Rocky Mountain Natural Gas	8,925
Utah Gas Service	12,870
Western Gas Supply	36,445
Wyoming Industrial Gas	13,750
Total DS–1	167,390
Total ODL–1 and DS–1	3,267,615

Northwest indicates that its firm sales contract demand under Rate Schedules ODL–1 and DS–1 upon approval of the pending partial abandonments will have declined by 73 percent to a level of 3,267,615 therms per day as a result of the conversions to firm transportation service. Each of the services under these rate schedules provides for a primary term continuing until October 1, 1989, and from year to year thereafter, subject to termination upon twelve months prior written notice by either party. Northwest stated that on October 31, 1988, it served notice on each of its Rate Schedule ODL–1 and DS–1 customers that the existing sales agreements would be terminated, pursuant to the terms of the contracts, on October 31, 1989.

Northwest indicates that it does not propose to abandon any of its pipeline facilities as a result of the instant request to abandon existing gas sales services.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: January 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] Northwest filed in Docket Nos. CP88–611–000 *et. al.* requests for partial abandonment of its firm sales obligations to these cutomers.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP89–324–000]

December 13, 1988.

Take notice that on December 1, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP89–324–000, a request pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the total sales service to East Ohio Gas Company (East Ohio), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that East Ohio's gas sales contract expired October 31, 1988, that East Ohio formally confirmed that it no longer desires sales service from Panhandle after expiration of the contract; and that East Ohio requests firm transportation service from Panhandle as a replacement for the expired sales service. It is further stated that Panhandle and East Ohio have agreed to replace 100% of East Ohio's sales service with the equivalent quantity of firm transportation and to continue to utilize the Maumee, Ohio delivery point for the receipt of both firm and interruptible transportation volumes. Panhandle explains that pursuant to section 311 of the Natural Gas Act, firm transportation is currently being performed under its Rate Schedule PT-Firm.

Specifically, Panhandle would abandon the contract demand (CD) of 185,000 Mcf per day of natural gas sold to East Ohio, which was served under Panhandle's Rate Schedule LS–1.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: January 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP89–326–000]

December 13, 1988.

Take notice that on December 1, 1988, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–326–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon its Rate Schedule DS–1, natural gas sales service to Wyoming Industrial Gas Company (Wyoming Industrial), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest was issued a blanket transportation certificate, pursuant to Part 284 of the Commission's Regulations, on January 19, 1988, in Docket No. CP86–578–000. On June 10, 1988, pursuant to § 284.10(c)(3)((ii), Northwest offered its firm sales customers the opportunity to convert an unlimited portion of their firm sales contract demand to firm transportation service. By letter dated October 12, 1988, Wyoming Industrial exercised the option by converting 50 percent of its firm sales service of 27,500 therms of gas per day under Northwest's Rate Schedule DS–1 to firm transportation service of 13,750 therms of gas per day under Northwest's Rate Schedule TF–1. Northwest also requests that permission and approval for the subject abandonment be made effective November 1, 1988, to correspond to the effective date of the new firm DS–1 service agreement and transportation agreement.

Northwest does not propose to abandon any of its pipeline facilities.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: January 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89–334–000]

December 13, 1988.

Take notice that on December 5, 1988, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–334–000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for

authorization to install and operate eight (8) sales taps and an additional point of delivery to Mississippi Valley Gas Company (MVG), an existing customer, under Southern's blanket certificate issued in Docket No. CP82-406-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would install and operate the sales taps as part of its pipeline system. Southern further states that the sales taps would be located at various locations on its 6-inch Northern Meridian Line in Winston and Kemper Counties, Mississippi and would be used to service certain end-use customers on behalf of MVG. MVG also advises that it proposes to construct, install and operate the additional point of delivery in Adams County, Mississippi, so that MVG may service new residential customers.

Southern states that the total volumes to be delivered to MVG after the installation of the proposed facilities would not exceed the total volumes authorized prior to the installation of the point of delivery or the sales taps and therefore, the activities are not prohibited by any existing tariff of Southern. Southern also states that it has sufficient capacity to accomplish the proposed deliveries without detriment to its other customers, and that the proposal would have a *de minimis* impact on peak day and annual deliveries. Finally, Southern advises that MVG has agreed to reimburse it for the cost to construct and install the eight sales taps and the new point of delivery which is estimated to be $5,440.00 and $11,700, respectively.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89-361-000]

December 13, 1988.

Take notice that on December 8, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-361-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 for authorization to add a new delivery point under a transportation service presently being provided by Tennessee for Granite State Gas Transmission, Inc. (Granite State), under the certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that by order issued July 24, 1987, in Docket No. CP81-296-008 Tennessee was authorized to transport up to 12,500 Mcf of natural gas per day for Granite State. It is stated that delivery of gas is presently made by Tennessee at three delivery points, with total daily deliveries limited to 12,587 dekatherms and with limits on daily deliveries at each delivery point as follows:

Delivery point	Daily quantity limits (Dekatherms)
(1) Northampton	2,050
(2) Lawrence	9,481
(3) Pleasant Street	1,282

Tennessee states that Granite State has requested Tennessee to provide an additional delivery point at Agawam, Massachusetts, with daily deliveries not to exceed 6,500 dekatherms. It is also stated that the addition of Agawam as a delivery point will not change the existing delivery points and maximum daily quantities or the total daily volume of 12,587 dekatherms.

Tennessee states that the Agawam delivery point on Tennessee's system is downstream of the Northampton delivery point and upstream of the Lawrence and Pleasant Street delivery points. Tennessee states that it is able and willing to deliver the requested daily volume of 6,500 dekatherms at the Agawam delivery point on condition that total daily deliveries of gas transported by Tennessee at the three delivery points of Lawrence, Pleasant Street and Agawam shall not exceed 10,763 dekatherms.

It is further stated that Tennessee is presently authorized to serve Granite State a daily contract quantity of 83,921 Mcf under Tennessee's CD-6 Rate Schedule. It is stated that up to 41,040 dekatherms per day are to be delivered at Agawan under such sales authorization. Tennessee states that no additional facilities are needed by Tennessee or Granite State to effect delivery of a total of 47,540 dekatherms per day at Agawam.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP89-59-001]

December 14, 1988.

Take notice that on December 7, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89-59-001, an Amendment to its Application filed in Docket No. CP89-59-000 pursuant to sections 7 (b) and (c) of the Natural Gas Act requesting authority to increase the Contract Demands of certain firm sales customers and decrease the Contract Demands of certain firm sales customers, all as more fully set forth in the Amendment which is on file with the Commission and open to public inspection.

Texas Gas states that the Amendment is being filed to reflect renominated service levels which its firm sales customers were allowed to submit in conjunction with Texas Gas's current rate case in Docket No. RP88-115-000. Texas Gas, it is said, offered its customers this opportunity based on discussions concerning the offering of the standby service proposed in Texas Gas Docket No. CP80-31-000 at a 100 percent level as opposed to the 50 percent level described in that application.

It is stated that the renominated service levels include both increases and decreases in various customers' Contract Demands. Texas Gas has indicated in the filing the extent to which any decreases in Contract Demand involve conversions to firm transportation service.

All requested increases in Contract Demand, Texas Gas states, can be implemented without the addition of any facilities or the diminution in service to any other customer.

Any new service agreement executed by affected customers after the granting of authority in this docket would, according the Texas Gas, still be considered an "eligible firm sales service agreement" within the meaning of § 284.10 of the Commission's Regulations.

Pursuant to 18 CFR 294.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: January 4, 1988, in accordance with Standard Paragraph F at the end of the notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89-377-000]

December 13, 1988.

Take notice that on December 12, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-377-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Columbia Gas of Ohio, Inc. (Columbia Gas), a local

distribution company, under the blanket certificate issued in Docket No. CP86–585–000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated October 1, 1988, under its Rate Schedule PT, it proposed to transport up to 20,000 dekatherms (dt) per day equivalent of natural gas for Columbia Gas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Columbia Gas in Lucas County, Ohio.

Panhandle advises that service under § 284.223(a) commended on October 1, 1988, as reported in Docket No. ST89–1112. Panhandle further advises that it would transport 20,000 dt on an average day and 7,300,000 dt annually.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89–371–000]

December 14, 1988.

Take notice that on December 9, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–371–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Sun Operating Limited Partnership (Sun). United explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–939. United explains that the peak day quantity would be 61,800 MMBtu, the average daily quantity would be 61,800 MMBtu, and that the annual quantity would be 22,557,000 MMBtu. United explains that it would receive natural gas for Sun's account at existing interconnections in the states of Texas and Louisiana. United states that it would redeliver the gas for Sun's account at existing interconnections in the states of Louisiana, Alabama, Florida, and Mississippi.

Comment date: January 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. North Penn Gas Company

[Docket No. CP89–360–000]

December 14, 1988.

Take notice that on December 8, 1988, North Penn Gas Company (North Penn), 76–80 Mill Street, Port Allegany, Pennsylvania 16743, filed in Docket No. CP89–360–000 an application for a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations. North Penn seeks authorization to engage in any of the routine activities specified in §§ 157.208 through 157.218 of the Commission's Regulations including permission and approval to abandon, as may be amended from time to time, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: January 4, 1988, in accordance with Standard Paragraph F at the end of this notice.

13. Williston Basin Interstate Pipeline Company

[Docket No. CP89–302–000]

December 14, 1988.

Take notice that on November 29, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89–302–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of new Annual Entitlement Quantities (AEQ) and Maximum Daily Quantities (MDQ) for sales services performed pursuant to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedules G–1 and SGS–1. Additionally, Williston Basin proposes the establishment of an Authorized Overrun Service (AOS) to be made part of its FERC Gas Tariff, First Revised Volume No. 1. Finally, pre-granted abandonment authority is requested with respect to the abandonment of Williston Basin's certified firm sales obligations to customers converting from firm sales to firm transportation pursuant to § 284.10 of the Commission's Regulations in order to reduce its certificated firm sales service by an amount equivalent to the amount of sales service converted, effective on the same date on which the conversions are effective, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. An effective date of January 1, 1989, is requested.

Williston Basin states that the new AEQ and MDQ quantities are those nominated by the following customers: Montana-Dakota Utilities Co. (Montana-Dakota), Wyoming Gas Company (Wyoming Gas), Frannie-Deaver Utilities (Frannie-Deaver) and Northern Utilities (Northern). It is stated that in accordance with new Rate Schedule G–1 service agreements dated June 23, 1988, Montana-Dakota has requested an AEQ of 31,300,000 Mcf and an MDQ of 275,485 Mcf, and Wyoming Gas has requested an AEQ of 700,000 Mcf and an MDQ of 8,254 Mcf. Additionally, Williston Basin states that under the new G–1 service agreements, Montana-Dakota and Wyoming Gas were allowed the opportunity to exercise their rights under § 284.10 of the Commission's Regulations to convert up to 15 percent of their firm sales requirements to firm transportation effective January 1, 1989. It is stated that both Montana-Dakota and Wyoming Gas have elected to convert the full 15 percent of their nominated AEQ's and approximately 4.7 and 3.5 percent, respectively of their nominated MDQ's to firm transportation. It is further stated that effective January 1, 1989, Montana-Dakota will have a new AEQ level of 26,605,000 Mcf and a MDQ level of 262,622 Mcf; Wyoming Gas will have a new AEQ level of 595,000 Mcf and an MDQ level of 7,966 Mcf.

Williston Basin also requests certification of the AEQ's and MDQ's of its two small general service customers currently receiving service under Rate Schedule SGS–1, Northern and Frannie-Deaver. It is averred that the executed service agreement with Northern specifies an AEQ level of 16,990 Mcf and and MDQ level of 280 Mcf, and that the agreement with Frannie-Deaver specifies an AEQ level of 7,200 Mcf and an MDQ level of 200 Mcf. These customers, according to Williston Basin, have not yet requested any conversion of their sales service to transportation.

Williston Basin also requests authority to incorporate an AOS in its Rate Schedules G–1 and SGS–1 so as to allow the provisions of interruptible sales service over and above the unconverted sales MDQ's and AEQ's requested herein, or those which may be applicable from time to time in the future as a result of additional conversions of sales service to firm

transportation. It is stated that upon implementation of the AOS service, customers with executed agreements under Rate Schedules G–1 and SGS–1 would have the availability of an interruptible service whenever Williston Basin determines that it has enough capacity available on its system to provide the AOS service.

Comment date: January 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

14. Williams Natural Gas Company

[Docket No. CP89–331–000]

December 14, 1988.

Take notice that on December 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–331–000 pursuant to Section 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim regulating, measuring and appurtenant facilities serving Strauss Grain Company, Inc. (Strauss) in Neosho County, Kansas, and the transportation of gas through these facilities, under the blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that Strauss has requested that the facilities be reclaimed. The total cost of the abandonment is approximately $790 with an estimated salvage of $60.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–358–000]

December 14, 1988.

Take notice that on December 8, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–358–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Apache Corporation (Apache), a producer, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 31, 1988, under its Rate Schedule IT–1, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Apache "A" of the agreement to numerous redelivery points, also listed in Appendix "A". The subject transportation service involves interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 7,500 MMBtu and 3,650,000 MMBtu, repectively. Service commenced October 31, 1988, under the provisions of Section 284.223(a) as reported in Docket No. ST89–835 (filed November 21, 1988).

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Natural Gas Pipeline Company of America

[Docket No. CP89–365–000]

December 14, 1988.

Take notice that on December 9, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–365–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Fina Oil and Chemcial Company (Fina), a producer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated September 22, 1988, under its Rate Schedule ITS, it proposes to transport for Fina up to 30,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at an UTOS/Cameron delivery point and that it would transport and redeliver the gas for Fina's account to United Gas Pipe Line Company at an existing interconnection near the outlet of Texaco's Henry Plant in Vermilion Parish, Louisiana. Natural advises that the gas ultimately would be consumed in Georgia.

Natural advises that service under 284.223(a) commenced October 8, 1988, as reported in Docket No. ST89–1203 (filed on December 9, 1988). Natural further advises that it would transport 15,000 MMBtu on an average day and 5,750,000 MMBtu annually.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, ath instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29281 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes In FERC Gas Tariff

December 16, 1988.

Take notice that on December 12, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing First Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective January 1, 1989.

Alabama-Tennessee states that the purpose of the filing is to adjust its currently effective take-or-pay surcharge rates to its customers to reflect increases in the amount being billed to it by Tennessee Gas Pipeline. Alabama-Tennessee further states that such filing is being made pursuant to § 26.1(a) of its tariff.

Alabama-Tennessee is amortizing the increased take-or-pay costs over a thirty-six (36) month period. According to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No. RP88-191.

Alabama-Tennessee has also submitted Alternate First Revised Sheet No. 4A, which is proposed to become effective on January 1, 1989. According to Alabama-Tennessee, such tariff sheet is being submitted to maintain the status quo should the Commission defer action on the primary tariff sheet pending a final order on its August 9, 1988 compliance filing.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29282 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-32-000]

Colorado Interstate Gas Co.; Proposed Changes In FERC Gas Tariff

December 15, 1988.

Take notice that on December 12, 1988, Colorado Interstate Gas Company ("CIG") submitted for filing various tariff sheets in its FERC Gas Tariff Original Volume No. 1, Second Revised Volume No. 1-A, and Original Volume No. 2 which reflect, as appropriate, the 1.51 cents per Mcf Gas Research Institute (GRI) charge approved for calendar year 1989 pursuant to Federal Energy Regulatory Commission (Commission) Opinion No. 320 in Docket No. RP88-182-000. Since the GRI charge approved in Opinion No. 320 is the same as that presently in effect, there is no rate change.

CIG requested that it be granted any such waiver as the Commission may deem necessary for such affected tariff sheets to be placed into effect on January 1, 1989.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29283 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-32-001]

Colorado Interstate Gas Co.; Proposed Changes In FERC Gas Tariff

December 15, 1988.

Take notice that on December 9, 1988, Colorado Interstate Gas Company ("CIG") submitted for filing Substitute Second Revised Sheet No. 4 of CIG's Second Revised Volume No. 1-A tariff to correct for an omission of the Balancing Penalty Charge reference and related footnotes on this sheet which was filed by CIG on August 31, 1988. The omitted references were included in tariff sheets approved by the Commission on November 1, 1988 in Docket No. CP86-589, et al.

CIG submits for filing six copies of Substitute Second Revised Sheet No. 4 to its Second Revised Volume No. 1-A tariff to reflect the above correction, to be effective October 1, 1988.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29284 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 16, 1988.

Take notice that on December 9, 1988, National Fuel Gas Supply Corporation

BEST COPY AVAILABLE

("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 71–A, page 1 of 2
Second Revised Sheet No. 71–A, page 2 of 2
Second Revised Sheet No. 71–B, page 1 of 2
Second Revised Sheet No. 71–B, page 2 of 2
First Revised Sheet No. 71–D
Second Revised Sheet No. 72–A, page 1 of 4
Second Revised Sheet No. 72–A, page 2 of 4
Second Revised Sheet No. 72–A, page 3 of 4
Second Revised Sheet No. 72–A, page 4 of 4
Second Revised Sheet No. 72–B, page 1 of 3
Second Revised Sheet No. 72–B, page 2 of 3
Second Revised Sheet No. 72–B, page 3 of 3
Second Revised Sheet No. 72–D

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of Section 20 of the General Terms and Conditions to National's FERC Gas Tariff, First Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to flow-through additional take-or-pay charges to National are: Columbia Gas Transmission Corporation, CNG Transmission Corporation and Tennessee Gas Pipeline Company.

Copies of National's filing were served on National's jurisdiction customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29285 Filed 12–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–117–005]

Northern Natural Gas Co.; Division of Enron Corp.; Compliance With Order Nos. 483 and 483–A

December 16, 1988.

Take notice that on December 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Seventh Revised Sheet No. 65
Substitute Fifth Revised Sheet No. 66
Substitute Seventh Revised Sheet No. 67
Substitute Sixth Revised Sheet No. 68
Substitute Ninth Revised Sheet No. 69
Substitute First Revised Sheet No. 69a
Substitute Eighth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 70a
Third Revised Sheet No. 70b
Substitute Fifth Revised Sheet No. 70c

Original Volume No. 2

Substitute Fifth Revised Sheet No. 1d
Substitute Fifth Revised Sheet No. 1e
Substitute Sixth Revised Sheet No. 1f
Substitute Eighth Revised Sheet No. 1g
Substitute Sixth Revised Sheet No. 1h
Substitute Sixth Revised Sheet No. 1i
Substitute Second Revised Sheet No. 1i.1
Fifth Revised Sheet No. 1i.2
First Substitute Original Sheet No. 1i.2a

Such revised tariff sheets are required in compliance with the Letter Orders dated September 29, 1988, and November 18, 1988, respectively, in order that Northern's tariff will be in conformance with Order Nos. 483 and 483–A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 23, 1988. Protests will be considered by the Commisson in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion ot intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29286 Filed 12–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–266–001, RP88–181–006 and TA89–1–6–001]

Sea Robin Pipeline Co.; Tariff Filings

December 15, 1988.

Take notice that on December 12, 1988, Sea Robin Pipeline Company (Sea Robin) in accordance with the Commission's order of October 28, 1988, in Docket No. RP88–266 and the Secretary's Letter Order of December 1, 1988, in Docket No. RP88–181–003, *et al.* and TA89–1–6–000, submitted revised tariff sheets.

In Docket No. RP88–181–006, in compliance with the Letter Order of Dec. 1, 1988, Sea Robin has classified Other Gas Supply Expenses in Account No. 813 to the commodity component of its sales rate. The FTS reservation fee has been corrected as required by the December 1, 1988 Letter Order. These changes are to be effective July 1, 1988.

In Docket No. RP88–266–001, Sea Robin has included an Authorized Overrun Rate applicable to takes in excess of D–2 nominated volumes but less than contract quantities and included an addition to its General Terms and Conditions which includes terms and conditions applicable to the provision of the Authorized Overrun Rate. Sea Robin's filing also reflects the 100% load factor rate for unauthorized takes in excess of 100% of D–2 nominations but less than 102% of D–2 nominations. These changes are to be effective Oct. 1, 1988.

As a result of the tariff filings required by the December 1, 1988 Letter Order, Sea Robin's base tariff rates are being revised in Docket No. TA89–1–6–001, effective January 1, 1989.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such motions to intervene or protest should be filed on or before December 22, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

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become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29287 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-81-009]

Texas Eastern Transmission Corp.; Proposed Changes In FERC Gas Tariff

December 16, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 12, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed to be Effective July 19, 1988

Revised First Revised Sheet No. 330
Revised Second Revised Sheet No. 331

Proposed to be Effective October 13, 1988

Second Substitute Revised Second Revised Sheet No. 330
Second Substitute Revised Original Sheet No. 330A
Substitute Revised Third Revised Sheet No. 501
Substitute Revised Third Revised Sheet No. 513

Proposed to be Effective February 1, 1989

Third Revised Sheet No. 331
Original Sheet No. 331A

Texas Eastern states that this filing makes the revisions to Texas Eastern's March 22, 1988 tariff filing as required by the Commission's July 19 and November 25, 1988 Orders issued in Docket Nos. RP88-81-002 *et al.*, and RP88-81-003 respectively.

In purported compliance with the July 19 and November 25, 1988 Orders, Texas Eastern has made the following tariff changes:

(1) In section 3.2 of Rate Schedule IT-1 on Revised First Revised Sheet No. 330 and Revised Second Revised Sheet No. 331, the requirement that shippers tender gas at every receipt point within 30 days or lose that receipt point has been deleted as of July 19, 1988, the effective date determined by the Commission in Texas Eastern's Docket No. RP88-81-008.

(2) Section 3.3 of Rate Schedule IT-1 on Third Revised Sheet No. 331 has been added to provide for a consistent policy for both Rate Schedules FT-1 and IT-1 regarding requests for amendments to existing transportation agreements to add new receipt points. Texas Eastern proposes to implement this provision on Feb. 1, 1989.

(3) Language has been deleted in the certification forms for Intrastate Pipelines on Substitute Revised Third Revised Sheet Nos. 501 and 513 which required Intrastate Pipelines to certify that in the event they took title to the gas to be transported by Texas Eastern, they would not sell that gas in a sale for resale for ultimate consumption outside of the state in which it was authorized to do business. Texas Eastern proposes to implement these tariff sheets on October 13, 1988, the effective date of the tariff sheets that are being substituted. Second Substitute Revised Second Revised Sheet No. 330 is being filed solely to reflect the correct supersession.

As required by the November 29 Order, Texas Eastern has removed from the tariffs proposed to be effective July 19 changes associated with Texas Eastern's July 14, 1988 tariff filing, made pursuant to Order No. 497, issued June 1, 1988, which was rejected by the Commission in an order dated August 12, 1988 in Docket No. RP88-216. The tariff sheets proposed to be effective October 13, 1988 and February 1, 1989 reflect the tariff filing made by Texas Eastern on September 12 1988, as supplemented on September 23, 1988, pursuant to Order No. 497 which was approved by the Commission in an order dated October 12, 1988 in Docket Nos. MT88-9-000 and MT88-9-001. Said filings (1) deleted the

The tariff sheets are proposed to be effective as of the dates listed above.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, all parties of record in Docket No. RP88-81 and all current Rate Schedule IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29288 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-11-001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 15, 1988.

Take Notice that on December 9, 1988, United Pipe Line Company (United) tendered for filing the following tariff sheets:

Original Volume 1

Substitute Eighty-Fourth Revised Sheet No. 4
Substitute Third Revised Sheet No. 4.1

The proposed effective date of the above referenced tariff sheets in this docket is January 1, 1989. The above referenced tariff sheets are being filed pursuant to §§ 154.304 and 154.308 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in section 19 of United's FERC Gas Tariff, First Revised Volume No. 1.

United states that these tariff sheets are being filed to amend United's November 30, 1988 filing. These sheets reflect a surcharge of 12.63¢ (to be effective January 1, 1989), a decrease of 3.95¢ from United's November 30, 1988 filing. Therefore, gas cost, reflecting both the current adjustment and surcharge, shows a 5.33¢ reduction from the currently billed rates.

United also submits with this filing Schedule D1, Text 01 workpapers as support in the establishment of the revised surcharge amount.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with § 385.214 and 385.211 of the Commission's regulations. All such petitions of protest should be filed on or before December 22, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to

Intervene. Copies of this filing are on file with the Commssion and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29289 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2514 Virginia]

Appalachian Power Co.; Intent to File an Application For a New License

December 14, 1988.

Take notice that on November 8, 1988, Appalachian Power Company, the existing licensee for the Byllesby and Buck Hydroelectric Project No. 2514, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric consumers Protection Act of 1986, Pub. L 99-495. The original license for Project No. 2514 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the New River in Carroll County, Virginia. The Byllesby Unit principal works include a 47-foot-high, 528-foot-long concrete dam at crest elevation 2,071 feet m.s.l.; a reservoir of 260 acres; and a powerhouse with installed capacity of 21, 600 kW. The Buck Unit includes a 44.4-foot-high, 352-foot-long concrete dam at 2,007 feet m.s.l.; a reservoir of 70 acres; and a powerhouse with installed capacity of 8,505 kW. Each unit has a transmission line connection and appurtenances.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at G.O. Hydro Department, 40 Franklin Road, Roanoke, Virginia 24022.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29209 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-211-000, et al.]

CNG Transmission Corp.; Informal Settlement Conference

December 14, 1988.

Take notice that an informal settlement conference will be convened in the above proceeding on Thursday, January 5, 1989, at 10:00 a.m. at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission regulations (18 CFR 385.214).

For additional information, contact Marvin T. Griff (202) 357-5248 or Marsha L. Gransee (202) 357-5738.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29211 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-006]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

December 14, 1988.

Take notice that Northern Natural Gas Company, Division of Enron Corp. on December 9, 1988 tendered for filing proposed changes in its FERC Gas Tariff.

Northern states that this filing is being made to comply with the provisions of the Commission's Order issued October 26, 1988, in the instant proceeding. That Order required Northern to obtain D-2 nominations from its customers and to refile tariff sheets reflecting such nominations. Based upon the customer nominations received, Northern is proposing a D-2 rate of $.2452 effective October 27, 1988.

Copies of the filing were served upon all of Northern's customers and interested State Regulatory Commissions as well as all parties of record to the instant proceeding.

Any person desiring to be heard or to protest said filing, should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such Motions or Protests should be filed on or before December 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protests and parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29210 Filed 12-20-88; 8:45 am]

BILLING CODE 6717-01-M

Southwestern Power Administration

Federal Hydroelectric Power—Intent To Allocate Power, W.D. Mayo Project

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of intent to allocate power from the proposed W.D. Mayo Hydroelectric Power Project in Oklahoma to the Oklahoma Municipal Power Authority and other preference entities.

SUMMARY: Section 1117 of Pub. L. No. 99-662 authorizes the Cherokee Nation of Oklahoma (CN) to design and construct hydroelectric generating facilities at the existing W.D. Mayo Lock and Dam No. 14 (W.D. Mayo) on the McClellan-Kerr Arkansas River Navigation System in Oklahoma. Pub. L. 99-662 also authorizes the Southwestern Power Administration (SWPA) to market excess power produced by the proposed project and to reimburse CN for the costs it incurs in designing and constructing the facilities.

In order to complete the proposed subject at the lowest possible cost, CN has entered into a preliminary agreement with the Oklahoma Municipal Power Authority (OMPA). In accordance with the terms of the preliminary agreement, OMPA will act as CN's financier and agent to oversee the completion of the project. In consideration for providing these services, OMPA seeks an allocation of power from SWPA. In keeping with the intent of the SWPA Power Allocation Policy published in volume 52 of the **Federal Register** at 29881 of August 12, 1987, SWPA herewith gives notice of its intent to allocate power made available as a result of the construction of the proposed hydroelectric power project at W.D. Mayo. OMPA, as a preference entity, will be allocated the equivalent of fifty percent (50%) of the marketable power from the proposed project with 1,200 hours per kilowatt per year of firm energy and a proportionate share of SWPA's discretionary energy for a term of 50 years with the remaining power and energy from the project to be

allocated in accordance with SWPA's Power Allocation Policy, conditioned upon the following: (1) CN and OMPA finalize an agreement authorizing OMPA to act as agent for the CN; (2) All the terms and conditions of section 1117 of Pub. L. 99–662 are successfully achieved; (3) OMPA complies with all of the provisions of its agreement with the CN; and (4) The project is successfully completed and transferred to the United States. Copies of the following proposed power allocation will be mailed to all SWPA customers and other interested parties for comments. After consideration of all comments, a tentative power allocation will be published in the **Federal Register**. The final power allocation will be made if these conditions are completed. A more detailed description of the project is set forth below.

DATES: Questions and/or comments regarding the proposed action must be submitted by January 23, 1989 to Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Gajan at the above address.

SUPPLEMENTARY INFORMATION: The McClellan-Kerr Arkansas River Navigation System was constructed and is owned and operated by the U.S. Army Corps of Engineers (Corps). W.D. Mayo was authorized for navigation by the River and Harbor Act, approved July 24, 1946. The lock and dam began operation in December 1970 and provides up to 22 feet of lift for the system.

Section 1117 of Pub. L. 99–662 authorizes the CN to design and construct the hydroelectric power facilities at W.D. Mayo, generally as described in the report of the Chief of Engineers dated December 23, 1981. When constructed, the facilities will have an installed generating capacity of approximately 32,900 kilowatts (kW), with marketable capacity of 30,000 kW and will produce an average of 138,000,000 kilowatt-hours of energy annually. The Corps will approve the design, inspect the construction, and own and operate the facilities after the proposed project is completed and accepted. No Federal funds will be used in the design and construction of the project.

In accordance with section 1117 of Pub. L. 99–662, SWPA will market the excess power produced as a result of the construction of the proposed project. Revenues from the sale of power produced by the generating facilities of the interconnected system of reservoirs operated by the Corps and marketed by SWPA will be used to repay the following: (1) Costs incurred by CN for the design and construction of the project; (2) costs incurred by the Corps for the annual operation, maintenance, and major replacements (OM&R) of the hydroelectric facilities; (3) costs incurred from capital expenditures and OM&R costs for transmission and switching facilities; and (4) to pay the CN a reasonable royalty.

As agent of the CN, OMPA will negotiate with the Corps and SWPA to develop a series of agreements for the development of the proposed project, provide all the funds required for the completion of the proposed project, design the project in consultation with the Corps, take competitive bid packages for the acquisition of equipment and construction, and be responsible for the schedule of construction. In consideration for its role to finance and construct the project on behalf of the CN, OMPA seeks the allocation described above at SWPA system rates.

Issued at Tulsa, Oklahoma, on December 8, 1988.

J.M. Shafer,

Administrator, Southwestern Power Administration.

Proposed Power Allocation For Marketable Power From W.D. Mayo Hydroelectric Power Project

The Administrator of the Southwestern Power Administration (SWPA) proposes to allocate the proposed 30,000 kW of marketable power from the W.D. Mayo Hydroelectric Power Project in accordance with the terms of this notice, section 5 of the Flood Control Act of 1944 (16 U.S.C. 8255), and the SWPA Power Allocation Policy.

A 15,000 kW allocation will be made to OMPA in accordance with the intent of Section II, Part A, paragraph 3 of the Power Allocation Policy, and a 15,000 kW allocation will be made under Section I as referenced in Section II, Part A, paragraph 3 of the Power Allocation Policy as shown in Table A after the project is completed by the CN and accepted by the United States.

TABLE A.—ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS, PROJECT: W.D. MAYO, MARKETABLE CAPACITY (KW) = 15,000; PERCENT SET ASIDE FOR NEW CUSTOMERS 10; EQUALIZATION ADJUSTMENT (PERCENT) 10

State	Current load (KW)	Percent system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Customer's allocation (KW)
Arkansas	1,150,220	13.002	1,950					
Equalization adjustment			−212	New Customers	0	10.000	195	174
Adjusted State share			1,738	Augusta	3,700	0.290	6	5
				Bentonville	30,200	2.363	46	41
				Clarksville	22,449	1.757	34	31
				Jonesboro	109,200	8.544	167	149
				Paragould	52,900	4.139	81	72
				Paris	9,771	0.765	15	13
				Piggott	8,000	0.626	12	11
				AECC	914,000	71.517	1,395	1,243
				Subtotal	1,150,220	100.001	1,951	1,739
Kansas	1,052,896	11.902	1,785					
Equalization adjustment			179	New Customers	0	10.000	179	196
Adjusted State share			1,964	Anthony	8,300	0.709	13	14
				Coffeyville	35,000	2.992	53	59
				Kansas City	403,000	34.448	615	676
				KMEA:				
				Augusta	15,961	1.364	24	27
				Baldwin City	3,921	0.335	6	7
				Chanute	24,600	2.103	38	41
				Clay Center	10,950	0.936	17	18
				Colby	11,070	0.946	17	19

TABLE A.—ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS, PROJECT: W.D. MAYO, MARKETABLE CAPACITY (KW) = 15,000; PERCENT SET ASIDE FOR NEW CUSTOMERS 10; EQUALIZATION ADJUSTMENT (PERCENT) 10—Continued

State	Current load (KW)	Percent system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Customer's allocation (KW)
				Garnett	6,300	0.539	10	11
				Herrington	5,050	0.432	8	8
				Holton	7,250	0.620	11	12
				Horton	2,968	0.254	5	5
				Iola	17,634	1.507	27	30
				LaCrosse	3,659	0.313	5	6
				Lindsborg	5,766	0.493	9	10
				Mulvane	7,500	0.641	11	13
				Neodesha	8,100	0.692	12	14
				Norton	7,550	0.645	12	13
				Oakley	5,540	0.474	8	9
				Oberlin	5,600	0.479	9	9
				Osawatomie	6,578	0.562	10	11
				Ottawa	20,400	1.744	31	34
				St. Francis	2,950	0.252	4	5
				Sharon Spring	1,580	0.135	2	3
				Wamego	8,001	0.684	12	13
				Wellington	21,600	1.846	33	36
				Winfield	40,200	3.436	61	67
				KEPCo	328,500	28.080	501	551
				Kaw Valley	18,349	1.568	28	31
				Nemaha-Marshal	9,019	0.771	14	15
				Subtotal	1,052,896	100.000	1,786	1,963
Louisiana	1,839,300	20.791	3,119					
Equalization adjustment			312	New Customers	0	10.000	312	343
Adjusted State share			3,430	Lafayette	268,000	13.114	409	450
				Natchitoches	34,000	1.664	52	57
				LEPA:				
				Alexandria	137,000	6.704	209	230
				Houma	56,000	2.740	85	94
				Jonesville	6,000	0.294	9	10
				Minden	30,000	1.468	46	50
				Morgan City	42,000	2.055	64	71
				Plaquemine	20,000	0.979	31	34
				Rayne	16,000	0.783	24	27
				Ruston	45,000	2.202	69	76
				Vidalia	11,300	0.553	17	19
				Winnfield	14,000	0.685	21	24
				Cajun	1,160,000	56.761	1,770	1,947
				Subtotal	1,839,300	100.002	3,118	3,432
Missouri	2,332,809	26.369	3,955					
Equalization adjustment			−430	New Customers	0	10.000	396	353
Adjusted State share			3,526	Carthage	35,300	1.362	54	48
				Fulton	19,760	0.762	30	27
				Herman	7,500	0.289	11	10
				Higginsville	9,400	0.363	14	13
				Kennett	25,389	0.980	39	35
				Lamar	12,560	0.485	19	17
				Malden	13,500	0.521	21	18
				New Madrid	6,900	0.266	11	9
				Nixa	5,800	0.224	9	8
				Poplar Bluff	45,600	1.759	70	62
				Sikeston	48,400	1.867	74	66
				Springfield	424,000	16.358	647	577
				Thayer	1,800	0.069	3	2
				West Plains	23,900	0.922	36	33
				AECI	1,653,000	63.773	2,522	2,249
				Subtotal	2,332,809	100.000	3,956	3,527
Oklahoma	758,166	8.570	1,286					
Equalization adjustment			−140	New Customers	0	10.000	129	115
Adjusted State share			1,146	Comanche	3,911	0.464	6	5
				Copan	1,472	0.175	2	2
				Duncan	36,840	4.373	56	50
				Eldorado	1,079	0.128	2	1
				Goltry	691	0.082	1	1
				Granite	1,941	0.230	3	3
				Hominy	6,371	0.756	10	9
				Lexington	2,741	0.325	4	4
				Manitou	336	0.040	1	0
				Olustee	928	0.110	1	1
				Purcell	11,508	1.366	18	16
				Ryan	1,785	0.212	3	2

TABLE A.—ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS, PROJECT: W.D. MAYO, MARKETABLE CAPACITY (KW) = 15,000; PERCENT SET ASIDE FOR NEW CUSTOMERS 10; EQUALIZATION ADJUSTMENT (PERCENT) 10—Continued

State	Current load (KW)	Percent system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Customer's allocation (KW)
				Skiatook	9,784	1.161	15	13
				Spiro	3,216	0.382	5	4
				Walters	5,149	0.611	8	7
				Watumka	3,016	0.358	5	4
				Yale	2,594	0.308	4	4
				Fort Sill	33,508	3.978	51	46
				Vance AFB	6,286	0.746	10	9
				McAlester Army	3,010	0.357	5	4
				WFEC	622,000	73.836	949	846
				Subtotal	758,166	99.998	1,288	1,146
Texas	1,713,340	19.367	2,905					
Equalization adjustment			291	New Customers	0	10.000	291	320
Adjusted State share			3,196	Rayburn Contry	299,000	15.706	456	502
				Tex-La of Tx	181,000	9.508	276	304
				NTEC	383,500	20.145	585	644
				Brazos	849,840	44.641	1,297	1,427
				Subtotal	1,713,340	100.000	2,905	3,197
Total customer Load (KW)	8,846,731	100.000			8,846,731			15,004

[FR Doc. 88-29296 Filed 12-20-88; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 202-010776-39.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed modification would further clarify when service charges can be deducted for monies collected by the Agreement for the members.

By Order of the Federal Maritime Commission.

Dated: December 16, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29222 Filed 12-20-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200198.

Title: Port of Houston Authority Terminal Agreement.

Parties:

Port of Houston Authority of Harris County, Texas Schroder Marine Terminal, Inc. (Schroder)

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.

Synopsis: The agreement provides that Schroder will perform or have performed public marine terminal services, including freight handling and cargo loading/unloading, at the Port's wharves and transit sheds Number 42. The term of the agreement expires December 31, 1990.

By Order of the Federal Maritime Commission.

Dated December 16, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29223 Filed 12-20-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–002161–005.
Title: Port of Seattle Terminal Agreement.
Parties:
Port of Seattle
Cargill, Incorporated
Synopsis: The agreement provides for a renewal of the basic lease agreement for a period of five years. The agreement also increases the rental and modifies the lease provisions relating to the assessment of dockage and clean air charges.

Agreement No.: 224–200199.
Title: City of Long Beach Preferential Assignment Agreement.
Parties:
City of Long Beach
Copper/T. Smith Stevedoring Co., Inc.
Synopsis: The agreement provides for the City to grant Assignee a nonexclusive preferential assignment of the wharf and contiguous wharf premises, together with improvements located at Berths 204–205, Pier F and water area adjacent thereto required for the berthing of vessels. The term of the Agreement shall commence on January 1, 1989 and terminate on December 31, 1998.

Agreement No.: 224–003158–004.
Title: The Port Authority of New York and New Jersey Terminal Agreement.
Parties:
The Port Authority of New York and New Jersey
Ecuadorian Line, Inc. (EL)
Synopsis: The agreement provides for EL's lease of Shed No. 138, its annex, Berths 2 and 4 and adjacent upland improvements and modifications of a building, and the termination of adjacent premises including Berth 6. The term of Agreement No. 224–003158 is extended to February 29, 1996.

By Order of the Federal Maritime Commission.

Dated: December 16, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88–29224 Filed 12–20–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Winter—Park Bancshares, Inc., et al., Applications to Engage de nova in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–28547) published at page 50097 of the issue for Tuesday, December 13, 1988.

Under the Federal Reserve Bank of San Francisco, the entry for The Mitsubishi Bank, Limited, Tokyo, Japan, is amended to read as follows:

1. *The Mitsubishi Bank, Limited,* Tokyo, Japan; to engage *de novo* through its subsidiary, MBL Futures, Inc., Chicago, Illinois, in acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, and certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Comments on this application must be received by January 3, 1989.

Board of Governors of the Federal Reserve System, December 15, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–29212 Filed 12–20–88; 8:45 am]
BILLING CODE 6210–01–M

PNC Financial Corp.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–28435) published at page 4992 of the issue for Monday, December 12, 1988.

Under the Federal Reserve Bank of Cleveland, the entry for PNC Financial Corp. is amended to read as follows:

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.,* Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of Bank of Delaware Corporation, Wilmington, Delaware, and thereby indirectly acquire Bank of Delaware, Wilmington, Delaware.

In connection with this application, New Financial Corp, Wilmington, Delaware; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Delaware Corporation, Wilmington, Delaware, and thereby indirectly acquire Bank of Delaware, Wilmington, Delaware.

In connection with these applications, Applicants have also applied to acquire nonbank subsidiaries of Bank of Delaware Corporation, Wilmington, Delaware: Del Vest, Inc., Wilmington, Delaware—a Delaware Corporation which provides portfolio investment advisory services for institutional and individual customers pursuant to § 225.25(b)(4) of the Board's Regulation Y; Christine Life Insurance Company, Wilmington, Delaware—an Arizona Corporation which underwrites, as reinsurer, credit life, disability, accident, and health insurance policies written in conjunction with loans made by Bank of Delaware pursuant to § 225.25(b)(8) of the Board's Regulation Y. Applicants have also applied to acquire the following subsidiaries of the Bank of Delaware; Christina Brokerage Services, Inc., Wilmington, Delaware, which engages in discount securities brokerage services for retail customers; Millsboro Insurance Agency, Inc., Wilmington, Delaware, which sells physical and damage insurance policies on an agency basis in connection with mobile home loans made by Bank of Delaware; Roney-Richards, Inc., Wilmington, Delaware, to sells, on an agency basis, credit life and disability insurance to consumers in connection with direct loans made by Bank of Delaware; Marand Corporation, Wilmington, Delaware, which owns land for the benefit of Bank of Delaware; and Christina Ventures, Inc., Wilmington, Delaware, a partner with Tatten Developers, A Delaware Partnership formed to acquire, construct and own a multi-story office project, of which Bank of Delaware now occupies a substantial portion.

Comments on this application must be received by January 3, 1989.

Board of Governors of the Federal Reserve System, December 15, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–29213 Filed 12–20–88; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting of Advisory Committee for Elimination of Tuberculosis

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET)

Time and Date: 8:00 a.m.–4:30 p.m.—January 24, 1989; 8:00 a.m.–2:30 p.m.—January 25, 1989.

Place: Salon D & E, Lanier Plaza Conference Center, 418 Armour Drive, NE., Atlanta, Georgia 30324.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: Tuberculosis control among the foreign-born. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE., Mailstop E–10, Atlanta, Georgia 30333, Telephones: FTS: 236–2501; Commercial: 404/639–2501.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–29218 Filed 12–20–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88N–0432]

Animal Drug Export; Melatonin Implants for Mink

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wildlife Laboratories, Inc., has filed an application requesting approval for the export of the animal drug Melatonin Implants for Mink to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFVM142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2855.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Wildlife Laboratories, Inc., P.O. Box 8983, Fort Collins, CO 80525, has filed an application requesting approval for the export of the amimal drug Melatonin Implants for Mink to Canada. The drug is intended to accelerate the fur priming cycle in mink. The application was received and filed in the Center for Veterinary Medicine on December 13, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and indentified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 21, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: December 13, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88–29216 Filed 12–20–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPO–74–FN]

Medicare Program; Data, Standards and Methodology Used To Establish Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice announces that we are adopting as final without revision previously published proposed data, standards and methodology to establish fiscal intermediary and carrier budgets for the fiscal year beginning October 1, 1988.

EFFECTIVE DATE: December 19, 1988.

SUPPLEMENTARY INFORMATION: On September 20, 1988, we published a proposed notice in the **Federal Register** at 53 FR 36496 that described data, standards and methodology we proposed to use to establish fiscal intermediary and carrier budgets for fiscal year, 1989, which began October 1, 1988. The notice implements section 4035(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), which requires us to publish for public comment in the **Federal Register** the data, standards and methodology we intend to use to establish budgets at least 90 days before we propose to use them. We did not receive any comments on the proposed notice. Therefore, we are adopting as final the data, standards and methodology as proposed.

Sec. 1102, 1816, 1842 and 1871 of the Social Security Act (42 U.S.C. 1302, 13595h, 1395u, and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 13773, Medicare-Hospital)

Dated: December 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-29245 Filed 12-20-88; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2-Amino-4-Nitrophenol

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 2-amino-4-nitrophenol, an intermediate in the manufacture of C.I. Mordant Brown 33 and C.I. Mordant Brown 1, which are used for dyeing leather, nylon, silk, wool and fur. It is also used in semipermanent hair dyes to produce gold-blond shades.

Two-year toxicology and carcinogenesis studies of 2-amino-4-nitrophenol were conducted by administering the chemical in corn oil by gavage to groups of 50 F344/N rats of each sex and 50 $B6C3F_1$ mice of each sex at doses of 0, 125, or 250 mg/kg, 5 days per week.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity [1] of 2-amino-4-nitrophenol for male F344/N rats, as shown by increased incidences of renal cortical (tubular cell) adenomas. The incidences of renal tubular cell hyperplasia were also increased in male rats exposed to 2-amino-4-nitrophenol. The survival of male rats that received 2-amino-4-nitrophenol was reduced compared with survival of vehicle control male rats. There was no evidence of carcinogenic activity of 2-amino-4-nitrophenol for female F344/N rats or for male or female $B6C3F_1$ mice that received 125 or 250 mg/kg per day.

The study scientist for these studies is Dr. Richard D. Irwin. Questions or comments about the contents of this Technical Report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3340; FTS: 629-3340.

Copies of *Toxicology and Carcinogenesis Studies of 2-Amino-4-Nitrophenol in F344/N Rats and $B6C3F_1$ Mice (Gavage Studies)* (TR 339) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709, telephone: (919) 541-3991; FTS: 629-3991.

Dated: December 15, 1988.

David P. Rall,

Director.

[FR Doc. 88-29217 Filed 12-20-88; 8:45 am]

BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1906]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals—Notice of Fund Availability under Subtitle E of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

The information collection requirements in this package are the result of amendments to the SRO Program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628 (approved November 7, 1988). Under section 485 of the 1988 McKinney Act, the Department has 60 days from the date of statutory enactment (i.e., by January 6, 1989) in which to publish a notice implementing the new provisions. In order to meet this statutory deadline, the Department has requested OMB to complete its paperwork review of the SRO Notice of Fund Availability by December 28, 1988. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the SRO Notice to OMB for regular paperwork review. The public will then have an additional 60 day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 15, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Section 8 Moderate Rehabilitation—Single Room Occupancy Program (FR–2539)

Office: Housing

Description of the Need for the Information and Its Proposed Use: The purpose of the information request is to assist HUD in selecting applicants who meet program requirements. HUD will use the information to fund applications from public housing agencies which best demonstrate a need for the assistance and the ability to undertake and carry out the program.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	100		1		25		2,500

Total Estimated Burden Hours: 2,500

Status: Extension

Contact: Alfonso M. Bell, HUD, (202) 755–6650; John Allison, OMB, (202) 395–6880

Date: December 15, 1988.

[FR Doc. 88–29250 Filed 12–20–88; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–88–1907]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Emergency Shelter Grants (ESG) program under Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

The information collection requirements in this package are the result of amendments to the ESG program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (approved November 7, 1988). Under section 485 of the 1988 McKinney Act, the Department has 60 days from the date of statutory enactment (i.e., by January 6, 1989) in which to publish a notice implementing the new provisions. In order to meet this statutory deadline, the Department has requested OMB to complete its paperwork review of the ESG Notice by December 28, 1988. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the ESG Notice to OMB for regular paperwork review. The public will then have an additional 60 days in which to comment on the paperwork requirement.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently infomation submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 15, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Emergency Shelter Grants Program (FR–2562)

Office: Community Planning and Development

Description of the Need for the Information and Its Proposed Use: This program provides grants to cities, counties, states, and territories for the following eligible activities relating to emergency shelter for the homeless: renovation, rehabilitation, or conversion of buildings; supportive services; and maintenance, operation (other than staff), insurance, utilities, furnishings, and homeless prevention. Information collected will be used to ensure grantees comply with the program's statutory and regulatory requirements.

Form Number: SF–269, SF–424, HUD–7015.15, and certifications

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: On Occasion and Annually

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	375		1		16		6,000
Initial Reports	375		1		12		4,500
Annual Reports	375		1		12		4,500
Waiver Reports	25		1		4		100
Environmental Submission to HUD by Local Governments Funded by HUD	325		1		.4		130
Recordkeeping by Local Governments Funded by HUD	325		1		30		9,750
Environmental Submission to by Local Governments Funded by States	300		1		.4		120
Recordkeeping by Local Governments Funded by States	300		1		30		9,000
Environmental Submission from States to HUD for Nonprofit Funded by States	200		1		.4		80
Recordkeeping by States for Nonprofits Funded by States	50		1		8		400
Local Governments Certification to States for Nonprofits Seeking Funding from States	200		1		.25		50
Local Government Site Change Certification to HUD	25		1		.25		6.25

Total Estimated Burden Hours: 34,636
Status: Revision
Contact: James R. Broughman, HUD (202) 755–5977; John Allison, OMB, (202) 395–6880.

Date: December 15, 1988.

[FR Doc. 88–29251 Filed 12–20–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Amendments to Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise seven notices describing systems of records maintained which are subject to the requirements of section 3 of the Act. All seven of the notices are being amended to add a new compatible routine use to each notice providing for the disclosure of debtor information to the Internal Revenue Service (IRS) for the purpose of collecting debts owed to the Federal government through the offset of tax refunds. These changes are being made pursuant to the provisions of 26 CFR 301.6402–6T (offset of past-due legally enforceable debt against overpayment (temporary)), 5 U.S.C. 5514 (installment deduction from federal salary for indebtedness to the United States, including procedures for contesting debt), 26 U.S.C. 6103 (confidentiality and disclosure of returns and return information), 26 U.S.C. 6402 (authority to make credits or refunds including collection of debts owed to Federal agencies), 31 U.S.C. 3701 (definitions and application for chapter on claims), 31 U.S.C. 3716 (administrative offset procedures), and 31 U.S.C. 3720A (reduction of tax refund by amounts of debt).

Also, four of the notices (WBR–2, USGS–3, NPS–4, and NPS–17) are being amended to revise the existing routine disclosure statement for litigation purposes to incorporate the clarification on such disclosures prescribed by the Office of Mangement and Budget in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act.

The changes being made are as follows:

1. The system of records notice titled "Payroll, Attendance, Retirement, and Leave Records—Interior, Office of the Secretary–85," published in the **Federal Register** on November 3, 1986 (51 FR 39918), describing employee payroll records maintained by the Department is amended by adding a new routine use disclosure (21) to read as follows:

Interior/OS–85

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(21) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

2. The system of records notice titled "Accounts Receivable—Interior, Office of the Secretary–86," published in the **Federal Register** on July 15, 1986 (51 FR 25613), describing accounting records maintained by the Office of the Secretary is amended by adding a new routine use disclosure (5) to read as follows:

Interior/OS–86

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(5) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

3. The system of records notice titled "Accounts Receivable—Interior, Reclamation–2," published in the **Federal Register** on September 27, 1984 (49 FR 38194), describing accounting records maintained by the Bureau of Reclamation is amended by revising existing routine use (1) and adding a new routine use disclosure (7) to read as follows:

INTERIOR-WBR–2

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(7) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts

owed to the Federal government through the offset of tax refunds.

* * * * *

4. The system of records notice titled "Accounts Receivable—Interior, GS–3," published in the **Federal Register** on July 5, 1985 (50 FR 27693), describing accounting records maintained by the Geological Survey is amended by revising existing routine use (2) and adding a new routine use disclosure (7) to read as follows:

INTERIOR/USGS–3

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(7) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

5. The system of records notice titled "Advanced Budget/Accounting Control and Information System (ABACIS)—Interior, MMS–8)," published in the **Federal Register** on March 10, 1987 (52 FR 7322), describing accounting records maintained by the Minerals Management Service is amended by adding a new routine use disclosure (9) to read as follows:

INTERIOR/MMS–8

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(9) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

6. The system of records notice titled "Travel Records—Interior, NPS–4," published in the **Federal Register** on November 10, 1983 (48 FR 51698), describing employee travel records maintained by the National Park Service is amended by revising existing routine use (1) and adding new routine use (3) to read as follows:

INTERIOR/NPS–4

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(7) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

7. The system of records notice titled "Employee Financial Irregularities—Interior, NPS–17," published in the **Federal Register** on November 10, 1983 (48 FR 51702), describing employee records maintained by the National Park Service is amended by revising existing routine use (1) and adding new routine use (3) to read as follows:

INTERIOR/NPS–17

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled;

* * * * *

(3) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds.

* * * * *

5. U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 30 days of publication in the **Federal Register** will be considered. The changes shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: December 16, 1988.

[FR Doc. 88–29264 Filed 12–20–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[AA–660–09–4120–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Fees, Rentals, and Royalties (43 CFR Part 3470).

Abstract: The final rulemaking amending subpart 3473 of Title 43 of the Code of Federal Regulations requires that the underground royalty for all new and readjusted underground Federal coal leases be set at a flat rate of 5 percent of the value of the coal removed from the lease. This regulation will be available upon application for leases

previously issued at, or readjusted to, a rate above 5 percent and to leases with readjustments under appeal. Information requirements for the application in the regulation are acceptable in any form which meets the specifications of the rulemaking. In general, a letter is the expected form of application. The obligation to respond is required to obtain a benefit.

This information collection requirement package includes no information collections which were previously assigned clearance numbers by the Office of Management and Budget. Failure to collect the information would result in a decrease in the effectiveness of the program in meeting policy and statutory objectives.

Frequency: On occasion.

Description of Respondents: Coal lessees with underground coal reserves who apply for an amendment of the royalty lease term.

Annual Responses: 250.

Annual Burden Hours: 1,000.

Bureau Clearance Officer: Rick Iovaine (202) 653–8853.

Dated: December 14, 1988.

Robert H. Lawton,

Assistant Director, Energy & Mineral Resources.

[FR Doc. 88–29234 Filed 12–20–88; 8:45 am]

BILLING CODE 4310–84–M

[UT–020–09–4331–08]

Amendment of Four Decisions of the Box Elder Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of four decisions of the Box Elder Resource Management Plan.

SUMMARY: The Bureau of Land Management proposes to amend four decisions in the Box Elder Resource Management Plan (RMP), Bear River Resource Area, Salt Lake District, Utah. The amendments are necessitated by the requirements of a recently developed management plan for the Central Pacific Railroad Grade Area of Critical Environmental Concern (ACEC).

Amendment 1—Areas of Critical Environmental Concern Decision 1—The first line of the existing decision reads: "Designate approximately 250 acres of the * * *". This shall be changed to read: "Designate a 400 foot corridor (200 feet on either side of grade centerline), including about 1735 acres, of public land along 35.77 miles of the * * *," the remainder of the original decision remains unchanged. At the end of the original decision an added statement, identified as (5) shall be included and will read as follows: "(5) Any areas within the 400 foot railroad grade corridor that are not presently public land but which BLM may acquire title to or administer through a cooperative agreement in the future will be managed under the prescriptions applied to the existing ACEC area."

Rationale: The size of the ACEC needs to be increased from approximately 250 acres to approximately 1770 acres in order to include many historic features within or adjacent to the grade that would not be included under the 250 acre limitation.

Amendment 2—Recreation Program Decision 1—The present decision is proposed to be amended as follows: Area open to motorized vehicle use would decrease from 999,634 acres to 997,949 acres.

Area limited for motorized vehicle use would increase from 12,160 acres to 13,845 acres.

Area closed to motorized vehicle use would remain at 0 acres.

Rationale: In order to preserve the integrity of the railroad grade as an area of critical environmental concern (ACEC), ORVs should not be allowed to operate off of existing road on the railroad grade nor off of roads or trails which are located within 200 feet of the grade. The amended RMP would call for a limited ORV designation, which restricts use to existing roads and trails on 1,735 acres of area. The total area open to motorized vehicle use would change from 999,634 acres to 997,949 acres, a decrease of 1,685 acres. Total area limited for motorized vehicle use would change from 12,160 acres to 13,845 acres, an increase of 1,685 acres. As part of the total limited acreage, the Central Pacific Railroad Grade and Adjacent Sites would increase from 250 acres to 1,735 acres. Closed acreage would remain at 0 (zero) acres.

Amendment 3—Visual Resources Program decision 1—Change acreages within VRM Classes II, III, and IV. Add all public land within a mile-wide corridor (one-half mile on either side of grade centerline) of the Central Pacific Railroad Grade to the VRM II Class. The total acreage will increase from the present 10,930 acres to 33,823 acres. Add all remaining public lands in the viewshed (that area visible from the grade) to VRM Class III. This will change the total area of Class III land from 73,581 acres to 240,128 acres. VRM Class IV acreage will change from 927,283 acres to 737,893 acres. VRM Class I acreage would remain at 0 (zero) acres.

Rationale: In order to preserve the historic character of the grade, and the unobstructed expansive panoramas virtually unchanged from the early railroading days, it is necessary to implement protective management of this visual resource. Class II calls for a retention of the existing landscape, meaning that changes must not call attention to themselves, but must repeat the basic elements of form, line, color and texture characteristic of that landscape. Class III allows changes to be visible, but not dominant, in the landscape. A map of the Class II and III areas added as a result of this amendment are shown on the attached map.

Amendment 4—Change acreages included in Category 1 and 2 of the Fluid Minerals Leasing Categories—Category 1 (open for leasing), will change from 800,732 acres to 611,292 acres. Category 2 (open with special stipulations) will increase from 213,726 acres to 403,189 acres.

Rationale: In order to be consistent with changes in VRM Class II and III areas (see amendment 3, above) and with the management plan that has been developed for the Central Pacific Railroad Grade ACEC the additional fluid mineral lease acreage in Category 2 is necessary. Stipulation (4) of the existing fluid mineral decision applies to this additional acreage. The acreage total stated in (4) will be increased from 84,511 acres to 273,951 acres. Any other stipulations stated in the existing decision that may apply to the lands added to Category 2 will also be in effect.

FOR FURTHER INFORMATION CONTACT: Dennis E. Oaks or Shelley J. Smith, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–5348.

James M. Parker,

Utah State Director

[FR Doc. 88–29233 Filed 12–20–88; 8:45 am]

BILLING CODE 4310–DQ–M

[CA 22882]

Realty Action, Sale of Public Lands; Siskiyou County, CA

SUMMARY: The following described public lands have been examined and through the development of land use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, and

approved Redding Resource Area Land Use Plans.

T. 43 N., R. 6 W., M.D.B. & M.
Sec. 30, Lots 1, 2, 3 and 4
(containing 49.69 acres)

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands described are hereby segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

Direct sale methodology will be pursuant to FLPMA and existing policy, laws, and regulations pertaining to disposal of public lands, (43 CFR 2710.0–6(c)(4)).

The proposed purchaser is: Mr. Glenn Penisten, 3173 Alexis Drive, Palo Alto, California 94304. In no case shall these lands be sold for less than the appraised fair market value of $5,000. This value was determined by an appraisal performed by a Federal appraiser using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions.

The mineral interests are being offered by a $50.00 non-refundable filing fee (43 CFR 2720.1–2(c)).

Sale terms and conditions are as follows:

A. Reservation to the United States—There are hereby excepted from these land patents and reserved to the United States the following:

A right-of-way on the property for ditches or canals, constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

B. Rights of the Third Parties—the conveyance made by this land patent is subject to all valid existing rights, including the following:

1. Those rights for distribution line purposes as have been granted to Pacific Power and Light Company, by Permit #CA 9035, under the Act of October 21, 1976, (43 U.S.C. 1761)

2. Those rights for access road purposes as have been granted in perpetuity to John H. And Mary Linville by Permit #CA 14737, under the Act of October 21, 1976 (43 U.S.C. 1761)

3. Those rights for access road purposes as have been granted in perpetuity to Kenneth D. and Rose M. Cochran, by Permit #CA 16493, under the Act of October 21, 1976, (43 U.S.C. 1761).

C. The proposed purchaser must be a United States citizen or a corporation authorized to own real property in the State of California.

Detailed information concerning the sale, including the environmental assessment and land report are available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

DATES: For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002. Comments will be evaluated by the State Director, who may vacate or modify this Realty Action and issue a final determination. In the absence of any action taken by the State Director, this Realty Action will become the final determination of the Land Management.

FOR FURTHER INFORMATION CONTACT: Mark T. Morse, (916) 246–5325.

Date: November 30, 1988.

Mark T. Morse,

Area Manager.

[FR Doc. 88–29235 Filed 12–20–88; 8:45 am]

BILLING CODE 4310–40–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–388 (Final)]

All-Terrain Vehicles From Japan

AGENCY: United States International Trade Commission.

ACTION: Change of the hearing date and of the date prehearing briefs are due in the subject investigation.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202–252–1999), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: On October 26, 1988, the commission instituted the subject investigation and established a schedule for its conduct (53 FR 43275, October 26, 1988). On December 1, 1988, the Commission voted to change the date of the hearing. The hearing is now scheduled for January 26, 1989, beginning at 9:30 a.m., at the U.S. International Trade Commission Building, 500 E Street SW., Washington DC., and the prehearing briefs are now due on January 23, 1989.

For further information concerning this investigation see the Commission's notice of investigation cited above the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201.

Authority: This investigation is being conducted under authority of the Tariff Acf of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 12, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29292 Filed 12–20–88; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–423 (Preliminary)]

Generic Cephalexin Capsules From Canada

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Canada of generic cephalexin capsules, provided for in item 411.76 of the Tariff Schedules of the United States (subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On October 27, 1988, a petition was filed with the Commission and the Department of Commerce by Biocraft Laboratories, Inc., Elmwood Park, NJ, alleging that an industry in the United States is materially injured by reason of

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Acting Chairman Brunsdale and Commissioner Cass determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of generic cephalexin capsules that are alleged to be sold in the United States at less than fair value.

LTFV imports of generic cephalexin capsules from Canada. Accordingly, effective October 27, 1988, the Commission instituted preliminary antidumping investigation No. 731-TA-423 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 4, 1988 (53 FR 44676). The conference was held in Washington, DC, on November 16, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 1988. The views of the Commission are contained in USITC Publication 2143 (December 1988), entitled "Generic Cephalexin Capsules from Canada: Determination of the Commission in Investigation No. 731-TA-423 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 14, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29293 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on October 13, 1988 of a request from the Committee on Ways and Means of the United States House of Representatives and the Committee on Finance of the United States Senate, the Commission instituted investigation No. 332-267 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide objective factual information on the EC single market and a comprehensive analysis of its potential economic consequences for the United States. The Committee requested that the Commission investigation focus in particular on the following:

1. The anticipated changes in laws, regulations, policies, and practices of the EC and individual member states that may affect U.S. exports to the EC and U.S. investment and business operating conditions in Europe, such as changes in customs requirements and procedures, government procurement practices, investment policies, service directives, and tax systems. The Committees requested that the analysis include consideration of the relationship and differences between policies and principles, such as sectoral reciprocity, proposed for the EC single market and current EC or member state obligations and commitments under bilateral or multilateral agreements and codes to which the United States is a party.

2. The likely impact of such changes on major sectors of U.S. exports to the EC, such as agricultural trade and telecommunications.

3. An assessment of whether particular elements of the single market may be trade liberalizing or trade discriminatory with respect to third countries, particularly the United States.

4. The relationship and possible impact of the single market exercise on the Uruguay Round of GATT multilateral trade negotiations.

The Committees requested that the Commission provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with follow up reports as necessary.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the investigation contact either Mr. John J. Gersic at 202-252-1342, or Mr. David R. Konkel at 202-252-1451.

For information on legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 11, 1989, and continuing as required on April 12, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5:00 p.m., March 28, 1989. Post-hearing briefs may be submitted no later than April 26, 1989.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on April 26, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

By order of the Commission.

Issued: December 15, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29291 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-279]

Certain Plastic Light Duty Screw Anchors; Commission Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Mitchell W. Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1087.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53(h) and 210.58(a) of the Commission's Interim

Rules of Practice and Procedure (53 FR 33043, 33070 and 33072, Aug. 29, 1988).

On October 27, 1988, the presiding administrative law judge (ALJ) issued an ID finding a violation of section 337 in the unauthorized importation and sale of certain plastic light duty screw anchors with the threat to injure substantially an industry in the United States. No petitions for review of the ID or Government comments regarding the ID were received.

Having examined the record, the Commission has concluded that the ID does not warrant review.

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The parties' written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on December 29, 1988. Reply submissions on these issues must be filed no later than January 5, 1989. Written submissions addressing the issues of remedy, the public interest, and bonding may also be filed by members of the public and Government agencies and departments. Such submissions must be filed no later than the close of business on January 5, 1989. No further submissions will be permitted.

COMMISSION HEARING: The Commission does not plan to hold a public hearing in connection with final disposition of this matter.

ADDITIONAL INFORMATION: Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before any deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on January 27, 1988 (53 FR 2298).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: December 14, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29294 Filed 12–20–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Luc Noel.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 13, 1988.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202–252–1805.

Issued: December 19, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29436 Filed 12–20–88; 10:11 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–282]

Certain Venetian Blind Components; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: A. J. Boyd Industries, Inc. (Boyd), Vogue Hardware Products and W & P Company Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 8, 1988.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

Issued: December 19, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29437 Filed 12–20–88; 10:06 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging a Consent Decree; Channel Industries Gas Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 2, 1988 a proposed Consent Decree in *United States v. Channel Industries Gas Company*, Civil Action No. G–88–416, was lodged with the United States District Court for the Southern District of Texas.

The Complaint filed by the United States alleged that the defendants had violated the Prevention of Significant Deterioration ("PSD") regulatons 40 CFR 52 et seq., and the Clean Air Act, 42 U.S.C. 7412, and requested injunctive relief and the imposition of civil penalties. The proposed Consent Decree requires the defendant to withdraw its PSD permit application, and to pay for a Texas Air Control Board permit of its Solar Century gas turbine at Station No. 809 in Bay City, Texas, which will limit the Nitrogen Oxide emissions from the turbine to 39 tons per year. In addition, the decree requires Channel to pay a total civil penalty of $100,000.00.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Divison, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Channel Industries Gas Company*, DOJ≠ Ref. 90–5–2–1–1240. The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, Courthouse & Federal Building, 515 Rusk Avenue, 3rd Floor, Houston, Texas, 77002. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Divison.

[FR Doc. 88–27808 Filed 12–20–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Carl E. Darby, M.D., Revocation of Registration

On August 31, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Carl E. Darby, M.D. (Respondent) of 1420 Marilyn Drive, Ogden, Utah, proposing to revoke his DEA Certificate of Registration, AD3130717 as a practitioner under 21 U.S.C. 823(f), and to deny any pending applications for renewal of the registration. The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

On November 11, 1988, Respondent, proceeding pro se, waived his opportunity for a hearing and submitted a written statement on the issues raised by the Order to Show Cause. Based upon the waiver of hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order based upon the investigative file and the written statement submitted by Respondent. See 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

The Administrator finds that Respondent is currently licensed to practice as a physician in the State of Utah. On November 13, 1984, an Investigator with the Utah State Department of Business Regulation received information that Respondent was over-prescribing Desoxyn and Dexedrine, both Schedule II controlled substances. A check of local pharmacies revealed that Respondent issued numerous prescriptions for Desoxyn and Dexedrine to "Reedus Davis." When the Utah State Investigator interviewed Respondent, he admitted writing all of

the prescriptions issued to Reedus Davis. Respondent stated that Ms. Davis was his sister, and that a few years ago she had requested that Respondent send her some drugs. Pursuant to this request, Respondent started writing prescriptions for Desoxyn and Dexedrine 5mg. tablets, part of which he would send to his sister in Texas, and part of which he would consume himself. Respondent also told the Utah State Investigator that he had written prescriptions for his wife, for Librium and Dalmane, both Schedule IV controlled substances, which she used every day.

As a result of this investigation, on October 21, 1985, the Utah Department of Business Regulation, Division of Professional Licensing, revoked Respondent's Schedule II controlled substance license. Pursuant to the Department's order, Respondent retained his license to prescribe Schedule III through V controlled substances on a probationary basis. Respondent also entered into an agreement with the Department under which he was prohibited from prescribing controlled substances to himself or any family member.

The Administrator finds that on June 13, 1986, Respondent submitted a renewal application requesting his DEA registration be renewed in Schedules II through V. On this application, Respondent stated that he was licensed to handle controlled substances in the schedules for which he was applying under Utah State law, when in fact, he was not.

A second renewal application was submitted to DEA by respondent on May 20, 1987, also requesting authorization to handle controlled substances in Schedules II through IV. Respondent again stated on this application that he was licensed to handle Schedule II controlled substances in the State of Utah, when in fact, he was not. By application dated May 11, 1988, Respondent again seeks to renew his DEA registration in Schedules II through V.

The Administrator finds that Respondent cannot be entrusted with a DEA registration. Respondent falsified his renewal applications in order to obtain registration in Schedules II and IIN, with full knowledge of the State of Utah's revocation of his Schedule II privileges. This constitutes material falsification under 21 U.S.C. 824(a)(1), an independent ground for revocation or denial of a DEA registration. Since DEA must rely on the truthfulness of information supplied by applicants in registering to handle controlled substances, falsification cannot be tolerated.

In his written statement, Respondent states that to his knowledge, the only restriction placed on his Schedule II privileges was an agreement that he would not prescribe diet pills. The Administrator does not find Respondent's argument persuasive. The Utah State order does not even mention diet pills. The Utah State order completely and clearly revoked Respondent's license to prescribe all Schedule II controlled substances, a fact that should have been well known to Respondent when he executed his first renewal application less then eight months after the state action.

In view of all the foregoing, Respondent's overprescribing of dangerous controlled substances, the revocation of Schedule II privileges of Respondent's state controlled substance license, and his falsification of his applications for DEA registration, the Administrator determines that the continued registration of Respondent is inconsistent with the public interest. 21 U.S.C. 824(a)(4). Respondent cannot be entrusted to handle controlled substances in a lawful and responsible manner. His registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AD3130717, previously issued to Carl E. Darby, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective January 23, 1989.

John C. Lawn,

Administrator.

Dated: December 15, 1988.

[FR Doc. 88-29221 Filed 12-20-88; 8:45 am]

BILLING CODE 4410-09-M

Benjamin Wailes, M.D., Revocation of Registration

On September 14, 1988, the Deputy Assistant Administrator, Office of Diverson Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Benjamin Wailes, M.D., 1501 David Whitney Building, 1553 Woodward Street, Detroit, Michigan 48226, proposing to revoke his DEA Certificate of Registration AW9672305, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of Dr. Wailes is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was initially sent to Dr. Wailes by registered mail, but was returned to DEA unclaimed. On November 1, 1988, the Order to Show Cause was personally served on Dr. Wailes' receptionist at his medical office. More than thirty days have passed since the Order to Show Cause was received by Dr. Wailes and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Benjamin Wailes, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that during the course of an investigation of a local pharmacy, DEA investigators noted an excessive number of prescriptions for controlled substances issued by Dr. Wailes. A review of Dr. Wailes' controlled substance prescribing practices revealed that he continuously prescribed controlled substances for individuals who did not exhibit a legitimate medical need for the type and quantity of controlled substances prescribed. Dr. Wailes often prescribed these drugs to individuals even though he knew they had drug and/or alcohol abuse problems. Finally, the review of Dr. Wailes' prescribing practices revealed that Dr. Wailes prescribed controlled substances to individuals even though he knew that these individuals were going to sell the drugs or give them to other individuals.

An associate professor of medicine at Wayne State University School of Medicine also reviewed Dr. Wailes' controlled substance prescribing practices. In the professor's opinion, Dr Wailes exceeded the scope of medical practice standards in his prescribing of narcotics and controlled substances. The professor was specifically concenred about the fact that Dr. Wailes prescribed controlled substances for many of his "patients" knowing that they had a history of narcotic or alcohol abuse or of selling or sharing drugs.

The Administrator has considered the factors listed in 21 U.S.C. 823(f) and concludes that the continued registration of Dr. Wailes is inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Dr. Wailes. Therefore, the Administrator concludes that Dr. Wailes' registration must be revoked.

BEST COPY AVAILABLE

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW9672305, previously issued to Benjamin Wailes, M.D., be, and it hereby is, revoked. The Administrator further orders that any applications submitted by Benjamin Wailes, M.D. for registration as a practitioner under 21 U.S.C. 823(f), be, and they hereby are, denied. This order is effective January 23, 1989.

John C. Lawn,

Administrator.

Dated: December 15, 1988.

[FR Doc. 88-29220 Filed 12-20-88; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Institution, Pekin, IL

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new federal correctional institution with an adjacent satellite prison camp is needed in its system. A 250 acre tract of land bounded by State Route 29 to the west, VFW Road to the south, Central Illinois railroad tracks to the east and extending north in the direction of Koch Street. The proposal calls for the construction of facilities to house approximately 650 inmates in a medium security facility and 250 inmates in a minimum facility.

Approximately 30% of the 250 acres would be used for road access, inmates housing, administration, and program spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a locaton convenient to the citizens of Pekin. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation. Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: Patricia Sledge, Site Acquisition Coordinator, U.S. Bureau of Prisons, 320 First Street NW., Washington, DC 20534, Telephone: (202) 272-6534.

Dated: December 9, 1988.

William J. Patrick,

Chief, Facilities Development & Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 88-29225 Filed 12-20-88; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-88-222-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Sinclair Underground Mine (I.D. No. 15-07116) located in Muhlenburg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals in return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to a rock fall the seals in the main south section of the mine cannot be examined. To reseal the area at this time would place miners in great danger.

3. As an alternate method, petitioner proposes that—

(a) Methane and oxygen would be monitored weekly by a certified person, in a crosscut 20 feet from the seal in front of the fall. Alternatively, the operator would maintain a continuous monitoring system with an audible warning device set to activate when methane is detected at 1 percent and low oxygen at 18 percent; and

(b) The operator would maintain an air current passing through the crosscut and going to the main return air shaft.

4. Petitioner states that proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 15, 1988.

[FR Doc. 88-29266 Filed 12-20-88; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

DATE: January 13, 1989, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittal Pavilion, Jefferson Building, Library of Congress, 10 First Street SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 287-6590.

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The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditional of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: December 13, 1988.

Donald C. Curran,

Acting Associate Librarian for Management.

[FR Doc. 88–29232 Filed 12–20–88; 8:45 am]

BILLING CODE 1410–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Muncipal Utility District Rancho Seco Nuclear Generating Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated August 3, 1988, filed by Ms. Barbara Moller (Petitioner). The Petitioner requested that the Nuclear Regulatory Commission (NRC) immediately test for drug use all individuals working at, or having access to, the Rancho Seco Nuclear Generating Station (Rancho Seco). The Petitioner also requested NRC to require the operators of Rancho Seco, the Sacramento Municipal Utility District (SMUD), to implement a mandatory periodic drug testing program at Rancho Seco.

Ms. Moller's Petition was based on allegations that (1) cocaine was found on the Rancho Seco site; (2) subsequently, nine persons were tested for drug use at Rancho Seco; (3) this testing was inadequate to find the party in illegal possession of cocaine; accordingly, (4) illegal drug use at Rancho Seco poses a danger to public health and safety.

The Director has determined that the Petitioner's request should be denied for the reasons set forth in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–88–20), which is available for inspection and copying in the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the local Public Document Room for the Rancho Seco Nuclear Generating Station at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

A copy of the Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action fo the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 14th day of December, 1988.

[FR Doc. 88–29274 Filed 12–20–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26358; File No. SR–NYSE–88–28]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on September 29, 1988, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] that establishes debt securities listing guidelines, adopted from current listing requirements, and incorporates the standards into section 1 of the NYSE *Listed Company Manual* (*"Manual."*).

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Rel. No. 34–26204, October 20, 1988) and by publication in the **Federal Register** (53 FR 43311). No comments were received in connection with the proposal.

According to the Exchange, the provisions affecting listing standards for domestic and non-domestic debt securities currently are found in various sections of the *Manual.*[3] Consequently, the task of ascertaining Exchange policy in this area is somewhat cumbersome due to the disjointed manner in which debt securities listing provisions appear in the *Manual.*

The proposed rule change is designed to address this problem. Under the proposal, § 102.00 (Domestic Companies) of the *Manual* would be expanded to include, among other things, provisions covering aggregate market value of initial debt listings, interest coverage requirements, a distribution policy, and a requirement that common stock underlying listed convertible bonds must also be listed. Section 103.00 would be similarly amended to include identical requirements governing the listing of debt securities for non-U.S. companies. Accordingly, section 1 of the *Manual* will provide issuers with a general overview of Exchange policy for the listing of debt securities.

After careful review, the Commission has determined that the NYSE proposal to amend its *Listed Company Manual* is reasonable. In particular, the Commission believes that the proposed rule will facilitate the review of Exchange requirements for the listing of debt securities by enabling issuers to review the listing guidelines in one specific section of the *Manual.* Further, we note that the proposed amendment does not alter any existing requirements for debt securities listings, but rather summarizes, incorporates, and codifies into section 1 of the *Manual* current provisions and policies governing the listing of these securities. Accordingly, the Commission believes that the proposal should be approved as submitted and finds therefore that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to these provisions, we note that the Exchange has a longstanding practice involving the aggregate market value of initial debt listings adopted pursuant to § 703.06 of the *Manual.* That Section provides that a debt security issue will be eligible for listing on the NYSE if it is of "sufficient size and distribution to warrant trading in the Exchange market system." Although the Section does not establish a minimum size or distribution requirement, the Exchange currently employs a $5,000,000 minimum aggregate market value requirement when reviewing issuer applications to list debt securities. Accordingly, if the aggregate market value of an initial debt listing is below the minimum threshold requirement, the listing application generally is rejected. This internal, quantitative requirement is currently an unpublished policy of the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 14, 1988.

[FR Doc. 88-29226 Filed 12-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16693; 811-3900]

Oppenheimer Challenger Fund; Application for Deregistration

December 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Oppenheimer Challenger Fund ("Applicant").

Relevant 1940 Act Sections: Deregistration under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8f was filed on October 11, 1988, and an amendment was filed on December 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 9, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant: Oppenheimer Challenger Fund: Two World Trade Center, New York, New York 10048-0669.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicant, a Massachusetts business trust, is registered under the 1940 Act as a open-end, non-diversified management investment company. Applicant initially organized as a Maryland corporation on September 1, 1983 under the name "Oppenheimer Retirement Fund, Inc.," and reorganized to a Massachusetts business trust pursuant to a Declaration of Trust dated January 7, 1986. In connection with the reorganization to a business trust, Articles of Transfer were filed January 31, 1986 with the Maryland State Department of Assessments and Taxation. Applicant filed its Articles of Dissolution in Maryland on April 6, 1987.

2. On November 7, 1983, Applicant filed a Notification of Registration pursuant to section 8(b) of the 1940 Act on Form N-8A and filed a registration statement under the 1940 Act on Form N-1A. The registration statement became effective on January 5, 1984. Applicant also registered under the Securities Act of 1933 an indefinite number of shares of common stock. Applicant's initial public offering commenced January 5, 1984.

3. At a meeting on December 3, 1987, the Board of Trustees of the Applicant unanimously adopted and recommended to the shareholders of Applicant that they approve a series of transactions pursuant to a plan of reorganization whereby Oppenheimer OTC Fund ("OTC Fund") would acquire all of the assets of Applicant in exchange for shares of OTC Fund. Challenger and OTC have similar investment objectives and policies. In reaching the decision, the Board noted the disparity in net assets between the two funds, Applicant having approximately $2.6 million in net assets and OTC Fund having approximately $25.3 million in net assets. Because Applicant does not have the economies of scale enjoyed by a larger fund, its expenses had increased markedly in relation to average net assets. That situation was expected to worsen as the number of outstanding shares of Applicant diminished. Challenger's Board had determined that the reorganization would not result in a direct or indirect increase in the management fee, even though OTC has a Distribution Plan pursuant to Rule 12b-1 of the Act and Challenger does not.

4. On January 4, 1988, an OTC Fund prospectus and a proxy statement from Applicant, declared effective by the Commission on January 4, 1988, was mailed to shareholders of Applicant in connection with the solicitation by Applicant's Board of Trustees for purposes of voting on the proposed reorganization. On January 21, 1988, a Special Meeting of Shareholders of the Applicant was held at which a majority of shareholders approved the reorganization.

5. As of January 31, 1988, Applicant's aggregate net assets were $848,633. On that date, all of Applicants' net assets (including all portfolio securities, were transferred OTC Fund pursuant to a reorganization in exchange for 55,763 shares of OTC Fund which resulted in OTC Fund adding to its gross assets all of the assets (net of any liability for portfolio securities purchased but not settled) of Applicant and Applicant's shareholders owning shares of OTC Fund. In essence, a shareholder of Applicant who voted his shares in favor of the reorganization elected to redeem his shares at net asset value per share and reinvest the proceeds in shares of OTC Fund at no sales charge and without recognition of taxable gain or loss. No gain or loss or taxable income was recognized by either Applicant or OTC Fund. The cost basis and holding period of the shares of each shareholder of Applicant carried over to the shares of OTC Fund which each shareholder acquired; and the holding period and cost basis of Applicant for its assets transferred to OTC Fund carried over to OTC Fund. No brokerage commissions were paid in the exchange.

6. The expenses associated with carrying out the reorganization totaled $1,900, consisting of $500 for the deregistration of Applicant and $1,400 in other fees, including legal, accounting, printing, transfer agency, filing and proxy solicitations. Applicant's liabilities, which consisted primarily of an anticipated tax obligation (see below), accrued but unpaid normal operating expenses (excluding the cost of any portfolio securities purchased but not yet settled), and the amount, if any, required to satisfy any properly submitted unpaid redemption requests were accrued or paid by Applicant in the ordinary course of business on or prior to the effectiveness of the reorganization. Failure to qualify as a RIC resulted in a $1,200 tax liability (accrued and paid by Challenger), which was subsequently refunded as a result

of Challenger's ordinary loss incurred during the same period.

7. As of the time of filing the application, Applicant had no security holders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. It is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant is current on its required filings, including its N–SAR filing.

9. Applicant will notify the proper Massachusetts authorities of its dissolution and deregistration as an investment company if this Order is granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29227 Filed 12–20–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24775; 70–6688]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 15, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 10, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Fuels, Inc., et al. (70–6688)

Columbia Fuels, Inc. ("Columbia"), and its parent company Alabama Power Company ("Alabama"), both located at 600 North 18th Street, Birmingham, Alabama 35291, indirect and direct subsidiaries, respectively, of The Southern Company, a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to Sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By prior Commission orders (HCAR Nos. 22786, 23047 and 24468, December 20, 1982, August 31, 1983, and September 30, 1987, respectively), Columbia was authorized, among other things, to enter into a $100 million note-issuing credit agreement with Bank of America ("Bank") for a line of credit to be used to finance the purchase of nuclear fuel, which will be leased by Alabama under a related fuel lease agreement ("Lease"). This particular credit arrangement, together with an additional arrangement with Credit Suisse, provides aggregate credit available to Columbia for nuclear fuel financing of up to $150 million. Columbia now proposes to enter into an amended agreement ("Agreement") with the Bank to provide for the issuance and sale of commercial paper, in addition to the previously authorized notes, for nuclear fuel financing and to eliminate the finance bill financing option under the current agreement. The line of credit available to Columbia from the Bank will remain at $100 million and the aggregate credit limit of $150 million available to Columbia for nuclear fuel financing will remain unchanged.

Under the proposed commercial paper ("Paper") option of the Agreement, the Paper of Columbia will be offered for sale by the Bank, acting as dealer, to its customers in the form of promissory notes of Columbia with varying maturities not to exceed 270 days. Actual maturities will be determined by market conditions and the effective interest costs to Columbia at the time of issuance.

The basic cost to Columbia under this option will be the market rate at the time of issuance for such Paper, plus a dealer fee, expected to be not greater than ⅛ of 1% per annum. Costs to be paid to the Bank under this option will include a commitment fee of ⅛ of 1% per annum on the total credit commitment of $100 million, less the sum of the aggregate outstanding credits realized under the direct borrowing option ("Loans"). The Paper obligations will be paid when due by Columbia. Loans will continue to be evidenced by notes ("Notes"), on the same terms and conditions as previously approved.

As required by the Lease, Alabama will be unconditionally obligated to pay to Columbia, or the person designated by Columbia, any and all amounts requested by Columbia to satisfy all scheduled payments of (i) principal or interest on any Notes, (ii) the face amount of any Paper, and (iii) fees, indemnities or other obligations of Columbia pursuant to the Agreement. A Depositary, as selected by Columbia, will conduct all transactions as to the application of funds and will hold a security interest in the nuclear fuel, as trustee for the holders of the outstanding Paper and Notes, and in all rights, title, and interest as held by Columbia in the Lease. This security interest held by the trustee shall rank *pari passu* with the security interest of the Bank granted by Columbia pursuant to the provisions of the various agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29228 Filed 12–20–88; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Modifying Sugar Import Quota Allocation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice modifies for the remainder of 1988 the allocation provisions which are presently applicable to sugar import quotas.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, (202) 395–5006.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661), modified the quotas on the importation into the United States of sugars, sirups and molasses provided for in items 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS) and allocated the quotas on a country-by-country basis. Under this system, sugar from an individual country enters the United States and is counted against that country's quota on a first-come-first-served basis. If the quota allocation is filled for that quota period, the sugar may be entered into warehouse under bond and later

withdrawn from warehouse for consumption in a subsequent quota period. The quota periods are established on an annual basis.

Proclamation 4941 also authorizes the U.S. Trade Representative, after appropriate consultations with the Department of Agriculture and the Department of State, to make certain modifications in the sugar import quota systems if such modifications are appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

After appropriate consultations between the Office of the United States Trade Representative and the Departments of Agriculture and State, the United States Trade Representative has determined that certain modifications in the import quota system are appropriate and give due consideration to such interests. Accordingly, the country-by-country quota allocations are modified as follows:

—Having declared a shortfall of 11,676 short tons, raw value [STRV], Guyana's quota for 1988 is reduced to 374 STRV.

—The shortfall of 11,676 STRV is reallocated as follows:

Belize	5646.5	STRV
Jamaica	5646.5	STRV
Trinidad and Tabago	383.0	STRV

This notice is effective the day following the day of filing. The allocations made herein are in addition to the 1988 annual allocation for these countries. Reallocated sugar must be entered or withdrawn from warehouse for consumption on or before December 31, 1988.

I have determined that the above allocations are appropriate to give due consideration to the interests of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-29395 Filed 12-20-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-098]

AGENCY: Coast Guard, DOT.

ACTION: Notice of Changes to Inland Rules.

SUMMARY: On September 28, 1988, the President signed Pub. L. 100-448 which included several technical amendments to Rules 3(g)(v), 27(b), and 27(f) of the Inland Navigation Rules to make them consistent with the International Rules. The Coast Guard publishes the full text of the International and Inland Rules in "Navigation Rules, International-Inland" (COMDTINST M16672.2A) which will be revised at the next scheduled publication. To facilitate ready access to the revised rules in the interim, this notice sets forth the modified text of Rules 3(g)(v), 27(b), and 27(f).

EFFECTIVE DATE: September 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Palmer, Office or Navigation Safety and Waterway Services, U.S. Coast Guard, (G-NSR-3), 2100 Second Street SW., Washington DC, 20593-0001. Telephone (202) 267-0343.

SUPPLEMENTARY INFORMATION: The technical amendments in Pub. L. 100-448 make minor changes to the wording of the Inland Rules to conform with the wording of the International Rules. The word "mineclearance" replaces the word "minesweeping" in Inland Rules 3 and 27. Also, in Rule 27, the lights or shapes on a mineclearance vessel now warn mariners that it is not safe to navigate within 1000 meters of the mineclearance vessel. To effect these changes, Inland Rules 3 and 27 have been revised to read as follows:.

1. Rule 3, Paragraph (g)(v) of Inland Navigation Rules, has been revised to read:

(v) a vessel engaged in mineclearance operations; and

2. Rule 27, Paragraph (b) of Inland Navigation Rules, has been revised to read:

(b) Vessels restricted in their ability to maneuver

A vessel restricted in her ability to maneuver, except a vessel engaged in mineclearance operations, shall exhibit:

3. Rule 27, Paragraph (f) of Inland Navigation Rules has, been revised to read:

(f) Vessels engaged in mineclearance operations

A vessel engaged in mineclearance operations shall, in addition to the lights prescribed for a power-driven vessel in Rule 23 or to the lights or shape prescribed for a vessel at anchor in Rule 30, as appropriate, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited near the foremast head and one at each end of the foreyard. These lights or shapes indicate that it is dangerous for another vessel to approach within 1,000 meters of the mineclearance vessel.

Mariners and affected parties are urged to note these changes and to update personal copies of the Navigation Rules booklet.

Dated: December 9, 1988.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-29173 Filed 12-20-88; 8:45 am]

BILLING CODE 491-014-M

Federal Highway Administration

Environmental Impact Statements: Chatham County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Chatham County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, 4505 Falls of the Neuse Road, Suite 470, Raleigh, North Carolina 27609, Telephone (919) 790-2950.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) for the proposed improvement of US 64 from the end of the four-lane divided roadway section over Jordan Lake to SR 1515 west of Pittsboro. The proposed action consists of the addition of two lanes adjacent to the existing roadway from the end of the four-lane section crossing Jordan Lake to some point west of the Haw River. From this point a multilane, divided, partially controlled-access facility will be constructed on new location to bypass Pittsboro. The proposed project is needed to serve traffic demand in the area and to relieve the congestion, delay, and inconvenience currently being experienced along existing US 64 from Raleigh to Asheboro and along existing US 15-501 from Chapel Hill to Sanford.

Alternatives under consideration include (1) the "nobuild", (2) improving existing US 64 without the construction of a bypass, and (3) improving existing US 64 with the construction of a bypass.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials will be held in the

project area.A public hearing will also be held. Information on the time and location of the public meeting and public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To insure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20, 205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: December 13, 1988.

J. Max Tate,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 88-29231 Filed 12-20-88; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 245
Wednesday, December 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Change in Meeting Scheduled December 20, 1988

December 16, 1988.

TIME AND DATE: 10:00 a.m., Tuesday, December 20, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following item has been postponed to a later date:

2. *Secretary of Labor and UMWA v. Mid-Continent Resources, Inc., and American Mining Congress,* Docket No. WEST 87-88. (Issues include consideration of pending motions.)

It was determined by the Commissioners that this item should be heard at a later date.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5620/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-29381 Filed 12-19-88; 3:52 pm]

BILLING CODE 6735-01-M

NATIONAL LABOR RELATIONS BOARD

Hearing

TIME AND DATE: 9:00 a.m., Thursday, December 8, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. S552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated: Washington, DC., December 16, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-29349 Filed 12-19-88; 2:56 pm]

BILLING CODE 7445-01-M

VOL 53 ISS 245 DE 21 1988 UMI

Federal Register

Wednesday
December 21, 1988

Part II

National Aeronautics and Space Administration

48 CFR Part 1804 et al
Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Final Rule

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1807, 1808, 1809, 1810, 1812, 1813, 1814, 1815, 1816, 1817, 1819, 1823, 1825, 1827, 1828, 1833, 1836, 1837, 1842, 1848, and 1852

[NASA FAR Supplement Directive 85-13]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: December 31, 1988.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 10546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) 8(a) contracting, (2) protest documentation, (3) value engineering, and (4) publication of several clauses and provisions originated by NASA centers for local use, but now authorized for agencywide use. Typographical and editorial changes to improve readability and conformance with FAR drafting conventions have been made. Substantive meanings have not been altered; however, entire textual segments have been reprinted when such changes are both numerous and scattered through the rule.

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no burdens on the public within the ambit of the Paper Work Reduction Work Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1804, 1807, 1808, 1809, 1810, 1812, 1813, 1814, 1815, 1816, 1817, 1819, 1823, 1825, 1827, 1828, 1833, 1836, 1837, 1842, 1848, and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1804, 1807, 1808, 1809, 1810, 1812, 1813, 1814, 1815, 1816, 1817, 1819, 1823, 1825, 1827, 1828, 1833, 1836, 1837, 1842, 1848, and 1852 continues to read as follows:

PART 1804—ADMINISTRATIVE MATTERS

2. Part 1804 is amended as set forth below:

a. In Subpart 1804.1, 1804.103 is revised to read as follows:

1804.103 Contract clause.

The contracting officer shall include the clauses at FAR 52.204-1, Approval of Contract, and 1852.204-74, Approval Official, in solicitations, contracts, and supplemental agreements subject to Master Buy Plan procedures (see 1807.7102). In the clause at 1852.204-74, insert either the "NASA Assistant Administrator for Procurement" if the procurement has been selected for Headquarters approval of the contract under the Master Buy Plan procedures, or insert the "Procurement Officer" if the procurement has not been so selected.

b. In Subpart 1804.4, 1804.404-70 is added to read as follows:

1804.404-70 Contract clause.

The Contracting Officer shall insert the clause at 1852.204-75, Security Classification Requirements, in solicitations and contracts if work to be performed will require security clearances. Insert the security clearance level applicable to the particular procurement. Include in the solicitation and contract a properly executed DD Form 254, Contract Security Classification, in accordance with NMI 1650.1. For contracts, delete the last sentence. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular procurement and installation.

1804.676 [Amended]

c. In 1804.676, the words "Headquarters Procurement Management Division (Code HM)." are removed, and the words "Educational Affairs Division, University Programs Office, NASA Headquarters (Code XEU)." are added in their place.

Subpart 1804.74 [Removed]

d. Subpart 1804.74 is removed.

PART 1807—ACQUISITION PLANNING

3. Subpart 1807.70 is amended by revising its title to read as follows:

Subpart 1807.70—Solicitation Provision

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Part 1808 is amended by adding 1808.002-76 to read as follows:

1808.002-76 Contract clause.

The contracting officer shall insert the clause at 1852.208-83 in all solicitations and contracts requiring the procurement of helium.

1808.304-572 [Amended]

5. In 1808.304-572, in paragraphs (a)(2)(ii) and (a)(4), the reference "1852.208-7009" is revised to read "1852.208-77" in both instances.

1808.305 [Amended]

6. In 1808.305, the references "1852.208-7003" and "1852.208-7008" are revised to read "1852.208-71" and "1852.208-76," respectively.

1808.309 [Amended]

8. In 1808.309, paragraphs (a) through (i), the references "1852.208-7002," "1852.208-7003," "1852.208-7008," "1852.208-7004," "1852.208-7005," "1852.208-7006," "1852.208-7007," "1852.208-7009," "1852.208-7010," and "1852.208-7011," are revised to read "1852.208-70," "1852.208-71," "1852.208-76," "1852.208-72," "1852.208-73," "1852.208-74," "1852.208-75," "1852.208-77," "1852.208-78," and "1852.208-79," respectively.

9. Subpart 1808.8 is amended by adding 1808.870 to read as follows:

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208-81, Printing and Duplicating, in solicitations and contracts where there is any requirement for significant printing and/or reproduction. Printing in excess of that described in paragraph (c) of the

clause constitutes significant printing and/or reproduction.

PART 1809—CONTRACTOR QUALIFICATIONS

10. Part 1809 is amended by adding Subpart 1809.6, consisting of 1809.670, to read as follows:

Subpart 1809.6—Contractor Term Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209–72, Composition of the Contractor, in all construction invitations for bid and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

11. Part 1810 is amended by revising 1810.011 and adding 1810.011–70, to read as follows:

1810.011 Solicitation provisions and contract clauses.

1810.011–70 NASA solicitation provisions and contract clauses.

(a) When a "brand-name-or-equal" purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.210–70, Brand Name or Equal.

(b) The contracting officer shall insert the provision at 1852.210–71, Descriptive Literature for Used Material, in solicitations containing FAR clause 52.210–6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property. Insert the information needed to make a determination that the items to be furnished can reasonably be expected to conform to the requirements of the solicitation.

(c) The contracting officer may insert a clause substantially as stated in 1852.210–72, Supplies and/or Services to be Furnished, in all solicitations and contracts to indicate the items to be delivered. Insert the item number, description of the supplies (see FAR 2.101 for definition) and/or services to be furnished, quantities to be furnished, unit and unit price (if applicable), and total dollar amount. The column headings may be modified for what is being acquired and for the type of contract.

(d) The contracting officer shall insert a clause substantially as stated at 1852.210–75, Packaging and Marking, in solicitations and contracts where the packaging and marking requirements of NASA Handbook 6000.1 and/or MIL–STD–2073 are appropriate. Insert the applicable information for the particular procurement. Substitute Alternate I for paragraphs (a), (b), (c), and (d) of the basic clause if commercial packing and marking practices are to be used. Add Alternate II if space flight item(s) are to be delivered.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

12. Subpart 1812.1 is amended by adding in 1812.104–70 paragraphs (d) and (e) to read as follows:

1812.104–70 Additional clauses.

* * * * *

(d) The contracting officer may insert a clause substantially as stated at 1852.212–73, Delivery Schedule, in solicitations and contracts if the Government requires delivery of items on specific dates during the contract. Insert the item description, quantity of items to be furnished, delivery dates, and shipping addresses applicable to the particular procurement.

(e) The contracting officer may insert a clause substantially as stated at 1852.212–74, Period of Performance, in term contracts to specify the time during which contract performance will take place. Insert the period of performance dates applicable to the particular procurement.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13. Subpart 1813.2 is amended by revising 1813.205 to read as follows:

1813.205 Review procedures.

The procurement officer shall ensure that all BPA files are reviewed at least annually to ascertain that appropriate procedures are being followed and that prices obtained are fair and reasonable.

PART 1814—SEALED BIDDING

14. Subpart 1814.2 is amended by adding 1814.201–6 and 1814.201–670, to read as follows:

1814.201–6 Solicitation provisions.

1814.201–670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214–70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214–21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award, in invitations for bid, except for construction, and competitive requests for proposals when conditions of inspection, installation performance, or location under multiple awards for certain items or groupings of certain items is impracticable. See 1814.201–5 (a) and (b) and FAR 52.214–10 and 52.215–16. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214–72, Full Quantities, in invitations for bid, except for construction, and competitive requests for proposals when it is in the Govenment's best interest not to make award for less than the full quantities solicited. See FAR 52.214–10 and 52.215–16.

(d) For conducting pre-bid conferences, see 1815.407–70(f).

PART 1815—CONTRACTING BY NEGOTIATION

1815.106 and 1815.106–2 [Removed]

15. In Subpart 1815.1, 1815.106 and 1815.106–2 are removed.

16. Subpart 1815.4 is amended as set forth below:

a. Section 1815.406–2 is added, and 1815.406–4 and 1815.406–5 are revised to read as follows:

1815.406–2 Part I—The Schedule.

Section C, Description/specifications/work statement.

(a) In source evaluation board procurements, when detailed program or project support plans will be required as part of the offeror's proposal but will not be important discriminators in the evaluation process and cover only technical or management support to the primary product or service being offered, describe the requirements for those plans in separate appendices to the statement of work (see 1815.406–70(a)(7)).

(b) In solicitations for cost-reimbursement support services contracts requiring price quotations, include available data regarding the quantity and quality of supplies and services required, set forth in terms of work hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs (see 1815.406–70(b)(8)).

1815.406–4 Part III—List of documents, exhibits, and other attachments.

Section J, List of attachments. List here all the documents, exhibits, and other attachments making up the

solicitation package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example: work frequency schedules, work breakdown structures, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the solicitation proper).

1815.406–5 Part IV—Representations and Instructions.

(a) Section K, Representations, certifications, and other statements of offerors or quoters. See 1845.104(b).

(b) Section L, Instructions, conditions, and notices to offerors or quoters.

(1) State if the selected contractor will require access to classified information (see NMI 1650.1, Industrial Security Policies and Procedures).

(2) Indicate the method and format of price quotation desired (fixed-price or cost-reimbursement, if known at the time), including a reference to the necessity for cost or price breakdown.

(3) Describe the information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost or price information (see FAR Subparts 15.7 and 15.8, and FAR Part 44).

(4) Include instructions for disposing of drawings and specifications supplied with the solicitation.

(5) Include a statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities any contractors must possess.

(6) Include an instruction reflecting desirability of a separation between the offeror's business management proposal and technical proposal. For evaluation purposes, separate proposals, if time permits, should be received; therefore the format should be flexible enough to permit separate requirements (see 1815.406–70).

(7) State that the solicitation does not commit the Government to pay any cost incurred in submitting the offer or in making necessary studies or designs for its preparation, nor to contract for services or supplies.

(8) Include a statement that "PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THE SOLICITATION (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001."

b. In 1815.407–70, paragraphs (c) through (i) are added to read as follows:

1815.407–70 NASA solicitation provisions.

* * * * *

(c) The contracting officer may insert a provision substantially as stated at 1852.215–74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government. See FAR 52.215–13(d).

(d) In accordance with 1815.406–5(b)(7), the contracting officer shall insert the provision at 1852.215–75, Expenses Related to Offeror Submissions, in all requests for proposals.

(e) In accordance with 1815.406–5(b)(8), the contracting officer shall insert the provision at 1852.215–76, False Statements, in all requests for proposals to advise offerors of the penalty for making false statements in proposals.

(f) The contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a preproposal or pre-bid conference. Insert the appropriate specific information relating to the conference. Supplemental information, such as an agenda summary and whether a tour is included, may be identified in "Other Information."

(g) The contracting officer shall insert the provision at 1852.215–80, Disposal of Unsuccessful Proposals, in competitive requests for proposals.

(h) For grouping items in the solicitation in contemplation of an aggregate award, see 1814.201–670(b).

(i) For requiring full quantities to be proposed, see 1814.201–670(c).

17. Subpart 1815.7 is amended by adding 1815.708 and 1815.708–70 to read as follows:

1815.708 Contract clause.

1815.708–70 NASA contract clause.

(a) The contracting officer shall insert the provision at 1852.215–78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215–21, Changes or Additions to Make-or-Buy Program. The contracting officer may add an additional paragraph(s) identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215–21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

18. Subpart 1815.10 is amended by revising its title to read as follows:

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

PART 1816—TYPES OF CONTRACTS

19. Subpart 1816.2 is amended as set forth below:

a. Sections 1816.202 and 1816.202–70 are added to read as follows:

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm Fixed Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203–4 [Amended]

b. In 1816.203–4, introductory paragraph (a), the references "1852.216–7001" and "–7002" are revised to read "1852.216–70" and "–71," respectively.

c. In 1816.203–4, paragraphs (a)(1) and (a)(2), the references "1852.216–7001" and "1852.216–7002" are revised to read "1852.216–70" and "1852.216–71," respectively.

d. In 1816.203–4, paragraph (g), the reference "1852.216–7003" is revised to read "1852.216–72."

e. Sections 1816.207 and 1816.207–70 are added to read as follows:

1816.207 Firm-fixed-price, level-of-effort term contracts.

1816.207–70 NASA contract clause.

(a) The contracting officer shall insert a clause substantially as stated at 1852.216–79, Level-of-Effort (Fixed-Price), in fixed-price term solicitations and contracts. Insert the minimum direct labor hours, the labor categories and associated direct labor hours, and a formula or dollar amount as the rate(s) at which the fixed price may be reduced if the minimum direct labor hours have not been provided. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(b) For task ordering procedures for firm-fixed-price, level-of-effort term contracts, see 1816.307–70 (d) and (e).

20. Subpart 1816.3 is amended by revising 1816.307 and 1816.307–70 to read as follows:

1816.307 Contract clauses.

(a) In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, or FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(b) In subdivision (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

(c) In subdivision (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303.

(b) The contracting officer may insert the clause at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert a clause substantially as stated at 1852.216–80, Task Ordering Procedure, for level-of-effort term solicitations and contracts where (1) the Government desires to control and direct the contractual effort through the issuance of task orders and (2) the statement of work is conducive to issuance of task orders by the Government. This clause is applicable to both fixed-price and cost type term contracts. The contracting officer may modify, where appropriate, the contractor's task plan submission period.

(e) The contracting officer shall use the clause at 1852.216–80 with its Alternate I, which deletes the requirement for contractor task plans, if (1) direction in the task order is sufficiently defined, (2) submission of a contractor task plan would serve no useful purpose in clarifying the work to be performed, (3) the task order authorizes commencement of work on a particular date, and (4) the contractor acknowledges in writing that it will proceed with work in accordance with the task order.

(f) The contracting officer shall insert the clause at 1852.216–81, Estimated Cost, in cost no-fee contracts that are not cost sharing or facilities contracts. Insert the total estimated cost (value) of the contract.

(g) The contracting officer shall insert a clause substantially as stated at 1852.216–82, Level-of-Effort (Cost), in cost-plus-fixed-fee term solicitations and contracts. Insert the minimum and maximum percentages of direct labor hours, the labor categories and associated direct labor hours, and total direct labor hours. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(h) The contracting officer may insert a clause substantially as stated at 1852.232–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts. Insert the contract number and mailing addresses for submission of vouchers.

21. Subpart 1816.4 is amended by revising 1816.405 and adding 1816.405–70 to read as follows:

1816.405 Contract clauses.

1816.405–70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed price incentive solicitations and contracts utilizing firm or successive targets. See FAR 52.216–16 and 52.216–17. Insert the appropriate amounts. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(c) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts. Insert the appropriate target cost and fee amounts.

(d) The contracting officer may insert a clause substantially as stated at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. Insert the applicable cost and fee information for the particular procurement. If there is no base fee, delete the statements regarding base fee or specify $"0" (zero) base fee.

22. Subpart 1816.6 is amended by adding 1816.603–4 and 1816.603–470 to read as follows:

1816.603–4 Contract clause.

1816.603–470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.216–86, Settlement of Letter Contract, in contracts definitizing letter contracts. Insert the appropriate letter contract number, date, and modification numbers.

PART 1817—SPECIAL CONTRACTING METHODS

1817.204 [Amended]

23. In 1817.204, paragraph (a), the first sentence is removed, and the following sentence is added in its place: "The 5-year limitation (basic plus option periods) set forth in FAR 17.204(e) shall apply to all NASA contracts regardless of type."

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

24. Part 1819 is amended as set forth below:

a. Subpart 1819.1 is added to read as follows:

Subpart 1819.1—Size Standards

1819.170 Contract clause.

The contracting officer shall insert the provision at 1852.219–72, Standard Industrial Classification (SIC) Code and Small Business Size Standard, in all solicitations. Insert the applicable SIC code and small business size information (either the number of employees, or the dollar value in average annual receipts for the last three (3) fiscal years for the particular procurement).

b. In Subpart 1819.7, 1819.708 and 1819.708–70 are added to read as follows:

1819.708 Solicitation provisions and contract clauses.

1819.708–70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.219–73, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations containing the clause at FAR 52.219–9.

Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

When offerors are to include subcontracting plans in their initial offer as contemplated by FAR 19.705–2(d), or if a noncompetitive solicitation will be issued, the contracting officer may use the provision with its Alternate I.

c. In Subpart 1819.8, 1819.809–1 is revised to read as follows:

1819.809–1 General.

The contracting officer shall accomplish internal NASA distribution of both the prime contract and the subcontract and provide SBA a duplicate original copy of the executed prime contract and any additional authenticated, conformed, or reproduced copies SBA requests. The SBA will provide the contracting officer two duplicate original copies of the executed subcontract and any additional authenticated, conformed, or reproduced copies the contracting officer requests for internal NASA distribution.

PART 1823—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

25. Part 1823 is amended as set forth below:

a. Section 1823.303–70 is revised to read as follows:

1823.303–70 NASA clause.

The contracting officer shall insert the clause at 1852.223–72, Potentially Hazardous Items, in solicitations and contracts involving potentially hazardous items or components. Insert the potentially hazardous items or components.

b. In 1823.7004, paragraphs (e) and (f) are added to read as follows:

1823.7004 Contract clause.

* * * * *

(e) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the clause at 1852.223–70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. The contracting officer shall include the plan, as approved by the contracting officer, in any resulting contract. See 1852.223–70.

(f) When the installation safety/health officials recommend that a Safety and Health Plan be submitted by the apparently successful offeror after notification of selection but before contract award, the clause at 1852.223–73 shall be used with its Alternate I.

PART 1825—FOREIGN ACQUISITION

26. Part 1825 is amended as set forth below:

a. In Subpart 1825.4, 1825.405 is revised, and 1825.407 and 1825.407–70 are added to read as follows:

1825.405 Procedures.

Solicitations shall require that applicable duty charges be included in the offered price, whether or not duty free certificates are obtained. Duty charges shall be included in the price evaluation.

1825.407 Solicitation provision and contract clause.

1825.407–70 NASA solicitation provision.

In accordance with FAR 25.405(d), the contracting officer shall insert the provision at 1852.225–72, Offer in English Language and U.S. Dollars, in solicitations subject to the Trade Agreements Act of 1979.

b. In Subpart 1825.6, 1825.605 and 1825.605–70 are added to read as follows:

1825.605 Contract clause.

1825.605–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.225–73, Duty-Free Entry Supplies, in solicitations and contracts where the possibility exists of receiving duty-free supplies. Insert the supplies that are to be accorded duty-free entry in accordance with FAR 25.604 and 1825.604.

1825.703 [Amended]

c. In 1825.703, paragraph (a) and the paragraph (b) designator are removed.

Subpart 1825.9—[Amended]

1825.904 Determination and findings.

1825.903–70 [Redesignated as 1825.904–70]

d. In Subpart 1825.9, 1825.904 is added, and 1825.903–70 is redesignated 1825.904–70.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

27. Subpart 1827.3 is amended as set forth below:

a. Section 1827.303 is added to read as follows:

1827.303 Contract clauses.

In accordance with FAR 27.303, see 1827.373 for directions for using the clauses at FAR 52.227–11 and 52.227–13.

b. In section 1827.373, the title and paragraphs (a)(1) through (a)(3) are revised, and (a)(4) is added to read as follows:

1827.373 Contract clauses and solicitation provisions.

(a) Patent rights—retention by the contractor (short form).

(1) The contracting officer shall insert the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), in any contract (and solicitation therefor) with a small business firm or a nonprofit organization for the performance of experimental, developmental, or research work unless a determination is made to use another clause in accordance with one of the exceptions set forth in paragraph (c) below. The clause shall be modified as specified in paragraph (a)(4) below. Also, see paragraph (f) below and 1827.374–4.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement, or if the Administrator determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or to-be-entered-into treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(3) To qualify for the clause at FAR 52.227–11, a prospective contractor may be required to certify that it is either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with 13 CFR 121.3–5 if small business firm status is questioned or requires the prospective contractor to furnish evidence of its status as a nonprofit organization.

(4) When the clause at FAR 52.227–11 is included in a solicitation or contract, it shall be modified as authorized in FAR 27.303(a)(2) by adding the following subparagraphs to paragraph (f):

(5) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, listing subject inventions made during that period and certifying that all have been disclosed or that there are none.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were none, and listing all subcontracts at any tier that contain a patent rights clause or certifying that there were none.

(6) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause, by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon the Contracting

Officer's request, the Contractor shall furnish a copy of that subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(7) The Contractor shall provide, upon request, the filing date, serial number, and title; a copy of the patent application (including an English language version if filed in a language other than English); and the patent number and issue date for any subject invention for which the Contractor has retained title.

(8) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

* * * * *

1827.374–1 [Amended]

c. In 1827.374–1, paragraph (d), the reference "1852.227–11" is revised to read "1827.373(a)."

1827.374–4 [Amended]

d. In 1827.374–4, paragraph (a)(2), the reference "1852.227–11," is revised to read "1827.373(a),".

28. Subpart 1827.4 is amended as set forth below:

1827.404 [Amended]

a. In 1827.404, paragraph (e)(1), the phrase "and 1852.227–14" is removed.

1827.405 [Amended]

b. In 1827.405, paragraph (a)(1), the phrase "and 1852.227–19" is removed, and in paragraph (a)(2), the reference "1852.227–19)" is revised to read "1827.409(g))".

c. Section 1827.409 is amended by revising paragraphs (e), (f), (g), and (h) to read as follows:

1827.409 Solicitation provisions and contract clauses.

* * * * *

(e) In accordance with 1827.404(e)(1), the contracting officer shall add the following subparagraph (d)(3) to paragraph (d) of the clause at FAR 52.227–14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges:

(d)(3) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(f) In accordance with 1827.405(a)(1), the contracting officer shall add the following paragraph (e) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contract Technical Representative/User may sign any vendor-supplied agreements registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(g) In accordance with 1827.405(a)(2), the contracting officer shall add the following paragraph (f) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract:

(f) Subject to paragraphs (a) through (g) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(h) In accordance with 1827.405(a)(3), the contracting officer shall use the clause at 1852.227–86, Commercial Computer Software—Licensing, in lieu of the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

PART 1828—BONDS AND INSURANCE

29. Subpart 1828.1 is amended by adding 1828.101 and 1828.101–70 to read as follows:

1828.101 Bid guarantees.

1828.101–70 NASA solicitation provision.

In accordance with FAR 28.101, the contracting officer shall insert the provision at 1852.228–73, Bid Bond, in construction solicitations where offers are expected to exceed $25,000, and a performance bond or a performance and payment bond is required. The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed $3 million. This provision may be used in other than construction procurements if the requirements of FAR 28.103 have been complied with.

30. Subpart 1828.3 is amended as set forth below:

a. In 1828.305, paragraph (b)(2) and (b)(2)(ii) are revised to read as follows:

1828.305 Overseas workers' compensation and war-hazard insurance.

* * * * *

(b) * * *

(1) * * *

(2) The Schedule of each contract containing the clause at 1852.228–77, Reimbursement for War-Hazard Losses, shall contain an estimated cost for war-hazard losses, derived in accordance with (i) below, and a statement similar to that set forth in (ii) below:

(i) * * *

(ii) "The portion of this contract providing for the new contractor to afford protection to its employees and subcontractors to their employees against war-hazard risks (see the clauses at 52.228–4 of the Federal Acquisition Regulation (FAR) and 1852.228–77 of the NASA FAR Supplement) is on a cost-reimbursement, no-fee basis, notwithstanding the basis of the remainder of the contract."

1828.309 [Amended]

c. In 1828.309, the reference "1852.228–470" is revised to read "1852.228–77."

1828.370 [Amended]

d. In 1828.370, paragraph (a) is revised, and paragraph (c) is added to read as follows:

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228–70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) below, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

* * * * *

(c) When the clause at 1852.228–70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located

during and for the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

31. Subpart 1833.1 is amended by revising 1833.103 and 1833.104 to read as follows:

§ 1833.103 Protests to the agency.

(a) Immediately upon learning that a protest has been filed, the contracting officer shall notify the Headquarters Procurement Policy Division (Code HP). If the protest is filed directly with an installation, any determination under FAR 33.103(a) to award the contract before the protest is resolved will be made by the contracting officer. If the protest is filed with NASA Headquarters, any such determination will be made by the Assistant Administrator for Procurement.

(b) When a protest is filed directly with an installation or with NASA Headquarters, the contracting officer shall provide any notice under FAR 33.103(b)(1) to offerors whose offers might become eligible for award.

(c) For protests filed with NASA Headquarters, the contracting officer shall forward to the Procurement Policy Division (Code HP) within 10 work days a report essentially the same as that required by FAR 33.104(a)(3).

§ 1833.104 Protests to GAO.

(a) *General.* (1) NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this Regulation.

(2) Upon receiving any communication from a protester or the GAO regarding a protest, the cognizant procurement officer shall immediately contact Code HP for guidance. Conversely, upon Headquarters receipt of notice from GAO of the filing of a protest, Code HP shall immediately notify the cognizant procurement officer. This is usually done via telephone and constitutes the official notice to the installation that a protest has been filed. Within three work days of being notified, the contracting officer shall forward to Headquarters (Code HP) a copy of the procurement file including all documents referred to in FAR 33.104(a)(3) (i) through (vi) and any others requested by Code HP. The contracting officer's statement (FAR 33.104(a)(3)(vi)) shall be forwarded no later than ten work days after the contracting officer has been notified. If more time is needed, requests for extension may be made by telephone to Headquarters, Code HP. When the GAO elects to use its express option procedure, the contracting officer's statement shall be forwarded to Code HP within six work days after the contracting officer has been notified. If that is not possible, a report to Code HP shall be made by telephone.

(3) The notices required by FAR 33.104(a)(4) shall be made by the contracting officer.

(4) The report required by FAR 33.104(a)(5) shall be filed by Headquarters (Code HP).

(5) Headquarters (Code HP) shall furnish copies of the report as required by FAR 33.104(a)(6) and, in consultation with the Office of General Counsel, decide which documents are relevant.

(6) Headquarters (Code HP) shall provide the information required by FAR 33.104(a)(7) to the GAO.

(b) *Protests before award.* (1) The contracting officer shall provide Headquarters (Code HP) with information and recommendations relevant to a determination under FAR 33.104(b)(1) to award a contract prior to resolution of a protest. Any such determination shall be made by the Assistant Administrator for Procurement, who for purposes of this requirement is the "head of the contracting activity." The notification to GAO required by FAR 33.104(b)(2) will be made by Code HP.

(2) The contracting officer shall make the notifications and requests required by FAR 33.104(b)(3).

(c) *Protests after award.* (1) Any request for a determination under FAR 33.104(c)(2) to authorize performance notwithstanding a protest shall be submitted to Headquarters (Code HP). Any such determination shall be made by the Assistant Administrator for Procurement who, for purposes of this requirement, is the "head of the contracting activity." The notification to GAO required by FAR 33.104(c)(3) shall be made by Code HP.

(2) Under FAR 33.104(c)(4), the contracting officer shall consult with Headquarters (Code HP) before terminating a protested contract. If FAR 33.104(c)(5) applies, the contracting officer shall consult with Code HP before taking any action.

(d) *Document requests.* If the protester in its protest statement or later in the process requests documents under FAR 33.104(a)(2), the contracting officer shall forward them to Code HP with the documents required by 1833.104(a)(3), within three work days of receipt of the request. Concurrently, the contracting officer shall within 1 work day provide copies of the protest statement, the document request if separate from the protest statement, and the requested documents to the installation Chief Counsel who will prepare a written recommendation on the release of the documents. This recommendation will be provided to the contracting officer with copies to Headquarters (Code HP) and the Associate General Counsel for Contracts (Code GK) for incorporation into the Administrative Report.

(e) *Conferences.* Representatives from Code HP and Code GK, and those installation representatives designated by Code HP or requested by the GAO will attend conferences held in accordance with FAR 33.104(e).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

32. Part 1836 is amended by adding Subpart 1836.5 to read as follows:

Subpart 1836.5—Contract Clauses

1836.570 NASA contract clauses.
1836.57001 Hurricane plan.
1836.57002 Magnitude of requirement.

Subpart 1836.5—Contract Clauses

1836.570 NASA contract clauses.

1836.57001 Hurricane plan.

The contracting officer shall insert the clause at 1852.236–73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

1836.57002 Magnitude of requirement.

The contracting officer shall insert the provision at 1852.236–74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

PART 1837—SERVICE CONTRACTING

33. Subpart 1837.1 is amended by adding 1837.110 and 1837.110–70 to read as follows:

1837.110 Solicitation provisions and contract clauses.

1837.110–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.237–70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornados, earthquakes, or other emergencies.

PART 1842—CONTRACT ADMINISTRATION

34. Part 1842 is amended as set forth below:

1842.803 [Amended]

a. In 1842.802, paragraph (c)(5), the name "General Accounting Office." is removed, and the name "General Services Administration." is added in its place.

b. Subpart 1842.70 is revised to read as follows:

Subpart 1842.70—NASA Contract Clauses

1842.7001 Technical direction.

The contracting officer shall insert the clause at 1852.242–70, Technical Direction, in cost-reimbursement solicitations and contracts if (1) technical direction as defined in the clause (which includes the Government's approving approaches and solutions of the contractor and shifting emphasis among work areas or tasks) is appropriate to accomplish the contract requirements effectively, (2) the statement of work is conducive to technical direction by the Government, and (3) technical direction is to be in writing. Identify this duty in subparagraph 3(m), "Other duties as follows" of NASA Form 1634 (see 1842.270). This clause addresses COTR responsibilities that are in addition to those discussed in subparagraphs 3(a)–(1) of the COTR delegation and is not intended to be followed in fulfilling those other responsibilities. The clause is not authorized for use with institutions of higher education and other non-profit organizations.

1842.7002 Travel outside of the United States.

(a) The contracting officer shall insert the clause at 1852.242–71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

(b) Add Alternate I to the clause at 1852.242–71 if the contractor is an institution of higher education or other nonprofit organization.

1842.7003 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242–72, Observance of Legal Holidays, in contracts when notification to the contractor of Government holidays would be useful in administering the contract.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when work will be performed at a NASA installation and it is desired that contractor employees observe the same holidays as Government employees. This alternate may be appropriately modified for fixed-price contracts.

PART 1848—VALUE ENGINEERING

35. Part 1848 is amended by revising Subparts 1848.1 and 1848.2 to read as follows:

Subpart 1848.1—Policies and Procedures

1848.102 Policies.
1848.103 Processing value engineering change proposals.
1848.104 Sharing arrangements.
1848.104–2 Sharing collateral savings.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.
1848.201–70 NASA conditions.

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

(a) Contracting officers shall include value engineering (VE) clauses in appropriate supply, service, architect-engineer, and construction contracts as prescribed in FAR Subpart 48.2, except when exemptions are granted on a case-by-case basis, or for specific classes of contracts, by the Assistant Administrator for Procurement

(b) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VE change proposal (VECP). Profit or fee shall be excluded when calculating instant or future contract savings, except that in calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

(c) The FAR requires agencies to establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings. In accordance with 1848.103, the contracting officer shall notify the responsible technical official of the potential for awarding the contractor future or collateral savings if the submitted VECP is accepted. Upon acceptance, the contracting officer shall obtain the concurrence of the program office and amend the instant contract to reflect payment of future or collateral savings.

1848.103 Processing value engineering change proposals.

(a) The contracting officer shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract, indicating—

(1) The date the VECP was received;

(2) The date by which the contractor must be informed of the Government's acceptance or rejection of the VECP unless additional time is required for evaluation;

(3) The date by which the contracting officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(4) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed for evaluating the VECP;

(5) The potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(6) That if the VECP is accepted, precise information will be needed with regard to the type of savings, Government costs, etc., that can be expected from its acceptance;

(7) The need for a procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(8) The need for additional funds if acceptance of the VECP results in negative instant contract savings.

1848.104 Sharing arrangements.

1848.104–2 Sharing collateral savings.

The contracting officer may make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.

1848.201–70 NASA conditions.

(a) Insertion of a VE clause in solicitations and contracts over $100,000 applies with respect to the VE incentive clause and the exceptions set out in FAR 48.201(a) (1) through (5). However, the Administrator is not authorized to exempt the agency completely from the requirements of FAR Part 48 (see 48.201(a)(6)). The contracting office shall omit the VE incentive clause when the Administrator has exempted a contract or a class of contracts from the

requirements of FAR Part 48, unless the head of the contracting activity authorizes its inclusion.

(b) NASA contracting officers shall insert the VE program requirement clause (the clause at FAR 52.248–1 used with its Alternative I or II) in (1) initial production contracts for major systems and (2) major systems research R&D and development contracts for full-scale development, unless the contracting officer determines that its use is inappropriate and documents the file to reflect that determination. The VE program requirement clause is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that, in the contracting officer's judgment, lend themselves to VE.

(c) The contracting officer may not insert either the VE incentive clause or the VE program requirement clause in an R&D contract where the statement of work is essentially an incorpration by reference of the propospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might profit from or be improved by application of VE techniques, the contracting officer shall consider inserting the VE incentive clause or VE program requirement clause, to refer to that part.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

36. Part 1852 is amended as set forth below:

1852.102 and 1852.102–2 [Removed]

a. Sections 1852.102 and 1852.102–2 are removed.

b. Section 1852.103–70 is revised to read as follows:

1852.103–70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown below. This format shall be used both for incorporation by reference and when using full text.

"52.232–22 Limitation of Funds (APR 1984)—as modified by NASA FAR Supplement 1832.705–270(d)"

38. Subpart 1852.2 is amended as set forth below:

a. Sections 1852.203–70, 1852.204–70, 1852.204–71, and 1852.204–72 are revised to read as follows:

1852.203–70 Contracts between NASA and former NASA employees.

As prescribed in 1803.7002, insert the following provision in all solicitations except IFB's:

CONTRACTS BETWEEN NASA AND FORMER NASA EMPLOYEES (DECEMBER 1988)

The offeror represents that he or she ( ) is, or ( ) is not, an individual who was employed by NASA during the past two years, or a firm in which such an individual is a partner, principal officer, or majority shareholder or that is otherwise controlled or predominantly staffed by such individuals. (End of provision.)

1852.204–70 Report on NASA subcontracts.

As prescribed in 1804.672, insert the following clause in all NASA contracts of $500,000 or more or when a modification increases the amount of a contract to $500,000 or more:

REPORT ON NASA SUBCONTRACTS (DECEMBER 1988)

(a) The Contractor shall submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, substantially as follows with respect to each subcontract or subcontract modification exceeding $10,000 as soon as possible after its execution:

(1) The name and address of the prime contractor and the NASA prime contract number.

(2) The name and address of the subcontractor.

(3) Whether the subcontractor is a large or small business concern and/or a minority business concern.

(4) Whether the type of effort being performed involves research and development.

(5) A brief description of the subcontract work.

(6) The amount of the subcontract.

(7) The principal location where the subcontract work is to be performed, if known.

(b) The Contractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, so notified by the Contractor or subcontractor.

(c) "Subcontract," as used in this clause, means procurement in excess of $10,000 by the Contractor or first-tier subcontractor of articles, materials, or services for performing this contract, except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this contract.

(d) "Research and development," as used in this clause, means basic and applied research, and design and development of prototypes and processes, to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes, or (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.

(e) The Contractor shall—

(1) Insert the provisions of paragraphs (a), (b), (c), and (d) above in each subcontract over $50,000;

(2) Instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546; and

(3) Provide its subcontractors with the number of the NASA prime contract. (End of clause.)

1852.204–71 NASA Contractor financial management reporting.

As prescribed in 1804.675–1(a), insert the following clause in contracts that require submission of any of the NASA Form 533 series of reports (excluding Form 533P).

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (DECEMBER 1988)

(a) The Contractor shall submit Financial Management Reports on NASA Form 533 in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2B) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, shall be set forth in the contract Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information reported to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract Schedule line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only.

(d) The Contractor shall insert the substance of this clause in all first-tier cost-reimbursement subcontracts specifically identified in writing by the Contracting Officer and shall include their cost in its cost reports.

(e) If during the performance of this contract NASA requires a change in the

information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) above, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract. (End of clause.)

1852.204–72 NASA contractor financial management reporting (performance analysis report).

As prescribed in 1804.675–1(b), insert the following clause in contracts that require submission of NASA Form 533P in addition to the Form 533 series submission prescribed at 1804.675–1(a).

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (PERFORMANCE ANALYSIS REPORT) (DECEMBER 1988)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2B) and on the reverse side of the form, as supplemented in the Schedule of this contract. (End of clause.)

1852.204–73 [Removed]

b. Section 1852.204–73 is removed.

c. Sections 1852.204–74 and 1852.204–75 are added to read as follows:

1852.204–74 Approval official.

As prescribed in 1804.103, insert the following clause:

APPROVAL OFFICIAL (DECEMBER 1988)

This contract is subject to the written approval of the _____ [Insert either "NASA Assistant Administrator" or "Procurement Officer"], in accordance with Federal Acquisition Regulation clause 52.204–1, Approval of Contract. (End of clause.)

1852.204–75 Security classification requirements.

As prescribed in 1804.404–70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (DECEMBER 1988)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204–2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254]. The offeror selected for award of this procurement shall be required to execute a DoD Security Agreement (DD Form 441), which binds the contractor to observe the provisions of the DoD Industrial Security Manual. (End of clause.)

d. Sections 1852.208–70, 1852.208–71, 1852.208–72, 1852.208–73, 1852.208–74, 1852.208–75, 1852.208–76, 1852.208–77, 1852.208–78, 1852.208–79, and 1852.208–80 are added to read as follows:

1852.208–70 Rates.

As prescribed in 1808.309, insert the following clause:

RATES (DECEMBER 1988)

(a) The Contractor shall be paid at the rates set out in Appendix A, provided that the Government shall be liable for any minimum monthly charge specified in this contract commencing with the billing period in which service is initially furnished and continuing until the contract is terminated, except that this charge shall be equitably prorated for the billing periods in which commencement and termination of this contract become effective.

(b) The Contractor hereby certifies that the rates for the service furnished under this contract do not exceed the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service. (End of clause.)

1852.208–71 Public regulation and change of rates.

As prescribed in 1808.309, insert the following clause:

PUBLIC REGULATION AND CHANGE OF RATES (DECEMBER 1988)

(a) Rates under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed changes.

(b) If during the term of this contract the public regulatory agency having jurisdiction approves rates higher or lower than those stipulated in this contract, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in the contract and the Government agrees to pay the changed rates from the date they are made effective.

(c) If the regulatory agency promulgates any regulation concerning matters other than rates that affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) If the Contractor, during the term of this contract, makes effective any new or amended rate schedule for the class of service furnished the Government at the service location that contains lower rates or conditions more favorable to the Government, the Contractor shall (1) forward to the Contracting Officer a copy of the schedule within 15 days after its effective date and, upon receipt of written request from the Government, (2) substitute the new or amended schedule for the one then in effect under this contract for that service location, commencing with the billing period in which the request is received. (End of clause.)

1852.208–72 Change in class of service.

As prescribed in 1808.309, insert the following clause:

CHANGE IN CLASS OF SERVICE (DECEMBER 1988)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to that service location at the lowest available rate schedule of the Contractor applicable to the class of service furnished following that permanent change, subject to the Rates clause of this contract.

(b) If the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished. (End of clause.)

1852.208–73 Contractor's facilities.

As prescribed in 1808.309, insert the following clause:

CONTRACTOR'S FACILITIES (DECEMBER 1988)

(a) The Contractor, at its expense, shall furnish, install, operate, and maintain all facilities required to furnish service under this contract to, and measure that service as of, the point of delivery specified in the Service Specifications. Title to these facilities shall be and remain in the Contractor, and the Contractor shall be responsible for all loss of or damage to them.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to any limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises. These facilities shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or maintenance, shall be borne by the Contractor.

(c) Authorized representatives of the Contractor shall be allowed access to the Contractor's facilities at suitable times to perform the Contractor's obligations regarding the facilities. The facilities shall be removed and Government premises restored to their original condition by the Contractor at its expense within a reasonable time after the Government revokes the permit or license granted by this clause and in any event within a reasonable time after termination of this contract, provided that if the contract is terminated for default, the facilities may be retained in place at the Government's option

until comparable service is obtained elsewhere.

(d) Proper Government authority may limit or restrict the right of access granted by this clause in any manner considered by that authority to be necessary for the national security. (End of clause.)

1852.208-74 Technical provisions.

As prescribed in 1808.309, insert the following clause. Minor changes may be made in it when insisted upon by the contractor to conform with established procedures or those in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of 1808.307-71 relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of service.* (1) The words "billed conjunctively" in the second sentence of clause subparagraph (a)(1) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing, as if the bill were prepared for a single meter. This sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively," to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In clause subparagraph (a)(2), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter test.* (1) The first sentence of clause paragraph (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the contractor's regulated practice.

(2) In the third sentence of clause paragraph (b), the percentage error (shown as 2 percent) may be changed to comply with the Contractor's regulated practice.

(c) *Continuity of service and consumption.* (1) In clause subparagraph (d)(1), the adjustment provision may be deleted or changed, if necessary, to conform with the provisions of the contractor's field rate schedules. This subparagraph may be ended after the word "facilities" and before the word "provided." For the period, "10 hours" may be changed.

(2) Clause subparagraph (d)(2) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand or similar charges on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

TECHNICAL PROVISIONS (DECEMBER 1988)

a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at its expense. When two or more meters are installed at the service location, their readings shall be billed conjunctively. If any meter fails to register or registers incorrectly the service furnished through it, the parties shall agree upon the length of period during which it failed to register or registered incorrectly and the quantity of service delivered through it during that period, and, upon agreement, an appropriate adjustment shall be made in the Government's bills. For the purpose of the preceding sentence, any meter that registers not more than 2 percent slow or fast shall be deemed correct.

(2) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is prevented from reading the meters on that day, the Contractor shall read the meters on the next succeeding business day on which it is able to do so, provided that (i) all bills based on meter reading intervals of less than 27 days or more than 33 days shall be prorated accordingly and (ii) there shall be no more than 12 billings in any one year.

(b) *Meter test.* The Contractor, at its expense, shall periodically inspect and test the meters installed by it at intervals not exceeding 1 year. At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all of these meters in the presence of Government representatives. The cost of these additional tests shall be borne by the Government if the percentage of errors is found to be not more than 2 percent slow or fast. No meter may be placed or allowed to remain in service that has an error in registration exceeding 2 percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall, so far as possible, be given by the Contracting Officer to the Contractor regarding any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* (1) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages or breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the Contractor's control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, strikes, or failure or breakdown of transmission or other facilities; provided that when any such failure, suspension, diminution, or variation aggregates more than 10 hours during any billing period, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(2) If the Government cannot operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate that service location in whole or in part exceeds 15 days during any billing period. (End of clause.)

1852.208-75 Renewal of contract.

As prescribed in 1808.309, insert the following clause:

RENEWAL OF CONTRACT (DECEMBER 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least _____ days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ____ years. (End of clause.)

1852.208-76 Change in rates.

As prescribed in 1808.309, insert the following clause:

CHANGE IN RATES (DECEMBER 1988)

(a) If at any time during the term of this contract either of the parties considers it appropriate to change all or part of the rates applicable to the service furnished under this contract, the parties agree to promptly negotiate new rates upon receipt by one party of a written request from the other (1) specifying the rates to which a change is considered appropriate, (2) setting forth the proposed change, and (3) stating in detail the reasons for the proposed change. Any rate change agreed to by the parties as the result of such negotiations shall be made a part of this contract by the issuance of a supplemental agreement and shall become effective as of the date of the request for a change in rates, unless otherwise agreed.

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any pertinent books, documents, papers, or records of the Contractor relating to costs that form the basis for the rates. (End of clause.)

1852.208-77 Connection charge.

As prescribed in 1808.309, insert the following clause:

CONNECTION CHARGE (DECEMBER 1988)

(a) *Charge.* The Government, for the furnishing and installation by the Contractor at the Contractor's expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, $_____, representing the sum of $_____ less

the agreed salvage value in the amount of $_____, as shown in Appendix C; provided that, as a condition for final payment, the Contractor executes a release acceptable to the Contracting Officer of claims against the Government arising from that furnishing and installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the Government's payment of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or maintenance, shall be borne by the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the service location, a credit of ____ percent of the amount of each bill as rendered, until the accumulation of credits equals the amount of the connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each bill.

(2) If the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of those facilities, the corresponding benefit to the Contractor is hereby recognized. It is therefore agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under subparagraph (1) above to 100 percent of each monthly bill, until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service (as agreed upon by the parties) as the portion of the facilities utilized in serving the other customer bears to the complete facilities described in Appendix C.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to those facilities.

(e) *Termination after completion of facilities.* (1) *Termination by the government.* If the Government terminates this contract after completion of the facilities for which the Government is to pay a connection charge, but before the crediting in full by the Contractor or any connection charge in accordance with the terms of this contract, the possible continued usefulness of those facilities is hereby recognized. Upon such termination, the Contractor shall have the following options:

(i) To retain in place for 12 months or more after the notice of termination by the Government such facilities on condition that (A) if, during that period, the Contractor serves any other customer by means of the facilities, the Contractor shall, in lieu of allowing credits, pay the Government during the period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause before the termination, and (B) immediately after the period, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(ii) To remove such facilities at the Contractor's own expense within 12 months after the effective date of the termination by the Government; provided, that if the Contractor elects to remove them, the Government shall have the option of purchasing them at the agreed salvage value set forth in Appendix C; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property that the Contractor elects to remove and that the Government elects to purchase at the agreed salvage value.

(2) *Termination by the contractor.* If the Contractor teminates service under, or otherwise defaults in performance of, this contract before the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of termination. (End of clause.)

1852.208–78 Termination charge.

As prescribed in 1808.309, insert the following clause and attach Appendix C to the contract when a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. The length of time, not in excess of 60 months, as negotiated with the contractor shall be entered in the first blank. In the second blank, enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of the cost of facilities furnished and installed by the contractor less the agreed salvage value, as shown in Appendix C. Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to Headquarters approval in accordance with 1808.307–71.

TERMINATION CHARGE (DECEMBER 1988)

For the furnishing and installation by the Contractor at its expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, the Government shall, in the event of termination of this contract by the Government before ____ months from the date on which service commences, pay the Contractor as a termination charge ____ less ____ multiplied by the number of months service has been received after the date of termination. (End of clause.)

1852.208–79 Multiple service locations.

As prescribed in 1808.309, insert the following clause:

MULTIPLE SERVICE LOCATIONS (DECEMBER 1988)

(a) The Contracting Officer may at any time, by written order, designate any service location within the Contractor's service area at which service shall be furnished or discontinued under the order, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location and specifying (1) a different rate if applicable, (2) the appropriate point of delivery, (3) different service specifications if applicable, and (4) any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated from the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications becomes effective. (End of clause.)

1852.208–80 Contractor's facilities (short form).

As prescribed in 1808.309, insert the following clause:

CONTRACTOR'S FACILITIES (SHORT FORM) (DECEMBER 1988)

The Contractor, at its expense, shall furnish, install, operate, maintain, retain title to, and be responsible for all loss of or damage to the facilities required to furnish the service provided for under this contract. The Contractor shall be allowed access to its facilities on Government premises at suitable times and shall, at the Contractor's expense, remove the facilities and restore the premises to their original condition within a reasonable time after this contract's termination. (End of clause.)

1852.208–7002, 1852.208–7003, 1852.208–7004, 1852.208–7005, 1852.208–7006, 1852.208–7007, 1852.208–7008, 1852.208–7009, 1852.208–7010, 1852.208–7011, and 1852.208–7012 [Removed]

e. Sections 1852.208–7002, 1852.208–7003, 1852.208–7004, 1852.208–7005, 1852.208–7006, 1852.208–7007, 1852.208–7008, 1852.208–7009, 1852.208–7010, 1852.208–7011, and 1852.208–7012 are removed.

f. Sections 1852.208–81 and 1852.208–83 are added to read as follows:

1852.208–81 Printing and duplicating.

As prescribed in 1808.870, insert the following clause:

PRINTING AND DUPLICATING (DECEMBER 1988)

(a) The Contractor shall reproduce any documentation required by this contract in

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accordance with the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

(b) The term "printing", as used in this clause, is defined in the Government Printing and Binding Regulations and includes the processes of composition, platemaking, presswork, binding, and the end items produced by such processes and equipment.

(c) The Contractor is authorized to duplicate by offset platemaking units not requiring the use of negatives; copy-processing machines not requiring the use of negatives or metal plates; or offset lithograph presses with single unit, sheet fed, maximum sheet size 11 x 17 inches and plate image no longer than 10¾ x14¼ inches. However, the Contractor shall not exceed 5,000 production units of any page nor 25,000 production units in the aggregate for multiple page duplication. A "production unit" is one sheet, size 8½ x 11 inches (215 x 280 mm), one side only, and one color.

(d) If the Contractor has reason to believe that any reproduction required under this contract violates the regulations referred to in paragraph (a) of this clause, the Contractor shall provide the Contracting Officer with immediate notice in writing and request approval prior to accomplishment of the reproduction. (End of clause.)

1852.208–83 Acquisition of Helium.

As prescribed in 1808.002–76, insert the following clause:

ACQUISITION OF HELIUM (DECEMBER 1988)

(a) In accordance with Parts 1 and 2, Subchapter A, Chapter 1, Title 30, Code of Federal Regulations, helium furnished under this contract (purchase order) shall be Department of the Interior, Bureau of Mines, helium or shall be replaced by the supplier with an equivalent volume of helium purchased from the Bureau of Mines.

(b) The Contractor may procure (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines from commercial sources if these sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from the Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, Texas 79101.

(c) The Contractor shall provide a copy of each contract (purchase order) for helium from commercial sources to the Contracting Officer and Bureau of Mines at the address in paragraph (b) above. (End of clause.)

g. Sections 1852.209–70 and 1852.209–71 are revised to read as follows:

1852.209–70 Product removal from qualified products list.

As prescribed in 1809.206–71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DECEMBER 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract. (End of clause.)

1852.209–71 Limitation of future contracting.

As prescribed in 1809.508–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.508:

LIMITATION OF FUTURE CONTRACTING (DECEMBER 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies. (End of clause).

h. Section 1852.209–72 is added to read as follows:

1852.209–72 Composition of the contractor.

As prescribed in 1809.670, insert the following clause:

COMPOSITION OF THE CONTRACTOR (DECEMBER 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract. (End of clause.)

i. Section 1852.210–70 is revised, and 1852.210–71, 1852.210–72, and 1852.210–75 are added to read as follows:

1852.210–70 Brand name or equal.

As prescribed in 1810.011, insert the following provision:

BRAND NAME OR EQUAL (DECEMBER 1988)

(a) As used in this provision, "brand name" means identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a "brand name or equal" description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsiblity of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered. (End of provision.)

1852.210–71 Descriptive literature for used material.

As prescribed by 1810.011–70(b), insert the following provision:

DESCRIPTIVE LITERATURE FOR USED MATERIAL (DECEMBER 1988)

(a) Offerors' attention is directed to the clause in this solicitation entitled "Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property." If an offeror intends to furnish any items falling within any of the classes of property addressed by that clause, the following information must be submitted as an attachment to the offer:

[Insert the information needed to determine that items can reasonably be expected to conform to the solicitation requirements.]

(b) Offerors are specifically advised that if this procurement is being conducted in accordance with procedures for sealed bidding (see FAR Part 14), a failure to provide the information identified in paragraph (a) above will render the offeror nonresponsive. (End of provision.)

1852.210-72 Supplies and/or services to be furnished.

As prescribed in 1810.011-70(c), insert the following clause:

SUPPLIES AND/OR SERVICES TO BE FURNISHED (DECEMBER 1988)

The contractor shall provide all resources (except as may be expressly stated in this contract as furnished by the Government) necessary to furnish the items below in accordance with the Description/ Specifications/Work Statement in Section C.

Item no.	Description	Quantity	Unit	Unit price	Total amount
[Insert the item number, brief description, quantity, unit, unit price, and total dollar amount.]					

(End of clause.)

1852.210-75 Packaging and marking.

As prescribed in 1810.011-70(d), insert the following clause:

PACKAGING AND MARKING (DECEMBER 1988)

(a) The Contractor shall pack and mark all hardware deliverable under this contract in accordance with the provisions of NASA Handbook (NHB) 6000.1, Requirements for Packaging, Handling, and Transportation, and/or MIL-STD-2073, as applicable, except as noted below:

[Insert exceptions to packing and marking requirements or

(b) The Contractor shall pack potentially hazardous items in accordance with paragraph 204 of NHB 6000.1.

(c) The Contractor shall develop packaging, handling, and transportation records, if required, from engineering and packaging data. The Contracting Officer's technical representative is the approving official of the records and special packaging data under paragraph 302 of NHB 6000.1.

(d) The Contractor's packaging specifications or procedures may be utilized if they are (i) not in conflict with cited NASA specifications and (ii) approved in writing by the Contracting Officer. In any conflict between NASA and the Contractor specifications or procedures, the NASA documents cited in this clause shall take precedence.

(e) The Contractor shall place identical requirements on all subcontracts. (End of clause.)

PACKAGING AND MARKING (ALTERNATE I)

(a) The contractor shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rate(s).

(b) The contractor's markings on shipping containers shall be clearly legible from a distance of 36 inches. The contractor may mark by stencil, rubber stamp, or lacquer over a coated gummed label.

PACKAGING AND MARKING (ALTERNATE II)

(f) The following items to be furnished under this contract are for space flight use:

[Insert items for space flight use.]

(g) All markings for space flight items shall be blue in color. All shipping containers, shipping documents, and purchasing documents for these items shall be marked "ITEMS FOR SPACE FLIGHT USE."

(h) The Contractor shall prominently display a NASA Critical Space Item Label on the exterior of all Class I, Class II, and Class III interim packages and exterior shipping containers to alert all shipping and handling personnel to the criticality of the item in accordance with paragraph 303 of NHB 6000.1. (End of clause.)

1852.212-13 [Removed]

j. Section 1852.212-13 is removed.

k. Sections 1852.212-70 and 1852.212-72 are revised to read as follows:

1852.212-70 Notice of delay.

As prescribed at 1812.104-70(a), insert the following clause:

NOTICE OF DELAY (DECEMBER 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing of the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable. (End of clause.)

1852.212-72 Partial shipments.

Insert the following clause as prescribed in 1812.104-70(c).

PARTIAL SHIPMENTS (DECEMBER 1988)

Partial shipments will not be accepted unless authorized elsewhere in this contract or by the Contracting Officer's representative at the time of delivery. The Government reserves the right to return partial shipments to the Contractor, transportation charges collect. (End of clause.)

l. Sections 1852.212-73, 1852.212-74, 1852.214-70, 1852.214-71, and 1852.214-72 are added to read as follows:

1852.212-73 Delivery schedule.

As prescribed in 1812.104-70(d), insert the following clause:

DELIVERY SCHEDULE (DECEMBER 1988)

The contractor shall deliver the items required to be furnished by this contract as follows:

Item no.	Description	Quantity	Delivery date	Shipping address
[Insert the applicable item numbers, descriptions, quantities of items, delivery dates, and shipping addresses.] (End of clause.)				

1852.212–74 Period of performance.

As prescribed in 1812.104–70(e), insert the following clause:

PERIOD OF PERFORMANCE (DECEMBER 1988)

The period of performance of this contract shall be [Insert period of performance dates]. (End of clause.)

1852.214–70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201–670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING DESCRIPTIVE LITERATURE (DECEMBER 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that "Data are subject to change without notice," "Prices subject to change without notice," or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202–5.] (End of provision.)

1852.214–71 Grouping for aggregate award.

As prescribed in 1814.201–670(b), insert the following provision:

GROUPING FOR AGGREGATE AWARD (DECEMBER 1988)

(a) The Government will evaluate offers and make award on a basis of the lowest aggregate offers for items *[Insert the item numbers and/or descriptions].*

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on all of the items specified in paragraph (a). (End of provision.)

1852.214–72 Full quantities.

As prescribed in 1814.201–670(c), insert the following provision:

FULL QUANTITIES (DECEMBER 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities. (End of provision.)

1852.215–2 and 1852.215–12 [Removed]

m. Sections 1852.215–2 and 1852.215–12 are removed.

n. Sections 1852.215–70, 1852.215–71, and 1852.215–73 are revised to read as follows:

1852.215–70 Increases in estimated costs.

As prescribed in 1815.613–72, insert the following provision:

INCREASES IN ESTIMATED COSTS (DECEMBER 1988)

Once the apparent successful offeror has been selected, that offeror may not unilaterally increase the estimated costs submitted with its proposal except for—

(a) Increases resulting from updating or correcting the certified cost or pricing data submitted with the proposal;

(b) Costs resulting from the Government's directed correction of identified weaknesses in the proposal that must be corrected as a condition of contracting; or

(c) Minor changes in the requirements of the solicitation. In such cases, the Government will consider only those increases arising from requirements actually affected by the changes (irrespective of whether the changes result in an increase or decrease in the requirements or are initiated by the Government or the offeror) and then only to the extent the increases are identified and justified. (End of provision.)

1852.215–71 Adjustment for subcontract price redetermination.

As prescribed in 1815.870–2, insert the following clause:

ADJUSTMENT FOR SUBCONTRACT PRICE REDETERMINATION (DECEMBER 1988)

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of that subcontract and the firm price established for it. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under the contract to reflect the subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.

[List subcontracts]

(End of clause.)

1852.215–73 Late Submissions, Modifications, and Withdrawals of Proposals. (AO and SBIR Programs).

As prescribed in 1815.407–70(b), use the following provision in lieu of the provision at FAR 52.215–10 in Announcement of Opportunity and SBIR solicitations:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (AO AND SBIR PROGRAMS) (DECEMBER 1988)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award. (End of provision.)

o. Sections 1852.215–74, 1852.215–75, 1852.215–76, 1852.215–77, 1852.215–78, 1852.215–79, and 1852.215–80 are added to read as follows:

1852.215–74 Alternate proposals.

As prescribed in 1815.407–70(c), insert the following provision:

ALTERNATE PROPOSALS (DECEMBER 1988)

(a) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in and responsive to this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, if accepted, would result in a contract with terms varying in one or more material respects from those contained in this solicitation (i.e., change in scope), and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interests, the Government may modify its solicitation in a manner appropriate to incorporate the change in scope but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation. (End of provision).

1852.215–75 Expenses related to offeror submissions.

As prescribed in 1815.407–70(d), insert the following provision:

EXPENSES RELATED TO OFFEROR SUBMISSIONS (DECEMBER 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk. (End of provision.)

1852.215–76 False statements.

As prescribed in 1815.407–70(e), insert the following provision:

FALSE STATEMENTS (DECEMBER 1988)

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THE SOLICITATION (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001. (End of provision.)

1852.215–77 Preproposal/pre-bid conference.

As prescribed in 1815.407–70(f), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE (DECEMBER 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable: [Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation. (End of provision.)

1852.215–78 Make or buy program requirements.

As prescribed in 1815.708–70(a), insert the following provision:

MAKE OR BUY PROGRAM REQUIREMENTS (DECEMBER 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission. (End of provision.)

1852.215–79 Price adjustment for "Make-or-Buy" changes.

As prescribed in 1815.708–70, insert the following clause:

PRICE ADJUSTMENT FOR "MAKE-OR-BUY" CHANGES (DECEMBER 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215–21, Change or Additions to Make-or-Buy Program, of this contract:

ITEM DESCRIPTION

MAKE-OR-BUY DETERMINATION

(End of clause.)

1852.215–80 Disposal of unsuccessful proposals.

As prescribed in 1815.407–70(g), insert the following provision:

DISPOSAL OF UNSUCCESSFUL PROPOSALS (DECEMBER 1988)

After contract award, one or more copies of each unsuccessful proposal will be retained in the Government's official contract file, and all other copies will be destroyed. (End of provision.)

1852.216–7 and 1852.216–13 [Removed]

p. Sections 1852.216–7 and 1852.216–13 are removed.

q. Sections 1852.216–70, 1852.216–71, 1852.216–72, 1852.216–73, 1852.216–74, 1852.216–75, and 1852.216–76 are added to read as follows:

1852.216–70 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

As prescribed in 1816.203–4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (DECEMBER 1988)

(a) The Contractor warrants that the unit price stated in this contract for _____ does not exceed the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date, if this is a negotiated contract) for like quantities of the same item. "Unit price" excludes any part of the price reflecting requirements for preservation, packaging, and packing beyond standard commercial practice. "Established price" means a price that meets the criteria of paragraph 15.804–3(c) of the Federal Acquisition Regulation as an established catalog or market price for a commercial item sold in substantial quantities to the general public. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. This decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in the invoice reflects all decreases required by this clause or (2) on the final invoice that all price decreases requried by this clause have been applied in the manner required by the clause.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is a negotiated contract), the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly; provided, that—

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the established price, if the Contracting Officer receives the Contractor's written request within 10 days after the increase in the established price, but, if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of the request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless the Contractor's failure to deliver these quantities before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract; and

(4) No modification incorporating an increase in a unit price shall be executed under this clause until the Contracting Officer has verified the increase in the applicable established price.

(d) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of cancellation. However, if the Contractor certifies to the Contracting Officer by notice received within 10 days after the Contractor receives the cancellation notice that certain items were completed or in the process of manufacture at the time the Contractor received the cancellation notice,

the Contractor may then deliver those items, and the Government shall pay for them at the increased contract unit price to the extent provided by paragraph (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel for it is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation as provided in paragraph (d) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for them at the contract unit price increased to the extent provided by paragraph (c) above. (End of clause.)

1852.216-71 Economic price adjustment—nonstandard steel items.

As prescribed in 1816.203-4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (DECEMBER 1988)

(a) "Established price" means a price that meets the criteria of paragraph 15.804-3(c) of the Federal Acquisition Regulation as an established catalog or market price of a commercial item sold in substantial quantities to the general public. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or scheduled price. (But see paragraph (i)(8) below.)

(b) Each contract unit price shall be subject to revision under this clause to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be ____ percent. (See paragraph (i)(1) below.)

(c) For the purposes of this paragraph (c), "labor index" means the average straight-time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see paragraph (i)(2) below) for any particular month. "Month" as used in this clause means "calendar month"; *provided, however,* that if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight-time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight-time hours worked by those employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to (1) the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of _____, 19____ (see paragraph (i)(3) below), the month immediately preceding, and the month immediately following, and (2) the "current labor index," which shall be the average of the labor indices for the two months consisting of the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to (1) the "base steel index," which shall be the Contractor's established price (see paragraph (i)(8) below), including all applicable extras of $_____ per _____ (see paragraph (i)(4) below) for _____ (see paragraph (i)(5) below) on _____, 19____ (see paragraph (i)(6) below), and (2) the "current steel index," which shall be the Contractor's established price (see paragraph (i)(8) below) for the item, including all applicable extras in effect _____ (see paragraph (i)(7) below) prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and the revised contract unit price shall apply to any supplies required to be delivered in that month, regardless of when actually delivered. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (1) the amount (representing the adjusted cost of labor) obtained by multiplying ____ percent of the contract unit price by a fraction whose numerator is the current labor index and whose denominator is the base labor index; (2) the amount (representing the adjusted cost of steel) obtained by multiplying ____ percent of the contract unit price by a fraction whose numerator is the current steel index and whose denominator is the base steel index; and (3) the amount equal to ____ percent of the original contract unit price (representing that portion of the unit price relating neither to the cost of labor nor to the cost of steel and therefore not subject to revision (see paragraph (i)(1) below)); *provided, however,* that any revised contract unit price made under this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending any revisions of the contract unit prices to be made under this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within 30 days after the final delivery of supplies, or within such further period as the Contracting Officer may authorize, the Contractor shall furnish a statement setting forth and certifying the correctness of (1) the average straight-time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above and (2) the Contractor's established prices (see subparagraph (i)(8) below), including all applicable extras for like quantities of the item identified in paragraph (d) above. Upon request of the Contracting Officer, the Contractor shall make available its records used in the computation of the labor indices. After the receipt of the certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with this clause, and this contract shall be modified accordingly. However, no modification shall be made until the revised established price (see paragraph (i)(8)) has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which the termination notice is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of the terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) of this clause; *provided, however,* that as to the quantity of the item that is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining those indices. If any steel item is terminated for default of the Contractor, any price revision shall be limited to the quantity of that item delivered by the Contractor and accepted by the Government before receipt by the Contractor of notice of termination for default.

(h) As used in this clause, the month in which delivery of supplies is required to be made under this contract means any month in which a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided, however,* that if the Contractor's failure to deliver that quantity results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract, the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule in this contract shall be amended accordingly.

(i) Offerors shall complete all blanks in this clause in accordance with the following instructions:

(1) Insert the same percentage figures for the corresponding blanks in paragraph (b) and in paragraphs (e) (1) and (2). In paragraph (e)(3), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Insert the month of bid opening or, if this is a negotiated contract, the month in which the Contractor submitted its proposal.

(4) Insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Insert the date set for bid opening or, if this is a negotiated contract, the date of the Contractor's proposal.

(7) Insert the number of days representing the Contractor's best estimate of the period required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) If this is a negotiated procurement and there is no "established price" or it is not

desirable to use such price, refer to another appropriate price basis in paragraph (d), such as an established interplant price. (End of clause.)

1852.216–72 Evaluation of offers subject to economic price adjustment.

As prescribed in 1816.203–4(g), insert the following provision:

EVALUATION OF OFFERS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (DECEMBER 1988)

Notwithstanding the requirements of the _____* clause, offers shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Offers that provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, shall also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Offers that provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or that limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

* Insert the title of the clause providing for economic price adjustment. (End of provision)

1852.216–73 Estimated cost and cost sharing.

As prescribed in 1816.307–70(a), insert the following clause.

ESTIMATED COST AND COST SHARING (DECEMBER 1988)

(a) It is estimated that the total cost of performing the work under this contract will be $_____ [insert total estimated cost].

(b) For performing of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the Limitation of Cost clause, the total estimated cost to the Government is hereby established as $_____ [insert estimated Government share]; this amount is the maximum cost for which the Government is obligated.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). (End of clause.)

1852.216–74 Estimated cost and fixed fee.

As prescribed in 1816.307–70(b) insert the following clause:

ESTIMATED COST AND FIXED FEE (DECEMBER 1988)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total of estimated cost and fixed fee is _____. (End of clause.)

1852.216–75 Payment of fixed fee.

As prescribed in 1816.307–70(c), insert the following clause:

PAYMENT OF FIXED FEE (DECEMBER 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer. (End of clause.)

1852.216–76 Award Fee.

As prescribed in 1816.405, insert the following clause:

AWARD FEE (DECEMBER 1988)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause. (End of clause.)

1852.216–7001, 1852.216–7002, 1852.216–7003, 1852.216–7004, 1852.216–7005, 1852.216–7006, and 1852.216–7007 [Removed]

r. Sections 1852.216–7001, 1852.216–7002, 1852.216–7003, 1852.216–7004, 1852.216–7005, 1852.216–7006, and 1852.216–7007 are removed.

s. Sections 1852.216–78, 1852.216–79, 1852.216–80, 1852.216–81, 1852.216–82, 1852.216–83, 1852.216–84, 1852.216–85, 1852.216–86, and 1852.216–87 are added to read as follows:

1852.216–78 Firm fixed price.

As prescribed in 1816.202–70, insert the following clause:

FIRM FIXED PRICE (DECEMBER 1988)

The total firm fixed price of this contract is $_____. [Insert the appropriate amount]. (End of clause.)

1852.216–79 Level-of-effort (fixed-price).

As prescribed in 1816.207–70(a), insert the following clause:

LEVEL-OF-EFFORT (FIXED-PRICE) (DECEMBER 1988)

(a) In accomplishing the work required under this contract, the Contractor shall provide ____ direct labor hours as a minimum. These hours shall be expended as follows:

Labor Category

Minimum Direct Labor Hours

[Insert the labor categories and associated direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) If, at the end of the contract term, the Contractor has not provided the minimum direct labor hours specified above, the total fixed price of this contract shall be reduced as follows: [Insert either a formula based upon the number of hours expended in the separate labor categories or the product of the hours of unexpended labor multiplied by one specified rate.]

(d) The Contractor may, at its own option, furnish more than the stated direct labor hours; however, the Contractor shall not be entitled to any increase in the fixed price of the contract for exceeding the stated direct labor hours.

(e) Within thirty (30) days after the end of the performance period and before submission of an invoice for final payment, the Contractor shall submit to the Contracting Officer a statement certifying the actual total number of direct labor hours expended under this contract. The Contractor further agrees to make available to the Contracting Officer such records as the Contracting Officer may reasonably require to determine that the minimum number of labor hours specified in this clause were expended in the performance of the work. (End of Clause.)

1852.216–80 Task ordering procedure.

As prescribed in 1816.307–70(d), insert the following clause:

TASK ORDERING PROCEDURE (DECEMBER 1988)

Performance under this contract is subject to the following ordering procedure.

(a) Within the direct labor hours specified in the Level-of-Effort clause of this contract, the Contractor shall incur cost under this contract in the performance of task orders and task order modifications issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer.

(b) From time to time during the term of this contract, the Contracting Officer will issue task orders in writing to the Contractor, providing specific information on work to be performed within the scope of the contract. Each task order will indicate the objectives or result desired.

(c) Task orders will contain, as a minimum, the following information:

(1) Signature of the Contracting Officer.

(2) Contract number, order number, and date.

(3) Description of work.

(4) Maximum number of contract labor hours and other resources authorized.

(5) Documentation requirements.

(6) Delivery/performance schedule.

(7) Quality assurance standards, as appropriate.

(8) Travel authorized.

(9) Any other necessary information.

(d) The Contracting Officer may modify task orders in the same manner as they are issued.

(e) The Contractor shall submit within ten calendar days after receipt of each task order a onetime Contractor task plan. The task plan is the Contractor's overall approach for completing the task order and shall include the following:

(1) Discussion of the technical approach for performing the work.

(2) Estimated date of commencement of work, and any changes proposed to the schedule of performance.

(3) Direct labor hours, both straight time and overtime (if authorized), on a monthly basis by applicable labor category, and the total direct labor hours, including those in (5) below, estimated to complete the task.

(4) The travel and material estimates.

(5) An estimate for subcontractors and consultants, including the direct labor hours, if applicable.

(6) Estimated computer use time required, if applicable.

(7) Other pertinent information, such as indirect costs and interdivisional transfers.

(8) The total estimated cost and fee, where appropriate, for completion of the task order.

(f) The Contracting Officer shall approve in writing the Contractor's task plan and any plan revisions either (1) as being in accordance with the task order or (2) with identified variations constituting a modification to the task order. All approvals shall be prior to commencement of work.

(g) In the event that there is a conflict between the requirements of the task order and the Contractor's task plan, the task order shall prevail. (End of clause.)

ALTERNATE I (DECEMBER 1988)

As prescribed in 1816.307–70(e), delete paragraphs (e), (f), and (g) from the basic clause.

1852.216–81 Estimated cost.

As prescribed in 1816.307–70(f), insert the following clause:

ESTIMATED COST (DECEMBER 1988)

The total estimated cost for complete performance of this contract is $_____ [Insert total estimated cost of the contract]. See FAR clause 52.216–11, Cost Contract—No Fee, of this contract. (End of clause.)

1852.216–82 Level-of-effort (cost).

As prescribed in 1816.307–70(g), insert the following clause:

LEVEL-OF-EFFORT (COST) (DECEMBER 1988)

(a) During the term of the contract, the Contractor is obligated to provide not less than ____% [Insert minimum percentage of direct labor hours] nor more than ____% [Insert maximum percentage of direct labor hours] of the following direct labor hour:

Labor category

Direct labor hours

Labor hours

[Insert applicable labor categories, direct labor hours in each labor category, and total direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) Once the maximum number of direct labor hours is reached or the contract term has ended, the Contractor's requirements under the contract are fulfilled, even though the specified work may not have been completed. The Contractor is not authorized to exceed the maximum of the direct labor hours specified in paragraph (a) unless a bilateral contract modification is executed. Any estimated cost and fee(s) adjustments for any additional direct labor hours shall be based solely upon the quantity of additional hours being added to the maximum number of direct labor hours specified in this clause.

(d) The fee(s), if any, are based upon the furnishing of the specified minimum level-of-effort. If the Contractor provides less than the specified minimum level-of-effort prior to expiration of the contract term, and the Government has not invoked its rights under the Termination clause of this contract to adjust the contract for such reduced effort, the Contracting Officer will unilaterally make an equitable downward adjustment to the contract fee. The downward adjustment in fee will be based upon the difference between the minimum direct labor hours specified under this clause and the amount of direct labor hours provided by the Contractor. At the Contracting Officer's discretion, the adjustment may take into consideration efficiencies in the Contractor's performance, including productivity improvements, if any, which contributed to the lesser number of direct labor hours being provided. (End of clause.)

1852.216–83 Fixed price incentive.

As prescribed in 1816.405(b), insert the following clause:

FIXED PRICE INCENTIVE (DECEMBER 1988)

The target cost of this contract is $_____. The target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. (End of clause.)

1852.216–84 Estimated cost and incentive fee.

As prescribed in 1816.405–70(c), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE (DECEMBER 1988)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract is $_____ [Insert appropriate target cost and fee amounts]. (End of clause.)

1852.216–85 Estimated cost and award fee.

As prescribed in 1816.405–70(d), insert the following clause:

ESTIMATED COST AND AWARD FEE (DECEMBER 1988)

The estimated cost of this contract is $_____. The base fee is $_____, and the maximum available award fee is $_____. Total cost, base fee, and maximum award fee is $_____. [Insert appropriate cost and fee amounts.] (End of clause.)

1852.216–86 Settlement of letter contract.

As prescribed in 1816.603–470, insert the following clause:

SETTLEMENT OF LETTER CONTRACT (DECEMBER 1988)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____, dated _____, and supersedes the letter contract and its modification no.(s) _____. [Insert letter contract number, date, and modification numbers.]

(b) The costs and fees, or prices, established in this definitive contract represent full and complete settlement of letter contract _____ and modification no.(s) _____.

(c) If this definitive contract contains terms that may be construed to be inconsistent with the letter contract, the parties agree that this definitive contract states the complete agreement and intent of the parties, and any rights and duties created by the letter contract that are inconsistent with this definitive contract are hereby waived, cancelled, and released. (End of clause.)

1852.216–87 Submission of vouchers for payment.

As prescribed in 1816.307–70(h), insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT (DECEMBER 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract *[Insert the contract number]* and be forwarded to: *[Insert the mailing address for submission of cost vouchers.]*

This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.

(b) The Contractor shall prepare vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.

(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to: *[Insert the mailing address for submission of fee vouchers.]*

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made. (End of clause.)

t. Section 1852.217–70 is revised to read as follows:

1852.217–70 Property administration and reporting.

As prescribed in 1817.7002–4 insert the following clause:

PROPERTY ADMINISTRATION AND REPORTING (DECEMBER 1988)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Defense Purchase Request shall be controlled and accounted for in accordance with the Military Department's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition. (End of clause.)

1852.219–70 and 1852.219–71 [Removed]

u. Sections 1852.219–70 and 1852.219–71 are removed.

v. Sections 1852.219–72 and 1852.219–73 are added to read as follows:

1852.219–72 SIC code and small business size standard.

As prescribed in 1819.170, insert the following provision:

SIC CODE AND SMALL BUSINESS SIZE STANDARD (DECEMBER 1988)

(a) The standard industrial classification (SIC) code(s) for this procurement is (are) ——— [Insert SIC code].

(b) The small business size standard is ——— [Insert the number of employees, *or* dollar value in average annual receipts for the last three (3) fiscal years]. (End of provision.)

1852.219–73 Small business and small disadvantaged business subcontracting plan.

As prescribed in 1819.708–70, insert the following provision:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (DECEMBER 1988)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219–9, "Small Business and Small Disadvantaged Business Subcontracting Plan." The apparently successful offeror must submit the complete plan within ____ [Insert number of days] calendar days after request by the Contracting Officer. (End of provision.)

ALTERNATE I (DECEMBER 1988)

As prescribed in 1819.708–70, delete the last sentence of paragraph (b) of the basic clause and substitute the following:

Each offeror must submit the complete plan with its initial proposal.

w. Sections 1852.222–71, 1852.223–70, 1852.223–71, and 1852.223–72 are revised, and 1852–223.73 is added to read as follows:

1852.222–71 Facilities nondiscrimination.

As prescribed in 1822.7002(b), insert the following clause:

FACILITIES NONDISCRIMINATION (DECEMBER 1988)

(a) As used in this clause,"facility" means store, shop, restaurant, cafeteria, restroom, or any other public facility in the building in which the space covered by this lease is located.

(b) The lessor shall not discriminate against anyone because of race, color, religion, or national origin in furnishing, or by refusing to furnish, the use of any facility, including any services, privileges, accommodations, and activities provided by that facility. Nothing in this clause requires the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants and their employees, customers, patients, clients, guests, and invitees.

(c) Any noncompliance by the lessor with this clause shall constitute a material breach of this lease. In the event of noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue any other remedies provided by law. In the event of termination, the lessor is liable for all excess costs of the Government in acquiring substitute space, including the cost of moving to that space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible, and moving costs shall be limited to the actual expenses incurred.

(d) Whenever an agreement is to be entered into or a concession is to be permitted to operate, the lessor shall include or require the inclusion of paragraphs (a), (b), and (c) above in every such agreement or concession arrangement under which any person other than the lessor operates or has the right to operate any facility. Nothing in this clause, however, requires the lessor to include or require the inclusion of those paragraphs in any previously existing agreement or concession arrangement, or in one under which a party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend.

(e) The lessor shall take, as expeditiously as possible, any lawful actions NASA may direct to enforce the intent of this clause, including termination of the agreement or concession and institution of court action. (End of clause.)

1852.223–70 Safety and health.

As prescribed in 1823.7004, insert the following clause:

SAFETY AND HEALTH (DECEMBER 1988)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the contract Schedule, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.

(b) The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of $25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (1) above, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that (1) amount to $1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required), (2) require construction, repair, or alteration in excess of $25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) above, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:

(1) Written hazardous operating procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations. (End of clause.)

1852.223–71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DECEMBER 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required. (End of clause.)

§ 1852.223–72 Potentially hazardous items.

As prescribed in 1823.303–70, insert the following clause:

POTENTIALLY HAZARDOUS ITEMS (DECEMBER 1988)

(a) The Contractor shall furnish complete design information and drawings showing all details of construction, including materials, for the following items or components: [Insert the potentially hazardous items or components.]

These items or components are designated as potentially hazardous to employees and subcontractors who are to perform any work in connection with installing them in combination with other equipment, or in testing them either alone or in combination with other items or components, or in handling them. The contractor shall inform such employees or subcontractors of the potentially hazardous nature of these items or components before requsting or directing the performance of work.

(b) This requirement for delivery of data supersedes any terms of this contract permitting withholding of data.

(c) The Contractor shall include this clause, including this paragraph (c), in each subcontract at any tier under this contract that calls for the manufacture or handling of the items or components designated according to paragraph (a) above as potentially hazardous. (End of clause.)

1852.223–73 Safety and health plan.

As prescribed in 1823.7004(e), insert the following provision:

SAFETY AND HEALTH PLAN (DECEMBER 1988)

The offeror shall submit a detailed safety and health plan, as part of the offeror's proposal, showing how the Contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment. This plan, as approved by the Contracting Officer, will be included in any resulting contract. (End of provision.)

ALTERNATE I (DECEMBER 1988)

As prescribed by 1823.7004(f), delete the first sentence of the basic clause and substitute the following:

The apparently successful offeror shall submit a detailed safety and health plan after notification of selection but before contract award, showing how the contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment.

x. Section 1852.225–71 is revised, and 1852.225–72 and 1852.225–73 are added to read as follows:

1852.225–71 Nondomestic construction materials.

As prescribed in 1825.205–70, insert the following clause:

NONDOMESTIC CONSTRUCTION MATERIALS (DECEMBER 1988)

The requirements of the Buy American Act—Construction Materials clause do not apply to the following construction materials or components: [List articles of materials and supplies.] (End of clause.)

1852.225–72 Offer in english language and U.S. dollars.

As prescribed in 1825.407, insert the following provision:

OFFER IN ENGLISH LANGUAGE AND U.S. DOLLARS (DECEMBER 1988)

Offers submitted in response to this solicitation shall be in the English language and in U.S. dollars. (End of provision.)

1852.225–73 Duty-free entry supplies.

As prescribed in 1825.605–70, insert the following clause:

DUTY-FREE ENTRY SUPPLIES (DECEMBER 1988)

In accordance with the Duty-Free Entry clause of this contract, the following supplies will be given duty-free entry:

[Insert the supplies that are to be accorded duty-free entry.]

(End of clause.)

1852.227–11, 1852.227–14, and 1852.227–19 [Removed]

y. Sections 1852.227–11, 1852.227–14, and 1852.227–19 are removed.

1852.228–470 [Removed]

z. Section 1852.228–470 is removed.

aa. Sections 1852.228–70, 1852.228–71, 1852.228–72, 1852.228–73, 1852.228–74, 1852.228–75 are revised, and 1852.228–77 is added to read as follows:

1852.228–70 Aircraft ground and flight risk.

As prescribed in 1828.370, insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has

reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangers, comparable structures, and other designated areas. In addition, clause subparagraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK (DECEMBER 1988)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, and in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; *provided* that an engine or a portion of a wing or a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after acceptance Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, in the process of installation in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "In the open" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in Contractor's possession, care, custody, or control.

(3) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; *provided*, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "Operation" means operations and tests, other than on any production line, of aircraft, not in flight, whether or not the aircraft is in the open or in motion during them and includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant or separate location at which this contract is performed or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) below, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with subparagraph (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with subparagraph (5) below.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in subdivision (ii) above.

(d) The Government's assumption of risk shall not extend to damage to or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) To the extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from inherent vice in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to or loss or destruction of aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to or loss or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to or loss or destruction of the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to or loss or destruction of aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) above, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either (i) require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If, in the alternative, this contract is terminated under this paragraph (i) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery. (End of clause.)

1852.228-71 Aircraft flight risks.

(a) As prescribed in 1828.311-270, insert the following clause:

AIRCRAFT FLIGHT RISKS (DECEMBER 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not (1) be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to sea-planes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c)(1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) above, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made (i) in the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration. (End of clause.)

1852.228-72 Interparty waiver of liability during STS operations.

As prescribed in 1828.371, insert the following clause:

INTERPARTY WAIVER OF LIABILITY DURING STS OPERATIONS (DECEMBER 1988)

(a) The Contractor undertakes the obligations of, agrees to be bound by, and shall receive the protection and benefits of a NASA contractor under the no-fault, no-subrogation interparty waiver of liability provision with users for Space Shuttle services, to the extent provided for and reprinted in paragraph (d) below.

(b) This inteparty waiver of liability shall not apply to damage caused by (1) NASA to the Contractor's employees or property or (2) the contractor to NASA's employees or property.

(c) This clause, including this paragraph (c), shall be included in all subcontracts under this contract under which work is to be performed in support of STS operations.

(d) The applicable definitions and the no-fault, no-subrogation interparty waiver of liability provision contained in NASA agreements with users for Space Shuttle services provide in relevant part as follows:

1. General.

a. **(Paragraph a. of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)**

b. For purpose of this (Shuttle Launch) Agreement, the following definitions shall be applicable:

(1) "Liability" shall include payments made pursuant to United States' treaty, any judgment by a court of competent jurisdiction, administrative and litigation costs, and, after consultation with the User, settlement payments.

(2) "Damage" shall mean bodily injury to or death of any person, damage to, or loss of any property, and loss of revenue or profits or other direct, indirect, or consequential damages arising therefrom.

2. (Paragraph 2 of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)

3. Damage to Persons or Property Involved in STS Operations.

a. For purposes of this Paragraph 3., the following definitions shall be applicable:

(1) "STS Operations" shall mean:

(a) All Space Transportation System activity;

(b) All Payload activity:

(c) All tangible personal property (including ground support, test, training and simulation equipment) related to (a) and (b) above;

(d) Research, design, development, test, manufacture, assembly, integration, transportation, or use of any materials related to (a), (b) or (c) above.

(e) Performance of any services related to (a) through (d) above.

(2) "Protected STS Operations" shall mean a period of time during which STS Operations are being performed as follows:

(a) Beginning with the signature of an Agreement or Arrangement with NASA for Space Transportation System services and (i) when any employee, Payload or property arrives at a United States Government Installation, or (ii) during transportation of such to the installation by a United States Government conveyance, or (iii) at ingress of such into an Orbiter, for the purpose of fulfilling such Agreement or Arrangement, whichever occurs first.

(b) Ending with regard to any employee when (i) the employee departs a United States Government Installation, or (ii) the Orbiter if it lands at other than such Installation, or (iii) a United States Government conveyance which transports the employee from such Installation or Orbiter, whichever occurs last.

(c) Ending with regard to a Payload or property, not Jettisoned or Deployed, under the same conditions as set forth in Subparagraph 3.a.(2)(b) above.

(d) Ending with whichever occurs last with regard to a Deployed or Jettisoned payload or property (i) after such impacts the earth; or (ii) if retrieved by the Orbiter, under the same conditions set forth in Subparagraph 3.a.(2)(b) above.

b. NASA and the User (the parties) will respectively utilize their property and employees in STS Operations in close proximity to one another and to others. Furthermore, the parties recognize that all participants in STS Operations are engaged in the common goal of meaningful exploration, exploitation and uses of outer space. In furtherance of this goal, the parties hereto agree to a no-fault, no-subrogation, interparty waiver of liability pursuant to which each party agrees not to bring a claim against or sue the other party or other users and agrees to absorb the financial and any other consequences for Damage it incurs to its own property and employees as a result of participation in STS Operations during Protected STS Operations, irrespective of whether such Damage is caused by NASA, the User, or other users participating in STS Operations, and regardless of whether such Damage arises through negligence or otherwise. Thus, the parties, by absorbing the consequences of damage to their property and employees without recourse against each other or other users participating in STS Operations during Protected STS Operations, jointly contribute to the common goal of meaningful exploration of outer space.

c. The parties agree that this common goal will also be advanced through extension of the interparty waiver of liability to other participants in STS Operations. Accordingly, the parties agree to extend the waiver as set forth in Subparagraph 3.b. above to contractors and subcontractors at every tier of the parties and other users, as third party beneficiaries, whether or not such contractors or subcontractors causing damage bring property or employees to a United States Government Installation or retain title to or other interest in property provided by them to be used, or otherwise involved, in STS Operations. Specifically, the parties intend to protect these contractors and subcontractors from claims, including "products liability" claims, which might otherwise be pursued by the parties, or the contractors or subcontractors of the parties, or other users or the contractors or subcontractors of other users. Moreover, it is the intent of the parties that each will take all necessary and reasonable steps in accordance with Subparagraph 3.e. below to foreclose claims for Damage by any participant in STS Operations during Protected STS Operations, under the same conditions and to the same extent as set forth in Subparagraph 3.b. above, except for claims between the User and its contractors or subcontractors and claims between the United States Government and its contractors and subcontractors.

d. The parties intend that the interparty waiver of liability set forth in Subparagraphs 3.b. and 3.c. above be broadly construed to achieve the intended objectives.

e. NASA will require all Space Transportation system users entering into Launch and Associated Services Agreements with NASA after December 1, 1982, to agree to the interparty waiver of liability as set forth in Subparagraphs 3.b. and 3.c. above. The User, and each other user, will require the following to agree to the waiver of liability set forth in Subparagraph 3.c. above: (i) all persons and entities to whom it assigns all or part of its right to Launch and Associated Services; (ii) any person or entity to whom it has sold or leased or otherwise agreed to provide all or any portion of its Payload or Payload services prior to the completion of NASA's launch services for a particular Payload; (iii) all its prime contractors; and (iv) all its subcontractors who will have persons or property involved in STS Operations during Protected STS Operations. NASA will require all the following to agree to the waiver of liability set forth in Subparagraph 3.c. above: (i) all its prime contractors; and (ii) all its subcontractors who will have persons or property involved in STS Operations during Protected STS Operations. Furthermore, NASA has required all STS users entering into Launch and Associated Services Agreements prior to December 1, 1982, to agree to a more limited waiver of liability, a copy of which is available from NASA upon request. Failure of any party to obtain a waiver agreement required above shall not

affect such party's right to the protections otherwise provided by this Paragraph 3. (End of clause.)

1852.228–73 Bid bond.

As prescribed in 1828.101–70, insert the following provision:

BID BOND (OCTOBER 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.288–1, in the amount of twenty percent (20%) of the bid price, or $3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier. (End of provision.)

1852.228–74 Payment and performance bonds.

As prescribed in 1828.102–70, insert the following provision:

PAYMENT AND PERFORMANCE BONDS (DECEMBER 1988)

Unless the resulting contract is for $25,000 or less, the successful bidder will be required to furnish payment and performance bonds to the Contracting Officer as follows:

(a) *Performance Bonds*: (Standard Form 25)

(1) The penal amount of performance bonds shall be 100 percent of the original contract price.

(2) The Governemnt may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) *Payment Bonds*: (Standard Form 25–A)

(1) The penal amount of payment bonds shall equal—

(i) 50 percent of the contract price if the contract price is not more than $1 million;

(ii) 40 percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) $2.5 million if the contract price is more than $5 million.

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection as revised shall meet the requirement of subparagraph (1) immediately above.

(3) The government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all bonds, including any necessary reinsurance agreements, to the Contracting Officer before starting work. Performance and payment bonds shall be dated the *same date as the contract award date*; or, in the case of any additional bond protection required, the *same date as the contract modification date*.

(d) Surety companies acceptable to the Government are identified by the Department of Treasury and listed in the **Federal Register.** (End of provision.)

1852.228–75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCTOBER 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as requried by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater. (End of clause.)

1852.228–77 Reimbursement for war-hazard losses.

As prescribed in 1828.309, insert the following clause:

REIMBURSEMENT FOR WAR-HAZARD LOSSES (DECEMBER 1988)

(a) The Contractor's costs for assuming liability for employee protection against war-hazard risks pursuant to paragraph (b) of the Worker's Compensation and War-Hazard Insurance Overseas clause shall be an allowable cost under this contract, subject to the following:

(1) The Contractor shall submit proof-of-loss files to support payment or denial of each claim.

(2) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the Contracting Officer extends the time, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump-sum payment. Subject to approval by the Contracting Officer, the Contractor shall then obtain necessary release documents and settle the claim by lump-sum arrangement, taking into account any payments previously made.

(3) As to any potential claim that is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made and giving the results of the investigation, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(4) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title, and interest of the Contractor to any refund, rebate, or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in any manner it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence that appears to give rise to a claim under this portion of the contract, (1) perform any investigations that may be appropriate and (2) promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of that claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed whose cost or expense may be reimbursable to the Contractor under this clause. The Contractor shall to render full assistance to the Government in connection with any third-party suit or claim relating to this clause or its subject matter that the Government elects to prosecute or defend in its own behalf. (End of clause.)

bb. Sections 1852.236–73, 1852.236–74, 1852.237–70, 1852.242–71, and 1852.242–72 are added to read as follows:

1852.236–73 Hurricane plan.

As prescribed in 1836.57001, insert the following clause:

HURRICANE PLAN (DECEMBER 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate. (End of clause.)

1852.236–74 Magnitude of requirement.

As prescribed in 1836.57002, insert the following provision:

MAGNITUDE OF REQUIREMENT (DECEMBER 1988)

The Government estimated price range of this project is between $_____ and $_____. [Insert the estimated dollar range.] (End of provision.)

1852.237–70 Emergency evacuation procedures.

As prescribed at 1837.110, insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DECEMBER 1988)

The Contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required. (End of clause.)

1852.242–71 Travel outside of the United States.

As prescribed in 1842.7002(a), insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DECEMBER 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report. (End of clause.)

ALTERNATE I

TRAVEL OUTSIDE OF THE UNITED STATES (DECEMBER 1988)

As prescribed in 1842.7002(b), add Alternate I to the basic clause.

(d) The costs of foreign travel may be approved as a charge to the contract for presentation of papers at meetings, conferences, or symposiums; participation in meetings, conferences, or symposiums as session chairpersons, discussion leaders, special invitees, or official staff members of the sponsoring group; "on-site" field work; and in exceptionally meritorious cases, visits to scientific or technical organizations and attendance at international conferences and technical seminars when the travel is related to efforts under the contract.

(e) The costs of foreign travel ordinarily will not be approved as a charge to the contract for the sole purpose of visiting or attending meetings, unless fully warranted by clear and recognizable direct benefits to the efforts under the contract; meetings of national (as distinguished from international) bodies, unless the travel is constructively associated with other approved goals; or meetings that are predominantly American in either attendance or presented papers. (End of clause.)

1852.242–72 Observance of legal holidays.

As prescribed in 1842.7003(a), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS (DECEMBER 1988)

(a) The on-site Government personnel observe the following holidays:

New Year's Day
Labor Day
Martin Luther King's Birthday
Columbus Day
Washington's Birthday
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract. (End of clause.)

ALTERNATE I (DECEMBER 1988)

As prescribed in 1842.7003(b), add the following paragraphs (c), (d), and (e) as Alternate I to the clause.

(c) Personnel assigned to this contract shall limit their observance of holidays to those set forth above. If the Contractor's personnel work during a holiday other than those above, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) When the NASA installation grants administrative leave to its Government employees, Contractor personnel working on-site should also be dismissed. However, the Contractor shall (1) continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled and (2) be guided by the instructions issued by the Contracting Officer or an authorized representative.

(e) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (d) above as a result of inclement weather, potentially hazardous conditions, or other special circumstances, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

1852.250–70 and 1852.250–71 [Amended]

cc. In 1852.250–70 and 1852.250–71, in the introductory sentence, the references "1850.403–3(a)(1):" and "1850.403–3(a)(2):" are revised to read "1850.403–370(a)(1):" and "1850.403–370(a)(2):", respectively.

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Part III

State Justice Institute

Grant Guideline; Notice

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STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final guideline.

SUMMARY: This guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1989 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at 120 S. Fairfax St., Alexandria, Virginia 22314, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Jutice Institute Act of 1984, Pub. L. 98–620, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $10 million will be available for award in FY 1989. The guideline published below establishes the Institute's funding schedule, procedures, and Special Interest categories for FY 1989.

On October 21, 1988, the Institute published its proposed FY 1989 Grant Guideline in the Federal Register for public comment. 53 FR 41444. The Institute specifically requested comment on a number of issues related to SJI funding for judicial education projects; on several administrative changes in the grant program; and on the appropriateness of providing "maintenance funding" to organizations providing important services to the State courts. An analysis of the comments received on these and other issues, and the Institute's response to them, is set forth below.

Judicial Education

Comment was specifically invited on the following judicial education issues:

(1) *The provision of technical assistance to State judicial educators and national judicial education organizations for the purpose of State-to-State, State-to-national, and national-to-State transfer of educational curricula, delivery techniques, services and resource materials.*

Most of the comments received on this issue were strongly supportive of the idea of a technical assistance project. In response to the suggestions of two commenters, the final guideline contemplates the support of one *or more* projects, and clarifies that a technical assistance project may be implemented either under a contract, a grant, or a cooperative agreement. See section II.B.2.b.

(2) *The award of "seed money" grants to assist interested States in developing minimum standards for judicial education and training; creating an on-going entity responsible for planning and implementing judicial education programs for judges and other court personnel.*

The final guideline includes "seed money" grants to develop in-State judicial education programs and, in response to several comments, clarifies that States interested in such funding must demonstrate the commitment of their judicial leadership to develop and continue in-State judicial education. In addition to the requirements imposed on any State court application (support for the project by the State's Chief Justice or his or her designee, and a commitment to contribute matching support), the State must also demonstrate a commitment to continue the project after the expiration of SJI funding. See section II.B.2.b.

(3) *The award of formula grants to States for certain educational purposes, e.g., developing and improving in-State judicial education programs, or supporting "scholarships" for judges and other court personnel to attend out-of-State training.*

Several commenters suggested that the Institute move cautiously in establishing formula grants. In light of the comments and after further consideration by the Board, the final Guideline does not establish a formula grant program.

(4) *The specific criteria on which education and training proposals should be evaluated.*

The public comment was very supportive of the proposed criteria to be used to evaluate education and training proposals. The final Guideline accordingly retains the following criteria to determine whether a project is likely to result in effective training for judges and other court personnel: The description of how the need for the program has been determined; the methods by which faculty will be recruited, selected, and trained; the objectives of the training; the adult education practices and teaching methods to be employed; and the methods by which the program will be evaluated to determine the impact of the training as well as the reaction of the participants. See section II.B.2.b.

(5) *The priority, if any, SJI should accord certain types of education and training programs, i.e., new judge training; continuing judicial education; or personal development projects.*

In recognition of the great need for "new judge" training nationally (a need underscored by a number of the comments received), and the lack of high quality applications received to date that focus on the educational needs of new judges, the Board has expressed a particular interest in receiving proposals to develop, present and evaluate such training in FY 1989. For purposes of the Guideline, "new judge training" is defined to include education and training conducted from the time of appointment through judge's first year of service. Section II.B.2.b.

(6). *Issues and ideas to inform the Board's long-range strategic plan for SJI support of judicial education programs at the State and national level.*

The Board is planning to publish a "Long-Term Judicial Education Funding Strategy" for public comment next spring. The Strategy will present a statement of SJI's goals and objectives in the area and a plan for allocating Institute funds for different types of education and training projects at the national, regional, and State levels. The Strategy will be revised, as appropriate, in light of the public response and the Board's further deliberations, and published as part of the Institute's FY 1990 Proposed Grant Guideline next summer. The final Strategy, reflecting the comments received on the proposed Guideline, will be published as part of SJI's final FY 1990 Grant Guideline.

Other Changes in Special Interest Areas

In addition to the Special Interest areas listed in the proposed Guideline, the final Guideline also contains the following two new areas: "Careers in the Courts" (including ways to attract, select, and retain persons in the judiciary and other court occupations) (Section II.B.2.h.) and "The Experimenta Use of Subject Matter Panels on State Intermediate Appellate Courts" (Section II.B.2.i.)

The Board carefully considered a comment to combine the special interest categories on enforcement of fines, probation, and continuing court orders into one category entitled the "Integrity of Court Orders," but declined to do so in order to assure that potential applicants consider the important sub-topics within each of the categories that may not necessarily involve protecting the integrity of the court's order.

Administrative Changes

The proposed Grant Guideline requested comment on possible changes in the application process, including

ways to relieve organizations submitting multiple concept papers or applications from the burden of submitting repetitive information in each paper or application; and the establishment of policies and procedures regarding "continuation" and "on-going support" grants.

On the basis of the comments received and further consideration by the Board, the final Guideline permits applicants to eliminate repetitive information in their applications by including common information in one "cover letter" (and reducing the permissible length of the individual applications accordingly). See sections VI.A.5. and VII.E.2. The final Guideline also incorporates the proposed "continuation" and "on-going support" provisions and clarifies that continuation applications may be submitted at times other than those established for the Institute's normal funding cycles. See section IX. The award of continuation grants outside the normal cycle is subject to the discretion of the Board and the availability of funds.

The final Guideline also highlights the need for each project to include an evaluation of its impact and the degree to which it has met its objectives (section VII.C.4.b.), and requires applicants to specify evaluation costs in project budgets. See section VII.D. The Guideline also provides that the Institute will notify the designated State contact person (see Appendix) when courts in a State are named as participating project sites. In addition, the Guideline specifies that if an applicant receiving notice of the Board's approval of its application does not submit requested revisions (or a reasonable timetable for submitting such revisions) within 30 days after notification of approval, the approval will be withdrawn and the application presented to the Board for reconsideration. Section VIII.F. Other administrative changes clarify non-supplantation and match requirements. See section X.B. and X.G.3.

In response to questions raised during the comment period, the Guideline clarifies that publicly supported institutions of higher education are not considered units of State or local government for the purposes of providing match. See section X.B. The Guideline also provides that tuition and registration fees charged for Institute-supported training and education programs must be used to cover project-related costs or to reduce the amount of grant funds used to support the project. Section XI.F.3.

In addition, the Guideline modifies the review process by authorizing Institute staff to prepare only summary descriptions of proposals that, in the judgment of the Executive Director, fall outside the scope of the Institute's funding program or present ideas unlikely to merit serious consideration by the Board. Section VI.C.

"Maintenance Grants"

The final substantive issue on which public comment was requested was the appropriateness of awarding "maintenance" grants to certain organizations that provide important services to the State courts, without requiring those organizations to submit proposals seeking funds for specific projects.

Most commenters believed that such grants should not be awarded. On the basis of the comments received and the deliberations of the Board, the final Guideline does not authorize maintenance grants. The issue will, however, be raised again for public comment in the context of the "Long-Term Strategy" to be published next spring.

Recommendations to Grantwriters

Over the past two years, Institute staff have received approximately 550 concept papers and 200 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this guideline. The Institute suggests that applicants make certain that they answer the following questions when preparing a concept paper or application:

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocubulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

5. *How will others find out about it?* Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified. In

applications, the budgeted figures should relate directly to the specific project tasks included in the workplan. If match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which the costs will be covered wholly or in part by the match should be specified.

7. What, if any, match is being offered? Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: If the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1989:

State Justice Institute Grant Guideline

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SUMMARY

This guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $10 million is available for grants, contracts, and cooperative agreements from FY 1989 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1989 funds, with a concept paper submission deadline of February 2, 1989. This guideline applies to concept papers and formal applications submitted for FY 1989 funding.

The awards made by the State Justice Institute are governed by the requirements of this guideline and the authority conferred by Pub. L. 98–620, Title II, 42 U.S.C. 10701, *et seq.*

I. Background

The State Justice Institute ("Institute") was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1989 is approximately $10 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1989, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination or information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and services forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1989, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects" and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Judicial and Court Personnel Career Enhancement.* This category includes the development and testing of innovative methods to enhance judicial and court personnel careers, other than direct increases in salary. These methods could include approaches that emphasize the intrinsic rewards of the profession such as job enrichment and participative management strategies, use of "quality circles", judicial and nonjudicial personnel exchange programs, innovative programs or techniques for reducing judicial stress or "burnout", judicial sabbatical programs, or mentoring programs. This category also includes efforts to prepare lawyers for judicial careers and to encourage qualified persons to seek and accept positions as judges and court professionals.

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b. *Education and Training for Judges and Other Key Court Personnel.* This category includes:

i. Development by a State of minimum standards for its court education programs;

ii. Preparation by a State of long range plans to ensure a comprehensive training program and the effective allocation of limited court education resources;

iii. Development of an organization to plan and implement education programs for judges and court personnel in those States which currently have little or no capacity to develop a State court education program. Applicant States must demonstrate a commitment to maintain and enhance their court education program after the grant period; and

iv. Development of innovative continuing education and career development programs for all court personnel, including but not limited to programs that emphasize "team" training.

The Board is particularly interested in the development, presentation and evaluation of in-State orientation and training programs for judges between the time of appointment and the conclusion of their first year of service on the bench.

Court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants, and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

Court education programs also should develop new or revised curricula on key topics of concern to the judiciary, such as those identified in the SJI Special Interest categories and other topics that judges and court personnel have identified as important.

The Board is also interested in supporting the provision of technical assistance to State and national judicial educators for the transfer of educational curricula and resources, faculty development techniques, delivery techniques, evaluation methods, and plans for the development and administration of judicial education programs. Technical assistance projects may also include, as one facet of the services to be provided, aiding State judicial educators and other State and local court officials in the preparation of concept papers and grant applications.

c. *Alternative Dispute Resolution (ADR).* This category includes the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving civil, criminal, domestic relations, juvenile and other types of disputes more fairly, more expeditiously and less expensively than the traditional court process, with particular emphasis on the impact of those procedures and programs on the quality of justice provided, litigant and court costs, and court workload. Among the possible issues that may be addressed are the effects that ADR programs that focus on domestic relations cases have on case processing; the effectiveness of ADR techniques in complex civil litigation; and the judicial role in settling cases, including the effectiveness of various settlement techniques, the most appropriate point(s) in the litigation process to convene a settlement conference, and the ethical questions that may confront a judge seeking to settle a case.

d. *The Impact of User Fees on Court Revenues and the Access to Justice.* This category includes research examining the various forms of user fees that are imposed on parties in civil, criminal, domestic relations, juvenile and other types of cases in order to assess their impact on court use, policies, services, revenues, and costs.

e. *The Future and the Courts.* This category includes research on the changing demands and circumstances that will face the courts in the 21st century, and the planning and implementation of modifications that may be needed in court organization, financing, procedures, services, personnel, and facilities to respond to those demands and circumstances. A proposed project could focus on such issues as:

—The impact that demographic changes in the American population over the next generation will have on the State courts;

—How developments in chemistry, disease and disease control, engineering, computer design, and other sciences are likely to affect the courts; or

—The possible changes in court structure, court administration, or legal authority that might help the State courts more effectively administer justice.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels, including, e.g., the publication of a court technology bulletin to assist judges and court managers in selecting technology appropriate to a court's needs; assessment of the usefulness of on-bench computer terminals; and local experiments with promising but untested applications of technology in the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

g. *Jury System Management.* This category includes the development, implementation and evaluation of legal and administrative procedures relating to jurors to ensure the representativeness of the juror pool, clarify jury instructions, expedite the jury selection and empanelment process without affecting fairness, and otherwise reduce the cost and enhance the fairness of the jury process.

h. *Careers in the Courts.* This category includes development and testing of ways to attract and select persons in the judiciary and other court occupations, and evaluations of the impact of equal employment opportunity policies on court personnel, administration, and the public perception of the courts.

i. *The Experimental Use of Subject Matter Panels on State Intermediate Appellate Courts.* The Board specifically invites proposals for establishing intermediate appellate court panels responsible for handling specific subject matter cases. The Board would like to support a carefully designed and evaluated "subject matter panel" experiment to test whether such panels result in more uniformity and stability in the law; preserve judicial authority and avoid undue delegation to non-judicial staff; and expedite the decisionmaking process.

The Board contemplates that the subject matter panels would consist of three to five judges who are assigned specific types of cases, e.g., torts, family matters, property cases. Criminal cases could be assigned to one panel or allocated among all of them. The panels need not be permanent but could shift through gradual rotation. For a more thorough discussion of subject matter panels, see Meador, "An Appellate Court Dilemma and a Solution Through Subject Matter Organization," 16 *Journal of Law Reform* 471 (1983).

j. *Reduction of Litigation Expense and Delay.* This category includes the implementation and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile, or other

types of litigation at the trial or appellate level (or both), and the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures.

k. *Enforcement of Fines and Orders to Pay.* This category includes the implementation and evaluation of procedures for effectively imposing, collecting, and enforcing orders to pay fines, restitution, and other obligations.

l. *Improved Enforcement and Management of Probation.* This category includes the implementation and evaluation of innovative procedures for enforcing compliance with conditions of probation, and methods through which courts responsible for managing the probation function can carry out this responsibility more effectively and efficiently.

m. *Review and Enforcement of Continuing Court Orders.* This category includes the development, implementation and evaluation of effective and efficient procedures for monitoring and enforcing on-going court orders such as those issued in civil commitment, guardianship, neglect and abuse, child support, and institutional reform cases. Examples of these procedures include but are not limited to periodic review hearings; the required submission and review of periodic reports and financial accountings; the use of citizen review panels; and the appointment of special masters. Proposed projects should seek to provide fair, current, and thorough review of continuing court orders within realistic financial constraints and without overburdening the agencies, organizations, or individuals responsible for implementing the continuing order.

n. *Substance Abuse.* The Board is interested in sponsoring (or co-sponsoring) conferences, seminars, or other forums for judges, probation officers, caseworkers and other court personnel to examine court-related issues concerning drug and alcohol abuse and to discuss the appropriate role of the courts in addressing the problem of substance abuse.

o. *Implications of AIDS for the Courts.* This category includes research regarding the implications of Acquired Immune Deficiency Syndrome for court decisions, procedures, and policies, including but not limited to such matters as pretrial release, sentencing, child custody, termination of parental rights, and the right to and termination of medical treatment.

p. *Programs and Procedures for Victims and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment for victims of crimes and witnesses. "Court-based" programs include those programs that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in prosecutors' offices are ordinarily outside the scope of Institute funding.

Eligible projects may involve civil, criminal, domestic relations, juvenile and other types of cases, including but not limited to demonstrations and evaluations of innovative court-ordered treatment programs for victims or offenders; court procedures for notifying victims of key events pertaining to their cases; the use of child victim impact statements; procedures for the fair, effective and efficient handling of domestic violence and child sexual abuse cases; the issuance and enforcement of protective orders; and the obtaining of testimony from children.

q. *Responding to the Court-Related Needs of Elderly and Disabled Persons.* This category includes research and demonstration projects on issues related to access to the courts by elderly persons and physically or mentally disabled persons, and the fair and effective handling of cases affecting those persons; and the presentation of a national conference for judges, court personnel and others on the court-related needs of elderly or disabled persons. The issues that may be addressed include, but are not limited to:

—The fair and effective disposition of cases concerning the provision of medical, mental health, social and support services to elderly or disabled persons;

—The fair and effective disposition of cases concerning the imposition of plenary or limited surrogate decision-makers;

—The impact on court caseloads of the increasing proportion of elderly persons in the population; and

—The improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

r. *Public Education About the Courts.* This category includes projects designed to improve the public's understanding of the courts, such as the development of video tapes and other informational materials to be shown to citizens' groups or in schools; the development of survey instruments by which the courts could determine areas of public dissatisfaction or misunderstanding; and other innovative approaches to enhancing the public's understanding of the purpose of the courts, the operations of the judicial system, and the system's responsiveness to its citizens.

s. *Courthouse Security and Operation.* This category includes the implementation and evaluation of innovative techniques for improving courthouse security; the provision of technical assistance to jurisdictions to evaluate and enhance the security of courthouse facilities; and the development of policies, practices and procedures which emphasize the prevention of incidents that endanger the lives of judges, court personnel, and others in the courtroom. Funds will not be made available solely to hire additional security personnel or to purchase alarm or other security systems.

t. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

—Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;

—Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;

—Processing complex multistate litigation in the State courts;

—Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and

—Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, the likely effect of the elimination or restriction of Federal diversity jurisdiction on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

u. *Special Needs of the Largest Urban Courts.* This category is limited to projects submitted by State or local court systems regarding the implementation and evaluation of innovative programs and procedures to address the critical needs of a trial court serving a city or county with a population of at least 1,000,000 persons. Such projects might include the development and testing of improved methods to assist those courts in

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selecting, retaining and removing judges, or projects to relieve acute problems in the court's ability to handle civil, criminal, domestic relations, juvenile and other types of cases in a fair and timely manner. The Board will consider awarding grants of up to $500,000 each to support projects in this category. Up to $1,000,000 of available grant funds have been set aside to support such projects.

C. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

1. The Board will consider supporting a limited number of projects submitted by State or local courts that relate only to that State or local jurisdiction. Up to $500,000 of available grant funds has been set aside for such projects.

2. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements") respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

3. All awards under this category are subject to the matching requirements set forth in section X.B.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. *Institute:* The State Justice Institute.

B. *State Supreme Court:* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, its designates to perform the functions described in this guideline.

C. *Designated Agency or Council:* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and to be accountable for those funds.

D. *Grantor Agency:* The State Justice Institute.

E. *Grantee:* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. *Subgrantee:* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match:* The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

H. *Renewal Funding:* A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

I. *Continuation Grant:* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the knowledge, programs, or services produced or established during the prior grant period.

J. *On-going Support Grant:* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs, or products for which there is a continuing important need.

K. *Human Subjects:* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in sections II.B.2.u. and II.C.1. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical Assistance.

B. Size of Awards

1. Except as specified in paragraphs V.B.2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. A project addressing the needs of the largest urban courts under Special Interest category u. may, receive support of up to $500,000.

3. Applications for on-going support grants may request funding in amounts up to $600,000. The funds to support the first year of the project will be drawn

from the Institute's appropriations for the Fiscal Year of the award. Funds to support each subsequent year will be made available subject to the availability of appropriations for that Fiscal Year, the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and routine grant monitoring, and the submission for Institute approval of a detailed annual task schedule within 30 days of the end of each project year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement may be waived by the Board only if it determines that extraordinary circumstances exist to justify the waiver.

A. Format and Content

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper; and

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.

2. The narrative must be no more than 10 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The narrative should contain:

a. A statement listing the statutory program area(s), and "special interest" category(ies), if any, addressed by the paper;

b. An explanation of the need for the project;

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

3. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

5. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. However, the incorporated material will be counted against the 10-page limit for each paper.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project; and

d. The reasonableness of the proposed budget.

2. "Special Interest" category concept papers submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.2.

4. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process.

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

D. Submission Requirements.

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1989 must be sent by first class or overnight mail, or by courier no later than February 2, 1989. A postmark or courier receipt will constitute evidence that the concept paper was sent on or before the

deadline date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

The Board expects to meet on March 30–April 1, 1989 to review the concept papers and invite applications. The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

VII. Application Requirements for New Projects

Except as specified in Section VI, a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project and program narrative, and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of Form B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (Form C or C1)

Applicants may submit the proposed project budget either in the tabular format of Form C or in the spreadsheet format of Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8–½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8–½ by 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish.

2. Program Areas to be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and special interest categories is not obvious.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* A delineation of the tasks to be performed and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the training, including the teaching methods to be used and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the

materials to be provided and how they will be developed; the cost to participants; and the methods to be used for evaluating the reaction of the participants and the impact and effectiveness of the training.

For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored; and how the results of the demonstration will be determined and assessed.

For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; the cost to recipients; and how the usefulness and impact of the technical assistance will be determined and assessed.

b. *Evaluation*. Every project design must include an evaluation plan to determine whether the project met its objectives. The plan should present the qualifications of the evaluator(s); describe the criteria that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation. The evaluation should be designed to provide an objective and independent assessment.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. Products

A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Fourteen copies of all project products must be submitted to the Institute.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. If the applicant is neither an organization qualifying as a priority recipient nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms or replicability and other appropriate factors. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. Staff Capability

A summary of the training and experience of the key staff members that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute. Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached only if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by,

and salaries to be paid to, individuals directly involved with the project. The applicant should address the basis for personnel compensation and explain any deviations from current rates or established written organization policies.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with Section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include a description of the rate method used and address the per diem rates separate from transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project related mailings should be described in the budget narrative. The cost of special mailings such as for a survey or for announcing a workshop should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.3.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well.

E. Submission Requirements

1. An application package containing the application, an original signature on Form A (and on Form B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 23, 1989. A postmark or courier receipt will constitute evidence that the application was sent on or before the deadline date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314. Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. However, the incorporated material will be counted against the 25-page limit for the program narrative.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project; and

h. The demonstration of cooperation and support of other agencies that may be affected by the project.

2. "Special Interest" applications submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.2.

4. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project

would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix A when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding. The first, a "continuation grant," is to permit completion of activities initiated under an existing Institute grant or to enhance the knowledge, programs or services produced or established during the prior grant period. Continuation grants are intended to support projects with a limited duration. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support. Continuation grants are subject to the limits on size and duration set forth in section V.B.1. and V.C.1.

The second, an on-going support grant, is to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. On-going support grants are subject to the limits on size and duration set forth in sections V.B.2. and V.C.2.

The Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VIII.

A. Continuation Grants

1. In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain an estimate of the funds to be requested and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Within 30 days of receiving a letter of intent, the Institute will inform the grantee filing of the date by which an application for a continuation grant must be submitted.

2. An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the the topics listed in section VII.C., the program narrative of an application for a continuation grant should:

a. Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why;

c. Present a detailed task schedule for the next project period;

d. Specify the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation;

e. Describe fully any other changes to the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

f. Indicate why other sources of support are inadequate, inappropriate or unavailable; and

g. Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

3. An application for a continuation grant should not repeat information contained in a previously approved application.

4. The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-going Support Grants

1. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

2. The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds will be made available in annual increments as specified in section V.B.3.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. A comprehensive evaluation report must be completed not less than 90 days before the end of the grant period.

3. In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute by letter of its intent to submit an application for such funding no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.1.a.

4. An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for an on-going support grant should:

a. Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project;

b. Demonstrate support for the continuation of the project from the courts community;

c. Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why;

d. Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period;

e. Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period;

f. Describe fully any other changes to the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

g. Indicate why other sources of support are inadequate, inappropriate or unavailable; and

h. Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

5. An application for an on-going support grant should not repeat information contained in a previously approved application.

6. The submission requirements set forth in section VII.E. other than the deadline for mailing apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The extent to which the project has met its goals and objectives, the key findings and recommendations resulting from an evaluation of the project, and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new applications set forth in sections VII.C–VII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions or higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award.

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project (see section VIII.B. above).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her

immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than *January 30, April 30, July 30, and October 30*). These reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

K. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(1).

L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

> This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

O. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is

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a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff.

If the qualifications of a person assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose to this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit or funded programs and projects.

2. References

Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OBM) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hosptials and other Non-Profit Organizations.

f. *Offfice of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. *Responsibilities of State Supreme Court*

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *or* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any projects income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget on which its award commitment will be based. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see section X.J. and XI.J.).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and

contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest.

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tutition fees may be used for other purposes only with the prior written approval of the Institute.

4. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute—

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

The Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance with Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $200 a day.

3. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

(1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circular A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already

available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

. *Audit Requirements*

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: Follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute:

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award amount by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds to the Institute at the same time they submit a final report.

b. *Final Progress Report.* This report should be prepared in accordance with instructions provided by the Institute.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the expenditure deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII. F. and G.).

7. The assignment of a person to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI

program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment Notice signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

Requests for changes or extensions of the grant period are to be made 90 days in advance of the end date of the grant whenever possible. In no instance may the request be made less than 30 days before the end date of the grant.

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248.

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455.

Ms. Mary McQueen, State Court Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780.

Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402-E State Capitol, Charleston, West Virginia 25305, (304) 348–0145.

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Part IV

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Notice of Public Meetings

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3479-8]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: The Environmental Protection Agency (EPA) is holding four public meetings on the proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), published elsewhere in today's edition of the **Federal Register**. The revisions are intended to implement the regulatory changes necessitated by the Superfund Amendments and Reauthorization Act of 1986 (SARA), as well as to clarify existing NCP language and to reorganize the NCP to coincide more accurately with the sequence of response actions. The public meetings are scheduled to allow EPA to meet directly with interested parties concerning the proposed revisions. At each meeting, EPA expects to present a summary of a major proposed changes and to accept oral and written statements.

DATES: The four meetings are scheduled to be held on January 10, 12, 17, and 19, 1989.

ADDRESSES: The meetings will take place in the following areas from 9:00 a.m. to 5:00 p.m., unless concluded earlier, and will continue in the evening beginning at 6:30 p.m.:

January 10, 1989 *Chicago Illinois area.* Sheraton International at O'Hare, 6810 N. Mannheim Road, Rosemont, IL 60018, (312) 297-1234.

January 12, 1989 *Washington, D.C. area.* Holiday Inn Crown Plaza, 300 Army-Navy Drive, Arlington, VA 22202, (703) 892-4100.

January 17, 1989 *Dallas, Texas.* Sheraton Park Central Hotel & Towers, 12720 Merit Drive, Dallas, Texas 75251 (North Dallas), (214) 385-3000.

January 19, 1989 *Los Angeles, California area.* Sheraton Long Beach at Shoreline Sq., 333 East Ocean Boulevard, Long Beach, CA 90802, (213) 436-3000.

FOR FURTHER INFORMATION CONTACT: Betti VanEpps or Tod Gold, Policy and Analysis Staff, Office of Emergency and Remedial Response [OS-240], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, at 1-202-382-2182.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to present an oral statement at a meeting must contact the Policy and Analysis Staff at the address or telephone number given above in advance of the meeting. Such statements will be permitted to the extent that time allows. Since time will be limited, EPA recommends that the public consider submitting written comments in lieu of oral presentations. All written and oral statements will be made part of the record and will be taken into consideration by EPA.

Henry L. Longest II,

Director, Office of Emergency and Remedial Response.

[FR Doc.88-26788 Filed 12-20-88: 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3381-4]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Superfund Amendments and Reauthorization Act of 1986 (SARA) amends existing provisions of and adds major new authorities to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Furthermore, SARA mandates that the NCP be revised to reflect these amendments. The proposed NCP revisions are intended to implement regulatory changes necessitated by SARA, as well as to clarify existing NCP language and to reorganize the NCP to coincide more accurately with the sequence of response actions.

DATES: Comments on the proposed revisions to the NCP must be submitted on or before February 21, 1989. Elsewhere in this issue of the **Federal Register**, a separate notice is being published announcing the dates, times, and locations of public meetings regarding today's proposed revisions to the NCP to be held during the public comment period.

ADDRESS: Written comments on the proposed revisions to the NCP should be submitted, in triplicate, to the Superfund Docket, located in Room LG at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Tod Gold, Policy and Analysis Staff, Office of Emergency and Remedial Response [OS-240], U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, at 1-202-382-2182, or the RCRA/Superfund Hotline at 1-800-424-9346 (in Washington, DC, at 1-202-382-3000).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Major Revisions in Each Subpart
III. Summary of Supporting Analyses

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, as amended by section 105 of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, (CERCLA or Superfund or the Act), and Executive Order (E.O.) No. 12580 (52 FR 2923, January 29, 1987), the Environmental Protection Agency (EPA) is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Revisions to the NCP were last promulgated on November 20, 1985 (50 FR 47912). For the reader's convenience and because the section numbers are being changed, EPA is reprinting the entire NCP, except for Appendices A (Uncontrolled Hazardous Waste Site Ranking System: A Users Manual) and B (National Priorities List), which are or will be proposed separately, and C (Revised Standard Dispersant Effectiveness and Toxicity Tests), for which only minor technical corrections are being proposed. EPA is not reproposing those portions of the NCP that are unchanged and does not solicit comment on those provisions. Comment is requested only on new portions of, or substantive changes to, the NCP.

All existing subparts of the NCP have proposed revisions and several new subparts are being added. Furthermore, because the NCP is being reorganized, many of the existing subparts have been redesignated with a different letter. The proposed reorganization of NCP subparts is as follows:

Subpart A—Introduction
Subpart B—Responsibility and Organization for Response
Subpart C—Planning and Preparedness
Subpart D—Operational Response Phases for Oil Removal
Subpart E—Hazardous Substance Response
Subpart F—State Involvement in Hazardous Substance Response
Subpart G—Trustees for Natural Resources
Subpart H—Participation by Other Persons
Subpart I—Administrative Record for Selection of Response Action
Subpart J—Use of Dispersants and Other Chemicals
Subpart K—Federal Facilities [Reserved]

In today's revisions to the NCP, EPA is proposing a broad and comprehensive rulemaking to revise as well as restructure the NCP. The primary purpose of today's proposal is to incorporate changes mandated by the Superfund Amendments and Reauthorization Act of 1986 (SARA) and to set forth the EPA's proposed approach for implementing SARA. SARA extensively revised existing provisions of and added new authorities to CERCLA. These changes to CERCLA necessitate revision of the NCP.

The regulation and the rest of the preamble use the term "CERCLA" to mean CERCLA as amended by SARA; the term "SARA" is used only to refer to Title III, which is an Act separate from CERCLA, and to other parts of SARA that did not amend CERCLA. The term "SARA" is used in this overview portion of the preamble, however, to highlight the changes to CERCLA.

A. Statutory Overview

The following discussion summarizes the CERCLA legislative framework, with particular focus on the major revisions to CERCLA mandated by SARA as well as those mandated by E.O. No. 12580, which delegates certain functions vested in the President by CERCLA to EPA and other Federal agencies. In addition, this discussion gives reference to the specific preamble sections that detail how these changes to CERCLA are reflected in today's proposed rule.

1. *Reporting and Investigation.* CERCLA section 103 requires that a release into the environment of a hazardous substance in an amount equal to or greater than its "reportable quantity" (established pursuant to section 102 of CERCLA) must be reported to the National Response Center. Title III of SARA establishes a new, separate program that requires releases of hazardous substances, as well as other "extremely hazardous substances," to be reported to State and local emergency planning officials. The preamble discussion of Subpart C summarizes Title III reporting requirements.

CERCLA section 104 provides the Federal government with authority to investigate releases. SARA amends CERCLA section 104 to clarify EPA's investigatory and access authorities, explicitly empowering EPA to compel the release of information and to enter property for the purpose of undertaking response activities. Amended section 104(e) also provides Federal courts with explicit authority to enjoin property owners from interfering with the conduct of response actions. SARA further amends CERCLA section 104 to authorize EPA to allow potentially responsible parties (PRPs) to conduct investigations. The preamble discussion

of Subpart E details how these revisions to CERCLA are reflected in today's proposed rule.

2. *Response Actions.* CERCLA section 104 provides broad authority for a Federal program to respond to releases of hazardous substances and pollutants or contaminants. There are two major types of response actions: the first is "removal action," the second is "remedial action." CERCLA section 104 is amended by SARA to increase the flexibility of removal actions. This amendment increases the dollar and time limitations on removal actions from $1 million and six months to $2 million and one year, and allows a new exemption from either limit if continuation of the removal action is consistent with the remedial action to be taken. (The existing exemption for emergency actions remains in effect.) SARA also amends CERCLA section 104 to require removals to contribute to the efficient performance of a long-term remedial action, where practicable.

In addition, SARA amends CERCLA section 104 to require that, for the purpose of remedial actions, primary attention be given to releases posing a threat to human health. (To this end, SARA also amends CERCLA section 104 to expand health assessment requirements at sites and to allow individuals to petition ATSDR for health assessments.)

Among the major new provisions added by SARA are CERCLA sections 121(a) through 121(d), which supplement sections 104 and 106 by stipulating general rules for the selection of remedial actions, providing for review of remedial actions, and describing requirements for the degree of cleanup. These new sections codify rigorous remedial action cleanup standards by mandating that remedial actions meet applicable or relevant and appropriate Federal standards and more stringent State standards. Where the remedial action involves transfer of hazardous substances off-site, this transfer may only be made to facilities in compliance with the Resource Conservation and Recovery Act (RCRA) (or other applicable Federal laws) and applicable State requirements. (EPA has proposed separately the regulatory requirements for the off-site transfer of hazardous substances and codify these in the final NCP, 53 FR 48218, November 29, 1988.)

Section 121 emphasizes a long-term perspective on remedies by requiring that long-term effectiveness of remedies and permanent reduction of the threat be considered and that the calculation of the cost-effectiveness of a remedy include the long-term costs, including the cost of operation and maintenance. The section mandates a preference for remedies that permanently reduce the "volume, toxicity, or mobility" of the hazardous substance, and requires that remedies use permanent solutions and alternative technologies or resource recovery technologies to the maximum extent practicable. The preamble discussion of Subpart E details how these revisions to CERCLA are reflected in today's proposed rule.

3. *State and Public Participation.* New CERCLA section 121(f) requires the "substantial and meaningful" involvement of the States in the initiation, development, and selection of remedial actions. States are to be involved in decisions on conducting preliminary assessments and site inspections. States will also have a role in long-term planning for remedial sites and negotiations with potentially responsible parties. In addition, States are to be given reasonable opportunity to review and comment on such documents as the remedial investigation/feasibility study (RI/FS) and the proposed plan for remedial action. CERCLA also provides in section 121(e)(2) that a State is permitted to enforce any Federal or State standard, requirement, criterion, or limitation to which the remedial action is required to conform.

CERCLA section 104(d) provides that a State may apply to carry out the response action. This section allows States to enter into cooperative agreements with the Federal government to conduct response actions. SARA amends CERCLA section 104 to make it easier for States to enter into such cooperative agreements. The preamble discussion concerning Subpart F details how these revisions to CERCLA are reflected in today's proposed rule.

SARA adds a new CERCLA section 117 to codify public involvement in the Superfund response process. This section mandates public participation in the selection of remedies and provides for grants allowing groups affected by a release to obtain the technical expertise necessary to participate in decisionmaking. Proposed community relations requirements are described in section H of the Subpart E, § 300.430 preamble discussion.

4. *Enforcement.* CERCLA sections 106 and 107 authorize EPA to take legal action to recover from responsible parties the cost of response already underway or to compel them to respond to the problem themselves. SARA adds to CERCLA a number of provisions that are intended to facilitate responsible party financing of response actions. CERCLA section 122, for example, provides mechanisms by which settlements between responsible parties and EPA can be made, and allows for "mixed funding" of response actions, with both EPA and responsible parties contributing to response costs.

SARA creates a new CERCLA section 310, which allows for citizen suits. Any person may commence a civil action on his/her own behalf against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution), alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to CERCLA (including any provision of an agreement under section 120 relating to Federal facilities). A civil action may also be commenced against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the Agency for Toxic Substances and Disease Registry) where there is alleged a failure to perform any act or duty under CERCLA, including an act or duty under section 120 (relating to Federal facilities), which is not discretionary with the President or such other Federal officer, except for any act or duty under section 311 (relating to research, development, and demonstration). Section 310 requires that citizen suits be brought in a United States district court.

SARA amends CERCLA section 113 to require the lead agency to establish an administrative record upon which the selection of a response action is based. This record must be available to the public at or near the site. Section 113(j) provides that judicial review of any issues concerning the adequacy of any response action is limited to the administrative record. The preamble discussion of new Subpart I includes the introduction of administrative record requirements into the NCP.

5. *Federal facilities.* Section 120(a)(2) of CERCLA provides that all guidelines, rules, regulations, and criteria for preliminary assessments, site investigation, National Priorities List (NPL) listing, and remedial actions are applicable to Federal facilities to the same extent as they are applicable to other facilities. No Federal agency may adopt or utilize guidelines, rules, regulations, or criteria that are inconsistent with those established by EPA under CERCLA. (For purposes of the NCP, the term "lead agency" generally includes Federal agencies that are conducting response actions at their own facilities.)

Section 120 also defines the process that Federal agencies must use in undertaking remediation at their facilities. It requires EPA to establish a Federal agency hazardous waste compliance docket that includes a list of Federal facilities. EPA must assure that a preliminary assessment is conducted at each facility within 18 months of enactment and, where appropriate, evaluate these facilities for potential inclusion on the NPL within 30 months of enactment. Section 120(d) clarifies that Federal facilities shall be evaluated for inclusion on the NPL by applying listing criteria in the same manner as the criteria are applied to private facilities. Requirements governing listing are set forth in proposed Subpart E of the NCP and in Appendix A (the Hazard Ranking System). Federal agencies must commence the RI/FS within six months of listing on the NPL and enter into an interagency agreement with EPA. Section 120(e) provides for joint EPA/Federal agency selection of the remedy, or selection by EPA if EPA and the Federal agency are unable to reach an agreement. CERCLA section 120(f) makes clear that State officials shall have an opportunity to participate in the planning and selection of the remedial action, in accordance with section 121.

The requirements of the NCP, including the requirements related to RI/FS and selection of remedy and the administrative record, are applicable to Federal agency response actions under CERCLA at NPL and non-NPL sites, except where specifically noted that the requirements apply only to Fund-financed activities. However, the deadlines in section 120(e) and the requirement for joint selection of the remedy do not apply at non-NPL sites. A subpart specifically for Federal facilities (Subpart K) is reserved in this proposal. EPA plans to propose Subpart K after this proposal of the NCP. EPA is following its usual regulation development process for this subpart, including formation of a workgroup. The workgroup will be managed by EPA and will include membership of interested Federal agencies and States. EPA plans to finalize Subpart K as expeditiously as possible after consideration of public comment.

Even in instances where NCP requirements do not appear strictly to apply to Federal agency response, de facto compliance may still be necessary. One such example is the statutory limitations of 12 months and $2 million on removal actions. When either of those limits is reached and no statutory exemption applies, Fund-financed activity must cease, unless appropriate remedial actions are planned. Thus, the limitations serve two purposes. In addition to their primary function of establishing the funding limits on removals, the statutory time and dollar limits also serve as markers signaling the end point of removal authority. In order for Fund-financed remediation activity to continue at a site where a statutory limit has been reached and no exemption applies, it must be conducted as a remedial action. Thus, while the limits have no real application to funding or duration of response at a Federal facility, they do mark the point at which applicable remedial requirements of the NCP must begin to be met.

B. Brief Summary of Proposed Changes to the NCP

In addition to incorporating changes mandated by SARA and E.O. 12580, the proposed revisions are intended to:

1. Reorganize the NCP to describe more accurately the sequence in which response actions are taken pursuant to the NCP;
2. Clarify existing language on roles, responsibilities, and activities of affected parties; and
3. Incorporate changes suggested by program experience since the last revisions to the NCP.

Major revisions in each subpart are summarized briefly in the paragraphs that follow:

Proposed Subpart A is similar to existing Subpart A, but contains some clarifying revisions. Proposed Subpart A also reflects new statutory definitions and authorities. Subpart B combines the existing NCP's Subparts B and C; and the letter designations of existing Subparts D through F are changed accordingly. Proposed Subpart B of this regulation lists specific responsibilities that Federal agencies have as members of the National Response Team. Proposed Subpart C (existing Subpart D) includes the information from the current NCP regarding "Plans" and adds information on Title III of SARA. However, it should be noted that regulations implementing Title III of SARA are found at 40 CFR Part 355 et seq.

Redesignated Subpart D (existing Subpart E), "Operational Response Phases for Oil Removal," does not have significant proposed revisions. Proposed Subpart E (existing Subpart F) addresses hazardous substance response. Today EPA is proposing major revisions to this subpart to incorporate the CERCLA amendments to hazardous substance response authorities. Furthermore, EPA is proposing to restructure the sections within new Subpart E to correspond more accurately to established procedures for hazardous substance response.

Proposed Subpart F (new) is being added to satisfy the new statutory mandate to promulgate regulations for State involvement in CERCLA response actions. State participation in Federal facility response will be governed by the provisions of proposed Subpart F. Proposed Subpart G (existing Subpart G) contains several revisions to clarify the designations of trustees for natural resources. Proposed Subpart H (new) consolidates into one new subpart existing language currently in various NCP sections concerning participation by other persons in response activities, with some revisions and additions. Proposed Subpart I (new) codifies the statutory requirements for establishment of an administrative record documenting how a response action is selected for a given CERCLA site. Proposed Subpart J, "Use of Dispersants and Other Chemicals," is very similar to existing Subpart H; clarifying revisions are proposed to this subpart.

Executive Order 12580, in conjunction with CERCLA, delegates responsibility for remedial actions at NPL or non-NPL sites and all removal actions, except emergencies, to the heads of Executive departments and agencies, where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of those departments and agencies, including vessels bare-boat chartered and operated. The E.O. also delegates authority to the Department of Defense (DOD) and Department of Energy (DOE) to respond to emergencies under their jurisdiction, custody, or control. The E.O. delegates to EPA the responsibility for defining the term emergency for the purposes of the delegations.

For the purpose of the delegations, EPA considers an emergency to be a release or threat of release generally requiring initiation of a removal action within hours of the lead agency's determination that a removal action is appropriate. This is consistent with the discussion in the preamble for removals (§ 300.415) and in the regulatory section on the administrative record for removals (§ 300.820). EPA will respond only to those public health or environmental emergencies that the Federal agency cannot respond to in a timely manner.

EPA invites public comment on today's revisions, including comments on the proposed reorganization described above. Table I, which shows

the distribution of current NCP sections into proposed new sections, has been prepared to assist the reader in identifying and tracking the reorganized rule language. An asterisk (*) next to a new section number indicates that substantial changes are proposed.

TABLE I.—NCP DISTRIBUTION TABLE

Old section and title	New section
Subpart A	(Subpart A)
300.1—Purpose and objectives.	300.1.*
300.2—Authority	300.2.
300.3—Scope	
300.3(a)	300.3(a).
300.3(b)	300.3(b) (1–4), (6), (9).
300.3(c)	300.3(c).
300.4—Application	300.2.
300.5—Abbreviations	
300.5(a)	300.4(a).
300.5(b)	300.4(b).*
300.6—Definitions	300.5.*
Subpart B	(Subpart B)
300.21—Duties of the President delegated to Federal agencies.	300.100.
300.22—Coordination among and by Federal agencies.	
300.22(a)	300.105(a)(1–2).*
300.22(b)	300.105(a)(3).
300.22(c)	300.105(a)(4).
300.22(d)	300.130(d).
300.22(e)	300.130(b)(3) & (c).
300.22(f)	300.130(e).
300.22(g)	300.130(f).
300.23—Other assistance by Federal agencies.	
300.23(a)	300.170.
300.23(b)	300.170(a); 300.175.*
300.23(c)	300.170(b).
300.23(d)	300.170(c); 300.175.*
300.24—State and local participation.	300.180.
300.25—Nongovernmental participation.	
300.25(a–c)	300.185(a–c).
300.25(d)	300.185(d).*
Subpart C	(Proposed to become part of Subpart B)
300.31—Organizational concepts.	300.105(b) & (d).
300.32—Planning and coordination.	
300.32(a)	300.110(a–e); (g); (h) (1), (3), (5–8); (i).
300.32(b)	300.115(a–i) & (k).
300.32(c)	300.120(d) & (g); 300.210(c).*
300.33—Response operations.	
300.33(a)	300.120(a–c); 300.130(g).
300.33(b)	300.120(e); 300.135.*
300.34—Special forces and teams.	
300.34(a)	300.145(a).
300.34(b)	300.145(b).
300.34(c)	300.145(c).
300.34(d)	300.145(d).
300.34(e)	300.145(g).
300.34(f)	300.115(j)(1–4), (6–7).
300.34(g)	300.110(j).
300.34(h)	300.110(k).
300.35—Multi-regional responses.	300.140.
300.36—Communications.	
300.36(a–c)	300.125.
300.36(d)	300.115(j)(5).
300.37—Special considerations.	
300.37(a)	Deleted.
300.37(b)	300.145(e).*
300.38—Worker health and safety.	300.150.
300.39—Public information.	300.155.
300.40—OSC reports	300.165.
Subpart D	(Proposed to become Subpart C)
300.41—Regional and local Plans.	300.210.*
300.42—Regional contingency plans.	
300.42(a)	300.210(b).
300.42(b)	Deleted.
300.42(c)	300.210(b).
300.43—Local contingency plans.	
300.43(a)	300.210(c).*
300.43(b)	Deleted.
Subpart E	(Proposed to become Subpart D)
300.51—Phase I—Discovery and notification.	300.300.
300.52—Phase II—Preliminary assessment and initiation of action.	300.305.
300.53—Phase III—Containment, countermeasures, cleanup, and disposal.	300.310.
300.54—Phase IV—Documentation and cost recovery.	300.315.
300.55—General pattern of response.	300.320.
300.56—[Reserved]	Deleted.
300.57—Waterfowl conservation.	300.330.
300.58—Funding	300.335.
Subpart F	(Proposed to become Subpart E)
300.61—General	
300.61(a)	300.400(a).
300.61(b)	Deleted.
300.61(c)	300.400(c).
300.61(d)	300.400(h).
300.61(e)	300.400(i).
300.62—State role	Replaced by new Subpart F.
300.63—Discovery or notification.	
300.63(a)	300.405(a).
300.63(b)	300.405(b).
300.63(c)	300.405(e).
300.63(d)	300.405(f).
300.64—Preliminary assessment for removal actions.	
300.64(a–b)	300.410(b–d).
300.64(c)	300.410(e).
300.64(d)	300.410(g).
300.64(e)	300.410(h).
300.65—Removals	
300.65(a)	300.415(a).*
300.65(b)	300.415(b).*
300.65(c)	300.415(d).
300.65(d)	300.415(f).
300.65(e)	300.415(g).
300.65(f)	300.415(j).*
300.65(g)	
300.65(h)	300.415(k).
300.65(i)	300.700(c).*
300.66—Site evaluation phase and National Priorities List determination.	
300.66(a)	300.420(a–c).*
300.66(b)	300.425(c).*
300.66(c)	300.425(b) & (d–e).*
300.67—Community relations.	300.415(n)*; 300.430(c) & (f)*; 300.435(c).*
300.68—Remedial action	300.430*; Appendix D.*
300.69—Documentation and cost recovery.	300.160.
300.70—Methods of remedying releases.	Replaced by new Appendix D.
300.71—Other party responses.	Replaced by new Subpart H.
Subpart G	(Subpart G)
300.72—Designation of Federal trustees.	300.600.*
300.73—State trustees	300.605.
300.74—Responsibilities of trustees.	300.615.*
Subpart H	(Proposed to become Subpart J)
300.81—General	300.900.
300.82—Definitions	300.5.
300.83—NCP Product Schedule.	300.905.
300.84—Authorization of use.	300.910.
300.85—Data requirements.	300.915.
300.86—Addition of products to schedule.	300.920.
None	Subpart I.

II. Major Revisions in Each Subpart

In this section, revisions to each subpart are explained. Major revisions for each subpart (and each section in the case of Subpart E) are discussed first, followed by a discussion of other revisions.

Subpart A—Introduction

Subpart A, the preface to the NCP, contains statements of purpose, authority, applicability, and scope. It also explains the abbreviations and defines the terms used in the NCP.

A. Major Revisions

1. *Definitions reflecting the roles of States and Federal agencies.* Changes are proposed for the current definitions of "lead agency," "on-scene coordinator" (OSC), and "remedial project manager" (RPM), and new definitions are proposed for "support agency," "support agency coordinator," "Superfund State contract," and

"Superfund Memorandum of Agreement" (SMOA).

The proposed definition of "lead agency" states that the lead agency provides the OSC/RPM to plan and implement the response action under the NCP. The terms "plan" and "implement" for purposes of a remedial action refer to the RI/FS and the remedial design/remedial action (RD/RA) activities, respectively. The "lead agency" definition includes political subdivisions of States, as well as States themselves, and a reference to SMOAs. In addition, because Indian Tribes are afforded substantially the same treatment as States are afforded during response actions, the proposed definition of "State" includes Federally recognized Indian Tribes. (See § 300.515 for requirements Indian Tribes must meet to be afforded the same treatment as States.) Thus, for example, EPA may enter into cooperative agreements with such Indian Tribes. The proposed "lead agency" definition also reflects E.O. 12580, which delegates lead agency authorities to Department of Defense (DOD), Department of Energy (DOE), and other Federal agencies under certain specific conditions. The Federal agency will maintain its lead agency implementation responsibilities even when the remedy at an NPL site is selected jointly with EPA, or when the remedy is selected by EPA alone in situations where the Federal agency and EPA are unable to reach agreement. The new definition of "support agency" clarifies the relationship between the lead and support agencies described in proposed NCP provisions. In the case of remedial actions taken at Federal facilities under CERCLA section 120, EPA and the State will both be support agencies to the lead Federal agency.

The definitions for OSC and RPM are proposed to be simplified, with emphasis placed on the agency that designates the official. The proposed definitions for OSC and RPM combined with the definition for "lead agency" allow an official from a State, political subdivision, or Indian Tribe to be the lead OSC or RPM where a cooperative agreement, a contract, or the SMOA designates one of those entities as lead agency. It should be noted that this designation must be made on a site-specific basis. In some circumstances, a support agency coordinator, also defined in Subpart A, may be designated on a site-specific basis, with authority to carry out support agency responsibilities for particular response actions.

The new definitions for SMOA and "State Superfund contract" clarify the Federal/State partnership. Both documents are intended to formalize the responsibilities of lead and support agencies. The SMOAs are described in greater detail in the proposed new Subpart F of the NCP.

2. *Definitions of "applicable requirements" and "relevant and appropriate requirements."* These definitions have been modified pursuant to the CERCLA amendments to include the statutory provision that in addition to Federal requirements, more stringent, promulgated State requirements can also be applicable or relevant and appropriate.

In addition, EPA proposes to revise the definitions of the terms "applicable requirements" and "relevant and appropriate requirements" to clarify the wording of these two definitions without altering their basic meaning or significance. The current NCP defines "applicable requirements" as "those Federal requirements that would be legally applicable, whether directly, or as incorporated by a Federally authorized State program, if the response actions were not undertaken pursuant to CERCLA section 104 or 106." EPA today proposes to define applicable requirements as "those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site."

The proposed changes to the current definitions are not substantive and are not intended to affect implementation. They are intended to clarify the definitions and, in the case of "applicable," eliminate the conditional wording of the current definition, which has caused some confusion. However, EPA is not changing its position (see 50 FR 47917, November 20, 1985) that other environmental laws do not legally apply to on-site response actions conducted under the authority of CERCLA sections 104, 106, or 122, except as they are incorporated by CERCLA section 121(d). Nonetheless, as EPA decided in promulgating the 1985 NCP revisions, and as Congress affirmed in enacting section 121 of CERCLA, the substantive requirements of other environmental laws will be met in CERCLA remedial actions. The only exceptions to this requirement are the six specified in CERCLA section 121(d)(4).

The current NCP defines "relevant and appropriate requirements" as "those Federal requirements that, while not 'applicable,' are designed to apply to problems sufficiently similar to those encountered at CERCLA sites that their application is appropriate. Requirements may be relevant and appropriate if they would be 'applicable' but for jurisdictional restrictions associated with the requirement." Today EPA proposes to clarify this definition with the following substitution: "Relevant and appropriate requirements means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not 'applicable' to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site."

The word "substantive" in the proposed definitions is not meant to imply a necessary level of "significance" or "weight" for a requirement to be applicable or relevant and appropriate. Rather, "substantive" is used to distinguish the universe of applicable or relevant and appropriate requirements from administrative or procedural requirements, which are not potentially applicable or relevant and appropriate.

Further discussion on applicable or relevant and appropriate requirements and how they are identified and used in the remedial selection process, including more discussion of the distinction between "substantive" and "administrative," can be found in the Subpart E, § 300.430 preamble section below, "F. Compliance with the applicable or relevant and appropriate requirements of other laws."

B. Other Revisions

1. *Organization of Subpart A.* EPA has rewritten § 300.1, "Purpose and objectives," to clarify that the purpose of the NCP is twofold: (1) To provide a plan for an organizational structure; and (2) to provide a plan for responses, under that structure, to discharges of oil and releases of hazardous substances, pollutants, or contaminants.

Section 300.2, "Authority," is combined with current § 300.4, "Application," to eliminate redundancies. Section 300.3, "Scope," is being expanded to reflect new authorities created by the CERCLA amendments. Proposed § 300.3(b) reflects the outline of the NCP.

In addition, definitions contained in the current Subpart H, "Dispersants," (e.g. burning agent, sinking agent) are proposed to be moved to Subpart A so

that all definitions are in one place. No substantive changes are proposed to these definitions. Proposed §§ 300.6 and 300.7 have been added to explain use of number and gender and computation of time in the NCP.

2. *New abbreviations.* EPA is including many operational abbreviations that are commonly used in communications regarding actual site response. For example, the abbreviation "RI/FS" is commonly used by EPA to refer to the remedial investigation/feasibility study process where hazards at CERCLA sites are characterized and alternatives for response to those hazards are developed. EPA believes that the NCP should contain abbreviations that have become common in EPA communications. However, EPA is not adding any new department or agency title abbreviations, even though the Nuclear Regulatory Commission is now a member of the National Response Team (NRT). Because "NRC" is already listed as the abbreviation for the National Response Center, confusion will be avoided by not using this abbreviation for Nuclear Regulatory Commission.

3. *Minor definitional changes.* Some of the changes are merely to conform with word or phrase changes required by CERCLA or Executive Order 12580, and others are proposed strictly for clarification. The following are changes required to conform with the statute: Addition of abandonment of drums to the definition of "release;" addition of a phrase to include related enforcement activities in the definitions of "remove or removal," "remedy or remedial action," and "respond or response;" and addition of provisions for Indian Tribes to the definition of "natural resources."

Clarifying changes include expanded definitions of "trustee" and "operable unit." Indian Tribes were added to the definition of "trustee" to be consistent with statutory changes.

The definition of "operable unit" was expanded to explain that operable units can be distinguished by their dimensional aspects. This is an important concept because a Record of Decision often is signed for, and site work often is conducted as, one or several operable units, not an entire site response. Operable units may be actions performed at a site simultaneously on different portions of the site or in a series of actions. Sometimes the purpose of conducting an operable unit is to address the most imminent threat or to stabilize a threat posed by the site or to undertake a discrete, well-defined portion of the project while developing the overall remedial action. Examples of this are providing an alternative water supply or retarding movement of a contaminated plume while a source control and ground-water remediation strategy is being formulated. Sometimes remediation may consist of several operable units conducted sequentially for logistical and technical reasons. An example of this is where demolition and treatment of waste in tanks on a site is the first operable unit to facilitate locating equipment or materials handling for staging the second operable unit, which may be to cleanup an adjacent lagoon or contaminated soils on the site. In addition, operable units sometimes may be conducted concurrently but as separate activities. An example of this is where source control activities are one operable unit and ground water restoration is another operable unit. For more information on operable units, see proposed regulatory and preamble language for Subpart E, § 300.430.

Changes also include shortened definitions of "remedial investigation," "feasibility study," "source control remedial action," and "management of migration." EPA is proposing to shorten the definitions because the current definitions contain details inappropriate for a definition. These definitional changes do not represent a change in policy or meaning.

4. *New definitions.* EPA is proposing to incorporate in the NCP new definitions that were added to CERCLA. The proposed NCP adds definitions directly from the statute for the terms "alternative water supply" and "Indian Tribe."

EPA is also proposing the addition of several new definitions including "CERCLIS," "community relations coordinator," "cooperative agreement," "miscellaneous oil spill control agents," "operation and maintenance," "preliminary assessment," "public vessel," "remedial design," "SARA," "site inspection," "State," "treatment technology," and "vessel."

i. *CERCLIS.* EPA is proposing to add a definition for CERCLIS because CERCLIS has become a key documentation tool for most Superfund remedial and removal activities, and it is mentioned in portions of the NCP. CERCLIS is EPA's inventory of potential hazardous waste sites. In the past, CERCLIS was primarily an inventory of remedial releases or sites and included only some sites on which removals had been undertaken. However, CERCLIS has recently been changed to include releases at removal, remedial, and enforcement sites so that it is a more comprehensive list of all Superfund activities. To ensure as comprehensive a data base as possible, EPA is now also entering data for CERCLA response actions undertaken by the United States Coast Guard (USCG). In addition, as the definition explains, CERCLIS contains active and inactive (i.e., previously addressed) sites. EPA archives inactive sites in CERCLIS as a historical record of accomplishment. For informational and dissemination purposes, EPA considers only active sites.

ii. *Community relations coordinator.* EPA is proposing the addition of a definition for the term "community relations coordinator." The community relations coordinator is an important person in CERCLA responses; therefore, EPA believes it is necessary to include a definition of the title for informational purposes.

iii. *Cooperative agreement.* EPA is proposing to define cooperative agreement as a Federal assistance agreement in which substantial EPA involvement is anticipated.

iv. *Miscellaneous oil spill control agents.* EPA is proposing to add a definition of "miscellaneous oil spill control agents" for informational purposes.

v. *Operation and maintenance and remedial design.* The terms, "operation and maintenance" (O&M) and "remedial design" are proposed as new definitions because they are important terms commonly used in EPA communications; furthermore, a new NCP section (§ 300.435) has been added to reflect new CERCLA provisions affecting remedial design/remedial action (RD/RA) and O&M.

vi. *Preliminary assessment and site inspection.* EPA is proposing to add definitions for the terms, "preliminary assessment" (PA) and "site inspection" (SI), because they are important and discrete procedures in the site evaluation process. Use of the terms is also common in EPA communications. There are two kinds of PAs and SIs. Removal PAs and removal SIs are carried out to determine the nature of a release and associated threats when initial notification or discovery data suggest that a relatively rapid assessment or response is appropriate. The objective of removal PAs and SIs is to make timely and accurate decisions on which subsequent removal actions can be based. The other subset is remedial PAs/SIs. Remedial PAs are generally the first stage in the process of evaluating whether there is a release or threatened release at a site that does not appear to warrant removal action and determining the nature of the threat associated with that release or threat. Remedial SIs are the second step in the process and include an on-site

investigation and other gathering of data to determine whether further action at the site is necessary.

vii. *Public vessel and vessel.* Definitions for the terms "public vessel" and "vessel," taken from Clean Water Act (CWA) section 311 and CERCLA, are proposed for addition because the terms are used in several other NCP definitions.

viii. *SARA.* The proposed rule also includes a definition for "SARA," the Superfund Amendments and Reauthorization Act of 1986. This is the law that, among other things, amended CERCLA. One significant component of SARA is Title III, a free-standing section on emergency planning and community right-to-know. Regulations implementing Title III are codified at 40 CFR Subchapter J, and referred to in Subpart C of the proposed NCP.

ix. *State.* EPA is proposing to add a definition of "State" that includes "Indian Tribes." Except for purposes of SARA Title III or where specifically noted in the NCP, Indian Tribes may be treated in the same manner as States. EPA proposes to include Indian Tribes in the definition of State so that the term does not have to be repeated in every place that "State" appears. Section 300.515 describes in more detail requirements for Indian Tribes.

x. *Treatment technology.* The term "treatment technology" is also being added as a new definition for informational purposes. The term is used often in EPA communications and has become a central consideration in the remedial selection process. It has a precise meaning, which EPA believes should be included in the NCP.

5. *Deletion of definitions.* The definition of "Federally permitted release" is proposed to be deleted because it is no longer used in the NCP. To avoid confusion with other plans, the term "Plan" is no longer used to mean the NCP in the proposed rule. The definition of "Plan" is proposed to be deleted. The term "quality assurance/project plan" is proposed to replace "Site Quality Assurance and Sampling Plan."

C. Point of Clarification

The NCP includes within the terms "discharge" and "release," threats of discharge and threats of release. Thus, the phrases "threat of discharge" and "threat of release" have generally been deleted from the current rule where they appear with the terms "discharge" and "release," except when they are part of a statutory definition. To clarify this, EPA proposes to add the definition "threat of discharge or release" with cross-references to "discharge" and "release."

Subpart B—Responsibility and Organization for Response

Proposed Subpart B describes the responsibilities of Federal agencies for response and preparedness planning and describes the organizational structure within which response takes place. It lists the Federal participants in the response organization, their responsibilities for preparedness planning and response, and the means by which State and local governments, Indian Tribes, and volunteers may participate in preparedness and response activities. The term "Federal agencies" is meant to include the various departments and agencies within the Executive Branch of the Federal government.

A. Major Revisions

No major substantive changes are proposed for this subpart. EPA is proposing, however, a major reorganization of Subpart B. The most significant element of this reorganization is that EPA proposes to combine existing Subparts B and C. Furthermore, EPA proposes to change the sequence in which information from current Subparts B and C is presented. The proposed revisions present key information in a logical sequence of response-oriented activities from preparedness planning through response operations. The overall National Response Team (NRT), Regional Response Team (RRT), and OSC/RPM organization is introduced at the beginning, and the discussion of activities that have to be completed before and during response operations is integrated with a discussion of the role and responsibility of each of these major entities in the Federal response organization. Qualifications, exceptions, and caveats are generally described after the main or usual course of action. The listing of the capabilities of Federal agencies with respect to preparedness planning and response now follows the sections related to response operations.

B. Other Revisions

1. *Reorganization overview of existing Subparts B and C.* EPA proposes to combine existing Subparts B and C and reorganize the existing language (with minor revisions) in the following order:

i. Identification of the NRT/RRT/OSC/RPM organizational system (§ 300.105);

ii. Roles and responsibilities of the NRT and RRT (§§ 300.110 and 300.115) and OSC/RPM (§ 300.120), and activities that must be accomplished prior to a response;

iii. Notification and communication of threats or incidents (§ 300.125);

iv. Determination that a response is needed, including discussion of separate authorities of the Clean Water Act and CERCLA (§ 300.130);

v. Response operations—organized around OSC/RPM activities (§ 300.135);

vi. Other response-related topics such as multi-regional response, special teams, and documentation and cost recovery (§§ 300.140 through 300.165);

vii. Federal agency participation (§ 300.170) and Federal capabilities and expertise of NRT member agencies that might be required or useful in certain preparedness planning and responses (§ 300.175); and

viii. Information on State and local governments, Indian Tribes, and volunteer participation in and coordination with Federal preparedness planning and response (§§ 300.180 and 300.185).

In general, very little existing NCP language is proposed to be deleted. Deletions are proposed only when, in the proposed new sequence, it would be clearly repetitive and not necessary to assure that key ideas are highlighted in frequently used sections. New introductory language has been added in some sections and new headings indicate more clearly the contents of each section.

Several cross-references to other sections of the NCP have been added. For example, Community Relations Plans are referred to in this proposed subpart under Public Information to remind the reader of the existence of community relations requirements and the need for coordination where such plans are in effect.

EPA proposes to change or add language in several places to make clearer the parallels between NRT and RRT responsibilities and activities and to highlight the complementary nature of the RRT–OSC relationship. For example, the discussion of the OSC's responsibility for "OSC contingency plans" (proposed in Subpart C as the new name for plans formerly called "Federal local plans") complements the discussion of the RRT members' responsibility to participate in such planning. Language is also proposed in several places to reflect the current responsibilities or activities (e.g., RRT work planning) that are needed and being performed, but that are not identified in the current NCP.

2. *Executive Order 12580.* The 1986 CERCLA amendments and E.O. 12580 (52 FR 2923, January 29, 1987) have

expanded the responsibilities of Federal agencies for facilities and vessels under their jurisdiction, custody, or control. EPA notes that the language proposed throughout this subpart is intended to be generally applicable to all Federal OSCs/RPMs.

3. *Indian Tribes.* Proposed new language in various sections of this subpart introduces Indian Tribal government representation in the NRT/RRT system. The 1986 CERCLA amendments establish that Indian Tribes are to play essentially the same role as States for the purposes of the Superfund program. Although not explicit in the current NCP, provision had previously been made for Indian Tribes to participate in RRTs when Indian Tribes so request. Indian Tribes are now proposed to be included in the definition of State in Subpart A, so they are specifically mentioned in Subpart B only when the role of responsibilities of Indian Tribes needs separate explanation.

4. *Title III.* New references are proposed to be incorporated throughout the proposed subpart relating to review of State and local emergency preparedness planning required by SARA Title III. The emergency preparedness planning activities discussed in this subpart are carried out under the authority of Title III, not CERCLA.

5. *Incident-specific response teams (§ 300.115(j)).* EPA proposes this paragraph to notify RRT members of key information relating to a release when full RRT activation is not warranted. Without systematic transfer of correct information, RRT members may receive only partial or erroneous information from second-hand sources as to effects on people or natural resources from a release. Systematic means of notification should be covered in Regional Contingency Plans (RCPs) so the OSC/RPM is not distracted from managing the response by the need to maintain frequent contact with RRT members. EPA notes that numerous communications techniques and tools are becoming more readily available to RRT members. For example, electronic bulletin boards and conference call systems have been used successfully.

6. *On-scene coordinators and remedial project managers (§ 300.120).* The first paragraph of proposed § 300.120, sets forth all OSC/RPM responsibilities and activities up to the time of an actual response. EPA proposes this language to replace existing §§ 300.32(c) and 300.33(a) with the items of responsibility or activity in a slightly different order, stating first the basic OSC responsibility—that the OSC is to be in charge of the response. It is in light of this responsibility that the OSC undertakes the other preparedness and planning duties and the OSC's related activities with RRT member representatives. Where appropriate, there is parallel language for RPMs regarding remedial response.

In addition to remedial action responsibilities, an RPM may have removal authority responsibilities if, during the remedial process, a release is discovered that will threaten public health or the environment within a timeframe shorter than that in which the remedial program can respond and it is more efficient for the RPM to conduct the action. Because of this overlap in OSC and RPM responsibilities, the term "OSC/RPM" is proposed to be used in the NCP, where appropriate, to describe responsibilities that may belong to either an OSC or an RPM, depending on the particular circumstances of the release.

Additionally, EPA is proposing to use the terms OSC and RPM to apply to State representatives overseeing State-lead response actions. Therefore, changes are proposed in this section, as well as elsewhere in the NCP, to accurately reflect this approach.

The SMOA, a cooperative agreement, or another agreement, such as an agreement between EPA and another Federal agency or between another Federal agency and a State, may provide for the establishment of a support agency at a response action. To clarify the response structure and the interaction of the support agency and the OSC/RPM, a description of responsibilities of a support agency coordinator (SAC) is proposed to be added to § 300.120(f). There may be a support agency and a SAC at a site only if specified in an agreement with the lead agency. Generally, a support agency will not be designated for responses to oil discharges or emergency releases of hazardous substances. If a support agency is designated in such an agreement, the support agency may designate a SAC to be the prime representative of that agency and responsible for interacting and coordinating with the OSC/RPM. The purpose of designating a SAC is to provide a specific person in the support agency to assist the OSC/RPM as requested. In particular, the SAC is responsible for providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and response activities.

Changes are proposed for § 300.120(e) regarding RPM responsibilities, currently § 300.33(b)(14), to reflect changes in Federal agency responsibilities due to the CERCLA amendments and E.O. 12580. For example, a new paragraph, non-Fund-financed Federal-lead, was added to cover sites at which a Federal agency other than EPA or the USCG (primarily DOD and DOE) has the lead.

7. *Notification and communications (§ 300.125).* EPA proposes to add the word "notification" to the title of existing § 300.36, and to move it to a new location. In EPA's proposed revisions, notification starts the communications process, followed by the determination of whether to initiate a Federal response. This section has been moved to more accurately reflect its place in the response sequence. Both the title and the location change better reflect the importance of the National Response Center in the NRT/RRT/OSC/RPM system.

EPA reiterates that statutory and regulatory reporting requirements are still keyed to discharges of oil and releases of hazardous substances exceeding a reportable quantity (RQ). EPA is aware, however, that many notifiers do not have the training or knowledge to determine if there is an RQ of a substance involved in a release. Therefore, whenever there is any doubt about whether a release exceeds an RQ, EPA encourages that the release be reported to the NRC. Reporting ensures positive referral of every incident to each Federal agency with jurisdiction and/or regulatory interest.

The NRC is tasked with processing all reports regardless of the material involved or the reported significance of the incident. All reports are passed immediately by telephone to the proper Federal response entity and recorded in the NRC data base at the time of receipt. Public, government, industry, or academic requests for access to stored data may be made through a written Freedom of Information Act request to the Chief, National Response Center, 2100 Second Street, NW., Room 2611, Washington, DC 20593. See § 300.405, "Discovery or Notification," and related preamble discussion.

8. *Determinations to initiate response and special conditions (§ 300.130).* EPA proposes to consolidate in § 300.130 language currently in several places in the NCP. The section addresses the initiation of a Federal response, provides a basic statement about response management responsibilities of the co-chair agencies (whether under the CWA or CERCLA), discusses the special authorities and circumstances that may affect the initiation of a response, and contains cross-references to the relationship of the NCP to other kinds of

Federal response authorities (e.g., natural disasters). Also, for example, § 300.130(f) refers to the Federal Radiological Emergency Response Plan (FRERP) when a discharge or release involves radioactive materials. When EPA is required to respond under the FRERP, it will do so in accordance with the provisions of the U.S. EPA Radiological Emergency Response Plan. (See EPA Report No. 520/1–81–002, December 1986.)

9. *Response operations (§ 300.135).* EPA proposes to relocate existing § 300.33, to introduce it with language currently contained in § 300.33(b), and to keep the language that follows it virtually unchanged. EPA also proposes to relocate the language describing the way OSC jurisdiction is determined from current § 300.33(a) to new § 300.120. This section describes the OSC/RPM components of the NRT/RRT/OSC/RPM system.

10. *Special teams and other assistance available to OSCs/RPMs (§ 300.145).* EPA proposes changes to existing § 300.34 to combine information currently in two separate paragraphs about special technical resources available to OSCs/RPMs (e.g., on marine salvage) and to delete information no longer applicable (dive teams and Spill Cleanup Inventory System).

11. *Worker health and safety (§ 300.150).* EPA proposes to make several revisions to existing § 300.38 to bring it up to date with CERCLA and other changes in applicable regulations and policy developed since the last revision of the NCP.

12. *Public information (§ 300.155).* The title of this section has been changed to "Public Information and Community Relations" to indicate that obligations in this area extend beyond merely informing the public.

13. *Documentation and cost recovery (§ 300.160(d)).* Section 300.160(d) is a proposed new section of the NCP added in response to changes made by the 1986 amendments to CERCLA. Section 107(a)(4)(D) of CERCLA establishes that the responsible parties are liable for "* * * the costs of any health assessment or health effects study carried out under section 104(i)." This new section of the NCP responds to the statutory requirement by providing for the development of documentation to assure that these costs will be recoverable from responsible parties at CERCLA sites. The responsible parties are liable under section 104(i) of CERCLA for the costs of:

i. A health assessment for each facility on the National Priorities List (NPL);

ii. Health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such an exposure is a release;

iii. Pilot studies of health effects for selected groups of exposed individuals, where such studies are deemed appropriate by the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) on the basis of a health assessment;

iv. Full-scale epidemiological or other health studies as may be necessary to determine the health effects on a population exposed to a hazardous substance from a release or threatened release, where deemed appropriate by the Administrator of ATSDR on the basis of a pilot study or other study or health assessment;

v. Establishing a registry of exposed persons;

vi. Population health surveillance programs for exposed populations; and

vii. Steps necessary to reduce exposure and eliminate or substantially mitigate the significant risk to human health, including but not limited to provision of alternative water supplies and permanent or temporary relocation of individuals.

In addition, section 104(i)(5) of CERCLA authorizes health effects research addressing inadequacies in the existing health risk information on substances frequently found at CERCLA sites.

This research is based on the data inadequacies identified in the toxicological profiles on the substances selected under section 104(i)(2)(A). These substances are selected for their potential human health risk in terms of (1) chemical toxicity, (2) frequency-of-occurrence at NPL sites, and (3) potential for human exposure. This research reduces the inadequacies in the existing health effect data base by further determining the health effects of these substances or by developing the techniques and methods to further such determination. A more complete data base on these substances' health effects will allow EPA to estimate better the health risks at NPL sites.

To minimize duplication of health effects research across the various government programs, and to minimize unnecessary cost recovery actions, whenever possible, EPA and ATSDR will coordinate the research programs under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the National Toxicology Program (NTP) to fill the data inadequacies identified in the toxicological profiles. This position is consistent with CERCLA section 104(i)(5)(D) which states:

> It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

In many cases, the cost of research conducted under these programs is already borne by the manufacturers, the processors, and the registrants of the substances as intended by the Congress. The existing regulations under TSCA and FIFRA allow EPA to pass the major portion of the research costs to them. For example, 40 CFR Part 716 requires submission of health and safety studies on chemical substances selected for priority consideration for testing rules under section 4(a) of TSCA. Under 40 CFR Part 158, manufacturers and processors of pesticides are required to provide health and environmental risk information on pesticides for which registration is sought.

Where costs are incurred that are not otherwise borne by manufacturers, processors, or registrants, any agency conducting health effects research initiated by the Administrator of ATSDR, under the authority of CERCLA section 104(i), should maintain complete documentation of the expenditures related to this research and submit these documents to EPA for cost recovery actions.

14. *OSC reports (§ 300.165).* EPA proposes to leave current § 300.40 largely unchanged, except for an increase in the time for submitting OSC reports from 60 to 90 days. This change is viewed as giving the OSC a more realistic amount of time in light of the OSC's many other responsibilities. EPA expects that, wherever possible, all or parts of reports prepared to meet other requirements can be used with little or no revision to meet review needs of the RRTs and the NRT. An OSC report's recommendations may be a source for new procedures and policy.

15. *Federal agency capabilities (§§ 300.170 and 300.175).* EPA is proposing that the description of the capabilities of Federal agencies with

respect to response (currently § 300.23) be reorganized to highlight the leadership roles of EPA and the USCG. EPA also proposes to amend the regulation to refer to EPA's legal expertise in interpreting CERCLA and other environmental laws. Additionally, EPA is proposing to revise and update the descriptions of some of the other agencies' capabilities and expertise related to preparedness planning and response. Furthermore, EPA is adding a paragraph describing the Nuclear Regulatory Commission's capabilities and expertise to reflect the fact that the Commission was recently added to the NRT membership roll. It should be noted that the purpose of these sections is to discuss the special capabilities agencies have and the assistance they can render during any response action. These sections are not intended to specifically address Federal facilities.

16. *Nongovernmental participation (§ 300.185).* This section deals with the use of volunteers in Superfund response actions. Use of volunteers may be appropriate when it can be done in a safe and well-organized way. Key to the use of volunteers is capable leadership on the part of knowledgeable officials and areas of work that are suitable to these individuals. Prior to the use of volunteers, appropriate consideration must be given to the issue of liability for volunteer action, with regard to its effect on both the lead agency and on the volunteers themselves.

17. *National System for Emergency Coordination.* In January 1988, the President approved the National System for Emergency Coordination (NSEC). The NSEC is a mechanism for assuring that the Federal government provides assistance to State and local governments in "extreme catastrophic technological, natural, or other domestic disasters of national significance." The President may activate the NSEC in the event of a catastrophic environmental incident. As additional information regarding the implementation of NSEC becomes available, it may be necessary to make additional revisions to the NCP.

Subpart C—Planning and Preparedness

Proposed Subpart C revises current Subpart D and provides an extensive cross-reference to SARA Title III (the "Emergency Planning and Community Right-to-Know Act of 1986") and its regulations at 40 CFR Subchapter J.

A. Major Revisions

1. *SARA Title III.* Historically, the NCP has provided for Federal planning and coordination entities and for Federal contingency plans. Although there has previously been no Federal requirement for State and local planning, the NCP has always provided for coordination with such entities and plans where they exist. SARA Title III, however, now requires development of a State and local planning structure and local emergency response plans.

Title III provides the mechanism for citizen and local government access to information concerning potential chemical hazards present in their communities. This information includes requirements for the submission of material safety data sheets and emergency and hazardous chemical inventory forms to State and local governments, and for the submission of toxic chemical release forms to the States and EPA. Title III also contains general provisions concerning emergency training, review of emergency systems, trade secret protection, providing information to health professionals, public availability of information, enforcement, and citizen suits. Regulations implementing Title III are codified at 40 CFR Subchapter J. EPA will reference Title III and these regulations in Subpart C where appropriate.

2. *OSC contingency plans.* The name and contents of "Federal local plans" have been modified. EPA proposes to use the new name "OSC contingency plans" to replace the name "Federal local plan" in order to remove ambiguity in the phrase "Federal local" and because the OSC is responsible for developing these plans. Changes also have been made to describe better what these plans are and to identify how they are different from and linked to the "emergency plans" required by section 303 of SARA.

B. Point of Clarification

Title III definitions of facility and release. Title III and CERCLA provide slightly differing definitions of the terms "facility" and "release." Affected parties should carefully note these differences and their applicability to requirements in Title III and CERCLA.

Subpart D—Operational Response Phases for Oil Removal

Proposed Subpart D contains only minor revisions to current Subpart E. Proposed § 300.300(b) includes a reference to the EPA Regional emergency response telephone number. Another modification to § 300.300(b) and the addition of § 300.300(c) have been proposed to clarify that in the case of required reports of oil discharges made by the person in charge of a vessel or facility, reports must be made to the National Response Center (NRC). In other cases, reporting to the NRC is encouraged but not mandatory (this section is consistent with the changes to the counterpart section in Subpart E, "Discovery or Notification" (§ 300.405)). Proposed § 300.305(d) clarifies the requirement for OSC notification of natural resource trustees and makes it consistent with the wording in § 300.410. Proposed § 300.310(c) requires that applicable or relevant and appropriate requirements be met in the disposal of materials recovered in cleanup operations. Finally, proposed § 300.320(b)(4) describes appropriate responses for medium and major oil discharges, which are described separately in existing §§ 300.55(b)(4) and 300.55(b)(5).

Subpart E—Hazardous Substance Response

The Hazardous Substance Response subpart contains a detailed plan covering the entire range of authorized activities involved in abating and remedying releases or threats of releases of hazardous substances, pollutants, or contaminants. EPA is proposing major revisions to the hazardous substance response authorities included in the NCP. The revisions incorporate amendments to CERCLA and reorganize the sections of the subpart to coincide with the general order of established procedures during response.

Specifically, EPA is proposing to expand current § 300.62 on the State role into a separate subpart (new Subpart F), which incorporates the new State involvement regulations, and to move the entire discussion to appear after the Hazardous Substance Response subpart—today proposed to be redesignated as "Subpart E." EPA also proposes to revise and reformat current § 300.67 on community relations so that it is no longer a separate section but is incorporated into the other sections as appropriate. Furthermore, EPA is proposing to rename and reorganize the sections in Subpart E as follows:

§ 300.400 General.
§ 300.405 Discovery or notification.
§ 300.410 Removal site evaluation.
§ 300.415 Removal action.
§ 300.420 Remedial site evaluation.
§ 300.425 Establishing remedial priorities.
§ 300.430 Remedial investigation/feasibility study (RI/FS) and selection of remedy.
§ 300.435 Remedial design/remedial action, operation and maintenance.

General Framework for Responding to Releases

Before discussing the revisions section-by-section, it is useful to review the general framework for responding to releases of hazardous substances,

pollutants, or contaminants. The framework outlined in the 1982 NCP and refined in the 1985 NCP and in this proposed revision to the NCP establishes general procedures for discovery or notification, response, and remediation of releases that pose a threat to human health and the environment. EPA's primary consideration in CERCLA response actions is that remedies be protective of human health and the environment. The variety of releases and threats encountered, however, makes it necessary that specific response actions and cleanup levels be determined on a site-by-site basis. Therefore, the function of the NCP is to delineate how such site-specific decisions on response actions will be made.

CERCLA authorizes EPA to administer response actions in several ways:

i. EPA can take direct action using Fund monies;

ii. Under EPA oversight, responsible parties can undertake a response action as a result of EPA's enforcement authorities; and

iii. States can undertake a response action using CERCLA monies pursuant to a cooperative agreement with EPA.

1. *Discovery or notification.* The first step in the response process occurs when there is discovery or notification of a release (the definition of "release" in Subpart A includes threat of release). This discovery or notification occurs in the various ways described in § 300.405. As described in that section, notice of a release is typically directed to the National Response Center. Once Federal officials are aware of a release, there are two types of responses: Removal or remedial. Before any response action is taken, however, the conditions and problems at the site must be evaluated.

2. *Site evaluation.* When notice of a release is received, EPA will consider the reported facts and circumstances to determine whether a removal or a remedial site evaluation should be undertaken.

The main differences between removal and remedial site evaluations are their respective purposes and the amount of time available for conducting the evaluation before an action must begin. When a lead agency conducts a removal site evaluation, the agency usually has some reason to believe that a prompt action may be needed. If there is any indication that there may be an emergency or other time-critical situation, the release is evaluated for possible removal action. The same is generally not true with remedial site evaluations because the primary purpose of a remedial site evaluation is to assist in determining whether a release should be included on the National Priorities List (NPL). (See § 300.425(b); urgent situations do not allow for developing the more comprehensive data required in remedial site evaluations to score the site for the NPL.)

It should be noted, however, that removal and remedial site evaluations overlap. Information gathered during a remedial site evaluation may indicate that the contamination or one portion of the contamination at a site should be addressed by the removal program or information gathered during a removal site evaluation may indicate that the contamination at a site can be better addressed by the remedial program. The important point is that when the lead agency receives notification of a release, it makes a quick determination as to whether the site seems to be a likely candidate for removal action. If the release does not immediately seem to be a likely candidate for removal, then the release is listed on CERCLIS for a remedial site evaluation to be conducted in the future.

Because of the pressing nature of removal response, a removal PA/SI is characterized by a quick assessment. When the OSC is responding to an explosion or transportation spill, a removal site evaluation may involve only an on-site assessment. Where more time is available (for a non-time-critical removal), a removal site evaluation may involve a review of any existing information available on the release plus an on-site evaluation, including sampling. During these evaluations, the lead agency generally reviews conditions of a release to see whether the release is from a discrete source. Due to the limitations on removal actions, the removal program is generally unable to address large areas of contamination, i.e., where there is not an identifiable discrete source. For example, the lead agency may look for unstabilized tanks, drums, lagoons, or a small area of highly contaminated soil in evaluating the urgency of the release. Section 300.410 describes in more detail the removal site evaluation, including when it is terminated. The criteria for removal actions described in § 300.415(b)(2) are used in the removal site evaluation to determine whether a removal action may be appropriate.

Remedial PAs and SIs are more comprehensive and structured because there is not the same time constraint as there is for removal PA/SIs. A remedial PA will consist of a review of existing information and may include on-site or off-site reconnaissance where safe and appropriate. After the PA is complete, the lead agency will prepare a report that describes the characteristics of the release and recommends whether further remedial evaluation is warranted. At sites where further action is indicated, the lead agency will conduct an SI that will build on the information collected in the remedial PA and involve, as required, on-site and off-site field investigations and sampling. Data gathered during the remedial PA/SI are used to evaluate the release using the Hazard Ranking System (HRS) to determine whether the site should be listed on the NPL. For more discussion on remedial site evaluation see the preamble section below, "§ 300.420—Remedial Site Evaluation." For more discussion on the NPL, see the preamble section below, "§ 300.425—Establishing Remedial Priorities."

3. *Removal actions.* After conducting the removal site evaluation (or, as appropriate, during a remedial activity) the factors described in § 300.415(b)(2) are considered in determining whether or not a removal action is appropriate. If the lead agency determines, upon consideration of such factors, that a removal action is appropriate, actions shall begin as soon as possible to prevent, minimize, or mitigate the threat to human health and the environment. (Section 300.415(d) describes the types of measures that may be taken.) CERCLA requires the termination of Fund-financed removal actions after 12 months have elapsed from the date of the initial response or after $2 million has been obligated unless statutory exemptions apply.

EPA has conducted removal actions in response to a wide range of situations including, "midnight dumping" and other illegal disposal, releases from active manufacturing or waste disposal facilities, and transportation-related incidents. In addition, removal actions may be conducted in response to a time-critical situation at a remedial response site. For example, a removal action may be required to stabilize an NPL site before remedial response activities can begin, or a removal action may be necessary in response to a sudden dangerous situation such as a fire or explosion that occurs during a long-term remedial response.

In situations involving immediate threats, it is not difficult to determine that use of removal authorities is appropriate. In less obvious situations, however, the lead agency must rely on the best technical judgment of its response personnel to determine whether use of removal authority or remedial authority is more appropriate to address the identified threats. On-

scene coordinators and remedial project managers are charged with using all the information available to them at the time to determine how quickly a response must be initiated and, therefore, which response authorities are appropriate.

Notwithstanding the discussion of lead and support agency conduct of removals, potentially responsible parties may undertake these activities under EPA oversight as a result of EPA's enforcement authorities.

4. *Remedial response*—i. *Remedial investigation/feasibility study and selection of remedy.* The lead agency generally will conduct a remedial investigation (RI) and feasibility study (FS) (although actions may be initiated at any time prior to, during, or after the RI/FS when there is a need or opportunity to reduce or control risk or prevent further environmental degradation). The purpose of the RI is to gather sufficient data to characterize the conditions at the site in order to assist in determining the appropriate action. The RI should be focused so that only data needed to develop and evaluate alternatives and to support design are collected. Nonetheless, because of the complexity of the problems, it can take many months of investigatory and sampling work to characterize properly the pathways of exposure to the surrounding population, the hazardous substances that are present at the site, the concentrations of these substances in various areas of the site, and other conditions that must be understood before the best remedy can be selected for that site.

As the problems at a site are beginning to be understood, a feasibility study is conducted. The purpose of the FS is to develop and analyze alternatives for appropriate action. The level and detail of the analysis will be tailored to the scope and complexity of the action needed. As the impacts of these alternatives and other factors are considered, the number of alternatives is reduced. A remedy is selected in a Record of Decision based on these studies. The proposed regulation and preamble for § 300.430 explain in detail the RI/FS and selection of remedy process; therefore details of the process will not be repeated here.

ii. *Remedial design/remedial action and operation and maintenance.* After an RI/FS has been completed and a remedy has been selected, the lead agency designs the remedy. The remedial design stage includes developing the actual plans and specifications for the selected remedy. When this is completed, the lead agency conducts and completes the remedial action. After a joint inspection of the remedy following the completion of construction, the State or other appropriate party (e.g., a Federal facility) will generally assume responsibility for ensuring that the remedy is operational and functional. After the lead and support agencies have determined that the remedy is operational and functional, the State or other appropriate party is responsible for operating and maintaining the site as needed. Section 300.435 describes remedial design/remedial action (RD/RA) and operation and maintenance (O&M) activities.

Notwithstanding the discussion of lead and support agency conduct of RI/FSs, RD/RAs, and O&M, potentially responsible parties (PRPs) can undertake these activities as a result of EPA's enforcement authorities.

5. *Relationship between removal and remedial activities.* It is important to note that response to releases of hazardous substances does not follow a straight sequential path from discovery through removal to remedial action. Although the NCP sections on removal site evaluation and removal actions come before the remedial site evaluation and other remedial sections, in reality, a decision to conduct a removal may be made at any time in the remedial process, and sites initially evaluated or addressed by the removal program may be referred to the remedial program. Thus the need for removal is considered during a remedial PA, a remedial SI, RI/FS, and actual remedial action. If a removal action does not fully address the threat posed by a release, the lead agency will ensure an orderly transition from removal to remedial response activities. The removal program is intended to address releases that pose a relatively near-term threat that can be addressed within the statutory limits. The remedial program is intended to address significant releases that cannot be addressed under the removal program. There will always be some overlap between the two programs, and it is important that they work closely together. The goal is to ensure that the most significant threats are addressed in the most efficient and effective manner.

6. *State participation.* State participation is critical to the response program. It is EPA's intention that the States and EPA function as partners, and States are encouraged to participate in all facets of the response process: Removal, pre-remedial, remedial, and enforcement. EPA proposes to use general agreements called Superfund Memoranda of Agreement (SMOA) to delineate non site-specific Federal/State interactions and responsibilities. Site-specific State-lead actions are undertaken via cooperative agreements between the State and the EPA Region. For more information on State involvement see proposed Subpart F of the NCP.

7. *Public participation.* CERCLA requires the opportunity for participation of the public and of PRPs in the remedy selection process and the development of the administrative record supporting the remedy selected (see Subpart I). The NCP discusses the opportunities for public and PRP participation, including comment periods, public meetings, and formal community relations plans specifying interactions at each remedial action site. In enforcement actions, there will be comment periods for consent decrees and, in the removal action process, participation is encouraged to the extent allowed by the exigencies of the situation. The public participation requirements have been incorporated into each of the sections where they apply (e.g., §§ 300.415, 300.430, and 300.435). See Subpart E, § 300.430 preamble section below, "H. Community Relations."

8. *Federal facilities.* CERCLA emphasizes the application of the Superfund program to Federal facilities indicating the intent of Congress that Federal agencies address releases from such facilities with attention equal to that given by EPA to non-Federal sites. Unless a provision specifically addresses Fund-financed activities only, all provisions in Subpart E (and throughout the NCP, as appropriate) apply to Federal facilities.

Subpart E: Section-by-Section

A section-by-section discussion of the proposed revisions to Subpart E follows, in order of appearance, with two exceptions: Community relations and applicable or relevant and appropriate requirements. These requirements are described in their own separate preamble sections because the requirements are interspersed throughout the Subpart E regulatory sections.

Section 300.400 General.

This section revises existing NCP § 300.61 and contains a general discussion of the prerequisites, methods, criteria, and limitations of response actions addressing hazardous substance releases.

A. Major Revisions

1. *Limitations on response (§ 300.400(b)).* Amendments to CERCLA section 104(a)(3) added significant

limitations on response authorities. Those limitations have been incorporated into the NCP through the addition of new § 300.400(b). The proposed section states that the Fund may not be used to respond to releases of naturally occurring substances, to releases from products that are a part of the structure of a building and result in exposure within that building, or to releases into drinking water supplies due to deterioration of the water system through normal use. However, there is an exception allowed. The Fund may be used to respond in cases where the lead agency determines that the release is a public or environmental emergency and that no other person with the authority and capability to respond will do so in a timely manner. EPA expects these exceptions to be rare.

An example of the first type of situation for which the Fund is not available for response is found in the Reading Prong and other areas, where high levels of radon were discovered inside buildings erected on naturally radioactive formations. Examples of the second type of situation are chemically-treated wood or masonry materials containing radionuclides which may be part of the structure of a building and result in exposure to persons in that building. Examples of the third type of situation are releases of lead and other contaminants into a municipal drinking water supply system solely from the natural deterioration of pipes and welds in the system.

2. *Entry and access (§ 300.400(d)).* CERCLA section 104(e)(3) allows any officer, employee, or representative of the President, duly designated by the President, to have access to vessels, facilities, establishments, or other places, where any hazardous substance, pollutant, or contaminant may be, or has been released, generated, stored, treated, disposed of, or transported from or where access is needed to determine the need for response or the appropriate response or to effectuate a response action under CERCLA. As one method of enforcing such authority, where consent is not forthcoming, CERCLA section 104(e)(5) authorizes the President to issue administrative orders for entry and access to such property. In E.O. 12580 the President delegated this authority to Executive departments and agencies. To ensure full understanding of the scope and proper utilization of this authority, EPA proposes to include in § 300.400(d) the requirements for administrative orders, the scope of orders, the activities permitted under orders, and certain content, delivery, and enforcement aspects of such orders.

In accordance with CERCLA's increased emphasis on private party response, EPA specifies in this section that it may designate a potentially responsible party as EPA's representative solely for the purpose of access, and that it may exercise the authorities contained in section 104(e), including issuing an administrative order, to gain access for the potentially responsible party. Such designation will only be used where the potentially responsible party is conducting a response action pursuant to an administrative order or consent decree and the designation is in accordance with relevant EPA policy.

3. *"On-site" for permitting purposes (§ 300.400(e)).* Section 121(e) of the amended CERCLA states: "No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site, where such remedial action is selected and carried out in compliance with this section." EPA proposes to state that on-site permits are not required for response actions taken by EPA, other Federal agencies, States, or private parties pursuant to CERCLA sections 104, 106, or 122. For the purposes of implementing this section, EPA has proposed to define the term "on-site" in § 300.400(e)(1) to include the "areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action."

Flexibility in defining a site is necessary in order to provide expeditious response to site hazards. EPA emphasizes that the lead agency must always comply with the substantive requirements that would otherwise be included in a permit and that the NCP requires public participation in the remedy selection process. EPA also believes that required approval or consultation by regulatory bodies is analogous to permit requirements and is encompassed within the CERCLA section 121(e) exemption. However, EPA intends to consult closely with the appropriate regulatory authority where time permits. The definition will exempt the lead agency only from administrative processes. These administrative processes could otherwise delay implementation of a response action for several months.

The definition of "on-site" is intended to address the following types of situations. First, remedial actions frequently involve treatment systems that require significant land area for construction. For example, an incinerator cannot be placed on top of contaminated soil but may require some area adjacent to the area of contamination. Situations have arisen where the contamination is in a lowland marshy area and it is not possible to locate an incinerator or construction staging area in the marshy area but it is possible to do so in an uncontaminated upland area in very close proximity. Moreover, the "areal extent of contamination" is intended to include sites where areas of contamination are discrete rather than continuous but are within reasonably close proximity to one another. The decision document should describe the boundaries of the site. A second situation is where a containment structure or a slurry wall to contain contaminated material must be built adjacent to the contaminated material, not in the contaminated area. Third, a ground water plume may extend several miles from the source of contamination or the source may not even be defined at the time of response. If the remedy selected is to intercept the plume and treat the ground water upgradient of a drinking water supply, the treatment facility must be placed near the point of interception.

EPA's interpretation of CERCLA section 121(e) is that each of these situations falls under the purview of that section and that permits are not required for the activities. For this reason, EPA has proposed a flexible definition of "on-site" that can be tailored to specific cases. However, as a matter of policy, EPA will implement the proposed definition with certain limitations. It is EPA's general policy to invoke the permit exemption only when the area within very close proximity to the contamination is necessary for implementation of the portion of the response action relating to the hazardous substance with which it is in proximity. An example is an area of contaminated soil and contaminated ground water that extends several miles from the contaminated soil. The remedy selected includes incineration of the contaminated soil and pumping and treating the contaminated ground water plume. Following EPA's policy in this example, the lead agency would locate the pump system along the contaminated ground water plume, as necessary, without a permit; but, it would only locate the incinerator near the contaminated soil. The lead agency would generally not locate the incinerator several miles from the contaminated soil over the plume. In such a case, where the incinerator must be located far from the source, the lead agency, in accordance with this policy, should obtain a permit.

EPA's interpretation of "on-site" further includes situations where the remedial activity occurs entirely on-site but the effects of such activity cannot be strictly limited to the site. For example, a direct discharge of CERCLA wastewater would be an on-site activity if the receiving water body is in the area of contamination or is in very close proximity to the site, even if the water flows off-site.

EPA notes that section 104(d)(4) of CERCLA allows EPA to treat non-contiguous facilities as one where those facilities are "reasonably related on the basis of geography, or on the basis of threat or potential threat to public health or welfare or the environment." EPA interprets this section to allow it to elect to treat several CERCLA facilities as one "site" for purposes of section 121(e). Under this approach, hazardous substances from several CERCLA facilities could be managed on-site at one of those CERCLA facilities without having to obtain a permit for the wastes that are brought from the other CERCLA facilities. Among the criteria EPA uses to treat non-contiguous facilities as one site are that the facilities are reasonably close to one another and the wastes are compatible for the selected treatment or disposal approach. EPA solicits comment on whether to limit this approach to situations where the non-contiguous facilities are under the ownership of the same entity.

EPA is considering several other possible ways of defining "on-site" for permitting purposes. Each of these is described and discussed briefly below.

i. Define "on-site" as the areal extent of surface contamination. This concept is similar to the RCRA concept of a hazardous waste management area. It would make the definition of "on-site" more definite but would have several problems. First, there are CERCLA sites that have relatively minimal or no surface contamination because the contamination is primarily in the ground water. This definition would mean that in certain cases there would be little or no area that would be considered "on-site" and exempt from permits. Second, this option would mean that permits would have to be obtained in cases where the construction or staging area cannot be located on top of the contamination, even if the staging areas were in very close proximity. As described above, these administrative processes could delay remedial actions at many sites even after there has been public comment on the proposed remedy.

ii. Define "on-site" as identical to a CERCLA facility. The term "facility" is defined in section 101(9) of CERCLA (this definition is repeated in § 300.5 of the NCP) as "any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel." Defining the term "on-site" to be the same as "facility" probably would allow the lead agency to follow a plume and construct a treatment system over the plume without obtaining a permit because of the phrase "or any site where a hazardous substance has been deposited * * * or otherwise come to be located." It would not, however, address the concern that noncontaminated land may be needed as a construction staging area and may be an integral part of the remedial action to be taken. In addition, it should be noted that it is often difficult to define a CERCLA facility boundary. When a site is listed on the NPL, an attempt is made to describe the facility and its boundaries. However, the extent of contamination is not always known at that point in the process. Later, during the RI/FS stage, the facility boundaries may be better defined.

iii. Define "on-site" as the facility plus any contiguous area necessary for carrying out the response. This would address the problem described in number (i) above but the requirement of contiguity may present other problems. For example, sometimes it may not be possible to locate the construction staging area directly contiguous to the facility; perhaps there is unused railroad property between the facility and the proposed staging area or some other similar obstacle.

iv. Define "on-site" as encompassing the area having the same legal ownership as the primary contaminated area or areas. This definition would limit the permit-free areas available for staging and implementing response actions. Because the site would be defined in terms that do not directly relate to the contamination, there may be situations where the ability to implement a remedy expeditiously is artificially constrained by the proximity of the property line.

B. Other Revisions

1. *Current § 300.61(b).* This paragraph has been deleted to conform with amendments to CERCLA section 104(a)(1)(B). The former CERCLA section 104(a)(1) and NCP authorized a response action "unless the President determines that such removal or remedial action will be done properly by the owner or operator of the facility * * * or by any other responsible party." The change to CERCLA and deletion of this section from the NCP clarify that the Federal government is not precluded from conducting a response action, merely because responsible parties have indicated a willingness to take some form of response action.

2. *Health assessments (§ 300.400(f)).* This paragraph has been added to codify the requirements of CERCLA section 104(i) that a health assessment be performed by ATSDR at each site proposed to be listed on the NPL or in response to a petition for a health assessment.

C. Points of Clarification

1. *Pollutants and Contaminants.* CERCLA section 104(a)(1) authorizes response actions whenever any hazardous substance, including mixtures of oil and hazardous substances, is released or whenever there is a release of any pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare. This standard is reflected in NCP § 300.400(a). Note that under CERCLA, "imminent and substantial danger" limitation applies only to pollutants and contaminants and not to hazardous substances. Moreover, the limitation does not define the scope of the removal actions as described in § 300.415(b).

2. *Response to HWTC's petition to modify the NCP to permit treatability testing without the need to obtain a RCRA permit.* The Hazardous Waste Treatment Council (HWTC) has petitioned EPA to issue regulations facilitating small-scale treatability studies on wastes at Superfund sites that contain or may contain RCRA hazardous wastes by exempting owners or operators of facilities conducting such tests from RCRA requirements that would otherwise apply to facilities treating, storing, and disposing of hazardous wastes. HWTC has submitted two petitions for regulatory action. One seeks a regulation under RCRA that would generally exempt such studies from regulation under RCRA when conducted within certain limits of study size, storage volume, etc. The second petition is directed more specifically at treatability studies conducted to support decisionmaking at CERCLA sites. It seeks to exempt treatability studies conducted to support remedy decisions at CERCLA sites from

permitting requirements by defining the facilities at which treatability studies are conducted as being "on-site." As discussed elsewhere, activities conducted "on-site" are exempted from the need to obtain permits. Such a definition, therefore, would exempt those conducting treatability studies from any permitting requirements and would not be limited to the need to obtain a RCRA permit. EPA is separately considering HWTC's petition for rulemaking under RCRA. (See 52 FR 35279, September 18, 1987.) Only the second petition, under which treatability tests on wastes from CERCLA sites would be exempted from permitting by defining them as occurring "on-site," is considered here.

Treatability tests are an important part of the RI/FS process as well as other waste management processes. EPA has concluded, however, that to the extent it is appropriate to adjust permitting requirements to encourage treatability testing, that should be accomplished by directly modifying the RCRA regulations to address such testing generally. EPA does not believe that the term "on-site" can extend to a distant facility that may be conducting a treatability test. For these reasons, EPA is not proposing in today's notice to extend the definition of the term "on-site" to include facilities conducting treatability tests characterizing wastes from CERCLA sites as contemplated by HWTC's petition. Instead EPA will consider the merits of HWTC's position in the context of HWTC's petition for rulemaking under RCRA.

Section 300.405 Discovery or Notification.

This section revises current NCP § 300.63 and discusses how CERCLA sites may be discovered, the notification responsibility to report releases of hazardous substances, pollutants, or contaminants to the National Response Center (NRC), and the details of the notification process. There are no major revisions.

Revisions

1. *Discovery of release (§ 300.405(a)).* EPA is proposing two minor clarifying changes to current § 300.63(a) on how releases are discovered. First, notification under section 103(a) of CERCLA (notification of releases of reportable quantities) and under section 103(c) of CERCLA (owners and operator's notification to EPA of the existence of a facility at which hazardous substances are or have been stored, treated or disposed of) have been separated into (1) and (2).

Second, EPA is proposing to add to the list of discovery methods a new method for discovering releases. This revision is intended to reflect the fact that the new statutory provision allowing citizen petitions for preliminary assessments also represents a new method for discovering a release.

2. *Notification requirements (§ 300.405 (b), (c) and (d)).* EPA is proposing a minor clarifying change to the notification requirements in § 300.63(b) to state that where direct reporting to the NRC is not practicable, reports may be made to the predesignated EPA OSC through the Regional 24-hour emergency response telephone number. This wording was added to alert the public that such numbers exist, but should be used only in the very rare cases where the NRC cannot be reached (for example, because a caller cannot get through to the NRC). EPA strongly urges that all reports of releases be made directly to the NRC. If the notifier can reach a telephone, the NRC must be called. EPA notes that the most likely situations in which direct reporting to the NRC may not be practicable are releases from vessels at sea or offshore platforms with no telephone access. In these cases, releasers would normally report by radio to a Coast Guard station that maintains a radio watch. Releasers who report to the nearest Coast Guard unit under this provision must also notify the NRC as soon thereafter as possible.

Reporting requirements and penalties in CERCLA and the NCP are effective only for releases covered by the 40 CFR 302.4 List of Hazardous Substances and Reportable Quantities (RQs). However, whenever there is any doubt about whether a release equals or exceeds a RQ, EPA encourages that it be reported to the NRC. Paragraph (c) is proposed to be added to highlight this and to make clear the only two situations that should not be reported to the NRC.

The NRC processes all reports of releases that it receives, regardless of the substance involved or the significance of the incident. Reports are archived into the NRC computer data base at the time of receipt and passed immediately by telephone to the appropriate response entity. This centralized reporting simplifies and expedites public, governmental, industrial, and academic access to information regarding hazardous substance releases and response.

EPA is proposing to add a new § 300.405(d), to enumerate the kinds of information that should be provided to the NRC during notification of releases. However, EPA points out that reporting should not be delayed because of missing information.

3. *CERCLIS (§ 300.405(f)(2)).* EPA is proposing language to indicate that when notification shows that removal action is not necessary, but that a remedial site evaluation should be performed, the release will be listed in the CERCLIS remedial inventory. (For a definition and discussion of CERCLIS, see the Subpart A preamble section, "4. New Definitions.")

4. *SARA Title III (§ 300.405(g)).* EPA is proposing minor clarifying changes to the notification requirements of the NCP. EPA is adding a reference to the new SARA Title III notification requirements. This reference states that notification of the NRC does not generally satisfy all Title III notification requirements. This has been added because it is important to note that several notifications may be needed for each release to meet the requirements of SARA.

Section 300.410 Removal Site Evaluation.

This section revises current NCP § 300.64 and discusses the preliminary assessment that is conducted to evaluate available data about a reported release to determine whether the conditions warrant a removal action.

A. Major Revisions

1. *Title of section.* EPA is proposing to change the title of this section from "Preliminary Assessment for Removal Actions" to "Removal Site Evaluation." Parallel changes for the section concerning remedial site evaluations are also being made. These changes clarify that one of the first steps before conducting either a removal or remedial action is to evaluate the release conditions in order to determine what actions may be needed. Section titles in the current NCP do not reflect the similar requirements for removal and remedial actions.

2. *Natural resources (§ 300.410(g)).* EPA proposes to revise current § 300.64(d) to state that the OSC or lead agency is responsible for ensuring that State and Federal trustees of affected natural resources are notified promptly when it is determined that natural resources have been, or are likely to be, damaged. Current § 300.64(d) links this notification to a preliminary assessment determination. The proposed language broadens the section to require trustee notification whenever any data indicate that natural resources will be threatened. Furthermore, the new language clarifies that the OSC or lead agency will coordinate, as appropriate,

the necessary response action assessments, evaluations, investigations, and planning with the State and Federal trustees.

B. Other Revisions

1. *Removal/Remedial program coordination (§ 300.410(h)).* EPA proposes a minor addition at § 300.410(h) to clarify that when a removal site evaluation indicates that a removal action is not needed, but that a remedial action may be needed, a remedial site evaluation shall be initiated and the release shall be listed on the CERCLIS remedial inventory. This is similar to the addition proposed for the notifications section at § 300.405(f)(2).

2. *Termination of removal site evaluation (§ 300.410(e)).* EPA is proposing minor changes to current § 300.64(c) to reference the limitations on response in § 300.400(b).

As discussed in the current NCP, it is important to note that if another party is responding, the OSC will not continue to pursue a removal site evaluation or action, whether or not such person is under court or administrative order. However, if the person is under an order, the OSC may provide surveillance as a separate action, to assure compliance with the order. There may also be instances of voluntary response where the OSC provides monitoring to assure proper response and to avoid a situation where followup action would be needed.

C. Minor Revisions

EPA is proposing other minor conforming revisions to ensure consistency in wording between the new statute and the NCP, and between subparts.

Section 300.415 Removal action.

This section contains the CERCLA program's removal authorities. EPA is proposing several revisions to portions of the current NCP § 300.65 including: the statutory limits on removal actions and exceptions to those limits; the relationship of removal action to anticipated long-term remedial action; a list of appropriate removal actions for specific situations; requirements for post-removal site control; and the requirement for submission of the OSC's report to the RRT.

Today's preamble discussion uses several descriptive terms to broadly differentiate among various types of removals, and EPA wishes to provide here an understanding of their meanings in this context: "Emergencies" generally refer to those actions where the release requires that response activities begin on-site within hours of the lead agency's determination that a removal action is appropriate. "Time-critical" removals are those where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a period of less than six months available before response activities begin on-site. "Non-time-critical" removals are those where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of more than six months available before on-site activities must begin. The lead agency for non-time-critical removals will undertake an engineering evaluation/cost analysis (EE/CA) or its equivalent.

Because Superfund resources are finite, it is not possible for EPA to conduct all removals authorized by CERCLA. Therefore, the removal program sets priorities to ensure that the most serious public health and environmental threats will be addressed. Classic emergencies, such as fires and explosions and time-critical removals that cannot be addressed by any other authority, are the removal program's highest priorities.

A. Major Revisions

1. *Statutory limits (§ 300.415(b)(5)).* The amendments to CERCLA section 104(c)(1) raised the statutory limits for Fund-financed removal actions from six months and $1 million, to twelve months and $2 million, respectively. The amendments also provide a new exemption from the time and dollar limits for situations where the lead agency determines that continued response is otherwise appropriate and consistent with the remedial action to be taken. Formerly, there was an exemption only for those situations that met the emergency criteria in CERCLA section 104(c).

EPA proposes to include the new statutory limits and the new exemption in the NCP at § 300.415(b)(5). In the proposal, only statutory language has been included for both provisions. This is consistent with the way the emergency exemption has been treated in the current NCP.

EPA has developed an approach for implementing the new exemption and solicits comment on this approach. EPA believes that the new exemption should be used primarily for proposed and final NPL sites and should be used for non-NPL sites only in rare circumstances. EPA believes that Congress originally put the statutory limits in place because it intended that the removal program generally be short-term and mitigative in nature. Long-term remedial actions generally involve complete cleanup of sites which are on the NPL. EPA believes that the new exemption was included to ensure that the time and monetary limits wou1d not preclude proper implementation of the requirement in CERCLA section 104(a)(2) that removal actions should, to the extent practicable, contribute to the efficient performance of any long-term remedial action (see below for discussion of this provision). The purpose of the provision is to conserve Fund monies at NPL sites by performing indicated removals at these sites that take into account the ultimate remedy. Monies spent wisely during the removal portion at NPL sites would enable the entire action to be completed more efficiently and cost-effectively.

In accordance with this interpretation, EPA has developed the following criteria for determining when use of the new exemption at proposed and final NPL sites is appropriate:

i. To avoid a foreseeable threat;

ii. To prevent further migration of contaminants;

iii. To use alternate technology to reduce mobility, toxicity, or volume; or

iv. To comply with off-site requirements.

Although EPA intends to use the new exemption primarily at NPL sites in order to maintain the effectiveness of the NPL priority system, EPA also recognizes that there may be some limited circumstances at non-NPL sites where use of the new exemption could be appropriate. If, for example, treatment could be used that would permanently or significantly reduce mobility, toxicity, or volume at a non-NPL site, then it might be appropriate to use the new exemption at a non-NPL site. Use of the exemption in these situations at non-NPL sites would be consistent with a permanent remedy, but use at non-NPL sites is not intended to supplant the remedial program. EPA will ensure that the new exemption is used at non-NPL sites only in limited circumstances by requiring that each decision for using the new exemption at a non-NPL site be approved by the Assistant Administrator for the Office of Solid Waste and Emergency Response.

2. *Efficient performance of the long-term remedial action (§ 300.415(c)).* CERCLA section 104(a)(2) provides that removal actions should, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release. EPA is proposing to incorporate this language into the NCP. This provision is intended to avoid repetitive removal actions or actions that do not take into account

their impact on performance of subsequent remedial action, and to allow for more permanent tasks to be completed under removal authorities. EPA proposes to apply this requirement to all removal actions. Since removals may occur in situations where there is only limited information on whether or not a remedial action is anticipated, the lead agency need only consider information that is available at that time. The lead agency should consider the following questions when selecting a removal action that will contribute to the efficient performance of the long-term remedy:

i. What is the long-term response plan for the site? If there is no plan, what is it likely to be? To determine the long-term response plan the OSC need use only currently available information. The OSC is not required to determine long-term action.

ii. Which threats will require attention prior to the start of the long-term response? An efficient removal should address those threats that require attention in order to stabilize the site or protect human health and the environment until the long-term remedy can be implemented.

iii. How far should the removal go to ensure that the threats are adequately abated? If a long-term remedy is planned, an efficient removal should mitigate the threat to human health and the environment until the remedial action can be implemented. At a minimum, this means that the removal should prevent or reduce further migration or public contact.

iv. Is the proposed removal action consistent with the long-term remedy? An efficient removal generally should not hinder or foreclose viable options for a long-term remedial action.

Removal action should not be unduly delayed by the consideration of the above criteria. The threat to human health and the environment shall remain the primary concern of the lead agency conducting the removal. Occasionally, it may not be practicable to be entirely consistent with the long-term remedial action. This may occur when it is necessary to slow the migration but not possible to implement the long-term remedy. For example, removal actions may be needed that merely stabilize (e.g., cap) some sites to reduce the migration threat until a long-term treatment remedy is developed. EPA is currently developing guidance to further address the details. EPA solicits comments on the policy of extending the section 104(a)(2) provision to all removals rather than limiting it to NPL sites only, and on the criteria for determining whether a removal will contribute to the efficient performance of the long-term remedial action.

B. Other Revisions

1. *Engineering evaluations and costs analyses (§ 300.415(b)(4)).* It is EPA's intent that the lead agency conduct an engineering evaluation and cost analysis (EE/CA) or its equivalent, as appropriate, as a part of removal actions in those cases where adequate planning time is available before the start of the removal. EPA believes adequate planning time is a minimum of six months. EE/CAs contain evaluations of possible alternative technologies, selection of the response, and document the decisionmaking process. Engineering evaluations and cost analyses use a screening process and analysis of removal options based upon such factors as technical feasibility, institutional considerations, reasonableness of cost, timeliness of the option with respect to threat mitigation, environmental impacts, and the protectiveness of the option. This information will be subject to review and comment by the public prior to initiation of the affected removal.

2. *Appropriate actions (§ 300.415(d)).* EPA is proposing some minor changes to the current §§ 300.65(c) (3) and (6) by clarifying additional activities that can be conducted.

3. *Off-site policy.* Current § 300.65(g) requires that removal actions taken pursuant to CERCLA sections 104 and 106 that involve the storage, treatment, or disposal of hazardous substances, pollutants, or contaminants at off-site facilities shall use only those facilities that are operating under appropriate Federal or State permits or authorization and other legal requirements. EPA has separately proposed regulations implementing CERCLA section 121(d)(3) which imposes requirements on the off-site transfer of hazardous substances or pollutants or contaminants, 53 FR 48218, November 29, 1988.

4. *State-lead removals (§§ 300.415 (h) and (i)).* EPA is proposing to codify in the NCP its existing policy allowing States to enter into cooperative agreement to undertake Fund-financed removal actions, provided that States follow all the provisions of the NCP removal authorities. Non-time-critical actions are the most likely candidates for State-lead removal because sufficient time generally exists to complete a cooperative agreement. The new language also states that facilities operated by a State or political subdivision require a minimum cost share of 50 percent of the total response costs if a remedial action is taken.

5. *Post-removal site control (§ 300.415(l)).* Because of statutory limits on removals and the historical role of removals as short-term actions, there will sometimes be situations at both NPL and non-NPL sites where post-removal site control actions (such as watering a grass cover) will be necessary. EPA expects that States, potentially responsible parties, or EPA's remedial program (in the case of some Fund-financed NPL sites) will provide for post-removal site control activities to ensure the protectiveness of the removal action. This may also involve arranging for private parties or Federal facilities to conduct the post-removal site control. In most cases, the possible State role in post-removal site control will be discussed prior to initiation of removal activities. EPA wants to encourage that, to the extent practicable, the State commitment to conduct such action be secured prior to the start of cleanup.

EPA is developing procedures for assumption of post-removal site control at NPL and non-NPL sites. For more discussion of State assurances necessary for cooperative agreement for State-lead removal and remedial actions, see the discussion of the new State involvement regulations in today's preamble discussion of Subpart F.

6. *OSC reports (§ 300.415(m)).* This paragraph has been added to ensure that OSCs and RPMs conducting removal actions submit OSC reports. It is important that where RPMs are overseeing removal actions at NPL sites, they submit OSC reports to the RRT for review (see "Points of Clarification" below for discussion of situations where an RPM might oversee a removal). The Subpart B discussion of OSC reports also proposes some minor clarifying changes for OSC reports.

7. *Community relations (§ 300.415(n)).* Discussion of community relations is included in the Subpart E, § 300.430 preamble section, "H. Community Relations."

C. Points of Clarification

1. *Compliance with other laws.* CERCLA section 121 requires that remedial actions attain a level of standard of control which is applicable or relevant and appropriate to any hazardous substance, pollutant or contaminant that will remain on-site. In contrast, section 121 does not require that removal actions attain applicable or relevant and appropriate requirements (ARARs). EPA's policy for removal actions, however, is that ARARs will be identified and attained to the extent practicable. ARARs are those substantive requirements that pertain to

actions or conditions in the environment (see Subpart E, § 300.430 preamble section below, F.15).

Three factors will be applied to determine whether the identification and attainment of ARARs are practicable in a particular situation: (i) The exigencies of the situation; (ii) the scope of the removal action to be taken; and (iii) the effect of ARAR attainment on the statutory limits for duration and cost.

i. *Exigencies of the situation.* OSCs must often act quickly to provide protection of public health and the environment, and any delay would compromise this objective of the removal action. Where urgent conditions constrain or preclude efforts to identify and attain ARARs, the OSC's documentation of these conditions will be considered sufficient as justification for not attaining all ARARs. To illustrate, a site may contain leaking drums that pose a danger of fire or explosion in a residential area. The drums should be removed or stabilized immediately without attempting to identify and comply with all potential ARARs. The OSC's documentation should describe the time-critical nature of the situation and the removal action taken.

ii. *Scope of the removal action.* Removal actions generally focus on the stabilization of a release or threat of release and mitigation of near-term threats. ARARs that are within the scope of such removal actions, therefore, are only those ARARs that must be attained in order to eliminate the near-term threats. For example, a removal action may be conducted to remove large numbers of leaking drums and associated contaminated soil. In this situation, because the removal focuses only on partial control, chemical-specific ARARs for ground-water restoration would not be considered.

iii. *Statutory limits.* CERCLA sets time and money limitations on a Fund-financed removal action. Attainment of all ARARs for a removal response may not be possible within the 12 months or $2 million limits set in the statute. For instance, a removal action may be undertaken at a site where there is widespread soil and ground water contamination. This response might involve removal of surface debris and excavation of highly contaminated soil necessary to reduce the direct contact threat and further deterioration of the ground water. If the statutory limits were reached or approached as a result of the debris removal and limited excavation, and no statutory exemption applied, more extensive excavation of low-level soil contamination as part of the removal may not be warranted. Although the statutory limits may preclude removals from attaining all identified ARARs, OSCs will strive to comply with those ARARs that are most crucial to the proper stabilization of the site and protection of public health and the environment. (Exemptions to the $2 million/12 month statutory limits may be granted where sites meet the criteria for approving the "emergency" or "consistency" exemptions.)

If none of the three factors would act to preclude identification and attainment of particular ARARs (i.e., attainment is not impracticable), then the statutory waivers in CERCLA section 122(d)(4) and § 300.430(f)(3) of the proposed NCP should be examined to ascertain, as for a remedial action, whether the ARAR may be waived. For example, State ARARs do not have to be attained where the State standard, requirement, criterion, or limitation has not been consistently applied in circumstances similar to the response in question. If a State standard is identified as an ARAR for a removal action, attainment of that ARAR may be waived if the State has inconsistently applied it in similar circumstances. The ARARs waivers generally may be used as they are used for remedial activities.

2. *Removals conducted during the remedial process.* During the course of the remedial process at an NPL site, releases or threats of releases may be discovered that will threaten public health or the environment within a length of time shorter than that in which the remedial program can respond. In such situations, it is appropriate to use removal authority to quickly abate or remove the threat. This may be done either through: (i) A traditional removal action conducted by the removal program using its own resources, or (ii) through an "expedited response action" (ERA) conducted by the remedial program using its own resources. ERAs are performed when the threat identified in the removal action memorandum is of such a nature that response can be delayed for six months or more. The delay allows time for the procurement process, preparation of an EE/CA or its equivalent, and solicitation of formal public comment to be completed.

The potential for concurrent removal and remedial activities, and new CERCLA language encouraging consistency with remedial actions makes it important for OSCs and RPMs to coordinate with each other and to share the data that they have generated during their respective activities.

3. *Removal versus remedial actions and "trigger" level.* EPA has considered whether a clearer removal/remedial distinction could be made through the establishment of "trigger" levels for these actions (e.g., setting specific maximum levels of contamination for particular hazardous substances that would always "trigger" a removal action rather than a remedial action). EPA has decided against this because response decisions are made on a site-by-site basis and there is no one trigger level which would be appropriate for all situations involving a particular contaminant. In general, as described at the beginning of the preamble discussion for Subpart E, the removal program is more likely to remove point sources of contamination that can be addressed within the removal statutory limits. The remedial program, on the other hand, may address a wider range of contamination problems. Use of "trigger" levels is not appropriate for making this distinction. In addition, "trigger" levels would vary based on the additive effects that can result from the interaction of several chemicals. Finally, as treatment technology changes, established standards may change, and any regulatory language might always be a few steps behind technology. Therefore, EPA continues to believe strongly that OSCs and RPMs must consider all information available to them at the time that decisions are made about which response approach to use at a given site.

4. *Regulations on reimbursement to local governments.* CERCLA section 123 authorizes reimbursement of local governments for expenses incurred in providing temporary emergency measures in response to releases of hazardous substances, pollutants, or contaminants. Reimbursement is limited to $25,000 per response and is not intended to supplant local funds normally provided for such response. EPA has issued a separate interim final rule, 40 CFR Part 310, which establishes the procedures and requirements for local government reimbursement. (See 52 FR 39386, October 21, 1987.) As such, only a reference to this new CERCLA provision is included in Subpart H of the NCP.

Section 300.420 Remedial Site Evaluation.

This section revises current § 300.66, "Site evaluation phase and National Priorities List determination." Current § 300.66 has been split into two sections: "Remedial Site Evaluation" and "Establishing Remedial Priorities." In § 300.420, EPA is today proposing revisions that expand the activities that may be undertaken during remedial site

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evaluation to determine whether a site should be included on the NPL. The revised section addresses how EPA proposes to use remedial preliminary assessments and site inspections (PA/SIs) to evaluate and characterize releases to determine if they warrant remedial action.

A. Major Revisions

1. *Purpose and content of a remedial preliminary assessment (§ 300.420(b)).* The revised rule states in § 300.420(b) that remedial preliminary assessments (PAs) shall be conducted for all sites listed in the CERCLIS remedial inventory. Moreover, EPA is proposing to define a PA, which was previously undefined, in the definition section of Subpart A (see also Subpart A preamble).

The purpose of the remedial PA, as described in the current NCP, is to set priorities for remedial site inspection, to determine whether removal action is warranted, and to eliminate from further remedial consideration those releases that do not threaten public health or the environment. Today's proposed regulatory revisions would expand the purpose of the remedial PA to include the gathering of appropriate existing data to assist in developing a hazard ranking score. Additionally, EPA proposes that remedial PAs may consist not only of a review of existing data and an off-site reconnaissance, but also may include an on-site reconnaissance, if appropriate.

Today's proposed revisions would add provisions requiring the lead agency to complete a remedial PA report. The revisions generally outline the type of information that should be contained in the report, including a description of the site, the probable nature of the release, and a recommendation of whether further action is warranted as well as the nature of such further action and which agency should carry it out.

2. *Citizen petitions for preliminary assessments (§ 300.420(b)(5)).* Section 105(d) of CERCLA, as amended, provides that any person who is, or may be affected by a release of a hazardous substance, pollutant, or contaminant, may petition the President to conduct a preliminary assessment of the hazards associated with the release. If a PA has not yet been conducted, it must be completed within a year or an explanation of why the PA is not appropriate must be provided. In E.O. 12580, the President delegated this authority to EPA or the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody, or control of those departments and agencies. EPA is proposing procedures which address how the public should petition EPA or other appropriate Federal agency and how EPA will respond to petitions, including criteria for determining when a PA is not appropriate.

Petitions for PAs should be directed to the Regional Administrator who oversees the area in which the release is located or, in the case of a release from a Federal facility, to the Federal agency responsible for that facility. In cases where EPA receives a petition involving a release from a Federal facility, this petition will be forwarded to the appropriate Federal agency for action. A list of EPA Regional Offices, their addresses, and the States and other areas for which they are responsible is provided in section C. below.

3. *Required information to be submitted with PA petitions (§ 300.420(b)(5) (i) and (ii)).* In developing the procedures for petitions, EPA has attempted to balance the need for specific information concerning a release or potential release necessary to act on the petition, against the potential burdens that such procedures might place on the public. Specific information on the location of the release is essential. Additional information and documentation on the nature of, and history of, activities at the release will expedite response to petitions; and in cases where an immediate threat may be posed, facilitate appropriate further evaluation or response to such threats. In accordance with CERCLA section 105(d), petitioners also have a responsibility to demonstrate how they are, or may be, affected by the release. EPA is proposing that at a minimum the petition shall contain the following information:

i. Name, address, phone number, and signature of petitioner;

ii. Description of the location of the release or suspected release, including a marked map, if possible;

iii. How the petitioner is or may be affected by the release or suspected release;

Additionally, EPA is proposing that the petitioner should include as much information as possible regarding:

iv. The type of substances released or with potential to be released;

v. The nature and the history of activities that have occurred at releases or suspected releases; and

vi. Prior contacts with local and State authorities about the release and the disposition of these notifications.

Items i. through iii. are essential to a complete petition, and EPA will not deem the one-year time period for responding to the petition to begin until such information has been provided. Information in response to items iv. through vi. is recommended and will facilitate the review of the petition and identification of the need for further assessment and/or immediate response to potential threats which might be posed by the release. Additionally, since not all releases or potential releases of hazardous substances can be addressed under CERCLA, EPA encourages petitioners affected by releases to notify all appropriate State and local agencies of the suspected release. This will assist in determining the appropriate response authority in cases where response appears warranted.

4. *Responsibilities of the lead Federal agency in receiving or responding to PA petitions (§ 300.420(b)(5)(iii)).* Upon receipt of a complete PA petition, EPA or the appropriate Federal agency (the lead Federal agency) will first determine whether a PA has already been conducted for the release. In cases where a PA has not been conducted, pursuant to the language in CERCLA section 105(d), the lead Federal agency will determine whether such an assessment is appropriate. Where appropriate, a removal or remedial PA will be completed within one year. When a PA is deemed appropriate, the lead Federal agency will determine whether a removal, as opposed to a remedial, PA will be performed, based on the information available at the time of notification of the release or the suspected release. Where a PA is not deemed appropriate, the lead Federal agency will notify the petitioner and provide an explanation of this determination within one year.

In determining whether a PA is appropriate, the lead Federal agency will take into consideration: (i) Whether there is any information indicating that a release has occurred or that there is a threat of a release of a hazardous substance, pollutant, or contaminant; and (ii) whether the site appears to be eligible for response under CERCLA.

The first criterion is expected to be used rarely, but could be applicable in those cases where the petition, or other readily available information, does not provide sufficient information to show that there has been a release or there is potential for release at a specific site. EPA is proposing the second criterion for situations where, based on the available information, it is clear that the site will ultimately not be eligible for response under CERCLA, for example, because of a statutory exemption. Therefore, further site evaluation would not be appropriate under CERCLA.

When determining whether or not a PA is appropriate, the lead Federal

agency will also consider whether there is any indication that an immediate response may be needed. If there is such an indication, the lead Federal agency will initiate a removal PA. If the release is found to meet one of the removal criteria in § 300.415(b), the lead Federal agency will initiate a removal action. Although this will satisfy the requirement to perform a PA in response to a petition, when the removal PA or removal action is complete, the lead Federal agency will consider whether further evaluation may be needed.

When there is no indication that an immediate response may be needed, the lead Federal agency will conduct a remedial PA to respond to a citizen petition for a PA. As described elsewhere, remedial PAs are more comprehensive and serve a different purpose than removal PAs. Because EPA expects that remedial PAs will generally be conducted in response to a citizen petition, the paragraphs on PA petitions are proposed to be located in the section on remedial site evaluations.

When the results of a completed PA indicate that the release or threat of release may pose a threat to human health or the environment, the remedial evaluation process will be continued.

5. *Purpose and content of site inspections (§ 300.420(c)).* The proposed revisions to the NCP state that if the PA indicates that further site evaluation is warranted, the lead agency shall conduct a remedial site inspection (SI). The current NCP states that the purposes of the SI are to determine which releases pose no threat or potential threat to public health or the environment, to determine if there is any immediate threat to persons living or working near the release, and to collect data to determine whether a site where a release has occurred or may occur should be included on the NPL.

The proposed NCP retains the same basic concepts with some modifications. First, EPA proposes that the language in subparagraph (c)(1) be changed so that it parallels language used about PAs in subparagraph (b)(1). Second, subparagraph (c)(1)(iv) as proposed concerns collecting data beyond that which is required to score the release pursuant to the HRS. This paragraph no longer ties SIs directly to listing a release on the NPL as the existing NCP does. EPA proposes in (c)(1)(iv) to expand the scope of data collection and sampling during selected SIs, as appropriate, to better characterize the release so that, where necessary, the RI/FS or response under other authorities can be initiated more rapidly and effectively. While information gathered during the SI may be used to evaluate a release pursuant to the HRS, it may be more appropriate to undertake response under authorities other than CERCLA. In such a case, the release would not be listed on the NPL. (For further information, see preamble discussion, "§ 300.425—Establishing Remedial Priorities.")

The SI builds upon the information collected in the remedial PA and consists of a visual inspection of the release as well as the collection of samples. However, if adequate sampling has already occurred, the additional collection of samples may not be necessary. Like the PA, if the SI reveals that a removal action may be necessary, the lead agency shall initiate a removal site evaluation.

Today's revisions would require that the lead agency complete an SI report and that the revisions generally outline the contents of this report. The report would include information regarding a description, history, or nature of waste-handling at the site, a description of known contaminants, a description of pathways of migration of contaminants, an identification and description of human and environmental receptors, and a recommendation as to whether further action is warranted.

B. Point of Clarification

Criteria for determining that further remedial evaluation is warranted. At each step in the remedial site evaluation process the lead agency is responsible for recommending whether further evaluation or action is warranted. Because the major end purpose of the remedial site evaluation process has been to determine whether a release should be included on the NPL, EPA generally has not begun or continued to evaluate a site (except where a removal action was needed) if a site was found, as a matter of policy, not to be eligible for the NPL (e.g., a RCRA site).

EPA is proposing revisions to the primary purpose of the remedial site evaluation process. (See the proposed changes described above.) EPA is also requesting comments on expanding the current NPL deferral policy to include other Federal and State response authorities (See preamble discussion, "§ 300.425—Establishing Remedial Priorities.") EPA believes that the overriding goal in the remedial site evaluation program should be to ensure, to the extent practicable, that sites posing the most serious threat are identified and then addressed as soon as possible by the appropriate Federal or State authorities. This could result in a remedial PA or SI being conducted at a site that is later deferred, as a matter of policy, from listing on the NPL. For example, EPA may perform an SI on a site subject to RCRA corrective action even though the site may be eligible for deferral from the NPL.

The second result is that the focus of further remedial site evaluation will be on sites that show evidence of a significant threat or potential threat to human health or the environment. In determining at the end of the remedial PA and SI whether or not a site poses a significant threat or potential threat to human health or the environment, the lead agency may use a combination of a preliminary HRS score and best professional judgment. The preliminary HRS score is based on the HRS model but uses very conservative assumptions to compensate for the limited data available at early stages of the evaluation process. In addition, where necessary and appropriate, best professional judgment may be used to supplement the preliminary score in making decisions about whether or not to proceed to the next phase of evaluation. The use of conservative assumptions combined with the use of best professional judgment should address those situations where data are limited but there may be a potential threat.

If the lead agency determines that a site poses a significant threat or potential threat based on a preliminary HRS score or based on best professional judgment, then the site may proceed to the next stage of evaluation up to NPL consideration. If the preliminary score or judgment indicates that the site is unlikely to meet NPL scoring requirements, then EPA will notify the appropriate State of the results of the site evaluation and that EPA does not at that time intend to pursue further action under CERCLA section 104 or other Federal authorities.

During the remedial preliminary assessment, available information is collected and documented to characterize the site as accurately as possible so that a decision can be made about the site. The remedial PA should result in a recommendation on whether further action is needed. The recommendation may be that the site may be appropriate for a removal, or that the site should proceed to a remedial site inspection because there is evidence of significant threat, or that the remedial site evaluation should be terminated because the evidence does not show that there is or may be a significant threat.

C. Regional Offices

(As of October 1988)

Address	Areas in the region
Region I	
JFK Federal Building, Room 2203, Boston, MA 02203.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Region II	
26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Puerto Rico, Virgin Islands.
Region III	
841 Chestnut Street, Philadelphia, PA 19107.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
Region IV	
345 Courtland Street, NE Atlanta, GA 30365.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
Region V	
230 South Dearborn St., Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
Region VI	
1445 Ross Avenue, Suite 1200, Dallas, TX 75202.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Region VII	
726 Minnesota Ave., Kansas City, KS 66101.	Iowa, Kansas, Missouri, Nebraska.
Region VIII	
999 18th Street, Suite 500, Denver, CO 80202-2405.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
Region IX	
215 Fremont Street, San Francisco, CA 94105.	American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands, Trust Territory of the Pacific Islands.
Region X	
1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Idaho, Oregon, Washington.

Section 300.425 Establishing Remedial Priorities.

This section reorganizes and revises current § 300.66(c) of the NCP which addressed listing on the National Priorities List. The revised section sets forth the criteria and procedures for placing sites on the NPL and the criteria and procedures for deleting sites from the NPL.

A. Major Revisions

1. *Clarification of rank on the NPL (§ 300.425(b)).* EPA is proposing to revise the first sentence of current paragraph § 300.66(c)(2), which states that "[t]he NPL serves as a basis to guide the allocation of Fund resources among releases," to clarify that the NPL is a list of priority releases for long-term remedial response under CERCLA. A site's rank on the NPL is one of a number of factors which guide the allocation of Fund resources. Sites are added to the NPL in order of their HRS score and as new sites are added to the NPL they are generally incorporated into the previously promulgated NPL in order of their HRS score. The NPL is presented in groups of 50 sites to emphasize that minor differences in HRS score do not necessarily represent significantly different levels of risk. EPA considers sites within a group to have approximately the same priority for response actions.

To the extent feasible, once sites are listed on the NPL, EPA determines high-priority candidates for either Fund-financed response action or enforcement action from within the highest priority groupings, however many factors other than a site's rank are considered. For example, the status of enforcement actions, voluntary private party response, and State willingness to cost share may enter into the decision regarding the order in which funds will be committed to respond to sites. In addition, it should be noted that CERCLA section 120(e)(1) requires the appropriate Federal agency to commence an RI/FS at a Federal facility not later than 6 months after the inclusion of the Federal facility on the NPL.

In § 300.425(b), EPA proposes not to include the reference to the 400-site minimum originally required in the 1980 CERCLA and reflected in current § 300.66(c)(1). This is a minor conforming revision to reflect the statutory amendments.

2. *Procedures for placing sites on the NPL (§ 300.425(d)).* Most of this section is proposed to be reorganized from current § 300.66(c). The major addition is the description of procedures for proposing the NPL in the **Federal Register** and ensuring public involvement. Sections 300.425(d)(5) (i) and (ii) have been standard procedure for listing sites on the NPL and were added to the NCP for clarification.

3. *Revision of requirement to submit the recommended NPL to the NRT.* EPA is proposing that current § 300.66(c)(9) be deleted because the NRT does not generally have additional factual data that is relevant to the HRS score or other NPL eligibility of specific sites. Therefore, it is not generally necessary to submit the recommended NPL to the NRT for review and comment as the current NCP requires. EPA notes that sites are added to the NPL only after they have been proposed for listing on the NPL in the **Federal Register**. After proposal in the **Federal Register**, EPA receives and responds to these comments from interested members of the public as well as from other Federal and State entities in the final rulemaking. EPA believes that through the **Federal Register** proposal, the member agencies of the NRT would still receive notice and have an opportunity to comment regarding sites for which they may have information relating to whether a specific site is eligible for the NPL. In situations in which the NRT has, or appears likely to have, factual information regarding whether a particular site is eligible for the NPL, EPA will consider this information during the NPL rulemaking process and, if appropriate, consult with the NRT.

4. *Deletion of sites from the NPL (§ 300.425(e)).* This section incorporates former § 300.66(c)(7) in describing the criteria for deleting sites from the NPL. A site may be deleted where no further response is appropriate.

There are three changes to § 300.425(e) on deletions. The first change is that § 300.425(e)(2) has been added to specify that the State in which the release was located must concur in deleting it from the NPL. CERCLA section 121(f)(1)(C) requires State concurrence on deletion from the NPL.

The second change is a minor conforming addition to § 300.425(e)(3) to reflect the new provision in CERCLA section 105(e) to relist without rescoring a site that has been deleted if there is a significant later release at that site.

The third change is that information has been added to describe how EPA will conduct the deletion process and ensure public involvement. This procedure for publishing a Notice of Intent to Delete in the **Federal Register** and soliciting public comments is existing EPA policy and was followed in the March 7, 1986 Notice of Deletion.

Any site deleted from the NPL under proposed § 300.425(e) remains eligible for further Fund-financed response in the unlikely event that conditions at the site require such action, consistent with CERCLA section 105(e).

B. Point of Clarification

HRS revisions. The 1986 amendments to CERCLA require EPA to promulgate amendments to the HRS to assure, to the maximum extent feasible, that the HRS accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The HRS is Appendix A to the NCP and is the

principal mechanism EPA uses to place sites on the NPL. Revisions to the HRS are being undertaken as a separate rulemaking action, and when finalized after opportunity for public comment, will be incorporated into the NCP as revised.

C. Proposal to Recategorize Sites on the NPL

The current NCP provides that releases may be deleted or recategorized on the NPL. At the time of promulgation of the 1985 NCP revisions, the deletion criteria and procedures had undergone several comment periods (see 49 FR 40322, October 15, 1984; 50 FR 5862, February 12, 1985; and 50 FR 47912, November 20, 1985) and EPA was in the process of deciding whether sites would be deleted from or recategorized on the NPL. The final NPL rulemaking on June 10, 1986 (51 FR 21066–67) reflected EPA's intention to delete sites rather than recategorize them on the NPL. However, EPA is now considering an approach that would recategorize sites on the NPL while still providing for deletion from the NPL when appropriate under current deletion criteria.

The purpose of this proposal would be to improve the way EPA communicates to the public the status of remediation progress at NPL sites. Currently, EPA identifies a response category and cleanup status code for each site on the NPL at which action has been initiated (51 FR 21075, June 10, 1986). Sites may be deleted from the NPL "where no further response is appropriate," such as where response actions have been completed either by the PRPs or through Fund-financed response, or where no remedial measures have been deemed necessary. EPA is concerned that the response category (identifies who has the lead) and the cleanup status codes (I=implementation activity underway, one or more operable units; O=one or more operable units completed, others may be underway; and C=implementation activity completed for all operable units) do not fully reflect the remedial response activities at a site. In many cases, due to the nature of hazardous waste contamination, a significant period of time may be required between installation of an appropriate and fully functional remedy and the completion of the remedial action. For example, a remedy designed to restore groundwater quality to acceptable levels may consist of long-term (e.g., 20 years) "pump and treat" operations. That such long-term activity is underway is not well communicated by the current status codes.

Therefore, in order to provide more useful information on the status of remedial activities conducted at NPL sites, EPA is considering a proposal to establish a new category on the NPL. This category would be the Construction Completion category, consisting of sites where construction activities have been completed, i.e., sites where long-term response actions (LTRA) are in progress or sites awaiting deletion. An LTRA represents a site where all remedial actions have been implemented but where continued operation of the remedy is required for an indefinite period before the levels of protection specified in the Record of Decision (ROD) are achieved. A site awaiting deletion is where an approved Close Out Report indicates that no further remedial activity is required or appropriate at that site.

When a remedy has been implemented and is operating properly, a Close Out Report (interim or final) would summarize the technical basis for determining that construction activities are complete at a site. For sites awaiting deletion, the Close Out Report would document that the remedy has achieved protectiveness levels specified in the ROD, and that remedial action is complete. For LTRAs, the Close Out Report would describe the nature of the continuing action. Sites initially denoted as LTRAs would eventually become sites awaiting deletion (on the basis of final or amended Close Out Reports). Those sites for which CERCLA requires five-year reviews of the remedy (see § 300.430(f)) would be clearly identified upon attaining classification in the Construction Completion category. Moreover, EPA does not believe that the need to conduct a five-year review means that a site must be listed as an LTRA; such sites may also, where appropriate, become deletion candidates.

After a Close Out Report has documented that a site can be placed in the Construction Completion category, EPA may begin the deletion process, where appropriate. However, in cases where a significant delay will exist between placing a site in the Construction Completion category and the date of the next NPL deletion notice, EPA may initiate the deletion process without placing the site in that category.

EPA requests comment on this proposal, specifically on the merits of creating a Construction Completion category.

D. Deferral Policies

EPA has in the past deferred the listing of sites on the National Priorities List (NPL) when other authorities were found to exist that were capable of accomplishing needed corrective action. To date, this deferral policy has been limited to two specifically enumerated Federal laws. EPA is considering broadening the deferral approach, such that listing of sites on the NPL would be deferred in cases where a Federal authority and its implementing program are found to have corrective action authority. EPA further requests comment on whether to extend this policy as well to States that have implementing programs with corrective action authorities to address CERCLA releases. EPA also requests comment on extending this policy to sites where the potentially responsible parties (PRPs) enter into Federal enforcement agreements for site remediation under CERCLA.

This section of the preamble is intended to clarify EPA's approach to determining which of those sites meeting the eligibility criteria of the NCP will be listed on the NPL. This section will describe the reasons EPA has implemented a deferred listing approach for certain authorities, the regulatory and statutory background of NPL listing policies, and issues raised by today's draft policy to consider the expansion of the deferred listing approach. EPA intends to keep the current deferral policies in effect, and not implement a general deferred listing policy, until comments are considered on today's draft policy.

There are two primary reasons why EPA is considering expanding its use of NPL deferrals to appropriate Federal and State authorities. First, EPA believes that this approach will assist EPA in meeting CERCLA objectives; by deferring to other authorities, a maximum number of potentially dangerous hazardous waste sites can be addressed, and EPA can direct its CERCLA efforts (and Fund monies, if necessary) to those sites where remedial action cannot be achieved by other means. Second, EPA believes where other authorities are in place to achieve corrective action, it may be appropriate to defer to those authorities.

1. *Purpose of the NPL.* EPA's approach to listing sites on the NPL is based on its interpretation of the purpose of the NPL. A conference report on CERCLA explains that the NPL was intended to:

> [S]erve primarily informational purposes identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. S. Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980).

In the past, EPA viewed the NPL as a list compiled for the purpose of informing the public of the most serious hazardous waste sites in the nation.

regardless of which law applies. Subsequently, it was viewed as a list for informing the public of hazardous waste sites that appear to warrant remedial action under CERCLA. In addition, it may be appropriate to view the non-Federal section of the NPL merely as a list for informing the public of hazardous waste sites that appear to warrant CERCLA funding for remedial action through CERCLA funding alone. EPA believes that one of the latter two approaches would be preferable to the broad approach of listing all potential problem sites. This will allow EPA to make the NPL a more useful management tool for EPA and also to provide more meaningful information to the public and the States. EPA's decision on which way to view the NPL will be largely determined by its decision on the deferral policies discussed below. As explained in the following discussion, EPA believes that the latter two alternative views of the NPL are consistent with CERCLA and its legislative history.

EPA's interpretation of the NPL as a list that should not include all sites that could potentially be addressed by CERCLA is consistent with the terms of the statute itself. CERCLA section 105(a)(8)(B) calls upon the President to list "national priorities among the known releases or threatened releases throughout the United States," not to list all releases. Therefore, although EPA believes it has the authority to list any site where there has been a release or threatened release of a hazardous substance, pollutant, or contaminant, EPA believes that it is not obligated to do so.

Further, the statute requires EPA, in determining whether a site is to be listed on the NPL, to consider factors enumerated in CERCLA sections 105(a)(8) (A) and (B). The factors include the relative risks posed by the site, State preparedness to assume State costs and responsibilities, and "other appropriate factors." The statutory directive to "take into account to the extent possible" the enumerated factors provides EPA with broad discretion to weigh factors as appropriate. Moreover, the fact that Congress did not specify what factors are "appropriate" supports the breadth of EPA's discretion. Since the proposal of the first NPL (47 FR 58476, December 30, 1982), EPA has considered "other appropriate factors" to include the availability of other Federal authorities to address the problems at a site. PRP enforcement agreements, as well as the willingness of a State to undertake a site remediation, may also constitute other appropriate factors.

This interpretation is also consistent with Congressional intent. In the House Appropriations Committee Report for Fiscal Year 1988, the conferees expressed some concern over whether Superfund is operating to produce maximum environmental benefit for the investment: "The Committee wants to reemphasize the overriding principle of the legislation that Superfund should be reserved for the most serious sites not otherwise being addressed." H. Rept. 189, 100th Cong., 1st sess. 27–28 (1987).

The view of the NPL as a list of sites where CERCLA action is required is also consistent with the legislative history surrounding the reauthorization of RCRA. In adding new authorities to RCRA (sections 3004(u) and 3008(h)) in 1984, for example, Congress recognized that the burden of responding to the nation's waste sites should not fall entirely on Superfund. In its report on the Hazardous and Solid Waste Amendments of 1984, the House Committee on Energy and Commerce stated the following:

> Unless all hazardous constituent releases from solid waste management units at permitted facilities are addressed and cleaned up the Committee is deeply concerned that many more sites will be added to the future burdens of the Superfund program with little prospect for control or cleanup. The responsibility to control such releases lies with the facility owner and operator and should not be shifted to the Superfund program, particularly when a final [RCRA] permit has been requested by the facility. H. Rept. 198, 98th Cong., 1st Sess. 61 (1983).

EPA believes that the use of the NPL to identify sites that appear to warrant remedial (or Fund-financed) action under CERCLA, as compared to action under RCRA or another authority, is consistent with Congressional intent.

Finally, EPA believes that a more limited use of the NPL gives greater effect to the informational and management functions of the list. To include on the NPL every site that has a hazardous substance problem may give the public the misleading impression that every such site is awaiting CERCLA review or attention. In fact, some sites may be addressed by an ongoing corrective action program under another statute such as RCRA. Listing only those sites that appear to warrant remedial action or funding under CERCLA will also serve to make the NPL a more useful management tool for EPA, e.g., in setting priorities for reviewing and addressing sites.

A determination that a site "appears to warrant" remedial action or funding under CERCLA would not reflect a judgment that remedial action should be taken or funds spent at a site. As has always been the case, the decision to list a site on the NPL is not sufficiently refined to make final determinations as to which sites pose threats qualifying for remedial action under CERCLA (see 48 FR 40658, September 8, 1983). Rather, the findings are meant to pinpoint problem sites that deserve more comprehensive analysis under CERCLA. The approach being discussed today would simply add a judgment that no other authority is currently available to address the problem, and thus the site should be listed on the NPL for further evaluation.

2. *Current deferral policies.* EPA's current deferral policy has been limited to sites that can be addressed by the corrective action authorities of RCRA Subtitle C or that are subject to regulation by the Nuclear Regulatory Commission. EPA is now considering, and seeks comment on, the possibility of deferring more generally to Federal authorities. This would be consistent with the view of the NPL as a list of sites where response action is appropriate under CERCLA.

Currently, RCRA Subtitle C facilities are listed on the NPL only if necessary corrective actions under RCRA are unlikely to be performed (51 FR 21054, June 10, 1986), or if certain criteria for listing are met (53 FR 23978, June 24, 1988). Three categories of RCRA facilities have been identified where it is unlikely that RCRA corrective action will be performed: (i) Facilities owned by persons who are bankrupt, (ii) facilities that have lost RCRA interim status and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; and (iii) facilities, analyzed on a case-by-case basis, whose owners or operators have shown an unwillingness to undertake corrective action. On August 9, 1988 (53 FR 30002–09), EPA announced the additional criteria that would be used in determining if a RCRA facility was unwilling to adequately carry out corrective action activities, and requested comment on criteria to be used in determining if the owner/operator is unable to pay for corrective action. On June 24, 1988 (53 FR 23978), EPA identified four other categories of RCRA facilities that may be listed on the NPL, i.e., non- or late-filers, protective filers, sites with pre-HSWA permits, and converters. RCRA Subtitle C facilities that meet any of the above categories are appropriate for listing provided the site meets the HRS scoring or other eligibility requirements.

EPA's present policy for Nuclear Regulatory Commission-licensed sites

(48 FR 40658, September 8, 1983) is not to list releases of source, by-product, or special nuclear material from any Nuclear Regulatory Commission-licensed facility on the grounds that the Nuclear Regulatory Commission has full authority to require cleanup of releases from such facilities, but to list such releases from State-licensed facilities.

EPA under CERCLA does not oversee remedial activities at deferred sites under either the RCRA or Nuclear Regulatory Commission deferred listing policy. EPA generally does not believe it is appropriate under CERCLA to oversee the work of other Federal agencies, or of other authorities under EPA's jurisdiction once a site has been deferred. (Of course, EPA would oversee the remedial activities at a site deferred from listing based on a CERCLA enforcement order.) Although a policy of deferring to other Federal authorities may result in variations in procedures and extent of remedial action, it may be appropriate to assume that the Federal authority will adequately address the remedial action. The Federal laws that have been passed have undergone national notice and comment, and are generally consistent in their application from State to State. In the case of sites deferred for action under RCRA Subtitle C, the corrective action provisions are substantially equivalent to those required under CERCLA, and thus EPA believes it is not necessary to require compliance with CERCLA corrective action standards as a condition of deferral. In the case of the Nuclear Regulatory Commission sites, the Commission has full authority and expertise to require corrective action of the unique waste types subject to its jurisdiction. EPA did not deem it appropriate to require compliance with CERCLA standards.

Later in this section, there is discussion of the possibility of also deferring sites, with the State's concurrence, subject to CERCLA section 106 enforcement agreements. This would be deferral under CERCLA authorities, and not deferral to another Federal authority. This approach would be consistent with the view of the NPL as a list of sites that appear to warrant CERCLA funding for remedial action.

3. *Expanding the deferral policy to other Federal authorities.* EPA is today considering extending the deferral option to other Federal programs as follows:

i. *RCRA Subtitle D.* Under the deferred listing approach, RCRA Subtitle D landfills would continue to be listed on the NPL because corrective action authorities are not currently available for such facilities. However, EPA proposed regulations that will require corrective action at new and existing Subtitle D municipal waste landfills (53 FR 33313, August 30, 1988). These regulations are expected to be implemented by the States when they adopt permit programs to implement the regulations. Only after the Subtitle D regulations are effective would new and existing municipal landfills generally be deferred to the States that have adopted State permit programs that incorporate the revised Federal Subtitle D regulations. Because closed municipal landfills will not be regulated by Subtitle D, they will continue to be listed on the NPL if eligible.

ii. *RCRA Subtitle I.* Under the deferred listing approach, EPA would defer listing sites that can be addressed by Subtitle I corrective action authorities when those authorities take effect. Section 9003(h) of RCRA gives EPA authority to respond to petroleum releases from underground storage tank (UST) systems or to require their owners and operators to do so. It also establishes a trust fund to finance some of these activities. On September 23, 1988, EPA issued final standards for the regulation of hazardous materials in USTs under RCRA Subtitle I. Subpart F of those regulations requires corrective action for "confirmed releases" from USTs containing either hazardous substances listed under CERCLA or petroleum (53 FR 37082).

However, where USTs are but one of numerous leaking units (landfills, surface impoundments, above ground tanks, etc.), EPA will determine whether to defer to a mix of authorities or list sites on the NPL.

iii. *Mining wastes.* Under the deferred listing approach, in cases where States address sites using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the response authorities of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the sites would be deferred from listing.

Although the AMLR Fund was designed primarily to address reclamation and restoration of land and water resources adversely affected by past coal mining, SMCRA sections 409 (a) and (c) provide that States can use funds to address noncoal sites if either all coal sites have been addressed, or the Governor of the State declares that the noncoal project is necessary for the protection of public health or safety. It is important to note that generally the decision to use AMLR funds at a particular site resides with the State concerned, except in one narrow circumstance. EPA will continue to add noncoal mining sites to the NPL should States choose not to take action to respond to the site under SMCRA. States may also choose to use State-share AMLR funds for portions of CERCLA remedial action activities. Sites at which only portions of the remedial action take place with AMLR funds would continue to be listed .

One exception to this policy is the situation where a State has funded all of its known coal and noncoal mining projects, and is proposing to use its remaining AMLR funds for impact assistance (e.g., construction of roads, recreation facilities, etc.). EPA would not list a mining site that is: (a) Discovered in a State where it was previously thought that all mining projects had been completed and impact assistance had been granted, (b) the site is eligible for AMLR funding, (c) sufficient AMLR funds remain to fund the entire response action, and (d) the State intends to use those funds for impact assistance. Currently, no sites meet this description.

iv. *Pesticide sites.* To date, EPA has not finalized its policy regarding the listing of pesticide application sites; thus, pesticide application sites will not be generally listed on the NPL at this time (49 FR 40320, October 15, 1984). EPA believes that the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) may be the most appropriate statute for controlling the source of contamination resulting from the registered use of pesticides since it provides the authority to cancel or limit a pesticide's use or to require label changes when the risks associated with use outweigh the benefits. Therefore, FIFRA will be the primary statute used to address pesticide problems. However, EPA will continue to list sites resulting from leaks, spills, and improper disposal of pesticides. In addition, CERCLA removal activities, such as providing alternate water supplies, may be initiated if it is determined that the release or threat of release constitutes a public health or environmental emergency and no other party has the authority or capability to respond in a timely manner.

v. *Other Federal authorities.* It is possible that by amendment, a Federal regulatory authority not mentioned above will be authorized to require corrective action at sites currently addressed under CERCLA. If so, the affected sites would also be addressed under the general deferred listing approach.

vi. *Oversight of Federal authorities.* As noted earlier, EPA believes it may be appropriate to assume that a Federal authority will adequately address a site,

and thus has to date deferred to RCRA Subtitle C and Nuclear Regulatory Commission authorities without oversight. However, the additional Federal authorities being considered today for deferral do not necessarily present the same level of assurance of remediation that meet the environmental protection standards of CERCLA. Thus, for response actions under these additional Federal authorities, it may be appropriate to require some oversight by CERCLA officials or a requirement that CERCLA cleanup standards be applied. A decision by EPA to defer to another Federal authority for the corrective action of a site does not constitute an approval by EPA of the method or extent of the response to be undertaken by that other authority.

EPA requests comment on the appropriateness of deferring generally to Federal authorities, and on whether such authorities should be required to meet some or all CERCLA standards in addressing deferred NPL sites.

4. *Expanding the deferral policy to State authorities.* EPA believes it is appropriate at this time to consider broadening the scope of the deferral policies to include State authorities in addition to Federal authorities in recognition of other possible avenues of response action.

EPA has already instituted a policy of deferring non-Federal RCRA sites to States that are authorized to carry out the Subtitle C corrective action authorities of RCRA (51 FR 21054, June 10, 1986). However, EPA currently does not defer to other State authorities even if they have authority to achieve some corrective action at contaminated sites. The present framework of the NPL process has not precluded States from taking independent enforcement authorities during CERCLA remedial activities, and a State can request the enforcement lead at sites on the NPL. (Under any of the proposed approaches for State deferral, a State would retain the option of having a State-lead enforcement site listed. Subpart F of today's proposal discusses EPA's criteria for designating a State as the lead agency. The Subpart F criteria are intended solely for State-lead actions under CERCLA.)

EPA has, in the past, listed sites being addressed under State authorities so that it could ensure that similar sites were remediated to similar levels, and in a manner consistent with the NCP. Further, public participation, ATSDR health assessments, and oversight by EPA is assured for all NPL sites. In addition, affected communities are eligible to apply for Technical Assistance Grants (TAGs) at sites on the NPL (53 FR 9471, March 24, 1988), and mixed funding settlements for remedial action are possible.

EPA is now considering deferring to State authorities more generally. EPA recognizes that many more sites need to be addressed than present CERCLA resources can accomodate; by deferring some problem sites to the States, EPA believes more overall response actions can be accomplished more quickly, and EPA can direct its resources to sites that otherwise would not be addressed. As with any deferral, no CERCLA funds would be available to the State for the site being deferred, although EPA may exercise its enforcement or response authorities at that site. Moreover, the State may be required to obtain on-site permits, as permit exemptions are only available for CERCLA actions.

EPA notes that even if a State has authorities applicable to Federal facilities, the remediation of such sites will not be deferred, and Federal facilities will continue to be listed on the NPL, consistent with CERCLA section 120(d)(2).

EPA believes it may be appropriate to defer listing sites on the NPL to allow the States to fully utilize corrective action authorities under their own programs when they have programs in place for obtaining some corrective action at contaminated sites. This approach is consistent with the view of the NPL as a list of sites where response action is appropriate under CERCLA, and the site is not being otherwise addressed.

A deferral would not be a delegation of any CERCLA authority, and it is not intended to ensure equivalence to CERCLA. By deferring to a State authority, EPA is not approving the remediation to be undertaken by that State authority. In considering this deferral policy, EPA recognizes that corrective actions under State authorities may not follow the procedures and requirements of the NCP, and in some cases, this may result in differences, e.g., some States may have more stringent corrective action standards than EPA while other States may have less stringent corrective action standards. Requiring State authorities to conform strictly to NCP requirements might result in fewer States choosing to undertake a site remediation that could be deferred. EPA requests comment on the level of remediation that should be required for sites deferred to States.

It is important to note in instances where State authorities intend to recover their costs from responsible parties under CERCLA section 107 for sites subsequently listed on the NPL, response actions at these sites may not be "inconsistent with" the NCP.

Although EPA does not intend to apply all of the procedures and requirements of the NCP to deferred sites, EPA strongly believes that the general public participation procedures of the NCP are a necessary part of any State deferral policy. The NCP has specific requirements to inform the community of releases and planned actions at a site, and to provide the public an opportunity to comment on removal and remedial plans. However, EPA recognizes that specific requirements to involve a community in remediation decisions may or may not exist under State authorities. Therefore, EPA believes if sufficient public participation requirements do not already exist under the State authority, the State should be required, as a condition of deferral, to develop a site-specific public participation plan to inform the community of remediation progress and involve the community in the remedy selection.

EPA is requesting comment in general on the issue of deferring to State authorities, and requests comment on two options for implementing deferral to States: (i) Deferral based upon a State petition to EPA requesting deferral; and (ii) deferral based upon a State's certification of its commitment and ability to address the site according to certain CERCLA standards. EPA intends to keep the current limited State deferral policy, i.e., deferral to authorized State RCRA authorities, in effect while public comments are reviewed. If a more expanded State deferral policy is implemented, EPA would apply it prospectively to sites as they are proposed for listing (see discussion of final sites below).

i. *Option 1—Deferral based upon a State petition.* Under this option, EPA would defer sites from listing on the NPL in cases where the State petitioned EPA for deferral. Specifically, once EPA believes that a site scores above the HRS cutoff, or otherwise meets eligibility requirements for listing sites on the NPL, EPA would consider deferring the site if the State petitions EPA certifying that:

a. The State has provided reasonable notice to the public of its intent to petition for deferral of a site, and its plans and general schedule for corrective action under State laws;

b. The State will provide for public participation in the remedy selection process; and

c. If requested by the public, the State would hold a public meeting at which it

discussed its decision to petition for deferral.

Under this option, the State would explain to the public and EPA its plans and general schedule for corrective action under State laws. EPA specifically requests comment on whether the State should be required to hold a public meeting or if such meeting should be held only if requested. This option represents a total deferral; it is not intended to ensure equivalence to CERCLA. EPA believes that this option could maximize the overall number of corrective actions that occur by allowing CERCLA funds and resources to be directed to other sites at which no response action by State authorities is anticipated.

This option would have no requirements or obligations for oversight by EPA. However, EPA would still have the flexibility to exercise CERCLA authorities to achieve corrective action at sites deferred from listing, if necessary. EPA would reserve the right to terminate the deferral status of a site and take the necessary procedural steps to list the site on the NPL where the State revises its earlier position and requests that the site be considered for listing.

ii. *Option 2—Deferral based upon a State certification.* This option would defer individual sites from listing on the NPL in cases where the State provides a more detailed certification of its ability and commits to perform corrective action according to certain CERCLA standards. Specifically, once EPA believes that a site scores above the HRS threshold for listing, or otherwise meets eligibility requirements for listing sites on the NPL, EPA would consider deferring the site if the State demonstrates and certifies in writing to EPA the following:

a. The existence of State regulatory response or enforcement authorities that are sufficient to achieve corrective action.

b. Sufficient State personnel and funds committed for either: (1) enforcement actions, compliance monitoring, and oversight of PRP remediation, or (2) State-implemented corrective action.

c. Satisfactory schedules with milestones to complete the enforcement or corrective action process.

d. Commitment to provide status reports to EPA and the public.

e. Provision for public participation in the remedy selection process, and

f. Commitment to select a remedy that is consistent with the cleanup standards of section 121 of CERCLA.

This option accomplishes the overall goal of increasing the States' involvement in the corrective action process, thereby making CERCLA resources available for other sites. It would require greater EPA oversight than the first option, and requires remediation consistent with standards in section 121 of CERCLA.

As discussed in the first option, EPA would retain its right to apply CERCLA authorities at deferred sites, if necessary. Additionally, EPA would consider terminating the deferral status of a site and taking the necessary procedural steps to list the site on the NPL if any of the commitments in the State certification were not met.

For both options, EPA is considering two management approaches to account for sites that are deferred. The first approach would be to propose deferral site candidates for listing on the NPL, and solicit public comment on the HRS score and the deferral issue. If a decision is made to defer, the sites would remain on the proposed NPL in a stayed, deferred status. This would provide the public with information on the sites EPA has deferred from listing, and would allow EPA to engage in final rulemaking to place the site on the NPL in an expeditious manner if termination were necessary. (In such a case, EPA would request comment on termination of the deferral prior to promulgating the site on the final NPL.)

If deferred sites are proposed on the NPL in a stayed, deferred status, ATSDR health assessments would be performed at those sites, and affected communities would be eligible to apply for TAGs. EPA requests comments on whether it is appropriate to issue TAGs at these sites, since one purpose of the deferral policy is to direct Fund monies to sites that otherwise cannot be addressed by authorities other than CERCLA.

The second management approach EPA is considering would be to defer sites to States prior to, and without, NPL proposal. This could conserve the resources that EPA would use for proposal so that they could be applied to other sites. Under this approach, the responsibility to inform the public about deferred sites could be left solely to the States through the petition or certification procedures discussed above. Alternatively, EPA could retain the role of informing the public through a separate, non-NPL listing in the **Federal Register** of deferred sites. In either case, by not first proposing the site, EPA would have to propose the site to the NPL and take comment on the HRS score before addressing a site under the CERCLA remedial program if deferral termination is necessary. (Of course, the HRS score would not change as a result of any response actions taken by the State during the period of deferral, consistent with EPA's past practice explained at 48 FR 40664, September 8, 1983). However, EPA could apply certain CERCLA response authorities to the sites prior to their listing, including removal actions and remedial investigations.

Further, due to the absence of NPL proposal under this approach, ATSDR would not be required to perform a health assessment at the deferred site. (CERCLA authorizes ATSDR to perform health assessments in response to requests from the public. Petitions for health assessments will require data showing a high probability of the existence of a current or potential health problem.) In addition, TAGs would not be available (CERCLA does not authorize TAGs at non-NPL sites) and the possibility of mixed funding settlements for remedial actions at such sites would be precluded.

EPA specifically requests comment on whether a site deferred to a State should be proposed to the NPL in a "deferred" category, or whether the public should be informed of the deferral through a non-NPL notification or State action.

EPA will consider comments on the current policy and the two options for deferral to State authorities. If EPA determines that it is appropriate to revise the current policy, EPA may adopt one of the options described or a combination of both.

5. *Sites regulated by multiple authorities.* EPA recognizes that there may be some sites that are regulated by a mix of authorities. In cases such as these, EPA requests comment on whether the site should be deferred to a mix of authorities, or whether EPA should address the site comprehensively under CERCLA.

6. *Deferral of sites with agreements under CERCLA enforcement authorities.* Currently, it is EPA's policy to keep enforcement-lead sites on the NPL until the selected remedy is complete in order to ensure that CERCLA Fund resources are available to quickly achieve mitigation if the PRPs fail to comply with CERCLA orders or enforcement agreements, and to keep the public apprised of remedial progress at the site. This policy also provides for the potential availability of TAGs, the performance of ATSDR health assessments at affected sites, and allows for the possibility of mixed funding for remedial actions.

However, in addition to the State deferral options previously discussed, EPA is also considering options for not listing, or deferring from listing sites where PRPs enter into Federal

enforceable agreements for site remediation under CERCLA. A policy of not listing sites where enforceable cleanup orders or agreements under CERCLA are in place may facilitate EPA efforts to expeditiously obtain such enforceable agreements for remedial action at sites that would otherwise be listed on the NPL and evaluated under the CERCLA remedial program. EPA would retain approval authority over any remedial action at sites deferred from listing based on an enforceable CERCLA order or agreement. State concurrence would be necessary for deferring sites under this policy.

Although EPA has not yet reached a decision on this issue, the options being considered today are within EPA's discretion under the statute. CERCLA section 104(a)(1) authorizes EPA to respond to the release or threat of release of hazardous substances, but provides that a PRP may be allowed to carry out the action if the President or his delegate "determines that such [removal and remedial] action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party." In addition, CERCLA section 105(a)(8)(A) directs EPA to "the extent practicable, to tak[e] into account" appropriate factors in developing the NPL, giving EPA broad discretion to consider such factors as PRP remedial action agreements.

EPA seeks comment on two principal options: (i) Deferral to CERCLA enforcement authorities prior to NPL proposal based on an agreement to carry out the EPA-selected remedial design/remedial action (RD/RA) pursuant to a consent decree, and (ii) deferral at the time of proposal based on an agreement to conduct a remedial investigation/feasibility study (RI/FS) for that site, with the proposed site dropped if the PRP subsequently agrees to perform the RD/RA pursuant to a consent decree. Both options will continue to assure the opportunity for public comment on the remedy selected by EPA under the CERCLA consent decree. This CERCLA enforcement authority deferral policy being considered today will not be implemented until public comments have been considered. EPA intends to keep the current deferral policies in effect while comments are reviewed. If this deferral policy is issued, EPA plans to apply it prospectively (see discussion of final sites below). These options, and variations of these options, are discussed below.

i. *Option 1—Pre-proposal deferral based on agreement to perform RD/RA.* Under this option, EPA would, with the concurrence of the State agency, defer listing of a site if a PRP were willing to enter into a consent decree with EPA for the total remediation of a site prior to the site's proposal for NPL listing. However, EPA would not delay the normal process for assessing sites, developing HRS scores, and proposing on the NPL. Only those sites for which a consent decree is signed prior to proposal of the site on the NPL would be considered.

Because completed preliminary assessments and site investigations are publicly available documents, EPA believes that many PRPs will have adequate information concerning the potential listing of a site on the NPL in order to decide whether to begin negotiations of a consent decree with EPA for remediation of a site. However, EPA intends to continue its policy of not releasing draft HRS scores prior to a decision to propose a site for the NPL. EPA would simply acknowledge that a site is being considered for listing on the NPL.

Under this option, more consent decrees providing for remediation may be signed, freeing CERCLA Fund resources for remedial action at other sites. (CERCLA resources would be required for oversight of sites deferred based on an agreement under CERCLA enforcement authorities.) Moreover, these consent decrees would represent enforceable agreements under CERCLA for the entire response effort, including remedial action, and would provide the necessary legal assurances that a protective remedy, selected and approved by EPA, would proceed in a timely manner. Further, EPA would select the remedy under this approach, and the full remedial process described under Subpart E of the NCP, including the public participation requirements, would be required; all consent decrees would also be published in the **Federal Register** before entry by the court.

This option would allow PRPs, by agreeing to an enforceable consent decree under CERCLA to perform the total remediation, to avoid the listing of their site on the NPL. However, at this stage in the remedial process, the actual remedy to be implemented will be unknown and the PRPs may be reluctant to agree to implement a remedy of unknown cost and dimensions. Even if the PRPs agreed to implement the EPA-selected remedy, they might be reluctant to waive their rights to contest EPA's choice of remedy in the context of dispute resolution under the consent decree, which process may involve further resource commitment by EPA.

This option might have limited applicability at sites with multiple parties. Because EPA does not intend to implement a formal process prior to proposal to notify parties of their potential responsibility at sites, there may not be adequate time for numerous PRPs to agree to implement the site remedy to be selected by EPA in the future.

If a PRP fails to complete the remedy and the enforcement mechanisms available under the consent decree are not successful (e.g., if the PRP is financially unable to continue the work), Fund-financed action could not be taken until the site was listed on the NPL (although financial assurances such as performance bonds could also be required under this option to ensure that remedial action would continue).

Under this approach, because sites would not be listed or proposed for listing on the NPL, TAGs would not be available and ATSDR health assessments would not be required (see State deferral discussion).

As part of this option, EPA is also seeking comment on the appropriate method for identifying problem sites to the public if those sites are not proposed for the NPL because of deferral to a CERCLA enforcement agreement. One alternative is to publish a notice in the **Federal Register** identifying sites that are to be deferred prior to proposal on the NPL. Another alternative is to notify the affected public of the deferral by publication in a local newspaper(s) of general circulation. Of course, once a consent decree is lodged, the public will be notified (pursuant to 28 CFR 50.7), and will have an opportunity to comment on the remedy that EPA ultimately selects.

ii. *Option 2—Proposal and deferral based on an agreement to conduct RI/FS.* EPA is also considering an option under which EPA would propose a site for listing on the NPL, but would defer final listing of the site if the PRPs agree to perform the RI/FS under an enforceable CERCLA agreement (administrative order or consent decree). The site would remain on the proposed NPL (in a stayed, deferred status) until the RI/FS is completed, the public comments on the remedy are received, and the record of decision is issued. If the PRPs agree to implement the remedy selected in the record of decision under an enforceable consent decree or order under CERCLA, the site would be dropped from the proposed list; if they do not, EPA would proceed to list the site on the final NPL. Adoption of this option would make the final NPL a list of sites where CERCLA Fund-financed

action appears to be warranted, rather than a list of sites where CERCLA action, whether Fund-financed or enforcement lead, appears to be warranted.

Because sites would be formally proposed for listing, the PRPs would be fully informed of the opportunity of entering into an enforceable CERCLA agreement. This approach may encourage PRP performance of RI/FSs and RD/RAs thus freeing CERCLA Fund monies for other sites. In addition, because deferral candidates would remain on the proposed NPL until a final consent decree is entered, EPA can proceed rapidly to final listing and site remediation using the Fund in the event the PRPs do not agree to implement the selected remedy. This option would also ensure that EPA has substantial input into, and control over, the PRP-conducted RI/FS or RD/RA, since both efforts would be completed under the terms of enforceable agreements under CERCLA, and with EPA oversight.

The process contemplated in this option would allow a PRP to avoid listing on the final NPL by agreeing to undertake a remedial response pursuant to an enforceable agreement under CERCLA. In addition, in contrast to the first option (defer prior to proposal), the PRPs are entering into agreements in a stepwise fashion and are not committing to final site remediation until the remedial options have been fully explored if necessary.

If the PRP does not consent to implement the remedy identified as a result of the RI/FS, Federal funds could not be spent for the remedial action until the site was listed as final on the NPL. However, additional planning or removal actions under section 104 could take place if necessary.

A variation on this option would be that, rather than proposing the site for listing on the NPL, the site would be included on a special list pending the PRPs entering into a consent decree. This variation presents a greater risk of delay in remedial action because if the PRP fails to sign a consent decree for cleanup, the site must be first placed on the proposed NPL, comment taken on HRS scoring, and then placed on the final list. Additionally, because sites would not be listed or proposed for listing on the NPL under this option, TAGs would not be available and ATSDR health assessments would not be required, and the possibility of mixed funding settlements for remedial actions at such sites would be precluded (see State deferral discussion).

EPA will consider comments on the current policy and the two options for deferral to enforcement authorities. If EPA determines that it is appropriate to revise the current policy of not deferring to PRPs entering into enforcement agreements, EPA may adopt one of the options described above or a combination of both.

7. Deletion of proposed and final sites based upon deferral to other authorities. In today's notice, EPA is requesting comment on deferring the placement of sites on the NPL when Federal or State authorities are available to address contamination at the site, as well as deferring sites where the PRPs have signed enforceable CERCLA consent orders for remedial action. EPA is also considering whether this policy should be applied to sites on the final NPL, i.e., whether final NPL sites should be deleted if they are being addressed by another authority or under a CERCLA consent order. On August 9, 1988 (53 FR 30005), EPA announced that it would not systematically apply the RCRA deferral policy in certain limited circumstances. As with the general deferral policies discussed in today's notice, the deletion of final sites would tend to free CERCLA's resources for use in situations where another authority is not available, and thus may help maximize the overall number of response actions.

As stated with respect to the RCRA deferral policy, EPA does not believe it is appropriate to systematically review the final sites already on the NPL to see whether any are being addressed, or may be addressed, under another statute or under a CERCLA consent order. It is EPA's opinion that such a review would be time consuming, thereby detracting from the more important work of the CERCLA program, and could disrupt work at sites where CERCLA actions have already begun. However, in certain limited circumstances, EPA believes that it may be appropriate to remove a site from the final NPL before a cleanup is complete if EPA is satisfied that the site is being or will be addressed under another statute or authority.

EPA believes that it is appropriate to apply different and more stringent criteria in actions to delete based on deferral to other authorities for sites that are on the final NPL, as compared to sites that are merely candidates for deferral prior to NPL listing. For final NPL sites, EPA has completed its listing process, identified the site as a potential problem requiring further attention, and has often commenced CERCLA actions. In addition, the listing itself has created public anticipation of a response under CERCLA. Thus, EPA and the public have a significant interest in seeing that these sites are addressed. EPA does not believe that applying different criteria to final sites that may be deleted will cause any significant prejudice to any party; as EPA has stated repeatedly in the past, inclusion on the NPL does not determine the liability of any party for the cost of any response actions that may be taken at a site (48 FR 40659, September 8, 1983).

Therefore, EPA is considering applying this policy on a case-by-case basis in the following limited circumstances. A site may be an acceptable candidate for deletion based upon deferral to another authority where EPA is presented with evidence that:

i. A site on the NPL is currently being addressed by another regulatory authority under an enforceable order or permit requiring corrective action or the PRPs have entered into a CERCLA consent order to perform the RD/RA;

ii. Response is progressing adequately;

iii. Deletion would not otherwise disrupt an on-going CERCLA response action; and

iv. All criteria for deferral to that authority have been met (i.e., the requesting party must meet all conditions for deferral to that authority in addition to the three specific criteria set out above for deletion based upon deferral).

EPA would generally consider it to be a disruption of a CERCLA remedial action to defer a final NPL site in situations where funds and/or personnel have been committed for further action such as an RI/FS, remedial design or remedial construction activity.

To date, sites have been deleted from NPL only "where no further response is appropriate," such as where remedial actions have been completed either by the PRPs or through Fund-financed response, or where no remedial measures have been deemed necessary (current NCP § 300.66(c)(7), reproposed today as § 300.420(e)(1)). In order to delete sites for deferral, it may be necessary to adopt additional deletion criteria or to reinterpret the existing criteria to apply to instances where another authority is addressing the site, and thus, no further response is appropriate under CERCLA (or, alternatively, that no further response is necessary using CERCLA funds). As with any deletion, a deletion based upon a decision to defer would be entered only after a notice of intent to delete (and defer) is filed in the **Federal Register** and comment is taken. If EPA later determines that CERCLA remedial action is necessary at the site, the site would remain eligible for CERCLA Fund-financed remedial action and relisting on the NPL without the

requirement to reapply the HRS (current NCP § 300.66(c)(8), reproposed today as § 300.420(e)(2)).

EPA requests comment on the policy of deleting final sites based upon deferral to other authorities, and on the criteria that should be applied in reviewing petitions for such deletions.

8. *Effective date of policy.* No deferral policy being considered today will be implemented until public comments have been considered. EPA intends to keep the current deferral policies (e.g., RCRA and Nuclear Regulatory Commission) in effect while such comments are being reviewed.

Section 300.430 Remedial Investigation/Feasibility Study (RI/FS) and Selection of Remedy.

Today EPA is proposing major revisions to Subpart E to incorporate the new requirements of the 1986 CERCLA reauthorization amendments into existing procedures, and to reflect program management principles EPA intends to follow in order to promote the efficiency and effectiveness of the remedial response process. Chief among these principles is a bias for action.

The 1986 CERCLA amendments include a number of requirements related to the remedial alternatives development and remedy selection process. Section 121 of the statute retains the original CERCLA mandates to select remedies that are protective of human health and the environment and that are cost-effective. In addition, today's proposed revisions address the new statutory requirements for remedial actions to attain the applicable or relevant and appropriate requirements of other Federal and State environmental laws, the mandate to utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable, and the preference for remedies that employ treatment that permanently and significantly reduces the toxicity, mobility, or volume of hazardous substances, pollutants, or contaminants as their principal element over those that do not.

The overarching mandate of the Superfund program is to protect human health and the environment from the current and potential threats posed by uncontrolled hazardous waste sites. This mandate applies to all remedial actions and cannot be waived. The mandate for remedies that protect human health and the environment can be fulfilled through a variety of means, including the destruction, detoxification, or immobilization of contaminants through the application of treatment technologies, and by controlling exposure to contaminants through engineering controls (such as containment) and/or institutional controls which prevent access to contaminated areas.

The CERCLA amendments emphasize achieving protection that will endure over long periods of time by mandating the use of permanent solutions to the maximum extent practicable and by specifying long-term effectiveness factors that must be assessed under section 121(b)(1) (A–G). The amendments also express a clear preference for achieving this protection through the use of treatment technologies as the principal element of remedies. These provisions reflect the belief that treatment that destroys or reduces the hazardous properties of contaminants (e.g., toxicity or mobility) frequently will be required to achieve solutions that afford a high degree of permanence. The highest degrees of permanence are clearly afforded by remedies that are not heavily reliant on long-term operation and maintenance following the completion of an implemented action.

In addition to these new mandates, the amended CERCLA retained the mandate for selecting remedies that are cost-effective. Although cost-effectiveness cannot be used to select a nonprotective remedy, this mandate does require EPA to evaluate closely the costs required to implement and maintain a remedy and to select protective remedies whose costs are proportionate to their overall effectiveness. This mandate establishes efficient use of resources as a standard for Superfund remedial actions and reflects Congress' intent to maximize the use of the Fund across a large number of sites. EPA intends to focus available resources on selection of protective remedies that provide reliable, effective response over the long-term.

This combination of mandates (i.e., remedies that provide permanent solutions to the maximum extent practicable, the preference for treatment as a principal element, and cost-effectiveness) creates dynamic tensions for the Superfund program. In today's proposal EPA extends some of the fundamental features of the current NCP in proposing to resolve these competing goals through a process that examines the characteristics of sites and alternative approaches for remediating the problems those sites pose. This process evaluates alternative hazardous waste management strategies using nine criteria related to CERCLA's mandates to determine advantages and disadvantages of the various remedial action alternatives. This analysis identifies site-specific trade-offs between options, and facilitates the risk management decision which is the fundamental nature of remedy selection decisions at CERCLA sites. In balancing trade-offs among options and selecting the protective alternative which seems to offer the best combination of attributes in terms of the nine criteria and is thus most appropriate for a given site, EPA is exercising the discretion granted by CERCLA to determine the maximum extent to which permanent solutions and treatment or resource recovery technologies can be practicably utilized in a cost-effective manner.

EPA believes that the solutions that are most appropriate for a given site will vary depending on the size, complexity, and location of the site, the magnitude of the threats posed, the timing of the availability of suitable treatment technologies, and the proximity of human and environmental receptors, among other factors. While the CERCLA amendments strongly encourage the use of treatment technologies in CERCLA remedial actions, they allow for discretion in dealing with site circumstances and technological, economic, and implementation constraints that place practical limitations on the use of treatment technologies. Treatment is most likely to be practicable for wastes that cannot be reliably controlled in place, such as liquids, highly mobile materials (e.g., solvents), and high concentrations of toxic compounds (e.g., several orders of magnitude above levels that allow for unrestricted use and unlimited exposure). Treatment is less likely to be practicable where sites have large volumes of low concentrated material, or where the waste is very difficult to handle and treat (e.g., mixed waste of widely varying composition). Specific situations that may limit the use of treatment could include sites where: (1) Treatment technologies are not technically feasible or are not available within a reasonable timeframe; (2) the extraordinary size or complexity of a site makes implementation of treatment technologies impracticable; (3) implementation of a treatment-based remedy would result in greater overall risk to human health and the environment due to risks posed to workers or the surrounding community during implementation; or (4) severe effects across environmental media resulting from implementation would occur. In addition, there are CERCLA sites or portions of sites where the concentrations of the wastes are at low

levels or are substantially immobile, and where the wastes can be reliably contained over a long period of time through the use of engineering controls. In these situations, treatment may not always offer a sufficient degree of increased permanence and long-term protection to be cost-effective.

CERCLA sites are frequently complex and involve a number of different problems. EPA believes that it often will be the case that the most appropriate solution for a site will involve a combination of methods of achieving protection of human health and the environment. Most frequently, EPA expects that treatment of the principal threats posed by a site, with priority placed on treating highly toxic, highly mobile waste, will be combined with engineering controls (such as containment) for treatment residuals and untreated waste.

As appropriate, institutional controls such as water use and deed restrictions may supplement engineering controls for short- and long-term management to prevent, or limit exposure, to hazardous substances, pollutants, or contaminants. Institutional controls will be used routinely to prevent exposures to releases during the conduct of a remedial investigation and feasibility study, during remedial action implementation, and as a supplement to engineering controls designed to manage wastes over time. The use of institutional controls to restrict use or access should not, however, substitute for active response measures (e.g., treatment and/or containment of source material, restoration of ground waters to their beneficial uses) as the sole remedy unless such active measures are determined not to be practicable, based on the balancing of trade-offs among alternatives that is conducted during the selection of remedy. These trade-offs, based on the nine criteria, are identified during the analysis of alternatives.

EPA recognizes that the approach presented in today's proposed rule is not the only approach possible for resolving the competing goals and requirements of the Superfund program. Therefore, later in this preamble EPA presents four alternative approaches. Two of those alternatives are site-specific balancing approaches that, while similar to the one proposed in today's rule, differ primarily in terms of how they organize the evaluation criteria, and how they incorporate the statutory requirements to select remedies that are cost-effective and that use permanent solutions and treatment technologies to the maximum extent practicable. The two additional alternatives presented later represent different approaches to remedy selection, based on different views of the goals and purposes of the Superfund program. EPA solicits comments on these four alternative approaches as well as the approach presented in today's proposed rule.

A. Program Management Principles

Today's proposal also includes revisions to the 1985 NCP that are not mandated by CERCLA. These revisions reflect principles by which EPA intends to manage the Superfund remedial program. These principles stem from experience gained over the first eight years of the program. In managing CERCLA sites, EPA must balance the goal of definitively characterizing site risks and analyzing alternative remedial approaches for addressing those threats in great detail, and the desire to implement protective measures quickly. EPA intends to balance these goals with a bias for initiating response actions necessary or appropriate to eliminate, reduce, or control hazards posed by a site, as early as possible. EPA will promote the responsiveness and efficiency of the Superfund program by encouraging action prior to or concurrent with conduct of an RI/FS as information is sufficient to support remedy selection. While the bias for action promotes multiple actions of limited scale, the program's ultimate goal continues to be to implement final remedies at sites.

Early action may be taken at a site via enforcement or Fund-financed activities taken under removal or remedial authorities. In deciding between using removal and remedial authorities, the lead agency should consider: (i) The criteria and requirements for taking removal actions in § 300.415 of today's proposed rule; (ii) the statutory limitations on removal actions and the criteria for waiving those limitations; (iii) the availability of resources; and the (iv) urgency of the site problem. Specific actions that may be taken under removal authorities include emergency action, non-time-critical removals, and expedited response actions. A discussion of these activities is included in the § 300.415 preamble section. Early actions using remedial authorities are initiated as operable units.

The Superfund program has long permitted remedial actions to be staged through multiple operable units. Operable units are discrete actions that comprise incremental steps toward the final remedy. Operable units may be actions that completely address a geographical portion of a site or a specific site problem (e.g., drums and tanks, contaminated ground water) or the entire site. Operable units include interim actions (e.g., pumping and treating of ground water to retard plume migration) that must be followed by subsequent actions which fully address the scope of the problem (e.g., final ground water operable unit that defines the remediation level and restoration timeframe). Such operable units may be taken in response to a pressing problem that will worsen if unaddressed, or because there is an opportunity to undertake a limited action that will achieve significant risk reduction quickly.

The appropriateness of dividing remedial actions into operable units is determined by considering the interrelationship of site problems and the need or desire to initiate actions quickly. To the degree that site problems are interrelated (e.g., contaminated soils and ground water), it may be most appropriate to address the problems together. However, where problems are reasonably severable, phased responses implemented through a sequence of operable units may promote more rapid risk reduction.

Related to the bias for action is the principle of streamlining, which EPA intends to emphasize in managing the Superfund program as a whole and in conducting individual remedial action projects. On a project-specific basis, recommendations to ensure that the RI/FS and remedy selection process is conducted as effectively and efficiently as possible include:

a. Focusing the remedial analysis to collect only additional data needed to develop and evaluate alternatives and to support design;

b. Focusing the alternative development and screening step to identify an appropriate number of potentially effective and implementable alternatives to be analyzed in detail. Typically, a limited number of alternatives will be evaluated that are focused to the scope of the response action planned;

c. Tailoring the level of detail of the analysis of the nine evaluation criteria (see below) to the scope and complexity of the action. The analysis for an operable unit may well be less rigorous than that for a comprehensive remedial action designed to address all site problems;

d. Tailoring selection and documentation of the remedy based on the limited scope or complexity of the site problem and remedy. In particular, operable units initiating interim remedies may require less complex justifications because they are limited actions that will only require minimum

documentation of statutory findings based on the presumption that additional response will further address the site problem;

e. Accelerating contracting procedures and collecting samples necessary for remedial design during the public comment period.

Although the level of effort and extent of analysis required for an RI/FS will vary on a site-specific basis, the procedural steps needed for remedy selection do not. These steps, however, may be less extensive depending on the complexity and scope of the problem being addressed. Regardless of the level of effort and analysis on a specific RI/FS, the lead agency is responsible for ensuring that all procedural requirements are met, including support agency participation, soliciting public comment, developing an administrative record, and preparing a record of decision.

Circumstances that may be particularly conducive to a more streamlined analysis during an RI/FS include:

(1) Site problems are straightforward such that it would be inappropriate to develop a full range of alternatives. For example, site problems may only involve a single group of chemicals that can only be addressed in a limited number of ways, or site characteristics (e.g., fractured bedrock) are such that available options are limited. To the extent that obvious, straightforward problems exist, they may create opportunities to take actions quickly that will afford significant risk reduction;

(2) The need for prompt action to bring the site under initial control outweighs the need to examine all potentially appropriate alternatives;

(3) ARARs, guidance, or program precedent indicate a limited range of appropriate response alternatives (e.g., PCB standards for contaminated soils, Superfund Drum and Tank Guidance, BDAT requirements);

(4) Many alternatives are clearly impracticable for a site from the outset due to severe implementability problems or prohibitive costs (e.g., complete treatment of an entire large municipal landfill) and need not be studied in detail; and

(5) No further action or extremely limited action will be required to ensure protection of human health and the environment over time. This situation will most often occur where a removal measure previously has been taken.

The bias for action and principles of streamlining are considered throughout the life of a remedial project but begin to be evaluated as site management planning is initiated. Site management planning is a dynamic, ongoing, and informal strategic planning effort that generally starts as soon as sites are proposed for inclusion on the NPL and continues through the RI/FS and remedy selection process, remedial design and remedial action phases, to deletion from the NPL. This strategic planning activity is the means by which the lead and support agencies determine the types of actions and/or analyses necessary or appropriate at a given site and the optimal timing of those actions. At the RI/FS stage, this effort involves review of existing site information, consideration of current and potential risks the site poses to human health and the environment, an assessment of future data needs, understanding of inherent uncertainties in the process, priorities among site problems and the program as a whole, and prior program experience. The focus is on taking action at the site as early as site data and information make it possible to do so.

B. Major Revisions to the RI/FS and Selection of Remedy Process

The RI/FS process proposed today incorporates statutory requirements, reflects the program management principles of the bias for action, streamlining, and site management planning, and builds on the engineering and analytical steps established in the current NCP. The RI/FS remedy selection process is portrayed in the following specific steps: (1) Project scoping which includes developing workplans; (2) a remedial investigation that typically includes gathering basic site data for site characterization and the baseline risk assessment, and conducting treatability studies; (3) a feasibility study, which includes the development of alternatives, a screening step, as necessary, and a detailed analysis of the alternatives; (4) remedy selection; and (5) documentation. As presented in today's proposal, these steps appear highly articulated and distinct. In practice, the steps are usually highly interactive. The RI/FS process should be tailored to match the scope and nature of the site problems.

The steps in the process are intended to ensure that remedial alternatives are formulated to be protective of human health and the environment and designed to meet the applicable or relevant and appropriate requirements of other Federal and State environmental laws. Judgments as to the cost-effectiveness of the alternatives and the extent to which permanent solutions and treatment or resource recovery technologies can be practicably utilized at a given site are made in the remedy selection process, as trade-offs between protective alternatives are balanced.

1. *Project scoping.* The purpose of scoping is to define more specifically the appropriate type and extent of investigative and analytical studies that should be undertaken for a given site. Scoping is distinct from site management planning in that it entails formal planning for both the remedial investigation and feasibility study. Scoping has been separated from the remedial investigation section to which it is attached under the current NCP simply to highlight the workplan development process and the development of other project plans such as the sampling and analysis plan (SAP), the health and safety plan (HSP), and the community relations plan (CRP).

During scoping, to assist in evaluating the possible impacts of releases from the site on human health and the environment, a conceptual understanding of the site should be established considering in a qualitative manner the sources of contamination, potential pathways of exposure, and potential receptors. This preliminary characterization is initially developed with readily available information and is refined as additional data are collected. A site-specific baseline risk assessment with additional qualitative and/or quantitative aspects will be performed during the RI to build on this conceptual understanding by characterizing further the type and magnitude of potential risks. The identification of potential ARARs and other criteria, advisories and guidance to be considered (TBCs) will begin during scoping as lead and support agencies initiate a dialogue on potential requirements during planning meetings or discussions that occur between agencies. Under CERCLA section 121(d)(2)(A)(ii), State requirements must be identified in a timely manner in order to be considered ARARs. Sections 300.430 (d) and (e) and 300.510(d) in today's proposed rule describe the process for identification of ARARs by the lead and support agencies.

The main objectives of scoping are to identify the types of decisions that need to be made, to determine the types (including quantity and quality) of data needed, and to design efficient studies to collect these data. The scope and detail of the investigative studies and alternative development and analysis should be tailored to the complexity of site problems. This will require a consideration of how the phases of the remedial process could most appropriately be conducted and the

level of effort and analysis required for each phase. The greatest opportunities to streamline the analysis generally will occur when the scope of the study and remedial action are limited to a small part of the site, or when the threats are clearly defined and technical solutions are straightforward.

2. *Remedial investigation (RI).* The RI includes: (i) The collection of data identified during project scoping as necessary to characterize the site and evaluate remedial alternatives; (ii) the characterization of current and potential risks through a baseline risk assessment; and (iii) treatability studies, as appropriate. Today's proposed revisions emphasize that the program management principle of streamlining will be applied to determinations of what is necessary to adequately characterize a site. Site-specific judgments are required to determine how much additional information is necessary to support decisions, taking into consideration the added time and costs of collecting and analyzing the data.

During site characterization, site-specific data are collected and assessed to determine what, if any, types of response actions are warranted. In light of CERCLA's mandate to assess permanent solutions, alternative treatment technologies, and resource recovery technologies, EPA is proposing to collect, as appropriate, data about treatment technologies, such as characteristics of the waste or the site that affect the types of treatment possible and the effectiveness of treatment approaches, the extent to which substances on-site may be reused or recycled, and the potential for future releases if any substances or treatment residuals remain on-site. The RI may also include treatability studies that are needed to better evaluate potential technologies.

Once the contaminants of concern at a site have been identified, the baseline risk assessment is initiated to determine whether the site poses a current or potential risk to human health and the environment in the absence of any remedial action. It provides the basis for determining whether or not remedial action is necessary and the justification for performing remedial actions. The Superfund baseline risk assessment process may be viewed as consisting of an exposure assessment component and a toxicity assessment component, the results of which are combined to develop an overall characterization of risk. As indicated above, these assessments are site-specific and therefore may vary in both detail and the extent to which qualitative and quantitative analyses are utilized, depending on the complexity and particular circumstances of the site, as well as the availability of pertinent ARARs and other criteria, advisories, and guidance.

An exposure assessment is conducted to identify the magnitude of actual or potential human or environmental exposures, the frequency and duration of these exposures, and the routes by which receptors are exposed. This assessment involves developing for each site a current exposure scenario as well as a reasonable maximum exposure scenario. The current exposure analysis is used to determine whether a health or environmental threat exists based on existing site conditions. The reasonable maximum exposure scenario is used to provide decisionmakers with an understanding of potential future exposures and should include an assessment of the likelihood of such exposures occurring. This exposure scenario will provide the basis for the development of protective exposure levels.

The toxicity assessment component of Superfund risk assessment considers: (a) The types of adverse health or environmental effects associated with chemical exposures; (b) the relationship between magnitude of exposures and adverse effects; and (c) related uncertainties such as the weight of evidence for a particular chemical's carcinogenicity in humans. Typically, the Superfund risk assessment process relies heavily on existing toxicity information or profiles developed on specific chemicals. These are generally estimated carcinogen exposures that may be associated with specific lifetime cancer risk probabilities (risk-specific doses or RsDs), and noncarcinogen exposures that are not likely to present appreciable risk of significant adverse effects to humans (including sensitive subgroups) over lifetime exposures (reference doses or RfDs).

During risk characterization, chemical-specific toxicity information is compared both against measured contaminant exposure levels and those levels predicted through fate and transport modeling to determine whether levels at or near the site are of potential concern. Results of this analysis are presented with all critical assumptions and uncertainties so that significant risks can be readily identified.

3. *Feasibility study (FS).* The purpose of the FS is to provide the decisionmaker with an assessment of alternatives, including their relative strengths and weaknesses, and the trade-offs in selecting one alternative over another. The FS process involves developing a reasonable range of viable remedial alternatives and analyzing these alternatives in detail using nine evaluation criteria. Because the RI and FS are conducted concurrently, this is an interactive process in which potential alternatives and remediation goals are continually refined as additional information from the RI becomes available.

i. *Establishing protective remedial action objectives.* The first step in the FS process involves developing remedial action objectives for protecting human health and the environment which should specify contaminants and media of concern, potential exposure pathways, and preliminary remediation goals. The preliminary remediation goals, by establishing initially acceptable contaminant levels for each exposure route, assist in setting parameters for the purpose of evaluating technologies and developing remedial alternatives. Because these preliminary remediation goals typically are formulated during project scoping or concurrent with initial RI activities (i.e., prior to completion of the baseline risk assessment), they are initially based on readily available environmental or health-based ARARs (e.g., MCLs, WQC) and other criteria, advisories, or guidance (e.g., RfDs). As new information and data are collected during the RI, including the baseline risk assessment, and as additional ARARs are identified during the RI, these preliminary remediation goals may be modified as appropriate to ensure that remedies comply with CERCLA's mandate to be protective of human health and the environment and comply with ARARs.

During the development and analysis of alternatives, the risks associated with potential alternatives, both during implementation and following completion of remedial action, are assessed, based on the reasonable maximum exposure scenario and any other controls necessary to ensure that exposure levels are protective and can be attained. These are generally assessed for each exposure route unless there are multiple exposure routes where combined effects may have to be considered. For noncarcinogenic chemicals, EPA has concluded that protection is achieved when exposures are such that no appreciable risk of significant adverse effects to individuals over a lifetime of exposure exist. For carcinogens, EPA uses health-based ARARs to set remediation goals when

they are available. When an ARAR does not exist, EPA guidance has been to select remedies resulting in cumulative risks that fall within a range of 10^{-4} to 10^{-7} individual lifetime excess cancer risk. EPA is willing to continue using this range in the future as it provides flexibility in developing protective remedies suitable to site-specific conditions. However, EPA is interested in receiving comment on a risk range of 10^{-4} to 10^{-6} since this risk range is used in certain other EPA programs.

The risk range is important because it is a standard used by EPA to comply with CERCLA's mandate to protect human health. Furthermore, the choice of risk range will continue to be important as the Superfund program matures and as related science and policy evolve.

EPA, therefore, solicits comment on two potential risk ranges in particular—the current 10^{-4} to 10^{-7} range and an alternative 10^{-4} to 10^{-6} range—and on issues related to these or alternative risk ranges. Commenters are requested to provide as much supporting information as practical for any alternatives suggested. Issues that commenters may want to consider include the following:

(1) The potential impact of improvements in the understanding of cancer risk assessment, including biological mechanisms, interpretation of data, measures of exposure, etc.

(2) The ability of available analytical methods to measure chemical substances at concentrations associated with low levels of risk.

(3) Possible advantages or disadvantages of a narrower or broader risk range, or of a single risk value.

(4) The desirability of using a risk range for cleanup at these sites to protect current and potential sources of drinking water that is more stringent than the 10^{-4} to 10^{-6} range that characterizes drinking water standards and that is more stringent than what is considered de minimis risk under other programs.

(5) The ability of treatment technologies to achieve cleanups at specified levels of risk. This may include technologies that are unable to achieve removal of contaminants to very low levels, as well as other technologies that can only achieve low levels of risk.

(6) Whether available funds should be used to attain very low levels of risk at a limited number of sites, or to achieve cleanup at more sites (at somewhat higher levels of risk for some sites) with a greater reduction in overall risk.

(7) The effect of achieving particular risk levels on the time needed to complete the remedial action and the extent to which this should be considered when selecting remedies.

(8) The relationship between EPA's risk range and those used in State Superfund programs, including the impact of EPA's range on the development of State programs.

(9) The evolving issue of public perception of relative risks in our society.

Commenters are invited to address these and other issues related to either the Superfund program's risk range or alternatives that they may suggest.

In general, chemical-specific ARARs are set for a single chemical or closely related group of chemicals. These requirements typically do not consider the mixtures of chemicals and other conditions (e.g., multiple pathways of exposure) that may be found at CERCLA sites. Therefore, due to site-specific factors, remediation goals set at the level of single chemical-specific requirements may not adequately protect human health or the environment at that site. In these instances, remediation goals may be set below the chemical-specific requirements (i.e., at more stringent levels) in order to obtain a remedy that is protective. Remedies resulting in cumulative risks that fall within the generally acceptable risk range for carcinogens (10^{-4} to 10^{-7}) or meet acceptable levels for noncarcinogens are said to be protective of human health.

Superfund remedies will also be protective of environmental organisms and ecosystems. However, "protectiveness" in this context is often considerably less quantitative.

During selection of remedy, the final remediation goals, and resulting exposure levels, will be determined by balancing the major trade-offs among protective, ARAR-compliant alternatives, using specified evaluation criteria (see sections 3.iii. and 4., below).

During the FS, pertinent factors for modifying the remediation goals within the acceptable risk range can be divided into three broad categories: (a) Exposure factors, (b) uncertainty factors, and (c) technical factors. Included under exposure factors are: the cumulative effect of multiple contaminants, the potential for human exposure from other pathways at the site, population sensitivities, potential impacts on environmental receptors, and cross media impacts of alternatives. Factors related to uncertainty may include: the reliability of alternatives, the weight of scientific evidence, and the reliability of exposure data. Technical factors may include: detection/quantification limits for contaminants, technical limitations to restoration, the ability to monitor and control movement of contaminants, and background levels of contaminants.

Remediation levels should be set for appropriate environmental media, and performance standards established for selected engineering controls and treatment systems including controls implemented during the response measure. For ground water, remediation levels should generally be attained throughout the contaminated plume, or at and beyond the edge of the waste management area when waste is left in place. For air, the selected levels should be established for the maximum exposed individual, considering reasonably expected use of the site and surrounding area. For surface waters, the selected levels should be attained at the point or points where the release enters the surface waters.

ii. *Development and screening of alternatives.* Once remedial action objectives have been developed, general response actions, such as treatment, containment, excavation, pumping, or other actions that may be taken to satisfy those objectives should be established. Technologies potentially applicable to each general response action are then identified, briefly evaluated to verify their suitability, and assembled into remedial alternatives. In the event a large number of alternatives are developed, a screening step may be conducted.

For most sites, the initial range of alternatives should represent distinct, promising alternative approaches to managing the site problems. The major change in this step from the current NCP is the organizing scale along which the alternatives are to be arrayed.

The current NCP requires alternatives to be developed, as appropriate, from the following categories: (a) An off-site alternative; (b) an alternative that attains ARARs; (c) an alternative that exceeds ARARs; (d) an alternative that does not attain ARARs; and (e) a no-action alternative. These categories tested on the implicit assumption that alternatives would share the same potential ARARs and that the ability to meet or exceed those requirements corresponded to different levels of protection. Program experience has shown that while alternatives will usually share chemical- and location-specific ARARs, each will have a unique set of action-specific requirements. Additionally, it is now clear that ARARs do not by themselves necessarily define protectiveness. First, ARARs do not exist for every contaminant, location, or waste management activity that may be encountered or undertaken at a CERCLA site. Furthermore, in those

circumstances where multiple contaminants are present, the cumulative risks posed by the potential additivity of the constituents may require cleanup levels for individual contaminants to be more stringent than ARARs to ensure protectiveness at the site. Finally, determining whether a remedy is protective of human health and the environment also requires consideration of the acceptability of any short-term or cross-media impacts that may be posed during implementation of a remedial action.

In light of these determinations and in response to the new statutory emphasis on utilizing permanent solutions and treatment technologies to the maximum extent practicable, EPA is proposing a major change in the range of alternatives required to be developed.

The initial range of alternatives should represent distinct, promising alternative approaches to managing the site problems. In light of the statutory preference for treatment remedies, this range typically will include alternatives that feature, as a principal element, treatment that reduces the toxicity, mobility, or volume of the hazardous substances at the site. Typically, treatment alternatives range from remedies that treat the principal threats at the site, to remedies that completely destroy, detoxify, or immobilize the hazardous substances and leave materials that require no long-term management. Principal threats will be defined on a site-specific basis and may include a discrete areas of the site that consists of highly toxic and/or highly mobile waste (e.g., a lagoon filled with highly concentrated organic contaminants and surrounded by slightly contaminated soils), or a single environmental medium (e.g., highly contaminated ground water).

In developing alternatives, the lead agency should consider whether the prospective remedy should be developed as an on-site alternative, an off-site alternative, or both. While CERCLA clearly states that off-site disposal without treatment is the least preferred alternative, it does not express any preference for or bias against off-site disposal with treatment. In evaluating off-site actions, however, EPA's requirements related to the off-site transfer of CERCLA wastes must be taken into account.

In addition to treatment alternatives, the lead agency should develop, as appropriate, alternatives that control the threats posed by hazardous substances and/or prevent exposure, such as containment technologies and institutional controls. Containment options typically provide a baseline for comparison with other actions and provide alternatives in case the lead agency concludes that remedies featuring treatment are not practicable.

A no-action alternative will always be developed, although analysis of this option frequently will be more limited than for other alternatives unless information suggests that indeed no action is necessary. In the remedial context, this option is often "no further action," since removals or enforcement actions frequently will have taken place prior to the FS or maintenance activities may be ongoing. The no-action alternative involves leaving the site essentially as it is. Analyzing the no-action alternative provides another useful baseline for evaluating the costs of and protection provided by the other alternatives being considered.

The statutory preference for treatment must be considered in developing a reasonable number of options that have real potential for addressing site problems. The appropriate number of alternatives to be developed will vary by site depending on the nature of the site and the risks posed by the contaminants. For example, while treatment technologies encompass a range of options, there might be only one viable technology that can be applied to the hazardous substances at a particular site. Thus, the variation within the treatment range might involve only the amount of waste treated, or the levels to which the contaminants are reduced by the single technology. In other instances, such as large municipal landfills or mining waste sites, comprehensive treatment options are less likely to be practicable, and therefore the universe of viable alternatives might be reduced to a limited number of remedies involving treatment of the principal threats, engineering controls, institutional controls, or combinations of those approaches.

For an operable unit that does not constitute the complete response action for the site or a particular site problem, it may not be necessary or appropriate to develop the full array of alternatives discussed above. In the event the risk assessment indicates no action is required, few, if any, alternatives will be developed. In summary, a lengthy list of remedial alternatives is not required to fulfill the purpose of this phase of the CERCLA process. The number and type of remedial alternatives should be tailored to fit the site problems being addressed and established remedial action objectives.

CERCLA grants EPA flexibility to examine and select technologies that have not yet been proven in practice, in order to address certain types of sites and to promote the development of new methods of treatment of hazardous substances. Therefore, EPA today proposes that innovative technologies be carried through to the detailed analysis, if there is a reasonable belief that those technologies will offer significant advantages over other options being considered (e.g., better performance or implementability, fewer or lesser adverse impacts, or lower costs).

A screening step may be conducted in those situations where a wide array of alternatives are available in order to reduce the number of alternatives that will be analyzed in detail. Although the screening will reduce the number of alternatives being considered, a range of choices should be preserved. Screening will not be necessary where only a few choices have emerged from the development of alternatives phase. When the screening step is conducted, the most promising subset of alternatives that are suitable to the site in question should be identified through a preliminary evaluation of the relative effectiveness, implementability, and cost of the alternatives. The effectiveness of the alternatives relates to their overall performance in eliminating, reducing, or controlling the current and potential risks posed by the site, both during implementation and over time. The implementability of the alternatives involves the degree of difficulty associated with their actual construction, including technical, administrative, and logistical problems that affect the time necessary to complete the remedy. Cost considerations include construction costs and the costs of operating and maintaining the remedy over time.

Data at this stage in the remedial process may be incomplete due to ongoing field investigations and treatability studies, but they should be sufficient to assess the major relative strengths and weaknesses of the alternatives. The primary focus during screening is on identifying those alternatives that are clearly ineffective or unimplementable, or that are clearly inferior to other alternatives being considered in terms of their effectiveness, implementability, or cost.

Cost generally will not be the sole reason for eliminating an alternative from further consideration at the screening phase. The primary function of cost at this point in the process is to help identify alternatives that provide levels of effectiveness similar to those of other options being considered, but at substantially higher cost. Cost can also be considered in conjunction with other

factors to determine whether or not an option is likely to yield results in terms of implementability and effectiveness that are in proportion to its costs, relative to other alternatives under consideration. For example, cost may be considered along with implementability factors to determine whether treatment of the principal threats posed by a large municipal landfill would be cost-effective and practicable, relative to other remedial options.

When utilized, the screening step provides another opportunity to tailor the remaining analysis to the identified site problems, ensuring that the number and the types of alternatives carried forward matches the nature and complexity of the site problems.

The lead agency should coordinate with the support agency when developing and/or screening alternatives. The lead agency and support agency should begin to identify action-specific ARARs and TBCs for alternatives that remain for the detailed analysis.

iii. *Detailed analysis.* The purpose of the detailed analysis is to objectively assess the alternatives with respect to nine evaluation criteria that encompass statutory requirements and include other gauges of the overall feasibility and acceptability of remedial alternatives. This analysis is comprised of an individual assessment of the alternatives against each criterion and a comparative analysis designed to determine the relative performance of the alternatives and identify major trade-offs (i.e., relative advantages and disadvantages) between them. This analysis should focus on those subfactors under each criterion that are most pertinent to the circumstances of the site and the scope of the action. Information gathered during this analysis will be used by the decisionmaker to select a remedial action.

These nine criteria can be categorized into three groups, each with distinct functions in selecting the remedy. During the selection process, the decisionmaker will consider these criteria as follows. Overall protection of human health and the environment and compliance with applicable or relevant and appropriate requirements (or invoking a waiver) are threshold criteria that must be satisfied in order for an alternative to be eligible for selection. Long-term effectiveness and permanence, reduction of toxicity, mobility, or volume, short-term effectiveness, implementability, and cost are the primary balancing factors used to weigh major trade-offs between alternative hazardous waste management strategies. State and community acceptance are modifying considerations that are formally taken into account after public comment is received on the proposed plan and RI/FS report.

Threshold Criteria

(1) *Overall protection of human health and the environment.* Protectiveness is the primary requirement that CERCLA remedial actions must meet. A remedy is protective if it adequately eliminates, reduces, or controls all current and potential risks posed through each pathway by the site. A site where, after the remedy is implemented, hazardous substances remain without engineering or institutional controls, must allow for unrestricted use and unlimited exposure for human and environmental receptors. For those sites where hazardous substances remain such that unrestricted use and unlimited exposure is not allowable, engineering controls, institutional controls, or some combination of the two must be implemented to control exposure and thereby ensure reliable protection over time. In addition, implementation of a remedy cannot result in unacceptable short-term risks to, or cross-media impacts on, human health and the environment.

(2) *Compliance with applicable or relevant and appropriate requirements (ARARs).* Compliance with ARARs is one of the statutory requirements for remedy selection. Alternatives are developed and refined throughout the CERCLA process to ensure either that they will meet all of their respective ARARs or that there is good rationale for waiving an ARAR. During the detailed analysis, information on Federal and State action-specific ARARs will be assembled along with previously identified chemical-specific and location-specific ARARs. Alternatives will be refined to ensure compliance with these requirements, or to begin to identify waivers that might be invoked.

Primary Balancing Criteria

(3) *Long-term effectiveness and permanence.* This criterion reflects CERCLA's emphasis on implementing remedies that will ensure protection of human health and the environment into the future as well as in the near term. In evaluating alternatives for their long-term effectiveness and the degree of permanence they afford, the analysis should focus on the residual risks that will remain at the site after the completion of the remedial action. This analysis should include consideration of the following: the degree of threat posed by the hazardous substances remaining at the site; the adequacy of any controls (e.g., engineering and institutional controls) used to manage the hazardous substances remaining at the site; the reliability of those controls; and the potential impacts on human health and the environment, should the remedy fail based on assumptions included in the reasonable maximum exposure scenario. This evaluation criterion incorporates the statutory requirements to take into account the following: The uncertainties associated with land disposal; the goals, objectives, and requirements of RCRA; the persistence, toxicity, mobility, and propensity to bioaccumulate of the hazardous substances and their constituents; the long-term potential for adverse health effects from human exposure; the potential for future remedial action costs if the remedy were to fail; and the potential threat to human health and the environment associated with redisposal or containment of the hazardous substances.

(4) *Reduction of toxicity, mobility, or volume.* This criterion addresses the statutory preference for remedies that employ treatment as a principal element by ensuring that the relative performance of the different treatment alternatives in reducing toxicity, mobility, or volume will be assessed. Specifically, the analysis should examine the magnitude, significance, and irreversibility of reductions.

(5) *Short-term effectiveness.* This criterion includes the short-term impacts of the alternatives—i.e., impacts during implementation—on the neighboring community, the workers, or the surrounding environment, including the potential threats to human health and the environment associated with excavation, treatment, and transportation of hazardous substances. The potential cross media impacts of the remedy and the time to achieve protection of human health and the environment should also be analyzed.

(6) *Implementability.* Implementability considerations include the technical and administrative feasibility of the alternatives, and the availability of the goods and services (e.g., treatment, storage, or disposal capacity) on which the viability of the alternative depends. Implementability considerations often affect the timing of various remedial alternatives, e.g., limitations on the season in which the remedy can be implemented, the number and the complexity of materials-handling steps that must be followed, the need to obtain permits for off-site activities, and the need to secure

technical services such as well drilling and excavation.

(7) *Cost.* Cost encompasses all construction and operation and maintenance costs incurred over the life of the project. The focus during the detailed analysis is on the net present value of these costs. EPA intends to continue to rely on OMB Circular A–94 for determining the discount rate for Federal projects, while retaining the option provided in A–94 of using sensitivity analyses. EPA believes that the discount rate represents an important aspect of developing a realistic accounting of the future costs of remedial alternatives and an accurate comparison of the total costs, and the cost-effectiveness, of treatment and nontreatment remedies.

Modifying Criteria

(8) *State acceptance.* This criterion, which is an ongoing concern throughout the remedial process, reflects the statutory requirement to provide for substantial and meaningful State involvement. State comments may be addressed during the development of the FS, as appropriate, although formal State comments usually will not be received until after the State has reviewed the draft RI/FS and the draft proposed plan prior to the public comment period. The proposed plan that is issued for public comment along with the RI/FS report should indicate whether or not the State has commented on or concurred with EPA's preferred alternative or that State comments have not been received. The ROD should specifically address State concurrence or nonconcurrence with the response action that is selected, particularly noting State views on compliance or noncompliance with State ARARs.

(9) *Community acceptance.* This criterion refers to the community's comments, where community is broadly defined to include all interested parties, on the remedial alternatives under consideration. These comments are taken into account throughout the RI/FS process through the communications that occur as the community relations plan is implemented. Again, EPA can only preliminarily assess community acceptance during the development of the FS, since formal public comment will not be received until after the public comment period for the proposed plan and the RI/FS is held. The detailed analysis, however, may summarize preliminary comments on components of the alternatives received up to that point.

4. *Selecting remedial actions.* The selection of a CERCLA remedial action from among alternatives is a two-step process. First, the lead agency, in conjunction with the support agency, will review the results of the RI/FS to identify a preferred alternative, which will be presented to the public in a proposed plan along with the supporting information and analysis, for review and comment. Second, the lead agency, will review the public comments, consult with the support agency in order to evaluate whether the preferred alternative is still the most appropriate remedial action for the site or site problem, and make a decision.

While the decisionmaking steps, in general, are similar for all types of response actions, the information, analysis, and criteria upon which response action decisions are based will vary depending on the scope of the action and complexity of the decision.

The identification of the preferred alternative, and subsequently the remedy selection, is based on an evaluation of the major trade-offs among alternatives in terms of the evaluation criteria, focusing on specific factors most relevant to site circumstances, and the overall practicability of each alternative. The decisionmaker should first determine whether all alternatives meet the threshold criteria. Those alternatives that provide adequate protection of human health and the environment, and either comply with all of their ARARs, or provide grounds for invoking a waiver of an ARAR, satisfy the threshold criteria. Any alternative that does not satisfy both of these requirements is not eligible for selection.

The preferred alternative is then selected by determining which alternative appears to provide the best combination of attributes with respect to the five primary balancing criteria: Long-term effectiveness, short-term effectiveness, reduction in toxicity, mobility, or volume, implementability, and cost. Generally, at this point only informal and perhaps incomplete comments of the State and community are known. These two modifying criteria are typically considered after the public comment period on the proposed plan.

Total costs of each alternative should be compared to the overall effectiveness they afford and the relationship between costs and overall effectiveness across alternatives should be examined to determine which alternatives offer results proportional to their costs such that they represent a reasonable value for the money. The lead agency will choose the alternative that represents the best combination of those factors that are deemed most important to the site. In performing the balancing necessary to make that decision, the decisionmaker must weigh the preference for remedies involving treatment as a principal element.

The proposed plan will identify the alternative that appears to offer the best balance of trade-offs among alternatives in terms of the criteria, summarize the position of the State resulting from its formal comments on the RI/FS and the draft proposed plan, and state the lead agency's expectation that the preferred alternative will satisfy all statutory requirements. The proposed plan will be issued for public review and comment.

In making the final selection, the lead agency reassesses its initial determination that the preferred alternative provides the best balance of trade-offs, now factoring in any new information or points of view expressed by the State or community during the public comment period. The decisionmaker will consider State and community comments regarding EPA's evaluation of alternatives with respect to the other criteria (e.g., potential short-term impacts associated with implementation). These comments may help EPA determine whether to modify aspects of the preferred alternative, or whether another alternative provides a more appropriate balance. If the preferred alternative is determined to be the most appropriate remedy, in that it offers the best balance among the factors evaluated, the lead agency will select that alternative. If not, the lead agency, in conjunction with the support agency, will select another protective, cost-effective alternative that provides a better combination of long- and short-term effectiveness, reduction of toxicity, mobility, or volume, implementability, and cost. This may require a discussion of significant changes in the ROD or the development of a new proposed plan to be made available for additional public comment prior to selection of remedy. (See § 300.430 preamble section below, "H. Community Relations.")

For Fund-financed actions, EPA may consider the need to use Fund monies at other sites in selecting a less costly remedy over a more desirable but substantially more expensive alternative as the most practicable, cost-effective solution.

In selecting a remedy, the statutory requirements discussed below must be satisfied. These requirements will be addressed differently depending on the scope of the action being taken.

i. The selected remedy is protective of human health and the environment, by eliminating, reducing, or controlling risks posed through each pathway such that human and environmental receptors are no longer threatened. The protectiveness evaluation of an operable

unit may be limited to that unit itself; at a minimum, the protectiveness determination should show that conditions at a site are not exacerbated as a result of the action.

ii. The selected remedy at least attains all ARARs, unless use of a waiver or waivers is justified. For an operable unit, the ARAR determination will be limited to the wastes being actively managed. CERCLA section 121 allows EPA to waive ARARs for actions that are a portion of a more comprehensive remedy that will attain ARARs when completed. Only Federal and State requirements that are applicable or relevant and appropriate to the operable unit must be addressed. Justification must be provided if a waiver is being invoked.

iii. The selected remedy is cost-effective in that its overall effectiveness is proportionate to its total costs.

iv. The selected remedy utilizes permanent solutions, treatment technologies, or resource recovery technologies to the maximum extent practicable. In making this determination for an operable unit, the need or opportunity to take expeditious action at the site may be considered.

5. *Documenting decisions.* Remedies selected under Superfund are documented in a record of decision (ROD). The general process of documenting decisions is similar for both operable units and comprehensive remedial actions, however, the content and level of detail will vary depending on the scope of the action. A ROD serves several purposes. It summarizes the problems posed by a site, the technical analysis of alternative ways of addressing those problems, and the technical aspects of the selected remedy that are later refined into design specifications. A ROD is also a legal document that demonstrates that the lead and support agency decisionmaking has been carried out in accordance with statutory and regulatory requirements and that explains the rationale by which remedies were selected. EPA's decisions will be supported on the basis of the ROD and other materials in the administrative record in cases that challenge remedy selection decisions. Finally, RODs are important documents that summarize key facts discovered, analyses performed, and decisions reached by the lead and support agencies. A notice of availability of a signed ROD will be published in a major local newspaper of general circulation. In addition, the lead agency will make the ROD available for public inspection and copying at or near the site, before remedial action begins.

All RODs will have the following common features:

i. A brief summary of the problems posed by the site, the alternatives evaluated as potential remedies, the results of that analysis, the rationale for the remedial action being selected, and the technical aspects of the selected action.

ii. A demonstration that the decision was made in accordance with statutory and regulatory requirements. The ROD should discuss how the requirements of section 121 of CERCLA have been addressed, including whether or not the preference for treatment as a principal element is satisfied or an explanation in those cases in which the selected remedial action does not satisfy this preference.

iii. A description of the remediation level(s) and/or other performance levels that the remedial action is expected to achieve.

iv. A statement of whether or not hazardous substances, pollutants, or contaminants will remain at the site such that a five-year review of the response action will be required (see section 6. below).

v. A discussion of significant changes in the final selected remedy from the preferred alternative. A responsiveness summary that identifies and responds to significant comments should be available with the record of decision.

6. *Five-year review.* The CERCLA amendments require periodic reviews—at least every five years—at sites where the remedial action leaves hazardous substances, pollutants, or contaminants on-site. EPA interprets this requirement to mean that a review is required at those sites where such substances remain on-site above levels that allow for unrestricted use and unlimited exposure for human and environmental receptors. This means that whenever a remedy is selected that assumes limited uses of the land or relies on institutional controls to ensure attainment of protective exposure levels, a review will be conducted. In addition, a review will be conducted at sites where substances remain on-site if the standards initially used to define protective exposure levels are subsequently changed. If the periodic review shows that a remedy is no longer protective of human health and the environment, additional action will be evaluated and taken to mitigate the threat.

In addition to the statutorily required five-year reviews, EPA might specify in its record of decision more frequent reviews, or specific reviews of the remedy selected, such as assessments of remedial technologies that might not have been available at the time the decision was made.

C. Alternative Selection Of Remedy Approaches

1. *Variations on the site-specific approach.* EPA has considered two major variations on the site-specific balancing approach laid out in today's proposed rule, each of which establishes a somewhat different structure. EPA has considered the potential advantages and disadvantages associated with the kind of structure these variations would afford. After analysis of public comment, EPA may include in the final NCP rule any or a combination of the options discussed here.

i. *Variation Number 1: Site-specific balancing with a cost-effectiveness screen.* The first variation would follow the process as laid out in the proposed rule through the screening of alternatives. However, this approach would: (a) Retain the organization of evaluation criteria used during screening through the detailed analysis and selection; (b) not include State and community acceptance as evaluation criteria; (c) establish an explicit step by which cost-effectiveness would be determined that would screen alternatives before the final determination of the practicable extent to which permanent solutions and treatment technologies will be utilized.

The detailed analysis would focus on the three categories of criteria first examined in the screening step: effectiveness (long- and short-term), implementability, and cost. While individual protectiveness and ARARs factors would be examined in the detailed analysis of effectiveness and implementability, the protectiveness finding and final determination of ARAR compliance (or justification of a waiver) would not be addressed until the selection step. Reductions in toxicity, mobility, or volume would also be analyzed under effectiveness, rather than as a separate criterion. Under this approach, State acceptance also would not be an explicit evaluation criterion. This approach would not ask for an explicit characterization of State comments unless there were a disagreement between EPA and the State over the preferred alternative in the proposed plan or at the time of final remedy selection. In the case where the State is the lead agency, this approach would consider State acceptance to be built into the process. Where the State is serving as the support agency, this approach would rely on the support agency comment period on the completed RI/FS and proposed plan to

provide an adequate opportunity for formal comments. Similarly, community acceptance would not be an evaluation criterion but a consideration in the final selection phase as public comments received on the proposed plan and RI/FS are factored into the lead and support agencies' thinking. Thus, the detailed analysis would be limited to producing an organized presentation of the trade-offs among alternatives in terms of effectiveness (short- and long-term, including toxicity, mobility, or volume reduction), implementability and cost, highlighting those trade-offs of primary importance for this particular site.

The selection phase under this alternative approach would be conducted very similarly to the proposed rule with the exception that the determination of the cost-effectiveness of the alternatives would be made as an explicit screening step prior to selection of the alternative which represents the best balance of factors and utilizes permanent solutions and treatment technologies to the maximum extent practicable. Following a check that all alternatives afford adequate protection and attain their ARARs (or provide grounds for invoking a waiver), the cost-effectiveness of the alternatives would be determined by examining the long-term effectiveness achieved by each alternative in relation to its costs and comparing this long-term effectiveness/cost relationship among alternatives. Those alternatives which do not offer long-term effectiveness proportionate to their costs relative to the other alternatives would not be considered to be cost-effective and would be eliminated from further consideration. This step would function as a threshold screen to determine whether the alternatives are cost-effective, not which is "the only" or "the most" cost-effective option. Relative degrees of cost-effectiveness could be taken into account in the final balancing step by which the remedy is selected.

This approach retains a consistent organization of criteria throughout the screening, detailed analysis, and selection steps of the process. Limiting the balancing to three broader categories of criteria, as opposed to nine, may simplify and streamline the analysis and focus the rationales for remedy selection. This approach would not include State and community acceptance as formal criteria to be balanced along with effectiveness, implementability, or cost factors. This approach also establishes a step which more clearly separates the cost-effectiveness finding from the finding that permanent solutions and treatment technologies or resource recovery technologies have been used to the maximum extent practicable.

ii. *Variation Number 2: Sequential decisionmaking approach.* Another variation on a site-specific balancing approach involves breaking the final remedy selection into multiple, sequential decision steps. Again, the steps of the process through the screening of alternatives are the same as under the previously described approaches. The detailed analysis is conducted using the effectiveness, implementability, and cost categories of criteria proposed in Variation No. 1. Differences arise in the selection phase, which is conducted in five steps under this approach.

First, using the results of the detailed analysis, the alternatives are qualitatively ranked for overall effectiveness. The preference for treatment is addressed by favoring options that afford better long-term reliability and permanence, other factors being equal, and by giving this factor increased emphasis if factors are not equal. Other considerations are emphasized on a site-specific basis. Following (or concurrent with) this effectiveness ranking, the alternatives are qualitatively ranked for their overall implementability. Clearly unimplementable or impracticable alternatives would be eliminated from further consideration. Again, individual implementability factors would be emphasized on a site-specific basis. The effectiveness and implementability rankings would then be combined into a joint effectiveness/implementability ranking, also performed qualitatively. This step would require a balancing of all noncost factors, again giving long-term effectiveness and permanence extra emphasis.

After an overall noncost ranking is determined, the relative costs of the alternatives would then be considered. Unlike the previous approach, which determines the cost-effectiveness of alternatives by focusing on the relationship between their cost and their long-term effectiveness only, this approach would focus on the relationship between cost and all noncost factors. Specifically, this approach would isolate and compare the differences in cost and the differences in combined effectiveness and implementability across remedial alternatives. Alternatives whose incremental costs were out of proportion to incremental effectiveness/implementability would be deemed not cost-effective. All other alternatives would be deemed cost-effective and would therefore be eligible for final selection.

The final step involves selecting from the remaining (cost-effective) options the one that received the highest effectiveness/implementability ranking. The option that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable would be the alternative that offers the best balance of noncost factors (effectiveness and implementability) that is also cost-effective.

This approach adds more structure to the process by separating the final remedy selection into a series of steps, and by specifying the sequence in which those steps would take place. Each step would be presented in detail and justified in the record of decision. An advantage that may derive from this second variation is more consistent documentation of the rationale for remedy selection. Alternatively, the compartmentalization of decisionmaking steps may not allow sufficient flexibility for decisionmakers to synthesize all of the different kinds of information they must bring to bear on a remedy selection.

EPA solicits comments on these alternative site-specific balancing approaches, specifically on potential advantages or disadvantages related to the type of criteria considered in the detailed analysis, the steps by which the statutory findings are made, and the degree of structure they propose.

2. *Alternative strategies*—i. *Point of departure strategy.* A different type of strategy would adopt a point of departure analysis. This approach would differ from those previously described as early as the development of alternatives phase. Aggressive treatment options that could result in absolute destruction, detoxification, or immobilization of all waste above health- or risk-based levels would be identified. Initially, containment technologies or treatment/containment combinations might also be considered but would not pass the screening step if any viable alternatives involving full treatment existed. The detailed analysis would focus on identifying the most effective alternatives with effectiveness here defined primarily by technical feasibility and the long-term results each treatment process could achieve. Short-term impacts that might be caused by an alternative would be a secondary consideration.

Effective treatment options would then be put through an implementability

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screen. The implementability screen would be used primarily to eliminate clearly unimplementable options, although alternatives that were significantly less implementable than other options and offered no gain in long-term effectiveness and permanence would also be screened out. The least costly of the most effective options, defined primarily in terms of toxicity, mobility, or volume reduction achieved, would be selected.

This approach places the greatest emphasis on treatment, virtually equating the degree of effectiveness, permanence, and/or protectiveness with the degree of toxicity, mobility, or volume reduction attained. This is a fundamentally different assumption than that which underlies the other three approaches previously discussed. It is a point of departure approach in that it presumes that the alternative employing the most aggressive form of treatment of all waste typically will be selected unless unimplementable. This approach gives much less weight to short-term impacts of the technologies, site-specific implementability considerations, and the relative cost-effectiveness of alternatives than any of the site-specific balancing approaches. This approach implicitly interprets the mandate to "utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable" as a mandate to use the maximum amount of treatment possible.

Variations of this point of departure approach could be fashioned that would retain the initial presumption that the analysis of alternatives should begin with those that achieve the greatest toxicity, mobility, or volume reduction through treatment, but would allow broader consideration of implementability factors and cost-effectiveness to permit consideration of other alternatives employing less treatment. Modifications could avoid the presumption that full treatment is the necessary means to achieving protection of human health and the environment.

One potential implication of this approach, particularly with respect to the way it defines cost-effectiveness and the mandate to utilize permanent solutions and alternative treatment or resource recovery technologies to the maximum extent practicable, is that it may jeopardize EPA's ability to ensure an efficient use of Trust Fund monies. Application of maximum treatment to each site as it is addressed in turn may prevent EPA from distributing resources across sites in a manner that ensures that treatment can be applied to the worst problems first. In addition, under this option, other mandates in CERCLA section 121, including protection of human health and the environment, compliance with ARARs, and cost-effectiveness, might not be accorded sufficient consideration during the selection of remedy process.

ii. *Site stabilization strategy.* Another wholly different strategy would assume the objective of maximizing the number of sites that could be addressed by the Superfund program. To stretch the resources of the trust fund, the vast majority of sites initially would be addressed in conjunction with the Superfund removal program with only interim remedial measures. Only those sites or portions of sites for which treatment was immediately necessary to protect human health and the environment might be addressed with treatment. This strategy would envision two phases of CERCLA implementation: the first, a series of interim remedies to stabilize sites and to prevent further degradation; the second, implementation of "permanent" remedies most often involving substantial treatment. This second and final phase of remediation would address the sites posing the worst risks first.

EPA seeks comments on the appropriateness and desirability of pursuing one of these alternative strategies.

3. *Analytical tools and techniques.* In addition to these overall approaches and strategies, there are a number of different analytical tools and methodologies that could be employed in the detailed analysis and/or selection phases in a variety of ways and combinations to come up with additional variations. These tools and techniques include screening against threshold criteria, pairwise comparison, and ranking of alternatives or criteria. These techniques are represented in some of the approaches previously described. Additional tools that could be employed include scoring, which would involve measuring alternatives against a consistent scale, weighting of alternatives or criteria in an explicit fashion, and the techniques of decision analysis which could be used to construct a multi-attribute model that incorporates the assumptions of exactly how different criteria should be considered in relation to one another in assessing the attributes of alternatives. This could be done on a programmatic or site-specific basis.

EPA solicits comments on the potential advantages and disadvantages associated with these techniques, the appropriateness of establishing them in regulations or guidance, and recommendations regarding alternative approaches that might be established using different combinations of these methods.

D. Special Notice and Moratoria

A fundamental goal of the CERCLA enforcement program is to facilitate settlements, i.e., agreements securing the voluntary performance or financing of response actions by PRPs. EPA believes that settlements are most likely to occur and will be most effective when EPA interacts frequently and early in the process with PRPs. The special notice procedures in CERCLA section 122(e) provide an important means of encouraging interaction and improving the prospects for settlement.

Section 122(e) provides EPA with the discretion to issue special notice letters when to do so would facilitate agreement and expedite remedial action. Issuance of a special notice triggers a moratorium during which EPA may not commence a response action under section 104(a) or an RI/FS under section 104(b), or initiate an enforcement action under section 106. This moratorium provides a "formal" period for EPA and PRPs to negotiate a settlement.

Initially, the length of the special notice moratorium is 60 days. If EPA receives a good faith offer during this 60 day period, the moratorium is extended an additional 30 days for RI/FS negotiations as well as 60 days for RD/RA negotiations, non-time-critical removal negotiations, and enforcement actions under section 106.

While "formal" negotiations pursuant to a special notice will play a central role in the settlement process, "formal" negotiations should not be viewed as the sole vehicle for reaching settlement. To assure that "formal" negotiations are productive, frequent interaction between EPA and PRPs, through exchange and "informal" discussions may be appropriate outside of the "formal" special notice moratorium. "Informal" discussions are communications that can occur between EPA and PRPs throughout the response process.

The "Interim Guidance on Notice Letters, Negotiations, and Information Exchange," dated October 19, 1987, includes guidance to the Regions on the use of the special notice procedures and on managing negotiation deadlines for removal and remedial actions. In addition, the "Interim Guidance: Streamlining the CERCLA Settlement Decision Process," dated February 12, 1987, includes guidance on managing negotiation deadlines for the RI/FS and RD/RA.

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E. EPA's Approach for Ground-Water Remediation Under the Superfund Program

It has been the policy of EPA's Superfund program for several years to operate within the framework of EPA's Ground-Water Protection Strategy in determining the appropriate remediation for contaminated ground water at CERCLA sites. EPA's Ground-Water Protection Strategy establishes different degrees of protection for ground waters based on their vulnerability, use, and value. EPA's Superfund program has applied this concept in looking to characteristics of vulnerability, use, and value, among other factors, in formulating and evaluating remedial alternatives for contaminated ground water. This section summarizes the approach EPA has presented in the "Preliminary Review Draft Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites" (April, 1988).

The goal of EPA's Superfund approach is to return usable ground waters to their beneficial uses within a timeframe that is reasonable given the particular circumstances of the site. The Superfund remedial process assesses the characteristics of the affected ground water as the first step toward making three decisions: the level to which the ground water will be restored; the timeframe within which the restoration will occur; and the most appropriate technology or approach for attaining these goals. Using the "EPA Guidelines for Ground-Water Classification" (Draft, December 1986) as a guide, a determination is made as to whether the contaminated ground water falls within Class I, II, or III.

Class I ground waters are resources of unusually high value that are highly vulnerable to contamination because of the hydrological characteristics of the areas where they occur. They are characterized as follows:

1. The ground water is irreplaceable because no reasonable alternative source of drinking water is available to substantial populations; or

2. The ground water is ecologically vital, providing the base flow for a particularly sensitive ecological system that supports a unique habitat.

Class II ground waters are all non-Class I ground waters that are currently used or are potentially available for drinking water or other beneficial uses. Class II–A ground waters are currently used as a source of drinking water; Class II–B ground waters are potential drinking water sources.

Class III ground waters are not considered to be potential sources of drinking water and are of limited beneficial use. These are ground waters which are highly saline, or are otherwise contaminated beyond levels that allow restoration using methods reasonably employed in public water treatment systems. This condition must not be the result of a release that is attributable to a specific site. Class III is further distinguished by the degree of interconnection with adjacent water. Class III–A ground waters are highly to moderately interconnected; Class III–B ground waters have a low degree of interconnection and are typically at greater depths. CERCLA sites will rarely involve Class III–B ground waters.

The lead agency will use the EPA Guidelines for Ground-Water Classification to assist in classifying the ground water at a CERCLA site. Such classifications are site-specific and limited in scope to the Superfund remedial action that will be undertaken. Classifications performed by EPA's Superfund program do not apply to that geographical area in general, to any other actions that may be undertaken under any other State or Federal program, or to private actions. The classification scheme described above may be superseded by other classification schemes which may have been promulgated by a State and are applicable or relevant and appropriate to the CERCLA response. This approach may also be modified by State ARARs that derive from wellhead protection programs which may require protection of a municipal water source, or replacement if that source is contaminated.

The Superfund program's approach to ground-water remediation calls for development of a limited number of ground-water remediation alternatives expressed in terms of a remediation level (i.e., cleanup concentration in the ground water), a time period for restoration to the preliminary remediation goals for all locations in the area of attainment, and the technology or approach that will be used to achieve those goals.

Preliminary remediation goals are established based on the analysis of ARARs and other pertinent standards, criteria, and advisories identified by the lead and support agencies. For ground water that is or may be used for drinking water (Class I or II), the maximum contaminant levels (MCLs) set under the Safe Drinking Water Act or more stringent promulgated State standards are generally the applicable or relevant and appropriate standard. (For a fuller discussion regarding when MCLs are relevant and appropriate, see Subpart E, § 300.430 preamble section, F.13, CERCLA-specified relevant and appropriate requirements.) When MCLs or State standards do not exist for contaminants identified in the ground water at the site, the Superfund program looks to other ARARs, standards, criteria, or advisories including: proposed MCLs, health advisories, drinking water equivalent levels, reference doses, risk specific doses, water quality criteria, MCLGs, proposed MCLGs, or State health advisories. As noted in the earlier discussion of establishing protective remediation goals during the RI/FS, it may be necessary to make adjustments to these levels when ARARs and other standards, criteria, and advisories are outside the 10^{-4} to 10^{-7} risk range which EPA generally considers as protective at CERCLA sites.

It should be noted that although MCLs are generally the cleanup standards, as described above, the remedial action necessary to attain an MCL level for the most predominant chemical (or a protective level for a chemical without an MCL) usually results in other chemicals achieving levels that are more protective than their respective MCLs.

It should also be noted that the Superfund program achieves consistency with 40 CFR 264.94 of RCRA Subpart F which may be ARAR to CERCLA actions. These provisions offer the choice of establishing cleanup standards at background, MCLs, or alternate concentration limits (ACLs). In setting remediation levels, the Superfund program generally uses the MCL or other health-based standards, criteria, or advisories which are the equivalent of a health-based ACL under RCRA.

Restoration time periods refer to the period of time needed to achieve established remediation levels within the entire area of attainment, defined as the area from the edge of any waste that, as the final remedy, will be managed on-site to the limits of the contaminant plume. Restoration time periods may range from very rapid (one to five years) to relatively extended (perhaps several decades). EPA's preference is for rapid restoration of contaminated ground water that can be used for drinking water wherever practicable, particularly for Class I ground waters and ground waters associated with drinking water supplies described in CERCLA section 118 (i.e., where the release of hazardous substances, pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply). The most appropriate timeframe must,

however, be determined through an analysis of alternatives. The minimum restoration timeframe will be determined by hydrogeological conditions, specific contaminants at a site, and the size of the contaminant plume. Once a determination of the practical limits on the restoration timeframe has been made, the restoration timeframes for remedies can be evaluated relative to these limits based on the following factors:

i. Feasibility of providing an alternative water supply;

ii. Current use of ground water;

iii. Potential need for ground water;

iv. Effectiveness and reliability of institutional controls;

v. Ability to monitor and control the movement of contaminants in ground water;

vi. Cost; and

vii. Other environmental impacts.

If there are other readily available drinking water sources of sufficient quality and yield that may be used as an alternative water supply, the importance of rapid restoration of the contaminated ground water is reduced. Where a future demand for drinking water from ground water is likely and other potential sources are not sufficient, those remedies which achieve more rapid restoration should be favored.

The effectiveness and reliability of institutional controls to prevent the utilization of contaminated ground water for drinking water purposes during the restoration period should be evaluated. If these controls are not clearly effective, more rapid restoration may be necessary. The availability of good management and institutional controls may provide a basis to extend the period of response. Institutional controls will usually be used as supplementary protective measures during implementation of ground-water remedies as well.

The third variable in formulating and evaluating ground water alternatives is the technology or method that will be used to achieve the remediation level within the desired timeframe. EPA expects that most ground water remedies at CERCLA sites will involve at least some pumping and treating. Variation among alternatives often stems from the aggressiveness of the pumping scheme (e.g., number of wells, rate of extraction, whether or not reinjection is included), the type of treatment applied (e.g., air stripping), and what is done with the residuals from the treatment process. Typical options for the treated effluent include reinjection, discharge to surface water, or discharge to a publicly owned treatment works (POTW). Other more passive methods, such as gradient control and slurry walls may be appropriate to prevent the further spread of contamination. In limited cases, natural attenuation, which can involve either the dispersion or actual biodegradation of contaminants, may be the most appropriate solution for a site.

There are special situations where it may not be practicable to actively restore ground water including sites where there are: (a) Widespread plumes resulting from non-point sources (e.g., some mining, pesticide, or industrial areas); (b) Hydrogeological constraints (e.g., aquifers with very low transmissivity, or aquifers in fractured bedrock or Karst formations); (c) Containment constraints (e.g., the presence of dense, non-aqueous phase liquids which collect in "puddles" at the base of an aquifer); and (d) Physiochemical limitations (e.g., interactions between contaminants and the aquifer material which limit the rate at which they can be removed). In these cases, the lead agency may provide wellhead treatment and/or rely on natural attenuation with institutional controls as the final remedy.

The 1986 amendments to CERCLA state a preference for treatment that reduces the toxicity, mobility, or volume of hazardous substances as a principal element. This preference applies to ground water as well as source control actions. Wherever ground water poses one of the principal threats at a site, the Superfund program will seek to pump and treat if practicable. However, site characteristics, such as fractured bedrock or karst topography, may preclude or severely hinder aggressive pumping and treating options in certain cases and dictate other ground-water restoration methods. In other situations, natural attenuation may achieve site cleanup goals in a reasonable period of time.

For Class I and II ground waters, the Superfund program will consider several different alternative restoration time periods (including five years) and methodologies to achieve the preliminary remediation level and select the most appropriate option (including the final cleanup level) by balancing trade-offs of long-term effectiveness, short-term effectiveness, reductions of toxicity, mobility, or volume, implementability, and cost.

CERCLA section 121(d)(2)(B)(ii) allows the use of ACLs if specified conditions are met. EPA proposes to use ACLs for the Class I and II ground water when these conditions are met and cleanup to MCLs or other protective levels is determined not to be practicable. When the likely point of human exposure has been set beyond the facility boundary, this provision requires an analysis at the end of the remedial action to determine whether the ground water discharging into surface water will cause a statistical increase of contaminants in the surface water. Moreover, such a remedial action must include enforceable measures to prevent use of any contaminated ground water. In using this provision, the lead agency would also consider an alternative remedy that would partially restore ground water to levels that could reasonably be treated by public water treatment systems.

For Class III ground water (i.e., ground water that is unsuitable for human consumption due to high salinity or widespread contamination and does not have the potential to affect drinkable ground water), drinking water standards are neither applicable nor relevant and appropriate. Likewise, restoration timeframes and cleanup methods for these ground waters will not be formulated on the same basis as drinkable ground waters. Rather, alternatives should be developed based on the specific site conditions. First, a determination must be made as to whether the ground water has any beneficial use (e.g., agricultural or industrial). If so, a remediation level, restoration time period, and method can be tailored to returning the ground water to that designated use. More typically, concerns with Class III ground waters will center on potential discharge of the contaminated ground water to surface waters or "higher class" ground waters and Superfund will establish a level consistent with exposure-based ACLs under RCRA Subpart F. Environmental receptors and systems may well determine the necessity and extent of ground-water remediation. In general, alternatives for Class III ground waters will be relatively limited and the evaluation less extensive than for Class I or II ground waters and the focus will be on preventing adverse spread of the contamination.

Complex fate and transport mechanisms of contaminated ground waters often make it difficult to accurately predict the performance of the ground-water remedial action. Therefore, the remedial process must be flexible and allow for changes in the remedy based on the performance of several years of operation. If the chosen remedial action does not meet performance expectations after a period of operation, the decisionmaker should decide the extent to which further or different action is necessary and

appropriate to protect human health and the environment.

Widespread contamination due to multiple sources is handled in a special way by the Superfund program. At most NPL sites, program policy is to determine contributors to the aquifer contamination, and involve them in the overall response action. EPA will take the lead role in managing the overall response if the NPL site is the primary contributor to the multiple-source problem. To the extent it can be determined, Superfund participation in the overall ground-water remediation will be proportional to the contribution the NPL site(s) makes to the areawide problem. EPA may also take any action necessary to protect human health and the environment such as providing alternate water supplies or wellhead treatment if there is a reasonable belief that the NPL sources in and of themselves pose a threat to human health and the environment.

EPA solicits comment on this approach toward ground-water remediation at NPL sites.

F. Compliance with the Applicable or Relevant and Appropriate Requirements of Other Laws

CERCLA mandates that remedial actions be in compliance with other environmental and public health laws. Compliance with other laws is a key consideration throughout the remedial selection process. This section discusses achieving compliance with applicable or relevant and appropriate requirements (ARARs) under other laws in the following order:

1. The history of EPA's Compliance Policy.
2. Codification of the Compliance Policy in CERCLA reauthorization.
3. The definition of ARARs and Other Information To Be Considered (TBC).
4. The difference between applicable requirements and relevant and appropriate requirements.
5. Resolving ARAR disputes.
6. Types of ARARs.
7. State ARARs.
8. Methods for identifying ARARs.
9. Compliance with ARARs and the development and selection of remedies.
10. Circumstances in which ARARs may be waived.
11. When and where ARARs and TBCs associated with cleanup levels must or should be attained.
12. Addressing new ARARs or other information after the initiation of the remedial action.
13. CERCLA-specified relevant and appropriate requirements.
14. ARARs for investigation-derived waste.
15. Substantive versus administrative requirements.
16. Potential ARARs of the Resource Conservation and Recovery Act (RCRA).
17. Hypothetical examples of relevant and appropriate requirements.

(The relationship between ARARs and determining remediation levels is discussed in the § 300.430 preamble section above, B.3.)

1. *The history of EPA's Compliance Policy.* The November 20, 1985 revisions to the NCP stated that, as a general rule, EPA's policy is to attain or exceed applicable or relevant and appropriate requirements under Federal environmental and public health laws in CERCLA response actions. At that time EPA revised existing § 300.68(i) of the NCP to require that, for all remedial actions, the selected remedy must attain or exceed the Federal ARARs identified for that site. In the preamble to the 1985 revisions to the NCP, EPA stated that ARARs could only be determined on a site-by-site basis, gave examples of how this would work, and reprinted from EPA's October 2, 1985 Compliance Policy a list of Potentially Applicable or Relevant and Appropriate Requirements, as well as a list of Other Federal Criteria, Advisories, Guidance, and State Standards To Be Considered (TBC). TBCs are non-promulgated criteria, advisories, etc., that can be consulted along with or in addition to ARARs. From these lists, the lead agency could select ARARs or TBCs, based upon the circumstances at a particular site. Furthermore, EPA provided five limited circumstances in which remedies that did not attain all ARARs could be selected.

2. *Codification of the Compliance Policy in CERCLA Reauthorization.* On October 17, 1986, CERCLA was reauthorized with additional new requirements. Section 121 of CERCLA requires that remedial actions comply with Federal and more stringent State requirements that are legally applicable or relevant and appropriate under the circumstances of the release or threatened release with respect to any hazardous substance or pollutant or contaminant that will remain on-site. EPA's policy is to attain or exceed such ARARs during the implementation of the remedial action (where pertinent to the action itself) as well as at the completion of the action, unless a waiver is justified.

The term ARAR refers to an applicable or relevant and appropriate requirement; a single requirement cannot be both applicable and relevant and appropriate. However, when reference is made to compliance with ARARs, the term refers to such requirements collectively and means compliance with both applicable requirements and relevant and appropriate requirements.

Although section 121(d) basically codified EPA's 1985 policy regarding compliance with other laws, this section does add some requirements to the pool of potential ARARs. The 1986 CERCLA amendments provide that promulgated State standards that are more stringent than Federal standards are also potential ARARs for CERCLA remedial actions. Where no Federal ARAR exists for a chemical, location, or action, but a State ARAR does exist, or where a State ARAR is broader in scope than the Federal ARAR, the State ARAR is considered more stringent.

Furthermore, the CERCLA amendments provide that Federal water quality criteria established under the Clean Water Act (CWA), and maximum contaminant level goals (MCLGs) established under the Safe Drinking Water Act, must be attained when found to be relevant and appropriate under the circumstances of the release (see ARARs preamble section below, "13. CERCLA-specified relevant and appropriate requirements").

CERCLA retains the basic concept of compliance with ARARs for any remedy selected (unless a waiver is justified). ARARs will be determined by the lead agency based upon its analysis of which requirements are applicable or relevant and appropriate to the distinctive set of circumstances and actions contemplated at a specific site.

The requirements of CERCLA section 121 generally apply as a matter of law only to remedial activities occurring on-site. However, as a matter of policy, EPA will attain ARARs to the extent practicable considering the exigencies of the situation when carrying out removal actions (see § 300.415 preamble section, C.1.).

3. *The definition of ARARs and TBCs (§§ 300.5 and 300.400(g)).* EPA is proposing nonsubstantive clarifications to the definition of applicable requirements.

i. *Applicable requirements.* EPA proposes that applicable requirements are "those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site." (See the discussion of definition revisions in today's Subpart A preamble section.)

Applicable requirements may be identified on a site-specific basis by determining whether the jurisdictional prerequisites of a requirement fully address the circumstances at the site or the proposed remedial activity. Some typical jurisdictional prerequisites follow:

a. Who, as specified by the statute or regulation, is subject to its authority;

b. The activities the statute or regulation requires, directs, or prohibits;

c. The substances or places within the authority of the requirement; and

d . The time period for which the statute or regulation is in effect.

Basically, in determining applicability, the question is whether a regulation would be legally enforceable at the site (or for the contaminant or action) if a private party were remediating the site apart from any CERCLA authority.

The word "substantive" in the proposed definitions of "applicable" and "relevant and appropriate" is not meant to imply a necessary level of "significance" or "weight" for a requirement to be an ARAR. Rather, "substantive" is used to distinguish the universe of ARARs from administrative requirements, which are not considered potential ARARs. (See ARARs preamble section below, "15. Substantive versus administrative requirements.")

ii. *Relevant and appropriate requirements.* If a requirement is not applicable, one must consider whether a requirement is both relevant and appropriate. EPA is also proposing nonsubstantive clarifications to the definition of relevant and appropriate requirements. EPA proposes that relevant and appropriate requirements are "those cleanup standards, standards of control, or other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not 'applicable' to a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well-suited to the particular site."

Relevant and appropriate requirements are also determined on a site-specific basis by determining their jurisdictional prerequisites and comparing them to the circumstances at a CERCLA site. Once the decisionmaker determines that a requirement is not applicable, the decisionmaker compares the circumstances at the site to the purpose and subject matter addressed by the requirement in question to determine if there is sufficient similarity to find that the requirement is both relevant and appropriate for the site.

Determining whether a requirement is both relevant and appropriate is essentially a two-step process. First, to determine relevance a comparison is made between the action, location, or chemicals covered by the requirement and related conditions of the site, release, or potential remedy; a requirement is relevant if the requirement generally pertains to these conditions. Second, to determine whether the requirement is appropriate, the comparison is further refined by focusing on the nature of the substances, the characteristics of the site, the circumstances of the release, and the proposed remedial action; the requirement is appropriate if, based on such comparison, its use is well-suited to the particular site. Only those requirements that are determined to be both relevant and appropriate must be complied with.

EPA proposes that the following criteria, where pertinent to the type of requirement in question, be used to determine whether there is sufficient similarity to find that a requirement is relevant and appropriate:

a. Whether the purpose for which the requirement was created is similar to the specific objectives of the CERCLA action;

b. Whether the media regulated or affected by the requirement are similar to the media contaminated or affected at the CERCLA site;

c. Whether the substances regulated by the requirement are similar to the substances found at the CERCLA site;

d. Whether the entities or interests affected or protected are similar to the entities or interests affected by the CERCLA site;

e. Whether the actions or activities regulated by the requirement are similar to the remedial action contemplated at the CERCLA site;

f. Whether any variances, waivers, or exemptions of the requirement are available for the circumstances of the CERCLA site or CERCLA action;

g. Whether the type of place regulated is similar to the type of place affected by the CERCLA site or CERCLA action;

h. Whether the type and size of structure or facility regulated is similar to the type and size of structure or facility affected by the release or contemplated by the CERCLA action; and

i. Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the affected resource.

In determining which requirements are relevant and appropriate, the pivotal criteria differ depending upon the type of requirement under consideration, namely chemical-specific, location-specific, or action-specific (see ARARs preamble section below, "6. Types of ARARs"). In general, for chemical-specific requirements the focal point for the relevant and appropriate determination is whether the requirement for the chemical at the CERCLA site sets a health- or environmental-based level based on an exposure scenario (including the medium) that is similar to the potential exposure at a CERCLA site. For location-specific requirements, generally the primary test for relevance and appropriateness is whether the location under consideration is sufficiently similar to the location upon which the requirement is based. For action-specific requirements, generally the test for relevance is whether the action contemplated at the CERCLA site is similar. In order to determine appropriateness, the decisionmaker may consider, among others, the following factors: whether the action contemplated at the site or the circumstances at the site which require an action, the substances involved, and the objectives of the action are sufficiently similar to the action-specific requirement itself.

iii. *Other information to be considered (TBC).* Other information that does not meet the definition of ARAR may be necessary to determine what is protective or may be useful in developing Superfund remedies. Criteria, advisories, or guidance developed by EPA, other Federal agencies, or States may assist in determining, for example, health-based levels for a particular contaminant for which there are no ARARs or the appropriate method for conducting an action. This other information to be considered (TBC) when developing CERCLA remedies generally falls within three categories:

a. Health effects information with a high degree of creditability, e.g., RfDs;

b. Technical information on how to perform or evaluate site investigations or response actions; and

c. Policy, e.g., EPA's ground-water policy.

4. *The difference between applicable requirements and relevant and appropriate requirements.* Applicable requirements and relevant and appropriate requirements differ in the amount of discretion allowed in identifying them. Applicable requirements are identified by a largely objective comparison to the circumstances at the site; if there is a

one-to-one correspondence between the requirement and the circumstances at the site, then the requirement is applicable. There is little discretion involved in this determination. If a requirement is not applicable, the decisionmaker uses best professional judgment to determine whether the requirement addresses problems or situations that are generally pertinent to the conditions at the site (i.e., the requirement is relevant) and whether the requirement is well-suited to the particular site (i.e., the requirement is appropriate). However, once a regulation (or portion thereof) is identified as relevant and appropriate, it is applied as strictly as is an applicable requirement.

Statutes and regulations are sometimes made up of discrete requirements, each requirement having its own set of jurisdictional prerequisites. EPA has found that within these authorities often only some requirements within a regulation are relevant and appropriate. In contrast with an applicable requirement, flexibility exists to identify discrete "appropriate" portions of a regulation which may be mixed with "appropriate" portions of other regulations in a manner that makes good environmental sense for the site. (See hybrid closure example described in ARARs preamble section below, "16.vi. Hypothetical examples of compliance with RCRA: closure requirements.")

The other requirements in that same regulation may be relevant (in that they address in a broad sense the same problem as is faced at the CERCLA site) but not appropriate because the requirement is not well-suited to the circumstances at the CERCLA site.

An example of a requirement that may be relevant but not appropriate in certain situations is the requirement to cap landfills upon closure. This requirement is designed to apply to specific types of discrete units. This requirement for closure of hazardous wastes deposited on land may be relevant because it addresses the same kinds of wastes and action proposed at a CERCLA site, but may be inappropriate because of the physical size and character of the contamination at the CERCLA site. Although capping may be appropriate for smaller areas, it may not be appropriate in some circumstances for large dispersed areas of low-level soil contamination, such as may be found at many large municipal landfill facilities. (Other examples are described in the ARARs preamble section below, "16. Potential ARARs of RCRA.")

5. *Resolving ARAR disputes.* Because judgment is involved in determining which requirements are relevant and appropriate, Federal, State, and potentially responsible parties may on occasion arrive at different conclusions. EPA, operating in its oversight role for CERCLA enforcement actions, will resolve ARAR disputes between the lead agency and the potentially responsible parties. An ARAR dispute between a State and EPA may be submitted to the dispute resolution process described in today's preamble discussion of Subpart F on State Involvement. If a State strongly desires attainment of a substantive requirement that has been determined by the dispute resolution process not to be an ARAR, such a requirement will be met if the State demonstrates an ability and willingness to pay for the additional increment of expense associated with attaining such a requirement. Moreover, as discussed in today's preamble Subpart F section, States may be required to take the lead in the remedial design and remedial action necessary to meet such additional requirements.

6. *Types of ARARs.* For ease of identification, EPA divides ARARs into three categories: chemical-specific, location-specific, and action-specific. Chemical-specific ARARs are usually health- or risk-based numerical values or methodologies which, when applied to site-specific conditions, result in the establishment of numerical values. These values establish the acceptable amount or concentration of a chemical that may remain in, or be discharged to, the ambient environment. For example, the Safe Drinking Water Act requires the establishment of maximum contaminant levels (MCLs), the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. MCLs are generally relevant and appropriate as cleanup standards for contaminated ground water that is or may be used for drinking. (See ARARs preamble section below, "13. CERCLA-specified relevant and appropriate requirements.")

Location-specific ARARs generally are restrictions placed upon the concentration of hazardous substances or the conduct of activities solely because they are in special locations. Some examples of special locations include floodplains, wetlands, historic places, and sensitive ecosystems or habitats. Examples of location-specific ARARs are the substantive requirements of the Coastal Zone Management Act and the Wild and Scenic Rivers Act. Consideration must also be given to whether locational restrictions are prospective only (e.g., siting requirements) or whether they are intended for existing situations.

Action-specific ARARs are usually technology- or activity-based requirements or limitations on actions taken with respect to hazardous wastes, or requirements to conduct certain actions to address particular circumstances at a site. Remedial alternatives which involve, for example, closure or discharge of dredged or fill material may be subject to ARARs under RCRA and the Clean Water Act, respectively.

These categories were developed to assist in identifying ARARs and are not necessarily precise. Some ARARs may not fit into any one of these categories while other ARARs may fit into two or more of these categories. For example, RCRA land disposal regulations can be considered both chemical and action-specific. (See EPA's draft "CERCLA Compliance with Other Laws Manual," OSWER Directive No. 9234.1-01, which provides detailed guidance on identification of and compliance with ARARs. The manual includes matrices which group ARARs into the chemical-specific, location-specific, and action-specific categories.)

7. *State ARARs (§ 300.400(g)(4)).* Section 121(d)(2)(A) of the amended CERCLA states that remedies must comply with "any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, or limitation" if applicable or relevant and appropriate to the hazardous substance or release in question.

In § 300.400(g)(4), EPA proposes to define promulgated State requirements as those laws or regulations that are of general applicability and are legally enforceable. State advisories, guidance, or other non-binding guidelines as well as standards that are not of general applicability will not be considered potential ARARs.

EPA's treatment of State ARARs is fully consistent with the way EPA has treated Federal requirements under the current NCP, in which Federal advisories and nonpromulgated guidelines are put in a separate category ("other information to be considered") from potential ARARs. Like their Federal counterparts, State advisories and other nonpromulgated guidelines may still be considered in determining an appropriate, protective remedy; but neither Federal nor State advisories should be treated as potential ARARs.

Further, unless limitations found in site-specific State permits are based on promulgated ARARs, such limitations will not be considered potential ARARs, however widely they may be used in the State. However, frequently used permit limitations may be considered in fashioning a protective remedy for a site.

The phrase "legally enforceable" refers to State regulations or statutes which contain specific enforcement provisions or are otherwise enforceable under State law. EPA expects that State laws or standards which are considered potential ARARs have been issued in accordance with State procedural requirements. The phrase "of general applicability" is meant to preclude consideration of State requirements promulgated specifically for one or more CERCLA sites as potential ARARs. EPA believes that Congress did not intend CERCLA actions to comply with requirements that would not also apply to other similar situations in that State. This interpretation is consistent with the statutory qualification on State siting requirements banning land disposal in CERCLA section 121(d)(2)(C)(iii)(I) and the waiver for inconsistently applied State standards in CERCLA section 121(d)(4)(E). For a State requirement to be a potential ARAR it must be applicable to all remedial situations described in the requirement, not just CERCLA sites.

General State goals that are contained in a promulgated statute and implemented via specific requirements found in the statute or in other promulgated regulations are potential ARARs. For example, a State antidegradation statute which prohibits degradation of surface waters below specific levels of quality or in ways that preclude certain uses of that water would be a potential ARAR. Where such promulgated goals are general in scope, e.g., a general prohibition against discharges to surface waters of "toxic materials in toxic amounts," compliance must be interpreted within the context of implementing regulations, the specific circumstances at the site, and the remedial alternatives being considered.

8. *Methods for identifying ARARs.* The preamble sections above regarding RI/FS and selection of remedy generally describe when ARARs and TBCs are identified and analyzed (e.g., during "project scoping," "remedial investigation," etc.). This section explains how ARARs can be identified during those stages.

The identification of ARARs necessarily begins with a review of the universe of Federal and State requirements to determine the potential ARARs that may be applied at a site (see Subpart F preamble regarding identification of State ARARs). Examples of potential Federal and State ARARs and TBCs are included in the next Subpart E, § 300.430 preamble section, "G." As more is learned about the site and as remedial alternatives are considered, Federal and State requirements can be narrowed to those which are potential ARARs for each alternative.

ARARs are identified with increasing certainty as the RI/FS process proceeds. For example, the purpose of site characterization during the remedial investigation phase is to provide data regarding contaminants or chemicals present in the release, the extent of contamination, and the specific location and characteristics of the site. These data assist in identifying more specifically the potential chemical- and location-specific ARARs. Likewise, as more details regarding remedial alternatives are developed, potential action-specific ARARs can be identified. During the detailed analysis and selection of remedy phases, the decisionmaker must compare the potential ARARs to the known information regarding conditions at the site and the remedial alternatives to determine if the potential ARARs are, in fact, actually applicable or relevant and appropriate to the response action. More ARARs may need to be identified during remedial design as the specific details of the remedial action are developed. (See also ARARs preamble section below, "12. Addressing new ARARs or other information after the initiation of the remedial action.")

9. *Compliance with ARARs and the development and selection of remedies.* In the 1985 revisions to the NCP, EPA required the development of five remedial alternatives, primarily based upon their relative attainment of ARARs. As discussed in today's preamble section regarding RI/FS and selection of remedy, remedies would no longer be developed along this scale although all remedies, except those invoking a waiver, must attain ARARs.

EPA proposes, however, to continue to rely on ARARs to guide the lead agency in formulating appropriate hazardous waste response alternatives. For example, an ARAR may indicate an acceptable concentration of a contaminant in soil. An alternative that includes excavation of contaminated media at a site would use that ARAR to determine the extent of excavation. Additionally, ARARs may indicate the amounts of hazardous substances that can be emitted or discharged during or after treatment. EPA recognizes, however, that there may be situations in which ARARs will not exist or will not be sufficient to protect human health and the environment.

Nonetheless, a proposed remedial alternative's attainment of ARARs does not determine whether that alternative should be chosen over another alternative that attains a different set of ARARs (or qualifies for waivers from ARARs). The decision on which alternative to select is made at the end of the process and is based on the balancing of the selection of remedy criteria. ARARs will differ depending upon the specific actions and objectives of each alternative being considered, e.g., an alternative that would remove and treat all contaminants from the site would invoke clean closure and treatment ARARs whereas an alternative that leaves waste in place would invoke only landfill closure ARARs (see ARARs preamble section below, "16.vi. Hypothetical examples of compliance with RCRA: closure requirements").

10. *Circumstances in which ARARs may be waived § 300.430(f)(3)).* CERCLA reauthorization modified somewhat the current NCP's five limited circumstances in which all ARARs need not be attained. CERCLA eliminated the "enforcement exception," basically codified the remaining four waivers, and added two new waivers—one for circumstances in which a State standard has been inconsistently applied in other remedial actions within a particular State, and another for circumstances in which the same level of protectiveness offered by an ARAR may be achieved by using a different method or technology with an equivalent standard of performance. These waivers apply only to meeting ARARs with respect to remedial activities occurring on-site. A waiver must be invoked for each ARAR that will not be attained or exceeded. Other statutory requirements, such as that remedies are to be protective of human health and the environment, and that remedies must be cost-effective, cannot be waived. The waivers provided by CERCLA section 121(d)(4), some circumstances under which each waiver might be invoked, and criteria for invoking the waivers are discussed below.

i. *Interim Measures.*

[T]he remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed. CERCLA section 121(d)(4)(A).

This waiver will generally be applicable to interim measures that are expected to be followed within a

reasonable time by complete measures that will attain ARARs. The interim measures waiver may apply to sites at which a total site remedy is divided into several smaller actions.

For example, the selected remedy at a site may include excavation and treatment of the source. However, the treatment method may require treatability testing or time for set-up or construction. During this time, an interim measure involving stabilization of the source, such as by use of a cap, may be appropriate. In such a circumstance, the interim measure waiver would allow the temporary stabilization actions at the site to constitute the initial components of a phased remedial response; these actions would not be required to attain landfill closure ARARs because the response would not be complete.

Factors that are appropriate for invoking this waiver include:

a. *Potential for exacerbation of site problems.* The interim measure should not directly cause additional migration of contaminants, complicate the site response, or present an immediate threat to human health or the environment; and

b. *Noninterference with final remedy.* The interim measure selected must not interfere with, preclude, or delay the final remedy, consistent with EPA's priorities for taking further action.

EPA invites comment on its interpretation of this waiver and on these factors.

ii. *Greater Risk to Health and the Environment.*

[C]ompliance with such requirement at the facility will result in greater risk to human health and the environment than alternative options. CERCLA section 121(d)(4)(B).

EPA suggests that this waiver be invoked when compliance with an ARAR poses greater risks than noncompliance with that ARAR. This waiver could be used for a remedial alternative that would otherwise cause greater environmental damage or health risks solely because a particular ARAR had to be attained. For example, an alternative may include cleanup of PCBs at a site. However, attaining the ambient concentration level for PCBs spread throughout river sediment might require widespread dredging of the sediments, causing an unacceptable release of the pollutant to the water body and damaging or disrupting the ecosystem. Waiving the ARAR for ambient PCB concentrations in the river sediment would eliminate the need to conduct such harmful dredging.

Meeting an ARAR could also pose greater risks to workers or residents. For example, excavation of a particularly toxic, volatile, or explosive waste to meet an ARAR could pose high, short-term risks. If protective measures were not practicable for such excavation, use of this waiver might be appropriate.

Specific factors that may be considered in invoking the waiver for preventing greater risks include:

a. *Magnitude of adverse impacts.* The risk posed or the likelihood of present or future risks posed by the remedy using the waiver should be significantly less than that posed by the totally compliant remedy posing the risk;

b. *Duration of adverse impacts.* The more long lasting the risks from the totally compliant remedy, the more this waiver becomes appropriate; and

c. *Reversibility of adverse impacts.* This waiver is especially appropriate if the risks posed by meeting the ARAR could cause irreparable damage.

Remedies protective of human health and the environment but not meeting all ARARs should be compared to the remedy meeting ARARs that causes the minimum adverse impacts. The additional public health and environmental benefits of not meeting all ARARs must be weighed against the adverse impacts caused by meeting all ARARs. Only the ARARs that cause the greater risk are eligible to be waived.

iii. *Technical Impracticability.*

[C]ompliance with such requirement is technically impracticable from an engineering perspective. CERCLA section 121(d)(4)(C).

The term "impracticable" implies an unfavorable balance of engineering feasibility and reliability. EPA believes that the term "engineering perspective" used in the statute implies that cost, although a factor, is not generally the major factor in the determination of technical impracticability. However, a remedial alternative that is feasible might be deemed technically impracticable if it could only be accomplished at an inordinate cost.

Furthermore, the use of the term "impracticable" implies that remedies that are not demonstrated but that are thought to be feasible cannot be eliminated because of this waiver. Thus, EPA suggests using this waiver for cases where: (a) neither existing nor innovative technologies can reliably attain the ARAR in question, or (b) attainment of the ARAR in question would be illogical or infeasible from an engineering perspective.

EPA suggests that the technical impracticability waiver should be invoked when either of the following specific criteria are met:

(1) *Engineering feasibility.* The current engineering methods necessary to construct and maintain an alternative that will meet the ARAR cannot reasonably be implemented.

(2) *Reliability.* The potential for the alternative to continue to be protective into the future is low, either because the continued reliability of technical and institutional controls is doubtful, or because of inordinate maintenance costs.

iv. *Equivalent Standard of Performance.*

[T]he remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach. CERCLA section 121(d)(4)(D).

EPA proposes to use this waiver in situations where an ARAR stipulates use of a particular design or operating standard, but equivalent or better remedial results (e.g., contaminant levels or reliability) could be achieved using an alternative design or method of operation. For instance, an alternative may involve reduction of either the mobility or toxicity of a hazardous substance through a specified form of treatment. The waiver may be invoked where a substitute form of treatment from that specified by an ARAR (e.g., fixation instead of incineration) achieves comparable reductions in either mobility or toxicity.

The CERCLA Reauthorization Conference Committee's Statement of Managers makes the following point with regard to this waiver:

Subsection [121](d)(4)(D) allows the selection of a remedial action that does not comply with a particular Federal or State standard or requirement of environmental law, where an alternative provides the same level of control as that standard or requirement through an alternative means of control. This allows flexibility in the choice of technology but does not allow any lesser standard or any other basis (such as a risk-based calculation) for determining the required level of control. However, an alternative standard may be risk-based if the original standard was risk-based. H. Rep. 99-962, 99th Cong., 2d Sess. 249.

EPA invites comments on the following necessary conditions for invoking this waiver:

a. Degree of protection of health, welfare, and the environment (e.g., environmental concentration achieved) is equal to or greater than that under the original ARAR;

b. The level of performance achieved is equal to or better than that specified by the ARAR (e.g., concentration of residual);

c. The potential for the alternative ARAR to continue to be protective into

the future is equal to or greater than that afforded by the ARAR to be waived; and

d. The time required to achieve beneficial results using the alternative remedy is not significantly more than the original ARAR. An alternative that achieves similar results in significantly less time should be considered as advantageous.

v. *Inconsistent Application of State Requirements.*

[W]ith respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions. CERCLA section 121(d)(4)(E).

This waiver is intended to prevent unjustified or unreasonable restrictions from being imposed on remedial actions. The issues raised by this waiver are closely tied to those involved in the definition of "promulgated" (see ARARs preamble section above, "7. State ARARs").

EPA envisions using this waiver in two situations. First, State requirements may have been developed and promulgated but never applied because of a lack of applicability in past situations. EPA believes that such requirements should not be applied in CERCLA actions where there is evidence that the State does not intend to apply them elsewhere. Second, State standards that have been variably applied or inconsistently enforced may give reason to invoke the inconsistent application waiver. A standard is presumed to have been consistently applied unless there is evidence to the contrary.

Consistency of application may be determined by:

a. Similarity of sites or response circumstances (nature of contaminants or media affected, characteristics of waste and facility, degree of danger or risk, other hazardous waste management programs, etc.);

b. Proportion of noncompliance cases (including enforcement actions);

c. Reason for noncompliance;

d. Intention to consistently apply future requirements as demonstrated by policy statements, legislative history, site remedial planning documents, or State responses to Federal-lead sites; newly promulgated requirements shall be presumed to embody this intention unless there is contrary evidence.

vi. *Fund Balancing.*

[I]n the case of a remedial action to be undertaken solely under Section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats. CERCLA section 121(d)(4)(F).

The Fund-balancing waiver may be invoked when meeting an ARAR would entail such cost in relation to the added degree of protection or reduction of risk afforded by that standard that remedial action at other sites would be jeopardized. (Even with this waiver, the remedy must still comply with the statutory requirement to be protective of human health and the environment.)

EPA suggests that the Fund-balancing waiver be used when attainment of the ARAR would significantly reduce the availability of Fund monies for other sites (considering the number of other sites and the expected cost of remediations). Projections should show that significant imminent threats from other sites may not be addressed under the current Fund if the ARAR were attained.

EPA intends to establish the use of a dollar threshold for routinely considering invoking the Fund-balancing waiver. The threshold would be based on an amount significantly higher than the average cost of remediating sites with problems similar to those at the site under consideration, e.g., large municipal landfills. Further, EPA intends to develop specific criteria for invoking the waiver. EPA solicits comment on the proposal to establish a dollar threshold and on what other specific criteria should be established for invoking the waiver.

11. *When and where ARARs and TBCs associated with cleanup levels must or should be attained.* This section discusses the place and the time EPA intends that ARARs or TBCs related to contaminant levels or performance or design standards be achieved, i.e., the point of compliance.

i. *When ARARs must and TBCs should be attained.* Although not compelled by statute, EPA is proposing that the applicable or relevant and appropriate requirements of other laws pertinent to a remedial action itself must be met during the conduct of the remedial action as well as at the completion of the remedial action unless a waiver is invoked (see § 300.435(b)(2)). Some examples of potential ARARs for the conduct of remedial activities include the RCRA treatment, storage, and disposal requirements, restrictions on emissions discharges based upon the Clean Air Act national ambient air quality standards, and CWA effluent discharge limitations.

ii. *Where ARARs must and TBCs should be attained.* Sometimes the ARAR itself will specify where the requirement should be attained. For example, the Clean Water Act requirement to apply best available technology controls to discharges of toxic pollutants to receiving waters is measured for compliance at the discharge point (i.e., the "end-of-the-pipe").

However, at sites where an ARAR does not specify where it is to be attained or where a TBC value is used to set an acceptable level of exposure, the lead agency has the discretion to determine where the level shall be attained to ensure protectiveness.

Generally, EPA's policy is to attain ARARs and TBCs pertaining either to contaminant levels or to performance or design standards so as to ensure protection at all points of potential exposure. This means that any waste left in place should either be brought to levels that allow for unrestricted use and unlimited exposure or managed according to performance or design specifications; if active measures are not practicable and cost-effective, exposure to the waste must be controlled through legally enforceable institutional means. (See Subpart E, § 300.430 RI/FS and selection of remedy preamble introductory section for discussion regarding institutional controls.) Depending on the site circumstances, exposure pathways may include ingestion of ground or surface water, contact with or ingestion of soil, and inhalation. At each potential point of exposure, EPA assumes a maximum reasonable exposure scenario and sets the goals that will ensure protectiveness for each response. For instance, if any hazardous substances remain at a site, exposure by direct contact should be considered in fashioning a protective remedy. Hazardous substances that present a direct contact threat should be treated or covered to the appropriate degree. If a waste management area is left at a site, ground water should attain the appropriate cleanup levels at the edge of the area.

12. *Addressing new ARARs or other information after the initiation of the remedial action.* EPA recognizes that subsequent to the initiation of the remedial action new standards based on new scientific information or awareness may be developed and that these standards may differ from the cleanup standards on which the remedy was based.

EPA believes that such new ARARs or other information should be considered as part of the review conducted at least every five years under CERCLA section 121(c) for sites where hazardous substances remain on-site. The review requires EPA to assure that human health and the environment are being protected by the remedial action. Hence, the remedy should be examined in light of any new standards that would be applicable or relevant and appropriate to the circumstances at the site and in light of any other pertinent new information in order to ensure that the remedy is still protective. In certain situations, new standards or the information on which they are based may indicate that the site presents a significant threat to health or environment. If such information comes to light at times other than at the five-year reviews, EPA will consider the necessity of acting to modify the remedy at such times.

13. *CERCLA-specified relevant and appropriate requirements*—i. *Safe Drinking Water Act standards.* CERCLA section 121(d)(2)(A) states that a remedial action will attain a level or standard of control established under the Safe Drinking Water Act (SDWA), among other statutes, where such level or control is applicable or relevant and appropriate to any hazardous substance, pollutant, or contaminant that will remain on-site. The enforceable standards under the SDWA are maximum contaminant levels (MCLs), which represent the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Section 121(d)(2)(A) also states that such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals (MCLG) established under the SDWA where relevant and appropriate under the circumstances of the release or threatened release. The following discussion addresses how to choose between these two standards.

Under the SDWA, MCLGs are health-based goals set at levels at which no adverse health effects may arise, with a margin of safety. An MCL is required to be set as close as feasible to the respective MCLG, taking into consideration the best technology, treatment techniques, and other factors (including cost). As the enforceable standard for public water supplies, MCLs are fully protective of human health and, for carcinogens, fall within an acceptable individual lifetime risk range of 10^{-4} to 10^{-7}. For noncarcinogens, which are the majority of chemicals to be controlled, MCLs will nearly always be set at MCLGs. Therefore, in many cases, the MCL will be equivalent to the MCLG.

In a guidance document published last year in the **Federal Register**, "Superfund Program: Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements," 52 FR 32496 (August 27, 1987), EPA stated its policy that for surface or ground water that is or may be used for drinking, MCLs are generally relevant and appropriate as cleanup standards. The basis for this policy was that MCLs are protective of human health and represent the level of water quality that EPA believes is acceptable for over 200 million Americans to consume every day from public drinking water supplies.

EPA recognizes that there may be special circumstances where protection of human health requires more stringent standards than MCLs, as with multiple contaminants or pathways of exposure. In such cases, EPA will make a site-specific determination whether risk posed by such multiple contaminants or pathways is in excess of 10^{-4} and, therefore, of the need for more stringent standards, considering MCLGs, EPA's policy on use of appropriate risk ranges for carcinogens, levels of quantification, and other pertinent guidelines.

Many commenters agreed with EPA because MCLs are fully protective of human health. Comments in support of the guidance noted that the range of risk for MCLs is within EPA's acceptable risk range and that MCLGs are often not achievable given current technology because many MCLGs are set at the zero risk level. Further, requiring MCLGs at CERCLA sites would impose a more restrictive requirement than exists for the drinking water consumed by most households in the country. Also noted was that MCLs are legally applicable at the point of use, generally the tap or at a well used for supplying drinking water. Application of MCLs to cleanup of ground water at a CERCLA site that is or may be used for drinking, therefore, imposes a more stringent standard than exists under the SDWA.

Other commenters on the interim ARARs guidance disagreed with EPA's proposal and asserted that section 121 required that MCLGs generally be the cleanup standards for ground water at CERCLA sites. Some opponents argued that section 121 specifically prohibited consideration of cost-effectiveness in choosing a relevant and appropriate cleanup standard until after a standard that protects human health and the environment is selected. Therefore, they argued, application of MCLs as the relevant and appropriate standard is inconsistent with the statute because cost and available technology factors are considered in the development of MCLs.

In summary, the commenters presented divergent opinions on this specific issue. After review of comments, EPA believes that the interpretation articulated in the interim ARARs guidance is correct and that section 121 permits the use of MCLs as generally relevant and appropriate cleanup standards for the following reasons. Under section 121, it is EPA's responsibility to determine what standards are applicable or relevant and appropriate at a site, a determination made on a case-by-case basis within general EPA program guidelines. Although section 121(d)(2)(A) does not specifically refer to cleanup of contaminated ground water to its beneficial uses, CERCLA actions will generally use SDWA standards for ground water that is or could be used for drinking. EPA believes that MCLs, the enforceable standards under the SDWA, are the appropriate standard because they represent the level of quality for the nation's drinking water supplies. (The application of SDWA standards to the cleanup of ground water is also discussed in the § 300.430 preamble section above, "E. EPA's Approach for Ground-Water Remediation under the Superfund Program.")

Using MCLs as relevant and appropriate standards is consistent with EPA's use of a risk range to determine acceptable levels of residuals of carcinogens. CERCLA does not require that EPA eliminate all risk. Therefore, EPA believes that generally a risk range of 10^{-4} to 10^{-7} incremental individual lifetime cancer risk for carcinogens fulfills its statutory mandate to protect human health and the environment. MCLs for carcinogens are set within this risk range. For noncarcinogens, MCLs will nearly always be set at MCLGs, thus assuring that even sensitive populations will experience no adverse health effects. Since the majority of chemicals encountered at sites are noncarcinogens, there will be no difference in the protectiveness of MCLGs and MCLs for most contaminants.

Furthermore, even though cost and available technology may be considered when setting an MCL, an MCL is protective and therefore achieving an MCL complies with CERCLA's mandate to protect human health and the environment.

(See also EPA's interpretation of CERCLA section 121(d)(2)(B)(ii)

regarding the use of alternate concentration limits (ACLs) as cleanup standards for ground water that is or may be used for drinking in the § 300.430 preamble section above, "E. EPA's Approach for Ground-Water Remediation under the Superfund Program.")

ii. *Federal Water Quality Criteria.* EPA develops two kinds of Federal Water Quality Criteria (FWQC), one for protection of human health and another for protection of aquatic life. FWQC are non-enforceable guidelines used by the States to set Water Quality Standards (WQS) for surface water. FWQC, which identify threshold level concentrations for noncarcinogens and concentrations equating to various risk levels for carcinogens, guide States in assessing the toxicity of a contaminant. States designate the use of a given water body based on its current and potential use and apply the FWQC to set pollutant levels that are protective of that use. State WQS, which can be narrative or expressed as a numerical concentration limit, are subject to EPA approval.

If a State has promulgated a numerical WQS that applies to the contaminant and the designated use of the surface water at a site, the WQS will generally be applicable or relevant and appropriate for determining cleanup levels, rather than an FWQC. A WQS represents a determination by the State, based on the FWQC, of the level of contaminant which is protective in that surface water body, a determination subject to EPA approval.

CERCLA 121(d)(2) requires that, in determining whether an FWQC is relevant and appropriate, the latest information available be considered. Thus, an FWQC may be relevant but not appropriate if its scientific basis is not current. EPA's recommended RfDs and cancer potency factors, which are based on the EPA's evaluation of the latest information, should be used when an FWQC does not reflect current information.

CERCLA 121(d)(2) also requires that the designated or potential use of the surface or ground water and the purposes for which the criteria were developed be considered in determining whether a FWQC is relevant and appropriate.

The purpose of the FWQC for human health is to identify protective levels from two routes of exposure—exposure from drinking the water and from consuming aquatic organisms, primarily fish. There are levels provided for exposure from both routes, and from fish consumption alone. Whether a FWQC is relevant and appropriate, and which form of the criteria is appropriate, depends on whether exposure via either or both of these routes is likely to occur, and thus on the designated use of the water body.

As discussed in the section above, MCLs represent the level of quality EPA has determined to be safe for drinking and thus are generally relevant and appropriate for ground water that is or may be used for drinking and for surface water designated as a current or potential drinking water supply. Therefore, when a promulgated MCL exists, the FWQC for that constituent would not be relevant and appropriate. However, when MCLs are not available, a FWQC may be relevant and appropriate in water that is a potential drinking water source.

Since MCLs only reflect exposure from drinking the water, a FWQC for consumption of aquatic organisms may be appropriate in addition to the MCL, resulting in a more stringent cleanup level, when that route is also a concern at the site.

FWQC without modification are not relevant and appropriate in selecting cleanup levels in ground water, where consumption of contaminated fish is not a concern. However, a FWQC may be adjusted to reflect only exposure from drinking the water. Alternatively, the use of EPA-recommended RfDs and cancer potency factors, following a methodology similar to that used to develop the drinking water portion of the FWQC, could serve as a guideline for cleanup if the FWQC is not current.

A FWQC adjusted for drinking water could also be relevant and appropriate in surface water designated for drinking water purposes, since the FWQC is specifically designed to be protective of that use. Whether a FWQC that also includes fish consumption should be selected depends on the likelihood of exposure occurring from this route and on whether fishing is included in the State's designated use.

If the State has designated a water body for recreation, a FWQC reflecting fish consumption only, not drinking the water, may be relevant and appropriate if fishing is included in that designation.

Generally, FWQC are not relevant and appropriate for other uses, such as industrial or agricultural use, since exposures reflected in the FWQC are not likely to occur.

A FWQC for protection of aquatic life may be relevant and appropriate for a remedy involving surface waters (or ground-water discharges to surface water) when the designated use requires protection of aquatic life or when environmental concerns exist at the site. If protection of human health and aquatic life are both a concern, the more stringent standard or criteria should generally be applied.

A State numerical WQS is essentially a site-specific adaptation of a FWQC, subject to EPA approval, and, when available, is generally the appropriate standard for the specific water body, rather than a FWQC. If both an MCL and numerical State WQS exist for the same constituent where the water is designated for drinking, the State WQS should be used if it is more stringent, as required by CERCLA section 121(d)(2)(A)(ii).

In sum, a FWQC, or component of the FWQC, may be relevant and appropriate when the FWQC is intended to protect the uses designated for the water body at the site, or when the exposures for which the FWQC are protective are likely to occur. To be considered relevant and appropriate, FWQC must also reflect current scientific information. In addition, whether a FWQC is relevant and appropriate depends on the availability of standards, such as an MCL or WQS, specific for the constituent and use.

14. *ARARs for investigation-derived waste.* EPA believes that the CERCLA section 121 requirement that remedial activities comply with Federal and State ARARs applies not only to the implementation of the remedy selected for a site, but also to the handling, treatment, or disposal of investigation-derived wastes produced during remedial activities, such as the SI or RI/FS.

Specifically, there are several ways that investigation-derived wastes may result from such remedial activities. Examples include the following: (i) Ground water or surface water samples that must be disposed of after analysis; (ii) drill cuttings or core samples from soil boring or monitoring well installations; (iii) purge water removed from sampling wells before ground water samples are collected; (iv) water, solvents, or other fluids used to decontaminate field equipment such as backhoes, drilling rigs, and pipes; (v) condensate from pipes used for gas sampling in landfills; and (vi) waste produced by on-site pilot-scale facilities constructed to test technologies best suited for remediation of the site.

The handling, treatment, or disposal of any such investigation-derived wastes must satisfy Federal and State requirements that are applicable or relevant and appropriate to the site location and the amount and concentration of the hazardous substances, pollutants, or contaminants involved. EPA intends that field investigation teams use best

professional judgment in determining when investigation-derived wastes may contain hazardous substances and to handle such substances in accordance with all Federal and State ARARs. For example, if ground-water samples containing hazardous substances are to be disposed of by discharge into surface water, they may require treatment before disposal so that water quality standards are not violated. Also, if it is known or suspected that purge waters are drawn from an area with significant dioxin contamination, EPA expects that such investigation-derived wastes will be containerized, tested, and disposed of in accordance with all ARARs. (Consistent with established practice, investigation-derived materials may remain on-site until the remedial action commences.) In contrast, the routine containerization and testing of large volumes of drilling muds and purge waters which are not suspected to contain hazardous substances may be unnecessary because they result only in delays to the investigation with no attendant public health or environmental benefit.

15. *Substantive versus administrative requirements.* CERCLA section 121(d) requires that remedial actions shall require a level or standard of control for hazardous substances, pollutants, or contaminants which attains ARARs. Levels or standards of control are basic performance objectives for the remedial action (e.g., acceptable exposure levels after the remedial action is completed). These basic performance objectives are defined by substantive ARARs. Examples of substantive ARARs include acceptable concentrations for specific chemicals under the Safe Drinking Water Act which define cleanup levels for ground water that is or may be used for drinking water, technology-based requirements under RCRA for the management of hazardous wastes which define, for example, the physical characteristics of a new landfill if waste is to be closed in place, and restrictions on activities in certain locations which define, for example, the conduct of excavation in order to minimize potential harm to wetlands.

Requirements which do not in and of themselves define a level or standard of control are considered administrative. Administrative requirements include the approval of, or consultation with, administrative bodies, issuance of permits, documentation, and, generally, reporting and recordkeeping. The Superfund program imposes its own reporting and recordkeeping requirements to ensure that substantive levels or standards of control are being met. Compliance with similar requirements of other environmental statutes would be redundant and unduly burdensome.

This interpretation is consistent with CERCLA section 121(e) which exempts on-site activities from obtaining permits. The purpose of this exemption is to allow CERCLA response actions to proceed expeditiously without the delays that could result while waiting for other offices or agencies to issue a permit. The substantive requirements that would be imposed by a permit still must be stated in Superfund documents, but the redundancy of stating such standards in a permit issued by another office or agency is avoided.

In most cases, the classification of a particular requirement as substantive or administrative will be clear, but some requirements may fall into a gray area between the provisions related primarily to program administration and those concerned primarily with environmental and human health goals. Several factors may be considered when it is not readily apparent whether a requirement is substantive or administrative; for example, the basic purpose of the requirement, any adverse effect on the ability of the action to protect human health and the environment if the requirement were not met, the existence of other requirements (e.g., CERCLA procedures) at the site that would provide functionally equivalent compliance, and classification of similar or identical requirements as substantive or administrative in other situations. The determination of whether a requirement is substantive or administrative need not be documented.

16. *Potential ARARs of the Resource Conservation and Recovery Act (RCRA).* CERCLA compliance with the regulations promulgated pursuant to RCRA is a special concern within the broader context of CERCLA compliance with other environmental and public health laws. Because the RCRA Subtitle C regulations address the ongoing treatment, storage, and disposal of hazardous waste, and because CERCLA response actions often involve treatment, storage, and disposal of hazardous waste, many RCRA requirements will be applicable or relevant and appropriate to CERCLA response actions. The current RCRA Subtitle C regulations are codified at 40 CFR Subchapter I.

The purpose of this discussion is to provide a general overview of CERCLA compliance with the potential ARARs of RCRA, including the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA). Although the determination of which requirements are applicable or relevant and appropriate is always made on a site-by-site basis, it is possible to make some general statements about compliance with RCRA.

i. *The potential ARARs of RCRA Subtitle C.* RCRA Subtitle C is the authority for regulations which establish standards for hazardous waste management. Pursuant to RCRA Subtitle C, EPA has promulgated requirements and standards for generators and transporters of hazardous waste and for owners and operators of hazardous waste treatment, storage, and disposal facilities. These regulations contain numerous potential ARARs for CERCLA remedial actions, each requirement having its own unique set of jurisdictional prerequisites.

In general, RCRA Subtitle C requirements for the treatment, storage, or disposal of hazardous waste will be applicable if a combination of the following conditions is met:

a. The waste is a listed or characteristic waste under RCRA; and

b. Either: (1) The waste was treated, stored, or disposed after the effective date of the RCRA requirements under consideration; or (2) The activity at the CERCLA site constitutes treatment, storage, or disposal as defined by RCRA.

Listed hazardous wastes under RCRA are found in 40 CFR Part 261, Subpart D. Some RCRA requirements apply to hazardous wastes as defined in RCRA section 1004(5). Characteristic hazardous wastes under RCRA are described in 40 CFR Part 261, Subpart C. Testing methods and protocols for characteristic determinations are contained in Test Methods for Evaluating Solid Waste, 3rd edition, Volume 1C, Laboratory Manual (SW-846).

There are two scenarios under which RCRA requirements may be applicable to CERCLA sites. First, if the lead agency determines that RCRA listed or characteristic hazardous waste is present and the waste was treated, stored, or disposed at the site after the effective date of the requirements under consideration, then the pertinent RCRA requirements will be applicable to the waste activity. Generally, traditional RCRA regulated facilities that have been listed on the NPL may fall into this category, even if the proposed CERCLA action would not involve treatment, storage, or disposal. For example, if a RCRA landfill or a hazardous waste incinerator operated at the site after the effective date of the RCRA closure requirements, then the lead agency

would need to comply with the applicable closure requirements for those units in completing the remedial action. Second, if the lead agency determines that RCRA listed or characteristic hazardous waste is present at the site (even if the waste was disposed before the effective date of the requirement) and the proposed CERCLA action involves treatment, storage, or disposal as defined under RCRA, then RCRA requirements related to those actions would be applicable.

These two scenarios are contingent upon determinations that RCRA Subtitle C hazardous waste is present and on the identification of the period of waste management. To determine whether a waste is a listed waste under RCRA, it is often necessary to know the source. However, at many CERCLA sites no information exists on the source of the wastes nor are references available citing the date of disposal. The lead agency should use available site information, manifests, storage records, and vouchers in an effort to ascertain the source of these contaminants. When this documentation is not available, the lead agency may assume that the wastes are not listed RCRA hazardous wastes, unless further analysis or information becomes available which allows the lead agency to determine that the wastes are listed RCRA hazardous wastes. If the lead agency assumes the wastes are not listed RCRA hazardous wastes and it is determined that the wastes are not characteristic wastes under RCRA (see discussion below, 17.i.) RCRA requirements would not be applicable to CERCLA actions, but may be relevant and appropriate if the CERCLA action involves treatment, storage or disposal and/or if the wastes are similar or identical to RCRA hazardous waste.

Under certain circumstances, although no historical information exists about the waste and when it was treated, stored, or disposed, it may be possible to identify the wastes as RCRA characteristic wastes. With respect to hazardous characteristics, (ignitability, corrosivity, reactivity, or EP toxicity), it is the responsibility of the generator (in this case, the lead agency or PRP conducting the action) to determine if the wastes exhibit any of these characteristics (defined in 40 CFR 261.21 through 24). The lead agency must use best professional judgment to determine, on a site-specific basis, if testing for hazardous characteristics is necessary. Testing is required unless it can be determined, by "applying knowledge of the hazard characteristic in light of the materials or process used," that the waste does not have hazardous characteristics (40 CFR 262.11(c)).

In determining whether to test for the toxicity characteristic using the Extraction Procedure (EP) Toxicity Test, it may be possible to assume that certain low concentrations of waste are not toxic. For example, if the total waste concentration is 20 times or less the EP Toxicity concentration, the waste cannot be characteristic hazardous waste. In such a case RCRA requirements would not be applicable and would not likely be relevant or appropriate unless the waste also contained other RCRA hazardous wastes and the CERCLA action involved treatment, storage, or disposal.

If the wastes exhibit hazardous characteristics, RCRA requirements are potentially applicable if the wastes also were either treated, stored, or disposed after the effective date of the applicable RCRA requirement or if the CERCLA actions will involve treatment, storage, or disposal.

ii. *Actions constituting treatment, storage, or disposal.* Many CERCLA actions occur in areas of contamination that contain waste treated, disposed of, or stored prior to November 19, 1980. If left untouched, wastes in such areas are not currently regulated under Subtitle C of RCRA. [Solid waste management units at RCRA facilities are regulated by the 3004(u) corrective action requirements.) However, certain physical movement, alteration, or disturbance of RCRA hazardous waste associated with a remedial action may meet the RCRA definition of treatment, storage, or disposal. For instance, treatment has occurred when the CERCLA remedial action uses "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, dispose of; or amenable for recovery, amenable for storage, or reduced in volume." 40 CFR 260.10.

Similarly, storage occurs when a CERCLA remedial action involves the "holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere." 40 CFR 260.10.

Land disposal occurs when RCRA hazardous waste is placed into a land disposal unit, including a "landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave." RCRA section 3004(k).

Movement of hazardous waste entirely within a unit does not constitute "land disposal" under Subtitle C of RCRA. However, movement of hazardous waste into a unit (i.e., across the boundary of a unit) does constitute "land disposal."

In many cases CERCLA sites contain areas of contamination (with differing levels of concentration, including hot spots, of hazardous substances, pollutants, or contaminants) that may be characterized as a unit, usually a landfill, under RCRA. In such cases where RCRA hazardous waste is moved into the area of contamination, RCRA disposal requirements are applicable to the disturbed waste and certain land disposal requirements (such as for closure) may be applicable to the area where the waste is received.

Therefore, the following activities constitute land disposal under RCRA Subtitle C where the waste involved is RCRA hazardous waste:

a. Wastes from different units are consolidated into one unit;

b. Waste is removed and treated outside a unit and redeposited into the same or another unit; or

c. Waste is picked up from the unit and treated within the area of contamination in an incinerator, surface impoundment, or tank and then redeposited into the unit (does not include in-situ treatment).

In contrast, an example of an activity that does not constitute "land disposal" is the mere consolidation of RCRA hazardous wastes within a unit. Similarly, the covering and sealing off of hazardous waste, called "capping with waste in place," is also not considered "land disposal" and RCRA Subtitle C requirements would not be applicable. If some of the waste at a site is moved into another unit, but other waste is left behind in the original unit (the unit in which such waste was found), "land disposal" applies only with regard to the waste that is moved into another unit. Under these examples, however, certain RCRA land disposal requirements might nevertheless be relevant and appropriate to such waste. (See ARARs preamble sections below, 16.iii. and 17.)

iii. *Hypothetical examples of compliance with RCRA: land disposal restrictions.* Land disposal restrictions under RCRA sections 3004 (d) through (k) are triggered whenever there is placement of RCRA hazardous wastes subject to land disposal restrictions ("banned waste") into a land-based unit. Such land disposal does not occur when

hazardous waste is merely moved around within a unit.

Certain activities, e.g., placement, involving specific wastes may be subject to the special restrictions on land disposal of hazardous wastes. (Placement into a unit is defined identically to land disposal, see above.) The land disposal restrictions (LDR) regulations establish treatment standards to be achieved based on the best demonstrated available treatment technology (BDAT) before specific wastes may be land disposed. For example, land disposal restrictions require that a remedial action that involves the excavation and movement of banned waste into a unit (i.e., placement) must meet BDAT levels before the waste is placed into the unit. Similarly, the land disposal restrictions also apply where the remedial action involves excavation of banned waste from its original unit, treatment of that waste at another unit, and placement of that waste back into the original unit or another unit. However, land disposal restrictions are not applicable where banned waste is moved, graded, stabilized, or treated in-situ, entirely within the original unit, because placement has not occurred. Furthermore, the temporary staging of waste within the unit prior to further remedial action is not placement (however, storage restrictions may apply). Land disposal restrictions are not applicable but may be relevant and appropriate where the remedial action involves placement of CERCLA waste similar in composition to RCRA banned waste. (See ARARs preamble section below, "17. Hypothetical Examples of Relevant and Appropriate Requirements.")

iv. *Hypothetical examples of compliance with RCRA: design and operating requirements.* The RCRA 40 CFR Part 264 regulations require certain design and operating standards (minimum technology requirements) for the construction of new land disposal units, and for the construction of replacements for, expansions of, or lateral extensions to existing land disposal facilities. If, for instance, the remedial action involves the placement of RCRA hazardous waste into a newly built or expanded landfill, then the 40 CFR Part 264 design and operating standards for landfills will be applicable to the remedial action, unless an exemption is justified under the provisions of the design and operating standards. Double liners and leachate collection and return systems will thus be required as a part of construction and operation.

v. *Hypothetical examples of compliance with RCRA: corrective action requirements.* EPA's ground-water protection regulations, 40 CFR Part 264, Subpart F, include corrective action requirements. EPA is currently developing regulations for corrective action requirements imposed by RCRA sections 3004 (u) and (v) (added by HSWA).

The Subpart F corrective action provisions require cleanup of ground water for each hazardous constituent to either the background level, a SDWA maximum contaminant level (MCL), or an alternate concentration limit (ACL) set by the Regional Administrator. The RCRA ground water protection standards (40 CFR Part 264 Subpart F) do not contain all of the current SDWA MCLs. Where no MCL exists under RCRA, the ground-water protection standard will be set at background or at an ACL if the proper ACL demonstrations can be made to the satisfaction of the Regional Administrator.

The Subpart F corrective action standards for regulated units are applicable where the release being addressed is from certain specified land disposal units to the environment and the unit received RCRA hazardous waste after July 26, 1982 (the publication date of Subpart F).

The RCRA corrective action requirements added by HSWA regulate releases of RCRA hazardous constituents to the environment from solid waste management units at RCRA facilities, regardless of the date on which the hazardous or solid waste was received by the unit. EPA is currently developing more detailed regulations to implement these HSWA requirements that will establish procedures and standards for corrective action. EPA expects that the existing and new regulations, when promulgated, will generally be applicable to Superfund actions whenever a remedial action involves treatment, storage, or disposal of RCRA hazardous waste. These regulations will be particularly significant for CERCLA because they will reflect standards EPA has found specifically appropriate to remedial actions.

EPA anticipates that, for the most part, only the requirements in the corrective action regulation that establish standards for cleanup and hazardous waste management will be applicable to CERCLA actions.

Some of the remedy selection standards may be equivalent to or subsumed by the standards for remedies established in the NCP. For these standards, meeting the NCP standards would automatically ensure that the applicable RCRA requirements are met. A clear example of this is the protectiveness standard, since both RCRA corrective action rules and the NCP require that remedies must be protective of human health and the environment. Other standards may need to be addressed on a site-specific basis. A more specific determination of how the corrective actions standards must be addressed will be made when the RCRA regulations are promulgated.

The corrective action regulations are likely to establish a corrective action process. These parts of the rule will establish procedures, criteria, and definitions to implement corrective action. For example, the rule is likely to establish when investigations and detailed study of alternatives are required and how those assessments will be conducted. These requirements will not be applicable because they are the equivalent of administrative requirements in that they prescribe methods and procedures to implement the corrective action program.

EPA has, through the NCP, established procedures that it believes will achieve the same result as the RCRA corrective action process. For example, the use of action levels to trigger the full corrective action process parallels CERCLA's Hazard Ranking System, which brings sites under the remedial process. Another example is RCRA's definition of "facility," which differs from the statutory definition provided in CERCLA. Attempting to apply RCRA's distinct, but essentially equivalent, procedures and definitions would cause significant confusion and provide little environmental gain under the Superfund program.

vi. *Hypothetical examples of compliance with RCRA: closure requirements.* Although 40 CFR Part 264 includes potentially applicable or relevant and appropriate requirements addressing closure and post-closure care for the various types of units regulated in the several subparts of Part 264 (e.g., Subparts G, K, and N), these various subparts contain only two basic closure options that can be potentially applicable or relevant and appropriate to the completion of operable units during CERCLA response actions. The two closure options are best exemplified by the regulations for closure of surface impoundments. For instance, owners and operators desiring to decommission (i.e., close) an operating surface impoundment have two options. The first option, "closure by removal" (or "clean closure"), requires that all waste

residues and contaminated liners and subsoils be removed or decontaminated. A recent amendment to the interim status regulations for closure and post-closure care for hazardous waste surface impoundments, 52 FR 8704, March 19, 1987, further clarifies that this closure option involves the removal of enough contaminated soil such that contamination is reduced to concentration levels that attain promulgated standards and/or EPA's health-based advisory levels in the actual area of contamination (i.e., this does not allow for environmental fate and transport modeling to determine exposure levels outside the area of contamination). The level of cleanup required has been interpreted to be "drinkable leachate" and "edible soils." No post-closure requirements exist for an owner/operator who has chosen the closure option because EPA has adopted the strict clean standards. The strict standards ensure that the public and the environment will be safe from all exposure pathways (i.e., dermal, inhalation, and direct soil and water ingestion) after the owner/operator of a RCRA facility has left the RCRA regulatory system (the clean closure regulations allow an owner/operator to leave the RCRA regulatory system after verification of the attainment of clean closure levels for 180 days).

The second option, "closure with waste in place" or "landfill closure," where contaminated materials remain after closure, requires final cover over the unit and post-closure care, such as maintenance of the final cover, ground-water monitoring, and corrective action if the ground-water protection standards are violated. Thus, a significant difference between clean closure and landfill closure is that after landfill closure the unit must be maintained and monitored, corrective action taken if needed, a notice provided in the deed and plat that the site was used for hazardous waste, and permission must be obtained to build over the site. Clean closure does not include such additional requirements because hazardous constituents have been removed to sufficiently low levels that no further action is necessary to be protective.

Thus, the determination of whether clean closure or landfill closure requirements are potential ARARs depends upon the contemplated remedial activities, i.e., whether the activity is treatment, storage, or disposal of hazardous waste and whether all contamination will be removed from that unit or whether hazardous wastes will remain at the closed unit. (See also ARARs preamble section below, "17. Hypothetical examples of relevant and appropriate requirements.")

Even where not applicable, portions of the closure requirements may be relevant and appropriate depending upon the site. If portions of the closure requirements are found relevant and appropriate, the lead agency may combine relevant and appropriate requirements from clean and landfill closure options that are suitable for a particular site. Rather than having only two options for addressing contaminated soil at a site (i.e., either excavate basically all of the waste and contaminated soil to clean closure levels, or cap), the lead agency may combine relevant and appropriate requirements to form a hybrid closure option. (EPA is considering a hybrid closure regulation for the RCRA program; however, the discussion below refers to the use of hybrid closure in the Superfund program.)

The Superfund program has been using several different types of hybrid closure (where RCRA closure is not applicable) that give the decisionmaker additional choices for the long-term management of hazardous substances as well as treated residuals. Alternate clean closure and alternate land disposal closure are the two hybrid closures most frequently used. The alternate clean closure approach is similar to clean closure in that engineering controls are not required. However, limited fate and transport modeling and site information may be used to establish cleanup levels for contaminated soils and waste materials remaining at the site. For example, the ground-water route of exposure would be protected by determining a level in the soils that would be consistent with the levels established for ground water. Typically, monitoring will be necessary after the completion of the remedial measure to verify that the levels established at the site are protective of ground water and other routes of exposure. After the verification period, no monitoring at the site would be required. A deed notice may be desirable in some cases.

The alternate land disposal closure is the second type of hybrid closure that is used by the Superfund program. This type of closure is identical to RCRA landfill disposal closure except that the cover requirements are relaxed because the wastes being contained do not pose a threat to ground water. Direct contact and surface water threats, as well as other threats, can be adequately addressed with a soil cover. This type of closure is usually appropriate for wastes at low concentrations but still above "walk-away" levels. EPA has found this type of closure to be useful in addressing wide areas of contaminated soils in a relatively inexpensive but very reliable manner.

If clean closure or landfill closure requirements are applicable, alternate closure may be implemented only if an ARAR waiver can be invoked.

17. *Hypothetical examples of relevant and appropriate requirements.* The criteria to be used in determining whether a requirement is relevant and appropriate to a CERCLA remedial action are listed in § 300.400(g)(2). The discussion below illustrates the use of the criteria by providing hypothetical, but typical, situations where requirements from RCRA and other laws may be both relevant and appropriate, i.e., the circumstances addressed in the requirement are pertinent to those of the CERCLA action or release and the requirement is well-suited to the circumstances at the site.

i. *CERCLA waste similar to RCRA hazardous waste.* The source or prior use of many wastes at CERCLA sites cannot be positively identified. Yet the CERCLA waste may be similar in composition to a listed RCRA waste derived from a known source or use. If such a CERCLA waste would not otherwise exhibit the characteristics that would make it a RCRA hazardous waste under 40 CFR Part 261 Subpart C, the RCRA regulations for hazardous waste would not be applicable to management of the CERCLA waste. However, certain RCRA regulations, such as the design and operating requirements, may be relevant and appropriate to management of such CERCLA waste when warranted by the circumstances of the release or other site-specific factors (see ARARs preamble section above, "16.i. The potential ARARs of RCRA Subtitle C").

If, for example, CERCLA waste were to be disposed in a new land disposal unit, the minimum technology requirements in the RCRA design and operating requirements for land disposal facilities (set forth at 40 CFR Part 264, Subparts K, L, M, and N) would be relevant and could be appropriate, depending on the site-specific circumstances. The action or facility regulated by the requirement—construction of a new land disposal unit—is identical to the proposed remedial action, and the objective of creating secure containment facilities where land disposal is necessary is the same for both RCRA and CERCLA. If the CERCLA waste presents hazards that warrant secure disposal, the

minimum technology requirements may be appropriate for use at the site.

ii. *CERCLA situations similar to regulated situation.* Even where the substance found at a CERCLA site is legally identical to the substance addressed in a regulation, the situation at a CERCLA site may not technically match the situation addressed by the regulation. Nevertheless, if the two situations are sufficiently similar, such that the requirement is well-suited to the CERCLA situation, the regulation may still be both relevant and appropriate to the CERCLA site. Examples of such potentially relevant and appropriate requirements are given below from RCRA and other laws.

For example, if RCRA hazardous waste disposed of before the effective date is located on a CERCLA site in a unit of size and character similar to RCRA-type units, and the remedial action is designed essentially to leave the waste in place, a portion of one or more of the closure requirements may be relevant and appropriate. Depending on site circumstances, such as the extent and mobility of contamination and hydrogeologic characteristics, either disposal closure or "hybrid" closure (i.e., portions of the existing closure requirements) may be relevant and appropriate. The determination for either would be based on an evaluation of similarity between these additional pertinent factors: the objective of the RCRA requirement and the CERCLA action, and the action and facility under consideration at the CERCLA site and those regulated by the RCRA closure requirement for disposal units. If there is sufficient similarity between these factors so that the requirement suits the CERCLA site circumstances, the requirement is relevant and appropriate.

Taking landfill closure standards for the sake of simplicity, the objective of the closure requirements as stated above matches that of the CERCLA action: waste left at a site must be secured to prevent further releases or direct contact. The substances at the site in this example are RCRA hazardous wastes. The remaining pertinent criteria are whether the action and the facility contemplated at the CERCLA site are sufficiently similar to those regulated by the RCRA landfill closure requirements. Since hazardous waste above levels that allow for unrestricted use and unlimited exposure is being left at the site in a unit which, though not regulated under the landfill closure standards of RCRA, is similar in size and character to such a unit, the substantive closure requirements pertinent to the specific kind of unit on the site (i.e., landfill) as contained in 40 CFR Part 264, Subpart N would directly suit the CERCLA action. Thus, it is relevant and appropriate to attain the specified cover system and post-closure care.

If, however, the waste is widely dispersed and not contained in a RCRA-type unit, use of RCRA closure may not be appropriate. For instance, RCRA Subtitle C covers may not be appropriate under certain circumstances for large municipal landfills or large mining waste sites, if the waste is generally of low toxicity and the contamination is dispersed over a large area that bears little resemblance to the discrete units regulated under RCRA Subtitle C. (See draft CERCLA Compliance with Other Laws Manual, Chapter 2, OSWER Directive No. 9234.1-01, for more discussion on this issue.) The administrative requirements in the closure regulations are not relevant and appropriate for on-site actions under any circumstances. (See ARARs preamble section above, "15. Substantive versus administrative requirements.")

Even if they are not applicable, portions of RCRA requirements for tanks (40 CFR Part 264, Subpart J) may be relevant and appropriate for sites where temporary storage in tanks is required. For example, the requirement that tanks have sufficient minimum shell thickness and pressure controls to prevent collapse or rupture may be relevant and appropriate, since the purpose of the requirement is to ensure that the tank does not create additional environmental problems due to its own failure. RCRA regulations also require that tanks have an inner lining or coating, or an alternative means of protection such as cathodic protection or corrosion inhibitors, in order to ensure that the tank is safe throughout its effective life. This requirement, although relevant, may not be appropriate in many situations. For example, if the tanks were to be used only for relatively short periods, the full RCRA Subpart J standards, which were designed for long-term storage, may not be appropriate.

Another example of a CERCLA situation which is similar to a regulated situation concerns the cleanup of certain kinds of asbestos waste. Emissions of asbestos fibers are controlled by a National Emission Standard for Hazardous Air Pollutants (NESHAP) under the Clean Air Act. The NESHAP in Subpart M of 40 CFR Part 61 includes requirements for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations (40 CFR 61.153), for active waste disposal sites (40 CFR 61.156), and for waste disposal for demolition and renovation operations (40 CFR 61.152), but no requirements for inactive waste disposal sites for demolition and renovation operations. Therefore, the NESHAP will not be applicable to cleanup of an inactive waste disposal site unless it was owned or operated by an asbestos mill, manufacturer, or fabricator, or contains waste from such sources. However, the NESHAP specified in 40 CFR Part 61, Subpart M may be relevant and appropriate to the control of emissions and access under CERCLA at an inactive waste disposal site for demolition and renovation operations because the situations may be sufficiently similar.

The finding of relevance and appropriateness is based on several factors that are sufficiently similar in the NESHAP and the CERCLA situation and the suitability of the NESHAP to the specific site circumstances. Both the requirement and the remedial action are intended to protect human health from exposure to a hazardous substance; the specific remedial action, like the specific requirements in the NESHAP, seeks to control harmful emissions from or contact with asbestos materials at a disposal site through proper management and mitigation measures. The media of concern are the same for both air contamination and direct contact with waste. The activity and facility involve in both cases the management or disposal of asbestos waste at a land disposal site. The only difference between the CERCLA situation and the NESHAP concerns the regulated substance and entity, for the NESHAP does not cover asbestos from demolition and renovation operations at inactive sites. However, the problems from such asbestos may be very similar to those encountered at, for example, inactive sites for mills and manufacturing: fugitive emissions of asbestos particles may need to be eliminated and public access to the site controlled. Hence, it may be relevant and appropriate at the CERCLA site to comply with such NESHAP requirements as elimination of visible emissions (or capping of waste) and installation of warning signs and fencing.

G. Examples of Potential Federal and State ARARs and TBCs

Potential ARARs and TBCs include, but are not limited to, the following:

1. *Federal requirements which may be potential applicable or relevant and appropriate requirements.*

i. EPA's Office of Solid Waste administers, inter alia, the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. 6901). Potentially applicable or relevant and appropriate requirements pursuant to that Act are:

a. Open Dump Criteria Pursuant to RCRA Subtitle D criteria for classification of solid waste disposal facilities (40 CFR Part 257). Note: Only relevant to nonhazardous wastes.

b. RCRA Subtitle C requirements governing standards for owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR Part 264, for permitted facilities, and 40 CFR Part 265, for interim status facilities):

(1) Ground-Water Protection and Monitoring (40 CFR 264.90–264.101).

(2) Closure and Post Closure (40 CFR 264.110–264.120).

(3) Containers (40 CFR 264.170–264.178).

(4) Tanks (40 CFR 264.190–264.200).

(5) Surface Impoundments (40 CFR 264.220–264.249).

(6) Waste Piles (40 CFR 264.250–264.269).

(7) Land Treatment (40 CFR 264.270–264.299).

(8) Landfills (40 CFR 264.300–264.339).

(9) Incinerators (40 CFR 264.340–264.999).

(10) Land Disposal Restrictions (40 CFR 268.1–268.50).

(11) Dioxin-containing wastes (50 FR 1978).

(12) Standards of performance for storage vessels for petroleum liquids (40 CFR Part 60, Subparts K and K(a)).

(13) Codification rule for 1984 RCRA amendments (50 FR 28702, July 15, 1985; 53 FR 45788, December 1, 1987).

ii. EPA's Office of Water administers several potentially applicable or relevant and appropriate statutes and regulations issued thereunder:

a. Section 14.2 of the Public Health Service Act as amended by the Safe Drinking Water Act, as amended, (42 U.S.C. 300(f)).

(1) Maximum Contaminant Levels (for all sources of drinking water exposure) (40 CFR 141.11–141.16).

(2) Maximum Contaminant Level Goals (40 CFR 141.50–141.51, 50 FR 46936).

(3) Underground Injection Control Regulations (40 CFR Parts 144, 145, 146, 147).

b. Clean Water Act, as amended, (33 U.S.C. 1251).

(1) Requirements established pursuant to sections 301, 302, 303 (including State water quality standards), 304, 306, 307 (including Federal pretreatment requirements for discharge into a publicly owned treatment works), 308, 402, 403 and 404 of the Clean Water Act (33 CFR Parts 320–329, 40 CFR Parts 122, 123, 125, 131, 230, 231, 233, 400–469).

(2) Available Federal Water Quality Criteria documents are listed at 45 FR 79318, November 28, 1980; 49 FR 5831, February 15, 1984; 50 FR 30784, July 29, 1985; 51 FR 8012, March 7, 1986; 51 FR 22978, June 28, 1986; 51 FR 43665, December 3, 1986; 52 FR 6213, March 2, 1987.

(3) Clean Water Act section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230).

(4) Procedures for Denial or Restriction of Disposal Sites for Dredged Material (Clean Water Act section 404(c) Procedures, 33 CFR Parts 320–329, 40 CFR Part 231).

c. Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401).

(1) Incineration at sea requirements (40 CFR Parts 220–225, 227, 228. See also 40 CFR 125.120–125.124).

iii. EPA's Office of Pesticides and Toxic Substances administers the Toxic Substances Control Act (15 U.S.C. 2601). Potentially applicable or relevant and appropriate requirements pursuant to that Act are:

PCB requirements generally: 40 CFR Part 761; Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items (40 CFR 761.20–761.30); Markings of PCBs and PCB Items (40 CFR 761.40–761.45); Storage and Disposal (40 CFR 761.60–761.79); Records and Reports (40 CFR 761.180–761.185). See also 40 CFR 129.105, 750.

iv. EPA's Office of External Affairs administers potentially applicable or relevant and appropriate requirements regarding requirements for floodplains and wetlands (40 CFR Part 6, Appendix A).

v. EPA's Office of Air and Radiation administers several potentially applicable or relevant and appropriate statutes and regulations issued thereunder:

a. The Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 2022) and Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (40 CFR Part 192).

b. Clean Air Act (42 U.S.C. 7401).

(1) National Primary and Secondary Ambient Air Quality Standards (40 CFR Part 50).

(2) Standards for Protection Against Radiation (10 CFR Part 20). See also 10 CFR Parts 10, 40, 60, 61, 72, 960, 961.

(3) National Emission Standard for Hazardous Air Pollutants (40 CFR Part 61). See also 40 CFR 427.110–427.116, 763.

(4) New source performance standards (40 CFR Part 60).

vi. Other Federal requirements:

a. OSHA requirements for workers engaged in response activities are codified under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651). The relevant regulatory requirements are included under:

(1) Occupational Safety and Health Standards (General Industry Standards) (29 CFR Part 1910).

(2) The Safety and Health Standards for Federal Service Contracts (29 CFR Part 1926).

(3) The Health and Safety Standards for Employees Engaged in Hazardous Waste Operations (29 CFR 1910.120).

b. National Historic Preservation Act (16 U.S.C. 470). Compliance with NHPA required pursuant to 7 CFR Part 650. Protection of Archaeological Resources: Uniform Regulations—Department of Defense (32 CFR Part 229), Department of the Interior (43 CFR Part 7).

c. D.O.T. Rules for the Transportation of Hazardous Materials, 49 CFR Parts 107, 171, 172.

d. The following requirements are also potentially ARAR for Fund-financed actions:

(1) Endangered Species Act of 1973 (16 U.S.C. 1531). Generally, 50 CFR Parts 81, 225, 402.

(2) Wild and Scenic Rivers Act (16 U.S.C. 1271).

(3) Fish and Wildlife Coordination Act (16 U.S.C. 661 note).

(4) Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135) 40 CFR Part 165.

(5) Wilderness Act (16 U.S.C. 1131).

(6) Coastal Barriers Resources Act (16 U.S.C. 3501).

(7) Surface Mining Control and Reclamation Act (30 U.S.C. 1201).

(8) Coastal Zone Management Act of 1972 (16 U.S.C. 1451). Generally, 15 CFR Part 930 and 15 CFR 923.45 for Air and Water Pollution Control Requirements.

(9) Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(10) Marine Mammal Protection Act (16 U.S.C. 1361 et seq.).

2. *Examples of potential State ARARs.*

i. State requirements for disposal and transport of radioactive wastes.

ii. State approval of water supply system additions or developments.

iii. State ground-water withdrawal approvals.

iv. Requirements of authorized (Subtitle C of RCRA) State hazardous waste programs.

v. State Implementation Plans (SIPs) and delegated programs under the Clean Air Act.

vi. Approved State NPDES program under the Clean Water Act.

vii. Approved State underground injection control (UIC) programs under the Safe Drinking Water Act.

viii. Approved State wellhead protection programs.

ix. State water quality standards.

x. State air toxics regulations.

3. *Other Federal criteria, advisories, and guidance, to be considered.*

i. Federal Criteria, Advisories, and Procedures.

a. Health Effects Assessments (HEAs) and Proposed HEAs ("Health Effects Assessment for (Specific Chemical)"), ECAO, USEPA, 1985).

b. Reference Doses (RfDs), ("Verified Reference Doses of USEPA," ECAO-CIN-475, January 1986).

c. Carcinogen Potency Factors (CPFs), (Table 11, "Health Assessment Document for Tetrachloroethylene (Perchloroethylene)," USEPA, OHEA/600882/005F, July 1985).

d. Pesticide registrations and registration data.

e. Pesticide and food additive tolerances and action levels. **Note:** Germane portions of tolerances and action levels may be pertinent and therefore are to be considered in certain situations.

f. PCB Spill Cleanup Policy (52 FR 10688, April 2, 1987).

g. Waste load allocation procedures (40 CFR Parts 125, 130).

h. Federal sole source aquifer requirements (52 FR 6873, March 5, 1987).

i. Public health basis for the decision to list pollutants as hazardous under section 112 of the Clean Air Act.

j. EPA's Ground-Water Protection Strategy.

k. Guidance on Remedial Actions for Contaminated Ground Water at Superfund sites (Draft, October 1986) establishes criteria for the use of background concentrations and ACLs.

l. Superfund Public Health Evaluation Manual.

m. TSCA health data.

n. TSCA chemical advisories.

o. ATSDR Toxicological Profiles.

p. Advisories issued by FWS and NWFS under the Fish and Wildlife Coordination Act.

q. TSCA Compliance Program Policy ("TSCA Enforcement Guidance Manual Policy Compendium," USEPA, OECM, OPTS, March 1985).

r. Health Advisories, EPA Office of Water.

s. EPA/DOT Guidance Manual on Hazardous Waste Transportation.

ii. USEPA RCRA Guidance Documents.

a. Alternate Concentration Limits (ACL) Guidance (draft).

b. EPA's RCRA Design Guidelines

(1) Surface Impoundments—Liner Systems, Final Cover, and Freeboard Control.

(2) Waste Pile Design—Liner Systems.

(3) Land Treatment Units.

(4) Landfill Design—Liner Systems and Final Cover.

c. Permitting Guidance Manuals.

(1) Permit Applicant's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities.

(2) Permit Applicant's Guidance Manual for the General Facility Standards of 40 CFR Part 264.

(3) Permit Writer's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities.

(4) Permit Writer's Guidance Manual for the Location of Hazardous Waste Land Storage and Disposal Facilities: Phase I, Criteria for Location Acceptability and Existing Regulations for Evaluating Locations.

(5) Permit Writer's Guidance Manual for Subpart F.

(6) Permit Applicant's Guidance Manual for the General Facility Standards.

(7) Waste Analysis Plan Guidance Manual.

(8) Permit Writer's Guidance Manual for Hazardous Waste Tanks.

(9) Model Permit Application for Existing Incinerators.

(10) Guidance Manual for Evaluating Permit Applications for the Operation of Hazardous Waste Incinerator Units.

(11) A Guide for Preparing RCRA Permit Applications for Existing Storage Facilities.

(12) Guidance Manual on Closure and Post-Closure Interim Status Standards.

d. Technical Resource Documents (TRDs).

(1) RCRA Ground-Water Monitoring Technical Enforcement Guidance Document.

(2) Evaluating Cover Systems for Solid and Hazardous Waste.

(3) Hydrologic Simulation of Solid Waste Disposal Sites.

(4) Landfill and Surface Impoundment Performance Evaluation.

(5) Lining of Water Impoundment and Disposal Facilities.

(6) Management of Hazardous Waste Leachate.

(7) Guide to the Disposal of Chemically Stabilized and Solidified Waste.

(8) Closure of Hazardous Waste Surface Impoundments.

(9) Hazardous Waste Land Treatment.

(10) Soil Properties, Classification, and Hydraulic Conductivity Testing.

e. Test Methods for Evaluating Solid Waste.

(1) Solid Waste Leaching Procedure Manual.

(2) Methods for the Prediction of Leachate Plume Migration and Mixing.

(3) Hydrologic Evaluation of Landfill Performance (HELP) Model Hydrologic Simulation and Solid Waste Disposal Sites.

(4) Procedures for Modeling Flow Through Clay Liners to Determine Required Liner Thickness.

(5) Test Methods for Evaluating Solid Wastes.

(6) A Method for Determining the Compatability of Hazardous Wastes.

(7) Guidance Manual on Hazardous Waste Compatability.

iii. USEPA Office of Water Guidance Documents.

a. Pretreatment Guidance Documents.

(1) 304(g) Guidance Document on Revised Pretreatment Guidelines (3 volumes).

b. Water Quality Guidance Documents.

(1) Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters (1977).

(2) Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses (1983).

(3) Water-Related Environmental Fate of 129 Priority Pollutants (1979).

(4) Water Quality Standards Handbook (1983).

(5) Technical Support Document for Water Quality-Based Toxics Control.

(6) Developing Requirements for Direct and Indirect Discharges of CERCLA Wastewater (1987).

c. NPDES Guidance Documents.

(1) NPDES Best Management Practices Guidance Manual (June 1981).

(2) Case studies on toxicity reduction evaluation (May 1983).

d. Ground Water/UIC Guidance Documents.

(1) Designation of a USDW.

(2) Elements of Aquifer Identification.

(3) Definition of major facilities.

(4) Corrective action requirements.

(5) Requirements applicable to wells injecting into, through, or above an aquifer that has been exempted pursuant to 40 CFR 146.104(b)(4).

(6) Guidance for UIC implementation on Indian lands.

e. Clean Water Act Guidance Documents.

f. Guidance for Applicants for State Well Head Protection Program Assistance Funds under the Safe Drinking Water Act (Office of Ground-Water Protection, June 1987).

iv. USEPA Manuals from the Office of Research and Development.

a. EW 846 methods—laboratory analytic methods.

b. Lab protocols developed pursuant to Clean Water Act section 304(h).

v. Other.

a. Data Quality Objectives, Volumes I and II.

b. Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (Draft).

c. Guidance on Preparing Superfund Decision Document: The Proposed Plan and Record of Decision (Draft).

d. Standard Operating Safety Guides.

H. Community Relations

By adding section 117, "Public Participation," to CERCLA, Congress clearly indicated its intention that affected communities be informed about and involved in the decisions regarding the Superfund program's response to hazardous releases. Congress directed EPA to ensure that affected communities would be involved from the outset in developing and selecting the actions necessary at a site. EPA strongly believes that community relations is an integral part of the Superfund program and encourages a coordinated effort among Federal agencies and States as well as among technical, enforcement, and community relations staff to ensure that the concerns of the public are considered and addressed.

Today, EPA proposes to revise the community relations requirements of the NCP to reflect the public participation provisions of CERCLA. The current NCP explains in a single section (§ 300.67) the requirements for community relations. EPA proposes to intersperse community relations requirements throughout the NCP in conjunction with the actions to which they apply: during removal actions (§ 300.415) and remedial actions (§§ 300.430 and 300.435), including enforcement-related community relations activities. The major substantive changes in these requirements, summarized below, are either dictated by the 1986 amendments to CERCLA or are the result of procedures developed under the community relations program over the past seven years. Guidance for meeting Superfund community relations requirements is contained in "Community Relations in Superfund: A Handbook," EPA No. 9230.0–3A (March 1986).

1. *Public comment period during removal actions (§ 300.415(n)).* The proposed rule provides for notice in a local newspaper of general circulation to announce a minimum 30-calendar day comment period for Fund-financed and enforcement sites where there is a planning period of at least six months from the determination, based on the site evaluation, that a removal is appropriate. This gives the public, including PRPs, an opportunity to review and comment on the document describing the removal activities proposed for the site, i.e., the Engineering Evaluation/Cost Analysis (EE/CA) or its equivalent in non-time-critical situations. The lead agency shall prepare responses to significant comments. The proposed rule also provides for a comment period, where appropriate, for time-critical removal actions. (See Subpart I for administrative record requirements.)

2. *Other community relations requirements during removal actions (§ 300.415(n)).* EPA proposes to add a requirement that three major community relations activities be initiated for non-time-critical or time-critical removal actions where on-site removal activities will last longer than 120 calendar days. First, EPA proposes that interviews with State and local officials, residents, public interest groups, or other interested or affected parties, as appropriate, be conducted within the community. The purpose of the interviews is to identify firsthand the specific information needs and site-specific methods for encouraging dialogue with the community. Second, EPA proposes that a formal community relations plan (CRP) be developed from the information obtained during the community interviews. The CRP specifies the community relations activities the lead agency expects to undertake during the response action. Third, EPA proposes that at least one information repository be established at or near the facility. (See community relations preamble section below, "4. Information repository for removal and remedial actions.")

In the current NCP, a CRP must be developed if the response activities are expected to exceed 45 days; neither community interviews nor an information repository are required. The additional time allocation in the proposed regulation (120 days) provides more flexibility, allows for more effective use of lead agency resources, and also provides a more realistic time period for assessing the community's specific needs.

In the case of removals lasting less than 120 days, the lead agency is still responsible for ensuring that a spokesperson is designated, that accurate and timely information is provided to the public, and that public concerns are considered, whenever possible.

3. *Community interviews and Community Relations Plan during removal and remedial actions (§ 300.415(n) and (§ 300.430(c)).* Community interviews have been required since 1983 as a matter of EPA policy and were discussed in the preamble to the proposed 1985 revisions to the NCP in relation to remedial actions. The requirement that community interviews be conducted for certain removals and all remedial actions is consistent with existing guidance for remedial actions and reflects EPA's experience that such interviews have considerable value in identifying community-specific interests that should be reflected in the CRP to assure that community concerns are considered in managing the response action. Experience has also shown that these interviews assist in gathering information that is useful in conducting the response action at the site, e.g., in identifying potentially responsible parties. However, EPA has deliberately chosen not to specify in the proposed NCP how the interviews should be conducted or who should be interviewed.

The lead agency, in consultation with the support agency, will decide the number and type of interviews that are appropriate to accomplish the objective of developing an accurate picture of community needs and concerns when preparing the CRP. How many and what kind of interviews to conduct generally depends on whether the lead agency is already aware of community concerns through prior interaction with the community and interested parties, e.g., through public participation related to permitting a unit of a facility which later requires CERCLA response action. Interviews may range from formal question and answer sessions requesting the opinions of many citizens about a variety of aspects of a site history and community values to only a few, informal discussions in person or by telephone with selected, well-informed individuals who clearly represent the community. Only a few selected interviews or informal discussions may need to be conducted to verify information and ask questions on specific issues where the lead agency already is largely aware of community concerns through prior interaction with the community and interested parties. In these cases, interviews with a local official, the facility owner/operator, or a leader of the local interest group, as appropriate, may be used to round out information already available to the lead agency.

4. *Information repository for removal and remedial actions (§§ 300.415(n) and 300.430(c)).* Items made available for

public information are to be kept in an information repository and shall be available for public inspection and copying at or near the facility at issue. EPA proposes that at least one information repository be established at or near each site in order to fulfill this requirement. The purpose of the information repository is to provide members of the community easier access to site-related documents. Further, one copy of the administrative record file for selection of response action may be kept in one of the information repositories, as specified in Subpart I.

For non-time-critical or time-critical removal actions where on-site removal activities will last longer than 120 days, at least one information repository will be established at or near the location of the action. For remedial actions, EPA is proposing that the information repository be established when the final remedial investigation/feasibility study workplan is available to the public. EPA proposes that the lead agency shall inform interested parties of the establishment of the information repository.

5. *Public participation during remedial actions (§ 300.430(f)).* Sections 117 (a) and (d) of CERCLA require that the proposed plan, which briefly analyzes the remedial action alternatives studied in the feasibility study (FS) and describes a preferred remedial action alternative, be made available to the public, including PRPs, at or near the facility at issue. The information repositories will be used to meet this requirement. The statute also requires that a notice of availability and a brief analysis of the proposed plan be published in a major local newspaper of general circulation. The notice of availability and brief analysis published in the newspaper shall include sufficient information to provide a reasonable explanation of the proposed plan and alternatives considered. EPA also proposes to require that the FS be made available to the public at the information repositories.

The proposed regulation also requires that the lead agency provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting regarding the RI/FS, the proposed plan, and any proposed waivers under section 121(d)(4) relating to cleanup standards. EPA is proposing that this public comment period shall be no less than 30 calendar days. This is consistent with comment periods for NPL additions, deletions, and consent decrees. This proposal is an extension of the 21-calendar-day public comment period in the current NCP.

The proposed regulation further requires that the lead agency keep a transcript of the public meeting on the proposed plan and the supporting analysis and information held during the public comment period pursuant to section 117(a) and make the transcript available to the public. Transcripts are required for formal public meetings only. Additional formal and/or informal public meetings held pursuant to section 117(a) during the public comment period where the lead agency is present and there is a discussion of the FS, the proposed plan, and proposed waivers to cleanup standards should also be documented in an appropriate form. Any further substantive oral communications regarding these issues which are received by any other means such as phone calls or meetings with individuals or small groups during the public comment period should also be documented by the lead or support agency. In all cases where EPA receives documents or comments that are relevant to selection of the response action, the documents and a summary of the comments should be prepared and placed in the administrative record.

6. *Responsiveness summaries after public comment periods (§§ 300.415(n), 300.425(d), 300.425(e), 300.430(f), 300.815(b), 300.820(b)).* CERCLA requires the lead agency to develop a response to significant comments, criticisms, and new data received in written or oral form during the public comment period on the proposed plan pursuant to section 117(a). In the proposed regulation, EPA also requires public comment periods for removal actions (see above, paragraph 1.), proposed additions and deletions to the National Priorities List, issuance of a revised proposed plan, and ROD amendments.

The purpose of the requirement to respond is to document how public comments have been considered during the decisionmaking process and provide answers, if possible, to major questions. A responsiveness summary can be used to respond to comments. The responsiveness summary should be a concise summary of significant comments received during the comment period from the support agency and the public, and the lead agency's response to these comments. It should not be a point-by-point recitation and rebuttal of each comment. Rather, extensive comments should be summarized, and similar comments should be grouped together for a single response.

7. *Addressing significant changes prior to the adoption of the final remedial action plan (§ 300.430(f)).* The lead agency will need to identify and address significant changes that may occur from the time that the preferred alternative was presented in the proposed plan to the adoption of the selected alternative in the Record of Decision (ROD). If significant changes do occur during this period, the lead agency shall provide, as required by section 117(b) of CERCLA, "a discussion of any significant changes (and the reasons for such changes)" in the ROD. In addition to this statutory requirement, today's proposal specifies the limited circumstances where additional public comment would be necessary prior to final adoption of the alternative in the ROD.

The determination of whether a significant change has occurred is a site-specific determination which shall be made by the lead agency. Typically, significant changes that occur after the public comment period will affect the scope, performance, or cost of the final alternative. Today's proposal focuses on significant changes affecting these aspects of the final remedial alternative.

In the event that a significant change has been identified, the lead agency will need to determine whether the public could have reasonably anticipated the significant change based on the information presented in the RI/FS report and the proposed plan. Where the lead agency determines that the public could have reasonably anticipated the change, the lead agency need only document the change in the ROD, as proposed in § 300.430(f)(2)(A). Where the lead agency determines that the change could not have been reasonably anticipated by the public, the lead agency will reissue the proposed plan and solicit further public comment in accordance with § 300.430(f)(2)(B). A responsiveness summary may also be developed to document comments and agency responses.

8. *Notice of availability of the ROD (§ 300.430(f)).* This section provides that a notice of the signed ROD shall be published in a major local newspaper of general circulation and that the ROD will be made available to the public at the information repositories before commencement of any remedial action.

9. *Changes to the ROD after its adoption (§ 300.435(c)).* This section incorporates the requirements of section 117(c) of CERCLA that the lead agency publish an explanation of the significant differences when significant changes occur after the ROD is signed and the section 117(d) requirement that a notice summarizing the significant changes be published in a major local newspaper of

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general circulation. In addition, this section proposes to distinguish between an explanation of significant differences, which announces a significant change in the selected remedy, and a ROD amendment, which fundamentally alters the remedy selected in the ROD. The lead agency will need to make this determination whenever the remedial action under section 104 or 120, enforcement action under section 106, or settlement or consent decree under section 106 or 122, differs significantly from the selected remedy in the ROD. The lead agency will decide whether to issue an explanation of significant differences or to propose a ROD amendment, based on site-specific information and the impact the significant change has with respect to scope, performance, or cost on the remedy selected in the ROD. During this decision process, the lead agency should notify and consult with the support agency, as appropriate.

The lead agency must identify when a remedial action, settlement, or decree differs significantly from the ROD. If the identified remedial action, enforcement action, consent decree, or settlement does not fundamentally alter the remedy selected in the ROD with respect to scope, performance, or cost, the lead agency will issue an explanation of significant differences to announce the significant change. For example, the lead agency may determine that the attainment of a newly promulgated ARAR is necessary, based on new scientific evidence, because the existing ARAR is no longer protective. Where this new ARAR would affect a basic feature of the remedy, such as timing or cost, but not fundamentally alter the remedy specified in the ROD, the lead agency would need to issue an explanation of significant differences announcing the change.

If the action, decree, or settlement fundamentally alters the ROD in such a manner that the proposed action, with respect to scope, performance, or cost, is no longer reflective of the selected remedy in the ROD, the lead agency will propose an amendment to the ROD. For example, the lead agency may have selected an innovative technology as the waste management approach in the ROD. Studies conducted during remedial design may subsequently indicate that the innovative technology will not achieve the remediation levels specified as protective of human health and the environment in the ROD. The lead agency, based on this information, may determine that a more conventional technology, such as thermal destruction, should be used at the site. In this event, the lead agency will propose to amend the ROD.

Section 122(d)(1)(A) of CERCLA provides that whenever EPA enters into an agreement with any PRP to undertake a remedial action, the agreement shall be entered as a judicial consent decree. Section 122(d)(2) requires that DOJ provide the public with an opportunity to comment on the proposed consent decree at least 30 days prior to its entry. Where the proposed consent decree fundamentally alters the ROD, EPA contemplates that it will issue a proposed ROD amendment concurrent with the proposed consent decree, and that the public comment period provided pursuant to section 122(d)(2) shall satisfy the requirements for additional public comment for a ROD amendment.

When an explanation of significant differences is issued, the lead agency will consult with the support agency (unless a SMOA, cooperative agreement, or Superfund State contract requires concurrence) prior to notifying the public in a major local newspaper of general circulation. This public notice will summarize the explanation of significant differences by identifying the significant changes and the reasons for the changes. The lead agency will also place the explanation of significant differences and information supporting the decision in the information repository and administrative record file.

When the lead agency determines that the ROD should be amended, the lead agency will propose a ROD amendment and make this document and supporting information available for public comment, following the requirements specified in §§ 300.430(f) (1) and (2) of today's proposed rule. In addition, where the lead agency proposes to amend a ROD that was signed prior to the enactment of the 1986 amendments to CERCLA, the proposed amendment shall be subject to the requirements specified in CERCLA section 121.

EPA believes that the appropriate threshold for amending a ROD is when a fundamentally different approach to managing hazardous wastes at a site is proposed. As a result, EPA has determined that a ROD amendment decision should be made after consideration of public comments and should undergo the same public and support agency involvement as a proposed plan.

10. *Community relations during enforcement actions (§ 300.430(c)).* The proposed revisions clarify the respective roles of lead agencies and responsible parties during enforcement actions. The proposed regulation provides that the lead agency for an enforcement action comply with the same community relations requirements as under Fund-financed actions (i.e., §§ 300.155, 300.415(n), 300.430 (c) and (f), and 300.435(c)). At the discretion of the lead agency, responsible parties may implement aspects of the government's community relations program under the oversight and direction of the lead agency. Responsible parties may, of course, initiate their own additional community relations activities, e.g., preparing fact sheets and/or conducting public meetings. However, the lead agency is still responsible for planning and implementing the government's community relations program.

For enforcement actions, EPA believes that it may be appropriate to hold meetings with the public, including PRPs, in order that concerns about the remedy can be raised and discussed among all parties.

Section 300.67(f) of the current NCP, which allows the community relations plan to be modified or adjusted at the direction of a Federal district court, has been deleted. The public participation requirements of sections 113(k) and 117 of CERCLA contemplate a community relations effort that is outside of the jurisdiction of the Federal district courts. In addition, CERCLA's statutory scheme of remedy selection is one of an administrative process with full public participation prior to the filing of an action under CERCLA section 106. Given those factors, EPA has determined that it is most appropriate to delete that section of the current NCP.

11. *Community relations during remedial design/remedial action (§ 300.435(c)).* It is EPA's intent to continuously undertake activities that involve affected communities and interested parties in actions taken at a site. To that end, EPA proposes in § 300.435(c) to add a requirement for community relations after adoption of the ROD, and solicits comment on other potential community relations requirements during the remedial design (RD) and remedial action (RA) phases of site activity.

EPA proposes that the lead agency shall revise the community relations plan (CRP) as necessary to address community concerns during the RD/RA phases of action, if not already addressed by the CRP. It is recommended that, whenever possible, this revision be based on interviews with local officials, citizens, interest groups, PRPs, or others in the affected community, as appropriate, based on the judgment and experience of the lead agency. Revising the CRP ensures that

citizen concerns about the remedy design and construction are addressed through appropriate community relations activities throughout the implementation of the final remedial action.

EPA is considering including other community relations requirements during RD/RA and solicits comments on the advisability of doing so. For example, the lead agency could be required to prepare a fact sheet or other public information document on the proposed remedial design which would inform the public about the design prior to its completion. The public could be notified of the availability of the fact sheet or document through a variety of techniques, such as a mailing to those on the site mailing list or an advertisement placed in a local newspaper of general circulation. Another example could be to require the lead agency to provide an opportunity for a public information briefing prior to the initiation of on-site activity. Construction activities and workplans could be explained with a discussion of any short- and long-term benefits and impacts of the construction and final remedy on the surrounding community. The public could be notified of such a meeting through a mailing, an advertisement, or other techniques chosen by the lead agency. Another example would be to require notification to the public of the beginning and end of the remedial action phase. Again, this notification could be done through the method determined by the lead agency to be most effective for reaching members of the public interested in the specific site.

12. *Other person participation (§ 300.700).* Section 300.700(c) proposes that private parties undertaking response actions shall, in order to be consistent with the NCP, comply with either the public participation requirements for Fund-financed response actions (including §§ 300.155, 300.415(n), 300.430 (c) and (f), and 300.435(c)) or State and local requirements which provide a substantially equivalent opportunity for public involvement in the choice of remedy.

Section 300.435 Remedial Design/ Remedial Action/Operation and Maintenance.

This section is entirely new. EPA proposes to add this section to the NCP because, as discussed earlier, EPA is reorganizing the NCP to make it correspond more accurately with the order in which response actions are usually implemented. The current NCP does not address the activities discussed in this section. The purpose of remedial design (RD) is to design and draft the specifications for the remedy selected under § 300.430. The purpose of remedial action (RA) is to implement the remedy selected. The purpose of operation and maintenance (O&M) is to maintain the integrity of remedial actions when the remedial action is complete. EPA today proposes to codify this last portion of the response process.

The following discussion generally follows the outline of the proposed regulatory language and explains significant points paragraph by paragraph.

1. *General and RD/RA activities (§§ 300.435 (a) and (b)).* Paragraph (a) of § 300.435 gives a general description of RD/RA and O&M to assist the reader in understanding these activities.

Paragraph (b)(1) states that RD/RA activities must be consistent with the language of the ROD regarding those activities. Although the ROD may not specify all of the details of RD/RA activities, the implementation of RD/RA activities must flow from the remedy selected in the ROD and not be inconsistent with, or substantively different from, the remedy and the intent stated in the ROD.

Paragraph (b)(2) states that all Federal and State ARARs identified for the specific site, or that the conditions of any waivers of ARARs must be met during the RD/RA. Note that the ARARs preamble section also discusses ARARs that may be identified during the RD (paragraph F.12).

2. *Community relations.* See Subpart E, § 300.430 preamble section "H. Community Relations," for discussion of § 300.435(c) and all other community relations requirements.

3. *Contractor conflict of interest (§ 300.435(d)).* This paragraph addresses remedial action contractors who are potentially responsible parties at a site. Frequently, these contractors will have a conflict of interest which prevents them from serving the best interests of the State or Federal government in the capacity of remedial action contractors carrying out CERCLA section 104 activities. This paragraph requires the lead agency to include in the bidding documents language requiring potential contractors to disclose all pertinent information regarding their status as potentially responsible parties, including the status of their parent companies, their affiliates, and their subcontractors. Furthermore, the potential contractors must certify that they have disclosed all such information or that no information exists regarding their status as potentially responsible parties.

The new paragraph also requires the lead agency to follow certain procedures during the awarding of remedial action contracts to safeguard against contractor conflict of interest. The lead agency must verify prior to awarding the contract that the potential contractor and subcontractors do not have any conflicts of interest that would affect their performance. The proposed regulatory language would allow the lead agency the discretion to opt for actions less severe than denial of the contract award for situations in which the contractor's role at the site has been very minor or is not yet determined. In such a situation, the lead agency may, in the interest of saving time and money, elect to proceed with a contract award, and ensure enhanced government oversight of the remedial action. The new paragraph provides that, in case the low bidder on a contract does have a conflict of interest that prevents the contractor from serving the best interests of the lead agency, the lead agency may declare the bidder nonresponsible.

4. *Recontracting for additional work (§ 300.435(e)).* EPA proposes this new language to conform to the CERCLA amendments. Occasionally, as new information is generated by the RD/RA process, changes need to be made to the scope of the work in the contract for Fund-financed remedial actions. Contract law generally requires the contract to be terminated when changes to the scope of work are needed. Section 300.435(e) incorporates the provisions of CERCLA section 104(c)(8) and applies to all Fund-financed remedial actions. The purpose is to avoid disruption of a remedial action when recontracting is required for remedial services, such as when additional contamination requiring a different response procedure is found. Situations requiring contract termination are handled differently, depending on whether EPA or the State has the lead for the site. Where EPA has the lead, EPA may extend the existing contract to conduct interim work necessary to address a hazard to human health or the environment until EPA can reopen the bidding process and recontract to complete the remedial action. Where a State has the lead, the State must consult with EPA, and the cooperative agreement must be amended to address the new situation. The paragraph also repeats the $2 million statutory restriction of such interim actions.

5. *Operation and maintenance (§ 300.435(f)).* Section 300.430(f) addresses O&M, which is the final step in the remedial process. (See § 300.510(c)

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for State assurances on O&M.) Most of paragraph (f) is proposed to focus on the O&M provision in CERCLA section 104(c)(6). This provision defines as remedial action the operation of measures to restore contaminated ground or surface water for a period of up to ten years after the commencement of operation of such measures (or until a protective level is achieved, if less than ten years). The practical effect of this is that the Fund will pay 90 percent (or 50 percent for a publicly operated site) of the costs of measures to restore the ground or surface water for a period of up to ten years.

EPA also proposes to clarify in the NCP that the 10-year provision does not apply in two situations. The first situation is where source control maintenance measures are initiated to prevent further contamination of ground or surface waters and continued O&M is needed to control the source. Source control maintenance, although it may prevent further contamination of ground and surface waters, is separate and distinct from ground and surface water restoration activities. For example, leachate control systems for containment units constitute a form of source control maintenance and do not constitute the restoration of an aquifer. EPA proposes that, upon completion of construction of a source control system, and once the system is operational and functioning properly, EPA's funding obligations cease.

To illustrate, suppose that a Fund-financed site has contaminated soil, surface impoundment sludge, and contaminated ground water. The remedy selected includes placing the soil and sludge in an on-site, RCRA compliant land disposal facility with a leachate collection/treatment system and operating a system to pump and treat the contaminated ground water. Under this scenario, EPA would pay 90 percent of the cost of pumping and treating the ground water for up to ten years but the State would be responsible for operating and maintaining the leachate system. It should be noted that this example assumes that the source control remedy has been completed and meets protective levels.

Source control measures that are ongoing and have not yet achieved the protective levels indicated in the ROD are remedial action, not O&M. If, for example, the selected remedy is to land-farm soils for several years, the land-farming costs would be paid for by the Fund until the cleanup levels in the soils stipulated in the ROD have been achieved. Only if O&M is required for the soils (e.g., erosion control) after these cleanup levels have been achieved would the State be responsible for the costs.

The second situation where the 10-year provision does not apply is where measures are initiated for the primary purpose of providing a drinking water supply. Ground or surface water measures initiated for reasons other than restoration would not be subject to the 10-year provision. For example, in some situations a determination may be made that restoration of ground or surface water is infeasible or not cost-effective and, therefore, the drinking water source in the ground or surface water cannot be brought to drinking water standards. If the most cost-effective means of providing the drinking water is to pump and treat the contaminated water and directly supply it to the affected population, EPA would pay for the construction of a treatment system designed to meet the population's water needs and any operational costs up to one year to verify that the treatment system is operational and functional. Situations where the selected remedy is to pump and treat to restore the ground or surface water drinking water source as well as to provide drinking water will be addressed on a case-by-case basis. In making a determination in these cases EPA will take into account how separable the costs are and other relevant factors.

EPA solicits comments on its interpretation of "restore ground and surface water quality" and on the merits of the alternatives that EPA has not adopted. Specifically, EPA requests comment on whether the 10-year provision for Federal funding of O&M should extend to situations where the primary purpose of ground-water treatment is to provide drinking water supplies from water contaminated at the site without restoring it.

Subpart F—State Involvement in Hazardous Substances Response

Proposed Subpart F is completely new. It combines concepts described in the current NCP § 300.62 on State role and § 300.68 on State involvement in remedial action. The proposed new subpart codifies in one place all regulatory requirements for State participation and involvement in CERCLA-authorized response activities. It also includes the minimum requirements EPA will follow to ensure that all States are provided an opportunity for "substantial and meaningful" involvement in remedial and enforcement actions, as mandated by CERCLA section 121(f)(1). The following preamble discussion gives an overview of the Subpart.

A. Summary of Subpart F Sections

1. *General overview and context (§ 300.500).* CERCLA section 104(d)(1) permits EPA to transfer Federal funds and to authorize States to undertake CERCLA response activities via a cooperative agreement. Under this agreement, the State is the lead agency for conduct of response actions at that site. For State-lead Fund-financed remedial and enforcement actions, the cooperative agreement is also used by EPA to obtain the required State cost-share and other CERCLA section 104(c) assurances. In a Federal-lead response, EPA leads the response with the State acting in a support agency role. For Federal-lead Fund-financed remedial actions, a Superfund State contract is the mechanism used by EPA to obtain the required State cost-share and other CERCLA section 104 assurances.

Regardless of the lead agency designation, CERCLA section 121(f)(1) requires State involvement in pre-remedial, remedial, and enforcement response activities. To meet the requirements of CERCLA and strengthen the EPA/State partnership, Subpart F establishes comparable processes for EPA's involvement in State-lead response and State involvement in EPA-lead response. Subpart F, therefore, is applicable both to EPA and the State when either is in a lead or a support agency role. The concept of lead and support agency as defined in Subpart A is integral to the approach taken in Subpart F to ensure close coordination and cooperation during response at all sites listed on the NPL. The term partnership does not imply that EPA and a State enter into formal legal partnership arrangements.

Subpart F introduces the EPA/State Superfund Memorandum of Agreement (SMOA) as a vehicle for establishing an effective EPA/State working relationship. SMOAs are intended to strengthen EPA/State interaction by specifying in advance how EPA and each State will conduct response activities in keeping with the concept of partnership. SMOAs are encouraged but they are not mandatory for a Fund-financed action unless the State wishes to recommend the remedy for EPA concurrence, or to be recognized as the lead agency for a non-Fund-financed action at an NPL site. The Region will enter into a SMOA if the State requests it to do so and the State has demonstrated the capability to take the lead for response. EPA solicits comments on the appropriateness of

requiring in the regulation that Regions enter into SMOAs if States request them and have demonstrated capability to take the lead for response action.

Specific provisions of a SMOA may vary or EPA Regions/States may find that SMOAs are not appropriate to their particular circumstances. However, in those situations where a cooperative agreement is not necessary or desired, the SMOA must be the mechanism for establishing the State as lead agency. States may still use a letter to recognize Federal lead for RI/FS and remedial design at privately operated sites. Such a letter is necessary for EPA to initiate action at a site if a site-specific agreement has not been signed and a SMOA does not exist.

SMOAs are intended to define and facilitate communication between EPA and a State on all aspects of the response process. SMOAs are not legally binding, do not delegate or transfer authorities, and do not convey funds. For example, a SMOA may address in general EPA/State interaction at Federal facilities but the SMOA cannot impose requirements nor obligations on the Federal agencies concerned or provide any authorities to States with respect to the Federal facilities. The SMOA is simply intended to delineate the procedures that EPA and the State will follow to ensure mutually satisfactory communications.

Subpart F does not establish specific oversight requirements for EPA's role during State-lead Fund-financed response, since all Fund-financed response actions must comply with CERCLA and the NCP. Instead, EPA expects technical oversight to be addressed by a SMOA or by site-specific documents, such as a cooperative agreement.

2. *Cross-references for various forms of State participation (§ 300.500(b)).* This paragraph provides cross-references to the specific paragraphs in Subpart F that address the different types of State participation.

3. *EPA/State superfund memorandum of agreement (§ 300.505).* This section of the NCP describes what EPA and a State may agree to include in a SMOA. The consultation process described in this section is the key to a strong EPA/State partnership dedicated to the remediation of as many hazardous waste sites as possible by utilizing the combined resources of States and EPA and avoiding duplication of effort while protecting the interests of both parties.

The primary goals of the SMOA are to: (i) Provide maximum flexibility to EPA and States in planning and implementing response actions; (ii) ensure an equitable EPA/State partnership during response; (iii) reduce or eliminate misunderstandings by clarifying EPA and State expectations; and (iv) designate lead agency status for States in the absence of a cooperative agreement.

Although § 300.525 discusses State involvement in removals, the removal program is not included in the NCP discussion of the SMOA. There is concern that the nature of the removal program requires that there be maximum flexibility in determining how each removal activity will be conducted. EPA Regional offices and States agree that the current EPA/State removal interaction is effective.

However, where practicable, a SMOA may include general provisions for EPA/State interaction on removal actions by specifying: (a) The process to be followed by EPA and a State to notify each other of a determination that a removal action is necessary; (b) the procedures to be followed by EPA and a State to consult and comment upon the nature of any proposed removal action; and (c) the procedure to be followed to provide for post-removal site control as described in § 300.415(1). Generally, the SMOA provision should specify that responsibility for post-removal site control should be discussed and provided for before the implementation of the removal action. The definition of the consultation process is intended to facilitate EPA/State agreement on the nature and extent of any removal action before the removal action is initiated.

To ensure EPA and State accountability for adherence to the terms of the SMOA, the Regional Administrator and the responsible State agency head must sign this agreement. It is a State-specific, general agreement that should remain applicable for several years, needing modifications only as changes in legislation, regulation, policy, or guidance occur that affect the EPA/State partnership. The SMOA should be implemented through more detailed site-specific documents which should be updated or revised annually or otherwise as necessary. EPA and the State will meet annually to designate who will be the lead agency for specific sites.

The SMOA sets forth overall understandings that should be used as a base from which to operate when developing site-specific cooperative agreements and Superfund State contracts. Cooperative agreements and Superfund State contracts will continue to be the documents for delineating EPA and State site-specific responsibilities and obtaining State assurances as required by CERCLA section 104. However, because a cooperative agreement will not exist for State-lead non-Fund-financed actions, a SMOA will be required for EPA to designate the State as lead agency for a non-Fund-financed response at an NPL site. The SMOA will be supplemented by site-specific enforcement agreements between EPA and the State which specify schedules and EPA involvement.

SMOAs may address both non-Fund-financed State response actions and Fund-financed actions at NPL sites. Non-Fund-financed State response actions do not have to comply with CERCLA, unless a State wishes to recover costs under section 107 of CERCLA or to receive credit per section 104(c)(5) of CERCLA for its remedial action expenditures if the site is on the NPL or subsequently listed on the NPL. However, it is EPA's opinion that non-Fund-financed State response actions at NPL sites should comply with CERCLA, as amended, to promote national consistency, avoid additional Federal response actions, and expedite deletion of a site from the NPL upon completion of the response action. Possible consequences of States not complying with section 121 of CERCLA or not being consistent with the NCP are discussed below in paragraph 9 of this Subpart F preamble.

The SMOA may identify which documents prepared in the course of response activities require review, comment, or approval by the support agency prior to the lead agency proceeding with further work at the site. Because of wide variations in complexity at site responses, the documents designated for support agency review, comment, or approval may be altered by mutual agreement in the cooperative agreement or Superfund State contract covering a specific site.

See Subpart F preamble, paragraph 11 below, for a description of requirements in the absence of a SMOA or if the SMOA does not address the requirements specified in § 300.515(h).

4. *State assurances (§ 300.510).* Section 300.510(b)(1) addresses State cost-share requirements, including the codification of the statutory provisions for use of credits to offset a State's required cost-share. CERCLA continues to authorize credit for State or political subdivision expenditures or obligations for cost-eligible response actions taken at NPL sites from 1978 to 1980. From October 16, 1986, forward, CERCLA section 104(c)(5) limits credit to State expenditures only for remedial action. States may now receive credit toward their cost-share obligation for remedial action expenditures at NPL sites when taken pursuant to a cooperative agreement

and remedial action expenditures at non-NPL sites which are later listed on the NPL and documented in a cooperative agreement or a Superfund State contract with EPA. States that contributed 50 percent toward Fund-financed response actions at publicly owned but not operated NPL sites pursuant to a cooperative agreement or Superfund State contract in effect between the enactment of CERCLA and the enactment of the 1986 amendments to CERCLA may receive a credit for that amount of the cost share supplied over 10 percent.

Sections 300.510 (c) and (d) read that States must provide assurances for operation and maintenance and off-site disposal, when required. Section 300.510(e) addresses the CERCLA section 104(c)(9) assurance on 20-year capacity on all hazardous wastes (not just hazardous waste from CERCLA sites) generated within a State. EPA will provide more details on how the assurance will be made and how EPA will determine the adequacy of a State's assurance at a later date. Currently, these issues are being addressed by an EPA task force.

Section 300.510(f) addresses the CERCLA section 104(j) assurance for acquiring an interest in real property in order to conduct a response action. In the case of permanent relocations and certain other response actions, where it is necessary to acquire ownership or some lesser interest in real property, EPA will determine when an acquisition of any property interest is necessary. Generally, the States will carry out the required acquisition and hold title to the property interest. However, there may be instances in which the State lacks authority to condemn or otherwise acquire property or is unable to do so in an expeditious manner. The United States Government may then agree to acquire the necessary interest, but only if the response cannot proceed without the acquisition and if the State first agrees to accept transfer of the acquired interest. The State must accept transfer at the conclusion of the response as earlier if EPA determines it to be necessary to facilitate the response, as appropriate under the particular circumstances.

5. *Requirements for State involvement in remedial response (§ 300.515).* This section combines existing language from §§300.62 and 300.68 of the current NCP with new language that describes how EPA intends to satisfy requirements for State involvement established by the 1986 amendments to CERCLA.

6. *General (§ 300.515(a)).* In order to determine whether the State is the appropriate agency to assume the lead agency responsibilities at an NPL site, EPA is considering various criteria that would assist EPA Regional Offices and the States in making such decisions. Some of the criteria under consideration are: overall expertise, legal authorities, administrative and contracting capability, financial management systems (according to the applicable assistance agreement regulation), availability of general resources, complexity of the site, availability of site-specific resources, workload and expertise, past Federal or State actions at the site, and past State cleanup activities. EPA solicits comment on these possible criteria and whether further criteria should be added.

As described in the Subpart E, § 300.425 preamble section, "D. Deferral Policies," EPA is considering a policy which would provide the States with the opportunity to request that a site be deferred from listing on the NPL. Deferral to State authorities is part of an overall proposed policy to allow EPA to defer listing sites on the NPL where other Federal or State authorities and their implementing programs can address problems at those sites. As a part of this proposal, EPA describes criteria it is considering for deferring listing of sites on the NPL for response under State authorities. The deferral criteria are not identical to the above criteria for lead agency designation; the above criteria are intended solely for State-lead actions under CERCLA.

7. *Applicability of State involvement requirements to Indian Tribes (§ 300.515(b)).* CERCLA requires EPA to afford to Indian Tribes substantially the same treatment as it would to States. Therefore, an Indian Tribe may be authorized to undertake the lead for Fund-financed response activities via a cooperative agreement if: (i) The Indian Tribe is Federally-recognized; (ii) the Tribal governing body is currently performing governmental functions to promote the health, safety, and welfare of its affected population or environment; (iii) the Indian Tribe can demonstrate an ability to carry out the response actions (with the exception of criminal enforcement actions) which it seeks authority to perform in accordance with the criteria and priorities established by the NCP; (iv) the Indian Tribe can demonstrate that the functions to be performed are within the scope of its jurisdiction; and (v) the Indian Tribe can demonstrate a reasonable ability to effectively administer a cooperative agreement, including having accounting and procurement procedures that comply with the applicable assistance agreement regulation. The reason for excluding criminal enforcement actions from Fund-financed response actions is that Tribes do not have criminal enforcement jurisdiction over non-Indians.

EPA proposes to provide for EPA interaction with Federally-recognized Indian Tribes when an NPL site is on Indian lands. When this occurs, a separate SMOA may be developed and, in some instances, the SMOA may be a three-party agreement between EPA, the State, and the Federally-recognized Indian Tribe. Under CERCLA section 104(c)(3), Federally-recognized Indian Tribes do not have to provide CERCLA 104(c) assurances. The definition of "State" in Subpart A of the NCP is proposed to include Indian Tribes and, therefore, unless specified otherwise, Federally-recognized Indian Tribes generally may have the same roles and responsibilities under the NCP as do States.

8. *State involvement in the PA/SIs and NPL listing and deletion process (§ 300.515(c)).* The intent of Subpart F is to ensure significant State involvement in the pre-remedial and remedial phases of Superfund responses. It is EPA's position that cooperation with the States throughout the response process will assist in meeting the national goal of maximizing the number of responses. One step in the response process where State involvement is necessary is at the pre-remedial phase of response in which potential sites are evaluated, scored, and listed on the NPL. States have the option of performing PA/SIs.

EPA proposes to ensure significant State involvement in the NPL listing process by requiring EPA to consult with the State on EPA-initiated draft Hazard Ranking System scoring packages. EPA would then provide a 20- to 30-day review period for States to comment on the proposed listing of sites in that State. The State's comments, which may include new or additional information on the site, would be reviewed by EPA and taken into consideration prior to publication of the proposed listing.

In addition, § 300.515(c)(3) contains requirements for State involvement in the NPL deletion process. In accordance with the amendments to CERCLA, EPA must obtain State concurrence in order to delete a site from the NPL.

9. *EPA and State consultation in remedial planning and selection of remedy process (§§ 300.515 (d) and (e)).* Section 300.515(d)(2) establishes a process for lead and support agency consultation and solicitation of their respective identified ARARs and other criteria, guidance, and advisories to be considered (TBC) which may be helpful

in establishing protective cleanup levels. (See general discussion of ARARs and TBCs in § 300.430 preamble section, "F. Compliance with applicable or relevant and appropriate requirements of other laws.") This process is ongoing throughout the remedial response process, and is effective only if lead and support agencies work together at each of several key points. This communication/consultation process should ensure that all responses comply with all ARARs and, where appropriate, that other criteria, guidance, and advisories are considered.

Sections 300.515(d) (1) and (2) make the lead agency responsible for: (i) Identifying its own ARARs and TBCs; and (ii) soliciting from the support agency its ARARs and TBCs. The lead agency is also responsible for providing to the support agency information about the site and nature of the contamination, as well as the remedial alternatives being considered. The support agency will identify its ARARs and TBCs for the lead agency in as detailed and comprehensive a manner as possible on a site-specific basis. Each agency is responsible for coordinating ARAR and TBC identification with other offices or agencies within its own organization. If a Region and State have entered into a SMOA, the SMOA may contain a provision on the process to be followed for identifying Federal and State ARARs as required in § 300.515(d)(2).

Furthermore, CERCLA section 121(d)(2) provides that State ARARs must be met if they are communicated to EPA in a timely manner. EPA proposes a general definition of timely manner in § 300.515(d)(1), which requires that the lead and support agencies identify their respective ARARs and TBCs and communicate them to each other so that sufficient time is available for the lead agency to consider and incorporate such ARARs and TBCs into the remedy selection process without inordinate delays and duplication of effort. EPA proposes to apply this requirement to both the lead and support agency because it is in keeping with the concept of a Federal/State partnership and will ensure that information is shared in a timely manner. EPA proposes that the SMOA may specify that the identification/solicitation process occur within certain mutually agreed upon timeframes. These timeframes may be modified as necessary on a site-specific basis in cooperative agreements or Superfund State contracts. The SMOA may also define lead and support agency roles in the ARARs identification process that are more comprehensive than what EPA has proposed today for the new Subpart F. This allows more flexibility in soliciting ARARs and TBCs and will enable changes in the process to be made as experience is gained.

The ARARs solicitation process established in the SMOA will identify the appropriate EPA/State management staff level for communication and solicitation of ARARs and TBCs. This process should identify at least one written lead agency request for ARAR/TBC identification and requires a minimum of one written response from the support agency. This documentation should be included in the administrative record.

In the absence of a SMOA, EPA proposes in § 300.515(h)(2) to establish minimum points where the lead and support agencies must identify and communicate in writing their respective ARARs and TBCs. This will ensure that the lead agency has sufficient data and time to consider the ARARs and TBCs in developing and selecting the preferred remedy.

Whether or not a SMOA is in place, EPA expects that the focus of solicitations will be toward requesting the specific kinds of ARARs and TBCs needed at a specific time (e.g., contaminant- or location-specific ARARs/TBCs after site characterization information becomes available, and action-specific ARARs during the early stages of the comparative analysis of remedial alternatives). Alternatively, the lead agency could make a preliminary ARAR determination to which the support agency can respond and/or elaborate.

Procedures and time periods for State notification, review, and concurrence regarding a remedy that either waives State ARARs or that attains ARARs other than those identified by the State are proposed in §§ 300.515(d)(3) and (4). EPA expects its Regional offices and the States (with assistance from EPA Headquarters as necessary) to negotiate and resolve differences of opinion regarding ARARs, and all other areas of disagreement (e.g., preferred alternatives or alternatives to be evaluated). The dispute resolution process adopted by the Region and the State should be used to resolve any differences that might impede the response process. Differences should be addressed at the staff level first and raised to management if a mutually acceptable solution is not attained. If necessary, the Region and the State can jointly raise the dispute to the Assistant Administrator for Solid Waste and Emergency Response for a final determination. If the Region and the State prefer to establish a different dispute resolution process in their SMOA, that process will be followed.

Section 300.515(e)(1) addresses lead agency responsibilities with respect to the proposed plan. The lead agency and support agency will consult and attempt to reach agreement on the proposed plan. The proposed plan will include a statement of the support agency's opinion on the proposed plan. Agreement between the lead and support agencies on the proposed plan is not required prior to publishing the public notice but such agreement is highly encouraged. If the State is the lead agency for a Fund-financed action but EPA cannot concur with the State's proposed plan after all efforts at resolving differences have failed, EPA will assume the lead for the proposed plan and preparation of the ROD. If EPA is the lead agency, and the State cannot support EPA's proposed plan, EPA may publish the plan, but must include the State's objection and concerns and state why EPA disagrees with the State.

Section 300.515(e)(2) discusses the roles of EPA and the State in the selection of remedy process. It reflects the evolution of the EPA/State partnership in recent years by providing the State, when it is the lead agency, with responsibilities in the selection of remedy process. This new concept would be applicable to both Fund-financed and non-Fund-financed actions (e.g., enforcement sites) in which the State as lead agency would recommend the remedy and provide EPA an opportunity to concur with and adopt the remedy. Concurrence is in keeping with the statutory requirement to provide substantial and meaningful involvement in the initiation, development, and selection of remedial actions.

The concept of concurrence by EPA is designed to further the EPA/State partnership, optimize the use of governmental resources, and increase the number of response actions. Under the current NCP, EPA has significant involvement in and oversight of activities at State-lead Fund-financed sites. Conversely, EPA has limited involvement at State-lead non-Fund-financed sites. States currently have limited responsibilities during selection of remedy at EPA-lead sites. Concurrence increases EPA involvement at State-lead non-Fund-financed sites and provides for a greater State role in the selection of remedy process at Fund-financed sites.

Under this approach, a State can recommend a remedy for EPA concurrence and adoption only when a

SMOA is established. Through the annual planning process, EPA and the States will designate at which State-lead Fund-financed and non-Fund-financed sites the State will prepare the ROD for EPA concurrence and adoption.

EPA intends to implement selectively the process of State preparation of RODs for EPA concurrence and adoption at State-lead Fund-financed sites, since this process is not necessarily applicable to all States, nor for all sites within a State. Moreover, States are not required to accept this responsibility. Sites will be selected where the circumstances at the particular site warrant less EPA involvement and the State has demonstrated its capability to conduct remedial response actions in an effective and responsible manner. EPA concurrence in and adoption of a remedy recommended by the State may not be appropriate at Fund-financed sites where the State has not demonstrated that it possesses the necessary capabilities or where the particular circumstances indicate that greater EPA involvement is necessary.

Under the proposed concurrence process, EPA can select the remedy at EPA–lead sites even when a State neither responds nor concurs with the recommended remedy. However, the State must provide the assurances required by CERCLA section 104 before EPA can proceed with the remedial action.

When a State is the lead agency at a Fund-financed site for developing the RI/FS and preparing the ROD, the State may prepare the proposed plan (if agreed to by EPA), publish the notice of availability, prepare the responsiveness summary, and develop the ROD, thereby recommending a remedy for EPA concurrence and adoption. Additionally, the State is responsible for compiling and maintaining the administrative record for selection of the response action and documenting and providing necessary information for cost recovery. A State cannot proceed with Fund-financed response without EPA's concurrence in and adoption of the remedy. Silence by EPA shall not be construed as concurrence or adoption.

EPA and a State may agree that certain sites will be designated as non-Fund-financed State-lead enforcement actions (i.e., the State is responding pursuant to its own authorities). At such sites, a State may proceed without further EPA concurrence. However, the State may select the remedy, prepare the ROD, and seek EPA concurrence with the remedy in order to: (a) Promote effective use of Federal and State resources; (b) promote national consistency in responses; (c) avoid the need for additional Federal response actions; (d) induce PRPs to agree to perform necessary response actions; and (e) expedite deletion of the site from the NPL at the completion of the response action.

At non-Fund-financed State-lead enforcement sites, the State is responsible for proper implementation of the remedial action so that the site will meet criteria for deletion from the NPL. However, even when EPA concurs with the remedy selected and implemented by the State, EPA may still proceed under its own CERCLA authorities if necessary to ensure compliance with CERCLA section 121 and other pertinent provisions of CERCLA.

Subpart F does not require that States select remedies for non-Fund-financed State-lead enforcement sites in conformance with CERCLA section 121 and the remedy selection process specified in the NCP. However, where a State-selected remedy does not so conform, States and/or PRPs may be at risk in several ways, including, but not limited to the following: (1) EPA will not concur with the recommended remedy; (2) EPA may refuse to designate the State as lead agency for any subsequent response activities; (3) States and PRPs may be deprived of the assurance that EPA will not find it necessary later to seek to compel further response actions; (4) EPA may be unable to delete a site from the NPL and/or (5) State cost recovery efforts may be hindered.

If disputes arise with respect to concurrence, the dispute resolution procedure discussed above or, as otherwise specified in a SMOA, should be invoked so that EPA and the State can reach a mutually acceptable decision on the appropriate remedy.

Section 300.515(f) addresses State funding of substantive requirements beyond the scope of the selected remedy, including procedures for attainment of State standards which EPA has determined not to be ARARs or which EPA has determined to waive. EPA intends this section to apply to State-funded additional elements of the basic remedy selected or concurred upon by EPA. The State may be required to assume the lead for remedial design and implementation of such remedial actions or EPA may maintain the lead if the EPA Region determines that financial responsibility and related issues do not present obstacles to EPA-lead remedial action. Another option is State assumption of the lead for only the State-funded addition if those additional requirements can be done as a separate operable unit.

EPA encourages States to participate in EPA-lead enforcement negotiations as provided for in section 121(f)(1) of CERCLA and proposed in § 300.520 of the NCP and to conduct State-lead enforcement actions consistent with CERCLA and the NCP. To maximize PRP responses through State-lead enforcement actions, Federal financial assistance may be provided to support these actions.

During EPA-lead enforcement actions, EPA intends to provide States with opportunities for review, consultation, and concurrence. As with Fund-financed response, the general degree of State involvement in EPA-lead enforcement actions should be outlined in SMOAs. Although opportunities for State involvement are provided in this subpart, EPA may determine that substantive State standards are not ARARs, or may waive State ARARs pursuant to CERCLA section 121(d)(4) for remedies proposed by EPA during a Federal-lead enforcement action. In those circumstances, pursuant to CERCLA section 121(f)(2)(A), States are provided an opportunity to concur or nonconcur with the remedy selected by EPA. Procedures for seeking the modification of the remedy to conform to State ARARs are found in section 121(f)(2)(B) of CERCLA.

During State-financed or State-lead enforcement actions at NPL sites, States should provide EPA with an opportunity for the review of key documents and consultation during the remedial response process. For State-lead enforcement sites, the State will prepare the ROD (generally, EPA will not prepare the ROD at State-lead enforcement sites unless the State and EPA agree otherwise). The general degree of EPA involvement may be outlined in the SMOA. EPA's oversight and involvement in State-lead enforcement actions where EPA is providing financial assistance will be delineated in site-specific cooperative agreements. EPA does not intend to be routinely involved in negotiations at State-financed enforcement sites; however, EPA expects that States will notify EPA of negotiations with potentially responsible parties and provide opportunities for involvement to facilitate EPA concurrence with recommended remedies when the State seeks EPA concurrence. It is recognized that due to workload and resource constraints associated with EPA-lead projects, EPA may not have adequate staff or resources to review certain plans and that EPA will not be bound to any decisions made by the State if EPA fails to respond. Settlements achieved

will normally be between the State and potentially responsible parties. Also, the requirements outlined in § 300.515 for Fund-financed remedial response will be applicable to Fund-financed State-lead enforcement actions. For State-lead enforcement sites, the State should request that EPA provide: (A) Identified Federal ARARs; (B) a review of the State or potentially responsible parties' FS and proposed plan; (C) a response to comments on waivers to, or disagreements about, Federal ARARs; and (D) concurrence in RODs.

10. *State involvement in remedial action (§ 300.515(g)).* A key point for EPA/State interaction during Fund-financed remedial action will be the joint inspection of the remedy as specified in § 300.515(g). The purpose of this inspection is to ensure that the remedy has been constructed in accordance with the ROD and the remedial design.

11. *Requirements for State involvement in the absence of a SMOA (§ 300.515(h)).* Section 300.515(h) describes categories of requirements that must be met in the absence of a SMOA: annual consultations; identification of ARARs and TBCs; and State review and comment on EPA-lead RI/FS, proposed plan, ROD, ARAR/TBC determinations, and remedial design. These requirements also apply where a SMOA is negotiated but does not address a specific category. For example, a SMOA may include requirements for annual consultations and State review but not identification of ARARs and TBCs. In this case, the requirements in § 300.515(h) regarding identification of ARARs and TBCs must be complied with. If a SMOA does address a particular category, the SMOA may specify requirements different from those stated in § 300.515(h) except that, at a minimum, the SMOA must include the ARARs identification requirements specified in § 300.515(h)(2). For example, a SMOA may include requirements regarding State review of EPA-lead documents but specify shorter or longer timeframes for that review.

12. *Administrative record (§ 300.515(i)).* The administrative record is an important aspect of the response process. The purpose of this paragraph is to remind the reader that the SMOA can address the procedures for compiling and maintaining the administrative record. It also directs the reader to Subpart I for more information.

13. *State involvement in EPA-lead enforcement negotiations (§ 300.520).* CERCLA section 121(f)(2) requires EPA to provide notice to States regarding negotiations with PRPs. Accordingly, EPA is proposing this section to implement the CERCLA mandate. Although this section focuses on State notification and involvement in remedial investigations/feasibility studies (RI/FS) and remedial design and remedial action (RD and RA) PRP negotiations, EPA does not intend to preclude notification to and involvement of States as appropriate in other enforcement actions.

14. *State involvement in removal actions (§ 300.525).* This section addresses State involvement with EPA in the removal program. Although the USCG also works closely with the States when undertaking CERCLA response, Subpart F requirements do not apply to State involvement in USCG responses. Statutory requirements for removals are not the same as those for remedial and enforcement response; therefore, State involvement differs significantly. Although § 300.515(a) is generally applicable to State-lead removals, § 300.525 notes the specific differences in State involvement in removals from remedial actions. Except as provided in § 300.525, the rest of § 300.515 on pre-remedial and remedial response is not generally applicable to EPA-lead removals.

Although EPA and States actively coordinate during removal actions to assure timely and efficient response, most Fund-financed removal actions are EPA-lead. However, in some circumstances States are required to share in the cost of the removal. (See § 300.510(b)(1).) Proposed Subpart F encourages States to undertake Fund-financed removal actions via cooperative agreements, if EPA determines that it will result in the most efficient method of threat mitigation. In either situation, States are encouraged to assume responsibility for post-removal site control activities, if required (see § 300.415(1)).

EPA will encourage State-lead removals to the extent practicable. The statutory limits for removals, now $2,000,000 and twelve months, will apply to State-lead, Fund-financed removal actions unless the second statutory exemption (consistency with the remedial action to be taken) is invoked. The first exemption (continuing emergency) for extending the removal action beyond the statutory limitation will generally not be applicable to State-lead removals because of their less critical nature. (See § 300.415.)

15. *Consultation with States regarding removal actions (§ 300.525(e)).* This paragraph contains a general statement that EPA will consult with the State when conducting removal actions within that State.

B. Points of Clarification

1. *Applicability of State involvement requirements to political subdivisions.* Subpart F does not address EPA interaction with political subdivisions of a State, although a political subdivision may take the lead for certain response actions via a cooperative agreement if the State provides the required assurances at the time of remedial action. EPA, the State, and the political subdivision are required to establish a written agreement that sets forth roles and responsibilities of each party. The cooperative agreement will specify the requirements associated with a political subdivision lead. Such Fund-financed actions must comply with CERCLA and the NCP.

2. *Applicability of Subpart F to Federal facility responses.* As provided in CERCLA section 120(f), the substantive requirements of Subpart F do apply to Federal facility responses, and the Federal facility must meet the requirements for involving the States in remedial response actions taken at Federal facilities. EPA intends to further address State involvement at Federal facilities in the proposed Subpart K to be drafted. Note that CERCLA section 120(g) does not allow the transfer of the EPA's authority to the States.

3. *State requirements or siting laws.* CERCLA section 121(d)(2)(C) specifically limits the applicability of State requirements or siting laws for hazardous waste facilities that could result in a State wide ban on land disposal. In order to be treated as potential ARARs, such laws must:

i. Be of general applicability and be formally adopted;

ii. Be based only on technical (e.g., hydrogeologic) or other relevant considerations; and

iii. Not be intended to preclude land disposal for reasons other than protection of health or the environment.

In addition, the State must arrange and pay for additional costs for out-of-State or other disposal made necessary by such a law. EPA believes that the factors used in evaluating such criteria should include the nature of the technical considerations and the history of health and environmental legislation in the State.

Subpart G—Trustees for Natural Resources

Section 107(a)(4)(C) of CERCLA imposes responsible party liability for the injury, destruction, or loss of a natural resource, including the costs of a natural resources damage assessment. Section 107(f)(1) of CERCLA provides

that only properly designated Federal trustees, authorized representatives of an affected State, or Indian Tribes can pursue a section 107(a)(4)(C) action.

Subpart G designates Federal trustees to act on behalf of the President in assessing damages to natural resources from discharges of oil or releases of hazardous substances, pollutants, or contaminants, and outlines the responsibilities of trustees under the NCP. Although the CERCLA amendments necessitated few changes to Subpart G, the major objective for this proposed revision is to make the subpart more readable and understandable to those who are not familiar with trustee agency authorities. Because the primary purpose of this subpart is to designate trustees, the proposed changes reflect an overriding concern that trustee jurisdictions be described as accurately as possible.

Section 301(c) of CERCLA requires the promulgation of rules for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance under CERCLA and the Clean Water Act. The responsibility to promulgate these regulations has been delegated to the Department of the Interior (DOI). The use of the procedures described in DOI's rule, 43 CFR Part 11, is optional. However, the results of an assessment performed in accordance with the DOI rule by a Federal or State trustee, or Indian Tribe, if reviewed by a Federal or State trustee, shall be given the status of a rebuttable presumption in an action to recover damages for injuries to, destruction of, or loss of natural resources. Whether or not the procedures in 43 CFR Part 11 are followed, a trustee should proceed in conformance with the responsibilities described in this subpart.

A. Major Revisions

1. *Specific designation of trustees and consultation (§ 300.600).* In the proposed revisions, EPA has attempted to clarify and define as accurately as possible the Federal agencies responsible for specific resources. EPA has attempted to do this by delineating in the paragraph headings the Federal agency or type of Federal agency responsible for natural resources. In addition, EPA has changed the narrative to describe in more detail the resources that agencies manage and to give examples of the types of resources that might be under an agency's trusteeship.

It should be noted that although the Departments of Commerce and the Interior are listed under separate headings, the division of authorities between them, and that between them and other agencies, is complex. For this reason, parallel construction of the sections describing trustee designations is not possible. The proposed revisions use the terms of the authorities under which each trustee operates.

A related change is made to § 300.600(b)(1), which designates the Secretary of Commerce as a trustee. The revision explains that the Secretary will act with the concurrence of other Federal agencies when the resources or authorities of other agencies are involved. This situation may arise because the trusteeship of the Secretary of Commerce is sometimes described geographically, i.e., within certain marine and coastal areas. However, specific natural resources in these same areas may also be managed or protected under statutes administered by other Federal agencies. Thus, the regulation states that the Secretary of Commerce will act with the concurrence of other Federal agencies when any of their resources are affected. It is appropriate that Federal trustees seek concurrence when they plan to act with respect to resources under the management or protection of other agencies. The concurrence need not be lengthy or cumbersome. A similar provision is not included in the regulatory section describing the Secretary of the Interior's trusteeship because DOI's authority is not defined in terms of particular geographical areas. Rather, Federal statutes administered by the Secretary of the Interior describe the specific natural resources to be managed or protected by DOI.

Another major change involves the description of certain natural resources. Section 300.72 of the current NCP designates the Secretary of Commerce as trustee for "waters of the contiguous zone and parts of the high seas * * *". In the proposed revision, the following are included as under the Secretary's jurisdiction: "waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf * * *". The contiguous zone includes the area from three to twelve miles from the shore. The exclusive economic zone, defined by Proclamation 5030 (March 10, 1983) and subsequently incorporated in the Magnuson Fishery Conservation and Management Act, is the area up to two hundred miles from the shore. The outer continental shelf extends beyond two hundred miles in some places.

The current NCP's exclusions of lands or resources in or under U.S. waters (§ 300.72 (a) and (b)) are proposed to be deleted. Federal trusteeship derives from authority to manage or protect the affected resources regardless of where these resources are located. To the extent that these resource management jurisdictions are concurrent or contiguous, trustees are expected to work together pursuant to § 300.615.

2. *Indian Tribes (§ 300.610).* The amendments to CERCLA provide that an Indian Tribe may bring an action for injury to, destruction of, or loss of "natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation." In those instances where the United States acts on behalf of an Indian Tribe, the Secretary of the Interior shall function as the trustee of those natural resources for which the Indian Tribe would otherwise act as trustee. The revisions in § 300.610 reflect these statutory changes.

Section 300.72(d) of the current Subpart G designates the Secretary of the Interior as trustee to recover "[d]amages to natural resources protected by treaty (or other authority pertaining to Native American tribes) or located on lands held by the United States in trust for Native American communities or individuals." Because this quoted language is inconsistent with the language on "natural resources" in section 107 of CERCLA, as amended, it has been deleted from the proposed revisions to Subpart G.

3. *Responsibilities of trustees (§ 300.615).* EPA proposes to reorganize and make substantive changes to the existing NCP § 300.74. The section has been reorganized by changing the order in which some information appears (e.g., discussion of multiple trustees appears first, instead of last) and by changing the format in which some information appears (e.g., listing the responsibilities of the trustees so that their responsibilities are easier to read and understand).

Several new provisions are proposed to be added to this section to provide better information on the actions trustees can take to carry out their responsibilities. The first addition notes that trustees may list in each Regional contingency plan (see § 300.210(b)) the appropriate contacts to ensure that the trustees are notified of potential or actual damage to natural resources. In addition, the proposed section provides that when trustees are notified of or discover possible damage to natural resources, they may conduct a preliminary survey of the area to determine if natural resources under their trust are affected.

Although a trustee may be responsible for certain natural resources affected or potentially affected by a release, it is important that only one person (i.e., the lead agency OSC or RPM) manage activities at the site of a release or potential release. The OSC/RPM shall coordinate responsibilities for CERCLA section 104 assessments, investigations, and planning, including Federal trustees' participation in negotiations with PRPs as provided under CERCLA section 122(j)(1). Close communication and coordination between OSCs/RPMs and trustees is essential. When there are multiple trustees, it is recommended that a lead authorized official be designated to coordinate all aspects of the assessment.

The trustee actions authorized under existing NCP § 300.74(b) are proposed to be changed in the following ways. First, the trustee is authorized to conduct CERCLA section 104(e) activities such as entering and inspecting any relevant vessels, facilities, or other properties, or inspecting or obtaining samples of any suspected hazardous substances, pollutants, or contaminants. This addition to this section reflects authorities delegated to trustees under Executive Order 12580. In exercising this authority, trustees must consult with the lead agency to ensure efficient response actions and to avoid duplication of effort. Second, a new provision of CERCLA, section 104(e)(5)(B), provides that the President (or Federal trustees by delegation under EO 12580) may request that the Attorney General initiate civil actions against PRPs in order to compel compliance with orders regarding information gathering and access.

Finally, in discussing trustee responsibilities, the option of pursuing claims against the Fund has been deleted. This change reflects the provision in SARA that prohibits expenditures from the Fund to pay trustees' claims for natural resources damages assessment and restoration of natural resources. Although section 111(a)(3) of CERCLA provides for claims against the Fund for assessment and restoration of natural resources, section 517 of the Superfund taxing provisions in Title V of SARA (Superfund Revenue Act of 1986), by necessary implication, eliminates authority to pay for such assessments or restoration. The proposed deletion of existing NCP § 300.74(b)(4) reflects this change in the law.

Subpart H—Participation by Other Persons

The focus of this subpart is on those authorities of CERCLA that allow persons other than governments to respond to releases and to recover those response costs. Although this subpart is new, it revises and consolidates provisions from current NCP § 300.25 on Nongovernment Participation and § 300.71 on Other Party Responses into one place in the NCP. Subpart H also incorporates the new authorities from CERCLA, as amended, which address participation by other persons.

A. Major Revisions

1. *Reorganization of authorities regarding participation by other persons (§ 300.700).* EPA proposes to combine the closely related concepts of current NCP §§ 300.25(d) and 300.71 into a new subpart to clarify NCP authorities regarding responses undertaken by persons other than the Federal government, States or Indian Tribes. Accordingly, § 300.700(a) states that any person may undertake a response action to reduce or eliminate a release of a hazardous substance, or pollutant, or contaminant. Section 300.700(b) then sets forth the following summary of the mechanisms for the recovery of response costs:

i. *CERCLA section 107(a)(4)(B).* Awards of response costs from liable parties to other persons who undertake response actions consistent with the NCP;

ii. *CERCLA section 111(a)(2).* Claims by other persons against the Fund for reimbursement for actions consistent with EPA's prior approval;

iii. *CERCLA section 106(b)(2).* Petitions against the Fund for reimbursement of costs incurred in compliance with a section 106(a) order, issued after October 17, 1986, where the petitioner was not liable for the release, or if the petitioner was liable, to the extent that the action ordered was arbitrary and capricious, or not otherwise in accordance with the law; and

iv. *CERCLA section 123.* Claims by a general purpose unit of local government for reimbursement of temporary emergency measures costs (see 40 CFR Part 310).

In order for a person to recover the costs of his or her response action from the Fund or from another person, several conditions must be met. The remainder of the paragraphs in the new subpart examine each of the above cost recovery mechanisms and give a more in-depth description of the conditions that must be met.

2. *Consistency with the NCP for the purpose of cost recovery.* Section 107(a)(4)(B) authorizes parties other than the Federal government, States, or Indian Tribes to recover from liable parties response costs which they incurred consistent with the NCP. Proposed NCP § 300.700(c) revises current NCP § 300.71(a)(2) and contains a list of NCP sections that these other persons (except for other persons acting pursuant to orders issued under CERCLA sections 104 and 106) must comply with in order for their response actions to be considered consistent with the NCP for the purpose of cost recovery from other third parties. The exception is made for section 104 and 106 actions because the administrative order or consent decree issued under these sections determines the scope and requirements of the response action. Today EPA proposes to list the following NCP sections that EPA believes other persons must comply with in order for their response actions to be considered consistent with the NCP:

i. Section 300.150 (on worker health and safety);

ii. Section 300.160 (on documentation and cost recovery);

iii. Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action), (e) (on permit requirements), and (g) (on identification of ARARs);

iv. Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

v. Section 300.410 (on removal site evaluation) except (e)(5) and (6) and the reference to listing releases in CERCLIS in (h), which are uniquely Federal determinations;

vi. Section 300.415 (on removal actions) except (a)(2), (b)(2)(vii), (b)(5), and (g);

vii. Section 300.420 (on remedial site evaluation);

viii. Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(3)(iv)(F) which applies only to Fund-financed responses; and

ix. Section 300.435 (on remedial design/remedial action, operation and maintenance).

These sections have been chosen to assure protection of human health and the environment. EPA has omitted those NCP sections that pertain to organizational matters and other areas of concern that are unique to the government.

In addition, the regulation specifically states that other persons must provide an opportunity for public comment concerning the selection of the response action. The regulation identifies the sections of the proposed NCP regarding public participation (except administrative record and information repository requirements stated therein)

that a response action must comply with in order to be consistent with the NCP:

a. Section 300.155 (on public information and community relations);

b. Section 300.415(n) (on community relations during removal actions);

c. Section 300.430(c) (on community relations during RI/FS and selection of remedy) except (5);

d. Section 300.430(f)(1), (2), and (5) (on community relations during RI/FS and selection of remedy); and

e. Section 300.435(c) (on community relations during RD/RA and operation and maintenance).

Alternatively, EPA intends that a response action will be considered consistent with NCP public participation requirements if the person taking the response action complies with appropriate State or local requirements which provide a substantially equivalent opportunity for public involvement in the choice of remedy.

Further, the regulation suggests that other persons consider the methods of remedying releases listed in Appendix D when selecting the appropriate remedial action.

The requirements listed above are to be complied with where pertinent to the particular response action. By setting forth these requirements, EPA wishes to clarify that it is not EPA's objective to limit the discretion of Federal courts in determining what constitutes substantial compliance with the NCP or making CERCLA cost recovery awards. The courts, rather than EPA, will make the ultimate determination of what response costs parties may recover pursuant to CERCLA section 107. Nevertheless, as the primary agency charged with the implementation of the statute, EPA has an interest in this matter, and believes that its interpretation of the statute merits judicial deference. EPA believes it has an obligation, in promulgating the NCP, to explain when actions by non-governmental entities are consistent with the NCP. This obligation is particularly important given the widespread confusion and conflicting judicial interpretations of the issue. See e.g., *Walls v. Waste Resources Corp.*, 761 F.2d 311 (6th Cir. 1985); *Pinole Point Properties, Inc. v. Bethlehem Steel Corp.*, 596 F. Supp. 283 (N.D. Cal. 1984); *Bulk Distribution Centers, Inc. v. Monsanto Co.*, 589 F. Supp. 1437, 1442–44 (S.D. Fla. 1984); *Jones v. Inmont Corp.*, 584 F. Supp. 1425, 1430 (S.D. Ohio 1984); *City of Philadelphia v. Stepan Chemical Co.*, 544 F. Supp. 1135 (E.D. Pa. 1982).

Moreover, EPA intends that providing a list of requirements to be complied with in order to be consistent with the NCP will enhance the probability of a successful cost recovery action, thus providing an incentive to other persons to undertake response actions.

3. *Deletion of requirements regarding response actions that are "not inconsistent with the NCP."* EPA is proposing to delete the language of current NCP § 300.71(a)(2) regarding which sections of the NCP must be complied with for governmental response actions to be "not inconsistent with the NCP." EPA believes that CERCLA contemplates a different standard of proof for actions conducted by the Federal government, States, or Indian Tribes. EPA does not propose to define what actions are "not inconsistent with the NCP," and would leave that determination to case-by-case decisionmaking.

4. *Summary of revisions to language regarding consistency with the NCP.* In today's proposed rule, as well as in the current NCP, EPA makes it absolutely clear that no Federal approval of any kind is required for a cost recovery action under CERCLA section 107. The main effect of today's proposed revisions to current NCP § 300.71(a)(2) is to specify in further detail what other persons must do in order to act consistently with the NCP.

5. *Deletion of certification authorities from the NCP.* EPA proposes to delete current NCP § 300.71(c) regarding certification of organizations to conduct site response activities because EPA believes that preauthorization of each response claim is a sufficient means of determining the capability of applicants to perform proposed response actions. EPA is also concerned that its certification of organizations would be used as a marketing tool, possibly leading to public misperceptions regarding the quality of performance by certified firms. Today's proposed revisions incorporate that earlier proposed change.

6. *Additional statutory authorities for the recovery of response costs.* Subpart H refers to new mechanisms for reimbursement of response costs added by the 1986 CERCLA amendments:

i. Section 106(b), whereby a person who has complied with a section 106(a) enforcement order issued after October 17, 1986 may petition the Fund for reimbursement of response costs if he or she is not liable for the release, or, if liable for the release, can subsequently demonstrate that the order, or a portion thereof, was arbitrary and capricious, or not otherwise in accordance with the law; and

ii. Section 123, which authorizes any general purpose unit of local government to petition the Fund for expenses incurred in providing temporary emergency measures. Such reimbursement may not exceed $25,000 for a single response. EPA has issued an interim final regulation (see 52 FR 39396, October 21, 1987) establishing procedures for such actions.

B. Other Revisions

1. *Clarification and reorganization of requirements for preauthorization of responses by other persons.* The language in current NCP § 300.25(d) has, for the most part, been retained. However, the language has been reorganized, and minor clarifications and amplifications to existing language are proposed. Preauthorization is an established requirement. EPA is not considering revising it and does not solicit comment on the requirement itself.

The proposed revisions clarify that in order to receive EPA's prior approval, the applicant must demonstrate not only the technical and other capabilities necessary to respond safely and effectively to releases, but also establish that the action will be consistent with the NCP as established by this section. The capability of an applicant to perform a proposed action will be evaluated on a case-by-case basis, since an application for preauthorization must be filed with respect to each proposed action. EPA intends to propose a separate regulation setting forth the procedures for applying for preauthorization and for presenting a claim for reimbursement of response costs.

2. *Impact of new CERCLA section 122 settlement provisions on other party response.* Section 122(b) of CERCLA adds a provision that allows potentially responsible parties to be reimbursed through "mixed funding" agreements. Mixed funding agreements permit EPA to reimburse parties to settlement agreements for certain response actions that the parties have agreed to perform and that EPA has agreed to finance in part. EPA proposes to add a new paragraph to the section on claims to state that a claim by a party determined by EPA to be potentially liable under section 107 of CERCLA, including a State or a political subdivision thereof, will receive EPA's prior approval to submit claims only in accordance with an order issued pursuant to section 106 of CERCLA, or a settlement with the Federal government in accordance with section 122 of CERCLA. Consequently, a State or its political subdivision can submit claims under these sections in the context of enforcement actions taken by EPA. Where such persons are not determined by EPA to be potentially liable under section 107 of CERCLA, but

act in their capacity as a unit of government, they may receive funds from the Fund for section 104 response action as authorized by section 111(a)(1) of CERCLA. A political subdivision of a State is treated as a State for the purpose of section 107.

3. *Grants for technical assistance.* Current NCP § 300.25(d) refers to cooperative agreements and contracts. Amendments to CERCLA section 111 authorize technical assistance grants pursuant to section 117(e). Cooperative agreements and grants, when taken together, are generally referred to as "assistance agreements." EPA is proposing to revise § 300.25(d) to refer to "procurement contracts or assistance agreements."

Subpart I—Administrative Record for Selection of Response Action

Proposed Subpart I of the NCP is entirely new. It implements CERCLA requirements concerning the establishment of an administrative record. Section 113(k)(1) of CERCLA requires the establishment of an administrative record that contains the documents that form the basis for the selection of a CERCLA response action. In addition, section 113(k)(2) requires the promulgation of regulations establishing procedures for the participation of interested persons in the development of the administrative record.

EPA is proposing regulations regarding the administrative record that include procedures for public participation. This will ensure the development of a complete and accurate record by all parties responsible for compiling records, because procedures for establishing and maintaining the record are closely related to the procedures governing public participation.

Because this subpart is entirely new, the following discussion is not divided into major revisions, other revisions, and points of clarification. Instead, it explains the purpose of the administrative record and then generally provides a paragraph by paragraph explanation of the proposed regulations.

A. Background and Purpose

Under CERCLA, the administrative record established under section 113(k) serves two primary purposes. First, under section 113(j), judicial review of any issue concerning the adequacy of a response action is limited to the administrative record. Second, section 113(k) requires that the administrative record be used as a vehicle for public participation in the selection of the response action, ensuring that EPA has considered all relevant factors in selecting the response and that interested parties have been given adequate notice and an opportunity to participate in that selection.

1. *Judicial review.* Section 113(j)(1) of CERCLA provides that judicial review of any issues concerning the adequacy of any response action shall be limited to the administrative record. Section 113(j)(2) provides that the court shall uphold the selection of a response action unless the objecting party can demonstrate, based on the administrative record, that the decision was arbitrary and capricious, or otherwise not in accordance with law. These statutory provisions codify well-established principles of administrative law concerning the applicable standard and scope of review for informal agency actions. The legislative history of section 113 demonstrates that it is intended to clarify and confirm the applicability of these administrative law principles to CERCLA response selection. (See S. Rep. 99–11, 99th Cong., 1st Sess. 57 (1985); H.R. Rep. 99–253, 99th Cong., 1st Sess. 82 (1985); Cong. Rec. H 11084 (daily ed. Dec. 5, 1985)).

Limiting judicial review of the selection of a response action to the administrative record ensures that litigation on the selection of the response action focuses on the selection in light of the information available to the decisionmaker at the time the response was selected. Judicial review limited to the administrative record contributes to the overwhelming public interest in effecting the expeditious cleanup of potentially health- and environment-threatening hazardous waste sites and ensures that all interested persons may participate equally in the administrative decisionmaking process. The principal effect of limiting judicial review to the administrative record is that courts will not engage in de novo fact-finding during their review of a challenge to the decision to select a certain response. Thus, record review of response selection decisions would mean that persons challenging the response decision could not depose, examine or cross-examine on-scene coordinators (OSCs), remedial project managers (RPMs), government consultants, or decisionmakers with respect to the response decision or engage in any other discovery activities. Also, the imposition of long and costly trial-type procedures in section 106 actions would greatly delay response.

2. *Public participation.* Sections 113(k)(2) (A) and (B) of CERCLA require the promulgation of regulations establishing procedures for the participation of interested persons in the development of the administrative record. Participation by interested persons, where appropriate, will ensure that EPA has considered the concerns of the public, including potentially responsible parties (PRPs), in selecting the response action. In addition, for purposes of administrative and judicial review, the administrative record can contain documents that reflect the views of the public, including PRPs and those not party to any judicial proceeding, concerning the selection of a response action.

For remedial actions, section 113(k)(2)(B) of CERCLA establishes the following minimum procedures for public participation:

i. Notice to potentially affected persons and the public, accompanied by a brief analysis of the plan and alternative plans that were considered;

ii. A reasonable opportunity to comment and provide information regarding the plan;

iii. An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2) of CERCLA;

iv. A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations; and

v. A statement of the basis and purpose of the selected action.

These requirements are virtually the same as those required by section 117 of CERCLA concerning public participation for remedial actions. These public participation requirements are proposed for codification today in § 300.430 of Subpart E of the NCP. Subpart I expands on the public participation requirements of Subpart E.

Because the nature of removal actions often involves the need for prompt action, the procedures proposed today for public participation in removal actions are quite different from those for remedial actions. Removal authority allows the lead agency to move quickly in situations where prompt lead agency action is warranted. Section 113(k)(2)(A) of CERCLA requires that there be "appropriate" participation of interested persons in the development of the administrative record supporting removal actions. The legislative history of this section states that these public participation requirements "are not intended to hamper emergency removal actions. Nonetheless, the Administrator is directed to develop appropriate participation procedures for removal actions and should follow these requirements to the maximum extent practicable." (H.R. Rep. 99–253, 99th

Cong. 1st Sess., 1985, at 82). Public participation requirements for removal actions are addressed in § 300.415(n) of today's proposed regulations. Additional public participation procedures in the development of an administrative record for a removal action are addressed in § 300.820. The public participation procedures are designed to ensure an appropriate level of public involvement for removal actions without causing unnecessary delay. In general, where there is time to solicit public comment before the selection of a removal action, the lead agency will do so. Public participation procedures for removal actions are described in greater detail below.

B. Current Record Requirements

Section 113(k)(2)(C) of CERCLA states that until regulations on the participation of interested persons in the development of the administrative record are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. Current procedures on public participation in the selection of response actions include an extensive community relations program through which interested persons have notice of information through notices in local newspapers, community relations mailings, public meetings, and letters, including notice letters to potentially responsible parties. An adequate record should be compiled and maintained through use of current procedures for sites where the remedial investigation or removal action has already begun prior to promulgation of these regulations. These proposed administrative record requirements build upon and formalize existing procedures for the exchange of information on the selection of a response action.

The cutoff date for the applicability of these regulations is based on when the administrative record file must first be made available under these regulations. The lead agency may not be able to fully comply with regulations concerning compilation of the record which are promulgated after a record has already been compiled and made available at or near a site. Thus, at such sites, the lead agency will comply with these regulations to the extent practicable.

C. Summary of New Subpart I

1. *Establishment of an administrative record (§ 300.800).* As explained earlier, section 113(k) requires the establishment of an administrative record consisting of the documents that form the basis for the selection of a response action. An administrative record is the compilation of documents considered or relied on by the agency in making a decision; in this case, the selection of the response action for the site. Proposed § 300.800(a) codifies this statutory provision and provides that such establishment is the responsibility of the lead agency. The regulation also uses the term "administrative record file" to refer to documents which the lead agency anticipates will be included in the administrative record when the decision on response action selection is made. The administrative record file contains a body of documents which increases as documents are added and does not necessarily constitute the final administrative record.

The term "documents," also used in the preamble and proposed regulations, is intended to be very broad. It includes writings, drawings, graphs, charts, photographs, and data compilations from which information can be obtained. It does not include physical samples.

Section 300.800(b) addresses administrative records for Federal facilities. Executive Order 12580 authorizes Federal agencies to establish the administrative record for selection of response actions for Federal facilities under their jurisdiction, custody, or control. EPA, however, is required to promulgate regulations establishing procedures for the participation of interested parties in the development of the record. Federal agencies must compile and maintain records as required by this subpart, as finally promulgated. Section 300.800(b) also clarifies that although the Federal agency is responsible for compiling and maintaining the administrative record, EPA may furnish documents which the Federal agency is to place in the administrative record file to ensure that the administrative record includes all documents which form the basis for the selection of the response action.

Section 300.800(b)(2) provides that when EPA (or the United States Coast Guard (USCG)) is the lead agency at a Federal facility, EPA (or USCG) shall compile and maintain the record. Executive Order 12580 delineates cases in which EPA (or USCG) is the lead agency. EPA is the lead agency, for example, at Federal facilities conducting on-site emergency removal actions (other than at DOD or DOE Facilities). The USCG can be the lead agency at Federal facilities with on-site emergency removal actions in the coastal zone.

Section 300.800(b)(3) requires that when EPA is involved in the selection of a response action at a Federal facility on the NPL, the Federal agency shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents requested by EPA on a case-by-case basis. EPA is involved in the selection of a response action when it is jointly selecting the response action with the Federal agency, as delineated in Executive Order 12580. Such joint selection occurs, for example, for all remedial actions at Federal facilities on the NPL. In such cases, EPA must be sufficiently familiar with the contents of the administrative record to be able to select jointly the response action.

EPA considered other options for involvement in the development of the administrative record for Federal facilities, such as periodic visits to the Federal facility to review the administrative record file as it is compiled, receipt of the entire contents of the record file for all NPL sites, and receipt of the entire contents of the record file for all response actions at all Federal facilities. EPA has tentatively rejected these options as being overly burdensome. EPA believes that the preferred option allows enough flexibility for EPA to ensure that the response action selected by the Federal agency adequately accounts for the concerns of the public, is consistent with response action selection at non-Federal facilities, and allows EPA to be sufficiently involved in the decision when it is jointly selecting the response action. EPA solicits comments on alternative procedures for EPA's involvement in the development of the administrative record for Federal facilities.

Section 300.800(c) specifies that it is the responsibility of the State to compile and maintain administrative records at a State-lead site. Section 300.800(c) applies only if EPA and the State formally designate the State as the lead agency for a site as specified in Subpart A under the definition of lead agency. The requirements for State-lead sites are similar to those for Federal agencies compiling administrative records for Federal facilities at which EPA is involved in the selection of the response action. EPA is proposing that the State provide EPA, commencing at the time the administrative record file is first made available to the public, with the index of documents included in the administrative record file. The issues relating to this requirement are similar to those outlined above for Federal

facilities. Additionally, EPA may require that States place additional documents in the record file to ensure that the administrative record includes all documents which form the basis for the selection of the response action.

Section 300.800(d) provides that Subpart I applies to all response actions taken under section 104 of CERCLA or sought, secured, or ordered administratively or judicially under section 106 of CERCLA. The statutory language of section 113(j)(1) states that in any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. It has been argued that section 113(j)(1) of CERCLA does not apply to injunctive actions taken under section 106, and that the literal meaning of the phrase "taken or ordered by the President" does not include section 106 actions for injunctive relief unless an administrative order is issued.

The statutory language of sections 113(j) (1) and (2), when read together, indicates that this narrow interpretation of section 113(j) is incorrect. Together, sections 113(j) (1) and (2) provide that judicial review of any response action is limited to the administrative record. In addition, section 121 of CERCLA expressly provides that the President shall select all remedial actions to be carried out by EPA under section 104 of CERCLA or secured under section 106. No exception for section 106 injunctive actions was made.

Accordingly, consistent with the statutory language and congressional intent, EPA is clarifying that limiting judicial review of response action selection to the administrative record applies to all actions taken under section 104 of CERCLA, or sought, secured, or ordered administratively or judicially under section 106 of CERCLA.

Section 300.800(d) further provides that Subpart I only applies to those sites at which the remedial investigation commences or the action memorandum is signed after the promulgation of these regulations. For those sites grandfathered by paragraph (d), paragraph (e) provides that the lead agency shall comply with these regulations to the extent practicable on a case-by-case basis. This does not mean that administrative records are not required for these sites or that judicial review of the selection of a response action at these sites will not be limited to the administrative record. Rather, as explained earlier, this provision simply recognizes that there will be ongoing actions at which the final regulations cannot be complied with in full. The public participation procedures for remedial actions outlined in section 113(k)(2)(B) and 117 of the statute and discussed earlier in this preamble, however, are applicable to any Record of Decision (ROD) signed after October 17, 1986, the date that, in general, the amendments to CERCLA took effect.

Subpart I does not apply to third party cleanups, i.e., those not undertaken pursuant to sections 104, 106, or 111 of CERCLA. Under this proposal, such cleanups need not comply with these administrative record requirements. Section 300.800(d) does not require that State actions for cost recovery under section 107 of CERCLA, where the State used only its own authorities to conduct a response action, comply with this subpart. If a State is seeking to recover costs from responsible parties under section 107 of CERCLA, EPA may wish to require that States comply with this subpart to expedite judicial proceedings in such circumstances. EPA solicits comments on whether these regulations should apply to those situations.

2. *Location of the administrative record (§ 300.805).* Section 113(k)(1) of CERCLA requires that "the administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location." EPA proposes to require that the administrative record file generally be located in two places. First, as provided by the statute, the record file shall be located at or near the facility at issue. (To conform to the terminology of the rest of the NCP, the term "site" will be used in this subpart as a substitute for the term "facility" used in the statute.)

In addition, EPA proposes that the administrative record file be located at an office of the lead agency or other central location. Examples of central locations include an EPA Regional Office, an EPA field office, a Federal agency equivalent to an EPA Regional office, or, for State lead sites, a State environmental agency office. EPA considered making the central location requirement optional, but concluded that the lead agency has more control over the maintenance of the necessary documents at the central location than at or near the site. As described below, the file at or near the site should contain a copy of most of the documents included in the administrative record file at the central location.

Under § 300.805, the file at the central location must contain all documents which are part of the administrative record except certain verified sampling data, quality control and quality assurance documents, chain of custody forms, and publicly available technical literature. These documents, which are part of the record, may be located elsewhere, as provided in § 300.805 (a) and (c), and explained further below.

The administrative record file at or near the site at issue should be located at one of the information repositories which may already exist for community relations purposes. The information repository, maintained by the community relations coordinator, may contain additional information which is of interest to the public, but which does not form a basis for the response action decision. Examples of such information include newspaper articles, press releases, and information concerning the NPL listing. If there is no existing community relations information repository, or the information repository is inadequate for maintaining the administrative record file, the file may be located in some other publicly accessible place. EPA is considering and seeks comments on limiting the information which much be available at or near the site in situations where the record is too voluminous for the publicly accessible location. Typically, local libraries, town halls, or public schools are used as publicly accessible locations.

EPA may make the administrative record file available to the public in microform. EPA may microform-copy documents that form the basis for the selection of a CERCLA response action in the regular course of business. The microform copying will be done in accordance with technical regulations concerning micrographics of Federal Government records and EPA records management procedures.

EPA proposes that some information need not be physically located at or near the site because of the substantial administrative burden this would pose. The information not available at or near the site would, however, always be available to the public at another location. For example, § 300.805(a) provides that certain types of technical information may be located in the central location or elsewhere, such as a contract laboratory or field office. The index to the administrative record file, which will be included in the administrative record file both at or near the site and at the central location, must indicate where the information is located and how it can be obtained for inspection. Thus, such information continues to be easily accessible to interested persons. Examples of such information include validated sampling data, which are normally summarized in

data summary sheets and are quite voluminous, documentation of quality assurance and quality control which is normally summarized in the remedial investigation/feasibility study (RI/FS), and chain of custody forms. These types of documents may be stored in the EPA Regional office, contract laboratory office that conducted the testing, State environmental agency office, or elsewhere, as appropriate.

Section 300.805(b) provides that guidance documents not generated for the particular site for which an administrative record is being compiled may be maintained in a library at the central location. The guidance documents need not be in each site-specific administrative record file at the central location or at or near the site at issue. EPA anticipates that each EPA Regional office will maintain a central library of guidance documents which are frequently cited as a basis for selecting a response action. This approach eliminates the need for reproducing copies of the same document for each site record. The term guidance document includes issue-specific policy memoranda as well as formal guidance documents. Examples of such guidance documents and issue-specific memoranda include the RI/FS guidance document, guidance on risk/exposure assessments, guidance on applicable or relevant and appropriate requirements, memoranda on maximum contaminant levels, and guidance on testing for specific contaminants.

Guidance documents and memoranda which are generated for a particular site must be placed in the site-specific administrative record file. (For example a document on dioxin contamination at XYZ site must be placed in the XYZ site-specific administrative record file. If it is also used as a guidance document on the cleanup of dioxin at other sites, it may be located only in the central library rather than physically in the administrative record file at those other sites.) The central library of guidance documents will be available to the public.

EPA proposes in § 300.805(c) that publicly available technical literature not generated for a site at issue need not be located at or near the site at issue, in the central library of guidance documents or in the site-specific administrative record file, provided that it is listed in the index to the administrative record. Copyright laws may bar the copying of these materials without specific approvals. EPA believes that expending Superfund resources on obtaining copies of publicly available technical literature is not appropriate. Examples of publicly available technical literature include widely used engineering handbooks on ground-water monitoring, and articles from technical journals, which are readily available in technical libraries. The index must list these documents separately and indicate information on their availability, or, the literature may already be cited in a document included in the record.

Technical literature, however, which is not generally available should be included in the site-specific administrative record file. Because these documents are by definition not easily obtainable, they should not simply be indexed. They generally will not be used for many sites; therefore, it is also not appropriate to include them in the central library of guidance documents. The library should be reserved for documents which are frequently used to select response actions. Examples of technical literature not generally available include articles from technical journals or unpublished documents not available through the Library of Congress or not circulated to technical libraries.

Section 300.805(d) provides that documents included in the confidential portion of the administrative record file shall be located only in the central location. Since the public cannot review the confidential and privileged information, there is no reason to require that such information be maintained at or near the site.

EPA is proposing in § 300.805(b)(5) that, for reasons of administrative feasibility, an administrative record file for emergency removal actions where on-site activities cease within 30 days of initiation need only be available for public inspection at the central location. Emergencies are those actions with little or no lead time and generally of very short duration—for example, a highway spill. The benefits of placing the record file at or near the site are outweighed by the administrative burden on the response to such emergencies. Where feasible, a notice may be placed at the site explaining that the administrative record file will be available for public inspection at the EPA Regional office (or other central location).

3. *Contents of the administrative record (§ 300.810).* The administrative record under section 113(k) consists of documents which form the basis for the selection of a response action at a particular site. In determining which documents form the basis for the response action, i.e., what constitutes a complete record, the lead agency shall include all documents considered by the decisionmaker, including those relied upon by the decisionmaker in selecting the response action.

It should be noted that documents constituting the administrative record for selection of a response action are only a subset of documents that the lead agency may have compiled with respect to a particular site. The lead agency will also have general files consisting of documents relevant to other aspects of a site.

Section 300.810 discusses generally what should be contained in the administrative record file for response selection and what should be excluded. Section 300.810(a) states that it should contain factual information; data; analysis of the factual information and data; guidance documents; technical literature; site-specific policy memoranda; documents received, published, or made available to the public under §§ 300.815 and 300.820 of this subpart; decision documents; and enforcement orders. In addition, an index listing the documents contained in the administrative record file should be included at the beginning of the record file.

The following is a list of documents which typically, but not in all cases, should be part of the administrative record for selection of a remedial or removal action. (For purposes of this subpart, an RI/FS should be included as a component of a remedial action record.) Only documents within each category which form a basis for selecting the response action will be part of the record (i.e., although correspondence is listed under public participation, correspondence on liability issues is not part of the record). This list is intended to be illustrative, but not necessarily required at each site or complete.

i. *Contents of Remedial Action Administrative Record.*

(a) *Factual Information/Data.*

Sampling plan.
Validated sampling and analysis data.
Chain of custody forms.
Project plan or program plan (QAPP).
Preliminary assessment report.
Site investigation report.
Inspection reports.
RI/FS final workplan.
Amendments to final RI/FS workplan.
Summary of remedial action alternatives (used in conjunction with early special notice letters).
Data summary sheets.
RI/FS.
Technical studies.
Factual information submitted by the public, including PRPs.

Documents supporting the lead agency's determination of imminent and substantial endangerment.
(b) *Policy and Guidance.*
Memoranda on policy decisions (site-specific and issue-specific).
Guidance documents.
Technical literature.
(c) *Public Participation.*
Correspondence.
Public notices.
Public comments.
Community relations plan.
Notice letters to PRPs.
Proposed plan.
Transcript of meeting on RI/FS and proposed plan, and waivers under section 121(d) of CERCIA.
Documentation of other public meetings.
Response to significant comments.
(d) *Other Party Information.*
ATSDR health assessment.
Natural Resource Trustees finding of fact and final reports.
Documentation of State involvement.
(e) *Decision Documents.*
Record of Decision, including responsiveness summary.
(f) *Enforcement Documents.*
Administrative orders.
Consent decrees.
Affidavits.
Response to notice letters containing relevant factual information.
(g) *Index.*
ii. *Contents of Removal Action Administrative Record.*
(a) *Factual Information/Data.*
Sampling plan.
Validated sampling and analysis data.
Chain of custody forms.
Preliminary assessment report.
Site investigation report.
Inspection reports.
Engineering evaluation/Cost analysis report (EE/CA).
Technical studies performed for the site.
Factual information submitted by the public, including PRPs.
Documents supporting the lead agency's determination of imminent and substantial endangerment.
(b) *Policy and Guidance.*
Memoranda on policy decisions (site-specific and issue-specific).
Guidance documents.
Technical literature.
(c) *Public Participation.*
Correspondence.
Public notices.
Public comments.
Community relations plan.
Notice letters to PRPs.
Documentation of other meetings.
Response to significant comments.
(d) *Other Party Information.*
ATSDR health assessment.
Natural Resource Trustees finding of fact and final reports.
Documentation of State involvement.
(e) *Decision Documents.*
EE/CA approval memorandum.
Action memorandum.
(f) *Enforcement Documents.*
Administrative orders.
Consent decrees.
Affidavits.
Response to notice letters containing relevant factual information.
(g) *Index.*

Several documents in the list above require further explanation. First, verified sampling data are included on the list above. Data which have undergone quality assurance/quality control and are relied on must be included in the record. Data which have been rejected as inaccurate, or will otherwise not be considered or relied upon, need not be included in the record.

Second, EPA is proposing in § 300.810(a)(1) that documents supporting the determination of an imminent and substantial endangerment be part of the administrative record. EPA and other Federal agencies have the discretion to conduct assessments to determine the extent of an imminent and substantial endangerment to the public health or welfare or the environment due to an actual or threatened release of a hazardous substance. If EPA chooses to exercise its discretion to conduct such an assessment, the assessment shall be included in the record. A determination of an imminent and substantial endangerment is based on factual information which forms a basis for the selection of the response action. As such, when a determination of an imminent and substantial endangerment is made, it is part of the record of the selection of a response action. EPA believes that judicial review of the determination that there is an imminent and substantial endangerment in actions under section 106 to enforce an order or for injunctive relief, therefore, is limited to the administrative record.

Third, for a remedial action record, the list includes a summary of remedial action alternatives. This summary will only be generated in conjunction with special notice letters EPA may issue to PRPs pursuant to section 122(e) of CERCLA if the notice letter is issued prior to the availability of an RI/FS report and it appears necessary to inform interested persons of the lead agency's direction on remedial alternatives. In this context, a summary of remedial action alternatives would be generated if necessary to enable PRPs to make an informed good faith offer to undertake the remedial design or remedial action. The summary of remedial action alternatives should be included in the administrative record file so that the public and not just the PRPs have the information.

Finally, EPA is proposing that notice letters to PRPs be included in the administrative record. EPA has recently issued guidance on the notice letters issued under section 122(e) of CERCLA, 53 FR 5298 (February 23, 1988). PRPs that receive notice letters are expected to become familiar with CERCLA, if they have not already done so. In light of notice letters and general principles of administrative law, PRPs are on notice that an administrative record file will be, or is, available for public inspection.

Section 300.810(b) addresses documents which generally will not be included in the administrative record. The type of documents referenced in § 300.810(b) are those which by definition are not appropriate for inclusion in the administrative record because they do not form a basis for the selection of the response action. These documents are specified in the regulation for purposes of clarity.

Draft documents, internal memoranda, and day-to-day notes of staff generally will not be included in the administrative record. Examples of draft documents that will be included in the administrative record are those that were considered or relied on in response action selection and never superseded by a final document, and those that contain material facts which do not appear in any other document included in the administrative record file. The general rule, however, is that only final documents will be included in the administrative record.

Examples of internal memoranda and day-to-day notes of staff which are not appropriate for inclusion in the administrative record are documents that express opinions or recommendations of staff to other staff or management, or internal pre-decisional documents that evaluate alternative viewpoints.

Section 300.810(c) addresses privileged documents. Examples of privileged documents include, but are not limited to: documents subject to attorney-client privilege and attorney work product exclusion, documents subject to deliberative process privilege, and enforcement sensitive information. Common law and other privileges may be asserted.

An assertion of confidentiality of information does not necessarily eliminate the need to make such information part of the administrative record. If confidential information which

forms a basis for the selection of a response action is not included in any other document in the administrative record, that information must be part of the administrative record. Section 300.810(d) requires that the information, to the extent feasible, must be summarized in such a manner as to make it disclosable to the public and placed in the administrative record file. If it is not feasible to summarize the information in a releasable manner, e.g., when the privilege applies directly to the information which forms a basis for the selection of the response action, such as confidential business information, the documents must be maintained by the lead agency in a confidential portion of the administrative record file. (These documents may be reviewed in camera in any subsequent judicial proceeding.) The index to the administrative record must list the confidential or privileged document even though the document will not be available for public inspection. Whether or not the information can be summarized in a releasable manner, the actual document containing confidential or privileged material must be included in the confidential portion of the administrative record file. In light of the nature of the information in the RI/FS and underlying documents and the fact that contamination levels are generally not privileged, this is not expected to occur frequently.

It should be noted that section 104(e)(7) of CERCLA governs the extent to which information may be claimed confidential by persons required to provide information under that section. Where confidential business information is claimed, EPA will proceed according to regulations set forth in 40 CFR Part 2.

4. *Administrative record for a remedial action (§ 300.815).* Section 300.815(a) provides that the documents included in the administrative record file for a remedial action shall be available for public inspection at the commencement of the remedial investigation phase. Generally, the commencement of the remedial investigation phase occurs when the final RI/FS work plan is available. The regulations do not specify when the remedial investigation phase commences because this may be a site-specific determination. EPA solicits comments on whether the regulation should specify in greater detail when the lead agency must make the administrative record file for a remedial action available for public inspection. The file at that time should contain the documents which will form a basis for the selection of the response action generated or received through the date when the administrative record file is first made available. Documents generally available when the RI/FS work plan is approved include a preliminary assessment report, site inspection report, the RI/FS work plan, underlying inspection reports, and the community relations plan. From that time until the ROD is signed (except as provided in § 300.825, described below) documents which form the basis for the selection of the remedial action, shall be added as generated or received to the administrative record file.

The lead agency may establish a system allowing for periodic review of documents where there are questions as to whether the documents must be included in the administrative record file. Quarterly or monthly updates of the administrative record file may be appropriate in given situations and allows the lead agency to analyze data and organize it in a manner that will be meaningful to the public. In addition, it may save the lead agency the time involved in making daily or weekly determinations on whether questionable documents should be added to the administrative record file. If there is no question that a document belongs in the administrative record file, e.g., the RI/FS report, the document should be placed in the record file as soon as practicable after its generation or receipt.

EPA proposes in § 300.815(a) that the lead agency publish a notice of availability of the administrative record file. The notice must be published in a major local newspaper of general circulation, as is required for the notice of availability of the proposed plan. (See § 300.430 of today's proposed rule.) EPA considered proposing that a notice be published in the **Federal Register** for wider circulation, but rejected such a requirement as unnecessary. EPA solicits comments on whether a notice of availability of the record or of commencement of the public comment period should be published in the **Federal Register**. EPA also considered proposing that a separate notification of known potentially responsible parties be made. Section 113(k)(2)(D) of CERCLA provides that the President shall make reasonable efforts to identify and notify PRPs as early as possible before selection of a response action. EPA will be issuing notice letters to PRPs under section 122(e) of CERCLA early in the process in many situations. Given these early efforts, as well as the notice in a local newspaper, EPA chose not to propose a separate notification of PRPs here.

Section 300.815(b) clarifies that interested persons may submit comments for inclusion in the administrative record file during the public comment period on the RI/FS and proposed plan described in § 300.430(f) of Subpart E. The lead agency need not, however, respond to comments that were submitted prior to the public comment period on the proposed plan, although in many instances, the lead agency will either make appropriate modifications to the response action or respond in writing to those early comments.

A written response to significant comments will be included in the administrative record file. The lead agency need not respond to any comments received during the public comment period until the close of the public comment period. Generally, responses will be included in the responsiveness summary, which is part of the ROD. In responding to significant comments, the lead agency need not respond separately to each comment but may combine comments by subject or other category in the response.

The public participation procedures for a remedial action are set forth in § 300.430. Section 300.815(c) of Subpart I requires that compliance with the requirements of § 300.430(f) be documented for inclusion in the administrative record file. The requirements of § 300.430(f) include preparation of a proposed plan; publication of a notice of availability and brief analysis of the proposed plan; placing a copy of the proposed plan in the information repository; providing an opportunity for the submission of written or oral comments on the proposed plan, RI/FS, and any waivers to cleanup standards under section 121(d)(4) of CERCLA; providing an opportunity for a public meeting on the RI/FS, proposed plan, and waivers to cleanup standards; preparing a transcript of public meetings held during the public comment period; making the transcript available to the public; discussing significant changes to the proposed plan; responding to significant comments; and soliciting additional public comment and providing for other public participation procedures at the lead agency's discretion prior to the adoption of the decision where new and substantial issues have been raised. It will generally be the practice of the lead agency that, whenever possible, documents upon which the selection decision is based will be included in the administrative record file as soon as possible after they are generated or received, and no later than when the

decision document is signed. This is intended to encourage maximum public participation in the development of the record.

Documents generated or received after the selection is made do not provide a basis for the decision and thus generally are not part of the administrative record, except as provided in § 300.825, discussed below.

5. *Administrative record for a removal action (§ 300.820).* Section 300.820 proposes requirements for administrative records for removal actions. It is divided into two parts. Paragraph (a) addresses "non-time-critical" removal actions, i.e., those for which, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of at least six months before on-site cleanup activities must be initiated. Paragraph (b) addresses all other removal actions.

Explanations of regulatory requirements and related issues which are the same as those for remedial actions will not be repeated here. Only requirements and issues specific to removal actions will be addressed.

Section 300.820(a)(1) provides that the administrative record file for a non-time-critical removal action shall be available for public inspection when the engineering evaluation/cost analysis (EE/CA) report is made available for public comment. At that time, an administrative record file shall be established and made available to the public and shall contain all documents relevant to selection of the removal action generated up through that date. Documents generally available at that time include sampling data, a preliminary assessment report, a site inspection report, the EE/CA approval memorandum, and the EE/CA. After the EE/CA report is available and until the Action Memorandum is signed (except as provided in § 300.825, discussed below), documents relevant to the selection of the removal action shall be added to the administrative record file as discussed in the remedial action section of today's preamble.

The public participation procedures for non-time-critical removal actions are set forth in § 300.415(n)(3) of Subpart E of today's proposed regulations. Section 300.820(a)(3) requires that compliance with § 300.415(n)(3) (i) through (iii) be documented for inclusion in the administrative record. The requirements of § 300.415(n)(3) (i) through (iii) include publication of a notice of availability and brief description of the EE/CA; making the EE/CA available to the public; providing a reasonable opportunity, not less than 30 days, for submission of comments after the completion of the EE/CA; and responding to significant comments.

Section 300.820(b) provides different procedures for time-critical, including emergency, removal actions. As explained earlier, section 113(k)(2)(A) of CERCLA requires procedures for the "appropriate" participation of interested persons in the development of the administrative record for removal actions. Appropriate participation is significantly different in situations where an action must be taken on short notice. Where the exigencies of the situation demand that cleanup be initiated and often completed within short timeframes, public comment periods may delay expeditious response to the emergency. In view of Congressional intent that public participation requirements not hamper or delay emergency removal actions, EPA has considered many options for the appropriate level of public participation. EPA must balance the benefits of public involvement in advance of the selection of a removal action against the need to proceed quickly in emergency situations. EPA believes that the requirements proposed today strike the correct balance.

EPA has had to consider two questions in determining the level of participation for time-critical removals. First, at what point should the administrative record file be made available to the public, and second, should there be a formal public comment period on the record? EPA is proposing in § 300.820(b)(1) that for all time-critical removals (including emergencies), the record file should be made available to the public no later than 60 days after initiation of on-site removal activity. EPA is choosing to make the record available at this time recognizing that there will be many situations where immediate action must be undertaken to remove threats to human health and the environment before the administrative record file can be assembled and placed in a public docket for inspection. In reviewing typical removal actions, EPA found that generally containment or stabilization (i.e., those activities taken to retard, reduce, or prevent the spread of a release or threat of release and eliminate any immediate threat) at removal sites often are completed within 60 days. Clearly, where circumstances warrant, EPA should focus on addressing the threat at a site, and attend to administrative procedures later. The proposal meets both EPA's charge to protect human health and the environment and the requirement to provide for appropriate public participation, by requiring that the administrative record file be made available to the public no later than 60 days after initiation of removal activities. Making the record available involves: assembling the administrative record file, identifying a publicly accessible location for the record file at or near the site, finding an acceptable newspaper and placing an advertisement in it to notify the public, and preparing for receipt and evaluation of comments. The proposed requirement that the file be available "no later than" 60 days does not preclude making the record file available at an earlier time, if circumstances allow.

EPA is also proposing in § 300.820(b)(2) that the lead agency shall, as appropriate, provide a 30-day public comment period to begin at the time the administrative record is made available to the public. Generally, when the removal action has not been completed, a public comment period will be considered appropriate at the time the administrative record file is made available to the public. EPA requests comment on whether public comment should be solicited on activities that have already been completed at the time the record is made available.

EPA has also considered other public participation procedures for time-critical removals. They include:

i. Requiring that the record file be made available immediately upon issuing the Action Memorandum, and delaying the initiation of cleanup until after public comment is solicited and responded to. This would allow maximum public participation in selection of the removal, but it is not consistent with the need to provide prompt response for protection of human health and the environment at the site. Such an approach would also be inconsistent with the legislative history which states that administrative procedures established under section 113 should not hamper emergency removal actions.

ii. Requiring that the record be made available "promptly" after issuing the Action Memorandum, and then soliciting public comment "as time allows." EPA considered this as a way of addressing the individual nature of removals, the different timeframes that may be involved, and the need to provide meaningful opportunities for public comment in cases where time allows. As discussed earlier, EPA believes resources should first be directed toward mitigating threats at a time-critical removal site and that 60 days of on-site work will allow this. However, EPA is concerned that a

standard of "prompt" availability is too vague and would be a source of controversy at each site. Thus, EPA believes an objective standard is preferable. Similarly, while providing for public comment "as time allows" permits flexibility in the requirements, such a rule would require the exercise of judgment and would allow disputes over compliance with this requirement in individual cases. In addition, as discussed above, it is rare that there is sufficient time before beginning a time-critical action to solicit, consider and respond to comments.

iii. Delaying the availability of the record until 120 days after beginning cleanup and then soliciting public comment. This approach parallels the community relations requirements (within 120 days of cleanup for ongoing responses, a Community Relations Plan must be prepared and an information repository must be made available; see § 300.415(n)). This would increase the number of sites at which cleanup has been completed before the public is notified. EPA believes that the increased cleanup time provided under this option generally does not justify the delay in public involvement concerning response selection.

iv. Requiring that the record file be made available after performing containment or stabilization at a site where disposal is needed (over 25 percent of removals do not require disposal) and delaying disposal until public comment could be solicited, evaluated and responded to. This approach attempts to balance the need for public comment with the urgency of the response, limiting the response selection undertaken without benefit of public input to those aspects of removals which must be conducted swiftly in order to protect public health and the environment.

There are two major difficulties with this approach. The first concerns precisely defining "containment" and "stabilization" in this context and providing indicators to mark their completion. While it is possible, based on experience, to say that the containment or stabilization phase of a removal action is generally completed within 60 days of initiating work, it is much more difficult to determine such completion on a site-specific basis.

The second difficulty with such a rule is that it fails to take into account several important factors which may make such an approach infeasible in many cases. Specifically, delay of disposal activities may: (a) Create additional unnecessary risks to human health and the environment, and (b) result in needless expenditures of time and money. Site conditions, weather conditions, location, public accessibility, availability of approved disposal facilities, availability of treatment facilities and the effect of the delay on the statutory time and money limitations on removals are only some of the factors to be considered before a site-by-site determination could be made as to whether or not it was practicable to solicit public comment.

v. Making the record publicly available as in the proposal (i.e., no later than 60 days after initiation of cleanup), but not formally soliciting any public comment. Given the need for quick action on time-critical removals, that they are generally limited in scope, and few cleanup options are feasible, this may be an appropriate approach. This approach, however, would not provide the public with an opportunity for meaningful participation where it might be appropriate in specific removal situations.

EPA solicits comments on the proposed and other considered approaches to public participation on removal actions.

6. *Adding documents after selection of response action (§ 300.825).* New documents may be added to the record file after the decision document is signed only as provided in § 300.825. Documents generated or received after the decision document (e.g., Action Memorandum or ROD) is signed generally will be kept in a post-decision document file unless and until a determination is made that the document(s) should be placed in the administrative record file, pursuant to § 300.825.

Section 300.825(a) provides that the lead agency may add post-decision documents to the administrative record file in two situations. The first situation occurs when the decision document does not address or reserves a portion of the response action decision. In such cases, the lead agency will continue to add to the administrative record file documents which form the basis for that portion of the decision not addressed or reserved by the decision document. Where appropriate, the lead agency shall provide public notice that the administrative record file for this portion of the decision continues to be available for public inspection and comment. It should be noted that this exception applies to RODs that address an operable unit but leave a portion of the decision on that operable unit open.

The second situation arises when an explanation of significant differences provided for in § 300.435(c) or an amended decision document is required. An explanation of significant differences is issued when, after adoption of a final remedial action plan, the remedial action or enforcement action taken, or the settlement or consent decree entered into, significantly differs in scope, performance or cost from the final plan. The record shall include an explanation of significant differences and all documents that form the basis for the decision to modify the response selection decision. The lead agency shall publish a notice of availability of these documents, as required by section 117 of CERCLA and as proposed in § 300.435(c). If, in addition, an amended decision document is required, the record shall include the amended document and all documents that form the basis for the amended decision. The public participation procedures outlined in Subpart E on explanations of significant differences and amendments to decision documents shall apply.

Section 300.825(b) provides that the lead agency may, in its discretion, hold additional public comment periods or extend the time for submission of public comment after the decision document is signed, and may limit such comment to issues for which the lead agency has requested additional comment. This is intended to allow the lead agency to solicit additional comment on the response action whenever it determines that new information or other circumstances warrant additional input.

Section 300.825(c) governs public comments received after the close of the comment period. Under this section, the lead agency will need to consider such comments only if they could not have been submitted during the comment period and provide critical, new information relevant to the response selection which substantially supports the need to significantly alter the response action. EPA is proposing the standard set out in § 300.825(c) as providing the best balance between EPA's desire to remain open to critical, new information on the effectiveness of a selected response and the need to make final decisions in order to allow expeditious implementation of the response action. EPA solicits comment on this approach.

D. Compliance With This Subpart

As provided in section 113(j)(4) of CERCLA, in reviewing alleged procedural errors related to the administrative record, a court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

Subpart J—Use of Dispersants and Other Chemicals

Proposed Subpart J is very similar to existing Subpart H and contains only minor revisions. Section numbers and references to other sections and subparts have been changed where necessary. Technical changes and minor wording changes to improve clarity have also been made.

Definitions formerly in this section have been moved to Subpart A, and a new definition has been added for miscellaneous oil spill control agents. Accordingly, a list of data requirements for miscellaneous spill control agents is proposed to be added to § 300.915. The definition for navigable waters is as defined in 40 CFR 110.1.

Points of Clarification

Section 300.910 on "Authorization of use" specifies the conditions under which the OSC may authorize the use of dispersants and other chemicals. Authorization applies to all products on the NCP Product Schedule.

The language in § 300.910 has been modified slightly to emphasize the importance of obtaining concurrence for the use of dispersants and other chemicals from the appropriate Regional Response Team (RRT) State representative and the DOC/DOI natural resource trustees "as appropriate." "As appropriate" refers, in this case, to the fact that the decision to use a chemical is highly dependent upon specific circumstances, locations, and conditions which must be assessed by the OSC. The EPA and the State RRT representatives and DOC/DOI trustees are in a unique position to understand local conditions and to collect and coordinate quickly the necessary local information which should facilitate a correct decision. Since the decision whether to use such chemicals has far-reaching implications and must be made in a timely fashion, early involvement of the EPA and State RRT representatives and DOC/DOI trustees, as appropriate, is important. As a part of their contingency planning efforts, RRTs are further encouraged to make pre-approval determinations with respect to the use of certain dispersants or chemical agents in their area of geographical responsibility.

Sinking agents are specifically prohibited for application to oil discharges.

Appendix C to Part 300—Revised Standard Dispersant Effectiveness and Toxicity Tests

Two technical corrections have been proposed for Appendix C to Part 300. First, in the calculations sections, 2.5 and 2.6, the formulas of equations (2), (3), and (5) for concentration of oil (C_{do}) in the sample, dispersant blank correction (D), and oil blank correction (OBC) have been corrected. Second, the units of viscosity (item 3, part IX in section 4.0) have been changed from furol seconds to centistokes. Last, the new 1988 ASTM standards has been cited for reference to viscosity in centistokes.

Appendix D to Part 300—Appropriate Actions and Methods of Remedying Releases

Proposed Appendix D to Part 300 includes materials from existing § 300.68(j) on appropriate actions at remedial sites and existing § 300.70 on methods for remedying releases. The appendix describes general approaches and lists specific techniques but is not intended to be inclusive of all possible methods of addressing releases. A lead agency may respond to types of releases and employ techniques other than those that are listed, depending on the particular circumstances. EPA believes that the provisions in existing §§ 300.68(j) and 300.70 are not appropriate for inclusion in proposed Subpart E, which has been structured to focus on the sequence of response procedures. Because the materials do not impose any requirements or restrictions, they are appropriate for a proposed appendix. It is intended that parties conducting response actions should consider the information provided in Appendix D.

III. Summary of Supporting Analyses

A. Regulatory Impact Analysis of Proposed Revisions to the NCP

An economic analysis entitled, "Regulatory Impact Analysis Prepared in Support of the Proposed Revisions to the National Contingency Plan" (RIA) estimates the incremental costs associated with the proposed revisions to the NCP. The RIA is available in the Superfund Docket, Room LG at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RIA estimates total and incremental costs to the Fund, States, Federal agencies, and responsible parties of implementing the remedial and removal programs during the period FY 87 through FY 91, the duration of the 1986 reauthorization of the Superfund program. The analysis focuses on four provisions with incremental costs and benefits attributable directly to the 1986 CERCLA amendments: (1) Selection of remedy; (2) removals; (3) water restoration; and (4) publicly owned sites. The impacts of these four provisions are attributable directly to the 1986 CERCLA amendments, rather than to additional requirements imposed by EPA, because in these areas EPA chose to retain the flexibility of the statutory language; the NCP essentially codifies the statutory requirements. The RIA estimates the incremental costs of the four provisions, using the requirements of CERCLA, as specified in the 1985 NCP, as the baseline. The 1985 NCP is the proper baseline for the analysis of changes attributable to the statutory amendments because the 1985 NCP is the legal framework that defines response activities in the absence of the amendments to CERCLA. The estimated economic costs attributable to the 1986 CERCLA amendments are summarized below.

1. *Selection of remedy.* The new CERCLA preference for reducing mobility, toxicity, and volume of contaminants at a site is assumed to be a preference for remedies that use treatment as a principal element. All Superfund Records of Decision (RODs) signed during the FY 82 to FY 86 period were reviewed for information on capital and operation and maintenance (O&M) costs for treatment-based remedies and for containment-based remedies considered for a site. Many RODs, however, do not include useful cost data for purposes of this analysis. RODs that did not develop costs for both treatment-based remedies and containment-based remedies, or that presented cost information only in present value terms, without a separate presentation of the capital and O&M costs, could not be used in the analysis. The RIA estimates of selection of remedy costs, therefore, are developed using cost data from 30 RODs, the mandatory schedules in section 116 of CERCLA for 175 remedial action starts by the end of FY 89 and an additional 200 starts by FY 91, and the assumptions that the principal effect of the selection of remedy provisions in the 1986 CERCLA amendments is to increase from 32 percent to 80 percent the frequency of selection of remedies (including operable units) that use treatment to address the principal threat at a site.

The RIA estimates that the total cost of the selection of remedy provisions in the 1986 amendments to CERCLA, during the FY 87 through FY 91 period, is $9.4 billion: $4.5 billion to the Fund; $0.8 billion to States; $3.2 billion to responsible parties; and $0.9 billion to Federal agencies. The 5-year present value of the estimated incremental cost of the selection of remedy provisions over the costs imposed already by the 1985 NCP is $3.6 billion: $1.8 billion to the Fund; $0.2 billion to States; $1.2 billion to responsible parties; and $0.4

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billion to Federal agencies. Changes in program administrative costs are not included in these estimates.

A sensitivity analysis is included in the RIA to determine how the cost estimates developed in the RIA change if the most important assumptions used to derive the estimates are altered. In addition to varying cost parameters used in the analysis, the frequency of use of treatment under the 1986 CERCLA amendments is varied between 50 percent of sites or operable units using treatment to 100 percent using treatment. The results of the sensitivity analysis estimates the total incremental costs of the selection of remedy provisions to be between $686 million and $8 billion, with a best estimate of $3.6 billion.

The 1986 amendments to CERCLA require remedial actions to comply with State applicable or relevant and appropriate requirements (ARARs) that are more stringent than Federal ARARs. To the extent possible, therefore, cost estimates used in the RIA are for remedies expected to comply with Federal ARARs and those State ARARs more stringent than the Federal standards. Approximately 50 percent of the RODs signed in FY 86 had selected remedies in compliance with more stringent State ARARs. This represents the baseline level of compliance with State ARARs because the FY 86 RODs were developed in compliance with the 1985 NCP. Ten of the containment-based remedies and 14 of the treatment-based remedies whose costs were used in the RIA are expected to meet more stringent State ARARs. The RIA includes a brief comparative analysis of the costs of these 24 remedies with the costs of the other remedies used in the RIA where compliance with State ARARs is not designated specifically in the ROD. This analysis indicates that compliance with more stringent State ARARs may increase the costs of a remedial action by about $6.6 million. However, one should not conclude that an additional $6.6 million will be incurred to meet State ARARs for every remedial action under CERCLA. Many RODs signed prior to the 1986 CERCLA amendments already showed evidence of compliance with State ARARs. Therefore, no incremental costs associated with such compliance would result under CERCLA as amended. In addition, many States do not have relevant standards more stringent than Federal standards and, even if a State has identified a potential ARAR that is more stringent than a Federal standard, that State standard may not be applicable at all sites within a State.

Assuming 50 percent of the Fund-financed remedial actions expected to be conducted annually over the FY 87 to FY 89 period would have chosen remedies under the provisions of the 1985 NCP in compliance with more stringent State ARARs and that the remaining 50 percent of the remedial actions will incur incremental costs under CERCLA for compliance with more stringent State ARARs, the incremental cost of compliance with the State ARARs provision in the 1986 CERCLA amendments can be estimated to be approximately $190 million per year. These costs are not additive to the total annual remedy selection costs shown above because compliance with State ARARs was captured to some extent in the ROD data used to estimate costs in the RIA.

The results of the ARAR cost analysis may be overestimated because State ARARs were not discussed in all RODs, and it is not clear if the lack of discussion implies lack of compliance with State ARARs, or the fact that there were no more stringent State ARARs that were relevant to the remedy selection process. If the latter is the case, then the number of sites that will incur incremental costs to comply with the State ARAR provisions in the 1986 amendments to CERCLA is overstated.

2. *Removals.* Incremental costs of the removal provisions in the 1986 CERCLA amendments are not quantified in the RIA due to a paucity of relevant data. Removal actions are very sensitive to budgetary fluctuations and regulatory and policy modifications. The 1986 removal data reflect the budgetary constraints resulting from the delay in the reauthorization of the Superfund; earlier removal data did not reflect the off-site policy and other recent regulatory and statutory changes that affect removal costs, such as the 1984 Hazardous Substances Waste Act amendments to the Resource Conservation and Recovery Act that prohibit land disposal of listed hazardous wastes. Although the increase is not quantified in the RIA, removals undertaken during the period from FY 87 through FY 91 are expected to have higher average costs than removals undertaken in the past because more extensive removals are allowable without a waiver and because treatability studies may be done during removal actions at NPL sites to promote consistency with long-term remedial actions.

3. *Water restoration provisions.* Under the 1985 NCP, States held primary responsibility for financing O&M costs associated with a remedial action at a Fund-lead site. During the first fiscal year after completion of the capital expenditure at a site, the Fund financed a maximum of 90 percent of the operational costs until EPA was assured that the remedy was operational and functional. In each subsequent year, the State financed 100 percent of O&M costs. The 1986 amendments to CERCLA change this funding relationship for remedial actions involving treatment to restore ground water or surface water. Long-term costs of treatment of contaminated ground water or surface water now are defined to be a component of the remedial action when treatment is being used to restore an aquifer or surface water body. Hence, this provision transfers financing responsibilities at Fund-lead sites using water restoration as part of the selected remedy from the States to the Fund. Under the new provision, the Fund finances 90 percent of the costs of water restoration for up to ten years; States finance the remaining 10 percent of costs during these years. The RIA estimates that approximately $63 million in obligations to pay for water restoration will be transferred from States to the Fund over the FY 87–91 period as a result of the provisions on ground-water and surface water restoration in the 1986 amendments to CERCLA. Because the provision results only in transfers of obligations to pay from States to the Fund, it does not give rise to real economic costs or real economic benefits.

4. *Publicly owned sites.* The 1986 amendments to CERCLA require that States pay at least 50 percent of the costs of Fund-lead remedial actions at sites operated by a "State or political subdivision thereof, either directly or through a contractual relationship." Prior to the amendments, CERCLA required States to pay at least 50 percent of costs at Fund-lead sites owned or operated by a public entity. The effect of this amendment is to transfer from States to the Fund costs incurred at publicly owned sites operated by a private entity. The RIA estimates that the publicly owned sites provision in the 1986 CERCLA amendments will result in transfers from the States to the Fund of approximately $32 million in obligations to pay for remedial actions over the FY 87–91 period. Because this provision results only in transfers from States to the Fund of obligations to pay for certain activities, it does not give rise to real economic costs or real economic benefits.

5. *Other provisions analyzed.* New CERCLA section 113(k) requires that an

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administrative record of the decisionmaking process for removal actions and remedial actions be established. Subpart I in the proposed NCP revisions describes the documents that must be included in the administrative record and outlines the procedures to follow in developing the record. Essentially, the proposed NCP provision gives detail to the CERCLA requirement, and, therefore, the costs of establishing the administrative record are attributable to CERCLA rather than to additional requirements imposed by EPA. The costs of establishing the record include both the labor hours to develop and maintain the record and the capital cost for the storage space required to house the record. These costs are not quantified explicitly in the RIA, but are estimated to be small.

The RIA also includes an analysis of other incremental costs and benefits attributable to the proposed NCP revisions. These include costs and benefits where EPA exercised discretion and imposed specific requirements beyond those imposed already by the statute. The following subparts of the NCP have costs and benefits attributable to the additional requirements.

Section 300.420 of the proposed NCP establishes procedures that a petitioner must follow in petitioning for a preliminary assessment. The information required by EPA is minimal and involves no data gathering or analysis on the part of the petitioner. It is estimated that no more than one hour would be required to create the petition instrument. In §§ 300.415 and 300.430 of the proposed NCP, some new provisions are included for public participation in removal and remedial activities, respectively. Some of these new provisions reflect existing policy, others incorporate requirements of CERCLA. The costs of the new community relations provisions are expected to be small. The provisions help ensure that information is disseminated quickly and efficiently.

The post-screening field investigation is a new step added to the RI/FS process detailed in § 300.430 of the proposed revisions to the NCP. Although such field investigations are not a specific component in the 1985 NCP, these investigations have been conducted in the past at sites where treatment-based remedies were selected. As a result of CERCLA's increased emphasis on the use of treatment-based remedies, more treatability studies are expected to be conducted.

The proposed NCP provisions in § 300.500 formalize State involvement in remedial action decisionmaking using a Superfund Memorandum of Agreement (SMOA). This provision is expected to result in a clearer understanding of the EPA/State relationship and the responsibilities each party will assume. The incremental costs attributable to this provision are expected to be small.

The RIA results indicate that the proposed rule will have a significant effect on the economy. However, the majority of costs associated with the proposed revisions to the NCP are attributable to requirements in CERCLA rather than to additonal requirements imposed by EPA.

B. Executive Order No. 12291

Proposed regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order (E.O.) No. 12291. E.O. No. 12291 establishes the following criteria for a regulation to qualify as a major rule.

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on the RIA results summarized above, the proposed NCP is a major rule because adoption of today's proposed rule would have an annual effect on the economy of $100 million or more. This regulation has been submitted to the Office of Management and Budget for review under Executive Order Nos. 12291 and 12580.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a proposed regulation on small entities. If the proposed rule is likely to have a "significant impact on a substantial number of small entities," then a Regulatory Flexibility Analysis must be performed. EPA certifies that today's rule will not have a significant impact on a substantial number of small entities.

Small businesses generally will be affected only by the proposed changes that address selection of remedy. The cost of a CERCLA response action, whether using containment-based remedies or treatment-based remedies, can be quite large and, in some cases, may be beyond the financial resources of a responsible party (RP). Because RPs can be in different industry sectors and face different market structures, each RP's ability to finance Superfund response actions could be very different. The analytical framework used in Chapter 7 of the RIA to estimate the economic effects of the CERCLA provisions on typical RPs relies heavily on publicly available financial information and makes the conservative assumption that each RP would be solely responsible for the entire remedial action cost. The analysis includes two financial tests performed on a sample of 15 firms selected randomly and varying in size. One test (the net income test) compares average response costs to the sample firm's net income or cash flow. The second test (a modified Beaver ratio) compares the sample firm's cash flow to its total liabilities, including response costs. On the basis of this analysis, EPA has determined that the proposed revisions to the NCP will not result in a significant impact on a substantial number of small businesses.

Municipalities also could be affected by the proposed revisions to the selection of remedy provisions in the NCP because municipalities can be RPs. NPL sites owned by municipalities tend to be municipal wellfields and landfills. The cleanup of wellfields is undertaken to restore drinking water to a community either by pumping and treating a contaminant plume or building an alternative water distribution system. The contaminant plume usually has not been created by municipality actions; instead, the plume may have migrated from a nearby industrial waste site. As a result, the municipality is not likely to be liable for the costs of response actions. At municipal landfill sites, or other landfill sites that have accepted municipal wastes, the municipality also is not likely to be liable for 100 percent of response costs, because other entities typically have contributed to the site problem. The range of capital costs of cleanups at municipally owned sites with RODs signed over the FY 82 to FY 86 period is from $304,000 for construction of an alternative water supply system to $23.2 million to cap a 90 acre landfill site.

The level of involvement of small municipalities in the Superfund program is not expected to change under the 1986 CERCLA amendments. The sites at which municipalities are most likely to be involved are not expected to be affected greatly by the new CERCLA selection of remedy provisions. The costs of cleaning up municipal landfills in particular are not expected to

increase substantially as a result of the CERCLA amendments because the typical size of such sites limits the implementability of treatment-based remedies.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1463) and a copy may be obtained from Carl Koch, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling 1–202–382–2739.

Public reporting burden for this collection of information is estimated to be a weighted average of 3,350 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Respondent means States and other entities (excluding the Federal government) conducting required activities associated with remedial actions.

Please send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or any public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: November 15, 1988.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Part 300, be amended as follows:

1. The authority citation for Part 300 is revised to read as follows:

Authority: 42 U.S.C. 9605; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Subparts A through H of Part 300 are revised, Subparts I and J are added, and Subpart K is added and reserved to read as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

Subpart A—Introduction

Sec.
300.1 Purpose and objectives.
300.2 Authority and applicability.
300.3 Scope.
300.4 Abbreviations.
300.5 Definitions.
300.6 Use of number and gender.
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Subpart B—Responsibility and Organization for Response

300.100 Duties of President delegated to Federal agencies.
300.105 General organization concepts.
300.110 National Response Team.
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300.120 On-scene coordinators and remedial project managers: general responsibilities.
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300.145 Special teams and other assistance available to OSCs/RPMs.
300.150 Worker health and safety.
300.155 Public information and community relations.
300.160 Documentation and cost recovery.
300.165 OSC reports.
300.170 Federal agency participation.
300.175 Federal agencies: additional responsibilities and assistance.
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Subpart C—Planning and Preparedness

300.200 General.
300.205 Planning and coordination structure.
300.210 Federal contingency plans.
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300.300 Phase I—Discovery or notification.
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300.310 Phase III—Containment, countermeasures, cleanup, and disposal.
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300.320 General pattern of response.
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Subpart E—Hazardous Substance Response

300.400 General.
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300.505 EPA/State Superfund Memorandum of Agreement (SMOA).
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Subpart G—Trustees for Natural Resources

300.600 Designation of Federal trustees.
300.605 State trustees.
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300.615 Responsibilities of trustees.

Subpart H—Participation by Other Persons

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Subpart I—Administrative Record for Selection of Response Action

300.800 Establishment of an administrative record.
300.805 Location of the administrative record.
300.810 Contents of the administrative record.
300.815 Administrative record for a remedial action.
300.820 Administrative record for a removal action.
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Subpart J—Use of Dispersants and Other Chemicals

300.900 General.
300.905 NCP Product Schedule.
300.910 Authorization of use.
300.915 Data requirements.
300.920 Addition of products to schedule.

Subpart K—Federal Facilities [Reserved]

Appendix A to Part 300—[Not Included]

Appendix B to Part 300—[Not Included]

Appendix C to Part 300—Revised Standard Dispersant Effectiveness and Toxicity Tests

Appendix D to Part 300—Appropriate Actions and Methods of Remedying Releases

Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide the organizational structure and

procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

§ 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, (hereinafter CERCLA), and by section 311(c)(2) of the Clean Water Act (CWA), as amended, 33 U.S.C. 1321(c)(2). In Executive Order (E.O.) 12580 (52 FR 2923, January 29, 1987), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. This includes coordination with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. The NCP is applicable to response taken pursuant to the authorities under CERCLA and section 311 of the CWA.

§ 300.3 Scope.

(a) The NCP applies to Federal agencies and States and is in effect for:

(1) Discharges of oil into or upon the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). (See sections 311(b)(1) and 502(7) of the CWA.)

(2) Releases of hazardous substances into the environment, and releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the Federal, State, and local governments and describes resources that are available for response.

(2) The establishment of requirements for Federal regional and on-scene coordinator (OSC) contingency plans. It also summarizes State and local emergency planning requirements under SARA Title III.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Procedures for undertaking response actions pursuant to CERCLA.

(5) Procedures for involving State governments in the initiation, development, selection, and implementation of response actions.

(6) Designation of trustees for natural resources for purposes of CERCLA and the CWA.

(7) Procedures for the participation of other persons in response actions.

(8) Procedures for compiling and making available an administrative record for response actions.

(9) National policies and procedures for the use of dispersants and other chemicals in removals under the CWA and response actions under CERCLA.

(c) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, Federal statutes, and executive orders. Actions taken pursuant to the NCP shall conform to the provisions of international joint contingency plans, where they are applicable. The Department of State shall be consulted, as appropriate, prior to taking any action which may affect its activities.

§ 300.4 Abbreviations.

(a) Department and Agency Title Abbreviations:

ATSDR—Agency for Toxic Substances and Disease Registry
DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
RSPA—Research and Special Programs Administration
USCG—United States Coast Guard
USDA—United States Department of Agriculture

(Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.)

(b) Operational Abbreviations:

ARARs—Applicable or Relevant and Appropriate Requirements
CERCLIS—CERCLA Information System
CRC—Community Relations Coordinator
CRP—Community Relations Plan
ERT—Environmental Response Team
FCO—Federal Coordinating Officer
FS—Feasibility Study
HRS—Hazard Ranking System
NPL—National Priorities List
NRC—National Response Center
NRT—National Response Team
NSF—National Strike Force
O&M—Operation and Maintenance
OSC—On-Scene Coordinator
PA—Preliminary Assessment
PIAT—Public Information Assist Team
RA—Remedial Action
RCP—Regional Contingency Plan
RD—Remedial Design
RI—Remedial Investigation
ROD—Record of Decision
RPM—Remedial Project Manager
RRC—Regional Response Center
RRT—Regional Response Team
SAC—Support Agency Coordinator
SI—Site Inspection
SMOA—Superfund Memorandum of Agreement
SSC—Scientific Support Coordinator

§ 300.5 Definitions.

Terms not defined in this section have the meaning given by CERCLA or the CWA.

"Activation" means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

"Alternative water supplies" as defined by section 101(34) of CERCLA, includes, but is not limited to, drinking water and household water supplies.

"Applicable requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site.

"Biological additives" means microbiological cultures, enzymes, or nutrient additives that are deliberately introduced into an oil discharge for the specific purpose of encouraging biodegradation to mitigate the effects of the discharge.

"Burning agents" means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

"CERCLA" is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986.

"CERCLIS" means EPA's comprehensive data base and management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS is the abbreviation of the CERCLA Information System. CERCLIS consists of three distinct inventories: CERCLIS Removal Inventory, CERCLIS Remedial Inventory, and CERCLIS Enforcement Inventory. Within each of the three categories are active and inactive releases. Inactive releases are those where a determination has been made, based on available information, that no further action is needed. These are retained in the data base as a historical record of accomplishment. Active releases are those for which a lead agency has not yet had an opportunity to evaluate for response action, or to which a lead agency has responded and determined that further action is required, or where there is currently ongoing response action.

"Chemical agents" means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the pollutant from the water.

"Claim" as defined by section 101(4) of CERCLA, means a demand in writing for a sum certain.

"Coastal waters" for the purposes of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

"Coastal zone" as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

"Community relations" means EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns. The term "public" includes citizens directly affected by the site, other interested citizens or parties, organized groups, elected officials, and potentially responsible parties.

"Community relations coordinator" means lead agency staff who work with the OSC/RPM to involve and inform the public about the Superfund process and response actions in accordance with the interactive community relations requirements set forth in the NCP.

"Contiguous zone" means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

"Cooperative agreement" means a Federal assistance agreement in which substantial EPA involvement is anticipated during the performance of the project.

"Discharge" as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means threat of discharge.

"Dispersants" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

"Drinking water supply" as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

"Environment" as defined by section 101(8) of CERCLA, means the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

"Facility" as defined by section 101(9) of CERCLA, means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

"Feasibility study" (FS) means a study undertaken by the lead agency to develop and evaluate options for remedial action. The FS emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI), using data gethered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study.

"First Federal official" means the first Federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC. A State with primary jurisdiction over a site covered by a cooperative agreement will act in the stead of the first Federal official for any incident at the site.

"Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

"Ground water" as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

"Hazard Ranking System" (HRS) means the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

"Hazardous substance" as defined by section 101(14) of CERCLA, means: any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixiture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

"Indian Tribe" as defined by section 101(36) of CERCLA, means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Inland waters," for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

"Inland zone" means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. The term inland zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

"Lead agency" means the agency that provides the OSC/RPM to plan and implement response action under the NCP. EPA, the USCG, another Federal agency, or a State (or political subdivision of a State) operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA, or designated pursuant to a Superfund Memorandum of Agreement (SMOA) entered into pursuant to Subpart F of the NCP or other agreements may be the lead agency for a response action. In the case of a release of a hazardous substance, pollutant, or contaminant, where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of Department of Defense (DOD) or Department of Energy (DOE), then DOD or DOE will be the lead agency. Where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of a Federal agency other than EPA, the USCG, DOD, or DOE, then that agency will be the lead agency for remedial actions and removal actions other than emergencies. The Federal agency maintains its lead agency responsibilities whether the remedy is selected by the Federal agency for non-NPL sites or by EPA and the Federal agency or by EPA alone under CERCLA section 120. The lead agency will consult with the support agency, if one exists, throughout the response process.

"Management of migration" means actions that are taken to minimize and mitigate the migration of hazardous substances or pollutants or contaminants and the effects of such migration. Measures may include, but are not limited to, management of a plume of contamination, restoration of a drinking water aquifer, or surface water restoration.

"Miscellaneous oil spill control agent" is any product, other than a dispersant, sinking agent, surface collecting agent, biological additive, or burning agent, that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

"National Priorities List" (NPL) means the list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance facilities in the United States that need to be addressed under CERCLA authorities. Only NPL sites are eligible for Fund-financed remedial action.

"Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any State or local government, any foreign government, any Indian Tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian Tribe.

"Offshore facility" as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the United States and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

"Oil" as defined by section 311(a)(1) of the CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"Oil pollution fund" means the fund established by section 311(k) of the CWA.

"On-scene coordinator" (OSC) means the Federal official predesignated by EPA or the USCG to coordinate and direct Federal responses under Subpart D, or the official designated by the lead agency to coordinate and direct removal actions under Subpart E of the NCP.

"Onshore facility" as defined by section 101(18) of CERCLA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and, as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

"On-site" for permitting purposes, means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

"Operable unit" means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable

units will not impede implementation of subsequent actions, including final action at the site.

"Operation and maintenance" (O&M) means activities required to maintain the effectiveness of response actions.

"Person" as defined by section 101(21) of CERCLA means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, State, municipality, commission, political subdivision of a State, or any interstate body.

"Pollutant or contaminant" as defined by section 101(33) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas). For purposes of Subpart E of the NCP, the term pollutant or contaminant means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare.

"Preliminary assessment" (PA) means review of existing information and an off-site reconnaissance, if appropriate, to determine if a release may require additional investigation or action. A PA may include an on-site reconnaissance, if appropriate.

"Public participation," see the definition for community relations.

"Public vessel" as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

"Quality assurance project plan" (QAPP) is a written document, associated with remedial site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance (QA) and quality control (QC) activities designed to achieve the data quality objectives of a specific project(s) or continuing operation(s). The QAPP is prepared for each specific project or continuing operation (or group of similar projects or continuing operations). The QAPP will be prepared by the responsible program office, regional office, laboratory, contractor, recipient of an assistance agreement, or other organization. For an enforcement action, potentially responsible parties may prepare a QAPP subject to lead agency approval.

"Release" as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For purposes of the NCP, release also means threat of release.

"Relevant and appropriate requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site.

"Remedial design" (RD) means the technical analysis and procedures which follow the selection of remedy for a site and result in a detailed set of plans and specifications for implementation of the remedial action.

"Remedial investigation" (RI) is a process undertaken by the lead agency to determine the nature and extent of the problem presented by the release. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the feasibility study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

"Remedial project manager" (RPM) means the official designated by the lead agency to coordinate, monitor, or direct remedial or other response actions under Subpart E of the NCP.

"Remedy or remedial action" (RA) means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities (including the cost of providing "alternative land of equivalent value" to an Indian Tribe pursuant to CERCLA section 126(b)) where EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous

substances and associated contaminated materials. The term also includes enforcement activities related thereto.

"Remove or removal" as defined by section 311(a)(8) of the CWA, refers to removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health, welfare, or to the environment. As defined by section 101(23) of CERCLA, remove or removal means the cleanup or removal or released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. The term also includes enforcement activities related thereto.

"Respond or response" as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action, including enforcement activities related thereto.

"SARA" is the Superfund Amendments and Reauthorization Act of 1986. In addition to certain free-standing provisions of law, it includes amendments to CERCLA, the Solid Waste Disposal Act, and the Internal Revenue Code. Among the free-standing provisions of law is Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" and Title IV of SARA, also known as the "Radon Gas and Indoor Air Quality Research Act of 1986." Title V of SARA amending the Internal Revenue Code is also known as the "Superfund Revenue Act of 1986."

"Sinking agents" means those additives applied to oil discharges to sink floating pollutants below the water surface.

"Site inspection" (SI) means an on-site investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected in the preliminary assessment and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate.

"Size classes of discharges" refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in Subpart D. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in critical public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) Minor discharge means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

"Size classes of releases" refers to the following size classifications which are provided as guidance to the OSC for meeting pollution reporting requirements in Subpart B. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of the particular release (e.g., size, location, impact, etc.):

(a) Minor release means a release of a quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses minimal threat to public health or welfare or the environment.

(b) Medium release means a release not meeting the criteria for classification as a minor or major release.

(c) Major release means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare or the environment or results in significant public concern.

"Source control remedial action" means measures that are intended to address the hazardous substances or pollutants or contaminants primarily on top of or within the ground, or in buildings or other structures. Source control measures are distinguished from management of migration measures which address contaminated ground water or hazardous substances in streams, marshes, or lakes.

"Specified ports and harbors" means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in Federal regional contingency plans.

"State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian Tribes as defined in the NCP except where specifically noted. Section 126 of CERCLA provides that the governing body of an Indian Tribe shall be afforded substantially the same treatment as a State with respect to certain provisions of CERCLA. Section 300.515 of the NCP describes the requirements pertaining to Indian Tribes that wish to be treated as States.

"Superfund Memorandum of Agreement" (SMOA) means a written document executed by an EPA Regional Administrator and the head of a State agency establishing the nature and extent of EPA and State interaction during the pre-remedial, remedial, and enforcement response process. The SMOA is not a site-specific document although attachments may address specific sites. The SMOA generally defines the role and responsibilities of both the lead and the support agencies.

"Superfund State contract" means a joint agreement between the Federal agency and a State which documents any required cost share and assurances necessary to conduct a response action when the Federal agency is the lead agency for response. It is not a procurement contract as defined by the Federal Grant and Cooperative Agreement Act. The Superfund State contract may also be a three-party agreement used to establish EPA, State, and political subdivision responsibilities for political subdivision-lead activities and for States to provide assurances for political subdivision-lead actions.

"Support agency" means the agency that provides the support agency coordinator to furnish necessary data to the lead agency, review response data and documents, and provide other assistance as requested by the OSC or RPM. EPA, the USCG, other Federal agency, or a State may be the support agency for a response action if operating

pursuant to a contract executed under section 104(d)(1) of CERCLA or designated pursuant to a Superfund Memorandum of Agreement entered into pursuant to Subpart F of the NCP or other agreement. The support agency may also concur on decision documents.

"Support agency coordinator" (SAC) means the official designated by the support agency, as appropriate, to interact and coordinate with the lead agency in response actions under Subpart E of this Part.

"Surface collecting agents" means those chemical agents that form a surface film to control the layer thickness of oil.

"Threat of discharge or release," see definitions for discharge and release.

"Treatment technology" means any unit operation or series of unit operations that alters the composition of a hazardous substance or pollutant or contaminant through chemical, biological, or physical means so as to reduce toxicity, mobility, or volume of the contaminated materials being treated. Treatment technologies are an alternative to land disposal of hazardous wastes without treatment.

"Trustee" means an official of a Federal natural resources management agency designated in Subpart G of the NCP or a designated State official or Indian Tribe who may pursue claims for damages under section 107(f) of CERCLA.

"United States" when used in relation to section 311(a)(5) of the CWA, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. United States, when used in relation to section 101(27) of CERCLA, includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

"Vessel" as defined by section 101(28) of CERCLA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

"Volunteer" means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (examples: see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

§ 300.6 Use of number and gender.

As used in this regulation, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 300.7 Computation of time.

In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

Subpart B—Responsibility and Organization for Response

§ 300.100 Duties of President delegated to Federal agencies.

In Executive Order 11735 and Executive Order 12580, the President delegated certain functions and responsibilities vested in him by the CWA and CERCLA, respectively. Responsibilities so delegated shall be responsibilities of Federal agencies under the NCP unless:

(a) Responsibility is redelegated pursuant to section 11(g) of Executive Order 12580; or

(b) Executive Order 11735 or Executive Order 12580 is amended or revoked.

§ 300.105 General organization concepts.

(a) Federal agencies should:

(1) Plan for emergencies and develop procedures for addressing oil discharges and releases of hazardous substances, pollutants, or contaminants;

(2) Coordinate their planning, preparedness, and response activities with one another;

(3) Coordinate their planning, preparedness, and response activities with affected States and local governments and private entities; and

(4) Make available such of their facilities or resources as may be useful in a response situation, consistent with agency authorities and capabilities.

(b) Three fundamental kinds of activities are performed pursuant to the NCP:

(1) Preparedness planning and coordination for response to a discharge of oil or release of a hazardous substance, pollutant, or contaminant;

(2) Notification and communications; and

(3) Response operations at the scene of a discharge or release.

(c) The organizational elements created to perform these activities are:

(1) The National Response Team (NRT), responsible for national planning for and coordination of preparedness and response actions. NRT membership consists of representatives from agencies specified in § 300.175.

(2) Regional Response Teams (RRTs), responsible for regional planning and preparedness activities before response actions, and coordination of assistance and advice during such response actions in support of the on-scene coordinator (OSC) and remedial project manager (RPM). RRT membership consists of designated representatives from each participating Federal agency, State government, and local government (as agreed upon by the States).

(3) The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in § 300.135.

(d)(1) The organizational concepts of the NCP are depicted in the following Figure 1:

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Figure 1 -- National Contingency Plan Concepts

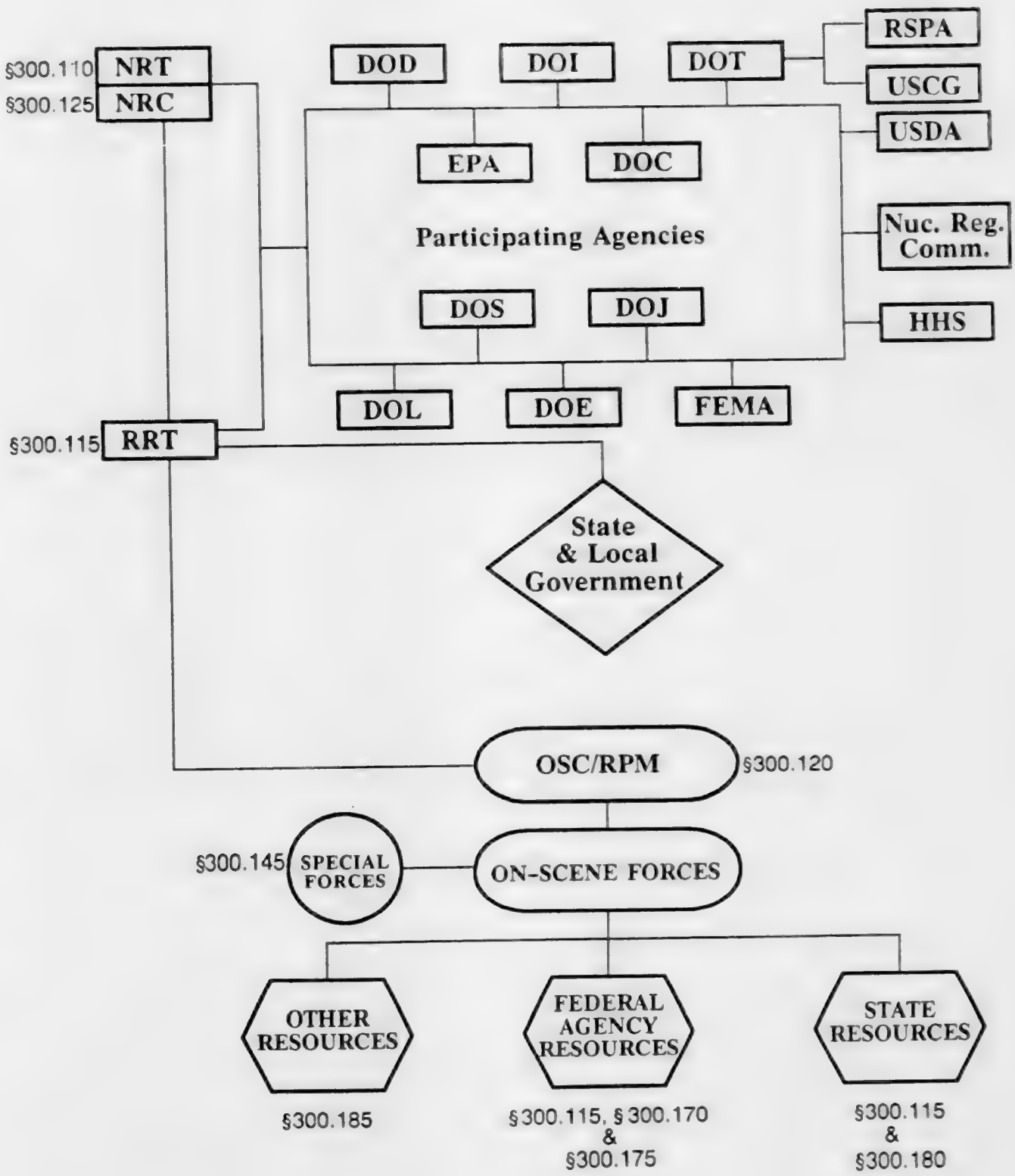

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(2) The standard Federal regional boundaries are shown in the following Figure 2:

Figure 2 -- Standard Regional Boundaries for Ten Regions

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(3) The USCG District boundaries are shown in the following Figure 3:

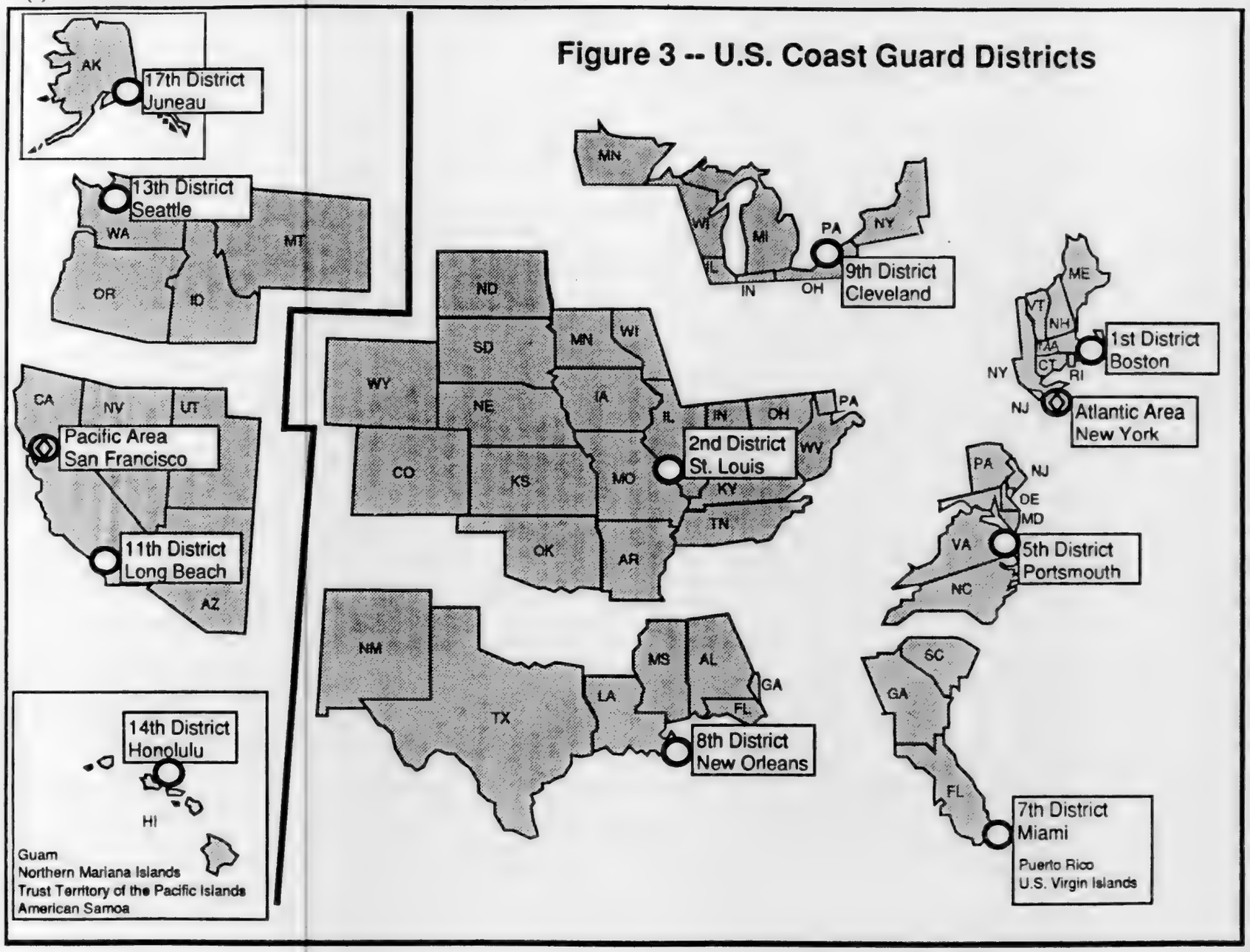

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§ 300.110 National Response Team.

National planning and coordination is accomplished through the National Response Team (NRT).

(a) The NRT consists of representatives from the agencies named in § 300.175. Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT.

(b) The chair of the NRT shall be the representative of EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall either be the EPA or USCG representative, depending on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the chair and vice chair. The vice chair shall maintain records of NRT activities along with national, regional, and OSC plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(d) The NRT may establish such by-laws and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges or releases, recommend needed changes in the response organization, and may recommend revisions to the NCP.

(f) Subject to functions and authorities delegated to agencies in Executive Order 12580 (52 FR 2923, January 29, 1987), the NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil or release of a hazardous substance, pollutant, or contaminant that is beyond regional capabilities;

(2) Publishing guidance documents for preparation and implementation of SARA Title III local emergency response plans;

(3) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(4) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(5) Developing procedures to ensure the coordination of Federal, State, and local governments, and private response to oil discharges and releases of hazardous substances, pollutants, or contaminants;

(6) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination and avoid duplication of effort;

(7) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP; and

(8) Reviewing regional responses to oil discharges and hazardous substance, pollutant, or contaminant releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations.

(i) The NRT will consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge or hazardous substance release:

(i) Exceeds the response capability of the region in which it occurs;

(ii) Transects regional boundaries; or

(iii) Involves a significant threat to public health or welfare or the environment, substantial amounts of property, or substantial threats to natural resources; or

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT shall meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC/RPM and recommend to the OSC/RPM, through the RRT, actions to combat the discharge or release;

(2) Request other Federal, State, and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.115 Regional Response Teams.

(a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. The RRT agency membership parallels that of the NRT, as described in § 300.110, but also includes State and local representation. The RRT provides the appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC/RPM during such response actions.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating Federal agency, State governments, and local governments (as agreed upon by the States); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard Federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge or release. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by State and local governments, shall be determined by the designated RRT chair for the incident, based on the Regional Contingency Plan (RCP). The incident-specific RRT supports the designated OSC/RPM. The designated OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release.

(c) The representatives of EPA and the USCG shall act as co-chairs of RRTs except when the RRT is activated. When the RRT is activated for response actions, the chair shall be the EPA or USCG representative, depending on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the co-chairs.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard Federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the

standard Federal region. Participating States may also designate one member and at least one alternate member to the RRT. Indian Tribal governments may arrange for representation with the RRT appropriate to their geographical location. All agencies and States may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and membership on incident-specific teams in support of the OSCs/RPMs.

(f) Federal RRT members or their representatives should provide OSCs/RPMs with assistance from their respective Federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC/RPM as specified in the RCP and OSC contingency plan.

(g) RRT members should designate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining OSC contingency plans, described in § 300.210, that provide for use of agency resources in responding to discharges and releases.

(h) Affected States are encouraged to participate actively in all RRT activities. Each State governor is requested to assign an office or agency to represent the State on the appropriate RRT; to designate representatives to work with the RRT and OSCs in developing RCPs and OSC contingency plans; to plan for, make available, and coordinate State resources; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The State's RRT representative should keep the State Emergency Response Commission (SERC), described in § 300.205(c), apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by State law or as arranged by the State's representative. Indian Tribes are also invited to participate and may contact the appropriate RRT to arrange for their participation.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of OSC contingency plans for the Federal response to discharges and releases, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges or releases on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and OSC contingency plans are effective;

(5) Encourage the State and local response community to improve its preparedness for response;

(6) Conduct advance planning for use of dispersants, surface collection agents, burning agents, biological additives, or other chemical agents in accordance with Subpart J of this Part;

(7) Be prepared to respond to major discharges or releases outside the region;

(8) Conduct training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period and consider changes in RCPs and OSC contingency plans; and

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve State and local coordination.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge or release:

(i) Exceeds the response capability available to the OSC/RPM in the place where it occurs;

(ii) Transects State boundaries; or

(iii) May pose a substantial threat to the public health or welfare or the environment, or to regionally significant amounts of property. RCPs shall specify detailed criteria for activation of RRTs.

(2) The RRT will be activated during any discharge or release upon a request from the OSC/RPM, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chair and may:

(i) Monitor and evaluate reports from the OSC/RPM, advise the OSC/RPM on the duration and extent of response, and recommend to the OSC/RPM specific actions to respond to the discharge or release, subject to statutory and Executive Order authorities;

(ii) Request other Federal, State, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations;

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT;

(iv) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated; and

(v) Submit pollution reports to the NRC as significant developments occur.

(5) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(6) When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any Federal member of the RRT.

(7) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC/RPM no longer requires RRT assistance.

(8) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter

before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or there is a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT, described in § 300.110, for advice.

§ 300.120 On-scene coordinators and remedial project managers: general responsibilities.

(a) The OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release. As part of the planning and preparedness for response, OSCs shall be predesignated by the regional or district head of the lead agency. EPA and the USCG shall predesignate OSCs for all areas in each region, except as provided in paragraphs (b) and (c) of this section. RPMs shall be assigned by the lead agency to manage remedial or other response actions at NPL sites, except as provided in paragraphs (b) and (c) of this section.

(1) The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another Federal agency, within or threatening the coastal zone. The USCG shall also provide OSCs for the removal of releases of hazardous substances, pollutants, or contaminants into or threatening the coastal zone, except as provided in paragraph (b) of this section. The USCG shall not provide predesignated OSCs for discharges or releases from hazardous waste management facilities or in similarly chronic incidents. The USCG shall provide an initial response to discharges or releases from hazardous waste management facilities within the coastal zone in accordance with DOT/EPA Instrument of Redelegation (46 FR 63294, December 31, 1981). The USCG OSC shall contact the cognizant RPM as soon as it is evident that a removal may require a follow-up remedial action, to ensure that the required planning can be initiated and an orderly transition to an EPA or State lead can occur.

(2) EPA shall provide OSCs for discharges or releases into or threatening the inland zone and shall provide RPMs for Federally-funded remedial actions, except in the case of State-lead Federally-funded response and as provided in paragraph (b) of this section. EPA will also assume all remedial actions at NPL sites in the coastal zone, even where removals are initiated by the USCG, except those involving vessels.

(b) For releases of hazardous substances, pollutants, or contaminants, when the release is on, or the sole source of the release is from, any facility or vessel, including vessels bareboat chartered and operated, under the jurisdiction, custody, or control of DOD, DOE, or other Federal agency:

(1) In the case of DOD or DOE, DOD or DOE shall provide OSCs/RPMs responsible for taking all response actions; and

(2) In the case of a Federal agency other than the USCG, EPA, DOD, or DOE, such agency shall provide OSCs for all removal actions that are not emergencies and shall provide RPMs for all remedial actions.

(c) DOD will be the removal response authority with respect to incidents involving military weapons and munitions.

(d) The OSC is responsible for developing any OSC contingency plans for the Federal response in the area of the OSC's responsibility. The planning shall, as appropriate, be accomplished in cooperation with the RRT, described in § 300.115, and designated State and local representatives.

(e) The RPM is the prime contact for remedial or other response actions being taken (or needed) at sites on the proposed or promulgated NPL, and for sites not on the NPL but under the jurisdiction, custody, or control of a Federal agency. The RPM's responsibilities include:

(1) Fund-Financed Response: The RPM coordinates, directs, and reviews the work of EPA, State, and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the remedial investigation/feasibility study (RI/FS), described in § 300.430, and continues through design, remedial action, deletion of the site from the NPL, and the CERCLA cost recovery activity. When a removal and remedial action occur at the same site, the OSC and RPM should coordinate to ensure an orderly transition of responsibility.

(2) Federal-lead Non-Fund-Financed Response: The RPM coordinates, directs, and reviews the work of other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM shall recommend action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS, described in § 300.430, and continues through design and remedial action, and the CERCLA cost recovery activity. The OSC and RPM shall ensure orderly transition of responsibilities from one to the other.

(3) The RPM shall participate in all decisionmaking processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other Federal agencies and the State. The RPM may also review responses where EPA has preauthorized a person to file a claim for reimbursement to determine that the response was consistent with the terms of such preauthorization in cases where claims are filed for reimbursement.

(f)(1) Where a support agency has been identified through a cooperative agreement, SMOA, or other agreement, that agency may designate a support agency coordinator (SAC) to provide assistance, as requested, by the OSC/RPM. The SAC is the prime representative of the support agency for response actions.

(2) The SAC's responsibilities may include:

(i) Providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and cleanup activities of the response action; and

(ii) Providing other assistance as requested.

(g)(1) The lead agency should provide appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under the NCP.

(2) OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out actions under the NCP, to the extent practicable.

§ 300.125 Notification and communications.

(a) The NRC is the national communications center for activities related to response actions. It is located at USCG Headquarters in Washington, DC. The NRC receives and relays notices of discharges or releases to the appropriate OSC, records each notice, disseminates OSC/RPM and RRT reports to the NRT when appropriate, and provides facilities for the NRT to use in coordinating a national response action when required.

(b) The Commandant, USCG, shall provide the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302, respectively. Notification shall be made

to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 426–2675. All notices of discharges or releases received at the NRC will be relayed immediately by telephone to the OSC.

§ 300.130 Determinations to initiate response and special conditions.

(a) The Administrator of EPA or the Secretary of the Department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil or releases of hazardous substances, pollutants, or contaminants except with respect to such releases on or from vessels or facilities under the jurisdiction, custody or control of other Federal agencies.

(b) The Administrator of EPA or the Secretary of the Department in which the USCG is operating, as appropriate, is authorized to initiate appropriate response activities when the Administrator or Secretary determines that:

(1) Any oil is discharged from any vessel or offshore or onshore facility into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States;

(2) The release into the environment of a hazardous substance, pollutant or contaminant presents a threat to public health or welfare or environment; or

(3) A marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare because of a discharge or release, or an imminent discharge or release, from a vessel of large quantities of oil or hazardous substances designated pursuant to section 311(b)(2)(A) of the CWA.

(c) Whenever there is such a marine disaster, the Administrator of EPA or Secretary of the Department in which the USCG is operating may:

(1) Coordinate and direct all public and private efforts to abate the threat; and

(2) Summarily remove and, if necessary, destroy the vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds.

(d) In addition to any actions taken by a State or local government, the Administrator of EPA or the Secretary of the Department in which the USCG is operating may request the U.S. Attorney General to secure the relief necessary to abate a threat if the Administrator or Secretary determines:

(1) That there is an imminent and substantial threat to the public health or welfare or the environment because of discharge of oil from any offshore or onshore facility into or upon the navigable waters of the United States; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release of a hazardous substance from a facility.

(e) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(f) Where appropriate, when a discharge or release involves radioactive materials, the lead or support Federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan.

(g) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(h) If the situation is beyond the capability of State and local governments and the statutory authority of Federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer (FCO) to coordinate all Federal disaster assistance activities. In such cases, the OSC/RPM would continue to carry out OSC/RPM responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other Federal disaster assistance activities.

§ 300.135 Response operations.

(a) The OSC/RPM, consistent with §§ 300.120 and 300.125, shall direct response efforts and coordinate all other efforts at the scene of a discharge or release, as provided for in Executive Order 11735 and Executive Order 12580. As part of the planning and preparation for response, the OSCs/RPMs shall be predesignated by the regional or district head of the lead agency.

(b) The first Federal official affiliated with an NRT member agency to arrive at the scene of a discharge or release should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate Federal Fund-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC/RPM shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare, and the environment; and appropriate cost documentation.

(d) The OSC's/RPM's efforts shall be coordinated with other appropriate Federal, State, local, and private response agencies. OSCs/RPMs may designate capable persons from Federal, State, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under Subparts D and E of the NCP that involve expenditures of CWA section 311(k) or CERCLA funds unless an appropriate contract or cooperative agreement has been established.

(e) The OSC-RPM should consult regularly with the RRT in carrying out the NCP and keep the RRT informed of activities under the NCP.

(f) The OSC/RPM shall advise the support agency as promptly as possible of reported discharges or releases.

(g) The OSC/RPM shall immediately notify FEMA of situations potentially requiring evacuation, temporary housing, or permanent relocation. In addition, the OSC/RPM shall evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(h) In those instances where a possible public health emergency exists, the OSC/RPM should notify the HHS representative to the RRT. Throughout response actions, the OSC/RPM may

call upon the HHS representative for assistance in determining public health threats and call upon the Occupational Safety and Health Administration and HHS for advice on worker health and safety problems.

(i) All Federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All Federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable Federal regulations and guidelines.

(j) The OSC/RPM shall promptly notify the trustees for natural resources of discharges or releases that are injuring or may injure natural resources under their jurisdiction. The OSC or RPM should consult with the natural resource trustees in determining such effects and shall coordinate, as appropriate, all response activities with natural resource trustees.

(k) Where the OSC/RPM becomes aware that a discharge or release may adversely affect any endangered or threatened species, or result in destruction or adverse modification of the habitat of such species, the OSC/RPM should consult with the DOI or DOC (NOAA).

(l) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.150.

(m) The OSC, and the RPM as appropriate, shall submit pollution reports to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(n) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable, consistent with the requirements of § 300.155 of this Part.

§ 300.140 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one RCP or OSC contingency plan into another area, the authority for response actions should likewise shift. If a discharge or release affects areas covered by two or more RCPs, the response mechanisms of both may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs.

(b) There shall be only one OSC and/or RPM at any time during the course of a response operation. Should a discharge or release affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC and/or RPM. The RRT shall designate the OSC and/or RPM if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC and/or RPM if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has initially provided the OSC for response to a release from hazardous waste management facilities located in the coastal zone, responsibility for response action shall shift to EPA, in accordance with EPA/USCG agreements, or to another Federal agency, as appropriate under Executive Order 12580.

§ 300.145 Special teams and other assistance available to OSCs/RPMs.

(a) Strike Teams, collectively known as the National Strike Force (NSF), are established by the USCG on the Pacific coast and Gulf coast (covering the Atlantic and Gulf coast regions), to provide assistance to the OSC/RPM.

(1) Strike Teams can provide communications support, advice, and assistance for oil and hazardous substances removal. These teams also have knowledge of shipboard damage control, are equipped with specialized containment and removal equipment, and have rapid transportation available. When possible, the Strike Teams will provide training for emergency task forces to support OSCs/RPMs and assist in the development of RCPs and OSC contingency plans.

(2) The OSC/RPM may request assistance from the Strike Teams. Requests for a team may be made directly to the Commanding Officer of the appropriate team, the USCG member of the RRT, the appropriate USCG Area Commander, or the Commandant of the USCG through the NRC.

(b) Each USCG OSC manages emergency task forces trained to evaluate, monitor, and supervise pollution responses. Additionally, they have limited "initial aid" response capability to deploy equipment prior to the arrival of a cleanup contractor or other response personnel.

(c)(1) The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering.

(2) The ERT can provide access to special decontamination equipment for chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC/RPM or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(d) Scientific support coordinators (SSCs) are available, at the request of OSCs/RPMs, to assist with actual or potential responses to discharges of oil or releases of hazardous substances, pollutants, or contaminants. The SSC will also provide scientific support for the development of RCPs and OSC contingency plans. Generally, SSCs are provided by NOAA in coastal and marine areas, and by EPA in inland regions.

(1) During a response, the SSC serves under the direction of the OSC/RPM and is responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature of the incident, the SSC can be expected to provide certain specialized scientific skills and to work with governmental agencies, universities, community representatives, and industry to compile information that would assist the OSC/RPM in assessing the hazards and potential effects of discharges and releases and in developing response strategies.

(2) If requested by the OSC/RPM, the SSC will serve as the principal liaison for scientific information and will facilitate communications to and from the scientific community on response issues. The SSC, in this role, will strive for a consensus on scientific issues surrounding the response but will also ensure that any differing opinions within the community are communicated to the OSC/RPM.

(3) The SSC will assist the OSC/RPM in responding to requests for assistance

from State and Federal agencies regarding scientific studies and environmental assessments. Details on access to scientific support shall be included in the RCPs.

(e) For marine salvage operations, OSCs/RPMs with responsibility for monitoring, evaluating, or supervising these activities should request technical assistance from DOD, the Strike Teams, or commercial salvors as necessary to ensure that proper actions are taken. Marine salvage operations generally fall into five categories: afloat salvage; offshore salvage; river and harbor clearance; cargo salvage; and rescue towing. Each category requires different knowledge and specialized types of equipment. The complexity of such operations may be further compounded by local environmental and geographic conditions. The nature of marine salvage and the conditions under which it occurs combine to make such operations imprecise, difficult, hazardous, and expensive. Thus, responsible parties or other persons attempting to perform such operations without adequate knowledge, equipment, and experience could aggravate, rather than relieve, the situation.

(f) Radiological Assistance Teams have been established by EPA's Office of Radiation Programs (ORP) to provide response and support for incidents or sites containing radiological hazards. Expertise is available in radiation monitoring, radionuclide analysis, radiation health physics and risk assessment. Radiological Assistance Teams can provide on-site support including mobile monitoring laboratories for field analyses of samples and fixed laboratories for radiochemical sampling and analyses. Requests for support may be made 24 hours a day to the Radiological Response Coordinator. Assistance is also available from the Department of Energy and other Federal agencies.

(g) The USCG Public Information Assist Team (PIAT) is available to assist OSCs/RPMs and regional or district offices to meet the demands for public information and participation. Its use is encouraged any time the OSC/RPM requires outside public affairs support. Requests for the PIAT may be made through the NRC.

§ 300.150 Worker health and safety.

(a) Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (OSH Act) and under the laws of States with plans approved under section 18 of the OSH Act (State OSH laws), as well as other applicable safety and health requirements, will be applied to response activities under the NCP. These requirements are subject to enforcement by the appropriate Federal and State agencies. Federal OSH Act requirements include, among other things, all OSH Act General Industry (29 CFR Part 1910, in particular, § 1910.120 Hazardous Waste Operations and Emergency Response), Construction (29 CFR Part 1926), Shipyard (29 CFR Part 1915), and Longshoring (29 CFR Part 1918) standards wherever they are relevant, as well as OSH Act recordkeeping and reporting regulations (29 CFR Part 1904). Employers at response actions under the NCP will also be subject to the general duty requirements of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program is made available for the protection of workers at the response site, and that workers entering the response site are apprised of the response site hazards and provisions of the safety and health program.

(c) In a response taken under the NCP by a lead agency, the lead agency must assure that a program for occupational safety and health is made available for the protection of workers at the response site, and that workers entering the response site are appraised of site hazards and provisions of the safety and health program. Any contract relating to a response action under the NCP shall contain assurances that the contractor at the response site will comply with this program and with any applicable provision of the OSH Act and State OSH laws.

(d) When a State, or political subdivision of a State, without an OSHA-approved State plan is the lead agency for response, the State or political subdivision must comply with standards promulgated by EPA pursuant to section 126(f) of SARA.

§ 300.155 Public information and community relations.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official Federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All Federal news releases or statements by participating agencies should be cleared through the OSC/RPM.

(c) The community relations requirements specified in §§ 300.415, 300.430, and 300.435 apply to removal, remedial, and enforcement actions and are intended to promote active communication between communities affected by discharges or releases and the lead agency responsible for response actions. Community Relations Plans (CRPs) are required by EPA for certain response actions. The OSC/RPM should ensure coordination with such plans which may be in effect at the scene of a discharge or release or which may need to be developed during followup activities.

§ 300.160 Documentation and cost recovery.

(a) For releases of a hazardous substance, pollutant, or contaminant, the following provisions apply:

(1) During all phases of response, the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be sufficient to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, accurate accounting of Federal, State, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment. Where applicable, documentation shall state when the NRC received notification of a release of a reportable quantity.

(2) The information and reports obtained by the lead agency for Fund-financed response actions shall, as

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appropriate, be transmitted to the chair of the RRT. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate. In addition, OSCs shall report as required by § 300.165 for all major releases and all Fund-financed removal actions taken.

(3) The lead agency shall make available to the trustees of affected natural resources information and documentation that can assist in the determination of actual or potential natural resource injuries.

(b) For discharges of oil, documentation and cost recovery provisions are described in § 300.315.

(c) Response actions undertaken by the participating agencies shall be carried out under existing programs and authorities when available. Federal agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge or release. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures. Further funding provisions for discharges of oil are described in § 300.335.

(d) The Administrator of EPA and the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) shall assure that the costs of health assessment or health effect studies conducted under the authority of CERCLA section 104(i) are documented in accordance with standard EPA procedures for cost recovery. Documentation shall include information on the nature of the hazardous substances addressed by the research, information concerning the locations where these substances have been found, and any available information on response actions taken concerning these substances at the location.

§ 300.165 OSC reports.

(a) Within 90 days after completion of removal activities at a major discharge of oil, a major hazardous substance, pollutant, or contaminant release, or when requested by the RRT, the OSC/RPM shall submit to the RRT a complete report on the removal operation and the actions taken. The OSC/RPM shall at the same time send a copy of the report to the Secretary of the NRT. The RRT shall review the OSC report and send to the NRT a copy of the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(b) The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

(c) The format for the OSC report shall be as follows:

(1) Summary of Events—a chronological narrative of all events, including:

(i) The location of the hazardous substance, pollutant, or contaminant release or oil discharge, including, for oil discharges, an indication of whether the discharge was in connection with activities regulated under the Outer Continental Shelf Lands Act (OCSLA), the Trans-Alaska Pipeline Authority Act, or Deepwater Port Act;

(ii) The cause of the discharge or release;

(iii) The initial situation;

(iv) Efforts to obtain response by responsible parties;

(v) The organization of the response, including State participation;

(vi) The resources committed;

(vii) Comments on whether the discharge or release affected natural resources;

(viii) Comments on Federal or State damage assessment activities and efforts to replace or restore damaged natural resources;

(ix) Details of any threat abatement action taken under CERCLA or under section 311 (c) or (d) of the CWA;

(x) Treatment/Disposal/Alternative Technology approaches pursued and followed; and

(xi) Public information/community relations activities.

(2) Effectiveness of removal actions taken by:

(i) The responsible party(ies);

(ii) State and local forces;

(iii) Federal agencies and special forces; and

(iv) Contractors, private groups, and volunteers, if applicable.

(3) Difficulties Encountered—A list of items that affected the response, with particular attention to issues of intergovernmental coordination.

(4) Recommendations—OSC/RPM recommendations, including at a minimum:

(i) Means to prevent a recurrence of the discharge or release;

(ii) Improvement of response actions; and

(iii) Any recommended changes in the NCP, RCP, OSC contingency plan, and, as appropriate, plans developed under section 303 of SARA and other local emergency response plans.

§ 300.170 Federal agency participation.

Federal agencies listed in § 300.175 have duties established by statute, executive order, or Presidential directive which may apply to Federal response actions, following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have duties relating to the rehabilitation, restoration, or replacement of natural resources injured or lost as a result of such discharge or release as described in Subpart G of this Part. The NRT and RRT organizational structure, the NCP, the Federal Regional Contingency plans (RCPs) and OSC contingency plans, described in § 300.210, provide for agencies to coordinate with each other in carrying out these duties.

(a) Federal agencies may be called upon by an OSC/RPM during response planning and implementation to provide assistance in their respective areas of expertise as described in § 300.175, consistent with the agencies' capabilities and authorities.

(b) In addition to their general responsibilities, Federal agencies should:

(1) Make necessary information available to the Secretary to the NRT, RRTs, and OSCs/RPMs.

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and OSC contingency plans.

(3) Inform the NRT and RRTs, consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(c) All Federal agencies are responsible for reporting releases of hazardous substances, pollutants, or contaminants or discharges of oil from facilities or vessels which are under their jurisdiction or control in accordance with section 103 of CERCLA.

§ 300.175 Federal agencies: additional responsibilities and assistance.

(a) During preparedness planning or in an actual response, various Federal agencies may be called upon to provide assistance in their respective areas of expertise as indicated in paragraph (b) of this section, consistent with agency legal authorities and capabilities.

(b) The Federal agencies include:

(1) The United States Coast Guard (USCG), as provided in 14 U.S.C. 1–3, is an agency in the Department of Transportation (DOT), except when operating as an agency in the United

States Navy in time of war. The USCG provides the NRT vice chair, co-chairs for the standing RRTs, and predesignated OSCs for the coastal zone as described in § 300.120(a)(1). The USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG also offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation and safety of vessels and marine facilities.

(2) The Environmental Protection Agency (EPA) chairs the NRT and co-chairs, with the USCG, the standing RRTs; provides predesignated OSCs for the inland zone and RPMs for remedial actions except as otherwise provided; and generally provides the SSC for responses in the inland zone. EPA provides expertise on environmental effects of oil discharges or releases of hazardous substances, pollutants, or contaminants, and environmental pollution control techniques. EPA also provides legal expertise on the interpretation of CERCLA and other environmental statutes. EPA may enter into a contract or cooperative agreement with the appropriate State in order to implement a response action.

(3) The Federal Emergency Management Agency (FEMA) provides guidance, policy and program advice, and technical assistance in hazardous materials and radiological emergency preparedness activities (planning, training, and exercising). In a response, FEMA provides advice and assistance to the lead agency on coordinating relocation assistance and mitigation efforts with other Federal agencies, State and local governments, and the private sector. FEMA may enter into a contract or cooperative agreement with the appropriate State or political subdivision in order to implement relocation assistance in a response. In the event of a hazardous materials incident at a major disaster or emergency declared by the President, the lead agency shall coordinate hazardous materials response with the Federal Coordinating Officer (FCO) appointed by the President.

(4) The Department of Defense (DOD) has responsibility to take all action necessary with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of DOD. DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed United States Navy oil spill equipment and provide assistance to other Federal agencies on request. The following two branches of DOD have particularly relevant expertise:

(i) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstruction, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administrative services for other Federal agencies.

(ii) The United States Navy (USN) is the Federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open sea pollution incidents.

(5) The Department of Energy (DOE), except as otherwise provided in Executive Order 12580, provides designated OSCs/RPMs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody or control, including vessels bareboat chartered and operated. In addition, under the Federal Radiological Emergency Response Plan (FRERP), DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Coordinating Office.

(6) The Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, and other natural or man-caused emergencies. The USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(i) The Forest Service has responsibility for protection and management of National Forests and National Grasslands. The Forest Service has personnel, laboratory, and field capability to measure, evaluate, monitor, and control as needed, releases of pesticides and other hazardous substances on lands under its jurisdiction.

(ii) The Agriculture Research Service (ARS) administers an applied and developmental research program in animal and plant protection and production; the use and improvement of soil, water, and air; the processing, storage and distribution of farm products; and human nutrition. The ARS has the capabilities to provide regulation of, and evaluation and training for, employees exposed to biological, chemical, radiological, and industrial hazards. In emergency situations, the ARS can identify, control, and abate pollution in the areas of air, soil, wastes, pesticides, radiation, and toxic substances for ARS facilities.

(iii) The Soil Conservation Service (SCS) has personnel in nearly every county in the nation knowledgeable in soil, agronomy, engineering, and biology. These personnel can predict the effects of pollutants on soil and their movements over and through soils. Technical specialists can assist in identifying potential hazardous waste sites and provide review and advice on plans for remedial measures.

(iv) The Animal and Plant Health Inspection Service (APHIS) can respond in an emergency to regulate movement of diseased or infected organisms to prevent spread and contamination of nonaffected areas.

(v) The Food Safety and Inspection Service (FSIS) has responsibility to prevent meat and poultry products contaminated with harmful substances from entering human food channels. In emergencies, the FSIS works with other Federal and State agencies to establish acceptability for slaughter of exposed or potentially exposed animals and their products. In addition they are charged with managing the Federal Radiological Emergency Response Program for the USDA.

(7) The Department of Commerce (DOC), through NOAA, provides scientific support for responses and contingency planning in coastal and marine areas, including assessments of

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the hazards that may be involved, predictions of movement and dispersion of oil and hazardous substances through trajectory modeling and information on the sensitivity of coastal environments to oil or hazardous substances; provides scientific expertise on living marine resources for which it is responsible and their habitats, including endangered species and marine mammals; provides information on actual and predicted meteorological, hydrologic, ice, and oceanographic conditions for marine, coastal, and inland waters; and furnishes tide and circulation information for coastal and territorial waters and for the Great Lakes.

(8) The Department of Health and Human Services (HHS) is responsible for providing assistance on matters related to the assessment of health hazards at a response, and protection of both response workers and the public's health. HHS is delegated authorities under section 104(b) of CERCLA relating to a determination that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant. HHS programs and services may be carried out through grants, contracts, or cooperative agreements. The basic research programs shall be coordinated with the Superfund research, demonstration, and development program conducted by EPA and DOD through the mechanisms provided for in CERCLA. Agencies within HHS have relevant responsibilities, capabilities, and expertise as follows:

(i) The Agency for Toxic Substances and Disease Registry (ATSDR), under section 104(i) of CERCLA, is required to: establish appropriate disease/exposure registries; provide medical care and testing of exposed individuals in cases of public health emergencies; develop, maintain, and provide information on health effects of toxic substances; maintain a list of areas restricted or closed because of toxic substances contamination; conduct research to determine relationships between exposure to toxic substances and illness; conduct health assessments at all NPL sites; conduct a health assessment in response to a petition or provide a written explanation why an assessment will not be conducted; together with EPA, identify the most hazardous substances related to CERCLA sites; together with EPA, develop guidelines for toxicological profiles for hazardous substances; develop a toxicological profile for all such substances; and develop educational materials related to health effects of toxic substances for health professionals.

(ii) The National Institutes for Environmental Health Sciences (NIEHS) has been given the responsibilities under section 311(a) of CERCLA, to conduct and support programs of basic research, development, and demonstration; and to establish short course and continuing education programs, and graduate or advanced training. In addition, section 126(g) of SARA authorizes NIEHS to administer grants for training and education of workers who are or may be engaged in activities related to hazardous waste removal, containment, or emergency responses.

(9) The Department of the Interior (DOI) may be contacted through Regional Environmental Officers (REO), who are the designated members of RRTs. Department land managers have jurisdiction over the National Park System, National Wildlife Refuges and Fish Hatcheries, the public lands, and certain water projects in western States. In addition, bureaus and offices have relevant expertise as follows:

(i) Fish and Wildlife Service: fish and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; contaminants affecting habitat resources; and laboratory research facilities.

(ii) Geological Survey: geology, hydrology (ground water and surface water), and natural hazards.

(iii) Bureau of Land Management: minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness; and hazardous materials.

(iv) Minerals Management Service: manned facilities for Outer Continental Shelf (OCS) oversight.

(v) Bureau of Mines: analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(vi) Office of Surface Mining: coal mine wastes and land reclamation.

(vii) National Park Service: biological and general natural resources expert personnel at Park units.

(viii) Bureau of Reclamation: operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(ix) Bureau of Indian Affairs: coordination of activities affecting Indian lands; assistance in identifying Indian Tribal government officials.

(x) Office of Territorial Affairs: assistance in implementing the NCP in American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(10) The Department of Justice (DOJ) can provide expert advice on complicated legal questions arising from discharges or releases, and Federal agency responses. In addition, the DOJ represents the Federal government, including its agencies, in litigation relating to such discharges or releases.

(11) The Department of Labor (DOL), through the Occupational Safety and Health Administration (OSHA) and the States operating plans approved under section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(i) Safety and health standards and regulations promulgated by OSHA (or the States) in accordance with section 126 of SARA and all other applicable standards; and

(ii) Regulations promulgated under the Occupational Safety and Health (OSH) Act and its General Duty Clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency. OSHA may also conduct inspections in response to accidents or employee complaints. OSHA may also conduct inspections at hazardous waste sites in those Plan States that choose not to exercise their jurisdiction to inspect such sites. On request, OSHA will provide advice and assistance to EPA and other NRT/RRT agencies as well as to the OSC/RPM regarding hazards to persons engaged in response activities. Technical assistance may include review of site safety plans and work practices, assistance with exposure monitoring, and help with other compliance questions. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites should be referred to the OSHA Regional Office.

(12) The Department of Transportation (DOT) provides response expertise pertaining to transportation of oil or hazardous substances by all modes of transportation. Through the Research and Special Programs Administration (RSPA), DOT offers expertise in the requirements for packaging, handling, and transporting regulated hazardous materials.

(13) The Department of State (DOS) will lead in the development of international joint contingency plans. It will also help to coordinate an

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international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(14) The Nuclear Regulatory Commission will respond, as appropriate, to releases of radioactive materials by its licensees, in accordance with the NRC Incident Response Plan (NUREG–0728) to monitor the actions of those licensees and assure that the public health and environment are protected and adequate recovery operations are instituted. The Nuclear Regulatory Commission will keep EPA informed of any significant actual or potential releases in accordance with procedural agreements. In addition, the Nuclear Regulatory Commission will provide advice to the OSC/RPM when assistance is required in identifying the source and character of other hazardous substance releases where the Nuclear Regulatory Commission has licensing authority for activities utilizing radioactive materials.

§ 300.160 State and local participation in response.

(a) Each State Governor is requested to designate one State office/representative to represent the State on the appropriate RRT. The State's office/representative may participate fully in all activities of the appropriate RRT. Each State governor is also requested to designate a lead State agency that will direct State-lead response operations. This agency is responsible for designating the RPM for State-lead response actions, designating SACs for Federal-lead response actions, and coordinating/communicating with any other State agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by State law or arranged by the State's representative. Indian Tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) In addition to meeting the requirements for local emergency plans under SARA section 303, State and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP and the RCP, in all emergency and disaster planning.

(c) For facilities not subject to response actions under the NCP, States are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(d) States are encouraged to enter into cooperative agreements pursuant to section 104(c)(3) and (d) of CERCLA to enable them to undertake actions authorized under Subparts D and E of the NCP. Requirements for entering into these agreements are included in Subpart F of the NCP. A State agency that acts pursuant to such agreements is referred to as the lead agency. In the event there is no cooperative agreement, the lead agency can be designated in a SMOA or other agreement.

(e) Since State and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures necessary to protect public health and welfare, and are responsible for directing evacuations pursuant to existing State or local procedures.

§ 300.165 Nongovernmental participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and OSC contingency plans.

(b) The technical and scientific information generated by the local community, along with information from Federal, State and local governments, should be used to assist the OSC/RPM in devising response strategies where effective standard techniques are unavailable. The SSC shall act as liaison between the OSC/RPM and such interested organizations.

(c) OSC contingency plans shall establish procedures to allow for well-organized, worthwhile, and safe use of volunteers, including compliance with § 300.150 regarding worker health and safety. OSC contingency plans should provide for the direction of volunteers by the OSC/RPM or by other Federal, State, or local officials knowledgeable in contingency operations and capable of providing leadership. OSC contingency plans also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC/RPM, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC/RPM, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of Subpart H of this Part if any recovery of costs will be sought.

Subpart C—Planning and Preparedness

§ 300.200 General.

This subpart summarizes emergency preparedness activities relating to hazardous chemicals and substances; describes the Federal, State, and local planning structure; provides for three levels of Federal contingency plans; and cross-references State and local emergency preparedness activities under SARA Title III, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" but referred to herein as "Title III". Regulations implementing Title III are codified at 40 CFR Subchapter J.

§ 300.205 Planning and coordination structure.

(a) *National.* As described in § 300.110, the NRT is responsible for national planning and coordination.

(b) *Regional.* As described in § 300.115, the RRTs are responsible for regional planning and coordination.

(c) *State.* As provided by sections 301 and 303 of SARA, the State emergency response commission (SERC) of each State, appointed by the Governor, is to designate emergency planning districts, appoint local emergency planning committees (LEPC), supervise and coordinate their activities, and review local emergency response plans, described in § 300.215. The SERC also is to establish procedures for receiving and processing requests from the public for information generated by Title III reporting requirements and to designate an official to serve as coordinator for information.

(d) *Local.* As provided by sections 301 and 303 of SARA, emergency planning districts are designated by the SERC in order to facilitate the preparation and implementation of emergency plans. Each LEPC is to prepare a local emergency response plan for the emergency planning district and establish procedures for receiving and processing requests from the public for information generated by Title III reporting requirements. The LEPC is to appoint a chair and establish rules for the LEPC. The LEPC is to designate an official to serve as coordinator for information.

§ 300.210 Federal contingency plans.

There are three levels of Federal contingency plans: the National Contingency Plan, Regional contingency plans (RCPs), and OSC contingency plans. These plans are available for inspection at EPA Regional offices or USCG district offices. Addresses and

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telephone numbers for these offices may be found in the United States Government Manual, issued annually, or in local telephone directories.

(a) *The National Contingency Plan.* The purpose and objectives, authority, and scope of the NCP are described in §§ 300.1 through 300.3.

(b) *Regional contingency plans.* The RRTs, working with the States, shall develop Federal RCPs for each standard Federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various Federal agencies and other organizations to discharges of oil or releases of hazardous substances, pollutants, or contaminants. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and coordinate with State emergency response plans, OSC contingency plans, described in § 300.210(c), and Title III local emergency response plans, described in § 300.215. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

(c)(1) *OSC contingency plans.* In order to provide for a coordinated, effective Federal, State, and local response, each OSC, in consultation with the RRT, may develop an OSC contingency plan for response in the OSC's area of responsibility. OSC contingency plans shall be developed in all areas in the coastal zone, because OSCs in the coastal zone have responsibility for discharges and releases offshore, which often exceed the jurisdiction and capabilities of other responders. Boundaries for OSC contingency plans shall coincide with those agreed upon among EPA, USCG, DOE, and DOD, subject to functions and authorities delegated in Executive Order 12580, to determine OSC areas of responsibility and should be clearly indicated in the RCP. Jurisdictional boundaries of local emergency planning districts established by States, described in § 300.205(c), shall, as appropriate, be considered in determining OSC areas of responsibility. OSC areas of responsibility may include several such local emergency planning districts, or parts of such districts. In developing the OSC contingency plan, OSCs shall coordinate with SERCs and LEPCs affected by the OSC area of responsibility.

(2) The OSC contingency plan shall provide for a well-coordinated response that is integrated and compatible with all appropriate response plans of State, local, and other non-Federal entities, and especially with Title III local emergency response plans, described in § 300.215, or the OSC area of responsibility. The OSC contingency plan shall, as appropriate, identify the probable locations of discharges or releases; the available resources to respond to multi-media incidents; where such resources can be obtained; waste disposal methods and facilities consistent with local and State plans developed under the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq.; and a local structure for responding to discharges or releases.

§ 300.215 Title III local emergency response plans.

This section describes and cross-references the regulations that implement Title III of SARA. These regulations are codified at 40 CFR Part 355.

(a) Each LEPC is to prepare an emergency response plan in accordance with section 303 of SARA Title III and review the plan once a year, or more frequently as changed circumstances in the community or at any subject facility may require. Such Title III local emergency response plans should be closely coordinated with applicable Federal OSC contingency plans and State emergency response plans.

(b) A facility, as defined in 40 CFR Part 355, is subject to emergency planning requirements if an extremely hazardous substance, as defined in 40 CFR Part 355, is present at the facility in an amount equal to or in excess of the threshold planning quantity established for such substance. In addition, for the purposes of emergency planning, a Governor or SERC may designate additional facilities that shall be subject to planning requirements, if such designation is made after public notice and opportunity for comment. EPA may revise the list of extremely hazardous substances and threshold planning quantities, taking into account the toxicity, reactivity, volatility, dispersability, combustibility, or flammability of a substance. Facility owners or operators are to name a facility representative who participates in the planning process as a facility emergency coordinator.

(c) In accordance with section 303 of SARA, each local emergency response plan is to include, but is not limited to, the following:

(1) Identification of facilities subject to Title III emergency planning requirements that are within the emergency planning district; routes likely to be used for the transportation of substances on the list of extremely hazardous substances; and any additional facilities, such as hospitals or natural gas facilities, contributing or subjected to additional risk due to their proximity to facilities subject to Title III emergency planning requirements;

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release, as defined in 40 CFR Part 355, of extremely hazardous substances;

(3) Designation of a community emergency coordinator and a facility emergency coordinator for each facility subject to Title III emergency planning requirements, who will make determinations necessary to implement the emergency response plan;

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency response plan, and to the public, that a release has occurred;

(5) Methods for determining the occurrence of a release and the area or population likely to be affected by such a release;

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to Title III emergency planning requirements, including an identification of the persons responsible for such equipment and facilities;

(7) Evacuation plans, including provisions for precautionary evacuation and alternative traffic routes;

(8) Training programs, including schedules for training of local emergency response and medical personnel; and

(9) Methods and schedules for exercising the emergency response plan.

(d) In accordance with section 303 of SARA, the SERC of each State is to review the emergency response plan developed by the LEPC of each emergency planning district and make recommendations to the LEPC on revisions that may be necessary to ensure coordination of the plan with emergency response plans of other emergency planning districts. RRTs may review a local emergency response plan at the request of the LEPC.

(e) Title III establishes reporting requirements that provide useful information in developing emergency plans.

(1) Upon request from the LEPC, facility owners or operators shall provide promptly to such LEPC information necessary for developing

and implementing the emergency response plan.

(2) Facilities required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, as defined in 40 CFR Part 370, under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under that Act, shall submit a MSDS for each hazardous chemical or a list of hazardous chemicals to the appropriate SERC, LEPC, and local fire department in accordance with 40 CFR Part 370.

(3) Facilities subject to the requirements of paragraph (e)(2) of this section shall also submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these hazardous chemicals at the facility in accordance with 40 CFR Part 370.

(4) Certain facilities with ten or more employees and which manufacture, process, or use a toxic chemical, as defined in 40 CFR Part 372, in excess of a statutorily-prescribed quantity, shall submit annual information on the chemical and releases of the chemical into the environment to EPA and the State in accordance with 40 CFR Part 372.

(f) Immediately after a release of an extremely hazardous substance, or a hazardous substance subject to the notification requirements of CERCLA section 103(a), the owner or operator of a facility, as defined in 40 CFR Part 355, shall notify the community emergency coordinator for the appropriate LEPC and the appropriate SERC in accordance with 40 CFR Part 355. As soon as practicable after such a release has occurred, the facility owner or operator shall provide a written follow-up emergency notice, or notices, if more information becomes available, setting forth and updating the information contained in the initial release notification and including additional information with respect to response actions taken, health risks associated with the release, and, where appropriate, advice regarding medical attention necessary for exposed individuals. For releases of hazardous substances subject to the notification requirements of CERCLA section 103(a), immediate notification must also be made to the NRC, as provided in § 300.405(b).

(g) Title III requires public access to information submitted pursuant to its reporting requirements. Each emergency response plan, MSDS, inventory form, toxic chemical release form, and follow-up emergency release notification is to be made available to the general public during normal working hours at the location(s) designated by the EPA Administrator, Governor, SERC, or LEPC, as appropriate.

§ 300.220 Related Title III issues.

Other related Title III requirements are found in 40 CFR Part 355.

Subpart D—Operational Response Phases for Oil Removal

§ 300.300 Phase I—Discovery or notification.

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the Clean Water Act, immediately notify the NRC. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the Regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or facility notifies the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall proceed with the following phases as outlined in the RCP and OSC contingency plan.

§ 300.305 Phase II—Preliminary assessment and initiation of action.

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal;

(3) To the extent practicable, identify potentially responsible parties; and

(4) Ensure that authority exists for undertaking additional response actions.

(c) The OSC, in consultation with legal authorities when appropriate, shall make a reasonable effort to have the discharger voluntarily and promptly perform removal actions. The OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC shall, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not take proper removal actions, or is unknown, or is otherwise unavailable, the OSC shall, pursuant to section 311(c)(1) of the CWA, determine whether authority for a Federal response exists, and, if so, take appropriate response actions. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(d) If natural resources are or may be injured by the discharge, the OSC shall ensure that State and Federal trustees of affected natural resources are promptly notified in order that the trustees may initiate appropriate actions, including those identified in Subpart G. The OSC shall seek to coordinate, as appropriate, assessments, evaluations, investigations, and planning with State and Federal trustees.

§ 300.310 Phase III—Containment, countermeasures, cleanup, and disposal.

(a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to public health or welfare or the environment. Actions may include but are not limited to: analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with Subpart J of this Part to restrain the spread of the oil and mitigate its effects.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health

and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP and OSC contingency plan and any applicable laws, regulations, or requirements.

§ 300.315 Phase IV—Documentation and cost recovery.

(a) Documentation shall be collected and maintained to support all actions taken under the CWA and to form the basis for cost recovery. Whenever practicable, documentation shall be sufficient to prove the source and circumstances of the incident, the responsible party or parties, and impact and potential impacts to public health and welfare and the environment. When appropriate, documentation shall also be collected for scientific understanding of the environment and for the research and development of improved response methods and technology. Damages to private citizens, including loss of earnings, are not addressed by the NCP. Evidentiary and cost documentation procedures and requirements are specified in the USCG Marine Safety Manual (Commandant Instruction M16000.11) and 33 CFR Part 153.

(b) OSCs shall submit OSC reports to the RRT as required by § 300.165.

(c) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources.

(d) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.320 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) When the reported discharge is an actual or potential major discharge, immediately notify the RRT, including the affected State, if appropriate, and the NRC.

(2) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(3) Officially classify the size of the discharge and determine the course of action to be followed.

(4) Determine whether a discharger or other person is properly carrying out removal. Removal is being done properly when:

(i) The cleanup is fully sufficent to minimize or mitigate threat(s) to public health and welfare and the environment. Removal efforts are improper to the extent that Federal efforts are necessary to minimize further or mitigate those threats; and

(ii) The removal efforts are in accordance with applicable regulations, including the NCP.

(5) Determine whether a State or political subdivision has the capability to carry out response actions and whether a contract or cooperative agreement has been established with the appropriate fund administrator for this purpose.

(6) Notify the trustees of affected natural resources in accordance with the applicable RCP.

(b) The preliminary inquiry will probably show that the situation falls into one of four categories. These categories and the appropriate response to each are outlined below:

(1) If the investigation shows that no discharge occurred, or it shows a minor discharge with no removal action required, the case may be closed for response purposes.

(2) If the investigation shows a minor discharge with the responsible party taking proper removal action, contact shall be established with the party. The removal action shall, whenever possible, be monitored to ensure continued proper action.

(3) If the investigation shows a minor discharge with improper removal action being taken, the following measures shall be taken:

(i) An immediate effort shall, as appropriate, be made to stop further pollution and remove past and ongoing contamination.

(ii) The responsible party shall be advised of what action will be considered appropriate.

(iii) If the responsible party does not properly respond, the party shall be notified of potential liability for Federal response performed under the CWA. This liability includes all costs of removal and may include the costs of assessing and restoring damaged natural resources and other actual or necessary costs of a Federal response.

(iv) The OSC shall notify appropriate State and local officials, keep the RRT advised, and initiate Phase III operations, as described in § 300.310, as conditions warrant.

(v) Information shall be collected for possible recovery of response costs in accordance with § 300.315.

(4) When the investigation shows that an actual or potential medium or major oil discharge exists, the OSC shall follow the same general procedures as for a minor discharge. If appropriate, the OSC shall recommend activation of the RRT.

§ 300.330 Waterfowl conservation.

The DOI and State representatives to the RRT shall arrange for the coordination of professional and volunteer groups permitted and trained to participate in waterfowl dispersal, collection, cleaning, rehabilitation, and recovery activities, consistent with 16 U.S.C. 703–712 and applicable State laws. The RCP and OSC contingency plans shall, to the extent practicable, identify organizations or institutions that are permitted to participate in such activities and operate such facilities. Waterfowl conservation activities will normally be included in Phase III response actions, described in § 300.310.

§ 300.335 Funding.

(a) If the person responsible for the discharge does not act promptly or take proper removal actions, or if the person responsible for the discharge is unknown, Federal discharge removal actions may begin under section 311(c)(1) of the CWA. The discharger, if known, is liable for costs of Federal removal in accordance with section 311(f) of the CWA and other Federal laws.

(b) Actions undertaken by the participating agencies in response to pollution shall be carried out under existing programs and authorities when available. Federal agencies will make resources available, expend funds, or participate in response to oil discharges under their existing authority. Authority to expend resources will be in accordance with agencies' basic statutes and, if required, through interagency agreements. Where the OSC requests assistance from a Federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR 153.407. Specific interagency reimbursement agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge of oil. The ultimate decisions as to the appropriateness of expending funds rest with the agency that is held accountable for such expenditures.

(c) The OSC shall exercise sufficient control over removal operations to be able to certify that reimbursement from the following funds is appropriate:

(1) The oil pollution fund, administered by the Commandant, USCG, has been established pursuant to section 311(k) of the CWA. Regulations

governing the administration and use of the fund are contained in 33 CFR Part 153.

(2) The fund authorized by the Deepwater Port Act is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(3) The fund authorized by the Outer Continental Shelf Lands Act, as amended, is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(4) The fund authorized by the Trans-Alaska Pipeline Authorization Act is administered by a Board of Trustees under the purview of the Secretary of the Interior. Governing regulations are contained in 43 CFR Part 29.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a Federally operated or supervised facility or vessel is the responsibility of the operating or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) The USCG pollution control efforts are funded under "operating expenses." These funds are used in accordance with agency directives.

(3) The Department of Defense has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(4) Pursuant to section 311(c)(2)(H) of the CWA, the State or States affected by a discharge of oil may act where necessary to remove such discharge and may, pursuant to 33 CFR Part 153, be reimbursed from the oil pollution fund for the reasonable costs incurred in such a removal.

(i) Removal by a State is necessary within the meaning of section 311(c)(2)(H) of the CWA when the OSC determines that the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs does not effect removal properly, or is unknown, and that:

(A) State action is required to minimize or mitigate significant threat(s) to the public health or welfare or the environment that Federal action cannot minimize or mitigate, or

(B) Removal or partial removal can be done by the State at a cost that is less than or not significantly greater than the cost that would be incurred by the Federal agencies.

(ii) State removal actions must be in compliance with the NCP in order to qualify for reimbursement.

(iii) State removal actions are considered to be Phase III actions, described in § 300.310, under the same definitions applicable to Federal agencies.

(iv) Actions taken by local governments in support of Federal discharge removal operations are considered to be actions of the State for purposes of this section. The RCP and OSC contingency plan shall show what funds and resources are available from participating agencies under various conditions and cost arrangements. Interagency agreements may be necessary to specify when reimbursement is required.

Subpart E—Hazardous Substance Response

§ 300.400 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA:

(1) When there is a release of a hazardous substance into the environment; or

(2) When there is a release into the environment of any pollutant or contaminant that may present an imminent and substantial endangerment to the public health or welfare.

(b) *Limitations on response.* Unless the lead agency determines that a release constitutes a public health or environmental emergency and no other person with the authority and capability to respond will do so in a timely manner, a Fund-financed removal or remedial action shall not be undertaken in response to a release:

(1) Of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(2) From products that are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(3) Into public or private drinking water supplies due to deterioration of the system through ordinary use.

(c) *Fund-financed action.* In determining the need for and in planning or undertaking Fund-financed action, the lead agency shall, to the extent practicable:

(1) Engage in prompt response;

(2) Provide for State participation in response actions, as described in Subpart F of this Part;

(3) Conserve Fund monies by encouraging private party response;

(4) Be sensitive to local community concerns;

(5) Consider using treatment technologies;

(6) Involve the RRT in both removal and remedial response actions at appropriate decisionmaking stages;

(7) Encourage the involvement and sharing of technology by industry and other experts; and

(8) Encourage the involvement of organizations to coordinate responsible party actions, foster site response, and provide technical advice to the public, Federal and State governments, and industry.

(d) *Entry and access.* (1) For purposes of determining the need for response, or choosing or taking a response action, or otherwise enforcing the provisions of CERCLA, EPA, or the appropriate Federal agency, and a State or political subdivision operating pursuant to a contract or cooperative agreement under CERCLA section 104(d)(1) has the authority to enter any vessel, facility, establishment or other place, property, or location described in paragraph (d)(2) and conduct, complete, operate, and maintain any response actions authorized by CERCLA or these regulations.

(2)(i) Under the authorities described in paragraph (d)(1) of this section, EPA, or the appropriate Federal agency, and a State or political subdivision operating pursuant to a contract or cooperative agreement under CERCLA 104(d)(1) may enter:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from;

(B) Any vessel, facility, establishment, or other place or property from which, or to which, a hazardous substance or pollutant or contaminant has been, or

may have been, released or where such release is or may be threatened;

(C) Any vessel, facility, establishment, or other place or property where entry is necessary to determine the need for response or the appropriate response or to effectuate a response action; or

(D) Any vessel, facility, establishment, place, property, or location adjacent to those vessels, facilities, establishments, places or properties described in paragraphs (d)(2)(i) (A), (B), or (C) of this section.

(ii) Entry is not restricted to those vessels, facilities, establishments, places, properties, or locations, or portions thereof, where there is a reasonable basis to believe there may be a release of a hazardous substance or pollutant or contaminant. Once a determination has been made that there is a reasonable basis to believe that there may be a release, EPA, or the appropriate Federal agency, and a State or political subdivision operating pursuant to a contract or cooperative agreement under CERCLA section 104(d)(1) is authorized to enter all vessels, facilities, establishments, places, properties, or locations specified in paragraph (d)(2)(i) of this section, in responding to that release.

(3) The lead agency may designate, among others, a potentially responsible party as its representative solely for the purpose of access, and EPA, or the appropriate Federal agency, may exercise the authority contained in section 104(e) of CERCLA to obtain access for the potentially responsible party. A potentially responsible party may only be designated as a representative of the lead agency where that potentially responsible party has agreed to conduct response activities pursuant to an administrative order or consent decree.

(4)(i) If consent is not granted under the authorities described in paragraph (d)(1) of this section, EPA, or the appropriate Federal agency, may issue an order pursuant to section 104(e)(5) of CERCLA directing compliance with the request for access made under § 300.400(d)(1) and seek judicial enforcement of such order; or commence a civil action in Federal court to enjoin interference with the requested action.

(ii) EPA reserves the right to proceed, where appropriate, under applicable authority other than CERCLA.

(iii) The administrative order may direct compliance with a request to enter or inspect any vessel, facility, establishment, place, property, or location described in paragraph (d)(2) of this section.

(iv) Each order shall contain:

(A) A determination by EPA, or the appropriate Federal agency, that it is reasonable to believe that there may be a release or threat of a release of a hazardous substance or pollutant or contaminant and a statement of the facts upon which the determination is based;

(B) A description, in light of CERCLA response authorities, of the purpose and estimated scope and duration of the entry, including a description of the specific anticipated activities to be conducted pursuant to the order;

(C) A provision advising the person who failed to consent that an officer or employee of the agency that issued the order will be available to confer with respondent prior to effective date of the order; and

(D) A provision advising the person who failed to consent that a court may impose a penalty of up to $25,000 per day for unreasonable failure to comply with the order.

(v) Orders shall be served upon the person who failed to consent prior to their effective date. Force shall not be used to compel compliance with an order.

(vi) Orders may not be issued for any criminal investigations.

(e) *Permit requirements.* (1) No Federal, State, or local permits are required for on-site response actions conducted pursuant to CERCLA sections 104, 106, or 122. The term "on-site," for permitting purposes, shall include the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

(2) Permits, if required, shall be obtained for all response activities conducted off-site.

(f) *Health assessments.* Health assessments shall be performed by ATSDR at facilities on or proposed to be listed on the NPL and may be performed at other releases or facilities in response to petitions made to ATSDR. Where available, these health assessments may be used by the lead agency to assist in determining whether response actions should be taken and/or to identify the need for additional studies to assist in the assessment of potential human health effects associated with releases or potential releases of hazardous substances.

(g) *Identification of applicable or relevant and appropriate requirements.* (1) The lead and support agencies shall identify applicable requirements based upon an objective determination of whether the requirement specifically addresses a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site.

(2) If, based upon the criteria in paragraph (g)(1) of this section, it is determined that a requirement is not applicable to a specific release, then the requirement shall be examined to determine if it is both relevant and appropriate to the circumstances of the release. The criteria in paragraphs (g)(2)(i) through (ix) of this section shall be weighed, where pertinent, to determine whether a requirement addresses problems or situations sufficiently similar to the circumstances of the release or remedial action contemplated that it is relevant and appropriate. The pertinence of each of the following factors will depend, in part, on whether a requirement addresses a chemical, location, or action.

(i) Whether the purpose for the statute and regulations under which the requirement was created are similar to the specific objectives of the CERCLA action;

(ii) Whether the media regulated or affected by the requirement are similar to the media contaminated or affected at the CERCLA site;

(iii) Whether the substances regulated by the requirement are similar to the substances found at the CERCLA site;

(iv) Whether the entities or interests affected or protected are similar to the entities or interests affected by the CERCLA site;

(v) Whether the actions or activities regulated by the requirement are similar to the remedial action contemplated at the CERCLA site;

(vi) Whether any variances, waivers, or exemptions of the requirement are available for the circumstances of the CERCLA site or CERCLA action;

(vii) Whether the type of place regulated is similar to the type of place affected by the CERCLA site or CERCLA action;

(viii) Whether the type and size of structure or facility regulated is similar to the type and size of structure or facility affected by the release or contemplated by the CERCLA action; and

(ix) Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the affected resource.

(3) In addition to applicable or relevant and appropriate requirements, the lead and support agencies shall, as appropriate, identify other advisories, criteria, and guidance to be considered for a particular release. The "to be considered" (TBC) category consists of advisories, criteria, and guidance that were developed by EPA, other Federal

agencies, or States and that may be useful in developing CERCLA remedies.

(4) Only those State standards that are promulgated and more stringent than Federal requirements may be applicable or relevant and appropriate. For purposes of identification and notification of promulgated State standards, the term "promulgated" means that the standards are of general applicability and are legally enforceable.

(5) The lead agency shall identify its applicable or relevant and appropriate requirements. The support agency shall identify its applicable or relevant and appropriate requirements. These agencies shall notify each other, in a timely manner as described in § 300.515(d)(2)(i), of the requirements they have determined to be applicable or relevant and appropriate.

(6) The procedures and timeframes for notification of ARARs specified in § 300.515 (d)(2) and (h)(2) shall be used.

(h) *Oversight.* The lead agency may provide oversight for actions taken by potentially responsible parties to ensure that a response is conducted consistent with this Part. The lead agency may also monitor the actions of third parties preauthorized under Subpart H of this Part.

(i) *Other.* (1) This subpart does not establish any preconditions to enforcement action by either the Federal or State governments to compel response actions by potentially responsible parties.

(2) While much of this subpart is oriented toward Federally-funded response actions, this subpart may be used as guidance concerning methods and criteria for response actions by other parties under other funding mechanisms. Except as provided in Subpart H of this Part, nothing in this part is intended to limit the rights of any person to seek recovery of response costs from responsible parties pursuant to CERCLA section 107.

(3) Activities by the Federal and State governments in implementing this subpart are discretionary governmental functions. This subpart does not create in any private party a right to Federal response or enforcement action. This subpart does not create any duty of the Federal government to take any response action at any particular time.

§ 300.405 Discovery or notification.

(a) A release may be discovered through:

(1) A report submitted in accordance with section 103(a) of CERCLA, i.e., reportable quantities codified at 40 CFR Part 302;

(2) A report submitted to EPA in accordance with section 103(c) of CERCLA;

(3) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(4) Notification of a release by a Federal or State permit holder when required by its permit;

(5) Inventory or survey efforts or random or incidental observation reported by government agencies or the public;

(6) Submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA; and

(7) Other sources.

(b) Any person in charge of a vessel or a facility shall report releases as described in paragraph (a)(1) of this section to the National Response Center (NRC). If direct reporting to the NRC is not practicable, reports may be made to the USCG OSC for the geographic area where the release occurs. The EPA predesignated OSC may also be contacted through the Regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or facility notifies the NRC as soon as possible.

(c) All other reports of releases described under paragraph (a) of this section, except releases reported under paragraphs (a) (2) and (6) of this section, shall, as appropriate, be made to the NRC.

(d) Reporting under paragraphs (b) and (c) of this section shall not be delayed due to incomplete notification information. The NRC will generally need information that will help to characterize the release. This will include, but not be limited to: location of the release; type(s) of material(s) released; an estimate of the quantity of material released; possible source of the release; date and time of the release.

(e) Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC. The OSC shall notify the Governor, or designee, of the State affected by the release.

(f)(1) When the OSC is notified of a release that may require response pursuant to § 300.415(b), a removal site evaluation shall, as appropriate, be promptly undertaken pursuant to § 300.410.

(2) When notification indicates that removal action pursuant to § 300.415(b) is not required, remedial site evaluation shall, if appropriate, be undertaken by the lead agency pursuant to § 300.420, if one has not already been performed, and the release will be listed in the CERCLIS Remedial Inventory.

(3) If radioactive substances are present in a release, the EPA Radiological Response Coordinator should be notified for evaluation and assistance. See also §§ 300.130(f) and 300.145(f).

(g) Release notification made to the NRC under this section does not relieve the owner/operator of a facility from any obligations under SARA Title III or State law. In particular, it does not relieve the owner/operator from the requirements of section 304 of SARA Title III and 40 CFR Part 355 and § 300.215(f) of this Part for notifying the community emergency coordinator for the appropriate local emergency planning committee of all affected areas and the State emergency response commission of any State affected that there has been a release.

§ 300.410 Removal site evaluation.

(a) A removal site evaluation includes a removal preliminary assessment and, if warranted, a removal site inspection.

(b) A removal site evaluation of a release identified for possible CERCLA response pursuant to § 300.415 shall, as appropriate, be undertaken by the lead agency as promptly as possible. Pursuant to § 300.420(b)(5), the lead agency may perform a preliminary assessment in response to petitions submitted by a person who is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant.

(c)(1) The lead agency shall, as appropriate, base the removal preliminary assessment on readily available information. A removal preliminary assessment may include, but is not limited to:

(i) Identification of the source and nature of the release or threat of release;

(ii) Evaluation by ATSDR or by other sources, for example, State public health agencies, of the threat to public health;

(iii) Evaluation of the magnitude of the threat;

(iv) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(v) Determination of whether a non-Federal party is undertaking proper response.

(2) A removal preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of

historical photographs, literature searches, and personal interviews conducted as appropriate.

(d) A removal site inspection may be performed if more information is needed. Such inspection may include a perimeter (off-site) or on-site inspection taking into consideration whether such inspection can be performed safely.

(e) A removal site evaluation shall be terminated when the OSC or lead agency determines:

(1) There is no release;

(2) The source is neither a vessel nor a facility as defined in § 300.5 of the NCP;

(3) The release involves neither a hazardous substance, nor a pollutant or contaminant that may present an imminent and substantial danger to public health or welfare;

(4) The release consists of a situation specified in § 300.400(b) subject to limitations on response;

(5) The amount, quantity, or concentration released does not warrant Federal response;

(6) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or

(7) The removal site evaluation is completed.

(f) The results of the removal site evaluation shall be documented.

(g) If natural resources are or may be injured by the release, the OSC or lead agency shall ensure that State and Federal trustees of the affected natural resources are promptly notified in order that the trustees may initiate appropriate actions, including those identified in Subpart G of this Part. The OSC or lead agency shall seek to coordinate, as appropriate, necessary assessments, evaluations, investigations, and planning with such State and Federal trustees.

(h) If the removal site evaluation indicates that removal action under § 300.415 is not required, but that remedial action under § 300.430 may be necessary, the lead agency shall, as appropriate, initiate remedial site evaluation pursuant to § 300.420. If a remedial site evaluation is performed, the release will be listed in the CERCLIS remedial inventory, if not already included.

§ 300.415 Removal action.

(a)(1) In determining the appropriate extent of action to be taken in response to a given release, the lead agency shall first review the removal site evaluation, any information produced through a remedial site evaluation, if any has been done previously, and the current site conditions to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly.

(3) This section does not apply to removal actions taken pursuant to section 104(b) of CERCLA. The criteria for such actions are set forth in section 104(b) of CERCLA.

(b)(1) At any release, regardless of whether the site is included on the National Priorities List, where the lead agency makes the determination, based on the factors in paragraph (b)(2) of this section, that there is a threat to public health or welfare or the environment, the lead agency may take any appropriate action to abate, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

(2) The following factors shall be considered in determining the appropriateness of a removal action pursuant to this section:

(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

(vi) Threat of fire or explosion;

(vii) The availability of other appropriate Federal or State response mechanisms to respond to the release; and

(viii) Other situations or factors that may pose threats to public health or welfare or the environment.

(3) If the lead agency determines that a removal action is appropriate, actions shall, as appropriate, begin as soon as possible to prevent, minimize, or mitigate the threat to public health or welfare or the environment. The lead agency shall, at the earliest possible time, also make any necessary determinations pursuant to paragraph (b)(4) of this section.

(4) Whenever a planning period of at least six months exists before on-site activities must be initiated, and the lead agency determines, based on a site evaluation, that a removal action is appropriate, the lead agency shall conduct an engineering evaluation/cost analysis (EE/CA) or its equivalent. The EE/CA is an analysis of removal alternatives for a site.

(5) Fund-financed removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after $2 million has been obligated for the action or twelve months have elapsed from the date that removal activities begin on-site, unless the lead agency determines that:

(i) There is an immediate risk to public health or welfare or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance will not otherwise be provided on a timely basis; or

(ii) Continued response action is otherwise appropriate and consistent with the remedial action to be taken.

(c) Removal actions shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned.

(d) The following removal actions are, as a general rule, appropriate in the types of situations shown; however, this list is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary in response to any situation or preclude lead agency deferral of response action to other appropriate Federal or State enforcement or response authorities:

(1) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the release;

(2) Drainage controls, for example, run-off or run-on diversion—where needed to reduce migration of hazardous substances or pollutants or contaminants off-site or to prevent precipitation or run-off from other sources, for example, flooding, from entering the release area from other areas;

(3) Stabilization of berms, dikes, or impoundments or drainage or closing of lagoons—where needed to maintain the integrity of the structures;

(4) Capping of contaminated soils or sludges—where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground water, or air;

(5) Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release;

(6) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas—where such actions will reduce the spread of, or direct contact with, the contamination;

(7) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants—where it will reduce the likelihood of spillage; leakage; exposure to humans, animals, or food chain; or fire or explosion;

(8) Containment, treatment, disposal, or incineration of hazardous materials—where needed to reduce the likelihood of human, animal, or food chain exposure; or

(9) Provision of alternative water supply—where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(e) When a Fund-financed removal action is initiated, the release shall be listed in the CERCLIS removal inventory.

(f) When necessary to protect public health or welfare, the lead agency shall request that FEMA conduct a temporary relocation or that State/local officials conduct an evacuation.

(g) If the lead agency determines that the removal action will not fully address the threat posed by the release and the release may require remedial action, the lead agency shall ensure an orderly transition from removal to remedial response activities.

(h) Removal actions conducted by States under cooperative agreements, described in Subpart F of this Part, shall comply with all requirements of this section.

(i) Facilities operated by a State or political subdivision at the time of disposal require a State cost share of at least 50 percent of Fund-financed response costs if a Fund-financed remedial action is conducted.

(j) Fund-financed removal actions under CERCLA section 104 and removal actions pursuant to CERCLA section 106 shall, to the extent practicable considering the exigencies of the situation, attain or exceed applicable or relevant and appropriate Federal and State requirements. Other Federal and State criteria, advisories, and guidance shall, as appropriate, be considered in formulating the removal action. The waivers from attaining applicable or relevant and appropriate Federal and State requirements, described in § 300.430(f)(3), may be used for removal actions.

(k) Removal actions pursuant to section 106 or 122 of CERCLA are not subject to the following requirements of this section:

(1) Section 300.415(a)(2) requirement to locate responsible parties and have them undertake the response;

(2) Section 300.415(b)(2)(vii) requirement to consider the availability of other appropriate Federal or State response and enforcement mechanisms to respond to the release;

(3) Section 300.415(b)(5) requirement to terminate response after $2 million has been obligated or twelve months have elapsed from the date of the initial response; and

(4) Section 300.415(g) requirement to assure an orderly transition from removal to remedial action.

(l) To the extent practicable, provision for post-removal site control at both NPL and non-NPL sites is encouraged to be made prior to the initiation of the removal action. Such post-removal site control includes actions necessary to insure the effectiveness and integrity of the removal action after the completion of the on-site removal action or after the $2 million or 12 month statutory limits are reached for sites that do not meet the exemption criteria in paragraph (b)(5) of this section. Post-removal site control may be conducted by:

(1) The affected State or political subdivision thereof or local units of government for any removal;

(2) Potentially responsible parties; or

(3) EPA's remedial program for some Federal-lead Fund-financed responses at NPL sites.

(m) OSCs/RPMs conducting removal actions shall submit OSC reports to the RRT as required by § 300.165.

(n) *Community relations in removal actions.* (1) In the case of all removal actions taken pursuant to § 300.415 or enforcement actions to compel response analogous to § 300.415, a spokesperson shall be designated by the lead agency. The spokesperson shall inform the community of actions taken, respond to inquiries, and provide information concerning the release. All news releases or statements made by participating agencies shall be coordinated with the OSC/RPM. The spokesperson shall notify, at a minimum, immediately affected citizens, State and local officials and, when appropriate, civil defense or emergency management agencies.

(2) For actions where, based on the site evaluation, the lead agency determines that a removal is appropriate, and that less than six months exists before on-site removal activity must begin, the lead agency shall:

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper or general circulation within 60 days of initiation of on-site removal activity;

(ii) Provide a public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection, pursuant to § 300.820(b)(2); and

(iii) Prepare a written response to significant comments pursuant to § 300.820(b)(3).

(3) For all removal actions where on-site action is expected to extend beyond 120 days from the initiation of on-site removal activities, the lead agency shall by the end of the 120-day period:

(i) Conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved in the Superfund process;

(ii) Prepare a formal community relations plan (CRP) based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the reponse; and

(iii) Establish at least one local information repository at or near the location of the response action. The information repository shall contain items made available for public information. Further, an administrative record file established pursuant to Subpart I for all removal actions shall be available for public inspection in at least one of the repositories. The lead agency shall inform the public of the establishment of the information repository and provide notice of availability of the administrative record file for public review. All items in the repository shall be available for public inspection and copying.

(4) Where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities, the lead agency shall at a minimum:

(i) Comply with the requirements set forth in paragraphs (n)(3) (i), (ii), and (iii) of this section, prior to the completion of the engineering evaluation/cost analysis (EE/CA), or its equivalent, except that the information repository and the administrative record file will be established no later than when the EE/CA Approval Memorandum is signed;

(ii) Publish a notice of availability and brief description of the EE/CA in a

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major local newspaper of general circulation pursuant to § 300.820;

(iii) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments after completion of the EE/CA pursuant to § 300.820(a); and

(iv) Prepare a written response to significant comments pursuant to § 300.820(a).

§ 300.420 Remedial site evaluation.

(a) *General.* The purpose of this section is to describe the methods, procedures, and criteria the lead agency shall use to collect data, as required, and evaluate releases of hazardous substances, pollutants, or contaminants. The evaluation may consist of two steps: a remedial preliminary assessment (PA) and a remedial site inspection (SI).

(b) *Remedial preliminary assessment.* (1) The lead agency shall perform a remedial PA on all sites in the CERCLIS remedial inventory as defined in § 300.5 to:

(i) Eliminate from further consideration those sites that pose no threat to public health or the environment;

(ii) Determine if there is any potential need for removal action;

(iii) Set priorities for site inspections; and

(iv) Gather existing data to facilitate later evaluation of the release pursuant to the Hazard Ranking System (HRS) if warranted.

(2) A remedial PA shall consist of a review of existing information about a release such as information on the pathways of exposure, exposure targets, and source and nature of release. A PA shall also include an off-site reconnaissance as appropriate. A PA may include an on-site reconnaissance where appropriate.

(3) If the remedial PA indicates that a removal action may be warranted, the lead agency shall initiate removal evaluation pursant to § 300.410.

(4) In performing a PA, the lead agency may complete the EPA Preliminary Assessment form, available from EPA Regional offices, or its equivalent, and prepare a PA report, which shall include:

(i) A description of the release;

(ii) A description of the probable nature of the release; and

(iii) A recommendation on whether further action is warranted, which lead agency should conduct further action, and whether an SI or removal action should be undertaken.

(5) Any person may petition EPA or the appropriate Federal agency (the lead Federal agency) in the case of a release or suspected release from a Federal facility, to perform a PA of a release when such person is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant. Such petitions shall be addressed to the EPA Regional Administrator for the Region in which the release is located, except that petitions for PAs involving Federal facilities should be addressed to the head of the appropriate Federal agency.

(i) Petitions shall be signed by the petitioner and shall contain the following:

(A) The full name, address, and phone number of petitioner;

(B) A description, as precisely as possible, of the location of the release.

(C) How the petitioner is or may be affected by the release.

(ii) Petitions should also contain the following information to the extent available:

(A) What type of substances were or may be released;

(B) The nature of activities that have occurred where the release is located; and

(C) Whether local and State authorities have been contacted about the release.

(iii) The lead Federal agency shall complete a remedial or removal PA within one year of the date of receipt of a complete petition pursuant to paragraph (b)(5) of this section, if one has not been performed previously unless the lead Federal agency determines that a PA is not appropriate. Where such a determination is made, the lead Federal agency shall notify the petitioner and will provide a reason for the determination.

(iv) When determining if performance of a PA is appropriate, the lead Federal agency shall take into consideration:

(A) Whether there is information indicating that a release has occurred or there is a threat of a release of a hazardous substance, pollutant, or contaminant; and

(B) Whether the release is eligible for response under CERCLA.

(c) *Remedial site inspection.* (1) The lead agency shall perform a remedial SI as appropriate to:

(i) Eliminate from further consideration those releases that pose no significant threat to public health or the environment;

(ii) Determine the potential need for removal action;

(iii) Collect or develop additional data, as appropriate, to evaluate the release pursuant to the HRS; and

(iv) Collect data in addition to that required to score the release pursuant to the HRS, as appropriate, to better characterize the release for more effective and rapid initiation of the RI/FS or response under other authorities.

(2) The remedial SI shall build upon the information collected in the remedial PA. The remedial SI shall involve, as appropriate, both on- and off-site field investigatory efforts, and sampling.

(3) If the remedial SI indicates that removal action may be appropriate, the lead agency shall initiate removal site evaluation pursuant to § 300.410.

(4) Prior to conducting field sampling as part of site inspections, a site-specific sampling plan shall be prepared that:

(i) Addresses the objectives of the sampling effort and the quality of data necessary to fulfill those objectives;

(ii) Identifies the number, type, and approximate location of sampling points and the procedures for collecting samples; and

(iii) Incorporates the appropriate field QA/QC samples.

(5) Upon completion of a remedial SI, the lead agency shall prepare a report that includes the following:

(i) A description/history/nature of waste handling;

(ii) A description of known contaminants;

(iii) A description of pathways of migration of contaminants;

(iv) An identification and description of human and environmental targets; and

(v) A recommendation on whether further action is warranted.

§ 300.425 Establishing remedial priorities.

(a) *General.* The purpose of this section is to identify the criteria as well as the methods and procedures EPA uses to establish its priorities for remedial actions.

(b) *National Priorities List.* The NPL is EPA's list of priority releases for long-term remedial response.

(1) Only those releases included on the NPL shall be considered eligible for Fund-financed remedial action. Remedial planning activities pursuant to CERCLA section 104(b) are not considered remedial action and are not limited to NPL sites.

(2) Inclusion of a release on the NPL does not imply that monies will be expended, nor does the rank of a release on the NPL establish the precise priorities for the allocation of Fund resources. Responsible parties shall pay for or implement response actions to the fullest extent practicable. EPA may also pursue other appropriate authorities to remedy the release. A site's rank on the NPL serves, along with other factors, including enforcement actions, as a basis to guide the allocation of Fund resources among releases.

(3) Federal facilities that meet the criteria identified in paragraph (c) of this section are eligible for inclusion on the NPL. Except as provided by CERCLA sections 111(e)(3) and 111(c), Federal facilities are not eligible for Fund-financed remedial actions.

(4) Inclusion on the NPL is not a precondition to action by the lead agency under CERCLA sections 106 or 122 or to action under CERCLA section 107 for recovery of non-Fund-financed costs or Fund-financed costs other than Fund-financed remedial construction costs.

(c) *Methods for determining eligibility for NPL.* A release may be included on the NPL if the release meets one of the following criteria:

(1) The release scores sufficiently high pursuant to the Hazard Ranking System described in Appendix A to this Part.

(2) A State has designated a release as its highest priority. States may make only one such designation; or

(3) The release satisfies all of the following criteria:

(i) The Agency for Toxic Substances and Disease Registry has issued a health advisory that recommends dissociation of individuals from the release;

(ii) EPA determines that the release poses a significant threat to public health; and

(iii) EPA anticipates that it will be more cost-effective to use its remedial authority than to use removal authority to respond to the release.

(d) *Procedures for placing sites on the NPL.* Lead agencies may submit candidates to EPA by scoring the release using the HRS and providing the appropriate backup documentation.

(1) Lead agencies may submit HRS scoring packages to EPA anytime throughout the year.

(2) EPA shall review lead agencies' HRS scoring packages and revise them as appropriate. EPA shall develop any additional HRS scoring packages on releases known to EPA.

(3) EPA shall compile the NPL based on the methods identified in paragraph (c) of this section.

(4) EPA shall update the NPL at least once a year.

(5) To ensure public involvement during the proposal to add a release to the NPL, EPA shall:

(i) Publish the proposed rule in the **Federal Register** and solicit comments through a public comment period; and

(ii) Publish the final rule in the **Federal Register** with a response to each significant comment and any significant new data submitted during the comment period.

(e) *Deletion from the NPL.* Releases may be deleted from or recategorized on the NPL where no further response is appropriate.

(1) EPA shall consult with the State on proposed deletions from the NPL prior to developing the Notice of Intent to delete. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment, and therefore, taking of remedial measures is not appropriate.

(2) Releases shall not be deleted from the NPL until the State in which the release was located has concurred on the proposed deletion. EPA shall provide the State a minimum of 20 calendar days and a maximum of 30 calendar days for review of the deletion notice prior to its publication in the **Federal Register**.

(3) All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the HRS.

(4) To ensure public involvement during the proposal to delete a release from the NPL, EPA shall:

(i) Publish a Notice of Intent to Delete in the **Federal Register** and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) In a major local newspaper of general circulation at or near the release that is proposed for deletion, publish a notice of availability of the Notice of Intent to Delete;

(iii) Place copies of information supporting the proposed deletion in the information repository, described in § 300.430(c)(2)(iii), at or near the release proposed for deletion. These items shall be available for public inspection and copying; and

(iv) Respond to each significant comment and new data submitted during the comment period and include this response document in the final deletion package.

(5) EPA shall place the final deletion package in the local information repository once the notice of final deletion has been published in the **Federal Register**.

§ 300.430 Remedial investigation/feasibility study and selection of remedy.

(a) *General*—(1) *Introduction.* The purpose of the remedial action process is to implement remedies that reduce, control, or eliminate risks to human health and the environment. The process generally will include a remedial investigation and feasibility study (RI/FS), a remedy selection decision, engineering design, and implementation of the remedial action. Remedial actions may include: actions initiated early in the RI/FS process where there is a need or opportunity to reduce or control risk or prevent further environmental degradation; final actions to control threats posed by a part of a site or specific pathway of migration; or actions that address the total site. The remedial action process at a site may be conducted through the use of an operable unit initiated at any time prior, during, or after the RI/FS when sufficient information is available to support selection of a remedy to address a particular site problem, a specific portion of a site, or the entire site. All remedial action will require evaluation of the nine criteria described in paragraph (e)(9) of this section, State review, development of a proposed plan, public participation, and selection of a remedy documented in a record of decision as described in paragraph (f) of this section. Site-specific data needs, the evaluation of alternatives, and the documentation of the selected remedy should reflect the scope and complexity of the site problems being addressed.

(2) *RI/FS.* The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy. Developing and conducting an RI/FS generally shall include the following activities: project scoping, data collection, risk assessment, and analysis of alternatives. The scope and timing of these activities should be tailored to the nature and complexity of the problem and the response alternatives being considered.

(b) *Project scoping.* The lead agency or its designee shall examine available information and develop workplans that describe the scope and content of the RI/FS needed to select and implement response actions. Workplans shall identify the data needed to support those decisions and the methods by which these data will be obtained and analyzed. The investigative and analytical studies should be tailored to site circumstances so that the scope of

the analysis is appropriate to the complexity of site problems or the problem to be addressed. Based on the available information, the lead agency shall:

(1) Assemble and evaluate existing data on the site, including the results of any removal actions, remedial preliminary assessment and site inspections, and the NPL listing process, to begin to define potential pathways and associated impacts on human and environmental receptors and to initiate any response actions that may be indicated.

(2) Begin to formulate remedial alternatives, consistent with available information.

(3) Undertake limited data collection efforts or studies where this information will assist in scoping the RI/FS or accelerate response actions, and begin treatability studies, as appropriate.

(4) Prepare site-specific health and safety plans that shall specify, at a minimum, employee training and protective equipment, medical surveillance requirements, standard operating procedures, and a contingency plan that conforms with 29 CFR 1910.120 (l)(1) and (l)(2).

(5) Develop sampling and analysis plans that shall provide a process for obtaining data of sufficient quality to support decisions during remedial response. The sampling and analysis plans shall describe the number, type, and location of samples; the type of analyses; and quality assurance objectives and measures. Sampling and analysis plans shall be reviewed and approved by EPA.

(6) If natural resources are or may be injured by the release, ensure that State and Federal trustees of the affected natural resources are promptly notified in order that the trustees may initiate appropriate actions, including those identified in Subpart G of this Part. The lead agency shall seek to coordinate, as appropriate, necessary assessments, evaluations, investigations, and planning with such State and Federal trustees.

(7) Initiate a dialogue with the support agency regarding identification of potential ARARs and other criteria, advisories, or guidance to be considered.

(8) Initiate development of remedial action objectives, as appropriate.

(c) *Community relations.* (1) The community relations requirements described in this section apply to all remedial activities undertaken pursuant to CERCLA section 104 and to section 106 or section 122 consent orders or decrees, or section 106 administrative orders.

(2) The lead agency shall provide for the conduct of the following community relations activities, to the extent practicable, prior to commencing field work for the remedial investigation:

(i) Conducting interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process;

(ii) Preparing a formal Community Relations Plan (CRP), based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the remedial response; and

(iii) Establishing at least one local information repository at or near the location of the response action. Each information repository shall contain a copy of each item made available to the public. The lead agency shall inform interested parties of the establishment of the information repository.

(3) For PRP actions, the lead agency shall plan and implement the community relations program at a site. Potentially responsible parties may participate in aspects of the community relations program at the discretion of and with oversight by the lead agency.

(4) The lead agency may conduct technical discussions involving potentially responsible parties and the public. These technical discussions may be held separately from, but contemporaneously with, the negotiations/settlement discussions.

(5) In addition, the following provisions specifically apply to enforcement actions:

(i) Lead agencies entering into an enforcement agreement with de minimis parties under CERCLA section 122(g) or cost recovery settlements under section 122(h) shall publish a notice of the proposed agreement in the **Federal Register** at least 30 days before the agreement becomes final, as required by section 122(i). The notice must identify the name of the facility and the parties to the proposed agreement and must allow an opportunity for comment and consideration of comments; and

(ii) Where the enforcement agreement is embodied in a consent decree, public notice and opportunity for public comment shall be provided in accordance with 28 CFR 50.7.

(d) *Remedial investigation.* (1) The purpose of the remedial investigation (RI) is to collect data necessary to adequately characterize the site for the purpose of a remedy selection decision. To characterize the site, the lead agency shall, as appropriate, conduct field investigations, conduct a baseline risk assessment, and initiate treatability studies. The remedial investigation provides information to assess the risks to human health and the environment and to support the development, evaluation, and selection of appropriate response alternatives. Site characterization may be conducted in one or more phases to focus sampling efforts and increase the efficiency of the investigation. Because estimates of actual or potential exposures and associated impacts on human and environmental receptors may be refined throughout the phases of the RI as new information is obtained, site characterization activities should be fully integrated with the development and evaluation of alternatives in the feasibility study. Bench- or pilot-scale treatability studies shall be conducted, when appropriate, to provide additional data for the detailed analysis and to support engineering design of remedial alternatives.

(2) The following activities, as appropriate, shall be considered to characterize and assess the extent to which the release poses a threat to human health or the environment or to support the analysis and design of potential response actions:

(i) Physical characteristics of the site, including important surface features, soils, geology, hydrogeology, meteorology, and ecology;

(ii) Characteristics or classifications of air, surface water, and ground water;

(iii) The general characteristics of the waste, including quantities, state, concentration, toxicity, propensity to bioaccumulate, persistence, and mobility;

(iv) The extent to which the source can be adequately identified and characterized;

(v) Potential exposure pathways through environmental media;

(vi) Potential exposure routes, for example, inhalation and ingestion; and

(vii) Other factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedial action alternatives.

(3) The lead and support agency shall identify their respective ARARs, pertinent criteria, advisories, or guidance related to the location of and contaminants at the site in a timely manner.

(4) Using the data developed under paragraphs (d)(1) and (2) of this section, the lead agency shall conduct a site-specific baseline risk assessment to characterize the current and potential

threats to human health and the environment that may be posed by contaminants migrating to ground water or surface water, releasing to air, leaching through soil, remaining in the soil, and bioaccumulating in the food chain. The results of the baseline risk assessment will help establish acceptable exposure levels for use in developing remedial alternatives in the FS, as described in paragraph (e) of this section.

(e) *Feasibility study.* (1) The primary objective of the feasibility study (FS) is to ensure that appropriate remedial alternatives are developed and evaluated such that relevant information concerning the waste management options can be presented to a decisionmaker and an appropriate remedy selected. The lead agency may develop a feasibility study to address a specific site problem or the entire site. The development and evaluation of alternatives shall reflect the scope and complexity of the remedial action under consideration and the site problems being addressed. Development of alternatives shall be fully integrated with the site characterization activities of the remedial investigation described in paragraph (d) of this section. Typically, treatment alternatives will be evaluated consistent with the nature of the threat being addressed and the purpose of the response action. The lead agency shall include an alternatives screening step, when needed, to select a reasonable number of alternatives for detailed analysis.

(2) Alternatives shall be developed that protect human health and the environment by eliminating, reducing, and/or controlling risks posed through each pathway by a site. The number and type of alternatives to be analyzed shall be determined at each site, taking into account the scope, characteristics, and complexity of the site problem that is being addressed. In developing and, as appropriate, screening the alternatives, the lead agency shall:

(i) Establish remedial action objectives specifying contaminants and media of concern, potential exposure pathways, and remediation goals. Final remediation goals will be determined when the remedy is selected. Remediation goals that establish acceptable exposure levels that are protective of human health and the environment shall be developed considering the following:

(A) Applicable or relevant and appropriate Federal and State environmental requirements, if available, and the following factors:

(*1*) For systemic toxicants, acceptable exposure levels shall represent concentration levels to which the human population, including sensitive subgroups, is expected to be exposed without appreciable risk of significant adverse effect during a lifetime;

(*2*) For known or suspected carcinogens, acceptable exposure levels are generally concentration levels that represent an excess upperbound lifetime cancer risk to an individual of between 10^{-4} and 10^{-7} using information on the relationship between dose and response.[1] The 10^{-6} risk level shall be used as the point of departure for determining remediation goals for alternatives when ARARs are not available or are not sufficiently protective;

(*3*) Presence of multiple contaminants at a site or multiple pathways of exposure;

(*4*) Factors related to technical limitations such as detection/quantification limits for contaminants;

(*5*) Factors related to uncertainty; and

(*6*) Other pertinent information.

(B) Maximum contaminant levels promulgated under the Safe Drinking Water Act shall generally be considered relevant and appropriate standards when determining acceptable exposure for ground water and surface water that is a current or potential source of drinking water. In cases involving multiple contaminants or pathways that present risks in excess of 10^{-4}, maximum contaminant level goals may be considered when determining acceptable exposures, along with the criteria in paragraph (e)(2)(i)(A) of this section.

(C) For threats to the environment, appropriate risk analyses will be performed.

(ii) Identify and evaluate potentially suitable technologies, including innovative technologies;

(iii) Assemble suitable technologies into alternative remedial actions.

(3) For source control actions, the lead agency shall develop, as appropriate:

(i) A range of alternatives that employ treatment that reduces the toxicity, mobility, or volume of the hazardous substances, pollutants, or contaminants as their principal element. As appropriate, this range shall include an alternative that removes or destroys hazardous substances, pollutants, or contaminants to the maximum extent feasible eliminating or minimizing, to the degree possible, the need for long-term management. The lead agency also shall develop, as appropriate, other alternatives which, at a minimum, treat the principal threats posed by the site but vary in the degree of treatment employed and the quantities and characteristics of the treatment residuals and untreated waste that must be managed; and

(ii) One or more alternatives that involve little or no treatment, but provide protection of human health and the environment primarily by preventing or controlling exposure to hazardous substances, pollutants, or contaminants, through engineering controls, for example, containment, and, as necessary, institutional controls to protect human health and the environment and to assure continued effectiveness of the response action.

(4) For ground water response actions, the lead agency shall develop a limited number of remedial alternatives that attain site-specific remediation levels within different restoration time periods utilizing one or more different technologies.

(5) The lead agency shall develop one or more innovative treatment technologies for further consideration if there is a reasonable belief that they offer potential for better treatment performance or implementability; fewer or lesser adverse impacts than other available approaches; or lower costs for similar levels of performance than demonstrated treatment technologies.

(6) The no-action alternative, which may be no further action, shall be developed.

(7) As appropriate, and to the extent sufficient information is available, the short- and long-term aspects of the following three criteria shall be used to guide the development and screening of remedial alternatives:

(i) *Effectiveness.* This criterion focuses on the degree to which an alternative minimizes residual risks and affords long-term protection, minimizes short-term impacts, and how quickly protection can be achieved. Alternatives providing significantly less effectiveness than other, more promising alternatives may be eliminated. Alternatives that do not provide adequate protection of human health and the environment shall be eliminated from further consideration.

(ii) *Implementability.* This criterion focuses on the technical feasibility and availability of the technologies each alternative would employ and the administrative feasibility of implementing the alternative. Alternatives that are technically or administratively infeasible or that would require equipment, specialists, or facilities that are not available within a

[1] While a 10^{-4} to 10^{-7} risk range is proposed, EPA is very interested in comments on alternatives to this risk range for the reasons discussed in the Subpart E preamble, § 300.430, paragraph B.3.i.

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reasonable period of time may be eliminated from further consideration.

(iii) *Cost.* The costs of construction and any long-term costs to operate and maintain the alternatives shall be considered. Alternatives providing effectiveness and implementability similar to that of other alternatives, but at greater cost, may be eliminated. The relationship of costs as compared to the overall effectiveness of alternatives may also be considered as one of several factors used to eliminate alternatives.

(8) The lead agency shall notify the support agency of the alternatives that will be evaluated in detail to facilitate the identification of ARARs and pertinent standards, criteria, and advisories to be considered.

(9) *Detailed analysis of alternatives.* (i) A detailed analysis shall be conducted on the limited number of alternatives that represent viable hazardous waste management approaches. ARARs and other standards, criteria, and advisories related to specific actions must be identified in a timely manner and no later than the early stages of the comparative analysis.

(ii) The detailed analysis consists of an assessment of individual alternatives against each of nine evaluation criteria and a comparative analysis that focuses upon the relative performance of each alternative against those criteria.

(iii) The analysis of alternatives under review shall reflect the scope and complexity of site problems and alternatives being evaluated and consider the relative significance of the factors within each criteria. The nine evaluation criteria are as follows:

(A) *Overall protection of human health and the environment.* Alternatives shall be assessed as to whether they can adequately protect human health and the environment from unacceptable risks posed by hazardous substances, pollutants, or contaminants present at the site by eliminating, reducing, or controlling exposures to levels established during development of remediation goals. This is a threshold requirement and the primary objective of the remedial program.

(B) *Compliance with ARARs.* The alternatives shall be assessed as to whether they attain applicable or relevant and appropriate requirements of other Federal and State environmental and public health laws or provide grounds for invoking one of the waivers under paragraph (f)(3)(iv) of this section.

(C) *Long-term effectiveness and permanence.* Alternatives shall be assessed for the long-term effectiveness and permanence they afford, along with the degree of certainty that the alternative will prove successful. Factors that shall be considered, as appropriate, include the following:

(*1*) Nature and magnitude of total residual risks in terms of amounts; potential for exposure of human and environmental receptors; concentrations of hazardous substances, pollutants, or contaminants remaining following implementation of a remedial alternative, considering the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(*2*) The type, degree, and adequacy of long-term management required for untreated substances and treatment residuals, including engineering controls (such as containment technologies), institutional controls, monitoring, and operation and maintenance;

(*3*) Long-term reliability of the engineering and institutional controls, including uncertainties associated with land disposal of untreated hazardous substances, pollutants, and contaminants, and treatment residuals; and

(*4*) Potential need for replacement of the remedy, as well as the continuing need for repairs to maintain the performance of the remedy.

(D) *Reduction of toxicity, mobility, or volume.* The degree to which alternatives employ treatment that reduces toxicity, mobility, or volume shall be assessed. Alternatives which, at a minimum, address the principal threats posed by the site through treatment shall also be identified. Factors that shall be considered, as appropriate, include the following:

(*1*) The treatment processes the alternatives employ and materials they will treat;

(*2*) The amount of hazardous substances, pollutants or contaminants that will be destroyed or treated;

(*3*) The degree of expected reduction in toxicity, mobility, or volume, including how the principal threat is addressed through treatment;

(*4*) The degree to which the treatment is irreversible; and

(*5*) The residuals that will remain following treatment, considering the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

(E) *Short-term effectiveness.* The short-term impacts of alternatives shall be assessed considering the following:

(*1*) Short-term risks that might be posed to the community during implementation of an alternative;

(*2*) Potential impacts on workers during remedial action and the effectiveness and reliability of protective measures;

(*3*) Potential environmental impacts of the remedial action and the effectiveness and reliability of mitigative measures during implementation; and

(*4*) Time until protection is achieved.

(F) *Implementability.* The ease or difficulty of implementing the alternatives shall be assessed by considering the following types of factors as appropriate:

(*1*) Degree of difficulty or uncertainty associated with construction and operation of the technology;

(*2*) Expected operational reliability of the technologies the alternatives utilize and the ability to undertake additional action, if required;

(*3*) Ability and time required to obtain any necessary approvals and permits from other agencies;

(*4*) Availability of necessary equipment and specialists;

(*5*) Available capacity and location of needed treatment, storage, and disposal services; and

(*6*) Timing of the availability of prospective technologies that may be under consideration.

(G) *Cost.* The types of costs that shall be assessed include the following:

(*1*) Capital costs, including contingency and engineering fees;

(*2*) Operation and maintenance costs; and

(*3*) Net present value of capital and O&M costs.

(H) *State acceptance.* Assessment of State concerns may not be completed until comments on the RI/FS are received and may be discussed, to the extent possible, in the proposed plan issued for public comment. The State concerns that shall be assessed include the following:

(*1*) The State's position and key concerns related to the preferred alternative and other alternatives; and

(*2*) State comments on ARARs or the proposed use of waivers.

(I) *Community acceptance.* This assessment includes determining which components of the alternatives interested persons in the community support, have reservations about, or oppose. This assessment may not be completed until comments on the proposed plan are received.

(f) *Selection of remedy*—(1) *The proposed plan.* Prior to initiating a remedial action, the lead agency, in conjunction with the support agency, shall prepare a proposed plan that briefly describes the remedial alternatives analyzed by the lead agency, proposes a preferred remedial

action alternative, and summarizes the information relied upon to select the preferred alternative. The selection of remedy process for an operable unit may be initiated at any time during the remedial action process. The purpose of the proposed plan is to supplement the RI/FS and provide the public with a reasonable opportunity to comment on the preferred alternative for remedial action, as well as alternative plans under consideration, and to participate in the selection of remedial action at a site. At a minimum, the proposed plan shall:

(i) Provide a brief summary description of the remedial alternatives evaluated in the detailed analysis established under paragraph (e)(9) of this section;

(ii) Identify and provide a discussion of the rationale that supports the preferred alternative;

(iii) Provide a summary of any formal comments received from the support agency; and

(iv) Provide a summary explanation of any proposed waiver identified under paragraph (f)(3)(iv) of this section from applicable or relevant and appropriate requirements.

(2) *Community relations to support the selection of remedy.* (i) The lead agency, after preparation of the proposed plan and review by the support agency, shall conduct the following activities:

(A) Publish a notice of availability and brief analysis of the proposed plan in a major local newspaper of general circulation;

(B) Make the proposed plan and supporting analysis and information available in the administrative record required under Subpart I of this Part;

(C) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments on the proposed plan and the supporting analysis and information located in the information repository, including the RI/FS;

(D) Provide the opportunity for a public meeting to be held during the public comment period at or near the site at issue regarding the proposed plan and the supporting analysis and information;

(E) Keep a transcript of the public meeting held during the public comment period pursuant to CERCLA section 117(a) and make such transcript available to the public; and

(F) Prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period and the lead agency response to each issue. This responsiveness summary shall be made available with the record of decision.

(ii) After publication of the proposed plan and prior to adoption of the selected remedy in the record of decision, if new information is made available that significantly changes the basic features of the remedy with respect to scope, performance, or cost, such that the remedy significantly differs from the original proposal in the proposed plan and the supporting analysis and information, the lead agency shall:

(A) Include a discussion in the record of decision of the significant changes and reasons for such changes, if the lead agency determines such changes could be reasonably anticipated by the public based on the alternatives and other information available in the proposed plan or the supporting analysis and information in the administrative record; or

(B) Seek additional public comment on a revised proposed plan, when the lead agency determines the change could not have been reasonably anticipated by the public based on the information available in the proposed plan or the supporting analysis and information in the administrative record. The lead agency shall, prior to adoption of the selected remedy in the record of decision, issue a revised proposed plan, which shall include a discussion of the significant changes and the reasons for such changes, in accordance with the public participation requirements described in paragraph (f)(2)(i) of this section.

(3) *Selecting the remedy.* (i) Remedies selected shall reflect the scope and purpose of the actions being undertaken and how the action relates to long-term, comprehensive response at the site, giving appropriate weight to specific factors within each criterion, as noted in paragraph (e)(9)(iii) of this section, that are most relevant to the circumstances at the site.

(ii) Remedies selected shall be protective of human health and the environment and attain ARARs or provide grounds for invoking a waiver.

(iii) The requirement to utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable while meeting the cost-effectiveness requirement shall be fulfilled by selecting the alternative that satisfies (f)(3)(ii) of this section and provides the best balance of trade-offs among alternatives in terms of the following criteria noted in paragraph (e)(9)(iii) of this section: long-term effectiveness factors; reduction of toxicity, mobility or volume factors; short-term effectiveness factors; implementability factors; and cost factors. The balancing shall take into account the preference for treatment as a principal element and consider State and community acceptance, respectively.

(iv) An alternative that does not meet applicable or relevant and appropriate Federal or State public health or environmental requirements may be selected under the following circumstances:

(A) The alternative is an interim measure and will become part of a total remedial action that will attain the applicable or relevant and appropriate Federal or State requirements;

(B) Compliance with the requirements will result in greater risk to human health and the environment than other alternatives;

(C) Compliance with the requirements is technically impracticable from an engineering prespective;

(D) The alternative will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, or limitation through use of another method or approach;

(E) With respect to a State requirement, the State has not consistently applied, or demonstrated the intention to consistently apply, the promulgated requirement in similar circumstances at other remedial actions within the State; or

(F) For Fund-financed response actions only, an alternative that attains ARARs will not provide a balance between the need for protection of human health and the environment at the site and the availability of Fund monies to respond to other sites that may present a threat to human health and the environment.

(v) If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the lead agency shall determine that a review shall be initiated no less often than every five years after implementation of the selected remedial action.

(vi) The process for selection of a remedial action at a Federal facility on the NPL, pursuant to CERCLA section 120, will entail:

(A) Joint selection of remedial action by the head of the relevant department, agency, or instrumentality and EPA; or

(B) If mutual agreement on the remedy is not reached, selection of the remedy is made by EPA.

(4) *Documenting the decision.* (i) To support the selection of a remedial action, all facts, analyses of facts, and site-specific policy determinations considered in the course of carrying out activities in this section shall be documented, as appropriate, in a record of decision for inclusion in the administrative record required under Subpart I of this Part. Documentation shall explain how the evaluation criteria in paragraph (e)(9)(iii) of this section were used to select the remedy.

(ii) The record of decision shall describe the following statutory requirements as they relate to the scope and objectives of the action:

(A) How the selected remedy is protective of human health and the environment, explaining how the remedy eliminates, reduces, or controls exposures to human and environmental receptors;

(B) The Federal and State requirements that are applicable or relevant and appropriate to the site that the remedy will attain;

(C) The applicable or relevant and appropriate requirements of other Federal and State laws that the remedy will not meet, the waiver invoked, and the justification for invoking the waiver;

(D) How the remedy is cost-effective, i.e., explaining how the remedy provides overall effectiveness proportional to its costs;

(E) How the remedy utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(F) Whether the preference for remedies employing treatment which permanently and significantly reduces the toxicity, mobility, or volume of the hazardous substances, pollutants, or contaminants as a principal element is or is not satisfied by the selected remedy. If this preference is not satisfied, the record of decision must explain why a remedial action involving such reductions in toxicity, mobility, or volume was not selected.

(iii) The record of decision also shall:

(A) Indicate, as appropriate, the remediation levels that the remedy is expected to achieve. Performance shall be measured at appropriate locations in the ground water, surface water, soils, air, and other affected environmental media. Measurement relating to the performance of the treatment processes and the engineering controls may also be identified, as appropriate;

(B) Discuss significant changes and the response to comments described in paragraph (f)(2)(i)(F) of this section.

(C) Describe whether hazardous substances, pollutants, or contaminants will remain at the site such that a review of the remedial action under paragraph (f)(3)(v) of this section no less often than every five years shall be required; and

(D) When appropriate, provide a commitment for further analysis and selection of long-term response measures within an appropriate timeframe.

(5) *Community relations when the record of decision is signed.* After the record of decision is signed, the lead agency shall:

(i) Publish a notice of the availability of the record of decision in a major local newspaper of general circulation; and

(ii) Make the record of decision available for public inspection and copying at or near the facility at issue prior to the commencement of any remedial action.

§ 300.435 Remedial design/remedial action, operation and maintenance.

(a) *General.* The RD/RA stage of remedial response includes the development of the actual design of the selected remedy and implementation of the remedy through construction. A period of operation and maintenance may follow the RA activities.

(b) *RD/RA activities.* (1) All RD/RA activities shall be in conformance with the remedy selected and set forth in the ROD or other decision document for that site.

(2) During the course of the RD/RA, the lead agency shall be responsible for ensuring that all Federal and State applicable requirements and relevant and appropriate requirements identified for the action being taken are met. If waivers from any ARARs are involved, the lead agency shall be responsible for ensuring that the conditions of the waivers are met.

(c) *Community relations.* (1) Prior to the initiation of remedial design (RD), the lead agency shall revise the CRP to address community concerns anticipated during the RD/RA process, if not already addressed by the CRP.

(2) After the adoption of the ROD, if the remedial action or enforcement action taken, or the settlement or consent decree entered into, differs significantly from the selected remedy in the ROD with respect to scope, performance, or cost, the lead agency shall consult with the support agency, as appropriate, and shall either:

(i) Publish an explanation of significant differences when the differences in the remedial or enforcement action, settlement, or consent decree significantly change but do not fundamentally alter the remedy selected in the ROD with respect to scope, performance, or cost. To issue an explanation of significant differences, the lead agency shall:

(A) Make the explanation of significant differences and supporting information available to the public in the administrative record established under § 300.825 and the information repository; and

(B) Publish a notice that briefly summarizes the explanation of significant differences, including the reasons for such differences, in a major local newspaper of general circulation; or

(ii) Propose an amendment to the ROD if the differences in the remedial or enforcement action, settlement, or consent decree fundamentally alter the basic features of the selected remedy with respect to scope, performance, or cost. To amend the ROD, the lead agency, in conjunction with the support agency, as provided in § 300.515(e), shall:

(A) Issue a notice of availability and brief description of the proposed amendment to the ROD in a major local newspaper of general circulation;

(B) Make the proposed amendment to the ROD and information supporting the decision available for public comment;

(C) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written or oral comments on the amendment to the ROD;

(D) Provide the opportunity for a public meeting to be held during the public comment period at or near the facility at issue;

(E) Keep a transcript of comments received at the public meeting held during the public comment period;

(F) Include in the amended ROD a brief explanation of the amendment and the response to each of the significant comments, criticisms, and new relevant information submitted during the public comment period;

(G) Publish a notice of the availability of the amended ROD in a major local newspaper of general circulation; and

(H) Make the amended ROD and supporting information available to the public in the administrative record and information repository prior to the commencement of the remedial action affected by the amendment.

(d) *Contractor conflict of interest.* (1) For RD/RA and O&M activities which are not privately funded, the lead agency shall:

(i) Include appropriate language in the bid solicitation requiring potential contractors to provide information on their status and that of their parent companies, affiliates, and

subcontractors as potentially responsible parties at the site.

(ii) Require potential contractors to certify that, to the best of their knowledge, they have disclosed all such information or that no such information exists, and that any such information discovered after submission of their bid or proposal or contract award will be disclosed immediately.

(2) Prior to contract award, the lead agency shall evaluate the information provided by the potential contractor and subcontractors and:

(i) Determine that they do not have conflicts of interest that would affect their performance; or

(ii) If a member of the contract team has a conflict of interest which prevents the team from serving the best interests of the State and Federal government in the capacity of RA contractor under Fund-financed actions, the bidder may be declared nonresponsible in accordance with appropriate acquisition regulations and the contract awarded to the next eligible bidder.

(e) *Recontracting.* (1) If a Fund-financed contract must be terminated because additional work outside the scope of the contract is needed, EPA is authorized to take appropriate steps to continue interim RAs as necessary to reduce risks to public health and the environment. Appropriate steps may include extending an existing contract for a Federal-lead RA or amending a cooperative agreement for a State-lead RA. Until the lead agency can reopen the bidding process and recontract to complete the RA, EPA may take such appropriate steps as described above to cover interim work to reduce such risks, where:

(i) Additional work is found to be needed as a result of such unforeseen situations as newly discovered sources, types, or quantities of hazardous substances at a facility; and

(ii) Performance of the complete RA requires the lead agency to rebid the contract because the existing contract does not encompass this newly discovered work.

(2) The cost of such interim actions shall not exceed $2 million.

(f) *Operation and maintenance.* (1) O&M activities are initiated after the remedy is operational and functional. A State must provide its assurance to assume responsibility for O&M under § 300.510 (c).

(2) For Fund-financed remedial actions involving treatment or other measures to restore contaminated ground or surface water quality to a level that assures protection of human health and the environment, the operation of such treatment or measures for a period up to 10 years after the construction or installation and commencement of operation will be considered part of remedial action. Activities required to maintain the effectiveness of such treatment or measures following the 10-year period, or after remedial action is complete, whichever is earlier, shall be considered O&M.

(3) The following shall not be deemed to constitute treatment or other measures to restore contaminated ground or surface water:

(i) Source control measures initiated to prevent contamination of ground or surface waters; and

(ii) Ground or surface water measures initiated for the primary purpose of providing a drinking water supply, not for the purpose of restoring ground water.

(4) The 10-year period will begin once the ROD has been signed, construction activities have been completed, and the remedy is operational and functional.

§ 300.440 [Reserved]

Subpart F—State Involvement in Hazardous Substances Response

§ 300.500 General.

(a) EPA shall ensure meaningful and substantial State involvement in hazardous substance response as specified in this subpart. EPA shall provide an opportunity for State participation in pre-remedial and remedial and enforcement response. EPA shall encourage States to enter into an EPA/State Superfund Memorandum of Agreement (SMOA) under § 300.505 to increase State involvement and strengthen the EPA/State partnership.

(b) EPA shall encourage States to participate in Fund-financed response in two ways. Pursuant to § 300.515(a), States may either assume the lead through a cooperative agreement for the response action or may be the support agency in EPA-lead remedial response. Section 300.515 sets forth requirements for State involvement in EPA-lead remedial and enforcement response and also addresses comparable requirements for EPA involvement in State-lead remedial and enforcement response. Section 300.520 specifies requirements for State involvement in EPA-lead enforcement negotiations. Section 300.525 specifies requirements for State involvement in removal actions.

§ 300.505 EPA/State Superfund Memorandum of Agreement (SMOA).

(a) A SMOA is not required unless a State requests to be designated as lead agency for non-Fund-financed actions at NPL sites or to recommend a remedy for EPA concurrence for Fund-financed actions. If a SMOA is executed, the following may be addressed:

(1) The SMOA may establish the nature and extent of EPA and State interaction during EPA-lead and State-lead response. Similar agreements may be developed with Federally-recognized Indian Tribes for specific actions at NPL sites on Indian lands if Fund-financed remedial response is contemplated.

(2) The SMOA may define the role and responsibilities of the lead agency for pre-remedial, remedial, and enforcement response and describe the roles and the responsibilities of the support agency.

(3) The SMOA may describe general requirements for EPA oversight. Oversight requirements may be more specifically defined in cooperative agreements.

(4)(i) The SMOA may describe the general nature of lead and support agency interaction regarding the review of key documents and/or decision points in pre-remedial, remedial, and enforcement response. The requirements for EPA and State review of each other's key documents when each is serving as the support agency shall be equivalent to the extent practicable.

(ii) Site-specific lead/support agency interaction may be established in cooperative agreements or State Superfund contracts entered into pursuant to section 104(d)(1) of CERCLA and shall be consistent with the interaction established in the SMOA.

(iii) The SMOA may be modified if EPA and the State agree that the lead and support agency roles and responsibilities have changed, or if modifications are required to achieve the desired goals.

(5) The SMOA and any modifications thereto shall be executed by the EPA Regional Administrator and the head of the State agency designated as lead agency for State implementation of CERCLA.

(b)(1) The SMOA may describe the timeframe and process for EPA and State consultation to determine priorities and make lead and support agency designations for pre-remedial and remedial and enforcement response to be conducted during the next fiscal year and to discuss future priorities and long-term requirements for response. These consultations shall include the exchange of information on both Fund- and non-Fund-financed response activities.

(2) The following activities shall be discussed in the EPA/State consultations established in the SMOA,

or otherwise initiated and documented in writing in the absence of a SMOA, on a site-specific basis with EPA and the State identifying the lead agency for each response action discussed:

(i) Pre-remedial response actions, including preliminary assessments and site inspections;

(ii) Hazard Ranking System scoring and NPL listing and deletion activities;

(iii) Remedial response, including remedial investigation/feasibility study, identification of potential applicable or relevant and appropriate requirements (ARARs) under Federal and State laws and other criteria, guidance, and advisories to be considered (TBCs) on a site-specific basis, proposed plan, ROD, remedial design, remedial action, and operation and maintenance;

(iv) Enforcement actions including potentially responsible party (PRP) searches, notices to PRPs, response to information requests, PRP negotiations, administrative and judicial enforcement, and oversight of PRPs;

(v) Compilation and maintenance of the administrative record for selection of a response action as required by Subpart I of this Part;

(vi) Related site support activities; and

(vii) State ability to share in the cost and timing of payments.

(3) If a SMOA designates a State as the lead agency for a non-Fund-financed action at an NPL site, the SMOA shall be supplemented by site-specific enforcement agreements between EPA and the State which specify schedules and EPA involvement.

(4) Requirements in the absence of a SMOA, or if the SMOA does not address the categories of requirements specified in § 300.515(h), are described in § 300.515(h).

§ 300.510 State assurances.

(a) A Fund-financed remedial action undertaken pursuant to section 104(a) cannot proceed unless a State provides its applicable required assurances. The assurances must be provided by the State prior to the initiation of remedial action pursuant to a Superfund State contract for EPA-lead (or political subdivision-lead) remedial action or pursuant to a cooperative agreement for a State-lead remedial action. The SMOA may not be used for this purpose. Federally-recognized Indian Tribes are not required to provide CERCLA section 104(c) assurances for Fund-financed response actions.

(b)(1) The State is not required to share in the cost of State- or EPA-lead Fund-financed removal actions or remedial planning activities associated with remedial actions conducted pursuant to CERCLA section 104 unless the facility was operated by the State or a political subdivision thereof at the time of disposal of hazardous substances therein and a remedial action is ultimately undertaken at the site. Such remedial planning activities include, but are not limited to, remedial investigations (RI), feasibility studies (FS), and remedial design (RD). States shall be required to share 50 percent, or greater, in the cost of all Fund-financed response actions if the facility was publicly operated at the time of the disposal of hazardous substances. For other facilities, except Federal facilities, the State shall be required to share ten percent of the cost of the remedial action.

(2) CERCLA section 104(c)(5) provides that EPA shall grant a State credit for reasonable, direct, out-of-pocket, non-Federal expenditures during the specific time periods or circumstances specified in CERCLA section 104(c)(5). For a State to apply credit toward its cost share, it must enter into a cooperative agreement or Superfund State contract. The State must submit as soon as possible, but no later than at the time CERCLA section 104 assurances are provided for a remedial action, its accounting of eligible credit expenditures for EPA verification.

(3) Credit may be applied to a State's future cost share requirements at NPL sites for response expenditures or obligations incurred by the State or a political subdivision from January 1, 1978, to December 11, 1980, and for the remedial action expenditures incurred by the State only after October 17, 1986.

(4) Credit that exceeds the required cost share at the site for which the credit is granted may be transferred to another site to offset a State's required remedial action cost share.

(c)(1) Prior to remedial action, the State must also provide its assurance in accordance with CERCLA section 104(c) to assume responsibility for operation and maintenance of implemented remedial actions for the expected life of such actions. The State and EPA shall consult on a plan for operation and maintenance prior to the initiation of a remedial action.

(2) After a joint EPA/State inspection of the implemented Fund-financed remedial action under § 300.515(g), EPA may share, for a period of up to one year, in the cost of the operation of the remedial action to ensure that the remedy is operational and functional. In the case of the restoration of ground or surface water, EPA shall share in the cost of the State's operation of ground or surface water restoration remedial actions as specified in § 300.435(f).

(d) If off-site storage, destruction, treatment, or disposal is required, the State must provide its assurance before the remedial action begins on the availability of a hazardous waste disposal facility that is in compliance with section 121(d)(3) and is acceptable to EPA.

(e) Effective October 17, 1989, EPA shall not provide any remedial action pursuant to section 104 of CERCLA, unless the State in which the release first occurs has provided its assurance to EPA's satisfaction that it has adequate capacity for the destruction, treatment, or secure disposal of all hazardous wastes, including CERCLA wastes, expected to be generated within the State in the 20-year period following the assurance.

(f) EPA may determine that an interest in real property must be acquired in order to conduct a response action. As a general rule, the State in which the property is located must agree to acquire and hold the necessary property interest. If it is necessary for the United States government to acquire the interest in property to permit implementation of the response, the State must agree to accept transfer of the acquired interest on or before the completion of the response action.

§ 300.515 Requirements for State involvement in remedial and enforcement response.

(a) *General.* (1) States are encouraged to undertake actions authorized under Subpart E. Section 104(d)(1) of CERCLA authorizes EPA to enter into cooperative agreements or contracts with a State, political subdivision, or a Federally-recognized Indian Tribe to carry out Fund-financed response actions authorized under CERCLA, when EPA determines that the State, the political subdivision, or Federally-recognized Indian Tribe has the capability to undertake such actions. EPA will use a cooperative agreement to transfer funds to those entities to undertake Fund-financed response activities.

(2) For EPA-lead Fund-financed remedial planning activities, including, but not limited to, remedial investigations, feasibility studies, and remedial designs, the State agency acceptance of the support agency role during an EPA-lead response shall be documented in a letter or a SMOA. Superfund State contracts are unnecessary for this purpose.

(3) Cooperative agreements or Superfund State contracts are generally unnecessary for non-Fund-financed response actions unless a State intends to seek credit for remedial action

expenses under § 300.510. However, a SMOA will be required for a State to recommend the remedy to EPA for a Fund-financed action or for EPA to designate a State as the lead agency to carry out non-Fund-financed response actions.

(b) *Designation of Indian Tribe as lead agency.* An Indian Tribe may be authorized to undertake the lead for Fund-financed response actions in a cooperative agreement if:

(1) The Indian Tribe is Federally-recognized;

(2) The Indian Tribe has a tribal governing body that is currently performing governmental functions to promote the health, safety and welfare of the affected population or environment within a defined geographic area;

(3) The Indian Tribe demonstrates an ability to carry out response actions in accordance with the criteria and priorities established by the NCP;

(4) The Indian Tribe demonstrates that the functions to be performed in Fund-financed response actions are within the scope of its jurisdiction; and

(5) The Indian Tribe demonstrates a reasonable ability to administer effectively a cooperative agreement by the existence of the appropriate management and technical skills; by a history of successful managerial performance of public health/environmental programs; and by acceptable accounting and procurement procedures that comply with applicable assistance agreement regulations.

(c) *State involvement in PA/SI and NPL process.* EPA shall ensure State involvement in the listing and deletion process by providing States opportunities for review, consultation, or concurrence specified in this section.

(1) EPA shall consult with States as appropriate on the information to be used in developing HRS scores for sites.

(2) EPA shall provide the State a minimum of 20 calendar days and a maximum of 30 calendar days to review sites or facilities which were scored by EPA and which will be proposed for listing on the National Priorities List (NPL).

(3) EPA shall provide the State a minimum of 20 calendar days and a maximum of 30 calendar days to review and concur on the Notice of Intent to Delete a site from the NPL. Section 300.425 describes the EPA/State consultation and concurrence process for deleting sites from the NPL.

(d) *State involvement in RI/FS process.* A key component of the EPA/State partnership shall be the communication of potential Federal and State ARARs and TBCs.

(1) In accordance with §§ 300.400(g) and 300.430, the lead and support agencies shall identify their respective potential ARARs and TBCs and communicate them to each other in a timely manner and no later than the early stages of the comparative analysis, such that sufficient time is available for the lead agency to consider and incorporate all potential ARARs and TBCs without inordinate delays and duplication of effort.

(2) When a State and EPA have entered into a SMOA, the SMOA may specify a consultation process which requires the lead agency to solicit potential ARARs and TBCs at specified points in the remedial planning and remedy selection processes. At a minimum, the SMOA shall include the points specified in § 300.515(h)(2). The SMOA shall specify timeframes for support agency response to lead agency requests to ensure that potential ARARs and TBCs are identified and communicated in a timely manner.

(3) If EPA in its statement of a proposed plan intends to waive any State-identified ARARs, or does not agree with the State that a certain State standard is an ARAR, it shall formally notify the State when it submits the RI/FS report for State review or responds to the State's submission of the RI/FS report.

(4) EPA shall respond to State comments on waivers from or disagreements about State ARARs, as well as the preferred alternative when making the RI/FS report and proposed plan available for public comment.

(e) *State involvement in selection of remedy.* (1) At the conclusion of the RI/FS, the lead agency, in conjunction with the support agency, shall develop a proposed plan. The support agency shall have an opportunity to comment on the plan and the lead agency shall publish a notice of availability of the RI/FS report and a brief analysis of the proposed plan pursuant to §§ 300.430(e) and (f). Included in the proposed plan shall be a statement that the lead and support agencies have reached agreement or, where this is not the case, a statement explaining the concerns of the support agency with the lead agency's proposed plan.

(2)(i) EPA and the State shall identify, at least annually, sites for which RODs will be prepared during the next fiscal year, in accordance with § 300.515(h)(1). For all EPA-lead sites, EPA shall prepare the ROD and provide the State an opportunity to concur with the recommended remedy. For Fund-financed State-lead sites, EPA and the State shall designate sites for which the State shall prepare the ROD and seek EPA's concurrence and adoption of the remedy specified therein and sites for which EPA shall prepare the ROD and seek the State's concurrence. For non-Fund-financed State-lead enforcement response actions taken at NPL sites, EPA and the State may designate sites for which the State shall prepare the ROD and seek EPA's concurrence in and adoption of the remedy specified therein. Either EPA or the State may choose not to designate a site as State-lead.

(ii) Both EPA and the State shall be involved in preliminary discussions on the alternatives addressed in the FS prior to preparation of the proposed plan and ROD. State concurrence on a ROD is not a prerequisite to EPA's selecting a remedy, i.e., signing a ROD, nor is EPA's concurrence a prerequisite to a State selecting a remedy at a non-Fund-financed State-lead enforcement site. Unless EPA concurs in writing with a State-prepared ROD, EPA shall not be deemed to have approved the State decision. A State may not proceed with a Fund-financed response action unless EPA has first concurred in and adopted the ROD. Section 300.510(a) specifies limitations on EPA proceeding with a remedial action without State assurances.

(iii) The lead agency shall provide the support agency with a copy of the signed ROD for remedial actions to be conducted pursuant to sections 104, 106, or 122 of CERCLA.

(iv) On State-lead sites identified for EPA concurrence, the State generally shall be expected to maintain its lead agency status through the completion of the remedial action.

(f) *Procedures for application of State ARARs waived by EPA or enhancement of remedy.* (1) If a State determines that a proposed Fund-financed remedial action should comply with substantive State standards that EPA has determined are not ARARs, or with State ARARs which EPA has determined to waive pursuant to CERCLA section 121(d)(4), the State shall fund the entire additional cost associated with compliance with such ARARs. The State may be required to continue the lead for RD/RA or for the additional requirements if it is a State-lead Fund-financed project or to assume the lead for remedial design and construction, or for the additional requirements only, if the project is Federal-lead.

(2) If a State determines that a Fund-financed remedial action should exceed the scope of the selected remedy, for example, enhancement of the selected remedy, the State shall fund the entire

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additional cost associated with such enhancement. The State may be required to assume the lead for the remedial design and construction of the remedy or only the State-funded enhancement if that enhancement can be a separate phase or activity.

(3) If a State determines that an enforcement action under sections 106 or 122 of CERCLA should attain State requirements that EPA or a Federal District Court have determined need not be met in accordance with criteria in CERCLA section 121(d)(4), the State shall fund the additional requirements. The State may be required to undertake this work.

(g) *State involvement in remedial action.* For Fund-financed remedial actions, the lead and support agencies shall conduct a joint inspection at the conclusion of construction of the remedial action to determine that the remedy has been constructed in accordance with the ROD and with the remedial design.

(h) *Requirements for State involvement in absence of SMOA.* In the absence of a SMOA, or in the event that a SMOA does not address any or all of the following categories of requirements for State involvement in remedial and enforcement response, the following shall be applicable in addition to all other requirements of this subpart:

(1) *Annual consultations.* EPA shall conduct consultations with States at least annually to establish priorities and identify and document in writing the lead for remedial and enforcement response for each NPL site within the State for the upcoming fiscal year. States shall be given the opportunity to participate in long-term planning efforts for remedial and enforcement response during these annual consultations.

(2) *Identification of ARARs and TBCs.* The lead and support agencies shall discuss potential ARARs and TBCs during the scoping of the RI/FS. The lead agency shall request potential ARARs and TBCs from the support agency no later than the time that the site characterization data are available. The support agency shall communicate in writing those potential ARARs to the lead agency within 30 working days of receipt of the lead agency request for these ARARs. After the initial screening of alternatives has been completed but prior to initiation of the comparative analysis conducted during the detailed analysis phase of the FS, the lead agency shall request that the support agency communicate any additional requirements that are applicable or relevant and appropriate to the alternatives contemplated within 30 working days of receipt of this request. The lead agency shall consult the support agency during the remedial design to ensure that identified ARARs and TBCs are updated as needed.

(3) *State review of EPA-lead documents.* EPA shall provide an opportunity for States to review and comment on the EPA-lead RI/FS, proposed plan, ROD, and remedial design, and any proposed determinations on potential ARARs and TBCs. The State shall have a minimum of 10 working days and a maximum of 15 working days to provide comments to EPA on the RI/FS, ROD, ARAR/TBC determinations, and remedial design. The State shall have a minimum of 5 working days and a maximum of 10 working days to comment on the proposed plan.

(i) *Administrative record requirements.* The State, where it is the lead agency for a Fund-financed site, shall compile and maintain the administrative record for selection of a response action under Subpart I of this Part unless specified otherwise in the SMOA.

§ 300.520 State involvement in EPA-lead enforcement negotiations.

(a) EPA shall notify States of response action negotiations to be conducted by EPA with potentially responsible parties during each fiscal year.

(b) The State must notify EPA of such negotiations in which it intends to participate.

(c) The State may be a party to such settlements in which it is a participant in the negotiations.

§ 300.525 State involvement in removal actions.

(a) States may undertake Fund-financed removal actions pursuant to a cooperative agreement with EPA. State-lead removal actions taken pursuant to cooperative agreements must be conducted in accordance with § 300.415 on removal actions and applicable assistance regulations.

(b) States are not required under section 104(c)(3) of CERCLA to share in the cost of a Fund-financed removal action, unless the removal is conducted at an NPL site that was publicly operated at the time of disposal of hazardous substances therein and a Fund-financed remedial action is ultimately undertaken at the site. In this situation, States are required to share, 50 percent or greater, in the cost of all removal, remedial planning, and remedial action costs at the time of the remedial action.

(c) States are encouraged to provide for post-removal site control as discussed in § 300.415(l) for all Fund-financed removal actions.

(d) States shall be responsible for identifying potential State ARARs for all Fund-financed removal actions and for providing such ARARs to EPA in a timely manner for all EPA-lead removal actions.

(e) EPA shall consult with States on all removal actions to be conducted in a State.

Subpart G—Trustees for Natural Resources

§ 300.600 Designation of Federal trustees.

(a) The President is required to designate in the National Contingency Plan those Federal officials who are to act on behalf of the public as trustees for natural resources. Federal officials so designated will act pursuant to section 107(f) of CERCLA and section 311(f)(5) of the Clean Water Act. Natural resources include:

(1) Natural resources over which the United States has sovereign rights; and

(2) Natural resources within the territory, contiguous zone, exclusive economic zone, and outer continental shelf belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or protected") by the United States.

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources. They are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance or a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or protection.

(1) *Secretary of Commerce.* The Secretary of Commerce shall act as trustee for natural resources that are managed or protected by Federal agencies and that are found in or under waters navigable by deep draft vessels, in or under tidally influenced waters, or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf, and in upland areas serving as habitat for marine mammals and other protected species. However, before the Secretary takes an action with respect to an affected resource under the management or protection of another Federal agency, the concurrence of that other Federal agency is required. Examples of the Secretary's trusteeship include marine fishery resources and their supporting ecosystems;

anadromous fish; certain endangered species and marine mammals; and National Marine Sanctuaries and Estuarine Research Reserves.

(2) *Secretary of the Interior.* The Secretary of the Interior shall act as trustee for natural resources managed or protected by the Department of the Interior. Examples of the Secretary's trusteeship include migratory birds; certain anadromous fish, endangered species, and marine mammals; Federally-owned minerals; and certain Federally-managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian Tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian Tribe.

(3) *Secretary for the land managing agency.* For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the Department in which the land managing agency is found. The trustees for the principal Federal land managing agencies are the Secretaries of the Department of the Interior, the Department of Agriculture, the Department of Defense, and the Department of Energy.

(4) *Head of authorized agencies.* For natural resources located in the United States but not otherwise described in this section, the trustee shall be the head of the Federal agency or agencies authorized to manage or protect those resources.

§ 300.605 State trustees.

State trustees shall act on behalf of the public as trustees for natural resources within the boundary of a State or belonging to, managed by, controlled by, or appertaining to such State. For the purposes of Subpart G of this Part, the definition of the term "State" does not include Indian Tribes.

§ 300.610 Indian Tribes.

The Tribal chairmen (or heads of the governing bodies) of Indian Tribes, as defined in § 300.5, or a person designated by the Tribal officials, shall act on behalf of the Indian Tribes as trustees for the natural resources belonging to, managed by, controlled by, or appertaining to such Indian Tribe, or held in trust for the benefit of such Indian Tribe, or belonging to a member of such Indian Tribe, if such resources are subject to a trust restriction on alienation. The Tribal chairmen or heads of the Tribal governing bodies shall notify the President of such designations. Such officials are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance or a discharge of oil.

§ 300.615 Responsibilities of trustees.

(a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they shall coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs, for inclusion in the Regional Contingency Plan, appropriate contacts to receive notifications from the OSCs/RPMs of potential damages to natural resources.

(c) Upon notification or discovery of injury to, destruction of, loss of, or threat to, natural resources, trustees may, as appropriate:

(1) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(2) Cooperate with the OSC/RPM in coordinating assessments, investigations, and planning;

(3) Carry out damage assessments; or

(4) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the Federal, State, and Indian Tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR Part 11.

(d) Federal trustees have the authority to:

(1) Request that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Participate in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources.

(3) Require, in consultation with the lead agency, any person to comply with the requirements of CERCLA section 104(e) regarding information gathering and access.

(e) Actions which may be taken by any trustee include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any hazardous substances from a contaminated medium pursuant to section 104 of CERCLA.

Subpart H—Participation by Other Persons

§ 300.700 Activities by other persons.

(a) *General.* Any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant.

(b) *Summary of CERCLA authorities.* The mechanisms available to recover the costs of response actions under CERCLA are, in summary:

(1) Section 107(a), wherein any person may receive a court award of his or her response costs, plus interest, from the party or parties found to be liable;

(2) Section 111(a)(2), wherein a private party, a potentially responsible party pursuant to a settlement agreement, or certain foreign entities may file a claim against the Fund for reimbursement of response costs;

(3) Section 106(b), wherein any person who has complied with a section 106(a) order may petition the Fund for reimbursement of reasonable costs, plus interest; and

(4) Section 123, wherein a general purpose unit of local government may apply to the Fund under 40 CFR Part 310 for reimbursement of the costs of temporary emergency measures that are necessary to prevent or mitigate injury to human health or the environment associated with a release.

(c) *Section 107(a) cost recovery actions.* (1) The Federal government, States, including political subdivisions thereof, or Indian Tribes may recover from responsible parties governmental response costs not inconsistent with the NCP.

(2) Any other person is eligible to recover from responsible parties necessary costs consistent with the NCP incurred for response actions to releases of hazardous substances consistent with the NCP.

(3)(i) For the purpose of cost recovery under section 107(a)(4)(B) of CERCLA, EPA intends that a response action will be considered to be consistent with the NCP if the person taking the response action complies with an order issued by EPA pursuant to section 106 of CERCLA, a consent decree entered into pursuant to section 122 of CERCLA, or the following NCP provisions, where pertinent to the particular response chosen for the particular facility:

(A) Section 300.150 (on worker health and safety);

(B) Section 300.160 (on documentation and cost recovery);

(C) Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action), (e) (on permit requirements), and (g) (on identification of ARARs);

(D) Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

(E) Section 300.410 (on removal site evaluation) except paragraphs (e)(5) and (6) and the reference to listing releases in CERCLIS in (h);

(F) Section 300.415 (on removal actions) except paragraphs (a)(2), (b)(2)(vii), (b)(4), and (g);

(G) Section 300.420 (on remedial site evaluation);

(H) Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(3)(iv)(F); and

(I) Section 300.435 (on RD/RA and operation and maintenance).

(ii) In addition, other persons undertaking response actions shall provide an opportunity for public comment concerning the selection of the response action. A response action shall not be considered consistent with the NCP unless:

(A) The person taking the response action complies with the following NCP provisions regarding public participation, with the exception of administrative record and information repository requirements stated therein:

(*1*) Section 300.155 (on public information and community relations);

(*2*) Section 300.415(n) (on community relations during removal actions);

(*3*) Section 300.430(c) (on community relations during RI/FS) except paragraph (5);

(*4*) Section 300.430(f)(1), (2), and (5) (on community relations during selection of remedy); and

(*5*) Section 300.435(c) (on community relations during RD/RA and operation and maintenance); or

(B) The person taking the response action complies with State or local requirements which provide a substantially equivalent opportunity for public involvement in the choice of remedy.

(iii) When selecting the appropriate remedial action, any other person shall, as appropriate, consider the methods of remedying releases listed in Appendix D of this Part.

(iv) Except for actions taken pursuant to CERCLA sections 104 or 106 or response actions for which reimbursement from the Fund will be sought, any action to be taken by the lead agency in §§ 300.415, 300.430, and 300.435 may be taken by the person carrying out the response action.

(d) *Section 111(a)(2) Claims.* (1) Persons, other than those listed in paragraphs (d)(1)(i) through (iii) of this section, may be able to receive reimbursement of response costs by means of a claim against the Fund. The categories of persons excluded from pursuing this claims authority are:

(i) Federal government;

(ii) State governments, and their political subdivisions, unless they are potentially responsible parties covered by an order or consent decree pursuant to section 122 of CERCLA; and

(iii) Persons operating under a procurement contract or an assistance agreement with the United States with respect to matters covered by that contract or assistance agreement, unless specifically provided therein.

(2) In order to be reimbursed by the Fund, an eligible person must notify the Administrator of EPA or designee prior to taking a response action and receive prior approval, i.e., "preauthorization," for such action.

(3) Preauthorization is EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. All applications for preauthorization will be reviewed to determine whether the request should receive priority for funding. EPA, in its discretion, may grant preauthorization of a claim. Preauthorization will be considered only for:

(i) Removal actions pursuant to § 300.415;

(ii) CERCLA section 104(b) activities;

(iii) Remedial actions at National Priorities List sites pursuant to § 300.435.

(4) To receive EPA's prior approval, the eligible person must:

(i) Demonstrate technical and other capabilities to respond safely and effectively to releases of hazardous substances, pollutants, or contaminants; and

(ii) Establish that the action will be consistent with the NCP in accordance with the elements set forth in paragraphs (c)(3) (i), (ii), and (iii) of this section.

(5) EPA will grant preauthorization to a claim by a party it determines to be potentially liable under section 107 of CERCLA only in accordance with an order issued pursuant to section 106 of CERCLA, or a settlement with the Federal government in accordance with section 122 of CERCLA.

(6) Preauthorization does not establish an enforceable contractual relationship between EPA and the claimant.

(7) Preauthorization represents EPA's commitment that if funds are appropriated for response actions, the response action is conducted in accordance with the preauthorization decision document, and costs are reasonable and necessary, reimbursement will be made from the Superfund, up to the maximum amount provided in the preauthorization decision document.

(8) For a claim to be awarded under section 111 of CERCLA, EPA must certify that the costs were necessary and consistent with the preauthorization decision document.

(e) *Section 106(b) petition.* Subject to conditions specified in CERCLA section 106(b), any person who has complied with an order issued after October 10, 1986 pursuant to section 106(a) of CERCLA, may seek reimbursement for response costs incurred in complying with that order unless the person has waived that right.

(f) *Section 123 reimbursement to local governments.* Any general purpose unit of local government or a political subdivision that is affected by a release may receive reimbursement for the costs of temporary emergency measures necessary to prevent or mitigate injury to human health or the environment subject to the conditions set forth in 40 CFR Part 310. Such reimbursement may not exceed $25,000 for a single response.

(g) *Release from liability.* Implementation of response measures by potentially responsible parties or by any other person does not release those parties from liability under section 107(a) of CERCLA, except as provided in a settlement under section 122 of CERCLA or a Federal court judgment.

Subpart I—Administrative Record for Selection of Response Action

§ 300.800 Establishment of an administrative record.

(a) *General requirement.* The lead agency shall establish an administrative record that contains the documents that form the basis for the selection of a response action. The lead agency shall compile and maintain the administrative record in accordance with this subpart.

(b) *Administrative records for Federal facilities.* (1) If a Federal agency other than EPA is the lead agency for a Federal facility, the Federal agency shall compile and maintain the administrative record for the selection of the response action at that facility in accordance with this subpart. EPA may furnish documents which the Federal agency shall place in the administrative record file to ensure that the administrative record includes all documents that form the basis for the selection of the response action.

(2) EPA or the U.S. Coast Guard shall compile and maintain the administrative record when it is the lead agency for a Federal facility.

(3) If EPA is involved in the selection of the response action at a Federal facility on the NPL, the Federal agency acting as the lead agency shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(c) *Administrative record for State-lead sites.* If a State is the lead agency for a site, the State shall compile and maintain the administrative record for the selection of the response action at that site in accordance with this subpart. EPA may require the State to place additional documents in the administrative record file to ensure that the administrative record includes all documents which form the basis for the selection of the response action. The State shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(d) *Applicability.* This subpart applies to all response actions taken under section 104 of CERCLA or sought, secured, or ordered administratively or judicially under section 106 of CERCLA, as follows:

(1) Remedial actions where the remedial investigation commenced after the promulgation of these regulations; and

(2) Removal actions where the action memorandum is signed after the promulgation of these regulations.

(e) For those response actions not included in paragraph (d) of this section, the lead agency shall comply with this subpart to the extent practicable.

§ 300.805 Location of the administrative record.

The lead agency shall establish a docket at an office of the lead agency or other central location at which documents included in the administrative record file shall be located and a copy of the documents included in the administrative record file shall also be made available for public inspection at or near the site at issue, except as provided below:

(a) Sampling and testing data, quality control and quality assurance documentation, and chain of custody forms, need not be located at or near the site at issue or at the central location, provided that the index to the administrative record file indicates the location and availability of this information.

(b) Guidance documents not generated specifically for the site at issue need not be located at or near the site at issue, provided that they are maintained at the central location and the index to the administrative record file indicates the location and availability of these guidance documents.

(c) Publicly available technical literature not generated for the site at issue, such as engineering textbooks, articles from technical journals, and toxicological profiles, need not be located at or near the site at issue or at the central location, provided that the literature is listed in the index to the administrative record file or the literature is cited in a document in the record.

(d) Documents included in the confidential portion of the administrative record file shall be located only in the central location.

(e) The administrative record for a removal action where the release or threat of release requires that on-site removal activities be initiated within hours of the lead agency's determination that a removal is appropriate and on-site removal activities cease within 30 days of initiation, need be available for public inspection only at the central location.

§ 300.810 Contents of the administrative record.

(a) *Contents.* The administrative record file for selection of a response action typically, but not in all cases, will contain the following types of documents:

(1) Documents containing factual information, data, and analysis of the factual information and data that may form a basis for the selection of the response action. Such documents may include verified sampling data, quality control and quality assurance documentation, chain of custody forms, site inspection reports, preliminary assessment and site evaluation reports, ATSDR health assessment, documents supporting the lead agency's determination of imminent and substantial endangerment; public health evaluations, and technical and engineering evaluations. In addition, for remedial actions, such documents may include approved work plans, State documentation of applicable or relevant and appropriate requirements, and the RI/FS;

(2) Guidance documents, technical literature, and site-specific policy memoranda that may form a basis for the selection of the response action. Such documents may include guidance on conducting remedial investigations and feasibility studies, guidance on determining applicable or relevant and appropriate requirements, guidance on risk/exposure assessments, engineering handbooks, articles from technical journals, memoranda on the application of a specific regulation to a site, and memoranda on off-site disposal capacity;

(3) Documents received, published, or made available to the public under § 300.815 for remedial actions, or § 300.820 for removal actions. Such documents may include notice of availability of the administrative record file, community relations plan, proposed plan for remedial action, notices of public comment periods, public comments and new information received by the lead agency, and responses to significant comments;

(4) Decision documents. Such documents may include action memoranda and records of decision;

(5) Enforcement orders. Such documents may include administrative orders and consent decrees; and

(6) An index of the documents included in the administrative record file.

(b) *Documents not included in the administrative record.* The lead agency is not required to include documents in the administrative record file which do not form a basis for the selection of the response action. Such documents include but are not limited to draft documents, internal memoranda, and day-to-day notes of staff unless such documents contain information that forms the basis of selection of the response action and the information is not included in any other document in the administrative record file.

(c) *Privileged documents.* Privileged documents shall not be included in the record file except as provided in paragraph (d) of this section or where such privilege is waived. Privileged documents include but are not limited to documents subject to the attorney-client, attorney work product, deliberative process, or other applicable privilege.

(d) *Confidential file.* If information which forms the basis for the selection of a response action is included only in a document containing confidential or privileged information and is not otherwise available to the public, the information, to the extent feasible, shall be summarized in such a way as to make it disclosable and placed in the publicly available portion of the administrative record file. The

confidential or privileged document itself shall be placed in the confidential portion of the administrative record file. If information, such as confidential business information, cannot be summarized in a disclosable manner, the information shall be placed only in the confidential portion of the administrative record file. All documents contained in the confidential portion of the administrative record file shall be listed in the index to the file.

§ 300.815 Administrative record for a remedial action.

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the files containing the administrative record.

(b) The lead agency shall provide a public comment period as specified in § 300.430(f) so that interested persons may submit comments on the selection of the remedial action for inclusion in the administrative record file. The lead agency is not required to respond to comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(c) The lead agency shall comply with the public participation procedures required in § 300.430(f) and shall document such compliance in the administrative record.

(d) Documents generated or received after the record of decision is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.820 Administrative record for a removal action.

(a) If, based on the site evaluation, the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists before on-site removal activities must be initiated:

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the file containing the administrative record.

(2) The lead agency shall provide a public comment period as specified in § 300.415 so that interested persons may submit comments on the selection of the removal action for inclusion in the administrative record file. The lead agency is not required to respond to comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) The lead agency shall comply with the public participation procedures of § 300.415(n) and shall document compliance with § 300.415(n)(3) (i) through (iii) in the administrative record file.

(4) Documents generated or received after the action memorandum is signed shall be added to the administrative record file only as provided in § 300.825.

(b) For all removal actions not included in paragraph (a) of this section:

(1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of availability of the file containing the administrative record.

(2) The lead agency shall, as appropriate, provide a public comment period of not less than 30 days beginning at the time the administrative record is made available to the public. The lead agency is not required to respond to comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) Documents generated or received after the action memorandum is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.825 Record requirements after decision document is signed.

(a) The lead agency may add documents to the administrative record file after the decision document selecting the response action has been signed if:

(1) The documents concern a portion of a response action decision that the decision document does not address or reserves to be decided at a later date; or

(2) An explanation of significant differences required by § 300.435(c), or an amended decision document is issued, in which case, the explanation of significant differences or amended decision document and all documents that form the basis for the decision to modify the response action shall be added to the administrative record file.

(b) The lead agency may hold additional public comment periods or extend the time for the submission of public comment after a decision document has been signed on any issues concerning selection of the response action. Such comment shall be limited to the issues for which the lead agency has requested additional comment. All additional comments submitted during such comment periods that are responsive to the request, and any response to these comments, shall be placed in the administrative record file.

(c) The lead agency is required to consider comments submitted by interested persons after the close of the public comment period only to the extent that the comments contain significant information not contained elsewhere in the administrative record which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action. All such comments and any responses thereto shall be placed in the administrative record file.

Subpart J—Use of Dispersants and Other Chemicals

§ 300.900 General.

(a) Section 311(c)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants and other chemicals, if any, that may be used in carrying out the NCP. This subpart makes provisions for such a schedule.

(b) This subpart applies to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976.

(c) This subpart applies to the use of any chemical agents or other additives as defined in Subpart A of this Part that may be used to remove or control oil discharges.

§ 300.905 NCP Product Schedule.

(a) *Oil Discharges.* (1) EPA shall maintain a schedule of dispersants and other chemical or biological products that may be authorized for use on oil discharges in accordance with the procedures set forth in § 300.910. This schedule, called the NCP Product Schedule, may be obtained from the Emergency Response Division (OS–210), U.S. Environmental Protection Agency,

Washington, DC 20460. The telephone number is 1-202-382-2190.

(2) Products may be added to the NCP Product Schedule by the process specified in § 300.920.

(b) [Reserved]

§ 300.910 Authorization of use.

(a) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the States with jurisdiction over the navigable waters threatened by the release or discharge and the DOC/DOI natural resource trustees, may authorize the use of dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents on the oil discharge, provided that the dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents are listed on the NCP Product Schedule.

(b) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the States with jurisdiction over the navigable waters threatened by the release or discharge and the DOC/DOI natural resources trustees, may authorize the use of burning agents on a case-by-case basis.

(c) The OSC may authorize the use of any dispersant, surface collecting agent, other chemical agent, burning agent, biological additive, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT, the RRT representatives from the States with jurisdiction over the navigable waters threatened by the release or discharge, or the DOC/DOI natural resource trustees when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. The OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected States and the DOC/DOI natural resource trustees of the use of a product as soon as possible and, pursuant to the provisions in paragraph (a) of this section, obtain their concurrence for its continued use once the threat to human life has subsided.

(d) Sinking agents shall not be authorized for application to oil discharges.

(e) RRTs shall, as appropriate, consider, as part of their planning activities, the appropriateness of using the dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the appropriateness of using burning agents. Regional Contingency Plans (RCPs) shall, as appropriate, address the use of such products in specific contexts. If the RRT representatives from the States with jurisdiction over the waters of the area to which a RCP applies approve in advance the use of certain products as described in the RCP, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraph (a) of this section.

§ 300.915 Data requirements.

(a) *Dispersants.* (1) Name, brand, or trademark, if any, under which the dispersant is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Dispersant Toxicity—Use standard toxicity test methods described in Appendix C to Part 300.

(8) Effectiveness—Use standard effectiveness test methods described in Appendix C to Part 300. Manufacturers are also encouraged to provide data on product performance under conditions other than those captured by these tests.

(9) Flash Point—Select appropriate method from the following: ASTM—D 56-82; ASTM—D 92-85; ASTM—D 93-85; ASTM—D 1310-86; ASTM—D 3278-80.[1]

(10) Pour Point—Use ASTM—D 97-85.[1]

(11) Viscosity—Use ASTM—D 445-86.[1]

(12) Specific Gravity—Use ASTM—D 1298-84.[1]

(13) pH—Use ASTM—D 1293-84.[1]

(14) Dispersing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(15) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Using standard test procedures, state the concentrations or upper limits of the following materials:

(i) Arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, plus any other metals that may be reasonably expected to be in the sample. Atomic absorption methods should be used and the detailed analytical methods and sample preparation shall be fully described.

(ii) Cyanide. Standard calorimetric procedures should be used.

(iii) Chlorinated hydrocarbons. Gas chromatography should be used and the detailed analytical methods and sample preparation shall be fully described.

(16) The technical product data submission shall include the identity of the laboratory that performed the required tests, the qualifications of the laboratory staff, including professional biographical information for individuals responsible for any tests, and laboratory experience with similar tests. Laboratories performing toxicity tests for dispersant toxicity must demonstrate previous toxicity test experience in order for their results to be accepted. It is the responsibility of the submitter to select competent analytical laboratories based on the guidelines contained herein. EPA reserves the right to refuse to accept a submission of technical product data because of lack of qualification of the analytical laboratory, significant variance between submitted data and any laboratory confirmation performed by EPA, or other circumstances that would result in inadequate or inaccurate information on the dispersing agent.

(b) *Surface Collecting Agents.* (1) Name, brand, or trademark, if any, under which the product is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

[1] 1988 Annual Book of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference has been submitted for approval by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the book may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., S.W., Room LG, Washington, D.C., or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity—Use standard toxicity test methods described in Appendix C to Part 300.

(8) Flash Point—Select appropriate method from the following: ASTM—D 56–82; ASTM—D 92–85; ASTM—D 93–85; ASTM—D 1310–86; ASTM—D 3278–80.[1]

(9) Pour Point—Use ASTM—D 97–85.[1]

(10) Viscosity—Use ASTM—D 445–86.[1]

(11) Specific Gravity—Use ASTM—D 1298–84.[1]

(12) pH—Use ASTM—D 1293–84.[1]

(13) Test to Distinguish Between Surface Collecting Agents and Other Chemical Agents.

(i) Method Summary—Five milliliters of the chemical under test are mixed with 95 milliliters of distilled water and allowed to stand undisturbed for one hour. Then the volume of the upper phase is determined to the nearest one milliliter.

(ii) Apparatus.

(A) Mixing Cylinder: 100 milliliter subdivisions and fitted with a glass stopper.

(B) Pipettes: Volumetric pipette, 5.0 milliliter.

(C) Timers.

(iii) Procedure—Add 95 milliliters of distilled water at 22° C, plus or minus 3° C, to a 100 milliliter mixing cylinder. To the surface of the water in the mixing cylinder, add 5.0 milliliters of the chemical under test. Insert the stopper and invert the cylinder five times in ten seconds. Set upright for one hour at 22° C, plus or minus 3° C, and then measure the chemical layer at the surface of the water. If the major portion of the chemical added (75 percent) is at the water surface as a separate and easily distinguished layer, the product is a surface collecting agent.

(14) Surface Collecting Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface action agents, solvents, and additives.

(15) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(15) of this section.

(16) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(16) of this section.

(c) *Biological Additives.* (1) Name, brand, or trademark, if any, under which the additive is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use, depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Statements and supporting data on the effectiveness of the additive, including degradation rates, and on the test conditions under which the effectiveness data were obtained.

(8) For microbiological cultures, furnish the following information:

(i) Listing of all microorganisms by species.

(ii) Percentage of each species in the composition of the additive.

(iii) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(iv) Special nutrient requirements, if any.

(v) Separate listing of the following, and test methods for such determinations: Salmonella, fecal coliform, Shigella, Staphylococcus Coagulase positive, and Beta Hemolytic Streptococci.

(9) For enzyme additives furnish the following information:

(i) Enzyme name(s).

(ii) International Union of Biochemistry (I.U.B.) number(s).

(iii) Source of the enzyme.

(iv) Units.

(v) Specific Activity.

(vi) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(vii) Enzyme shelf life.

(viii) Enzyme optimum storage conditions.

(10) Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(16) of this section.

(d) *Burning Agents.* EPA does not require technical product data submissions for burning agents and does not include burning agents on the NCP Product Schedule.

(e) *Miscellaneous Oil Spill Control Agents.* (1) Name, brand or trademark, if any, under which the miscellaneous oil spill control agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alternatives to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity—Use standard toxicity test methods described in Appendix C to Part 300.

(8) Flash Point—Select appropriate method from the following: ASTM—D 56–82; ASTM—D 92–85; ASTM—D 93–85; ASTM—D 1310–86; ASTM—D 3278–80.[1]

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[1] 1988 Annual Book of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference has been submitted for approval by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the book may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., S.W., Room LG, Washington, D.C., or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

[1] 1988 Annual Book of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference has been submitted for approval by the Director of the Federal Register in

Continued

(9) Pour Point—Use ASTM—D 97–85.[1]
(10) Viscosity—Use ASTM—D 445–86.[1]
(11) Specific Gravity—Use ASTM—D 1298–84.[1]
(12) pH—Use ASTM—D 1293–84.[1]
(13) Miscellaneous Oil Spill Control Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.
(14) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(15) of this section.
(15) For any miscellaneous oil spill control agent that contains microbiological cultures or enzyme additives, furnish the information specified in paragraphs (c)(8) and (c)(9) of this section, as appropriate.
(16) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(16) of this section.

§ 300.920 Addition of products to schedule.

(a) To add a dispersant, surface collecting agent, biological additive, or miscellaneous oil spill control agent to the NCP Product Schedule, the technical product data specified in § 300.915 must be submitted to the Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If EPA determines that the required data were submitted, EPA will add the product to the schedule.
(b) EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the schedule.
(c) The submitter may assert that certain information in the technical product data submissions is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR Part 2, Subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.
(d) The submitter must notify EPA of any changes in the composition, formulation, or application of the dispersant, surface collecting agent, biological additive, or miscellaneous oil spill control agent. On the basis of this data, EPA may require retesting of the product if the change is likely to affect the effectiveness or toxicity of the product.
(e) The listing of a product on the NCP Product Schedule does not constitute approval of the product. To avoid possible misinterpretation or misrepresentation, any label, advertisement, or technical literature that refers to the placement of the product on the NCP schedule must either reproduce in its entirety EPA's written statement that it will add the product to the NCP Product Schedule under § 300.920(b), or include the disclaimer shown below. If the disclaimer is used, it must be conspicuous and must be fully reproduced. Failure to comply with these restrictions or any other improper attempt to demonstrate the approval of the product by any NRT or other U.S. Government agency shall constitute grounds for removing the product from the NCP Product Schedule.

Disclaimer

[PRODUCT NAME] is on the U.S. Environmental Protection Agency's NCP Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, certifies, or authorizes the use of [product name] on an oil discharge. This listing means only that data have been submitted to EPA as required by Subpart J of the National Contingency Plan, § 300.915.

Subpart K—Federal Facilities [Reserved]

3. Units 1.0, 2.0, and 4.0 of Appendix C to Part 300 are amended by revising the first sentence of subunit 1.1, and subunits 2.5 (step 13), and 2.6 (steps 15 and 16) and IX, and adding reference 4 to the list of references to read as follows:

Appendix C to Part 300—Revised Standard Dispersant Effectiveness and Toxicity Tests

* * * * *

1.0 Introduction

1.1 *Scope and Application.* These methods apply to "dispersants" involving Subpart J (Use of Dispersants and Other Chemicals) in 40 CFR Part 300 (National Oil and Hazardous Substances Pollution Contingency Plan).

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2.0 Revised Standard Dispersant Effectiveness Test

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2.5 * * *

* * * * *

13. Spectrophotometrically determine the absorbance of the extract using the identical wavelength and cell used to calibrate the spectrophotometer. From the calibration curve, determine the concentration of oil in the chloroform.

Compute the concentration of oil in the sample as follows:

$$C_{do} = \frac{C_1 \text{ X (volume of chloroform used)}}{\text{(volume of sample)}} \quad (2)$$

where:

C_{do} is the concentration of dispersed oil in the sample and
C_1 is the measured concentration of oil in the chloroform extract.

Note that the standard sample volume is 500 ml and the volume of chloroform used should also be expressed in ml.

Repeat steps 1 through 13 at least three times for each of the three required volumes of dispersant.

2.6 * * *

* * * * *

15. Spectrophotometrically determine the absorbance of the extract using the identical wavelength and cell used to calibrate the spectrophotometer. From the calibration curve, determine the corresponding concentration of oil in the chloroform. Compute the dispersant blank correction for 25 ml of dispersant as follows:

$$D = \frac{C_2 \text{ X (volume of chloroform used)}}{\text{(volume of sample)}} \quad (3)$$

where:

D is the blank correction for 25 ml of dispersant, and
C_2 is the measured concentration of oil in the chloroform extract.

Note that the standard sample volume is 500 ml and the volume of chloroform used should also be expressed in ml.

The Dispersant Blank Correction (DBC) for other volumes of dispersant used in a test may then be computed as:

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accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the book may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., S.W., Room LG, Washington, D.C., or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

$$DBC = \frac{D \times (\text{volume in ml of dispersants used})}{25\ ml} \quad (4)$$

16. Clean the test tank and prepare the synthetic seawater at 23±1°C as described in Step 1. Do not install the containment cylinder. Prepare 100 ml of test oil as described in Steps 4 and 5, and add it to the test tank. Continue the test procedures as described in Steps 8 through 13. The Oil Blank Correction (OBC) is:

$$OBC = \frac{C_1 \times (\text{volume of chloroform used})}{(\text{volume of sample})} \quad (5)$$

* * * * *

4.0 Summary Technical Product Test Data Format

* * * * *

IX. *Physical Properties of Dispersant/Surface Collecting Agent* (4):

1. Flash Point: (°F).
2. Pour Point: (°F).
3. Viscosity: —— at —— °F (centistokes).
4. Specific Gravity: —— at —— °F.
5. pH: (10 percent solution if hydrocarbon based).
6. Surface Active Agents (Dispersants).[1]
7. Solvents (Dispersants).[1]
8. Additives (Dispersants).
9. Solubility (Surface Collecting Agents).

* * * * *

4. Appendix D is being added to Part 300 to read as follows:

Appendix D to Part 300—Appropriate Actions and Methods of Remedying Releases

(a) This Appendix D to Part 300 describes types of remedial actions generally appropriate for specific situations commonly found at remedial sites and lists methods for remedying releases that may be considered by the lead agency to accomplish a particular response action. This list shall not be considered inclusive of all possible methods of remedying releases and does not limit the lead agency from selecting any other actions deemed necessary in response to any situation.

(b) In response to contaminated soil, sediment, or waste, the following types of response actions shall generally be considered: removal, treatment, or containment of the soil, sediment, or waste to reduce or eliminate the potential for hazardous substances or pollutants or contaminants to contaminate other media (ground water, surface water, or air) and to reduce or eliminate the potential for such substances to be inhaled, absorbed, or ingested.

(1) Techniques for removing contaminated soil, sediment, or waste include the following:

(i) Excavation.
(ii) Hydraulic dredging.
(iii) Mechanical dredging.

(2) Techniques for treating contaminated soil, sediment, or waste include the following:

(i) Biological methods, including the following:

(A) Treatment via modified conventional wastewater treatment techniques.
(B) Anaerobic, aerated, and facultative lagoons.
(C) Supported growth biological reactors.
(D) Microbial biodegradation.

(ii) Chemical methods, including the following:

(A) Chlorination.
(B) Precipitation, flocculation, sedimentation.
(C) Neutralization.
(D) Equalization.
(E) Chemical oxidation.

(iii) Physical methods, including the following:

(A) Air stripping.
(B) Carbon absorption.
(C) Ion exchange.
(D) Reverse osmosis.
(E) Permeable bed treatment.
(F) Wet air oxidation.
(G) Solidification.
(H) Encapsulation.
(I) Soil washing or flushing.
(J) Incineration.

(c) In response to contaminated ground water, the following types of response actions will generally be considered: elimination or containment of the contamination to prevent further contamination, treatment and/or removal of such ground water to reduce or eliminate the contamination, physical containment of such ground water to reduce or eliminate potential exposure to such contamination, and/or restrictions on use of the ground water to eliminate potential exposure to the contamination.

(1) Techniques that can be used to contain or restore contaminated ground water include the following:

(i) Impermeable barriers, including the following:

(A) Slurry walls.
(B) Grout curtains.
(C) Sheet pilings.

(ii) Permeable treatment beds.

(iii) Gound water pumping, including the following:

(A) Water table adjustment.
(B) Plume containment.

(iv) Leachate control, including the following:

(A) Subsurface drains.
(B) Drainage ditches.
(C) Liners.

(2) Techniques suitable for the control of contamination of water and sewer lines include the following:

(i) Grouting.
(ii) Pipe relining and sleeving.
(iii) Sewer relocation.

(d)(1) In response to contaminated surface water, the following types of response actions shall generally be considered: elimination or containment of the contamination to prevent further pollution, and/or treatment of the contaminated water to reduce or eliminate its hazard potential.

(2) Techniques that can be used to control or remediate surface water include the following:

(i) Surface seals.

(ii) Surface water diversions and collection systems, including the following:

(A) Dikes and berms.
(B) Ditches, diversions, waterways.
(C) Chutes and downpipes.
(D) Levees.
(E) Seepage basins and ditches.
(F) Sedimentation basins and ditches.
(G) Terraces and benches.

(iii) Grading.
(iv) Revegetation.

(e) In response to air emissions, the following techniques will be considered:

(1) Pipe vents.
(2) Trench vents.
(3) Gas barriers.
(4) Gas collection.
(5) Overpacking.
(6) Treatment for gaseous emissions, including the following:

(i) Vapor phase adsorption.
(ii) Thermal oxidation.

(f) Alternative water supplies can be provided in several ways, including the following:

(i) Individual treatment units.
(ii) Water distribution system.
(iii) New wells in a new location or deeper wells.
(iv) Cisterns.
(v) Bottled or treated water.
(vi) Upgraded treatment for existing distribution systems.

(g) Temporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment.

[FR Doc. 88-26789 Filed 12-20-88; 8:45 am]

BILLING CODE 6560-50-M

[1] If the submitter claims that the information presented under this subheading is confidential, this information should be submitted on a separate sheet of paper clearly labeled according to the subheading and entitled "Confidential Information."

federal register

Wednesday
December 21, 1988

Part VI

Department of Labor

Employment and Training Administration

Trade Adjustment Assistance for Workers: Supplemental Operating Instructions for Implementing the 1988 Amendments to Trade Adjustment Assistance for Workers Program; Notice of Change 1 to General Administration Letter No. 7-88

VOL 53 ISS 245 DE 21 1988 UMI

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance for Workers: Supplemental Operating Instructions for Implementing The 1988 Amendments to Trade Adjustment Assistance for Workers Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Change 1 to General Administration Letter No. 7–88.

SUMMARY: The Department of Labor publishes with this notice Change 1 to General Administration Letter (GAL) No. 7–88, to inform the States and cooperating State agencies of the substantive changes in Change 1 to the operating instructions issued in GAL 7–88, which constitute supplemental operating instructions for implementing the 1988 Amendments to the Trade Adjustment Assistance for Workers Program.

FOR FURTHER INFORMATION CONTACT: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance. Telephone: (202) 376–2646; this is not a toll free telephone number.

SUPPLEMENTARY INFORMATION: On August 23, 1988, the President signed into law the "Omnibus Trade and Competitiveness Act of 1988." Part 3—Trade Adjustment Assistance, Subtitle D of Title I of the Act, concerns trade adjustment assistance for workers. On September 16, 1988, the Department published GAL 7–88, dated September 12, 1988, and the preamble thereto in the **Federal Register** (53 FR 36180–36212). In this Change 1 to GAL 7–88, the Department of Labor announces two substantive changes and one addition which are further operating instructions that supersede or supplement the operating instructions in GAL 7–88 to the extent that they are not consistent with those instructions.

For the reasons set out above, GAL No. 7–88, Change 1 is published below, together with Training and Employment Information Notice No. 6–88, Change 1.

Signed at Washington, DC, on December 12, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

Directive: General Administration Letter No. 7–88, Change 1
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management

Subject: Supplemental Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance Program in the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Amendments)

1. *Purpose.* To inform the States and cooperating State agencies of substantive changes to the operating instructions issued in GAL 7–88, which constitute supplemental operating instructions for implementing the amendments to the Trade Adjustment Assistance Program in the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Amendments).

2. *References.* The Trade Act of 1974; Part 3 of Subtitle D of Title I of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (Pub. L. 100–418); regulations at 20 CFR Part 617; the proposed rule published at 53 FR 48474; GAL 7–88, and TEIN 6–88.

3. *Background.* General Administration Letter (GAL) No. 7–88 was issued to all State employment security agencies on September 12, 1988 and was published in the **Federal Register** on September 16, 1988 (53 FR 36180); TEIN 6–88 was published on the same date (53 FR 36213). The GAL and the preamble published in the **Federal Register** set forth operating instructions of the Department of Labor to guide States in implementing the provisions of the 1988 Amendments. The operating instructions were subsequently used by Employment and Training Administration staff in briefing and training sessions for State agency staffs in Washington, DC, Atlanta, GA, and San Francisco, CA.

GAL 7–88 provided that the operating instructions contained therein shall remain in effect until amended regulations are published or they are superseded or supplemented by further operating instructions. In this Change 1 to GAL 7–88 the Department announces two substantive changes and one addition which are further operating instructions that supersede or supplement the operating instructions in GAL 7–88, to the extent that they are not consistent with these instructions.

The operating instructions issued in GAL 7–88 and in this Change 1 to GAL 7–88 shall remain in effect until the amended regulations become effective or until superseded by further operating instructions.

4. *Changes to the Operating Instructions.* There are substantive changes in the operating instructions in GAL 7–88. These changes were influenced largely through questions and comments by State agency staffs at the three briefing and training sessions. These changes are all effective on the date of issuance of this Change 1.

• *Breaks in training.* Counting days in scheduled breaks in training for purposes of paying TRA is changed from the way it was presented in GAL 7–88. The revised method for counting days provides that the days within a break in a training program that shall be counted in determining the number of days of the break shall include all calendar days beginning with the first day of the break and ending with the last day of the break, as provided for in the published schedule of the training program, except that any Saturday or Sunday occurring during the scheduled break in training, on which training would not normally be scheduled in the training program if there were no break in training, shall not be counted in determining the number of days of the break.

• *Meaning of no suitable employment available (Criterion (A) of Section 236(a)(1)).* The meaning of criterion (A) is presented in GAL 7–88 as follows: "This means that for the worker for whom approval of training is being considered under section 236(a)(1) * * * there is no reasonable prospect of such suitable employment becoming available for the worker *within the next 30 days."* (Underlining added for emphasis). The phrase "within the next 30 days" is deleted and the phrase "in the foreseeable future" is added. This change is made to make criterion (A) more flexible and also to make training inappropriate when it is reasonably foreseeable (even beyond 30 days) that a worker will be recalled by the former employer or other suitable job opportunities are expected to become available.

• *Waiver of participation in training requirement.* GAL 7–88 explained that the new subsection (c) in section 231 of the Trade Act provided for the issuance of a waiver by the State agency of the training requirement as a condition for receiving TRA upon a finding that training "is not feasible or appropriate." Subsection (c)(1)(B) of the Act also provides that when a State agency issues such a waiver to a worker, it is required to "submit to the Secretary a written statement certifying such finding and the reasons for such finding." In GAL 7–88 there is no listing of reasons why training may be considered not feasible or appropriate.

State agency representatives in the training session were informed that such a list of reasons would be included in the regulations. For purposes of recordkeeping and until amended regulations are published, the following list of reasons is being provided:

Not feasible because—

(A) The beginning date of approved training is beyond 30 days, as required in the definition for "Enrolled in training".

(B) Training is not reasonably available to the individual.

(C) Training is not available at a reasonable cost.

(D) Funds are not available to pay the total costs of training.

(E) Other (explain).

Not appropriate because—

(A) The firm from which the individual was separated plans to recall the individual within the reasonably foreseeable future (State agencies must verify planned recalls with the employer).

(B) The duration of training suitable for the individual exceeds the individual's maximum entitlement to basic and additional TRA payments.

(C) The individual possesses skills for "suitable employment" and there is reasonable expectation of employment in the foreseeable future.

(D) Other (explain).

Note: The proposed rule amending the regulations at 20 CFR Part 617, to implement the 1988 Amendments, was published in the **Federal Register** on November 30, 1988 at 53 FR 48474. The proposed rule is intended to be consistent in all substantive points with the operating instructions in GAL 7–88 and in this Change 1. The matters covered in this Change 1 may be found at §§ 617.15(d)(3), 617.22(a)(1)(ii), and 617.19(b)(2) of the proposed rule. On these and other matters, reference may be made to the proposed rule for any assistance that may be provided in understanding the operating instructions. Any comments submitted on the proposed rule, however, should reference the section and paragraph of the proposed rule on which the comment is made. Copies of the proposed rule are being provided to the States and cooperating State agencies under separate cover.

5. *Supplemental Operating Instructions.* The supplemental operating instructions in this Change 1 constitute controlling guidance for the States and the cooperating State agencies in implementing and administering the provisions of the 1988 Amendments pursuant to the agreements between the States and the Secretary of Labor under section 239 of the Trade Act of 1974. The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in GAL 7–88, and in this Change 1 to GAL 7–88, and in any other subsequent or supplemental operating instructions.

6. *Action Required.* Inform appropriate staff:

- Of the substantive changes, in this Change 1, to operating instructions published in GAL 7–88.
- That the operating instructions in GAL 7–88 and in this Change 1 shall remain in effect until the amended regulations are published or until superseded or supplemented by further operating instructions.

7. *Inquiries.* State agencies are to direct all inquiries to the appropriate ETA Regional Office.

Training and Employment Information Notice No. 6–88, Change 1
To: All State JTPA Liaisons, State Wagner-Peyser Administering Agencies, Worker Adjustment Liaisons
From: Jones, Assistant Secretary of Labor
Subject: Supplemental Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance Program in the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Amendments)

1. *Purpose.* To inform the State JTPA Liaisons, State Wagner-Peyser Administering Agencies, and Worker Adjustment Liaisons of the publication of Change 1 to General Administration Letter (GAL) No. 7–88, informing States and cooperating State agencies of several substantive changes to the operating instructions issued in GAL 7–88.

2. *References.* The Trade Act of 1974; Part 3 of Subtitle D of Title I of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (Pub. L. 100–418); Regulations at 20 CFR Part 617; the proposed rule published at 53 FR 48474; GAL 7–88 and Change 1; and TEIN 6–88.

3. *Background.* Change 1 to General Administration Letter No. 7–88, dated December 9, 1988, was furnished to all State employment security agencies. Change 1 described several changes to the operating instructions in GAL 7–88, which were published in the **Federal Register** on September 16, 1988 (53 FR 36180–36212), and states that these changes supersede or supplement operating instructions issued in GAL 7–88 to the extent that they are not consistent with these operating instructions.

The supplemental operating instructions issued in Change 1 to GAL 7–88 shall also constitute controlling guidance for State JTPA and Wagner-Peyser Administering Agencies in administering the 1988 Amendments. GAL 7–88, and Change 1 to GAL 7–88, shall remain in effect until the amended regulations become effective or until superseded by further operating instructions.

The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in GAL 7–88, in Change 1 to GAL 7–88, and in any other subsequent or supplemental operating instructions.

4. *Attachment.* General Administration Letter No. 7–88, Change 1.

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Wednesday
December 21, 1988

Part VII

Department of the Interior

National Park Service

36 CFR Part 4

Vehicles and Traffic Safety; Proposed Rule

VOL 53 ISS 245 DE 21 1988 UMI

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

Vehicles and Traffic Safety

AGENCY: National Park Service, Interior.
ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to establish a mandatory seatbelt regulation that would apply to occupants of motor vehicles operated within units of the National Park System. This proposed rulemaking is issued in response to a specific provision in the Department of the Interior's 1989 Fiscal Year Appropriations Act that requires the NPS to issue such a rulemaking. Under current NPS regulations, the use of seatbelts by the public is required only in park areas that lie within states that have a mandatory seatbelt law in effect; the applicable state law is adopted and enforced by the NPS. The NPS now proposes to require the use of seatbelts by all front seat occupants of motor vehicles that are operated in park areas located within states that do not have a mandatory seatbelt law in effect. The NPS anticipates the effects of such a regulation to be mixed. A potential decrease in injuries and fatalities resulting from motor vehicle accidents would be an obvious benefit to the public. However, this rulemaking will create an inconsistency between traffic regulations that apply within some park areas and those that apply in the surrounding state(s), resulting in conflicts for motor vehicle operators and management and enforcement problems for the NPS.

DATES: Written comments will be accepted through February 21, 1989.

ADDRESS: Comments should be addressed to: Associate Director, Operations, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: James Loach, National Park Service, Division of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–4874.

SUPPLEMENTARY INFORMATION:

Background

The NPS administers 354 park areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Facilities developed by the NPS in park areas, including roads, are limited to those necessary to carry out these legislative mandates and to support the purposes of the individual park areas as defined by Congress.

Although visitors to the National Park System use a variety of access methods, the vast majority continue to rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major responsibilities and program involvement in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers almost 8,000 miles of roads within the National Park System that are open to the public. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several states, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain state and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

The following statistics provide an indication of the scope of NPS traffic safety and traffic law enforcement activities. In 1987 there were 287,200,000 visits recorded to the National Park System and approximately 2,600,000,000 vehicle-miles traveled on roads administered by the NPS. There were 9,358 traffic accidents reported that resulted in 70 fatalities, 1,979 personal injuries and $6.3 million in property damage. A total of 140,610 citations were issued by NPS law enforcement officers (Park, Rangers and U.S. Park Police) for traffic violations.

NPS general regulations pertaining to vehicles and traffic safety are codified in Title 36 of the Code of Federal Regulations (36 CFR) Part 4. These regulations apply to all units of the National Park System. They were revised extensively in 1987. The rulemaking that proposed those revisions in 1986 included a section that would have established a mandatory seatbelt regulation that applied throughout the National Park System (see 51 FR 21840). However, the NPS did not incorporate that provision in the final rule for reasons that were discussed in detail in that document (see 52 FR 10670). In general, those reasons included the following:

1. NPS regulations provide for adopting applicable state traffic law; state seatbelt laws that are in effect are adopted and enforced by the NPS in park areas.

2. The NPS believes that, in general, the respective states are the appropriate authorities to regulate traffic. In states in which there was no mandatory seatbelt law in effect, there was no greater need demonstrated for the use of restraint systems by vehicle occupants within park areas than existed outside parks.

3. The NPS seatbelt regulation as proposed would have created conflicts with state law in park areas located within states in which there was a mandatory seatbelt law in effect.

4. The NPS seatbelt regulation would have created management problems and public confusion in park areas located within states in which there was no seatbelt law in effect because park visitors would have been subject to a unique Federal regulation, with no similar requirement in effect on state highways outside the park. These problems would have been severe in park areas with multiple access roads or roads that wind in and out of park boundaries.

5. Comments received during the comment period, mostly from park managers and members of their staffs, opposed the promulgation of this particular regulation because of management and enforcement problems associated with it.

The NPS is again proposing a seatbelt regulation. The Department of the Interior and the NPS strongly support the use of appropriate restraint systems by vehicle occupants and view the potential reduction in personal injuries and fatalities that might result from the promulgation of this regulation as highly desirable. The benefits of wearing seatbelts have been documented extensively.

The basis for this proposal is a provision contained in the 1989 Department of the Interior Appropriations Act (Pub. L. 100–46; 9/27/88) which states as follows:

> For necessary expenses of the Office of the Secretary of the Interior, $49,067,000, of which not to exceed $10,000 may be for official reception and representation expenses: *Provided*, that the National Park Service shall reissue a Notice of Proposed Rulemaking on the mandatory use of seatbelts while traveling on National Park Service roads within 30 days after the date of enactment of this Act.

The Conference Report to accompany this Act (HR 100–862) provided additional guidance to the NPS as follows:

The amendment provides for a Notice of Proposed Rulemaking on seatbelt use on National Park Service roads instead of withholding 5 per centum of Office of the Secretary funds until final rules are issued. The Park Service should take special measures to solicit comments on proposed rules from appropriate State and Federal highway safety agencies as well as other interested health and safety organizations.

The proposed NPS seatbelt regulation requires that a motor vehicle operator and all front seat passengers be restrained by a properly fastened seatbelt while the motor vehicle is in motion. The burden of compliance is placed on the operator. The regulation prohibits operating a motor vehicle in motion unless restrained by a properly fastened safety belt and operating a motor vehicle in motion unless all front seat passengers are restrained by a properly fastened safety belt. Children, as defined by applicable state law, are required to be restrained in accordance with state law. A person who is convicted of violating this or any other NPS regulation promulgated under the authority of 16 U.S.C. 3 would be subject to a maximum penalty of a $500 fine, or six months imprisonment, or both.

According to figures provided by staff of the National Highway Traffic Safety Administration, all states have child restraint laws in effect; 31 states and the District of Columbia have mandatory seatbelt laws in effect. The seatbelt regulation proposed in this rulemaking is intended to apply only in park areas that are located within states that do not have some form of mandatory vehicle seatbelt law in effect. In states that do have a mandatory seatbelt law in effect, the NPS will continue to enforce the applicable state seatbelt law in park areas located within these states, regardless or whether the provisions of state law are identical to or different from the provisions of this proposed regulation. To do otherwise would create the potential for unnecessary conflicts with state law.

The proposed regulation would not apply to a motor vehicle operator or passenger who is occupying a seat that was not originally equipped with a seatbelt by the vehicle manufacturer, nor would it apply to a person with a medical condition that prevents restraint by a seatbelt.

The NPS intends that this regulation be enforced primarily through signing, text in brochures and incidental public contact, not through checkpoints or other enforcement contacts that are not initiated as a result of another violation.

The NPS estimates that this regulation could potentially affect approximately 100 park areas, or portions thereof, that are located within the following states: Alabama, Alaska, Arizona, Arkansas, Kentucky, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, West Virginia and Wyoming. Park areas located in the Virgin Islands would also be affected.

The question of the applicability and enforcement of the NPS seatbelt regulation is further complicated by the fact that many park areas contain state highways and county roads as well as roadways administered by the NPS. NPS traffic regulations apply on all roadways and parking areas within a park area that are open to public traffic and that are under the legislative jurisdiction of the United States. As an example of a confusing situation that could be created if the NPS seatbelt regulation is promulgated, a motor vehicle operator visiting a park area to which the regulation applies could be faced with a situation in which he or she is not subject to a seatbelt regulation on the state highway leading up to the park boundary, is then subject to a seatbelt regulation on roads administered by the NPS within the park, and then may or may not be subject to a seatbelt requirement on portions of state highways or county roads within the park, depending on the extent of jurisdiction over those roads that has been ceded to the NPS by the state. These problems are compounded in situations when state highways or county roads wind in and out of park boundaries. Inconsistencies between the traffic regulations that apply within park areas and in the surrounding state(s) create very undesirable situations for motor vehicle operators and obvious management and enforcement problems for NPS staff involved. The NPS believes that such situations should be avoided if at all practicable.

The existing strong support from the Department and the NPS for the wearing of seatbelts does not alter the basic position of the Department and the NPS that the respective states are the appropriate authorities to regulate traffic on roadways within units of the National Park System. The NPS believes that, to the extent practicable, motor vehicle operators should be subject to the same traffic laws and regulations while traveling on roadways in park areas as they are in the surrounding state(s); NPS traffic regulations should be limited to those that address problems or situations that are unique to park areas or that reflect a need to apply a consistent Servicewide regulatory approach.

The Department and the NPS welcome public comment to assist in resolving these apparently conflicting concerns. On one hand the Department and the NPS strongly support a public safety measure that has proven effective; on the other hand, the agencies have serious reservations about the proposed designation of the NPS as the appropriate authority to impose seatbelt requirements in situations in which states have elected not to impose such requirements.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this document to the address noted at the beginning of this rulemaking. The NPS specifically solicits comments from representatives of state and Federal highway safety agencies, traffic law enforcement agencies and other interested health and safety organizations.

Drafting Information

The primary author of this rulemaking is Andy Ringgold of the NPS Division of Ranger Activities, Washington, DC. The staff of the National Highway Traffic Safety Administration was consulted informally during the development of this rulemaking and provided valuable advice and assistance.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on the fact that the overall economic effects of this rulemaking are negligible; it would impose no additional costs on any group or class of individuals. The NPS would incur costs associated with the installation of signs and the development of other public information programs in all affected park areas. These administrative costs could be significant in some park areas, depending on the road inventory and the number of access points.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based in this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6. (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 4

National parks, traffic regulations.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By adding a new § 4.15 to read as follows:

§ 4.15 Safety belts.

(a) This section applies only in park areas, or portions thereof, that are located within States in which there is no State law in effect that requires the mandatory use of vehicle safety belts.

(b) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt, nor does in apply to an operator or passenger with a medical condition that prevents restraint by a safety belt.

(c) The following are prohibited: (1) Operating a motor vehicle in forward motion unless the operator is restrained by a properly fastened safety belt. (2) Operating a motor vehicle in forward motion unless each front seat passenger is restrained by a properly fastened safety belt, except that children, as defined by State law, shall be restrained as provided by State law.

Date: December 8, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-29236 Filed 12-20-88; 8:45 am]

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Part VIII

Department of Education

34 CFR Part 212

Migrant Education Even Start; Notice of Proposed Rulemaking

VOL 53 ISS 245 DE 21 1988 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 212

Migrant Education Even Start

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to issue regulations to govern the Migrant Education Even Start program, which was authorized by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, in amendments to the Elementary and Secondary Education Act of 1965. The regulations are proposed to be added to the Basic Even Start regulations, which were published in proposed form on October 25, 1988, in the **Federal Register** (53 FR 43178).

DATES: Comments must be received on or before February 21, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. John F. Staehle, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC, 20202–6135.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202–6135. Telephone No. (202) 732–4758.

SUPPLEMENTARY INFORMATION:

A. Background

The Even Start program grants funds to eligible local educational agencies (LEAs) and State educational agencies (SEAs) for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literary training for their parents. On October 25, 1988, the Secretary published a notice of proposed rulemaking in the **Federal Register** (53 FR 43178) for the Even Start program operated by LEAs. Those proposed regulations, as currently written, would establish a new 34 CFR Part 212 to govern the basic Even Start program. However, as published, the proposed regulations contain no provision for the migrant education component authorized by section 1053(a) of the Elementary and Secondary Education Act of 1965 (ESEA). Therefore, the Secretary proposes to add a new Subpart F to Part 212 to implement the new Migrant Education Even Start program. These regulations are necessary because, in some respects, the proposed regulations governing the basic Even Start program are not compatible with the way the Migrant Education Even Start program should operate.

Sections 1051 through 1058 of Chapter 1 establish specific criteria for administration of the basic Even Start program. However, section 1053(a) delegates to the Secretary broad discretion to administer the migrant education component in a manner that is "consistent with the purpose of the" basic Even Start program.

There are two fundamental reasons why the two Even Start programs must operate somewhat differently. First, the basic Chapter 1 Migrant Education Program is administered by the SEAs, and the Migrant Education Even Start program is supplemental to the basic Migrant Education Program. Second, the Migrant Education Even Start program is intended to serve children and parents with very different characteristics from those served under the basic Even Start program. The migrant education component, like the basic Chapter 1 Migrant Education Program, is intended to meet the needs of children and parents who move from one school district to another during the calendar year to permit the parent, guardian, or other immediate family member to obtain temporary or seasonal agricultural or fishing work. The basic Even Start program addresses the needs of children and parents who generally reside permanently in one school district.

The proposed Subpart F reflects these differences in approach. While it incorporates for the Migrant Education Even Start program many of the proposed regulations governing the basic Even Start program, it includes certain modifications of those regulations that stem from fundamental differences in the ways the two programs will need to operate.

Section 212.56 would provide that the regulations in proposed § 212.5(a) apply to this program. For further information on appeals from adverse agency decisions to a new Office of Administrative Law Judges, refer to proposed regulations published on December 2, 1988, in the **Federal Register** (53 FR 48866).

B. Reservations of Funds

Set-aside of funds for Migrant Education Even Start Program. Section 1053(a) of the Act requires the Secretary to reserve three percent of the funds appropriated for the Even Start program for use by the Office of Migrant Education to conduct Even Start programs for migratory children. The Secretary interprets this provision as applying regardless of the level of the Even Start appropriation.

Set-aside of funds for evaluation. Section 1058 of the Act requires the Secretary to conduct an annual independent evaluation of Even Start programs and submit a report to Congress summarizing those evaluations. To conduct these evaluations, the Secretary intends to reserve annually not more than two percent of appropriated funds. The reserved amount would be used to evaluate the migrant education program as well as the basic statutory program.

C. Significant Provisions

Eligible grantees. Under the basic Even Start program, LEAs apply for funding on a competitive basis when appropriations are below $50 million. When appropriations equal or exceed $50 million, basic Even Start program funds are distributed on a formula basis to SEAs.

The Act does not specify which agencies are to be eligible grantees under the Migrant Education Even Start program. Proposed § 212.51 designates only SEAs or consortia of SEAs as eligible applicants and grantees and specifies that funding would be on a competitive grant basis, regardless of the size of appropriations. The Secretary believes this difference from the basic Even Start program is needed for several reasons. First, because of the transient nature of the population to be served, SEAs are better equipped than LEAs to undertake the inter- and intrastate coordination activities necessary for this program. Second, since SEAs are the grant recipients under the larger State-operated Chapter 1 Migrant Education Program and are responsible for administering migrant education programs operated by LEAs, designating SEAs as the eligible grantees will facilitate coordination between the two programs. Finally, the small scope of the Migrant Education Even Start program accentuates the importance of evaluation and dissemination of results so that other State and local agencies can benefit from the experience of

successful grantees. SEAs appear to be better suited than LEAs to perform these functions.

The small three percent set-aside by which the Migrant Education Even Start program is funded also compels maintaining awards on a competitive grant basis regardless of the size of the appropriation. If program funding were distributed on a formula basis, funds would be spread too thinly to support meaningful Even Start projects.

Eligible participants. Section 212.51 proposes to define children eligible to participate as only currently migratory children who are aged 1 through 7. The Secretary believes that limiting services to migrant children who have moved from one school district to another within the past year is necessary to ensure that services are provided to the children most in need.

Section 1055(2) of the Act defines eligible parents as those eligible for participation in an adult basic education program under the Adult Education Act. Section 312 of the Adult Education Act contains the definition of an eligible adult for participation in an adult education program. That definition is as follows:

(1) The term "adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law * * *.

(2) The term "adult education" means services or instruction below the college level for adults—

(A) who are not enrolled in secondary school;

(B) who lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education;

(C) who are not currently required to be enrolled in school; and

(D) whose lack of mastery of basic skills results in an inability to speak, read, or write the English language which constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, and thus are in need of programs to help eliminate such inability and raise the level of education of such individuals with a view to making them less likely to become dependent on others.

Selection criteria. In evaluating applications for Migrant Education Even Start program funds, the Secretary, under § 212.54, would use the selection criteria applicable to the basic Even Start program with only minor variations. Under the basic Even Start program, in proposed § 212.21(o), the Secretary would consider the "percentage of eligible children and parents to be served" relative to the number of children and parents who are not to receive Even Start project services. Because the Secretary proposes to have the migrant education component administered by SEAs on an interstate or intrastate basis in project areas the SEAs will select, and because the number of migrant children and parents residing in a project area may change significantly from year to year, this criterion would not be appropriate for the Migrant Education Even Start program. Therefore, the Secretary proposes that § 212.21(b) not apply to this program. Because of the importance that funded projects serve as models for use elsewhere, the Secretary also proposes, in § 212.54(b), to increase the number of points that can be awarded under the criterion in § 212.21(e) ("Promise as a model") from 15 to 20 to adjust for the inapplicability of the criterion in § 212.21(b).

Equitable distribution of assistance. Section 1057(c) of the Act requires the Secretary to ensure that funds are distributed on an equitable geographic basis. Under the basic Even Start program, the Secretary has proposed to implement this requirement by distributing projects among States and among urban and rural areas of a State and the Nation as a whole. Because the movement patterns of migrant children and their parents typically result in three major geographic streams (generally referred to as Eastern, Central, and Western), the Secretary proposes in § 212.55 to implement the requirement by distributing grants on the basis of these three streams and the States within those streams.

Continuation awards. Section 212.25 of the proposed basic Even Start program regulations establishes criteria for making continuation awards if appropriation levels are insufficient to fund all requests fully. The Secretary proposes in § 212.56(a) to apply these criteria, with needed modifications to reflect differences between the two programs, to new awards under the Migrant Education Even Start program.

Other changes from proposed requirements for the basic Even Start program. Under section 1057(b) of the Act and § 212.20 of the proposed basic Even Start program regulations, the Secretary would establish a formal review panel of experts to evaluate each application. Given the small amount of funds available and the State focus of the migrant component, the Secretary believes that this review panel is not appropriate for the Migrant Even Start program, and proposes that § 212.20 not apply.

In addition, § 212.11 of the proposed basic Even Start regulations would establish a requirement for open meetings with members of the public and consideration of public comment before an LEA submits an application to the Secretary for a new grant. The provision derives from former section 1006 of the Elementary and Secondary Education Act (20 U.S.C. 3386), which affects only submission of applications prepared by LEAs. Therefore, the Secretary has determined that proposed § 212.11 should not apply to the Migrant Education Even Start program since applicants under this program would be limited to SEAs or a consortium of SEAs.

D. Contents of Application

Sections 1054 (b) and (c) and 1056 (b) and (c) of the Act contain the content of applications to be submitted under the basic Even Start program. The preamble to the basic Even Start program regulations, published in the **Federal Register** on October 25, 1988, at 53 FR 43178, enumerated the required content of program applications. Except for the LEA open meeting certification discussed in Part C of the Supplementary Information section of this preamble, the Secretary interprets these statutory provisions as also applicable to applications for grants under the Migrant Even Start program. The Secretary expects to prepare an application form that will identify the required information.

The applicable statutory provisions include the Federal share limitation in section 1054(c), which requires grantees to contribute, over time, increasing levels of program support out of non-Federal sources. Under proposed § 212.53(a), the Secretary would only consider applications that demonstrate an applicant's ability to meet this requirement. The non-Federal contribution may include both monetary and in-kind support. Therefore, while the Migrant Education Even Start program is to be administered by SEAs rather than LEAs, the Secretary believes that in working with LEAs to operate projects SEAs can appropriately meet responsibilities to provide the requisite State or local contribution.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with the Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and

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general well-being. To the contrary, the Even Start program has the potential of providing significant advantages to the family. In funding family-centered education projects, the program may help the family perform its educational function, strengthen the stability of the family, and strengthen the role of the parents in the education of their children.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because the Secretary proposes to make competitive direct grants only to SEAs or consortia of SEAs, the proposed regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 212.54 contains information collections requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Federal Office Building 6, Room 2145, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 212

Children, Coordination, Education, Evaluation, Family, Migratory children, Reporting and recordkeeping requirements, State educational agencies, Subgrants.

Dated: November 22, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.214—Migrant Education Even Start)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Subpart F to Part 212 to read as follows:

PART 212—EVEN START

* * * * *

Subpart F—Migrant Education Even Start

Sec.

212.50 What is the Migrant Education Even Start program?
212.51 Who is eligible for a grant?
212.52 Who may be served?
212.53 How does the Secretary evaluate an application for a new grant?
212.54 What selection criteria does the Secretary use in making new grants?
212.55 What additional factors does the Secretary consider in making new grants?
212.56 What other provisions in this part apply?

Authority: 20 U.S.C. 2741–2749, 2831, unless otherwise noted.

* * * * *

Subpart F—Migrant Education Even Start

§ 212.50 What is the Migrant Education Even Start program?

(a) The Migrant Education Even Start program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary makes grants for family-centered education projects that provide services on an intrastate or interstate basis, and that includes all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2741, 2743, 2831)

§ 212.51 Who is eligible for a grant?

An applicant under section 1053(a) of the Act is eligible to receive a grant under the Migrant Education Even Start program if it is an SEA or a consortium of SEAs.

(Authority: 20 U.S.C. 2743, 2831)

§ 212.52 Who may be served?

Persons to be served by a project under this subpart are—

(a) A parent of a child described in paragraph (b) of this section, if the parent is eligible for participation in an adult basic education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2); and

(b) A currently migratory child, aged 1 to 7 inclusive, as defined in 34 CFR 201.3.

(Authority: 20 U.S.C. 2743, 2745, 2831)

§ 212.53 How does the Secretary evaluate an application for a new grant?

(a) The Secretary evaluates an application for a new grant that—

(1) Meets the purposes of the Migrant Education Even Start program as provided in § 212.50 on the basis of the procedure described in § 212.54; and

(2) Adequately demonstrates the applicant's ability to provide the additional funding required by section 1054(c) of the Act.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum number of points for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1070d–2 (a) and (e), 2743)

§ 212.54 What selection criteria does the Secretary use in making new grants?

The Secretary uses the criteria in § 212.21, when evaluating an application, except that—

(a) In each place the term "LEA" appears, the term is considered to mean "SEA";

(b) The criterion in § 212.21(b) (Percentage of eligible children and parents to be served) does not apply; and

(c) The maximum number of points possible under the criterion in § 212.21(e) (Promise as a model) is 20.

(Authority: 20 U.S.C. 2743, 2831)

§ 212.55 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in §§ 212.21 and 212.54, the Secretary ensures that—

(1) Grants are made to projects that ensure coordination and cooperation between States (or areas of a State) in which participating children and parents reside during the year; and

(2) To the extent possible, grants are distributed equitably among the States in the three migrant streams, as defined in paragraph (c) of this section.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into three groups representing the three migrant streams; and

(2) First awards a grant to the applicant in each stream that is ranked the highest as a result of the process in § 212.53, provided that there is an acceptable application from an SEA or consortium of SEAs in that stream.

(c) For the purposes of this section, the States comprising each stream are the following:

Eastern Stream—

Alabama
Connecticut
Delaware
Florida
Georgia
Kentucky
Maine
Maryland
Massachusetts
Mississippi
New Hampshire
New Jersey
New York
North Carolina
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia
District of Columbia

Central Stream—

Arkansas
Illinois
Indiana
Iowa
Kansas
Louisiana
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma
South Dakota
Texas
Wisconsin

Western Stream—

Alaska
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
Mariana Islands

(Authority: 20 U.S.C. 2743, 2831)

§ 212.56 What other provisions in this part apply?

(a) In addition to the provisions in this subpart, the following provisions in this part apply to the Migrant Education Even Start program:

(1) § 212.3.
(2) § 212.4.
(3) § 212.5(a).
(4) § 212.6.
(5) § 212.25, except the references in paragraphs (c) and (d) to § 212.21 and § 212.22(a) are read to refer to § 212.54 and § 212.55 respectively.
(6) 212.26.

(b) In each place the term "LEA" appears in § 212.4 or § 212.26, the term is considered to mean "SEA."

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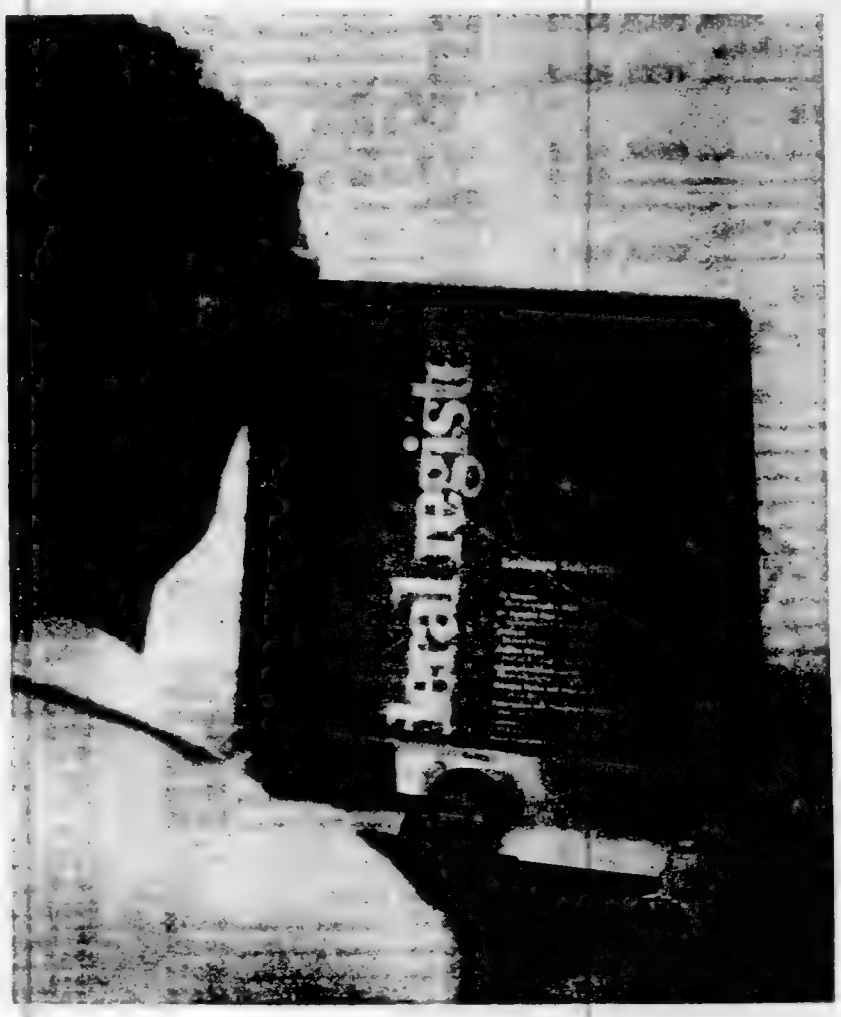

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Rules and Regulations

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket No. 88-18]

Employee Stock Option and Stock Purchase Plans; Charges by National Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule makes technical amendments to 12 CFR 7.5015, relating to employee stock option and stock purchase plans, and 12 CFR 7.8000, which governs charges by national banks. The rule removes from § 7.5015 a reference to 12 CFR 13.1, which was rescinded in 1980. Separately, the rule restores to § 7.8000 language inadvertently omitted from its codification following an amendment in 1984.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Horace G. Sneed, Attorney, Legal Advisory Services Division, telephone (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: This final rule deletes an obsolete reference in § 7.5015 to 12 CFR 13.1, which was rescinded on October 15, 1980, 45 FR 68603. As amended, § 7.5015 continues to state that national banks may provide employee stock purchase and stock option plans.

Section 7.8000 was amended on December 2, 1983. 48 FR 54319, to make it clear that Federal law preempts state laws that prohibit or limit service charges on deposit accounts. As amended, the rule included a paragraph (d) which provided that the rule did not apply to service charges imposed by a national bank in its capacity as fiduciary, or to service charges on dormant accounts. On July 11, 1984, 49 FR 28237, § 7.800 was further amended. Although subsection (d) was not changed, it was inadvertently left out of the codification of the rule in 12 CFR 7.8000. This final rule corrects the omission by restoring subsection (d) to 12 CFR 7.8000, so that future codifications will contain the text of the rule as it should have appeared in the Code of Federal Regulations following the July 11, 1984 amendment.

No collection of information requirements are involved in this technical amendment.

Regulatory Impact Analysis

Pursuant to Executive Order 12291, the Office of the Comptroller of the Currency has determined that this amendment does not constitute a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other small entities.

Adoption Without Notice and Comment and Reason for Immediate Effective Date

Publication for notice and comment and delayed effectiveness as set forth in the Administrative Procedure Act, 5 U.S.C. 553, are not required. The amendments made by this final rule are technical in nature and have no substantive effect on the banking industry or the public.

List of Subjects in 12 CFR Part 7

Deposit accounts, Employee stock option plans, National Banks, Service charges.

Authority and Issuance

For the reasons set forth in the preamble, Part 7 of Chapter I of Title 12 of the Code of Federal Regulations is amended to read as follows:

PART 7—[AMENDED]

1. The authority citation for 12 CFR Part 7 is amended to read as follows:

Authority: 12 U.S.C. 93a.

2. Section 7.5015 is revised to read as follows:

§ 7.5015 Employee stock option and stock purchase plans.

National banks may provide employee stock option and stock purchase plans.

3. Section 7.8000 is amended by adding paragraph (d) as follows:

§ 7.8000 Charges by national banks.

* * * * *

(d) This interpretive ruling does not apply to: (1) Charges imposed by a national bank in its capacity as a fiduciary which are governed by 12 CFR Part 9; and

(2) Service charges on dormant accounts which are governed by 12 CFR 7.7515.

Date: December 19, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-29386 Filed 12-21-88; 8:45]
BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-18]

Amendment to Transition Area; Vidalia, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Vidalia, Georgia, transition area by adding an arrival area extension which will provide airspace protection for aircraft executing a new Nondirectional Radio Beacon (NDB) Runway 24 Standard Instrument Approach Procedures (SIAP) to the Vidalia Municipal Airport predicated on the Onion Radio Beacon (RBN). Also, the geographic position coordinates are being revised for the Vidalia Municipal Airport and the Reidsville Airport.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

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SUPPLEMENTARY INFORMATION:

History

On October 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Vidalia, Georgia, transition area (53 FR 43447). The proposed amendment would add an arrival area extension to provide airspace protection for aircraft executing a new NDB Runway 24 SIAP to the Vidalia Airport from the Onion RBN. It would also revise the geographic position coordinates for both the Vidalia Municipal and Reidsville Airports. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No Comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Vidalia, Georgia, transition area by adding an arrival area extension. This action is necessary to provide airspace protection for aircraft executing a new NDB Runway 24 SIAP to the Vidalia Municipal Airport from the Onion RBN. This action also revises the geographic position coordinates of the Vidalia Municipal Airport and the Reidsville Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vidalia, Georgia [Amended]

By deleting the existing description and adding the following: "That airspace extending upward from 700 feet above the surface within and 8.5-mile radius of Vidalia Municipal Airport (lat. 32°11'30" N., long. 82°22'30" W.); within 2.5 miles each side of the 065° bearing from Onion RBN (lat. 32°13'23" N., long. 82°17'54" W.), extending from the 8.5-mile radius area to seven miles northeast of the RBN; within a 6.5-mile radius of Reidsville Airport, Reidsville, Georgia, (lat. 32°03'32" N., long. 82°09'00" W.); within three miles each side of the 295° bearing from Prison RBN (lat. 32°03'27" N., long. 82°09'09" N.), extending from the 6.5-mile radius area to 8.5 miles northwest of RBN."

Issued in East Point, Georgia, on December 9, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–29310 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AWP–17]

Proposal Revision to Lihue, HI, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule revises the Lihue, Hawaii, control zone and transition area. It provides controlled airspace for aircraft executing published instrument approach procedures to the Lihue Airport.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0166.

SUPPLEMENTARY INFORMATION:

History

On October 20, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the control zone and transition area in Lihue, HI (53 FR 41198). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Lihue, HI, control zone and transition area. This action will provide controlled airspace for aircraft executing standard instrument approaches to Lihue Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lihue, HI [Revised]

Within a 5-mile radius of Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.); beginning at lat. 21°54'50" N., long. 159°21'45" W; thence clockwise to 21°58'25" N., long. 159°15'50" W.; to lat. 21°55'15" N., long. 159°12'20" W.; to lat. 21°51'15" N., long.

159°11'15" W.; to lat. 21°50'45" N., long. 159°22'00" W.; thence to point of beginning.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Lihue, HI [Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 21°58'25" N., long. 159°15'50" W.; thence counter clockwise via the 5-mile radius circle of the Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.;) to lat. 22°03'10" N., long. 159°18'20" W.; to lat. 22°05'50" N., long. 159°15'30" W.; thence clockwise via the 10-mile radius circle to lat. 21°55'15" N., long. 159°12'20" W.; to point of beginning.

Issued in Los Angeles, California, on December 5, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-29311 Filed 12-21-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-26348]

Delegation of Authority to Director of Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its regulation concerning Organization and Program Management to delegate authority to the Director of the Division of Market Regulation to grant exemptions, either unconditionally or on specified terms and conditions, from the broker-dealer registration requirements of section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), pursuant to section 15(a)(2) of the Exchange Act, with respect to registered government securities brokers or dealers effecting any transactions in, or inducing or attempting to induce the purchase or sale of, a security principally backed by a guaranty of the United States. This amendment should facilitate review and consideration of applications for such exemptions.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: John Polanin, Jr., (202) 272-2848, Office of Legal Policy, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to Rule 30-3 of its regulation concerning Organization and Program Management [1] governing delegation of authority to the Director of the Division of Market Regulation ("Director"). The amendment adds to the rule new paragraph (a)(47), which authorizes the Director to grant exemptions to registered government securities brokers [2] or government securities dealers,[3] where appropriate, from the broker-dealer registration requirements of section 15(a)(1) of the Exchange Act,[4] solely with respect to effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security principally backed by a guaranty of the United States. Section 15(a)(1) provides as follows:

> It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.[5]

Under section 15(a)(2), the Commission currently has authority, "by rule or order, as it deems consistent with the public interest and the protection of investors, [to] conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of broker[s] or dealer[s] specified in such rule or order." [6]

The need for the instant exemption arises with respect to securities issued in connection with the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 ("Appropriations Act").[7] Title III of the Appropriations Act authorizes the issuance of U.S. Government guarantees of 90% of all principal and interest due under new loans obtained by various foreign nations to finance the prepayment of certain loans previously made to these nations under the Foreign Military Sales ("FMS") credit program by the Defense Security Assistance Agency of the Department of Defense and the United States Federal Financing Bank, and to pay arrearages thereon.[8] Any securities backed by notes covered by this guaranty would not meet the literal definition of government securities in section 3(a)(42) of the Exchange Act.[9] That definition includes only securities that are issued, or guaranteed as to principal or interest by, the United States, corporations designated by the Secretary of the Treasury in which the United States has an interest, or corporations the securities of which are designated specifically by statute as exempt securities for purposes of the Exchange Act, or certain puts, calls, straddles, options, or privileges on such securities. Therefore, government securities brokers or dealers that are registered only as government securities brokers or government securities dealers under section 15C(a)(2) of the Exchange Act [10] ordinarily would not be able to trade such securities without registering with the Commission under section 15(b) of the Exchange Act.[11]

However, the Commission recently issued an order exempting certain registered government securities brokers from the registration requirements of section 15(a),[12] solely with respect to publishing quotations and effecting transactions in securities issued in connection with the refinancing under the Appropriations Act of FMS loans made to the Government of Israel.[13] Thereafter, the Commission issued similar orders exempting certain registered government securities brokers and a registered government securities dealer from broker-dealer registration with respect to an additional offering of securities issued in connection with the refinancing of Israeli FMS loans.[14]

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[1] 17 CFR 200.30-3.

[2] 15 U.S.C. 78c(a)(43).

[3] 15 U.S.C. 78c(a)(44).

[4] 15 U.S.C. 78o(a)(1).

[5] *Id.*

[6] 15 U.S.C. 78o(a)(2).

[7] Pub. L. 100-202, 101 Stat. 1329-131 (1987).

[8] The Department of the Treasury has adopted regulations under the Appropriations Act to implement the refinancing of these FMS loans. 31 CFR Part 25.

[9] 15 U.S.C. 78c(a)(42).

[10] 15 U.S.C. 78o-5(a)(2).

[11] 15 U.S.C. 78o(b).

[12] 15 U.S.C. 78o(a).

[13] Letter from Jonathan G. Katz, Secretary, SEC, to Neil Flanagin, Esq., Sidley & Austin (September 22, 1988) (Chapdelaine and Co. Government Securities, Inc., Fundamental Brokers Incorporated, Garban Limited, and RM] Securities Corporation).

[14] Letter from Jonathan G. Katz, Secretary, SEC, to Neil Flanagin, Esq., Sidley & Austin (December 9, 1988) (RM] Securities Corporation and Liberty Brokerage Inc.); letter from Jonahtan G. Katz, Secretary, SEC, to Richard B. Smith, Esq., Davis Polk and Wardwell (December 9, 1988) (Discount Corporation of New York).

These exemptions were conditioned on, among other things, compliance with all rules adopted by the Secretary of the Treasury pursuant to section 15C(b) of the Exchange Act,[15] including all applicable net capital regulations.

The Commission thus has received several requests for exemptions concerning this class of securities in a relatively short time, and the Appropriations Act contemplates the refinancing of numerous additional FMS loans. Accordingly, the Commission has determined to delegate its exemptive authority under section 15(a)(2) [16] to the Director of the Division of Market Regulation with respect to securities principally backed by a guaranty of the United States. The delegation of this authority will conserve the resources of the Commission and the Division, because the staff will not be required to present requests for such exemptions to the Commission itself for resolution.[17]

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act,[18] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Securities. Text of Amendment.

The Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATIONS; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority cituation for Part 200, Subpart A, continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11 * * *

2. 17 CFR 200.30–3 is amended by adding new paragraph (a)(47) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(47) Pursuant to section 15(a)(2) of the Act, 15 U.S.C. 78*o*(a)(2), to review and, either unconditionally or on specified terms and conditions, grant exemptions from the broker-dealer registration requirements of section 15(a)(1) of the Act, 15 U.S.C. 78*o*(a)(1), to government securities brokers or government securities dealers that have registered with the Commission under section 15(a)(2) of the Act, 15 U.S.C. 78*o*—5(a)(2), solely with respect to effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security principally backed by a guaranty of the United States.

* * * * *

By the Commission.

Dated: December 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29337 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78*o*—5(b).

[16] 15 J.S.C. 78*o*(a) (2).

[17] In any particular case where the Director believes it appropriate, the Director still may submit a request for an exemption to the Commission. 17 CFR 200.30–3(g).

[18] 5 U.S.C. 553(b)(A).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–279; RE: Notice No. 655]

Fredericksburg in the Texas Hill Country Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Fredericksburg in the Texas Hill Country which is located in Gillespie County, Texas. The petition was submitted by Mr. Karl W. Koch of the Pedernales Vineyards. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Wine and Beer Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

Mr. Karl W. Koch of the Pedernales Vineyards petitioned ATF to establish a viticultural area in Gillespie County, Texas, to be known as "Fredericksburg in the Texas Hill Country." This viticultural area is located entirely within Gillespie County in the central part of the State approximately 80 miles west of Austin. The viticultural area consists of approximately 110 square miles. There are approximately eight vineyards in the area which are devoted to wine grapes with a total of about 50 acres under cultivation. Additionally, there are many commercial peach growers in the area with test plantings of grapes. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 655, in the **Federal Register** on February 19, 1988 (53 FR 4999), proposing the establishment of the Fredericksburg in the Texas Hill Country viticultural area.

Comments

Two comments were received during the comment period. One comment was from Mr. Robert P. Oberhelman of Oberhellmann Vineyards. The other comment was from Mr. Ned E. Simes of Grape Creek Vineyard.

Both commenters opposed the name "Fredericksburg in the Texas Hill Country" for the following reasons:

(1) The area boundaries proposed actually identifies the Pedernales Valley which has been the recognized name for this area since the time of the Spanish

explorers. The name "Fredericksburg" would be confusing since it identifies only the urban area and the center of commerce for Gillespie County and the Pedernales Valley.

(2) The name "Fredericksburg" has never been used to identify the name outside the limits of the city. The name "Fredericksburg" was used by the early settlers for their settlement, and not for the area.

(3) The term "Hill Country" is an informal one for the Edwards Plateau or the Balcones Escarpment. Only these two neames are used on geographical maps to identify this large area.

Mr. Simes further stated that even the residents of Texas cannot agree upon the boundaries of the "Hill Country." ATF conducted an independent investigation as to whether the proposed viticultural area is locally and/or nationally known as "Fredericksburg in the Texas Hill Country." Numerous people were interviewed including the petitioner, the two commenters, several members of the Fredericksburg Chamber of Commerce, and several of the residents both within and outside the city limits of Fredericksburg. Also, the county extension horticulturist and an employee from the Soil Conservation Service were interviewed.

All of the people interviewed, with the exception of the two commenters, stated that they felt the area within the boundaries of the viticultural area is considered the Fredericksburg area. This finding is further verified by the extent of the area which makes up the Fredericksburg telephone exchange in the local phone book and by the extent of the area which is considered the Fredericksburg school district. It is possible that the name "Pedernales Valley" could have been used for this area but the use of this name would have resulted in the boundaries of the Fredericksburg area having to be greatly extended. In addition, many of the residents of the Fredericksburg area consider the name "Pedernales Valley" to be more representative of the area further down the Pedernales River toward Austin. This area down river has a somewhat lower elevation than the Fredericksburg area.

We agree that the term "Texas Hill Country," or just "Hill Country," is an informal one for the Edwards Plateau or the Balcones Escarpment. However, the term "Hill Country" is widely used in the State of Texas and the State is encouraging its use as a way to advertise the area. While it is true that even the residents of Texas cannot agree upon the boundaries of the "Hill Country," it is also true that the Fredericksburg area is always included in the "Hill Country" no matter whose boundary descriptions are being used. Everyone who was interviewed agreed that Fredericksburg was in the "Hill Country" and all literature published by the State of Texas clearly shows that Fredericksburg is in the "Hill Country." Therefore, we do not believe that use of the name "Fredericksburg in the Texas Hill Country" is misleading in any way. As a result of the information obtained during our investigation, we have decided to approve the "Fredericksburg in the Texas Hill Country" viticultural area as proposed in the notice of proposed rulemaking.

Viticultural Area Name

The name "Fredericksburg" can be found on several U.S.G.S. maps of the area surrounding the city of Fredericksburg. The area around Fredericksburg is described in various newspaper and magazine articles, as well as brochures published by the State of Texas, as the "Texas Hill Country." Therefore, "Fredericksburg in the Texas Hill Country" is approved as the name for this viticultural area.

Local Viticultural History

Fredericksburg was founded May 8, 1846, by German immigrants under the auspices of the Society for the Protection of German Immigrants in Texas. The first colonization was of New Braunfels in 1845. A few years later, Fort Martin Scott was established southeast of Fredericksburg.

The Commissioner General of the Society, also known as the "Adelsverein," was Baron Ottfried Hans Von Meusebach, a German nobleman who took the name of John O. Meusebach once settled in Fredericksburg.

The city of Fredericksburg derived its name from German nobleman Prince Frederick of Prussia, who was the highest ranking member of the "Adelsverein." This society sponsored the colonization of the Fisher-Miller Grant in Central Texas. Vineyards were confined during this time to a very small number of Germans in the eastern settlements. The few vineyards which were established often drew favorable comments from observers, who foresaw a great future for this agricultural specialty.

More common was the practice of making wine from wild grapes, principally the variety known as the Mustang, which was found in abundance in the valleys of the Colorado, San Antonio, and Guadalupe rivers and their tributaries. The abundance of wild grapes convinced the early settlers that domesticated types would also thrive, and vine clippings brought from Europe were planted by Germans in the very first year at New Braunfels and shortly thereafter around Castroville. Experiments continued for a number of years in the western settlements, including the hill on the north side of Fredericksburg, but in the end it was realized that the imported European vines would not grow properly in Texas, and viticulture was, with few exceptions, abandoned. A commercial winery existed as late as the post-World War II period in Fredericksburg, selling products made from wild grapes and berries, but the wine was made primarily for home use to satisfy a cultural beverage preference. Currently, present day technology has made viticulture a more practical venture than a century or so ago.

Consequently, recent efforts in viticulture in the Fredericksburg area show promise of producing a unique wine that will parallel and/or supplement the peach business for which the Fredericksburg area has long been well known.

Geographical/Climatological Features

The Fredericksburg in the Texas Hill Country viticultural area is distinguished from surrounding areas by differences in geography, soil and clima'e. These differences are based on the following:

(a) Geography

The Fredericksburg in the Texas Hill Country viticultural area is on the Edwards Plateau which is the result of the geological uplift phenomenon. The Pedernales watershed originates due west of Fredericksburg a few miles from the Gillespie-Kerr-Kimble county line at an elevation of 2,200 feet. The Pedernales River flows easterly to Lake Travis (below 700 feet elevation) which is a part of the Austin city water supply. The elevation of the viticultural area is between 1,500 and 1,900 feet. At an attitude above 1,900 feet, there is a greatly increased risk of spring frost.

The viticultural area is a "bowl" shaped area with a relatively flat bottom and relatively steep sides. It is the bottom of the bowl that is suitable for farming. There is no similar farming area for at least 100 miles west of Austin and San Antonio. Most of the surrounding area is ranching, not crops and orchards. The majority of the area, including the town of Fredericksburg, lies to the north of the Pedernales River.

(b) Soil

The soils of the viticultural area consist of the contiguous Luckenbach-

Pedernales-Heatly Soil Association which is on or near the Pedernales River and its tributaries at an approximate elevation of between 1,500 and 1,900 feet. These soils adjacent to the river, and the riverbed itself, near Fredericksburg contain an abundance of flint or chert which is hydrated silica from the ancient seabed that formed the Edwards Plateau. The Spanish word "Pedernale," from which the river derived its name, actually means "flintstone."

The higher elevations of the Pedernales River watershed are the source of the Alluvial Valley Soils of the viticultural area. The Luckenbach-Pedernales-Heatly Soil Association is composed of deep, sandy to loamy, gently sloping soils on uplands and terraces.

The Soil Conservation Service, U.S. Department of Agriculture, describes the Luckenbach-Pedernales-Heatly Soil Association as a sandy loam topsoil (mostly quartz with limited organic matter) over a reddish clay. This clay is high in the nutrients, phosphorus, potassium, and calcium, as well as other minerals. The red color is due to iron which helps peaches (and grapes) avoid a chloritic condition. About one-half of this Soil Association in Gillespie County is cultivated. The crops are sorghums, small grain, peaches, grapes, and tame pasture. The remaining one-half is used for rangeland and wildlife habitat.

(c) Climate

The Fredericksburg area, at latitude 30 degrees north, is far enough south to escape harsh winters. At an elevation of 1,747 feet and a distance of more than 200 miles inland from the coast, the Fredericksburg area escapes the hot, humid summers characteristic of many southern climates. Summer temperatures are more characteristic of the High Plains than of southern Texas. Smog is unknown, and severe storms are very rare.

Total annual precipitation averages 27.44 inches. The lack of rainfall is due to the distance north and west of the Gulf of Mexico. A result of the dry climate is an abundance of sunshine which is a requirement for quality fruit. The dry climate also reduces disease problems. The Fredericksburg area is generally cooler than surrounding areas. Summer nights at Fredericksburg average four to five degrees Fahrenheit cooler than at lower elevations east of the Hill Country. The growing season (freeze-free period) in the Fredericksburg area averages 219 days. The average date of the last occurrence of 32 degrees in spring and the first occurrence in fall are April 1 and November 6, respectively.

The altitude of the area serves two purposes. In winter there are over 850 hours per year at below 40 degrees Fahrenheit. This maintains a proper winter dormancy factor. A second altitude benefit is that of temperature change between night and day. A difference in temperature is required to properly mature a fruit. Because of the higher elevation of the Fredericksburg area, the temperature difference between night and day is more pronounced than in surrounding areas.

Weather maps published by the Bureau of Business Research at the University of Texas show that the viticultural area is located at or near departure or change points from surrounding areas for temperature, precipitation and relative humidity. The Fredericksburg area is generally cooler than areas to the north and east while about the same mean annual temperature as areas to the immediate south and west. The mean annual precipitation for the viticultural area is about the same as the area to the north, more than the area to the west, and less than the areas to the east and south. The mean annual relative humidity for the Fredericksburg area is about the same as the areas to the north and south, lower than the area to the east, and higher than the area to the west.

Boundaries

The boundaries proposed by the petitioner are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with distinguishable geographic and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Fredericksburg in the Texas Hill Country viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Fredericksburg in the Texas Hill Country wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition, along with the appropriate maps with boundaries marked, is available for inspection during normal business hours at the following location: ATF Reading Room, Room 4412, Office of Public Affairs and Disclosure, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

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27 CFR Part 9 is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add § 9.125 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.125 Fredericksburg in the Texas Hill Country.

* * * * *

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.125 to read as follows:

§ 9.125 Fredericksburg in the Texas Hill Country.

(a) *Name.* The name of the viticultural area described in this section is "Fredericksburg in the Texas Hill Country."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Fredericksburg in the Texas Hill Country viticultural area are six U.S.G.S. topographical maps of the 1:24,000 scale. They are titled:

(1) Stonewall Quadrangle (1961);

(2) Cain City Quadrangle (1963);

(3) Fredericksburg East Quadrangle (1967, photorevised 1982);

(4) Cave Creek School Quadrangle (1961);

(5) Fredericksburg West Quadrangle (1967, photorevised 1982); and

(6) Lady Bird Johnson Park Quadrangle (1964, photoinspected 1979).

(c) *Boundaries.* The Fredericksburg in the Texas Hill Country viticultural area is located entirely in Gillespie County, Texas, in the central part of the State approximately 80 miles west of Austin. The beginning point is on the Stonewall Quadrangle map near Blumenthal at a point on U.S. Route 290 approximately .1 mile east of bench mark (BM) 1504, at the junction of a light-duty road known locally as Jung Road.

(1) From the beginning point, the boundary proceeds on Jung Road in a northwesterly direction across the Pedernales River.

(2) Then northwesterly approximately 1 mile along Jung Road as it parallels the Pedernales River.

(3) Then north along Jung Road approximately 3.9 miles to a point where Jung Road meets a medium-duty road known locally as Texas Ranch Road 2721.

(4) Then westerly approximately .1 mile on Texas Ranch Road 2721 to a point where it meets a medium-duty road known locally as Texas Ranch Road 1631.

(5) Then northeasterly along Texas Ranch Road 1631 approximately 1 mile to a point where Texas Ranch Road 1631 crosses the 1,800 foot contour line.

(6) Then northwesterly in a meandering manner along the 1,800-foot contour line to the point where the 1,800-foot contour line crosses State Route 16.

(7) Then in a generally westerly direction along the 1,800-foot contour line to the point where the 1,800-foot contour line crosses State Route 965.

(8) Then in a northwesterly and then generally a southeasterly direction along the 1,800-foot contour line to a point where the 1,800-foot contour line goes just south of the Kordzik Hills approximately 1 mile due east of the city of Fredericksburg.

(9) Then continuing on the 1,800-foot contour line in a generally northwesterly, southerly, and again northwesterly direction to the point where the 1,800-foot contour line crosses Loudon Road approximately 4 miles northwest of Fredericksburg.

(10) Then continuing on the 1,800-foot contour line in a northwesterly, then generally a southeasterly, westerly and finally a southerly direction to a point where the 1,800-foot contour line crosses a light-duty road known locally as Hayden Ranch Road about 50 yards north of Texas Ranch Road 2093.

(11) Then 50 yards south on Hayden Ranch Road to Texas Ranch Road 2093 and then east on Texas Ranch Road 2093 approximately .15 mile to an unimproved, southbound, gravel and dirt county road known locally as Beverly Gold's Road.

(12) Then approximately 2.6 miles south on Beverly Gold's Road to a point where it joins Texas State Route 16.

(13) Then approximately 1.5 miles northeast on State Route 16 to a light-duty county road known locally as Bear Creek Road.

(14) Then approximately 1 mile in a southeasterly, northeasterly, and then a southerly direction along Bear Creek Road to the point where the road crosses the 1,700-foot contour line.

(15) Then in a generally easterly direction for approximately 10 miles along the 1,700-foot contour line to a point where the 1,700-foot contour line crosses Texas Ranch Road 1376.

(16) Then approximately 3.1 miles southeast along Texas Ranch Road 1376 to a light-duty road at Luckenbach known locally both as Kunz-Klien Road and Luckenbach Road.

(17) Then approximately 1.3 miles in a generally northeasterly and then an easterly direction along Luckenbach Road and continuing along Luckenbach Road in a northerly direction about 2.5 miles to the point where Luckenbach Road joins U.S. Route 290.

(18) Then west approximately .2 mile on U.S. Route 290 to the intersection with Jung Road, the point of beginning.

November 4, 1988.

Stephen E. Higgins,

Director.

Approved: December 2, 1988.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

December 2, 1988.

[FR Doc. 88-29317 Filed 12-21-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 26-88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system is the "Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA-003)." Records in this system contain copies of records requested from the "Executive Clemency Files (JUSTICE/OPA-001)" under the Freedom of Information/Privacy Acts and therefore relate to official Federal investigations and matters of law enforcement. The exemption is needed to protect ongoing investigations and the identities of confidential sources involved in such investigations.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on April 20, 1988 (53 CFR 12951). The public was given 30 days to comment. One comment was received which did not necessitate any change. A copy of the comment has been placed in the record.

This order relates to individuals other than small business entities. Nevertheless, pursuant to the requirement of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, it is hereby stated that the order will not

have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Acts.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR Part 16 is amended by revising § 16.79 as set forth below.

Date: December 7, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. Section 16.79 of 28 CFR Part 16 is amended to read as follows:

§ 16.79 Exemption of Pardon Attorney Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE /OPA–001).

(2) Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA–003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive Clemency Files contain investigatory and evaluative reports relating to applicants for Executive clemency. The FOI/PA Request File contains copies of documents from the Executive Clemency Files which have not been released either in whole or in part pursuant to certain provisions of the FOI/PA. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communciations among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of the Executive Clemency Files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by reason of Article II, Section 2, Clause 1 of the Constitution, which commits pardons to the exclusive discretion of the President.

[FR. Doc. 88–29413 Filed 12–21–88; 8:45 am]
BILLING CODE 4410–01

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Number 35) concerns liability insurance coverage of permit applicants and of agents performing reclamation for permit applicants. The amendment is intended to reduce the required coverage to the minimum required by the corresponding Federal regulations.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated August 23, 1988 (Administrative Record No. OH–1094), Ohio submitted proposed revisions to paragraph (B) of Rule 13–7–07 of Chapter 1501 of the Ohio Administrative Code (OAC).

OSMRE announced receipt of the proposed amendments in the September 21, 1988 **Federal Register** (53 FR 36585), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

1. OAC 1501:13–7–07(B)(2)

Ohio is revising this paragraph to eliminate the separate minimum coverage requirements for liability insurance for bodily injury and property damage. The minimum insurance coverage required for bodily injury and property damage combined is now $300,000 for each occurrence and $500,000 in the aggregate. In addition, Ohio has deleted provisions requiring higher coverage for certain operations.

The Director finds that the reduced, combined minimum insurance coverage requirements proposed by Ohio are identical to those of the corresponding Federal regulation at 30 CFR 800.60(a) and that they are therefore no less effective than that Federal regulation.

2. OAC 1501:13–7–07(B)(3)

Ohio is correcting any editorial error by substituting "renew" for "reclaim" in this paragraph, thus clarifying that insurance policies must include a rider requiring that the insurer notify the Chief, Division of Reclamation, if the policyholder fails to renew his or her coverage.

The Director finds that this change renders the State rule substantively identical to and therefore no less effective than its Federal counterpart at 30 CFR 800.60(c).

IV. Disposition of Comments

Public Comments

The public comment period announced in the September 21, 1988 **Federal Register** (53 FR 36585) ended on October 21, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies

with an actual or potential interest in the Ohio program. No comments were received.

V. Director's Decision

Based on the findings discussed above, the Director is approving Ohio Progam Amendment No. 35 as submitted on August 23, 1988, and is amending 30 CFR Part 935 to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 19, 1988.

Robert E. Boldt,

Deputy Director.

For reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The Authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (hh) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(hh) The following amendment concerning liability insurance, as submitted to OSMRE on August 23, 1988, is approved effective December 22, 1988: Revision of paragraph (B) of Rule 1501:13–7–07 of the Ohio Administrative Code.

[FR Doc. 88–29393 Filed 12–21–88; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 34) modifies 17 Ohio rules in various subject areas for the purpose of maintaining consistency with revised Federal requirements, clarifying ambiguities, improving operational efficiency and implementing the additional flexibility afforded by Federal regulatory revisions.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15 and 935.16.

II. Submission of Amendment

By letter dated May 24, 1988 (Administrative Record No. OH–1033), Ohio submitted Program Amendment Number 34 to modify the following rules of Chapter 1501 of the Ohio Administrative Code (OAC): 13–1–02, 13–4–03, 13–4–04, 13–4–05, 13–4–13, 13–4–14, 13–7–03, 13–7–04, 13–7–05, 13–9–04, 13–9–07, 13–9–09, 13–9–14, 13–9–15, 13–10–01, 13–14–02 and 13–14–05.

The proposed changes to OAC 1501:13–9–09 and 1501:13–9–15(F)(5)(f) and (g) satisfy requirements placed on Ohio by the Director in his approval of Program Amendment Number 25 on July 17, 1987 (52 FR 26959), as codified at 30 CFR 935.16(e) and (h). However, as Ohio notes in its letter of transmittal, most of the revisions remove or modify provisions which are more stringent than or otherwise differ from the corresponding Federal requirements. Other changes respond to recently published Federal regulatory revisions or address State operational concerns.

OSMRE announced receipt of the proposed amendments in the June 16, 1988, **Federal Register** (53 FR 22503), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment, or concern program provisions for which there is no Federal counterpart and which do not adversely affect other aspects of the program.

1. OAC 1501:13–1–02 Definitions

(a) Excess Spoil

Ohio proposes to revise the definition of "excess spoil" in paragraph (MM) of this rule to reflect the transfer of provisions governing the blending of spoil from OAC 1501–15–9–07(C) to OAC 1501:13–9–14(E). Since this change is nonsubstantive in nature, the Director finds that the revised rule is no less effective than the corresponding Federal definition in 30 CFR 701.5.

(b) Previously Mined Area

Ohio proposes to revise the definition of "previously mined area" in paragraph (HHHH) of this rule by changing the reference date from April 10, 1972, to August 3, 1977. The revised definition states that "previously mined area means land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of Chapter 1513 of the Revised Code, as effective August 3, 1977 and thereafter." The corresponding Federal rule at 30 CFR 701.5, as revised on May 8, 1987, (52 FR 17526) defines this term as meaning "land previously mined on which there were no surface coal mining operations subject to the standards of [SMCRA]." The State definition is based solely on whether lands were properly reclaimed; unlike the Federal definition, it does not distinguish between lands that were subject to regulation and those that were exempt. Therefore, the State definition would include a greater number of sites than would the Federal rule, a situation on which the proposed change of dates has no effect.

The Ohio definition closely resembles an earlier version of the Federal rule, which the U.S. District Court for the District of Columbia struck down as being inconsistent with SMCRA because it allowed less than complete highwall elimination in areas mined after SMCRA's reclamation standards took effect (*In re: Permanent Surface Mining Regulation Litigation II, Civil Action 79–1144*, July 15, 1985). Since the Ohio definition is similarly used to determine when an operation is eligible for the lesser reclamation standards of OAC 1501:13–4–12(K) and 13–9–14(L)(3), which include incomplete highwall elimination, the Director finds that the Ohio definition is less effective than the Federal rules and less stringent than SMCRA. Therefore, he is not approving the definition to the extent that includes lands mined after the effective date of SMCRA, except for those lands mined under one of the exemptions provided by SMCRA, and he is requiring that Ohio further amend its definition to remove this inconsistency.

(c) Property To Be Mined

Ohio proposes to revise the definition of "property to be mined" in paragraph (MMMM) of this rule to clarify that, with respect to mineral estates, it includes only those estates to be mined. Surface estates would have to be identified for all lands within the proposed permit area or overlying the proposed underground workings. The corresponding Federal definition in 30 CFR 701.5 lacks this distinction. Furthermore, the preamble to the Federal definition states that "other mineral estates which could be affected must be included" (48 FR 44352, September 28, 1983) so that the regulatory authority can take this into consideration during the permit application review process.

The revised Ohio definition is no less effective than the Federal rule with respect to areas overlying proposed underground workings because the only mineral estates removed or altered in nature or composition would be those being mined. However, it could be less effective than the Federal rule with respect to surface mines (and, possibly, the face-up areas of underground mines) because the excavation involved in such operations may well have a significant adverse effect on other mineral estates. Accordingly, the Director is requiring that Ohio further amend this definition to include all mineral estates which may be affected by the surface excavation associated with coal mining operations.

(d) Support Facilities

On June 9, 1988, pursuant to the decision of the U.S. Court of Appeals for the District of Columbia in *National Wildlife Federation* v. *Hodel* (Case No. 84–5743, January 29, 1988), which upheld inclusion of a geographic proximity element within the definition of "support facilities," OSMRE reinstated the definition of this term in 30 CFR 701.5 (53 FR 21764). As approved on July 17, 1987, the corresponding Ohio definition did not include a proximity element. In this amendment, Ohio proposes to add a sentence to its definition of "support facility" in paragraph (PPPPP) to clarify that "resulting from or incident to" connotes an element of proximity. Since the revised State definition is virtually identical to the corresponding Federal definition, the Director finds that it is no less effective than the Federal rule.

(e) Valid Existing Rights

Ohio proposes to revise the definition of "valid existing rights" (VER) in paragraph (FFFFFF) of this rule to add a provision recognizing continually created VER. When real estate becomes subject to any of the statutory prohibitions or limitations on mining after August 3, 1977, VER will be determined to exist if, on the date the protection comes into existence, a validly authorized coal mining operation exists on or is approved for that site. Since this provision is substantively identical to paragraph (d)(1) of the corresponding Federal definition in 30 CFR 761.5, the Director finds that it is no less effective than that Federal rule.

2. OAC 1501:13–4–03 Permit Applications; Requirements for Legal, Financial, Compliance, and Related Information

Paragraph (A)(3)(a) of this rule is being revised to clarify that underground mining applications must identify the owners of all property, not just of the coal. This changes renders the State rule substantively identical to the corresponding Federal rule at 30 CFR 778.13(e) with respect to underground mines. Therefore, the Director finds that this revision renders the State rule no less effective than the Federal rule.

3. OAC 1501:13–4–04 Permit Application Requirements for Information on Environmental Resources

(a) Baseline Hydrologic Information

Ohio is revising paragraph (D)(4)(d) of this rule to delete the requirement for baseline information on the sulfate and suspended solids content of the groundwater, and to provide that groundwater need not be analyzed for total dissolved solids if specific conductance is measured. Similarly, Ohio is revising paragraph (E)(2) of this rule to delete the requirement for baseline information on the sulfate content of surface water and to provide the operator the choice of measuring either the specific conductance or the total dissolved solids content of surface waters. Since the corresponding Federal rules at 30 CFR 780.21(b)(1) and (2) are substantively identical to the revised State rules with respect to these parameters, the Director finds that these revisions do not render the State rules less effective than their Federal counterparts.

(b) Fish and Wildlife Studies

Paragraph (J), which concerned fish and wildlife studies, is being deleted and its contents revised and transferred to OAC 1501:13–4–05(P). The comparable Federal rule at 30 CFR 779.20 was similarly removed and its

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contents revised and transferred to 30 CFR 780.16 on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the deletion of former paragraph (J) does not render the Ohio rule less effective than the Federal regulations.

4. OAC 1501:13–4–05 Permit Application Requirements for Reclamation and Operations Plans

(a) PHC Determinations

The requirement in paragraph (E)(2)(a) of this rule that the determination of probable hydrologic consequences ("PHC determination") include an analysis of the effect of the proposed mining on the total sulfate content of surface and ground waters is being deleted. Since this analysis is not required under 30 CFR 780.21(f)(3)(iv), the Director finds that this deletion will not render the Ohio rule less effective than the cited Federal counterpart.

(b) MSHA Impoundment Plans

If the proposed operation includes any structure for which the applicant is required to submit plans to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216, paragraph (H)(1)(d) of this State rule currently requires that such plans also be included in the permit application submitted to the Chief. Ohio is now revising this rule by deleting this paragraph and transferring its contents in revised form to paragraph (H)(2)(b). This transfer means that the requirement to submit MSHA plans to the Chief will now apply only to proposed impoundments. Since the corresponding Federal rule at 30 CFR 780.25(c)(2) is similarly limited in applicability, the Director finds that this change will not render the State rule less effective than its Federal counterpart.

In addition, Ohio is replacing its reiteration of the information requirements of 30 CFR 77.216–2(a), formerly located in now-deleted paragraphs (H)(2)(b) (i) through (xviii) of the State rule, with a general requirement in paragraph (H)(2)(b) that the application contain all the information required under 30 CFR 77.216–2(a). Since this change is nonsubstantive in nature, the Director finds that the revised State rule is no less effective than its Federal counterpart in 30 CFR 780.25(c)(2), which contains similar provisions.

(c) Air Pollution Control Plans

Paragraph (O) of this rule is being revised to clarify that air pollution control plans submitted with permit applications need only address fugitive dust resulting from erosion. The corresponding Federal rule at 30 CFR 780.15(b) lacks this limiting language. However, in specifying that the plan for fugitive dust control practices shall be as required under 30 CFR 816.95, the Federal rule has the same meaning as the revised State rule since 30 CFR 816.95 concerns only air pollution attendant to erosion. Therefore, the Director finds that the revised State rule is no less effective than 30 CFR 780.15.

(d) Fish and Wildlife Application Requirements

Revised paragraph (P), which consolidates program requirements concerning the fish and wildlife resource information and protection and enhancement plans required of permit applicants, contains provisions identical to those of the corresponding Federal regulation at 30 CFR 780.16, as published on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the revised rule is no less effective than its Federal counterpart.

5. OAC 1501:13–4–13 Underground Mining Permit Application Requirements for Information on Environmental Resources

(a) Sulfur Analyses

Ohio is revising paragraphs (C)(2)(c)(v) and (C)(2)(d)(iii) of this rule to delete the requirement that the coal seam be analyzed to determine the amount of sulfur present in the form of marcasite. Language is also being added to grant the Chief the authority to waive the requirement for analysis of the amount of sulfur present in pyritic form. Like the corresponding Federal rules at 30 CFR 784.22(b)(iii) and (b)(3)(iii), the State rules continue to require an analysis of the total sulfur content of the coal seam in all cases. Since the revised State rules are substantively identical to their Federal counterparts, the Director finds that they are no less effective than those rules.

(b) Baseline Hydrologic Information

Ohio is revising paragraph (D)(4)(d) of this rule to delete the requirement for baseline information on the sulfate and suspended solids content of groundwater, and to provide that groundwater need not be analyzed for total dissolved solids if specific conductance is measured. Similarly, Ohio is revising paragraph (E)(2)(b) of this rule to delete the requirement for baseline information on the sulfate content of surface waters and to provide the operator the choice of measuring either specific conductance or the total dissolved solids content of surface waters. Since the corresponding Federal rules at 30 CFR 784.14(b) (1) and (2) are substantively identical to the revised State rules with respect to these parameters, the Director finds that these revisions do not render the State rules less effective than their Federal counterparts.

(c) Fish and Wildlife Studies

Paragraph (J), which concerned fish and wildlife studies, is being deleted and its contents revised and transferred to OAC 1501:13–4–14(R). The comparable Federal rule at 30 CFR 783.20 was similarly removed and its contents revised and transferred to 30 CFR 784.21 on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the deletion of former paragraph (J) does not render the Ohio rules less effective than the Federal regulations.

6. OAC 1501:13–4–14 Underground Mining Permit Application Requirements for Reclamation and Operations Plans

(a) Groundwater Recharge Capacity

Ohio is revising this rule by deleting former paragraph (E)(1)(f), which required that the application's plan for the protection of the hydrologic balance describe how the approximate groundwater recharge capacity of the proposed permit area would be restored. By notice published in the December 2, 1987, **Federal Register**, OSMRE removed comparable language in 30 CFR 784.14(g) for the reasons discussed in the preamble to that notice. Therefore, the Director finds that the deletion of former paragraph (E)(1)(f) will not render the Ohio rule less effective that the corresponding Federal regulation.

(b) PHC Determinations

Ohio is deleting the requirement in paragraph (E)(2)(a) of this rule that the determination of probable hydrologic consequences include an analysis of the effect of the proposed mining on the total sulfate content of surface and ground waters. Since this analysis is not required under 30 CFR 784.14(e)(3)(iii), the Director finds that this deletion will not render the Ohio rule less effective than the cited Federal counterpart.

(c) MSHA Impoundment Plans

If the proposed operation includes any structure for which the applicant is required to submit plans to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216, paragraph (H)(1)(d) of this State rule currently requires that such plans also be included in the permit application submitted to the Chief. Ohio

is now revising this rule by deleting this paragraph and transferring its contents in revised form to paragraph (H)(2)(b). This transfer means that the requirement to submit MSHA plans to the Chief will now apply only to proposed impoundments. Since the corresponding Federal rule at 30 CFR 784.16(c)(2) is similarly limited in applicability, the Director finds that this change will not render the State rule less effective than its Federal counterpart. In addition, Ohio is replacing its reiteration of the information requirements of 30 CFR 77.216–2(a), formerly located in now-deleted paragraphs (H)(2)(b)(i) through (xviii) of the State rule, with a general requirement in paragraph (H)(2)(b) that the application contain all the information required under 30 CFR 77.216–2(a). Since this change is nonsubstantive in nature, the Director finds that the revised State rule is no less effective than its Federal counterpart in 30 CFR 784.16(c)(2), which contains similar provisions.

(d) Subsidence Control Plans

Ohio is revising paragraph (M)(2)(b) of this rule to require that the map of workings included in subsidence control plans indicate the areas where measures will be taken to correct subsidence-related material damage, where appropriate, as does the corresponding Federal rule at 30 CFR 784.20(b). However, in making this change, Ohio inadvertently included an erroneous cross-reference to paragraph (M)(2)(e). The Director understands that the State is now preparing further revisions to this rule and that the reference will be corrected in that process. In the interim, he finds that the context in which the cross-reference is used clearly indicates that the rule intended to reference the measures listed in paragraph (M)(2)(d); he is approving the amendment with the stipulation that the rule be so interpreted.

In addition, the introduction to paragraph (M)(2) has been slightly revised to clarify, in keeping with similar revisions to the corresponding Federal rule at 30 CFR 784.20, that subsidence control plans are required only where a survey shows that structures or renewable resource lands exist and that subsidence could cause material damage to or diminution of the value of foreseeable use of such lands or structures.

Therefore, with the stipulation noted in the first paragraph above, the Director finds that these revisions of the State rule will not render it less effective than its Federal counterpart at 30 CFR 784.20.

(e) Air Pollution Control Plans

Paragraph (Q) of this rule is being revised to clarify that air pollution control plans submitted with permit applications need only address fugitive dust resulting from erosion. The corresponding Federal rule at 30 CFR 784.26 lacks this limiting language. However, in specifying that the plan for fugitive dust control practices shall be as required under 30 CFR 817.95, the Federal rule has the same meaning as the revised State rule since 30 CFR 817.95 concerns only air pollution attendant to erosion. Therefore, the Director finds that the revised State rule is not less effective than 30 CFR 784.26.

(f) Fish and Wildlife Application Requirements

Revised paragraph (R), which consolidates program requirements concerning the fish and wildlife resource information and protection and enhancement plans required of permit applicants, contains provisions identical to the corresponding Federal regulation at 30 CFR 784.21 as published on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the revised rule is no less effective than its Federal counterpart.

7. OAC 1501:13–7–03 Form, Conditions, and Terms of Performance Bonds

Ohio is revising paragraph (B)(7) to delete former subparagraphs (d), which prohibited the Chief from accepting any individual letter of credit in excess of 10 percent of a bank's capital surplus account, and (e), which prohibited the Chief from accepting a letter of credit if the sum of such letter of credit and all other letters of credit issued by the bank to the operator exceeded 30 percent of the bank's capital surplus account. Since the corresponding Federal rule at 30 CFR 800.21(b) imposes no similar or related restrictions on letters of credit posted as bond, the Director finds that the deletion of these restrictions will not render the State rule less effective than its Federal counterpart.

8. OAC 1501:13–7–04 Self-Bonding

Ohio is revising paragraphs (B)(3)(b), (B)(3) (c) and (D) of this rule to adopt self-bonding eligibility criteria identical to those set forth in 30 CFR 800.23(b)(3)(ii), (b)(3)(iii) and (d). Ohio will now recognize an applicant's total fixed assets within the entire United States, rather than just within Ohio. Also, the required minimum current assets to current liabilities ratio has been reduced from 1.5 to 1.2. Since the revised State requirements are identical to their Federal counterparts, the Director finds that the revised State rules are no less effective than the cited Federal rules.

9. OAC 1501:13–7–05 Procedures, Criteria, and Schedule for Release of Performance Bond

Paragraph (A)(2)(b)(iv) is being revised to delete the requirement that requests for approval of Phase II reclamation on cropland other than prime farmland include crop yield data. Since the corresponding Federal rule at 30 CFR 800.40(c)(2) requires actual yield data only for prime farmland, the Director finds that the revised State rule is no less effective than the Federal rule in this respect.

10. OAC 1501:13–9–04 Protection of the Hydrologic System

(a) Precipitation Event Design Standards for Diversions and Spillways

Paragraphs (F)(2)(c), (F)(3)(c), (G)(3)(b)(i) and (ii), (H)(2)(h) and (H)(3)(b) of this rule are being revised to adopt precipitation event design standards identical, respectively, to those of 30 CFR 816.43 (b)(3) and (c)(3), 816.46(c)(2)(ii), former 816.49(b)(7), and former 816.49(c)(2) and their counterparts in 30 CFR Part 817. In general, Ohio is replacing 24-hour precipitation event design standards with 6-hour event requirements. While OSMRE has recently (53 FR 43584, October 27, 1988) removed the impoundment spillway design standards previously found in 30 CFR 816.49 (b)(7) and (c)(2) and 817.49 (b)(7) and (c)(2), Ohio is not required to do so as section 505(b) of SMCRA allows States to retain more stringent standards if they so desire. Since the new State standards are identical to or more stringent than their Federal counterparts, the Director finds that these revisions will not render the State rules less effective than the corresponding Federal rules.

(b) Foundation Testing for Impoundments

Ohio is revising paragraph (H)(1)(e)(i) of this rule to clarify that foundation investigations and laboratory testing to determine the design requirements for foundation stability are mandatory only where the proposed impoundment meets or exceeds the size or other criteria of 30 CFR 77.216(a). As promulgated on September 26, 1983, 48 FR 44004, the corresponding Federal rules at 30 CFR 816.49(a)(5)(i) and 817.49(a)(5)(i) extended this requirement to all impoundments regardless of size. However, on November 20, 1986, 51 FR 41991, OSMRE suspended these rules insofar as they applied to impoundments

smaller than a specified size. On October 27, 1988, 53 FR 43584, OSMRE promulgated a revised version of these rules mandating such investigations and testing only for proposed impoundments meeting the criteria of 30 CFR 77.216(a). Since the revised State rule is substantively identical to its revised Federal counterparts, the Director finds that it is no less effective than those Federal rules.

(c) Water Monitoring

Ohio is revising paragraph (N)(2)(a) of this rule to require quarterly rather than monthly monitoring of pond discharges. In addition, paragraphs (N)(1)(c), (N)(2)(a)(iii) and (N)(2)(b)(iii) are being revised to require that surface and ground water monitoring reports be submitted within two weeks following the close of the quarter, rather than two weeks after sample collection or 15 days after the end of the month as previously required. The corresponding Federal rules at 30 CFR 780.21 (i) and (j), 784.14 (h) and (i), 816.41 (c)(2) and (e)(2), and 817.41 (c)(2) and (e)(2) specify that, at a minimum, monitoring shall be conducted on a quarterly basis and that reports shall be submitted every three months. Since the revised Ohio rules retain these minimum requirements, the Director finds that they are no less effective than the cited Federal rules in this respect.

11. OAC 1501:13–9–07 Disposal of Excess Spoil

Ohio is revising this rule by replacing former paragraph (B), which specified that any area disturbed by the disposal of spoil is considered a disturbed area, with a new paragraph (B), which establishes design certification requirements for excess spoil fills. The Director finds that this revision does not render the State rule less effective than any Federal requirement since the definition of "disturbed area" at OAC 1501:13–1–02(FF) already includes all areas upon which spoil is placed or topsoil or vegetation is removed. The new design certification requirements are identical to and therefore no less effective than those set forth in the corresponding Federal rules at 30 CFR 816.71(b)(1) and 817.71(b)(1).

Ohio is also transferring the contents of former paragraph (C), which concerns the blending of spoil during backfilling and grading, to OAC 1501:13–9–14(E), a nonsubstantive change discussed in Findings 1(a) and 13 of this notice, and otherwise revising the language and organization of this rule to more closely resemble the corresponding Federal rules at 30 CFR 816.71 through 816.74 and 817.71 through 817.74. Among these changes is a revision to paragraph (L)(6), which establishes requirements for surface water diversions appurtenant to durable rock fills, replacing the 24-hour precipitation event design standard with the 6-hour event design standard contained in the corresponding Federal rules at 30 CFR 816.73(f) and 817.73(f). For the reasons discussed above, the Director finds that these revisions will not render the State rule less effective than its Federal counterparts.

12. OAC 1501:13–9–09 Disposal of Coal Mine Wastes and Noncoal Mine Wastes

(a) Compaction Requirements

Ohio is revising this rule by deleting the provisions, previously found in paragraph (A)(5) of this rule, requiring that coal mine waste be placed in lifts no thicker than two feet and that it be compacted to attain 90 percent of its maximum dry density. On June 9, 1988, 53 FR 21764, OSMRE deleted comparable requirements from the corresponding Federal rules at 320 CFR 816.81(c)(2), 816.83, 817.81(c)(2) and 817.83.

Therefore, the Director finds that deletion of these requirements will not render the State rule less effective than its Federal counterparts.

(b) Design Standards for Spillways and Diversions

Ohio is also revising paragraphs (B)(1)(b), (C)(2)(b) and (C)(4) of this rule by replacing the 24-hour precipitation event design standard for diversions and spillways with the 6-hour event design standard found in the corresponding Federal rules at 30 CFR 816.83(a)(2), 816.84(b)(2) and 816.84(d) and their identical counterparts in 30 CFR Part 817. Therefore, the Director finds that these revisions will not render the State rule less effective than its Federal counterparts.

(c) Foundation Investigations and Noncoal Mine Waste Disposal

In approving Program Amendment No. 25 on July 17, 1987 (Finding 36, 52 FR 26965), the Director, at 30 CFR 935.16(e), required that Ohio further amend OAC 1501:13–9–09(A)(4) to remove the provision granting the certifying engineer sole authority to determine the levels of investigation and laboratory testing needed for design of the foundations of proposed coal mine waste disposal structures. Ohio has complied with this requirement in this amendment. Therefore, the Director finds that revised OAC 1501:13–9–09(A)(4) is now no less effective than the corresponding Federal rules at 30 CFR 816.81(d) and 817.81(d).

In the same notice and finding, the Director also required that Ohio further amend OAC 1501:13–9–09 (E) to prohibit (1) the disposal of noncoal mine waste in a coal mine waste refuse pile or impounding structure and (2) excavation of a noncoal mine waste disposal site within eight feet of a coal outcrop or coal storage area. Ohio has complied with this requirement in this amendment. Therefore, the Director finds that revised OAC 1501:13–9–09(E) is now no less effective than the corresponding Federal rules at 30 CFR 816.89 and 817.89.

13. OAC 1501:13–9–14 Backfilling and Grading

The provisions governing the blending of spoil into the surrounding terrain during backfilling and grading are being transferred to paragraph (E) of this rule from paragraph (C) of OAC 1501:13–9–07. Since the language of these provisions remains unchanged, and since the transfer will not affect their applicability or implementation, the Director finds that this modification is nonsubstantive in nature and that the revised rule is therefore no less effective than its Federal counterparts at 30 CFR 816.102 and 817.102.

14. OAC 1501:13–9–15 Revegetation

(a) Revised Exemptions

Paragraph (B) of this rule is being revised to exempt small incidental areas from the program's revegetation requirements if revegetation would conflict with the postmining land use and if no environmental harm would result. While the corresponding Federal regulations at 30 CFR 816.111 and 817.111 do not specifically exempt such areas, they do specify that revegetation must be compatible with the approved postmining land use. If revegetation would conflict with the postmining land use, it would be incompatable with that use and therefore prohibited. Since the amendment limits the exemption to areas where revegetation would conflict with the approved postmining land use, the Director finds the amendment to be consistent with and no less effective than the revegetation requirements of 30 CFR 816.111 and 817.111.

(b) Volunteer Species

Paragraphs (F)(3)(b) and (F)(3)(c) of this rule are being revised to allow non-noxious volunteer species to contribute to the satisfaction of Phase II and III revegetation requirements for land to be developed for industrial, residential or commercial use. The Federal regulations at 30 CFR 816.111 and 817.116 do not specifically address the consideration of

non-noxious volunteer species in the satisfaction of revegetation requirements. However, paragraph (a)(2) of the Federal rule does specify that the standards for success shall include criteria representative of unmined lands in the area being reclaimed. Non-noxious volunteer species may be present in or even characteristic of the natural vegetation of such lands. The Director finds, therefore, that the revisions are consistent with the Federal revegetation rules, provided Ohio limits application of these provisions to volunteer species that are compatible with and contributory to the approved reclamation plan and postmining land use.

(c) Prime Farmland Bond Release Standards

Paragraphs (F)(5)(f) and (F)(5)(g) of this rule are being revised to require that the permittee provide three years of crop yield data prior to the Chief's approval of any Phase II or Phase III bond release for prime farmland. The previous rule required only one year of data for a Phase II bond release. In addition, Ohio is removing the requirement that, for a Phase III release, two of three years to be the last two years of the responsibility period. Ohio also has taken this opportunity to correct an erroneous cross-reference in paragraph (F)(5)(e)(i) of this rule.

The Director finds that the revised requirements are substantively identical to and therefore no less effective than the Federal requirements at 30 CFR 823.15(b)(3). In making this change, Ohio has satisfied the requirement imposed by OSMRE at 30 CFR 935.16(h) (Finding 41, 52 FR 26969, July 17, 1987) that it replace the previous 1-year yield data requirement for approval of a Phase II bond release with a 3-year requirement.

15. OAC 1501:13–10–01 Roads; Performance Standards

Ohio is revising paragraph (G)(3)(a) of this rule to replace the 24-hour precipitation event design standard for the drainage control structures of primary roads with a 6-hour event standard identifical to that of 30 CFR 816.151(d)(1) and 817.151(d)(1), as promulgated on November 8, 1988 (53 FR 45190). At the time Ohio submitted this amendment, the corresponding Federal rules were suspended following their remand by the U.S. District Court for the District of Columbia for lack of adequate public notice (*In re: Permanent Surface Mining Regulation Litigation II, supra*). However, States were free to adopt similar provisions if they complied with their own public notice and participation requirements. Since Ohio has done so, and since the revised State and Federal standards are identical with respect to the design standard, the Director finds that the revised State rule is not less effective than the corresponding Federal rules at 30 CFR 816.151(d)(1) and 817.151(d)(1).

16. OAC 1501:13–14–02 Enforcement

Ohio is revising this rule to delete former paragraph (C)(5), which required the Chief to file copies of show-cause orders with the Ohio Reclamation Board of Review (RBR). Under the corresponding Federal procedures in 30 CFR 843.13(a)(1), the Director of OSMRE is required to file a copy of such orders with the Office of Hearings and Appeals, which then conducts the hearing, if one is requested, and issues the appropriate decision. However, under the rules, the Chief conducts the hearing and renders the decision. Therefore, there is no need to file copies of show-cause orders with the RBR since it has no jurisdiction in such cases. Accordingly, the Director finds that deletion of this provision will not render the State program inconsistent with any Federal requirements. The revised show-cause procedures remain similar to and no less effective than the corresponding Federal procedures.

17. OAC 1501:13–14–05 Informal Conferences

Paragraph (B) of this rule is being revised to specify that informal conferences concerning permit applications shall be held within 60 days following the close of the comment period required by OAC 1501:13–5–01(B)(1), rather than within 90 days of receipt of the request for a conference, as previously required by this rule. The corresponding Federal rule at 30 CFR 773.13(c) specifies that the regulatory authority shall hold an informal conference within a reasonable time following receipt of the request for such a conference. The Director finds that the time period specified in the revised rule is reasonable, since it will allow the State and other parties to receive and analyze all comments submitted and thus address them at the conference. Therefore, he finds the revised rule to be no less effective than its Federal counterpart at 30 CFR 773.13(c).

IV. Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the June 16, 1988, **Federal Register** ended on July 18, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Soil Conservation Service supported the amendment. The Mine Safety and Health Administration (MSHA) provided the only other comments received. It expressed concern that the State's rules did not fully reflect MSHA requirements for impoundment plans, inspection and release. In response, the Director notes that, while the State and Federal regulations do not reiterate the MSHA rules in their entirety, this lack of reiteration does not mean operators need not comply with these rules. Indeed, with respect to impoundments, both the State and Federal rules specifically incorporate the MSHA rules by reference. Furthermore, should any conflicts arise, section 702 of SMCRA provides that MSHA regulations would take precedence.

V. Director's Decision

Based on the above findings, the Director is approving Program Amendment Number 34, as submitted by Ohio on May 24, 1988 with the exception of the definition of "previously mined area" at OAC 1501:13–1–02(HHHH), which, as discussed in Finding 1(b), the Director has determined to be inconsistent with SMCRA, the Federal regulations and court decisions concerning those regulations.

The Director is requiring that Ohio further amend its program to correct this inconsistency. In addition, as discussed in Finding 1(c), he is requiring that Ohio further amend its definition of "property to be mined" at OAC 1501:13–1–02(MMMM) to include all mineral estates which would be removed or displaced by surface excavation activities associated with coal mining operations.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

As explained in Findings 12(c) and 14(c), this amendment satisfies the requirements of 30 CFR 935.16 (e) and

(h) and thus renders the corresponding prior disapprovals (52 FR 26959, July 17, 1987) at 30 CFR 935.12 (a) and (c) moot. Therefore, the Director is revising the Federal rules to remove these requirements and disapprovals.

The Director is also taking this opportunity to correct an error in 30 CFR 935.16(bb), as published on July 17, 1987, and to revise this paragraph to improve clarity and provide additional specificity. As originally published, this paragraph neglected to identify the State rules repealed by Program Amendment Number 25.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. As discussed in Findings 4(c) and 6(e), Ohio is revising the language of its rules concerning air pollution control plans. However, these changes are nonsubstantive clarifications having no effect upon air quality standards. As required by 30 CFR 732.17(h)(11)(i), the Director solicited EPA's comments on these changes; however, none were received.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSMRE for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSMRE. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Date: December 19, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.12, paragraph (c) is removed, and paragraph (a) is revised to read as follows:

§ 935.12 State regulatory program provisions and amendments disapproved.

* * * * *

(a) The definition of "previously mined area" at OAC 1501:13–1–02 (HHHH), as submitted to OSMRE on May 24, 1988, is disapproved to the extent that it includes lands mined after the effective date of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, except for those lands mined under one of the exemptions provided in that law.

* * * * *

3. In § 935.15, paragraph (bb) is revised, and a new paragraph (gg) added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(bb) With the exception of those provisions identified in section 935.12 of this part, Program Amendment Number 25, as submitted to OSMRE on May 16, 1986, and revised on December 1, 1986, is approved effective July 17, 1987, provided Ohio promulgates these regulations and enacts these statutory revisions in a form identical to that submitted to OSMRE. The amendment consists of the following modifications to the Ohio program:

(1) Revision of the following rules of Chapter 1501 of the Ohio Administrative Code:

13–1–01 Effective Date and Applicability.
13–1–02 Definitions.
13–1–10 Availability of Records.
13–3–03 Areas Where Mining is Prohibited or Limited.
13–3–04 Procedures for Identifying Areas Where Mining is Prohibited or Limited.
13–3–05 Criteria for Designating Areas Unsuitable for Coal Mining Operations.
13–3–06 Exploration on Land Designated As Unsuitable for Coal Mining Operations.
13–3–07 Procedures for Designating Areas Unsuitable for Coal Mining Operations.
13–4–01 General Contents Requirements for Permit Applications.
13–4–02 Requirements of Coal Exploration.
13–4–03 Permit Applications; Requirements for Legal, Financial, Compliance and Related Information.
13–4–04 Permit Application Requirements for Information on Environmental Resources.
13–3–05 Permit Application Requirements for Reclamation and Operations Plans.
13–4–06 Permit Applications, Revisions, and Renewals, and Transfers, Assignments, and Sales of Permit Rights.
13–4–08 Hydrologic Map and Cross Sections.
13–4–12 Requirements for Permits for Special Categories of Mining.
13–4–13 Underground Mining Permit Application Requirements for Information on Environmental Resources.
13–4–14 Underground Mining Permit Application Requirements for Reclamation and Operations Plans.
13–5–01 Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.
13–6–03 Small Operator Assistance Program.
13–7–01 General Requirements for Bonding of Coal Mining and Reclamation Operations.
13–7–02 Amount and Duration of Performance Bond.
13–7–03 Form, Conditions, and Terms of Performance Bonds.
13–7–04 Self-Bonding.
13–7–05 Procedures, Criteria, and Schedule for Release of Performance Bond.

13–7–06 Performance Bond Forfeiture Criteria and Procedures.
13–7–07 Liability Insurance.
13–8–01 Coal Exploration; Performance Standards.
13–9–01 Signs and Markers.
13–9–04 Protection of the Hydrologic System.
13–9–06 Use of Explosives.
13–9–08 Protection of Underground Mining.
13–9–09 Disposal of Coal Mine Wastes and Noncoal Mine Wastes.
13–9–10 (formerly 13–14–05) Training, Examination, and Certification of Blasters.
13–9–11 Protection of Fish, Wildlife, and Related Environmental Values.
13–9–13 Contemporaneous Reclamation.
13–9–14 Backfilling and Grading.
13–9–15 Revegetation.
13–10–01 Roads; Performance Standards.
13–13–02 Auger Mining; Additional Performance Standards.
13–13–03 Operations on Prime Farmland.
13–13–04 Mountaintop Removal Mining.
13–13–05 Steep Slope Mining.
13–13–06 Coal Preparation Plants and Support Facilities Not Located at or near the Mine Site or Not within the Permit Area for a Mine.
13–14–01 Inspections.
13–14–02 Enforcement.
13–14–03 Civil Penalties.
13–14–04 Petitions for Award of Costs and Expenses.

(2) Addition of the following rules to Chapter 1501 of the Ohio Administrative Code:

13–1–13 Rule References.
13–7–08 Bond Release Conference.
13–14–05 Informal Conferences.

(3) Deletion of the following rules from Chapter 1501 of the Ohio Administrative Code:

13–1–07 Applicability.
13–3–02 Definitions—Valid Existing Rights.
13–13–08 Dams Constructed of Waste Materials.

(4) Revision of Rule 1513–3–03 of the Ohio Administrative Code to prohibit ex parte contacts between the Reclamation Board of Review and representatives of parties appearing before it.

(5) Revision of Rule 1513–3–08 of the Ohio Administrative Code to prohibit the granting of temporary relief when the relief sought is the issuance of a denied permit application.

(6) Revision of paragraphs (H)(2) and (H)(3) of section 1513.16 of the Ohio Revised Code to delete provisions for automatic approval of bond release applications if the Chief fails to act upon them within specified timeframes.

(7) Revision of paragraph (F) of section 1513.18 of the Ohio Revised Code to delete language allowing the State to delay reclamation of forfeiture sites until all collection efforts have been exhausted.

* * * * *

(gg) With the exception of the provision noted in § 935.12 of this part, the following amendment, as submitted to OSMRE on May 24, 1988, is approved effective December 22, 1988: Program Amendment Number 34, which consists of revisions to the following rules of Chapter 1501 of the Ohio Administrative Code: 13–1–02, 13–4–03, 13–4–04, 13–4–05, 13–4–13, 13–4–14, 13–7–03, 13–7–04, 13–7–05, 13–9–04, 13–9–07, 13–9–09, 13–9–14, 13–9–15, 13–10–01, 13–14–02 and 13–14–05. The revisions affect a number of program areas, including definitions; permit application requirements and informal conference procedures; bonding and bond release requirements; precipitation event design standards; performance standards for excess spoil and mine waste disposal, backfilling and grading, impoundments, water monitoring and revegetation; and enforcement procedures for show-cause orders.

4. In § 935.16, the heading is revised, paragraphs (e) and (h) are removed, and new paragraphs (a) and (b) are added to read as follows:

§ 935.16 Required regulatory program amendments.

* * * * *

(a) By September 1, 1989, Ohio shall submit a proposed amendment to OAC 1501:13–1–02(HHHH), the definition of "previously mined area," to exclude all lands on which there existed any surface coal mining operations subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(b) By September 1, 1989, Ohio shall submit a proposed amendment to OAC 1501:13–1–02(MMMM), the definition of "property to be mined," or otherwise amend its program to require that permit applications identify all owners of record of mineral estates to be removed or displaced by surface excavation activities during the proposed coal mining operations.

* * * * *

[FR Doc. 88–29394 Filed 12–21–88; 8:45 am]
BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.
ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1812(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement

purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119.)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1), and 1812 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: December 16, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. Section 36.4212 is amended by revising paragraphs (a) and (d) to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1812 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(Authority: 38 U.S.C. 1812(f))

(1) Effective December 19, 1988, 13 percent simple interest per annum for a loan which finances the purchase of a manufacturer home unit only.

(2) Effective December 19, 1988, 12 and ½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective December 19, 1988, 12 and ½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

(d) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1812(a)(1)(f)) may specify an interest rate in excess of the rate specified in paragraph (a) (1), or (2), or (3) of this section provided the interest rate of the refinancing loan is less than the interest rate of the VA loan being refinanced.

(Authority:38 U.S.C. 1812 (f) and (g).)

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10 and ½ per centum per annum, effective December 19, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 and ½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1).)

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10-¾ per centum per annum, effective December 19, 1988, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10-¾ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1).)

(c) Effective November 1, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1).)

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10 and ½ percent per annum. Loans solely for the purpose of energy

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conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12 percent per annum.

(Authority: 38 U.S.C. 1611(d)(1) and (2)(A).)

* * * * *

[FR Doc. 88-29324 Filed 12-21-88; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6944]

Changes in Flood Elevation Determinations; Sacramento, CA

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001 through 4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O.12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California	Sacramento	Unincorporated areas	Dec. 2, 1988, Dec. 9, 1988, *The Sacramento Bee.*	The Honorable Jim Streng, Chairman, Sacramento County Board of Supervisors, 827 Seventh Street, Sacramento, California 95814.	Nov. 18, 1988	060262 C

Issued: December 15, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-29327 Filed 12-21-88; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Dade and Orange Counties, FL

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer

coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001 through 4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida	Orange (Docket No. FEMA-6936).	Unincorporated areas	Aug. 18, 1988, Aug. 25, 1988, *The Orlando Sentinel*.	The Honorable Thomas R. Sewell, County Administrator, Orange County, P.O. Box 1393, Orlando, FL 32802-1393.	Aug. 10, 1988	120179
Florida	Dade (Docket No. FEMA-6936).	Unincorporated areas	Aug. 18, 1988, Aug. 25, 1988, *Miami News*.	The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 N.W. 1st Street, Suite 2910, Miami, FL 33128-1971.	Aug. 10, 1988	125098

Issued: December 15, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-29328 Filed 12-21-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Georgia, et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

PART 67—AMENDED

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
GEORGIA	
Bainbridge (city), Decatur County (FEMA Docket No. 6934)	
Big Slough Tributary:	
About 1400 feet downstream of U.S. Highway 84	*105
About 0.80 mile upstream of Twin Lakes Drive	*108
Maps available for inspection at the City Hall, Building Inspection Department, 1001 South Broad Street, Bainbridge, Georgia.	
LOUISIANA	
Patterson (town), St. Mary Parish (FEMA Docket No. 6930)	
Wax Lake East:	
Intersection of Lucia Drive and David Street	*3
Intersection of Pietro Drive and Bernard Drive	*3
Maps available for inspection at the Town Hall, 203 Park Street, Patterson, Louisiana.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
MINNESOTA	
Windom (city), Cottonwood County (FEMA Docket No. 6930)	
Perkins Creek:	
Just downstream of Sixth Avenue	*1354
Just downstream of U.S. Highway 71	*1359
Just upstream of U.S. Highway 71	*1364
About 2100 feet upstream of U.S. Highway 71	*1367
Maps available for inspection at the City Hall, 444 Ninth Street, Windom, Minnesota.	
MISSOURI	
Berkeley (city), St. Louis County (FEMA Docket No. 6934)	
Coldwater Creek:	
About 1850 feet downstream of Norfolk Southern Railway	*520
About 1350 feet upstream of Norfolk Southern Railway	*521
Maps available for inspection at the City of Berkeley, Engineering Department, 6140 North Hanley Street, Berkeley, Missouri.	
NORTH CAROLINA	
Durham (city), Durham County (FEMA Docket No. 6934)	
Sandy Creek:	
At mouth	*253
About 1000 feet upstream of Garrett Road	*258
Just upstream of U.S. Highway 15 and 501	*267
Maps available for inspection at the City Hall, Planning and Community Development, 101 City Hall Plaza, Durham, North Carolina.	
Pender County (unincorporated areas) (FEMA Docket No. 6934)	
Atlantic Ocean/Northeast Cape Fear River: From the mouth of the Cape Fear River to State Route 210	*8
Atlantic Ocean/Futch Creek: Along Futch Creek from about 6000 feet downstream of SR 1571 to about 2500 feet upstream of SR 1571	*11
Island Creek:	
Just upstream of SR 1002	*8
About 1.3 miles upstream of SR 1002	*12
Maps available for inspection at the County Administration Annex, 300 East Fremont, Burgaw, North Carolina.	
TEXAS	
Clute (city), Brazoria County (FEMA Docket No. 6929)	
Gulf of Mexico: Flooding on Oyster Creek at eastern portion of corporate limits (1,000 feet east of intersection of County Routes 503 and 251)	*10
Oyster Creek:	
At river mile 10.6	*10
Approximately 650 feet east of Ash Lake	*10
Approximately 0.5 mile north of point where County Route 226 crosses the eastern corporate limits	*11
Approximately 300 feet north of intersection of Kyle Road and County Route 749	*13
Approximately 1,000 feet north of County Route 286 along Oyster Creek	*14
At downstream side of County Route 288	*15
Maps available for inspection at the City Hall, 104 East Main, Clute, Texas.	
Richwood (city), Brazoria County (FEMA Docket No. 6929)	
Oyster Creek:	
At downstream corporate limits	*13
At upstream corporate limits	*15

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Maps available for inspection at the City Hall, 215 Halbert Street, Richwood, Texas.	
VIRGINIA	
Smyth County (unincorporated areas) (FEMA Docket No. 6930)	
Staley Creek:	
At corporate limits	*2,198
Approximately 780 feet upstream from corporate limits	*2,210
Maps available for inspection at the Building Inspection Department, Smyth County Courthouse, Main Street, Marion, Virginia.	

Issued: December 15, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-29329 Filed 12-21-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-201; RM-5003, RM-5529]

Radio Broadcasting Services; Walton and Falmouth, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document vacates an earlier action in this proceeding substituting Channel 245A for Channel 237A at Falmouth, Kentucky, and modifying the license for Station WIOK at Falmouth accordingly, in response to the request of the licensee of WIOK. The document also dismisses petitions for reconsideration of that action as moot. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Karl A. Kensinger, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order MM Docket No. 86-201, adopted December 2, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended for Kentucky by removing Channel 245A and adding Channel 237A at Falmouth.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29369 Filed 12-21-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-224; RM-5706 and RM-5888]

Radio Broadcasting Services; Perryville, MO, Granite City and Benton, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses, at the request of the petitioner, a petition for rule making proposing the substitution of Channel 292B1 in lieu of Channel 292A at Benton, Illinois and the modification of the license of Station WQRL-FM, Benton, to specify operation on Channel 292B1. In view of the dismissal, this document substitutes Channel 226A in lieu of Channel 294A at Perryville, Missouri, and substitutes Channel 293C1 in lieu of Channel 293C2 at Granite City, Illinois. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 87-224, adopted November 4, 1988, and released November 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Missouri by removing Channel 294A and adding Channel 226A at Perryville.

3. Section 73.202(b), the FM Table of Allotments, is amended under Illinois by removing Channel 293C2 and adding Channel 293C1 at Granite City.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29370 Filed 12-21-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-67; RM-6178]

Radio Broadcasting Services; Ogdensburg, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Timothy D. Martz, allots Channel 254A to Ogdensburg, New York, as the community's second local FM service. Channel 254A can be allotted to Ogdensburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) northeast to avoid a short-spacing to Channel 201A, Brockville, Ontario, and to Station CFLY-FM, Kingston, Ontario, Canada.
The coordinates for this allotment are North Latitude 44-42-57 and West Longitude 76-26-50. Canadian concurrence in the allotment has been received since Ogdensburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: *Effective:* January 23, 1989. The window period for filing applications will open on January 24, 1989 and close on February 23, 1989.

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FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–67, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Ogdensburg, New York is amended by adding Channel 254A.

Federal Commissions Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–29368 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–71; RM–6165]

Radio Broadcasting Services; Manchester, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ohio Kentucky Radio Company, allots Channel 267A to Manchester, Ohio, as the community's first local FM service. Supporting comments were filed by Southern Ohio Christian Broadcasting Company. Channel 267A can be allotted to Manchester in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 38–41–18 and West Longitude 83–30–24. With this action, this proceeding is terminated.

DATES: *Effective:* January 23, 1989. The window period for filing applications will open on January 24, 1989 and close on February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–71, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Ohio is amended by adding the following entry: Manchester, Channel 267A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–29364 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–70; RM–6163]

Radio Broadcasting Services; Lincoln City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Matrix Media, Inc., substitutes Channel 244C2 for Channel 244A at Lincoln City, Oregon, and modifies its license for Station KCRF to specify operation on the higher powered channel. Channel 244C2 can be allotted to Lincoln City in compliance with the Commission's minimum distance separation requirements and can be used at Station KCRF's present transmitter site. The coordinates for this allotment are North Latitude 44–52–30 and West Longitude 123–59–03. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–70, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Lincoln City, Oregon, is revised by removing Channel 244A and adding Channel 244C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–29366 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–68; RM–6187]

Radio Broadcasting Services; Riverside, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Victor A. Michael, Jr., allots Channel 222A to Riverside, Pennsylvania, as the community's first local FM service. Channel 222A can be allotted to Riverside in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.5 miles) west to avoid a short-spacing to Station WMGS, Channel 225B, Wilkes-Barre, Pennsylvania. The coordinates for this allotment are North Latitude 40–57–18 and West Longitude 76–38–16. Canadian

concurrence has been received since Riverside is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: *Effective;* January 23, 1989. The window period for filing applications will open on January 24, 1989, and close on February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–68, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Pennsylvania is amended by adding the following entry, Riverside, Channel 222A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–29365 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 206, 219, 222, 225, 227, 231, 242, 245, 248, and 252

[Defense Acquisition Circular (DAC) 88–3]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules and interim rules as indicated.

SUMMARY: Defense Acquisition Circular (DAC) 88–3 amends the DoD FAR Supplement (DFARS) with respect to Government Property, no-cost storage agreements; security of Government contractor telecommunications; requirement of competition for award of grants and contracts to colleges and universities for certain purposes; small business and small disadvantaged business concerns; restrictions on employment of personnel (Alaska and Hawaii); rights in technical data, prohibitions; responsibilities of CACOs; value engineering; public relations and advertising costs; foreign selling costs; and an editorial correction. This DAC also includes an information item regarding procurement of mooring and welded shipboard anchor chain.

EFFECTIVE DATE: December 15, 1988. Comments must be received on or before January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86–1 through 86–5. Amendments made by DACs 86–6 through 86–16 were published in the **Federal Register** at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

B. Public Comments

DAC 88–3, Item I

This item is published for information purposes; comments are not necessary.

DAC 88–3, Item II

A proposed rule with request for comments were published in the **Federal Register** on May 26, 1988 (53 FR 19006), and comments were considered in preparing this final rule.

DAC 88–3, Items III through V, VIII, X, and XI

Public comments were not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures. However, comments from small entities concerning the affected DoD FAR Supplement coverage will be considered. Please cite DAR Case 88–610D.

DAC 88–3, Item VI

Comments are invited. Interested parties should submit written comments, to be considered in further rulemaking on this subject, on or before January 23, 1989 to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–300 in all correspondence related to this subject.

DAC 88–3, Item VII

Comments are invited. Interested parties should submit written comments to the address shown above on or before January 23, 1989, to be considered in further rulemaking on this subject. Please cite DAR Case 88–305 in all correspondence related to this subject.

DAC 88–3, Item IX

A proposed rule was published in the **Federal Register** on March 31, 1988 (53 FR 10409), and comments were solicited, but none were received.

C. Regulatory Flexibility Act

DAC 88–3, Item I

This item is published for information purposes; comments are not necessary. The Regulatory Flexibility Act does not apply.

DAC 88–3, Items III, IV, VIII, X, and XI

These rules do not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

DAC 88–3, Item II

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the data required to evaluate status as a small business and the reasonableness of an assertion of inability to acquire the necessary equipment is already required to

determine their status in respect to the Government contract. A Final Regulatory Flexibility Analysis has been performed and submitted to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

DAC 88–3, Item V

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. This change will impact only those small entities that have been awarded in FY 1989 construction and services contracts calling for performance in whole or in part within the States of Alaska or Hawaii, and then only if the unemployment rate for those states exceeds the national average. The number of small entities that meet this condition is considered to be insignificant in relation to the total number of small entities that do business with the Department of Defense. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

DAC 88–3, Item VI

This interim rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Act Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and must cite DAR Case 88–610D in correspondence.

DAC 88–3, Item VII

The changes in this interim rule are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* because any small entities that might be affected by the changes would already be covered by the restrictions of 10 U.S.C. 2320(a)(2)(F), as implemented in the existing DFARS 227.473–2. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments will be submitted separately and must cite DAR Case 88–610D in correspondence.

DAC 88–3, Item IX

The Department of Defense certifies that this final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* While contractors will now be required to prepare cost/price proposals when storage agreements are contemplated, the number of small businesses that will be impacted is expected to be minimal, particularly in view of the fact that this regulatory change is expected to greatly reduce the number of storage agreements. The proposed rule published in the **Federal Register** on March 31, 1988 (53 FR 10409) invited comments from small entities, but none were received.

D. Paperwork Reduction Act

DAC 88–3, Item I

This item is published for information purposes. The Paperwork Reduction Act does not apply.

DAC 88–3, Items II through VIII, X, and XI

These rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

DAC 88–3, Item IX

On November 28, 1988, OMB approved 439,050 burden hours for OMB Control Number 0704–0246. This represents an increase of 3,200 hours as a result of the proposed rule published in the **Federal Register** at 53 FR 10409, dated March 31, 1988, which is herein finalized.

D. Determination To Issue an Interim Regulation

DAC 88–3, Items VI and VII

A determination has been made under the authority of the Secretary of Defense that the coverage in these items must be issued as an interim regulation to promptly implement sections 826 and 806 respectively of the National Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100–456).

List of Subjects in 48 CFR Parts 204, 206, 219, 222, 225, 227, 231, 242, 245, 248, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–3]
December 15, 1988.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective December 15, 1988.

Note: Revisions in this DAC are issued as final rules except the revisions under Items VI and VII which are issued as interim rules.

Defense Acquisition Circular (DAC) 88–3 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Guidance for Procurement of Mooring and Welded Shipboard Anchor Chain

The DAR Council at its meeting of 30 November 1988 approved the following guidance for procurement of mooring and welded shipboard anchor chain using Fiscal Year 1988 and 1989 appropriated funds.

(a) No Fiscal Year 1989 funds shall be used to procure welded shipboard anchor and mooring chain, four inches in diameter and under, manufactured outside the United States, its territories or possessions.

(b) No Fiscal Year 1988 funds shall be used to procure mooring chain of all types, four inches or less in diameter, if such chain is manufactured outside the United States, its territories or possessions, or Canada. However, when adequate supplies of mooring chain are not available from the United States, its territories or possessions, or Canada, to meet DoD requirements on a timely basis, then this mooring chain may be procured from other countries on a case-by-case basis as determined by the Secretary (or designee) of the service concerned.

Item II—Security of Government Contractor Telecommunications

In response to National Communications Security Instruction (NACSI) 6002, "Protection of Government Contractor Telecommunications", and in an effort to improve the communications security posture of Department of Defense (DoD) contractors, DoD issued DoD Directive

5210.74, which requires all DoD components to identify telecommunications security requirements for all contract-related telecommunications, and states that the costs associated with securing contractor telecommunications shall be allowable in the same manner as other security costs. Through new programs sponsored by the NSA, telecommunications security equipment is now available to Government contractors either as Government-Furnished Property (GFP), Contractor-Acquired Property, or plant equipment.

The DAR Council has approved changes to add to the DoD FAR Supplement the requirements for contracting officers to identify telecommunications security requirements, if any, for all DoD contracts, and to ensure the implementation of telecommunications security as necessary and appropriate.

A new Subpart 204.5 and a new clause at 252.204-7008 are added to effect the above-mentioned changes.

Item III—Requirement of Competition for Award of Grants and Contracts to Colleges and Universities for Certain Purposes

DFARS 206.302-3(c) is added to implement the statutory prohibition on acquiring research and development and facilities construction from colleges and universities noncompetitively. This restriction applies to contracts entered into after *October 1, 1989.* It does not apply to the exercise of priced options on existing contracts.

Item IV—Small Business and Small Disadvantaged Business Concerns

DFARS 19.000(a) (S-70) is revised to extend the objective through Fiscal Year 1990.

Item V—Restrictions on Employment of Personnel (Alaska and Hawaii)

DFARS 222.7200 is revised to implement section 8120 of the FY 1989 Defense Appropriations Act with respect to Restrictions on Employment of Personnel in Alaska and Hawaii.

Item VI—Public Relations and Advertising Costs; Foreign Selling Costs

Section 826 of the Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100-456) amended section 2324(f) of Title 10, U.S. Code to add a new paragraph (5) which prescribes that "* * * costs to promote the export of products of the United States defense industry * * *" be allowable to the extent that certain specified conditions are met.

In addition to implementing the literal requirements of the statute, the DAR Council has also opted to allow costs associated with those promotional activities which contain significant efforts to promote exports of products of the United States defense industry because they believe that a target-based segregation of promotional costs is administratively impracticable.

DoD has determined that an interim rule is necessary to implement this coverage. Accordingly, DFARS 231.205-1 and 231.205-38 are revised to implement the change to 10 U.S.C. 2324(f). DFARS 225.7304 is also revised to make it compatible with the changes to DFARS Part 231.

Paragraph (b), "Regulations" of section 826 requires that coverage be prescribed within 90 days of enactment. Thus contracts entered into on or subsequent to that date are intended to contain this interim rule. Additionally, paragraph (b) requires that costs of the types referenced in section 826 which are incurred by a Defense contractor or subcontractor be covered by the new rules, presumably whether or not the contract references cost principles containing the revision. Thus the new regulations provide for the substance of the new rule to apply to Defense contracts which predate the effective date of the rule.

Item VII—Rights in Technical Data; Prohibitions

DFARS 227.473-2 is revised to add coverage to implement 10 U.S.C. 2305(d)(4), which was amended under section 806, Incentives for Innovation, of the FY 89 DoD Authorization Act, Pub. L. 100-456, on September 29, 1988. The statute limits the Government's authority to require that prospective developers or producers of major systems provide proposals which would enable the Government to use technical data to obtain future competition when acquiring items or components of the weapon system, where the items or components were developed exclusively at private expense.

Item VIII—Responsibilities of CACOs

DFARS 242.603 is revised to provide a more comprehensive description of Corporate Administrative Contracting Officer (CACO) functions.

Item IX—Government Property, No-Cost Storage Agreements

A memorandum of 25 November 1986 from the Under Secretary of Defense (Acquisition) prohibits use of "no-cost" storage agreements. "No-cost" is misleading as it is obvious there are costs associated with the control and care of stored property. The language proposed at DFARS 245.612-3 requires storage contracts to be separately priced and funded. A proposed rule with request for comments was published in the **Federal Register** on March 31, 1988 (53 FR 10409).

Item X—Value Engineering

The Office of Management and Budget published in the **Federal Register** on 3 February 1988 OMB Circular A-131, Value Engineering, dated January 26, 1988. The Circular, addressed to Heads of Executive Departments and Establishments, requires the use of value engineering, as appropriate, by Federal departments and Agencies to identify and reduce nonessential procurement and program costs. As a result of coverage being revised in the FAR to implement OMB Circular A-131, DFARS 248.201(a)(2) is deleted as unnecessary.

Item XI—Editorial Correction

DFARS 245.505-14(a)1 (iv), (v), and (vii) are revised to reflect the correct FAR reference instead of a DFARS reference.

Adoption of Amendments

Therefore the DoD FAR supplement is amended as set forth below.

1. The authority for 48 CFR Parts 204, 206, 219, 222, 225, 227, 231, 242, 245, 248, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. A new Subpart 204.5, consisting of sections 204.500 through 204.503, is added to read as follows:

Subpart 204.5—Security of Contractor Telecommunications

Sec.
204.500 Scope of subpart.
204.501 Definitions.
204.502 Policy.
204.503 Contract clause.

Subpart 204.5—Security of Contractor Telecommunications

204.500 Scope of subpart.

This subpart prescribes requirements for securing telecommunications between Department of Defense agencies and their contractors and subcontractors.

204.501 Definitions.

"Securing", as used in this subpart, means the application of Government-approved telecommunications security

equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this subpart, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which the individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this subpart, means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Defense agencies, contractors and subcontractors, to transmit

(a) Classified or sensitive information;

(b) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(c) Matters critical to the direct fulfillment of military or intelligence missions.

204.502 Policy.

(a) National policy provides the basis for agency regulations concerning the security of Government contractor telecommunications systems.

(b) Technical or requirements organizations initiating purchase requests shall identify to the Contracting Officer:

(1) The nature and extent of information requiring security during telecommunications and the requirement for the contractor to secure telecommunications systems for each contract;

(2) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques or services must be interoperable; and

(3) The approved telecommunications security equipment, devices, techniques or services such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(c) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts. Except as provided in paragraph (d) of this section, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with Part 45 of the FAR. In some cases, such as for communications security (COMSEC) equipment designated as a Controlled Cryptographic Item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(d) The agency head or designee may agree to provide the necessary facilities as Government-Furnished Property or authorize their acquisition as Contractor-Acquired Property if: (1) The Contractor or subcontractor is ineligible to own COMSEC equipment; or (2) the conditions of FAR 45.302–1(a) are met.

204.503 Contract clause.

The contracting officer shall insert the clause at 252.204–7008, Telecommunications Security Equipment, Devices, Techniques and Services, in solicitations and contracts when securing telecommunications is required in performance of a contract.

PART 206—COMPETITION REQUIREMENTS

3. Section 205.302–3 is added to read as follows:

206.302–3 Industrial mobilization; or engineering, developmental, or research capability.

(c) *Limitations.* 10 U.S.C. 2361 provides that the Department of Defense may not award a contract to a college or university for the performance of research or development or for the construction of a facility unless the contract is awarded using competitive procedures. For purposes of this restriction, competitive procedures include, but are not limited to, the small purchase procedures in Part 213 and the existing procedures for initiation, use and renewal of Federally Funded Research and Development Contracts, as well as the competitive procedures identified in FAR 6.102.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.000 [Amended]

4. Section 219.000 is amended by adding at the end of paragraph (a) (S–70) a new sentence reading: "Section 844 of Pub. L. 100–456 extended the objective through Fiscal Year 1990."

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.7200 [Amended]

5. Section 222.7200(a) is amended by substituting between the words "Pub. L. 98–190," and the word "require" the words "and similar sections in subsequent Defense Appropriations Acts" in lieu of the words "section 9069 of the 1987 Defense Appropriations Act, Pub. L. 99–591, and section 8046 of the 1988 Defense Appropriations Act, Pub. L. 100–202,"; and by removing the word "contract" and the word "for" the words "awarded during FY 1986, FY 1987 and FY 1988 calling".

PART 225—FOREIGN ACQUISITION

225.7304 [Amended]

6. Section 225.7304 is amended by substituting in the first sentence of paragraph (c)(1)(i)(C) between the word "costs" and the word "be" the word "may" in lieu of the words "shall not"; by adding at the end of the first sentence of paragraph (c)(1)(i)(C) following the word "requirements" the words "in accordance with DFARS 231.205–38(c) (S–70)"; and by changing in the second sentence of paragraph (c)(1)(i)(C) between the word "Provided," and the word "when" the capital "T" to a lower-case "t" for the word "that".

PART 227—PATENTS, DATA, AND COPYRIGHTS

7. Section 227.473–2 is amended by adding paragraph (b)(3) to read as follows:

227.473–2 Prohibitions.

* * * * * *

(b) * * *

(3) 10 U.S.C. 2305(d)(4) provides that, except where the Government is otherwise entitled to unlimited rights in technical data (see 227.472–3(a)), in solicitations for development or production of major systems, the contracting officer shall not require offers that would enable the Government to competitively reprocure identical items or components of the major system if the item or component was developed exclusively at private expense, unless the contracting officer detemines that:

(i) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements; or

(ii) Proposals by the original supplier of the item or component to meet mobilization requirements are

insufficient to meet the agency's mobilization needs.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

8. Section 231.205–1 is added as an interim rule, to read as follows:

231.205–1 Public relations and advertising costs.

(f)(2) Costs of shows and other special events, such as conventions and trade shows, lacking a significant effort to promote export sales of products of the U.S. defense industry, including—

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(f)(8) All public relations costs, other than those specified in FAR 31.205–1(e), whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under FAR 31.205–38(c) and DFARS 231.205–38(c) (S–70), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services. Nothing in this paragraph (f)(8) modifies the express unallowability of costs listed in FAR 31.205–1 (f)(3) through (f)(7), or DFARS 231.205–1(f)(2). The purpose of this paragraph (f)(8) is to provide criteria for determining whether costs not specifically identified should be unallowable.

(g) FAR 31.205–1(g) does not apply to the Department of Defense.

9. Section 231.205–38 is revised to read as follows:

231.205.38 Selling costs.

(b) Other market planning costs are allowable to the extent that they are reasonable and comply with the provisions of paragraph (c) (S–70) of this section.

(c) (S–70) The costs of broadly-targeted and direct selling efforts and market planning other than long-range, which are incurred in connection with a significant effort to promote export sales of products of the U.S. defense industry, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the Department of Defense provided:

(i) The costs are allocable, reasonable, and otherwise allowable under this Part and Part 31 of the FAR. However, costs normally unallowable under FAR 31.205–1(f)(5) of DFARS 231.205–1(f)(2) (i) and (iii) or 231.205–1(f)(8) are allowable under this paragraph (c) (S–70).

(ii) That, with respect to a business segment which allocates to Department of Defense contracts $2,500,000 or more of such costs in any fiscal year of such business segment, the allowable amount of such costs shall not be in excess of 110% of such costs incurred by such business segment in the previous fiscal year.

(iii) In order to comply with Pub. L. 100–456, the substance of this paragraph (c) (S–70) shall apply to all contracts (and subcontracts) of the contractor with the Department of Defense being performed by the contractor on the first day of the contractor's first full fiscal year that begins on or after the date this paragraph (c) (S–70) became effective, whether or not a contract or subcontract contains this paragraph (c) (S–70). This paragraph (c) (S–70) (iii) is effective until September 28, 1991.

(d) The cost of any selling efforts other than those addressed in FAR 31.205–38(b) or (c) or paragraph (c) (S–70) of this section are unallowable.

(e) Costs of the type identified in FAR 31.205–38(b) or (c) and in paragraphs (c) (S–70) and (d) of this section are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of FAR 31.201–6 and FAR 30.405, and such costs are not allowable merely because they are incurred in connection with allowable selling activities.

(f) Additional allowability requirements for FMS contracts are contained in DFARS 225.7304 and 225.7305.

PART 242—CONTRACT ADMINISTRATION

10. Section 242.603 is revised to read as follows:

242.603 Responsibilities.

CACOs perform the CAS functions in FAR 42.302 at the corporate level when a corporate level involvement exists. In ensuring the uniform and consistent treatment of corporate costs charged to the Government by all business segments of the corporation, the CACO should maintain close coordination with business segment ACOs.

PART 245—GOVERNMENT PROPERTY

245.505–14 [Amended]

11. Section 245.505–14 is amended by substituting at the end of paragraphs (a)1 (iv), (a)(v), and (a)(vii) the reference "FAR 45.101" in lieu of the reference "245.101" in all three places.

12. Section 245.612–3 is added to read as follows:

245.612–3 Special storage at the government's expense.

(a) Before authorizing retention of items in storage for anticipated future use, the contracting officer shall ensure that sufficient funds are available to pay the storage and any related tasks required of the contractor. The contracting officer shall ensure that retention decisions are reviewed at least annually to determine whether continued storage is appropriate.

(b) All storage contracts shall be fully funded and separately priced to include all allocable costs.

PART 248—VALUE ENGINEERING

248.201 [Amended]

13. Section 248.201 is amended by removing paragraphs (a)(2), (a)(2)(i), and (a)(2)(ii).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 252.204–7008 is added to read as follows:

252.204–7008 Security of contractor telecommunications.

As prescribed in 204.503, insert the following clause:

Telecommunications Security Equipment, Devices, Techniques and Services (Dec. 1988)

(a) Definitions.

"Securing", as used in this subpart, means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this subpart, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which the individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this subpart, means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media,

when employed by Defense agencies, contractors and subcontractors, to transmit

(a) Classified or sensitive information;

(b) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(c) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and the requirement for the Contractor to secure telecommunication systems. The Contractor agrees to secure information and systems identified in (insert the location in solicitation/contract).

(c) To provide the security, the Contractor shall use Government-approved telecommunications security equipment, devices, techniques or services, as identified in (insert location in solicitation/contract). Equipment, devices, techniques or services used by the Contractor must be compatible or interoperable with (insert location in solicitation/contract listing any telecommunications security equipment, devices, techniques, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as provided in DFARS 204.502(d), Contractors shall furnish all telecommunications security equipment, devices, techniques or services necessary to perform this contract. Contractors must meet ownership eligibility conditions for COMSEC equipment designated as Controlled Cryptographic Items (CCI).

(e) This clause, including this paragraph (e), shall be included in all subcontracts which require securing telecommunications, suitably modified to reflect the relationship of the parties.

(End of clause)

[FR Doc. 88–29355 Filed 12–21–88; 8 45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Loan and Grant Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the portion of its regulations governing Community Facility loans pertaining to insurance and fidelity bond coverage, to provide additional guidance on defeasance of FmHA loans, and to make various minor corrections. The primary intended effect is to allow greater flexibility for borrowers required to carry insurance and fidelity bond coverage.

DATE: Comments must be received on or before January 23, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Management and Budget, Office of Information and regulatory Affairs, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard Kelley, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to be to provide better service to rural communities.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 23, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

The primary purpose of this package is to modify the provisions of FmHA regulations relating to insurance and fidelity bond coverage for Community Programs borrowers. Additional guidance on defeasance will also be provided. Finally, a number of minor correction-type changes to the regulations may be included. The alternatives are to do nothing or to proceed with revision of the regulation. FmHA believes that making the proposed changes will result in more efficient and equitable conduct of internal Agency administrative activities and provision of service to the public.

The primary changes include the following:

1. Section 1942.17(j)(3)(i)(A) clarifies that insurance requirements are to be based on the FmHA-financed facility.

2. Section 1942.17(j)(3)(i)(C) establishes policy governing the use of deductibles.

3. Section 1942.17(j)(3)(i)(E) clarifies that borrowers may be required to submit evidence of the maximum amount of funds on hand during the year to allow FmHA to determine the adequacy of fidelity bond coverage.

4. Section 1942.17(j)(3)(ii)(A) allows the loan approval official to approve an amount of fidelity bond coverage lower than the normal requirement.

5. Section 1942.17(j)(3)(ii)(B) clarifies that blanket fidelity bond coverage is acceptable, and that other forms of coverage are acceptable if they fulfill essentially the same purpose as a fidelity bond.

6. Section 1942.17(j)(3)(ii)(C) clarifies that for deductibles, the full amount involved must be set aside and restricted for use only for the intended purpose.

7. Section 1942.18(d)(4) is revised to provide current references to guidelines used in designing FmHA-financed health care facilities.

8. Section 1942.19(h)(10)(iii) is revised to further emphasize that defeasance is not authorized in connection with FmHA loans due to conflict with the statutory requirement concerning refinancing.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—housing and

community development, Loan security, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is proposed to be amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by revising paragraph (j)(3) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(j) * * *

(3) *Insurance and fidelity bonds.* Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Such coverage must then be maintained for the life of the loan.

(i) *General.* The requirements below apply to all types of coverage determined necessary:

(A) The purpose of insurance and fidelity bond coverage is to protect the government's financial interest based on the facility financed. For example, fidelity bond coverage for an FmHA-financed water system may be based solely on funds attributable to the water system if such funds are kept separate from funds relating to other operations of the borrower.

(B) Insurance requirements shall normally not exceed those proposed by the applicant/borrower if the proposed coverage is determined by the loan approval or servicing official to be adequate to protect the government's financial interest.

(C) In unusual circumstances the use of a deductible, i.e., an initial amount of each claim to be paid by the policyholder, may be allowed if the applicant/borrower provides evidence acceptable to FmHA that its resources would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Proposed types and amounts of insurance coverage will normally be reviewed by the applicant/borrower's attorney and insurance provider(s). The types and amounts must in all cases be adequate to protect the government's interest based on the type of facility financed and the type of security involved. However, applicants/borrowers are strongly encouraged to maintain adequate insurance for all operations even if not required by FmHA.

(E) Except for the fidelity bond, copies of policies do not have to be maintained in the case file. However, borrowers must furnish evidence to FmHA annually that adequate coverage is in effect. This may consist of a listing of policies and coverage amounts in annual audits, yearend reports, or other documentation. To evaluate the adequacy of fidelity bond coverage, FmHA may require a certification or other evidence of the maximum amount of funds on hand at any time during the previous fiscal year.

(ii) *Fidelity bond.* Applicants/borrowers will provide fidelity bond coverage for all persons entrusted with the receipt and/or disbursement of funds and the custody of valuable property. Coverage may be provided either for all individual positions involved, or through "blanket" coverage providing protection for all appropriate employees and/or officials.

(A) Coverage will normally equal the maximum amount of funds on hand at any time exclusive of funds deposited in a supervised bank account. However, a lesser amount may be approved by the FmHA loan approval official if he or she determines and documents that the coverage is considered adequate to protect the government's financial interest. Such a determination must be based on consideration of the amounts involved; estimated impact a loss would have on the facility or repayment of the loan; positions with and division of responsibility for receipt and/or disbursement of funds and custody of valuable property; internal control procedures which afford protection against losses; the nature of the security for the loan; and operating history.

(B) Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used. Similar forms may be used if determined acceptable to FmHA. Policies or riders covering employee theft and dishonesty are acceptable if it is determined by FmHA that they fulfill essentially the same purpose as a fidelity bond.

(C) If a deductible is approved by FmHA, funds equal to the deductible amount must be set aside and restricted for use only to cover losses requiring payment of the deductible.

(D) FmHA will be named co-obligee if security includes a lien on revenues from the facility financed unless prohibited by State law.

(E) A certified power of attorney with effective date will be attached to each bond.

(iii) *Other types of coverage.* The following types of coverage must be maintained if appropriate for the type of project and entity involved:

(A) *Property insurance.* Fire and extended coverage must be maintained on all above-ground structures when the security for the loan is a lien on such structures or they are needed to produce revenue pledged as security for the loan. An exception may be granted for reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if it is determined and documented that such structures are not normally insured and the government's interest will remain adequately protected. If such insurance is required, borrower-owned equipment or machinery located in the insured structures must also be covered. Property insurance on subsurface lift stations is not required except for the value of electrical and pumping equipment therein. If FmHA has a lien on the property, FmHA must normally be listed as mortgagee on the policy.

(B) *Liability and property damage insurance.* Requirements for liability and property damage insurance will be established based on the type of entity involved and the nature of the operation.

(C) *Malpractice insurance.* The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) *Flood insurance.* Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(E) *Worker's compensation.* The borrower will carry worker's compensation insurance for employees in accordance with State laws.

* * * * *

3. Section 1942.18 is amended by revising paragraph (d)(4) to read as follows:

§ 1942.18 Community facilities—planning, bidding, contracting, constructing.

* * * * *

(d) * * *

(4) *Health Care Facilities.* The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0–913962–96–1, "Guidelines for Construction and Equipment of Hospital and Medical Facilities," 1987 Edition. The facility must also meet the life/safety aspects of the *1985* edition of the National Fire Protection Association

(NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. Under § 1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

4. Section 1942.19 is amended by revising paragraph (h)(10)(iii) to read as follows:

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

* * * * *

(h) * * *

(10) * * *

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement.

* * * * *

Dated: November 17, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-29318 Filed 12-21-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 88-199]

Animals Destroyed Because of Scrapie

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period for advance notice of proposed rulemaking.

SUMMARY: This document extends the comment period by 60 days, until March 6, 1989, for an advance notice of proposed rulemaking entitled "Animals Destroyed Because of Scrapie." This action will provide interested persons with additional time to prepare comments on the notice of proposed rulemaking.

DATE: Writtern comments must be postmarked or received on or before March 6, 1989.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-131. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Chester A. Gipson, Senior Staff Veterinarian, Swine, Poultry, and Miscellaneous Diseases Staff, VS, APHIS, USDA, Room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

SUPPLEMENTARY INFORMATION: On November 2, 1988, the Animal and Plant Health Inspection Service published in the **Federal Register** (53 FR 44200-44202, Docket Number 88-131) an advance notice of proposed rulemaking to discontinue the Scrapie Eradication program and to remove the regulations concerning animals destroyed because of scrapie (9 CFR Part 54).

The advance notice provided that written comments would be accepted for 60 days until January 3, 1989. We have received a request from industry associations that we extend the comment period for 60 days to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to extend the comment period. Accordingly, we are extending this comment period for 60 days, until March 6, 1989.

Done in Washington, DC, this 16th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-29320 Filed 12-21-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-159-AD]

Airworthiness Directives; Short Brothers Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Short Brothers Model SD3-60 series airplanes, which would require repetitive inspections of the horizontal stabilizer rear spar web fuselage attachment fitting area for defective rivets, and repair, if necessary. This proposal is prompted by reports of failure of rivets connecting the stabilizer rear spar web to the fuselage attachment fittings due to vibration of the tailplane during takeoff. This condition, if not corrected, could lead to loss of the structural integrity of the attachment of the horizontal stabilizer to the fuselage and reduced life of the tailplane.

DATE: Comments must be received no later than February 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-159-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, Librarian for Service Bulletins, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of

this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Airworthiness Rules Docket No. 88-NM-159-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilaterial airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Short Brothers Model SD3-60 series airplanes. The manufacturer has reported failure of the rivets connecting the horizontal stabilizer rear spar web fuselage attachment fittings due to vibration of the tailplane during takeoff. This condition, if not corrected, could lead to loss of structural integrity of the attachment of the horizontal stabilizer to the fuselage and reduced life of the tailplane.

Short Brothers has issued Service Bulletin SD360-15-16, dated April 1988, which describes procedures for inspecting the horizontal stabilizer for defective rivets, and repair, if necessary. The CAA has classified this service bulletin as mandatory.

Short Brothers has also issued Service Bulletin SD360-55-12 (Modification 7998), Revision 2, dated November 1986, which describes procedures for modification of the horizontal stabilizer spar webs. Accomplishment of this modification terminates the need for the repetitive inspections described above. The CAA did not classify this service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the spar webs of the horizontal stabilizer for defective rivets, and repair, if necessary, in accordance with Service Bulletin SD360-15-16. An optional terminating action is provided as modification the horizontal stabilizer spar webs in accordance with Service Bulletin SD360-55-12, Revision 2.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,320.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3-60 series airplanes, serial numbers SH3601 through SH3691 and SH3694, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage, accomplish the following:

A. Visually inspect, in accordance with the schedule listed below, the forward face of the rear spar web and the aft face of the front spar web for defective rivets between fuselage attach fitting at 12.5" left and right of the airplane center line, in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-16, dated April 1988.

1. For airplanes Serial Numbers SH3680 through SH3691 and SH3694, and airplanes affected by this AD which have used only 15° take-off flap setting since before or upon reaching 5,000 flights, inspection is required within the next 100 flights after the effective date of this AD or prior to the total accumulatioin of 12,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,500 flights.

2. For all other airplanes affected by this AD, inspection is required within the next 100 flights after the effective date of this AD or prior to the accumulation of 8,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,000 flights.

B. If defective rivets are found, prior to further flight, repair in accordance with Part II of Short Brothers Model SD3-60 Service Bulletin SD360-55-16, dated April 1988. After repair, continue the repetitive inspections accordance with paragraph A., above.

C. The repetitive inspections required by paragraphs A. and B., above, may be terminated following completion of the modification of the horizontal stabilizer spar webs (Modification 7998), in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-12, Revision 2, dated November 1986.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Strandardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, Librarian for Service Bulletin, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certificatcn Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 8, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-29312 Filed 12-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASO-22]

Proposed Revision of Control Zone, Anderson, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Anderson, South Carolina control zone by changing the hours of operation from part-time to full-time. This proposed change is a result of weather observations now being taken at the Anderson County Airport. This action would also correct the geographic position coordinates of the Anderson County Airport and Correct arrival area extensions based on the Electric City VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Anderson County Radio Beacon (RBN).

DATE: Comments must be received on or before January 23, 1989.

ADDRESSES: Send comment on the proposal in triplicate to:
Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-22, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Melvin Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Anderson, South Carolina, control zone by changing the hours of operation from part-time to full-time. This change is a result of weather observations now being taken at the Anderson County Airport. This action would also correct the geographic position coordinates of the Anderson County Airport, and correct arrival area extensions based on the Electric City VORTAC and the Anderson County RBN. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Anderson, South Carolina [Amended]

By deleting the existing description and adding the following:

Within a 5-mile radius of Anderson County Airport (lat. 34°29'42"N., long. 82°42'33"W.); within 1.5 miles each side of Electric City VORTAC 035° radial, extending from the 5-mile radius zone to 1.5 miles northeast of the VORTAC and within 3 miles each side of the 172° bearing from the Anderson County RBN (lat. 34°29'53"N., long. 82°42'31"W.), extending from the 5-mile radius zone to 8.5 miles south of the RBN.

Issued in East Point, Georgia, on December 9, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-29313 Filed 12-21-88; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6945]

Proposed Flood Elevation Determinations; Mississippi et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entitites. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

Proposed Modified Base Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Mississippi	Unincorporated areas of Rankin County.	Richland Creek	About 2400 feet downstream of State Highway 468.	*316	*316
			About 4400 feet upstream of State Highway 471.	*340	*338
			About 3500 feet upstream of Interstate Highway No. 20.	*373	*373
Maps available for inspection at the Rankin County Tax Assessor's Office, 401 North Street, Brandon, Mississippi. Send comments to The Honorable Ralph Moore, President, Rankin County Board of Supervisors, 110 Timber Street, Brandon, Mississippi 39042.					
New Jersey	Ramsey, Town, Bergen County	Valentine Brook Tributary No. 2.	Upstream of Private Road (approximately 865 feet upstream of South Central Avenue).	*333	*332
			Downstream side of East Main Street	*339	*340
Maps available for inspection at the Borough Building, 33 North Central Avenue, Ramsey, New Jersey. Send comments to The Honorable Emil L. Porfido, Mayor of the Borough of Ramsey, Bergen County, 33 North Central Avenue, Ramsey, New Jersey 07446.					
New York	Oneida, Village, Oneida County	Oneida Creek	Most downstream corporate limits	*429	*427
			Most upstream corporate limits	*453	*452
Maps available for inspection at 17 W. 2nd Street, Oneida Castle, New York. Send comments to The Honorable James Campbell, Mayor of the Village of Oneida Castle, Oneida County, 17 W. 2nd Street, Oneida Castle, New York 13421.					
North Carolina	Unincorporated areas of Surry County.	Stewarts Creek	At confluence with Ararat River	*990	*985
			About 0.8 miles upstream of SR 2000	*993	*993
		Lovills Creek	At mouth	*991	*991
			Just upstream of U.S. Route 52 Bypass	*993	*991
			About 2.1 miles upstream of Independence Boulevard.	*1,051	*1,051
		Ararat River	At confluence of Stewarts Creek	*990	*985
			Just upstream of Linville Road	*1,029	1,032

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 1,100 feet downstream of State Road 104.	*1,067	*1,068
		Tumbling Rock Branch	Just upstream of mouth	None	*1,027
			Just downstream of Private Road	None	*1,057
			Just upstream of Private Road	None	*1,062
			Just downstream of Tumbling Rock Lake Dam	None	*1,081
			Just upstream of Tumbling Rock Lake Dam	None	*1,102
			Just downstream of Westlake Drive	None	*1,121
			Just upstream of Westlake Drive	None	*1,135
			Just downstream of Boggs Drive	None	*1,178
		Tumbling Rock Branch	Just upstream of Boggs Drive	None	*1,185
			About 820 feet upstream of Boggs Drive	None	*1,191

Maps available for inspection at the Planning and Development Office, Courthouse Square, Dobson, North Carolina.

Send comments to The Honorable Sam Couch, Chairman, Surry County Board of Commissioners, P.O. Box 706, Dobson, North Carolina 27017.

North Dakota	City of Fargo, Cass County	Red River of the North	Ponded Area located approximately 100 feet South of County Road 6 and approximately 2,200 feet east of 25th Street South.	*904	*903
			Ponded area located immediately South of County Road 6 and approximately 2,600 feet East of 25th Street South.	None	*904

Maps are available for review at the City Engineer's office, 306 North Fourth Street, Fargo, North Dakota.

Send comments to The Honorable John G. Lindgren, Mayor, City of Fargo, City Hall, 200 North Third Street, Fargo, North Dakota 58102.

Pennsylvania	Morrisville, borough, Bucks County.	Delaware River	Downstream corporate limits	*16	*20
			Approximately 100 feet upstream of U.S. Route 1.	*21	*22

Maps available for inspection at 35 Union Street, Morrisville, Pennsylvania.

Send comments to The Honorable William Thompson, Mayor of the Borough of Morrisville, Bucks County, 35 Union Street, Morrisville, Pennsylvania 19067.

Texas	Pearland, city, Brazoria and Harris Counties.	Clear Creek	Approximately .52 mile downstream of downstream corporate limits.	*32	*31
			At upstream corporate limits	*48	*47

Maps available for inspection at the City Hall, Department of Public Works, 3519 Liberty Drive, Pearland, Texas.

Send comments to The Honorable Tom Reid, Mayor of the City of Pearland, Brazoria and Harris Counties, P.O. Box 2068, Pearland, Texas 77588.

Virginia	Craigsville, town, Augusta County.	Taylor Hollow	Approximately 70 feet upstream of State Route 42.	*1,540	*1,541
			Approximately 500 feet upstream of upstream corporate limits.	*1,556	*1,566

Maps available for inspection at 6 East Johnson Street, Staunton, Virginia.

Send comments to The Honorable Richard Fox, Mayor of the Town of Craigsville, Augusta County, P.O. Box 237, Craigsville, Virginia 24430.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: December 15, 1988.

[FR Doc. 88-29325 Filed 12-21-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen. Docket No. 87-24]

Program Exclusivity in the Cable and Broadcast Industries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: Action taken herein extends the time period for filing comments in response to the Further Notice of Proposed Rule Making in Gen. Docket No. 87-24. This Further Notice addresses matters relating to the ability of television broadcasters to obtain exclusive rights in the programming they purchase. The extension of time was requested by Southern Broadcast Corporation of Sarasota, Inc., and WMUR-TV, Inc., in a joint filing, and by United Communications Corp.

DATES: Comments due January 17, 1989; replies due February 3, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 73 and 76

Broadcast television, Cable television.

Order Granting Motions For Extension of Time For Filing Comments

In the matter of amendment of Parts 73 and 76 of the Commission's Rules relating to program exclusivity in the cable and broadcast industries; Gen. Docket No. 87-24.

Adopted: November 30, 1988.

Released: December 2, 1988.

By the Chief, Mass Media Bureau.

1. On October 13, 1988, the Commission adopted a Further Notice of Proposed Rule Making (Further Notice), 3 FCC Rcd 6171, in the above-captioned proceeding. This Further Notice addresses possible changes in a number of rules relating to the ability of television broadcasters to obtain exclusive rights in the programming they purchase *vis-a-vis* cable television

systems carrying distant broadcast signals and against other television broadcast stations. The deadlines for filing comments and reply comments in this proceeding are December 12, 1988, and December 27, 1988, respectively.

2. On November 22, 1988, Southern Broadcast Corporation of Sarasota and WMUR–TV, Inc., filed a joint petition requesting that the time for filing comments in this proceeding be extended to January 26, 1989. On November 29, 1988, United Communications Corp. submitted a motion for extension of time to file comments also asking the Commission to extend the comment deadline to January 26, 1989. Petitioners indicate that more time is needed to collect and evaluate the extensive data sought by the Commission and to respond to the range of issues raised in the Further Notice.

3. As set forth in § 1.46 of the Commission's rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rule making proceedings shall not be routinely granted. However, we note that the Further Notice raises numerous issues concerning several different program exclusivity rules and therein we specifically state our desire for additional information to develop a comprehensive record before deciding these matters. Thus, it appears reasonable to provide parties with sufficient time to compile the data needed to analyze these issues. However, given our desire to conclude this proceeding as expeditiously as possible, we will grant a more limited extension than that requested by the petitioners. Therefore, we will extend the deadline for filing comments to January 17, 1989, and the deadline for replies to February 3, 1989.

4. Accordingly, *It Is Ordered,* that the joint petition for extension of time filed by Southern Broadcast Corporation of Sarasota and WMUR–TV, Inc., and the motion for extension of time to file comments filed by United Communications Corp. *Are Granted* to the extent specified in paragraph 3, *supra. It Is Further Ordered* that the time for filing comments and reply comments in this proceeding *Are Extended* to January 17, 1989, and February 3, 1989, respectively.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.45 of the Commission's rules.

6. For further information concerning this proceeding, contact Marcia Glauberman, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88–29371 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

VOL 53 ISS 246 DE 22 1988 UMI

Notices

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 16, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Administration Building, Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• *Agricultural Stabilization and Conservation Service*

Reporting Requirements for Unmarketed Tobacco in 7 CFR Parts 724, 725, and 726
MQ–108, MQ–108–1
On occasion; Annually
Farms; 300,000 responses; 20,170 hours; not applicable under section 3504(h)
Sarah Matthews (202) 475–5012

Extension

• *Agricultural Cooperative Service*

Compliance Review (Farmer Cooperatives)
ACS–40
On occasion
Businesses or other for-profit; 30 responses; 15 hours; not applicable under section 3504(h)
Charles A. Kraenzle (202) 653–7213

• *Forest Service*

Volunteer Application for Natural Resource Agencies
OF–301
Other; One-time only
Individuals or households; 57,200 responses; 14,100 hours; not applicable under section 3504(h)
Donld T. Hansen (202) 535–0927

• *Agricultural Marketing Service*

Cranberries Grown in the States of MA, RI, CT, NJ, WI, MI, MN, OR, WA, and Long Island in the State of New York, Marketing Order No. 929
None
Recordkeeping; Annually
Businesses or other for-profit; 1,431 responses; 703 hours; not applicable under section 3504(h)
Virginia M. Olson (202) 475–3930

New Collection

• *Agricultural Marketing Service*

Marketing Agreement for Proposed Marketing Order for Potatoes Grown in the High Plains of Texas and New Mexico
None
Annually
Farms; 144 responses; 25 hours; not applicable section 3504(h)
Virginia M. Olson (202) 475–3930

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 88–29319 Filed 12–21–88; 8:45 am]
BILLING CODE 3410–01–M

Soil Conservation Service

Pony Creek Watershed, Kansas and Nebraska

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: James N. Habiger, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001 through 1008, in the State of Kansas, is hereby providing notification that a record of decision to proceed with the installation of the Pony Creek Watershed is available. Single copies of this record of decision may be obtained from James N. Habiger at the address shown below.

FOR FURTHER INFORMATION CONTACT: James N. Habiger, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401 Telephone 913–823–4565.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 12, 1988.

James N. Habiger,
State Conservationist.

[FR Doc. 88–29377 Filed 12–21–88; 8:45 am]
BILLING CODE 3410–16–M

Deauthorization of Federal Funding; Moores Creek Watershed, Alabama

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Moores Creek Watershed Project, Chambers County, Alabama, effective on November 30, 1988.

FOR FURTHER INFORMATION CONTACT: E. V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, (205) 821–8070.

BEST COPY AVAILABLE

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: December 14, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88-29448 Filed 12-21-88; 8:45 am]

BILLING CODE 3410-16-M

CENTRAL INTELLIGENCE AGENCY

Survivor and Health Insurance Benefit Entitlements Under the Central Intelligence Agency Retirement and Disability System for Certain Former Spouses Divorced Prior to 15 November 1982

Qualified former spouses should respond by 1 April 1989 to the address Listed below.

In accordance with the Intelligence Authorization Act for Fiscal Year 1987 (P.L. 99-569), effective 1 October 1986, certain former spouses who were divorced from Central Intelligence Agency employees, former employees, and retirees prior to 15 November 1982 may be entitled to receive survivor benefits equal to 55 percent of the participant's annuity. The Act also permits such former spouses divorced prior to 7 May 1985 to enroll in the Federal Employees Health Benefits Program (FEHBP) in certain circumstances. Eligibility is based on at least 10 years of marriage to a Central Intelligence Agency Retirement and Disability System (CIARDS) participant during his or her creditable service, at least 5 years of which must have been spent outside the United States together. Certain additional criteria must also be met.

This survivor annuity is financed solely by a special appropriation to the CIARDS fund, and in no way affects the participant's retirement annuity or any entitlements in favor of any other individual (a current spouse, for instance) based upon the participant's annuity.

The deadline for applying for these benefits is 1 April 1989. For further information, please write to the following address:

Central Intelligence Agency, Chief, Retirement Division, Post Office Box 1925, Washington, DC 20013.

Date: December 12, 1988.

Henry P. Mahoney,

Associate Deputy Director for Administration.

[FR Doc. 88-29321 Filed 12-21-88; 8:45 am]

BILLING CODE 6310-02-M

New Retirement Benefit Under the Central Intelligence Agency Retirement and Disability System for Certain Former Spouses Divorced After 15 November 1982

Qualified former spouses should respond by 2 June 1990 to the address listed below.

In accordance with the Intelligence Authorization Act for Fiscal Year 1989 (Pub. L. 100-453), certain former spouses who were *divorced after* 15 November 1982 from Central Intelligence Agency employees, former employees, and retirees who *retired before* 15 November 1982 may be eligible to receive a lifetime annuity equal to a pro rata share of 50 percent of the participant's annuity. Eligibility is based on at least 10 years of marriage to a Central Intelligence Agency Retirement and Disability System (CIARDS) participant during his or her creditable service, at least 5 years of which were spent outside the United States together. Certain additional criteria must also be met.

The lifetime annuity is financed solely by a special appropriation to the CIARDS fund, and in no way affects the participant's retirement annuity or any entitlements in favor of any other individual (a current spouse, for instance) based upon the participant's annuity. The effective date of this provision is 2 December 1987.

The deadline for applying for this benefit is 2 June 1990. For further information, please write to the following address:

Central Intelligence Agency, Chief, Retirement Division, Post Office Box 1925, Washington, DC 20013.

Date: December 12, 1988.

Henry P. Mahoney,

Associate Deputy Director for Administration.

[FR Doc. 88-29322 Filed 12-21-88; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 403]

Resolution and Order Approving the Application of the Greater Detroit Foreign-Trade Zone, Inc., for Special-Purpose Subzones at the General Motors Plants in Detroit and Orion Township, MI

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, filed with the Foreign-Trade Zones Board (the Board) on August 17, 1987, requesting special-purpose subzone status for two auto manufacturing plants of General Motors Corporation located in Detroit and in Orion Township, Michigan, adjacent to the Detroit Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

FOREIGN-TRADE ZONES BOARD, WASHINGTON, DC

Grant of Authority To Establish foreign-Trade Subzones at General Motors Plants in the Detroit, Michigan, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trades Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the

establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 70, has made application (filed August 17, 1987, FTZ Docket 11–87, 52 FR 32821) in due and proper form to the Board for authority to establish special-purpose subzones at the automobile manufacturing plants of General Motors Corporation (GM) in Detroit (Detroit/Hamtramck Plant) and Orion Township, Michigan;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed August 17, 1987, the Board hereby authorizes the establishment of subzones at two of GM's Detroit area plants, designated on the records of the Board as Foreign-Trade Subzone Nos. 70K (Detroit/Hamtramck Plant) and 70L (Orion Plant) at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Activiation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–29402 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 404]

Resolution and Order Approving the Application of the Greater Detroit Foreign-Trade Zone, Inc., for a Special-Purpose Subzone at the General Motors Complex in Lansing, MI

Resolution and Order

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, filed with the Foreign-Trade Zones Board (the Board) on August 18, 1987, requesting special-purpose subzone status for the automobile manufacturing complex of General Motors Corporation located in Lansing, Michigan, adjacent to the Detroit Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

FOREIGN-TRADE ZONES BOARD, WASHINGTON, DC

Grant of Authority to Establish a Foreign-Trade Subzone at the General Motors Complex in Lansing, Michigan

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 70, has made application (filed August 18, 1987, FTZ Docket 12–87, 52 FR 32822) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing complex of General Motors Corporation (GM) in Lansing, Michigan;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed August 18, 1987, the Board hereby authorizes the establishment of a subzone at GM's Lansing, Michigan, complex, designated on the records of the Board as Foreign-Trade Subzone No. 70M at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the

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revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-29401 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 405]

Resolution and Order Approving the Application of the St. Louis County, Port Authority For a Special-Purpose Subzone at the General Motors Plant in Wentzville, MO

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the St. Louis County Port Authority, grantee of FTZ 102, filed with the Foreign-Trade Zones Board (the Board) on September 4, 1987, requesting special-purpose subzone status for the auto manufacturing plant of General Motors Corporation located in Wentzville, Missouri, adjacent to the St. Louis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

FOREIGN-TRADE ZONES BOARD, WASHINGTON, DC

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdication of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the St. Louis County Port Authority, grantee of Foreign-Trade Zone No. 102, has made application (filed September 4, 1987, FTZ Docket 15-87, 52 FR 34398) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing plant of General Motors Corporation (GM) in Wentzville, Missouri (St. Louis area);

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed September 4, 1987, the Board hereby authorizes the establishment of a subzone at GM's Wentzville, Missouri, plant, designated on the records of the Board as Foreign-Trade Subzone No. 102B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activiation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-29400 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 402]

Resolution and Order Approving the Application of the Greater Cincinnati Foreign-Trade Zone, Inc., for a Special-Purpose Subzone at the Storage and Distribution Facilities of U.S. Shoe Corp. in Cincinnati, OH

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of FTZ 46, filed with the Foreign-Trade Zones Board (the Board) on July 17, 1987, requesting special-purpose subzone status for non-manufacturing operations at the Eastwood Complex of U.S. Shoe Corporation in Cincinnati, Ohio, within the Cincinnati Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied with regard to that part of the application requesting subzone status for the storage and distribution facilities (24 acres) within the complex, and that this part of the proposal is in the public interest, approves that part of the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby

authorized to issue a grant of authority and appropriate Board Order.

FOREIGN–TRADE ZONES BOARD, WASHINGTON, DC

Grant of Authority to Establish a Foreign-Trade Subzone at the U.S. Shoe Plant in Cincinnati, Ohio

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 46, has made application (filed July 17, 1987, 52 FR 29714) in due and proper form to the Board for authority to establish a special-purpose subzone at the storage and distribution facilities of U.S. Shoe Corporation at its Eastwood Complex in Cincinnati, Ohio, within the Cincinnati Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed July 17, 1987, the Board hereby authorizes the establishment of a subzone, at the storage and distribution facilities of U.S. Shoe Corporation in Cincinnati, Ohio, designated on the records of the Board as Foreign-Trade Subzone No. 46E at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, and to the limitations described in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–29403 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 413]

Authority for Temporary Time Extension for Subzones 78c and 78D, Tennessee Valley Authority, Hartsville and Phipps Bend, TN

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

Whereas, FTZ Subzones 78C and 78D at Tennessee Valley Authority's (TVA) nuclear facilities in Hartsville and Phipps Bend, Tennessee, were approved for a five-year period (Board Order 246, 3/30/84) to provide duty deferral on certain unused nuclear power plant equipment stored at the facilities;

Whereas, TVA has experienced delays in selling the equipment;

Whereas, the Metropolitan Nashville-Davidson County Port Authority, grantee of FTZ 78, has applied to the Board for a time extension to allow TVA to proceed with a proposed sale of the equipment;

Whereas, the extension application was accepted for filing on October 25, 1988, and notice inviting public comment was given in the **Federal Register** on October 28, 1988 (FTZ Docket 34–88, 53 FR 43748);

Whereas, the U.S. Customs Service and the examiners committee assigned to the case recommend approval;

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the time limits for Subzones 78C and 78D are extended to October 25, 1993, and December 31, 1989, respectively, in accordance with the application filed October 25, 1988. The grant does not include authority for manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 16th day of December, 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–29399 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Industry Policy Advisory Committee for Trade Policy Matters; Meeting

December 19, 1988.

A meeting of the Industry Policy Advisory Committee for Trade Policy Matters (IPAC) will be held Thursday, January 5, 1989, in Washington, DC, from 9:00 a.m. to 5:00 p.m. The morning session will be held in the Office of the U.S. Trade Representative, Room 203; the afternoon session, in the Indian Treaty Room of the Old Executive Office Building.

The Committee, sponsored by the U.S. Trade Representative and the U.S. Department of Commerce, provides advice to U.S. policymakers with respect

to trade agreements and matters arising in connection with the administration of the trade policy of the United States.

The agenda will be devoted to the Uruguay Round of Multilateral Trade Negotiations being conducted under the auspices of the General Agreement on Tariffs and Trade (GATT), with particular emphasis on the Mid-term Review of the negotiations held in Montreal in early December.

The meeting will be closed to the public in accordance with a Notice of Determination by the United States Trade Representative.

For further information, contact Clare Soponis at (202) 377–3268.

Date: December 19, 1988.

James P. Moore, Jr.,

Assistant Secretary of Trade Development.

[FR Doc. 88–29396 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–DR–M

Withdrawal of Applications for Duty-Free Entry of Scientific Instruments

The University of California, Los Alamos has witdrawn the following applications for duty-free entry of streak cameras:

Docket Numbers: 86–103, 86–143 and 86–147.

We have discontinued processing of these applications in accordance with § 301.5(g) of 15 CFR Part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–29398 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; Vanderbilt University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the intruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3 and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89–009

Applicant: Vanderbilt University, School of Medicine, Department of Pediatrics/Gastroenterology, 1161 21st Avenue S., Nashville, TN 37232.

Instrument: Micromanipulator, Model Mk 1.

Manufacturer: Singer Instruments, United Kingdom.

Intended Use: The Instrument will be used for experiments relating to the identification of intestinal transport proteins involved in phosphate movement. mRNA will be harvested from rat small intestine and injected into xenopus oocytes with the use of the micromanipulator with the aim of identifying the genetic defect in hypophosphatemic animals and humans.

Application Received by Commissioner of Customs: October 24, 1988.

Docket Number: 89–010

Applicant: University of Southern California, Department of Geological Sciences, University Park, Los Angeles, CA 90089–0740.

Instrument: Mass Spectrometer, Model PRISM.

Manufacturer: VG Isogas, United Kingdom.

Intended Use: The instrument will be used to study geological materials (rocks and minerals) that have been collected from the earth's surface. These studies will involve analysis of the isotopic composition of metamorphic, sedimentary and igneous rocks. The principal objectives of this research will be to determine the nature of fluid (H_2O, CO_2, CH_4) rock interaction within the earth's crust which will provide a detailed understanding of the magnitude and importance of crustal fluid movements. In addition, the instrument will provide hands on experience with a state of the art mass spectrometer for students conducting research in Geology 594 and Geology 794.

Application Received by Commissioner of Customs: October 24, 1988.

Docket Number: 89–011

Applicant: California Department of Food and Agriculture, Division of Plant Industry, Analysis and Identification Branch, 1220 N Street, Room 340, P.O. Box 942871, Sacramento, CA 94271–0001.

Instrument: Electron Miscroscope, Model EM 902.

Manufacturer: Carl Zeiss, West Germany.

Intended Use: The instrument will be used in studies to rapidly and accurately detect and identify plant diseases that pose an economic or health threat in California. The materials studied will include purified viruses, nucleic acid preparations, thin and thick sections of biological material taken from diseased woody and herbaceous plant hosts. Other plant pests will be studied including mycoplasmas, bacteria, fungi, nematodes and insects. Tissue from plants treated with a variety of pesticides or grown under adverse cultural conditions will be studied.

Application Received by Customs: October 25, 1988.

Docket Number: 89–012

Applicant: New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853–6401.

Instrument: Ultrasonic Gas Flowmeter.

Manufacturer: Birmingham University Research Development Ltd, United Kingdom.

Intended Use: The instrument will be used for the studies of respiratory function in horses worked at varying respiratory frequencies and flow rates, and the pulmonary function in anesthetized or exercised horses.

Application Received by Commissioner of Customs: October 25, 1988.

Docket Number: 89–013

Applicant: Northern Arizona University, Box 4088, Flagstaff, AZ 86011.

Instrument: Electron Microscope, Model JEM 1200 EX II.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument will be used for studies of the following biological materials and phenomena:

(a) Ciliated protozoans,

(b) Flowering (cereal) plants,

(c) Epulopiscium, a unicellular organism,

(d) Plant leaves and associated (surface) bacteria,

(e) Leaves from various plants and possibly other plant parts.

These studies will be conducted in an attempt to discover what structures are present or absent, where they are located, if their form or relationships to other structures is(are) unique and/or special. In addition, the instrument will be used for teaching electron microscopy techniques to graduate students.

Application Received by Commissioner of Customs: October 26, 1988.

Docket Number: 89–014

Applicant: Massachusetts Insitute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139.

Instrument: Electron Microscope, Model JEM–1200 EX/SEG/DP/DP.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument will be used for studies of the ultrastructure of the small free-living nematode, *C. elegans*, addressing basic questions in cell and developmental biology.

Application Received by Commissioner of Customs: October 27, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–29397 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene public meetings of its Standing, Shrimp, Reef Fish, and Spiny Lobster Scientific and Statistical Committees, at the Embassy Suites Hotel, 4400 West Cypress, Tampa, FL. On January 9, 1989, at 1 p.m., the Committees will discuss the Texas shrimp closure and Amendment #5—Options Paper, and will recess at 5 p.m. On January 10 the Committees reconvene at 8:30 a.m., to review draft Reef Fish Amendment #1, and will recess at 5 p.m. On January 11 the Committees will reconvene at 8 a.m., to review draft Spiny Lobster Amendment #1 and will adjourn at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: December 16, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–29350 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico and South Atlantic Fishery Management Councils Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils will convene a public meeting of their Spiny Lobster Advisory Panels at the Sombrero Resort, 19 Sombrero Boulevard, Marathon, FL.

On January 12, 1989, at 10 a.m., the Panels will review and make recommendations on the proposed draft Amendment #2 to the Spiny Lobster Fishery Management Plan. The Councils, through the draft amendment, are proposing a regulatory amendment procedure under which the State of Florida could propose certain types of rules directly to the Regional Director, National Marine Fisheries Service, for implementation in Federal waters. The public meeting will adjourn at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: December 16, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–29351 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council, its Committees and its Shrimp Advisory Panel will convene public meetings at the Hyatt Regency Hotel, 123 Losoya, San Antonio, TX, as follows:

Council

On January 18, 1989, will convene at 1:30 p.m., to review the Shrimp Management Committee recommendations on the Texas shrimp closure, allow public comments from 1:45 p.m., to 2:15 p.m., and to begin reviewing Shrimp Amendment 5—Options Paper. Public comments will be heard from 3:30 p.m., to 3:45 p.m., on Spiny Lobster Amendment # 2; the Mackerel Committee will provide their recommendations of separate Council management action for mackerel. The public meeting will recess at 5 p.m., and reconvene January 19, 1989, at 8:30 a.m., to continue reviewing reports of the Ad Hoc, Law Enforcement, Reef Fish, Budget, and Habitat Protection Committees and hear a summary of the Intercouncil Shark Committee meeting, law enforcement and Directors' reports. The public meeting will adjourn at noon.

Committees

On January 16, 1989, the Law Enforcement Committee will convene at 3:30 p.m., and will recess at 5 p.m. The Budget Committee will convene at 3:30 p.m., and will recess at 5 p.m. On January 17, 1989, at 8 a.m., the Shrimp Management, Habitat Protection, Reef Fish, and Spiny Lobster Committees will convene and will recess at 5:30 p.m. On January 18, 1989, the Mackerel Management and Ad Hoc Magnuson Act Committees will convene at 8 a.m., and will adjourn at 11:30 a.m.

Shrimp Advisory Panel

On January 16, 1989, at 8 a.m., the Shrimp Advisory Panel will convene to review the 1988 Texas closure and to form recommendations to the Council for the 1989 closure. The public meeting will adjourn at 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Date: December 16, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–29352 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMORCE

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting on January 4, 1989, at 8:30 a.m., at the Guest Quarters, Baltimore-Washington International Airport, 1300 Concourse Drive, Linthicum, MD (telephone: 301–850–0747), to discuss a shark 303(e) (2) data request and other fishery management and administration matters. The public meeting will adjourn on the afternoon of January 5 but may be legnthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION, CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901–6790; telephone: (302) 674–2331.

Date: December 16, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-29353 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Withdrawal of Notice for Exclusive Licensing; Baxter-Healthcare Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, withdraws its notice published on November 13, 1987 of intent to grant Baxter-Healthcare Inc. an exclusive right in the U.S. and foreign countries to practice the invention embodied in U.S. patent application S.N. 7-026,540, "Oxhydrogen Catalytic Thermal Tip for Angioplasty and the Like." The invention is now available for licensing to others. Requests for licensing and technical information may be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, P.O. Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing.

[FR Doc. 88-29375 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for Bomarc Missile Site, McGuire Air Force Base, New Jersey

The United States Air Force (USAF), Department of Defense, will prepare an Environmental Impact Statement (EIS) for cleanup activities being evaluated for the BOMARC Missile Site at McGuire Air Force Base (AFB), New Jersey, in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 and 40 CFR Part 1500. The Air Force will develop the EIS concurrently with a Remedial Investigation and Feasibility Study (RI/FS) of the radioactive contamination of a BOMARC missile launch site near McGuire Air Force Base, resulting from a fire after a high pressure helium tank exploded 7 June 1, 1960. The site occupies approximately 218 acres within the Fort Dix Military Reservation in Ocean County, New Jersey. The site lies within the Pinelands National Reserve. The Air Force has attached a high priority to those actions required to ensure that the site is in compliance with applicable environmental laws and regulations.

The boundaries of the contaminated area will be established and the location and disposition of contaminants and contaminated material will be determined. Environmental health effects will be analyzed and a risk assessment conducted. Contaminant receptors and migration pathways will be identified and investigated. A range of actions and alternatives will be evaluated as to the degree of protection they would provide, the resultant reductions in contaminant toxicity, mobility, or volume they would achieve, and their environmental consequences. Data will be acquired to permit a comparison of remediation alternatives and the selection of a remedy sufficient to satisfy all applicable or relevant and appropriate requirements (ARARs) of Federal, state, and local public health and environmental laws, regulations, standards, policies, and criteria. The adverse and beneficial effects on the environment of all options will be evaluated. In screening alternatives, consideration will be given to their cost effectiveness, permanence, and protection of human health and the environment.

Significant issues or concerns to be addressed in the EIS include, but are not limited to, the distribution of radioactive contamination around the site; extent of contamination through air dispersion; migration of contaminants through groundwater acquifers, or surface runoff water; physical transport of contaminants by humans or animals; the effect of the incident on the ecosystem; and the efficiency of post-accident management efforts to reduce hazards through decontamination, containment, or removal of hazardous or potentially hazardous materials, and the appropriate degree of cleanup consistent with public health and welfare and present and future uses of the site.

The EIS will be prepared by an interdisciplinary team with expertise appropriate to the scope of study and issues identified through the scoping process. Two scoping meetings will be held on 11 January 1989. The first, will be at 9:00 a.m. at the Officers' Open Mess at McGuire Air Force Base, New Jersey, and will be for federal, state, and local officials. A scoping meeting for the general public will be held at 7:00 p.m. that day at the Township Municipal Building, Jackson, New Jersey. These meetings will enable interested parties to acquire additional information on these studies or to provide suggestions or comments on the scope of the analyses to be undertaken.

Anyone wishing to provide written comments regarding issues to be addressed in the EIS should provide them within 30 days of the publication of this notice in the **Federal Register.** Written comments should be addressed to: MAC/DEEV, Scott AFB IL 62225-5001.

For further information on the RI/FS, contact Mr. Wayne Caughman, or on the EIS, contact Ms. Patricia Calliott. Both are located at HQ Military Airlift Command/DEEV, Scott AFB IL 62225-5001. Telephone inquiries may be made at 618.256-5764.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-29094 Filed 12-21-88; 8:45am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet on 10 through 11 January, 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to prepare and present the study's outbrief to SAF/AQ. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-29356 Filed 12-21-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Ad Hoc Committee on Conventional, Munitions; Meeting

December 19, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Conventional Munitions will meet on 24-26 January, 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to gather information on requirements and technological advances in conventional

munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29360 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Ad Hoc Committee on Electronic Combat; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Combat will meet on 10–12 Jan 89 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting will be to review Air Force Electronic Combat programs, to develop an organizational structure for the committee, and to establish a program plan for conducting the study. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29357 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Ad Hoc Committee on Electronic Warfare; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 18 January 1989 from 8:00 a.m. to 5:00 p.m. at Headquarters Strategic Air Command, Offutt AFB, NE 68113.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29359 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Ad Hoc Committee on Hypervelocity Gun Technology; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypervelocity Gun Technology will meet on 26 January 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purposes of this meeting are to review the progress in the development of hypervelocity gun technology and to assess the potential for application of the "Ram Cannon" concept. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29361 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Airlift Cross-Matrix Panel Meeting

December 19, 1988.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will meet on 17–19 Jan 89 from 8:00 a.m. to 5:00 p.m. at Headquarters Military Airlift Command, Scott AFB, IL.

The purpose of the meeting will be to provide an orientation for the new members of the Panel, and to review the roles and missions of the Command as well as Military Airlift Command programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29358 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Division Advisory Group for Space Division; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Space Division (AFSC) will meet on 6–8 February 89 from 8:00 a.m. to 5:00 p.m. at Vandenberg AFB, CA 93437. This meeting was previously announced for 6–8 December 1988 and is rescheduled from those dates.

The purpose of this meeting is to review plans for the Space Test Range. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29362 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

December 14, 1988.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel originally scheduled to meet on January 11–12, 1989 will now meet on January 17–18, 1989, from 8:00 a.m. to 5:00 p.m., at HQ AFLC, Wright-Patterson AFB, OH.

The purpose of this meeting will be to facilitate the exchange of information on technical development and logistics operations issues. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–29450 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: January 9–10, 1989.

Time of Meetings: 0800–1700 hours daily.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgoup for Tactical Applications of Directed Energy Weapons (DEW) will meet to review two specific systems, brief Army principals, and finalize the tactical applications of the DEW report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–29300 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of The Committee: Army Science Board (ASB).

Dates of Meeting: January 10–11, 1989.

Time of Meetings: 0900–1630, January 10, 1989, 0900–1130, January 11, 1989.

Place: TRADOC Analysis Command, White Sands, New Mexico.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet to discuss in detail some specific models. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–29301 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of the Committee: Army Science Board.

Dates of the Meeting: January 11–12, 1989.

Time: 0800–1700 hours each day.

Place: SDC Headquarters, Crystal Mall 4, Arlington, VA.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. The subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–29299 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: January 12–13, 1989.

Time: 0900–1630. January 12, 1989, 0800–1200. January 13, 1989.

Place: Aerospace Corporation, Los Angeles. CA.

Agenda: The Army Science Board Ad Hoc Subgroup on Space Systems will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. The subgroup is tasked with a comprehensive review of space concepts, technology, and related issues. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–29302 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

Privacy Act of 1974; Altered System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of an altered system of records subject to the Privacy Act of 1974.

SUMMARY: The Department of the Army is publishing a notice for public comment on an altered system of records included in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on January 23, 1989, unless comments are received which result in a contrary determination.

ADDRESS: Send comments to the record system manager identified in the record system notice set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, AS–OPS–MR, Fort Huachuca, AZ 85613–5000, *telephone:* 602–538–6568, *autovon:* 879–6568.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (40 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987
FR Doc. 88–8671 (53 FR 12971) April 20, 1988
FR Doc. 88–10355 (53 FR 16575) May 10, 1988
FR Doc. 88–12861 (53 FR 21509) June 8, 1988
FR Doc. 88–16946 (53 FR 28247) July 27, 1988
FR Doc. 88–16901 (53 FR 28249) July 27, 1988
FR Doc. 88–17036 (53 FR 28430) July 28, 1988

FR Doc. 88-20256 (53 FR 34576) September 7, 1988

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on 7 December 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

December 19, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0725.01aCFSC

System name.

Child Development Services (CDS)

System location.

Child Development Services, Army-wide. Addresses may be obtained from the System Manager.

Categories of individuals covered by the system.

Any person or entity who directly or indirectly uses or provides any services under the auspices of CDS.

Categories of records in the system.

Documents include, but are not limited to, parent's, guardian's and provider's name, grade or rank, SSN, home and office telephone number and address, signature of parent/guardian for emergency notification; child's name, birthdate, medical information including allergies, immunization dates, communicable diseases, and other pertinent data; remarks, observations and recommendations by CDS program employees, providers, parents, physicians and other pertinent to CDS functions.

Authority for maintenance of the system.

10 U.S.C., section 3013 and E.O. 9397.

PURPOSE(S).

To provide safe, quality Child Development Services by ensuring that providers and caregivers are qualified and well suited to provide child care functions; and to ensure adequate information and releases are available on all children served.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

Information from this system may be disclosed to civilian health and welfare departments/agencies in emergency situations. Additionally, information will be used to comply with statutory or regulatory reporting and administrative requirements. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE.

Card files; paper files in folders; magnetic tapes/discs.

RETRIEVABILITY.

By surname and/or SSN or parent or guardian.

SAFEGUARDS.

Records are accessible only to authorized personnel. Positive identification to access data is established prior to releasing personal data to an individual. Computer systems/remote terminals are housed in designated controlled areas.

RETENTION AND DISPOSAL.

Child's records are destroyed 1 year after child no longer attends CDS operations. Records of children who have had serious accidents, injuries, or unusual occurrences requiring emergency consultation or treatment are destroyed 3 years after incident or 1 year after child no longer attends CDS operations, whichever is longer. Personnel records of center-based employees (These records do not include official personnel files), are destroyed 3 years after termination of employment. Information may be transferred from one Child Development Services to another upon transfer of child.

SYSTEM MANAGER(S) AND ADDRESS.

Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331-0521.

NOTIFICATION PROCEDURE.

Individuals wishing to know whether or not information on them is contained in this system of records should write to the Coordinator, Child Development Services at the installation where record is believed to exist. Individual must provide present name, rank, SSN and proof of identification.

RECORD ACCESS PROCEDURES.

Individuals desiring access to records about themselves should address an inquiry as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES.

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES.

From the individual receiving service; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM.

None.

[FR Doc. 88-29330 Filed 12-21-88; 8:45 am]
BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) For the Kaweah River Basin Investigation, Tulare County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action includes study of alternatives that would provide greater flood protection for interests downstream of Lake Kaweah. The EIS/ EIR will examine the feasibility of several alternatives that satisfy this objective and also evaluate the benefits of the additional water supply storage for irrigation, recreation, and hydropower. Flooding in the Kaweah River Basin has been a problem since the mid-1800's and is expected to worsen in the future following further changes and intensification in floodplain land use. Sedimentation in the existing reservoir coupled with unpredictably arid climatic conditions may result in water supplies that are inadequate to meet all the perceived water-related needs of the area. The proposed alternatives could help to alleviate flooding and provide additional water storage for future water needs.

FOR FURTHER INFORMATION CONTACT: Questions or comments about the proposed action and DEIS should be addressed to Mr. Jeff Groska, at telephone (916) 551-1860, or in writing to the District Engineer, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall, Sacramento, California 95814-4794. Responses specifically related to CEQA requirements of the EIR may be directed to Mr. James Crook, Kaweah Delta Water Conservation District, P.O. Box 1247, Visalia, California 93279, (209) 732-0111.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The study will determine the

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feasibility of constructing additional facilities to control flooding along the Kaweah River and to provide additional water supply storage. The Corps of Engineers will prepare a report on its findings to be submitted to Congress.

2. Alternatives

Alternatives being considered in detail for feasibility studies consist of (a) No action, (b) nonstructural, (c) Enlargement of Lake Kaweah, (d) and a Dry Creek Reservoir for flood control only or multiple-purpose flood control and water supply, with a connecting tunnel to Lake Kaweah. Other alternatives considered during reconnaissance studies which are not considered viable solutions but will be reported on in the DEIS/EIR consist of (e) Groundwater recharge/spreading, (f) Levee and channel improvements, (g) Diversion canals, (h) Pumping into the Friant-Kern Canal, (i) Upstream reservoirs, (j) Dredging Lake Kaweah, (k) Flood control detention reservoirs on Dry Creek, and (1) Limekiln Reservoir at the confluence of Dry Creek and Kaweah River.

3. Scoping Process

a. Studies addressing additional flood control in the Kaweah River Basin began in 1985. The Corps completed a reconnaissance study in January 1988 which identified several acceptable alternatives to be carried into feasibility studies. A public workshop was held in 1986 and a formal public meeting in 1987, both in Visalia, California. The purpose of the workshop was to discuss the need for flood control and to identify local concerns and opportunities to improve water related resources. The results of the reconnaissance study were presented at the formal public meeting. Close coordination is being maintained with Federal, State, local sponsors, local agencies, environmental organizations, concerned individuals. This is being accomplished through public meetings, public notices and inter-agency coordination. Through this Notice of Intent all segments of the affected public and agencies are invited to participate in the planning process.

b. Significant issues that will be analyzed in depth in the EIS include: displacement of people. land use, noise, air quality, endangered species, wildlife resources, fishery resources, cultural resources, riparian vegetation, flood protection, dam failure, water quality, and transportation.

c. The Kaweah Delta Water Conservation District is the local sponsor for the study and is cost-sharing 50 percent of the total study cost. Cost sharing partners to the study sponsor are: City of Visalia, Tulare County, Kings County, and California Department of Water Resources. The sponsor will participate with the Corps of Engineers in study management and plan formulation processes. Specific work items to be accomplished by the local interests include preparation of a Biological Data Report on impacts to endangered species, identification of environmental baseline conditions, identification of baseline socioeconomic conditions, identification of current land use, and assistance in the preparation of the Habitat Evaluation Procedure (HEP).

d. Significant review and consultation requirements to be conducted during the study include coordination with the U.S. Fish and Wildlife Service and California Department of Fish and Game under the Fish and Wildlife Coordination Act and Endangered Species Act, consultation with the State Historic Preservation Officer and Advisory Council on Historic Preservation under the National Historic Preservation Act, and coordination with the California Water Quality Control Board and Environmental Protection Agency on water quality issues under Section 404 of the Clean Water Act. As this report will be a joint DEIS/EIR, coordination and review requirements of both the National Environmental Policy Act and the California Environmental Quality Act will be completed.

4. Meeting Schedule

Public meetings for the specific purpose of scoping are not being considered. Scoping letters and public meetings during the reconnaissance study phase served to identify significant concerns and potential solutions. An April 26, 1988, Notice of Initiation of Feasibility Studies was mailed to interested agencies, organizations, and individuals. That notice and this Notice of Intent to Prepare a DEIS/EIR provide further opportunity for interested parties to provide input into the scope of the feasibility study and potential solutions.

5. Availability

The DEIS/EIR is scheduled to be available to the public in January 1991.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

November 30, 1988.

[FR Doc. 88-29447 Filed 12-21-88; 8:45 am]

BILLING CODE 3710-GH-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant Agreement to International Gas Research Conference

AGENCY: U.S. Department of Energy (DOE).

ACTION: The U.S. DOE announces pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of DE-FG01-89FE61774 to the International Gas Research Conference in partial support of the 1989 International Gas Research Conference to be held at Keio Plaza Hotel, Tokyo, Japan, on November 6 through 9, 1989.

SUMMARY: The work of the 1989 International Gas Research Conference is to address the field of worldwide gas technology and gas related research in the areas of distribution; transmission; residential, commercial, and industrial utilization; environment; supply technologies; and gas properties and combustion. The conference will bring together scientific researchers and practical engineers to explore a breath of established disciplines in the international gas technology field. It offers an excellent opportunity for formal and informal interactions among delegates and guests.

Eligibility

Award of this effort is restricted to the International Gas Research Conference because the proposed grantee is the only known entity conducting or planning to conduct such a conference on gas research technology in the near future. The International Gas Research Conference is an international biennial conference series with previous meetings having been held in the United States (Chicago, Los Angeles, Washington, DC); Toronto, Canada; and London, England. This is to be the first International Gas Research Conference to be held in Asia. DOE support of the 1989 International Gas Research Conference will enhance the public benefits by increasing the cooperative information exchange among key DOE and international industrial participants.

FOR FURTHER INFORMATION CONTACT: Albert G. Dietz, Jr., FE-10, Senior Scientific and Technical Advisor, ASFE, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, (301) 353-6138.

J. Allen Wampler,

Assistant Secretary for Fossil Energy.

[FR Doc. 88-29425 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement, EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the return of 12,935 grams of uranium enriched to 20 percent in the isotope 235 from the Triga research reactor in Rome, Italy to U.S. DOE facilities for storage. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 19, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-29426 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement, EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the sale of 60 grams of uranium-238 from the United States to Harwell Laboratory, United Kingdom to be used in measurements of the neutron capture cross-section in the neutron energy region from thermal to several 100's keV. Contract Number S-EU-948 has been assigned to this sale.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 19, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-29427 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Taiwan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" pursuant to the Taiwan Relations Act of 1979 (Pub. L. 96-8).

The subsequent arrangement to be carried out under the above-mentioned authority involves approval of the following sale. Contract Number S-CI-23, for the supply of one milligram of uranium-233, one milligram of uranium-234, one milligram of uranium-238 and 100 micrograms of thorium-229. These materials are to be used for studies of natural isotopic variations in geological and marine samples for age determination and source tracing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 19, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-29428 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Orders Filed; Period of November 7 Through December 2, 1988

During the period of November 7 through December 2, 1988, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 15, 1988.

Richome Oil and Gas Co., Jerome B. Herrmann, Richard P. Herrmann, Amarillo, Texas, KRO-0710

On November 28, 1988, Richard P. Herrmann, P.O. Box 9940, Amarillo, Texas 79105, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Department of Energy Economic Regulatory Administration (ERA) issued to Richome Oil and Gas Co., Jerome B. Herrmann, and Richard P. Herrmann on September 21, 1988. On November 29, 1988, Jerome B. Herrmann and Richome Oil & Gas Co., 610 SW. 11th Street, Amarillo, Texas 79101, also filed a Notice of Objection to the PRO. In the PRO, the ERA determined that during the time period November 1973 through December 1974, Richome produced and sold 26,334.28 barrels of domestic price controlled crude oil at exempt prices, in violation of 6 CFR 150.354(c), 10 CFR 212.73(a) and 10 CFR 212.74.

According to the PRO, the violation resulted in $137,030.20 of overcharges.

Salomon, Inc. et al., Wilmington, DE, KRO-0720

On November 29, 1988, Salomon, Inc. *et al.*, c/o Corporation Trust Co., Corporation Trust Plaza, 1209 Orange Street, Wilmington, DE 19801 filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration issued to the firms on September 23, 1988. In the PRO the ERA found that during January 1, 1978 to December 31, 1980, the firms resold crude oil in violation of, *inter alia*, 10 CFR 212.183 (the crude oil resale price rule) and 212.186 (the crude oil layering rule).

According to the PRO, the violation resulted in $107,973,814.48 of overcharges.

[FR Doc. 88-29424 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed, Week of November 11 Through 18, 1988

During the Week of November 11 through 18, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

December 15, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 11 through November 18, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Sept. 1, 1988	Amoco/Indiana, Indianapolis, IN	RM251-135	Request for Modification/Rescission. *If Granted:* The May 28, 1987 Decision and Order issued to Indiana would be modified, regarding the state's application in the Amoco II second stage refund proceeding.
Nov. 14, 1988	San Jose Mercury News, San Jose, CA	KFA-0231	Appeal of an Information Request Denial. *If Granted:* The November 3, 1988, Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded and the San Jose Mercury News would receive access to a copy of a Lawrence Livermore National Laboratory report entitled "Columns of Fire in the Valley of the Giant Mushrooms".
Nov. 14, 1988	Arkansas, Little Rock, AR	KER-0049	Request for Modification/Rescission. *If Granted:* The August 5, 1988 Decision and Order issued to Arkansas would be rescinded regarding the state's appeal of the Dallas Support Office's decision.
Nov. 15, 1988	Oasis Petroleum Corporation, Washington, DC	KRD-0650 KRH-0650	Motion for Discovery and Request for Evidentiary Hearing. *If Granted:* Discovery would be granted and an evidentiary hearing would be convened in connection with the Proposed Remedial Order issued to Oasis Petroleum Corporation (Case No. KRO-0650).
Nov. 21, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0525	Interlocutory. *If Granted:* In the Proposed Remedial Order issued to Kern Oil and Refining, Inc. (Case No. KRO-0520), the potential personal liability against Donald M. LeDoux would be dismissed and the liability against Larry D. Delpit would be limited to 25 percent of the overcharge alleged against the Corportation.
Nov. 18, 1988	Economic Regulatory Administration, Washington, DC.	KRR-0050	Request for Modification/Rescission. *If Granted:* The September 29, 1988 Decision and Order issued to Phoenix Petroleum Company (Case No. KRO-0190) would be modified, regarding the personal liability of Steven B. Wyatt for a portion of the Phoenix Petroleum overcharges.

REFUND APPLICATIONS RECEIVED

[Week of November 11 through November 18, 1988]

Date received	Name of Refund Proceeding/ Name of Refund Applicant	Case Number
11/7/88	Ronald Adkisson	RF310-323
11/10/88	Cyprus Bagdad Copper Corp.	RD272-61260
11/11/88 thru 11/18/88.	Gulf Oil Refund	RF300-10596 thru RF300-10603
11/11/88 thru 11/11/88.	Exxon Refund	RF307-6676 thru RF307-6767
11/11/88 thru 11/18/88.	Crude Oil Refund.	RF272-75100 thru RF272-75115

REFUND APPLICATIONS RECEIVED—Continued

[Week of November 11 through November 18, 1988]

Date received	Name of Refund Proceeding/ Name of Refund Applicant	Case Number
11/11/88 thru 11/18/88.	Atlantic Richfield Refund.	RF304-7221 thru RF304-7271
11/11/88 thru 11/18/88.	Murphy Oil Refund.	RF309-529 thru RF309-571
11/14/88	City of Tulsa	RF139-202
11/14/88	Northwestern Steel & Wire Co.	RD272-64610

REFUND APPLICATIONS RECEIVED—Continued

[Week of November 11 through November 18, 1988]

Date received	Name of Refund Proceeding/ Name of Refund Applicant	Case Number
11/14/88	Great Lakes Carbon Corporation.	RD272-67247
11/14/88	Warner Company.	RD272-67949
11/14/88	Grow Group, Inc.	RD272-68932
11/14/88	Chicago Milwaukee Corporation.	RD272-69326

REFUND APPLICATIONS RECEIVED—Continued

[Week of November 11 through November 18, 1988]

Date received	Name of Refund Proceeding/ Name of Refund Applicant	Case Number
11/14/88	Delaware and Hudson Railway Co.	RD272-71613
11/15/88	City of Granville	RF139-203
11/16/88	ICI Americas, Inc.	RD272-61737
11/16/88	QO Chemicals, Inc.	RD272-64300
11/16/88	National Forge Company.	RD272-68991

[FR Doc. 88-29423 Filed 12-21-88; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1762]

Petitions for Reconsideration; Applications for Review and Petitions for Stay of Actions in Rule Making Proceedings

December 15, 1988.

Petitions for reconsideration, applications for review and petitions for stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed January 9, 1989.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconsideration Act of 1985. (Gen. Docket No. 86-285)

Number of petitions received: 3.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Cathage, Illinois) (MM Docket No. 88-236, RM-5725)

Number of petitions received: 1.

Petition for Stay

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (San Clemente, California) (MM Docket No. 84-442, RM-4724)

Number of petitions received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-29373 Filed 12-21-88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88-538]

Applications for Consolidated Hearing; Sarasota-Charlotte Broadcasting Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Sarasota-Charlotte Broadcasting Corp., Englewood, FL	BPH-870908MX	88-538
B. William A. James, Englewood, FL	BPH-870909ML	
C. South Florida Broadcast Limited Partnership, Englewood, FL	BPH-870910MK	
D. Cawley Broadcasting Corporation, Inc., Englewood, FL	BPH-870910MM	
E. Russell Earl Warren, Jr., Englewood, FL	BPH-870910MM	
F. Charles L. Fernandez and Tony W. Fernandez, Englewood, FL	BPH-870910MR	
G. Constance Whitaker and Warren Koerbel, General Partners, d/b/a Seafoam Broadcasters, LTD., Englewood, FL	BPH-870910MW	
H. A.P. Walter, Jr., Englewood, FL	BPH-870910MY	
I. Englewood Radio, Inc., Englewood, FL	BPH-870910NS	
J. Sandpiper Broadcasting Inc., Englewood, FL	BPH-870910OG	
K. Harbor Sounds, Inc., Englewood, FL	BPH-870910MA (Dismissed Herein).	
L. Englewood Broadcasting Associates, Englewood, FL	BPH-870910NG (Dismissed Herein).	
M. New South Communications, Inc., Englewood, FL	BPH-870910OA (Dismissed Herein).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B-J
2. Comparative, A-J
3. Ultimate, A-J

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-27372 Filed 12-21-88; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bay Banks, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bay Banks, Inc.*, Boston Massachusetts; to acquire The New York Switch Corporation, Hackensack, New Jersey, and thereby engage in data processing and related activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29305 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

CB&T Financial Corp., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *CB&T Financial Corp.*, Fairmont, West Virginia; to engage *de novo* through its subsidiary, CB&T Capital Investment Company, Fairmont, West Virginia, and thereby engage in making and servicing commercial loans and other extensions of credit and making equity investments of 5 percent or less pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *One National Bancshares, Inc.*, Little Rock, Arkansas; to engage *de novo* through its subsidiaries, Investment Securities, Inc., Little Rock, Arkansas, and Bowman & Co. Futures, Inc., Little Rock, Arkansas, in securities brokerage, providing securities brokerage services and such incidental services as may be required from time to time, incuding offering custodial services, individual retirement accounts, and cash management services on behalf of customers pursuant to § 225.25(b)(15); and acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, pursuant to § 225.25(b)(18) of the Board's Regulation Y. The activities will be conducted in and around Little Rock, Arkansas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Bank of Tokyo, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, BOT Futures, Inc., New York, New York, in acting as a futures commission merchant for nonaffiliated persons pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29306 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

Eastern Savings Bancorp, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1989.

A. **Federal Research Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Eastern Savings Bancorp, Inc., Lynn, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Eastern Bank (Eastern), Lynn, Massachusetts, a *de novo* bank, and 5.24 percent of the voting shares of Family Bancorp, Haverhill, Massachusetts, and thereby indirectly acquire The Family Mutual Savings Bank, Haverhill, Massachusetts.

In connection with this application, Applicant also proposes to acquire Eastern Bank & Trust Company, Salem, Massachusetts, and thereby engage in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29307 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

Gwinnett Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 USC 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it wil also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than January 11, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Gwinnett Bancorp, Inc.*, Duluth, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Gwinnett National Bank, Duluth, Georgia, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Athens Bancorp, Inc.*, Athens, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Athens State Bank, Athens, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chambanco, Inc.*, Chambers, Nebraska; to acquire an additional 43.7 percent of the voting shares of Ewing Agency, Inc., Ewing, Nebraska, and thereby indirectly acquire Farmers State Bank, Ewing, Nebraska.

Board of Governors of the Federal Reserve System, December 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29308 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Management and Budget, Assistant Secretary

Part A, (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is amended to reflect a transfer of responsibilities within the Office of the Assistant Secretary for Management and Budget. Specifically, Chapter AMN (Office of Finance) (as last published at 53 FR 39145 on October 5, 1988) is being amended to better align certain management responsibilities within the Office of Finance.

Make the following changes to Chapter AMN:

1. Section AMN. 20 Functions. Insert the following after Item 2j:

The Office of Financial Policy is comprised of the following:

A. Division of Financial Management Policy (DFMP)

The Division of Financial Management Policy (DFMP) functions as one of two major components within the Office of Financial Policy, Office of Finance and is responsible for all Department-wide policies, procedures and standards relating to cash management, credit management, debt management, payment management, travel management and entitlement grants. The Division has the following responsibilities:

a. Develops Department-wide policies, procedures and standards for financial management areas including cash management, credit management, debt management, payment management, travel management and entitlement grants and promulgates these and related Government-wide financial management requirements through the Department Staff Manual System.

b. Provides advice and assistance to OPDIV's and STAFFDIV's on financial management areas.

c. Serves as principal staff advisors to the Office of Finance on financial management matters.

d. Reviews and drafts Departmental reports on Congressional bills affecting financial management of the Department's programs.

e. Maintains liaison with Office of Management and budget (OMB), the Treasury Department, the General Accounting Office (GAO), and other agencies on all fnancial management matters including entitlement grant policy.

f. Recommends policy and maintains a system for tracking and improving cash and credit management and debt collection performance throughout the Department.

g. Developes and maintains travel and voucher examination policies for Department-wide applications and publishes policies through the Department Staff Manual System.

h. Performs studies or analyses in any of these or related subjects singly or with outside organizations. Maintains continuous contact with GAO, OMB, Treasury, GSDA or other agencies.

B. Division of Accounting and Fiscal Policy (DAFP)

The Division of Accounting and Fiscal Policy (DAFP) functions as one of two major components within the Office of Financial Policy, Office of Finance and is responsible for matters relating to accounting policiy, fiscal policy,

financial statements presentation, publications, and legislative and other special initiatives. The Division has the following responsibilities:

a. Develops policies, procedures and standards for Department-wide accounting and fiscal areas including legislative or other special accounting policy initiatives such as the Standard General Ledger (SGL) and promulgates these policies, procedures and standards as well as other Government-wide accounting and fiscal procedures through the Department Staff Manual System and maintains appropriate reference material.

b. Provides advice and assistance to OPDIV's and STAFFDIV's on accounting and related fiscal matters.

c. Serves as principal advisors to the Office of Finance on accounting and related fiscal matters.

d. Reviews and drafts Departmental reports on Congressional bills affecting accounting and related fiscal matters.

e. Maintains liaison with Office of Management and Budget (OMB), the Treasury Department, the General Accounting Office (GAO), and other agencies on matters involving accounting and realted fiscal matters.

f. Develops and maintains financial statements presentation policies, procedures and standards for Department-wide applications.

g. Peforms studies or analyses in any of these or related subjects singly or with outside organizations. Maintains continuous contact with GAO, OBM, Treasury, GSA or other agencies.

Date: December 15, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88-29345 Filed 12-21-88; 8:45 am]

BILLING CODE 4510-04-M

Centers for Disease Control

Meetings: Fall Injuries to Older Persons, Reduction; Potential Interventions

ACTION: Notice of Meeting-Potential Interventions to Reduce Fall Injuries to Older Persons.

TIME AND DATE: 8:30 a.m.—5:00 p.m.; January 9, 1989, 8:30 a.m.—1:00 p.m.; January 10, 1989.

PLACE: South Shore Hospital, 600 Alton Road, Miami Beach, Florida.

STATUS: Open to the public, limited only by the space available.

MATTERS TO BE DISCUSSED: The Centers for Disease Control (CDC) is convening a public meeting with experts from the fields of geriatric medicine, injury epidemiology and control, and health education regarding potential interventions which may be effective in reducing fall injuries among older persons, in particular the frail elderly. The purpose of the meeting is to assist CDC and the Dade County Health Unit in developing recommentations for a pilot intervention program designed to reduce fall injuries in South Miami Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Stuart T. Brown, M.D., Director Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephones: FTS 236-4690, Commerical (404) 454-4690.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 29315 Filed 12-21-88; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Advisory Council; Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration announces the rechartering by the Secretary, HHS, of the following Council.

Council	Termination date
Advisory Council on Nurses Education.	Continuing.

The Nursing Shortage Reduction and Education Act of 1988 changed the name of the Council from National Advisory Council on Nurse Training to the Advisory Council on Nurses Education and increased the membership by two; one from practicing nurses and one from representatives of associate degree schools of nursing.

Authority for this Council is continuing and a Charter will be filed no later than November 30, 1990, in accordance with section 14(b)(2) of Pub. L. 93-462.

Dated: December 16, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-29384 Filed 12-21-88; 8:45 am]

BILLING CODE 4160-15-M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW. Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION:

The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 et seq., provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods specified in the table, but only if the

petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS through December 8, 1988. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute:

1. Any allegation in a petition that the petitioner either;

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading **"FOR FURTHER INFORMATION CONTACT"**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions Received

1. Charles and Nancy Hulsey on Behalf of Wesley Hulsey, Sierra Vista, Arizona, Claims Court Docket Number 88–46–V.

2. Lisa S. Reddish on Behalf of Christopher Reddish, Orlando, Florida, Claims Court Docket Number 88–47–V.

3. Gary G. Bunting on Behalf of Bradley Bunting, Duval County, Florida, Claims Court Docket Number 88–48–V.

4. Ida Showkeir on Behalf of Jamey Showkeir, Grand Blanc, Michigan, Claims Court Docket Number 88–49–V.

5. Eileen Lucarelli on Behalf of Dawn Lucarelli, Chesapeake, Virginia, Claims Court Docket Number 88–50–V.

6. Henry J. Beck on Behalf of Amanda Beck, Round Lake Beach, Illinois, Claims Court Docket Number 88–51–V.

7. Barbara M. Lakey on Behalf of Courtney Lakey, Portsmouth, Virginia, Claims Court Docket Number 88–52–V.

8. Esmeralda and Luis Reyna, Jr. on Behalf of Luis Reyna III, Harlingen, Texas, Claims Court Docket Number 88–53–V.

9. Robert and Roma Shepherd on Behalf of Heather Shepherd, North Miami Beach, Florida, Claims Court Docket Number 88–54–V.

10. Cheryl D. and Troy B. Seagraves on Behalf of Tori Seagraves, Keystone Heights, Florida, Claims Court Docket Number 88–55–V.

11. Guy R. Bailey on Behalf of Beth Bailey, Westbrook, Maine, Claims Court Docket Number 88–56–V.

12. William and Jeannette Gowan on Behalf of Cameron Gowan, Escalon, Georgia, Claims Court Docket Number 88–57–V.

13. Mario and Christy Tafoya on Behalf of Andre Tafoya, Joliet, Illinois, Claims Court Docket Number 88–58–V.

14. Anthony and Janet Ciotoli on Behalf of Richard Ciotoli, Endicott, New York, Claims Court Docket Number 88–59–V.

15. Larry and Jayne Younginger on Behalf of Lance Younginger, Darlington, South Carolina, Claims Court Docket Number 88–60–V.

16. Teresa Pollard on Behalf of Kimberly Pollard, Fayetteville, Georgia, Claims Court Docket Number 88–61–V.

17. Sidney and Jeanne MacWithey on Behalf of JeTaime MacWittey, Orlando, Florida, Claims Court Docket Number 88–62–V.

18. Stephen and Deborah Pusateri on Behalf of Stephen Pusateri II, Baltimore, Maryland, Claims Court Docket Number 88–63–V.

19. Florin Ionescu on Behalf of Mary J. Ionescu, San Antonio, Texas, Claims Court Docket Number 88–64–V.

20. Alfredo and Julie Torres on Behalf of Rebecca Torres, Woodstock, Illinois, Claims Court Docket Number 88–65–V.

21. Christine Watkins on Behalf of Cassidy Watkins, Tampa, Florida, Claims Court Docket Number 88–66–V.

22. Beverly Newton on Behalf of Michael Donnelly, Tempe, Arizona, Claims Court Docket Number 88–67–V.

23. Jack and Jane Siegfried on Behalf of Mary A. Siegfried, Fresno, California, Claims Court Docket Number 88–68–V.

24. Janet Manley on Behalf of Lee Ann Manley, Wayland, Massachusetts, Claims Court Docket Number 88–69–V.

Dated: December 16, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88–29385 Filed 12–21–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Debt Collection Policies and Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed changes in offset procedures.

SUMMARY: The Department of the Interior is proposing changes in its debt collection procedures to include referral of debts to the Internal Revenue Service for tax refund offset as authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A), and requesting public comment on the procedures.

DATE: Comments must be received at the following address by January 23, 1989.

ADDRESS: Comments should be addressed to William L. Kendig, Director, Office of Financial Management, Department of the Interior, MS 7258, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Merrell, Office of Financial Management, (202) 343–5223.

SUPPLEMENTARY INFORMATION: On December 3, 1984, the Department of the Interior released a Departmental Manual part on debt collection, 344 DM., as required by the Debt Collection Act of 1982, (31 U.S.C. 3716). On March 1, 1985, the Department announced in the **Federal Register** that copies of the 344 DM were available to the public (50 FR 8400).

This notice proposes changes to the Department's procedural debt collection regulations by adding Chapter 12 establishing procedures to cover the referral of debt to the Internal Revenue Service for collection by offset against a taxpayer's Federal income tax refund. Following consideration of comments received, the Department will release a revised Departmental Manual Part 344 which will include Chapter 12 and publish the chapter in the **Federal Register**.

Copies of the current Departmental Manual part on debt collection (344 DM, Chapters 1–11) are available to the public. Copies may be obtained by contacting the Printing and Publications Division, Office of the Secretary, at the following address: Department of the Interior, Room 1307, 18th and C Streets,

NW., Washington, DC 20240. The text of Chapter 12, follows.

William L. Kendig,

Director, Office of Financial Management.

12.1 Collection by Offset of a Debtors Federal Tax Refund

A. Scope.

These guidelines establish procedures for the use of tax refund offset under 31 U.S.C. 3720A which authorizes the Internal Revenue Service (IRS) to reduce a tax refund by the amount of a past-due legally enforceable debt owned to the United States.

(1) For the purpose of this action, a past-due legally enforceable debt referable to the IRS is:

(a) No older than 9 years, 11 months as of January 1, of the tax refund year (except in the case of judgment debt).

(b) Not currently being collected by other collection methods.

(c) Not in bankruptcy under Title 11 of the United States Code.

(d) Under the requirements of 31 U.S.C. 3720A and Treasury Regulation 301.6402–6T relating to the eligibility of a debt for tax refund.

12.2 Administrative Charges

Bureaus will increase the amount of the debt (offset) by the amount of the administrative costs incurred in connection with the referral of the debt to the IRS.

12.3 Notice of Offset

Bureaus must inform the debtor of their intent to recover the debt due by tax refund offset (see 31 U.S.C. 3720A (b)). A notice must be sent to the debtor at least 60 calendar days prior to referral to the IRS, with a mailing address for forwarding any written correspondence, a contact name, and a phone number for any questions. The notice must state:

(1) The nature and amount of debt.

(2) That unless the debt is repaid within 60 days from the date of the notice, the bureau intends to collect the debt by requesting offset of the debtor's tax refund by the IRS.

(3) That the debtor has a right to inspect the bureau records related to the claim.

(4) That the debtor has a right to a review of and, if applicable, a hearing on the claim (see paragraph 12.4).

(5) That the debtor has an opportunity to enter into a repayment agreement with the bureau to repay the debt.

12.4 Review Within the Department

The debtor may request, within 60 calendar days after receipt of the bureau's written notice specified in 12.3, a review with the appropriate bureau as to the existence, the amount of the debt, or terms of repayment. The form of the review, including the need for an oral hearing, will be determined in accordance with 4 CFR 102.3(c). The review will be conducted by a designated bureau official not involved in the collection of the debt for which the offset is proposed. The official may determine that no debt is due, the amount of the debt should be reduced, terms of repayment through installments should be set, or the amount should be paid in full (see 344 DM 4.1A for guidance on compromise). The official may negotiate with the debtor concerning a written agreement for the repayment of the debt which is satisfactory to the debtor and the bureau.

12.5 Offset

If no written agreement is executed, the debtor does not request a review with the bureau, or the official who conducted the review determines that a debt is due, the IRS offset against the debtor's tax refund will be executed.

12.6 Insufficient Tax Refund

If a tax refund is insufficient to satisfy a debt in a given tax year, the bureau will refer the debt to the IRS on the following year to collect further on the debt. If in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS on Form 1099G.

12.7 Time Limitation

A bureau may not initiate offset of tax refunds on a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the bureau's right to collect the debt accured, unless facts material to the bureau's right to collect the debt were not known and could not reasonably have been known by the officials of the bureau responsible.

[FR Doc. 88–29263 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

Closure Order; Atlas Superfund Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Approximately 200 acres of public lands disturbed by the abandoned Atlas asbestos mine and mill, within Fresno County, in the Hollister Resource Area, Bakersfield District, California, are hereby closed to entry and all public use.

SUMMARY: All public lands disturbed by the mining operation as indicated below (with the exception of that portion of the White Creek Road lying between the high tensile fences that have been constructed to form a travel corridor on both sides of the road) are hereby closed to all public entry and use. This closure is in effect on all of the public lands described below (A map depicting the closure can be viewed at the Hollister Resource Area Office):

Sections 29, 30, 31, and 32, T.18S., R.13E., M.D.M.
Section 25, T.18S., R.12E., M.D.M.

SUPPLEMENTARY INFORMATION: This order is necessary for the protection of public health. Soils on the mine site contain high concentrations of asbestos fibers. Inhaling asbestos fibers is known to increase the risk of lung cancer and other respiratory diseases. When the surface of the mine site is disturbed by vehicle or foot traffic, a fine powdered dust containing asbestos fibers is released into the air. Because of health hazards associated with asbestos this site has been placed on the Environmental Protection Agency's National Priorities List (Superfund). The entire perimeter of the mine site has been posted with closed area/asbestos warning signs at 150 feet intervals. The White Creek Road, which bisects the mine site, will remain open to public use. An 8-foot high-tensile fence has been constructed on both sides of the White Creek Road to define that area within the road right-of-way where public use is permitted. This closure is issued under the authority of 43 CFR 8364.1. Any person who fails to comply with this closure order shall be subject to the penalties provided in 43 CFR 8360.0–7. Federal, State and County Employees and/or their contractors while in the performance of official duties requiring ingress and egress and individuals in possession of written authorization from the Hollister Resource Area Manager shall be exempt from this closure order.

DATES: This order is in effect December 22, 1988, and is in effect until the order is cancelled, amended, or replaced.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, Bureau of Land Management, P.O. Box 365, Hollister, CA 95024; telephone 408–637–8183.

Dated: December 14, 1988.

Robert E. Beehler,

Area Manager.

[FR Doc. 88–29414 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–84–M

[NV-930-09-4212-11; Nev-057854 and Nev-058554]

Opening Order; City of North Las Vegas, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides for opening of certain lands for direct sale to the City of North Las Vegas, Nevada.

EFFECTIVE DATE: December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126 (702) 646-8800.

SUPPLEMENTARY INFORMATION: In the early 1960's title to 1,080 acres of public land was transferred to the City of North Las Vegas, Nevada pursuant to the Recreation and Public Purposes Act (43 CFR Part 869 through 869-4). By quitclaim deed executed November 22, 1988, the following described 1,080 acres were reconveyed to the United States as the City of North Las Vegas, Nevada would now like to acquire unrestricted title to the lands pursuant to section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713):

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
Sec. 21, S½;
Sec. 28, all:
Sec. 33, N½ME¼, NW¼NW¼.

On December 14, 1988, the lands described above were opened only to disposal pursuant to section 203 of the Federal Land Policy and Management Act, for the purpose of consummating a noncompetitive sale to the City of North Las Vegas, Nevada, subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

The land will remain closed to all other forms of appropriation including the mining laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-29376 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-09-4212-12, Serial No. AZA-23606]

Realty Action; Arizona; Correction

SUMMARY: The Notice of Realty Action published on Thursday, November 10, 1988, in **Federal Register** Volume 53, No. 218, page 45599, is hereby corrected as follows:

1. Page 45599, column 3, line 1 should read: Sec. 14, all.
2. Page 45599, column 3, line 21 should read: 3,266.34 acres.
3. Page 45599, column 3, line 28 should read: T. 18 N., R. 20 E.,
4. Page 45599, column 3, line 37 should read: T. 33 N., R. 12 W., Sec. 32, all.
5. Page 45599, column 3, line T. 38 should read: T., N., R. 13 W.,
6. Page 45599, column 3, line 45 should read: 4,194.40 acres.

Date: December 15, 1988.

William T. Childress,

District Manager (Acting), Bureau of Land Management.

[FR Doc. 88-29378 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-66-M

[AZ-920-09-4212-13; A-23217]

Exchange of Public and Private Mineral Estates in La Paz, Mohave, and Yavapai Counties; AZ

December 16, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of mineral estates.

SUMMARY: This action informs the public of the completion of a mineral estate exchange between the United States and Santa Fe Pacific Railroad Company, and delineates administration of the mineral estate conveyed to the United States.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the mineral estate in the following described 135,728.11 acres of land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 6 W.,
Sec. 4, lot 1, SE¼NE¼, S½;
Sec. 5, S½;
Sec. 6, lots 1, 2, 3, 5, 6, and 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 8, all;
Sec. 9, N½, SW¼;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 20, N½NE¼, SW¼NE¼, NW¼;
Sec. 21, NE¼.
T. 10 N., R. 7 W.,
Sec. 3, lots 1 to 12, incl., S½SW¼, SE¼;
Sec. 4, lot 1 and lots 5 to 9, incl., SW¼, S½SE¼;
Sec. 9, all;
Sec. 10, N½, SW¼;
Sec. 12, E½;
Sec. 13, NE¼, S½;
Sec. 14, SE¼;
Sec. 23, NE¼, S½;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 33, all;
Sec. 35, all.
T. 10 N., R. 8 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 11, all.
T. 11 N., R. 5 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 6, incl., S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½;
Sec. 8, N½, SW¼;
Sec. 18, lots 1 to 4, incl., E½;
Sec. 19, lots 1 to 4, incl., E½;
Sec. 20, lots 1 and 2, W½NW¼, SW¼, NW¼SE¼;
Sec. 21, lots 5 to 8, incl., lot 12;
Sec. 28, lot 3;
Sec. 29, lots 1 and 2, S½NE¼;
Sec. 30, lots 1 to 4, incl.;
Sec. 31, lots 1 to 4, incl., E½;
Sec. 34, SW¼, N½SE¼.
T. 11 N., R. 6 W.,
Sec. 1, lots 1 to 8, incl., S½N½, S½;
Sec. 3, lots 1 to 8, incl., S½N½, S½;
Sec. 4, lots 1 to 21, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9, lots 2 to 5, incl., lots 8 to 11, incl.;
Sec. 10, E½, E½W½;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 22, lots 1 to 12, incl., E½, E½W½;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, lots 1 to 12, incl., NE¼, E½NW¼, NE¼SW¼, E½SE¼, NW¼SE¼;
Sec. 30, lots 5, 10, 18, and 19;
Sec. 31, lots 5 to 14, incl., lots 16 and 17, SE¼SE¼.
T. 11 N., R. 7 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 8, all;
Sec. 11, W½;
Sec. 13, all;
Sec. 17, all;
Sec. 18, lots 1, 3, and 4, E½, E½W½;
Sec. 19, lots 1 to 7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 20, lots 1 to 4, incl., N½, N½S½;
Sec. 21, N½;
Sec. 23, lots 1 to 9, incl., NW¼NW¼, W½SW¼, SE¼;
Sec. 27, lots 1 to 11, incl., NW¼;
Sec. 34, lots 1, 2, 9, 10, and 12.
T. 11 N., R. 8 W.,
Sec. 1, lots 1 to 7, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, lots 1 to 4, incl., W½E½, W½;

BEST COPY AVAILABLE

Sec. 13, lots 1, 2, and 4, W½E½, W½;
Sec. 14, all;
Sec. 15, all;
Sec. 22, all;
Sec. 35, all.
T. 12 N., R. 6 W.,
Sec. 1, lots 1 to 4, incl., S½;
Sec. 2, lots 1 to 4, incl., S½;
Sec. 3, lots 1 to 4, incl., S½;
Sec. 4, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½;
Sec. 6, lot 1, lots 4 to 14, incl., SE¼;
Sec. 7, lots to 16, incl., E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, N½;
Sec. 13, S½;
Sec. 18, lots 1 to 16, incl., E½;
Sec. 19, lots 1 to 8, incl., NE½;
Sec. 30, E½NE¼, NE¼SE¼, SW¼SE¼.
T. 12 N., R. 7 W.,
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, W½;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, W½SW¼.
T. 12 N., R. 8 W.,
Sec. 3, lots 1 to 4, incl., S½;
Sec. 4, lot 4, S½.
Sec. 5, lots 1 to 4, incl., S½;
Sec. 6, lots 1 to 4, incl., E½SE¼;
Sec. 8, N½, SE¼;
Sec. 9, E½, SE½NW½;
Sec. 10, all;
Sec. 11, all;
Sec. 12, NE¼, NE¼NW¼, SW¼NW¼, SW¼, E½SE¼, SW¼SE¼;
Sec. 17, E½;
Sec. 18, lots 1 to 8, incl.,
Sec. 19, lots 1 to 8, incl.,
Sec. 20, E½E½;
Sec. 29, W½;
Sec. 30, lots 1 to 8, incl.,
Sec. 31, lots 1 to 8, incl.,
T. 12 N., R. 9 W.,
Sec. 4, lots 1 to 4, incl., S½;
Sec. 9, all;
Sec. 10, NW¼;
Sec. 12, all;
Sec. 13, all;
Sec. 23, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 24, all;
Sec. 25, all;
T. 13 N., R. 4 W.,
Sec. 5, lots 2 and 3, SW¼NE¼, SE¼NW¼.
T. 13 N., R. 5 W.,
Sec. 1, lots 2 to 4, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 4, lots 1 to 4, incl., S½N½, N½S½, SW¼SW¼;
Sec. 10, NE¼, E½NW¼, S½;
Sec. 11, N½, N½S½;
Sec. 12, W½NE¼, NW¼, N½SW¼;
Sec. 13, all;
Sec. 14, E½, E½NW¼, NE¼W¼;
Sec. 15, N½, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 23, NE¼;
Sec. 24, N½, N¼SW¼, SE¼.
T. 13 N., R. 6 W.,
Sec. 5, lots 15 and 16.
T. 13 N., R. 7 W.,
Sec. 25, SE¼SE¼.
T. 13 N., R. 8 W.,
Sec. 12, S½NE¼, NW¼NW¼, SW¼SW¼, SE¼;
Sec. 14, SW¼NW¼, S½;
Sec. 23, N½NE¼;
Sec. 26, NE¼, S½;
Sec. 31, lots 2 to 4, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 35, all.
T. 13 N., R. 9 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 17, NW¼;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 20, E½, E½NW¼, S½SW¼;
Sec. 21, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½.
T. 14 N., R. 4 W.,
Sec. 3, lot 1, S½NE¼, SE¼;
Sec. 10, E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 15, all;
Sec. 22, E½.
Sec. 23, lot 7;
Sec. 24, lots 1, 2, 3, and 6, W½SE¼;
Sec. 25, W½W½;
Sec. 26, lots 2, 3, 6, 7, and 8, SE¼SW¼, S½SE¼;
Sec. 35, lots 1 to 9.
T. 14 N., R. 5 W.,
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½;
Sec. 31, lots 1 to 6, incl., NE¼, N½SE¼;
Sec. 33, lots 1 to 4, incl., N½, N½S½;
Sec. 34, lots 1 to 4, incl., N½,N½S½;
Sec. 35, 1 to 4, incl., N½, N½S½.
T. 14 N., R. 6 W.,
Sec. 4, lots 1 to 4, incl., S½N½;
Sec. 5, lots 1 and 2;
Sec. 9, all;
Sec. 24, SW¼.
T. 14 N., R. 9 W.,
Sec. 21, SE¼NE¼, S½;
Sec. 25, all;
Sec. 26, E½;
Sec. 27, W½;
Sec. 28, all;
Sec. 29, E½;
Sec. 33, all;
Sec. 34, N½, SW¼;
Sec. 35, all.
T. 14½ N., R. 6 W.,
Sec. 21, lots 1 to 4, incl., S½.
T. 14½ N., R. 8 W.,
Sec. 26, NE¼;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all.
T. 15 N., R. 6 W.,
Sec. 30, lots 1 to 4, incl., W½NE¼, SE¼;
Sec. 31, lots 1 to 4, incl., E½.
T. 15 N., R. 7 W.,
Sec. 5, lots 1 to 4, incl., S½N½, SW¼;
Sec. 17, all;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 34, all.
T. 15 N., R. 8 W.,
Sec. 12, N½SW¼;
Sec. 14, NE¼SW¼, S½SW¼, SE¼SE¼;
Sec. 21, all;
Sec. 22, NW¼NW¼;
Sec. 23, NE¼, E½SE¼;
Sec. 24, SW¼NW¼, W½SW¼;
Sec. 25, NW¼NW¼;
Sec. 26, N½N½, SW¼NE¼, S½NW¼;
Sec. 27, NE¼NE¼, S½NE¼, SE¼;
Sec. 28, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 33, NW¼NW¼, N½SW¼;
Sec. 35, all.
T. 15 N., R. 9 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, NE¼SE¼, S½SE¼;
Sec. 8, all;
Sec. 9, E½NE¼, SW¼NE¼, W½, SE¼;
Sec. 10, all;
Sec. 11, all;
Sec. 17, N½, N½SE¼, SW¼SE¼;
Sec. 22, all;
Sec. 23, W½NE¼, SE¼NE¼, W½.
T. 16 N., R. 9 W.,
Sec. 1, lots 1 to 4, incl., S½N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, N½, N½S½, SW¼SW¼, S½SE¼;
Sec. 11, all;
Sec. 12, all;
Sec. 14, all;
Sec. 15, all;
Sec. 17, all;
Sec. 20, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 21, all;
Sec. 22, all;
Sec. 23, N½, SW¼, SW¼SE¼;
Sec. 24, N½, E½SW¼, SW¼SW¼, SE¼;
Sec. 25, NE¼, S½;
Sec. 26, NW¼NE¼, S½NE¼, NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 31, E½, E½W½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;

In exchange, the mineral estate in 135,762.68 acres of land has been conveyed to the United States. The mineral estate conveyed to the United States in the following described lands is being administered by the National Service as part of Grand Canyon

BEST COPY AVAILABLE

Nationa Park and/or Lake Mead National Recreation Area:

Gila and Salt River Meridian, Arizona

T. 29 N., R. 11 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
T. 30 N., R. 11 W.,
Sec. 9, all;
Sec. 11, all;
Sec. 23, all;
Sec. 27, all;
T. 30 N., R. 15 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, lots 1 to 4, incl.;
Sec. 17, all;
Sec. 19, NE¼, that portion within Grand Canyon National Park (GCNP) and/or Lake Mead National Recreation Area (LMNRA);
Sec. 21, lots 1 to 4, incl., that portion within GCNP and/or LMNRA.
T. 30 N., R. 16 W.,
Sec. 11, N½, E½SE¼, that portion within GCNP and/or LMNRA;
Sec. 13, N½, SE¼, that portion within GCNP and/or NMNRA.
T. 31 N., R. 11 W.,
Sec. 17, all;
Sec. 21, all;
Sec. 25, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all;
T. 31 N., R. 12 W.,
Sec. 9, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 23, all;
Sec. 25, all;
Sec. 35, all;
T. 31 N., R. 13 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½, that portion within GCNP and/or LMNRA;
Sec. 7, lots 1 to 4, incl., E½, E½W½, that portion within GCNP and/or LMNRA;
Sec. 25, all;
T. 31 N., R. 15 W.,
Sec. 31, all;
Sec. 33, lots 1 to 4, incl.

The mineral estate conveyed to the United States in the following described land is being administered by the U.S. Fish and Wildlife Service as part of Havasu National Wildlife Refuge:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 20½ W.,
Sec. 1, NE¼, E½NW¼, N½NW¼NW¼, SE¼NW¼NW¼, N½N½SE¼.
T. 15 N., R. 20 W.,
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
T. 15 N., R. 20½ W.,
Sec. 1, all;
Sec. 3, lots 1 and 2, N½ and SE¼ of lot 3, E½E½;
Sec. 11, all;
Sec. 13, all;
Sec. 23, east 20 acres of lot 1, NE¼, E½NW¼, NE¼NE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 25, E½, N½NW¼, N½S½NW¼, SE¼SE¼NW¼, E½E½SW¼;
Sec. 35, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼.
T. 15 N., R. 21 W.,
Sec. 1, S½;
Sec. 13, NE 10 acres of lot 2, NE¼, NE¼NW¼, NE¼SE¼, E½NW¼SE¼, E½SE¼SE¼, SW¼SE¼SE¼.
T. 16 N., R. 20 W.,
Sec. 31, lots 1 to 4, incl., E½W½, E½;
T. 16 N., R. 20½ N.,
Sec. 35, N½, SE¼.

The mineral estate conveyed to the United States in the remaining following described land, most of which is within twelve wilderness study areas, will be administered by the Bureau of Land Management for its public values:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 15 W.,
Sec. 5, W½, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all.
T. 10 N., R. 16 W.,
Sec. 1, N½N½, S½S½;
Sec. 3, all;
Sec. 11, all.
T. 10 N., R 17 W.,
Sec. 13, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
Sec. 33, all;
Sec. 35, all.
T. 10 N., R. 18 W.,
Sec. 3, lots 1, to 4, incl., S½N½, S½;
Sec. 9, NE¼, E½SE¼;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 33, all;
Sec. 35, all.
T. 11 N., R. 15 W.,
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 11 N., R. 16 W.,
Sec. 25, N½, NW¼SW¼, NE¼SE¼.
T. 11 N., R. 18 W.,
Sec. 35, all.
T 12 N., R. 13 W.,
Sec. 5, lots 1 to 4, incl., S½.
Sec. 7, lots 1 to 4, incl., SE¼NW¼, E½SW¼, SE¼;
Sec. 9, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 29, NE¼, E½NW¼.
T. 12 N., R. 14 W.,
Sec. 1, lots 2 to 4, incl., S½;
Sec. 3, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½,
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, E½, E½NW¼;
Sec. 35, all.
T. 12 N., R. 15 W.,
Sec. 1, lots 1 to 4, incl., S½;
Sec. 3, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 15, all;
Sec. 17, all;
Sec. 21, all;
Sec. 23, SW¼NE¼, SE¼SW¼, SE¼;
Sec. 27, all;
Sec. 29, all.
T. 13 N., R. 12 W.,
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 13 N., R. 13 W.,
Sec. 11, S½;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
Sec. 33, SE¼;
Sec. 35, all.
T. 13 N., R. 14 W.,
Sec. 27, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 13 N., R. 15 W.,
Sec. 27, all;
Sec. 33, all;
Sec. 35, all.
T. 14 N., R. 12 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 11, N½, N½W¼, SE¼SW¼, SE¼.
T. 14 N., R. 18 W.,
Sec. 25, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 14 N., R. 19 W.,
Sec. 3, lots 1 to 4, incl., S½N½, SE¼;
Sec. 5, lots 1 and 2, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½.
T. 15 N., R. 12 W.,
Sec. 35, all.
T. 15 N., R. 18 W.,
Sec. 29, all;
Sec. 31, lots 1 and 2, E½, E½NW¼;
Sec. 33, all.
T. 15 N., R. 21 W.,
Sec. 1, N½.
T. 16½ N., R. 19 W.,
Sec. 21, lots 1 to 4, incl., S½N½, S½;
Sec. 23, lots 1 to 4, incl., S½N½, S½;
Sec. 27, all;
Sec. 33, all.
T. 17 N., R. 16 W.,

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Sec. 5, lots 1 to 4, incl., S½N½, S½.
T. 17 N., R. 20 W.,
Sec. 1, lots 1 to 7, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 33, all;
Sec. 35, all;
T. 18 N., R. 16 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, S½SW¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, W½;
Sec. 27, N½, SW¼;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all.
T. 18 N., R. 17 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 13, all;
Sec. 23, all;
Sec. 25, all.
T. 18 N., R. 20 W.,
Sec. 25, all;
Sec. 33, all;
Sec. 35, all.
T. 19 N., R. 16 W.,
Sec. 9, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 25, E½SE¼;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 19 N., R. 17 W.,
Sec. 13, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 35, all.
T. 19 N., R. 20 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½.
T. 20 N., R. 20 W.,
Sec. 11, all;
Sec. 13, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, SE¼SE¼;
Sec. 35, lots 1 and 2, NE¼NE¼, W½E½, W½, SE¼SE¼.
T. 24 N., R. 18 W.,
Sec. 5, lots 1 to 4 incl., S½;
Sec. 7, NE¼, E½NW¼;
Sec. 9, all.
T. 25 N., R. 17 W.,
Sec. 31, lots 3 and 4, E½SW¼, SE¼.
T. 25 N., R. 18 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 30 N., R. 15 E.,
Sec. 19, NE¼, that portion lying outside of GCNP and/or LMNRA;
Sec. 21, lots 1 to 4, incl., that portion lying outside of GCNP and/or LMNRA.
T. 30 N., R. 16 W.,
Sec. 11, N½, E½SE¼, that portion lying outside of GCNP and/or LMNRA;
Sec. 13, N½, SE¼, that portion lying outside of GCNP and/or LMNRA.
T. 31 N., R. 13 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½, that portion lying outside of GCNP and/or LMNRA;
Sec. 7, lots 1 to 4, incl., E½, E½W½, that portion lying outside of GCNP and/or LMNRA;
Sec. 25, all.

The purpose of this Notice is to inform the public and interested state and local government officials of this exchange of public and private mineral estates, and to outline administration of the mineral estate conveyed to the United States.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-29420 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-32-M

[CO-010-09-4212-13; COC-45800]

Exchange of Public Lands in Jackson and Grand Counties; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice corrects an error in the legal description of public lands proposed to be exchanged for nonfederal land.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459.

SUPPLEMENTARY INFORMATION: In Federal Register Document 88-27706 on pages 48589-48590 in the issue of Thursday, December 1, 1988, under T. 5 N., R. 81 W., section 9, lot 15 is corrected to read lot 7, containing 44.57 acres.

David C. Nylander,

Acting District Manager.

[FR Doc. 88-29418 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-JB-M

[ID-060-09-4212-13; I-26370]

Coeur d'Alene District, Idaho County, ID; Exchange of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Idaho County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Principal Meridian, Idaho

T. 29 N., R. 3 E.
Sec. 6, SE¼SW¼
T. 30 N. R. 4 E.
Sec. 19, Lots 9 and 10.
Containing 117.95 acres in Idaho County.

In exchange for these lands, the United States will acquire the following described lands from FLEX Northwest, Inc.:

Boise Principal Meridian, Idaho

T. 31 N., R. 2 W.
Sec. 7, lots 4 and 5.
Containing 79.30 acres in Lewis County.

The purpose of the exchange is to obtain non-federal lands for use in Federal recreation programs in the vicinity of the Lower Salmon River. The exchange is consistent with the Bureau's planning for the involved lands. The public interest will be well served by making the exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize values upon completion of the final appraisal of the lands. The exchange involves both the surface and mineral estates.

Lands to be conveyed from the United States will be subject to the following terms and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

Publication of this notice segregates the public lands from the operation of the public land laws, including the mining laws, for a period of two years from the date of publication.

Additional information about the exchange is available for review at the Bureau of Land Management Office, Route 3, Box 181, Cottonwood, Idaho 83522.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments or adverse claims to the Coeur d'Alene District Manager, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 15, 1988.

John B. O'Brien III,

Acting District Manager.

[FR Doc. 88-29379 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-66-M

[NV-930-09-4212-11; N-49859]

Realty Action; Bureau Motion Lease/Purchase For Recreation and Public Purposes Nye County, NV

The following described public land near Lathrop Wells, Nye County, Nevada has been identified and examined and will be classified as potentially suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register** and the filing of an application by a qualified applicant.

Mount Diablo Meridian, Nevada

T. 15 S., R. 49 E.,
Section 13; N½,N½S½.

Aggregating 480 acres (gross)

This parcel of land contains approximately 480 acres. The lands are being classified for recreation and public purposes by the Bureau of Land Management in order to make the lands available for filing of an application by a qualified applicant under the Recreation and Public Purposes Act. Upon the filing of an application, the Bureau of Land Management will prepare the required documents which include Environmental Assessment/Land Report, cultural resources report/survey, and mineral report. A final determination of any application will not be made until completion of these reports. The lands have been identified for disposal in the Southern Nye/Esmeralda BLM Resource Management Plan. The lease and/or patent, if issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Nye County.

2. Those rights for telephone line purposes which have been granted to Continental Telephone by Permit No. CC-021488 under the Act of March 4, 1911.

3. Those rights for highway purposes which have been granted to State of Nevada, Department of Transportation by Permit No. CC-018078 under the Act of August 27, 1958.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area. The purpose of this notice is to merely classify the lands and is not authorization for any surface disturbing activities.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: December 12, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV

[FR Doc. 88-29446 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-HC-M

[(OR-943-09-4214-11; GP9-065; OR-44047)]

Conveyance of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 150.82 acres of public lands out of Federal ownership. The 154.79 acres of reconveyed land will not be opened to surface entry, mining and mineral leasing because it will be designated as an Outstanding Natural Area.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 150.82 acres of lands in Lane County, Oregon, from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 17 S., R. 3 E.,
sec. 10, lots 4 and 5, and SE¼NW¼.

Revested Oregon and California Railroad Grant Land

T. 17 S., R. 3 E.,
sec. 10, lot 3 and NW¼NW¼.

The area described contains 154.79 acres in Lane County.

The land will not be opened to operation of the public land laws, including the mining and mineral leasing laws because it will be designated as an Outstanding Natural Area.

Dated: December 14, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 88-29410 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-33-M

[OR-050-4212-14:GP9-072]

Prineville District, Oregon; Realty Action, Direct Sale of Public Land in Crook County, Oregon (OR 44610)

December 15, 1988.

AGENCY: Bureau of Land Management, Interior.

The following lands are suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value.

LEGAL DESCRIPTION

T. 16 S., R. 16 E., W.M.	Tract	Acres
A. Sec. 14 SW¼NW¼	40	2.46
B. Sec. 21 NE¼SW¼	41	.47
C. Sec. 21 NE¼SE¼	42	1.66
D. Sec. 28 NW¼SE¼	44	3.03
E. Sec. 28 SE¼SE¼	45	7.73
F. Sec. 26 E½NW¼, NE¼SW¼, NW¼SE¼	43	10.66
G. Sec. 35 E½E½	46	0.91
	47	0.26
Total		27.29

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

These (isolated) parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

The tracts were established as a result of a dependent resurvey conducted by BLM Prineville District Office. The survey revealed discrepancies between section corners used in surveying the Prineville Lake Acres Unit II subdivision, and the original established corners.

By selling the eight tracts directly to the developer, Central Oregon Sun Country, Inc., the property would automatically be incorporated into each of the affected individual lots.

Direct sale procedures are being used since a competitive sale is not appropriate. The public interest would best be served by direct sale because the tracts are included within lots of the subdivision.

The tracts identified by Serial No. OR 38477 are being offered to the developer, Central Oregon Sun Country, Inc., using direct sale procedures authorized under 43 CFR 2711.3–3. The land will be sold at fair market value without competitive bidding.

The prospective purchaser is required to render a minimum deposit of 20% of the purchase price by January 30, 1989, and the balance within 180 days of the sale date.

Terms and Conditions of the Sale

The terms, conditions and reservations applicable to the sale are as follows:

(1) All oil and gas interests in the lands will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

(2) Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

(3) The patent will be issued subject to all valid existing rights and reservations of record.

Further information concerning the sale including the environmental analysis and land report is available for review at the Prineville District Office, P.O. Box 550, Prineville, OR 97754.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Prineville District Manager at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. (In the absence of adverse comments this realty action will become a final determination of the Department of the Interior.)

Dated: December 15, 1988.

Donald L. Smith,

Acting District Manager.

[FR Doc. 88–29411 Filed 12–21–88; 8:45 am]

BILLING CODE 4310-33-M

[U-62285, U-62294, U-62295, U-62296, U-62297, U-62298; UT-040-09-4212-14]

Realty Action; Sale of Public Land in Iron County, UT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: The Notice of Realty Action announcing a sale of public lands in Iron County, Utah, published in the **Federal Register**, Vol. 53, No. 230, Wednesday, November 30, 1988, pp. 48317–48318 is hereby amended to include the following statement:

"The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws. This segregation will remain effective pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first."

Date: December 14, 1988.

Gordon Staker,

District Manager.

[FR Doc. 88–29409 Filed 12–21–88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-09-4212-13]

Final Decision on Plan Amendment; Grand Resource Area, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Final decision on plan amendment for Grand Resource Area Resource Management Plan.

SUMMARY: Notice is given to the public that the Bureau of Land Management has made a final decision to amend the Grand Resource Area Resource Management Plan. The plan amendment changes the lands management actions on page 22 with the following additions: "The following described public lands (shown on Figure 1) will be managed for disposal, only by exchange under FLPMA Section 206:

Salt Lake Meridian, Utah

T.24S., R.22E.,
Section 35, S½NE¼, N½N½SE¼, and N½S½N½SE¼.

The following described private lands (shown on Figure 2) will be acquired only by exchange under FLPMA Section 206:

Salt Lake Meridian, Utah

T.24S., R.23E.,
Section 2, Lots 2, 3, 4, 5, 8 and 9."

The minerals management action on page 27, paragraph 3 would be removed in its entirety and replaced with the following:

"Areas closed to mineral material disposal area:

1. Negro Bill ACEC
2. Mill Canyon Interpretive Site
3. Wilderness Study Areas (WSA). If the WSA is included in the Wilderness Preservation System it will remain closed to mineral material disposal. However, if it is not included, it will be open to applications for disposal of mineral material.
4. Mineral withdrawals
5. Oil and Gas leasing categories 3 and 4 with the exception of Fish Ford material site. The legal description for Fish Ford is:

Salt Lake Meridian, Utah

T.21S., R.24E.,

Section 34, S½SE¼;
Section 35, NW¼NW¼, S½NW¼, N½SW¼, SW¼SW¼.
T.22S., R.24E.,
Section 2, Lots 3, 4;
Section 3, Lots 1–5, 8, and 9, SW¼NW¼, W½SW¼.

These areas are identified on Figure 3. The rest of the resource area is open to mineral material disposal. NEPA documentation will determine whether a permit should be issued for a specific site within the area open for salable mineral disposal. If approved the NEPA documentation will determine appropriate stipulations for the site." The planning criteria on pages A–24, 25 (Lands Actions) would be changed by the following addition:

"The determination of suitability of lands for exchanges will be done in a site-specific environmental assessment. To be in conformance with the plan, an exchange must be shown to be in the public interest and meet the disposal and acquisition criteria below:

Lands selected for disposal *must be* suitable for disposal under criteria established by policy, law, or regulation:

—No mining claims of record under section 314 of FLPMA;
—Lands not encumbered by a withdrawal or other special designation;
—Lands with no known cultural resource sites suitable for national register designation;
—Lands which, because of their location or other characteristics, are difficult or uneconomic to manage as part of the public lands;
—Lands are not suitable for management by another Federal department or agency;
—Lands are not in flood areas or contain wetlands which preclude disposal.

The values of the acquisition must outweigh the values of the disposal:

—Acquisition of public lands to be managed by the BLM will meet program objectives for management of recreation resources, wilderness, cultural resources, wildlife habitat, riparian or wetland areas, or threatened or endangered species;
—The exchange will result in better Federal land management;
—Where possible, the exchange will provide access to public lands.

Acquisitions for the benefit of another Federal agency must be shown to be in the public interest.

DATES: For up to and including January 23, 1989, protests on the plan amendment may be filed. This decision will become final after the 30-day-period if no protests are received.

ADDRESSES: Protests on the plan amendment shall be sent to the Director, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240. The environmental assessment prepared for the plan amendment is available at the Grand Resource Area, P.O. Box M, Sand Flats Road, Moab, Utah 84532, phone: (801) 259–8193.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Grand Resource Area.

Dated: December 12, 1988.

James M. Parker,
State Director.

[FR Doc. 88–29387 Filed 12–21–88; 8:45 am]
BILLING CODE 4310–DQ–M

[ID–942–09–4730–12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a..m., December 12, 1988.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 20, T. 1 S., R. 4 E., Boise Meridian, Idaho, Group No. 764, was accepted November 30, 1988.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

December 12, 1988.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

[FR Doc. 88–29412 Filed 12–21–88; 8:45 am]
BILLING CODE 4310–GG–M

[CO–930–09–4214–10; COC 49195]

Proposed Withdrawal; Scheduled Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw National Forest System land near Frisco, Colorado, for 20 years to protect recreational facilities and resource values at the Copper Mountain Ski Area. This notice closes this land to location and entry under the U.S. mining laws for two years. The land remains open to mineral leasing and to Forest Service management. This notice also establishes the time and place of a public meeting which has been scheduled as required by regulation to allow public involvement in this proposed action.

DATES: Comments on this proposed action must be received on or before March 22, 1989; requests to be heard at the public meeting must be received by February 7, 1989.

ADDRESS: Comments and/or requests to be heard should be submitted to the State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

MEETING DATE: The public meeting will be held on February 15, 1989, at 7:00 p.m. All requests to be heard should be received by close of business February 7, 1989, at the Colorado State Office. A list of scheduled speakers will be established. Unscheduled speakers will be heard if time allows.

MEETING ADDRESS: Frisco Town Hall, 1st and Main Streets, Frisco, Colorado 80443.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 236–1768.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Department of Agriculture, Forest Service, filed application to withdraw the following described National Forest System land from location and entry under the mining laws, subject to valid existing rights:

Sixth Principal Meridian

Arapaho National Forest

T. 6S., R. 78 W.,
Sec. 20, SE¼SW¼SW¼, S½SE¼SW¼;
Sec. 29, W½SW¼NE¼, E½W½, E½W½NW¼ NE¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, SW¼SE¼, W½NW¼SE¼;
Sec. 30, S½ exclusive of Tract 37;
Sec. 31, All;
Sec. 32, W½E½, W½.
T. 7 S., R. 78 W. (Protraction Diagram No. 9, Accepted April 26, 1965).
Sec. 5, W½NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, SW¼SE¼ SW¼, W½NW¼SE¼, exclusive of patented lands;
Sec. 6, All exclusive of patented lands;
Sec. 7, NW¼, fractional E½NW¼, fractional N½NE¼SW¼, fractional NW¼NE¼SE¼, exclusive of Tract 50 and patented lands;
Sec. 8, NW¼NE¼NW¼, NW¼NW¼, NW¼SW¼NW¼.
T. 7 S., R. 79 W.,
Sec. 1, All;
Sec. 2, All;
Sec. 3, E½, E½NE¼SW¼, NE¼SE¼ SW¼;
Sec. 10, NE¼NE¼, NE¼NW¼NE¼, N½SE¼NE¼, SE¼SE¼NE¼;
Sec. 11, N½, N½NE¼SW¼, N½N½SE¼, exclusive of patented lands;

Sec. 12, N½, N½N½S½, exclusive of patented lands.
T. 6 S., R. 79 W.,
Sec. 25, SW¼SW¼NE¼, exclusive of Tract 38, S½NW¼, SW¼, SE¼ exclusive of Tract 38;
Sec. 26, S½, S½N½, NW¼NE¼, S½NE¼NE¼, NW¼NE¼NE¼, NE¼NW¼, W½NW¼NW¼, SE¼NW¼NW¼;
Sec. 27, E½NE¼NE¼, SE¼SE¼NE¼, SE¼SE¼SW¼, NE¼NE¼SE¼, S½NE¼SE¼, SE¼NW¼SE¼, S½SE¼;
Sec. 34, E¼, N½NE¼NW¼, SE¼NE¼ NW¼;
Sec. 35, All;
Sec. 36, All.

The area described aggregates approximately 7,699 acres of National Forest System land in Summit County.

The purpose of this proposed withdrawal is to protect recreational facilities and high resource values within the Copper Mountain Ski Aea.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the undersigned officer of the Bureau of Land Management. However, those persons desiring to be heard at the public meeting must submit their requests by February 7, 1989.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to allow those descretionary uses that do not conflict with the ski area permit and use.

Jenny L. Saunders,
Acting Chief, Branch of Realty Programs.
[FR Doc. 88–29415 Filed 12–21–88; 8:45 am]
BILLING CODE 4310–JB–M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service.
ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5345, Block 555, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on December 15, 1988. Comments must be received on or before January 6, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr.; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: December 15, 1988.
J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.
[FR Doc. 88–29380 Filed 12–21–88; 8:45 am]
BILLING CODE 4310–MR–M

National Park Service

Boundary Establishment, Descriptions, etc.; Sleeping Bear Dunes National Lakeshore, MI

AGENCY: National Park Service, Interior.
ACTION: Notice of correction to boundary map.

The boundary of Sleeping Bear Dunes National Lakeshore, authorized October 21, 1970, 84 Stat. 1075, was revised in the **Federal Register**, January 4, 1985 (50 FR 552) to include approximately 115 acres pursuant to authority contained in the Act of June 10, 1977, 91 Stat. 211, as amended, 16 U.S.C. 460*l*–9(c).

It was originally intended that .30 acre of Tract 08–111 be deleted. However, the map drawn depicted the deletion of the entire tract. Map numbered 634–80050 dated June 1988 correctly depicts the boundary to reflect the deletion of only the .30-acre portion of the tract. The map is available to the public for inspection at the following addresses:

Director, National Park Service, 1100 L Street NW., P.O. Box 37127, Washington, DC 20013–7127
Regional Director, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102
Superintendent, Sleeping Bear Dunes National Lakeshore, Box 277, 9922 Front Street, Empire, Michigan 49630

Date: August 3, 1988.
Don H. Castleberry,
Regional Director, Midwest Region.
[FR Doc. 88–29342 Filed 12–21–88; 8:45 am]
BILLING CODE 4310–70–M

General Management Plan for Eugene O'Neill National Historic Site; Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed General Management Plan for Eugene O'Neill National Historic Site, Contra Costa County, California.

The draft Plan proposes the development of a public access road to the site, the development of additional

visitor use facilities, adaptive use of historic structures for administrative and visitor use purposes, removal of a non-historic structure, and adjustment of the Site's boundary to include the access road corridor and additional historic resources. Alternatives include no action, the development of an alternative access route, and retention and use of the non-historic building.

DATES: Written comments on the draft General Management Plan and DEIS will be accepted until March 15, 1989. Also, a public information session will be held January 18, 1989 at San Ramon Valley High School, located at 140 Love Lane, Danville. The session, to be held in Room R, will run from 4:00 p.m. until 9:00 p.m. Park Service officials will be available at this time to hand out materials on the Plan, receive written comments, and answer questions.

ADDRESSES: Inquiries on the DEIS should be directed to: Superintendent, Eugene O'Neill National Historic Site, 4202 Alhambra Avenue, Martinez, CA 94553. Telephone number (415) 228–8860.

Copies of the draft Plan and DEIS are available at the park headquarters in Martinez at the above address. Copies are also available for inspection at libraries located in the Site's vicinity.

Date: December 15, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88–29343 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 10:30 a.m. (PDT) on Saturday, January 28, 1989, at the West Marin School, Point Reyes Station, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items at this public meeting will be a Point Reyes Committee Report on amendments to the Range Management Guidelines and on a request for communications tower construction; a report on resource management projects at Point Reyes National Seashore including the exotic plant control plan; report on the status of the Drakes Beach Visitor Center planning; status report on the Limantour Comfort Station proposal; status report on other issues relating to Point Reyes National Seashore and the northern area of the Golden Gate National Recreation Area; and a Superintendent's Report.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on these items. Statements will be accepted until February 10, 1989.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123, telephone (415) 556–4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after February 17, 1989. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: December 14, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88–29344 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31342]

Soo Line Railroad et al.; and Burlington Northern Railroad Co.; Exemptions; Joint Project for Relocation of a Line of Railroad and Trackage Rights

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Soo Line Railroad Company (Soo) has filed a Notice of Exemption pursuant to 49 CFR 1180.2(d)(5) and (7) to relocate operations and to acquire trackage rights over a 145.96-mile long line of railroad owned and operated by the Burlington Northern Railroad Company (BN) between BN milepost 155.36 at Soo Junction near Schley, MN, and BN milepost 9.40 at Superior, WI. The trackage rights will enable Soo to relocate certain operations within its Superior terminal which, in turn, will permit Soo to abandon a 1.26-mile portion of a line of railroad between Soo milepost 279.49 at interlocking "MJ" in Superior, and Soo milepost 278.23 at "Junction 278" near Saunders, WI. The proposal also involves the construction by Soo of a new connector track between Soo's and BN's lines at interlocking "MJ" in Superior.

On October 24, 1984 (53 FR 43050 October 25, 1988), the Commission revoked Soo's exemptions pending compliance by Soo with possibly applicable environmental review requirements under the Coastal Zone Management Act (CZMA). Soo has now complied with the CZMA requirements. Also, the Commission has found that environmental review is not required of the involved transactions. Consequently, the October 24 decision should be vacated and this exemption notice published.

As a condition to use this exemption, any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

DATE: The exemption is effective on December 22, 1988. Petitions to revoke may be filed at any time.

ADDRESS: Petitions to revoke must be filed with:

1. Office of the Secretary, Case Control Branch, Interstate Commerce Commission Bldg., Washington, DC 20423, and

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2. Soo's representative: Larry D. Starns, General Attorney, Soo Line Building, Suite 1000, 105 South Fifth Street, Box 530, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired service (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Assistance for the hearing impaired is available through TDD services (202) 275–1271.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29323 Filed 12–21–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Congoleum Corporation* has been lodged with the United States District Court for the District of New Jersey. The consent decree addresses alleged violations by Congoleum Corporation of the New Jersey State Implementation Plan ("SIP") and the Clean Air Act relating to volatile organic substances ("VOS") emissions from the rotogravure printing process at Congoleum's Trenton, New Jersey plant.

The proposed Consent Decree provides that Congoleum will pay a civil penalty of $135,000, shall operate its rotogravure printing process and associated pollution control equipment in compliance with the New Jersey SIP, and shall test its afterburner to establish whether the afterburner is meeting the destruction efficiency requirements of the New Jersey SIP.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Congoleum Corporation*, D.J. Ref. 90–5–2–1–1101.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6317, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $2.70 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–29417 Filed 12–21–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application; Wildlife Laboratories, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 7, 1988, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 23, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: December 15, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88–29354 Filed 12–21–88; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88–104]

National Environmental Policy Act; Availability of Draft Environmental Impact Statement, Advanced Solid Rocket Motor

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Notice is hereby given of the public availability of the draft Environmental Impact Statement (EIS) for Advanced Solid Rocket Motor (ASRM) program. Comments on the EIS and on matters set forth therein are solicited from and may be submitted by state and local agencies and members of the public. Such comments should be submitted to Ms. Rebecca McCaleb, Building 2423, Stennis Space Center, Mississippi 39529–6000. All comments must be received within 45 days of the Environmental Protection Agency Notice of Availability in order to be

considered in the preparation of the final EIS.

Copies of the draft statement may be obtained or examined at any of the following locations:

(a) NASA Headquarters, Public Documents Room (Room 126), 600 Independence Avenue SW., Washington, DC 20546.
(b) NASA/Ames Research Center (Building 201, Room 17), Moffett Field, CA 94035.
(c) NASA/Ames Research Center, Dryden Flight Research Facility (Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.
(d) NASA/Goddard Space Flight Center (Building 8, Room 150), Greenbelt, MD 20771.
(e) NASA/Johnson Space Center (Building 1, Room 136), Houston, TX 77058.
(f) NASA Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, FL 32899.
(g) NASA Langley Research Center (Building 1219, Room 304), Hampton, VA 23365.
(h) NASA Lewis Research Center (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, OH 44135.
(i) NASA/Marshall Space Flight Center (Building 4200, Room G–11), Huntsville, AL 35812.
(j) NASA/Stennis Space Center (Building 1100, Room A–213), Bay St. Louis, MS 39520.
(k) Jet Propulsion Laboratory (Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, CA 91109.
(l) NASA/Goddard Space Flight Center, Wallops Flight Facility (Library Building, Room E–105), Wallops Island, VA 23337.

December 15, 1988.

M. Peralta,

Associate Administrator for Management.

[FR Doc. 88–29298 Filed 12–21–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal; Advisory Panel for Engineering Research Centers

The Assistant Director for Engineering has determined that the renewal of the Advisory Panel for Engineering Research Centers for an additional 2 years is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

December 19, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–29449 Filed 12–21–88; 8:45 am]

BILLING CODE 7555–01–M

Division of Ocean Sciences, Advisory Panel for Ocean Sciences Research; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and Time: January 24–25, 1989; 8:30 a.m.–5:00 p.m.

Place: American Association for the Advancement of Science, 1333 H Street, NW., Washington, DC 20005.

Rooms: First Floor Conference Room A, First Floor Conference Room B, Eighth Floor Conference Room, Eleventh Floor Conference Room.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9600.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

December 19, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–29451 Filed 12–21–88; 8:45 am]

BILLING CODE 7555–01–M

Review Panel for Research in Teaching and Learning Program; Meeting

The National Science Foundation announces the following meeting:

Name: Review Panel for Research in Teaching and Learning Program.

Date and Time: January 11–13, 1989, from 8:00 p.m.to 9:00 p.m the night of the January 11; January 12, 1989, from 8:30 a.m. to 5:00 p.m. and each day after.

Place: Institute for Research on Learning, 2550 Hanover Street, Palo Alto, CA 94304.

Type of Meeting: Closed.

Contact Person: Raymond J. Hannapel, Program Director for Research in Teaching and Learning Program, Room 635A, 202/357–7071.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

December 19, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–29452 Filed 12–21–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1988 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The abnormal occurrences are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 11, No. 2 ("Report to Congress on Abnormal Occurrences: April-June 1988"). This report will be available in the NRC's Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC, about three weeks after the publication date of this **Federal Register** Notice.

88–10 Significant Breakdown in Management and Procedural Controls at a Medical Facility

One of the general AO criteria notes that major deficiencies in use of, or management controls for, licensed materials can be considered an abnormal occurrence. In addition, one of the AO examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

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Date and Place

This occurrence addresses licensee performance, leading to an Order Modifying License and Proposed Civil Penalty of $5,000 issued on June 3, 1988; Riverton Memorial Hospital-Health Trust, Inc., Riverton, Wyoming.

Nature and Probably Consequences

During a special, unannounced inspection on September 30 and October 1, 1986, in response to an allegation of unauthorized individuals using radioactive materials, an NRC inspector identified nine violations of NRC requirements and substantiated the allegation. An enforcement conference was held November 4, 1986, with members of the licensee's management to discuss the findings of the inspection and the licensee's corrective actions.

On January 21, 1987, a Notice of Violation and Proposed Imposition of Civil Penalties ($2,500) was issued. The licensee requested mitigation of the civil penalties, but mitigation was denied by the NRC. On June 11, 1987, an Order Imposing Civil Monetary Penalty was issued.

On March 24, 1988, a special, unannounced inspection was performed to assess the effect of the licensee's corrective actions. The NRC inspectors identified eight violations of NRC requirements, of which four were repeated from the previous inspection and two were related to previous findings. The violations involved, (1) an unauthorized use of licensed material, (2) failure to adequately instruct a worker, (3) failure of the Radiation Safety Committee to meet quarterly, (4) failure to notify the Commission within 30 days that authorized users had terminated employment, (5) failure to perform quarterly inventories of sealed sources, (6) failure to have a copy of the license on which a visiting physician was named, (7) failure to make a record of a diagnostic misadministration, and (8) failure to provide all required information on radiopharmaceutical administration records.

A Confirmation of Action Letter (CAL) was issued March 29, 1988, to confirm, among other things, that the hospital had established controls to preclude the conduct of therapeutic procedures involving licensed materials. The licensee responded on April 7, 1988, with a copy of a memorandum distributed to all nuclear medicine personnel, which stated that no therapeutic procedures were to be performed.

Another enforcement conference was held April 15, 1988, and on June 3, 1988, the NRC issued an Order Modifying License and Notice of Violation and Proposed Imposition of Civil Penalty for $5,000. The licensee responded, acknowledging the violations and proposing a new plan of corrective actions.

Cause or Causes

The causes are attributed to significant deficiencies in management oversight and control of the licensed program.

Actions Taken to Prevent Recurrence

Licensee

The licensee trained its personnel, including the Radiation Safety Officer. In a letter of May 2, 1988, the licensee committed to setting up a calendar for those parts of its radiation safety program that need to be performed on a regular schedule and committed to a review of the program by the hospital administrator on a monthly basis.

The licensee has committed to hiring a consulting company to audit the hospital's radiation protection program on a quarterly basis.

NRC

The NRC modified the license by order issued June 3, 1988. The order required the licensee to (1) notify the NRC Region IV office by telephone prior to the effective date of any employment termination of any personnel directly involved in the nuclear medicine department's licensed activities, and (2) have audits of the radiation safety program performed by an independent party for one year, at quarterly intervals.

The NRC reviewed the licensee's proposed corrective action and approved the use of the consultant. The licensee's program will be reinspected to confirm the implementation and effectiveness of corrective actions.

88–11 Medical Diagnostic Misadministration

One of the general AO criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place

June 9, 1988; Veterans Administration Medical Center (Wadsworth), Los Angeles, California.

Nature and Probable Consequences

For a bone metabolism, a patient was administered a dose of 15 millicuries of technetium (Tc)–99m DTPA, which exceeded the prescribed dose by a factor of 1000. The misadministration was initially caused by a technologist presenting the wrong dose to a resident physician for injection. The resident physician then administered the radioactive material without properly identifying the material or determining the procedure for which it was to be administered.

The licensee stated that no untoward effects on the patient are anticipated. (For comparison purposes, 20 millicuries of Tc–99m DTPA is routinely used in the United States for diagnostic renal perfusion studies).

Cause or Causes

The cause was due to the failure of the technician and resident physician to follow the protocol for radio pharmaceutical injections.

Actions Taken to Prevent Recurrence

Licensee

The Chief of Service immediately conducted a review and discussion of injection procedures. All nuclear medicine staff attended the required sessions. Personnel performing injections were admonished to determine appropriateness of dose and/or procedure, as specified in the Service Protocol for Radiopharmaceutical Administration.

NRC

The circumstances of the misadministration were discussed with the licensee. The licensee's corrective actions were determined to be acceptable.

Dated at Rockville, MD this 16th day of December, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–29383 Filed 12–21–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–334 and 50–412]

Duquesne Light Co. et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 133 and 9 to Facility Operating License Nos. DPR–66 and NPF–73, respectively, issued to Duquesne Light Company, et al. (the licensee). The amendments revise the Technical Specifications for operation of the Beaver Valley Power Station, Units 1 and 2, located in Shippingport,

Pennsylvania. The amendments are effective as of the date of issuance, to be implemented within 60 days of issuance.

The amendment excludes all containment isolation weight- and spring-loaded check valves not subject to Type-C testing from the lift test requirements of Specification 4.6.3.1. The valves, however, will continue to be tested in accordance with ASME Section XI, as specified in Specification 4.0.5.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on August 16, 1988 (53 FR 30880). No request for a hearing or petition for leave to intervene was filed following this notice.

The staff has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the staff has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendments dated June 22, 1988, (2) Amendments Nos. 133 and 9 to License Nos. DPR-66 and NPF-73, (3) the staff's related Safety Evaluation and, (4) the staff's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Divison of Reactor Projects I/II.

Dated at Rockville, Maryland this 13th day of December, 1988.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-29389 Filed 12-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-499]

Houston Lighting and Power Co. et al., South Texas Project, Unit 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-78 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas (the licensees) which authorizes operation of the South Texas Project, Unit 2 (the facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (190 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The South Texas Project, Unit 2 is a pressurized water reactor located in Matagorda County, Texas, west of the Colorado River, 8 miles north-northwest of the town of Matagorda and about 89 miles southwest of Houston. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the South Texas Project was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the South Texas Project, Unit 2 (dated August 1986) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on December 9, 1988 (53 FR 49804), December 16, 1988 (53 FR 50604) and December 16, 1988 (53 FR 50605).

For further details with respect to this section, see (1) Facility Operating License No. NPF-78, with Technical Specifications (NUREG-1334) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated June 10, 1986; (3) the Commission's Safety Evaluation Report, dated April 1986 (NUREG-0781), and Supplements 1 through 6; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1986 (NUREG-1711).

These items are available for inspection at the Commission's Public Document Room located at 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the Facility Operating License No. NPF-78 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects-III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1 through 6 (NUREG-0781) and the Final Environmental Statement (NUREG-1171) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Rockville, Maryland this 16th day of December, 1988.

For the Nuclear Regulatory Commission.

George F. Dick,

Project Manager, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-29390 Filed 12-21-88; 8:45am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. and to Facility Operating License Nos. NPF-4

and NPF–7, to the Virginia Electric and Power Company (the licensee), which revised the Technical Specifications for operation of the North Anna Power Station, Units 1 and 2 (NA–1&2), located in Louisa County, Virginia. The amendments were effective as of the date of their issuance.

The amendments revised the NA–1&2 TS containment air temperature upper limit from 105 °F to 120 °F and the volume of water available from the refueling water storage tank for the quench spray system was redefined and reduced to permit the use of wide range level instrumentation for TS surveillance.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 12, 1988 (53 FR 16921).

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on December 9, 1988 (53 FR 49805).

For further details with respect to the action, see (1) the application for amendment dated March 2, 1988, as supplemented August 5, 1988, (2) Amendment Nos. 110 and 96 to Facility Operating License Nos. NPF–4 and NPF–7, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland this 14th day of December 1988.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–29391 Filed 12–21–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval Of Comprehensive Medical Plans Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a renewal of an existing information collection and record-keeping requirement from the public. Comprehensive Medical Plans—Application to Participate in Federal Employees Health Benefits Program (FEHBP) and Contractor Records Retention are required under the authority of Title 5, U.S. Code, Chapter 89 and Federal Acquisition Regulation (FAR) 9.1. Comprehensive medical plans applying for participation in the FEHBP must complete an application form so OPM can determine if the plans are "responsible prospective contractors" as defined under FAR 9.1. Once approval is obtained, the comprehensive medical plans are required to keep administrative, financial and claim records, which are subject to audit. Annual use (the number of plans expected to apply) is estimated at 75 applications during the next contract year from January 1, 1989 through December 31, 1989. The total annual information and recordkeeping burden is 22,896 hours. For copies of this proposal, call Lawrence F. Dambrose on (202) 632–0199.

DATE: Comments on this proposal should be received by January, 9, 1989.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–29314 Filed 12–21–88; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26362; File No. SR–MSE–88–6]

Self-Regulatory Organization; Midwest Stock Exchange, Incorporated; Order Approving Proposed Rule Change

The Midwest Stock Exchange, Incorporated ("MSE") submitted on September 9, 1988, a proposed rule change (File No. SR–MSE–88–6) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("ACT"). The proposed rule change eliminates the present limit order execution criterion of the Midwest Automated Execution System ("MAX") which requires a cospecialist to manually execute 300 shares for every 500 shares of the same issue that trades at the limit price on the primary market.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 26139 (September 30, 1988) 53 FR 39564. The Commission received no comments on the proposal. This order approves the proposal.

MSE Article XX, Rule 34 (BEST Rule) requires that all agency limit orders up to 1099 shares be filled if, among other criteria, the issue is trading at the limit price on the primary market. A fill is not required, however, if it can be shown that the order would not have been executed if it had been sent to the primary market or the broker and specialist agree to specific volume related or other cirteria for requiring a fill. In 1981, the MSE implemented new limit order execution criteria for limit orders entered over the MAX System. This new criteria required a specialist to manually execute 300 shares of a MAX entered limit order for every 500 shares that trade at the limit price in the primary market. When a limit order is received over the MAX System and is printed out, the specialist holds the order and determines when each limit order received should be executed based on his/her observation of the volume traded on the primary market. This rule change defined specific volume related criteria requiring a fill of limit orders entered over the MAX System.

In 1985, another rule change was implemented which clarified how specialists should handle existing limit orders entered manually in the book when executing a MAX limit order at the same price using the "3 for 5" criteria. Under that rule change, upon the printing of 500 shares in the primary market, the specialist is required to execute both the MAX order under the "3 for 5" criteria and 300 shares of the

resting order. All resting orders in the book would constitute one order for purposes of this rule. The purpose of this change was to provide execution criteria that would be equitable to limit orders entered both by MAX and by floor broker, while at the same time recognizing the differences between the expectations of member firms utilizing an automated execution system and those transmitting orders through their representatives on the trading floor. Since 1985, however, the "3 for 5" criteria has created an administrative burden for the specialist as well as additional confusion as to which limit orders and what size are entitled to a fill based on volume on the primary market.

The proposed rule change eliminates the "3 for 5" rule, and all limit orders, whether entered over MAX or by floor broker, are to be handled in the same manner under the general BEST rule requirement. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSE.

It is *Therefore Ordered,* pursuant to section 19(b)(2) of the Act, that SR–MSE–88–6 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 15, 1988.

[FR Doc. 88–29334 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Sothebys Holdings Inc.
Class A, Common Stock, $1.00 Par Value (File No. 7–4090)
Berkshire Hathaway, Inc.
Common Stock, $5.00 Par Value (File No. 7–4091)
Fibreboard Corporation
Common Stock, $01 Par Value (File No. 7–4092)
Lomas Mortgage Securities Fund, Inc.
Common Stock, $01 Par Value (File No. 7–4093)
Maxxam Inc.
Common Stock, $.50 Par Value (File No. 7–4094)
Oppenheimer Multi-Government Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–4095)
Oregon Steel Mills Inc.
Common Stock, $.01 Par Value (File No. 7–4096)
Templeton Global Government Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–4097)
Texaco Canada Inc.
Common Stock, No Par Value (File No. 7–4098)
British Steel Plc
Interim American Depositary Shares (File No. 7–4099)
Inland Steel Industries, Inc.
$3.625 Cumulative Convertible Exchangeable Preferred Stock, $1.00 Par Value (File No. 7–4100)
Federal Home Loan Mortgage Corporation
Senior Participating Preferred Stock, $2.50 Par Value (File No. 7–4101)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 5, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29338 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26361; File No. SR–NASD–88–43]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Define Professional Trader for Purposes of the Small Order Execution System

On September 26, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] to adopt a new subsection (E) to the NASD's Rules of Practice and Procedures for the Small Order Execution System ("SOES Rules") to prohibit members from entering orders in its Small Order Execution System ("SOES") on behalf of a professional trading account.

SOES was created for the purpose of entering orders of limited size [3] for retail customers involving securities quoted on the National Association of Securities Dealers Automated Quotation ("NASDAQ") System. Such orders receive an immediate execution at the best available price. Orders entered in SOES are executed automatically at the inside market.[4]

SOES Rules prohibit member firms from attempting to circumvent the SOES order-size limits by breaking up any order too large for SOES into a series of smaller orders for execution.[5] Nevertheless, the NASD is concerned that some SOES Order Entry Firms [6] and their customers have been using SOES to execute orders for so-called "professional traders." These traders monitor the market and are capable of reacting instantly to temporary disparities in the price of a security, using SOES. Because market makers markets in a number of securities, they are not always able to react instantly to a change in the price of each security in

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[1] *See* 15 U.S.C. 78s(b)(1) (1982)

[2] 17 CFR 240.19b–4 (1988).

[3] The maximum order size for SOES orders was 1,000 shares for NASDAQ/National Market System ("NMS") securities and 500 shares for regular NASDAQ securities. Recent amendments to SOES (discussed *infra* at notes 14, 23 and accompanying text) permit different order sizes to be set for different categories of NASDAQ/NMS securities.

[4] The "inside market" is the best bid and ask price for a security.

[5] SOES Rules, section (c)(3)(C), *NASD Manual*, ¶ 2480, at 2306.

[6] The term "SOES Order Entry Firm" refers to an NASD member who is registered as a SOES order entry firm for purposes of participation in SOES. As such, they may enter orders of limited size for execution against SOES Market Makers. *See* SOES Rules section (a)(6), *NASD Manual*, ¶ 2451, at 2303.

which they make a market. The NASD believes that, in response to the activity of professional traders, market makers may limit the number of securities in which they make markets, thereby affecting the liquidity of the market. Therefore, the NASD is proposing to eliminate the use of SOES by SOES Order Entry Firms on behalf of professional trading accounts.

The proposed rule change defines "professional trading account" to include any account in which five or more "day trades" [7] have been executed through SOES during any trading day or where a professional trading patterin in SOES is exhibited. A professional trading pattern is deemed to be demonstrated by (1) the existence of a pattern or practice of executing day trades; (2) the execution of a high volume of day trades in relation to the total transactions in the account; or (3) the execution of a high volume of day trades in relation to the amount and value of securities held in the account.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26151, October 3, 1988) and by publication in the **Federal Register** (53 FR 39703, October 11, 1988).

I. Comment Letters

The Commission received 19 comment letters on the proposed rule change. Of these comment letters, the National Security Trader Association ("NSTA"), representing over 7,000 professional members, favored the proposed rule change [8] and the other commentators objected to the proposal.[9]

The central argument made by the commentators in opposition to the filing is that the proposed rule change will have a negative impact on the over-the-counter ("OTC") market.[10] They assert that the activities of customers who employ SOES to obtain an automatic execution against a market maker whose quotation is the best, impose a market discipline. Market makers whose quotes are not "in line" with the other market makers are forced to update their quotations once they become aware, through repeated SOES executions, that their quotation is not in line with the majority of market makers for that particular stock. As part of this argument, the commentators assert that, by eliminating "professional traders" from SOES, the market will experience a decline in liquidity as well as an increase in inefficiency. They suggest that market makers will be even less motivated to update their quotations without the market discipline imposed by professional customers.

The commentators also assert that the NASD has not provided any substantive justification for the proposed rule change.[11] Moreover, these commentators argue, that, even if the NASD's concern is appropriate, the proposed rule change is not necessary in light of an NASD rule change recently approved by the Commission permitting SOES market makers to lower their exposure limits on a daily basis.[12]

The NSTA, the commentator favoring the proposed rule change, believes that the proposed rule change will differentiate between those accounts which use SOES for small, retail orders, for which SOES was conceived, and those which are manifestly used by the professional traders. They argue that the proposed rule change will preserve the inherent purpose for which SOES was created and thereby benefit public customers' small retail orders.

II. Background

The need for greater automation of the order execution process in the OTC market became apparent during the surge in trading volume that began in the fall of 1982.[13] With the increase in trading volume, the handling of routine small orders became an increasing burden for market makers. Consequently, the NASD implemented SOES, a system that is designed for individual retail customer orders and is restricted to orders of a maximum size.[14] Although SOES handles only approximately 1.3% of the total NASDAQ volume, 13% of all OTC transactions are handled through SOES. Thus, it is obvious that the average size of a SOES transaction is far smaller than the size of an average OTC transaction.[15] As discussed, SOES makes it possible for Order Entry Firms to obtain automatic execution for small orders [16] at the best price available on NASDAQ.[17]

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[7] The proposed rule change defines the term "day trade" or "day trading" to mean the execution of offsetting trades in the same security for generally the same size during the same trading day.

[8] *See* letter from John L. Watson III, President, and Gary D. Fender, Chairman, NSTA, to Jonathan G. Katz, Secretary, SEC, dated October 29, 1988. *See also* letter from Arthur J. Pacheco, President, Security Traders Association of New York, to Brandon Becker, SEC, dated August 18, 1988.

[9] *See* letter from: Harvey Houtkin, Vincent E. Scala, Parkway Home Inspection Services Inc., James S. Barr, Dean McCarty, Thomas K. Davis, Piper, Jaffray and Hopwood, and John Jay Edwards, to Richard G. Ketchum, director, Division of Market Regulation, SEC, dated October 20, 1988, November 10, 1988, November 11, 1988, November 27, 1988, undated, and undated respectively; Barry Soloway, Soloway & Co., Mark Scheinbaum, Fuhrman-Matt Securities, Inc., Martin S. Schwartz, Martin S. Schwartz and Co., and Robert M. Schwartz to Richard Kepchum [sic], dated November 15, 1988, November 17, 1988, and November 22, 1988; Jake Jacobus to Mr. Ketcham [sic], dated November 16, 1988; Harvey Houtkin to Kathryn Natale, SEC, dated November 18, 1988; Brian F. Amery, Bressler, Amery & Ross, to Jonathan G. Katz, Secretary, SEC, dated October 31, 1988; Clifford Atkin to Securities and Exchange Commission, dated November 29, 1988; Steven Cohen (undated); Dean Scharf (undated); Mike Rosenbaum (undated); and David Hess (undated). *See also* Donlan, "Terrors of the Tube, Computerized Traders vs. Market Makers," *Barron's*, November 7, 1988, at 24, and letter "To the Editor," from Harvey Houtkin, *Barron's*, November 14, 1988, at 42.

[10] In addition, the commentators apparently disagree with the NASD's definition of the term professional trader. They do not, however, raise any objections to the specific components of the definition. Nevertheless, one commentator did specifically argue that the definition of professional trader is ambiguous, and gives rise to concerns regarding enforcement of the proposed rule change. *See* letter from Brian F. Amery, Bressler, Amery & Ross, to Jonathan G. Katz, Secretary, SEC, dated October 31, 1988.

[11] The NASD has represented that one SOES Order Entry Firm represents, on average, between 5 and 10% of the number of trades executive through SOES and that those trades represent between 15 and 25% of the total SOES volume. Furthermore, between 87 and 98% of that firm's SOES trades are day trades. *See* letter from Dennis C. Hensley, Vice President and Deputy General Counsel, NASD, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 1, 1988.

[12] *See* letters from Harvey Houtkin, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 20, 1988, and from Steven Cohen (undated). *See* Securities Exchange Act Release No. 26173 (October 12, 1988), 53 FR 40809 (October 18, 1988). The proposed rule change (SR-NASD-88-42) was approved for a six-month period. *See also infra* note 23 and accompanying text.

[13] *See* Colby & Simon, *The National Market System for Over-the-Counter Stocks*, 55 Geo. Wash. L. Rev. 17 (1986).

[14] The initial phase of SOES became operational in January, 1985; the second phase became operational in August, 1986. At the system's inception, executions were limited to orders in NASDAQ/NMS securities of 500 shares or fewer. *See NASD, NASDAQ Subscriber Bulletins 1 (Mar. 1984) & 1-2 (July 29, 1986). For a full description of SOES, see* SEC File No. SR-NASD-84-26. *See also* Securities Exchange Act Release No. 21743 (February 12, 1985), 50 FR 7432 (February 22, 1985).

[15] For example, the average size of a trade in National Market System ("NMS") securities (inclusive of SOES trades) is 2,025 shares, whereas the average size of SOES trades in NMS securities is only 350 shares.

[16] Small orders are defined in the SOES Rules. Under the latest amendments, the size of a small order eligible for execution through SOES can be 200, 500, or 1,000 shares, depending on the characteristics of the security. Small orders eligible for execution in SOES, however, also may be effected manually by the market maker. *See* note 23 and accompanying text.

[17] SOES works in tandem with NASDAQ. Market makers enter their bid and ask quotations in NASDAQ; the same quotations are reflected in SOES. Market makers in NASDAQ securities are required to enter and maintain two-sided quotations for a security in which they are registered as a market maker in the NASDAQ System ("dealer's quote"). In this context, the market maker must

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During the October market break of 1987, the OTC market experienced severe price declines and record high volume.[18] Displayed quotations did not always reflect the prevailing market. The liquidity of the OTC market was reduced dramatically because market makers withdrew from SOES and NASDAQ. In addition, locked and crossed markets [19] prevented automatic executions through SOES and made it difficult to establish bid and ask prices for specific securities. These problems combined prevent the efficient execution of transactions through the NASDAQ System and thus frustrated the purposes of sections 11A and 15A of the Act.[20]

In response to the problems that surfaced during the October market break, SOES was upgraded to enhance the quality of the system's service and to ensure that individual customers would have access to a more efficient and liquid market, particularly during periods of high volume and volatility.[21] Specifically, the NASD made participation in SOES mandatory for all market makers in NASDAQ National Market System ("NASDAQ/NMS") securities. This requirement counteracts the problem of market makers withdrawing from SOES when rapidly moving markets appear to make such withdrawal profitable. In addition, the NASD established a requirement that market makers commit to executions for at least five times the maximum order size in every security for which they make markets if their quotes are at the inside market or if the orders are preferenced [22] to them.[23] The NASD also increased the penalty imposed on market makers who withdraw from SOES without a permissible excuse.[24]

III. The Proposal is Consistent With the Act and With the Rules and Regulations Adopted Thereunder

The Commission has determined, pursuant to section 19(b)(2) of the Act, that the proposal should be approved. The record indicates that the proposal is consistent with the requirements of the Act including, in particular, the requirements of sections 11A and 15A, and the rules and regulations adopted thereunder. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: "(i) Economically efficient execution of securities transactions; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." Section 15A(b)(8) requires that the rules of the NASD, in general, provide for "fair procedure for the prohibition or limitation of any person with respect to access to services offered by the association or member." [25] Section 15A(b)(6) of the act requires that the rules of the NASD be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and to facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The proposed rule change is designed to further the purposes of these sections. For the reasons discussed below, the Commission believes that the proposal will properly limit certain practices inconsistent with the system's design, and that the proposal will further the goals outlined in the Act.

IV. Discussion

As a threshold matter, the Commission notes that the activity addressed by the NASD's proposal became possible only as a result of the extensive changes made to the operation of SOES earlier this year to respond to problems experienced during the market break.[26] Since these changes were implemented, professional traders have been able to take advantage of slight price disparities among market makers by executing within seconds up to five orders for 1,000 shares each. In particular, these traders are able to respond to news items that result in quotation price moves and execute against market makers who, because of the many securities in which they make markets, have not yet had an opportunity to revise their quotations. These trades generally are liquidated within minutes at the new market price, thereby locking in a profit for the trader.[27] The NASD did not anticipate

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stand ready to buy and sell at those specific prices on a regular and continuous basis. Currently, NASDAQ market makers are required to purchase or sell one round lot (100 shares) of any security in which they make a market, in response to each offer to purchase or sell ("firm quote rule", *see* Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1). Further more, if a market maker provides a quotation for a particular number of shares in excess of 100, it must execute orders for that particular amount at its quoted prices in response to offers to buy or sell.

[18] The Composite index representing the NASDAQ market declined 27.2% during the month of October, 1987, while volume reached the unprecedented level of 288 million shares on Wednesday, October 21, 1987. *See* Division of Market Regulation, *The October 1987 Market Break*, ("Market Study") at ix (1988). The previous peak was January 23, 1987, when 261.8 million shares were traded.

[19] A "locked market" exists when the bid price quoted by one market maker in a security equals the ask price quoted by another market maker in the same security. A "crossed market" exists when the bid price quoted by one market maker in a security is greater than the ask price quoted by another market maker in the same security.

[20] Discussed *infra* at 9–10.

[21] *See* Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988).

[22] Orders may be enterd into SOES and designated for routing to a particular market maker. This type of order-entry is referred to as "preferencing." If this is done, the order is executed at the best price for that market maker's account even if its quote is not the best. Approximately 50% of the orders executed through SOES are preferenced orders. Market makers must have agreed in advance to accept preferenced orders.

[23] Market makers are, of course, free to establish larger exposure limits. In addition, these amendments established three maximum order-size limits for SOES orders, which are based on the average daily non-block volume, bid price, and number of market makers for each security. The tiers were established in a manner that the NASD believed would provide public investors with the most efficient means of handling their small orders while ensuring that market makers would not be required to assume unrealistic risks.

[24] The penalty for an unexcused withdrawal is that a withdrawing market maker may not re-enter the market for that security for 20 business days. In addition, the NASD limited the reasons for which an excused withdrawal would be granted. (It should be noted that, when SOES market makers were able to withdraw from SOES at any time without penalty, it was not necessary for them to rely on exposure limits to limit their risk. SOES market makers were able to adjust their exposure limits at any time during the trading day and could withdraw from SOES at will). The NASD also has submitted a proposed rule change that would permit small market makers to receive an excused withdrawal for vacations. *See* Securities Exchange Release No. 26258 (November 7, 1988), 53 FR 45837 (November 14, 1988).

[25] Section 11A(b)(5) provides that any prohibition or limitation of any person in respect of access to services offered by a registered securities information processor ("SIP"), must not be unfairly discriminatory and must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NASDAQ, Inc. is a registered SIP.

[26] At the time these changes were implemented, the Commission was concerned that these new requirements, which impose significant obligations on market makers, might cause market makers to eliminate market making positions and consequently decrease the liquidity of the marketplace. For example, the requirement of mandatory participation in SOES for all market makers in NASDAQ/NMS securities coupled with the increased penalty for withdrawing from SOES, created an economic incentive for market makers to continue their market making positions to avoid being subject to the 20-day penalty, while at the same time caused market makers to evaluate the potential for increased risk posed by mandatory participation in SOES. *See* Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR at 22597.

[27] In addition, some of these orders were being entered in SOES as a series of transactions for accounts which, taken individually, appeared SOES eligible, but were the result of a single investment decision. The NASD issued an interpretation pursuant to Section 19(b)(3)(A) of the Act to prohibit this practice. *See* Securities Exchange Act Release

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the volume or prevalence of professional trading that has occurred when it proposed its 1988 SOES rule amendments.

The results of SOES trading for professional accounts are clear. They impose substantial additional costs and risks on SOES market makers. These costs and risks could cause market makers to reduce substantially the number of securities for which they make a market. The Commission is concerned that such a widespread reduction in market making could have a significant impact on the liquidity of the markets for NASDAQ/NMS securities.

The primary issue raised by this proposal is whether the NASD, consistent with its statutory requirements, may limit professional traders' access to SOES. As an initial matter, we note that the NASD is not required to provide the SOES service. However, having determined to offer SOES, sections 15A(b) (6) and (8) of the Act [28] require that the service be made available to brokers, dealers, and investors on terms that are neither unfairly discriminatory nor impose any unnecessary or inappropriate burden on competition. Thus, the question before the Commission is whether the NASD's decision to preclude traders from using SOES to profit from short-term pricing discrepancies by OTC market makers who have failed to update their quotes, when these same market makers are required by the NASD rules to participate in SOES, is unfairly discriminatory or imposes any unnecessary or inappropriate burden on competition in light of the statutory goals.

The adverse commentators argue that professional traders provide a valuable service by encouraging market makers to update their quotes in a timely manner. In contrast, the NASD and NSTA, in effect, argue that such trading activity unfairly penalizes market makers who, although acting reasonably within business constraints, do not update their quotes faster than professional traders enter their orders. While such market makers must continue to accept orders for investors seeking to acquire or dispose of an inventory position, the NASD and NSTA do not believe they should be required by rule (which is the effect of the current SOES structure) to accept multiple executions by traders seeking to profit from short-term pricing discrepancies.

The Commission has long believed that timely, accurate, and firm quotations are a key component of an effective national market system.[29] Indeed, this goal is incorporated in section 11A of the Act. In addition, the Commission generally believes that arbitrage trading activities contribute to pricing efficiency. Nevertheless, the Commission does not believe that providing professional traders access to a retail automatic execution service is necessary to achieve these goals in this specific context. NASD rules require firm quotes. Rule 11Ac1–1 under the Act requires quotes to be firm for NMS securities. Moreover, because various broker-dealers operate their own proprietary small order execution systems based on the best displayed quotation in NASDAQ, these broker-dealers have an economic incentive to ensure that quotes of an aberrant market maker do not remain out of line.[30] In this regard, the NASD proposal is structured narrowly to address the situation where a trader seeks to profit from a brief, transitory disparity between one market maker's quote and quotes by other market makers. Such traders are not seeking to establish or liquidate an inventory position. Rather, the near simultaniety of the executions is designed to avoid taking inventory risk and to profit from those transitory pricing discrepancies. Indeed, if these traders believed a fundamental mispricing opportunity had arisen, they still could use SOES if they were willing to hold an inventory position overnight.

Accordingly, in this limited context and because the Commission is satisfied that there are other regulatory and economic incentives to update quotes in a timely manner, the Commission believes that, on balance, it is beneficial to overall market liquidity to preclude professional traders from access to SOES. The Commission is not convinced by arguments of some commentators that other alternatives such as reducing the size requirements for SOES across-the-board have resolved the problems identified. While the NASD's amendment has permitted market makers to reduce their SOES exposure to professional traders, even the lower limits can impose substantial costs on smaller market makers. Moreover, to the extent that many market makers take advantage of the lower limits, this amendment has the potential of cancelling out much of the progress made by the NASD's regulatory responses to the Market Break and substantially reducing liquidity in the OTC market. In light of the experience of last October, the Commission believes it is far more important for the NASD to continue it efforts, including expanded SOES order size, to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid OTC market, than to protect the ability of a small group of traders, who were never intended to benefit from SOES, to profit from short-term disparities.

In addition, the Commission is satisfied that the NASD reasonably has concluded that its other regulatory initiative limiting the minimum exposure limit (SR–NASD–88–42) is insufficient to address this matter. Moreover, as a general matter, the Commission does not believe that reducing exposure limits, which affects the liquidity of the entire OTC market, is preferable to focusing on the specific issue of the use of SOES for day trading. Indeed, in the long run, the Commission believes it would be preferable if exposure limits were reinstituted and increased.

Accordingly, the Commission finds, for the reasons described above, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of sections 11A and 15A, and the rules and regulations thereunder.[31]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: December 15, 1988.

Commissioner Grundfest, concurring, with whom Commissioner Fleischman joins.

I concur with the Commission's decision to approve the rule change proposed by the National Association of

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No. 26045 (August 31, 1988), 53 FR 34856 (September 8, 1988). *See also* Harvey Houtkin and Allstate Investment Group, Inc. v. SEC, No. 88–3725 (3rd Cir. filed November 2, 1988).

[28] *See also* Section 11A(b) (5).

[29] *See Policy Statement of the SEC on the Structure of a Central Market,* March 29, 1973.

[30] Any broker-dealer operating a proprietary system is subject to executions at the best price, even though the quotation is out of line with the market.

[31] With respect to the specific concern raised by the commentators regarding the NASD's definition of the term professional trader (*see supra* note 10), the Commission finds that the description of what would constitute a professional trading pattern provides a clear and understandable standard for the NASD to enforce. Moreover, we note that the NASD is required to act fairly and reasonably pursuant to section 15A(b)(8) of the Act. Of course, the Commission in its oversight capacity will carefully scrutinize application of the rule.

Securities Dealers, Inc. ("NASD") that would prohibit members from entering orders in the Small Order Execution System ("SOES") on behalf of "professional trading accounts." [1] Much of the criticism of the NASD's proposed rule relies, I think, on an overly narrow conception of the economic environment in which SOES operates. When viewed from a broader perspective, these criticisms lose much of their logical force.

As an initial matter, it is essential to recognize that the NASD and SOES operate in a highly competitive environment. The NASD competes every minute of every trading day with the New York Stock Exchange and the American Stock Exchange for listings, market making capital, and customer accounts. Each of these marketplaces expends substantial resources in an effort to convince a broad range of constituencies that theirs is the best market for the purchase and sale of equity securities. The competition is at times fierce and each organization is quick to demean their competitor's systems whenever they perceive an advantage from negative campaigning.[2]

SOES became operational in 1985 and was made mandatory for NASDAQ/NMS market makers in 1988 as part of the NASD's effort to assure small retail customers that they will be able to receive immediate execution at the best prices posted on NASDAQ. All quotations, including those subject to SOES obligations, are displayed on a common NASDAQ screen. SOES provides a particular method for executing retail trades at the prices advertised on the NASDAQ screen. SOES provides a particular method for executing retail trades at the prices advertised on the NASDAQ screen. Without SOES, quotations generally are firm only for orders of 100 shares.[3] Thus, when a broker places a telephone order in excess of 100 shares with a market maker, there is no guarantee that the market maker's quotation is the price at which the market maker stands ready to trade at the volume demanded by the customer. With execution on SOES, however, the customer's order is automatically executed at the best displayed price, up to a maximum amount required by the NASD's SOES rules. As a result, the retail customer has greater assurance that "what you see is what you get" in the over-the-counter market.

The NASD's decision to operate an automatic order execution system, subject to order size limits and restricted to customers who are not professional traders, is economically rational because larger orders can imply new information coming to the market. The arrival of such new information can generate a need to adjust bid and asked prices.[4] There is also a finite amount of capital available for purposes of providing liquidity for any stock at its prevailing market prices. Larger orders may require a liquidity premium in the form of a lower bid or higher asked in order to compensate for the increased demand for immediacy.[5] Moreover, in the intermarket competition for small retail orders, there is substantial value in being able to promise automatic execution to customers at an advertised price and up to a maximum size. Thus, just as a retail merchant promises that if he runs out of inventory on a sale item he will make good on his advertised price with a rain check or some other form of compensation, SOES allows market makers to promise to retail investors that, for orders up to a certain size and for a maximum of five such orders, they can rely on an advertised price, at least until that advertised price is changed.

It therefore makes competitive sense for marketplaces to establish separate procedures for dealing with investors whose trades are less likely to impart information or to impose unusual liquidity costs. In the case of SOES, trades by "professional" traders—which can imply new information—can be treated differently for perfectly sound economic reasons because these trades have different information characteristics.

In order further to demonstrate the reasonableness of the NASD's proposed rule, it is useful to consider the consequences that will result if the rule is rejected. Market makers will demand a competitive return on their market making capital regardless of whether the proposed rule is approved or rejected. Without the rule, however, market makers would recognize a higher probability of being "picked off" by "professional" traders whenever they do not adjust their quotes with sufficient speed. In response, market makers would, no doubt, invest greater effort in promptly updating their quotes. Market makers would not, however, be able to eliminate totally the probability of being picked off. They would therefore be expected to raise their prices fractionally on all NASDAQ/NMS trades in order to compensate for the losses suffered when they are picked off by professionals through SOES.

Market makers raise prices by widening spreads.[6] Thus, if we rejected the NASD's proposed rule, we would likely cause marginally higher spreads on all NASDAQ/NMS trades. These higher prices would be paid out of the pockets of non-"professsional" investors and would be transferred to "professional" traders who pick off laggard market makers. In a perfectly competitive market, the net result would be a wealth transfer from non-"professional" customers to "professional" traders. Put in simpler terms, the profits earned by "professionals" who use SOES to pick off laggard market makers would ultimately come out of the pockets of non-"professional" customers who pay higher spreads on all NASDAQ/NMS trades.

There is, of course, nothing wrong with the swift taking advantage of the slow in the capital markets. That is what

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[1] Securities Exchange Act Release No. 26,151 (October 3, 1988), 53 FR 39703 (October 11, 1988).

[2] *See, eg., U.S. Stock Exchanges Wage Listings War Abroad.* Fin. Times, April 20, 1988, at 10.

[3] *See* NASD Bylaws, Schedule D, Part VI, Section 2(b). *See also* 17 CFR 240.11Ac1–1(c)(2) (1988), which provides that "every responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security * * * at a price at least as favorable * * * as the bid price or offer price comprising such responsible broker's or dealer's published bid or published offer * * * in any amount up to his published quotation size." In practice, while market makers can post bid or asked prices of any size, most market makers generally limit their published quotations to orders of 100 shares. A market maker is not required to honor his published quote, however, if he has submitted a revised quote or if he is in the process of executing a transaction at the published quote and submits a revised quote immediately thereafter. *Id.*

[4] *See, e.g.*, Easley & O'Hara, *Prices, Trade Size, and Information in Securities Markets*, 19 J. Fin. Econ. 69 (1987) ("quantity matters because it is correlated with information about a security's true value * * *. [T]he larger the trade size, the more likely it is that a market maker is trading with an informed trader. This information effect dictates that the market maker's optimal pricing strategy also depends on quantity, with large trade prices reflecting this increased probability of information-based trading."); *see also* Glosten & Harris, *Estimating the Components of the Bid/Ask Spread*, 21 J. Fin. Econ. 123 (1988); Glosten & Milgrom, *Bid, Ask, and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders*, 13 J. Fin. Econ. 71 (1985); Copeland and Galai, *Information Effects and the Bid-Ask Spread*, 38 J. Fin. 1457 (1983).

[5] *See, e.g.*, Easley and O'Hara, *supra* note 4; Glosten and Harris, *supra* note 4; Holthausen, Leftwich and Mayers, *The Effect of Large Block Transactions on Securities Prices: A Cross-Sectional Analysis*, 19 J. Fin. Econ. 237 (1987); Ho and Macris, *Dealer Bid-Ask Quotes and Transactions Prices: An Empirical Study of Some Amex Options*, 39 J. Fin. 23 (1984).

[6] At the margin, and assuming a perfectly competitive market, some market makers may abandon some market making activity if they are unable o generate sufficient volume at a widened spread

competition is all about.[7] However, competition among the marketplaces has led the NASD to consider that, in order to attract retail volume, the NASD will benefit from offering retail customers firm prices at tight spreads. The continued ability of professional traders to place trades through what was intended to be a retail-oriented system may well threaten the NASD's ability to (1) maintain the level of market making capital that is currently devoted to the NASDAQ system; (2) continue to require market makers to participate in SOES; (3) continue to require market makers to honor quotes entered on SOES; or (4) maintain tight spreads on orders placed through the NASDAQ system. Thus, it falls well within the zone of reasonable judgment and is consistent with the requirements of Section 15A of the Exchange Act for the NASD and this Commission to conclude that, on balance, given the intended retail orientation of SOES and the qualitatively different nature of the order flow present on SOES, it makes sense to preserve narrower and firm commitments at the expense of some marginal and transitory stale pricing in a limited segment of the NASDAQ/NMS market.

[FR Doc. 88-29331 Filed 12-21-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-26363; File No. SR-NYSE-88-41)

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.; Relating to Auxiliary Opening Procedures for Orders Relating to Expiring Stock Index Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice hereby is given that on December 12, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] "Obviously, one may gain a competitive advantage in the marketplace through conduct constituting skill, foresight, industry and the like." *United States v. Carpenter*, 791 F.2d 1024, 1031 (2d Cir. 1986), *aff'd*, 108 S. Ct. 316 (1987).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Exchange's auxiliary opening procedures for assisting in handling the order flow on those days on which there is concurrent expiration of stock index futures, stock index options and options on stock index futures ("quarterly Expiration Fridays"). Specifically, the proposed rule change permits the use of "limit-at-the-opening" orders when using the auxiliary opening procedures.

In addition, the proposed rule change also consists of a revised method of determining those stocks for which imbalances shall be disseminated in accordance with special procedures on quarterly and monthly Expiration Fridays as well as for disseminating imbalances as appropriate on any day when Exchange Rule 80A is in effect.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Limit-at-the-opening orders. In June 1988, the Commission approved the Exchange's establishing on a permanent basis the auxiliary opening procedures for quarterly Expiration Fridays (*see* Release No. 34-25804 (June 22, 1988 quarterly)). At that time, the Exchange precluded the use of limit-at-the-opening orders as part of those procedures because such orders could not be entered into the Exchange's electronic display books. Thus, the acceptance of such orders would have complicated a specialist's task in opening the market. Because the electronic display books now can accommodate limit-at-the-opening orders, the purpose of this rule change is to delete the prohibition against such orders.

Stocks for which imbalances are disseminated. In regard to the revised method of determining those stocks for which imbalances are disseminated on Expiration Fridays and any days when Exchange Rule 80A is in effect, there are currently two separate lists of stocks as to which imbalances are published.

The list of 50 stocks used on Expiration Fridays consists of:

- 30 stocks in the Dow Jones Industrial Average (DJIA);
- 3 stocks in the Major Market Index (XMI) that are not in the DJIA; and
- 17 stocks that are the highest capitalized among the S&P 500 and are in neither the DJIA nor the XMI.

In SR-NYSE-88-30 and SR-NYSE-88-31, the Exchange noted that on any day when trading in any of the 50 highest-capitalized NYSE listed stocks in the S&P 500 index is halted during, or at the conclusion of, the so-called "sidecar" period specified in NYSE Rule 80A, and there is an imbalance in such stock of 50,000 shares or more, the size of the imbalance in such stock shall be disseminated.

The Exchange is proposing to use a single list for disseminating order imbalances on Expiration Fridays and for purposes of Exchange Rule 80A in order to avoid confusion, particularly if Rule 80A were to become effective on an Expiration Friday. The proposed single list consists of:

- 50 most highly capitalized stocks in the S&P 500; and
- Major Market Index (XMI) stocks that are not among the 50 most highly capitalized stocks in the S&P 500.

The Exchange believes that this single list should include the XMI stocks because the settlement price on the XMI is based on closing prices in the component stocks and should also include the S&P 500 stocks because these stocks account for a significant percentage of trading activity on the Exchange.

To the extent that the Exchange defined the list of stocks to be used when Exchange Rule 80A is in effect in SR-NYSE-88-30 and SR-NYSE-88-31, the Exchange is hereby proposing to amend that list to be defined as the "single list" described above. At the time of this filing, the single list would consist of 52 stocks.

(b) Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. In particular, the NYSE would like to be able to implement its revised procedures on Friday, December 16, 1988, which is the next quarterly Expiration Friday.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. Permitting entry of limit-at-the-opening orders when the NYSE's auxiliary opening procedures are in effect on quarterly Expiration Fridays will permit a broader range of orders to reach the specialist for execution. This should facilitate transactions in securities and help remove impediments to and perfect the mechanism of a free and open market.

The Commission also believes that the Exchange's use of a single list of stocks for disseminating order imbalances on Expiration Fridays and for purposes of Exchange Rule 80A should help avoid any unnecessary confusion that could arise from use of two different lists of stocks. Use of separate lists of stocks could be particularly disruptive if Rule 80A were to be implemented on an Expiration Friday. In addition, the criteria to be used by the NYSE to determine the stocks subject to order imbalance disseminations and to Rule 80A should enable the Exchange to include those stocks traded most actively on the NYSE and most likely to be traded as part of strategies involving the use of stock index derivative instruments.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. The Exchange's proposed rule change is designed to govern trading during quarterly and monthly Expiration Fridays and during any other periods when market volatility is significant. Accordingly, it is important for the NYSE to be able to implement quickly and notify market participants about procedures that should have a positive impact on trading during the December 16 quarterly Expiration Friday.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 15, 1988.

[FR Doc. 29335 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26359; File No. SR-PSE-88-24]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Restructure of PSE Committees, and to Rules and Procedures of Those Committees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1988, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated is proposing to modernize the provisions in the PSE Constitution that relate to committees, and to provide formalized rules and procedures for committees in a new and separate rule in the PSE Rules of the Board of Governors.

Article IV of the PSE Constitution currently lists ten committees. Of these ten, only seven are in existence. In addition, there are eighteen other committees that are in existence, but are not listed in either the Constitution or the Rules. Therefore, the Exchange proposes the following:

(a) To entirely replace Article IV of the Constitution with a new Article IV, and

(b) To create a completely new rule, Rule XXII, to provide for Board Committees, Equity Committees, Options Committees, and Exchange Committees, and to establish committee procedures and an appeals process for review of committee action.

Attached to the filing as Exhibit 1 is a copy of the proposed amendments to Article IV of the PSE Constitution and the proposed new rule, Rule XXII. Exhibit 1 is available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, and at the principal office of the PSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

BEST COPY AVAILABLE

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Changes

(1) Purpose

Present language in Article IV of the Constitution identifies ten Standing Committees of the PSE.[1] The last time this Article was reviewed was in 1982 when Options Committees were added. Since that time, additional committees have been appointed to address changing needs of the PSE and its members.[2] However, these working committees are neither listed nor described in the Constitution or Rules of the PSE. Also, three of the ten committtees in the Constitution no longer exist.[3]

The purpose of this amendment is twofold: (1) To list and define committees as they operate today; and (2) to formalize the rules and procedures that affect all committees. The amendment reduces the number of committees in the Constitution to five, and places all other committees in a new rule, Rule XXII of the Rules of the Board of Governors.

The five committees to be listed in Article IV of the Constitution have continually been in existence at the PSE.[4] The proposed amendment to Article IV with respect to the Equity Allocation Committee provides that the Committee members may be associated with a specialist firm but may not be specialist, and that no two such persons associated with the same specialist firm may be members on the same intra-city arm of the Committee at the same time. In addition, the proposed amendments with respect to the Options Listing Committee provide that this Committee has rulemaking authority with respect to listing, delisting, allocation, and reallocation of options. The amendments delete the current requirement that the Options Listing Committee consist of at least five persons who are either Exchange members or representatives of members.

The remainder of committees will also be classified as "standing", but will become a part of the Rules and will be categorized into four types: Board, Equity, Options, and Exchange Committees.[5] The Constitution will continue to contain a brief description of powers and duties of the committee members, but more extensive definitions will be found in Rule XXII. This reorganization is consistent with most of the other exchanges.

Presently, every committee described in these amendments exists with the exception of the Membership Committee and the Market Performance Committee. Membership Committees have been appointed by the Board in the past to review specific policies or issues and to make recommendations to the Board. However, changes in membership composition and/or outmoded policies or rules regarding membership now require an outgoing Membership Committee. The Market Performance Committee replaces the Quality of Markets Committee as a Board Committee to review the overall regulation of the Exchange. In addition, the Market Performance Committee will review specialists' and market performance, oversee the evaluation process, and review capitalization of PSE members.[6]

Another purpose of these amendments is to formalize the process for selection and approval of committee members. This process will allow for broader membership participation on the committees. Near year-end, members will be given the opportunity to indicate whether they have an interest in joining a committee, and whether they have a preference for a specific committee.[7]

Finally, these amendments will allow a member to appeal the decision or action of a committee to the Board Appeals Committee. The appeals procedure is established as part of Rule XXII.[8] These amendments to Article IV of the PSE Constitution and Rule XXII of the Rules of the Board of Governors have been prepared by exchange staff and reviewed by the Board and PSE members.

(2) Basis

The proposed rule filing is consistent with section 6(b) of the Securities Exchange Act of 1934 in that, among other things, it will promote just and equitable principles of trade, and it is designed to protect the public investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed change impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change to restructure the committees of the PSE, (herein referred to as the "Proposal"), are the result of an indepth study. The PSE conducted the study, which included significant contact with the members. Initially, PSE staff worked closely with certain committees to define the role of committees and their duties. Those committees were the Options Floor Trading Committee, the Ethics and Business Conduct Committee, and the Equity Floor Trading Committee. A Task Force of four PSE Governors (three of whom were PSE Floor members), was established to review the Proposal, and to make recommendations. Thereafter, in February 1988, the Proposal was mailed to each member for review and comment.

Comments were received from the members. The Task Force and PSE staff reviewed the members' comments, and

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[1] Article IV, Section 1, provides that the Standing Committees of the Exchange shall consist of the Allocation Committee, Clearing Committee, Ethics and Business Conduct Committee, Floor Trading Committee, Listing Committee, Organization Review Committee, Options Floor Trading Committee, Options Listing Committee, Options Appointment Committee, and Public Relations Committee.

[2] The Exchange proposes to appoint an ongoing Membership Committee and to replace the Quality of Markets Committee with the Market Performance Committee. In addition, proposed new Rule XXII provides for a Specialist Committee, Audit Committee, Board Appeals Committee and Technology Services Committee under the heading of Board Committees; a National Market System Advisory Committee and an Equity Marketing Committee under the heading of Equity Committees; an Options Marketing Committee under the heading of Options Committees; and a Pension Committee, a Membership Committee and a New Products Committee under the heading of Exchange Committees.

[3] Neither the proposed amendments to the Constitution nor the New Rule XXII provides for a Clearing Committee, Organization Review Committee nor a Public Relations Committee.

[4] The proposed amended Article IV of the Constitution provides a brief description of the following: The Boards ability to delegate its authority to authorized committees, the duties of Exchange Committees in addition to those duties specifically designated, restrictions on interested members of a committee from participating in an adjudication, appointment of committee members, and the Equity Allocation Committee, the Equity Floor Trading Committee, the Options Listing Committee, the Options Floor Trading Committee, and the Ethics and Business Conduct Committee, and their respective duties.

[5] The Exchange proposed to move the Equity Listing Committee, which is currently listed in the Exchange's Constitution, to proposed New Rule XXII under the heading of Equity Committees, and to move the Options Appointment Committee, which is also currently listed under the Constitution, to proposed new Rule XXII under the heading of Options Committees.

[6] See Exhibit I, proposed Rule XXII, section 8(a).

[7] See Exhibit I, proposed Rule XXII, sections 1 (a), (b), and (c), and 6 (a) and (b).

[8] See Exhibit 1, proposed Rule XXII, section 7 (a) through (n).

made amendments to the Proposal. The Proposal was then approved by the Board of Governors on March 24, 1988.

The Proposal was resubmitted to the members on August 23, 1988, and the members were asked to vote on the changes to Article IV of the Constitution. Thereafter, the membership approved the Constitutional Amendment in the Proposal by the required 2/3 majority voting, and suggested additional changes to the Proposed Rule XXII. The additional changes were approved by the Board of Governors on September 22, 1988.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-20 and should be submitted by January 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29336 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5519]

Issuer Delisting; Application To Withdraw From Listing and Registration; (CDI Corp., Common Stock, $.10 Par Value, American Stock Exchange)

December 15, 1988.

CDI Corp. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company recently listed and registered this security on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 9, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29339 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16692; File No. 812-7160]

The Equitable Life Assurance Society of the United States and Norman C. Francis; Filing of Application

December 14, 1988.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), 787 Seventh Avenue, New York, NY 10019, and Norman C. Francis ("Francis"), 7325 Palmetto Street, New Orleans, LA 70125 (collectively, the "Applicants") have filed an application ("Application") requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"). The requested order would grant Equitable, certain of its subsidiaries (Equico Securities, Inc.; Equitable Capital Management Corporation; Wood, Struthers and Winthrop Management Corporation; and any affected future subsidiary (collectively, "The Equitable Subsidiaries")), and Francis a permanent exemption from the prohibitions of sections 9(a) (2) and (3) of the Act, to the extent that these prohibitions are applicable to the Applicants by virtue of an injunction entered against Francis in 1979. Applicants request relief only to the extent necessary for Francis to serve as a director of Equitable.

The Application states that Equitable is a New York mutual life insurance company, a registered broker-dealer (under the Securities Exchange Act of 1934), and a registered investment adviser (under the Investment Advisers Act of 1940). Equitable is investment adviser, principal underwriter and depositor for investment companies and separate accounts (collectively, the "Accounts") that are registered under the Investment Company Act. The Equitable Subsidiaries are also, or may in the future be, investment advisers, principal underwriters and/or depositors of entities registered under the Act. Francis is the President of Xavier University of Louisiana, New Orleans, Louisiana. The Application states that Francis served as a director of Equitable from January 1, 1988, to July 7, 1988.

On February 7, 1979, the Commission filed a civil action against The Starr Broadcasting Group, Inc. ("SBG"), a national bank, and nine individuals who served or had served as SBG's board of directors, including Francis, who had been a non-officer director of SBG.[1]

[1] *SEC* v. *The Starr Broadcasting Group, Inc.*, Civil Action No. 79-0357 (D.D.C.).

Francis, without admitting or denying the allegations in the Commission's complaint, consented to the entry of an injunction against him. The order, which was entered on September 4, 1979, permanently enjoined Francis, while serving as an officer or director of any publicly held reporting company, from causing such company to file reports with the Commission which contravene applicable reporting requirements of the Securities Exchange Act of 1934 and from obtaining or extending credit in contravention of the margin rules of the Commission and the Federal Reserve Board.

Section 9(a)(2) of the Act applies to persons who, by reason of misconduct, have been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Section 9(a) prohibits these persons from serving or acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of, or principal underwriter for, a registered investment company. Section 9(a)(3) extends these prohibitions to companies whose affiliated persons are subject to the prohibitions of section 9(a)(2).

Section 9(c) of the Act authorizes the Commission to grant exemptions from the prohibitions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis. Applications for exemption must establish that the prohibitions of section 9(a) are unduly or disproportionately severe as applied to the applicant, or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

Because of the injunction entered against Francis, the provisions of section 9(a) would preclude his service as a director of Equitable unless the relief requested pursuant to section 9(c) of the Act in the Application is granted. The Applicants submit that the prohibitions of section 9(a) of the Act would be unduly and disproportionately severe as applied to them, and that Francis' conduct has been such as to make it not against the public interest or the protection of investors to grant an exemption from its provisions.

In support of these contentions, Applicants submit that:

1. Over eight years have passed since the entry of the injunction against Francis. In that time, Francis has never been the subject of any other enforcement action by any regulatory body and has not, to his knowledge, been the subject of any governmental investigation involving violations of any laws.

2. At the time of the entry of the injunction, the Commission acknowledged that Francis did not benefit from the matters complained of and did not prepare the reports that gave rise to the injunction.[2]

3. By its terms, the injunction does not bar Francis from acting as an affiliated person of an investment adviser, depositor or principal underwriter.

4. Francis has fully complied with the terms of the injunction.

5. The Accounts have not been the subject of any enforcement action by any regulatory body.

6. Equitable has not been the subject of any enforcement action under the Federal securities laws.

7. The allegations of the complaint do not relate to the activities of Equitable or of the Accounts, or to any of Francis' activities in relation to Equitable or to the Accounts. Francis was not affiliated with Equitable at the time the activities alleged in the complaint took place.

8. When Francis was elected a director of Equitable neither he nor Equitable was aware of the need for an exemption under section 9(a) of the Act.

Based upon the foregoing, Applicants request that the Commission, pursuant to section 9(c) of the Act, grant the Applicants a permanent exemption from the provisions of section 9(a) to the extent applicable as a result of the injunction entered against Francis in 1979 and to the extent necessary to permit Francis to serve as a director of Equitable.

Applicants represent that they acknowledge, understand, and agree that the Commission's issuance of the order requested by the Application shall not prejudice nor limit the Commission's rights in any manner with respect to any investigation, enforcement action, or proceeding under section 9(b) of the Act, based, in whole or in part, upon conduct other than that giving rise to the Application.

Notice is further given that any interested person may, not later than January 13, 1989, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the Application, accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application herein will be issued as of course following said date unless the Commission orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29333 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission's litigation release states that the principal allegation against Francis in the complaint was that, while he did not benefit from the alleged transactions and while he did not personally prepare the reports of SBG filed with the Commission, he had a responsibility as a director to be sure that such reports complied with applicable federal securities laws.

[Release No. IC–16695; 811–4072]

Park Avenue New York Tax Exempt Money Market Fund, Inc.; Application for Deregistration

December 15, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Park Avenue New York Tax Exempt Money Market Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Deregistration under section 8(f).

Summary OF Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing date: The application on Form N–8f was filed on August 5, 1988, and an amendment was filed on November 1, 1988 with a supplemental letter dated October 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 9, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to

the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant: Park Avenue New York Tax Exempt Money Market Fund, Inc.: 666 Old Country Road, Garden City, New York 11530.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272–2856, or Karen L. Skidmore, Branch Chief, (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Applicant, a Maryland corporation, is registered as an open-end, non-diversified management investment company under the 1940 Act.

2. On July 19, 1984, Applicant filed a Notification of Registration pursuant to section 8 of the 1940 Act on Form N–8A and filed a registration statement under the 1940 Act on Form N–1A. The registration statement became effective on November 14, 1984. Applicant also registered under the Securities Act of 1933 an indefinite number of shares of common stock pursuant to Rule 24f–2 of the 1940 Act. Applicant's initial public offering commenced November 15, 1984.

3. The acquisition of Applicant by the Vista Fund was deemed to be in the best interests of each entity by their respective governing boards. The transaction enabled the Applicant's shareholders to derive the benefits offered to shareholders of the Vista Group which is a larger and more diverse family of funds than the Park Avenue fund had been. On February 24, 1988, the Board of Directors of the Applicant approved the terms of the reorganization. On April 22, 1988, pursuant to notice, a shareholders' meeting of the Applicant was held at which a majority of shareholders approved the reorganization.

4. As of April 29, 1987, Applicant's aggregate net assets were $236,950,457.63. On May 2, 1988, Applicant was party to a reorganization transaction which entailed the acquisition by the series of Mutual Fund Group designated as the Vista New York Tax Free Money Market Fund (the "Vista Fund") of all of the properties and assets, and the assumption of all of the liabilities, of the Applicant in exchange for an equal value of Vista Fund's shares of beneficial interest which were contemporaneously distributed to the shareholders of the Applicant. The exchange was done at net asset value as determined in accordance with Rule 2a–7 under the Act and the procedures set forth for valuation in each entities' respective governing instruments. The net asset value, offering price and redemption price per share was $1.00. The exact net asset value of the shares varied by some small degree from that exact amount, as permitted by Rule 2a–7. All portfolio securities of the Applicant were acquired by Vista Fund in connection with the reorganization and no brokerage commissions were paid with respect thereto. All portfolio securities were valued at their amortized cost. Vista Fund assumed all of Applicant's obligations and liabilities then existing, whether absolute, accrued, contingent or otherwise.

5. Expenses incurred in connection with the reorganization, including costs of printing and mailing the Proxy Statement/Prospectus and accounting and legal fees, were borne by Vista Fund and Applicant pro rata according to each fund's aggregate net assets on the date of the reorganization. Aggregate expenses were approximately $115,573. Of such amount, approximately $98,400 was allocated to Applicant and approximately $17,173 was allocated to Vista Fund.

6. As of the time of filing the application, Applicant have no security-holders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. It is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

7. Applicant filed a Certificate of Dissolution with the State of Maryland on May 2, 1988.

8. Applicant is current on its required filings, including its N–SAR filing.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29332 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–8128]

Issuer Delisting; Application To Withdraw From Listing and Registration; (Pope, Evans and Robbins Incorporated, 13.5% Subordinated Debentures, Due 2002, American Stock Exchange)

December 15, 1988.

Pope, Evans and Robbins Incorporated ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2 (d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

On September 30, 1988, the Company completed an exchange offer whereby for each $1,000 principal amount of 13.5% Subordinated Debentures, due 2002, ("Debentures") tendered to and accepted by the Company for exchange the tendering holder of the Debentures received $1,000 principal amount of newly issued 7% Senior Notes due May 15, 1998, and 422.1 shares of Company's common stock, $.10 par value, pursuant to the terms of an Offering Circular, dated April 5, 1988.

The holders of more than 85% of the $35,000,000 aggregate principal amount of the Debentures then outstanding consented to the exchange offer and concomitant delisting of the Debentures by tendering the Debentures held by them in connection with the exchange offer. The Company now seeks to withdraw the Debentures from registration and listing on AMEX pursuant to the express terms of the exchange offer.

In the resolution approved by the Company's Board of Directors authorizing this application to delist the Debentures, the Company committed itself to use its best efforts to cause a registered broker-dealer to make a market in the Debentures or to cause such registered broker-dealer to advertise its willingness to purchase the Debentures until there are no longer any of the Debentures publicly held.

Any interested person may, on or before January 9, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if

any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29341 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9345]

Issuer Delisting; Application To Withdraw From Listing and Registration; (The Taiwan Fund, Inc., Common Stock, $.01 Par Value, American Stock Exchange)

December 15, 1988.

The Taiwan Fund, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company recently listed and registered this security on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common shares on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 9, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rule of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29340 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 07/07-0093]

First of Nebraska Investment Corp.; Issuance of a Small Business Investment Company License

On September 2, 1988, a notice was published in the **Federal Register** (53 FR 31489) stating that an application has been filed by First of Nebraska Investment Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business November 2, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to secion 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07-0093 on November 25, 1988, to First of Nebraska Investment Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 14, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-29348 Filed 12-21-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0486]

First New York Small Business Investment Co.; Revocation of License

Notice is hereby given that the license to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act), issued to First New York Small Business Investment Company, 20 Squadron Boulevard, Suite 480, New York, New York 10956 has been revoked. First New York Small Business Investment Company was licensed by the Small Business Administration on December 30, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the revocation was effective on November 21, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 14, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-29347 Filed 12-21-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1250]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 0930 on Tuesday, 24 January 1989 in Room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of this special meeting is to continue development of U.S. positions for the upcoming International Maritime Organization (IMO) Diplomatic Conference on the Draft Salvage Convention scheduled to meet in London from 17-28 April 1989. The initial public meeting on this subject was held in Washington, DC, on 29 November 1988; a third and possibly final public meeting may be scheduled for late March/early April 1989.

In preparing for the Salvage Diplomatic Conference, four draft convention issues appear to be particularly important from the U.S. perspective:

1. The system established in Articles 10 and 11 ("Criteria for Assessing the Reward" and "Special Compensation") for sharing the cost of a new environmental incentive for salvors between shipowners and cargo interests;

2. The jurisdiction provisions in Article 21;

3. The present scope of the provision for exception by reservation in Article 24, the effect of which would be to require application of the convention to many offshore hydrocarbon exploration and production facilities; and

4. The absence of any exclusion from the convention for government-owned, non-commercial cargoes carried in other than government-owned vessels.

The foregoing issues, along with any other issues raised by participants, will be discussed extensively at this special

SHC meeting. The views of the public, and particularly those of affected maritime and environmental interests, are requested.

Members of the public are invited to attend the 24 January 1989 SHC meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting or to submit views concerning the proposed Salvage Convention, contact either Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G–LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–1527, televax (202) 267–4165.

Date: December 13, 1988.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–29434 Filed 12–21–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1251]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 18, 1989, at NASA Headquarters, 600 Independence Ave., Room 521J at 9:30 a.m. Study Group 2 deals with matters relating to the space research services among other things. The purpose of the meeting is to prepare for the Final Meeting of Study Group 2 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Postelle, telephone 834–5607.

Date: December 19, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88–29430 Filed 12–21–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1247]

Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 6, 1989 at the University of Colorado Engineering Center, Room CR 1–42, from 9:00 a.m. to 12:00 noon. Study Group 5 deals with matters relating to the propagation of radio waves in non-ionized media. The purpose of the meeting is to prepare for the Final Meeting of Study Group 5 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Dr. John F. Cavanagh, Naval Surface Weapons Center, Code F405, Dahlgren, Va., 22338–5000, phone 703–663–8737.

Date: December 15, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88–29431 Filed 12–21–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1246]

Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on Saturday, January 7, 1989 at the U.S. Department of Commerce, Institute for Telecommunication Sciences, 325 Broadway, Boulder, Colorado. The meeting will begin at 9:00 a.m. in Room 1103.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to discuss the status of the work of the Study Group for the 1989 Final Meeting.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Date: December 15, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88–29432 Filed 12–21–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1248]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 11, 1989, and February 9, 1989, at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue NW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommunications. The purpose of the meetings is to prepare for the Final Meeting of Study Group 7 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Roger E. Beehler, National Institute of Standards and Technology, 325 Broadway, Boulder, CO 70303; phone (303)497–3281.

Date: December 15, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88–29433 Filed 12–21–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1249]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 19 at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting is to report on the results of the IXth Plenary Assembly, Melbourne, Australia, insofar as Study Group D interests are concerned, develop U.S. positions concerning organization of Study Groups VII and XVII, and to prepare Contributions for the first meeting of Study Group XVII scheduled for 13–21 March, 1989, in Geneva, Switzerland. Any other business relevant to the new CCITT four year Plenary period may be considered as well.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should do so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: December 14, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 88–29435 Filed 12–21–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on December 16, 1988

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on December 16, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on December 16, 1988.

DOT No: 3149.
OMB No: 2133–0013.
Administration: Maritime Administration.
Title: Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing.
Need for Information: To document the extent and nature of Export-Import Bank Financed shipping.
Proposed Use of Information: To determine whether Export-Import Bank Financed shipping is in conformance with U.S. Laws and Regulations.
Frequency: Monthly.
Burden Estimate: 126 hours.
Respondents: Ship operators and owners.
Form(s): MA–518.
Average Burden Hours Per Respondent: 30 minutes per response.

DOT No: 3150.
OMB No: 2133–0036.
Administration: Maritime Administration.
Title: Relative Cost of Shipbuilding in the Various Coastal Districts of the United States.
Need for Information: To satisfy Congressional requirement to report on the relative cost of construction or reconditioning of ocean vessels in domestic shipyards in U.S. Coastal areas.
Proposed Use of Information: To monitor cost differentials between coastal shipyards.
Frequency: Annually.
Burden Estimate: 70 hours.
Respondents: Shipyards.
Form(s): MA–939.
Average Burden Hours Per Respondent: 5 hours.

DOT No: 3151.
OMB No: 2120–0045.
Administration: Federal Aviation Administration.
Title: Bird Strike/Incident Report.
Need for Information: The information is needed to develop standards and monitor hazards to aviation.
Proposed Use of Information: The information is used to identify bird strike control requirements and provide in-service data on aircraft component failure.
Frequency: On occasion.
Total Estimated Burden: 120 total hours annually.
Respondents: Individuals.
Form Number(s): FAA Form 5200–7.
Estimated Average Per Respondent: 5 minutes per response.

DOT No: 3152.
OMB No: 2127–0541.
Administration: National Highway Traffic Safety Administration.
Title: Owner's Manual Requirements—Motor Vehicle and Motor Vehicle Equipment, 49 CFR 571.108, 126, 205, 208, 210, Part 575.105.
Need for Information: To inform vehicle owners and passengers about the proper use of the vehicle or equipment.
Proposed Use of Information: Certain safety information which could benefit the vehicle owner or operator by reducing the risk of harm must be included in the vehicle owner's manual to provide for safe operation by users.
Frequency: On occasion.
Burden Estimate: 1,095 hours.
Respondents: Businesses/small businesses.
Form(s): None.
Average Burden Hours Per Respondent: 121 minutes.

DOT No: 3153.
OMB No: 2127–0044.
Administration: National Highway Traffice Safety Administration.
Title: Name and Addresses of First Purchasers of Motor Vehicles.
Need for Information: To notify first purchasers of new motor vehicles in case their vehicle is recalled.
Proposed Use of Information: Motor vehicle manufacturers are required to record and retain the names and addresses of first purchasers of new motor vehicles, so that the manufacturer can directly notify those persons if the vehicle is recalled.
Frequency: On occasion.
Burden Estimate: 1,000,000.
Respondents: 15,000,000.
Form(s): None.
Average Burden Hours Per Respondent: 3 minutes.

DOT No: 3154.
OMB No: 2127–0039.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 557, Petitions for Hearings.
Need for Information: Gives persons who believe manufacturers have been deficient in notifying the public of a safety related defect or noncompliance.
Proposed Use of Information: This regulation establishes procedures for any person to petition the agency for a hearing to determine whether a manufacturer has met its obligation to notify vehicle owners of a defect or noncompliance and whether the remedy has been satisfactory.
Frequency: On occasion.
Burden Estimate: 21 hours.
Respondents: 21.
Form(s): None.
Average Burden Hours Per Respondent: 60 minutes.

DOT No: 3155.
OMB No: New.
Administration: Office of the Secretary.
Title: Supporting Statements—Air Carrier claims for subsidy payments.
Need for Information: Required to submit forms in order to determine subsidy payments to air carriers.
Proposed Use of Information: To keep as a record for the present and the future use.
Frequency: Monthly.
Burden Estimate: 1578 hours.
Respondents: U.S. Air carriers who are in the 419 subsidy program.
Form(s): 397 and 398.
Average Burden Hours Per Respondent:

Form 397 1 hour 15 minutes
Form 398 30 minutes.

DOT No: 3156.
OMB No: New.
Administration: U.S. Coast Guard.
Title: Labeling Required in 33 CFR 181 and 183.
Need for Information: The Information is needed to: (1) Provide safety information to the boating public; (2) evidence compliance with applicable regulations; (3) provide information to manufacturers, dealers and installers of associated equipment on recreational boards; and (4) uniquely identify each boat which aids in the recovery of stolen boats.
Proposed Use of Information: This information is used to identify the boat manufacturer or importer and to ensure that safety standards are complied with.
Frequency: On occasion.
Burden Estimate: 164,494.
Respondents: Boat manufacturers and importers.
Form(s): None.
Average Burden Hours Per Respondent: varies from .08 for labeling to 20 hours for testing.

DOT No: 3157.
OMB No: New.
Administration: Research and Special Programs Administration.
Title: Control of Drug Use in Natural Gas Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations.
Need for Information: Assure compliance with anti-drug program requirements.
Proposed Use of Information: Plans and records would be reviewed by agency personnel to assure conformity with anti-drug program requirements and to determine program effectiveness.
Frequency: An anti-drug plan would be prepared one time, and records would be kept of each test and training exercise.
Burden Estimate: 71,000 hours.
Respondents: 2200.
Form(s): None.
Average Burden Hours Per Respondent: 1 hour.

DOT No: 3158.
OMB No: 2115–0100.
Administration: U.S. Coast Guard.
Title: Shipment of Hazardous Bulk Solids.
Need for Information: This information collection is needed in compliance with the laws and regulations for safe transportation and stowage of hazardous solid bulk cargoes. It is needed to (1) determine the physical and chemical properties of materials to be shipped for proper classification of the new cargo; (2) to study the experience of the manufacturer in handling the materials; and (3) to determine the recommended safety precautions to use in preparing the special permit.
Proposed Use of Information: The Coast Guard requires Shipping Papers for barges and vessels and Dangerous Cargo Manifests for vessels for the following reasons: (1) To inform the shipper, handlers and persons in charge of the shipment of the nature and quantity of the hazardous materials being transported; (2) to provide the Coast Guard inspectors the information needed to make certain that proper safety precautions and safe stowage requirements are being observed; and, (3) to allow for necessary emergency responses if problems of a hazardous nature should develop.
Frequency: On occasion.
Burden Estimate: 1346.
Respondents: Solid Bulk Cargo Vessel Owners/Operators.
Form(s): None.
Average Burden Hours Per Respondent: .6747 hours.

DOT No: 3159.
OMB No: 2138–0016.
Administration: Research and Special Programs Administration.
Title: Report of Extension of Credit to Political Candidates.
Need for Information: Monitor credit practices by certificated air carriers to political candidates.
Proposed Use of Information: Reports are made by DOT and sent to the Federal Elections Commission.
Frequency: Monthly.
Burden Estimate: 20 hours.
Respondents: Certificated Air Carriers.
Form(s): Form 183.
Average Burden Hours Per Respondent: 1 hour.

DOT No: 3160.
OMB No: 2138–0006.
Administration: Research and Special Programs Administration.
Title: Part 249—Presentation of Air Carrier Records.
Need for Information: Retention periods are prescribed only for records that support specific regulatory needs.
Proposed Use of Information: Audit for mail rate, continuing fitness and consumer protection purposes.
Frequency: None (record retention requirement) retention periods 30 days to 3 years.
Burden Estimate: 556 hours.
Respondents: Certified air carriers and charter operators.
Form(s): None.
Average Burden Hours Per Respondent: 1.65 hours.

DOT No: 3161.
OMB No: 2138–0009.
Administration: Research and Special Programs.
Title: Form 298–C Report of Financial and Operating Statistics for Small Aircraft operators.
Need for Information: Establish Essential Air Service (EAS) Levels, EAS Subsidy rates, Alaskan mail rate, allocate funds for airport development and monitor carriers fitness.
Proposed Use of Information: To help manage the EAS program, the Mail Rate Program and allocate funds for airport development.
Frequency: Quarterly.
Burden Estimate: 8002 hours.
Respondents: Small certificated and commuter air carriers.
Form(s): RSPA Form 298–C.
Average Burden Hours Per Respondent: 3 hours.

DOT No: 3162.

OMB No: New.
Administration: Federal Highway Administration.
Title: Controlled Substances.
Need for Information: To meet Federal Highway Administration requirements for Motor Carriers to test their drivers for drug use and for drivers to be tested for drugs after an accident.
Proposed Use of Information: For the Federal Highway Administration to measure the magnitude of the drug problem affecting highway safety.
Frequency: Recordkeeping 3 years.
Burden Estimate: 1,053,961.
Respondents: Motor Carriers.
Form(s): N/A.
Average Burden Hours Per Respondent: 5.2 hours for each recordkeeping.

DOT No.: 3163.
OMB No.: New.
Administration: National Highway Traffic Safety Administration.
Title: Replaceable Light Source Dimensional Information Submission Requirements for Motor Vehicle Equipment and Headlamp Aiming Instruction Labels.
Need for Information: To eliminate design restrictions on size and shape of headlamp bulbs and provide instruction labels for the headlight aiming devices.
Proposed Use of Information: Manufacturers are required to provide vehicle lighting on all motor vehicles and equipment and give instructions for placing labels on vehicle aiming devices. Provide information on new headlamp bulbs for replacement and interchangeability purposes.
Frequency: On occasion.
Burden Estimate: 4,052.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Respondent: 0.17 minutes.

DOT No.: 3164.
OMB No.: New.
Administration: Federal Aviation Administration.
Title: Anti-drug Program for Personnel Engaged in Specified Aviation Activities.
Need for Information: The FAA needs to exercise oversight of the establishment of individual programs to ensure their effectiveness. The information is needed by the FAA to monitor the program.
Proposed Use of Information: The information will be used by the FAA to monitor the programs, summarize trends, and make recommendations for change when necessary.
Frequency: One time and semi-annually.
Burden Estimate: 377,707 hours.
Respondents: Commercial aviation operators.
Form(s): None.
Average Burden Hours Per Respondent: For the one time plan submission, 45 hours, and for the recurring semi-annual report, 10 hours.

DOT No.: 3165.
OMB No.: 2115–0544.
Administration: U.S. Coast Guard.
Title: Advance Notice of Need for Reception Facilities.
Need for Information: This information collection requirement is needed to ensure that the Coast Guard establishes regulations for determining the adequacy of reception facilities at ports and terminals. It is also used to establish procedures whereby persons in charge of ports and terminals may request the Secretary to certify the adequacy of facilities. The reception facilities are needed to receive waste not discharged at sea.
Proposed Use of Information: The information is used to determine when ships require reception facilities and to make such facilities available. This requirement is in lieu of requiring that terminals and personnel be available on a consistent basis, thereby reducing operating costs on the public.
Frequency: On occasion.
Burden Estimate: 1,256 hours.
Respondents: Oceangoing ships requiring oil, noxious liquid substance or garbage reception facilities at U.S. ports.
Form(s): None.
Average Burden Hours Per Respondent: .25 minutes.

DOT No.: 3166.
OMB No.: New.
Administration: U.S. Coast Guard.
Title: Chemical Drug and Alcohol Testing of Commercial Vessel Personnel.
Need for Information: This information collection requirement is needed to enforce the recently enacted drug testing laws.
Proposed Use of Information: Coast Guard will use this information to identify users of dangerous drugs in the U.S. Merchant Marine industry. It is also used to determine whether an individual is qualified to receive a license, certificate of registry or merchant marine documents under the periodic testing program.
Frequency: On occasion.
Burden Estimate: 8,864 hours.
Respondents: Individuals and marine employers.
Form(s): CG–2692B.
Average Burden Hours Per Respondent: .52 hours.

DOT No.: 3167.
OMB No.: 2106–0009.
Administration: Office of the Secretary, Tariffs Division.
Title: Part 221—Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers.
Need for Information: Section 403, Federal Aviation Act of 1958, as amended, requires that all air carriers and foreign air carriers file with the DOT, and post for public inspection, tariffs containing fares, rates and changes which apply to international air transportation.
Proposed Use of Information: Tariffs filed are used by carriers, travel agents, DOT, other government agencies and general public to determine the fares, rates and charges for international air transportation.
Frequency: As necessary.
Burden Estimate: 2,298,298.
Respondents: Air carriers and/or their agents.
Form(s): N/A.
Average Burden Hours Per Respondent: 5 hours, 51 minutes.

Issued in Washington, DC on December 16, 1988.

Robert J. Woods,
Director of Information Resource Management.

[FR Doc. 88–29421 Filed 12–21–88; 8:45 am]
BILLING CODE 4910–62–M

[Order 88–12–37]

Fitness Determination of Horizon Air, Inc. d/b/a Mohawk Airlines

AGENCY: Department of Transportation.
ACTION: Notice of commuter air carrier fitness determination order to show cause.

SUMMARY: The Department of Transportation is proposing to find Horizon Air, Inc. d/b/a Mohawk Airlines fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than January 3, 1989.

FOR FURTHER INFORMATION CONTACT:
Ms. Carol A. Woods, Air Carrier Fitness

Division (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: December 19, 1988.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–29422 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[88–099]

Rules of the Road Advisory Council; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Rules of the Road Advisory Council. This Council was established under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS).

DATES: Requests for applications should be received by the Coast Guard no later than January 15, 1989. Applications must be completed and returned to the Coast Guard no later than February 15, 1989.

ADDRESS: Persons interested in applying should write to Commandant (G–NSR–3), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Tom Meyers, Executive Director, Rules of the Road Advisory Council, (G–NSR–3), Room 1416, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–0354.

SUPPLEMENTARY INFORMATION: In June 1989, there will be seven vacancies on the 21-member Council. The seven appointments will be made by the Secretary of Transportation. The Coast Guard will accept applications received after the publication of this notice and before February 15, 1989, and thereafter make recommendations to the Secretary. Under the Inland Navigation Rules Act and to assure balanced representation, members shall be chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry, (3) individuals with an interest in marine law, and (4) Federal and state officials with responsibility for vessel and port safety."

Since its establishment, the Council has met at least yearly at various sites in the continental United States. Members are entitled to receive per diem in lieu of subsistence, as well as to be reimbursed for travel expenses, in accordance with current regulations. The seven new appointments will expire three years from June 1989.

Date: December 14, 1988.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88–29406 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Cass County, ND, Clay County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fargo, North Dakota, and Moorhead, Minnesota.

FOR FURTHER INFORMATION CONTACT: John C. Kliethermes, Division Administrator, Federal Highway Administration, P.O. Box 1755, Bismarck, ND 58502. Telephone Number is (701) 250–4204. (FTS 783–4204).

SUPPLEMENTARY INFORMATION:

The FHWA, in cooperation with the North Dakota State Highway Department, will prepare an Environmental Impact Statement (EIS) on a proposal for improvements to the I–94 Corridor in Fargo, North Dakota, and Moorhead, Minnesota.

The proposed project consists of:

1. Rehabilitation of the roadways from just west of Horace Road to US 75.

2. Interchange modifications at Horace Road and I–29.

3. New interchange at 45th Street and 25th Street.

4. Six laning of I–94 from I–29 to US 75. Also under consideration are noise barriers from I–29 to US 75.

Alternatives under consideration include taking no action, which would leave the existing facility to carry the projected traffic increases.

At Horace Road, two interchange modifications are presented. Both involve upgrading the ramps and tapers.

Three interchange revisions are presented for I–94/I–29 interchange. They involve revising the ramps and loops to improve safety and operational characteristics.

At 45th Street, two interchange plans are presented. Both are diamonds with one being skewed to avoid a farmstead and a railroad.

At 25th Street, three interchange plans are presented. One is a diamond. Another is a modified diamond with the southeast ramp removed and replaced with a loop in the southwest quadrant. The third is also a modified diamond with the southeast ramp removed and loops installed in the southwest and northeast quadrants.

Letters soliciting views and comments on the proposed project were sent to various Federal, state and local agencies. The project has been discussed at local meetings in Fargo.

An Environmental Assessment was prepared and a public hearing was held. Due to public concerns about noise, it was decided to prepare a DEIS.

The Draft EIS will be available for public and agency review and comment. Notice of availability for a public hearing will be made. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed aciton are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on December 12, 1988.

John C. Kliethermes,

Division Administrator, Federal Highway Administration.

[FR Doc. 88–29408 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Rear Seat Lap/Shoulder Belt Retrofit Kits; Request for Information

SUMMARY: The purpose of this Notice is to request information from vehicle manufacturers on current availability,

future availability and cost of rear seat/lap shoulder belt retrofit kits. The information gained will be incorporated into an agency report to the Congress on the retrofitting of vehicles with rear seat lap/shoulder belts.

DATE: Comments must be received on or before January 26, 1989.

ADDRESSES: Comments should be submitted to Barry Felrice, Associate Administrator for Rulemaking, NRM–01, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Lillvian Jones-Bixler, Special Projects Staff, NRM–011, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4929.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 210 requires that seat belt anchorages for a Type 2 seat belt assembly shall be installed for each forward-facing outboard designated seating position in passenger cars other than convertibles, and for each designated seating position for which a Type 2 seat belt assembly is required by Standard No. 208 in vehicles other than passenger cars. This requirement makes it possible for consumers to retrofit their vehicles with lap/shoulder belts in the rear seat, if desired.

The Congress, in an Appropriation Committee Report, (H.R. Rep. No. 957, 100th Cong., 2d. Sess., at 28, 29. (1988)), requested that NHTSA prepare a report which includes, among other items, the following information:

1. A comprehensive survey of vehicle manufacturers to determine all vehicle makes and models for which aftermarket retrofit assemblies are available to the general public.

2. A timetable for the availability of retrofit kits from each manufacturer that does not presently make such kits available.

3. An analysis of actions each manufacturer has taken to distribute retrofit kits and installation instructions to dealers and other potential installers.

To gain this information, NHTSA asks that motor vehicle manufacturers provide answers and comments to the following questions.

Current Availability of Retrofit Kits

1. Please list by make, model and model year all vehicles for which your company has available rear seat lap/shoulder belt retrofit kits.

2. Please list dates when you began to provide rear seat lap/shoulder belt retrofit kits by make, model and model year to your dealerships.

3. Please describe the types of retrofit kits you have available by including such information as: Are the belts in the retrofit kits retractable; do you offer retrofit kits which have belts color coded to the interior of the vehicles; are the retrofit kits equipped with a separate shoulder belt assembly or a shoulder and lap belt assembly?

4. How many retrofit kits did you sell during Calendar Year 1987? During Calendar Year 1988? Have you had orders that you could not fill? If so, why not?

5. Have your rear seat lap/shoulder belt retrofit systems been laboratory tested to determine their effectiveness?

6. Has your company made any efforts to inform the general public of the availability of rear seat lap/shoulder belt retrofit kits? If so, what have you done?

Future Availability of Retrofit Kits

7. For those vehicles for which you do not currently provide retrofit kits, are there any plans to do so? Please provide estimated dates by make, model and model year as to when you will provide retrofit kits for those vehicles.

8. Please indicate make, model and model year of vehicles for which you will not provide a rear seat lap/shoulder belt retrofit kit. Why will you not provide retrofit kits for these vehicles?

Distribution and Installation of Retrofit Kits

9. Once a dealer places an order for a year seat lap/shoulder belt retrofit kit, what is the average delivery time to the dealership?

10. May dealerships order rear seat lap/shoulder belt retrofit kits from the seat belt manufacturers directly?

11. Does your company provide rear seat lap/shoulder belts to other than new car dealerships (e.g., used car dealerships) if requested? If not, why not?

12. Do you provide information to your dealerships on how to retrofit vehicles with rear seat lap/shoulder belts without being requested to do so? If not, do you provide this information upon request?

13. Has your company ever received any comments from the dealers or consumers on the ease or difficulty of the installation or use of the retrofit belts? If so, what were they?

14. Please submit copies of the installation instructions used in the rear seat lap/shoulder belt retrofit kits by make, model and model year.

15. Are copies of these instructions available to individual purchasers of retrofit kits?

16. Has your company received any consumer complaints on the unavailability of rear seat lap/shoulder belt retrofit kits? How many complaints and of what nature?

17. What is the manufacturer's suggested retail price for rear seat lap/shoulder belt retrofit kits, by make, model, and model year?

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the address shown in the ADDRESS heading at the beginning of this notice. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

Issued On: December 19, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–29405 Filed 12–21–88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Date: December 15, 1988.

O. Donaldson Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88–29382 Filed 12–21–88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 6, 1988.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–29465 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 13, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 29466 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 20, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–29467 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 27, 1988.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 29468 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:11 a.m. on Monday, December 19, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Recommendations regarding the Corporation's assistance agreement with an insured bank; (2) an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) the Corporation's corporate activities.

The Board also considered certain personnel matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 19, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–29454 Filed 12–20–88; 11:04 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Tuesday, December 20, 1988.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: December 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–29522 Filed 12–20–88; 3:22 pm]

BILLING CODE 6210-01-M

POSTAL SERVICE

Board of Governors; Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, January 10, 1989, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, January 9, 1989, but it will consist entirely of briefings and is not open to the public.

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Agenda

Tuesday Session

January 10—8:00 a.m. (Open)

1. Minutes of the Previous Meeting, December 5–6, 1988.
2. Remarks of the Postmaster General.
3. Annual Report on Open Meeting Compliance (Sunshine Act). (David F. Harris, Secretary to the Board of Governors)
4. EEO/Affirmative Action Report. (Sherry A. Cagnoli, Executive Director, Office of Equal Employment Opportunity)
5. Annual Report of the Postmaster General. (Frank S. Johnson, Jr., Assistant Postmaster General, Communications Department)
6. Election of Chairman and Vice Chairman.
7. Tentative Agenda for February 6–7, 1989, meeting in Miami, Florida.

David F. Harris,

Secretary.

[FR Doc. 88–29453 Filed 12–20–88; 11:04 am]

BILLING CODE 7710–12–M

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Corrections

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Proclamation 5923 of December 14, 1988; To Implement the United States-Canada Free-Trade Agreement

Correction

In Presidential document 88-29118 beginning on page 50638 in the issue of Friday, December 16, 1988, make the following correction:

On page 50640, the file line, "Filed 12-14-88; 4:29 pm]", should be removed. On page 50910, at the bottom of the page, the file line should read "[FR Doc. 88-29118 Filed 12-14-88; 4:29 pm]".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-64010; FRL-3479-1]

Intent To Cancel Certain Pesticide Registrations

Correction

In notice document 88-26725 beginning on page 46816 in the issue of Friday, November 18, 1988, make the following corrections:

1. On page 46818, in the first column, in the ninth line from the bottom, "04402" should read "94402".

2. On page 46822, in the second column, in the first line "51972-1" should read "41972-1".

3. On the same page, in the third column, in the 11th line, "43321-1" should read "43321-2".

4. On the same page, in the same column, in the 35th line, "43717-27" should read "43717-1-2".

5. On page 46823, in the third column, in the 44th line, "4625-1" should read "46265-1".

6. On page 46824, in the second column, in the seventh line from the bottom, "Stanley" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

[OPTS-62070; FRL-3482-6]

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA)

Correction

In notice document 88-27325 beginning on page 48424 in the issue of Wednesday, November 30, 1988, make the following corrections:

1. On page 48425, in the 2nd column, under **II. EPA Approval of Training Courses**, in the 4th paragraph, in the 11th line, "affect" should read "effect".

2. On page 48427, in the second column, in the third line, "11/30/87" should read "10/30/87".

3. On page 46428, in the 1st column, in the 21st line, "Laborer" should read "Laborer's".

4. On page 48430, in the 1st column, in the 3rd line, "7/8/86" should read "12/8/86"; in the 18th line, "Course" should read "Courses"; and in the 9th line from the bottom, "Courses" should read "Course".

5. On page 48432, in the 1st column, in the 30th line, "Niagara" was misspelled.

6. On page 48435, in the 2nd column, in the 36th line, "6/6/86" should read "6/6/88".

7. On page 48437, in the 1st column, in the 12th line, "Heath" should read "Health".

8. On page 48438, in the 1st column, in the 18th line from the bottom, "Contract" should read "Contractor".

9. On the same page, in the 2nd column, in the 15th line, "(212) 874-7348" should read "(219) 874-7348".

10. On the same page, in the third column, in the fifth line, "Courses" should read "Course".

11. On page 48440, in the second column, in the second line, "60606-01-98" should read "60606-0198".

12. On page 48441, in the 2nd column, after the 11th line, insert the following text:

(b) *Approved Course:* Abatement worker (contingent from 9/1/88).

13. On page 48446, in the 3rd column, in the 11th and 12th lines from the bottom, "2/30/87" should read "12/30/87".

14. On page 48449, in the 2nd column, in the 24th line, "20C-404" should read "20C-204".

15. On the same page, in the third column, in the bottom line, the paragraph designation "(6)" should read "(7)".

16. On page 48465, in the third column, in the ninth line from the bottom, "Million" should read "Millien".

17. On page 48467, in the 3rd column, in the 34th and 35th lines, "Service Ind." should read "Testing Labs".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 87-265; FCC 88-318]

Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS)

Correction

In rule document 88-27111 beginning on page 47711 in the issue of Friday, November 25, 1988, make the following corrections:

§ 95.5 [Corrected]

1. On page 47714, in the 3rd column, in § 95.5 introductory text, in the 4th line, "or" should read "of"; and in the 10th line, "license" should read "licenses".

§ 95.25 [Corrected]

2. On page 47715, in the first column, in § 95.25(e)(1), in the third line, "tree or which" should read "tree on which".

§ 95.71 [Corrected]

3. On page 47716, in the second column, in § 95.71(f), in the second line, "or" should read "of".

4. On page 47717, in the third column, after amendatory instruction 30, the section heading should read

"**§ 95.179 Individuals who may be station operators**".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0317]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 88-24762 appearing on page 43272 in the issue of Wednesday, October 26, 1988, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth and fifth lines, "202-473-5690" should read "202-472-5690".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-07-4212-13; A-22844-A]

Arizona; Exchange of Federal and Private Mineral Estate

Correction

In notice document 88-27093 beginning on page 47584, in the issue of Wednesday, November 23, 1988, make the following corrections:

1. On page 47584, in the second column, under T. 10 N., R. 26 E., the seventh line should read "Sec. 26, W½NE¼, S½NW¼, W½SW¼,".

2. On page 47585, in the first column, under T. 13 N. R. 31 E., the first line should read "Sec. 19, lots 3 and 4, E½SW¼, SE¼;".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1140

[Ex Parte No. 402]

Reasonably Expected Costs; Implementation of the Railroad Accounting Principles Board Findings

Correction

In rule document 88-28599 beginning on page 49990 in the issue of December 13, 1988, make the following correction:

§ 1140.2 [Corrected]

On page 49990, in the third column, amendatory instruction 2 should read, "2. Section 1140.2 is amended by revising paragraphs (b)(7)(i), (7)(ii) introductory text, (7)(ii)(B)-(F), (7)(iii), (12)(i), (12)(ii) introductory text, (12)(ii)(B)-(E), and (12)(iii) to read as follows:"

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

MET Electrical Testing Company, Inc.; Application for Recognition

Correction

In notice document 88-28064 beginning on page 49258 in the issue of Tuesday, December 6, 1988, the heading was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

High Density Traffic Airports Slot Allocation and Transfer Methods; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 25758; Amdt. No. 93-56]

High Density Traffic Airports; Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Aviation Regulations relating to the allocation and transfer of air carrier and commuter operator slots (i.e., instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport. This proposal would increase the percentage of use required in order to retain allocated slots in certain circumstances. The proposed amendment would also permit withdrawal of slots, for international and other purposes, from carriers with fewer than 8 slots at an airport if the slots were not used by that carrier. This notice also requests information on the need for further changes to the slot allocation and transfer rules in accordance with recent legislation.

DATE: Comments must be received on or before February 6, 1989.

ADDRESS: Comments on this regulation may be mailed in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25758, 800 Independence Avenue SW., Washington, DC 20591.

or delivered in triplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed rule by submitting such written data, views, or arguments as they may desire on any portion of the amendment. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25758." The postcard will be date/time stamped and returned to the commenter. Also, any portion of this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the amendment number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

The High Density Traffic Airport Rule, 14 CFR Part 93, Subpart K, limits the number of operations during certain hours or half hours at four highly congested airports: Kennedy International, LaGuardia, O'Hare International, and Washington National. The rule establishes limitations on the number of Instrument Flight Rule (IFR) reservations ("slots") per hour that will be accepted at those airports and allocates the hourly reservations among the three classes of users: Air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators.

The hourly quotas are set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation. A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific hour or 30-minute period at one of the high density airports. The limits at Washington National Airport were revised in 1981 and those at O'Hare International Airport in 1984. The FAA continually monitors operations and delays at the four airports to determine if the current quotas are sufficient or necessary.

On December 16, 1985, the Secretary of Transportation issued a new Subpart S to Part 93 establishing comprehensive rules for the allocation and transfer of high density airport slots (50 FR 52180, December 20, 1985). Subpart S permits air carrier and commuter operator slots at the high density airports to be transferred for any consideration. Slots used for international or essential air service (EAS) operations, or which have been obtained in a lottery and have not been used for two months following the start-up of operations, may only be transferred on a one-for-one basis. Subpart S further provides for the allocation by lottery of newly available slots and slots returned to the FAA or lost under the use-or-lose provision. The use-or-lose provision requires the return to the FAA of any slot that is not used 65 percent of the time in a 2-month period.

On March 6, 1986, the FAA issued Special Federal Aviation Regulation (SFAR) 48 (51 FR 8632; March 12, 1986) which established a special procedure for a one-time withdrawal of slots used by air carriers at three of the high density airports—LaGuardia, O'Hare, and Washington National. The slots withdrawn, when added to other slots already available for allocation at each airport, totalled 5% of all air carrier slots at each airport. Slots in the 5% pool were reallocated through 2 special lotteries to new entrants and incumbent carriers with less than 8 slots at the airport in question. The two lotteries were held on March 27, 1986, and December 15, 1986. SFAR 48 terminated on January 1, 1988, and is no longer in effect.

In addition to the SFAR 48 lotteries, two other lotteries have been held under the provisions of 14 CFR Part 93, § 93.225 on December 15, 1986, and July 22, 1987. Section 93.225 provides in part that lotteries will be held when slots are available, but generally not more than twice a year. The slots in the lottery pool are those which have been returned to the FAA or have been withdrawn from carriers for failure to meet the minimum slot use requirements. No slots are withdrawn for a § 93.225 lottery. Under the existing rule, 25 percent of the slots available for a particular airport,

but not less than 2 slots, if available, are reserved for selection by new entrants.

Since the rule was first issued, a total of 140 slots have been made available to new entrants or limited incumbents (holding less than 8 slots). Of the carriers which received the 140 slots, many if not most of the carriers sold those slots in the minimum time permitted or otherwise failed to use them. Of the 140 slots allocated to new entrants and carriers with less than 8 slots in the lotteries to date, only 15 are in use by the carriers that obtained the slots. Others were used by carriers which subsequently merged into larger carriers, but most of the 140 slots were sold or were returned to the FAA without operation.

The America West Petition

On July 1, 1987, America West Airlines filed a petition with FAA requesting the initiation of a rulemaking proceeding concerning the allocation of takeoff and landing slots at Washington National and LaGuardia Airports. Specifically, America West requested an amendment to Part 93, Subpart S of the Federal Aviation Regulations, which would permit the FAA to withdraw slots from current holders (93 slots at National and 96 slots at LaGuardia) and redistribute the slots to air carriers with less than 18 slots at each airport. As a new entrant, America West proposed that it should receive 18 slots at each airport. The petition suggested that a total of 189 slots be withdrawn from USAir-Piedmont Airlines and Texas Air, which includes Continental and Eastern Airlines. The FAA published the petition in the **Federal Register** on July 9, 1987 (52 FR 25886).

The America West petition also commented on the proposed USAir acquisition of Piedmont Airlines, citing statistics to demonstrate that the merger would reduce competition in Washington and New York markets. The Department of Transportation (DOT) considered America West's comments prior to the approval of the merger on October 30, 1987. DOT found that the acquisition would not lessen competition substantially in Washington and New York markets as each market does not contain airport-specific submarkets. The Department held that even though USAir and Piedmont have a large share of slots at LaGuardia and National Airports, there are alternative airports in the Washington and New York metropolitan areas which are not slot-restricted and which can be utilized by air carriers. Since DOT found the New York and Washington markets to be nonairport-specific, the Department did not need to address the second issue concerning the allocation of slots at the high density airports in those markets. Rather, the decision reserved the slot allocation issue for disposition by the FAA in response to the rulemaking petition.

As justification for the requested reallocation of slots, America West contended that barriers to entry at LaGuardia and National prevented competition at these airports. Citing an informal survey, America West asserted that it has been unable to purchase any slots at either Washington National or LaGuardia Airport and that it is extremely difficult to obtain slots at these airports. The inability to obtain slots at the airports would adversely affect the travelling public, according to the petition.

Comments on the America West Petition

Eighteen comments were received on the America West petition. The consensus among the majority of commenters was that the petition was based on inaccurate information and that the implementation of the proposal would adversely affect the travelling public. American Airlines, Delta Air Lines, Pan American World Airways, USAir/Piedmont, United Airlines, Eastern Air Lines, and Continental Airlines all opposed the petition, stating that the buy-sell rule (Subpart S) has created an effective market for the efficient distribution of slots at the airports. All the above airlines questioned the supporting affidavit of America West, which stated that it was not possible for a small or new carrier to purchase slots at the two airports and asserted that holders are willing to sell, trade, or lease the slots. The opponents to the petition further commented that the informal survey which formed the basis of the affidavit was faulty and unrealistic. Delta asserted that the in actual practice the trading and leasing slots by the small carriers was very common.

The dissenting airlines also asserted that it would be unfair and disruptive to withdraw the slots from current slot holders. The airlines argued that should slots be withdrawn, service to some smaller communities would be eliminated. It was argued that since America West is requesting the slots in order to serve Phoenix and Las Vegas and various western cities from Washington and New York, several of the communities now served by Texas Air and USAir/Piedmont would lose air service if the slots are withdrawn, as America West is not planning to serve those other areas. This concern was also expressed by the Attorney General of West Virginia and the City and Chamber of Commerce of Dayton, Ohio. Those parties urged the FAA to deny the petition on the grounds that air service would be suspended or eliminated to their respective states.

The petition drew support from several small airports, i.e., Stewart International Airport, Wichita Airport, and the Airport Authority of Louisville and Jefferson County, as well as from Midwest Express Airlines. The airports supported the petition as a means of obtaining more air service. They asserted that the implementation of Subpart S decreased the level of business at the airports and that the only way to increase the amount of business would be to open up Washington National and LaGuardia to new carriers. Stewart International Airport also suggested that the FAA should require one out of every five scheduled flights out of LaGuardia to operate from Stewart International.

In this regard the FAA notes that slots are not identified with or linked to any particular market, and that under the Airline Deregulation Act of 1978, air carriers are not restricted in their ability to inaugurate or suspend service in a particular market. Accordingly, an assertion that a reallocation of slots would benefit any particular market is highly speculative.

Midwest Express supported the petition and agreed with America West's assertion that it was difficult to buy the slots at the two airports. Midwest Express proposed that a new SFAR–48 should be implemented to withdraw slots from larger slot holders and redistribute the slots to smaller carriers with fewer slots.

After a review of the comments, the Department has concluded that certain changes should be made to increase the ability of small or new carriers to enter the market, but that there is not enough justification for measures to withdraw slots from current slot holders. Undeniably, the most effective way to permit the entrance of new and small carriers into LaGuardia and National Airports would be to withdraw slots from existing slotholders and allocate the slots to new entrant and smaller carriers. The Department finds, however, that this procedure would be unnecessarily disruptive to existing air service and is not warranted by the circumstances described by the petitioner. Therefore, the Department believes that amendments to the procedures in Subpart S that would tend to make marginally used slots available for sale or reallocation would represent a sufficient balance of the interests of

incumbent carriers and any smaller carriers that are actually in a position to benefit from new slots. Initiation of this rulemaking represents the agency response to the America West petition, and no further separate action on that petition will be taken.

Public Law 100–457

The Department of Transportation Appropriations Act, Pub. L. 100–457, enacted September 30, 1988, contains a requirement that FAA institute rulemaking to consider certain changes in the slot allocation and transfer regulations. Section 149 of Pub. L. 100–457 reads as follows:

> Not later than 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall institute a rulemaking proceeding to consider the need for changes to the existing regulation concerning the allocation and transfer of "slots" held by air carriers and commuter operators at each of the four airports covered by the final rule regarding Slot Allocation and Transfer Methods at High Density Traffic, Airports, published in the Federal Register on December 20, 1985. Included among the issues that shall be considered in this proceeding are (1) the overall effect of the existing buy-sell regulation upon new entry or limited incumbents at these four airports, (2) the effects of the recently approved mergers and acquisitions upon the operation of the buy/sell program at these airports, (3) the competitive and fare implications of the utilization of slots for providing services to and from hub airports and on monopoly routes, (4) the effect of short-term leases of slots upon the ability of new entrants or limited incumbents to purchase slots at these airports, (5) the effect of the use of air carrier slots by commuter operators upon entry by air carriers at these airports, and (6) the variation in prices paid for slots since adoption of the buy/sell program. The Administrator shall take final action in this proceeding, including the promulgation of any resulting final regulations, not later than 270 days after the date of enactment of this Act.

While the Department has developed a body of data and analyses on some of the issues raised in Pub. L. 100–457, we believe that additional information on these issues would be useful in order to determine whether regulatory measures are necessary. Accordingly, the FAA has not, at this time, proposed measures other than those specifically described below. The FAA requests comments and information on each of the following issues, and the agency may base further rulemaking on the comments received.

(1) The Overall Effect of the Existing Buy-Sell Regulation Upon New Entry or Limited Incumbents at These Four Airports

Although new carriers have entered markets and other carriers have expanded their operations at the high density airports, the opinion has been expressed that the administration of slots under existing regulations discourages, and sometimes precludes, new entry and expansion by limited incumbents. Comments should distinguish the effects of economic conditions and general policies, such as airline deregulation, from the actual impact of the current slot allocation and transfer regulations.

(2) The Effects of the Recently Approved Mergers and Acquisitions Upon the Operation of the Buy-Sell Program at These Airports

While the Department looked carefully at the competitive impact of the slots holdings in the relevant merger cases and in one case (the acquisition of Eastern by Texas Air Corporation) required the sale of a number of slots, additional information is requested on the realized impact of the mergers in concert with the operation of the buy-sell rule.

(3) The Competitive and Fare Implications of the Utilization of Slots for Providing Services to and From Hub Airports and on Monopoly Routes

A comment on this issue should include the particular scheduling information or actual fare data which the commenter believes would support its position.

(4) The Effect of Short-term Leases of Slots Upon the Ability of New Entrants or Limited Incumbents to Purchase Slots at These Airports

The existing rule permits carriers to transfer slots on a temporary basis. As a result, carriers may retain the allocation of a slot while permitting another carrier to operate it for a specified period. In practice, such "leases" have been for periods of one day to several years, and have enabled carriers to work out among themselves short-term scheduling adjustments through a market mechanism.

(5) The Effect of the Use of Air Carrier Slots by Commuter Operators Upon Entry by Air Carriers at These Airports

Currently, air carrier slots may be operated with commuter aircraft. This permits an air carrier to hold slots for which it has no present need, by leasing them to a commuter operator or using them for a commuter affiliate. Comments are requested on whether the FAA should require that commuter operators not be permitted to use air carrier slots. Comments are specifically requested on: (i) The effect of the existing rule on the ability of air carriers to retain unused slots by leasing the slots to commuter operators; (ii) the prevalence of this practice; (iii) whether the elimination of the provision would substantially affect the holding of unused slots; (iv) the effect of the existing rule on competition; and (v) whether there are benefits to the existing provision unrelated to the retention of unused air carrier slots.

(6) The Variation in Prices Paid for Slots Since Adoption of the Buy-sell Program

The current regulations permit the transfer of a slot for any consideration. The regulations do not require the reporting of the price paid for permanent or temporary transfer of a slot, and neither OST nor FAA collect or maintain such information. The intent of the rule was to permit the free transfer of slots, in accordance with airline scheduling needs, using a free market mechanism without administrative intervention. Commenters who urge that slot price information should be collected and utilized by the agency in some manner should provide information on the value and/or actual exchange price of slots, and the rationale for such collection, in support of the comment.

Finally, the FAA requests comments on the underlying mechanism by which demand for air traffic services is controlled—specifically, the imposition of limits on the number of operations each hour or half hour during certain periods of the day. Comments are requested on whether the current restrictions of the High Density Rule are necessary in consideration of technical innovations and improvements in air traffic services since the rule was adopted in 1969. Comments should address the potential effects on operating delays and efficiency of the air traffic system which would result from removal or amendment of High Density Rule restrictions at each of the 4 airports. Any suggested alternatives to current High Density Rule restrictions should be identified.

The Proposal

In consideration of the America West petition, comments submitted, and the status of current slot holdings, the Department is considering an amendment to Subpart S of Part 93 of the Federal Aviation Regulations (14 CFR Part 93, Subpart S) to alter certain restrictions concerning transfer of slots at the high density airports.

In summary, the proposed amendment would:

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—Provide that slots will not be withdrawn from a carrier with 8 or fewer slots, except for failure to use the slots, if the carrier itself uses the slots held.

—Increase the slot use requirements for carriers holding a substantial number of slots in certain hours or half-hours, to minimize holding of unused slots.

The use restrictions proposed would not affect the normal operating use of slots, but would tend to reduce the incidence of unused slots.

First, the notice proposes to add a use requirement to the provision protecting the slots of carriers holding 8 or fewer slots at an airport. FAR § 93.223(f) currently provides that slots will not be withdrawn from an air carrier or commuter operator holding 8 or fewer slots at an airport (not counting international slots). The proposed amendment would add a provision that the exception from withdrawal only applies to slots used by the holding carrier, and would clarify that the protection does not apply to withdrawal for nonuse under § 93.227(a). The use requirement would prohibit the current practice by larger carriers of transferring vulnerable slots (i.e., slots with a low withdrawal priority number) to a carrier with fewer than 8 slots, then leasing the slot back for operation.

Second, it is proposed to increase the minimum percentage of use for slots under § 93.227(a) for carriers holding a substantial number of slots in one time period. For a time period (hour or half-hour, depending on the airport) in which a carrier holds 10 or more slots, the FAA will withdraw a slot used less than 90 percent of the time in a 2-month period. For a time period in which a carrier holds 5 through 9 slots, the FAA will withdraw a slot used less than 80 percent of the time in a 2-month period. In all other cases, the minimum percentage of 65 percent under the existing rule is retained. The proposed amendment would substantially reduce the ability of a carrier to protect unused slots by distributing a given number of operations across a greater number of slots. The amendment would not affect smaller carriers or interfere with the normal operating flexibility required for use of slots, however.

The amendments proposed are intended to provide an opportunity for new entrant carriers to have access to high density airports, and for small incumbent carriers to increase the number of operations at those airports, without withdrawing from incumbent carriers slots used for existing operations. The agency requests comments on the specific impacts of the rule proposed on both new entrant and incumbent operators.

Because the proposed amendment is essentially procedural in nature and does not significantly alter the current operational environment for either air carrier or commuter operations at the high density airports, the FAA has determined that this proposed amendment: (1) Is not a "major rule" under Executive Order 12291; and (2) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because of congressional interest in this subject, the rulemaking is considered a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because of the minimal impact on any operator, I certify that under the criteria of the Regulatory Flexibility Act, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This amendment provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provision of Subpart S. OMB Approval Number 2120–0524 has been assigned to Subpart S.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 93 of the Federal Aviation Regulations (14 CFR Part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for Part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

2. In § 93.223, paragraph (c)(3) added to read as follows:

§ 93.223 Slot withdrawal.

(c) * * * * *

(3) Except as provided in paragraph § 93.227(a), the FAA shall not withdraw any slot held and operated by an air carrier or communter operator at an airport if that air carrier or commuter operator holds eight or fewer slots at that airport (excluding slots used for operations described in § 93.217(a)(1)).

* * * * *

3. In § 93.227, paragraph (a) is revised to read as follows:

§ 93.227 Slot use and loss.

(a) Except as provided in paragraphs (b), (c), (d), and (g) of this section, a slot shall be recalled by the FAA if it is not used for the following percentage of the time over a 2-month period:

(1) In a time period in which the slot holder holds 10 or more slots: 90 percent.

(2) In a time period in which the holder holds 5 through 9 slots: 80 percent.

(3) In all other cases: 65 percent.

* * * * *

Issued in Washington, DC, on December 16, 1988.

Mimi W. Dawson,

Deputy Secretary.

FR Doc. 88–29309 Filed 12–19–88; 12:02 pm]

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Part III

Department of Education

National Institute on Disability and Research; Final Funding Priorities for Rehabilitation Research and Training Centers and Applications for New Awards, Fiscal Year 1989; Notice

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for Rehabilitation Research and Training Centers for Fiscal Year 1989.

SUMMARY: The Secretary of Education announces final funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1989. A separate notice inviting applications is also published in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

SUPPLEMENTARY INFORMATION: On August 23, 1988, proposed priorities for Rehabilitation Research and Training Centers (RRTCs) were published in the **Federal Register** at 53 FR 32188. NIDRR received public comments and made some modifications to the priorities on the basis of those comments. An analysis of the comments and responses is included in this notice.

On the basis of the comments received from the public, several changes were made in the priorities. The priority for an RRTC in rehabilitation of persons with long-term mental illness has been modified to note that the dissemination activity may include materials beyond those resulting from the Center's research, and to note the importance of independent living as a goal of transition programs for young adults. The priority for the RRTCs on seriously emotionally disturbed children has been modified to emphasize that consideration must be given to infants and toddlers. On the basis of recommendations included in the comments from the public, NIDRR has included two additional requirements in this priority: epidemiological studies to define the target population, and the development of a methodology to be used by States in assessing the needs for various service system components. The priority on less restrictive housing has been renamed the Center on Accessible Housing and has been modified to delete the emphasis on aging persons and focus equally on disabled persons of all ages, to specify the inclusion of children and their families, and to broaden the composition of the training target group.

Analysis of Comments and Changes

NIDRR received many letters commenting on the proposed priorities. A summary and discussion of those comments follow, along with an analysis of the changes that were made.

RRTC on Rehabilitation of Individuals with Long-term Mental Illness Comment: Several commenters suggested that the Center dissemination activity should include the diffusion of relevant information from sources other than the Center's own research projects.

Discussion: The principal requirement for a Center's dissemination effort must be diffusing the findings of its research to appropriate target groups and promoting the utilization of those research findings. However, a Center may also disseminate appropriate materials that originated elsewhere, if they are pertinent to the Center's own mission. There was no intent to preclude applicants from proposing a broader dissemination activity.

Changes: The dissemination activity has been expanded to indicate that the Center may disseminate relevant materials from other sources.

Comment: One commenter stated that the Center should work to develop models for family involvement in service delivery program planning and other activities.

Discussion: NIDRR is aware of the need to further study and develop models for family roles and support to families during the rehabilitation of individuals with long-term mental illness. However, NIDRR is interested in focusing each of its Centers on a limited segment of a problem area, and to prescribe fewer requirements for the Centers in the absolute priorities. While NIDRR is requiring that this Center study and develop strategies to enhance consumer roles in their own rehabilitation, the Institute will not require that the Center also focus on family research. Rather, NIDRR intends to call for research on family involvement in the rehabilitation of individuals with long-term mental illness in future priorities.

Changes: None.

Comment: One commenter recommended that NIDRR add a focus on individuals with a "dual diagnosis" of severe mental illness and substance abuse disorder.

Discussion: While NIDRR recognizes the seriousness of the problems confronted by this target population, the Institute has based the content of this priority on the recommendations of a three-day planning conference involving leaders in the field of mental illness rehabilitation, and believes that the scope outlined in the proposed priority is sufficient for one Center. To add issues of dual diagnosis would dilute the efforts of the Center in the priority areas already identified.

Changes: None.

Comment: One commenter suggested that the Center should also be required to focus on homeless mentally ill persons.

Discussion: NIDRR has included an emphasis on homeless mentally ill persons in past Center priorities. Since the National Institute of Mental Health (NIMH), which is cofunding this Center, now has a separate funding authority that focuses on the needs of homeless mentally ill persons, the two agencies have decided not to require this Center to address this specialized population. An applicant is not precluded from proposing activities to address the needs of homeless mentally ill persons, as long as the applicant meets all of the required activities in the priority.

Changes: None.

Comment: A few commenters suggested that the Center should be required to develop and test supported employment models as one rehabilitative intervention.

Discussion: NIDRR has recently funded several projects on the assessment of supported employment programs for persons with long-term mental illness. In addition, the Office of Special Education and Rehabilitative Services as a whole has undertaken an array of supported employment activities. Before requiring a Center to undertake a long-term commitment to further research in this area, NIDRR would prefer to have the findings of some of these activities to use as a guide in the development of future priority requirements. Furthermore, NIDRR prefers, wherever possible, not to specify the types of rehabilitative interventions a Center must examine, but to allow the applicant and the resultant Center to propose interventions based on prior research, needs assessments, and modeling. Applicants are not precluded from proposing assessments of supported employment models, but they must demonstrate the value of their approach.

Changes: None.

Comment: One commenter objected to the studies of systems change in this priority, stating that this goal could be addressed by existing RRTCs on mental health or through the systems change now in progress in the supported employment program.

Discussion: One of the existing RRTCs in mental health will complete its funding period in fiscal year 1988; the remaining Center will complete its funding period in fiscal year 1989. NIDRR has no opportunity to redirect the activities of those Center grantees to this new priority area. One purpose of announcing this priority is to maintain NIDRR's commitment to and activity in mental health research. Further, any Center funded in response to this priority will be expected to address service systems in mental health, generic health services, and housing, as well as rehabilitation and employment, and the scope and purpose will be broader than those in the systems change activity related to supported employment.

Changes: None.

Comment: One commenter recommended that a requirement to identify and assess existing models of psychosocial rehabilitation services should be required in the priority for research on the rehabilitation of persons with long-term mental illness.

Discussion: This type of activity has been supported by NIDRR in previous RRTCs over a ten-year period. NIDRR believes that virtually all of the elements in the current priority are components of psychosocial rehabilitation programs. However, NIDRR believes that after nearly fifteen total years of RRTC activity in mental health rehabilitation, it will be more productive now for a Center to undertake definitive research in limited problem areas. The foci of this Center are case management, consumer self-direction, transition, and postsecondary education.

Changes: None.

Comment: One commenter suggested that the emphasis on transition to work or postsecondary education neglects the more important issue of transition to independent living in the community.

Discussion: The Secretary agrees that this is an important point and has therefore modified the priority.

Changes: The priority element relating to youth in transition now includes transition to "living independently in the community."

Comment: One commenter recommended that all priorities should specifically include leisure activities.

Discussion: Such terms as "rehabilitation", "community-based programs", "patterns of successful family coping", "independent living in the community," and "community service systems" can include leisure activities and recreation. NIDRR prefers to let the rehabilitation research field, through the applications and the evaluations of the peer reviewers, define the elements of rehabilitation that should be addresed.

Changes: None.

RRTCs on Rehabilitation of Seriously Emotionally Disturbed (SED) Children and Youth

Comment: One commenter recommended that the unique needs of infants and toddlers should be given consideration under both priorities relating to seriously emotionally disturbed children and youth.

Discussion: NIDRR agrees that early diagnosis and intervention are important for this group.

Changes: In the introduction to this priority, NIDRR has specified that each Center must consider the needs of infants and toddlers with serious emotional disturbance.

Comment: One commenter suggested that it would be important for the Center on improving service systems to work toward developing a consensus about criteria for residential treatment.

Discussion: NIDRR generally prefers to let applicants decide the methods they will use to approach the prescribed goals, which in this case is an assessment of the efficacy and cost-effectiveness of alternatives to residential treatment. Applicants are not precluded from proposing consensus-building as an initial approach.

Changes: None.

Comment: Several commenters recommended that there be an emphasis on epidemiologic and longitudinal studies in the Centers on SED children.

Discussion: The need for more epidemiological research to define certain parameters of the population is clear, and the priority has been modified to include this activity. The objective specified for the Center could be approached through a longitudinal data collection effort. Applicants may propose a longitudinal study.

Changes: The priority has been modified to include a statement that epidemiological research to determine certain characteristics is part of the scope of this Center.

Comment: Several commenters suggested that the priority be revised to make it clear that the study of the state-of-the-art could be done through the mechanism of a conference, since the commenters believed that a conference might be a preferable or more cost-effective approach.

Discussion: NIDRR intends that an applicant may propose to conduct a study of the state-of-the-art through the mechanism of a conference if the applicant demonstrates that this is the most appropriate means to conduct the study.

Changes: A change has been made to note that a Center in response to this priority may conduct either a conference or study on the state-of-the-art.

Comment: One commenter asked for clarification as to whether grantees would be expected to implement model programs to assist in the transition from school to work.

Discussion: An applicant may address the requirement to "develop, evaluate, and disseminate model programs" in various ways. A model demonstration program would be one such approach, and most RRTCs conduct at least one such program. Many RRTCs have cooperative agreements with service providers or with operational units within a university (e.g., model schools). Under these agreements, the latter typically conduct the model programs, while the RRTC conducts evaluation and perhaps provides technical assistance. Applicants may propose this approach or other appropriate approaches.

Changes: None.

Comment: Several commenters noted that State agencies are not equipped to assess the needs for various components of a comprehensive service system and recommended that the Center address that problem.

Discussion: NIDRR believes that needs assessment is an important element in the creation of responsive, comprehensive service systems at the State level. This issue is particularly critical to the Children and Adolescent Service Systems Program (CASSP) of NIMH, the cosponsor of the Center. A model to assist States to conduct such needs assessments would be an important contribution of the Center.

Changes: The priority has been modified to include the development of a methodology whereby States can assess the needs for various system components.

Comment: A few commenters urged that the development of instruments and classification systems should address a broader range of characteristics and abilities than those specified in the priority.

Discussion: As stated before, the elements listed in the priority are not meant to be limiting or all-inclusive. Applicants may propose the

development of instruments pertinent to any dimensions they deem important, as long as they meet the minimum requirements imposed by the priority.

Changes: None.

Comment: One commenter objected to the priorities for additional Centers related to seriously emotionally disturbed children and youth on the basis that these are not compatible with the mandates of the Federal-State rehabilitation program, and that they dilute resources that should be directed to the problems of the population served by the vocational rehabilitation system.

Discussion: NIDRR currently contributes to the funding, along with the National Institute of Mental Health, of two RRTCs studying problems related to seriously emotionally disturbed children and youth. These Centers will complete their funding periods in fiscal year 1988. Thus, the proposed Centers are not additional Centers, but are a means to continue NIDRR's support of work in the important area of mental illness rehabilitation. The legislative mandate of NIDRR is different from that of the Rehabilitation Services Administration. NIDRR is required to address the problems of disabled individuals of all ages, and there is specific reference in the authorizing legislation to both children and elderly persons.

Changes: None.

RRTC on Accessible Housing

Comment: A few commenters suggested that the title "Less Restrictive Housing Environments" was potentially confusing and could lead to a diversion of the focus away from accessible housing. They recommended that a more precise name be found for the Center.

Discussion: In order to eliminate the possibility, however remote, of confusion about the mission of the Center, the Secretary has changed the title of the priority.

Changes: The title of the priority has been changed to "Accessible Housing Environments for Individuals with Disabilities".

Comment: Several commenters stated that the priority as proposed placed too great an emphasis on aging, which is only one cause of disabling conditions leading to the need for adapted environments. They recommended that the Center focus on the housing needs of persons of all ages with disabilities.

Discussion: Because of the concern that focusing on the elderly will lead to the neglect of the needs of individuals with severe disabilities resulting from causes other than age, the Secretary has modified the priority. The focus on aging was originally inserted in the priority because NIDRR believes that prudent and cost-effective planning requires that the needs of persons who will require housing adaptations as they age be taken into account in developing accessible housing options for all persons with disabilities. It may be cost-effective to expand the parameters of the target population for adapted housing and furnishings, since a larger volume both lowers the unit cost and provides an expanded market for housing rental turnovers. Also, NIDRR believes that service providers and researchers may benefit from a knowledge of current practices to adapt housing and equipment to the needs of the elderly population. Thus, while the Secretary is changing the focus of the priority to provide equal emphasis on all age groups among persons with disabilities, the Secretary urges that Center applicants not neglect these additional sources of information and support.

Changes: The special emphases upon aging persons has been deleted from the priority. A statement that persons of all ages, including disabled children and their families and elderly persons with disabilities, must be considered in the activities of the Center, has been added.

Comment: Many commenters urged that the Center include children with disabilities and their families among its target groups, and some urged a special emphasis on this group.

Discussion: The Secretary agrees that this population is an important group and that its needs must be addressed by the Center. However, NIDRR will not target any one group. The priority has been amended to clarify that the Center must address the housing needs of all age groups, without special emphasis.

Changes: A statement that the Center must address the housing requirements of all age groups, including disabled children and their families and elderly persons with disabilities, has been added to the priority.

Comment: Several commenters stated that there has been sufficient research on accessible housing, and that the present need is for dissemination of what is known into practice.

Discussion: The Secretary agrees that dissemination and promoting utilization of what is known are needed and are important functions of this Center. However, there are many areas in which our knowledge of feasible, cost-effective solutions to housing problems of disabled persons is inadequate. A major purpose of any RRTC is to conduct a significant program of research to advance the state of knowledge in a given area. The Secretary notes that there may be other mechanisms that can be used for a pure dissemination activity. It would not be appropriate for an RRTC to be limited to dissemination.

Changes: No change has been made. There is considerable emphasis on dissemination in the priority as proposed.

Comment: One commenter questioned the need for the RRTC to be affiliated with a university. The commenter expressed concern that this affiliation might create an overly academic emphasis within the Center and neglect practical experience.

Discussion: The legislation creating the RRTC program requires that RRTCs be affiliated with an institution of higher education.

Changes: None.

Comment: Several commenters recommended that the target population for training should be expanded to include families of disabled children, educators, and others.

Discussion: The specified target population has been expanded. However, it is important to note that this is not a restrictive listing, and that an applicant may include other appropriate groups in its training programs. Since the target groups specified in the proposed priority include many that are not generally included in rehabilitation-related activities, NIDRR believes it is important to require their inclusion.

Changes: The training target population has been modified to include families of persons with disabilities, educators, rehabilitation service providers, and other appropriate audiences.

Comment: One commenter asked whether the RRTC was expected to become involved in developing and influencing public policy.

Discussion: As a grantee of the Department of Education, an RRTC may not use Department funds for the purpose of influencing public policy through lobbying or related forms of advocacy. It is assumed that the Center's findings and recommendations, because of their merits, may be of use to policymakers.

Changes: None.

Comment: A few commenters recommended other activities for the Center, such as serving as a national information resource, providing specific solutions to individuals, or providing implementation assistance to practitioners.

Discussion: In general, applicants are not restricted to the activities specified in the priority. While they must address all of the priority activities, they may include other activities as well. The Secretary will not require any additional activities because the requirements for

this Center are already extensive. Applicants are also reminded that they should consider how this Center will relate to planned and existing technology information resources, such as the Rehabilitation Engineering Centers in technology transfer and statewide services, ABLEDATA, and the possible State and national information resources authorized in the new Technology-Related Assistance for Persons with Disabilities Act of 1988.

Changes: None.

Background

A program of Rehabilitation Research and Training Centers has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilitzation of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be accessible to individuals with a range of disabling conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers also must conduct a state-of-the-art studies in relevant aspects of their priority areas. In addition, each RRTC must provide training to individuals with disabilities and their families in managing and coping with disabilities.

The following four final funding priorities represent areas in which NIDRR has a long-standing interest. The publication of these priorities does not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise directed by statute. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. Continued funding of a Center depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Priorities (4) Rehabilitation for Persons with Long-Term Mental Illness

There are over two million persons with long-term, severe mental illness. Improved rehabilitation interventions and service delivery models are needed to afford better opportunities for this population to remain out of institutions and to attain satisfactory lives in their communities. While the population of adults with severe psychiatric disabilities spans all ages, there is particular concern with young adults whose education and vocational preparations have been interrupted by severe mental illness. Service systems have not addressed adequately the transition from school to work or independent living for young adults.

The configuration of Federal financial supports, third-party payors, and State and local policies has led many service systems toward a case management approach that links clients with needed services and provides continuity of care. However, there is a range of approaches to case management, with no reliable information about which components are most important or most effective in various situations.

There has been a significant emphasis on consumer involvement in rehabilitation programs for persons with severe psychiatric disabilities, including peer self-help groups and consumer-managed programs. However, little is known about the most effective approaches to organizing and managing these programs and to developing consumer capacity to operate successful programs.

Results of research and practice indicate that specialized rehabilitative interventions can increase the likelihood of community adjustment for persons with long-term mental illness. It is important to continue to develop and test more effective rehabilitative interventions, including especially those that contribute to improvements in education, vocational status, and general health care.

NIDRR, with the cooperation of the National Institute of Mental Health, intends to fund an RRTC to address these issues. Any Center to be funded under this priority must involve persons with long-term mental illness and their family members in the planning, conduct and evaluation of the research and training activities.

An absolute priority is announced for an RRTC to:

- Identify and assess existing case management systems for persons with long-term mental illness, including goals, organization, staffing, functions, and outcomes, and develop and test model approaches to case management;
- Develop and evaluate model approaches to train consumers to administer programs, represent their interests in program development, and address issues of systems change;
- Evaluate the impact of client involvement in program planning and implementation on program content, participation and use, and outcomes;
- Study the experiences and problems confronting young adults, aged 18–22 years, who are completing their special education programs under Pub. L. 94–142, and develop model service interventions for this group, including services to facilitate their transition from school to work or postsecondary education, and living independently in the community;
- Develop and test models to use existing community resources to meet client needs for postsecondary education;
- Develop and evaluate rehabilitative interventions to enhance the rehabilitation of individuals with long-term mental illness;
- Develop and test models for the efficient delivery of technical assistance to consumer self-help and other community-based programs for persons with mental illness; and
- Develop and implement a program to disseminate the findings of the Center's research and, as appropriate, other relevant new knowledge to appropriate practitioner, consumer, and research constituencies.

Rehabilitation of Severely Emotionally Disturbed (SED) Children and Youth (Two Priorities)

There are an estimated three million children with emotional disturbances, and they are among the most underserved of all disabled populations. (*Unclaimed Children*, Children's Defense Fund, 1982.) A background paper issued by the Office of Technology Assessment (OTA) indicates that, while there is convincing evidence that severely emotionally disturbed children can benefit from mental health services, there is a need for more reliable early assessment, better matching of children with services and interventions, and more community-based services. (*Children's*

Mental Health, 1986.) That report further notes that the Federal Government is virtually the only source of funds for research and training in this area.

Children with emotional disturbances often do not receive any attention to their problems until they require services from other system components—juvenile justice, corrections, social services, or drug abuse agencies, for example. The most readily available form of help for these children continues to be in-patient hospitalization—the most restrictive and costly form of intervention.

NIDRR has identified two different programmatic areas of research, training, and knowledge dissemination and is proposing two RRTCs in this area, each focusing on one of the sets of specific elements outlined below. The target population includes children from birth to age 21 years who have serious emotional impairments, and each Center must give consideration to the needs of children from birth to five years of age. The target population of families must include single-parent families, families with teen-aged parents, and minority families.

Any Center to be funded in this area must involve severely emotionally disturbed youth and members of their families in planning, conducting, and evaluating the research program. Each Center must conduct all research and training activities in community-based settings, and must establish communications with RRTCs in related areas, with the Child and Adolescent Service System Program (CASSP) directors, the National Parent Network, and other relevant organizations concerned with the improvement of children's mental health. Each Center may elect to establish satellite activities through agreements with other institutions of higher education for the purpose of replicating research studies or providing additional training sites. The National Institute of Mental Health (NIMH) intends to contribute support to these Centers. Specific priority requirements are:

Improving Service Systems for Seriously Emotionally Disturbed Children and Youth

An absolute priority is announced for an RRTC to:

- Develop instruments and classification systems that will provide profiles of the functional abilities and deficits of children with serious emotional disorders;
- Develop a methodology that can be used by States to determine the level of need for various components of a comprehensive service system for this target population;
- Conduct epidemiological research to define the population of SED children and youth in terms of numbers, ages, characteristics, functional levels, and interactions with the service system;
- Develop, evaluate, and disseminate model programs, involving interagency and interdisciplinary collaboration, to assist transition from school to work for this population;
- Assess the efficacy and cost-effectiveness of alternatives to residential treatment, identify incentives and disincentives to community and home-based treatment, and develop models to address the disincentives;
- Assess the financing options that could be applied to meet the multiple service needs of this population and their families;
- Provide information to the RRTC on Improving Services for Families of Children and Youth With SED for inclusion in a clearinghouse; and
- Conduct at least one study or conference on the state-of-the-art in a selected topic in this research area.

Improving Services for Families of Children and Youth with Serious Emotional Disturbances (SED)

An absolute priority is announced for an RRTC to:

- Investigate patterns of family use of community-based resources and services;
- Investigate patterns of successful family coping among families with SED children;
- Analyze the perceptions of SED among minority families and the impact of those perceptions on service utilization, and develop and evaluate culturally sensitive information and service delivery models for minority families;
- Develop and test strategies to facilitate the involvement of families in the development and evaluation of community-based services at the individual, community, and State levels;
- Identify exemplary graduate level training courses and curricula used in the cross-disciplinary training of professionals and families who plan, provide, and coordinate services and programs for this population of children and youth, and develop materials to replicate best practices;
- Develop a national clearinghouse, including a parent-operated resource center component, that can provide technical assistance to parents, family members, and professionals on service systems and on options for family support; and
- Conduct at least one national conference on the state-of-the-art in supportive resources for families with children with serious emotional disturbances.

Accessible Housing Environments for individuals with Disabilities

The provision of appropriate housing for the lifespan of disabled persons is a major undertaking, involving accommodation to a complex array of physical limitations. An RRTC is needed in this area to develop a variety of housing options and innovative approaches to challenges of designing, financing, and administering models of adaptive housing. A convergence of knowledge from the fields of architecture, engineering, construction, rehabilitation, independent living, and related areas is required to create appropriate housing environments in which disabled persons can live independently or with families and other household members. The knowledge base must include information about modifications to existing structures and equipment, as well as design concepts that can be used to build facilities for the entire lifespan. The knowledge base must be developed from the results of research, needs assessments, and analysis of the physical capabilities of individuals with disabilities.

One immediate objective is to conduct new programmatic research into the needs of disabled persons for accessible housing environments. A second focus is to improve the utilization of available research-based information on accessibility and independent living, including data on human performance, models of accessible building adaptations, and standards and guidelines that have been developed for construction. Over the longer term, it is important to develop better building designs, based on field and laboratory research, and tested in regular use by disabled persons.

A prerequisite to improving design of housing environments in a permanent and comprehensive way is to make those who design, build, adapt, maintain, manage, finance, and use housing aware of the potential for creating more accessible environments for independent living. A center to be funded in response to this priority must maintain liaison with the Architectural and Transportation Barriers Compliance Board (ATBCB), as well as with NIDRR-supported research projects and Centers in such areas as independent living, aging, families, and community integration. The RRTC must maintain liaison with the Rehabilitation

Engineering Centers, especially those in the area of quantification of human performance. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for an RRTC to:

- Identify and assess housing environments that promote independent living for persons with disabilities and the specific housing environment needs of persons with physical, sensory, and cognitive impairments, including disabled children and their families, elderly persons, and adults of all ages;
- Analyze the legal, regulatory, commercial, social, psychological, business, design, and financial aspects of developing suitable living environments for disabled persons of all ages and develop strategies to address problems in these areas;
- Develop and disseminate recommendations for new designs and for adaptations to existing housing that are appropriate for persons with physical, sensory and cognitive impairments;
- Incorporate new research knowledge from NIDRR-funded projects and other sources in products, housing design and information and training materials to enhance accessibility and independent living;
- Develop, acquire, maintain, and disseminate both graphic and text databases on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing, and serve as a national information resource;
- Design training materials to increase awareness of the housing needs of disabled persons, concepts of accessibility, and techniques to increase the availability of accessible housing, and conduct training for a range of involved populations, including persons with disabilities and their families, architects and home builders, rehabilitation service providers, educators, designers and manufacturers of furnishings and equipment, housing managers, city planners and engineers, and other appropriate audiences;
- Promote concepts of accessible housing, including ideas from abroad, in graduate and undergraduate education and professional practice in a wide range of academic disciplines and applied professions; and
- Conduct at least one study of the state-of-the-art in a significant aspect of accessible housing.

(Catalog of Federal Domestic Assistance 84.133B, National Institute on Disability and Rehabilitation Research)

Authority: 29 U.S.C. 760–762.

Dated: December 8, 1988.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 88–29270 Filed 12–21–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.133B]

Notice Inviting Applications for New Awards for Rehabilitation Research and Training Centers Under the National Institute on Disability and Rehabilitation Research for Fiscal Year 1989

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: This program provides funds to institutions of higher education, and organizations affiliated with such institutions, to support comprehensive, interdisciplinary programs of research and training to address problems confronting individuals with disabilities.

Deadline for Transmittal of Applications: February 21, 1989.

Available Funds: $2,450,000.

Estimated Number of Awards: 4.

Note: The Department of Education is not bound by any estimates in this notice.

Estimated Range of Awards: $500,000–$750,000.

ESTIMATED AWARDS FOR RRTCS FOR FY 1989 CFDA NO. 84.133B

Priority area	Estimated size of award	Estimated No. of awards	Project period
Rehabilitation for persons with long-term mental illness.	$750,000 per year.	1	60 mo.
Improving service systems for seriously emotionally disturbed children and youth.	$600,000 per year.	1	Do.
Improving services for families of children and youth with serious emotional disturbances.	$600,000 per year.	1	Do.
Accessible housing environments for individuals with disabilities.	$500,000 per year..	1	Do.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 80, and (b) the regulations governing this program published at 34 CFR Part 352.

Priorities: The Secretary gives an absolute preference to applications that meet the following priorities: Rehabilitation for Persons with Long-Term Mental Illness; Improving Service Systems for Seriously Emotionally Disturbed Children and Youth; Improving Services for Families of Children and Youth with Serious Emotional Disturbances; and Accessible Housing Environments for Individuals with Disabilities. The complete description of these priorities is published elsewhere in this issue of the **Federal Register** in a notice of final funding priorities.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet these absolute priorities.

Selection Criteria: The Secretary uses the following criteria under 34 CFR Part 352 to evaluate an application under this program.

(a) *Relevance and importance of the research program.* (20 points)

The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center

are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design.* (35 points) The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(iv) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program.* (25 points): The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that is usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management.* (20 points): The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director (if designated), training director (if designated), principal investigators and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # | Applicant must insert number and letter), Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# | Applicant must insert number and letter), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I

Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II

Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

PART III

Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC 20202. Telephone: (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TDD services.

Program Authority: 29 U.S.C. 762(b)(1).

Dated: December 16, 1988.

Madeleine Will,

Assistant Secretary, Special Education and Rehabilitative Services.

Appendix

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register.** However, there are no extensions or exceptions to the due date made for individual applicants.

Further information about mailing is included in Section IV of this Consolidated Application Package.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation.

It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One Program Competition in NIDRR or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applications for Rehabilitation Research and Training Centers should limit indirect cost rates to fifteen percent of the grant award, as noted in the program regulations and statute.

Applications in other programs that are for training activities should limit indirect charges to the lesser of the actual indirect costs or eight percent of the total direct costs of the program, as noted in the Education Department General Administrative Regulations (EDGAR).

All other applicants should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs.

8. Not Applicable.

9. Is There a Cost-Sharing or Matching Requirement?

Cost-sharing is required in the Research and Demonstration Projects program, with certain exceptions noted in the law; the Knowledge Dissemination and Utilization program; the Field-Initiated Research program; and the Career Development and Research Training program.

There are no cost-sharing requirements for the Innovation Grants or the Research Fellowships programs.

For the Rehabilitation Research and Training Centers and the Rehabilitation Engineering Centers, the Secretary has the option to require matching. It is generally the practice of the agency to require cost-sharing under these programs.

There is no set rate for cost-sharing. The cost-sharing is negotiated at the time an award is made and is not part of the evaluation of the application.

10. Not applicable.

11. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area is likely to receive approval in the investigator-initiated competitions.

12. How Do I Assure That My Application Will be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competitions by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

Applicants should assist NIDRR in ensuring that their Field-Initiated and Innovation Grant applications are referred to the most appropriate panels by emphasizing the focus of the proposed activity in the abstract of the project on the Standard Form 424. It would be helpful if the applicant would not use acronyms in the title and abstract, unless those acronyms are in common usage nationally.

13. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program and for other reasons. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

14. Can I Call NIDRR To Find Out if My Application is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

15. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

16. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approved for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

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ED Form GCS-008, 6/88

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Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

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Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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December 22, 1988

Part IV

Federal Deposit Insurance Corporation

12 CFR Part 308

Rules of Practice and Procedures; Final Rule

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Rules of Practice and Procedures

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The FDIC is adopting a revised 12 CFR Part 308—Rules of Practice and Procedures—which governs the conduct of administrative proceedings before the FDIC. The changes include a reorganization of existing sections of Part 308, revisions of some sections that existed previously, and the addition of new sections. Provisions that the FDIC has added or significantly revised concern the following general topics: authority of the FDIC Board of Directors ("Board") and the Executive Secretary, selection and authority of administrative law judges, appearance before the FDIC, good faith certification, pleadings, intervention, consolidation and severance of actions, scope of and time limits for discovery, motions, prehearing preparations and submissions, conduct and timing of hearings, evidence, use of written testimony, stays of administrative orders pending appeals, collateral attacks on administrative proceedings, conflicts of interest, sanctions, suspension and disbarment, ex parte communications, and miscellaneous provisions including ones concerning the maintenance of the administrative record, filing and service of papers, construction of time limits, and transition rules. Additionally, sections that are neither new nor substantially revised often contain some language changes in order to enhance clarity. The purpose of the provisions proposed herein is to secure a just and orderly determination of administrative proceedings before the FDIC.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy L. Alper, Senior Attorney, Compliance and Enforcement Section, telephone 202/898–3720, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; or Christine C.A. Tullio, Senior Regional Attorney, Regional and Corporate Affairs Branch, telephone 312/207–0495, Federal Deposit Insurance Corporation, 30 South Wacker Drive, Suite 3300, Chicago, Illinois 60606.

SUPPLEMENTARY INFORMATION: On February 12, 1988, the Board of Directors of the FDIC approved the publication in the **Federal Register** of the revisions to Part 308 of its regulations entitled "FDIC Rules of Practice and Procedures" (12 CFR Part 308) (53 FR 5392, February 24, 1988). Part 308 had been selected for review under the FDIC's Regulation Review Program (see 50 FR 14247, April 11, 1985). This revised Part 308 is a result of the review conducted.

I. General Purpose of the Revisions

Existing Part 308 was largely written in the mid-1970s. At that time the FDIC brought relatively few administrative enforcement actions, and the cases that were brought were almost invariably settled. In the intervening years, the number of FDIC administrative enforcement proceedings has increased dramatically, and the FDIC now tries numerous proceedings each year. This increased experience has persuaded us that existing Part 308 is inadequate to deal with the volume and nature of current FDIC administrative enforcement proceedings. As a result, the FDIC has revised Part 308 and with this **Federal Register** notice is adopting the new Part 308 with certain modifications as suggested by the comments.

The most substantive of the revisions of Part 308 flow from one, or more, of the following problems. First, a disproportionate number of cases take longer than they should to come to hearing. Second, pre-hearing practices and rulings vary widely among administrative law judges handling FDIC proceedings. And third, many Respondents and/or Respondents' counsel do not consistently abide by orders of the administrative law judges and/or the provisions of Part 308.

To alleviate these problems, revised Part 308, principally subpart B, spells out in considerable detail what each party may and must do to prepare a proceeding for hearing, and when those acts must be done. These provisions should move cases forward to a relatively early hearing (generally 120 to 150 days after the proceeding is commenced); eliminate the need to go to the administrative law judge on a number of issues that are not resolved in existing Part 308; give considerable guidance to administrative law judges hearing the issues that still require litigation; and reduce the ambiguities and gaps that are often given as explanations for failures to comply with orders and regulations. Failures to comply should be further reduced by the introduction of a good faith pleading requirement and the availability of sanctions and, in extreme cases, suspension or disbarment from practicing before the FDIC.

The bulk of the substantive revisions are found in subpart B, which has been largely rewritten. Subparts A and K also contain considerable substantive revisions. The changes in certain other subparts are largely, but not exclusively, made to conform those subparts to the general provisions of subpart B or to resolve ambiguities in the existing language. Given the extent of the revisions, little purpose would be served by pointing out in the text that the language in almost every important provision in subparts A, B, and K is either new to Part 308 or revises the existing language.

In addition to these modifications, revisions to other subparts have been made. Subpart L, which contained rules of practice and procedure relating to proceedings under both section 8(g) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. 1818(g), and section 19 of the Act, 12 U.S.C. 1829, has been divided into two subparts, subparts N and M, respectively. This should clarify the differences between the two types of proceedings and the rules of procedure for each action.

Similarly, subpart G has been divided into two parts. Subpart G now consists of the rules of practice and procedure for actions arising under section 8(e) of the Act, 12 U.S.C. 1818(e), governing removal, prohibition or suspension orders. New rules concerning applications for the termination of removal or prohibition orders are being drafted and should appear as subpart L. Since subpart L would be the first codification of rules of practice and procedure for applications to terminate section 8(e) orders, it is expected that, subpart L will be put out for comment under separate publication in the **Federal Register**.

Finally, it is expected that a new subpart, subpart O, will be created. This subpart would codify longstanding procedures which have governed a bank's contesting the imposition of civil money penalties for the untimely filing of Reports of Condition and Income. It is anticipated that subpart O will be included in the separate publication in the **Federal Register**.

Finally, we note that while several of the concepts, and most of the language, in revised Part 308 is new to the part, those concepts, and much of the language, are not unique to revised Part 308. Rather, most have their origins in the Federal Rules of Civil Procedure, other agencies' regulations, and, to a lesser degree, in standing pretrial orders and practices of various United States district court judges and administrative

law judges and in the Federal Rules of Evidence.

II. Comments and Discussion

A. Comment Summary

The FDIC received four comment letters on its February 12, 1988 proposed rule. Overall, the comments commended the undertaking of the FDIC in substantially revising its rules of practice and procedure and praised the undertaking as thorough, fair and constituting an incorporation of procedural safeguards and facilitatory features. The comments also raised certain questions and objections, some of which overlapped.

B. Specific Objections Raised and Suggested Changes

(1) Several commenters suggested that Rule 403 of the Federal Rules of Evidence ("FRE") should be incorporated into Part 308. FRE Rule 403 permits the exclusion of evidence where the probative value is outweighed by other factors such as the potential for undue consumption of time. The rationale for inclusion of FRE Rule 403 is that the rules of evidence set forth in Part 308 do not provide sufficient guidance to administrative law judges on the admissibility of evidence.

(2) Questions were raised concerning the tying of the admissibility of evidence to the date of the Notice. The reasoning for raising this issue was that the date of issuance of the Notice was not felt to have any necessary relevance to the fact of the violation. The concern, expressed by the commenters, was that institutions and/or respondents in similar proceedings would be bound by different evidentiary rules because of differing dates of issuance of the Notice.

(3) One objection was made concerning the restriction of introducing evidence of any act or event occurring after the date of the Notice. The rationale was that this restriction ignores the distinction between the fact of the violation of law or regulation ("Violation") and/or the fact of the unsafe or unsound practice ("Practice"), and the fashioning of the remedy. With respect to the fact of the Violation and/or the Practice, the commenter agreed that evidence of events, conditions and acts subsequent to the examination of a bank is irrelevant. The commenter stated that the rule should be inflexible in prohibiting the admission of evidence occurring subsequent to the examination.

However, the commenter asserted that such evidence is necessary in determining what is the appropriate remedy irrespective of what type of enforcement action is involved. It was suggested that § 308.38(a)(2) be amended to provide that evidence subsequent to the date of the Violation or Practice is irrelevant to the fact of that Violation or Practice and permit the administrative law judge to determine the relevancy of evidence as to the other issues.

(4) Objections were also raised against permitting only document discovery and providing for depositions solely where witnesses are unavailable for the hearing. 12 CFR 308.27–308.29.

(5) One commenter objected to the process of filing exceptions to a recommended decision as being archaic and cumbersome. Instead, it was recommended that briefs be used which set out a statement of the facts and reference the record.

(6) Certain commenters read § 308.41(c) to mean that appeals by parties to an enforcement action are prohibited.

(7) It was suggested that decisions of the administrative law judges be treated as initial decisions of the agency, which are final unless they are appealed to and reversed by the Board of Directors of the FDIC, instead of being considered as recommended decisions which require a final decision by the Board.

(8) With respect to subpoenas, it was recommended that subpoenas should be standardized into a simple format and be pre-printed. It was also suggested that subpoenas should be pre-signed by an authorized official and should be issued by the Office of the Executive Secretary. The rationale for this last suggestion is that the role of administrative law judges should be limited to deciding objections. However, it was recommended that when an issue was raised as to whether top officials were subpoenaed by respondents, then the administrative law judge should determine whether to issue the subpoenas. The commenter stated this would avoid abuse of process by respondents who sought to harass senior FDIC officials.

(9) One commenter suggested that § 308.40(a) should be amended to provide for the commencement of the 45-day decision-writing period for administrative law judges after the filing of reply briefs.

(10) Another commenter suggested that § 308.48 is overly broad by prohibiting any material *ex parte* communications and stated that the present provision which prohibits *ex parte* communications relevant to the merits is sufficient.

(11) Issues were raised concerning whether § 308.50 may violate the Agency Practice Act, 5 U.S.C. 500, by providing for automatic suspension from practice before the FDIC of an individual who was convicted of a felony or a misdemeanor involving moral turpitude within the past ten years. It was suggested that the summary suspension of attorneys for contemptuous conduct by an administrative law judge may be too harsh. An interlocutory appeal to the FDIC was suggested as ameliorating this rule.

(12) Questions were raised concerning whether respondents should be provided with a Wells-type submission process such as that which the Securities and Exchange Commission employs. Two commenters recommended that the FDIC implement such a process, while one opposed it.

C. Analysis and Modifications

(1) While it is felt that § 308.38 provides sufficient guidelines to administrative law judges on the admissibility of evidence, § 308.38(a) has been amended to include language from FRE Rule 403. The FDIC believes that with this additional language, an administrative law judge now has the proper tools to make determinations on the admissibility of evidence.

(2) The FDIC when revising Part 308 considered and discussed what general date should be used to demarcate when evidence concerning the fact of a Violation or the fact of a Practice would be admissible. The date of the commencement of the examination was considered at length as the most obvious choice. The rationale for this was that the date would be well-known, and that it had factual significance to the fact of the Violation or of the Practice.

Further analysis, however, revealed that the date of the commencement of the examination was too narrow. While this date would work well when, for example, a section 8(b) enforcement action was being litigated, the date would not be workable in an enforcement proceeding involving, for example, a section 8(c) action. Under this scenario, if an examiner, while examining a bank, uncovered a transaction which threatened the solvency of the bank, a section 8(c) action would be mandated. The basis for the action, however, would not rest upon the bank examination but rather upon the particular transaction which had been uncovered. In going forward with an enforcement action, then, the date of the commencement of the examination would be irrelevant and immaterial to a determination of the admissibility of the evidence. What would be relevant would be the date of

the transaction and the circumstances surrounding the transaction. Similarly, where an enforcement action was based upon a visitation report instead of a Report of Examination, the date of the commencement of the examination would have little or no legal significance or relationship to the enforcement action.

Accordingly, the FDIC continues to believe that the most efficient and workable general rule to limit the admissibility of evidence is to tie admissibility to the date of the Notice.

(3) The FDIC also considered at length the question of whether evidence of any act or event occurring after the date of the Notice should be admissible at the hearing. In light of the comments received as well as the statutory requirements of section 8, the FDIC upon careful consideration has determined to modify its rule governing the admissibility of evidence.

In order to fashion an appropriate remedy for the particular enforcement action involved, the FDIC has determined that evidence subsequent to the date of the Notice may be relevant. Such evidence, however, may be admitted only for the exclusive and limited purpose of assisting in fashioning an appropriate remedy. Accordingly, the administrative law judge must make a finding on the record that such evidence is necessary to fashion a remedy before it can be admitted. What is contemplated by this modification, then, is a proceeding where the fact of the Violation and/or Practice must be established first by evidence occurring up to the date of the Notice. Only once the fact of the Violation and/or Practice has been established and the administrative law judge makes a finding to that effect, may the administrative law judge at this point entertain motions for the admission of evidence occurring after the date of the Notice and may admit such evidence after a specific finding that the evidence is necessary to fashion a remedy.

The adoption of this modification to § 308.38(a)(2) will serve several purposes. First, by limiting the admissibility of evidence to prove the fact of a Violation or Practice to evidence which occurred up to the date of the Notice, the modified rule will provide a time frame for the demarcation of facts relevant to proving the Violation or the Practice. Second, by requiring that the administrative law judge make a specific finding that evidence subsequent to the date of the Notice is necessary to fashion a remedy, the regulation will prevent the record from being cluttered with immaterial and irrelevant evidence concerning the fact of the Violation or Practice. Finally, the modified rule will ensure that a remedy is devised that addresses the specific problems which require correction.

(4) The FDIC additionally considered at length the scope of discovery which it would permit under its revised Part 308. In attempting to strike a balance between the interests and needs of the FDIC and the respondent banks and/or individuals, the FDIC undertook research relative to the constitutional mandates for the scope of discovery. The research revealed that parties to judicial or quasi-judicial actions are not entitled to pre-trial discovery as a matter of constitutional right. *National Labor Relations Board* v. *Interboro Contractors, Inc.*, 432 F.2d 854, 858 (2d Cir. 1970); and 4 STEIN, MITCHELL, MEZINES, ADMINISTRATIVE LAW § 23.01[1] at 23–7 (1987) and cases cited therein.

Further, one of the principal and stated purposes of the revisions to Part 308 was to shorten the time it has taken a disproportionate number of cases to reach the hearing stage. This purpose is fully consistent with the expedient nature of the FDIC's trial processes as mandated by the Federal Deposit Insurance Act, 12 U.S.C. 1811–1831d. The FDIC determined that the deposition process for purposes of discovery is inconsistent with its statutory mandates. Accordingly, in balancing the needs and interests of the parties to an FDIC enforcement proceeding, the FDIC has provided only for document discovery as the best means of securing a just and orderly disposition of an enforcement action.

(5) Section 557(c) of the Administrative Procedure Act, 5 U.S.C. 557(c), specifically authorizes parties in a hearing to have a reasonable opportunity to submit exceptions to recommended decisions of administrative law judges. This procedure for taking exception to recommended decisions has been implemented for many years and has widespread use at many agencies. While the commenter objected to the exception process as being archaic, burdensome and time-consuming, the FDIC believes that this procedure assures the parties that a fair, just and detailed review of the record below and of the recommended decision will be undertaken. Accordingly, the FDIC will continue to use the exception process for any appeals to the Board of Directors of the FDIC from any recommended decision of an administrative law judge. It should also be noted that Part 308 expressly authorizes the filing of briefs in support of any exceptions that are taken.

(6) Contrary to the misinterpretation given to subsection c of section 308.41 by certain commenters, § 308.41 does permit the filing of exceptions and supporting briefs asking the FDIC's Board of Directors to review "* * * the failure of the administrative law judge to make any recommendation for relief, finding or conclusion; to the admission or exclusion of evidence; and to any other ruling." 12 CFR 308.41(a)(1). Subsection c of section 308.41 merely prohibits the filing of replies to the exceptions.

This prohibition does not violate the Administrative Procedure Act ("APA"). Section 557(c) of the APA, 5 U.S.C. 557(c), provides that parties to a proceeding be given a reasonable opportuni'y to submit proposed findings and conclusions to an agency fact finder or to submit exceptions to the recommended decision of a subordinate agency fact finder for agency review. The case law interprets this provision as providing that a party to a proceeding is entitled to a reasonable opportunity to file proposed findings and conclusions *or* exceptions. The APA does not require that a party have a reasonable opportunity to file both. (See *Watson Brothers Transportation Co. v. United States*, 180 F. Supp. 732, 740 (D. Neb. 1960)). The FDIC's revised rules of practice and procedure grant a party to a proceeding the opportunity to file both findings and conclusions as well as exceptions. The FDIC believes that this provides the parties with sufficient opportunity to narrow the focus of the issues, as well as accords the parties due process.

(7) The Administrative Procedure Act provides that the individual who presides over the taking of evidence in a formal hearing may issue an initial decision or a recommended decision. 5 U.S.C. 554(d). The difference between the two types of decisions is that an initial decision becomes the final decision of the agency unless there is further agency action by an appeal being taken or the agency *sua sponte* undertakes to review such a decision. 5 U.S.C. 557(b). A recommended decision, on the other hand, does not become a final agency action unless the agency adopts the recommended decision.

The FDIC has determined to maintain its present two-tier approach to its administrative enforcement proceedings of a recommended decision made by an administrative law judge followed by a review, and final decision and order by the Board of Directors of the FDIC. It is felt that this approach accords the

parties to the proceedings with due process protections by providing, *inter alia*, a review and appeal of the findings, conclusions, admissions of evidence, and any other ruling made by the administrative law judge. 12 CFR 308.41. Additionally, it appears unlikely that many parties who had been willing to see a matter through a full administrative hearing would then fail to appeal an adverse decision to the Board of Directors. Thus, the proposed change does not appear likely to speed (and could well slow) the entry of final agency decisions in numerous proceedings.

(8) The FDIC has concluded that the comment, concerning standardizing subpoenas into pre-printed forms, should be adopted. Accordingly, pre-printed subpoenas duces tecum and subpoenas testificandum will be issued as set forth pursuant to 12 CFR 308.28, 308.35, and subpart K of Part 308. Upon the granting of a motion for a subpoena, the presiding officer in the particular proceeding will execute and issue the appropriate subpoena. Requiring the presiding officer at the proceeding to execute and issue the subpoena will expedite the administrative action being undertaken.

(9) As set forth below, the FDIC has determined to modify Part 308 to expand the time tables for the administrative enforcement process by 30 days. This in conjunction with modifying Part 308 to include a three-day mail rule should provide sufficient time for all interested parties to a proceeding and at the same time preserve the expeditious nature of FDIC administrative enforcement actions.

(10) The Administrative Procedure Act prohibits "ex parte communication[s] relevant to the merits". 5 U.S.C. 557(d). In revising Part 308, the FDIC determined that clarification of the APA's definition of ex parte communication was appropriate since there is considerable uncertainty as to what "relevant to the merits" means. Accordingly, the FDIC adopted the revised definition in § 308.48 and rejects the comment on this issue.

(11) Case law has consistently upheld an agency's authority to set standards for admission to practice before it as well as to establish criteria for suspension, disbarment or other sanctions for attorney misconduct. The various provisions of Part 308 governing attorney practice before the FDIC comport with concepts of due process, including notice, an opportunity to have a hearing and a right of review. The FDIC believes that these provisions will contribute to a fair, expeditious and just resolution of enforcement proceedings and accordingly, adopts these revisions to Part 308.

(12) Much discussion has ensued concerning whether a formal or informal procedure, such as the SEC's Wells-submissions, should be implemented to allow targets of investigations an opportunity to respond before official action is taken. A report commissioned by the Administrative Conference of the United States rejects the concept of any such procedure for the FDIC, as well as the other banking agencies. The rationale for this conclusion was that the process of bank enforcement provides informal opportunities for exchanges of views throughout the early stages of an administrative proceeding before a formal enforcement action is brought. Malloy, "Report to the Administrative Conference of the United States on Adjudication Practices and Procedures of the Federal Bank Regulatory Agencies" (1987) at 53, n. 197. The FDIC is in agreement with this report. The informal mechanisms in place for resolving regulatory problems normally provide targeted respondents an opportunity for presenting their position and resolutions to those problems, while at the same time providing a balance to the regulatory process by permitting the regulators to respond swiftly and efficiently to the problems uncovered in the bank examination. Accordingly, the FDIC has determined that it will not adopt any formal or informal Wells-type submissions procedures.

III. Section-by-Section Summary and Discussion

A. Subpart A—Definitions and General Provisions (§§ 308.01–.03)

Section 308.01, "Definitions," leaves unchanged the terms "FDIC," "foreign bank," "insured bank," "insured branch," and "official." Some definitions which applied to only discrete portions of Part 308 were either broadened to apply to all of Part 308 or were moved to the subpart to which the definition was applicable. An example of the former is the term "person;" an example of the latter is "ex parte communication."

Several definitions were deleted because changes in the regulation made them unnecessary. More specifically, changes in subpart K eliminate the need to define "presiding officer" and "proceeding pursuant to section 10(c)." The terms "bank" and "officer" have been deleted because there seemed no reason to define them in light of the other definitions. Finally, definitions which are completely new or have been changed are the terms "Act," "Board's designee" (which is broken out from the term "Board of Directors"), "Executive Secretary" (which is expanded to include his or her designee), the term "Notice" (which is defined to include the entire document issued by the Board of Directors or its designee to commence an administrative proceeding), and the term "Respondent" (which is defined for the first time in the proposed regulation).

Section 308.02, "Rules of Construction," has been expanded to make clear that any use of masculine, feminine, or neuter genders should be read as encompassing all three. Further, because subpart B of Part 308 allows for non-attorney representation under certain circumstances, the Rules of Construction have been expanded to clarify that any use of the term "attorney" or "counsel" shall be read to include non-attorney representatives. And, the rules of construction explicitly state that any action required to be taken by a party to a proceeding may be taken by that party's attorney or non-attorney representative.

Section 308.03, "Transition Rules," is written to avoid confusion concerning when to apply existing Part 308 and when to apply revised Part 308. However, because revised Part 308 provides resolutions to many questions which are not specifically addressed in existing Part 308, section 308.03 suggests that revised Part 308 may under appropriate circumstances be used for guidance in cases governed by existing Part 308.

B. Subpart B—Rules of Practice (§§ 308.04–.50)

1. General Provisions (§§ 308.04–.19)

As set forth in § 308.04, "Scope," the rules of practice set forth in subpart B are to be followed in hearings on the record pursuant to the provisions of the Federal Deposit Insurance Act, unless otherwise specified in subparts C through L. Paragraphs (a) through (g) of § 308.04 list specific provisions of the Federal Deposit Insurance Act, and other applicable law, to which subpart B pertains.

Section 308.05, "Authority of Board and Executive Secretary," makes explicit that the Board may perform, direct performance of, or waive performance of any act which could otherwise be done or ordered by the Executive Secretary or an administrative law judge. Additionally, the section spells out that the Executive Secretary may act with the same authority as an administrative law judge when no judge has been given jurisdiction over a proceeding. The exception to this provision is that the

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Executive Secretary may not hear a case on its merits or make a recommended decision to the Board. At the same time, § 308.21(d) makes clear that a default order may be entered by the Executive Secretary.

In accordance with § 308.06, "Appointment of Administrative Law Judges," a hearing which falls under the scope of subpart B will be held before an administrative law judge appointed by the United States Office of Personnel Management. The Executive Secretary shall make the request for an administrative law judge to the United States Office of Personnel Management, and shall advise the parties in writing that a judge has been appointed.

Section 308.07, "Powers of Administrative Law Judges," corresponds to § 308.07(b) of existing Part 308. Section 308.07(b) of the new regulation spells out that the administrative law judge obtains jurisdiction over a proceeding upon appointment and retains that jurisdiction until a recommended decision is rendered, assuming the administrative law judge has not resigned or been removed. If a matter is remanded by the Board, the administrative law judge regains jurisdiction over the proceeding.

Section 308.07(b)(7) of the amended regulation clarifies § 308.08(b)(9) of the existing regulation by stating that the administrative law judge has the power to deny dispositive motions such as motions for summary judgment and motions to dismiss, but may only recommend to the Board a decision granting a dispositive motion.

Section 308.08, "Appearance Before the FDIC," has undergone several changes from the previous provision at § 308.04. First, any appearance by an attorney, or a duly authorized official of a corporation, government unit, or partnership is subject to the conditions of § 308.47, "Conflict of Interest," and the limitations of § 308.50, "Suspension and Disbarment." Section 308.08(c) also allows for representation of non-parties and provides that a non-party may be represented by any person qualified to represent a party before the FDIC.

The concept presented in § 308.09, "Short and Plain Statement Required," is reduced to writing for the first time in Part 308. As the title suggests, any presentation of record must contain a short and plain statement of the claim or position being advanced, the factual and legal basis for the position, the relief requested, and the basis for granting such relief.

Rule 11 of the Federal Rules of Civil Procedure is the basis for § 308.10, "Good Faith Certification." The general requirement of § 308.10(a) is that every written presentation made by a party after the issuance of the Notice must be signed by that party or his or her attorney, as set out in § 308.10(b). A signature on a post-Notice written presentation constitutes a certification that the attorney or party has read the written presentation, that the presentation is well-grounded in fact and is warranted by existing law or a good faith argument for extending or modifying existing law, and is not interposed for any improper purpose to the best of that attorney's or party's knowledge, information, and belief formed after reasonable inquiry. Failure to sign a written presentation results in it being stricken from the record unless it is signed promptly after the signature omission is called to the attention of the attorney or party. Paragraph (c) of § 308.10 provides that the making of an oral motion or argument constitutes the same certification as the signing of a written presentation. Finally, § 308.10(d) grants authority to impose sanctions authorized in §§ 308.49 and 308.50 upon the attorney, the represented party, or both for violation of the good faith certification requirements.

Housekeeping matters concerning maintenance of the record and filing of papers are covered in §§ 308.11 and 308.12, respectively. Section 308.11, "Maintenance of the Record," states that the Executive Secretary shall maintain the official record for all proceedings until such time as an administrative law judge is appointed. Section 308.12, "Filing Papers," provides that the original and one copy of all papers required to be filed under subpart B shall be filed with the Executive Secretary. Certain exceptions apply, including pre-marked proposed exhibits, transcripts, and hearing exhibits, which must be filed with the administrative law judge and need not be filed by the parties with the Executive Secretary.

Section 308.13, "Service of Papers," provides that the Executive Secretary, or such other person as the Board's designee may cause to make service, shall serve all papers required to be served by the Board or its designee. Any papers filed in accordance with subpart B shall be served upon the attorneys of record for all represented parties to the proceeding and upon all unrepresented parties. Service by the Executive Secretary, a person assigned by the Board's designee, or a party to the proceeding is to be accomplished in the manner set forth in § 308.13(a). Service of subpoenas may be accomplished in any manner set out in § 308.13(c).

Section 308.14, "Construction of Time Limits," sets forth the general rule in computing time periods prescribed in subpart B. The date of the act or event of the default from which the time period begins to run is not to be included in the computation, but the last day is to be included. If the last day falls on a Saturday, Sunday, or federal holiday, the last day of the designated time period becomes the next day that is not a Saturday, Sunday, or federal holiday. Intervening Saturdays, Sundays, and federal holidays are not included in the computation of the designated period unless the time period involved is more than ten days.

Section 308.14(b) sets forth the rules for proper service. To accomplish timely service, the serving party may make personal service, deliver the papers to a reliable commercial service or to the U.S. Post Office for Express Mail delivery, or mail by first class, registered, or certified mail. If the serving party chooses to use first class, registered, or certified mail, section 308.14(c) provides that three days shall be added to the prescribed period.

Section 308.15, "Time Limits," provides that the administrative law judge, for good cause shown, may fix or change the time when an action shall be taken and fix or change the place for a hearing to commence or continue. Extensions of time normally require a decision by the administrative law judge that there is good cause for the extension. However, a finding of good cause need not be made where the parties agree to a delay of not more than five days.

Section 308.15(c) sets forth the course of action to be followed when a bilateral settlement agreement has been agreed to by a Respondent and FDIC enforcement counsel, but is awaiting a final decision by the FDIC. In such instances, at the request of either signing party, the proceedings are to be stayed as to any settling Respondent pending a final FDIC decision on whether to accept the settlement. A bilateral settlement agreement between a Respondent and the FDIC shall not be a basis for delaying the proceeding as to any non-settling Respondent, unless such other Respondent and the FDIC agree to a delay, and the delay is approved by the administrative law judge. Should the FDIC determine to reject a bilateral settlement proposal, the proceeding shall resume at the point it had reached when it was interrupted due to the settlement proposal.

Section 308.16, "Witness Fees and Expenses," provides that subpoenaed witnesses shall be paid the same fees as are paid in the United States district courts, with the exception of parties

subpoenaed under discovery subpoenas pursuant to § 308.27. Such parties are not entitled to receive fees. Section 308.16 also makes clear that the FDIC shall not be required to pay any fees or expenses of a witness it does not subpoena.

Unilateral settlement offers to the Board are covered by § 308.17. Any Respondent may, at any time, without prejudice to the rights of any party, submit a unilateral settlement proposal to the Executive Secretary for consideration by the Board or its designee. However, such a submission does not provide a basis for adjourning or delaying any portion of a proceeding, nor is it admissible into evidence over the objection of any party. Further, a party that submits a unilateral settlement offer waives any objection to the participation of interested persons made with respect to such an offer.

Section 308.18 addresses confidentiality issues that arise in proceedings under subpart B. Hearings under subpart B will ordinarily be private unless the Board or its designee determines, after considering the views of the Respondent, that a public hearing is necessary to protect the public interest. No Respondent shall disclose or use any information which is not publicly available and which was obtained through discovery or at a hearing for any purpose other than litigation of the proceeding, including any appeal of the proceeding. If an FDIC proceeding or other order has been appealed to, or otherwise brought before, any court of the United States, § 308.18 is not to be read as limiting public access to any record, papers filed, or evidence presented in the court proceeding. Finally, § 308.19 spells out that nothing contained in subpart B shall be construed to limit the right of the FDIC to conduct examinations or visitations of any insured bank, or the right of the FDIC to conduct any form of investigation authorized by law.

2. Pleadings and Parties (§§ 308.20–.24)

A meaningful discussion of the pleadings and parties section of subpart B is most easily accomplished by beginning with a brief discussion of § 308.34, "Hearings." The overall structure of this portion of subpart B is premised on hearings commencing approximately 120 days after the Respondent's receipt of the Notice. This period may be extended for up to 30 days upon a finding by the administrative law judge that there is good cause for a continuance. A hearing is not to be continued to a date more than 150 days after receipt of the Notice unless one of five findings is made on the record. *See* § 308.24(a)(1)(i)–(v). The general 120-day rule is not applicable to hearings held under 12 U.S.C. 1818(b) and 1818(e) if any party objects to continuing the hearing beyond the 60-day period provided in those sections, unless the administrative law judge makes a determination that holding a hearing within 60 days is impractical, would materially and unfairly prejudice one or more parties, or otherwise would be unjust. Because the FDIC has found that scheduling a formal hearing within 60 days after the proceeding is commenced tends to result in numerous practical problems, § 308.34(a)(2) allows the parties to an action under 12 U.S.C. 1818(b) or 1818(e) to extend the 60-day period to the general 120 to 150 day schedule without seeking approval from the administrative law judge.

For purposes of illustration, we assume in the following discussion that the hearing will be held 120 days after service of the Notice.[1]

Section 308.20, "The Notice," provides that the 120-day time period begins running when the Notice is served. As provided in § 308.01(j), the Notice includes the entire document issued by the Board of Directors or its designee and served upon the party, which initiates the proceeding conducted under Part 308. In addition to giving notice of the basic facts and law upon which action is proposed to be taken, the Notice is to include a prayer for relief and/or a proposed order.

The Notice, among other things, advises the Respondent that an answer must be filed within 20 days after service of the Notice as required by § 308.21. In actions involving civil money penalties under 12 U.S.C. 1818(i) and 1828(j), and in a denial of a change in bank control under 12 U.S.C. 1817(j)(4), the Notice advises the Respondent that a request for a hearing must also be filed. The extension of time from 10 to 20 days for filing a request for a hearing in actions under 12 U.S.C. 1818(i) and 1828(j) was made in order to reduce confusion that has arisen because of the difference in when the request for a hearing, and the answer, were due in such cases.

In addition to setting forth the time period in which to file an answer (paragraph (a)) and the requirements of the answer (paragraph (b)), § 308.21, "Answer," sets forth the effect of admitting allegations (paragraph (c)). When the Respondent's answer admits the allegations of fact, the first portion of paragraph (c) limits any hearing to the issue of relief. The second portion of paragraph (c) provides that where the Respondent's answer admits the allegations of fact and does not contest the relief requested, the administrative law judge is to certify the record to the Executive Secretary who shall have authority to enter an order granting the relief sought by the Notice.

Section 308.21(d) provides that failure of a Respondent to file an answer within 20 days of receipt of the Notice is deemed to be a waiver of the right to appear and a consent to the entry of an order granting the relief sought by the Notice. Section 308.20 provides that a Notice of disapproval of a change in bank control under section 7(j) of the Act, as well as a Notice of Assessment of Civil Money Penalties under sections 8(i) and 18(j) of the Act, requires that both a request for a hearing and an answer be filed. Unless both a request for a hearing and an answer are filed, said Notices automatically become final and unappealable, pursuant to § 308.21(d)(1). In all other proceedings governed by subpart B, the Executive Secretary, upon the written request of FDIC enforcement counsel, may enter a default order when a Respondent has failed to timely file an answer.

Occasionally it is necessary for a Notice or answer to be amended or supplemented. Section 308.22(a), "Amended Pleadings," allows for the Notice or answer to be amended or supplemented upon good cause shown, and by leave of the administrative law judge. In the case of an amended Notice, the Respondent must answer in the time remaining for Respondent's answer to the original Notice or within 10 days after service of the amended Notice, whichever is later.

As provided in § 308.22(b), "Amendments to Conform to the Evidence," amendments to the Notice and answer are not required when issues not raised by the Notice or answer are tried by express or implied consent of the parties. If, at the hearing, evidence is objected to on the ground that it is not within the issues raised by the Notice or answer, the administrative law judge has the discretion to allow the Notice or answer to be amended when the presentation of the merits of the case will be served and the administrative law judge is convinced that the admission of such evidence would not unfairly prejudice the objecting party's action or defense. The administrative law judge may grant a continuance, if justice requires, to enable the objecting party to meet such evidence.

[1] If the hearing is scheduled to be held within 60 days after service of the Notice, all time periods beginning with the pre-trial exchange of proposals and drafts are to be reduced by 60 days.

Section 308.23, "Intervention; Persons Having Official Interest," gives the administrative law judge discretion to allow a person to intervene for limited or all purposes. Section 308.23(a) sets forth a three-pronged test that must be met before a person may be allowed to intervene. An intervenor is not allowed to appear through any attorney or law firm representing any Respondent in the action.

Section 308.23(b) acknowledges that a person may have an official interest in a proceeding without the necessity of becoming an intervenor. Examples of persons who may have an official interest are the bank, when not a Respondent or intervenor, other federal banking regulators, appropriate state banking agencies, and other interested governmental agencies. Persons having an official interest may, at the discretion of the administrative law judge, attend the hearing, be served with papers, and submit amicus curiae briefs within the same time periods as the parties.

Section 308.24, "Consolidation and Severance of Actions," addresses circumstances that arise both when more than one action is taken against a Respondent (paragraph (a)(1)) and when similar actions are brought against several Respondents (paragraph (a)(2)). In such situations, consolidation generally should take place unless it would cause unreasonable delay or injustice.

Section 308.24(b) provides that a proceeding involving two or more Respondents may be severed on the motion of any party or on the administrative law judge's own motion. Severance may be appropriate if the proceeding against one or more Respondents is being stayed, if severance would promote the prompt resolution of the proceeding, or if severance is otherwise required to prevent injustice.

3. Discovery (§§ 308.25–.29)

Section 308.25 provides for limited discovery. Paragraph (a) states that discovery may be obtained only through production of documents, and through no other means. Relevant documents may be obtained in discovery, as well as documents that may be inadmissible at the hearing but which appear reasonably calculated to lead to the discovery of admissible evidence. *See* § 308.25(b). However, as provided in § 308.25(c), privileged documents are not discoverable.

Section 308.26, "Time Limits for Discovery," provides that all initial requests for discovery must be made within 40 days after the Respondent receives the Notice. An exception to the 40-day period is made in § 308.26(a)(2) for "follow up" discovery requests; that is, if a discovery request is based upon or otherwise follows up on an earlier discovery response, a follow up request may be served within ten days after service of the response upon which it is based. If an extension is granted to permit a Respondent to file a late answer, FDIC enforcement counsel are given ten days following the late answer to serve discovery requests on that party. The time to file discovery requests is similarly extended until ten days after the answer is filed if the FDIC amends the Notice and an answer is required.

The procedure to be used for document discovery from parties is described in § 308.27. It is basically a "notice" procedure similar to that used under the Federal Rules of Civil Procedure. It is a departure from the procedure found in the present regulations which requires a party seeking documents from another party to file with the administrative law judge an application for a subpoena. Under § 308.27 of the proposed regulations, any party may serve on any other party a request to produce documents.

Unless the parties agree to other arrangements, the party to whom a document request is made shall bear the cost of copying documents if they are asked to copy no more than 250 pages. If more than 250 pages of copying is requested, the cost of copying (at $.20 per page) and shipping shall be borne by the requesting party. *See* § 308.27(b). Certain updating of responses to discovery requests is required by § 308.27(c).

Section 308.27(d) sets forth procedures to be followed when the party upon whom a document request is served objects to any portion, or all, of the document request. Section 308.27(d)(4) provides that a general objection to all or virtually all of a document request shall, unless there is substantial justification for such a general objection, be stricken. Paragraph (f) sets forth the procedure and timetable to be followed in discovery disputes, including moving for an order or subpoena requiring production. Paragraph (g) provides for discovery conferences to resolve discovery disputes. Finally, § 308.27(i) reiterates the authority of an appropriate United States district court, pursuant to 12 U.S.C. 1818(n), to issue an order requiring compliance with a subpoena issued by an administrative law judge.

Obtaining documents from a non-party continues to require a document subpoena. Section 308.28 provides for the issuance of a third-party document subpoena by the administrative law judge, upon receipt of an application containing a brief statement of the reasons for its issuance. If compliance with a subpoena is ordered by the administrative law judge, but refused, the subpoenaing party may apply to the appropriate United States district court for an order compelling compliance.

Section 308.29, "Depositions of Witnesses Unavailable for Hearing," states that the administrative law judge may issue a subpoena requiring the attendance of a witness at a deposition only upon a showing by the requesting party that the witness will be unavailable for the hearing, that the witness' unavailability was not caused by the subpoenaing party, that the witness' testimony will be material, and that taking the deposition will not result in an undue burden or delay. In the event of noncompliance, the subpoenaing party or other aggrieved party may apply to an appropriate United States district court for an order requiring compliance.

4. Motions (§§ 308.30–.31)

Section 308.30 applies to all motions except discovery motions. Unless made during a pre-trial conference or a hearing, applications for orders must be made by written motion, and must be accompanied by a statement of the relief or order sought. A period of 10 days is allowed for filing a written response, including a proposed order. If a written response to a motion is filed and it raises new issues or arguments, the moving party has 5 days in which to reply, with such reply limited to the new issues or arguments raised in the response.

Section 308.30(d) requires that a good faith attempt to resolve disputes must be made before a motion may be filed under this section. Counsel for the moving party (or the moving party, if not represented by counsel) must certify that he or she has met in person or by telephone with opposing counsel in an effort to resolve the dispute (or that opposing counsel refused to discuss the matter) before a motion may be filed. However, this good faith requirement does not apply to motions that would substantially dispose of the case, such as motions for summary judgment or motions to dismiss.

The ruling of an administrative law judge on a motion may not be appealed to the Board prior to the Board's consideration of the administrative law judge's recommended decision on the entire case, unless the Board grants special permission to appeal, pursuant to § 308.31, "Interlocutory Appeals to

the Board." In addition to setting forth the procedure to be followed in an interlocutory appeal, § 308.31(c) makes clear that such an appeal shall not stay the proceedings before the administrative law judge. However, the administrative law judge or the Board may grant a stay upon a showing that the aggrieved party has a substantial likelihood of success on the merits and that hardship or injustice will result if a stay is not granted.

5. Prehearing Procedures and Conferences (§§ 308.32–.33)

"Prehearing Procedures and Conferences," including section 308.32, "General Procedures," and § 308.33, "Prehearing Submissions and Conference," are intended to: provide continuous control over an action so that the action will not become protracted, discourage wasteful pretrial activities, result in orderly and expeditious preparation of a case for a hearing, avoid unnecessarily lengthy hearings, and assure that a party who complies with the requirements of subpart B and with the orders of the administrative law judge will not be unfairly prejudiced by the failure of any other party to comply with such regulations and orders.

The hearing date establishes the timeframe for making prehearing submissions and taking other prehearing actions as required or allowed by § 308.33. The date of the hearing will ordinarily be 120 days after receipt of the Notice, except in proceedings under 12 U.S.C. 1818(b) and 1818(e) where the 60-day period has not been waived or extended pursuant to § 308.34(a)(2).

Section 308.33 governs prehearing submissions and conferences. Section (b) provides that not less than thirty-five days before the hearing date, each party shall serve on every other party a proposed statement of the issues, proposed stipulations, proposed trial exhibits, and a proposed witness list, including a short summary of the expected testimony of each witness. Counsel for all parties and any unrepresented parties shall then meet and attempt to agree upon a joint statement of the issues, stipulations, and admissibility of proposed trial exhibits (or a stipulation that proposed trial exhibits are authentic). This meeting must be held sufficiently in advance of the fifteenth day before the hearing so that on the fifteenth day before the hearing the parties can file with the administrative law judge a joint statement of the issues for hearing and stipulations. If a single statement of the issues cannot be agreed upon, each party shall file its own statement of issues. Further, on the fifteenth day before the hearing, each party shall file its pre-marked trial exhibits, together with any stipulations concerning their admissibility or authenticity, and that party's witness list. Pre-hearing briefs may also be filed by any party on the fifteenth day before the hearing is to begin.

Section 308.33(e) expressly authorizes a final prehearing conference to be held close to the time of the hearing. If a conference is called in accordance with § 308.33(e), such conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. By dictation on the record at the conference, or by written memorandum or order within a reasonable time following the conclusion of the conference, the administrative law judge shall set forth the agreements reached and determinations made at the pre-hearing conference.

Section 308.33(f) sets forth limitations on any party who fails to exchange proposed exhibits or a witness list as required by section (b) or fails to file exhibits or a witness list as required by section (c). Such parties forfeit their right to introduce any exhibits and/or call any witness at the hearing during their case-in-chief. Failure to timely file a pre-hearing brief operates as a waiver of the right to file such a brief.

Should any party fail to exchange or file documents required under sections (b) or (c), namely, exchanging and/or filing a proposed statement of the issues, proposed stipulations, proposed trial exhibits, and proposed witness lists, the administrative law judge or any other party may require that such party state in writing, within five days of receipt of the request, whether that party will appear at the hearing and defend the case on the merits. Failure of the party to respond by filing a timely and express written statement that the party will appear at the hearing and defend on the merits shall be deemed a waiver of that party's right to a hearing, and a default order may be entered by the Executive Secretary. Finally, if any party fails to comply fully and in good faith with the requirements of section 308.33, the administrative law judge, on the motion of any party or on his or her own motion, may impose appropriate sanctions authorized in § 308.49, in addition to enforcing the specific limitations set forth in § 308.33.

6. Hearings (§§ 308.34–.38)

As discussed above, § 308.34 sets out the time period for commencement of hearings under this part. Generally, hearings are to be commenced 120 days after service of the Notice. This time period may be extended if the administrative law judge makes a finding, on the record, that good cause is shown for continuing the matter. No hearing is to be continued to a date more than 150 days after service of the Notice except upon a finding, on the record, of impracticality, or a need to provide time to obtain a final decision by the Board or its designee on whether to accept an agreed settlement offer (*see* § 308.15), a need to stay the proceeding pending a final Board decision on an interlocutory appeal (*see* 308.31), or that the ends of justice require a continuance.

Actions under 12 U.S.C. 1818(b) and 1818(e) may not be continued beyond 60 days after service of the Notice over the objection of any party, unless the administrative law judge makes a finding on the record that commencing a hearing within this time period is impractical, would materially and unfairly prejudice one or more parties, or would otherwise be unjust.

A party's failure to appear at a hearing personally or by an authorized representative is deemed a waiver of the right to appear and results in the entry of an order of default, as provided in § 308.21.

Section 308.35, "Hearing Subpoenas," provides that a party who intends to call a person as a witness may apply to the administrative law judge for a hearing subpoena requiring the witness to appear at the hearing. The party obtaining the hearing subpoena is responsible for serving it on the witness and on all other parties. Objections may be made to the hearing subpoena either by the person named therein or by any party. A hearing subpoena duces tecum addressed to a party shall not be issued by the administrative law judge unless he or she finds that either the subpoenaing party could not have reasonably anticipated the need for the subpoenaed documents during the discovery period (see § 308.26) or the subpoenaed documents were requested previously by document request, and the relevant portion of the document request was not quashed by the administrative law judge.

Section 308.36, "Conduct of Hearings," authorizes the administrative law judge to exercise control over the hearing. As is true in the present regulations, § 308.36 provides that FDIC enforcement counsel shall present their case-in-chief first. Additionally, at the beginning of the hearing, unless otherwise ordered by the administrative law judge, all stipulations of fact and law filed 15 days prior to the commencement of the

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hearing shall automatically be admitted into evidence. Documents, the admissibility of which has been previously stipulated to, shall also be automatically admitted into evidence.

Section 308.36(c) is based on Rule 611 of the Federal Rules of Evidence. Like Rule 611, this section limits cross-examination under most circumstances to the subject matter of that witness' direct examination and matters pertaining to the credibility of the witness. The administrative law judge may use his or her discretion to permit cross-examination into additional matters, but only under limited circumstances.

Rebuttal evidence may be presented in accordance with § 308.36(d), but shall be limited to material new issues or to new evidence concerning material disputes. The parties' presentation of rebuttal evidence shall be in the same order as their presentation of their cases-in-chief.

Section 308.37, "Written Testimony in Lieu of Oral Hearing," expressly authorizes hearings in which most, or all, of the direct testimony is present in written form. Section (a) provides that absent objection by a party, the administrative law judge may order that the parties present their cases-in-chief and rebuttal in the form of exhibits and written statements sworn to by the witness offering the evidence. Any such order shall also allow any party to call hostile witnesses or adverse parties to testify orally and shall give all parties a right of oral cross-examination.

Paragraph (c) of § 308.37 sets forth the limitations to be applied if a party fails to file written testimony. A failure to file written testimony is deemed to be a waiver of that party's right to present any evidence, except the testimony of a previously identified adverse party or hostile witness. A party's right of cross-examination or right to present rebuttal evidence (if not required to be submitted in written form) is not waived by that party's failure to file written testimony.

Section 308.38, "Evidence," provides that non-repetitive evidence is admissible in accordance with the Administrative Procedure Act and other applicable laws. Further, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in a proceeding under subpart B.

Generally, to be admissible, evidence must concern acts occurring prior to the date of the Notice. In addition, upon motion and a finding on the record that the admission of evidence generally excluded by this section is necessary for the express and limited purpose of fashioning a remedy, the administrative law judge may determine to admit such evidence.

The rules of privilege applicable to discovery (*see* § 308.25) are applicable to hearings. Consistent with those rules, evidence which a party had previously withheld from discovery under a claim of privilege can be received at the hearing only upon a finding by the administrative law judge that the exclusion of such evidence would result in manifest injustice. The admission of such evidence may be conditioned on terms that the administrative law judge deems are just to all parties.

Section 308.38(c) allows the administrative law judge to take official notice of any material fact which might be judicially noticed by a United States district court and any material information in the official public records of the FDIC. Upon timely request, the parties are afforded an opportunity to dispute any fact officially noticed or requested to be noticed under this section.

Section 308.38(d) provides: (1) That a duplicate copy of a document is admissible to the same extent as the original, unless there is a genuine issue as to whether the copy, in some material respect, is not a true and legible copy of the original; (2) that FDIC examination and visitation reports are admissible with or without a sponsoring witness; and (3) that witnesses may use illustrative or summary charts, exhibits, calendars, calculations, or outlines during their testimony, with the administrative law judge having discretion concerning the admission of such documents into evidence.

According to § 308.38(e), if a witness who has been deposed under § 308.29 is unavailable to testify at the hearing, all or part of that witness's deposition transcript, including exhibits, may be introduced into evidence. Generally, the deposition transcript is admissible to the same extent that the testimony would have been. If a witness refused to answer proper questions during the deposition, the administrative law judge may limit the admissibility of the deposition as justive requires. Only those portions of a deposition received in evidence at the hearing shall constitute a part of the record.

Section 308.38(f) requires that objections to evidence be made timely and state the grounds relied upon. Debate concerning an objection is to be included in the transcript unless the administrative law judge, with the consent of the parties, orders otherwise, and rulings on objections are to be made on the record. Finally, failure to object is deemed a waiver of objection.

Section 308.38(f)(2) provides that when an objection to a question or a line of questioning is sustained, the examining attorney may make a proffer on the record of what was expected to be proven by the testimony of the witness. This can be done either by representation of counsel or by interrogation of the witness. Further, the administrative law judge is required to retain rejected exhibits, marked for identification, and transmit them to the Executive Secretary pursuant to § 308.40.

7. Post-Hearing Proceedings (§§ 308.39–.42)

Section 308.39, "Post-Hearing Papers," provides that within 30 days after the hearing transcript is delivered to all parties or is filed, whichever is earlier, each party who participated in the hearing shall file proposed findings of fact with specific page references to the record to support those proposed findings, proposed conclusions of law, and a proposed order. At that time, a post-hearing brief may also be filed by any party.

A reply brief may be filed within 15 days after the date that the proposed findings, conclusions, and orders are due. This brief is restricted to responding to new matters, issues, or arguments raised by another party. If a party failed to file proposed findings of fact, conclusions of law, and a post-hearing brief, that party is not permitted to file a reply brief. Thus, while the filing of a post-hearing brief is optional, it is a condition of being permitted to file a reply brief.

Section 308.40, "Recommended Decision and Filing of Record," directs the administrative law judge to file with the Executive Secretary the record of the proceeding within 50 days after the date for the parties' filing of proposed findings, conclusions, and orders under § 308.39(a). The record of the proceeding shall include the administrative law judge's recommended decision, findings of fact, conclusions of law, and proposed order, as well as all pre-hearing, hearing, and post-hearing exhibits, memoranda, motions, transcripts, and the like. If requested by any party, the hearing record shall also include any profferred evidence which was excluded. Upon filing with the Executive Secretary, the administrative law judge is to serve upon each party a copy of the recommended decision, findings of fact, conclusions of law, and proposed order.

Section 308.41, "Exceptions to Recommended Decision," states that a party to the proceeding may file with the

Executive Secretary written exceptions to the administrative law judge's decision, findings, conclusions, and proposed order, and a supporting brief, within twenty days after service of the administrative law judge's decision. Exceptions may be taken to the administrative law judge's failure to make any recommendation for relief, finding, or conclusion, to the admission or exclusion of evidence, and to any other ruling. Exceptions are to include page and paragraph references to the record, or legal citations, which support each exception. A request for oral argument may also be filed. *See* § 308.43(a). Exceptions and briefs not filed within the 20-day time period will normally not be accepted. As provided in § 308.41(c), no replies to exceptions shall be filed unless the Board, on its own motion, requests them.

Section 308.42, "Notice of Submission to the Board," states that after the administrative law judge has filed the record of the proceeding with the Executive Secretary pursuant to section 308.40, and the time period for filing exceptions has expired, the Executive Secretary shall submit the official record of the action to the Board, and shall notify the parties of such submission.

8. Board Action (§§ 308.43–.44)

Pursuant to § 308.43(a), the Board may, in its sole discretion, order oral argument on the findings, conclusions, and recommended decision of the administrative law judge, or on any issue raised in the proceeding. Written requests for oral argument must be made within the time prescribed for filing exceptions under § 308.41. If the Board requires oral argument, it may set aside the notice of submission of the record.

Oral arguments shall be made before one or more members of the Board, and shall be recorded, as specified in § 308.43(b). Unless the Board orders otherwise, oral arguments will be limited to 40 minutes. The FDIC enforcement counsel will open oral argument and may reserve up to one-half of their time for reply.

Section 308.44, "Decision by the Board," provides that after the Executive Secretary has submitted the record of the proceeding to the Board, a decision is to be issued within 90 days. However, within this 90-day period the Board may remand the case to the administrative law judge. The provisions of §§ 308.43 and 308.44 shall apply to the remanded proceedings, unless otherwise ordered by the Board or the administrative law judge. The 90-day period will begin anew when the record is resubmitted to the Board upon completion of the proceedings on remand. Further, if oral argument has been ordered, the Board shall issue a decision by the later of 30 days from the date of the oral argument or the expiration of the original 90-day period. Finally, §308.44(b) permits a party to seek reconsideration within fifteen days from the date of the issuance of a Board decision and order.

Section 308.44 of the revised regulation is comparable to § 308.18(b) of the current regulation in providing that members of the FDIC staff who have not participated in the investigatory or prosecutorial functions, or in a factually related case, may advise and assist the Board in its consideration of the case.

Finally, § 308.44(c) provides that the Executive Secretary will serve copies of the Board's decision and order on the parties and on the bank concerned. Copies will also be furnished to appropriate state or federal supervisory authorities.

9. Stays (§§ 308.45–.46)

Section 308.45, "Stays Pending Appeal," provides that commencement of proceedings for judicial review of a decision and order of the Board shall not operate as a stay of the order, unless a stay is specifically ordered by the Board or by the court.

Section 308.46, "Collateral Attacks on Administrative Proceedings," provides that if an interlocutory appeal or collateral attack on an administrative proceeding governed by subpart B is brought in any court, the challenged administrative proceeding is to continue without regard to the pendency of the court proceeding. Further, no default or other failure to act at the administrative level is to be excused based on the pendency of any such interlocutory appeal or collateral attack.

10. Conflicts of Interest and Sanctions (§§ 308.47–.50)

Section 308.47 is new to revised Part 308 and addresses the recurring problem of conflicts of interest. Paragraph (a) of § 308.47 states the general rule that no attorney, law firm, or other person acting in a representative capacity shall represent two or more persons when one or more of them is a party to a proceeding under subpart B and there is a material and actual conflict of interest between or among the persons represented as to any matter relating directly or indirectly to the proceeding. Further, no attorney, law firm, or other person acting in a representative capacity may represent two or more parties to a proceeding under subpart B, or a party and a bank to which notice of a subpart B proceeding has been given, unless the attorney certifies in writing at the time of filing the notice of appearance required by § 308.08: (1) That the attorney has personally and fully discussed the possibility of conflicts of interest with each represented party or bank; (2) that each party or bank has advised the attorney that to its knowledge there is no existing or anticipated material conflict between its interest and the interest of others represented by the same attorney or law firm; and (3) that each party or bank waives any right it might otherwise have had during the course of the proceeding, including any appeal, to assert any known or non-material conflict of interest. These conditions precedent to an attorney's or law firm's multiple representation are set forth in § 308.47(b).

Section 308.47(c) authorizes the administrative law judge, at any stage of a proceeding under subpart B, to take measures to cure a conflict of interest, including issuance of an order to disqualify an individual or firm from representing one or more of the participants in a proceeding.

Under the existing regulation, "ex parte communication" is defined in § 308.48(a), and the prohibition against, and sanctions based upon, such communications are set forth in § 308.48(e). In the revised regulation, the definition, prohibitions, and sanctions are all located in § 308.48, "Ex Parte Communications." Ex parte communications include any material communication, made orally or in writing, which were neither on the record nor on reasonable prior notice to all parties, between a party or other interested person and the administrative law judge, a member of the FDIC's Board, or any person assisting the Board or the administrative law judge in preparing a decision. Section 308.48(b) states that from the time the Notice is served, no person shall make or knowingly cause to be made an ex parte communication concerning the proceeding. Requests for status reports are not ex parte communications.

Absent giving all parties notice and an opportunity to participate, the administrative law judge shall not consult with anyone within the FDIC on any matter in issue, except that the administrative law judge may consult with the Office of the Executive Secretary concerning procedural matters. This limited exception to the general prohibition is made explicit in § 308.48(c).

Section 308.48(d) sets forth the procedure to be followed when an ex

parte communication nonetheless occurs. It provides that all such written communications, or, if the ex parte communication was oral, a memorandum setting forth the substance of the communication, shall be placed on the record of the proceeding and served on all parties.

If the prohibition against ex parte communication in § 308.48 is knowingly violated by a party, such violation may be a ground for sanctions, including a decision adverse to the party, if justice and the policies of the Act would be served by such an action. Further, ex parte communications engaged in by an attorney may be sanctioned under § 308.50.

Section 308.49, "Sanctions," is included in revised subpart B to make clear that administrative law judges and the Board have authority to effectively deal with the significant problem of parties and their counsel failing to comply with the requirements of Part 308 and/or with orders. Under § 308.49(a), sanctions may be imposed when any counsel or party has acted in a manner contrary to any applicable statute, regulation, or order, and the party's or counsel's conduct is contemptuous or has materially injured or prejudiced some other party.

Sanctions imposed in accordance with § 308.49(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Under § 308.49(c), dismissal of an action as a sanction for the failure to hold a hearing within the time period specified in Part 308 or based upon the failure of an administrative law judge to render a recommended decision within the time period specified in Part 308 may only be granted if the delay is solely the result of the conduct of the FDIC enforcement counsel, that conduct is unexcused, the moving Respondent took all reasonable steps to oppose and prevent the delay, the Respondent has been materially prejudiced or injured, and no lesser or different sanction is adequate.

Paragraph (d) of section 308.49 sets out the general procedure for the imposition of sanctions. The administrative law judge may impose sanctions on his or her own motion or at the request of any party. Prior to their imposition, all sanctions, except the refusal to accept late papers, require notice to the parties and opportunity for counsel or the party against whom sanctions would be imposed to be heard. The form that the opportunity to be heard shall take is largely left to the discretion of the administrative law judge. For example, the opportunity to be heard may be limited to an oral response immediately after the violative action or inaction is noted by the administrative law judge. Requests for, and the imposition of, sanctions are to be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge, *i.e.*, in accordance with § 308.31.

Section 308.50, "Suspension and Disbarment," is a considerable expansion of § 308.04(b) of the existing regulations, which authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.50 of the proposed regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board discretion to suspend and disbar under other circumstances.

Under § 308.50(a), the Board has the power to suspend or revoke an attorney's privilege of practicing before the FDIC based not only on the Board finding that the attorney engaged in contemptuous conduct before the agency, but also upon a finding that the attorney does not possess the requisite qualifications to represent others, is seriously lacking in integrity or has engaged in material unethical or improper professional conduct, or has engaged in or aided another in engaging in a material and knowing violation of the Federal Deposit Insurance Act. The Board may suspend or revoke the privilege to practice before the FDIC on these grounds only after notice of and opportunity for a hearing.

Once suspended or disbarred from practice before the FDIC by the Board pursuant to § 308.50(a), an attorney may not make an application for reinstatement for at least three years, and thereafter, may make a new request for reinstatement no sooner than one year after the attorney's most recent reinstatement application. An attorney may be reinstated by the Board for good cause shown.

Under § 308.50(b) an attorney is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past 10 years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

Reinstatement after a suspension or disbarment under § 308.50(b) may be made by the Executive Secretary if all grounds for suspension are subsequently removed by a reversal of the conviction or termination of the underlying suspension or disbarment. An application for reinstatement under § 308.50(b) on any other grounds may be filed at any time not less than one year after the applicant's most recent application. Until the Board has reinstated the applicant for good cause shown, the suspension shall continue.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted pursuant to this section shall be handled in the same manner as other hearings under this subpart B, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and provided that the Board may limit any such hearings to written submissions.

Finally, § 308.50(d) of the proposed regulations largely mirrors § 308.04(b) of the current regulation by providing that any attorney or representative found in contempt by the administrative law judge may be summarily suspended from participation in that proceeding.

C. Subparts C–P

Subparts C–P contain rules and procedures that govern specific types of formal and informal proceedings conducted by the FDIC. Generally, revisions made to these subparts are either clarifying in nature or were made to conform the subparts to, or avoid overlaps with, subpart B.

1. Subpart C—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control (§§ 308.51–308.54)

New subpart C replaces old subpart I and governs proceedings in connection with the disapproval of a proposed acquisition of control of an insured nonmember bank. The changes made to subpart C generally were made to make

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this subpart consistent with revised subpart B.

Since new § 308.51 states that the rules and procedures of subpart B shall apply to all proceedings under this subpart, the requirements contained in old § 308.77 have been dropped as being redundant. New § 308.53 is a combination of old §§ 308.75 and 308.76. Section 308.53(b) is taken from old § 308.75(d). New § 308.54 replaces old § 308.76 and redesignates "exceptions" as "answer" in order to be consistent with the terminology used in subpart B.

2. Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessments of Civil Penalties for Willful Violations of the Change in Bank Control Act (§§ 308.55–308.57)

New subpart D replaces old subpart J and governs proceedings relating to assessments of civil penalties for willful violations of the Change in Bank Control Act. Redundant sections have been deleted (old §§ 308.80 and 308.81) and other sections (old §§ 308.79 and 308.82) have been condensed into new § 308.56.

3. Subpart E—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status (§§ 308.58–308.63)

New subpart E replaces old subpart C and governs proceedings for the involuntary termination of insured status. A major change from old subpart C is that the full APA hearing procedure of subpart B will no longer apply to proceedings for the termination of deposit insurance under section 8(p) of the Act, *i.e.*, for failure to receive deposits. Under existing regulations, a bank is entitled to receive a full APA hearing prior to the termination of insured status. Section 8(p) of the Act does not require such a hearing process, and the FDIC's experience with section 8(p) terminations indicates that they can be properly handled using informal procedures.

The structure of this subpart has been changed somewhat for clarification purposes. The existing provisions concerning grounds for termination under section 8(a) of the Act (old §§ 308.24–308.26) have been consolidated into one section *i.e.*, new § 308.54. Old §§ 308.27(b), 308.78 and 308.29 have been deleted since they reiterate provisions contained in new subpart B.

4. Subpart F—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders (§§ 308.64–308.68)

New subpart F replaces old subpart D and governs proceedings relating to cease-and-desist orders. The changes in subpart F were made for purposes of clarity. The existing provisions regarding grounds for the issuance of a Notice (old §§ 308.33 and 308.38) have been consolidated into one section, *i.e.*, new § 308.65. Old §§ 308.35 and 308.36(a) have been deleted since the provisions contained in these sections are found in new subpart B.

5. Subpart G—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders (§§ 308.69–308.73)

New subpart G replaces old subpart E and governs proceedings relating to removal, prohibition and suspension orders. Only minor changes have been made to subpart G in order to clarify these rules and procedures. Old §§ 308.44–308.45, which pertain to temporary suspension orders, have been consolidated into one section, new § 308.73. Old § 308.42 has been deleted, since the provisions contained in that section are found in new subpart B.

6. Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes (§§ 308.74–308.76)

New subpart H modifies old subpart H and governs proceedings relating to assessment and collection of civil money penalties for the violation of cease-and-desist orders and of certain federal statutes. Several sections of old subpart H (old §§ 308.69–308.71 have been deleted as being redundant with provisions of subpart B. Old §§ 308.65–308.67 have been deleted as being redundant in light of the modifications made to the new "Scope" section, § 308.74.

7. Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents (§ 308.77–308.80)

New subpart I replaces old subpart K and governs procedures for the imposition of sanctions upon municipal securities dealers or persons associated with them and clearing agencies or transfer agents. There have been minor modifications in structure (compare old § 308.85 with new § 308.78), and old §§ 308.87 and 308.88 have been deleted as being redundant with provisions in new subpart B.

8. Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934 (§§ 308.81–308.86)

New subpart J replaces old subpart L and governs exemption proceedings under section 12(h) of the Securities Exchange Act of 1934. There have been minor structural changes in order to clarify this subpart. It should be noted that under new § 308.85(b)(2), the presiding officer will now have the discretion to order the swearing of any witness in an exemption proceeding.

9. Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act (§§ 308.87–308.93)

New subpart K replaces old subpart F and governs procedures applicable to investigations pursuant to section 10(c) of the Act. The changes noted below are designed to spell out the scope of the FDIC's authority under 10(c) of the Act to conduct investigations of both open and failed insured banks, institutions making applications to become insured banks, and any other types of investigations. The changes also make more specific certain of the procedures to be used during such investigations.

Section 308.87, "Scope," has been revised to spell out that the FDIC's investigatory power under section 10(c) of the Act extends to both open and failed insured banks.

Under § 308.88, "Order to conduct investigation", the Director of the Division of Liquidation, or designee thereof, has been added to the list of people authorized to open 10(c) investigations. This section has been further modified to require that the order of investigation indicate the purpose of the investigation and that the persons who authorized the investigation terminate it upon completion.

Consistent with the changes made in subpart B regarding sanctions, § 308.89, "Powers of Person Conducting Investigation," has been revised to spell out the Board's authority to summarily suspend for contemptuous conduct any attorney representing a witness during the investigation. This section also has made explicit that the person conducting the investigation may obtain assistance from others both within and outside the FDIC.

Section 308.91, "Rights of Witnesses", has been revised to spell out that a witness is to be furnished with a copy of the order of investigation if the witness so requests. Consistent with the changes made in subpart B regarding conflicts of interest and sanctions, authority is given to the person conducting the

investigation to order compliance with the same conflict of interest provisions found in § 308.47(b) of subpart B.

Old § 308.51(d) has been deleted. Our experience is that rather than producing useful rebuttal information, as had been hoped, the primary products of this paragraph have been pointless delays and arguments. In short, this provision has proved to be confusing and unworkable, and has often resulted in considerable delays with little or no benefit to the decision-making process. The deletion of this provision, of course, does not preclude the person conducting the investigation from nonetheless using his or her discretion to seek out evidence or testimony rebutting or otherwise relating to any apparent wrongdoing.

Section 308.93, "Transcripts." Paragraph (b), concerning subscription by witness, is a new provision and was added in order to reduce challenges to the completeness or accuracy of deposition transcripts if the transcripts are used in subsequent proceedings.

10. Subpart L—[Reserved]

11. Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the Act (§§ 308.99–308.103)

New subpart M governs proceedings for applications under section 19 of the Act. The purpose of putting procedures relating to applications under section 19 of the Act in a separate subpart is to clarify the differences between this type of proceeding and that under section 8(g) of the Act.

Subpart M permits the filing of an application not less than three years after the effective date of the conviction for a criminal offense involving dishonesty or breach of trust. After the initial application, the applicant may apply no sooner than one year from the date of the last denial of his application. Considerations relevant to an application under section 19 have been amplified in § 308.100. Further, under § 308.103 an applicant is given an opportunity for an oral hearing should the Board of Directors or its designee, in its sole discretion, make such a determination. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witnesses. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record.

12. Subpart N—Rules and Procedures Applicable to Proceeding Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

New subpart N governs proceedings for suspension, removal, and prohibition pursuant to section 8(g) of the Act where a felony is charged. As with proceedings under section 19, the purpose of providing for procedures relating to section 8(g) actions in a separate subpart is to clarify the differences between this type of proceeding and that under section 19 of the Act. In addition to structural changes made in this subpart, old §§ 308.60–308.61 have been consolidated into new § 308.107. Paragraph (b)(4) of § 308.107 has been added in order to make clear that there is no discovery in proceedings conducted under this subpart. Paragraph (b)(9) of § 308.107 is also new and was added to make the procedures under this subpart consistent with other proceedings in which a presiding officer makes recommended decisions to the Board.

13. Subpart O—Reserved

14. Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses (§§ 308.113–308.127)

New subpart P modifies old subpart M and governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504. The revisions to this subpart are minor. For example, §§ 308.114 and 308.115 were moved closer to the beginning of the subpart, and new §§ 308.114, 308.115, 308.116(c), and 308.121 rearrange provisions found in existing sections of subpart M (old §§ 308.104, 308.105, 308.97, and 308.102). Paragraph (c) of new § 308.115 is derived from old § 308.106, and new § 308.123 is derived from old § 308.106(b).

The scope of subpart P, new § 308.113, has been changed to reflect amendments made by Congress when the Equal Access to Justice Act was re-enacted in 1985. (*See* Pub. L. 99–80, 99 Stat. 183). The types of eligible applicants under new § 308.101(b), has also been modified for consistency with the 1985 amendments.

Regulatory Factors

Part 308 was selected for review under FDIC's Regulation Review Program (*see* 50 FR 14247, April 11, 1985). This revised Part 308 is a result of the review conducted.

The collections of information imposed by this Part 308 are a consequence of and are related to the administrative enforcement actions and proceedings conducted by the FDIC against specific individuals or entities. According to the Paperwork Reduction Act (44 U.S.C. 3518(c)(1)(B)), these collections are not subject to OMB review.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) the Board of Directors hereby certifies that this revised Part 308 will not have a significant economic impact on a substantial number of small entities. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings before the FDIC.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Claims, Courts, Equal access to justice, Lawyers, Penalties.

For the reasons set out in the preamble, Title 12, Part 308 of the Code of Federal Regulations is revised as follows:

PART 308—RULES OF PRACTICE AND PROCEDURES

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308.02 Rules of construction
308.03 Transition rules

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308.05 Authority of Board and Executive Secretary
308.06 Appointment of administrative law judges
308.07 Powers of administrative law judges
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308.09 Short and plain statement required
308.10 Good-faith certification
308.11 Maintenance of the record
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308.19 FDIC's right to conduct examinations is unaffected
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308.40 Recommended decision and filing of record
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308.43 Post-hearing oral argument before the Board
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308.45 Stays pending appeal
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Subpart C—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

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Subpart E—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

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Subpart F—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

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Subpart G—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

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Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

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Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

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Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

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Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the Act

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Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

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308.125 Recommended decision
308.126 Board Action
308.127 Payment of awards

Authority: Sec. 2(9), Pub. L. No. 797, 64 Stat. 881 (12 U.S.C. 1819); Sec. 18, Pub. L. No. 94–29, 89 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. No. 95–630, 92 Stat. 3641 (12 U.S.C. 1972); sec. 203, Pub. L. No. 96–481, 94 Stat. 2325 (5 U.S.C. 504).

Subpart A—Definitions and General Provisions

§ 308.01 Definitions.

For purposes of this Part 308, unless explicitly stated to the contrary:

(a) "Act" means the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811–31;

(b) "Board of Directors" or "Board" Means the Board of Directors of the Federal Deposit Insurance Corporation;

(c) Board's "designee" means officers or officials of the FDIC acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR Part 303 or by specific resolution of the Board of Directors;

(d) "Executive Secretary" means the Executive Secretary of the FDIC or his or her designee;

(e) "FDIC" means the Federal Deposit Insurance Corporation;

(f) "Foreign bank" means any company which engages in the business of banking and which is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands. "Foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks, and other institutions which engage in usual banking activities in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(g) "Insured bank" means any bank or banking institution (including a savings bank and a foreign bank having an insured branch) any deposits of which are insured in accordance with the Act;

(h) "Insured branch" means a branch of a foreign bank any deposits of which are insured in accordance with the Act;

(i) "Insured nonmember bank" means any insured bank which is not a national bank, a District bank, a member of the Federal Reserve System, or a Federal savings bank;

(j) "Notice" means the entire document issued by the Board of Directors or its designee which is served upon a party and which initiates a proceeding conducted under this part. The Notice sets forth the charges, a statement of facts underlying the charges, and the proposed relief including a proposed order, if any;

(k) "Official" means any director, trustee, officer, employee, or agent of a bank to which reference is being made, or any other person participating in the conduct of the affairs of a bank;

(l) "Party" means, a person named or admitted as a party for some or all purposes;

(m) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, agency, or any other entity; and

(n) "Respondent" means any person against whom the FDIC seeks relief in the Notice.

§ 308.02 Rules of construction.

For purposes of this Part 308: (a) any use of a term in the singular shall include the plural, and the plural shall include the singular, if such use would be appropriate; (b) any use of a masculine, feminine, or neuter gender shall be read as encompassing all three, if such use would be appropriate; (c) any use of the term "attorney" or "counsel" shall be read to include a non-attorney representative; and (d) unless the context requires otherwise, a party's attorney of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 308.03 Transition rules.

(a) *General rule.* (1) This revised Part 308 shall be applicable to any proceeding instituted or *application filed* after January 1, 1989, the effective date of this revised Part 308.

(2) The preexisting provisions of Part 308 shall be applicable to any proceeding instituted or *application filed* before January 1, 1989, the effective date of this revised Part 308, unless the parties, with the consent of the administrative law judge, agree that this revised Part 308 shall apply to the proceeding.

(b) *Guidance provided by revised Part 308.* In those proceedings in which revised Part 308 is not applicable, the Executive Secretary, administrative law judge, and Board or its designee may, unless fairness requires otherwise, look to revised Part 308 for guidance to the extent that revised Part 308 is not inconsistent with the express provisions of the preexisting Part 308.

Subpart B—Rules of Practice

§ 308.04 Scope.

Except as otherwise specified in subparts C through I, this subpart B prescribes rules of practice and procedure to be followed in all hearings pursuant to the provisions of the Federal Deposit Insurance Act, and other applicable law, pertaining to:

(a) Disapproval of a proposed acquisition of control of an insured nonmenber bank (*see* 12 U.S.C. 1817(j));

(b) Assessment of civil money penalties based on violations of the Change in Bank Control Act (*see* 12 U.S.C. 1817(j)(16));

(c) Involuntary termination of the insured status of an insured bank (*see* 12 U.S.C. 1818(a));

(d) Issuance of cease-and-desist orders against any insured nonmember bank or its official (*see* 12 U.S.C. 1818(b));

(e) Removal from office or prohibition from further participation in the conduct of the affairs of an insured nonmember bank (*see* 12 U.S.C. 1818(e) (1), (2), (3) and (5));

(f) Assessment of civil money penalties against (1) an insured nonmember bank or its official for violation of a cease-and-desist order which has become final (*see* 12 U.S.C. 1818(i)(2)); or (2) an insured nonmember bank or its official for violation of (i) the provisions of sections 22(h), 23A, or 23B of the Federal Reserve Act (*see* 12 U.S.C. 375b, 371c, 371c–1) or (ii) the provisions of section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (*see* 12 U.S.C. 1972(2));

(g) Imposition of sanctions upon (1) any municipal securities dealer for which the FDIC is the appropriate regulatory agency; (2) any person associated or seeking to become associated with such a municipal securities dealer; or (3) any clearing agency or transfer agent for which the FDIC is the appropriate regulatory agency (except for hearings on postponement of registration by such clearing agency or transfer agent pending registration denial proceedings, and for hearings on suspension of registration by such clearing agency or transfer agent pending registration revocation proceedings) (*see* 15 U.S.C. 78o); and

(h) Any other types of FDIC hearings which are required by statute to be held on the record, and as to which neither the applicable statute nor other FDIC regulations set forth the procedures to be used in conducting the required hearing on the record.

§ 308.05 Authority of Board and Executive Secretary.

(a) *The Board.* (1) The Board may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary or the administrative law judge.

(2) Nothing contained in Part 308 shall be construed to limit the power of the board granted by applicable statutes or regulations.

(b) *The Executive Secretary.* When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board.

§ 308.06 Appointment of administrative law judges.

(a) *Appointment.* Unless otherwise directed by the Board, a hearing within the scope of this subpart shall be held before an administrative law judge appointed by the United States Office of Personnel Management.

(b) *Procedures.* (1) The Executive Secretary may at any time after issuance of the Notice, and shall promptly after receipt of an answer, secure the appointment of an administrative law judge to hear the proceeding through the United States Office of Personnel Management.

(2) The Executive Secretary shall advise the parties, in writing, that an administrative law judge has been appointed.

(3) If, for any reason, an administrative law judge is unable to, or, for any reason, does not bring the proceeding on for hearing, render a recommended decision, or otherwise perform the duties of an administrative law judge as provided in this subpart, a successor administrative law judge may be requested and appointed. Such substitution shall not be a basis for delaying the proceeding, unless such delay is a practical necessity, or for reopening any matter previously decided, unless the ends of justice so require.

§ 308.07 Powers of administrative law judges.

(a) *General rule.* The administrative law judge shall conduct all proceedings governed by this subpart B in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. §§ 554–557) and other applicable law.

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The administrative law judge shall conduct the hearing in a fair and impartial manner and shall avoid unnecessary delay in the disposition of proceedings.

(b) *Powers.* The administrative law judge obtains jurisdiction over a proceeding upon appointment and retains that jurisdiction until such time as he or she submits a recommended decision to the Executive Secretary, resigns, or is removed or replaced. Further, the administrative law judge regains jurisdiction over a proceeding if the matter or any aspect thereof is remanded by the Board. In addition to all of the specific powers granted by applicable law and in this subpart B, the administrative law judge shall have all powers necessary to conduct the hearing including, without limitation, the power:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders and to revoke, quash, or modify any such subpoenas and orders;

(3) To hold conferences for settlement, for simplification of issues, or for any other proper purpose;

(4) To regulate the course of the hearing and the conduct of the parties and their counsel;

(5) To receive relevant evidence and rule upon the admission of evidence and offers of proof;

(6) To continue or adjourn a hearing from time to time and place to place, as permitted by law and this subpart B;

(7) To consider and rule upon procedural and other motions. The administrative law judge shall have the power to deny a motion for summary judgment, motion to dismiss, and any other dispositive motion properly brought before the administrative law judge; the administrative law judge may, however, only recommend to the Board a decision to grant a dispositive motion;

(8) To reopen the hearing record at any time prior to the transmission of the recommended decision to the Executive Secretary and to call for the production of further evidence, to permit oral argument, and to permit the submission of briefs; and

(9) To disqualify himself or herself upon motion made by a party or on his or her own motion.

§ 308.08 Appearance before the FDIC.

(a) *Qualification.* Subject to the conditions, limitations, and qualifications appearing in §§ 308.47 and 308.50:

(1) Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory, or the District of Columbia may represent others before the FDIC if such person is not currently suspended or disbarred from practice before the FDIC; and

(2) A member of a partnership may represent the partnership; a duly authorized officer of a corporation, trust, or association may represent the corporation, trust, or association; and an authorized officer or employee of any government unit, agency, or authority may represent that unit, agency, or authority, if such individual partner, officer, or employee is not currently suspended or disbarred from practice before the FDIC.

(b) *Authorization and notice of appearance.* Any attorney or non-attorney representative representing any Respondent under paragraph (a) of this section must file with the Executive Secretary, at or before the time that attorney or representative submits papers or otherwise appears on behalf of a party before the FDIC, a Notice of Appearance that includes a written declaration of current qualification to represent that Respondent before the FDIC and a statement of authorization to represent each party he or she is authorized to represent. The Notice of Appearance shall be accompanied by the certification required under § 308.47(b), if applicable.

(c) *Representatives of nonparties.* A nonparty, who has a right to be represented in any deposition or other proceeding under this subpart B, may be represented by any person qualified to represent a party before the FDIC. Anyone representing a nonparty in such a situation is not required to file a Notice of Appearance unless expressly ordered to do so, but any party or the administrative law judge may require that the attorney state either on the record or in writing the information required in a Notice of Appearance, and no attorney who refuses to provide that information shall be allowed to represent any person in the proceeding.

§ 308.09 Short and plain statement required.

Each pleading, motion, and other representation of record shall consist of a short and plain statement of

(a) the claim or position being advanced,

(b) the factual and legal bases for that claim or position, and

(c) the relief requested and the basis for granting such relief. Subject to the requirements of § 308.10, bases for a claim or position may be set forth hypothetically or in the alternative and are not required to be consistent. Relief in the alternative, or several different types of relief, may be requested.

§ 308.10 Good faith certification.

(a) *General requirement.* After the Board or its designee issues the Notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name and shall state that attorney's address and telephone number. A party who is not represented by an attorney shall sign his or her presentation of record and state his or her address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification that the attorney or party read the written presentation of record; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other presentation or record is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a written presentation of record is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by him or her that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well grounded in fact and are warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violations.* If a pleading, motion, or other presentation is made in violation of this section, on the motion of any party or on his or her own motion, the administrative law judge may impose upon the attorney, the represented party, or both, any appropriate sanction authorized in §§ 308.49 and 308.50.

§ 308.11 Maintenance of the record.

(a) *Duties of the Executive Secretary.* (1) The Executive Secretary shall maintain the official record of all papers filed in each proceeding. For purposes of subpart B, the official record shall not include settlement offers and related papers, Board resolutions, internal staff

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recommendations, and other deliberative-process memoranda.

(2) Upon appointment of the administrative law judge, the Executive Secretary shall forward to the administrative law judge a copy of the then existing official record of the proceeding.

(b) *Certification of record by administrative law judge.* The administrative law judge shall transmit to the Executive Secretary a copy of the record of the proceeding upon transmittal of the recommended decision to the Executive Secretary pursuant to § 308.40. The record shall be accompanied by a docket sheet or similar summary.

§ 308.12 Filing papers.

(a) *Filing with Executive Secretary.* Unless expressly provided to the contrary, the original and one copy of all papers required by subpart B to be filed or served shall be filed with the Executive Secretary, provided that premarked proposed exhibits, transcripts, and hearing exhibits shall be filed with the administrative law judge and need not be filed with the Executive Secretary. Filing with the Executive Secretary may be accomplished by regular mail postmarked on or before the due date or by any means authorized in § 308.14.

(b) *Filing with the administrative law judge.* During the period between the appointment of the administrative law judge and the transmittal of a recommended decision by the administrative law judge, one copy of all papers shall be filed with the administrative law judge. During such period, filing with the administrative law judge shall be made in conformity with the time limits and procedures set forth in § 308.14.

(c) *Form of papers.* All papers filed must set forth the name, address, and telephone number of the attorney or party making the filing and shall be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must set forth on the first page the caption of the case, the FDIC docket number, the party filing the paper, and the nature or subject matter of the filing.

§ 308.13 Service of papers.

(a) *By the Board or its designee.* (1) All documents or papers required to be served by the Board or its designee upon any party shall be served by the Executive Secretary or by such other person as the Board's designee may select. Service shall be made on a party by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the person's residence, by registered or certified mail addressed to the party's last known address, or in any other manner reasonably calculated to give actual notice.

(2) As to a party who has appeared in a proceeding through an attorney of record, service upon that attorney by any means by which a party may be served, by commercial courier, or by first class or express mail shall constitute service on the party.

(b) *By the parties.* Except as otherwise expressly provided, a party filing papers in accordance with this subpart B shall serve them upon the attorneys of record of all other parties to the proceeding, or upon the other parties if they have no attorney of record. Service by a party may be accomplished in any manner in which the Board or its designee can serve an attorney of record under the provisions of paragraph (a) of this section.

(c) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(d) *Nationwide service.* Service in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 308.14 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart B, the date of the act or event of default from which the designated period of time begins to run is not to be included. The last day so computed shall be included unless it is a Saturday, Sunday, or federal holiday. When the last day is a Saturday, Sunday, or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or federal holiday. Intermediate Saturdays, Sundays, and federal holidays shall be included in the computation of time, except that, when the period of time within which an act or event of default is to be performed is ten days or less, intermediate Saturdays, Sundays, and federal holidays shall not be included.

(b) *Methods of service.* To accomplish service the serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, or to the U.S. Post Office for Express Mail delivery; or

(3) Mailing the papers by first class, registered, or certified mail.

(c) *Service and filing of papers.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by first class, registered or certified mail, three (3) days shall be added to the prescribed period.

§ 308.15 Time limits.

(a) *Grounds for extension of time.* The administrative law judge may for good cause shown, (1) fix or change the time when any action shall be taken; and (2) fix, or change, the place for a hearing to commence or continue.

(b) *On the record.* An extension of time shall only be granted by the administrative law judge in a decision on the record which sets forth the factual basis for that finding that there is good cause for an extension. This requirement applies to contested matters and to requests made on consent of the parties, except that the administrative law judge, in the case of requests on consent for delays or extensions, may, in his or her discretion, grant extensions of five days or less without making such a finding, provided that the hearing date will not be delayed as a result of such extension.

(c) *Extension during consideration of bilateral settlement proposals.* (1) Upon being advised that a stipulation or agreement to settle has been signed by any Respondent and by enforcement counsel for the FDIC, the administrative law judge shall, upon the request of either signing party, stay the proceedings as to that Respondent pending a final decision by the Board or its designee on whether to accept the settlement.

(2) No stipulation or agreement to settle under paragraph (b)(1) of this section which involves less than all of the Respondents shall provide a basis for delaying the proceeding as to any other Respondent who has not signed a settlement stipulation or agreement that has been signed by the FDIC, unless the FDIC and such other Respondent agree

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to the delay, and the administrative law judge approves that agreement.

(3) If the Board or its designee rejects any stipulation or agreement to settle covered by paragraph (c)(1) of this section, the schedule of acts to be accomplished in the proceeding shall resume as though the date upon which the Respondent was advised of the rejection of the settlement was the day the proceeding was stayed under paragraph (c)(1) of this section, provided that the administrative law judge may make such adjustments as may be reasonable in light of the delay and in light of proceedings, if any, against other Respondents in the same action.

§ 308.16 Witness fees and expenses.

Witnesses subpoenaed to testify or for depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts, provided that in the case of a discovery subpoena addressed to a party under the provisions of section 308.27, no witness fees or mileage need be tendered or paid. Fees of the witness shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the FDIC is the subpoenaing party. The FDIC shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the FDIC.

§ 308.17 Unilateral settlement offers to the Board.

(a) *Submission of unilateral settlement offers.* At any time, and without prejudice to the rights of any party, any Respondent may unilaterally submit to the Executive Secretary for consideration by the Board or its designee, a written offer to settle a proceeding.

(b) *Unilateral settlement offers do not stay proceedings.* Submission of a unilateral settlement offer shall not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this subpart B or any other subpart of Part 308.

(c) *Settlement offer inadmissible as evidence.* No settlement offer, whether made pursuant to paragraph (a) of this section or otherwise, shall be admissible into evidence over the objection of any party.

(d) *Waiver.* A party submitting a unilateral settlement offer waives any objection to participation by interested persons or divisions within the FDIC in any decision or disposition made with respect to such unilateral settlement offer.

§ 308.18 Confidentiality.

(a) *All papers and proceedings confidential.* Hearings under this subpart B shall be private unless the Board or its designee determines, after considering the views of the Respondent, that a public hearing is necessary to protect the public interest.

(b) *Unauthorized disclosure prohibited.* No Respodent shall disclose or otherwise use any information which is not publicly available and which was obtained through discovery or at the hearing for any purpose other than litigation of the proceeding, including appeals, if any.

(c) *Disclosure in court proceedings.* Where any FDIC proceeding or order has been appealed to, or otherwise brought before, any court of the United States, this section shall not be read as limiting, or stating a policy favoring limits on, public access to any record or other papers filed, or evidence presented, in such court proceeding.

§ 308.19 FDIC's right to conduct examinations is unaffected.

Nothing contained in this subpart B shall be construed as limiting in any manner the right of the FDIC to conduct any examination or visitation of any insured bank or the right of the FDIC to conduct any form of investigation authorized by law.

§ 308.20 The Notice.

(a) *Commencement of action.* A proceeding governed by this subpart B shall be commenced by issuance of a Notice.

(b) *Contents of Notice.* (1) The Notice shall set forth:

(i) The basis for the FDIC's jurisdiction over the proceeding;

(ii) The claim showing that the FDIC is entitled to relief; and

(iii) A prayer for an order granting the requested relief. A proposed order may be served in lieu of, or as a supplement to, a prayer for relief.

(2) The Notice shall advise the Respondent:

(i) That an answer must be filed within twenty days after service of the Notice;

(ii) That in actions involving civil money penalties under 12 U.S.C. 1818(i) and 1828(j) a request for hearing must be filed within twenty days after service of the Notice;

(iii) That in actions involving denial of a change in bank control under 12 U.S.C. 1817(j)(4), a request for hearing must be filed within ten days after service of the Notice;

(iv) That a hearing will be held within the judicial district in which a Respondent bank is found or within a judicial district in which at least one Respondent or the bank is found (if the bank is not a Respondent); and

(v) That, unless the administrative law judge sets another date, the hearing will commence (A) within sixty days after service of the Notice for actions involving cease-and-desist orders under 12 U.S.C. 1818(b) or removals and prohibitions under 12 U.S.C. 1818(e), or (B) within *one hundred and twenty* days for all other actions.

§ 308.21 Answer.

(a) *Timely answers are required.* (1) Every Respondent shall file an answer with the Executive Secretary within twenty days after service of the Notice. For purposes of Part 308, service of a Notice is deemed to have been accomplished (i) at the time personal service or service on an agent is accomplished, or (ii) if the Notice is mailed, or served in any other manner authorized by § 308.13(a), at the time the Notice is received by the Respondent.

(2) The time to file an answer is not extended by the making of any motion. The administrative law judge may grant an extension of the time to answer for good cause shown. Except as provided in paragraph (d) of this section, only the Board may permit filing of a late answer where a default order has been entered against the Respondent pursuant to paragraph (d) of this section or a Notice of disapproval has become final under the provisions of § 308.54 or an assessment of civil money penalties has become final under the provisions of § 308.75. Extensions of time to answer may be conditioned upon such terms or sanctions as the administrative law judge deems appropriate.

(b) *Content of answer.* An answer shall specifically respond to each paragraph or allegation of fact contained in the Notice and shall admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information shall have the effect of a denial. Denials shall fairly meet the substance of each allegation of fact denied. When a Respondent intends to deny part of an allegation, that part shall be denied and the remainder specifically admitted. Any allegation of fact in the Notice which is not denied in the answer shall be deemed admitted for purposes of the subject proceeding. A Respondent is not required to plead to the portion of a Notice that constitutes the prayer for relief or a proposed order. The answer shall set forth affirmative defenses, if any, asserted by the Respondent.

(c) *Effect of admitted allegations.* (1) If a Respondent does not contest any of the allegations of fact contained in the Notice, the Respondent's answer shall consist of a statement that all of the allegations of fact are admitted. Such an answer shall constitute a waiver of hearing on the allegations of fact contained in the Notice, and any further proceedings, including any hearing, shall be limited to the issue of relief.

(2) In cases where the Respondent does not contest any of the allegations of fact contained in the Notice and does not contest the requested relief, the Respondent's answer shall consist of a statement that all of the allegations of fact are admitted and that the request for relief is not contested. Such an answer will constitute a waiver of a hearing on both the allegations of fact and the requested relief, and the administrative law judge shall certify the record to the Executive Secretary, who shall enter an order granting any proper relief that is sought by the Notice.

(d) *Default.* Failure of a Respondent to file an answer within twenty days shall be deemed a waiver of the right to appear and contest the allegations of fact and the requested relief contained in the Notice and a consent by that Respondent to entry of an order granting any proper relief that is sought by the Notice.

(1) When a Notice of disapproval of a change in bank control has been issued under section 7(j) of the Act or an assessment of civil money penalties has been made under section 8(i) or 18(j) of the Act, they shall automatically become final and unappealable unless both the required request for hearing and an answer are timely filed.

(2) In all other proceedings governed by this subpart B, upon the written request of FDIC enforcement counsel, which shall be served on all parties, the Executive Secretary may, at any time more than five days after such service enter a default order granting any proper relief that is sought by the Notice. The Executive Secretary shall not enter a default order under this paragraph if in the Executive Secretary's sole discretion, he or she determines that no default has occurred or that for some other reason the matter should be referred to either the Board or an administrative law judge for further proceedings. The Executive Secretary shall also retain jurisdiction to vacate a default order entered under this paragraph if the Executive Secretary subsequently determines that no default had in fact occurred or that for some other ministerial reason a default order entered under this paragraph should be vacated. Any order entered under this paragraph shall be final and unappealable.

§ 308.22 Amending pleadings.

(a) *Amendments.* A Notice or answer may be amended or supplemented upon good cause shown, by leave of the administrative law judge. The Respondent shall answer an amended Notice within the time remaining for the Respondent's answer to the original Notice or within ten days after service of the amended Notice, whichever period is longer.

(b) *Amendments to conform to the evidence.* When issues not raised by the Notice or answer are tried at hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the Notice or answer, and amendments to the Notice and answer are not required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the Notice or answer, the administrative law judge may allow the Notice or answer to be amended when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. If justice so requires, the administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 308.23 Intervention; persons having official interest.

(a) *Intervention.* The administrative law judge may, in his or her discretion, allow, upon timely application, a person to intervene for limited purposes, or for all purposes, upon a showing that:

(1) The intervening person has a substantial interest relating to the subject of the action, and the intervening person is so situated that the disposition of the action may as a practical matter impair or impede his or her ability to protect that interest;

(2) The intervening person's interest may not be fully and adequately represented if that person is not allowed to intervene; and

(3) The intervention will not delay the proceeding or otherwise unfairly prejudice any party, provided that no intervenor shall be allowed to appear through counsel for, or any firm representing, any Respondent in the action.

(b) *Persons having an official interest.* (1) The administrative law judge may, in his or her discretion, permit, upon timely application, persons having an official interest in the substance of the proceeding to attend the hearing and to be served with papers. Such persons may include the bank, when not a Respondent or intervenor, other federal banking regulators, any appropriate state banking agency and other interested government agencies.

(2) Persons having an official interest may, if permitted by the administrative law judge in his or her discretion, submit amicus curiae briefs to the administrative law judge within the time periods during which parties may submit briefs.

§ 308.24 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion:

(i) Any two or more proceedings may be consolidated for some or all purposes if each proceeding involves or arises out of the same transaction, occurrence, or series of transactions or occurrences and material common questions of law or fact will arise in each of the proceedings, unless consolidation would cause unreasonable delay or injustice; and

(ii) Any two or more proceedings against the same, or at least one common, Respondent which involve common questions of fact or law may be consolidated for some or all purposes, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule shall be made to avoid unnecessary expense or inconvenience, provided that such adjustment shall not result in delaying the hearing beyond the latest date upon which an unconsolidated hearing involving at least one Respondent in the consolidated proceeding would otherwise have commenced under this subpart.

(b) *Severance.* On the motion of any party or on the administrative law judge's own motion, a proceeding involving two or more Respondents may be severed for some or all purposes if severance (1) is appropriate because the proceeding against one or more Respondents cannot proceed or is being stayed, (2) will promote the prompt resolution of the proceeding as to some or all Respondents, or (3) is otherwise required to prevent injustice.

§ 308.25 Scope of discovery.

(a) *Limits on discovery.* Parties to proceedings under this subpart B may obtain discovery only through the production of documents (including

writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, which documents shall be translated, if necessary, by the responder through detection devices into reasonably usable form). No other form of discovery shall be allowed.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and such other privileges as the Constitution, any applicable act of Congress, or the principles of common law provide.

§ 308.26 Time limits for discovery.

(a) *General rule.* (1) All initial requests for discovery must be made within forty days after service of the Notice on the Respondent. If there are multiple Respondents, the time for making discovery requests by, and to, each Respondent shall be separately measured from the date on which each Respondent received the Notice.

(2) Except as provided in paragraph (b) of this section, only discovery requests that are based upon or otherwise follow up on discovery responses, including objections, to timely discovery requests may be served after the initial forty day period for making discovery requests. All such follow up requests shall be served within ten days after service of the response upon which they are based.

(b) *Extensions of time.* (1) No extension of the forty-day period to commence discovery shall be granted unless the administrative law judge finds on the record that good cause exists for the extension.

(2) The foregoing notwithstanding, (i) if a Respondent is permitted to file a late answer, FDIC enforcement counsel shall be entitled to serve discovery requests on that party within ten days following the filing of the late answer; and (ii) if the FDIC amends the Notice, and an answer is required, the Respondent shall be entitled to serve discovery requests within the later of forty days following the service of the original Notice or ten days following the filing of the answer to the amended Notice.

§ 308.27 Document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request shall identify the documents to be produced either by individual item or by category, and shall describe each item and category with reasonable particularity. Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying is requested, the party to whom the request is addressed shall bear the cost of copying and shipping if less than 250 pages of copying are requested. If more than 250 pages of copying are requested, the requesting party shall pay for copying, unless the parties agree otherwise, at a rate of $.20 per page plus the cost of shipping.

(c) *Obligation to update responses.* Unless expressly stated to the contrary on its face, or unless otherwise ordered by the administrative law judge, all discovery requests served on a party impose an obligation on that party (1) to update promptly the response through the cut-off date for evidence to be admitted at the hearing as provided in § 308.38(a) if that cut-off date occurs after the date for compliance with the request; and (2) to amend or supplement promptly the response if the responding party learns that (i) the response was materially incorrect when made or (ii) the response is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Objections.* (1) The party upon whom a request is served shall serve its objections to the request within twenty days after service of the request. Any objections not made in writing and within the prescribed period are waived.

(2) The reason for each objection shall be stated with reasonable particularity. If objection is made to only a portion of an item or category in a request, the portion objected to shall be specified.

(3) The date set forth in the request for production of documents shall not be a ground for relief from any provision of the request unless that date is less than twenty days after service of the request or unless the party to whom the request was made certifies that the search for and compilation and copying of the requested documents is expected to require more than 40 hours of work. Under either of those circumstances, the party upon whom the request was served may apply for a reasonable extension of time for production of the requested documents, which extension may be granted for good cause shown. Any extension of time for production shall not extend the time to object to discovery requests under paragraph (d)(1) of this section.

(4) If a party generally objects to all or virtually all of a discovery request without substantial justification, upon motion, the entire objection (except for bona fide privilege claims) shall be stricken. The administrative law judge need not consider whether any specific objections (other than privilege claims) would have been sustained had they been made separately.

(5) Objection to part of a request shall not operate to delay or excuse production of documents pursuant to portions of the request to which no objection is made.

(e) *Privilege.* At the time other documents are produced or within twenty days after service of the discovery request, whichever is later, all documents withheld on grounds of any privilege, other than work-product privilege, shall be reasonably identified, including the basis for the claim of privilege. If a party withholds documents on the ground of work-product privilege, the party shall so state.

(f) *Discovery disputes.* (1) If a party objects to all or any part of a request, fails to comply fully with a request, or withholds any documents as privileged, the requesting party may, within ten days of the making of the objections or the assertion of the privilege claim, or if later, within ten days of the time the failure to comply becomes known, move before the administrative law judge for an order or subpoena requiring production.

(2) A discovery motion provided for in paragraph (f)(1) of this section shall contain a short and plain summary of the matters in dispute, and the nature of the dispute; a precise statement of the relief requested; and the certification required by § 308.30(d). The motion shall have attached to it a copy of the discovery request and the objections thereto. A brief in support of the motion may be filed when the motion is filed.

(3) In response to a discovery motion, any other party shall have the right to submit written views to the

administrative law judge at least one business day prior to the discovery conference provided for in paragraph (g) of this section. Any such response shall specifically identify and address each issue disputed by that party and may include a brief.

(g) *Discovery conferences.* (1) When a discovery motion is made under paragraph (f)(1) of this section, the administrative law judge shall promptly set a discovery conference, unless the administrative law judge concludes, and advises the parties, that the disputed matters can be more expeditiously, or better, resolved by handling this dispute as other written motions are handled under § 308.30, or in some other manner. At any discovery conference, each party shall be given an opportunity to be heard. The administrative law judge shall rule on each disputed matter unless the administrative law judge, in his or her discretion, determines that one or more issues should be further briefed or should be taken under advisement. As to all matters not resolved at the discovery conference, the administrative law judge shall promptly after the conference decide those matters that are not more properly held for decision at the hearing.

(2) If the moving party fails to attend the discovery conference and such failure is not excused, the motion shall be denied. If the party from whom discovery is sought does not either attend the discovery conference or submit a written response to the motion, that party shall be deemed to have waived any right to object to the requested discovery and to have consented to entry of an appropriate order or ruling.

(3) In addition to, or in lieu of, ordering production of requested documents or issuing a subpoena under this section, the administrative law judge may impose any appropriate sanctions authorized in § 308.49.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with that subpoena. A party's right to seek court enforcement of a subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who fails to produce subpoenaed documents.

§ 308.28 Document subpoenas to nonparties.

(a) *General rule.* (1) Any party may apply to the administrative law judge for the issuance of a document subpoena addressed to any person who is not a party to the proceeding. The application shall contain a proposed document subpoena and a brief statement of the reasons for the issuance of the subpoena. Pre-printed forms of subpoenas are available from the appropriate Regional Office or the Office of the Executive Secretary. The subpoenaing party shall specify a reasonable time, place, and manner for making production under the document subpoena. Any requested subpoena shall be promptly issued unless the administrative law judge determines that the application does not set forth a valid basis for issuance of the subpoena or otherwise fails to conform to the requirements of this subpart B, provided that the administrative law judge may, on his or her own motion, request briefs or hold a conference concerning whether a requested subpoena should be issued.

(2) The party obtaining the document subpoena shall be responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(3) Issuance of any subpoena under this paragraph (a) is without prejudice to the right of the subpoenaed person to object before the administrative law judge, in the manner set forth in paragraph (c) of this section, to all or any part of the subpoena.

(b) *Scope of document subpoenas.* (1) The scope of document subpoenas issued under this section is the same as that for document requests under § 308.25(b). Any document subpoena sought under this section must be applied for within the period during which the applying party could serve a document request under the provisions of § 308.26.

(2) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

(3) Every party shall have a right to inspect and copy all documents produced pursuant to a document subpoena.

(4) If the subpoenaing party agrees to inspect documents other than at the time and place designated in the document subpoena, or to receive copies in lieu of inspecting documents, it shall be the duty of the subpoenaing party to assure that all other parties have access to all documents inspected by or delivered to the subpoenaing party, at substantially the same time as access is obtained by the subpoenaing party.

(c) *Objections.* (1) The subpoenaed person may object within the time limits and on the same basis, including assertion of privilege, upon which a party could object under § 308.27(d) to a document request.

(2) if the subpoenaed person objects to all or any part of a document subpoena, fails to fully comply with a document subpoena, or withholds any document as privileged, the subpoenaing party may, within ten days of the making of the objections or the assertion of the claim of privilege, or if later, within ten days of the time the failure to comply becomes known, seek to compel compliance with the document subpoena in the manner provided in § 308.27 (f) and (g).

(3) In lieu of objecting to a document subpoena, the subpoenaed person may within twenty days after service of the subpoena on the subpoenaed person move before the administrative law judge to revoke, quash, or modify the subpoena. A statement of the basis for the motion to revoke, quash, or modify a subpoena issued under this section must accompany the motion. The motion must be on notice to all parties. Any party may respond to the motion within ten days after the motion is made.

(d) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge issued pursuant to paragraph (c) of this section which directs compliance with all or any portion of a document subpoena, the subpoenaing party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who procures a failure to comply with a subpoena issued under this section.

§ 308.29 Depositions of witnesses unavailable for hearing.

(a) *General rule.* (1) If a witness will not be available for the hearing, the

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administrative law judge may issue a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon a showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) If the application for a subpoena sets forth a valid basis for its issuance, the administrative law judge may either issue the deposition subpoena or, on his or her own motion, request briefs or hold a conference concerning whether a requested subpoena should be issued.

(3) A pre-printed form of the subpoena shall be available from the appropriate Regional Office or from the Office of the Executive Secretary. The subpoena shall name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place within one hundred miles of the witness's residence or regular place of employment as the administrative law judge shall fix.

(4) The party obtaining deposition subpoenas shall be responsible for serving them on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on less than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may move before the administrative law judge to revoke, quash, or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to revoke, quash, or modify a subpoena issued under this section must accompany the motion. The motion must be on notice to all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying upon oral deposition shall be duly sworn, and each party shall have the right to examine the witness. Objections to questions or evidence shall be in short form, stating the grounds for the objection. Failure to object to questions or evidence shall not be deemed a waiver except where the ground for the objection is one which might have been avoided or removed if presented at that time. All questions, answers, and objections shall be on the record.

(2) The deposition shall be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(3) Any party may move before the administrative law judge for an order compelling the witness to answer any questions or submit any evidence the witness has refused to answer or submit during the deposition. The motion must be on notice to all parties.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the subpoena as the administrative law judge has ordered complied with. A party's right to seek court enforcement of a deposition subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 308.30 Motions.

(a) *General rule.* (1) This section governs all motions except motions concerning discovery disputes which are governed by § 308.27. An application for an order shall be made by written motion, unless made during a conference or a hearing. The administrative law judge may, in his or her discretion, require that any oral motion be submitted in writing.

(2) All motions shall state with particularity the grounds therefor and the relief or order sought. A memorandum of law, affidavits, or other appropriate papers may be filed in support of any motion at the time the motion is made. All written motions shall be accompanied by a form of proposed order. No oral argument shall be heard on written motions unless the administrative law judge directs otherwise.

(3) All motions shall be decided promptly and each decision shall be memorialized either in writing or on the record.

(b) *Responses.* (1) Within ten days, or such shorter period as the administrative law judge may direct, after service of any written motion under paragraph (a) of this section, any party may file a written response to a motion. Any such responses shall be accompanied by a form of proposed order.

(2) When an oral motion is made under paragraph (a) of this section, unless the administrative law judge in his or her discretion directs that the response be in writing, any opposing party shall be given an opportunity to respond to the motion orally before the administrative law judge rules on the motion.

(3) The failure of any party to oppose a motion shall be deemed a waiver of the right to oppose the motion and a consent by that party to the entry, in the case of written motions, of an order substantially in the form of the order accompanying the motion, and in the case of oral motions, of an order providing the relief requested.

(c) *Replies.* If any party's written response to a motion raises new issues or arguments, the moving party may, within five days of service of that response, serve a reply that is strictly limited to addressing those new issues or arguments. No further filings relating to the motion shall be permitted unless the administrative law judge, on his or her own motion, so directs.

(d) *Good-faith attempt to resolve disputes.* (1) No written motion shall be made under this section unless the attorney for the moving party, or the moving party if unrepresented, certifies that (i) the attorney or party has met (in person or by telephone) with opposing counsel, or if unrepresented, the opposing party, in a good-faith effort to resolve the dispute that is the subject of the motion, or (ii) the opposing attorney or party, despite the moving party's reasonable efforts, cannot be contacted or has refused to participate in such a meeting.

(2) The requirement of paragraph (d)(1) of this section shall not apply to

motions for summary judgment, motions to dismiss, or other dispositive motions that would, if granted, substantially dispose of the case as to one or more Respondents.

§ 308.31 Interlocutory appeals to the Board.

(a) *General rule.* (1) Rulings or orders by an administrative law judge may not be appealed to the Board prior to submission of the record to the Board pursuant to the provisions of § 308.42, unless the Board, in its sole discretion, grants special permission to appeal.

(2) Special permission to appeal a ruling or order will only be granted if (i) the interlocutory appeal involves an important, unresolved issue of general application that should be immediately decided by the Board or (ii) the interlocutory appeal involves clear error below, and the rights of a party are likely to be severely prejudiced if the matter is not immediately decided by the Board. A party's ongoing costs of administrative litigation will not be considered as a basis for hearing an interlocutory appeal.

(b) *Procedures.* (1) A party may, within ten days after the entry of an interlocutory ruling or order by the administrative law judge, apply to the Board for special permission to appeal that ruling or order. Any such application shall state with particularity the basis under paragraph (a) of this section upon which special permission to appeal should be granted. The application shall also either state that the party relies on its brief before the administrative law judge or be accompanied by the party's brief to the Board on the merits.

(2) Any other party may, within ten days of service of the application, file a brief with the Board opposing the grant of special permission to appeal. Any other party may, regardless of whether that party opposes the grant of special permission, within the same ten-day period, either file a brief with the Board concerning the merits or advise the Board, in writing, that the party relies on its brief before the administrative law judge.

(3) There shall be no right of reply to the briefs filed or relied upon pursuant to paragraph (b)(2) of this section unless the Board, on its own motion, requests a reply.

(4) When an application has been made and the time within which to file papers pursuant to paragraphs (b)(1) and (b)(2) of this section has expired, the Executive Secretary shall submit the application and all other papers to the Board. The Executive Secretary shall notify the administrative law judge and all parties when the application has been submitted to the Board.

(c) *Proceeding not stayed.* Interlocutory appeals under this section do not stay proceedings before the administrative law judge. The Board or the administrative law judge may, however, order a stay upon a finding on the record that the party aggrieved by the appealed ruling or order has shown a substantial likelihood of success before the Board on the merits of the interlocutory appeal and that substantial hardship or injustice is likely to result if a stay is not granted, provided that only the Board may grant any stay or series of stays exceeding a total of thirty days.

§ 308.32 General procedures.

(a) *Scheduling when there is a fixed date of hearing.* If a hearing date has been fixed by the administrative law judge, then that hearing date shall be used in determining dates for making the prehearing submissions and taking the prehearing actions required or authorized by § 308.33.

(b) *Scheduling when the date of hearing is not fixed.* If a hearing date has not been fixed by the administrative law judge, a date one hundred and twenty days after service of the Notice shall be used as the hearing date in determining dates for making the submissions and taking the actions required or authorized by § 308.33, provided that in proceedings under 12 U.S.C. 1818 (b) and (e), as to which the sixty-day period for hearing has not been waived or extended pursuant to the provisions of § 308.34(a)(2), a date sixty days after service of the Notice shall be used as the hearing date in determining dates for making the submissions and taking the actions required or authorized by § 308.33, provided further that unless the administrative law judge orders otherwise, in cases involving multiple Respondents, the one hundred and twentieth day, or sixtieth day, shall be measured from the date the last Respondent was served with the Notice.

§ 308.33 Prehearing submissions and conferences.

(a) *Prehearing preparations.* Prehearing preparations for each action governed by this subpart B shall, unless the administrative law judge orders to the contrary, include:

(1) The exchange of proposed statements of the issues, stipulations, exhibits, and witness lists as provided in paragraph (b) of this section;

(2) The filing of a joint statement of issues and stipulations and of each party's exhibits and witness list as provided in paragraph (c) of this section;

(3) The simultaneous filing of prehearing briefs as provided in paragraph (d) of this section;

(4) The holding of a prehearing conference as provided in paragraph (e) of this section; and

(5) Any other prehearing preparations, such as other filings, conferences, schedules, and other orders, as the administrative law judge, on motion of any party, or on the administrative law judge's own motion, deems appropriate.

(b) *Prehearing exchange and meeting of counsel.* (1) Not less than thirty-five days before the hearing date, each party shall serve on every other party (but unless otherwise ordered shall not file, except in connection with proceedings for sanctions under paragraph (f) of this section), the party's:

(i) Proposed statement of the issues;

(ii) Proposed stipulations;

(iii) Proposed trial exhibits; and

(iv) Proposed witness list, including the name and address of each witness and a short summary of the expected testimony by each witness.

(2) Sufficiently in advance of the fifteenth day before the hearing date as to allow compliance with paragraph (c) of this section, all parties shall meet and attempt to agree upon (i) a joint statement of the issues, (ii) stipulations, and (iii) stipulations that proposed trial exhibits are admissible or, if admissibility is not stipulated, that proposed trial exhibits are authentic.

(c) *Prehearing filings.* (1) Not less than fifteen days before the hearing date, the parties shall file (i) a joint statement of the issues for hearing, provided that if there is no joint statement of issues, each party shall file its own statement of issues, and (ii) stipulations, if any.

(2) Not less than fifteen days before the hearing date, each party shall file (i) that party's premarked trial exhibits with an accompanying stipulation concerning the admissibility or authenticity of each exhibit and (ii) that party's witness list.

(d) *Prehearing brief.* Not less than fifteen days before the hearing date, each party shall file a prehearing brief.

(e) *Prehearing conference.* (1) A prehearing conference may be held at such time and place as the administrative law judge designates. If such a conference is required by the administrative law judge, the conference shall be participated in by at least one of the attorneys who will conduct the trial for each of the parties, and by any unrepresented parties. Unless otherwise directed by the administrative law judge the conference shall be recorded by a

court reporter. The participants at the conference shall formulate a plan for trial, including a program for facilitating the admission of evidence and shall address such other matters as the administrative law judge may reasonably direct.

(2) At or within a reasonable time following the conclusion of the prehearing conference, the administrative law judge shall serve on each party a prehearing memorandum or order containing agreements reached and any determinations made. Such an order may, in the administrative law judge's discretion, be dictated into the record at the conference.

(f) *Effect of failure to comply.* (1) Any party who fails to exchange proposed exhibits or witness lists as required by paragraph (b) of this section or fails to submit exhibits or witness lists as required by paragraph (c) of this section shall be deemed to have forfeited its right to introduce any exhibits or call any witness in its case-in-chief at the hearing. Any exhibit or witness not included in the party's final exhibit or witness list may not be introduced or called by that party in its case-in-chief at the hearing. Relief from this paragraph (f) may be granted only for good cause shown and upon such terms as are just.

(2) Failure to file a prehearing brief as required in paragraph (d) of this section shall be deemed a waiver of the right to file a prehearing brief. Late briefs may be accepted for filing only if the moving party can show that failure to accept the late brief would materially prejudice the movant and injustice would result.

(3) If any party fails to exchange or file documents required under paragraph (b) or (c) of this section, any other party, or the administrative law judge, on his or her own motion, may serve a request that the party state, within five days of receipt of the request, whether that party will appear at the hearing and litigate the case on the merits. The response shall be signed by counsel (if any) appearing for the party or by any party who is not represented by counsel. Failure of a party to respond by filing a timely and express statement that the party will appear at the hearing and litigate on the merits shall be deemed a waiver by that party of his or her right to a hearing, and a default order may be entered against that party by the Executive Secretary as provided for in § 308.21(d).

(4) Upon the failure of any party to comply fully and in good faith with the requirements of this section, including without limitation, the failure to stipulate to facts or to the authenticity or admissibility of documents as to which there is no good-faith dispute, the administrative law judge may, on the motion of any party, or on the administrative law judge's own motion, impose any appropriate sanction authorized in section 308.49.

§ 308.34 Hearings.

(a) *When held.* (1) Except as provided in paragraph (a)(2) of this section, hearings shall commence within one hundred and twenty days of service of the Notice, unless the administrative law judge makes a finding of good cause for holding the hearing at a later date. No hearing shall be continued to a date more than one hundred and fifty days after service of the Notice except upon a finding, on the record, that:

(i) It is impractical to commence the hearing within one hundred and fifty days of service of the Notice;

(ii) There is a need to provide time to obtain a final decision by the Board or its designee on whether to accept an agreed settlement offer, as provided in § 308.15; or

(iii) The ends of justice require a continuance.

(2) Hearings under 12 U.S.C. 1818 (b) and (e) may not be continued beyond sixty days after service of the Notice over the objection of any party, unless the administrative law judge finds, on the record, that holding the hearing within sixty days is impractical or would materially and unfairly prejudice one or more parties or otherwise would be unjust. The parties to any action under 12 U.S.C. 1818 (b) or (e) may, at any time, agree in writing to waive the subject sixty-day period and to have the provisions of paragraph (a)(1) of this section govern the schedule upon which the action will be heard.

(b) *Effect of failure to appear at hearing.* The failure of any party to appear at the hearing personally or by a duly authorized attorney shall be deemed a waiver of the right to a hearing and a consent to the entry of an order of default. The default order shall be entered by the Executive Secretary, as provided for in § 308.21(d).

§ 308.35 Hearing subpoenas.

(a) *Issuance.* (1) Upon the representation of any party that it intends to call a named person as a witness or has a good-faith intention of calling that person as a witness if certain evidence is or is not admitted, any party may apply for the issuance of, and the administrative law judge may at any time during the proceeding issue, hearing subpoenas requiring the attendance of the subpoenaed person at a hearing. Pre-printed forms of subpoenas are available from the appropriate Regional Office or the Office of the Executive Secretary.

(2) The administrative law judge shall not issue a hearing subpoena duces tecum addressed to a party except upon a finding, on the record, that either (i) the subpoenaing party could not reasonably have anticipated the need for the subpoenaed documents during the discovery period prescribed by § 308.26 or (ii) the subpoenead documents were requested in a document request that was served on the subpoenaed party during the discovery period, and the relevant portion of that document request was not quashed or modified in writing.

(3) Hearing subpoenas may require that the witness appear at any place designated for the hearing. The party obtaining a hearing subpoena shall be responsible for serving it on the witness and for serving copies on all other parties. There shall be service of process for hearing subpoenas in any state, territory, possession, the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(b) *Objection to hearing subpoenas.* (1) A person named in a hearing subpoena, or any party, may apply to the administrative law judge to revoke, quash, or modify the subpoena. The application must be on notice to all parties. The application must be made prior to the time for compliance specified in the subpoena and must be made within ten days after service of the subpoena on the person making the application.

(2) A statement of the basis for the order to revoke, quash, or modify a hearing subpoena under this paragraph (b) must accompany the application.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggreived party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the subpoena as the administrative law judge has ordered complied with. A party's right to seek court enforcement of a subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party that fails to comply with, or procures failure to comply with, a hearing subpoena.

§ 308.36 Conduct of hearings

(a) *General rules.* (1) Hearings shall be conducted to provide a fair and

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expeditious trial of the relevant, disputed issues.

(2) The administrative law judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (i) make the interrogation and presentation effective for the ascertainment of the truth; (ii) avoid needless consumption of time; and (iii) protect witnesses from harassment.

(b) *Order of hearing.* (1) Unless the administrative law judge directs otherwise, all stipulations of fact and law previously filed in the case, and all documents the admissibility of which has been previously stipulated in the case, shall automatically be admitted into evidence upon commencement of the hearing.

(2) The administrative law judge shall determine, and advise the parties, prior to the commencement of the hearing, whether opening and/or closing statements will be allowed.

(3) FDIC enforcement counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge or unless otherwise expressly provided in this Part 308. If there are multiple Respondents, Respondents may agree among themselves as to the order in which Respondents shall present their case-in-chief, but if they do not agree, the administrative law judge shall fix the order.

(c) *Cross-examination.* (1) Each party shall have the right to cross-examine the other parties' witnesses, provided that the administrative law judge shall limit cross-examination that is unduly repetitive.

(2) During cross-examination any party may move the admission into evidence of any admissible document shown to the witness during that cross-examination.

(3) Cross-examination should be limited to the subject matter of that witness's direct examination and matters pertaining to the credibility of the witness. The administrative law judge may permit inquiry into additional matters as if on direct examination if (i) it appears likely to facilitate completion of the proceeding, (ii) it will not unfairly disrupt presentation of the case-in-chief (or rebuttal case) of the party calling the witness, and (iii) all parties (other than the party who has called that witness) agree that if such broader inquiry is permitted, they will not call that witness during their case-in-chief or, if they have presented their case-in-chief, in their rebuttal case. Such broader inquiry on cross-examination should generally not be permitted if the witness was called as an adverse party, a hostile witness, or a witness identified with an adverse party.

(c) *Rebuttal evidence.* Rebuttal evidence shall be limited to material new issues or to new evidence concerning material disputes, including expert opinion. The parties shall present their rebuttal evidence, if any, in the same order in which they presented their case-in-chief.

(e) *Leading questions.* Leading questions should not be used on the direct examination of a witness except as may be necessary to develop that witness's testimony. Ordinarily leading questions should be permitted on cross-examination except where matters outside the scope of the direct examination are inquired into under paragraph (c) of this section. When a party calls an adverse party, a hostile witness, or a witness identified with an adverse party, interrogation may be by leading questions.

§ 308.37 Written testimony in lieu of oral hearing.

(a) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not require such a format if that format would violate the objecting party's rights under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing under § 308.34, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, shall be submitted and the oral portion of the hearing begun within thirty days of the date set for filing written direct testimony.

(3) Unless the administrative law judge directs otherwise, (i) all parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section, and (ii) all parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

§ 308.38 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence shall be admissible to the fullest extent authorized by the Administrative Procedure Act, other applicable statutes, and the common law; provided that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Without limiting the foregoing, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in any proceeding governed by this Subpart B.

(2) No evidence concerning any act or event occurring after the date of the Notice shall be deemed relevant or otherwise admissible as to the fact of the violation of a law, rule, regulation, or any written agreement entered into with the FDIC, as to the fact of an unsafe or unsound practice, or as to the fact of a breach of fiduciary duty, in any proceeding as set forth in § 308.04.

(3) Evidence concerning any act or event occurring after the date of the Notice may be admitted only for the express and limited purpose of assisting the administrative law judge in fashioning an order. Upon motion of a party for the admission of such evidence, the administrative law judge must make a finding on the record that such evidence is material and probative

to the fashioning of an order before such evidence may be admitted.

(b) *Privilege.* (1) The rules of privilege contained in § 308.25 which are applicable to discovery apply equally to hearings.

(2) Documentary evidence which a party had previously withheld from discovery under a claim of privilege shall not be received on behalf of such party at the hearing, nor shall related testimony, unless the administrative law judge finds that the exclusion of this evidence would result in manifest injustice. The administrative law judge may condition the admission of such evidence on such terms as are just to all parties.

(c) *Official notice.* Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States and any material information in the official public records of the FDIC. All matters officially noticed by the adminstrative law judge shall appear on the record. If official notice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(d) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as an original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Relevant Reports of Examination or Visitation Reports prepared by the FDIC, whether or not such documents were prepared as a result of joint or concurrent examinations or visits, are admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, or outlines to summarize, illustrate, or simplify the presentation of testimony. Such documents may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(e) *Unavailable witness.* If a witness is unavailable to testify at the hearing, and that witness has been deposed under the provisions of § 308.29, any party may offer as evidence all or any part of the transcript of the deposition, incuding deposition exhibits, if any. Such deposition transcript shall be admissible to the same extent that the testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the deposition, the administrative law judge may on that basis limit the admissibility of the deposition in any manner that justice requires. Only those portions of a deposition received in evidence at the hearing shall constitute a part of the record.

(f) *Objections to evidence.* (1) Objections to evidence must be timely made and shall briefly state the grounds relied upon. The transcript shall include any argument or debate thereon, except as otherwise ordered by the administrative law judge with the consent of all parties. Rulings on all objections shall appear in the record. Failure to object shall be deemed a waiver of any objection.

(2) When an objection to a question or line or questioning propounded to a witness is sustained, the examining attorney may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness. The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record and transmit such rejected exhibits to the Executive Secretary pursuant to § 308.40.

§ 308.39 Post-hearing papers.

(a) *Post-hearing filings.* Each party who participates in a hearing shall file with the administrative law judge (1) proposed findings of facts, which shall set forth specific page references to those portions of the record relied upon to support each proposed finding; (2) proposed conclusions of law; and (3) a proposed order.

Any party may, at that time, file a post-hearing brief. The papers required or allowed by this paragraph (a) shall be filed within thirty days after the date the hearing transcript is delivered to all parties or is filed, whichever is earlier.

(b) *Reply briefs.* Reply briefs may be filed within fifteen days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs shall be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed either proposed findings of fact and conclusions of law or a post-hearing brief, shall not be permitted to file a reply brief.

§ 308.40 Recommended decision and filing of record.

(a) *Post-hearing filing.* (1) Within fifty days after expiration of the time allowed for filing proposed findings, conclusions, and orders under section 308.39(a), the administrative law judge shall file with the Executive Secretary the record of the proceeding which shall include the administrative law judge's recommended decision, findings of fact, conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. At the request of any party, the record shall also include any proffered evidence which was excluded.

(2) At the time of filing of the record with the Executive Secretary, the administrative law judge shall serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

(3) The Executive Secretary may extend the period for the filing of the recommended decision, findings, conclusions, proposed order, and record by the administrative law judge.

(b) *Filing when a summary judgment is recommended.* If the administrative law judge recommends a final disposition of an action in response to a motion for summary judgment, motion to dismiss, or comparable dispositive motion as to one or more parties, the administrative law judge shall promptly file with the Executive Secretary that recommendation and the portion of the record (or a copy thereof) which pertains to that dispositive motion.

§ 308.41 Exceptions to recommended decision.

(a) *Filing.* (1) Within twenty days after service of the recommended decision, findings, conclusions, and proposed order under § 308.40, a party may file with the Executive Secretary written exceptions thereto. The exceptions may include exceptions to the failure of the administrative law judge to make any recommendation for relief, finding, or conclusion; to the admission or exclusion of evidence; and to any other ruling. A supporting brief may be filed at the time the exceptions are filed.

(2) Exceptions and briefs in support thereof which are not filed within the time period provided in paragraph (a)(1) of this section shall not be accepted for filing, except that prior to the Executive Secretary's certification of the record to the Board for decision pursuant to § 308.42, the Executive Secretary may upon a showing of good cause allow late filing. Exceptions and briefs in support thereof shall not be accepted for filing after the record is certified to the Board under § 308.42 unless the Board, in its sole discretion, decides to accept them.

(b) *Contents.* (1) All exceptions and briefs in support of exceptions shall be confined to the particular matters in, or omissions from, the administrative law judge's recommendations as to which that party takes exception.

(2) All exceptions and briefs in support of exceptions shall set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

(c) *No replies permitted.* There shall be no replies to exceptions, or other additional papers however styled, unless the Board, on its own motion, requests the filing of additional papers.

(d) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be deemed a waiver of objection thereto.

(2) No exceptions shall be considered if the party taking exception has an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

§ 308.42 Notice of submission to the Board.

When the administrative law judge has filed the record of proceeding with the Executive Secretary pursuant to section 308.40, the Executive Secretary shall submit the official record of the action to the Board after expiration of the time for filing exceptions and shall notify the parties that the action has been submitted to the Board.

§ 308.43 Post-hearing oral argument before the Board.

(a) *When oral argument is permitted.* (1) Upon the written request of a party, or on its own motion, the Board may, in its sole discretion, order oral argument on the findings, conclusions, and recommended decision of the administrative law judge, or on any specific issue raised in the action.

(2) Any party's request for oral argument must be made within the time prescribed in § 308.41 for filing exceptions. The Board may enter an order requiring oral argument and setting aside the notice of submission of the record to the Board at any time before the Board renders its final decision on the case.

(b) *Procedure for oral argument.* (1) Oral agrument ordered under this section shall be before the Board or its designee. Oral argument under this section shall be recorded.

(2) Unless the Board directs otherwise, (i) oral argument shall be limited to a total of forty minutes of which FDIC enforcement counsel shall be allotted one-half, and (ii) FDIC enforcement counsel shall open the oral argument and may reserve up to one-half of their time for reply.

§ 308.44 Decision by the Board.

(a) *Decision to be made within ninety days.* (1) The Board shall issue its decision within ninety days after the Executive Secretary has submitted the record to the Board. If oral argument is ordered under § 308.43, the Board shall issue its decision within ninety days after the submission of the record to the Board or thirty days after oral argument, whichever is later.

(2) Within the ninety-day period provided in this section, the Board may set aside any notice that the case has been submitted to the Board for final decision and remand the case or any aspect thereof to the administrative law judge for further proceedings. In such a case, the provisions of §§ 308.34 through 308.44 shall apply to the remanded proceeding, unless the Board or administrative law judge orders otherwise. When a case is remanded, the ninety-day period within which the Board shall issue its decision shall start anew upon the submission of the record to the Board following the completion of the hearing or remand.

(b) *Motion for reconsideration.* Within fifteen days from the date of the issuance of the decision and order of the Board, a party may file a motion for reconsideration of such decision and order (except a decision and order already previously denied upon reconsideration). The petition must be in writing and should (i) specify reasons why the FDIC should reconsider its action and (ii) set forth relevant information that for good cause was not previously set forth.

(c) *FDIC staff participation.* Appropriate members of the FDIC staff who have not participated in the performance of investigative or prosecutorial functions in the particular case, or in a factually related case, may advise and assist the Board in the consideration of the particular case and in the preparation of documents for its disposition.

(d) *Copies.* The Executive Secretary shall serve copies of the decision and order of the Board on the parties and on the bank concerned. Copies shall also be furnished to the appropriate state supervisory authority in the case of an insured nonmember bank, including a state branch of a foreign bank. Where the proceedings involve termination of the insured status of a state member bank, copies shall also be furnished to the Board of Governors of the Federal Reserve System and to the appropriate state supervisory authority. Where the proceedings involve termination of the insured status of a national bank, a district bank, or a federal branch of a foreign bank, copies shall also be furnished to the Comptroller of the Currency. Where proceedings involve termination of the insured status of a federal savings bank, copies shall also be furnished to the Federal Home Loan Bank Board.

§ 308.45 Stays pending appeal.

The commencement of proceedings for judicial review of a decision and order of the Board shall not, unless specifically ordered by the Board or the court, operate as a stay of any order issued by the Board. The Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on an appeal of that order.

§ 308.46 Collateral attacks on administrative proceedings.

In an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an administrative proceeding governed by this subpart B, the challenged administrative proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the administrative proceeding within the times prescribed in this subpart B shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 308.47 Conflicts of interest.

(a) *General rule.* No attorney, law firm, or other person acting in a representative capacity shall represent two or more persons, at least one of whom is a party to a proceeding governed by this subpart B, if there is, as to any matter relating directly or indirectly to the proceeding under this subpart B, any material and actual conflict of interest between the persons represented.

(b) *Certification and waiver.* No attorney, law firm, or other person may represent two or more parties to a proceeding under this subpart B, or a party and a bank to which notice of a proceeding must be given under this subpart B, unless the attorney certifies in writing at the time of filing the notice of appearance required by § 308.08: (1) that the attorney has personally and fully discussed the possibility of conflicts of interest with each such party or bank; (2) that each such party or bank has advised the attorney that to its knowledge there is no existing or anticipated material conflict between its

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interests and the interests of others represented by the same attorney or his or her firm; and (3) that each such party or bank waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding, including any appeals.

(c) *Disqualification.* The administrative law judge may take protective measures at any stage of a proceeding to cure a conflict of interest, including issuance of an order disqualifying an individual or firm from appearing in a representative capacity in that proceeding.

§ 308.48 Ex parte communications.

(a) *Definition.* "Ex parte communication" means any material oral or written communication concerning a proceeding, which takes place between a party or another person interested in the proceeding and the administrative law judge handling that proceeding, any member of the Board, or any person assisting the administrative law judge or Board in preparing a decision with respect to that proceeding, and which was neither on the record nor on reasonable prior notice to all parties. Requests for status reports are not ex parte communications.

(b) *Prohibition on ex parte communications.* From the time the Notice is served, no person, including any person involved in the decisional process concerning the proceeding, shall make or knowingly cause to be made an ex parte communication concerning the proceeding.

(c) *Communications involving the administrative law judge.* (1) The administrative law judge shall not consult anyone within the FDIC on any matter in issue, unless upon notice and opportunity for all parties to participate. This section shall not be construed as prohibiting the administrative law judge from consulting with the Office of the Executive Secretary concerning procedural matters.

(2) The administrative law judge shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FDIC engaged in the performance of investigative or prosecutorial functions.

(d) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is made, all such written communications, or if the communication is oral, a memorandum stating the substance of the communication, shall be placed on the record of the proceeding and served on all parties.

(e) *Sanctions.* To the extent consistent with the interests of justice and the policy of the Act, knowing violation of this section may be a ground for a decision adverse to a party who violates this section or may be a ground for suspension or disbarment of any person engaging in such conduct, as provided for in § 308.50.

§ 308.49 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act (1) constitutes contemptuous conduct; (2) has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise; (3) is a clear and unexcused violation of an applicable statute, regulation, or order; or (4) has unduly delayed the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following: (1) Issuing an order against the party; (2) rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party; (3) precluding the party from contesting specific issues or findings; (4) precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party; (5) precluding the party from making a late filing or conditioning a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Limits on dismissal as a sanction.* No recommendation of dismissal shall be made by the administrative law judge or granted by the Board based on the failure to hold a hearing within the time period called for in this Part 308, or on the failure of an administrative law judge to render a recommended decision within the time period called for in this Part 308, absent a finding that the delay (1) resulted solely or principally from the conduct of the FDIC enforcement counsel; (2) that the conduct of the FDIC enforcement counsel is unexcused; (3) that the moving Respondent took all reasonable steps to oppose and prevent the subject delay; (4) that the moving Respondent has been materially prejudiced or injured; and (5) that no lesser or different sanction is adequate.

(d) *Procedure for imposition of sanctions.* (1) The administrative law judge, upon the request of any party, or on his or her own motion, may impose sanctions in accordance with this section, provided that the administrative law judge may only recommend to the Board the sanction of entering a final order determining the case on the merits.

(2) No sanction, other than refusing to accept late papers, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any counsel or party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the administrative law judge directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge.

(3) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or the Board from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 308.50 Suspension and disbarment.

(a) *Discretionary suspension and disbarment.* (1) The Board may suspend or revoke the privilege of any attorney to appear or practice before the FDIC if, after notice of and opportunity for hearing in the matter, that attorney is found by the Board: (i) Not to possess the requisite qualifications to represent others, (ii) to be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct, (iii) to have engaged in, or aided and abetted, a material and knowing violation of the Act, or (iv) to have engaged in contemptuous conduct before the FDIC. Suspension or revocation on the grounds set forth in paragraphs (ii), (iii), and (iv) of this section shall only be ordered upon a further finding that the attorney's conduct or character was sufficiently egregious as to justify suspension or revocation.

(2) Unless otherwise ordered by the Board, an application for reinstatement by a person suspended or disbarred under paragraph (a)(1) of this section may be made in writing at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. The

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suspension or disbarment shall continue until the applicant has been reinstated by the Board for good cause shown or until, in the case of a suspension, the suspension period has expired. An applicant for reinstatement under this provision may, in the Board's sole discretion, be afforded a hearing.

(b) *Mandatory suspension and disbarment.* (1) Any attorney who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, within the last ten years, shall be suspended automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(a) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Failure to file any such paper shall not impair the operation of any other provision of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension under the provisions of that paragraph are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time not less than one year after the applicant's most recent application. An applicant for reinstatement under this provision may, in the Board's sole discretion, be afforded a hearing.

(c) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this subpart B, provided that in proceedings to terminate existing FDIC suspension or disbarment orders, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof, and that the Board may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

(d) *Summary suspension for contemptuous conduct.* A finding by the administrative law judge of contemptuous conduct during the course of any proceeding shall be grounds for summary suspension by the administrative law judge of any attorney or other representative from any further participation in that proceeding for the duration of that proceeding.

(e) *Practice defined.* Unless the Board orders otherwise, for the purposes of this section, practicing before the FDIC includes, but is not limited to, (1) transacting any business with the FDIC as an attorney or agent for any other person and (2) the preparation of any statement, opinion, or other paper by any attorney, which statement, opinion, or paper is filed with the FDIC in any registration statement, notification, application, report, or other document, with the consent of such attorney.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

§ 308.51 Scope.

The rules and procedures in this subpart and subpart B shall apply to proceedings in connection with the disapproval by the Board or its designee of a proposed acquisition of control of an insured nonmember bank.

§ 308.52 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control of an insured nonmember bank:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any section of the United States may be to substantially lessen competition or to tend to create a monopoly or would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit such person to control the bank; or

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by the FDIC.

§ 308.53 Notice of disapproval.

(a) *General rule.* (1) Within three days of the decision by the Board or its designee to disapprove a proposed acquisition of control of an insured nonmember bank, a written notice of disapproval shall be mailed by first class mail to, or otherwise served upon, the party seeking to acquire control.

(2) The notice of disapproval shall (i) state the basis for the disapproval, and (ii) indicate that (A) a hearing may be requested by filing a written request with the Executive Secretary within ten days after service of the notice of disapproval and (B) if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.54, must be filed within twenty days after service of the notice of disapproval.

(b) *Waiver of hearing.* Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity for a hearing and the notice of disapproval shall constitute a final and unappealable order.

§ 308.54 Answer to notice of disapproval.

(a) *Contents.* An answer to the notice of disapproval of a proposed acquisition of control shall be filed within twenty days after service of the notice of disapproval and shall specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice of disapproval

which are not specifically denied are deemed admitted by the applicant. Any hearing under this subpart C shall be limited to those parts of the notice of disapproval that are specifically denied.

(b) *Failure to answer.* Failure of a party to file a timely answer pursuant to this section shall be deemed a waiver of the party's right to appear at a hearing and contest the disapproval, and the notice of disapproval shall automatically constitute a final and unappealable order.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

§ 308.55 Scope.

The rules and procedures of this subpart and subpart B shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978, or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

§ 308.56 Assessment of penalties.

(a) *Relevant considerations.* The Board or its designee may, in its discretion, assess civil penalties for willful violations of the Change in Bank Control Act after taking into consideration the gravity of the violation and the Respondent's financial resources, good faith, and any other arguments, information, and data submitted by the Respondent.

(b) *Amount.* The Board or its designee may assess against the Respondent a penalty of not more than $10,000 per day for each day the violation of the Change in Bank Control Act continues.

§ 308.57 Collection of penalties.

The FDIC may collect any civil penalty assessed pursuant to this subpart by agreement with the Respondent, or the FDIC may bring an action against the Respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart E—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

§ 308.58 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the Act.* The rules and procedures in this subpart and subpart B shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank or an insured branch of a foreign bank pursuant to section 8(a) of the Act, 12 U.S.C. 1818(a).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.63 of this subpart E shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank or an insured branch of a foreign bank pursuant to section 8(p) of the Act, 12 U.S.C. 1818(p). Subpart B shall not apply to proceedings under section 8(p) of the Act.

§ 308.59 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the Act:

(1) An insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank;

(2) An insured bank is in an unsafe or unsound condition such that it should not continue operations as an insured bank; or

(3) An insured bank or its directors or trustees have violated an applicable law, rule, regulation, or order, or any condition imposed in writing by the FDIC in connection with the granting of any application or other request by the bank or have violated any written agreement entered into with the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board under subpart G or the failure of any person associated with a foreign bank to appear promptly as a party to a proceeding pursuant to subpart G shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.60 Order of correction.

(a) *Notice to bank.* (1) Upon a finding by the Board or its designee pursuant to § 308.59 of an unsafe or unsound practice or condition or of a violation, there shall be served upon the insured bank an Order of Correction specifying the findings and ordering correction of the practices, conditions, or violations within one hundred twenty days after receipt of an Order of Correction.

(2) A shorter period of correction of not less than twenty days may be fixed in any case where the Board or its designee, in its discretion, has determined that the insurance risk of the FDIC is unduly jeopardized, or may be fixed by the Comptroller of the Currency in the case of a national bank, a district bank, or an insured federal branch of a foreign bank, by the state authority in the case of an insured nonmember bank, including an insured State branch of a foreign bank, by the Board of Governors of the Federal Reserve System in the case of a state member bank, or by the Federal Home Loan Bank Board in the case of an insured federal savings bank.

(b) *Notice to supervisory authority.* The Executive Secretary shall also serve the Order of Correction on the Comptroller of the Currency in the case of a national bank, a district bank, or an insured federal branch of a foreign bank, on the Board of Governors of the Federal Reserve System in the case of a state member bank, on the Federal Home Loan Bank Board in the case of an insured federal savings bank, and on the appropriate state supervisory authority in the case of an insured state bank, including a state branch of a foreign bank, for the purpose of securing correction of the practices or violations of the bank or its directors or trustees, or of the condition of the bank.

§ 308.61 Notice of intent to terminate.

Unless correction of the practices, condition, or violations specified in the Order of Correction is made within the time period provided therein, the Board or its designee, if it determines to proceed further, shall cause to be served upon the insured bank a Notice of its intention to terminate insured status not less than thirty days after the service of that Notice.

§ 308.62 Notice to depositors.

If the Board enters an order terminating the insured status of a bank or branch, the bank shall, on the day that order becomes final, or on such other day as that order prescribes, mail a notification of termination of insured status to each depositor at the depositor's last address of record on the

books of the bank or branch. The bank shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____.

1. The status of the _____, as an (insured bank) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the ____ day of _____, 19____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (bank) (branch) on the ____ day of _____, 19____, will continue to be insured, as provided by the Federal Deposit Insurance Act, for 2 years after the close of business on the ____ day of _____, 19____. Provided, however, that any withdrawals after the close of business on the ____ day of _____, 19____, will reduce the insurance coverage by the amount of such withdrawals.

_____

(Name of bank or branch)

_____

(Address)

The notification may include any additional information the bank deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.63 Involuntary termination of insured status for failure to receive deposits.

(a) *Notice to show cause.* When the Board or its designee has evidence that an insured bank is not engaged in the business of receiving deposits, other than trust funds, the Board or its designee shall be given written notice of this evidence to the bank and shall direct the bank to show cause why its insured status should not be terminated under the provisions of section 8(p) of the Act. The bank shall have thirty days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board determines that the bank is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board shall notify the bank that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of that notification.

(c) *Notification to depositors of termination of insured status.* Within the time specified by the Board and prior to the date of termination of its insured status, the bank shall mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the bank. The bank shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____.

The status of the _____ as an (insured bank) (insured branch) under the Federal Deposit Insurance Act, will terminate on the ____ day of _____, 19____, and its deposits will thereupon cease to be insured.

_____

(Name of bank or branch)

_____

(Address)

The notification may include any additional information the bank deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

Subpart F—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.64 Scope.

(a) *Cease-and-desist proceedings under section 8 of the Act.* The rules and procedures of this subpart and subpart B shall apply to proceedings to order an insured nonmember bank or its official to cease and desist from practices and violations described in section 8(b) of the Act, provided that the provisions of subpart B shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the Act.

(b) *Proceedings under the Securities Act of 1934.* (1) The rules and procedures of this subpart and subpart B shall apply to proceedings by the Board to order a municipal securities dealer or a person associated with a municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 780–4(c)(5), where the municipal securities dealer is an insured nonmember bank or a subsidiary thereof.

(2) The rules and procedures of this subpart and subpart B shall apply to proceedings by the Board to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of sections 17, 17A, and 19 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78q, 78q–1, 78s, and the applicable rules and regulations thereunder, where the clearing agency or transfer agent is an insured nonmember bank or a subsidiary thereof.

§ 308.65 Grounds for cease-and-desist orders.

(a) *General Rule.* The Board or its designee may issue and have served upon any insured nonmember bank or its official a Notice, as described in section 308.20 of subpart B, if:

(1) In the opinion of the Board or its designee the bank or official is engaging or has engaged in an unsafe or unsound practice;

(2) The Board or its designee has reasonable cause to believe the bank or official is about to engage in an unsafe or unsound practice in conducting the business of such bank; or

(3) In the opinion of the Board or its designee, the bank or official has violated, or there is reasonable cause to believe that the bank or official is about to violate, a law, rule, or regulation, or any condition the FDIC has imposed in writing in connection with granting an application or other request by the bank, or any written agreement with the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its official that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section or a temporary cease-and-desist order under § 308.68 of this subpart, shall be a ground for an order if the Board or its designee finds that:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia which act or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.66 Notice to state supervisory authority.

The Board or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to subpart F, and the grounds thereof. Any proceedings shall be conducted according to subpart F, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action.

§ 308.67 Effective date of order and service on bank.

(a) *Effective date.* A cease-and-desist order issued by the Board after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of thirty days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the Respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.68 Temporary cease-and-desist order.

(a) *Issuance.* (1) When the Board or its designee determines that the violation, threatened violation, or the unsafe or unsound practice, as specified in the Notice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to seriously weaken the condition of the bank of otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the Act and § 308.65 of this subpart, the Board or its designee may issue a temporary order requiring the bank or its official to immediately cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings under section 8(b) of the Act.

(2) The temporary order shall be served upon the bank or official named therein and shall also be served upon the bank in the case where the temporary order applies only to an official of the bank.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or its official. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the Act, the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the Act and entry of an order which has become final.

(c) *Subpart B does not apply.* The provisions of subpart B shall not apply to the issuance of temporary orders under this section.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

§ 308.69 Scope.

The rules and procedures of this subpart and subpart B shall apply to proceedings to remove, or prohibit from further participation in the conduct of the affairs of a bank as provided in section 8(e) of the Act, 12 U.S.C. 1818(e), any director, officer, or other person participating in the conduct of the affairs of an insured nonmember bank, provided that the provisions of subpart B shall not apply to issuance of a temporary suspension order pursuant to section 8(e)(4) of the Act.

§ 308.70 Grounds for removal or prohibition.

(a) *Removal of director or officer.* The Board or its designee may issue and have served upon a director or officer of any insured nonmember bank and on such bank a Notice of intent to remove a director or officer from office when in the opinion of the Board or its designee:

(1) (i) The director or officer has committed any violation of law, rule, regulation, or of a cease-and-desist order which has become final; or has engaged or participated in any unsafe or unsound practice in connection with the bank; or has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as a director or officer;

(ii) The violation, practice, or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or is one which demonstrates the director's or officer's willful or continuing disregard for the safety or soundness of the bank; and

(iii) The bank has suffered or will probably suffer substantial financial loss or other damage, or the interests of its depositors could be seriously prejudiced by reason of such violation, practice, or breach of fiduciary duty, or the director or officer has received financial gain by reason of such violation, practice, or breach of fiduciary duty; or

(2) The director or officer:

(i) Has engaged in conduct or practices with respect to another insured bank or other business institution that resulted in substantial financial loss or other damage;

(ii) Has evidenced either personal dishonesty or a willful or continuing disregard for the safety or soundness of the previously affected institution or of the subject insured bank; and

(iii) Has evidenced unfitness to continue as a director or officer of an insured bank; or

(3) The director or officer has committed any violation of the Depository Institution Management Interlocks Act.

(b) *Prohibition of person who has participated in conduct of bank.* The Board or its designee may issue, and have served upon any person who has participated in the conduct of the affairs of an insured nonmember bank, a Notice of intention to prohibit the individual's further participation in any manner in the conduct of the affairs of the bank when in the opinion of the Board or its designee the individual;

(1) Has engaged in conduct or practices with respect to such bank or other insured bank or other business institution that resulted in substantial financial loss or other damage;

(2) Has evidenced either personal dishonesty or a willful or continuing disregard for the safety or soundness of the previously affected institution or of the subject insured bank; and

(3) Has evidenced unfitness to participate in the conduct of the affairs of an insured bank.

§ 308.71 Notice to state supervisory authority.

The Board or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to this subpart G, and the grounds therefor. The proceeding shall be conducted according to this subpart G unless within the time specified in such notification, the state supervisory authority has effected satisfactory corrective action.

§ 308.72 Effective date of removal or prohibition order.

An order of removal or prohibition issued by the Board after a hearing, and an order of removal or prohibition issued on default, shall become effective at the expiration of thirty days after the service of the order upon the Respondent and the bank. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and

enforceable, except to the extent that they are stayed, modified, terminated, or set aside by the Board or its designee or by a reviewing court.

§ 308.73 Temporary suspension order.

(a) *Issuance.* (1) The Board may suspend from office or prohibit from further participation in the conduct of the affairs of an insured nonmember bank, a director, an officer, or any other person participating in the conduct of the affairs of such bank pending the completion of the proceeding initiated by the Notice issued pursuant to section 8(e)(1)(2) of the Act and section 308.70 of this subpart G when the Board deems the suspension necessary for the protection of the bank or the interests of its depositors.

(2) The temporary suspension order shall be served upon the individual being suspended or prohibited and upon the bank.

(b) *Effective date.* A suspension or prohibition shall become effective when served upon the individual being suspended or prohibited. Unless set aside, limited, or suspended by a court in proceedings authorized by the Act, the temporary suspension order shall remain effective and enforceable pending completion of the administrative proceedings and entry of an order which has become final pursuant to the provisions of section 8(e)(5) of the Act.

(c) *Subpart B does not apply.* The provision of subpart B shall not apply to the issuance of temporary suspension orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

§ 308.74 Scope.

(a) *General rule.* The rules and procedures in this subpart and subpart B shall apply to proceedings to assess and collect civil penalties from:

(1) An insured nonmember bank or its official where the bank or official has violated the terms of any order which has become final and was issued pursuant to section 8(b)(c) or (s) of the Act;

(2) An insured nonmember bank or its official where the bank or official has violated the provisions of section 22(h), 23A, or 23B of the Federal Reserve Act, 12 U.S.C. 375b, 371c, or 371c–1 or any rule or regulation promulgated thereunder;

(3) An insured nonmember bank or its official where the bank or official has violated the provisions of section 106(b)(2) of the Bank Holding Company Act, as amended, 12 U.S.C. 1972(2), or any rule or regulation promulgated thereunder; or

(4) An insured nonmember bank or its official where the bank or official has violated the provisions of Chapter 40 of Title 12 of the United States Code, or any rule, regulation, or order issued thereunder by the FDIC.

(b) *Definition of "has violated".* As used in this subpart, the term "has violated" includes, but is not limited to, any action, alone or with others, for or towards causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 308.75 Assessment of penalties.

(a) *Assessment.* The civil penalty shall be assessed upon service of the Notice of Assessment and shall automatically become final and unappealable unless the Respondent both (1) requests a hearing pursuant to the provisions of § 308.20 and (2) answers the Notice pursuant to the provisions of § 308.21 of subpart B.

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* The Board or its designee may assess upon the bank or official a civil penalty of not more than $1,000 per day for each day the violation of an order or statute specified in § 308.74 of this subpart continues.

§ 308.76 Effective date of, and payment under, an order to pay.

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable sixty days after the Notice is served upon the Respondent.

(2) If the Respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable sixty days after an order to pay, issued after the hearing or upon default, is served upon the Respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

§ 308.77 Scope.

The rules and procedures in this subpart and subpart B shall apply to proceedings by the Board or its designee:

(a) To censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency;

(b) To censure, suspend, or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securities dealer; and

(c) To deny registration to, censure, limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency.

This subpart and subpart B shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

§ 308.78 Grounds for imposition of sanctions.

(a) *Action under section 15(b)(4) of the Securities Exchange Act of 1934.* The Board or its designee may issue and have served upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, or any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, or to censure, suspend, or bar the person from being associated with the municipal securities dealer, when the Board or its designee determines:

(1) That such municipal securities dealer or such person (i) has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o), (ii) has been convicted of any offense specified in section 15(b)(4)(B) of that act within 10 years of commencement of proceedings under this subpart, or (iii) is enjoined from any act, conduct, or practice specified in section 15(b)(4)(C) of that act; and

(2) That is in the public interest to impose any of the sanctions set forth in paragraph (a) of this section.

(b) *Action under sections 17 and 17A of Securities Exchange Act of 1934.* The Board or its designee may issue, and have served upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to deny registration to, censure, place limitations on the activities or functions or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board or its designee determines:

(1) That the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Securities Exchange Act of 1934, as amended, or any applicable rule or regulation issued pursuant thereto; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (b) in this section.

§ 308.79 Notice to and consultation with the Securities and Exchange Commission.

Before initiating any proceedings under § 308.78, the FDIC shall: (a) notify the Securities and Exchange Commission of the identity of the municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action; and (b) consult with the Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

§ 308.80 Effective date of order imposing sanctions.

An order issued by the Board after a hearing or an order issued upon a default shall become effective at the expiration of thirty days after the service of the order, except that an order of censure, denial, or revocation of registration is effective when served. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated, or set aside by the Board, its designee, or a reviewing court, provided that orders of suspension shall continue in effect no longer than twelve months.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

§ 308.81 Scope.

The rules and procedures of this subpart J shall apply to proceedings by the Board or its designee to exempt, in whole or in part, an issuer of securities from the provisions of sections 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78l, 78m, 78n(a), (c) (d) or (f), or to exempt an officer or a director or beneficial owner of securities of such an issuer from the provisions of section 16 of that act, 15 U.S.C. 78p.

§ 308.82 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

§ 308.83 Newspaper notice.

(a) *General rule.* If the Board or its designee, in its sole discretion, decides to further consider an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain (1) the name and address of the issuer and the name and title of the applicant, (2) the exemption sought, (3) a statement that a hearing will be held, and (4) a statement that within thirty days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

§ 308.84 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.83, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than thirty days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

§ 308.85 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the Administrative Procedures Act (5 U.S.C. 554–557), and subpart B shall not apply to hearings under this subpart.

(b) *Hearing procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(3) The proceedings shall be recorded and the transcript shall be promptly submitted to the Board. If the hearing is conducted by a presiding officer other than one or more members of the Board, the presiding officer shall make recommendations to the Board, unless the Board, in its sole discretion, directs otherwise.

§ 308.86 Decision of Board.

Following submission of the hearing transcript to the Board, the Board may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act

§ 308.87 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured bank, any institutions making application to

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become insured banks, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the Act, 12 U.S.C. section 1820(c). Subpart B shall not apply to investigations under this subpart.

§ 308.88 Conduct of investigation.

An investigation conducted pursuant to section 10(c) of the Act shall be initiated only upon issuance of an order by the Board, or by the General Counsel or designee thereof, the Director of the Division of Bank Supervision or designee thereof or the Director of the Division of Liquidation or designee thereof. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

§ 308.89 Powers of person conducting investigation.

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board any instance where any attorney has been guilty of contemptuous conduct. The Board, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

§ 308.90 Investigations confidential.

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in Part 309 of the FDIC's rules and regulations and as otherwise required by law.

§ 308.91 Rights of witnesses.

In an investigation pursuant to section 10(c) of the Act:

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by an attorney who meets the requirements of § 308.08(c). That attorney may be present and may: (1) Advise the witness before, during, and after such testimony; (2) briefly question the witness at the conclusion of such testimony for clarification purposes; and (3) make summary notes during such testimony solely for the use and benefit of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of multiple witnesses, the person conducting the investigation may require the attorney to comply with the provisions of section 308.47(b) of subpart B; and

(e) Witness fees shall be paid in accordance with section 308.16 of subpart B.

§ 308.92 Service of subpoena.

Service of a subpoena shall be accomplished in accordance with section 308.13 of subpart B.

§ 308.93 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, in an investigation pursuant to section 10(c) shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

(b) *Subscription by witness.* The transcript of testimony shall be subscribed by the witness, unless the person conducting the investigation and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the transcript of the testimony is not subscribed by the witness, the official reporter taking the testimony shall certify that the transcript is a true and complete transcript of the testimony.

Subpart L—Reserved

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the Act

§ 308.99 Scope.

The rules and procedures set forth in this subpart shall apply to the application by an insured bank or an individual under section 19 of the Act, 12 U.S.C. 1829, to engage the services of an individual who has been convicted of any criminal offense involving dishonesty or a breach of trust.

§ 308.100 Relevant considerations.

(a) In proceedings under § 308.99 on an application to participate in the conduct of the affairs of a bank, the following shall be considered:

(1) Whether the conviction is for a criminal offense, either misdemeanor or felony, involving dishonesty or breach of trust;

(2) Whether service of the individual in the proposed bank constitutes a threat to the safety or soundness of the bank or the interests of its depositors, or threatens to impair public confidence in the bank;

(3) Evidence of the applicant's rehabilitation;

(4) The position to be held by the applicant;

(5) The amount of influence and control the applicant will be able to exercise over the affairs and operations of the insured bank;

(6) The ability of the management at the bank to supervise and control the activities of the applicant;

(7) The level of ownership which the applicant will have at the insured bank;

(8) Applicable fidelity bond coverage for the applicant;

(9) Additional factors in the specific case that appear relevant.

(b) The question of whether an individual convicted of a crime was guilty of that crime shall not be at issue in a proceeding under this subpart.

§ 308.101 Filing papers and effective date.

(a) *Filing with the Regional Office.* Applications pursuant to section 19 of the Act shall be filed in the appropriate regional office.

(b) *Effective date.* An application pursuant to section 19 of the Act may be made in writing at any time more than three years after the effective date of the conviction of a criminal offense involving dishonesty or a breach of trust. At any time more than one year after the issuance of a decision denying an application pursuant to section 19 of the Act, a new application to participate in the conduct of the affairs of the bank may be made. The removal and/or prohibition pursuant to section 19 of the Act shall continue until the applicant has been reinstated by the Board or its designee for good cause shown.

§ 308.102 Denial of applications.

A denial of an application pursuant to section 19 of the Act shall:

(a) Inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefor and any supporting evidence, may be filed with the Executive Secretary within thirty days after the denial; and

(b) Summarize or cite the relevant considerations specified in § 308.100 of this subpart.

§ 308.103 Hearings.

(a) *Hearing dates.* The Board, or its designee, in its sole discretion, shall determine whether to grant a hearing on the application. If a hearing is granted, the Executive Secretary shall order a hearing to be commenced within sixty days after receipt of a request for hearing on an application filed pursuant to § 308.99(a). Upon the request of the applicant, or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of § 308.08, 308.10, 308.14 and 308.18 of subpart B shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart, the balance of subpart B shall not apply to such hearings.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart M.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with section 308.16 of subpart B.

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board, where possible, within twenty days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board or its designee. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the individual shall remain barred under section 19.

(e) *Decision by Board or its designee.* Within sixty days followig the Executive Secretary's certification of the record to the Board or its designee, the Board or its designee shall notify the affected individual whether the individual shall remain barred under section 19. The notification shall state the basis for any decision of the Board or its designee that is adverse to the applicant.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

§ 308.104 Scope.

The rules and procedures set forth in this section shall apply to the following proceedings:

(a) To suspend any director, officer or other person participating in the conduct of the affairs of an insured state nonmember bank, or to prohibit such individuals from further participation in the conduct of the affairs of the bank, where the individual is charged in any state, federal, or territorial information or indictment, or charged in any complaint authorized by a United States attorney, with the commission of, or participating in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law; or

(b) To remove from office any director, officer, or other person, or to prohibit any person from further participation in the conduct of the affairs of the bank, except with the consent of the Board or its designee, where a judgment of conviction not subject to further appellate review has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law.

§ 308.105 Relevant considerations

(a) In proceedings under § 308.104 (a) and (b) for a suspension, removal or prohibition order, the following shall be considered:

(1) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or federal law, and which involves dishonesty or breach of trust, and

(2) Whether continued service or participation by the individual may pose a threat to the interest of the bank's depositors, or threatens to impair public confidence in the bank.

(3) Additional factors in the specific case that appear relevant to its decision

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to continue in effect, rescind, terminate, or modify a suspension, removal or prohibition order may be considered.

(b) The question of whether an individual charged with a crime is guilty of the crime charged shall not be tried or considered in a proceeding under this subpart.

§ 308.106 Notice of suspension, and orders of removal or prohibition.

(a) *Notice of suspension or prohibition.* (1) The Board or its designee may suspend or prohibit from further participation in the conduct of the affairs of the bank a director, an officer, or other person participating in the conduct of the affairs of the bank by written notice of suspension or prohibition upon a determination by the Board or its designee that the grounds for such suspension or prohibition exist. The written notice of suspension or prohibition shall be served upon the individual and the bank.

(2) The written notice of suspension shall:

(i) Inform the individual that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within thirty days after receipt of the written notice; and

(ii) Summarize or cite to the relevant considerations specified in § 308.105 of this subpart.

(3) The suspension or prohibition shall be effective immediately upon service on the individual, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board or its designee under the provisions of section 308.107 or section 308.108 or otherwise.

(b) *Order of removal or prohibition.*

(1) The Board or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank a director, officer, or other person participating in the conduct of the affairs of the bank, when:

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.104(b); and

(ii) The Board or its designee determines that continued service or participation of the individual may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(2) The order shall be served upon the individual and the bank.

(3) The order shall:

(i) Inform the individual that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within thirty days after receipt of the order; and

(ii) Summarize or cite the relevant considerations specified in § 308.105 of this subpart.

(4) The order shall be effective immediately upon service on the individual, and shall remain in effect until it is terminated by the Board or its designee under the provisions of § 308.107 or § 308.109 or otherwise.

§ 308.107 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within thirty days after receipt of a request for hearing on an application filed pursuant to § 308.106. Upon the request of the applicant, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.08, 308.10, 308.14 and 308.18 of subpart B shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart, the balance of subpart B shall not apply to such hearings.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart N.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.16 of subpart B.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board, where possible, within ten days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect pursuant to § 308.97

(e) *Decision by Board or its designee.* Within sixty days following the Executive Secretary's certification of the record to the Board or its designee, the Board or its designee shall notify the affected individual whether the order of removal or prohibition will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board or its designee that is adverse to the applicant. The Board or its designee shall promptly rescind or modify an order of removal or prohibition where the decision is favorable to the applicant.

Subpart O—[Reserved]

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

§ 308.113 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. section 504), which it implements, apply to adversary adjudications before the FDIC. The types of adjudication covered by this subpart are those listed in § 308.04 of subpart B. Subpart B does not apply to any proceedings to recover fees and expenses under this subpart.

§ 308.114 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding within thirty days after service of the final order of the Board in disposition of the proceeding.

(b) *Content.* The application and related documents shall conform to the requirements of § 308.12 of subpart B.

(c) *Service.* The application and related documents shall be served on all parties to the adversary adjudication in accordance with § 308.13 of subpart B, except that statements of net worth shall be served only on counsel for the FDIC.

(d) Upon receipt of an application, the Executive Secretary shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Executive Secretary determines, in his or her sole discretion, that there is cause to refer the matter to a different administrative law judge, the matter shall be referred to a different administrative law judge.

§ 308.115 Responses to application.

(a) *By FDIC.* (1) Within twenty days after service of an application, counsel for the FDIC may file with the Executive Secretary and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or files a statement of intent to negotiate under § 308.110 of this subpart, failure to file an answer within the twenty-day period will be treated as a consent to the award requested.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the FDIC's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 308.111.

(b) *Reply to answer.* The applicant may file a reply if the FDIC has addressed in its answer any of the following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within fifteen days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.111.

(c) *By other parties.* Any party to the adversary adjudication, other than the applicant and the FDIC, may file comments on an application within twenty days after service of the application. If the applicant is entitled to file a reply to the FDIC's answer under paragraph (b) of this section, another party may file comments on the answer within fifteen days after service of the answer. A commenting party may not participate in any further proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

(d) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 308.116 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in paragraph (b) of this section.

(b) *Types of eligible applicant.* The types of eligible applicant are:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated.

(c) *Factors to be considered.* In determining the types of eligible applicant:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevails are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a bank shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the adversary adjudication.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary adjudication was initiated. Part-time employees are included as though they were full-time employees.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are (i) individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant, and (ii) corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares.

The Board may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

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§ 308.117 Prevailing party.

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding, is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.105 if proration were not performed. Whether separate or prorated treatment is appropriate, the appropriate proration percentage shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 308.118 Standards for awards.

A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

§ 308.119 Measure of awards.

(a) *General rule.* Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate, provided that no award under this subpart for the fee of an attorney or agent may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 308.120 Application for awards.

(a) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) A statement of the amount of fees and expenses for which an award is sought;

(4) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(5) A description of any affiliated individuals or entities, as defined in § 308.103(c)(5), or a statement that none exist;

(6) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.103(b) as of the date the proceeding was initiated; and

(7) Any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

(b) *Verification.* The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

§ 308.121 Statement of net worth.

(a) *General rule.* A statement of net worth must be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant.

(b) *Contents.* (1) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable unless the administrative law judge or the Board otherwise requires. Financial statements or reports to a Federal or State agency, prepared before the initiation of the adversary adjudication for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.103(c)(2). Assets and liabilities of individuals shall include those beneficially owned within the meaning of the FDIC's rules and regulations.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. In all cases the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation

of the proceeding. Except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board or required by law, the statement of net worth shall be for the confidential use of counsel for the FDIC, the Board, and the administrative law judge.

§ 308.122 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 308.123 Settlement negotiations.

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.102 for an additional twenty days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

§ 308.124 Further proceedings.

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 308.125 Recommended decision.

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than ninety days after the filing of the application or thirty days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 308.126 Board action.

(a) *Exceptions to recommended decision.* Within twenty days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board.* The Board shall render its decision within sixty days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 308.127 Payment of awards.

An applicant seeking payment of an award made by the Board shall submit to the Executive Secretary a statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within thirty days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of November 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–27882 Filed 12–21–88; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 704

Comprehensive Assessment Information Rule; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82013C; FRL-3368-1]

Comprehensive Assessment Information Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a standard approach to gathering information on the manufacture, importation, and processing of chemical substances and mixtures under section 8(a) of the Toxic Substances Control Act (TSCA). This standard approach, or model rule, titled the Comprehensive Assessment Information Rule (CAIR), establishes uniform reporting and recordkeeping requirements and a list of questions from which specific information requirements will be assembled on a substance-by-substance basis. This rule will be used to obtain information needed by EPA and other Federal agencies to support the assessment and regulation of chemical substances and mixtures. EPA is also establishing specific reporting requirements for 19 substances at this time. Future additions of substances will be made through amendments to this rule announced in the **Federal Register**.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on January 5, 1989. This rule shall become effective on February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460. Telephone: (202) 554–1404. Hearing Impaired: TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: In this rulemaking, EPA is establishing a standard approach to gathering information on the manufacture, importation, and processing of substances. This standard approach, or model rule, is called the Comprehensive Assessment Information Rule (CAIR). It establishes uniform reporting and recordkeeping requirements that can be adapted to specific substances and a standardized reporting form. This rule will reduce duplicative reporting by industry and conserve EPA resources.

Public reporting burden for this collection of information is presented in chart form in Unit XII.C. of this preamble. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. To locate a respondent's burden estimate on the chart, identify the substance's Chemical Abstract Service (CAS) Registry Number and the respondent category for which the report is being submitted, and locate the corresponding range. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

I. Authority

Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes the Administrator of EPA to promulgate rules that require manufacturers, importers, and processors of chemical substances and mixtures (referred to hereafter as substances or chemical substances) to maintain records and submit information on such substances as the Administrator may reasonably require. Failure to comply fully with any provision of a section 8(a) rule is a violation of section 15 of TSCA and subjects the violator to penalties under TSCA sections 16 and 17.

II. Background

A. Proposed Rule

The proposed rule was published in the **Federal Register** of October 7, 1986 (51 FR 35762). Recognizing the wide scope of this rule and the comment period overlap with another major reporting rule, the Agency extended the comment period for an additional 60 days (for a total of 150 days) to allow sufficient time for thoughtful comment.

Extensive comments were received from the public during this time period. A brief discussion of these comments and the changes made to the rule in response to these comments is found in each section of the preamble that addresses that particular aspect of the rule.

The Agency has also prepared a more detailed discussion of the comments and EPA responses in a document titled "Response to Comments" that is in the public record for this rule. Also included in this record are the results of a pre-test of the reporting form conducted by the Agency during the comment period.

B. Description of Rule

The CAIR has generic reporting and recordkeeping requirements and a standard list of questions. The main objective of the CAIR is to obtain necessary information in a timely fashion while conserving industry and EPA resources. The CAIR will accomplish this objective by: (1) reducing duplicative reporting by industry, (2) reducing familiarization time for industry responding to reporting requirements, and (3) reducing Agency resources needed to develop information-gathering rules and process the data reported.

It is EPA's intention to amend the CAIR from time-to-time through regular notice and comment rulemaking for purposes of adding substances to the rule. Unless absolutely necessary, no other changes will be made to the regulatory text or the CAIR form. Amendments will identify the substances for which there is an information need, the information requested, the retrospective period covered by the rule, and the categories of persons who must provide the information. Only those questions and reporting requirements listed in the amendments must be complied with. For example, EPA may require manufacturers and processors of substance "X" to respond to all of the questions in Section 1 plus questions 2.03, 3.05, and 4.05 in the reporting form, while manufacturers and processors of substance "Y" might be required to answer all of the questions in Section 1 plus questions 2.03, 5.06, 7.03, and 7.05. Hereafter, when discussing amendments to the CAIR, the Agency is referring to amendments that will add chemical substances to the rule but not alter any other parts of the regulatory text, unless otherwise stated.

C. Intent of Rule

EPA is promulgating the CAIR as an improved method for gathering and maintaining information on substances relevant to chemical risk identification, all stages of risk assessment, and control action functions. By using a uniform format and set of questions, both EPA and industry can reduce time and resources usually associated with the varying formats of traditional chemical-specific rules. In the same way, errors in reporting and interpretations of the type of data being requested can be reduced through experience with a model rule. The standardized format proposed in the CAIR will allow EPA to have a single data base for easy storage and retrieval,

and will allow industry the same benefit.

Generally, regulatory agencies gather information to support the assessment and management of chemical risks through a lengthy and costly process. First, an agency determines that a particular substance under certain circumstances may present a risk to health or the environment. The agency then gathers readily available information about that substance to determine possible courses of action. This information may support a determination that regulatory action is appropriate, but precise information is usually needed to determine whether and to what degree regulation is required. Since this information is held by chemical substance manufacturers, importers, and processors and is not publicly available, the agency must use its statutory authority to gather the information.

This requires that the agency draft and issue a proposed rule, review public comments, draft and issue a final rule, and establish and maintain a data base on the reported information. During this time the agency must either delay taking risk management action or take action without complete information. Because each information-gathering rule usually has unique reporting requirements, the agency also has to respond to numerous questions following each new rule's promulgation.

Information-gathering rules may also be costly to the companies submitting the information. For each proposed rule, potential respondents review the requirements and, if necessary, submit comments. Following promulgation, the companies familiarize themselves with the final reporting requirements, locate the information in company files, complete the reporting forms, and submit them to the agency.

EPA's experience with model rules has shown that model rules offer several advantages for both EPA and respondents. For EPA, the advantages are: (1) the time to promulgate an amendment that adds chemical substances to a model rule is one-quarter to one-third the time needed to publish a chemical-specific rule; (2) Agency review can concentrate on the need for information and the information request since reporting and recordkeeping requirements are standardized; (3) more efficient handling and review of completed forms due to standardization; and (4) a single, universally accessible data base is possible for storage and retrieval of information.

For respondents, model rules offer the advantage of certainty. No matter the substance, many of a respondent's reporting and recordkeeping obligations are standardized, including the use of the same reporting form. This reduces familiarization time and reporting costs. Also, EPA's experience with a model rule has shown that as respondents repeatedly use a form, correct errors, and resubmit the form, significantly fewer errors occur. Thus, with model rules, the cost to respondents of resubmitting reporting forms is reduced. It also ensures that the Agency can access a complete and accurate data base more quickly, rather than waiting for corrections to be made.

D. The CAIR and Other Section 8(a) Model Rules

EPA designed this rule by building on its experience with two existing section 8(a) regulations: the TSCA Inventory Update Rule (IUR) (40 CFR Part 710, Subpart B; 51 FR 21438; June 12, 1986) and the Preliminary Assessment Information Rule (PAIR) (40 CFR Part 712; 47 FR 26992; June 22, 1982). The TSCA IUR requires manufacturers and importers of certain chemical substances to provide EPA with basic identification, production, and site-limited status information every 4 years. Questions requesting the same information have been added to Section 1 of the CAIR reporting form and would be answered by persons subject to the CAIR. EPA has included an exemption in the IUR to ensure that a company reporting for the CAIR would not have to report for the IUR (40 CFR 710.35). Under this exemption, persons who must report for the CAIR are not required to submit subsequent IUR reports so long as the CAIR reporting occurred no more than 1 year prior to the period for which IUR reporting is required.

The Agency also designed the CAIR reporting form to include questions similar to those in the PAIR. Three basic differences exist between the PAIR and the CAIR: (1) only manufacturers and importers are subject to the PAIR, whereas processors are also potentially subject to the CAIR; (2) under the PAIR, respondents are required to answer every question in the PAIR (EPA Form 7710–35), whereas the CAIR lists only the specific questions (from the entire form) that must be answered; and (3) whereas the PAIR form contains only basic questions on production, use, and exposure that can support preliminary assessments of chemical substances, the CAIR includes more detailed information designed to support all stages of assessments.

Substances are added to the PAIR by (1) notice and comment rulemaking or (2) adding a substance to the rule automatically without notice and comment and requiring reporting within 90 days. Only substances identified by the Interagency Testing Committee (ITC) under TSCA section 4(e) are added automatically.

Under the CAIR, any EPA program office requesting basic PAIR-type information on a substance can use the CAIR to gather this information. Such additions of substances will be made through regular notice and comment rulemaking. The Agency is planning to amend the CAIR, at some future date, to add the ITC automatic reporting provisions. EPA will at that time withdraw the PAIR. However, until that time, ITC identified substances will continue to be added to the PAIR.

Although not issued under the authority of TSCA section 8(a), the Superfund Amendments and Reauthorization Act (SARA) Title III, section 313 rule which was published in the **Federal Register** of February 16, 1988 (53 FR 4500), has some similarities to the CAIR. Like the CAIR, the SARA section 313 rule requires manufacturers, importers, and processors to report exposure-related information on listed substances. Unlike the CAIR, SARA section 313 requires annual reporting on every substance listed in the rule unless a substance is removed from the rule. To minimize the burden on companies that may have to report for both rules, EPA has purposely staggered the reporting periods for the first round of reporting and will seek ways to minimize reporting overlap in the future. Further, any substance listed on the SARA section 313 rule and also on the CAIR, will not be subject to duplicative reporting. That is, those questions on the CAIR that directly overlap questions on the SARA section 313 rule will not be asked under the CAIR for any substances that are on both rules. Data received on those substances which are on both rules will be shared between EPA's Office of Toxic Substances (OTS) and EPA's Office of Solid Waste and Emergency Response (OSWER), as well as EPA's Office of Air and Radiation and Office of Water.

Also, if EPA has collected accidental release information under the Agency's Accidental Release Information Program on a substance being considered for the CAIR, questions which are duplicative of or similar to that information will not be asked under the CAIR. In addition, EPA will consider whether the information requested, if not already available, could be gathered more efficiently or accurately under the

Accidental Release Information Program than under the CAIR.

III. The Final Rule

A. An Overview

To be consistent between other TSCA section 8(a) rules and the CAIR, EPA consolidated and incorporated many requirements found in other parts of the CFR into Part 704. Part 704 provides the framework for all section 8(a) rules and is amended as follows: The current general provisions for all TSCA section 8(a) rules apply to all section 8(a) chemical-specific rules and, unless otherwise stated, to the CAIR. Subpart A of Part 704 contains the general reporting and recordkeeping provisions. Subpart B lists chemical-specific section 8(a) rules. The regulatory text that specifies the general provisions of the CAIR is located in Subpart C, and Subpart D contains the reporting period deadlines and a matrix that lists the substances for which there is an information need, the information requested for each substance, the period covered by the rule, the persons who must provide the information, exemptions added or removed, and the effective date of the final rule.

The sub-units under Unit B below correspond to the requirements in the CAIR matrix (Subpart D of the rule). Each sub-unit describes a requirement in the rule, and the last subunit explains how these requirements are listed in the matrix. Directions for obtaining the CAIR reporting form and instructions are given in Unit F.

B. Reporting Requirements

1. Who Must Report

For the 19 substances listed in this final rule, and whenever EPA adds a substance to the rule, the Agency states who is required to report on each substance (manufacturers, importers, and/or processors) and which previous years are covered by the rule. Manufacturing activities are all those activities at one site which are necessary to produce a listed substance and make it ready for sale or use as the listed substance, including purifying and importing a substance. Processing activities, on the other hand, include (1) use of a listed substance after its manufacture to make another substance for sale or use, (2) repackaging of the listed substance, or (3) purchasing and preparing the listed substance for use or distribution in commerce. Therefore, under the CAIR, all of the steps involved in making a CAIR listed substance, including adding stabilizers and additives, which are necessary to get the substance "out the door" or ready for use, are considered part of manufacturing.

Persons who are required to report must answer the CAIR reporting form questions only for the activity that is designated in the rule. For instance, if EPA were to require manufacturers of a substance to report, then a person who both manufactures and processes the substance would not have to answer the CAIR questions for both activities, only for the manufacturing activity; however, if both were required, the company would report on both activities using the same form.

For some of these listed substances, EPA is requiring processors other than the original manufacturer or importer to report. However, since many manufacturers, importers, and processors market the listed substances to these "customers" under names other than a systematic or easily recognizable chemical name (i.e., the substances are sold under trade names), persons who buy *and* process the substance under a trade name may not realize that the substance is listed on the CAIR and that they are required to report. Under the CAIR, EPA considered two approaches for gathering information from customers who process a listed substance. The first approach was to list the substances in the **Federal Register** by chemical name and require all processors of certain substances to report. Under this option, however, the Agency would expect to receive reports from only those persons who know or can reasonably ascertain that they are processing the listed substance. EPA has therefore chosen to adopt the second approach.

This reporting/notification mechanism, listed in § 704.208 of the CAIR, requires those persons who manufacture, import, or process a listed substance and distribute that substance under a trade name, to do one of three things: report for their customers who process the listed substance; notify their customers that the trade name substance is listed by EPA and that the customers must meet EPA reporting requirements; or provide EPA with the trade name.

Persons may report for their customers who process a listed substance only if they can supply the requested information. Such reporting is due no later than the reporting period deadline for that substance listed in § 704.223(a). All reporting requirements that apply to a customer who processes the listed substance would then apply to the person submitting the report on behalf of the customer. Such persons are liable for information they report incorrectly on their customers' activities just as the customers would be for reporting incorrectly on their own activities. Persons who sell a listed substance under a trade name and who are either unable to report for their customers or who choose not to do so are required to comply with one of the other options.

Manufacturers, importers, or processors may choose to notify, in writing, their customers who are subject to reporting and inform them of the specific section in Subpart D that identifies the substance and the processor reporting requirements. The customers who process the substance prior to the effective date of the listing of the substance must be notified by certified mail no later than 30 days after the effective date of the listing of the substance. The customers must then report to EPA within the time period specified in § 704.223(b) of the receipt of the notification. Persons who notify their customers of their reporting obligation must also inform them of the date such reporting is due, and the citation of the **Federal Register** that promulgated the reporting requirements on the listed substance.

Manufacturers, importers, or processors who do not wish to report for their customers or notify them of their reporting obligations must, by 1 day after the effective date of the rule listing the substances, submit their trade names to EPA (to the same address as the reporting forms). These submissions must contain, at a minimum, the company's name and address, the address and telephone number of the company's technical contact, the chemical name and CAS number of the substance as listed in the rule, and the trade names under which the substance is marketed. The submitter must indicate that the submission is in response to a CAIR **Federal Register** notice.

Once the trade names are received, EPA will issue a technical amendment adding the trade names to the final rule. This amendment will be published in the **Federal Register** within 4 weeks after the rule has become effective, and the processors of these trade name substances would then have to submit their reports by the deadline specified in the reporting period for that amendment.

The following diagram graphically depicts the reporting schedule for each of the three customer reporting/notification options. Since the reporting period for the substances listed in this final rule is 90 days from the effective date of the final rule, the 90-day period is used in the example. Future amendments may have different reporting periods.

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SCHEDULES FOR CUSTOMER REPORTING/NOTIFICATION OPTIONS

(1) Persons Who Choose To Report For Their Customers:

Publication Date	Effective Date	Reports Due
		90 Days

(2) Persons Who Choose to Notify Their Customers:

Publication Date	Effective Date	Notify Customers	Customers Report
		30 Days	90 Days

(3) Persons Who Choose To Submit Trade Names To EPA:

Publication Date	Submit Trade Names	EPA Publishes Trade Names	Customers Report
	Effective Date + 1 day	4 Weeks	90 Days

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In the proposed CAIR, EPA requested comments on this customer reporting/notification mechanism and suggestions for alternate information gathering approaches. No substantive suggestions for an alternative mechanism were received. Therefore, the Agency will use the scheme as proposed. To minimize the burden of this requirement, the Agency has extended the time period for notifying customers for those persons who choose this option. The proposed rule had set a 10-day time limit; this final rule extends the period to 30 days. EPA will reevaluate this provision and may reduce or further extend the 30-day period for subsequent CAIR iterations.

Persons who choose the customer notification option, but who cannot meet the deadline, may request an extension of time. Extension requests must be in writing, justify the need for the extension, and be postmarked no less than 5 days prior to the notification deadline.

Some commenters to the proposed rule suggested that the definition of "customer" was too broad in that it includes disposal facilities and persons who purchase articles. These commenters felt that such persons should not be included under the CAIR and that manufacturers and processors should not be responsible for notifying them or reporting for them. The Agency has decided to leave the definition as proposed. Since persons who import or process a listed substance as part of an article are exempt from this rule, the persons who sell these articles are not responsible for notifying their customers who process the articles.

The Agency does not agree that persons who operate disposal facilities should be excluded from CAIR reporting; processing of the listed substances at a disposal facility can present a significant potential for exposure about which EPA or other agencies may require information.

2. Exemptions From Reporting

Persons who manufacture, import, or process a listed substance are subject to this rule unless they meet one or more of the standard exemptions set forth in §§ 704.5 or 704.210. The following persons are exempt, unless the exemption is made inapplicable on a substance-by-substance basis: (1) small manufacturers (total annual parent sales are less than 40 million dollars and the company manufactures less than 100,000 pounds at a plant site, or total annual parent company sales less than 4 million dollars); (2) processors and importers of articles; (3) manufacturers, importers, and processors of substances that are manufactured, imported, or processed solely as impurities or byproducts; (4) manufacturers, importers, and processors of research and development substances; and (5) manufacturers of nonisolated intermediates. Whenever EPA intends to change any or all of these exemptions for reporting on a particular substance, the Agency will use notice and comment rulemaking and the change in the exemption will be noted in the matrix in Subpart D of the CAIR. Two new exemptions, which are discussed below, have been added to § 704.210 in Subpart C.

EPA, under the CAIR, is requiring processors to report; however, processors who are either small or are solely repackagers would be exempt from reporting. A processor is exempt if (a) total annual parent company sales are less than 40 million dollars and the company processes less than 100,000 pounds of a listed substance at a plant site; or (b) if a processor has total annual parent company sales of less than 4 million dollars. These sales and volume limits are the same limits EPA uses to define small manufacturers. Like the small manufacturer exemption, EPA intends to revise the sales figures periodically based on the Producer Price Index for Chemicals and Allied Products.

The small processor exemption uses the same size limitations as the small manufacturer exemption because: (1) in the aggregate, for the chemical industry in general, the sales and quantities produced or processed are approximately the same for manufacturers and processors, and (2) many manufacturers are also processors and therefore are potentially subject to CAIR reporting for either or both activities. Consistent standards for both will result in an insignificant information loss and will minimize confusion for respondents.

EPA is also exempting processors who are solely repackagers. A repackager is defined as a person who buys a listed substance or mixture, removes the substance or mixture from the container in which it was bought, and transfers this substance, as is, to another container for sale. The Agency has determined that requiring such reporting would greatly expand the scope of CAIR (i.e., the number of persons who must report) without significantly adding to the quality of the data reported. Persons who engage in processing activities other than repackaging must report. Moreover, since repackagers, by definition, are preparing a substance for further use, those persons who buy the repackaged substance and process it further will still be required to report, unless they are users of the substance. Thus, EPA, in most cases, will be able to track a substance through commerce, even if repackagers do not report. The Agency will re-evaluate this exemption in the future to determine whether it excessively limits the reporting of significant data.

If any of the exemptions stated above are changed in the rule for a particular listed substance, the Agency will indicate this by listing the exemption citation in the matrix and preceding it with a minus sign (e.g., "—§ 704.210"). Exemptions that are added for the first time to the CAIR will be listed in the matrix next to the substances to which they apply and will be indicated by the citation preceded with a plus sign.

3. Coverage Period

As with the other requirements described in Unit III.B. of the preamble, the dates when a company was engaged in manufacturing, importing, or processing a CAIR listed substance will help determine whether the company has to report or not. The dates must be during a complete corporate year that occurred during the "coverage period" identified with each substance in Subpart D. The coverage period is a time span that is 1 day less than 2 years; thus, no company can have more than one complete corporate year in any one coverage period.

An example of how the coverage period works is as follows. EPA issues a CAIR amendment with an effective date of November 7, 1989; the rule requires manufacturers of chemical A to report. The coverge period is from November 8, 1987 to November 6, 1989. If a company has a corporate year from January 1 to December 31 and begins manufacturing chemical A on May 27, 1989, the company does not have to report. Even though the company was making the CAIR substance during the coverage period, no manufacturing activity occurred during the complete corporate fiscal year which falls within the coverage period (January 1, 1988 to December 31, 1988).

With each substance added to the CAIR, EPA will identify one or more coverage periods. When more than one coverage period is identified with a substance, the most recent coverage period will be listed first, the next most recent second, etc. The most recent coverage period loosely corresponds to what EPA called "current reporting" in the proposal; the other periods were called "past reporting." Many commenters to the proposed rule stated

that requiring reporting on activities that occurred in past years (i.e., past reporting) would be difficult for some companies since (1) they may have gone out of business, and (2) personnel who were engaged in these activities and files on these activities may no longer be available.

EPA has decided to continue its requirement as proposed, although in a different format for coverage periods. Although EPA will continue to require reporting on some substances with past coverage periods, persons subject to these past requirements would only be responsible for completing Section 1 of the CAIR reporting form; however, any question on the CAIR form may be asked for *current* coverage periods. Further, companies that were engaged in reportable activities for more than one coverage period, would only be required to report for the most recent coverage period. In addition, EPA will include no more than two past coverage periods, plus the current coverage period, for any one substance, thereby minimizing the burden on companies subject to past or multiple coverage periods.

The Agency decided to keep some past reporting in the CAIR since if all such reporting were eliminated, batch manufacturers that did not produce a listed substance during the current coverage period would not be required to report, and the degree of past exposure would be underestimated.

For the purposes of the CAIR, EPA requires reporting only if persons currently manufacture or process chemical substances for commercial purposes. Thus, companies that manufactured or processed a listed substance in the past, but who are not manufacturing or processing *any* chemical substances as of the effective date of the rule or rule amendment listing a substance, are not subject to reporting. Companies that are subject to the rule who engaged in reportable activities only during a past coverage period are to report only that information known to them or reasonably ascertainable by them. Thus, some companies that cannot reconstruct data for past reporting can state that the data are unknown.

In the proposed rule EPA included requirements not only for activities that occurred in the past but also for activities that may occur in the future. Many commenters questioned the Agency's ability to determine now what its information needs will be in the future. Further, they argued that EPA should first review the data submitted during the initial reporting period before requiring subsequent reporting. The Agency agrees. EPA will wait to propose subsequent reporting until after initial reporting requirements are received and reviewed. If subsequent reporting is deemed necessary, EPA will propose and promulgate these requirements.

The Agency believes that waiting to issue additional reporting requirements until initial data have been submitted will be beneficial to all parties. Under the proposed approach, many years may have elapsed between the proposal of additional reporting requirements and the date when actual reporting is required. For example, some substances in the October 7, 1986, proposal had +5 designations. This means that if the effective date for initial reporting was October 1, 1988, future reporting would not be due until 90 days after October 1, 1993. During the period between the proposed and final rule, new information may become available to the Agency or the public that might lessen or eliminate the need for the CAIR data.

4. Question Selection

The question selection section of the rule specifies which questions from the CAIR reporting from must be answered for specific substances. Each person subject to the rule need only answer those questions designated for his or her substance.

The question selection requirement will always include Section 1 of the reporting form. Other questions and sections of the form will be requested on an as-needed basis. These requirements will be listed in the CAIR matrix by the section or question number from the CAIR reporting form. Whenever the question selection lists a section in the CAIR form, each person subject to that requirement must answer all parts of that section. A question selection listing might be as follows: 1, 2 all, 3 all, 4.01, 4.05, 5 all. The 1, 2 all, 3 all, and 5 all, refer to entire sections of the CAIR form; the 4.01 and 4.05 refer to specific questions in Section 4 of the form.

5. Reporting Period

All persons subject to the rule must report no later than the dates specified in § 704.223(a) of Subpart D of this rule. Processors who are notified of their reporting obligation by their chemical suppliers must report within the time period identified in § 704.223(b).

Persons who cannot meet a reporting deadline can request a reasonable extension. These requests must be in writing with a justification for the extension request, and they must be received by EPA within: 30 days after the effective date listing the substance or 30 days after receiving notice from a chemical supplier of the processor reporting obligations.

Some commenters suggested that EPA provide longer reporting periods because the CAIR reporting period could overlap with that of section 313 of SARA. Since the CAIR becomes effective after the close of the first section 313 reporting, no overlap exists.

Other commenters requested more time to report than the 60 days proposed for this rule because of the resource intensive nature of CAIR reporting. The Agency has considered the comments received on the length of the reporting period and has decided to set a 90-day response period for the substances listed in today's rule. Since the 90-day response period starts when the rule becomes effective, and the rule is not effective until 44 days after today's **Federal Register** publication date, respondents will have several months to prepare their CAIR reports. However, if necessary, the Agency may require a shorter response period (e.g., 60 days) in some cases in the future. The reporting period for each CAIR amendment will be specified in the paragraph preceding the CAIR matrix (§ 704.223).

6. Use of the CAIR Matrix

The CAIR matrix in Subpart D of this rule lists all of the reporting requirements and any changes to the standard CAIR exemptions that may apply to each listed substance. The matrix lists substances, persons who must report, exemption modifications, coverage period, questions selected for reporting, and the effective date. The following sample matrix was developed to illustrate how the matrix in Subpart D works.

SAMPLE MATRIX

CAS No. and chemical name	Who must report	Exemptions added (+), removed (−)	Coverage period	Questions selected	Effective date
56-78-9 Chemical A	M, X/P, I, P		5/4/86 to 5/2/88	1, 2.01, 2.11, 2.12, 3.04, 4 all, 6.03, 7.01, 8.01.	5/3/88
	M		5/4/85 to 5/2/87	1	5/3/88
62-23-5 Chemical B	M, I		5/4/86 to 5/2/88	1, 2.01, 2.04 thru 2.06, 9.04 thru 9.07, 10.06.	5/3/88

M = Each Person Who Manufactured the Substance for Commercial Purposes
I = Each Person Who Imported the Substance for Commercial Purposes.
P = Each Person Who Processed the Substance for Commercial Purposes.
X/P = Each Person Who Manufactured, Imported, or Processed the Substance for Commercial Purposes and Distributed the Substance under a Trade Name

As one can see from this matrix, each of the four reporting requirements is a column heading. The other column headings are the identification for the listed substance (CAS Number and Chemical Name), and the effective date of the final rule listing the substance. The first step potential respondents should take is to look at the chemical list. If they have not manufactured, imported, or processed any of the listed substances during the previous 3 complete corporate fiscal years, they do not have to report for the CAIR. If, on the other hand, they have engaged in one of those activities, they must read further.

The first variable that excludes a company from CAIR reporting means that company is not subject to reporting on that substance. For example, if a company processes a listed substance, but upon reading column 2 learns that only manufacturers and importers are required to report, that company is not subject to reporting on that substance.

The coverage period is the last variable that determines whether a company must report or not. The company would determine the complete corporate fiscal year which falls within each coverage period identified in the matrix and whether it engaged in a subject activity during each coverage period. The company would then report for the most recent complete corporate fiscal year during which it engaged in a subject activity. If the company did not engage in a subject activity during any coverage period, it need not report under the CAIR. For example, using the sample matrix, suppose a company has its corporate fiscal year from January 1 through December 31, and manufactured Chemical A from August 13, 1986 to May 27, 1987. The company's complete corporate fiscal year which falls within the coverage period (May 2, 1986–April 30, 1988) was January 1, 1987 to December 31, 1987. The company must therefore report as a manufacturer of Chemical A from January 1, 1987 to May 27, 1987. For this activity the company is responsible for the reporting requirements in the next column (1, 2.01, 2.11, 2.12, etc.). Even though the company also manufactured Chemical A in a past coverage period (May 2, 1985 to April 30, 1987), the company does not need to report its activity during that period. A company need only report for the most recent reporting year applicable to them.

C. Levels of Effort

In response to the many questions and comments received on the four "levels of effort" set forth in the proposed rule, and a concern for lessening the burden placed on the reporting public, EPA is eliminating the "levels of effort" requirement and will require persons to report information that is "known to or reasonably ascertainable by" them as defined in § 704.3. The "levels of effort" concept was conceived by the Agency to spell out more specifically what level of effort companies would need to meet their reporting obligation. However, some commenters stated that this scheme was less clear than the "known to or reasonably ascertainable by" standard used in previous rules. Thus, the latter standard has been adopted for this rule.

D. Recordkeeping

Under § 704.11, persons subject to the requirements of the rule must retain: a copy of each report submitted, supporting materials sufficient to verify or reconstruct the report, and a copy of all notices sent to customers who are required to report, with return receipt cards. The report submitted to EPA and its supporting material must be retained for a period of 3 years from the date of the submission of the report. Notices submitted to customers, including return receipt cards, must be retained 3 years from the date they were sent to the customers.

Some commenters stated that requiring records to be kept more than 2 years would place a severe burden on many companies. Further, the records that must be kept, (as set forth in the proposed rule in § 704.11(b)—"all supporting material and documentation used by the person to complete each report") were viewed by the commenters as too inclusive and resource intensive to maintain.

EPA has reviewed the typical schedules for compliance inspections to determine the appropriate length of time CAIR records must be retained so that they will be available during an inspection. Based on this analysis, the Agency has determined that a period of 3 years is necessary. However, the Agency has revised § 704.11 to specify the retention only of those records mentioned in the first paragraph of this Unit.

E. Confidentiality

Section 14(a) of TSCA allows a person who submits information to EPA to assert a claim of confidentiality, if release of the information would reveal trade secrets or confidential commercial or financial information. Under the CAIR, claims of confidentiality can be asserted only at the time information is submitted and only in the manner specified in § 704.219. Detailed instructions and a substantiation form for asserting and substantiating confidentiality claims under this rule are contained in Appendix II of the CAIR Form. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR part 2, Subpart B.

Any submitter who claims information on a submission as confidential is required to provide two copies of the submission: a complete copy of the form, including all information claimed as confidential, and a "sanitized" copy from which all confidential information has been

deleted. EPA will place the submitter's sanitized copy in the public file.

The rule requires submitters to substantiate all confidentiality claims by answering questions contained in Appendix II of the CAIR form. Rather than providing a separate substantiation for each reporting item claimed as confidential, submitters may organize the claimed information into categories, (e.g., production volume or submitter identity) and submit a single substantiation for each category. In addition to answering questions pertaining to the individual categories, submitters are required to answer questions pertaining to all confidentiality claims asserted.

As is detailed in the instructions in Appendix II of the CAIR Form, each question is claimed as confidential by identifying the appropriate category of confidentiality. Only those categories identified as confidential by submitters have to be substantiated. The substantiation questions outline the analytic process the submitters should go through before asserting a claim of confidentiality, helping the submitter to focus on relevant issues.

Commenters have stated that this requirement is burdensome, and that the effort required to complete reporting forms and the accompanying substantiation would be laborious. EPA recognizes the effort necessary for reporting but does not find the burden onerous and therefore has not altered the requirement. EPA requires up-front substantiation of only the six categories of confidentiality claims rather than separate substantiation for each and every reporting item. This will minimize the reporting requirement while providing adequate substantiation.

Commenters questioned the validity of requiring up-front substantiation of confidentiality claims. Commenters stated that TSCA section 14(c)(1) contains no authority for requiring up-front substantiation of confidentiality claims. Section 14(c)(1) allows submitters to designate data as confidential and provides for separate submission of such data. While section 14(c)(1) does not specify substantiation, it does provide for designation of claims in writing and "in such manner as the Administrator may prescribe," contemplating requirements involving more than just an assertion of a claim. EPA is committed to the public disclosure of as much nonconfidential information collected under the rule as possible. Requiring up-front substantiation of confidentiality claims and continued close scrutiny of such claims through the established claim review process will ensure that as much information as possible is releasable. Public interest in the information generated by this rule justifies this approach. Up-front substantiation obviates the need for follow-up substantiation by submitters resulting from EPA review or Freedom of Information Act requests.

If a company fails to submit a sanitized copy of its submission, EPA will notify the company by registered mail. The respondent will have 30 days from the date of receipt of the notice letter to submit the required second copy. If the Agency does not receive the requested sanitized version, EPA will place the confidential copy of the submission in the public file on the 31st day after the submitter's receipt of EPA's letter. If no claim of confidentiality accompanies a document or the claim is unaccompanied by the required substantiation at the time it is submitted to EPA, the company will be notified that the unsanitized copy will be placed in the public file.

EPA will attempt to provide the public with sufficient and informative access to information collected under this rule while protecting submitters' valid proprietary interests. This will be accomplished by: (1) disclosing to the public all reported information not claimed as confidential; and (2) releasing nonconfidential aggregates of confidential information when possible.

The proposed rule specified that the sanitized copy of a confidential submission provide "generic" information for each item claimed confidential. Commenters on the proposed rule expressed concern over the practicality of a generic information requirement, pointing out the difficulty of devising generic descriptions of confidential data that would be meaningful to the public without revealing sensitive information. EPA agrees that the difficulties of such reporting are considerable and outweigh the limited usefulness of generic information. EPA has dropped this requirement.

Commenters also expressed concern over the potential for releasing confidential business information (CBI) when sharing information obtained under CAIR within EPA and with other Federal agencies. EPA's security procedures under TSCA have adequately protected against release of confidential material during the Agency's 10-year administration of TSCA. All confidential data collected under the rule are subject to the requirements of the TSCA Confidential Business Information Security Manual and EPA's regulations at 40 CFR Part 2, Subpart B. EPA is also working with the participating agencies and will ensure that proper physical and procedural security plans are in place to protect confidential information collected under the rule. Also, before any transfer of CBI material, EPA will clear any individual who needs access to TSCA CBI information.

The final requirements for claiming CAIR data as CBI are summarized as follows:

1. Make assertions for claims of confidentiality at the time information is submitted.
2. Sign the confidentiality certification statement on the CAIR reporting form.
3. Provide EPA with two copies of the submission (one complete confidential version and one "sanitized" non-confidential version).
4. Mark the box on each question of the form with the appropriate letter(s) representing the category of information the claim is intended to protect.
5. Provide complete, detailed answers to substantiation questions for each of the categories of information claimed (see step 4 above), as well as to general questions that must be answered for all claims.

F. The CAIR Reporting Form

EPA has compiled a comprehensive list of questions in the CAIR reporting form consistent with the information types listed in TSCA section 8(a)(2). Since many kinds of information will be needed to support the variety of chemical risk identification, assessment, and control action functions of EPA and other Federal agencies, these questions vary in the type of information elements and comprehensiveness. For each listed substance, EPA will ask only those questions that are pertinent to planned risk identification, assessment, or control actions for that substance. Persons subject to the CAIR must answer only those questions listed for the substance in the matrix in Subpart D of the rule.

The reporting form is divided into 10 sections, each section containing a list of specific questions. The form covers: plant site information; chemical identification; production, processing, and importation volumes; physical/chemical properties; environmental fate data; economic and financial information; manufacturing and processing information; waste generation and management; worker exposure; and environmental release.

The reporting form also includes detailed instructions including sample answers. There are tables for converting numeric responses to metric units, and a glossary that defines key terms. Since

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the proposal, the Agency has clarified some definitions and added some others.

Section 1 of the form must be completed by all respondents; the remaining parts are to be completed as specified in Subpart D of the rule. Questions in Section 1 ask for basic information, for example: plant site classification, respondent identification, and substance identification. Section 1 also contains questions for persons who sell or buy trade name products and a certification statement for persons who had previously submitted information requested in Subpart D.

Companies that *voluntarily* submit information to EPA or other Federal agencies are encouraged to use the CAIR form. If the substance they are reporting on is later added to the CAIR, these companies may be exempt from resubmitting the previously reported information. The companies would still be required to complete and submit Section 1 of the CAIR reporting form. However, the companies would be exempt from reporting any other data that were previously submitted, provided: that the previously submitted data are no more than 3 years old as of the effective date of the substance's addition to the rule, the data are still complete and accurate, and a copy of the previous submission is attached. Persons who use this exemption must sign the statement in Section 1 that certifies that the previously reported data meet the requirements set forth in the exemption.

At times, CAIR may be used to require reporting on the same substance more than once. Some respondents may have little or no change to report in the second submission; these companies can use the same exemption discussed above for voluntary reporting. Such respondents need only complete Section 1 of the reporting form, specify the date of the previous submission, and certify that the data are still complete and accurate. This exemption will eliminate duplicative reporting and reduce the burden on companies subject to reporting more than once on a listed substance.

The Agency has revised the form based on public comments. In general, EPA has made the form easier to complete by eliminating complex and unnecessary questions. However, questions that are likely to be asked in the future, though not requested in this iteration, remain on the form. The Agency has added clarifying language to the form to assist the respondent, and has also revised the instructions and glossary to add more sample answers and definitions. CAIR forms and instructions may be obtained by telephoning the TSCA Assistance Office at (202) 554–1404, or by writing to the TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Some commenters were concerned that EPA will not have the staff to respond to the many questions the commenters anticipate will be asked during the reporting period. EPA assures the public that this will not occur. Persons who have general questions concerning the rule or reporting form may call the TSCA Assistance Office at (202) 554–1404. TDD: (202) 554–0551. The Agency has also established a CAIR Office staffed by persons who can answer technical questions on the requirements of the rule and the reporting form. When necessary, the TSCA Assistance Office will refer callers to the CAIR Office. Further, the questions of general interest asked during this time, and EPA's responses, will be summarized in a "Question and Answer" document. This document will be included with each CAIR form the Agency sends out starting with the second iteration of the CAIR.

IV. Substances listed in this Final Rule

Two program offices in EPA and three other Federal agencies nominated 47 substances for the proposed rule. After thoroughly reviewing the candidates, two agencies have removed their requests, and EPA has reduced its own list of chemical candidates. The rule now contains 19 substances. The reasons for withdrawal of substances, a summary of the concerns for the remaining substances, and how the requested information will be used follows. The substances are listed in Subpart D, § 704.225, of the regulatory text. These are substances for which: (1) the agencies know or suspect cause adverse health or environmental effects yet lack current exposure data; (2) the agencies believe data gaps are significant; and (3) the agencies place a priority on the need for the requested information to complete assessments of the substances. The substances and the offices that nominated them are listed in Table I in this Unit of the preamble. Additional background information on the substances is in the public record for this rule.

Literature searches were undertaken for the information requested by the offices that nominated substances for this rule. A listing of the substances, along with the information requests, was sent for review to each office in EPA and other Federal agencies participating in the CAIR's development. These offices searched their records for information on the substances; however, the searches did not provide the needed information.

The following offices and agencies nominated the substances included in this final rule: EPA's Office of Air and Radiation (OAR), EPA's Office of Toxic Substances (OTS), and the National Institute for Occupational Safety and Health (NIOSH). A total of 23 nominations were made by these offices; however, since 4 of these nominations were multiple nominations (i.e., substances nominated by two offices), 19 substances are listed in this rule. Table I of this Unit of the preamble lists the 19 chemical substances.

The 19 substances listed in this rule include 7 hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA requires persons who are in charge of vessels or facilities, to immediately notify the National Response Center [(800) 424–8802 or (202) 426–2675) when hazardous substances are released in quantities that are equal to or greater than the reportable quantities (RQs). [See CERCLA section 103 and 40 CFR Part 302; 50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986.) CERCLA hazardous substances are listed in Table 302.4—List of Hazardous Substances and Reportable Quantities (50 FR 13475 and 51 FR 34541).

The Agency received many comments on the Federal government's justification for requesting reporting for some of the substances. For the final rule, the Agency has added additional background material on why the substances are listed in the rule, and what the requesting offices intend to do with the CAIR reported data.

The Consumer Product Safety Commission (CPSC) nominated eight substances for the proposed CAIR but dropped one substance (Urea, *N*-(4-chlorophenyl)-*N'*-(3,4-di-chlorophenyl)-, CAS No. 101–20–2) when it was determined that, although the substance was on the TSCA Inventory, it presently had no known TSCA uses and will subsequently be removed from the Inventory. CPSC dropped their remaining substances because of unexpectedly high costs to industry for compliance with CAIR, and because information gathered under the PAIR, the Federal Insecticide, Fungicide, and Rodenticide Act, and possibly, SARA, though not as detailed as CAIR information, will probably be sufficient for their needs.

The Occupational Safety and Health Administration (OSHA) had requested information on seven chlorinated solvents listed in the proposed CAIR when it was preparing a Notice of Proposed Rulemaking for one of them, Methylene Chloride (DCM). Because of the length of the CAIR rulemaking process and the current limitations on the scope of the evolving rule, OSHA proceeded with a survey of DCM. This survey included questions about the other chlorinated solvents frequently used as substitutes for DCM. Through its survey, OSHA compiled the material needed for its analysis of DCM. Thus, it has withdrawn its nomination of the seven chlorinated solvents.

NIOSH has requested information on one of the substances listed in the CAIR—4,4'-Methylenebis(-2-chloroaniline) (MBOCA) (CAS No. 101–14–4). MBOCA is a known animal carcinogen. Potential for occupational exposure exists because MBOCA is widely used as a curing agent in the production of cast polyurethane articles. OTS has promulgated a chemical-specific TSCA section 8(a) rule on MBOCA requiring notice to EPA of the initiation of any manufacture of MBOCA in the U.S. However, that rule will not provide the information NIOSH needs concerning exposures from current uses of imported MBOCA. All of the questions NIOSH requested pertain to identifying the number of workers exposed, degree of exposure, and extent of medical and environmental monitoring. This information is useful to NIOSH in identifying worker groups suitable for epidemiologic study and/or notification and screening programs. The extent of MBOCA use is difficult to characterize because not all polyurethane manufacturing plants use MBOCA, and those that do, use it in a variable proportion of their products. Although efforts have been made by OSHA, NIOSH, and EPA to characterize the extent of exposure to MBOCA, estimates of numbers of workers exposed have been very uncertain. The degree of worker exposure at facilities that use MBOCA in the manufacture of polyurethane products is also difficult to estimate because there is no centralized data collection of environmental and medical monitoring results.

NIOSH can use the data collected under CAIR to identify sites for several types of occupational health research studies, including industrial hygiene surveys, surveys on the efficacy of monitoring techniques, epidemiologic studies, and identification of sites for an industry-wide exposure registry. The CAIR data will also be used in formulating NIOSH recommendations for limiting occupational exposure to MBOCA. Given the potential for continued worker exposure in the processing of MBOCA, NIOSH believes that an ongoing and comprehensive assessment of worker exposure to MBOCA is warranted.

EPA's Office of Air Quality Planning and Standards (OAQPS) of the Office of Air and Radiation has requested information on five of the substances listed in the CAIR. They are four Toluene Diisocyanates (TDI isomers): Benzene, 1,3-diisocyanato-2-methyl- (CAS No. 91–08–7), Benzene, 2,4-diisocyanato-1-methyl- (CAS No. 584–84–9), Benzene, diisocyanatomethyl- (CAS No. 1321–38–6), Benzene, 1,3-diisocyanatomethyl- (CAS No. 26471–62–5); and Chlorine (CAS No. 7782–50–5). The TDI isomers as a group of compounds present potential health treats and have large production volumes. All of the substances nominated are volatile and can be absorbed through the respiratory tract. Human effects that result from exposure to these substances can include potential carcinogenic, teratogenic, or mutagenic responses; extreme eye, lung, and mucous membrane irritation; or neurotoxic effects. The toxicity of these substances and their high level of production has raised concerns about the potential for human health effects from ambient air exposure. OAQPS needs detailed production and exposure information to determine whether these substances present an actual threat to human health.

Benzene, 1,3-diisocyanatomethyl- (CAS No. 26471–62–5) has been classified as a Group B2 carcinogen based upon the EPA Guidelines for Carcinogen Risk Assessment, September 24, 1986 (51 FR 33992). This classification indicates that there is sufficient evidence of carcinogenicity from animal studies. The potential health effects, other than cancer, associated with exposure to TDI isomers include respiratory effects (irritation/inflammation of the respiratory tract, pulmonary hypersensitivity, lung function decrements), dermal sensitization, and skin and eye irritation. The potential health effects associated with exposure to chlorine are eye and respiratory irritation at lower concentrations and pulmonary edema leading potentially to death at higher concentrations.

The data developed through reporting under the CAIR will be used to develop the exposure and risk analyses for these substances, thereby supporting decisions on the need to regulate these substances under the Clean Air Act (CAA).

OAQPS has dropped two of the substances (ammonia and propylene oxide) it nominated in the proposed rule because CAA regulatory evaluations are now essentially complete for these substances. In addition, OAQPS has dropped styrene because of the high costs to industry associated with reporting on this substance and the high number of burden hours which would be utilized.

OTS had requested information on 23 of the substances listed in the proposed CAIR. The substances had been nominated by two different divisions of OTS. Four of the substances were also among the group nominated by OAQPS.

The 17 substances nominated by the Exposure Evaluation Division (EED) have been dropped from this final rule. The substances fell under three categories: (1) fertilizers widely found in ground water, (2) volatile organic compounds found in ground water, and (3) some chlorinated solvents.

The fertilizers have been eliminated from this rule because these substances are no longer of high priority to EED. While EED remains concerned about the exposure potential of these substances, the resources may not be available to properly assess CAIR data if it were reported.

Data on the volatile organic compounds will probably be available following SARA section 313 reporting. It is likely that this information will be sufficient to meet the needs of EED, thus negating the need for CAIR data.

The SARA section 313 rule will also provide data needed by EED in their assessment of the chlorinated solvents. Further, data submitted to the Office of Air and Radiation under section 114 of the CAA has provided significant information on the major point sources of the chlorinated solvents. In addition, the chlorinated solvents project is expected to be completed before the data are expected under the CAIR. Finally, CAIR addresses manufacturers and processors, not the users of substances who are of most interest to the solvents project.

If, after the review of these alternative sources, EED decides that additional CAIR data are needed, EPA will review and promulgate reporting requirements and questions, or a subset of questions, listed in the proposed rule.

The Existing Chemical Assessment Division (ECAD) of OTS had nominated 18 of the OTS substances. ECAD has decided to withdraw one chemical substance, acid orange 7, because other higher priority efforts precluded further

work on this substance at this time. The 17 remaining substances fall within 5 groups, the first group includes acetamide (CAS No. 60–35–5) and Broenner's acid (CAS No. 93–00–5). Acetamide is a known animal carcinogen, and Broenner's acid may contain the impurity beta-naphthylamine, a known human carcinogen. Preliminary assessments had been conducted for both acetamide and Broenner's acid, but too little exposure-related information was available to proceed with an assessment. Human and environmental risk is largely unknown due to the lack of available exposure data. It is for this reason that EPA has requested such a broad range of information on these substances. Should subsequent assessments of these substances indicate potential risks, OTS will consider regulations to reduce identified risks where necessary.

The second group consists of certain substances found in human adipose tissue. These four substances are phenanthrene (CAS No. 85–01–8); ethanol, 2-chloro-, phosphate (3:1) (CAS No. 115–96–8); pyrene (CAS No. 129–00–0); and dimethyl disulfide (CAS No 624–92–0). These substances have come to the Agency's attention through the systematic screening of chemicals identified in human tissue samples and other environmental media. The widespread exposure demonstrated by these data from the National Human Monitoring Program, coupled with known information on the toxicity of these substances, warrants investigation of the possible sources of contamination. Manufacture, process, and use information needed to complete risk assessment of these substances is not available through other sources; the CAIR data will enable the exposure assessment to proceed without further delay. The exposure assessment, in turn, is a component of the broader risk assessment process conducted to determine if risk reduction alternatives need to be considered. These risk assessment and risk management activities will result in some type of risk reduction under TSCA, referral to another Agency program office or Federal agency, or a drop from further consideration because of low exposure potential, or low priority for other reasons.

The third group consists of four substances: hydroxylamine (CAS No. 7803–49–8) and three of its salts (CAS Nos. 5470–11–1, 10039–54–0, and 10046–00–1). The toxic properties of hydroxylamine are documented in OTS' Chemical Hazard Information Profile (CHIP) document (September 11, 1984). These include hematologic, genotoxic, and developmental effects. Exposure may occur during many possible uses of hydroxylamine and its salts. The best documented use is in color developer solutions, but the National Occupational Hazard Survey (NOHS) lists a wide variety of industries with potential hydroxylamine exposure. EPA has not been able to document actual use or the extent of use of hydroxylamines outside chemical processing, photo developing, and laboratory research. Furthermore, the Agency has little information on the amount of hydroxylamines in these known uses. Concern is warranted since the possible uses of hydroxylamines as antioxidants, for example, could cause widespread exposure.

The CAIR is intended to obtain information that verifies some of these suspected uses (or verifies that these uses are not widespread). The CAIR will also provide some information on amounts and concentrations of the hydroxylamine compounds in various uses, and exposure data. This information can be used to focus the Agency's efforts on hydroxylamine uses with highest exposures and determine whether these uses may present an unreasonable risk.

Preliminary risk evaluations were conducted by ECAD on the fourth group: semicarbazide (CAS No. 57–56–7), semicarbazide hydrochloride (CAS No. 563–41–7), and 1,1,2,2-tetrabromoethane (CAS No. 79–27–6). Semicarbazide and semicarbazide hydrochloride present carcinogenic, teratogenic, and acute health concerns. Only limited production, exposure, and use data are available for these two substances. Two manufacturers and one importer have been identified, but these substances are apparently produced for captive use by a number of companies. In addition, little information is available on the number of processors, their employees, and extent of employee exposure. Three uses have been reported, but other potential uses have been identified. These other uses may involve exposures of a greater magnitude or by a different route than those uses known to exist. Tetrabromoethane also raises carcinogenic health concerns in addition to causing acute and chronic liver, kidney, and lung effects. Until recently, production was nearly 5 million pounds per year, with nearly all used as a catalyst or catalyst initiator in the oxidation of p-xylene to produce terephthalic acid. Production has reportedly decreased substantially during the last 2 years, which mitigates the risk case. The information required in the CAIR will confirm this change in production needs and provide information on the use pattern.

Risk assessments are planned for the fifth and final group: the TDI isomers. These are the same substances nominated by OAQPS, and include two individual TDI isomers and two CAS numbers for mixed TDI isomers. Exposure to TDI has been associated with carcinogenic, respiratory, immunologic, dermal, and neurologic effects as well as isolated reports of hematologic and gastrointestinal symptomology. It is apparent that the observed effects are directly related to the exposure concentration, length of exposure, and the route of exposure.

OTS in coordination with OAQPS, NIOSH, and CPSC, has substantial concern for persons exposed to TDI in several situations. First, persons residing in the vicinity of TDI manufacturing, processing, and use facilities may be exposed to fugitive TDI emissions. Accordingly, OAQPS is issuing CAA section 114 letters to TDI manufacturers to obtain emissions information. OTS and OAQPS intend to share these data. CAIR questions to TDI producers that will be addressed through CAA section 114 letters have been withdrawn. Emissions data from non-producers (importers and processors) will continue to be sought through CAIR.

Clearly the projected regulatory endpoints, if any, for TDI cannot be suggested until all the data are available and analyses have been made. The extremely broad spectrum of applications for TDI-containing materials mandate that EPA perform detailed risk/benefit analyses regarding the TDI isomers. These, of course, require information that only industry can provide.

The second exposure of concern to OTS and NIOSH is occupational exposure to TDI through processing or use of TDI-containing materials. OTS will be sharing these CAIR-generated data with NIOSH. As appropriate, the American Conference of Governmental Industrial Hygienists (ACGIH) and OSHA will be advised of significant findings.

Lastly, both CPCS and OTS share interests in consumers potentially exposed to TDI through home use of publicly available consumer goods containing this diisocyanate. These products include sealants, coatings, adhesives, foam insulation, and polyurethane finishes. Any information obtained will be shared with CPSC.

The chemical list which cites the offices that nominated the substances follows.

TABLE I—CHEMICAL LIST

Federal agency requesting information	Who must report	Coverage period	Questions selected
EPA/OTS/ECAD	M, X/P, I, P[4]	2/8/87-2/5/89	*Hydrazinecarboxamide* (CAS No. 57-56-7) 1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06.
EPA/OTS/ECAD	M, I	2/8/87-2/5/89	*Acetamide* (CAS No. 60-35-5) 1, 2.01, 2.04 thru 2.06, 2.08, 2.12 thru 2.14, 2.17, 3.04, 9.04 thru 9.07.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	*Ethane, 1,1,2,2-tetrabromo-* (CAS No. 79-27-6) 1, 2.08, 2.12, 2.13.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	*Phenanthrene* (CAS No. 85-01-8) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06.
			Benzene, 1,3-diisocyanato-2-methyl- (CAS No. 91-08-7)
EPA/OAR[1]	M, I	2/8/87-2/5/89	1
	X/P, P	2/8/87-2/5/89	1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.06.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.09 thru 10.16, 10.23.
EPA/OTS/ECAD	M, I	2/8/87-2/5/89	*2-Naphthalenesulfonic acid, 6-amino-* (CAS No. 93-00-5) 1, 2.01, 2.04 thru 2.06, 2.08, 2.11, 2.12, 2.17, 3.04, 4.01, 9.07, 10.05, 10.06.
NIOSH[3]	X/P, P	2/8/87-2/5/89	*Benzeneamine, 4,4'-methylenebis[2-chloro-* (CAS No. 101-14-4) 1, 9.01, 9.03, 9.06, 9.08, 9.12, 9.15.
EPA/OTS/ECAD	M, I	2/8/87-2/5/89	*Ethanol, 2-chloro-, phosphate* (3:1) (CAS No. 115-96-8) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06.
EPA/OTS/ECAD	M, I	2/8/87-2/5/89	*Pyrene* (CAS No. 129-00-0) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	*Hydrazinecarboxamide, monohydrochloride* (CAS No. 563-41-7) 1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06.
			Benzene, 2,4-diisocyanato-1-methyl- (CAS No. 584-84-9)
EPA/OAR	M, I	2/8/87-2/5/89	1
	X/P, P	2/8/87-2/5/89	1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.06.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.09 thru 10.16, 10.23.
EPA/OTS/ECAD	M, I	2/8/87-2/5/89	*Disulfide, dimethyl* (CAS No. 624-92-0) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06.
			Benzene, diisocyanatomethyl- (CAS No. 1321-38-6)
EPA/OAR	M, I	2/8/87-2/5/89	1
	X/P, P	2/8/87-2/5/89	1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.06, 10.08.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	*Hydroxylamine, hydrochloride* (CAS No. 5470-11-1) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01.
EPA/OAR	M	2/8/87-2/5/89	*Chlorine* (CAS No. 7782-50-5) 1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.08.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	*Hydroxylamine* (CAS No. 7803-49-8) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	*Hydroxylamine, sulfate* (2:1) (CAS No. 10039-54-0) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	*Hydroxylamine, sulfate* (1:1) (CAS No. 10046-00-1) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01.
			Benzene, 1,3-diisocyanatomethyl- (CAS No. 26471-62-5)
EPA/OAR	M,I	2/8/87-2/5/89	1
	X/P, P	2/8/87-2/5/89	1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.06, 10.08.
EPA/OTS/ECAD	M, X/P, I, P	2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23.

[1] EPA/OAR = Environmental Protection Agency—Office of Air and Radiation.
[2] EPA/OTS/ECAD = Environmental Protection Agency—Office of Toxic Substances—Existing Chemical Assessment Division.
[3] NIOSH = National Institute for Occupational Safety and Health.
[4] M = Each Person Who Manufactured the Substance for Commercial Purposes.
I = Each Person Who Imported the Substance for Commercial Purposes.
P = Each Person Who Processed the Substance for Commercial Purposes.
X/P = Each Person Who Manufactured, Imported, or Processed the Substance for Commercial Purposes and Distributed the Substance under a Trade Name.

V. CAIR Information Management

EPA has developed a data base to store all of the reported CAIR information in a manner that allows EPA to determine easily whether the required data have already been collected under the CAIR, to produce reports in standard formats, and to protect proprietary information. The data base is an essential component of CAIR information management. Offices considering the development of information-gathering rules will be able to check the CAIR data base before requesting the information from

industry. This procedure will help reduce duplicative requests. Further, reported data will be available quickly and in an appropriate format for the user's review.

Commenters on the proposed rule expressed concern about EPA's ability to manage the quantity of data that the CAIR will generate. EPA plans to devote substantial resources for the implementation of the CAIR. While the CAIR will produce a significant amount of data, EPA has the necessary systems and personnel to process the volume of data generated by the CAIR. EPA has experience with processing large amounts of data from the TSCA section 8(a) PAIR, and IUR reporting, and will be able to both process CAIR data and make it available as needed.

VI. The CAIR and Other Information-Gathering Mechanisms

The comprehensive nature of the CAIR and the reporting form allow EPA in many instances to gather information for offices in EPA and other Federal agencies. However, the CAIR is not being promulgated as a replacement for all other information-gathering regulations, nor has any other office delegated its information-gathering authority to the CAIR. The CAIR will be used only when it is appropriate and is the most efficient means to gather information. Other agencies or EPA offices will use their own authority under circumstances such as: (1) the substance of interest cannot be regulated under TSCA (e.g., the substance is not a "chemical substance" or "mixture" as defined in section 3 of TSCA); (2) the information being sought could be gathered more efficiently using another authority; or (3) the information being sought is more specific and detailed than would be elicited by the questions in the CAIR reporting form. Therefore, while other offices within EPA and other agencies will consider utilizing the CAIR for information-gathering, EPA does not expect the CAIR to be a replacement for all data-gathering regulations.

VII. Implementation of the Rule

A. The Need for Information

Prior to listing the 19 substances in this rule, EPA searched for the requested information to determine if the information was already available. Each office and agency involved in developing the CAIR searched for this information in their data bases and the public literature; they were, however, unable to locate the requested information listed in Subpart D of this rule.

EPA has established a formal process whereby each office or agency that wants to add a substance to the CAIR must submit detailed nomination material to OTS (the nomination material for the substances in this final rule consist of memoranda to the public record with relevant support documents). The nomination must include: why the information is needed, how the nominating office will use the reported data, and any other pertinent information the Agency deems necessary. OTS will then determine whether the substance is a potential candidate for the CAIR.

Substances that pass OTS' initial screening will be submitted to an inter-agency, government-wide workgroup for review. As was done for the substances in this final rule, the workgroup (made up of representatives from program offices in EPA and other Federal agencies) reviews the list of substances and information requests. If needed information is available, the requesting office is notified and the substance withdrawn from the list of potential candidates for addition to the CAIR. Comments provided by the public on the chemical substance nominated in a proposed rule may also lead to the withdrawal of the substance or revised information requests.

B. Budgeting for Burden

EPA has prepared an information collection request that estimates the reporting burden that the CAIR would impose. The Paperwork Reduction Act requires EPA to collect information from the public in the least burdensome way and to summarize, for the Office of Management and Budget's (OMB) review, information collection activities and their associated burden. As part of this process, an Information Collection Budget (ICB) is developed that estimates the total number of burden hours the Agency will impose on the public during the next fiscal year.

CAIR is included in this budget process. In June of each year, each program office participating in CAIR will submit an ICB profile to the Information and Regulatory Systems Division (IRSD) in EPA's Office of Policy, Planning and Evaluation. This profile will contain the estimated number of substances on which the program expects to request data, the total burden hours associated with the request, and, if possible, the names of the substances involved. Based on this profile, each program office will have a CAIR line item on the ICB containing that office's total burden hours for CAIR requests. Making each EPA office accountable for the burden they impose through the CAIR will ensure that they use the rule judiciously.

For the substances listed in this final rule, the OTS has budgeted for the burden hours for its substances along with the substances added by NIOSH. (OAR has accounted for its own substances.) In the future, each EPA office that adds a substance to the CAIR will account for the burden hours as described above while other agencies that add substances to CAIR will account for the burden hours in their own ICB.

Some commenters suggested that the CAIR will dramatically increase the government-wide reporting burden placed on industry each year and, in an effort to reduce this effect, EPA should not continue with the CAIR. EPA does not agree with these commenters' conclusions regarding the increased reporting burden. First, if EPA did not continue with the CAIR, the burden hours allocated for the rule would be available elsewhere in the Agency for use. Thus, there would be no net difference in the burden placed on industry by EPA if the CAIR is or is not promulgated. Second, the Agency has developed CAIR as an efficient information-gathering tool that should require less burden to comply with over time than separate rules gathering the same information. That is, more information can be collected at the same or less cost using the CAIR than using individual information-gathering rules.

C. Assistance for Submitters

Given the comprehensive nature of some questions in the CAIR reporting form, EPA is committed to providing technical assistance to companies reporting for the CAIR. Besides the instruction document that accompanies the reporting form, companies will be able to contact EPA or its contractor for assistance. An assistance office has been established to answer questions regarding the CAIR and will be staffed by a team of information specialists who are thoroughly familiar with the rule requirements and reporting form.

For the second iteration of CAIR, the Agency will compile and distribute a summary of "Questions and Answers" asked by submitters. The Agency has also developed a brochure that explains how the CAIR operates. Copies of this brochure are available from the TSCA Assistance Office.

D. Evaluation

To ensure that the CAIR meets its objectives of providing timely, reliable, useful, and non-duplicative data while imposing a minimum burden on

industry, EPA has and will continue to evaluate the CAIR. The Agency has conducted a review of the final rule package to assure that there is adequate documentation to justify each information request.

The Agency has also reviewed the effectiveness of the nominating process in meeting the requirements of the Paperwork Reduction Act. Since the nomination process is standard for OTS, this review involved all OTS ICRS, including the CAIR. It is also the Agency's intention to evaluate the data submitted under the CAIR by reviewing forms for apparent inconsistencies and surveying submitters to determine problem areas.

Finally, a survey of data users both within EPA and at other agencies that nominated listed substances will be conducted. Interviews with a sample of users will be conducted to assure that the data submitted meet the needs of the user. A special report will be prepared that will examine any problem with timeliness of data receipt and determine if the levels of precision and specificity have been met.

VIII. Public Participation

EPA believes that the public review that occurred during the development of this rule was important. The Agency actively sought public input early in the developmental stages of the rule and met with all organizations requesting a meeting. Two general public meetings were held in July of 1985 to discuss an early draft of the rule and reporting form. Constructive comments helped EPA refine the rule to make it more understandable and effective. After further revisions, the CAIR reporting form was circulated again for public review in December 1985. Again, more constructive comments were made and many were adopted.

EPA issued a notice on January 24, 1986 (51 FR 3251), asking for participation in a pretest of the reporting form. The purpose of the pretest was two-fold: (1) to test whether the questions are easily understood, and (2) to estimate the reporting burden associated with answering questions. The Agency had hoped many volunteers would participate. However, fewer applied than were expected. Therefore, the Agency does not view the results of this pretest as representative of the entire industry. The pretest did, however, provide extremely valuable "hands-on" data that were used in making changes to the form and for determining the economic impact of this rule.

After publication of the proposed rule (51 FR 35762), EPA extended the public comment period. The Agency appreciates all of the comments that have been made, and this final rule reflects EPA's consideration of those comments.

IX. Alternatives Considered

Before and during the development of the CAIR, the Agency considered three major alternative approaches for meeting its information-gathering objectives: (1) issuing chemical-specific TSCA section 8(a) rules, (2) issuing the CAIR list of questions as guidelines for incorporation in chemical-specific rules, and (3) developing a three-tier approach to reporting (of which parts of CAIR would comprise the first two tiers). After review of these approaches, the Agency decided to develop the CAIR as proposed.

Chemical-specific rules, unlike the CAIR, can be tailored to meet very specific needs. However, as discussed above, these rules are costly for EPA to establish and implement, and for industry to respond to. If specific information is needed that is beyond the scope of CAIR, the Agency always has the option of issuing a chemical-specific rule for that substance.

A variation of the chemical-specific option would be the issuance of the CAIR list of questions as guidelines. Whenever an information need arose, questions from the guidelines could be chosen and incorporated into a chemical-specific rule. An advantage of this option is that the guidelines could be modified as necessary without notice and comment.

The Agency has determined that such an option would be less desirable than issuance of a model rule because many of the efficiencies offered by a model rule would be diminished or lost. There would be a diminished incentive to use the questions exactly as they are written. The additional variability industry would face with such minor changes would impose substantial costs to industry in responding to each chemical-specific rule. Also, chemical-specific rules would require substantial additional space in the **Federal Register** since the questions would have to be stated in full rather than simply specified by number under the CAIR.

Furthermore, there is no need to issue CAIR questions as guidelines. Many of the questions were taken from existing government forms previously used to collect information from industry. There has also been much cooperation with industry representatives in developing the form so that the questions will both provide the information needed to EPA and be in the terminology used by industry. EPA does not anticipate that a major refinement of the questions will be necessary after promulgation of this final rule. Moreover, should the need arise, EPA can develop a TSCA section 8(a) chemical-specific rule with questions tailored to the unique characteristics of the requesters.

The last option that many commenters suggested was that EPA consider gathering information according to the stage of assessment of a substance. That is, for substances in the early stages of assessment, request only basic information like that found in the PAIR. If, following analysis of the reported data, the Agency finds that additional information is needed, a more detailed substance-specific rule would be used.

EPA does not believe a tiered reporting approach is necessary or appropriate; in fact, such a reporting scheme could be counterproductive since it could involve two or three separate complete rulemakings that would be costly to EPA in terms of Agency resources and delays in obtaining the needed information. Whereas a tiered reporting approach might be feasible if the CAIR was solely an OTS rule, the applicability of the CAIR to other program offices within EPA other than OTS, as well as to other Federal agencies, makes a tiered reporting approach impractical. The broad range of topics covered by the CAIR is one of the primary benefits derived from the rule. An office or agency can choose specific questions on the CAIR according to its particular stage of assessment.

X. Economic Analysis

A. Methodology

EPA has conducted in-depth studies to estimate the amount of secretarial, technical, and managerial time needed to respond to each question in the reporting form. These studies are located in the public record for this rulemaking.

The response times were derived from three major sources. One source was the set of Federal personnel experienced in preparing questionnaires that contained questions similar to those in the reporting form. Another source was Federal agency documents that described and analyzed questionnaires that contained questions similar to those in the reporting form. The last source was persons in private industry and industry research organizations who performed surveys with questionnaires similar to the CAIR form. These persons provided estimates of the time required to respond to certain parts of the reporting form. The Agency also used a

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pretest of the CAIR form to determine the time required to complete various questions on the reporting form.

The question-specific reporting burden was estimated for each of three distinct labor categories: managerial, technical, and secretarial. Mean reporting times and variances were then calculated for each labor category. Applicable wage rates were then multiplied by the time estimates and the results were summed to establish the estimated reporting cost per question. Combining the cost per question for all the questions required of each type of respondent yielded both a mean reporting cost and a 90-percent confidence level cost range. This procedure was followed for each chemical substance listed in Subpart D. The mean reporting costs (i.e., unit costs) were further multiplied by the estimated number of respondents for each substance to determine the direct reporting cost of the rule.

EPA used the 1987 update of the TSCA Inventory data base as its primary source of plant sites that manufacture and/or import CAIR-listed substances. This provided the latest site counts for all CAIR substances except chlorine (Chlorine, an inorganic chemical, was not included in the Inventory update.) Additional data sources were consulted to establish site count estimates for chlorine and to double-check estimates for the remaining CAIR substances. The Agency reviewed the following sources, among others: *Chemical Economics Handbook, Directory of Chemical Producers, Importers of Benzenoid Chemicals and Products, Synthetic Organic Chemicals, Chemical Products Synopsis, Million Dollar Directory, Market Identifiers,* and the Census Bureau's *Census of Manufacturers.* Articles from recent trade magazines and journals, as well as contacts with a variety of industry personnel, were also used to identify plant sites.

To identify the plants that process the substances, data were collected on the downstream uses of each listed substance for which processor reporting is required. All those facilities that were strictly end users of listed substances were not considered to be processors for this rule.

The final step associated with developing the site estimates was to determine the number of "unique sites"; that is, those sites that must report. Since a site with multiple processes may be required to report for more than one substance, it is most important not to count that site more than once. Adjustments of site estimates were based on an examination of the specific identities and chemical operations of expected submitters.

Once site estimates were established, estimating a per substance cost for each respondent type was then a simple matter. The estimated number of sites per respondent category was multiplied by the appropriate estimated reporting cost per substance. In turn, the reporting costs per substance were summed to provide the total direct reporting cost of the rule.

Reporting sites also incur a variety of indirect reporting costs. These involve such activities as familiarization with the rule and its reporting requirements, the establishment and maintenance of a recordkeeping system, notifying EPA and/or customers of any trade names, the cost of substantiating any information claimed to be confidential, and the miscellaneous costs associated with reviewing, copying, and mailing the completed CAIR reporting form. In each case, research was conducted to determine the appropriate unit cost (per report or per site) of each indirect cost category. (Two sets of unit costs were established in this analysis, one for a respondent answering a large number of questions and the other for a respondent answering a small number of questions.) After unit costs were multiplied by the appropriate number of sites and reports, the results were summed to produce the total indirect reporting cost of the rule.

The final step in determining the total cost of the rule was to estimate the cost incurred by firms that must assess whether they are required to report. Two steps were required to calculate this compliance determination cost. The first step was to identify the number of sites that are exempt from reporting requirements. The second step was to estimate the cost of making a compliance determination.

Those sites that do not manufacture, import, or process a listed substance are obviously not covered by the CAIR. The same is true of those sites that only use a CAIR substance. While keeping these points in mind, the list of CAIR substances was reviewed to determine the set of Standard Industrial Classification (SIC) codes likely to contain the sites subject to CAIR reporting or be exempt from reporting. The establishment counts in SIC 28, 29, 516, 2295, 2515, 3069, 3086, and 5198 were tallied, and the sum was then reduced by the number of sites listed as small businesses having annual sales under $4 million. (These sites are also exempt from CAIR reporting requirements.) The adjusted sum was further reduced by the estimated number of sites that would report in the initial reporting period. A total of 14,855 exempt sites was ultimately established.

The second step was to estimate the unit cost of compliance determination. A variety of industry and Agency sources were consulted to establish a range of time (required by labor category) needed to determine that reporting is not required. The time estimates were then multiplied by appropriate labor rates to provide a range of compliance determination costs. A unit cost of $33 per site was selected from the range after it was determined to be most applicable. (It was necessary to allocate to the form familiarization cost category the compliance determination cost incurred by a site that must report under the CAIR. Since the review of reporting requirements that makes up a compliance determination is also a necessary part of form familiarization, this allocation was done to prevent double counting of costs.) The exempt site count was then multiplied by the unit cost of compliance determination to provide the final cost component of the CAIR.

Performing the set of calculations described above yields an estimated total cost for the 19 currently listed substances of $2.3 million. These costs are broken down into direct reporting costs, indirect reporting costs, and compliance determination costs. The total direct reporting cost is estimated to be $1.23 million. The total indirect reporting cost is estimated to be $560,788. The total compliance determination cost is estimated to be $490,215 for the 14,855 sites exempted from reporting requirements.

Based on the information collection requirements in this rule and the set of CAIR listed substances, the Agency calculated the expected costs of a typical responding site that would incur all possible costs. (Not all sites will incur such costs as CBI substantiation and trade name notification. Moreover, these expected costs are averages and may not actually match the cost of a specific site. Thus, the costs presented below will be somewhat different from those derived by dividing total line item costs by the number of responding sites or supplied reports.)

per report:

150 hours to gather and report the requested information	$5,092
17 hours to substantiate CBI claims	$680
8 hours to conduct trade name notification	$360
11 hours to establish and file the records that support a reporting effort	$238
1.5 hours to incur miscellaneous costs (mailing, etc.)	$70

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per site:

43 hours for rule and form familiarization.....$1,490

EPA assumes that the per site costs will be incurred one-time only for those respondents that submit two or more reports per site in any given reporting year. Only the per report costs will be incurred for each report submitted by a responding site. EPA further assumes that sites which must report in a following year will incur only a portion of the initial reporting year's per site costs. This is due to the expected increase in rule familiarization and understanding as the reports are prepared over a period of time. This may in fact not be entirely true in those cases in which a respondent must answer a small number of questions and, as a result, may not learn the entire reporting form.

B. EPA Administrative Costs

EPA will incur a variety of costs to process and maintain the information provided under the CAIR. This section briefly describes the costs associated with the Agency's administration of this rule.

EPA has developed a system to process and maintain the CAIR information. The major tasks in this overall effort are performing a feasibility study, and developing a data entry system, data base system, and tracking system. The initial system design and development costs are estimated to be $445,000. There will be an additional cost of $65,000 for the development of standardized reports for CAIR data users.

EPA also expects to incur costs associated with entering and processing data for the initial 19 chemicals, administrating the CAIR information office, and several other projects. These activities are estimated to cost $444,000.

In addition to the costs shown above, EPA will incur staff costs for these rule-related activities. Approximately 5.4 full-time equivalents (FTEs) will be required in the implementation of the initial CAIR. At $32,000 per FTE, the total of 5.4 FTEs will cost EPA $172,800.

Thus, it is assumed that EPA's expenditures for the development and implementation of this final rule will be roughly $954,750 plus a total of $172,800 in staff costs. This yields a total cost to EPA of $1,127,550.

C. Response to Comments on Economic Analysis

A variety of comments were received on the proposed CAIR. Among these comments were a set that specifically addressed cost estimates. In general, these comments all argued that EPA's cost estimate was considerably below the cost industry officials believed would be incurred. Listed below are the major comments addressing economic issues and the EPA response. More detailed responses can be found in the rulemaking record.

A number of commenters stated that the unit labor rates EPA used were far below the levels found in industry today. It was argued that hourly wages were too low and that labor overhead should also be included in cost estimates. It was also argued that the use of only three labor categories (managerial, technical, and clerical) tended to bias downward the cumulative cost of the work performed by all the different types of personnel involved in filling out the CAIR reporting form.

The Agency agrees with these general comments and has taken two major steps to address the concerns. First, EPA factored inflation levels since March 1984 into the set of wage rates used to cost out the proposed CAIR. The unit labor costs were based on March 1984 data and, therefore, needed to be updated. Second, the Agency realized that industry responses to government health and environmental reporting requirements tend to be prepared by senior level personnel from a variety of backgrounds (financial, legal, and operational). Thus, the Agency used different and more senior labor cost categories from Bureau of Labor Statistics data in establishing the new unit labor rates for the economic analysis. These two major adjustments resulted in hourly wage rate increases of 27.3, 35.3, and 11.2 percent for managerial, technical, and clerical personnel, respectively.

The Agency does not agree that labor overhead should be factored into the cost estimates. The allocation of any overhead expenses to CAIR reporting activities is an arbitrary exercise. This is especially true because the indirect reporting costs that might be classified as overhead are addressed as separate line items in the cost estimates prepared for the final rule. As an illustration, the indirect reporting costs associated with the establishment of a support document recordkeeping system are now shown as a distinct line item in the economic analysis.

Other commenters argued that EPA underestimated the total number of chemical processors that might be subject to reporting requirements, and thereby further underestimated the possible total cost of the rule. As an illustration, it was argued that the count used by EPA for the number of ammonia processors and solvent processors was too low. Commenters also argued that EPA's site counts for non-sample substances were low in some cases.

The Agency agrees with these comments in general. The Agency chose a group of sample substances to be representative, in terms of manufacturing operations, of the set of substances currently listed on the CAIR. The Agency conducted a comparison of the sample and non-sample substances and determined that the samples are representative of the total set in terms of chemical type, annual production volume, and the number of manufacturing sites.

The analysis prepared for the proposed CAIR estimated a total of roughly 298,000 processing sites for the 15 sample substances. Follow-up work using additional primary and secondary data sources resulted in an increase in the count of processing sites to roughly 308,700 sites. With respect to the site counts for the non-sample substances, these estimates were derived from the data collected on the sample substances. Thus, they were only to be representative, not specific. The adjustments made to the site counts for the sample substances should result in more accurate site counts for non-sample substances.

Some commenters believed that EPA underestimated the time and effort required to complete the CAIR reporting form. They argued that far more time would be required to collect data from scattered sources, to coordinate form analysis and response efforts between different personnel, and to actually develop responses to various questions on the form. With respect to this last issue, commenters argued that EPA failed to account for the additional reporting burden incurred by firms that do multiple processing of CAIR substances, have multiple work areas, or have multiple emission points. It was also argued that these firms would ostensibly be required to provide multiple responses to various questions on the reporting form.

The Agency agrees with these points. As a result, additional cost line items were added to account for the activities that had not been considered in the proposed rule's economic analysis. The new cost line items are compliance determination, review and mailing of the final reporting form, collection and calculation of data required by CAIR form questions, and several other miscellaneous costs associated with form preparation. In addition, revisions were made to the estimated costs for CBI substantiation, form familiarization,

recordkeeping, and trade name notification. The result of these changes, plus the revised site counts and unit labor rates mentioned above, was an increase in the estimated total cost from $3.27 million to roughly $23.9 million. However, this cost was then reduced significantly by factoring in the exemptions used in the final rule and by the change in the number of substances on the rule from 47 for the proposed rule to 19 for this final rule.

XI. Rulemaking Record

The following documents constitute the major documents in the record for this rule (docket control number OPTS–82013C). All documents, including the index to the complete record, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460. The record includes but is not limited to the following information:

1. **Federal Register** Notices: (April 4, 1985; 50 FR 13391), (June 17, 1985; 50 FR 25095), (January 24, 1986; 51 FR 3251), (February 28, 1986; 51 FR 7120), and (December 19, 1986; 51 FR 45486).

2. Transcript of public meeting held on July 17, 1985.

3. Transcript of public meeting held on July 30, 1985.

4. Minutes of meetings held with the Chemical Manufacturers Association, the Synthetic Organic Chemical Manufacturers Association, and the American Petroleum Institute.

5. Copy of memorandum and CAIR reporting form circulated to the public for review on December 9, 1985.

6. CAIR reporting form response times and labor costs analysis, Centaur Associates, April 21, 1986.

7. Economic analysis of the CAIR.

8. Comments received on earlier drafts of the CAIR preamble and reporting form.

9. Background information on substances appearing in the proposed and final rule.

10. Proposed Rule October 7, 1986; 51 FR 35762.

11. Comments received on the proposed rule.

12. CAIR Pretest Summary Report, Science Applications International Corporation, March 20, 1987.

13. Correspondence with and from the public regarding CAIR.

14. Minutes of meeting held with industry, environmental, and labor organizations on February 26, 1986.

15. Minutes of meeting with representatives from the Chemical Manufacturers Association, the Office of Management and Budget, and the Environmental Protection Agency held on August 6, 1987.

16. Response to Comment document.

17. Final CAIR Reporting Form and Instructions.

XII. REGULATORY ASSESSMENT REQUIREMENTS

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. The Agency has determined that this final rule is not "major" because it does not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices. This rule was submitted to the OMB for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses. Small businesses are defined in this rule and are exempt from reporting except under certain circumstances defined in TSCA.

C. Paperwork Reduction Act

The information collection requirements in this rule were submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2010–0019.

Public reporting burden for this collection of information is estimated to vary as presented in the following chart. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. To locate a respondent's burden estimate on the chart, identify the substance's CAS number and the respondent category for which the report is being submitted, and locate the corresponding range. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

CAIR Reporting Burden for Both Question-Specific and General Costs (Range in Hours)

Chemical name	CAS No.	Manufacturer	Importer	Processor	Manufacturer / processor	Importer / processor
Hydrazinecarboxamide	57–56–7	39–47	39–47	41–49	44–56	41–50
Acetamide	60–35–5	45–57	45–57	NA	61–79	51–65
Ethane, 1,1,2,2-tetrabromo-	79–27–6	37–41	37–41	37–41	37–42	37–41
Phenanthrene	85–01–8	40–47	40–46	40–48	44–54	41–49
Benzene, 1,3-diisocyanato-2-methyl-	91–08–7	194–231	98–114	268–316	403–466	266–315
2-Naphthalenesulfonic acid, 6-amino-	93–00–5	44–54	44–54	NA	55–72	48–61
Benzeneamine, 4,4'-methylenebis[2-chloro-	101–14–4	NA	NA	47–60	55–72	47–60
Ethanol, 2-chloro-, phosphate (3:1)	115–96–8	40–47	40–46	NA	44–54	41–49
Pyrene	129–00–0	40–47	40–46	NA	44–54	41–49
Hydrazinecarboxamide, monohydrochloride	563–41–7	39–47	39–47	41–49	44–56	41–50
Benzene, 2,4-diisocyanato-1-methyl-	584–84–9	194–231	98–114	268–316	403–466	266–315
Disulfide, dimethyl	624–92–0	40–47	40–46	NA	44–54	41–49
Benzene, diisocyanatomethyl-	1321–38–6	196–233	100–116	270–320	407–471	269–318
Hydroxylamine, hydrochloride	5470–11–1	37–42	38–43	38–43	39–44	38–43
Chlorine	7782–50–5	55–79	NA	NA	91–128	NA
Hydroxylamine	7803–49–8	37–42	38–43	38–43	39–44	38–43
Hydroxylamine, sulfate (2:1)	10039–54–0	37–42	38–43	38–43	39–44	38–43
Hydroxylamine, sulfate (1:1)	10046–00–1	37–42	38–43	38–43	39–44	38–43

CAIR REPORTING BURDEN FOR BOTH QUESTION-SPECIFIC AND GENERAL COSTS (RANGE IN HOURS)—Continued

Chemical name	CAS No.	Manufacturer	Importer	Processor	Manufacturer / processor	Importer / processor
Benzene, 1,3-diisocyanatomethyl-	26471-62-5	196–233	100–116	270–320	407–471	269–318

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements.

Dated: October 27, 1988.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Part 704 is amended as follows:

1. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

PART 704—REPORTING AND RECORDKEEPING REQUIREMENTS

2. By revising the Part heading to read as set forth above.

Subpart A—General Reporting and Recordkeeping Provisions for Section 8(a) Information-Gathering Rules

3. By revising the Subpart A heading to read as set forth above.

4. By revising §§ 704.1, 704.3, and 704.5 to read as follows:

§ 704.1 Scope.

(a) This Part specifies reporting and recordkeeping procedures under section 8(a) of the Toxic Substances Control Act (TSCA) for manufacturers, importers, and processors of chemical substances and mixtures (hereafter collectively referred to as substances) that are identified in Subpart B or D of this Part. The reporting and recordkeeping provisions in Subpart A of this Part apply throughout this Part unless revised in any other subpart.

(b) Subpart B of this Part sets out chemical-specific reporting and recordkeeping requirements under section 8(a) of TSCA.

(c) Subpart C of this Part sets out the general reporting provisions for the Comprehensive Assessment Information Rule (CAIR). CAIR standardizes certain section 8(a) rules by: providing a set of uniform questions for EPA and other agencies to use in assembling specific reporting requirements; requiring the submission of information on a standard reporting form; and establishing uniform reporting and recordkeeping provisions that supplement the reporting and recordkeeping provisions in Subpart A of this Part. CAIR provisions apply only to those persons who manufacture, import, or process a substance identified in Subpart D of this Part during the time period for which reporting is required.

(d) Subpart D of this Part contains a matrix that identifies the substances for which EPA requires reporting under Subpart C, the persons who must report the information to EPA, the information that must be reported, the coverage period (as that term is defined in § 704.203), and the effective date of the final rule.

§ 704.3 Definitions.

All definitions as set forth in section 3 of TSCA apply in this Part. In addition, the following definitions are provided for the purposes of this Part.

"Annual" means the corporate fiscal year.

"Article" means a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

"Byproduct" means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

"CAS Number" means Chemical Abstracts Service Registry Number.

"Coproduct" means a chemical substance produced for a commercial purpose during the manufacture, processing, use, or disposal of another chemical substance or mixture.

"Customer" means any person to whom a manufacturer, importer, or processor directly distributes any quantity of a chemical substance, mixture, mixture containing the substance or mixture, or article containing the substance or mixture, whether or not a sale is involved.

"Domestic" means within the geographical boundaries of the 50 United States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

"Enclosed process" means a manufacturing or processing operation that is designed and operated so that there is no intentional release into the environment of any substance present in the operation. An operation with fugitive, inadvertent, or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to and environmental contamination from the releases.

"EPA" means the United States Environmental Protection Agency.

"Import" means to import for commercial purposes.

"Import for commercial purposes" means to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer, and includes the importation of any amount of a chemical substance or mixture. If a chemical substance or mixture containing impurities is imported for commercial purposes, then those impurities also are imported for commercial purposes.

"Import in bulk form" means to import a chemical substance (other than as part of a mixture or article) in any quantity, in cans, bottles, drums, barrels, packages, tanks, bags, or other containers, if the chemical substance is intended to be removed from the container and the substance has an end use or commercial purpose separate from the container.

"Importer" means (1) any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States, and includes:

(i) The person primarily liable for the payment of any duties on the merchandise, or

(ii) An authorized agent acting on his behalf (as defined in 19 CFR 1.11).

(2) Importer also includes, as appropriate:

(i) The consignee.

(ii) The importer of record.

(iii) The actual owner if an actual owner's declaration and superseding bond have been filed in accordance with 19 CFR 141.20.

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(iv) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144.

(3) For the purposes of this definition, the customs territory of the United States consists of the 50 States, Puerto Rico, and the District of Columbia.

"Impurity" means a chemical substance which is unintentionally present with another chemical substance.

"Intermediate" means any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.

"Known to or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

"Manufacture" means to manufacture for commercial purposes.

"Manufacture for commercial purposes" means: (1) To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things, such "manufacture" of any amount of a chemical substance or mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

"Manufacturer" means a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.

"Non-isolated intermediate" means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture. Mechanical or gravity transfer through a closed system is not considered to be intentional removal, but storage or transfer to shipping containers "isolates" the substance by removing it from process equipment in which it is manufactured.

"Own or control" means ownership of 50 percent or more of a company's voting stock or other equity rights, or the power to control the management and policies of that company. A company may own or control one or more sites. A company may be owned or controlled by a foreign or domestic parent company.

"Parent company" is a company that owns or controls another company.

"Person" includes any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

"Possession or control" means in the possession or control of any person, or of any subsidiary, partnership in which the person is a general partner, parent company, or any company or partnership which the parent company owns or controls, if the subsidiary, parent company, or other company or partnership is associated with the person in the research, development, test marketing, or commercial marketing of the substance in question. Information is in the possession or control of a person if it is:

(1) In the person's own files including files maintained by employees of the person in the course of their employment.

(2) In commercially available data bases to which the person has purchased access.

(3) Maintained in the files in the course of employment by other agents of the person who are associated with research, development, test marketing, or commercial marketing of the chemical substance in question.

"Process" means to process for commercial purposes.

"Process for commercial purposes" means the preparation of a chemical substance or mixture after its manufacture for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included in this definition. If a chemical substance or mixture containing impurities is processed for commercial purposes, then the impurities also are processed for commercial purposes.

"Processor" means any person who processes a chemical substance or mixture.

"Production volume" means the quantity of a substance which is produced by a manufacturer, as measured in kilograms or pounds.

"Propose to manufacture, import, or process" means that a person has made a firm management decision to commit financial resources for the manufacture, import, or processing of a specified chemical substance or mixture.

"Site" means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one plant on a single site. The site for a person who imports a substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction and may in some cases be the organization's headquarters office in the United States.

"Small manufacturer or importer" means a manufacturer or importer that meets either of the following standards:

(1) *First standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.

(2) *Second standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor

Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales values when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide **Federal Register** notification when changing the total annual sales values.

"Small quantities solely for research and development" (or "small quantities solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product") means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that are not greater than reasonably necessary for such purposes.

"Substance" means either a chemical substance or mixture unless otherwise indicated.

"Test marketing" means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, article containing that chemical substance or mixture, or a mixture containing that substance, by a manufacturer or processor, to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture, or article in commerce.

"Total annual sales" means the total annual revenue (in dollars) generated by the sale of all products of a company. Total annual sales must include the total annual sales revenue of all sites owned or controlled by that company and the total annual sales revenue of that company's subsidiaries and foreign or domestic parent company, if any.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.

§ 704.5 Exemptions.

A person who is subject to reporting requirements for a substance identified in this Part is exempt from those requirements to the extent that the person and that person's use of the substance is described in this section. This section is superseded by any TSCA section 8(a) rule that adds to, removes, or revises the exemptions described in this section.

(a) *Articles.* A person who imports, processes, or proposes to import or process a substance identified in this Part solely as part of an article is exempt from the reporting requirements of this Part with regard to that substance.

(b) *Byproducts.* A person who manufactures, imports, or proposes to manufacture or import a substance identified in this Part solely as a byproduct is exempt from the reporting requirements of this Part.

(c) *Impurities.* A person who manufactures, imports, processes, or proposes to manufacture, import, or process a substance identified in this Part solely as an impurity is exempt from the reporting requirements of this Part.

(d) *Non-isolated intermediate.* A person who manufactures or proposes to manufacture a substance identified in this Part solely as a non-isolated intermediate is exempt from the reporting requirements of this Part.

(e) *Research and development.* A person who manufactures, imports, processes, or proposes to manufacture, import, or process a substance identified in this Part only in small quantities solely for research and development is exempt from the reporting requirements of this Part.

(f) *Small manufacturers and importers.* Small manufacturers and importers are exempt from the reporting requirements of this Part.

5. By revising the section heading for § 704.7 to read as follows:

§ 704.7 Confidential business information claims.

* * * * *

6. By adding §§ 704.9, 704.11, and 704.13 to read as follows:

§ 704.9 Where to send reports.

Reports must be submitted by certified mail to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460. ATTENTION: 8(a) Reporting.

§ 704.11 Recordkeeping.

Each person who is subject to the reporting requirements of this Part must retain the following records for 3 years following the creation or compilation of the record.

(a) A copy of each report submitted by the person in response to the requirements of this Part.

(b) Materials and documentation sufficient to verify or reconstruct the values submitted in the report.

(c) A copy of each notice sent by the person, return receipt requested, to that person's customers for the purpose of notifying their customers of the customer's reporting obligations under this Part.

(d) All return receipts signed by the person's customers who received the notice described in paragraph (c) of this section.

(Approved by the Office of Management and Budget under OMB control number 2010–0019)

§ 704.13 Compliance and enforcement.

Violators of the requirements of this Part may be subject to civil administrative penalties up to $25,000 per day of violation or criminal prosecution, as provided in sections 15 and 16 of TSCA. In addition, under section 17, EPA may seek judicial relief to compel submission of required information.

7. By amending Subpart B as follows:

Subpart B—Chemical-Specific Reporting and Recordkeeping Rules

a. By revising the heading for Subpart B to read as set forth above.

§§ 704.83, 704.85, and 704.142 [Redesignated as §§ 704.43, 704.45 and 704.102].

b. By redesignating existing §§ 704.83, 704.85, and 704.142 under Subpart B as §§ 704.43, 704.45, and 704.102 respectively.

§§ 704.195 and 704.205 [Removed].

c. By removing §§ 704.195 and 704.205.

8. By adding Subpart C to read as follows:

Subpart C—CAIR: Comprehensive Assessment Information Rule—General Reporting and Recordkeeping Provisions

Sec.

704.200 Overview of CAIR provisions—Subparts C and D.
704.203 Definitions.
704.205 Limitations on reporting requirements.
704.206 Persons who must report.
704.207 Information to be reported.
704.208 Distribution of substances under a trade name.
704.210 Exemptions.
704.212 Questions selected.
704.214 Coverage period.
704.215 Reporting period.
704.216 How to obtain a CAIR reporting form.
704.217 How to submit completed CAIR reporting forms.

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704.219 Confidential business information claims.

§ 704.200 Overview of CAIR provisions—Subparts C and D.

Although the provisions in Subpart A of this Part apply to all of Part 704, EPA may in Subpart C and D of this Part modify the Subpart A provisions of this Part for the purposes of requiring reporting and recordkeeping provisions on specified substances. In the event of a conflict between the provisions of Subparts A and C of this Part, the provisions of Subpart C of this Part shall govern. Subpart C of this Part explains the reporting and recordkeeping provisions for persons who manufacture, import, or process the substances identified in Subpart D of this Part. Subpart D of this Part identifies: the substances for which EPA requires the reporting of information under CAIR; the persons who are required to submit the information; the questions from the CAIR reporting form that must be answered; the time period on which to report; and the effective date of the final rule. The text of Subpart D of this Part is set out in a matrix format and uses symbols to identify some reporting requirements. These symbols are explained in § 704.206. In addition to the matrix, Subpart D also identifies when all reporting forms must be submitted.

§ 704.203 Definitions.

All definitions as set forth in section 3 of TSCA and § 704.3 apply in this Subpart. In addition, the following definitions are provided for the purposes of this Subpart.

"Coverage period" means a time-span which is 1 day less than 2 years, as identified in Subpart D, and is the time-span which a person uses to determine his/her reporting year. Subject manufacturing or processing activities may or may not have occurred during the coverage period.

"Manufacturing activities" means all those activities at one site which are necessary to produce a substance identified in Subpart D of this Part and make it ready for sale or use as the listed substance, including purifying or importing the substance.

"Processing activities" means all those activities which include (1) preparation of a substance identified in Subpart D of this Part after its manufacture to make another substance for sale or use, (2) repackaging of the identified substance, or (3) purchasing and preparing the identified substance for use or distribution in commerce.

"Repackager" means a person who buys a substance identified in Subpart D of this Part or mixture, removes the substance or mixture from the container in which it was bought, and transfers this substance, as is, to another container for sale.

"Reporting Period" means the time period during which CAIR reporting forms are to be submitted to EPA.

"Reporting Year" means the most recent complete corporate fiscal year during which a person manufactures, imports, or processes the listed substance, and which falls within a coverage period identified with a substance in Subpart D of this Part.

"Small processor" means a processor that meets either of the following standards:

(1) *First Standard.* A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual processing volume of a particular substance at any individual site owned or controlled by the processor is greater than 45,400 kilograms (100,000 pounds), the processor shall not qualify as small for purposes of reporting on that substance at that site, unless the processor qualifies as small under standard (2) of this definition.

(2) *Second standard.* A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances processed by that processor.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide **Federal Register** notification when changing the total annual sales values.

§ 704.205 Limitations on reporting requirements.

The following limitations apply to the reporting and recordkeeping requirements of Subpart D of this Part.

(a) *Repart on TSCA-regulable quantities.* A person must report on only the quantity of a substance that is defined as a chemical substance under TSCA section 3(2).

(b) *Chemical substances from natural sources.* A manufacturer of a chemical substance which is mined or extracted from minerals, ores, petroleum, natural gas, quarried nonmetallic minerals (including extraction of salts from seawater or brines), coal, or atmospheric gases, or from any other natural source, must report only about the manufacturing steps taken, and the uses of, that substance, and not about production of the natural source material or other crude precursors derived from the natural source material.

§ 704.206 Persons who must report.

(a) *General requirements.* Manufacturers, importers, and processors must report on each substance identified in Subpart D of this Part if: they are designated in Subpart D as a person who must report on the substance, they manufactured, imported, or processed the substance during the coverage period designated in Subpart D for which reporting on that substance is required, and they are not otherwise exempt.

(b) *Symbols for designating persons who must report.* EPA will designate who must report on each substance identified in Subpart D of this Part by using the following symbols:

(1) "M" means each person who manufactured the substance for commercial purposes.

(2) "I" means each person who imported the substance for commercial purposes.

(3) "P" means each person who processed the substance for commercial purposes.

(4) "X/P" means each person who manufactured, imported, or processed the substance for commercial purposes and distributed the substance under a trade name.

(c) *Special provision for importers.* When two or more persons are involved in a particular import transaction of a substance identified in Subpart D of this Part, and two or more of these persons meet the definition of "importer" for this transaction, they may determine among themselves who should comply with the CAIR reporting and recordkeeping requirements for the substance and have that person list the names of the other importers who were involved in the transaction. If none of the persons involved comply with the CAIR reporting and recordkeeping requirements for that substance, then EPA will hold each of these persons liable for their failure to comply.

(d) *Dual designations.* If a person is engaged in more than one activity (e.g., manufacturing and processing) at the same site for a substance identified in Subpart D of this Part and both activities are listed, then that person must comply with the reporting requirements for both activities.

§ 704.207 Information to be reported.

(a) The CAIR reporting form is comprised of 10 sections. Each section contains specific questions which pertain to the subject matter found in that particular section. There is a set of instructions which accompanies the CAIR reporting form. The instructions consist of: specific directions and sample answers relating to certain form questions based on two reporting scenarios, conversion tables, and a glossary which defines key terms. The following is a description of the information contained in each section of the CAIR reporting form.

(1) Section 1: *General Manufacturer, Importer, and Processor Information.*

Respondent Identification
Reporting Status
Certification Statements
Corporate Data
Mixture Identification

(2) Section 2: *Manufacturer, Importer, and Processor Volume, and Use.*

Respondent Activities
Quantity Manufactured, Imported, and Processed
Quantity Exported
Quantity Stored on-site
Product Types
Transportation off-site
Customer Use

(3) Section 3: *Processor Raw Material Identification.*

Quantity Used and Price of Listed Substance
Transportation to Site
Listed Substance in the Form of a Mixture

(4) Section 4: *Physical/Chemical Properties.*

Purity of Listed Substance
MSDS Exists/Submitted
Physical State of Listed Substance
Particle Size of Listed Substance
Fire, Explosion, and Other Hazard Data
Shipment Restrictions

(5) Section 5: *Environmental Fate.*

Rate Constants and Transformation Products
Partition Coefficients

(6) Section 6: *Economic and Financial Information.*

Company Type
Product Types/Product Markets
Commercially Available Substitutes
Production Costs
Product Sales

(7) Section 7: *Manufacture and Process Information.*

Process Block Flow Diagrams
Unit Operation Equipment Types
Process Stream Description and Characterization

(8) Section 8: *Residual Treatment, Generation, Characterization, Transportation, and Management.*

Residual Treatment Block Flow Diagrams
Unit Operation Equipment Types
Process Stream Description and Characterization
Residual Management Methods
Residual Handling Instructions/ Restrictions
Storage or Treatment in Tanks and Waste Piles
Storage, Treatment, or Disposal in Containers
Residual Handling
Burning in Boilers and Incinerators
Storage, Treatment, or Disposal in Land Treatment Sites and Surface Impoundments
Disposal in Landfill Cells and Injection Wells

(9) Section 9: *Worker Exposure.*

Employment and Potential Exposure Profile
Records Maintained for Workers
Job Titles by Labor Category
Exposure Characterization
Process Block Flow Diagram with Associated Work Areas
Description of Work Areas and Worker Activities
Work Place Monitoring Programs
Personal/Ambient Air Monitoring
Medical, Monitoring Tests
Engineering Controls
Equipment/Process Modifications
Personal Protective Clothing and Safety Equipment
Respirator Maintenance Activity and Training Programs
Work Practices
Housekeeping Tasks
Medical, Leak, Spill, Worker Safety, and Health Plans

(10) Section 10: *Environmental Release.*

Plant Location
Meteorological Conditions
Groundwater Below Plant Site
Routine Releases
Quantity of Listed Substance Released
Control Technologies
Point Source Emissions
Emission Characteristics
Equipment Leaks and Detection
Pressure Relief Devices with Controls
Raw Material, Intermediate, and Product Storage Emissions
NPDES, POTW, and Non-point Discharges
Releases to Soils, Groundwater, and Drinking Water
Spills and Other Non-routine Releases
Weather Conditions, Date and Time of Release
Method of Release and Quantity Released
Cause and Result of Release
Authorities and Population Notified
Personal Injuries and Casualties
Release Prevention Practices
Repairs and/or Preventative Measures

(b) [Reserved]

§ 704.208 Distribution of substances under a trade name.

(a) The X/P designation requires each person who manufactured, imported, or processed a substance identified in Subpart D of this Part for commercial purposes and who distributed the substance under a trade name to do one of the following.

(1) *Trade name list.* Submit to EPA a list of all trade names under which the person distributes the substance. Submissions must have a postmark date no later than 1 day after the effective date of the final rule listing the substance in Subpart D of this Part. Trade name lists must be submitted by certified mail to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460, ATTENTION: CAIR Trade Name List. Include the date of the **Federal Register** notice you are subject to, the substance name, CAS number, trade name(s) associated with that substance, the company's name, address and telephone number, and the address and telephone number of a technical contact. EPA will issue all submitted trade names in a **Federal Register** notice in order to notify all processors of these trade name substances of their CAIR reporting and recordkeeping obligations.

(2) *Customer reporting.* Submit to EPA a CAIR reporting form that answers the processor's reporting requirements for each customer who would be required to report if the customer knew it was processing the listed substance. Persons may only choose to report for their customers if such persons can supply all of the information requested. Persons reporting on their customers' activities are liable for information reported incorrectly just as they are for reporting incorrectly on their own activities. Reporting is due no later than 90 days after the effective date of the final rule listing the substance in Subpart D of this Part.

(3) *Customer notification.* Notify each customer who would be required to

report if the customer knew they were processing the listed substance, of the specific section in Subpart D of this Part which identifies the substance and the processor reporting requirements. The customer notification must be sent by certified mail, return receipt requested, within 30 days of the effective date of the final rule that added the substance to Subpart D of this Part. The notification must specify which questions from the form must be answered, on which trade name substances, when the reports are due, the citation and date of the final rule that added the substance to Subpart D, and where to send the reports. Customers must report within the time period indicated in § 704.223(b).

(b) *Notification extensions.* Any person who chooses to notify their customers of their reporting obligations, but cannot meet the notification deadline, may apply for a reasonable extension of time. Requests for extensions must be made in writing, contain a justification for such a request, and be addressed to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460, ATTENTION: CAIR customer notification extension. Extension requests must be postmarked no later than 5 days before the notification deadline.

(c) [Reserved]

§ 704.210 Exemptions.

The reporting exemptions set out in § 704.5 apply to CAIR reporting requirements. This section contains additional exemptions from reporting that also apply to CAIR reporting requirements. EPA may modify exemptions for CAIR reporting requirements for specific substances by specifying the modification in Subpart D of this Part.

(a) *Repackager.* A person who is solely a repackager as defined in § 704.203, and does not engage in any other processing activities, is exempt from the reporting and recordkeeping requirements of this Subpart.

(b) *Small processor.* A person who qualifies as a small processor as this term is defined in § 704.203 is exempt from the reporting and recordkeeping requirements of this Subpart.

(c) *Previous submission of data.* (1) A submitter who previously provided information on a substance identified in Subpart D of this Part to EPA or another Federal agency on a CAIR reporting form qualifies for a partial exemption from current reporting requirements for that substance and site if the person previously reported voluntarily or pursuant to previous reporting and recordkeeping requirements of this Subpart. The previously submitted report must have covered a complete corporate fiscal year that ended no more than 3 years before the effective date of the current reporting requirements for the substance, and the data on the previously submitted CAIR form must be current, accurate, and complete for the reporting year determined using the coverage periods specified in Subpart D of this Part.

(2) If the submitter qualifies for this partial exemption because the submitter previously submitted information voluntarily to EPA or another agency, then that person may, in response to a specified reporting requirement on a substance identified in Subpart D of this Part, submit only a completed Section 1 of the CAIR reporting form and a copy of the previous submission. To use this partial exemption, the person must sign the certification set out in Section 1 of the CAIR reporting form that pertains to the use of this exemption.

(3) If the submitter qualifies for this partial exemption because the submitter previously submitted information to EPA pursuant to reporting requirements of this Subpart, then that person may, in response to a specified reporting requirement on a substance identified in Subpart D of this Part, submit only a completed Section 1 of the CAIR reporting form and indicate the date of and the technical contact for the previous submission. To use this partial exemption, the person must sign the certification set out in Section 1 of the CAIR reporting form that pertains to the use of this exemption.

§ 704.212 Questions selected.

(a) *Designated questions.* Each person who is required to report on a substance identified in Subpart D of this Part must answer only the CAIR reporting form questions designated in Subpart D. A CAIR reporting form and instructions can be obtained from the TSCA Assistance Office as outlined in § 704.216.

(b) *Specifying the questions.* (1) The questions selected will always include Section 1 of the CAIR reporting form.

(2) Other questions selected will be specified by section or question number (e.g., 3 all or 3.01 and 3.02).

(i) Whenever the questions selected specify a section of the CAIR reporting form followed by the word "all," each person who is required to report on the identified substance must answer all parts of each question within the section.

(ii) Whenever the questions selected specify a question from the CAIR reporting form, each person who is required to report on the identified substance must answer all parts of the question.

(c) *One report per site.* Each person who is required to report on a substance identified in Subpart D of this Part must report the required information separately for each site at which that person manufactured, imported, or processed the substance.

(d) *Activities on which to report.* Each person who is required to report on a substance identified in Subpart D of this Part must report the required information for each activity which occurs at the site. If a person is engaged in more than one activity (e.g., manufacturing and processing) at the same site with respect to the substance, such person is only required to report on the activity or activities specified in Subpart D. If a person is required to report on more than one activity for the same substance, such person must report on all specified activities on the same form.

§ 704.214 Coverage period.

(a) Each person who is required to report on a substance identified in Subpart D of this Part must comply with the reporting requirement for the coverage period designated in the Subpart D matrix.

(b) EPA will specify for each reporting requirement the coverage period on which the information must be reported.

(c) Activities which occurred during a coverage period are reportable if they occurred during the reporting year.

(d) Persons who were engaged in reportable activities in more than one coverage period must report only on the most recent coverage period in which the activities occurred.

§ 704.215 Reporting period.

(a) *When reports are due.* (1) Persons who are required to report on a substance identified in Subpart D of this Part, including those who choose to report for their customers who process the identified substance, must submit their completed CAIR forms during the reporting period identified in § 704.223(a).

(2) Persons who were notified by a supplier that reporting is required on a trade name substance, must submit their completed CAIR forms during the reporting period identified in § 704.223(b).

(b) *Reporting extensions.* Persons who cannot submit their reports by the deadline as specified in § 704.223 may

apply for a reasonable extension of time. Requests for extensions must be made in writing, contain a justification for such requests, and be addressed to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460, ATTENTION: CAIR reporting extension. Extension requests must be postmarked no later than 30 days after the effective date of the addition of a substance or mixture to Subpart D of this Part or 30 days after notification by a supplier as described in § 704.208.

§ 704.216 How to obtain a CAIR reporting form.

CAIR forms and instructions may be obtained by telephoning or writing the TSCA Assistance Office. Phone Number: (202) 554–1404, TDD (202) 554–0551. Address: TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

§ 704.217 How to submit completed CAIR reporting forms.

(a) Each person who is required to report on a substance identified in Subpart D of this Part may submit their reports from the individual sites or through the company headquarters. However, a separate report must be submitted for each substance at each site at which the person engages in one or more of the activities for which EPA is requesting information.

(b) Submitters must send their completed forms to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Rm. L–100, 401 M St., SW., Washington, DC 20460. ATTENTION: CAIR Reporting.

§ 704.219 Confidential business information claims.

(a) Submitters may assert a Confidential Business Information (CBI) claim for information submitted to EPA only if: the claim is asserted in accordance with this section; and release of the information would reveal trade secrets or confidential commercial or financial information, as provided in section 14(a) of TSCA. EPA will place all information not claimed as confidential in the manner described in this section in the public file without further notice to the respondent.

(b) Submitters who assert a CBI claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file. Failure to furnish a second copy of the submission when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the submitter by certified mail that a finding of a presumptive wavier of the claim of confidentiality has been made. The submitter has 30 days from the date of receipt of notification to submit the required second copy. Failure to submit the second copy will cause EPA to place the first copy in the public file.

(c) Submitters may assert CBI claims only at the time a completed CAIR form is submitted and only in the specified manner.

(1) Submitters must clearly mark all information claimed as confidential. Submitters can claim information submitted on a reporting form as confidential by placing in the CBI box, which is adjacent to the question, the letter or letters that indicate the category of the information, as enumerated in paragraph (e) of this section, which is being claimed confidential. Respondents who claim information submitted on continuation sheets to the form as confidential must do so by writing the word "Confidential" at the top of the page on which the information appears and by placing brackets ([ ]) around the information claimed confidential.

(2) [Reserved]

(d) Submitters must substantiate all claims of confidentiality at the time the submitter asserts the claim (i.e., when the reporting form is submitted). Failure to provide substantiation of a claim at the time the submitter submits the reporting form will result in a waiver of the confidentiality claim, and the information may be disclosed to the public without further notice to the submitter.

(e) EPA has identified six information categories as those which will encompass all claims of confidentiality:

Submitter identity=h,
Substance identity=i,
Volume manufactured, imported, or processed=j,
Use information=k,
Process information=l, and
Other information=m.

Submitters who assert a CBI claim on the reporting form must mark the letter or letters (h through m) that represent the appropriate category(ies) of confidentiality for the information in the box adjacent to the question. Confidentiality claims for information on continuation sheets are asserted by placing the appropriate letter(s) in the margin by the information claimed confidential.

(f) Submitters who assert any CBI claims must substantiate all claims by completing all applicable portions of the CBI substantiation form found in Appendix II of the CAIR reporting form.

9. Subpart D is added to read as follows:

Subpart D—CAIR Specific Reporting and Recordkeeping Requirements

Sec
704.220 Chemical substance matrix requirements.
704.223 Reporting period.
704.225 Chemical substance matrix by CAS registry number.

§ 704.220 Chemical substance matrix requirements.

For each substance listed in the matrix in § 704.225, EPA has identified the persons who must report on that substance by means of the symbols M, I, P, and X/P. An explanation of these symbols is given in § 704.206 of Subpart C of this Part. These designated persons must respond to all of the matrix's reporting requirements. All of the CAIR reporting and recordkeeping requirements are explained in Subpart C of this Part. Persons who are required to report must comply with Subpart C of this Part.

§ 704.223 Reporting period.

(a) Reports must be submitted to the Agency no latter than 90 days after the effective date of the final rule listing the substance in § 704.225, except as described in § 704.223(b).

(b) Persons subject to X/P designations and who chose to notify their customers, must inform their customers that reports are due within 90 days of receipt of notification.

§ 704.225 Chemical substance matrix by CAS registry number.

The following codes are used in this section.

M=Each Person who Manufactured the Substance for Commercial Purposes

I=Each Person who Imported the Substance for Commercial Purposes
P=Each Person who Processed the Substance for Commercial Purposes
X/P=Each Person who Manufactured, Imported, or Processed the Substance for Commercial Purposes and Distributed the Substance under a Trade Name

(a) List of Chemicals.

CAS No.	Chemical name	Who must report	Exemptions added (+) removed (−)	Coverage period	Questions selected	Effective date
57-56-7	Hydrazinecarboxamide	M, X/P, I, P.		2/8/87-2/5/89	1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06	2/6/89
60-35-5	Acetamide (Ethanamide)	M, I		2/8/87-2/5/89	1, 2.01, 2.04 thru 2.06, 2.08, 2.12 thru 2.14, 2.17, 3.04, 9.04 thru 9.07	2/6/89
79-27-6	Ethane, 1,1,2,2-tetrabromo-	M, X/P, I, P.		2/8/87-2/5/89	1, 2.08, 2.12, 2.13	2/6/89
85-01-8	Phenanthrene	M, X/P, I, P.		2/8/87-2/5/89	1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06	2/6/89
91-08-7	Benzene, 1,3-diisocyanato-2-methyl- (2,6-Toluene diisocyanate).	X/P, P		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.08 thru 10.16, 10.23	2/6/89
		M, I		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.09 thru 10.16, 10.23	2/6/89
93-00-5	2-Naphthalenesulfonic acid, 6-amino- (Broenner's acid).	M, I		2/8/87-2/5/89	1, 2.01, 2.04 thru 2.06, 2.08, 2.11, 2.12, 2.17, 3.04, 4.01, 9.07, 10.05, 10.06	2/6/89
101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro- (MBOCA).	X/P, P		2/8/87-2/5/89	1, 9.01, 9.03, 9.06, 9.08, 9.12, 9.15	2/6/89
115-96-8	Ethanol, 2-chloro-, phosphate (3:1) (Tris(2-chloroethyl) phosphate).	M, I		2/8/87-2/5/89	1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06	2/6/89
129-00-0	Pyrene (Benzo[def]phenanthrene)	M, I		2/8/87-2/5/89	1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06	2/6/89
563-41-7	Hydrazinecarboxamide, monohydrochloride (Semicarbazide hydrochloride).	M, X/P, I, P.		2/8/87-2/5/89	1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06	2/6/89
584-84-9	Benzene, 2,4-diisocyanato-1-methyl- (2,4-Toluene diisocyanate).	X/P, P		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.08 thru 10.16, 10.23	2/6/89

CAS No.	Chemical name	Who must report	Exemptions added (+) removed (−)	Coverage period	Questions selected	Effective date
		M, I		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.09 thru 10.16, 10.23	2/6/89
624-92-0	Disulfide, dimethyl (Dimethyl disulfide).	M, I		2/8/87-2/5/89	1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06	2/6/89
1321-38-6	Benzene, diisocyanatomethyl- (Unspecific toluene diisocyanate).	X/P, P		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.08 thru 10.16, 10.23	2/6/89
		M, I		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23	2/6/89
5470-11-1	Hydroxylamine, hydrochloride (Hydroxylammonium chloride).	M, X/P, I, P		2/8/87-2/5/89	1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01	2/6/89
7782-50-5	Chlorine	M		2/8/87-2/5/89	1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.08	2/6/89
7803-49-8	Hydroxylamine (Oxammonium)	M, X/P, I, P		2/8/87-2/5/89	1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01	2/6/89
10039-54-0	Hydroxylamine, sulfate (2:1) (Hydroxylammonium).	M, X/P, I, P		2/8/87-2/5/89	1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01	2/6/89
10046-00-1	Hydroxylamine, sulfate (1:1) (Hydroxylamine acid sulfate).	M, X/P, I, P		2/8/87-2/5/89	1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01	2/6/89
26471-62-5	Benzene, 1,3-diisocyanatomethyl- (Toluene diisocyanate).	X/P, P		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10 08 thru 10.16, 10.23	2/6/89
		M, I		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23	2/6/89

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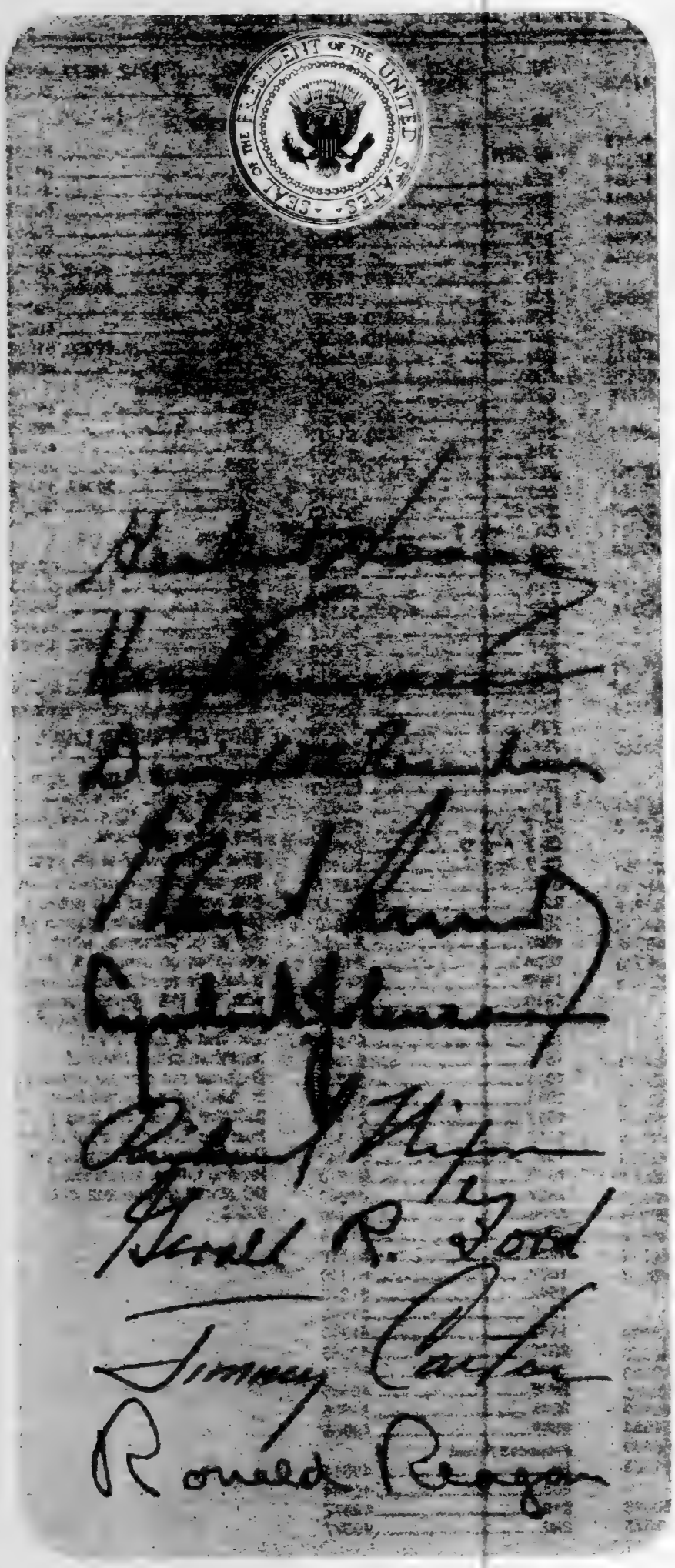

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Title 3—

The President

Proclamation 5924 of December 21, 1988

To Complete Implementation of the United States-European Community Agreement on Citrus and Pasta, and for Other Purposes

By the President of the United States of America

A Proclamation

1. On February 24, 1987, the United States and the European Community (EC) signed an agreement resolving the long-standing dispute concerning access to the EC market for U.S. citrus products. The EC agreed to reduce certain duties on specified imported products, in certain cases subject to a tariff rate quota. The United States agreed to reduce duties on particular products and further agreed to eliminate the increased rates of duty on EC pasta established by Proclamation 5354 of June 21, 1985 (50 FR 26143).

2. Section 1122(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (Pub. L. 100–418, 102 Stat. 1144) authorizes the President to proclaim an effective date after September 30, 1988, for the duty reductions set out in section 1122(c) of the 1988 Act that is appropriate to carry out the Agreement. Further, section 1122(b)(2) of the 1988 Act authorizes the President at any time to modify or terminate by proclamation any provision of law enacted by the amendments made by section 1122(c) of the 1988 Act.

3. Sections 9001 and 9004 of the Technical and Miscellaneous Revenue Act of 1988 (the TMRA) (Pub. L. 100–647, 102 Stat. 3342) make various amendments, including the extension of certain existing suspensions of duty and duty reductions, to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Certain amendments to the TSUS made by the TMRA, which became effective on November 10, 1988, extend through December 31, 1992, and must therefore be incorporated into the Harmonized Tariff Schedule of the United States (HTS) in order to continue such duty treatment after January 1, 1989. Further, certain technical corrections to particular HTS provisions are necessary to correctly state the tariff treatment of the covered articles.

4. Pursuant to section 4(a) of the United States-Israel Free Trade Area Implementation Act of 1985 (the 1985 Act) (19 U.S.C. 2112 note; Pub. L. 99–47, 99 Stat. 82), the President is authorized to proclaim such modifications or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties as he determines to be required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in Annex I of the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985, and approved on June 11, 1985. Section 4(b) of the 1985 Act authorizes the President, whenever he determines it necessary to maintain the general level of reciprocal and mutually advantageous concessions provided with respect to Israel provided for by the Agreement, to proclaim such additional tariff modifications, including the withdrawal, suspension, modification, or continuance of any duty, as he determines to be required or appropriate to carry out the Agreement.

5. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder. Section 1204(b) of the 1988 Act (19 U.S.C. 3004(b)) directs the President to proclaim

such modifications to the HTS as are necessary or appropriate to implement the applicable provisions of statutes enacted and Executive actions taken after January 1, 1988, and before the effective date of the HTS, and such technical rectifications as he considers necessary.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including but not limited to sections 1122 and 1204 of the 1988 Act, sections 9001 and 9004 of the TMRA, section 4 of the 1985 Act, section 604 of the Trade Act, and sections 301 and 302 of title 3 of the United States Code, do proclaim that:

(1) In order to complete implementation of the United States-EC Agreement on Citrus and Pasta, the HTS is modified as provided in Annex I to this Proclamation.

(2) In order to incorporate in the HTS the changes in tariff treatment enacted in the TMRA and to make certain technical rectifications, the HTS is further modified as set forth in Annex II to this Proclamation.

(3) The duty provided for in section 466 of the Tariff Act of 1930 shall not be imposed on equipments, or any part thereof, including boats, the foregoing which are the product of Israel, or on the expenses of repairs made in Israel upon U.S.-documented vessels (other than U.S. civil aircraft, as defined in general note 3(c)(iv) to the HTS).

(4) Subject to paragraph (5), the modifications to the HTS made by this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

(5) The United States Trade Representative (USTR) may delay the effective date of any modification to the HTS set out in Annex I to this Proclamation, or may suspend any such modification that may have taken effect, if the USTR determines that the EC has not implemented provisions of the Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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ANNEX I

MODIFICATIONS TO THE HTS TO IMPLEMENT
THE U.S.-EC AGREEMENT ON CITRUS AND PASTA

Notes:

1. Bracketed matter is included with particular subheadings to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). Except where specified rates of duty are being modified for particular subheadings, the headings and subheadings are set forth in columnar form; and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

1. Subheading 0406.90.50 is modified by striking out "9%" and inserting in lieu thereof "Free".

2. Subheading 0406.90.55 is modified by striking out "12%" and inserting in lieu thereof "Free".

3. Chapter 7 is modified by inserting at the end of the Additional U.S. Notes the following new note 5:

"5. The rates of duty set forth in subheadings 0711.20.15 and 2005.70.13 apply to the first 4,400 metric tons of olives, green in color, not pitted, in a saline solution, in containers each holding more than 8 kg, drained weight, certified by the importer to be used for repacking or sale as green olives, the foregoing entered under both subheadings combined in any calendar year."

4. Subheading 0711.20.20 is superseded by:

[0711	:Vegetables . . .:]	:	:	:
[0711.20	: Olives:]	:	:	:
	: "Not pitted:	:	:	:
0711.20.15	: Described in additional	:	:	:
	: U.S. note 5 to this	:	:	:
	: chapter.....	:3.7¢/kg on drained weight	:Free (E)	:7.4¢/kg on drained weight
0711.20.25	: Other.....	:7.4¢/kg on drained weight	:Free (E)	:7.4¢/kg on drained weight"

5. The rates of duty in column 1-general and in column 2 for subheading 0711.20.40 are stricken and the rate "10.8¢/kg on drained weight" is inserted in both columns.

6. Subheading 0711.30.00 is modified by striking out "16%" and inserting in lieu thereof "8%".

Annex I (con.)

7. Subheading 0712.90.15 is modified by striking out the column 1-general duty rate of "11¢/kg" and inserting in lieu thereof "5.5¢/kg".

8. Subheading 0904.20.20 is modified by striking out "4.4¢/kg" and inserting in lieu thereof "3¢/kg".

9. Subheadings 1509.10.20, 1509.90.20 and 1510.00.40 are each modified by striking out "8.4¢/kg on contents and container" and inserting in lieu thereof "5¢/kg on contents and container".

10. Subheadings 1509.10.40, 1509.90.40 and 1510.00.60 are each modified by striking out "5.7¢/kg" and inserting in lieu thereof "3.4¢/kg".

11. Subheading 1604.16.20 is superseded by:

[1604	Prepared . . .:]			
	[Fish, . . .:]			
[1604.16	Anchovies:]			
	"In oil, in airtight containers:			
1604.16.10	For an aggregate quantity entered in any calendar year not to exceed 3,000 metric tons.....	3%	Free (A, E,IL)	30%
1604.16.30	Other.....	6%	Free (A, E,IL)	30%"

12. Chapter 20 is modified by inserting at the end of the Additional U.S. Notes the following new note 4:

"4. The rates of duty set forth in subheadings 0711.20.15 and 2005.70.13 apply to the first 4,400 metric tons of olives, green in color, not pitted, in a saline solution, in containers each holding more than 8 kg, drained weight, certified by the importer to be used for repacking or sale as green olives, the foregoing entered under both subheadings combined in any calendar year."

13. Subheadings 2001.90.10 and 2001.90.20 are each modified by striking out "16%" and inserting in lieu thereof "8%".

Annex I (con.)

14. Subheadings 2005.70.10 through 2005.70.80, inclusive, are superseded by:

[2005	Other . . .:]			
[2005.70	Olives:]			
	[In . . .:]			
	[Green . . .:]			
	"Not pitted:			
2005.70.11	Ripe, in containers each holding less than 13 kg, drained weight, in an aggregate quantity not to exceed 730 metric tons entered in any calendar year.....	5.4¢/kg on drained weight	Free (E)	7.4¢/kg on drained weight
	Other:			
2005.70.13	Described in additional U.S. note 4 to this chapter.....	3.7¢/kg on drained weight	Free (E)	7.4¢/kg on drained weight
2005.70.15	Other.....	7.4¢/kg on drained weight	Free (E)	7.4¢/kg on drained weight
	Pitted or stuffed:			
	Place packed:			
2005.70.21	Stuffed, in containers each holding not more than 1 kg, drained weight, in an aggregate quantity not to exceed 2,700 metric tons in any calendar year.....	5.4¢/kg on drained weight	Free (E)	10.8¢/ kg on drained weight
2005.70.22	Other.....	10.8¢/ kg on drained weight	Free (E)	10.8¢/ kg on drained weight
2005.70.25	Other.....	10.8¢/ kg on drained weight	Free (E)	10.8¢/ kg on drained weight

Annex I (con.)

	[Other . . .: (con.)]			
	[Olives : (con.)]			
	[In . . .: (con.)]			
	Not green in color:			
	Canned:			
2005.70.50	Not pitted.....	11.6¢/ kg on drained weight	Free (E)	11.6¢/ kg on drained weight
2005.70.60	Other.....	11.9¢/ kg on drained weight	Free (E)	11.9¢/ kg on drained weight
	Other than canned:			
2005.70.70	In airtight containers of glass or metal.....	11.6¢/ kg on drained weight	Free (E)	11.6¢/ kg on drained weight
2005.70.75	Other.....	5¢/kg on drained weight	Free (E)	10¢/kg on drained weight
	Otherwise prepared or preserved:			
2005.70.81	Green, in containers each holding less than 13 kg, drained weight, in an aggregate quantity not to exceed 550 metric tons in any calendar year.....	5.5¢/kg on drained weight	Free (E)	11¢/kg on drained weight
2005.70.83	Other.....	11¢/kg on drained weight	Free (E)	11¢/kg on drained weight"

15. Subheading 2008.30.50 is superseded by:

[2008	Fruit, . . .:]			
[2008.30	Citrus . . .:]			
	[Other:]			
	[Mandarins . . .:]			
	"Mandarins:			
2008.30.52	Satsumas, in airtight containers, for an aggregate quantity entered in any calendar year not to exceed 40,000 metric tons.	Free		2.2¢/kg
2008.30.54	Other.....	0.44¢/kg	Free (A, E, IL)	2.2¢/kg"

Annex I (con.)

16. Subheading 2206.00.15 is modified by striking out "0.8¢/liter" and inserting in lieu thereof "0.4¢/liter".

17. Subheadings 9903.19.10 and 9903.19.90 and their superior description are deleted.

18. U.S. note 6 to subchapter III of chapter 99 is modified by striking out "subheadings 9903.19.10 and 9903.19.90,".

ANNEX II

TECHNICAL MODIFICATIONS TO THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Note:

The following subheadings, article descriptions, rates of duty, and effective periods supersede matter now in the Harmonized Tariff Schedule of the United States (HTS). The material set forth below is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", "Rates of Duty 2", or "Effective Period", as appropriate.

1. Additional U.S. Note 1 to chapter 17 is modified by striking out "Commission for Methods" and inserting "Commission for Uniform Methods" in lieu thereof.

2. Subheading 6103.29.10 is modified by striking out "artifical" and inserting "artificial" in lieu thereof.

3. Subheadings 9902.26.22, 9902.29.16, 9902.29.18, 9902.29.19, 9902.78.01, and 9902.84.49 are each modified by striking out "12/31/88" and inserting "12/31/92" in lieu thereof.

4. Subheading 9902.29.17 is modified by striking out "Potassium salts: (Antimony tartrate (tartar emetic)" and "12/31/88" and inserting "Potassium antimony tartrate (Tartar emetic)" and "12/31/92" in lieu thereof in the Article Description and Effective Period columns, respectively.

5. Subheading 9902.70.12 is modified by striking out "Free (A,E) 3.6% (IL)" and inserting "No change" in lieu thereof in the Rates of Duty 1-Special subcolumn.

6. Subchapter II of chapter 99 is modified by adding in numerical sequence the following new U.S. Note:

"9. The 'Effective Period' for subheading 9902.30.02 is:

On or before the earlier of 12/31/92 or the date (as determined by the U.S. Trade Representative) on which the rate of duty imposed by the European Communities on articles described in subheading 2939.30.00 exceeds the rate of duty imposed by the United States on such articles that was in effect on 6/30/88."

Annex II (con.)

7. Subchapter II of chapter 99 is further modified by adding in numerical sequence the following new provisions:

"9902.07.04	Brussels sprouts, fresh, chilled, or frozen, but not reduced in size and not otherwise prepared or preserved (provided for in subheading 0704.20.00 or 0710.80.65).....	12.5%	No change	No change	On or before 12/31/92
9902.29.89	4-Chloro-3-methylphenol (CAS No. 59-50-7) (provided for in subheading 2908.10.50).....	Free	No change	No change	On or before 12/31/92
9902.29.90	3,5,6-Trichlorosalicylic acid (provided for in subheading 2918.29.50).....	Free	No change	Free	On or before 12/31/92
9902.29.91	4,4'-Bis(α,α-dimethylbenzyl)diphenylamine (provided for in subheading 2921.44.50).....	Free	No change	No change	On or before 12/31/92
9902.29.92	m-Xylenediamine (provided for in subheading 2921.59.50).	Free	No change	No change	On or before 12/31/92
9902.29.93	1,3-Bis(aminomethyl)cyclohexane (provided for in subheading 2921.30.20).....	Free	No change	No change	On or before 12/31/92
9902.29.94	m-Aminophenol (provided for in for in subheading 2922.29.10).	Free	No change	Free change	On or before 12/31/92
9902.29.95	Clomiphene citrate (provided for in subheading 2922.50.25).	Free	No change	No change	On or before 12/31/92
9902.29.96	Dicyclomine hydrochloride (provided for in subheading 2922.19.50).....	Free	No change	No change	On or before 12/31/92
9902.29.97	N-Acetylsulfanilyl chloride (provided for in subheading 2924.29.13).....	Free	No change	Free change	On or before 12/31/92

Annex II (con.)

9902.29.98	Amiodarone (provided for in subheading 2932.90.41)	Free	No change	No change	On or before 12/31/92
9902.29.99	Terfenadine; mepenzolate bromide (provided for in subheading 2933.39.35)	Free	No change	No change	On or before 12/31/92
9902.30.00	Desipramine hydrochloride (provided for in subheading 2933.90.33)	Free	No change	No change	On or before 12/31/92
9902.30.01	(6R,7R)-7-[(R)-2-Amino-2-phenylacetamido]-3-methyl-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid disolvate (provided for in subheading 2934.90.40)	Free	No change	No change	On or before 12/31/92
9902.30.02	Caffeine (provided for in subheading 2939.30.00)	4.1%	No change	No change	See U.S. note 8 to this sub-chapter
9902.30.03	Lactulose (provided for in subheading 2940.00.00)	Free	No change	No change	On or before 12/31/92
9902.30.06	Rifampin (provided for in subheading 2941.90.30)	Free	No change	No change	On or before 12/31/92
9902.39.07	Allyl resins, uncompounded (provided for in subheading 3907.91.10)	Free	No change	No change	On or before 12/31/92
9902.71.04	Tool blanks and drill blanks, of industrial diamonds (provided for in subheading 7104.90.50 or heading 8207)	Free	No change	30%	On or before 12/31/92"

8. Subheading 9902.29.11 is modified by striking out "2909.49.50" and by inserting in lieu thereof "2909.19.50".

9. Subheading 9902.38.07 is modified by striking out "3808.20.10" and by inserting in lieu thereof "3808.90.10".

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10. Subheading 9902.40.11 is modified by striking out "4011.40.00" and by inserting in lieu thereof "4011.50.00".

11. The indented superior description to subheadings 9903.28.05 through 9903.28.25 is modified by striking out "2825.90.50" and by inserting in lieu thereof "2825.90.60".

12. Subheadings 9903.41.20 and 9903.41.25 are each modified by striking out the words "million bits" and by inserting in lieu thereof "megabits".

13. Chapter 75 of the HTS is modified by striking out heading number "7508" and by inserting in lieu thereof "7508.00".

14. Chapter 85 of the HTS is modified by inserting "8527.90" in the column entitled "Heading/Subheading" immediately above the subheading number "8527.90.40".

15. Subheadings 9901.00.50 and 9903.28.01 are each modified by inserting "(A,E,IL)" immediately after "No change" in the "Special" subcolumn of rate of duty column 1.

16. Subheadings 9903.17.05 through 9903.17.30, inclusive, are each modified by inserting "thousand" between the number and the unit of quantity in the quota quantity column.

17. Subheading 9903.87.00 is modified by adding "(B,E,IL)" immediately after "No change" in the "Special" subcolumn of rate of duty column 1.

18. Subheading 9903.17.30 is modified by striking out "2204.21.20,".

19. Subheading 9902.40.11 is modified by striking out "4011.40.00" and substituting "4011.50.00" in lieu thereof.

20. General note 3(c)(ii)(A) to the HTS is modified by inserting in alphabetical sequence in the enumeration of independent countries "Bahamas, The"; by striking out "Bermuda" from the enumeration of non-independent countries and territories; and by striking out "Singapore" from the enumeration of the member countries of the Association of South East Asian Nations (ASEAN).

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Presidential Documents

Proclamation 5925 of December 21, 1988

To Modify the Import Relief on Western Red Cedar Shakes and Shingles

By the President of the United States of America

A Proclamation

1. In Proclamation 5498 of June 6, 1986 (51 FR 20953), pursuant to sections 202 and 203 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2252 and 2253), I proclaimed import relief with respect to wood shingles and shakes, provided for in item 200.85 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). This relief took the form of a temporary duty increase for such shingles and shakes of western red cedar entered, or withdrawn from warehouse for consumption, during the period June 7, 1986, through June 6, 1991. On May 23, 1986, I directed that the United States International Trade Commission (USITC) be requested to advise me of the probable economic effect on the domestic industry of the termination of import relief after 30 months and that the Secretaries of Commerce and Labor be requested to provide advice regarding termination of relief. The Secretaries of Commerce and Labor have duly provided this advice.

2. On October 6, 1988, the USITC reported to me the results of an investigation (Inv. No. TA–203–18) pursuant to section 203(i) of the Trade Act (19 U.S.C. 2253(i)) with respect to the probable economic effect on the domestic industry of the termination of the import relief after 30 months. The USITC was equally divided on the question of whether the continuation of import relief would result in positive adjustments that would enhance the competitiveness of the domestic industry. On the basis of the advice that I have received, I have determined that the industry has undertaken positive adjustment efforts to improve competitiveness during the 30-month period of relief. However, the additional duties have burdened consumers and have encouraged substitution of alternative non-wood roofing materials.

3. On the basis of the information and advice received from the USITC and the Secretaries of Commerce and Labor, I have determined that recent market trends have impaired the effectiveness of import relief provided to the domestic industry. Accordingly, I have determined that it is in the national interest to accelerate the reduction of import duties.

4. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the TSUS the substance of the provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder. Further, section 1204 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3004) authorizes the President to proclaim such modifications to the Harmonized Tariff Schedule of the United States (HTS) as are necessary or appropriate to implement the applicable provisions of statutes enacted, Executive actions taken, and final judicial decisions rendered, after January 1, 1988, and before the effective date of the HTS.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including but not limited to sections 204 and 604 of the Trade Act and section 1204 of the 1988 Act, do proclaim that:

BEST COPY AVAILABLE

(1) Part 2A of the Appendix to the TSUS is modified as provided in section (a) of the Annex to this Proclamation.

(2) Chapter 99 of the HTS is modified as provided in section (b) of the Annex to this Proclamation.

(3) (a) The modifications to the TSUS made by this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this Proclamation in the **Federal Register**.

(b) The modifications to the HTS made by this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

Billing code 3195-01-M

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ANNEX

MODIFICATIONS TO THE IMPORT RELIEF
ON WESTERN RED CEDAR SHAKES AND SHINGLES

Notes:

1. Bracketed matter is included to assist in the understanding of the proclaimed modifications.

2. The provisions of Section A of this Annex supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior description are set forth in columnar format, and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively. The provisions of Section B of this Annex supersede matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior description are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", and "Rates of Duty 2", respectively.

Section A

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after December 7, 1988, part 2A of the Appendix is modified by striking out items 924.31 and 924.32 and by inserting in lieu thereof the following:

	[Wood...]			
"924.33	If entered during the period from December 7, 1988, through December 6, 1989, inclusive.....	20% ad val.		20% ad val.
924.34	If entered during the period from December 7, 1989, through December 6, 1990, inclusive.....	10% ad val.		10% ad val.
924.35	If entered during the period from December 7, 1990, through June 6, 1991, inclusive.....	5% ad val.		5% ad val."

Section B

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989, subchapter III of chapter 99 of the HTS is modified by striking out subheadings 9903.44.20 and 9903.44.30 and by inserting in lieu thereof the following:

	[Wood...]			
"9903.44.24	If entered during the period from December 7, 1988, through December 6, 1989, inclusive.....	20%		20%
9903.44.28	If entered during the period from December 7, 1989, through December 6, 1990, inclusive.....	10%		10%
9903.44.32	If entered during the period from December 7, 1990, through June 6, 1991, inclusive.....	5%		5%"

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Rules and Regulations

Federal Register
Vol. 53, No. 247
Friday, December 23, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Letter of Credit Arrangements for Carrier Reserves

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to require the use of letter of credit (LOC) arrangements for Federal Employees Health Benefits Program (FEHBP) payments to certain experience-rated carriers. The regulation will enhance OPM's financial management of the FEHB Program without altering the basic OPM/carrier financial relationships which currently exist.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On September 6, 1988, OPM published proposed regulations to require the use of letter of credit (LOC) arrangements for FEHB Program payments to certain experience-rated carriers. The regulation implements the United States Department of the Treasury regulation at 31 CFR Part 205, which requires the use of the LOC method for Federal program agencies having a continuing relationship with a contractor involving annual payments of at least $120,000.

OPM received comments from one Federal agency, seven FEHB Program health benefits carriers, and two underwriters of FEHB Program plans. The respondents were generally supportive of OPM's efforts to improve the financial management of the FEHB Program. However, most of the carriers and underwriters were uncertain about the effect of the LOC procedures on their operations. The majority of the comments fall into two categories: (1) Belief that a LOC arrangement will not yield the investment income that can be earned through the carrier's own investment of its FEHB funds; and (2) procedural questions involving the mechanics of the LOC transfer. A summary of the comments and OPM's response follows.

Five carriers and one underwriter asserted that a LOC arrangement would cause a significant loss of investment income. A decrease in investment income could possibly impact on the rate-setting process of individual plans. OPM does not dispute the claim that carriers may be able to invest in individual securities which potentially may earn more interest than the U.S. securities in which OPM is restricted by law to invest. This is a fact of the marketplace where higher risk securities require a higher interest rate to attract investors. OPM does not agree, however, that this marketplace phenomenon will necessarily translate into higher net return on investment for the FEHB Program. Carriers currently incur administrative costs with regard to FEHB investments and, due to increased risks, sometimes suffer losses which would not be applicable to the LOC process. Also, a number of carriers do not credit the FEHB Program with the actual interest earned on individual securities but, rather, use allocation formulas which do not necessarily result in greater net returns on investments to the FEHB Program than Treasury investment rates. In addition, the potential loss of investment income and, hence, any potential impact on premium is insignificant considering that total investment income earned by the carriers was less than 1 per cent of subscription income for 1987 (1987 Financial Statements for the FEHB Program reflect total interest income of $41,100,137 and subscription income of $6,488,274,986 for experience-rated carriers). Therefore, OPM believes that the overall financial benefit to the FEHB Program and the Government from the LOC arrangement is far greater than the insignificant potential loss of investment income. Three commenters expressed concern that additional administrative costs associated with the LOC procedures, such as additional bank service charges and expenses related to an increased clerical workload in mailing daily vouchers, would be charged back to the Program, causing a rise in premiums. OPM is aware that some additional costs may be incurred. Nevertheless, OPM believes that there will be an overall financial benefit to the FEHB Program and the Government from the LOC arrangement.

One respondent took exception to OPM's assertion that Part 205 of Title 31, Code of Federal Regulations, should be applied to FEHB contracts. These regulations require the use of a letter of credit arrangement for contracts involving annual advances aggregating at least $120,000. As the government agency with primary responsibility for administering letters of credit for financing operations under Federal programs, the Department of the Treasury has reviewed and approved the use of the LOC payment method for the FEHB Program. In the absence of a Department of the Treasury ruling to the contrary, OPM will comply with the regulatory requirements in Part 205 of Title 31, CFR.

The same respondent is concerned with the way State regulatory requirements, specifically the requirement that all of an insurer's assets be available for the payment of all of its liabilities, will interface with a letter of credit arrangement. The LOC payment method does not prohibit the carrier's FEHB Program assets from being used for the payment of all of its liabilities. That restriction is based in the FEHB law under which the carrier has operated for over 25 years. Section 8909, title 5, United States Code, has always required that FEHB funds be used solely for Program purposes. From this standpoint, there should be no difference in the treatment of assets historically employed by the carrier and the treatment of assets under the LOC payment arrangements.

The respondent is further concerned about the characterization of the LOC funds as an "asset." The carrier contends that the LOC funds are nonadmitted assets. That is, they are not sufficiently free to be recognized as an admitted asset by State Insurance Departments. In general, assets are nonadmitted due to either an uncertainty as to their collectibility or an insufficient basis for determining their valuation. An asset in the form of a LOC is an admitted asset because there

is no uncertainty as to its collectibility, nor is there an insufficient basis for determining its valuation. Section 205.5, Title 31, Code of Federal Regulations, states that a "letter of credit is irrevocable (the equivalent of cash available to the recipient organization) to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement." Since the funds in the LOC account will be reported as an account receivable by the carrier and can be withdrawn when Program expenses are paid, OPM believes that the funds are admitted assets in accordance with statutory insurance accounting principles.

Eight respondents raised questions pertaining to procedures which were not covered by the proposed regulations. OPM intentionally omitted detailed procedural instructions from the proposed regulations to allow for maximum flexibility in adapting the procedures to the varied needs of the individual FEHBP carriers. The final regulation continues to reflect this philosophy. Detailed procedures are more appropriately reserved for operational guidelines which are being provided to the carriers. The questions are responded to in this Supplementary Information as follows:

(1) *Carrier/underwriter accessibility to the LOC account.* The Department of the Treasury will establish a LOC in the name of each carrier. The carrier must select one financial institution for purposes of processing requests for funds and funds transfers for both parties. The carrier and underwriter, or their designated officials, may have access to the account. Because the Department of the Treasury limits the number of drawdowns from a LOC account to one per day, the carrier and underwriter should agree upon the timing and method of requesting their respective drawdowns.

(2) *Presentation of the voucher to the carrier's bank.* The standard Treasury procedure for requesting funds requires the recipient organization (carrier) to present an SF 5805, Request for Funds, to its financial institution for review. However, at its option, the financial institution may establish an alternative procedure for accepting and validating the request-for-funds information in lieu of physical receipt of the SF 5805. The procedure established shall be mutually agreed upon by the carrier and its financial institution. The financial institution shall, in such case, be responsible for ensuring the validity of the request for funds. When an alternative procedure has been established for accepting and validating the request for funds, the SF 5805 will not be used. However, the agreed upon alternative should leave a clear audit trail of the request-for-funds transactions.

(3) *Method of drawdown (i.e., checks paid versus delay of drawdown).* The final regulations allow the carrier to select either the checks paid or the delay of drawdown technique, or both, for withdrawal of funds from the LOC account. Under the checks paid technique, the drawdown on the letter of credit is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment. Under the delay of drawdown technique, the drawdown on the letter of credit is delayed until after checks issued by the carrier or underwriter for FEHB Program disbursements have been forwarded to the payees. Some carriers may find the checks paid technique administratively easier, while others will prefer the delay of drawdown technique because the float inherent in this method affords a greater amount of working capital. Carriers may combine the two methods if they find, for example, that the checks paid technique is more appropriate for claims expenses and the delay of drawdown technique is preferable for administrative expenses.

(4) *Date for incurring expenses.* This comment concerned drawdowns from the LOC account for administrative expenses in order to avoid premature withdrawals. OPM will not establish set time frames for allocation of administrative expenses. However, drawdowns must be consistent with the drawdown technique(s) selected.

(5) *Contingency reserve payments if a plan terminates in a deficit position.* The LOC arrangement does not alter any contractual arrangements or change any rights of the carrier to the contingency reserve. All contingency reserve payments will be made available to the LOC account and the carrier and underwriter will have access to this amount to pay claims and other expenses in accordance with the drawdown procedures.

(6) *Indemnity plan reinsurance.* The respondent is concerned that there will be changes in financing as a result of the LOC arrangement which could significantly effect its reinsurers' irrevocable decisions to contract with the carrier for contract year 1989. OPM continues to assert that the basic financial relationships that currently exist in the FEHB Program will not be changed as a result of the LOC arrangement, nor will the financial makeup of the Program be changed.

(7) *Non-commingling of working capital.* The amount of working capital that may be kept outside the LOC account should be a minimal amount (less than one day's working capital). In cases where an underwriter provides services for more than one FEHB plan, monies held outside the LOC account must not be commingled.

(8) *Reports to the carrier of OPM transactions.* OPM will notify plans of the amount to be made available in the LOC account via a Payment Advice. The Payment Advice has been revised to include the balance in the LOC account.

(9) *Carrier reporting requirements.* OPM has not implemented any new reporting requirements. However, carriers may be required to provide detailed cashflow worksheets along with their annual accounting statements to support drawdown transactions.

Several respondents requested that OPM increase the amount of cash held outside the LOC account. The carriers and underwriters are concerned that a delay in receipt of available funds following claims payment will result in increased financial risk. OPM does not believe that there will be an increase in financial risk due to the limitation on working capital. Carriers may minimize the impact of the reduction in working capital by selecting the delay of drawdown technique for withdrawal of funds from the LOC account. The delay of drawdown technique allows carriers to hold the monies withdrawn after checks are forwarded to payees in a separate interest-bearing account outside of LOC until the checks are presented for payment.

Three respondents requested an exemption from the letter of credit arrangement for certain plans. OPM opposes blanket exemptions from the LOC regulations. However, in response to concerns that the change in the method of FEHB financing was proposed subsequent to agreements made in good faith between carriers and their underwriters and reinsurers, we have added a provision to the final regulations which authorizes OPM to grant exceptions to the effective date of the LOC regulations. An exception to the effective date under this provision would be authorized under very limited circumstances and would be granted only if a carrier could demonstrate in writing that its business would be adversely affected as a result of the January 1, 1989, implementation of the LOC regulations.

Several respondents commented on the early effective date of the

regulations and a possible inability to prepare administratively for the change in financing method. Although the effective date is January 1, the first LOC premium payment for contract year 1989 will not be issued until the fourth Thursday in February. This delay should give the carriers and underwriters sufficient time to adjust their administrative procedures to accommodate the letter of credit arrangement. One carrier suggested a one-year delay in effective date so that its deficit could be recovered through the existing operation of its plan. OPM does not believe this request is valid; moreover, there is no guarantee that the deficit of the plan, or that of any other plan, would be recovered in the 1989 contract year.

Two changes have been made to the regulations to clarify that only one drawdown may be made on the LOC account per day and that the drawdown must be presented to the Treasury by the carrier's financial institution not later than 1:00 p.m. eastern time.

Two respondents believe that OPM is discriminating against experience-rated plans because the LOC regulations require crediting of interest on the LOC account at Treasury security rates—a rate below the competitive market rate, while community-rated plans can continue to invest at higher rates of interest. The purpose of the LOC arrangement is to improve the Government's financial management of the Program and not to discriminate against experience-rated carriers. Since the reserves held by experience-rated carriers ultimately belong to the FEHB Program (in cases where experience-rated carriers discontinue participation in the FEHB Program, all claims are paid and the remaining reserves are returned to OPM), and excess amounts over claims expense of community-rated carriers do not, community-rated carriers were excluded from the LOC arrangement.

Final regulations amending 48 CFR Chapter 16 to conform to the LOC payment arrangement for FEHB Program contracts are published elsewhere in this issue of the **Federal Register**.

Waiver of the 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective January 1, 1989, so that it will be applicable to contracts covering calendar year 1989. While the regulation is effective beginning with the first day of the 1989 contract year, for practical purposes, the first premium payment affected by the LOC regulation will not be made until the fourth Thursday in February.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation does not change the amount of money credited to the carriers and the carriers will continue to have full and immediate access to their Treasury LOC account.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Hugh Hewitt,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 State. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744.

2. In § 890.101, a definition for "letter of credit" is added to paragraph (a).

§ 890.101 Definitions; time computations.

(a) * * *

"Letter of credit" means the method, established in 31 CFR Part 205, by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter-of-credit arrangement for payment under this part, the terms "carrier reserves," "carrier-held reserves," and "special reserves" include any balance in the carrier's letter-of-credit account.

* * * * *

3. In Subpart E, a new § 890.505 is added to read as follows:

§ 890.505 Recurring premium payments to carriers.

(a) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(b) *Recurring payments to experience-rated carriers.* Prior to each contract year, OPM will estimate the amount of premiums that will be paid to each experience-rated carrier participating in the program during the following contract year.

(1) If the estimate reveals that a carrier and its authorized underwriter will receive less than a total of $120,000 during the following contract year, OPM will pay to the carrier the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the FEHB Fund.

(2)(i) If the estimate reveals that a carrier and its authorized underwriter will receive a total of $120,000 or more during the following contract year, OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan less the amounts credited to the contingency and administrative reserves will be made available for carrier and/or underwriter drawdown not later than 30 days after receipt by the FEHB Fund. In addition, contingency reserve and interest distribution payments will be made available for carrier or underwriter drawdown from the LOC account. Carriers will use the LOC account in accordance with 31 CFR 205 and guidelines issued by OPM.

(ii) Withdrawals from the LOC account may be made by the checks paid technique, the delay of drawdown technique, or both. Under the checks paid technique, drawdown on the LOC is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's or underwriter's bank for payment. Under the delay or drawdown technique, drawdown on the LOC is delayed until after the checks issued for FEHB Program disbursements have been forwarded to the payees.

(iii) Cash drawdowns from the LOC are limited to not more than one per day. Requests for drawdowns must be presented to the Department of the Treasury by the financial institution not later than 1:00 p.m. eastern time.

(iv) OPM may grant an exception to the effective date of the LOC payment arrangement if the carrier requests the exception in writing and demonstrates to OPM's satisfaction that LOC

disbursements will result in significantly increased liability under the contract, or that the LOC arrangement is otherwise clearly and significantly detrimental to the operation of the plan. Payments to carriers that have been granted an exception to the effective date will be made in accordance with paragraph (b)(1) of this section.

[FR Doc. 88-29510 Filed 12-22-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 680]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 680 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 23 through December 29, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 680 (§ 907.980) is effective for the period December 23 through December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to this Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on December 20, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a seven to four vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that demand for navel oranges is fair.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.980 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.980 Navel Orange Regulation 680.

The quantity of navel oranges grown in California and Arizona which may be handled during the period December 23, 1988, through December 29, 1988, are established as follows:

(a) District 1: 680,000 cartons;
(b) District 2: 76,000 cartons;
(c) District 3: 51,000 cartons;
(d) District 4: 43,000 cartons.

Dated: December 21, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-29605 Filed 12-22-88; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 645]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 645 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 261,000 cartons during the period December 25 through December 31, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 645 (§ 910.945) is effective for the period December 25 through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant ecomonic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on December 20, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.945 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.945 Lemon Regulation 645.

The quantity of lemons grown in California and Arizona which may be handled during the period December 25, 1988, through December 31, 1988, is established at 261,000 cartons.

Dated: December 21, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–29604 Filed 12–22–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 87–073]

Cleaning and Disinfecting of Export Aircraft

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the exportation of animals and animal products from the United States by requiring the cleaning and disinfecting of aircraft prior to their being used to export animals from the United States. This action is necessary to help ensure that aircraft used to export animals from the United States are not contaminated with disease and to encourage international trade in animals from the United States.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Q. Faizi, Import-Export Operations Staff, VS, APHIS, USDA, Room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8383.

SUPPLEMENTARY INFORMATION:

Background

We published in the **Federal Register** on December 24, 1986 (51 FR 46684–46685, Docket No. 84–042), a proposal to amend the regulations in 9 CFR Part 91 (referred to below as the regulations) by requiring the cleaning and disinfecting of aircraft prior to their being used to export animals from the United States. On August 4, 1987, we published in the **Federal Register** (52 FR 28842, Docket No. 87–026) a document reopening the comment period on the proposal until August 19, 1987.

We received three comments, one of which supported the proposed rule. The second comment, received from the Air Transport Association of America (ATA), requested that we clarify several points and that we further investigate the effect on aircraft of our proposed disinfection. First, ATA stated that it had no objection to our proposal requirement to clean and disinfect aircraft used to export animals if the requirement does not apply to shipments of pets and other small animals. It does not. The regulations provide for the cleaning and disinfecting of aircraft to be used to export animals as defined in § 91.1(e) of the regulations. Since animals are defined in § 91.1(e) as horses, cattle (including American

bison), sheep, swine, and goats, the proposed rule does not apply to passenger-carrying aircraft that transport pets and other small animals.

Secondly, ATA questioned whether cleaning and disinfecting would occur each time the animals are placed onboard the aircraft, since it is conceivable that flights may be scheduled through more than one U.S. city prior to export. If the aircraft is loaded with animals in more than one U.S. city before export from the U.S., but is not loaded with any additional cargo, the document crtifying that the aircraft has been cleaned and disinfected at the initial city should be sufficient to negate additional cleaning and disinfection. No further risk of disease is introduced since all animals are checked for disease before they are loaded on the aircraft, and because the embarkation inspection and loading facilities must meet requirements contained in 9 CFR 91.14 that prevent introduction of disease. We will require further cleaning and disinfection of an aircraft making stops at more than one U.S. city only if the stowage area, through cargo loading, comes in contact with garbage, soil, manure, plant materials, insects, paper, debris, or other materials requiring cleaning and disinfection of the stowage area. The determination of whether cleaning and disinfection is necessary will be made by the inspector supervising the loading of animals for export, who will base his or her decision on inspection of the stowage area and examination of the cleaning and disinfection documents.

Finally, ATA expressed reservation about the properties of the proposed cleaning solution and its effect on the aircraft. ATA seems to think that the solution (4% sodium carbonate and 0.1% sodium silicate) might be deleterious to aircraft.

Research performed by Pan American World Airways and the Boeing Commercial Airplane Company has determined that the use of a 4% sodium carbonate/0.1% sodium silicate solution for disinfection of aircraft is not corrosive or otherwise damaging to aircraft.[1] This research also concluded that the addition of 0.1% sodium silicate to a 4% sodium carbonate solution effectively inhibits the corrosive action of the sodium carbonate on aluminum.

The third comment, sent by a veterinarian, noted that some disinfectant spraying devices may not be fully effective because they may not disperse the disinfectant over 100 percent of the surfaces. We have changed the rule to require that disinfectant solution must be applied with a device that creates an aerosol or mist that covers 100 percent of the surfaces.

This commenter also asked what was meant by the statement in the proposal that cleaning and disinfection would be performed "immediately prior to loading." Our intent is to require cleaning and disinfection at a time that our inspector finds adequate to ensure that the stowage area will still be clean and disinfected when the export animals are loaded. We have revised the rule to emphasize this point.

This commenter also asked whether cleaning and disinfection would be performed before or after cargo other than animals was loaded aboard the aircraft. We have revised the rule to allow cleaning and disinfection to be performed after loading of other cargo if the inspector determines that the cargo and the deck surface under it do not contain materials that may contain animal disease pathogens such as garbage, soil, manure, plant materials, insects, waste paper, or debris.

Based on the rationale set forth in the proposal and in this document, we are adopting the revised proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

No substantial delay in the departure of aircraft will be caused by these requirements. In addition, most airlines already clean and disinfect the stowage area of their aircraft prior to transporting animals from the United States. The cost of labor and materials for the disinfection techniques currently used are comparable to the cost of the techniques required by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal disease, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, 9 CFR Part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In 91.1, the terms are rearranged alphabetically without paragraph designations, and the definition of "inspector" is revised to read as follows:

§ 91.1 Definitions.

* * * * *

Inspector. An inspector of the Animal and Plant Health Inspection Service.

* * * * *

§ 91.18 [Amended]

3. In § 91.18, paragraph (b) is revised to read as follows:

* * * * *

(b) 4 percent sodium carbonate plus 0.1 percent sodium silicate.

* * * * *

4. In Part 91, a new Subpart E consisting of § 91.41 is added to read as follows:

[1] A summary of this research is contained in the rulemaking record for this final rule, and may be obtained by writing to the contact person identified in the preamble of this document.

Subpart E—Cleaning and Disinfecting of Aircraft

Sec.
91.41 Cleaning and disinfecting of aircraft.

Subpart E—Cleaning and Disinfecting of Aircraft

§ 91.41 Cleaning and disinfecting of aircraft.

Prior to loading of animals, the stowage area of aircraft to be used to export animals under the provisions of this part shall, under the supervision of an inspector, be cleaned and then disinfected using a freshly prepared solution of 4 percent sodium carbonate plus 0.1 percent sodium silicate. In addition, all loading ramps, fittings, and equipment to be used in loading the animals on the aircraft shall be cleaned and disinfected using an approved disinfectant listed in § 71.10 of this chapter. The time at which the cleaning and disinfection is performed must be approved by the inspector, who will give approval only if he or she determines that the cleaning and disinfection will be effective up to the projected time of loading of animals. If the animals are not loaded by the projected time, the inspector shall determine whether further cleaning and disinfection are necessary. The cleaning must remove all garbage, soil, manure, plant materials, insects, paper, and other debris from the stowage area. The disinfectant solution must be applied with a device that creates an aerosol or mist that covers 100 percent of the surfaces in the stowage area, except for any loaded cargo and deck surface under it that, in the opinion of the inspector, do not contain materials that may contain animal disease pathogens such as garbage, soil, manure, plant materials, insects, waste paper, or debris. After cleaning and disinfection is performed, the inspector shall sign and deliver to the captain of the aircraft or other responsible official of the airline involved, a document stating that the aircraft has been properly cleaned and disinfected, and stating further the date, the carrier, the flight number, and the name of the airport and the city and state in which it is located. If an aircraft is cleaned and disinfected at one airport, then flies to a subsequent airport, with or without stops en route, to load animals for export, the inspector at the subsequent airport will determine, based on examination of the cleaning and disinfection documents, whether the previous cleaning and disinfection is adequate or whether to order a new cleaning and disinfection. If the aircraft has loaded any cargo in addition to animals, the inspector at the subsequent airport will determine whether to order a new cleaning and disinfection based on both examination of the cleaning and disinfection documents and inspection of the stowage area for materials that may contain animal disease pathogens such as garbage, soil, manure, plant materials, insects, waste paper, or debris.

Done in Washington, DC, this 20th day of December 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-29481 Filed 12-22-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0647]

Regulation CC; Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board is publishing a final official Board interpretation concerning a preemption determination under its Regulation CC, Availability of Funds and Collection of Checks, with respect to the law of New Jersey. The Expedited Funds Availability Act provides standards for determining whether State law governing funds availability supersedes, or is preempted by Federal law. Under Regulation CC, the Board will issue preemption determinations upon request.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), Legal Division, or Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Program Leader (202/452-2934), Division of Federal Reserve Bank Operations; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (the "Act") (12 U.S.C. 4001-4010). The regulation requires banks to make funds available to their customers within specified time frames, and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent, and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon the request of a state, bank, or other interested party.

Discussion

The Board issued, for a 30-day public comment period, a proposed preemption determination with respect to New Jersey law. 53 FR 44352 (November 2, 1988). The Board set out principles, at the time it adopted several final state preemption determinations in August, as guides for future preemption determinations. 53 FR 32354 (August 24, 1988). Those principles have been followed in the proposed New Jersey determination as well.

The State of New Jersey Department of Banking requested that the Board issue a preemption determination under Regulation CC with respect to New Jersey law. New Jersey does not have a law or regulation establishing maximum time periods within which funds deposited to accounts must be made available for withdrawal. New Jersey does, however, have regulations governing the disclosure of an institution's availability policy. Regulation CC provides that state funds availability disclosure or notice requirements applicable to accounts covered by the federal rules are preempted by the federal disclosure scheme. The Board received no comments from the public on the proposal, and has adopted the New Jersey preemption determination as proposed.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

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For the reasons set out in the preamble, 12 CFR Part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 522, 635, 12 U.S.C. 4001 et seq.

2. Appendix F is amended by adding a preemption determination for the state of New Jersey alphabetically to read as follows:

Appendix F—Official Board Interpretations; Preemption Determinations

* * * * *

New Jersey

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC preempt the provisions of New Jersey law concerning disclosure of a bank's funds availability policy. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

New Jersey does not have a law or regulation establishing the maximum time periods within which funds deposited by check or electronic payment must be made available for withdrawal. New Jersey does, however, have regulations concerning the disclosure of a banking institution's availability policy (N.J.A.C. 3:1–15.1 *et seq.*).

Disclosures

New Jersey law requires every banking institution (defined as any state or federally chartered commercial bank, savings bank, or savings and loan association) to provide written disclosure to all holders of and applicants for deposit accounts which describes the institution's funds availability policy. Institutions must also disclose to their customers any significant changes to their availability policy.

Regulation CC preempts state disclosure requirements concerning funds availability that relates to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules. (§ 229.20(c)(2)). Thus, the New Jersey statute (N.J.A.C. sections 3:1–15.1 *et seq.*) is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The New Jersey disclosure rules would continue to apply to other "deposit accounts," as defined by New Jersey law, including money market accounts and savings accounts established by a natural person for personal or family purposes, which are not governed by the Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, December 19, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–29458 Filed 12–22–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–ASO–10]

Revocation of Transition Area; Camden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Camden, Alabama, transition area. The transition area was established to afford airspace protection for aircraft executing a NDB Standard Instrument Approach Procedure (SIAP) to the Camden Municipal Airport. The SIAP is no longer in effect; thus, no valid need exists to retain the transition area.

EFFECTIVE DATE: 0901 U.T.C., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Camden, Alabama, transition area (53 FR 37589). The transition area was established to provide airspace protection for aircraft executing a NDB SIAP to the Camden Municipal Airport. The SIAP is no longer in effect; thus, there is no reason to retain the transition area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Camden, Alabama, transition area and will raise the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area. The NDB SIAP to the Camden Municipal Airport is no longer in effect; thus, there is no need to retain the transition area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Camden, Alabama [Removed]

Issued in East Point, Georgia, on December 1, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–29485 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASO–16]

Revocation of Transition Area; Belzoni, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Belzoni, Mississippi, Transition Area. The runway surface of the Belzoni Municipal Airport has deteriorated beyond usability and the airport has been NOTAMed closed since November 1987. There are no definite plans to reopen the airport. Action has been taken to cancel the only Standard Instrument Approach Procedure (SIAP) to the airport.

EFFECTIVE DATE: 0901 u.t.c. February 9, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On September 29, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Belzoni, Mississippi, Transition Area (53 FR 38024). The transition area was established to afford airspace protection for aircraft executing a Standard Instrument Approach Procedure (SIAP) to the Belzoni Municipal Airport. Action has been taken to cancel the SIAP. The Airport has been NOTAMed closed since November 1987, due to runway deterioration. There are no definite plans to reopen the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Belzoni, Mississippi Transition Area and will raise the floor of controlled airspace from 700 to 1,200 feet above the surface within a 5-mile radius of the Belzoni Municipal Airport. The transition area is no longer required since the Belzoni Municipal Airport has been closed and action has been taken to cancel the only SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Belzoni, Mississippi [Removed]

Issued in East Point, Georgia, on December 1, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–29484 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–23]

Alteration of VOR Federal Airways; Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the descriptions of Federal Airways V–9, V–128 and V–144 located in the vicinity of Pontiac, IL. The realignment of these airways is necessary to improve the flow of traffic in the metropolitan Chicago area. This action is one of a number of measures being implemented on an expedited basis to increase the efficiency of air traffic flow and reduce arrival/departure delays in the Chicago area. This action enhances safety, improves traffic flow and reduces controller coordination.

DATES: Effective date—0901 u.t.c., February 9, 1989.

Comments must be received on or before February 6, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88–AGL–23, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, that was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the descriptions of V–9, V–128 and V–144, located in the Pontiac, IL, area. These changes will substantially increase the efficiency of arrival and departure routes to and from O'Hare

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International Airport and other airports in the Chicago metropolitan area. In October 1988, the FAA implemented daily traffic flow management programs into O'Hare and Midway Airports to meter arriving flights at a rate consistent with air traffic control (ATC) resources. In order to increase the efficiency of the ATC system in the Chicago area, reduce substantial operating delays at Midway and O'Hare Airports, and permit the eventual suspension of regular traffic management programs into the area, the FAA, with the cooperation of local government and aviation industry representatives, has identified a number of corrective measures involving ATC resources, procedures, and operating rules. These measures have been adopted as a high-priority action plan and are currently being implemented by the agency on an expedited basis.

Immediate reconfiguration of several federal airways in the Chicago area is a necessary element of the general revision of ATC procedures for arrivals and departures in this area. Accordingly, the FAA has concluded that there is an immediate need to realign Federal Airways V–9, V–128 and V–144 to improve traffic flow, reduce controller workload, and alleviate serious traffic delays at O'Hare International and Midway Airports. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Secton 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–9 [Amended]

By removing the words "Pontiac, IL; INT Pontiac 332° and Rockford, IL, 180° radials; Rockford;" and substituting the words "Pontiac, IL; INT Pontiac 343° and Rockford, IL, 169° radials; Rockford;"

V–128 [Revised]

From Dubuque, IA; Janesville, WI; Rockford, IL; INT Rockford 169° and Pontiac, IL, 343° radials; INT Pontiac 343° and Kankakee, IL, 274° radials; Kankakee; INT Kankakee 126° and Peotone, IL, 152° radials; INT Peotone 152° and Indianapolis, IN, 312° radials; Indianapolis; INT Indianapolis 137° and Cincinnati, OH, 290° radials; Cincinnati; York, KY; Charleston, WV; to Casanova, VA.

V–144 [Amended]

By removing the words "From Peotone, IL, via Fort Wayne, IN;" and substituting the words "From Bradford, IL; Kankakee, IL; INT Kankakee 089° and Knox, IN, 238° radials; INT Peotone, IL, 098° and Knox 238° radials; Fort Wayne, IN;"

Issued in Washington, DC, on December 15, 1988.

Robert G. Burns,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–29486 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 385

[Docket No. 45614; Amdt. 385–4]

Delegations of Powers and Duties

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the delegations of authority to the Director, Office of Aviation Information Management, Research and Special Programs Administration (RSPA).

EFFECTIVE DATE: This final rule is effective on December 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jerold Coffee, Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4409.

SUPPLEMENTARY INFORMATION: Following the sunset of the Civil Aeronautics Board and the transfer of remaining functions to the Department of Transportation, various powers and duties relating to aviation data collection and dissemination were delegated to the Administrator, RSPA. At that time, subdelegations to the Director, Office of Aviation Information Management were made to provide that official with substantially the same functions as were delegated to the equivalent official in the Civil Aeronautics Board. A review of those powers and duties shows that they are in need of revision and updating. This final rule makes the necessary changes.

In particular, the revisions consolidate the existing authorities, conform the rulemaking practices of aviation data collection and dissemination with the rulemaking practice of other RSPA programs, codify existing practice with respect to the International Civil Aviation Organization reporting requirements, and grant the Director initial authority to dispose of requests for confidential treatment of reports and data and to respond to requests for those reports and data.

Since these amendments relate to Departmental management, procedures, and practice, notice and public comment are unnecessary. The delegations are effective as of the date of publication of this document.

List of Subjects in 14 CFR Part 385

Authority delegations (Government agencies).

In consideration of the foregoing, Part 385 of Title 14, Code of Federal Regulations, is amended as follows:

PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

1. The authority citation for Part 385 is revised to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, 49 U.S.C. App. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Pub. L. 98–443, October 4, 1984; 49 CFR 1.53(g).

2. Section 385.27 is revised to read as follows:

§ 385.27 Authority of the Director, Office of Aviation Information Management, Research and Special Programs Administration.

The Director, Office of Aviation Information Management, Research and Special Programs Administration (RSPA) has authority to:

(a) Conduct all rulemaking proceedings concerning accounting, reporting, and record retention requirements for carrying out Titles IV and X of the Act, except the issuance of final rules and the disposition of petitions for reconsideration.

(b) Interpret the accounting, reporting, and record retention requirements used to carry out Title IV and X of the Act.

(c) Waive any of the accounting, reporting, and record retention requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions as may be prescribed for waivers in the applicable regulations, unless such authority is otherwise specifically assigned.

(d) Dismiss petitions for Department or RSPA action with respect to accounting, reporting, and record retention matters when such dismissal is requested or consented to by the petitioner.

(e) Require special reports, documentation, or modifications to reports required by this chapter from any air carrier upon a determination that such reports or documentation or modifications are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, Department officials, or another agency or component of the Federal Government.

(f) Grant or deny requests by air carriers for extension of filing dates for reports required by subchapters A and D of this chapter.

(g) Grant or deny requests by air carriers for substitution of their own forms, adaptation of Department forms, or use of ADP media to meet special needs where Department approval of such forms or ADP media is required by subchapter A of this chapter.

(h) Determine the data necessary to complete the International Civil Aviation Organization reports required by U.S. Treaty; as provided in Order 81–3–120, establish any necessary supplemental reporting requirements; and dispose of petitions for extensions of filing dates or waivers with respect to the data required for such reports.

(i) Grant or deny motions filed under § 302.39 of this chapter requesting confidential treatment of aviation economic information or reports filed with RSPA and place the decision in the motion's docket, which decision will be subject to review through a petition for reconsideration filed within ten days of issuance, to be acted upon by the Administrator, RSPA.

(j) Grant or deny requests filed under § 241.22 of this chapter for confidential treatment of preliminary year-end financial reports.

(k) Grant or deny requests filed under § 248.5 of this chapter for confidential treatment of individual air carrier special reports.

(l) Grant or deny requests for use of domestic and international service segment and market data in accordance with the limitations on the availability of these data contained in § 241.19–6 of this chapter and Order 81–12–9.

(m) Grant or deny requests for use of international Origin and Destination Survey statistics in accordance with the limitations on the availability of these data contained in § 241.19–7 of this chapter and with the policy set forth in § 399.100 of this chapter.

(n) Grant or deny requests for individual air carrier fuel data in accordance with the limitations on the availability of these data contained in paragraph (k) of the reporting instructions for Schedule P–12(a), which are contained in § 241.24 of this chapter.

(o) Grant or deny requests for individual air carrier financial data in accordance with the limitation on the availability of these data contained in paragraph (d) of the reporting instructions for Schedule F–1, which are contained in § 298.62 of this chapter.

(p) Grant or deny requests for individual air carrier financial data as reported on Schedule P–1(a) in accordance with § 241.22(b)(3) of this chapter.

Issued in Washington, DC, on December 19, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–29392 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 80861–8161]

Revision of Validated License Controls on Marine Water Tube Boilers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends the validated export license controls on marine water tube boilers described in ECCN 2409A(e) and 4409B on the CCL according to a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Marine water tube boilers controlled under ECCN 2409A on the CCL will now require a validated export license only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan for national security reasons. In addition, this rule removes ECCN 4409B, which controls marine water tube boilers with a heat release rate less than 190,000 BTU. As a result, these marine water tube boilers will now be covered by ECCN 6499G and only controlled to Country Groups S and Z for foreign policy reasons.

Notice of the foreign availability determination on this equipment is published in the Notices section of this **Federal Register**.

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: Donald J. Brychczynski, Office of Foreign Availability, Bureau of Export Administration, Washington, DC 20230, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act of 1979, as amended, does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a

notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 768–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.)*, as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et. seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 2409A is amended by revising the *Validated License Required* and *Reason for Control* paragraphs to read as follows:

2409A Naval equipment.

Controls for ECCN 2409A

* * * * *

Validated License Required: Country Groups QSTVWYZ, *except marine water tube boilers, which require a validated license only for Country Groups QSWYZ, the People's Republic of China and Afghanistan.*

* * * * *

Reason for Control: National security.

* * * * *

3. In Supplement No. 1 to § 799.1, ECCN 4409B is removed.

Dated: December 20, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–29515 Filed 12–22–88; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM88–25–000; Order No. 510]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued December 19, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues a final rule concerning the generic determination of the rate of return on common equity for public utilities. In prior rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities. In this final rule, the Commission determines that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989. The Commission also determines that 0.03 percent is an appropriate flotation cost adjustment factor for that period. The benchmark rates of return determined through the procedures remain advisory and are intended to provide guidance to companies and intervenors in individual rate cases and to serve as reference points for the Commission in its deliberations.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT:

For Further Technical Information Contact: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8283.

For Further Legal Information Contact: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) issues this final rule estimating the average cost of common equity for the jurisdictional operations of public utilities [1] for the 12 months ending June 30, 1988 (the "base year"). In several earlier rulemaking proceedings concerning the generic determination of the rate of return for electric utilities, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate

[1] The terms "public utilities" and "electric utilities" are used interchangeably.

benchmark rates of return on common equity for public utilities. In this fifth annual proceeding concerning that generic determination, the Commission determines that the growth rate and flotation cost factors to be used in the quarterly indexing procedure during the 12 months beginning February 1, 1989 will be 4.3 percent and 0.03 percent, respectively. Benchmark rates of return determined through the procedures remain advisory, as were those resulting from the previous four annual proceedings.[2]

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable." [3] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both ratepayers and utility stockholders. The allowed rate of return on common equity is now determined individually for each utility on a case-by-case basis.

In July 1984, the Commission adopted procedures for the generic determination of benchmark rates of return on common equity and for their application in individual cases.[4] The Commission has conducted four prior proceedings to determine benchmark rates of return and has made those rates advisory only. In that advisory status, benchmark rates are intended to provide guidance to parties to rate proceedings and to serve as reference points for the Commission in setting allowed rates of return.[5] The Commission again requests that all rate case participants, including staff, evaluate the reasonableness of the applicable benchmark rate of return in light of the special circumstances of the specific utility. The Commission requests that litigants submit substantive analyses of the risks of individual utilities vis-a-vis the average utility represented through the benchmark rates of return, to enable the Commission to use those benchmarks as points of departure in setting allowable rates of return.

III. Discussion

As required by § 37.4 of the Commission's regulations, the Commission initiated a fifth annual proceeding to establish the growth rate and flotation cost adjustment factors to be used in the quarterly indexing formula for the year beginning February 1, 1989 by issuing a Notice of Proposed Rulemaking (NOPR or Notice) on August 5, 1988.[6] The Commission received 12 timely comments in response to that Notice.[7]

In prior proceedings, the Commission established a DCF methodology for estimating the rate of return on common equity. Specifically, that formula is:

$$k=(1+.5g)y+g$$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = expected annual dividend growth rate
(1+.5g) = dividend adjustment factor for quarterly dividend payments

A. Dividend Yield

The dividend yield used in this DCF formula is the median of the dividend yields of those companies that remain in a sample of utilities after application of certain screening criteria. The Commission begins with a group of approximately 100 publicly-traded electric utilities or combination companies that meet the following standards:

(1) The utility is predominantly electric;

(2) The stock of the utility is traded on either the New York or the American Stock Exchange;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission based on a case-by-case determination that its data is unavailable or inappropriate.[8]

The Commission then excludes companies from the sample if:

(1) The company's common stock is no longer publicly traded due to merger or other action;

(2) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(3) The Commission determines on a case-by-case basis that some other occurrence has caused the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.

The quarterly dividend yield for each company is computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend multiplied by four. The price used in calculating the quarterly dividend yield is the simple average of the three monthly high and low prices for the quarter. The dividend yield used in the quarterly indexing procedure is the average of the two most recent quarterly median yields.[9]

A list of the 99 remaining public utilities to be used in base-year dividend yield calculations and quarterly updates is included as Appendix B to this rule.[10]

B. Growth Rate

In the NOPR, the Commission proposed to rely on both a fundamental analysis approach and a two-stage growth model to estimate the expected growth rate, as it did in previous proceedings.[11] The fundamental analysis approach involves evaluation of the two underlying components of expected annual dividend growth, which are growth from retention of earnings and growth from sales of new common stock. Growth from retention of earnings, or internal growth, is a function of the expected retention ratio "b" and the expected return on common equity "r". Growth from sales of new common stock, or external growth, is a function of the amount of stock expected to be sold "s" and the expected price of those sales relative to book value "v". The formula for estimating the growth

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[2] The annual proceedings were first established by Order No. 389, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29946 (July 25, 1984) (Docket No. RM80-36-000) (final rule) (issued July 18, 1984) and Order No. 389-A, 49 FR 46351 (Nov. 26, 1984) (order denying rehearing) (issued Nov. 21, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21802 (May 29, 1985) (Docket No. RM84-15-000) (final rule) (issued May 20, 1985) and Order No. 420-A, 50 FR 34086 (Aug. 23, 1985) (Docket No. RM85-15-001, *et al.*), (order denying rehearing); (issued Aug. 20, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986) (Docket No. RM85-19-000) (final rule) (issued Dec. 26, 1985) and Order No.442-A, 51 FR 22505 (June 20, 1986) (Docket No. RM85-19-001, et al.) (order granting in part and denying in part requests for rehearing) (issued June 11, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987) Docket No. RM86-12-000) (final rule) (issued Dec. 24, 1986) and Order 461-A, 52 FR 5757 (Feb. 26, 1987) (order denying rehearing) (issued Feb. 19, 1987). The fourth annual proceeding resulted in Order No. 489, 53 FR 3342 (Feb. 5, 1988) (Docket No. RM87-35-000) (final rule) (issued Jan. 29, 1988) and Order No. 489-A, 53 FR 11991 (Apr. 12, 1988) (order denying rehearing) (issued March 30, 1988).

[3] 16 U.S.C. 824d(a) (1982).

[4] Order No. 389, 49 FR 29946 (July 25, 1984).

[5] *Id.*, at 29954.

[6] Generic Determination of Rate of Return on Common Equity for Public Utilities, 53 FR 31883 (Aug. 22, 1988) (Docket No. RM88-25-000) (notice of proposed rulemaking) (issued Aug. 5, 1988).

[7] *See* Appendix A for a list of commenters.

[8] Southwestern Public Service Company, which meets the first three standards, is excluded from the sample because it has a non-standard fiscal year which does not end at the conclusion of a calendar quarter, causing its dividend yield to be out of step with the other companies in the sample.

[9] 18 CFR 37.4 (1988).

[10] The sample of 100 utilities used in the fourth annual proceeding has been reduced by one through the deletion of Savannah Electric & Power Company, which was acquired by the Southern Company.

[11] 53 FR at 31884-85 (Aug. 22, 1988).

rate based on this fundamental analysis is $g=br+sv$. The two-stage growth analysis involves separate evaluation of near-term and long-term growth expectations.

The Commission also proposed to consider other data and methods for estimating the expected growth rate, but primarily as a check on the reasonableness of its growth rate determination based on the fundamental and two-stage growth analyses.

Seven commenters make growth rate recommendations. These growth rate recommendations range from 3.70 percent by the Financial Analyses Branch, Office of Electric Power Regulation, Federal Energy Regulatory Commission (FAB–OEPR), to 5.09 percent by Southwestern Electric Power Service Company (SWEP). *See* Table 1. Most commenters recommend lower growth rates than those they recommended in the previous proceeding (RM87–35). SWEP is the only commenter to recommend a growth rate higher than its recommendation in RM87–35. Table 2 presents the raw growth rate data on which the commenters relied. Based on its review and evaluation of the growth rate analyses submitted by the commenters in this proceeding, the Commission finds the expected growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 to be 4.3 percent.

TABLE 1.—SUMMARY OF GROWTH RATE RECOMMENDATIONS

Commenter	Growth rate	Basis for recommendation
Utilities		
1. SWEP	5.086	1. Base-year fundamental analysis. 2. Analyst forecasts.
2. EEI	4.6	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
3. AUS	4.53	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
4. NEP	4.5/5.0	1. Hist. DPS growth rates. 2. Base-year fundamental analysis. 3. Analyst forecasts.
5. BEC	4.44	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
Other Commenters		
6. FAB-OEPR	3.70	1. Projected fundamental analysis.
7. GSA	3.5/4.0	1. Hist. DPS and Price growth rates. 2. Analyst forecasts.

TABLE 2.—RAW GROWTH RATE DATA

Rate(s)	Type of rate	Commenter
Historical DPS Growth Rates		
4.94	5-year median	AUS
4.20	5-year median	BEC
4.50	5-year median	EEI
4.9	5-year median	NEP
4.94	10-year median	AUS
5.10	10-year median	BEC
4.42/4.62	10-year mean/median	EEI
5.23	10-year median	NEP
Historical EPS Growth Rates		
5.50	5-year median	AUS
3.60	5-year median	BEC
4.19	5-year median	EEI
4.94	10-year median	AUS
5.60	10-year median	BEC
4.56/5.52	10-year mean/median	EEI
Base-Year Fundamental Growth Rates		
	(b)(r)+(s)(v)	
4.44	4.2+0.24	BEC
3.38	3.37+0.007	EEI
4.30	4.1+0.2	NEP
4.30	4.3+(Not reported)	AUS
3.70	3.6+0.1	FAB–OEPR
5.90	(Not reported)	SWEP
Projected Fundamental Growth Rates		
	(b)(r)+(s)(v)	
4.7	4.7+0.01	EEI

TABLE 1.—SUMMARY OF GROWTH RATE RECOMMENDATIONS—Continued

Commenter	Growth rate	Basis for recommendation
4. NEP	4.5/5.0	1. Hist. DPS growth rates. 2. Base-year fundamental analysis. 3. Analyst forecasts.
5. BEC	4.44	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
Other Commenters		
6. FAB-OEPR	3.70	1. Projected fundamental analysis.
7. GSA	3.5/4.0	1. Hist. DPS and Price growth rates. 2. Analyst forecasts.

TABLE 2.—RAW GROWTH RATE DATA—Continued

Rate(s)	Type of rate	Commenter
Analyst Near-Term Forecasts		
3.87	I/B/E/S average	AUS
4.0	I/B/E/S median	BEC
3.45/3.7	I/B/E/S mean/median	EEI
4.0	Zack's median	NEP
3.25	Value Line DPS median	AUS
3.5	Value Line DPS median	BEC
3.13/3.5	Value Line DPS mean/median.	EEI
Analyst Near-Term Forecasts		
3.0	Value Line EPS median	AUS
3.0	Value Line EPS median	BEC
2.85/3.0	Value Line EPS mean/median.	EEI
2.7	Merrill Lynch DPS median.	BEC
3.3	Merrill Lynch EPS mean/median.	BEC
4.0/4.0	Salomon Brothers' Normalized Growth mean/median.	EEI
3.8/4.0	Salomon Brothers' Normalized Growth mean/median.	BEC
4.286	Salomon Brothers'	SWEP
4.556	First Boston DPS	SWEP
4.79	First Boston EPS	SWEP
Analyst Long-Term Forecasts		
4.0	Merrill Lynch EPS	GSA

1. Growth Rate Recommendations

BEC recommends a growth rate of 4.44 percent, based on a combination of historical growth, fundamental analysis, analysts' projections, and two different two-stage growth rate analyses.[12] Using a 90-company sample, BEC calculates that the median 5-year and 10-year historical growth rates in earnings and dividends ranged from 3.6 percent to 5.6 percent. However, BEC states that it considers the 5-year growth rate to be unusually low and that investors also regard that rate as atypically low.[13]

For its fundamental growth rate analyses, BEC calculates the individual components of internal growth, "b" and "r", and external growth, "s" and "v". BEC uses three methods to estimate the retention ratio "b" and the return on common equity "r".[14] To estimate internal growth, BEC first calculates the payout ratio, (1–b), of the Value Line Electric Utility Composite for the period 1977–1987. In five of those years the payout ratio was greater than 70 percent and in the other six years it was less than 70 percent. BEC concludes that the payout ratio for the industry has been

[12] BEC at i.
[13] BEC at 9.
[14] BEC at 13–15.

roughly centered on the 70 percent level. Second, BEC examines the payout ratio for 90 electric utilities for the 12 months ending in each of the four quarters from June 1987 through March 1988. It finds that the average of the median payout ratios slightly exceeded 72 percent. Finally, BEC examines the projected retention rate data reported by the Value Line Investment Survey for 1987 and for 1990–1992. The averages of the median values for 1987 and 1990–1992 were 27.5 percent and 27 percent, respectively. BEC concludes that "[w]hile the base year and projected retention ratios are somewhat below historical levels of about 30 percent, it seems reasonable for investors to expect the retention rates to rise to the more traditional level the long run." [15]

To estimate the return on equity "r" for the industry, BEC first examines the rates of return for the Value Line Electric Utility Composite from 1977 through 1987. It finds that industry rates of return since 1982 have fluctuated between 13.5 and 14.5 percent, and have averaged 14.1 percent. Second, BEC examines average return on equity for 90 electric utilities for the 12 months ending in each of the four quarters from June 1987 through March 1988. It finds that the average of the median returns was 14.0 percent. Finally, BEC examines the 1987 average return on equity reported by the Value Line Investment Survey and Value Line's projections for 1990–1992. The averages of the median returns for 1987 and 1990–1992 were 14.0 percent and 13.8 percent, respectively. BEC concludes that investors expect a return on equity of approximately 14.0 percent.[16]

Using an expected retention ratio "b" of 30 percent and an expected return on average common equity "r" of 14 percent, BEC calculates an internal growth rate for the industry of 4.2 percent.

BEC then estimates external growth "sv".[17] It adopts an "s" component (proportion of future new common stock financing) of 1.0 percent, based on its judgment and on common stock financing projections published by EEI. BEC estimates the "v" component to be 0.237, on the basis of a Value Line 1990–1992 projection of 1.31 for the price-book value ratio (calculated by multiplying the projected return on average equity of 13.8 percent by the projected price-earnings ratio of 9.5).[18] Thus, "sv" is equal to 0.24 percent (0.01 × 0.237). Total projected growth, the sum of internal growth and external growth, is 4.44 percent.

BEC then reviews near-term growth rate forecasts of earnings and dividends made by the following analysts and investment advisory services: Value Line (3.0–3.5 percent), Merrill Lynch (2.7–3.3 percent), I/B/E/S (4.0 percent), and Salomon Brothers (4.3 percent). BEC concludes that investors would not put much weight on growth projections below 4.0 percent because such growth rates would produce unreasonable costs of equity.[19]

BEC concludes with a pair of two-stage DCF analyses. Both are based on Value Line projections of dividends and prices for the 1990–1992 period. The resulting composite constant growth rate is 4.6 percent.

EEI recommends a growth rate of 4.6 percent on the basis of historical data, a fundamental analysis, and a two-stage growth analysis.[20] EEI begins by examining historical 5-year and 10-year growth rates in per share earnings and per share dividends. The median 5-year historical growth rates in earnings range from 1.44 to 3.46 percent. The 10-year historical growth rates range from 4.42 to 5.52 percent. EEI notes that if a number of utilities that reported negative growth rates are eliminated from the sample, the recalculated 5-year growth rates (4.19–4.50 percent) approach the lower end of the range of the 10-year growth rates.

EEI also examines historical 10-year payout ratios and returns on average common equity derived from Value Line data.[21] The resulting distribution of payout ratios and rates of return is almost identical to the distribution found by BEC.

EEI relies on a base-year analysis and a projected fundamental growth rate analysis. For the base-year estimate, EEI calculates individual components of internal growth, "b" and "r", and of external growth, "s" and "v". To estimate the base-year internal growth rate, EEI calculates the payout rate ratio "b" and return on average equity "r" for each of 91 electric utilities for the 12 months ending in each of the four quarters from June 1987 through March 1988. It then computes the internal growth rate for each company. The average of the four quarterly median values is 3.37 percent.[22]

To calculate the base-year external growth rate "sv", EEI first estimates the "v" component. Using the same sample of 91 utilities, EEI divides the average price for the 12 months ending June 30, 1988 by the 1986 book value and arrives at a price-book value ratio of 1.28 and a "v" of 0.219.[23] It then derives the "s" component (0.0003) from its own published data. The resulting external growth "sv" is 0.007 percent (0.0003 × 0.219). Total base-year growth, the sum of internal and external growth, is 3.38 percent.

For its projected fundamental growth rate, EEI projects "br" and "s" and "v". Internal growth is based on Value Line 1990–1992 projections of retention growth. The mean and median values of projected growth are 4.7 and 4.8 percent, respectively.

EEI then estimates the price-book value ratio used in the formula for the "v" component. EEI relies on the Value Line projected return on common equity for 1990–1992 (13.4 percent) and the Value Line projected price-earnings ratio for the same period (9.5 percent). The product of return on average equity and the projected price-earnings ratio is the price-book value ratio. The resulting price-book value ratio is 1.27 (0.134 × 9.5) and is equivalent to a "v" value of 0.214. EEI attempted to derive its projected "s" by subtracting its estimate of projected internal growth "br" from Value Line projections of growth in total equity. That result was negative (−0.007) and EEI discarded it. EEI then uses its own projections of external financing and obtains an "s" of 0.0007.[24] The resulting projected external growth, the product of "s" and "v", is 0.01 percent (0.0007 × 0.214). EEI's estimate of fundamental projected growth, the sum of internal and external growth, is 4.7 percent.[25]

EEI also cities direct forecasts of near-term growth rates made by I/B/E/S, Value Line, and Salomon Brothers. These range from 2.9 to 4.0 percent, but center around 3.5 percent.

Finally, EEI presents a two-stage growth analysis. Its analysis uses an initial growth rate of 3.4 percent, based on EEI's base-year fundamental analysis, and assumes that growth will increase to a constant of 3.5 percent after five years, based on the analysts' near-term forecasts. This approach results in a composite growth rate of 3.49 percent.

EEI relieves heavily on its projected fundamental growth rate of 4.7 percent

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[15] BEC at 14.

[16] BEC at 15.

[17] BEC at 15–19.

[18] The "v" component is typically computed from the following formula:

$v = 1 - [1/(P/B)]$,

where:

P/B = Price-Book Value Ratio.

[19] BEC at 20–21.

[20] EEI at Attachment A–13.

[21] EEI at Attachment A–8.

[22] EEI at Attachment A–8.

[23] *Id.* and Appendix 10.

[24] EEI at 9.

[25] EEI at Attachment A–10.

to arrive at its recommended growth rate of 4.6 percent. It discounts analysts' projections of earning and dividend growth because it believes that the analysts have been unduly influenced by " 'temporary,' single events which have disrupted [utility] earnings", such as changes in accounting standards. EEI also discounts its own two-stage growth analysis because the analysis relied heavily on those analysts' projections.[26]

NEP recommends a growth rate in the range of 4.5 to 5.0 percent.[27] Its analysis includes historical dividend growth rates, a fundamental analysis, and projections of earnings per share. The median 5-year and 10-year historical growth rates in dividends per share (for the period ending with 1987) are 4.45 and 5.15 percent, respectively. However, NEP believes that investors "expect dividend growth rates greater than zero." It therefore recalculates historical dividend growth excluding companies with historical dividend growth rates equal to or less than zero. The resulting median 5-year and 10-year historical growth rates in dividends are 4.9 and 5.23 percent.

In its fundamental analysis, NEP calculates a total growth rate of 4.3 percent, comprised of an internal growth rate of 4.1 percent and an external growth rate of 0.20 percent. NEP calculates an internal growth rate "br" for each utility based on Salomon Brothers' earned rates of return for the year ending June 30, 1988 (a median of 13.7 percent), and a payout ratio of 70 percent. The 70 percent payout ratio was "based on the FERC's conclusion in Order No. 489 that, regardless of recent data and near-term expectations, investors hold to long-term expectations of approximately 70 percent payout (i.e., 30 percent retention) of earnings." [28] NEP calculates an external growth rate "sv" for each utility from Value Line projections of the growth in the number of common shares outstanding ("s") and from 1987 stock prices and book values ("v").[29] NEP also relies on the 4.0 percent 5-year median projected earnings growth rate published by Zacks Investment Research in June 1988.

AUS recommends a growth rate of 4.53 percent on the basis of an equal weighting of the results of 4.75 percent from its two-stage growth analysis and 4.3 percent from its fundamental analysis.[30] The two-stage analysis uses data derived by averaging seven historical and forecasted growth rates taken from Value Line and I/B/E/S. AUS uses the mean of these rates, 4.35 percent, for the first stage, and the median, 4.94 percent, for the long-run second stage beginning after five years.

AUS bases its retention growth rate "br" of 4.3 percent on retention growth rates projected by Value Line for 1988, 1989, and 1990–1992.[31] Although AUS does not attempt to specify a particular "sv" component in its fundamental analysis, it notes that with price-book value ratios above 1.0, the "sv" component would be positive and thus produce additional growth.

AUS uses a totally different method to "test the reasonableness of growth rates developed from other sources." [32] It notes that indicators of inflation, economic growth, and changing capital cost rates are higher now than last year, and then argues that the growth rate must also be higher. AUS presents a table showing that the average increase in these items between 1987 and 1988 was 0.85 percent. Forecasts of these factors for the coming year average a 0.20 percent increase. AUS weighs the historical and projected increases and concludes that an increase of approximately 0.5 percent in the Commission's prior annual growth rate (to 4.84 percent) would be appropriate.

FAB–OEPR recommends a growth rate of 3.70 percent on the basis of a fundamental analysis of 85 companies.[33] FAB–OEPR estimates a near-term retention ratio "b" of 27 percent, based on 1988 data from Salomon Brothers and on projected data from Value Line.

FAB–OEPR uses three methods to estimate a near-term return on equity "r" of 13.5 percent.[34] First, it reviews the Value Line rate of return projections for 1990–1993, concluding that "the Value Line data support a 13.6 percent estimate for the expected earned rate of return on average common equity during the next several years." [35]

Second, FAB-OEPR uses a technique called attrition analysis to examine the difference between allowed rates of return and earned returns for the period 1982–1987. On the basis of its judgment about those differences, FAB-OEPR concludes that electric utilities will earn 12.5 percent (about 0.5 percent below the 1987 allowed rates of return) in the near term.

Third, FAB–OEPR uses a method described as "sustainable rate of return," based on the mathematical equality:

$$r = \frac{\text{Dividend Yield} \times \text{Price/Book Value Ratio}}{\text{Payout Ratio}}$$

FAB–OEPR determines that a sustainable rate of return on common equity is 14.04 percent. FAB–OEPR concludes on the basis of this analysis that "investors would reasonably expect the average electric utility to earn a 13.5 percent rate of return on common equity in the near-term." [36]

Using an expected retention ratio "b" of 27 percent and an expected earned rate of return on average common equity "r" of 13.5 percent, FAB–OEPR calculates an internal growth rate for the industry of 3.6 percent.

FAB–OEPR next estimates external growth "sv".[37] It determines the "s" component to be 0.40 percent by subtracting its own estimate of internal growth (3.6 percent) from its analysis of Value Line's projections of growth in common stock equity (4.0 percent). FAB–OEPR's estimate of the "v" component is 0.219, based on a 1.28 price-book value ratio for the year ending June 30, 1988. Thus, external growth "sv" is 0.1 percent (0.004×0.219) and total projected growth, the sum of internal growth and external, is 3.7 percent.

GSA recommends a growth rate between 3.5 and 4.0 percent.[38] Its recommendation is based on both analyst growth forecasts and historical growth rates. GSA relies on Merrill Lynch's long-term (steady-state) growth rate for electric utility earnings of 4.0 percent. GSA also cites a finding that for each 5-year and 10-year period between 1955 and 1987 the average growth rate of Moody's Utility Common Stock Index ranged from 3.5 to 4.0 percent.

SWEP recommends a growth rate of 5.086 percent based on a 60–40 weighting of historical data and projections of future growth rates.[39] The historical data include a 5.9 percent fundamental growth rate derived from Standard and Poor's Compustat data. The projected growth rates average 4 5 percent and consist of 5-year projections of earnings per share and dividends made by First Boston and Salomon Brothers.

[26] EEI at Attachment A–13.
[27] NEP at 6.
[28] NEP at 3.
[29] NEP at Schedule No. 8.
[30] AUS at 39.
[31] AUS at 35.
[32] AUS at 31–32.
[33] FAB–OEPR at 9.
[34] FAB–OEPR at 3–6.
[35] FAB–OEPR at 4.
[36] FAB–OEPR at 6.
[37] FAB–OEPR at 6–7.
[38] GSA at 15.
[39] SWEP at 2.

2. Fundamental Analysis

a. *Earnings Retention Rate ("b") Analysis.* Six Commenters estimate the fundamental internal growth rate "br", either directly or through its individual components, the retention rate "b" and expected earned rate of return on book value of common equity "r". Three commenters, NEP, BEC and FAB–OEPR, present estimates of the earnings retention rate "b" (1.0 minus the payout ratio). NEP adopts the 30 percent rate from Order No. 489 without any independent analysis. BEC analyzes base-year data and projections and finds that both of these are below the 30 percent level. BEC also analyzes historical data and finds that the retention rate has fluctuated around the 30 percent level. BEC concludes that a 30 percent retention rate is appropriate.[40] FAB–OEPR also examines base-year and projected retention rates and concludes that a retention rate of 27 percent is appropriate.[41]

In Order No. 489, the Commission noted that in the two previous proceedings it had found that 28–32 percent represented a reasonable range of projected retention rates and used 30 percent in its own calculations. It further stated:

> In this proceeding, evidence suggests that the dividend payout ratio has risen recently and that a ratio above 70 percent is projected for the near-term future. * * * However, the Commission believes that, despite recent data and near-term expectations for the dividend payout ratio, the evidence is not persuasive that investors have long-term expectations that deviate significantly from the 70 percent ratio the Commission has adopted in the last two proceedings.[42]

The Commission concludes that the evidence in the record of this proceeding supports continuation of a long-term expected earnings retention rate of 30 percent.

b. *Expected Earned Rate of Return on Equity ("r") Analysis.* Two commenters, BEC and FAB–OEPR, explicitly comment on the expected earned rate of return on equity "r". The Commission also infers the rate of return for a third commenter, NEP. The three expected earned rates of return are in the relatively narrow range of 13.5 percent to 14.0 percent.

BEC examines historical and base-year data and projections of "r". Its historical analysis covers the six-year period 1982–1987. Its projections are based on Value Line's estimates for each utility for 1990–1992. The average of the median returns for the projected period is 13.8 percent. On the basis of all of its analyses, BEC concludes that investors expect a return on equity of approximately 14.0 percent.

FAB–OEPR examines Value Line composite projections and projections for individual utilities. On the basis of that data, FAB–OEPR concludes that the projections support an estimate for "r" of 13.6 percent. FAB–OEPR also performs an "attrition analysis" which yields an estimated earned rate of return of 12.5 percent and a "sustainable rate of return analysis" which yields an estimated return of 14.04 percent. FAB–OEPR concludes that a 13.5 percent rate of return is appropriate.[43]

NEP estimates a historical base-year "br" for each utility. Because NEP uses a retention rate of 30 percent for each company, the Commission is able to estimate that the rate of return implied in NEP's estimate is 13.7 percent.[44]

The Commission believes that reliance on a purely historical appproach to project an expected rate of return is not warranted. Although historical growth rates do provide a reference point, additional analyses are needed before one can conclude that investors expect the future to replicate the past. It is the judgment of the Commission that 13.8 percent is a reasonable expected earned rate of return on common equity for public utilities at this time.

c. *Internal Growth ("br") Analysis.* Three commenters, AUS, EEI and NEP, present estimates of the combined value of internal growth "br". AUS uses Value Line forecasts to arrive at its projected "br" of 4.3 percent. EEI estimates internal growth through a base-year fundamental analysis (3.37 percent) and a projected fundamental analysis (4.7 percent). As noted above, NEP uses base-year data to derive its internal growth estimate of 4.1 percent.

The Commission's estimate of "br", derived from separate estimates of "b" and "r", is 4.14 (0.3×0.138), which is in the lower to mid-range of these estimates.

d. *Proportion of New Stock Expected to be Issued ("s") Analysis.* The Commission adopts an "s" value (proportion of new stock expected to be issued) of 0.9 percent. Three commenters present specific estimates of "s", ranging from 0.03 percent in the base year (EEI) to a 1.0 percent long-term forecast (BEC). The use of the constant growth model requires evaluation of estimates of long-term industry trends. BEC presents a convincing argument that, while investors expect relatively low construction and external common stock financing in the near term, they expect somewhat higher levels in the longer term. The Commission therefore gives relatively little weight to the near-term forecasts of EEI (0.07 percent) and FAB–OEPR (0.4 percent), and more weight to the long-term forecast of BEC, which is more in keeping with the findings of long-term expectations in previous proceedings.

e. *Expected Price of New Common Stock Financing Relative to Book Value ("v") Analysis.* The Commission adopts a "v" value (the expected price of new common stock financing relative to its book value) of 0.225. The estimates presented by commenters are in a narrow range. FAB–OEPR uses base-year data to arrive at a price-book value ratio of 1.26. BEC and EEI use the methodology favored in RM87–35 and arrive at projected price-book value ratios of 1.31 and 1.27, respectively. The commenters' results are so close that the Commission cannot meaningfully distinguish among them. The Commission therefore adopts the average, 1.29, which is equivalent to a "v" of 0.225. The resulting value of "sv" is 0.20 percent (0.9×0.225).

f. *Total Fundamental Growth ("br+sv") Analysis.* One commenter, SWEP, reports the result of its historically based fundamental analysis as one line of a table.[45] The Commission places little weight on SWEP's fundamental analysis because it does not provide sufficient information for the Commission to evaluate its study. In particular, the comments state neither which data SWEP uses to estimate "br" and "sv" nor how many years of data are included in the study. The Commission's estimate of total fundamental growth "br+sv" is 4.3 percent (0.138×0.30+0.009×0.225).

3. Two-Stage Growth Analysis

Three commenters present two-stage growth analyses. However, these analyses are not particularly helpful in determining a dividend growth rate for use in the constant growth rate model. In its two-stage DCF analyses, BEC employs a complex procedure to forecast utility stock prices in the 1990–1992 period. By forecasting stock prices directly, BEC bypasses the two-stage growth analysis the Commission asked commenters to utilize. The analysis desired by the Commission includes estimates for near-term growth and long-term growth in dividends per share. Long-term growth rates are implicit in

[40] BEC at 14.
[41] FAB–OEPR at 2.
[42] 53 FR at 3352.
[43] FAB–OEPR at 3–6.
[44] NEP at Schedule No. 7.
[45] SWEP at 2 and Exhibit B.

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BEC's stock price forecasts, but the Commission has no way of appraising their reasonableness. For this reason, the Commission places little weight on BEC's results.

In its analysis, EEI uses its base-year fundamental analysis growth rate (3.4 percent) as the near-term growth rate estimate, and analysts' near-term forecasts as the long-term growth rate. EEI dismisses its own two-stage forecast, arguing that the analyst's near-term forecasts are understated. The Commission believes that the EEI analysis is deserving of little weight because EEI does not use a long-term growth rate forecast.

The Commission also does not place much weight on AUS's application of the two-stage growth model. AUS provides no theoretical justification for using the mean of its seven historical and forecasted growth rates as the short-term growth rate in the model or for using the median of these growth rates as the long-run growth rate.[46]

NEP criticizes the use of a two-stage growth rate analysis on practical grounds. It argues that it is very difficult to establish two separate growth rate stages for the electric utility industry because most projected growth rates are for periods not longer than five years and are appropriate only for the first stage. The use of short-term forecasts for the second stage of the model has been a problem in this proceeding. The only commenter to offer a long-term growth rate (4.0) estimate (GSA) does not use that rate in a two-stage model.[47]

The Commission cannot rely on the two-stage growth rate analysis in this proceding because the two-stage analyses presented by commenters are each deficient in some manner, leaving the Commission without sufficient data to perform its analysis.

4. Other Growth Rate Estimates

The State of Connecticut Office of Policy and Management suggests that the evaluation of the data and methods for estimating the expected growth rate are reasonable and should be encouraged.[48] The Commission restates its position that it will place primary reliance on two specific methods of estimating the expected annual dividend growth rate—a fundamental analysis approach and a two-stage growth model, but that it will consider other data and methods as a check on the reasonableness of the results of the two primary methods.[49]

AUS presents a hypothesized relationship between indicators of inflation, economic growth, and changing capital cost rates on the one hand and growth of electric utility dividends on the other, but fails to offer a persuasive justification for that relationship. In fact, some of the relationships may be the inverse of that hypothesized by AUS. For example, increases in interest rates and capital costs generally curb business expansion and demand for electricity. It is therefore unlikely that the result would be an expectation of an increased dividend growth for electric utilities. Furthermore, AUS does not present any evidence of the sensitivity of electric utility dividend growth rates to these factors. Finally, AUS test is tied to near-term phenomena and not to the long-term factors required by the constant growth rate model.

Four commenters submit historical growth rates of dividends and of earnings per share. These historical growth rates vary from 3.6 percent to 5.6 percent, with most estimates above 4.0 percent (See Table 2). Both BEC and EEI suggest that those 5-year growth rates may be biased downward because of negative earnings growth in recent years. EEI suggests that negative earnings growth may be due to one-time events such as changes in accounting standards.[50]

Analysts' near-term forecasts vary from 2.7 to 4.8 percent, with most estimates at 4.0 percent or below. EEI also suggests that near-term forecasts may be biased downward by the same one-time events that affected the 5-year historic growth rates.

The Commission's fundamental analysis growth rate of 4.3 percent falls between historic growth rates and near-term forecasts.

5. Conclusion

The Commission concludes, on the basis of its review of the commenters' analyses and its own analysis developed above, that an expected annual dividend growth rate factor of 4.3 percent is appropriate for use in the quarterly indexing procedure for the 12 months beginning February 1, 1989. The Commission reaches this conclusion primarily on the basis of the fundamental analysis approach. The two-stage growth rate analysis proved unusable for determining growth rate in this proceeding due to the sparse data and deficient analyses offered by commenters.

C. Flotation Costs

Flotation costs are incurred by utilities when they sell new shares of their common stock, and include issuance costs, such as underwriters' compensation and legal and printing fees. Although relatively small, flotation costs are not accounted for elsewhere in a utility's cost of service and are therefore included in the calculation of the allowance on common equity.

The Commission continues its policy of calculating an industry average adjustment to the required rate of return in order to compensate utilities for issuance costs only. The Commission also continues its policy of estimating the adjustment to the required rate of return for flotation costs using the following formula:[51]

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return
f = industry average flotation cost as a percentage of offering price
s = proportion of new common equity expected to be issued annually to total common equity

Commenters' estimates for "f", average flotation cost as a percentage of offering price, range from 2.68 to 3.56 percent.[52] The Commission finds the analysis of BEC to include the most comprehensive set of new issues and adopts it estimated 3.56 percent value of "f" in deriving the value of flotation cost "k *".

The Commission determined in the growth rate section above that the expected proportion of new common equity issued annually, "s", should be 0.9 percent. Applying the 3.56 percent estimate of issuance costs, "f", and the 0.9 percent estimate of new equity financing, "s", to the above formula, the Commission finds the flotation cost adjustment for use in the quarterly indexing procedure to be 0.03 percent, or 3 basis points.[53]

D. Inclusion of Diversified Public Utilities in the Sample

The General Services Administration (GSA), commenting on behalf of the

[46] AUS at 34.
[47] GSA at 15.
[48] CONN at 1.
[49] *See*, 53 FR 31884–85.

[50] The EEI estimates of 5-year historical growth appearing in Table 2 have been recalculated to eliminate utilities with negative growth rates. Before the recalculation EEI's median 5-year historical dividend and earnings growth rates were 3.46 percent and 1.44 percent, respectively.

[51] *See*, Order Nos. 420, 442, 461, and 489.
[52] AUS at 37, BEC at 32, EEI Attachment A at 15, OEPR at 11, and SWEP at Exhibit C.
[53] Flotation cost adjustment = 0.0356 (0.009) ÷ 1.009 = 0.0003.

consumer interests of Federal executive agencies, recommends that the Commission revise the criteria for inclusion of electric utilities in the sample used to determine the dividend yield factor in the DCF formula to recognize the increasing diversification of some of those firms into non-utility ventures. GSA maintains that diversification into non-utility ventures increases the investment risk of utility firms, thereby requiring them to offer higher dividend yields to attract investors. GSA concludes that inclusion of these diversified firms in the sample for calculating the median dividend yield for electric utilities inflates that median yield and thereby inflates the rate of return finding.[54]

GSA cites three specific examples of diversification efforts which it suggests have altered the risk profiles of sample firms. Minnesota Power and Light has invested in leveraged leases and preferred stock, real estate, telecommunications, and paper mills, and 40 percent of its net income is currently derived from non-utility ventures.[55] Potomac Electric Power Company has invested in oil and gas exploration, venture capital firms, finance and operating aircraft leases, subway cars, communication satellites, real estate, power production projects, financing of low-income housing, and high-yield corporate bonds. Hawaiian Electric Industries has invested in banking, insurance, real estate, marine transportation services, and corporate securities. GSA argues that most diversification into non-utility areas has led to greater risks and higher expected and required returns on common equity. It supports its position by citing reports by credit rating agencies and other investment firms and a statement by the Minnesota State public utility commission recognizing that investors perceive non-utility ventures as relatively riskier than utility ventures. It discounts the likelihood that the "portfolio effect" of diversification (that is, investment in non-utility operations that are countercyclical to the firm's utility operations) will offset the increase in business risk.

GSA suggests that the sample group of utilities be changed to ensure that the rates charged for utility services reflect only the risks and costs, including capital costs, attributable to utility operations. It suggests inclusion of an earnings volatility measure to screen out those firms whose earnings volatility has been significantly altered by diversification.

The Commission has previously considered this issue. In the fourth annual proceeding, FAB-OEPR identified a number of companies in the industry sample which had begun to diversify into unregulated businesses. It suggested that diversified companies have a different risk profile than firms which are solely regulated utilities because diversified companies as a group have lower dividend yields, higher expected earned returns, and, therefore, higher price-to-book value ratios. However, FAB-OEPR's analysis revealed that diversification had not had a significant impact on the industry cost of capital.[56] The Commission responded in Order No. 489 by noting that, although FAB-OEPR's data showed divergence between diversified and non-diversified utilities in dividend yields, expected earned returns, and price-to-book value ratios, they also showed that the costs of equity for the two groups remained very close. The Commission therefore declined to eliminate utilities from its sample on the grounds of diversification and concluded that its existing sampling procedures regarding diversified firms were adequate. However, the Commission did acknowledge that diversification is an increasingly important factor in the electric utility industry and did state its intent to monitor the effects of diversification on the industry average cost of equity in future proceedings.[57]

The Commission continues to acknowledge that diversification activities may transform the risk profile of a public utility to such an extent that it is no longer appropriate to include that firm in the sample for calculation of median dividend yields for public utilities. In the current proceeding, FAB-OEPR again suggests that the inclusion of diversified companies in the sample has no material effect on the benchmark.[58] The Commission will continue to monitor the impact of diversification on the benchmark rate of return.

E. Advisory Status of Generic Rate of Return

Several commenters support the intention of the Commission, expressed in the NOPR in this proceeding, to continue to use the generic rate of return on an advisory basis.[59] During several earlier annual proceedings, the Commission had considered treating the generic rate of return as a rebuttal presumption. However, that is not an issue in this proceeding because the NOPR did not propose to modify § 37.8 of the Commission's regulations, which provides that "[t]he benchmark rates of return under this part will be advisory only." The Commission decided in those earlier proceedings, most recently in Order No. 461, not to make the generic rate of return a rebuttal presumption at that time. The generic rates remain advisory.

Two commenters go further and suggest that the Commission declare that the generic rate of return will permanently remain advisory only.[60] The Commission declines to do so. This rule deals with the benchmark process for the 12 months beginning February 1, 1989, and the Commission did not propose to change the status of the generic rate of return for that period. Furthermore, the Commission in the future could choose to propose and implement such a change and would not be bound by any statement regarding permanence made in this rule. Therefore, the sense of permanence sought by those two commenters would be illusory.

F. Utility of Benchmark Rate of Return

BEC comments that the "benchmark experiment" now seems unlikely to achieve its three original purposes stated in Order No. 389. It suggests that the annual benchmark proceeding has become a purely mechanical process which does not give the Commission a "more current and direct understanding of the financial and operating circumstances of the electric utility industry." BEC notes that the Commission prepared industry financial profiles in 1985 and 1986 to implement this objective but has discontinued the practice. It also suggests that the procedure cannot achieve its purpose of rendering more accurate and consistent rate of return decisions without the agency's willingness to devote the time and resources needed for a meaningful exploration of factors affecting the cost of equity. Finally, BEC comments that the benchmark procedure has not achieved its purpose of saving resources, and that there is no reason to expect that it will.[61]

AUS also expresses concern that the generic rate of return proceedings have not accomplished the stated goals initially established by the Commission

[54] GSA at 1–2.
[55] *Id.*, at 3–5.
[56] 53 FR 3349, citing comments of FAB-OEPR staff at 1, 12.
[57] 53 FR 3349.
[58] OEPR at 1.
[59] Conn. at 1, CEC at 2.
[60] CEC at 2, EEI at 5.
[61] BEC at 1–2.

and it criticizes the DCF model as presently employed by the Commission.

EEI comments that little use has been made of the benchmark rates of return by utilities, intervenors, Commission staff, or the Commission itself. It notes that the benchmark rate of return is rarely mentioned in Commission orders other than in the generic rate of return proceedings themselves and that, although Commission staff now includes benchmark information as exhibits in rate case proceedings, that information does not appear to play any significant role in the staff's recommendations.[62] EEI states that reference to the generic rate of return in decisions of the Commission or administrative law judges has been generally limited either to matters of detail or to rejections of its use. EEI further notes that when public utilities have sought to use the benchmark to serve as a basis for automatic adjustment of the rate of return on equity, the Commission has refused permission. EEI finds this unfortunate "since automatic adjustment of a pre-established rate of return is at least one (perhaps the only) function that the benchmark rate of return procedure may be adequately equipped to perform." [63] EEI suggests that the Commission's failure to utilize the benchmark rate of return reflects a lack of confidence in its validity. EEI concludes that the benchmark rates of return developed by the Commission in earlier proceedings have "systematically and substantially understated the cost of capital to electric utilities" and that therefore the Commission's methodology fails the "end-result" test.[64]

The Commission continues to believe that generic determination of rate of return on common equity for public utilities can provide several desirable benefits, including more accurate and consistent Commission decisions among companies and for the same company over time. The Commission also expects use of the generic rate of return to result ultimately in significant cost savings. Those benefits have not yet been realized to a major degree because adoption of the benchmark rate has been incremental and cases in which the benchmark could be applied have only recently begun to reach the Commission decision stage. In addition, the pace of change in long-standing practices and procedures is often slow. The Commission has utilized the generic rate in arriving at its rate of return conclusion in several recent cases, including *Connecticut Light and Power, et al.*[65] and *Yankee Atomic Electric Company, et al.*[66] There have also been some innovative uses of the generic rate of return in proceedings such as *Ocean State Power.*[67] The Commission continues to encourage wider use of the generic rate of return by staff and other parties and remains confident that as its use broadens, its utility will become more evident.

American Electric Power Service Corporation (AEP) comments that the generic rate of return has not produced economically realistic results and should be abandoned. AEP asserts that in each recent year the required rate of return projected by the Commission's DCF model has failed "to even remotely approximate the actual return realized by investors in utility stocks." [68]

Even if AEP's assertions are true, the test it implies is not a valid test of the model. As the Commission has stated in the past, the DCF model is used to estimate the return required by investors at the time the analysis is performed. It is not intended to forecast price changes, changes in market conditions, or changes in expectations. A year later, expectations about interest rates, dividends and growth rates will likely have changed. Prices change because expectations change. The Commission agrees that the DCF model is a poor method for predicting future stock prices.[69]

AUS charges that the Commission's quarterly benchmark does not work properly. AUS argues that the benchmark does not change in unison with other indicators of capital costs. To make its point, AUS cites the reduction in the benchmark from 12.51 percent to 12.36 percent (calculated using dividend yield data for the period January through June 1988 and applicable between August 1 and October 31, 1988). It compares this decrease to the 34 basis point increase in the yield of "10-year Treasuries" between April 15 and July 15, 1988.

AUS has mismatched the time periods for comparison between the benchmark rate and bond yields. In partial response to a similar argument by AUS in RM87-35, the Commission stated:

> In addition, some commenters mismatched the time periods for comparison between the benchmark rate and bond yields. While it is true that a benchmark rate of return is meant to apply to a particular period, it is calculated by the Commission using dividend yield data from a period prior to the applicability period. Therefore, a fair comparison should contrast the benchmark rate of return with contemporaneous smoothed bond yields * * *
>
> In the quarterly indexing procedure used to develop the benchmark rate, the Commission uses a six month divident yield to smooth short-term market fluctuations inherent in spot yields. A similar smoothing process should be used to remove short-term fluctuations from bond yields before any comparison is made.[70]

The same problem arises again with the AUS analysis in this proceeding. When 10-year Treasury bond yields are smoothed in a manner consistent with the dividend yield measurement period used in the quarterly indexing procedure, the result is a decrease in bond yields between the two periods. The smoothed bond yield is 8.77 percent for the first period and 8.66 percent for the second, a decline of 11 basis points, almost precisely equal to the 15 basis point decline in the generic rate of return for the same period.

G. Other Comments

AUS requests that the Commission conduct evidentiary hearings or appoint an administrative law judge to analyze the comments submitted in this proceeding to "provide the necessary forum for each commenting party to sustain its burden of proof through discovery and cross-examination of each participant." [71] AUS suggests that the fact that the Commission has stated that it will take "official notice" of the benchmark rate of return in individual rate cases requires that hearings be conducted in this rulemaking proceeding before the Commission or an administrative law judge.

This is a generic rulemaking proceeding under the Administrative Procedure Act (APA). The APA does not require a formal evidentiary hearing in such circumstances and AUS has presented no justification for holding such a hearing in this case.

The State of Connecticut, on behalf of its Department of Public Utility Control, stresses its opposition to extension of the generic rate of return concept beyond the Commission. It argues that state regulatory agencies must maintain flexibility in their decision making and sovereignty over determination of rates of return allowed to local utilities.[72]

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[62] EEI at 8.
[63] *Id.* at 9.
[64] *Id.* at 6.
[65] 43 FERC ¶ 61,508 (June 22, 1988) at 62,264 and 62,267, 45 FERC ¶ 61,370 (Dec. 6, 1988) (order on rehearing).
[66] 40 FERC ¶ 61,372 (Sept. 30, 1987) at 62,210 43 FERC ¶ 61,232 (May 6, 1988) (order on rehearing).
[67] 44 FERC ¶ 61,261 (Aug. 19, 1988).
[68] AERP at 3, 6.
[69] 53 FR 3346.
[70] *Id.*
[71] AUS at 5.
[72] CONN at 2.

The NOPR in this proceeding did not propose to expand the applicability of the generic rate of return. The Commission regulations are applicable to utilities within this Commission's jurisdiction; Connecticut's concerns about their imposition on state regulatory agencies are groundless.

Two commenters suggest that the Commission consider methods and models other than its DCF formula to determine a benchmark rate of return, arguing that the Commission's DCF formula is flawed and inadequate.[73]

The Commission's use of the DCF formula is not an issue in this proceeding. The Commission has thoroughly considered numerous and wide-ranging comments on that DCF formula in the four previous annual proceedings and has adopted the same formula in each final rule. In adopting its DCF formula for the fourth time in Order No. 489, the Commission stated that future proceedings may be limited to determination of the growth rate and flotation cost factors to be used in that formula in the quarterly indexing procedure.[74] The NOPR in this fifth annual proceeding did limit the inquiry to the growth rate and flotation cost factors. The Commission's DCF formula is an established methodology and comments promoting alternative methods are beyond the scope of the NOPR.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [75] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities that would be affected by the proposed rule are too large to be considered "small entities" within the meaning of the Act.[76] Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. National Environmental Policy Act

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[77] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[78] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[79] The generic rate of return is a factor to be considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

VI. Paperwork Reduction Act

The Paperwork Reduction Act [80] and Office of Management and Budget (OMB) regulations [81] require that the OMB approve certain information collection requirements imposed by agency rule. The final rule in this proceeding does not impose any information collection requirements. Therefore, the Commission has not submitted this rule to the OMB for review or approval.

VII. Timing of Quarterly Updates and Effective Date of Rule

The benchmark rates of return established through the Commission's quarterly indexing procedure will generally be published on or before the fifteenth of the month following the close of a calendar quarter.

The first quarter will run from February 1 to April 30, the second quarter from May 1 to July 31, the third quarter from August 1 to October 31, and the fourth quarter from November 1 to January 31.

This rule will be effective January 18, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Appendix A—Commenters in RM88–25–000

American Electric Power Service Corporation—AEP
Associated Utility Services, Inc.—AUS
Boston Edison Company, *et al.*—BEC
Commonwealth Edison Company—CEC
State of Connecticut/Office of Policy and Management—CONN
Edison Electric Institute—EEI
Financial Analyses Branch, Office of Electric Power Regulation, Federal Energy Regulatory Commission—FAB–OEPR
General Services Administration—GSA
New England Power Company—NEP
Southern Electric System—SES
Southwestern Electric Power Company—SWEP
Southwestern Public Service Company—SPSC

Appendix B—Public Utilities Used in Base-year Dividend Yield Calculations and Quarterly Updates

Utility	Ticker symbol
Allegheny Power System	AYP
American Electric Power	AEP
Atlantic Energy Inc	ATE
Baltimore Gas & Electric	BGE
Black Hills Corp	BKH
Boston Edison Co	BSE
Carolina Power & Light	CPL
Centerior Energy Corp	CX
Central & South West Corp	CSR
Central Hudson Gas & Elec	CNH
Central Ill Public Servic	CIP
Central Louisiana Electri	CNL
Central Maine Power Co	CTP
Central Vermont Pub Serv	CV
Cilcorp Inc	CER
Cincinnati Gas & Electric	CIN
CMS Energy Corp	CMS
Commonwealth Edison	CWE
Commonwealth Energy Syste	CES
Consolidated Edison of NY	ED
Delmarva Power & Light	DEW
Detroit Edison Co	DTE
Dominion Resources Inc-VA	D
DPL Inc	DPL
Duke Power Co	DUK
Duquesne Light Co	DQU
Eastern Utilities Assoc	EUA
Empire District Electric	EDE
Fitchburg Gas & Elec Ligh	FGE
Florida Progress Corp	FPC
FPL Group Inc	FPL
General Public Utilities	GPU
Green Mountain Power Corp	GMP
Gulf States Utilities Co	GSU
Hawaiian Electric Inds	HE
Houston Industries Inc	HOU
I E Industries Inc	IEL
Idaho Power Co	IDA
Illinois Power Co	IPC
Interstate Power Co	IPW
Iowa Resources Inc	IOR
Iowa-Illinois Gas & Elec	IWG
Ipalco Enterprises Inc	IPL
Kansas City Power & Light	KLT
Kansas Gas & Electric	KGE

[73] AUS at 5, SPSC at 4.

[74] 53 FR 3359.

[75] 5 U.S.C. 601–612 (1982).

[76] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b) (1982). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant it its field of operation." 15 U.S.C. 6.32(a) (1982).

[77] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987) FERC Stats. & Regs. ¶ 30.783 (Dec. 10, 1987), *codified at* 18 CFR Part 380.

[78] 18 CFR 380.4 (1988).

[79] 18 CFR 380.4(a)(15) (1988).

[80] 44 U.S.C. 3301–3520 (1982).

[81] 5 CFR 1320.12 (1988).

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Utility	Ticker symbol
Kansas Power & Light	KAN
Kentucky Utilities Co	KU
Long Island Lighting	LIL
Louisville Gas & Electric	LOU
Maine Public Service	MAP
Middle South Utilities	MSU
Midwest Energy Co	MWE
Minnesota Power & Light	MPL
Montana Power Co	MTP
Neco Enterprises Inc	NPT
Nevada Power Co	NVP
New England Electric Syst	NES
New York State Elec & Gas	NGE
Niagara Mohawk Power	NMK
Nipsco Industries Inc	NI
Northeast Utilities	NU
Northern States Power-MN	NSP
Ohio Edison Co	OEC
Oklahoma Gas & Electric	OGE
Orange & Rockland Utiliti	ORU
Pacific Gas & Electric	PCG
Pacificorp	PPW
Pennsylvania Power & Light	PPL
Philadelphia Electric Co	PE
Pinnacle West Capital Cor	PNW
Portland General Corp	PGN
Potomac Electric Power	POM
PSI Holdings Inc	PIN
Public Service Co of Colo	PSR
Public Service Co of N H	PNH
Public Service Co of N ME	PNM
Public Service Co Enterprise	PEG
Puget Sound Power & Light	PSD
Rochester Gas & Electric	RGS
San Diego Gas & Electric	SDO
Scana Corp	SCG
Scecorp	SCE
Sierra Pacific Resources	SRP
Southern Co	SO
Southern Indiana Gas & El	SIG
St Joseph Light & Power	SAJ
Teco Energy Inc	TE
Texas Utilities Co	TXU
TNP Enterprises Inc	TNP
Tucson Electric Power Co	TEP
Union Electric Co	UEP
United Illuminating Co	UIL
Unitil Corp	UTL
Utah Power & Light	UTP
Utilicorp United Inc	UCU
Washington Water Power	WWP
Wisconsin Energy Corp	WEC
Wisconsin Public Service	WPS
WPL Holdings Inc	WPH

Trabandt, Commissioner, concurring

This, the fifth annual rule on the generic rate of return, serves a routine purpose. The Commission has only updated two elements in the formula for 1989: the growth rate and "flotation cost factors" (that part of the cost of capital that represents expenses for securities underwriters). Order at 1. If the majority had stopped there, I would have voted for the rule without again expressing my basic disapproval of the idea that the Commission should fix a generic rate of return. As the preamble, order at 37–42, meanders from solving algebraic equations to provide a response to comments questioning the "Utility of the Benchmark Rate of Return," I will offer mine.

I agree with Boston Edison Company and, to some extent, with the Edison Electric Institute (EEI)'s observations. Not only has the annual benchmark proceeding become a "purely mechanical exercise" (order at 37), I have gone even further and suggested that "the generic rate of return has no meaning." *Connecticut Light & Power Company*, 43 FERC ¶ 61,508 (1988) at 62,272 (dissenting opinion). To me, the whole exercise reflects a lack of sensitivity to the proper method of setting rates of return.

The law and sound policy require that we also take the individual circumstances in which companies operate into account when we set the rate of return. *See, Ocean State Power*, 44 FERC ¶ 61,261 (1988) at 61,987 (dissenting opinion). With a generic rate of return, no matter how advisory, the Commission faces—and perhaps succumbs to—a severe temptation not to. (Indeed, I have pointed out the coincidence between the generic and the allegedly individual rates of return we have set in several cases, *e.g., Connecticut Light & Power; Yankee Atomic Electric Company*, 40 FERC ¶ 61,372 (1987) at 62,226 (concurring opinion), *reh. den.* 43 FERC ¶ 61,232 (1988).) Fixing a rate of return may be subjective but that does not entitle us to become completely arbitrary. *Public Service Commission of the State of New York v. FERC*, 813 F.2d 448, 465 (D.C. Cir. 1987).

One final comment: the majority, order at 39–40, hints strongly that they intend to take the generic rate of return beyond the advisory stage. Indeed, the order states with certain eloquence, in response to EEI's complaint that we have not used the benchmark enough, "the pace of change in long-standing practices and procedures is often slow." The order correctly cites to the fact that the Commission has used the generic rate of return several times. The majority encourages parties to make greater use of the benchmark in the future.

I dissented in the cases the majority cites and I will continue to oppose our imposing the generic rate of return on individual utilities in rate cases. In my opinion, change in long-standing practices and procedures may sometimes be unnecessary, and in some instances, may be harmful. The type of change the majority suggests here falls under both categories. I think we should abandon this approach altogether.

With these reservations, I concur in the order.

Charles A. Trabandt,

Commissioner.

[FR Doc 88–29516 Filed 12–22–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 24, and 148

[T.D. 89–3]

Customs Regulations Amendments Relating to the United States-Canada Free-Trade Agreement

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to implement the duty preferences of the United States-Canada Free-Trade Agreement, commonly referred to as the CFTA.

DATES: Effective date: January 1, 1989. Written comments must be received on or before February 21, 1989.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Harrison Feese, Office of Trade Operations (202–566–7060), Harry Carnes, Office of Inspection and Control (202–566–8648); Audit and Forms Aspects: Marcus Sircus, Office of Regulatory Audit (202–566–2812); Legal Aspects: John Valentine, Office of Regulations and Rulings, (202–566–5868).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1988, the United States and Canada (the "Parties") entered into an agreement, the United States-Canada Free-Trade Agreement (CFTA). The objectives of the CFTA are to eliminate barriers to trade in goods and services between the two parties, facilitate conditions of fair competition within the free-trade area, liberalize significantly conditions for investments within the free-trade area, establish effective procedures for the joint administration of the CFTA and the resolution of disputes, and lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the CFTA.

The provisions of the CFTA were adopted by the United States with the enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988 the ("Act") (100 Stat. 418, Pub. L. 100–449).

The role of the U.S. Customs Service is to implement those portions of the CFTA and the Act that relate to the rules of origin and other trade issues. The rules of origin are the basis for determining whether goods imported into the U.S. from Canada are eligible for the preferential treatment accorded to goods originating in Canada. These rules do not confer origin or establish a criterion for determining origin for any other purpose. For example, origin determinations for eligibility under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), as well as for country of origin marking under 19 U.S.C. 1304, are not affected.

Preferential treatment is available for goods entered under certain designated provisions throughout Chapters 1–99 of the HTSUS. This preferential treatment is available only to goods which are determined to be originating goods in

accordance with General Note 3(c), of the HTSUS.

The CFTA and the Act provide that goods wholly obtained or produced in the United States and/or Canada will qualify for such preferential treatment. Goods containing third-country material will qualify for preferential treatment if the materials undergo, in one or both parties, a sufficient degree of processing or assembly to result in a designated change in tariff classification under the HTSUS; that is, processing and/or assembly must result in changes in the product that are physicially and commercially significant. With respect to some goods (generally, assembled products), the CFTA and the Act also require that a specified percent of the cost of manufacturing the goods be attributable to U.S. or Canadian materials and/or direct cost of processing or assembly, incurred in the U.S. or Canada. In certain limited circumstances, the origin requirement may be met on the basis of meeting the value-content requirement above.

The CFTA and the Act contain a safeguard provision that will result in denial of preferential treatment to any goods altered merely to circumvent the rules of origin.

While regulations relating to automotive products are set forth below, specific regulations relating to textile and apparel products and other provisions will be the subject of a separate rule to be published at a later date. Following is a discussion of each section of the interim regulations.

Section-by-Section Discussion

Section 10.301 Scope.

This section sets forth a general statement of the coverage and statutory authority for the CFTA and the Act. It should be noted that excluded from the coverage of these provisions are such matters as marking and foreign assets control. Each of these is provided for elsewhere in this chapter.

Section 10.302 Eligibility criteria in general.

This section provides that the preferences shall be claimed under a HTSUS heading or subheading by use of the prefix "CA" in the "special" column of the entry summary or other appropriate customs document. This section further defines "originating goods", in general, which will be eligible for the preferences and which are more specifically defined in § 10.303. Such goods must be wholly obtained or produced in the United States or Canada, or transformed in accordance with General Note 3(c), HTSUS, in either party. The section further states that such originating goods must be shipped to the United States directly from Canada with certain exceptions identified in detail in § 10.306(b).

Section 10.303 Originating goods.

This section more specifically defines originating goods that are eligible for a preference. Such goods must be wholly obtained or produced in Canada or have been transformed by a processing that results in a change in classification that is specified in the CFTA. In certain instances, eligibility for preference also requires that a value-content test be met, as set forth in General Note 3(c), HSTUS. This section also provides rules under which a very limited class of goods may qualify for preference without change in classification.

Section 10.304 Exclusions.

This section sets forth those circumstances in which, notwithstanding a change in tariff classification, goods will not be considered as eligible for a preference. Such goods include those that have undergone simple packaging or simple combining operations, or have been merely diluted with water or another substance that does not materially change the characteristics of the goods.

In addition, under certain circumstances, goods will not be considered as originating goods if they have undergone any process or work the sole purpose of which is to circumvent the rules of origin that thereby qualify for a preference.

Section 10.305 Value content requirement.

This section sets forth the definitions that apply whenever a specific rule of origin requires a value-content determination.

Paragraph (a) defines the terms "direct cost of processing" or "direct cost of assembling" as those costs directly incurred in, or reasonably allocated to, the production of goods.

Paragraph (b) defines the term "value of materials originating in Canada or the United States, or both", as the aggregate of the price paid by the producer for material originating in either party, or both, or for materials from a third country used or consumed in the production of originating goods. When not included in that price, specific costs are defined that may be included in the value of the originating material, when related thereto.

Paragraph (c) defines the term "value of the goods when exported to the United States" as the aggregate of the price paid by the producer for *all* materials and the direct cost of processing and/or the direct cost of assembling the goods. When not included in the price paid for the materials, specific costs related thereto are specified.

Paragraph (d) provides that whenever a value-content determination is required, and whenever materials used in the production of goods in Canada or the United States originated in a third country, the value of the originating material may be included in the value-content only to the extent that the value is directly attributable to the goods under consideration.

Paragraph (e) sets forth specific costs that are excluded from the direct cost of processing or assembling. Such costs excluded include those related to the general expenses of doing business, brokerage charges, royalty payments, buildings costs and profit on goods.

Section 10.306 Direct shipment to the United States.

This section defines the circumstances under which goods will be considered to have been directly shipped to the United States from Canada in order to establish eligibility for preferences.

Paragraph (a) defines a through shipment as a direct shipment from Canada to the United States that does not enter the territory of a third country.

Paragraph (b) defines the circumstances under which goods will qualify for a preference if shipped through the territory of a third country. The requirements are that the goods not enter the commerce of any third country and not be subjected to any operation other than unloading, reloading, or any other operation necessary to transport or maintain them in good condition. Further, the documentation must reflect the United States as the final destination.

Section 10.307 Documentation.

This section sets forth the documentation required to claim a preference.

Paragraph (a) provides that a preference is claimed by including on the entry summary or equivalent document the symbol "CA" as a prefix to the subheading of the HTSUS under which the good is being entered.

Paragraph (b) requires that the claim for a preference be made at the time of filing of the entry summary, or liquidation will occur at the rate that would otherwise be applicable.

Paragraph (c) provides that a claim for a preference will be based on the exporter's written certificate of origin, Customs Form 353 (a copy of which is

set forth in Appendix A to this document), and that the certificate of origin must be available at the time the preference is claimed. The certificate under the regulations must be presented to the district director upon request.

Paragraph (d) requires that the certificate of origin be prepared on Customs Form 353 unless the exporter uses an approved computerized format or other format approved by the U.S. Customs Service. Such alternative format must contain the same information and certification as set forth on the Customs Form 353.

Paragraph (e) sets forth exceptions to the requirement for an exporter's certificate of origin that may be authorized by the district director. The exceptions include entries entitled to informal entry procedures provided for in §§ 143.21 and 143.22, Customs Regulations.

Paragraph (e) further requires that the invoice or other Customs release document for commercial goods that qualify for both informal entry and a preference must include a certification that the goods are eligible for a preference based upon the rules of origin. The certification must be signed by the manufacturer, supplier, or exporter. Further, special rules for automotive products are set forth in § 10.311.

Noncommercial goods which qualify for both informal entry and a preference may be exempt from the exporter's certificate of origin requirement if the goods are legally marked "Made in Canada", or it is otherwise shown that the goods qualify as originating goods.

Paragraph (e)(2) authorizes the district director to waive the requirement for evidence of direct shipment when he is satisfied that the otherwise qualifying goods were in fact imported directly from Canada.

Section 10.308 Records retention.

This section sets out the requirements for records retention by both U.S. importers and exporters. Paragraph (a) requires the importer to retain the exporter's certificate of origin for a 5-year period and requires that it be furnished to the appropriate Customs official upon request.

Paragraph (b) requires the exporter to retain, for a 5-year period, all of the information necessary to prepare the exporters certification of origin and to submit such information to the appropriate Customs official upon request.

Section 10.309 Verification of documentation.

This section authorizes the appropriate Customs official to require any evidence of country of origin or of direct shipment that he deems necessary to verify the claim for a preference.

Section 10.310 Election to average for motor vehicles.

Section 10.310 contains the regulations relating to the election to average for motor vehicles. Certain conforming amendments have also been made to § 10.84 that relate to automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

Paragraph (a) provides that the manufacturer may elect to average its calculation of the 50 percent value-content requirement for vehicles of the same class, assembled in the same plant, over a 12-month period. The election to average must be made before the importation of any vehicle produced within the 12-month period identified.

Paragraph (b) provides that an election to average becomes binding upon the first entry of vehicles for the identified 12-month period and that if the manufacturer's annual report fails to substantiate the claim that the vehicles are originating goods under the Act or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), or if the manufacturer fails to comply with other reporting requirements, all vehicles covered by the averaging declaration will be liquidated without preference. Paragraph (c) sets forth the documentation requirements for a manufacturer of motor vehicles who elects to average in lieu of submitting an exporter's certificate of origin.

Section 10.311 Documentation for election to average for motor vehicles.

Paragraph (a) requires a declaration of election to average, signed by an authorized company official, and submitted to Customs on Customs Form 355. A sample of Customs Form 355 is set forth in Appendix B to this document.

Paragraph (b) requires that a quarterly report be submitted to Customs within 30 days of the end of each quarter on Customs Form 356. A copy of Customs Form 356 is set forth in Appendix C to this document. The manufacturer may elect to submit the required information in an approved computerized format or such other format as may be approved by Customs, provided the alternative format contains the information set forth on Customs Form 356. Negative quarterly reports are required.

Paragraph (c) requires that an annual report be submitted within 90 days of the end of the identified financial year on Customs Form 357. Again, the manufacturer may elect to submit the required information in an approved computerized format or such other format as may be approved by Customs, provided such alternative format contains the same information as required on Customs Form 357. A copy of Customs Form 357 is set forth in Appendix D.

Part 24 Customs Financial And Accounting Procedures

Section 24.23 sets forth an ad valorem fee on merchandise formally entered or withdrawn from warehouse for consumption. The Act provides for a gradual reduction of this fee on originating goods. The amendments establish the schedule for fee reduction from Janauary 1, 1990, to January 1, 1994.

Part 148 Personal Declarations and Exemptions

Subpart J of Part 148 relates to noncommercial importations of limited value. Section 148.102 provides for a flat rate of duty. The Act provides for a gradual reduction of the flat rate for originating goods imported from Canada. the regulatory amendments establish the schedule for duty reductions.

In order to assist the public in understanding the application of the flat rate to originating goods imported from Canada and the relationship of this flat rate to the personal exemptions provided by law, an example has been included as Appendix E to this document.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a) public notice is inapplicable to

this regulation because it is within the foreign affairs function of the United States. Not having regulations implementing the procedures for obtaining preferences for goods designated as eligible and other aspects of the United States-Canada Free-Trade Agreement on the date the United States-Canada Free-Trade Agreement Implementation Act of 1988, is expected to be effective, January 1, 1989, would provoke undesirable international consequences. In addition, because these regulations establish procedures which the public needs to know in order to claim a preference under the United States-Canada Free-Trade Implementation Act of 1988, it is determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

Furthermore, for the above reasons and because the regulations implement procedures for obtaining preferences for goods designated as eligible, thus conferring substantial benefits upon Canadian exporters and the public in general, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(1) and (d)(3) for dispensing with a delayed effective date.

Executive Order 12291

Because this document will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), do not apply.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515 - 0164.

Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for U.S. Customs Service, with copies to the U.S. Customs Service, Regulations and Disclosure Law Branch, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

The collections of information in this regulation are in § 10.84, 10.307, 10.310 and 10.311, title 19, Code of Federal Regulations. This information is required to claim a preference under the CFTA and Act and will be used by the U.S. Customs Service to determine eligiblity for a preference. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 225 hours, depending on individual circumstances, with an estimated average of 3.55 hours. Estimated number of respondents and/or recordkeepers: 5,165. Estimated annual frequency of responses: 7.

Drafting Information

The principal author of this document was Marilyn G. Morrison, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspections, Imports, Motor Vehicles.

19 CFR Part 24

Customs duties and inspections, Imports.

19 CFR Part 148

Customs duties and inspections, Imports.

Amendments to the Regulations

For the reasons set forth above, Parts 10, 24 and 148, Customs Regulations (19 CFR Parts 10, 24 and 148) are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1499, 1508, 1623, 1624.

2. Section 10.84 is revised to read as follows:

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a)(1) Certain motor vehicles and motor vehicle equipment are eligible for duty-free entry as proclaimed by the President under the Automotive Products Trade Act of 1965. The articles designated for such duty-free treatment are defined in General Note 3(c)(iii), HTSUS (19 U.S.C. 1202). Specifically, such articles are those designated [as "Free (B)"] in the "Special" subcolumn in Chapter 87, HTSUS, and must qualify as "Canadian articles" as defined in General Note 3(c)(iii)(A)(1). To claim exemption from duty under the Automotive Products Act of 1965, an importer must establish, to the satisfaction of the appropriate Customs officer, that the article in question qualifies as a "Canadian article" for purposes of General Note 3(c)(iii)A)(1). The Customs officer may accept as satisfactory evidence a certificate executed by the importer as set forth in paragraph (b) of the section, subject to any verification he may deem necessary. Alternatively, the Customs officer may determine that under the circumstances of the importation a certificate is unnecessary.

(2) Under the United States-Canada Free-Trade Agreement and implementing legislation (Pub. L. 100-449, 100 Stat. 418) a manufacturer of motor vehicles may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles in establishing its eligibility for tariff preference. Requirements for averaging are set forth in § 10.310 and 10.311.

(b)(1) When all materials used at any stage in the production of the imported article are wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is a "Canadian article":

All materials contained in the product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed were wholly obtained or produced in Canada or the United States, or both. No materials other than those which were wholly obtained or produced in Canada or the United States, or both, were incorporated into this product or any of its components at any stage of production or in the production of any intermediate product used at any stage in the chain of production in Canada or the United States, or both.

(2) When any material used at any stage in the production of an imported article or any of its components is not wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a "Canadian article":

The product covered by the _____ (Describe the invoice, bill of lading, or other

document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were used in its production in Canada _____ (Description sufficient for tariff classification of the materials, and number of units) of third country materials of which the price paid was _____ per unit of quantity, plus _____ which represents all costs incurred in transporting the materials to the location of the producer and the duties, taxes, and brokerage fees on the materials, if such costs were not included in the price paid.

(3) If such Customs officer is satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in paragraph (b)(2) of this section a certificate in the following form when the merchandise covered thereby has been produced with third country material but is an originating good under a specific rule of origin for the merchandise:

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were or may have been used in its production in Canada or the United States, or both, materials of a third country.

It is impractical to ascertain the exact number of units of third country material, if any, used in its production or the price paid (and other costs required to be included in the price paid) of such materials but to the best of (my) (our) (its) knowledge the materials are described (sufficient for tariff classification purposes) as follows:

_____.

(4) The certificates described in paragraphs (b)(2) and (b)(3) of this section shall not be accepted if the statements therein make it evident that the importation is not a "Canadian article" within the meaning of General Note 3(c), HTSUS.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b) (1), (2), or (3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material, other than originating material, is used in the production of an article covered by such a certificate, the certificate shall state the number of units, a description sufficient for tariff classification purposes, the price paid, and, if not included in the price paid, the costs incurred in transporting the materials to the location of the producer and duties, taxes and brokerage fees paid in Canada and/or the United States on the material, per unit of each kind of materials.

(6) A certificate conforming to paragraph (b) (1), (2), or (3) of this section shall be accepted as evidence of the facts alleged therein only if:

(i) There is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary evidence which identifies the article to which the certificate pertains,

(ii) The certificate is signed by the manufacturer or producer of the article to which it pertains, or by the person who exported the articles from Canada, and

(iii) It clearly appears that such copy or other documentary evidence was annexed to the certificate when it was signed.

(c) In lieu of the certification in paragraph (b) (1), (2), or (3) of this section, a manufacturer of motor vehicles who claims a preference under the United States-Canada Free-Trade Agreement and elects to average pursuant to § 10.310(a), shall be subject to the requirements of §§ 10.301 to 10.311 of this part.

(d) When an importer makes an entry, or withdrawal from warehouse, for consumption of articles for use as "original motor-vehicle equipment" as that term is defined in General Note 3(c)(iii), HTSUS, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds of motor vehicles specified in the General Note and furnish the name and address of the motor vehicle manufacturer. A copy of the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the district director of Customs is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by customs officials upon request during a period of 3 years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(e) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, it is decided to divert the article from its intended use in the manufacture in the United States of motor vehicles, the importer or other person deciding to divert the article from such intended use shall give notice in writing of the decision to the district director of Customs of the district where entry was made or where the offices of the importer are located and either make arrangements for its destruction or exportation under Customs supervision or pay duties in accordance with General Note 3(c)(iii)(B)(2), HTSUS. If such article is not destroyed or exported under Customs supervision or the duties paid, the article, or its value, shall be subject to forfeiture.

3. Part 10 is amended by adding at the end thereof a new heading followed by new §§ 10.301 through 10.311 to read as follows:

* * * * *

United States-Canada Free Trade Agreement

Sec.

10.301 Scope.
10.302 Eligibility criteria in general.
10.303 Originating goods.
10.304 Exclusions.
10.305 Value content requirement.
10.306 Direct shipment to the United States.
10.307 Documentation.
10.308 Records retention.
10.309 Verification of documentation.
10.310 Election to average for motor vehicles.
10.311 Documentation for election to average for motor vehicles.

United States-Canada Free Trade Agreement

§ 10.301 Scope.

The provisions of §§ 10.302–10.311 of this part relate to the procedures for obtaining preferences for imported goods designated as eligible in the "special" column of the Harmonized Tariff Schedules of the United States (HTSUS), and General Note 3(c), HTSUS. These preferences were the subject of the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (100 Stat. 418). In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to section 407 of the Agreement.

§ 10.302 Eligibility criteria in general.

Subject to the more specific explanations of the criteria in §§ 10.303 and 10.305 of this part, goods classifiable under an HTSUS heading or subheading for which the symbol "CA" appears in the "special" column are eligible for a preference if:

(a) *Originating goods.* The goods originate in Canada or the United States, or both, and

(b) *Direct shipment required.* Except as provided in § 10.306(b), are directly shipped to the United States from Canada.

§ 10.303 Originating goods.

For the purpose of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(a) *Wholly of Canadian or United States origin.* The goods are wholly obtained or produced in the Territory of Canada or the United States, or both.

(b) *Transformed with a change in classification.* The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c), HTSUS; or

(c) *Transformed without a change in classification.* An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS; or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(1) The value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in § 10.305 constitute not less than 50 percent of the value of the goods when exported to the United States,

(2) The assembled goods are not subsequently processed or further assembled in a third country, and

(3) The goods satisfy the requirement in § 10.306.

(d) *Articles of Feather.* The goods are eligible to be treated as originating in Canada pursuant General Note 3(c)(vii)(Q)(12)(ee), HTSUS.

§ 10.304 Exclusions.

(a) *Changes based on simple processing.* No goods shall be considered originating for purposes of eligibility under the Agreement if they have merely undergone simple packaging or simple combining operations, or have undergone mere dilution with water or with another substance that does not materially alter the characteristics of the goods.

(b) *Other excluded processing.* No goods shall be considered to be originating merely by virtue of having undergone any process or work in which the facts clearly justify the presumption that the sole object was to circumvent the provisions of Chapter 3 of the Agreement.

§ 10.305 Value content requirement.

The following definitions apply whenever a specific rule of origin under the Agreement requires a value content determination:

(a) *Direct cost of processing or assembling.* The terms "direct cost of processing" or "direct cost of assembling" mean the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(1) The cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(2) The cost of inspecting and testing the goods;

(3) The cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(4) Development, design, and engineering costs;

(5) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(6) Royalty, licensing, or other like payments for the right to the goods.

(b) *Value of originating materials.* The term "value of materials originating in the United States or Canada or both" means the aggregate of:

(1) The price paid by the producer of exported goods for materials originating in either the United States, or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(2) When not included in that price, the following costs related thereto:

(i) Freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (b)(1) of this section to the location of the producer;

(ii) Duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(c) *Value of goods when exported.* The term "value of the goods when exported to the United States" means the aggregate of:

(1) The price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) Freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) Duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade; and

(2) The direct cost of processing or the direct cost of assembling the goods.

(d) *Directly attributable.* Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(e) *Exclusions from direct costs of processing or assembling.* Excluded from the direct costs of processing or assembling are:

(1) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(2) Brokerage charges relating to the importation and exportation of goods;

(3) Costs for telephone, mail, and other means of communication;

(4) Packing costs for exporting the goods;

(5) Royalty payments related to a licensing agreement to distribute or sell the goods;

(6) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; and

(7) Profit on the goods.

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§ 10.306 Direct shipment to the United States.

Goods shall be considered as directly shipped to the United States from Canada for the purpose of eligibility for preferences under the Agreement only under the following circumstances:

(a) *Through shipment.* The goods have been shipped directly from Canada to the United States without passage through the territory of any third country; or

(b) *Shipment through a third country.* The goods were shipped through the territory of a third country but:

(1) The goods did not enter the commerce of any third country;

(2) The goods did not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the United States or to preserve them in good condition; and

(3) All shipping and export documents show the United States as the final destination.

§ 10.307 Documentation

(a) *Claims for a preference.* A preference in accordance with the Agreement is claimed by including on the entry summary, or equivalent documentation, the symbol "CA" as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference.* A claim for preference under the Agreement must be made at the time of the filing of the entry summary in accordance with § 10.307(a) of this part. Failure to make a timely claim will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin.* A claim for a preference for goods under paragraph (a) of this section shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed under paragraph (a) of this section and shall be presented to the district director upon request.

(d) *Exporter's Certificate of Origin.* The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, D.C. 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(e) *Exceptions to documentation requirements.* Exceptions to the foregoing documentation requirements may be authorized at the discretion of the district director in the following circumstances:

(1) *Exception for informal entries.* As set forth in paragraphs (e)(1) (i) and (ii) of this section, an Exporter's Certificate of Origin may be waived in connection with an entry entitled to informal entry procedures as authorized in §§ 143.21 and 143.22 of this chapter if:

(i) *Commercial goods which qualify for informal entry.* The invoice, or an appropriate Customs release document, for commercial goods which qualify both for informal entry and a preference must include the following statement, on the invoice or appropriate Customs document:

I hereby certify that the goods described herein are eligible for a preference based upon the rules of origin enumerated in the United States-Canada Free-Trade Agreement.

Check One:

[ ] Manufacturer
[ ] Supplier
[ ] Exporter

Signature

Title
Date:

(ii) *Noncommercial goods which qualify for informal entry.* The importation of goods from Canada by a person for noncommercial use may be exempt from documentation requirements if the goods are legally marked "Made in Canada", or it can otherwise be shown that they are originating goods under the Agreement and there is no evidence to the contrary.

(2) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the goods, that the goods were, in fact, imported directly from Canada, and that they otherwise qualify for a preference in accordance with the Agreement.

§ 10.308 Records retention.

(a) *Importer.* The importer of record shall retain the exporter's certificate of origin required by § 10.307(d) for a period of 5 years and it must be made available upon request by the appropriate Customs official.

(b) *Exporter.* Any person who exports, or who knowlingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection, such records (including certifications of origin or copies thereof), which pertain to such exportation for a period of 5 years from the date of exportation. In the event that the appropriate Customs official requests submission of the records, they shall be submitted directly to the requesting official.

§ 10.309 Verification of documentation.

Any evidence of country of origin or of direct shipment submitted in support of a preference under the Agreement shall be subject to such verification as the appropriate Customs official may deem necessary. If the U.S. importer or U.S. exporter or their agent does not provide the information requested by the appropriate Customs officer, the district director may refuse to grant the claim for preference, in addition to other available sanctions.

§ 10.310 Election to average for motor vehicles.

(a) *Election.* In determining whether a motor vehicle is originating for purposes of the preferences under the Agreement or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), a manufacturer may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles of the same class or sister vehicles which are assembled in the same plant as provided for in the Agreement. A manufacturer must declare its election to average before the importation of any vehicles produced within the identified 12-month period. The election to average is subject to the conditions and requirements set forth in §§ 10.310 and 10.311.

(b) *Effect of election.* An election to average shall be binding at the time of the first entry of vehicles for which the election has been made. If a manufacturer's annual report, required by § 10.311, does not verify the claim that the vehicles are originating goods under the Agreement of Canadian articles under APTA, or if a manufacturer otherwise fails to comply with the reporting requirements, entries of the vehicles identified in the averaging declaration will be subject to liquidation in accordance with the rate of duty which would otherwise apply.

(c) *Election in lieu of certificate of origin.* In lieu of the Exporter's Certificate of Origin required in § 10.307(c), an importer of vehicles covered by an election to average under this section may have its claim for preference based on a copy of the declaration of election.

§ 10.311 Documentation for election to average for motor vehicles.

A manufacturer who elects to average for motor vehicles shall submit a

declaration of election to average, quarterly reports, and an annual report in the form and manner as follows:

(a) *Declaration of election.* A declaration of election to average, signed by an authorized company official, shall be submitted by the manufacturer to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568 on Customs Form 355, Declaration of Election to Average.

(b) *Quarterly Report.* A quarterly report shall be submitted to the Regulatory Audit Division, at the above address, on Customs Form 356, Vehicle Cost Report (Quarterly), within 30 days after the end of each quarter. In lieu of the Customs Form 356, the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on the Customs Form 356. Negative quarterly reports are required.

(c) *Annual Report.* An annual report shall be submitted to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568, on Customs Form 357, Vehicle Cost Report (Annual), within 90 days of the end of the financial year identified in the Election to Average, Customs Form 355. In lieu of the Customs Form 357, Vehicle Cost Report (Annual), the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on Customs Form 357.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 is revised to read as follows:

Authority: 19 U.S.C. 58, 66, 1202, 1624.

2. Section 24.23 is amended by adding a subparagraph (5) at the end of paragraph (b) to read as follows:

§ 24.23 Ad valorem fee.

* * * * *

(b) *Exemptions.* * * *

(5) Goods originating in Canada pursuant to General Note 3(c), HTSUS, according to the following schedule:

(i) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1990, the user fee shall be 80 percent of the user fee otherwise applicable on that date;

(ii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1991, the user fee shall be 60 percent of the user fee otherwise applicable on that date;

(iii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1992, the user fee shall be 40 percent of the user fee otherwise applicable on that date;

(iv) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1993, the user fee shall be 20 percent of the user fee otherwise applicable on that date;

(v) With respect to goods entered or withdrawn from warehouse on or after January 1, 1994, there shall be no Customs user fee.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624.

2. Section 148.102(a) is amended by adding "Canada," before "American Samoa".

3. Section 148.102 is amended by adding a new paragraph (c) to read as follows:

§ 148.102 Flat rate of duty.

* * * * *

(c) *Canada.* The rate of duty on originating goods from Canada (exclusive of duty-free goods) as defined in § 10.303 of this chapter, accompanying any person, including a crew member, arriving in the United States directly or indirectly from Canada shall be a flat rate of 9 percent as established by the United States-Canada Free-Trade Agreement. The flat rate shall decrease at the rate of one percent every year commencing on January 1, 1990, until January 1, 1998, at which time a free rate of duty shall apply.

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

December 9, 1988.

John P. Simpson,

Acting Assistant Secretary for the Treasury.

Appendices

Note: These appendices will not appear in the Code of Federal Regulations.

BILLING CODE 4820–02–M

Appendix A

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 4/30/89
OMB No. 1515-0164

U.S.-CANADA FREE TRADE AGREEMENT

EXPORTER'S CERTIFICATE OF ORIGIN

19 CFR 10.307(d)

1. GOODS CONSIGNED FROM (Exporter's business name, address, country, tax identification number)	2. IF BLANKET CERTIFICATION EFFECTIVE DATE EXPIRATION DATE
3. GOODS CONSIGNED TO (Consignee's name, address, country)	4. PRODUCER'S NAME, ADDRESS, COUNTRY, TAX IDENTIFICATION NUMBER (If different from exporter)

5. ORIGIN CRITERIA FOR GOODS COVERED BY THIS CERTIFICATE:

A. Wholly produced or obtained in Canada or the United States; or

B. The goods have been transformed in the United States or Canada so as to be subject:

1) to a change in tariff classification as described in the Rules of Annex 301.2; or

2) to a change in tariff classification as described in the Rules of Annex 301.2 and the value of originating materials plus the direct cost of processing in Canada or the United States is not less than 50 percent or, as required by Section VI Rule 15 of Annex 301.2, 70 percent of the value of exported goods; or

3) to Rule 5, Section XII of Annex 301.2; or

C. No change in tariff classification because goods and parts are provided for in the same tariff subheading or goods were imported in unassembled or disassembled form and were classified pursuant to General Rule of Interpretation 2a) of the Harmonized System, and the value of originating materials plus the direct cost of assembly in Canada or the United States is not less than 50 percent of the value of exported goods.

6. SPECIAL DECLARATION FOR TEXTILE PRODUCTS SUBJECT TO TARIFF RATE QUOTA:

A. Apparel goods cut and sewn in Canada or the United States from fabric produced or obtained in a third country.

B. Non-wool fabric and non-wool made-up textile articles, woven or knitted in Canada from yarn produced or obtained in a third country.

7. Origin Criterion (See Fields 5 or 6)	8. Description of Goods	Tariff Classification (To Six Digits)	9. Gross Weight or Other Quantity	10. Invoice Number(s) & Date(s)

11. CERTIFICATION OF ORIGIN

I certify that the information and statements herein are correct, that all the goods were produced in Canada or the United States, that they comply with the origin requirements specified for those goods in the United States-Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in Canada or the United States.

I agree to maintain, and present upon request, the documentation to support this certification and, if this is a blanket certification, to inform the importer or other appropriate party of any change that would affect the validity of this certification.

This certificate consists of _____ pages.

PLACE AND DATE	AUTHORIZED SIGNATURE	TITLE

Customs Form 353 (120188)

VOL 53 ISS 247 DE 23 1988 UMI

INFORMATION FOR THE COMPLETION OF THE EXPORTER'S CERTIFICATE OF ORIGIN

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the terms of Annex 406 of the U.S./Canadian Free Trade Agreement and the Statement of Administrative Action for the implementing legislation (P.L. 100-449). Annex 406 requires that, upon request, an importer must provide the Customs Administration of the Party (U.S./Canada) with proof of the exporter's written certification of the origin of the goods. The exporter's certification, provided for in the Agreement, is essential to substantiate compliance with the rules of origin under the Agreement. You are required to give us this information.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 20 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention Desk Officer for U.S. Customs Service.

FIELD

1. Complete with the full legal name, address, country and tax identification number.
2. Complete with the effective and expiration dates (Maximum 6 months),[1] if this certificate is to cover multiple FTA qualified shipments to the same importer. NOTE: It is the exporter's responsibility to notify everyone to whom a blanket certificate is issued if changes occur in materials, costs, or production sites that would materially affect the accuracy or validity of the certification during the period. Failure to do so could make the exporter subject to penalties.
3. Complete with the consignee's full legal name, address, and country.
4. Complete with the full legal name, address, country and if known, the tax identification number. This field is to be completed only if the exporter is not the producer of the goods. If more than one producer's goods are included in a single or blanket certificate, attach a numbered list of the additional producers. Indicate the appropriate producer's number in parenthesis after the origin criteria in Field 7.
5. Fields 5 and 6 reflect the various origin criteria by which exported goods may be eligible for FTA treatment, and are to be identified in Field 7 for each corresponding item listed in Field 8.

5.A. Indicate this criterion if the goods are wholly produced or obtained in Canada or U.S. as defined in Article 304 of the Agreement.

5.B.1. Requires that a change in the tariff classification take place along with any other requirements, other than value-added, as described in the Rules of Annex 301.2 of the Agreement.

5.B.2. Also requires that a change in tariff classification take place. Additionally, it requires that the value of domestic materials and direct cost of processing, as described in the Rules of Annex 301.2, be either 50 or 70 percent, as specified in the Rules of Annex 301.2, of the value of the exported good.[2]

5.B.3. This field does not require that a change in tariff classification take place but other requirements as described in the Rules of Annex 301.2, other than value-added, be met.[2]

5.C. This criterion does not require that a change in tariff classification take place but requires that the value of domestic materials and direct cost of assembly is not less than 50 percent of the value of exported goods. The provisions of this criterion are in accordance with paragraphs 3, 4, and 5 of the interpretation of Annex 301.2 of the Agreement. The imported components from which the goods were produced in Canada must have constituted an unassembled or disassembled article as per the General Rule of Interpretation 2(a) of the Harmonized System, or the tariff subheading for the imported components must have provided for both the goods and their parts

6. The special declarations for textile products are identified for use in Field 7
7. Indicate the origin criterion selected from Fields 5 or 6 for each corresponding item listed in Field 8. If more than one article for export is covered by this certificate, the origin criterion for each is required. If necessary, a continuation sheet may be used to list the articles for export and their respective criteria. If more than one producer (Field 4) is identified, indicate next to the criteria the producer number assigned, e.g. 5.A.(3).
8. Fully describe the goods. If more than one article for export is covered by this certificate, a complete description of each article is required. If a change in tariff classification criterion is used and there are multiple constitutent materials, indicate in parentheses, the number of third country constituent materials per unit. When third country constituent materials vary in a product, estimates are acceptable. The tariff classification, to six digits, of each article for export is required beside each description
9. Indicate the gross weight or other pertinent quantities, as described on the invoice(s) or purchase order, of each good listed in Field 8. If this is a blanket certificate, indicate the contracted for weight or other quantity anticipated or contracted for during the blanket certification period, if known.
10. Indicate the invoice number(s) and date(s) for each item being shipped. If this is a blanket certificate, this field need not be completed.
11. Self-explanatory. The number of pages the certificate comprises must be indicated. **NOTE**: Unless the place, date, signature and title of the exporter appear on the space provided, this document will be considered invalid

Note: Where the certificate or instructions makes reference to "Canada or the United States" or "domestic", this is to be interpreted as meaning either Canada or the United States or both.

[1] Canada will accept blanket exporter certificates with a validity period of twelve months; the United States will accept a validity period of six months.

[2] Canada requires the exporter to indicate the specific rule which the goods qualify; the United States simply requires an indication of the criterion.

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Appendix B

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 4/30/89
OMB No. 1515-0164

U.S./CANADA FREE TRADE AGREEMENT

VEHICLE AVERAGING ELECTION

19 CFR 10.311(a)

1. FINANCIAL YEAR TO WHICH THIS ELECTION APPLIES	
2. CANADIAN MANUFACTURER (Name and Address)	3. FINANCIAL YEAR—
	3a. Starting Date / 3b. Ending Date
	4. NAME AND LOCATION OF PLANT

VEHICLES TO BE AVERAGED

5. Make	6. Model	7. FTA Class	8. Estimated Minimum Average Percentage U.S./Canadian Value

CERTIFICATION

In accordance with Article 1005, paragraph 2, of the U.S./Canada Free Trade Agreement, we hereby elect to average our calculations over a 12-month period on the same class of vehicles or sister vehicles (station wagons and other body styles in the same car line), assembled in the same plant for the financial year. Quarterly reports will be submitted to U.S. Customs within 30 days after the end of each quarter, and a final report for the financial year, based on actual costs and values, will be submitted to U.S. Customs within 90 days of the close of the financial year.

The estimated minimum average percentage of U.S./Canadian value and costs for the financial year is based upon an analysis of the projected foreign and U.S./Canadian costs of production for these vehicles and takes into account normal business fluctuations.

The accounting system used to arrive at these estimates is not expected to change during the financial year. Should it change, we will provide U.S. Customs with the details of such change at the time of implementation. The manufacturer will still be able to provide U.S. Customs with complete value and cost data on the vehicles identified herein to verify the FTA claim.

9 SIGNER'S TITLE	10. SIGNATURE OF AUTHORIZED CO. OFFICIAL	11. DATE SIGNED

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the Statement of Administrative Action for the U.S. implementing legislation (P.L. 100-449) which requires Customs to prepare a multi-year enforcement plan for enforcement of the FTA, with emphasis on the automotive sector. It also requires Canadian vehicle manufacturers to provide an "election to average for motor vehicles." This form is used by Canadian automotive vehicle manufacturers/assemblers electing to average their costs by automotive vehicle class over a 12-month period under the provisions of the U.S./Canada Free Trade Agreement. The submission of this form is required to obtain or retain a benefit and once made is a binding election to average cost information by the automotive vehicle manufacturer/assembler.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

Customs Form 355 (112288)

Appendix C

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 4/30/89
OMB No. 1515-0164

U.S./CANADA FREE TRADE AGREEMENT

VEHICLE COST REPORT (Quarterly)

19 CFR 10.311(b)

1. CLASS OF VEHICLE	

2. REPORTING COMPANY (Name and Address)	3. FOR QUARTER ENDED	4. DATE OF THIS REPORT
	5. FINANCIAL YEAR –	
	5a. Starting Date	5b. Ending Date
	6. PLANT LOCATION	
7. CONTACT PERSON (Name and Phone Number)		

COST DATA – Direct Cost of Total Vehicles Produced in Canada

ARTICLE 304, PART TWO, CHAPTER THREE – U.S./CANADA FREE TRADE AGREEMENT	COST OF VEHICLES	
	U.S./Canadian	Foreign
8. Material		
9. Labor and Overhead		
10. Total Direct Costs		

INVENTORY ADDITIONS AND SUBTRACTIONS (Vehicles Produced, Shipped, Returned)

			NUMBER OF VEHICLES	
			Qualifying	Non-Qualifying
11. Beginning Inventory				
12. Total Vehicles Produced in Quarter				
13. Total Vehicles Available for Shipment (Item 11 Plus Item 12)				
14. Less:	a. Vehicles Shipped to U.S.	(1) Under Autopact (APTA)		
		(2) Under FTA		
		(3) Under MFN		
	b. Vehicles Shipped to: –	(1) Canadian Locations		
		(2) Foreign Countries Other Than U.S		
	c. Vehicles Returned		( )	( )
	d. Total Vehicles Shipped			
15. Ending Inventory (Item 13 less Item 14d)				

METHOD USED FOR DETERMINING INVENTORY COSTS

16. METHOD USED FOR FINANCIAL STATEMENTS (E.g., "LIFO", "FIFO", Etc.)	17. METHOD USED TO PREPARE THIS REPORT
18. ARE COSTS "ACTUAL" OR "STANDARD" (ESTIMATED)? ☐ ACTUAL ☐ STANDARD (On separate sheet, explain how and when actual costs are determined.)	19. IS THIS REPORT BASED ON AN AVERAGING METHOD? ☐ YES (On separate sheet, describe method in detail.) ☐ NO

CERTIFICATION

The reporting company identified in item 2 above certifies that the information and statements contained in this report are true and accurate, that all the vehicles were produced in Canada and/or the United States, that they comply with the origin requirements specified for those goods in the United States/Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in the United States or Canada.

The reporting company agrees to maintain the documentation to support this certification and it will be available for Customs review.

20. PLACE AND DATE SIGNED	21. AUTHORIZED SIGNATURE	22. TITLE

Customs Form 356 (112288)

VOL 53 ISS 247 DEC 23 1988 UMI

INFORMATION FOR THE COMPLETION OF THE VEHICLE COST REPORT (QUARTERLY)

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the Statement of Administrative Action for the U.S. Implementing legislation (P.L. 100-449) which requires Customs to prepare a multi-year enforcement plan for enforcement of the FTA, with emphasis on the automotive sector. It also requires Canadian vehicle manufacturers to provide "regular cost submissions." This form is used by Canadian automotive vehicle manufacturers/assemblers electing to average their costs by automotive vehicle class over a 12-month period under the provisions of the U.S./Canada Free Trade Agreement. The submission of this form is mandatory once a binding election to average cost information is made by the automotive vehicle manufacturer/assembler.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 185 hours per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

BLOCK

1. Designate the class of automotive vehicle as defined in Article 1006, class of vehicles—a through g.
2. Complete with the full legal name, address and country.
3. Date current financial quarter ended.
4. Self explanatory.
5. State your financial year starting and ending dates.
6. Street address, province and city.
7. Self explanatory.
8. These costs represent the total costs of finished vehicles whether shipped or ready for shipment from the plant.
9. Same as 8.
10. Totals of 8 & 9.
11. The number of vehicles represents finished vehicles ready for shipment from the plant.
12. Use only total of vehicles produced during quarter which represent finished vehicles shipped or ready for shipment.
13. Self explanatory.
14. Self explanatory. APTA=Automotive Products Trade Act;
    FTA =U.S./Canada Free Trade Agreement;
    MFN=Most Favored Nation Tariff.
15. Self explanatory.
16. Attach explanation of inventory method used.
17. Attach explanation of inventory method used.
18. Explain on separate sheet methodology used to develop standard costs.
19. Self explanatory.

Customs Form 356 (112288) (Back)

Appendix D

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
U.S./CANADA FREE TRADE AGREEMENT
VEHICLE COST REPORT (Annual)

19 CFR 10.311(c)

Approved through 4/30/89
OMB No. 1515-0164

1. CLASS OF VEHICLE

2. REPORTING COMPANY (Name and Address)	3. FOR YEAR ENDED	4. DATE OF THIS REPORT
	5. FINANCIAL YEAR –	
	5a. Starting Date	5b. Ending Date
	6. PLANT LOCATION	
7. CONTACT PERSON (Name and Phone Number)		

COST DATA – Direct Cost of Total Vehicles Produced in Canada

ARTICLE 304, PART TWO, CHAPTER THREE – U.S./CANADA FREE TRADE AGREEMENT	COST OF VEHICLES			
	U.S./Canadian		Foreign	
	Standard	Actual	Standard	Actual
8. Material				
9. Labor				
10. Inspecting and Testing				
11. Energy, Fuel, Etc.				
12. Development, Design, Etc.				
13. Rent, Mortgage, Etc. Used in Production of Goods				
14. Royalty, Licensing, Etc. for Right to Goods				
15. Other				
16. Total Direct Costs				

INVENTORY ADDITIONS AND SUBTRACTIONS (Vehicles Produced, Shipped, Returned)

			NUMBER OF VEHICLES	
			Qualifying	Non-Qualifying
17. Beginning Inventory				
18. Total Vehicles Produced in Year				
19. Total Vehicles Available for Shipment (Item 17 Plus Item 18)				
20. Less.	a. Vehicles Shipped to U.S	(1) Under Autopact (APTA)		
		(2) Under FTA		
		(3) Under MFN		
	b. Vehicles Shipped to –	(1) Canadian Locations		
		(2) Foreign Countries Other Than U.S.		
	c. Vehicles Returned		( )	( )
	d. Total Vehicles Shipped			
21. Ending Inventory (Item 19 less Item 20d)				

METHOD USED FOR DETERMINING INVENTORY COSTS

22. METHOD USED FOR FINANCIAL STATEMENTS (E.g., "LIFO", "FIFO", Etc.)	23. METHOD USED TO PREPARE THIS REPORT
24. ARE COSTS "ACTUAL" OR "STANDARD" (ESTIMATED)? ☐ ACTUAL ☐ STANDARD (On separate sheet, explain how and when actual costs are determined)	25. IS THIS REPORT BASED ON AN AVERAGING METHOD? ☐ YES (On separate sheet describe method in detail.) ☐ NO

CERTIFICATION

The reporting company identified in item 2 above certifies that the information and statements contained in this report are true and accurate, that all the vehicles were produced in Canada and/or the United States, that they comply with the origin requirements specified for those goods in the United States/Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in the United States or Canada.

The reporting company agrees to maintain the documentation to support this certification and it will be available for Customs review

26. PLACE AND DATE SIGNED	27. AUTHORIZED SIGNATURE	28. TITLE

Customs Form 357 (112288)

VOL 53 ISS 247 DEC 23 1988 UMI

INFORMATION FOR THE
COMPLETION OF THE
VEHICLE COST REPORT (ANNUAL)

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the Statement of Administrative Action for the U.S. Implementing legislation (P.L. 100-449) which requires Customs to prepare a multi-year enforcement plan for enforcement of the FTA, with emphasis on the automotive sector. It also requires Canadian vehicle manufacturers to provide "regular cost submissions." This form is used by Canadian automotive vehicle manufacturers/assemblers electing to average their costs by automative vehicle class over a 12-month period under the provisions of the U.S./Canada Free Trade Agreement. The submission of this form is mandatory once a binding election to average cost information is made by the automotive vehicle manufacturer/assembler.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 225 hours per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

BLOCK

1. Designate the class of automotive vehicle as defined in Article 1006, class of vehicles—a through g, U.S./Canada Free Trade Agreement.
2. Complete with the full legal name, address and country.
3. Date current financial year ended.
4. Self explanatory.
5. State your financial year starting and ending dates.
6. Street address, province and city.
7. Self explanatory.
8.-15. These costs represent the total costs of finished vehicles whether shipped or ready for shipment from the plant.
16. Totals of 8 through 15.
17. The number of vehicles represents finished vehicles ready for shipment from the plant.
18. Use only total of vehicles produced during year which represent finished vehicles shipped or ready for shipment.
19. Self explanatory.
20. Self explanatory. APTA=Automotive Products Trade Act;
    FTA =U.S./Canada Free Trade Agreement;
    MFN =Most Favored Nation Tariff.
21. Self explanatory.
22. Attach explanation of inventory method used.
23. Attach explanation of inventory method used.
24. Explain on separate sheet methodology used to develop standard costs.
25. Self explanatory.

BILLING CODE 4820-02-C

Customs Form 357 (112288) (Back)

Appendix E
for Passenge
Trade Agree

Mr. and M
visit to Cana
merchandise
$10,000. Ass
$5,800 of the
origin and $
foreign origi
addition to t
($400 each),
a free rate o
exemptions
days, and (4
allowances,
articles are
flat rate.

Mr. and M
declaration
follows:

BREA

Canadian orig

$3,500
1,800
500

(a) The $400 p
exemption is
grouped for
of
(b) Articles wh
a free rate o
(c) The $1,000
of duty allow
calculated a
merchandise
Canadian or
10% on
merchandise
foreign origi
than Canada
flat rate is g
for a total of

(d) Balance of
subject to du
rates other t
flat rate

Total

[FR Doc. 88-
BILLING CODE

Appendix E—Example of Duty Calculation for Passengers Under the U.S./Canada Free Trade Agreement (FTA)

Mr. and Mrs. E return from a one-week visit to Canada where they have acquired merchandise having a fair retail value of $10,000. Assume for this example that (1) $5,800 of the merchandise is of Canadian origin and $4,200 of the merchandise is of foreign origin other than Canada; (2) in addition to the personal exemptions of $800 ($400 each), $5,200 of the merchandise carries a free rate of duty, (3) allowances and exemptions have not been used in the last 30 days, and (4) all articles in excess of allowances, exemptions and duty free articles are dutiable at rates other than the flat rate.

Mr. and Mrs. E present their baggage declaration for verification. Duty is figured as follows:

BREAKDOWN OF MERCHANDISE

Canadian origin	Duty rate	Foreign origin other than Canada
$3,500	Free	$1,700
1,800	3% ad valorem	
500	2% ad valorem	
	24% ad valorem	2500

	Fair retail value	Duty
(a) The $400 personal exemption is grouped for a total of	$800	0.00
(b) Articles which carry a free rate of duty	5,200	0.00
(c) The $1,000 flat rate of duty allowance calculated at 9% on merchandise of Canadian origin and 10% on merchandise of foreign ongin other than Canada. The flat rate is grouped for a total of $2,000	1,700 (at 10% flat rate)	$170.00
	300 (at 9% flat rate)	27.00
(d) Balance of articles subject to duty at rates other than the flat rate	1,500 (at 3% ad valorem)	45.00
	500 (at 2% ad valorem)	10.00
Total	10,000	252.00

[FR Doc. 88-29501 Filed 12-22-88; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3493-3]

Ocean Dumping; Site Designation; Atlantic Ocean Offshore Brunswick Harbor, GA

AGENCY: U.S Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing, interim-approved Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Brunswick Harbor, Georgia, as an EPA-approved ocean disposal site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as a disposal option for dredged material disposal projects in the greater Brunswick, Georgia, vicinity.

This Final Rule also corrects the discrepancies in the Brunswick Harbor ODMDS boundary coordinates relative to the draft and final Environmental Impact Statement (EIS), 40 CFR Part 228 (Revised as of July 1, 1984, and 1987), and 42 FR 2461 (January 11, 1977: pg. 2485).

EFFECTIVE DATE: This designation shall become effective on January 23, 1989.

ADDRESSES: Send comments to: Frank M. Redmond, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460

EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

FOR FURTHER INFORMATION CONTACT: Reginald G. Rogers, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This final designation of a site offshore Brunswick Harbor, Georgia, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR Chapter I, Subchapter H, § 228.4) indicate that ocean disposal sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the existing Brunswick Harbor site as an interim site.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)). EPA, in cooperation with the Savannah District of the U.S. Army Corps of Engineers (COE), has prepared a draft and final EIS entitled "Brunswick Harbor, Georgia Ocean Dredged Material Disposal Site Designation." This Final Rule and the preceding Proposed Rule (53 FR 38032 (September 29, 1988)) are procedural follow-ups to the EIS. The EIS may be used (not necessarily "*should* be used" as stated in the Proposed Rule) as reference, particularly for literature citations, which are not cited in the Rules. This Final Rule includes excerpts from the Proposed Rule.

The action discussed in this EIS is the final designation for continuing use of the existing interim ocean dredged material disposal site near Brunswick Harbor, Georgia. The purpose of the action is to provide an environmentally acceptable location for ocean disposal. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

For the Brunswick Harbor ODMDS, the COE and EPA would evaluate all dredged material disposal projects (not just "*all Federal* dredged material disposal projects" as stated in the Proposed Rule) pursuant to the EPA

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criteria given in the Ocean Dumping Regulations (40 CFR Parts 220 through 229) and the COE regulations (33 CFR 209.120 and 209.145). The COE also issues MPRSA permits to all applicants (upgraded from "*private* applicants" as stated in the Proposed Rule) for the transport of dredged material intended for disposal after compliance with these regulations is determined (although not stated in the Proposed Rule, the COE also undergoes a public review process for its own disposal actions). EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met. State permitting would not be needed for the Brunswick Harbor ODMDS since the disposal site is located outside of State of Georgia waters and the State of Georgia currently has no approved Coastal Zone Management Plan.

On Friday, November 28, 1986, the Notice of Availability of the draft EIS for public review and comment was published in the **Federal Register** (51 FR 43082 (November 28, 1986)). The public comment period on the draft EIS closed on January 12, 1987.

The Notice of Availability of the final EIS for public review and comment was published in the **Federal Register** on Friday, March 25, 1988 (53 FR 9806 (March 25, 1988)). The public comment period closed on April 25, 1988. The final EIS addressed the eight comments received on the draft EIS.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the action. The EIS considers mid-shelf and shelf-break alternative sites (Continental Shelf) using the general criteria and specific factors contained in the Ocean Dumping Regulations, 40 CFR Part 228. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer coastal sediments may have a long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break sites. Fishery resources are localized over the mid-shelf and shelf-break areas. These hard bottom areas are unique habitats, support several species of commercially and recreationally important finfish, and are sensitive to the effects of dredged material disposal. Also, the Continental Shelf offshore Brunswick is so wide that any site chosen beyond the shelf-break would be beyond economical distances for transporting materials; several proposed or active Minerals Management Service oil and gas lease sites exist in the mid-shelf and shelf-break regions; and the Ocean Dumping Regulations require the designation of sites which have historically been used, where feasible. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on one of a series of disposal site environmental studies.

C. Coastal Zone Management Coordination

The State of Georgia does not have an approved Coastal Zone Management Plan; however, EPA has determined that this site designation is consistent with general coastal zone management practices. The Brunswick Harbor ODMDS is located outside of Georgia State waters.

D. Endangered Species Coordination

Pursuant to section 7 of the Endangered Species Act, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) were asked by EPA to concur in EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. By letter dated July 2, 1986, the FWS concurred in the conclusion that this site designation will have no effect on Federally-listed threatened or endangered species under the FWS jurisdiction. By letter dated May 1, 1987, the NMFS concurred that the site designation will not affect the endangered or threatened species under NMFS jurisdiction.

E. Site Designation

The disposal site is located southeast of Brunswick, Georgia, outside of State waters, approximately 6 nautical miles (nmi) offshore and occupies an area of about 2 square nautical miles (nmi^2). The site is rectangular, approximately 1 nmi by 2 nmi. Water depths within the area average 9 meters. The correct coordinates of the Brunswick Harbor site being designated on a permanent basis are as follows:

31°02'35" N., 81°17'40" W.;
31°02'35" N., 81°16'30" W.;
31°00'30" N., 81°16'30" W.;
31°00'30" N., 81°17'42" W.

The above last coordinate component, 81°17'42"W., is a slight modification of the 81°17'40"W. coordinate component presented (apparently in error) in 40 CFR 228.12(a)(3) (revised as of July 1, 1984 and 1987) for the interim Brunswick Harbor ODMDS.

(Note: The draft EIS and the final EIS cited the correct coordinates (as above) but incorrectly referenced the Federal Register (Vol. 42, No. 7 dated 11 January 1977), since that Federal Register presented (apparently in error) the last coordinate component as 81°16'30" W. (page 2485) as opposed to 81°17'42" W.).

The Proposed Rule was published in the **Federal Register** on September 29, 1988 (53 FR 38032 (September 29, 1988)). The 30-day comment period closed on October 31, 1988. No formal comments on the Proposed Rule were received during the comment period by EPA/Region IV. However, certain changes in this Final Rule concerned with the COE's role in dredging project review and permit issuance resulted from a discussion with a COE district.

To supplement EPA's response to a comment letter on the draft EIS received from Terrell K. Murphy, D.D.S. dated December 18, 1986 (see pages 46–47 in final EIS), EPA wishes to relate in this Final Rule that a copy of this comment letter was also subsequently received by EPA (after the close of the draft EIS comment period on January 12, 1987) via an inquiry letter from the Honorable Sam Nunn, U.S. Senator (Georgia), dated January 27, 1987. A copy of Dr. Terrell's letter to Senator Nunn dated January 7, 1987, was also included. EPA responded to this Congressional interest in a letter dated February 12, 1987, which referenced the then pending final EIS, in which the response to the original letter from Dr. Terrell was provided (see response on page 56 in the final EIS).

A draft version of the Proposed Rule was circulated to various Federal, State of Georgia, university and private concern representatives—essentially those attendees at a meeting requested by the Georgia Department of Natural Resources (GDNR) and hosted on April 12, 1988, in Atlanta, Georgia (see discussion of meeting in Proposed Rule). As indicated in the Proposed Rule, comments on the draft version of the Proposed Rule were not formally discussed. However, a brief summary of those received comments is nevertheless presented in this Final Rule.

Informal substantive comments on the draft Proposed Rule were primarily concerned with the fact that the Brunswick Harbor ODMDS designation should not preclude beach nourishment. A formal comment letter dated August 15, 1988, from the GDNR also expressed this concern and the GDNR's intention to pursue beach nourishment permits. The letter also stated that "[a]lthough it is apparent EPA does not consider use of maintenance and other dredged material for beach renourishment; it is important that EPA recognize the

potential value of the use of this material for renourishment." EPA responded to the GDNR letter with a letter dated September 13, 1988, indicating that the GDNR letter was interpreted as a restatement of GDNR's policies on beach nourishment as opposed to a presentation of suggestions to change the draft Proposed Rule. The letter also indicated, as discussed in the Proposed Rule that, "* * * EPA's site designation of the Brunswick Harbor ODMDS would not preclude a beach nourishment alternative."

It should be emphasized in this Final Rule that an EPA designation of an ODMDS makes available an environmentally-acceptable site *option* for ocean disposal as opposed to authorizing any dredging projects or disposal at the ODMDS. Therefore, beach nourishment and other disposal options can also be considered for disposal needs. These options should be addressed at the dredging project level and with appropriate permitting agencies. As stated in the EPA response letter to the GDNR's interest in beach nourishment, "[p]ursuit of such an alternative should be initiated with the appropriate permitting agencies as opposed to EPA concerned with site designation."

A draft version of this Final Rule was coordinated with the Savannah COE before EPA's publication of its (this) final version.

F. Site Management

Site management of the Brunswick Harbor ODMDS is the responsibility of EPA and the COE (upgraded from "EPA *as well as* the COE" as stated in the Proposed Rule). The COE issues permits to all applicants (upgraded from "*private* applicants" as stated in the Proposed Rule) for ocean disposal (although not stated in the Proposed Rule, the COE also undergoes a public review process for its own disposal actions); however, EPA/Region IV assumes overall responsibility for the Brunswick Harbor site management. A Memorandum of Understanding between EPA/Region IV and the South Atlantic Division of the COE is being developed and is to establish a management/monitoring framework (not just "a *monitoring* framework" as stated in the Proposed Rule) for ODMDSs in the Region, which is to lead toward a site-specific management/monitoring plan (not just "a *monitoring* plan" as stated in the Proposed Rule) for the Brunswick Harbor ODMDS.

Site management may include strategically locating and/or orienting dredged material within the site boundaries relative to predominant current patterns. Monitoring could involve sediment mapping of disposed material to determine any movement of material off of the site. Determination of the significance of any biological impacts of dredged material outside the ODMDS boundaries would then be appropriate.

The existence, magnitude, and implementation of a site management/monitoring plan (not just "a *monitoring* plan" as stated in the Proposed Rule) is dependent upon available funding and coordination between EPA, the COE, and the State of Georgia (the State was not included in the Proposed Rule).

G. Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general and selection criteria (not just "the *general* criteria" as stated in the Proposed Rule) used for site evaluation.

The designation of the Brunswick Harbor site as an EPA-approved ODMDS is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, EPA and the COE (not just "the COE" as stated in the Proposed Rule) must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

In this Final Rule, EPA wishes to emphasize that the site designation of the Brunswick Harbor ODMDS does not preclude beach nourishment or other non-ocean disposal alternatives. As indicated in the Proposed Rule, if relevant to the project, such options should be discussed at the dredging project level as opposed to the ODMDS designation level by the applicant. Furthermore, pursuit of such options should be with appropriate permitting agencies rather than EPA.

The Brunswick Harbor ODMDS is not restricted to disposal use by Federal Projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Brunswick, Georgia vicinity.

H. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This Final Rulemaking Notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 9, 1988.

Approved by:

Lee A. DeHihns, III,

Acting Regional Administrator.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Part 228 is amended by removing the paragraph for Brunswick Harbor from § 228.12(a)(3).

3. Part 228 is further amended by adding § 228.12(b)(41) as follows: [1]

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[1] (Note.—The last component presented as 81°17'40" W. in § 228.12(a)(3) of the 40 CFR revised as of July 1, 1987, referenced above was apparently in error, per coordination with the COE Savannah District, and should have been 81°17'42" W. as added above in § 228.12(b)(41). This apparent error was also in § 228.12(a)(3) of the 40 CFR revised as of July 1, 1984. Also, page 2485 of 42 FR 2461 (January 11, 1977) listed (apparently in error) the last coordinate component as 81°16'30" W.).

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§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(41) Brunswick Harbor; Brunswick, Georgia; Ocean Dredged Material Disposal Site _____ Region IV.

Location: 31°02'35" N., 81°17'40" W.; 31°02'35" N., 81°16'30" W., 31°00'30" N., 81°16'30" W., 31°00'30" N., 81°17'42" W;

Size: Approximately 2 square nautical miles.

Depth: Average 9 meters.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the greater Brunswick, Georgia, vicinity.

[FR Doc. 88-29055 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-3497-1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Toftdahl Drums site (Brush Prairie, Washington) from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA has determined that remedial actions conducted at the site have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: Judi Schwarz, Remedial Project Manager, Superfund Branch, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101 Telephone (206) 442-2684.

SUPPLEMENTARY INFORMATION: As stated above, the site EPA deletes from the NPL is: Toftdahl Drums, Brush Prairie, Washington.

A Notice of Intent to Delete for this site was published August 12, 1988 (53 FR 30452). The closing date for comments on the Notice of Intent to Delete was September 12, 1988. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Superfund-(Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial action in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: Section 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 17735, 38 FR 21243.

Appendix B—[Amended]

2. The NPL Part 300, Appendix B is amended as follows: Remove: Toftdahl Drums, Brush Prairie, Washington.

Date: December 12, 1988.

Robie G. Russell,

Regional Administrator, U.S. EPA, Region 10.

[FR Doc. 88-29491 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-7]

Broadcast Services; Amendment of the Radio Duopoly Rule to Liberalize the Restrictions Against the Common Ownership of Two or More Commercial Radio Stations in the Same Broadcast Service Whose 1mV/m Contours Overlap

AGENCY: Federal Communications Commission.

ACTION: Final rule; public notice regarding effective date.

SUMMARY: On October 27, 1988, the Commission adopted amendments to the radio duopoly rule contained in § 73.3555(a) of the Commission's Rules and Regulations. A *Public Notice* advised that these amendments became effective immediately upon adoption. The Commission found good cause to make these amendments effective immediately because the revised rules remove restrictions that were unnecessary and contrary to the public interest. All currently pending waiver requests involving radio station combinations that would be permissible under the rule as amended are thus rendered moot and the underlying applications in those cases may be granted if it is otherwise appropriate to do so.

EFFECTIVE DATE: October 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michele Farquhar, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision in MM Docket No. 87-7, adopted October 27, 1988. Pursuant to the *Public Notice* summarized above, this decision became effective immediately upon adoption. The text of this Commission decision has not been released.

Summary of Decision

1. This decision modifies one of the Commission's local ownership rules—the radio duopoly rule, which prohibits the common ownership of two or more commercial radio stations in the same broadcast service whose 1 mV/m contours overlap. The Commission is relaxing this rule to a principal-city contour standard (the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations). This refinement of the contour overlap represents a relatively minor adjustment to the rule, under which ownership of two AM or FM stations located in the same "principal city" will still be prohibited. Nevertheless, this action will enable broadcasters to own two or more commercial radio stations in the same service in closer proximity than is currently allowed, enabling them to realize some of the efficiencies of common ownership.

2. This rule was adopted in 1964 in order to promote the dual goals of economic competition and viewpoint diversity in the ownership of broadcast stations. The *Notice of Proposed Rule Making* in this proceeding proposed relaxing the rule to a principal-city contour standard to reflect the geographic area in which most radio listenership occurs, the undue discrimination against AM broadcaste: s

caused by the present rule, the tremendous growth in the number and types of media outlets in large and small markets in the 24 years since the rule was adopted, and the benefits of common station ownership. Commenters responding to the *Notice* overwhelmingly agreed with the Commission's initial determination that the rule should be liberalized in light of these factors.

3. Based on the record in this proceeding and the overwhelming support of the comments received, the Commission concluded that the public interest would best be served by relaxing the rule as proposed in the *Notice*. The principal-city contour standard more accurately reflects the geographic area where most of a station's audience is located and relieves the overly restrictive effects of the current rule, including the unwarranted discrimination against AM broadcasters. Under this relatively minor adjustment to the rule, the Commission will still prohibit the common ownership of stations in the same service located in the same listening area. In view of this fact, as well as the substantial growth and availability of media outlets in local markets, the Commission does not believe that this modification will adversely affect our traditional competition and diversity goals. In fact, this decision may actually enhance these goals given the efficiencies and public service benefits possible from common ownership of stations in the same vicinity.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Rule Amendments

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.3555 is amended by revising paragraphs (a) (1) and (2) to read as follows:

§ 73.3555 Mutiple ownership.

(a) * * *

(1) Any overlap of the predicted or measured 5 mV/m groundwave contours of the existing and proposed AM stations, computed in accordance with § 73.183 or § 73.186; or

(2) Any overlap of the predicted 3.16 mV/m contours of the existing and proposed FM stations, computed in accordance with § 73.313; or

(3) * * *

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 88-29603 Filed 12-22-88; 8:45 am]

BILLING CODE 6712-01-M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1632 and 1652

Federal Employees Health Benefits Acquisition Regulation; Letter of Credit Arrangements for Carrier Reserves

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to require the use of letter of credit (LOC) arrangements for Federal Employees Health Benefits Program (FEHBP) payments to certain experience-rated carriers. The regulation will enhance OPM's financial management of the FEHB Program without altering the basic OPM/carrier financial relationships which currently exist.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632-4634.

SUPPLEMENTARY INFORMATION: On September 6, 1988, (53 FR 34320) OPM published proposed regulations to require the use of letter of credit (LOC) arrangements for FEHB Program payments to certain experience-rated carriers. The regulation implements the United States Department of the Treasury regulation at 31 CFR Part 205, which requires the use of the LOC method for Federal program agencies having a continuing relationship with a contractor involving annual payments of at least $120,000.

OPM received comments from one Federal agency, seven FEHB Program health benefits carriers, and two underwriters of FEHB Program plans. The respondents were generally supportive of OPM's efforts to improve the financial management of the FEHB Program. However, most of the carriers and underwriters were uncertain about the effect of the LOC procedures on their operations. The majority of the comments fall into two categories: (1) Belief that a LOC arrangement will not yield the investment income that can be earned through the carrier's own investment of its FEHB funds; and (2) procedural questions involving the mechanics of the LOC transfer. A summary of the comments and OPM's response follows.

Five carriers and one underwriter asserted that a LOC arrangement would cause a significant loss of investment income. A decrease in investment income could possibly impact on the rate-setting process of individual plans. OPM does not dispute the claim that carriers may be able to invest in individual securities which potentially may earn more interest than the U.S. securities in which OPM is restricted by law to invest. This is a fact of the market-place where higher risk securities require a higher interest rate to attract investors. OPM does not agree, however, that this marketplace phenomenon will necessarily translate into higher net return on investment for the FEHB Program. Carriers currently incur administrative costs with regard to FEHB investments and, due to increased risks, sometimes suffer losses which would not be applicable to the LOC process. Also, a number of carriers do not credit the FEHB Program with the actual interest earned on individual securities but, rather, use allocation formulas which do not necessarily result in greater net returns on investments to the FEHB Program than Treasury investment rates. In addition, the potential loss of investment income and, hence, any potential impact on premium, is insignificant considering that total investment income earned by the carriers was less than 1 per cent of subscription income for 1987 (1987 Financial Statements for the FEHB Program reflect total interest income of $41,100,137 and subscription income of $6,488,274,986 for experience-rate carriers). Therefore, OPM believes that the overall financial benefit to the FEHB Program and the Goverment from the LOC arrangement is far greater than the insignificant potential loss of investment income. Three commenters expressed concern that additional administrative costs associated with the LOC procedures, such as additional bank service charges and expenses related to an increased clerical workload in mailing daily vouchers, would be charged back to the Program, causing a rise in premiums. OPM is aware that some additional costs may be incurred. Nevertheless, OPM believes that there will be an overall financial benefit to the FEHB Program and the Government from the LOC arrangement.

One respondent took exception to OPM's assertion that Par' 205 of Title 31,

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Code of Federal Regulations, should be applied to FEHB contracts. These regulations require the use of a letter of credit arrangement for contracts involving annual advances aggregating at least $120,000. As the government agency with primary responsibility for administering letters of credit for financing operations under Federal programs, the Department of the Treasury has reviewed and approved the use of the LOC payment method for the FEHB Program. In the absence of a Department of Treasury ruling to the contrary, OPM will comply with the regulatory requirements in Part 205 of Title 31, CFR.

The same respondent is concerned with the way State regulatory requirements, specifically the requirement that all of an insurer's assets be available for the payment of all of its liabilities, will interface with a letter of credit arrangement. The LOC payment method does not prohibit the carrier's FEHB Program assets from being used for the payment of all of its liabilities. That restriction is based in the FEHB law under which the carrier has operated for over 25 years. Section 8909, title 5, United States Code, has always required that FEHB funds be used solely for Program purposes. From this standpoint, there should be no difference in the treatment of assets historically employed by the carrier and the treatment of assets under the LOC payment arrangements.

The respondent is further concerned about the characterization of the LOC funds as an "asset." The carrier contends that the LOC funds are nonadmitted assets. That is, they are not sufficiently free to be recognized as an admitted asset by State Insurance Departments. In general, assets are nonadmitted due to either an uncertainty as to their collectibility or an insufficient basis for determining their valuation. An asset in the form of a LOC is an admitted asset because there is no uncertainty as to its collectibility, nor is there an insufficient basis for determining its valuation. Section 205.5, Title 31, Code of Federal Regulations, states that a "letter of credit is irrevocable (the equivalent of cash available to the recipient organization) to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement." Since the funds in the LOC account will be reported as an account receivable by the carrier and can be withdrawn when Program expenses are paid, OPM believes that the funds are admitted assets in accordance with statutory insurance accounting principles.

Eight respondents raised questions pertaining to procedures which were not covered by the proposed regulations. OPM intentionally omitted detailed procedural instructions from the proposed regulations to allow for maximum flexibility in adapting the procedures to the varied needs of the individual FEHBP carriers. The final regulation continues to reflect this philosophy. Detailed procedures are more appropriately reserved for operational guidelines which are being provided to the carriers. The questions are responded to in this Supplementary Information as follows:

(1) *Carrier/underwriter accessibility to the LOC account.* The Department of Treasury will establish a LOC in the name of each carrier. The carrier must select one financial institution for purposes of processing requests for funds and funds transfers for both parties. The carrier and underwriter, or their designated officials, may have access to the account. Because the Department of the Treasury limits the number of drawdowns from a LOC account to one per day, the carrier and underwriter should agree upon the timing and method of requesting their respective drawdowns.

(2) *Presentation of the voucher to the carrier's bank.* The standard Treasury procedure for requesting funds requires the recipient organization (carrier) to present an SF 5805, Request for Funds, to its financial institution for review. However, at its option, the financial institution may establish an alternative procedure for accepting and validating the request-for-funds information in lieu of physical receipt of the SF 5805. The procedure established shall be mutually agreed upon by the carrier and its financial institution. The financial institution shall, in such case, be responsible for ensuring the validity of the request for funds. When an alternative procedure has been established for accepting and validating the request for funds, the SF 5805 will not be used. However, the agreed upon alternative should leave a clear audit trail of the request-for-funds transactions.

(3) *Method of drawdown (i.e., checks paid versus delay of drawdown).* The final regulations allow the carrier to select either the checks paid or the delay of drawdown technique, or both, for withdrawal of funds from the LOC account. Under the checks paid technique, the drawdown on the letter of credit is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment. Under the delay of drawdown technique, the drawdown on the letter of credit is delayed until after checks issued by the carrier or underwriter for FEHB Program disbursements have been forwarded to the payees. Some carriers may find the checks paid technique administratively easier, while others will prefer the delay of drawdown technique because the float inherent in this method affords a greater amount of working capital. Carriers may combine the two methods if they find, for example, that the checks paid technique is more appropriate for claims expenses and the delay of drawdown technique is preferable for administrative purposes.

(4) *Date for incurring expenses.* This comment concerned drawdowns from the LOC account for administrative expenses in order to avoid premature withdrawals. OPM will not establish set time frames for allocation of administrative expenses. However, drawdowns must be consistent with the drawdown technique(s) selected.

(5) *Contingency reserve payments if a plan terminates in a deficit position.* The LOC arrangement does not alter any contractual arrangements or change any rights of the carrier to the contingency reserve. All contingency reserve payments will be made available to the LOC account and the carrier and underwriter will have access to this amount to pay claims and other expenses in accordance with the drawdown procedures.

(6) *Indemnity plan reinsurance.* The respondent is concerned that there will be changes in financing as a result of the LOC arrangement which could significantly effect its reinsurers' irrevocable decisions to contract with the carrier for contract year 1989. OPM continues to assert that the basic financial relationships that currently exist in the FEHB Program will not be changed as a result of the LOC arrangement, nor will the financial makeup of the Program be changed.

(7) *Non-commingling of working capital.* The amount of working capital that may be kept outside the LOC account should be a minimal amount (less than one day's working capital). In cases where an underwriter provides services for more than one FEHB plan, monies held outside the LOC account must not be commingled.

(8) *Reports to the carrier of OPM transactions.* OPM will notify plans of the amount to be made available in the LOC account via a Payment Advice. The Payment Advice has been revised to include the balance in the LOC account.

(9) *Carrier reporting requirements.* OPM has not implemented any new reporting requirements. However, carriers may be required to provide detailed cashflow worksheets along with their annual accounting statements to support drawdown transactions.

Several respondents requested that OPM increase the amount of cash held outside the LOC account. The carriers and underwriters are concerned that a delay in receipt of available funds following claims payment will result in increased financial risk. OPM does not believe that there will be an increase in financial risk due to the limitation on working capital. Carriers may minimize the impact of the reduction in working capital by selecting the delay of drawdown technique for withdrawal of funds from the LOC account. The delay of drawdown technique allows carriers to hold the monies withdrawn after checks are forwarded to payees in a separate interest-bearing account outside of LOC until the checks are presented for payment.

Three respondents requested an exemption from the letter of credit arrangement for certain plans. OPM opposes blanket exemptions from the LOC regulations. However, in response to concerns that the change in the method of FEHB financing was proposed subsequent to agreements made in good faith between carriers and their underwriters and reinsurers, we have added a provision to the final regulations which authorizes OPM to grant exceptions to the effective date of the LOC regulations. An exception to the effective date under this provision would be authorized under very limited circumstances and would be granted only if a carrier could demonstrate in writing that its business would be adversely affected as a result of the January 1, 1989, implementation of the LOC regulations.

Several respondents commented on the early effective date of the regulations and a possible inability to prepare administratively for the change in financing method. Although the effective date is January 1, the first LOC premium payment for contract year 1989 will not be issued until the fourth Thursday in February. This delay should give the carriers and underwriters sufficient time to adjust their administrative procedures to accommodate the letter of credit arrangement. One carrier suggested a one-year delay in effective date so that its deficit could be recovered through the existing operation of its plan. OPM does not believe this request is valid; moreover, there is no guarantee that the deficit of the plan, or that of any other plan, would be recovered in the 1989 contract year.

Two changes have been made to the regulations to clarify that only one drawdown may be made on the LOC account per day and that the drawdown must be presented to the Treasury by the carrier's financial institution not later than 1:00 p.m. eastern time.

Two respondents believe that OPM is discriminating against experience-rated plans because the LOC regulations require crediting of interest on the LOC account at Treasury security rates—a rate below the competitive market rate, while community-rated plans can continue to invest at higher rates of interest. The purpose of the LOC arrangement is to improve the Government's financial management of the Program and not to discriminate against experience-rated carriers. Since the reserves held by experience-rated carriers ultimately belong to the FEHB Program (in cases where experience-rated carriers discontinue participation in the FEHB Program, all claims are paid and the remaining reserves are returned to OPM), and excess amounts over claims expense of community-rated carriers do not, community-rated carriers were excluded from the LOC arrangement.

Final regulations amending 5 CFR Part 890 to establish the LOC payment arrangement for FEHB Program contracts are published elsewhere in this issue of the **Federal Register**.

Waiver of the 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective January 1, 1989, so that it will be applicable to contracts covering calendar year 1989. While the regulation is effective beginning with the first day of the 1989 contract year, for practical purposes, the first premium payment affected by the LOC regulation will not be made until the fourth Thursday in February.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation does not change the amount of money credited to the carriers and the carriers will continue to have full and immediate access to their Treasury LOC account.

List of Subjects in 48 CFR Parts 1602, 1632, and 1652

Administrative practice and procedure, Government contracts, Health insurance.

U.S. Office of Personnel Management.
Hugh Hewitt,
Deputy Director.

Accordingly, OPM is amending 48 CFR Chapter 16 as follows:

1. The authority citation for Chapter 16 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1602—DEFINITIONS OF WORDS AND TERMS

2. In Subpart 1602.1, subsections 1602.170–9 and 1602.170–10 are redesignated as 1602.170–10 and 1602.170–11 and a new subsection 1602.170–9 is added as follows:

1602.170–9 Letter of credit.

"Letter of credit" means the method, established in 31 CFR Part 205, by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms "carrier reserves," "carrier-held reserves," and "special reserves" include any balance in the carrier's letter of credit account.

PART 1632—CONTRACT FINANCING

3. In Subpart 1632.1, section 1632.111 is removed and new sections 1632.170, 1632.171, and 1632.172 are added to read as follows:

1632.111 [Removed]

1632.170 Recurring premium payments to carriers.

The procedures for payment of premiums, contingency reserve, and interest distribution to FEHB Program carriers shall be those contained in 5 CFR 890.505.

1632.171 Clause—contracts without letter of credit payment arrangements.

The clause at 1652.232–70 shall be inserted in all FEHBP contracts without letter of credit payment arrangements.

1632.172 Clause—contracts with letter of credit payment arrangements.

The clause at 1652.232–71 shall be inserted in all FEHBP contracts with letter of credit payment arrangements.

PART 1652—CONTRACT CLAUSES

4. In Subpart 1652.2, subsection 1652.232–70 is redesignated as 1652.232–72 and new subsections 1652.232–70 and 1652.232–71 are added to read as follows:

1652.232–70 [Redesignated as 1652.232–72]

1652.232–70 Payments—contracts without letter of credit payment arrangements.

As prescribed in 1632.171, the following clause shall be inserted in all FEHBP contracts without letter of credit payment arrangements:

Payments

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

1652.232–71 Payments—contracts with letter of credit payment arrangements.

As prescribed in 1632.172, the following clause shall be inserted in all FEHBP contracts with letter of credit payment arrangements:

Payments

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be made available for carrier and/or underwriter drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

[FR Doc. 88–29509 Filed 12–22–88; 8:45 am]
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Proposed Rules

Federal Register
Vol. 53, No. 247
Friday, December 23, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0654]

Truth in Lending; Credit and Charge Card Disclosures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to revise Regulation Z (Truth in Lending) to implement the Fair Credit and Charge Card Disclosure Act amendments to the Truth in Lending Act. The law, enacted on November 3, 1988, requires credit and charge card issuers to provide certain credit disclosures in telephone solicitations and in direct mail and other applications and solicitations to open credit and charge card accounts. Card issuers will also be required to give cardholders written notice regarding the renewal of their credit and charge card accounts before a cardholder has to pay a fee to renew the account. In addition, the law requires credit card issuers to provide cardholders with written notice of a change in the entity providing credit insurance on credit card accounts.

DATE: Comments must be received on or before February 21, 1989.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0654. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3867: Michael S. Bylsma or Adrienne D. Hurt, Senior Attorneys, or Kathleen S. Brueger, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

On November 3, 1988, the Fair Credit and Charge Card Disclosure Act, Pub. L. No. 100-583, 102 Stat. 2960, was enacted into law. The law amends sections 111 (state law preemption), 122 (form of disclosure), 127 (open-end credit disclosures), 130 (civil liability), and 136 (information collection by Board) of the Truth in Lending Act (TILA). The purpose of the law is to provide for more detailed and uniform disclosure of rates and other cost information in applications and solicitations to open credit and charge card accounts. Consumers will be given basic cost information about credit and charge cards at an earlier time than under the current provisions of the TILA in order to enhance credit shopping. Under the current provisions of the TILA, card issuers are required to give consumers credit disclosure statements at about the time an account is opened. (The new law does not affect the general advertising provisions in section 143 of the TILA.)

The law mandates that an implementing rule be in place 150 days from enactment of the law. Mandatory compliance by card issuers with the law's requirements will be effective 150 days from issuance of a final rule by the Board (240 days for disclosures in applications and solicitations made available to the general public by means other than direct mail or telephone). The Board expects to adopt a final rule by April 3, 1989, making compliance with the law mandatory on or around August 31, 1989 (or November 29, 1989, for applications and solicitations made available to the general public other than by direct mail or telephone).

As of the mandatory compliance dates, all state laws relating to the disclosure of information in any credit or charge card application and solicitation that will be subject to the requirements of new section 127(c) of the TILA, or any renewal notice that will be subject to the requirements of new section 127(d), will be preempted. If a card issuer complies with the federal requirements before the effective dates for mandatory compliance, all relevant state laws will be preempted as to that card issuer as of the date of compliance.

The law requires credit and charge card issuers to provide disclosures to consumers in three situations involving applications and solicitations to open credit or charge card accounts: (1) Direct mail applications and solicitations, (2) telephone solicitations; and (3) applications and solicitations by means other than mail or telephone that are made available to the general public (such as applications and solicitations commonly referred to as "take-ones"), including those contained in catalogs, magazines, or other generally available publications. An application or solicitation to add a credit or charge card to an existing open-end plan would not be subject to the new law. Most of the required disclosures would have to be provided in the form of a table, which the Board is directed to prescribe.

In addition to the disclosures required with applications and solicitations, the law requires disclosures in two other circumstances. First, card issuers that impose fees to renew credit and charge card accounts will have to provide cardholders with renewal notices (including a new set of credit disclosures and information about an account's expiration and how to terminate an account) before a renewal fee is payable. Second, credit card issuers will have to provide disclosures if they offer credit insurance and decide to change insurance providers. As part of the disclosures, credit card issuers would be required to disclose any substantial decrease or limitation in coverage as a result of a change.

The law amends section 130 of the TILA, the civil liability provision, to provide that a card issuer shall have liability under section 127 (c) and (d) of the act only to a cardholder who pays an annual or other periodic fee or a membership fee, or who uses a credit or charge card. The law also requires the Board to collect credit card price and availability information from a sampling of financial institutions and make it available to the public on request.

(2) The Proposed Amendments to Regulation Z

The Board proposes to add new § 226.5a to Regulation Z to implement most of the provisions of the Fair Credit

and Charge Card Disclosure Act. The proposed section has been added between § 226.5 (general open-end disclosure requirements) and § 226.6 (initial open-end disclosure statement) because of the timing for providing the disclosures. The disclosures required when renewing a credit or charge card account or changing an insurance provider on a credit card account are contained in § 226.9 (subsequent disclosure requirements) of the regulation.

The disclosure requirements for credit and charge cards have been combined in the proposed rule to avoid unnecessary duplication. Unless otherwise specified in the discussion below, language of the proposed rule which differs from the language of the act primarily simplifies and clarifies the act's requirements. Citations in the discussion of the proposed rule are to the amended sections of the TILA. The Board intends to provide additional guidance as necessary when it publishes the final rule. This guidance will eventually be proposed for incorporation into the Board's official staff commentary to the regulation.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

Paragraph (a)—Authority

Instead of adding to the authority section each law that amends the TILA, the section will merely refer to the TILA as amended, thus incorporating all such laws. As a result, any specific reference to laws amending the act would be removed as unnecessary.

Section 226.2—Definitions and Rules of Construction

Section 226.2(a)(15) of the regulation would be revised to include the definition of a charge card. Generally, these are credit card accounts on which outstanding balances cannot be rolled over from one month to another and are payable when a periodic statement is received. Section 127(c)(4)(E) of the act defines a charge card as a credit card (as defined in Regulation Z, § 226.2(a)(15)) which is not subject to a finance charge. The act's disclosure provisions applicable to charge cards require the issuer to disclose transaction charges, for both purchases and cash advances. Since, under Regulation Z, these charges are finance charges, it is clear that charge card accounts can involve finance charges despite the act's definition. The Board proposes to modify the charge card definition for clarity, so that the term charge card would be defined in the regulation to mean a credit card on an account for which no periodic rate is used to compute a finance charge. Consequently, card issuers who offer cards that may be subject to finance charges such as transaction charges on cash advances—but for which no periodic rate is used to compute the finance charge on an outstanding balance—would be characterized as charge card issuers for purposes of the new law and would give the applicable charge card disclosures.

Under the existing regulation, § 226.2(a)(17)(iv), card issuers extending closed-end credit are subject to certain of the open-end credit disclosure provisions. That section sets forth the provisions that are not applicable to such card issuers. The Board proposes to revise the section to also exclude these card issuers from the new disclosure requirements of the law.

Section 226.5—General Disclosure Requirements

Paragraph (a)—Form of Disclosures

Paragraph (a)(1). The Board proposes to revise footnotes 8 and 9 to § 226.5. Footnote 8 would be revised to indicate that the terms "annual percentage rate" (APR) and "finance charge," when used in the disclosures required under proposed § 226.5a, need not be more conspicuous than other terms. Footnote 9 would be revised to indicate that the disclosures given under § 226.5a need not be in a form that the consumer can keep.

Paragraph (a)(3). Paragraph (a)(3) would be added to explain that the standard for certain disclosures required under proposed § 226.5a differs from the general clear and conspicuous standard for TILA disclosures. Certain disclosures under proposed § 226.5a must be given in the form of a table and in a prominent location when provided on or with an application or solicitation.

Paragraph (b)—Time of Disclosures

Paragraph (b)(3). Paragraph (b)(3) would be added to provide a general cross reference to § 226.5a for the timing requirements for disclosures in credit and charge card applications and solicitations.

Section 226.5a—Credit and Charge Card Applications and Soliciations

Paragraph (a)—General Rules

Paragraph (a) would contain the general rules applicable to this section.

Paragraph (a)(1). Paragraph (a)(1) would implement section 127(e)(1) of the act and provide that if the amount of any fee required to be disclosed is determined on the basis of a percentage of another amount—for example, if a card issuer imposes an annual fee based on a percentage of the credit line—the card issuer may state the percentage and what it is applied to rather than the dollar amount of the fee. If a card issuer is able to determine the dollar amount of the fee, the card issuer would, of course, be permitted to disclose that amount.

Paragraph (a)(2). Paragraph (a)(2) would implement section 127(f) of the act. It provides that if any cash advance, late payment or over-the-credit-limit fee required to be disclosed varies from state to state, the card issuer may disclose the range of the fees instead of disclosing the amount of the fee. If a range is disclosed, the card issuer must include a statement that the amount of the fee varies from state to state. This option is limited to the fees mentioned above.

Paragraph (b)—Direct Mail Applications and Solicitations

Paragraph (b) would implement the disclosure requirements for direct mail applications and solicitations for credit and charge cards provided in section 127 (c)(1) and (c)(4) (A) and (B) of the act. Paragraph (b)(1) would contain the disclosures under the act that are required to be given in tabular format. Paragraph (b)(2) would contain the additional fee disclosures that may be located inside or outside of the table.

Paragraph (b)(1). Credit card issuers would have to provide the disclosures in paragraph (b)(1) (i) through (vi) to the extent the disclosures are applicable. Charge card issuers would have to provide the disclosures in paragraphs (b)(1) (ii), (iv) and (vii) as applicable. The disclosures would have to be given in the form of a table. The Board is proposing two new model forms in appendix G, either of which will comply with the tabular format requirement if used properly. Detailed information about requirements as to the form of disclosures is contained in the discussion of appendix G below.

APR Disclosure. Paragraph (b)(1)(i) would implement section 127(c)(1)(A)(i) of the act. Credit card issuers would be required to disclose each periodic rate that may be used to compute the finance charge on an outstanding balance expressed as a corresponding APR. This provision would apply to rates applied to purchase and cash advance balances. If the APR for cash advances differs from the APR for purchases, the disclosure should indicate the rate applicable to each balance. Whenever more than one rate applies to an outstanding balance, the card issuer

would be required to disclose the range of balances to which each rate applies.

If an extension of credit is subject to a variable rate, the credit card issuer would be required to disclose the fact that the rate is variable. The credit card issuer would also be required to disclose the APR in effect at the time of mailing, and how the rate is determined. An APR in effect at any time within 30 days before the mailing may be deemed to be the rate in effect at the time of mailing. Thus, a change in an index resulting in a change in the APR within 30 days before the mailing would not invalidate the disclosure. A credit card issuer would satisfy the requirement of disclosing how the rate is determined by identifying the index and the margin or spread above the index.

Periodic and membership fee disclosure. Paragraph (b)(1)(ii) would implement section 127(c) (1)(A)(ii)(I) and (4)(A)(i) of the act. It would require credit and charge card issuers to disclose any annual or other periodic fee (including fees based on account activity or inactivity), or any membership fee imposed for the issuance or availability of a credit or charge card. This would include a one-time fee for the issuance of a card. Tc promote easy comparison of disclosures, the proposed rule would require that the fees (if periodic) be expressed as an annualized amount. Therefore, for example, if a card issuer imposed a quarterly fee, the issuer would have to disclose how much the fee would be on an annual basis.

With regard to one-time membership fees, the Board requests comment on what types of fees should be included. For example, the language of the proposed rule might be interpreted to include application fees, raising the question of whether these fees should be covered. The same question arises with respect to various charges associated with the opening of a home equity line of credit that is accessible by credit card.

Minimum finance charge. Paragraph (b)(1)(iii) would implement section 127(c)(1)(A)(ii)(II) of the act and would require credit card issuers to disclose any minimum or fixed finance charge that could be imposed for any period during which any extension of credit which is subject to a finance charge is outstanding. This would occur where the amount of such a finance charge is greater than the finance charge that would otherwise be imposed for such period under the applicable APR.

Transaction charge for purchases. Paragraph (b)(1)(iv) would implement section 127(c) (1)(A)(ii)(III) and (4)(A)(ii) of the act. It would require credit and charge card issuers to disclose any transaction charge imposed in connection with the use of the card to purchase goods and services. This provision does not cover fees for cash advances, although such fees are required to be disclosed by another provision of the law.

Grace period for purchases. Paragraph (b)(1)(v) would implement section 127(c)(1)(A)(iii) of the act. It would require credit card issuers to disclose the date by which or the period within which any credit extended under credit card accounts for the purchase of goods or services must be repaid to avoid incurring a finance charge. If a card issuer does not offer a "grace period", the card issuer must disclose that fact. If the length of the grace period varies, a card issuer may disclose the range, the minimum or the average number of days in the grace period, if the disclosure is identified as a range, minimum or average, respectively. No disclosure about grace periods for cash advances is required.

The act provides that either the heading or the statement under the heading for the disclosure shall contain the term "grace period." The Board proposes to mandate use of the term "grace period" as a required heading in the table (as well as all other terms in the headings). Therefore, to the extent a card issuer provides more than a numerical disclosure in the body of the table, the card issuer would be permitted to use any word or statement that conveys substantially the same meaning as a "grace period", for example, a reference to a free-ride period.

Balance calculation method for purchases. Paragraph (b)(1)(vi) would implement section 127(c)(1)(A)(iv) of the act. Credit card issuers would be required to disclose the method of calculating the balance on which finance charges will be computed for the purchase of goods and services. (No disclosure of the method of calculating the balance for cash advances is required.) In making this disclosure, issuers would be required to identify the balance calculation method used on the account by the name provided by the Board in the regulation's definitions of the most common balance calculation methods. Credit card issuers would be required to provide a detailed explanation of the balance calculation method used if it is not one of the methods described in the regulation. The level of detail of the explanation would be the same as that required for the initial disclosures under § 226.6(a)(3) of the regulation. A card issuer would be permitted to provide the detailed explanation outside of the table if a reference is included in the table.

The Board has tentatively identified five of the most common methods for determining the balance of account transactions on which the finance charge will be computed. Those methods are contained in paragraph (f) of this section of the proposal. The numerical order of these methods is not intended to reflect their relative usage by issuers. Three general balance calculation methods have been defined by the Board—average daily balance, adjusted balance and previous balance. Of these general methods, three variations of the average daily balance method have been identified as separate methods because of their potential impact on a consumer's finance charge. The three average daily balance methods which would be required to be identified separately are average daily balance (including new transactions), average daily balance (excluding new transactions), and retroactive average daily balance.

As described, the average daily balance methods are computed in a similar manner but vary based on whether new transactions are included in the balance and on whether the balance includes transactions from a previous billing cycle. The retroactive average daily balance method is described as the sum of the average daily balance (including new transactions) for two billing cycles. The Board requests comment on whether a separate retroactive method exists which is the average daily balance (*excluding* new transactions) for two cycles and on how many issuers may use that method. The Board also requests comment on whether and how much any separate retroactive methods vary from the retroactive method described by the Board in terms of their potential effect on a consumer's finance charge.

Another average daily balance method, frequently called "true" or "actuarial" average daily balance, has not been identified as a specific balance calculation method because the Board believes that it is the average daily balance (including new transactions) method without a grace period, and therefore may be disclosed using the name "average daily balance (including new transactions)."

The proposed descriptions of the balance calculation methods disregard minor variations in the methods resulting from differences in the allocation of payments, in the posting date as compared to the transaction date, the grace period, and whether the

balance includes unpaid finance charges and charges such as late fees and annual fees. Such variations in the methods described would not constitute different balance calculation methods.

The Board also has identified two other balance calculation methods—ending balance and daily balance—as the alternative sixth and seventh methods on the list for the purpose of soliciting comment on whether either of these methods should be substituted for any of the five methods identified as the most common methods. The Board also requests comment on whether the daily balance method results in a finance charge substantially similar to that derived under the average daily balance (including new transactions) method. The Board would consider categorizing the daily balance method as average daily balance (including new transactions) if it determines that there is no significant difference between the two methods in the impact on the consumer's finance charge.

The Board also solicits comment on whether any methods that have not been identified are more common than those in the proposed rule. The Board is particularly interested in any data from surveys or other studies of card issuers that address which methods are most commonly used. This information should focus only on those methods which are most common for the majority of card issuers—not on those methods which are most common for the majority of accounts in existence. Comments suggesting substitution of other methods for the five methods identified by the Board should include information supporting the inclusion of certain methods as more common among all card issuers than a particular method on the Board's list.

Due and payable statement. Paragraph (b)(1)(vii) would implement section 127(c)(4)(A)(iii) of the Act which applies only to charge card issuers. It would require charge card issuers to disclose that charges incurred by use of a charge card are payable when the periodic statement reflecting those charges is received by the cardholder.

Paragraph (b)(2)

Additional fee disclosures. Paragraph (b)(2) would implement section 127 (c)(1)(B) and (c)(4)(B) of the Act which requires credit and charge card issuers to disclose any cash advance, late payment or over-the-credit-limit fee. These disclosures could be provided in the prescribed table along with the disclosures mentioned in paragraph (b)(1) above (see the discussion of proposed model forms for details), or could be provided elsewhere in a clear and conspicuous manner on or with an application or solicitation.

Paragraph (c)—Telephone Solicitations

Paragraph (c) would implement the disclosure requirements for telephone solicitations to open a credit or charge card account provided in section 127 (c)(2) and (c)(4)(A) of the act.

Paragraph (c)(1).

Under paragraph (c)(1), card issuers would generally be required to orally disclose the applicable items that are required to be disclosed in tabular format in direct mail applications and solicitations; cash advance, late payment and over-the-credit-limit fees would not have to be disclosed.

Paragraph (c)(2).

Paragraph (c)(2) would implement section 127(c)(2)(B) of the act which permits an alternative disclosure for telephone solicitations. The act specifically provides this alternative for credit card issuers. The Board proposes to make this alternative disclosure available to both credit and charge card issuers; this modification might make compliance easier, and would not appear to reduce consumer protections.

If a card issuer does not impose a periodic or membership fee or does not impose any of those fees unless the consumer signifies acceptance by using the card, the card issuer need not give the oral disclosures at the time of the solicitation. The card issuer, however, would be required to disclose in writing the required terms—both those specified in paragraph (b)(1), in tabular format, and those listed in paragraph (b)(2)—within 30 days after the consumer requests the card, but in no event later than the delivery of the card. Therefore, if a consumer requests a card and the card is sent to the consumer 10 days after the solicitation, of example, the disclosures would have to be provided at that time. The card issuer must also explain in the written disclosure notice that the consumer is not obligated to accept the card and that the consumer will not be obligated to pay any fee or charges disclosed unless the consumer elects to accept the card by using it.

Paragraph (d)—Applications and Solicitations Other Than by Mail or Telephone

Paragraph (d) would implement the disclosure requirements for applications and solicitations to open credit and charge card accounts that are made available to the general public, including those contained in catalogs, magazines and other generally available publications, as provided in section 127 (c)(3) and (4)(C) of the act. A card issuer could satisfy the requirements of this section of the act in any of three ways. The act specifically allows any option to be used by credit card issuers. In order to allow maximum flexibility in complying with the new requirements, the Board proposes to make all options available to both credit and charge card issuers.

Paragraph (d)(1).

Under the option in paragraph (d)(1), the card issuer would provide all the required credit disclosures in the requisite format on or with applications and solicitations, and indicate: (1) That the disclosures are accurate as of the date they were printed; (2) the date of printing (disclosure of the month and year would be sufficient to fulfill this requirement); (3) that the terms are subject to change after such date; and (4) that the consumer should contact the creditor for any changes in the information disclosed. (If a rate is variable, any rate in effect 30 days before the date of printing would be deemed accurate as of the date of printing.) The card issuer would also have to provide a mailing address, or a toll-free telephone number to call (for calls made from an area code other than that used by the card issuer), for consumers to obtain information about changes in the disclosures. If the card issuer elects to provide an address rather than a toll-free telephone number, the card issuer could also provide a regular telephone number (rather than a toll-free number).

Paragraph (d)(2).

Under the option in paragraph (d)(2), a card issuer could include on or with an application or solicitation the disclosures required under § 226.6(a) through (c) of the regulation. The act provides that the credit disclosures required under section 127(c)(1) (proposed paragraph (b) discussed above) must be included, though they need not be given in tabular format. The legislative history of the act indicates that this option is available so long as the credit disclosures required under the act are provided clearly and conspicuously (H.R. Rep. No. 1069, 100th Cong., 2d Sess. 17). With minor exceptions, the disclosures required under section 127(c)(1) are also part of the disclosures required to be given under § 226.6(a) through (c) of the regulation. Furthermore, all TILA disclosures are subject to a general clear and conspicuous standard. Consequently, the Board proposes to interpret this option as requiring that

only the initial disclosures in § 226.6(a) through (c) of the regulation be given.

It should be noted that the disclosure of this information alone would not satisfy the initial disclosure requirements under the TILA. If, however, the card issuer in complying with this section provides all the disclosures required under § 226.6, in a form that the consumer may keep, the card issuer will have satisfied the disclosure requirement for this section of the act as well as the initial disclosure requirements for credit cards under the TILA.

Paragraph (d)(2) would also require the card issuer to disclose a toll-free telephone number or a mailing address for use in asking about changes in the information disclosed.

Paragraph (d)(3).

Under the option in paragraph (d)(3), a card issuer would provide a statement on the aplication or solicitation that there are costs associated with the use of the credit or charge card and that the applicant could contact the creditor to request specific information about those costs by calling a toll-free telephone number or by writing to an address specified on the application or solicitation. The card issuer would have to provide both a toll-free telephone number (for calls made from an area code other than that used by the card issuer) and a mailing address at which the consumer would contact the card issuer to obtain the required information. A card issuer could not use this option if the card issuer includes on the application or solicitation any of the credit disclosures required by the act.

Paragraph (d)(4).

Regardless of the option used, the act provides that upon receiving a request by a consumer for any of the credit information required to be disclosed under the act, card issuers must promptly disclose all of the required credit disclosures. The Board would not interpret this provision to require card issuers to provide all required credit disclosures in all instances. For example, if disclosures have been provided in accordance with proposed paragraph (d)(1) or (2), and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the card issuer may, but would not be required to, provide information about disclosures for which there are no changes from those previously provided on or with the application. Furthermore, if a consumer requested only one particular item, the card issuer could supply just that requested item rather than the entire list of disclosures. If, however, the card issuer has made disclosures in accordance with the option in paragraph (d)(3), and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information would have to be given.

Paragraph (e)—Special Charge Card Rule—Card Issuer and Person Extending Credit Not the Same Person

Paragraph (e) would implement section 127(c)(4)(D) of the act. Where the charge card issuer and the person maintaining an open-end credit plan that the card accesses are different persons, this provision permits the charge card issuer to disclose only the information required for the charge card, and no information about the underlying plan, if the charge card issuer also discloses to the consumer that: (1) The card issuer will make an independent decision whether to issue the card; (2) the card may arrive before the decision is made on the open-end plan; and (3) approval by the card issuer does not constitute approval of the plan.

The act also requires the creditor offering the underlying open-end credit plan to provide the credit disclosures required under section 127(c)(1) for the plan, before the first transaction under the plan. The timing for giving these disclosures is identical to the timing for giving initial disclosures. Moreover, with minor exceptions, the credit disclosures required under the new law will be included as part of the initial disclosures required under § 226.6 of the regulation. Consequently, the Board proposes to eliminate any additional disclosure requirements for a creditor that extends the underlying open-end credit plan beyond providing the initial disclosures in accordance with § 226.6 of the regulation. Thus, the proposed rule makes no reference to this requirement.

Paragraph (f)—Balance Calculation Methods Defined

This paragraph sets forth the proposed names and definitions of balance calculation methods. For a detailed discussion, refer to the discussion under paragraph (b) above.

Section 226.9 Subsequent Disclosure Requirements

Paragraph (e)—Disclosures Upon Renewal of Credit or Charge Card

Paragraph (e) would implement the disclosure requirements for credit and charge card renewals provided in section 127(d) of the act. Paragraph (e)(1) contains the general rule about notification. Paragraph (e)(2) allows the notice in paragraph (e)(1) to be given at a later point in time if certain other disclosures are provided.

Paragraph (e)(1). If a card issuer imposes any annual or other periodic fee to renew a credit or charge card account, the card issuer would generally be required to provide cardholders with written notices of renewal at least 30 days before the scheduled renewal date of the credit or charge card account. The renewal date is the date the fee is payable to preserve continued credit availability and not necessarily the date on which the credit or charge card expires. The notice would have to disclose: (1) The date by which, the month by which, or the billing period at the close of which the account will expire if not renewed; (2) the credit disclosures required under the Act, in the requisite format, that would apply if the account were renewed; and (3) the manner in which the cardholder may terminate continued credit availability under an account.

Paragraph (e)(2). Under paragraph (e)(2), the notice could be provided less than 30 days before the renewal date so long as the cardholder is given at least 30 days to avoid payment of the fee, or to have the fee recredited to the account, in any case where the cardholder does not wish to continue the availability of credit. The card issuer would have to disclose those facts, in writing, along with a disclosure that the cardholder may use the card in the interim without paying the fee.

Paragraph (e)(3). The renewal disclosures may be presented on or with a periodic statement, or in a separate mailing. If provided with a periodic statement or separately, the credit disclosures required by § 226.9(e)(1)(ii) would have to be given in tabular format (to the extent required in applications and solicitations); if provided on the statement itself, they need not be given in tabular format although the required headings would have to be used. If disclosures are provided on the back of a periodic statement, the card issuer must include on the front of the statement a reference to those disclosures.

Section 127(d)(3) of the act permits the Board, by regulation, to provide for fewer disclosures where an account is renewable more frequently than every six months; the purpose would be to ease the burden on card issuers in this circumstance. The legislative history indicates, however, that the Board would have to require, at a minimum, the periodic fee disclosure and disclosure of any credit term that had changed since the last disclosure. The Board believes such short term renewals

are rare and is not proposing any special rule; however, it seeks comment on whether an abbreviated disclosure scheme would be necessary or useful to cover this situation.

Paragraph (f)—Change in Credit Card Account Insurance Provider

Paragraph (f) would implement section 127(g) of the act. Credit card issuers that offer credit insurance (typically, life, disability, and unemployment insurance) on the outstanding balance on an account would be required to make certain disclosures to their insured consumer cardholders if the card issuers change insurance providers. The Board proposes to add two new model forms that may be used to comply with paragraph (f); see the discussion of appendix G, below, for details.

Paragraph (f)(1). Paragraph (f)(1) would implement section 127(g)(1) of the act which requires that a notice be sent at least 30 days before a change in insurance providers occurs. The notice may be sent on or with a periodic statement. The notice must inform the cardholder of the upcoming change in insurance providers, and indicate that the cardholder has the right to discontinue the credit insurance. (If discontinuing the credit insurance would have some effect on the credit plan, the notice may also explain that.) In addition, if the change in insurance providers will result in an increased rate or other increased costs for the cardholder, or if a substantial decrease or limitation in coverage will result, the notice must disclose those items to the cardholder. The Board proposes to interpret the act to require notice of changes in coverage terms only and not of changes relating solely to service.

Paragraph (f)(2). Paragraph (f)(2) would incorporate section 127(g)(5) of the act and would provide that, in determining whether a decrease or limitation in the coverage terms is considered substantial, the card issuer first must consider whether the decrease or limitation is in a significant term of coverage. (A list of examples of significant terms of coverage is provided in the proposed rule.) If a significant term of coverage is involved, the card issuer must then consider whether the decrease or limitation might reasonably be expected to affect a cardholder's decision to continue taking insurance from the card issuer; if that is the case, the decrease or limitation must be disclosed in the notice. The Board seeks comment on its definition of a substantial decrease and on its examples of significant terms of coverage.

Paragraph (f)(3).

Paragraph (f)(3) would incorporate section 127(g)(2) of the act. It would require that a second notice be provided by card issuers when the change in insurance providers actually occurs. Card issuers would be required to send this notice no later than 30 days after the change. Card issuers would be required to provide the name and address of the new insurance provider, and to include a statement that the consumer has the right to discontinue the insurance. In addition, card issuers would have to provide a copy of the new policy or group certificate, which must contain the basic terms and conditions and the premium rate. This notice may be sent on or with a periodic statement. (The copy of the policy or group certificate could be sent along with the periodic statement.)

Paragraph (f)(4).

Paragraph (f)(4) allows card issuers to combine the notice required by paragraph (f)(3) with the notice required by paragraph (f)(1) providing the timing requirement of paragraph (f)(1) is met. Notices may be provided on or with a periodic statement.

Section 226.28 Effect on State Laws

Paragraph (d) would implement the new preemption provision added to section 111 of the TILA. Section 127 (c) through (f) preempts any provision in state or local laws and regulations relating to the disclosure of information in any credit or charge card application or solicitation that is subject to section 127(c) and any provision relating to renewal notices in any transaction that is subject to section 127(d). The preemption of such state law is total, and differs from the preemption standard of other parts of the TILA, which generally preempt only inconsistent state law requirements.

State laws enacted or used to enforce the requirements of section 127 (c) and (d) of the act are not affected. The same is true for general disclosure laws such as state retail installment sales acts and plain language laws. In addition, other state consumer laws regarding credit or charge cards, such as a law requiring banks in that state to offer a grace period, would not be affected. The provisions of the act requiring insurance disclosures do not supersede any state laws applicable to the regulation of insurance. The Board would also take the view that the act does not preempt state laws that require disclosures relating to antidiscrimination matters.

Appendix G—Open-End Model Forms and Clauses

The Board's proposal includes several model forms and clauses which would appear in Appendix G of the regulation.

Proposed model from G–10A illustrates the permissible inclusion in the tabular format of all of the required disclosures for applications and solicitations. In proposed model form G–10B, the table includes only that information required to be included in the table, while the three additional required disclosures are illustrated clearly and conspicuously outside of the table. The table (in either G–10A or G–10B) must contain the prescribed headings to the extent applicable, although they may be arranged horizontally rather than vertically. In designing forms, card issuers would be permitted to eliminate inapplicable headings and their corresponding boxes. For example, if no transaction fee is imposed for purchases, the disclosure form could either retain the "Transaction Fee for Purchases" heading and box, indicating "None" in the box, or the heading and box could be deleted from the disclosure entirely. There is, however, an exception for the grace period disclosure: even if no grace period exists, this disclosure must be retained, stating that fact. The information in the boxes must be provided in a manner that conveys substantially the same meaning as the information in the Board's model form, although the precise terminology shown need not be used. A card issuer may provide other information about the tabular disclosures; however, that information must be presented outside the table.

Proposed model clauses G–11, –12, and –13 are provided to illustrate the additional disclosures for applications and solicitations by means other than by direct mail or telephone. Proposed model clause G–14 illustrates the disclosures to be made when a charge card may access an open-end line of credit offered by someone other than the card issuer.

Proposed model forms G–15 and –16 relate to changes in an insurance provider. Form G–15 lists several significant terms of coverage that may be affected by the change in insurance provider. The card issuer may list all of these potential changes in coverage and place a checkmark by the applicable changes or may include only statements about the actual change in coverage. Under either approach, the card issuer must explain the change or reference an accompanying copy of the policy or

group certificate for details of the new terms of coverage. Form G–15 illustrates the permissible combination of the two notices required by § 226.9(f). Form G–15 may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Proposed model form G–16 illustrates the disclosures required when the insurance provider is changed.

The Board solicits comment on whether additional model forms and clauses should be provided, and if so, suggestions about what would be useful.

(3) Comments Requested

Interested persons are invited to submit written comments on the proposed amendments and other matters addressed in this notice. After the close of the comment period, based upon its analysis of the comments received, the Board will publish in the **Federal Register** notice of final action. The comment period ends on February 21, 1989. Because of the strict statutory deadline for issuing the final regulations, comments must be submitted no later than this date.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in Lending.

(5) Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in 15 U.S.C. 1604 and sec. 2, Pub. L. No. 100–583, 102 Stat. 2960 (to be codified at 15 U.S.C. 1637(c)(5)) of the TILA, as amended, the Board proposes to amend Regulation Z (12 CFR Part 226) as follows:

1. The authority citation for Part 226 is revised to read as follows:

Authority: ►Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Pub. L. No. 100–583, 102 Stat. 2960◄ [Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*)]; sec. 1204(c), Competitive Equality Banking Act, Pub. L. No. 100–86 101 Stat. 552.

Subpart A—General

2. Section 226.1 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending ►Act◄ [and Fair Credit Billing Acts], which [are] ►is◄ contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). * * *

* * * * *

3. Section 226.2 is amended by revising paragraph (a)(15) and (a)(17)(iv) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) *Definitions.*

* * * * *

(15) *"Credit card"* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. ►The term "charge card" means a credit card on an account for which no periodic rate is used to compute a finance charge.◄

* * * * *

(17) *"Creditor"* means:

* * * * *

(iv) For purposes of Subpart B (except for ►the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f),◄ the finance charge disclosures contained in §§ 226.6(a) and 226.7(d) through (g) and the right of rescission set forth in § 226.15) and Subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

* * * * *

Subpart B—Open-End Credit

4. Section 226.5 is amended by revising footnotes 8 and 9, adding paragraphs (a)(3) and (b)(3) and republishing paragraphs (a)(1) and (a)(2) and footnote 7 to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,[7] in a form that the consumer may keep.[8]

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9]

►(3) Certain disclosures required under § 226.5a for credit and charge card applications and solicitations must be provided in a tabular format and in a prominent location in accordance with the requirements of that section.◄

(b) *Time of disclosures.*

* * * * *

►(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the requirements of § 226.5a.◄

* * * * *

5. A new § 226.5a is added to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) *General rules*—(1) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) *Certain fees that vary by state.* If the amount of any fee referred to in paragraph (b)(2) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) *Direct mail applications and solicitations.* The credit card issuer shall disclose the applicable items in paragraphs (b)(1)(i) through (vi) and paragraph (b)(2) of this section on or with an application to open a credit card account, or a solicitation not requiring an application to open a credit card account, that is mailed to consumers. In the case of a similar mail application or solicitation to open a charge card account, the charge card issuer shall disclose the applicable items in

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[7] The disclosure required by § 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.

[8] The ►disclosures required under § 226.5a for credit and charge card applications and solicitations, the◄ alternative summary billing rights statement provided for in § 226.9 (a)(2), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

[9] The terms need not be more conspicuous when used ►under § 226.5a for credit and charge card applications and solicitations,◄ under § 226.7(d) on periodic statements and under § 226.16 in advertisements.

paragraphs (b)(1)(ii),(iv) and (vii) and paragraph (b)(2) of this section. This paragraph does not apply to an application or a solicitation made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures for such applications and solicitations are contained in paragraph (d) of this section.

(1) *Disclosures in tabular format.* The card issuer shall disclose, to the extent applicable, in a prominent location on or with the application or solicitation, each of the following items in the form of a table, using the prescribed terminology in the headings and substantially the same format and statements as found in appendix G:

(i) Each periodic rate that may be used to compute the finance charge on an outstanding balance expressed as an annual percentage rate. When more than one rate applies, the range of balances to which each rate is applicable shall also be disclosed. If the plan has a variable rate, the card issuer shall also disclose the fact that the rate may vary, the annual percentage rate in effect within 30 days before the time of mailing, and how the rate is determined.

(ii) Any annual or other periodic fee, expressed as an annualized amount, or any other membership fee, that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity.

(iii) Any minimum or fixed finance charge that could be imposed during a billing cycle.

(iv) Any transaction charge imposed in connection with use of the card for purchases.

(v) The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no such grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.

(vi) The name of the balance calculation method listed in paragraph (f) of this section that is used to determine the balance on which the finance charge is computed for purchases, or an explanation of the method used if it is not listed. The explanation may appear outside the table if the table contains a reference to the explanation.

(vii) A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(2) *Additional disclosures.* The card issuer shall also disclose either in the table prescribed in paragraph (b)(1) of this section or elsewhere on or with the application or solicitation, the following items to the extent applicable, using the prescribed terminology in the headings and substantially the same format and statements as found in appendix G (if the items are in the table):

(i) Any fee imposed for an extension of credit in the form of cash;

(ii) Any fee imposed for a late payment; and

(iii) Any fee imposed for exceeding a credit limit.

(c) *Telephone solicitations.*—(1) *Oral disclosure.* The card issuer shall orally disclose the information in paragraph (b)(1) of this section, to the extent applicable, in a telephone solicitation to open a credit or charge card account.

(2) *Alternative disclosure.* The oral disclosure under paragraph (c)(1) of this section need not be given if the card issuer either does not impose a fee described in paragraph (b)(1)(ii) of this section or does not impose the fee unless the consumer uses the card, and the card issuer discloses in writing:

(i) The applicable information contained in, and in the form required by, paragraphs (b)(1) and (2) of this section within 30 days after the consumer requests the card, but in no event later than the delivery of the card; and

(ii) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

(d) *Applications and solicitations other than by mail or telephone.* The card issuer shall provide disclosures on or with an application to open a credit or charge card account, or a solicitation not requiring an application to open a credit or charge card account, that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (d)(1), (2) or (3) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on or with the application or solicitation, the following items:

(i) The applicable information contained in, and in the form required by, paragraphs (b) (1) and (2) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *Disclosure of certain initial disclosures.* The card issuer may disclose on or with the application or solicitation the following:

(i) The disclosures required in § 226.6 (a) through (c); and

(ii) A toll-free telephone number or a mailing address for the consumer to contact the card issuer to obtain any change in the information disclosed.

(3) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(4) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(e) *Special charge card rule—card issuer and person extending credit not the same person.* If by use of a charge card, a cardholder may access an open-end plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in paragraph (b), (c) or (d) of this section for the open-end plan if the card issuer states on or with the application or solicitation the following, to the extent applicable:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end plan; and

(3) Approval for the charge card does not constitute approval for the open-end plan.

(f) *Balance calculation methods defined.* The following methods may be described by name without regard to minor variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period and whether the balance is adjusted by charges such as late fees, annual fees, and unpaid finance charges:

(1) *Average daily balance (including new transactions).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) *Average daily balance (excluding new transactions).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(3) *Retroactive average daily balance.* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle, and is figured in the same way as the first balance except that it will be considered zero if a finance charge was already imposed against purchases in that cycle.

(4) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(5) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

(6) *Ending balance.* This balance is the outstanding balance at the end of the billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(7) *Daily balance.* This balance is the balance on each day of the billing cycle (including new purchases and deducting payments and credits made as of that day).◄

6. Section 226.9 is amended by adding paragraphs (e) and (f) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

►(e) *Disclosures upon renewal of credit or charge card*—(1) *Notice prior to renewal.* Except as provided in paragraph (e)(2) of this section, a card issuer that imposes any annual or other periodic fee to renew a credit or charge card account (including any fee based on account activity or inactivity) shall mail or deliver to the cardholder at least 30 days before the renewal fee is payable written notice of the following information:

(i) When the account will expire if not renewed;

(ii) The disclosures contained in, and in the form required by, § 226.5a(b)(1) that would apply if the account were renewed; and

(iii) How the cardholder may terminate the account to avoid paying the renewal fee.

(2) *Delayed notice.* The notice required by paragraph (e)(1) of this section may be provided less than 30 days before the date the fee to renew the account is payable if, no later than the time the periodic statement first disclosing the fee is mailed or delivered, the card issuer also discloses that:

(i) The cardholder has 30 days to avoid paying the fee or to have the fee recredited if the cardholder terminates the account; and

(ii) The cardholder may use the card during the interim period without having to pay the fee.

(3) *Combined notification.* The disclosures required by this paragraph may be made on or with a periodic statement. When the disclosures are provided on a periodic statement, the card issuer shall use the prescribed headings referred to in § 226.5a(b)(1) but need not give the disclosures in tabular format. If the disclosures are provided on the back of a periodic statement, the card issuer shall include on the front of the statement a reference to those disclosures.

(f) *Change in credit card account insurance provider*—(1) *Notice prior to proposed change.* If a credit card issuer proposes to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account, the card issuer shall send the cardholder written notice of the proposed change not less than 30 days before the change. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the premium rate or other costs that will result from the proposed change;

(ii) Any substantial decrease or limitation in coverage that will result from the proposed change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Substantial decrease or limitation in coverage.* For purposes of this paragraph, a substantial decrease or limitation in coverage is a decrease or limitation in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum installment benefit, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(3) *Notice when change in provider occurs.* If a proposed change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the premium rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(4) *Combined notification.* The notices required by paragraphs (f) (1) and (3) of this section may be provided on or with a periodic statement, and may be combined provided the timing requirement of paragraph (f)(1) of this section is met.◄

Subpart D—Miscellaneous

7. Section 226.28 is amended by revising the first sentence of paragraph (a)(1) and adding paragraph (d) to read as follows:

§ 226.28 Effect on State laws.

(a) *Inconsistent disclosure requirements.* (1) ►Except as provided in paragraph (d) of this section, state◄ [State] law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the act and the implementing provisions of this regulation are preempted to the extent of the inconsistency. * * *

* * * * *

►(d) *(d) Special rule for credit and charge cards.* State law requiremens relating to the disclousre of information in any credit or charge care application or solicitation which is subject to the requirements of section 127(c) of chapter 2 of the act (§ 226.5a of the requirement) or in any renewal notice for a credit or charge card which is subject to the requirements of section 127(d) of chapter 2 of the act (§ 226.9(e) of the regulation)

are preempted. State laws relating to the enforcement of section 127(c) and (d) of the act are not preempted.◄

8. Appendix G is amended by adding G–10A through G–16 to read as follows:

Appendix G—Open-End Model Forms and Clauses

* * * * *

►G–10A Applications and Solicitations Model Form (§ 226.5a(b)).

G–10B Applications and Solicitations Model Form (§ 226.5a(b)).

G–11 Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure of Required Credit Information) (§ 226.5a(d)(1)).

G–12 Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure With Initial Disclosures) (§ 226.5a(d)(2)).

G–13 Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (No Disclosure of Credit Information) (§ 226.5a(d)(3)).

G–14 Open-End Credit Feature Model Clauses (§ 226.5a(e)).

G–15 Change in Insurance Provider Model Form (§ 226.9(f)(1)–(3)).

G–16 Change in Insurance Provider Model Form (§ 226.9(f)(3)).◄

* * * * *

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►G-10A — Applications and Solicitations Model Form

Annual Percentage Rate	_____%
Variable Rate Information	Your annual percentage rate may vary. The rate is determined by _____.
Grace Period For Purchases	• You have _____ days [until _____] [not less than _____ days] [between _____ and _____ days] [_____ days on average] to repay your balance for purchases before being charged a finance charge. [• There is no grace period allowing you to repay your balance for purchases before being charged a finance charge.]
Balance Calculation Method for Purchases	
Membership Fees	[Annual][Membership] fee: $____ per year.] [_____ $____ per year.] [_____ $_____.]
Minimum Finance Charge	$_____.
Transaction Fee for Purchases	$_____.
Transaction Fee for Cash Advances	$_____.
Late Payment and Over-the-Credit-Limit Fees	Late Payment fee: $_____. Over-the-Credit Limit fee: $_____.
[All charges made on this charge card are due and payable when you receive your periodic statement.]	

G-10B — Applications and Solicitations Model Form

Annual Percentage Rate	_____ %
Variable Rate Information	Your annual percentage rate may vary. The rate is determined by _____.
Grace Period for Purchases	• You have _____ days [until _____] [not less than _____ days] [between _____ and _____ days] [_____ days on average] to repay your balance for purchases before being charged a finance charge. [• There is no grace period allowing you to repay your balance for purchases before being charged a finance charge.]
Balance Calculation Method for Purchases	
Membership Fees	[Annual][Membership] fee: $_____ per year.] [_____ $_____ per year.] [_____ $_____.]
Minimum Finance Charge	$_____.
Transaction Fee for Purchases	$_____.
[All charges made on this charge card are due and payable when you receive your periodic statement.]	

- Transaction Fee for Cash Advances: $_____.
- Late Payment Fee: $_____.
- Over-the-Credit-Limit Fee: $_____.

G-11 — Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure of Required Credit Information)

The information about the costs of the card described in this [application] [solicitation] is accurate as of _____, when it was printed. This information may change after the printing date.

To find out what may have changed, [call us at _____.] [write to us at_____
_____
_____.]

G-12 — Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (Disclosure With Initial Disclosures)

To find out about changes in the information in this [application][solicitation], [call us at _____.] [write to us at _____
_____
_____.]

G-13 — Applications and Solicitations Other Than By Direct Mail or Telephone Model Clauses (No Disclosure of Credit Information)

The card is subject to various fees and charges. To get information about these fees and charges, call us at _____ or write to us at _____
_____
_____.

G-14 — Open-End Credit Feature Model Clauses

This charge card may also allow you to obtain credit from a line of credit offered by a different creditor. Our decision about issuing you a charge card will be made independently from the other creditor's decision about allowing you access to a line of credit. Approval by us to issue you a card does not constitute approval by the other creditor to grant you credit privileges.

If we issue you a charge card, you may receive it before the other creditor decides whether to grant you credit privileges. The other creditor will provide you with information about the costs associated with the line of credit before the first extension of credit.

BEST COPY AVAILABLE

G-15 — Change in Insurance Provider Model Form

The credit card account you have with us currently is insured. This is to notify you that we plan to obtain insurance coverage from a different insurer to replace your current coverage.

- If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[- Your premium rate will increase to $____ per ____.]

[- Your other costs for coverage will increase to $____ per ____.]

- Your coverage will be affected by the following:

  [] The elimination of a type of coverage previously provided to you. [____(explanation)____]
  [See _____ of the attached policy for details.]

  [] A lowering of the age at which your coverage will terminate or become more restrictive. [____(explanation)____]
  [See _____ of the attached policy for details.]

  [] A decrease in your maximum insurable loan balance, maximum installment benefit, maximum number of payments, or other decrease in the dollar amount of your coverage or benefits. [____(explanation)____]
  [See _____ of the attached policy for details.]

  [] A restriction on your eligibility for benefits. [____(explanation)____]
  [See _____ of the attached policy for details.]

  [] A restriction in the definition of "disability" or other key term of coverage. [____(explanation)____]
  [See _____ of the attached policy for details.]

BEST COPY AVAILABLE

[ ] The addition of exclusions or limitations broader or other than those under the current coverage. [_____ (explanation)_____]
[See _____ of the attached policy for details.]

[ ] An increase in the elimination (waiting) period or a change to non-retroactive coverage. [_____ (explanation)_____]
[See _____ of the attached policy for details.]

[• The name and mailing address of the new insurer providing the coverage for your account will be:

_____

_____

_____]

G-16 — Change in Insurance Provider Model Form

We have changed the insurer providing the coverage for your account. The new insurer's name and mailing address is:

_____

_____

_____.

(A copy of the new policy or certificate is attached.)

You may cancel the insurance for your account.◄

BILLING CODE 6210-01-C

By order of the Board of Governors of the Federal Reserve System, December 19, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-29457 Filed 12-22-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 88-1342]

Regulatory Capital Requirements for Insured Institutions

Date: December 15, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board (the "Bank Board" or "Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is today proposing to amend its regulations establishing capital requirements for institutions whose accounts are insured by the FSLIC ("insured institutions," "thrift institutions," or "institutions"). The proposal is intended to continue the Board's efforts to ensure that the thrift industry is adequately capitalized in order to protect the FSLIC and to ensure the financial strength of individual institutions, as well as the industry as a whole. The proposed rule is, to a greater extent than the Board's current capital regulations, risk-based, with the goal of better ensuring that institutions engaging in activities that are riskier to the institution and ultimately to the FSLIC as insurer are supported by adequate capital. It is modeled, in many respects, on the capital requirements recently proposed by the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively the "federal banking agencies"or "federal banking regulators"). The proposal also addresses additional issues affecting capital and an institution's risk to the FSLIC, including interest-rate risk and collateralized borrowing.

DATE: Comments must be received on or before March 23, 1989.

ADDRESSES: Send comments to: Director, Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board,1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331-4592; Carol Larson, Accounting Fellow, (202) 331-4577; John Robinson, Director, Policy Analysis, (202) 331-4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; Donald Bisenius, Director, Financial Analysis Division, (202) 377-6759, Office of Policy and Economic Research; Deborah Dakin, Regulatory Counsel, (202) 377-6445; Theresa Stark, Attorney, (202) 377-7054; Karen Solomon, Associate General Counsel, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

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Appendix B—Sample Capital Requirement Calculation

I. General Background

A. Introduction

The Board's current minimum capital regulation, 12 CFR 563.13, is primarily a liability-based requirement that contains limited provisions addressing credit risk, interest-rate risk, and off-balance-sheet risk. The Board's current definition of regulatory capital, 12 CFR 561.13, establishes the elements that make up thrift capital. Today, the Board proposes a risk-based capital requirement, similar in many respects, to that proposed by the federal banking agencies in March of this year. The proposal addresses two major issues: (1) How much capital should be required for thrift institutions; and (2) what should count as capital for thrift institutions.

The Board is proposing to amend its capital regulations at this time for several reasons. First, Section 406 of the Competitive Equality Banking Act of 1987 ("CEBA") instructed the Board to establish capital requirements for thrifts consistent with the purposes of the capital requirements established by the federal banking agencies pursuant to section 908 of the International Lending Supervision Act of 1983 ("ILSA"). The federal banking agencies have proposed guidelines significantly modifying how certain risks will be taken into account in determining banking organizations' capital adequacy. *See* 53 FR 8550 (March 15, 1988). It is appropriate that the Board review these changes and consider them in conjunction with congressional intent as expressed in CEBA.

Second, the Board is concerned that its present capital rule may be unnecessarily complex in some respects without being adequately responsive to risk. Any rule that seeks to calculate a level of capital appropriate to protect the insurance fund against potential losses will be complex if it reflects the business risks involved in operating depository institutions. Today's proposal, like that of the federal banking agencies, advances the effort to distinguish among different risks. The proposal is designed as a reasonable balance between the need for a rule that distinguishes among institutions based on risk and the attendant problems of complexity and imprecision.

If the rule is adopted as proposed, thrifts without large amounts of collateralized borrowings will have a total capital requirement that, on average, is expected to equal 8% of risk-weighted assets. This requirement may be more or less stringent for individual institutions than the Board's present requirement, depending on the credit and interest-rate risk inherent in an institution's portfolio.

Total capital is the sum of an institution's core equity capital (primarily capital as computed in accordance with generally accepted accounting principles or "GAAP") and its supplementary capital (which

includes elements such as maturing subordinated instruments and general loss allowances). Each institution must hold at least the greater of one-half of its total capital requirement (based upon risk-weighted assets) or 2% of total assets as core equity capital. (*See* Part V) This latter requirement recognizes the fact that no institution is completely risk-free, no matter how minimal its credit and interest-rate risk may be. Establishing a minimum level of core equity capital based on total assets rather than risk assets provides protection against risks that do not necessarily vary with the degree of credit risk or interest-rate risk posed by an institution, such as operating risk, risks of fraud, and liquidity risk.

Under the proposal, institutions will calculate their total capital requirement as the sum of three components: credit risk, interest-rate risk, and collateralized borrowings.

The *credit-risk* component of the capital calculation assigns each asset held by an institution to one of six risk categories based on the amount of credit risk associated with a particular class of assets. The categories range from 0% for U.S. Treasury securities to 300% for equity-risk investments. The book value of assets in each category is multiplied by the weighting factor (from 0% to 300%) assigned to that category. These products are then summed across all risk categories to arrive at total risk-weighted assets. (*See* Part III.B.1)

Off-balance sheet items are included in risk-weighted assets by converting them to an approximate balance sheet "credit equivalent amount" based on a conversion schedule discussed below. These credit equivalent amounts are then assigned to risk categories in the same manner as on-balance-sheet assets and included in risk-weighted assets. (*See* Part III.B.2)

The proposal requires institutions to maintain capital equal to no less than 6 percent of risk-weighted assets for the credit-risk component of their capital requirement.

The *interest-rate risk* component requires an institution to maintain capital equal to fifty percent of the change in value of the institution's equity (the market value of portfolio equity) that would likely result from a change in interest rates of 200 basis points (assuming the change is instantaneous and permanent). (*See* Part III.C)

The *collateralized borrowing* component requires an institution to maintain capital equal to three percent of the institution's liabilities against which a specific asset is pledged. Collateralized borrowings perform much the same function for insured institutions as insured deposits, *i.e.*, serving as a relatively low-cost source of funds. Nevertheless, insured institutions pay no premiums on these liabilities as they do on insured deposits. Because the creditor holding the collateral stands ahead of the FSLIC in the event of the institution's liquidation, these liabilities, unlike subordinated securities, provide no protection to the FSLIC. This component is intended to provide such protection in the form of higher capital. (*See* Part III.D)

The Board intends its risk-based capital proposal to implement Congress' intent that thrift industry capital requirements be consistent with those of the banking industry. The proposal recognizes, however, differences inherent in the industries. The differences between this proposed rule and the guidelines proposed by the banking regulators are most significant in five areas: interest-rate risk, the treatment of intangible assets and equity-risk investments, collateralized borrowings, and the allowable components of capital.

In contrast to the federal banking regulators' proposal, which for the most part defers consideration of interest-rate risk, the Board is proposing to take explicit account of interest-rate risk. The Board considers this the prudent course of action given the volatility of interest rates and the greater vulnerability to such risk of long-term home mortgage lending, an activity in which the thrift industry has traditionally been engaged to a much greater extent than the banking industry.

The Board has also proposed to create credit-risk categories above the 100% level for most intangible assets and equity-risk investments. Intangible assets (including goodwill but not purchased or excess mortgage servicing right) are placed in a 200% risk category. The Board believes that it is more appropriate to treat such intangible assets within the risk-weighting system than to deduct them from capital in most cases, as the federal banking regulators have proposed.

In addition, thrifts have significantly greater investment flexibility than banks in making equity-risk investments. These investments pose a variety of risks beyond the scope of the federal banking regulators' proposal. Equity-risk investments for purposes of this proposal are placed into a single risk category, 300%, although the Board is specifically requesting comments and supporting empirical data to assist it in determining whether to establish additional risk categories for various types of equity-risk investments at lower or higher levels to avoid either unduly increasing the cost of conducting certain low-risk activities, on the one hand, or providing inappropriate incentives to conduct high-risk activities, on the other. The Board is also considering whether the amount of some or all equity-risk investments should be added to an institution's capital requirement so that such investments are funded with capital, or uninsured liabilities outside the insured institution itself, rather than insured deposits.

The Board has also determined to address the risks posed to the FSLIC as insurer of the thrift industry by the use of collateralized borrowings, rather than insured deposits, subordinated debt instruments, or equity, to fund assets. Such non-deposit liabilities, which escape FSLIC deposit insurance premiums, serve to support the same level of asset risk and also may significantly affect the FSLIC's costs in resolving troubled insured institutions. While banks' use of these obligations present the same risks, the bank regulators have not addressed these risks in their capital proposal. The FDIC, however, has recently proposed to address the issuance of "bank notes" by FDIC-insured institutions, which raises some similar concerns, through a regulation that would widen the scope of "deposits" for purposes of assessing FDIC insurance premiums. 53 FR 47723 (Nov. 25, 1988).

With respect to capital components, as a result of statutory requirements and historical differences between the thrift and banking industries, the Board has included in both its current definition of regulatory capital and in this proposal certain components that the bank regulators have excluded. Many of these components are, however, being phased out under the regulations implementing CEBA that the Board promulgated in December 1987.

B. Purpose of Regulatory Capital

Capital in a thrift institution serves two primary purposes. From the Board's perspective, the most important purpose is protection of the FSLIC, the insurer of the accounts of the insured institution. Capital serves this purpose in two ways. In addition to serving as a cushion to absorb losses ahead of the FSLIC, capital acts to reduce the "moral hazard" engendered when the insurer bears most of the cost of a thrift's failure.

Capital requirements impose a responsibility for risk on a depository institution comparable to the customary "deductible" included in most forms of

insurance, *i.e.*, initial losses are borne not by the insurer but by the depository institution's equity and subordinated debt holders, who, through their control of the institution's management, control the actions most likely to lead to insurance losses. Thrift management is more likely to conduct its business appropriately with respect to risks and rewards when the owners bear significant risk. When the owners do bear meaningful risk, the responsibility for the institution's well-being is firmly placed in the hands of the people who have the most to gain and lose from business decisions and who should know their business best—the institution's owners and their agents, management. Capital requirements thus provide the FSLIC with a "cushion" against loss and reduce the incentive for a thrift to take excessive risk with insured deposits.

Ensuring a sufficient cushion against loss for the FSLIC has become increasingly important as thrifts have engaged in new activities with more volatile returns and as the economic environment has become more volatile as well. A greater reliance on capital to provide incentives for prudent management will enable the Board to be flexible in its regulatory responses to economic environments that are rapidly changing and becoming more competitive.

The second major purpose served specifically by equity captial is to enable thrift institutions to absorb losses. An adequate capital cushion can play a significant role in helping thrifts to remain solvent and successful.

While capital is crucial in serving these purposes, it does not solve all problems. There is no substitute for competent management. Strong earnings also provide an important means to absorb losses. The Board views its capital regulation as a key, but by no means the only, tool in fulfilling its statutory mandate as insurer and regulator of the thrift industry.

C. Defining Adequate Capital

The question of what constitutes an adquate level of capital for an insured institution is best answered in relation to the activities of the particular institution. The Board believes that insured institutions with relatively low risk profiles should not be required to maintain the same level of regulatory capital as institutions with high risk profiles. Today's proposal distinguishes among the credit-risk profiles of insured institutions by assigning assets and off-balance sheet items to various risk categories and incorporating the risk represented by those assets and off-balance sheet activities in the calculation of an institution's capital requirement.

Interest-rate risk is an important part of an institution's overall risk profile. An institution may own assets that present a low level of credit risk, but its overall portfolio (assets and liabilities) may render it vulnerable to sudden shifts in interest rates. Institutions with different interest-rate risk profiles will differ in their need, and ability, to absorb losses tied to fluctuations in interest rates. A risk-based capital rule should also take this type of risk into account in determining an institution's minimum capital requirement, especially in the thrift industry, which has traditionally borne significant amounts of interest-rate risk.

The amount of capital that an insured institution should maintain, however, is not the only relevant issue in establishing a regulatory capital requirement. The quality of capital is also relevant. All components that can be included in an institution's capital base do not serve equally well the dual purposes of protecting the FSLIC and providing a cushion to the insured institution. By their nature, some components of capital will provide protection to the FSLIC, but will not protect the institution as a going concern if the principal value of that component is threatened. Moreover, some capital components with debt characteristics will eventually mature, subjecting the institution to refunding risks and the FSLIC to the risk of a precipitous decline in the institution's capital. In order to assure that the FSLIC and an insured institution are both sufficiently protected by a regulatory capital requirement, the Board believes that a capital rule should not only distinguish among various elements of risk contained in an institution's portfolio, but should also distinguish among the quality of protection various components of capital afford the FSLIC.

Insured institutions with different risk profiles face different costs of capital and therefore may need different capital structures. A low-risk institution with stable earnings, for example, may safely use more debt capital than a high-risk thrift—indeed, it may require such a structure to conduct its low risk/low return-on-assets strategy profitably. A regulatory capital requirement should be flexible enough—with regard to both the required level of equity capital and the authorized capital components—to ensure that different institutions with differing risk profiles may adapt their capital structures to the needs of their insurer as well as their own needs.

Although a high capital requirement can provide added protection to the FSLIC and can be a source of stability to an insured institution, an excessive *equity* capital requirement may have accompanying negative consequences. Requiring insured institutions to retain excessively high levels of equity capital relative to their potential earnings or unnecessarily restricting the use of alternative forms of capital could adversely affect the ability of the thrift industry to compete for capital in today's rapidly changing and highly competitive financial environment. Furthermore, an equity capital requirement that is too high could encourage insured institutions to make high-risk investments in attempts to earn sufficient returns to attract and retain capital.

As the Board considers implementing new regulatory capital requirements, its principal goal is to provide an appropriate level of protection to both the FSLIC and to insured institutions by establishing capital standards that will enable insured institutions to withstand the risk of loss attendant to their asset, liability, and off-balance sheet portfolios. It is equally important to the Board, however, that any revisions to the regulatory capital requirement not unnecessarily handicap the industry's ability to attract additional capital. The rule proposed today is designed to strike a balance between these concerns.

II. Statutory and Regulatory Background

A. Prior Reserve, Net-Worth, and Regulatory Capital Regulations

Since 1934, section 403(b) of the NHA has required that institutions establish reserves. Reserves, net worth, and capital are all intended to absorb losses. The statutory reserve requirement and related regulatory requirements have varied in response to the market forces shaping the thrift industry. In the effort to keep up with changes in economic conditions, Congress and the Board have altered minimum reserve requirements, and the Board has worked to improve the base upon which reserve requirements are calculated. This has included an increasing recognition that these requirements should reflect the risks facing, and posed by, thrift institutions.

Early regulatory reserve requirements called for institutions annually to credit a percentage of their net income to reserves until their reserves equaled a stated percentage of their insured accounts.[1] Beginning in 1972, the Board

[1] *See* Board Res. No. 9826, 21 FR 5483 (July 21, 1956).

replaced the net income credit requirement with requirements that were based, at least in part, on risk analysis. In 1972, the Board promulgated a regulatory capital requirement that required institutions to maintain a "regulatory reserve" or "net worth" of an amount equal to the greater of: (1) 5 percent of insured accounts, plus 20 percent of scheduled items, or (2) the amount determined by the so-called Asset Composition and Net-Worth Index. That index assigned minimum net-worth percentages to specific types of assets, including real estate held for development or investment and investments in service corporations.[2]

Over a decade later, in 1985, in reaction to declining capital in the thrift industry, the Board adopted a capital rule that was even more explicitly based on a system of risk incentives and disincentives.[3] Under the rule, an insured institution's minimum net-worth requirement was calculated using a four-factor formula. The four factors included a base factor, an amortization factor, a growth factor, and a contingency factor. The contingency factor was the portion of the formula that added loans sold with recourse to the institution, scheduled items, and equity investments to the calculation of required capital. Under the regulation, the sum of these four factors was adjusted by the amount of the insured institution's "qualifying balance deduction" to determine the required net worth. Qualifying balances included interest-bearing liquid assets, one-half of adjustable-rate mortgages, and fixed-rate liability sources that had remaining terms to maturity of more than five years. The contingency factor attempted to take a measure of credit risk into account, while the qualifying balance deduction attempted to encourage institutions to take steps to minimize their interest-rate risks.

In formulating the current capital regulation in 1986, the Board chose to build on the risk-adjusted structure of the 1985 regulation and to require an increase in the industry's overall level of capital while continuing to restrict over-leveraged growth and imposing incremental capital requirements on potentially high risk assets, *i.e.*, land loans, direct investments, and nonresidential construction loans.[4] The capital level required of an institution under the current regulation consists of a liability component [5] plus a contingency component,[6] from which a maturity matching credit [7] is subtracted. The maturity-matching credit expanded the former qualifying balance deduction in order to reflect more accurately an institution's interest-rate risk exposure as a portfolio measure. The contingency component continued to reflect a measure of credit and equity risk.

B. Recent Developments Affecting Regulatory Capital Requirements

With the passage of the CEBA in 1987, Congress significantly enhanced the Board's statutory authority to impose and enforce capital requirements. Congress granted this authority to provide consistency between the Board's capital requirements and those established by the federal banking agencies pursuant to the ILSA. Section 406 of CEBA authorized the Board to establish minimum capital requirements for federal associations and insured institutions and enabled the Board to alter those requirements with respect to an individual institution as necessary or appropriate. CEBA also authorized the Board to issue directives requiring individual institutions to increase their capital.

On December 22, 1987, the Board adopted regulations to implement this new authority.[8] A new regulation, 12 CFR 563.14, provides for case-by-case minimum capital requirements established upon a determination that the insured institution's capital is or may become inadequate in view of its circumstances. It also sets forth discretionary standards for determining appropriate individual minimum capital requirements.

In early 1986, the federal banking agencies proposed a risk-based capital structure. That proposal recognized broad differences in risks among a banking organization's assets and off-balance sheet items in an effort to fashion a capital requirement that would be more sensitive to the risk profiles of individual banking organizations. Based on comments received in response to that proposal, the federal banking agencies, in conjunction with the Bank of England, published a revised risk-based capital proposal in early 1987. Implementation of that proposal was deferred in order to enlist the participation of additional countries in the risk-based capital agreement.

The federal banking agencies again sought comment on a revised risk-based capital proposal in March 1988. 53 FR 8550 (March 15, 1988). The 1988 proposal was based upon a risk-based capital framework ("the Basle capital framework" or "Basle Agreement") developed by the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Supervisors' Committee"), which was made up of supervisory authorities from 12 major industrial countries. The goals of the federal banking agencies in adopting this proposal were to establish a uniform risk-based capital framework applicable to all federally supervised banking organizations that: (1) Is more sensitive to credit risk factors among the portfolios of different banking organizations; (2) takes off-balance sheet exposures into explicit account in assessing capital adequacy; and (3) minimizes the disincentives to holding liquid, low-risk assets.

In July 1988, the Basle Supervisors' Committee agreed to the final Basle capital framework. The final accord differs only slightly from the proposal. The three federal banking regulators expect to issue their final regulations implementing the Basle Accord by the end of 1988.

III. Risk-Based Capital Requirement

A. Asset Base for Purposes of Determining Capital Requirements

The asset base used in determining an institution's appropriate capital requirement is a critical element of any

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[2] Board Res. No. 72–1415, 37 FR 28579 (Dec. 14, 1972).

[3] 50 FR 6891 (February 19, 1985).

[4] 51 FR 33565 (September 22, 1986).

[5] The liability component requires each institution to hold capital in an amount equal to 6% of its liabilities in excess of the book value of its existing level of liabilities on January 1, 1987. 51 FR 33565, 33577 (September 22, 1986). In essence, all growth of an institution was to be supported by 6 percent additional capital. Institutions were given a number of years (to be determined by industry profitability), however, to achieve a capital level equal to 6% of liabilities. The regulation provided that the amount of capital previously required by the net worth requirement on existing liabilities increase annually by a fraction of the average profitability in the industry during the preceding year until it reached 6 percent.

[6] The contingency component required each institution to hold additional capital against certain risky assets and certain off-balance sheet items. 51 FR 33565, 33579 (September 22, 1986). The regulation classified assets into two categories: fixed-reserve elements and variable-reserve elements. With respect to fixed-reserve elements, there was a 2% requirement on recourse liabilities, a 2% requirement on standby letters of credit, and a 20% requirement on scheduled items. The requirement on a variable-reserve element depended on an institution's actual capital level and its concentration in a specific asset category. The variable-reserve elements included land loans, equity-risk investments and non-residential construction loans. The requirement on equity-risk investments ranged from 0–10%. It ranged from 0 to 4% on land and nonresidential construction loans.

[7] The maturity matching credit allowed an institution to reduce its capital requirement by up to 2% of liabilities for one-year and three-year hedged maturity gaps of less than 15% in absolute value. Gaps between 15% and 25% received credit on a declining scale and gaps above 25% received no credit. An institution could not use this credit to bring its overall requirement below 3% for the first three years that the regulation was in effect and not below 4% thereafter.

[8] 53 FR 363 (January 6, 1988).

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capital proposal. The starting point, of course, is the institution's asset portfolio. In reviewing the structure and level of capital requirements required to support various investments, the Board has also considered the appropriate treatment of debt and equity investments in service corporations and other subsidiaries. Subsidiaries allow an insured institution to engage in certain activities to a greater extent than is possible in the institution itself and to fund those activities from market sources, not insured deposits. The Board's regulations require that insured institutions maintain a "corporate veil" between the institution and its subsidiaries. *See* 12 CFR 563.37, 570.10 (1988). The Board continues to believe that a strong corporate veil is important to the safety and soundness of insured institutions.

Effective January 1, 1989, all insured institutions must report their financial statements to the Board on a consolidated basis, as required by GAAP. 12 CFR 563.23–3. When the Board imposed this requirement as part of its Uniform Accounting Standards regulation,[9] it expressly noted that the appropriate vehicle for determining whether a thrift's capital should be calculated on a consolidated basis for purposes of measuring compliance with the Board's minimum capital regulation would be a rulemaking on that subject. The Board is addressing that issue at this time and will take into consideration comments received on this issue in that earlier rulemaking.

The Board has reviewed three methods of treating the thrift's investment in subsidiaries for purposes of computing the institution's minimum capital requirement. Currently, thrift institutions may account for their investments in their majority-owned subsidiaries, other than finance subsidiaries, using the *equity method* of accounting. Under this accounting method, the thrift's investment in its subsidiaries is reflected as an asset on its books. The amount of the investment is increased to recognize the institution's proportionate share of the subsidiary's earnings, while it is decreased to reflect the institution's proportionate share of the subsidiary's losses and any dividends declared. The thrift is required to hold capital against this asset (the investment in its subsidiary).

Banking regulators have generally consolidated the assets and liabilities of a bank and its majority-owned subsidiaries (except domestic depository institutions) in applying capital requirements. Under the *consolidation method*, the parent institution must maintain capital against both its assets and the assets of its subsidiaries. The parent's investment in its subsidiaries and other intercompany transactions and balances are subtracted from the calculation of assets and the subsidiary's equity attributable to the parent does not count as part of capital.

A third method for treating an institution's investment in its subsidiaries for capital adequacy purposes is to exclude the investment from the institution's total assets and from capital—the *exclusion method*. Under this method, an institution's investment in subsidiaries (including loans and advances to subsidiaries) is added to the capital requirement of the institution and not counted in the assets of institution. This method requires institutions to provide capital for their investment in subsidiaries on a dollar-for-dollar basis with their own capital rather than leveraging that investment with insured deposits and permits only the amount of leverage in the subsidiary itself that will be supported by the uninsured lenders.[10]

The Board proposes to apply the consolidation method to investments by thrifts in subsidiaries and service corporations and to the assets and liabilities of such subsidiaries and service corporations in applying capital requirements. (Consistent with the consolidation method and with the proposed treatment of collateralized borrowings in Part III.D, any collateralized borrowings or other obligations issued by the subsidiary that are senior to the claims of the parent would also be subject to the three percent capital requirement explained in the Part.) As discussed in Part III.B.1.c, the Board is also considering, as an alternative, whether to adopt the exclusion method for investments by thrifts in equity-risk investments and in subsidiaries and service coporations that themselves engage in equity-risk investments.

The proposed treatment would eliminate the need for the optional consolidation provisions in the current capital requirements (with respect to determining the equity-risk investments considered in the capital requirement) because any and all risks posed by subsidiaries in this regard will be sufficiently covered by the risk-weighting of the asset or off-balance sheet item. It would also eliminate the need for the separate treatment of securities issued through subsidiaries that is contained in 12 CFR 563.13–2 (1988). Under current § 563.13–2, an institution must include the amount of securities issued through a subsidiary in the calculation of its total liabilities for purposes of computing its regulatory capital requirement unless the securities are collateralized by assets that have substantially the same duration as the securities issued or the securities were remitted in exchange for a liability issued by the parent institution what was otherwise included in the parent's total liabilities for capital calculation purposes. Under the Board's proposal, application of the risk-weighting scheme to the assets of the finance subsidiary would take into account the relatively low-risk nature of its assets, making it unnecessary and, in fact, inappropriate to retain separate treatment for finance subsidiaries. To the extent that the subsidiary's assets and liabilities expose the parent to risk resulting from maturity mismatch, the interest-rate risk component of the proposed rule will figure such risk into the calculation of the parent institution's capital requirement. Therefore, the Board proposes to delete § 563.13–2 from its rules if the rule proposed today is adopted.

B. Credit Risk

1. On-Balance Sheet Assets

a. Discussion of risk weights for on-balance sheet assets. Today's proposal sets forth a system of risk-weighted assets similar to that proposed by the federal banking regulators. Assets, in general, will be assigned to risk categories based on the degree of credit risk associated with the obligor or

[9] Board Res. No. 87–1293, 53 FR 324 (January 6, 1988).

[10] The federal banking agencies' proposed guidelines indicated that, in considering the capital requirements of the banking organizations they regulate they may, on a case-by-case basis, deduct investments in subsidiaries from capital. *See* 53 FR 8569 (March 15, 1988) (OCC); 8574 (Federal Reserve Board); 8582 (FDIC). Such deductions would most likely be in the case of non-banking subsidiaries, but might also occur with other subsidiaries. The Federal Reserve Board intends to deduct from the capital of bank holding companies the organization's equity and debt capital investments in certain subsidiaries, such as securities, affiliates, for purposes of determining capital adequacy, although the investment would be consolidated for reporting purposes. This would be "an element of the firewall that is designed to insulate bank subsidiaries of a holding company from their securities affiliates and to ensure that a bank holding company maintains a level of capital, exclusive of the resources invested in the securities affiliate, that is sufficient to support their bank and other nonbank subsidiaries." This treatment has been applied in recent orders approving applications of certain banking organizations to engage, through subsidiaries, in securities underwriting activities. The Federal Reserve Board believes such treatment furthers the functional regulation of such subsidiaries.

nature of the obligation. The categories include risk-weights of 0, 20, 50, 100, 200, and 300 percent.

The 100 percent category is the standard risk category and contains most types of loans to private-sector entities. Assets not specifically included in another category fall within this category. Items that are less risky than a "standard risk asset" because of the traditional financial strength of the obligor, the default history of the asset type, or the guarantee or security backing the asset are assigned to a lower risk category. This reflects the Board's determination, mirroring in many ways the implicit determinations made by the market, that such assets present lower risks. Items that are more risky than a standard risk asset, such as most intangible assets, including goodwill, and real estate owned ("REO"), or that otherwise present a wider range of potentially higher risks, such as equity-risk investments, are assigned to a higher risk category.

Risk-weighted assets are determined by taking the book value of each asset and multiplying it by the risk weight assigned to it.[11] The resulting values are added together to arrive at total risk assets. The amount of total risk assets is the amount against which the minimum capital requirement is applied.[12]

This proposal uses the risk-weighting approach that was adopted by the international banking regulators in the Basle Agreement and has since been proposed by the federal banking regulators. Residential mortgages and mortgage-backed securities have generally been assigned risk-weights of 50% and 20%, respectively. The Board recognizes that the relationship between the risks of these investment forms may be different from the 50/20 or 50/100 ratios implied by these risk weights and that a significantly different relationship may result in unintended incentives to hold one investment type rather than the other. The Board is proposing these risk weights in part to maintain competitive equality between the thrift industry and the banking industry. It solicits comments on the appropriateness of the specific weights and the possible unintended consequences and seeks data that may provide assistance in analyzing the appropriate relationship.

b. *Summary of risk weights for on-balance sheet assets.*

0%

—Cash
—Full faith and credit obligations (except mortgage-backed securities) of the U.S. Government or its agencies
—Items collateralized by cash

20%

—U.S. Government-sponsored agencies' obligations
—Qualifying mortgage-related securities guaranteed by U.S. Government agencies, government-sponsored agencies, or of equivalent high quality
—Claims on and balances due from Federal Home Loan Banks and Federal Reserve Banks
—Stock of Federal Home Loan Banks, Federal Reserve Banks, and other U.S. Government corporations
—Bonds issued by the Financing Corporation
—General obligations of state and local governments
—Federal funds sold
—Cash items in the process of collection

50%

—Public purpose revenue bonds
—Qualifying mortgage loans
—Non-high quality mortage-related securities collateralized by qualifying mortgage loans

100%

—All assets not classified elsewhere

200%

—All intangible assets except purchased or excess mortgage servicing rights
—Real estate owned

300%

—Equity-risk investments

c. *Credit-risk-weight assignments—Category 1—Zero Percent.* This category, presenting, in the Board's estimation, a nearly non-existent level of credit risk, includes:

—cash owned and held in all offices of an institution or in transit;
—securities issued by the U.S. Government or its agencies (direct obligations), all other claims (including leases) on the U.S. Government or its agencies, portions of all loans and other assets that are collateralized [13] by securities issued or guaranteed by the U.S. Government or its agencies, where the obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government. Today's proposal includes notes and obligations issued by the Federal Savings and Loan Insurance Corporation in this category.[14] This category does *not* include Government National Mortgage Association ("GNMA") mortgage-related securities or guarantees, which are included in Category 2;
—items collateralized by cash or cash equivalents, such as a loan secured by a deposit in the institution.

Category 2—20 percent. This category includes items viewed as presenting a significantly lower level of risk than standard risk assets. It includes:

—Claims on, or portions of claims guaranteed by, U.S. Government-sponsored agencies and portions of claims collateralized by securities issued or guaranteed by U.S. Government-sponsored agencies. Only that portion of a loan or other asset that is guaranteed or collateralized by a U.S. Government-sponsored agency will be included in this category; the remainder will be assigned to the risk category otherwise appropriate

[11] Accounts related to an asset should be treated in a way that appropriately considers the credit risk of the entire position. For example, a mortgage portfolio may have at least the following related accounts: loans-in-process, specific allowances, general allowances, deferred loan fees, premiums and discounts. The mortgage portfolio would be included in the appropriate risk category without reducing it for the related loans-in-process account because this would result in capital's being provided against the entire loan commitment rather than only the net disbursed amount. The portfolio would be reduced for specific allowances associated with the portfolio because they represent previously recognized credit losses. The portfolio would not be reduced for any general allowances as general allowances are included in the components of capital available to satisfy the minimum capital requirement; the general allowances would be counted twice if they also reduced the asset before risk-weighting the asset. Because deferred loan fees, in effect, represent an adjustment to the investment in the portfolio, they reduce potential credit risk and thus should be included with the portfolio in the appropriate risk category. Premiums and discounts represent an adjustment of the portfolio that affects the total potential credit risk and thus should be included with the portfolio in the appropriate risk category.

[12] Ownership interests in investment companies such as mutual funds, are assigned risk weights based upon the composition of the investment company's underlying portfolio of assets. The thrift's ownership interest in the entire portfolio is assigned to the risk category to which the highest risk asset in the portfolio would be assigned. For example, in the case of portfolios that contain any asset that would be characterized as an equity-risk investment if held by an institution, the thrift's entire ownership interest in that portfolio will be treated as an equity-risk investment.

[13] There are two general approaches for establishing the collateral requirements for rating-agency purposes: cash-flow analysis and market-value analysis. Cash-flow analysis is based primarily on the timing of cash flows while market-value analysis requires that an estimate be made on the market-value of the cash-flow. Instruments whose structure and ratings are based on cash-flow analysis will be considered fully collateralized to the extent they maintain their rating.

[14] Since a major purpose of regulatory capital is protection of the FSLIC, assets already guaranteed by the FSLIC pose no additional risk to the FSLIC. Therefore, assets that are acquired in FSLIC-assisted transactions for which FSLIC provides full capital loss and yield maintenance agreements will be treated as assets guaranteed by the U.S. Government for purposes of this risk-based proposal.

to the obligor. The degree or extent of collateral backing is determined by methodologies prescribed by the major rating agencies. U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government, such as the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Bank System, and the Financing Corporation ("FICO"). This category does *not* include equity securities of government-sponsored agencies, such as FHLMC and FNMA, which are assigned to Category 4.

—mortgage-related securities issued or guaranteed by GNMA;

—high quality mortgage-related securities. "High quality mortgage-related securities" are defined as mortgage-related securities qualifying under section 3 (c)(41) of the Securities Exchange Act of 1934 and are commonly referred to as "SMMEA securities." Such securities either represent ownership of one or promissory notes or certificates of interest or participation in such notes secured by first liens on residential real estate which were originated by a qualified mortgage or are secured by such promissory notes or certificates of interest or participations and provide by their terms for payments on such notes, certificates, or participations. Mortgage-related securities with residual characteristics are not included in this category, but fall within Category 4.

—claims on and balances due from Federal Home Loan Banks and Federal Reserve Banks;

—stock of Federal Home Loan Banks, Federal Reserve Banks, and other U.S. Government corporations, but not of U.S. Government-sponsored corporations, which are included in Category 4. The stock of these Banks and other U.S. Government corporations is included in Category 4. The stock of these Banks and other U.S. Government corporations is included in this category because it is redeemable at par.

—general obligations and claims on or guaranteed by the full faith and credit of state and local governments. General obligations of states and political subdivisions include loans, leases and securities such as notes, bonds, and debentures (including tax warrants and tax-anticipation note). Because such general obligation claims are secured by the full faith and credit to the local taxing authority, they are assigned to a lower risk-weight category than revenue bonds issued by state or local governments, which are repayable with revenues from the specific projects financed and are included in Category 3. The Board requests comments on whether it would be useful or appropriate to take ratings of these obligations by rating agencies into account in determining appropriate risk weights.

—balances due from domestic depository institutions. Claims on depository institutions consist of balances due from such institutions, including demand deposits and other transaction accounts, savings deposits, time certificates of deposit, other interest-bearing deposits, and federal funds sold. Among other items considered to be claims on depository institutions are loans to such institutions, including overdrafts and term federal funds, holdings of the institution's own discounted acceptances for which the account party is a depository institution, holdings of bankers acceptances of other depository institutions, and securities issued by depository institutions, except those that qualify as capital (which are included in Category 4 or Category 6, as appropriate; subordinated debt securities would fall within Category 4, for example, while equity securities would fall within Category 6).

—bonds issued by the Financing Corporation;

—cash items in the process of collection.

The Board is proposing to treat all mortgage-related securities the same regardless of issuer so long as the issuer is a U.S. Government agency or corporation or a U.S. Government-sponsored corporation, or the mortgage-related security is of high quality. According to a recent study by the General Accounting Office, privately issued collateralized mortgage obligations ("CMOs") backed by agency collateral yield between 10 and 20 basis points more than similar CMOs issued directly by the agencies. Privately issued CMOs backed by whole mortgage loans yield approximately 50 basis points more than agency issues. Based upon the information available to it at this time, the Board does not wish to distort this market or otherwise hinder the development of private secondary markets by assigning disparate risk weights to these securities.

The Board contemplates treating the credit risk of interest-only and principal-only portions of mortgage-related securities in the same manner as that it treats the underlying securities, since their credit-risk attributes are the same as those of the underlying securities. Their interest-rate-risk attributes are treated under the interest-rate-risk component. (*See* Part III.C) It specifically requests comments on the appropriate credit risk-weighting of interest-only and principal-only interests in mortgage-related securities and other derivative securities. Additionally, it requests comments on the appropriate scope and definition of the term "residual characteristics." The Board anticipates addressing these components in its final capital rule.

The Board recognizes that the placement of GNMA mortgage pools of FHA/VA guaranteed loans in the 20% risk-weight category will result in greater capital being required against such pools than against the underlying FHA/VA guaranteed loans (that are placed in the 0% risk-weight category). This may be inconsistent as GNMA pools of FHA/VA guaranteed loans arguably have a lower credit risk than whole FHA/VA guaranteed loans without the GNMA guarantee of timely payment. The Board requests comments on this anomaly.

While the Board is proposing to place balances due from domestic depository institutions in the 20% risk-weight category, it is also considering placing insured deposits in the 0% risk-weight category and the remainder of balances due from domestic depository institutions in the 100% risk-weight category. The Board requests comments on the appropriate risk-weighting of balances due from domestic depository institutions. Further, the Board requests comment on the appropriate risk-weight category for cash items in the process of collection and claims and balance due from Federal Home Loan Banks and Federal Reserve Banks.

Category 3—50 percent. This category contains assets considered to present a moderate level of credit risk as compared to standard risk assets. It includes:

—public purpose revenue bonds or similar obligations, including loans and leases, that are obligations of state or local governments, but for which the government entity is committed to repay the debt with revenues from the facilities

financed, rather than from general tax funds;
—permanent 1–4 family residential first mortgage loans with a loan-to-value ratio not exceeding 80 percent (at origination), unless backed by private mortgage insurance provided by an investment grade issuer approved by the FHLMC and FNMA ("qualifying mortgage loans"). This weighting assignment is generally consistent with the experience of the thrift industry with this asset, the lower default rates on residential mortgages as compared to other types of assets, and the international agreement among banking regulators. Current indications are that the banking regulators will also place these loans in the 50% category when their final guidelines are issued. The Board will continue to review this category particularly closely. It seeks specific comment with supporting empirical data to assist it in determining whether this weighting assignment should be raised or lowered;
—other mortgage-related securities backed by qualifying mortgage loans, excluding those mortgage-related securities with residual characteristics, which are included in Category 4.

Category 4—100 percent. All assets not classified elsewhere are assigned to this category, which comprises standard risk assets. This category includes:
—consumer loans;
—commercial loans;
—home equity loans;
—one-to-four family residential loans not qualifying under Category 3;
—multi-family mortgage loans;
—residential construction loans;
—land loans and nonresidential construction loans, except those qualifying as equity-risk investments pursuant to 12 CFR 563.9–8(b)(6);
—industrial development bonds and similar obligations issued by state or local governments for the benefit of a private party or enterprise where that party or enterprise, not the government, is committed to pay the principal and interest;
—instruments issued by other depository institutions that qualify as capital, except those that would be classified as equity-risk investments purusant to 12 CFR 563.9–8(b)(2);
—private-issue debt securities;
—fixed assets;
—purchased and excess mortgage servicing rights;
—mortgage-related and other derivative securities with residual characteristics; and
—stock of United States government-sponsored corporations that would not be classified as an equity-risk investment pursuant to 12 CFR 563.9–8.[15]

Category 4 will include all assets that are not specifically included in another category or specifically excluded from risk weighting. In this regard, the Board anticipates that the Office of Regulatory Activities will issue guidelines that will clarify the treatment of items within each category.

Category 5–200 percent. This category includes all intangible assets, except purchased or excess mortgage servicing rights, and an institution's REO.

The most common intangible asset is goodwill, which is generally created in an acquisition accounted for as a purchase. It represents a premium the acquiror pays over the fair value of the net identifiable tangible and intangible assets acquired. In some cases, this premium is "paid" by the assumption of liabilities in excess of assets by the acquiror. Following the acquisition, goodwill is amortized over some future period. At any point in time, then, goodwill represents the unamortized premium paid at the time of a prior transaction. It is difficult to estimate the value that an intangible asset such as goodwill provides to an institution or the FSLIC due to the difficulty inherent in assessing its future benefit. For example, if the institution's condition has deteriorated since the acquisition such that it is apparent the premium paid was excessive, the value of goodwill may be overstated. Conversely, if the source of goodwill were acquisitions that have been substantially amortized over the years, its current value may be understated.

Real estate owned by an institution, most often acquired through foreclosure, or real estate is foreclosure, is of particularly uncertain value. Such assets are often concentrated in economically depressed areas. In some instances, the original appraised value of such real estate before foreclosure may not accurately reflect its current market value. The asset may also have declined in value since foreclosure.

It is difficult to estimate the protection such assets provide to an institution or the FSLIC because of the difficulty inherent in assessing their value. While the Board believes that a 200 percent risk-weight offers the FSLIC protection against the variability of the values of these assets, it requests public comment on the appropriate risk-weighting of these assets, with any supporting data.

In proposing the assignment of goodwill to a risk category of 200 percent, the Board is attempting to strike an appropriate balance between two opposing views of goodwill. The first is represented by the Board's current treatment of goodwill as a reasonable estimate of the franchise value of certain assets acquired in past transactions that were market-based transactions. The second is that implied in the banking regulators' proposal to deduct goodwill from capital (after the transition period) because its value is highly uncertain, especially in situations where an institution is approaching insolvency. Placement of goodwill in a 200 percent risk category recognizes both that it has relatively less certain worth as protection to the FSLIC and that it is an asset that carries some value.

The Board is also considering another alternative treatment of goodwill. This alternative would deduct goodwill from core equity capital, but include it in supplementary capital. This treatment would also recognize that goodwill likely represents some value to the institution, but that the value is likely to be less certain as protection for the FSLIC in the event of insolvency and thus should be considered only as a contribution to supplementary capital.

The Board requests specific comments on the appropriateness of its proposed treatment of goodwill, as well as alternative treatments. Additionally, the Board requests comments on whether some or all of the goodwill acquired through a FSLIC-assisted acquisition of an insured institution or institutions prior to the effective date of the rule should be placed in a different risk category. The Board notes that the federal banking agencies have indicated that they may not treat goodwill acquired through supervisory mergers in the same manner as other goodwill. *See* 53 FR at 8569, 8572, 8581.

Category 6–300 percent. This category includes all equity-risk investments, as defined at 12 CFR 563.9–8(b). Because banks are generally prohibited from investing in equity securities and from taking equity positions in real estate, the

[15] The Board is considering whether its equity-risk investment regulation should be modified to treat all stock of U.S. government-sponsored corporations similarly. Currently, stock of the Student Loan Marketing Association is considered an equity security for purposes of that regulation, while stock of FNMA and FHLMC is not. *See* 12 CFR 563.9–8(b)(2)(i), (d)(1)(iv). If the Board determines that such investments present similar risks to other equity securities and amends its equity-risk investment regulation accordingly, items added as equity-risk investments would fall within Category 6.

banking regulators have not needed to address such investments in their risk-weighted proposals. These assets, which include equity securities and real estate, present a wide range of credit risks. A "blue chip" equity security is often treated by the market as less risky than a high loan-to-value nonresidential construction loan. Both may be more or less risky than a standard commercial loan. Today, the Board is proposing to place equity-risk investments into the 300% risk category. This effectively means that for every $100 invested in equity-risk investments, a thrift must maintain $18 in capital for credit risk, in comparison to $6 in capital for a standard risk asset.

The Board's equity-risk investment regulations, 12 CFR 563.9–8, establishes thresholds, based upon an institution's capital, for determining whether an institution needs supervisory approval for engaging in additional equity-risk investments. The Board's current capital regulation also requires additional capital, in the from of a contingency component, for thrifts whose portfolios reflect a high concentration of equity-risk investments, land loans, and nonresidential construction loans. 12 CFR 563.13(b)(4). The current capital regulation does not attempt to address or in any way evaluate all equity-risk investments in a thrift institution's portfolio. The equity-risk regulation itself only deals with new equity-risk investments.

In the context of a capital rule that attempts to assign risk weights for the credit risks accompanying all assets in a thrift's portfolio, it is appropriate to consider all equity-risk investments, regardless of when they were made, just as all other investments are evaluated regardless of when they became part of the thrift's portfolio. Indeed, the FSLIC's experience in liquidating institutions with equity-risk investments has demonstrated that equity-risk investments entered into before the Board promulgated its equity-risk investment regulation in 1985 have been responsible for substantial losses to the FSLIC. Today's proposal therefore does not "grandfather" existing equity-risk investments.

Although the Board today is only proposing to assign equity-risk investments to a single credit-risk category, 300%, for purposes of its capital regulation, it is considering whether and how to differentiate among equity-risk investments for purposes of assigning some types to higher or lower risk categories. The Board is currently conducting a study of equity-risk investments pursuant to section 1203 of CEBA. It anticipates evaluating data developed in that study, as well as Board and FSLIC experience in this area, in determining whether to distinguish among the credit risks presented by various types of equity-risk investments.

The Board is also considering as an alternative applying the exclusion method discussed earlier in this section to all equity-risk investments, including investments by insured institutions in subsidiaries and service corporations that engage in equity-risk investments as defined in 12 CFR 563.9–8. A thrift's guarantees of the obligations of its subsidiaries and service corporations that are engaged in equity-risk investments would also be added to its capital requirement. This approach would help to insulate the thrift from the obligations of potentially higher risk subsidiaries and to ensure that the thrift maintains adequate capital to support its activities, exclusive of any investment in such subsidiaries. It would simultaneously provide thrifts with the flexibility to conduct lower risk equity-risk investments on a more highly leveraged basis in their subsidiaries.

The variability of risk associated with activities identified under the equity-risk investment rule may be sufficiently great such that it would be inappropriate to specify risk categories for such activities. Assigning such categories could also have the perverse result of discouraging insured institutions from making relatively lower risk investments and encouraging higher risk investments as a result of the maximum leverage requirements that such risk-weighting would impose. As a result, a market-based determination of leverage through the exclusion method might be the most appropriate method of allowing thrifts to exercise their investment authority while protecting the FSLIC insurance fund by requiring that such investment be made with the thrift's excess capital, rather than insured deposits.

The Board is also considering treating mortgage-backed securities with residual characteristics, corporate debt securities that are below investment grade ("junk bonds"), other similar investments, and equity securities of U.S. Government-sponsored corporations such as FHLMC and FNMA in the same manner as equity-risk investments for purpose of capital requirements. These investments also may present uncertain risk to thrift institutions.

The Board therefore requests comments, with supporting empirical data, on (1) whether equity-risk investments should be considered in a credit-risk-weighting system at all; (2) whether and at what levels additional credit-risk categories should be assigned for various types of equity-risk investments; (3) how various types of equity-risk investments should be assigned to risk categories; and (4) whether other investments such as those with residual characteristics and "junk bonds" should be either placed into a higher than 100% risk category or excluded from a credit-risk-weighting system.

2. Off-Balance Sheet Items

a. *Discussion of conversion factors for off-balance sheet items.* The Board is also proposing to incorporate off-balance sheet items in its calculation of risk-weighted assets, using a method similar to that proposed by the federal banking regulators. As discussed in Part II, the Board's current capital regulation requires additional capital to support certain off-balance sheet liabilities as part of its contingency component.

As proposed, risk weights for off-balance sheet items would be determined by a two-step process. First, the notional principal, or face value, amount of the off-balance sheet item is multiplied by a credit conversion factor to arrive at a balance sheet "credit-equivalent amount". The conversion factor is based upon the relative likelihood that a credit obligation will result from the commitment. The credit-equivalent amount is assigned to the appropriate risk category depending upon the obligor (*e.g.*, to the 20% risk category if the obligor or guarantor is a depository institution or a Federal Home Loan Bank or the 100% category if the obligor is a private party.)

The Board has not attempted to include in the listing below all potential off-balance sheet items. Instead, it has listed those items more commonly found in thrift institutions' portfolios. The Board will review additional off-balance sheet activities as they are undertaken by thrift institutions and generally expects to follow the federal banking regulators' approach with respect to those items.

The Office of Regulatory Activities will issue guidelines clarifying the treatment of off-balance sheet items as necessary.

b. *Summary of conversion factors for off-balance sheet items.*

Group A—100%

—Direct credit substitutes, including standby letters of credit

Group B—50%

—Transaction-related contingencies

—Unused commitments not falling in the 0% conversion factor category

Group C—20%

—Short-term, self-liquidating, trade-related contingencies, including commercial letters of credit

Group D—0%

—Unused commitments that are unconditionally cancelable and that the thrift will review before extending

Group E—Interest Rate Contracts

c. *Conversion factors—Group A—100 Percent.* Direct credit substitutes are assigned to Group A. Direct credit substitutes are any irrevocable obligations in which a thrift has essentially the same credit risk as if it had made a direct loan to the obligor or account party. Direct credit substitutes include guarantees (or guarantee-type instruments) backing financial claims, such as outstanding securities, loans, and other financial obligations including those on behalf of subsidiaries. Direct credit substitutes also include standby letters of credit, equivalent obligations, and forward agreements that are legally binding agreements (contractual obligations) to purchase assets with certain drawdowns at specified future dates.

Asset sales with recourse, if not already included on the balance sheet, are treated in the same way as direct credit substitutes. Such sales will be treated as if they did not occur. Capital will be required against the full amount sold for assets sold with recourse, even if recourse is for less than the full amount. The only exception to this treatment occurs when the amount of recourse liability retained by an institution is less than the capital requirement for credit-risk exposure; in such instances, capital must be maintained in an amount equal to the amount of credit-risk exposure retained.[16]

Retention of the subordinated portion of a senior/subordinated loan participation or package of loans will be treated in the same manner as an asset sale with recourse. The minimum amount of capital required against loans sold to an institution with full recourse is determined by the type of obligor.

Group B—50 percent. This group includes transaction-related contingencies and unused commitments not falling within Group D. Transaction-related contingencies include bid bonds, performance bonds, performance standby letters of credit, warranties, and standby letters of credit related to particular transactions. These instruments are different from financial guarantee-type standby letters of credit in that they concern performance of nonfinancial or commercial contracts or undertakings. These instruments generally involve guaranteeing the account party's obligation to deliver a service or product in the conduct of its day-to-day business.

A commitment is defined as any arrangement between an institution and its customer that legally obligates the institution to extend credit to the customer in the form of loans or leases. It also includes such undertakings as overdraft transactions. Normally, a commitment involves a written contract or agreement, a commitment fee, or some other form of consideration.

Commitments are included in risk-weighted assets regardless of whether they contain "material adverse change" clauses or other similar provisions. Commitments with material adverse change clauses are included in this category (rather than in a category carrying a smaller conversion factor) because they represent obligations that may involve risk if an institution funds the commitment before the customer's condition deteriorates, or before the deterioration is recognized. Moveover, while the Board does not wish to discourage the use of material adverse change clauses, some court decisions suggest that the presence of a material adverse change clause cannot necessarily be relied on to relieve an institution of its obligations pursuant to a commitment.

Only the unused portion of a commitment is treated as an off-balance sheet item. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet; such amounts, therefore, will not be included as commitments for purposes of computing the risk-asset ratio.

Group C—20 percent. Group C includes short-term, self-liquidating, trade-related contingencies that arise from the movement of goods, including commercial letters of credit and other documentary letters of credit collaterialized by the underlying shipments.

Group D—Zero Percent. This category includes unused commitments that an institution: (1) Can, at its option, unconditionally (without cause) cancel; and (2) will actually review to determine whether or not it should be extended. Facilities that, at the institution's option, are unconditionally cancelable at any time are not considered to be commitments, provided that the institution makes a separate credit decision before each drawdown under the facility. Unused retail credit card lines are deemed to fall under this group if the thrift has the unconditional option to cancel the card at any time.

Group E—Interest Rate Contracts. Interest-rate contracts, including interest-rate swaps, futures, over-the-counter options, interest-rate options purchased (caps, floors and collars), and forward rate agreements are converted to credit equivalents by utilizing the "current exposure method." Under the current exposure method, the credit equivalent is the total replacement cost of contracts at the end of the reporting quarter. The resulting credit exposure is risk-weighted at 50 percent or lower, depending on the obligor.

C. Interest-Rate Risk

The second major component of the proposed capital requirement is interest-rate risk. Traditionally, thrift institutions have assumed significant interest-rate risk because their asset portfolios have been heavily concentrated in long-term, fixed-rate residential home mortgages. By definition, the cash flows resulting from such assets are less adjustable to interest-rate changes than the primarily short-term deposit liabilities thrifts have held. This maturity mismatch caused or contributed to many of the problems in the thrift industry during the early 1980s and remains a significant risk today.

Because interest-rate risk has so strongly affected the financial position of the thrift industry, the Board's capital regulations since 1980 have incorporated measures to take that risk into account. From 1980 until December 1986, for example, thrifts received a credit to their capital requirement for the amount of adjustable-rate mortgages in their portfolios. Additionally, by issuing fixed-rate liabilities with terms to maturity of more than five years, a thrift could receive a "qualifying balance deduction" and reduce its capital requirement by up to ten percent.

In 1987, the Board added to its capital requirements a maturity-matching credit ("MMC") to incorporate the concept of portfolio risk. Under the MMC component of the current regulation, a thrift institution may receive up to a two percentage point reduction in its capital requirement by maintaining, respectively, one and three year cumulative "maturity gaps" of less than twenty-five percent of assets. These maturity gaps are determined by subtracting the dollar value of liabilities

[16] For instance, if $100 million in qualifying mortgage loans, which carry an effective capital requirement of 3%, are sold and the seller retains a 2% recourse liability, the selling institution would be required to hold capital against this off-balance sheet liability of $2 million. If, on the other hand, the recourse is 5%, the requirements would be $3 million ($100 million × .50 × 6%).

maturing or repricing in one and three years from the dollar value of the thrift's assets maturing or repricing over those respective periods. The MMC was intended to provide institutions with an incentive to reduce the sensitivity of their net interest margins and their book net worth to changes in interest rates.

While the maturity-matching credit does provide a measure of protection to the FSLIC, it has not fully addressed all of the Board's concerns with interest-rate risk. First, by only providing a credit, it may not adequately discourage institutions from asset-liability mismatches. Second, by focusing on two specific maturity gaps (one and three years), the MMC does not reflect the total interest rate risk of the thrift's entire portfolio. Excessive long-term gaps, the effects of which ultimately will be reflected in the thrift's interest income, may erode the institution's value long before they are reflected in the maturity gaps covered by the current regulation.

Since the Board last revised its capital regulation, more sophisticated measures of interest-rate risk have been developed to address these and similar concerns. The revisions proposed today are intended to reflect these developments. This will enable the Board to monitor more closely the financial condition of the institutions it supervises and require, where necessary, additional capital to protect against declines in a thrift's fair value because of changes in interest rates. The Board recognizes that any tools used to measure the effects of changes in interest rates and the attendant risks upon a thrift's portfolio are inherently complex.

At this stage, the capital proposals of the federal banking agencies have dealt with interest-rate risk in a more limited way, by assigning higher credit-risk weights to certain long-term assets. The Board believes that the importance of interest-rate risk to the thrift industry requires it to address interest-rate risk explicitly in its capital rule, using the best available tools for analyzing interest-rate risk that are administratively practicable. While the current "state of the art" methodology may be complex, the Bank Board believes that postponing explicit consideration of interest-rate risk to some later rule or using a simpler, but less accurate, methodology would not be in the best interests of either the FSLIC or the thrift industry. It is, however, clearly important that the thrift industry know how to calculate this critical component of its capital requirements.

Today's proposal thus represents the Board's determination (1) to include an explicit interest-rate risk component in its capital requirements; (2) to construct the component so that it will help protect the FSLIC and thrift institutions against excessive interest-rate risk as well as provide incentives for thrifts to manage their interest-rate risk appropriately; and (3) to measure interest-rate risk on a portfolio basis rather than differentiate among a laundry list of assets and liabilities or look only at a particular time horizon. To ensure maximum flexibility in measuring interest-rate risk while assisting the industry in understanding how to calculate this critical component of the capital regulation, the Board will develop and publish for public comment guidelines containing the instructions and calculations that will be used in determining the interest-rate risk component of the capital regulation. This process, which will take place before a final capital rule goes into effect, will afford the public the opportunity to participate in the development of this tool and will afford the Board the maximum flexibility to modify the component as needed.

The proposed interest-rate risk component would be calculated as follows. A discounted cash-flow analysis will be used to estimate the effect on an institution's value (market value of portfolio equity) of an immediate and permanent 200-basis-point movement in interest rates, either up or down. Such a movement in interest rates in a relatively short period could have a significant effect on an institution.

Additionally, such a shift is sufficiently likely to occur so that an institution should hold sufficient capital against such an eventuality. For example, over the last 10 years, the volatility of long-term interest rates—measured as the standard deviation of the percentage change in weekly interest rates on 10-year Treasury Bonds—has ranged from a low of six percent in 1978 to a high of 22 percent in 1986. The average volatility of long-term rates has been 16 percent over the period. Since the 10-year Treasury bond rate over this time period averaged slightly more than 10 percent, this volatility suggests that rate movements of at least 160 basis points are quite probable. Volatility in short-term rate (6-month Treasury bill rates) averaged 24 percent over the 1978–87 period.

Although this proposed rule does not address greater changes in interest rates, institutions should nevertheless manage their interest-rate risk and capital positions in order to address such changes in interest rates. 12 CFR 563.17–6 and Thrift Bulletins published by the Office of Regulatory Activities impose further safety and soundness requirements on insured institutions regarding interest-rate-risk management.

The calculation of interest-rate-risk exposure will be based on an institution's total portfolio of financial assets including off-balance sheet items. The Board recognizes that changes in interest rates can influence the value of nonfinancial assets such as fixed assets. Due to limited information concerning the relationship between interest-rate movements and the changes in the value of nonfinancial assets, the Board is not proposing at this time to include such assets in its calculation of interest-rate-risk exposure. The Board does request comment on the appropriateness of this exclusion and on ways that the influence of interest-rate movement on such assets can be quantified.

The published guidelines will specify the necessary assumptions, including interest rates, prepayments, and the treatment of other option-type instruments. The Board currently contemplates applying a uniform set of assumptions on a nationwide basis, but requests comments on whether regional assumptions would better serve its needs. It also anticipates that the individual minimum capital requirements currently located in § 563.14 could be used in situations where supervisory personnel determine, or an institution could demonstrate that the assumptions used significantly misrepresented the effect of interest-rate shifts on its portfolio.

Once the interest-rate risk exposure is calculated as described above, an institution will be required to maintain capital in an amount equal to fifty percent of the larger of the possible decreases in the market value of the thrift's net equity consequent to the 200 basis point increase or decrease, as protection against interest-rate risk.

The Board is proposing at this time to limit the interest-rate-risk component to fifty percent of the calculated effect in order to minimize the possibility that the Board's industry-wide calculation of interest-rate-risk exposure may significantly overstate an individual institution's actual exposure. Until the Board has developed further experience with such calculations and their effect on capital requirements, it believes that the better course of action is to proceed cautiously. At some later point, experience may dictate a heavier weight on the interest-rate risk determined portion of the risk-based capital rule and less weight on the credit-risk determined portion of the rule

The Board solicits public comment on several specific potential problems that may arise in implementing an interest-rate-risk component and possible solutions. First, this proposal is designed to capture only prospective interest-rate-risk. It does not adjust either the capital position of the institution or its capital requirement for the effect of changes in interest rates that have already occurred, which may have significantly affected the market value of assets and liabilities already in the institution's portfolio and the future income stream that the portfolio will generate. As a result, it is possible for the interest-rate-risk component of an institution's capital requirement to decline at the same time as the value of its portfolio declines due to increasing interest rates.

One solution would be to change (increase or decrease) the institution's capital position or its capital requirement to reflect the change in value of the portfolio as a result of prior interest-rate shifts. Such a change could be reflected fully (100%) or partially (*e.g.*, 30% or 50%). A partial change could be adopted to address, in part, concerns over the volatile nature of interest-rate movements. the Board believes that this type of approach, while potentially more accurate, could entail significant administrative difficulties and reporting burdens. It would also represent a significant departure from GAAP. The Board seeks public comment on both the desirability of and difficulties with such an approach.

Second, the proposed approach necessarily relies on relatively broad assumptions in calculating institution's interest-rate-risk exposure. While the methodology for undertaking discounted cash-flow analysis is well-established, its application in assessing future interest-rate-risk exposure is dependent on a number of assumptions concerning behavior of borrowers, depositors, and investors in a changing interest-rate environment. Historical data relating to such behavior demonstrates that this behavior can vary substantially based on factors such as geography and demographics. As a result, a broad set of assumptions that may be appropriate on average may distort to some degree any individual institution's interest-rate-risk exposure.

Third, the use of broad assumptions and a single interest rate "shock" of 200 basis points leave the calculation of an institution's interest-rate-risk exposure vulnerable to "gaming" in order to minimize the rule's impact for a given amount of risk.

One option for resolving some of these issues is to permit institutions to supply their own assumptions or calculate their own interest-rate-risk exposure. The present maturity-matching credit provides for such an option. The Board, however, is concerned that this approach caused significant problems for the examination and supervision staff in assessing and enforcing institution's minimum capital requirements. Therefore, the Board is not proposing such an option at this time, although it solicits public comment. Instead, the Board intends to rely on § 563.14 to address those few situations where the application of the broad assumptions results in clearly inappropriate requirements.

A further option that the Board considered in this context was the complete reliance on the individual minimum capital requirement to address interest-rate-risk. The Board is not proposing such an approach at this time because it believes that the industry-wide rule should explicitly address interest-rate-risk and because it is concerned that reliance solely on the individual minimum capital requirement could result in either an unreasonably high administrative burden or the effective exemption of a large part of the industry from the interest-rate-risk component in the minimum capital rule.

The Board recognizes that the necessary simplifying assumption in the proposal will make any projections less "precise" than they could be and that recent volatility in interest rates suggests that institutions should be prepared to deal with relatively rapid shifts in interest rates greater than 200 basis points. Nevertheless, the Board believes that the proposed formulation strikes a reasonable balance. Comments on alternative approaches that would address these concerns are solicited.

D. Collateralized Borrowings

The Board is also proposing to require additional capital to the extent that an institution has collateralized borrowings. For purposes of the proposed capital regulation, collateralized borrowings include any liability against which the institution has pledged specific assets, pledged to maintain a specific value of assets, or for which the structure of a transaction could otherwise result in an effective pledging of assets (e.g., preferred stock issued by a subsidiary). Institutions may use this vehicle in order to raise funds by offering creditors protection in the event of liquidation, a function served for deposit liabilities by FSLIC insurance. The FSLIC receives no insurance premiums on collateralized borrowings to offset its costs if the institution becomes insolvent and is liquidated or is merged in an assisted transaction, however, in contrast to premiums received on deposit liabilities. Unlike noncollateralized liabilities, these borrowings provide no protection to the FSLIC, since, with respect to the specific assets collateralizing the borrowing, the holders have a priority over the FSLIC in liquidation. Since collateralized borrowings can substitute for insured deposits, they can increase the effective risk to the FSLIC, because the FSLIC's premium stream is reduced but its exposure to loss remains unchanged. Currently the industry has approximately $220 billion in advances and reverse repurchase agreements on which the FSLIC forgoes $400 million in premium income each year.

The Board today proposes to require all insured institutions that have specific assets pledged against non-deposit liabilities to maintain additional capital in the amount of three percent of those liabilities. This is intended to approximate the cost advantage an institution receives from these borrowings by avoiding the payment of FSLIC insurance premiums. Unlike insurance premiums, however, these funds will remain in the institution, affording the FSLIC protection by serving as an additional buffer against insolvency. The Board solicits comments about the proposed scope of this "collateralized borrowings" component, whether and how "non-deposit liabilities" should be defined, and other approaches that would address its concerns in this area.

IV. Components of Capital

The definition of capital that the Board is proposing to adopt is generally modeled after the definition of capital in the risk-based capital guidelines that have been jointly proposed by the federal banking agencies for commercial banks and bank holding companies. Although the capital definition in this proposed rule is structured similarly to that contained in the guidelines adopted by the federal banking agencies, the Board is not proposing that the treatment of capital components for insured institutions be precisely the same as that applied to banking organizations.

It is the Board's view that the definition of capital for insured institutions must contain distinctions that reflect statutory requirements and differences in the nature of the thrift and banking industries. Specific distinctions in the Board's proposed definition of capital are more fully explained later in this section.

As proposed, "capital" would consist of a two-tiered requirement, comprised

of "core equity capital" (Tier 1) and "supplementary capital" (Tier 2). Not all components of capital equally serve the dual purposes of protecting the FSLIC and providing a buffer to insured institutions. A two-tiered approach to calculating an institution's capital reflects differences in quality among different components of capital.

Core equity or Tier 1 capital will generally equal GAAP capital. This is similar to modified equity capital as that term is currently defined in 12 CFR 561.13(a), with the exception that as proposed, deferred loan losses and the difference between cost and a lower market value of investments in qualified mutual funds will not be components of Tier 1 capital.[17] These two elements will be considered supplementary capital, along with essentially the same components as definitional capital under current § 561.13(b) and risk analysis reporting items under § 561.13(c).

A. Core Capital (Tier 1)

For stock institutions, core capital would include common stockholders' equity and perpetual preferred stock (less contra accounts such as shareholder receivables). Common stockholders equity includes common stock, surplus and retained earnings. Common stockholders' equity is a relatively permanent source of protection for the insured institution and the FSLIC. Moreover, perpetual preferred stock can provide an insured institution with approximately the same degree of financial strength as common stockholders' equity. Perpetual preferred stock differs from common stockholders' equity primarily in that there is a fixed requirement to pay dividends. These instruments have no maturity and holders of this stock are residual owners of an institution rather than creditors. An institution cannot be forced into insolvency by its requirement to pay dividends on this preferred stock, since the obligation to pay dividends can be suspended when the insured institution encounters financial difficulties. The proposed treatment of perpetual preferred stock as core capital is consistent with the standards adopted in July by the Basle Supervisors' Committee and with the definition of capital that the federal banking regulators are expected to adopt shortly.

Retained earnings are generally the only form of GAAP capital available to mutual institutions. As such, core capital would be equivalent to retained earnings (less any applicable contra-equity accounts) plus any nonwithdrawable accounts and certain minority interests in consolidated subsidiaries.

Tier 1 capital will include minority interests in consolidated subsidiaries unless the Board determines in the case of a particular institution that it does not provide a cushion to absorb losses. This could occur, for example, where the minority interest consists of a preferred interest in the subsidiary.

The Board is not proposing at this point to differentiate between equity as determined in accordance with GAAP and tangible equity for purposes of its capital regulation. Tangible equity is equal to equity determined in accordance with GAAP less certain intangible assets, such as goodwill.

The OCC and the FDIC have proposed generally, except in certain supervisory cases, to deduct goodwill and other intangible assets, except for purchased mortgage servicing rights, from capital for purposes of their proposed definition of capital. The Federal Reserve Board has proposed to deduct goodwill from capital, but to include the value of all other intangible assets, for purposes of its definition of capital for state member banks. In the Bank Board's view, however, neither treatment would be appropriate for thrifts. Specifically, while the value of goodwill may change over time, such value changes on the balance sheet are not limited to goodwill. Due to the use of historical cost accounting, the current value of many, if not all, assets may vary from the amount shown in the financial statements. Furthermore, section 402 of the CEBA authorizes the Board to allow insured institutions to use goodwill in meeting reserve and other regulatory requirements.[18] For purposes of this rule, therefore, the Board has chosen to adhere more closely to capital as determined in accordance with GAAP.

Recognizing the potential for misstatement in estimations of the value of goodwill, the Board intends to monitor closely the amount of goodwill carried by institutions. If, in the Board's judgment, amounts are excessive, it will exercise its authority to set individual minimum capital requirements under 12 CFR 563.14.

B. Supplementary Capital (Tier 2)

Although equity or GAAP capital is the most permanent form of capital and therefore the best protection for the institution and the FSLIC, there are circumstances when issuing equity can prove to be expensive and therefore detrimental to an insured institution. Depending on market conditions, the issuance of equity securities by an insured institution may prove to be very costly in comparison to other forms of capital such as the issuance of debt. Many forms of debt securities can provide a buffer to the FSLIC because the holders are subordinated to depositors and therefore the FSLIC in the event of liquidation. The Board believes such instruments should be included as components of capital for purposes of meeting capital requirements. While the Board strongly believes that an insured institution's core capital should be composed of GAAP capital, it also believes that the definition of total capital should enable institutions to raise capital from less costly sources when appropriate. A number of the components that would comprise supplementary capital under the Board's proposed definition are intended to serve this purpose.

Supplementary capital would be comprised of (1) those debt or equity instruments that are not as permanent as and have less certain value than the components of core equity capital; and (2) those components that offer little protection to an insured institution or the FSLIC, but are statutorily authorized or required to be included as components of capital for insured institutions. Supplementary capital components would include: hybrid debt/capital instruments (capital instruments that combine certain characteristics of equity and certain characteristics of debt) such as mandatory convertible subordinated debt (capital notes and commitment notes), mutual capital certificates, perpetual subordinated debt, mandatory redeemable preferred stock, qualifying subordinated debt, general loss allowances, and deferred loan losses. Additionally, appraised equity capital and other risk analysis reporting ("RAR") items may be included as components of supplementary capital until these items are phased out as capital components.

All components of supplementary capital would not be accorded equivalent treatment under the proposed

[17] Although these items are technically assets, not capital components, they are assets that are not included as assets for purposes of calculation of an institution's risk-weighted assets.

[18] Section 402 of the CEBA added a new section 9 to the HOLA and new section 415 to the NHA that required the Board to impose uniform accounting standards on all insured institutions. On December 21, 1987, the Board adopted a regulation that implemented that statutory requirement. See 53 FR 324 (January 6, 1988). In mandating that the Board impose uniform account standards on all insured institutions, the CEBA also stipulated that the requirements of Section 402 would not affect the authority of the Board to authorize associations to use subordinated debt and goodwill in meeting reserve and other regulatory requirements. See 12 U.S.C. 1467(b) and 1730(b).

rule. While certain components would be eligible for unlimited use in meeting supplementary capital requirements, other instruments would be subject to limitations on the amount maturing in a given year, or, in the case of general loss allowances, subject to a limitation similar to that imposed on general loan loss reserves in the banking industry.

1. Unlimited Supplementary Capital

Under the proposed rule, no limits would be places on an institution's use of mandatory convertible subordinated debt (capital notes), perpetual subordinated debt, mutual capital certificates, income capital certificates ("ICCs"), and net worth certificates ("NWCs") as components of supplementary capital, unless the issuance of such instruments raises supervisory concerns about an institution's ability to meet its debt service requirements.

Capital notes are a form of mandatory convertible debt that will be replaced by equity capital at a specified point in the future. Perpetual subordinated debt instruments share many of the same characteristics as capital notes, except that they do not protect the institution as a going concern because the holders of the notes generally have the right to force liquidation if their claims are not satisfied.

Mutual capital certificates are available to mutual institutions and possess many of the same characteristics of preferred stock for preserving the institution as a going concern. In liquidation, these instruments are subordinate to the claims of general creditors and depositors. Prior to liquidation, they may be available to absorb losses after the exhaustion of all other items in an institution's capital account. Moreover, dividends on these instruments may not be declared if they would impair regulatory capital.

NWCs and ICCs are statutorily created guarantees that the FSLIC can make available to troubled institutions for the purpose of improving their capital position. Institutions use these capital instruments to leverage additional growth. Although statutorily authorized as components of capital, since these instruments are a form of capital provided by the FSLIC, they are liabilities of the FSLIC and thus they afford no protection to the FSLIC itself in the event of an institution's insolvency.

2. Supplementary Capital: Maturing Capital Instruments

The use of commitment notes (a second form of mandatory convertible debt), mandatory redeemable preferred stock, and subordinated debt (collectively, "maturing capital instruments") as components of supplementary capital would be limited by the amount of these instruments in an institution's portfolio that mature in any one year during the final seven years prior to maturity. The Board proposes, as an alternative to the present amortization rule, limiting the total of all such instruments maturing in any one year that can be included as supplementary capital to a set percentage of an institution's regulatory capital, including such instruments. The Board is currently considering percentages in a range from 10 to 20 percent, and solicits comment, with any supporting data, on an appropriate percentage.

In the Board's view, the characteristics of maturing capital instruments require some form of special provision to protect the FSLIC adequately. Although these instruments are required to be structured to protect the FSLIC, they present a refunding risk to the FSLIC and the insured institutions that issue them. If these types of instruments are not refunded they could cause a precipitous reduction in the capital position of an institution.

The Board's present capital rule, which is similar to the approach adopted by the federal banking agencies, requires maturing capital instruments to be amortized for regulatory capital purposes at the rate of 1/7, or approximately 14%, per year during the final seven years to maturity. This rule has several adverse consequences for institutions wishing to issue such instruments that the Board believes may be mitigated without significant reduction of protection to the FSLIC. Under the present amortization rule, maturing capital instruments become an "expensive" form of capital as an instrument comes within seven years of maturity because less of the issue counts toward regulatory capital as it approaches maturity. Insured institutions are reluctant to issue such instruments for terms of less than seven years and they are inclined to refund longer-term instruments when those instruments are within seven years of maturity. Requiring insured institutions to rely on longer-term funds may result in their having to pay higher interest rates or incurring unnecessary transaction costs for refunding instruments earlier than necessary.

To avoid the adverse effects of the present rule, while continuing to protect the FSLIC's interest in strong capital positions, the Board is today proposing a percentage limitation approach for the treatment of maturing capital instruments. This approach would limit (for inclusion in capital for purposes of this regulation) the aggregate amount of capital that matures in any one year during the seven years immediately prior to an instrument's maturity to a set percentage of an institution's regulatory capital. If an insured institution wished to hold, and to count for purposes of this rule, maturing capital that is greater than that set percentage of regulatory capital, it would have to spread the maturities over two or more years so that no more than an amount equal to the set percentage of regulatory capital would mature in any one year. As noted above, the Board is currently considering percentages in the 10–20 percent range.

The Board is also considering another option, which is described in Appendix A, to address this issue. The Board requests specific comments on the appropriateness of each of the options and the elimination of the existing amortization rule. The Board also requests comments on whether institutions should be permitted to choose between the current amortization schedule and that proposed today for purposes of calculating the amount of instruments of this type issued before November 27, 1988, that would be includable in capital.

3. Supplementary Capital: Other Limitations

Other elements of supplementary capital, including general loss allowances, deferred loan losses, appraised equity capital, the excess of cost over market value of liquid asset mutual fund investments, and other RAR components, are considered "limited capital" under today's proposal, because they are not available to institutions as sources for raising funds for capital as are the equity and debt instruments described above. They are included in supplementary capital, however, subject to the limitations described in this section.

General loss allowances are established through a charge against earnings to absorb inherent but unidentified losses on loans. They do not include allowances held for specifically identified losses or earmarked for a specified asset. In the Board's view, general loss allowances represent, effectively, a segregation of retained earnings and therefore are appropriately includable in meeting capital requirements. Because they do represent potential losses to the institution, however, the Board is

proposing that these allowances be treated as a limited element of capital. Under the guidelines proposed by the federal banking agencies, general reserves for loan/lease losses will be limited to 1.25% of risk-weighted assets. The Board is proposing a similar limitation for thrifts' general loss allowances. Because of the substantial differences between the thrift and banking industries, however, the Board seeks specific comments on the appropriateness of the 1.25% limit. If commenters believe this limit is inappropriate, they should also provide any supporting data and address the CEBA provisions on comparability between the banking and thrift industries in regard to losses.

The remaining elements of supplementary capital are limited because they are gradually disappearing from thrift balance sheets as a result of statutory and regulatory changes.

Deferred loan losses are losses that have been realized, but are deferred for regulatory capital purposes in accordance with specific regulatory language. They provide no protection to the FSLIC and are of no value to an insured institution facing financial stress. Nevertheless, section 402 of the CEBA requires the Board to allow institutions with deferred loan losses to continue factoring them into their calculation of capital until the losses are amortized. No similar conditions have been imposed on the federal banking agencies. Institutions are no longer permitted to record new deferred loan losses, so this component of capital will eventually be phased out.

Appraised equity capital represents an estimated gain in the market value of real estate held by an insured institution. In the Board's view, this component affords uncertain protection to an insured institution or the FSLIC, the true value of which can be only determined by frequent appraisals. The current regulatory capital regulation requires this component to be phased out as a form of capital by 1994. The Board is proposing that institutions that do not opt for immediate elimination of appraised equity capital as a component of regulatory capital may continue to include it as a component of supplementary capital on a pro rata basis.

The Basle capital framework allows revaluation reserves to be included as a component of capital. This component includes both revaluation of fixed assets (which resemble appraised equity capital) and revaluation of long-term holdings of equity securities valued on the balance sheet at historical costs of acquisition. Both type of reserves may be legitimate sources of capital that serve the purposes of protecting the FSLIC and the institution. While the federal banking agencies have opted not to count revaluation reserves as a component of capital, the Board requests comment on whether such reserves should count as supplementary capital for thrifts.

Liquid asset mutual funds consist entirely of debt obligations, such as U.S. government securities, that would qualify as liquid assets pursuant to 12 CFR 523.10(g). An investment in this type of mutual fund qualifies as a liquid asset under that section. When the Board implemented uniform accounting standards pursuant to the CEBA, it recognized that under GAAP, an insured institution could invest directly in U.S. government securities and carry that investment at cost. However, GAAP would require an equivalent investment in a mutual fund, the portfolio of which consisted entirely of the same securities, to be carried on the institution's books at the lower of cost or market.[19] Accordingly, the Board decided, as part of the gradual phase-in to GAAP, to permit institutions to include on their unaudited financial reports and statements, investments in shares of liquid asset mutual funds that meet the requirements of § 523.10(g)(8), recorded at historical cost through 1993.[20] This difference, which is neither GAAP capital nor equivalent to bank regulatory capital, will no longer be includable in capital after 1993.

Under present regulations, RAR components represent the cumulative differences between regulatory and GAAP accounting that the Bank Board has permitted to be included in regulatory capital for certain transactions. RAR components include loan origination and commitment fees, futures transactions, sales of real estate by an institution, and accretion of discounts and amortization of premiums. These items will no longer be components of capital by 1994.[21] During the transition to full implementation of the Uniform Accounting Standards regulation in accordance with CEBA, institutions will be permitted to include RAR items as components of supplementary capital subject to the phase-out set forth in § 563.13(f).

V. Required Level and Composition of Capital

In order to satisfy the minimum regulatory capital requirement, by the end of the transition period (*See* Part VI) institutions must have minimum total regulatory capital at least equal to the sum of (1) 6% of risk-weighted assets (credit-risk component); (2) an amount equal to 50% of the effect of a 200 basis point shift in interest rates on the institution's value (interest-rate risk component); and (3) an amount equal to 3% of the institution's collateralized liabilities (collateralized borrowing component). At least one-half of an institution's minimum total capital requirement must be in the form of core equity capital.

In any event, notwithstanding the principal capital requirements based on particular risks discussed above, all insured institutions will be required to maintain a minimum of core equity capital that is at least equal to 2% of *total* assets.[22] The Board believes that all institutions must have some equity capital, no matter how limited their credit and interest-rate risks, in recognition of the fact that these are not the only risks facing a thrift.

Failure to maintain the higher of either minimum capital level (*i.e.*, the number determined by adding the risk-determined components or the alternate determined as a percentage of total assets) or failure to maintain the appropriate ratio of core equity to supplementary capital may result in the Board's requiring the institution to take corrective action, as set forth in current § 563.13(d). The proposal does not amend these provisions.

VI. Transition and Phase-in

Institutions would be expected to adjust their capital bases and asset portfolios so that they will be in full compliance with the requirements of this rule ("fully phased-in capital requirement") by January 1, 1993. The Board believes that it is important that all thrift institutions reach their capital requirement as quickly as possible, but recognizes that some thrifts will require time to restructure their portfolios and raise capital to reach to desired levels of both total capital and core equity capital. The Board therefore contemplates a transition period before the requirements proposed today would be fully effective. During that period, thrifts would be required to attain the minimum capital requirements in two stages: (1) By January 1, 1991, all insured institutions must have capital equal to 80% of their fully phased-in capital requirement and must have core equity capital equal to 2% of total assets; and

[19] *See* 53 FR 324, 332 (Jan. 6, 1988).
[20] *See* 12 CFR 561.13(f) (1988).
[21] *See* 12 CFR 561.13(f) (1988).

[22] Total assets means the consolidated total assets figure required to be computed for and stated in an institution's most recent quarterly report.

(2) By January 1, 1993, all insured institutions must have capital equal to at least their fully phased-in capital requirement. Any *de novo* institution that becomes an insured institution after January 1, 1991, will be required to maintain capital at the fully phased-in level. Until January 1, 1991, the current capital regulation found at 12 CFR 563.13 will be used in measuring institutions' capital adequacy.

The Board solicits comments on the length and stages of this transition period. In this regard, the Board solicits specific comments addressing the appropriate treatment (both during and after the transition period) of forbearances (both supervisory and accounting) given to acquirers as part of a supervisory or FSLIC-assisted acquisition. The Board intends to use care to avoid unintended interference with such forbearances. Commenters addressing this point should discuss the implications of the CEBA-mandated phase-in towards GAAP as implemented by the Uniform Accounting Standards regulation on forbearances. Under that regulation, accounting forbearances were specifically included as regulatory capital under § 561.13(d), which will become effective January 1, 1989.

VII. Summary

For the reasons set forth above, the Board is therefore, pursuant to its authority under Sections 403(b) and 407(t) of the NHA, publishing for notice and comment a risk-based capital regulation. Attached as Appendix B is a sample of how the rule, if adopted, would be applied in determining if a thrift were meeting its minimum capital requirements.

In addition to its general request for public comment on all aspects of this proposal, the Board is specifically requesting comment on the following issues:

(1) The interaction between the individual minimum capital requirement located at 12 CFR 563.14 and the more general capital regulation prescribed in 12 CFR 563.13.

(2) The appropriate definition and treatment of securities with residual characteristics and below investment-grade corporate debt securities in a risk-based capital framework.

(3) The appropriate treatment of interest-only and principal-only interests in mortgage-backed and other derivative securities.

(4) The appropriate treatment of loans bought or sold with recourse and the appropriateness of the definition currently located at 12 CFR 561.8 for purposes of the proposal.

(5) The appropriate treatment of mortgage commitments.

(6) The appropriate asset base (all assets or just financial assets), approaches, and types of assumptions for calculating interest-rate risk exposure and whether any such assumptions should be nationwide or regional.

(7) The appropriate treatment of maturing capital instruments including the amount of any such instruments maturing in any one year that should count as capital.

(8) Whether revaluation reserves should be includable in supplementary capital.

(9) The appropriateness of applying the federal banking agencies' 1.25% limit on the use of general loan loss reserves in capital to thrift institution general loss allowances.

(10) The appropriate risk-weighting for intangible assets, such as goodwill (including whether a distinction should be made for goodwill acquired in a FSLIC-assisted acquisition), and REO.

(11) The appropriate treatment of equity-risk investments.

(12) The consideration of private sector ratings given obligations of state or local governments (rather than the funding repayment sources) for purposes of determining appropriate risk categories.

(13) The placement of qualifying mortgage loans in a higher or lower risk category.

(14) The placement in the 50% risk-weight category of permanent 1–4 family residential mortgage loans with loan-to-value ratios exceeding 80% that are current after 24 months of payments.

(15) The appropriate treatment of supervisory forbearances and accounting forbearances given to acquirers in supervisory or FSLIC-assisted acquisitions.

The Board intends to hold a public hearing on this proposal during which members of the public may present comments on all aspects of the proposal. Notice of the date and time of the hearing will be published in a later issue of the **Federal Register**.

Appendix A—Alternative Treatment of Maturing Capital Instruments

The Board is considering linking the amount of maturing capital instruments that an institution could include as part of its calculation of supplementary capital to the institution's tangible capital as defined in 12 CFR 563.9–8(b)(12). Under this alternative, the allowable percentage of maturing capital that an institution could include as a component of supplementary capital, would be tied each year to a variable scale based on the tangible capital of the institution. All maturing capital would be depreciated on a straight line basis according to the following schedule governed by the tangible capital of the insured institution:

Less than *1% tangible capital*—4 year straight line depreciation starting when capital instruments have 6 years to maturity.

1–2% tangible capital—4 year straight line depreciation starting when capital instruments have 4 years to maturity.

2–3% tangible capital—4 year straight line depreciation starting when capital instruments have 2 years to maturity.

3% tangible capital and above—Maturing instruments would count fully until maturity, without limitation. These depreciation rules would produce the following table, where percentages indicate the percentage of maturing capital instruments that could be counted toward capital:

Percentage of Maturing Capital Includable in Regulatory Capital

YEARS TO MATURITY

Tangible capital	1	2	3	4	5	6
.99 or less	0	0	25	50	75	100
1 to 1.99	25	50	75	100	100	100
2 to 2.99	75	100	100	100	100	100
3 or above	100	100	100	100	100	100

This approach to the treatment of maturing capital instruments as components of capital could provide a strong incentive for institutions with weakening capital positions to seek additional capital. Encouraging institutions to take action to strengthen their capital positions before maturing capital is fully depleted will also enhance the protection available to the FSLIC. In addition, this approach would provide institutions with strong, high quality capital positions with the flexibility to undertake large issues of maturing instruments that mature in the same year, thereby improving access to these instruments and reducing transaction costs.

Appendix B—Sample Capital Requirement Calculation

Calculation of Minimum Capital Requirement

SAMPLE INSTITUTION—CONSOLIDATED

[In millions of dollars]

	Amount
Assets:	
Cash/Treas. Sec.	$90
FNMA MBS	110
1 to 4 Res. Mortg.	100
Equity Risk Inv.	10
Other Assets	100
Total Assets	$410
Liabilities and Capital:	
Deposits	385
Stockholders' Equity	25
Total Liabilities and Capital	410

SAMPLE INSTITUTION—CONSOLIDATED—Continued

[In millions of dollars]

	Amount
Off-Balance Sheet Items (Contingent Liabilities)	
Commitment to fund 1 to 4 Res. Mortg.	−40
Unused Retail Credit Card lines of credit	−100
Total Off-Balance Sheet Items	−140

* * * * * * *

Step 1: Convert Off-Balance Sheet Items to On-Balance Sheet Equivalent amounts by multiplying their nominal value by the appropriate conversion factor.

	Nominal value	Conversion factor (percent)	On-balance sheet equivalent
Commitment to fund 1 to 4 Res. Mortg.	$40	50	$20
Unused Retail Credit	100	0	0

Step 2: Calculate the credit-risk-weighted assets of institution.

	Book value (or on-balance sheet equiv.)	Risk weight (percent)	Risk-weighted assets
Cash/Treas.	$90	0	$ 0
FNMA MBS	110	20	22
1 to 4 Res. Mtg.:			
(On-Bal. Sh.)	100	50	50
(Off-Bal. Sh.)	20	50	10
Equity Risk Investments	10	300	30
Other Assets			
(On-Bal. Sh.)	100	100	100
(Off-Bal. Sh.)	0	100	0
Total	430		212

Step 3: Multiply the sum total of risk-weighted on-balance sheet assets and off-balance sheet credit equivalents by the credit-risk component (6%).

$212 million × 6.0% = $12.72 million

This is the *credit-risk component* of the institution's risk-based capital requirement.

Step 4: Using assumptions provided by the Board, determine the *interest-rate-risk component* of the capital requirement. This is equal to 50% of the change in market value of the institution due to a 200 basis point change in interest rates.

For this example, assume that a 200 basis point change in interest rates results in a reduction in the market value of an institution of $8 million.

Interest-rate risk component:

$8 million × 50% = $4 million

Step 5: Add the credit-risk component ($12.72 million) and the interest-rate-risk component ($4 million) to determine the institution's minimum capital requirement. In this example, this requirement equals $16.72 million.

The example assumes that the institution has no collateralized borrowings.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. Reasons, Objectives, and Legal Basis Underlying the Proposed Rule

These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. Small Institutions to Which the Proposed Rule Would Apply

The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a)(1988). Therefore, small entities to which the proposed rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. Impact of the Proposed Rule on Small Institutions

The proposed rule would apply equally to all insured institutions, as adequate capital is critical to the health of all insured institutions and to protection of the FSLIC as insurer of all insured institutions regardless of size. The Board has attempted, in developing the proposal, to rely to the greatest extent possible on information currently required to be computed for and reported on thrift financial report by all insured institutions. In areas where that has not proved possible, the Board has attempted to suggest the least burdensome alternatives possible.

4. Overlapping or Conflicting Federal Rules

There are no known federal rules of other agencies that duplicate, overlap, or conflict with this proposed rule. To the extent that any current regulations of the Board are determined to duplicate, overlap, or conflict with this proposed rule, the Board contemplates reviewing its regulations to remove such duplication, overlapping or conflicts. Such removal would be made after the opportunity for public notice and comment, if appropriate. Currently, the Board contemplates reviewing its regulations on equity-risk investment, 12 CFR 563.9–8, and finance subsidiaries of federal associations, 12 CFR 545.82, among others in this regard.

5. Alternatives to the Proposed Rule

Alternatives to various aspects of the proposed rule are discussed in **SUPPLEMENTARY INFORMATION.** The Board solicits comments on alternatives that would both address the Board's concerns and be less burdensome on small institutions. The Board has not found any alternatives to date that would be less burdensome and adequate address its concerns.

List of Subjects

12 CFR Part 561

Savings and Loan Associations.

12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 561 and 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority for Part 561 continues to read as follows:

Authority: Sec. 1, Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437), Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp. P. 1071.

2. Section 561.13 is revised to read as follows:

§ 561.13 Regulatory Capital.

(a) Regulatory capital is the sum of core equity capital and supplementary capital, each as defined in this section.

(b) Core equity capital is capital as determined in accordance with generally accepted accounting principles (including perpetual preferred stock issued pursuant to § 563.8 of this subchapter) plus certain minority interests in consolidated subsidiaries,

and nonwithdrawable accounts meeting the criteria of § 561.42 of this part.

(c) Supplementary capital is the sum of:

(1) Unlimited supplementary capital, including

(i) Mandatory convertible subordinated debt (capital notes) issued pursuant to § 563.8–1 of this subchapter to the extent that such securities meet the criteria set forth by the Office of Regulatory Activities in supervisory memoranda;

(ii) Perpetual subordinated debt issued pursuant to § 563.8–1 of this subchapter to the extent that such debt meets the criteria set forth by the Office of Regulatory Activities in supervisory memoranda.

(iii) Mutual capital certificates issued pursuant to § 563.7–4 of this subchapter.

(iv) Income capital certificates, net worth certificates issued in accordance with Part 572 of this subchapter or that the Corporation is committed to purchase by virtue of § 572.1(c), accumulated annual income payments on capital certificates not yet due and payable, and pledged certificates and any other nonwithdrawable accounts (excluding any treasury shares held by the institution) to the extent such nonwithdrawable accounts are not included in core equity capital.

(2) Maturing capital instruments, including:

(i) Mandatory convertible subordinated debt (commitment notes) issued pursuant to § 563.8–1 of this subchapter to the extent that such securities meet the criteria set forth by the Office of Regulatory Activities in supervisory memoranda;

(ii) Mandatory redeemable preferred stock issued prior to July 23, 1985 or issued pursuant to § 563.1 of this subchapter, and was approved in writing by the Corporation for inclusion as regulatory capital before or after its issuance, pursuant to § 563.7–5;

(iii) Subordinated debt issued pursuant to § 563.8–1 of this subchapter of the extent that such debt meets the criteria set forth by the Office of Regulatory Activities in supervisory memoranda;

Provided That only the aggregate amount of maturing capital instruments that mature in any one year during the seven years immediately prior to an instrument's maturity that does not exceed 10% of an institution's regulatory capital will qualify as regulatory capital.

(3) Regulatory capital components, including:

(i) General loss allowances established pursuant to § 563.23–3 of this subchapter and Part 563c of this subchapter up to a maximum of 1.25 percent of risk-weighted assets;

(ii) The amount of unamortized loan gains and losses that were deferred pursuant to § 563c.14 of this subchapter;

(iii) Appraised equity capital as defined in paragraph (b)(1) of § 563.13 of this subchapter;

(iv) The excess of historical cost over market value of investments in shares of open-end management investment companies, as defined in § 523.10(g)(8) of this chapter;

(v) The amount of the following items computed by an insured institution in accordance with risk analysis reporting in effect prior to January 1, 1989, and included in its financial statements prior to January 1, 1989. An institution may include an amount that represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting prior to January 1, 1989:

(A) Sales of real estate developed by the institution or its subsidiary;

(B) Futures transactions;

(C) Accretion of discounts and amortization of premiums on securities; and,

(D) Loan origination and commitment fees.

(d) *Sunset provision.* Authority to include items listed in paragraphs (c)(3)(iii), (iv), and (v) of this section as components of regulatory capital will cease as of December 31, 1993. Institutions may make an irrevocable election upon the filing of their first quarterly report for 1989 to phase-out these items over the period beginning January 1, 1989 and ending December 31, 1993, pursuant to the following schedule: 100 percent of these items are includable in regulatory capital for 1989; 80 percent in 1990; 60 percent in 1991; 40 percent in 1992; 20 percent in 1993; and 0 percent in 1994 and all years thereafter.

PART 563—OPERATIONS

3. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

4. Section 563.13 is amended by revising paragraphs (b), (c), (d), (e) and (f), and by adding paragraphs (g), (h) and (i) to read as follows:

§ 563.13 Regulatory capital requirement.

(a) * * *

(b) *General definitions*—(1) *Appraised equity capital* means (i) unrealized and unrecorded equity in office land, buildings, and improvements (including leasehold improvements) owned by the insured institution or a subsidiary thereof, (ii) unamortized deferred profits originating from the sale and leaseback of office properties formerly owned by the insured institution or a subsidiary thereof, and (iii) the value of leasehold interests.

(2) *Collateralized borrowings* means any non-deposit liability against which the insured institution has pledged a specific asset or pledged to maintain a specific value of such assets or for which the structure of a transaction would otherwise result in an effective pledging of assets (*e.g.*, preferred stock issued by a subsidiary).

(3) *Commitment* means any arrangement that obligates an insured institution to: (i) Purchase loans or securities; or (ii) extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, or similar transactions.

(4) *Direct credit substitutes* means any irrevocable obligation or portion thereof in which an institution has essentially the same credit risk as if it had made a direct loan to the obligor or account party. It includes, but is not limited to, guarantees or guarantee-type instruments backing financial claims such as outstanding securities, loans, and other financial obligations, and financial guarantee-type standby letters of credit.

(5) *Domestic depository institution* means all offices (branch and main, foreign and domestic) of insured institutions and other deposit-taking institutions chartered and headquartered in any of the several states of the United States of America, and District of Columbia, Puerto Rico, and United States territories and possessions with accounts or deposits insured by a federal agency or corporation. This definition includes mutual and stock savings banks, savings or building and loan associations (stock and mutual), commercial banks, cooperative banks, credit unions, and international banking facilities of domestic depository institutions. U.S. branches and agencies of foreign banks are excluded from this definition.

(6) *Fully phased-in capital requirement* means the amount of

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capital required by this section at the end of the transition period.

(7) *High quality mortgage-related securities* means any mortgage-related security as defined in section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41).

(8) *Intangible assets* include, but are not limited to, goodwill, favorable leaseholds, core deposit value, and similar assets.

(9) *Interest-rate contracts* means any single currency interest-rate swap, basis swap, forward-rate agreement, interest-rate option purchased, or any other instrument that, in the opinion of the Board, gives rise to similar risks.

(10) *Mortgage-related securities* means any mortgage-related qualifying security under section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41), *provided that,* the rating requirements of that section shall not be considered for purposes of this definition.

(11) *Net equity-risk investment* means investments defined as equity-risk investments pursuant to § 563.9–8 of this part, (*Provided,* That paragraph (c)(1) of that section shall not apply for purposes of this section) plus any direct credit substitutes by an institution of the obligations of its subsidiaries or service corporations, plus an institution's ownership interest in an investment company, as defined in the Investment Company Act of 1940, that has any assets in its portfolio that would qualify as an equity-risk investment if held by an institution.

(12) *Perpetual preferred stock* means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder.

(13) *Qualifying mortgage loan* means a permanent 1–4 family residential first mortgage loan that is performing and not more than 90 days past due with a documented loan-to-value ratio not exceeding 80 percent (at origination) unless insured to at least an 80 percent loan-to-value ratio by private mortgage insurance provided by an issuer approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(14) *Residual characteristics* means interests similar to a multiclass pay-through obligation representing the excess cash flow generated from mortgage collateral over the amount required for the issue's debt service and ongoing administrative expenses presenting similar degrees of interest-rate/prepayment risk and principal loss risks.

(15) *State* means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(16) *Total Assets* means the consolidated total assets figure required to be computed for and stated in an institution's most recent quarterly report.

(17) *Unconditionally cancelable* means, with respect to a commitment-type lending arrangement, including retail credit card lines, that an institution may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(18) *United States Government or its agencies* means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the payment of principal and interest by the full faith and credit of the United States Government.

(19) *United States Government-sponsored agency or corporation* means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

(c) *Minimum required amount.* (1) Except as otherwise provided in this section, an institution's minimum regulatory capital requirement for any calendar quarter shall be an amount equal to the sum of: (i) 6% of its risk-weighted assets as measured pursuant to paragraph (d) of this section; (ii) 50% of its interest-rate-risk exposure as measured pursuant to paragraph (e) of this section; and (iii) 3% of its collateralized borrowings as defined in paragraph (b)(2) of this section.

(2) Except as otherwise provided in this section, one-half of an institution's regulatory capital must consist of core equity capital as defined in § 561.13 of this subchapter.

(3) Except as provided in paragraph (c)(4) of this section, no institution may hold less than an amount equal to 2% of its total assets, as defined in paragraph (b)(16) of this section, in core equity capital as defined in § 561.13 of this subchapter.

(4) Any forbearances or other order specifically granted by the Board to an insured institution establishing a different composition of capital for that insured institution will govern that particular institution in accordance with the terms of the forbearance or order. To the extent that the forbearance or order does not specifically address components addressed in this section and § 561.13, the forbearance or order shall not be construed so as to supersede these regulatory provisions.

(d) *Risk-weighted Assets.* Risk-weighted assets equal total assets plus consolidated off-balance sheet items where each asset or item is multiplied by the appropriate risk-weight as set forth in paragraph (d)(1) of this section. Before an off-balance sheet item can be assigned a risk weight, it must be converted to an on-balance sheet credit equivalent amount in accordance with paragraph (d)(2) of this section. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit equivalent amount that is included in the calculation of risk-weighted assets for purposes of this rule. Any asset added to an institution's capital requirement in computing capital requirements is not included as part of the institution's risk-weighted assets. The Office of Regulatory Activities of the Federal Home Loan Bank System may issue guidelines to clarify the assignment of items to risk categories.

(1) *On-Balance Sheet Assets*: The risk categories/weights for on-balance sheet assets are:

(i) *Zero percent Risk Weight (Category 1).* (A) Cash owned and held in all offices of an institution or in transit;

(B) Securities issued by the U.S. Government or its agencies whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government, except for mortgage-related securities or guarantees;

(C) Notes and obligations issued by the Corporation;

(D) Items collateralized by cash;

(E) All other claims (including loans and leases) on the U.S. Government or its agencies.

(ii) *20 percent Risk Weight (Category 2).* (A) Claims on United States Government-sponsored agencies;

(B) That portion of assets guaranteed by United States Government-sponsored agencies;

(C) That portion of assets collateralized by securities issued or guaranteed by United States Government-sponsored agencies;

(D) High quality mortgage-related securities, except for those with residual characteristics;

(E) General obligations and claims on or guaranteed by the full faith and credit of any state or any political subdivision thereof, within the meaning of 12 CFR 561.5a, and that portion of any claims guaranteed by any such state or political subdivision;

(F) Stock of Federal Home Loan Banks, Federal Reserve Banks, and

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other United States Government corporations;

(G) Bonds issued by the Financing Corporation as defined at 592.1(f) of this chapter;

(H) Cash items in the process of collection;

(I) Balances due from and all claims on domestic depository institutions. This includes demand deposits and other transaction accounts, savings deposits and time certificates of deposit, federal funds sold, loans to other depository institutions, including overdrafts and term federal funds, holdings of the institution's own discounted acceptances for which the account party is a depository institution, holdings of bankers acceptances of other institutions and securities issued by depository institutions, except those that qualify as capital;

(J) Claims on, and balances due from, Federal Reserve Banks and Federal Home Loan Banks.

(iii) *50 percent Risk Weight (Category 3).* (A) Revenue bonds issued by any state or any political subdivision thereof, within the meaning of 12 CFR 561.5a, for which the underlying obligor is the state or political subdivision, but which are repayable solely from the revenues generated from the project financed through the issuance of the obligations;

(B) Qualifying mortgage loans;

(C) Non-high quality mortgage-related securities backed by qualifying mortgage loans, except for those with residual characteristics.

(iv) *100 percent Risk Weight (Category 4).* All assets not classified under paragraphs (d)(1) (i), (ii), (iii), (v) or (vi), or excluded pursuant to this paragraph (d), including, but not limited to:

(A) Consumer loans;

(B) Commercial loans;

(C) Home equity loans;

(D) one-to-four family residential loans not qualifying under paragraph (b)(13);

(E) multi-family mortgage loans;

(F) residential construction loans;

(G) Land loans, except those that qualify as equity-risk investments;

(H) Nonresidential construction loans, except those that qualify as equity-risk investments;

(I) Instruments issued by other depository institutions that qualify as capital of the issuer, except those that qualify as equity-risk investments;

(J) Obligations issued by any state or any political subdivision thereof, within the meaning of 12 CFR 561.5a, for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligations, *e.g.*, industrial development bonds.

(K) Private-issue debt securities except for those qualifying under paragraph (d)(1)(ii) of this section;

(L) Fixed assets;

(M) Purchased or excess mortgage servicing rights;

(N) Mortgage-related securities with residual characteristics;

(O) Stock of U.S. government-sponsored corporations, except those that qualify as equity-risk investments.

(v) *200 percent risk weight* (Category 5).

(A) all intangible assets except for purchased or excess mortgage servicing rights;

(B) real estate owned by an insured institution or real estate in foreclosure.

(vi) *300 percent risk weight* (Category 6). All net equity-risk investments as defined in paragraph (b)(11) of this section.

(vii) *Ownership interests in investment companies.*

(A) Except as provided in paragraph (d)(1)(vii)(B) of this section, ownership interests in investment companies as defined in the Investment Company Act of 1940 are assigned to risk-weight categories under this section based upon the risk weight that would be assigned to the assets in the portfolio of the investment company.

(B) Where the portfolio of the investment company consists of assets that would fall into different risk-weight categories, the entire ownership interest of the institution will be assigned to the category of the asset with the highest risk weight in the portfolio.

(2) *Off-Balance Sheet Activities.* Risk weights for off-balance sheet items are determined by a two-step process. First, the face amount of the off-balance sheet item is multiplied by the appropriate credit conversion factor detailed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit-equivalent amount. Second, the Credit-equivalent amount is then assigned to the appropriate risk category depending on the obligor (*i.e.*, the 20 percent risk category if the obligor is a domestic depository institution or the 100 percent risk category if the obligor is a private party), *Provided,* That the maximum risk-weight assigned to the credit-equivalent amount of an interest-rate contract is 50 percent. Guarantees and other direct credit substitutes by insured institutions of the obligations of their service corporations and subsidiaries that qualify as net equity-risk investments under paragraph (b)(11) of this section are assigned a credit-equivalent amount of the entire value of the direct credit substitute. The following are the credit conversion factors and the off-balance sheet times to which they apply.

(i) *100 percent credit conversion factor (Group A).* (A) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute is netted against the amount of any participations sold in that item except as otherwise provided below. The amount retained by the institution is converted to an on-balance sheet equivalent. If the originating institution remains liable to the beneficiary for the full amount of the standby letter of credit, should the participant fail to perform under its participation agreement, then the full amount of participations sold should be treated as a direct credit substitute. If participations are such that each participant is responsible only for its pro-rata share of the risk, and there is no recourse to the originating institution, the full amount of the participations sold is excluded from the originating institution's risk-weighted assets;

(B) Risk participations purchased in bankers' acceptances and participations purchased in direct credit substitutes;

(C) Assets sold under an agreement to repurchase and the full value of assets sold with recourse, to the extent these assets are not reported on the statement of condition, except where the amount of recourse liability retained by an institution is less than the capital requirement for credit-risk exposure, in which case capital must be maintained equal to the amount of credit-risk exposure retained. This category includes loan strips sold without direct recourse and the retention of the subordinated portion of a loan participation or package of loans;

(D) Forward agreements and other contingent obligations with a certain draw down, *e.g.*, legally binding agreements to purchase assets at a specified future date. On the date an institution enters into a forward agreement or similar obligation, it should convert the principal amount of the assets to be purchased at 100 percent as of that date and then assign this amount to the risk category appropriate to the obligor or guarantor of the item, or the nature of the collateral.

(ii) *50 percent credit conversion factor (Group B).* (A) Transaction-related contingencies, including, *inter alia,* performance bonds and performance-based standby letters of credit related to a particular transaction.

(B) Unused portions of loan commitments, except those qualifying under paragraph (d)(2)(iv)(A) of this section.

(iii) *20 percent credit conversion factor (Group C).* Trade-related contingencies, *i.e.*, short-term, self-liquidating instruments used to finance the movement of goods and collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(iv) *Zero percent credit conversion factor (Group D):* (A) Unused commitments, if:

(*1*) They are unconditionally cancelable by the institution, and

(*2*) The institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each drawing under the lending facility.

(B) Unused retail credit card lines that are unconditionally cancelable by the insitution.

(v) *Interest-rate contracts (Group E).* The credit-equivalent amount of such contracts is the current credit exposure. Current credit exposure is the replacement cost of the contract as determined by its current market value at the end of the reporting quarter. Contracts with negative market value are deemed to have no current credit exposure. This credit-equivalent amount is assigned to the 0%, 20% or 50% risk category, depending on the nature of the obligor. Any interest-rate contract that is traded on an exchange requiring the daily posting of maintenance variations margins are not considered in determining an institution's risk-weighted assets.

(e) *Interest-Rate-Risk Exposure.* An institution's interest-rate-risk exposure is the estimated decline in the market value of the portfolio equity of an institution that would result from an immediate and permanent 200 basis-point change in interest rates. This estimated decline in the market value of portfolio equity will equal the present value of the change in earnings that is projected to result from the 200 basis-point change in interest rates using standard present value formulas. An institution's interest-rate-risk exposure will be based on information supplied by each institution regarding the maturities and interest rates for assets and liabilities in their respective portfolios, including both on- and off-balance-sheet items, as well as general assumptions regarding such items as amortization schedules, prepayment speeds, discount rates, and the treatment of options. The Board will publish the assumptions to be used in calculating interest-rate-risk exposure for public comment prior to adoption and implementation.

(f) *Transition period.* (1) By January 1, 1991, all insured institutions must have the level of capital set forth in paragraph (c)(3) of this section.

(2) Institutions are required to attain 80% of their fully phased-in capital by January 1, 1991, *provided that* any de novo institution becoming insured after January 1, 1991 must meet the fully phased-in capital requirement at the time it becomes insured. By January 1, 1993, insured institutions must attain 100% of the minimum required amount calculated pursuant to paragraph (c) of this section.

(g) *Failure to meet minimum regulatory capital requirements.* If an insured institution fails to meet the regulatory capital requirement set forth in paragraph (c) of this section, the Corporation may, whether through enforcement proceedings or otherwise, require such institution to take one or more of the following corrective actions:

(1) Increase the amount of its regulatory capital to a specified level or levels;

(2) Convene a meeting or meetings with the Executive Director, Office of Regulatory Activities, or his designee, for the purpose of accomplishing the objectives of this section;

(3) Reduce the rate of earnings that may be paid on savings accounts;

(4) Limit the receipt of deposits to those made to existing accounts;

(5) Cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;

(6) Cease or limit lending or the making of a particular type or category of loan;

(7) Cease or limit the purchase of loans or the making of specified other investments;

(8) Limit operational expenditures to specified levels;

(9) Increase liquid assets and maintain such increased liquidity at specified levels; or

(10) Take such other action or actions as the Corporation may deem necessary or appropriate for the protection of the Corporation, the insured institution, or depositors or investors in the insured institution.

(h) *Charging of losses to reserves.* Losses charged to reserves shall exhaust all regulatory capital accounts before constituting a charge against mutual capital certificates.

(i) *Transactions for purposes of evasion.* An institution's Principal Supervisory Agent may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this section. An institution may seek review and final decision by the Corporation of any such determination.

§ 563.13-2 [Removed]

5. Section 563.13-2 is removed and reserved.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-29303 Filed 12-22-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-170-AD]

Airworthiness Directives: McDonnell Douglas Model DC-9 Series Airplanes, Including Model DC-9-80 Series and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (ADs), applicable to McDonnell Douglas Model DC-9 series airplanes, including Model DC-9-80 series and Model MD-88 airplanes, which currently require inspection, and repair or replacement, as necessary, of the dorsal fin attach angles. Those actions were prompted by reports from operators of cracks found in the dorsal fin attach angles. This action would rescind the current terminating action, require repetitive inspections, and provide for a new terminating action. This action is prompted by reports of new fatigue cracks found in the dorsal fin attach angles. This condition, if not corrected, could compromise the structural integrity of adjacent structure and cause subsequent failure of the empennage section.

DATE: Comments must be received no later than February 17, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rule Docket No. 88-NM-170-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas

Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Los Angeles Aircraft Certification Office at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5321.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rule Docket No. 88–NM–170–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On October 19, 1982, FAA issued AD 82–10–51–R3, Amendment 39–4481 (47 FR 47803; October 28, 1982), to require structural inspections, and repair or replacement, as necessary, of the fuselage skin under the dorsal fin of McDonnell Douglas Model DC–9 series airplanes.

Since issuance of AD 82–10–51–R3, DC–9 operators have reported cracks on the dorsal angles, P/N 5939711–1, -501 and -502. These angles were installed during production or as terminating action to AD 82–10–51–R3. Laboratory analysis at McDonnell Douglas has determined that the cracks found in these angles were attributed to metal fatigue caused by a fastener short edge distance at the taper intersect and preload, due to the absence of shims during the installation of the angles.

On August 19, 1988, the FAA issued telegraphic AD T88–17–51, [and subsequently, Amendment 39–6016 (53 FR 35306; September 13, 1988)] applicable to all Model DC–9 series airplanes, including Model DC–9–80 series and Model MD–88 airplanes, which required a one-time visual inspection to assure that the dorsal fin attach angles are free from cracks, and provided instructions for repair or replacement, as necessary. Inspection and repair or replacement of the angles, if necessary, will minimize the possibility of compromising the structural integrity of adjacent structure and causing subsequent fuselage skin cracks.

The FAA has reviewed and approved McDonnell Douglas DC–9 Alert Service Bulletin A53–223, dated November 30, 1988, and McDonnell Douglas Service Rework Drawing SR09530092, Revision A, dated August 26, 1988, which describe procedures for inspection and repair of cracks along the dorsal attach angles.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD's 82–10–51–R3 and 88–17–51 to: (1) Rescind the terminating action provided by AD 82–10–51, (2) reinstitute required repetitive inspections; and (3) furnish the necessary instructions to install a new terminating action in accordance with the service rework drawing previously mentioned. Although the inspection requirements of AD 88–17–51 would remain unchanged in this document, the FAA considers it logical to supersede AD 88–17–51 and incorporate its requirements into one document (this action) to provide the operators with a single source for AD accountability.

There are approximately 1,520 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 824 airplanes of U.S. registry would be affected by this AD, that it would take approximately 47 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,549,120.

The regulations proposed herein would not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 82–10–51–R3, Amendment 39–4481 (47 FR 47803; October 28, 1982), and AD 88–17–51, Amendment 39–6016 (53 FR 35306; September 13, 1988), with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9 series airplanes, including Model DC–9–80 series and Model MD–88, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the empennage section, accomplish the following:

A. For airplanes equipped with dorsal fin two-piece attach angles, part numbers 5912188–27, -28, -29, and -30, accomplish the following:

1. Within 100 landings after May 17, 1982 (the effective date of Amendment 39–4481), visually inspect, from inside the airplane,

cracks in the area adjacent to the following fuselage stations appropriate to the model being inspected:

Series 10 and 20: Fuselage Stations (FS) 901.400;
Series 30 and C–9: FS 1080.400;
Series 40: FS 1156.400;
Series 50: FS 1251.400; and
Series 80: FS 1422.400.

2. If no cracks are found, accomplish the interim modification in accordance with McDonnell Douglas Service Sketch 3414, Revision D, dated May 11, 1982 (herein after referred to as 3414D), prior to the accumulation of 50 landings after June 7, 1982, for DC–9 and C–9 series aircraft, fuselage numbers 1 through 950; and prior to the accumulation of 400 landings from May 17, 1982, for all other affected airplanes. Verification that no cracks exist must be repeated immediately prior to accomplishment of the interim modification. The visual inspection required by paragraph A.1., above, must be repeated at intervals not to exceed 2,000 landings after the accomplishment of the interim modification. Prior to accumulating 4,000 landings from May 17, 1982, accomplish the terminating actions specified in paragraph D.1., below.

3. If cracks are found, before further flight, accomplish the interim modification described in McDonnell Douglas Service Sketches 3413, Revision J, dated March 3, 1983 (hereinafter referred to as 3413J) and 3414D, and repeat the visual inspection required by paragraph A.1., above, thereafter at intervals not to exceed 2,000 landings. Prior to accumulating 4,000 landings from May 17, 1982, accomplish the terminating action specified in paragraph D.2. below.

B. For airplanes with dorsal fin one-piece attach angle, part number 5912188–5 or -6, accomplish the following:

1. Within 500 landings from May 17, 1982, for airplanes with less than 22,500 landings; and within 100 landings from May 17, 1982, for airplanes with 22,500 or more landings; conduct the visual inspections, from inside the airplane, in accordance with paragraph A.1., above. In addition, conduct a visual inspection of the dorsal fin attach angle, from the outside of the airplane, for cracks.

2. If no angle cracks are found, conduct an eddy current inspection of the angle in accordnace with McDonnell Douglas DC–9 Alert Service Bulletin A53–154, Revision 4, dated August 24, 1982; or conduct a dye penetrant inspection of the angle, within 1,000 additional landings, and thereafter at intervals not to exceed 3,000 landings, until the terminating action specified in paragraph D.1., below, is accomplished.

3. If skin cracks are found, before further flight, accomplish the modification described in McDonnell Douglas Service Sketch 3413J, and conduct eddy current inspections of the angle in accordance with paragraph B.2., above, thereafter at intervals not to exceed 3,000 landings, until the terminating action specified in paragraph D.1., below, is accomplished.

4. If dorsal fin attach angle cracks are found, accomplish the repair described in DC–9 Structural Repair Manual, Chapter 53–05, Figure 19, prior to the accumulation of 50 landings from June 7, 1982, for Model DC–9 and C–9 series airplanes fuselage numbers 1 through 896; and prior to the accumulation of 400 landings from May 17, 1982, for all other affected airplanes. Verification that no skin cracks exist must be repeated immediately prior to accomplishment of the repair.

5. A dye penetrant or eddy current inspection of the angle in accordance with paragraph B.2., above, must be repeated at intervals not to exceed 3,000 landings after the accomplishment of the repair until the terminating action specified in paragraph D.1., below, is accomplished. As an alternative to this procedure, accomplish the interim modification described in McDonnell Douglas Service Sketch 3414D, in accordance with the compliance schedule specified in paragraph B.4., above. The visual inspection required by paragraph B.1., above, must be repeated at intervals not to exceed 2,000 landings after the accomplishment of the interim modification. Prior to the accumulation of 4,000 landings from May 17, 1982, accomplish the terminating action specified in paragraph D.1., below.

C. For airplanes equipped with dorsal fin attach angle part number 5939711–1, –2, –501, or –502, accomplish the following:

1. Prior to the accumulation of 7,500 landings since installation of the above attach angle, or within 100 landings after August 19, 1988 (the effective date of telegraphic AD T88–17–51), whichever occurs later, unless previously accomplished within the last 2,000 landings, conduct a visual inspection of both angles, RH and LH, for cracks.

2. If no angle cracks are found, conduct an eddy current inspection of the angle in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–223, dated November 30, 1988, or conduct a dye penetrant inspection of the angle at intervals not to exceed 2,000 landings, until such time as the angles are replaced in accordance with paragraph D.1., below.

3. If dorsal fin attach angle cracks are found, before further flight, replace or modify cracked dorsal fin attach angle(s) in accordance with McDonnell Douglas Alert Service Bulletin A53–223, dated November 30, 1988.

4. If skin cracks are found, before further flight, accomplish the modification in accordance with McDonnell Douglas Service Sketch 3413J.

D. Terminating Action. The following constitutes terminating action for the requirements of this AD:

1. Replacement or modification of the dorsal fin attach angle in accordance with McDonnell Douglas Alert Service Bulletin A53–223 dated November 30, 1988, constitutes terminating action for the inspections required by this AD.

2. Upon accumulation of 30,000 landings after accomplishing the replacement or modification described in paragraph D.1., above, resume repetitive inspections in accordance with paragraph C., above, at intervals not to exceed 2,000 landings.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on December 12, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–29483 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ACE–13]

Proposed Cancellation of Control Zone; Hays, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to cancel the control zone for the Hays, Kansas, Municipal Airport. This action is necessary because the weather observation reporting requirements justifying the designation of the control zone at this airport have not been met.

DATE: Comments must be received on or before January 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic

Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) which would cancel the control zone for the Hays, Kansas, Municipal Airport. One of the requirements for the designation of a control zone is that the required weather observations must be disseminated. The Automated Flight Service Station (AFSS), Wichita, Kansas, conducted a survey and has determined that less than one half of the required weather observations at the Hays, Kansas, Municipal Airport are being distributed. Accordingly, since a key requirement for the designation of a control zone is not being met, the FAA is cancelling the Hays, Kansas, control zone.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Hays, Municipal Airport, Kansas [Removed]

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29488 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-21]

Proposed Alteration of Transition Area; Estherville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to alter the transition area at Estherville, Iowa. An instrument approach procedure for the Estherville, Iowa, Municipal Airport based on the Swan Lake Non-directional Radio Beacon (NDB) has been cancelled. Accordingly, that portion of the Estherville transition area airspace designed to protect this NDB is no longer required and should be deleted from the present transition area description.

DATE: Comments must be received on or before January 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri. An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) by altering the transition area at Estherville, Iowa. The Swan Lake NDB serving the Estherville Municipal Airport has been cancelled. Therefore, that portion of the Estherville transition area designation designed to protect this NDB is no longer required and the Estherville transition area should be redescribed to delete this airspace.

Section 71.181 of Part 71 of Federal Aviation Regulations was republished in Handbook 7400.6D, January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Estherville, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 6-½-mile radius of the Estherville Municipal Airport (lat. 43°24'15"N., long. 94°44'45"W.); within 3 miles each side of the 175° radial from the Estherville VOR (lat. 43°24'37"N., long. 94°44'20"W.), extending from the 6-½-mile radius area to 8-½ miles south of the VOR; within 3 miles each side of the 340° radial from the Estherville VOR extending from the 6-½-mile radius area to 8-½ miles north of the VOR, excluding that portion that overlies the Emmetsburg, Iowa, Transition Area.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88–29489 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ACE–22]

Proposed Alteration of Transition Area; Sac City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to alter the transition area at Sac City, Iowa. An instrument approach procedure for the Sac City Municipal Airport, utilizing the 138° bearing of the Sac City Non-directional Radio Beacon (NDB) has been cancelled. Accordingly, that portion of the Sac City transition area airspace designed to protect this NDB is no longer required and should be deleted from the present transition area description.

DATE: Comments must be received on or before January 27, 1988.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMS

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 Part 71) by altering the transition area at Sac City, Iowa, An instrument approach utilizing the 138° bearing of the Sac City, Iowa NDB has been cancelled. Therefore, that portion of the Sac City transition area designation designed to protect this NDB is no longer required, and the Sac City transition area should be redescribed to delete this airspace.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and

routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Sac City Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of the Sac City Municipal Airport (lat. 42°22'30" N., long. 94°58'45" W.), and within 3 miles each side of the 172° bearing from the Sac City NDB (lat. 42°22'22" N., long. 94°58'51" W.), extending from the 6½-mile radius area to 8½ miles south of the NDB.

Issued in Kansas City, Missouri, on December 13, 1988

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88–29490 Filed 12–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-23]

Proposed Alteration of Transition Area; Vinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the transition area at Vinton, Iowa. An instrument approach procedure for the Vinton Veterans Memorial Airpark, Vinton, Iowa, utilizing the 310° bearing of the Garrison Non-directional Radio Beacon (NDB) has been cancelled. Accordingly, that portion of the Vinton, Iowa, transition area airspace designated to protect this NDB is no longer required and should be deleted from the present transition area description.

DATE: Comments must be received on or before January 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) by altering the transition area at Vinton, Iowa. An instrument approach utilizing the 310° bearing of the Garrison NDB has been discontinued. Therefore, that portion of the Vinton, Iowa, transition area designation designed to protect this NDB is no longer required and the Vinton transition area should be redescribed to delete this airspace.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983), 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vinton, Iowa [Reported]

That airspace extending from 700 feet above the surface within a 5-mile radius of the Vinton Veterans Memorial Airpark (lat. 42°13'03"N., long. 92°01'43"W.) and within 2 miles each side of the Garrison NDB (lat. 42°13'18"N., long. 92°01'12"W) 103° bearing, extending from the 5-mile radius area to 7 miles east of the airport.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29487 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89-1, Notice No. 1]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has been considering options for restructuring and reformatting Part VI of the MUTCD with the objective of improving the application of effective traffic control devices in a construction zone. This notice makes a Public Information Package covering recommended changes to Part VI available to the public for review and comment.

DATE: Comments on action and materials cited in this notice must be received on or before March 15, 1989. Comments received after that date will be considered to the extent practicable.

ADDRESS: Submit written, signed comments, to FHWA Docket 89-1, Notice No. 1, Federal Highway Administration, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION OR A COPY OF THE PUBLIC INFORMATION PACKAGE CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration as the National Standard for highways open to public travel. Part VI "Traffic Controls For Street and Highway Construction and Maintenance Operations" of the MUTCD sets forth basic principles and prescribes standards for traffic control during construction and maintenance operations on streets and highways in the United States. It has been determined that Part VI needs to be revised to better serve the highway community. The title of Part VI is being changed to "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations." A contractor has been retained by the FHWA to review and prepare recommended changes to Part VI. The text of Part VI is to be expanded to include "utility" and "emergency" subject areas as well as to include recent research results and other areas not adequately covered in these documents. Also improved graphics will be added along with the clarification of ambiguous language. This notice announces the availability of a Public Information Package that provides a detailed summary of the contractor's recommended changes to Part VI. The contractor will be working very closely with the FHWA's Office of Traffic Operations to insure that all of the comments are appropriately considered. This notice is being published to inform the public of the status of the contract to rewrite Part VI of the MUTCD and to request comments on the work done thus far.

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 (domestic price) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices (TCDs) standards and applications for use on all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

Issued on December 16, 1988.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 88-29524 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53 and 56

[EE-154-78]

Lobbying by Public Charities; Lobbying by Private Foundations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document revises proposed regulations published in 1986 and also supersedes portions of proposed regulations published in 1980. The proposed regulations relate to lobbying expenditures by certain tax-exempt public charities and by private foundations. Changes to the tax laws governing lobbying by public charities were made by the Tax Reform Act of 1976 (the "Act"). The proposed regulations will provide organizations the guidance needed to comply with the Act, and will affect public charities electing the expenditure test under section 501(h) of the Internal Revenue Code of 1986 ("electing public charities"). The proposed regulations will also provide organizations with clearer guidance needed to comply with the requirements of section 4945 (relating to lobbying expenditures by private foundations). Finally, in light of the unique charitable and educational purposes shared by all organizations described in section 501(c)(3) as well as the similarity of the statutory schemes governing lobbying by private foundations and by electing public charities, the regulations ensure that the rules regarding lobbying by private foundations are consistent with the rules regarding lobbying by electing public charities. However, these proposed regulations are not applicable to lobbying by ineligible or nonelecting public charities, which continue to be covered by the "substantial part" test regarding lobbying activities.

DATES: Written comments and/or requests to appear (with an outline of the oral comments to be presented) at a public hearing scheduled for Monday, April 3, 1989, at 10:00 a.m., and continuing, if necessay, at the same time on Tuesday, April 4, 1989, must be

delivered or mailed by March 23, 1989. The proposed regulations published in the **Federal Register** on November 5, 1986 (51 FR 40211), as amended by this document, are proposed to be effective for tax years beginning after the publication of final regulations.

ADDRESS: Send comments, requests to appear at the public hearing, and outlines of oral comments to be presented at the public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (EE–154–78), Washington, DC 20224. The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerome P. Walsh Skelly of the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:CORP:T:R (EE–154–78), telephone 202–535–3818 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Prior Law

A publicly supported charity is not an organization described in section 501(c)(3) ("a section 501(c)(3) organization") if its lobbying activities are more than an insubstantial part of its activities. If it is determined that a substantial part of a publicly supported section 501(c)(3) organization's activities consists of attempts to influence legislation, the organization will lose its tax-exempt status as a charity. Before the passage of the Tax Reform Act of 1976, there was uncertainty about what constituted a "substantial part" of an organization's activities. Congress was aware both of the severity of loss of tax exemption as a sanction and of the belief that the vague standards of the substantial part test tended to create uncertainty and allow subjective and selective enforcement.

Expenditure Test

Under sections 501(h) and 4911, which were added by section 1307 of the Tax Reform Act of 1976, certain publicly supported section 501(c)(3) organizations may elect to spend up to a certain percentage of their "exempt purpose expenditures" to influence legislation without incurring tax or losing qualification for tax-exempt status. Thus, if an eligible organization elects the "expenditure test" of sections 501(h) and 4911, specific statutory dollar limits on the organization's lobbying expenditures apply. Under the expenditure test, there are limits both upon the amount of the organization's grass roots lobbying expenditures and upon the total amount of the organization's direct and grass roots lobbying expenditures. In contrast to the substantial part test, however, the expenditure test imposes no limit on lobbying activities that do not require expenditures, such as certain unreimbursed lobbying activities conducted by bona fide volunteers. In general, if either or both of the expenditure test limits are exceeded, a 25 percent excise tax is imposed upon the greater of: (1) The amount by which the organization's grass roots lobbying expenditures exceed its grass roots lobbying limit, or (2) the amount by which an organization's total direct and grass roots lobbying expenditures exceed its total lobbying limit. Additionally, if an organization's grass roots expenditures or total lobbying expenditures normally exceed 150 percent of the applicable limitation on its lobbying expenditures, the organization will cease to be described in section 501(c)(3), and, therefore, will cease to be exempt from income tax and will no longer be eligible to receive tax deductible charitable contributions.

Background

On November 25, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 162, 6001, and 6033 of the Internal Revenue Code of 1954 (relating to grass roots lobbying expenditures by business corporations) and to the Foundation and Similar Excise Taxes (26 CFR Part 53) under section 4945 of the Internal Revenue Code of 1954 (relating to lobbying expenditures by private foundations) (45 FR 78167) ("the 1980 NPRM").

On November 5, 1986, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1), Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7), Estate Tax Regulations (26 CFR Part 20), Gift Tax Regulations (26 CFR Part 25), and Foundation and Similar Excise Taxes (26 CFR Part 53), and also proposed regulations on Public Charity Excise Taxes (26 CFR Part 56), under sections 170, 501(c)(3), 501(c)(4), 501(h), 504, 2055, 2522, 4911, 4945, 6001, 6011, and 6033 of the Internal Revenue Code of 1954 (51 FR 40211) ("the 1986 NPRM").

This document supersedes a portion of the 1980 NPRM and revises portions of the 1986 NPRM. Specifically, it supersedes that portion of the 1980 NPRM that proposed amendments to the regulations under section 4945 of the Internal Revenue Code (relating to lobbying expenditures by private foundations). It revises portions of the 1986 NPRM relating to proposed regulations on Public Charity Excise Taxes (26 CFR Part 56) under section 4911 of the Internal Revenue Code. In addition, it revises portions of the 1986 NPRM that proposed amendments to the regulations under sections 501(h) and 4945. Thus, where this document proposes to amend any portion of the regulations under section 501(h) or section 4945, the proposed amendment in this document supersedes any proposed amendment of that portion of the regulations that was published in the 1986 NPRM.

The amendments to the Foundation and Similar Excise Taxes are necessary to provide guidance to organizations that must comply with the requirements of section 4945 and will also ensure that the regulations regarding lobbying by private foundations are consistent with the regulations regarding lobbying by electing public charities. The amendments proposed on November 5, 1986, as amended in this document, are proposed to conform the regulations to section 1307 of the Tax Reform Act of 1976 (90 Stat. 1720) as well as to ensure consistency between the similar schemes governing lobbying expenditures by electing public charities and by private foundations. The proposed regulations are to be issued under the authority in sections 501(h)(6), 504(b), 4911(f)(3) and 7805 of the Internal Revenue Code of 1986 (26 U.S.C. 501(h)(6), 504(b), 4911(f)(3), 7805).

Public Comment Process of Previous Notices of Proposed Rulemaking

Several thousand written comments were received concerning the 1986 NPRM. Numerous written comments were also received concerning the 1980 NPRM. In addition, on May 11 and 12, 1987, the Internal Revenue Service ("Service") held public hearings concerning the 1986 NPRM.

The numerous public comments and the two days of public hearings have been helpful in formulating this revised notice of proposed rulemaking. In addition, possible revisions of the controversial sections of the proposed regulations have been discussed at length with the Commissioner's Exempt Organizations Advisory Group (comprised of legal and other representatives of exempt organizations as well as academics) at public meetings held on September 17, 1987, and February 26, 1988.

Every effort has been made in the drafting of this revised notice of proposed rulemaking to be as responsive as possible to the many comments received from the public. This effort required a careful balancing of the statutory mandate limiting the amount of lobbying expenditures by section 501(c)(3) organizations with the desire of the affected organizations and individuals to involve themselves in the public policymaking process to the greatest extent consistent with that statutory mandate. Extensive revisions have been made to the prior notices of proposed rulemaking in an effort to achieve this difficult balance. For example, the proposed regulations contain a definition of grass roots lobbying that is less inclusive than is permitted by the broad statutory language defining grass roots lobbying.

Numerous portions of the 1986 NPRM were not controversial, however, and gave rise to little or no public comment. Those portions of the proposed regulations have been retained and are, in general, not affected by the revisions proposed in this document. For example, proposed §§ 1.501(h)–1 and 1.501(h)–3, proposed in the 1986 NPRM, describe the application of the expenditure test to electing public charities, including that an electing public charity may undertake a certain amount of lobbying expenditures without being subject to tax or having its tax-exempt status revoked. With minor exceptions, these portions of the proposed regulations are not affected by the revisions proposed in this document.

Summary of Comments Received on the Previous Notices of Proposed Rulemaking and Explanation of Provisions

1. Proposed Effective Date

Many of the comments on the 1986 NPRM's proposed regulations regarding lobbying expenditures by electing public charities opposed the proposed effective date of the proposed regulations (generally for tax years beginning after December 31, 1976). On April 9, 1987, the Service issued an information release, IR–87–49, stating that final regulations will be effective only prospectively from the date of publication of final regulations. Accordingly, the amendments proposed in this document and in the 1986 NPRM, as revised by this document, are hereby proposed to be effective on a prospective-only basis for tax years beginning after the date of publication of final regulations.

2. Definition of Grass Roots Lobbying

The 1986 NPRM proposed to define grass roots lobbying as a communication that:

(i) Pertains to legislation being considered by a legislative body, or seeks or opposes legislation,

(ii) Reflects a view with respect to the desirability of the legislation (for this purpose, a communication that pertains to legislation but expresses no explicit view on the legislation shall be deemed to reflect a view on legislation if the communication is selectively disseminated to persons reasonably expected to share a common view of the legislation), and

(iii) Is communicated in a form and distributed in a manner so as to reach individuals as members of the general public, that is, as voters or constituents, as opposed to a communication designed for academic, scientific, or similar purposes. A communication may meet this test even if it reaches the public only indirectly, as in a news release submitted to the media.

Most commentators expressed opposition to the breadth of the definition of grass roots lobbying contained in the 1986 NPRM. The primary objections were that the definition did not require a communication to have a "call to action" or some other encouragement to action on the part of the communication's recipients; that the definition considered an otherwise balanced discussion of a piece of legislation to reflect a view on that legislation based on the persons to whom the discussion was disseminated; and that the definition did not require the legislation to be pending or imminently to be introduced. Several commentators also expressed concern that the third part of the proposed definition of grass roots lobbying, regarding communications that reach the public only indirectly, could include testimony on a bill before a legislative committee if the press was in attendance.

In response to the numerous comments on the 1986 NPRM, this document substantially revises the proposed definition of grass roots lobbying. The modifications include the removal of the phrases "pertains to," "seeks or opposes legislation," and "selectively disseminated to persons reasonably expected to share a common view of the legislation."

In place of the definition contained in the 1986 NPRM, this document proposes to define the term "grass roots lobbying communication" (except with regard to a limited number of mass media communications discussed below) to include only those communications that: (1) Refer to specific legislation; (2) reflect a view on such legislation; and (3) encourage the recipient of the communication to take action with respect to such legislation.

Thus, under the rules proposed in this document, a communication is not a grass roots lobbying communication unless the communication's reference to legislation is to "specific legislation." As indicated in this document, this term includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.

The rules proposed in this document also indicate that a communication is not a grass roots lobbying communication unless it encourages its recipients to take action with respect to the specific legislation. As indicated in this document, a communication encourages its recipients to take action only if the communication:

(1) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(2) States the address, telephone number, or similar information of a legislator or an employee of a legislative body;

(3) Provides a petition, tear-off postcard or similar material for the recipient to communicate his or her views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); or

(4) Specifically identifies one or more legislators who will vote on the legislation as: (a) Opposing the communication's view with respect to the legislation; (b) being undecided with respect to the legislation; (c) being the recipient's representative in the legislature; or (d) being a member of the legislative committee that will consider the legislation. Encouraging the recipient to take action under this fourth category does not include naming the main sponsor(s) of the legislation for purposes of identifying the legislation.

Communications that are described in categories (1) through (3) above are deemed not only to encourage action

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with respect to legislation, but also to "directly encourage" action with respect to legislation. This distinction is important because only communications in category (4), which encourage the recipient to take action with respect to legislation without "directly encouraging" such action, may be within the exception for nonpartisan analysis, study or research and, as a result, not be grass roots lobbying communications.

This revised definition is a major modification to the definition proposed in the 1986 NPRM. The lobbying definition contained in this document (with an exception for a limited number of mass media communications discussed below) not only requires that the communication contain a reference to specific legislation, but also requires that the communication both reflect a view with respect to such legislation and encourage the recipient to take action. Under such a definition, communications could advocate or oppose specific legislation and not be considered lobbying, so long as the communications do not encourage the recipients to take action with respect to the legislation. The 1986 NPRM, in contrast, included within the definition of lobbying certain communications that did not encourage the recipient to take action with respect to legislation. Also in contrast to this document's definition, the definition proposed in 1986 provided that a communication not directly taking a position on legislation could be lobbying based upon the selective dissemination of the communication.

The one exception to the above three-part definition of lobbying is a special rule for certain mass media communications. If within two weeks before a vote by a legislative body, or committee thereof, on a highly publicized piece of legislation, an organization makes a communication in the mass media that reflects a view on the general subject of such legislation and either (1) refers to the highly publicized legislation or (2) encourages the public to communicate with their legislators on the general subject of such legislation, then the communication will be presumed to be a grass roots lobbying communication. An organization can rebut this presumption by demonstrating that the communication is a type of communication regularly made by the organization in the mass media without regard to the timing of legislation (that is, a customary course of business exception) or that the timing of the communication was for reasons unrelated to the upcoming legislative action. For purposes of this special rule, the term "mass media" means television, radio, and certain general circulation newspapers and magazines. Any mass media communication that is not made within two weeks before a legislative vote on a highly publicized piece of legislation will be tested by the general three-part test for grass roots lobbying.

Under the proposed regulations, testimony on a bill before a legislative committee, which is often a direct lobbying communication, is not grass roots lobbying merely because the testimony indirectly reached the public through press coverage of the organization's testimony.

In addition to the rules discussed above, numerous examples are provided to assist organizations in evaluating the facts and circumstances of each individual case. In general, those examples amplify the rule that a communication that advocates or opposes specific legislation is generally not a grass roots lobbying communication unless it encourages the recipient to take action with respect to the legislation, such as by requesting recipients to contact legislators or by providing the names of undecided legislators.

As noted above, under the proposed regulations, a communication will be considered to encourage recipients to take action with respect to legislation only if the communication is described in one of the four listed categories. The Service will, however, continue to study communications and, if other methods of encouraging recipients to take action are identified, will propose amendments to the regulations.

In order to achieve the balance between the statutory mandate limiting expenditures for grass roots lobbying and the desire of many charitable organizations to participate in the public policy process, the definition of grass roots lobbying proposed in this document is a less inclusive definition than is permitted by the broad statutory language defining grass roots lobbying. The Service believes that any definition of grass roots lobbying less inclusive than that proposed in this document could, in effect, eliminate the statutory limitation Congress has placed on grass roots lobbying expenditures by electing public charities.

3. Definition of Direct Lobbying

Some commentators criticized the definition of direct lobbying contained in the 1986 NPRM in that the definition was based on the grass roots lobbying definition. The primary objections were that the definition considered an otherwise balanced discussion of a piece of legislation to reflect a view on legislation based on the dissemination of the communication, and that the definition did not require the legislation to be pending or imminently to be introduced.

This document proposes to modify the definition of direct lobbying by removing the phrases "pertains to," "seeks or opposes legislation," and "selectively disseminated to persons reasonably expected to share a common view of the legislation." In place of the definition contained in the 1986 NPRM, this document proposes to define the term "direct lobbying communication" to include only those communications to legislators or certain other government officials that (1) refer to specific legislation, and (2) reflect a view on such legislation.

4. Allocation Rules

Many commentators expressed concern about the allocation rules proposed in the 1986 NPRM, particularly the special rules relating to advertising, fundraising, and mixed lobbying purposes.

This document revises the proposed allocation rules. Under the allocation rule proposed in this document, a mixed grass roots and direct lobbying expenditure is to be treated as a grass roots expenditure, except to the extent that the organization demonstrates that the expenditure was incurred *primarily* (rather than the *solely* standard contained in the 1986 NPRM) for direct lobbying purposes, in which case a reasonable allocation shall be made between the direct and grass roots lobbying purposes served by the communication.

This document removes the two special rules with respect to fundraising and advertising contained in the 1986 NPRM. For lobbying communications that also serve a bona fide nonlobbying purpose, this document proposes two different allocation rules. Which rule is used depends upon whether the communication is sent primarily to members or nonmembers.

For communications that are sent primarily to bona fide members (that is, for communications sent to more members than nonmembers), an organization must make a reasonable allocation between the amount expended for the lobbying purpose and the amount spent for the nonlobbying purpose. Including as a lobbying expenditure only the amount expended for the specific sentence or sentences that encourage the recipient to action is not considered a reasonable allocation.

For lobbying communications that are not sent primarily to bona fide members, all costs attributable to those parts of the communication that are on the same specific subject as the lobbying message must be included as lobbying expenditures for allocation purposes. Under the rules proposed in this document, however, the costs attributable to parts of a lobbying communication that are not on the same specific subject as the lobbying message are not considered lobbying expenditures. Whether or not a portion of a communication is on the same specific subject as the lobbying message will depend on the surrounding facts and circumstances. In general, a portion of a communication will be on the same specific subject as the lobbying message if that portion discusses an activity that would be directly affected by the proposed legislation that is the subject of the lobbying message. Moreover, discussion of the background or consequences of either the proposed legislation or of an activity directly affected by the proposed legislation will also be considered to be on the same specific subject as the lobbying communication.

5. Research and Preparation Costs

Some commentators expressed concern that, under the 1986 NPRM, the research and preparation costs incurred in producing a nonlobbying communication could be treated as a lobbying expenditure because of subsequent use of the communication in a lobbying campaign by that organization, a related organization, or an unrelated organization.

This document attempts to make clear that the costs of researching and preparing nonlobbying communications would be treated as lobbying expenditures only in cases of abuse. Except in such cases, the regulations proposed in this document would not treat as lobbying expenditures the research and preparation costs of a communication that is not itself a lobbying communication merely because the communication was also used in a lobbying campaign.

A communication that reflects a view on specific legislation but that is not a lobbying communication will be treated as a lobbying communication because of subsequent use of the communication in a lobbying effort only if the primary purpose of the organization in preparing the communication was for use in lobbying. The primary purpose of an organization in preparing a document is not lobbying if, prior to or contemporaneously with the use of the communication in lobbying, the organization makes a substantial nonlobbying distribution of the communication.

Where a communication's nonlobbying distribution is not substantial, all of the facts and circumstances must be weighed to determine the organization's primary purpose in preparing the communication. Two factors of particular importance are (1) the relative scope of the nonlobbying and subsequent lobbying distributions, and (2) whether the subsequent lobbying distribution is made by the organization itself, a related organization or an unrelated organization. Where the subsequent distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

6. Communications with Members

With respect to the exception for an organization's communications with its members, many commentators stated that their organizations have only a mailing list of supporters, without a formal membership, or have a single mailing list that includes both formal members and nonmember supporters.

This document does not revise the proposed definition of membership because the statutory use of the term "bona fide member", combined with the legislative history, indicates Congress intended that the exception for communications with members not include persons simply included on a mailing list or those whose financial support of the organization is in the distant past. However, the proposed regulations relating to communications with members have been slightly modified to reflect the revisions to the definition of direct and grass roots lobbying.

7. Exception for Nonpartisan Analysis, Study or Research

Some commentators expressed concern that the statutory exception for nonpartisan analysis should apply to some of the examples under the 1986 NPRM's general definition section for grass roots lobbying

The section 4945 regulations currently provide that engaging in and making available nonpartisan analysis, study or research does not constitute lobbying. This same exception was included in the 1986 NPRM's proposed section 4911 regulations by cross-reference to the section 4945 regulations. This document proposes to include in the section 4911 regulations the full text of the section 4945 regulations' exception for nonpartisan analysis, study or research, rather than merely a cross-reference to the section 4945 regulations. As requested by the comments, the examples proposed in this document note where the nonpartisan analysis exception clearly applies. As a result of the narrow definition of grass roots lobbying proposed in this document, many communications addressing legislation will not be grass roots lobbying communications. Because fewer communications will be lobbying communications, organizations will not have to depend on the nonpartisan analysis exception to the extent necessary under the 1986 NPRM. That is to say, under the rules proposed in this document, many communications that address legislation will fail to be lobbying communications as a result of the narrow definition of lobbying rather than because of the nonpartisan analysis exception.

The comments received by the Service indicated some confusion regarding the scope of the nonpartisan analysis exception. To remove this confusion, this document proposes to clarify in both the section 4945 and section 4911 regulations that a communication is not within the nonpartisan analysis exception if the communication *directly* encourages recipients of the communication to contact legislators or certain other governmental officials in favor of or in opposition to specific legislation. As stated above, a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than specifically identify legislators as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation.

This document proposes an additional amendment to the regulations regarding the nonpartisan analysis, study or research exception. Under the rules proposed in this document, analysis, study or research that reflects a view on specific legislation is not nonpartisan if an organization's primary purpose for undertaking the analysis, study or research is for use in lobbying *and* the analysis, study or research is subsequently used as, or with, a lobbying communication that directly encourages recipients to take action with respect to specific legislation. However, the primary purpose of the organization in undertaking analysis,

study or research will not be considered to be lobbying if, prior to or contemporaneously with the use of the analysis, study or research in lobbying, the organization makes a substantial distribution of the analysis, study or research (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan analyses, studies, or research.

8. Exception for Discussion of Broad Social, Economic and Similar Problems

Some commentators requested that the "discussion of broad social, economic and similar problems" exception to the definition of lobbying be included in the text of the section 4911 regulations (relating to lobbying expenditures by electing public charities). The section 4945 regulations currently provided that discussions of broad social, economic and similar problems are not lobbying activities. This document proposes that the full text of the exception be included in the section 4911 regulations. In response to confusion about the scope of the exception, this document proposes that the exception, for purposes of both section 4945 and section 4911, does not apply where a communication directly encourages recipients of the communication to contact legislators or certain other government officials in favor of or in opposition to specific legislation. Because of the revised definition of grass roots lobbying proposed in this document, many communications will not be grass roots lobbying, and thus very few, if any, communications that actually constitute grass roots lobbying communications will be within the exception for discussion of broad social, economic and similar problems. That is, the revised definition of grass roots lobbying will reduce or eliminate the need for organizations to depend upon the exception for discussion of broad social, economic and similar problems.

9. Grants by Private Foundations to Electing Public Charities

Some commentators noted that the 1986 NPRM would expand certain rules relating to restrictions on grants by private foundations to electing public charities beyond the scope of a private letter ruling issued by the Service in 1977. These commentators suggested that the additions to the Service's 1977 private ruling are inappropriate and unnecessary.

With respect to grants by private foundations to electing public charities, this document revises the 1986 NPRM to conform to the Service's 1977 private letter ruling by removing the additional restrictions. Additionally, this document states that a private foundation can rely on the assertions of the grantee regarding the nonlobbying nature of the funded activities, unless the private foundation doubts or, in light of all the facts and circumstances, reasonably should doubt the accuracy or reliability of the documents provided by the grantee.

10. Effect on 1980 Notice of Proposed Rulemaking

In the 1980 NPRM, the Service proposed amendments to the regulations on Foundations and Similar Excise Taxes in order to provide clearer guidance to organizations that must comply with the requirements of section 4945, relating to the making of lobbying expenditures by private foundations. Regulations under section 162(e)(2) were also proposed to be amended in that same notice of proposed rulemaking. This document proposes to revise the regulations regarding lobbying by private foundations by conforming them to the regulations governing lobbying by electing public charities. It does not propose any revisions to the regulations under section 162(e)(2).

11. Rules Regarding Affiliated Organizations

Several commentators objected to the 1986 NPRM's standard that organizations are affiliated where the governing instruments of the "controlled" organization require that the "controlled" organization "take into account" the position of the "controlling" organization on a legislative issue.

In response to those comments, this document slightly modifies the affiliation rules by removing the "take into account" language and directly tracking the statutory language.

12. Definition of Term "Separate Fundraising Units"

Several commentators objected to the use of the term "substantial" in the 1986 NPRM's definition of the term "separate fundraising units." Their objections were with regard to both the term's lack of precision and its expansive scope.

In response to such objections, this document slightly modifies the proposed rule to include only those persons who spend a majority, rather than a substantial part, of their time on fundraising for the organization.

13. Miscellaneous Technical Revisions

Finally, some commentators suggested that, for a variety of reasons, certain portions of the proposed regulations needed minor technical changes. In response to those comments, this document proposes several minor technical revisions to the 1986 NPRM. The Service specifically welcomes further comments suggesting any additional technical revisions necessary for proper implementation of the underlying statutes.

Several sections in the regulations have been reserved. This is simply for the convenience of the **Federal Register** reader.

Rulings Regarding Application of the Regulations

Under its ruling program (see Rev. Proc. 83–36, 1983–1 C.B. 763 and Rev. Proc. 88–8, 1988–4 I.R.B. 22), the Service will consider requests for private letter rulings to clarify the application of these regulations to particular fact patterns.

Comments, Requests To Appear at the Public Hearing, and Outline of Oral Comments To Be Presented at the Public Hearing

Before adopting these prposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. All comments, requests to appear at, and outlines of oral comments to be presented at the public hearing will be available for public inspection and copying. In light of the extensive comments upon and full discussion of the issues in this document since the enactment of the Tax Reform Act of 1976 and the publication of the 1986 NPRM, the Service has scheduled a publich hearing to be held on Monday, April 3, 1989, at 10:00 a.m., and continuing, if necessary, at the same time on Tuesday, April, 4, 1989, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure

requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Supersession

These regulations, when published in final form in the **Federal Register**, will supersede section 7.0(c)(4) of the Temporary Income Tax Regulations under the Tax Reform Act of 1976. This document supersedes that portion of the notice of proposed rulemaking published in the **Federal Register** on November 25, 1980 (45 FR 78167) that proposed amendments to the regulations on Foundations and Similar Excise Taxes (26 CFR Part 53). Where this document proposes to amend any portion of the regulations under Title 26 of the Code of Federal Regulations, the proposed amendment in this document supersedes any proposed amendment of that portion of the regulations that was previously published in the **Federal Register** on November 5, 1986 (51 FR 40211).

Drafting Information

The principal author of this document was Jerome P. Walsh Skelly of the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations Division). Other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.501(a)–1—1.528–10

Income taxes, Exempt organizations, Foundations, Nonprofit organizations, Cooperatives, Political organizations, Homeowners associations.

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

26 CFR Part 56

Excise tax, Lobbying expenditures, Exempt purpose expenditures, Affiliated organizations, Administration and procedure.

Proposed Amendments to the Regulations

Accordingly, (I) the proposed amendments to 26 CFR Part 53 that were published on November 25, 1980 (45 FR 78167) are withdrawn, and (II) the notice of proposed rulemaking (to amend 26 CFR Parts 1 and 53 and add a new Part 56) that was published on November 5, 1986 (51 FR 40211), is amended, and additional amendments of Part 53 are proposed, as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.504–1 and 1.504–2 also issued under 26 U.S.C. 504(b).

Par. 2. Proposed § 1.501(h)–2 is amended by revising paragraph (b)(2)(vi) to read:

§ 1.501(h)–2 Electing the expenditure test.

* * * * *

(b) *Organizations eligible to elect the expenditure test.* * * *

(2) *Certain organizations listed.* * * *

(vi) Section 509(a)(3) (relating to organizations supporting public charities), except that for purposes of this paragraph (b)(2), section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

* * * * *

Par. 3. Proposed § 1.501(h)–3 is amended by revising paragraph (c)(4) and adding new Examples (4) and (5) to paragraph (e), to read:

§ 1.501(h)–3 Lobbying or grass roots expenditures normally in excess of ceiling amount.

* * * * *

(c) *Definitions.* * * *

(4) The term "grass roots expenditures" means expenditures for grass roots lobbying communications as defined in section 4911(c)(3) or section 4911(f)(4)(A) and §§ 56.4911–2 and 3.

* * * * *

(e) *Examples.* * * *

Example (4) Organization M made the expenditure test election under section 501(h) effective for taxable years beginning with 1977 and has not revoked the election. M has $500,000 of exempt purpose expenditures during each of the years 1981 through 1984. In addition, during each of those years, M spends $75,000 for direct lobbying and $25,000 for grass roots lobbying. Since the amount expended for M's lobbying (both total lobbying and grass roots lobbying) is within the respective nontaxable expenditure limitations, M is not liable for the 25 percent excise tax imposed under section 4911(a) upon excess lobbying expenditures, nor is M denied tax-exempt status by reason of section 501(h).

Example (5) Assume the same facts as in Example (4), except that, on behalf of M, numerous unpaid volunteers conduct substantial lobbying activities with no reimbursement. Since the substantial lobbying activities of the unpaid volunteers are not counted towards the expenditure limitations and the amount expended for M's lobbying is within the respective nontaxable expenditure limitations, M is not liable for the 25 percent excise tax under section 4911, nor is M denied tax-exempt status by reason of section 501(h).

PART 53—[AMENDED]

Par. 4. The authority citation for Part 53 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 5. Section 53.4945–2 is amended as follows:

1. Paragraph (a)(1) is revised, paragraph (a)(2) is removed and reserved, proposed paragraph (a)(6) is revised, and, in proposed paragraph (a)(7)(ii), Examples (1), (2), and (3) are revised and new Examples (10) through (13) are added and the introductory text is republished to read as set forth below.

2. Paragraphs (b) and (c) are removed and reserved.

3. Paragraph (d)(1)(i) is revised to read as set forth below.

4. In paragraph (d)(1)(iv), the last sentence is revised to read as set forth below.

5. Paragraph (d)(1)(v), *Examples*, is redesignated as paragraph (d)(1)(vii), Examples (4) and (5) are revised, and new Examples (8) through (11) are added, to read as set forth below.

6. New paragraphs (d)(1)(v) and (d)(1)(vi) are added, to read as set forth below.

7. Paragraph (d)(4) is revised to read as set forth below.

§ 53.4945–2 Propaganda influencing legislation.

(a) *Propaganda influencing legislation, etc.*—(1) *In general.* Under section 4945(d)(1) the term "taxable expenditure" includes any amount paid or incurred by a private foundation to carry on propaganda, or otherwise to attempt, to influence legislation. An expenditure is an attempt to influence legislation if it is for a direct or grass roots lobbying communication, as defined in § 56.4911–2 (without reference to §§ 56.4911–2(b)(3) and 56.4911–2(c)) and § 56.4911–3. See, however, paragraph (d) of this section for exceptions to the general rule of this paragraph (a)(1).

(2) [Reserved]

* * * * *

(6) *Grants to public organizations that attempt to influence legislation*—(i) *General Support Grant.* A general support grant by a private foundation to an organization described in section 509(a)(1), (2), or (3) (a "public charity" for purposes of paragraphs (a) (6) and (7) of this section) does not constitute a taxable expenditure under section 4945(d)(1) to the extent that the grant is not earmarked, within the meaning of § 53.4945–2(a)(5)(i), to be used in an attempt to influence legislation. The preceding sentence applies without

regard to whether the public charity has made the election under section 501(h).

(ii) *Specific Project Grant.* A grant by a private foundation to fund a specific project of a public charity is not a taxable expenditure by the foundation under section 4945(d)(1) to the extent that—

(A) The grant is not earmarked, within the meaning of § 53.4945–2(a)(5)(i), to be used in an attempt to influence legislation, and

(B) The amount of the grant, together with other grants by the same private foundation for the same project for the same year, does not exceed the amount budgeted, for the year of the grant, by the grantee organization for activities of the project that are not attempts to influence legislation. If the grant is for more than one year, the preceding sentence applies to each year of the grant with the amount of the grant divided equally between years, or as otherwise actually disbursed by the private foundation. This paragraph (a)(6)(ii) applies without regard to whether the public charity has made the election under section 501(h)

(iii) *Reliance upon grantee's budget.* For purposes of determining the amount budgeted by a prospective grantee for specific project activities that are not attempts to influence legislation under paragraph (a)(6)(ii) of this section, a private foundation may rely on budget documents or other sufficient evidence supplied by the grantee organization (such as a signed statement by an authorized officer, director or trustee of such grantee organization) showing the proposed budget of the specific project, unless the private foundation doubts or, in light of all the facts and circumstances, reasonably should doubt the accuracy or reliability of the documents.

(7) *Grants to organizations that cease to be described in 501(c)(3)—* * * *

(ii) *Examples.* The provisions of paragraphs (a)(6) and (a)(7) of this section are illustrated by the following examples:

Example (1). W, a private foundation, makes a general support grant to Z, a public charity described in section 509(a)(1). Z informs W that, as an insubstantial portion of its activities, Z attempts to influence the State legislature with regard to changes in the mental health laws. The use of the grant is not earmarked by W to be used in a manner that would violate section 4945(d)(1). Even if the grant is subsequently devoted by Z to its legislative activities, the grant by W is not a taxable expenditure under section 4945(d).

Example (2). X, a private foundation, makes a specific project grant to Y University for the purpose of conducting research on the potential environmental effects of certain pesticides. X does not earmark the grant for any purpose that would violate section 4945(d)(1) and there is no oral or written agreement or understanding whereby X may cause Y to engage in any activity described in section 4945(d) (1), (2), or (5), or to select any recipient to which the grant may be devoted. Further, X determines, based on budget information supplied by Y, that Y's budget for the project does not contain any amount for attempts to influence legislation. X has no reason to doubt the accuracy or reliability of the budget information. Y uses most of the funds for the research project; however, Y expends a portion of the grant funds to send a representative to testify at Congressional hearings on a specific bill proposing certain pesticide control measures. The portion of the grant funds expended with respect to the Congressional hearings is not treated as a taxable expenditure by X under section 4945(d)(1).

Example (3). M, a private foundation, makes a specific project grant of $150,000 to P, a public charity described in section 509(a)(1). In requesting the grant from M, P stated that the total budgeted cost of the project is $200,000, and that of this amount $20,000 is allocated to attempts to influence legislation related to the project. M relies on the budget figures provided by P in determining the amount P will spend on influencing legislation and M has no reason to doubt the accuracy or reliability of P's budget figures. In making the grant, M did not earmark any of the funds from the grant to be used for attempts to influence legislation. M's grant of $150,000 to P will not constitute a taxable expenditure under section 4945(d)(1) because M did not earmark any of the funds for attempts to influence legislation and because the amount of its grant ($150,000) does not exceed the amount allocated to specific project activities that are not attempts to influence legislation ($200,000 − $20,000 = $180,000).

* * * * *

Example (10). X, a private foundation, makes a specific project grant to Y, a public charity described in section 509(a). In requesting the grant, Y stated that it planned to use the funds to purchase a computer for purposes of computerizing its research files and that the grant will not be used to influence legislation. Two years after X makes the grant, X discovers that Y has also used the computer for purposes of maintaining and updating the mailing list for Y's lobbying newsletter. Because X did not earmark any of the grant funds to be used for attempts to influence legislation and because X had no reason to doubt the accuracy or reliability of Y's documents representing that the grant would not be used to influence legislation, X's grant is not treated as a taxable expenditure.

Example (11). G, a private foundation, makes a specific project grant of $300,000 to L, a public charity described in section 509(a)(1) for a three-year specific project studying child care problems. L provides budget material indicating that the specific project will expend $200,000 in each of three years. L's budget materials indicate that attempts to influence legislation will amount to $10,000 in the first year, $20,000 in the second year and $100,000 in the third year. G intends to pay its $300,000 grant over three years as follows: $200,000 in the first year, $50,000 in the second year and $50,000 in the third year. Since the amount of the grant in each of the three years, when divided equally between the three years ($100,000 for each year), is not more than the nonlobbying expenditures of L on the specific project for any of the three years, none of the grant is treated as a taxable expenditure under section 4945(d)(1).

Example (12). P, a private foundation, makes a $120,000 specific project grant to C, a public charity described in section 509(a) for a three-year project. P intends to pay its grant to C in three equal annual installments of $40,000. C provides budget material indicating that the specific project will expend $100,000 in each of three years. C's budget materials, which P reasonably does not doubt, indicate that the project's attempts to influence legislation will amount to $50,000 in each of the three years. After P pays the first annual installment to C, but before P pays the second installment to C, reliable information comes to P's attention that C has spent $90,000 of the project's $100,000 first-year budget on attempts to influence legislation. This information causes P to doubt the accuracy and reliability of C's budget materials. Because of the information, P does not pay the second-year installment to C. P's payment of the first installment of $40,000 is not a taxable expenditure under section 4945(d)(1) because the grant in the first year is not more than the nonlobbying expenditures C projected in its lobbying materials that P reasonably did not doubt.

Example (13). Assume the same facts as in Example (12), except that P pays the second-year installment of $40,000 to C. In the project's second year, C once again spends $90,000 of the project's $100,000 annual budget in attempts to influence legislation. Because P doubts or reasonably should doubt the accuracy or reliability of C's budget materials when P makes the second-year grant payment, P may not rely upon C's budget documents at that time. Accordingly, although none of the $40,000 paid in the first installment is a taxable expenditure, only $10,000 ($100,000 minus $90,000) of the second-year grant payment is not a taxable expenditure. The remaining $30,000 of the second installment is a taxable expenditure within the meaning of section 4945(d)(1).

* * * * *

(b) [Reserved]

(c) [Reserved]

(d) * * *

(1) * * *

(i) *In general.* A communication is not a direct lobbying communication described in § 56.4911–2(b)(1) or a grass roots lobbying communication described in § 56.4911–2(b)(2) if the communication constitutes engaging in nonpartisan analysis, study or research and making available to the general public or a segment or members thereof or to governmental bodies, officials, or employees and results of such work. Accordingly, an expenditure for such a

communication does not constitute a taxable expenditure under section 4945(d)(1) and § 53.4945–2(a)(1).

(ii) * * *

(iii) * * *

(iv) *Making available results of nonpartisan analysis, study, or research.* * * * For purposes of this paragraph (d)(1)(iv), such communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue.

(v) *Subsequent lobbying use of nonpartisan analysis, study or research.* For purposes of this paragraph, a nonlobbying communication is any communication that reflects a view on specific legislation but that is not a lobbying communication as described in § 56.4911–2(b). This § 56.4945–2(d)(1)(v) governs any nonlobbying communication that is nonpartisan analysis, study or research (within the meaning of § 56.4945–2(d)(1)) *and* that is: subsequently used with an accompanying lobbying communication that directly encourages recipients to take action with respect to legislation; or subsequently altered so that it is itself a lobbying communication that directly encourages recipients to take action with respect to legislation. In such a case, the communication is not within the exception for nonpartisan analysis, study or research and will be treated as a lobbying communication if the organization's primary purpose in preparing the communication was for use in lobbying; consequently, the expenses of preparing and distributing the communication will be treated as lobbying expenditures. The primary purpose of the organization in undertaking analysis, study, or research will not be considered to be for use in lobbying if, prior to or contemporaneously with the use of the analysis, study, or research in lobbying, the organization makes a substantial distribution of the analysis, study, or research (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan analyses, studies, or research. Where the nonlobbying distribution of a communication governed by this paragraph is not substantial, all of the facts and circumstances must be weighed to determine whether the organization's primary purpose in preparing the communication was for use in lobbying. While not the only factor, the extent of the organization's nonlobbying distribution of the communication is particularly relevant, especially when compared to the extent of the communication's distribution with the lobbying message. Another particularly relevant factor is whether the subsequent lobbying use of a communication is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

(vi) *Directly encouraging action by recipients of a communication.* A communication that reflects a view on specific legislation is not within the nonpartisan analysis, study or research exception of this § 53.4945–2(d)(1) if the communication directly encourages the recipient to take action with respect to such legislation. For purposes of this section, a communication directly encourages the recipient to take action with respect to legislation if the communication is described in § 56.4911–2(b)(2)(iii)(A) through (C). As described in § 56.4911–2(b)(2)(iv), a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than specifically identify one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation.

(vii) *Examples.* * * *

Example (4). Publishes a bi-monthly newsletter to collect and report all published materials, ongoing research, and new developments with regard to the use of pesticides in raising crops. The newsletter also includes notices of proposed pesticide legislation with impartial summaries of the provisions and debates on such legislation. The newsletter does not encourage recipients to take action with respect to such legislation, but is designed to present information on both sides of the legislative controversy and does present such information fully and fairly. It is within the exception for nonpartisan analysis, study, or research.

Example (5). X is satisfied that A, a member of the faculty of Y University, is exceptionally well qualified to undertake a project involving a comprehensive study of the effects of pesticides on crop yields. Consequently, X makes a grant to A to underwrite the cost of the study and of the preparation of a book on the effect of pesticides on crop yields. X does not take any position on the issues or control the content of A's output. A produces a book which concludes that the use of pesticides often has a favorable effect on crop yields, and on that basis argues against pending bills which would ban the use of pesticides. A's book contains a sufficiently full and fair exposition of the pertinent facts, including known or potential disadvantages of the use of pesticides, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. The book does not directly encourage readers to take action with respect to the pending bills. Consequently, the book is within the exception for nonpartisan analysis, study, or research.

Example (6). * * *

Example (7). * * *

Example (8). Organization Z researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. Z's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.

Example (9). Assume the same facts as in Example (8), except that, after stating support for the pending bill, the study concludes: "You should write to the undecided committee members to support this crucial bill." The study is not within the exception for nonpartisan analysis, study or research because it directly encourages the recipients to urge a legislator to support a specific piece of legislation.

Example (10). Organization X plans to conduct a lobbying campaign with respect to illegal drug use in the United States. It incurs $5,000 in expenses to conduct research and prepare an extensive report primarily for use in the lobbying campaign. Although the detailed report discusses specific pending legislation and reaches the conclusion that the legislation would reduce illegal drug use, the report contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent conclusion regarding the effect of the legislation. The report does not encourage readers to contact legislators regarding the legislation. Accordingly, the report does not, in and of itself, constitute a lobbying communication.

Copies of the report are available to the public at X's office, but X does not actively distribute the report or otherwise seek to make the contents of the report available to the general public. Whether or not X's distribution is sufficient to meet the requirement in § 53.4945–2(d)(1)(iv) that a nonpartisan communication be made available, X's distribution is not substantial (for purposes of § 53.4945–2(d)(v)) in light of all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan reports. X then mails copies of the report, along with a letter, to 10,000 individuals on X's mailing list. In the letter, X requests that individuals contact legislators urging passage of the legislation discussed in the report. Because X's research and report were primarily undertaken by X for lobbying purposes and X did not make a substantial distribution of the report (without an accompanying lobbying message) prior to or contemporaneously with the use of the report in lobbying, the report is a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study or research. Thus, the expenditures for preparing and mailing both the report and the letter are taxable expenditures under section 4945.

Example (11). Assume the same facts as in Example (10), except that before using the report in the lobbying campaign, X sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, X also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution pattern of similar nonpartisan reports. In light of all of the facts and circumstances, X's distribution of the report is substantial. Because of X's substantial distribution of the report, X's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on X's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications.

* * * * *

(4) *Examinations and discussions of broad social, economic, and similar problems.* Examinations and discussions of broad social, economic, and similar problems are neither direct lobbying communications under § 56.4911–2(b)(1) nor grass roots lobbying communications under § 56.4911–2(b)(2) even if the problems are of the type with which government would be expected to deal ultimately. Thus, under §§ 56.4911–2(b) (1) and (2), lobbying communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation. For example, this paragraph excludes from grass roots lobbying under § 56.4911–2(b)(2) an organization's discussions of problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the discussions do not directly encourage recipients of the communication to contact a legislator, an employee of a legislative body, or a government official or employee who may participate in the formulation of legislation.

PART 56—[AMENDED]

Par. 6. Proposed §§ 56.4911–1 through 56.4911–3 are revised to read:

§ 56.4911–1 Tax on excess lobbying expenditures.

(a) *In general.* Section 4911(a) imposes an excise tax of 25 percent on the excess lobbying expenditures (as defined in paragraph (b) of this section) for a taxable year of an organization for which the expenditure test election under section 501(h) is in effect. The limit on expenditures for influencing legislation on which no tax is due from an organization for a taxable year is the lobbying nontaxable amount, or, on expenditures for influencing legislation through grass roots lobbying, the grass roots nontaxable amount (see paragraph (c) of this section). For rules concerning the application of the excise tax imposed by section 4911(a) to the members of an affiliated group of organizations (as defined in § 56.4911–7(e)), see § 56.4911–8.

(b) *Excess lobbying expenditures.* For any taxable year for which the expenditure test election under section 501(h) is in effect, the amount of an organization's excess lobbying expenditures is the greater of—

(1) The amount by which the organization's lobbying expenditures (within the meaning of § 56.4911–2(a)) exceed the organization's lobbying nontaxable amount, or

(2) The amount by which the organization's expenditures for grass roots lobbying communications (within the meaning of §§ 56.4911–2 and –3)) exceed the organization's grass roots nontaxable amount.

(c) *Nontaxable amounts*—(1) *Lobbying nontaxable amount.* Under section 4911(c)(2), the lobbying nontaxable amount for any taxable year for which the expenditure test election is in effect is the lesser of—

((i)) $ 1,000,000, or

(ii) To the extent of the organization's exempt purpose expenditures (within the meaning of § 56.4911–4) for that year, the sum of 20 percent of the first $500,000 of such expenditures, plus 15 percent of the second $500,000 of such expenditures, plus 10 percent of the third $500,000 of such expenditures, plus 5 percent of the remainder of such expenditures.

(2) *Grass roots nontaxable amount.* Under section 4911(c)(4), an organization's grass roots nontaxable amount for any taxable year is 25 percent of its lobbying nontaxable amount for that year.

(d) *Examples.* The provisions of this section are illustrated by the examples in § 1.501(h)–3.

§ 56.4911–2 Lobbying expenditures, direct lobbying communications, and grass roots lobbying communications.

(a) *Lobbying expenditures.* If an organization has in effect for any year the expenditure test election under section 501(h), its lobbying expenditures for that year are the sum of its expenditures during that year for direct lobbying communications ("direct lobbying expenditures") plus its expenditures during that year for grass roots lobbying communications ("grass roots expenditures").

(b) *Influencing legislation: direct and grass roots lobbying communications defined*—(1) *Direct lobbying communication*—(i) *Definition.* A direct lobbying communication is any attempt to influence any legislation through communication with:

(A) Any member or employee of a legislative body; or

(B) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.

(ii) *Required elements.* A communication with a legislator or government official will be treated as a direct lobbying communication under this § 56.4911–2(b)(1) only if the communication:

(A) Refers to specific legislation; and

(B) Reflects a view on such legislation.

(iii) *Definition of specific legislation.* For purposes of paragraphs (b)(1) and (b)(2) of this section, specific legislation includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.

(2) *Grass roots lobbying communication*—(i) *Definition.* A grass roots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.

(ii) *Required elements.* A communication will be treated as a grass roots lobbying communication under this § 56.4911–2(b)(2) only if the communication:

(A) Refers to specific legislation;

(B) Reflects a view on such legislation; and

(C) Encourages the recipient of the communication to take action with respect to such legislation. (For special rules regarding certain mass media communications, see § 57.4911–2(b)(5)).

(iii) *Definition of encouraging recipient to take action.* For purposes of this section, encouraging a recipient to take action with respect to legislation means that the communication:

(A) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(B) States the address, telephone number, or similar information of a legislator or an employee of a legislative body;

(C) Provides a petition, tear-off postcard or similar material for the recipient to communicate his or her views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); or

(D) Specifically identifies one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation. Encouraging the recipient to take action under this paragraph (b)(2)(iii)(D) does not include naming the main sponsor(s) of the legislation for purposes of identifying the legislation.

(iv) *Definition of directly encouraging recipient to take action.* Communications described in § 56.4911–2(b)(2)(iii) (A) through (C) not only "encourage," but also "directly encourage" the recipient to take action with respect to legislation. Communications described in § 56.4911–2(b)(2)(iii)(D), however, do not directly encourage the recipient to take action with respect to legislation. Thus, a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than identify one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation. Communications that encourage the recipient to take action with respect to legislation but that do not *directly* encourage the recipient to take action with respect to legislation may be within the exception for nonpartisan analysis, study or research (see § 56.4911–2(c)(1)) and thus not be grass roots lobbying communications.

(v) *Subsequent lobbying use of nonlobbying communication that is not nonpartisan analysis, study or research.* For purposes of this paragraph, a nonlobbying communication is any communication that reflects a view on specific legislation but that is not a lobbying communication as described in § 56.4911–2(b). This § 56.4911–2(b)(2)(v) governs any nonlobbying communication that is not nonpartisan analysis, study or research (within the meaning of § 56.4911–2(c)(1)) *and* that is subsequently used with an accompanying lobbying communication or is altered so that it is itself a lobbying communication. In such a case, the communication will be treated as a lobbying communication if the organization's primary purpose in preparing the communication was for use in lobbying, and the expenses of preparing and distributing the communication will be treated as lobbying expenditures. The primary purpose of the organization in preparing a communication governed by this paragraph will not be considered to be for use in lobbying if, prior to or contemporaneously with the use of the communication in lobbying, the organization makes a substantial distribution of the communication (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances. Solely for purposes of this paragraph (b)(2)(v), the nonlobbying distribution of a communication will not be considered "substantial" unless that distribution is at least as extensive as the lobbying distribution of the communication. Where the nonlobbying distribution of a communication governed by this paragraph is not substantial, all of the facts and circumstances must be weighed to determine whether the organization's primary purpose in preparing the communication was for use in lobbying. While not the only factor, the extent of the organization's nonlobbying distribution of the communication is particularly relevant, especially when compared to the extent of the communication's distribution with the lobbying message. Another particularly relevant factor is whether the lobbying use of a communication is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying. To illustrate this paragraph, assume a nonlobbying "report" (that is not nonpartisan analysis, study or research) is prepared by an organization, but distributed to only 50 people. The organization then sends the report to 10,000 people along with a letter urging recipients to write their Senators about the legislation discussed in the report. Because the report's nonlobbying distribution is not as extensive as its lobbying distribution, the report's nonlobbying distribution is not substantial for purposes of this paragraph. Accordingly, the organization's primary purpose in preparing the report must be determined by weighing all of the facts and circumstances. In light of the relatively minimal nonlobbying distribution and the fact that the lobbying distribution is by the preparing organization rather than by an unrelated organization, and in the absence of evidence to the contrary, both the report and the letter are grass roots lobbying communications. Accordingly, the organization's expenditures for preparing and mailing the two documents are grass roots lobbying expenditures.

(3) *Exceptions to the definition of influencing legislation.* A communication is not a direct or grass roots lobbying communication under § 56.4911–2(b) (1) or (2) if it falls within one of the exceptions listed in paragraph (c) of this section. See paragraph (c)(1), Nonpartisan analysis, study or research; paragraph (c)(2), Examinations and discussions of broad social, economic

and similar problems; paragraph (c)(3), Requests for technical advice; and paragraph (c)(4), Communications pertaining to self-defense by the organization. In addition, see § 56.4911–5, which provides special rules regarding the treatment of certain lobbying communications directed in whole or in part to members of an electing public charity.

(4) *Examples.* This paragraph (b)(4) provides examples to illustrate the rules set forth in this section regarding direct and grass roots lobbying. Except where otherwise explicitly stated, the expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples in this paragraph (b)(4). In addition, it is assumed that the special rules of § 56.4911–5, regarding certain of a public charity's communications with its members, do not apply to any of the examples in this paragraph (b)(4).

(i) *Direct lobbying.* The provisions of this section regarding direct lobbying communications are illustrated by the following examples:

Example (1). Organization P's employee, X, is assigned to approach members of Congress to gain their support for a pending bill. X drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, X personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are direct lobbying communications.

Example (2). Organization M's president writes a letter to the Congresswoman representing the district in which M is headquartered, requesting that the Congresswoman write an administrative agency regarding proposed regulations recently published by that agency. M's president also requests that the Congresswoman's letter to the agency state the Congresswoman's support of M's application for a particular type of permit granted by the agency. The letter written by M's president is not a direct lobbying communication.

Example (3). Organization Z prepares a paper on a particular state's environmental problems. The paper does not reflect a view on any specific pending legislation or on any specific legislative proposal that Z either supports or opposes. Z's representatives give the paper to a state legislator. Z's paper is not a direct lobbying communication.

Example (4). State X enacts a statute that requires the licensing of all day care providers. Agency B in State X is charged with preparing rules to implement the bill enacted by State X. One week after enactment of the bill, organization C sends a letter to Agency B providing detailed proposed rules that organization C suggests to Agency B as the appropriate standards to follow in implementing the statute on licensing of day care providers. Organization C's letter to Agency B is not a lobbying communication.

Example (5). Organization B researches, prepares and prints a code of standards of minimum safety requirements in an area of common electrical wiring. Organization B sells the code of standards booklet to the public and it is widely used by professionals in the subject area. A number of states have codified all, or part, of the code of standards as mandatory safety standards. On occasion, B lobbies state legislators for passage of the code of standards for safety reasons. The research, preparation, printing and public distribution of the code of standards is not an expenditure for a direct (or grass roots) lobbying communication. Costs incurred in lobbying state legislators for passage of the code of standards into law are expenditures for direct lobbying communications.

Example (6). On the organization's own initiative, representatives of organization F, present written testimony to a Congressional committee. The news media reports on the testimony of organization F detailing F's opposition to a pending bill. The testimony is a direct lobbying communication but is not a grass roots lobbying communication.

(ii) *Grass roots lobbying.* The provisions of this section regarding grass roots lobbying communications are illustrated in paragraph (b)(4)(ii)(A) of this section by examples of communications that are not grass roots lobbying communications and in paragraph (b)(4)(ii)(B) by examples of communications that are grass roots lobbying communications. The provisions of this section are further illustrated in paragraph (b)(4)(ii)(C), with particular regard to the exception for nonpartisan analysis, study, or research:

(A) Communications that are not grass roots lobbying communications

Example (1). Organization L places in its newsletter an article that asserts that lack of new capital is hurting State W's economy. The article recommends that State W residents either invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. The article is an attempt to influence opinions with respect to a general problem that might receive legislative attention and is distributed in a manner so as to reach and influence many individuals. However, the article does not refer to specific legislation that is pending in a legislative body, nor does the article refer to a specific legislative proposal the organization either supports or opposes.

Example (2). Assume the same facts as Example (1), except that the article refers to a bill pending in State W's legislature that is intended to provide tax incentives for private savings. The article praises the pending bill and recommends that it be enacted. However, the article does not encourage readers to take action with respect to the legislation.

Example (3). Organization B sends a letter to all persons on its mailing list. The letter includes an update on numerous environmental issues with a discussion of general concerns regarding pollution, proposed federal regulations affecting the area, and several pending legislative proposals. The letter endorses two pending bills and opposes another pending bill, but does not name any legislator involved (other than the sponsor of one bill, for purposes of identifying the bill), nor does it otherwise encourage the reader to take action with respect to the legislation.

Example (4). A pamphlet distributed by organization Z discusses the dangers of drugs and encourages the public to send their legislators a coupon, printed with the statement "I support a drug-free America." The term "drug-free America" is not widely identified with any of the many specific pending legislative proposals regarding drug issues. The pamphlet does not refer to any of the numerous pending legislative proposals, nor does the organization support or oppose a specific legislative proposal.

Example (5). A pamphlet distributed by organization B encourages readers to join an organization and "get involved in the fight against drugs." The text states, in the course of a discussion of several current drug issues, that organization B supports a specific bill before Congress that would establish an expanded drug control program. The pamphlet does not encourage readers to communicate with legislators about the bill (such as by including the names of undecided or opposed legislators).

Example (6). Organization E, an evnronmental organization, routinely summarizes in each edition of its newsletter the new environment-related bills that have been introduced in Congress since the last edition of the newsletter. The newsletter identifies each bill by a bill number and the name of the legislation's sponsor. The newsletter also reports on the status of previously introduced environment-related bills. The summaries and status reports do not encourage recipients of the newsletter to take action with respect to legislation, as described in paragraphs (b)(2)(iii) (A) through (D) of this section. Although the summaries and status reports refer to specific legislation and often reflect a view on such legislation, they do not encourage the newsletter recipients to take action with respect to such legislation.

(B) Communications that are grass roots lobbying communications

Example (1). A pamphlet distributed by organization Y states that the "President's plan for a drug-free America," which will establish a drug control program, should be passed. The pamphlet encourages readers to "write or call your senators and representatives and tell them to vote for the President's plan." No legislative proposal formally bears the name "President's plan for a drug-free America," but that and similar terms have been widely used in connection with specific legislation pending in Congress that was initially proposed by the President. Thus, the pamphlet refers to specific legislation, reflects a view on the legislation, and encourages readers to take action with respect to the legislation.

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Example (2). Assume the same facts as in Example (1), except that the pamphlet does not encourage the public to write or call representatives, but does list the members of the committee that will consider the bill.

Example (3). Assume the same facts as in Example (1), except that the pamphlet encourages readers to "write the President to urge him to make the bill a top legislative priority" rather than encouraging readers to communicate with members of Congress.

Example (4). Organization B, a nonmembership organization, includes in one of three sections of its newsletter an endorsement of two pending bills and opposition to another pending bill and also identifies several legislators as undecided on the three bills. The section of the newsletter devoted to the three pending bills is a grass roots lobbying communication.

Example (5). Organization D, a nonmembership organization, sends a letter to all persons on its mailing list. The letter includes an extensive discussion concluding that a significant increase in spending for the Air Force is essential in order to provide an adequate defense of the nation. Prior to a concluding fundraising request, the letter encourages readers to write their Congressional representatives urging increased appropriations to build the B–1 bomber.

Example (6). State Y plans to conduct a binding voter referendum on a proposition to permit gambling in the state. Organization Z places an advertisement in a general circulation newspaper encouraging voters to vote against the proposition.

Example (7). Organization F mails letters requesting that each recipient contribute money to or join F. In addition, the letters express F's opposition to a pending bill that is to be voted upon by the U.S. House of Representatives. Although the letters are form letters sent as a mass mailing, each letter is individualized to report to the recipient the name of the recipient's congressional representative.

(C) Additional examples

Example (1). The newsletter of an organization concerned with drug issues is circulated primarily to individuals who are not members of the organization. A story in the newsletter reports on the prospects for passage of a specifically identified bill, stating that the organization supports the bill. The newsletter story identifies certain legislators as undecided, but does not state that readers should contact the undecided legislators. The story does not provide a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is a grass roots lobbying communication.

Example (2). Assume the same facts as in Example (1), except that the newsletter story provides a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is *not* a grass roots lobbying communication because it is within the exception for nonpartisan analysis, study or research.

Example (3). Assume the same facts as in Example (2), except that the newsletter story explicitly asks readers to contact the undecided legislators. Because the newsletter story directly encourages readers to take action with respect to the legislation, the newsletter story is not within the exception for nonpartisan analysis, study or research. Accordingly, the newsletter story is a grass roots lobbying communication.

Example (4). Assume the same facts as in Example (1), except that the story does not identify any undecided legislators. The story is not a grass roots lobbying communication.

Example (5). X organization places an advertisement that specifically identifies and opposes a bill that X asserts would harm the farm economy. The advertisement is not a mass media communication described in § 56.4911–2(b)(5)(ii) and does not directly encourage readers to take action with respect to the bill. However, the advertisement does state that Senator Y favors the legislation. Because the advertisement refers to and reflects a view on specific legislation, and also encourages the readers to take action with respect to the legislation by specifically identifying a legislator who opposes X's views on the legislation, the advertisement in a grass roots lobbying communication.

Example (6). Assume the same facts as in Example (5), except that instead of identifying Senator Y as favoring the legislation, the advertisement identifies the "junior Senator from State Z" as favoring the legislation. The advertisement is a grass roots lobbying communication.

Example (7). Assume the same facts as in Example (5), except that instead of identifying Senator Y as favoring the legislation, the advertisement states: "Even though this bill will have a devastating effect upon the farm economy, most of the Senators from the Farm Belt states are inexplicably in favor of the bill." The advertisement does not specifically identify one or more legislators as opposing the advertisement's view on the bill in question. Accordingly, the advertisement is not a grass roots lobbying communication because it does not encourage readers to take action with respect to the legislation.

(5) *Mass media communications*—(i) *In general.* All mass media communications, other than those described in paragraph (b)(5)(ii) of this section, are evaluated by the three-part grass roots lobbying definition contained in paragraph (b)(2) of this section.

(ii) *Special rule for certain mass media communications.* If within two weeks before a vote by a legislative body, or committee thereof, on a highly publicized piece of legislation, an organization makes a communication in the mass media that reflects a view on the general subject of such legislation and either: Refers to the highly publicized legislation; or encourages the public to communicate with legislators on the general subject of such legislation, then the communication will be presumed to be a grass roots lobbying communication. An organization can rebut this presumption by demonstrating that the communication is a type of communication regularly made by the organization in the mass media without regard to the timing of legislation (that is, a customary course of business exception) or that the timing of the communication was unrelated to the upcoming legislative action. Notwithstanding the fact that an organization successfully rebuts the presumption, a mass media communication described in this paragraph (b)(5)(ii) is a grass roots lobbying communication if the communication would be a grass roots lobbying communication under the rules contained in paragraph (b)(2) of this section.

(iii) *Definitions*—(A) *Mass media.* For purposes of this paragraph (b)(5), "mass media" means television, radio, and general circulation newspapers and magazines. General circulation newspapers and magazines do not include newspapers or magazines published by an organization for which the expenditure test election under section 501(h) is in effect, except where both: The total circulation of the newspaper or magazine is greater than 100,000; and fewer than one-half of the recipients are members of the organization (as defined in § 56.4911–5(f)).

(B) *Highly publicized.* For purposes of this paragraph (b)(5), "highly publicized" means frequent coverage on television, radio, and general circulation newspapers and magazines during the two weeks preceding the vote by the legislative body.

(iv) *Examples.* The special rule of this paragraph (b)(5) is illustrated by the following examples. The expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples in this paragraph (b)(5)(iv):

Example (1). Organization X places a television advertisement advocating one of the President's major foreign policy initiatives, as outlined by the President in a series of speeches. The initiative is popularly known as "the President's World Peace Plan," and is voted upon by the Senate four days after X's advertisement. The advertisement concludes: "SUPPORT THE PRESIDENT'S WORLD PEACE PLAN!" The President's plan and position are highly publicized during the two weeks before the Senate vote, as evidenced by: coverage of the plan on several nightly television network news programs; more than one article about the plan on the front page of a majority of the country's ten largest daily general circulation newspapers; and an editorial about the plan in four of the country's ten largest daily general circulation newspapers. Although the

advertisement does not encourage readers to contact legislators or other government officials, the advertisement does refer to specific legislation and reflects a view on the general subject of the legislation. The communication is presumed to be a grass roots lobbying communication.

Example (2). Assume the same facts as in Example (1), except that the advertisement appears three weeks before the Senate's vote on the plan. Because the advertisement appears more than two weeks before the legislative vote, the advertisement is *not* within the scope of the special rule for mass media communications on highly publicized legislation. Accordingly, the advertisement is a grass roots lobbying communication only if it is described in the general definition contained in paragraph (b)(2) of this section. Because the advertisement does not encourage recipients to take action with respect to the legislation in question, the advertisement is not a grass roots lobbying communication.

Example (3). Organization Y places a newspaper advertisement advocating increased government funding for certain public works projects the President has proposed and that are being considered by a legislative committee. The advertisement explains the President's proposals and concludes: "SUPPORT FUNDING FOR THESE VITAL PROJECTS!" The advertisement does not encourage readers to contact legislators or other government officials nor does it name any undecided legislators, but it does name the legislation being considered by the committee. The issue of funding public works, however, is not highly publicized during the two weeks before the vote: there has been little coverage of the issue on nightly television network news programs, only one front-page article on the issue in the country's ten largest daily general circulation newspapers, and only one editorial about the issue in the country's ten largest daily general circulation newspapers. Two days after the advertisement appears, the committee votes to approve funding of the projects. Although the advertisement appears less than two weeks before the legislative vote, the advertisement is *not* within the scope of the special rule for mass media communications on highly publicized legislation because the issue of funding for public works projects is not highly publicized. Thus, the advertisement is a grass roots lobbying communication only if it is described in the general definition contained in paragraph (b)(2) of this section. Because the advertisement does not encourage recipients to take action with respect to the legislation in question, the advertisement is not a grass roots lobbying communication.

Example (4). A binding referendum is held in State X. At issue is Proposition 1, a citizen initiated proposition that, if enacted, would ban the manufacture and sale of handguns in State X. The proposition is controversial and highly publicized during the two weeks preceding the vote, as evidenced by numerous front-page articles, editorials, and letters to the editor published in the state's general circulation daily newspapers, as well as frequent coverage of the proposition by the television and radio stations serving the state. During the two weeks before the election, Organization Y places advertisements on radio stations serving the state. The advertisements do not encourage listeners to vote against the proposition, but do attack the legislation as being unconstitutional and ineffective. Because the advertisements are mass media communications made within two weeks of a vote on highly publicized legislation and because the advertisements refer to that highly publicized legislation and reflect a view on the general subject of such legislation, the advertisements are presumed to be grass roots lobbying communications.

(c) *Exceptions to the definitions of direct lobbying communication and grass roots lobbying communication*—(1) *Nonpartisan analysis, study, or research exception*—(i) *In general.* Engaging in nonpartisan analysis, study, or research and making available to the general public or a segment or members thereof or to governmental bodies, officials, or employees the results of such work constitute neither a direct lobbying communication under § 56.4911–2(b)(1) nor a grass roots lobbying communication under § 56.4911–2(b)(2).

(ii) *Nonpartisan analysis, study, or research.* For purposes of this section, "nonpartisan analysis, study, or research" means an independent and objective exposition of a particular subject matter, including any activity that is "educational" within the meaning of § 1.501(c)(3)–1(d)(3). Thus, "nonpartisan analysis, study, or research" may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion, however, does not qualify as "nonpartisan analysis, study, or research". Activities of a noncommercial educational broadcasting station or network (television or radio) constitute "nonpartisan analysis, study, or research" if the station or network adheres to the Federal Communications Commission regulations and its "fairness doctrine," interpreted as in effect on January 1, 1987 (requiring balanced, fair, and objective presentation of issues).

(iii) *Presentation as part of a series.* Normally, whether a publication or broadcast qualifies as "nonpartisan analysis, study, or research" will be determined on a presentation-by-presentation basis. However, if a publication or broadcast is one of a series prepared or supported by an electing organization and the series as a whole meets the standards of paragraph (c)(1)(ii) of this section, then any individual publication or broadcast within the series is not a direct or grass roots lobbying communication even though such individual broadcast or publication does not, by itself, meet the standards of paragraph (c)(1)(ii) of this section. Whether a broadcast or publication is considered part of a series will ordinarily depend upon all the facts and circumstances of each particular situation. However, with respect to broadcast activities, all broadcasts within any period of six consecutive months will ordinarily be eligible to be considered as part of a series. If an electing organization times or channels a part of a series which is described in this paragraph (c)(1)(iii) in a manner designed to influence the general public or the action of a legislative body with respect to a specific legislative proposal, the expenses of preparing and distributing such part of the analysis, study, or research will be expenditures for a direct or grass roots lobbying communication, as the case may be.

(iv) *Making available results of nonpartisan analysis, study, or research.* An organization may choose any suitable means, including oral or written presentations, to distribute the results of its nonpartisan analysis, study, or research, with or without charge. Such means include distribution of reprints of speeches, articles and reports; presentation of information through conferences, meetings and discussions; and dissemination to the news media, including radio, television and newspapers, and to other public forums. For purposes of this paragraph (c)(1)(iv), such communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue.

(v) *Subsequent lobbying use of nonpartisan analysis, study or research.* For purposes of this paragraph, a nonlobbying communication is any communication that reflects a view on specific legislation but that is not a lobbying communication as described in § 56.4911–2(b). This § 56.4911–2(c)(1)(v) governs any nonlobbying communication that is nonpartisan analysis, study or research (within the meaning of § 56.4911–2(c)(1)) *and* that is: subsequently used with an accompanying lobbying communication that directly encourages recipients to take action with respect to legislation; or subsequently altered so that it is itself a lobbying communication that directly encourages recipients to take action with respect to legislation. In such a case, the communication is not within the exception for nonpartisan analysis,

study or research and will be treated as a lobbying communication if the organization's primary purpose in preparing the communication was for use in lobbying; consequently, the expenses of preparing and distributing the communication will be treated as lobbying expenditures. The primary purpose of the organization in undertaking analysis, study, or research will not be considered to be for use in lobbying if, prior to or contemporaneously with the use of the analysis, study, or research in lobbying, the organization makes a substantial distribution of the analysis, study, or research (without an accompanying lobbying message). Whether a distribution is substantial will be determined by reference to all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan analyses, studies, or research. Where the nonlobbying distribution of a communication governed by this paragraph is not substantial, all of the facts and circumstances must be weighed to determine whether the organization's primary purpose in preparing the communication was for use in lobbying. While not the only factor, the extent of the organization's nonlobbying distribution of the communication is particularly relevant, especially when compared to the extent of the communication's distribution with the lobbying message. Another particularly relevant factor is whether the lobbying use of a communication is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

(vi) *Directly encouraging action by recipients of a communication.* A communication that reflects a view on specific legislation is not within the nonpartisan analysis, study, or research exception of this paragraph (c)(1) if the communication directly encourages the recipient to take action with respect to such legislation. For purposes of this section, a communication directly encourages the recipient to take action with respect to legislation if the communication is described in § 56.4911–2(b)(2)(iii) (A) through (C). As described in § 56.4911–2(b)(2)(iv), a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than specifically identify one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation.

(vii) *Examples.* The provisions of this paragraph (c)(1) may be illustrated by the following examples:

Example (1). Organization M establishes a research project to collect information for the purpose of showing the dangers of the use of pesticides in raising crops. The information collected includes data with respect to proposed legislation, pending before several State legislatures, which would ban the use of pesticides. The project takes favorable positions on such legislation without producing a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion on the pros and cons of the use of pesticides. This project is not within the exception for nonpartisan analysis, study, or research because it is designed to present information merely on one side of the legislative controversy.

Example (2). Organization N establishes a research project to collect information concerning the dangers of the use of pesticides in raising crops for the ostensible purpose of examining and reporting information as to the pros and cons of the use of pesticides in raising crops. The information is collected and distributed in the form of a published report which analyzed the effects and costs of the use and nonuse of various pesticides under various conditions on humans, animals and crops. The report also presents the advantages, disadvantages, and economic cost of allowing the continued use of pesticides unabated, of controlling the use of pesticides, and of developing alternatives to pesticides. Even if the report sets forth conclusions that the disadvantages as a result of using pesticides are greater than the advantages of using pesticides and that prompt legislative regulation of the use of pesticides is needed, the project is within the exception for nonpartisan analysis, study, or research since it is designed to present information on both sides of the legislative controversy and presents a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

Example (3). Organization O establishes a research project to collect information on the presence or absence of disease in humans from eating food grown with pesticides and the presence or absence of disease in humans from eating food not grown with pesticides. As part of the research project, O hires a consultant who prepares a "fact sheet" which calls for the curtailment of the use of pesticides and which addresses itself to the merits of several specific legislative proposals to curtail the use of pesticides in raising crops which are currently pending before State Legislatures. The "fact sheet" presents reports of experimental evidence tending to support its conclusions but omits any reference to reports of experimental evidence tending to dispute its conclusions. O distributes ten thousand copies to citizens' groups. Exependitures by O in connection with this work of the consultant are not within the exception for nonpartisan analysis, study, or research.

Example (4). P publishes a bi-monthly newsletter to collect and report all published materials, ongoing research, and new developments with regard to the use of pesticides in raising crops. The newsletter also includes notices of proposed pesticide legislation with impartial summaries of the provisions and debates on such legislation. The newsletter does not encourage recipients to take action with respect to such legislation, but is designed to present information on both sides of the legislative controversy and does present such information fully and fairly. It is within the exception for nonpartisan analysis, study, or research.

Example (5). X is satisfied that A, a member of the faculty of Y University, is exceptionally well qualified to undertake a project involving a comprehensive study of the effects of pesticides on crop yields. Consequently, X makes a grant to A to underwrite the cost of the study and of the preparation of a book on the effect of pesticides on crop yields. X does not take any position on the issues or control the content of A's output. A produces a book which concludes that the use of pesticides often has a favorable effect on crop yields, and on that basis argues against pending bills which would ban the use of pesticides. A's book contains a sufficiently full and fair exposition of the pertinent facts, including known or potential disadvantages of the use of pesticides, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. The book does not directly encourage readers to take action with respect to the pending bills. Consequently, the book is written the exception for nonpartisan analysis, study, or research.

Example (6). Assume the same facts as Example (2), except that, instead of issuing a report, X presents within a period of 6 consecutive months a two-program television series relating to the pesticide issue. The first program contains information, arguments, and conclusions favoring legislation to restrict the use of pesticides. The second program contains information, arguments, and conclusions opposing legislation to restrict the use of pesticides. The programs are broadcast within 6 months of each other during commensurate periods of prime time. X's programs are within the exception for nonpartisan analysis, study, or research. Although neither program individually could be regarded as nonpartisan, the series of two programs constitutes a balanced presentation.

Example (7). Assume the same facts as in Example (6), except that X arranged for televising the program favoring legislation to restrict the use of pesticides at 8:00 on a

Thursday evening and for televising the program opposing such legislation at 7:00 on a Sunday morning. X's presentation is not within the exception for nonpartisan analysis, study, or research, since X disseminated its information in a manner prejudicial to one side of the legislative controversy.

Example (8). Organization Z researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. Z's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.

Example (9). Assume the same facts as in Example (8), except that, after stating support for the pending bill, the study concludes: "You should write to the undecided committee members to support this crucial bill." The study is not within the exception for nonpartisan analysis, study or research because it directly encourages the recipients to urge a legislator to support a specific piece of legislation.

Example (10). Organization X plans to conduct to lobbying campaign with respect to illegal drug use in the United States. It incurs $5.000 in expenses to conduct research and prepare an extensive report primarily for use in the lobbying campaign. Although the detailed report discusses specific pending legislation and reaches the conclusion that the legislation would reduce illegal drug use, the report contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent conclusion regarding the effect of the legislation. The report does not encourage readers to contact legislators regarding the legislation. Accordingly, the report does not, in and of itself, constitute a lobbying communication.

Copies of the report are available to the public at X's office, but X does not actively distribute the report or otherwise seek to make the contents of the report available to the general public. Whether or not X's distribution is sufficient to meet the requirement in § 56.4911–2(c)(1)(iv) that a nonpartisan communication be made available, X's distribution is not substantial (for purposes of § 56.4911–2(c)(1)(v)) in light of all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan reports. X then mails copies of the report, along with a letter, to 10,000 individuals on X's mailing list. In the letter, X requests that individuals contact legislators urging passage of the legislation discussed in the report. Because X's research and report were primarily undertaken by X for lobbying purposes and X did not make a substantial distribution of the report (without an accompanying lobbying message) prior to or contemporaneously with the use of the report in lobbying the report is a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study or research.

Example (11). Assume the same facts as in Example (10), except that before using the report in the lobbying campaign, X sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, X also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution pattern of similar nonpartisan reports. In light of all of the facts and circumstances, X's distribution of the report is substantial. Because of X's substantial distribution of the report, X's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on X's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications.

(2) *Examinations and discussions of broad social, economic, and similar problems.* Examinations and discussions of board social, economic, and similar problems are neither direct lobbying communications under § 56.4911–2(b)(1) nor grass roots lobbying communications under § 56.4911–2(b)(2) even if the problems are of the type with which government would be expected to deal ultimately. Thus, under §§ 56.4911–2(b) (1) and (2), lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation. For example, this paragraph excludes from grass roots lobbying under § 56.4911–2(b)(2) an organization's discussions of problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the discussions do not directly encourage recipients of the communication to contact a legislator, and employee of a legislative body, or a government official or employee who may participate in the formulation of legislation.

(3) *Requests for technical advice.* A communication is neither a direct lobbying communication under § 56.4911–2(b)(1) nor a grass roots lobbying communication under § 56.4911–2(b)(2) if the communication is the providing of technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision, as set forth in § 53.4945–2(d)(2).

(4) *Communications pertaining to "self-defense" by the organization.* A communication is neither a direct lobbying communication under § 56.4911–2(b)(1) nor a grass roots lobbying communication under § 56.4911–2(b)(2) if:

(i) The communication is an appearance before, or communication with, any legislative body with respect to a possible action by the body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deductibilty of contributions to the organization, as set forth in § 53.4945–2(d)(3);

(ii) The communication is by a member of an affiliated group of organizations (within the meaning of § 56.4911–7(e)), and is an appearance before, or communication with, a legislative body with respect to a possible action by the body that might affect the existence of any other member of the group, its powers and duties, its tax-exempt status, or the deductibility of contributions to it;

(iii) The communication is by an organization that has a membership consisting solely of other organizations that are described in section 501(c)(3), and is an appearance before, or communication with, any legislative body with respect to a possible action by the body which might affect the existence of one or more of the member organizations, their powers, duties, or tax-exempt status, or the deductibility of contributions to one or more of the member organizations; or

(iv) The communication is by an organization that is a member of a limited affiliated group of organizations under § 56.4911–10, and is an appearnace before, or communication with, the Congress of the United States with respect to a possible action by the Congress that might affect the existence of any member of the limited affiliated group, its powers and duties, tax-exempt

status, or the deductibility of contributions to it.

(d) *Certain transfers treated as lobbying expenditures*—(1) *Transfer earmarked for grass roots purposes.* A transfer is a grass roots expenditure to the extent that it is earmarked (as defined in § 56.4911–4(f)(4)) for grass roots lobbying purposes and is not described in § 56.4911–4(e).

(2) *Transfer earmarked for direct and grass roots lobbying.* A transfer that is earmarked for direct lobbying purposes or for direct lobbying and grass roots lobbying purposes is treated as a grass roots expenditure in full except to the extent the transferor demonstrates that the amounts transferred were expended for direct lobbying purposes. This paragraph (d)(2) shall not apply to any expenditure described in § 56.4911–4(e).

(3) *Certain transfers to organizations that lobby.* A transfer that is neither a controlled grant (as defined in § 56.4911–4(f)(3)) nor an expenditure described in § 56.4911–4(e), and that is made to an organization not described in section 501(c)(3) that engages in attempts to influence legislation, is treated as a grass roots expenditure to the extent of the lesser of the amount of the transfer or the transferee's expenditures for grass roots lobbying. If the amount of the transfer exceeds the transferee's expenditures for grass roots lobbying, the excess will be treated as an expenditure for direct lobbying to the extent of the transferee's expenditures for direct lobbying. In applying the two preceding sentences, the expenditures of the transferee will be determined as if the regulations under section 4911 applied to the transferee.

(e) *Definitions.* For purposes of section 4911 and the regulations thereunder—

(1) *Legislation.* "Legislation" includes action by the Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. "Legislation" includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaty.

(2) *Action.* The term "action" is limited to the introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions, or similar items.

(3) *Legislative body.* "Legislative body" does not include executive, judicial, or administrative bodies.

(4) *Administrative bodies.* "Administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive. Thus, for example, for purposes of section 4911, the term "any attempt to influence any legislation" does not include attempts to persuade an executive body or department to form, support the formation of, or to acquire property to be used for the formation or expansion of, a public park or equivalent preserves (such as public recreation areas, game, or forest preserves, and soil demonstration areas) established or to be established by act of Congress, by executive action in accordance with an act of Congress, or by a State, municipality, or other governmental unit described in section 170(c)(1), as compared with attempts to persuade a legislative body, a member thereof, or other governmental offical or employee, to promote the appropriation of funds for such an acquisition or other legislative authorization of such an acquisition. Therefore, for example, an organization would not be influencing legislation for purposes of section 4911, if it proposed to a Park Authority that it purchase a particular tract of land for a new park, even though such an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park. However, in such a case, the organization would be influencing legislation, for purposes of section 4911, if it provided the Park Authority with a proposed budget to be submitted to a legislative body, unless such submission is described by one of the exceptions set forth in paragraph (c) of this section.

§ 56.4911–3. Expenditures for direct and/or grass roots lobbying communications.

(a) *Definition of term "expenditures for"*—(1) *In general.* Expenditures for a direct or grass roots lobbying communication ("lobbying expenditures") include amounts paid or incurred as current or deferred compensation for an employee's services attributable to the direct or grass roots lobbying communication, and the allocable portion of administrative, overhead, and other general expenditures attributable to the direct or grass roots lobbying communication. Except as otherwise indicated in this paragraph (a), all costs of preparing a direct or grass roots lobbying communication are included as expenditures for direct or grass roots lobbying. For example, except as otherwise provided in this paragraph (a), all expenditures for researching, drafting, reviewing, copying, publishing and mailing a direct or grass roots lobbying communication, as well as an allocable share of overhead expenses, are included as expenditures for direct or grass roots lobbying.

(2) *Allocation of mixed purpose expenditures*—(i) *Nonmembership communications.* Except as provided in paragraph (a)(2)(ii) of this section, lobbying expenditures for a communication that also has a bona fide nonlobbying purpose must include all costs attributable to those parts of the communication that are on the same specific subject as the lobbying message. All costs attributable to those parts of the communication that are not on the same specific subject as the lobbying message are not included as lobbying expenditures for allocation purposes. Whether or not a portion of a communication is on the same specific subject as the lobbying message will depend on the surrounding facts and circumstances. In general, a portion of a communication will be on the same specific subject as the lobbying message if that portion discusses an activity or specific issue that would be directly affected by the proposed legislation that is the subject of the lobbying message. Moveover, discussion of the background or consequences of the proposed legislation, or discussion of the background or consequences of an activity or specific issue affected by the proposed legislation, is also considered to be on the same specific subject as the lobbying communication.

(ii) *Membership communications.* In the case of lobbying expenditures for a communication that also has a bona fide nonlobbying purpose and that is sent only or primarily to members, an organization must make a reasonable allocation between the amount expended for the lobbying purpose and the amount expended for the nonlobbying purpose. An organization that includes as a lobbying expenditure only the amount expended for the specific sentence or sentences that encourage the recipient to take action with respect to legislation has not made a reasonable allocation. For purposes of this paragraph, a communication is sent only or primarily to members if more than half of the recipients of the communication are members of the organization making the communication within the meaning of § 56.4911–5. See § 56.4911–5 for separate rules on communications sent only or primarily to members. Nothing in this paragraph shall change any allocation required by § 56.4911–5.

(3) *Allocation of mixed lobbying.* If a communication (to which § 56.4911–5 does not apply) is both a direct lobbying

communication and a grass roots lobbying communication, the communication will be treated as a grass roots lobbying communication except to the extent that the organization demonstrates that the communication was made primarily for direct lobbying purposes, in which case a reasonable allocation shall be made between the direct and the grass roots lobbying purposes served by the communication.

(b) *Examples.* The provisions of paragraph (a) of this section are illustrated by the following examples. Except where otherwise explicitly stated, the expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples of this paragraph (b). See § 56.4911–5 for special rules applying to the member communications described in some of the following examples.

Example (1). Organization R makes the services of E, one of its paid executives, available to S, an organization described in section 501(c)(4) of the Code. E works for several weeks to assist S in developing materials that urge voters to contact their congressional representatives to indicate their support for specific legislation. In performing this work, E uses office space and clerical assistance provided by R. R pays full salary and benefits to E during this period and receives no reimbursement from S for these payments or for the other facilities and assistance provided. All expenditures of R, including allocable office and overhead expenses, that are attributable to this assignment are grass roots expenditures because E was engaged in an attempt to influence legislation.

Example (2). An organization distributes primarily to nonmembers a pamphlet with two articles on unrelated subjects. The total cost of preparing, printing and mailing the pamphlet is $11,000, $1,000 for preparation and $10,000 for printing and mailing. The cost of preparing one article, a nonlobbying communication, is $600. The article is printed on three of the four pages in the pamphlet. The cost of preparing the second article, a grassroots lobbying communication that addresses only one specific subject, is $400. This article is printed on one page of the four page pamphlet. In this situation, $400 of preparation costs and $2,500 (25% of $10,000) of printing and mailing costs are expenditures for a grass roots lobbying communication.

Example (3). Assume the same facts as in Example (2), except that the pamphlet is distributed only to members. In addition, assume the second article states that the recipient members should contact their congressional representatives. The organization allocates $400 of preparation costs and $2,500 of printing and mailing costs as expenditures for direct lobbying (see § 56.4911–5(c)). The allocation is reasonable for purposes of § 56.4911–3(a)(2)(ii).

Example (4). Organization J places a full-page advertisement in a newspaper. The advertisement urges passage of pending legislation to build three additional nuclear powered submarines, and states that readers should write their Congressional representatives in favor of the legislation. The advertisement also provides a general description of J's purposes and activities, invites readers to become members of J and asks readers to contribute money to J. Except for the cost of the portion of the advertisement describing J's purposes and activities and the portion specifically seeking members and contributions, the entire cost of the advertisement is an expenditure for grass roots lobbying communication, because the entire advertisement, except for the lines specifically describing J and specifically seeking members and contributions, is on the same specific subject as the grass roots lobbying message.

Example (5). Assume the same facts as in Example (4), except that J places in the newspaper two separate half-page advertisements instead of one full-page advertisement. One of the two advertisements discusses the need for three additional nuclear powered submarines and urges readers to write their Congressional representatives in favor of the pending legislation to build the three submarines. The other advertisement contains only the membership and fundraising appeals, along with a general description of J's purposes and activities. The half-page advertisement urging readers to write to Congress is a grass roots lobbying communication and all of J's expenditures for producing and placing that advertisement are expenditures for a grass roots lobbying communication. J's expenditures for the other half-page advertisement are not expenditures for a grass roots or direct lobbying communication.

Example (6). Assume the same facts as in Example (4), except that the communication by J is in a letter mailed only to members of J, rather than in a newspaper advertisement, and the invitation to become a member of J is an invitation to join a new membership category. In addition, assume that the communication states that the member recipients should ask nonmembers to write their Congressional representatives. J allocates one-half of the cost of the mailing as an expenditure for a grass roots lobbying communication (see § 56.4911–5(d)). Because the communication had both bona fide nonlobbying (e.g., membership solicitation and fundraising) purposes as well as lobbying purposes, J's allocation of one-half of the cost of the communication to grass roots lobbying and one-half to nonlobbying is reasonable for purposes of § 56.491–3(a)(2)(ii).

Example (7). A particular monthly issue of organization X's newsletter, which is distributed mainly to nonmembers of X, has three articles of equal length. The firt article is a grass roots lobbying communication, the sole specific subject of which is pending legislation to help protect seals from being slaughtered in certain foreign countries. The second article discusses the rapid decline in the world's whale population, particularly because of the illegal hunting of whales by foreign countries. The third article deals with air pollution and the acid rain problem in North America. Because the first article is a grass roots lobbying communication, all of the costs allocable to that article (e.g., one-third of the newsletter's printing and mailing costs) are lobbying expenditures. The second article is not a lobbying communication and the pending legislation relating to seals addressed in the first article does not affect the illegal whale hunting activities. Because the second and third articles are not lobbying communications and are also not on the same specific subject as the first article, no portion of the costs attributable to those articles is a grass roots lobbying expenditure.

Example (8). Organization T, a nonmembership organization prepares a three page document that is mailed to 3,000 persons on T's mailing list. The first two pages of the three page document, titled "The Need for Child Care," support the need for additional child care programs, and include statistics on the number of children living in homes where both parents work or in homes with a single parent. The two pages also make note of the inadequacy of the number of day care providers to meet the needs of these parents. The third page of the document, titled "H.R. 1," indicates T's support of H.R. 1, a bill pending in the U.S. House of Representatives. The document states that H.R. 1 will provide for $10,000,000 in additional subsidies to child care providers, primarily for those providers caring for lower income children. The third page of the document also notes that H.R. 1 includes new federal standards regulating the quality of child care providers. The document ends with T's request that recipients contact their congressional representative in support of H.R. 1. The entire three page document is on the same specific subject, and, therefore, all expenditures of preparing and distributing the three page document are grass roots lobbying expenditures.

Example (9). Assume the same facts as in Example (8), except that T is a membership organization, 75 percent of the recipients of the three page document are members of T, and 25 percent of the recipients are nonmembers and are not subscribers within the meaning of § 56.4911–5(f)(5). Assume also that the document states that readers should write to Congress, but does not state that the readers should urge nonmembers to write to Congress. T treats the document as having a bona fide nonlobbying purpose, the purpose of educating its members about the need for child care. Accordingly, T allocates one-half of the cost of preparing and distributing the document as a lobbying expenditure (see § 56.4911–5(e)(2)(i)), of which 75 percent is a direct lobbying expenditure (see § 56.4911–5(e)(2)(iii)) and 25 percent is a grass roots lobbying expenditure (see § 56.4911–5(e)(2)(ii)). The remaining one-half is allocated as a nonlobbying expenditure. T's allocation is reasonable for purposes of § 56.4911–3(a)(2)(ii) and is correct for purposes of § 56.4911–5(e).

Example (10). Assume the same facts as in Example (9), except that T allocates one percent of the cost of preparing and distributing the document as a lobbying expenditure (for purposes of § 56.4911–5(e)(2)) and 99 percent as a nonlobbying expenditure. T's allocation is based upon the fact that out of 200 lines in the document.

only two lines state that the recipient should contact legislators about the pending legislation. T's allocation is unreasonable for purposes of § 56.4911–3(a)(2)(ii).

Example (11). Organization F, a nonmembership organization, sends a one page letter to all persons on its mailing list. The only subject of the letter is the organization's opposition to a pending bill allowing private uses of certain national parks. The letter requests recipients to send letters opposing the bill to their congressional representatives. A second one page letter is sent in the same envelope. The second letter discusses the broad educational activities and publications of the organization in all areas of environmental protection and ends by requesting the recipient to make a financial contribution to organization F. Since the separate second letter is on a different subject from the lobbying letter, and the letters are of equal length, 50 percent of the mailing costs must be allocated as an expenditure for a grass roots lobbying communication.

Example (12). Assume the same facts as in Example (11), except that F is a membership organization and the letters in question are sent primarily (90 percent) to members. The other 10 percent of the recipients are nonmembers and are not subscribers within the meaning of § 56.4911–5(f)(5). Assume also that the first letter does not state that readers should urge nonmembers to write to legislators. F allocates one-half of the mailing costs as a lobbying expenditure, of which 90 percent is a direct lobbying expenditure and 10 percent is a grass roots lobbying expenditure (see § 56.4911–5(e)(2)). F's allocation is reasonable for purposes of § 56.4911–3(a)(2)(ii) and is correct for purposes of § 56.4911–5.

Par. 7. Proposed § 56.4911–4 is amended by revising paragraphs (b)(2), (b)(5), (b)(6), (c)(7), and (f)(2) to read as follows:

§ 56.4911–4 Exempt purpose expenditures.

* * * * *

(b) *Included expenditures.* * * *

(2) Amounts paid or incurred as current or deferred compensation for an employee's services for a purpose enumerated in section 170(c)(2)(B).

* * * * *

(b) *Included expenditures.* * * *

(5) Amounts paid or incurred for activities described in § 56.4911–3,

(6) Amounts paid or incurred for activities described in § 56.4911–5 that are not lobbying expenditures, and

* * * * *

(c) *Included expenditures.* * * *

(7) Amounts paid or incurred for the production of income, whether or not described in section 512(a)(1).

* * * * *

(f) *Definitions.*

(2) For purposes of paragraph (c) of this section, a separate fund raising unit of any organization must consist of either two or more individuals a majority of whose time is spent on fund raising for the organization, or any separate accounting unit of the organization that is devoted to fund raising.

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Par. 8 Proposed § 56.4911–5 is amended as follows, to read as set forth below:

1. Paragraphs (a) through (d) and paragraph (e)(1) are revised to read as set forth below.

2. Paragraph (f)(6) is revised to read as set forth below.

3. A new paragraph (f)(8) is added, to read as set forth below.

§ 56.4911–5 Communications with members.

(a) *In general.* For purposes of section 4911 and § 56.4911–2, expenditures for certain communications between an organization and its members are treated as expenditures for direct lobbying, as expenditures for grass roots lobbying, or as other than lobbying expenditures in accordance with this section.

(b) *Communication directed only to members; excepted communication.* Expenditures for a communication that refers to, and reflects a view on, specific legislation are not lobbying expenditures if the communication satisfies the following requirements:

(1) The communication is directed only to members of the organization;

(2) The specific legislation the communication refers to, and reflects a view on, is of direct interest to the organization and its members;

(3) The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization); and

(4) The communication does not directly encourage the member to engage in grass roots lobbying (whether individually or through the organization).

(c) *Communication directed only to members: expenditures for direct lobbying.* Expenditures for a communication that refers to, and reflects a view on, specific legislation and that satisfies the requirements of paragraphs (b)(1), (b)(2), and (b)(4) of this section, but does not satisfy the requirements of paragraph (b)(3) of this section, are treated as expenditures for direct lobbying.

(d) *Communication directed only to members: grass roots expenditures.* Expenditures for a communication that refers to, and reflects a view on, specific legislation and that satisfies the requirements of paragraphs (b)(1) and (b)(2) of this section, but does not satisfy the requirements of paragraph (b)(4) of this section, are treated as grass roots expenditures (whether or not the communication satisfies the requirements of paragraph (b)(3) of this section.

(e) *Written communications directed to members and nonmembers*—(1) *In general.* Expenditures for any written communication that is designed primarily for members of an organization (but not directed only to members) and that refers to, and reflects a view on, specific legislation of direct interest to the organization and its members, are treated as expenditures for direct or grass roots lobbying in accordance with paragraph (e)(2) or (e)(3) of this section. For purposes of this section, a communication is designed primarily for members of an organization if more than half of the recipients of the communication are members of the organization.

* * * * *

(f) *Definitions and special rules.* * * *

* * * * *

(6) *Directly encourages*—(i) *Direct lobbying*—(A) *In general.* For purposes of this section, a communication directly encourages a recipient to engage in direct lobbying, whether individually or through the organization, if the communication:

(*1*) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(*2*) States the address, telephone number, or similar information of a legislator or an employee of a legislative body; or

(*3*) Provides a petition, tear-off postcard or similar material for the recipient to communicate his or her views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation).

(B) *"Self-defense" exception for communications with members.*

Notwithstanding the provisions of paragraph (f)(6)(i)(A) of this section, for purposes of paragraphs (b)(3), (e)(2)(i), and (e)(3)(ii) of this section, a communication that directly encourages a member to engage in direct lobbying activities that are described in section 4911(d)(2)(C) and that would not be attempts to influence legislation if engaged in directly by the organization is treated as a communication that does not directly encourage a member to engage in direct lobbying.

(ii) *Grass roots lobbying.* For purposes of paragraphs (b)(4) and (e)(3)(i) of this section, a communication directly encourages recipients to engage individually or collectively (whether through the organization or otherwise) in grass roots lobbying if the communication:

(A) States that the recipient should encourage any nonmember to contact a legislator or an employee of a legislative body, or to contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);

(B) States that the recipient should provide to any nonmember the address, telephone number, or similar information of a legislator or an employee of a legislative body; or

(C) Provides (or requests that the recipient provide to nonmembers) a petition, tear-off postcard or similar material for the recipient (or nonmember) to use to ask any nonmember to communicate views to a legislator or an employee of a legislative body, or to any other government official or employee who may participate in the formulation of legislation, but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation. For purposes of this paragraph, a petition is provided for the recipient to use to ask any nonmember to communicate views if, for example, the petition has an entire page of preprinted signature blocks. Similarly, for purposes of this paragraph, where a communication is distributed to a single member and provides several tear-off postcards addressed to a legislator, the postcards are presumed to be provided for the member to use to ask a nonmember to communicate with the legislator.

* * * * *

(8) *Reasonable allocation rule.* In the case of lobbying expenditures for a communication that also has a bona fide nonlobbying purpose and that is sent only or primarily to members, an organization must make a reasonable allocation between the amount expended for the lobbying purpose and the amount expended for the nonlobbying purpose. See § 56.4911–3(a)(2)(ii).

Par. 9. Proposed § 56.4911–6, paragraphs (a)(3), (a)(4), (b)(2), and (b)(3), are revised to read as follows:

§ 56.4911–6 Records of lobbying and grass roots expenditures.

(a) *Records of lobbying expenditures.* * * *

(3) The portion of amounts paid or incurred as current or deferred compensation for an employee's services for direct lobbying;

(4) Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and for direct lobbying, whether or not incurred by an employee;

* * * * *

(b) *Records of grassroots expenditures.* * * *

(2) The portion of amounts paid or incurred as current or deferred compensation for an employee's services for grass roots lobbying;

(3) Amounts paid for out-of pocket expenditures incurred on behalf of the organization and for grass roots lobbying, whether or not incurred by an employee;

* * * * *

Par. 10. Proposed § 56.4911–7 is amended by revising paragraph (c) to read:

§ 56.4911–7 Affiliated group of organizations.

* * * * *

(c) *Governing instrument.* One organization (the "controlling" organization) is affiliated with a second organization (the "controlled" organization) by reason of the governing instruments of the controlled organization if the governing instruments of the controlled organization expressly or by implication limit the independent action of the controlled organization on legislative issues by requiring it to be bound by decisions of the other organization on legislative issues.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–29304 Filed 12–22–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns the reclamation bond liability period for surface coal mining acreage disturbed for sediment ponds and associated access roads, surface water diversions, and soil stockpiles.

This notice sets forth the times and locations that the North Dakota program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., m.s.t. January 23, 1989. If requested, a public hearing on the proposed amendments will be held on January 17, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., m.s.t. on January 9, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis at the address listed below. Copies of the North Dakota program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. B Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5776.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

Edward J. Englerth, Director, Reclamation Division, North Dakota Public Service Commission, Bismarck, North Dakota 58505–0165, Telephone: (701) 224–4096.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.14, 934.15, and 934.16.

II. Proposed Amendments

North Dakota's Administrative Code (NDAC) at Section 69–05.2–12–09, requires that the reclamation performance bond liability period for acreage disturbed by mining operations be a minimum of 10 years. NDAC Section 69–05.2–22–07 specifies that the 10-year period of bond liability for a reclamation tract begins after the last year of augmented seeding, planting, fertilization, irrigation or other work. NDAC 69–05.2–16–09 specifies that sedimentation ponds for a reclamation tract may not be removed sooner than 2 years after the last augmented seeding. The combined effect of these regulations is that reclaimed sedimentation ponds and associated structures (access roads, surface water diversions, and soil stockpiles) have a reclamation bond liability period that in most cases ends two years later than the reclamation bond liability period for other adjacent mining-related disturbances.

On November 8, 1988, North Dakota submitted to OSMRE, a proposed amendment to its approved program. North Dakota proposes to add subsection (b) to NDAC 69–05.2–22–07 to allow North Dakota on a case-by-case basis, to set a reclamation bond liability period for sedimentation ponds and associated disturbances that would end at the same time as the reclamation bond liability period for other disturbances within the reclamation tract. The State would allow such practices when "the permittee affirmatively demonstrates that reclamation of facilities will provide equal or greater protection to the environment and to the public health and safety."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by North Dakota satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.s.t. on January 9, 1989. Location and time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 16, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–29470 Filed 12–22–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks, Cashier's Checks, Traveler's Checks, and Money Orders

AGENCY: Departmental Offices, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 6185(b) of Title VI of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100–690, November 18, 1988, requires that the Secretary of the Treasury issue regulations prescribing what identification shall be provided by purchasers of cashier's checks, traveler's checks, money orders and bank checks, in amounts or denominations of $3,000 or more. Treasury is issuing this Advance Notice to solicit comments from the public on how best to implement this provision.

DATE: Comments are due on January 23, 1989.

ADDRESS: Comments should be sent to Amy Rudnick, Director, the Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566–9947.

SUPPLEMENTARY INFORMATION: Section 6185(b) of Title VI of the Anti-Drug Abuse Act of 1988 added a new section 5325 to the Bank Secrecy Act:

§ 5325. Identification required to purchase certain monetary instruments.

(a) In general.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of $3,000 or unless—

(1) the individual has a transaction account with such financial institution and the financial institution—

(A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) Report to Secretary upon request.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported to the Secretary of the Treasury at the request of such Secretary.

(c) Transaction account defined.—For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

The legislative history indicates that Congress clearly felt that there was a need for this provision, based on the fact that the purchase of these instruments for amounts under $10,000 is a common money laundering technique. The House Committee Report noted that the only indentification records required for persons who conduct currency transactions in amounts under $10,000 are those needed to open an account, thus permitting non-account-holders to conduct under-$10,000 transactions without having to identify themselves. The Committee indicated that it expects affected financial institutions to be "fully cooperative and responsive to this law enforcement effort." H. Rep. No. 100–716, 100th Cong., 2d Sess. 7.

Treasury was asked to formally comment on this provision while still a legislative proposal and stated that it believed that such a requirement would be a "useful deterrent" to the practice of money laundering through the repeated purchase of bank checks (sometimes denominated as drafts), traveler's checks, cashier's checks, and money orders in amounts of less than $10,000. Treasury noted that it did not feel that the proposal would be overly burdensome and stated that it envisioned that financial institutions would need to keep only a chronological log of the purchases of these instruments and report the log to Treasury upon request. *See* Statement of the Honorable Gerald L. Hilsher, Deputy Assistant Secretary (Law Enforcement), before the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, June 8, 1988.

Prior to issuing a Notice of Proposed Rulemaking to propose specific regulatory changes, Treasury wishes to solicit comments from the public, particularly affected financial institutions, on the most effective and least burdensome way to implement this new requirement. Treasury at the present time envisions, as noted above, that each financial institution as defined in 31 CFR 103.11(g) would keep a chronological log of cash purchases of these instruments in amount of $3,000 and above that includes particular information about the transaction and, in the case of accountholders, the method of verifying the account relationship or, in the case of non-accountholders, the particular form of identification used to verify the individual's identity. The log could be maintained either manually or by computer, and must be provided to the Secretary of the Treasury upon request.

Treasury requests that the affected financial institutions suggest alternative ideas on implementing this requirement in a way which would be least burdensome to them, but also would provide full information easily accessible to the Treasury Department. Treasury also requests comments on how the account relationship and identification verification requirements could be implemented. Use of the notation "Signature card on file" will not be permitted. Finally, Treasury also requests comments from the financial institutions on the feasibility of using their present systems to aggregate purchases of these instruments.

After review and consideration of all the comments, Treasury will issue a Notice of Proposed Rulemaking proposing specific regulatory changes and will solicit again the views of the public before issuing a Final Rule implementing this requirement. There is no requirement to comply with the statutory provision prior to the effective date of a Final Rule.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials to comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Ave. NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at the number listed above.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

Dated: December 14, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88–29482 Filed 12–22–88; 8:45 am]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 798 and 799

[OPTS–46017, FRL–3496–7]

Mouse Visible Specific Locus Test Requirement; Proposed Amendment in Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the requirement for the mouse visible specific locus test (MVSL; 40 CFR 798.5200) for both final and proposed test rules promulgated under section 4(a) of the Toxic Substances Control Act (TSCA). Because of the potential unavailability of test facilities for the MVSL, EPA is proposing to allow test sponsors for these or future test rules to choose either the MVSL or the mouse biochemical specific locus test (MBSL) in testing for heritable gene mutations in mammals, if notified by EPA that such testing is necessary. EPA believes that both the MBSL and MVSL are

comparable tests and acceptable for detecting heritable gene mutations in mammals. The test guideline for the MBSL is being proposed in this document under 40 CFR 798.5195. EPA is proposing a reporting requirement of 51 months for the completion of testing for either the MVSL or MBSL. EPA is also proposing certain specimen retention modifications of the TSCA Good Laboratory Practice Standards for the MBSL and MVSL. Current rules including this testing requirement and affected by this proposal include: The final test rules for fluoroalkenes, mesityl oxide (MO), oleylamine (Phase I and Phase II), and commercial hexane, and the proposed test rules for unsubstituted phenylenediamines, triethylene glycol monomethyl, monoethyl, and monobutyl ethers, isopropanol, and tributyl phosphate.

DATES: Submit written comments on or before January 23, 1989. If persons request an opportunity to submit oral comments by February 6, 1989, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see UNIT VI. of this preamble.

ADDRESS: Written comments must be identified by the docket number as follows:

1. For comments on the test guidelines in 40 CFR 798.5195 and/or 798.5200, identify the comments by the docket number [OPTS–46017].

2. For comments on a chemical substance subject to either the mouse visible specific locus (40 CFR 798.5195) or the mouse biochemical specific locus (40 CFR 798.5200), identify the comments by the docket number [OPTS–46017/ and the docket number for the specific chemical] as follows:

[OPTS–46017/42002H]—Fluoroalkenes (vinyl flouride, vinylidene fluoride, hexafluoropropene, and tetrafluoroethane).
[OPTS–46017/42008E]—Unsubstituted phenylenediamines.
[OPTS–46017/42030F]—Mesityl oxide (MO).
[OPTS–46017/42061D]—Oleylamine.
[OPTS–46017/42080C]—Triethylene glocol monomethyl, monoethyl, and monobutyl ethers.
[OPTS–46017/42084G]—Commercial hexane.
[OPTS–46017/42097A]—Isopropanol.
[OPTS–46017/42100A]—Tributyl phosphate.

Comments, in triplicate, should be submitted to: TSCA Public Docket Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–55, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is proposing under TSCA section 4(a) to amend the requirement for the MVSL in the final test rules for four fluoroalkenes, mesityl oxide, oleylamine (Phase I and Phase II) and commercial hexane, and in proposed test rules for unsubstituted phenylenediamines, triethylene glycol monomethyl, monoethyl, and monobutyl ethers, isopropanol, and tributyl phosphate, to allow the test sponsor for these or future test rules to use either the MVSL or the MBSL for the testing of chemical substances for their potential to elicit heritable gene mutations in mammals, if notified by EPA that such testing is necessary.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Introduction

In the **Federal Register** published on May 23, 1985 (50 FR 21398), EPA issued a final rule requiring testing of diethylenetriame (DETA), which included the MVSL, triggered by a positive result in the *Drosophila* sex-linked recessive lethal test. In the **Federal Register** published on April 10, 1986 (51 FR 12344), EPA proposed test standards and reporting requirements for the testing of DETA which were finalized in the **Federal Register** published on February 3, 1987 (52 FR 3230). The Synthetic Organic Chemical Manufacturers Association and Texaco Chemical Corporation challenged this final rule in the U.S. Court of Appeals for the Third Circuit (No. 87–3265), arguing that the MVSL, required by the rule, would be impossible to perform due to unavailability of a laboratory to perform the test.

The MVSL requirement also appears in four other final test rules: Fluoroalkenes (52 FR 21516; June 8, 1987); mesityl oxide (52 FR 19088; May 20, 1987); oleylamine (Phase I; 52 FR 31962; August 24, 1987); and commercial hexane (53 FR 3382; February 5, 1988). Persons subject to these rules did not challenge the MVSL requirement, although two of the rules (fluoroalkenes and mesityl oxide) were challenged on different grounds.

A petition challenging the test rule for mesityl oxide (MO) is currently pending in the Court of Appeals for the Fifth Circuit. In a decision rendered in August of 1987, 862 F.2d 295 (5th Cir. 1987), the court remanded the test rule for MO to EPA for reconsideration of an issue distinct from the subject of this proposed rulemaking. EPA will complete its reconsideration of the MO test rule by early 1989 and, if EPA decides to require testing of MO, the modifications proposed in this rule would apply to the testing of MO.

During the course of discussions with the DETA petitioners, EPA learned that there were factual inaccuracies in the rulemaking record concerning the availability of the Oak Ridge National Laboratory (ORNL) to conduct the MVSL in accordance with EPA's TSCA Good Laboratory Practice Standards (GLPS) described in 40 CFR Part 792. EPA had, in part, based its conclusion that testing facilities would be available to perform the MVSL on information obtained during a meeting with representatives from the U.S. Department of Energy (DOE), which operates ORNL, held on October 3, 1986. A summary of this meeting (Ref. 1) has been placed in the rulemaking record for this proposed rule, was contained in the rulemaking record for the final Phase II test rule for DETA, and had been reviewed by DOE. From this meeting, EPA had understood that ORNL had previously conducted the MVSL for another substance at industry's expense according to the U.S. Food and Drug Administration's GLPS (similar to EPA's GLPS), and was interested in conducting the MVSL for test sponsors pursuant to EPA's TSCA section 4(a) test rules. EPA's understanding was incorrect.

In the Third Circuit, EPA and the DETA petitioners filed a joint motion for additional time to correct the record before filing briefs. The Court denied this motion and suggested that such corrections could only be made after a

remand of the rule to EPA. EPA and the petitioners then jointly moved the Court to issue an order under TSCA section 19(b) (15 U.S.C. 2618(b)) providing that EPA correct, complete, and supplement the record and provide an opportunity for additional submissions and presentations to EPA on the MVSL issue. On July 23, 1987, the Court granted this joint motion and required the parties to file a joint statement of the status of the administrative proceedings every 90 days. Since that time, EPA has determined that a positive test result was not obtained for DETA in the sex-linked recessive lethal test in *Drosophila*, the triggering test for the MVSL. Accordingly, the petitioners and EPA have asked the Court to dismiss the DETA case. However, EPA believes that the MVSL issue needs to be addressed in a general context and in the context of the availability of another, comparable test, the MBSL, and also specifically in reference to the remaining final and proposed test rules listed in this preamble.

II. Comparison Between the MVSL and MBSL

Both the MVSL and MBSL are capable of detecting chemical substances which elicit heritable gene mutations in mammals and are acceptable for TSCA testing requirements. For an indepth discussion of the MVSL and MBSL, a Work Group Report (Ref. 2) prepared for EPA's GENE-TOX Program and other recommended publications (Refs. 3 and 4) should be consulted. In the MVSL, the mutations which are inherited by the offspring (*e.g.*, changes in coat color, eye color, hair structure, or the morphology of the external ear) are readily visible to the naked eye. By comparison, the mutations which are inherited by the offspring in the MBSL test (changes in the chemical structure and electrophoretic properties of certain enzymes contained in the blood or kidneys) are not visible to the naked eye, but require biochemical analyses of blood and kidney biological preparations to detect the altered enzymes resulting from mutations. For blood preparations, starch-gel electrophoresis is performed, followed by specific enzyme staining to demonstrate migration patterns. For kidney preparations, broad-range isoelectric focusing is performed, followed by similar staining procedures. The altered enzymes exhibit different migration patterns following these analytical procedures than those obtained from animals in which mutations affecting these enzymes have not occurred. In both tests, the males are generally exposed to the test substance and subsequently mated with untreated females. With both tests, it is possible to detect mutations which are elicited at two important stages of development of the male sperm cell: The spermatogonial stem cell stage and the postspermatogonial stage. For that reason, the MVSL (40 CFR 798.5200), and the MBSL (40 CFR 798.5195) proposed in this rule, are constructed such that mutations elicited during the spermatogonial stem cell stage and all postspermatogonial stages of sperm development will be observed. In addition, although both of these guidelines do not specify more than one dose level, at least two dose levels will be specified in each individual test rule, so that the data obtained will be useful for risk assessment purposes.

Since the 1981 Work Group Report (Ref. 2), the MBSL has become commercially available (Ref. 5). EPA currently believes that both the MVSL and MBSL are equally acceptable for detecting chemicals which elicit heritable gene mutations in mammals. EPA is soliciting public comment on this issue, as described in Unit IV. of this preamble.

III. Proposed Amendment of MVSL Requirements

For all of the final and proposed test rules listed in this preamble, EPA is proposing to amend the final or proposed test standards in three ways. First, EPA is proposing that test sponsors have the option of conducting either the MVSL, according to 40 CFR 798.5200, or the MBSL, according to the TSCA Health Effects Test Guideline for the MBSL which EPA is proposing under 40 CFR 798.5195 in this rule. Second, EPA is proposing that the MVSL or MBSL be conducted in accordance with modified TSCA GLPS, as proposed in Unit III.B. of this preamble. Third, EPA is proposing to amend the reporting requirements so that the final report on either the MVSL or MBSL is due no later than 51 months following EPA's notification that such testing is necessary, with 6-month interim reports required, the first of which is due 6 months following notification of the test sponsor.

A. Option of Using Either the MVSL or MBSL

EPA is proposing to amend the MVSL test requirement for each of the final and proposed TSCA section 4(a) test rules described in this preamble, such that the test sponsors for these or future test rules may select either the MVSL or the MBSL, using the modifications to EPA's TSCA GLPS proposed in Unit IV. of this preamble, to determine whether a given chemical substance elicits heritable gene mutations in mammals.

This amendment would provide a test sponsor with four alternatives:

1. Independently negotiate with ORNL or a commercial laboratory already possessing the required historical control data to conduct the MVSL according to the TSCA Health Effects Test Guideline (40 CFR 798.5200).

2. Independently negotiate with a commercial laboratory not already possessing the required historical control data to conduct the MVSL, with the cost of developing the necessary historical control data to be borne by the party or parties specified in the negotiated contract.

3. Independently negotiate with Research Triangle Institute (RTI) or another laboratory already possessing the required historical control data to conduct the MSBL as specified in the TSCA Health Effects Test Guideline under 40 CFR 798.5195 which EPA is proposed for this test in this document.

4. Independently negotiate with a laboratory not already possessing the required historical control data specified in the proposed TSCA Health Effects Test Guideline to conduct the MBSL with the cost of the necessary historical control data to be borne by the party or parties specified in the negotiated contract.

This proposal is the result, in part, of EPA's further consideration of mutagenicity testing requirements in light of new information and developments in the DETA litigation. EPA continues to believe that each of the test rules is valid and that EPA has made appropriate statutory findings to establish these test rules. In addition, EPA continues to believe that it should require testing of chemical substances, as appropriate, for their potential mutagenicity. Consequently, EPA believes that a valid for detecting heritable gene mutations in mammals, such as the MVSL, is necessary when certain lower-tier mutagenicity tests are positive.

The MVSL, however, is rarely used. ORNL is currently the only laboratory in the United States which has experience conducting the MVSL and the control data required by 40 CFR 798.5200 (d)(4). In addition, it is not clear whether ORNL is available and willing to perform the MVSL for industrial test sponsors in accordance with TSCA GLPS. On September 16, 1987, EPA sent a letter (Ref. 6) to the contractor that oversees the operation of ORNAL for DOE inquiring about: The terms of availability of the MVSL at ORNL for industrial test sponsors; ORNL's ability

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to conduct the MVSL with adherence to TSCA GLPS; the cost of the MVSL at ORNL; and the possible terms of a potential interagency agreement (IGA) between EPA and ORNAL to ensure the availability of the MVSL for industrial test sponsors requiring this test pursuant to EPA's TSCA section 4(a) test rules.

On December 10, 1987, EPA received a letter (Ref. 7) from DOE indicating that DOE was concerned that the use of ORNL's facilities and personnel for conducting the MVSL for industrial tests sponsors pursuant to EPA's TSCA section 4(a) test rule requirements might have an adverse impact on the DOE health effects research program at ORNL. Furthermore, DOE indicated that it would require an interagency memorandum of understanding (MOU) between EPA and DOE before it would consider committing significant resources to this effort. EPA has decided not to enter into such an interagency MOU with DOE. This decision is consistent with EPA's policy of avoiding any direct involvement with negotiations on the part of test sponsors with testing facilities to secure contractual agreements for testing required under TSCA section 4(a) test rules. However, this decision does not in any way limit the opportunity for test sponsors to conduct independent negotiations with DOE to utilize ORNL for the conduct of the MVSL for substances subject to a requirement for such testing.

After learning that the MBSL, another mutagenicity assay which is capable of detecting heritable gene mutations in mammals, might be currently available at RTI, a commercial laboratory, EPA sent a letter (Ref. 8) to RTI on September 16, 1987. The letter inquired about: (1) The commercial availability of the MBSL to industrial test sponsors; (2) RTI's ability to conduct the MBSL under TSCA GLPS; (3) the cost of the MBSL under various assumptions; (4) the adequacy of RTI's historical control data for the MBSL; (5) the number of chemicals which could be tested per year given various assumptions; (6) the length of time required to conduct the MBSL for one substance under various assumptions; and (7) the amount of lead time the laboratory would require before initiating testing, including the time required for contract negotiations and all other activities necessary before the initiation of testing.

In a letter (Ref. 5) dated October 20, 1987, RTI replied to EPA that it would be prepared to conduct the MBSL for industrial test sponsors requiring such testing pursuant to TSCA section 4(a) test rules, and that RTI was fully capable of conducting the MBSL with adherence to TSCA GLPS. In addition, in a letter (Ref. 9) dated December 15, 1987, RTI indicated to EPA that the laboratory would also be available and willing to conduct the MVSL for industrial test sponsors, provided that the test sponsors would fund the development of the required positive and negative historical control data, and that RTI would be able to obtain the appropriate test animals from ORNL or another source. EPA has received estimates that this required historical control data could cost as much as $1 million to develop. RTI also indicated to EPA that it would be able to conduct the MVSL with adherence to TSCA GLPs.

In view of all of the information which EPA has received since promulgation of the final Phase II test rule for DETA, EPA has concluded that the MBSL is as acceptable as the MVSL for determining the potential of a substance to elicit heritable gene mutations in mammals (see Unit II. of this preamble), and EPA solicits public comment on this issue (see Unit IV. of this preamble). In addition, the MBSL currently appears to be less costly for a test sponsor to obtain from a commercial testing facility than is the MVSL, since it is commercially available at a laboratory already possessing all of the required historical control data (Ref. 5). In this notice, EPA is also requesting further public comment on the availability and cost of each of these two tests.

In each of the final and proposed test rules for which amendments are proposed, EPA made a commitment to conduct a public program review (triggered by the test sponsor's notification of EPA that a positive result for the sex-linked recessive lethal gene mutation test in Drosophila had been observed for a given substance) before deciding whether testing of the substance for eliciting heritable gene mutations in mammals should be required. EPA is now proposing that the public program review would consider all of the mutagenicity test results available for the substance in question, the relative cost of testing of the MBSL as opposed to the MVSL, the availability of testing facilities, and other matters relating to whether the MVSL or MBSL should be conducted. If EPA decides that testing in the MVSL or MBSL should be initiated, EPA would notify the test sponsor either by certified letter or **Federal Register** notice. The choice of the test utilized would be made by the test sponsor.

B. Revision of GLPS and Reporting Requirements

Following EPA's promulgation of the final Phase II test rule for DETA, the DETA petitioners held independent discussions with ORNL on the prospects for ORNL to conduct the MVSL test on DETA. As a consequence of these discussions, ORNL sent EPA a letter (Ref. 10) inquiring about the possible modification of EPA's TSCA GLPS for this test. EPA, in turn, sent letters and copies of the GLPS to both ORNL (Ref. 11) and RTI (Ref. 12) asking for recommendations on what specific aspects of the GLPS might be modified for the MVSL and MBSL tests. Although all testing required by TSCA section 4(a) test rules is required to be conducted according to EPA's TSCA GLPS, as presented in 40 CFR Part 792, based upon discussion with ORNL and RTI, EPA is proposing certain specimen retention modifications of these GLPS for the MVSL and MBSL. EPA believes that these modifications of EPA's TSCA GLPS with respect to the MVSL and MBSL will result in significant reductions in the costs of these tests without sacrificing the quality or integrity of the data obtained.

EPA is proposing to finalize proposed modifications to the GLPS for these two tests by incorporating the specific modifications to the GLPS in 40 CFR 798.5200 for the MVSL and in the proposed 40 CFR 798.5195 rule for the MBSL, rather than specifying modifications of the GLPS for these tests in each test rule in which they are contained. Thus, by specifying the TSCA Health Effects Testing Guideline for either of these tests, EPA would be automatically granting the modifications of the GLPS contained within each guideline. As described in Unit IV. of this preamble, EPA is soliciting public comment on the appropriateness of the proposed modifications of TSCA GLPS for these two tests.

1. *Mouse Visible Specific Locus Test.* EPA is proposing to modify §§ 792.190(a) and 792.195(c) for the MVSL. The existing paragraphs, as written, would require the frozen storage of the carcasses of all mutant animals, their siblings, and their parents. EPA believes that frozen storage of such a large number of carcasses would be extremely expensive and would add nothing to the scientific validity of the study. Such storage would also constitute a poor utilization of valuable laboratory space. EPA believes that retention of 35-mm color photographs (and negatives) of all mutant animals, their siblings, and their parents would

suffice, together with individual animal records, to assure the validity of the data obtained, with no required retention of the animal carcasses. EPA proposes to effect this modification by adding § 798.5200(h) (1) and (2) to the MVSL guideline.

EPA is also proposing in this notice to revise § 798.5200(f)(5), the test report provision of the MVSL guideline, changing "reporting recommendations" as specified under 40 CFR Part 792 to "reporting requirements".

2. *Mouse Biochemical Specific Locus Test.* EPA is proposing the MBSL under 40 CFR 798.5195. Sections 798.5195(h) (1) and (2) of this proposed rule modify certain aspects of §§ 792.190(a) and 792.195(c) for the MBSL. In the MBSL test, mutations are detected in the offspring after sacrifice by subjecting biological preparations of blood to broad-range electrofocussing and staining or biological preparations of kidneys to starch-gel electrophoresis and staining. Comparisons are then made between the migration patterns of certain enzymes contained in these preparations obtained from suspected mutants and those obtained with preparations from control animals. EPA believes that frozen storage of the blood and kidney biological preparations would be both costly and unproductive, since some of the enzymes studied deteriorate after long periods, even when properly frozen. In addition, the starch gels and electrofocussing columns on which the migration patterns are exhibited for preparations of kidneys and blood, respectively, deteriorate after a few months of storage, even when carefully stored. EPA believes that retention of adequately identified 35-mm photographs (and negatives) of the starch gels and electrofocussing columns exhibiting the migrating patterns obtained from all mutant animals, their siblings, and their parents would suffice, together with individual animal records, to assure the validity of the data obtained, with no required retention of the starch gels or electrofucussing columns.

C. Revision of Reporting Requirements

The final test rule for MO, and the proposed reporting requirements for oleylamine, isopropanol, unsubstituted phenylenediamines, and tributyl phosphate require that the final report on the MVSL, if conducted, be submitted to EPA no later than 48 months following notification of the test sponsor that such testing is required, with 6-month interim reports required, the first of which is due 6 months following EPA's notification of the test sponsor. The final test rule for the four fluoroalkenes requires that the final report on the MVSL be submitted to EPA within 51 months following notification that such testing is required, with 6-month interim reports required, the first of which is due 6 months following EPA's notification of the test sponsor.

For all of these rules, EPA is proposing to amend the reporting requirements so that the final report on either the MVSL or MBSL would be due no later than 51 months following EPA's notification that such testing is necessary, with 6-month interim reports required, the first of which is due 6 months following notification of the test sponsor. Amending the date at which the final report on the MVSL or MBSL would be due makes this reporting requirement consistent with that contained in the final test rule for the fluoroalkenes. EPA now believes that the 51-month time period is needed, since it includes the time required for contract negotiations and preparations at the testing facility prior to the initiation of testing, as well as the time allowed for conduct of the MVSL or MBSL and the preparation of final test reports.

IV. Issues for Comment

EPA is soliciting public comment on the following issues:

1. Is the MBSL equivalent to the MVSL for detecting chemical substances which elicit heritable gene mutations in mammals?

2. Are the modifications which EPA is proposing to the Agency's TSCA GLPS (40 CFR Part 792) for the MVSL and MBSL reasonable, in that they do not affect the integrity and validity of the data obtained from these tests? What other modifications of the TSCA GLPS might be appropriate for these two tests?

3. What is the current availability of laboratories to conduct the MVSL and MBSL for test sponsors requiring such testing pursuant to TSCA section 4(a) test rules?

4. If EPA's TSCA GLPS were strictly adhered to, what would be the test costs for the MVSL and MBSL for a two-dose test suitable for risk assessment purposes?

5. If EPA's TSCA GLPS were modified as proposed in this rule, what would be the costs for the MVSL and MBSL for a two-dose test suitable for risk assessment purposes? What would be the cost if additional modifications to the GLPS were allowed for these two tests (comments should describe the specific modification of EPA's TSCA GLPS contemplated in considering the costs)?

V. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Written comments submitted to EPA and oral presentations made at the public meeting will be considered only if they specifically relate to the contents of this proposed rule. For example, comments on the general mutagenicity policy utilized in TSCA section 4(a) test rules or the necessity of requiring tests for detecting chemical substances capable of eleciting heritable gene mutations in mannals in such rules would be viewed by EPA as inappropriate with respect to this rulemaking and will not be considered. Persons who wish to attend or to present comments at the meetings should call the TSCA Asssistance Office (TAO): (202) 554–1404, by February 6, 1989. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arrange to present comments and to designated EPA participants. Attendees should call TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the rulemaking record. Participants are invited, but not required, to submit copies of their statements to EPA either prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VI. Rulemaking Record

Within each of the existing records for the remaining final and proposed TSCA section 4(a) test rules currently containing a requirement for the MVSL (Fluoroalkenes, OPTS–42002H; Unsubstituted phenylenediamines, OPTS–42008E; Mesityl oxide, OPTS–42030F; Oleylamine, OPTS–42061D; Triethylene glycol monomethyl, monoethyl, and monobutyl ethers, OPTS–42080C; Commercial hexane, OPTS–42084G; Isopropanol, OPTS–42097A; and Tributyl phosphate, OPTS–42100A) EPA has established a record for this rulemaking.

This record contains the basic information considered by EPA in developing this proposed rule, including:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule, consisting of:

(a) Final test rules for diethylenetriamine (DETA; 52 FR 3230; February 3, 1987); mesityl oxide (MO; 52 FR 19088; May 20, 1987; fluoroalkenes (52 FR 21516; June 8, 1987); oleylamine (52 FR 31962; August 24, 1987 and 53 FR 48542; December 1, 1988) and commercial hexane (53 FR 3382; February 5, 1988).

(b) Proposed test rules for unsubstituted phenylenediamines (53 FR 913; January 14, 1988); triethylene glycol monomethyl, monoethyl, and monobutyl ether (51 FR 17883; May 15, 1986); isopropanol (53 FR 8638; March 16, 1988); and tributyl phosphate (52 FR 43346; November 12, 1987).

(c) The TSCA health effects testing guideline for the mouse visible specific locus test (40 CFR 798.5200; July 1, 1987).

(2) Communications, consisting of:

(a) Written public comments and letters.

(b) Contract reports of telephone conversations.

(c) Meeting summaries.

B. References

(1) U.S. Environmental Protection Agency. Office of Toxic Substances (OTS). Meeting summary of OTS/U.S. Department of Energy (DOE) meeting on availability of the mouse visible specific locus test (MVSL) at Oak Ridge National Laboratory (ORNL). (October 3, 1986).

(2) Russell, L.B., *et al.* D"The Mouse specific-locus test with agents other than radiations: Interpretation of data and recommendations for future work." *Mutation Research* 86:329–354. (1981).

(3) National Research Council. "Identifying and Estimating the Genetic Impact of Chemical Environmental Mutagens." (Washington, DC: National Academy Press, pp. 134–139, 1982).

(4) Department of Health and Human Services. U.S. Public Health Service. National Toxicology Program Fiscal Year 1987 Annual Plan. (Research Triangle Park: National Toxicology Program, pp. 59–61, 1987).

(5) Research Triangle Institute. Research Triangle Park, NC, 27709. Letter to Michael Cimino, OTS, Health and Environmental Review Division. (October 28, 1987).

(6) OTS, Test Rules Development Branch. Letter to Roger Ward, Manager, Contracts Division, Martin Marietta Energy Systems, Inc. (September 16, 1987).

(7) DOE. Letter to Gary Timm, Test Rules Development Branch, OTS. (December 3, 1987).

(8) OTS, Health and Environmental Review Division. Letter to Susan Lewis, Research Triangle Institute. (September 16, 1987).

(9) Research Triangle Institute. Research Triangle Park, NC, 27709. Letter to Raymond Locke, OTS, Test Rules Development Branch. (December 15, 1987).

(10) Oak Ridge National Laboratory. Oak Ridge, TN, 37831. Letter to Raymond Locke, OTS, Test Rules Development Branch. (July 8, 1987).

(11) OTS. Test Rules Development Branch. Letter to L.B. Russell, ORNL. (April 22, 1988).

(12) OTS. Test Rules Development Branch. Letter to Susan E. Lewis, RTI. (April 22, 1988).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G–004, NE Mall, 401 M St., SW., Washington, DC., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. EPA will supplement this record periodically with additional relevant information as received.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that the amendments to these test rules would not be major because they do not meet any of the criteria set forth in section 1(b) of the Order, *i.e.*, they would not have any annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor cost, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA". The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 798 and 799

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Recordkeeping and reporting requirements.

Dated: November 28, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, Chapter I, Subchapter R, be amended as follows:

PART 798—[AMENDED]

1. In Part 798:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding § 798.5195 to read as follows:

§ 798.5195 Mouse biochemical specific locus test.

(a) *Purpose.* The mouse biochemical specific locus test (MBSL) may be used to detect and quantitate mutations originating in the germ line of a mammalian species.

(b) *Definitions.* (1) A biochemical, specific locus mutation is a genetic change resulting from a DNA lesion causing alterations in proteins that can be detected by electrophoretic methods.

(2) The germ line is comprised of the cells in the gonads of higher eukaryotes, which are the carriers of the genetic information for the species.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* The principle of the MBSL is that heritable damage to the genome can be detected by electrophoretic analysis of proteins in the tissues of the progeny of mice treated with germ cell mutagens.

(2) *Description.* For technical reasons, males rather than females are generally treated with the test chemical. Treated males are then mated to untreated females to produce F1 progeny. Both

blood and kidney samples are taken from progeny for electrophoretic analysis. Up to 33 loci can be examined by starch-gel electrophoresis and broad-range isoelectric focussing. Mutants are identified by variations from the normal electrophoretic pattern. Presumed mutants are bred to confirm the genetic nature of the change.

(3) *Animal selection*—(i) *Species and strain.* Mice shall be used as the test species. Although the biochemical specific locus test could be performed in a number of inbred strains, in the most frequently used cross, C57BL/6 females are mated to DBA/2 males to produce (C57BL/6 × DBA/2) F1 progeny for screening.

(ii) *Age.* Healthy, sexually-mature (at least 8 weeks old) animals shall be used for treatment and breeding.

(iii) *Number.* A decision on the minimum number of treated animals should take into account possible effects of the test chemical on the fertility of the treated animals. Other considerations should include:

(A) The production of concurrent spontaneous controls.

(B) The use of positive controls.

(C) The power of the test.

(4) *Control groups*—(i) *Concurrent controls.* An appropriate number of concurrent control loci shall be analyzed in each experiment. These should be partly derived from matings of untreated animals (from 5–20 percent of the treated matings), although some data on control loci can be taken from the study of the alleles transmitted from the untreated parent in the experimental cross. However, any laboratory which has had no prior experience with the test shall produce a spontaneous control sample of about 5,000 progeny animals and a positive control (using 100 mg/kg ethylnitrosourea) sample of at least 1,200 offspring.

(ii) *Historical controls.* Long-term, accumulated spontaneous control data (currently, 1 mutation in 1,200,000 control loci screened) are available for comparative purposes.

(5) *Test chemicals*—(i) *Vehicle.* When possible, test chemicals shall be dissolved or suspended in distilled water or buffered isotonic saline. Water-insoluble chemicals shall be dissolved or suspended in appropriate vehicles. The vehicle used shall neither interfere with the test compound nor produce major toxic effects. Fresh preparations of the test chemical should be employed.

(ii) *Dose levels.* Usually, only one dose need be tested. This should be the maximum tolerated dose (MTD), the highest dose tolerated without toxic effects. Any temporary sterility induced due to elimination of spermatogonia at this dose must be of only moderate duration, as determined by a return of males to fertility within 80 days after treatment. For evaluation of dose-response, it is recommended that at least two dose levels be tested.

(iii) *Route of administration.* Acceptable routes of administration include, but are not limited to, gavage, inhalation, admixture with food or water, and intraperitoneal or intravenous injections.

(e) *Test performance*—(1) *Treatment and mating.* Male DBA/2 mice shall be treated with the test chemical and mated to virgin C57BL/6 females immediately after cessation of treatment. Each treated male shall be mated to new virgin C57BL/6 females each week. Each pairing will continue for a week until the next week's mating is to begin. This mating schedule permits sampling of all postspermatogonial stages of germ-cell development during the first 7 weeks after exposure. Spermatogonial stem cells are studied thereafter. Repeated mating cycles should be conducted until sufficient offspring have been obtained to meet the power criterion of the assay for spermatogonial stem cells.

(2) *Examination of offspring*—(i) *Birth and weaning.* Offspring shall be examined at birth and at weaning for externally detectable changes in morphology and behavior; these could be due to dominant mutations. Such characteristics may include, but are not limited to, variations in coat color, appearance of eyes, size (in which case weighing of variant animals and littermates should be carried out), fur texture, etc. Gross changes in external form and behavior shall also be sought. Scrutiny of such visible characteristics of all animals shall be made during all subsequent manipulations of the animals.

(ii) *Tissue sampling.* Blood (about 0.1 mL) and one kidney shall be removed from progeny mice under anesthesia. Both tissues are then prepared for analysis by electrophoresis.

(iii) *Electrophoresis.* The gene products of 6 loci shall be analyzed in the blood sample by broad-range isoelectric focussing and of 27 loci in the kidney sample by starch-gel electrophoresis and enzyme-specific staining. Details on these procedures are included in paragraphs (g) (1) through (3) of this section.

(iv) *Mutant identification.* Presumptive electrophoretic mutants shall be identified by variation from the normal electrophoretic banding patterns. Reruns of all variant samples shall be performed to confirm the presence of altered banding patterns. Samples from parents of progeny exhibiting banding pattern variations shall be assayed to determine whether the variant was induced by the experimental treatment or was pre-existing. All treatment-induced variants are bred to determine the genetic nature of the change.

(f) *Data and reports*—(1) *Treatment of results.* Data shall be presented in tabular form and shall permit independent analysis of cell stage-specific effects, and dose-dependent phenomena. The data shall be recorded and analyzed in such a way that clusters of identical mutations are clearly identified. The individual mutants detected shall be thoroughly described. In addition, concurrent positive control data (if employed) and spontaneous control data shall also be tabulated. These concurrent controls shall be added to, as well as compared with, the historical control data.

(2) *Statistical evaluation.* Data shall be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive response, one of which is a statistically significant dose-related increase in the frequency of electrophoretic mutations. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of these test points.

(ii) A test chemical which does not produce a statistically significant increase in the frequency of electrophoretic mutations over the spontaneous frequency, or a statistically significant and reproducible positive response for at least one of the test points, is considered nonmutagenic in this system, provided that the sample size is sufficient to exclude a biologically significant increase in mutation frequency.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the MBSL indicate that, under the test conditions, the test chemical induces heritable gene mutations in a mammalian species.

(ii) Negative results indicate that, under the test conditions, the test chemical does not induce heritable gene mutations in a mammalian species.

(5) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J, and paragraph (h) of this section, the following specific information shall be reported:

(i) Strain, age and weight of animals used; numbers of animals of each sex in experimental and control groups.

(ii) Test chemical vehicle, doses used, rationale for dose selection, and toxicity data, if available.

(iii) Route and duration of exposure.

(iv) Mating schedule.

(v) Number of loci screened for both treated and spontaneous data.

(vi) Criteria for scoring mutants.

(vii) Number of mutants found/locus.

(viii) Loci at which mutations were found.

(ix) Use of concurrent negative and positive controls.

(x) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline, the following references should be consulted:

(1) Barnett, L.B., C.F. Felton, B.J. Gibson, D.S. Sharpe, M.D. Shelby and S.E. Lewis. "No heritable mutations are induced by ethylene dibromide at electrophoretically expressed loci." (In preparation for publication in *Mutation Research*, expected in 1988–1989).

(2) Johnson, F.M., G.T. Roberts, R.K. Sharma, F. Chasalow, R. Zweidinger, A. Morgan, R.W. Hendren, and S.E. Lewis. "The detection of mutants in mice by electrophoresis: Results of a model induction experiment with procarbazine." *Genetics* 97:113–124 (1981).

(3) Johnson, F.M. and S.E. Lewis. "Mutation rate determinations based on electrophoretic analysis of laboratory mice." *Mutation Research* 82:125–135 (1981a).

(4) Johnson, F.M. and S.E. Lewis. "Electrophoretically detected germinal mutations induced by ethylnitrosourea in the mouse." *Proceedings of the National Academy of Sciences* 78: 3138–3141 (1981b).

(5) Lewis, S.E., C. Felton, L.B. Barnett, W. Generoso, N. Cacheiro, and M.D. Shelby. "Dominant visible and electrophoretically expressed mutations induced in male mice exposed to ethylene oxide by inhalation." *Environmental Mutagenesis* 8:867–872 (1986).

(h)(1) *Exemptions to certain Good Laboratory Practice Standards requirements.* Testing facilities conducting the mouse biochemical specific locus test in accordance with this section shall be exempt from the provisions of §§ 792.190(a) and 792.195 (b) and (c) of this chapter solely with respect to the storage and retention of the biological preparations of blood and kidneys obtained from mutant mice, their siblings, and their parents, and with respect to the stained isoelectric-focussing columns and the stained starch-gels obtained with these preparations of blood and kidneys, respectively, to demonstrate the migration patterns of certain enzymes in these tissues from mutant and nonmutant animals.

(2) *Additional requirements.* Testing facilities conducting the mouse biochemical specific locus test under the provisions of paragraph (h)(1) of this section shall, instead of retaining frozen biological preparations of blood and kidneys and stained starch-gels and isoelectric-focussing columns, obtain, adequately identify, and retain for at least 10 years of acceptable 35-mm photographs (and their negatives) of the stained isoelectric-focussing columns and the stained starch-gels obtained following analyses of blood and kidney preparations, respectively, from mutant mice, their siblings, and their parents.

c. By revising § 798.5200(f)(5) introductory text and adding paragraph (h) to read as follows:

§ 798.5200 Mouse visible specific locus test.

* * * * *

(f) * * *

(5) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J, and paragraph (h) of this section, the following specific information shall be reported:

* * * * *

(h)(1) *Exemptions to certain Good Laboratory Practice Standards requirements.* Testing facilities conducting the mouse visible specific locus test in accordance with this section shall be exempt from the provisions of § 792.190(a) and § 792.195(b) and (c) of this chapter solely with respect to the collection, storage, and retention of the carcasses of mutant mice, their siblings, and their parents.

(2) *Additional requirements.* Testing facilities conducting the mouse visible specific locus test under the provisions of paragraph (h)(1) of this section shall, instead of retaining the frozen carcasses, obtain and retain for at least 10 years acceptable 35-mm color photographs (and their negatives) demonstrating the visible mutations observed in mutant animals and the lack of such mutations in their siblings and parents.

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By revising § 799.1700(c)(1)(i)(C)(*1*), (ii)(A), and (d) to read as follows:

§ 799.1700 Fluoroalkenes.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) * * *

(*1*) A mouse visible specific locus assay (MVSL) shall be conducted with VF, VDF, TFE, and HFP in accordance with § 798.5200 of this chapter, except for the provisions of paragraph (d)(5) of § 798.5200, or a mouse biochemical specific locus assay (MBSL) shall be conducted with VF, VDF, TFE, and HFP in accordance with § 798.5195 of this chapter, except for the provisions of paragraph (d)(5) of § 798.5195, for whichever of these substances produces a positive test result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(B) of this section if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

* * * * *

(ii) * * *

(A) Mutagenic effects-gene mutation tests shall be completed and the final reports shall be submitted to EPA as follows: Somatic cells in culture assay, within 6 months after the effective date of the final rule; *Drosophila* sex-linked recessive lethal, within 9 months (for VF and VDF) and within 15 months (for TFE and HFP) after the effective date of the final rule; MVSL or MBSL, within 51 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(d) *Effective dates.* (1) The effective date of this rule is July 22, 1987, except for the provisions of paragraphs (c)(1)(i)(C)(*1*), and (ii)(A) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

* * * * *

c. By adding § 799.2155(c)(5)(i)(D): (ii)(A)(*4*) and (C); and revising paragraph (d) to read as follows:

§ 799.2155 Commercial hexane.

* * * * *

(c) * * *

(5) * * *

(i)* * *

(D)(*1*) Unless the results of the sex-linked recessive lethal test in *Drosophila melanogaster* conducted with commercial hexane pursuant to paragraph (c)(5)(i)(C) of this section are negative, EPA shall conduct a public program review of all of the mutagenicity data available for this substance. If, after this review, EPA decides that testing of commercial hexane for causing heritable gene mutations in mammals is necessary, it shall notify the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated in either the mouse visible specific locus test or the mouse biochemical specific locus test. The mouse visible specific locus test, if conducted, shall be performed for commercial hexane in accordance with §798.5200 of this chapter except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5200. The mouse biochemical specific locus test, if conducted, shall be performed for commercial hexane in accordance with § 798.5195 of this chapter except for the provisions of paragraphs (d)(5)(ii) and (iii) of § 798.5195.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* A minimum of two dose levels shall be tested. The highest dose tested shall be the highest dose tolerated without toxic effects, provided that any temporary sterility induced due to eliminating of spermotogonia is of only moderate duration, as determined by a return of males to fertility with 80 days of treatment, or shall be the highest dose attainable below the lower explosive limit concentration of commercial hexane. Exposure shall be for 6 hours a day. Duration of exposure shall be dependent upon the accumulated total dose desired for each group.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

* * * * *

(ii) * * *

(A) * * *

(*4*) The mouse visible specific locus test or the mouse biochemical specific locus test shall be completed and a final report shall be submitted to EPA within 51 months of the date on which the test sponsor is notified by EPA by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(C) Interim progress reports for either the mouse visible specific locus test or the mouse biochemical specific locus test shall be submitted to EPA at 6-month intervals, beginning 6 months after EPA's notification of the test sponsor that testing should be initiated, until the applicable final report is submitted to EPA.

* * * * *

(d) *Effective dates.* (1) The effective date of this final rule is November 17, 1988, except for the provisions of paragraphs (c)(5)(i)(D), (ii)(A)(*4*) and (C) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

* * * * *

d. By revising § 799.2500(c)(3)(i)(E), (ii)(D)(*1*), (iii)(A)(*3*) and (C), and (d) to read as follows:

§ 799.2500 Mesityl oxide (MO).

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) A mouse visible specific locus test (MVSL) or a mouse biochemical specific locus test (MBSL) shall be conducted for MO if it produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* pursuant to paragraph (c)(3)(i)(B) or (D) of this section.

* * * * *

(ii) * * *

(D) * * *

(*1*) The MVSL shall be conducted with MO in accordance with § 798.5200 of this chapter, except for the provisions of paragraphs (d)(5)(ii) and (iii) of § 798.5200, or the MBSL shall be conducted with MO in accordance with § 798.5195 of this chapter, except for the provisions of paragraphs (d)(5)(ii) and (iii) of § 798.5195.

* * * * *

(iii) * * *

(A) * * *

(*3*) The MVSL or MBSL shall be completed and the final report submitted to EPA within 51 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(C) Progress reports shall be submitted to EPA for the MVSL or the MBSL at 6-month intervals, the first of which is due within 6 months of EPA's notification of the test sponsor that testing shall be initiated.

* * * * *

(d) *Effective dates.* (1) The effective date of this rule is July 6, 1987, except for the provisions of paragraphs (c)(3)(i)(E), (ii)(D)(*1*), (iii)(A)(*3*) and (C) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

* * * * *

e. By revising § 799.3175(c)(3)(i)(C), adding (ii)(C), (iii)(A)(*3*), (C) and revising paragraph (d) to read as follows:

§ 799.3175 Oleylamine.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(C) A mouse visible specific locus test (MVSL) or a mouse biochemical specific locus test (MBSL) shall be conducted for ODA if it produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(i)(B) of this section and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

* * * * *

(ii) * * *

(C)(*1*) The MVSL or MBSL shall be conducted with ODA in accordance with §§ 798.5200 or 798.5195 of this chapter, respectively, except for the provisions of paragraph (d)(5)(iii) of each of these sections.

(*2*) For purposes of this section, the following provision also applies.

(*i*) *Route of administration.* The route of exposure shall be oral by gavage.

(*ii*) [Reserved]

* * * * *

(iii) * * *

(A) * * *

(*3*) The MVSL or MBSL shall be completed and the final report submitted to EPA within 51 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(C) Progress reports shall be submitted to EPA for the MVSL or the MBSL at 6-month intervals, the first of which is due within 6 months of EPA's notification of the test sponsor that testing shall be initiated.

* * * * *

(d) *Effective date.* (1) The effective date of this rule is October 7, 1987, except for the provisions of paragraphs (c)(3)(i)(C), (ii)(C), (iii)(A)(*3*), and (C) of this section, which are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

(2) The guidelines and other test methods cited in this section are

referenced as they exist on the effective date of the final rule.

* * * * *

[FR Doc. 88-29496 Filed 12-22-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1001

Medicare and Medicaid Programs; Fraud and Abuse; OIG Anti-Kickback Provisions

AGENCY: Office of the Secretary, Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations are designed to implement section 14 of Pub. L. 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, by specifying various payment practices which, although potentially capable of inducing referrals of business under Medicare, would not be considered kickbacks for purposes of criminal prosecution or civil remedies.

DATES: To assure consideration, public comments must be mailed and delivered to the address provided below by February 21, 1989.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR-17-P, Room 5246, 330 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR-17-P.

Comments will be available for public inspection beginning approximately two weeks after publication in Room 5551, 330 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m., (202) 472-5270.

FOR FURTHER INFORMATION CONTACT:
Harvey Yampolsky, Office of the General Counsel, (202) 472-5335
Joel Schaer, Office of Inspector General, (202) 472-5270

For paperwork reduction and information collection requirements: Allison Herron, Office of Management and Budget (202) 395-7316.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1128B(b) of the Social Security Act, previously codified at sections 1877 and 1909, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is extremely broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

The leading case regarding this statute illustrates its broad scope. In *United States* v. *Graber*, 760 F.2d 68 (3d Cir.) *cert. denied*, 474 U.S. 988, 106 S.Ct. 396 (1985), the Third Circuit Court of Appeals was asked to examine the nature of payments between a medical diagnostic company, providing holter monitor services, and physicians. The company billed Medicare for the monitoring service it performed, and forwarded 40 percent of those payments (up to $65 per patient) to the referring physician.

The defendant in this case alleged that these payments were merely "interpretation fees" paid to the referring physicians for their initial consultation and for explaining the test results to the patients. *Id.* at 70. The court, however, declined to examine whether there might have been a legitimate purpose behind those payments, concluding: "if one purpose of the payment is to induce future referrals, the medicare statute has been violated." *Id.* at 69.

Since the statute on its face is so broad, and the court has recognized its full breadth, concern has arisen among a number of health care providers that many relatively innocuous, or even beneficial, commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

Public Law 100-93

Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, added two new provisions addressing the anti-kickback statute. Section 2 specifically provided new authority to the Office of Inspector General (OIG) to exclude a person or entity from participation in the Medicare and State health care programs if it is determined that the party is engaged in a prohibited remuneration scheme. This new sanction authority is intended to provide an alternative civil remedy, short of criminal prosecution, that will be a more effective way of regulating abusive business practices than is the case under criminal law.

In addition, section 14 of Pub. L. 100-93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B of the Act and that will not provide a basis for exclusion from the Medicare program or from the State health care programs under section 1128(b)(7). This section reflects the generally accepted view that the language proscribing remuneration that induces referrals is so broadly written as to encompass many harmless or efficient arrangements as well.

In accordance with the stipulation of Pub. L. 100-93, these proposed regulations have been developed in consultation with the Department of Justice.

Notice of Intent

The legislative history of section 14 of Pub. L. 100-93 indicates that Congress expected the Department of Health and Human Services to consult with affected provider, practitioner, supplier and beneficiary representatives before promulgating regulations. In order to most effectively address issues related to this provision, we published a notice of intent to develop regulations (52 FR 38794, October 21, 1987) soliciting comments from interested parties prior to developing proposed regulations. As a result of that notice, the OIG received a total of 137 timely comments, recommendations and suggestions on generic criteria that can be applied to particular types of business arrangements in order to determine if such arrangements are inappropriate for civil or criminal sanctions.

II. Provisions of the Proposed Rule

We are proposing to amend 42 CFR Part 1001 by adding a new § 1001.952 to set forth those specific payment practices that would not be treated as a criminal offense under section 1128B of the Act and would not serve as the basis for an exclusion from the Medicare and State health care programs. Before we discuss the various payment practices that we are proposing to exempt, we will clarify the effect of not having a

particular business arrangement exempted, and we invite public comments on the issues of advisory opinons, notice to beneficiaries, and preferred provider organizations.

Business Arrangements Not Exempt—We are aware that it is the unique position physicians occupy in the medical marketplace that has led to the examination of their relationship with varying business arrangements. It is the physician who controls access to a large array of medical items and services in order for third party reimbursement to be available. This is a highly competitive market that is constantly expanding with new drugs, medical devices and tests. While this competitive marketplace is important, it is necessary for the fiscal integrity of the Medicare and Medicaid programs to assure that physicians exercise sound, objective medical judgment when controlling admittance to this market. We have attempted in these proposed regulations to permit physicians to freely engage in business practices and arrangements that encourage competition, innovation and economy. However, we have added criteria to each "safe harbor" in order to reduce the potential for abuse.

In order for a business arrangement to comply with one of the exemptions set forth below, each provision of that exemption must be met. If, however, the business arrangement involves several payments, for example, rental of both space and equipment, then each payment will be analyzed to determine if all the provisions of each applicable exemption have been fulfilled. Thus, fully complying with one exemption may not grant that individual or entity complete immunity under the statute.

Several commenters responding to our notice of intent have asked that we clarify what it means if a particular business arrangement does not fully comply with each element of a particular exemption. In many instances, the failure to comply fully with one of the exemptions will be of no consequence because the arrangement does not fall within the proscriptions of the statute at all. However, where individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to fully comply with one of the exemptions proposed in these regulations, they would risk scrutiny by the OIG and may be subject to civil to criminal enforcement action.

Continuing Guidance—Congress intended that the regulations set forth on "safe harbors" be an evolving rule that would be periodically updated to reflect changing business practices and technologies. In the House Committee Report accompanying Pub. L. 100–93, the Committee stated that it "believes that a mechanism for periodic public input is necessary to ensure that the regulations remain relevant in light of changes in health care delivery and payment and to ensure that published interpretations of the law are not impeding legitimate and beneficial activities. Accordingly, the Committee expects that the Secretary will formally reevaluate the anti-kickback regulations on a periodic basis and, in doing so, will solicit public comments at the outset of the review process." Moreover, there may be a need for the Department to respond to changing modes of health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy.

We, therefore, invite public comments on how we can best achieve the twin goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments. Comments should address how affected parties can make their questions or views known on a continuing or regular basis, and how the Department can best respond to such concerns. For example, it has been suggested that it would be useful for the Department to create a mechanism for offering advice, such as selective opinions on generic issues or periodic intermediary and carrier notices, or Inspector General letters. We should note that questions have been raised regarding the practicality and effectiveness of such an approach given that often an assessment of circumstances (1) cannot accurately be made based solely on a written presentation, (2) could divert limited resources from enforcement efforts, and (3) could be used to impede subsequent cases against other parties.

Notice to Beneficiaries—We considered including in several of the proposed "safe harbors" a requirement that a person notify each Medicare beneficiary or Medicaid State health care program of the financial relationship that exists and any person to whom he or she refers the beneficiary for items or services. This requirement may serve to provide an additional safeguard against the abuse for which there is always some potential when such financial relationships exist. Furthermore, it reiterates the ethical responsibility of physicians as reflected in the Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association, and it is a duty imposed by some State statutes as well.

However, such notice requirements may be unduly burdensome compared with the potential benefits to health care consumers. We therefore have not included the requirement in the ownership and financial relationship safe harbors at this time. However, we invite public comments on this issue.

Preferred Provider Organizations—We are aware that there are an increasing variety of arrangements among providers grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care." Unlike HMOs, PPOs and managed care arrangements do not have a single unique identifying structure or concept. In addition, unlike HMOs, there is no single entity that is recognized as the "provider." For these reasons, there is no safe harbor specifically delineated for these arrangements. Rather, we believe that the safe harbors we have designated would cover many relationhips in preferred provider and managed care networks. Furthermore, the anti-kickback statute would not apply to participants in PPOs where the discounts and financial relationships are obviously not designed to improperly induce referrals. However, we invite comments from the public regarding additional safe harbors that would provide further assurance to PPOs.

Relationship to Other Laws—The safe harbors being proposed in these regulations are only for purposes of the Federal Medicare and Medicaid anti-kickback statute. They would not provide immunity from civil or criminal prosecution or other sanctions under any other Federal or State laws. For example, a particular arrangement permissible under a safe harbor may violate a law administered by the Federal Trade Commission or the Securities and Exchange Commission (SEC), or may run afoul of a State law that is applied by the State in a stricter fashion than the Federal law.

Proposed Safe Harbors

Set forth below is a description of the various payment practices that we are proposing to exempt and the rationale for their inclusion in this proposed rulemaking.

A. Investment Interests

As written, the anti-kickback provision applicable to the Medicare and State health care programs is so broad that it could be interpreted literally, for example, to prohibit a physician from receiving dividend payments from a large publicly traded

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pharmaceutical company if he or she prescribed one of the company's products for a Medicaid patient, knowing that ordering that product would increase his or her dividend payment.

We do not believe that Congress intended to bar all forms of investment or ownership by referral sources in health providers. This conclusion is based on the fact that there are other provisions of Medicare law that pertain specifically to physican-owned home health agencies. Obviously, these provisions would make little sense if the kickback provision prohibited, *per se*, referrals by physicians to entities in which they had any investment interest.

To reflect this view that Congress did not intend to absolutely bar any investment by physicians in other health care entities, we have included a "safe harbor" for some investment interests, so long as the arrangement meets certain standards and includes specified safeguards against abuse.

On the other hand, many commenters have described to us situations where health care entities sell limited partnership interests at nominal cost solely to investors who are in a position to make referrals to the entity, and where the profit distribution in the first year, and each year thereafter, is substantially in excess of the original investment. Competitors of these entities complain of losing a significant share of the market to an entity that establishes a limited partnership with physicians in the service area. We have been urged not to include a "safe harbor" for such practices.

We have crafted an exemption to the anti-kickback statute in § 1001.952(a), Investment interests, for legitimate investment interests, without providing a "safe harbor" for these potentially abusive limited partnership arrangements. Accordingly, this proposed "safe harbor" is intended to draw a sensible and well-defined line between payments that are derived from legitimate investments and those that are suspect.

As drafted, this subsection has been designed to permit the following three "safe harbors" with respect to investment interests: (1) Investment interests in large corporations that are available to the general public; (2) investment interests in other entities, such as limited partnerships, where a bona fide opportunity to invest is made on an equal basis to people in a position to make referrals as well as others, where there are no requirments to make referrals, where there has been disclosure to a referred patient, and where payments are not related to referrals; and (3) managing partnership interests where there is disclosure to a referred patient, and where payments are not related to referrals.

We have created one "safe harbor" restricted to investments in large companies. We have done this to assure that the companies are sufficiently large enough so that the return on investment is, at most, tangentially related to any referrals of items or services made by a shareholder, for example, the prescribing of a drug by an investing physician. This "safe harbor" describes a minimum number of shareholders and a minimum amount of assets the company must have in order to qualify under this exemption. We have adopted the same bright line employed by the SEC. The SEC applies these same standards to determine which companies are required to register with it, regardless of whether they are traded on a national securities exchange (15 U.S.C. 78*l*(g) and 17 CFR 240.12g–1). We believe this bright line will be useful to health care providers as it sets forth a standard for permissible investments under this "safe harbor" that can be easily determined.

B. Space Rental

The anti-kickback statute is so broadly written that it could be interpreted to cover rental payments where one party is in a position to make referrals to the other party, even if there is no explicit or implicit understanding regarding referrals. While many rental arrangements are legitimate, we have been informed of many situations where rental payments were simply a device used to mask the real nature of the payments, that is, to induce referrals.

Some examples of these kinds of arrangements are where: (1) A health care entity rents space at a rate above market value from a physician by the hour—with the space being used solely to provide care or services to patients referred by the physician—and the hours per week, and thus the payments, varying in direct relationship to the number of referrals; (2) a physician rents space to a health care entity at a rate above what the market would ordinarily bear, but the entity agrees to the high rent because of an understanding that the physician will refer his or her patients to that entity; or (3) a physician rents space to a health care entity on a month-to-month lease, with the rent varying each month based on the number of referrals from the physician in the preceding month. These arrangements obviously fall within the scope of the anti-kickback law, and provide the potential to abuse the Medicare and State health care programs.

Typically, the abusive arrangements involve rental payments either substantially in excess or below the fair market value of the rental space. The Ninth Circuit Court of Appeals, in *United States v. Lipkis*, 770 F.2d 1447 (9th Cir. 1985), emphasized the importance of determining fair market value when assessing the legitimacy of payments between parties who are in a position to make referrals. In *Lipkis*, a medical management company providing services to a physician group entered into an arrangement with a laboratory where the laboratory returned 20 percent of its revenues obtained from the physician group's referrals back to the management company. The defendant alleged that these payments were fair compensation for "specimen collection and handling services." *Id.* at 1449. The court rejected this defense, concluding: "The fair market value of these services was substantially less than the [amount paid], and there is no question that [the laboratory] was paying for referrals as well as the described services." *Ibid.* Accordingly, one fundamental principle is whether the payment is based on fair market value, regardless of whether the payment is for space rental, equipment rental, personal services, or management contracts.

We have, therefore, crafted an exemption to the antikickback law in these proposed regulations for rental arrangements that would require certain standards and safeguards in order to limit the opportunity for abusive relationships that are intended to induce referrals. Proposed § 1001.952(b), Rent, specifically would establish "safe harbors" in cases of rental agreements where: (1) In instances when access is for periodic intervals, those intervals are set in advance in the lease, rather than allowed to vary week-to-week on the basis of the number of referred patients to be served at the premises; (2) the lease is for at least one year so it cannot be readjusted every month based on the number of referrals; and (3) the charges reflect fair market value.

C. Equipment Rental

Diagnostic and other items of medical equipment are sometimes rented rather than purchased. Obviously, there is no *per se* violation of the anti-kickback statute solely because the owner of the equipment refers a patient to the entity who is paying the individual rent for the equipment. However, we have had situations brought to our attention where payment for the use of the

equipment, just like rent for space, is simply a vehicle to provide reimbursement for referrals.

For example, we have had described to us arrangements where a provider rents equipment from a hospital and reimburses the hospital on an hourly basis each time he or she uses the equipment. Under this type of arrangement, the hospital knows it will be paid a fee by the provider each time it refers a patient to the provider for services requiring the use of the equipment. In another case, an ophthalmologist may rent diagnostic equipment to an optometrist at a rate significantly below the usual market rate. In this instance, there is an understanding between the parties that the rate will be adjusted periodically depending on the referral rate of patients from the optometrist to the ophthalmologist. The reduction in the rental charge, which becomes larger as the number of referrals increase, could obviously be construed as the offer of remuneration in order to induce referrals.

We have, therefore, provided in § 1001.952(c), a "safe harbor" for equipment rentals similar to those applied to real estate rental discussed above, along with the appropriate conditions and safeguards to limit the potential for abuse.

D. Personal Services/Management Contracts

Medical practitioners and providers often have agreements to perform services for each other on a mutually beneficial basis.

Sometimes these agreements call for the party requiring the service to pay a fixed amount or hourly rate to the party performing the service. In other instances, both parties may be allegedly contributing some service or benefit to a so-called "joint venture," and taking compensation in the form of a share of the profits generated by the venture. In still other situations, a party may perform a service acting in the capacity of agent for a company. For example, the agent may perform management services for the company, or handle certain billing and collection services.

None of these arrangements is *per se* illegal solely because referrals between the parties, or to the joint venture, occur. However, if the nature of the agreement is such that payments are intended to induce referrals, or there is an implicit or explicit arrangement where the amount of the payment varies with the volume of referral, the anti-kickback law would apply.

Examples of abusive arrangements that would fall into this category are where: (1) An orthopedist is under contract with a physical therapist to provide billing services for patients he or she refers for the service, thereby receiving compensation in an amount that varies directly with the volume of the referrals; (2) a hospital-employed respiratory therapist is paid by a supplier for servicing home oxygen equipment, but only in cases where the therapist is the source of the patient referral and (3) a hospital stores and delivers medical equipment to discharged patients on behalf of a supplier and is compensated through a disproportionate share of the net profits of the supplier, although the hospital's only other "service" to the joint venture is the referral of the discharged patients. The variations on these examples are virtually limitless.

We have established in § 1001.952(d) a "safe harbor" for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met and safeguards are present to limit the opportunity to provide financial incentives in exchange for referrals. This exemption includes the determination of whether services are paid at fair market value, and is predicated on the same type of standards and qualifications as set forth in the exemption for space and equipment rental.

E. Sale of Practice

It has been brought to our attention that another approach sometimes employed by hospitals to assure a referral of business is to buy, or appear to buy, a physician's practice. Unlike the traditional sale of a practice by a retiring physician to another physician, in these cases the physician continues to practice on the staff of the hospital. Thus, the hospital is able to assure that it will be the provider of both physician services and any hospital services required by any of the physician's patients. The physician's patients, in most cases, may be totally unaware that the physician has "sold" his or her practice to the hospital. Further, such sales often involve much higher rates of compensation than would be the case if a retiring physician sold a comparable practice to another physician. The additional compensation in these instances reflects the value of the referrals.

Another approach in the sale of a practice is for the hospital to pay a practicing physician a monthly fee to keep alive its so-called "option" to purchase his or her practice. We have been advised that in these situations neither party intends for the hospital to ever exercise its option, but that the payments are for referrals and will continue only so long as the physician meets his or her monthly quota of referrals.

We are also aware of practices between practitioners such as optometrists and ophthalmologists whereby the ophthalmologist "buys" the optometrist's practice, but the optometrist keeps practicing, only now substantially salaried by the ophthalmologist. The only purpose of this sale was to lock up referrals.

The "safe harbor" we are proposing in § 1001.952(f) would exist for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

F. Referral Services

Professional societies and other consumer-oriented groups often operate referral services, with a fee sometimes paid to cover the costs of such a service. Because such a service fee could be construed as a payment in order to obtain a referral, we have concluded that it is appropriate to establish a specific "safe harbor" for this type of practice. The proposed regulations at § 1001.952(g), referral services, provides standards and safeguards to assure that the "safe harbor" is not abused by persons who would attempt to operate exclusive or selective referral services for which they would impose high participation fees.

G. Warranties

We believe that it is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. Section 1001.952(h) reflects this belief and provides a "safe harbor" for such purposes. We are aware, however, that some companies, such as some pacemaker manufacturers, offer so-called "warranties" on *other* manufacturers' products. The reason this occurs is that the Medicare program will reimburse the full costs of a replacement product. As a result, if a patient has no out-of-pocket expenses, he or she can easily be persuaded to make use of another manufacturer's product, and the manufacturer can, in turn, look to the Medicare program for reimbursement. These so-called warranties do not meet the Federal Trade Commission definition of warranty, and these regulations would

not provide a "safe harbor" for such warranties.

H. Waiver of Deductibles for Inpatient Hospital Care

With the advent of the prospective payment system in 1984 for reimbursing hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. Because the Federal anti-kickback statute does not distinguish between categories of individuals who are prohibited from receiving something of value as an inducement to arrange for care from a particular provider, as a technical matter, the statute prohibits hospitals from engaging in this kind of practice. However, because a hospital will receive the same prospective payment amount for each patient discharged within a diagnostic category regardless of whether inpatient hospital deductible amounts are collected, and since peer review organizations have been established to monitor for unnecessary admissions, the Department believes that there is no substantial Federal harm resulting from this marketing practice and that there is an obvious financial advantage for Medicare beneficiaries. For these reasons, we have proposed a safe harbor for this practice. However, the safe harbor is only for inpatient hospital care, only up to the deductible amount, is available only where there is no cost to the Medicare program, and only where the benefit is offered to all Medicare beneficiaries without regard to their diagnoses or lengths of stay. In any other situations where deductible amounts are waived to induce business, we believe the anti-kickback statute is violated.

I. Discounts, Employees and Group Purchasing Organizations

The "safe harbors" relating to discounts, employees and group purchasing organizations are specifically required under section 1128B of the Act. The proposed regulations, at § 1001.952 (i), (j) and (k), respectively, set forth guidance on the scope of these exemptions.

1. Discounts—The proposed discount exemption we are proposing is intended to meet the legislative intent of encouraging price competition that benefits the Medicare and Medicaid programs.

The exemption applies to individuals and entities, including providers, who solicit or receive price reductions, and to individuals and entities who offer or pay them. However, while the exemption places certain requirements on individuals or entities who solicit or receive the discount, we are not proposing any requirements on the individuals or entities offering or paying it in order for them to qualify for the exemption. In addition, the exemption also applies regardless whether the discount is offered for bulk purchases, prompt payment or other purposes, and whether the buyer buys directly from the seller or through a group purchasing organization.

This proposed discount exemption closely follows the statutory language, limiting its application to reductions in the amount a seller charges in a specific transaction for a good or service to a buyer. We are specifically requiring that the discount be itemized and appear clearly on the invoice or statement. This discount may take the form of a direct and explicit reduction in price, or of an indirect reduction that results from the offer of an extra quantity of the item purchased "at no extra charge." This exemption specifically does not apply to remuneration in the form of other things of value, such as rebates of cash, other free goods or services, redeemable coupons, or credit towards the future purchases of other goods or services. It also does not apply to any reductions in price offered to beneficiaries, such as routine reductions or waiver of coinsurance and deductible amounts owed by program beneficiaries, unless permitted under these regulations for inpatient hospital care.

We have proposed to limit the scope of this exemption because we have become aware of numerous practices whereby practitioners and providers have been offered a variety of things of value, which are not legitimate "discounts," in return for referrals of Medicare or State health care program business. Such forms of remuneration include, among other things, trips, computers or computer terminals, coupons, cash rebates, or in kind offers, such as the inclusion of one free item when one hundred are purchased. We believe that these practices should not qualify for the discount exemption because many of them are subject to abuse and because their benefits cannot be realized by the Medicare and Medicaid programs.

In addition, we believe that it would not be feasible to enforce the requirements of the exemption if remuneration other than price discounts were permitted here. Such an enforcement effort would require the Department to know the precise amount and value of these other goods or services and then be able to apportion that value to each claim or request for payment. It would be very easy for providers seeking to evade enforcement to conceal or undervalue some part of these good or services. However, we are interested in receiving comments on the prevalence of such arrangements and mechanisms that could be used to recognize other cash or inkind discounts where the benefits can be realized by the Medicare and Medicaid programs.

For the purposes of qualifying for this discount exemption, we have divided providers, practitioners, and suppliers into three categories, depending on how they are reimbursed under the programs: (1) Payments based on reasonable cost, acquisition cost, and prospectively determined payment amounts, such PPS payments to hospitals, the composite rate paid to providers of maintenance renal dialysis services, or payments made *exclusively* on a fee schedule; (2) payments based in whole or in part on charges; and (3) payments based on a capitated risk sharing basis under section 1876 of the Act or on a similar basis.

With respect to the first category, cost-based or PPS paid providers, the exemption merely requires the individual or entity to report the discount. Of course, we expect that the *full* amount of the discount to be reported. For the most part, this would be accomplished through the cost report.

For example, the reasonable cost rules at 42 CFR 413.98 specify how to report discounts. In other cases, such as with payments based on acquisition costs, the discount could alternatively be reported on the claim or request for payment.

With respect to the second category, those paid in whole or in part on the basis of charges, the exemption applies only if the discount is reported, and the actual charge is reduced by the full amount of the discount.

This second discount exemption applies to all individuals or entities that are reimbursed based on the lesser of actual charges or fee schedule amounts. We are aware of many situations, particularly in the case of laboratory-to-laboratory discounts offered by one clinical diagnostic laboratory to another, where fee schedule amounts are being paid by Medicare but if the discount were properly reported and fully reflected, the actual charge would be reduced to below the fee schedule amount.

With respect to the third category, we are proposing not to impose any requirements on risk sharing health maintenance organizations or competitive medical plans paid on a capitated basis under section 1876 of the

Act or on a similar basis. Since we do not perceive any circumstance where the Medicare or State health care programs will benefit from any price reductions obtained by these entities, we see no purpose in imposing any requirements on them to comply with this exemption.

2. Employees—This statutory exemption permits an employer to pay an employee in whatever manner he or she chooses for having that employee assist in the solicitation of Medicare or State health care program business. The proposed exemption follows the statute in that it applies only to bona fide employee-employer relationships. We have decided to adopt the definition of employee from the Internal Revenue Service set forth in 26 U.S.C. 3121(d)(2).

In response to the October 21, 1987 request for comments, many commenters suggested that we broaden the exemption to apply to independent contractors paid on a commission basis. We have declined to adopt this approach because we are aware of many examples of abusive practices by sales personnel who are paid as independent contractors and who are not under appropriate supervision. We believe that if individuals and entities desire to pay salesperson on the basis of the amount of business they generate, then to be exempt from civil or criminal prosecution, they should make these salespersons employees where they can and should exert appropriate supervision for the individual's acts.

3. Group Purchasing Organizations—This exemption applies to payments made by a vendor of goods or services to a person authorized to act as a group purchasing organization (GPO) for a number of individuals or entities who are furnishing Medicare or State health care program services. The exemption closely follows the statute, and requires a written agreement between the GPO and the individual or entity that specifies the amount the GPO will be paid. Where the entity is a provider, the exemption requires the GPO to disclose in writing to the provider at least annually the amounts received from each vendor with respect to purchases made on behalf of that provider. Providers must make such disclosures available to the Department upon request, but we are not proposing at this time to require that these disclosures be submitted on a routine basis. In addition, we are not proposing more specific requirements as to the content of the disclosure. At this time, we have concluded that the purposes of this statutory exemption are fulfilled with these limited disclosure requirements. Of course, providers and GPOs remain free to supplement these requirements as they see fit.

III. Regulatory Impact Statement

A. Introduction

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the Executive Order criteria for a "major rule," that is, that would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 6712), unless the Secretary certifies that a proposed reulation would not have a significant economic impact on a substantial number of small entities.

B. Impact on Providers and Practitioners

The provison providing new authority to the OIG to exclude a person or entity from Medicare and State health care programs if engaged in a prohibited remuneration scheme would ensure that the Department could seek action against those practicing in such prohibited schemes short of criminal prosecution. This provision is a result of the statute and not this proposed rule. In addition, this proposed rule attempts to specify various business and payment practices that would not be considered a kickback for purposes of criminal or civil remedies. The regulations serve to clarify departmental policy as to the legality of various commercial arrangements. We believe that the great majority of providers and practitioners do not engage in illegal remuneration schemes, and that the aggregate economic impact of this provison should, in effect, be minimal, affecting only those who have chosen to interpret the kickback statute broadly and who have engaged in prohibited payment schemes in violation of the statutory intent.

C. Conclusion

For these reasons, we have determined that a regulatory impact analysis is not required. Further we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities. Therefore, we have not prepared a regulatory flexibility analysis.

IV. Paperwork Reduction Act

Section 1001.952 of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the ADDRESS section of this preamble.

V. Response to Comments

Because of the large number of comments we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Chapter V, Part 1001 would be amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE

1. The authority citation for Part 1001 would be revised to read as follows:

Authority: Secs. 1102, 1128, 1128B, 1842(j), 1842(k), 1862(d), 1862(e), 1866(b)(2)(D), (E) and (F), and 1871 of the Social Security Act (42 U.S.C. 1302, 1302a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(d), 1395(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh), unless otherwise noted.

2. The table of contents for Part 1001 would be amended by adding a new Subpart E to read as follows:

* * * * *

Subpart E—Permissive Exclusions

Sec.
1001.951 Fraud, kickbacks and other prohibited activities.
1001.952 Exceptions.

3. A new Subpart E consisting of §§ 1001.951 and 1001.952 would be added to read as follows:

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Subpart E—Permissive Exclusions

§ 1001.951 Fraud, kickbacks and other prohibited activities.

The OIG may exclude any individual or entity that it determines has committed an act described in section 1128B of the Social Security Act, subject to the exceptions set forth in § 1001.952.

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion.

(a) *Investment Interests.* As used in section 1128B of the Act, "remuneration" does not include any payment that—

(1) Is a return, such as a dividend, capital gains distribution, or interest income, from an investment obtained for fair market value in the investment securities (including shares in a corporation, bonds, debentures, notes, or other debt instruments) of a corporation that, at the end of the corporation's fiscal year preceding the purchase of the securities, had:

(i) Total assets exceeding $5,000,000, and

(ii) A class of equity security held of record by at least 500 persons;

(2) Results from the distribution of profits to an investor in an entity where—

(i) A bona fide opportunity to purchase the investment that is the basis for the payment was made available on an equal basis to:

(A) Persons (or their families) who are able to make or influence the referral of individuals for items or services; and

(B) Persons who are not able to make or influence such referrals;

(ii) There are no requirements that the investor be in a position to make referrals for items or services as a condition for the person to continue as an investor;

(iii) The amount of the payment is proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered); and

(iv) The amount of the capital investment cannot be related to the volume of referrals from the investor to the entity; or

(3) Results from the distribution of profits to an investor in an entity where—

(i) The investor has a significant management role in the entity in which he or she is an investor;

(ii) The amount of the payment is proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered); and

(iii) The amount of the capital investment cannot be related to the volume of referrals from the investor to the entity.

For the purposes of this section, the term "investor" means any person who has contributed services to a business or venture prior to the start-up of its operations, or who has paid money, in order to obtain a financial interest in the business or venture. The term includes, but is not limited to, proprietors, general partners, limited partners, and corporate shareholders.

(b) *Space Rental.* As used in section 1128B of the Act, "remuneration" does not include payments made by a lessee to a lessor for the use of premises, as long as—

(1) The lease agreement is set out in writing and signed by the parties;

(2) The lease specifies the premises covered by the lease;

(3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(4) The term of the lease is for not less than one year; and

(5) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare or Medicaid.

For purposes of this section, the term "fair market value" means the value of the rental property for general commercial purposes (not taking account of its intended use), but shall not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the property as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(c) *Equipment rental.* As used in section 1128B of the Act, "remuneration" does not include payments made by a lessee of equipment to the owner ("lessor") of the equipment for the use of the equipment, as long as—

(1) The lease agreement is set out in writing and signed by the parties;

(2) The lease specifies the equipment covered by the lease;

(3) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(4) The term of the lease is for not less than one year; and

(5) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare or Medicaid.

For purposes of this section, the term "fair market value" mean the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the equipment as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(d) *Personal services and management contracts.* As used in section 1128B of the Act, "remuneration" does not include payments made by a principal to an agent as compensation for the services of the agent, as long as—

(1) The agency agreement is set out in writing and signed by the parties;

(2) The agency agreement specifies the services to be provided by the agent;

(3) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact charge for such intervals;

(4) The term of the agreement is for not less than one year; and

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with air market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties that is reimbursed under Medicare or any State health care program.

For purposes of this section, an agent of a principal is any person, other than a bona fide employee, who has an agreement to perform services for, or on behalf of, the principal.

(e) *Sale of practice.* As used in section 1128B of the Act, "remuneration" does not include payments made to a practitioner by another practitioner where one practitioner is selling his or her practice to another practitioner, as long as—

(1) The period from the date of any agreement pertaining to the sale to the completion of the sale is not more than one year; and

(2) The practitioner who is selling his or her practice will not be in a professional position to make referrals to the purchasing practitioner after one year from the date of the agreement.

(f) *Referral services.* As used in section 1128B of the Act, "remuneration" does not include payments by a physician to an entity which offers to the public that it will refer a person to a physician for medical services, as long as—

(1) The entity does not exclude any qualified physician from participation in the referral service;

(2) Any fee for participation in the referral service is charged equally to all physicians and is reasonably related to the cost of operating the referral service;

(3) The entity imposes no requirements on the manner in which the physician provides services to a referred person, except that the entity may require that these services be furnished free of charge or at reduced charge to the patient; and

(4) The entity makes a disclosure to each person referred as to (i) the manner in which it selects a physician for the person, (ii) the nature of the relationship between the entity and the physicians to whom it makes referrals, and (iii) the nature of any restrictions that would exclude a physician from the pool of physicians to whom referrals are made.

(g) *Warranties.* As used in section 1128B of the Act, "remuneration" does not include payments by a manufacturer or supplier of an item to the purchaser of the item as compensation for any loss sustained by the purchaser due to the failure of the item to operate as intended, as long as the payment—

(1) Is made in accordance with a written affirmation made in connection with the original sale of the item by the supplier to the purchaser, with such affirmation relating to the nature of the material or workmanship and affirming or promising that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time; and,

(2) Is reasonably related to the economic loss that would otherwise be sustained by the purchaser, including, but not limited to,

(i) Either a refund of the purchase price or the repair or replacement of the defective item, and

(ii) Reimbursement of any costs associated with replacing the product.

(h) *Waiver of deductibles for inpatient hospital care.* As used in section 1128B of the Act, "remuneration" does not include any amount up to a Medicare beneficiary's aggregate obligation for deductibles that a hospital offers to waive for inpatient hospital services that Medicare pays for under the prospective payment system, as long as:

(1) The hospital does not later claim the amount as a bad debt for Medicare reimbursement purposes;

(2) The cost to the hospital of waiving the amount is not in any other way passed on to the Medicare program; and

(3) The offer to waive deductible amounts is made equally to all Medicare beneficiaries of inpatient hospital care, without regard to the reason for the admission, the length of stay of the beneficiary, or the diagnostic related group for which the claim for Medicare reimbursement is filed.

(i) *Discounts.* (1) As used in section 1128B of the Act, a discount is a reduction in the amount a seller charges for a good or service to a buyer (who buys either directly or through a contact with a group purchasing organization) that appears on the invoice or statement. Discounts do not include rebates of cash, other kinds of free goods or services, redeemable coupons, credit towards the future purchase of any goods or services, routine reductions or waivers of any coinsurance or deductible amount owed by program beneficiaries for other than inpatient hospital services, or other remuneration in cash or in kind.

(2) A reduction in a seller's charge is considered a discount as long as an individual or entity that solicits or receives such discount—

(i) On an item or service for which payment is made on the basis of a reasonable cost, acquisition cost, or prospectively determined payment amounts (such as prospective payments system payments to hospitals, or the composite rate paid to providers of maintenance renal dialysis services), fully and accurately reports the discount in the applicable cost reporting mechanism or claim for payment filed with the Department, a State agency or one of their agents;

(ii) On an item or service for which payment is made in whole or in part on the basis of charges,

(A) Fully and accurately reports the discount in the applicable claim for payment filed with the Department, a State agency, or one of their agents, and

(B) Reduces the charge to the program or the beneficiary by the full amount of the discount; or

(iii) Is a health maintenance organization or competitive medical plan paid for by Medicare as a risk contractor under the Tax Equity and Fiscal Responsibility Act of 1982, as authorized under section 1876 of the Act, or by a Medicaid State agency on a similar basis.

(j) *Employees.* As used in section 1128B of the Act, "remuneration" does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the provision of covered items or services.

For purposes of this section, the term "employee" has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2).

(k) *Group purchasing organizations.* As used in section 1128B of the Act, "remuneration" does not include payments by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed by Medicare or Medicaid, as long as—

(1) The purchasing agent has a written agreeement with each individual or entity in the group that specifies the amount the agent will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and the purchasing agent); and

(2) In the case of an entity that is a provider of services, the agent discloses in writing to the entity at least annually, and to the Secretary upon request, the amount received from each vendor with respect to purchases made by or on behalf of the entity.

Dated: December 9, 1988.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: December 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-29615 Filed 12-22-88; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Policies and Procedures For Testimony, Production and Disclosure of Material or Information By FEMA Employees

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: The Director of the Federal Emergency Management Agency (FEMA) is amending FEMA regulations

(44 CFR Part 5, Subpart F) which govern the production and disclosure of records and information contained in materials generated, developed or held by FEMA. The amendment publicizes the delegation to the General Counsel, contained in FEMA Instruction No. 1130.1 (March 3, 1982), of the Director's authority to approve production or disclosure of FEMA materials or information in response to subpoenas or other demands. The amendment seeks to clarify the prohibition against the production or disclosure of Agency records in response to a subpoena duces tecum by any officer or employee without prior approval of the General Counsel. In addition, new material will be added governing oral testimony of employees in response to subpoenas or other official demands. The new subpart generally provides that FEMA employees may not give testimony as part of their official duties in litigation in which the United States or FEMA is not a party. This general prohibition is, of course, subject to waiver by the General Counsel at his or her discretion. The purpose of this regulation is to maintain FEMA's policy of strict impartiality with respect to private litigants and to minimize the disruption of official duties.

DATES: Public comments on the proposed rule should be submitted no later than February 21, 1989. The rule shall become effective 30 days after it is published in final form in the **Federal Register.**

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, General Attorney, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472, (202 646–4111).

SUPPLEMENTARY INFORMATION: With increasing regularity, employees of the Federal Emergency Management Agency are requested or subpoenaed to produce Agency documents or to give testimony in litigation in which neither the United States nor FEMA are parties. Typically, such requests are made for purposes of authenticating Agency documents in compliance with evidentiary rules, acquiring the testimony of an employee who has some knowledge of facts at issue in a lawsuit, or acquiring the testimony of an employee as an expert or opinion witness on the basis of knowledge gained by the employee during the course of performing his or her official duties. In the past, requests or demands for documents or testimony have generated confusion among employees as to the appropriate response. This rule is intended to eliminate such confusion on the part of employees and the resulting inconsistency in response by prescribing a uniform policy for employee conduct in these types of situations. In addition, this rule is intended to clarify for private parties FEMA's position on attempts to subpoena Agency documents and employee testimony. With respect to the related issue of subpoenas for the testomony of FEMA employees in litigation or other adjudicatory proceedings in which the United States or FEMA is a party, this rule provides the Agency the flexibility to substitute other FEMA employees for those named in the subpoena where the public interest and smooth functioning of the Agency so requires.

Subpoenas to testify concerning information which employees have acquired in the course of performing official duties, or to produce documents, are essentially legal actions against the United States as to which there has been no statutory waiver of sovereign immunity. The courts have recognized the authority of federal agencies to limit compliance with such subpoenas. *See United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951); *Swett* v. *Schenk,* 792 F.2d 1447 (9th Cir. 1986); *Giza v. Secretary of HEW,* 628 F.2d 748 (1st Cir. 1980); *Reynolds Metals Co. v. Crowther,* 572 F. Supp. 288 (D. Mass. 1982). Moreover, subpoenas by State courts or legislative committees which attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution, and a federal regulation prohibiting compliance with such subpoenas reinforces this principle. *See McCullouch v.* Maryland, 17 U.S. (4 Wheat.) 316 (1819); *U.S. v.* McLeod, 385 F.2d 734 (5th Cir. 1967); *Municipal Couret v.* Civiletti, 172 Cal Rptr. 83, 116 Cal. App. 3d 105 (1981).

The current regulation (44 CFR part 5, Subpart F) governing response to subpoenas duces tecum provides that such subpoenas should be served on the appropriate Regional Director for regional records or the General Counsel for any other records held by FEMA. It further provides that employees (other than the General Counsel or Regional Directors) served with a subpoena duces tecum should, unless, otherwise directed by the Director, decline to produce the requested documents on the grounds that they are without authority to do so. By FEMA Instruction 1130.1, dated March 3, 1982, the Director delegated to the General Counsel the authority to determine whether Agency personnel should disclose documents or information in response to subpoenas or other demands. The proposed amendment to the rule, therefore, makes clear that no Agency records are to be produced in response to a subpoena duces tecum even where served upon an official authorized to acknowledge service of subpoenas, without the approval of the General Counsel. This provision for the central handling of subpoenas is designed to prevent the improper disclosure of Agency documents. It in no way impacts upon the Agency's present policy of providing documents for use in private litigation to the fullest extent permitted by law. The proposed amendment also makes clear that absent the approval of the General Counsel to respond in strict compliance with the terms of the subpoena, the appropriate response to a subpoena duces tecum is to furnish the private litigant with authenticated copies of Agency documents. This amendment is proposed in the interest of preserving resources for performance of the official work of the Agency.

FEMA regulations do not currently address the terms on which FEMA employees may testify in response to subpoenas ad testificandum. Accordingly, this rule is intended to fill that void by prohibiting, subject to waiver by the General Counsel, any employee from appearing in proceedings on behalf of any party other than the United States to testify as to any material contained in the files of the Agency or any information acquired by an employee as part of that person's official duties or because of that person's official status, including the meaning of official Agency documents. The general prohibition against voluntary appearances and compliance with subpoenas is designed to maintain the Agency's policy of strict impartiality with respect to private litigants. Moreover, to the extent that such requests or demands are designed to elicit testimony on official actions and policies, FEMA believes that the best proof can be derived from FEMA records.

FEMA recognizes that there are situations where the Agency would wish to cooperate with State or local authorities as part of the joint responsibility for developing and enforcing floodplain management regulations and other policies. This rule does not preclude such activities in cases where, in the discretion of the General Counsel, a determination is made that such activity (including the

testimony of FEMA employees) would directly further a FEMA interest and not infringe upon the Agency's resources or its objectivity.

This proposed rule is an administrative action in support of maintaining normal day-to-day Agency operations, a category of action which has been determined by FEMA to have no significant effect on the human environment. 44 CFR 10.8(c)(2)(viii). Therefore, neither an environmental impact statement nor an environmental assessment will be prepared.

This proposed rule relates solely to internal Agency management and, therefore, is not a "major" rule subject to the requirements of Executive Order 12291.

No information collection requirements are imposed by this proposed rule. Therefore, the rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), FEMA certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed rule represents a change in Agency procedures and practices regarding the availability of Agency documents and employees under compulsory legal process and, therefore, does not have a particular effect on small entities.

List of Subjects in 44 CFR Part 5

Testimony, Production, Disclosure of information.

For the reasons set forth in the preamble, 44 CFR Part 5, Subpart F is amended to read as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Antifreedom of Information Reform Act of 1986 (Pub. L. 99–570); 5 U.S.C. 301 (Pub. L. 85–619); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12148.

1a. The heading for Subpart F is revised to read as follows:

Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

2. Section 5.80 is revised to read as follows:

§ 5.80 Scope and applicability.

(a) This subpart sets forth policies and procedures with respect to the disclosure or production by FEMA employees, in response to a subpoena, order or other demand of a court or other authority, of any material contained in the files of the Agency or any information relating to material contained in the files of the Agency or any information acquired by an employee as part of the performance of that person's official duties or because of that person's official status.

(b) This subpart applies to State and local judicial, administrative and legislative proceedings, and federal judicial and administrative proceedings.

(c) This subpart does not apply to Congressional requests or subpoenas for testimony or documents, or to an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

3. Section 5.81 is amended by revising paragraphs (a) and (b) to read as follows:

§ 5.81 Statement of policy.

(a) It is the policy of FEMA to make its records available to private litigants to the same extent and in the same manner as such records are made available to members of the general public, except where protected from disclosure by litigation procedural authority (e.g., Federal Rules of Civil Procedure) or other applicable law.

(b) It is FEMA's policy and responsibility to preserve its human resources for performance of the official functions of the Agency and to maintain strict impartiality with respect to private litigants. Participation by FEMA employees in private litigation in their official capacities is generally contrary to this policy.

§ 5.85 [Redesignated from § 5.82]

4. Section 5.82 is redesignated as § 5.85 and a new § 5.82 is added to read as follows:

§ 5.82 Definitions.

For purposes of this subpart, the following terms have the meanings ascribed to them in this section:

(a) "Demand" refers to a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g., an administrative or state legislative body), signed by the presiding officer, for the production, disclosure, or release of FEMA records or information or for the appearance and testimony of FEMA personnel as witnesses in their official capacities.

(b) "Employee of the Agency" includes all officers and employees of the United States appointed by or subject to the supervision, jurisdiction or control of the Director of FEMA.

(c) "Private litigation" refers to any legal proceeding which does not involve as a named party the United States government, or the Federal Emergency Management Agency, or any official thereof in his or her official capacity.

5. A new § 5.83 is added to read as follows:

§ 5.83 Authority to accept service of subpoenas.

In all legal proceedings between private litigants, a subpoena duces tecum or subpoena testificandum or other demand by a court or other authority for the production of records held by FEMA or for the oral or written testimony of FEMA employees should be addressed to the General Counsel, FEMA, Washington, DC 20472. For Regional records or testimony by Regional employees, the subpoena should be addressed to the appropriate Regional Director listed in §5.26. No other official or employee of FEMA is authorized to accept service of subpoenas on behalf of the Agency.

6. A new § 5.84 is added to read as follows:

§ 5.84 Production of documents in private litigation.

(a) The production of records held by FEMA in response to a subpoena duces tecum or other demand issued pursuant to private litigation, whether or not served in accordance with the provisions of § 5.83 of this subpart, is prohibited absent authorization by the General Counsel.

(b) Whenever an official or employee of FEMA, including any Regional Director, receives a subpoena or other demand for the production of Agency documents or material, he or she shall immediately notify and provide a copy of the demand to the General Counsel.

(c) The General Counsel, in consultation with appropriate officials, shall determine whether to disclose the material or documents indentified in the subpoena or other demand. Generally, authorization to furnish the requested material or documents will not be withheld unless their disclosure is prohibited by relevant law or for other compelling reasons.

(d) Whenever a subpoena or demand commanding the production of any record is served upon any Agency employee other than as provided in § 5.83 of this subpart, or the response to a demand is required before the receipt of instructions from the General Counsel, such employee shall appear in

response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section and state that the demand has been referred for the prompt consideration of the General Counsel.

(e) Where the release of documents in response to a subpoena duces tecum is authorized by the General Counsel, the official having custody of the requested records will furnish, upon the request of the party seeking disclosure, authenticated copies of the documents. No official or employee of FEMA shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

7. Newly redesignated § 5.85 is revised to read as follows:

§5.85 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, Administrators, the General Counsel, the Docket Clerk, Inspector General, Regional Directors, and their designees, and other heads of offices having possession of records are authorized in the name of the Director to authenticate and attest for copies or reproduction of records. Appropriate fees will be charged for such copies or reproduction based on the fee schedule set forth in § 5.46 of this part.

8. A new § 5.86 is added to read as follows:

§5.86 Production of documents in litigation or other adjudicatory proceeding in which the United States is a party.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be handled as provided at §5.8.

9. A new §5.87 is added to read as follows:

§ 5.87 Testimony of FEMA employees in private litigation.

(a) No FEMA employee shall in response to a subpoena or other demand testify in private litigation as to any information relating to material contained in the files of the Agency, or any information acquired as part of the performance of that person's official duties or because of that person's official status, including the meaning of Agency documents.

(b) Whenever a demand is made upon a FEMA employee for the disclosure of information described in paragraph (a) of this section, that employee shall immediately notify the Office of General Counsel. The General Counsel, upon receipt of such notice and absent waiver at his or her discretion, shall arrange with the appropriate United States Attorney the taking of such steps as are necessary to quash the subpoena or seek a protective order.

(c) In the event that an immediate demand for testimony or disclosure is made in circumstances which would preclude prior notice to and consultation with the General Counsel, the employee shall respectfully request from the demanding authority a stay in the proceedings to allow sufficient time to obtain advice of counsel.

(d) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraph (c) of this section pending consultation with counsel, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to tesify or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

10. A new §5.88 is added to read as follows:

§5.88 Testimony in litigation in which the United States is a party.

(a) Whenever, in any legal proceeding in which the United States is a party, the attorney in charge of presenting the case for the United States requests it, the General Counsel shall arrange for an employee of the Agency to testify as a witness for the United States.

(b) The attendance and testimony of named employees of the Agency may not be required in any legal proceeding by the judge or other presiding officer, by subpoena or otherwise. However, the judge or other presiding officer may, upon a showing of exceptional circumstances (such as a case in which a particular named FEMA employee has direct personal knowledge of a material fact not known to the witness made available by the Agency) require the attendance and testimony of named FEMA personnel.

11. A new §5.89 is added to read as follows:

§5.89 Waiver.

The General Counsel may grant, in writing, a waiver of any policy or procedure prescribed by this subpart, where waiver is considered necessary to promote a significant interest of the Agency or for other good cause. In granting such waiver, the General Counsel shall attach to the waiver such reasonable conditions and limitations as are deemed appropriate in order that a response in strict compliance with the terms of a subpoena duces tecum or the providing of testimony will not interfere with the duties of the employee and will otherwise conform to the policies of this part. The Director may, in his or her discretion, review a decision by the General Counsel to authorize a waiver of any policy or procedure prescribed by this subpart.

Date: December 9, 1988.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88–29326 Filed 12–22–88; 8:45 am]

BILLING CODE 6718–21–M

Notices

Federal Register
Vol. 53, No. 247
Friday, December 23, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: February 8–10, 1989.

Time: 8:00 a.m.–5:00 p.m., February 8, 1989; 8:00 a.m.–5:00 p.m., February 9, 1989; 8:00 a.m.–12:00 Noon, February 10, 1989.

Place: Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC 20037.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be preparing a report assessing the President's proposed FY 1990 budget for agricultural research and extension agencies.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 15th day of December 1988.

John Patrick Jordan,

Administrator.

[FR Doc. 88–29553 Filed 12–22–88; 8:45 am]

BILLING CODE 3410–22–M

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes the establishment of a Privacy Act System of Records to be maintained by the Federal Crop Insurance Corporation (FCIC), entitled USDA/FCIC–2 "FCIC Compliance Review Cases, USDA/FCIC."

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on February 21, 1989, unless modified by a subsequent notice to incorporate comments received from the public. USDA invites comments from the public on this proposal to be received by the contact person listed below on or before January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ralph F. Satterfield, Federal Crop Insurance Corporation, Room 4606, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382–9714.

SUPPLEMENTARY INFORMATION: The USDA is developing a system of records to be maintained by the Federal Crop Insurance Corporation (FCIC), pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) (the "Act"). The records system will contain detailed information pertaining to cases in which the Office of Compliance of FCIC is involved..

It is also proposed that the system be exempted from certain access, amendment, and other provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) and 7 CFR 1.123. A proposed rule amending 7 CFR 1.123 was published at 53 FR 30435, on August 12, 1988.

The information is collected during the course of reviews and investigations conducted by the Office of Compliance and includes investigative notes, signed statements, affirmations and affidavits, correspondence, case history and status, contractual information, financial data and other related information, and reported findings by the Office of Compliance and other entities such as the Office of Inspector General, USDA.

The system of records provides documentation of all cases involving FCIC Office of Compliance. It also provides status reports with respect to the disposition of all cases.

A "Report on New System," required by 5 U.S.C. 552a(o), has been sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget.

Accordingly, notice is hereby given that USDA is establishing a system of records to be maintained by the Federal Crop Insurance Corporation (FCIC) titled "USDA/FCIC–2–FCIC Compliance Review Cases, USDA/FCIC", to read as set forth below.

Signed at Washington, DC, on December 14, 1988.

Peter C. Myers,

Acting Secretary.

USDA/FCIC–2

SYSTEM NAME:

FCIC Compliance Review Cases, USDA/FCIC.

SYSTEM LOCATION:

Office of Compliance, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Room 4068, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, and Branch Offices of the Office of Compliance located in strategic cities throughout the United States. Addresses of each Branch Office may be obtained from the Assistant Manager for Compliance, Office of Compliance, FCIC, at the address listed above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FCIC employees, Insurance Companies under an Agency Sales and Service Contract, Insurance Companies whose policies of crop insurance are reinsured by FCIC under a Reinsurance Agreement, Insurance Industry Committee or Board Members, agents, loss adjusters, or other employees, and any other individuals alleged to be violators of program or contractual provisions or who are otherwise the subject of a compliance review.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

The system consists of compliance review files containing evidence gathered in the course of Office of Compliance reviews. These files also

contain reports by other entities including the Office of Inspector General, USDA, as well as intra and interdepartmental recommendations. The records system also includes a tracking system maintained by computer which provides current status reports on all cases involving FCIC including reports and conclusions by other entities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Compliance is responsible for compliance activities with respect to programs administered by FCIC under the authority of 7 U.S.C. 1501–1520 and 7 CFR 2.23(h).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Records contained in this system may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting a violation of law, or for enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Records contained in this system may be referred to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(3) Records from this system may be disclosed in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(4) Records from this system may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that the agency determines that the information sought is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and in computer data files at the addresses listed under "System location."

RETRIEVABILITY:

The records filed in this system are issued a primary individual name or company name and a case number. A secondary name indicating the subject under compliance review is also issued. The records are filed in order of occurrence. Files are retrieved by identifying the individual or company name, subject, and case number.

SAFEGUARDS:

Records are stored in file folders and computer data files accessible only to authorized personnel. The computer data base is accessed through a secure system procedure by Office of Compliance Staff and by the FCIC ADP Security Officers. Offices containing these records are locked when not in use during nonbusiness hours and when offices are otherwise vacant. All records are accessible to Office of Compliance Staff and FCIC ADP Security Officers.

RETENTION AND DISPOSAL:

Magnetic tape records are maintained indefinitely. Hard copy records are maintained subject to the Disposal of Field Records retention schedule (FCIC Issuance System–M5–P2–C8, Exhibits 1, 2, and 5).

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

Assistant Manager for Compliance, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to the provisions of 5 U.S.C. 552a(k)(2), material in this system of records is exempt from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) because it contains investigatory material compiled for law enforcement purposes. See 7 CFR 1.123.

5 U.S.C. 552a(d) requires that an individual be given access to and the right to amend files pertaining to himself or herself. Such individual access to these files could hamper reviews in progress by alerting subjects involved in compliance reviews that their actions are under scrutiny, and allow them time to take measures to prevent detection of any illegal activities or escape prosecution. Release of these records would also disclose investigatory techniques and review procedures employed by Office of Compliance, FCIC and other agencies, which may impair law enforcement activities.

5 U.S.C. 552a(c)(3) requires that an accounting of disclosures be made available to an individual. This would impair compliance reviews by alerting the subject of the review to the existence of those compliance reviews.

The release of information from these files could result in the destruction or alteration of documentary evidence necessary to prosecution, improper influencing of witnesses, and other activities which could impede or compromise the review. 5 U.S.C. 552a(e)(1) permits the maintenance of only such information as is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Exemption from this provision is required because determination of relevance and necessity can be made only after information is evaluated. Evaluation at the time of collection is too time consuming for the effective conduct of a compliance review. Further, the determination of relevance or necessity of specific information at the early stages of the compliance review is not possible.

5 U.S.C. 552a(e)(4) (G) and (H), and (f) provide for notification and access procedures. If these requirements are followed it would necessarily alert subjects of the compliance review to the existence of the review and could impair the outcome of the review. Similarly, access to the records could interfere with compliance review and ultimate

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law enforcement proceedings; disclose confidential informants and information; constitute an unwarranted invasion of the personal privacy of others; and, reveal confidential investigative techniques and procedures. 5 U.S.C. 552a(e)(4)(I) requires that categories of records in each system be published. Application of this provision could disclose investigative techniques and procedures employed by compliance reviewers and result in sources not giving information because of fear of reprisal, or fear of breach of promises of anonymity or confidentiality resulting in a compromise of the ability to conduct a compliance review.

[FR Doc. 88-29480 Filed 12-22-88; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Stanley Basin Allotment Management Plan Revision; Sawtooth National Forest, Custer County, Challis; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to revise the allotment management plan for the Stanley Basin C&H Allotment. The majority of the allotment is within the boundaries of the Sawtooth National Recreation Area (SNRA), which is administered by the Sawtooth National Forest. The remaining portion is within the boundaries of the Challis National Forest and managed by the Sawtooth National Forest. The proposal is to resolve conflicts associated with permitted livestock on the Stanley Basin C&H Allotment. The primary conflicts are fisheries, recreation, and highway safety.

The Sawtooth National Forest Land and Resource Management Plan has been prepared, Record of Decision signed September 16, 1987. The management goal of the plan is to "bring allotments to their reasonable grazing potential "(Chapter IV of the Plan) while "ensuring that resource management best provides for the needs of high value salmon and steelhead fisheries" and "minimize impacts on resident fisheries through habitat improvement" (IV of the Plan). This direction is consistent with the legislation establishing the SNRA (Public Law 92-400).

A range of alternatives, including No Action, will be considered. Other possible alternatives range from elimination of all livestock grazing to maintaining current grazing numbers with extensive mitigation measures. The No Action Alternative will analyze the impacts of the current grazing system on the environment.

Over the past couple of years, issues and concerns have been identified by several organizations, state, federal and local governments, and individuals concerning grazing conflicts with fisheries, recreation, and highway safety. Development of an EIS will provide all interested parties a chance to revisit the issues and concerns and will include:

1. Identification of new or additional issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a cooperating agency to evaluate the potential impact on threatened and endangered species habitat if any such species are found to exist in the allotment.

Roland M. Stoleson, Forest Supervisor, Sawtooth National Forest, Twin Falls, Idaho, is the responsible official.

The analysis is expected to take about six (6) months. The draft environmental impact statement should be available for public review by March, 1989. The final environmental impact statement is scheduled to be completed by July, 1989.

Written comments and suggestions concerning the analysis should be sent to Roland M. Stoleson, Forest Supervisor, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, Idaho 83301.

Questions about the proposed action and environmental impact statement should be directed to Bert Webster, Range Staff Officer, Sawtooth National Forest, telephone 208-737-3200.

Date: December 16, 1988.

Roland M. Stoleson,

Forest Supervisor, Sawtooth National Forest.

[FR Doc. 88-29548 Filed 12-22-88; 8:45 am]

BILLING CODE 3410-11-M

Arctic Research Commission

Meeting

Notice is hereby given that the United States Arctic Research Commission will hold its 16th Meeting in San Francisco on 20-21 January, 1989. The meeting will start at 8:30 a.m. in the Toyon A and B rooms of the San Francisco Hilton Hotel at 333 O'Farrell Street. Agenda items include: (1) Report from the Chairman; (2) Approval of minutes of the 15th Meeting; (3) Policy for joint sponsorship of events; (4) Coordination with the Interagency Arctic Research Policy Committee and review of the revision of the Arctic Research Plan and other policy guidance; (5) International Science Cooperation; and (6) Future plans of the Commission.

From 9:00 a.m. until 3:00 p.m. on January 21, 1989 the Commission will meet in Executive Session to review legal advice and plans.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission (202) 371-9631.

Jennifer Loporcaro,

Administrative Assistant, U.S. Arctic Research Commission.

[FR Doc. 88-29523 Filed 12-22-88; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 80861-8161]

Foreign Availability Determination; Marine Water Tube Boilers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of foreign availability determination.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Adminstration pursuant to section 5 (f) and (h) of the Export Administration Act of 1979, as amended, initiates and reviews claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment of marine water tube boilers controlled under ECCN 2409A(e) defined as:

> Naval equipment—Marine boilers designed to have any of the following characteristics: heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per ft^3 of furnace volume; or ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83.

Marine water tube boilers are also controlled under ECCN 4409B:

> Water tube boilers, marine type, designed to have a heat release rate (at maximum rating) equal to 180,000 BTU, up to but not including 190,000 BTU per hour per ft^3 of furnace volume; boiler superheaters, feedwater heaters, and economizers therefor; and parts and accessories therefor.

Based on this assessment and following consultation with the Department of Defense, the Department of Commerce has found foreign availability for this commodity.

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FOR FURTHER INFORMATION CONTACT: Donald Brychczynski, Office of Foreign Availability, Bureau of Export Administration, Washington, DC 20230, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION:

Foreign Availability Determination

The purpose of the assessment was to determine whether national security export controls should be continued. The Office of Foreign Availability has completed an assessment of the availability from foreign sources of the above described equipment and has recommended a finding of foreign availability as defined by law. Based on such assessment and recommendation, I hereby determine that foreign availability of such equipment exists within the meaning of section 5(f) of the Export Administration Act of 1979, as amended.

Based on this determination, the Bureau of Export Administration is publishing regulations in the Rules section of today's **Federal Register** that amend the national security export controls on these marine water tube boilers to remove the individual validated license requirement for marine water tube boilers with a heat release rate less than 190,000 BTU to all destinations except Country Groups S and Z and those with a heat release rate equal to or greater than 190,000 BTU to destinations in Country Groups T and V, except the People's Republic of China and Afghanistan.

The Bureau of Export Administration will also begin the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly change in the multilateral controls maintained on such marine water tube boilers when exported to controlled countries.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability.

Dated: December 20, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–29514 Filed 12–22–88; 8:45 am]

BILLING CODE 3510–DT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Korea

December 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements(CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Groups II and III and certain sublevels within Groups I, II and III are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 161, published on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 28, 1988 the directive of December 30, 1987 is amended to include adjustments to the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
300/301	5,838,304 pounds.
317/326	18,558,955 square yards.
625/626/627/628/629.	13,582,418 square yards.
669–T [2]	8,362,297 pounds.
Group II	
239, 330–354, 359, 431–448, 459, 630–654, and 659, as a group.	694,147,748 square yards equivalent.
Sublevels in Group II	
333/334	77,135 dozen.
335	78,980 dozen.
336	46,094 dozen.
336/339	814,249 dozen.
340	273,300 dozen.
347/348	345,552 dozen.
433/434	17,772 dozen of which not more than 13,824 dozen shall be in Category 433
447	87,621 dozen.
459–W [3]	193,036 pounds
631	252,520 dozen pairs.
633/634/635.	1,471,885 dozen.
636	234,082 dozen.
634	773,917 numbers.
647/648	1,243,962 dozen.
659–H [4]	2,629,373 pounds.
Group III	
831–844 and 847–859, as a group.	14,691,815 square yards equivalent.
Sublevel in Group II	
835	29,452 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 669–T, only TSUSA numbers 386.1105 and 389.6210.

[3] In Category 459–W, only TSUSA numbers 702.7500 and 702.8000.

[4] In Category 659–H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703 1620, 703.1630, 703.1640 and 703.1650.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provision of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29511 Filed 12-22-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

December 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for certain cotton, wool and man-made fiber textile products in Group I are being adjusted, variously, for carryforward, swing and carryover.

A description of the textile and apparel categories in terms of T.S.U.S.A numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 163, published on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

December 20, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 28, 1988, the directive of December 30, 1987 is being amended to adjust the limits for the following categories, under the terms of the current textile agreement between the Governments of the United States and the Philippines:

Category levels in group I	12-month limit [1]
239	13,721,209 pounds.
347/348	1,166,159 dozen.
369-S [2]	1,001,365 pounds.
445/446	26,626 dozen.
631	2,882,670 dozen pairs.
634	275,044 dozen.
635	275,280 dozen.
649	4,631,748 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369-S, only TSUSA number 366.2840.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29512 Filed 12-22-88; 8:45 am]

BILLING CODE 3510-DR-M

Cancellation of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling export visa requirements.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Since the bilateral textile agreement between the Governments of the United States and Costa Rica on Categories 340/640 expires on December 31, 1988, shipments of goods in Categories 340/640 exported from Costa Rica on and after January 1, 1989 will no longer require a visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 26820, published on January 29, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 28, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes, among other things, export visa requirements for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica.

Effective on January 1, 1989, a visa will not be required for cotton and man-made fiber textile products in Categories 340/640 which are exported from Costa Rica on and after January 1, 1989.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29513 Filed 12-22-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 23, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 26, October 14 and November 4, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 32642, 40252, and 44646) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Maintenance Kit, Window—1560–00–450–3622
Blanket, Bed—7210–00–177–4986
Binder, Looseleaf, Flight Crew—7510–00–766–4269
Liner, Flyer's Jacket—8415–00–844–9811; 8415–00–844–9812; 8415–00–844–9813; 8415–00–844–9814

Services

Commissary Shelf Stocking, Custodial and Warehouse Service, Ellsworth Air Force Base, South Dakota
Janitorial/Custodial, Waco Distribution Center, 1801 Exchange Park, Waco, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–29520 Filed 12–22–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: January 23, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Blackboard—7110–00–132–6650; 7110–00–843–7917

Services

Food Service Attendant; Homestead Air Force Base, Florida
Janitorial/Custodial, Headquarters Building 1001, Fort Hood, Texas
Janitorial/Custodial, Food and Drug Administration Laboratory, Canyon Park Business Center, Bothell, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–29521 Filed 12–22–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Navy

Finding of No Significant Impact for the Continued Operation of the Navy EMPRESS I Facility on the Solomons Annex of the Patuxent River Naval Air Station, Solomons, MD

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (§ 1508.13 of Title 40, Code of Federal Regulations) the Department of the Navy hereby gives notice that an Environmental Assessment has been prepared and an Environmental Impact Statement is not being prepared for the continued operation of the Navy Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS I) facility on the Solomons Annex of the Patuxent River Naval Air Station, Solomons, Calvert County, Maryland.

On 27 June 1988 the Navy announced in the **Federal Register** the availability of the EMPRESS I Environmental Assessment (EA). This EA had been distributed to various Federal, Maryland state and local governmental agencies and special interest groups. In addition, copies of the EA were available for viewing during normal business hours, at several public locations near EMPRESS I in St. Mary's and Calvert Counties, Maryland.

The announcement in the **Federal Register** also scheduled a public meeting which was held on 9 August 1988, in Prince Frederick, Maryland. This meeting was held for the purpose of affording the above mentioned agencies, special interest groups, and individuals an opportunity to comment publicly regarding the EA and the proposed action. Comments were received by the Navy during this meeting and subsequent to it.

The EMPRESS I facility, originally built in 1972, is located on Pt. Patience, Maryland, which extends out into the Patuxent River in southern Calvert County, Maryland.

EMPRESS I is a highly specialized radio transmitter that broadcasts a pulse of electromagnetic energy for the purpose of assessing its effects on Navy electronic equipment. This pulse, known as electromagnetic pulse (EMP), is of extremely short duration and high intensity. It is capable of upsetting and even damaging electronic equipment under certain conditions. The testing is conducted so that the Navy can identify problems and then take the necessary steps to protect its equipment from such upset and damage.

Three alternatives to the proposed action were considered: (1) Land-based testing at other existing EMP facilities, and ship testing at a new EMP facility (EMPRESS II); (2) the use of analysis, computer modeling, and laboratory testing in lieu of full-scale, free-field EMP testing; and (3) no action, i.e., the discontinuation of all Navy EMPRESS I operations and termination of all EMP testing conducted at the Patuxent Naval Air Station, Solomons Annex. The first alternative is considered to be a reasonable alternative to the proposed action.

The second alternative is a useful supplement to full-scale, free field testing, but cannot replace it entirely and therefore was classed as an unacceptable alternative. Computer and scale modeling is useful to predict effects on simple geometries, but these techniques have not been developed to the point where they can be used to accurately predict electromagnetic coupling to something as complex as a ship with its irregular structures, thousands of pieces of equipment, and miles of cables. Laboratory testing by direct injection of EMP transients into electronic components or individual pieces of equipment is also useful to determine the effects of these transients on the operation of components or equipment. However, the level and type of signal to inject must be known and this can only be determined from prior full ship EMP tests.

The third alternative (no action) is unacceptable from a national security standpoint. Based on the extensive EMP experience of the Navy, Air Force, Army, and Defense Nuclear Agency, there continues to be a need to test, harden, and retest Navy equipment, systems and ships, to reduce their vulnerability to upset and damage from EMP.

Alternatives two and three would not allow the Navy to achieve its mission of hardening its electronic equipment and equipment systems. They were therefore rejected.

The impacts on the environment that would occur from the implementation of the proposed action and its alternatives were analyzed and documented. They include: Instances of upset and damage of sensitive electronic equipment on Navy property on the Solomons Annex, infrequent upset of very sensitive marine electronic equipment on boats in the Patuxent River within about one-half mile of the EMPRESS I facility, atmospheric releases of small quantities of Freon and sulfur hexafluoride, restrictions on certain government/contractor operations (only on military property) during EMPRESS I pulsing, and minor land-use restrictions on the Solomons Annex.

The major measures taken to mitigate the impacts on the environment were in the area of modifications to operational procedures. They include: advance notification of pulsing operations so that sensitive electronic equipment on the Solomons Annex can be disconnected prior to pulsing; the placement of two observers on Pt. Patience during pulsing operations to ensure that no one is near the hazardous high-voltage electrical components, that no pulsing occurs if boats or aircraft enter into areas (within ½ mile of the main antenna) where their electronic equipment could be damaged from pulses, and that no large sailboats enter into areas (within ½ mile of the main antenna) within which induced electrical shock could prove annoying to people aboard the vessel. In addition, no pulsing is conducted when ordnance and explosive devices are handled or transported on the Solomons Annex, no gasoline is dispensed from the gas pumps at the Third Cover adjacent to the EMPRESS I facility during pulsing, and no operations involving painting or the use of flammable liquids are permitted in a nearby paint spraying compound during pulsing. Finally, pacemaker warning signs are posted at the 5,000 volt per meter (V/m) contour prior to pulsing operations, and pulsing is suspended when any boat enters the 5,000 V/m contour until it either leaves the area or it has been ascertained by Navy personnel that no pacemaker wearers are on board. (The volt per meter is the standard unit used to measure electric fields; the 5,000 V/m contour is located 700 feet from the main antenna). In addition, all future ship testing will be conducted with the ship at the Destroyer pier. The Navy will remove the two buoys in the Patuxent River. This will result in fewer restrictions on access to surface waters and river bottoms.

The EMPRESS I facility has operated for the past 16 years, and has generated over 35,000 EMP pulses. During this time, the facility has had a history of safe operation, and has had no significant environmental impact. The continued use of the EMPRESS I will not have a significant impact on the environment, within the context of the National Environmental Policy Act.

Responses to the comments received by the Navy during the public review of the EMPRESS I EA are presented below.

Analysis and computer modeling are not viable alternatives to EMPRESS I testing. As discussed previously and on pages 20–21 of the EA, there currently exists no alternative that can replace the need for full scale free-field EMP testing of electronic equipment and systems.

During the past two decades, many studies were conducted to determine if there could be adverse effects on biological organisms due to the absorption of EMP into their bodies. These studies were discussed in the EA. A few of these studies showed minor effects on the organisms studied. None of these effects were considered to be harmful effects, and all of them were produced by EMP field strengths far in excess of those produced by EMPRESS I. While definitive answers to all biological issues investigated were not obtained, sufficient results were obtained to support the conclusion that there will be no significant impact on biological organisms, including humans, as a result of the proposed action.

One comment addressed the possibility that EMP could cause cancer in humans. This issue was discussed in detail in the EA. There is no evidence that EMP has ever caused caner. No determination has ever been made, as a result of litigation, that anyone has ever contracted leukemia as a result of EMP exposure.

Another comment disagreed with the Navy's conclusion that continued operation of EMPRESS I is needed, and asserts that the reasonable alternative (alternative 1) would have less impact than the continued operation of EMPRESS I. The EMPRESS I Environmental Assessment concludes that impacts on the environment from both continued operation of EMPRESS I and from the reasonable alternative (alternative 1) are comparable, with both options resulting in no significant impact on the environment. As to need, EMPRESS I continues to be used to conduct low-level tests on smaller ships (one such test was conducted in Oct. 1987). Although EMPRESS II is now available, it can currently only be operated in the ocean during the summer months. There is still a need for the capability to conduct tests year-round. Low level EMPRESS I tests on

smaller ships can also be performed at a lower cost.

One review comment stated that the crab pots mentioned in the EA, as placed in the Patuxent River around Pt. Patience, are assumed to be eel pots, and that crab pots are not allowed in the area. The Navy accepts that they may have been eel pots rather than crab pots. That same comment addressed the testing of eels for adverse effects due to exposure to EMP. Tests were conducted by the University of Maryland's Horn Point Laboratory, Cambridge, Maryland, to determine if exposure to EMP would produce any noticeable effects on American eels. No EMP related effects were observed.

The Navy has concluded that, with the above mitigation measures in place, marine electronic equipment on boats in the Patuxent River near EMPRESS I will not be damaged by the pulses that are generated, and that any upsets of such equipment will be of a minor nature and will not pose a hazard to navigation.

One comment addressed the surface waters restrictions in the Patuxent River (100 yards around any vessel anchored there) that would occur if a ship were anchored in the river during testing. The 1967 EMPRESS I test of USNS POWHATAN was conducted with that vessel tied up to the end of the Destroyer Pier. The Navy plans to remove the two large mooring buoys in the Patuxent River south of Pt. Patience, and has no plans to conduct any further ship tests at any location other than at the Destroyer Pier. The result of this will be less restriction on access to surface waters and river bottoms.

The use of boat watchers with radios stationed on Pt. Patience is adequate to prevent pulsing when boats with sensitive marine electronic equipment are within the 1,350 V/m area. (1,350 V/m was established in the EMPRESS II EIS as the safe level for commercial electronics; this was based on previous tests conducted by other agencies as well as tests conducted by the Navy at EMPRESS I on civilian marine electronics). The determination of whether a boat has sensitive marine electronic equipment aboard is made based primarily on visual inspection of the boat, and on a determination of the type of boat. For example, a small rowboat would be expected to have no electronics aboard, whereas a large cabin cruiser with visible antennas topside would obviously have electronics aboard.

One comment addressed the effects of EMPRESS I pulses on fly-by-wire (computer-controlled) aircraft which it claims cannot be safely exposed to fields in excess of 200 V/m. This comment is in error. The comment refers to the **Federal Register** of May 16, 1988 in which the FAA announced special test requirements that apply only to Boeing 767 aircraft, and only those 767 aircraft which use a new Pratt & Whitney PW4000 series engine that uses a digital electronic propulsion control system. These requirements include direct lightning strikes of 10,000 to 200,000 amperes, and a combination of tests and analysis to demonstrate that this digital control system will not be adversely affected by the worst case RF threat due to *continuous* RF emitters. The field strengths given as the threat include 1000 volts per meter over the 3–30 MHz band (wherein lies most of the EMP energy); moreover, the 1000 volts per meter is a continuous exposure to RF, and therefore contains much more energy than a 1000 volt per meter pulse lasting less than one-millionth of a second. In any event, commercial aircraft do not use the airspace around EMPRESS I, which is controlled by the Patuxent River Naval Air Station.

Tests by Georgia Tech and the Defense Nuclear Agency have shown that the 5,000 V/m threshold established for safe exposure of cardiac pacemakers is adequate. No pacemakers will be adversely affected as a result of EMPRESS I operations.

The EA addressing this action is on file and copies may be obtained by interested parties from: Naval Surface Warfare Center, White Oak Laboratory, Benjamin M. Plotkin, Esq., Office of Counsel, Code C71W, 10901 New Hampshire Avenue, Silver Spring, MD 20903–5000, (301) 394–1999.

Date: December 19, 1988.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 88–29554 Filed 12–22–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 15, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 20, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: Continuation Application for the Follow Through Program
Abstract: Existing grantees need the application form to apply for

continuation funding. The department needs this information to make awards and insure that proposed projects meet the requirements of regulations. This application contains the following Standard Forms: SF424, SF424A, and SF424B.

Additional Information: The Follow Through Program is requesting expedited review for these continuation applications in order to process grant awards in a timely fashion and to ensure the progress of grantees towards achievement of planned objectives for the second year of funding.

Frequency: Annually

Affected Public: State or local governments

Reported Burden:
Responses: 63
Burden Hours: 315

Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

BILLING CODE 4000-01-M

VOL 53 ISS 247 DE 23 1988 UMI

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR ELEMENTARY AND SECONDARY EDUCATION

Dear Colleague:

I am writing to you concerning procedures to apply for a noncompeting continuation award for fiscal year 1989 under the Follow Through Program. Since the Department is not publishing a Federal Register notice inviting continuation applications, this letter contains the information you previously found in the Federal Register.

The deadline date for transmittal of Follow Through continuation applications is _____ In order to be assured of consideration, your application must be prepared in accordance with the application instructions. The original and two copies must be mailed or hand delivered in accordance with the mailing instructions contained in the application package.

the narrative section of the application should describe project accomplishments, any changes in the project plan as approved in the original application, and specific objectives and approaches for the second year of the project. Please address each of the components pertinent to the type of project being implemented (i.e., educational component, parent participation component, etc.).

The amount available for awards to Follow Through projects in fiscal year 1989 is _____. Each applicant should make every effort to request an amount not to exceed the first year grant award.

Please review all of the information in the application package carefully. If you have any questions concerning the application requirements, please contact the Follow Through program officer, Barbara Little at (202) 732-4700.

Sincerely,

Beryl Dorsett
Assistant Secretary

DRAFT

400 MARYLAND AVE SW WASHINGTON DC 20202

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U.S. DEPARTMENT OF EDUCATION
WASHINGTON, DC 20202

FOLLOW THROUGH PROGRAM
INSTRUCTIONS FOR COMPLETILNG APPLICATION FOR FEDERAL ASSISTANCE (Nonconstruction Programs)

No funds will be awarded unless this application is completed and filed according to existing law and regulations (42 U.S.C. 2929; C.F.R. 215).

This form shall be used for applying for Federal assistance for the Follow Through program of the Department of Education (ED). This form shall be used to request supplemental assistance, to propose changes or amendments, and to request continuation or refunding for approval grants.

PART I

Part I of this application consists of the standard face page for Federal applications and concomitant instructions. (SF 424)

The following SUPPLEMENTAL instructions for items given below are to be used in lieu of or along with the standard instructions for the items:

Item 5 - If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified here.

Item 6 - If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full ED entity number in item 6.

Item 10 - Preprinted.

Item 11 - Enter the descriptive name of this project: "Self-sponsored Local Project", "Sponsored Local Project", or "Sponsor Project".

PART II

See General Instructions for the Budget Information (SF-424A).

PART III

PROGRAM NARRATIVE
Section A

Prepare the program narrative statement in accordance with the following instructions. Requests for supplemental assistance should respond to question 2 only.

1. The program narrative is the section of the application in which the applicant states the objectives of the continuation project and how they are to be accomplished, any changes in the original approved plan, and project accomplishments to date. The narrative for a self-sponsored and sponsored local project should address all of the items in Section 215.4 of the regulations. The narrative for Follow Through sponsor project should address Section 215.5 of the regulations. The narrative should be concise, free from superfluous detail and repetition.

2. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

DRAFT

BEST COPY AVAILABLE

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DEPARTMENT OF EDUCATION
Washington, D.C. 20202

DRAFT

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project (1810-0003), Washington, D.C. 20503

PROGRAM NARRATIVE FORM FOR LOCAL PROJECTS
Section B

NOTE: All applicants for "Local Projects" must respond to the material below.

1. ESTIMATE OF SCHOOL YEAR ENROLLMENT IN FOLLOW THROUGH

Give the number of children who will participate in the Follow Through project during the academic year for which funds are requested.

Preschool participation[1]/	Number of Children Enrolled[2]/				
	PUBLIC SCHOOL		NON PUBLIC SCHOOL		TOTAL
	Low-Income	Non Low-Income	Low-Income	Non Low-Income	
Head Start or equivalent experience					
No Head Start or equivalent experience					

1/ Each child in Follow Through should be counted as having previously participated in a full year of Head Start or similar federally-financed program of a compensatory nature or as not having so participated.

2/ Each child participating in Follow Through should be counted as either coming from a low-income family as specified by the local educational agency or from a non low-income family.

[FR Doc. 88-29539 Filed 12-22-88; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 18, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 20, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited

Title: Application for Handicapped Infants and Toddlers Program, under Part H of the Education of the Handicapped Act

Abstract: This form will be used by State agencies to apply for funding under Part H of the Education of the Handicapped Act. The Department uses the information to make grant awards.

Additional Information: An expedited review is requested for this revised State application form to allow States adequate time to establish a policy which incorporates all of the components of a statewide system as required by Section 675(b) (A), (B) and (C) of Part H of the Education of the Handicapped Act. Allowing for the normal review period would adversely affect States, as adopting such policy may require special action of the Governor and/or legislature in each of the States. This submission contains the standard form SF–424, Federal Assistance Face Sheet.

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 57

Burden Hours: 456

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

BILLING CODE 4000–01–M

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ED/OSERS/OSEP

PART I. SUBMISSION STATEMENT, ASSURANCES, & CERTIFICATIONS

Public reporting burden for this collection of information is estimated to average eight hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Special Education Programs, Division of Educational Services, 400 Maryland Avenue, S.W., Washington, D.C. 20202 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

A. Submission Statement

I, the undersigned authorized official of the _____ (Name of State and official name of State agency), have been designated by the Governor of this State to submit this application for FY 1989 funds under Part H of the Education of the Handicapped Act.

I certify that the State of _____ will operate its Part H Program in accordance with the assurances required by the statute. I also certify that the requirements stated in 34 CFR 76.104 of the Education Department General Administrative Regulations (EDGAR) have also been met.

_____ Signature of Authorized Official

_____ Date

DRA

_____ Typed Name and Title

B. Required Assurances

The State of _____ makes the following asssurances and provisions as required by Part H of the Education of the Handicapped Act:

1. Funds received under Part H will be used by the State to plan, develop, and implement the statewide system of early intervention services required by Section 676 of Part H. (Sec. 678(a)(3) and Sec. 675(b)(1)(B))

2. The State will: (a) provide reports containing information that the Secretary may require, and (b) keep records and afford access to those records as the Secretary may find necessary to assure the correctness and verification of reports and proper disbursement of funds provided under this part. (Sec. 678(b)(4))

3. The control of Federal funds made available under Part H and title to property acquired with those funds is in a public agency for the uses and purposes provided by Part H, and a public agency administers the funds and property. (Sec. 678(b)(3))

4. Federal funds made available under Part H will not be commingled with State funds. (Sec. 678(b)(5)(A))

5. Federal funds made available under Part H will be used to supplement and increase the level of State and local funds expended for infants and toddlers with handicaps and their families and in no case will be used to supplant such State and local funds. (Sec. 678(b)(5)(B))

6. Fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under Part H. (Sec. 678(b)(6))

7. The State will not use its Part H funds to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of Part H--except that whenever considered necessary to prevent a delay in the timely provision of services to an eligible child or family, the Part H funds may be used to pay the provider of services, pending reimbursement from the agency which has the ultimate responsibility for the payment. (Secs. 678(b)(2) and 681(a))

8. The State agrees that it will not construe anything in this part to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to Maternal and Child Health) or Title XIX of the Social Security Act (relating to medicaid) within the State. (Secs. 678(b)(2) & 681(b))

9. Federal funds paid to the State under Part H for developing a statewide early intervention system will be expended in accordance with the provisions of Part H. (Sec. 678(b)(1))

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C. Certifications Required by EDGAR

In accordance with 34 CFR 76.104 the lead agency of the State of _____ assures:

1. That the application is submitted by the State agency that is eligible to submit the application.

2. That the State agency has authority under State law to perform the functions of the State under the program.

3. That the State legally may carry out each provision of the application.

4. That all provisions of the application are consistent with State law.

5. That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the application.

6. That the State officer who submits this application, specified by title in the certification, has authority to submit the application.

7. That the agency that submits the application has adopted or otherwise formally approved the application.

8. That the application is the basis for State operation and administration of the program.

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D. Information Required under Executive Order 12372

I certify that the Part H application for the State of _____ was submitted to the State's "single point of contact" under Executive Order 12372 on _____.
Month/Day/Year

_____
Signature of Authorized Official

_____
Date

_____
Typed Name and Title

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PART II - GENERAL APPLICATION REQUIREMENTS

A. Lead Agency. Include information showing that the Governor has designated your agency to be the lead agency responsible for the administration of Part H in the State. (678(a)(1); 676(a)(9))

B. State Interagency Coordinating Council. Include the information in either B-1 OR B-2, below:

1. New Councils. Include information demonstrating that your State has a State Interagency Coordinating Council that meets the requirements in Section 682 of the Act (e.g., in terms of the establishment, composition, meetings, and functions of the Council). (Secs. 674, 678(a)(2), & 682)

2. Existing Councils. If your State is using a council that was established before September 1, 1986, include information demonstrating that the existing advisory council is comparable to the Council required in Sec. 682 (e.g., in terms of its composition, meetings, and functions). (Sec. 682(g)) */

C. Description of use of funds. Describe how your State will use its Part H funds for fiscal year 1989. The description must include the following information -- presented separately for the lead agency and the Council:

1. Administrative Positions: Include the following information:

a. A list of administrative positions in the lead agency (and a list of positions in the Council), with salaries, and a description of duties for each person whose salary is paid in whole or in part with Part H funds; and

b. For each position, the percentage of salary paid from Part H.

2. Planning, Development & Implementation Activities. Include the following:

a. A description of the nature and scope of each major activity to be carried out with Part H funds in planning, developing, and implementing the statewide system of early intervention services (e.g., a description of the State's projected plans during the coming year to develop a coordinated child find system); and

b. The approximate amount of funds to be spent for each activity.

*/ Section 682(g) provides that "[w]ithin four years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with the Council described in Section 682 of the EHA."

3. Direct Services. Include a description of any direct services that your State expects to provide to eligible children and their families with Part H funds during the fiscal year covered by this application. The description must include information about each type of service to be provided, including --

   a. The method used to provide each type of service (e.g., contracts or other arrangements with specified public or private organizations);

   b. The approximate amount of funds to be used for the service; and

   c. Whether the service --

      (1) Is a service not otherwise provided from other public or private resources; or

      (2) Expands and improves on a service that is otherwise available. (Sec. 679)

4. Activities by Other Agencies. If other agencies are to receive funds from the lead agency (or, as appropriate, from the Council), include the following information: (1) the name of each agency, (2) the estimated amount of funds each agency will receive, and (3) the purposes for which the funds will be used.

   Note: The information required in C-1 through C-4 must be presented separately for the lead agency and the Council.

D. Public Participation. Include the following information to demonstrate that the public participation requirements in Section 678(a)(4) have been met by your State:

   a. Copies of news releases and advertisements used to provide notice of public hearings and opportunity to comment on the application, and on the adoption of the policy described in the application. (The news releases and advertisements should include the dates and locations of the hearings, and the length of the comment period.)

   b. A summary of the public comments received on the application, and on the adoption of the policy described in the application.

   c. The State's responses to those comments.

E. Equitable Distribution of Resources. Describe the procedure used by your State to ensure an equitable distribution of resources made available under Part H among all geographic areas within the State. (Sec. 678(a)(6))

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PART III. ADOPTION OF STATE POLICY OR REQUEST FOR A WAIVER

INSTRUCTIONS: Include the information requested under III-A OR III-B, below.

A. Policy Adoption. Include in your State's third year application information and assurances demonstrating to the satisfaction of the Secretary that --

1. The State has adopted a policy to plan, develop, and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with handicaps and their families;

2. The State's policy incorporates all of the components of a statewide system of early intervention services, as required in Sec. 676 of the Act; and

3. Except as provided in Sec. 675(b)(1)(C) of the Act, the statewide system will be in effect before the beginning of the State's fourth year of participation under Part H.

B. Request for a Waiver. If your State intends to adopt a policy, but has been unable to do so within the required timeline, your third year application must contain a request for a waiver that includes the following:

1. Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in III-A-1 and A-2, above.

2. The reasons why your State was unable to meet the timeline, and the steps remaining before the policy will be adopted.

3. An assurance that, except as provided in Sec. 675(b)(1)(C) of the Act, the policy will be adopted and go into effect before the beginning of the fourth year of the State's participation under Part H.

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[FR Doc. 88-29540 Filed 12-22-88; 8:45 am]
BILLING CODE 4000-01-C

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Office of Postsecondary Education

Invitation for Field Readers for Educational Opportunity Center Program et al.

AGENCY: Department of Education.

ACTION: Invitation for Individuals Interested in Serving as Field Readers for the (1) Educational Opportunity Centers Program, (2) the Ronald E. McNair Post-Baccalaureate Achievement Program, (3) the School, College, and University Partnerships Program, (4) the Student Support Services Program, (5) the Talent Search Program, (6) the Training Program for Special Programs Staff and Leadership Personnel Program, and the (7) Upward Bound Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the (1) Educational Opportunity Centers Program, (2) the Ronald E. McNair Post-Baccalaureate Achievement Program, (3) the School, College, and University Partnerships Program, (4) the Student Support Services Program, (5) the Talent Search Program, (6) the Training Programs for Special Programs Staff and Leadership Personnel Program, and the (7) Upward Bound Program.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 to 10 days. Each field reader who is selected will receive compensation for certain travel expenses, and an honorarium.

Program Descriptions and Field Reader Qualifications: The Educational Opportunity Centers Program provides Federal financial assistance to institutions of higher education, public and private agencies and organizations, and in exceptional cases secondary schools to establish and operate Educational Opportunity Centers that provide information regarding financial and academic assistance for disadvantaged persons desiring to pursue a program of postsecondary education; and assistance in the admission process at participating institutions that provide a postsecondary education. Field readers are needed who have: (a) Counseling, tutoring youth, or related experience at the secondary school level; (b) experience directing programs which provide instructional counseling and tutoring assistance to disadvantaged youth or adults; (c) knowledge and experience in program evaluation; (d) experience in community outreach programs; (e) program design and management experience; (f) knowledge and experience in methods of information dissemination; or (g) knowledge and experience in postsecondary schools admissions policies and practices.

The Ronald E. McNair Post-Baccalaureate Achievement Program provides grants for higher education institutions to prepare low-income, first generation college students, and students from groups underrepresented in graduate education, for doctoral study. Field readers are needed who have experience: (a) In counseling, tutoring, or teaching in programs for disadvantaged students at the undergraduate and/or graduate level; (b) in the design, establishment, administration or coordination of educational programs at the graduate level; and (c) in planning and designing other educational support programs on college campuses. A new competition in Fiscal Year 1989 will be held for the Ronald E. McNair Post-Baccalaureate Achievement Program.

The School, College, and University Partnerships Program supports partnerships between institutions of higher education and secondary schools serving low-income students to conduct programs that improve the academic skills of public and private nonprofit secondary school students, thereby increasing the students chances of continuing a program of education after secondary school and enhancing the students prospects for employment after secondary school. Field readers are needed who have: (a) Two or more years of teaching experience at the secondary school level; (b) two or more years of experience in counseling, tutoring, or teaching in programs for disadvantaged students either at the secondary or postsecondary level; (c) experience in designing, administering, or coordinating educational programs at the secondary school level; (d) experience in developing, administering, or coordinating school-college partnerships; or (e) experience in business, industry, vocational education, or youth employment programs.

The Student Support Services Program awards grants to institutions of higher education for projects that provide support services to low-income, first generation or physically handicapped college students to enhance their academic skills, increase their retention and graduation rates, and as appropriate, facilitate entrance into four-year colleges or graduate and professional programs. Field readers are needed who have experience: (a) Counseling, tutoring, or teaching, in programs for disadvantaged students at the postsecondary level; (b) planning and designing other educational support programs on college campuses; (c) designing, establishing, administering, or coordinating educational programs at the postsecondary level; and (d) administering, teaching or counseling in an educational program for the handicapped at the postsecondary level.

The Talent Search Program provides Federal financial assistance to projects designed to assist participants to continue in and graduate from secondary schools and enroll in postsecondary educational programs. Field readers are needed who have: (a) Two or more years of experience in counseling, education, or a related field at the secondary or postsecondary level; (b) two or more years of secondary or postsecondary experience; (c) experience counseling, tutoring, or teaching in programs for disadvantaged youth or adults at the secondary level; (d) experience in program evaluation; (e) experience in community and outreach programs; (f) knowledge of schools and social services linkages; (g) program design and management experience; and (h) experience in appropriate uses of standardized tests and student assessment procedures.

The Training Program for Special Programs Staff and Leadership Personnel Program provides grants to institutions of higher education, and other public and private nonprofit institutions and organizations for projects that improve the operation of the Special Programs for Students from Disadvantaged Backgrounds (Talent Search, Upward Bound, Student Support Services, and Educational Opportunity Centers) by providing training for staff and leadership personnel employed in, or preparing for employment in such programs and projects. Field readers are needed who have: (a) A degree in education, social science, psychology, or public administration; (b) experience in cost effective uses of computers and/or other advanced educational technology; (c) experience in appropriate uses of standardized tests and student assessment procedures; (d) experience in educational services to disabled students at the secondary and postsecondary level; (e) experience directing training workshops, seminars, or internship programs; and (f) experience directing programs which provide instructional counseling and

tutoring assistance to disadvantaged youth or adults.

The Upward Bound Program provides Federal financial assistance to projects designed to generate in participants skills and motivation necessary for success in education beyond high school. Field readers are needed who have: (a) Experience in compensatory education at the secondary level; (b) experience in curriculum design for disadvantaged students; (c) experience in student or program evaluation; (d) experience directing programs which provide teaching, instructional, personal counseling, and tutoring assistance to disadvantaged youth; (e) experience in appropriate uses of standardized tests and student assessment procedures; (f) knowledge and experience in community and outreach programs; and (g) program design and management experience. A new competition in Fiscal Year 1989 will be held for the Upward Bound Program.

Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program or programs for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79. Regulations for these programs are found at 34 CFR Parts 644, 646, 643, 642, and 645.

FOR FURTHER INFORMATION CONTACT: For Educational Opportunity Centers, Talent Search, and Upward Bound Programs; Mrs. Goldie Hodgdon; and for Ronald E. McNair Post-Baccalaureate Achievement Program, School, College, and University Partnerships, Student Support Services, and Training Program for Special Programs Staff and Leadership Personnel Programs, Mrs. Jowava Leggett, Division of Student Services, U.S. Department of Education, ROB 3, Room 3060, 400 Maryland Avenue, SW., Washington, DC 20202–5249.

Program Authority: 20 U.S.C. 1070d, 1070d–1c; 20 U.S.C. 1105a–1105c; 20 U.S.C. 1070d, 1070d–1b; 20 U.S.C. 1070d, 1070d–1; 20 U.S.C. 1070d, 1070d–1d; and 20 U.S.C. 1070d, 1070d–1a.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Numbers 84.066A, 84.217A, 84.204, 84.042A, 84.044A, 84.103, and 84.047A)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29542 Filed 12–22–88; 8:45 am]

BILLING CODE 4000-01-M

Invitation for Field Readers for Law School Clinical Experience Program et al.

AGENCY: Department of Education.

ACTION: Invitation for Individuals Interested in Serving as Field Readers for the (1) Law School Clinical Experience Program, (2) the Minority Participation in Graduate Education Program, (3) the Patricia Roberts Harris Graduate and Professional Study Fellowships Program, and (4) the Patricia Roberts Harris Public Service Education Fellowships Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Law School Clinical Experience Program, the Minority Participation in Graduate Education Program, the Patricia Roberts Harris Graduate and Professional Study Fellowships Program, and the Patricia Roberts Harris Public Service Education Fellowships Program.

Program Descriptions and Field Reader Qualifications: The Law School Clinical Experience Program provides financial assistance to accredited law schools to establish or expand programs of clinical experience for students in the practice of law. Field readers are needed who have: (a) Clinical law experience; (b) a working knowledge of the judicial system including the actual preparation and trial of cases; (c) knowledge of the resources available to persons needing legal representation; or (d) experience in investigative research and legal analysis.

The Minority Participation in Graduate Education Program awards grants to institutions of higher education to identify and recruit talented undergraduate students who demonstrate financial need from minority groups that are traditionally underrepresented in graduate education and engage those students in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. Field readers are needed who have: (a) Two or more years administrative experience at the graduate level; (b) experience teaching, counseling, or tutoring minorities at the graduate level; (c) experience in program design and evaluation; or (d) academic backgrounds in engineering, life sciences, mathematics and computer science, psychology, business administration, physical sciences, social sciences, and the arts and humanities.

Under the Patricia Roberts Harris Fellowships Program, Graduate and Professional Study Fellowship and Public Service Education Fellowship grants are awarded to institutions of higher education to support fellowships to students who demonstrate financial need and are from groups who are traditionally underrepresented in graduate and professional study areas or who plan to pursue leadership careers in areas of public service, respectively. Field readers are needed who have: (a) Experience in designing, administering, or coordinating educational programs for students from traditionally underrepresented groups at the graduate level; (b) program design and management experience at the graduate level; (c) a graduate degree in physical science, engineering, mathematics and computer science, psychology, law, business administration, social sciences, or arts and the humanities; (d) leadership positions in public service at the local, state, or Federal levels; and (e) two or more years experience in curriculum development at the graduate level.

All field readers should be acknowledged experts in their particular field of study. Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader will receive compensation for certain travel expenses, and an honorarium.

Application Process: Any individual interested in serving as a field reader should mail his/her résumé to the address listed below indicating the program or programs for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. The regulations for these programs are found at 34 CFR Part 639 (Law School Clinical Program) and 34 CFR Part 649 (Patricia Roberts Harris Fellowships Program). A Notice Inviting Applications for Fiscal

Year 1988 Under the Grants to Institutions to Encourage Minority Participation in Graduate Education, which contains a description of the program, was published in the **Federal Register** on July 8, 1988 (53 FR 25653).

FOR FURTHER INFORMATION CONTACT: For Law School Clinical Experience Program, Patricia Roberts Harris Fellowships Program; Dr. Charles H. Miller; and for Minority Participation in Graduate Education Program, Mr. Walter T. Lewis, Division of Higher Education Incentive Programs, U.S. Department of Education, ROB 3, Room 3022, 400 Maryland Avenue SW., Washington, DC 20202–5251.

Program Authority: 20 U.S.C. 1134s–1134t, 20 U.S.C. 1134–1134b, 20 U.S.C. 1134d–1134f.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Numbers 84.097A, 84.202, 84.094B, and 84.094C.)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29545 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Field Readers for Minority Science Improvement Program

AGENCY: Department of Education.

ACTION: Invitation for individuals interested in serving as field readers for the Minority Science Improvement Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Minority Science Improvement Program.

The Minority Science Improvement Program awards grants to support projects that propose to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the participation of underrepresented ethnic minorities in scientific and technological careers.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 4 to 5 days. Each field reader will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are needed who have: (a) Knowledge of problems faced by minority students in science and mathematics at all instructional levels; (b) knowledge of the state-of-the-art in science and technology programs at postsecondary institutions; or (c) knowledge of issues pertaining to the underrepresentation of minorities in science and technology. Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. The regulations for this program are found at 34 CFR Part 637.

FOR FURTHER INFORMATION CONTACT: Dr. Argelia Velez-Rodriguez, Division of Higher Education Incentive Programs, U.S. Department of Education, Room 3022, 400 Maryland Avenue SW., Washington, DC 20202–5251.

Program Authority: 20 U.S.C. 1135b–1135b–3 and 1135d–1135d–6.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Numbers 84.120A and 84.120B)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29544 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Field Readers for Strengthening Institutions Program

AGENCY: Department of Education.

ACTION: Invitation for individuals interested in serving as field readers for the Strengthening Institutions Program, title III, Part A of the Higher Education Act of 1965, as amended.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Strengthening Institutions Program, title III, Part A of the Higher Education Act of 1965, as amended.

The Strengthening Institutions Program provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency, and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

Dates and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are needed who have higher education experience: (a) In an administrative decision-making position that involves institutional planning and development in an administrative, an academic, or a fiscal area; (b) in the development or management of programs at institutions serving minorities or educationally and economically disadvantaged students; or (c) with computers and other equipment used in strengthening management and academic programs. Field readers should also have experience in the administration of an institution of higher education. Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. The regulations for this program are found at 34 CFR Part 607 (52 FR 30526, August 14, 1987).

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Division of Institutional Development, U.S. Department of Education, ROB 3, Room 3042, 400 Maryland Avenue SW., Washington, DC 20202–5250.

Program Authority: 20 U.S.C. 1057.

Dated: December 16, 1988.

(Catalog of Federal Domestic Assistance Program Number 84.031A)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29543 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.064]

Veterans Education Outreach Program; Invitations for Applications for New Awards for Fiscal Year 1989

Purpose: Provides funds to institutions of higher education to provide outreach and recruitment activities, counseling and tutorial services, and special programs for disabled, incarcerated and educationally disadvantaged veterans.

Deadline for Transmittal of Applications: May 15, 1989.

Applications Available: March 10, 1989.

Available Funds: $2,838,000

Estimated Range of Awards: $1,000–$50,000.

Estimated Average Size of Awards: $5,000.

Estimated Number of Awards: 700.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, and 77; and (b) the regulations for this program in 34 CFR Part 629. Final regulations for this program were published in the Federal Register on August 11, 1987 (52 FR 29824).

FOR APPLICATIONS OR INFORMATION CONTACT: Neil McArthur or Charles I. Griffith, U.S. Department of Education, 400 Maryland Avenue SW., Room 3022, Washington, DC 20202–5251. Telephone: (202) 732–4406 or 732–4389.

Program Authority: 20 U.S.C. 1070e–1.

Dated: December 19, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–29541 Filed 12–22–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: WP–89]

Intent To Revise Wholesale Power Rates To Become Effective October 1, 1989

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent. *BPA File No.:* WP–89. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–89.

SUMMARY: BPA has determined it may be necessary to adjust wholesale power rates effective October 1, 1989. This notice should not be interpreted as BPA's decision that rates must be revised regardless of changing circumstances. Rather, the function of this notice is to comply with the requirement that BPA publish a notice of intent to generally revise rates at least 9 months prior to the effective date of the rate adjustment. BPA expects to have formulated its initial rate proposal by February 1989. In that event, notice of the proposed rates would be published in the Federal Register.

The February 1989 notice would also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act. A final schedule would be established by the Hearings Officer who presides over BPA's rate hearings. These hearings would give interested persons an opportunity to present both oral and written comments on the proposal.

Ms. Shirley Melton, Director, Division of Contracts and Rates, is the official responsible for the development of BPA rates.

DATE: Written suggestions and recommendations concerning the development of proposed wholesale power rates will be accepted through 4 p.m., January 25, 1989. Pursuant to the *ex parte* limitations, BPA will not be able to accept oral recommendations on substantive issues, except in meetings for which notice has been given.

ADDRESS: Written comments should be submitted to the Public Involvement Office-ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne H. Sugai, Public Involvement Office, at the address listed above, or telephone 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Ave., Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomas Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, 1527 Holipark Drive, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

BPA, an agency of the U.S. Department of Energy, is the Federal power marketing agency in the Pacific Northwest. BPA markets hydroelectric power from 30 U.S. Army Corps of Engineers and U.S. Bureau of Reclamation projects on the Columbia River and its tributaries, as well as thermal power it acquires in the region. In addition, BPA owns, operates, and maintains the nation's largest high-voltage transmission system grid.

BPA supplies about 50 percent of the electric energy consumed in the Pacific Northwest and accounts for about 80 percent of the region's high-voltage transmission capacity. BPA sells power to 168 publicly owned and investor-owned utilities, Federal and State agencies, and direct-service industries (DSIs). The power is sold to BPA utility customers for resale to ultimate consumers, and is sold directly to BPA's industrial and Federal-agency customers. In addition, BPA sells power that is surplus to the needs of the Pacific Northwest to customers outside the region.

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues must also pay BPA's operation and maintenance expenses, purchased power costs, and certain other miscellaneous expenses.

BPA's last wholesale power rate adjustment became effective on an interim basis on October 1, 1987. BPA is preparing revenue requirement studies to determine the extent to which anticipated revenue requirements for

Fiscal Years 1990 and 1991 would be recovered from expected revenues collected under the current rates. If it is determined that an increase in revenues will be necessary to meet the revenue requirements, BPA will develop various studies to be used in designing rates.

II. Major Issues

The development of BPA's rates is a complex process, raising numerous issues for resolution. The following is a brief explanation of several of the major issues to be addressed in formulating rates.

A. Revenue Requirement

BPA develops a Revenue Requirement Study that projects the costs of providing electricity and services to BPA's customers. The revenue requirement calculation will be a major factor in determining whether or not it will be necessary to adjust wholesale power rates.

BPA has completed its Programs in Perspective process in which BPA undertook a public review of Fiscal Year 1990 and 1991 proposed program levels. This public process will affect revenue requirement data for BPA's rate case. Accordingly, if a rate adjustment were proposed, the Administrator would not reopen program-level decisions in the rate case.

B. Sales and Revenue Forecasting

BPA forecasts sales and revenues for the current Fiscal Year and for the rate period. These forecasts determine the need for a rate adjustment and affect the level of any adjustment.

Load forecasts and resource projections are the basis for the sales and revenues forecasts and consequently are given close scrutiny in the rate development process. Projections of surplus firm power and nonfirm energy sales and revenues also affect the need for a rate adjustment and the level of any adjustment. Surplus firm power and nonfirm energy sales are highly dependent on market and water conditions which are uncertain and largely uncontrollable by BPA. Because of the uncertainty, surplus firm power and nonfirm energy revenue projections are likely to be major issues.

C. Risk Protection and Financial Flexibility

BPA believes it is necessary to have some methods to protect and enhance its financial health. These methods will provide assurance of BPA's ability to meet U.S. Treasury payments, stabilize long-term rates, provide the financial strength to allow BPA to take advantage of debt refinancing opportunities, and make progress in reducing BPA's accumulated net loss. Potential methods include:

1. Cost Recovery Adjustment Clause—An adjustment clause that triggers an adjustment in several of BPA's major rates if actual financial performance is below the projected performance by a specified amount for a specified period.

2. Planned Net Revenues—An amount included in BPA's revenue requirement sufficient to provide an acceptable probability of meeting BPA's financial objectives, which include added assurance that BPA's payments to the U.S. Treasury will be made on a timely basis.

3. Reserve Funds—One or more reserve funds which could be used to protect BPA's ability to make U.S. Treasury payments and, if revenues allow, to reduce its fixed costs by redeeming high-interest debt or deferring new borrowing, thereby reducing BPA's total debt obligations.

Following publication of an initial proposal in the **Federal Register** (February 1989), both general public field hearings and formal public hearings would be conducted by BPA. If a rate adjustment is proposed, written comments would be accepted through the hearing process. A final comment deadline would be announced in a future **Federal Register** notice. Following the hearings, BPA would announce its final proposed wholesale power rates and submit them by July 31, 1989, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 13, 1988.

Steven G. Hickok,

Executive Assistant Administrator.

[FR Doc. 88-29537 Filed 12-22-88; 8:45 am]

BILLING CODE 6450-01-M

[BPA File No.: TR-89]

Intent To Revise Transmission Rates To Become Effective October 1, 1989

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent. *BPA File No.:* TR-89. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR-89.

SUMMARY: BPA has determined it may be necessary to adjust rates for the transmission of electric power of other entities over Federal facilities, which would become effective October 1, 1989. This notice should not be interpreted as BPA's decision that rates must be revised regardless of changing circumstances. Rather, the function of this notice is to comply with the requirement that BPA publish a notice of intent to generally revise rates at least 9 months prior to the effective date of rate adjustment. BPA expects to have formulated its initial rate proposal by February 1989. In that event, notice of the proposed rates would be published in the **Federal Register**.

The February 1989 notice would also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act. A final schedule would be established by the Hearings Officer who presides over BPA's rate hearings. These hearings would give interested persons an opportunity to present both oral and written comments on the proposal.

Ms. Shirley Melton, Director, Division of Contracts and Rates, is the official responsible for the development of BPA rates.

DATE: Written suggestions and recommendations concerning the development of proposed transmission rates will be accepted through 4 p.m., January 25, 1989. Pursuant to the *ex parte* limitations, BPA will not be able to accept oral recommendations on substantive issues, except in meetings for which notice has been given.

ADDRESS: Written comments should be submitted to the Public Involvement Office–ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne H. Sugai, Public Involvement Office, at the address listed above, or telephone 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnut, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109–1030, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137

SUPPLEMENTARY INFORMATION: The Federal Columbia River Transmission System (FCRTS) is owned and operated by BPA, an agency of the U.S. Department of Energy. The FCRTS encompasses approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. Electric power from Federal and non-Federal generating units is integrated and transmitted utilizing the FCRTS. Interregional transmission services to customers outside the Pacific Northwest are also provided by BPA. Studies to determine the adequacy of current transmission rates and rate designs are currently being developed by BPA. Transmission rate adjustments may be necessary to cover changing FCRTS costs.

Current rates apply to four types of transmission service: (1) Firm integration of utilities' remote resources; (2) firm system exports; (3) nonfirm interconnections between systems both within and outside the Pacific Northwest region; and (4) firm transmission over specified facilities. Firm transmission is sold through contracts for periods up to 20 years. Firm transmission on BPA's network (main grid) is available on a mileage basis as well as a postage stamp rate structure.

BPA plans to accommodate the provisions of its Long-Term Intertie Access Policy (LTIAP) utilizing the Southern Intertie (IS) rate structure developed in the 1987 rate case. IS–87 is actually comprised of two rates: An "A" rate for nonfirm service and a "B" rate for Assured Delivery pursuant to contracts consistent with the LTIAP. BPA is seeking comments and recommendations on the suitability of the "B" rate for Assured Delivery. Comments are also invited on the subject of whether other rate structures would be desirable for exchanges of capacity for energy and seasonal exchange contracts.

The Market Transmission (MT) Rate was developed to apply to transactions undertaken pursuant to the experimental Western Systems Power Pool (WSPP) Agreement. The WSPP Agreement was approved by the Federal Energy Regulatory Commission on March 12, 1987, for a period of 2 years beginning May 1, 1987. BPA is one of the original 15 signatories to the WSPP Agreement. The MT–87 Rate is the same transmission rate adopted by all other WSPP participants. This rate structure is expected to be continued in this rate filing concurrently with the WSPP Agreement.

BPA's last transmission rate adjustment became effective on an interim basis on October 1, 1987. Following the hearings, BPA would announce its final proposed transmission rates and submit them by July 31, 1989, to the Federal Energy Regulatory Commission for appoval.

Issued in Portland, Oregon, on December 13, 1988.

Steven G. Hickok,

Executive Assistant Administrator.

[FR Doc. 88–29536 Filed 12–22–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Special Research Grant Program Notice 89–2; High-Resolution Underground Imaging of Geologic Media Using Elastic Waves

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants in the area of high-resolution underground imaging of geologic media using elastic waves. The approach to be taken may, for example, involve propagation of seismic signals between boreholes or between boreholes and the surface. New techniques for high data-rate processing, large array synthesis and the interpretation of seismic data in terms of geologic media parameters such as permeability will also be considered. The purpose of this effect is to provide a scientific and knowledge base for remote quantification of underground structures. Information about submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found in 10 CFR Part 605. (See **ADDRESS** section of this notice for obtaining copies of this document.)

DATES: Initial selections will be made in Fiscal Year 1989; for consideration for the initial selections, submission of an application prior to February 15, 1989, is required. Information on the timing of subsequent rounds of selection will be available after February 15 from the information contact given below.

ADDRESS: Completed applications referencing Program Notice 89–2 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER–64, Room G–2367, Washington, DC 20545.

FOR FURTHER INFORMATION CONTACT: Dr. George A. Kolstad, Office of Engineering and Geosciences, Office of Basic Energy Sciences, ER–15, Washington, DC 20545 (301) 353–5822.

SUPPLEMENTARY INFORMATION: The intent of this particular initiative is to support research related to better resolution of geological parameters in hydrocarbon and geothermal reservoirs, aquifers and waste storage applications. This initiative will include approaches involving elastic waves and the manipulation and interpretation of related data. Research featuring use of electromagnetic signals will be considered only if it is truly exceptional in its creativity and of likely utility for energy-related applications. The work is to be basic in nature and not directly competitive with existing efforts in commercial entities. Work funded under this initiative will involve mathematical and theoretical studies, laboratory and in-situ measurements and field testing, where appropriate. Proposals involving techniques to take advantage of modern computer capabilities in high data rate processing and large array synthesis are particularly appropriate. These computational capabilities have dramatically increased the resolution obtained by imaging in the marine and atmospheric environments and have promise to transform imaging in the solid earth geosciences.

The intent here is to support research which holds substantial promise of leading to major progress in three-dimensional underground imaging by, for example, increasing the resolution by one or two orders of magnitude compared with currently available images. Accordingly, a grant application for research which seeks incremental improvement to existing methods cannot be favorably considered for this initiative. For FY 1989, $3,500,000 has been set aside to be available for

funding work under this initiative. The amount obligated will depend on the excellence of the applications which are received. Some of the funds being set aside may be used to support research proposed by DOE laboratories. The DOE laboratory proposals will also be evaluated using normal peer review procedures. No specific limit has been established for individual awards, but current grants in the Geosciences Research activity average $108,000 per year, with the largest being $360,000 per year. The grants are typically awarded for projected periods of one, two or three years. Continuation and expansion of this initiative is planned for FY 1990.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the ER Special Research Grant Application Kit and Guide. The application kit and guide is available from the U.S. Department of Energy, Office of Energy Research, Washington, DC 20545. Telephone requests may be made by calling (301) 353–5544. The Catalog of Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC on December 2, 1988.

D.D. Mayhew,

Acting Deputy Director for Management, Office of Energy Research.

[FR Doc. 88–29538 Filed 12–22–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF83–230–003 et al.]

Kerr-McGee Chemical Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Kerr-McGee Chemical Corp.

[Docket No. QF83–230–003]

December 14, 1988.

On December 6, 1988, Kerr-McGee Chemical Corp. (Applicant) of Trona, California 93562 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Trona, California. The facility will consist of an extraction/condensing steam turbine generator. Steam recovered from the facility will be used for processing at the Kerr-McGee Chemical Corporation's soda products plants. The maximum electric power production capacity of the facility will be 106 MW. The primary source of energy will be bituminous coal.

The original application was filed on August 30, 1984 and was granted on December 28, 1984; 29 FERC ¶ 62,386. The recertification is requested due to change of ownership, increase in electric power production capacity and primary source of energy. The ownership interest will change from Kerr-McGee Chemical Corp. to ACE Cogeneration Company, a California limited partnership. CD ACE I, Inc., CD ACE II, Inc. and CD ACE III, Inc. all wholly-owned subsidiaries of Baltimore Gas & Electric Co., an electric utility, will have approximately 31.5 percent interest in the facility. The electric power production capacity will increase from 98 MW to 108 MW. The primary energy source will now be limited to bituminous coal. Installation of the facility is expected to be completed in 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp doing business as PacificCorp Power & Light Company

[Docket No. ES89–11–000]

December 14, 1988.

Take notice that on December 9, 1988, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1) authorizing it to issue and sell, prior to December 31, 1990, its fixed or floating rate No. Par Serial Preferred Stock with an aggregate preference on involuntary liquidation of not more than $100,000,000 and (2) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER89–1–000]

December 15, 1988.

Take notice that on December 5, 1988, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission an amendment to its September 29, 1988 filing for changes in its FERC Order No. 84 Rate Schedule for third-party purchase and resale transactions.

WP&L's Order No. 84 Rate Schedule, as revised in this amended filing provides that where WP&L voluntarily engaged in third-party purchase and resale of electric power or energy, WP&L, for each megawatt of energy transmitted in such transaction that is priced according to the purchased energy price from third-party systems, will charge the receiving party:

a. The amount WP&L pays the supplying party; plus

b. Up to 4.50 dollars per megawatt for energy transmitted (in no event shall the one day total of such hourly charges for any single transaction exceed the product of $72.00 times the highest average number of megawatts resold in any hour during the day); plus

c. Up to 2.00 dollar per megawatthour for difficult to qualify costs; plus

d. The cost of transmission losses incurred and State of Wisconsin revenue taxes that would otherwise have been incurred.

WP&L requests expedited consideration of this filing and an effective date coincident with the Commission's order accepting the rate change for filing. Accordingly, WP&L requests waiver of the Commission's notice requirement, to the extent necessary.

WP&L states that copies of this filing have been mailed to each of the parties identified on the Service List.

Comment date: December 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Green Mountain Power Corporation

[Docket No. ER89–61–000]

December 19, 1988.

Take notice that on November 9, 1988, Green Mountain Power Corporation (GMP) tendered for filing an Agreement for the Purchase of Power between GMP and Fitchburg Gas and Electric Light Company (FG&E) for the period November 1, 1988, through October 31, 1991.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this document.

5. Utah Power & Light Company

[Docket No. ER89–111–000]

December 19, 1988.

Take notice that on December 13, 1988, Utah Power & Light Company (Utah) tendered for filing an Agreement for short-term replacement energy with the City of Glendale, California. The Agreement provides for replacement power during scheduled maintenance outages at I.P.P. Unit Nos. 1 and 2.

Utah requests that the notice requirement be waived as provided in 18 CFR 35.11, and that the Agreement be

made effective retroactively as of September 30, 1988, the date service first commenced.

Copies of this filing were served on the City of Glendale, California.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER89-112-000]

December 19, 1988.

Take notice that on December 13, 1988, New England Power Company (NEP) tendered for filing executed amendments to the Service Agreements of the Towns of Merrimac and Groveland, Massachusetts (Towns) who receive all-requirements power service under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP states that the amendment modifies the terms under which NEP credits the Towns' billings to reflect the value of their allocations of power from the New York Power Authority (NYPA). According to NEP, the Modifications increase the credit over the currently effective credit mechanism for NYPA power. NEP states that the proposed amendments are identical to the credit mechanism provided to its other all-requirements customer who receives NYPA power. NEP requests waiver of the notice requirements so that the amendments may become effective May 1, 1987.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER89-109-000]

December 19, 1988.

Take notice that on December 9, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing supplements to Rate Schedule FERC No. 85. This Rate Schedule covers services rendered by PG&E under the agreement entitled, "Interconnection Agreement, between Pacific Gas and Electric Company and the City of Santa Clara" (Interconnection Agreement). The Interconnection Agreement was initially filed under Docket No. ER84-6-000 and was assigned Rate Schedule FERC No. 85.

The supplements are two letter agreements relating to operations under real-time scheduling, including deviation bands and billing procedures, and are dated February 14, 1985, and May 24, 1985., The parties have been operating in accordance with these letter agreements since real-time scheduling began on April 1, 1985. PG&E has requested an April 1, 1985 effective date for the supplements.

Copies of this filing were served upon the City of Santa Clara and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER89-110-000]

December 19, 1988.

Take notice that Duke Power Company (Duke) on December 9, 1988, tendered for filing a revision in its wheeling rate under the Agreement between Duke Power Company and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1986 (designated Rate Schedule FERC No. 283), as supplemented, which revision provides for a reduction in the wheeling rate from $1.44 per kilowatt month to $1.33 per kilowatt month for delivery by Duke of approximately 194,500 kilowatts from SEPA's Hatwell, Clarks Hill, and Richard B. Russell Projects to preference customers of SEPA in Duke's service are in Norther Carolina and South Carolina.

Duke has requested a waiver of the Commission's notice requirements so that the revised rate becomes effective on January 21, 1989.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: January 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Orange and Rockland Utilities, Inc.

[Docket Nos. ER87-72-004 and ER87-73-003]

December 19, 1988.

Take notice that on December 6, 1988, Orange and Rockland Utilities, Inc. tendered its filing in accordance with the Commission's Opinion No. 314-A.

Comment date: Janaury 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29479 Filed 12-22-88; 8:45am]

BILLING CODE 6717-01-M

[Project No. 3893-005 et al.]

Hydroelectric Applications; El Dorado Irrigation District et al.; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Filing: Surrender of License.

b. Project No.: 3893-005.

c. Date Filed: August 1, 1988.

d. Applicants: El Dorado Irrigation District.

e. Name of Project: Sly Park Project.

f. Location: On Sly Park Creek near the city of Placerville, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contract: Mr. Chuck Abraham, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, CA 95667 (916) 622-4534.

i. FERC Contact: Thomas Dean, (202) 376-9562.

j. Comment Date: February 6, 1989.

k. Description of Application: The proposed project would have utilized the Bureau of Reclamation's Sly Park dam and would have consisted of: (1) A 30-foot-long, 36-inch-diameter steel penstock connected to the existing outlet pipe through Sly Park dam; (2) a 35-foot-long, 36-inch-diameter steel tailrace conduit; (3) a powerhouse containing one generating unit with a rated capacity of 850 kW; (4) a short section of 21-kV transmission line connecting into the existing Pacific Gas & Electric Company distribution line; and (5) appurtenant facilities.

The applicant estimated the average annual energy generation to be 2,602 MWh.

The applicant states that the project is infeasible because of the inability to

negotiate an agreement with the local utility that would justify the necessary investments for hydropower facilities at this project.

l. Purpose of Project: Applicant intended to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: B and C.

a. Type of Filing: Surrender of License.

b. Project No.: 6614–003.

c. Date Filed: August 1, 1988.

d. Applicants: El Dorado Irrigation District.

e. Name of Project: Pleasant Oak Main Reservoir B Project.

f. Location: On Sly Park Creek near the city of Placerville, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contract: Mr. Chuck Abraham, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, CA 95667 (916) 622–4534.

i. FERC Contact: Thomas Dean, (202) 376–9562.

j. Comment Date: February 9, 1989.

k. Description of Application: The proposed project would have utilized the Bureau of Reclamation's Pleasant Oak Main pipeline and would have consisted of: (1) A 30-inch-diameter, 500-foot-long steel penstock; (2) a powerhouse containing one generating unit with a rated capacity of 250 kW; (3) a step-up transformer and switchgear; (4) a 40-inch-diameter tailrace conduit; (5) a 1-mile-long, 21-kV transmission line connecting to the Pacific Gas & Electric Company transmission line; and (6) appurtenant facilities.

The applicant estimated the average annual energy generation to be 1,000 MWh.

The applicant states that the project is infeasible because of the inability to negotiate an agreement with the local utility that would justify the necessary investments for hydropower facilities at this project.

l. Purpose of Project: Applicant intended to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: B and C.

3. a. *Type of Filing:* Minor license.

b. *Project No.:* 8718–003.

c. *Date Filed: March 21, 1988.*

d. *Applicant:* Dan J. Brutger.

e. *Name of Project:* Lewis Creek.

f. *Location:* On Lewis Creek in Park County, Montana Section 13, Township 6S, and Range 6E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. George L. Smith, P.O. Box 1016, Idaho Falls, ID 83401, (208) 529–8115.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 376–9830.

j. *Comment Date:* February 9, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A 5-foot-high, 19-foot-long diversion structure at elevation 6,000 feet msl; (2) an 18-inch-diameter, 2,650-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 95 kW; (4) a 480-volt, 1,500 foot-long transmission line; and (5) appurtenant facilities. The applicant estimates a 350,000 kWh average annual energy production.

l. *Purpose of Project:* Power would be used on site to supply the electrical needs of the ranch.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4. a. *Type of Filing:* Petition Alleging Commitment of Substantial Monetary Resources.

b. *Project No.:* 9656–002.

c. *Date Filed:* June 22, 1987.

d. *Applicant:* Marble Creek Hydro, Inc.

e. *Name of Project:* Marble Creek Hydroelectric Project.

f. Location: On Marble Creek, in Shoshone Country, Idaho, occupying U.S. lands within the St. Joe National Forest. (Township 45 North and Range 3 East Boise Meridian).

g. *Filed Pursuant to:* Electric Consumers Protection Act (ECPA), Pub. L. No. 99–495, section 8(b) (1986).

h. *Applicant Contact:* James R. Morris, Vice President, Marble Creek Hydro, Inc., P.O. Box 1016, Lewiston, ID 83501. (208) 799–1352.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* January 23, 1989.

k. *Description of Project:* The applicant seeks exemption from moratorium of the Public Utility Regulatory Policies Act benefits imposed on projects located at new dams or diversions by section 8(e) of the ECPA. The applicant states that it had expended $56,698 on the license application prior to enactment of ECPA on October 16, 1986. The applicant has filed a Petition Alleging Commitment of Substantial Monetary Resources, pursuant to § 292.209 of the Commission's regulations, for the Marble Creek Hydroelectric Project, which would consist of a new 8-foot-high diversion structure, 3,000-foot-long penstock, a powerhouse containing two generating units with a combined capacity of 3,200 kW, and a 2.2-mile-long transmission line.

l. This notice also consists of the following standard paragraphs: B and C.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10628–000.

c. *Date filed:* July 20, 1988.

d. *Applicant:* Pacific Water & Power, Inc.

e. *Name of Project:* Briones Reservior/Dam Project.

f. *Location:* On the East Bay Municipal Utility District raw water system, at the Briones Dam and reservior in Contra Costa County, California, near Orinda Village. T1N, R3W.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert R. Doelle, President, Pacific Water & Power, Inc., P.O. Box 6022, Stanford, CA 94305 (408) 778–1492. Mr. William S. Breakey, 2125 Darnis Circle, Morgan Hill, CA 94037 (408) 778–5608.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. *Comment Date:* February 10, 1989.

k. *Description of Project:* The proposed project would consist of: (1) The existing 207-foot-high Briones Dam; (2) the existing 725 acre Briones Reservoir with a storage capacity of 60,500 acre-feet at an elevation of 576 feet msl; (3) the existing 84-inch-diameater, 2,350-foot-long Orinda raw water pipeline to be modified; (4) four powerhouses each containing a single generating unit with a combined installed capacity of 8,676 kW, producing an average annual energy output of 38,299 MWh; (5) existing Briones Diversion Works Pumping Station; (6) existing Orinda Filtration Plant; (7) Lafayette Aqueduct Nos. 1 and 2; and (8) four transmission lines interconnecting to an existing Pacific Gas and Electric Company line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be between $30,000 and $40,000.

l. *Purpose of Project:* Project power would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10629–000.

c. *Date filed:* July 21, 1988.

d. *Applicant:* Pacific Water & Power, Inc.

e. *Name of Project:* San Pable Reservoir/Dam Project.

f. *Location:* On the East Bay Municipal Utility District raw water system, at the San Pablo Dam and Reservior in Contra Costa County, California, near the town of Kensington, T1N, R3W and R4W.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert R. Doelle, President, Pacific Water & Power, Inc., P.O. Box 6022, Stanford, CA 94305 (408) 778–1492. Mr. William S. Breakey, 2125 Darnis Circle, Morgan Hill, CA 94037 (408) 778–5608.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. *Comment Date:* February 10, 1989.

k. *Description of Project:* The proposed project would consist of two developments, both utilizing the existing 866 acre San Pablo Reservoir with a storage capacity of 40,800 acre-feet at an elevation of 315 feet m.s.1.. Development No. 1 would consist of: (1) The existing intake tower; (2) the existing 171-foot-high San Pablo Dam with a chute type spillway; (3) the existing 1.5-mile-long Sorbrante horseshoe tunnel to be modified, carrying raw water to the existing Sorbrante Filtration Plant; (4) a powerhouse containing a single generating unit; (5) existing Sorbrante Filitration Plant; (6) existing Sorbrante raw water pipeline outlet; (7) a transmission line interconnecting to an existing Pacific Gas and Electric Company line. Development No. 2 would consist of: (1) An existing intake tower at the west side of the San Pablo Reservoir; (2) the existing 25-mile-long horseshoe tunnel to be modified, carrying raw water to the existing San Pablo Filtration Plant; (3) a powerhouse containing a single generating unit; (4) San Pablo Filteration Plant; (5) San Pablo pipeline outlet; (6) a transmission line interconnecting to an existing Pacific Gas and Electric Company line. The project would have a total installed capacity of 3,522 kW and would produce an estimated 25,343 MWh of energy annually.

No new access roads will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be between $60,000 and $80,000.

l. *Purpose of Project:* Project power would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10663–001.

c. *Date Filed:* September 30, 1988.

d. *Applicant:* Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.

e. *Name of Project:* Tazimina River.

f. *Location:* On the Tazimina River in T3S, R32W, Sec 16, 17, 19, 10, 21, 22, 24, 25, 26, 27, Seward Meridian near Iliamna Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. T.M. Olsen, P. O. Box 210, Iliamna, AK 99606 (907) 571–1259.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* February 17, 1989.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) A streambank intake at elevation 580 feet; (2) a 1,400-foot-long, 3½-foot-diameter penstock; (3) a powerhouse containing two generating units with a total rated capacity of 1,400 kW; (4) a 12-foot-long tailrace; and (5) a 6.5-mile-long transmission line. Applicant estimates the average annual energy production to be 5,700 MWh and the cost of the proposed studies to be $250,000.

l. *Purpose of Project:* The power produced would be used in the Iliamna Lake area.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10670–000.

c. *Date Filed:* October 4, 1988.

d. *Applicant:* City of Tacoma.

e. *Name of Project:* Cispus River No. 4.

f. *Location:* River Mile 5.5 of the Cispus River in Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. E. E. Coates, Director, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, WA 98411 (202) 383–2471.

i. *FERC Contact:* Mr. William Roy-Harrison (202) 386–9830.

j. *Comment Date:* January 23, 1989.

k. *Competing application:* Project No. 10567–000, Date filed: April 4, 1988.

l. *Description of Project:* The proposed project would consist of: (1) A 15-foot-high, 275-foot-long diversion dam at elevation 970 feet msl; (2) a 15-foot-deep, 80-foot-wide, 11,000-foot-long canal; (3) two 12-foot-diameter, 500-foot-long penstocks; (4) a powerhouse containing a generating unit with a rated capacity of 15 MW; (5) a 69-kV, 11,000-foot-long transmission line tying into a new Lewis County Public Utility District substation; and (6) appurtenant facilities. The applicant estimates a 100,000,000 kWh average annual energy production.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

9a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10671–000.

c. *Date Filed:* October 4, 1988.

d. *Applicant:* City of Tacoma.

e. *Name of Project:* Silver Creek.

f. *Location:* On Silver Creek, partially within the Gifford Pinchot National Forest, in Lewis County, Washington, T12N, R7E, and T13N, R7E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. E. E. Coates, Director, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, WA 98411 (202) 383–2471.

i. FERC Contact: Mr. William Roy-Harrison, (202) 376–9830.

j. *Comment Date:* January 23, 1989.

k. Competing application: Project No. 10571–000, Date Filed: April 4, 1988.

l. *Description of Project:* The proposed project would consist of: (1) A 6-foot-high, 75-foot-long diversion dam at elevation 1,450 feet msl; (2) a 72-inch-diameter, 1,800-foot long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 6 MW; (4) a 69-kV, 4,600-foot-long transmission line tying into the existing Lewis County Public Utility District system; and (5) appurtenant facilities. The applicant estimates a 40,000,000 kWh average annual energy production.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10681–000.

c. *Date Filed:* October 27, 1988.

d. *Applicant:* Echo Bay Exploration, Inc.

e. *Name of Project:* Sheep Creek.

f. *Location:* On Sheep Creek in Sec. 32, 33, and 34, T41S, R67E, and Sec. 4, T42S. R67E Copper River Meridian near Juneau, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harry A. Noah, 4404 Thane Rd., Juneau, AK 99801 (907) 586–4161.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* February 9, 1989.

k. *Description of Project:* The proposed project would utilize the disposal of mine tailings which with watershed run off would be retained behind a 270-foot-high dam. The project would also consist of: (1) A 3,700-foot-long penstock; (2) a powerhouse containing 3 generating units with a total rated capacity of 3.1 MW; and (3) a 2.3-mile-long transmission line. Applicant estimates the average annual energy production to be 17 GWh and the

cost of the work to be performed under the preliminary permit to be $200,000.

1. *Purpose of Project*: The power produced will be used in mining activities.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

11a. *Type of Filing:* Transfer of License.

b. *Project No:* 6780–000.

c. *Date Filed:* October 6, 1988.

d. *Applicants:* Enviro Hydro Inc. (transferor) and Nugget Hydroelectric, L.P. (transferee).

e. *Name of Project:* Deadwood Creek.

f. *Location:* On Deadwood Creek in Yuba County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(a).

h. *Applicant Contact:* Enviro Hydro, Inc., c/o Mr. H.L. Childers, President, 9200 Shanley Lane, Auburn, California 95603 (916) 823–2386. Nugget Hydroelectric, L.P. c/o Mr. Alan K. Forbes, President, Enervest Management Corporation, 6200 South Syracuse Way, Suite 125, Englewood, Colorado 80111 (303) 721–9550.

i. *FERC Contact:* William Roy-Harrison, (202) 376–9830.

j. *Comment Date:* January 27, 1989.

k. *Description of Project:* The transferor, as listed in paragraph (d) proposes to transfer the license issued on September 28, 1988, to the transferee to facilitate completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license. The transferee is a limited partnership organized under the laws of the state of California.

1. This notice also consists of the following standard paragraphs: B and C.

12a. *Type of Application: Conduit Exemption.*

b. *Project No:* 10643–000.

c. *Date Filed:* August 8, 1988.

d. *Applicants:* City of Arvada, Colorado.

e. *Name of Project:* Ralston Hydroelectric Facility.

f. *Location:* On water transmission pipelines supplying the Ralston water treatment plant, in Jefferson County, Colorado.

g. *Filed Pursuant to:* Section 30 of the Federal Power Act, 16 U.S.C. 823 (a).

h. *Applicant Contact:* Mr. Jerry Zander, Civil Engineer, City of Arvada, 8101 Ralston Road, Arvada, CO 80002 (303) 431–3033.

i. *FERC Contact:* Mr. James Hunter, (202) 376–1943.

j. *Comment Date:* January 27, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A 24-inch-diameter pipeline connecting to water supply pipelines immediately above pressure reducing valves; (2) a 20-foot-square, concrete block powerhouse containing a generating unit rated at 200 KW and producing an average annual output of 1,150 MWH; and (3) a pipeline returning flows to the water supply system below the pressure reducing valves.

1. *Purpose of Project:* The facility would recover energy presently dissipated by pressure reducing valves.

m. This notice also consists of the following standard paragraphs: B, C, and D3b.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular

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application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal request will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that, for the purposes provided in section 408 of the Energy Security Act of 1980, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the state fish and game agency(ies) file, within 45 days from the date of issuance of this notice, appropriate terms and conditions to protect any fish and wildlife resources, or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, the Commission will presume that the agency has none. Other federal, state, and local agencies are requested to provide any comments related to their duties and responsibilities. No other formal requests for comments will be made. Agencies should confine comments to substantive issues relevant to the granting of an exemption. If any agency does not file comments within 45 days from the date of issuance of this notice, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Dated: December 20, 1988, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29530 Filed 12–22–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–364–000 et al.]

Columbia Gulf Transmission Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Company

[Docket No. CP89–364–000]

December 16, 1988.

Take notice that on December 8, 1988, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP89–364–000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport for Sonat Marketing Company (Sonat) under the blanket certificate issued in Docket No. CP86–239–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia indicates that it proposes to transport up to 1,000 MMBtu per day, on an interruptible basis, on behalf of Sonat pursuant to a Transportation Agreement dated August 29, 1988, between Columbia Gulf and Sonat. The Transportation Agreement provides Columbia Gulf to receive gas in Louisiana and Offshore Louisiana and redeliver the gas to Chevron U.S.A.'s Gas Processing Plant in Plaquemines Parish, Louisiana.

Columbia Gulf estimates that the volume of gas to be transported on a peak day is up to 1,000 MMBtu, on an average day up to 600 MMBtu and up to 219,000 MMBtu on an annual basis. Columbia Gulf further indicates it commenced this service on October 1, 1988, as reported in Docket No. ST89–911–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89–385–000]

December 16, 1988.

Take notice that on December 12, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288 Tulsa, Oklahoma 74101, filed in Docket No. CP89–385–000, a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for St. Francis Hospital and Medical Center (St. Francis) in Kansas, under Williams blanket transportation certificate issued May 10, 1988, in Docket No. CP86–631–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams states it will receive the gas from various supply sources in Kansas and Oklahoma and transport the gas to various points in Kansas on William's system for delivery to St. Francis.

Williams proposes to transport up to 200 MMBtu of natural gas per average day or approximately 500 MMBtu of gas on a peak day and 182,500 MMBtu annually. Williams states that the transportation service commenced under the 120-day automatic

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authorization of § 284.223(a)(i) of the Commission's Regulations on October 20, 1988, pursuant to a transportation agreement dated October 6, 1988. Williams notified the Commission of the commencement of the transportation service in Docket No. ST89–727–000 on November 15, 1988.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–369–000]

December 16, 1988.

Take notice that on December 9, 1988, Northern Natural Gas Company, Division on Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–369–000, an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Hadson Gas Systems, Inc., a marketer of natural gas under Northern's blanket certificate issued in Docket No. CP86–435–000 pursant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 75,000 MMBtu/day for Hadson Gas Systems, Inc. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 75,000 MMBtu, 56,250 MMBtu and 27,375,000 MMBtu, respectively.

Northern advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–948–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP89–356–000]

December 16, 1988.

Take notice that on December 8, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–356–000 a request pursuant to § 157.205 and §§ 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Arkla Energy Marketing Company (AEMC), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP89–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport up to 100 billion Btu of natural gas per day, plus overrun volumes, on an interruptible basis for AEMC. It is indicated that receipt point would be in Oklahoma and that the delivery points would be in Texas.

Natural states that this transportation commenced October 7, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations, as reported in Docket No. ST89–1177.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–367–000]

December 16, 1988.

Take notice that on December 9, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas, 77251–1188, filed in Docket No. CP89–367–000, an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Sun Operating Limited Partnership, a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP89–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 120,000 MMBtu/day for Sun Operating Limited Partnership. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 120,800 MMBtu, 90,600 MMBtu and 44,092,000 MMBtu, respectively.

Northern advises that service under § 284.223(a) commenced November 5, 1988, as reported in Docket No. ST89–895–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89–389–000]

December 16, 1988.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–389–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for PSI, Inc. (PSI), under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set in the request on file with the Commission and open to public inspection.

Tennessee indicates that it proposes to transport up to 50,000 dt per day, on an interruptible basis, on behalf of PSI pursuant to a Transportation Agreement dated November 1, 1988 between Tennessee and PSI. The Transportation Agreement provides PSI to transport natural gas from points of receipt located offshore Louisiana and the state of Mississippi to various delivery points off Tennessee's system interconnecting with Columbia Gas Transmission located in multiple states.

Tennessee estimates that the daily and quantities would be 50,000 dt and 18,250,000 dt, respectively. Tennessee further indicates it commenced this service December 1, 1988 as reported in Docket ST89–1072–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Ozark Gas Transmission System

[Docket No. CP89–275–000]

December 16, 1988.

Take notice that on November 22, 1988, as supplemented on December 12, 1988, Ozark Gas Transmission System, 1700 Pacific Avenue, First City Center, Dallas, Texas 75201, (Ozark) filed in Docket No. CP89–275–000 an application pursuant to Rule 207 of the Rules of Practice and Procedure of the Commission, petitions for a declaratory order that it is authorized to abandon certain compression facilities or in the alternative for permission and approval under section 7(b) of the Natural Gas Act (NGA) to abandon such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark claims that in February 1982, it began operating two 620 horsepower 2-stage compressor units at the Hurley Compressor Station, located adjacent to its mainline in Johnson County,

Arkansas. It is asserted that this station is used to compress natural gas produced into the Hurley Lateral and after compression the gas is delivered into Ozark's 20-inch main transmission line. Ozark asserts that due to the significant decrease in production of wells connected to the Hurley Lateral as well as to the abandonment by producers of certain other wells, continued operation of both compressor units at the Hurley Compressor Station is no longer necessary or economical. It is alleged that abandonment of one of the compressor units at the Hurley Lateral would not cause a decrease in service on the Hurley Lateral and would not have an adverse effect on Ozark's shippers.

It is stated that in contrast to the situation at the Hurley Station, Ozark has a demonstrable need for additional compression on the Tobey Lateral, in Franklin County, Arkansas, where it operates one 620 horsepower compressor unit at the Tobey Compressor Station. It is alleged that due to the immediate operational requirements at the Tobey Lateral, Ozark on November 17, 1988, temporarily repositioned one of the Hurley compressor units (Unit No. 34027) to the Tobey Compressor Station, pursuant to the authority under § 157.208(a) of the Commission's regulations. It is further alleged that Ozark relocated the compressor unit to accommodate increased deliverability into the Tobey Lateral and in order to be better prepared for the 1988–1989 winter heating season. It is asserted that Ozark intends to abandon permanently one compressor unit from the Hurley Compressor Station and relocate it to the Tobey Compressor Station.

Ozark requests a declaratory order to the effect that it can abandon one of the two compressor units previously located at the Hurley Compressor Station pursuant to the automatic abandonment authority under § 157.216(a) of the Commission's regulations. Ozark submits that the standards for the automatic authority have been met because (1) gas produced from the wells connected to the Hurley Lateral qualified for incentive pricing under the NGPA and is no longer subject to the Commission's NGA abandonment authority and (2) sales from several of the wells connected the Hurley Lateral have ceased.

It is requested that if the Commission finds that Ozark is not authorized to accomplish the abandonment under its blanket abandonment authority, the Commission grant permanent abandonment authority pursuant to NGA section 7(b). It is asserted that the proposed abandonment would not affect Ozark's ability to provide service to its two firm shippers, nor would it affect the producers' ability to deliver the remaining gas ito Ozark. It is alleged that by abandoning and relocating the 620 horsepower compressor unit, Ozark would be able to operate its system more efficiently and increase its ability to provide efficient service at the Tobey Lateral.

Comment date: January 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. Northern Border Pipeline Company

[Docket No. CP78–124–010]

December 19, 1988.

Take notice that on December 5, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed pursuant to section 7(c) of the Natural Gas Act and section 9 of the Alaska Natural Gas Transportation Act of 1976 a petition to amend the Commission's Orders dated April 28, 1980 and June 20, 1980, in Docket No. CP78–124. By such petition, Northern Border is requesting authority to increase the natural gas volumes it is authorized to transport and deliver at its Welcome, Minnesota delivery point for the account of Northern Natural Gas Company, Division of Enron Corporation (Northern Natural), all as more fully set forth in the petition to amend which is on file with the Commission and available for public inspection.

Northern Border states that pursuant to the Commission's order dated April 28, 1980, in Docket No. CP78–124, Northern Border was issued a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities for the transportation in interstate commerce, of up to 800,000 Mcf of natural gas per day for United Gas Pipe Line Company, Panhandle Eastern Pipe Line Company, and Northern Natural (collectively called the U.S. Shippers). On June 20, 1980, Northern Border states, the Commission issued its order, in this proceeding granting applications for rehearing in part which affirmed and modified said prior order. Pursuant to the Commission's order dated December 14, 1984, Northern Border states, the term of Northern Border's certificate authority to transport up to 800,000 Mcf of gas per day for the U.S. Shippers was extended to October 31, 1996. By these orders, Northern Border was authorized, among other things, to transport 200,000 Mcf per day for Northern Natural with deliveries of 100,000 Mcf per day at the Ventura, (Iowa) Meter Station; 75,000 Mcf per day at the Welcome (Minnesota) Meter Station; and 25,000 Mcf per day at the Aberdeen (South Dakota) Meter Station.

Specifically, Northern Border proposes herein to increase the volume of natural gas delivered to Northern Natural at its Welcome delivery point to 80,000 Mcf per day from the currently authorized 75,000 Mcf per day. Northern Border indicates that it is not proposing to increase the total natural gas volumes that it is obligated to transport for Northern Natural. Northern Border states that the proposed transportation service will be provided without detriment or disadvantage to any of its existing shippers.

Comment date: January 9, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–350–000]

December 16, 1988.

Take notice that on December 7, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–350–000, a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc. (Mobil), a producer of natural gas, on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Phillips, through existing facilities, as follows:

200,000 MMBtu on a peak day
150,000 MMBtu on an average day
73,000,000 MMBtu on an annual basis

It is further stated that the requisite filings, under the 120 day automatic authorization provisions of § 284.223(a), have been made in Docket No. ST89–833–000 with service commencing on October 19, 1988.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89-402-000]

December 19, 1988.

Take notice that on December 13, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-420-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Terra Resources, Inc. (Terra) under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis up to a maximum of 30,000 MMBtu of natural gas per day for Terra from various receipt points in Kansas, Missouri, Oklahoma and Wyoming to various delivery points of WNG's pipeline system located in Kansas, Missouri, Texas and Wyoming. The receipt and delivery points are listed in Exhibits A and B of the November 1, 1988 transportation agreement which provides for this service, and on file with the Commission and open to public inspection. WNG states that it anticipates transporting 20,000 MMBtu on an average day and 10,950,000 MMBtu on an annual basis.

WNG states that the transportation of natural gas for Terra commenced on November 1, 1988, as reported in Docket No. ST89-960-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000. WNG states that it proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

WNG further states that it has no knowledge of any agency relationship under which a local distribution company or an affiliate of Terra will receive natural gas on behalf of Terra.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. El Paso Natural Gas Company

[Docket No. CP89-392-000]

December 16, 1988.

Take notice that on December 13, 1988, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization in Docket No. CP89-392-000 pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act to deliver gas to Gas Company of New Mexico, a Division of Public Service Company of New Mexico (Gas Company) at two existing meter stations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it received a written request dated November 17, 1988, from Gas Company for natural gas service at two existing meter stations located on its 30" O.D. Permian-San Juan Line in Valencia and McKinley Counties, New Mexico. El Paso further states that Gas Company has reported that the natural gas would be utilized to serve existing residential requirements in and around Albuquerque, Gallup and Grants, New Mexico, that are presently being served by gas from Gas Company's own contracted supplies and supplies from its affiliated gathering company. El Paso also states that Gas Company has reported that volumes proposed to be sold at these locations are within the existing certificated entitlements of Gas Company.

El Paso proposes to deliver gas at: (1) The Rio Puerco Meter Station consisting of two 8⅝" O.D. tap and valve assemblies, with appurtenances, located in Valencia County, New Mexico; and (2) the Gallup-Grants Meter Station consisting of dual 6" O.D. standard orifice-type meters, with appurtenances, located in McKinley County, New Mexico, to allow for the delivery of natural gas to Gas Company. It is indicated that such facilities were initially installed for the delivery of gas transported by El Paso for others. El Paso states it would incur no additional costs to operate these facilities. El Paso further states that Gas Company has reported that it has the necessary facilities in place for ultimate distribution of the requested volumes of natural gas.

El Paso estimates peak day and annual volumes of 60,808 Mcf and 3,177,862 Mcf, respectively, through the requested sales taps for resale to the areas of Albuquerque, Gallup and Grants, New Mexico during the third year of operation. El Paso indicates that Gas Company would pay El Paso for each Mcf purchased at the two sales taps the ABDL-NM rate reflected from time to time on Sheet No. 100 of El Paso's FERC Gas Tariff, First Revised Volume No. 1. El Paso alleges that the proposed sale and delivery of natural gas to Gas Company at the two meter stations would have a negligible effect upon El Paso's peak day and annual deliveries.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-359-000]

December 19, 1989.

Take notice that on December 8, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 filed in Docket No. CP89-359-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), under the authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Amoco, a producer of natural gas, pursuant to an interruptible transportation agreement IT-1 dated October 31, 1988. The term of the transportation agreement is through December 31, 1992, and month to month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Northern proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 37,500 MMBtu; and on an annual basis 18,250,000 MMBtu of natural gas for Amoco. Northern proposes to receive the subject gas from receipt points in the offshore areas Texas, Mississippi, and Louisiana. Northern would then transport and redeliver such volumes for Amoco to existing points also in the offshore areas of Texas, Mississippi, and Louisiana. Northern avers that construction of facilities would not be required to provide the proposed service.

Northern states that it would perform such transportation service for Texaco pursuant to its Rate Schedule IT-1, or any effective superseding rate schedule on file with the FERC or any successor thereof. It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on October 31, 1988, as reported in Docket No. ST88-834-000.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

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13. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-369-000]

December 19, 1988.

Take notice that on December 9, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), Post Office Box 1188, Houston, Texas 77252, filed in Docket No. CP89-368-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tranam Energy Inc. (Tranam), a natural gas marketer, under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Tranam, pursuant to an interruptible transportation service agreement dated November 1, 1988. The transportation agreement is for a primary term of two years from its date and shall continue month to month thereafter unless cancelled by thirty days prior notice by either party. Northern proposes to transport on a peak day up to 40,000 MMBtu per day; on an average day up to 30,000 MMBtu; and on an annual basis 14,600,000 MMBtu of natural gas for Tranam. Northern proposes to receive the subject gas at various points located in the states of Iowa, Kansas, Oklahoma and Texas. It is stated that the points of delivery are located in the states of Illinois, Iowa, Kansas, Texas and Wisconsin. Northern avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northern commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST89-896-000.

Comment date: February 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by the determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as a application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29535 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1432-002]

CWC Fisheries, Inc.; Issuance of Annual License

December 20, 1988.

The license for the Dry Spruce Bay Project No. 1432, located on Dry Spruce Bay in Kodiak County, Alaska, was issued for a period ending October 26, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on a new license for the project, an annual license must be issued to CWC Fisheries, Inc., pursuant to section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c).[1]

Take notice that an annual license is issued to CWC Fisheries, Inc., for a period effective October 27, 1988, to October 26, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1432, subject to the terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before October 26, 1989, an annual license will be issued each year thereafter, effective October 27, of each year, until such time as a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29517 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-113-000]

Central Illinois Public Service Co.; Filing.

December 19, 1988.

Take notice that on December 13, 1988, Central Illinois Public Service Company (CIPS) tendered for filing an amendment to the existing supply contract between CIPS and the Village of Greenup (Village) which provides for an additional delivery point.

In its filing CIPS requests various waivers including waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,

[1] On October 28, 1988, Wards Cove Packing Co. filed an application for a new license. According to information received from the applicant, on November 1, 1987, Wards Cove Packing Co. became the successor in interest to CWC Fisheries, Inc., by way of a statutory merger which consolidated several commonly owned corporations. However, no application for transfer was filed. Wards Cove Packing Co. is instructed to file an application for transfer of license, under Part 9 of the Commission's regulations, within thirty days of issuance of this annual license.

385.214). All such motions or protests should be filed on or before January 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29473 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

December 19, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 12, 1988, tendered for filing Seventeenth Revised Sheet Nos. 57(i) and 57(ii), Second Revised Sheet No. 57(iii) and Fifth Revised Sheet No. 57(v) to Great Lakes Gas Transmission Company's ("Great Lakes") FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states Seventeenth Revised Sheet Nos. 57(i) and 57(ii) and Fifth Revised Sheet No. 57(v) were filed as an Out of Cycle PGA to revise the current PGA rates for the months of December 1988 and January 1989. The tariff sheets were filed in this Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited. These pricing arrangements were negotiated between each of Great Lakes resale customers and the supplier.

Great Lakes states Second Revised Sheet No. 57(iii) was filed to cancel rate for Part 284 transportation. This service is no longer authorized for use by Great Lakes.

Great Lakes requested waiver of the 30 day notice requirement for the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations and any other necessary waivers so as to permit the aforementioned tariff sheets to become effective in December 1, 1988.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29475 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff, Purchased Gas Adjustment Clause Provisions

December 19, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 9, 1988, revised its November 21, 1988 filing in Docket No. TF89-1-51-000 which revised current PGA rates for the months of November and December, 1988 and January, 1989 to reflect the latest estimated gas costs and a change in pricing tiers for gas sales to Natural Gas Pipeline Company of America. The November 21, 1988 filing should have been made as an Out of Cycle PGA filings in Docket No. TQ89-1-51-000 instead of a Flexible Rate Adjustment in Docket No. TF89-1-51-000 as indicated in the filing. The December 9, 1988 filing corrects the docket number and transmits additional information requested by the Commission's Staff. The tariff sheets did not require refiling.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29474 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-21-001 and RP89-21-002]

National Fuel Gas Supply Corp.; Filing

December 19, 1988.

Take notice that on December 8, 1988, National Fuel Gas Supply Corporation (National) filed Substitute First Revised Sheet No. 72-C, to be effective December 1, 1988. National States that Substitute First Revised Sheet No. 72-C corrects a footnote reference on First Revised Sheet No. 72-C. National states that this correction is a result of the new pagination adopted in its original filing in this proceeding.

On December 9, 1988, National filed Substitute First Revised Sheet No. 72-C after it came to their attention that two words were super-imposed on each other on the December 8, 1988 filing.

National states that copies of this tariff sheet have been mailed to all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29477 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-31-000]

Niagara Mohawk Power Co.; Initiation of Proceeding and Refund Effective Date

December 19, 1988.

Take notice that on December 19, 1988, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date: February 21, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29518 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-1-005 and RP89-5-001]

Northwest Pipeline Corp.; Filing of Pipeline Refund Reports and Refund Plans

December 19, 1988.

Take notice that on December 12, 1988, Northwest Pipeline Corporation submitted to the Commission for filing proposed refund reports.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before December 27, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29531 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-014]

Northwest Pipeline Corp.; Compliance Filing

December 20, 1988.

Take notice that on December 1, 1988, Northwest Pipeline Corporation (Northwest) filed certain tariff sheets in compliance with the Commission's order dated November 1, 1988.

Northwest states that the submitted tariff sheets comply with the Commission directives set forth in the Order in that they have been revised to eliminate the effect of the July 1, 1988 contract demand (CD) conversions from sales to transportation service by customers on the D-1 rates for firm sales and transportation services. Northwest states that the D-1 rate utilized in this filing are those that were initially filed by Northwest on January 4, 1988 in its primary tariff sheets in this rate filing which were modified by the Commission to reflect changes in the full certificated transportation CD volumes for ANR Pipeline Company (43 FERC ¶ 61,263) and approved for implementation subject to refund effective July 3, 1988 (44 FERC ¶ 61,158).

Northwest states that because the D-1 rate component contained in its previously submitted and rejected tariff sheets filed in its July 18, 1988 compliance filing is lower than the D-1 rate component being submitted in the compliance tariff sheets filed December 1, 1988, Northwest submitted alternative tariff sheets which would include the lower D-1 rate for the Commission's consideration. Northwest submits that it may be more equitable to its customers to include this lower D-1 rate component in its rates.

Northwest states that with respect to other rate components, no changes have been made to the non-gas cost components of the rates included in the July 18, 1988 compliance filing.

Northwest is also submitting tariff sheets which state the rates that should be effective October 1, 1988 which reflect Northwest's current filings regarding the gas cost components of its rates. Northwest states that other non-rate aspects of its revised tariff sheets submitted in its August 12, 1988 compliance filing have been incorporated in the tariff sheets included in this compliance filing.

Northwest states that the D-2 nominations utilized in this compliance filing are those that were submitted to Northwest by customers pursuant to Northwest's request for nominations under the May 18, 1988 Commission order. Such D-2 nominations were submitted in the context of this general Section 4 rate proceeding and reflected the conversion decisions that various customers had made at that time. Northwest states that because the Commission-ordered nominations for annual firm gas service received from customers have in the aggregate decreased, the D-2 and commodity components of the rates have increased.

Northwest states that a copy of this filing is being served on all parties of record in this docket and all jurisdictional customers and affected State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29532 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-93-000]

Pacific Gas and Electric

December 20, 1988

Take notice that on November 20, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing supplements to Rate Schedule FERc No. 84. This Rate Schedule covers services rendered by PG&E under the agreement entitled, "Interconnection Agreement, between Pacific Gas and Electric Company and the Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah and Plumas Sierra Rural Electric Cooperative" (Interconnection Agreement). The Interconnection Agreement was originally filed under Docket No. ER83-683-000 and assigned Rate Schedule FERC No. 84.

The supplements are: (1) A letter from PG&E to NCPA dated July 2, 1984, and (2) a letter agreement between PG&E and NCPA dated May 23, 1985, and signed June 18, 1985. The supplements relate to operating procedures under real time scheduling, which are not addressed under the Interconnection Agreement, including deviation bands and billing procedures. The parties have been operating in accordance with these letter agreements since they began real-time scheduling on April 1, 1985. PG&E has requested an April 1, 1985 effective date for the supplements.

Copies of this filing have been served upon NCPA and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29533 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-177-010]

Southern California Edison Co.; Filing

December 19, 1988.

Take notice that on December 9, 1988, Southern California Edison Company (SCE) tendered for filing its refund report in response to the Commission's order in this docket of November 2, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29476 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC89-5-000]

Southern California Edison Co., et al.; Filing

December 16, 1988

Take notice that on December 15, 1988, Southern California Edison Company and San Diego Gas & Electric Company ("Applicants"), pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, tendered for filing a Joint Application for an order authorizing and approving a proposed merger.

Southern California Edison Company ("Edison") is the public utility subsidiary of SCEcorp, a holding company. Edison is an electric utility engaged in the business of generating, transmitting and distributing electric energy to approximately 3.8 million customers in portions of central and southern California. In addition to its properties in California, it owns, wholly or in part, generating and transmission facilities in Nevada, Arizona, and New Mexico. Edison's service territory is located in 15 counties of southern and central California. Edison also sells electricity to certain customers for resale, and provides transmission service pursuant to Part II of the Federal Power Act, 16 U.S.C. 824 et seq.

San Diego Gas & Electric Company ("SDG&E") is engaged in the business of generating and selling electric energy in a service territory consisting of San Diego county and portions of Orange County, California. It also provides natural gas and steam service in the County of San Diego, California. It serves approximately one million electric customers and 641,098 gas customers. In addition to its properties in California, SDG&E owns, wholly or in part, transmission facilities in Arizona. SDG&E has no wholesale requirements customers. From time to time, it sells electricity to certain customers for resale and provides transmission service pursuant to Part II of the Federal Power Act, 16 U.S.C. 834 et seq.

Under the merger proposal, SDG&E would dispose of its jurisdictional assets and facilities by means of an exchange of its stock with SCEcorp and the simultaneous merger of SDG&E into Edison. Edison would be surviving corporation and as such would assume the liabilities and obligations of SDG&E. After the merger, SCEcorp would continue to own all of the outstanding common stock of Edison. The Applicants anticipate that substantial efficiencies will result from integration of the currently separate operations of Edison and SDG&E. These efficiencies will result in lower rates for the customers of both companies. The Applicants submit that the proposed merger is consistent with the public interest.

Copies of the Joint Application have been served upon the state commissions of Arizona, California, New Mexico and Nevada.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29472 Filed 12-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-223-004]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

December 19, 1988..

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 13, 1988, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed To Be Effective July 1, 1988

Second Substiture Original Sheet No. 483B

Proposed To Be Effective August 1, 1988

Second Substitute First Revised Sheet No. 483B

Texas Eastern states that the purpose of this filing is to file revised tariff sheets to make the revisions to Texas Eastern's tariff as required by the Commission's November 28, 1988 "Order Rejecting Compliance Filing" (November 28 Order) in Docket No. RP88-223-001.

Texas Eastern states that on August 24, 1988 the Commission issued an order in Texas Eastern's Docket No. RP88-223-000 which accepted and suspended, subject to refund and conditions, the proposal filed by Texas Eastern on July 25, 1988, to flow through the take-or-pay charges billed pursuant to the authorization granted to Southern Natural Gas Company (Southern) in Docket No. RP88-210-000. Ordering paragraph (B) of the August 24, 1988 Order required Texas Eastern to file revised tariff language to provide that a customer whose service agreement expired and who received any necessary abandonment authority after June 15, 1988 will continue to be liable for its allocated share of the Southern costs. On September 8, 1988, Texas Eastern filed tariff sheets in purported compliance with the Commission's August 24, 1988 Order in Docket No. RP88-223.

Texas Eastern states that the Commission on November 28, 1988 rejected Texas Eastern's September 8, 1988 filing in Docket No. RP88-223-001 on the grounds that it failed to fully comply with its August 24, 1988 Order in Docket No. RP88-223-000. Ordering Paragraph (A) requires Texas Eastern to file to revise Sheet No. 483B within 15

days of the date of issuance of the November 28 Order.

Texas Eastern states that in compliance with the November 28, 1988 Order, it has (1) deleted from Sheet No. 483B, the tariff language referring to the recovery of take-or-pay costs from former customers whose service agreements expired and who received any necessary abandonment authority for the subject service before June 15, 1988, the date of Texas Eastern's original filing to flowthrough Southern Natural Gas Company's take-or-pay cost in Docket No. RP88–192, and (2) added tariff language giving customers whose service has been abandoned after June 15, 1988 the option to pay in a lump sum or to continue to pay over the amortization period.

Texas Eastern states that the tariff sheets are being filed solely to comply with the Commission's November 28, 1988 Order in Docket No. RP88–223–001.

The tariff sheets are proposed to be effective as of the dates listed above.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and to all parties of record in Docket No. RP88–223.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29478 Filed 12–22–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89–435–000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

December 19, 1988.

Take notice that on December 15, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–435–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company (Coastal) under the blanket certificate issued in Docket No. CP88–328–000 on April 29, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a transportation agreement dated September 30, 1988, under its Rate Schedule IT, it proposes to transport up to 25,000 dekatherms (dt) per day equivalent of natural gas for Coastal from points of receipt listed in Exhibit "A" of the agreement to a delivery point also listed in Exhibit "A". Transco states that it would receive the gas at High Island Block A–376, Offshore Texas, and that it would transport and redeliver the gas at High Island Block A–343– Offshore Texas. Transco states that existing facilities would be utilized.

Transco advises that service under § 284.223(a) commenced October 10, 1988, as reported in Docket No. ST89–1164. Transco further advises that it would transport 13,000 dt on an average day and 4,745,000 dt annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed with the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29534 Filed 12–22–88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL 3497–8]

Cedar Bay Cogeneration Project, Applied Energy Services, Inc. (AES); Intent to Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) in conjunction with the State of Florida Department of Environmental Regulation (FDER) to identify potential environmental impacts involving construction and operation of the proposed cogeneration plant.

PURPOSE: Pursuant to 40 CFR 1501.7 and in accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Robert B. Howard, Chief, NEPA Compliance Section, Environmental Assessment Branch, EAB–4, U.S. EPA Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365. Telephone: (404) 347–7109 or FTS 257–7109.

Need for Action: AES is proposing to construct a cogeneration facility on an existing industrial site within the North District of Duval County, approximately eight miles north of Jacksonville, Florida, near the intersection of Heckscher Drive and Eastport Road. AES filed an application on December 1, 1988, for a National Discharge Elimination System (NPDES) Permit, NPDES No. FL0041173. The facility has been tentatively determined to be a new source steam electric power generating point source, subject to the requirements of 40 CFR Part 423. The plant will produce 225 megawatts (MW) of electricity for sale to Florida Power and Light (FP&L) Company. In addition, steam will be sold to the adjacent Seminole Kraft Corporation paper mill. The new power facility, valued at approximately $400 million, will consist of three new circulating fluidized bed (CFB) boilers and an associated turbine. The project also includes the construction of one new low-odor recovery boiler to be located and utilized at the Seminole Kraft Corporation facility. Coal and bark will be fired in the CFB boilers to generate steam. Coal will be delivered to the site either by rail or by a water borne vessel. Issues to be addressed in the EIS include construction and operational liquid waste effluent (NPDES Permit action), solid waste disposal, air emissions, and groundwater contamination; wetlands loss, aesthetic changes, and the method of coal transport.

Alternatives: The EIS will examine the feasible alternatives for meeting the

project goals of producing power and steam.

Scoping: Participation in the EIS process is invited from individuals, organizations, and government agencies. Preliminary project scoping is underway. The EPA will hold a public scoping meeting at 7:30 pm on January 24, 1989 at the San Mateo Elementary School, 600 Baisden Road, Jacksonville, Florida. A general description of the project and its goals will be presented. Comments and questions are encouraged and will be addressed and recorded.

Estimated Date of DEIS Release: August 11, 1989.

Responsible Official: Greer C. Tidwell, Regional Administrator.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-29552 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3497-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed December 12, 1988 Through December 16, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880413, Final, NPS, NV, CA, Death Valley National Monument, General Management Plan, Implementation, Inyo and San Barnardino Counties, CA and Nye County, NV, Due: January 23, 1989, Contact: Ed Rothfuff (619) 786-2331.

EIS No. 880414, Draft, FHW, CA, Cloverdale Bypass Construction on US 101 from North of Hiatt Road to Preston Overhead, Funding and Possible 404 Permit, City of Cloverdale. Sonoma County, CA, Due: February 19, 1989, Contact: David L. Eyres (916) 551-1314.

EIS No. 880415, Final, AFS, OR, WA, ID, CA, Pacific Northwest Region, National Forest System Lands, Competing and Unwanted Vegetation Management Plan, Implementation, Oregon, Idaho, Washington, and California, Due: January 23, 1989, Contact: Gary L. Larsen (503) 221-2727.

EIS No. 880416, Final, FHW, GA, SC, Bobby Jones Expressway Extension, Old Savannah Road in Augusta to US 1, Funding, 404 Permit and Coast Guard Permit, Richamond County, GA and Aiken County, SC, Due: January 23, 1989, Contact: Louis Papet (404) 347-4751.

EIS No. 880417, Draft, AFS, NM, Cemetery Tract Land Exchange for Westgate Tract or Trail Canyon Tract or Both Tracts, Implementation, Santa Fe National Forest, Los Alamos and Sandoval Counties, NM, Due: February 6, 1989, Contact: Maynard T. Rost (505) 988-6940.

EIS No. 880418, Final, USA, HI, Helemano Military Reservation, Family Housing Construction Project, Implementation, City and County of Honolulu, Island of Oahu, HI, Due: January 23, 1989, Contact: David G. Sox (808) 438-5030.

EIS No. 880419, Draft, NPS, CA, Eugene O'Neill National Historic Site Development and General Management Plan, Implementation, Contra Costa County, CA, Due: March 15, 1989, Contact: Stanley Albright (415) 228-8860.

EIS No. 880420, Draft, NAS, MS, FL, LA, Advance Solid Rocket Motor Program, Design, Construction and Operation, Site Selection, John C. Stennis Space Center, Hancock Co., MS; Yellow Creek Site, Tishomingo Co., MS; John F. Kennedy Space Center, Brevard Co., FL; Michoud Assembly Facility, New Orleans Parrish, LA and Slidell Computer Center, St. Tammany Parish LA, Due: February 6, 1989, Contact: Rebecca C. McCaleb (601) 688-3155.

EIS No. 880421, Draft, FHW, HI, Hanoapiilani Highway/FAP Route 30 Improvement, Puamana to Kaanapali, Funding, Maui County, HI, Due: February 6, 1989, Contact: William R. Lake (808) 541-2700.

Amended Notices

EIS No. 880400, Draft, BLM, NM, Molycorp Guadulupe Mountain Tailings Disposal Facility, Construction, Operation and Closure, Plan of Operation Approval, Tasco County, NM, Due: February 9, 1989, Contact: Robert T. Dale (505) 761-4546.

Published FR 12-9-88—Review period extended.

Dated: December 20, 1988.

William D. Dickerson,

Deputy Director.

[FR Doc. 88-29549 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3497-7]

Neskowin, OR; Wastewater Treatment Facilities; Intent to Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Neskowin Regional Sanitary Authority's Neskowin Wastewater Treatment Facilities Construction Grant.

Purpose: In accordance with section 511(c) of the Clean Water Act and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Ms. Ann Uhrich, Environmental Evaluation Branch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD-136, Seattle, Washington 98101-3188, telephone: (206) 442-8516.

SUMMARY: The EIS will evaluate the impacts associates with the construction and operation of a new wastewater treatment plant and sewerage collection system for the town of Neskowin, Oregon. This two-phased project is proposed by the Neskowin Regional Sanitary Authority to meet the service needs of present and projected population growth in the area. A 130,000 gallon per day plant is currently proposed for Phase I, the first 10 years, with an increase to 320,000 gallons per day currently proposed for Phase 2, the second 10 years of the planning period.

Need for Action: Existing on-site systems in the study area consist of combinations of septic tanks, drainfields, seepage pits, and cesspools. A package plant with a design capacity of 50,000 gallons per day also serves a portion of the study area, with disposal to Neskowin Creek. It is in poor condition. Water quality sampling over the past 9 years has repeatedly found evidence of fecal bacteria contamination in area streams, and the previous operators of the package plant have been cited by the Oregon Department of Environmental Quality for National Pollutant Discharge Elimination System permit violations on at least six occasions.

Alternatives: Effluent disposal alternatives presently include:

—Forest or other land application.

—Disposal to Neskowin Creek in winter with land application in summer.

—Ocean outfall disposal.

—Subsurface disposal along Breakers Boulevard.

Scoping: EPA, Region 10, will hold a public scoping meeting on Friday, January 27, 1989, at 7:00 p.m. at the Fire Hall, Highway 101, Neskowin, Oregon. Details of the project and proposed alternatives will be presented. The public is invited to attend and identify issues that should be addressed in the EIS.

Estimated Date of DEIS Release: EPA anticipates that the Draft EIS will be

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available for public review in summer 1989.

Responsible Official: Robie G. Russell, Regional Administrator, Region 10.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-29551 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3497-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 5, 1988 through December 9, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-SCS-E34029-KY, Rating LO, South Fork of Little River Watershed Multiple Purpose Floodwater Protection and Municipal and Industrial Water Supply Project, Funding and Implementation, Christian and Todd Counties, KY.

Summary: EPA has no objections to the proposed project.

Final EISs

ERP No.: F-AFS-L67015-AK, Quartz Hill Molybdenum Project Mine Development, Construction, Operation and Post-Mining Abandonment Section 10 and 404 Permits, Special Use Permit and Leases, Misty Fiords National Monument, Tongass National Forest, AK.

Summary: EPA feels this final EIS is acceptable as described.

ERP No.: F-BLM-L70010-OR, Brothers/LaPine Planning Area, Resource Management Plan, Implementation, Prineville District, Crook, Deschutes, Harney, Klamath and Lake Counties, OR.

Summary: EPA continues to have concerns about the nonpoint source degradation of water quality, as well as concerns relating to leasing stipulations, sample restrictions, and Standard Operating Procedures (SOPs) for the energy and minerals program. In addition it was suggested that the Record of Decision reflect a commitment to monitoring.

ERP No.: F-COE-G32051-TX, Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Funding and Implementation, Galveston and Harris Counties, TX.

Summary: EPA finds the proposed HG50 Plan to be environmentally unsatisfactory and the final EIS inadequate. EPA has requested the Corps extend the time allowed for referral to the Council on Environmental Quality (CEQ). In response the Corps has extended the referral deadline for three weeks to allow time to resolve issues. Issue resolution meetings will include the Corps, EPA, Fish and Wildlife Service, and the National Marine Fisheries Service.

ERP No.: FS-COE-L36015-00, Lower Granite Project, Lower Granite Interim Navigation and Flood Protection Dredging, Implementation, Snake and Clearwater Rivers, Nez Perce County, ID and Asotin, Garfield and Whitman Counties, WA.

Summary: EPA finds this project to be acceptable as described.

ERP No.: F-FHW-E40703-GA, GA-371/I-85 Highway Connector Construction, GA-371 to I-85, Funding, 404 Permit and USCG Permit, Forsyth and Gwinnett Counties, GA.

Summary: EPA has concerns over the lack of a detailed wetland mitigation plan to offset unavoidable wetland losses and the lack of spill prevention and containment features/plans to prevent or minimize the effects of potential roadway spills on municipal drinking water.

ERP No.: F-OSM-J01072-MT, Peabody Big Sky Coal Mine-Area B Expanded Operations Project, Plan Approval, Lee Coulee Drainge, Rosebud County, MT.

Summary: EPA has no objection to the selection of preferred alternative 3 as long as the monitoring plan provisions are complied with.

Dated: December 20, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-29550 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00097; FRL-349-74]

Biotechnology Science Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee (BSAC). The meeting will be open to the public. The Committee will hear and discuss reports from various Subcommittees, including the Subcommittee on the Proposed Draft Biotechnology Rule Under TSCA, the BSAC Subcommittee on Biotechlology Health, and the FIFRA SAP Subpanel meeting of November 22, 1988, which discussed the FIFRA experimental use permit amendment. The BSAC will also receive updates on various activities, such as the transgenic plants conference, and the status of Agency product reviews.

DATE: The meeting will be held on Thursday, January 12, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: December 16, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-29492 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3496-8]

Science Advisory Board, Radiation Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, Administrator's Conference Room 1103, 11th Floor, Waterside Mall, 401 M Street, SW; Washington, DC on January 12-13, 1989. The meeting will begin at 9:00 a.m. on Thursday and adjourn no later than 5:00 p.m. on Friday.

This is primarily an information meeting. The Committee will be briefed on the Office of Radiation Program's plans for revising the technical basis of the revised radionuclide NESHAP, on EPA's radon programs, and on a variety of other radiation-related activities. The Committee will also hear the report of the Radon Measurement Subcommittee and discuss its plans for 1989.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend or obtain information should contact Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Radiation Advisory Committee, Science Advisory Board, by the close of business on January 10, 1989. The telephone number is (202) 382–2552.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–29498 Filed 12–22–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3497–7]

Resource Conservation and Recovery Act; Docket Information Center; Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of postponement of move and of closing of RCRA Docket during the move.

SUMMARY: The relocation of the Resource Conservation and Recovery Act Docket from LG–100 to M2427 of EPA Headquarters, 401 M Street SW., Washington, DC 20460 has been postponed. The RCRA Docket will remain open December 27–30, 1988. Announcement of the rescheduling of the move of the RCRA Docket will be made in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: RCRA Docket Information Center (OS–305) 401 M Street SW., Washington, DC 20460, (202/475–9327).

Date: December 20, 1988.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

[FR Doc. 88–29591 Filed 12–22–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180798; FRL–3496–6]

Receipt of Application for an Emergency Exemption from Montana and Wyoming To Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received public health exemption requests from the Montana Department of Livestock and Wyoming Department of Agriculture (hereafter referred to as "Applicants") to use strychnine alkaloid (CAS Reg. No. 57–24–0) in egg baits for control of rabid skunks. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180798" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue public health exemptions to allow the otherwise unregistered use of strychnine in eggs to control rabid skunks. The Applicants have requested and received emergency exemptions for the use of strychnine to control rabid skunks since 1973. Montana has been authorized this use every year since 1973 and Wyoming has received exemptions in eight of those years.

In 1972, EPA cancelled the registrations of strychnine products used for predator control, including the use of strychnine to control skunks (37 FR 5718). The decision to grant emergency exemptions for the use of strychnine to control rabid skunks prior to 1985 was based on the Agency's finding that emergency conditions existed and that the Subpart D criteria allowing for emergency waiver of a hearing, 40 CFR 164.133, had been met.

However, in reviewing the emergency exemption request in 1985, the Agency determined that it had misinterpreted the Subpart D regulations and that, prior to even considering whether or not the hearing could be waived, a determination had to be made that substantial new evidence exists which warranted a reconsideration of the prior cancellation order. The Administrator determined that substantial new evidence existed in connection with the registration requests, under section 3 of FIFRA, and 1986 emergency exemption requests, as published in the **Federal Register** of June 13, 1986 (51 FR 21617). Accordingly, a hearing to reconsider whether to modify the prior cancellation order to permit the use of strychnine for controlling skunks to suppress rabies in areas where rabid animals have been found was held on October 7, 1986, as announced in the **Federal Register** of August 8, 1986 (51 FR 28623).

As a result of the hearing, the Order suspending the registration of strychnine, sodium cyanide, and sodium monofluoroacetate ("1080") for predator uses has been modified to permit the registration of strychnine to reduce populations of skunks as a means of suppressing the spread of rabies to humans and domestic animals.

The Applicants have applied, under section 3 of FIFRA, for registration of strychnine in egg baits to control rabid skunks. The Applicants are currently generating the data necessary to support the registration of this use of strychnine.

The Applicants have requested the use of strychnine for the purpose of suppressing local populations of skunks, the main carrier of rabies in Montana and Wyoming, thereby reducing the opportunity for exposure of humans, domestic animals, and susceptible wild species to rabies. The Applicants consider the incidence of rabies to be at a level which poses an unacceptable threat to public health.

The proposed control program involves use of strychnine egg baits

which contain 0.035 gram of actual strychnine alkaloid.

The Applicants have proposed the following restrictions for the requested exemptions:

Placement of strychnine-treated eggs will be limited to land within a 5-mile radius of a site where a laboratory-confirmed rabid skunk has been found. The number of strychnine egg baits may not exceed: 1,200 eggs in any treatment area, 150 eggs per any square mile, or two eggs per site. Strychnine egg baits will be placed in such skunk habitats as follows: skunk dens, holes, garbage dumps, road culverts, junk piles, and under non-occupied buildings. All strychnine egg baits will be stamped with the word "poison" in three locations and will contain green food coloring to warn people of their toxic nature. Baits will be covered at all times and checked no less than once a week. Warning signs will be posted at all points commonly used for access to the treatment area. Strychnine egg baits will be placed only on lands where written permission has been obtained from the landowner. Placement or removal of strychnine egg baits will be under the direct supervision of certified commercial applicators of restricted use pesticides.

On April 11, 1988, the United States District Court for the District of Minnesota issued an order enjoining the Administrator of EPA from continuing the registrations of strychnine for above-ground use within the range of listed species protected by the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act until certain actions specified in the court's order have been taken by EPA. A copy of the order was published in the **Federal Register** of May 25, 1988 (53 FR 18952). The reinitiated section 7 formal consultation under the Endangered Species Act f e above-ground uses of strychnine does not address this proposed use of strychnine-treated eggs. Therefore, the Agency is in the process of initiating a separate consultation with the Department of Interior for the proposed use of strychnine-treated eggs to assess the risks to species protected by the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes use of a pesticide if such pesticide was the subject of a notice under section 6(b) of FIFRA and was subsequently cancelled and is intended for a use that poses a risk similar to the risk posed by the pesticide which was the subject of the notice. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue these public health exemptions.

Dated: December 1, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-29497 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Crystal Cruises, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Crystal Cruises, Inc., 2121 Avenue of the Stars, Suite 200, Los Angeles, California 90067.

Vessel: CRYSTAL TBN

Date: December 20, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29526 Filed 12-22-88; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty); Crystal Cruises Inc./Crystal Ship (Bahamas)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passenger or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Crystal Cruises, Inc./Crystal Ship, (Bahamas) Limited, 2121 Avenue of the Stars, Suite 200, Los Angeles, California 90067.

Vessel: CRYSTAL TBN

Date: December 20, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-29527 Filed 12-22-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Application to Engage de novo in Permissible Nonbanking Activities; Citicorp

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to amend its current application to engage through Great Western Bank and Trust,

Phoenix, Arizona, and its subsidiary, Great Western Insurance Agency, in certain insurance agency activities (*See* 53 FR 3789 (February 9, 1988)) to add engaging through Union Security Corporation, which is also a subsidiary of Great Western Bank and Trust, in insurance agency activities pursuant to section 4(c)(8)(D) of the Bank Holding Company Act and § 225.25(b)(8)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29459 Filed 12-22-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 9, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Grants for Nurse Anesthetist Traineeship Programs—0915-0124—The information is needed for use by the grantee institutions to determine eligibility of nurses for the traineeship program and to maintain records of appointments. Respondents: Individuals or households, Non-profit institutions.

1st Information Collection

Title: Demonstration of Financial Need by Nurse—57.509(c) Number of Respondents: 40.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 120 minutes.

2nd Information Collection

Statement of Appointment—57.510(a) Number of Respondents: 40.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 4-6 minutes.

3rd Information Collection

Title: Trainee's Submissions of Information for Statement of Appointment 57.510(a) Number of Respondents: 40.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

4th Information Collection

Notification of Tuition Refund 57.512(b) Number of Respondents: 30.

Number of Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Total Annual Burden: 100.5

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202-252-5605 for copies of package)

1. Information Collection Requirements contained in the Final Regulations on the Prohibition of Retroactive Modification of Child Support Arrearages—NEW—These final rules require that, as a condition of State IV-D Plan approval, States have in effect laws requiring the use of procedures to prohibit retroactive modification of child support arrearages. Respondents: State or local government.

1st Information Collection

Title: Retro. Mod. of CS Arrearages

Annual Number of Respondents: 54.

Annual Frequency: 1.

Average Burden Per Response: 43 minutes.

2nd Information Collection

Recordkeeping

Annual Number of Respondents: 54.

Annual Frequency 1.

Average Burden Per Response: 1,000 minutes.

Total Annual Burden: 938.7.

OMB Desk Officer: Justin Kopca

Health Care Financing Administration

(Call Reports Clearance Officer on 301-966-2088 for copies of package)

1. Hospice Cost Report and Data Form—0938-0392—Form is completed by freestanding hospice which are certified to participate with Medicare. It collects cost data. Respondents: State and local governments, Business or other for-profit; Non-profit institutions.

1st Information Collection

Title: Reporting

Annual Number of Respondents: 157

Annual Frequency: 1.

Average Burden Per Response: 64.

2nd Information Collection

Recordkeeping

Annual Number of Respondents: 157.

Annual Frequency: —.

Average Burden Per Response: 255.

Total Burden Hours: 50,083.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Subpoena-Disability Hearing—0960-0428—The information collected by form SSA-1272 is used by the Social Security Administration to subpoena the production of evidence of testimony needed in connection with disability hearings. Respondents: Individuals or households; Number of Respondents: 28; Frequency of Response: 1; Average burden per Response: 30 minutes; Estimated Annual Burden: 14 hours.

2. Notification of Projected Completion Date—0960-0429—The information is needed so that disability hearing units (DHU) can be notified that a specific hearing case will not be completed and forwarded to the DHU as expected. The DHU can reschedule the hearing. Respondents: State or local governments; Number of Respondents: 24; Frequency of Response: 1; Estimated Annual Burden: 2 hours.

3. Application for Child's Benefits—0960-0100—The information is needed to determine the eligibility for child's insurance benefits. The Social Security Administration is requesting expedited review by January 3, 1989, for this form in order to accelerate its use. In keeping with the requirements for expedited reviews, we are attaching a copy of the form. Respondents: Individuals or households; Number of Respondents 1,740,000; Frequency of Response: 1; Estimated Annual Burden: 372,416 hours.

4. Request to be Selected as Payee—0960-0014—The information is used to determine the proper payee for a person who cannot receive his own benefits. The Social Security Administration is requesting expedited review by January 3, 1989, for this form in order to accelerate its use. In keeping with the requirements for expedited reviews, we are attaching a copy of the form. Respondents: Individuals or households; Number of Respondents 605,000; Frequency of Response: 1; Estimated Annual Burden: 105,875 hours.

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OMB Desk Officer: Justin Kopca

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
SSA: (301) 965–4149
OS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: December 19, 1988.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

BILLING CODE 4150-04-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration

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TOE 120/145/155

Form Approved
OMB No. 0960-0010

(Do not write in this space)

APPLICATION FOR CHILD'S INSURANCE BENEFITS

I apply on behalf of the child or children listed in item 3 below for all insurance benefits for which they may be eligible under title II (Federal Old-Age, Survivors and Disability Insurance) of the Social Security Act, as presently amended. (If you are applying on your own behalf, answer the questions on this form with respect to yourself.)

If you are applying for benefits based on the earnings record of a Deceased Worker, this may also be considered an application for survivors benefits under the Railroad Retirement Act and for Veterans Administration payments under Title 38, U.S.C., Veterans Benefits, Chapter 13 (which is, as such, an application for other types of death benefits under Title 38).

LIFE CLAIM ☐ DEATH CLAIM ☐

1.	(a) PRINT name of Wage Earner or Self-Employed person (herein referred to as the "Worker"). →	FIRST NAME, MIDDLE INITIAL, LAST NAME
	(b) PRINT Worker's Social Security number. →	__ __ __ / __ __ / __ __ __ __
2.	(a) PRINT your name (unless you are the Worker). →	FIRST NAME, MIDDLE INITIAL, LAST NAME
	(b) PRINT your Social Security number. →	__ __ __ / __ __ / __ __ __ __

PART I—INFORMATION ABOUT THE WORKER'S CHILDREN

3. The Worker's children (including natural children, adopted children, and stepchildren) or dependent grandchildren (including stepgrandchildren) may be eligible for benefits based on the earnings record of the Worker. For a living Worker, the information below applies to this month or to any of the past 12 months. For a deceased Worker, the information below applies to the date of death or for any period since the Worker's death. Also list any student who is between the ages of 18 and 23 if the student was both: 1) previously entitled to Social Security benefits on any Social Security record for August 1981, and 2) was also in full-time attendance at a post-secondary school for May 1982.

LIST BELOW ALL SUCH CHILDREN (IN ORDER OF BIRTH BEGINNING WITH THE OLDEST) who are now, or who were at the appropriate time (above), UNMARRIED and: • UNDER AGE 18 • AGE 18 TO 19 (OR TO AGE 23 FOR MONTHS PRIOR TO AUGUST 1982) AND ATTENDING SECONDARY SCHOOL • DISABLED OR HANDICAPPED (age 18 or over and disability began before age 22)	Check (✓) Sex of Child		Date of Birth (Mo., day, yr.)	Check (✓) if Child 17 or Older is:		Check (✓) the Column That Shows Child's Relationship to Worker					CHILD'S SOCIAL SECURITY NUMBER
	M	F		Student	Disabled	Legitimate	Adopted	Stepchild	Dependent Grandchild	Other	
FULL NAME OF CHILD											___ / __ / ____
											___ / __ / ____
											___ / __ / ____
											___ / __ / ____
											___ / __ / ____
											___ / __ / ____

If you do not wish to be payee for any child or dependent grandchild named above, list the child's name and address in "Remarks" on page 5. You may apply for a child even though you do not wish to be payee for the child's benefits.

4.	If any children in item 3 are stepchildren of the Worker, enter the date the Worker married the natural parent. →	MONTH, DAY, YEAR
5.	(a) Is there a legal representative (guardian, conservator, curator, etc.) for any of the children in item 3? →	☐ Yes (If "Yes," complete (b) and (c).) ☐ No (If "No," go on to item 6.)

(b) Write the following information about the legal representative(s):	NAME *(First name, middle initial, last name)*		TELEPHONE NUMBER (INCLUDE AREA CODE)
	ADDRESS		

(c) Briefly explain the circumstances which led the court to appoint a legal representative.

6. Are you the natural or adoptive parent of the person(s) for whom you are filing? ☐ Yes ☐ No

7. Have any children in item 3 ever been adopted by someone other than the Worker? (If "Yes," enter the following information): → ☐ Yes ☐ No

Name of Child	Date of Adoption	Name of Person Adopting

8. Are all the children in item 3 now living in the same household with you? (If "No," enter the following information about each child not living with you. If uncertain as to the whereabouts of any of these children, explain in "Remarks".) → ☐ Yes ☐ No

Name of Child Not Living With You	Person With Whom Child Now Lives	
	Name and Address	*Relationship to Child*

9. Has any child in item 3 ever been married? *(If "Yes," enter the information requested below.)* → ☐ Yes ☐ No

Name of Child	Date of Marriage (Month, day, year)
How Marriage Ended (If still married, write "not ended")	Date Marriage Ended (Month, day, year)

10. Has anyone ever before filed an application with the Social Security Administration for monthly benefits on behalf of any child in item 3? (If "Yes," enter below the name(s) of the child(ren) and the name(s) and Social Security number(s) of the person(s) on whose earnings record any other claim was based.) → ☐ Yes ☐ No

Name of Child	Name of Worker	Social Security Number of Worker
		__ __ __/__ __/__ __ __ __
		__ __ __/__ __/__ __ __ __
		__ __ __/__ __/__ __ __ __
		__ __ __/__ __/__ __ __ __

If you are applying ONLY for a child age 18 or over who is disabled, omit items 11 through 14. In all other cases, answer items 11 through 14.

EARNINGS INFORMATION FOR LAST YEAR (Do not complete if the Worker died this year)

11. (a) Did any child in item 3 earn more than the exempt amount last year? *(If "Yes," answer (b). If "No," go on to item 12.)* → ☐ Yes ☐ No

(b) NAME OF CHILD WHO EARNED OVER THE EXEMPT AMOUNT LAST YEAR	TOTAL EARNINGS OF CHILD	LIST EACH MONTH THAT CHILD DID NOT EARN MORE THAN $ _____ IN WAGES AND DID NOT PERFORM SUBSTANTIAL SERVICES IN SELF EMPLOYMENT
	$	
	$	
	$	

EARNINGS INFORMATION FOR THIS YEAR

12. (a) Do you expect the total earnings of any child in item 3 to be more than the exempt amount this year? (Count all earnings beginning with the first of this year and all anticipated earnings through the end of this year.) (If "Yes," answer (b). If "No," go on to item 13.) → ☐ Yes ☐ No

(b) NAME OF CHILD WHO EXPECTS TO EARN OVER THE EXEMPT AMOUNT THIS YEAR	EXPECTED EARNINGS OF CHILD	LIST EACH MONTH (INCLUDING THE PRESENT MONTH) THAT CHILD DID NOT OR WILL NOT EARN MORE THAN $ _____ IN WAGES AND DID NOT OR WILL NOT PERFORM SUBSTANTIAL SERVICES IN SELF EMPLOYMENT
	$	
	$	
	$	

Complete item 13 ONLY if any child is now in the last 4 months of the child's taxable year (Sept., Oct., Nov., and Dec., if the taxable year is a calendar year).

EARNINGS INFORMATION FOR NEXT YEAR

13. (a) Do you expect the total earnings of any child in item 3 to be more than the exempt amount next year? (If "Yes," answer (b.) If "No," go on to item 14.) → ☐ Yes ☐ No

(b) NAME OF CHILD WHO EXPECTS TO EARN OVER THE EXEMPT AMOUNT NEXT YEAR	EXPECTED EARNINGS OF CHILD	LIST EACH MONTH THAT CHILD WILL NOT EARN MORE THAN $ _____ IN WAGES AND WILL NOT PERFORM SUBSTANTIAL SERVICES IN SELF-EMPLOYMENT
	$	
	$	
	$	

14. If any of the children for whom you are filing uses a fiscal year (one that does not end on December 31), print here the name of the child and the month the fiscal year ends. → NAME OF CHILD AND MONTH FISCAL YEAR ENDS

Complete items 15 and 16 ONLY if the Worker is living. Otherwise, go on to item 17.

15. If any children in item 3 are children adopted by the Worker, print below the name of each such child and the date of adoption by the Worker.

NAME OF ADOPTED CHILD	DATE OF ADOPTION

Turn to page 4)

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16. Have all of the children in item 3 lived with the Worker during each of the last 13 months (counting the present month)? (If "No," enter the information requested below.) ☐ Yes ☐ No

NAME OF CHILD WHO DID NOT LIVE WITH THE WORKER IN EACH OF THE LAST 13 MONTHS	LIST EACH MONTH IN WHICH THIS CHILD DID NOT LIVE WITH THE WORKER	PERSON WITH WHOM CHILD LIVED	
		NAME AND ADDRESS	RELATIONSHIP TO CHILD

PART II—INFORMATION ABOUT THE DECEASED. Complete items 17 through 26 ONLY if the Worker is deceased. Otherwise, go on to the Signature block.

17. (a) Print date of birth of Worker — MONTH, DAY, YEAR

(b) Print Worker's name at birth if different from item 1(a)

(c) Check (✓) one for the Worker — ☐ Male ☐ Female

18. (a) Print date of death — MONTH, DAY, YEAR

(b) Print place of death — CITY AND STATE

19. Print the name of the state or foreign country where the Worker had a fixed, permanent home at the time of death. — STATE OR FOREIGN COUNTRY

20. Did the Worker work in the railroad industry for 7 years or more? ☐ Yes ☐ No

21. (a) Was the Worker in the active military or naval service (including Reserve or National Guard active duty or active duty for training) after September 7, 1939 and before 1968? ☐ Yes (If "Yes," answer (b) and (c).) ☐ No (If "No," go on to item 22.)

(b) Enter dates of service — FROM (month – year) TO (month – year)

(c) Has anyone (including the Worker) received, or does anyone expect to receive, a benefit from any other Federal agency? ☐ Yes ☐ No

22. Were all the children in item 3 living with the Worker at the time of death? (If "No," enter the following information) ☐ Yes ☐ No

NAME OF CHILD NOT LIVING WITH THE WORKER	PERSON WITH WHOM CHILD WAS LIVING	
	NAME AND ADDRESS	RELATIONSHIP TO CHILD

Answer item 23 ONLY if death occurred within the last 2 years.

23. (a) About how much did the Worker earn from employment and self-employment during the year of death? — AMOUNT $

(b) About how much did the Worker earn the year before death? — AMOUNT $

24. (a) Did the Worker ever engage in work that was covered under the social security system of a country other than the United States? ☐ Yes (If "Yes," answer (b).) ☐ No (If "No," go on to item 25.)

(b) List the country(ies).

25. (a) Did the Worker ever file an application for Social Security benefits, a period of disability under Social Security, Supplemental Security Income, or hospital or medical insurance under Medicare? ☐ Yes ☐ No ☐ Unknown (If "Yes," answer (b) and (c).) (If "No" or "Unknown," go on to item 26.)

(b) Enter name of person(s) on whose Social Security record other application was filed.

(c) Enter Social Security number of person named in (b). (If "Unknown," so indicate.) — __ __ __/__ __/__ __ __ __

Answer item 26 ONLY if the Worker died prior to age 66 and within the past 4 months.

26.	(a) Was the Worker unable to work because of a disabling condition at the time of death? →	☐ Yes (If "Yes," answer (b).)	☐ No
	(b) Enter date disability began →	MONTH, DAY, YEAR	

PART III—INFORMATION ABOUT THE PAYEE APPLICANT. If you want to be selected as payee for any children in Item 3, answer Items 27 and 28. Otherwise go on to the Signature block.

27.	Have you ever been convicted of a felony?	☐ Yes (*If "Yes," explain in "Remarks" below.*)	☐ No

28. Are you serving, or have your ever served, as representative payee for anyone receiving a Social Security or Supplemental Security income benefit?

[ ] Yes (If yes, enter SSN(s) in Remarks below.) [ ] No

REMARKS: (You may use this space for any explanations. If you need more space, attach a separate sheet.)

BEST COPY AVAILABLE

An ANNUAL REPORT of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any taxable year in which any child earns more than the yearly limit and receives some benefits in that year.

I AGREE TO FILE AN ANNUAL REPORT OF EARNINGS. THE ANNUAL REPORT IS REQUIRED BY LAW AND FAILURE TO REPORT MAY RESULT IN A MONETARY PENALTY.

BENEFITS MAY END if any of the following events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

I AGREE TO PROMPTLY NOTIFY the Social Security Administration if any of the following events occur and to PROMPTLY RETURN ANY BENEFIT CHECK I receive to which a child is not entitled if:

- Any child MARRIES, is DIVORCED, or has a marriage ANNULMENT.
- A student, age 18 or over, STOPS ATTENDING SCHOOL, REDUCES SCHOOL ATTENDANCE BELOW FULL-TIME, CHANGES SCHOOLS OR IS PAID BY AN EMPLOYER TO ATTEND SCHOOL.
- A disabled child, age 18 or over, GOES TO WORK or the child's DISABLING CONDITION IMPROVES.
- Any child is INCARCERATED FOR CONVICTION OF A FELONY.
- I no longer have responsibility for the care and welfare of any child for whom I am filing.
- Any child for whom I am filing or who is in my care dies, leaves my care or custody, or changes address.

I UNDERSTAND that all payments made to me on behalf of a child must be spent for the child's present needs or (if not present needed) saved for the child's future needs, and I AGREE to use the benefits that way. I will be held personally liable for repayment of benefits I receive if I misuse the payment or if I am found at fault with respect to an overpayment of such benefits.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION AS SOON AS I BELIEVE I WILL NO LONGER BE ABLE TO OR WISH TO ACT AS A REPRESENTATIVE PAYEE. (SUCH ADVANCE NOTIFICATION WILL ASSIST IN THE DEVELOPMENT OF AN ALTERNATE PAYEE AND WILL AVOID UNNECESSARY SUSPENSION OF PAYMENTS).

I also agree to file an accounting report of the use made of the payments when requested by the Social Security Administration.

I know that anyone who makes or causes to be made a false statement or representation of material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law by fine, imprisonment or both. I affirm that all information I have given in this document is true.

SIGNATURE OF APPLICANT	DATE (Month, day, year)
SIGNATURE (First name, middle initial, last name) (Write in ink) SIGN HERE ▶	TELEPHONE NUMBER(S) AT WHICH YOU MAY BE CONTACTED DURING THE DAY (INCLUDE AREA CODE) ___ ___ ____ (AREA CODE)

FOR OFFICIAL USE ONLY	Direct Deposit Payment Address *(Financial Institution)*			
	Routing Transit Number	C/S	Depositor Account Number	☐ No Account ☐ Direct Deposit Refused

Applicant's Mailing Address *(Number and street, Apt. No., P.O. Box, or Rural Route) (Enter Residence Address in "Remarks," if different.)*

City and State	ZIP Code	County *(if any)* in which you now live

Witnesses are required ONLY if this application has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the applicant must sign below giving their full addresses. Also, print the applicant's name in the signature block.

1. SIGNATURE OF WITNESS	2. SIGNATURE OF WITNESS
ADDRESS (Number and Street, City, State, and ZIP Code)	ADDRESS (Number and Street, City, State, and ZIP Code)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Social Security Administration ATTN: Reports Clearance Officer 1-A-21 Operations Bldg., Baltimore, MD 21235 and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0960-0010), Washington, D.C. 20503.

AN ANNUAL REPORT OF EARNINGS must be filed with the Social Security Administration within 3 months and 15 days after the end of any taxable year in which any child earns more than the yearly limit and receives some benefit payment in that year.

THE ANNUAL REPORT IS REQUIRED BY LAW AND FAILURE TO REPORT MAY RESULT IN A MONETARY PENALTY.

BENEFITS MAY END if any of the following events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

I AGREE TO PROMPTLY NOTIFY the Social Security Administration if any of the following events occur and to PROMPTLY RETURN ANY BENEFIT CHECK I receive to which a child is not entitled if:

- Any child MARRIES, is DIVORCED, or has a marriage ANNULMENT.
- A student, age 18 or over, STOPS ATTENDING SCHOOL, REDUCES SCHOOL ATTENDANCE BELOW FULL-TIME, CHANGES SCHOOLS,OR IS PAID BY AN EMPLOYER TO ATTEND SCHOOL.
- Any child IS INCARCERATED FOR CONVICTION OF A FELONY.
- A disabled child, age 18 or over, GOES TO WORK or the child's DISABLING CONDITION IMPROVES.
- I no longer have responsibility for the care and welfare of any child for whom I am filing.
- Any child for whom I am filing or who is in my care dies, leaves my care or custody, or changes address.

I UNDERSTAND that all payments made to me on behalf of a child must be spent for the child's present needs or (if not presently needed) saved for the child's future needs, and I AGREE to use the benefits that way. I will be held personally liable for repayment of benefits I receive if they are not spent for the child or if I am found at fault with respect to an overpayment of such benefits.

Collection and Use of Information from Your Application—
Privacy Act/Paperwork Act Notice

I. The Social Security Administration is authorized to collect the information on this form under sections 202(d) and 205(a) of the Social Security Act, as amended (42 U.S.C. 402(d) and 405(a)).

II. While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no benefits may be paid unless an application has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Social Security Act.

III. The information on this form is needed to enable Social Security to determine if you and your dependents are entitled to insurance coverage and/or monthly benefits, to determine if you have the necessary qualifications to serve as payee, and to administer the collection of overpayments once liability is established.

IV. Failure to provide all or part of this information could prevent an accurate and timely decision on your claim or your dependent's claim, could result in the loss of some benefits or insurance coverage, and could prevent an accurate and timely decision on your request to be selected as payee.

V. Although the information you furnish on this form is almost never used for any other purpose than stated in Part III, above, there is a possibility that in the administration of the Social Security programs or for the administration of programs requiring coordination with the Social Security Administration, information may be disclosed to another person or to another government agency as follows:

1. To enable a third party or an agency to assist Social Security in establishing rights to Social Security benefits
2. To comply with Federal laws requiring the release of information from Social Security records (e.g., to the General Accounting Office and the Veterans Administration)
3. To facilitate statistical research and audit activities necessary to assure the integrity and improvement of the Social Security programs (e.g., to the Bureau of the Census and private concerns under contract to Social Security)

RECEIPT FOR YOUR CLAIM FOR SOCIAL SECURITY CHILD'S INSURANCE BENEFITS

TELEPHONE NUMBER(S) TO CALL IF YOU HAVE A QUESTION OR SOMETHING TO REPORT	**BEFORE** YOU RECEIVE A NOTICE OF AWARD ___ ___ ___ (Area Code)	SSA OFFICE DATE CLAIM RECEIVED
	AFTER YOU RECEIVE A NOTICE OF AWARD ___ ___ ___ (Area Code)	

Your application for Social Security benefits on behalf of the child(ren) named below has been received. You will be notified by mail as soon as a decision is made on your claim.

You should hear from us within _____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you or any child(ren) changes address, or if there is some other change that may affect your claim, you or someone for you should report the change. The changes to be reported are listed below.

Always give us your claim number when writing or telephoning about your claim.

If you have any questions about your claim, we will be glad to help you.

CLAIMANT	SOCIAL SECURITY CLAIM NUMBER

WORKER S NAME *(If surname differs from name of claimant(s).)*

CHANGES TO BE REPORTED AND HOW TO REPORT

FAILURE TO REPORT MAY RESULT IN OVERPAYMENTS THAT MUST BE REPAID AND IN POSSIBLE MONETARY PENALTIES

- You or any child changes mailing address for checks or residence *To avoid delay in receipt of checks you should ALSO file a regular change of address notice with your post office.*
- Any beneficiary goes outside the U.S.A. for 30 consecutive days or longer
- Any beneficiary dies or becomes unable to handle benefits
- Work Changes – On your application you told us

  _____ (Name of child) expected total earnings for 19 ___ to be $ _____ .

  _____ (Name of child) (is) (is not) earning wages of more than $ _____ a month.

  _____ (Name of child) (is) (is not) self-employed rendering substantial services in a trade or business.

  (Report AT ONCE if this work pattern changes.)
- Custody Change – Report if a child for whom you are filing or who is in your care dies, leaves your care or custody, or changes address.
- Change of Marital Status – Marriage, divorce, annulment of marriage of any child
- Change in school attendance
- Any child is confined to jail, prison, penal institution, or correctional facility for conviction of a felony
- Disability Applicants
  1. The disabled adult child returns to work (as an employee or self-employed) regardless of amount of earnings
  2. The disabled adult child's condition improves
  3. The disabled adult child is incarcerated for conviction of a felony

An agency in your State that works with us in administering the Social Security disability program is responsible for making the disability decision on the child's claim. In some cases, it is necessary for them to get additional information about the child's condition or to arrange for the child to have a medical examination at Government expense.

HOW TO REPORT

You can make your reports by telephone, by mail, or in person, whichever you prefer.

WHEN A CHANGE OCCURS AFTER YOU RECEIVE A NOTICE OF AWARD, YOU SHOULD REPORT BY CALLING THE APPROPRIATE TELEPHONE NUMBER SHOWN NEAR THE TOP OF THIS PAGE.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration

TOE 250

Form Approved
OMB No. 0960-0014

REQUEST TO BE SELECTED AS PAYEE

FOR SSA USE ONLY							
Name or Ben. Sym.	Program	Date of Birth	Type	Gdn.	Cus.	Inst.	Nam.

FOR SSA USE ONLY

DISTRICT OFFICE DESIGNATION:

STATE AND COUNTY CODE:

PRINT name of wage earner, self-employed person, eligible SSI beneficiary, Black Lung beneficiary

ENTER SOCIAL SECURITY NUMBER

– – – / – – / – – – –

PRINT name of person or persons for whom you are applying

ENTER SOCIAL SECURITY NUMBER(S)

– – – / – – / – – – –

PRINT your name *(if different from either of the above)*

ENTER YOUR SOCIAL SECURITY NUMBER

– – – / – – / – – – –

Answer item 1 ONLY if you are the beneficiary and wish benefits paid directly to you.

1. I request that it be paid directly.
CHECK HERE ☐ and answer only item 5 before completing the signature block on page 4.

I REQUEST THAT THE SOCIAL SECURITY BENEFITS, SPECIAL AGE 72 BENEFITS, SUPPLEMENTAL SECURITY INCOME BENEFITS, OR BLACK LUNG BENEFITS FOR THE PERSON OR PERSONS NAMED ABOVE BE PAID TO ME AS REPRESENTATIVE PAYEE.

2. (a) Are you related by blood or marriage to the person(s) for whom you are filing? → ☐ Yes *(If "Yes," answer (b) and go on to item 5.)* ☐ No *(If "No," go on to item 3.)*

(b) How are you related? → *(For example: spouse, child, etc.)*

3. (a) Do you represent a bank, social agency, government office of institution? → ☐ Yes *(If "Yes," answer (b) and (c), and then go on to item 5.)* ☐ No *(If "No," go on to item 4.)*

(b) Enter your employer identification number
– – / – – – – – – – – –

(c) Check (✓) below which you represent:

☐ BANK (or other financial organization) ☐ SOCIAL AGENCY ☐ PUBLIC OFFICIAL *(Representing government office other than social agency or institution)* ☐ INSTITUTION *(Check one below)*

☐ FEDERAL ☐ STATE OR LOCAL ☐ PRIVATE NON-PROFIT ☐ PRIVATE PROPRIETARY If so, is it licensed under State or local law? ☐ Yes ☐ No

4. If you answered "No" to item 2 and 3, what is your relationship to the person(s) for whom you are filing? →

5. (a) Is there a legal representative *(guardian, conservator, curator, etc.)* for the person(s) for whom you are filing? → ☐ Yes *(If "Yes," answer (b) and (c) below.)* ☐ No *(If "No," go on to item 6.)*

(b) Write the following information about the legal representative(s)

NAME *(First name, middle initial, last name)*	ADDRESS *(include ZIP code)*	TELEPHONE NUMBER *(include area code)*

(c) Briefly explain the circumstances which led the court to appoint a legal representative.

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6. (a) Is the person(s) for whom you are filing living with you or in the institution you represent? ☐ Yes *(If "Yes," answer (b) through (f).)* ☐ No *(If "No," go on to item 7.)*

NOTE: If you are the natural or adoptive parent with custody of a minor child or childhood disability beneficiary, of the spouse with custody, or if you are already serving as the beneficiary's payee for SSA, SSI or Black Lung benefits, or if you are the conservator appointed under a voluntary conservatorship, omit the remaining items and go on to page 4.

(b) Why is he/she living with you?	
(c) Who placed him/her with you?	
(d) When was he/she placed with you?	
(e) How long will he/she be with you?	

(f) If you are not the representative of a financial organization, social agency, government office or institution, does work or other activity take you away from home? ☐ Yes ☐ No

If "Yes," who takes care of the person for whom you are filing when you are away? — Name *(First name, middle initial, last name)*

7. (a) If the person(s) for whom you are filing is not living with you, give the following information:

NAME OF PERSON(S) NOT LIVING WITH YOU	NAME, ADDRESS AND TELEPHONE NUMBER OF PERSON OR INSTITUTION WITH WHOM HE/SHE IS NOW LIVING. *(Hereafter this person is called the custodian)*	CUSTODIAN'S RELATIONSHIP TO HIM/HER	DATE HE/SHE BEGAN LIVING WITH CUSTODIAN	
			Month	Year

(If you are an official or the representative of a financial organization or social agency, or otherwise applying in your professional capacity such as an attorney or accountant, answer (d) and go on to question 8. Otherwise, continue with (b).)

(b) Why isn't he/she living with you or in the institution you represent?

(c) Do you visit the child(ren) or adult not living with you, send him/her clothing or other gifts, write letters, etc.? ☐ Yes *(If "Yes," show below how often you do any of those things.)* ☐ No *(If "No," please explain under "Remarks" on page 3 how you will find out about his/her needs.)*

NAME OF PERSON	VISIT	SEND CLOTHING	MAKE OTHER GIFTS	WRITE LETTERS	OTHER *(Describe)*

(d) Do you or any other person or agency give money for his/her support? ☐ Yes *(If "Yes," give the following information.)* ☐ No *(If "No," go on to item 8.)*

NAME OF PERSON(S)	PERSON OR AGENCY CONTRIBUTING, ADDRESS AND TELEPHONE NUMBER. SHOW "SELF" IF YOU ARE CONTRIBUTING.	HOW OFTEN CONTRIBUTIONS ARE MADE	AMOUNTS OF EACH CONTRIBUTION	DATE CONTRIBUTIONS BEGAN

Answer item 8 if you are filing on behalf of a child(ren) who is under age 18 and you are not the natural or adoptive parent.

8. (a) Does the child(ren) for whom you are filing have a living natural or adoptive parent? → ☐ Yes *(If "Yes," answer (b), (c), and (d).)* ☐ No *(If "No," go on to item 9.)*

(b) Give this parent's name, address and telephone number:

NAME OF PARENT →	*(First name, middle initial, last name)*
ADDRESS OF PARENT →	*(Number and street, city, State, and ZIP code)*
TELEPHONE NUMBER *(include area code)* →	( )
(c) Does this parent show interest in the child(ren)? →	☐ Yes ☐ No
EXPLAIN YOUR ANSWER →	
(d) Why do you wish to have benefits paid to you instead of to the parent named above? →	

Answer item 9 if you are not a relative of the person(s) for whom you are filing.

9. (a) Does the person for whom you are filing have a relative *(other than a parent named above)*? → ☐ Yes *(If "Yes" answer (b) and (c).)* ☐ No *(If "No," go to item 10.)*

(b) Give the name, address, and telephone number of this relative, and his/her relationship to the person(s) for whom you are filing.

Name of Relative →	*(First name, middle initial, last name)*
Address of Relative →	*(Number and street, city, State, and ZIP code)*
Telephone Number of Relative *(include area code)* →	( )
Relative's relationship to person(s) for whom you are filing →	
(c) Why do you wish to have benefits paid to you instead of to the relative named above? →	

Answer item 10 ONLY if you are not applying in your professional capacity.

10. (a) Are you under age 18? → ☐ Yes *(If "Yes," show you age.)* _____ ☐ No

(b) Are you employed? → ☐ Yes ☐ No *(If "No," enter below your main source of income.)*

Main source of income →

Answer item 11 ONLY if you are a creditor (e.g., a nursing home, landlord).

11. (a) Is the person for whom you are filing indebted to you or your facility for past care or services? → ☐ Yes ☐ No *(If "Yes," answer (b) and (c).)*

(b) Amount of debt	Date(s) debt incurred	(c) Description of care or services provided in connection with this debt

12. Have you ever been convicted of a felony? ☐ Yes *(If "Yes," explain in Remarks, page 4.)* ☐ No

13. Are you serving, or have you ever served, as representative payee for anyone receiving a Social Security or Supplemental Security Income benefit?

☐ Yes *(If yes, enter SSN(s) in Remarks, page 4.)* ☐ No

REMARKS: *(This space may be used for explaining any answers to the questions. If you need more space, attach a separate sheet.)*

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE SIGNING THIS FORM

I UNDERSTAND THAT ALL PAYMENTS MADE TO ME AS REPRESENTATIVE PAYEE MUST BE SPENT FOR THE BENEFICIARY'S PRESENT NEEDS OR (IF NOT PRESENTLY NEEDED) SAVED FOR THE BENEFICIARY'S FUTURE NEEDS AND I AGREE TO USE THE PAYMENTS THAT WAY. I ALSO UNDERSTAND THAT I MAY BE HELD PERSONALLY LIABLE FOR REPAYMENT IF I MISUSE THE PAYMENTS OR IF I AM FOUND AT FAULT WITH RESPECT TO ANY OVERPAYMENT OF BENEFITS. I AGREE TO FILE AN ACCOUNTING REPORT OF THE USE MADE OF THE PAYMENTS WHEN REQUESTED BY THE SOCIAL SECURITY ADMINISTRATION.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY WHEN ANY PERSON FOR WHOM I RECEIVE PAYMENTS DIES, LEAVES MY CUSTODY, IS LIVING ALONE OR WITH SOMEONE ELSE AND MOVES ELSEWHERE, OR WHEN I NO LONGER HAVE RESPONSIBILITY FOR SUCH PERSON'S WELFARE AND CARE. I ALSO AGREE TO COMPLY WITH THE CONDITIONS FOR REPORTING CERTAIN EVENTS (AS LISTED ON THE ATTACHED SHEET(S) WHICH I WILL MAINTAIN FOR MY RECORDS) AND FOR RETURNING CHECKS TO WHICH THERE IS NO ENTITLEMENT. WHEN AN ANNUAL REPORT OF EARNINGS IS REQUIRED, I AGREE TO FILE SUCH ANNUAL REPORT.

I ALSO AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION AS SOON AS I BELIEVE I WILL NO LONGER BE ABLE TO OR WISH TO ACT AS A REPRESENTATIVE PAYEE. (SUCH ADVANCE NOTIFICATION WILL ASSIST IN THE DEVELOPMENT OF AN ALTERNATE PAYEE AND WILL AVOID UNNECESSARY SUSPENSION OF PAYMENTS.)

I know that anyone who makes or causes to be made a false statement or representation of material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law by fine, imprisonment or both. I affirm that all information I have given in this document is true.

SIGNATURE OF APPLICANT	Date *(Month, day, year)*
Signature *(First name, middle initial, last name) (Write in ink)* SIGN HERE ▶	Telehone Number(s) at which you may be contacted during the day __ __ __ Area Code

Mailing Address *(Number and street, Apt. No., P.O. Box, or Rural Route)*

City and State	ZIP Code	Enter Name of County *(if any)* in which you now live

Witnesses are required ONLY if this application has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the applicant must sign below, giving their full addresses.

1. Signature of Witness	2. Signature of Witness
Address *(Number and street, City, State, and ZIP Code)*	Address *(Number and street, City, State, and ZIP Code)*

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SOCIAL SECURITY
Information for Representative Payees Who Receive Social Security Benefits

YOU MUST PROMPTLY NOTIFY THE SOCIAL SECURITY ADMINISTRATION AND PROMPTLY RETURN ANY BENEFIT CHECK YOU RECEIVE TO WHICH THE BENEFICIARY(IES) IS (ARE) NOT ENTITLED IF ANY OF THE FOLLOWING EVENTS OCCUR:

- DEATH of any beneficiary; (a Social Security beneficiary's entitlement to benefits ends with the month before the month in which the beneficiary dies).
- MARRIAGE of any person entitled to child's, widow's, mother's, father's, widower's, or parent's benefits, to wife's benefits as a divorced wife, or to special age 72 payments.
- DIVORCE or ANNULMENT of the marriage of any person entitled to wife's or husband's benefits; or to special age 72 payments;
- CHANGE IN SCHOOL ATTENDANCE of individual age 18 or over entitled to benefits as a full-time student;
- WORK by a beneficiary under age 70 for more than the annual limit (this limit changes each year and you will be kept informed of the amount) or
- WORK for more than the allowable time period by a beneficiary under age 70 living outside the United States
- Beneficiary begins to receive a GOVERNMENT PENSION or ANNUITY (from the Federal government or any State or any political subdivision thereof) or present payment changes only if the beneficiary is entitled to husband's, widower's, or divorced spouse's benefits.
- Beneficiary leaves your CUSTODY or CARE or otherwise CHANGES ADDRESS.
- A wife, husband, widow, or widower, getting benefits because caring for a son or daughter under age 16 or disabled, NO LONGER HAS A CHILD IN CARE.
- Confinement to jail, prison, penal institution, or correctional facility for conviction of a felony.

FOR A DISABILITY BENEFICIARY YOU MUST ALSO REPORT IF:

- A disabled person's MEDICAL CONDITION IMPROVES so that the beneficiary may be able to work, even if the beneficiary has not yet returned to work;
- A disabled person GOES TO WORK, whether as an employee or self-employed person;
- A disabled person (or someone on the person's behalf) applies for, or begins receiving, WORKMEN'S COMPENSATION BENEFITS, or black lung benefits paid by the U.S. Department of Labor;
- A disabled person (if now hospitalized) is DISCHARGED FROM THE HOSPITAL.
- A disabled person files an application for or begins to receive another Federal, State, or local disability benefit.

FOR A SPECIAL AGE 72 BENEFICIARY YOU MUST ALSO REPORT IF:

- A beneficiary or spouse becomes ELIGIBLE FOR PERIODIC GOVERNMENTAL PAYMENTS (pensions, annuities, retirement payments, etc.), whether from the U.S. Federal government or from the State or local government;
- A beneficiary or spouse receives SUPPLEMENTAL SECURITY INCOME or PUBLIC ASSISTANCE CASH PAYMENTS;
- A beneficiary or spouse resides outside the 50 states of the U.S., the District of Columbia, and the Northern Mariana Islands.

You must also report if YOU CHANGE YOUR MAILING ADDRESS FOR CHECKS or IF YOU CHANGE YOUR RESIDENCE.

Benefits may be affected or even end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events, even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected. You may make your reports by telephone, mail, or in person. It is usually quicker and easier to mail in a reporting form provided by this Social Security office.

You should also notify the Social Security Administration if you decide you will no longer be able to or wish to act as a representative payee. (Such notice will assist in better service to the beneficiary and will avoid unnecessary suspension of payments.)

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A REMINDER TO PAYEE APPLICANTS

PERSON TO CONTACT ABOUT YOUR REQUEST	SSA OFFICE	DATE REQUEST RECEIVED
TELEPHONE NUMBER *(include area code)*		

RECEIPT FOR YOUR REQUEST

Your request for Social Security benefits on behalf of the individual(s) named below has been received and will be processed as quickly as possible.

You should hear from us within ____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you change your address, or if there is some other change that may affect the benefits payable, you—or someone for you—should report the change. The changes to be reported are listed on the reverse.

Always give us the claim number of the beneficiary when writing or telephoning about the claim.

If you have any questions about this application, we will be glad to help you.

BENEFICIARY	SOCIAL SECURITY CLAIM NUMBER

Collection and Use of Information From Your Request—Privacy Act/Paperwork Act Notice

The Social Security Administration is authorized to collect the information on this form under sections (205(j), 205(a), and 1631 (a) (2) of the Social Security Act, as amended (42 U.S.C. 405(j), 405(a) and 1831 (a) (2)). While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no certification of payment may be made to you until this form has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Social Security Act. The information on this form is needed to enable Social Security to determine if you have the necessary qualifications to serve as payee. The information on this form is also needed for the administration of the Social Security program which includes the collection of overpayments once liability is established. Failure to provide all or part of this information could prevent an accurate and timely decision on your request to be selected as payee. Although the information you furnish on this form is almost never used for any other purpose than stated above, there is a possibility that in the administration of the Social Security or SSI programs, or for the administration of programs requiring coordination with the Social Security Administration, information may be disclosed to another person or to another governmental agency as follows: 1) to enable a third party or an agency to assist Social Security in establishing rights to Social Security or SSI benefits and/or coverage; 2) to comply with Federal laws requiring the release of information from Social Security records (e.g., to the General Accounting Office and the Veterans Administration); and 3) to facilitate statistical research and audit activities necessary to assure the integrity and improvement of the programs administered by SSA (e.g., to the Bureau of the Census and private concerns under contract to Social Security).

SUPPLEMENTAL SECURITY INCOME
Information for Representative Payees Who Receive Suplemental Security Income Benefits

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF ANY OF THE FOLLOWING EVENTS OCCUR, AND RETURN PROMPTLY ANY CHECK WHICH YOU RECEIVE FOR WHICH THE BENEFICIARY(IES) IS (ARE) NOT ELIGIBLE.

- DEATH of the beneficiary or any member of the beneficiary's household; (An SSI beneficiary's elegibility to receive benefits ends with the month in which the beneficiary dies)
- CHANGE in beneficiary's household (Increase or decrease in number of people living in beneficiary's household);
- ABSENCE of any beneficiary from the U.S. *(the 50 States, the District of Columbia, and the Northern Mariana Islands)* throughout a calendar month or for at least 30 consecutive days;
- CHANGE in any beneficiary's address;
- ENTRANCE of any beneficiary into a hospital, skilled nursing facility, nursing home, intermediate care facility, or other institution;
- CHANGE in the income of the beneficiary or any member of the beneficiary's household;
- CHANGE in the resources of the beneficiary or any member of the beneficiary's household;
- MARRIAGE of the beneficiary or any member of the beneficiary's household.
- DIVORCE or ANNULMENT of the marriage of the beneficiary or any member of the beneficiary's household;
- SEPARATION of any married beneficiary;

Benefits may be affected or even end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

REPORT THE FOLLOWING EVENTS FOR DISABLED OR BLIND BENEFICIARIES:

- A disabled beneficiary's MEDICAL CONDITION IMPROVES, so that the beneficiary may be able to work, even if the beneficiary has not yet returned to work;
- A disabled beneficiary GOES TO WORK, whether as an employee or self-employed person;
- A blind beneficiary's vision improves.

IF A BENEFICIARY HAS BEEN MEDICALLY DETERMINED TO BE A DRUG ADDICT OR AN ALCOHOLIC YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF THE BENEFICIARY IS NO LONGER RECEIVING TREATMENT REGULARLY AT AN APPROVED FACILITY.

Supplemental security income benefits must be used to meet the beneficiary's present needs, or if not presently needed, must be conserved for future needs. *(If benefits are conserved, you should be aware that such conserved benefits are considered resources and may affect continued eligibility for SSI benefits due to resource limitations.)*

You should also notify the Social Security Administration if you decide you will no longer be able to or wish to act as a representative payee. (Such notice will assist in better service to the beneficiary and will avoid unnecessary suspension of benefits.)

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A REMINDER TO PAYEE APPLICANTS

PERSON TO CONTACT ABOUT YOUR REQUEST	SSA OFFICE	DATE REQUEST RECEIVED
TELEPHONE NUMBER *(include area code)*		

RECEIPT FOR YOUR REQUEST

Your request for Supplemental Security Income benefits on behalf of the individual(s) named below has been received and will be processed as quickly as possible.

You should hear from us within _____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you change your address, or if there is some other change that may affect the benefits payable, you—or someone for you—should report the change. The changes to be reported are listed on the reverse.

Always give us the claim number of the beneficiary when writing or telephoning about the claim.

If you have any questions about this application, we will be glad to help you.

BENEFICIARY	SUPPLEMENTAL SECURITY INCOME CLAIM NUMBER

Collection and Use of Information From Your Request—Privacy Act/Paperwork Act Notice

The Social Security Administration is authorized to collect the information on this form under sections (205(j), 205(a), and 1631 (a) (2) of the Social Security Act, as amended (42 U.S.C. 405(j), 405(a) and 1831 (a) (2)). While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no certification of payment may be made to you until this form has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Social Security Act. The information on this form is needed to enable Social Security to determine if you have the necessary qualifications to serve as payee. The information on this form is also needed for the administration of the Social Security program which includes the collection of overpayments once liability is established. Failure to provide all or part of this information could prevent an accurate and timely decision on your request to be selected as payee. Although the information you furnish on this form is almost never used for any other purpose than stated above, there is a possibility that in the administration of the Social Security or SSI programs, or for the administration of programs requiring coordination with the Social Security Administration, information may be disclosed to another person or to another governmental agency as follows: 1) to enable a third party or an agency to assist Social Security in establishing rights to Social Security or SSI benefits and/or coverage; 2) to comply with Federal laws requiring the release of information from Social Security records (e.g., to the General Accounting Office and the Veterans Administration); and 3) to facilitate statistical research and audit activities necessary to assure the integrity and improvement of the programs administered by SSA (e.g., to the Bureau of the Census and private concerns under contract to Social Security).

BLACK LUNG BENEFITS
Information for Representative Payees Who Receive Black Lung Benefits

YOU MUST PROMPTLY NOTIFY THE SOCIAL SECURITY ADMINISTRATION AND PROMPTLY RETURN ANY BENEFIT CHECK YOU RECEIVE TO WHICH THE BENEFICIARY(IES) IS (ARE) NOT ENTITLED IF ANY OF THE FOLLOWING EVENTS OCCUR:

- DEATH of any beneficiary;
- Benefit payments are made under a STATE WORKMEN'S COMPENSATION (including occupational disease) law or plan based on the miner's disability, or any change in the amount of such benefits;
- The miner received or is receiving UNEMPLOYMENT INSURANCE;
- Any beneficiary IS WORKING OR RETURNS TO WORK, whether as an employee or self-employed person;
- A person entitled to child's, widow's, brother's or sister's benefits MARRIES OR REMARRIES, or in the case of the brother or sister, begins to RECEIVE SUPPORT PAYMENTS from his/her spouse;
- Any entitled child is legally ADOPTED;
- A disabled child, sister, or brother's MEDICAL CONDITION IMPROVES;
- A child, sister, or brother 18 TO 23, STOPS ATTENDING SCHOOL.

You must also report if YOU CHANGE YOUR MAILING ADDRESS FOR CHECKS or IF YOU CHANGE YOUR RESIDENCE.

Benefits may be affected or even end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events, even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected. You may make your reports by telephone, mail, or in person. It is usually quicker and easier to mail in a reporting form provided by this Social Security office.

You should also notify the Social Security Administration if you decide you will no longer be able to or wish to act as a representative payee. (Such notice will assist in better service to the beneficiary, and will avoid unnecessary suspension of payments.)

Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Social Security Administration ATTN: Reports Clearance Officer 1-A-21 Operations Bldg., Baltimore, MD 21235 and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0960-0014), Washington, D.C. 20503.

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A REMINDER TO PAYEE APPLICANTS

PERSON TO CONTACT ABOUT YOUR REQUEST	SSA OFFICE	DATE REQUEST RECEIVED
TELEPHONE NUMBER *(include area code)*		

RECEIPT FOR YOUR REQUEST

Your request for Black Lung benefits on behalf of the individual(s) named below has been received and will be processed as quickly as possible.

You should hear from us within _____ days after you have given us all the information we requested. Some claims may take longer if additional information is needed.

In the meantime, if you change your address, or if there is some other change that may affect the benefits payable, you—or someone for you—should report the change. The changes to be reported are listed on the reverse.

Always give us the claim number of the beneficiary when writing or telephoning about the claim.

If you have any questions about this application, we will be glad to help you.

BENEFICIARY	BLACK LUNG CLAIM NUMBER

Collection and Use of Information From Your Request—Privacy Act/Paperwork Act Notice

The Social Security Administration (SSA) is authorized to collect the information on this form under Section 412(a) of the Federal Mine Safety and Health Act as amended (42 USC 401 and 402). While it is not mandatory, except in the circumstances explained below, for you to furnish the information on this form to Social Security, no certification of payment may be made to you until this completed form has been received by a Social Security office. Your response is mandatory where the refusal to disclose certain information affecting your right to payment would reflect a fraudulent intent to secure benefits not authorized by the Federal Mine Safety and Health Act. The information on this form is needed to enable SSA to determine if you have the necessary qualifications to serve as payee. The information on this form is also needed for the administration of the Social Security program which includes the collection of overpayments once liability is established. Failure to provide all or part of this information could prevent an accurate and timely decision on your request to be selected as payee. Although the information you furnish on this form is almost never used for any other purpose than stated above, there is a possibility that in the administration of various programs, information may be disclosed to another person or to another government agency only with respect to Social Security and/or black lung programs, and to comply with Federal laws requiring the exchange of information between SSA and another agency.

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[FR Doc. 88-29502 Filed 12-22-88; 8:45 am]
BILLING CODE 4150-04-C

National Institutes of Health

Division of Research Resources; Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee (BRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), National Institutes of Health, February 27, 1989, Building 31C, Room 2C15, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 27, from 9:30 a.m. to adjournment to discuss program policies, the Minority High School Student Research Apprentice Program, the Biomedical Research Support Grant Program, and the Biomedical Research Support Shared Instrumentation Grant Program. Attendance by the public will be limited to space available.

The Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. John A. Beisler, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee, (301) 496–6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalouge of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health).

Dated: December 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–29463 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the Board of Scientific Counselors, Division of Cancer Prevention and Control meeting which was published in the **Federal Register** (53 FR 48982) on December 5, 1988.

The Board originally scheduled for a two day meeting now will be held on January 26 only from 8:30 a.m. to adjournment in Building 1, Wilson Hall, 3rd Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Dated: December 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–29460 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board on January 30, 1989, 8:30 a.m. to approximately 5 p.m., at the Crystal Gateway Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. John R. Abbott, Executive Director, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–0801, will provide on request an agenda and roster of members. Summary minutes of the meeting may also be obtained by contacting his office.

Dated: December 15, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–29461 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Planning Subcommittee of the Board of Regents of the National Library of Medicine; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on January 13 and 14, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on January 13, and from 9:00 a.m. to adjournment on January 14. In this second one of three planning meetings, the subcommittee will continue discussions on the Outreach Programs of the National Library of Medicine—how the Library can fully inform health care professionals of its products and services, and how to establish a permanent user feedback mechanism. Attendance by the public will be limited to space available.

Ms. Susan P. Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–2311, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Date: December 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–29462 Filed 12–22–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–08–4111–15; WYW104520]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW104520 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW104520 effective June 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–29455 Filed 12–22–88; 8:45 am]

BILLING CODE 4310–22–M

VOL 53 ISS 247 DE 23 1988 UMI

INTERSTATE COMMERCE COMMISSION

Intent to Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: The O.M. Scott & Sons Company, 14111 Scottslawn Road, Marysville, OH 43041.

2. Wholly-owned subsidiary which will participate in the operations:

Hyponex Corporation, Delaware
Hyponex Corporation-Florida, Florida
Hyponex Corporation-Texas, Texas
Hyponex Corporation-California, California
Bunyon Enterprises, Inc., Georgia
The Hyponex Company, Inc., Georgia
Bunyon Trucking Company, Inc., Georgia
Hyper Humus Company, Inc., New Jersey
Hyponex Corporation-Colorado, Colorado
Hyponex Corporation-Missouri, Missouri
F.F. Smith & Co., Inc., California
Sequoia Chemical Corporation, California
Old Fort Financial Corp., Delaware

Noreta R. McGee,
Secretary

[FR Doc. 88-29504 Filed 12-22-88; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub No. 5) (89-1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the first quarter 1989 rail adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF is 1.046, an increase of 0.6 over the fourth quarter RCAF of 1.040. Maximum first quarter RCAF rate levels may not exceed 100.6 percent of maximum fourth quarter 1988 RCAF rate levels.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275-7354
Robert C. Hasek, (202) 275-0938
TDD for hearing impaired, (202) 275-1721

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Decided: December 15, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 88-29503 Filed 12-22-88; 8:45 am]
BILLING CODE 7035-01-M

[I.C.C. Order No. P-98]

Passenger Train Operation; Burlington Northern Railroad Co. et al.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Seattle, Washington and Chicago, Illinois. The operation of these trains requires the use of the tracks and other facilities of Soo Line Railroad Company (Soo). A portion of the Soo tracks near Wisconsin Dells, Wisconsin, are temporarily out of service because of a derailment. An alternate route is available via Burlington Northern Railroad Company (BN) and Chicago Central & Pacific Company (CC) between La Crosse, Wisconsin and Chicago, Illinois.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Burlington Northern Railroad Company (BN) and Chicago Central & Pacific Railroad Company (CC) are directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between La Crosse, Wisconsin and Union Station, Chicago, Illinois.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 10:00 a.m., (EST), November 9, 1988.

(e) *Expiration date.* The provision of this order shall expire at 10:00 a.m., (EST), November 11, 1988, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Burlington Northern Railroad Company, Chicago Central & Pacific Railroad Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the **Federal Register.**

Issued at Washington, DC, November 9, 1988.

Decided by: William J. Love, Agent.

Noreta R. McGee,
Secretary.

[FR Doc. 88-29505 Filed 12-22-88; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31363]

Blackstone Capital Partners L.P. et al.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P. (jointly Blackstone) and USX Corporation (USX) from the prior approval requirements of 49 U.S.C. 11343 and from the requirements of 49 U.S.C. 11321 to allow USX to transfer control of

eight regulated carriers (seven rail and one water) to Blackstone. The Commission further finds that the proposal will not violate 49 U.S.C. 10746.

DATES: The exemption will be effective on December 28, 1988. Petitions for reconsideration must be filed by January 12, 1989.

ADDRESSES: Send an original and 10 copies of pleadings referring to Finance Docket No. 31363 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives: John W. Barnum, Ann D. Smith, White & Case, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

(TDD for hearing impaired (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: December 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29507 Filed 12–22–88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31372]

Buffalo & Pittsburgh Railroad, Inc.; Operation Exemption; Lucerne Branch in Pennsylvania

Buffalo & Pittsburgh Railroad, Inc. (B&P) has filed a notice of exemption to operate a 1.86-mile line of railroad between milepost 0.00 at Lucerne Junction, PA asnd milepost 1.86 at Lucerne Mine, PA (the Lucerne Branch). The line was previously abandoned by CSX Transportation, Inc. (CSXT).[1] B&P purchased the Lucerne Branch from CSXT by agreement dated July 18, 1988. It intends to reactivate and operate the line on the effective date of the exemption.

Any comments must be filed with the Commission and served on Charles D. Cramton, Harter, Esq., Secrest & Emery, 700 Midtown Tower, Rochester, NY 14604.[2]

This notice is filed under 49 CFR 1150.31.[3] If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29441 Filed 12–22–88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31380]

Consolidated Rail Corp.; Trackage Rights Exemption; Terminal Railroad Association of St. Louis

The Terminal Railroad Assocation of St. Louis (TRRA) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between the connection of TRRA and Conrail trackage at Q Interlocking, at or near Missouri Avenue in East St. Louis, IL, and a point south of Q Tower, near M&O junction in East St. Louis, that connects with trackage of Chicago, Missouri and Western Railway (CM&W), a distance of 0.85 miles. The trackage rights were to have become effective on December 12, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29445 Piled 12–22–88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31313]

Consolidated Rail Corp.; Trackage Rights Exemption; Panther Valley Railroad and Schuylkill County Rail Transport Authority

The Panther Valley Railroad (PVAL) and Schuylkill County Rail Transport Authority (Authority) have agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between the connection of Conrail's Shimer Running Track and track operated by PVAL, at York Junction, PA (milepost 148.3), and the connection of PVAL's track and Conrail's Beaver Brook Colliery Branch, a distance of approximately 1,100 feet. The track is owned by the Authority and operated by PVAL. The trackage rights were to have become effective on November 30, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29442 Filed 12–22–88; 8:45 am]

BILLING CODE 7035-01-M

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[1] *See* Docket No. AB–19 (Sub-No. 110A), *Buffalo, Rochester and Pittsburgh Railway Company and the Baltimore and Ohio Railrood Company—Abandonment and Discontinuance—In Indiana County, PA* (not printed), served January 31, 1986.

[2] The Railway Labor Executives' Association (RLEA) and the United Transportation Union (UTU) filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. OUC replied, seeking denial of the request. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's and UTU's request is denied because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

[3] Although B&P is a Class II railroad, no new Class I or II railroad would be created by this transaction. Therefore, it is properly classified under 49 CFR 1150.33(h) and subject to the procedures at 49 CFR 1150.32–1150.34 and not to the procedures of § 1150.35. *Class Exemption—Acq. & Oper. R. Lines under 49 U.S.C. 10901*, 4 I.C.C.2d 309 (1988). B&P did not certify that projected revenues for the Lucerne Branch do not exceed those that would qualify it as a Class III carrier as required by 49 CFR 1150.33(h). However, it is obvious that they do not because the line to be operated was previously abandoned and generates no revenues.

[Finance Docket No. 31368]

Florida Northern Railroad Co., Inc.; Acquisition and Operation Exemption; Certain Rail Lines of CSX Transportation, Inc.

Florida Northern Railroad Company, Inc. (FN), a non-carrier, has filed a notice of exemption to acquire and operate approximately 27 miles of railroad of CSX Transportation, Inc. (CSXT), located in Florida. The lines extend from: (a) Milepost AS–756.69, near Lowell, FL, to milepost AS–781.20, near Candler, FL (24 miles); and (b) from milepost ARC–793.68, near Ocala, FL, to milepost ARC–791.00, also near Ocala (3 miles). The agreement for transfer of the lines between FN and CSXT was to be consummated on or before November 28, 1988.

A transaction relating to the continuance in control of FN by the Pinsly Railroad Company is the subject of a notice of exemption filed concurrently in Finance Docket No. 31369, *Pinsly Railroad Company—Continuance in Control Exemption—Florida Northern Railroad Company, Inc.* Any comments must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue NW., Washington, DC 20036, and David W. Hemphill, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

N&W must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines, under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988). [1]

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29439 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

[1] FN has certified that CSXT has identified such sites and structures to the Florida State Historic Preservation Officer.

[Finance Docket No. 31369]

Pinsly Railroad Co.; Continuance in Control Exemption; Florida Northern Railroad Co., Inc.

Pinsly Railroad Company (Pinsly) has filed a notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of the Florida Northern Railroad Company, Inc. (FN) upon the commencement of rail operations by FN. Pinsly controls four class III railroads: the Greenville and Northern Railway Company (G&N), the Pioneer Valley Railroad Company (PV), the Florida Central Railroad Company (FC), and the Florida Midland Railroad, Inc. (FM).

FN, a wholly-owned noncarrier subsidiary of Pinsly, has filed concurrently a notice of exemption in Finance Docket No. 31368, *Florida Northern Railroad Company, Inc.—Acquisition and Operation Exemption—Certain Rail Lines of CSX Transportation, Inc.* There, FN seeks an exemption under 49 CFR 1150.31 to purchase and operate approximately 27 miles of railroad of CSX Transportation, Inc., located near Lowell, Candler, and Ocala, FL.

Pinsly indicates that: (1) G&N, PV, FC, FM, and FN will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue NW., Washington, DC 20036.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–29440 Filed 12–22–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31378; Finance Docket No. 31378 (Sub-No. 1)]

Shamokin Valley Railroad Co. et al.; Operation Exemption; Certain Lines of SEDA–COG Joint Rail Authority in Pennsylvania

The Shamokin Valley Railroad Company (Shamokin) and the Nittany and Bald Eagle Railroad Company (N&BE) have filed a joint notice of exemption: (1) To operate lines of the SEDA–COG Joint Rail Authority (SEDA–COG); (2) for overhead trackage rights; and (3) for the continuance in control of Shamokin by Richard D. Robey. Shamokin and N&BE are Pennsylvania corporations formed by Mr. Richard D. Robey to perform rail services under operating agreements with SEDA–COG. On or about December 1, 1988, SEDA–COG acquired certain abandoned lines of railroad in central Pennsylvania from the Consolidated Rail Corporation (Conrail). At that time, Shamokin and N&BE began operating over the lines acquired by SEDA–COG. Conrail agreed to grant overhead trackage rights to Shamokin and N&BE in order that these carriers can interchange freight with the Conrail system.

In Finance Docket No. 31378, Shamokin has filed for an exemption to operate rail lines previously abandoned by Conrail and acquired by SEDA–COG. These lines are located in Northumberland County, PA, and extend: (1) From a point at or near milepost 13.2 (station 697+0) of Paxinos Industrial Track to the end of ownership in the Borough of Shamokin at or near milepost 18.3 (station 967+50); (2) from Locust Gap Junction at or near milepost 24.3 (station 1281+50) to Sagon Junction at or near milepost 25.86 (station 1366+45.8); (3) from Carbon Run Junction in the Borough of Shamokin at or near milepost 0.02 (station 1+25) of the Carbon Run Industrial Track to the end of ownership at or near milepost 1.46 (station 77+50); (4) from a point at or near milepost 131.0 (station 6916+80) west of Mt. Carmel Junction to the east line of Third Street and the connection with the Buffalo line in the City of Sunbury, PA, at or near milepost 156.31 (station 8250+17).

In addition, SEDA–COG acquired from Conrail certain previously abandoned lines of railroad located in Centre, Clinton, and Blair Counties, PA (referred to as the Bald Eagle Branch). N&BE has filed for an exemption to operate the Bald Eagle Branch. The line extends from Milesburg, PA, at or near milepost 34.6 (station 1827+82) to Mill Hall, PA, at or near milepost 51.5.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab intio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

In Finance Docket No. 31378 (Sub-No. 1), Mr. Robey, an individual in control of two carriers, N&BE and the Northshore Railroad Company (Northshore),[1] has filed for an exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding his continuance in control of Shamokin. He indicated that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this continuance in control exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

This notice is filed under § 1180.2(d)(2). Petitions to revoke this continuance in control exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Also in Finance Docket No. 31378 (Sub-No. 1), Conrail has agreed to grant overhead trackage rights to Shamokin and N&BE. Trackage rights to Shamokin have been granted between milepost 131.0 through Mt. Carmel Junction to interchange with Conrail at Sunbury. Conrail has agreed to grant overhead trackage rights to N&BE between Mill Hall, PA, and Lock Haven, PA, on the Bald Eagle Branch.

As a condition to the use of this trackage rights exemption, any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29443 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-292 (Sub-No. 2X)]

Alabama & Florida Railroad Co., Inc.; Abandonment Exemption; Covington and Geneva Counties, AL

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 1.7-mile line of railroad: (a) Between milepost 597.04 and milepost 597.85 at Opp, AL; and (b) between milepost 624.40 and milepost 625.30 at Geneva, AL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue NW., Suite 800, Washington, DC 20005-4797.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 28, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29444 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] The control by Mr. Robey of N&BE and Northshore was approved by the Commission in Finance Docket No. 30543, *Nittany and Bald Eagle Railroad Company and Northshore Railroad Company—Exemption from 49 U.S.C. 11343* (not printed), served August 22, 1984.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-6 (Sub-No. 306X)]

Burlington Northern Railroad Co.; Abandonment Exemption Between Fort Collins and Laporte, In Larimer County, Co

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 4.0-mile line of railroad between milepost 75.00 near Fort Collins and milepost 79.00 near LaPorte, in Larimer County, Co.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Ethel A. Allen, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 28, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29438 Filed 12-22-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-6 (Sub-No. 304)]

Burlington Northern Railroad Co.; Abandonment Between Sutton And Clay Center In Clay County, NE

The Commission has issued a certificate and decision authorizing Burlington Northern Railroad Company to abandon its 11.78 miles of rail line between milepost 106.46 near Sutton and milepost 94.68 near Clay Center in Clay County, NE. The abandonment certificate will become effective January 23, 1989, unless within 15 days after publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than January 3, 1989. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: December 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-29506 Filed 12-22-88; 8:45am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Action to Enjoin Discharge of Water Pollutants; Clearwater, FL, et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19020, notice is hereby given that a consent decree in *United States* v. *City of Clearwater, Florida, et al.*, Civil Action No. 88-1970-CIV-T-15B , was lodged with the United States District Court for the Middle District of Florida, Tampa Division, on December 15, 1988. The consent decree establishes a compliance schedule for the City of Clearwater's three publicly owned wastewater treatment facilities, known as the Marshall Street, East and Northeast Pollution Control Facilities, to bring them into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the applicable National Pollutant Discharge Elimination System Permits, and the applicable regulations relating to the discharge of pollutants. The consent decree also requires payment of a civil penalty of $300,000. The consent decree calls for the City of Clearwater to achieve compliance by October 1, 1990.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530 and should refer to *United States* v. *City of Clearwater, Florida, et al.*, D.J. Ref. No. 90-5-1-1-3015.

The consent decree may be examined at the office of the United States Attorney, Middle District of Florida, Robert Timberlake Bldg., Rm. 410, 500 Zack Street, Tampa, Florida 33602 and at the Region IV office of the

Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. A copy may be obtained by mail by written request to the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $2.60 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–29456 Filed 12–22–88; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Proposed Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed FY 1989 Research, Demonstration, and Service Program Priorities and Merit Selection Criteria under the Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing, for comment, a Notice of FY 1989 proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, title IV, section 405, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention amendments of 1988, subtitle F of title VII of Pub. L. 100–690, November 18, 1988.

DATE: Comments are due on or before February 24, 1989.

ADDRESS: Send comments to Verne L. Speirs, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724–7751.

FOR FURTHER INFORMATION CONTACT: Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724–7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1989, the continued funding of three programs through assistance awards will constitute all proposed section 405 priority funding areas. The Administrator is hereby announcing these proposed priorities, specifying merit and performance criteria to be applied in their review and inviting public comment on them for sixty days.

The following criteria, based on merit, will be considered in assessing the three noncompeting continuation awards (a noncompeting continuation grant is a grant made in support of a new budget period within an approved and existing project period):

(1) The results of title IV funding under the recipient's current award justify further program activity;

(2) The recipient has promptly submitted all required reports;

(3) Adequate grantor agency funds are available to support the project;

(4) The recipient has shown satisfactory progress in achieving the objectives of the project and has met all material terms and conditions of the award;

(5) The recipient's management practices have provided adequate stewardship of grantor agency funds; and

(6) Any other reason that would indicate continued funding would be in the best interest of the Government.

Listed below are programs currently funded under section 405 of the Missing Children's Assistance Act that are proposed as continuing program priorities for FY 1989 under their existing project period grants.

The Child Victim as Witness Research and Development Program

This program implements and tests new strategies to be used to improve court policies and practices for handling child victim witnesses (section 405(a)(6)).

Families of Missing Children: Psychological Consequences and Promising Interventions

The purpose of this project is to increase our knowledge of, and develop effective treatment alternatives for, the psychological consequences of families with missing and exploited children (section 405(a)(4) (A) and (B)).

Reunification of Missing Children

The purpose of this development initiative is to identify promising or effective strategies to assist families in adjusting to the return of a missing child (section 405 (a)(7)).

Dated: December 20, 1988.

Verne L. Speirs,

Administrator, Office Of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–29528 Filed 12–22–88; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer,

BEST COPY AVAILABLE

Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

Trade Adjustment Assistance (TAA Financial Status/Request for Funds Report)
New; ETA 9023
On Request
State or local governments
50 respondents; 500 total hours; 2 hours per response; 1 form

The Department of Labor requires financial data for the Trade Adjustment Assistance (TAA) program administered by States which are not available from the Standard Form 269A. The required data are necessary in order to meet statutory requirements prescribed in Pub. L. 100–418, the Omnibus Trade and Competitiveness Act of 1988.

Departmental Management
Compliance Information Report/Nondiscrimination-Handicapped 29 CFR Parts 31 and 32
State and local governments

Approximately 30 respondents reviewed annually; 1,585.5 hours (recordkeeping and reporting); 53 hours per response; no forms; in addition, 5401 grantees/subgrantees maintain records annually; 119,904 hours (recordkeeping); 22 hours per entity.

The Directorate of Civil Rights has responsibility for developing, implementing and monitoring the Department of Labor's enforcement program under all equal opportunity (EO) and non-discrimination requirements applicable to the Department's programs of Federal financial assistance. Various EO regulatory provisions require these grantees to collect, maintain and report data on participants' characteristics, e.g., race, sex, age, etc. in order to ensure that services are provided equitably.

Revision

U.S. Department of Labor, Bureau of Labor Statistics, Office of Prices and Living Conditions Consumer Price Index Housing Survey 1220–0034;

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 222S	Renters, Managers, Owners (including business or other for profit; small businesses or organizations).	2,000	Once	2 minutes.
BLS 222I	Renters, Managers, Owners	500	Once	8 minutes.
BLS 222NC	Renters, Managers, Owners	300	Once	9 minutes.
BLS 222R	Renters, Managers, Landlords	40,000	Semiannual	8 minutes.
BLS 222R	Owners	20,000	Annual	6 minutes.
BLS 222 CATI I	Renters, Managers, Owners	9,000	Once	4.2 minutes.
BLS 222 CATI R	Renters, Managers, Owners	6,000	Semiannual	10 minutes.
BLS 222 CAPI	Renters, Managers, Owners	500	Semiannual	10 minutes.

16,433 total hours

These forms are for the Consumer Price Index Housing Survey which measures price change for the Rent and Owners' Equivalent Rent components of the Consumer Price Index, which account for 25 percent of its total weight.

Extension

Employment Standards Administration
Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlement
1215–0151; CA–1032
Annually
Individuals or households

38,000 respondents; 12,667 total hours, ⅓ hr. per response; 1 form

The CA–1032 is used to obtain information from claimants receiving compensation on the Division of Federal Employees' Compensation periodic disability roll. This information is necessary to ensure that the compensation being paid is correct.

Extension

Employment Standards Administration
Authorization for Release of Medical Information
1215–0057; CM–936
On occasion
Individuals or households

3,000 respondents; 250 total hours; 5 min. per response; 1 form.

This form is necessary to obtain miner medical information incurred outside of Department jurisdiction. The Privacy Act prevents hospitals, clinics, and physicians from releasing this information without prior consent.

Extension

Employment and Training Administration
Annual State WIN Plans
1205–0214; ETA 8480, 8484, 8485, 8479
Annually
State or local governments

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 8480	State/local govts.	25	Annually	10 hrs. ea.
ETA 8484	State/local govts.	25	Annually	10 hrs. ea.
ETA 8485	State/local govts.	25	Annually	10 hrs. ea.
ETA 8479	State/local govts.	25	Annually	10 hrs. ea.
Plan	State/local govts.	25	Annually	10 hrs. ea.

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1,925 total hours

The State WIN Plan is the basic planning and management tool utilized by the national and regional offices to ensure State compliance with legislation, regulations, and national office goals. It is the vehicle for providing allocation levels to State agencies. Respondents are State staff.

Extension

Occupational Safety and Health Administration
Air Quality Record
On occasion
Businesses or other for profit; Small businesses or organizations
187,500 responses; 46,876 hour; 1 form, .25 hours per response

Underground construction employers are required to keep a record of air quality test results in order to identify decreasing oxygen levels or potentially hazardous concentrations of air contaminants in time to take corrective action prior to the attainment of hazardous conditions.

Signed at Washington, DC this 15th day of December, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88-29563 Filed 12-22-88; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council; Renewal

In accordance with the provision of the Federal Advisory Committee Act, and after consultation with GSA, I have determined that the establishment of the Business Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics on technical economic and statistical matters, in the analysis of the Bureau's statistics, and on the broader aspects of its program from an informed business point of view; and provide a realistic and timely two-way communications structure between business users and providers of basic economic statistics and a major governmental statistics-producing unit.

Council membership is selected to assure a technically competent group of economists, statisticians and industrial relations experts who represent a cross section of American business and industry. The members serve in their individual capacities, not as representatives of their companies or their organizations.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act by January 5, 1989.

Interested persons are invited to submit comments regarding renewal of the Business Research Advisory Council. Such comments should be addressed to: Janice D. Murphey, Liaison for BRAC, Bureau of Labor Statistics, Department of Labor, Room 2126, GAO Building, 441 G Street, NW., Washington, DC 20212, telephone: (202) 523-1347.

Signed at Washington, DC this 20th day of December 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc 88-29564 Filed 12-22-88; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits hae been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Pennsylvania:
PA88–9 (Jan. 8, 1988) ..... pp. 922–923.
PA88–15 (Jan. 8, 1988) ..... p. 954.
PA88–17 (Jan. 8, 1988) ..... p. 960
PA88–23 (Jan. 8, 1988) ..... p. 1002.

Volume II

None.....

Volume III

None.....

General Wage Determination Publication

General Wage determinations issued under Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 16th day of December 1988.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88–29388 Filed 12–22–88; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–88–220–C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 2339, Zanesville, Ohio 43701 has filed a petition to modify the application of 30 CFR 77.216–3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Broken Aro Mine (I.D. No. 33–00949), Sediment Pond No. 47 (I.D. No. 12110H80070–06) located in Coshocton County, Ohio.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined by a qualified person designated by the person owning, operating or controlling the impounding structure at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions.

2. As an alternate method, petitioner proposes to examine the sediment pond No. 47, at their closed Broken Aro Mine, monthly and following major precipitation.

3. In support of this request, petitioner states that the facility has been inspected weekly since construction in 1980 and there has been no geometric change. The structure has an excellent vegetative cover, no signs of instability have appeared; there are no downstream hazards to miners or to the public; and the nearest building is a barn approximately a half-mile downstream. There are no miners employed at the mine except the dam inspector once a week, the dam is locked, access is blocked by cable, and the inspector has the only key.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1989. Copies of the petition are available for inspection at that address.

Date: December 16, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 88–29506 Filed 12–22–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–225–C]

Rickco Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rickco Coal Company, HC 83, Box 664, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15–16396) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric tractors used to load coal at the face. The monitor is required to be kept operative and properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is not in use, it is used as a man trip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1989. Copies of the petition are available for inspection at that address.

Date: December 15, 1988.

[FR Doc. 88–29567 Filed 12–22–88; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Federal Advisory Committee on International Exhibitions; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on January 9, 1989, from 10:00 a.m.–4:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include the future role of the committee and guidelines.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 20, 1988.

Yvonne M. Sabine,

Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–29560 Filed 12–22–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison Co. et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 117 to Provisional Operating License No. DPR–13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the license for operation of the San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment approves the installation of the upgraded Nuclear Implementation System, together, with modified limiting conditions for operation and surveillance requirements in the Technical Specifications for the upgraded system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 18, 1988 (53 FR 17809). No request for a hearing or petition for leave to intervene was filed following this notice. The supplemented information provided by the licensees subsequent to the initial notice in the **Federal Register** concerned additional background on the plant, and did not alter the original application.

The Commission has prepared an Environmental Assessment related to this action which was published in the **Federal Register** on June 9, 1988 (53 FR 21742) and has concluded that an environmental impact statement need not be prepared because operation of the facility in accordance with this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 15, 1988, as supplemented October 18 and 21, and November 10, 19 and 23 (two letters), 1988, (2) Amendment No. 117 to License No. DPR–13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of those items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 13th day of December 1988.

For The Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–29519 Filed 12–22–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26369; File No. SR–NYSE–88–42]

Self-Regulatory Organization; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Monthly Expirations for Stock Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for six months, through June 30, 1989 or until the Commission acts on the NYSE's request for approval of the pilot program, its pilot program allowing "monthly expirations" for stock options (the listing of series in stock options to assure that contracts covering four expiration months, including the two nearest-term expiration months, are always open for trading).

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1987, the Commission approved a four-month extension of the Exchange's pilot program allowing monthly expirations in stock options retroactive from January 16, 1987. (*See* Rel. NO. 34–24193 (March 9, 1987); File No. SR–NYSE–87–1.) The Commission subsequently approved a one-year extension of the Exchange's pilot program, allowing the listing through May 21, 1988, of short-term series enabling monthly expirations in stock options. (*See* Rel. No. 34–24650 (June 26, 1987); File No. SR–NYSE–87–15). In 1987, the other options exchanges also received one-year extensions of their pilot programs to allow monthly expirations of stock options and to add February and March cycle series to their programs. Subsequently, the May 21, 1988 deadline was extended to December 16, 1988.

The proposed rule change extends the pilot program for an additional six and one half months or until the Commission act on the NYSE's request for approval of the pilot program. This further extension is designed to give the Commission time to study the effects the pilot has had on the trading public.

The statutory basis of the proposed rule change is section 6(b) of the Securities Exchange Act of 1934 (the "Act") in general and, in particular, Paragraph (5) of section 6(b), which requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change imposes no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, so that the pilot program can continue without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the pilot program can continue without interruption. In addition, the Commission previously has solicited comment on this and other near-term expiration pilot programs submitted by other options exchanges and has not received any negative comments on the operation of these pilot programs. Moreover, the current pilot program, which has been in effect for a year, has operated effectively and generally has been well received. Finally, the Commission's approval is limited until June 30, 1989 or until the Commission acts on the NYSE's request for approval of the pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, an all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 16, 1988.

[FR Doc. 88–29558 Filed 12–22–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26368; File No. SR–PSE–88–28]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Policy Statement on Market Closings

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on December 7, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, submits its Policy Statement on Market Closings ("Policy Statement"). The Policy Statement is set forth in full below:

POLICY STATEMENT ON MARKET CLOSINGS

October 27, 1988.

The Board of Governors of the Pacific Stock Exchange has reviewed the "circuit breaker" proposal of the President's Working Group on Financial Markets, and the responses to the proposal by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"). Based upon its review of the proposals and statements, the Board of Governors has adopted this Policy Statement.

The Working Group recommends that all U.S. markets for equity and equity-related products halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points from its previous day's closing level and for two hours if the DJIA declines 400 points.

The NYSE has filed for, and received approval, to implement a circuit breaker system based upon the Working Group's proposal. The NASD has adopted a policy statement calling for the pursuit of other initiatives relating to the authority of the Securities and Exchange Commission, the coordination and unification of clearing and

settlement systems, and establishment of an intermarket self-regulatory coordinating policy group.

The NASD's Statement recognizes the need to consider the Working Group's proposal and acknowledges the risks imposed on any single market remaining open while all other U.S. markets have halted trading. In that regard, the NASD will, upon request from SEC, halt domestic trading in all securities quoted in the NASDAQ system and domestic trading in equity and equity-related securities in the over-the-counter market.

While the PSE is sensitive to the need for interim solutions that will help to reinstate public confidence, the Board does not believe that the best solution has been found. Accordingly, the Board has decided not to file a rule that adopts the NYSE filing using circuit breakers. The Board will, however, cooperate with a request from the SEC to halt trading in all equity and equity-related products traded at the PSE, in conjunction with halted trading at other U.S. markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

(A)(Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 31, 1988, the New York Stock Exchange ("NYSE") filed proposed Rule 80B with the Commission regarding trading halts due to extraordinary market volatility.

The proposal was originally conditioned upon the approval of similar rule changes of the other self-regulatory organizations ("SROs"), as well as the halting of futures contracts under identical circumstances. In that regard, the Commission asked each exchange's board to approve similar rules and file them as soon as possible. The NYSE subsequently revised its proposal and removed the contingency relating to other SRO filings. The SEC approved the NYSE filing on October 19, 1988.[1] As a result, the PSE Board of Governors has reviewed the "circuit breaker" proposal recommended by the President's Working Group on Financial Markets as well as the proposals submitted by the NYSE and the National Association of Securities Dealers ("NASD"). Having reviewed these proposals, the Board of Governors has adopted this Statement of Policy.

The proposed Policy Statement is consistent with section 6(b)(4) of the Act in that, among other things, it promotes just and equitable principles of trade, and protects investors and the public interest. In addition, the proposed Policy Statement is consistent with section 6(b)(5) of the Act in that it will enable the PSE to enhance its ability to facilitate transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed Policy Statement imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PSE did not receive comments on the Policy Statement.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of this proposed rule change pursuant to section 19(b)(2) of the Act based on Commission approval of proposals on market closings submitted by the NYSE, the NASD, the American Stock Exchange, and the Chicago Board Options Exchange in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.[2] The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**. The PSE's proposed Policy Statement is virtually identical to a proposal submitted by the NASD that was reviewed by the Commission and that was noticed and approved on an accelerated basis in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637. In light of the absence of any adverse comments on the NASD's filing and the Commission's view of the benefits that may accrue from the adoption of coordinated circuit breakers that respond to stock market volatility and that may increase investor confidence in the markets, the Commission believes a good cause finding is justified.

The Commission finds that the proposed Policy Statement filed by the PSE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of 6 [3] and the rules and regulations thereunder. The proposal will permit the Exchange to coordinate with the other securities SROs and futures exchanges in providing a mechanism to address periods of extreme downward volatility in the stock market. The Commission notes that the PSE stated in its Policy Statement that it will halt trading in all equity and equity-related products [4] only in response to a request from the SEC. The Commission hereby requests that the PSE implement its Policy Statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading (*i.e.*, whenever the DJIA declines 250 or 400 points).[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

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[1] Securities Exchange Act Release No. 26198, 53 FR 41637.

[2] Letter from Rosemary A. MacGuinness, Staff Attorney, PSE, to Howard Kramer, Assistant Director, Commission, dated December 7, 1988.

[3] 15 U.S.C. 78f (1982).

[4] Equity related products would include options on stock and stock indices.

[5] The Commission made a similar request of the NASD in approving its policy statement on market closings. *See* 53 FR 41637.

[6] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: December 16, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29557 Filed 12-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16696 (812-7156)]

Fiduciary Capital Partners, L.P., et al.; Application

December 16, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Fiduciary Capital Partners, L.P. ("Enhanced Yield Fund"), Fiduciary Capital Pension Partners, L.P. ("Enhanced Yield Pension Fund", collectively with Enhanced Yield Fund, "Partnerships") and Fiduciary Capital Management, L.P. ("Fiduciary Capital").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of each Partnership are not "interested persons" of such Partnership or of Fiduciary Capital, (ii) the Independent General Partners of a Partnership will not be deemed to be "interested persons" of such Partnership by virtue of their service as Independent General Partners of the other Partnership and (iii) persons who become limited partners ("Limited Partners") of a Partnership and own less than 5% of the Units (as hereinafter defined) in such Partnership will not be deemed "affiliated persons" of the Partnership or any of its other partners solely by reason of their status as Limited Partners.

Filing Dates: The application was filed on October 21, 1988, and amended on December 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 9, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants, 375 Park Avenue, Suite 2602, New York, NY 10152, Attention: Michael G. Rafferty, Jr.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney, (202) 272-3047, or Brion Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300.)

Applicants' Representations

1. Each Partnership is a recently formed limited partnership organized under Delaware law. Each Partnership has elected to be a business development company and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. Each Partnership will terminate no later than November 30, 1998, or ten years from the final closing of the sale of Units in such Partnership, if later, unless extended for up to two additional one-year periods.

2. The Partnerships have filed a joint registration statement on Form N-2 under the Securities Act of 1933 ("1933 Act") with respect to an aggregate offering by the Partnerships of up to 75,000 (125,000 if the increased sale right is exercised in full) of limited partnership interests in the Partnerships (collectively, the "Units"). PaineWebber Incorporated will act as selling agent for the Units on a "best efforts" basis.

3. Each Partnership Agreement will provide that there must be at least two Independent General Partners (defined to be an individual who is not an "interested person" of the Partnership within the meaning of the 1940 Act), and that a majority of the General Partners must be Independent General Partners. It is contemplated that the same individuals will serve as Independent General Partners for both the Enhanced Yield Fund and the Enhanced Yield Pension Fund. The Independent General Partners will have overall responsibility for the management of each of the Partnerships. Fiduciary Capital will serve as each Partnership's managing general partner ("Managing General Partner") and will be responsible for purchasing investments for each Partnership which have been approved by the Independent General Partners, for providing administrative services to the partnership and for the admission of additional or assignee Limited Partners to the Partnership.

4. Fiduciary Capital will also act as the investment adviser to each Partnership pursuant to a separate investment advisory agreement ("Advisory Agreement") between Fiduciary Capital and each Partnership. Under each Advisory Agreement, Fiduciary Capital will be responsible for the identification of all investments to be made by the respective Partnership and will perform other functions carried out by the investment adviser to a business development company. Fiduciary Capital has filed an application to be a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").

5. Each Partnership will be managed solely by the Independent General Partners thereof, except with regard to those specific activities of such Partnership for which Fiduciary Capital, in its capacity as the Managing General Partner or as the investment adviser of such Partnership, will be responsible. The Independent General Partners of a Partnership will provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of an investment company organized as a corporation. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the disinterested directors of an incorporated registered investment company. The Limited Partners of a Partnership cannot participate in its management or control. However, Limited Partners may exercise certain rights and powers under the Partnership Agreement, including voting rights and the giving of consents and approvals provided for in such Partnership Agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. It is the opinion of legal counsel to each Partnership that the existence of these voting rights does not subject the Limited Partners to liability as General Partners under The Revised Uniform Limited Partnership Act of the State of Delaware. In addition, each Partnership Agreement will obligate the General Partners of such Partnership to take all such action which may be

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[7] 17 CFR 200.30-3(a)(12) (1988).

necessary or appropriate to protect the limited liability of the Limited Partners.

The Partnerships have considered the possibility of obtaining errors and omissions insurance. In light of the view of the staff of the SEC that substantial insurance coverage is appropriate in view of the special problems of using the limited partnership form for registered investment companies, the Independent General Partners of each Partnership will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy for such Partnership.

Applicants' Legal Analysis

1. Applicants request that each Partnership and the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of a Partnership or of Fiduciary Capital as the Managing General Partner and investment adviser of a Partnership because such Indpendent General Partners are General Partners of a Partnership and co-partners of Fiduciary Capital. Each Partnership has been structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company organized as a partnership.

2. The Independent General Partners of a Partnership may be deemed to be "interested persons" of such Partnership by virtue of their service as Independent General Partners of the other Partnership. Applicants believe that service by the same individuals as Independent General Partners of both Partnerships, a relationship similar to one in which an individual services as a director of multiple investment companies in the same complex, will be beneficial to both Partnerships. Thus, Applicants request that the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that they would otherwise be deemed to be "interested persons" of such Partnership solely by virtue of their service as Independent General Partners of the other Partnership.

3. Section 2(a)(3)(D) of the 1940 Act provides that an "affiliated person" of an entity includes any "partner" or "copartner" thereof, and thus, each Limited Partner might be deemed to be an affiliated person of a Partnership, as well as any other Limited Partner, the Independent General Partners and Fiduciary Capital. Accordingly, Applicants request exemption from section 2(a)(3)(D) of the 1940 Act so that any Limited Partner owning less than 5% of the Units of a Partnership will not be deemed an "affiliated person" of such Partnership, any other Limited Partner, any of the Independent General Partners or Fiduciary Capital solely because such Limited Partner is a partner of the Partnership or a partner with any such other persons in the Partnership. Applicants submit that requested relief will place investments in the Partnerships on a footing more equal with investments in business development companies organized as corporations. Applicants further submit that exempting the Independent General Partners and the Limited Partners of each Partnership from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act, to the extent requested, is consistent with the provisions, policies and purposes of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants agree that the Partnerships will be structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated investment company registered under the 1940 Act.

2. In certain limited instances, under the Partnership Agreements, in-kind distributions to Partners are authorized. However, the Partnerships each agree not to make any in-kind distributions of portfolio securities to their respective Partners until they have obtained either a "no-action" letter from the SEC staff or, alternatively, an order of exemption pursuant to Section 206A of the Advisers Act permitting such distributions.

3. Applicants will obtain an opinion of counsel satisfactory to the Independent General Partners of each Partnership that the distributions and allocations to the Managing General Partner of each Partnership can be paid in accordance with section 205 of the Advisers Act. Applicants do not request SEC review or approval of such opinion letter.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29559 Filed 12-22-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2322; Amdt. #1]

Arkansas (And Contiguous Counties in the States of Louisiana, Mississippi, and Missouri); Declaration of Disaster Loan Area

The above-mentioned Declaration (53 FR 49632) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated December 2, 1988, to include the following counties, in the State of Arkansas, as a result of damages from tornadoes and severe storms beginning on November 15, 1988: Chicot, Clark, Columbia, Craighead, Faulkner, Garland, Greene, Independence, Izard, Logan, Nevada, Ouachita, Phillips, Poinsett, Prairie, Saline, Stone, White, and Woodruff.

In addition, applications for economic injury from small businesses located in the contiguous counties of Ashley, Baxter, Calhoun, Clay, Crittenden, Cross, Desha, Drew, Fulton, Hempstead, Jackson, Lafayette, Lawrence, Lee, Mississippi, Monroe, Pike, Randolph, St. Frances, Scott, Sebastian, Sharp, Union, and Yell, in the State of Arkansas; Bossier, Claiborne, East Carroll, Morehouse, Webster, and West Carroll Parishes in the State of Louisiana; and Dunklin County, Missouri, may be filed until the specified date at the previously designated location.

Applications for economic injury from small businesses located in the contiguous counties of Bolivar, Coahoma, Issaquena, Tunica, and Washington, in the State of Mississippi, may be filed until the specified date at: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

The closing dates remain the same; i.e., the termination date for filing applications for physical damage is the close of business on January 23, 1989, and for economic injury until the close of business on August 23, 1989.

The number assigned to this disaster for physical damage is 232212 and for economic injury the number is 667200 for the State of Arkansas; 667800 for the State of Louisiana; 667900 for the State

of Mississippi, and 668000 for the State of Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 7, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-29499 Filed 12-22-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2325; Amdt. #1]

North Carolina (And Contiguous Counties in the State of Virginia); Declaration of Disaster Loan Area

The above-numbered Declaration (53 FR 50343) is hereby amended to assign an economic injury declaration number for the contiguous counties of Brunswick, Greensville, and Southampton, as well as the independent cities of Chesapeake and Virginia Beach, in the State of Virginia. The number assigned to this disaster for economic injury in the State of Virginia is 668100. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: December 9, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-29500 Filed 12-22-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10:00 a.m. on Wednesday, January 11, 1989 in the James Cleveland Federal Building, Room B-16, 55 Pleasant Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302-1257, (603) 225-1400.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

December 15, 1988.

[FR Doc. 88-29345 Filed 12-22-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 16, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46006

Date Filed: December 12, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 1989.

Description: Application of Private Jet Expeditions, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity pursuant to section 401(d)(3) of the Act, to engage in nonscheduled (charter) air transportation of persons, property and mail between a point or points in the United States and points throughout the World.

Docket No. 46007

Date Filed: December 12, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 9, 1989.

Description: Application of Ontario Express Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit authorizing it to engage in foreign air charter transportation in accordance with the U.S./Canada Non Scheduled Air Service Agreement.

Docket No. 46008

Date Filed: December 12, 1988.

Description: Application of Novair International Airways Limited fka Cal Air International Limited, pursuant to section 402, request reissuance in its current corporate name of the foreign air carrier permit issued to it under Order 87-3-64. The applicant's corporate name was changed to Novair International Airways Limited on December 7, 1988.

Docket No. 46010

Date Filed: December 13, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 10, 1989.

Description: Application of Air Micronesia, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests an amendment to its certificate of public convenience and necessity for Route 170 that would add a new segment between the coterminal points Saipan, Northern Mariana Islands, Palau, Eastern Caroline Islands, Guam and Brisbane/Sydney, Australia.

Docket No. 46014

Date Filed: December 14, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 11, 1989.

Description: Application of Canafrica Transportes Aereos, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests authority to engage in the non-scheduled air carriage of persons, property and mail between any point or points in Spain and any point or points in the United States.

Docket No. 46018

Date Filed: December 16, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 13, 1989.

Description: Application of Trans International Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in foreign air transportation of property and mail between the U.S. points of Los Angeles, Honolulu, Agana, Guam, Saipan, and Pago Pago, American Samoa on the one hand, and Sydney and Townsville, Australia and Taipei, Taiwan, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-29525 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

[Docket S-839]

Lykes Bros. Steamship Co., Inc.; Extension of Comment Period Concerning the Application for a Dual Service Privilege on Trade Route 13/22

Lykes Bros. Steamship Co., Inc., by letter dated December 9, 1988, has requested a 45 day extension of time with respect to the consideration of its application of November 3, 1988, for a Dual Service Privilege on its Trade Route 13 and Trade Route 22 service. Therefore, the Maritime Administration

is extending the comment period for 45 days, until January 26, 1989.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies).)

By Order of the Maritime Subsidy Board.

Date: December 20, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-29471 Filed 12-22-88; 8:45 am]

BILLING CODE 4910-01-M

UNITED STATES INSTITUTE OF PEACE

Solicited Grants 1989; Regional Conflict Management and Resolution

I. The United States Institute of Peace

The United States Institute of Peace is an independent, nonpartisan federal institution created and wholly funded by Congress to strengthen the nation's capacity to promote the peaceful resolution of international conflict. Established in 1984, the Institute has its origins in the tradition of American statesmanship which seeks to limit international violence and to achieve a just peace based upon freedom and human dignity. The Institute fulfills its congressional mandate to expand available knowledge about ways to achieve a more peaceful world through an array of programs including grant-making; a three-tiered fellowship program; research and studies projects; development of library resources; and a variety of citizen education activities.

II. The Grants Program

The Grants Program of the United States Institute of Peace promotes scholarship, education, training, and the dissemination of information on international peace and conflict management by providing financial support to nonprofit organizations, official public institutions, and individuals. Institute-funded research projects have addressed such topics as the role of third-party negotiators in the resolution of regional conflicts; religious and ethical questions in war and peace; the use of nonviolent sanctions in confronting political violence; global security in the nuclear age; and the relationship between domestic political systems and the aggressive use of force.

III. Solicited Grants—1988

In addition to its established practice of providing support for unsolicited grant proposals, the Institute has initiated a program of solicited grant projects which will serve to focus attention on themes and topics of special interest. Projects which were approved and funded in the first cycle of solicited grants will examine religious violence and nationalism in the Third World; analyze the implications for strategic stability, peace, and security of reductions in strategic nuclear forces of the United States and the Soviet Union; and provide forums in which policymakers and strategic theorists, policy-analysts and peace researchers, and moral philosophers, religious spokesmen and peace activists can exchange contending ideas on the paradoxes of nuclear deterrence.

IV. Solicited Grants—1989

General Theme: Mitigation or Resolution of Regional Conflict—Lessons for Negotiators and Policy-Makers

In establishing the Institute of Peace, Congress observed that "many potentially destructive conflicts among nations and peoples have been resolved constructively and with cost efficiency * * *through proper use of such techniques as negotiation, conciliation, mediation and arbitration." The Institute is interested in studies which examine in detail those techniques and such others as good offices, fact-finding, and peacekeeping, as they have been applied to conflicts in various regions of the developing world. The Institute is also concerned about the relationship of those techniques to other factors which affected the outcome of the conflicts, such as the roles of parties external to the region, either as protagonists or as mediators.

Case-Studies

The general theme of the 1989 solicited grant program is regional conflict management and resolution in the developing world. The Institute invites proposals for projects that use the case-study approach to examine specific historical incidents. It is the Institute's expectation that these studies of regional conflicts will focus on the post-World War II period. This, however, should not be interpreted as precluding analysis of earlier cases. Projects may be constructed to yield a variety of products and they may be directed to specialized as well as to more general audiences.

Most particularly, the Institute is interested in specific cases from Africa, Asia, Latin America, and the Middle East which may provide insights for the constructive reduction and resolution of contemporary or future international conflicts, as well as pitfalls to be avoided. The following are only some of the cases which might be examined for useful lessons:

Africa

- Angola and Namibia
- The Western Sahara
- The Horn of Africa (Ethiopia, Sudan, and Somalia)
- Mozambique
- South Africa
- Nigeria and Biafra
- The UN and the Congo (Zaire)
- Independence in Zimbabwe

Asia

- Afghanistan and the Soviet Union
- The West Irian Dispute
- The Tamilese/Singhalese Conflict in Sri Lanka
- The Indus Waters Dispute
- The Indo-Pak War and the Creation of Bangladesh
- Kampuchea/Viet Nam
- North Korea/South Korea—Role of Unofficial and Official Diplomacy in Moves Toward Rapprochement

Latin America

- Nicaragua, the Contadora Group, and the Arias Plan
- Argentina/Chile and the Beagle Channel Dispute
- The Falklands/Malvinas War
- The "Soccer War" Between Honduras and El Salvador

Middle East

- Yemen War (Egypt/Yemen/Saudi Arabia)
- The Iran-Iraq War
- The Abortive Israeli-Lebanese Agreement of 1983
- Selected Aspects of the Arab-Israeli Conflict:

a) Resolution of the Suez Crisis of 1956

b) The Immediate Aftermath of the 1967 War and the Adoption of UN Resolution 242

c) Kissinger's "Shuttle Diplomacy" After 1973

d) Camp David and the Egyptian-Israeli Peace Treaty

e) Egyptian-Israeli Negotiations Over Palestinian Autonomy, 1979–1982

- Cyprus
- Greek-Turkish Dispute Over the Continental Shelf in the Aegean

Factors

Suggested factors for consideration in the studies of specific cases include:

—The impact of East-West rivalry, defined in terms of: (a) Cases where both the U.S. and the U.S.S.R. were actively involved; (b) cases where only one of the superpowers was actively involved; (c) cases where

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neither superpower was actively involved;
—Methods for settling disputes short of armed conflict;
—The conduct and utility of such forms of dispute responses as conciliation, mediation, negotiation, arbitration, and force (including economic sanctions);
—The role of official third parties—international or regional organizations, states, or individuals—in reducing and settling differences between belligerents;
—The roles of unofficial emissaries in "track II" diplomatic activity;
—The effect of UN or non-UN peacekeeping forces and observers;
—The utility of particular negotiating techniques, devices, or approaches;
—Structural and systemic changes which may contribute to more stable relations, including regional arms-control agreements;
—The impact of the proliferation of nuclear and chemical/biological weapons (including "second tier" armssuppliers linked neither to the Atlantic Alliance nor to the Warsaw Pact) and the availability of affordable "smart weapons";
—Intra-regional change, including shifting demographic patterns and economic stress; indigenous religious movements and the polarization of conflict; and regime responses in the face of popular demands for greater political freedom.

V. How To Apply for a Solicited Grant

The Institute encourages applications from nonprofit organizations, official public institutions, and individuals. For further information or application material, please call or write: Solicited Grant Projects, United States Institute of Peace, 1550 M Street, NW., Suite 700, Washington, DC 20005–1708, (202) 457–1700, FAX # (202) 429–6063.

VI. Deadline for Applications

The closing date for receipt of solicited grant applications in the current review cycle is April 1, 1989. Announcements of awards will be made on or about September 1, 1989.

Contact: Hrach Gregorian, Director of Grant Programs, United States Institute of Peace, 1550 M Street NW., Suite 700, Washington, DC 20005, (202) 457–1700.

Charles Duryea Smith,

General Counsel.

December 16, 1988.

[FR Doc. 88–29464 Filed 12–22–88; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 247
Friday, December 23, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 9:47 a.m., Wednesday, December 21, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Conservatorship.

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under exemption (8). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-29621 Filed 12-21-88; 4:02 pm]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 50621 December 16, 1988.

STATUS: Open Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 13, 1988.

CHANGES IN THE MEETING: Cancellation.

The following items were not considered at an open meeting scheduled for Monday, December 19, 1988, at 10:00 a.m.:

1. Consideration of an application of Delta Government Options Corp. for registration as a clearing agency under section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272-2775.

2. Consideration of whether to issue for comment a release proposing Rule 15c2-10 under the Securities Exchange Act of 1934 to govern the operation of proprietary trading systems that are operated as facilities of national securities exchanges or associations and a conforming amendment to Rule 3a12-7 under the Securities Exchange Act of 1934. For further information, please contact Gordon K. Fuller at (202) 272-2414 or Eugene Lopez at (202) 272-2828.

3. Consideration of the recommendation with respect to the request of RMJ Securities Corporation ("RMJ Securities") and its subsidiary, RMJ Options Trading Corporation, that the staff issue a non-action letter with respect to the non-registration of RMJ Securities' option trading system as a national securities exchange under Sections 3(a)(1) and 6 of the Securities Exchange Act of 1934. For further information, please contact Gordon K. Fuller at (202) 272-2414.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-2300.

Jonathan G. Katz,

Secretary.

December 19, 1988.

[FR Doc. 88-29556 Filed 12-21-88; 9:01 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 247
Friday, December 23, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-101]

Importation of Birds

Correction

In proposed rule document 88-28067 beginning on page 49185 in the issue of Tuesday, December 6, 1988, make the following corrections:

1. On page 49186, in the 1st column, in the 1st complete paragraph, in the 14th line, "not" should read "now".

2. On page 49188, in the 3rd column, under **Executive Order 12291 and Regulatory Flexibility Act**, in the 2nd paragraph, in the 16th line, "or" should read "to".

§ 92.11 [Corrected]

3. On page 49191, in the first column, in § 92.11(h)(4)(ix)(A), in the fourth line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools

Correction

In notice document 88-26898 appearing on page 46920 in the issue of Monday, November 21, 1988, make the following corrections:

1. In the first column, under **SUMMARY**, in the ninth line, "Department" should read "Departments".

2. In the same column, under **ADDRESSES**, in the third line, "Roland" should read "Ronald"; and in the fourth line, "Program" should read "Programs".

3. In the second column, under **SUPPLEMENTARY INFORMATION**, in the fifth line, "674.52" should read "674.53".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0340]

Shell Oil Co.; Filing of Food Additive Petition

Correction

In notice document 88-24764 appearing on page 43272 in the issue of Wednesday, October 26, 1988, make the following correction:

In the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 13th and 14th lines, "6-weight-percent" should read "6 weight-percent."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87D-0315]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Prescription Compounding; Withdrawal of Approval of Abbreviated Antibiotic Drug Applications

Correction

In notice document 88-28027 beginning on page 49231 in the issue of Tuesday, December 6, 1988, make the following correction:

On page 49232, in the first column, in the paragraph designated 2, in the first line "AADA 61-805" should read "AADA 61-085".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0322]

Nippon Gohsei (U.S.A.) Co., Ltd.; Filing of Food Additive Petition

Correction

In notice document 88-25543 beginning on page 44670 in the issue of Friday, November 4, 1988, make the following corrections:

1. On page 44671, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "(HHF-355)" should read "(HFF-335)".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the 14th line, "2,2-dimethyl-1-1,3-" should read "2,2-dimethyl-1, 3-".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0335]

Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producung Animals; Opportunity for Hearing

Correction

In notice document 88-26344 beginning on page 46050 in the issue of Tuesday, November 15, 1988, make the following corrections:

1. On page 46059, in the first column, in the second complete paragraph, in the sixth line, "February 13, 1989" should read "January 17, 1989".

2. On the same page, in the 3rd column, in the 14th line, make the same correction.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-09-4212-13; AZ A 23589]

Realty Action; Exchange of Public Land; Arizona

Correction

In notice document 88-27029 beginning on page 47269 in the issue of Tuesday, November 22, 1988, make the following correction:

On page 47269, in the third column, in the third complete paragraph, in the third line, "August 30, 1980" should read "August 30, 1890".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-09-4212-12; Serial No. AZA 23606]

Realty Action; Gila and Salt River Meridian; Arizona

Correction

In notice document 88-26118 beginning on page 45599 in the issue of Thursday, November 10, 1988, make the following correction:

On page 45599, in the third column, under *Gila and Salt River Meridian, Arizona*, under "T. 9 N., R. 9 W.,", in the third line, "SW¼,SE½" should read "SW¼SE¼".

BILLING CODE 1505-01-D

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federal register

Friday
December 23, 1988

Part II

Environmental Protection Agency

40 CFR Part 85

Motor Vehicle Emissions Control System Performance Warranty Short Tests; Alternative Test Procedures; Notice of Proposed Rulemaking

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[AMS FRL-3455-2]

Motor Vehicle Emissions Control System Performance Warranty Short Tests; Alternative Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an alternative loaded-mode test procedure for inclusion in the Emissions Control System Performance Warranty Short Tests of 40 CFR Part 85, Subpart W. The alternative establishes test and dynamometer specifications that could be substituted for those contained in the present regulations for the loaded-mode portion of the Loaded Test. The State of Arizona plans to use the proposed test procedure in its emissions inspection and maintenance program. Final approval would bring Arizona's program into direct compliance with the emission control performance warranty provisions, allowing owners of vehicles which fail in the loaded mode to claim the intended warranty coverage. The proposed revision should be at least equal to the present Loaded Test in limiting errors of commission, or false failures, and retains reasonable correlation with the Federal Test Procedure.

DATES: No public hearing will be held on this proposal, unless specifically requested, for the reasons described in Section IV of today's notice. In the event that no hearing is requested, written comments must be submitted by January 23, 1989.

Any request for a public hearing must be received by EPA in writing at the address listed below for further information no later than January 9, 1989. If held, the hearing will be scheduled approximately 30 days after publication of this proposal. The exact date will be announced in a subsequent **Federal Register** notice. All written comments must then be submitted 30 days after the date of the public hearing.

ADDRESSES: Docket A-88-32 containing material relevant to this action is located at: Central Docket Section, South Conference Center, Room 4, U.S. EPA, 401 M Street, SW., Washington, DC 20460. Interested persons may inspect the docket between 8:00 am and 4:00 pm, on weekdays. The EPA may charge a reasonable fee for copying. All written comments should be submitted (in duplicate if possible) to: Central Docket Section, Docket A-88-32, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Any public hearing that may be scheduled in conjunction with this proposed rulemaking will be held at: Conference Room, Motor Vehicle Emissions Laboratory, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4390.

SUPPLEMENTARY INFORMATION:

I. Background

A. Performance Warranty

Section 207(b) of the Clean Air Act (the Act) establishes a mechanism to provide emission control performance warranty coverage for all motor vehicle classes. The statute requires the establishment of short test procedures to be used for determining in-use compliance of vehicles with Federal emission standards, if the Administrator determines that three conditions have been met: (1) The short test methods and procedures are "available" (i.e., that the necessary equipment may be readily obtained and the procedure is reasonably expected to serve its function); (2) the procedures are consistent with good engineering practices; and (3) the results are reasonably capable of being correlated with the Federal Test Procedure (FTP) used to certify vehicles for initial sale. If such test procedures are established, the Act then requires promulgation of regulations to implement the performance warranty for vehicles that fail an approved test if certain conditions are met.

On May 22, 1980, EPA published the necessary finding in the **Federal Register** establishing three "short test" procedures (45 FR 34802). These short tests are intended to be used by states as part of their vehicle inspection and maintenance (I/M) programs. On the same date, EPA also promulgated emission performance warranty regulations (45 FR 34829). These warranty regulations cover 1981 and newer model year light-duty vehicles and light-duty trucks whose owners may be subject to any sanction as a result of failing to meet emission standards, as determined by an approved short test. The warranty covers light-duty motor vehicles up to five years or 50,000 miles, if the vehicles were maintained and operated in accordance with the manufacturer's instructions. The test procedures and performance warranty regulations are contained in 40 CFR Part 85 Subparts V and W.

One June 12, 1984, EPA amended the warranty regulations (49 FR 24320). The amendments included a provision allowing states to request alternative short test standards or procedures.

B. Loaded Test

Among the short tests etablished in 1980 was the Loaded Test (§ 85.2214). The test consists of both loaded-mode and idle-mode operation. Conducting the emissions test under load is designed to detect in-use malfunctions that are not apparent during idle-neutral testing. To produce this load the vehicle is operated on a dynamometer. The current test protocol begins with a 30 mile per hour (mph) cruise at a dynamometer load of 9.0 horsepower (hp) for the loaded mode, followed by an idle-neutral mode. The loaded test procedure permits exhaust measurements to be taken from either the loaded mode, the idle mode, or both. If measurements are not taken during the 30 mph cruise, that mode is treated as a preconditioning step prior to the idle-mode measurement.

The dynamometer specifications and calibration procedures of the loaded-mode test were based largely on the variable-curve dynamometers used for certification testing. Thus, the 30-mph/9.0-hp test point was originally to be achieved by adjusting the power absorption unit, or PAU, of the variable-curve dynamometer to provide the appropriate speed/load response curve. A daily check (required by § 85.2217(c) of the existing regulation) was designed to ensure that the variable load PAU was properly adjusted, as indicated by the settings of the road load controller or road load indicator.

A few I/M programs have installed the equipment needed to conduct loaded testing. However, the dynamometers are not the variable-curve units anticipated by EPA at the time the warranty regulations were originally promulgated. Rather, economic considerations resulted in the installation of single-curve dynamometers, which were all designed and built by the Clayton Manufacturing Company. Unlike a variable-curve dynamometer, a single-curve unit uses a PAU with a fixed speed/load response curve. This relationship, which is roughly cubic for the dynamometers customarily employed in automotive applications, is determined at the time the PAU is manufactured.

The PAUs in the Clayton single-curve dynamometers were made to generate a road load of 30 hp at 50 mph. This

specification was associated with the originally proposed, but never promulgated, short tests. At the nominal speed of 30 mph called for in the current performance warranty regulations, such a dynamometer generates a corresponding road load of 7.0 hp.

The obvious difference in dynamometer specifications between the variable-curve and existing single-curve dynamometers means that I/M programs employing these latter units are in technical noncompliance with the approved Loaded Test. This is not presently a problem with regard to performance warranty coverage, primarily because the three states using loaded test procedures perform the cruise mode only as a preconditioning step prior to conducting an official idle test. That is, any measurements taken during the cruise condition are not used to pass or fail the vehicle. These programs are, therefore, in compliance with the approved Idle Test. However, this situation will change in the future as described below.

C. Loaded-Mode Testing in Arizona

The present Arizona I/M program passes or fails vehicles based on their exhaust emissions during idle operation only. On August 10, 1988, EPA approved revisions to the carbon monoxide (CO) State Implementation Plan (SIP) for that state. The SIP contains a statutory commitment requiring 1981 and newer vehicles to pass the I/M test during both idle-mode and loaded-mode operation. The loaded-mode testing is scheduled to begin January 1, 1989.

Arizona presently has the equipment necessary to perform loaded testing. In fact, it is one of the states employing loaded-mode operation in the I/M program for preconditioning some vehicles prior to the idle test. The State's equipment consists of the single-curve Clayton dynamometers manufactured to the 30 hp at 50 mph specification. The Arizona Department of Environmental Quality (ADEQ) has informed EPA of its intention to use the existing dynamometers for loaded-mode testing, so that expensive and time consuming equipment changes or modifications can be avoided. As already mentioned, this makes the program technically out of compliance with the approved Loaded Test, leaving affected consumers vulnerable to losing warranty coverage.

The Agency believes that the lack of explicit warranty coverage in this instance would be contrary to the intent of Congress as expressed in section 207(b) of the Act. Also, as discussed in more detail later, there is no technical reason why the short test criteria can not be met with more economical, single-curve dynamometers rather than variable-curve units, or with test specifications other than those now contained in the regulations. Therefore, EPA believes that programs with single-curve dynamometers, such as Arizona, should be afforded the opportunity of complying with EPA requirements without expensive modifications to the equipment and procedures. Similarly, EPA believes that any I/M programs wishing to change the test procedure from loaded preconditioning to a loaded-mode pass/fail, or wishing to add a cruise mode to a simple idle test program, should have a lower cost method of doing so. For these reasons, EPA believes that revising the loaded test requirements is desirable.

II. Contents of the Proposal

A. Test Procedure Revisions

The Agency is proposing to revise the loaded-mode portion of the Loaded Test to accommodate single-curve dynamometers in addition to the more sophisticated variable-curve units. The present loaded-mode test procedure requires the emissions measurement to be taken while the vehicle is operated on the dynamometer at 29–31 mph (§ 85.2216). This results in a nominal loading of about 8.1 to 9.9 hp during the test. Within the range of possible revisions, EPA has selected two alternatives for discussion in this proposal. The alternative procedures are based on those being considered by ADEQ for incorporation into the Arizona I/M program.

The simplest alternative is to change the dynamometer specification to require a lighter load of 7.0 ± 1.0 hp at 30 mph roll speed. Arizona has also indicated a preference for a slightly slower speed range of 28–30 mph during the test. Using these values results in a nominal loading of about 5.7 to 7.0 hp. This is a somewhat lighter load condition than the current testing requirements.

A more detailed revision involves establishing a schedule of speed/load test conditions based on a simple indicator of engine size and power rating. The speed/load schedule is identical to that currently used in the Wisconsin I/M program for preconditioning vehicles on Clayton single-curve dynamometers. The schedule is shown in the following Table 1.

TABLE 1—PROPOSED THREE-SPEED DYNAMOMETER TEST SCHEDULE

Engine size (cylinders)	Roll speed MPH	Nominal loading (hp)
4 or less	22 to 25	2.8 to 4.1.
5 to 6	29 to 32	6.4 to 8.4.
7 or more	32 to 35	8.4 to 10.8.

ADEQ has indicated a preference for the latter revision because of concerns that many of today's smaller vehicles may be tested at inappropriately high loads, thereby increasing the number of errors of commission, or false failures.

As already noted, the principal guidance for evaluating the approvability of any alternative short test are the three criteria contained in section 207(b) of the Act. Basically, the procedure must be reasonably available, follow good engineering practice, and reasonably correlate with the FTP. Regarding the first two criteria, both alternatives described above represent a relatively minor change to the test protocol and equipment required by the existing Loaded Test. Therefore, the alternatives obviously are available and continue to be consistent with good engineering practice.

Regarding the last criterion, EPA is in general agreement with ADEQ that testing at lighter loads, especially under the second alternative, could reduce the number of errors of commission for vehicles with smaller engines. Some manufacturers have previously raised this issue informally, claiming that EPA's 9.0 hp load is too high for representative testing of smaller sized and lower powered vehicles. (Too high a loading may cause vehicles to enter a rarely used operational mode in which design fuel metering and ignition timing calibrations favor high emissions.) Of the two alternatives described above, a reduction in false failures would appear more likely with the variable speed/load procedure because of its significantly lighter loading for smaller engines. Reducing errors of commission is generally consistent with increasing correlation with the FTP.

Offsetting this potential benefit is the possibility that testing at lighter loads may allow some marginally performing vehicles to pass the loaded-mode test, which would otherwise fail. This phenomenon is referred to as an error of omission, and reduces correlation with the FTP. There is no engineering reason to expect such behavior, however, for the small differences in load conditions associated with changing from a dynamometer specification of 9.0 to 7.0 hp, i.e., the first alternative. There may

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be some risk of this happening at the greater differences associated with the second alternative. Nevertheless, EPA believes that the load specified for each engine size is adequate, so that the potential for errors of omission, even under the second alternative, should not be significantly different than that of the existing loaded-mode test. Further, to the extent this might occur, its effect on correlation with the FTP would tend to be neutralized by the benefit in reducing errors of commission. Therefore, on balance, both of the alternative loaded-mode revisions appear consistent with the Act's criteria for approvability.

The Agency presently believes that the greater potential for reducing errors of commission, which is associated with the three-speed procedure (the second alternative), justifies the small potential increase in the risk of inappropriately passing marginally performing vehicles. Therefore, EPA is specifically proposing to supplement the existing loaded-mode test conditions and dynamometer specifications on an optional basis with those described in the second alternative. These specifications are compatible with existing single-curve dynamometers and variable-curve units. Comments are specifically requested on the representativeness of the speed/load points for each engine size, and the effects of this procedure on errors of commission and omission relative to the existing 9.0 hp test requirement and the alternative 7.0 hp requirement. Comments are also requested on the desirability of promulgating the 7.0 hp alternative rather than the three-speed alternative.

B. Quality Control Procedure Revisions

This action also proposes a number of additions or changes to the dynamometer calibration procedures to improve quality control during loaded-mode testing. First, the Loaded Test (§ 85.2214(b)) would be amended to require a check of variable-curve dynamometers prior to each test for the proper settings on the road load indicator or automatic road-load controller. This requirement would represent a minimal time demand, while preventing false tests in programs that employ modes or test conditions in addition to those specified in the performance warranty regulations. The new check would replace the daily check of § 85.2217(c), which would be deleted. Because the power absorption unit is not adjustable in a single-curve dynamometer, no such check is necessary in programs using single-curve units.

Second, a proposed minor revision to the wording of § 85.2216(b) would tighten the accuracy of the dynamometer roll speed measurement to 1.0 mph, and apply that limit over the range of possible true roll speeds that could be encountered during actual testing.

Third, and finally, the calibrations and adjustments section (§ 85.2217) would be amended to reflect EPA's concern that the speed and load accuracy of both single- and variable-curve dynamometers be verified at regular intervals. A monthly check of the roll speed indicator is proposed to be added to § 85.2217(e). A proposed biannual check (§ 85.2217(f)) would require verification of the road load response of variable-curve dynamometers and the PAU load of single-curve dynamometers.

Comments on the above proposals, especially the proposed biannual check, are solicited. The biannual requirement presumes use of a vehicle coast-down procedure or the equivalent to verify performance of variable-curve dynamometers. Because such a procedure has minimal application to single-curve dynamometers, an assessment of PAU torque is considered sufficient for these instruments. Although not currently contained in EPA regulations, this requirement is consistent with the manufacturer's recommended procedures.

III. Environmental and Economic Effects

The proposed revision to the loaded-mode procedure should have no significant effect on the emission benefits of the Loaded Test. Testing at lighter dynamometer loadings might result in passing some marginally performing vehicles than might otherwise occur. However, to the extent this may occur, EPA believes the number of these vehicles would be very limited. Further, not all of the marginally performing vehicles that incorrectly pass when tested in the loaded mode will also pass in the idle mode, so at least some of these vehicles will fail the full I/M test. Therefore, the overall emission benefits of the Loaded Test should not be significantly affected.

The proposed revision will allow existing dynamometers to be in technical compliance with the approved short test regulations and similar economical equipment to be used by other programs desiring to implement loaded-mode testing in the future. There should be no incremental economic effect with regard to consumers seeking performance warranty coverage, except to the extent that fewer errors of commission will increase the economic efficiency of the regulation. Therefore, EPA does not anticipate any adverse economic effects to occur as a result of this proposal.

IV. Public Participation

A. Comments and the Public Docket

In all rulemakings, EPA desires full public participation in arriving at final decisions. The Agency solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Central Docket Section, Docket No. A–88–32 (see "**ADDRESSEES**").

B. Public Hearing

This proposed action consists of relatively minor technical revisions to the existing Loaded Test. The modifications do not alter the intent or scope of the original rulemaking. No adverse economic effects are anticipated and the overall environmental effect of the changes will not be significantly different than that otherwise occurring under the present requirement. For these reasons, the Agency believes that adequate public review and comment is afforded by the opportunity for written comment on this proposal, without the need for a public hearing. Therefore, EPA does not intend to schedule a public hearing in conjunction with this action unless it is specifically requested by a commenter on or before January 9, 1989. (See "**DATES**" for further information.)

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major." This proposed regulation does not constitute a major rule because its total annual cost is projected to be less than $100 million; it will not increase costs for consumers, the industry or State or local governments; and it involves no adverse effects on competition, productivity, investment, employment, or innovation. Therefore, a Draft Regulatory Impact Analysis is not required.

This rulemaking action has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291. Any written comments from OMB and any written EPA response thereto will be placed in the public docket for this rulemaking.

VI. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. This proposed action modifies an existing regulation in a manner that potentially reduces the economic effect of the requirement. Also, because the revised procedure is no more stringent than the existing emission performance warranty short test, there should be no additional effect on entities manufacturing vehicles or aftermarket parts. Accordingly, I certify that this proposed regulation will not have a significant adverse effect on a substantial number of small entities.

VII. Reporting and Recordkeeping Requirements

This proposal does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research warranties.

Authority: 42 U.S.C. 7541 and 7601.

Dated: December 14, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, Part 85 of 40 CFR is proposed to be amended as follows:

PART 85—[AMENDED]

1. The authority citation for Part 85 will continue to read as follows:

Authority: Sections 202, 203, 205, 206, 207, 208, 212, and 301(a) of the Clean Air Act as amended: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7546, and 7601(a), unless otherwise noted.

2. Section 85.2214 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 85.2214 Loaded test.

* * * * *

(b) *Test sequence.* (1) The dynamometer and analyzers shall be warmed up, in stabilized operating condition, and adjusted and/or calibrated according to the procedures of § 85.2217. Prior to each test, variable-curve dynamometers shall be checked for proper setting of the road-load indicator or road-load controller.

(2) * * *

(3) * * *

(4) * * *

(5) Exhaust HC and CO shall be measured while the vehicle is operated at the indicated roll speed specified in this paragraph. The test shall be conducted with the vehicle's gear selector in drive for automatic transmissions and in second (or third if more appropriate) for manual transmissions. The exhaust gas concentrations shall be recorded after stabilized readings are obtained or at the end of 30 seconds, whichever occurs first. This process shall be repeated as necessary for multiple exhaust pipes, unless hardware which is capable of simultaneously sampling vehicles with multiple tailpipes is used. Neither multiple readings nor simultaneous sampling hardware is necessary for exhaust systems in which the exhaust pipes originate from a common point.

(i) *Roll Speed Option A.* The vehicle shall be operated according to the following schedule:

Engine size (cylinders)	Roll speed MPH
4 or less	22–25
5 to 6	29–32
7 or more	32–35

(ii) *Roll Speed Option B.* The vehicle shall be operated at 30 ± 1.0 mph roll speed.

* * * * *

3. Section 85.2216 is revised to read as follows:

§ 85.2216 Loaded test dynamometer specification.

(a) The loaded test dynamometer shall produce one of the following optional road loads.

(1) *Road Load Option A.* A load of 7.0 ± 1.0 hp at 30 mph true roll speed.

(2) *Road Load Option B.* A load of 9.0 ± 1.0 hp at 30 mph true roll speed.

(b) Road Load Option B shall be used only in conjunction with Roll Speed Option B specified in § 85.2214(b)(5)(ii).

(c) The speed/load response curve of the loaded test dynamometer shall follow a cubic relationship in the range of 22–35 mph.

(d) Speed shall be measured from the dynamometer roll(s) with an accuracy of at least 1.0 mph over the range of 22.0 mph to 35.0 mph true roll speed.

4. Section 85.2217 is amended by revising paragraph (a), reserving paragraph (c), redesignating paragraph (e) as (g), and adding new paragraphs (e) and (f) as follows:

§ 85.2217 Calibrations, adjustments.

(a) Equipment shall be calibrated, adjusted, and maintained in accordance with the instructions in this subpart. In cases where these regulations are silent, calibrations, adjustments and maintenance shall be performed in accordance with the equipment manufacturers' instructions.

(b) * * *

(c) (Reserved)

(d) * * *

(e) *Monthly check.* Within one month of each loaded test, the accuracy of the roll speed indicator shall be verified.

(f) *Biannual check.* Within six months of each loaded test, the road-load response of the variable-curve dynamometer or the power absorption unit torque of the single-curve dynamometer shall be determined at a speed within the range specified in § 85.2216(b). The load factor shall be calculated and adjusted for operation at 30 mph true roll speed according to the response curves for the particular dynamometer, and conformance with the limits defined by § 85.2216(a) shall be verified.

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Part III

Environmental Protection Agency

40 CFR Part 300

Hazard Ranking System (HRS) For Uncontrolled Hazardous Substance Releases; Appendix A of the National Oil and Hazardous Substances Contingency Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3296-8]

Hazard Ranking System (HRS) for Uncontrolled Hazardous Substance Releases; Appendix A of the National Oil and Hazardous Substances Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to the Hazard Ranking System, the principal mechanism for placing sites on the National Priorities List (NPL). The NPL is a list of releases and potential releases of hazardous substances, pollutants or contaminants that are eligible for Superfund-financed remedial actions. These revisions would change the way EPA evaluates potential threats to public health and the environment from hazardous waste sites and may affect the type and number of such sites included on the NPL. These revisions are designed to make the Hazard Ranking System more accurate in assessing relative potential risk as well as to meet other statutory requirements.

DATES: Comments may be submitted on or before February 21, 1989.

ADDRESSES: Comments may be mailed or delivered to the CERCLA Docket Clerk, Attn: Docket Number, 105NCP-HRS, Mail Code OS-240, Superfund Docket Room, LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please send 4 copies of comments. The public docket for the HRS revisions contains all relevant background material supporting these revisions. Requests for copies of these documents should be made to the CERCLA Docket Office, Waterside Mall Subbasement, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone 202-382-3046. The docket is available for viewing by appointment only from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Steve Caldwell or Jane Metcalfe, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response, OS-230, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone 202-382-3000 or 800-424-9346.

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I. Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.), commonly called the Superfund, in response to the dangers posed by uncontrolled releases of hazardous substances, pollutants, or contaminants into the environment.[1] To implement Section 105(8)(A) of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency (EPA) revised the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), with later revisions on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912). The NCP sets forth guidelines and procedures for responding to releases or potential releases of hazardous substances, pollutants, or contaminants. Section 105(8)(A) of CERCLA (now section 105(a)(8)(A)) required EPA to establish:

> criteria for determining priorities among releases or threatened releases [of hazardous substances] throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities * * * shall be based upon relative risk or danger to public health or welfare or the environment * * * taking into account to the extent possible the population at risk, the hazard potential of hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact [and] the potential for destruction of sensitive ecosystems * * *

To meet this requirement and help set priorities, EPA adopted the Hazard Ranking System (HRS) as part of the revised NCP. The HRS is a scoring system used to assess the relative threat associated with actual or potential releases of hazardous substances from a site. An HRS score is determined for a site by evaluating several migration routes or "pathways," such as water and air. The score for each pathway is obtained by evaluating a set of "factors" that characterize the potential of the facility to cause harm via that pathway. The factors, such as toxicity of the substances at a site, waste quantity, and population, are each assigned a numerical value according to instructions set out in Appendix A to the final NCP (47 FR 31180, July 16, 1982); this value is multiplied by a weighting factor yielding the factor score. The factor scores are then combined within "factor categories"; the total scores for the factor categories are multiplied together to develop a score for the relevant pathway. Finally, the pathway scores are combined according to a mathematical formula to produce the HRS score for the site.

The HRS was designed to be applied uniformly to each site, enabling sites to be evaluated relative to each other with respect to actual or potential hazards.[1] As EPA explained when it adopted the HRS, "the HRS is a means for applying uniform technical judgment regarding the potential hazards presented by a facility relative to other facilities. It does not address the feasibility, desirability, or degree of cleanup required" (47 FR 31220, July 16, 1982). Although the HRS was designed to assess relative risks, it is not designed to be used as a quantitative risk assessment.

The HRS score is a crucial part of the Agency's program to address the

[1] For the purpose of this rule and preamble, the term "hazardous substances, pollutants, or contaminants" will be referred to simply as "hazardous substances."

identification and cleanup of actual and potential releases of hazardous substances because the HRS is the primary way of determining whether a site is to be included on the National Priorities List (NPL). Each State can also designate a single site to the NPL as a State top priority site regardless of its HRS score and sites may be added in response to a health advisory from the Agency for Toxic Substances and Disease Registry (see NCP, 40 CFR 300.66(b)(4)). The NPL (Appendix B to 40 CFR Part 300) includes those sites that appear to pose the most serious threats to public health and the environment and that appear to warrant remedial investigation and possible cleanup under CERCLA. Only sites on the NPL are eligible for Superfund-financed remedial actions. Emergency removal and enforcement actions can be conducted at any site whether or not it is on the NPL.

Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release. Removal actions tend to be short-term or temporary in nature and involve cleanup or other actions deemed necessary to prevent or minimize damage to public health and the environment.

In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499), which added a section 105(c)(1) to CERCLA requiring EPA to amend the HRS to assure "to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." Section 105(c)(2) as amended also requires that the HRS appropriately assess the human health risks associated with contamination or potential contamination of surface waters, either directly or as a result of runoff of any hazardous substance. This assessment should take into account the use of these waters for recreation and the potential migration of any hazardous substance through surface water to downstream sources of drinking water.

The Amendments also add two criteria for evaluating sites under section 105(a)(8)(A):

- Evaluation of the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release of hazardous substances.
- The contamination or potential contamination of the ambient air which is associated with a release or threatened release

Section 105(c)(1) states that the revised HRS shall be applied to any site to be newly listed on the NPL after the effective date of the revised HRS. Until the effective date, sites will be scored with the current HRS. In addition, section 105(c)(3) specifies that EPA shall not be required to rescore any site evaluated with the current HRS before the effective date.

CERCLA section 118, added by SARA, requires EPA to give a high priority to facilities where the release of hazardous substances has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

CERCLA section 125 (added by SARA) requires revisions to the HRS to address facilities that contain substantial volumes of wastes specified in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act (Resource Conservation and Recovery Act or RCRA). These wastes include fly ash wastes, bottom ash wastes, slag wastes, and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels. Section 125 requires EPA to revise the HRS to assure the appropriate consideration of each of the following site-specific characteristics of such facilities:

1. The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.
2. The extent of, and potential for, release of such hazardous constituents into the environment.
3. The degree of risk to human health and the environment posed by such constituents.

II. Hazard Ranking System

The current HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems or ecological or environmental damage. The pre-remedial portion of the Superfund program—the portion prior to placing sites on the NPL—is intended to identify those sites that represent the highest priority for further investigation and possible cleanup under CERCLA. During site discovery, the first step of the pre-remedial process, possible releases of hazardous substances are listed in the CERCLA Information System (CERCLIS). A preliminary assessment is then conducted for all sites on CERCLIS; this low cost, initial evaluation is meant to give as full and complete a picture of the site as possible using existing information. EPA is currently continuing to screen the approximately 30,000 sites presently in CERCLIS.

If, based on the results of the preliminary assessment, EPA determines that a site warrants further action, the Agency initiates a site inspection as specified in the NCP (40 CFR 300.66). The site inspection may include the collection of a limited number of samples for chemical analysis. Such samples aid in ascertaining what substances are present at the site and whether they are being released. The purpose of the site inspection is to determine if there is a potential threat to public health or the environment, to determine if there is an immediate threat to people in the area, and to collect sufficient data to enable the site to be scored using the HRS.

As required by CERCLA, EPA has designed the Superfund program to focus its resources on the highest priority sites. Consequently, the initial studies—the preliminary assessment and site inspection—which are performed on a large number of sites, are relatively modest in scope and cost compared to the remedial investigations and feasibility studies subsequently performed on NPL sites. Because of the need to carry out the initial studies expeditiously, EPA has elected to place certain constraints on the complexity of the HRS. The required HRS data should be information that, for most sites, can be collected in a single site visit or that are already available. Thus, the HRS cannot rely on data that require extensive sampling or repeated sampling over a long period of time. The HRS has also been designed so that it can be applied consistently to a wide variety of sites.

The HRS provides a measure of relative rather than absolute risk. Congress, in its Conference Report on SARA, confirmed the appropriateness of this approach when it specified a substantive standard against which HRS revisions could be assessed.

This standard is to be applied within the context of the purpose for the National Priorities List; i.e., identifying for the States and the public those facilities and sites which *appear* to warrant remedial actions * * *. This standard does not, however, require the Hazard Ranking System to be equivalent to detailed risk assessments, quantitative or qualitative, such as might be performed as part of remedial actions. The standard requires the Hazard Ranking System to rank sites as accurately as the Agency believes is feasible using information from preliminary assessments and site inspections * * *. Meeting this standard does not require long-term monitoring or an accurate determination of the full nature and extent of contamination at sites or the projected levels of exposure such as might be done during remedial investigations and feasibility studies. This

provision is intended to ensure that the Hazard Ranking System performs with a *degree of accuracy appropriate to its role in expeditiously identifying candidates for response actions* (H.R. Rep. No. 962, 99th Cong., 2nd Sess. at 199–200 (1986) (emphasis added)).

EPA wants to emphasize that the HRS was designed to assess relative risk, and, thus, is not designed to be used as a quantitative risk assessment.

Of the approximately 30,000 sites in CERCLIS, approximately 27,000 have received a preliminary assessment. About 9,000 of those have had a site inspection and about 2,000 have been scored using the HRS. To date, there are 1,175 sites on or proposed for the NPL (see 48 FR 40658, September 8, 1983; 49 FR 19480, May 8, 1984; 49 FR 37070, September 21, 1984; 50 FR 6320, February 14, 1985; 50 FR 37630, September 16, 1985; 51 FR 21054, June 10, 1986; 52 FR 2492, January 22, 1987; 52 FR 27620, July 22, 1987; 53 FR 23988, June 24, 1988; and 53 FR 33811, September 1, 1988). SARA provides EPA (see CERCLA sections 116(a) (1) and (2), as amended) with goals for completing preliminary assessments and site inspections. For all sites in CERCLIS as of the date of the enactment of SARA, preliminary assessments should be completed by January 1, 1988, and site inspections, where needed, should be completed by January 1, 1989.

Although the NPL is ordered by HRS scores, EPA puts the sites into groups to emphasize that minor differences in scores do not necessarily indicate significantly different levels of risk.

The revisions being proposed today reflect the Agency's efforts to improve the accuracy of the HRS, addressing the SARA mandate. While this proposed rule, Appendix A to 40 CFR 300 ("proposed rule") would add some new elements, the HRS would still serve its intended purpose as a screening tool. EPA has been careful to balance the potential increased costs in time and resources to collect more data against the goal of improving accuracy, so the revised HRS can list sites correctly without impairing the Agency's ability to evaluate releases quickly.

Current HRS

The current HRS evaluates the relative threat of a site over five pathways—ground water, surface water, air, direct contact, and fire and explosion. The first three of these pathways reflect the risk from migration of hazardous substances from the site. The scores for ground water, surface water, and air are combined into an overall migration score that is the primary consideration in placing a site on the NPL. The last two pathways, direct contact and fire and explosion, may be used to determine if the potential risk is so acute that emergency action is required, but are not included in the overall HRS migration score.

The current HRS uses a structured value analysis approach to scoring sites. This approach assigns values to factors related to or indicative of risk. The basic elements of the current HRS are factors such as toxicity and containment. A scale of numerical rating values is provided for each factor and a value is assigned to each factor based on conditions at the site. Individual values are then weighted. The factors are grouped into three factor categories—observed release/route characteristics, waste characteristics, and targets—and are combined to obtain factor category scores. Each factor category has a maximum value, as does each of the component factors within the category.

The relevant factor category scores are multiplied together within each pathway and normalized to obtain a pathway score. Finally, the pathway scores for ground water, surface water, and air are combined to obtain the HRS migration score.

The pathway scores are combined using a root-mean-square approach to calculate the overall site score; that is, the final HRS score is the square root of the sum of the squares of the pathway scores divided by the square root of three. If all pathway scores are low, the HRS score will be low. However, the final score will be relatively high even if only one pathway score is high. EPA considers this an important requirement for the HRS scoring because some extremely dangerous sites pose threats through only one migration mode. For example, leaking drums of hazardous substances can contaminate drinking water wells, but if the drums are buried deeply enough and the hazardous substances are not very volatile, they may not release any hazardous substances to the air or to surface water.

III. Approach to HRS Revisions

EPA undertook a comprehensive review of the HRS in developing this proposed rule. Based on comments to previous rulemakings, and its own experience scoring sites, EPA prepared or sponsored a series of issue analysis reports that formed the basis for many of the options the Agency considered. These reports covered issues such as methods to evaluate human food chain exposure; methods to evaluate the potential for air release; evaluation of appropriate air and surface water target distance limits; factors to account for environmental attenuation of hazardous substances in ground water and surface water; methodologies for evaluating toxicity; methods for determining direction of ground water flow and issues related to the feasibility of using ground water flow direction measures; and the feasibility of using hazardous substance concentration data as well as evaluating waste quantity on a hazardous constituent basis. These reports and other studies form the basis of the Technical Support Document, available in the Superfund docket for public review, which explains in detail the basis for the options proposed in this revision.

To provide a broad spectrum of technical expertise in developing these revisions, EPA sought information from a number of sources. In 1986, EPA's Office of Emergency and Remedial Response established an EPA work group to guide the revision process. The work group's deliberations addressed not only the broad structure and function of the HRS, but also detailed technical issues.

A. Science Advisory Board

Several scientific questions were referred to the Agency's Science Advisory Board for its review and recommendations. The Science Advisory Board is a public advisory group providing scientific information and advice to the Administrator and other officials of EPA. The Board is structured to provide a balanced expert assessment of scientific issues related to problems facing the Agency. EPA referred three specific issues to the Board: (1) Options for revising the way toxicity of hazardous substances is evaluated and scored in the HRS; (2) the question of whether the HRS is biased against mining waste and other high volume waste sites (including issues related to the use of waste concentration data); and (3) the appropriate air pathway target distance over which population exposure is assessed. EPA developed summary technical documents on these issues and made several presentations to the Science Advisory Board, which prepared a report addressing each issue. The technical documents and Science Advisory Board recommendations are available in the docket. The documents are: (1) "Discussion of Options For Revising the Hazard Ranking System (HRS) Toxicity Factor," ICF, Inc., May 1987; (2) "Analysis of the Air Target Distance Limit in the Hazard Ranking System," EPA, 1987; (3) "The Superfund Hazard Ranking System (HRS): Applicability to Mining Waste Sites," ICF Inc., July 1987; and (4) "The

Superfund Hazard Ranking System (HRS): Feasibility of Using Concentration Data in a Revised HRS," ICF, Inc., July 1987. The Science Advisory Board's recommendations are outlined in "Science Advisory Board Hazard Ranking System Review Subcommittee: Review of the Hazard Ranking System," US EPA, 1988.

B. Review of Alternative Ranking Systems

One of the activities undertaken to develop a revised and improved HRS involved examining alternative site evaluation models chosen from a review of over 30 such systems. EPA evaluated the models to determine: accuracy in predicting potential risk; the extent to which the SARA requirements were addressed by the model; the implementability of the model; the amount of data that would have to be collected to evaluate sites using the model; and the cost and time involved in gathering these data.

In order to better understand the accuracy of these models, EPA tested three of the site evaluation models, along with a draft version of the revised HRS, on 20 sites. Through analysis of these models, EPA hoped to better understand the factors that affect the accuracy of site ranking methodologies, thereby developing insights to guide revisions to the HRS.

The three alternative systems analyzed were the New York State Human Exposure Potential Ranking System, the Air Force Hazard Assessment Rating Methodology II, and the Department of Energy Remedial Action Priority System. These systems were chosen for further testing because they considered site-specific conditions, were either fully developed and tested or in the final stages of development, examined multiple media, and were substantially different from the current HRS. None of them, however, fully met the SARA requirements without some revisions.

EPA convened a site ranking panel of senior EPA staff and managers selected to represent a cross-section of knowledge and specialties. The panel members were to evaluate and rank the 20 sites according to the relative level of risk they perceived the sites posed to human health and the environment. The purpose of this exercise was to obtain expert judgments to serve as a baseline for the comparative evaluations of the site evaluation models and to gain a better understanding of the relative weights of certain factors and exposure pathways in evaluating the threat from a site.

The 20 sites selected for the testing program were not randomly selected and are too small a sample to be statistically representative of the universe of potential Superfund sites. These sites had been investigated under the Superfund program and included NPL and non-NPL sites. The sites were selected to represent a range of different types of sites (landfills, surface impoundments, etc.) and a range of scores above and below 28.50, the cutoff on the current HRS for placing sites on the NPL. EPA also selected sites for which the necessary data were likely to be available. In addition, EPA explicitly selected some sites that contained features the current HRS migration routes could not score (such as human food chain exposures, direct contact exposures, and potential air releases). As a result, caution should be exercised in generalizing the testing results.

The panel used the most complete data available to rank the sites, more information than would normally be available at the time a site is evaluated using the HRS. Remedial investigations or Public Health Evaluations had been performed at most of the sites, providing quantitative risk estimates.

It is important to note that although the testing program provided the Agency with some useful information, this approach to assessing the site evaluation systems had some fundamental limitations. First, only 20 sites were used for the evaluation, and, as discussed above, these sites were not chosen randomly. Second, the panel had access to data that, in some cases, could not be used by (or were unavailable to) one or more of the models. Third, the panel's assessments were based on the subjective conclusions of panel members; although some objective criteria were applied, the same conclusions might not be reached by a second panel. Finally, no firm consensus was reached by the panel at the level of individual sites; rather, a fairly firm consensus on "groupings" of sites was reached, and only after negotiations and discussions among panel members. The limitations of the testing program account for some of the differences between the relative rankings of the expert panel and the rankings of the various models tested.

Despite these limitations, the results of the comparative evaluation of the models indicated that the draft revised HRS best reflected the site ranking panel's consensus ranking. This analysis is discussed in more detail in "Analysis of Alternatives to the Superfund Hazard Ranking System" (Industrial Economics, Inc., November 1988), as are each of the three alternative models tested. Further discussion of the correlations of the model rankings with the site ranking panel rankings and an analysis of the reasons for these correlations are provided in the above-referenced report which is available in the Superfund docket.

The model testing study suggested that the accuracy of the HRS could be improved by ensuring that the model considers a comprehensive set of exposure pathways and that the revised HRS employ a weighting scheme that gives sufficient emphasis to hazardous sites dominated by risks along one or several exposure pathways. In addition, the analysis suggests that the revised HRS should be flexible enough to take evidence of adverse health effects and environmental damage into account in evaluating sites. The analysis points out the sensitivity of site ranking models to the data they employ, and the importance—subject to resource constraints and the need to expeditiously evaluate sites—of providing the revised HRS with the best available data. The revised HRS attempts to implement these recommendations, as is discussed in greater detail later in this preamble.

Based on the evaluation of the HRS in the model testing study, EPA determined that the draft version of the revised HRS met all the statutory requirements, did not require more data than could reasonably be collected within the limited scope of a site inspection, and was cost-effective and implementable.

C. Cutoff Score

The first NPL contained 418 sites. States had the opportunity to designate one site as their single top priority; the remaining sites were included because they had HRS scores of 28.50 or higher. EPA chose the 28.50 cutoff score as a management tool because it yielded an initial NPL of at least 400 sites as required in CERCLA section 105(8)(B) (now CERCLA section 105(a)(8)(B)), not because of any determination that the cutoff represented a threshold of unacceptable risks presented by sites.

In the Conference Report on SARA, Congress asked EPA to address the relationship between risks at NPL sites and the cutoff score. During its revision of the HRS, EPA addressed this and other issues in a number of studies related to the cutoff score. These studies were combined into one report, which is available in the Superfund docket. ("SARA Studies on HRS Scores and Remedial Actions, HRS Scores and Potential Dangers, and the Effect of the 28.50 Cutoff Score," CH2M Hill,

September 1988.) Although the study was limited in scope and definitive conclusions are not possible, it did indicate that some sites with scores below the cutoff can also pose potential dangers to human health and the environment. However, the cutoff score was not meant to set a no-risk threshold, but rather to set a level above which a site becomes a priority.[2] Toward that end, the 28.50 cutoff has been useful in identifying high priority sites for further study and possible remedial action and has proven to be an effective management tool. In general, NPL sites with scores exceeding 28.50 present significant risks to public health and the environment, necessitating some form of response. On the other hand, three sites have been deleted from the NPL after completion of a remedial investigation/feasibility study (RI/FS). Based on the remedial investigations, EPA concluded that none of the sites presents a significant threat to public health or the environment and that no removal or remedial action is necessary at those sites (51 FR 7935, March 7, 1986; 53 FR 12680, April 18, 1988).

In the past, EPA considered the effects of both raising and lowering the cutoff score for the NPL relative to the current cutoff. Lowering the cutoff would add more sites to the NPL and would tend to include more sites with lower risks than sites currently on the NPL. EPA is concerned that lowering the threshold might substantially increase the number of NPL sites that are found to present no significant threat to health or the environment after the RI/FS has been completed. Raising the cutoff establishes a higher threshold for newly scored sites and would tend to exclude from the NPL sites that present significant risks to public health and the environment. Since EPA believes that the current cutoff score has been a useful management tool, the Agency is proposing that the cutoff score for the revised HRS be functionally equivalent to the current cutoff.

In light of the rather substantial revisions of the HRS in this proposal, EPA concluded that it is necessary to evaluate the practical effects of keeping the cutoff score at 28.50; that is, whether that score will continue to provide an appropriate set of National Priorities for management purposes. The Agency is examining several approaches for defining "equivalent to 28.50." One alternative is to score sites using both the current and revised systems; EPA would then use statistical analyses to determine what revised HRS score best corresponds to 28.50 on the current HRS. Another alternative would be designed to yield an NPL of the same size as would the current HRS and current cutoff score. That is, EPA would estimate the size of the NPL if the current approach were applied to the known inventory of sites and then identify what cutoff score for the revised HRS would result in the same number of NPL sites. A third alternative involves identifying the quantitative risk levels that on the average correspond to a current HRS score of 28.50 and then determining what revised HRS score best corresponds to that risk level.

EPA specifically requests comment on whether the cutoff score for the revised HRS should be functionally equivalent to the current HRS score of 28.50 and, if so, how to define and determine functional equivalence. The Agency intends to evaluate various cutoff score analyses based on the cost and availability of data.

Although the Agency is proposing that the cutoff be functionally equivalent to the current score of 28.50, it is premature to specify a numerical cutoff score for the revised HRS at this time. As stated previously, every factor in the current HRS has been revised, and new factors have been included. An entirely new exposure pathway, the onsite exposure pathway, has been included in the total site score. Sites with certain characteristics (i.e., human food chain or direct contact problems) may score higher on the revised HRS than under the current HRS. Alternatively, certain sites may score lower under the revised HRS because of factors that allow target populations to be distance and dilution weighted, and due to the addition of mobility factors. Thus, differences in scores are anticipated between the current HRS and the proposed revised HRS. While the Agency expects that the changes will result in increased accuracy in assessing the relative degree of risks to public health and the environment for certain sites, it makes it difficult at this time to identify an appropriate cutoff score. After performing further analyses and reviewing public comments, EPA will select a means of establishing a cutoff score for the revised HRS and will announce that score in the preamble to the final rule.

D. SARA Conference Reports

In the Conference Report on SARA, Congress called on the President to address a number of issues during the review of the HRS (H.R. Rep. No. 962, 99th Cong., 2nd Sess. at 200 (1986)). Thus, in addition to the studies and reviews that EPA performed based on its experience and on comments, the Agency prepared the following:

1. An evaluation of the Preliminary Pollutant Limit Value system used by the Department of Defense and comparison with the HRS.
2. An explanation of how the HRS was developed and the method of determining the relative hazards at different facilities under the system.
3. A study determining the relationship of HRS scores and the potential dangers to human health and the environment.
4. An examination of the effect of establishing a threshold value of 28.50 for facilities to be included on the NPL.
5. A study determining the relationship between HRS scores and the types of remedial actions that are appropriate at such facilities.

These studies are available in the Superfund docket for this proposal. (See "SARA Studies on HRS Scores and Remedial Actions, HRS Scores and Potential Dangers and the Effect of the 28.50 Cutoff Score," CH2M Hill, September 1988; "An Explanation of How the HRS was Developed and the Method of Determining the Relative Hazards at Different Facilities under the System," US EPA, September 1988; and "Comparison of the Preliminary Pollutant Limit Value (PPLV) System and the Hazard Ranking System (HRS)," Versar, September 1988.) In addition, Congress called for a determination of whether a new threshold value should be established for inclusion of facilities on the NPL; this subject is discussed in this preamble in Section III.C.

E. Advance Notice of Proposed Rulemaking

EPA published an advance notice of proposed rulemaking (ANPRM) on April 9, 1987 (52 FR 11513), soliciting comments on the revisions required by SARA as well as on the following technical issues: existing scoring factors; other models for ranking hazardous substance releases; mechanisms for including direct contact in the HRS; and a mechanism for incorporating human food chain exposures into the HRS. On May 7 and 8, 1987, EPA held a public meeting on the HRS. The comments received during the public meeting and in response to the ANPRM have been reviewed and considered in the development of this Notice of Proposed Rulemaking. EPA will respond in detail to all comments when the final rule is promulgated.

[2] It should be noted that although sites scoring below 28.50 have not generally been placed on the NPL, they may be addressed by CERCLA removal or enforcement authorities, or by State and local governments, if response measures appear to be warranted.

IV. Background Documents

The proposed revisions to the HRS are discussed in three primary documents: (1) The proposed rule, (2) this preamble, and (3) the "Technical Support Document: Revised Hazard Ranking System," ("Technical Support Document"). The proposed rule outlines the scoring system, emphasizing the mechanics of scoring sites. This preamble provides an overview of the scoring system, along with concise explanations of why the changes were made.

The Technical Support Document contains a more detailed explanation of the technical basis for the proposed revisions to the HRS, along with descriptions of the options considered. The Technical Support Document follows the same general outline as the preamble, with one section describing revisions that affect more than one pathway (e.g., toxicity), and the remaining sections describing the four pathways of the revised HRS. Each discussion in the Technical Support Document generally contains a description of the current HRS, the options considered, the revisions that are proposed for the revised HRS, and the technical justifications for the option chosen. In addition, the Technical Support Document references other background documents that provide an even greater level of detail on the proposed revisions. These documents, along with the Technical Support Document, are available to the public in the Superfund docket. To facilitate public review, EPA has prepared an index to the proposed rule, the preamble to the proposed rule, and the Technical Support Document with detailed cross referencing of issues. This index will be available in the Superfund docket. See the **ADDRESSES** section of this preamble for further information on the Superfund docket.

V. Discussion of the Proposed Rule

A. Overview

As stated above, the current HRS is incorporated in the NCP as Appendix A to 40 CFR Part 300. Appendix A, which is essentially a user's manual for the HRS, includes the forms as well as instructions for assigning values to each of the factors.

The current Appendix A provides instructions for evaluating five pathways. The surface water, ground water, and air pathways comprise the migration pathways and are used in determining the HRS site score. Direct contact and fire and explosion may be calculated to determine if removal action is warranted. EPA does not believe that the fire and explosion calculation would provide a useful basis for scoring a site for remedial action. The potential for fire and explosion is considered in another part of the Superfund program, the removal program, when determining if a removal action is necessary. Therefore, the proposed HRS would delete the fire and explosion calculations. For the reasons discussed in section V D 4, the current direct contact calculation would also be deleted and replaced by an onsite exposure pathway. This new pathway would be included in the HRS site score.

As can be seen from the diagrams preceding section V D 1 through 4, the essential structural features of the revised HRS would generally remain the same as those of the current HRS. However, every factor has been revised or is new. A few factors would be eliminated, either because they do not discriminate among sites or because they would be replaced by more accurate measures.

The remainder of this preamble discusses the proposed changes to Appendix A. After an overview of the four pathways (both in their current and revised state), section V B presents a general discussion of the major proposed revisions. Following that, section V C describes in detail issues and factor revisions that affect more than one of the pathways. Sections V D 1 through 5 discuss all other changes to each specific pathway. Finally, section V E discusses an issue that has been the subject of special attention, wastes designated as special study wastes under RCRA.

1. Ground Water

The ground water migration pathway in both the current and revised HRS evaluates the likelihood that hazardous substances at a site or facility will migrate through the ground beneath them and contaminate aquifers. If the hazardous substances reach an aquifer, the substances can potentially be transported through the aquifer and contaminate drinking water wells that draw from that aquifer.

If hazardous substances have been released to an aquifer or if the site characteristics make a release likely, the principal questions the ground water pathway evaluates are the impact of releases on the ground water resources and on the people who draw their drinking water from potentially contaminated wells. The revised HRS is designed to reflect the concept that hazardous substances in ground water tend to become increasingly diluted as distance from the site increases.

2. Surface Water

For the purposes of the HRS, surface water is defined as perennial streams, rivers, lakes, oceans, and intermittent streams and ditches in arid and semiarid regions. If contaminated runoff has reached surface water or if the site characteristics make a release to surface water likely, the HRS evaluates the potential for the release to affect people or the environment. The revised HRS would include factors for evaluating flood potential and address the effect of hazardous substances on the human food chain. In addition, the revised HRS would evaluate risks from recreational exposures.

3. Air

The current HRS air pathway is evaluated only if hazardous substances at a site have escaped into the air either as gases or as particulate matter. The revised HRS would also consider the site characteristics to assess the potential for releases to occur even if no release has been documented. Once the likelihood of release has been determined, the main questions are how many people and sensitive environments could be exposed to hazardous substances carried in the air and the inherent hazard associated with potential exposures.

4. Onsite Exposure Pathway

The onsite exposure pathway deals with the possibility that people or sensitive environments will have direct, physical contact with hazardous wastes or contaminated soil. The revised HRS would look at two populations to assess the risk. The resident population consists of those people who live or go to school or day care on land that is contaminated. The nearby population consists of those people who live within a one-mile travel distance of the site and might have access to the site.

B. Major Revisions

The following is a summary discussion of the major revisions being proposed. More detailed specifics of each proposed revision as well as discussions of legal requirements, of options EPA considered, and of the reasons for EPA's decisions are provided in sections C and D, which also give references to the rule and to supporting documents available in the docket.

1. Actual and Potential Contamination

The current HRS evaluates the potential for exposure of populations and does not give additional consideration (i.e., higher scores) to

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situations where human exposures have been documented. The current HRS is also primarily oriented toward population risk rather than individual risk. EPA is proposing changes in HRS calculations so that the HRS will more accurately reflect the potential risk to individuals and to populations exposed to documented contamination.

In assessing drinking water threats in the proposed revisions, target populations in the ground water and surface water pathways would be divided into four groups: people exposed to documented contamination above health-based benchmarks; people exposed to documented contamination not exceeding health-based benchmarks, but significantly above background concentrations (two groups are defined on the fraction of the benchmark present); and people potentially exposed to contamination from a site. The health-based benchmarks would be based on the National Primary Drinking Water Standards (maximum contaminant levels (MCLs)) (40 CFR 141.11 through 141.16 and 52 FR 25690, July 8, 1987). If no drinking water standard has been developed by the Agency for a substance, the health-based benchmark would then be based on maximum contaminant level goals (MCLGs) for noncarcinogens. For carcinogens and potential carcinogens that have no MCLs, risk-specific concentrations corresponding to an individual cancer risk of 10^{-4} would be used as the benchmark instead of MCLGs. Where contamination above a health-based benchmark occurs, people exposed to this contamination would be weighted most heavily in determining the factor score. (See section V C 5.) The sensitive environments subpathway in the surface water pathway would also be evaluated on actual and potential contamination, using ambient water quality criteria as ecologically-based benchmarks.

Likewise, the human food chain subpathway in the surface water pathway assigns a higher value where a fishery has actually been closed or shows contamination over an action level set by the U.S. Food and Drug Administration (FDA) than where a fishery has not been closed and is not known to be contaminated above action levels. The recreation subpathway assigns a higher value where a recreation area has actual contamination rather than potential contamination.

The potential risk to the maximally exposed individual (MEI) would be represented by the distance to the nearest drinking water well in the ground water pathway, the streamflow at the nearest drinking water intake in the surface water pathway, and the distance to the nearest occupied building in the air pathway. When there is contamination above health-based benchmarks in any well or water intake within the target distance, the MEI factor would be assigned the maximum value in the ground water or surface water pathways to ensure that documented contamination is heavily weighted. (See section V C 9.)

2. Dilution/Distance Weighting

In the current HRS, weighting targets based on dilution/distance is explicitly included only in the air pathway, although such weighting is implicit in some factors in the ground water and surface water pathways. Because, under most circumstances, the concentration of hazardous substances declines as the substances migrate from a site, the revised HRS would apply dilution/distance weighting directly to relevant target category factors to better reflect the differential exposures and risks to targets located at varying distances from a site. The Agency believes such a revision would improve the accuracy of the HRS.

For surface water, the weighting factor would be based on dilution as reflected by the average annual flow; in air and ground water, distance would be used as a surrogate for dilution. The weighting of the population at different distances is based on the results of environmental transport models. In the ground water and surface water pathways, dilution/distance weighting of targets would be used for those populations who do not have actual contamination in their drinking water wells or drinking water intakes, but where the aquifer or surface water body is contaminated or has the potential to be contaminated. In the air pathway, all targets would be distance weighted. In the onsite pathway, the nearby population would be distance weighted, reflecting the likelihood of people visiting the site, not the potential decrease in concentration as hazardous substances migrate from a site. (See section V C 8.)

3. Toxicity

Under the current HRS, the toxicity factor scoring is based primarily on acute toxicity of hazardous substances. However, EPA recognizes that adverse health effects at hazardous waste sites may result from chronic exposures as well as from acute exposures. To include the consideration of such risks, EPA is proposing to change the basis of the toxicity factor score. The current toxicity values are based on either the Sax rating system or the rating system of the National Fire Protection Association. The revised HRS would evaluate hazardous substances and assign scores for three kinds of toxicity: acute toxicity, carcinogenicity, and chronic noncarcinogenic toxicity. The highest of the three scores for a hazardous substance would become the toxicity factor value assigned to that substance. EPA is proposing to score hazardous substances using a system based on Reference Doses for chronic noncarcinogenic toxicity; Cancer Potency Factors combined with qualitative weight-of-evidence for carcinogenicity, or, when the Cancer Potency Factor is not available, the ED_{10}; and LD_{50} or LC_{50} values for acute toxicity. In addition, EPA is proposing to include aquatic toxicity ratings to assess potential risks to aquatic ecosystems. (See section V C 2 and Section V D 2.) Toxicity values for a substance would be combined in a matrix with mobility or persistence factors to calculate the final toxicity/mobility values for the ground water and air pathways or toxicity/persistence values for the surface water pathway.

4. Mobility

The current HRS does not directly consider the properties of substances that affect their ability to be released and migrate through environmental media; therefore, the current HRS may not differentiate well between two highly toxic substances with very different mobilities. The addition of a mobility factor should better reflect the risks from a site. Thus, EPA is proposing to incorporate mobility factors that would combine with toxicity in a matrix calculation in the ground water and air pathways to create a more accurate measure of the likelihood that a particular substance will migrate to ground water or to the atmosphere and expose potential targets; the air pathway would consider the mobility of both gases and particulates. (See sections V D 1 and 3.)

Although the surface water pathway has no mobility factor per se, the persistence factor addresses this issue, as would the proposed bioaccumulation factor in the human food chain calculations and the proposed dose adjusting factor in the recreation calculations. (See section V D 2.)

5. Hazardous Waste Quantity

Hazardous waste, in addition to including some proportion of hazardous substances, almost always includes nontoxic substances. When the current HRS was developed, EPA judged that

the cost of reliably determining the amount of hazardous constituents within the hazardous wastes at a site was prohibitive and, in some cases, technically impossible. Therefore, the current HRS was designed to use the total quantity of waste instead of the quantity of hazardous substances in the waste for the calculation of the hazardous waste quantity factor.

EPA is proposing to modify the existing method of calculating the hazardous waste quantity factor to make it a more accurate reflection of relative risk. The proposed tiered approach would allow for the use of calculated amounts of hazardous substances for sites where the contaminant concentrations in a given waste have been determined based on adequate sampling and analytical methods. If these concentrations are not available, waste quantity as deposited could be used, as could source volume or source area. (See section V C 3.)

6. Sensitive Environments

The sensitive environments considered under the current HRS include wetlands and areas that are critical habitats for plants and animals on the Federal endangered species list. EPA is proposing a significant expansion of the sensitive environments eligible to be scored in order to more fully address CERCLA's original mandate to consider threats to both public health and the environment, as well as to respond to the SARA requirement to accurately assess relative risk to human health and the environment, to the maximum extent feasible. In the revised HRS, sensitive environments would include lands and waters that have been legally designated as protected areas by either the Federal government or state governments, as well as areas that have been identified by the Nature Conservancy's National Heritage Program. (See section V C 6.)

7. Onsite Exposure Pathway

The direct contact portion of the current HRS calculates the potential for direct exposure to hazardous substances in a way that essentially parallels the surface water, ground water, and air pathways; however, the calculation is not included in the score used to determine a site's eligibility for the NPL. Currently, the direct contact pathway could be used to determine whether removal action is required at a site. An analysis of decisions on remedial actions indicated that some significant risks from direct contact may not have been completely addressed by removal actions and should be of concern in determining priorities for remedial action. To ensure that the potential for such contact is factored into the HRS score, EPA is proposing to incorporate exposure to onsite wastes and contaminated soils into the HRS migration score by adding a separate pathway. The onsite exposure pathway would be included in the HRS score to better respond to CERCLA's original mandate to take into account the potential for direct human contact in setting priorities, as well as to respond to the requirement in SARA to accurately assess relative risk to the maximum extent feasible.

The proposed onsite exposure pathway would separately assess two populations, those people who live or attend school or day care on the contaminated site and those who live nearby and have access to the site. Resident children under seven would be considered the high risk population and would be weighted more heavily than adults because of their greater likelihood of ingesting onsite contaminants. (See section V D 4.)

8. Surface Water

In the current HRS, the surface water pathway is primarily concerned with the potential contamination of drinking water and with the population that could be affected by this contamination. A lesser weight is given to the impact of contaminants on sensitive environments in surface water. As required by SARA, EPA has considered other targets and is proposing to evaluate separately the potential contamination of the human food chain (based on fishery contamination) and recreational exposures to contaminated surface water. Sensitive environments would also be assessed separately. In addition, new factors to assess flood potential would be incorporated into the likelihood of release factor category. The factors used to assess route characteristics in the current HRS would be replaced by a new set of factors that better assess overland release potential. (See section V D 2.)

9. Air

The HRS currently evaluates the air pathway solely on the basis of site monitoring data; if no release of contaminants has been documented at the site, the air pathway part of the HRS is assigned a score of zero. In contrast, for the surface water and ground water pathways, the potential for a release to occur is considered where no observed release has been documented.

CERCLA section 105(a)(8)(A), as amended by SARA, specifies that EPA should consider potential releases to the ambient air in revising the HRS. Accordingly, the proposal described in Section V D 3 includes a method to assess potential air releases.

C. Revisions Affecting Multiple Pathways

This section discusses in detail those issues that affect more than one pathway. Although some of these issues were covered in the general discussion in the major revisions section, this discussion reviews these cross-cutting issues in more detail and describes the options EPA considered to resolve these issues. Because the proposed changes are similar in all the pathways affected, to prevent repetition, the specific revisions for each pathway are discussed in this section rather than in the individual pathway discussions in section V D. For most of these issues, detailed descriptions of the options reviewed and the reasons for EPA's choice can be found in the Technical Support Document, available in the Superfund docket. Other related documents and tables for determining some factor values are also available in the Superfund docket.

1. Structure

The proposed HRS would retain the general structure of the current HRS, as described in section II; that is, the structure of the revised HRS would continue to be based on evaluating the relative risk of sites through the use of factors, factor categories, and pathways to obtain a final site migration score.

This structure was retained after a careful evaluation of possible alternative structures to the existing HRS, including alternatives to the entire structure, to factor categories, and to individual factors. During this process, EPA reviewed over 30 available site evaluation systems and over 55 chemical ranking systems, including several systems developed expressly for ranking hazardous waste sites.

Evaluation of Overall Site Migration Score. During the course of this evaluation, EPA considered several methods for revising the way in which pathway scores are combined to calculate the overall HRS site score. EPA evaluated the possibility of adding the pathway scores, but found that with the proposed structure, this approach tends to discount the effects of risks involving only one pathway. The results of testing a system that sums pathway scores are consistent with these findings. Other options considered included selecting the single highest pathway score, using a root-mean-square approach for the two highest

pathways, and using the root-mean-square approach for the three highest pathways. The Agency believes, however, that using the root-mean-square approach for all pathways in the revised HRS most appropriately considers the risk through all four pathways, without discounting risks involving only one pathway. Thus, the structure for combining pathway scores into a single site score is the same in both the current HRS and the proposed revisions to the HRS.

Evaluation of Pathways. The major changes to the pathways of the existing HRS are: (1) Elimination of the direct contact route; (2) incorporation of an onsite exposure pathway in the calculation of the total HRS site score; (3) elimination of the fire and explosion route; (4) modification of the surface water pathway; and (5) addition of a potential to release calculation to the air pathway.

For the onsite exposure pathway, EPA is proposing that the maximum score for the entire pathway be equal to the maximum score that could be assigned to either the resident or nearby population (proposed rule, section 5.0). EPA concluded that exposures to either group can represent a reasonable worst case risk and that this case should be reflected in the final migration score.

Four threat categories have been incorporated in the surface water pathway: Drinking water, human food chain, recreational, and environmental. Each of these threats is evaluated, structurally, in a manner consistent with surface water threats in the existing HRS. The four threat scores are added to form a total pathway score.

Evaluation of Factor Categories. In the current HRS, the value for the targets factor category in a pathway is the sum of individual factor values. The maximum factor category value can be obtained only if every factor is assigned its maximum factor value. This means that under the current HRS, a site significantly affecting 10,000 people would not receive a maximum score for the surface water pathway unless sensitive environments are also given a maximum value. Similarly, a site would not receive a maximum score for the air pathway if no one lives within a quarter mile of the site and, for the ground water pathway, a site would not receive a maximum score if there were no intakes or wells within 2,000 feet of hazardous substances.

The proposed rule would modify the method used to add target factor values so that some sites that do not meet the criteria for the maximum value for each target factor could still receive the maximum score for the overall target category. The sum of the available points for each type of exposure would be greater than the number of points allowed for the factor category. Under this approach it is possible to allocate a significant number of points for sensitive environments without reducing the importance of human health risks. One effect of this revised scoring system would be to condense scores at the upper end of the scale and more accurately assess relative risks elsewhere.

As is the case in the current HRS, all factor categories in the revised HRS have the same relative weight. That is, the maximum value for the waste characteristics category has the same weight as the maximum value for the targets category, and each of those has the same weight in the air pathway as in the ground water pathway. This is true despite different factor category values because the values are multiplied and normalized.

Evaluation of Factors. EPA is proposing structural changes in the way some individual factors are evaluated and in the relative scoring of factors within the targets factor category. To put this in context, the relationship of factors within categories must be understood. The relative importance of factors within different factor categories cannot be compared by their maximum factor values alone. Rather, their relative importance depends on the maximum percentage of their category they can account for; e.g., a factor with a maximum value of 50 contributes more to its category if the category maximum is 100 than if it is 200. Within the same factor category in a single pathway, the relative importance of factors is comparable based on their maximum values. In other words, in the surface water pathway the relative importance of drinking water population versus surface water use can be compared based on their maximum factor values. However, the relative importance of drinking water population in surface water versus ground water cannot be compared based on their factor values; their relative importance can only be compared based on the percentage their maximum value contributes to the maximum value of their factor category.

In the current HRS, factors are weighted by assigning a factor value and then applying a specified multiplier. The revised HRS would eliminate the explicit weighting by use of a multiplier and would incorporate a measure of relative importance of the factor to the factor category through the factor values themselves. To assign relative values among factors within factor categories for this proposed revision, EPA combined the results of model testing programs, a review of site ranking experience, and the results of analytical models used to model fate and transport of hazardous substances. In evaluating these data, EPA used two primary considerations for assigning the appropriate value to a given factor: (1) The relative importance of the factor as an indicator of risk and (2) the expected accuracy with which the factor can be measured or estimated based on site inspection data.

Potential Revisions Under Consideration. The Agency is still considering a variety of revisions to the algorithm and factor scales in the revised HRS.

The EPA Science Advisory Board, in addition to its review of specific issues identified by EPA, offered ideas regarding revisions to the algorithm used to calculate the current HRS score and the factor scales. The Board suggested that the Agency assess the current HRS algorithm to determine if changes in the algorithm could provide increased accuracy without increasing data collection costs.

Specifically, the Science Advisory Board suggested that the current HRS algorithm be revised to more closely resemble a quantitative risk assessment, with simplifications made to account for the difficulties of data collection. The Board also suggested that the factor category scales be revised so that the logarithm of the actual number for a factor becomes the factor value. Factor values might then be summed to develop pathway scores.

Another change in the algorithm could include moving the waste quantity factor from the waste characteristics category to the likelihood of release category. Such a move would increase the importance of toxicity and mobility/persistence factors because these would be the only factors remaining in the waste characteristics category. The change might also provide better discrimination among sites based on likelihood of release.

Another change in the structure might involve removing the maximum values from some factors (e.g., waste quantity or population) or from all factors. Scores would not be normalized to a 100 point scale under this approach and there would be no maximum possible score. In addition, EPA may change specific values for certain factors (and/or factor categories) to better reflect their relative importance.

EPA is planning to evaluate and possibly test such changes in the algorithm prior to promulgating a revised HRS. Commenters should

consider these and other possible revisions to the algorithm.

2. Toxicity

Toxicity, a factor in the waste characteristics category for all HRS pathways, is intended to represent the relative potential of a substance to cause adverse health effects. The toxicity factor does not provide an absolute assessment of toxicity; each substance is assigned a value based on its relative toxicity, and that value is used to determine the relative toxic potential of substances at sites.

The current HRS approach to scoring toxicity is based on the National Fire Protection Association (NFPA) rating scheme and the toxicity ratings developed by N.I. Sax. Using one of these ratings, both of which place primary emphasis on the acute toxicity of a substance, the HRS assigns a toxicity factor value from 0 to 3. Only the single highest scoring substance available for release in a pathway is used in assigning a value to the toxicity factor for that pathway.

Various rulemakings on the NCP and NPL, the subsequent applications of the HRS to uncontrolled hazardous waste sites, and EPA's request for comments in the ANPRM have raised a number of issues concerning the current method of assessing toxicity. In particular, commenters have questioned whether chronic toxicity and carcinogenic effects are adequately addressed.

As a first step to revising the HRS toxicity factor, EPA reviewed over 55 chemical ranking systems, as well as the toxicity components of over 30 site ranking systems. EPA then evaluated in more detail a number of methods to characterize and score toxicity, and presented several options to the Science Advisory Board, including an option based on Reportable Quantities (RQ); an option based on Reference Doses (RfDs) and Cancer Potency Factors; and an option using modified Acceptable Daily Intakes (ADI) and a modified weight-of-evidence approach. These options are discussed more fully in "Discussion of Options for Revising the Hazard Ranking System (HRS) Toxicity Factor" (ICF, Inc., May 1987), available in the Superfund docket.

EPA developed the RQ ranking system to aid in setting reportable quantities for hazardous substances as required by CERCLA; the system is described in detail in the following **Federal Register** notices and their supporting material: 50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987. In the RQ ranking scheme, each CERCLA hazardous substance is assigned to one of five RQ categories. Each category corresponds to a weight, in pounds, above which releases must be reported. Under the option developed for using the RQ approach in the HRS, three toxicity types would be considered: chronic noncarcinogenic toxicity, carcinogenicity, and acute toxicity.

The RfD/Cancer Potency Factor option would use the two quantitative toxicity parameters for chronic toxicity generally used by EPA in site-specific risk assessments: The RfD for noncarcinogenic effects and the Cancer Potency Factor combined with the qualitative weight-of-evidence for carcinogenicity; acute toxicity would not be considered under this option.

The Agency defines the RfD as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The determination of the RfD requires scientific judgments as to the appropriate NOAEL (No Observed Adverse Effect Level), uncertainty factors, and modifying factors. Uncertainty factors are reductions in dose rate that are introduced to account for areas of scientific uncertainty such as species extrapolation and variability within the human population. General rules have evolved for determining the overall uncertainty factor to use with various data sets. However, the application of these rules in a particular instance needs to be examined on a case-by-case basis, exercising scientific judgment as to the quality and quantity of the available data. As the magnitude of the uncertainty factor increases, the estimate of the RfD becomes less precise. The RfD is viewed by most toxicologists as a "soft" estimate. While exposures higher than the RfD are associated with increased probability of adverse effects, that probability is not a certainty, since the calculation of a RfD includes consideration of sensitive subgroups. Similarly, while the RfD is seen as a level at which the probability of adverse effects is low, the absence of risk to all people cannot be assured at this level. RfDs, which undergo a formalized Agency-wide peer review and verification process, are derived from available chronic and subchronic toxicity studies.

Cancer Potency Factors, which are developed by EPA's Carcinogen Assessment Group and used to estimate potential carcinogenic risk, are derived from studies on experimental animals or from human epidemiologic data, if available. The weight-of-evidence is defined as the overall strength of the data indicating potential carcinogenicity, based on an evaluation of all relevant studies and the nature and type of responses. Methods for estimating Cancer Potency Factors and evaluating weight-of-evidence are both described in more detail in EPA's Guidelines for Carcinogenic Risk Assessment (51 FR 33992, September 24, 1986).

The modified ADI/modified weight-of-evidence option included three human toxicity types: carcinogenicity, mutagenicity, and teratogenicity (CMT) considered as a group; chronic, non-CMT toxicity; and acute toxicity. All substances would be scored for all three types of toxicity. The modified ADI method for assessing chronic noncarcinogenic toxicity is similar to the RfD method, but the ADI values derived are not subject to Agency-wide peer review and can be based on a wider range of toxicity data (e.g., acute data) than can RfDs.

The Science Advisory Board indicated that all three options that EPA presented seem much better than the Sax rating method and recommended that Sax be replaced. The three options use essentially the same data bases for toxicity, the Board stated, although the data are processed differently. The Board preferred the RfD option for assessing chronic noncancer toxicity.

Based on the Board review and input from the EPA work group, EPA is proposing a scoring method that combines elements of several of the options originally presented to the Board. This combined approach would be based on three toxicity types: carcinogenicity, chronic noncarcinogenic toxicity, and acute toxicity. To evaluate the potential carcinogenicity of substances, the revised HRS would use Cancer Potency Factors combined with the qualitative weight-of-evidence. Where Cancer Potency Factors are not available, ED_{10}s, (i.e., dose at which a 10 percent response is observed) developed to assess carcinogenicity for setting RQs, would be converted to an equivalent scale and used for scoring.

For chronic noncarcinogenic toxicity, the revised HRS would use a method based on verified RfDs because they represent EPA's best scientific data and judgment regarding the potential noncarcinogenic effects of substances. RfDs are currently the most widely used values for evaluating chronic noncarcinogenic toxicity in EPA risk assessments. Acute toxicity scoring would be based on the LD_{50} or LC_{50} of a substance, or the LD_{10} or LC_{10} if LD_{50} and LC_{50} are not available.

In scoring toxicity using the revised HRS, separate toxicity scores would be developed for each HRS pathway, based on the substances relevant to that pathway. Within a pathway, the relevant hazardous substances would be identified—those associated with an actual or potential release to ground water, surface water, or air, or, for the onsite pathway, those associated with onsite exposure potential. For each substance identified, the toxicity rating would be determined using the methodology in the proposed rule (section 2.2.1.1) or a reference table based on that methodology (an example is available in the Docket: See "Example Reference Table for Toxicity and Other Substance-Specific Values", Versar, November, 1988).

Toxicity ratings for individual substances would be integer values on a scale of 0 to 5, with 5 being the most toxic and 0 representing insufficient information to score. If adequate toxicity data are available, each substance would receive three subscores—one for acute toxicity, one for chronic noncarcinogenic toxicity, and one would be the highest subscore. The rating scales developed for the revised HRS give less weight to acute toxicity relative to chronic toxicity because remedial actions are almost always in response to concerns over exposures associated with potential carcinogenicity or chronic toxicity (proposed rule, section 2.2.1.1).

Asbestos and radionuclides are classified as human carcinogens (the highest weight-of-evidence category), but their cancer potency values are not expressed in units directly comparable to most other substances. Therefore, asbestos and radionuclides cannot be evaluated and scored using the proposed system. For purposes of HRS scoring, asbestos and radionuclides would be assigned a 5, the highest toxicity value for carcinogens.

A default value of 3 would be used for a toxicity factor value when appropriate toxicity data for scoring does not exist for all hazardous substances relevant to that pathway or threat, a situation that EPA anticipates would be very rare. EPA solicits comment on this default value, which is the midpoint of the scoring range and approximate median of the substances scored to date by EPA.

The proposed rating scales for the three toxicity types (carcinogenicity, chronic noncarcinogenic toxicity, and acute toxicity) are provided in the proposed rule. A more thorough discussion of the development of these rating scales and the overall toxicity factor is provided in the Technical Support Document, available in the Superfund docket. EPA solicits comment on these rating scales.

The proposed toxicity scoring methodology would use readily available, high quality toxicity data, rely on a data base that is large enough to provide a score for all sites, and be consistent with existing EPA procedures. For the ground water, surface water, and air pathways, the overall toxicity value for each hazardous substance would be combined with its corresponding mobility or persistence value in a matrix to assign a toxicity/mobility or toxicity/persistence value. The highest toxicity/mobility or toxicity/persistence value relevant to a pathway or threat would become the factor value.

A hazardous substance's potential ecosystem toxicity, which would be considered in the surface water pathway, would be evaluated using the following hierarchy of data: EPA chronic water quality criteria, EPA acute water quality criteria, or the lowest LC_{50} value for the substance (proposed rule, section 4.4.2.1.1). (See section V D 2.)

Past commenters have questioned the use of the single highest scoring hazardous substance in each pathway to score toxicity in the current HRS. EPA reviewed a number of options related to the number of hazardous substances scored for a site including (1) retaining the current method of using the highest scoring hazardous substance in each pathway to score toxicity; (2) basing the toxicity value on all hazardous substances known to be at the site; (3) basing the toxicity value on a fixed percentage or number of hazardous substances known to be present at the site; and (4) giving extra points to sites with a large number of hazardous substances. These options are more fully discussed in the Technical Support Document and in the paper presented to the Science Advisory Board: "Discussion of Options for Revising the Hazard Ranking System (HRS) Toxicity Factor" (ICF, Inc., May 1987). Both documents are available in the Superfund docket.

EPA is proposing to retain the current method of scoring the toxicity factor based on the single highest scoring hazardous substance applicable in each pathway or threat because the Agency believes that the single most hazardous substance present in a pathway or threat generally provides an adequate screening level evaluation of relative hazards of the pathways, particularly when coupled with mobility or persistence, as applicable. The sampling conducted during a site inspection probably would not provide sufficient information on the relative quantities or concentrations of hazardous substances at a site. EPA believes that the proposed method will ensure that any site where highly toxic substances are present will receive a high toxicity score. EPA solicits comments on the use of a single hazardous substance per pathway or threat to score toxicity and on the alternatives discussed above.

3. Hazardous Waste Quantity

In the current HRS, hazardous waste quantity is the amount of waste containing hazardous substances (as defined in CERCLA Section 101) present at a site, excluding any wastes that are contained such that they cannot migrate. Values for the hazardous waste quantity factor are combined with values for the toxicity/persistence factor (in the ground water and surface water pathways) or toxicity (in the air pathway) to produce the final waste characteristics category score. If it is not possible to make any determination of the hazardous waste quantity at a site and it is known that hazardous substances are in the waste, a default value of one for hazardous waste quantity is assigned (the range is 0 to 8). EPA has found that about 20 percent of all sites studied are assigned the default value for waste quantity, signifying the absence of data. This finding indicates that even hazardous waste quantity, which is generally easier to estimate than hazardous substance concentration, is still difficult to estimate.

In preparing revisions to the HRS, EPA considered a number of alternatives to the current HRS method of calculating hazardous waste quantity and presented two to the Science Advisory Board: one would require use of hazardous substance concentration data to estimate waste quantity at all sites and the other would be a tiered approach that would use hazardous constituent concentration data, waste quantity, volume, or surface area of the source, in that order. These options are discussed in detail in a paper prepared for review by the Science Advisory Board: "The Superfund Hazard Ranking System (HRS): Feasibility of Using Concentration Data in a Revised HRS" (ICF, Inc., July 1987), and available in the Superfund docket.

In general, having adequate hazardous substance concentration data might enable sites to be evaluated more accurately. However, the cost of obtaining these data at all sites would be substantial. If accurate records of wastes were available and if the concentration of contaminants in the wastes were known, it would be

possible to calculate the amounts of hazardous constituents. EPA's experience, however, has been that such waste disposal records are frequently not available at Superfund sites, and when they are available, they are often incomplete and insufficiently detailed to estimate constituent quantities.

The comprehensive site sampling needed to estimate hazardous substance concentrations and amounts with known accuracy would not be feasible on a routine basis, given the resources available and the statutory requirement to expeditiously evaluate sites. Wastes at hazardous waste sites are typically heterogeneous. Depending on the nature and history of the site, very great differences in waste composition may occur over just a few meters, with different sets of constituents appearing and with levels varying by orders of magnitude. Attempting to determine a single representative concentration of a constituent or to estimate the total amount of all hazardous substances would be very difficult at most sites. Temporal variability also diminishes the relevance of any estimate of concentrations. Data from a single sampling provide only a "snapshot" of current conditions. Mobile substances may have already moved into environmental media and only the least mobile may remain at significant levels at the source. Thus, substance concentration data taken only from waste source materials may result in underestimates of waste mass available for transport.

In evaluating alternatives for developing a hazardous waste quantity value, the Agency recognized that, at some sites, sufficient data may be available to determine the concentration of hazardous constituents. At most sites, however, obtaining these data would be difficult and costly. Thus, the Agency is proposing the tiered approach to scoring hazardous waste quantity in the revised HRS (proposed rule, section 2.2.2). As the Science Advisory Board stated, the tiered system "would encourage the use of concentration data, but would also provide the flexibility to use indirect estimates of a constituent's mass when direct measurements of concentration are not available."

The tiered approach involves the development of a single hazardous waste quantity value for each pathway at a site. This factor would be based, in order of preference, on three factors: (1) Hazardous constitutent quantity, (2) site wastestream quantity, (3) site disposal capacity. The hazardous constituent quantity factor represents the actual quantity of hazardous substances deposited on the site. The wastestream quantity factor represents the quantity of hazardous substances potentially deposited on the site based on available information about the nature and quantity of wastes that were deposited on the site. The site disposal capacity factor represents the quantity of hazardous substances potentially deposited on the site based on the available information about the quantity of hazardous substances the site could have received as indicated by the sizes of the sources identified on the site. These three factors are in turn evaluated based on some or all of the following waste quantity measures depending on the quality and completeness of supporting data: (1) The quantity of hazardous substances deposited, (2) the quantity of waste deposited that contain hazardous substances, (3) source volume, (4) source area. The actual approach used in evaluating the hazardous waste quantity factor in terms of the three subsidiary factors and the four waste quantity measures is complex. The approach reflects judgments as to the appropriateness of employing each measure and factor under varying site-specific conditions of data completeness and quality. The hazardous waste quantity factor evaluation is presented in section 2.2.2 of the proposed rule; the basis for the approach is presented in section 2.4 of the Technical Support Document.

EPA has concluded that this tiered approach will make the hazardous waste quantity factor more accurate by using the best available data without imposing significant new costs or demands on resources. The tiered approach would also allow the scoring of the hazardous waste quantity factor at many more sites. In addition, the flexibility of the approach would accommodate a wide variety of data gathering strategies; efforts could be varied so that more resources were devoted to complex sites or to sites suspected of presenting severe health risks.

The proposed revision to the hazardous waste quantity factor is also responsive to the SARA requirement (CERCLA section 125, added by SARA) to consider the quantity, toxicity, concentration of hazardous substances at facilities that contain substantial volumes of waste described in section 3001 (b)(3)(A)(i) of RCRA. The wastes include fly ash wastes and other wastes generated from combustion of coal or other fossil fuels. For a further discussion of these wastes, see section V E.

The hazardous waste quantity factor in the onsite pathway would be calculated differently (proposed rule, section 5.2.1.1). In the other pathways, the hazardous waste quantity factor reflects the magnitude and duration of potential releases. In the onsite pathway, the question is not the release and migration of the hazardous substances, but rather the potential for direct contact with the contaminated area. For this reason, the hazardous quantity factor for the onsite pathway would be based primarily on the total surface area of the known sources at the site. If the original source of the contamination is unknown, the waste quantity factor would be based on the area of soil contaminated at levels significantly above background.

4. Observed Release/Concentration of Hazardous Substances in the Environment

The current HRS scores an observed release if the measured concentration of the hazardous substance is significantly above the background level and if that concentration can reasonably be attributed to the site. The current HRS gives little consideration to the specific concentrations of hazardous substances in the environment nor does it consider the relationship between the concentrations and health standards.

Some commenters to previous rulemakings have stated that only concentrations exceeding health-based benchmarks should be used in determining whether an observed release has occurred. Other commenters have stated that if a substance is detected at a level above a health-based benchmark it should receive a higher score than if the benchmark is not exceeded. Incorporating an assessment of environmental concentrations into the HRS would, in the opinion of some commenters, more accurately define the nature and degree of potential risk.

EPA evaluated several approaches for directly using environmental concentration data to assess potential risk as part of the HRS. One approach would have based the observed release value on the highest measured concentrations of hazardous substances in the environment, using this level as a measure of potential exposure. The Agency, however, concluded that site inspection personnel would generally be unable to identify areas where maximum contamination could be found. The temporal and spatial variance of contaminants makes it difficult to identify the most contaminated location on a site during a limited investigation. Furthermore, the

maximum concentrations may not yet have occurred at the time of the sampling.

Another approach studied was the use of simple fate and transport models to predict concentrations at the receptor. Fate and transport models combine movement in the transport medium (e.g., water) with the fate of the substance in the medium. For example, one substance may immediately dissolve in water and persist indefinitely while another may precipitate out of water and biodegrade within hours. However, using fate and transport models in this manner would require the accurate characterization of the source of contaminants and the media through which the contaminants must travel. Given the limited scope of the site inspection, it would be difficult to characterize the source and the media adequately enough to predict concentration levels accurately.

Knowledge of the concentrations and release rates of constituents at the source is essential to predicting levels at more distant points. As discussed in the section on waste quantity, EPA has concluded that at most sites it cannot dependably characterize the constituents of a waste source during the site inspection. Therefore, the Agency is not proposing to include a factor that would be scaled according to measured concentrations in releases.

EPA is retaining the current approach to scoring observed releases, but is proposing to specify better, more precisely defined criteria for determining when a release is significantly above background (proposed rule, sections 2.1.1, 3.1.1, 4.1.1.1, and 5.0.1). The proposed criteria for significant releases are as follows:

- If no background concentration is detected, a significant release is three or more times the detection limit.
- If the background concentration is greater than or equal to the detection limit but less than two times that limit, a significant release is greater than or equal to three times the applicable background concentration or greater than or equal to four times the detection limit, whichever is less.
- If the background concentration is greater than or equal to twice the detection limit, a significant release is greater than or equal to twice the applicable background concentration.

The detection limit could be the minimum of the EPA contract-required quantitation or detection limit specified in EPA's Contract Laboratory Program, the method detection limit for a given analytical procedure or instrument (or in the case of real time field instruments, the detection limit of the instrument used in the field), or the actual detection limit achieved by the laboratory for the set of samples in question. Negative sampling results would not necessarily form the basis for refuting an observed release that is based on a separate valid sampling and analysis because releases may be episodic in nature.

As mentioned above, commenters have suggested that a release at a concentration below a known health-based benchmark should not be considered significantly above background. When the current HRS was proposed, EPA explained that finding an observed release indicates that the likelihood of a release is 100 percent. The release of some substances into the environment is a good indication that substances from the site can escape and increases the likelihood of subsequent releases. Data on frequency and quantity of actual releases would require long-term monitoring, which is not feasible at the site inspection stage. In addition, the results of limited sampling may not be representative; higher concentrations than those detected when the sampling was done may exist or may occur at other times. EPA has concluded that the proposed criteria provide a reasonable definition of an observed release.

EPA has also concluded that limited environmental concentration data cannot be used to demonstrate that concentrations will remain below health-based benchmarks. Such an approach would most likely lead to the omission of some high risk sites from the NPL.

EPA is, however, proposing to use environmental concentration data in evaluating and scoring target populations as discussed below in section V C 5. This scoring method would weight any population actually exposed to documented contamination more heavily than those potentially exposed.

5. Use of Health-Based Benchmarks in Evaluating Target Populations

In assessing target populations in the current HRS, people actually exposed to contamination do not count more than people potentially exposed, nor is the level of exposure considered. Under Section 118, added by SARA, EPA is required to give high priority to sites that have led to the closing of drinking water wells or the contamination of principal drinking water supplies. To respond to this mandate, EPA considered an option of weighting closed wells higher than operating wells. Such a factor, however, would create other problems, such as how to weight contaminated wells that should be closed, but are not, and wells that may be closed in the future. Instead of including closed wells, EPA decided to give greater weight to known exposures using two other mechanisms. First, as discussed in section V C 9, factors reflecting risks to the MEI would be added to the revised HRS. Second, populations whose wells or intakes show documented drinking water contamination would receive higher weightings than those of populations only potentially exposed.

To improve the accuracy of the scoring system by giving increased weighting to populations based on their actual exposure, the Agency is proposing to expand the evaluation of exposed populations in both the ground water and surface water pathways to include weighting factors based on health-based benchmarks.

However, even though the Agency is attempting to consider concentrations of contaminants in drinking water in the proposed revisions to the HRS, it is important to remember that these data are from limited site investigations, and are used, in the HRS, simply to make initial screening decisions. Health-based benchmarks and cancer risk numbers are not used in the HRS to identify levels of risk from drinking contaminated water, but rather to provide added weight to populations actually exposed to site contaminants in determining pathway scores.

For the ground water and surface water pathways, the health-based benchmarks that EPA is proposing to use would be the Federal primary drinking water standards (maximum contaminant levels or MCLs) proposed or promulgated under the Safe Drinking Water Act (SDWA). Where no MCL has been proposed or finalized for a substance, the health-based benchmark for noncarcinogens would be the proposed maximum contaminant level goal (MCLG) [3]; for carcinogens or potential carcinogens, where the proposed MCLG has been set at zero, a concentration corresponding to specified individual lifetime cancer risks would be used as the health-based benchmarks.

MCLGs are health-based levels at which no adverse health effects would arise with a margin of safety. They are not enforceable under the SDWA. MCLs are enforceable limits under the SDWA and are set as close to the MCLGs as possible, taking several factors into account, including the effectiveness of treatment by the best available

[3] This proposed rule discusses "proposed" MCLGs only because MCLGs and MCLs will be finalized concurrently and, for the purposes of the proposed HRS, the final MCL will supercede the final MCLG.

technologies, detectability, and practical quantitation limits. For known or probable human carcinogens, MCLGs are set at zero. MCLs for carcinogens will never be set at zero, but are expected to be set so that the risk of drinking water at the MCL falls within the range of 10^{-4} to 10^{-7} individual lifetime cancer risk. These cancer risk numbers assume that the individual is a 70 kg (150 lb) person consuming 2 liters of water a day for 70 years.

Using these health-based benchmarks in assessing drinking water threats, the target population factor in the surface water and ground water pathways would be divided into four population groups:

(1) Level 1: The population drinking from wells or intakes that are contaminated with hazardous substances at concentrations greater than:

Proposed or final MCLs;

Proposed MCLGs (for noncarcinogens with no proposed or final MCL); or

A 10^{-4} individual lifetime cancer risk (for carcinogens and potential carcinogens with no proposed or final MCL).

The population drinking water at these concentrations would be weighted 100 times as much as the population drinking water at Level 3 concentrations.

(2) Level 2: The population drinking water from wells or intakes that are contaminated with hazardous substances at concentrations significantly above background, but within the following ranges:

Greater than 1/1000 of the proposed or final MCL but less than or equal to the proposed or final MCL;

Greater than 1/1000 of the proposed MCLG but less than or equal to the proposed MCLG (for noncarcinogens with no proposed or final MCL); or

Greater than 10^{-7} but less than or equal to 10^{-4} individual lifetime cancer risk (for carcinogens or potential carcinogens with no proposed or final MCL).

The population drinking water at these concentrations would be weighted 10 times as much as the population drinking water at Level 3 concentrations. Level 2 would also include any hazardous substance that shows up in a drinking water well or intake at concentrations that are significantly above background, but has no proposed or final MCL or MCLG, or cancer risk number.

(3) Level 3: The population drinking from wells or intakes that are contaminated with hazardous substances at concentrations significantly above background, but less than or equal to:

1/1000 of the proposed or final MCL;

1/1000 of the proposed MCLG (for noncarcinogens with no proposed or final MCL); or

10^{-7} individual lifetime cancer risk (for carcinogens with no proposed or final MCL).

These populations would not be given any additional weight.

(4) Potential contamination: The population whose wells or intakes are not known to be contaminated, but the ground water or surface water is already contaminated or has the potential to be contaminated. Only populations who use drinking water from within the target distance limit would be counted as potentially exposed. This potentially exposed population would be distance-weighted in the ground water pathway and dilution-weighted in the surface water pathway.

In all groups, the population counted would be the people whose drinking water is drawn from wells or intakes within the target distance limit; the populations would not have to live or work within the target distance limit.

The weighting of these groups was chosen to give high priority to sites where exposures to contamination attributable to the site were known to be occurring. Where Level I concentrations exist, only 200 people would need to be exposed to the contamination for the population factor to be assigned the maximum score.

The specific health-based benchmarks used in determining this factor were chosen to be consistent with other Agency programs. The range of individual lifetime cancer risks of between 10^{-4} and 10^{-7} was chosen to be consistent with the approach currently taken by the Superfund program in determining cleanup levels. For noncarcinogens, a three order of magnitude range of concentrations would be used in the Level 2 concentrations group to be more consistent with the way carcinogens are treated in Level 2. EPA has chosen to count populations drinking from wells or intakes contaminated at concentrations significantly above background but at concentrations less than or equal to the MCL or MCLG (or with an individual lifetime cancer risk of less than or equal to 10^{-7}) because some contamination, albeit low, has been detected, and may be the leading edge of a contaminant plume. Moreover, the concentration found in a well or intake during a site inspection is only a one-time picture of the contamination. During a remedial investigation/feasibility study, the Agency does extensive sampling to determine the extent of the contamination at a site.

MCLs have been developed for relatively few hazardous substances. More hazardous substances have MCLGs and cancer risk numbers. However, of the hundreds of hazardous substances found at Superfund sites, most currently have no health-based benchmarks. To be protective, the Agency has decided that populations exposed to hazardous substances with no health-based benchmarks should be included in Level 2 if the substances are found in the drinking water at concentrations significantly above background and are attributable to the site. The Agency solicits comments on this approach.

If more than one substance is present in the drinking water at levels significantly above background but not above the MCL, MCLG, or 10^{-4} individual lifetime cancer risk, for each such substance, the percentage of its health-based benchmark at which it is present would be calculated. If the total sum of the percentages exceeds 100, the concentration in the drinking water would be considered Level 1 concentrations (proposed rule, sections 3.3.2.1. and 4.1.3.2.1) and the population using that contaminated water would be weighted as Level 1 concentrations. If the sum of the percentages is greater than 0.1 and less than or equal to 100, the population using that contaminated water would be weighted as Level 2 concentrations. Finally, if the sum of the percentages is less than or equal to 0.1, the population using that contaminated water would be considered as a Level 3 population.

This proposal for summing benchmark ratios would give higher scores to those sites where several hazardous substances are found in the drinking water at concentrations near their benchmarks. The Agency analyzed other methods for achieving this, including evaluating hazardous substances individually against their benchmarks and basing the determination of target population weighting levels on the single substance found in the drinking water with the highest benchmark ratio. The Agency would like comment on the appropriateness of both these approaches to scoring multiple substances detected in drinking water, as well as any alternative approaches.

The Agency solicits comment on the proposed population groups, on the weightings assigned to these groups, and on the health-based benchmarks used to define these groups. In addition, the Agency solicits comment on the risk range (10^{-4} to 10^{-7}) used to define the proposed levels. Specifically, EPA would like comment on whether a risk range should be used in the context of the HRS and, if so, whether it should be 10^{-4} to 10^{-7} (as is used in the proposed rule) or 10^{-4} to 10^{-6}.

EPA is proposing the system described above for considering health-based benchmarks in the HRS; however, the Agency has evaluated a variety of alternatives. Three are discussed in this preamble. (See the Technical Support Document, available in the Superfund docket, for further detail.)

Alternative I is a three-tiered system that would use only proposed or final MCLs as the health-based benchmarks. The populations drinking water contaminated with hazardous substances at concentrations that exceed a proposed or final MCL would be included in the first tier, which would be weighted 100 times as much as the potentially exposed population. The population in the second tier would include those people drinking water at concentrations at or below a proposed or final MCL, but significantly above background, and those people drinking water containing hazardous substances for which proposed or final MCLs do not exist; this population would be weighted 10 times as much as the potentially exposed population. The third tier would include those people potentially exposed to contamination; this population would be distance- or dilution-weighted.

Alternative I would be considerably simpler than the one proposed and would be based solely on proposed or final MCLs, health-based benchmarks developed by the Agency for use in evaluating drinking water contamination, rather than MCLGs or cancer risk numbers. However, since MCLs have been developed for only a handful of chemicals, the Agency believes this approach may not accurately assess the relative degree of hazard and therefore does not discriminate among sites as well as the proposed approach.

Alternative 2 would weight target populations using benchmarks similar to those used in the proposed option—MCLs, MCLGs, and cancer risk numbers. However, Alternative 2 contains three tiers instead of four, and uses a single cancer risk number of 10^{-6} rather than a risk range to delineate the different tiers. The target population would be divided into the following three tiers:

(1) Level 1: The population exposed to concentrations greater than the proposed or final MCLs, the proposed MCLGs (for noncarcinogens with no MCLs), or a 10^{-6} individual lifetime cancer risk (for carcinogens with no MCLs) would be weighted 100 times as much as the people potentially exposed.

(2) Level 2: The population exposed to concentrations less than or equal to the proposed or final MCLs, the proposed MCLGs (for noncarcinogens with no proposed or final MCL), or a 10^{-6} individual lifetime cancer risk (for carcinogens with no MCLs), but significantly above background, would be weighted 10 times as much as the people potentially exposed.

(3) Potential Contamination: The population whose wells or intakes are not known to be contaminated, but the ground water or surface water from which these wells draw is already contaminated or has the potential to be contaminated. This potentially exposed population would be distance-weighted in the ground water pathway and dilution-weighted in the surface water pathway.

In all groups, the people counted would be those whose drinking water is drawn from wells or intakes within the target distance limit; the people would not have to live or work within the target distance limit.

The evaluation of multiple substances under this alternative would be similar to the proposed approach, in that, for each substance the percent of its health-based benchmark at which it is present would be calculated. As in the proposed option, if the total sum of the percentages is greater than 100, the concentration would be considered to be above the benchmark and the populations exposed to the contaminated water would be weighted as Level 1 contamination. If the concentration is significantly above background but not above the health-based benchmarks, the people exposed to the contaminated water would be weighted as Level 2 contamination.

The weighting of the three groups was considered so that sites where exposures to contamination above health-based benchmarks were known to be occurring would be given high priority. This approach is simpler than the proposed approach, and may be appropriate given the limited data available at the site inspection stage, and the purpose of the HRS as a screening tool (rather than a risk assessment).

The third alternative would be identical to Alternative 2, except a 10^{-4} individual lifetime cancer risk level, instead of a 10^{-6} risk level, would be used to differentiate between Level 1 and Level 2 contamination.

The Agency requests comment on these alternative approaches to assessing actual drinking water exposures in the HRS.

EPA is not proposing at this time to incorporate health-based benchmarks for the air and onsite pathways due to a number of unresolved technical issues. These include selection of the point at which samples would be taken to demonstrate exposure, the length of the monitoring period, and interpretation of data in light of the extreme temporal and spatial variability of air releases. EPA is considering ways to evaluate observed human exposure in the air pathway and solicits comments on how these technical issues could be addressed. It should be noted that the onsite pathway would be evaluated only if there is documented contamination at the site. In addition, the varying exposure to the non-resident population would depend more on the frequency of contact than on the level of contamination. For this reason, the nearby population would be distance-weighted.

The surface water pathway would apply ecologically-based benchmarks to the sensitive environment targets factor as well (proposed rule, sections 4.4.3.1.1, 4.4.3.1.2, and 4.4.3.1.3). This would be similar to the health-based benchmark system in terms of the relative weights or groups, except that there would be three levels instead of four. The ecological benchmarks are based on ambient water quality criteria. In the human food chain subpathway and the recreation subpathway, actual observed contamination would also be weighted more heavily than potential contamination.

6. Consideration of Hazards to the Environment

CERCLA section 105 required EPA to create an NPL of at least 400 sites. At the time of enactment, EPA realized that thousands of sites posed potential public health and environmental threats. The Agency believed that, given the need to set priorities for the expenditure of limited monies, the HRS should place greater weight on sites that posed threats to public health rather than those that posed risks to the environment.

CERCLA section 105 mandated that EPA consider both threats to public health and to the environment when it developed the NPL. Although SARA did not specifically require EPA to take any particular action regarding threats to the environment, consideration of the impact that waste sites have on sensitive environments is emphasized in SARA's addition of section 105(c)(1), which requires the HRS "to the maximum extent feasible to accurately assess the relative risk to human health and the environment." EPA's experience with many potential Superfund sites suggests that a number of sites posing a serious threat to the environment are not scoring high enough to be placed on the NPL and addressed under CERCLA. Therefore, the Agency has determined that overall accuracy would be improved, in certain cases, by placing on the NPL sites that have significant impact on the environment, even when the sites pose less of a threat to human health.

Although the proposed HRS was designed to give greater weight to environmental impacts than the current

HRS, the scores related to the relative risks to human health would still be weighted more heavily than sensitive environments. If sensitive environments, but no people, are affected by a site, the score would not reach the maximum for the targets category. EPA does, however, intend to assign a sufficiently high value to sensitive environments so that the most serious environmental impacts in the absence of any public health risks would have scores above the NPL cutoff. EPA would like comments on the relative weightings of the two types of impacts.

EPA is proposing to modify several features of the current sensitive environment factors. In the current HRS, if more than one sensitive ecosystem exists within the target distance, only the one with the highest score is included. The proposed HRS would base the sensitive environment factor in the surface water and air pathways on the sum of the values for all appropriate ecosystems within the target distance, with each ecosystem generally weighted for distance or dilution (proposed rule, sections 2.3.4 and 4.4.3). This proposed change is intended to provide a more accurate assessment of the potential risk to sensitive environments.

The primary ecosystems considered in the current HRS are wetlands of greater than five acres and habitats of Federally designated endangered species. The land use factor in the air pathway also evaluates other ecosystems, such as wildlife reserves. The revised HRS expands significantly the list of sensitive environments to include those environments that are protected under Federal or State designations. The full list of the proposed sensitive environments is Table 2–18 of the proposed rule. These environments include marine sanctuaries, National Parks, designated Wilderness Areas, National Monuments, National Seashore Recreational Areas, and National or State Wildlife Refuges. The final item on the list covers particular areas, often relatively small in size, that are important to the maintenance of unique biotic communities. EPA wants to specify the particular communities in the final rule and requests comments on which such communities should be listed.

In revising the sensitive environments factor, the Agency evaluated several ecological ranking models that were either in use or were in the latter stages of development. From this work, and from comments received in response to the ANPRM, the Nature Conservancy's National Heritage Program was identified as having the potential to supplement the sensitive environments list in the revised HRS. When the National Heritage Program is used in conjunction with the expanded list, EPA will be able to identify not only sensitive environments that have been formally designated by State or Federal agencies, but also those environments that score high on the National Heritage Program's database, which ranks a site according to its rarity and vulnerability.

The proposed sensitive environments factors could be assigned values based on their inclusion on the list of protected areas or on their rating under the National Heritage Program (see Table 2–19 of the proposed rule). If the values assigned for the type of area and for its National Heritage Program ranking differ, the higher of the values would be used.

Sensitive environments considered in the air pathway would be distance-weighted so that those closest to the site would have higher values than those at increasing distances up to the target distance limit. In the surface water pathway, sensitive environments that have been subject to actual contamination would receive a score based on whether the contamination was above or not exceeding ecological benchmarks. Where no actual contamination has been documented, the scores assigned would be dilution-weighted. In the onsite pathway, only terrestrial sensitive environments with observed contamination would be considered since the exposure is presumed to be from direct contact with the hazardous substances, not from the migration of hazardous substances.

7. Consideration of Effects on the Human Food Chain

SARA (see CERCLA section 105(a)(8)(A), as amended) requires EPA to consider, in revising the HRS, the effects of hazardous waste sites on the human food chain. When EPA developed the current HRS, the Agency decided that it could not apportion human food chain effects according to population risks, but it did deal with the effects qualitatively in the land and water use factors. In addition, the risks to the human food chain from using potentially contaminated water for irrigation are reflected in the current procedure for estimating the target population; an additional 1.5 people per acre are added to the population total for each acre of irrigated food or forage crops.

In revising the HRS, EPA has determined that the most significant, measurable human food chain risks are those associated with the aquatic food chain. Therefore, in the HRS surface water pathway, EPA is proposing to evaluate the potential risk to the human food chain based on potential or observed contamination of aquatic food chain organisms. Details of the proposed method the Agency would use to incorporate human food chain effects in the scoring of surface water are discussed in the section on the surface water pathway (section V D 2).

The potential exists for some sites to adversely affect the human food chain via other pathways. These pathways would primarily affect the terrestrial food chain (deposited air pollutants migrating to the edible portion of plants, ground water or surface water used to water animals or irrigate crops). EPA considered ways to account for terrestrial food chain effects in the revised HRS. However, the Agency decided that because the terrestrial food chain was more complex and not as well understood as the aquatic food chain, it was impractical to include a detailed assessment in the HRS. Rather, points are assigned to the ground water and surface water use factors if the water is used for irrigation of commercial food or forage crops, for commercial livestock watering, or for commercial food preparation. In the ANPRM, EPA asked for comments on methods of incorporating human food chain effects into the HRS and is continuing to seek comments on whether food chain contamination by hazardous substances in air and soil should be included in scoring either the air or ground water pathway and if so, the basis for estimating human health risks from such food chain exposure.

8. Dilution/Distance Weighting of Targets

The current HRS directly weights the population factor by dilution/distance only in the air pathway. The ground water pathway combines the total population using water drawn from the area within the target distance limit in a matrix with distance to the nearest drinking water well. The surface water pathway uses a matrix to combine the distance to an intake and the population using that intake. The greater the distance, the lower the HRS value for any population category.

In reviewing ways to account for the greater risks to populations close to sites, EPA considered using analytical models that would require data such as wind speed and temperature in the air pathway to calculate the rate of dispersion for a particular substance at a specific site and data such as ground water flow direction and gradients and dispersion to calculate dilution for the

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ground water pathway. EPA decided, however, that the reliability of the results, given the limited data available from site inspections, was not great enough to consider using such models and equations for each site.

The revised HRS would use distance- and dilution-weighting factors in calculating the scores for certain populations and environments that are potentially exposed to contamination from sites. The weighting factors would reflect the diminishing risk as substances disperse or dilute and were generally developed using analytical models. For each prescribed distance (e.g., a quarter to a half mile from the site) or for the appropriate flow characteristics of the surface water, the potentially affected population in the area would be multiplied by a weighting factor. The target population would be the sum (subject to the maximum) of the distance or dilution weighted groups plus any populations exposed to documented contamination.

Although EPA did not design the revised HRS to be an analytical model, the Agency did use models to help develop the scales of values and weights for distance weighting. These models are more fully explained in the Technical Support Document, available in the Superfund docket. EPA concluded that this distance and dilution weighting approach uses the best elements of analytical models without requiring site-specific data and thus represents a significant increase in accuracy without a major increase in data collection costs. In reviewing the effects of air emissions on populations surrounding Superfund sites, the Science Advisory Board supported the weighting of population according to distance from a site.

The proposed distance weighting factors for ground water (proposed rule, sections 3.3.1 and 3.3.2) are derived from a three-dimensional fate and transport model that determines relative concentrations as a function of distance from a site. Those relative concentrations provide the basis for the weighting factors. An exception to the distance weighting would occur when the aquifer is a karst aquifer. (See section V D 1 and proposed rule, section 3.3.2 for a discussion of karst aquifers.)

The air pathway distance weighting factors are based on the effects of atmospheric diffusion and were calculated using a simple Gaussian plume model (proposed rule, sections 2.3.1 and 2.3.2). The surface water pathway would not use distance weighting, but would instead employ dilution weighting. The extent of the dilution would be considered a function of the flow characteristics of the water available for dilution (proposed rule, sections 4.1.3.1 and 4.1.3.2).

For the onsite pathway, EPA is proposing a distance weighting factor for the nearby population that lives within one mile travel distance of the area of contamination (proposed rule, section 5.2.3), but does not live where contamination is present. This factor would be set based on the relative frequency with which an individual could travel to the site, which, in turn, is assumed to be based on the distance between the person's residence and the site. EPA has not identified any studies that provide estimates of incursion rates into contaminated land areas or the relationships between frequency of incursions and distance from a site. EPA is proposing a factor based on distance and solicits comments on how frequency of incursion might be taken into account in the onsite pathway.

9. Population Risks and Risk to the Maximally Exposed Individual

Maximally exposed individuals (MEIs) are those individuals in the exposed population that are expected to be exposed to the highest ambient concentration (and thus receive the highest dose) of the hazardous substance in question. Population risk would be the effect on the exposed population over an extended period of time, usually assumed to be 70 years.

The current HRS incorporates both concepts in developing target population scores. For example, the total population is evaluated at distances around a site, and the population scores are either distance weighted (air) or combined in a matrix with distance to the nearest well (ground water) or distance to the intake (surface water).

Although the HRS was not designed to be a risk assessment, the Agency believed that an explicit factor based on potential MEI risks should be added to improve the overall assessment of potential risks to human health within the HRS and to make the revised HRS more consistent with general Agency risk assessment approaches. Usually, EPA evaluates both MEI risks and exposed populations as part of its risk assessments to provide a better overall indication of potential threats. Consequently, several proposed changes related to MEI and population risks are included in the revised HRS. Population scores would be weighted based on known or potential exposure to contaminants (see health-based benchmarks in section V C 5). Factors reflecting the risks to the MEI via the ground water, surface water, and air pathway would be included in the revised HRS.

For ground water, the MEI risk would be assessed through a factor based on the distance to the nearest well (proposed rule, section 3.3.1). This measure was chosen because it is likely that, all other things being equal, the well closest to the site would have the highest level of contamination. Since contamination usually decreases with distance, the farther the nearest well is from the site, the lower the assigned value would be, with three exceptions. First, if any well has documented contamination above health-based benchmarks attributable to the site, the MEI factor would be assigned the maximum value. Second, if the site overlies a karst aquifer, the MEI factor would be assigned the maximum value if any well draws drinking water from the karst aquifer within the target distance limit. This reflects the potentially shorter travel time within such aquifers. Third, different distance weighting factors would be applied to wells in karst and wells not in karst to reflect differences in dilution.

For the surface water pathway, the risk to the MEI from drinking water would be represented by a value based on the flow characteristics of the body of water at the nearest intake (proposed rule, section 4.1.3.1). This method was selected because the flow characteristics of surface water are a major factor in determining the concentration of contaminants;, i.e., the greater the volume of water, the greater the dilution, and therefore the lower the potential risk. The assigned value for the MEI factor would be a multiple of the dilution weighting factors for the different flow characteristics of surface water. If any drinking water intake has documented contamination above health-based benchmarks attributable to the site, the factor would be assigned the maximum value. The human food chain, recreation and environmental subpathways do not contain an MEI factor.

For the air pathway, the risk to the MEI would be based on the distance from the emission sources on the site to the nearest individual, using the distance to the closest residence or regularly occupied building or area (proposed rule, section 2.3.1). Values would be assigned for distances of up to two miles from the site. Values beyond two miles would be zero due to the distance weights beyond two miles.

Because the onsite pathway is not a migration pathway and because of the nature of the exposure, the onsite pathway does not lend itself to an MEI

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factor. EPA is seeking comments on whether such a factor should be incorporated and if so, how to do so.

10. Scoring on the Basis of Current Conditions

Under the current HRS, EPA generally scores the air, ground water, and surface water pathways based on the present condition of the site excluding any response action that has been taken ("initial conditions"), rather than on the present condition of the site, taking into account response action ("current conditions"). The Agency has used this approach for a number of technical and programmatic reasons explained at 47 FR 31187 (July 16, 1982), and discussed below. In conjunction with revising the HRS, the Agency decided to review this policy. The Agency believes it may, in some situations, be appropriate to evaluate the site based on current conditions and to consider prior responses in calculating a HRS score. The Agency intends to determine under what conditions prior response actions should or should not be considered, to ensure that this results in a more feasible and accurate assessment of potential risk to human health and environment. EPA is, therefore, requesting comment on the following issues and approaches under consideration by the Agency.

CERCLA section 105(c), as added by SARA, requires EPA to amend the HRS, and states that, "Such amendments shall assure, to the maximum extent feasible, that the HRS accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." The Agency believes that, to the extent that risks at a site are reduced due to response actions, it may be appropriate to base the HRS score on that reduced risk. In addition, EPA believes that if properly devised, such a policy may encourage a bias toward action that protects human health and environment without distorting the HRS' ability to assess the relative risk of sites. Furthermore, the Agency believes that the current, rather than initial, conditions generally may represent a more accurate basis of scoring. Nonetheless, EPA recognizes that certain situations exist where implementing this policy may not be practical or technically feasible.

The existing policy of evaluating sites based on initial conditions was based on three principal concerns associated with considering current conditions. The first concern was that including consideration of current conditions would create undesirable incentives at hazardous waste sites that may be eligible for the NPL. For instance, some private parties may only take action sufficient to lower the score so the site would not be listed on the NPL, but the site could still pose a potential threat to public health or the environment. Those types of score changes could be accomplished by such actions as removing wells from service to lower target scores, or by removing wastes from a site to lower waste quantity scores; however, in both cases contaminated ground water would still exist at the site.

Another undesirable incentive may be to cause public agencies to be reluctant to perform removals if such actions could lower the score and thereby prevent the site from being included on the NPL. Only sites listed on the NPL are eligible for remedial action using Superfund monies. These early response actions are important to address immediate problems posed by the site. The Agency is concerned that if prior removal actions were considered in the calculation of the HRS score, public agencies may delay responding to threats to public health and the environment in order to ensure listing on the NPL, and the resulting availability of long term remedial response funding under Superfund.

The second issue of concern was that the ability of the HRS to approximate risk at a given site is based on a number of presumed relationships between various factors considered in calculating the HRS score. When partial response actions are taken into account in site scoring, the validity of these relationships for the purpose of approximating risk posed by the site might be affected. For example, the hazardous waste quantity factor, in combination with toxicity and likelihood of release, helps predict the relative risk of a given release. For a site that has been in existence for some time, hazardous substances may have migrated to the ground water or surface water. If the hazardous materials on the surface are removed and the site is scored according to conditions existing after the removal ("current conditions"), the site could be assigned a low value for waste quantity, even though an unknown quantity of the hazardous material may be in the soil on the site and remain a potential threat to public health or the environment via the ground water, surface water, or air pathways. Thus, EPA was concerned that if a site were scored to reflect conditions after a response, the expected reduction in the HRS score based on current conditions might not reflect a commensurate reduction in the level of risk presented by the site, because the Agency may not be able to determine, at the time of site inspection, the extent of contamination that has occurred.

Finally, the Agency considered the programmatic issue of how to define "current conditions" when conditions may be changing between the time of initial data collection and final listing. Response actions often are ongoing at sites during the evaluation process, and it would be unduly burdensome to continually recalculate scores to reflect such actions.

The Agency is considering two approaches to incorporate current site conditions in the HRS score while minimizing the concerns discussed above. Under either approach, EPA would only consider removals prior to a site inspection, as EPA cannot continuously update the score of a site to reflect ongoing cleanup activity. The first approach involves consideration of removal actions for certain pathways or specific factors where appropriate. The second approach is to consider current conditions routinely, but to identify and exempt situations where current conditions will not lead to a more accurate assessment of risks.

Under the first approach, EPA would identify for each pathway (i.e., ground water, surface water, air and onsite) and for non-target factors (e.g., likelihood of release and waste characteristics) and target factors (e.g., population and distance to nearest well) whether scoring based on current conditions is appropriate. In scoring sites using the current HRS, the migration pathways have generally been scored on the basis of initial conditions for non-target factors and current site conditions for target factors. However, there are some exceptions. For example, targets have not been scored on current conditions where a site has contaminated soils of a residential area such that it is advisable for people to relocate.

Under this first approach, the Agency would score all factors for the onsite pathway based on current conditions at the time of the site inspection or equivalent because potential exposure in that pathway is based on direct contact with contaminated materials (proposed rule, section 5.0.1). The Agency believes that this is a better approach for measuring relative risk under those circumstances, and generally it is more feasible to determine whether a threat to health in the onsite pathway has been addressed than in the other pathways. For example, if the contaminated soils have been removed and permanently disposed, the risks through direct

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contact are probably no longer significant.

The Agency believes there may also be certain non-target factors for which scoring on the basis of current conditions could give a more accurate indication of risks at the site e.g., flood potential and potential air releases. The flood potential factor in the surface water pathway is evaluated based on the site's location in a flood plain and on the source's containment. If the site has not been flooded since the disposal and if all wastes have been removed by an interim action, the Agency believes this factor could be evaluated based on current site conditions. In the potential air release factor, for example, if a site had a surface impoundment with volatile toxic substances, releases to air may occur. If, however, prior to the site inspection, the impoundment is drained and any remaining sludge is adequately capped, the threat of a release of volatiles is mitigated by the response action, and the Agency believes this factor could also be evaluated on current site conditions.

Unlike the situation in the air pathway, it may be much more difficult to determine whether response actions have mitigated the potential for a site to release to ground water or surface water. For example, removal of a waste pile or draining a surface impoundment stops adding to the source of contamination, but does not ensure that other potential sources of contamination (e.g., contaminated soils) or impacts (e.g., contaminated ground water) have been addressed.

Generally, target factors (e.g., population and distance to receptors), have been scored on initial conditions. For example, when a temporary drinking water supply has been provided, the initial target conditions may better represent the adverse impacts caused by the site. The same would be true when people have been relocated due to contamination, in which case scoring on the basis of initial conditions may better reflect the seriousness of the problem.

The Agency believes that the approach of taking response actions into account for more HRS pathways and factors than in the current HRS would provide a more accurate assessment of the risks at sites. Such an approach would also provide incentives for both public and private parties to perform responsible response actions. For both target and non-target factors, the Agency requests comment on additional factors that may be appropriately scored on the basis of current conditions.

The second approach the Agency is considering is to score all factors based on current conditions at the time of the site inspection, except for situations where this is not appropriate or feasible. For example, as just discussed, if a temporary drinking water supply has been provided or residents relocated, initial site conditions will be more appropriate. Also, under this approach, removals performed by non-Federal public agencies should not be considered, as their actions are a recognition of the site's threat to public health or the environment, and the public agency should not be discouraged from taking early action when appropriate.

In consideration of the concern about accurately assessing hazardous waste quantity when the vast majority has been removed, EPA has identified two alternatives under this approach. One method for making such determinations would be to require additional soil and ground water samples if a removal has occurred. This could add significantly to the cost of a site inspection, as sampling and analysis tend to be the highest cost components of performing the site inspection. Alternatively, EPA could develop a factor to modify hazardous waste quantity based on quantity removed and storage time at the site. This would be less accurate, but because it would be an objective model, it could be more simply and consistently applied, and would cost significantly less and be significantly faster than site specific sampling. The Agency specifically requests comment on these two approaches to assessing hazardous waste quantity after a removal has occurred.

The Agency believes that this second approach to incorporating current conditions in the HRS score could be more successful in assessing risk at the site than the first approach, if the hazardous waste quantity issue is satisfactorily resolved. This approach also maintains incentives for public and private sector removals to the same extent as the first alternative.

EPA specifically seeks comment on the two approaches to scoring sites, and on specific factors and situations that should be evaluated on initial conditions. The Agency is also interested in recommendations on other ways to consider removal actions that would allow recognition of the site's current conditions without encouraging incomplete solutions that reduce the HRS score below the cutoff and possibly leave significant health threats unaddressed, or significantly affect the cost of performing a site inspection. Finally, the Agency requests comment on how to evaluate the effectiveness of a response action to account for wastes that may have migrated to the soil, ground water, or surface water and may be posing a potential threat to public health and the environment.

11. Low Density Populations

In the current HRS, the population close to a site must be quite large (1,000 to 10,000 people generally within one to two miles) before the score for the targets category will approach the maximum. Commenters on previous NPL rulemakings have pointed out that this requirement for large populations prevents some dangerous sites from being listed and disproportionately affects certain groups. They have stated that hazardous waste sites on or near Indian tribal lands or in isolated, rural areas usually do not obtain high scores because the population density is low.

EPA is proposing to establish high values in the revised HRS for MEIs and for populations actually exposed to contamination, especially where health-based benchmarks are exceeded in drinking water. EPA believes that this will place greater weight on dangerous sites in isolated or rural areas, and allow such sites to be listed. EPA is seeking comments on this issue and suggestions for other ways to consider it in the HRS.

12. Standby Wells and Surface Water Intakes

In the current HRS, EPA generally does not differentiate between wells or intakes used as primary water sources and those which are used as standby water sources. Such an approach tends to emphasize the value of the drinking water resources, based on the rationale that standby water resources are often indispensable during periods of peak demand or drought. However, treating standby intakes and wells the same as primary water sources does not recognize the significant difference in the use of standby and primary intakes and wells, and the difference in potential risk based on this difference in exposure. To improve the ability of the HRS to distinguish between sites, EPA is proposing to differentiate between primary and standby water sources. EPA is considering three alternative approaches. One alternative involves assigning values to a standby water source based on the percentage of the system it supplies or the percentage of the year the source is used. Such an approach could more accurately assess the relative risks to public health from chronic exposure by better evaluating the relative degree of exposure through drinking water. A second alternative would involve considering as targets, only wells or intakes that are regularly

maintained and are used more than some specified annual amount. Such an approach would be simpler than the above option, but it would not be as accurate. A third alternative approach is to give standby wells and intakes a fraction of the value of a primary water source. This alternative would not reflect exposure from a site, but would distinguish between primary and standby sources and be easier to implement. Aspects of the second and third alternative are incorporated in the proposed rule in the MEI, population, and drinking water use factors. EPA specifically requests comment on how standby wells and intakes should be evaluated under the targets category, and would like specific comments on the three alternatives and what the particular cutoff levels or fraction should be.

D. Individual Pathway Revisions

Sections V D 1 through 4 detail the specific proposed revisions to the ground water, surface water, air, and onsite exposure pathways. A diagram that compares the current and the proposed structure precedes each section, except for the onsite exposure pathway where there is no current pathway for comparison. Each of the pathway discussions is organized in the same way: after a brief summary of the most significant proposed revisions and a discussion of any general considerations such as the distance over which risk is evaluated, the specific proposed revisions are grouped within the three factor categories—likelihood of release (likelihood of exposure for onsite exposure), waste characteristics, and targets. Where the revisions have already been specified in section V C, those discussions are referenced. Section 5 discusses the fire and explosion pathway. As with the issues covered in section V C, a more detailed discussion of the options EPA considered and the reasons for the proposed revisions can be found in the Technical Support Document, available in the Superfund docket.

1. Ground Water Pathway

As can be seen in Figure 1, the revised ground water migration pathway would retain the same structure as in the current HRS. In both versions, the likelihood of ground water contamination is evaluated by assessing the actual or potential release of hazardous substances to aquifers. The likelihood of release is then combined with the characteristics of the hazardous wastes and with the targets to obtain a pathway score. EPA is proposing revisions to every factor of the ground water pathway, the most significant of which are in the targets category. As already discussed, population would be assessed by how far drinking water wells subject to potential contamination are from a site (distance weighted) and by whether people are drinking from a well with contaminants above or below health-based standards. In addition, the proposed revisions would change the distance (target distance limit) within which drinking water wells are considered. In the waste characteristics category, EPA is proposing to combine toxicity with mobility rather than with persistence as is done in the current HRS. A new factor, sorptive capacity, would be added to the potential to release calculations.

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Figure 1

Ground Water Migration Pathway

Current HRS

Release	X	Waste Characteristics	X	Targets
Observed Release or Route Characteristics ❑ Depth to Aquifer of Concern ❑ Net Precipitation ❑ *Permeability of Unsaturated Zone* ❑ *Physical State* ❑ Containment		❑ Hazardous Waste Quantity ❑ Toxicity/*Persistence*		❑ Ground Water Use ❑ *Distance to Nearest Well*/Population Served

Revised HRS

Likelihood of Release	X	Waste Characteristics	X	Targets
Observed Release or Potential to Release ❑ Depth to Aquifer/ HYDRAULIC CONDUCTIVITY ❑ Net Precipitation ❑ SORPTIVE CAPACITY ❑ Containment		❑ Hazardous Waste Quantity* ❑ Toxicity/MOBILITY		❑ Ground Water Use* ❑ Population* ❑ MAXIMALLY EXPOSED INDIVIDUAL ❑ WELL HEAD PROTECTION AREA

Items in italic under Current HRS have been dropped or replaced. Items in caps under Revised HRS are new. Most items not in caps have been revised significantly.

****Factor based on several sub-factors.***

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General Considerations. Target Distance. EPA is proposing to extend the target distance limit within which the target factors are evaluated from three to four miles; where there is documented contamination attributable to the site beyond the four-mile target distance limit, wells with such contamination would be considered to be within the target distance for the evaluation of all target factors. In deciding on the change from three to four miles, the Agency used a combination of empirical data and modeling estimates. The empirical data consist of documented plume distances of greater than three miles in length. The modeling studies provided estimates of contaminant travel times for a variety of hydrogeological conditions. The Technical Support Document, available in the Superfund docket, contains further information on these studies.

In addition to increasing the target distance limit, the proposed HRS would change the locations from which the target distance would be measured (proposed rule, section 3.0.1.1) and would distance weight the population drinking from wells within the target distance except where there is documented contamination in these wells. In the revised HRS, the locations from which the distance is measured would be the sources of contamination at the site, not the extent of contamination as is done in the current HRS. The Agency would also incorporate a distance weighting factor for evaluating the potentially exposed population. (See section V C 8.) Thus, the population drawing from wells located between three and four miles from a site would be counted least heavily unless the wells they are drinking from show documented contamination. Extending this target distance limit to four miles is not expected to result in overestimating the target population because the distance weighting factors will be used to adjust the weights of populations as a function of distance from the site, unless those populations use drinking water from wells with documented contamination.

Aquifers Considered. The current HRS designates a single aquifer as the aquifer of concern; this aquifer is the aquifer that produces the highest ground water pathway score. The targets counted are only those that use that aquifer. In the revised HRS, if more than one aquifer is present, a migration score would be calculated for each of the aquifers and the aquifer with the highest score would be used to evaluate the site. In calculating the targets value for an aquifer, both the population using water from that aquifer and the population using water from all overlying aquifers must be considered, except when the hazardous substances were placed directly in the aquifer (proposed rule, section 3.0). The inclusion of targets from overlying aquifers is based on the assumption that contaminants must migrate through the shallower aquifers before reaching a deeper aquifer.

Aquifer Interconnections. In the current HRS, multiple aquifers can be considered a single aquifer if they function as a single hydrological unit within a three-mile radius of the site. Because specific determination of the degree of aquifer interconnection may require professional judgment to evaluate the site, EPA has developed guidance for applying such judgments in determining that multiple aquifers constitute a single hydrologic unit (proposed rule, sections 3.0.1.2 and 3.0.1.2.1).

At present, both the target distance limit and the distance over which the aquifer interconnections are determined extend for a three-mile radius from the extent of known contamination, except where a lateral discontinuity exists. EPA would reduce both the distance over which geologic conditions are evaluated for the potential to release and the distance over which aquifer interconnections are evaluated from three miles to two miles, except where contamination attributable to the site extends beyond two miles; areas underlying this contamination are included in the evaluation. This reflects EPA's belief that the geologic conditions near the site will, in most cases, be of primary importance in affecting the release of contaminants to an aquifer and from upper aquifers to lower aquifers. EPA requests comments on the two-mile radius.

Aquifer Discontinuities. Aquifer discontinuities (proposed rule, section 3.0.1.2.2) result when a geologic, topographic, or other structure or feature completely transects an aquifer, significantly disrupting water from flowing out of or into the aquifer. If the discontinuity exists within the target area, any part of an aquifer beyond the discontinuity is not counted in the aquifer unless the discontinuity does not entirely transect the target area. If multiple aquifers are considered as a single unit, any discontinuity must entirely transect the boundaries of the single unit before the area beyond the discontinuity is discounted. EPA is proposing to extend the distance for considering aquifer discontinuity from the current three-mile radius to a four-mile radius to keep it consistent with the distance over which population factors are evaluated.

Karst Aquifers. Karst aquifers are those associated with karst terrain, which refers to a type of topography formed in limestone, dolomite, or gypsum by dissolution by rain and ground water. Karst aquifers often have very high ground water flow velocities. Currently, sites in karst terrain are not given any special consideration in the HRS. (See proposed rule, section 3.0.1.3 for a further definition of karst.) In the several factors in the proposed revisions, karst aquifers would be scored differently than other types of aquifers (proposed rule, sections 3.1.2 and 3.3.1). The proposed revisions would reflect the high potential for contaminants to migrate through karst aquifers with little reduction in the concentration of the hazardous substance through dispersion, dilution, or attenuation. Karst aquifers would be treated differently than other aquifers in the depth to the aquifer/ hydraulic conductivity factor, the sorptive capacity factor, the maximally exposed individual factor, and the population potential contamination factor. For more detail, see the Technical Support Document, available in the Superfund docket. EPA also considered scoring other types of aquifers, such as fractured bedrock, differently for similar reasons. The Agency solicits comments on how the HRS could reflect the special characteristics of those types of aquifers.

Ground Water Flow Direction. The current HRS does not consider the direction of ground water flow in determining which populations or environments may be affected by the migration of hazardous substances at the site. The target factors give equal weight to the entire population within a three-mile radius from the site. In adopting the current HRS, EPA decided that the time and level of effort required to obtain sufficient geohydrologic information to determine ground water direction accurately over the entire three-mile radius would be inconsistent with the goal of expeditiously scoring sites. A reasonably accurate determination of the flow direction requires extensive geohydrological investigation because the direction of flow may be altered by seasonal variations, long-term historical changes, and the effects of pumping wells. In addition, when considering the migration of hazardous substances in ground water, other problems arise; for example, immiscible liquids may migrate in a direction other than the primary direction of the ground water

flow, making ground water flow direction an inaccurate surrogate for the direction of contaminant flow.

In the ANPRM, EPA sought comments on the question of using ground water flow direction measures. Most of the commenters supported using ground water flow direction, at least under certain conditions. EPA investigated several options for considering ground water or contaminant flow direction, including the following.

- Estimating the direction of ground water flow from piezometric measurements and dividing the target population into upgradient and downgradient categories. The two population categories would be evaluated differently.
- Determining population categories based on the direction(s) of observed contaminant migration rather than on direction(s) of ground water flow. The direction of ground water flow is a surrogate measure for evaluating the most probable direction of contaminant migration and is a less direct means of identifying the population at risk. As in the above option, the population would be divided based on location with respect to the direction of contaminant migration. Various alternatives were considered for how the two population categories might be evaluated.
- Retaining the current system that does not consider either the direction of ground water flow or contaminant migration flow in determining the target population.

To evaluate these options, EPA considered both the technical feasibility and the cost of obtaining reliable information. See the Technical Support Document (available in the Superfund docket) for a more detailed discussion of the options considered.

EPA is proposing to retain the current system, which does not directly consider ground water flow direction, in evaluating the population potentially exposed to contaminants. However, where there is known contamination in wells, the populations normally using those wells would be weighted higher than those only potentially exposed. Based on its review of technical feasibility, EPA determined that even if the general direction of the flow around the site could be defined, the localized direction of the flow may not be consistent with the general flow. Accurately determining the local flow within the target distance would require extensive geohydrologic investigations. EPA concluded that the considerable expenditure of time and public funds that would be required for geohydrological investigations is justified only at the nation's highest priority sites, i.e., those on the NPL. The revised HRS would indirectly take substance migration direction into account by using the MEI factor and by assigning weights to people drinking contaminated water either above or below health-based benchmarks.

Likelihood of Release. The proposed revisions provide the same general structure as the current HRS for assessing the likelihood of contaminants to migrate from a site to an aquifer—observed release and potential for release (formerly route characteristics/containment) (proposed rule, section 3.1).

Observed Release. As discussed in Section V C 4, the proposed HRS would include general criteria to define when a release can be considered significantly above background levels (proposed rule, section 3.1.1).

Potential to Release. The proposed potential to release factor category (proposed rule, section 3.1.2) is comparable in intent to the route characteristics/containment portion of the current HRS. The name would be changed to clarify that the factor represents the potential of the site to release contaminants to an aquifer rather than the potential for the contaminants to migrate once they enter the aquifer.

EPA is proposing a number of changes in how potential releases are scored. The current HRS has four route characteristics factors—depth to the aquifer, net precipitation, permeability, and physical state. The values for these factors are added together, then multiplied by the containment factor value. The proposed HRS would use four factors—depth to aquifer/hydraulic conductivity, net precipitation, sorptive capacity, and containment. The release potential would be calculated as the sum of the values of the first three factors multiplied by the value for containment (proposed rule, section 3.1.2.5).

In the proposed HRS, the depth to aquifer would be combined in a matrix with hydraulic conductivity (proposed rule, section 3.1.2.3). Considered together, the two factors provide an indication of the relative travel time required for hazardous substances to reach the underlying aquifer. In the current HRS depth of aquifer factor, aquifers deeper than 150 feet are assigned a value of zero. The depth to aquifer factor would be modified in the revised HRS to include aquifers with depths up to and exceeding 800 feet. Values would be assigned using a matrix that combines depth with hydraulic conductivity. This change in the depth reflects both the fact that aquifers are known to be used at depths exceeding 800 feet and that documented contamination has been found in deeper aquifers. See the Technical Support Document for further detail.

For HRS scoring purposes, the hydraulic conductivity factor would be calculated by deriving a thickness-weighted average hydraulic conductivity, a measure that combines the hydraulic conductivity of each layer of geologic material between the contaminant source and the aquifer with the thickness of that layer (proposed rule, section 3.1.2.3.2). The one exception is when the layer consists of karst; karst aquifers would always be assigned a thickness of zero feet regardless of their actual thickness. The hydraulic conductivity factor is a renaming of the permeability factor; the proposed addition of the thickness component would make the new hydraulic conductivity factor a more accurate measure of travel time and, therefore, a more accurate reflection of the potential for migration. As with aquifer interconnections, hydraulic conductivity would be examined within a two-mile radius of the site, except as noted in the proposed rule (section 3.1.2.3). EPA requests comments on this distance.

The net precipitation factor, which indicates the amount of water potentially available for infiltration to ground water, would be revised. Under the proposed HRS, the net precipitation factor value (proposed rule, section 3.1.2.2) would be based on a new method of estimating annual net precipitation rather than seasonal or annual net precipitation as determined in the current HRS. In addition, the factor value would be based on the sum of the months in which there is a positive net precipitation. This will better reflect the potential of hazardous substances to migrate to aquifers. A map providing net precipitation values for specific areas will be included in the final rule.

When the HRS was adopted, some commenters objected because it did not consider geochemical removal mechanisms. At the time, EPA did not believe that the data regarding these mechanisms were sufficiently broad to warrant inclusion in the HRS. In response to these comments, and to similar comments on the ANPRM, EPA is proposing to add a new factor to the ground water potential to release category, sorptive capacity. Sorptive capacity measures the potential of geologic materials to sorb contaminants and thereby retard their migration to aquifers (proposed rule, section 3.1.2.4). The sorptive capacity factor is intended to reflect relative differences in the ability of various types of geologic materials to inhibit the migration of

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contaminants. A table of sorptive capacity values is provided in the proposed rule. Sorptive capacity would be evaluated based on the clay and organic carbon content of the geologic materials that occur between the hazardous substances and the aquifer within a two-mile radius of the site (except as noted in the proposed rule), consistent with the way other geologic factors are evaluated. EPA requests comments on the sorptive capacity factor and the distance over which it is evaluated.

The containment factor (proposed rule, section 3.1.2.1) is a measure of the means taken to minimize or prevent the release of hazardous substances from a site to ground water. The containment factor would be revised in the proposed HRS to provide a greater range of assigned values and more detailed descriptions of each type of containment. These changes would make the determination of conditions and of the adequacy of containment more objective.

Certain ground water containment elements (e.g., liners, cover thickness, and permeability) cannot be examined visually during a site inspection. In the past, the Agency has relied principally on the records of site owners and operators to determine the adequacy of such containment measures. In the absence of such records, EPA has assumed that no such containment measures were undertaken. EPA proposes to retain this same approach when determining containment.

The physical state affects the potential of the waste to migrate from a site or, alternatively, for it to be contained at a site. Physical state can, therefore, be used as a component of either waste containment or waste migration potential. Physical state is used in the current HRS as a measure of waste migration potential in the ground water and surface water pathways. EPA is proposing to eliminate the physical state factor used in the current HRS because experience has shown that it seldom provides meaningful discrimination among sites. Most sites scored with the current HRS contained at least some liquids, therefore receiving the maximum value for physical state. In the proposed revisions, physical state has been integrated into the containment factor to better reflect the interrelationship of the two in the release of hazardous substances from a source area. EPA seeks comment on eliminating the physical state as a separate factor.

Waste Characteristics. The current waste characteristics factor category (proposed rule, section 3.2) includes hazardous waste quantity and toxicity/persistence factors. EPA is proposing a number of changes in the calculation of waste characteristics for all pathways. The toxicity factor and hazardous waste quantity factor would be revised as discussed in sections V C 2 and 3. In addition, for the ground water pathway, the toxicity factor would be combined in a matrix with mobility rather than with persistence as is done in the current HRS (proposed rule, section 3.2.1). EPA decided to eliminate the persistence factor because the method currently used to evaluate persistence is based on biodegradability and is generally not applicable to ground water.

The Science Advisory Board, as part of its review of the applicability of the HRS to mining waste sites, supported the incorporation of a mobility factor in the HRS. The Board indicated that mobility would more accurately reflect the potential for a substance to migrate through the ground water to a target population than does persistence.

The Board suggested that speciation of metals was an important consideration in evaluating mobility. However, to accurately assess the mobility of a specific metal, the various metal species present must be determined, both in the waste and in the subsurface environment. This, in turn, requires knowledge of the concentrations of anions, cations and dissolved organic materials; pH; redox potential; and adsorption characteristics of the geologic material. In evaluating options for mobility, EPA believed that it was not feasible to obtain reliable measures of these parameters given the temporal and spatial variations and the difficulty in sampling. Furthermore, the Agency concluded that the mobility factors added to the proposed HRS will increase the accuracy of the waste characteristics assessment.

The proposed mobility factor (proposed rule, section 3.2.1.2) would be a measure of the tendency of a hazardous substance to become mobile in the aqueous phase. Mobility would be evaluated for all hazardous substances that are available to migrate to ground water. Any substance documented in an observed release at a facility would be assigned the maximum value because its presence is an indication that it is sufficiently mobile at that facility to pose a hazard. For other substances, a mobility tendency value would be assigned to specific organic and inorganic contaminants based on water solubility, and to inorganic cations and anions based on each ion's coefficient of aqueous migration value. The coefficient of aqueous migration reflects the mobility of uncombined or free inorganic substances under geochemical conditions that maximize their mobility. For a more detailed discussion see the Technical Support Document in the Superfund docket.

The purpose of this new mobility measure is to increase the accuracy of the waste characteristics factor category by taking into account the differing abilities of substances to migrate and, therefore, increasing the accuracy of the scoring system. Mobility would be considered in a matrix with toxicity and thus would play a role in the selection of the substance used to assign the toxicity/mobility value (proposed rule, section 3.2.1.3). Combining mobility and toxicity would lead to selecting the contaminant that poses the most significant threat, thus increasing the accuracy of the HRS.

The toxicity/mobility factor value would be added to the hazardous waste quantity value to obtain a waste characteristics score.

Ground Water Targets. The ground water targets factor category (proposed rule, section 3.3) reflects the human population and resources potentially at risk from an actual or potential release of hazardous substances from the site to an aquifer. Currently, the ground water targets factor category includes two factors—a use factor and a factor derived from a matrix that combines distance to the nearest well with the population served by ground water. These factors are evaluated for drinking water and irrigation wells drawing from the aquifer of concern within the target distance of the site.

Four factors would be added together to derive a value for the targets category under the proposed rule: Ground water use, the presence of high priority ground water areas, the MEI, and population.

Ground Water Use. Currently, the ground water use factor takes into account four possible conditions and uses of the ground water drawn from the aquifer within the three-mile radius: drinking water with no unthreatened alternative source; drinking water with alternative sources or commercial, industrial or irrigation uses without alternatives; commercial, industrial or irrigation uses with alternatives, or not used but usable water; and unusable water. Only the ground water use with the highest value is used to assign a value to the factor. The proposed revisions (proposed rule, section 3.3.3) to the HRS would divide this factor into two subfactors—drinking water use and other water use. The drinking water use factor reflects the use and value of the

ground water and would consider whether the drinking water wells are private, public, or standby, parameters the current HRS does not consider (proposed rule, section 3.3.3.1). (Private wells are defined as wells that have less than 15 connections and serve less than 25 people.) The other water use factor would assign values if the wells are used for specified agricultural, commercial, or industrial purposes (proposed rule, section 3.3.3.2). The ground water use factor value would be the sum of the highest value assigned for drinking water use and for other water use, subject to a maximum (proposed rule, section 3.3.3.3). Expanding the ground water use factor to consider these additional uses would provide increased discrimination.

The ANPRM specifically asked for comments on modifying the ground water use factor to account for future use. The Agency received comments for and against this concept. Those favoring the addition of future use stated that unused aquifers should be considered resources to be protected. These commenters suggested mechanisms to predict future use, such as town planning documents. Those opposed to considering future use stated that the factor would be subjective and conjectural and that communities would develop unrealistic plans so their sites would receive higher HRS scores.

The proposed HRS would continue to place a high priority on current use. EPA has increased the relative weight of the revised ground water use factor among the factors in the target category. EPA concluded that the size of the target distance area, the consideration of alternative water supplies, and the high value placed on the resources give appropriate consideration to future use because it is likely that resources being heavily used at present will continue to be heavily used. In addition, the drinking water use factor assigns points for aquifers that are not used, but usable. However, the Agency recognizes that this approach may not account for a drastic increase in future use. The Agency has not identified a method for accurately and uniformly predicting such future changes in land and water resource use. Therefore, the Agency requests comment on two issues: (1) Can local population changes, land use changes, or changes in ground water use patterns be reliably predicted within the context of the HRS? and (2) how should the Agency weight sites where ground water resources have been degraded, regardless of whether these resources are presently used?

Population. The population factor (proposed rule, section 3.3.2) is an indicator of the number of people actually or potentially at risk from exposure to hazardous substances in drinking water as well as a measure of the value of the potentially affected resources. In the current HRS, all the people who drink water drawn from wells within three miles of the site are counted equally. The total population is then combined in a matrix with distance to the nearest well to assign a single factor value. In the proposed HRS, these factors would be separated to more clearly reflect MEI risks and resource value/population risk.

As discussed in sections V C 5 and 8, the population served by ground water factor would be divided into four possible groups with the first three groups based on how the concentration in the drinking water well compares to the health-based benchmarks (MCLs, MCLGs, or unit cancer risk numbers). The last group represents the population whose wells may not be contaminated, but the aquifer itself is contaminated, or has the potential to be contaminated. This last group would be distance-weighted. The population factor value would be the sum of the four population factor values, subject to a maximum (proposed rule, section 3.3.2.4).

Several other changes would affect the population factor. EPA would clarify its definition of which wells may be considered in determining target populations. In evaluating each aquifer, EPA would consider the population drawing drinking water from the aquifer being evaluated and those drawing from overlying aquifers except when the hazardous substances have been introduced directly into that aquifer (proposed rule, section 3.3). EPA would also consider populations drawing from a well beyond four miles if that well has contamination attributable to the site. In addition, EPA would use county census data when there is no actual population count available rather than using a conversion factor of 3.8 people per residence as in the current HRS (proposed rule, section 3.3.2). As explained in section V C 7, EPA has not been able to identify a reliable way of consistently evaluating terrestrial contamination effects on the human food chain. Therefore, the revised HRS would delete the conversion of agricultural acreage to equivalent population in the current HRS.

Maximally Exposed Individual. The current distance to the nearest well factor would be treated as a separate factor in the proposed revisions and would be used to indicate the risk to the MEI, as discussed in section V C 9. If the concentration of a substance (or substances) at any drinking water well exceeds health-based benchmarks and that contamination is attributable to the site under evaluation, then the MEI factor would be assigned the maximum factor value (proposed rule, section 3.3.1). In addition, any well drawing drinking water from a karst aquifer that underlies the site would also be assigned the maximum value. This factor addresses the concerns of section 118 of SARA, which requires EPA to give high priority to wells closed because of contamination.

High Priority Ground Water Areas. CERCLA section 118(a), as amended by SARA, requires the Agency to give a high priority to sites that have contaminated a principal drinking water supply. The use of health.based benchmarks in weighting target populations (see section V C 5) is one way the revised HRS gives greater weight to sites where actual contamination has occurred in a drinking water well. For example, a site responsible for contaminating wells or a water supply has the population factor increased, depending on how the level of contamination compares with health-based benchmarks. The use of the health-based benchmarks ensures that sites where actual contamination has occurred are given greater weight.

The Agency proposes adding a new factor to the target score to take into account the presence of a Wellhead Protection Area (WHPA) designated under section 1428 of the Safe Drinking Water Act (SDWA). This factor would address CERCLA section 118(a), as amended by SARA. This factor, which receives a maximum value if the source or hazardous substance released from the source is located within a WHPA or zero if the source and its hazardous substances are not located within a WHPA, would increase the target score when a hazardous waste site could endanger a WHPA. The Agency specifically requests comment on the weighting that should be given to a source located in a WHPA.

Section 1428 of the SDWA, which sets out the requirements for the WHPAs, requires each State to develop and submit for EPA approval, a program to protect wellhead areas supplying public water systems from contaminants that may have an adverse effect on human health. WHPAs are further defined as "the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and

reach such water well or wellfield." It is estimated that less than six percent of the land area of the U.S. will likely be included within such areas. Therefore, the WHPA designation would likely discriminate among sites where a principal drinking water supply is threatened. One disadvantage to the approach of using WHPAs is that currently no States have established WHPA programs. Section 1428(a) of the amendments requires each State to adopt and submit to EPA by June 19, 1989, a program designed to protect wellhead areas. Section 1428(g) requires each State to make every reasonable effort to implement the State wellhead protection program within two years of submitting the program to EPA.

The Agency considered using the presence of a sole source aquifer (SSA) rather than a WHPA to fulfill section 118(a). An SSA is established pursuant to section 1424(e) of the SDWA. The Agency decided against using the SSA designation because the criteria for SSA designation are not very selective, i.e., the primary test is whether 50 percent or more of the current population are served by ground water. Although there are currently relatively few designated sole source aquifers in the country, the criteria could potentially allow much more of the land area of the U.S. to be designated as SSAs than would the WHPA designations. If this were the case, assigning a maximum value to the target score if an SSA exists within the target distance limit would result in little discrimination among sites.

EPA's Office of Ground Water Protection has available the following guidance documents dealing with wellhead protection and sole source aquifers:

(1) Sole Source Aquifer Designation Petitioner Guidance, US EPA, February 1987.
(2) Guidelines for Delineation of Wellhead Protection Areas, US EPA, June 1987.
(3) Guidance for Applicants for State Wellhead Protection Program Assistance Funds Under the Safe Drinking Water Act, US EPA, June 1987.

Comment is requested on whether the Agency should use the WHPA designation in meeting the requirements of SARA Section 118. Comment is also requested on the desirability and mechanisms for incorporating other high priority areas in a State, such as those formally recognized within a State ground water classification system.

Ground Water Migration Score. The ground water migration score is the product of the likelihood of release value, the waste characteristics value, and the targets value, divided by a normalizing factor. A ground water migration score would be calculated for each aquifer underlying a site (proposed rule, section 3.4). The highest ground water score for an aquifer would be used as the ground water pathway score (proposed rule, section 3.5).

2. Surface Water Pathway

As can be seen in Figure 2, EPA is proposing major changes in the surface water pathway. As required by CERCLA Section 105 (as amended), EPA has assessed several potential effects of surface water contamination and is proposing to revise the surface water pathway to better consider the threats to human health through drinking water, the human food chain, and recreational water use. EPA is also proposing to revise the environmental component of the surface water pathway. Each of these threats would be evaluated separately for likelihood of release, waste characteristics, and targets. The pathway score would be the sum of the scores of the threats or subpathways. This revised structure provides a relatively simple way to account for the different substances and targets that may be important for the different types of potential exposure in the surface water pathway. The structure allows the HRS to take into account aquatic toxicity for sensitive environments, mammalian toxicity in drinking water, mammalian toxicity and bioaccumulation in the food chain, and mammalian toxicity, dermal permeability, and mass flux dilution for recreation.

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Figure 2

Surface Water Migration Pathway

Current HRS

Release	X	Waste Characteristics	X	Targets
Observed Release or Route Characteristics ❑ *Facility Slope/ Intervening Terrain* ❑ *One Year, 24 Hour Rainfall* ❑ *Physical State* ❑ Distance to Nearest Surface Water ❑ Containment		❑ Hazardous Waste Quantity ❑ Toxicity/Persistence		❑ Surface Water Use ❑ Population Served/ *Distance to Nearest Intake Downstream* ❑ Distance to a Sensitive Environment

Revised HRS

Drinking Water Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
Observed Release or Potential to Release OVERLAND FLOW ❑ Containment ❑ RUNOFF* ❑ Distance to Surface Water POTENTIAL TO RELEASE BY FLOOD ❑ CONTAINMENT (FLOOD) ❑ FLOOD FREQUENCY		❑ Hazardous Waste Quantity* ❑ Toxicity/Persistence		❑ Surface Water Use* ❑ Population* ❑ MAXIMALLY EXPOSED INDIVIDUAL

Human Food Chain Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
(same as above)		❑ Hazardous Waste Quantity* ❑ Toxicity/Persistence/ BIOACCUMULATION		❑ FISHERY USE ❑ POPULATION*

Recreational Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
(same as above)		❑ Hazardous Waste Quantity* ❑ Toxicity/Persistence/DOSE ADJUSTING FACTOR		❑ POPULATION*

Environmental Threat

Likelihood of Release	X	Waste Characteristics	X	Targets
(same as above)		❑ Hazardous Waste Quantity* ❑ ECOSYSTEM TOXICITY/Persistence		❑ Sensitive Environments

Items in italic under Current HRS have been dropped or replaced. Items in caps under Revised HRS are new. Most items not in caps have been revised significantly.

****Factor based on several sub-factors.***

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If hazardous substances could migrate from the site to surface water in more than one watershed, each of the threats would be evaluated over each watershed and the final pathway score would be the sum of the scores of the watersheds (proposed rule, section 4.0.1). In evaluating a threat to a watershed, only the information (waste quantity, observed release, etc.) appropriate for that watershed would be used. The same wastes, for example, would not be used to score more than one watershed except where it is not feasible to determine the locations of those wastes relative to the watershed boundaries.

Target Distance. In the current HRS, the target distance is measured from the probable point where the contaminated water enters the surface water to a point three miles downstream of the farthest observed contamination (one mile in static water such as a lake). EPA is proposing to extend the target distance limit to 15-stream-miles from the probable point of entry (a 15-mile arc for lakes and oceans). If an observed release is based on sediment samples, as opposed to water or benthic samples, the target distance would extend 15 miles beyond the farthest sediment sample showing contamination attributable to the site. This distinction is made because contaminated sediments may serve as a continuing source of contamination as particles become resuspended. In addition, if there is observed release based on water or benthic samples beyond the 15-mile limit, drinking water intakes, fisheries, or sensitive environments up to the point of observed contamination would be used to evaluate targets (proposed rule, section 4.0.2).

To derive the 15-mile limit, EPA analyzed how far contaminants could travel before being attenuated to the point where they were no longer considered important in characterizing risk. More information concerning this analysis is provided in the Technical Support Document, available in the Superfund docket. Based on this analysis, the Agency concluded that 15 miles provides a reasonable balance between ensuring that all potential receptors are evaluated and limiting the data collection effort to a reasonable level. The current and proposed target distance limits should not be directly compared. The current HRS indirectly includes distance and dilution weighting factors by assigning a value based on the distance between the probable point of entry of the contaminants into the surface water and the intake or sensitive environment. The proposed revisions explicitly include dilution weighting factors that are dependent upon the volume of flow. In the ANPRM, EPA requested comments on the target distance limit for surface water. The Agency would like comments on this proposed revision to the target distance.

Likelihood of Release. The current HRS evaluates the likelihood of release as an observed release or as a potential to release. This basic structure has been retained in the revised HRS. Because the likelihood of release factor category value would be calculated once and used in evaluating each of the applicable threats (drinking water, human food chain, recreation, and sensitive environments) at a site, it is discussed here without reference to the threat calculations.

Observed Release. An observed release would be scored when it can be demonstrated that a site has released hazardous substances to surface water. Either aquatic, benthic, or sediment sampling or direct observation of the release could be used to demonstrate that an observed release to surface water has occurred (proposed rule, section 4.1.1.1). (See section V C 4 for a discussion of the observed release criteria.)

Potential to Release. The current HRS calculates the potential to release factor category by multiplying the route characteristics by the containment. Route characteristic factors are the facility slope and the slope of intervening terrain; the one-year, 24-hour rainfall; the distance to the nearest surface water; and the physical state of the waste. These factors are added together.

The proposed HRS would replace the potential to release factors with two new groups of factors, overland flow and potential to release by flood, which would be added together to obtain the potential to release category score (proposed rule, section 4.1.1.2). The proposed overland flow factors are comparable to the route characteristics times containment portion of the current HRS. The name has been changed to reflect that the factors represent the potential of the site to release hazardous substances to surface water rather than the potential for hazardous substances to migrate once they enter the surface water body. Although both the current and revised factors measure the potential for a site to release hazardous substances, the revised factors would emphasize total releases rather than just peak releases.

In the current HRS, if the distance to the surface water is more than two miles, the distance to surface water factor is assigned a value of zero but the rest of the potential to release factors are evaluated and scored. Under the revised HRS, if the distance to surface water is greater than two miles, overland flow would be assigned a value of zero. In addition, if no overland segment can be defined (e.g., the site is in a topographic depression) the overland flow is assigned a value of zero. Flood potential would still be evaluated, however, as would the rest of the factors in the pathway.

Overland Flow. Overland flow is the sum of the runoff and the distance to surface water factors, multiplied by the overland containment factor (proposed rule, section 4.1.1.2.1.4). As stated above, the maximum distance from the site to the surface water would remain at two miles, but the scale of assigned rating values for interim distances would be modified to include more distance ranges, thus expanding the scale of possible values to better reflect the threat posed by the overland flow pathway (proposed rule, section 4.1.1.2.1.3).

The runoff factor, the measure of runoff available for carrying hazardous materials from a site to surface water, would include three components: (1) Rainfall, (2) runoff curve number, and (3) drainage area. The rainfall factor considers the potential for storms to cause surface water contamination as a result of runoff—as reflected by the two-year, 24-hour rainfall. The runoff curve number reflects the ability of the soil types present and of the predominant land surface to facilitate or impede runoff. The runoff curve number would be obtained from a matrix of hydrologic soil groups and the predominant land use (e.g., cultivated land, forests, streets) within the drainage area. The drainage area of interest is a new factor that considers the size of the drainage area and provides an additional measure of the amount of runoff available for hazardous substance migration. The area of interest refers only to the area contributing runoff from the site into the overland migration pathway. It includes the site and any area upgradient of the site that sends water through the site.

EPA chose this method of calculating runoff because it more accurately assesses runoff from the site. The precipitation value would be based on two-year, 24-hour rainfall data rather than the current one-year, 24-hour rainfall because of data availability. For more detail, see the Technical Support Document, available in the Superfund docket.

The sum of the runoff factor value and distance to surface water factor value

would be multiplied by the overland containment factor value. The containment factor is a measure of the means taken to minimize or prevent the release of hazardous substances from a site to surface water. The containment factor would be revised in the proposed HRS to provide a greater range of assigned values and more detailed descriptions of each type of containment (proposed rule, section 4.1.1.2.1.1). These changes would make the determination of conditions and of the adequacy of containment more objective.

EPA proposes to eliminate the current physical state and facility slope and intervening terrain factors. Most sites scored with the current HRS contained at least some liquids, thus scoring the maximum for physical state. Consequently, the physical state of the waste does not provide meaningful discrimination among sites. In the proposed revisions, physical state has been integrated into the containment factor to better reflect the interrelationship of the two in the release of hazardous substances from a source area. EPA seeks comment on eliminating the physical state as a separate factor.

Facility slope and slope of intervening terrain would be eliminated in part because of the difficulty in estimating these factors with sites commonly having irregular slopes or, in the case of a lagoon, having no slope but still posing a threat of release from a dike failure, from leakage, or from overtopping due to an inadequate freeboard.

Potential to Release by Flood. The current HRS accounts for flooding at hazardous waste sites only by assigning an observed release if a site has been inundated by a flood. The Agency is concerned that certain sites, such as those near the banks of a river, could release hazardous substances during a flood and that the threat of such a release is not adequately accounted for in the current HRS. The proposed potential to release by flood factor would better reflect the potential for a site to release hazardous substances if a site is flooded.

In determining the value for potential to release by flood, each source on a site is evaluated separately for the flood plain in which it lies, and the highest value calculated for any source would be the value for the factor. For each source, a value would be calculated by multiplying the flood frequency value for each flood plain in which the source lies by the containment (flood) value for that source for each specific flood plain (e.g., 10-year, 100-year) (proposed rule, section 4.1.1.2.2.3).

Flood frequency (proposed rule, section 4.1.1.2.2.2) would be based on available flood plain information. A value greater than zero would be assigned to a source for each flood plain in which the source is located; that is, if a source is in a 10-year and 100-year flood plain, a value would be assigned to the source for each. Flood containment for the source (proposed rule, section 4.1.1.2.2.1) would be scored on an all or nothing basis for each flood plain in which the source is located. If a source is in a flood plain (e.g., a 10-year flood plain) and a professional engineer certifies that the containment will prevent a release of hazardous substances from that source under such a flood, the containment factor for that flood plain would be assigned a value of zero for that source. If the containment would not prevent a release, the containment flood factor would be assigned the maximum value. Containment would be evaluated for each flood plain in which a source is located. EPA requests comments on the inclusion of flood potential and criteria to be used for determining flood containment.

In addition to the overland and flood mechanisms, EPA considered adding a mechanism to evaluate a site's potential to contaminate surface water through ground water discharges. EPA was not able to develop a system for reliably predicting such releases based on site inspection data. The Agency is concerned that discharges of contaminated ground water can be significant sources of hazardous substances in surface waters and would consider including a mechanism for evaluating such potential releases if reasonable. EPA solicits comments on how such a potential could be evaluated within the context of the HRS. Releases of contaminated ground water to surface water are addressed as observed releases where they can be documented.

Drinking Water Threat. Waste Characteristics. The current HRS evaluates the characteristics of the hazardous substances actually or potentially released to the surface water pathway by adding a value from a matrix of toxicity and persistence to a value based on hazardous waste quantity. These factors are retained in the proposed revisions, but evaluated differently. Scoring of toxicity and hazardous waste quantity would be revised as discussed in sections V C 2 and 3.

The persistence factor in the current HRS is based on biodegradation. To better account for actual, substance-specific attenuation processes, the persistence factor would be revised to include five decay processes: biodegradation, hydrolysis, photolysis, volatilization, and free-radical oxidation. In evaluating how the HRS handles the mobility of hazardous substances, the Science Advisory Board supported using attenuation measures for surface water because they most closely approximate what actually happens in the environment. In the proposed rule, four levels of persistence would be defined by a measure of the half-life of the substance, that is, the time it takes the concentration of the substance to be reduced by half (proposed rule, section 4.1.2.1.2). The persistence value would then be assigned based on the half-life of the hazardous substances and the type of the surface water, which together represent the time the hazardous substance will take to travel through the water. Of substances studied by the Agency for purposes of revising this factor, about 90 percent receive the maximum value for persistence in rivers, oceans, and the Great Lakes.

In cases where persistence data do not exist, the revised HRS would assign default values specific to the types of hazardous substances and to the types of surface water affected by a release. For example, hazardous substances that are metals would be assigned a default value of three for all surface water bodies; all other hazardous substances released to a river or stream would be assigned a default value of two, while a default value of one would be assigned for releases to lakes based on the longer travel time. A more detailed discussion of the persistence factor can be found in the Technical Support Document.

For each substance actually or potentially releasable from the site, persistence would be combined with toxicity in a matrix. The substance with the highest toxicity/persistence value would be used in calculating the drinking water waste characteristics factor category value (proposed rule, sections 4.1.2.1.3 and 4.1.2.3).

The value for toxicity/persistence would be added to the value for hazardous waste quantity to derive a waste characteristics score.

Targets. The drinking water target category reflects the humans and resources potentially at risk from exposure to hazardous substances in drinking water obtained from surface water sources (intakes). In the current HRS, two factors are used to evaluate the population potentially affected: surface water use and population served by drinking water intakes that are within the target distance from the

probable point of entry of releases from the site to the surface water. Currently, the population factor is combined in a matrix with distance to an intake to produce a single assigned value. The drinking water targets category in the revised HRS retains the surface water use and population factors, but substantially modifies them. The distance to an intake would be replaced with an MEI factor that would be evaluated separately. These three factors (surface water use, population, and MEI) would be added together to obtain a value for the drinking water targets.

The surface water use factor takes into account the value of the resource and the use of the water taken from surface water intakes within the target distance limit. In the current HRS, the use is evaluated based on whether the water is used for drinking; for irrigation, commercial food preparation, or recreation; for commercial/industrial purposes or is not used. Only the surface water use with the highest value is used to assign a value to the factor. The proposed revisions (proposed rule, section 4.1.3.3) to the HRS would divide this factor into two subfactors—drinking water use and other water use. The drinking water use factor would take into account whether the drinking water is a public or private water supply, whether reasonable alternative supplies exist, whether available alternatives are unthreatened by the site, whether the water is a standby source, whether the water has been designated for water use but is not used, and whether it is not used or is not usable for some reason unconnected with the site (proposed rule, section 4.1.3.3.1). These new considerations would provide a better method for evaluating the threat posed by the site to the surface water resource. As in the current HRS, other surface water uses (such as commercial food preparation, commercial livestock watering, or commercial crop irrigation) would also be assigned values (proposed rule, section 4.1.3.3.2). The surface water use value would be the sum of the highest values assigned for drinking water use and for other water use, subject to a maximum (proposed rule, section 4.1.3.3.3), allowing both types of use to be reflected in the score.

The population factor is an indicator of the number of people actually or potentially at risk from exposure to hazardous substances in drinking water. In the current HRS, population is combined in a matrix with distance downstream to the surface water intake to obtain a single factor value. No distinction is made between actual and potential contamination. As explained in section V C 5, EPA has decided that those people actually exposed to contaminated drinking water should be weighted more heavily than those potentially exposed. For this reason, in the revised HRS, the population factor would be determined using four population groups. The first three groups are based on how the concentrations at the drinking water intakes compare with health-based benchmarks (MCLs, MCLGs, or unit cancer risk numbers). The last of these four population groups would represent the population whose intakes are not known to be contaminated, but have the potential to be contaminated. This last group would be dilution-weighted. Where actual population counts are not available, population figures would be derived from county census data instead of being based on an assumption of 3.8 people per residence as in the current HRS (proposed rule, section 4.1.3.2). The emphasis on the risk to individuals exposed to actual as opposed to potential contamination is consistent with the ground water approach.

EPA is also proposing to use the dilution weighting factor at the nearest drinking water intake in assigning a value to the maximally exposed individual factor, as discussed in section V C 9. The dilution weighting factor would be assigned based on the average flow at the intake, and would be multiplied by 50 to obtain the value for the MEI factor, subject to a maximum of 50. If the concentration at any drinking water intake within the target distance limit exceeds a health-based benchmark and the hazardous substances can be attributed to the site, then the maximum value would be assigned to the MEI factor (proposed rule, section 4.1.3.1). Because mixing of hazardous substances depends on the characteristics of the body of water, EPA is proposing a three-mile zone of mixing for quiet flowing rivers with an average annual flow of greater than 50 cubic feet per second. Any intake within the mixing zone would be assigned a higher value than intakes on a similar size river that are not in the mixing zone.

Human Food Chain Threat. CERCLA section 105 (as amended by SARA), required EPA to consider the possible effects of hazardous substance releases on the human food chain in revising the HRS. In the ANPRM, EPA specifically sought comments on the addition of human food chain factors; most commenters supported the inclusion of factors in the HRS to assess the impact on the human food chain.

To develop the human food chain threat, EPA evaluated other ranking systems that considered human food chain effects. All the systems essentially used the same factors for determining exposure through the human food chain: a bioconcentration-type factor coupled with an estimate of the amount of food ingested. EPA has included these factors in the proposed human food chain threat.

The likelihood of release would be calculated as explained earlier. In evaluating exposure via the human food chain, a single hazardous substance would be selected on the basis of its bioaccumulation potential and its toxicity and persistence. The same hazardous substance would be used to evaluate all the waste characteristics and target factors for the human food chain exposure calculations, but would not necessarily be the same hazardous substances used in evaluating drinking water or recreational uses or sensitive environments. All hazardous substances known to be at the site and not contained in such a way as to prevent migration to the surface water would be eligible to be assessed for bioaccumulation. Each eligible hazardous substance would be assigned a bioaccumulation potential value and the hazardous substance with the highest value would be used in assessing human food chain exposure; if more than one hazardous substance has the highest value, the one with the highest toxicity/persistence value would be chosen (proposed rule, section 4.2.2.1.4). EPA specifically requests comments on the use of a single hazardous substance to score the human food chain threat.

The data that would be used to determine bioaccumulation potential are, in order of preference, bioconcentration, the logarithm of the octanol-water partition coefficient, and water solubility. Because, for the purpose of the HRS, EPA considers that bioconcentration provides the best measure of bioaccumulation (see the Technical Support Document for further detail), bioconcentration values are proposed as the principal means of evaluating the potential for hazardous substances to increase in concentration in an organism (proposed rule, section 4.2.2.1.1). Bioconcentration values would be assigned based on either EPA Water Quality Criteria Documents or on peer-reviewed literature.

If bioconcentration data are not available, the logarithm of the octanol-water partition coefficient data could be used as a surrogate. The logarithm of the octanol-water partition coefficient has

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been found to have a statistically significant linear correlation with the logarithm of the bioconcentration factor of organic chemical compounds. If bioconcentration and log octanol-water partition coefficient data are not available or if the log octanol-water partition coefficient exceeds 6.0, water solubility data could be used because they also have a statistically significant correlation with the bioconcentration factor for organic compounds.

If a hazardous substance biomagnifies—that is, if the tissue concentration of the bioaccumulated hazardous substance increases at each step in the human food chain—the assigned value would increase by one in all cases, subject to a maximum. The bioaccumulation value would be employed to select the hazardous substance used in evaluating the toxicity/persistence factor, except as mentioned above when two substances have the highest bioaccumulation value. In addition, the bioaccumulation value would be used to evaluate targets. Therefore, the same hazardous substance has to be used for both calculations.

Waste Characteristics. Hazardous waste quantity and the toxicity/persistence factors would be calculated in the same way as in the drinking water waste characteristics factor, except that the predominant water category used to assign the persistence factor would be based on the type of water (e.g., lake, river) between the probable point of entry and the nearest fishery (proposed rule, section 4.2.2.1.3) as opposed to the predominant water category between the probable point of entry and the nearest water intake. The waste characteristics score is the sum of the hazardous waste quantity factor and the toxicity/persistence factor values (proposed rule, section 4.2.2.3).

Targets. This category would reflect the threat to people from consumption of aquatic food chain organisms taken from the surface water migration path. Human food chain organisms are not limited to finfish, but could include other species used as human food. The human population exposed to hazardous substances through the aquatic food chain may be distinctly different from the local population, particularly if contaminated fish are caught for nonlocal commercial distribution. The potentially wide distribution of contaminated fish makes direct counting of the people who consume the fish infeasible. Furthermore, the direct counting or estimation of the population involved in local recreational or subsistence fishing is also not feasible. Thus, EPA is proposing a surrogate approach: the target population would be estimated based on the amount of food chain products harvested from the contaminated surface water body and the bioaccumulation of the hazardous substance. Two factors would be summed to obtain the human food chain targets value: population and fishery use.

The population factor value would be the sum of two factors: potential human food chain contamination and actual human food chain contamination (proposed rule, section 4.2.3.1.3). Actual contamination would be used to score a fishery only if, within the limits of the observed release, there is a closed fishery (or a portion of a closed fishery) and the hazardous substance(s) that caused the closing have been documented in an observed release from the site; or, a tissue sample from a fishery exceeds an FDA action level and the hazardous substance(s) that exceeds the action level has been documented in an observed release from the site. If either of these conditions apply, the actual human food chain contamination (population) score for the fishery would be based on the human food chain population value, which is derived from a matrix of the bioaccumulation potential value and the human food chain production values (proposed rule, sections 4.2.3.1 and 4.2.3.1.2).

The human food chain production is the annual production (in pounds) of human food chain organisms from within the fishery under evaluation. Human food chain production would be estimated from actual data on yield, where available. If actual data are not available, actual data on productivity should be used, and, if these are not available, default values for the standing crop of the water body should be used. If the standing crop data are used, they would be converted to pounds and then multiplied by 0.2 to convert the standing crop data to human food chain production yield. This conversion factor represents an assumed ratio between the amount of aquatic organisms caught and the amount of aquatic organisms within the surface water body.

The value for the actual human food chain contamination would be the sum of the human food chain population values for each fishery, subject to a maximum. EPA is soliciting comments on the use of 0.2 to convert standing crop data to catch in estimating human food chain production.

If the conditions for actual human food chain contamination are not met, scoring of the fishery would be based on potential contamination (proposed rule, section 4.2.3.1.1). The potential human food chain contamination (population) score would be calculated in the same manner as actual human food chain population, except that for each fishery, it would be multiplied by a dilution weighting factor based on the flow, and would be divided by 100, similar to the approach taken to evaluate potential contamination for the drinking water threat.

The fishery use factor would reflect the nature and utility of the fishery area. The surface water in question would be assigned values according to whether it is used for commercial fishing for human consumption, subsistence fishing, or recreation or sport fishing (proposed rule, section 4.2.3.2). This factor would be a means of putting a high value on the resource and therefore protecting both the resource and the human users.

Either the drinking water use factor or the fishery use factor would be assigned a value of zero so as to assign only the highest overall use value to the surface water and prevent double counting of surface water use. The method used to determine which factor would be assigned the nonzero value is specified in the proposed rule, section 4.2.3.2.

Recreation Threat. The current HRS does not consider the significance of possible recreational exposures to hazardous substances occurring at or near Superfund sites except as a subfactor of surface water use. No mechanism is included to estimate relative risks from recreational exposure to hazardous substances. In response to the SARA requirement (see CERCLA section 105(c)(2), as amended) that risks from recreation in contaminated surface water be appropriately assessed, the Agency performed an analysis to estimate potential risks to swimmers and fishermen (exclusive of any food chain risks) who might use surface water near selected current NPL sites. EPA concluded that health risks from recreational surface water exposures may be potentially significant at some sites. In addition, EPA has confirmed that some surface waters near NPL sites are used for recreation. Consequently, EPA is proposing a method of evaluating such risks as part of the surface water pathway.

EPA's efforts have focused on methods of evaluating waste characteristics and target category factors; the likelihood of release category would be the same as in the drinking water threat.

Waste Characteristics. In the waste characteristics factor category, two factors would be included: toxicity/

persistence and hazardous waste quantity. In evaluating toxicity/persistence, a dose adjusting factor would be assigned. The dose adjusting factor represents the ratio of the dose to an individual that would be obtained via recreation to that dose that would be obtained via consumption of the same water (proposed rule, section 4.3.2.1.1). The dose adjusting factor makes use of a dermal permeability constant that accounts for dermal exposures and a mass flux dilution factor that accounts for inhalation exposures, and is explained in more detail in the Technical Support Document.

From the set of hazardous substances with the highest dose adjusting factor, the substance with the highest toxicity/persistence value would be selected. The toxicity and persistence values would be determined by the same procedures used in the drinking water subpathway, as would hazardous waste quantity (proposed rule, sections 4.3.2.1.4 and 4.3.2.2.). The toxicity/persistence value would be added to the hazardous waste quantity factor value to obtain the recreation threat waste characteristics value.

Targets. The targets factor category reflects the population potentially at risk from an actual or potential release of hazardous substances from the site to surface waters used for recreation (swimming or fishing). The targets category has one factor, population, which would be evaluated for each recreation area within the target distance limit based on whether the recreation area is subject to actual contamination or potential contamination.

Only those people who use recreational areas within the limits of an observed release would be considered in the actual contamination factor. The recreation population value would be determined for each recreation area using appropriate distance categories and distance multipliers, an accessibility/attractiveness factor, and a recreational dose adjusting factor. Actual counts of the number of people who live within set distances (0–5 miles, 5–10 miles, etc.) from the recreational area would be multiplied by the distance category multipliers for each distance. Where actual population counts are not available, census data would be used. The values for the accessibility/attractiveness factor would be assigned based on the presence of specific improvements such as waterfront parks, boat ramps, designed swimming beaches, etc. (proposed rule, section 4.3.3.1.1.1). The dose adjusting factor value for the substance used to assign the toxicity/persistence value would be used to express the recreational population exposure in terms of an equivalent drinking water population exposure (proposed rule, section 4.3.3.1.1.2). The actual recreation population value for a recreation area would be divided by 10, and the highest value for any recreation area would be used as the value for this factor.

The potential contamination factor would be evaluated for recreational areas within the target distance limit that do not have documented contamination attributable to the site. A human recreation population value would be determined for each recreation area using the same method as for the actual contamination factor. The potential contamination value for a recreation area would be obtained by multiplying the recreation population value for that recreation area by the appropriate dilution weighting factor used for drinking water populations and dividing by 100. The potential contamination factor value would be the highest of the potential contamination values assigned to individual recreation areas within the target distance limit, subject to a maximum (proposed rules, section 4.3.3.1.2).

More detailed discussion of the recreation subpathway can be found in the Technical Support Document, along with other options EPA considered. EPA invites comments on refining these approaches.

The higher of the values for actual contamination and potential contamination would be assigned as the population factor value for the watershed (proposed rule, sections 4.3.3.1.3 and 4.3.4).

Environmental Threat. Sensitive environments are included in the current HRS surface water pathway as a factor in the targets category. The factor is assigned a value based on the distance to the particular type of sensitive environment involved. The revised HRS would place more emphasis on environmental damage and expand the types of environments considered, as discussed in section V C 6.

The likelihood of release would be determined in the same manner as it is in the drinking water subpathway.

Waste Characteristics. The hazardous waste quantity factor would be revised as discussed in section V C 3. Ecosystem toxicity would be combined in a matrix with persistence and would be evaluated for all hazardous substances at the site that are available to migrate to surface water. The final ecosystem toxicity/persistence score would be determined by the substance with the highest assigned value. The Agency requests comments on the appropriateness of using a single substance to evaluate toxicity in sensitive environments.

Because exposure of sensitive environments is more likely to be chronic than acute, the ecosystem toxicity value would be determined by using EPA chronic water quality criteria for the protection of aquatic life, if available. If these data are not available, EPA acute water quality criteria would be used and divided by 100. If EPA acute water quality criteria are not available, the lowest LC_{50} value (median lethal dose value from animal studies) for the hazardous substance would be used and again divided by 100 (proposed rule, section 4.4.2.1.1). The divisors are safety factors used to account for uncertainty.

Ecosystem persistence would be evaluated as described for drinking water, except that the predominant water category between the probable point of entry and the nearest sensitive environment would be used (proposed rule, section 4.4.2.1.2). The final ecosystem toxicity/persistence value would be derived from a matrix to reflect the relationship of these two factors in determining the relative threat posed by hazardous substances (proposed rule, section 4.4.2.1.3).

Hazardous waste quantity would be added to the toxicity/persistence value to obtain a score for the waste characteristics factor category.

Targets. This category reflects the sensitive environments potentially at risk from an actual or potential release of hazardous substances into surface water. The targets category consists of one factor, sensitive environments. Each sensitive environment would be given a value based on an expanded list of sensitive environments or the Natural Heritage Program information (see section V C 6). Each sensitive environment would be placed into three groups: (1) Those with contamination above ecologically-based benchmarks (Level I concentrations); (2) those with contamination not above ecologically-based benchmarks but significantly above background levels (Level II concentrations); and (3) those that could potentially be contaminated (proposed rule, section 4.4.3.1). Weighting factors would be applied to give the greatest weight to those sensitive environments with levels of contamination above the ecologically-based benchmarks; potentially exposed sensitive environments would be dilution weighted. (See discussion of weighting

factors and benchmarks in sections V C 5, 6, and 8.)

The values assigned to the sensitive environments within each of these three groups would be added together to determine the environmental threat target factor score (proposed rule, section 4.4.3.1.4).

Surface Water Migration Pathway Score. The score for each threat (drinking water, human food chain, recreational, and environmental) would be the product of the likelihood of release value, the waste characteristics value, and the targets value (proposed rule, sections 4.1.4, 4.2.4, 4.3.4, and 4.4.4). The surface water migration score would be the sum of the scores for the four types of threats, subject to a maximum and normalized. As stated in the introduction to this section, a surface water migration score would be calculated for each watershed at a site (proposed rule, section 4.5). The surface water migration pathway score would be the sum of the watershed scores, subject to a maximum (proposed rule, section 4.6).

3. Air Pathway

As Figure 3 indicates, the proposed air pathway has the same general structure based on the three factor categories as in the current HRS air pathway. However, as stated before, EPA is proposing to revise every factor. The current HRS scores the air pathway using only observed releases; if no release can be documented, the pathway score is zero. The revised HRS would have a factor category to evaluate a site's potential to release substances to the air. In the waste characteristics category, a new mobility factor would be added. The targets category would have a new factor to assess the risk to the MEI.

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Figure 3

Air Migration Pathway

Current HRS

Release	X	**Waste Characteristics**	X	**Targets**
Observed Release		❑ Hazardous Waste Quantity ❑ Toxicity ❑ *Reactivity and Incompatibility*		❑ Land Use ❑ Population Within 4-Mile Radius ❑ Distance to Sensitive Environment

Revised HRS

Likelihood of Release	X	**Waste Characteristics**	X	**Targets**
Observed Release or POTENTIAL TO RELEASE ❑ SOURCE TYPE ❑ SOURCE MOBILITY* ❑ SOURCE CONTAINMENT		❑ Hazardous Waste Quantity* ❑ Toxicity/MOBILITY*		❑ Land Use ❑ Population ❑ MAXIMALLY EXPOSED INDIVIDUAL ❑ Sensitive Environments

Items in italic under Current HRS have been dropped or replaced. Items in caps under Revised HRS are new. Most items not in caps have been revised significantly.

****Factor based on several sub-factors.***

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Likelihood of Release. Observed Release. EPA studied different approaches to monitoring observed releases to the air. As the Science Advisory Board stated in its review of the air pathway: "Because air emissions are often episodic or narrowly focused along a particular wind direction, they are difficult to observe." If weather conditions are unfavorable when sampling occurs (e.g., if there is a high wind), the sampling may result in a false negative. Improving the accuracy of air release observations would have required either substantially more monitoring or monitoring during specific meteorological conditions. Because, for most site inspections, sampling must be conducted during a single visit, which cannot always be scheduled at the optimum time, EPA has decided to retain the current system for scoring observed releases (proposed rule, section 2.1.1). To make the scoring of this factor more consistent, the Agency is proposing more specific criteria discussed in section V C 4.

Potential to Release. SARA (see CERCLA section 105(a)(8)(A) as amended), required EPA to consider potential releases of hazardous substances to the air. Because of the problems in sampling for the air pathway, air releases are often difficult to detect. Furthermore, sites that are not emitting hazardous substances into the atmosphere at the time of sampling may begin to do so at some later date. For these reasons, the Science Advisory Board encouraged the development of a potential to release factor for air. EPA is proposing to modify the HRS to include the potential for release when no observed release can be documented.

The proposed potential to release measure is intended to provide a reliable method for evaluating, in the absence of an observed release, the likelihood that a site will release a potentially significant amount of hazardous substances to the atmosphere (proposed rule, section 2.1.2). The potential for a site to release contaminants to the air is dependent on the physical characteristics of the site, the physical and chemical characteristics of the hazardous substances located at the site, and the ways in which the hazardous substances are contained. In the proposed revisions, three factors that correspond to these characteristics would be used to evaluate a site's potential to release hazardous substances—source type, source mobility, and source containment. Further information on air releases from Superfund sites and the options EPA evaluated in developing the potential to release calculation are provided in the Technical Support Document and in "HRS Issue Analysis: Options for Revising the Air Pathway," (Mitre, 1987) available in the Superfund docket.

A source type value would be assigned to each source at the site that meets a minimum size requirement as specified in the proposed rule, section 2.1.2.2; only sources that contain hazardous substances could be used to calculate size. The six types of sources that would be assigned values are: containers (including tanks); contaminated soil (including land treatment); fire sites; landfills; surface impoundments; and waste piles. The source type values reflect the likelihood that an uncontained source of that type would release a potentially significant amount of relatively immobile hazardous substances to the air.

Source mobility (proposed rule, section 2.1.2.3) reflects the relative propensity of hazardous substances contained in a source to migrate from a source as a gas or as particulates. For a gaseous hazardous substance, the mobility factor would be based on three physical-chemical characteristics of the hazardous substance: its vapor pressure, Henry's constant, and dry relative soil volatility. Gas mobility would be scored as specified in the proposed rule, section 2.1.2.3.1.

Particulate mobility represents the ability of particles contaminated with hazardous substances to escape into the air. Since the moisture content of the soil is a relative measure of particulate mobility, EPA is proposing to use the Thornthwaite Precipitation-Effectiveness (PE) index, a surrogate measure of the relative moisture content of the soil, as the basis for this factor (proposed rule, section, 2.1.2.3.2). The gas mobility factor and the particulate mobility factors would be combined in a matrix to obtain the mobility value for the source (proposed rule, section 2.1.2.3.3). A more detailed discussion of mobility is included in the Technical Support Document, available in the Superfund docket.

The third factor that would be considered to calculate the potential for release to air is the ability of the containment of hazardous substances to inhibit their escape. Containment includes natural and constructed barriers to escape. EPA would assign factor values for both gas containment and particulate containment; the higher of the two values would be used for the source (proposed rule, section 2.1.2.1).

Each source would be assigned a value calculated by adding its source type value and its source mobility value, and multiplying the sum by the containment value (proposed rule, section 2.1.2.4). The release potential value would be the highest of the values assigned to the sources at the site.

This factor approach to assessing potential for release was chosen because the principal alternative approaches, based on emission equations developed for sites regulated under RCRA, were only applicable to certain types of Superfund sites and would have required a substantial expansion of the site inspections. As described above, EPA believes the proposed scoring system will reflect the likelihood that the overall site will release contaminants to the air. EPA is seeking comments on whether these are the most appropriate factors to assess potential to release.

Waste Characteristics. In the waste characteristics category of the current HRS air pathway, the reactivity, incompatibility, and toxicity of the hazardous substances are evaluated, as is the hazardous waste quantity. The proposed HRS includes several revisions to the evaluation of the waste characteristics factor. The changes to toxicity and hazardous waste quantity are discussed in sections V C 2 and 3. The reactivity and incompatibility factors would be deleted because these factors primarily predict the likelihood of sudden releases. While these releases could be important in rare cases, they may not be applicable to the vast majority of Superfund sites. These events are more appropriately assessed when determining the need for removal actions that respond to imminent danger. The waste characteristics score in the proposed HRS would be the sum of the toxicity/mobility factor value and the hazardous waste quantity factor value.

EPA is proposing to add mobility to the waste characteristics category for air (proposed rule, section 2.2.1.2). The mobility factor would measure the tendency of a hazardous substance to migrate as a gas or as particulates. All hazardous substances available to migrate to the air would be evaluated for gas mobility. In addition, if the substance can migrate as a particulate, the site would be evaluated for particulate mobility. If a hazardous substance is present in a documented release, the assigned mobility value for that substance would be the maximum. The mobility of substances not found in observed releases would be calculated in the same way gas and particulate mobility are calculated under potential for release, with the higher of the two

scores being used if a substance could migrate as either a gas or particulate.

The purpose of the mobility factor is to increase the accuracy of the waste characteristics factor category by taking into account the differing abilities of substances to migrate and, therefore, the relative threats posed by their release. The mobility and toxicity values for each substance would be combined in a matrix to reflect the importance of both in assessing risk; the substance with the highest toxicity/mobility value would be used to assign the factor value (proposed rule, section 2.2.1.3). Combining toxicity and mobility to select the substance would lead to selecting the substance that poses the most significant threat, thus increasing the accuracy of the HRS.

Targets. The current HRS evaluates three target factors: population within a four-mile radius, distance to a sensitive environment, and land use. The proposed HRS would revise these three factors and add a factor to reflect the risk to the MEI.

Several of the proposed changes to this factor category are discussed in sections V C 6, 8, and 9—the extension of the sensitive areas definition, the distance weighting factors, and the measurement of risk to the maximally exposed individual. In addition, EPA is proposing changes specific to the air pathway target factor category. While the Agency proposes to retain the four-mile target distance limit for humans, the target distance limit for sensitive environments would be extended from one and two miles to four.

Public comments have suggested that the four-mile target distance limit for the air pathway is too large. An EPA study presented to the Science Advisory Board, however, suggested that for sites with large emission rates of potential carcinogens, individual risks may remain of concern even at distances greater than four miles. In this study, EPA used a range of plausible contaminant emission rates from Superfund sites and a range of cancer potency values as input to a Gaussian air dispersion model. The results provided information on the range of risks due to air emissions found at varying distances from Superfund sites. The study—"Analysis of the Air Target Distance Limit in the Hazard Ranking System" (1987)—is available in the Superfund docket.

The Science Advisory Board reviewed the analysis and recommended a dilution weighting scheme that would capture the differences in concentrations at different distances from the site. EPA is proposing to retain the current four-mile target distance limit and would add weighting factors as discussed in section V C 8.

EPA is also proposing to revise the land use factor. The current HRS air pathway considers five categories of land use and assigns values to them depending on their distance from the site. The highest assigned value for any of the relevant land uses becomes the value used for the land use factor. The proposed rule (section 2.3.3) would change this method of determining the land use value in three ways. First, residential land use, now a single category, would be divided into single-family residences and multi-family residences, with the latter being assigned a higher value. Second, the assigned value for land use would be multiplied by the distance weighting factor. Third, the final land use factor would be the sum of all the land uses within the target distance. The inclusion of all land uses would provide better discrimination; the greater range of assigned values and the distance weighting would provide a more accurate assessment of the potential risk.

The sensitive environment factor would be distance weighted and all sensitive environments within four miles would be evaluated and summed (proposed rule, section 2.3.4). EPA would like comments on whether the evaluation of sensitive environments in the air pathway should be limited to terrestrial sensitive environments.

The final score for the targets category would be the sum of the four factors (population, sensitive environments, land use, and MEI) (proposed rule, section 2.3.5).

Air Migration Pathway Score. The air migration pathway score would be the product of the likelihood of release value, the waste characteristics value, and the target value, normalized (Proposed Rule, Section 2.4).

4. Onsite Exposure Pathway

Figure 4 shows the structure of the proposed onsite exposure pathway. There is no current onsite exposure pathway. To parallel the proposed rule, this section discusses the three factor categories for the resident population, then for the nearby population.

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Figure 4

ONSITE EXPOSURE PATHWAY

REVISED HRS*

RESIDENT POPULATION THREAT

LIKELIHOOD OF EXPOSURE	X	WASTE CHARACTERISTICS	X	TARGETS
❑ OBSERVED CONTAMINATION		❑ TOXICITY		❑ HIGH RISK POPULATION ❑ TOTAL RESIDENT POPULATION ❑ TERRESTRIAL SENSITIVE ENVIRONMENTS

NEARBY POPULATION THREAT

LIKELIHOOD OF EXPOSURE	X	WASTE CHARACTERISTICS	X	TARGETS
❑ ACCESSIBILITY/ FREQUENCY OF USE ❑ HAZARDOUS WASTE QUANTITY		❑ TOXICITY		❑ POPULATION WITHIN 1 MILE

The current HRS includes a direct contact pathway, but that pathway is not used in calculating the overall HRS migration score.

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CERCLA (section 105(8)(A)) required EPA to take into account the potential for direct human contact in setting priorities for the NPL. When the HRS was promulgated in 1982, EPA explained that hazards from direct contact with hazardous substances would be addressed and controlled by a CERCLA emergency response action prior to remedial action and therefore the direct contact pathway did not need to be included in the HRS migration score. The direct contact portion of the current HRS calculates the potential for direct exposure to hazardous substances in a way that essentially parallels the migration pathways, but is not included in the score used to determine if a site should be on the NPL.

In developing the proposed revisions, EPA analyzed the Records of Decisions (RODs) produced during the first four years of the Superfund program. (A ROD is the documentation of the decision process associated with the selection of a remedy for a site.) This analysis showed that in over 50 percent of the NPL sites, direct contact was listed as one of the considerations in selecting the remedial action. This analysis indicated that some significant risks from direct contact may not have been completely addressed by removal actions and should be of concern in determining priorities for remedial action. The analysis is available in the Superfund docket.

Based on its review and its experience, and in order to better respond to the mandate in CERCLA section 105(8)(A) (now CERCLA 105 (a)(8)(A)), EPA is proposing to add a separate onsite exposure pathway, similar to the direct contact pathway, that would be included in the calculation of the total HRS site score (proposed rule, section 5.0). EPA considered incorporating direct contact exposures in the other migration pathways. However, soil ingestion at sites probably constitutes the most significant direct contact threat. The likelihood of soil ingestion represents a distinctly different mode of exposure than found in the other pathways. Therefore, EPA decided that a separate onsite exposure pathway would more directly and more accurately reflect the potential threat.

The proposed onsite exposure pathway score would consist of two population groups evaluated for the three factor categories (likelihood of exposure, waste characteristics, and targets), and is constructed in a way similar to the surface water threats. The first group is the resident population, including people living on a property where contamination is (or can be inferred to be) significantly above background levels, people attending schools or day care on such property, or sensitive environments that have become contaminated (proposed rule, section 5.1). The second group consists of the nearby population, composed of people who have access to a contaminated area (proposed rule, section 5.2). EPA asks for public comments on this breakdown.

Resident Population Threat. Likelihood of Exposure. The revised HRS would evaluate the resident population likelihood of exposure (proposed rule, section 5.1.1) based on the presence of contamination and not on release potential, as in the other pathways, because no migration of contaminants off-site is necessary for exposure to occur; people live on or attend school or day care on the site, or the contamination is in a terrestrial sensitive environment.

The proposed HRS would require documented, analytic evidence of contamination above background levels in order to assign a score for the pathway. The criteria for contamination would be the same as for the other pathways (see section V C 4); samples would be taken within a specified depth below the surface.

As set forth in the revised HRS, it would be possible to infer that properties are contaminated, even though no soil samples demonstrate contamination on these properties, if surrounding properties show contamination. This approach would also require that the likely mechanisms of transport (overland flow, air, etc.,) be considered along with topography and other factors to determine whether such interpolation of sampling results is reasonable. The Agency considered the alternative approach of only counting targets living on properties where sampling had demonstrated contamination; however, that approach would most likely result in either much higher costs for site inspections due to the increase in soil sampling or in less accuracy, if insufficient samples were taken. While the Agency has proposed the approach of interpolating from soil sampling and other information to demonstrate contamination, comments are solicited both on the approach selected and on guidance for implementing it. The guidance will need to address such issues as methods for establishing background levels of hazardous substances and interpretation of negative sample results within the boundaries of the contaminated area. In addition, the Agency recognizes that the approach of using property boundaries to define contaminated residential land may be problematic in certain situations, such as Federal installations or Indian lands, where residential areas could be within the contaminated "property" and be at considerable distance from the hazardous substances. The Agency is seeking comment on how such situations could be addressed in the revised HRS.

Waste Characteristics. Toxicity would be the only factor in this factor category and would be calculated as discussed in section V C 2.

Targets. The three target subgroups considered in the resident population factor would be children under seven, the total resident population, and sensitive environments (proposed rule, section 5.1.3). These values for these three factors would be added together to obtain the targets category score. Children under seven are considered a high risk subgroup because they have much higher soil ingestion rates than other people. The children counted in the high risk group would include those attending school or day care on contaminated property plus those who live on the contaminated property. Individual children could be counted only once in this factor category. These high risk individuals would be assigned scores five times that of individuals in the rest of the resident population (proposed rule, section 5.1.3.1).

The total resident population would include everyone who lives or goes to school on the property except those individuals already counted under the high risk population (proposed rule, section 5.1.3.2).

A high-risk population of 10 or a total resident population of 50 would be required to assign the maximum target score if there are no affected sensitive environment targets. EPA decided that onsite exposures to a very small number of people warrant assigning a high priority to the site because individual risks can be very high. Also, onsite exposures can lead to an extremely high level of public concern.

The Agency requests comments on the division of the population and on the relative weights. It also requests suggestions on how the high risk population can best be determined.

Any contaminated terrestrial sensitive environments would also be assigned a value (proposed rule, section 5.1.3.3). For this pathway, sensitive environments include only terrestrial environments; aquatic ecosystems would be addressed in the surface water pathway.

The resident population threat score would be calculated by multiplying the

likelihood of exposure, waste characteristics, and targets categories (proposed rule, section 5.1.4).

Nearby Population Threat. Likelihood of Exposure. The likelihood of exposure factor category in the revised HRS would evaluate the relative risks a site poses to the nearby population by considering the quantity of hazardous waste on the site and the site's accessibility/frequency of use. The hazardous waste quantity would be evaluated based on the total areal extent of the contamination (proposed rule, section 5.2.1.1). Contaminated area would be used in the onsite exposure pathway for the hazardous waste quantity factor because, for the onsite pathway, this factor evaluates the probability that wastes will be encountered, not the severity of exposures.

The accessibility/frequency of use factor would also evaluate the likelihood that wastes will be encountered. Accessibility refers to natural barriers or measures taken to limit access. Frequency of use is assigned a value based on estimates of use. Documented contamination of school property, parks, etc., would be assigned the maximum value because, by their very nature, the public is attracted to them. Schools onsite are included in this factor because other members of the community besides students use them. The value assigned to other contaminated properties would decline as the numbers of barriers increase, with the lowest value assigned to areas protected by a combination of natural and artificial barriers that completely surround the site and by guards who control entry at all times (proposed rule, section 5.2.1.2). No site would receive a score of zero for this factor because EPA considers that no system can provide a completely effective barrier.

Accessibility/frequency of use and waste quantity would be combined in a matrix to assign a value for the likelihood of exposure factor category (proposed rule, section 5.2.1.3).

EPA specifically requests comments on the appropriateness of basing the estimate of likelihood of exposure for the nearby population on site area and accessibility/frequency of use, the criteria used to assign accessibility/frequency of use, and the scales assigned to site areas.

Waste Characteristics. Toxicity would be the only factor in this category and would be assigned the same value for the nearby population as it would be for the resident population.

Targets. Individuals would be counted in the nearby population if they live or go to school or day care within a one mile travel distance of the contaminated site. As described in section V C 8, the nearby population would be distance weighted. The potential for exposure of nearby populations to contaminated soils and wastes is expected to be significantly less than resident population exposures. The Agency proposes to weight nearby populations at least 20 times lower than resident populations to reflect a reasonable estimate of the relative exposure levels. Individuals farther from the site would be weighted even lower to reflect the assumption that frequency and probability of access decrease with increasing distance from the site (proposed rule, section 5.2.3).

The nearby population targets section does not include a factor for sensitive environments. EPA concluded that relative to the harm measured by the terrestrial sensitive environments factors in the resident populations section and in other pathways, the threats to sensitive environments located near areas of contamination are much less, and therefore inclusion of a sensitive environment factor is not warranted. In addition, sensitive environments would be evaluated in the other pathways.

The nearby population threat score is calculated by multiplying the values for likelihood of exposure, waste characteristics, and targets (proposed rule, section 5.2.4).

Onsite Exposure Pathway Score. The final pathway score would be calculated by adding the resident population score and the nearby population score, subject to a maximum (proposed rule, section 5.3). As discussed above, the maximum for the pathway is also the maximum for either the resident population score or the nearby population score.

5. Fire and Explosion

Although the current HRS evaluates the risk of fire and explosion at sites to determine if removal actions may be required, the score for the fire and explosion pathway is not included in the final HRS migration score. EPA's experience indicates that the fire and explosion pathway would not provide a useful basis for scoring a site for remedial action. The potential for fire and explosion is evaluated in another part of the Superfund program, the removal program, to determine if a removal action is necessary. Therefore, the proposed HRS would not include a fire and explosion pathway.

E. CERCLA Section 125

Section 125, added by SARA, requires EPA, in revising the HRS, to address facilities that contain substantial volumes of waste specified in section 3001(b)(3)(A)(i) of RCRA. These wastes include fly ash wastes, bottom ash wastes, slag wastes and flue gas emission wastes generated from combustion of coal and other fossil fuels. Section 125 requires EPA to revise the HRS in a manner which assures the appropriate consideration of the quantity, toxicity, and concentrations of the hazardous constituents present in such wastes in comparison with other wastes; the extent of, and potential for release of such hazardous constituents; and the degree of risk these hazardous constituents pose to human health and the environment.

The Agency believes that the proposed revisions to the HRS address the requirements of section 125 in a number of different areas. First, the toxicity factor has been revised to include chronic and carcinogenic risks. The revised toxicity factor will provide for a better indication of the comparative toxicity of substances and will provide greater discrimination among sites. Thus, the toxicity of fly ash wastes will be more accurately reflected in HRS scores.

Second, to more fully consider the quantity and concentration of hazardous constituents at fly ash waste sites, the revised HRS will incorporate a tiered approach for calculating the hazardous waste quantity factor. Such a tiered approach would use the best data available at a site to calculate waste quantity, including constituent concentration data, if adequate. The revised HRS would consider the concentration of a hazardous substance in three ways: (1) By assigning a higher score to populations drinking water with contamination that exceeds a health-based benchmark; (2) by outlining specific criteria for determining the significance of an observed release, thus improving the way the HRS evaluates risk; and (3) by distance/dilution weighting targets subject to potential contamination.

Third, the revised HRS will consider the extent of, and potential for, release of hazardous constituents from fly ash waste sites into the environment by the observed release criteria, the revised method for calculating hazardous waste quantity, and the addition of factors that would improve the way the HRS evaluates the potential for hazardous substances to be released. In the ground water pathway, such factors include the revised depth to aquifer/hydraulic conductivity factor, the sorptive capacity factor, and the mobility factor. To improve the potential to release

evaluation in the surface water pathway, the revised HRS would replace the current potential to release factors with two new groups of factors, overland flow and potential to release by flood. In addition, the revisions to the persistence factor in the surface water pathway to include mechanisms for attenuation other than biodegradation would provide a more accurate assessment of the potential for hazardous substances to migrate. In the air pathway, the potential for a hazardous substance to be released would be considered by the addition of a potential to release mechanism, which would take into account source type, source size, and the mobility of hazardous substances at the site.

Fourth, the degree of risk to human health and the environment posed by such constituents would be appropriately considered in the revised HRS by:

- Revising the toxicity factor to include chronic toxicity;
- Improving the calculation of hazardous waste quantity by enabling the HRS to use more complete data, if available;
- Adding a mobility factor to the ground water and air pathways that would better assess the potential for contaminants to migrate;
- Revising the evaluation of potential to release in the ground water and surface water pathways;
- Adding a potential to release category in the air pathway;
- Specifying criteria for determining when an observed release is significantly above background;
- Using health-based and ecological benchmarks for weighting the targets actually exposed to contamination; and
- Adding distance and dilution weighting for targets potentially exposed to contamination.

Mining Wastes. Although SARA did not require EPA to revise the HRS with specific reference to mining wastes, the Agency received a number of comments on mining waste issues in response to the previous NPL rulemakings and to the ANPRM. The primary concern of the commenters was that the HRS may be biased against high volume, low concentration wastes because it does not adequately consider quantity, toxicity, and concentration of hazardous constituents.

In considering these issues, EPA evaluated studies conducted by commenters and conducted additional studies to determine whether HRS scores for mining sites versus non-mining sites were too high relative to the potential hazard they posed.

One study was a comprehensive analysis of the HRS scoring patterns of 406 sites on the NPL (mining and non-mining) plus 297 sites considered but not on the NPL at that time. The basic finding was that mining and non-mining NPL sites do not differ significantly in their scoring patterns for observed releases, population/distance scoring, or toxicity/persistence scoring. Mining sites generally do score higher on the hazardous waste quantity factor. However, hazardous waste quantity is a relatively less important determinant of HRS scores than several other factors. In addition, the maximum hazardous waste quantity score in the current HRS (2,500 tons and higher) covers a wide range of quantities reported at sites (e.g., 5,000,000+ tons). This large upper category of the scoring range diminishes the relative impact of very large quantities of waste.

A second study provided relevant information on waste and constituent quantities at six high-volume waste sites. For three of the sites, the quantity of hazardous substances present was estimated using site-specific information on constituent concentrations and amounts. For the other three sites, constituent quantities were estimated based on the quantity of hazardous waste reported on HRS scoring sheets for the site and generic constituent concentration ranges for the appropriate mining industry segment/district. The estimated quantity of hazardous constituents present at each site exceeded 2,500 tons, which is the cutoff value for the maximum hazardous waste quantity score. Therefore, these six sites would have received the maximum hazardous waste quantity score even if only the quantity of hazardous constituents present had been evaluated rather than the quantity of waste. In fact, at the six sites, the estimated amount of hazardous constituents exceeded the total amount of hazardous wastes at more than 60 percent of other NPL sites.

A third study compared HRS scores with the results of an analysis of potential dangers for six actual mining waste sites. The sites were chosen primarily on the basis of data availability. Site information relating to potential risks to human health and the environment was compiled for all four migration pathways. Although the six sites were not randomly selected and cannot be construed as representative of all mining waste sites, some conclusions can be drawn. All six sites were associated with a high potential risk rating in at least one exposure route. In addition, they demonstrate that any or all HRS pathways may be associated with significant potential risk at mining waste sites.

Within the six sites, higher HRS scores generally were associated with higher potential danger ratings and also with sites having a large number of potentially dangerous exposure routes. This result gives limited evidence that HRS scores may correlate with potential risk at mining waste sites. While all three studies covered a limited number of sites, they do suggest that the HRS score does not unfairly treat mining waste sites.

EPA requested the assistance of the Science Advisory Board regarding the applicability of the HRS in scoring mining waste sites. The studies discussed above are summarized in a report prepared for the Science Advisory Board deliberations entitled "The Superfund Hazard Ranking System (HRS): Applicability to Mining Wastes Sites" (ICF, Inc., July 1987). The report and the studies are available in the Superfund docket. The Board examined the scientific issues pertinent to waste and site characteristics and past HRS experience scoring mining waste sites. The Board concluded that, based on past experience, there is no evidence to demonstrate that the HRS is biased against these sites. However, the Board cautioned that the current HRS has the potential for bias when calculating a score based on potential to release. The Board suggested ways to improve the HRS in regard to large volume waste sites, including modifying the toxicity factor to reflect characteristics of metals, incorporating concentration and mobility factors, and adding transformation parameters. The new mobility factors in air and ground water, the revised persistence factor in surface water, and the new sorptive capacity factor in ground water will improve the accuracy of the revised HRS in evaluating the potential risk posed by mining waste sites.

The Agency also requested the Science Advisory Board's assistance on a related subject—the feasibility of using concentration data in determining the hazardous waste quantity factor. The report presented to the Science Advisory Board—"The Superfund Hazard Ranking System (HRS): Feasibility of Using Concentration Data in a Revised HRS" (ICF, Inc., July 22, 1987)—is available in the Superfund docket.

In response to the issue of using concentration data in calculating the hazardous waste quantity factor, the Board analyzed two options besides the current method (see section V C 3). The proposed tiered approach is based on the Board's recommendation. From comments it has received, EPA expects

that sufficient data may be available at certain types of sites, which could allow these sites to be scored using the highest tier in calculating the waste quantity factor.

The Board's conclusions and recommendations are available in the Superfund docket.

VI. Required Analyses

A. Executive Order No. 12291

Under Executive Order No. 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets.

An initial economic analysis entitled "Economic Impact Analysis in Support of the Proposed Revisions to the Hazard Ranking System" (U.S. EPA, January, 1988) was prepared to estimate the incremental costs associated with alternatives to the current HRS. This analysis compared the estimated cost of the revised HRS with the current HRS and with two alternative ranking systems—the Department of Energy's Remedial Action Priority System, the model that, with the revised HRS, did well in the site ranking panel review, and the revised HRS with a direction of ground water flow factor included. The analysis indicates that the revised HRS will cost more than the current HRS, but would be less costly than either of the other alternatives. The results of evaluating sites using the current HRS or any other alternative model are those costs incurred to collect the data and score a site. The best estimate of the average cost of the current HRS is $58,200 per site. The best estimates for the average cost per site for the alternatives are $147,600 for the proposed revised HRS, $217,000 for the revised HRS plus ground water flow direction, and $261,700 for the Remedial Action Priority System. The economic impact analysis is available for inspection in the Superfund docket.

Based on the results of the economic analysis, EPA has concluded that the proposed HRS is not a major rule under Executive Order No. 12291. The proposed HRS is expected to impose total costs of $56.0 million and expected to impose costs on society of $9.0 million over current HRS expenditures, well below the $100 million annual effect on the economy that defines a major rule. At this point, it is impossible to predict whether the revised HRS would result in more or fewer sites being included on the NPL.

This proposed rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of a rule on small entities and examine alternatives that may reduce these effects. EPA certifies that the proposed HRS will not have a significant impact on a substantial number of small entities.

Small businesses generally do not pay for HRS activities and therefore, most firms will not be affected by the proposed changes. In some cases, a responsible party may be required to pay HRS costs. EPA prepared an analysis of the potential impact the revised HRS would have on firms required to pay for HRS activities. The results of the financial analysis demonstrate that four out of five sample small firms had the assets or income to enable them to finance HRS action. (See Appendix A of the economic report.)

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1488) and a copy may be obtained from Carl M. Koch, Information Policy Branch, EPA, 401 M St., SW. (PM-223), Washington, DC 20460 or by calling (202) 382-2739.

The public reporting burden for this collection of information is estimated to vary from 1280 to 1500 hours, with an average of 1390 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 300

Air pollution controls, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: November 15, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCE POLLUTION CONTINGENCY PLAN

1. The authority citation for Part 300 is revised to read as follows:

Authority: 42 U.S.C. 9605, 9618, 9625(a); 33 U.S.C. 1321(c)(2); E.O. No. 11735, 38 FR 21243; E.O. No. 12580, 52 FR 2923.

2. Part 300, Appendix A is revised to read as follows:

Appendix A to Part 300—The Hazard Ranking System

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1.0 Introduction

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Pub. L. 96–510) required the President to identify at least 400 facilities in the nation which appear to warrant remedial investigation and possible cleanup under CERCLA. In order to set the priorities, CERCLA required that criteria be established based on relative risk or danger to public health, welfare or the environment, taking into account the population at risk; the hazard potential of the substances at a facility; the potential for contamination of drinking water supplies, for direct human contact, and for destruction of sensitive ecosystems; and other appropriate factors. To meet these requirements, EPA developed the Hazard Ranking System (HRS).

The HRS is a means of applying uniform technical judgment regarding the relative potential of releases of hazardous substances to threaten human health and the environment. The evaluation of sites for inclusion on the National Priorities List (NPL) is based primarily on HRS scores. The HRS does not, however, address the feasibility, desirability, or degree of cleanup required. Neither does it deal with the readiness or ability of a State to carry out such remedial action as may be indicated, or to meet other conditions prescribed in CERCLA.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499) requires the President to revise the HRS to "assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review" (CERCLA section 105(c)(1), as amended). The revisions must ensure that human health risks associated with the contamination or potential contamination of surface waters are appropriately assessed where such waters can be used for recreation or drinking water. The revisions must also provide for consideration of damage to natural resources which may affect the human food chain, and releases or threats of releases which may affect the ambient air. CERCLA section 118, added by SARA, also requires that a high priority be given "to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply." Finally, CERCLA section 125, added by SARA, requires the revisions to the HRS to consider the following characteristics for facilities (not included or proposed for inclusion on the NPL on the date of enactment of SARA) which contain substantial volumes of wastes described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act: (1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such wastes and comparison thereof with other wastes, (2) the extent of, and the potential for, release of such hazardous constituents into the environment, (3) the degree of risk to human health and the environment posed by such constituents.

This Appendix describes the HRS, as revised pursuant to SARA. Under this rule, an HRS score is determined for a site by evaluating four pathways:

- Air migration.
- Ground water migration.
- Surface water migration.
- Onsite exposure.

The score for each pathway is obtained by first evaluating a set of factors (e.g., observed release, waste quantity, and maximally exposed individual) that characterize the potential for the site to cause harm via that pathway. Each factor is assigned a numerical value according to the instructions in sections 2 through 5 of this document. All factor values assigned must be rounded to the nearest integer, except where otherwise noted.

The factor values are then combined within factor categories (e.g., likelihood of release, waste characteristics, and targets). The values for the factor categories within a pathway are combined and the resultant value divided by the maximum possible score for that pathway. This ratio is multiplied by 100 to obtain the pathway score, subject to a maximum score of 100.

The HRS site score (S) is a composite of the four possible pathway scores:

$$S = \sqrt{\frac{S_a^2 + S_{gw}^2 + S_{sw}^2 + S_{os}^2}{4}}$$

where:

S_a = Air migration pathway score.
S_{gw} = Ground water migration pathway score.
S_{sw} = Surface water migration pathway score.
S_{os} = Onsite exposure pathway score.

The effect of this means of combining the pathway scores is to emphasize the primary (highest scoring) pathway in aggregating pathway scores while giving some additional consideration to the other pathways.

The HRS score does not quantify the probability of harm from a facility nor the magnitude of the harm that could result, although the factors have been selected in order to approximate both those elements of risk. The HRS is a procedure for ranking facilities relative to each other in terms of the potential threat they pose.

The following definitions apply to the HRS:

- The term "hazardous substance" refers to CERCLA hazardous substances, pollutants and contaminants as defined in CERCLA Sections 101(14) and 101(33), as amended.
- A "source" is any area where a hazardous substance has been deposited, stored, disposed, or placed. If there is a release of hazardous substances (e.g., a ground water plume), but no known source of the release, the source is defined for HRS purposes by the known extent of the release.
- A "site" is one or more sources that have been aggregated for the purpose of applying the HRS.
- HRS "factors" represent the primary rating elements internal to the HRS.
- An HRS "factor category" consists of a set of HRS factors.
- An "HRS pathway" consists of a set of factor categories.
- The "HRS site score" is a composite of the four pathway scores.

2.0 Air migration pathway.

The air migration pathway addresses the relative risks, to the people, resources, and the environment surrounding a site, that are associated with actual or threatened releases of hazardous substances from the sources on the site to the atmosphere. Three factor categories are included in the air migration pathway:

- Likelihood of Release (LR).
- Waste Characteristics (WC).
- Targets (T).

Figure 2–1 indicates the factors included within each of these factor categories. The evaluation of the factors and factor categories is discussed in the following sections.

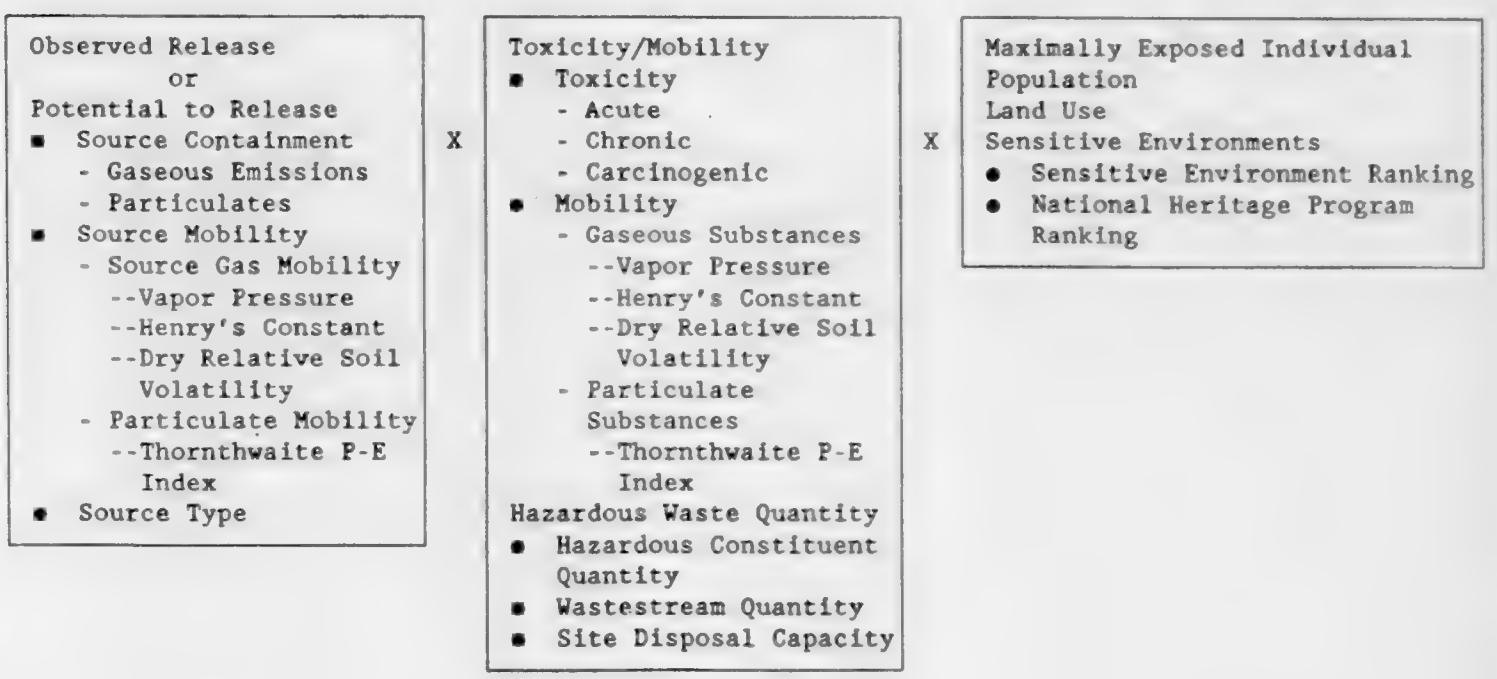

FIGURE 2-1
OVERVIEW OF THE AIR MIGRATION PATHWAY

The air migration pathway score is calculated in terms of the factor category values as follows:

$$S_a = \frac{LR \times WC \times T}{SF}$$

where S_a is the air migration pathway score and SF is a scaling factor used to normalize the score to a scale of 0 to 100. This calculation procedure is outlined in Table 2–1.

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TABLE 2-1
AIR MIGRATION PATHWAY SCORESHEET

Factor Categories and Factors	Maximum Value	Value Assigned
Likelihood of Release		
1. Observed Release	450	____
2. Potential to Release (Highest value assigned to any source evaluated)	390	____
3. Likelihood of Release (Higher of Lines 1 or 2)	450	____
Waste Characteristics		
4. Toxicity/Mobility	100	____
5. Hazardous Waste Quantity	100	____
6. Waste Characteristics (Lines 4 + 5)	200	____
Targets		
7. Maximally Exposed Individual	50	____
8. Population	235	____
9. Land Use	10	____
10. Sensitive Environments	100	____
11. Targets (Lines 7 + 8 + 9 + 10, subject to a maximum of 235)	235	____
Air Pathway Migration Score		
12. Pathway Score (S_a) [(Lines 3 x 6 x 11)/2.115 x 10^5]	100	____[1]

[1] S_a is not to be rounded to the nearest integer.

Figure 2–2 illustrates the process for developing an air migration pathway score.

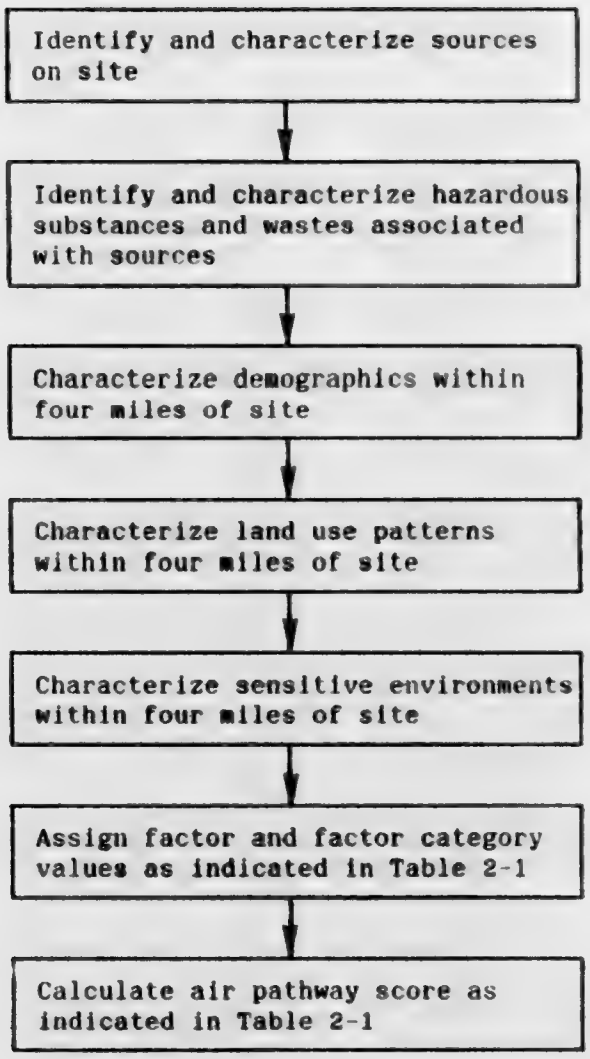

FIGURE 2-2
PROCESS FOR DEVELOPING AIR PATHWAY SCORE

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2.1 Likelihood of release.

The likelihood of release refers to the likelihood that the site has released, is releasing, or will release a potentially significant quantity of hazardous substances to the ambient air. The factor category value is determined in terms of an observed release factor and a potential to release factor.

2.1.1 Observed release.

An observed release to the atmosphere is established whenever it can be demonstrated that a site has released a hazardous substance to the atmosphere. This demonstration can be based on either direct observation of the release or indirect observation (i.e., the analysis of air samples).

In the case of direct observation, material (e.g., particulates) from the site must be seen entering the atmosphere directly. Further, available information must indicate that the material observed entering the atmosphere contained one or more hazardous substances. Such information should include an analysis of the hazardous substances contained in samples of the material or other similar documentation of the content of the material.

In the case of indirect observation, the samples must indicate that a significant increase in ambient hazardous substance concentration has occurred relative to the background concentration for the site (as described below). Further, the available information must support the attribution of some portion of the increase to the site. Attribution can be based on sampling information such as the location of the samplers or other source apportionment techniques.

A significant increase is determined by comparing atmospheric samples, one of which must be a background sample. The background sample should be chosen to reflect, as completely as possible, the concentration of the hazardous substance in the atmosphere exclusive of the contribution of any possible releases from the site. Further, the samples must be taken under the same atmospheric conditions (i.e., wind speed, wind direction, temperature, relative humidity, and any other conditions that might significantly affect sampling results).

The ambient concentration of a hazardous substance is considered to be significantly above background levels under the conditions presented in Table 2–2. The detection limit referred to in Table 2–2 may be the minimum of the actual detection limit achieved by the laboratory for the set of samples in question, the method detection limit achieved by the laboratory for a given analytical procedure (or, in the case of real-time field instruments, the detection limit of the instruments as used in the field), or, with one exception, the EPA contract-required quantitation limit (CRQL) or the EPA contract-required detection limit (CRDL) for the EPA Contract Laboratory Program. The exception is that the CRQL (or the CRDL) must not be used if the method detection limit or actual detection limit achieved is known and exceeds the CRQL (or the CRDL) or if the analysis is not performed under the EPA Contract Laboratory Program. The selection of the detection limit to be used may be done hierarchically, starting with the highest of the applicable detection limits. For example, when the CDRL is higher than the method detection limit achieved and use of the CRDL does not yield an observed release, then the method detection limit achieved can be used to evaluate an observed release.

TABLE 2–2—CONDITIONS NECESSARY TO DOCUMENT AN OBSERVED RELEASE

If background concentration is:	Observed release occurs if detected concentration is:
Not detected	Greater than or equal to 3 times the detection limit.
Greater than or equal to the detection limit, but less than 2 times the detection limit.	Greater than or equal to 3 times the applicable background concentration or greater than or equal to 4 times the detection limit, whichever is less.
Greater than or equal to 2 times the detection limit.	Greater than or equal to 2 times the applicable background concentration.

If an observed release can be established, then assign an observed release factor value of 450. If no observed release can be established, assign an observed release factor value of zero. Enter the value assigned on Table 2–1.

2.1.2 Potential to release.

Evaluate potential to release if an observed release has not been established. Potential to release assesses the likelihood of a site releasing a potentially significant amount of hazardous substances to the atmosphere. The potential to release factor is evaluated for the site by first evaluating the potential to release from each of the sources on the site. Three factors are evaluated in determining the potential to release from a source: source containment, source type, and source mobility.

Determine the potential to release value for each source as illustrated in Table 2–3. Use the highest of the source potential to release values as the value for the site potential to release factor.

TABLE 2–3—AIR PATHWAY POTENTIAL TO RELEASE EVALUATION

Source	Source type [1]	Source containment factor value [2]	Source type factor value [3]	Source mobility factor value [4]	Sum	Emission source value
		A	B	C	(B+C)	Ax(B+C)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
Potential to release factor value (Select highest emission source value)						

[1] Source Type from Table 2–6.
[2] Source Containment Factor Value from Section 2.1.2.1.
[3] Source Type Factor Value from Table 2–6.
[4] Source Mobility Factor Value from Table 2–10.

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2.1.2.1 Source containment. Containment refers to the physical characteristics of a source that act to restrict emissions of hazardous substances from the source. Assign, to each source, factor values for both gaseous and particulate containment, using Tables 2–4 and 2–5. Select the higher of the gaseous and particulate containment factor value for that source.

TABLE 2–4—SOURCE CONTAINMENT FACTOR—GASEOUS EMISSIONS

Source type/gas containment descriptions	Assigned value
Container (including tanks)	
Below ground/buried containers	Evaluate as a landfill, etc.
Intact, sealed containers protected from the weather by a maintained cover	0
Intact, sealed containers not protected from the weather by a maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with an essentially impermeable, maintained cover	0
Open, unsealed, or nonintact containers: waste partially covered with an essentially impermeable, maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with an essentially impermeable, unmaintained cover	2
Open, unsealed, or nonintact containers: waste otherwise covered or uncovered	3
Other	1
Fire Site	
Former fire site	Evaluate as a landfill, etc.
Active above-ground fire site	3
Active below-ground fire site: uncontaminated [1] soil cover in excess of two feet	1
Active below-ground fire site: uncontaminated [1] soil cover less than two feet, soil resistant to gas migration.[2]	2
Active below-ground fire site: uncontaminated [1] soil cover less than two feet, soil not resistant to gas migration.[2]	3
Other	1
Landfill, Contaminated Soil (including Land Treatment), or Waste Pile.	
Functioning gas collection system	0
Existing, nonfunctioning gas collection system	0
Intact synthetic cover plus uncontaminated soil cover over 0.5 inches in depth.[1]	1
Totally covered with an intact synthetic cover: surface soil contaminated.[1]	3
Totally covered with a nonintact synthetic cover: surface soil contaminated.[1]	0
Uncontaminated soil cover [1] in excess of six inches	0
Uncontaminated soil cover [1] greater than one inch and less than six inches: cover soil resistant to gas migration.[2]	1
Uncontaminated soil cover [1] less than six inches: cover soil type unknown	1
Uncontaminated soil cover [1] greater than one inch and less than six inches: cover soil not resistant to gas migration [2]	2
Uncontaminated soil cover [1] less than one inch: cover soil resistant to gas migration [2]	2
Uncontaminated soil cover [1] less than one inch: cover soil not resistant to gas migration [2]	3
Covering soil contaminated [1] with waste constituents at surface and no synthetic cover between surface and bulk of waste materials	3
Totally enclosed in a structurally intact building	1
Totally enclosed in a nonintact building	2
Waste uncovered or exposed	3
Other	1
Surface Impoundment	
Dry surface impoundment	Evaluate as a landfill, etc.
Wet enclosed [3] impoundment: impoundment totally covered with a maintained, essentially impermeable cover	0
Wet enclosed impoundment: impoundment totally covered with an unmaintained, essentially impermeable cover	1
Wet enclosed impoundment: impoundment partially covered with a maintained, essentially impermeable cover	1
Wet enclosed impoundment: impoundment partially covered with an unmaintained, essentially impermeable cover	2
Wet enclosed impoundment: uncovered, surface completely open to atmosphere	3
Wet nonenclosed impoundment: impoundment totally covered with a maintained, essentially impermeable cover	0
Wet nonenclosed impoundment: impoundment totally covered with an unmaintained, essentially impermeable cover	1
Wet nonenclosed impoundment: impoundment partially covered with a maintained, essentially impermeable cover	2
Wet nonenclosed impoundment: impoundment partially covered with an unmaintained, essentially impermeable cover	3
Wet nonenclosed impoundment: uncovered, surface completely open to atmosphere	3
Other	1
Other	0

[1] Lacking contrary evidence, covering soils are assumed to be uncontaminated.

[2] USGS soil types GC, ML, CL and CH are considered resistant to gas migration. Source: Adapted from Lutton, R. J., "Evaluating Cover Systems for Solid and Hazardous Wastes," (EPA–530/SW–867c), United States Environmental Protection Agency, Washington, D.C., September 1980.

[3] An enclosed impoundment is one with a freeboard exceeding two feet in height or one that is substantially surrounded by a wall, fence, trees or other adequate windbreak.

TABLE 2–5—SOURCE CONTAINMENT FACTOR—PARTICULATES

Source type/particulate containment descriptions	Assigned value
Container (including tanks):	
Below ground/buried containers	Evaluate as a landfill, etc
Intact, sealed containers protected from the weather by a maintained cover	0
Intact, sealed containers not protected from the weather by a maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with a maintained cover	0
Open, unsealed, or nonintact containers: waste partially covered with a maintained cover	1
Open, unsealed, or nonintact containers: waste totally covered with an unmaintained cover	2
Open, unsealed, or nonintact containers: waste otherwise covered or uncovered	3
Other	1
Landfill, contaminated soil (including land treatment), fire site, or waste pile:	
Site covered with an essentially impermeable and maintained cover or heavily vegetated with no exposed soil or waste-bearing liquids (e.g., paved-over)	0
Site substantially vegetated or totally covered with a maintained nonwater-based dust suppressing fluid. Little exposed soil or waste-bearing liquids	1
Site lightly vegetated or partially covered with a maintained nonwater-based dust suppressing fluid. Much exposed soil or waste-bearing liquids	2
Site substantially devoid of vegetation with a large percentage of exposed soil or waste-bearing liquids. No other cover	3
Totally enclosed in a structurally intact building	1
Partially enclosed in a structurally intact building	2
Totally enclosed in an nonintact building	2
Partially enclosed in an nonintact building	3
Substantially surrounded with windbreak (e.g., mesh or other fence, trees, etc.)	2
Active fire site	3
Other	1
Surface impoundment:	
Enclosed [1] impoundment: impoundment totally covered with a maintained cover	0
Enclosed impoundment: impoundment totally covered with an unmaintained cover	1
Enclosed impoundment: impoundment partially covered with a maintained cover	1
Enclosed impoundment: impoundment partially covered with an unmaintained cover	2
Enclosed impoundment: uncovered, surface completely open to atmosphere	3

TABLE 2-5—SOURCE CONTAINMENT FACTOR—PARTICULATES—Continued

Source type/particulate containment descriptions	Assigned value
Nonenclosed impoundment: impoundment totally covered with a maintained cover	1
Nonenclosed impoundment: impoundment totally covered with an unmaintained cover	2
Nonenclosed impoundment: impoundment partially covered with a maintained cover	2
Nonenclosed impoundment: impoundment partially covered with an unmaintained cover	3
Nonenclosed impoundment: uncovered, surface completely open to atmosphere	3
Other	1
Other	1

[1] An enclosed impoundment is one with a freeboard exceeding two feet in height or one that is substantially surrounded by a wall, fence, trees or other adequate windbreak.

2.1.2.2 Source type. For purposes of defining and evaluating sources, consider emission sources with all of the following characteristics as a single source:

- Sources of the same type.
- Sources containing the same hazardous substances.
- Sources with the same containment characteristics.

Assign to each emission source on the site that meets a minimum size requirement a source type factor value, using Table 2–6. The minimum size requirement is based on the source disposal capacity factor value defined in section 2.2.2. A source is considered to meet the minimum size requirements if, in evaluating that source, the source would receive a source disposal capacity factor value of one or more (using the rounding criteria in section 1.0). If no source meets the minimum size requirement, use only the descriptor "other" in Table 2–6 and assign a factor value of zero.

TABLE 2–6—SOURCE TYPE EVALUATION TABLE

Type of source [1]	Assigned value
Container (including tanks)	40
Contaminated Soil (including land treatment)	70
Fire Site	50
Landfill	60
Surface Impoundment	50
Waste Pile	30
Other	0

[1] Source must meet minimum size requirements as specified in section 2.1.2.2 in order to be used in the evaluation of the potential to release.

2.1.2.3 Source mobility. Source mobility refers to the propensity of the hazardous substances to migrate to the surface of the source area and escape into the atmosphere, based on their physical-chemical characteristics. The source mobility factor is evaluated using two mobility factors, one addressing gaseous hazardous substances, the other addressing particulate hazardous substances.

2.1.2.3.1 Source gas mobility. The source gas mobility factor reflects the potential of hazardous substances in a source to migrate to the surface/air interface and escape as a gas. The value assigned to gas mobility for a specific hazardous substance is based on three physical-chemical characteristics of the hazardous substance: vapor pressure, Henry's constant, and dry relative soil volatility.

For a specific hazardous substance, assign values for vapor pressure, Henry's constant and dry relative soil volatility using Table 2–7. Sum these three values, and assign a gas mobility value for the hazardous substance, based on this sum, as indicated in Table 2–8.

TABLE 2–7—GAS MOBILITY COMPONENT VALUES

	Assigned value
Vapor pressure:	
Above 10 torr [1]	3
Above 10–3 to 10 torr	2
10–5 to 10–3 torr	1
Less than 10–5 torr	0
Henry's constant: [2]	
Above 10–3	3
Above 10–5 to 10–3	2
10–7 to 10–5	1
Less than 10–7	0
Dry relative soil volatility: [3]	
Above 1	3
Above 10–3 to 1	2
10–6 to 10–3	1
Less than 10–6	0

[1] Torr is a unit of pressure equal to 1/760 of an atmosphere (i.e., 1 mm Hg).

[2] Henry's constant in terms of atm-m^3/mol.

[3] Dry relative soil volatility is a measure of the propensity of a gas to move through the air spaces in dry soil, as defined in U.S. Environmental Protection Agency, "Properties and Categorization of RCRA Wastes According to Volatility," EPA–450/3–85–007, U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina, 1985. (Report prepared by Versar Inc., Springfield, VA, under EPA Contract 68–03–3041; report available through National Technical Information Service, Springfield, VA, as PB85–204527.) Dry relative soil volatility is determined by experimentation or, alternately if no such data exists, as $P_{vp}/MW^{1/4}$ where P_{vp} equals the vapor pressure of the substance at 25 °C and MW equals the molecular weight of the substance.

TABLE 2–8—SUBSTANCE GAS MOBILITY FACTOR VALUE

Sum of gas mobility component values	Assigned value
0 to 2	0
3 to 4	1
5 to 6	2
7 to 9	3

Calculate the source gas mobility factor value as the average of the substance gas mobility factor values (from Table 2–8) for three hazardous substances associated with the source. If fewer than three hazardous substances can be associated with a source, then use all of the hazardous substances that can be associated with the source. If more than three hazardous substances can be associated with a source, then use the three with the highest substance gas mobility values. Hazardous substances whose location on a site cannot be determined may be used to evaluate the source gas mobility for any source on the site into which the hazardous substances could have been deposited. However, a hazardous substance that can be associated with a source must be used in preference to a hazardous substance whose location is unknown in assessing the gas mobility of that source.

2.1.2.3.2 Particulate mobility. The particulate mobility factor reflects the potential for particles on the surface of a source to be entrained in the atmosphere, thereby escaping from the site. The moisture content of the surface material is a measure of the relative mobility of particulates. The Thornthwaite precipitation effectiveness (P–E) index [1] is a surrogate measure of the relative moisture content of the surface material and is used to assign a value to particulate mobility.

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[1] Thornthwaite, C. Warren, "The Climates of North America According to a New Classification," Geographical Review, Vol. 21, 1931, pp. 633–655.

FIGURE 2-3
MAP OF P-E INDEX FOR STATE CLIMATIC DIVISIONS

Source: Cowherd, Chatten, Jr. et al., Rapid Assessment of Exposures to Particulate Emissions from Surface Contamination Sites, EPA-600/8-85-002, U.S. Environmental Protection Agency, Washington, DC, 1985.

FIGURE 2-3 (Concluded)

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The Thornthwaite P–E index can be read directly from Figure 2–3. For sites not located in areas on Figure 2–3, and for sites which are near the Thornthwaite P–E index boundary points on Figure 2–3 and for which the assigned factor value would differ on opposite sides of the boundary, the Thornthwaite P–E index may be calculated using the following equation:

$$PE = \sum_{i=1}^{12} 115 \times [P_i/(T_i - 10)]^{10/9}$$

where:

PE = Thornthwaite P–E index.

P_i = Mean monthly precipitation for month i in inches.

T_i = Mean monthly temperature for month i in degrees Fahrenheit; for any month in which the mean monthly temperature is less than 28.4 °F, use 28.4 °F.

Using the applicable value for the Thornthwaite P–E index, determine the source particulate mobility factor value as indicated on Table 2–9. As the particulate mobility factor value does not depend on distinct characteristics of the different sources, the same factor value applies to each source on the site.

TABLE 2–9.—PARTICULATE MOBILITY FACTOR EVALUATION TABLE

Thornthwaite PE index	Particulate mobility value
Greater than 150	0
85 to 150	1
50 to less than 85	2
Less than 50	3

2.1.2.3.3 Source mobility factor value. Once the source gas mobility factor value and the particulate mobility factor value have been calculated, determine the source mobility factor value using Table 2–10.

TABLE 2–10.—SOURCE MOBILITY FACTOR VALUE

	Source gas mobility factor value			
	0	1	2	3
Source particulate mobility factor value:				
0	0	10	20	30
1	10	20	30	40
2	20	30	40	50
3	30	40	50	50

2.1.2.4 Calculation of potential to release factor value. Determine the potential to release value for each source as illustrated on Table 2–3. Specifically, for each source, sum the source type factor value and the source mobility factor value and multiply this sum by the source containment factor value. The resulting value is the potential to release value for the source. Select the highest source potential to release value assigned to a source on the site. Assign that value as the potential to release factor value for the site. Enter this value on Table 2–1.

2.1.3 Calculation of likelihood of release category value.

If an observed release is established, assign the observed release factor value as the likelihood of release value. Otherwise, assign the potential to release factor value as the likelihood of release value. Enter the value assigned to likelihood of release on Table 2–1.

2.2 Waste characteristics.

This factor category reflects the rate, duration, and relative toxicity of potential hazardous substances releases from the site to the atmosphere. Two factors are included: toxicity/mobility and hazardous waste quantity.

The hazardous substances at the site that are to be considered in the evaluation of waste characteristics are restricted to those that are available to migrate to the atmosphere. Those hazardous substances available to migrate include hazardous substances establishing an observed release to the atmosphere as well as all hazardous substances found or documented to have been deposited at the site in a source that could be assigned a source containment factor value greater than zero. (See section 2.1.2.1 for descriptions of source containment factor values.) Also, hazardous substances whose locations on a site cannot be determined but that could have been deposited in any source whose source containment factor value is greater than zero are considered available to migrate to the atmosphere. Hazardous substances whose location on the site cannot be determined shall be assumed to have been placed in all sources on the site, except those sources for which there is definitive information that indicates that the hazardous substances were not or cannot have been deposited in the source.

2.2.1 Toxicity/mobility.

In determining the toxicity/mobility value for the air migration pathway at a site, evaluate all hazardous substances that are available to migrate to the atmosphere. For each such hazardous substance, a toxicity value and a mobility value is assigned as described below. The procedure for combining these values into a single toxicity/mobility value for each hazardous substance and for selecting the toxicity/mobility value for the site is described in section 2.2.1.3.

2.2.1.1 Toxicity. Hazardous substances are rated on a 5-point scale for each of three toxicity types: acute toxicity, chronic noncarcinogenic toxicity, and carcinogenicity. If comprehensive toxicity data are available, a hazardous substance is assigned three values, one for each toxicity type. The overall toxicity factor value for a hazardous substance is equal to the highest of the assigned values for the three toxicity types. If available information for a substance is inadequate for developing a value for a particular toxicity type, a value of zero is assigned and the substance's overall toxicity rating is based on the other types of toxicity. If available information for a hazardous substance is inadequate for developing a value for all three toxicity types, a value of zero is assigned as the overall toxicity rating for that hazardous substance, and other hazardous substances must be used to evaluate a pathway. In the event that all hazardous substances available to migrate to a particulate pathway have a zero toxicity rating (i.e., insufficient toxicity data to evaluate them), a default value of 3 is used as the toxicity factor value for the pathway. Table 2–11 provides the rating scales used to derive the values for each toxicity type.

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TABLE 2-11
TOXICITY FACTOR EVALUATION TABLES

Acute Toxicity Factor Values

Oral LD_{50} (mg/kg)	Dermal LD_{50} (mg/kg)	LC_{50} Dust or Mist (mg/l)	LC_{50} Gas or Vapor (ppm)	Assigned Value
---	---	---	---	5
$LD_{50} < 5$	$LD_{50} < 2$	$LC_{50} < 0.2$	$LC_{50} < 20$	4
$5 \leq LD_{50} < 50$	$2 \leq LD_{50} < 20$	$0.2 \leq LC_{50} < 2$	$20 \leq LC_{50} < 200$	3
$50 \leq LD_{50} < 500$	$20 \leq LD_{50} < 200$	$2 \leq LC_{50} < 20$	$200 \leq LC_{50} < 2000$	2
$500 \leq LD_{50}$	$200 \leq LD_{50}$	$20 \leq LC_{50}$	$2000 \leq LC_{50}$	1
Information not available	Information not available	Information not available	Information not available	0

Chronic Toxicity Factor Values

RfD (mg/kg-day)	Assigned Value
RfD < 0.0005	5
0.0005 ≤ RfD < 0.005	4
0.005 ≤ RfD < 0.05	3
0.05 ≤ RfD < 0.5	2
0.5 ≤ RfD	1
Information not available	0

TABLE 2-11 (Concluded)

Carcinogenicity Factor Values

Weight-of-Evidence[a]/q_1^* (mg/kg-day)$^{-1}$			Assigned Value
A	B	C	
$0.5 \leq q_1^*$	$5 \leq q_1^*$	$50 \leq q_1^*$	5
$0.05 \leq q_1^* < 0.5$	$0.5 \leq q_1^* < 5$	$5 \leq q_1^* < 50$	4
$q_1^* < 0.05$	$0.05 \leq q_1^* < 0.5$	$0.5 \leq q_1^* < 5$	3
---	$q_1^* < 0.05$	$q_1^* < 0.5$	2
---	---	---	1
Information not available	Information not available	Information not available	0

[a]A, B, and C refer to EPA weight-of-evidence categories (see text). Substances with a weight-of-evidence of D (inadequate evidence of carcinogenicity) or E (evidence of lack of carcinogenicity) are assigned a carcinogenicity factor value of 0.

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The value for acute toxicity is based on the median lethal dose value from animal studies (LC_{50} or LD_{50}). Acute toxicity is scored using separate scales for oral, dermal and inhalation routes of exposure. Sources for LC_{50} or LD_{50} data for hazardous substances include the Technical Background Document for the Reportable Quantity rule (or later versions as available):

- Environmental Monitoring and Services, Inc., 1985. "Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1." Prepared for Releases Control Branch, Office of Research and Development; and Emergency Response Division, Office of Solid Waste and Emergency Response; U.S. Environmental Protection Agency. Under Contract 68–03–3182.
- Environmental Monitoring and Services, Inc., 1986. "Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2." Prepared for Releases Control Branch, Office of Research and Development and Emergency Response Division, Office of Solid Waste and Emergency Response; U.S. Environmental Protection Agency. Under Contract 68–03–3182.
- C–E Environmental, Inc., 1987. "Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3." Prepared for Releases Control Branch, Office of Research and Development; and Emergency Response Division, Office of Solid Waste and Emergency Response; U.S. Environmental Protection Agency. Under Contract 68–03–3452.

If no LC_{50} or LD_{50} data are available for a hazardous substance, but an LD_{10} or LC_{10} value is available, these latter values should be used in Table 2–11 in place of the LD_{50} or LC_{50} value in assigning a rating value. These values are similar to LC_{50} or LD_{50} values except they represent a concentration or dose that is fatal to only a low percentage of the population (e.g., 10 percent) instead of 50 percent. The LD_{50} and LD_{10} are not identical but have been treated the same here because of uncertainty in how to convert from one to the other. This approach is the same as that used in setting Superfund Reportable Quantities for hazardous substances.

For hazardous substances having usable toxicity data for multiple exposure routes (e.g., inhalation, ingestion), use the highest route-specific rating value in assigning the acute toxicity value.

To determine a value for chronic noncarcinogenic toxicity, the Reference Dose (RfD) for a hazardous substance is used. An RfD is the amount of a substance to which an individual can be exposed on a daily basis over an extended period of time (usually a lifetime) without appreciable risk of deleterious noncancer effects. RfDs are derived from available chronic and subchronic toxicity studies and undergo a formalized EPA-wide peer review and verification process. RfDs for a number of CERCLA hazardous substances can be found in the U.S. EPA Integrated Risk Information System (IRIS) or in the appendices to the "Superfund Public Health Evaluation Manual," U.S. Environmental Protection Agency, October 1986, EPA 540/1–86/060 (or later as available).

The carcinogenicity value for a hazardous substance is based on one of two measures, its Cancer Potency Factor (q_1^*) or ED_{10}, combined with its qualitative weight-of-evidence rating. Cancer Potency Factors are used preferentially to ED_{10} values; for substances that do not have a Cancer Potency Factor, the ED_{10} is used. Cancer Potency Factors are developed by EPA's Carcinogen Assessment Group and are derived from studies in experimental animals or from human epidemiologic data, if available. Cancer Potency Factors and weight-of-evidence classifications for a number of hazardous substances can be found in IRIS and in the appendices to the "Superfund Public Health Evaluation Manual." ED_{10}s for a number of hazardous substances can be found in the appendices to the "Superfund Public Health Evaluation Manual."

The ED_{10} method for assessing carcinogenicity was developed by the Carcinogen Assessment Group as a means of setting Reportable Quantities for potentially carcinogenic hazardous substances, as required by CERCLA sections 102 and 103. ED_{10}s are calculated based on dose-response data derived from the primary literature. The ED_{10} is the estimated dose associated with a lifetime increased cancer risk of 10 percent. The ED_{10} method for assessing carcinogenicity is described more fully in the March 16, 1987 **Federal Register** (52 FR 8140). Empirical analysis of potential carcinogens shows that $1/ED_{10}$ is closely related to q_1^*, and is on average 6 times the q_1^*. Use this relationship between ED_{10} and q_1^* to estimate a q_1^* value from an ED_{10} value in the case when q_1^* data are not available.

The weight-of-evidence is defined as the overall strength of the data indicating potential carcinogenicity based on an evaluation of all relevant studies and the nature and type of responses. EPA has adopted a system for classifying weight-of-evidence for carcinogenicity into five major categories. The weight-of-evidence is used to increase or decrease a carcinogenicity value. Only those hazardous substances with weight-of-evidence classifications of A, B, or C shall be evaluated as carcinogens in the HRS. Those hazardous substances in categories D and E (not classified or with no evidence of carcinogenicity) shall not be evaluated as carcinogens. The Cancer Potency Factor and the weight-of-evidence classification are more fully described in EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992–34003, September 24, 1986).

Asbestos and radionuclides are classified as Group A human carcinogens (the highest weight-of-evidence category), but their cancer potency values are not expressed in units comparable to most other substances. Therefore, asbestos and radionuclides cannot be evaluated and assigned values using Table 2–11. For purposes of HRS scoring, assign a toxicity value of 5 for carcinogenicity to asbestos and to radionuclides.

Determine an acute toxicity value, a chronic toxicity value and a carcinogenicity value for each hazardous substance using Table 2–11. For each hazardous substance, select the highest of the three values and assign it as the overall toxicity factor value for that hazardous substance. For example, if a hazardous substance has a value of 2 for acute toxicity, 3 for chronic noncarcinogenic toxicity and no data for carcinogenicity, its overall toxicity value for HRS scoring purposes would be 3. If a pathway, aquifer (see section 3), or watershed (see section 4) has only hazardous substances without adequate toxicity data for developing a rating, assign a toxicity value of 3 as a default for each hazardous substance available to migrate to that pathway, aquifer, or watershed.

2.2.1.2 Mobility. In determining the mobility value, evaluate all hazardous substances that are available to migrate to the atmosphere. For any hazardous substance that establishes an observed release to the atmosphere, assign that hazardous substance the maximum mobility factor value of 3. For each gaseous hazardous substance not establishing an observed release, assign the hazardous substance a mobility factor value using the evaluation procedure described in section 2.1.2.3.1 (Tables 2–7 and 2–8). For particulate hazardous substances not establishing an observed release, assign the hazardous substance the particulate mobility factor value assigned in section 2.1.2.3.2 (Figure 2–3 and Table 2–9). (All such particulate hazardous substances are assigned this same value.) For a hazardous substance potentially present in both gaseous and particulate forms, select the higher of the factor values for substance gas mobility and particulate mobility for that hazardous substance and assign that value as the mobility factor value for the hazardous substance.

2.2.1.3 Calculation of toxicity/mobility value. Based on the overall toxicity value and the mobility value, assign a toxicity/mobility value to each hazardous substance available to migrate to the atmosphere using Table 2–12. Use the value for the hazardous substance with the highest toxicity/mobility value as the value for this factor for the air migration pathway. Enter this value on Table 2–1.

TABLE 2–12.—TOXICITY/MOBILITY FACTOR VALUE

	Mobility factor value			
	0	1	2	3
Toxicity factor value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

2.2.2 Hazardous waste quantity.

The hazardous waste quantity factor reflects the quantity and duration of potential hazardous substances releases from the site by this pathway. The hazardous waste quantity factor is evaluated considering three factors: hazardous constituent quantity, site wastestream quantity, and site disposal capacity.

The method used to evaluate each of these factors and to derive the hazardous waste quantity factor value from them is presented in Table 2–13 and is summarized below. The method varies depending on the completeness of the data available for the following measures: the quantity of hazardous substances deposited on the site, the quantity of wastes deposited on the site that contain hazardous substances, source volumes, and source areas.

TABLE 2–13.—HAZARDOUS WASTE QUANTITY FACTOR EVALUATION METHODOLOGY AND WORKSHEET

Part A—Hazardous Constituent Quantity Factor

1. Hazardous Substances Quantity:
   1a. Quantity of hazardous substances (in pounds) deposited on the site (HSQ).....
   1b. Assigned value from Table 2–14 for HSQ [1] .....
2. Is information on HSQ complete for the site? (Enter "yes" or "no").....
   2a. If "yes", go to line 17 and enter value from line 1b on line 17. (Do not evaluate Parts B and C.)
   2b. If "no" and the value on line 1b is the maximum factor value of 100, go to line 17 and enter "100" on line 17. (Do not evaluate Parts B and C.)
   2c. If "no" and value on line 1b is less than 100, go to Part B

Part B—Site Wastestream Quantity Factor

Complete lines 3 through 7 for each wastestream (use additional sheets as necessary).

3. Wastestream identification: _____
4. Wastestream Hazardous Substances Quantity:
   4a. Quantity of hazardous substances (in pounds) present in this wastestream (WHSQ) .....
   4b. Is information on WHSQ complete for this wastestream? (Enter "yes" or "no").....
   4c. Assigned value from Table 2–14 for this WHSQ [1] .....
5. Wastestream Quantity as Deposited:
   5a. Quantity of materials in this wastestream (in pounds) that contain hazardous substances (WQD).....
   5b. Is information on WQD complete for this wastestream? (Enter "yes" or "no").....
   5c. Assigned value from Table 2–14 for this WQD [1] .....
6. Wastestream Quantity Factor Value:.....
   6a. If line 4b is "yes", go to line 6c and enter value from line 4c on line 6c
   6b. If line 4b is "no", select the higher of the values from lines 4c and 5c and enter that value on line 6c
   6c. Watestream Quantity Factor Value.....
7. Site Wastestream Quantity Factor Value: Sum the wastestream quantity factor value (from line 6) for each wastestream evaluated and enter this sum on this line [2].....
8. Is information on wastestream quantity as deposited complete for the site? (Enter "yes" or "no").....

TABLE 2–13.—HAZARDOUS WASTE QUANTITY FACTOR EVALUATION METHODOLOGY AND WORKSHEET—Continued

   8a. If "yes", enter "10" or the value from line 7, whichever is higher, on this line; go to line 17 enter the value from line 8a on line 17. (Do not evaluate Part C.).....
   8b. If "no" and the value on line 7 is the maximum factor value of 100, enter "100" on this line; go to line 17 and enter "100" on line 17. (Do not evaluate Part C.).....
   8c. If "no" and value on line 7 is less than 100, go to Part C

Part C—Site Disposal Capacity Factor

Complete lines 9 through 14g for each source (use additional sheets as necessary).

9. Source type and identification (e.g., landfill #1): _____
10. Source Hazardous Substances Quantity:
   10a. Quantity of hazardous substances (in pounds) deposited in this source (SHSQ) .....
   10b. Is information on SHSQ complete for this source? (Enter "yes" or "no").....
   10c. Assigned value from Table 2–14 for this SHSQ [1] .....
11. Source Waste Quantity as Deposited: [3]
   11a. Quantity of wastes deposited in this source (in pounds) that contain hazardous substances (SWQD) .....
   11b. Is information on SWQD complete for this source? (Enter "yes" or "no").....
   11c. Assigned value from Table 2–14 for this SWQD [1] .....
12. Source Volume: [3]
   12a. Volume of this source (in cubic yards); if volume is not available, enter "not available".....
   12b. Assigned value from Table 2–14 for this volume for this type of source [1] .....
13. Source Area: [3]
   13a. Area of this source (in square feet), if area is not available, enter "not available" .....
   b. Assigned value from Table 2–14 for this area for this type of source. [1]
14. Source Disposal Capacity Factor Value:
   14a. If line 10b is "yes", go to line 14g and enter value from line 10c on line 14g. (Do not evaluate lines 14b through 14f.)
   14b. If line 10b is "no", select the higher of the values from lines 10c and 11c and enter the value on this line. (Continue to line 14c.) .....
   14c. If line 11b is "yes", go to line 14g and enter the value from line 14b on line 14g. (Do not evaluate lines 14d through 14f.)
   14d. If line 11b is "no" and line 12a has a volume entered, select the higher of the values from lines 14b and 12b and enter the value of this line. Go to line 14g and enter this higher value on line 14g. (Do not evaluate lines 14e and 14f.).....

TABLE 2–13.—HAZARDOUS WASTE QUANTITY FACTOR EVALUATION METHODOLOGY AND WORKSHEET—Continued

   14e. If line 11b is "no" and line 13a has an area entered, select the higher of the values from lines 14b and 13b and enter the value on this line. Go to line 14g and enter this higher value on line 14g. (Do not evaluate line 14f.).....
   14f. If line 11b is "no" and lines 12a and 13a indicate "not available", enter the value from line 14b on line 14g
   14g. Source Disposal Capacity Factor Value.....
15. Site Disposal Capacity Factor Value: Sum the source disposal capacity factor value (from line 14g) for each source evaluated. [2] Go to Part D.....

Part D—Hazardous Waste Quantity Factor Value

16. If a value is entered on both lines 7 and 15, enter "10" or the value from line 7 or 15, whichever is highest, on this line; go to line 17 and enter the value from line 16 on line 17.....
17. The Hazardous Waste Quantity Factor Value is the value that has been entered on this line. This factor value is subject to a maximum value of 100. Enter this value on Table 2–1 .....

[1] All values assigned from Table 2–14 are subject to a maximum value of 100.
[2] This sum is subject to a maximum value of 100
[3] If this information is not needed to obtain the source disposal capacity factor value (see lines 14a through 14g), this section (11, 12, or 13) does not need to be completed for this source

Throughout the evaluation, consider only those sources that can be assigned a containment factor value greater than zero for the pathway and only those wastes, wastestreams,[2] and hazardous substances that can be associated (either directly or indirectly) with such a source. The source containment value to be associated with wastes, wastestreams, or hazardous substances is that of the source into which each was deposited, or, if the source is unknown, those of the sources into which each could have been placed.

The hazardous constituent quantity factor is evaluated as described in Part A of Table 2–13, using the available data on the following measure: the quantity of hazardous substances that have been deposited on the site. A value is assigned to the quantity of hazardous substances deposited using Table 2–14. If the available data on the quantity of hazardous substances deposited on the site are complete (i.e., the total amount of hazardous substances deposited on the site has been fully quantified) or if the hazardous constituent quantity factor is assigned the maximum value of 100, then the other two factors are not evaluated. In this case the hazardous waste quantity factor value is based solely on the hazardous constitutent quantity factor value.

[2] Wastestreams are those portions of a waste which can be separately evaluated based on available information. (The following is an example of what is meant by wastestreams. For example, assume that 50 drums have been deposited together on a site. For 5 of these drums, complete hazardous substance quantity data are available. For 10 of these drums, hazardous substance quantity data are not available, but data are available on the amount of hazardous waste [e.g., 30 gallons] present in each drum when deposited. For the other 35, the only data available are that the 35 drums were deposited on the site and contained hazardous substances. The set of 5 drums, the set of 10 drums, and the set of 35 drums may each be considered a different wastestream for purposes of evaluating this factor.)

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TABLE 2-14.—HAZARDOUS WASTE QUANTITY FACTOR EVALUATION EQUATIONS

Measure (X)	Units	Equation for assigning value [1]
Hazardous Constituent Quantity Factor:		
Hazardous substances quantity (HSQ)	lbs	HSQ/10
Wastestream Quantity Factor: [2]		
Wastestream hazardous substances quantity (WHSQ)	lbs	WHSQ/10
Wastestream quantity as deposited (WQD)	lbs	WQD/50,000
Source Disposal Capacity: [2]		
Source hazardous substances quantity (SHSQ)	lbs	SHSQ/10
Source waste quantity as deposited (SWQD)	lbs	SWQD/50,000
Source Volume (SV):		
Landfill	yd [3]	SV/25,000
Surface Impoundment	yd [3]	SV/25
Drums [3]	gallons	SV/5,000
Nondrum Containers	yd [3]	SV/25
Contaminated Soil	yd [3]	SV/25,000
Pile	yd [3]	SV/25
Other	yd [3]	SV/25
Source Area (SA):		
Landfill	ft [2]	SA/25,700
Surface Impoundment	ft [2]	SA/112.5
Land Treatment	ft [2]	SA/8,100
Pile [4]	ft [2]	SA/25.7
Contaminated Soil	ft [2]	SA/337.500

[1] Maximum value to be assigned is 100.
[2] Use the following volume to mass conversions when necessary: 1 ton = 2,000 lbs = 1 cubic yard = 4 drums = 200 gallons.
[3] If the actual volume of the drum is unavailable, assume a conversion value of 1 drum = 50 gallons.
[4] Use the land surface area under the pile, not the surface area of the pile.

If the data for evaluating the hazardous constituent quantity factor are not complete and the maximum factor value of 100 is not assigned, the site wastestream quantity factor is evaluated as described in Part B of Table 2–13. It is evaluated by first assigning a wastestream quantity factor value to each wastestream deposited on the site and then summing the wastestream quantity factor value assigned to each wastestream. The wastestream quantity factor is evaluated for each wastestream using the available data on the following measures: the quantity of hazardous substances present in the wastestream and the quantity of materials present in the wastestream that contain hazardous substances (i.e., the wastestream quantity as deposited). If the available data on the wastestream quantity as deposited is complete for the site (i.e., the total amount of wastes deposited on the site that contain hazardous substances has been fully quantified) or if the site wastestream quantity factor is assigned the maximum value of 100, then the site disposal capacity is not evaluated. In this case the hazardous waste quantity factor value is based solely on the site wastestream quantity factor value.

If the data for evaluating both the hazardous constituent quantity factor and the site wastestream quantity factor are not complete and the maximum factor value of 100 has not been assigned, the site disposal capacity factor is evaluated as described in Part C of Table 2–13. It is evaluated by first assigning a source disposal capacity factor value to each source on the site and then summing the source disposal capacity factor value assigned to each source. The source disposal capacity factor is evaluated for each source using the available data on the following measures: the quantity of hazardous substances deposited in the source (i.e., the source hazardous substances quantity), the quantity of wastes deposited in the source that contain hazardous substances (i.e., the source waste quantity as deposited), the source volume, and the source area.

The hazardous waste quantity factor is then assigned a value as described in Part D of Table 2–13. If complete data are available for the hazardous constituent quantity factor or if the maximum factor value is assigned, then the hazardous waste quantity factor is evaluated based solely on that factor. In this case the hazardous waste quantity factor value is subject to a maximum value of 100 and a minimum value of zero. If complete data are not available for the hazardous constituent quantity factor, but if complete data are available for the site wastestream quantity factor or if the maximum factor value is assigned, then the hazardous waste quantity factor is evaluated based solely on the site wastestream quantity factor. In this case the hazardous waste quantity factor value is subject to a maximum value of 100 and a minimum value of 10. If complete data are not available for either of these two factors and the maximum factor value has not been assigned, then the hazardous waste quantity factor is determined by considering both the site wastestream quantity factor and the site disposal capacity factor. In this case, the hazardous waste quantity factor value is also subject to a maximum value of 100 and a minimum value of 10.

2.2.3 Calculation of waste characteristics value.

Sum the toxicity/mobility factor value and the hazardous waste quantity factor value. Assign this sum as the waste characteristics value. Enter this value on Table 2–1.

2.3 Targets.

The targets factor category reflects the human populations, resources, and environments potentially at risk from an actual or threatened release of hazardous substances from the site to the atmosphere. This factor category includes two factors primarily related to human health (maximally exposed individual (MEI) and population), one factor primarily related to resources (land use), and one factor primarily related to the environment (sensitive environments).

2.3.1 Maximally exposed individual.

The maximally exposed individual factor is evaluated based on the distance from any on-site emission source to the nearest individual (either on-site or off-site, as applicable). This distance to the nearest individual is determined as the shortest distance to the closest residence or regularly occupied building or area, as measured from any on-site emission source. Based on this shortest distance, assign the MEI factor a value using Table 2–15. Enter this value on Table 2–1.

TABLE 2–15—MEI FACTOR VALUES

Distance to nearest individual (miles)	Assigned value
0 to ⅛	50
Greater than ⅛ to ¼	13
Greater than ¼ to ½	4
Greater than ½ to 2	1
Greater than 2	0

2.3.2 Population.

The population factor value reflects the population actually or potentially exposed to air emissions from the site. Calculate the population factor value as follows, subject to a maximum value of 235.

For each of the distance categories defined on Table 2–16, determine the number of people within that distance category. The distance for an individual is measured as the shortest distance from any on-site emission source to the place at which the individual is

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located (e.g., place of residence or work). The population count should include persons residing within the distance categories specified as well as others who would regularly be present, such as students and workers. Exclude transient populations such as customers and travelers passing through the area in autos, buses, or trains.

TABLE 2-16—Distance Weighting Factors

Distance category	Distance (miles)	Distance weight [1]
1	On-site	5.265
2	Greater than 0 to ¼	1.0
3	Greater than ¼ to ½	0.1751
4	Greater than ½ to 1	0.0517
5	Greater than 1 to 2	0.0171
6	Greater than 2 to 3	0.0083
7	Greater than 3 to 4	0.0054
8	Greater than 4	0

[1] These distance weights are not be rounded to the nearest integer.

In counting population, use exact population counts where possible. If actual residential population figures are not available, the population for a distance category should be estimated by determining the number of residences located within the distance category and multiplying each residence by the most recent U.S. Census factor for number of persons per residence for the county in which the residence is located.

Based on the information described above, assign a population factor value (PI) using the following equation, subject to a maximum value of 235:

$$PI = \frac{1}{100} \sum_{i=1}^{8} D_i P_i$$

where:

P_i = Number of people within distance category i.

D_i = Distance weighting factor associated with distance category i.

Enter this calculated value on Table 2-1.

2.3.3 Land use.

The land use factor value is determined based on the shortest distance between an on-site emission source and each of the types of land use listed on Table 2-17.

TABLE 2-17—Land Use Factor Values

Type	Definition	Assigned value
1	Commercial/Industrial/ Institutional.	5
2	Single Family Residential [1]	8
3	Multi-Family Residential [2]	10
4	Parks	5
5	Prime Agricultural	7
6	Nonprime Agricultural	5

[1] An area is considered to be "single family residential" whenever the residences are solely single family residences.

[2] An area is considered to be "multi-family residential" whenever it contains multi-family residences such as apartment buildings.

Using the applicable distance category for each land use, assign the appropriate distance weighting factor for Table 2-16 to each of the land uses. Assign a value to each type of land use from Table 2-17. Calculate the land use factor value (L) using the following equation, subject to a maximum value of 10:

$$L = \sum_{i=1}^{6} D_i V_i$$

where:

V_i = Value of land use type i.

D_i = Distance weighting factor associated with land use i.

Enter this calculated value on Table 2-1.

2.3.4 Sensitive environments.

The sensitive environment factor value is determined based on the shortest distance from any on-site emission source to each of the applicable sensitive environments located wholly or partially within four miles of the source. Using the applicable distance category for each sensitive environment, assign a distance weighting factor from Table 2-16 to each sensitive environment. Assign value(s) to each sensitive environment using either Table 2-18 or 2-19. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher value to the sensitive environment. Calculate the sensitive environments factor value (ES) as follows, subject to a maximum value of 100:

$$ES = (1/10) \sum_{i=1}^{n} D_i S_i$$

where:

n = The number of sensitive environments identified.

S_i = Value(s) assigned to sensitive environment i.

D_i = Distance weighting factor associated with sensitive environment i.

Enter this calculated value on Table 2-1.

TABLE 2-18.—Sensitive Environments Factor Values

Sensitive environment	Assigned value
Critical habitat for Federal designated endangered or threatened species	100
Marine Sanctuary	
National Park	
Designated Federal Wilderness Area	
Areas identified under the Coastal Zone Management Act [1]	
Sensitive areas identified under the National Estuary Program or Near Coastal Waters Program [2]	
Critical areas identified under the Clean Lakes Program [3]	

TABLE 2-18.—Sensitive Environments Factor Values—Continued

Sensitive environment	Assigned value
Water segments designated by State as not attaining toxic water quality standards [4]	
National Monument [5]	
National Seashore Recreational Area	
National Lakeshore Recreational Area	
Habitat known to be used by Federal designated or proposed endangered or threatened species	75
Wetlands (freshwater, estuarine or coastal—five acre minimum) [6]	
National Preserve	
National or State Wildlife Refuge	
Unit of the Coastal Barrier Resources System	
Coastal Barrier (undeveloped)	
Federal land designated for protection of natural ecosystems	
Administratively Proposed Federal Wilderness Area	
Spawning areas critical for the maintenance of a fish species within a river system, coastal embayment, or estuary (e.g., anadromous salmon, alewives, shad)	
Migratory pathways critical for the maintenance of a fish species within a river system, coastal embayment, or estuary	
Feeding areas critical for the maintenance of a fish species within a river system, coastal embayment, or estuary	
National river reach designated as recreational	
Habitat known to be used by State designated endangered or threatened species	50
Habitat known to be used by a species under river as to its Federal endangered or threatened status	
State designated areas for the protection or maintenance of aquatic life (coastal, estuarine, or freshwater area) [7]	
Coastal Barrier (partially developed)	
Federal designated Scenic or Wild River	
State land designated for wildlife or game management	25
State designated Scenic or Wild River	
State designated Natural Areas	
Particular areas, relatively small in size, important to the maintenance of unique biotic communities (e.g., prairie pot holes, buffalo wallows, alligator holes, desert springs)	

[1] Areas identified in State Coastal Zone Management plans as requiring protection because of their ecological value.

[2] National Estuary Program study areas (subareas within estuaries) that are identified in Comprehensive Conservation and Management Plans as requiring protection because they support critical life stages of key estuarine species (section 320 of the Clean Water Act as amended by Pub. L. 100-4). Near Coastal Waters (NCW) sensitive areas are those identified in plans developed under NCW special projects as requiring protection because they support key estuarine or marine coastal, living resources (Sections 104(b)(3), 304(1), 319 and 320 of the Clean Water Act as amended by Pub. L. 100-4).

[3] Clean Lakes Program critical areas (subareas within lakes, or in some cases entire small lakes) that are identified by State Clean Lake Plans as critical habitat (section 314 of the Clean Water Act as amended by Pub. L. 100-4).

[4] Segments of navigable waters not attaining a state of water quality that will assure protection and propagation of a balanced population of shellfish, fish, and wildlife, due to toxic pollutants (section 304(1) of the Clean Water Act as amended by Pub. L. 100–4). This sensitive environment may be considered in evaluating a site only if a substance for which the water quality standard is not attained is deposited on the site.

[5] Use only for air pathway.

[6] Wetlands as defined in 40 CFR Section 230.3.

[7] Table I–1 of Attachment I to this Appendix A presents the State designations for ecological use (Section 305(a), Clean Water Act).

TABLE 2–19.—ALTERNATIVE SENSITIVE ENVIRONMENT RATING FACTORS

Elements of Natural Heritage Program[1]	Assigned value
Element with a national ranking of N1[2]	100
Element with a national ranking of N2	75
Element with a state ranking of S1	75
Element with a national ranking of N3	50
Element with a state ranking of S2	50
Element with a state ranking of S3	25

[1] Information for ranking each element (species, natural community, or another entity of conservation interest) and on the presence of each element along the pathway may be obtained from a Natural Heritage Data Center (The Nature Conservancy, 1987, "Natural Heritage Program Operations Manual," The Nature Conservancy, Arlington, VA; The Nature Conservancy, 1987, "Natural Heritage Data Centers, 1987 Directory," The Nature Conservancy, Arlington, VA).

[2] The rankings are those determined under the Natural Heritage Program. Under that Program, the meaning of these rankings is as follows:

National Element Ranks:

N1=Critically imperiled nationally because of extreme rarity (5 or fewer occurrences nationally or very few remaining individuals or acres) or because of some factor(s) making it especially vulnerable to extirpation from the nation.

N2=Imperiled nationally because of rarity (6 to 20 occurrences nationally or few remaining individuals or acres) or because of some factor(s) making it very vulnerable to extirpation throughout the nation.

N3=Rare or uncommon nationally (on the order of 21 to 100 occurrences nationally).

State Element Ranks:

S1=Critically imperiled in state because of extreme rarity (5 or fewer occurrences in state or very few remaining individuals or acres) or because of some factor(s) making it especially vulnerable to extirpation from the state.

S2=Imperiled in state because of rarity (6 to 20 occurrences in state or few remaining individuals or acres) or because of some factor(s) making it very vulnerable to extirpation from the state.

S3=Rare or uncommon in state (on the order of 21 to 100 occurrences).

2.3.5 Calculation of targets category value.

Sum the MEI, population, land use, and sensitive environments factor values. Assign this sum as the targets value, subject to a maximum value of 235. Enter this value on Table 2–1.

2.4 Air migration pathway score calculation.

Multiply the values for the likelihood of release, waste characteristics, and targets and divide by 211,500. The resulting score is the air migration pathway score (S_a). Enter this score on Table 2–1.

3.0 Ground water migration pathway.

The ground water migration pathway addresses the relative risks, to the people and resources surrounding a site, that are associated with actual or threatened releases of hazardous substances from the sources on the site to an aquifer. Three factor categories are included in the ground water migration pathway:

- Likelihood of release (LR).
- Waste characteristics (WC).
- Targets (T).

Figure 3–1 indicates the factors included within each of these factor categories. The evaluation of the factors and factor categories is discussed in the following sections.

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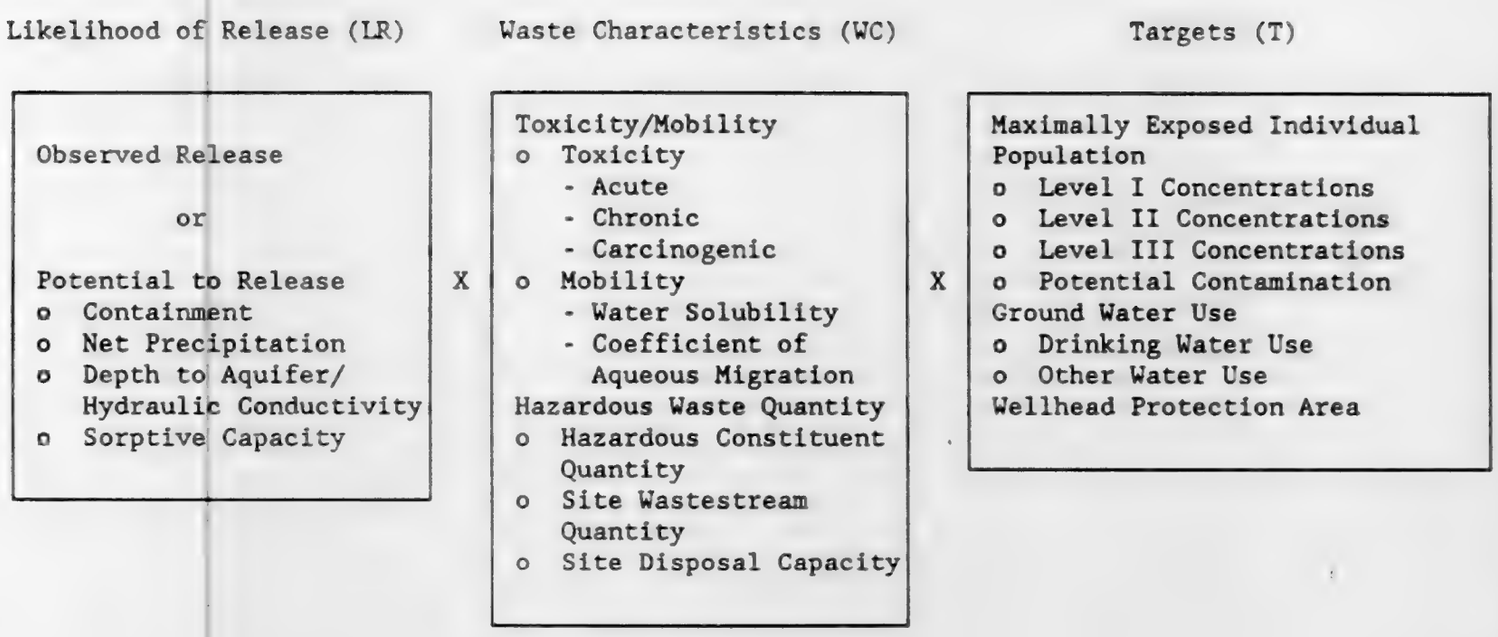

FIGURE 3-1
OVERVIEW OF GROUND WATER MIGRATION PATHWAY

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The ground water migration pathway score is calculated in terms of the factor category values as follows:

$$S_{gw} = \frac{LR \times WC \times T}{SF}$$

where S_{gw} is the ground water migration pathway score and SF is a scaling factor used to normalize the score to a scale of 0 to 100. This calculation procedure is outlined in Table 3–1.

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TABLE 3-1
GROUND WATER MIGRATION PATHWAY SCORESHEET

Factor Categories and Factors	Maximum Value	Value Assigned	
Likelihood of Release to an Aquifer			
1. Observed Release	500	____	
2. Potential to Release			
2a. Containment	10	____	
2b. Net Precipitation	10	____	
2c. Depth to Aquifer/Hydraulic Conductivity	35	____	
2d. Sorptive Capacity	5	____	
2e. Potential to Release (Lines 2a x (2b + 2c + 2d))	500	____	
3. Likelihood of Release (Higher of Lines 1 or 2e)	500		____
Waste Characteristics			
4. Toxicity/Mobility	100	____	
5. Hazardous Waste Quantity	100	____	
6. Waste Characteristics (Lines 4 + 5)	200		____
Targets			
7. Maximally Exposed Individual	50	____	
8. Population			
8a. Level I Concentrations	200	____	
8b. Level II Concentrations	200	____	
8c. Level III Concentrations	200	____	
8d. Potential Contamination	200	____	
8e. Population (Lines 8a + 8b + 8c + 8d, subject to a maximum of 200)	200	____	
9. Ground Water Use			
9a. Drinking Water Use	50	____	
9b. Other Water Use	20	____	
9c. Ground Water Use (Lines 9a + 9b, with a maximum of 50)	50	____	
10. Wellhead Protection Area	50	____	
11. Targets (Lines 7 + 8e + 9c + 10, subject to a maximum of 200)	200		____

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TABLE 3-1
GROUND WATER MIGRATION PATHWAY SCORESHEET (CONCLUDED)

	Maximum Value	Value Assigned
Ground Water Migration Score for an Aquifer		
12. Aquifer Score [(Lines 3 x 6 x 11)/2 x 10^5][1]	100	
Ground Water Migration Pathway Score		
13. Pathway Score (S_{gw}), (Highest value from Line 12 for all aquifers evaluated)[1]	100	

[1]These scores are not to be rounded to the nearest integer.

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A ground water migration pathway score is calculated for each aquifer. The score for an aquifer is calculated as the product of the factor category values for likelihood of release to the aquifer, waste characteristics, and targets for that aquifer. In calculating the targets factor category value for an aquifer, both the targets using water from that aquifer and the targets using water from all overlying aquifers must be used, except as noted below. The highest ground water migration pathway score that results for any aquifer is assigned as the ground water migration pathway score for the site. Figures 3–2 and 3–3 illustrate this procedure.

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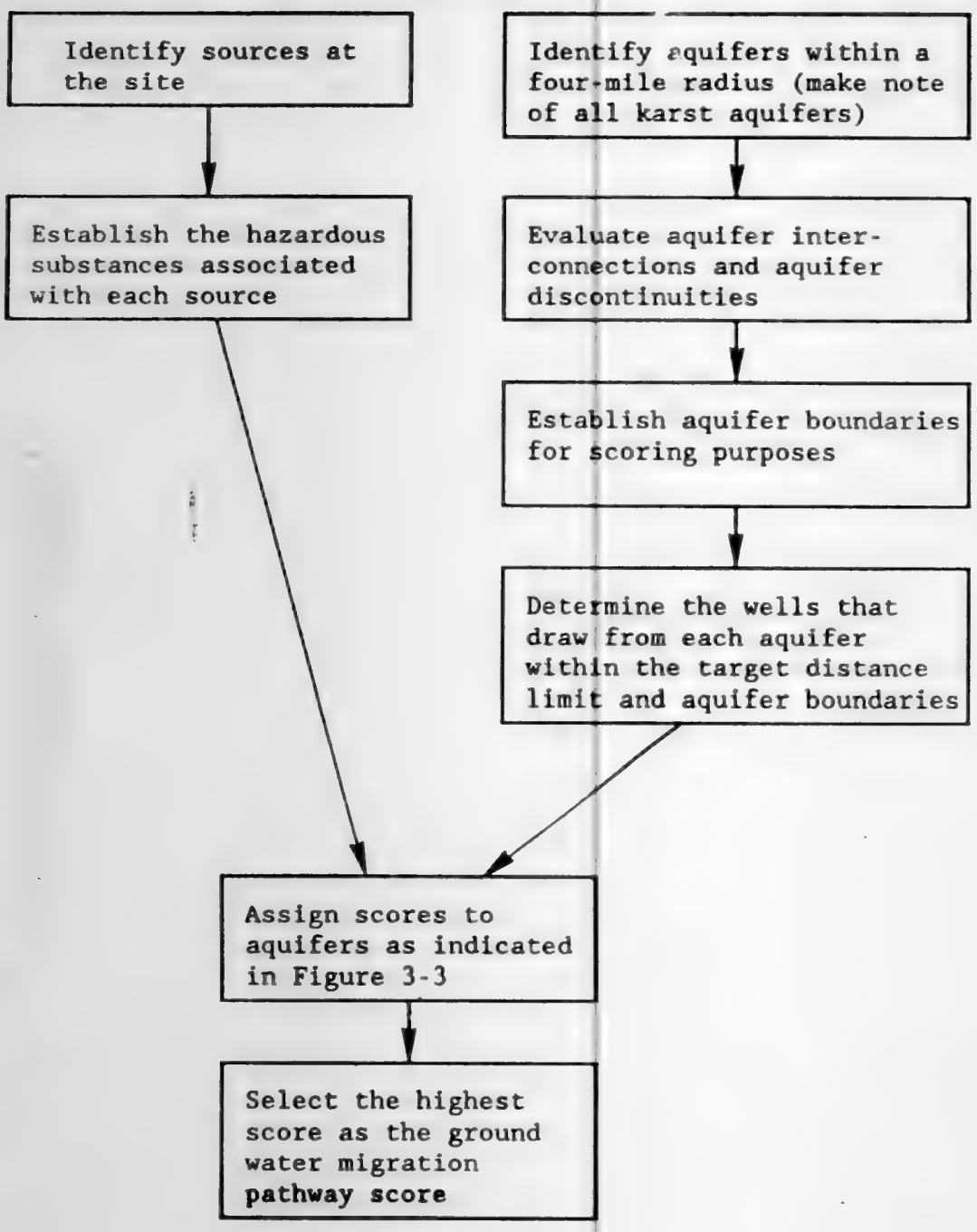

FIGURE 3-2
PROCEDURE FOR EVALUATING GROUND WATER MIGRATION PATHWAY

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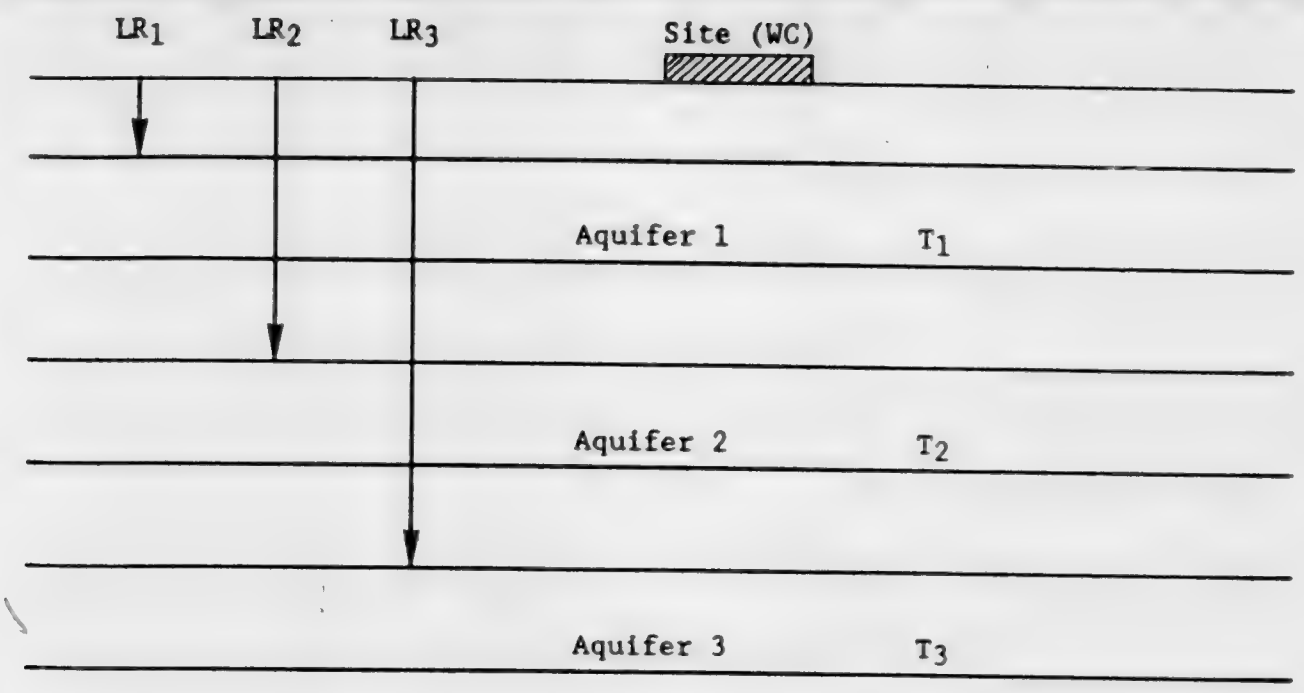

Aquifer 1 Score = $LR_1 \times WC \times T_1$

Aquifer 2 Score = $LR_2 \times WC \times (T_1$ and $T_2)$

Aquifer 3 Score = $LR_3 \times WC \times (T_1, T_2$, and $T_3)$

where

LR_i = Likelihood of Release Value for aquifers 1, 2, 3 . . . N

WC = Waste Characteristics Value

T_i = Targets for aquifers 1, 2, 3 . . . N

FIGURE 3-3
CALCULATION OF GROUND WATER MIGRATION SCORE FOR AN AQUIFER

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The above procedure for evaluating all targets associated with the migration of hazardous substances to an aquifer implies that harardous substances, when released, migrate from the surface to the aquifer being evaluated, through all intervening layers. Where there are no sources at the surface and hazardous substances were introduced directly into an aquifer without migrating through overlying layers, the evaluation of the targets for the aquifer that received the hazardous substances is limited to those using water from the aquifer, plus those using water from any additional aquifers where there is an observed release from the aquifer that received the hazardous substances (see section 3.1.1). The evaluation of the targets for each of the other aquifers below the one into which the hazardous substances were directly introduced is limited to those targets using water from the aquifer being evaluated, plus those using water from all overlying aquifers up to and including the one into which the hazardous substances were directly introduced, plus those using water from any additional aquifers where there is an observed release from the aquifer that received the hazardous substances. A ground water pathway migration score is not calculated for any aquifer above the one into which the hazardous substances were directly introduced unless there is an observed release in the aquifer.

Where there are sources at the surface and hazardous substances were also introduced directly into an aquifer, ground water migration scores are calculated as indicated in Figure 3–3 with the following differences. For an aquifer above the one into which the hazardous substances were directly introduced, the hazardous substances that were directly introduced in the lower aquifer must not be considered in calculating the ground water migration score for the upper aquifer unless there is an observed release of these substances from the lower aquifer to the upper aquifer. If there is such an observed release, then these hazardous substances must be considered in calculating the ground water migration score for the aquifers. For the aquifer into which the hazardous substances were introduced and for any aquifers below that aquifer, all hazardous substances (i.e., those in the sources at the surface and those directly introduced) must be considered in calculating the ground water migration score.

3.0.1 Definitions.

3.0.1.1 Ground water target distance limit. The target distance limit defines the maximum distance from a site over which targets are to be considered when evaluating the site. For calculating the ground water migration pathway score, use a target distance limit of our miles, except when aquifer discontinuities apply as noted in section 3.0.1.2.2. Furthermore, any well for which there is an observed release from the site (see section 3.1.1) is considered to lie within the target distance limit of the site, regardless of the well's distance from the site.

Measure the target distance limit from the areas of hazardous waste deposition at a site. These areas do not include the extent of hazardous substance migration at the site. However, for releases that are detected but for which the sources of contamination are unknown, measure the target distance limit from the boundary of the known contamination.

3.0.1.2 Aquifer boundaries. Aquifer boundaries define the extent of an aquifer in the vertical and horizontal directions and are based on the relative difference in the ease of ground water flow in adjacent geologic materials or layers. These boundaries often coincide with boundaries of geologic layers, but may consist of multiple layers or only portions of individual layers. Multiple aquifers may be combined into a single hydrologic unit for scoring purposes when aquifer interconnections for these aquifers can be identified. In contrast, aquifer boundaries must be restricted where aquifer discontinuities can be identified.

3.0.1.2.1 Aquifer interconnections. Aquifer interconnections are areas between aquifers that allow the transfer of ground water or hazardous substances in sufficient amounts to allow the separate aquifers to be treated as a single hydrologic unit. Aquifer interconnections are evaluated within a two-mile radius from the areas of hazardous waste deposition. Where aquifer interconnections can be identified within the two-mile radius, the aquifers with the interconnections may be combined for scoring purposes. If ground water contamination attributable to the site is observed to extend beyond two miles, then any locations within the observed limits of this contamination may also be used to evaluate aquifer interconnections. Where there are insufficient data to identify aquifer interconnections, the aquifers must be evaluated as separate aquifers. Aquifer interconnections can be identified as follows:

- Literature or well logs indicate that no lower relative hydraulic conductivity layer or confining layer separates the aquifers (i.e., a layer with a hydraulic conductivity that is lower by two or more orders of magnitude).
- Literature or well logs indicate that a lower relative hydraulic conductivity layer or a confining layer that separates the aquifers is not continuous throughout the two-mile radius (i.e., hydrogeologic interconnections between the aquifers are identified).
- Withdrawals of water from one aquifer (e.g., pumping tests, aquifer tests, well tests, etc.) affect water levels in another aquifer.
- Migration of constituents from one aquifer to another aquifer has been observed within the two-mile radius. (The mechanism of vertical migration does not have to be defined, and the constituents do not have to be attributed to the site being evaluated.)

In general, two or more layers may be considered a single hydrologic unit when any one of the above conditions are met. However, in conjunction with the above conditions, if conflicting information exists for a geologic setting, the most appropriate information should be used to establish aquifer boundaries. When evaluating a geologic setting, consider that all geologic materials transmit water to a certain degree; therefore, evidence of the leakage of water (not hazardous substances) through a layer of lower relative hydraulic conductivity does not, in itself, indicate that two aquifers should be considered a single hydrologic unit. In addition, identification of aquifer interconnections should in. 'ude a consideration of the existence and extent of man-made conduits (e.g., composite wells, gravel-packed wells, open boreholes, poorly constructed or damaged wells) and major faults.

3.0.1.2.2 Aquifer discontinuities. Aquifer discontinuities result when a geologic, topographic, or other structure or feature entirely transects an aquifer, thereby creating a continuous boundary to flow within the four-mile radius. Ground water divides and discharge boundaries that reflect ground water flow gradients do not constitute aquifer discontinuities unless they are associated with structures or features which entirely transect an aquifer.

Aquifer discontinuities are evaluated within the four-mile target distance limit. When an aquifer discontinuity is established within the four-mile radius, that portion of the aquifer beyond the discontinuity is not evaluated in the ground water migration pathway, except as noted below. If the migration of hazardous substances across a discontinuity is observed within the four-mile radius, the presence of the discontinuity is not considered for scoring purposes. Where more than one aquifer can be combined into a single hydrologic unit for scoring purposes, an aquifer discontinuity must entirely transect the boundaries of the single hydrologic unit. In general, where an aquifer discontinuity can be present, that portion of the aquifer beyond the apparent discontinuity should be included in the ground water migration pathway evaluation unless definitive information indicates that the discontinuity does actually exist.

3.0.1.3 Karst aquifer. Karst aquifers are aquifers where the predominant water movement occurs through openings in the rock created by dissolution of the rock material. Karst aquifers are given special consideration in the evaluation of two of the potential to release factors (i.e., depth to aquifer/hydraulic conductivity and sorptive capacity) and two of the targets factor (i.e., maximally exposed individual and potential contamination). See sections 3.1.2 and 3.3.

The presence of karst aquifers is often indicated by the occurrence of karst terrains. The following description should be used to identify karst terrains:

Karst is a "terrain with distinctive characteristics of relief and drainage arising from a higher degree of rock solubility in natural waters." [3] The majority of karst occurs in limestones, but karst may also form in dolomite, gypsum, and salt deposits. Dissolution of the rock may occur along joints, bedding planes, or other openings. Continued dissolution results in the formation of conduits that allow for the rapid movement of ground water. Features associated with karst terrains include irregular topography, sinkholes, vertical shafts, abrupt ridges,

[3] Bloom, Arthur L., 1978. "Geomorphology—A Systematic Analysis of Cenozoic Landforms." Prentice-Hall, Inc.

caverns, an abundance of springs, and disappearing streams.[4]

3.1 Likelihood of release.

For an aquifer, the likelihood of release factor category reflects the likelihood of the site releasing hazardous substances to that aquifer. The factor category is evaluated in terms of an observed release factor and a potential to release factor.

3.1.1 Observed release.

An observed release to an aquifer is established whenever it can be demonstrated that a site has released a hazardous substance to the aquifer. This demonstration can be based on either direct observation of the release or indirect observation (i.e., the analysis of samples taken from the aquifer).

In the case of direct observation, material from the site must be known to have entered the aquifer through direct deposition or be seen entering the aquifer through migration. Further, available information must indicate that the material deposited in or observed entering the aquifer contained one or more hazardous substances. Such information should include an analysis of the hazardous substances contained in samples of the material or other similar documentation of the conten: of the material. Finally, in the case of migration, the available information must indicate that hazardous substances in the material have reached the aquifer. For the hazardous substances to be considered to have reached the aquifer, the samples of the migrating material must be taken near the observed point of entry of the material into the aquifer or the source of the released material must be near the observed point of entry.

In the case of indirect observation, the samples must indicate that a significant increase in ambient hazardous substance concentration has occurred relative to the background concentration for the site (as described below). Further, the available information must support the attribution of some portion of the increase to the site. Attribution can be based on sampling information such as the location of the sampling points or other source apportionment techniques.

A significant increase is determined by comparing aquifer samples, one of which must be a background sample. The background sample should be chosen to reflect, as completely as possible, the concentration of the hazardous substance in the aquifer exclusive of the contribution of any possible releases from the site. The concentration of a hazardous substance is considered to be significantly above background levels under the conditions presented in Table 2–2 of Section 2. See section 2.1.1 for the detection limits to be used in the evaluation.

If an observed release can be established for the aquifer, then assign the aquifer an observed release factor value of 500. If no observed release can be established, assign an observed release factor value of zero.

3.1.2 Potential to release.

Potential to release is evaluated if an observed release has not been established. Potential to release assesses the likelihood of hazardous substances migrating from a site to an aquifer. Four factors are evaluated under potential to release: containment, net precipitation, depth to aquifer/hydraulic conductivity, and sorptive capacity. For a site overlying karst terrain, any karst aquifer within the target distance limit is given special consideration in evaluating depth to aquifer/hydraulic conductivity and sorptive capacity, as discussed below.

3.1.2.1 Containment. Containment refers to the methods (either natural or engineered) that have been used either to restrict the release of hazardous substances from a source (e.g., landfill) to the subsurface or to prevent released substances from entering ground water. Table I–2 of Attachment I to this Appendix A presents the criteria for use in rating the containment of inactive sources for the ground water pathway.

For such containment systems as diking, berms, and run-on control and runoff management systems to be considered present for rating purposes, they must completely surround the source area unless they connect with other natural or engineered barriers that together completely surround the source area. For liners to be considered present for rating purposes, they must be continuous and must cover all earth surrounding the source likely to be in contact with the hazardous substances or leachate containing the hazardous substances.

Assign a containment value to each source at the site using Table I–2 of Attachment I to this Appendix A. The containment factor value for the site is the highest containment value assigned to any of the sources. Enter this value in Table 3–1.

3.1.2.2 Net precipitation. Net precipitation indicates the amount of water that is potentially available, on an annual basis, for infiltration to ground water. This, in turn, is a measure of the amount of water which is potentially available for infiltration to the aquifers underlying the site and for tr sporting hazardous substances from the sit to ground water.

Determine annual net precipitation by summing the monthly net precipitation. Calculate the monthly net precipitation as the difference between monthly precipitation and monthly evapotranspiration. For months where evapotranspiration exceeds precipitation, assign the monthly net precipitation a value of zero.

Calculate net precipitation using local measured averages for precipitation and evapotranspiration. If local data are not available, use data from the nearest National Oceanographic and Atmospheric Administration weather station that is in a similar geographic setting. Data from the same time period must be used for both precipitation and evapotranspiration and must be of a sufficiently long period (20 years) to calculate a meaningful average. Where measured monthly evapotranspiration is not available, calculate monthly potential evapotranspiration as follows:[5]

$$e = 0.6\ F\ (10t/I)^{a}$$

where:

e = Monthly potential evapotranspiration (inches),
F = latitude adjusting factor for the month (adapted from Criddle [6]).
t = Mean monthly temperature (°C),
$a = 6.75 \times 10^{-7} I^3 - 7.71 \times 10^{-5} I^2 + 1.79 \times 10^{-2} I + .49239$, and
I = Sum of the twelve monthly heat indexes (i) where i (monthly heat index) $= (t/5)^{1.514}$

The latitude adjusting factor (F) for each month is assigned using Table 3–2. For latitudes lower than 50° North or 20° South that are not listed in the table, determine the latitude correction factor by interpolation.

TABLE 3–2.—LATITUDE ADJUSTING FACTOR FOR EACH MONTH FOR USE IN CALCULATING MONTHLY POTENTIAL EVAPOTRANSPIRATION [1]

	Month											
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Northern Hemisphere:												
Latitude [2] (deg):												
>50	0.74	0.78	1.02	1.15	1.33	1.36	1.37	1.25	1.06	0.92	0.76	0.70
45	.80	.81	1.02	1.13	1.28	1.29	1.31	1.21	1.04	.94	.79	.75
40	.84	.83	1.03	1.11	1.24	1.25	1.27	1.18	1.04	.96	.83	.81
35	.87	.85	1.03	1.09	1.21	1.21	1.23	1.16	1.03	.97	.86	.85
30	.90	.87	1.03	1.08	1.18	1.17	1.20	1.14	1.03	.98	.89	.88

[4] United States Geological Survey, 1986. "Hydrologic Hazards in Karst Terrain," Open-file Report 85–677, United States Geological Survey, Reston, VA.

[5] Thornthwaite, C.W., 1948. "An Approach Toward a Rational Classification of Climate," Geographical Review 38:55–94. Equation has been modified to convert "e" from centimeters to inches.

[6] Criddle, W.D., 1958. "Methods of Computing Consumptive Use of Water," Proceedings of the American Society of Civil Engineers, Journal of the Division of Irrigation and Drainage, Vol. 84., No. IR1, pp. 1–27.

TABLE 3-2.—LATITUDE ADJUSTING FACTOR FOR EACH MONTH FOR USE IN CALCULATING MONTHLY POTENTIAL EVAPOTRANSPIRATION [1]—Continued

	Month											
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
20	.95	.90	1.03	1.05	1.13	1.11	1.14	1.11	1.02	1.00	.93	.94
10	1.00	.91	1.03	1.03	1.08	1.06	1.08	1.07	1.02	1.02	.98	.99
0	1.04	.94	1.04	1.01	1.04	1.01	1.04	1.04	1.01	1.04	1.01	1.04
Southern Hemisphere:												
Latitude [3] (deg):												
0	1.04	.94	1.04	1.01	1.04	1.01	1.04	1.04	1.01	1.04	1.01	1.04
10	1.08	.97	1.05	.99	1.00	.96	1.00	1.02	1.00	1.06	1.05	1.09
20	1.14	.99	1.05	.97	.96	.91	.95	.99	1.00	1.08	1.09	1.15

[1] The latitude adjusting factor is not to be rounded to the nearest integer. The latitude adjusting factor for the Northern hemisphere is adapted from Criddle, W.D., 1958, "Methods of Computing Consumptive Use of Water," Proceedings of the American Society of Civil Engineers, Journal of the Division of Irrigation and Drainage, Vol. 84, No. IR1, pp. 1-27. The latitude adjusting factor for the Southern hemisphere is based on mean monthly daylight hours from "The Astronomical Almanac for the Year 1988," Nautical Almanac Office, U.S. Naval Observatory, 1987.
[2] For latitudes lower than 50° North that are not listed below, determine the latitude adjusting factor by interpolation.
[3] For latitudes lower than 20° South that are not listed below, determine the latitude adjusting factor by interpolation.

Once the annual net precipitation has been calculated, assign a factor value for net precipitation using Table 3-3. Enter this value in Table 3-1.

TABLE 3-3—NET PRECIPITATION FACTOR VALUES

Net Precipitation	Assigned value
0	0
Greater than 0 to 5 inches	1
Greater than 5 to 15 inches	3
Greater than 15 to 30 inches	6
Greater than 30 inches	10

Table I-3 of attachment I of this appendix illustrates the range of the net precipitation for each state as calculated using the above methodology.

3.1.2.3 Depth to aquifer/hydraulic conductivity. Depth to aquifer represents the distance that hazardous substances must travel to an aquifer while hydraulic conductivity represents the potential rate at which geologic materials can transmit ground water. Considered together, these two factors are an indicator of the relative travel time required for hazardous substances to reach an aquifer.

The depth to aquifer/hydraulic conductivity factor is evaluated by determining the depth to an aquifer and by calculating a thickness-weighted average hydraulic conductivity for that depth. In evaluating this factor at a location in karst terrain, the karst aquifer itself, but not other layers or aquifers, is assigned a thickness of zero feet. Depth to aquifer/hydraulic conductivity must be determined at locations within two miles of the areas of hazardous substance deposition, except when ground water contamination attributable to the site is observed to extend beyond two miles; then any locations within the observed limits of this contamination may also be used to evaluate depth to aquifer/hydraulic conductivity for those aquifers not determined to have an observed release. The rating values for depth to aquifer/hydraulic conductivity are given in Table 3-4.

TABLE 3-4—DEPTH TO AQUIFER/HYDRAULIC CONDUCTIVITY FACTOR VALUES

Thickness-weighted hydraulic conductivity (cm/sec)	Depth to aquifer (feet)							
	Greater than 0 to 12	Greater than 12 to 25	Greater than 25 to 50	Greater than 50 to 100	Greater than 100 to 200	Greater than 200 to 400	Greater than 400 to 600	Greater than 600
Greater than or equal to 10^{-3}	35	35	35	35	35	35	35	33
Less than 10^{-3} to 10^{-5}	35	32	30	29	27	26	24	22
Less than 10^{-5} to 10^{-7}	35	21	20	18	17	15	13	12
Less than 10^{-7}	35	10	9	7	6	4	3	1

3.1.2.3.1 Depth to aquifer. Depth to aquifer is measured from the lowest known point of hazardous substances at a site to the top of the aquifer being evaluated.

The distance from the surface to the lowest known point of hazardous substances at a site must be determined at a location where these substances are available to migrate to ground water (i.e., value for ground water containment value is greater than zero). This distance is to be determined from depth of hazardous substance disposal or from depth of hazardous substance migration (subject to the limitation noted in Section 3.0), whichever yields the least depth to the aquifer. For hazardous substances that have been buried, but for which the depth of burial is unknown, assume a deposition distance of six feet below the surface for evaluating only this factor. If any hazardous substances detected in a well is present at a concentration that establishes an observed release, then in evaluating aquifers not determined to have an observed release, the depth of migration below the surface is considered to be the uppermost point at which ground water is capable of entering that well (e.g., top of the well screen).

The distance from the surface to the top of an aquifer is measured to the highest seasonal level of the saturated zone of that aquifer. If this distance from the surface varies throughout an area, use the distance that most closely approximates conditions beneath the site.

Calculate the depth to an aquifer as the distance from the surface to the top of the aquifer minus the distance from the surface to the lowest known point of hazardous substances eligible to be evaluated for that aquifer.

3.1.2.3.2 Hydraulic conductivity. Hydraulic conductivity measures the ability of geologic materials to transmit water.

Evaluate hydraulic conductivity for the geologic materials that occur in the interval between the hazardous substances and the top of the aquifer being evaluated. Evaluate hydraulic conductivity as the thickness-weighted average hydraulic conductivity for all the geological materials that occur within this interval. Determine the thickness-weighted hydraulic conductivity only at those locations where the necessary geologic information (e.g., well logs, borings, stratigraphic columns) is available. Determine the thickness-weighted hydraulic conductivity as follows:

$$\text{Thickness-Weighted Hydraulic Conductivity} = \frac{\sum_{i=1}^{N} Ti}{\sum_{i=1}^{N} \frac{Ti}{HC_i}}$$

where:

T_i = Thickness for layers i = 1, 2, . . . N. (For any layer that is karst, its thickness is considered to be zero feet.)

HC_i = Hydraulic conductivity for layers i = 1, 2, . . . N.

N = Number of layers evaluated.

If, for the interval being evaluated, all layers are karst (and thus the sum of the layer thicknesses is zero), assign the depth to aquifer/hydraulic conductivity factor a value of 35 (the maximum value for this factor). Where the necessary subsurface geologic information is available at multiple locations, determine the thickness-weighted average at each location, and assign a value to each location using Table 3–4. Select the location that yields the highest value for depth to aquifer/hydraulic conductivity. Assign the value for this location as the depth to aquifer/hydraulic conductivity factor value for the aquifer. Enter this value in Table 3–1.

Hydraulic conductivities for individual layers may be determined by in-situ and laboratory tests or may be taken from Table 3–5. However, measured hydraulic conductivity values must be used for any layer where such measured values are available. When multiple measures of hydraulic conductivity are available from a single boring or location for a single layer, the average of the measured hydraulic conductivities should be used.

TABLE 3–5.—HYDRAULIC CONDUCTIVITY OF GEOLOGIC MATERIALS

Type of material	Assigned hydraulic conductivity
Clay; low permeability till (compact, unfractured till); shale; unfractured metamorphic and igneous rocks.	10^{-6} cm/sec.
Silt; loesses; silty clays; sediments that are predominantly silts; moderately permeable till (fine-grained, unconsolidated till, or compact till with some fractures); low permeability limestones and dolomites (no karst); low permeability sandstone; low permeability fractured igneous and metamorphic rocks.	10^{-5} cm/sec.
Sands; sandy silts; sediments that are predominately sand; highly permeable till (coarse-grained, unconsolidated or compact and highly fractured); peat; moderately permeable limestones and dolomites (no karst); moderately permeable sandstone; moderately permeable fractured igneous and metamorphic rocks.	10^{-4} cm/sec.
Gravel; clean sand; highly permeable fractured igneous and metamorphic rocks; permeable basalt; karst limestones and dolomites	10^{-3} cm/sec

TABLE 3–5.—HYDRAULIC CONDUCTIVITY OF GEOLOGIC MATERIALS—Continued

In most cases, information from throughout the two-mile area (or the observed limits of contamination if greater) may be used to calculate the thickness-weighted hydraulic conductivity. However, if the aquifer being evaluated is not continuous throughout this area the thickness-weighted hydraulic conductivity may be determined only at those locations overlying and within the aquifer boundaries (see section 3.0.1.2). In addition, there may be instances where a low hydraulic conductivity layer is not continuous throughout this area but still completely separates the hazardous substances from the aquifer being evaluated (see Figure 3–4). In this instance, migration of hazardous substances from the site to the aquifer must occur through the low hydraulic conductivity layer even though it is not continuous throughout this area. When migration of hazardous substances from the site to an aquifer must occur across a low hydraulic conductivity layer, regardless of its extent, then the location used to determine the thickness-weighted hydraulic conductivity must include this layer.

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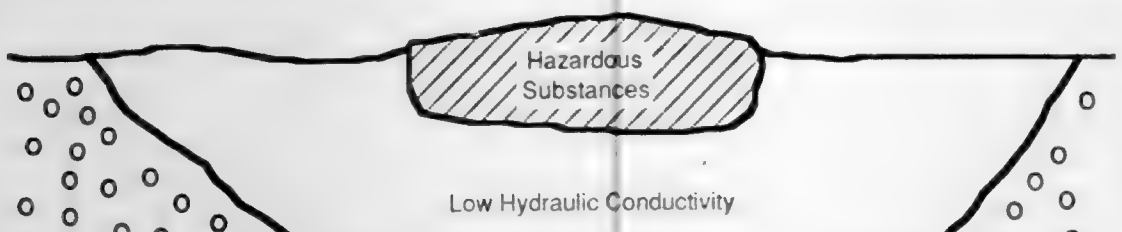

FIGURE 3-4
NONCONTINUOUS LOW HYDRAULIC CONDUCTIVITY
LAYER THAT COMPLETELY SURROUNDS SOURCE

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3.1.2.4 Sorptive capacity. Sorptive capacity reflects the potential for geologic materials to chemically sorb hazardous substances and thereby retard hazardous substance migration.

Sorptive capacity is evaluated for the geologic materials in the interval between the hazardous substances and the top of the aquifer being evaluated. (The depth of this interval is determined as discussed in Section 3.1.2.3.1.) Sorptive capacity is assessed based on the sorbent content of the geologic materials in this interval. Sorbent content is evaluated as the clay and organic carbon content of these geologic materials.

Evaluate sorbent content only at those locations where the necessary geologic information (e.g., well logs, borings, stratigraphic columns) is available. Evaluate sorbent content as follows:

$$\text{Sorbent Content} = \sum_{i=1}^{N} SC_i \cdot T_i / 100$$

where SC_i = Average sorbent content (percent clays plus percent organic carbon) for layers $i = 1, 2, \ldots N$.
T_i = Thickness for layers $i = 1, 2, \ldots N$. (For any layer that is karst, its thickness is considered to be zero feet.)
N = Number of layers evaluated.

The average sorbent content (average percent clays plus organic carbon) for individual layers may be measured or taken from Table 3–6. However, measured sorbent contents must be used for any layer where such measured data are available. Use Table 3–7 to assign a value to the sorptive capacity factor based on the calculated sorbent content of the entire interval evaluated. Where the necessary geologic information is available at multiple locations, calculate the sorbent content at each location, and use the location that yields the lowest sorbent content to assign a sorptive capacity factor value for the aquifer. Enter the value assigned in Table 3–1.

TABLE 3–6.—SORBENT CONTENT OF GEOLOGIC MATERIALS

Type of material	Average sorbent content (percent clays plus percent organic carbon)
Coal seams, peat, or organic-rich sediments[1]	77
Clays; silts; till; loesses; tar sands; sediments[1] that are predominantly clay or silt; claystones, mudstones, shales (including oil shales), or siltstones	64
Sands, sediments[1] that are predominantly sands, sandstones, or argillaceous limestones and dolomites	15
Limestones and dolomites, limey sediments[1] or, gravels	6
Clean sands, clean gravels, quartzite sandstones, or metamorphic and igneous rocks	3

[1] Sediments include unconsolidated materials such as soil.

TABLE 3–7.—SORPTIVE CAPACITY FACTOR VALUES

Sorbent Content	Assigned Value
Greater than 100	1
Greater than 10 to 100	3
0 to 10	5

Sorptive capacity must be evaluated at locations within two miles of the areas of hazardous substance deposition, except when ground water contamination attributable to the site is observed to extend beyond two miles; then any locations within the observed limits of the ground water contamination may also be used to evaluate sorptive capacity for those aquifers not determined to have an observed release. However, if the aquifer being evaluated is not continuous throughout this two-mile (or extended) area, sorptive capacity must be evaluated only at locations overlying and within the aquifer boundaries. Furthermore, if migration of hazardous substances from the site to an aquifer must occur across a highly sorptive layer that completely surrounds the site, but is not continuous throughout this area (see hydraulic conductivity example illustrated in Figure 3–4), the interval and location used to calculate sorbent content must include this layer. In addition, if the depth to an aquifer varies throughout an area, use a depth that most closely approximates conditions beneath the site.

3.1.2.5 Calculation of potential to release factor value. Sum the factor values for net preciptation, depth to aquifer/hydraulic conductivity, and sorptive capacity and multiply this sum by the factor value for containment. The resulting value is the value for the potential to release factor for the aquifer. Enter this value in Table 3–1.

3.1.3 Calculation of likelihood of release value.

If an observed release is established for an aquifer, assign the observed release factor value as the likelihood of release value for that aquifer. Otherwise, assign the potential to release factor value for that aquifer as the likelihood of release value. Enter the value assigned in Table 3–1.

3.2 Waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative toxicity of potential releases of hazardous substances from the site. Two factors are included: toxicity/mobility and waste quantity.

The hazardous substances at the site that are to be considered in the evaluation of waste characteristics are restricted to those that are available to migrate to ground water. Those hazardous substances available to migrate include hazardous substances establishing an observed release to ground water (subject to the limitation noted in section 3.0) as well as all hazardous substances found or documented to have been deposited at the site in a source that could be assigned a ground water containment factor value greater than zero. (See section 3.1.2.1 for descriptions of ground water containment factor values.) Also, hazardous substances whose location on a site cannot be determined but that could have been deposited in any source with a ground water containment factor value greater than zero are considered available to migrate to ground water. Hazardous substances whose location on the site cannot be determined shall be assumed to have been placed in all sources on the site, except those specific sources for which there is definitive information that indicates that the hazardous substances were not or cannot have been placed in the source.

3.2.1 Toxicity/mobility.

In determining the toxicity/mobility value, evaluate all hazardous substances that are available to migrate to ground water. For each such hazardous substance, assign a toxicity value and a mobility value as described below. The procedure for combining these values into a single toxicity/mobility value for each hazardous substance and for selecting the toxicity/mobility value for the ground water migration pathway is described in section 3.2.1.3.

3.2.1.1 Toxicity. Assign a toxicity value in the same manner as is discussed in Section 2.2.1.1 for each hazardous substance deposited at the site that is considered to be available to migrate to ground water.

3.2.1.2 Mobility. Mobility, a measure of the tendency of a hazardous substance to become mobile in the aqueous phase and to migrate to ground water, is evaluated for all hazardous substances at a site that are available to migrate to ground water.

For any hazardous substance that establishes an observed release to any of the aquifers underlying the site, regardless of the aquifer being evaluated, assign that hazardous substance the maximum mobility factor value of 3. For hazardous substances not establishing an observed release, assign the hazardous substance a mobility value according to Table 3–8 or 3–9, as described below.

Evaluate the mobility of hazardous substances based on water solubility except as noted below. Assign a mobility value to the hazardous substance using Table 3–8. (Water solubility is determined using the method specified in Lyman, Warren J., "Solubility in Water" in the "Handbook of Chemical Property Estimation Methods," Lyman, Warren J., William F. Reehl, and David H. Rosenblatt (authors) McGraw Hill Book Company, New York, New York, 1982.)

TABLE 3-8.—MOBILITY VALUES FOR ORGANIC SUBSTANCES AND FOR INORGANIC SUBSTANCES (OTHER THAN THOSE IN TABLE 3-9)

Water solubility range (mg/l)	Assigned mobility value
Less than or equal to 10	0
Greater than 10 to 100	1
Greater than 100 to 1,000	2
Greater than 1,000	3

For any cation or anion listed in Table 3-9, if the specific compound present at the site has not been identified for that cation or anion, evaluate its mobility based on the coefficient of aqueous migration. Assign a mobility value to such a cation or anion using Table 3-9. (Coefficient of aqueous migration is determined using the method specified in Perel'man, Aleksandr I., "Classification of the Epigenetic Processes Operating in the Supergene Zone," Chapter 9 in "Geochemistry of Epigenesis," Plenum Press, New York, NY, 1967.)

TABLE 3-9.—MOBILITY VALUES FOR CATIONS AND ANIONS

Cations and anions	Coefficient of aqueous migration (K)	Assigned mobility value
Aluminum, Chromium, Thallium, Thorium, Tin	Less than 0.1	1
Barium, Beryllium, Cobalt, Copper, Lead, Manganese, Nickel, Phosphorous	0.1 to 1.0	2
Antimony, Arsenic, Boron, Bromine, Cadmium, Fluorine, Iodine, Magnesium, Mercury, Molybdenum, Radium, Radon, Selenium, Silver, Uranium, Vanadium, Zinc	Greater than 1.0	3

3.2.1.3 Calculation of toxicity/mobility value. Based on the overall toxicity value and the mobility value, assign a toxicity/mobility value for each hazardous substance available to migrate to ground water using Table 3-10. Use the value for the hazardous substance with the highest toxicity/mobility value as the value for this factor for the ground water migration pathway. Enter this value in Table 3-1.

TABLE 3-10.—TOXICITY/MOBILITY VALUE

	Mobility value			
	0	1	2	3
Toxicity value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

3.2.2 Hazardous waste quantity.

Assign a hazardous waste quantity factor value in the same manner as is discussed in section 2.2.2 for those wastes deposited at the site that are considered to be available to migrate to ground water. Enter this value in Table 3-1.

3.2.3 Calculation of waste characteristics value.

Sum the toxicity/mobility and hazardous waste quantity factor values. Assign this sum as the waste characteristics value. Enter this value in Table 3-1.

3.3 Targets.

The ground water targets factor category reflects the human population and resources potentially at risk from an actual or potential release of hazardous substances from the site to an aquifer. Four factors are evaluated for an aquifer: maximally exposed individual, population, ground water use, and wellhead protection area. These four factors are evaluated within the target distance limit defined in section 3.0.1.1 and the aquifer boundaries established according to section 3.0.1.2.

The targets to be considered in evaluating these four factors for an aquifer must include both those targets using water from the aquifer being evaluated and those using water from any overlying aquifers, with the following exceptions. Where there are no sources at the surface and hazardous substances were introduced directly into an aquifer without migrating through overlying layers, the only targets that are to be considered for the aquifer that received the hazardous substances are limited to those using water from that aquifer, plus those using water from any additional aquifers for which an observed release from the aquifer that received the hazardous substances can be established. In this case, when evaluating an aquifer below the one into which hazardous substances were directly introduced, the targets that are considered in evaluating the lower aquifer must include those using water from the aquifer being evaluated, plus those using water from all overlying aquifers up to and including the one into which the hazardous substances were directly introduced, plus those using water from any additional aquifers where there is an observed release from the aquifer into which the wastes were directly introduced.

3.3.1 Maximally exposed individual.

This factor reflects the risk to the maximally exposed individual (MEI). The factor is evaluated by measuring the distance from the areas of hazardous waste deposition at a site to the nearest drinking water well within the target distance limit. In determining the nearest well, consider both the wells used for drinking water that draw water from the aquifer being evaluated and the wells that draw water from overlying aquifers, except as noted in section 3.3. Do not consider standby wells in evaluating this factor unless the standby wells are used for supply at least once every year (i.e., annually). Select the nearest well. Assign the appropriate value from Table 3-11 to this nearest drinking water well. This is the value for the maximally exposed individual factor, except as noted below.

TABLE 3-11.—MEI FACTOR EVALUATION

Distance from areas of hazardous waste deposition (miles)	Assigned value
0 to ¼	50
Greater than ¼ to ½	44
Greater than ½ to1	22
Greater than 1 to 2	12
Greater than 2 to 3	7
Greater than 3 to 4	6
Greater than 4	0

If the concentrations of hazardous substances present in a sample (or comparable samples) from any drinking water well considered above (not just the nearest) are at levels that both establish an observed release and, either individually or collectively, exceed a health-based benchmark, then the maximally exposed individual factor is assigned a value of 50. Table 3-12 lists the criteria for determining the health-based benchmarks to be considered. The concentration of a single hazardous substance in a well is considered to be above a benchmark if its concentration detected in at least one sample establishes an observed release and exceeds the benchmark for that hazardous substance. In addition, if more than one hazardous substance is present in a sample (or comparable samples) taken from a well at concentrations that establish an observed release, but all such concentrations are at or below health-based benchmarks, then calculate for each such hazardous substance that establishes an observed release the percentage of its health-based benchmark at which it is present in the sample. (Do not round the calculated percentage to the nearest integer.) If any hazardous substance is present in more than one comparable sample, then use the highest concentration of that hazardous substance in the comparable samples in determining its percentage of the health-based benchmark at which it is present. If the sum of these percentages (without round-off) for these hazardous substances exceeds 100 percent, then the contamination is considered to be above the health-based benchmark for that well. Treat sets of samples that are not comparable separately, calculating sums for each such set. If at least one of these sums exceeds 100 percent, then the contamination is considered to be above the health-based benchmark for that well.

TABLE 3-12.—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN DRINKING WATER

Health-based benchmarks to be used in order of preference: [1]
Carcinogens [2]
● National Primary Drinking Water Regulations [maximum contaminant levels (MCLs)].
● Risk specific concentration corresponding to a 10–4 individual cancer risk.
Other Hazardous Substances [3]
● National Primary Drinking Water Regulations [maximum contaminant levels (MCLs)].
● Maximum contaminant level goals (MCLGs).

[1] If more than one of these benchmarks are specified for a hazardous substance, use the top one in the hierarchy in assigning a value to the factor. If none of these benchmarks are specified for a hazardous substance, that hazardous substance is not used in the comparison of concentrations to the benchmarks.

[2] Includes any hazardous substance with a carcinogen weight-of-evidence classification of A, B, or C (See section 2.2.1.1).

[3] Includes any hazardous substance that does not have a carcinogen weight-of-evidence classification of A, B, or C (See section 2.2.1.1).

Furthermore, if a karst aquifer is one of the aquifers being evaluated and the karst aquifer underlies any portion of the site, assign the MEI factor a value of 50 if there is any well drawing drinking water from the karst aquifer within the target distance limit. If the karst aquifer does not underlie any portion of the site, but there is a well drawing drinking water from the karst aquifer within the target distance limit, then determine the distance from the areas of hazardous waste deposition to the nearest point of the karst aquifer. Use that distance to assign an MEI value from Table 3–11.

Select the highest value assigned above. Use that value as the value for the MEI factor. Enter the value in Table 3–1.

3.3.2 Population.

This factor is an indicator of both the number of people at risk from exposure to hazardous substances in drinking water and the value of the ground water supply. The population count should include persons served by drinking water wells within the target distance limit defined in section 3.0.1.1. (Any wells with observed releases from the site are considered to be within the target distance limit regardless of their distance from the site, as indicated in section 3.0.1.1). For the aquifer being evaluated, include in the population count persons served by wells in the aquifer being evaluated and persons served by wells in overlying aquifers, except as noted in section 3.3. Include residents as well as others who would regularly use the water, such as students and workers. Exclude transient populations such as customers and travelers passing through the area in autos, buses, or trains. In determining the population served by a well, if the water from the well is blended with other water (e.g., water from other wells or surface water intakes), count the population regularly served by the entire blended system as the population served by the well. When a standby well is maintained on a regular basis so that ground water supplies can be withdrawn, treat the standby well as an active well and count the population served by the standby well.

Use exact population counts where possible. If actual residential population figures are not available, the population should be estimated by determining the number of residences and multiplying each residence by the most recent U.S. Census factor for the number of persons per residence for the county in which the residence is located.

The population factor is evaluated as described below from four additional factors: level I concentrations, level II concentrations, level III concentrations, and potential contamination. If there are no samples that establish an observed release for a point of withdrawal, evaluate the point of withdrawal using the potential contamination factor (see section 3.3.2.4). If there are one or more samples that establish an observed release for a point of withdrawal, evaluate that point of withdrawal using the level I, level II, or level III concentrations factor, as appropriate. The determination of which factor applies is made based on a comparison of the concentrations of those hazardous substances that establish an observed release with their health-based benchmarks. Table 3–12 lists the criteria for determining the health-based benchmarks to be considered. The concentrations are to be measured at the point of withdrawal and may be the concentration found in untreated water or the concentrations found in treated water where treatment has not contributed to the levels of the hazardous substances detected. Table 3–13 summarizes the criteria for determining which factor is applicable. The procedure for making the determination is presented below.

TABLE 3–13.—CRITERIA FOR DETERMINING LEVEL OF CONCENTRATION

Sum of percentages [1]	Level
Greater than 100	I
Less than or equal to 100 and greater than 0.1.	II
Less than or equal to 0.1	III
No applicable benchmarks	I or II

[1] This sum is the sum of the ratios of the concentrations to the health-based benchmarks, expressed as percentages, without rounding-off.

Consider only those samples and only those hazardous substances in a sample that establish an observed release. With the exceptions noted below, if one or more such hazardous substances are present in a sample (or comparable samples) taken from a point of withdrawal, then calculate for each such hazardous substance the percentage of its health-based benchmark at which it is present. If any hazardous substance is present in more than one comparable sample, then use the highest concentration of that hazardous substance in the comparable samples in determining the percentage of its health-based benchmark at which it is present. Sum these percentages, without rounding-off. Treat sets of samples that are not comparable separately, calculating separate sums for each such set. Use the highest calculated sum to determine which factor is applicable as follows.

If the highest sum exceeds 100 percent, then the contamination at the point of withdrawal is considered to meet the criteria for level I concentrations. Evaluate such points of withdrawal as described in section 3.3.2.1. If the highest sum is less than or equal to 100 but greater than 0.1, then the contamination at the point of withdrawal is considered to meet the criteria for level II concentrations. Evaluate such points of withdrawal as described in section 3.3.2.2. If the highest sum is less than or equal to 0.1, then the contamination at the point of withdrawal is considered to meet the criteria for level III concentrations. Evaluate such points of withdrawal as described in section 3.3.2.3.

The exception to the above procedure is that if one or more hazardous substances are present in a sample from the point of withdrawal at concentrations that establish an observed release and for which no benchmarks are available, then the contamination at the point of withdrawal is considered to meet the criteria for level II concentrations unless it can be demonstrated that the level I criteria are also met. If the level I criteria are met, they apply.

3.3.2.1 Level I concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water at concentrations that both establish an observed release and, either individually or collectively, meet the level I criteria in Table 3–13.

Sum the number of people served by water from points of withdrawal meeting the level I criteria. This sum is the value to be assigned to this factor, subject to a maximum value of 200. Enter this value in Table 3–1.

3.3.2.2 Level II concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water which are at concentrations, either individually or collectively, that establish an observed release and that do not meet the level I criteria, but that do meet the level II criteria. Populations counted under the level I concentrations factor are not included in this factor.

Sum the number of people served by water from points of withdrawal meeting the above criteria. This sum divided by 10 is the value for this factor, subject to a maximum value of 200. Enter this value in Table 3–1.

3.3.2.3 Level III concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water that are at concentrations which establish an observed release, but that individually or collectively do not meet the level I or II criteria. Populations counted under the level I or level II concentrations factors are not included in this factor.

Sum the number of people served by water from points of withdrawal meeting the above criteria. This sum divided by 100 is the value for this factor, subject to a maximum value of 200. Enter this value in Table 3–1.

3.3.2.4 Potential contamination. This factor represents the population within the target distance limit that is potentially exposed to hazardous substances in ground

water. Thus, populations counted in the previous three population factors are not included.

Calculate the value for the potential contamination factor (PC) using the following equation, with a maximum value of 200:

$$PC = \frac{1}{100} \sum_{i=1}^{n} P_i D_i$$

where:

P_i = Population served by ground water from points of withdrawal within evaluation distance i.

D_i = Dilution weighting factor for evaluation distance i.

n = Number of evaluation distances.

The dilution weighting factors to be used are those presented in Table 3–14. The evaluation distances are the distance intervals in Table 3–14. Evaluate populations based on the locations of their water supply wells, not on the location of residences, work places, etc. Enter the value calculated in Table 3–1.

TABLE 3–14.—DILUTION WEIGHTING FACTORS FOR POTENTIALLY EXPOSED POPULATION

Distance from areas of hazardous waste deposition (miles)	Dilution Weighting Factor [3]	
	Karst Aquifer [1]	All Other Aquifers [2]
0 to ¼	1.00	1.00
Greater than ¼ to ½	0.62	0.62
Greater than ½ to 1	0.50	0.32
Greater than 1 to 2	0.50	0.18
Greater than 2 to 3	0.50	0.13
Greater than 3 to 4	0.50	0.08
Greater than 4	0	0

[1] Use this dilution weighting factor for populations drawing drinking water from a karst aquifer that underlies any portion of the site. If the karst aquifer does not underlie any portion of the site, assign the dilution weighting factor for populations drawing drinking water from the karst aquifer in the following manner. Determine the distance from the areas of hazardous waste deposition to the nearest point of the karst aquifer. Call that distance X. Determine the dilution weighting factor applicable to that distance from the "All Other Aquifers" portion of the above table. Call that dilution weighting factor D_x. The dilution weighting factors for the populations drawing drinking water from the karst aquifer are as follows:

Distance from areas of hazardous waste deposition (miles)	Dilution weighting factor [4]
X to X + ¼ [5]	1.00 D_x
Greater than X + ¼ to X + ½ [5]	0.62 D_x
Greater than X + ½ to target distance limit	0.5 D_x
Greater than target distance limit	0

[5] If the distance X + ¼ or X + ½ exceeds the target distance limit, assign a dilution weighting factor only within the target distance limit.

[4] If the dilution weighting factor calculated in this manner is lower than the dilution weighting factor that would be assigned at that distance for an aquifer that underlies the site and that is not a karst aquifer, then use the dilution weighting factor for "All Other Aquifers" instead of the calculated dilution weighting factor.

[2] Use this dilution weighting factor for populations drawing drinking water from "All Other Aquifers" (i.e., other than karst) that underlie any portion of the site. If the site is underlain by a karst aquifer that forms a single hydrologic unit with an aquifer that is not a karst aquifer and does not underlie any portion of the site, assign that latter aquifer a dilution weighting factor in the following manner. Determine the distance from the areas of hazardous waste deposition to the nearest point of the aquifer that is not a karst aquifer. Call that distance Y. Determine the dilution weighting factor applicable to that distance from the "Karst Aquifers" portion of the top table. Call that dilution weighting factor D_y. The dilution weighting factors for the populations drawing drinking water from the aquifer not in karst are as follows:

Distance from areas of hazardous waste deposition (miles)	Dilution weighting factor [4]
Y to Y + ¼ [6]	1.00 D_y
Greater than Y + ¼ to Y + ½ [6]	0.62 D_y
Greater than Y + ½ to Y + 1 [6]	0.32 D_y
Greater than Y + 1 to Y + 2 [6]	0.18 D_y
Greater than Y + 2 to Y + 3 [6]	0.13 D_y
Greater than Y + 3 to target distance limit	0.08 D_y
Greater than target distance limit	0

[6] If this distance exceeds the target distance limit, assign a dilution weighting factor only within the target distance limit.

[4] If the dilution weighting factor calculated in this manner is lower than the dilution weighting factor that would be applied at that distance for an aquifer that underlies the site and is not a karst aquifer, then use the dilution weighting factor for "All Other Aquifers" instead of the calculated dilution weighting factor.

[3] The dilution weighting factor is not to be rounded to the nearest integer.

3.3.2.5 Calculation of population factor value. Sum the factor values for level I concentrations, level II concentrations, level III concentrations, and potential contamination. Assign this sum as the population factor value for the aquifer, subject to a maximum value of 200. Enter this value in Table 3–1.

3.3.3 Ground water use.

Ground water use indicates the use and value of ground water supplies for the aquifer being evaluated and for overlying aquifers, except as noted in section 3.3. Two categories of ground water use are evaluated: drinking water use and other water use.

3.3.3.1 Drinking water use. Drinking water use is a measure of the use of ground water for direct human ingestion. Assess this use based on all wells within the target distance limit that draw from the aquifer being evaluated or from any overlying aquifers (except as noted in section 3.3). The drinking water use value for a well is the highest value that can be assigned to any drinking water use of that well. Assign a drinking water use value to the well from Table 3–15. If there are no drinking water wells within the target distance limit, assign a value from Table 3–15 to the target aquifer(s) based on their resource value for drinking water use.

TABLE 3–15.—DRINKING WATER USE—GROUND WATER

Type of use [1]	Assigned value
Public supply, no water from alternate unthreatened sources presently available	50
Private supply, no water from alternate un- threatened sources presently available	40
Public supply, water from alternate unthreatened sources presently available and meets minimum hookup requirements	30
Private supply, water from alternate unthreatened sources presently available and meets minimum hookup requirements	25
Standby well—used less than annually, but within past 10 years	20
Standby well—maintained but not used within past 10 years	10
Not used, but usable	10
Unusable (e.g., extremely saline aquifer as defined in the Safe Drinking Water Act)	0

[1] A well is defined as a public water supply if it is part of a system having at least 15 service connections or regularly serving at least 25 individuals. A well is defined as a private water supply, for HRS purposes, if it is part of a system that does not meet the definition of a public water supply. A standby well, if used for supply at least once every year (i.e., annually), is treated as if it is a public or private water supply and not as a standby well.

Alternate supplies must be capable of meeting current supply demands for extended periods of time and must not require extensive or unconventional treatment. For the aquifer being evaluated, an alternate supply is considered threatened if, within the ground water target distance limit, the alternate supply withdraws water from the aquifer being evaluated or from overlying aquifers (except as noted in section 3.3). An alternate supply is also considered threatened if water from the alternate supply is withdrawn from surface water within the target distance limit of the site under evaluation (see section 4.0.3), providing that a hazardous substance migration path (see section 4.0.1) can be defined for the watershed containing that surface water.

3.3.3.2 Other water use. Other water use is a measure of the use of ground water for agricultural, commercial and industrial purposes. Assess this use based on all wells drawing from the aquifer being evaluated and all wells drawing from any overlying aquifers (except as noted in section 3.3) that are within the target distance limit. The other water use value for a well is the highest value that can be assigned to any other water use for that well. Assign an other water use value to the well from Table 3–16.

TABLE 3–16.—OTHER WATER USE—GROUND WATER

Type of use	Assigned value
Used for irrigation (5 acre minimum) of commercial food crops or forage commercial crops	20

TABLE 3-16.—OTHER WATER USE—GROUND WATER—Continued

Type of use	Assigned value
Used for commercial livestock watering	20
Used for commercial food preparation	15
Commercial/industrial purposes other than drinking water	10
Not used for any of the above	0

3.3.3.3 Calculation of ground water use factor value. For all of the wells evaluated (or for the resource use), select the highest value assigned from section 3.3.3.1 and assign the drinking water use factor that value. Enter this value in Table 3–1. Similarly, for all of the wells evaluated (except the one used to assign the drinking water use factor value), select the highest value assigned from section 3.3.3.2 and assign the other water use factor that value.[7] Enter this value in Table 3–1. Sum the drinking water use factor value and the other water use factor value. Assign this sum as the value for the ground water use factor for the aquifer, subject to a maximum value of 50. Enter this value in Table 3–1.

3.3.4 Wellhead protection area.

Determine if either of the following criteria apply for the site:

- There is a source with a ground water containment factor value greater than zero that, either partially or fully, lies within or above a wellhead protection area designated according to Section 1428 of the Safe Drinking Water Act as amended.
- There is a ground water observed release from the site that, either partially or fully, lies within a wellhead protection area designated according to Section 1428 of the Safe Drinking Water Act as amended.

If neither criteria is met for the site, assign this factor a value of 0 for the aquifer being evaluated.

If either criteria is met, assign this factor a value as described below for the aquifer being evaluated. In assigning the factor value, consider the aquifer being evaluated and all overlying aquifers, except as noted in section 3.3. If, within the target distance limit, any of these aquifers are part of the wellhead protection area, assign this factor a value of 50 for the aquifer being evaluated. If, within the target distance limit, none of these aquifers are part of the wellhead protection area, assign this factor a value of 0 for the aquifer being evaluated. Enter the assigned value in Table 3–1.

3.3.5 Calculation of targets factor value.

Sum the MEI, population, ground water use, and wellhead protection area factor values. Assign this sum as the targets value for the aquifer, subject to a maximum value of 200. Enter this value in Table 3–1.

3.4 Ground water migration score for an aquifer.

For the aquifer being evaluated, multiply the values for the likelihood of release, waste characteristics, and targets and divide by 2×10^5. The resulting score is the ground water migration score for the aquifer. Enter this score in Table 3–1.

3.5 Ground water migration pathway score.

A ground water migration score for an aquifer should be calculated for each aquifer underlying a site, as appropriate. Select the highest ground water migration score for an aquifer and assign that score as the ground water migration pathway score (S_{gw}) for the site. Enter this score in Table 3–1.

4.0 Surface water migration pathway.

The surface water migration pathway addresses the relative risks, to the people, resources, and environment surrounding the site, that are associated with releases or threatened releases of hazardous substances from sources on a site to surface water. Four types of threats are evaluated: drinking water threat, human food chain threat, recreational threat, and environmental threat. Each of these threats is evaluated based on three factor categories: likelihood of release, waste characteristics, and targets.

Section 4.0 defines the surface water hazardous substance migration path, the surface water target distance limit, the HRS surface water categories, and the general procedure for calculating the surface water migration pathway score. Sections 4.1 through 4.4 describe the procedures for evaluating the four types of surface water threats.

4.0.1 Definition of the hazardous substance migration path for surface water.

The hazardous substance migration path includes both the overland segment and the in-water segment that hazardous substances would take as they migrate away from the site (Figure 4–1). The overland segment begins at a source and proceeds downgradient to the probable point of entry to surface water. The in-water segment of the hazardous substance migration path begins at this probable point of entry. For streams and rivers, it continues in the direction of the stream flow (including any tidal flows) for the distance established by the target distance limit (section 4.0.2). For lakes or the ocean, no flow direction is presumed and the target distance limit (section 4.0.2) is applied as an arc. If the in-water segment includes both rivers and lakes (or the ocean), the target distance limit then applies to both of their in-water segments combined (see Figure 4–2 for an example.)

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[7] Note that this procedure may be performed in the opposite order (i.e., assign the other water use factor value first) if it results in a higher value being assigned to the ground water use factor.

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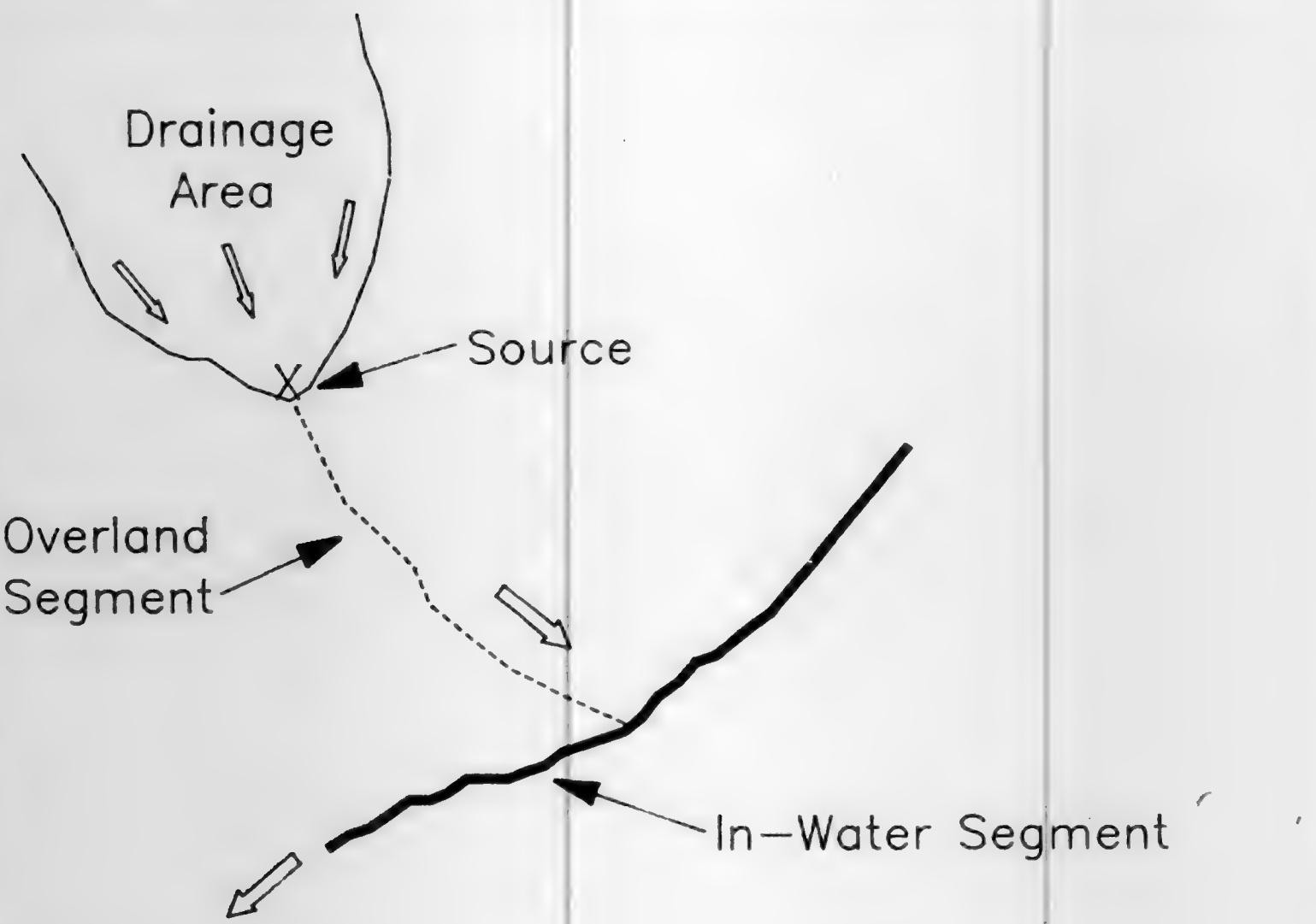

FIGURE 4-1
SURFACE WATER HAZARDOUS SUBSTANCE MIGRATION PATH

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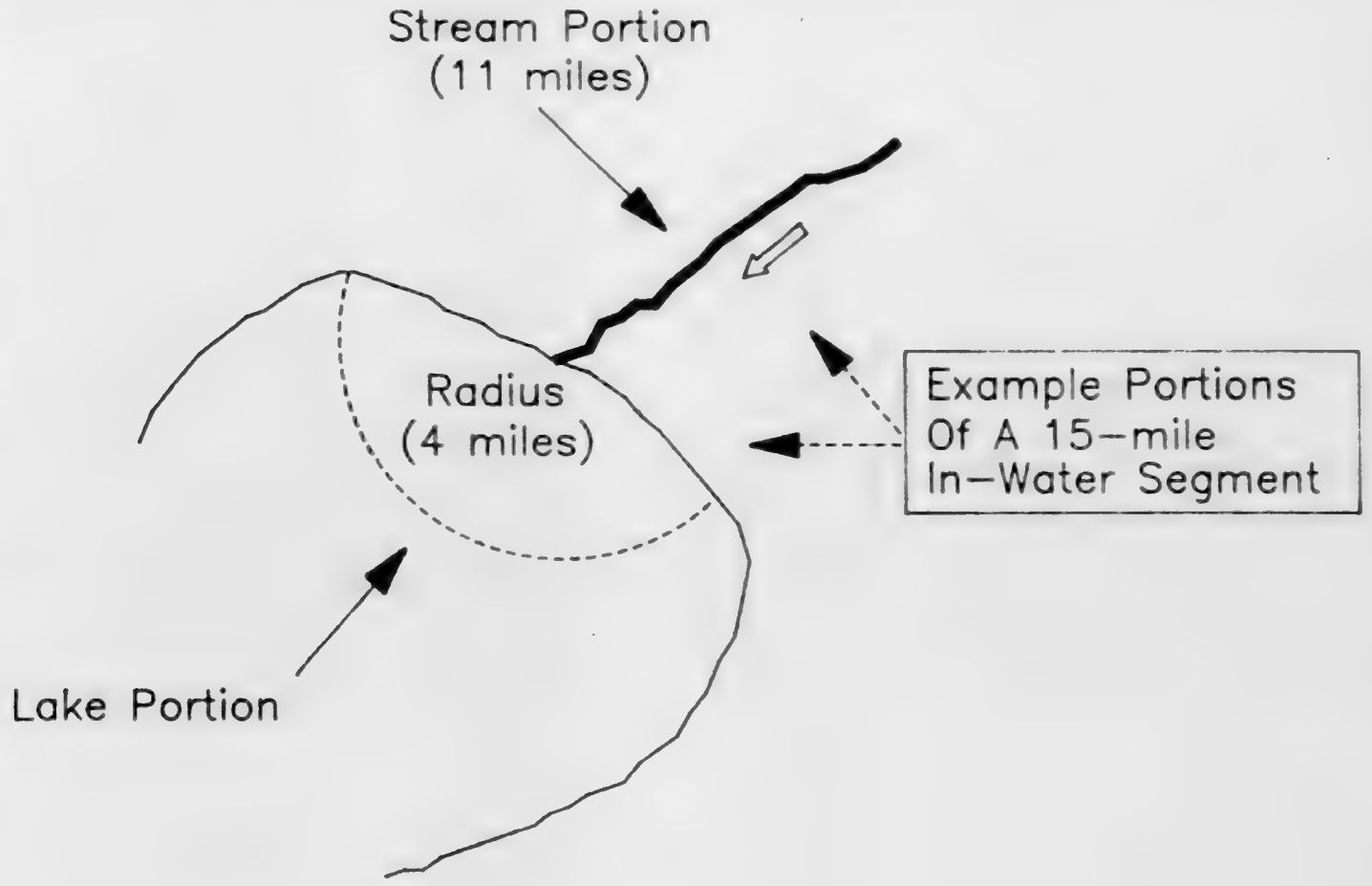

FIGURE 4-2
EXAMPLE OF THE IN-WATER SEGMENT OF A HAZARDOUS
SUBSTANCE MIGRATION PATH

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A site is considered to be in on two or more watersheds if there are two or more hazardous substance migration paths from the site that do not reach a common point within the target distance limit downstream. If the site is in more than one watershed, define a separate hazardous substance migration path for each watershed. Evaluate the threat for each watershed separately as described in section 4.0.4.

If for a watershed, overland runoff from the site can reach surface water bodies within that same watershed by two or more overland segments (i.e., there are two or more hazardous substance migration paths for the watershed), select one of these hazardous substance migration path for use in evaluating the threat to that watershed as described in section 4.0.4.

4.0.2 Target distance limit.

The target distance limit is the maximum distance over which targets are to be considered when evaluating the site. If the site is in more than one watershed, a separate target distance limit should be determined for each watershed. The target distance limit for a watershed varies based on whether there is an observed release to the watershed and on the type of samples used to establish the observed release if there is one (see section 4.1.1.1 for the definition of observed release).

If there is no observed release to surface water in the watershed, measurement of the target distance limit for the watershed begins at the probable point of entry to surface water and extends for 15 miles along the water from the point. If there is an observed release to the watershed that is based on aqueous or benthic samples, measurement of the target distance limit for the watershed begins at the probable point of entry; the target distance limit extends either for 15 miles along the water or to the most distant sample point indicating an observed release to that watershed, whichever is greater. If there is an observed release based on sediment samples, the target distance limit for the watershed extends to a distance of 15 miles along the water beyond the most distant sediment sample indicating an observed release to the watershed.

The surface water targets for a site (e.g., intakes, fisheries, recreational areas, sensitive environments) must lie within or be contiguous to the hazardous substance migration path and must be located at or between the probable point of entry and the target distance limit applicable to the watershed to be considered in evaluating the threat for that watershed. Targets located at or between the probable point of entry and any sampling point establishing an observed release to the watershed are considered to be targets subject to actual contamination (defined as either level I, level II, or level III concentrations in section 4.1.3) for that watershed. Targets located within the target distance limit for the watershed, but not at or between the probable point of entry and any sampling point establishing an observed release to the watershed, are considered to be targets subject to potential contamination for that watershed. Populations, resources, and sensitive environments located beyond the target distance limit for any watershed are not considered to be targets in evaluating the site. If flow within the hazardous substance migration path is reversed by tides, for those targets that lie upstream to be considered in the evaluation, documentation is required that the tidal run could carry substances from the site as far as those upstream targets.

4.0.3 Surface water categories.

For the purpose of the HRS, surface water is divided into three categories: rivers, lakes, and oceans. The key feature of these categories is the time necessary to transport hazardous substances over the target distance limit.

For HRS purposes, rivers include:

- Perennially flowing waters from the point of origin to the ocean (including estuaries) and the wetlands contiguous to these flowing waters.
- The aboveground portion of disappearing rivers.
- Man-made ditches only insofar as they perennially flow into other surface water.
- Intermittent streams and contiguous intermittent ditches only in those arid or semi-arid areas with less than 20 inches of mean annual precipitation.

Lakes include:

- Natural and man-made lakes (including impoundments) that lie along rivers, but excluding the Great Lakes.
- Isolated, but perennial, lakes and ponds.
- The wetlands contiguous to lakes.
- Static water channels or oxbow lakes contiguous to rivers.
- Salt water harbors that are largely protected by sea walls.
- Small rivers, without diking, that merge into surrounding perennially inundated wetlands.

Ocean and ocean-like water bodies include:

- Oceans.
- Contiguous bays and wetlands.
- The Great Lakes.

The interface between a river and a lake is frequently defined on the USGS topographic maps. When the definition is unclear (e.g., a river gradually broadens into a lake), surface elevation may be helpful. Although there is flow within lakes, the surface elevation is essentially the same across the lake. Rivers, in contrast, show decreasing elevation with distance. The interface between an estuary and ocean is defined by the most seaward line from landhead to landhead unless otherwise defined by a State.

4.0.4 Evaluation of the surface water migration pathway.

The surface water migration pathway addresses four different types of threat: drinking water threat, human food chain threat, recreational threat and environmental threat. Each of these threats are evaluated for each watershed based on the following three factor categories:

- Likelihood of Release (LR).
- Waste Characteristics (WC).
- Targets (T).

Figure 4–3 indicates the factors included within each of the factor categories for each type of threat. The evaluation of the factors, factor categories, and threats is discussed in the following sections.

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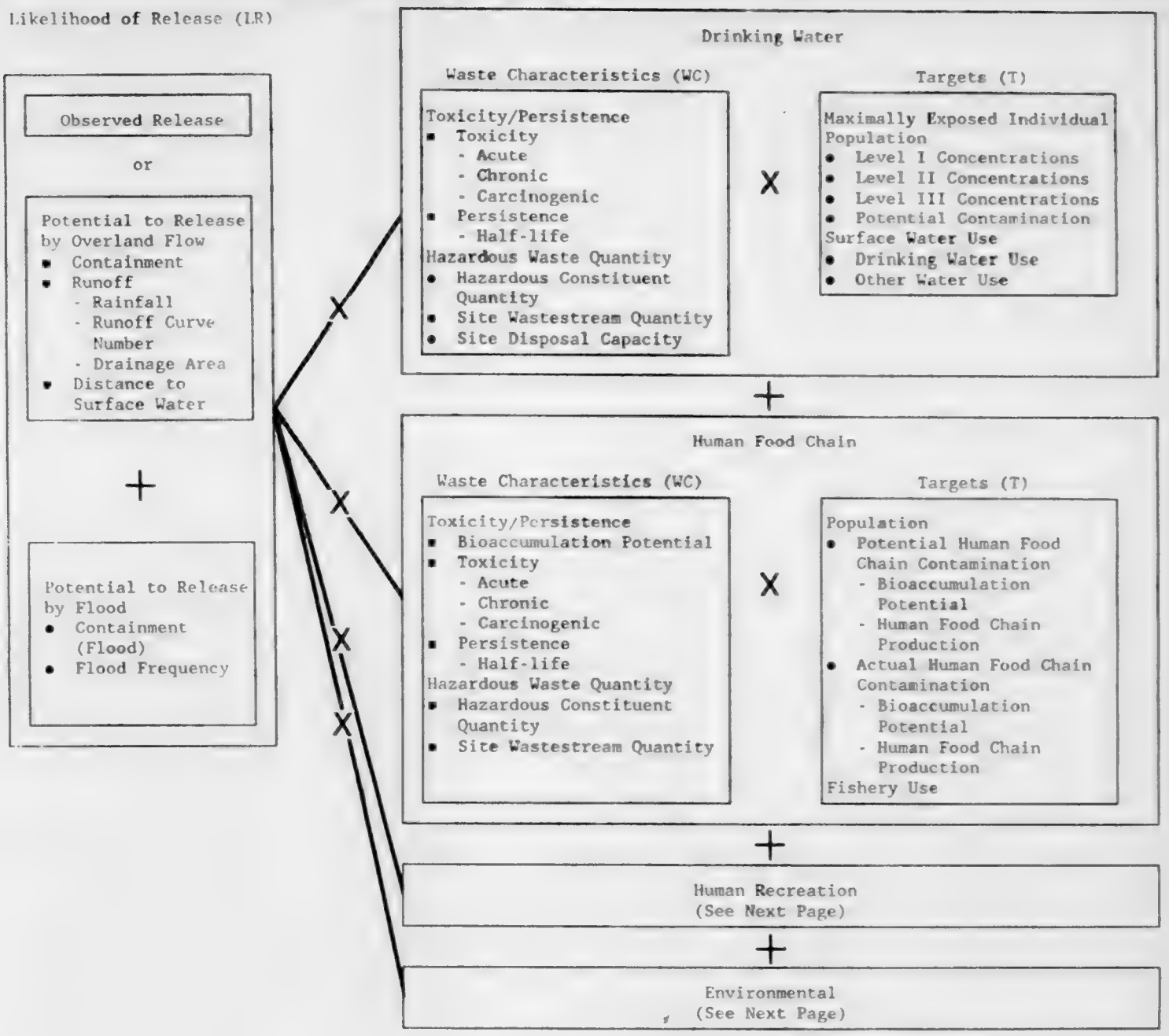

FIGURE 4-3
OVERVIEW OF SURFACE WATER MIGRATION PATHWAY

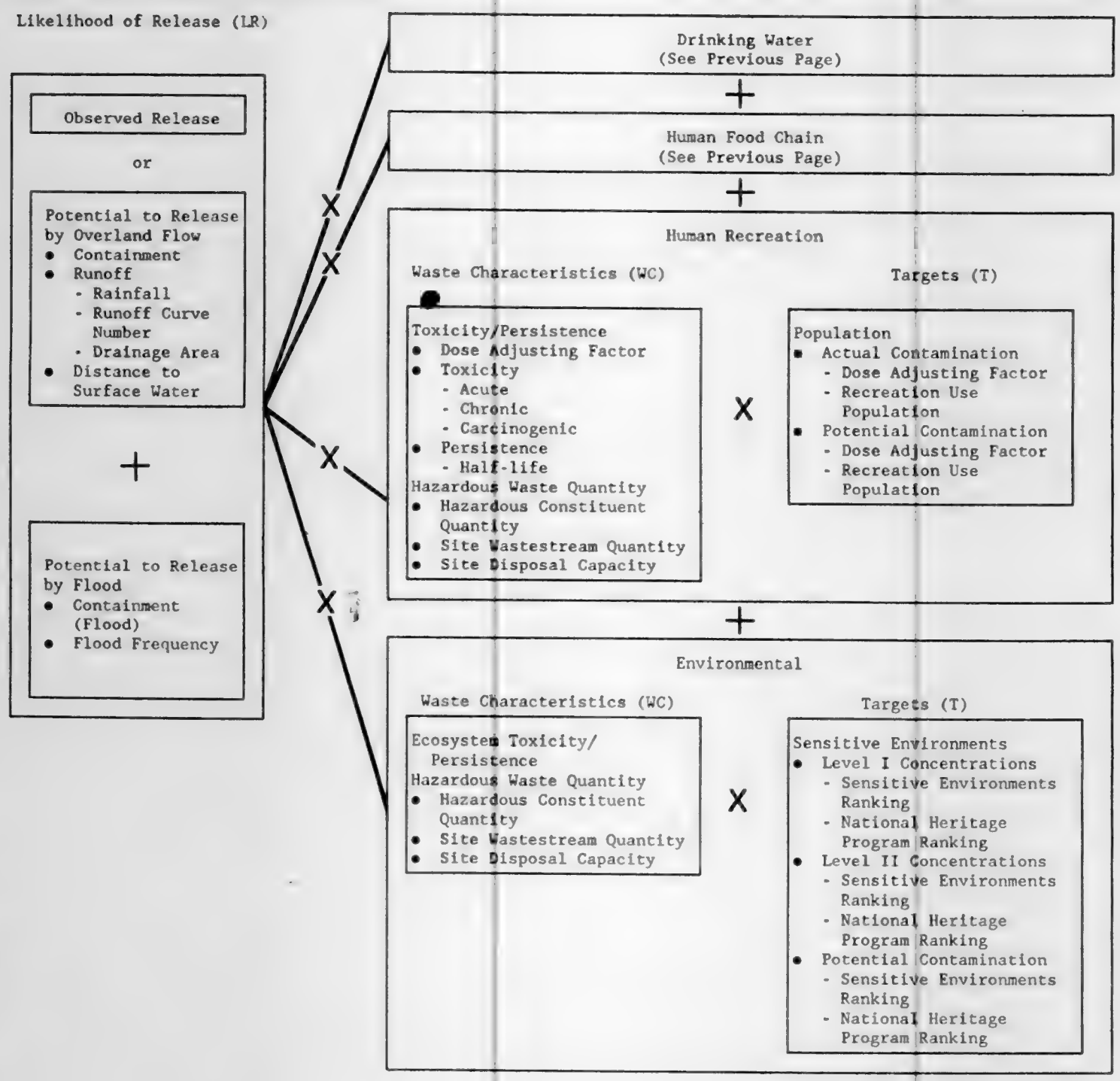

FIGURE 4-3
OVERVIEW OF SURFACE WATER MIGRATION PATHWAY
(Concluded)

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Calculate the surface water migration score for a watershed by multiplying, for each of the four threats, the values assigned to that threat for likelihood of release, waste characteristics and targets. Sum the resultant score for the four threats and normalize to a scale of 0 to 100. The calculation procedure is outlined in Table 4–1.

If there is only one hazardous substance migration path for the watershed (see section 4.0.1), use this score as the surface water migration score for the watershed. If there are two or more hazardous substance migration paths for the watershed, calculate a separate surface water migration score for each hazardous substance migration path for the watershed. For this calculation, include in the evaluation of waste characteristics for each of the hazardous substance migration paths, all those hazardous substances that are available to migrate (see section 4.1.2) along any of these hazardous substance migration paths. Select the highest surface water migration score for these hazardous substance migration paths. Use this score as the surface water migration score for the watershed. If the site is in only one watershed, use the surface water migration score for that watershed as the surface water migration score for the site.

If the site is in more than one watershed, calculate a separate surface water migration score for each watershed, using the likelihood of release, waste characteristics, and targets applicable to each watershed. Use a separate Table 4–1 to record the evaluation of each watershed. Sum the surface water migration score for each watershed. This sum is the surface water migration pathway score for the site, subject to a maximum score of 100. Enter this score on Table 4–1.

Figure 4–4 illustrates this process

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TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET

Factor Categories and Factors	Maximum Value	Value Assigned
DRINKING WATER THREAT		
Likelihood of Release		
1. Observed Release	120	
2. Potential to Release by Overland Flow		
2a. Containment	10	
2b. Runoff	6	
2c. Distance to Surface Water	6	
2d. Potential to Release by Overland Flow (Lines 2a x (2b + 2c))	120	
3 Potential to Release by Flood		
3a. Containment (Flood)	10	
3b. Flood Frequency	12	
3c. Potential to Release by Flood (Lines 3a x 3b)	120	
4 Potential to Release (Lines 2d + 3c, subject to a maximum of 120)	120	
5. Likelihood of Release (Higher of Lines 1 or 4)	120	
Waste Characteristics		
6. Toxicity/Persistence	100	
7. Hazardous Waste Quantity	100	
8. Waste Characteristics (Lines 6 + 7)	200	
Targets		
9. Maximally Exposed Individual	50	
10. Population		
10a. Level I Concentrations	200	
10b. Level II Concentrations	200	
10c. Level III Concentrations	200	
10d. Potential Contamination	200	
10e. Population (Lines 10a + 10b + 10c + 10d, subject to a maximum of 200)	200	

TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Continued)

Factor Categories and Factors	Maximum Value	Value Assigned	
DRINKING WATER THREAT (Concluded)			
Targets (Concluded)			
11. Surface Water Use			
11a. Drinking Water Use	50	____	
11b. Other Water Use	20	____	
11c. Surface Water Use (Lines 11a + 11b)	50	____	
12. Targets (Lines 9 + 10e + 11c, subject to a maximum of 200)	200		____
Drinking Water Threat Score			
13. Drinking Water Threat (Lines 5 x 8 x 12)	4.8×10^6		____
HUMAN FOOD CHAIN THREAT			
Likelihood of Release			
14. Likelihood of Release (Same Value as Line 5)	120		____
Waste Characteristics			
15. Toxicity/Persistence	100	____	
16. Hazardous Waste Quantity	100	____	
17. Waste Characteristics (Lines 15 + 16)	200		____

TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Continued)

Factor Categories and Factors	Maximum Value	Value Assigned	
HUMAN FOOD CHAIN THREAT (Concluded)			
Targets			
18. Population			
18a. Potential Human Food Chain Contamination	200	____	
18b. Actual Human Food Chain Contamination	200	____	
18c. Population (Lines 18a + 18b, subject to a maximum of 200)	200	____	
19. Fishery Use	50	____	
20. Targets (Lines 18c + 19, subject to a maximum of 200)	200		____
Human Food Chain Threat Score			
21. Human Food Chain Threat (Lines 14 x 17 x 20)	4.8×10^6		____
HUMAN RECREATION THREAT			
Likelihood of Release			
22. Likelihood of Release (Same value as Line 5)	120		____
Waste Characteristics			
23. Toxicity/Persistence	100	____	
24. Hazardous Waste Quantity	100	____	
25. Waste Characteristics (Lines 23 + 24)	200		____

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TABLE 4-1
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Continued)

Factor Categories and Factors	Maximum Value	Value Assigned	
HUMAN RECREATION THREAT (Concluded)			
Targets			
26. Population			
26a. Actual Contamination (Highest value assigned to any recreation area, subject to a maximum of 200)	200	____	
26b. Potential Contamination (Highest value assigned to any recreation area, subject to a maximum of 200)	200	____	
26c. Population (Higher of values on Lines 26a or 26b)	200	____	
27. Targets (Value from Line 26c)	200		____
Human Recreation Threat Score			
28. Human Recreation Threat (Lines 22 x 25 x 27)	4.8×10^6		____
ENVIRONMENTAL THREAT			
Likelihood of Release			
29. Likelihood of Release (Same Value as Line 5)	120		____
Waste Characteristics			
30. Ecosystem Toxicity/Persistence	100	____	
31. Hazardous Waste Quantity	100	____	
32. Waste Characteristics (Lines 30 + 31)	200		____

TABLE 4-1.
SURFACE WATER MIGRATION PATHWAY SCORESHEET (Concluded)

Factor Categories and Factors	Maximum Value	Value Assigned
ENVIRONMENTAL THREAT (Concluded)		
Targets		
33. Sensitive Environments		
33a. Level I Concentrations	120	
33b. Level II Concentrations	120	
33c. Potential Contamination	120	
33d. Sensitive Environments (Lines 33a + 33b + 33c, subject to a maximum of 120)	120	
34. Targets (Value from Line 33)	120	
Environmental Threat Score		
35. Environmental Threat (Lines 29 x 32 x 34)	2.88×10^6	
SURFACE WATER MIGRATION PATHWAY SCORE FOR A WATERSHED		
36. Watershed Score[1] [(Lines 13 + 21 + 28 + 35)/48,000, subject to a maximum of 100]	100	
SURFACE WATER MIGRATION PATHWAY SCORE		
37. Pathway Score (S_{sw})[1] (Sum of scores from Line 36 for all watersheds evaluated, subject to a maximum of 100)	100	

[1] These scores are not to be rounded to the nearest integer.

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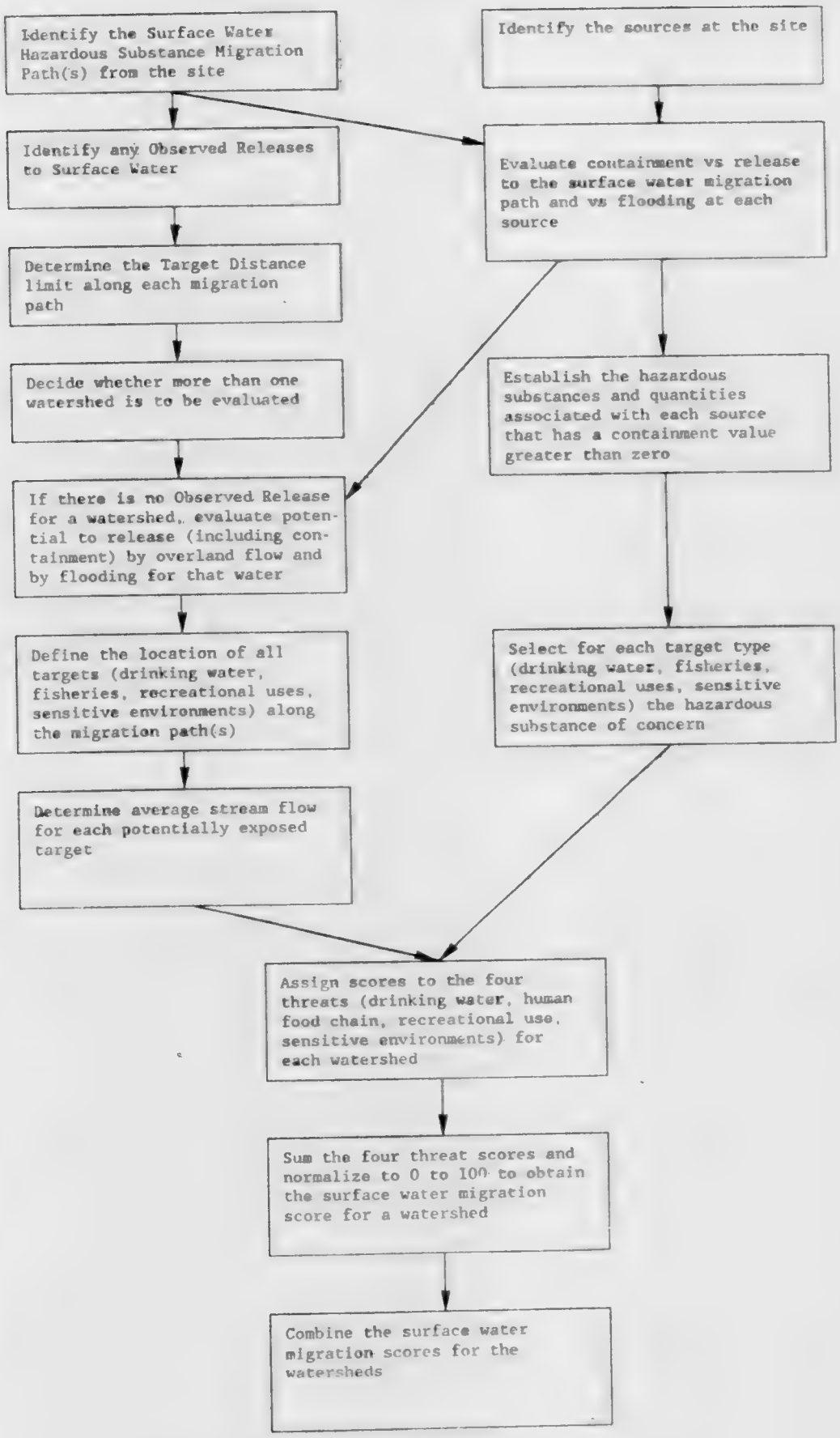

FIGURE 4-4
PROCEDURE FOR EVALUATING THE SURFACE WATER MIGRATION PATHWAY

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4.1 Drinking water threat.

The drinking water threat is used to evaluate the threat associated with the actual or potential release of hazardous substances from a site to drinking water resources. The drinking water threat score for each watershed is the product of the values for three factor categories: likelihood of release, waste characteristics and targets.

4.1.1 Drinking water threat likelihood of release.

The likelihood of release factor category reflects, for a watershed, the likelihood of a site releasing hazardous substances to the surface water in that watershed. The factor category is evaluated for each watershed in terms of an observed release factor and a potential to release factor.

4.1.1.1 Observed release. An observed release to surface water is established for a watershed whenever it can be demonstrated that a site has released a hazardous substance to the surface water in the watershed. This demonstration can be based on either direct observation of the release or indirect observation (i.e., the analysis of samples taken from surface water).

In the case of direct observation, material (e.g., leachate) from the site must be seen entering surface water either through migration or be known to have entered surface water through direct deposition. Further, available information must indicate that the material deposited in or observed entering surface water contained one or more hazardous substances. Such information should include an analysis of the hazardous substances contained in samples of the material or other similiar documentation of the content of the material. In the case of migration the available information must indicate that hazardous substances in the material have reached surface water. For the hazardous substances to be considered to have reached surface water, samples of the migrating material must be taken near the observed point of entry of the material into surface water or the source of the released material must be near the observed point of entry. Finally, documentation both that an area has been flooded at a time that hazardous substances were present and that the hazardous substances were in contact with the flood waters also constitutes an observed release.

In the case of indirect observation, the samples must indicate that a significant increase in ambient hazardous substance concentration has occurred relative to the background concentration for the site (as described below). Further, the available information must support the attribution of some portion of the increase to the site. Attribution can be based on sampling information such as the location of the samplers or other source apportionment techniques.

A significant increase is determined by comparing either surface water, benthic, or sediment samples, one of which must be a background sample for the watershed. The comparisons must be made between similar types of samples (e.g., between two or more surface water samples). The background sample should be chosen to reflect, as completely as possible, the concentration of the hazardous substance in the sample medium exclusive of the contribution of any possible releases from the site. For benthic samples, comparisons must be made between samples of relatively sessile benthic organisms (e.g., macroinvertebates, periphyton) and not between samples of far-ranging organisms (e.g., fish). The comparisons must be between benthic organisms that are similar.

The concentration of a hazardous substance is considered to be significantly above background levels under the conditions presented in Table 2–2 of section 2. See section 2.1.1 for the detection limits to be used in the evaluation.

If an observed release can be established for a watershed, then assign an observed release factor value of 120 to that watershed. If no observed release can be established for the watershed, assign an observed release factor value of zero to that watershed.

4.1.1.2 Potential to release. Potential to release is evaluated for a watershed if an observed release has not been established for the watershed. Potential to release assesses the likelihood for hazardous substances to migrate from a site to surface water in the watershed. Potential to release has two components: potential to release by overland flow (section 4.1.1.2.1) and potential to release by flooding (section 4.1.1.2.2). The sum of these two component values is the value assigned to the potential to release factor for the watershed, subject to a maximum value of 120.

4.1.1.2.1 Overland flow. The potential to release by overland flow for the watershed is based on three factors: containment, runoff, and distance to surface water.

The potential to release by overland flow is assigned a value of zero for the watershed under either of two conditions: no overland segment of the hazardous substance migration path can be defined for the watershed (e.g., the site lies in a topographic depression) or the overland segment of the hazardous substance migration path for the watershed exceeds 2 miles before surface water is encountered. If either of these conditions pertains, enter a value of zero on Table 4–1 for potential to release by overland flow for the watershed and precede to section 4.1.1.2.2 for the evaluation of potential to release by flood.

4.1.1.2.1.1 Containment. Containment for overland flow refers to the methods that have been used either to restrict or prevent the release of hazardous substances from a source (e.g., landfill) to surface water. Table I–4 of Attachment I to this Appendix A presents the criteria for use in rating the containment of inactive sources for the surface water migration pathway.

For such containment systems as diking, berms, and run-on control and runoff management systems to be considered present for rating purposes, they must completely surround the source area unless they connect with other natural or engineered barriers that together completely surround the source area. For liners to be considered present for rating purposes, they must be continuous and must cover all earth surrounding the source likely to be in contact with the hazardous substances or leachate containing the hazardous substances.

Determine the containment factor value for the watershed in the following manner. If, for the watershed, a source is located in surface water, assign the containment factor a value of 10 for the watershed. Otherwise, use Table I–4 of Attachment I to this Appendix A to assign a containment value to each inactive source at the site that can potentially release hazardous substances to the overland segment of the hazardous substance migration path for the watershed. The containment factor value for the watershed is the highest containment value assigned to any of these sources. Record the assigned value on Table 4–1.

4.1.1.2.1.2 Runoff. This factor reflects the potential for overland runoff to convey hazardous substances from a site to surface water downgradient from the site. Three components are evaluated: rainfall, runoff curve number value, and drainage area.

Rainfall. This component considers the potential for area storms to cause surface water runoff. This potential is reflected by the 2-year, 24-hour rainfall. If available, use site specific 2-year, 24-hour rainfall data. However, such site-specific data must be based on at least 20 years of record. If such site-specific data are not available, to obtain the 2-year, 24-hour rainfall appropriate to a site located in Eastern and Central States, use the Rainfall Frequency Atlas of the United States, Technical Paper No. 40, U.S. Department of Commerce, Washington, DC, 1963 (or a later version as available). To obtain this information for sites located in 11 Western States,[8] use the NOAA Atlas II, Precipitation-Frequency Atlas of the Western United States, 1973 (or a later version as available). For sites in Hawaii, use the Rainfall-Frequency Atlas of the Hawaiian Islands, Technical Paper No. 43, U.S. Department of Commerce, 1962 (or a later version as available). For sites in Alaska, use the Probable Maximum Precipitation and Rainfall-Frequency Data for Alaska, Technical Paper No. 47, U.S. Department of Commerce, 1963 (or a later version as available). For sites in Puerto Rico or the Virgin Islands, use the Generalized Estimates of Probable Maximum Precipitation and Rainfall-Frequency Data for Puerto Rico and Virgin Islands, Technical Paper No. 42, U.S. Department of Commerce, 1961 (or a later version as available).

Runoff curve number. The runoff curve number reflects the ability of soils, and the nature of the land surface, to facilitate or retard runoff. Assign a runoff curve number for the watershed according to Table 4–2, based on the predominant land use description (within the drainage area described below) and the hydrologic soil group that is found throughout most of the predominant land use area. The predominant land use is the land use that comprises the largest total area within the applicable drainage area. If a predominant land use area cannot be delineated, use the one in the

[8] These 11 states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

drainage area described below that yields the highest curve number, taking into consideration its respective hydrologic soil group. If a predominant soil group cannot be delineated, use the one in the drainage area that yields the highest curve number.

Most of the soils in the U.S. have been classified into the four hydrologic soil groups listed in Table 4–2. For soils, obtain their hydrologic soil group from U.S. Soil Conservation Service, Urban Hydrology for Small Watersheds, Technical Release 55, Appendix A, U.S. Department of Agriculture, Washington, D.C., 1986 (or later as available).

TABLE 4–2.—RUNOFF CURVE NUMBER [1]

Predominant land use	Hydrologic soil group [2]			
	A	B	C	D
Cultivated land:				
With runoff control (e.g., contour farming, sod waterways, terraces)	60	70	80	80
Without runoff control	70	80	90	90
Pasture or range land:				
Poor condition (exposed soil, erosion evident)	70	80	85	90
Good condition	40	60	75	80
Meadow	30	60	70	80
Wood or forest land:				
Thin stand or little soil cover	45	65	75	85
Normal stand or good soil cover	25	55	70	75
Open grass covered areas (lawns, parks, golf courses, cemeteries, etc):				
Good grass cover (75% or more coverage)	40	60	75	80
Poor grass cover (less than 75% coverage)	50	70	80	85
Industrial districts	80	90	90	95
Residential lots	60	75	85	90
Paved lots (parking lots, driveways, large roofs)	100	100	100	100
Streets and roads:				
Paved with curbs and storm sewers	100	100	100	100
Gravel	75	85	90	90
Dirt	70	80	85	90
Landfills:				
Surface composed of clay	—	—	—	90
Surface composed of debris	70	—	—	—
Surface composed of sod:				
Good sod cover (75% or more)	40	—	—	—
Poor sod cover (less than 75%)	50	—	—	—

[1] Curve numbers based on U.S. Soil Conservation Service, Technical Release No. 55, Urban Hydrology for Small Watersheds, U.S. Department of Agriculture, Washington, DC, 1986. Curve numbers have been rounded. (—) indicates soil group not relevant.

[2] The hydrologic soil groups are as follows:

A—Low runoff potential—soils having a high infiltration rate even when thoroughly wetted and consisting chiefly of deep, well-drained to excessively drained sands or gravels.

B—Soils having a moderate infiltration rate when thoroughly wetted and consisting chiefly of moderately deep to deep, moderately well-drained to well-drained soils with moderately fine to moderately coarse texture.

C—Soils having a slow infiltration rate when thoroughly wetted and consisting chiefly of soils with a layer that impedes downward movement of water or soils with moderately fine to fine texture.

D—High runoff potential—soils having a very slow infiltration rate when thoroughly wetted and consisting chiefly of clay soils with a high swelling potential, soils with a permanent high water table, soils with a claypan or clay layer at or near the surface, and shallow soils over nearly impervious material.

Drainage area. The drainage area reflects the land area which contributes to the runoff from a site that can enter the hazardous substance migration path for the watershed. This drainage area includes both the site area and the area upgradient of the site, but excludes any portion of the drainage area where runoff is diverted away from entering the site by storm sewers or run-on control and/or runoff management systems. Use Table 4–3 to assign the drainage area value for a watershed.

TABLE 4–3.—VALUE FOR SIZE OF DRAINAGE AREA

Size of drainage area in acres	Assigned value
Less than 50 acres	1
50 to 500 acres	2
Greater than 500 acres	3

Calculation of runoff value. Use Table 4–4 to assign a combined rainfall/runoff curve number value for the watershed based on the rainfall and the runoff curve number. Enter this combined value, along with the assigned value for drainage area, into Table 4–5 to determine the runoff factor value for the watershed. Enter the runoff factor value in Table 4–1.

TABLE 4–4.—RAINFALL/RUNOFF CURVE NUMBER VALUE [1]

Rainfall (inches)	Runoff curve No. (CN)															
	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
Less than 1.0	0	0	0	0	0	0	0	0	0	1	1	1	2	2	2	2
1.0 to less than 1.2	0	0	0	0	0	0	0	0	0	1	1	2	2	2	2	3
1.2 to less than 1.4	0	0	0	0	0	0	0	0	1	1	2	2	2	2	2	3
1.4 to less than 1.6	0	0	0	0	0	0	0	1	1	2	2	2	2	2	3	3
1.6 to less than 1.8	0	0	0	0	0	0	0	1	1	2	2	2	2	2	3	3
1.8 to less than 2.0	0	0	0	0	0	0	1	1	2	2	2	2	2	3	3	3
2.0 to less than 2.5	0	0	0	0	1	2	2	2	2	2	2	2	3	3	3	3
2.5 to less than 3.0	0	0	0	1	1	2	2	2	2	2	2	3	3	3	3	3
3.0 to less than 4.0	0	0	1	1	2	2	2	2	3	3	3	3	3	3	3	3
4.0 or greater	0	1	1	2	2	2	2	3	3	3	3	3	3	3	3	3

[1] This table is based on the runoff per unit area estimated using a rainfall/curve number equation (U.S. Soil Conservation Service, Technical Release No. 55, Urban Hydrology for Small Watersheds, U.S. Department of Agriculture, Washington, DC, 1986).

TABLE 4–5.—RUNOFF FACTOR VALUE

Drainage area value	Rainfall/Runoff Curve Number Value			
	0	1	2	3
1	1	2	4	4
2	2	3	5	6
3	3	5	6	6

4.1.1.2.1.3 Distance to surface water. This factor indicates the potential for hazardous substances to flow overland from the site to a surface water body in the watershed. Measure the distance to surface water as the distance along the overland segment from a source to either the mean high water level for tidal waters or the mean water level for other surface waters. Use Table 4–6 to assign a value to the distance to surface water factor for the watershed. Enter the assigned factor value for distance to surface water in Table 4–1.

TABLE 4–6.—DISTANCE TO SURFACE WATER FACTOR VALUES

Distance	Assigned value
Greater than 1.5 miles to 2 miles	1
Greater than 2,500 feet to 1.5 miles	2
Greater than 1,000 feet to 2,500 feet	3
Greater than 500 feet to 1,000 feet	4
100 feet to 500 feet	5
Less than 100 feet	6

4.1.1.2.1.4 Calculation of the factor value for potential to release by overland flow. Sum the factor values for runoff and distance to surface water for the watershed and multiply the sum by the factor value for containment. Enter the result in Table 4–1 as the factor value for potential to release by overland flow for the watershed.

4.1.1.2.2 Potential to release by flood. This factor reflects the potential for hazardous substances to be released to surface water as a result of a site being partially or fully inundated by a flood from surface water in the watershed. The potential for release due to flooding is evaluated for each watershed as the product of containment (flood) and a flood frequency factor.

If a source is located within a specified floodplain, it can become partially or fully submerged during the occurrence of a flood that is equal to or greater than the specified flood. For example, a source located in a 10-year floodplain can be submerged during the occurrence of flood with recurrence period equal to or longer than 10 years. Furthermore, containment that is adequate to prevent any washout of hazardous substances by a flood of a specified recurrence period may not be adequate to prevent washout by a flood with a longer recurrence period. Consequently, each source within the watershed must be evaluated separately for containment (flood) and for flood frequency for each floodplain in which it lies.

4.1.1.2.2.1 Containment (flood). This factor reflects the methods that have been used to prevent the release of hazardous substances from a source if it is partially or fully inundated by a flood. For each source within the watershed, assign from Table 4–7 a value for containment (flood) for each of the floodplains in which the source is partially or fully located (see section 4.1.1.2.2.2 for the applicable floodplains). If the source is not in one or more of the floodplains listed in section 4.1.1.2.2.2, then, for that source, assign a containment (flood) value of zero to each of the listed floodplains in which the source does not lie.

TABLE 4–7.—CONTAINMENT (FLOOD) VALUES

Containment criteria	Assigned value
Certification by a professional engineer that containment at the source is adequate to prevent any washout of hazardous substances by the flood being evaluated	0
Other	10

4.1.1.2.2.2 Flood frequency. This factor reflects the potential for a source or any portion of the source to be inundated by a flood from surface water within the watershed. For each source within the watershed, assign a value for flood frequency for each of the floodplains in which the source is partially or fully located. Assign the values using the criteria in Table 4–8.

TABLE 4–8.—FLOOD FREQUENCY FACTOR VALUES

Floodplain criteria	Assigned value
Source floods annually	12
Source in 10-year floodplain	10
Source in 100-year floodplain	5
Source in 500-year floodplain	1
None of the above	0

4.1.1.2.2.3 Calculation of the factor value for potential to release by flood. For each source within the watershed and for each floodplain in which the source is located, calculate a potential to release by flood value. Calculate this value as the product of the containment (flood) value and the flood frequency value for the floodplain. Select the highest value calculated for these sources. Use this value as the value for the potential to release by flood factor for the watershed. Enter, in Table 4–1, this potential to release by flood value for the watershed as well as the values for containment (flood) and flood frequency that yielded this highest value.

4.1.1.2.3 Calculation of potential to release factor value. Sum the values for the watershed for potential to release by overland flow and potential to release by flood. Assign this sum as the potential to release factor value for the watershed, subject to a maximum value of 120. Enter this value in Table 4–1.

4.1.1.3 Calculation of drinking water threat likelihood to release value. If an observed release is established for the watershed, assign the observed release factor value as the likelihood of release value for the watershed. Otherwise, assign the potential to release factor value for that watershed as the likelihood of release value for the watershed. Enter the value in Table 4–1.

4.1.2 Drinking water threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative toxicity of potential hazardous substances releases from the site. Two factors are included: toxicity/persistence and hazardous waste quantity.

The hazardous substances at the site that are to be considered in the evaluation of a watershed are restricted to those that are available to migrate via the surface water hazardous substance migration path for the watershed (section 4.0.1). Those hazardous substances available to migrate include hazardous substances establishing an observed release to surface water in the watershed as well as all hazardous substances found or documented to have been deposited at the site in a source that could be assigned a surface water containment value for either overland flow (section 4.1.1.2.1.1) or flood (section 4.1.1.2.2.1) that is greater than zero for the watershed. Also, hazardous substances whose location on the site cannot be determined but that could have been deposited in any source with a surface water containment value greater than zero are considered to be available to migrate to surface water. Hazardous substances whose location on the site cannot be determined shall be assumed to have been placed in all sources on the site, except those specific sources for which there is definitive information that indicates that the hazardous substances were not or cannot have been placed in the source.

4.1.2.1 Toxicity/persistence. In determining the toxicity/persistence value for the watershed, evaluate all hazardous substances that are available to migrate by the hazardous substance migration path for the watershed. For each hazardous substance considered, assign a toxicity value and a persistence value as described in the following sections. Combine these values into a single toxicity/persistence value for each hazardous substance as described in section 4.1.2.1.3.

4.1.2.1.1 Toxicity. Assign a toxicity value in the same manner as is discussed in Section 2.2.1.1 for each hazardous substance that is considered to be available to migrate to surface water in the watershed.

4.1.2.1.2 Persistence. Persistence of hazardous substances in the surface water environment is evaluated based on the expected reduction of the hazardous substance concentration, as a result of decay processes, over the target distance limit. Assess the persistence of hazardous substances in terms of half-life. The half-life is defined as the time to reduce the initial concentration by half as a result of the combined decay processes of biodegradation, hydrolysis, photolysis, volatilization, and free-radical oxidation.

Estimate the half-life ($t_{1/2}$) of a hazardous substance as follows:

$$t_{1/2} = \frac{1}{\frac{1}{h} + \frac{1}{b} + \frac{1}{ox} + \frac{1}{p} + \frac{1}{v}}$$

where $h = (t_{1/2})_h$ = Hydrolysis half-life.
$b = (t_{1/2})_b$ = Biodegradation half-life.
$ox = (t_{1/2})_o$ = Oxidation half-life.
$p = (t_{1/2})_p$ = Photolysis half-life.
$v = (t_{1/2})_v$ = Volatilization half-life.

Estimate the hydrolysis, biodegradation, oxidation, photolysis, and volatization half-lives using the methodology in Attachment II to this Appendix A. If one or more of these five component half-lives cannot be estimated based on available data, delete the component for that half-life from the denominator of the above equation. If none of these five component half-lives can be estimated from available data, a default procedure is used as described below. A separate half-life should be estimated for lakes and for rivers, oceans, and the Great Lakes.

If a half-life can be estimated for a hazardous substance, assign the hazardous substance a persistence value using the

appropriate portion of Table 4–9 (i.e., lake; or river, ocean, or Great Lake). If a half-life cannot be estimated from available data for those hazardous substances that are metals (or metalloids), assign a persistence value of 3 to the hazardous substance as a default for all surface water bodies. For other hazardous substances, assign a persistence value of 2 to the hazardous substance as a default for rivers, the ocean, and the Great Lakes, and a persistence value of 1 as a default for lakes.

TABLE 4–9.—PERSISTENCE VALUE

Substance half-life (days)	Assigned value
Persistence in Rivers, the Ocean, and the Great Lakes	
Less than or equal to 0.01	0
Greater than 0.01 but less than or equal to 0.1	1
Greater than 0.1 but less than or equal to 0.5	2
Greater than 0.5	3
Persistence in Lakes	
Less than or equal to 0.02	0
Greater than 0.02 but less than or equal to 2	1
Greater than 2 but less than or equal to 20	2
Greater than 20	3

Select the appropriate portion of Table 4–9 to be used in assigning the persistence value based on the type of surface water body in which the nearest drinking water intake along the hazardous substance migration path is located. If there are no drinking water intakes, then select the appropriate portion of Table 4–9 based on the type of surface water body in which the nearest intake used for any of the other water uses listed in Section 4.1.3.3 is located. If the in-water segment of the hazardous substance migration path between the probable point of entry and the selected nearest intake includes both lakes and other water bodies, use the criteria for lakes only if more than half the distance to this nearest intake lies in the lake(s). Otherwise, use the criteria for rivers, the ocean, and the Great Lakes. In those cases where there is no target intake (e.g., the water is usable but not used), use the criteria for lakes only if more than half the in-water segment of the hazardous substance migration path lies in the lake(s). Otherwise, use the criteria for rivers, the ocean, and the Great Lakes.

4.1.2.1.3 Calculation of toxicity/persistence value. Based on the overall toxicity value and the persistence value, assign a toxicity/persistence value for each hazardous substance available to migration to surface water using Table 4–10. Use the value for the substance with the highest toxicity/persistence value for the watershed as the value for this factor for the watershed. Enter this value in Table 4–1.

TABLE 4–10.—TOXICITY/PERSISTENCE VALUE

	Persistence value			
	0	1	2	3
Toxicity value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

4.1.2.2 Hazardous waste quantity. Assign a hazardous waste quantity factor value for the watershed in the same manner as is discussed in section 2.2.2 for those wastes deposited at the site that are considered to be available to the hazardous substance migration path for the watershed. Enter the value for the hazardous waste quantity factor for the watershed in Table 4–1.

4.1.2.3 Calculation of drinking water threat waste characteristics value. Sum the toxicity/persistence and hazardous waste quantity factor values for the watershed. Assign this sum as the value for drinking water threat waste characteristics for the watershed. Enter the value in Table 4–1.

4.1.3 Drinking water threat targets.

The targets factor category for the drinking water threat reflects the human population and resources potentially at risk from an actual or potential release of hazardous substances from the site to surface water resources used for drinking water or for agricultural, industrial, or commerical purposes. Three factors are evaluated: maximally exposed individual, population, and surface water use. The values for these three factors are determined as described below for each watershed and summed to obtain the overall value for drinking water threat targets for the watershed, subject to a maximum value of 200.

For two of the factors, maximally exposed individual and population, their evaluation is based on whether the target surface water intakes are considered to be subject to actual or potential contamination as defined in section 4.0.2. The determination of actual contamination can be based on samples taken at the intake or downstream from the intake as discussed in section 4.0.2. The concentrations of those hazardous substances that are present in comparable samples and that are significantly above background levels and attributable at least in part to the site (i.e., those hazardous substance concentrations that establish an observed release) define exposure concentrations for the intake. If there is more than one set of comparable samples, there may be more than one set of exposure concentrations. If the exposure concentrations are measured at the surface water intake, they can be based on the concentrations found in untreated water or treated water where treatment has not contributed to the level of the hazardous substances detected.

Actual contamination at an intake is evaluated as either level I concentrations, level II concentrations, or level III concentrations. The determination of which level applies at the intake is made based on a comparison of the exposure concentrations from comparable samples with their health-based benchmarks. Level I concentrations apply to those intakes at which one or more sets of exposure concentrations, either individually or collectively, exceed health-based benchmarks. Level II concentrations apply to those intakes for which all of the sets of exposure concentrations collectively do not exceed health-based benchmarks but for which at least one set exceeds 0.1 percent of the health-based benchmarks. This level also applies to those intakes for which the level I criteria are not met, but for which there is one or more hazardous substances in an exposure concentration that do not have health-based benchmarks available. Level III concentrations apply to those intakes for which all of the exposure concentrations collectively do not exceed 0.1 percent of health-based benchmarks. Table 3–12 (section 3.3.1) lists the criteria for determining the health-based benchmarks to be used for hazardous substances in drinking water. Table 3–13 (section 3.3.2) summarizes the criteria for determining which level applies at an intake. The procedure for making the determination is presented below.

In determining the level that applies, consider only those samples and only those hazardous substances in a sample that establish an observed release. With the exception noted below, if one or more such hazardous substances are present in a sample (or comparable samples) taken from an intake, then calculate for each such hazardous substance the percentage of its health-based benchmark at which it is present. If any hazardous substance is present in more than one comparable sample, then use the highest concentration of that hazardous substance from the comparable samples as the exposure concentration in determining the percentage of its health-based benchmark at which it is present. Sum these percentages without rounding-off. Treat sets of samples that are not comparable as separate sets of exposure concentrations, calculating separate sums for each such set. Use the highest calculated sum to determine which level is applicable as follows.

If the highest sum exceeds 100 percent, then the actual contamination at the intake is considered to meet the criteria for level I concentrations. If the highest sum is less than or equal to 100 but greater than 0.1, then the actual contamination at the intake is considered to meet the criteria for level II concentrations. If the highest sum is less than or equal to 0.1, then the actual contamination at the intake is considered to meet the criteria for level III concentrations.

The exception to the above procedure is that if one or more hazardous substances are present in a sample from the intake at concentrations that establish an observed release and for which no benchmarks are available, then the contamination at the intake is considered to meet the criteria for level II concentrations unless it can be demonstrated that the level I criteria are also met. If the level I criteria are met, they apply.

4.1.3.1 Maximally exposed individual. This factor reflects the threat to the maximally exposed individual (MEI). The calculation of the factor value requires the assignment of the appropriate dilution weighting factor from Table 4–11 for the nearest drinking water intake (either public or private) along the hazardous substance migration path for the watershed. Do not consider standby intakes in evaluating this factor unless the standby intake is used for supply at least once every year (i.e., annually).

TABLE 4–11.—DILUTION WEIGHTING FACTORS

Surface water characteristic	Average annual flow in cubic feet per second (CFS)	Assigned value[1]
Minimum perennial stream	Less than 5 cfs	10
Small to moderate stream	5 to 50 cfs	1
Moderate to large stream	Greater than 50 to 500 cfs.	0.1
Large streams to rivers	Greater than 500 to 10,000 cfs.	0.005
Major rivers	Greater than 10 000 cfs.	0.001
Ocean or the Great Lakes	Not applicable.	0.001
Mixing zone of quiet flowing rivers.	Greater than 50 cfs.	0.5

[1] The dilution weighting factor value is not to be rounded to the nearest integer.

The assignment of a dilution weighting factor requires an estimate of average annual flow sufficient to assign a stream or river to one of five categories in Table 4–11, ranging from minimum perennial stream to major river. The preferred datum is average annual discharge as defined in the U.S. Geological Survey Water Resources Data Annual Report. If this datum is not available, the average annual flow may be established based on other criteria such as annual gauging information for a period of less than five years, stream morphology, watershed area and runoff, or interpolation or extrapolation from points of documented average flow.

When the target intake being evaluated is located on a river, assign the dilution weighting factor based on the average flow in the river at the target intake. If the intake is on a lake, assign the dilution weighting factor based on the sum of the average flows for the rivers entering the lake up to the point of the intake. In those cases where flow is decreasing with distance, use the highest average flow between the intake and the probable point of entry; however, if the decrease in flow results primarily from evaporation, use the flow at the intake. Assign the ocean and the Great Lakes the same dilution weighting factor as a major river, as indicated in Table 4–11. In those cases where there is flow from a surface water body with a lower dilution weighting factor value to a surface water body with a higher dilution weighting factor value (i.e., flow is from a surface water body with more dilution to one with less dilution), then use the lower dilution weighting factor value as the dilution weighting factor value for the latter surface water body.

Mixing of hazardous substances is rapidly achieved in turbulent rivers (e.g., rocky bottoms, rapids), whereas hazardous substances tend to remain as a slug or plume for longer distances in quiet-flowing rivers (e.g., silted bottom and meandering). A zone of mixing is to be applied to a quiet-flowing river that contains the probable point of entry from the site to surface water. The zone of mixing starts at this probable point of entry and, with one exception, extends for 3 miles from the probable point of entry. The exception is that if the surface water characteristics change to turbulent within this 3-mile distance, the zone of mixing extends only to the point at which the change occurs. Assign a dilution weighting factor value of 0.5 for any intake that lies within the zone of mixing if the quiet-flowing river has an average flow greater than 50 cubic feet per second. Beyond this zone of mixing, assign a quiet-flowing river the same dilution weighting factor value as any other river. For a quiet-flowing river with an average flow less than or equal to 50 cubic feet per second, do not use the river characteristic "mixing zone of the quiet flowing river" in assigning the dilution weighting factor value to any portion of the river.

To calculate the value for the MEI factor for the watershed, multiple the dilution weighting factor for the nearest intake by 50, subject to a maximum MEI factor value of 50. If, however, there is actual contamination at any drinking water intake within the target distance limit for the watershed and the criteria for level I concentrations (as defined in sections 4.0.2 and 4.1.3) are met at any intake, assign the MEI factor a value of 50 for the watershed. Do not consider standby intakes in evaluating the MEI factor unless the standby intake is used for supply at least once a year (i.e., annually). Enter the value assigned in Table 4–1.

4.1.3.2 Population. This factor reflects the number of people at risk from actual or potential contamination of the in-water segment of the hazardous substance migration path for the watershed. The population factor is evaluated, as described below, from four additional factors: level I concentrations, level II concentrations, level III concentrations, and potential contamination. Evaluate the level I concentrations factor described in section 4.1.3.2.1 for each intake meeting the criteria for level I concentrations. Evaluate the level II concentrations factor described in section 4.1.3.2.2 for each intake meeting the criteria for level II concentrations. Evaluate the level III concentrations factor described in section 4.1.3.2.3 for each intake meeting the criteria for level III concentrations. Evaluate the potential contamination factor described in section 4.1.3.2.4 for all other intakes.

The population count to be used in evaluating each of these factors should include persons served by drinking water drawn from intakes (both public and private) that are along the surface water hazardous substance migration path for the watershed (section 4.0.1) and that are within the target distance limits defined in section 4.0.2. Include residents as well as others who would regularly use the water, such as students and workers. Exclude transient populations such as customers and travelers passing through the area in autos, buses, or trains. In determining the population served by an intake, if the water from the intake is blended with other water (e.g., water from other intakes or ground water wells), count the population regularly served by the entire blended system as the population served by the intake. When a standby intake is maintained on a regular basis so that surface water supplies can be withdrawn, treat the standby intake as an active intake and count the population.

Use exact population counts where possible. If actual residential population figures are not available, the population should be estimated by determining the number of residences and multiplying each residence by the most recent U.S. Census factor for the number of persons per residence for the county in which the residence is located.

4.1.3.2.1 Level I concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water at concentrations that both establish an observed release and, either individually or collectively, meet the level I criteria (as defined in sections 4.0.2 and 4.1.3). Only count persons in this category who use intakes that are subject to level I concentrations as defined in section 4.1.3.

The population count is the value for this factor, subject to a maximum value of 200. Sum the number of people served by water from intakes that are subject to level I concentrations and enter the value in Table 4–1, subject to the maximum of 200.

4.1.3.2.2 Level II concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water which are at concentrations, either individually or collectively, that establish an observed release and that do not meet the level I criteria, but that do meet the level II criteria (as defined in sections 4.0.2 and 4.1.3). Populations counted under the level I concentrations factor are not counted under this factor.

Sum the number of people served by water from intakes that are subject to level II concentrations. This sum divided by 10 is the value for this factor, subject to a maximum of 200. Enter the value in Table 4–1.

4.1.3.2.3 Level III concentrations. This factor represents the total number of people who are exposed to hazardous substances in drinking water that are at concentrations which establish an observed release, but that individually or collectively do not meet the level I or II criteria (as defined in sections 4.0.2 and 4.1.3). Populations counted under the level I or level II concentrations factors are not included in this factor.

Sum the number of people served by water from intakes that are subject to level III concentrations. This sum divided by 100 is the value for this factor, subject to a maximum of 200. Enter the value in Table 4–1.

4.1.3.2.4 Potential contamination. This factor represents the population within the target distance limit for the watershed, that is potentially exposed to hazardous substances in drinking water (i.e., population served by surface water intakes subject to potential contamination as defined in section 4.1.3). Thus, populations counted in the level I, level II, and level III concentrations factors are not included.

Calculate the value for the potential contamination factor (PC) for the watershed as follows, subject to a maximum value of 200:

$$PC = \frac{1}{100} \times \sum_{i=1}^{n} P_i \quad D_i$$

where:

P_i = Population using intake i.
D_i = Dilution weighting factor for intake i.
n = Number of intakes.

Determine the appropriate dilution weighting factor for each intake from Table 4–11, as described in section 4.1.3.1. Enter the value for PC in Table 4–1, subject to a maximum of 200.

4.1.3.2.5 Calculation of population factor value. Sum the factor values for level I concentrations, level II concentrations, level III concentrations, and potential contamination. Assign this sum as the population factor value for the watershed, subject to a maximum value of 200. Enter this value in Table 4–1.

4.1.3.3 Surface water use. This factor indicates the use and value of surface water drawn from the in-water segment of the hazardous substance migration path within the target distance limit for the watershed. Two categories of surface water use are evaluated: drinking water use and other water use.

4.1.3.3.1 Drinking water use. Drinking water use is a measure of the use of surface water for direct human ingestion. Assess all intakes drawing drinking water from the in-water segment of the hazardous substance migration path that are within the target distance limit for the watershed. The drinking water use value for an intake is the highest value that can be assigned to any drinking water use for that intake. Assign a drinking water use value to the intake using Table 4–12. If there are no intakes within the target distance limit, assign a value from Table 4–12 to the surface water within the target distance limit for the watershed based on its resource value for drinking water use.

TABLE 4–12.—DRINKING WATER USE—SURFACE WATER

Type of use	Assigned value
DRINKING WATER—PUBLIC WATER SUPPLY [1]	
An adequate alternative supply has not been developed:	
—and no studies have been completed which verify that such a supply is technically and economically feasible	50
—but could be developed, although it would be threatened by the site	45
—but could be developed and would be unthreatened by the site	40
An alternative source is already developed and can be brought into use without major changes in the system:	
—alternate source threatened by the site	35
—alternate source unthreatened by the site	30
The target intake being evaluated is a standby intake for the system:	
—used less than annually, but used within past 10 years	25
—maintained but not used within the past 10 years	20
DRINKING WATER—PRIVATE WATER SUPPLY [1]	
No alternative supply is readily available with minimum hookup requirements	40
An alternative unthreatened supply is readily available with minimum hookup requirements	15
NOT CURRENTLY USED FOR DRINKING WATER	
Designated by State for drinking water use [2] but not currently used	15
Not currently used and does not meet the criteria for an assigned value of zero	5
Not usable without extensive treatment because of naturally-occurring water quality problems	0

[1] An intake is defined as a public water supply if it is part of a system having at least 15 service connections or regularly serves at least 25 individuals. An intake is defined as private water supply, for HRS purposes, if it is part of a system that does not meet the definition of a public water supply. A standby intake, if used for supply at least once every year (i.e., annually), is treated as if it is a public or private water supply and not as a standby well.
[2] Table I–1 of Attachment I of this Appendix A presents the State designations for drinking water use.

To be defined as adequate in Table 4–12, an alternative supply must be capable of providing sufficient volume and also must not require extensive or unconventional treatment (e.g., for high salinity). Bottled water or water delivered by vehicle is considered for HRS purposes to be a temporary measure rather than an alternative supply. An alternative supply is considered threatened if water from the alternative supply is withdrawn from surface water within the target distance limit of the site, providing that a hazardous substance migration path can be defined for the watershed containing that surface water. An alternate supply is also considered threatened if water from the alternate supply is withdrawn from aquifers within the ground water target distance limit (see section 3.0.1.1) of the site.

4.1.3.3.2 Other water use. Other water use is a measure of the use of surface water for agricultural, commercial and industrial purposes. Assess all intakes drawing water from the in-water segment of the hazardous substance migration path that are within the target distance limit for the watershed. The other water use value for an intake is the highest value that can be assigned to any other water use for that intake. Assign an other water use value to the intake using Table 4–13.

TABLE 4–13.—OTHER WATER USE—SURFACE WATER

Type of use	Assigned value
Used for irrigation (5 acre minimum) of commercial food crops or commercial forage crops	20
Used for commercial livestock watering	20
Used for commercial food preparation	15
Used for commercial/industrial purposes other than drinking water, recreation, fishery, or transportation	10
Not used for any of the above	0

4.1.3.3.3 Calculation of surface water use factor value. For all of the intakes evaluated (or for the resource use), select the highest value assigned from section 4.1.3.3.1 and assign that highest value to the drinking water factor for the watershed. Similarly, for all of the intakes evaluated for the watershed (except the one used to assign the drinking water factor value), select the highest value assigned from section 4.1.3.3.2 and assign the other water use factor that highest value.[9] Sum the assigned values for the drinking water use factor and the other use factor. Assign this sum, not to exceed 50, as the value for the surface water use factor for the watershed.

Note that if the surface water use factor is assigned a nonzero value for the watershed, then the fisheries use factor in section 4.2.3.2 must be assigned a value of zero for the watershed. If the fisheries use factor is assigned a nonzero value for the watershed, then the surface water use factor must be assigned a value of zero for the watershed. The use (surface water use or fisheries use) which results in the higher overall surface water migration pathway score for the watershed should be assigned the nonzero factor value; the other use should be assigned a factor value of zero.[10]

[9] Note that this procedure may be performed in the opposite order (i.e., assign other water use factor value first) if it results in higher value being assigned to the surface water use factor.
[10] Note this determination can be made as follows: Multiply the value for the waste

Continued

Enter the value for drinking water use and the value for other water use for the watershed on Table 4–1. If the fisheries use factor is to be assigned a nonzero value, then enter in Table 4–1 a zero for the surface water use factor. Otherwise, sum the values for drinking water use and other water use and enter the sum, subject to a maximum value of 50, on Table 4–1 as the value for the surface water use factor for the watershed.

4.1.3.4 Calculation of the drinking water threat targets value. Sum the MEI, population and surface water use factor values for the watershed. This sum is the drinking water threat targets value for the watershed, subject to a maximum value of 200. Enter the targets value in Table 4–1.

4.1.4 Calculation of the drinking water threat score for a watershed.

Multiply the values for the likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and drinking water threat targets (maximum value of 200) for the watershed. The product is the drinking water threat score for the watershed. Enter the score (maximum value of 4,800,000) in Table 4–1.

4.2 Human food chain threat.

The human food chain threat is used to evaluate the threat associated with the actual or potential release of hazardous substances to surface waters containing human food chain organisms. The human food chain threat score for a watershed is the product of the values for three factor categories: likelihood of release, waste characteristics and targets.

4.2.1 Human food chain threat likelihood of release.

Assign the same value for human food chain threat likelihood of release for the watershed as was assigned for drinking water threat likelihood of release for the watershed in section 4.1.1.3. Enter this value in Table 4–1.

4.2.2 Human food chain threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration and relative human toxicity of potential hazardous substances releases from the site to the human food chain. Two factors are included: toxicity/persistence and hazardous waste quantity.

4.2.2.1 Toxicity/persistence. Evaluate toxicity/persistence for the human food chain threat in the same manner as toxicity/persistence is evaluated for the drinking water threat (Section 4.1.2.1) except as discussed below. The major exception relates to the role that bioaccumulation potential plays in the selection of the substance whose toxicity/persistence value is employed in the evaluation for the watershed. The hazardous substances to be considered are all those eligible to be considered for the drinking water threat for the watershed (see section 4.1.2).

4.2.2.1.1 Bioaccumulation potential. Use the following data hierarchy to assign a bioaccumulation potential value to each hazardous substance:

- Bioconcentration factor (BCF) data.
- Logarithm of the n-octanol-water partition coefficient (log Pow) data.
- Water solubility data.

Assign a bioaccumulation potential value to each hazardous substance using Table 4–14.

TABLE 4–14.—BIOACCUMULATION POTENTIAL VALUE

	Assigned value [1]
If BCF data are available, assign a value as follows:	
BCF	
Greater than or equal to 10,000	6
1,000 to less than 10,000	5
100 to less than 1,000	4
10 to less than 100	3
1 to less than 10	2
Less than 1	1
If BCF data are not available, assign a value as follows:	
Log Pow	
5.5 to 6.0	6
4.5 to less than 5.5	5
3.2 to less than 4.5	4
2.0 to less than 3.2	3
0.8 to less than 2.0	2
Less than 0.8	1
If Log Pow data are not available or exceed 6.0, assign a value as follows:	
Water Solubility (mg/l)	
Less than 25	6
25 to 500	5
Greater than 500 to 1500	4
Greater than 1500	1

[1] If the hazardous substance biomagnifies, increase the assigned value by one, except that the assigned value may not exceed 6.

If a BCF is available for any aquatic human food chain organism for the substance being evaluated, use the BCF to assign the bioaccumulation potential value to the hazardous substance. Use the following hierarchy for BCF data:

- BCF values in EPA Water Quality Criteria Documents.
- BCF values from peer reviewed literature.

If, within the same level of the hierarchy, BCFs are available for more than one species or from more than one bioassay of the same species, use the highest reported BCF in assigning a bioaccumulation potential value to the hazardous substance.

If BCF data are not available for the hazardous substance, use log Pow data to assign a bioaccumulation potential value to organic substances. Log Pow data are not to be used to assign a value to inorganic substances. If log Pow data are not available for the hazardous substance or if the log Pow exceeds 6.0, use water solubility data to assign a bioaccumulation potential value. (Use water solubility data as defined in section 3.2.1.2.) If none of these data are available, assign the hazardous substance the minimum bioaccumulation potential value of 1.

If a hazardous substance is reported in EPA Water Quality Criteria documents or peer reviewed literature to biomagnify [11], increase the assigned value by one in all cases, except that a hazardous substance must not be assigned a bioaccumulation potential value higher than 6.

4.2.2.1.2 Toxicity. Select those hazardous substances that have the highest bioaccumulation potential value. Assign a value for toxicity to these hazardous substances using the same procedures described in section 4.1.2.1.1.

4.2.2.1.3 Persistence. Evaluate the persistence of the set of hazardous substances that have the highest bioaccumulation potential value. Assign a value for persistence to each hazardous substance in the set, using the same procedures described in section 4.1.2.1.2, with one exception. In assigning the persistence value, use the predominant water category (i.e., lake; or river, ocean or Great Lake) between the probable point of entry and the nearest fishery (not the nearest drinking water intake) along the hazardous substance migration path for the watershed to determine which portion of the persistence rating table is to be used. The predominant water category is determined based on distance as described in section 4.1.2.1.2.

4.2.2.1.4 Calculation of the toxicity/persistence value, considering bioaccumulation. Bioaccumulation potential is considered in the selection of the substance whose toxicity/persistence value is employed in evaluating the human food chain threat for the watershed. For the set of hazardous substances with the highest bioaccumulation potential value for the watershed, assign a toxicity/persistence value to each hazardous substance in the set, using Table 4–10. Select that hazardous substance with the highest human toxicity/persistence value. Use the toxicity/persistence value of this hazardous substance as the assigned toxicity/persistence factor value for the watershed. The bioaccumulation potential value of this same hazardous substance must also be used in evaluating human exposure for the watershed in section 4.2.3. Enter the value for toxicity/persistence for this hazardous substance in Table 4–1.

4.2.2.2 Hazardous waste quantity. Assign the same factor value for hazardous waste quantity for the watershed as is assigned in section 4.1.2.2. Enter this value in Table 4–1.

4.2.2.3 Calculation of human food chain threat waste characteristics value. Sum the toxicity/persistence and hazardous waste quantity factor value for the watershed. Assign this sum as the value for the human food chain threat waste characteristics for the watershed. Enter this value in Table 4–1.

characteristics (drinking water) factor category times the value for the surface water use factor, and multiply the value for the waste characteristics (human food chain) factor category times fishery use factor value. For the smaller of the two products, assign its "use" factor the value of zero.

[11] Biomagnification is the process whereby the tissue concentration of a bioaccumulated substance increases at each step in the food chain, as the substance moves through two or more trophic levels.

4.2.3 Human food chain threat targets.

This targets factor category reflects the human population and fishery resources potentially at risk from an actual or potential release of hazardous substances from the site to aquatic human food chain resources. Two factors are evaluated: population and fishery use.

4.2.3.1 Population. The population factor value is determined for the watershed from two factors: potential human food chain contamination and actual human food chain contamination.

The actual human food chain contamination factor is to be used only for those fisheries along the hazardous substance migration path for the watershed at which either of the following apply:

- There is a closed fishery, and the hazardous substance(s) for which the fishery has been closed has been documented in an observed release from the site for the watershed, and at least a portion of the fishery is within the boundaries of the observed release (i.e., probable point of entry to furthest sampling point establishing the observed release).
- A tissue sample from a human food chain organism from a fishery exceeds an FDA action level and the hazardous substance which exceeds the FDA action level has been documented in an observed release from the site, and at least a portion of the fishery is within the boundaries of the observed release.

The potential human food chain contamination factor is to be used for all other fisheries that are partially or fully within the target distance limit for the watershed, including fisheries partially or fully within the boundaries of an observed release for the watershed that do not meet either of the two criteria listed above. If only a portion of a fishery is within the target distance limit, only that portion is considered in the evaluation of the population factor.

4.2.3.1.1 Potential human food chain contamination. This factor reflects the threat to the human population potentially exposed to hazardous substances through the aquatic human food chain. This factor is evaluated only for those fisheries that do not meet the criteria for actual human food chain contamination and that are partially or fully within the target distance limit for the watershed. Calculate the value for the potential human food chain contamination factor (PF) for the watershed as follows, subject to a maximum value of 200:

$$PF = \frac{1}{100} \times \sum_{i=1}^{n} P_i \, D_i$$

where:

P_i = Human food chain population for fishery i.

D_i = Dilution weighting factor for fishery i.

n = Number of fisheries.

Assign the dilution weighting factor a value as indicated in Table 4–7 of section 4.1.3.1, with the following exception: the river characteristic "mixing zone of quiet flowing rivers" is not to be used in assigning a dilution weighting factor. Determine the value for the human food chain population for each fishery, using values assigned to the bioaccumulation potential and to human food chain production as described below. Set boundaries between fisheries at those points where a change in human food chain production results in a different assigned value or where a change in stream flow results in a change in the dilution weighting factor.

In assigning the bioaccumulation potential value, use the bioaccumulation potential value for the same hazardous substance used to assign the toxicity/persistence factor value for this watershed in section 4.2.2.1.4.

The human food chain production is the annual production (in pounds) of human food chain organisms (e.g., fish, shellfish) from within the fishery under evaluation. Estimate human food chain production using the following hierarchy of data:

- Actual data on yield from the surface water body or on the stocking rate for the surface water body.
- Actual data on productivity of the surface water body.
- Default values on standing crop from Table I–5 of Attachment I to this Appendix A.

Convert standing crop data (a common measure of productivity) to pounds of fish per year within the hazardous substance migration path. In addition, multiply the standing crop data by 0.2 to convert the standing crop data to human food chain yield. (Note that each 1 foot section of stream width over a distance of 15 miles is equivalent to 1.82 acres.) Use Table 4–15 to assign human food chain production a value.

TABLE 4–15.—VALUES FOR HUMAN FOOD CHAIN PRODUCTION

Human food chain production (pounds per year)	Assigned value
0	0
Greater than 0 to 10	1
Greater than 10 to 100	2
Greater than 100 to 1,000	3
Greater than 1,000 to 10,000	4
Greater than 10,000 to 100,000	5
Greater than 100,000 to 1,000,000	6
Greater than 10^6 to 10^7	7
Greater than 10^7	8

Based on the values assigned to bioaccumulation potential and human food chain production, determine the value for human food chain population using Table 4–16.

TABLE 4–16.—HUMAN FOOD CHAIN POPULATION VALUE

	Human Food Chain Production Value								
	0	1	2	3	4	5	6	7	8
Bioaccumulation potential factor:									
6	0	160	1,600	16,000	160,000	1.6×10^6	1.6×10^7	* 2.0×10^7	2.0×10^7
5	0	16	160	1,600	16,000	160,000	1.6×10^6	1.6×10^7	2.0×10^7
4	0	2	16	160	1,600	16,000	160,000	1.6×10^6	1.6×10^7
3	0	0	2	16	160	1,600	16,000	160,000	1.6×10^6
2	0	0	0	2	16	160	1,600	16,000	160,000
1	0	0	0	0	2	16	160	1,600	16,000

* A value of 2.0×10^7 or greater will result in the maximum value for the human exposure factor for all dilution weighting factors

Calculate the value for the potential human food chain contamination factor for the watershed using the formula for PF in this section. Enter the value, subject to a maximum of 200, in Table 4–1.

4.2.3.1.2 Actual human food chain contamination. This factor is to be used only for those fisheries which meet either of the two criteria in section 4.2.3.1. If these criteria do not apply, assign this factor a value of zero for the watershed, and enter the value in Table 4–1.

If either criteria applies for the watershed, estimate the human food chain population value for each such fishery from Table 4–16, using values assigned to the bioaccumulation potential and to human food production as described below.

In assigning the bioaccumulation potential value, use the bioaccumulation potential value for the same hazardous substance used to assign the toxicity/persistence factor value for this watershed in Section 4.2.2.1.4. Human food chain production is assigned a value as described in Section 4.2.3.1.1, except that for a closed fishery the data on yield, stocking rate, or productivity that are to be considered within the specified data hierarchy are to be the most recent data available for the period prior to closure of the fishery.

Calculate the value for the actual human food chain contamination for the watershed as the sum of the human food chain population values for each fishery, subject to a maximum factor value of 200. Enter the factor value in Table 4–1.

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4.2.3.1.3 Calculation of the population factor value. Sum the values for potential human food chain contamination and actual human food chain contamination for the watershed. Assign this sum as the population factor value for the watershed, subject to a maximum value of 200. Enter this factor value in Table 4–1.

4.2.3.2 Fishery use. This factor reflects the nature and utility of the fisheries along the hazardous substance migration path for the watershed. Assign each fishery the highest value applicable from Table 4–17.

TABLE 4–17.—VALUES FOR FISHERY USE

Activity	Assigned Value
Commercial fishing for human consumption (including fish farming)	50
Subsistence fishing	40
Recreation/sport fishing	30
None of the above	0

For all the fisheries evaluated for the watershed, select the highest value assigned to any fishery and assign the fishery use factor that highest value, except as noted below.

If the fishery use factor has an assigned value of zero for the watershed, enter that value on Table 4–1. If the fishery use factor has a nonzero value and the surface water use factor (section 4.1.4) has a value of zero for the watershed, enter the value of the fishery use factor in Table 4–1. If, however, both the fishery use factor and the surface water use factor have a nonzero value assigned for the watershed, one of those values must be set to zero for the watershed. The use (fishery use or surface water use) which results in the highest overall surface water migration pathway score for the watershed should be assigned the nonzero factor value and the other use should be assigned a factor value of zero.[12] Decide which use factor is to be assigned the nonzero value and which is to be assigned the zero value for the watershed. Adjust the value for the surface water use factor in Table 4–1 in this manner if necessary, and enter the value for fishery use in Table 4–1.

[12] Note that this determination can be made as follows. Multiply the value for the waste characteristics (drinking water threat) factor category times the value for the surface water use factor, and multiply the value for the waste characteristics (human food chain threat) times the value for fishery use factor. For the smaller of the two products, assign its "use" factor the value of zero. (Note that the maximum value for both drinking water targets and human food chain targets is 200. Consequently, if the value for the fishery use factor exceeds 200 minus the population factor value assigned in section 4.2.3.1.3, then use a value equal to 200 minus this population factor value in the above calculation in place of the fishery use factor value. Similary, if the value for the surface water use factor exceeds 200 minus the population factor value assigned in section 4.1.3.2.5 minus the MEI factor value assigned in section 4.1.3.1, then use a value equal to 200 minus this population factor value minus this MEI factor value in the above calculation in place of the surface water use factor value.)

4.2.3.3 Calculation of human food chain threat targets value. Sum the population and fishery use factor values for the watershed. This sum is the human food chain threat targets value for the watershed, subject to a maximum value of 200. Enter the value in Table 4–1.

4.2.4 Calculation of the human food chain threat score for a watershed.

Multiply the human food chain threat values for likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and targets (maximum value of 200) for the watershed. Assign this product as the human food chain threat score for the watershed. Enter the score (maximum value of 4,800,000) in Table 4–1.

4.3 Human recreation threat.

The human recreation threat is used to evaluate the threat associated with the actual or potential release of hazardous substances to surface water used for human recreation. Recreation is defined, for the evaluation of this threat, as swimming or fishing in surface water. Recreation areas are those in which these activities take place. However, rivers with average annual flows less than 5 cubic feet per second and ponds less than 5 acres in size are excluded from consideration.

The human recreation threat score is the product of the values for three factor categories: likelihood of release, waste characteristics, and targets.

4.3.1 Human recreation threat likelihood of release.

Assign the same value for human recreation threat likelihood of release for the watershed as is assigned in section 4.1.1.3 for drinking water threat likelihood of release for the watershed. Enter this value in Table 4–1.

4.3.2 Human recreation threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative human toxicity of potential hazardous substances releases from the site to surface waters used for recreation in the watershed. Two factors are included: toxicity/persistence and hazardous waste quantity.

4.3.2.1 Toxicity/persistence. Evaluate toxicity/persistence for the human recreation threat in the same manner that toxicity/persistence is evaluated for the drinking water threat (section 4.1.2.1) except as discussed below. The major exception relates to the role that the dose adjusting factor plays in the selection of the substance whose toxicity/persistence value is employed in the evaluation for the watershed. The hazardous substances to be considered are all those eligible to be considered for the drinking water threat for the watershed (see section 4.1.2).

4.3.2.1.1 Dose adjusting factor. The dose adjusting factor represents the ratio of the dose of a hazardous substance that an individual would obtain via recreation in surface water to the dose that would be obtained via consumption of the same surface water as drinking water. Assign a dose adjusting factor value to each hazardous substance using the following equation and Table 4–18.

$$DF = (0.66 \times D_p) + (0.16 \times MF) + 0.0013$$

where:

DF = Dose adjusting factor.

D_p = Dermal permeability constant for the hazardous substance (cm/hr).

MF = Mass flux dilution factor for the hazardous substance ($1/m^3$).

TABLE 4–18.—DOSE ADJUSTING FACTOR EVALUATION TABLE

Dose Adjusting Factor (DF)	Assigned factor value
Greater than or equal to 0.1	3
0.01 to less than 0.1	2
0.001 to less than 0.01	1

Use values for the dermal permeability constant obtained from peer reviewed literature. If no such data are available, set $D_p = 0$ for that hazardous substance. "Analysis of Human Health Risks of Recreational Exposure to Toxic Pollutants in Surface Waters Near National Priority List (NPL) Sites, Appendix A," (EPA Contract No. 68–01–7090), Versar Inc., Springfield, VA, 1987, describes the method used to obtain the mass flux dilution factor for a hazardous substance.

4.3.2.1.2 Toxicity. Select those hazardous substances that have the highest dose adjusting factor value. Assign a value for toxicity to those hazardous substances using the same procedures described in Section 4.1.2.1.1.

4.3.2.1.3 Persistence. Evaluate the persistence of the set of hazardous substances that have the highest dose adjusting factor. Assign a value for persistence using the same procedures described in section 4.1.2.1.2, with one exception. In assigning the persistence value, use the predominant water category (i.e., lake; or river, ocean or Great Lake) between the probable point of entry and the nearest recreation area (not the nearest drinking water intake) along the hazardous substance migration path for the watershed to determine which portion of the persistence rating table is to be used. The predominant water category is determined based on distance as described in section 4.1.2.1.2.

4.3.2.1.4 Calculation of the toxicity/persistence value, considering the dose adjusting factor. The dose adjusting factor is considered in the selection of the hazardous substance whose toxicity/persistence value is employed in evaluating the human recreation threat for the watershed. For the set of hazardous substances with the highest dose adjusting factor value for the watershed, assign a toxicity/persistence value to each hazardous substance in the set, using Table 4–10. Select that hazardous substance with the highest human toxicity/persistence value. Use the toxicity/persistence value of this hazardous substance as the assigned toxicity/persistence factor value for the watershed. The dose adjusting factor value for this same hazardous substance must also

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be used in evaluating human recreation targets for the watershed in section 4.3.3. Enter the value for toxicity/persistence for this hazardous substance in Table 4–1.

4.3.2.2 Hazardous waste quantity. Assign the same factor value for hazardous waste quantity for the watershed as is assigned in section 4.1.2.2. Enter this value in Table 4–1.

4.3.2.3 Calculation of human recreation threat waste characteristics value. Sum the toxicity/persistence and hazardous waste quantity factor values for the watershed. Assign this sum as the value for human recreation threat waste characteristics for the watershed. Enter this value in Table 4–1.

4.3.3 Human recreation threat targets.

This targets factor category reflects the human population potentially at risk from an actual or potential release of hazardous substances from the site to surface waters used for recreation. The human recreation targets are evaluated based on one factor: population. (This factor also includes components for evaluating the attractiveness and accessibility of the surface water recreation area.) The evaluation of the population factor is based on whether the surface water recreation areas are considered to be subject to actual or potential contamination as defined in section 4.0.2. The determination of whether a specific recreation area is subject to actual or potential contamination is to be made as described in section 4.1.3.

4.3.3.1 Population. The population factor value for the watershed is determined from two factors: actual contamination and potential contamination.

4.3.3.1.1 Actual contamination. This factor is to be used only for those recreation areas that are subject to actual contamination as defined in sections 4.0.2 and 4.1.3 and that are wholly or partially within the target distance limit for the watershed. If only a portion of the recreation area is within the target distance limit for the watershed, consider only that portion in the evaluation. If there are no recreation areas that meet these criteria, assign the actual contamination factor a value of zero, and enter this value in Table 4–1.

If there are recreation areas that meet the above criteria, a human recreation population value is derived for each such recreation area as described in section 4.3.3.1.1.2. The human recreation population value is derived using values assigned to the dose adjusting factor and to the recreation use population factor for that recreation area. The value for the recreation use population factor for the recreation area is determined as discussed in section 4.3.3.1.1.1. The value for the dose adjusting factor is determined as discussed in section 4.3.2.1.1; use the dose adjusting factor value for the same hazardous substance used to assign the toxicity/persistence factor value for the watershed in section 4.3.2.1.4. Boundaries between recreation areas are set at those points where a change in recreation use population value results in a different assigned value or where a change in stream flow results in a change in the dilution weighting factor.

4.3.3.1.1.1 Recreation use population. To determine the recreation use population factor value for a recreation area, first use Table 4–19 and the criteria discussed below to place the recreation area into a recreation category and then to assign an accessibility/attractiveness factor value to the recreation area based on this recreation category. The accessibility/attractiveness factor value is not to be rounded to the nearest integer.

TABLE 4–19.—ACCESSIBILITY/ATTRACTIVENESS FACTOR[1]

Recreation area category[2]	Accessibility/attractiveness factor value[3]	Distance limit (miles)
Capitol use and access improvements	1.00	125 [4](N=8)
Access improvements only	0.66	80 (N=6)
Observed use only	0.33	40 (N=4)
None of the above criteria apply and access is not restricted	0.08	10 (N=2)

[1] Applies to flowing water bodies (greater than or equal to 5 CFS) and lakes/reservoirs/ponds (greater than or equal to 5 acres).

[2] See text for the specific types of recreation areas within each category.

[3] If more than one category applies, select the highest factor value that applies. The accessibility/attractiveness factor value is not to be rounded to the nearest integer.

[4] N=Number of distance categories in Table 4–20 to be used within the indicated distance limit for evaluating the recreation use population factor for the recreation area.

Assign an accessibility/attractiveness factor value of 1.0 when any one of the following are present at the waterfront for that recreation area: designated swimming beaches and areas, boat ramps or boat rental facilities, public recreation piers, marinas, waterfront parks, waterfront campgrounds, waterfront picnic areas, recreation fish stocking (e.g., trout streams), or designated water-sport recreation areas.

Assign a factor value of 0.66 where the following are present: public land access or roads or bridges that provide waterfront access to the public, but no other capital improvements are present.

Assign a factor value of 0.33 when there are no signs of access or use improvements and the surface water is observed to be in use for recreational activities.

Assign a factor value of 0.08 for other surface waters except those whose access is restricted (e.g., by private, nonresidential property owners). Where access is restricted and none of the other categories apply, assign a factor value of zero.

Next, based on the applicable recreation category, use Table 4–19 to select the maximum distance over which the recreation use population is to be estimated for the recreation area and the number of distance categories (N) to be used in counting the population within this maximum distance limit. Table 4–20 indicates the specific distance categories in which population is to be counted within this maximum distance limit and the distance category multipliers to be applied to the population count within each of these distance categories. The location for centering these distance measurements is defined as the access point of the recreation area nearest the largest population center within the appropriate maximum distance limit determined from Table 4–19; the location for centering these measurements is not the site itself.

TABLE 4–20.—DISTANCE CATEGORY MULTIPLIERS FOR CALCULATION OF RECREATION USE POPULATION

Distance category (miles)	Multiplier[1]
Distance Category Multipliers for Rivers (Greater than or equal to 5 CFS) and Ponds (5 to 500 Acres)	
0 to less than 5	0.45
5 to less than 10	0.15
10 to less than 20	0.074
20 to less than 40	0.037
40 to less than 60	0.022
60 to less than 80	0.016
80 to less than 100	0.012
100 to less than 125	0.010
Distance Category Multipliers for Small Lakes (Greater than 500 to 1,000 Acres)	
0 to less than 5	0.46
5 to less than 10	0.15
10 to less than 20	0.077
20 to less than 40	0.039
40 to less than 60	0.023
60 to less than 80	0.017
80 to less than 100	0.013
100 to less than 125	0.011
Distance Category Multipliers for Medium Lakes (Greater than 1,000 to 5,000 Acres)	
0 to less than 5	0.52
5 to less than 10	0.17
10 to less than 20	0.086
20 to less than 40	0.04
40 to less than 60	0.026
60 to less than 80	0.019
80 to less than 100	0.014
100 to less than 125	0.012
Distance Category Multipliers for Large Lakes (Greater than 5,000 Acres)	
0 to less than 5	0.65
5 to less than 10	0.22
10 to less than 20	0.11
20 to less than 40	0.055
40 to less than 60	0.033
60 to less than 80	0.023
80 to less than 100	0.018
100 to less than 125	0.015

[1] These multipliers are not to be rounded to the nearest integer.

Determine the population residing within each applicable distance category. Use actual population numbers where possible. If such data are not available, use Bureau of Census data (which is available in both noncomputerized form and as part of available computerized population data bases).

Determine a recreation use population value (RU) for a recreation area using the following equation:

$$RU = AAF \times \sum_{i=1}^{n} M_i P_i$$

where:
RU=Recreation use population value.
AAF=Accessibility/attractiveness factor value for the recreation area.

N = Number of distance categories applicable to the recreation area.
M_i = Multiplier associated with distance category i.
P_i = Number of people within distance category i.

Use Table 4–21 to assign a value to the recreation use population factor for each recreation area based on the value of RU calculated above.

TABLE 4–21.—RECREATION USE POPULATION FACTOR VALUES

Recreation use population value (RU)	Assigned factor value
Greater than 1,000,000	7
100,000 to less than 1,000,000	6
10,000 to less than 100,000	5
1,000 to less than 10,000	4
100 to less than 1,000	3
10 to less than 100	2
1 to less than 10	1
0	0

4.3.3.1.1.2 Determination of human recreation population value. Based on the values assigned to the dose adjusting factor and the recreation use population factor, use Table 4–22 to determine the human recreation population value for each recreation area.

TABLE 4–22.—HUMAN RECREATION POPULATION VALUE

	Recreation Use Population Factor Value							
	0	1	2	3	4	5	6	7
Does Adjusting Factor Value:								
3	0	3	25	250	2,500	25,000	250,000	2,500,000
2	0	0	3	25	250	2,500	25,000	250,000
1	0	0	0	3	25	250	2,500	25,000

4.3.3.1.1.3 Determination of actual contamination factor value. Divide the human recreation population value for each recreation area by 10. Use the resulting value as the value for the actual contamination factor for that recreation area. Select the highest actual contamination factor value assigned to any recreation area evaluated for the watershed. Assign the value selected as the value for the actual contamination factor for the watershed, subject to a maximum factor value of 200. Enter this factor value in Table 4–1.

4.3.3.1.2 Potential contamination. This factor reflects the threat to the human population potentially exposed to hazardous substances through aquatic recreation activities. This factor is evaluated only for those recreation areas that are not subject to actual contamination as defined in Sections 4.0.2 and 4.1.3. and that are wholly or partially within the target distance limit for the watershed (see section 4.3.3.1.1). If only a portion of the recreation area is within the target distance limit for the watershed, consider only that portion in the evaluation.

Calculate a human recreation population value as described in sections 4.3.3.1.1.1 and 4.3.3.1.1.2 for each recreation area evaluated for potential contamination for the watershed. Assign a dilution weighting factor value for the recreation area as indicated in Table 4–11 of section 4.1.3.1, with the following exception: the river characteristic "mixing zone of quiet flowing rivers" is not to be used in assigning a dilution weighting factor value. Determine boundaries between recreation areas as described in section 4.3.3.1.1.

Multiply the population value calculated above by the dilution factor value and divide the result by 100. Use the resulting value as the value for the potential contamination factor value for that recreation area. Select the highest potential contamination factor value assigned to any recreation area evaluated for the watershed. Assign the value selected as the value for the potential contamination factor for the watershed, subject to a maximum factor value of 200. Enter this factor value in Table 4–1.

4.3.3.1.3 Calculation of human recreation threat targets value. Assign the higher of the values for the actual contamination and potential contamination factors as the population factor value for the watershed, subject to a maximum value of 200. Enter this value in Table 4–1. Assign this same value to the human recreation threat targets factor category for the watershed and enter the value in Table 4–1.

4.3.4 Calculation of the human recreation threat score for a watershed.

Multiply the human recreation threat values for likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and targets (maximum value of 200) for the watershed. The product is the human recreation threat score for the watershed. Enter the resulting product (maximum value of 4,800,000) in Table 4–1.

4.4 Environmental threat.

The environmental threat is used to evaluate the threat associated with the actual or potential release of hazardous substances to surface water related sensitive environments. The environmental threat score for the watershed is the product of the values for the following: likelihood of release, waste characteristics, and targets.

4.4.1 Environmental threat likelihood of release.

Assign the same value for environmental threat likelihood of release for the watershed as is assigned for drinking water threat likelihood of release for the watershed in section 4.1.1.3. Enter this value in Table 4–1.

4.4.2 Environmental threat waste characteristics.

This factor category assesses waste characteristics that reflect the rate, duration, and relative ecological toxicity of potential hazardous substances releases from the site to surface water related sensitive environments. Two factors are included: ecosystem toxicity/persistence and waste quantity.

4.4.2.1 Ecosystem toxicity/persistence. The hazardous substances to be considered in evaluating ecosystem toxicity/persistence for the watershed are all those eligible to be considered in evaluating drinking water toxicity/persistence (section 4.1.2.1) for the watershed.

4.4.2.1.1 Ecosystem toxicity. Assign an ecosystem toxicity value to each hazardous substance for the watershed using Table 4–23.

Use the following hierarchy of data in assigning the ecosystem toxicity value:

- EPA chronic water quality criteria for the substance.
- EPA acute water quality criteria for the substance.
- Lowest LC50 value reported in peer reviewed literature for the substance.

TABLE 4–23.—ECOSYSTEM TOXICITY VALUE

	Assigned value
If an EPA chronic water quality criterion is available, assign a value as follows:	
EPA Chronic Water Quality Criterion	
Less than 1 ug/l	5
1 to 10 ug/l	4
Greater than 10 to 100 ug/l	3
Greater than 100 to 1,000 ug/l	2
Greater than 1,000 to 10,000 ug/l	1
Greater than 10,000 ug/l	0
If an EPA chronic water quality criterion is not available, assign a value from the EPA acute water quality criterion/100 as follows:	
EPA Acute Water Quality Criterion/100	
Less than 1 ug/l	5
1 to 10 ug/l	4

TABLE 4-23.—ECOSYSTEM TOXICITY VALUE—Continued

	Assigned value
Greater than 10 to 100 ug/l	3
Greater than 100 to 1,000 ug/l	2
Greater than 1,000 to 10,000 ug/l	1
Greater than 10,000 ug/l	0
If an EPA acute water quality criterion is also not available, assign a value from the $LC_{50}/100$ as follows:	
$LC_{50}/100$	
Less than 1 ug/l	5
1 to 10 ug/l	4
Greater than 10 to 100 ug/l	3
Greater than 100 to 1,000 ug/l	2
Greater than 1,000 to 10,000 ug/l	1
Greater than 10,000 ug/l	0

The EPA water quality criteria refer to water quality criteria for the protection of aquatic life (freshwater and saltwater) as presented in "Quality Criteria for Water 1986", EPA 440/5-86-001 (or later as available). If an EPA chronic water quality criterion is available for the hazardous substance being evaluated, use it to assign the ecosystem toxicity value. If the EPA chronic criterion is not available, use the EPA acute criterion, divided by 100, to assign the ecosystem toxicity value. If neither criterion is available, use the lowest LC_{50} value reported in peer reviewed literature, divided by 100, to assign the ecosystem toxicity value.

If the applicable EPA water quality criterion or LC_{50} value for the hazardous substance is available for both freshwater and saltwater, calculate a separate ecosystem toxicity value for freshwater and saltwater for the hazardous substance. If only a freshwater criterion or LC_{50} value is available, use it for both freshwater and saltwater. If only a saltwater criterion or LC_{50} value is available, use it for both saltwater and freshwater. If all sensitive environments being evaluated for the watershed are in freshwater, assign the hazardous substance the ecosystem toxicity value for freshwater. If all are in saltwater, assign the hazardous substance the ecosystem toxicity value for saltwater. If some are in freshwater and some are in saltwater, assign the hazardous substance the higher of the freshwater or saltwater ecosystem toxicity values.

4.4.2.1.2 Persistence. Assign a value for persistence for each hazardous substance available to the hazardous substance migration path for the watershed using the procedure outlined in section 4.1.2.1.2. However, in assigning the persistence value, use the predominant water category (i.e., lake or river; ocean or Great Lake) between the probable point of entry and the nearest sensitive environment (not the nearest drinking water intake) along the hazardous substance migration path for the watershed to determine which portion of Table 4–9 is to be used. The predominant water category is determined based on distance as described in section 4.1.2.1.2.

4.4.2.1.3 Calculation of toxicity/persistence factor value. Assign a toxicity/persistence value from Table 4–24 to each hazardous substance evaluated for the watershed, using the values assigned to the hazardous substance for ecosystem toxicity and persistence. Use the value for the substance with the highest toxicity/persistence value for the watershed as the value for this factor. Enter this value in Table 4–1.

TABLE 4-24.—ECOSYSTEM TOXICITY/PERSISTENCE VALUE

	Persistence value			
	0	1	2	3
Ecosystem toxicity value:				
0	0	0	0	0
1	10	27	43	60
2	20	37	53	70
3	30	47	63	80
4	40	57	73	90
5	50	67	83	100

4.4.2.2 Hazardous waste quantity. Assign the same factor value for hazardous waste quantity for the watershed as is assigned in section 4.1.2.2. Enter this value in Table 4–1.

4.4.2.3 Calculation of environmental threat waste characteristics value. Sum the toxicity/persistence factor value and the hazardous waste quantity factor value for the watershed. This sum is the environmental threat waste characteristics value for the watershed. Enter this value on Table 4–1.

4.4.3 Environmental targets.

The environmental targets factor category reflects the sensitive environments potentially at risk from an actual or potential release of hazardous substances from the site to surface water. The environmental targets for a watershed are evaluated based on one factor: sensitive environments. The evaluation is based on whether the sensitive environments are considered to be subject to actual or potential contamination as defined in section 4.0.2. Actual contamination is evaluated under a level I concentrations factor (i.e., exposure concentration exceeds ecological-based benchmarks) or a level II concentrations factor (i.e., exposure concentration does not exceed ecological-based benchmarks), as appropriate.

Determine whether a sensitive environment is subject to potential contamination, level I concentrations, or level II concentrations using the general methodology described in section 4.1.3 with the following modifications. Use ecological-based benchmarks (Table 4–25) rather than health-based benchmarks (Table 3–12) in determining if the level I criteria apply. If there is actual contamination and it does not meet the level I criteria, then the contamination is considered to meet the criteria for level II concentrations. In determining the level that applies consider only those samples and only those hazardous substances in a sample that establish an observed release. The samples considered may be taken at any location within the sensitive environment (or adjacent to the sensitive environment if contiguous to the migration path) or downstream from the sensitive environment. Table 4–25 lists the criteria for determining the ecological-based benchmarks to be used for hazardous substances in surface water.

TABLE 4-25.—Ecological-Based Benchmarks for Hazardous Substances in Surface Water

The appropriate ecological-based benchmark is selected from the EPA Water Quality Criteria for the protection of aquatic life (fresh water or salt water) as follows:

- If, within the target distance limit, the sensitive environment being evaluated is in freshwater, use the freshwater criteria as the benchmark.
- If, within the target distance limit, the sensitive environment being evaluated is in saltwater, use the saltwater criteria as the benchmark.
- If, within the target distance limit, the sensitive environment being evaluated is in both freshwater and saltwater, use the lower of the freshwater or saltwater criteria as the benchmark.

In all cases, use the chronic criteria if it is specified; otherwise, use the acute criteria as the benchmark.

4.4.3.1 Sensitive environments. Sensitive environments are determined from three factors: Level I concentrations, level II concentrations, and potential contamination.

4.4.3.1.1 Level I concentrations. This factor represents the sensitive environments along the hazardous substance migration path for the watersheds that are exposed to hazardous substances at exposure concentrations that exceed ecological-based benchmarks (see Table 4–25). Only count sensitive environments that are subject to level I concentrations as defined in section 4.4.3.

Assign values to each sensitive environment using either Table 2–18 or 2–19 in section 2.3.4. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Calculate the value (SH) of this factor for the watershed as follows, subject to a maximum value of 120:

$$SH = 10 \times \sum_{i=1}^{n} S_i$$

where:

S_i = Value(s) assigned to sensitive environment i.

n = Number of sensitive environments identified for the level I concentrations factor.

Enter the value in Table 4–1.

4.4.3.1.2 Level II concentrations. This factor represents the sensitive environments along the hazardous substance migration path for the watersheds that are exposed to hazardous substances at exposure concentrations that do not exceed ecological-based benchmarks (see Table 4–25) or for which ecological-based benchmarks do not exist for hazardous substances in the exposure concentration. Count only those

environments that are subject to level II concentrations as defined in section 4.4.3. Do not count any sensitive environments that have already been included in the evaluation of the level I concentrations factor for this watershed.

Assign values to each sensitive environment using either Table 2–18 or 2–19 in section 2.3.4. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Calculate the value (SL) of this factor for the watershed as follows, subject to a maximum value of 120:

$$SL = \sum_{i=1}^{n} S_i$$

where:

S_i = Value(s) assigned to sensitive i.
n = Number of sensitive environments identified for the level II concentrations factor.

Enter the value in Table 4–1.

4.4.3.1.3 Potential contamination. This factor represents the sensitive environments within the target distance limit for the watershed (section 4.0.2) that are potentially exposed to hazardous substances along the surface water hazardous substance migration path. Thus, sensitive environments counted in the level I or level II concentrations factors are not included.

Calculate the value of the potential contamination factor (SP) for the watershed as follows, subject to a maximum value of 120:

$$SP = \frac{1}{10} \sum_{i=1}^{n} S_i D_i$$

where:

S_i = Value(s) assigned to sensitive environment i.
D_i = Dilution weighting factor for sensitive environment i.
n = Number of sensitive environments identified for the potential contamination factor.

Assign values to each sensitive environment using either Table 2–18 or 2–19 in section 2.3.4. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Determine the appropriate dilution weighting factor for each sensitive environment from Table 4–11, as described in section 4.1.3.1, with the following exception: the river characteristic "mixing zone of quiet flowing rivers" is not to be used in assigning a dilution weighting factor. If more than one dilution weighting factor can be assigned to the sensitive environment (e.g., a wetland that is contiguous both to a small stream and to the main branch of the river), assign the highest value for the dilution weighting factor from among those that apply.

Enter the value for this factor, subject to a maximum of 120, in Table 4–1.

4.4.3.1.4 Calculation of environmental threat targets factor value. Sum the values for level I concentrations, level II concentrations, and potential contamination for the watershed. This sum is the environmental threat targets value for the watershed, subject to a maximum value of 120.

Enter the value in Table 4–1.

4.4.4 Calculation of environmental threat score for a watershed.

Multiply the environmental threat values for likelihood of release (maximum value of 120), waste characteristics (maximum value of 200), and targets (maximum value of 120) for the watershed. Assign the product as the environmental threat score for the watershed. Enter the resulting product (maximum value of 2,880,000) in Table 4–1.

4.5 Surface water migration pathway score for a watershed.

Sum the scores for the four types of threats for the watershed (drinking water, human food chain, recreation and environmental), subject to a maximum score of 4,800,000, and divide by 48,000. The resulting score is the surface water migration pathway score for the watershed. Enter the result in Table 4–1.

4.6 Surface water migration pathway score.

Sum the surface water migration pathway scores for each watershed. This sum is the surface water migration pathway score for the site, subject to a maximum score of 100. Enter this score in Table 4–1.

5.0 Onsite exposure pathway.

The onsite exposure pathway addresses the relative risks to people and to terrestrial sensitive environments, that are associated with direct contact with soils or wastes containing hazardous substances. These risks are evaluated based on the following: the likelihood of there being exposure through direct physical contact to hazardous substances in soils or sources containing shallow wastes (i.e., wastes on or above the land surface, or those contaminated soils or wastes not more than 2 feet below the land surface), the relative frequency and duration of such exposures, the relative toxicity of the hazardous substances, and the size and composition of the potentially exposed population.

Two types of threats are evaluated: the threat to the resident population and the threat to the nearby population. Both of these threats are evaluated based on three factor catagories:

- Likelihood of Exposure (LE).
- Waste Characteristics (WC).
- Targets (T).

Figure 5–1 indicates the factors included within each factor category for each type of threat.

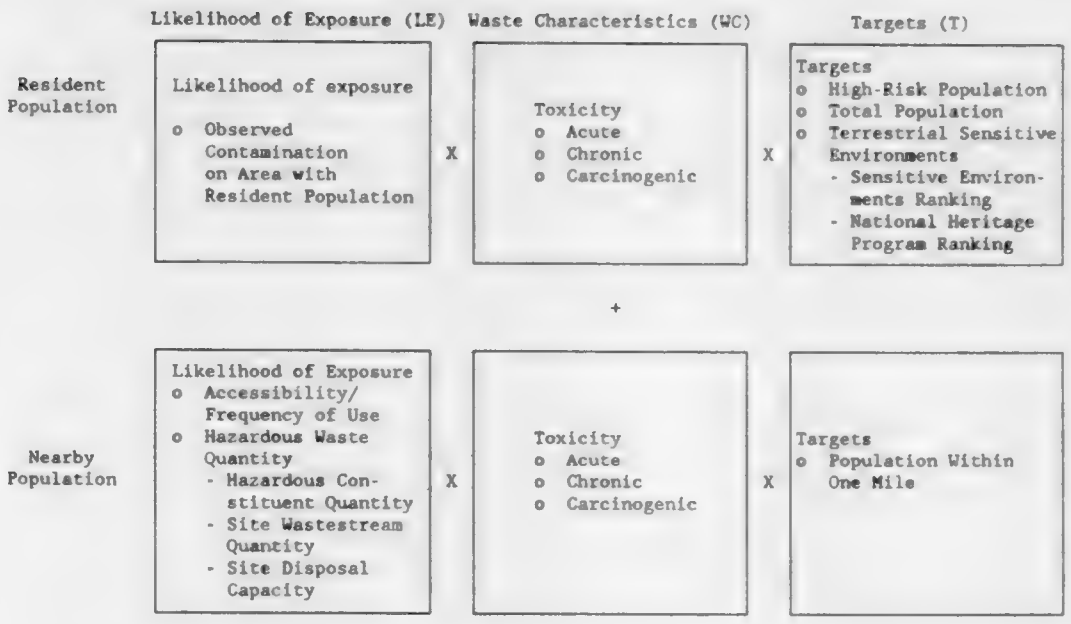

FIGURE 5-1
OVERVIEW OF THE ONSITE EXPOSURE PATHWAY

The onsite exposure pathway score (S_{os}) is calculated by multiplying, for each type of threat, the values for likelihood of exposure, waste characteristics, and targets. The resultant score is summed for the two types of threats and divided by a scaling factor to normalize it to a scale of 0 to 100. This calculation procedure is outlined in Table 5-1.

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TABLE 5-1
ONSITE EXPOSURE PATHWAY SCORESHEET

Factor Categories and Factors	Maximum Value	Value Assigned	
Resident Population Threat			
1. Likelihood of Exposure	100	____	
2. Waste Characteristics	5	____	
3. Targets			
3a. High-Risk Population	100	____	
3b. Total Resident Population	100	____	
3c. Terrestrial Sensitive Environments	25	____	
3d. Targets (Lines 3a + 3b + 3c, subject to a maximum of 100)	100	____	
4. Resident Population Threat Score (Lines 1 x 2 x 3d)	50,000		____
Nearby Population Threat			
5. Likelihood of Exposure			
5a. Waste Quantity	100	____	
5b. Accessibility/Frequency of Use	100	____	
5c. Likelihood of Exposure	100	____	
6. Waste Characteristics	5	____	
7. Targets			
7a. Population Within 1-Mile	100	____	
7b. Targets (Line 7a, subject to a maximum of 100)	100	____	
8. Nearby Population Threat Score (Lines 5c x 6 x 7)	50,000		____
Onsite Exposure Pathway Score			
9. Onsite Exposure Pathway Score (S_{os}) (Lines [4+8]/500, subject to a maximum of 100)	100	____	| | |____|

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5.0.1 General considerations.

The process for scoring the onsite exposure pathway is diagrammed in Figure 5–2. Observed contamination is considered to be present at locations where analytical evidence shows the presence of hazardous substances, attributable to the site, in soils or sources containing shallow wastes at concentrations significantly above background levels under the conditions presented in Table 2–2 of section 2. See section 2.1.1 for the detection limits to be used in the evaluation. Observed contamination is also considered to be present in areas between the site and the sampling locations that establish observed contamination, providing that these areas are likely to be contaminated by releases from the site based on topography or other surface conditions.

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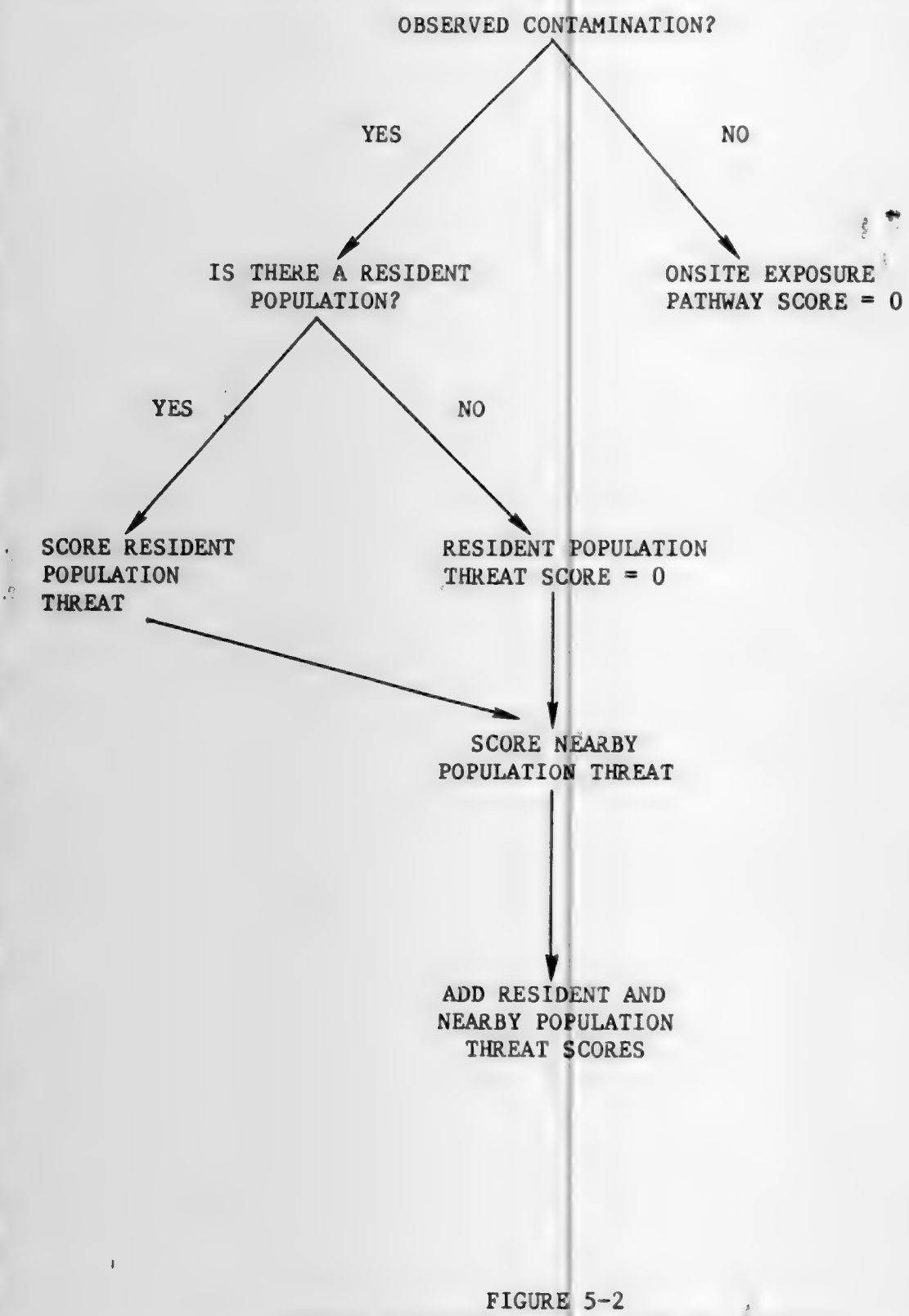

FIGURE 5-2
ONSITE EXPOSURE PATHWAY SCORING PROCESS

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If there is no observed contamination, assign the onsite exposure pathway a score of zero. If there is observed contamination, assign scores for the resident population threat and the nearby population threat as indicated in sections 5.1 and 5.2.

5.1 Resident population threat.

The resident population consists of the following: people living or attending school or day care on property where there is observed contamination; and terrestrial sensitive environments where there is observed contamination. If no people or terrestrial sensitive environments meet these criteria, assign the resident population threat a score of zero.

5.1.1 Likelihood of exposure.

If there is observed contamination on an area containing resident population, assign a value of 100 to the likelihood of exposure factor. Otherwise, assign a value of zero for both this factor and the resident population threat and proceed to the evaluation of the nearby population threat (section 5.2). Enter the value assigned in Table 5–1.

5.1.2 Waste characteristics.

The waste characteristics factor category consists of one factor: toxicity. Toxicity is evaluated for all those hazardous substances attributable to the site that are observed in soils and sources containing shallow wastes at levels significantly above background levels. Assign a toxicity value to these hazardous substances as specified in section 2.2.1.1. The value for this factor category is the highest toxicity value assigned to any of these hazardous substances. Enter this value in Table 5–1.

5.1.3 Targets.

The resident population targets category is based on three factors: high-risk population, total resident population, and terrestrial sensitive environments.

For any of these three populations to be considered in this factor category, one of two criteria must be met:

- There must be observed contamination attributable to the site within the property boundary of a residence, school, or day-care center, or within the boundaries of a terrestrial sensitive environment.
- The property boundary of a residence, school, day-care center, or terrestrial sensitive environment must lie within an area between the site and points of observed contamination attributable to the site and be likely to be contaminated by releases from the site based on topography or other surface conditions.

5.1.3.1 High-risk population. The high-risk population is composed of all children less than seven years old, as of the date of the SI or action equivalent to the SI, who meet either of the eligibility criteria for the resident population threat targets factor category as described above. Action equivalent to the SI includes evaluations performed by EPA prior to conducting removal actions, or by States prior to conducting response actions.

Children meeting more than one of the above criteria may be counted only once for this factor. Assign a value to this factor by multiplying the number of children in this high-risk population by ten. Enter this value in Table 5–1.

5.1.3.2 Total resident population. The total resident population is determined by counting all individuals who live or attend school or day care on property that meets either of the eligibility criteria for the resident population threat targets factor category as described above. Children counted for the high-risk population factor are not to be counted in evaluating this factor.

Assign a value to this factor by multiplying the total number of people counted in the resident population by two. Enter this value in Table 5–1.

5.1.3.3 Terrestrial sensitive environments. Assign values from either Table 5–2 or Table 2–19 of section 2.3.4 to each terrestrial sensitive environment that meets either of the eligibility criteria for the resident threat targets factor category as described above. If a sensitive environment can be assigned values from both tables, use the table that assigns the higher values to the sensitive environment. Calculate the value for this factor by dividing the value for the highest scoring sensitive environment by four. Enter this value in Table 5–1.

TABLE 5–2.—TERRESTRIAL SENSITIVE ENVIRONMENTS FACTOR VALUES

Terrestrial sensitive environments	Assigned value
Terrestrial critical habitat for federally designated endangered or threatened species	
National park	100
Designated Federal wilderness area	
Terrestrial habitat known to be used by Federally designated or proposed threatened or endangered species	
National preserve (terrestrial)	75
National or State terrestrial wildlife refuge	
Federal land designated for protection of natural ecosystems	
Administratively proposed Federal wilderness area	
Terrestrial habitat known to be used by State-designated endangered or threatened species	50
Terrestrial habitat known to be used by species under review as to its Federally designated threatened and endangered status	
State lands designated for wildlife or game management	25

5.1.3.4 Calculation of resident population targets score. Sum the values for the three resident population targets factors. This sum is the resident population targets category value, subject to a maximum value of 100. Enter this value in Table 5–1.

5.1.4 Resident population threat score.

Multiply the values for likelihood of exposure, waste characteristics, and targets for the resident population threat. This product is the resident population threat score. Enter this score in Table 5–1.

5.2 Nearby population threat.

The nearby population consists of individuals who live or go to school within a one-mile travel distance of the site and who do not meet the criteria for the resident population targets (see section 5.1.3).

5.2.1 Likelihood of exposure.

Two factors are included in the nearby population likelihood of exposure factor category: waste quantity and accessibility/frequency of use.

5.2.1.1 Waste quantity. The waste quantity factor for the site is evaluated based on the total areal extent of the site. Only the area covered by sources with wastes either on or above the surface or not more than 2 feet below the surface may be counted for this factor. Use Table 5–3 to assign a value to each source based on its area. For those sources where areal extent is not readily attainable, use the default measures in Table 5–3 applicable to each source type to assign a value to each source by using the following data (in order of preference): quantity of hazardous substances deposited in the source, quantity of waste deposited in the source that contains hazardous substance, source volume. Use a lower measure in the hierarchy only if data are not complete for a higher measure in the hierarchy. If more than one measure is used, assign the source the highest value that results from any of the measures used.

TABLE 5-3.—NEARBY POPULATION WASTE QUANTITY FACTOR VALUES

	Assigned factor value		
	0	1 to 100	100
PRIMARY MEASURE			
Contaminated Area (A) (ft^2)	Less than 5,000	A/5,000	500,000 +
DEFAULT MEASURES			
Landfill:			
HSQ [1] (lbs)	Less than 1.95	HSQ/1.95	195 +
QWD [2] (lbs)	Less than 9,728	QWD/9,728	972,800 +
V [3] (yd^3)	Less than 4,864	V/4,864	486,400 +
Surface Impoundment:			
HSQ (lbs)	Less than 444	HSQ/444	44,400 +
QWD (lbs)	Less than 2.2×10^6	QWD/2.2×10^6	2.2×10^6 +
V (yd^3)	Less than 1,111	V/1,111	111,100 +
Land Treatment:			
HSQ (lbs)	Less than 1.5	HSQ/1.5	150 +
QWD (lbs)	Less than 7,047	QWD/7,407	740,700 +
Waste Pile:			
HSQ (lbs)	Less than 1,946	HSQ/1,946	194,600 +
QWD (lbs)	Less than 9.7×10^5	QWD/9.7×10^6 +	9.7×10^6 +
V (yd^3)	Less than 4,864	V/4,864	486,400 +
Contaminated Soil:			
HSQ (lbs)	Less than 0.15	HSQ/0.15	15 +
QWD (lbs)	Less than 741	AWD/741	74,100 +
V (yd^3)	Less than 370	V/370	37,000 +

[1] HSQ: Hazardous Substance Quantity.
[2] QWD: Waste Quantity as Deposited.
[3] V: Volume.

Sum the values assigned to each eligible source within the site. This sum is the value for this factor, subject to a maximum value to 100. Enter this value in Table 5–1.

5.2.1.2 Accessibility/frequency of use. Accessibility refers both to the measures taken to limit access by humans or animals to areas with observed contamination and to natural barriers that may reduce access to such areas. Frequency of use is a measure of the expected level of use based on the characteristics of the areas with observed contamination.

Use Table 5–4 to assign a value for accessibility/frequency of use to areas with observed contamination. Any land used for residences is not considered in assigning a value for the accessibility/frequency of use factor. Select the highest value assigned to any area. This is the value for the acessibility/frequency of use factor. Enter this value in Table 5–1.

TABLE 5–4.—CRITERIA FOR ASSIGNING ACCESSIBILITY/FREQUENCY OF USE VALUES

Accessibility/frequency of use	Assigned value
Observed contamination on the property of a park, playground, school, or other areas designated for use by the public	100
Observed contamination on land (excluding land used for residences) with no continuous barrier to entry or a barrier that has been breached; or observed contamination on lands where there are clear indications of human recreational activity	75
Observed contamination on land (excluding land used for residences) protected by a continuous and effective barrier to entry or monitored by 24-hour surveillance	50
Observed contamination on land (excluding land used for residences) protected by a continuous and effective barrier to entry and 24-hour surveillance	25
Presence of an artificial barrier and a natural barrier combining to restrict access to hazardous substances (e.g., a fence combined with a cliff), which completely surrounds the facility; and a means to control entry, at all times, through gates or other entrances to the facility (e.g., an attendant, television monitors, or controlled roadway access to the facility)	5

5.2.1.3 Likelihood of exposure value. Assign a value for the likelihood of exposure factor using the matrix in Table 5–5, based on the values asigned to the waste quantity and accessibility/frequency of use factors. Enter this value in Table 5–1.

TABLE 5–5.— NEARBY POPULATION LIKELIHOOD OF EXPOSURE MATRIX

	Accessibility/frequency of use factor value				
	100	75	50	25	5
Waste Quantity Factor Value:					
76 to 100	100	100	75	50	25
51 to 75	100	75	50	25	10
26 to 50	75	50	25	10	0
1 to 25	50	25	10	0	0
0	25	10	0	0	0
No observed Contamination	0	0	0	0	0

5.2.2 Waste characteristics.

The waste characteristics factor category consists of one factor: toxicity. For every hazardous substance on the site significantly above background levels, assign a toxicity value as specified in section 2.2.1.1. The value for this factor category is the highest toxicity value assigned to any of these hazardous substances. Enter this value in Table 5–1.

5.2.3 Targets.

The nearby population targets factor category is evaluated based on one factor: population within a 1-mile travel distance from the site.

The population within a 1-mile travel distance from the site includes residents as well as students who attend school within this travel distance. Populations counted in the resident population threat are not counted under this factor. In determining the distance of an individual from the site, measure the overland distance an individual would have to travel. If there are no natural barriers to travel, such as a river, the travel distances from the site to the population are measured along a straight line from the site. If barriers exist, the distance must be measured from the site to the nearest crossing and from there to the individual as shown in Figure 5–3.

BILLING CODE 6560-50-M

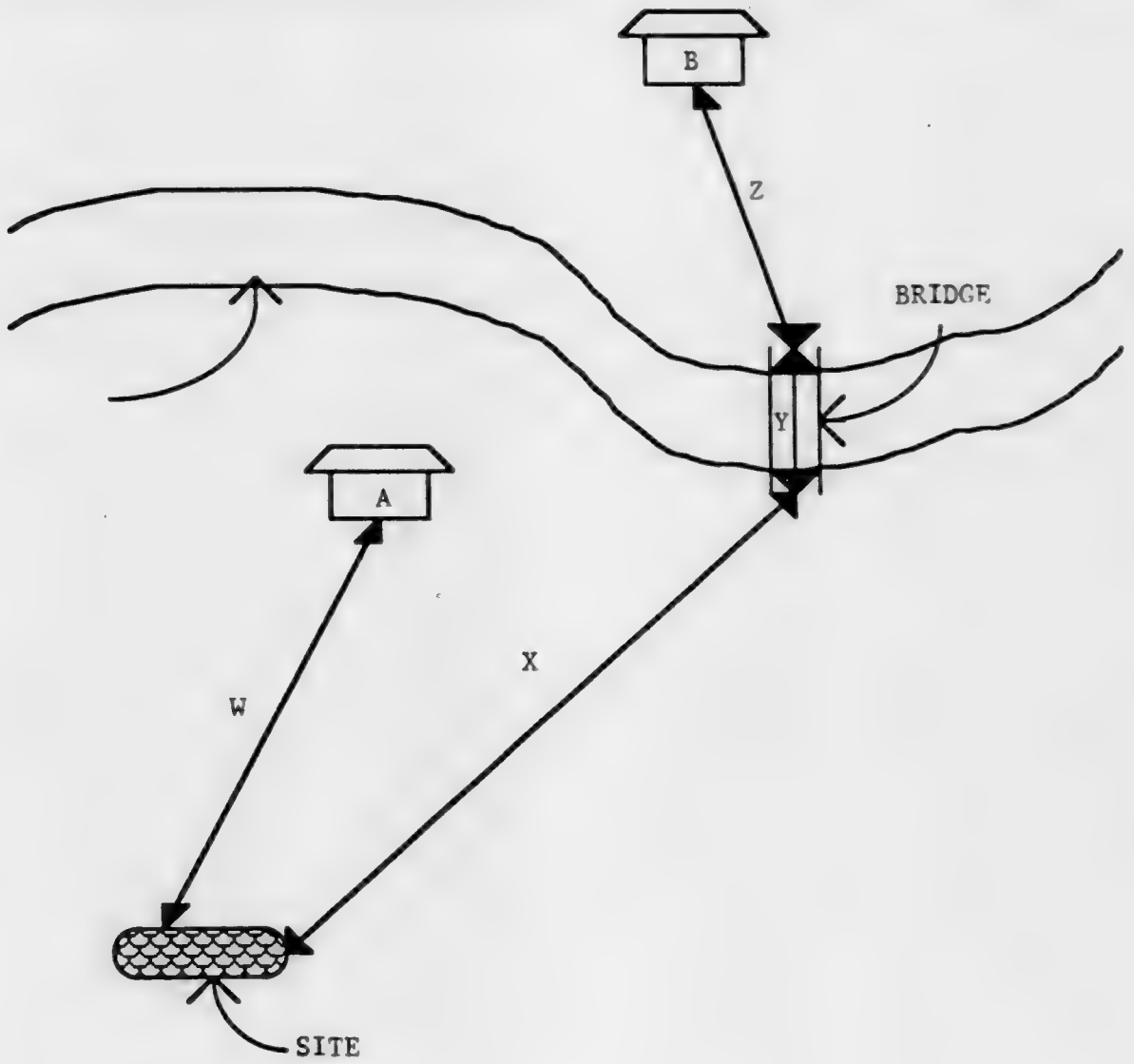

DISTANCE TO A = W

DISTANCE TO B = X + Y + Z

FIGURE 5-3
MEASUREMENT OF DISTANCE TO NEARBY POPULATION

BILLING CODE 6560-50-C

Calculate the value for this factor (PN) using the following equation, subject to a maximum value of 100:

$$PN = \sum_{i=1}^{3} P_i D_i$$

Where:
P_i = Population within evaluation distance i.
D_i = Distance weighting factor for evaluating distance i.

The distance weighting factors to be used as those presented in Table 5–6. Enter the value calculated in Table 5–1.

TABLE 5–6.—DISTANCE WEIGHTING FACTORS FOR NEARBY POPULATION

Evaluation distance (miles)	Distance weighting factor[1]
0 to ¼	0.1
Greater than ¼ to ½	0.05
Greater than ½ to 1	0.025

[1] This distance weighting factor is not to be rounded to the nearest integer.

5.2.4 Calculation of the nearby population threat score.

Multiply the values assigned to the nearby population likelihood of exposure factor, waste characteristics factor, and targets factor. This product is the nearby population threat score. Enter this score in Table 5–1.

5.3 Calculation of the onsite exposure pathway score.

Sum the resident population threat score and the nearby population threat score and divide the sum by 5. The resulting value, subject to a maximum of 100, is the onsite exposure pathway score. Enter this score in Table 5–1.

Attachment I to Appendix A

TABLE I–1.—STATE WATER USE DESIGNATIONS FOR DRINKING WATER AND ECOLOGY

State	Drinking water	Ecology
1. Alabama	PWS	F & W.
2. Alaska:		
—Fresh Water	A(i)	C.
—Marine Water		C.
3. Arizona	DWS	A & W.
4. Arkansas	Public water supply	Fisheries.
5. California	Domestic water supply	Preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.
6. Colorado	Domestic water supply	Aquatic life.
7. Connecticut:		
—Inland Waters	AA; A	B; C; D.
—Coastal and Marine		SA; SB; SC.
8. Delaware	Public water supply	Fish, Aquatic life, and Wildlife.
9. District of Columbia	D	C.
10. Florida	Class I	Class III.
11. Georgia	Drinking water supply	Fishing, propagation of fish, shellfish, game and other aquatic life; primary trout waters.
12. Hawaii:		
—Inland Waters	1b	1a; 1b; 1c.
—Marine Waters		AA; A.
13. Idaho	Domestic water supply	Cold water biota; warm water biota; salmonid spawning.
14. Illinois	Public and food processing water supply	Secondary contact and indigenous aquatic life waters.
15. Indiana	Domestic and industrial use	Aquatic life; limited use; exceptional use.
16. Iowa	C	B.
17. Kansas	Domestic water supply	Aquatic life use.
18. Kentucky	DWS	WAH; CAH; OWR.
19. Louisiana	D	C; G.
20. Maine:		
—Fresh Waters	A; B–1; B–2	B–1; B–2; C.
—Great Ponds	GP–A; GP–B	GP–B.
—Tidal or Marine		SA; SB–1; SB–2; SC; SD.
21. Maryland	I	I; III.
22. Massachusetts:		
—Inland Waters	A	B; C.
—Coastal or Marine		SA; SB; SC.
23. Michigan	Public water supply	Warmwater fish; other indigenous aquatic life and wildlife; coldwater fish.
24. Minnesota	Domestic consumption	Fisheries and recreation; agriculture and wildlife.
25. Mississippi	Public water supply	Fish and wildlife.
26. Missouri	Drinking water supply	Livestock and wildlife watering; protection of aquatic life.
27. Montana	A–closed; A–1; B–1; B–2; B–3	A–1; B–1; B–2; B–3; C–2; C–3.
28. Nebraska	Public drinking water supply	Aquatic life-coldwater habitat.
29. Nevada	A; B; C	A; B; C; D.
30. New Hampshire	A; B	B; C.
31. New Jersey	FW–2	FW–1; PL; FW–2; SE–1; SE–2; SE–3; SC.
32. New Mexico	Domestic water supply	Coldwater fishery; high quality cold water fishery; marginal coldwater fishery; warmwater fishery; limited warmwater fishery; livestock and wildlife watering.
33. New York:		
—Fresh Surface	AA, A	N; AA; A; B; C.
—Saline Surface		SA; SB; SC.
34. North Carolina:		
—Freshwater	WS–I; WS–II; WS–III	B; C.
—Saltwater		SA; SB; SC.
35. North Dakota	I; IA; II	I; IA; II.
36. Ohio	C(1)	A(1); A(2); A(3); A(4); A(5).
37. Oklahoma	Public and private water supplies; emergency public and private water supplies.	Fish and wildlife propagation.

TABLE I-1.—STATE WATER USE DESIGNATIONS FOR DRINKING WATER AND ECOLOGY—Continued

State	Drinking water	Ecology
38. Oregon	Public domestic water supply; private domestic water supply.	Salmonid fish rearing; salmonid fish spawning; resident fish and aquatic life; wildlife and hunting; anadromous fish and passage.
39. Pennsylvania	PWS	CWF; WWF; MF; AWS; HQ; EV.
40. Puerto Rico	SD	SA; SB; SC; SD; SE.
41. Rhode Island:		
—Freshwater	A; B	B; C; D.
—Sea Water		SA; SB; SC.
42. South Carolina:		
—Freshwaters	AA; A; B	AA; A-trout; A; B-trout; B.
—Tidal salt waters		SAA; SA; SB; SC.
43. South Dakota	Domestic water supply waters	Cold water permanent fish life propagation waters; cold water marginal fish life propagation waters; warmwater permanent fish life propagation waters; warmwater sempermanent fish life propagation waters; warmwater marginal fish life propagation waters; wildlife propagation and stock watering.
44. Tennessee	Domestic water supply	Livestock watering and wildlife; fish and aquatic life; trout waters.
45. Texas	Domestic water supply	Aquatic life.
46. Utah	1A; 1B; 1C	3A; 3B; 3C; 3D.
47. Vermont	A; B	Fish habitat designation.
48. Virginia	Public water supply	
49. Washington	AA; A; Lake class	AA; A; B; C; Lake class.
50. West Virginia	B-1	C-1; C-2.
51. Wisconsin	Public water supply	Fish and aquatic life.
52. Wyoming	Public water supply	Fish and wildlife.

TABLE I-2.—CONTAINMENT FACTORS FOR GROUND WATER MIGRATION PATHWAY

	Assigned value
Landfill:	
Evidence of hazardous substance migration from the landfill; or no liner; or none of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substance migration from the landfill, a liner, and any one of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removed system immediately above the liner	9
No evidence of hazardous substance migration from the landfill, a liner, and any two of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the landfill; and all of the following present: Liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, maintained engineered cover and functioning and maintained run-on control system and runoff management system	5
No evidence of hazardous substance migration from the landfill; and single liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Surface impoundment:	
Evidence of hazardous substance migration from the surface impoundment; or no liner; or free liquids present with either no diking, unsound diking, or diking that is not regularly inspected and maintained	10
No evidence of hazardous substance migration from the surface impoundment, free liquids present, a liner, sound diking that is regularly inspected and maintained, and adequate freeboard	9
No evidence of hazardous substance migration from the surface impoundment, free liquids present, a single liner with functioning leachate collection and removal system below the liner, functioning ground water monitoring system, sound diking that is regularly inspected and maintained, and adequate freeboard	*
No evidence of hazardous substance migration from the surface impoundment, free liquids present, a double liner with functioning leachate collection and removal system between the liners, functioning ground water monitoring system, sound diking that is regularly inspected and maintained, and adequate freeboard	3
No evidence of hazardous substance migration from the surface impoundment and all free liquids eliminated at closure (either by removal of liquids or solidification of remaining wastes and waste residues	(a)

TABLE I-2.—CONTAINMENT FACTORS FOR GROUND WATER MIGRATION PATHWAY—Continued

	Assigned value
Pile:	
Evidence of hazardous substance migration from the pile area (i.e., pile area includes pile and any containment structure that may be present); or no liner; or none of the following present: maintained engineered cover over the pile, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substance migration from the pile area, a liner, and one of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	9
No evidence of hazardous substance migration from the pile area, a liner, and any two of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the pile area, a liner, and all of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, functioning leachate collection and removal system immediately above the liner, and functioning ground water monitoring system	5
No evidence of hazardous substance migration from the pile area; and single liner with functioning leachate collection system immediately above the liner, ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners, ground water monitoring system, and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Pile inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the pile, and functioning and maintained run-on control is present	0
Containers:	
All containers buried	(b)
Evidence of hazardous substance migration from the container area (i.e., container area includes containers and any containment structures that may be present); or no liner (or no essentially impervious base) under the container area; or no diking (or similar structure) surrounding container area; or diking surrounding container area unsound or not regularly inspected and maintained	10
No evidence of hazardous substance migration from the container area, a liner (or essentially impervious base) under the container area, and container area surrounded by sound diking that is regularly inspected and maintained	9
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; and an essentially impervious base under the container area with a liquids collection and removal system	7
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, single liner under container area with functioning leachate collection and removal system below the liner, and functioning ground water monitoring system	5
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; containment system includes an essentially impervious base, a liquids collection system, sufficient capacity to contain 10 percent of the volume of all the containers, and functioning and maintained run-on control; functioning ground water monitoring system; and spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner to prevent overflow of the collection system, at least weekly inspection of containers, hazardous substances in leaking or deteriorating containers transferred to containers in good condition, and containers sealed except when waste is added or removed	5
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, double liner under container area with functioning leachate collection and removal system between the liners, and functioning ground water monitoring system	3
Containers inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any containers that were unsealed or ruptured, liquids or materials containing free liquids are not deposited in any container, and functioning and maintained run-on control is present	0
All containers removed, all containers were sealed and intact, and no evidence of hazardous substance migration from any container	0
No evidence of hazardous substance migration from the container area, containers leaking, and all free liquids eliminated at closure (either by removal or liquids or solidification of remaining wastes and waste residues)	(a)
Tank:	
Below ground tank	(b)

TABLE I-2.—CONTAINMENT FACTORS FOR GROUND WATER MIGRATION PATHWAY—Continued

	Assigned value
Evidence of hazardous substance migration from the tank area (i.e., tank area includes tank, ancillary equipment such as piping, and any containment structures); or tank and ancillary equipment not provided with secondary containment (e.g., liner under tank area, vault system, double wall); or no diking (or similar structure) surrounding tank and ancillary equipment; or diking surrounding tank and ancillary equipment unsound or not regularly inspected and maintained	10
No evidence of hazardous substance migration from the tank area, tank and ancillary equipment provided with secondary containment, and tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained	9
No evidence of hazardous substance migration from tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment with a leak detection and collection system	7
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, single liner under that tank area with functioning leachate collection and removal system below the liner, and functioning ground water monitoring system	5
No evidence of hazardous substance migration from the tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment system that detects and collects spilled or leaked hazardous substances and accumulated precipitation and has sufficient capacity to contain 110 percent of the volume of the largest tank within the containment area; spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner; and at least weekly inspection of tank and secondary containment system, and all leaking or unfit-for-use tank systems promptly responded to; and functioning ground water monitoring system	5
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, double liner under container area with functioning leachate collection and removal system between the liners, and functioning ground water monitoring system	3
Tank is above ground, and inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any material released from the tank, liquids or materials containing free liquids are not deposited in any tank, and functioning and maintained run-on control is present	0
Land treatment:	
Evidence of hazardous substances migration from the land treatment zone; or no functioning and maintained run-on control and runoff management system	10
No evidence of hazardous substances migration from the land treatment zone and functioning and maintained run-on control and runoff management system	7
No evidence of hazardous substances migration from the land treatment zone, functioning and maintained run-on control and runoff management system, and vegetative cover established over entire land treatment area	5
No evidence of hazardous substances migration from the land treatment zone and land treatment area maintained in compliance with requirements of 40 CFR 264.280	0
Other types of sources:	
Evidence of hazardous substances migration from the source area; or no liner; or none of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substances migration from the source area, a liner, and any one of the following present: Maintained engineered cover, or functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	9
Other types of sources:	
No evidence of hazardous substances migration from the source area, a liner, and any two of the following present: Maintained engineered cover, functioning and maintained run-on control system and runoff management system, or functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substances migration from the source area and all of the following present: Liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, maintained engineered cover and functioning and maintained run-on control system and runoff management system	5
No evidence of hazardous substances migration from the source area; and single liner with functioning leachate collection and removal system immediately above the liner, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners, functioning ground water monitoring system, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Source area inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the source area, and functioning and maintained run-on control is present	0

a. Evaluate as a landfill without bulk or free liquids deposited

b. Evaluate as a landfill.

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TABLE I–3.—MINIMUM TO MAXIMUM ANNUAL NET PRECIPITATION FOR EACH STATE (IN INCHES) AS DERIVED FROM THE NET PRECIPITATION METHODOLOGY [1]

State	Weather station name	Minimum	Weather station name	Maximum
AL	Montgomery WSO	20	Haleyville	32
AK	Northway FAA AP	2	Little Port Walter	203
AZ	Wellton	0	Junipine	12
AR	Fort Smith WSO	15	Mount Ida 3 SE	26
CA	Blythe	0	Strawberry Valley	69
CO	John Martin Dam	0	Crested Butte	15
CT	Bridgeport WSO	20	Norfolk 2 SW	31
DE	Newark University Farm	17	Wilmington Porter Res	20
FL	Key West WSO	0	Milton Exp Station	26
GA	Fort Stewart	10	Clayton 1 W	43
HI	Lahaina 361	1	Mountain View 91	151
ID	Chilly Barton Flat	2	Wallace Woodland Park	25
IL	Pontiac	11	Rosiclare	21
IN	Hobart	12	Paoli Radio WVAK	22
IA	Hawarden	5	Dubuque WSO	16
KS	Johnson 11 ESE	1	Columbus 6 NNW	13
KY	Ashland	17	Russellville	26
LA	Lake Charles WSO	16	Bunkie	27
ME	Presque Isle	17	Bar Harbor	33
MD	Cumberland 2	14	Oakland 1 SE	24
MA	Birch Hill Dam	20	Blue Hill WSO	28
MI	MO Hydro Plant	10	Marquette FAA AP	19
MN	Crookston NW Exp Sta	3	Duluth WSO	10
MS	Biloxi City	22	Tupelo 2 WNW	29
MO	Kansas City FAA AP	6	Charleston	23
MT	Opheim 12 SSE	1	Heron 2 NW	21
NE	Mitchell 5 E	1	Falls City	9
NV	Desert Natl WL Range	0	Glenbrook	11
NH	Lebanon FAA Airport	17	Mt. Washington WSO	76
NJ	Shiloh	17	Charlotteburg	27
NM	Carlsbad Caverns	0	Chama	8
NY	Mount Morris 2 W	10	Boonville 2 SSW	36
NC	Asheville	15	Highlands 2 S	55
ND	Parshall	2	Fullerton 1 ESE	5
OH	Put in Bay Perry Mon	11	Chardon	22
OK	Kenton	0	Idabel	20
OR	Burns WSO AP	2	Otis 2 NE	78
PA	Donora 1 SW	13	Pleasant Mount 1 W	26
RI	Block Island WSO	22	Kingston	27
SC	Charleston City WSO	11	Caesars Head 1 NE	53
SD	Camp Crook	2	Lead 1 SE	13
TN	Greeneville Exp Sta	17	Monteagle	34
TX	Alpine	0	Center	20
UT	Capitol Ref Natl Mon	1	Silver Lake Brighton	32
VT	Burlington WSO	14	Readsboro 1 SSE	28
VA	Dale Enterprise	11	Big Meadows	28
WA	Sunnyside	3	Ranier Paradise RS	100
WV	Franklin 2 NE	11	Pickens 1	42
WI	Sponner Exp Farm	7	Lake Geneva	13
WY	Deaver	1	Moran 5 WNW	15

[1] Based on over 3,300 weather stations in the U.S. for which average monthly precipitation and average monthly temperature data are available.

TABLE I–4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY

	Assigned value
Landfill:	
Evidence of hazardous substance migration from the landfill; or none of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner	10
No evidence of hazardous substance migration from the landfill; and any one of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removed system immediately above the liner	9
No evidence of hazardous substance migration from the landfill; and any two of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the landfill; and all of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, and liner with functioning leachate collection and removal system immediately above the liner	5
No evidence of hazardous substance migration from the landfill; and single liner with functioning leachate collection and removal system immediately above the liner, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the landfill; and double liner with functioning leachate collection and removal system above and between such liners, no bulk or noncontainerized liquids or materials containing free liquids deposited in the landfill, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Surface impoundment:	
Evidence of hazardous substance migration from the surface impoundment; or free liquids present with either no diking, unsound diking, or diking that is not regularly inspected and maintained	10
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, and adequate freeboard	9
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, and a single liner	7
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, and a single liner with functioning leachate collection and removal system below the liner	5
No evidence of hazardous substance migration from the surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, and a double liner with functioning leachate collection and removal system between the liners	3
No evidence of hazardous substance migration from the surface impoundment and all free liquids eliminated at closure (either by removal of liquids or solidification of remaining wastes and waste residues)	(a)
Pile:	
Evidence of hazardous substance migration from the pile area (i.e., pile area includes pile and any containment structure that may be present) or neither of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system	10
No evidence of hazardous substance migration from the pile area and either of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system	9
No evidence of hazardous substance migration from the pile area and any two of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substance migration from the pile area and all of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, and liner with functioning leachate collection and removal system immediately above the liner	5
No evidence of hazardous substance migration from the pile area; and single liner with functioning leachate collection system immediately above the liner, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	3
No evidence of hazardous substance migration from the pile area; and double liner with functioning leachate collection and removal system above and between such liners, no bulk or noncontainerized liquids or materials containing free liquids deposited in the pile, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	0
Pile inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the pile, and functioning and maintained run-on control is present	0
Container:	
All containers buried	(b)

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY—Continued

	Assigned value
Evidence of hazardous substance migration from the container area (i.e., container area includes containers and any containment structures that may be present); no diking (or similar structure) surrounding container area; or diking surrounding container area unsound or not regularly inspected and maintained.	10
No evidence of hazardous substance migration from the container area and container area surrounded by sound diking that is regularly inspected and maintained.	9
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; and an essentially impervious base under the container area with a liquids collection and removal system.	7
No evidence of hazardous substance migration from the container area; container area surrounded by sound diking that is regularly inspected and maintained; containment system includes an essentially impervious base, a liquids collection system, sufficient capacity to contain 10 percent of the volume of all the containers, and functioning and maintained run-on control; and spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner to prevent overflow of the collection system, at least weekly inspection of containers, hazardous substances in leaking or deteriorating containers transferred to containers in good condition, and containers sealed except when waste is added or removed.	5
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, and single liner under container area with functioning leachate collection and removal system below the liner.	5
No evidence of hazardous substance migration from the container area, free liquids present, container area surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, and double liner under container area with functioning leachate collection and removal system between the liners.	3
Containers inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any containers that were unsealed or ruptured, liquids or materials containing free liquids are not deposited in any container, and functioning and maintained run-on control is present.	0
All containers removed, all containers were sealed and intact, and no evidence of hazardous substance migration from any container.	0
No evidence of hazardous substance migration from the container area, containers leaking, and all free liquids eliminated at closure (either by removal or liquids or solidification of remaining wastes and waste residues).	(a)
Tank:	
Below ground tank.	(b)
Evidence of hazardous substance migration from the tank area (i.e., tank area includes tank, ancillary equipment such as piping, and any containment structures); no diking (or similar structure) surrounding tank and ancillary equipment; or diking surrounding tank and ancillary equipment unsound or not regularly inspected and maintained.	10
No evidence of hazardous substance migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained.	9
No evidence of hazardous substance migration from tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment (e.g., liner under tank area, vault system, double-wall) with a leak detection and collection system.	7
No evidence of hazardous substance migration from the tank area; tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained; tank and ancillary equipment provided with secondary containment system that detects and collects spilled or leaked hazardous substances and accumulated precipitation and has sufficient capacity to contain 110 percent of the volume of the largest tank within the containment area; spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner; at least weekly inspection of tank and secondary containment system, and all leaking or unfit-for-use tank systems promptly responded to.	5
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, and single liner under that tank area with functioning leachate collection and removal system below the liner.	5
No evidence of hazardous substances migration from the tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, containment system has sufficient capacity to hold total volume of all tanks within the containment area and to provide adequate freeboard, and double liner under container area with functioning leachate collection and removal system between the liners.	3
Tank is above ground, and inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any material released from the tank, liquids or materials containing free liquids are not deposited in any tank, and functioning and maintained run-on control is present.	0
Land Treatment:	
Evidence of hazardous substances migration from the land treatment zone; or no functioning and maintained run-on control and runoff management system.	10
No evidence of hazardous substances migration from the land treatment zone and functioning and maintained run-on control and runoff management system.	7
No evidence of hazardous substances migration from the land treatment zone, functioning and maintained run-on control and runoff management system, and vegetative cover established over entire land treatment area.	5
No evidence of hazardous substances migration from the land treatment zone and land treatment area maintained in compliance with requirements of 40 CFR 264.280.	0
Other Types of Sources:	
Evidence of hazardous substances migration from the source area; or neither of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system.	10

TABLE I-4.—CONTAINMENT FACTORS FOR SURFACE WATER MIGRATION PATHWAY—Continued

	Assigned value
No evidence of hazardous substances migration from the source area and either of the following present: maintained engineered cover, or functioning and maintained run-on control system and runoff management system	9
No evidence of hazardous substances migration from the source area and any two of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, or liner with functioning leachate collection and removal system immediately above the liner	7
No evidence of hazardous substances migration from the source area and all of the following present: maintained engineered cover, functioning and maintained run-on control system and runoff management system, and liner with functioning leachate collection and removal system immediately above the liner	5
No evidence of hazardous substances migration from the source area; and single liner with functioning leachate collection and removal system immediately above the liner, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	3
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners and any one deficiency in the physical containment system (i.e., bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, no or nonfunctioning or nonmaintained run-on control system and runoff management system, or no or nonmaintained engineered cover)	0
No evidence of hazardous substances migration from the source area; and double liner with functioning leachate collection and removal system above and between such liners, no bulk or noncontainerized liquids or materials containing free liquids deposited in the source area, functioning and maintained run-on control system and runoff management system, and maintained engineered cover	10
Source area inside or under a maintained structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids are not deposited in the source area, and functioning and maintained run-on control is present	0

a. Evaluate as a landfill without bulk or free liquids deposited.
b. Evaluate as a landfill.

TABLE I-5.—STANDING CROP DEFAULT DATA

Habitat	Pounds per acre	Comments
RIVER/STREAM		
COLD		
WI Rivers	14	Bass only.
PA trout stream	24	Trout only.
CA trout stream	41	Trout only.
WI Rivers	26	Pike only.
WY tailwaters	46	Trout only.
Mountain stream	51	Not U.S.
Trout streams	55	Average.
Mt. trout streams	40–226	Average.
MI streams	195	Bass streams.
WI streams	33	Smallmouth bass.
OH streams	11	Smallmouth bass.
MO streams	8	Smallmouth bass.
MD streams	16	Smallmouth bass.
MIDWESTERN		
Chariton River, MO.	53	Channelized.
Chariton River, MO.	304	Unchannelized.
Chariton River, MO.	152	Carp only.
OH streams	56	Average.
MO streams	72	Average.
Midwestern smallmouth stream.	114	Average.
Midwestern largemouth stream.	168	Average.
IN streams	158	Average.
IN streams	124	Largemouth.
IL streams	164	Average.
OK streams	174	Average.
WARM		
Warmwater Streams.	9–43	Average.
Warmwater Streams.	72	Courtois Creek.
Warmwater Streams.	56–90	Ozarks average.
Warmwater Streams.	120	Northern streams.
River backwaters and oxbows.	500	Average.
Tropical rivers	979–1,600	Lagoons.
OTHER		
Upper Mississippi	7–8	All species (1962-1973).
Lower Mississippi borrow pit.	51–3,199	All species.
Lower Mississippi (delta region).	530	Mosey Lake (mostly shad).
Lower Mississippi (delta region).	51–299	Wolf Lake (mostly shad).
RIVER BASIN		
Atchafalaya R.B., LA.	767	Lower basin stations.
Atchafalaya R.B., LA.	495	Upper basin stations.
LAKES		
Backwater lakes	397	Largemouth bass.
NY lake	47	Perch & bass.
Northern lake	51	Suckers.
Cold trout lakes	50	Average.
Lakes & ponds	58	Mixed species.
FL bass lake	97	All fish.
IO lake	123	Bullheads.
MI lakes	46	Slow growing perch.
MI lakes	88	Average diversity.
MI lakes	104	Unusual populations.
Lake Tohopekaliga, FL.	59–127	Before and after drawdown.
Warmwater lakes	125–150	Average.
MS oxbow lakes	202	Average.
Natural lakes	50–150	Average.
KY lakes	49–200	Average.
WI lakes	210	64% are minnows.
Lake Wingra, WI	440	Large fish.
AR lakes	89–445	Average range.
Alpine lakes	0.6–7	Average.
Tropical lakes	45–178	Average.
Atchafalaya Basin	270	Crawfish.
Atchafalaya Basin	624	Finfish.
Floodplain lakes	440	No overflow.
6 oxbow lakes, LA	156–267	Mostly channel cat and centrarchids.
7 backwater lakes	397	Average.
Wallum Lake, RI	14–17	Combined fish species.
Floa Lake, WI	3	Pumpkinseed & bluegill.
IL Lakes	18–36	
Third Sister Lake, MI.	86	Rotenone catch.
Third Sister Lake, MI.	13	Bass (average).
5 Lakes, FL (1–10ha).	7	Bass (average) only legal size.
Backwater lakes, LA.	24	Bass 250mm.
Lower Lock Alpine.	30	Bass.
Wintergreen Lake, MI.	48	Bass.
Cuba lakes, Cove Sampling.	83	Bass (average).
5 Lakes, FL	22–110	Ocala National Forest.
RESERVOIRS		
West VA reservoir	9	Largemouth bass.
IL, artificialty heated.	8–18	Bass and carp.
170 reservoirs	23	All bass.
GA reservoir	48	All species.
CO reservoir	62	Average.
LA reservoirs	73	Average.
127 reservoirs	180–186	Average, all species.
Reservoirs and ponds.	200–300	Average.

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TABLE I-5.—STANDING CROP DEFAULT DATA—Continued

Habitat	Pounds per acre	Comments
Impoundments	200–400	Average.
Midwest reservoirs.	400	Average.
Barkley Lake, KY	771	Small bay.
Power plant cooling lake in Texas.	1,000–2,000	Bass & tilapia.
Bobwhite Lake, IA	7	Largemouth bass.
Red Hawk Lake, IA.	24	Largemouth bass.
3 reservoirs, OK	8	Largemouth bass (average).
Carl Blackwell Lake, OK.	1	Largemouth bass.
Buds Lake, IA	3	Largemouth bass.
Lanier Lake, GA	8	Largemouth bass (average).
34 reservoirs TX & MA.	19	Largemouth bass (average).
IA reservoirs	112	Largemouth bass (average).
East Osceola, IA	29	Largemouth bass.
Bastrop Lake, TX	33	Largemouth bass.
Ridgelake, IL	49	Largemouth bass (average).
North American Lakes & reservoirs.	15	Bass (average).
Clear Lake	1	Bass.
Clear Lake	15	Bass (average).
68 Gamefish Lakes, MN.	7	Bass (average).
44 Roughfish Lakes, NM.	6	Bass (average).
FL, WI 30 lakes	7	Bass (mean).
Brown's Lake, WI	24	Bass (average).
Cacapon Lake, WV.	9	Bass (average).
14 Lakes, MI (0.3–8.7 ha).	7	Bass (average).
Deep Creek reservoir, MD.	100	Mixed species.
Cherokee Reservoir, TX.	1,550	Mixed species.
PONDS		
Cold ponds	69	Grebe Lake.
Carp ponds	355	Unfertilized.
Bullhead ponds	178	Unfertilized.
Small desert pond	133	Eutrophic.
Kansas pond	168	Channel catfish.
MI ponds	289	Bluegills.
Southern ponds	230–330	Average.
AL ponds	498	Bass & bluegill.
Stocked AL pond	527	Tilapia.
Ashville pond, RI	48	Combined fish sp.
Meshanticut pond, RI.	500	Combined fish sp. Few catchable bass/pickerel.
MA ponds (23)	88	Average.
OK ponds	91	Sunfishes.
IL ponds	88	Smallmouth bass.
NY ponds	18	Smallmouth bass.
IA ponds (balanced).	13	Largemouth bass (avg.).
IA ponds	14	Largemouth bass (avg.) (overpopulated w/bluegill).
IA ponds	23	Largemouth bass (avg.).
IA ponds	2	Largemouth bass (overpopulated w/bass).
MI ponds	21	Largemouth bass.
IL ponds	125	Only "large" bass (avg.).

TABLE I-5.—STANDING CROP DEFAULT DATA—Continued

Habitat	Pounds per acre	Comments
Ridge Lake, IL	357	Largemouth bass (avg.).
Ridge Lake, IL	48	(Over 254 mm).
Breon's pond, PA	15,771	Largemouth bass all sizes.
Rearing ponds U.S.	18,787	Largemouth bass.
MI ponds	147	Largemouth bass (avg.).
NY ponds	72	Largemouth bass (avg.).
AL pond	255	Largemouth bass.
MO ponds	72	No harvest.
Lake Toho Pekaligo, FL.	43	Littoral zone.
Lake Toho Pekaligo, FL.	46	Limnetic zone.
WV pond	88	Largemouth bass.
AL ponds	2,360	Bass fed.
FERTILIZED PONDS		
Carp & bullhead	1,070	Southern.
3 ponds, IL	447	Largemouth bass (avg.).
3 ponds,IL	69	Largemouth bass (avg.).
3 ponds,IL	60	Only "large" bass (avg.).
COASTAL		
Newport River, NC.	8	Littoral area estuary.
Mystic River, MA	18	Polluted estuary.
Narragansett Bay, RI.	28	Demersal fish.
Gulf of Mexico	54	Avg. Gulf.
Beach canals, LA	3–367	Gulf canals.
LA estuary	351	All estuary fish.
Chesapeake Bay	250	Nearshore-saltwater.
Chesapeake Bay	750	All finfish.
South Atlantic	286	Fish & shellfish.
Gulf Coast	432	Fish & shellfish.
Guadalupe Bay, TX.	11	
CA (3-mi zone)	293	Commercial catch.
OR (3-mi zone)	152	Commercial catch.
WA (3-mi zone)	444	Commercial catch.
AL Coastal	60	Estuary commercial catch.
LA Coastal	314	Estuary commercial catch.
MS Coastal	1011	Estuary commercial catch.
FL Coastal	48	Estuary commercial catch.
GA Coastal	35	Estuary commercial catch.
NC Coastal	128	Estuary commercial catch.
SC Coastal	26	Estuary commercial catch.
TX Coastal	[1] 57–68	Estuary commercial catch.
MA Coastal	1,267	Estuary commercial catch.

TABLE I-5.—STANDING CROP DEFAULT DATA—Continued

Habitat	Pounds per acre	Comments
NH Coastal	320	Estuary commercial catch.
MA Coastal	1,964	Estuary commercial catch.
RI Coastal	1,209	Estuary commercial catch.
CT Coastal	19	Estuary commercial catch.
NY Coastal	90	Estuary commercial catch.
NJ Coastal	155	Estuary commercial catch.
DE Coastal	14	Estuary commercial catch.
MD Coastal	84	Estuary commercial catch.
VA Coastal	751	Estuary commercial catch.
Laguna Madre, TX	18–337	Range-winter minimum/summer maximum.
Caminada estuary, LA.	649	
LacDes Allemands, LA.	87	Channel catfish.
Barataria-Caminada Bay, LA.	9	Shrimp only (1967–1972).

[1] Includes fish and shellfish.

Attachment II to Appendix A

II.0 Methodology for calculating half-lives.

This section describes the methodology for calculating the hydrolysis half-life, the biodegradation half-life, the free-radical oxidation half-life, the photolysis half-life, and the volatilization half-life.

II.1 Hydrolysis.

The hydrolysis half-life $(t_{1/2})_h$ is calculated as follows:

$(t_{1/2})_h = 0.693/K_h$

where K_h is the hydrolysis rate constant.

The hydrolysis rate constant K_h includes contributions from acid-catalyzed hydrolysis, base-catalyzed hydrolysis, and nucleophilic reaction with water (which is often referred to as neutral hydrolysis). The value of K_h is determined as follows:

$K_h = K_a[H^+] + K_n + K_b[OH^-]$

where:

K_h = Total hydrolysis rate constant, in units of $(time)^{-1}$

K_a = Acid hydrolysis rate constant, in units of $(M)^{-1}(time)^{-1}$ where M is moles per liter.

K_b = Base hydrolysis rate constant, in units of $(M)^{-1}(time)^{-1}$.

K_n = Neutral hydrolysis rate constant, in units of $(time)^{-1}$.

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$[H^+]$=Hydrogen ion concentration, in units of M.

$[OH^-]$=Hydroxyl ion concentration, in units of M.

Obtain the values of K_a, K_b, and K_n from peer reviewed literature. If the hydrolysis rates are reported for a temperature (T) other than 25 °C, multiply the reported rates by a temperature adjustment factor of $(1.116)^{T-25}$. This temperature adjustment factor will cause the rate constant to vary by a factor of 3 for each 10 °C change in temperature.

Assume the pH of the water to be in the range of 6 to 9. Calculate the value of K_h at pH 6 (i.e., $[H^+]=10^{-6}$ M and $[OH^-]=10^{-8}$ M) and at pH 9 (i.e., $[H^+]=10^{-9}$ M and $[OH^-]=10^{-5}$ M). Select the lower of the two calculated values. Use this as the value of the total hydrolysis rate constant K_h.

II.2 Biodegradation.

The biodegradation half-life $(t_{1/2})_b$ is calculated as follows:

$(t_{1/2})_b=0.693/K_b$

where K_b is the biodegradation rate constant, in units of $(time)^{-1}$.

Obtain the value of K_b from peer-reviewed literature. If the rate is reported for a temperature (T) other than 25 °C, multiply the reported value by a temperature adjustment factor of $(1.07)^{25-T}$.

In some cases, the biodegradation rate is specified as a second order rate constant (e.g., in units of (volume) $(cells)^{-1}$ $(time)^{-1}$), rather than as a first order rate constant (i.e., in unit of $(time)^{-1}$). When a second order rate constant is specified, multiply the rate specified by an assumed microorganism concentration of 10^4 cells/ml to obtain the value of K_b.

II.3 Free-radical oxidation.

Oxidation half-life $(t_{1/2})_o$ is calculated as follows:

$(t_{1/2})_o=0.693/K_o$

where K_o is the total oxidation rate constant.

The total oxidation rate includes contributions from oxidation by peroxyl radicals, oxidation by singlet oxygen, and oxidation by other unspecified oxidants. The total oxidation rate constant is calculated as follows:

$K_o=K_R[R]+K_S[S]+K_X[X]$

where:

K_R=Rate constant for oxidation by peroxyl radical.

K_S=Rate constant for oxidation by singlet oxygen.

K_X=Rate constant for oxidation by other oxidants.

$[R]$=Peroxyl radical concentration $[RO_2\bullet]$.

$[S]$=Singlet oxygen concentration $[^1O_2\bullet]$.

$[X]$=Other oxidants concentration $[OX\bullet]$.

Obtain the values of K_R, K_S, and K_X from peer reviewed literature. Assume the peroxyl radical concentration to be 10^{-9} M and the singlet oxygen concentration to be 10^{-11} M. Rate constants for oxidation by other oxidants are rarely available and need not be included unless available.

II.4 Photolysis.

The photolysis half-life $(t_{1/2})_p$ is calculated as follows:

$(t_{1/2})_p=0.693/K_p$

where K_p is the photolysis rate.

The photolysis rate K_p used in calculating the photolysis half-life is to be the rate averaged over both a 24-hour day receiving the mean annual sunlight and the depth of the water body.

Obtain the value of the photolysis rate from peer-reviewed literature. If the reported value is for a mid-day near surface situation, multiply the value by $2/\pi$ to convert from a mid-day to a daily average value, and then multiply by 1/30 to convert from near surface to a depth average value. The value of the photolysis rate may also be obtained from existing studies that have estimated the photolysis rate using laboratory data on absorption spectrum and quantum yield in conjunction with the method specified in Burns et al. (1982).[1]

II.5 Volatilization.

The volatilization half-life $(t_{1/2})_v$ is calculated as follows:

$(t_{1/2})_v=0.693/K_v$

where K_v=Volatilization rate, in units of $(time)^{-1}$.

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[1] Burns, L.A., D.M. Cline, and R.R. Lassiter, 1982. Exposure Analysis Modeling System (EXAM): User Manual and System Documentation, U.S. Environmental Protection Agency, Environmental Research Laboratory, Athens, GA.

Estimate the value of K_V using the following equation:

$$K_V = \frac{1}{L}\left(\frac{1}{A} + \frac{RT}{B}\right)^{-1}$$

$$A = K_1^0 (D_1^C/D_1^0)^m$$

$$B = H_c K_g^W (D_g^C/D_g^W)^n$$

where:

L = Mixing depth of the water body in units of cm; assumed it to be 200 cm.

K_1^0 = Liquid phase mass transport coefficient of oxygen in the water body in the units of cm $hour^{-1}$; assumed it to be 8 cm $hour^{-1}$ in rivers and 1.8 cm $hour^{-1}$ in lakes.

D_1^C = Liquid phase diffusion coefficient of the hazardous substance in water, in units of cm^2 sec^{-1}.

D_1^0 = Liquid phase diffusion coefficient of oxygen in water, in units of cm^2 sec^{-1}.

m = Coefficient depending on the liquid phase turbulence; assume it to be 0.7.

R = Gas constant, 62.4 torr $(°K)^{-1}M^{-1}$, or 8.205×10^{-5} m^3 atm $(°K)^{-1}$ mol^{-1}.

T = Temperature in unit of °K; assume it to be 298°K.

H_c = Henry's constant in unit of torr M^{-1} or m^3 atm mol^{-1}.

K_g^W = Gas phase transport coefficient for water in units of cm $hour^{-1}$; assume it to be 2,100 cm $hour^{-1}$.

D_g^C = Gas phase diffusion coefficient of the hazardous substance in air, in units of cm^2 sec^{-1}.

D_g^W = Gas phase diffusion coefficient of water in air, in units of cm^2 sec^{-1}.

n = Coefficient depending on the gas phase turbulence; assume it to be 0.7.

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Obtain the value of Henry's constant from peer-reviewed literature. The ratio of the liquid diffusion constants for the hazardous substance and oxygen (D_1^C/D_1^O) is related to the ratio of their molecular weights and is calculated as follows:

$$\frac{D_1^C}{D_1^O} = \left(\frac{W_C}{W_O}\right)^{-2/3} = \left(\frac{W_C}{32}\right)^{-2/3}$$

where: W_C = Molecular weight of hazardous substance.
W_O = Molecular weight of oxygen.

Similarily, the ratio of gas diffusion constants for the chemical and water (D_g^C/D_g^W) is related to the ratio of their molecular weights and is calculated as follows:

$$\frac{D_g^C}{D_g^W} = \left(\frac{W_C}{W_W}\right)^{-2/3} = \left(\frac{W_C}{18}\right)^{-2/3}$$

where: W_W = Molecular weight of water.

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Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for October 1988

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53111; FRL-3488-4]

Premanufacture Notices; Monthly Status Report for October 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for OCTOBER 1988.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53111]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during OCTOBER; (b) PMNs received previous and still under review at the end of OCTOBER; (c) PMNs for which the notice review period has ended during OCTOBER: (d) chemical substances for which EPA has received a notice of commencement to manufacture during OCTOBER; and (e) PMNs for which the review period has been suspended. Therefore, the OCTOBER 1988 PMN Status Report is being published.

Date: December 2, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report, October 1988

I. 92 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 88-2427	P 89-0045
P 88-2562	P 89-0046
P 88-2581	P 89-0047
P 89-0001	P 89-0048
P 89-0003	P 89-0049
P 89-0004	P 89-0050
P 89-0005	P 89-0051
P 89-0006	P 89-0052
P 89-0007	P 89-0053
P 89-0008	P 89-0054
P 89-0009	P 89-0055
P 89-0010	P 89-0056
P 89-0011	P 89-0057
P 89-0012	P 89-0058
P 89-0013	P 89-0059
P 89-0014	P 89-0060
P 89-0015	P 89-0061
P 89-0016	P 89-0062
P 89-0017	P 89-0063
P 89-0018	P 89-0064
P 89-0019	P 89-0065
P 89-0020	P 89-0066
P 89-0021	P 89-0067
P 89-0022	P 89-0068
P 89-0023	P 89-0069
P 89-0024	P 89-0070
P 89-0025	P 89-0071
P 89-0026	P 89-0072
P 89-0027	Y 89-0001
P 89-0028	Y 89-0002
P 89-0029	Y 89-0003
P 89-0030	Y 89-0004
P 89-0031	Y 89-0005
P 89-0032	Y 89-0006
P 89-0033	Y 89-0007
P 89-0034	Y 89-0008
P 89-0035	Y 89-0009
P 89-0036	Y 89-0010
P 89-0037	Y 89-0012
P 89-0038	Y 89-0013
P 89-0039	Y 89-0014
P 89-0040	Y 89-0015
P 89-0041	Y 89-0016
P 89-0042	Y 89-0017
P 89-0043	Y 89-0018
P 89-0044	

II. 681 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 83-0069	P 86-0592
P 85-0216	P 86-1078
P 85-0535	P 86-1189
P 85-0536	P 86-1235
P 85-0619	P 86-1602
P 85-0718	P 86-1603
P 85-0941	P 86-1604
P 86-0065	P 86-1607
P 86-0066	P 87-0057
P 86-0067	P 87-0058
P 86-0092	P 87-0059
P 86-0294	P 87-0068
P 86-0295	P 87-0105
P 87-0197	P 88-0890
P 87-0198	P 88-0894
44	P 88-0898
42 P 87-0199	P 88-0900
P 87-0200	P 88-0918
P 87-0201	P 88-0972
P 87-0323	P 88-0981
P 87-0326	P 88-0985
P 87-0770	P 88-0997
P 87-0794	P 88-0998
P 87-0930	P 88-0999
P 87-0931	P 88-1005
P 87-0963	P 88-1020
P 87-1028	P 88-1021
P 87-1066	P 88-1035
P 87-1104	P 88-1037
P 87-1192	P 88-1063
P 87-1226	P 88-1069
P 87-1227	P 88-1070
P 87-1273	P 88-1071
P 87-1337	P 88-1109
P 87-1379	P 88-1115
P 87-1417	P 88-1116
P 87-1436	P 88-1117
P 87-1437	P 88-1118
P 87-1542	P 88-1120
P 87-1546	P 88-1136
P 87-1547	P 88-1154
P 87-1548	P 88-1163
P 87-1549	P 88-1166
P 87-1555	P 88-1169
P 87-1673	P 88-1170
P 87-1676	P 88-1189
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III. 233 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OR THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY)

PMN No.

P 87-0973
P 87-1787
P 88-0049
P 88-0182
P 88-0288
P 88-0290
P 88-0854
P 88-0898
P 88-1197
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Y 89-0002
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Y 89-0007
Y 89-0008
Y 89-0009
Y 89-0010

IV. 62 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 82-0559	G Disubstituted benzene	Oct. 7, 1988.
P 83-1033	G C6-8 carboxylic acid	Mar. 15, 1985.
P 85-0353	G Polymer of aliphatic diisocyanate, aliphatic glycols, aliphatic diacid, aromatic anhydride and alkylene oxides	Jan. 6, 1986.
P 85-0986	G Functional aliphatic isocyanate based polymer	Aug. 25, 1988.
P 85-1284	G Alkanoic ester derivative of an alkanol and a carbonmonocyclic anhydride	Sept. 1, 1988.
P 86-1257	G Hydroxy functional acrylic methacrylate polymer	Feb. 10, 1988.
P 86-1436	G Methylenebis (isocyanatocyc ohexane), polymer with alkanediol, phthalic anhydride, tone M-100, and polyalkylenetriol	Oct. 12, 1988.
P 87-0075	G Mixed aldehyde novolacs	Jan. 12, 1987.
P 87-0076	G Mixed aldehyde novolacs	Jan. 12, 1987.
P 87-0152	G Salt of heterocyclicalkenyl, substituted (phenylpyrazole)	Aug. 25, 1988.
P 87-0920	G Organic salt of sulfonic acid	Aug. 31, 1988.
P 87-1041	G 1,2 -epoxypropionamide-glycidamide melamine resin	Sept. 21, 1988.
P 87-1637	Polymer of chloroethene-2-propenoic acid monoester with 1, 2-propandiol, '2-butenedioic acid	Feb. 20, 1988.
P 88-0054	G Azomethynine dye	Feb. 19, 1988.
P 88-0108	G Modified organosilicone	May 7, 1988.
P 88-0166	G Chlonnated alkyd resin	Aug. 30, 1988.
P 88-0243	G Paint jet magnenta ink	Apr. 7, 1988.
P 88-0256	2-mercaptonicotine	Sept. 28, 1988.
P 88-0270	G Nitroaromatic thiazoic and derivative	Aug. 31, 1988.
P 88-0456	G (Nitroaromatic alkyl)-substituted-heterocycle	Aug. 23, 1988.
P 88-0475	Formamide, N,N-dimethyl-	Sept. 15, 1988.
P 88-0476	G 2-Propenoic acid, 2-methyl-, methyl ester, polymer with poly(difluoromethylene), omega.-(2-((1-oxo-2-propenyl)oxy)ethyl)-	Sept. 15, 1988.
P 88-0477	G 5-(Substituted benzylidene)-5H-dibenzo(A,D) cycloheptene	Sept. 15, 1988.
P 88-0478	Formamide, N,N-dimethyl-	Sept. 15, 1988.
P 88-0481	G Aldehyde, polymer with ethenol	Sept. 15, 1988.
P 88-0483	G 2-Propenoic acid, 2-methyl-, methyl ester, polymer with siloxane and silicones, di-methyl	Sept. 15, 1988.
P 88-0484	G Carbonic dichlonde, polymer with bis phenol	Sept. 15, 1988.
P 88-0527	G Silane-modified polyurethane, polyvinyl alcohol copolymer	Sept. 20, 1988.
P 88-0618	Trimethoxysilylpropyl-N-methyldiallyl ammonium chlonde	Oct. 5, 1988.
P 88-0798	G Substituted-phenyl-substituted-tetrazolyl-substituted-naphthalenecarboxamide	Sept. 8, 1988.
P 88-0810	Polymer of: diglycidyl ether bisphenol A and polyoxypropylene polymer containing urethane linkages and terminated with mercaptan groups.	Sept. 2, 1988.
P 88-0905	G Polyimide	Sept. 19, 1988.
P 88-1045	G Substituted nitrophenylalkyl substituted thioxotetrazole	Aug. 25, 1988.
P 88-1102	G Fluoroalkyl aromatic chloramine	Sept. 30, 1988.
P 88-1108	G Alcohols, C16-12, ethoxylate, reaction product with maleic anhydride	July 20, 1988.
P 88-1164	G Thermoplastic polyimide precursor	Sept. 7, 1988.
P 88-1175	G Polyamic acid	Oct. 3, 1988.
P 88-1190	G Brominated aromatic compound	Aug. 22, 1988.
P 88-1300	G Modified polyester resin	Aug. 31, 1988
P 88-1360	G Partially fluorinated polyamide	Sept. 20, 1988.

IV. 62 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No	Identity/generic name	Date of commencement
P 88-1362	G Aromatic tetracarboxylic acid, methylated	Sept. 20, 1988.
P 88-1401	G Substituted lactone	Sept. 13, 1988.
P 88-1402	G Substituted lactone	Sept. 13, 1988.
P 88-1411	G Thermoplastic polyamide resin	Sept. 21, 1988
P 88-1489	G Alkyl salt of polycarboxylic acid	Sept. 28, 1988
P 88-1533	Toluene diisocyanate(2, 4isomer); toluene diisocyanate(2,6 isomer); salicylic acid; dipropylene glycol; 2-(2-aminoethyl)amino) ethanol; diglycidylethe of bisphenol A.	Sept. 16, 1988.
P 88-1534	4,4-diphenylmethane diisocyanate; dipropylene glycol; a 2000 MW polyester diol	Sept. 16, 1988.
P 88-1535	Toluene diisocyanate(2,4 isomer); toluene diisocyanate(2,6 isomer); 4,4-diphenylmethane diisocyanate; trisopropanolamine; 1000 MW polypropylene glycol prepolymer.	Sept. 16, 1988.
P 88-1537	4,4-diphenylamine diisocyanate; 1000 MW polypropylene glycol prepolymer dipropylene glycol, a 2000 MW polyester diol	Sept. 16, 1988.
P 88-1542	Rosin, dicyclopentadiene, dimer fatty acid, soya oil	Sept. 12, 1988.
P 88-1546	Xylene-formaldehyde polymer, reaction with rosin	Sept. 10, 1988.
P 88-1557	G Blocked isocyanate	Sept. 7, 1988.
P 88-1560	G Cationic acrylic resin	Sept. 7, 1988.
P 88-1603	G Vinyl acrylic copolymer	Sept. 26, 1988.
P 88-1614	G Metal hydride	Sept. 26, 1988.
P 88-1708	G Polymer of butyl acrylate with mixed alkyl methacrylates and alkyl maleate	Oct. 24, 1988.
Y 86-0051	G Lambda I polymer	Sept. 27, 1988.
Y 86-0124	G Copolymer of acrylic and methacrylic esters	Aug. 30, 1988.
Y 86-0250	G Aliphatic aromatic polyester	Nov. 10, 1986.
Y 88-0162	G Aqueous solutions of acrylic polymer salts	Apr. 29, 1988.
Y 88-0187	G Polyetherester	Sept. 6, 1988.
Y 88-0197	G Sunflower oil alkyd	Aug. 23, 1988.

V. 51 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.

P 83-0669
P 86-0092
P 87-1226
P 87-1227
P 87-1417
P 87-1436
P 88-0134
P 88-0138
P 88-0436
P 88-0701
P 88-0854
P 88-0894
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P 88-2273
P 88-2398
Y 88-0277
Y 88-0278
Y 88-0339
Y 88-0346
Y 89-0002
Y 89-0003

[FR Doc. 88-28332 Filed 12-22-88; 8:45 am]

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December 23, 1988

Part V

Department of the Treasury

31 CFR Part 0
Minimum Standards of Conduct; Final Rule

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DEPARTMENT OF THE TREASURY

31 CFR Part 0

Minimum Standards of Conduct

AGENCY: Treasury Department.

ACTION: Final rule.

SUMMARY: This rule amends the Department of the Treasury's Minimum Standards of Conduct. The amendment is total, and this rule substitutes for the existing Standards.

The Ethics in Government Act of 1978, as amended, made a number of changes in the post-employment restrictions of 18 U.S.C. 207, as well as imposing new and distinctly different financial disclosure requirements on certain Federal employees. These changes in the law are not reflected in the Department's current Minimum Standards of Conduct. Recognizing that an amendment to the Standards was required, the Department formed an internal task force to review the entire Standards for needed changes. This rule is the result of that review.

EFFECTIVE DATE: December 23, 1988.

ADDRESS: Deputy General Counsel, Room 3308, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: William L. Murphy, (202) 566–2327.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of proposed rulemaking on the revision of the Department's Minimum Standards of Conduct in the **Federal Register** on December 1, 1987 (52 FR 45648). One comment was received from outside the Department. That commenter expressed concern that some of the rules (particularly 0.735–36 and 0.735–96) could have an impact on the spouses of employees, thus taking the rules outside of the definition of an internal management regulation. The commenter expressed a view that as a result, a regulatory impact analysis is required. We disagree. By their terms, these rules apply only to the Department's employees. In response to an internal comment, an exception to the gift rule has been restored which was present in the previous rules and was omitted by mistake in the proposed rule. This change permits acceptance of food or refreshments under certain circumstances at organized functions where attendance is of benefit to the Department.

One commenter expressed concern about the effect of the promulgation of these revised Standards of Conduct. In response, the former Standards were in full force until the effective date of this amendment. Any act in violation of those rules, even if not a violation under these revised rules, is fully subject to appropriate discipline. Similarly, any act done prior to the effective date of these rules which would be in violation of these rules but was not a violation of the prior rules is not subject to discipline.

In addition, we have corrected several typographical errors which appeared in the proposed rule and clarified terminology.

Executive Order 12291 and Regulatory Flexibility Act

Because this rule relates solely to the internal management, operations, and personnel of the Treasury Department, Executive Order 12291 does not apply and a regulatory impact analysis is not required. For similar reasons, and although the Department did solicit public comments, no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

Drafting Information

The principal author of these regulations is Mr. William L. Murphy, Senior Counsel, Department of the Treasury. Other present and former personnel in the Treasury Department participated in the development of the regulations, both as to substance and style.

List of Subjects in 31 CFR Part 0

Standards of conduct.

31 CFR Subtitle A is amended by revising Part 0 to read as follows:

PART 0—STANDARDS OF CONDUCT

Subpart A—General Provisions

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0.735–1 Purpose.
0.735–2 Scope.
0.735–3 Policy.
0.735–4 Definitions.

Responsibilities

0.735–5 Assignment of responsibilities.
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0.735–7 The Department's counselor.
0.735–8 Deputy counselor.
0.735–9 Role of personnel officers.
0.735–10 Bureaus.
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0.735–12 Employees.

Subpart B—Rules of Conduct

Conflicts of Interest Statutes

0.735–20 General.
0.735–21 Summary of provisions of criminal code which define conflicts of interest.

Rules of Conduct

0.735–30 Proscribed actions; responsibilities.
0.735–31 Political activity.
0.735–32 Strikes.
0.735–33 Gifts or gratuities from government employees.
0.735–34 Gifts or gratuities from outside sources.
0.735–35 Gifts or gratuities from foreign governments.
0.735–36 Outside financial interests.
0.735–37 Using official designation.
0.735–38 Purchase of government property.
0.735–39 Outside employment and other outside activities—General rules.
0.735–40 Teaching, writing, lecturing, and speechmaking.
0.735–41 Gambling, betting, and lotteries.
0.735–42 Use of intoxicants; controlled substances.
0.735–43 Indebtedness; tax obligations.
0.735–44 Care of documents.
0.735–45 Lending or borrowing money.
0.735–46 Use of government cars.
0.735–47 Disclosure of information to the public.
0.735–48 Giving testimony.
0.735–49 Personal communications.
0.735–50 Use of Federal property.
0.735–51 Conduct while on official duty or on Government property.
0.735–52 Influencing legislation or petitioning Congress.
0.735–53 Soliciting, selling, and canvassing.
0.735–54 Office of Personnel Management examination processes.
0.735–55 Falsification of official records.
0.735–56 Miscellaneous statutory provisions.
0.735–57 General conduct prejudicial to the Government.
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0.735–59 Possession of weapons and explosives.
0.735–60 Privacy Act.

Subpart C—Confidential Statement of Employment and Financial Interest

0.735–90 General.
0.735–91 Criteria for designation of employees required to submit confidential statements.
0.735–92 Exceptions.
0.735–93 Grievances; form and content of statements.
0.735–94 Time and place for submission of employees' initial statements.
0.735–95 Annual statements.
0.735–96 Interests of employees' relatives.
0.735–97 Information not known by employees.
0.735–98 Information excluded.
0.735–99 Review of statements.
0.735–100 Confidentiality of employees' statements.
0.735–101 Effect of employees' statements on other requirements.

Subpart D—Executive Personnel Financial Disclosure Requirements

0.735–150 General.
0.735–151 Procedure.
0.735–152 Penalties.
0.735–153 Supplemental information.
0.735–154 Exemptions from filing.
0.735–155 Ethics Agreements.

Sec.

Subpart E—Special Government Employees

Conflict of Interest Statutes

0.735–210 Applicability of 18 U.S.C. 203 and 205.
0.735–211 Applicability of 18 U.S.C. 207.
0.735–212 Applicability of 18 U.S.C. 208.

Rules of Conduct

0.735–215 Applicability of Subpart B of this part.

Consultants and Advisers

0.735–220 Advice on rules of conduct and conflicts of interest statutes.
0.735–221 Industry, labor, agricultural, and other representatives.

Procedures to be Followed in the Department

0.735–230 Information and assistance to special Government employees and their supervisors.
0.735–231 Disclosure of financial interests.
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Subpart F—Employees Stationed in Foreign Countries

General Provisions

0.735–300 Purpose.
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Additional Rules of Conduct

0.735–310 Basic rule of conduct.
0.735–311 Applicability to American employees.
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0.735–313 Expression of thoughts and views.
0.735–314 Political activities.
0.735–315 Acceptance of employment by a member of a family.
0.735–316 Sale of personal automobiles and other personal property.

Advise and Counseling

0.735–320 Responsibility for guidance and assistance.

Authority: 5 U.S.C. 301, 5 U.S.C. 7301, Executive Order 11222, 18 U.S.C. 208, 5 CFR Part 735.

Subpart A—General provisions

§ 0.735–1 Purpose.

This part describes the Standards of Conduct required of all Department of the Treasury employees. The regulations in this part implement the Office of Personnel Management regulations (5 CFR Part 735) in accordance with Executive Order 11222, as amended. The Standards of Conduct in this part are not to be considered all inclusive and may be supplemented by the Department and bureaus to meet specific needs. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Department does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

§ 0.735–2 Scope.

This part covers the following subject areas:

(a) Subpart A of this part sets the general policy and definitions to be applied in interpreting the Department's Minimum Standards of Conduct and allocates responsibility in implementing these standards;

(b) Subpart B of this part summarizes the principal conflict of interest statutes and defines rules of conduct and procedures for all regular employees;

(c) Subpart C of this part contains rules concerning confidential financial disclosure;

(d) Subpart D of this part contains rules concerning public financial disclosure by Executive Personnel;

(e) Subpart E of this part applies to special Government employees and advisers;

(f) Subpart F of this part sets forth additional rules and guidelines applicable to employees stationed in foreign countries.

§ 0.735–3 Policy.

(a) Executive Order 11222 of May 8, 1965, as amended (18 U.S.C. 201 note), states the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of their government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his (or her) own integrity and conduct in all official actions.

(b) Personnel of the Department of the Treasury are expected to adhere to the above stated principles and to standards of behavior that will reflect credit on the Government. The Department's position is that of having confidence in its employees and of taking a positive and reasonable approach to the matter of maintaining the high Standards of Conduct necessary in the transaction of Treasury activities. Those few employees who violate the laws or the rules or regulations on conduct in this part will be disciplined in accordance with the gravity of the offenses committed.

(c) Disciplinary action may be in addition to any penalty prescribed by law. If disciplinary or other remedial action is necessary, it will be taken only after consideration of the explanation of the employee and will be effected in accordance with applicable laws and regulations. Remedial action may include, but is not limited to:

(1) Changes in assigned duties.

(2) Disqualification for a particular assignment.

(3) Divestment by the employee of his or her conflicting interest.

(4) Disciplinary action.

§ 0.735–4 Definitions.

In this part: (a) "Regular employee" or "employee" means an officer or employee of the Department of the Treasury, but does not include a special Government employee.

(b) "Special Government employee" means an officer or employee of the Department of the Treasury, or an employee detailed from another agency to the Department, who is retained, designated, appointed, employed, or detailed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(c) "Adviser" means a person who provides advice as a representative of an outside group and not as an employee or special Government employee.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Bureau" means for purposes of these regulations the Internal Revenue Service, Office of the Comptroller of the Currency, Bureau of Alcohol, Tobacco and Firearms, U.S. Customs Service, U.S. Secret Service, Federal Law Enforcement Training Center, Financial Management Service, Bureau of the Public Debt, U.S. Savings Bonds Division, United States Mint, Bureau of Engraving & Printing, Departmental Offices and the Legal Division.

Responsibilities

§ 0.735–5 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this part is described below in § 0.735–6—§ 0.735–12.

§ 0.735–6 Department.

The Department's responsibilities are to:

(a) Issue policy and basic Standards of Conduct applicable to all Treasury employees,

(b) Periodically review the basic standards issued and to review initially and periodically those additional standards issued by the bureaus,

(c) Set requirements to ensure that supervisors and employees are aware of the Standards of Conduct, of their responsibilities in maintaining and adhering to those standards and of the fact that disciplinary action will be taken in cases of failure to maintain or adhere to them, and

(d) Establish procedures for furnishing advice to management and to employees on the application of Standards of Conduct.

§ 0.735–7 The Department's counselor.

The Deputy General Counsel is the Ethics Counselor for the Department on matters covered by the regulations in this part. In addition, the Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO) for the purposes of the Ethics in Government Act, as amended. There will be an Alternate Designated Agency Ethics Official and such Deputy Designated Ethics Officials as the Deputy General Counsel appoints. The Deputy General Counsel is responsible for coordination of the counseling service within the Department and for interpretations on questions of conflicts of interest and other matters under this part. This includes providing the guidance required by section 206(b)(7) of the Ethics in Government Act.

§ 0.735–8 Deputy counselors.

The Chief Counsel or Legal Counsel for each bureau, or his or her designee, is the Deputy Ethics Counselor for that bureau.

As such, his or her responsibility is to give authoritative advice and guidance on conflicts of interest and other matters covered by this part.

§ 0.735–9 Role of personnel officers.

(a) Personnel officers at all organizational levels are responsible for providing general guidance and assistance to supervisors and employees in implementing and adhering to the provisions of the regulations in this part. Where questions arise or where advice is sought by other supervisors or employees which involve either advice or interpretation which is legal in nature, personnel officers will be responsible for seeing that the advice or interpretation is sought or obtained from the Deputy Ethics Counselor or the Ethics Counselor, as appropriate. Personnel officers will ensure that a briefing is given to all new employees on the rules in this part and the statutory provisions summarized in § 0.735–21. These officers will further ensure that all departing employees are briefed on the applicable post-employment restrictions of 18 U.S.C. 207, 5 CFR Part 737, this part and other applicable restrictions.

(b) The Department's Director of Personnel will issue a directive detailing implementation of this requirement.

§ 0.735–10 Bureaus.

The responsibilities of the bureaus are to:

(a) Provide employees with basic Standards of Conduct and any additional Standards and explanations necessary to effectively carry out the policy of the President and of the Department,

(b) See that employees and supervisors are aware of their responsibilities in maintaining and adhering to established Standards of Conduct,

(c) Inform employees as to how and from whom they may get additional clarification of Standards of Conduct and related laws, rules, and regulations,

(d) Advise employees of the location or availability or regulations governing conduct in and on Treasury buildings and grounds (§ 0.735–51),

(e) Ensure that appropriate disciplinary action is taken against employees who violate Standards of Conduct and related laws, rules and regulations and against supervisors who fail to carry out their responsibilities in taking or recommending disciplinary action when appropriate against employees under them who have committed such offenses, and

(f) Review and evaluate the effectiveness of standards issued and their application.

Note.—Bureaus shall provide employees with copies of the regulations in this part and will require a written receipt from each employee. New employees shall be given copies of the regulations in this part at the time of their employment. All employees will be timely reminded of periodic requirements (such as the requirement to promptly file and pay tax during the tax season, political restrictions during election campaigns, etc.) as well as continually educated concerning these rules. This may be done by posting the Standards on the bulletin board, by reminders in house organs or by other forms of written communication, including payroll inserts. In addition, employees will be reminded annually of their obligation to follow the Standards of Conduct.

§ 0.735–11 Supervisors.

It is the responsibility of each supervisor to:

(a) Know the Standards of Conduct applicable to him or her and the employees under his or her supervision,

(b) Advise the employees under his or her supervision to help them obtain advice on the application of the Standards of Conduct,

(c) Adhere to the Standards of Conduct,

(d) See that the employees under his or her supervision know and adhere to them also, and

(e) Take or recommend disciplinary action when appropriate in cases where the employees under his or her supervision violate the Standards or the principles upon which they are based.

§ 0.735–12 Employees.

(a) Each employee in the Department is required to:

(1) Know the Standards of Conduct and their application in his or her case,

(2) Seek information from his or her supervisor in case of doubt or misunderstanding on the application of the Standards of Conduct,

(3) Adhere to the Standards of Conduct, and

(4) Be aware of the consequences of violation of the laws, rules and regulations regarding conduct.

(b) Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms; U.S. Customs Service; Internal Revenue Service; or U.S. Secret Service. (An attorney in the Legal Division who obtains such information during the course of representation shall instead report to the appropriate Chief or Legal Counsel or the Deputy General Counsel.) The confidentiality of the source of such report will be maintained in a manner appropriate to the circumstances of the case.

(c) Employees shall report information of the type discussed in paragraph (b) of this section related to foreign intelligence or other information of the type covered by Executive Order 12356 to the Inspector General except that Legal Division attorneys who gain information during representation shall report this to the Deputy General Counsel.

Subpart B—Rules of Conduct

Conflict of Interest Statutes

§ 0.735–20 General.

The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable

question of conflict with his or her public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent. In addition to the conflict of interest statutes, summarized in § 0.735–21, the Department has rules concerning conflicts of interest that appear in §§ 0.735.34, 0.735.35, 0.735.36, and 0.735.39.

§ 0.735–21 Summary of provisions of criminal code which define conflicts of interest.

The following is a brief sumary of the provisions of the criminal code, 18 U.S.C. 201 *et seq.*, which define the conflicts of interest which are subject to fine and imprisonment. These provisions have been interpreted by the Attorney General in a memorandum distributed to Heads of Departments and Agencies, dated January 28, 1963, 28 FR 985 and published in a note following 18 U.S.C. 201. Specific examples of the application of the post-employment restrictions are provided by the Office of Government Ethics in 5 CFR Part 737. It should be noted that lesser prohibitions apply to special Government employees than to regular employees as indicated in Subpart E of this part.

(a) *18 U.S.C. 203.* Section 203 prohibits an employee from receiving, agreeing to receive or asking for, directly or indirectly, any compensation for services, otherwise than as provided by law, rendered by the employee or another in relation to any matter in which the United States is a party or has a substantial interest, before any Department or agency.

(Example: any Government employee's acceptance of compensation for Federal tax representation is prohibited, whether the employee provided the representation or not.)

(b) *18 U.S.C. 205.* Section 205 prohibits an employee from:

(1) Acting as an agent or attorney in prosecuting any claim against the United States or receiving any share or interest in such claim for assistance in its prosecution, or

(2) Acting as an agent or attorney for anyone before any Department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

This section does not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his or her parents, spouse, child or any person for whom, or for any estate for which, he or she is serving as guardian or other fiduciary, with certain exceptions set forth in section 205. (See § 0.735–39 for Departmental restrictions.) The provisions of this section and section 203 do not prevent an employee, if not inconsistent with the faithful performance of his or her duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty or other personnel administration matter in connection with such matter.

(c) *18 U.S.C. 207(a).* Section 207(a) prohibits a former employee at any time after his or her employment has ceased, from acting as agent or attorney (including making any oral or written communications with the intent to influence) for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she participated personally and substantially as an employee.

(d) *18 U.S.C. 207(b)(i).* Section 207(b)(i) prohibits any such former Government employee within two years after his or her employment from acting as an agent or attorney for, or otherwise representing (including making an oral or written communication with the intent to influence) anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested and which was under his or her official responsibility within one year prior to the termination of such responsibility.

(e) *18 U.S.C. 207(b)(ii).* Section 207(b)(ii) imposes an additional restriction which applies only to "Senior Employees." All executive level employees, together with those in Senior Executive Service who have been designated in 5 CFR 737.33 are "Senior Employees." A former "Senior Employee" may not aid or assist in representing by personal presence at a formal or informal appearance for a period of two years after employment with respect to any particular matter in which the employee would be prohibited from personally representing by Section 207(a) on account of personal and substantial participation as a Government employee.

(f) *18 U.S.C. 207(c).* Section 207(c) prohibits a former "Senior Employee" from acting as an agent or attorney for anyone other than the United States, or making an oral or written communication with the intent to influence, in any particular matter (but not necessarily involving a specific party or parties) before or to the employee's former agency for one year after employment. Certain Treasury components have been designated as "separate agencies" for purposes of this rule in 5 CFR 737.31. However, heads of these components may not take advantage of this separate agency designation and are barred from appearing before the Department as a whole. Similarly, those who supervise a component even though not part of it may not avail themselves of the designation.

(g) *18 U.S.C. 208.* Section 208 prohibits any employee from participating personally and substantially as a Government employee in any particular matter in which to his or her knowledge the employee, the employee's spouse, minor child, partner, organization in which the employee is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. An employee may be exempted from the provision of this section if he or she makes full disclosure of the financial interest to the official responsible for his or her appointment and receives in advance a written determination by that official that the interest is not so substantial as to be likely to affect the integrity of that employee's service. (Example: an auditor who owns stock in a company may not perform an audit of that company and an attorney working on a matter involving a company may not negotiate for employment with the law firm representing the company.) *See* § 0.735–37 for specific rules relating to negotiating employment. *See* § 0.735–36(e) for a general exemption of certain financial interests from the scope of this prohibition. Exemptions from the prohibition of section 208 may be made by general rule or regulation pursuant to section 208(b)(2). Specific exemptions pursuant to section 208(b)(1) may be made:

(1) For employees in the Departmental Offices by a superior official not lower than Deputy Assistant Secretary;

(2) For employees in bureaus by an official designated by the bureau head (this authority should not be delegated lower than the equivalent of Deputy Assistant Secretary); and

(3) For employees in the Legal Division by the Chief or Legal Counsel or Deputy General Counsel.

(h) *18 U.S.C. 209.* Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of salary as compensation for services as a Government employee from any source other than the Government. This section does not apply to a special Government

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employee, and does not prevent participation in any bona fide pension, retirement, profit sharing, or other welfare or benefit plan maintained by a former employer. This section also does not prohibit payment or acceptance of certain contributions, awards or expenses in connection with Government employee training programs or attendance at meetings authorized under 5 U.S.C. 4101–4118. In addition, payments by state or local governments and relocation expenses paid to White House fellows or participants in executive exchange programs may be accepted.

Rules of Conduct

§ 0.735–30 Proscribed actions; responsibilities.

(a) An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Afffecting adversely the confidence of the public in the integrity of the Government.

(b) An employee shall not unlawfully disclose personal information with respect to an individual which information has been obtained in the course of the employee's official duties.

(c) Employees may express their personal views on assigned matters to their immediate supervisors. Nevertheless, they are required to implement authorized decisions of their supervisors.

(d) Employees are expected to be courteous and tactful in their official relations with the public.

§ 0.735–31 Political activity.

Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns (5 U.S.C. 7324). Political activity in some local elections is permissible; but before employees engage in such activity, they should familiarize themselves with the statutory provisions and the Office of Personnel Management's regulations on this subject (5 U.S.C. 7324–7327 and 5 CFR Part 733). Employees are free to make political contributions, subject to two restrictions. First, it is unlawful for employees to solicit, receive or to be concerned with political assessments, subscriptions, or contributions for any political purpose whatever from other employees (5 U.S.C. 7323). Second, employees may not make contributions to an officer or employee of the Government who is the employer or employing authority of the contributing employee, or to an authorized committee of that officer or employee (18 U.S.C. 603). Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government (5 U.S.C. 7532 and E.O. 10450, as amended).

§ 0.735–32 Strikes.

Employees shall not strike against the Government (5 U.S.C. 7311).

§ 0.735–33 Gifts or gratuities from Government employees.

(a) Employees of the Federal Government are prohibited from soliciting contributions from other employees for gifts or presents to persons in superior official positions. Neither may such superiors receive any gift or present offered to them from employees in the Government receiving less salary than themselves (5 U.S.C. 7351).

(b) Collections of spontaneous origin may be made for voluntary token gifts on special occasions, such as marriage, retirement, resignation or for expressing condolences in cases of illness or death. Solicitations for such gifts should be limited to employees in the immediate office of the employee concerned and a few close associates with whom he or she has worked. However, supervisors may not solicit contributions from an employee under their supervision under any circumstances. In no case should general solicitations be made for a gift, nor should gifts to the recipients be in cash, except that small amounts (*e.g.*, under $20) remaining after the purchase of a gift may be included with the gift. A collection may be made, in accordance with the limitations set forth in paragraphs (a) and (b) of this section, with supervisory approval, for a cash gift to assist in a catastrophic illness or disaster, provided that these collections are limited to co-workers of approximately equal status to the recipient employee, and to his or her immediate supervisors.

(c) Employees must not be placed under pressure for personal contributions and the solictor must make it clear to all prospective contributors that contributions are voluntary.

§ 0.735–34 Gifts or gratuities from outside sources.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who: (1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department of the Treasury, (2) conducts operations or activities that are regulated by the Department, or (3) has interests that may be substantially affected by the performance or nonperformance of his or her official duty.

(b) General exceptions to the rule in paragraph (a) of this section are as follows unless otherwise precluded by heads of bureaus:

(1) Acceptance of gifts, entertainment, and food is proper when circumstances make it clear that obvious family or personal relationships (such as those between the employee and the parents, children, friends or spouse of the employee), rather than the business relationship of the persons concerned, are the motivating factors. (Friends for purposes of this rule are those with whom the employee has a long standing or close personal relationship.)

(2) Acceptance of food or refreshments of nominal value on infrequent occasions is permitted when such action occurs in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance, provided there is no pattern of accepting such food or refreshments from a single source. This exception also applies when Treasury officials are in attendance at large organized functions which are considered appropriate ones to attend because of the recognized benefit of such attendance to Treasury operations.

(3) If food or refreshments are received under circumstances that preclude immediate payment without embarrassment, and the acceptance is not authorized by paragraph (b)(1) or (2) of this section, it will be permitted to be accepted, but only if, within a reasonable period of time, the employee actually reimburses the host or has made a good faith effort to reimburse a host who will not accept reimbursement.

(4) Employees may accept gifts, the personal receipt of which is prohibited by these rules, where under the immediate circumstances, refusal would create embarrassment if: (i) The employee promptly turns the gift over to the Departmental Gift Unit (or as

specified in bureau directive) for return or other appropriate disposition; or

(ii) The employee directly returns the gift or writes a brief letter to the donor advising that Department rules do not permit the employee to accept the item. The employee will then submit the letter and the gift item to his or her supervisor who will arrange for mailing the letter and returning the gift item to the donor at Government expense.

(5) Employees may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, except where prohibited by law or regulation.

(6) Employees may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items of nominal intrinsic value. Employees may accept discounts afforded to Government employees as a whole, or to other groups of which the employee is a part, except when the entity is one which has business dealings with or is regulated by the employee's bureau.

(c) The rules set forth in paragraphs (a) and (b) of this section also apply to an employee who consents to the offer or acceptance of any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value by a person other than that employee, under circumstances which might reasonably be construed as influencing or improperly relating to past, present, or future performance of the employee's governmental duties.

(d) The receipt of payment or reimbursement by outside sources for the expenses of travel and subsistence for activities related to Government employment is permitted only in accordance with § 0.735–40.

(e) This section is not an attempt to classify all possible situations involving gifts or gratuities from outside sources. It is presented to assist management and employees in interpreting the rule and applying it. Cases must be judged on their individual merits. Employees must exercise sound judgment to comply with the intent of the rule. For example, acceptance of a gift permitted under paragraph (b) of this section might be inappropriate in certain circumstances. If there is any reasonable doubt about accepting a gift or gratuity, the employee should submit his or her questions in writing to the immediate supervisor and obtain a written opinion as to whether acceptance of the gift or gratuity is permissible under the rules of conduct.

§ 0.735–35 Gifts or gratuities from foreign governments.

(a) The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents emoluments, offices, or titles. Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations. Employees may retain gifts of minimal value meant as a souvenir or mark of courtesy if not prohibited by agency regulations.

(b) Minimal value for foreign government gifts to Treasury employees is $180.00 (or such higher amount established in 41 CFR Part 101–49).

(c) All gifts in excess of minimal value, the refusal of which would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, may be accepted and deposited with the Department within sixty days of acceptance.

(d) Deposit with the Department means delivery to the Departmental Gift Unit or other deposit authorized in the current Treasury Directive on Foreign Gifts.

(e) Any foreign gift must be reported as prescribed in the current Treasury Directive on Foreign Gifts.

§ 0.735–36 Outside financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that may reasonably be expected to be in conflict, or appears to be in conflict, with his or her Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her employment with the Department.

(b) Any employee who has a financial or other interest which may be affected by a matter to which the employee is assigned, shall promptly notify his or her supervisor of the potential conflict of interest. The supervisor is responsible for ensuring that the employee does not work on any matter which would create a conflict of interest (other interests which might require disqualification include membership in a nonprofit organization, financial interests of friends or relatives in a matter, and the like). Employees should consult with the Ethics Counselor or supervisor in case of doubt.

(c) An employee who is negotiating for, or has an arrangement concerning, prospective employment may not participate in a matter in which the prospective employer has a financial interest. Financial interest for this rule includes an indirect interest, such as when the prospective employer is representing a client which has a direct interest in the matter. To assist employees, the following rules apply to employment negotiating situations:

(1) An arrangement for employment includes a tacit agreement to return to a former employer.

(2) A negotiating situation exists either during active negotiation, where an employee solicits employment, or where an employee does not promptly reject an unsolicited offer of employment.

(3) The types of matters which the employee must refrain from participating in include not only particular matters, such as individual cases, but general matters such as drafting of regulations which would have a direct and predictable impact on the prospective employer.

(4) Employees should promptly notify their supervisor in writing of all employment arrangements and negotiations with an individual or organization which has financial interests actually or potentially affected by any matter on which the employee is working unless advised by an Ethics Counselor that a given negotiation need not be reported.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, as amended, this Part, or other regulations or directives.

(e) Pursuant to 18 U.S.C. 208(b)(2), the financial interests described below are deemed to be too remote and inconsequential to affect the integrity of employees' services. Therefore, an employee will not be in violation of section 208(a) for participating in a matter in which he or she has such interest. However, employees should refrain from participating in matters notwithstanding this waiver if such participation would result in an improper appearance. The financial interests referred to above are:

(1) Stocks or bonds of publicly traded corporations with a value of $1,000 or less;

(2) Stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested.

§ 0.735–37 Using official designation.

Employees shall not permit their official position, status or designation to be used in a manner that is intended to further, or gives the appearance of

furthering, the private, financial or business interests of the user.

§ 0.735–38 Purchase of Government property.

(a) Employees are prohibited from, either directly or indirectly, bidding or purchasing at any sale of property either owned by the Government and under control of the employees' bureau (or a bureau over which the employee exercises supervision) or seized and sold under the direction of the employees' bureau.

(b) Government property under the control of the Department shall not be sold to a Government employee (including an employee of any Treasury bureau other than the disposing bureau), either directly or indirectly, unless an authorized representative of the bureau disposing of the property has determined that the sale is in the best interests of the Government.

(c) Before purchasing any Government property, either directly or indirectly, from any agency other than Treasury, employees of the Department shall make known to the disposing agency that they are such employees. Employees are permitted to purchase such property unless prohibited by the disposing agency's rules. If the disposing agency's rules defer to the employing agency's rules, the procedures in paragraph (b) of this section shall apply to purchases by Treasury employees.

(d) This section does not apply to items sold generally to the public at fixed prices, such as Mint numismatic products. In addition, a foreign gift deposited with the Department may be purchased by the donee employee pursuant to 5 U.S.C. 7342 and 41 CFR Part 101–49.

§ 0.735–39 Outside employment and other outside activities—General rules.

(a) Employees shall not engage in any outside employment or other outside activities with or without compensation, which—

(1) Interfere with the efficient performance of official duties,

(2) Might bring discredit on or cause unfavorable and justifiable criticism of the Government,

(3) Might reasonably result in a conflict of interest, or an apparent conflict of interest, with official duties and responsibilities, or

(4) Might result in the unauthorized use or disclosure of classified or sensitive information.

(b) Bureau heads will establish appropriate instructions to meet their particular needs in regard to outside employment and other outside activities of their employees. Generally, these instructions will require employees to obtain written permission from appropriate approving officials. All approvals should be reviewed annually. To simplify administration of this rule, bureaus may include in their instructions criteria not inconsistent with the regulations in this Part which provide for outside activities which are clearly permissible and would not require written permission. Bureaus will retain in employees' Official Personnel Files all requests whether granted or not. In addition, bureaus will retain a separate file of all requests and approvals for the use of the counselor and deputy counselors.

(c) Under 5 U.S.C. App. (section 210 of the Ethics in Government Act of 1978, Pub. L. 95–521) all employees who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy full-time positions appointment to which is required to be made by the President, by and with the advice and consent of the Senate, may not have outside earned income which is in excess of 15 percent of their salary in any calendar year.

§ 0.735–40 Teaching, writing, lecturing, and speechmaking.

(a) This section sets forth rules regarding teaching, writing, lecturing or speaking, whether in a private or official capacity, which is dependent on information the employee obtained as a result of Government employment, or related to Treasury Department business. Teaching, writing, lecturing or speaking not dependent on information obtained as a result of Government employment, or related to Treasury Department business, or governed by § 0.735–39 and bureau regulations on outside employment.

(b) The following procedures control these activities dependent on Government information or related to Treasury Department business.

(1) *Use or release of nonpublic information.* An employee may not use or release in a teaching, writing, lecturing, or speechmaking activity (whether as an official duty or in a private capacity) information gained as a result of Government employment which has not been made available to the general public, or will not be made available on request, unless the appropriate approving official gives written authorization for such use or release based upon a determination that such use or release is in the public interest.

(2) *Activities undertaken as an official duty.* An employee may engage in teaching, writing, lecturing, or speechmaking as an official duty. If consistent with the proper expenditure of public funds, such activities may be permitted as official duties. Approval of the activity by the employee's supervisor and the content of the teaching, writing, lecturing or speechmaking engagement by the appropriate approving official is required. If undertaken as an official duty, all expenses are to be borne by the Treasury Department and the employee may receive no other compensation or reimbursement. However, the employee may, under 5 U.S.C. 4111 and 5 CFR Part 410, accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary to be tax exempt as described in 26 U.S.C. 501(c)(3) or from state, county or municipal governments, if no U.S. Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Department's policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities. While an employee may incur additional expenses, no reimbursement of such excess is permitted except by a person who:

(i) Is a relative or close personal friend, and

(ii) Makes such payment solely from personal funds.

Any payment or reimbursement shall be subject to the rules of this part pertaining to gifts and gratuities. Subject to these same limitations and approval requirements, reimbursement for reasonable travel expenses of a spouse or traveling companion who accompanies the employee may be accepted.

(3) *Activities undertaken in a private capacity.* (i) An employee may teach, write, lecture, or speak on matters related to Treasury Department business or which will draw from information gained while a Government employee (subject to paragraph (c)(2) of this section if nonpublic information is involved) in a private capacity subject to the following limitations:

(A) An advance copy or outline (such as a course outline) of any speech, writing, etc., must be given to the appropriate approving official who may disapprove the presentation;

(B) The employee may not use his or her official title without specific written approval by the appropriate approving official. An example of title use where approval is normally appropriate is where the employee's Government position is referred to in biographical

information provided in conjunction with the outside activity; and

(C) The employee may not utilize Government time or facilities to prepare the presentation or submission. Acceptance of honoraria is discouraged.

(ii) If an honorarium or other compensation is to be received, specific written approval is required. (Presidential appointees shall obtain personal written approval of the Secretary).

(iii) If an honorarium or other compensation is not to be received, further approval is not needed, unless required by bureau regulations.

(iv) Employees may accept payment for travel, lodging, and subsistence expenses actually incurred from the person or group sponsoring an activity determined not to be an official duty, if the payment is reasonable in amount and otherwise consistent with the Department's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee. Presidential appointees shall obtain the personal written approval of the Deputy Secretary or Secretary before accepting any such payment. An employee may incur excess expenses not reimbursable under this subsection. Payment or reimbursement of such expenses is permitted by a person who:

(A) Is a relative or close personal friend,

(B) Makes such payment solely from personal funds, provided

(C) That such payment is in accordance with the rules of this part pertaining to gifts and gratuities. Payment of these excess expenses by anyone other than a relative or close personal friend requires approval as compensation under paragraph (c)(4)(ii) of this section.

(4) *Reporting requirements.* All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs or activities of the Department, or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the appropriate approving official stating the amounts paid and by whom, unless this information was previously provided to that official. In addition, the employee may be required by the appropriate approving official to furnish other relevant information concerning these payments.

(5) *Other restrictions.* (i) Under 5 CFR 735.203(c), the Secretary of the Treasury may not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Treasury Department, or which draws substantially on official data or ideas which have not been made public.

(ii) Under 2 U.S.C. 441i, employees are prohibited from receiving honoraria of more than $2,000 for any appearance, speech, or article;

(iii) Presidential appointees should be aware that the earned income limitation described in § 0.735–39(c) applies to honoraria.

(c) For purposes of this section the "appropriate approving official" shall be, in the case of employees within a bureau, the bureau head or deputy; in the case of employees within an office, the office head or deputy; and in the case of a bureau or office head, the official to whom the bureau or office head reports pursuant to Treasury Department Order No. 101–5. (This authority may be delegated in writing.)

(d) Treasury employees are prohibited from official attendance at segregated meetings. They may not participate in conferences or speak before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities or the conferences, or from membership in the group.

§ 0.735–41 Gambling, betting, and lotteries.

(a) Except as provided for in paragraph (c) of this section an employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any form of illegal gambling, betting, lotteries or the sending of chain letters, even if such activities are in support of a worthy cause.

(b) Possession on Government-owned or leased premises of any numbers slip or ticket, record, notation, receipt or other writing of a type ordinarily used in any illegal form of gambling, such as a tip sheet or dream book, unless explained to the satisfaction of the head of the bureau or his delegate, shall be prima facia evidence that the employee is participating in an illegal form of gambling on such premises.

(c) This section does not preclude: (1) Activities necessitated by an employee's law enforcement duties; or (2) purchase of lottery tickets sold on Government-owned or leased property by blind vendors, as provided for in the Randolph Sheppard Act (20 U.S.C. 107a(a)(5)) except in those states or localities where such gambling is prohibited by statute, ordinance or other applicable laws.

§ 0.735–42 Use of intoxicants; controlled substances.

(a) Employees must refrain from using intoxicants or controlled substances habitually, to excess or in any way which adversely affects their work performance. In addition, employees are forbidden from engaging in the illegal sale, use or possession of controlled substances while on Department premises or on official duty.

(b) Employees in violation of paragraph (a) of this section may be subject to disciplinary action up to and including dismissal.

(c) In addition, each employee should be aware that any use of intoxicants or use, sale or possession of controlled substances found to be prejudicial to the Government may subject that employee to disciplinary action. See § 0.735–57.

§ 0.735–43 Indebtedness; tax obligations.

(a) Employees shall not without good reason fail to maintain good credit and a reputation for prompt settlement of their just financial obligations in a proper and timely manner. They are expected to manage their private financial affairs in a manner which will not cause embarrassment to the Treasury Department. This particularly includes just financial obligations to Federal, State, and local governments for taxes as well as private concerns and individuals. A "just financial obligation," as used in this section, means one acknowledged by the employee; reduced to judgment by a court; or, in the case of taxes, as provided by paragraph (b) of this section. "In a proper and timely manner," as used in this section, means in a manner which the Department determines does not, under the circumstances, reflect adversely on the Department as his or her employer. In the event of disputes between an employee and an alleged creditor, this section does not require the Department to determine the validity or amount of the disputed debt.

(b) In accordance with the requirement in paragraph (a) of this section that employees pay their just financial obligations in a proper and timely manner, employees must timely pay any valid tax due to a Federal, State, or local government agency. A "valid tax due" as used in this paragraph includes:

(1) A balance due on an original return as filed with a government agency;

(2) An uncontested tax assessment of a government agency;

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(3) A tax otherwise due a government agency which is acknowledged by the employee; or

(4) A final administrative determination confirmed by notice of a tax lien issued by a government agency.

(c) In addition, it is expected that employees will file timely and properly all tax returns in keeping with the requirements of law, regulation or ordinance, whether or not a tax is due.

§ 0.735–44 Care of documents.

The care of Government documents is a Federal requirement which is regulated by legislation. All records and documents in the custody of employees are in their custody for official purposes only. It is unlawful to remove, conceal, alter, mutilate, obliterate or destroy records or documents, or to remove or attempt to remove them from official custody with the intent of performing any of the above actions (18 U.S.C. 2071). Employees must not remove records and documents from official files without approval from proper authority. Working papers, copies of reports and other official records and documents shall be promptly sent to file when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements. There are specific instructions relating to the safeguarding of classified or other sensitive information which are furnished to employees authorized to have access to such information. See further the regulations in Part 1 of this title which implement 5 U.S.C. 301, 552 and 552a governing the care and the disclosure of records in the Department of the Treasury; § 0.735–61 of this part; and see the relevant statutes and regulations, if any, issued by a bureau or office to which the record belongs.

§ 0.735–45 Lending or borrowing money.

Employees shall not, either directly or indirectly, lend to or borrow from other employees substantial sums of money. In negotiating loans from authorized sources, such as credit unions, welfare associations, commercial or private banking institutions, etc., if the transaction involves the signature of one or more endorsers or comakers, the borrower must not in any instance solicit, or permit to be affixed to any instrument as endorser or comaker, the signature of any Treasury employee who exercises supervision over that borrower, or over whom that borrower exercises supervision.

§ 0.735–46 Use of Government cars.

Employees are prohibited from using Government cars for other than official purposes. Use of such cars for transportation of employees between their domiciles and places of employment can only be justified where affirmatively authorized by statute, as in 31 U.S.C. 1344. Employees who violate this section shall be suspended from duty without compensation for not less than one month and may be suspended for a longer period or removed from office if circumstances warrant.

§ 0.735–47 Disclosure of information to the public.

Employees may not disclose official information without either appropriate general or specific authority under Department or bureau regulations. However, employees who are so authorized should make every effort to comply promptly and courteously with requests by the public for information, when permitted to do so by law. See further 31 CFR 1.9, 1.10, and 1.28(b).

§ 0.735–48 Giving testimony.

(a) When directed to do so by competent Treasury authority, employees must testify and respond to questions truthfully, under oath when required, concerning matters of official interest.

(b) The information provided by an employee pursuant to paragraph (a) of this section shall be furnished to authorized persons in the Department of the Treasury who have a need for the information in the performance of their duties.

(c) Failure to testify, respond to questions, or give truthful answers, under oath when required, pursuant to paragraph (a) of this section, may subject employees to dismissal from Federal employment or other disciplinary or adverse action. Furnishing false information may also result in criminal prosecution.

(d) The authority for soliciting information pursuant to paragraph (a) of this section is granted in 5 U.S.C. 301 (Authorization of Agency Heads to Prescribe Regulations for their Departments); Executive Orders 10450 (Security Requirements For Government Employees) and 11222 (Prescribing Standards of Ethical Conduct For Government Officers and Employees); and 26 U.S.C. 7801 (Authority of the Secretary of the Treasury).

§ 0.735–49 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to essential need. Employees who receive personal mail at their office will advise addressers to stop sending such mail to the Department address.

§ 0.735–50 Use of Federal property.

Employees may not directly or indirectly use or allow the use of Federal property of any kind for other than officially approved activities. Employees also have a positive responsibility to protect and conserve all Federal property including equipment and supplies entrusted or issued to them.

§ 0.735–51 Conduct while on official duty or on Government property.

Employees must adhere to the regulations governing conduct in and on the Treasury Building, and Treasury Annex Building and grounds (Part 407 of this title); the Bureau of Engraving and Printing, and Bureau of Engraving and Printing Annex Building and grounds (Part 605 of this title); the Bureau of the Mint buildings and grounds located in Denver, Fort Knox, New York, Philadelphia, San Francisco, and West Point (Part 91 of this title); the grounds of the Federal Law Enforcement Training Center (Part 700 of this title); and Treasury-occupied General Services Administration buildings and grounds (41 CFR Subpart 101–19.3). In addition, each employee must refrain from acting in a manner unbecoming a Treasury employee, while on official duty or in Government buildings.

§ 0.735–52 Influencing legislation or petitioning Congress.

Employees are prohibited from using Government time, money or property (as, for example, through sending telegrams or letters) to influence a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling through proper channels of matters relating to legislation affecting the Department of the Treasury (18 U.S.C. 1913). Employees have the right to petition Members of Congress either individually or collectively or to furnish information to any committee or member of either House of Congress (5 U.S.C. 7211) when not using Government time, money or property.

§ 0.735–53 Soliciting, selling, and canvassing.

Except when authorized by the head of the bureau, office or division concerned, and except as provided by § 0.735–33, employees are prohibited from soliciting, from making collections, from canvassing for the sale of any article or from distributing literature or

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advertising matter in any space occupied by Treasury.

§ 0.735–54 Office of Personnel Management examination processes.

Appointment and future advancement in the Federal career service are based on the important principle of individual merit and qualifications. The selection and merit competitive processes are protected by the Office of Personnel Management statutory provisions, 5 U.S.C. Chapter 33 and the Office of Personnel Management regulations. Employees shall not participate either directly or indirectly in any of the following actions:

(a) Intentionally make a false statement or practice any deception or fraud in examination or appointment;

(b) Induce persons to withdraw from competition for competitive service positions;

(c) Engage in any improper activity with respect to the taking of Office of Personnel Management examinations and examination ratings; or

(d) Obstruct the right of any person to take examinations according to the Office of Personnel Management rules and regulations.

§ 0.735–55 Falsification of official records.

(a) Employees shall avoid making false, misleading or ambiguous statements, deliberately or willfully, whether oral or written, in connection with any matter of official interest. Some of these matters of official interest are: Transactions with the public, other Federal agencies or fellow employees; application forms and other forms which serve as a basis for appointment, reassignment, promotion or other personnel action; vouchers; leave records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with the employee's duties; and report of any moneys or securities received, held or paid to, for or on behalf of the United States.

(b) Furnishing false information may subject employees to dismissal from Federal employment, or other disciplinary or adverse action; and may also result in criminal prosecution (18 U.S.C. 1001).

§ 0.735–56 Miscellaneous statutory provisions.

Bureau heads should advise employees of any laws which relate specifically to employees in their bureaus. The attention of every employee is directed to the statutes relating to conduct listed below: (a) Pub. L. 96–303, July 3, 1980, 94 Stat. 855, 856, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(b) The prohibition placed on Department of the Treasury employees against carrying on any trade in any public funds or debts or obtaining any personal gain from transacting the Department's business (31 U.S.C. 329).

(c) Chapter 11 of Title 18, U.S.C., relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(d) The prohibition against the misuse of official mail for private purposes (18 U.S.C. 1719).

(e) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(f) The prohibition against—

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(g) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(h) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(i) The prohibitions against—

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783);

(2) The disclosure of confidential information (18 U.S.C. 1905);

(3) The unlawful disclosure of personal information (5 U.S.C. 552a); and

(4) The disclosure of tax information (26 U.S.C. 6103).

(j) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(k) The prohibition against Federal employment of any person convicted of a felony in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. 7313).

(l) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees whose compensation is equal to or greater than that for GS–16, or executive assistants or secretaries to any of the foregoing) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of compensation or other benefits such as a loan, or reimbursement for travel or other expenses from, or his or her sale to or purchase of property from, a private foundation.

(m) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(n) The prohibition against interfering with Office of Personnel Management examinations (18 U.S.C. 1917).

(o) The prohibition against striking against the Government (18 U.S.C. 1918).

§ 0.735–57 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government. See Federal Personnel Manual Chapter 731 for general guidance on the use of the terms "criminal, infamous, dishonest, or notoriously disgraceful conduct."

§ 0.735–58 Nondiscrimination.

While in the performance of duty, no employee may discriminate against any other employee, applicant for employment, or person dealing with the Department on official business because of race, color, religion, national origin, sex, age, or handicap. Nor may any employee engage in acts of sexual harassment.

§ 0.735–59 Possession of weapons and explosives.

Employees while on official duty or while in Government buildings shall not have in their possession firearms, other dangerous or deadly weapons or explosives, either openly or concealed, except for official purposes.

§ 0.735–60 Privacy Act.

(a) The head of each office and division shall be responsible for assuring that employees under their supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil remedies provided therein. Also, that employees are made aware of their responsibilities to protect the privacy of individuals by:

(1) Avoiding unauthorized disclosure either orally or in writing;

(2) Assuring that information maintained is accurate, relevant, timely and complete;

(3) Insuring that no system of records, as defined in section 2(a)(5) of the Act is maintained without public notice.

(b) Employees of the Department of the Treasury shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a

function or carry out a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to Department functions or responsibilities;

(3) Collect information, wherever possible, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the use that will be made of the information, and the effects, both legal and practical, of not furnishing information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or an individual's membership in associations or organizations, unless—

(i) The individual has volunteered such information;

(ii) The information is expressly authorized by statute to be collected, maintained, used or disseminated; or

(iii) The activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(6) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(7) Disseminate no information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a or pursuant to a routine use published in the **Federal Register**;

(8) Keep an accounting in accordance with applicable directives, of all disclosure of personal information outside the Department, whether made orally or in writing;

(9) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(10) Assure that the proper Department authorities are aware of any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment activities, or information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) Employees may be charged with a misdemeanor and a fine up to $5,000 for the following violations:

(1) Willful disclosure of records which is prohibited by section 3 of the Privacy Act of 1974 after having knowledge that disclosure of the specific material is so prohibited,

(2) Willful maintenance of records without meeting the requirements of publication of a notice concerning such system in the **Federal Register** under section 3(e)(4) of the Privacy Act; or

(3) Obtaining records under false pretenses.

Subpart C—Confidential Statement of Employment and Financial Interest

§ 0.735–90 General.

(a) Section 403 of Executive Order 11222, as amended by Executive Order 12565, authorizes the Office of Personnel Management to prescribe regulations requiring certain officers and employees in the Executive Branch to file confidential statements of employment and financial interests.

(b) This subpart describes Treasury procedures required to implement Executive Order 11222, as amended, and the regulations of the Office of Personnel Management, 5 CFR Part 735.

(c) Treasury officers required to file public financial disclosure reports by virtue of the Ethics in Government Act of 1978 shall do so in accordance with the procedures set out in Subpart D and will not be required to file confidential statements under this subpart, except as provided by § 0.735–153.

(d) Each bureau will submit a list of positions which meet the criteria for filing confidential statements to the Designated Agency Ethics Official by March 1 of each year. The Designated Agency Ethics Official will designate positions for coverage by April 1 of each year. Bureaus will advise employees of their filing requirements by May 1 of each year.

§ 0.735–91 Criteria for designation of employees required to submit confidential statements.

Except as provided in § 0.735–93 confidential statements of employment and financial interest will be filed by the following employees:

(a) Those classified at GS–13 to GS–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions, the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(b) Those classified at GS–13 to GS–15 under 5 U.S.C. 5332, or at comparable pay level under another authority, who are in positions determined to have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, Executive order, 5 CFR Part 735, and this Part.

(c) Those classified below GS–13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which otherwise meet the criteria in paragraphs (a) and (b) of this section, but only when the inclusion of the position has been specifically justified in writing to the Office of Personnel Management as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict of interest situation.

(d) A list of designated positions requiring filing will be published annually as a Departmental directive.

§ 0.735–92 Exceptions.

Employees in positions that meet the criteria in paragraph (a) of § 0.735–91 may be excluded by the Designated Agency Ethics Official from the reporting requirement when it is determined that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote; or

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

§ 0.735–93 Grievances; form and conduct of statements.

(a) An employee who believes that his or her position has been improperly designated as one requiring submission of a confidential statement of employment and financial interest may challenge that determination through the agency's normal grievance procedure.

(b) The confidential statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, at a minimum, the information required by the formats prescribed by the Office of Personnel Management in the Federal Personnel Manual. Such statements shall not include questions that go beyond, or are in greater detail than those included in Office of Personnel Management

formats without the approval of the Office of Personnel Management.

§ 0.735–94 Time and place for submission of employees' initial statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the office or official designated by the bureau head (reviewing official) not later than 30 days after the employee's entrance on duty in a covered position.

§ 0.735–95 Annual statements.

Employees shall submit an annual statement of employment and financial interests that shows changes in or additions to their original statement up to and including June 30 of each year, except when the Office of Personnel Management authorizes a different date. A complete report is required even if no change has occurred since the last report. This statement is required to be submitted to the reviewing official no later than July 31 each year. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result in a violation of the conflict of interest provisions of 18 U.S.C. 208, Subpart C of 5 CFR Part 735, or this part.

§ 0.735–96 Interests of employees' relatives.

For purposes of completing the confidential statement of employment and financial interest, the interests of a spouse, minor child, or other member of the employee's immediate household are to be considered interests of the employee. In other words, those blood relations who are residents of the employee's household are to be treated for purposes of completing the financial statement as though they were the employee and, therefore, the report of financial interests should reflect their employment and financial interests in the same manner that the employment and financial interests of the employee are shown.

§ 0.735–97 Information not known by employees.

If any information required to be included in a statement of employment and financial interests, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his or her behalf.

§ 0.735–98 Information excluded.

The regulations in this subpart do not require an employee to submit on a statement of employment and financial interests any information relating to the employee's exercise of First Amendment rights, or the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business enterprise. For the purposes of the regulations in this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 0.735–99 Review of statements.

(a) Each bureau will make provision for a review of the statements submitted by its employees. This review may be made either by the bureau head or his or her designee. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees. If information from the statements submitted or from other sources indicates a conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. If the conflict or apparent conflict is not resolved at the bureau or a lower organizational level, the matter will be referred to the Designated Agency Ethics Official.

(1) The assistance of the Designated Agency Ethics Official may be sought at any time.

(2) Each bureau head will submit a statistical report to the Designated Agency Ethics Official weekly beginning August 15 until the review process is complete. The report shall contain the number of statements required, the number received and the results of the reviews (such as the number approved and those awaiting final resolution).

(b) Notwithstanding paragraph (a) of this section, attorneys in the Legal Division shall submit their statements to their immediate supervisor for review, who will forward the statements to the Deputy General Counsel.

(c) In the case of officers who file public financial disclosure reports and who are also required by their bureaus to file supplemental information on a confidential basis in accordance with § 0.735–153, the supplemental information shall be filed with the head of the bureau, or his or her designee; and in the case of a bureau head filing such supplemental information, he or she shall submit it to the official in the Office of the Secretary to whom he or she reports under Treasury Department Order No. 101–5. Reviewing officials shall inform employees required to file supplementary statements in writing that such statements are due on or about June 15 each year. The statements will be reviewed by reviewing officials by August 31 and resolution shall be completed no later than September 30. Approval of each supplementary statement shall be shown affirmatively by initialing an "O.K." or other symbol of approval and the date of approval. The official shall submit a copy of each statement to the Designated Agency Ethics Official no later than September 15.

§ 0.735–100 Confidentiality of employees' statements.

(a) Statements of employment and financial interests shall be held in confidence. To ensure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part.

(b) Criminal penalties may be imposed on an employee who willfully and knowingly discloses to an unauthorized person information protected under the Privacy Act.

§ 0.735–101 Effect of employees' statements on other requirements.

The submission of a statement or supplementary information by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation.

Subpart D—Executive Personnel Financial Disclosure Requirements

§ 0.735–150 General.

Executive personnel are required to file public financial disclosure statements upon appointment, termination, and annually in accord with the regulations of the Office of Government Ethics, 5 CFR Part 734. For purposes of this provision, executive personnel are all those, at the Executive Level; in the Senior Executive Service; classified at GS–16 or above; paid at the minimum rate of basic pay fixed for GS–16 if paid under other than the General Schedule; or exempted from the competitive service by reason of occupying a position of a confidential or policymaking character (Schedule C).

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unless exempted from reporting by the Office of Government Ethics. For more information regarding this exemption as well as exemptions for special Government employees, and for those serving in a covered position for less than sixty-one days in a calendar year, see § 0.735–155.

§ 0.735–151 Procedure.

All executive personnel will file public financial statements on Standard Form 278 (or such other form as is prescribed by the Office of Government Ethics) pursuant to 5 CFR Part 734 and instructions which will be provided to each covered employee.

§ 0.735–152 Penalties.

Penalties for failure to file, or for falsification of a financial disclosure form are provided by the Ethics in Government Act of 1978. These penalties are a civil penalty of up to $5,000 and administrative remedies which may include adverse action under 5 CFR Part 752.

§ 0.735–153 Supplemental information.

Executive personnel required to file public financial disclosure reports are generally exempt from the requirement to submit Confidential Statements of Employment and Financial Interests. Nevertheless, such executive personnel may be required to submit supplemental information on a confidential basis if it is determined that such information is needed by Treasury or the executive's bureau for enforcement of specific statutes or regulations not having Governmentwide application. Upon receipt of sufficient justification by a bureau, the Designated Agency Ethics Official will approve requests for the collection of supplemental information and seek the approval of the Office of Personnel Management, if necessary.

§ 0.735–154 Exemptions from filing.

(a) Schedule C employees classified below GS–16 (or paid at a rate lower than GS–16 step 1 if not classified in the General Schedule) may be exempted from filing if they have no role in advising or making policy determinations with respect to agency programs or policies (such as those serving as chauffeurs, private secretaries, stenographers, and the like) pursuant to 5 CFR 734–203. The Director of Personnel will provide a list to the Designated Agency Ethics Official of those who are believed to meet the requirements for exclusion by April 15 of each year. The list will include a description of each position and the name of the incumbent. After review, the list will be provided to the Office of Government Ethics by May 15 of each year. The Director of Personnel will notify those on this final list of their exemption. In the event of subsequent disapproval of any exemption by the Office of Government Ethics the Designated Agency Ethics Official will notify the Director of Personnel so that the Director may require filing by that individual.

(b) Creation of new Schedule C positions during the year requires an immediate determination of exemption. The Director of Personnel shall make the report required in paragraph (a) of this section (if exemption is believed appropriate) not later than ten days after the individual's entrance on duty. The procedures in paragraph (a) of this section will be followed for these special reports.

(c) An individual may be exempted from filing if the Designated Agency Ethics Official determines that the employee will serve sixty days or less in a covered position. The Director of Personnel or bureau heads will promptly request such exemptions if appropriate. A report is required 15 days after the sixty-first day of service of an exempted employee (5 CFR 734.204).

(d) Special Government employees who serve more than sixty days may be exempted from public disclosure by the Director of the Office of Government Ethics. Copies of exemption requests shall be sent to the Designated Agency Ethics Official. The waiver request must be filed with the Office of Government Ethics within:

(1) Ten days after the individual knows that he or she will serve more than sixty days in any calendar year; or

(2) The expiration of the sixty days. Rules governing this waiver are at 5 CFR 734.205.

§ 0.735–155 Ethics agreements.

An ethics agreement is a written commitment by an employee to take certain actions, such as recusal, divestiture and the like to avoid an actual or potential conflict of interest. Nominees to positions requiring Senate confirmation are the most likely to execute such agreements as part of the appointment and confirmation process. There are special rules concerning ethics agreements at 5 CFR 734.803 *et seq.* These rules cover notification of the creation of such an agreement, notification of compliance with the terms of the agreement, and provisions for filing and retention of agreements.

Subpart E—Special Government Employees

Conflict of Interest Statutes

§ 0.735–210 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special Government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special Government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has direct and substantial interest and in which he or she has at any time participated in the course of his or her Government employment.

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when he or she does not serve the Government as well as on the days when he or she does.

(c) An employee who undertakes service with the Department of the Treasury and another department or agency shall inform each of his or her arrangements with the other.

(d) There may be situations where a special Government employee has a responsible position with his or her regular employer which requires him or

her to particiate personally in contract negotiations with the Department. In this situation, the special Government employee should participate in the negotiations for his or her employer only with the knowledge of a responsible Treasury official; *i.e.*, the full-time official to whom the special Government employee reports. Prior to permitting such participation, the responsible Treasury official shall obtain approval in writing of the Deputy General Counsel.

(e) Section 205 of Title 18, U.S.C., contains certain exemptions. The first of these deals with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his or her performance of work under a grant or contract for which he or she would otherwise be disqualified because he or she had participated in the matter for the Government or it is pending in an agency he or she has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or 205 or Title 18 U.S.C. to allow a special Government employee to represent before such department or agency either his or her regular employer or another person or organization in the performance of work under a grant or contract, provided the national interest so requires. The action required to effect the exemption is a certification by the Secretary to be submitted for publication in the **Federal Register**. Such certifications will be fowarded to the Secretary through the Deputy General Counsel, and the exemption will not take effect until the certification is published.

(f) The other exemption permits a special Government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether intermediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action in the Department of the Treasury.

§ 0.735–211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18, Code applies to individuals who have left Government service, including former special Government employees. It prevents a former employee or special Government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and sustantial interest. In addition, section 207 of Title 18, U.S.C. prevents a former employee for a period of two years after his or her employment has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matters before a court, department or agency if the matters were within the area of his or her official responsibility at any time during the last year of his or her Government service. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) A special Government employee who serves sixty-one days or more in a given calendar year in a position designated as a Senior Employee position in 5 CFR Part 737 may not represent anyone other than the United States before the employee's former agency in any particular matter (whether a specific party or parties are involved or not) and may not make oral or written communications, with intent to influence, to that agency for a period of one year after his or her employment has ceased. For purposes of this restriction, certain components of the Department of the Treasury have been designated as separate agencies from the balance of the Department in 5 CFR 737.31.

§ 0.735–212 Applicability of 18 U.S.C. 208.

(a) Section 208 of Title 18, U.S.C., bears on the activities of Government personnel, including special Government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. However, the section permits such an employee's agency to grant him or her an exemption if the interest is not so substantial as to affect the integrity of his or her service. Insignificant interests may also be waived by a general rule or regulation.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also where the financial interest involved is minimal in value.

Rules of Conduct

§ 0.735–215 Applicability of Subpart B of this part.

The rules of conduct (§§ 0.735–20 through 0.735–61) contained in Subpart B of this part shall also apply to special Government employees insofar as their employment with the Treasury Department is concerned. However, the prohibition in § 0.735–31, concerning active participation in political management or campaigns (5 U.S.C. 734), only applies to special Government employees on days that they serve the Department. In addition, where there are specific statutes applicable to employees in certain Treasury bureaus, the bureaus concerned should inform their special Government employees of the applicability of those statutes to them.

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Consultants and Advisers

§ 0.735–220 Advice on rules of conduct and conflicts of interest statutes.

If a special Government employee who is a consultant, expert, or an adviser has doubt as to the ethics of any conduct falling within the Standards of Conduct and conflicts of interest statutes, he or she should confer with the Ethics Counselor or a Deputy Counselor.

§ 0.735–221 Industry, labor, agricultural and other representatives.

There are situations where an adviser or member of an advisory committee may be providing advice as a representative of an outside group and not as an employee or special Government employee of the Department. Such questions normally arise with respect to members of advisory committees within the departments. Some advisory committees are clearly composed of representatives of industries. The Attorney General has ruled that the Advisory Group to the Commissioner of Internal Revenue is composed of persons serving in a representative capacity. Bureaus or offices using advisory committees may seek the advice of the Ethics Counselor or a Deputy Counselor to determine whether members of any given advisory committee are serving in a representative capacity and not as employees of the Department. Persons serving in a representative capacity are not subject to the conflict of interest laws, and are not required to file statements of employment and financial interest, but they should nonetheless be guided by the considerations in this part covering such points as use of inside information, abuse of office, and gifts.

Procedures To Be Followed in the Department

§ 0.735–230 Information and assistance to special Government employees and their supervisors.

Each special Government employee appointed in the Department and each supervisor of a special Government employee will be given a copy of this part and will be required to familiarize himself or herself with the conflict of interest laws and the provisions of the instructions applicable to him or her. If a special Government employee or prospective special Government employee or a supervisor desires assistance in interpreting the instructions or laws, he or she will be referred to the Ethics Counselor or a Deputy Counselor

§ 0.735–231 Disclosure of financial interests.

(a) In order to carry out the responsibility to avoid the use of the services of special Government employees in situations in which violations of the conflict of interest laws or of the regulations in this part may occur, each special Government employee will, at the time of initial employment and each reappointment thereto, be required to supply a statement of—

(1) All other employment and

(2) The financial interests of the special Government employee which the head of the bureau or office in which he or she serves determines are relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in which he or she has a financial interest, and the nature of such financial interest.

Each statement of financial interests will be forwarded to the Deputy General Counsel through the Advisory Committee on Ethical Standards along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The supervisor of the special Government employee should review the statement of employment and financial interests in relationship to the duties to be performed and initially determine that no conflict of interest exists prior to submission of the material to the Advisory Committee. Such statements must be kept current during the period the special Government employee is on the Government rolls. Changes in or additions to the information contained in an employee's statement of employment and financial interest must be promptly reported by the filing of an amended statement. Such changes would include the undertaking of new employment or the acquisition of new financial interest.

(c) The Department official or bureau head appointing a member of an advisory board or committee to serve in an individual rather than a representative capacity may:

(1) Waive disclosure of financial information when he or she considers that such information is not relevant to the advisory duties of the board or committee, or

(2) Waive disclosure of financial information except that which is relevant to the advisory duties of such board or committee.

Such waiver or partial waiver is for the convenience of the Department and shall in no instance be considered a substitute for the exemption procedures described in § 0.735–212, "Applicability of 18 U.S.C. 208" in this subpart. If the official or bureau head elects to waive or partially waive disclosure of information as described in this paragraph rather than obtain complete disclosure of financial information, he or she must report in writing to the Designated Agency Ethics Official the names of the persons to whom waivers were granted and the specific reasons for the waivers. In cases of doubt as to which of these actions is appropriate, he or she should obtain advice from the Designated Agency Ethics Official.

§ 0.735–232 Service with other Federal agencies.

If a special Government employee is serving in other Federal agencies, he or she will be required to inform the Department and each of the agencies of his or her arrangements with the others so that appropriate administrative measures may be effected. Information of service with other Federal agencies will be submitted along with the statement of employment and financial interests and must be kept current while employed with the Department.

§ 0.735–233 Resolution of cases involving a conflict or apparent conflict of interest.

When a situation arises which indicates a conflict of interest or apparent conflict of interest and the matter is not resolved, information about the situation will be reported to the Ethics Counselor, who in turn, will report to the Secretary. In any such situation, the special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 0.735–234 Legal interpretation.

Whenever the Ethics Counselor believes that a substantial legal question is raised by the employment of a particular special Government employee, the Ethics Counselor will advise the Office of Government Ethics in order to insure a consistent and authoritative interpretation of the law.

§ 0.735–235 Safeguarding of information.

(a) Statements of employment and financial interests, and supplementary statements shall be held in confidence. To ensure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part.

(b) Criminal penalties may be imposed on an employee who willingly and knowingly discloses to an unauthorized person prohibited information under the Privacy Act. See § 0.735–61.

(c) The unauthorized disclosure of employees' confidential statements may be the basis for civil action against the Department under the Privacy Act. See U.S.C. 552a(g)(1)(D).

Subpart F—Employees Stationed in Foreign Countries

General Provisions

§ 0.735–300 Purpose.

The General Provisions set forth in Subpart A of this part are applicable to all employees stationed in foreign countries. In addition, (a) regular employees stationed in foreign countries are responsible for adhering to the provisions of Subpart B of this part; (b) special Government employees are responsible for adhering to the provisions of Subpart E of this part; (c) this subpart sets forth additional rules and guidelines applicable to employees and special Government employees stationed in foreign countries.

§ 0.735–301 Policy.

Treasury employees and special Government employees on official duty in foreign countries are both representatives of the Department of the Treasury and the United States Government and guests of the country in which they serve. This subpart is intended simply to emphasize these points.

§ 0.735–302 General provisions governing conduct in foreign countries.

Treasury employees and special Government employees should familiarize themselves with the Standards of Conduct for State Department personnel overseas and be guided accordingly. The most important provisions regarding conduct, not otherwise covered in this subpart, are contained in §§ 0.735–310–0.735–316. Since application of the standards may vary slightly in different countries due to local differences, Treasury employees should look to the State Department or the U.S. Embassy for the country in which service is being performed for guidance, interpretation and assistance.

Additional Rules of Conduct

§ 0.735–310 Basic rule of conduct.

Treasury employees and special Government employees are obligated to obey the laws of the country in which they are assigned and to observe the rules of moral and courteous conduct in their official and personal lives.

§ 0.735–311 Applicability to American employees.

Each head of a Treasury organization overseas shall ensure that all employees and special Government employees under his or her jurisdiction have read and are familiar with the provisions of this part.

§ 0.735–312 Applicability to members of families.

Restrictions placed on Treasury employees and special Government employees with respect to speeches, interviews and participation in activities abroad also shall apply to those members of the family of the employee and special Government employee who normally reside with him or her and are dependent on him or her. An employee or special Government employee shall be held to strict accountability for the actions of his or her family. Members of an employees' or special Government employee's family shall avoid expressing views which are unfriendly to or critical of the United States or the host country, its Government, institutions, or people, either to or in the presence of persons of a foreign nationality. They shall, in addition, refrain from engaging in, or associating closely with, groups of people or organizations engaged in activities which are inimical to or embarrassing to the Government of the United States.

§ 0.735–313 Expression of thoughts and views.

Employees and special Government employees shall not allude in public speeches and newspaper interviews to disputes between governments or to active political issues in the United States or elsewhere, except with the authorization of the Department.

§ 0.735–314 Political activities.

Treasury employees and special Government employees shall not engage in any form of political activity in the country to which they are assigned. (This restriction does not apply to alien spouses who may continue to vote in their own countries.)

§ 0.735–315 Acceptance of employment by a member of a family.

Members of the family of Treasury employee or special Government employee overseas shall not transact or be interested in any business or engage for profit in any professions in the country to which the employee or special Government employee is assigned without the approval of the bureau concerned. However, if the bureau so determines, no approval is required for such employment by the U.S. Government.

§ 0.735–316 Sale of personal automobiles and other personal property.

The following provisions apply to all American employees and special Government employees regardless of agency, attached to United States embassies and constituent posts:

(a) The importation, sale or export of personal property including automobiles of American employees and special Government employees and their dependents must be in accordance with the laws, regulations and conventions of the host country.

(b) Personal property, including motor vehicles, brought to posts abroad by American employees and special Government employees must be for their bona fide personal use or that of their dependents, and not with intent of sale or transfer.

(c) Automobiles purchased for shipment to new posts of assignments should be unostentatious in appearance and modestly equipped.

(d) The employee or special Government employee will not be permitted to sell the employee's personal property, including motor vehicles, at an amount in excess of the price the employee paid for it plus any taxes and customs duty paid by the employee, or for any valuable consideration in excess of the total of these amounts. However, an employee need not sell personal property, including motor vehicles; it may be exported at the employee's or U.S. Government expense, under pertinent travel or shipping regulations. The employee must export it if required to do so by local law, local government regulation, or rules established by the ambassador.

(e) Full responsibility rests with the ambassador for controlling the importation and sale of personal property by all American employees or special Government employees attached to the embassy or constituent posts. He or she will issue and ensure compliance with local regulations consistent with policy prescribed herein and with other applicable regulations.

(f) Since conditions surrounding the importation and sale of personal property, including motor vehicles, vary widely country by country, Treasury must rely on the ambassador to issue detailed local regulations and procedures tailored to meet unique local situations. In issuing such local regulations and procedures consideration should be given to the

following alternatives among others available to the ambassador. The ambassador may:

(1) Limit or prohibit importation of certain kinds of personal property. (For example, he or she may limit the number or frequency of motor vehicles imported.)

(2) Limit classes of persons to whom sales may be made. (For example, he or she may arrange for personal property sales to the host government, or to the U.S. Mission's commissary or employee association for use or rental by it.)

(3) Limit the conversion of currency realized from the sale of personal property.

(4) Require the exportation of personal property at Government or the employee's or special Government employee's expense under applicable travel or shipping regulations.

Advice and Counseling

§ 0.735–320 Responsibility for guidance and assistance.

Supervisors in charge of Treasury activities overseas are responsible for providing guidance and assistance to their employees and special Government employees regarding conduct in such overseas activities. In the event the supervisor in the overseas location needs assistance and guidance or interpretation, he or she should first look to the State Department representative in the overseas country. If that is not possible or if he or she needs further assistance, he or she should contact his or her bureau head. Bureaus may refer questions on the regulations in this part to the Ethics Counselor who will confer with the State Department where necessary to assure uniformity of interpretation and application of this Subpart to employees stationed in foreign countries.

December 13, 1988.

Mark Sullivan III,

General Counsel.

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Part VI

Department of Labor

Employment and Training Administration

20 CFR Part 602

Federal State Unemployment Insurance Program; Revenue Quality Control Design Issues; Notice and Opportunity to Comment

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 602

Federal State Unemployment Insurance Program; Revenue Quality Control Design Issues

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice and opportunity to comment on design issues of proposed Quality Control program for State unemployment insurance revenue operations (Revenue Quality Control).

SUMMARY: The Employment and Training Administration requests comments on basic issues affecting the design of a Quality Control program for State unemployment insurance (UI) revenue operations. This notice also provides information about public consultation in designing the program, constraints affecting its design, and policy principles which have already been established. The program, called Revenue Quality Control, is intended to complement State managers' efforts to improve their UI programs, by providing them with objective information on the quality of existing revenue collection operations. This information may also at a later date be used to help carry out the Secretary of Labor's responsibilities to oversee the Federal-State unemployment compensation program.

DATE: Comments must be received in the Department of Labor by the close of business on February 21, 1989.

ADDRESS: Submit comments to Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4531, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Janet Sten, Director, Revenue Quality Control Work Group, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4015, Washington, DC 20210. Telephone (202) 535–0634 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

On September 3, 1987, the Department of Labor (the Department) published a regulation at 20 CFR Part 602 establishing a mandatory Unemployment Insurance (UI) Quality Control (QC) program. This program is intended to yield data which will help State managers improve program quality. Although the regulation provided that the UI QC program would cover all major aspects of the largest UI programs, the Department initially mandated only the first phase of QC, which reviews the quality of paid claims in a selected group of UI programs. Effective October 5, 1987, all State Employment Security Agencies (SESAs) were required to have implemented this first phase of UI QC. All extensions or modifications of QC beyond the first phase are to be preceded by careful pilot testing and evaluation; and the implementing regulation will be modified as needed to reflect each change. This notice is designed to solicit comments on issues pertinent to the design of a QC system to review UI revenue collection operations, an extension of QC the Department agreed would be one of the first steps on a path toward a comprehensive UI QC program. Once the design issues have been resolved, Revenue Quality Control (RQC) will be pilot tested, after which the QC regulation will be appropriately modified and RQC will be implemented in all States according to an appropriate schedule.

B. RQC Terminology

RQC will examine the operation of SESA programs for receiving and processing money received in or for the State unemployment fund, including employer contributions, payments in lieu of contributions (reimbursements), employee contributions where applicable, and penalties and interest. Given the variety of payments to be included in the program, the term "revenue" rather than "tax" or "contributions" has been chosen to identify this phase of the QC program. However, more common terminology has been used at some points in this notice (e.g, "tax staff") where using the word "revenue" would be awkward or confusing.

C. Public Consultation Process

RQC must be designed without benefit of a "Random Audit" type model (which guided benefit payments QC's development), in an environment of State laws and institutions which is much more diverse than the benefit payment environment. For this reason, and because it is essential such a system reflect and support State management objectives, the Department has already engaged in extensive informal information gathering and information exchanges with interested parties. Department staff have already met individually with UI tax staff in 13 States, and with staff of selected organizations representing all major interest groups in the UI system. RQC presentations on plans and principles have been made before large gatherings such as the State UI Administrators and International Association of Personnel in Employment Security (IAPES).

This notice and subsequent **Federal Register** notices will initiate the formal consultation process. In addition, the RQC workgroup will initially comprise Federal, National and Regional Office staff, technical support contractor staff, and selected State UI tax experts serving on Intergovernmental Personnel Act (IPA) assignments to the RQC workgroup. Progress will be reported, and comment on concerns solicited, periodically via regular ETA information vehicles. When the testing stage is reached, pilot State staff will be asked to work with the workgroup to refine the designs before final pilot testing begins.

D. Constraints

The design and implementation of RQC will be performed without a permanent increase in Federal or SESA QC staffing, and without an increase in UI data collection and reporting requirements. Efforts will be made to identify offsets and reductions to current performance and reporting requirements, the resources for which can be redirected to RQC. The system will be automated, not manual. There are no preconceptions about methodology: data collection methods will be determined by data needs, and it is hoped that automated reports can be used extensively.

E. RQC and Federal Oversight

Although the Department may eventually use some RQC input in connection with the Secretary's Federal oversight responsibilities, the RQC process will not be the means for determining how its findings might be so used. This latter task will be accomplished as part of a performance review being developed separately which will be subject to public comment before being put into place.

F. Established Principles for RQC

Some of the principles and design features of Benefits Quality Control (BQC) will apply to RQC. This notice will outline them and outline the process of choosing among features where BQC decisions have not necessarily established precedents.

1. *RQC Will Be Mandatory.* Following the precedent of BQC, States will be required to have an RQC program.

2. *RQC's Purpose.* RQC's overall purpose is to provide a core of

information through which the quality of State UI revenue operations can be objectively assessed so that actions can be taken to improve them where warranted. This information is intended not only for the use of State managers, but also to help the Department carry out its oversight, technical assistance and policy development responsibilities.

3. *RQC's Scope.* Examination of the State UI revenue operation will cover required employer payments and employee contributions, where applicable. The quality of UI benefit payments and revenue is influenced by factors both internal and external to the agency; RQC's objective is to develop measures of the quality with which the State performs the UI revenue collection operations under its direct control. Consequently, RQC will *not* be explicitly concerned with such elements as the effect of macroeconomic factors, e.g., the level of unemployment or other measures of economic activity; although by affecting workloads they affect the quality of UI activity, they are out of the agency's control. Nor will it review the decisions through which the agencies set basic program values such as the revenue rate, wage base and benefit levels which are designed to ensure fiscal solvency or wage replacement adequacy; nor the level of administrative funding and its effect on quality by agency staff; nor will RQC assess the effectiveness with which IRS collects and processes the Federal Unemployment Tax Act (FUTA) revenue. Ultimately, RQC findings may enable judgments to be made about the effect of external or indirect factors, but this will require combining QC and non-QC information.

G. RQC Design Questions

Aside from the established principles set forth above, RQC's basic structural and design characteristics remain open to discussion. The Department is eager to receive all interested parties' comments on what these characteristics should be before final decisions are made. The following questions are designed to elicit input on the broadest design issues.

1. *The Meaning of Quality in RQC.* The goal of RQC is to improve, where possible and necessary, the quality of UI revenue operations. These operations appear to have three salient dimensions of quality: Timeliness, accuracy and completeness, although not all dimensions may be equally important or applicable for every revenue operation. For example, completeness might be relevant for collections and status determination.

Question 1a: Are timeliness, accuracy, and completeness the dimensions of quality for UI revenue operations?

Question 1b: Are there other applicable dimensions which RQC should attempt to reflect and measure, e.g., the direct impact on Trust Fund balances?

Question 1c: If there are tradeoffs in measuring or accomplishing various dimensions, how should a balance be struck among them?

2. *Classification.* In the Department's initial conceptualization of the RQC, UI revenue operations have been divided into the following subfunctions for analysis (these functional classifications are not intended to define a desirable organizational structure):

- Status determination (identifying and ascertaining the liable status of new and successor firms; notifying employers; inactivating/removing accounts from the rolls; assigning initial revenue rate and handling employer appeals);
- Cashiering (receiving and preparing contributions for deposit and depositing them into the clearing account);
- Account maintenance (all activities associated with establishing and maintaining records of employer contributions and reports and processing the information into related outputs. This includes inputs such as: status report information, contribution report data, wage record data, delinquency collection results, audit data, and benefit charge data. Examples of outputs include: wage information, data for audit, change information, inactivation/termination of accounts, experience rate notices, 940 certification, debit memos, delinquency notices, credit memos and statistical reports.);
- Report delinquency (identifying and collecting delinquent reports and issuing estimated assessments);
- Collections (identifying delinquent employers, collecting overdue balances, and writing off uncollectables);
- Field audit (selecting employers for audit, examining employer records to determine whether wages or taxes have been reported in accordance with the law and agency policy, assisting employers to comply, and handling employer appeals); and
- Blocked claims (analyzing and investigating to resolve claims disputes due to missing or inaccurate wage/separation information).

Question 2a: Is this the most effective way to classify the revenue subfunctions, and if not, what is a better classification?

Question 2b: Of the above (or reclassified) subfunctions, which should be included in RQC and which excluded? Why?

Question 2c: Does the list contain any omissions?

3. *RQC Measures (Output and/or Process)?* As noted above in the Background section, States will be required to collect a core of standard measures for RQC. Depending in part on the answers to earlier questions:

Question 3a: Should the data be limited to a *minimal* set of measures that capture the quality of critical or key revenue function *outputs*, the ones most likely of interest for Federal oversight measures (e.g., no more than accuracy, timeliness and completeness for key end-products of each subfunction noted in (2 above); or

Question 3b: In an effort to facilitate program improvements, should the data include a fuller set of output-related measures, data on *processes* leading to each outcome or supporting data thought useful for guiding program improvements? (Examples of the last might include information on how well a process was operating or where/why a process allowed a problem to occur; how an error was detected; or employer characteristics which could be used for error prone profiling.)

4. *State vs. Federal Roles.* BQC involves a largely Federal design, and procedures and methods remain a Federal responsibility. State staff carry out day-to-day operations. Federal staff monitor its operations to ensure adherence to established procedures. The plans for consultation and involvement of non-Federal personnel in the design of RQC are outlined above.

Question 4a: Should SESAs and Federal roles for operations, methodology, and monitoring follow the model of BQC, or is another division of responsibilities preferable? If the latter, please explain.

5. *Standard Methodology.* For measures not used as "Federal oversight" measures, should States be required to follow a standard methodology in developing RQC information? If not, what kind of process will ensure that the diverse methodologies do not result in inaccurate, biased, or easily manipulated data?

6. *Other Basic Issues.* The above categories have attempted to reflect dimensions of the RQC design at the broadest possible level. Do you have other concerns at a similarly fundamental level which the Department needs to consider and reflect in its design of this program?

H. Next Steps

Upon receipt of comments on the above, the Department will prepare initial design specifications for the Revenue QC program. Comments on additional, more specific issues, arising at that stage of design will be solicited through a subsequent **Federal Register** notice.

Signed at Washington, DC, this 14th day of December, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88-29565 Filed 12-22-88; 8:45 am]

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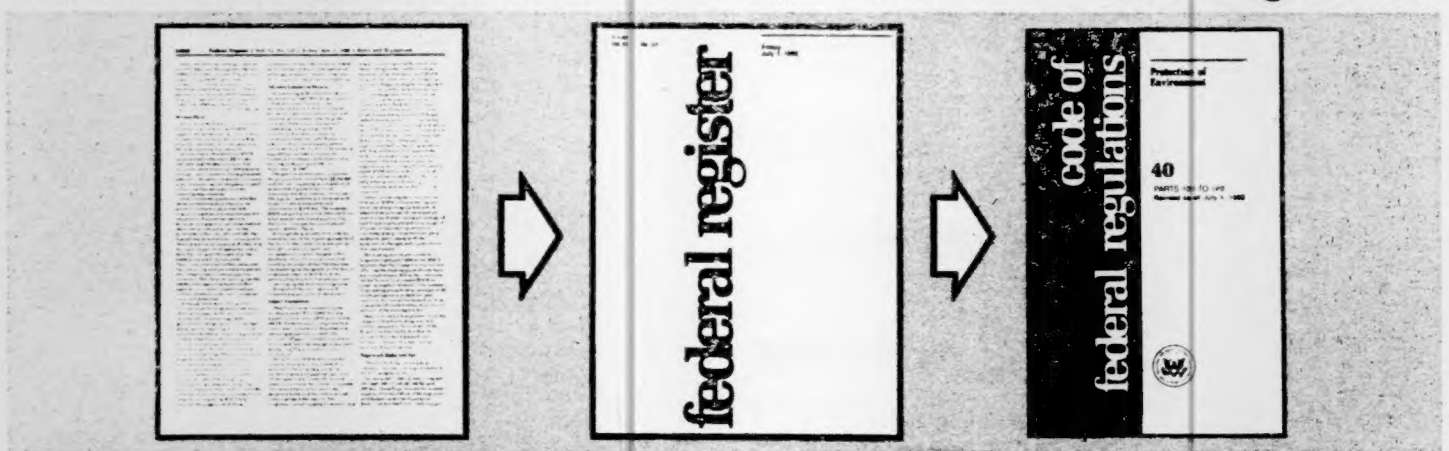

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